

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Hon. J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2018-002223

RECEIVED

Jul 31 2020

SC Court of Appeals

H. Hugh Andrews Respondent,

v.

Quentin S. Broom, Jr., ...Appellant.

CORRECTED RECORD ON APPEAL

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Mr. Curtis W. Stodghill
Stodghill Law Firm Chartered
November 4, 2005
Page 3

Mr. Broom plans to leave a few thousand dollars in Tri-Star to cover necessary accounting expenses. He plans to turn the books over to Tri-Star's accountant, Tim Russell. Thereafter, he will resign as the President of Tri-Star. We regret that such an unfortunate result has taken place, however, without the financial cooperation from Mr. Andrews, no other choice existed.

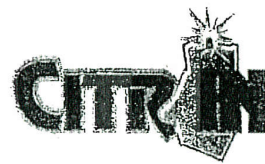
The only unfinished business resulting from the Dominican Republic venture is the existence of Four Hundred Thousand (\$400,000.00) Dollars or more in off-shore accounts (Calum/AKILAH). Sometime ago, because of comments made to Mr. Broom by Mr. Andrews on more than one occasion, Mr. Broom was led to believe that you have become actively involved in the management of the off-shore entities. Please inform us as to your role with regard to these entities. If you are actively involved, we request to be brought up to date on the activities of these entities, including copies of general ledgers and monthly income statements. Please keep in mind that there is still a large outstanding tax obligation due by Worldwide to the Dominican Republic, a large part of which is due by Calum.

Mr. Broom is unsure as to the existence of corporate books on Tri-Star but believes at one time they were in your possession. It seems that we need to dissolve the corporation, or certainly, it can be dissolved in its normal course by forfeiture.

Sincerely,

Patrick E. Knie

PEK:mbg
Enclosure



Santo Domingo, R. D.
21 de octubre del 2005

Estimado señor Broom:

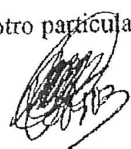
Con relación al asunto de referencia, por este medio le informo que con ocasión del cambio de regulaciones en la República Dominicana y en razón de las medidas tomadas por las autoridades dominicanas en cuanto al retiro de las maquinas de juego de los locales en que estas operaban fuera del ámbito de los casinos, ya no es posible llevar cabo las operaciones que fueron acordadas bajo el Contrato suscrito en fecha 13 de septiembre del 2001, bajo los términos y condiciones establecidas en dicho contrato.

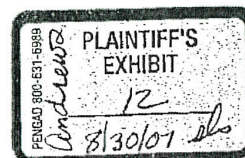
Se trata de una situación de fuerza mayor, que ninguna de las partes envueltas ha podido prever o solucionar, por lo que damos por terminado el Contrato intervenido entre **GRUPO CITRIN** y **WORLDWIDE ENTERTAINMENT, S.A.** debido a la imposibilidad de ejecutar el mismo.

En tal sentido, le informamos, que el equipo provisto por **WORLDWIDE ENTERTAINMENT, S.A.** a los fines de llevar a cabo las operaciones previstas bajo el contrato, le serán entregados en el lugar que usted indique, para finiquitar los asuntos pendientes bajo el contrato de que se trata.

Le reiteramos, se trata de una situación que escapa de las manos de ambas empresas y que, lamentablemente impide que se continúen llevando a cabo los negocios acordados entre las mismas conforme fuese pactado.

Sin otro particular, se despide,


Manuel Lebrón
Presidente - Tesorero



In reference to the matter at hand, by this means I inform you that with the change of regulations in the Dominican Republic and for reason of the measures taken by the Dominican authorities as to the retreat of slot machines from localities in which these operate outside of the environment of the casinos, it is no longer possible to carry out the operations that were agreed upon the subscribed date of 13 of September of 2001 under the terms and conditions established in said contract.

It is a matter of a situation of greater force, that either of the parties involved has been able to predict or to resolve, for which we give end to the contract intervened between CITRIN GROUP and WORLDWIDE ENTERTAINMENT, LTD due to the impossibilities to execute the same.

In such sense, we inform you, that the equipment provided by WORLDWIDE ENTERTAINMENT, LTD with the ends to carry out the operations predicted under the contract, will be delivered to you in a destination of your choice, to conclude the pending matters under the contract .

We reiterate, it is a matter of a situation that is out of reach of both businesses and that, unfortunately, impedes that they continue carrying out the business agreed to among the same in negotiated accordance.

With no other particular, good-bye,
Manuel Lebron
President-Treasurer

PATRICK E. KNIE

ATTORNEY AT LAW

A Professional Association

250 Magnolia Street

Spartanburg, S.C. 29306

Telephone No. (864) 582-5118

Fax No.:

(864) 585-1615

Mailing Address:

P.O. Box 5159 (29304)

November 15, 2005

VIA TELEFAX AND REGULAR MAIL

Mr. Curtis W. Stodghill
Stodghill Law Firm Chartered
Post Office Box 2431
Greenville, South Carolina 29602-2431

Dear Curt:

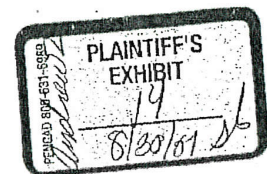
I faxed you a letter on November 4, 2005 and confirmed receipt thereof. Within the body of the correspondence, we requested to learn of your role in the administration and management of the off-shore entities known as Calum and AKILAH. To date, we have not had a response from you. It seems that if you are not involved in the administration and management of those entities, so advising us is a simple act. If in fact you are involved in the administration and management of those entities, as a shareholder, Mr. Broom is entitled to a response and to information relating to the administration and management of those entities. Your further silence on the matter gives rise to genuine and serious concern.

Sincerely,

Patrick E. Knie

PEK:mbg

cc: Mr. James R. Gilreath
The Gilreath Law Firm, P.A.



PATRICK E. KNIE

ATTORNEY AT LAW

A Professional Association

250 Magnolia Street

Spartanburg, S.C. 29306

Telephone No. (804) 582-5118

Fax No.:
(864) 585-1615

Mailing Address:
P.O. Box 5159 (29304)

November 15, 2005

VIA TELEFAX AND REGULAR MAIL

Mr. Curtis W. Stodghill
Stodghill Law Firm Chartered
Post Office Box 2431
Greenville, South Carolina 29602-2431

Dear Curt:

Mr. Broom sent three checks to Mr. Andrews on November 3, 2005 by certified mail. We are unsure as to whether or not anybody has signed for that document. I am enclosing copies of the three (3) checks and a copy of the certified mail receipt. I suppose if nobody signs for the checks, and they come back to Mr. Broom, I can forward them to you via regular mail.

I recommend, however, that you contact your client and ask that he sign for the checks.

Sincerely,



Patrick E. Knie

PEK:mbg
Enclosures

cc: Mr. James R. Gilreath
The Gilreath Law Firm, P.A.



PATRICK E. KNIE

ATTORNEY AT LAW

A Professional Association

250 Magnolia Street

Spartanburg, S.C. 29306

Telephone No. (864) 582-5118

Fax No.:

(864) 585-1615

Mailing Address:

P.O. Box 5159 (29304)

December 5, 2005

Mr. Curtis W. Stodghill
Stodghill Law Firm Chartered
Post Office Box 2431
Greenville, South Carolina 29602-2431

Dear Curt:

As I explained in my letter of November 15, 2005, apparently Mr. Andrews is refusing to accept his certified mail. Sometime ago, we attempted to send him three (3) checks. We finally received the envelope back from the US Postal Service. We are enclosing a copy of the envelope, as well as the three (3) checks. Please forward those checks to Mr. Andrews.

The foregoing is but one of several examples of the difficulty Mr. Broom has encountered in dealing with Mr. Andrews with regard to Tri-Star and the other related entities which formerly conducted business in the Dominican Republic.

Sincerely,

Patrick E. Knie

PEK:mbg
Enclosures

cc: Mr. James R. Gilreath
The Gilreath Law Firm, P.A.

Mr. Quentin Broom, Jr.



SPARTANBURG, SC 29305

DATE 11/3/05

67-103/532

PAY
TO THE
ORDER OF

Hugh Andrews

\$ 130,000.00

One hundred thirty thousand + 00/100

DOLLARS



MARTIN ARTHUR STATE BANK
SPARTANBURG, SC

FOR loan repayment

⑈004840⑈

TRI STAR COMMUNICATIONS, INC.
P O BOX 4914
SPARTANBURG, SC 29305

4841

DATE 11/3/05

67-103/532

PAY
TO THE
ORDER OF

Hugh Andrews

\$ 25,000.00

Twenty-five thousand dollars + 00/100

DOLLARS



MARTIN ARTHUR STATE BANK
SPARTANBURG, SC

FOR replacement of check #4469

⑈004841⑈

TRI STAR COMMUNICATIONS, INC.
P O BOX 4914
SPARTANBURG, SC 29305

4842

DATE 11/3/05

67-103/532

PAY
TO THE
ORDER OF

Hugh Andrews

\$ 60,000.00

Sixty thousand dollars + 00/100

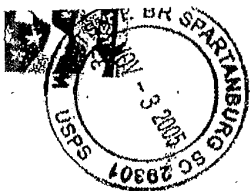
DOLLARS



MARTIN ARTHUR STATE BANK
SPARTANBURG, SC

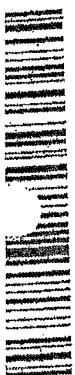
FOR final distribution

⑈004842⑈



PAID
SPARTANBURG, SC
29301-05
NOV 03 2005
U.S. POSTAGE

\$4.05
00025754-01



95E2 5225 9000 06E0 5002

RETURN RECEIPT
REQUESTED

Hugh Andrews
c/o Claudia Humphries
9107 Asheville Hwy
Boiling Springs, S.C.

RTS
RETURN TO SENDER

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

RTS 20-2134431222

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hugh Andrews
c/o Claudia Humphries
9107 Asheville Hwy
Boiling Springs, S.C.
29316

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from form)

7005 0390 0006 5213 7356

PS Form 3811, February 2004

Domestic Return Receipt

10255-024-1540

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

INTERNATIONAL GAME TECHNOLOGY,)
INC.,)

Plaintiff)

-versus-)

HORACE HUGH ANDREWS, II and)
DREWS DISTRIBUTING, INC.,)

Defendants)

7:03-1407

3/28/06

Spartanburg, SC

TRANSCRIPT OF BENCH TRIAL (Volume 1)

BEFORE THE HONORABLE HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Plaintiff: JEFFREY L. PAYNE, ESQ.
R. WAYNE BYRD, ESQ.
Turner Padgett Graham and Laney
PO Box 5478
Spartanburg, SC 29502

For Deft Andrews: CHARLES J. HODGE, ESQ.
Hodge Law Office
PO Box 2765
Spartanburg, SC 29304

For Deft Drews: DONALD C. COGGINS, JR.
Harrison White Smith and Coggins
PO Box 3547
Spartanburg, SC 29304

Court Reporter: Jean L. Cole, RMR
PO Box 10732
Greenville, SC 29603

The proceedings were taken by mechanical stenography and the
transcript produced by computer.

1 THE COURT: Okay. For those of you who haven't been
2 up here Jean Cole is the court reporter, Fred Bostic is the
3 courtroom deputy and then Fredric Marcinak is my lawyer for
4 this case. We've read your briefs so are you ready to call
5 your first witness or anything preliminarily?

6 MR. PAYNE: Your Honor, just a little bit of
7 housekeeping, we have pre-marked the exhibits and we would like
8 to go ahead and admit all of the exhibits except for
9 Plaintiff's Exhibit 4 without objection. We have no objection
10 to the defendants' exhibits. We've provided the court reporter
11 with a set, as well as your Honor with a set, and I believe Mr.
12 Coggins has done that as well so we can go ahead and introduce
13 all of those.

14 THE COURT: All right. Without objection.

15 (Plaintiff's Exhibits Number 1 through 77 and
16 Defendant's Exhibits Number 1 through 30 marked into evidence.)

17 MR. PAYNE: Your Honor, we call first Mr. --
18 Professor John Freeman.

19 THE COURT: I'm going to take his testimony. Y'all
20 addressed the objection in your proposed order.

21 JOHN P. FREEMAN, Plaintiff's witness, sworn

22 MR. HODGE: Your Honor, for the record would you
23 prefer that we address the issues we've got when he's qualified
24 or just save it for cross-examination?

25 THE COURT: No, go ahead and put your objection in

1 the record now.

2 MR. HODGE: Right now?

3 THE COUR: Yeah.

4 MR. HODGE: All right, sir. Your Honor, the South
5 Carolina Supreme Court has addressed this in the case of
6 Dawkins versus Fields, 354 SC 58. It's a 20003 case, and it
7 dealt specifically with Professor Freeman in this context where
8 he offered an opinion as to the ultimate issue in the case.
9 The ultimate issue in the case as to Mr. Hugh Andrews' piercing
10 the corporate veil, that is Professor Freeman's opinion he's
11 going to opine to the court. It's the ultimate issue and
12 that's for you to decide, not for an expert to decide. And so
13 the South Carolina Supreme Court has held that that kind of
14 testimony should not be introduced before the trial judge. So
15 we've briefed that thoroughly. I think you have read it and I
16 just want to get it on the record.

17 THE COURT: All right. Thank you. Objection is
18 noted. You may proceed.

19 MR. PAYNE: Your Honor, I'd first like to note
20 Professor Freeman is under subpoena for another case in
21 Columbia today if you're wondering about the logic of starting
22 with him first. He's got to be in Columbia shortly, so we're
23 going to start with Mr. Freeman or Professor Freeman first.

24 DIRECT EXAMINATION BY MR. PAYNE:

25 Q. Professor Freeman, would you please provide the court

1 with your educational background through law school.

2 A. Yes. I got my bachelors degree from the University of
3 Notre Dame in accounting, a BBA. Got a JD from Notre Dame in
4 1970. Subsequently received an LLM from the University of
5 Pennsylvania in Philadelphia in 1976.

6 Q. And what did you do after you went to law school?

7 A. I went to work with the law firm of Jones Day Revis and
8 Polk in Cleveland, Ohio and worked there for a couple of years,
9 then went and got a graduate degree at Penn -- I said '76. It
10 was actually '75 when I got my LLM. I studied there in '72 to
11 '73 and then came to this law school at USC in 1973.

12 Q. And you've been in South Carolina ever since 1973?

13 A. Yeah. Except I had part-time summer teaching at Texas,
14 taught a semester at Loyola Law School in Chicago, worked some
15 for the FCC in Washington D.C. in a couple of summers, but I've
16 been on the faculty here for over 30 years.

17 Q. Which classes do you primarily teach?

18 A. Corporations is one of them. Securities Regulation is
19 another one. We have a course called Business Crime and Legal
20 Accounting. I teach those two courses. I also teach a section
21 of an advanced PR course that deals with legal malpractice.
22 Those are the main courses that I teach.

23 Q. Did you have any involvement with the revisions of the
24 South Carolina Corporate Code when it was revised?

25 A. I did, and I'll explain that. It was revised in the late

1 1990 -- excuse me, late 1980s and the code revision project was
2 broken up with different folks taking different parts, and I
3 took the parts dealing with officers' and directors' duties and
4 responsibilities.

5 Q. Have you received any type of honors in connection with
6 your work at the University of South Carolina?

7 A. Yeah. I've been voted best teacher by the students four
8 different times.

9 Q. And what other professional or academic activities have
10 you engaged in besides teaching at USC?

11 A. Well, as I said, taught at the University of Texas and
12 Loyola. I teach lawyers frequently about professional matters,
13 the same thing with judges from time to time I teach concerning
14 business matters, as well to members of the South Carolina bar.
15 I write a column for the South Carolina Lawyer Magazine and
16 write legal scholarship as part of my work as a full-time
17 faculty member.

18 Q. And are you familiar with the concepts of piercing the
19 corporate veil?

20 A. Yes, sir, I am.

21 Q. And the concepts of corporate formalities under South
22 Carolina law?

23 A. True.

24 Q. And have you ever been involved in any corporate
25 litigation?

1 A. Yes, I have.

2 Q. As an attorney as well as a witness?

3 A. True.

4 Q. And which type of cases have you been an expert witness
5 in?

6 A. I've been an expert witness in several piercing cases.
7 I've been an expert witness in cases concerning the duties and
8 responsibilities of officers and directors concerning business
9 entities in South Carolina as well, and I've also testified in
10 legal malpractice cases or lawyer discipline cases.

11 MR. PAYNE: Your Honor, we'd like to introduce
12 Professor Freeman as an expert in the field of corporate
13 governance as well as the duties and responsibilities of
14 business owners.

15 THE COURT: As to the qualifications, any objection?

16 MR. COGGINS: None from us.

17 MR. HODGE: We object as previously stated. We don't
18 believe -- it's almost like a jurisdictional question. He
19 shouldn't be allowed to testify.

20 THE COURT: I understand.

21 BY MR. PAYNE:

22 Q. Professor Freeman, are you here to tell your Honor what
23 the law is to pierce the corporate veil --

24 A. No. It's for his Honor to determine the legal -- whether
25 the legal standards are met. I'm here to shed some light on

1 certain factual issues that concern piercing or may relate to
2 piercing. That's all I am -- I'm going to do, and then I'm
3 going to leave.

4 Q. And what have you been asked to do in this case?

5 A. I've been asked to evaluate the behavior of Mr. Andrews
6 in his operations concerning Drews, his company, and
7 specifically as to the impact of his behavior in the way that
8 Drews was operated on the entitlement of IGT to get paid for
9 machines that it shipped, it billed for, it was partially paid
10 for and now over 780,000 and then up with additional costs has
11 been unpaid, and I'm here to comment on the propriety of the
12 treatment of IGT as a creditor in light of certain facts.

13 Q. And in preparation for being here today to testify what
14 have you done?

15 A. Well, I've studied Mr. Andrews' testimony. I studied Mr.
16 Scrantom's testimony. I've reviewed documents. I've reviewed
17 Mr. Markel's analysis, and he's the forensic accountant who has
18 studied the books and records of Drews. And I have
19 refamiliarized myself with the standards that are applicable to
20 the dealings between a business owner and a creditor such as
21 IGT, whether you want to call them piercing standards or
22 fiduciary duty standards, and have made an analysis of the --
23 in my mind the reasonableness of the behavior and how the
24 behavior accords with accepted standards, and I'm here to
25 testify about that.

1 Q. All right. And in preparing to testify today would you
2 view the preparation that you've done as being an investigation
3 of the sort that you would normally engage in before you
4 express opinions that you're about to express?

5 A. True. As somebody who has testified about this subject
6 matter, my preparation is standard.

7 Q. All right. And do you have an opinion as an expert in
8 the field of corporate governance, as well as the field of
9 duties owed by business owners based on a reasonable degree of
10 certainty as to whether it would be appropriate in this case
11 for the court to pierce the corporate veil of Drews
12 Distributing Corporation and to hold Mr. Hugh Andrews
13 personally liable for the judgments that are --

14 A. I do have --

15 Q. -- IGT?

16 A. I do have --

17 MR. HODGE: Objection as previously stated.

18 THE COURT: Overruled. I'm going to go ahead and
19 take it all subject to the objection.

20 MR. HODGE: Yes, sir.

21 BY MR. PAYNE:

22 Q. And what's your opinion?

23 A. My opinion is that the corporate veil should be pierced,
24 that Mr. Andrews should be personally liable for the obligation
25 that is owed to IGT.

1 Q. And why would you or what do you base your opinion on?

2 A. Analysis of the facts and the standards that are
3 applicable to business owners such as somebody in Mr. Hugh
4 Andrews' position.

5 Q. Let's talk about some of the applicable factors in your
6 analysis. First of all, how many factors?

7 A. There are -- there are a variety of factors depending on
8 how you count, and there are eight that -- the test that is
9 recognized applicable to business owners in South Carolina is
10 drawn from principally from a case that Judge Donald Russell
11 decided when he was on the Fourth Circuit, and it's the Dewitt
12 Truck Brokers case which is in my corporations book and has
13 been forever basically ever since he decided it. It's a course
14 that students are taught about, not just in South Carolina, but
15 around the country. It's a case that, you know, is
16 significant. And he has, you know, eight different factors.
17 Excuse me.

18 Q. Back up just a tad.

19 A. I apologize. To start off with and then that's the first
20 prong, and then following that prong there -- there's another
21 prong that says that it's a combination of these factors, and
22 on top of that there has to be evidence of injustice. And to
23 all that the South Carolina courts have added an additional
24 consideration, and that is that the business owner must have
25 done something concerning the creditor's rights knowing about

1 the creditor's claim that prejudiced the creditor. That's a
2 Sturkie versus Sifley kind of additional twist. So there are
3 different factors, and I'm prepared to go over each one of them
4 if you wish.

5 Q. Is there -- do they group them? Do you sort of group
6 them --

7 A. I group --

8 Q. -- in a different way. What are the main groups?

9 A. There are two main groups. One is you're taking a look
10 at the way the business is run in a paperwork sense, which is
11 to say is this -- is this business being run by an owner who's
12 trying to make money and treat people right, including
13 shareholders and creditors, and keep records and, you know, not
14 to oppress anybody or is it being run -- is it a shambles as if
15 somebody's running it out of their back pocket and kind of
16 taking money here -- here and there? So there's a formality
17 side to it. You know, you have cases where the directors don't
18 even know that they're directors. You have cases where you've
19 got directors and they never meet, that kind of thing. That's
20 formalities.

21 And then -- so that's one group. And then on the
22 other side in another group you've got the money angle, which
23 is the idea of treating people in a financial way fairly when
24 they deal with the company, particularly creditors. And so
25 there -- of these eight factors if you were to analyze them,

1 they kind of break down as either a money issue with tending
2 toward unfairness or a back pocket shambles type issue where
3 it's -- essentially the business is being run by a guy like
4 he's the most important person and is uncaring toward others.

5 Q. Let's talk about say undercapitalization. Is that one of
6 the factors?

7 A. That's the first factor that is in the Dewitt test.
8 Whether the corporation is grossly undercapitalized is a
9 factor, but that ties into another factor that is insolvency of
10 the corporation at the time. In his opinion in the Dewitt case
11 Judge Russell talked about the need to maintain capitalization
12 not just at the time you're set up, but through the life of the
13 corporation in order to meet this, quote, undercapitalization
14 test. And my finding in this case is that we --

15 Q. Right.

16 A. Okay. My finding, factual finding is that the business
17 when it started out was not undercapitalized. The business was
18 making it through a period of time, but it appears that in the
19 year 2000, and there is some testimony that I'm aware of around
20 August and September in 2000 basically the business hit the
21 wall. And the business at that time couldn't pay its debts as
22 they came due in the ordinary course of business. And
23 following that demarcation period where at that time IGT was a
24 creditor, it was owed money, it established its debt by going
25 to arbitration and everything, but it was -- it was owed money

1 at that point in time. And from that point in time onward it
2 was prejudiced as additional money was pulled out of the
3 business by Mr. Andrews and for his benefit in various ways.

4 Q. So the capitalization is required not only when you incur
5 the debt, but while you have an ongoing debt obligation?

6 A. Right. And let me explain. Some businesses are
7 undercapitalized from the get-go. Some businesses are just
8 incorporated, no money's ever put in there. Imagine a case,
9 for example, and there is one where they incorporated a
10 swimming pool. All right. So a swimming pool is owned by a
11 corporation and people go swimming there. What's a foreseeable
12 risk in a swimming pool? A foreseeable risk is some guard --
13 lifeguard isn't going to show up or isn't going to do his or
14 her job and somebody's going to drown. That's a known risk.
15 Well, no money was ever put into this swimming pool corporation
16 and, of course, somebody went out and drowned through the
17 negligence. Well, that was an easy piercing case because
18 essentially there was never any capital in there to protect the
19 interests of people who would be dealing with the corporation.

20 Now, in the case of Drews there originally was
21 capital. There originally was a business that was doing fairly
22 well. And then it hit the wall and it hit the wall when IGT
23 was owed money, and after that time Mr. Andrews managed to
24 basically loot the business, pull money out for purposes that
25 seem to me to have no business purpose.

1 Q. All right. One of the factors, I believe, is corporate
2 formalities?

3 A. True.

4 Q. Now, what type of corporation was Drews Distributing?

5 A. It was a regular South Carolina corporation as
6 distinguished from a statutory close corporation. I'd like to
7 explain the difference on the record if I could.

8 Q. If you would.

9 A. Statutory close corporation is a special type of South
10 Carolina company that you can easily be, either by
11 incorporating as such or by amending your articles to claim
12 this status, and it's not difficult to do and people do this.
13 If you claim that special status in South Carolina, you are
14 bringing yourself under a special provision of the South
15 Carolina Code which says that your failure to adhere to
16 formalities shall not be a basis for basically piercing the
17 corporate veil, that that's sort of taken out -- taken off the
18 table.

19 And so we talked before about there being two main
20 issues, the money issue and the formalities issue. If you are
21 a statutory close corporation you can get rid of that risk and
22 get rid of that problem. Drews was not a statutory close
23 corporation, so it was subject to the duty to adhere to
24 reasonable corporate formalities.

25 Q. And what's your opinion about whether Drews met or

1 performed the corporate formalities like it should under South
2 Carolina law?

3 A. You've got gaps, and my opinion is that the formalities
4 were deficient, and I say that for a couple of reasons. One is
5 essentially the -- as far as I can see the directors were
6 non-functioning. They met -- there's only two sets of records
7 involving director action that I've seen, one early on and then
8 one when Mr. Andrews assigned himself essentially all the
9 assets of the company, which is, of course, highly prejudicial
10 to IGT. But those are just two -- two hints at regular
11 director actions substantiated by the business records.

12 On top of that his wife was missing in action. She
13 was non-functioning as a director, as an operator of this
14 business. And on top of that an aggravating circumstance from
15 the testimony of Mr. Andrews it appears that during the time
16 that much of this was going on in the year 2000, 2001 and into
17 the fall of 2002 he was battling a terrible drug problem and
18 for that reason is unable even himself to explain what was
19 going on or how it was going on within the business justifying
20 business decisions.

21 So you have non-functioning on two levels. One is
22 the failure to have meetings, and the second there is some
23 evidence in the record of a person who was really not competent
24 to make business decisions in a reasonable, business-like way
25 for the benefit of shareholders for the benefit here,

1 particularly of creditors.

2 Q. Let's see. Next item would be corporate records.

3 A. Well, there's an issue of dividends, and here the
4 dividends were paid. Huge dividends were paid by Mr. Andrews
5 pulling money out of the business, which of course did not help
6 IGT. And Mr. Markel, I assume, will talk about that more
7 later, but his finding, if I understand it correctly, is that
8 IGT either would not have been prejudiced or would have been a
9 lot less prejudiced had those dividends been more moderate,
10 instead they are in the millions and millions of dollars pulled
11 out and put into Mr. Andrews' pocket.

12 Q. Why do they even discuss nonpayment of dividends as a
13 factor when the concern is that the sole shareholders are
14 siphoning off this money under other factors?

15 A. I've asked myself that question, and I'm not one to
16 quibble with anything Donald Russell wants to put in his order.
17 I think it -- in a sense it can go to formalities. There were
18 no -- I'll put it this way. When it came to payment of these
19 dividends, I didn't see any board records of meetings where the
20 board would, you know, declare a dividend, announce a dividend,
21 set a record date for a dividend and then pay the dividend. It
22 looked to me like it was just basically a check cut to Mr.
23 Andrews that has -- where the notation on it is for dividends.
24 And it's to the tune of millions and millions of dollars.

25 Q. Do you think it applies when you have multiple

1 shareholders and in a situation where one shareholder is
2 getting all the benefits and the other ones are not receiving
3 any benefits?

4 A. That shows highhandedness and impropriety on the part of
5 the business owner.

6 Q. Okay. Let's see. Corporate records is one of the
7 factors. Is that right? I might --

8 A. It is.

9 Q. And what is -- what are the courts addressing, if ever,
10 if they ever address that, that particular factor?

11 A. Again, it goes to formalities because what you're doing
12 is you're looking at the way the business is run and kind of
13 scratching your head and asking yourself is this -- is this the
14 kind of capitalism that we should have in this country where
15 people are -- you know, people risk money as shareholders.
16 People risk money as creditors. Is this a fair playing field?
17 Is this the way a business ought to be run or is this some sort
18 of off-the-charts goofy and wildly unfair that we're just not
19 going to -- we're not going to allow it. We're not going to
20 reward this person by allowing the corporate veil to stand in
21 the way of a creditor's rights. And formalities is something
22 and corporate records is something you look at in an effort to
23 determine whether the business is being run on the up and up or
24 the business is being run, as I say, as a shambles.

25 Q. Would an example of necessary corporate records be that

1 if you're loaning money to related companies, that there should
2 be some type of documentation for those loans?

3 A. Yes. In particular related-party transactions are a hot
4 button issue, and they're a hot button issue because they're in
5 a conflict of interest area where the owner of the business
6 basically gets to -- has the keys to the vault and can reach in
7 for any purpose. And those are supposed to be documented
8 properly so that it's clear to one and all that there is no
9 overreaching and there is no unfairness, and documentation here
10 is lacking.

11 Q. Siphoning of funds, I believe that's the sort of second
12 big group that you talked about. Money issues would be under
13 that category. What about siphoning, what's your opinion about
14 whether this corporation was siphoning money?

15 A. There's a lot of evidence of that, and to give some
16 examples, you've got airplane expenses that are huge, money
17 being taken out for -- for example, in the year 2001 when Drews
18 was insolvent and basically had no business operations and Mr.
19 Andrews was suffering from his drug abuse, the airplane
20 expenses paid by Drews were \$257,000. Revenues for the year,
21 the total amount of income for the year was only a 115,000.

22 So you have to scratch your head and ask yourself why
23 -- if you want to make money as a businessman, why are you --
24 and you've only got a 115,000, 10,000 a month, why are you
25 spending \$25,000 a month paying for an airplane at the same

1 time IGT is going unpaid? The \$257,000 for airplane expenses
2 would be sufficient to buy 267 roundtrip first class airline
3 tickets from Atlanta to Los Angeles. Now, why does Drews need
4 that? But obviously that was considered a proper allocation of
5 money as compared to paying IGT.

6 To give another example, compensation of officers.
7 In the year 2000 -- 2001, again, after Drews had hit the wall
8 and IGT is still unpaid \$233,000 and yet when -- you know, when
9 you ask Mr. Andrews questions about decisions that he made then
10 and what was going on then, the answer is, "I don't know. I
11 don't know."

12 In 2002, well after the business hit the wall, IGT
13 gets its judgment in the arbitration proceeding, but it's been
14 owed this money all along, it's just vindicating its right to
15 collect that money, Drews pays 58,000 of good cash for a BMW
16 vehicle. Now, why does Drews when it basically has no business
17 at all need to be buying for cash a BMW vehicle? And the
18 inference that I get is that it's Mr. Andrews decided that he
19 or a friend of his wanted a BMW vehicle and were going to have
20 it even though maybe we can't pay IGT. Tough for them.

21 Well, when you make these decisions, you've got to
22 live with them, and you open the door to somebody like IGT
23 coming in the courtroom and saying that that was unfair, that
24 was improper, put the money back, put it in our pockets. And
25 that's what -- that's what's going on here.

1 Q. When the company is insolvent, does the board of
2 directors or the sole shareholder owe fiduciary duties to a
3 company like IGT and other creditors?

4 A. Yes. As a business matter --

5 MR. HODGE: Objection to misleading nature of the
6 question. It presumes insolvency.

7 THE COURT: I'll take it subject to the objection.

8 A. Okay. It does presume insolvency. When the business
9 lacks the ability to sustain itself as an ongoing concern, then
10 at that point the shareholders, who are owners of the business
11 by definition since the business is insolvent and all the
12 shareholders own is a residual financial interest in the
13 business, essentially they become drastically less important
14 because they ain't going to get paid. There's just not enough
15 money around to pay them. That's what it means to be
16 insolvent.

17 So the people who are -- actually have got the
18 financial stake at that point in time in the business are the
19 creditors, and it is recognized and we do teach that when that
20 day comes, should it come, hopefully it won't, but should it
21 come, then the business managers need to be thinking in -- when
22 they make business decisions, they need to be thinking
23 rationally and they need to be thinking about not doing
24 anything that unfairly prejudices the interests of sort of the
25 new owners of the business, that -- those being the creditors.

1 And some courts have recognized fiduciary obligations owed to
2 those creditors.

3 Q. Now, if you -- if an officer or director draws a salary
4 from a corporation, should it be doing some work for the
5 corporation?

6 A. Yeah. The requirement is that the salary is to be
7 reasonable in light of the work that's being performed and the
8 responsibilities that are being discharged. And that's not
9 just a requirement in -- for corporate managers as corporate
10 stewards, but it's also something that's insisted upon by the
11 Internal Revenue Service should you want to take a deduction
12 for a salary, that it be reasonable.

13 Q. And do the cases discuss excessive salaries as being a
14 means in which officers and directors have siphoned money from
15 a corporation?

16 A. It's one of the -- it's one of the tools that you can use
17 to try to jimmy open the safe and loot, excessive salaries,
18 excessive dividends, the same sort of thing, getting money
19 diverted to pay for personal purposes or money sent to related
20 entities. And also something that is another way of doing it
21 is enriching yourself is if an entity owes you in the business
22 like Drews collecting and putting it in your own pocket, but
23 doing nothing to collect money for Drews, and that's another
24 failing that I see here, because there's a company out there
25 called Tri-Star.

1 Tri-Star owed a lot, millions of dollars to Drews,
2 and although Tri-Star apparently was paying some personal
3 payoffs to Mr. Andrews, it was never -- he never collected
4 money from Tri-Star from around 2000 onward for the benefit of
5 Drews, which, of course, prejudiced IGT because the more money
6 that comes into Drews, the more assets Drews has, the more
7 likely it is that IGT gets paid. So there's two types of
8 wrongs, pulling money out directly and then not seeking to
9 bring money in when that's a possible avenue.

10 Q. You talked about money transferring to related companies,
11 but it doesn't have to be just money, does it? It could be any
12 other asset?

13 A. True. Any asset.

14 Q. What -- which factor would you place, assuming that
15 company employees of Drews are working for other related
16 companies, what is that a failure of if you're allowing your
17 employees to work for all these related companies while they're
18 on the Drews' payroll?

19 A. Well, to the extent you're using Drews' assets, which are
20 its employees and pay for those employees, to benefit you
21 personally as to these other investments that you have. So
22 you've got Drews' money being used to build up your wealth in,
23 you know, other companies. At the same time the creditor of
24 Drews or creditors of Drews are suffering because they are not
25 getting any payoff out of that. All they do is lose. It may

1 be a wash for you, but it's a losing proposition for the
2 creditors who need to be paid if they are creditors of Drews
3 and don't get anything out of that deal.

4 Q. All right. One of the other factors in the first prong
5 of the test, I believe, is the operating it as, I guess, the
6 alter ego or as the facade for the sole shareholder.

7 A. Right.

8 Q. And explain that factor, if you would, and what opinion
9 you have as to whether Mr. Andrews has violated that particular
10 factor of the test.

11 A. That's the final of the eight factors that were ticked
12 off by Judge Russell, and the fact the corporation is merely a
13 facade for the operations of the dominant stockholder, and that
14 feeds into this idea of siphoning of funds, of selfishness.
15 And what happened to Drews is Drews was for a period of time a
16 successful company. It hit the wall when video poker hit the
17 wall, and it collapsed financially as a going concern.

18 And rather -- and Mr. Andrews in a deposition you
19 took talked about the need to wind it up and kind of get rid of
20 it. And if he had wound it up and gotten rid of it properly,
21 looking after not just his own pocketbook, but the interests of
22 the creditors who had trusted Drews, did business with Drews
23 and expected to be paid, if he looked after their interests and
24 just paid everybody off and been done with it, there wouldn't
25 be any lawsuit, no problem at all.

1 Instead, whether because of his drug usage or
2 selfishness or whatever, he took Drews down -- down the winding
3 down trail, taking money out, cut back, cut back, essentially
4 winding its business up, getting rid of stuff, but in a way
5 that was selfish where he became the big winner. IGT got
6 nothing out of a \$58,000 purchase of a BMW in 2002. He did or
7 someone on his behalf did. And to the extent then that the
8 business is collapsing and is essentially in ruins as a going
9 concern and you continue to drain money out in an unfair way,
10 it is a facade. It's basically a practical joke that you're
11 playing on your creditors, and that's why we're here today.

12 Q. Now, explain the second prong of the test.

13 A. The second prong of the Dewitt test, which is not the
14 final prong in light of the Sturkie versus Sifly, but he took
15 what -- what Judge Donald Russell said in the Dewitt case is
16 that in addition to this -- these factors -- and in some form
17 or fashion as far as I'm concerned all these factors are
18 relevant and they all point in the direction. The first prong
19 of the eight factors point in the direction or recovery by IGT.

20 Second prong is is there an element of fundamental
21 unfairness if -- if you don't pierce, if the individual is not
22 held personally accountable for the actions and inactions.
23 And, yeah, I believe it would be fundamentally unfair because
24 again, IGT played by the rules. In a straight up business
25 transaction it sold a product. It took back a receivable. It

1 collected a million dollars on the receivable. It was owed
2 780,000 then. It couldn't get paid. Even though the money was
3 there to pay it it couldn't get paid. Then the money -- then
4 the money disappeared to pay it. It soldiers on. It soldiers
5 on into an arbitration under an arbitration agreement. It gets
6 that arbitration award affirmed out in California in federal
7 court. It brings that judgment to South Carolina and here we
8 are today.

9 So you can't fault IGT, but you can fault the way
10 this business was run. Again, as Mr. Andrews said, he wanted
11 to wind it up. He wanted to close it down. It needed to be
12 closed down. Had he done it right and in a fair way, looking
13 after the interests of IGT, no problem. He chose not to do
14 that, and he -- in my judgment it is fair and just that he be
15 held accountable for his very bad decision.

16 Q. Talk briefly about the assignment of the assets to Mr.
17 Andrews, and I was wanting to know what was the court to make
18 of the assignment, the timing of that.

19 A. Well, there was a decision that was made, and this was --
20 seemed to be in a business decision for Mr. Andrews to try --
21 who is advancing cash because IGT couldn't pay its bills, it
22 was insolvent at the same time he's pulling this money out, it
23 was insolvent and he's advancing money in an effort to protect
24 himself by claiming a lien on essentially everything that was
25 there.

1 And if I understand kind of the logic of this, it was
2 to sort of pole vault into a priority position over all the
3 general creditors of -- including IGT -- Drews and at the time
4 he did this he -- they knew about IGT. They knew about
5 arbitration. And it's kind of a paperwork way to try to
6 protect him from a valid claim on the part of creditors. And I
7 -- you know, that type of behavior is -- frankly tends to
8 incriminate more than it tends to protect because it's very
9 obvious what's going on at that point in time, and it's just to
10 me another act of unfairness along the way.

11 Q. It is an example of acting in a self-serving manner with
12 regard to the corporate assets?

13 A. Sure it is.

14 MR. HODGE: Object to the leading.

15 THE COURT: Sustained.

16 BY MR. PAYNE:

17 Q. What was the assignment an example of?

18 A. The assignment to me is an example of him using fancy or
19 trying to use some legalistic paperwork to prejudice IGT and
20 create after the fact another barrier to keep IGT away from his
21 personal assets.

22 MR. PAYNE: I beg the court's indulgence one second.

23 Q. Professor Freeman, one thing. You'd spoken a little bit
24 about the Sturkie test having a little additional factor.
25 Explain that, if you would.

1 A. Sure. The Sturkie case adds a factor that requires you
2 to look at whether or not in light of the circumstances you can
3 conclude that the business manager who is the target of the
4 case was the -- knew about the claim of the creditor, you know,
5 process that, and then well knowing about the claim of the
6 creditor did -- took actions that prejudiced the creditor's
7 rights and I've analyzed that.

8 Q. What's your opinion?

9 A. Absolutely met here for the simple reason that it was
10 always on the radar screen at Drews that you had this --
11 started out as a 1,780,000 payable -- paid down to 780. They
12 knew they had it. They knew IGT wanted to be paid. They knew
13 that they were -- IGT was taking them off to arbitration. They
14 absolutely were aware of it. And well knowing about that you
15 see things like these exorbitant airplane expenses, the money
16 for BMW, excessive salaries and so forth. So it was -- to my
17 mind a clear-cut, calculated decision by the owners to prefer
18 their interests to IGT's interest and to leave IGT holding the
19 bag.

20 MR. PAYNE: Your Honor, at this time I'd like to move
21 to introduce -- I think it's Plaintiff's Exhibit 4, which is
22 Professor Freeman's report.

23 THE COURT: Mr. Hodge.

24 MR. HODGE: Your Honor, in addition to renewing the
25 same objection, he's testified. His report is cumulative.

1 COURT REPORTER: He's testified what? I didn't
2 understand.

3 MR. HODGE: He's testified. That was what I said.
4 He's testified. His report's unnecessary.

5 THE COURT: I note your objection. I'll deal with it
6 in the final order.

7 (Plaintiff's Exhibit Number 4, expert report of
8 John C. Freeman, offered into evidence.)

9 MR. PAYNE: Answer any questions that defendant's
10 counsel may have for you please.

11 CROSS-EXAMINATION BY MR. HODGE:

12 Q. Good morning, Professor.

13 A. Good morning, sir.

14 Q. I haven't decided whether this is a dream or a nightmare
15 to cross-examine any professors, but let's give it a shot. You
16 are an expert, correct?

17 A. Yes, sir.

18 Q. You're offering a legal opinion?

19 A. I'm offering factual opinions that have a legal
20 conclusion which the court may accept or reject.

21 Q. About legal issues which will determine the outcome of
22 the case?

23 A. I'm really here to set the table factually.

24 Q. What I've said is exactly what you're doing though, isn't
25 it?

1 A. I'm dealing in the sense that the claim here is the
2 corporate veil should be pierced, and I hold that opinion. On
3 one level that's true. On another level I'm here to talk about
4 factual matters that to me drive that decision and to add
5 assistance as an expert concerning those factual matters.

6 Q. All right, sir. Now, the South Carolina Supreme Court
7 determined in the case of Dawkins versus Fields, 354 South
8 Carolina 58. It's a 2003 case, that your affidavit should be
9 stricken because it was legal argument as to why summary
10 judgment should be denied. Isn't that right?

11 A. I assume you read it correctly. I don't have the case in
12 front of me.

13 Q. But you know what I'm talking about?

14 A. I know what you're talking about.

15 Q. And, in fact, the report which we've objected to that you
16 -- that has been put into evidence has got a CV here, doesn't
17 it?

18 A. It hasn't been put into evidence. The court is going to
19 deal with that particular issue later is what I understood his
20 Honor's ruling.

21 Q. But when I look at all of these cases that you testified
22 in, and there's a bunch of them, when I looked at them, there's
23 one case I didn't see in here, and that's the case of Dawkins
24 versus Fields. It's not in your CV, is it, sir?

25 A. First of all that's not my CV. That is a part of a

1 Section 26 report which you are required to put down the cases
2 in which you testified as an expert and testified as an expert
3 at deposition or at trial. Every one of those is a case where
4 I testified as an expert at deposition or at trial. There is
5 no cross-examination of an affidavit and an affidavit to my
6 knowledge is not required to be disclosed under 26. That's why
7 the affidavits that I have written are not on that list, not
8 one of them. In the Dawkins case I never testified at a
9 deposition or a trial.

10 Q. All right, sir. So we can agree it's not in your 26(b)
11 report?

12 A. It's not in there and it does not have to be in there.

13 Q. Okay. Can we agree that in general expert testimony of
14 issues of law is inadmissible?

15 A. In general.

16 Q. Okay. Now, I was looking at the Sturkie case, and that's
17 313 Southeast 2nd 316. I brought the book with me to make sure
18 I read it correctly. But in that case the court held they --
19 refused to allow the corporate veil to be pierced. Isn't that
20 right?

21 A. I believe that's true.

22 Q. And that was despite evidence which showed in that case
23 that the corporation was grossly undercapitalized, that there
24 was a failure to observe corporate formalities, that there were
25 no dividends paid, that there was insolvency, that they lacked

1 corporate records, that corporate funds were siphoned off by
2 the dominant stockholders, that it was used as a mere facade
3 for the operations of its dominant stockholders and there
4 remained an unsatisfied judgment. All of those elements were
5 present in Sturkie, yet the court held you couldn't pierce the
6 corporate veil; isn't that right?

7 A. Yeah. And I believe that that's when the court grafted
8 on that additional requirement which I testified about being
9 satisfied here.

10 Q. Can we agree that the corporate form may be disregarded
11 only where equity requires the action to assist a third party?

12 A. I don't have a problem with that.

13 Q. Okay. Well, that's actually what the case says, isn't
14 it? And also the case of Crabtree Investments versus Iley, 479
15 Federal Supplement 449. That's a 1979 case.

16 A. Yes. And let me be explicit. The prevailing view in
17 this country and in this state is that we like capitalism, we
18 like entrepreneurs and that we're going to give them special
19 protections to encourage them to make -- go into business and
20 make risks, but we're going to have -- we're going to draw a
21 line, we're going to insist that when they do that, they not
22 rip off or cheat people, and that's why we're here today.

23 Q. Well, let's talk about the current case and the Sturkie
24 factors if you would. Now, I assume that in addition to
25 reviewing all the exhibits the plaintiff wanted to take a look

1 at, you've reviewed all the exhibits of us, the defendants?

2 A. I won't say that I have done that.

3 Q. Oh, you have not done that. Well, the first -- the first
4 criteria is that the corporation was grossly undercapitalized.
5 Now, did you review the 1998 financial statement of Drews?

6 A. Summary of it.

7 Q. Well, can we agree that that certainly indicated that
8 Drews was adequately capitalized?

9 A. As of that point in time it had a positive net worth,
10 yes, sir.

11 Q. It had a positive net worth of some \$12,476,000 in total
12 assets, didn't it?

13 A. No.

14 Q. Did not?

15 A. No. What you're doing is you're looking at the total
16 liabilities and equity, sir. The net worth is the equity,
17 which is \$9,339,000.

18 Q. Okay. But they had total assets of 12,476,000, didn't
19 they?

20 A. According to the books, that's correct.

21 Q. Okay. And the 1999 statement showed, again, millions of
22 dollars in capitalization, adequate capitalization, correct?

23 A. Yes, sir.

24 Q. As did the financial statement of 2000?

25 A. According to the Drews balance sheet, yes, sir, it had a

1 positive net worth. Mr. Markel disagrees and is here to
2 testify as to the flaws in the Drews numbers.

3 Q. Actually in 2001 it had a positive net worth?

4 A. According -- according to those records, yes, it did, but
5 for example, sir, in 2001 in terms of liabilities there's not a
6 penny of the liabilities or in 2000 for the debt that is owed
7 to IGT. So if you've got debts and you're not putting them on
8 your books, that tends to inflate your net worth.

9 Q. Yeah. I've heard you say a dozen times or so debt owed
10 to IGT. IGT wasn't owed anything until they got a judgment
11 amended in California. The fight was between Silicon Gaming,
12 wasn't it?

13 A. You're exactly wrong and here -- let me explain my
14 answer. Well, IGT-Silicon, it succeeded the interests of
15 Silicon Gaming, but there's no debt on the books for Silicon
16 Gaming either. There's 2001 zero accounts payable on the Drews
17 books even though clearly 780,000 was owed to Silicon or to IGT
18 at that time. And, you know, you can show a positive net worth
19 if you don't list your liabilities. Mr. Markel is here to say
20 that in 2000 they were insolvent, 2001 they were insolvent.

21 Q. Well, I understand he's there to say that, but -- and
22 we're going to get into the insolvency issue in just a minute,
23 but with regard to failure to observe corporate formalities
24 you've reviewed minutes of corporate stockholder meetings,
25 haven't you?

1 A. I have.

2 Q. Okay. And actually did you know that corporate counsel
3 was employed during several years in the '98 to 2000 range, Mr.
4 Curt Stodgill?

5 A. There were -- there were legal bills being paid, that's
6 true.

7 Q. Well, have you ever considered that perhaps some of those
8 corporate minutes got lost?

9 A. Well, that would be one explanation for their
10 nonexistence today.

11 Q. And isn't it important when you're looking at the
12 propriety of these corporate formalities to look to see if
13 something major was concealed?

14 A. Yes, sir.

15 Q. Now, the critical corporate minutes, the ones that y'all
16 would be most interested in, are present, aren't they? That's
17 that November 13 corporate assignment?

18 A. No, I'm interested in all the minutes.

19 Q. Number three, no dividends paid. Well, there were
20 dividends paid.

21 A. There are massive dividends.

22 Q. Yeah.

23 A. Close to four million bucks.

24 Q. And actually there was massive cash infusion too, wasn't
25 there?

1 A. There was a large amount of cash that was put in and
2 pulled out.

3 Q. Who put that money in?

4 A. Mr. Andrews infused money at the request of people within
5 Drews who needed it to try and keep the doors open.

6 Q. Does that sound like a fellow who's trying to siphon off
7 funds or does that sound like a fellow who's trying to keep the
8 company going?

9 A. It sounds like a fellow who is making -- first of all, at
10 the time he was doing this he's under drugs. He was a drug
11 abuser, and I'm not sure what he -- what he knew. He
12 definitely put money in it and he definitely pulled the money
13 out. He said he was doing it because he was trying to buy time
14 to wind the business down. And my testimony is if that's what
15 he wanted to do, had he done it and not prejudiced anybody,
16 fine. But he pulled the money out in a self-serving way and
17 prejudiced IGT.

18 Q. Professor Freeman, Hugh Andrews infused millions of
19 dollars into that company long before Silicon Gaming ever
20 obtained any judgment for 780,000, didn't he?

21 A. Yes. But, you know, the simple fact is Silicon Gaming
22 had a claim all that period of time. It was a creditor. It
23 didn't become a creditor when it got a judgment. It had a
24 claim and had that claim been honored, we're not here today.

25 Q. Professor Freeman, it looks like from the period August

1 7, 2000, to August -- to October 21, 2002, Hugh Andrews put in
2 over \$2 million to this company. You don't disagree with that,
3 do you?

4 A. That's what it looks like.

5 Q. Now, when you put that kind of money in, at some point
6 you've got to pay some taxes, don't you?

7 A. Yes. And he got a big tax deduction or a tax refund
8 later on that didn't go into the company, went into his pocket,
9 over a million bucks.

10 Q. The moneys that Drews wrote back to Hugh Andrews were
11 used to pay taxes, weren't they?

12 A. No. Airplane expense for his benefit, didn't pay any
13 taxes. BMW, didn't pay any taxes.

14 Q. You understood that Mr. Andrews was pursuing other
15 business opportunities. He was trying to keep this company
16 alive, wasn't he?

17 A. No, he was trying to wind it down is what his testimony
18 is.

19 Q. Now, with regard to the issue of insolvency, do you know
20 what the subject of the arbitration action was, what it was
21 over?

22 A. It was over the -- my understanding is that it was over
23 the debt.

24 Q. For what?

25 A. For machines.

1 Q. Gaming machines?

2 A. True.

3 Q. Correct?

4 A. True.

5 Q. 200 of them?

6 A. Right.

7 Q. Well, Professor Freeman, they got a judgment 1,780,000.
8 We paid them a million in cash and now they've got an existing
9 arbitration award of a million five. So these are pretty
10 valuable pieces of machinery, aren't they?

11 A. I'm not an expert on the value of gaming machines. I
12 assume the price was fair or Drews would not have agreed to pay
13 it in the first place. The point is they didn't pay for it.

14 Q. Well, what they did do is they scrupulously protected the
15 asset that's the subject of this lawsuit, and those are the
16 machines. Are you aware that there's been a standing offer to
17 return those machines which -- which are still wrapped up,
18 they're brand new?

19 A. I've heard something to that effect.

20 Q. Well, do you realize that there is a duty in corporate
21 law just like in tort law to mitigate your damages? Do you
22 understand that duty?

23 A. As a general rule there can be a duty to mitigate, true.

24 Q. Now, have they shared with you the depositions of Mr.
25 Richard Pennington and Mr. Theodore Grevelis?

1 A. I haven't seen those depositions.

2 Q. They haven't shown you those depositions?

3 A. I haven't seen them.

4 Q. Well, I'm going to represent to you that Theodore
5 Grevelis has established that this company IGT is the biggest
6 gaming concern in the world. They manufacture, they sell, they
7 place games. Okay?

8 A. All right.

9 Q. Now, interestingly at page 58 of the deposition of Mr.
10 Richard Pennington I asked him at line 20, "Can Odyssey
11 machines be adapted to applications for International Game
12 Technology or any of its subsidiaries?" You see where he
13 answered, "Yes"?

14 A. Yes, sir.

15 Q. I said, "Do you know" -- at page 59, line 6, "Do you know
16 how much it costs to modify an Odyssey machine to make it
17 compatible to the usage you've just described?" And what was
18 his answer?

19 A. Answer: "I would say somewhere in the 1,000
20 neighborhood."

21 Q. And my next question was, "So if you had 300 machines,
22 that it would be \$300,000 for cost of modification." And then
23 my next question at line 21, "Once you spend a thousand
24 dollars, how much is the machine worth?" And his answer was,
25 "It depends on your perspective. The machine could be worth

1 \$50,000 a year to a Native American tribe."

2 We established through Mr. Grevelis that this massive
3 company, the largest gaming concern in the world, does business
4 with Indian tribes. \$50,000 a machine times 200. Does that
5 come to \$10 million, Professor?

6 A. Yes.

7 Q. Does that sound to you like a failure to mitigate?

8 A. It sounds to me like if the money is there, Drews ought
9 to go and sell the machines to the Indian tribes and have
10 plenty of money for itself and plenty of money to pay IGT so we
11 don't have to go through this trial if it's so simple.

12 Q. Well, it would be simple except for one little item. IGT
13 paid Silicon Gaming \$45 million and they owned the technology
14 to adapt the machines. Now, they're not going to give it to
15 us. If they would, sure we'd go out and get our ten million a
16 year. They've got all the cards. They're almost a monopoly,
17 aren't they, Professor?

18 A. I'm not -- I don't have what their -- I'm here to testify
19 about their rights as a creditor.

20 Q. If you look at the Exhibits 1 through 26, there are
21 multiple corporate records in this case, aren't there?

22 A. I'm sure that there are multiple corporate records.

23 Q. Now, you used the term siphoning, but can we agree that
24 there's massive cash infusion in the millions of dollars by Mr.
25 Hugh Andrews as well?

1 A. There is cash infusion and massive withdrawals.

2 Q. Now, in this -- in terms of this used as a mere facade
3 for operations of its dominant stockholders, this company had
4 38 employees. Isn't that right?

5 A. At one point in time.

6 Q. And there remains an unsatisfied judgment. Isn't this
7 the Wizard of Oz case?

8 A. No, this is -- this is --

9 Q. Aren't they --

10 A. -- fraud on a creditor case.

11 Q. Aren't they Dorothy and they've got the golden slippers
12 and all they've got to do is click them together; i.e., take
13 the machines back and their judgment is satisfied?

14 A. They're American capitalist want to be paid.

15 Q. And they've got the wherewithal to be paid. All they've
16 got to do is get these great machines?

17 A. Sir, they've been litigating in arbitration in federal
18 court and here we are today.

19 Q. Do you agree that piercing the corporate veil is not to
20 be applied without substantial reflection?

21 A. I agree.

22 Q. That's right out of that Baker versus Equitable Leasing
23 case, 275 SC 359, correct?

24 A. I don't cite it by page, but I know the quote, sir, and I
25 agree with the quote.

1 Q. Okay. Now, with regard to corporate formalities, if --
2 if a stockholder, a dominant shareholder gets advice from
3 accountants, in-house counsel and outside counsel prior to
4 taking action, that reflects that he's observing certain
5 corporate formalities, doesn't it?

6 A. That would tend to be a plus. Reliance on advice of
7 counsel would tend to be a plus assuming that you are lucid and
8 not under some disability.

9 Q. Well, in fact, it would be even more of a plus if you
10 were under a disability.

11 A. If you're under a disability, you shouldn't be trying to
12 make decisions at all in my judgment, business decisions.

13 Q. That's why it's pretty apparent that others in the Drews
14 organization were really making the day-to-day decisions?

15 A. The money -- the big money is flowing in one direction,
16 and that is Mr. Andrews' pockets, which leads me to believe
17 that he is the focal point for decision making as to where the
18 money's going.

19 Q. Oh. First he's under an impairment. Now he's the focal
20 point for decision making. Which is it, Professor?

21 A. Both.

22 Q. Oh, it's both. Okay. Professor, your clients have a
23 remedy, don't they?

24 A. I don't have a client. I'm here to speak the truth, then
25 I'm going home.

1 Q. They can take these machines and utilize them, can't
2 they?

3 A. Sir, I am not going to offer testimony as to what
4 business decisions IGT can or should or wants to make. My
5 understanding is that they're an unpaid creditor. I'm here to
6 testify as to certain facts relating to their right to
7 recovery, and, as I say, then I'm going home.

8 Q. But, Professor Freeman, you've been qualified as an
9 expert in corporations?

10 A. I am.

11 Q. And I believe that. Okay? And I also believe that
12 you're an expert in the concept of mitigation.

13 A. I wouldn't say that, but I appreciate the compliment.

14 Q. And I also believe that when you address this concept of
15 fairness, that it's a two way street, and wouldn't it be fair
16 for them to take the machines to satisfy the judgment. After
17 all, they said they were worth a million seven eighty?

18 A. I don't agree with that at all. What's fair is they have
19 perfected their right. They've got a money judgment. They
20 played by the rules and they're entitled to get paid real money
21 to satisfy that judgment without taking funny money or property
22 or anything else. They right now when it comes to being a
23 judgment creditor are in the driver's seat and they don't have
24 to be dictated to by Mr. Andrews or anybody on his behalf.

25 Q. Now, the dispute between Silicon Gaming and Drews

1 Distributing, at its inception IGT was unrelated to Silicon
2 Gaming, weren't they?

3 A. I believe that they acquired their rights subsequently.

4 Q. Silicon Gaming and Drews were the only parties to the
5 arbitration proceedings. Isn't that correct?

6 A. I believe that's true.

7 Q. And Silicon Gaming specifically excluded Hugh Andrews
8 from that dispute, didn't they?

9 A. That is something I have no knowledge of.

10 Q. Well, did you read Mike Fletcher's deposition?

11 A. Did not.

12 Q. You did not? Wonder why they didn't supply that to you.
13 I want to represent to you that Mr. Fletcher's deposition at
14 page 83, line 24 through page 85, line 6 and page 92, lines 14
15 through 21, states that SGI clearly knew of the relationship to
16 Drews. In fact, they had to submit a bunch of criminal
17 background checks. They had to supply all kinds of financial
18 information. Were you aware that the previous agreement
19 required arbitration and not litigation?

20 A. Previous agreement. What previous agreement, sir?

21 Q. The agreement between Silicon Gaming and Drews.

22 A. Required arbitration?

23 Q. Yes.

24 A. That's why I figured they ended up in arbitration. That
25 was my understanding.

1 Q. Now, your client is litigating against Hugh Andrews.

2 A. Again, I don't have a client here. I'm an expert. I'm
3 sworn to tell the truth, then I'm going home, sir.

4 Q. The Fourth Circuit held that this was an arbitration
5 matter in the case of Drews Distributing versus SGI, 245
6 Federal Third 347, didn't they?

7 A. That what was an arbitration matter?

8 Q. That the dispute between Silicon Gaming and Drews was an
9 arbitration matter.

10 A. I'll take your word for it. I know they ended up in
11 arbitration out there in California.

12 Q. Okay. But Silicon Gaming chose to exclude Drews from the
13 process -- I mean Hugh Andrews from the process.

14 A. That's something I don't have any factual information
15 about.

16 Q. Now, what IGT did was they amended the California
17 judgment based upon an assignment contract that purported to
18 transfer legal rights and any rights to the contract with
19 Drews. Isn't that what happened?

20 A. I haven't studied the paperwork on that. I know that
21 they ended up with legal rights.

22 Q. Well, are you aware that the arbitration award wasn't in
23 favor of IGT at all, it was in favor of Silicon Gaming?

24 A. True.

25 Q. Okay. Now, what IGT is seeking to do is to bind Hugh

1 Andrews, who's a nonparty to the arbitration provision. SGI
2 could have arbitrated against him in 2002. They refused to,
3 didn't they?

4 A. Who could have arbitrated against him?

5 Q. Silicon Gaming, SGI.

6 A. I don't have an opinion on that, sir.

7 Q. Well, actually if you read the arbitration provision, you
8 would find that they only got 12 months to do it, that they're
9 really past their time at all to litigate against Hugh Andrews.

10 A. I don't agree with that a bit.

11 Q. Can we agree that video poker is illegal?

12 A. In South Carolina.

13 Q. That's where I'm talking about, in South Carolina.

14 A. Yes, sir.

15 Q. Can we agree that judicial enforcement of contracts which
16 are illegal in South Carolina is not permitted?

17 A. If they're -- if they're illegal at the time of their
18 being entered into, that would be a basis for voiding the
19 contract.

20 Q. Well, at the time this arbitration award was rendered in
21 2002 gambling was illegal, wasn't it, Professor?

22 A. I believe that gambling was illegal at that time, but the
23 contract was entered into long before that when video poker was
24 legal.

25 Q. The enforcement of this judgment is based on a contract

1 which has as its object the distribution of contraband. Isn't
2 that right?

3 A. Not at the time it was entered into.

4 Q. It violates the law and the clear public policy in South
5 Carolina.

6 A. I reject that.

7 Q. You reject the case of Mims Amusements versus SLED, a
8 2005 Supreme Court case?

9 A. This is a valid enforceable agreement at the time it was
10 entered into.

11 MR. HODGE: All right. Just bear with me, Judge. I
12 think I'm done.

13 THE COURT: Mr. Coggins.

14 MR. COGGINS: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. COGGINS:

16 Q. Professor Freeman, I'll try to be brief and not replot a
17 whole lot of ground.

18 A. Okay.

19 Q. I represent the corporation Drews Distributing,
20 Incorporated, in this case. Now, you testified in response to
21 Mr. Hodge's initial questions that your purpose here was to set
22 the table factually; is that correct?

23 A. Yes, sir.

24 Q. All right. And for you to set the table factually it's
25 important for you to have all the facts at your disposal.

1 Isn't that true?

2 A. The crucial facts, yes, sir.

3 Q. All right. Let's talk about some crucial facts, because
4 you're offering opinions about corporate governance and
5 corporate performance in this case; are you not?

6 A. Yes.

7 Q. And you're also offering opinions about what you assume
8 or perceive to be the actions of a dominant shareholder; are
9 you not?

10 A. True.

11 Q. All right. Can you tell me, Professor Freeman, who the
12 board of directors were for Drews Distributing at any point in
13 time in this 1998 to 2002 time period?

14 A. I believe it was Mr. Andrews and his wife. Those are the
15 two people that come to mind.

16 Q. All right. And can you tell me who the officers of the
17 company were during that period.

18 A. Mike Fletcher, I believe, was the president, and beyond
19 that I haven't focused on that.

20 Q. All right. Can you tell me who the shareholders were.

21 A. Mr. Andrews was the key shareholder and there may have
22 been, you know, smaller shareholders, but I focused on him.

23 Q. Okay. Do you know if there were any other shareholders
24 or not?

25 A. I think I've seen something to suggest that there may

1 have been minority shareholders, but I haven't seen any sign of
2 dividends paid to them.

3 Q. But as you sit here today you can't tell me who any of
4 the other shareholders are, can you?

5 A. No, other than I've seen something that I think points in
6 that direction.

7 Q. All right. Now, you indicated that it was your
8 understanding that Mr. Fletcher was the president of the
9 company. Is that correct?

10 A. Yes.

11 Q. All right. And you've testified that it's your
12 understanding that during the 2001-2002 period Mr. Andrews was
13 under a significant impairment because of his drug addiction;
14 have you not?

15 A. No. It was earlier than that. 2000 into November of
16 2002.

17 Q. All right, sir. I apologize. I'm assuming the record
18 will reflect it, but I wrote down that you testified in answer
19 to Mr. Payne's question that in 2001, 2002 Mr. Andrews was
20 impaired by drugs?

21 A. I believe he was. And I have said into November, but I
22 didn't -- that doesn't exclude him also being under, you know,
23 a drug problem, serious, very serious in 2000, which I believe
24 he was.

25 Q. All right. And did you see any documentation to indicate

1 exactly when Mr. Andrews was under this impairment?

2 A. Yeah. From time to time in his testimony in his
3 deposition he'd talk about that was in my -- when I was in drug
4 abuse. I don't remember because of drug abuse. And then he's
5 real explicit as to when he went to get treatment down to the
6 day, and I believe he was in for 16 or 18 days, and then he's
7 real explicit. And that was November of 2002, I believe, and
8 then, you know, went down to Florida and all, so there is
9 testimony about that.

10 Q. Yes, sir. But in terms of your assumption that it
11 existed earlier than 2000, do you have any information other
12 than perhaps what may have been in Mr. Andrews' deposition?

13 A. That's my basis.

14 Q. Okay. All right. Now, during that period of time that
15 Mr. Andrews was under an impairment, and I believe you just
16 indicated that his deposition revealed that he was actually in
17 treatment in rehabilitation for some period of time, that he
18 was in Florida for some period of time?

19 A. To his credit.

20 Q. During that period of time, Professor Freeman, who was
21 running the company?

22 A. I believe it was Mike Fletcher.

23 Q. All right. And did I understand you to say that you did
24 not have the deposition of Mr. Fletcher provided to you?

25 A. Haven't read Mr. Fletcher's deposition.

1 Q. Haven't read Mr. Fletcher's deposition. So then you
2 don't know what the standard process was for how this business
3 was being run on a day-to-day basis, do you?

4 A. Yeah, I can infer it from the --

5 Q. Okay.

6 A. -- finances.

7 Q. So we have your assumptions and your inferences, but when
8 it came to the witness, the person who was there who gave sworn
9 testimony about how that was done, you didn't review that, did
10 you?

11 A. Did not review his testimony.

12 Q. All right. And with respect to Ms. Claudia Humphries who
13 was the bookkeeper who actually handled the money, who actually
14 presented the checks for signature, who actually handled the
15 accounts, you didn't review her testimony either, did you?

16 A. No, only insofar as she was talked about by Mr. Andrews.

17 Q. All right. So the two people who were there on the
18 ground day-to-day running Drews Distributing during this
19 crucial period of time, you didn't deem that important enough
20 review, did you, sir?

21 A. Non-significant to me.

22 Q. All right. Now, in fact if you had reviewed their
23 testimony, you would have found that the check request came
24 largely from the accountant, Mr. Eddie Brown, but you don't
25 know that because you didn't review it, did you?

1 A. I reviewed where the money went and what it went for.

2 Q. All right. Next since you didn't review the testimony
3 you don't know that Mr. Fletcher was completely in charge of
4 the day-to-day activities and who got paid and when they got
5 paid, but you don't know that, do you?

6 A. No, it was by inference because Mr. Andrews was not
7 capable in my judgment of running the business and in fact said
8 he didn't run the business on a day-to-day basis.

9 Q. All right. And during the period of time after August of
10 2000, and I believe you said August of 2000 is when the company
11 hit the wall so to speak?

12 A. Right.

13 Q. Is that right? And, Professor Freeman, that's not
14 unusual because July 1, 2000, is when video poker became
15 illegal in the state of South Carolina, isn't it?

16 A. What do you mean that's not unusual?

17 Q. Well, the principle business of Drews Distributing was to
18 sell video poker machines and earn income, earn revenue from
19 those sales?

20 A. True.

21 Q. So if their entire product line becomes illegal, it would
22 not be surprising that they would hit the wall, that they would
23 have no more revenue stream?

24 A. Certainly they were suffering with the lack of revenue,
25 true.

1 Q. All right. And if you had reviewed Mr. Fletcher's
2 deposition, you would have seen his testimony that said that
3 the company was reluctant to accept the reality of that
4 situation and they looked for other sources of revenue. And in
5 particular since you didn't look at the deposition, we'll talk
6 about some things you would have seen in the financial
7 documents. They started up a subsidiary or related company
8 called AdSpace, didn't they?

9 A. There is evidence about payments to AdSpace, true.

10 Q. All right. That was an attempt to try to generate
11 revenue by creating an alternative business whereby they would
12 sell advertising on these plasma screens that would go in
13 restaurants and bars and that type thing. Now, in your
14 experience is it unusual if a company sees that its primary
15 source of revenue is drying up, is it unusual for it to try to
16 create some alternative revenue stream?

17 A. I don't -- it's not unusual and you can't begrudge people
18 for legitimate expenditures. I'm not here to do that.

19 Q. All right. And in addition if you had read Mr.
20 Fletcher's deposition, you would have also found that they
21 sought other markets where their video gaming machines would
22 still be legal, including going to different places in the
23 country, meeting with people in Oklahoma about Indian tribes
24 and casinos, going down Belize to the free zone between Belize
25 and Mexico, going to the Dominican Republic and other Caribbean

1 Islands, made a bunch of trips trying to find someplace else
2 that they could generate income. But you didn't see that, did
3 you?

4 A. I have been told about that by counsel.

5 Q. All right. What you did see though were these airplane
6 expenses where they made all those trips to try get that
7 business. Those are the big expenses you saw, aren't they?

8 A. Those are massive expenses, yes, sir --

9 Q. All right.

10 A. -- for a company that supposedly is winding down.

11 Q. Yes, sir. And only -- only inference you've got to draw
12 that winding down from is Mr. Andrews' testimony, correct?

13 A. His testimony under oath, yes, sir.

14 Q. Of course, he was the one who was impaired and in drug
15 rehab and living in Florida?

16 A. Not when he gave the deposition, sir.

17 Q. Yes, sir. But at the times he was testifying about that
18 was his condition; was it not?

19 A. He was incapacitated mentally, I think, for part of that
20 time.

21 Q. All right. And in addition to that these massive
22 withdrawals that you continue to speak about, the fact of the
23 matter is these massive withdrawals occurred in 1998 and 1999,
24 didn't they? The 3.9 million dollar --

25 A. The dividends, yes, sir.

1 Q. Okay. And in fact once you get past this August 2000
2 hitting the wall date?

3 A. Yes, sir.

4 Q. If you refer to the timeline distribution summary, which
5 is Plaintiff's Exhibit 5 in this case, you find that the total
6 taken out and chargeable to Mr. Andrews, even if you count
7 these vehicles, which there's been no testimony about who ended
8 up with them other than your assumption it was Mr. Andrews, but
9 even if you include the vehicles, the total amount taken out is
10 less than \$600,000, isn't it, over a 2-year period?

11 A. You're talking 2001 and 2002?

12 Q. From August 2000 through 2002.

13 A. Well, there's 23 -- 233,000 in compensation alone in
14 2001.

15 Q. 2001?

16 A. Yes, sir.

17 Q. What they're showing is salary and wages of 142,096.

18 A. From my understanding is -- oh, you're talking -- okay.
19 The number I have is 233,000.

20 Q. Yes, sir. And do you know where that number comes from?

21 A. Yeah. That comes from the expert report of Mr. Markel.

22 Q. Okay. But on Plaintiff's Exhibit it's showing salary and
23 wages of 142,096 for the entire year of 2001, doesn't it?

24 A. I don't have the exhibit. If you'd hand it to me, I
25 would be happy to --

1 Q. Certainly, sir. There you go. I believe if you will
2 look at the second page of the exhibit, you will get to the
3 relevant time period.

4 A. Okay.

5 Q. And if you look in that far right column, in 2000 it
6 shows salary and wages of 307,874, correct?

7 A. Yes, sir.

8 Q. And, of course, the first half of that year video poker
9 is still going and the company is still making money. Isn't
10 that correct?

11 A. True.

12 Q. So about \$150,000 after that July period. And then if
13 you come down to 2001, salary and wages for the entire year,
14 142,000, correct?

15 A. True.

16 Q. All right. And then the only other distribution to or
17 for the benefit of Mr. Andrews is one on April 11, 2002, for
18 \$30,000 and one on August 13, 2002, for 45,921. Isn't that
19 correct?

20 A. Distributions to or for the benefit of Hugh Andrews on
21 this column, yeah. There are other columns, money received
22 after assignment and rent.

23 Q. Yes, sir. But prior to the assignment during this period
24 of time from July of 2000 up until November of 2002 those are
25 the only distributions to him other than the purchase of these

1 two vehicles that you assume went to him?

2 A. On this chart, yes, sir.

3 Q. Yes, sir. And this chart is prepared by the attorneys
4 for IGT?

5 A. I believe so.

6 Q. All right. There is nothing showing as far as any
7 dividends, are there?

8 A. No, I don't think there were dividends paid as such.

9 Q. Yes, sir. There were no dividends paid after the
10 business became illegal, were there?

11 A. Not in using the name dividends.

12 Q. All right. And, in fact, the only distributions are the
13 ones we just described, correct?

14 A. Assuming that you don't factor in things like airplane
15 usage, payments to Mr. Andrews for inventory, professional and
16 legal fees.

17 Q. Yes, sir. Now, Mr. Andrews owned the building where
18 Drews operated; did he not?

19 A. Yeah, I believe he did.

20 Q. All right. And in your experience, Professor Freeman,
21 that's not an unusual arrangement to have an owner of a
22 business own the real estate and lease it back to his company?

23 A. No, it's not unusual.

24 Q. All right. And if appropriate charges are made and the
25 rent is paid, that is a perfectly legitimate expense; is it

1 not?

2 A. Assuming that everything is appropriate, yes, sir.

3 Q. All right. Have you reached any opinion as to whether or
4 not it was appropriate?

5 A. Yeah, I think it's inappropriate. The business in the
6 year 2002 -- excuse me, 2001 had revenue of 115,000. It's
7 paying more than that in rental.

8 Q. Yes, sir.

9 A. More than its annual revenues in pure rent. Then you
10 have to ask yourself why.

11 Q. Well, they have to have someplace to store these plasma
12 screens, don't they?

13 A. Well, if you're trying to wind it down, you know, why
14 don't you lease it to somebody who can afford to pay over time
15 as opposed to a business that really can't afford this kind of
16 expense.

17 Q. All right. And, of course, you don't know what other
18 uses they made as far as leasing out to other groups to use the
19 facility, do you?

20 A. I believe there were other related groups that were using
21 the facilities as well.

22 Q. Yes, sir. And in fact that business remains open today,
23 doesn't it?

24 A. What business?

25 Q. Drews Distributing, Incorporated.

1 A. As far as I know there still is a Drews Distributing and
2 a good lawyer who represents them.

3 Q. Thank you, sir. Now, at the same time that Mr. Andrews
4 was taking out greatly reduced moneys in terms of any salary
5 and taking no dividends is the time he was putting 2.1 million
6 dollars back into this business to try keep the doors open
7 while they pursued these alternative streams of revenue, isn't
8 it?

9 A. Yes. He was putting that money in.

10 Q. Yes, sir. And he wasn't taking all of it out either, was
11 he?

12 A. He was taking all the assets out by this assignment route
13 claiming that he could pole vault over IGT.

14 Q. Yes, sir. Now, at the time this assignment was done did
15 you review the deposition of Mr. Scrantom?

16 A. I did.

17 Q. All right. So that one you did review?

18 A. Yes, sir.

19 Q. And what did you understand the purpose of Mr. Scrantom's
20 engagement to be?

21 A. In part to protect him from -- or try to protect him from
22 IGT.

23 Q. Now, Professor Freeman, let's be fair. Is that what Mr.
24 Scrantom said?

25 A. He said that was on the radar screen when he came in.

1 Q. Yes, sir. He said that was one of the things that they
2 had to look at in terms of doing this corporate planning. Is
3 that right?

4 A. That was a factor.

5 Q. Yes, sir.

6 A. That's why I answered your question.

7 Q. Yes, sir. But he never said that the purpose of his
8 engagement was to try to defraud this creditor or to avoid the
9 debt to IGT, did he?

10 A. I quibble -- he didn't use the term fraud, and I'm not
11 going to impugn Mr. Scrantom by saying that he intentionally
12 tried to defraud or participated in any fraud on anybody.
13 Clearly he was hired in part to try to come up with some way so
14 that IGT would go unpaid and not have to -- Mr. Andrews would
15 not need to come out of pocket.

16 Q. All right. Well, Mr. Scrantom will be here to testify.
17 We'll let him speak for himself. With respect to Mr. Andrews'
18 involvement in this, this occurred during the period of time
19 when Mr. Andrews was in rehabilitation; did it not?

20 A. Yes.

21 Q. All right. And Mr. Scrantom indicated that he dealt with
22 other people at Drews regarding the information that he
23 required and providing him with documentation in order for him
24 to perform these services?

25 A. Correct.

1 Q. And, in fact, the documentation in Mr. Scrantom's file
2 reflects that Mr. Humphries, Mr. Fletcher and other folks are
3 the ones who are transmitting the documents?

4 A. Yes.

5 Q. All right. So there's no fair inference that can be
6 drawn that this is somehow a ploy by a dominant shareholder to
7 come down and have some lawyers in Charleston figure out a way
8 for him to loot his corporation, is it?

9 A. You know, when you cut right to the chase here, what
10 you've got is him trying to come up with some way to create a
11 barrier by using lawyers and the law and legal processes to cut
12 IGT out of its right of recovery and protect his own assets,
13 and that's the reality of the transaction as far as I'm
14 concerned.

15 Q. All right. Well, let's talk about that. Let's talk
16 about that unfairness. You said, I believe, in your earlier
17 testimony that if Mr. Andrews had just shut this thing down in
18 2000 when the revenue went away when they had no more money, if
19 he had just shut this thing down, then we wouldn't be here. No
20 lawsuit. Everybody would be happy. Is that right?

21 A. Right. I think there was enough money at the time video
22 poker was outlawed to pay IGT. That's what it looks like. It
23 was shortly after that that they hit the liquidity crunch.

24 Q. Yes, sir. Well, in fact they hit the liquidity crunch
25 pretty immediately, didn't they, because on August 7, 2000,

1 only a month later, Mr. Andrews had to put in a half million
2 dollars just to keep the doors open, didn't he?

3 A. Well, that tells you at that point in time they couldn't
4 pay their debts as they came due in the ordinary course of
5 business and were insolvent.

6 Q. Yes, sir. And so if Mr. Andrews had said I'm not going
7 to loan you any money, I'm not going to put any money back in
8 this business, IGT would have been left out in the cold. Would
9 they not?

10 A. Not necessarily.

11 Q. Well, if they didn't have money to pay their regular
12 operating expenses and they were insolvent, they sure as heck
13 didn't have 785,000 or a million dollars to pay to IGT, did
14 they?

15 A. I don't think that necessarily follows.

16 Q. All right.

17 A. They were -- they had a liquidity crunch, but that
18 doesn't mean their assets did not exceed at that point in time
19 their liabilities, even if you include the IGT debt on the
20 books, which seems to be something that Drews didn't do.

21 Q. All right. And is not bankruptcy a legitimate business
22 strategy if you become insolvent?

23 A. It is.

24 Q. All right. And had Drews declared bankruptcy rather than
25 trying to salvage the business, IGT would have been subject to

1 the dictates of bankruptcy court; would they not?

2 A. Yes.

3 Q. And they may have gotten a percentage of their debt or
4 they may not have gotten any?

5 A. Subject to going another route, piercing, true.

6 Q. All right. Which is what this is really all about. They
7 made a deal with a company, with my client, and now because my
8 client is no longer able to pay them, they're trying to get
9 their money from somebody else who's not a party to their deal?

10 A. That's partially true and not complete because they
11 believe they have got grounds to hold Mr. Andrews accountable
12 for that debt. The court will decide that issue.

13 Q. Right. And let's talk about not being a party to this.
14 And I -- again, I don't want to replot this ground, but did I
15 understand you to say that you did or did not review the
16 original agreement between Silicon Gaming and Drews?

17 A. If I reviewed it, it was a long time ago and I don't
18 remember the substance of it.

19 Q. Did you review the arbitration award?

20 A. Other than the fact that there was one, I did not read
21 the arbitrator's award.

22 Q. All right. You kept talking in your testimony about the
23 fact that Drews never carried this as a payable, never showed
24 this indebtedness on their records. Were you aware, Mr.
25 Freeman, that this was a disputed debt?

1 A. It's certainly disputed today. And let me explain.

2 Drews paid a million bucks on this debt.

3 Q. Correct.

4 A. So at some point in time Drews decided that there was a
5 debt there and decided to do something partially about it. And
6 what we're talking about is that tail end, 780,000.

7 Q. Yes, sir.

8 A. Which obviously was disputed or we never would have had
9 arbitration over it.

10 Q. Exactly. And is it not unusual in business if you are
11 buying a product and the product is not as it was represented,
12 the product does not -- does not perform, is it not unusual for
13 a company to make a partial payment pending the seller making
14 appropriate corrections to the product, in other words curing
15 the defect, before making any final payment?

16 A. That is a pathway that is sometimes taken.

17 Q. All right. But in this case you don't know if that was
18 the pathway taken or not because you haven't seen that
19 evidence, have you?

20 A. I accept that there was a dispute over these machines and
21 their effectiveness and so forth.

22 Q. All right.

23 A. And that led to Silicon Gaming taking Drews to the mat
24 and proving that it was entitled to that money, which it was --
25 is an established fact now.

1 Q. Correct. And that established fact became such in
2 September of 2002 when that arbitration award was confirmed;
3 did it not?

4 A. It became a judgment. It became a liability backed up by
5 a judgment, but prior to that time there still was a liability
6 that should have been on the books of Drews because it -- until
7 some court says it doesn't owe that money there's a contract
8 out there saying it does owe that money.

9 Q. All right. Well, now Drews had a counterclaim in this
10 thing. Should they have been showing a receivable for their
11 counterclaim?

12 A. I refer you to Financial Accounting Standard Board
13 Statement Number 5 that controls what needs to be disclosed in
14 this setting. It controls that, and in my judgment the
15 liability should have been disclosed.

16 Q. All right. Now, whether the liability or in this case
17 contingent liability was disclosed at an earlier date -- and
18 we'll let the accountant speak to that -- from a legal
19 standpoint there only becomes a debt that has to be paid once
20 the dispute is resolved, correct?

21 A. I disagree with that.

22 Q. All right. So it's your position then, Professor
23 Freeman, that if there is a dispute, the person who owes the
24 money under the contract always must pay the contract whether
25 they believe they owed it or not?

1 A. No. Here's the reason I disagree with what you said.
2 You had a contract and you had bought stuff under the contract,
3 so you have assets here that you bought. You're disputing
4 maybe the value of those assets in your obligation to pay. You
5 have an obligation, a contractual obligation to pay until
6 somebody says that you don't in my judgment.

7 Now, whether it's reduced to a judgment or not there
8 still is that liability on the books. Just the simple fact
9 that I think -- in hindsight I think you overcharged us or I
10 think that that stuff isn't as good as you thought, so
11 therefore we don't owe for it, it doesn't work that way. You
12 owe for it until some court lets you off the hook once you've
13 got a valid binding contract.

14 Q. So if you sell me widgets and you sell me defective
15 widgets, I have to pay you the full value regardless of whether
16 they're defective or regardless of whether you cure them or
17 not?

18 A. You can go ahead and write down the amount of your asset.
19 You've still got a liability to pay me until we either work it
20 out or some court says that you don't have an obligation to pay
21 me as long as I am insisting on right of payment.

22 Q. Yes, sir. And you and I may be talking about the same
23 thing from two different areas, but is it not true that my
24 obligation to pay you only becomes active once the court says
25 your dispute is over, we resolved it, you owe the money?

1 A. I disagree and here's why. It is rare in business for
2 somebody to get a judgment against somebody else over a debt.
3 We know it happens. That's one reason we've got courthouses.
4 We know there are lot of collection actions out there, but
5 there is a vastly larger amount of businesses out there where
6 people simply buy stuff on credit and pay day in and day out.
7 And those aren't transactions that only become valid if you get
8 a judgment. Those are valid transactions from the get-go.

9 Q. All right.

10 A. And what IGT was saying here is or Silicon Gaming is that
11 we're entitled to this money. We have a valid enforceable
12 contract. We sold you. That was a valid sale. Now, you
13 didn't pay us cash at the time. You promised to pay us. Now,
14 follow through with your promise because you owe us. And the
15 court later said we agree with that. Okay? And my simple
16 point is it didn't become a valid debt when the court agreed
17 with it. It was a valid debt from the get-go that was later
18 accepted by the court as valid and validated by a judgment.

19 Q. All right. I think we've beaten this horse till it's
20 good and dead. Let's move on to something else. With respect
21 to the last factor or the added factor in Sturkie, you
22 indicated that you believe it's met in this case. And that
23 factor is that the -- a principle shareholder, the individual,
24 is -- has to have knowledge of the claim, has to have knowledge
25 of the debt. Is that right?

1 A. Right.

2 Q. Okay. Now, you've already testified that during this
3 period of time when this debt was being disputed, arbitrated,
4 and resolved by arbitration and subsequent judgment entered by
5 the court that Mr. Andrews was not involved in the business of
6 the company, was under an impairment and may have been living
7 in Florida. Is that correct?

8 A. He was living in Florida from sometime in November of
9 2002 onward is my understanding.

10 Q. All right. And prior to that time I believe you said
11 since 2000 or before he had had a significant impairment as a
12 result of his drug addiction?

13 A. True.

14 Q. Is that right? And I know you didn't read the deposition
15 of Mr. Fletcher, but is it your understanding that Mr. Andrews
16 was not involved in the day-to-day business of the company?

17 A. Correct.

18 Q. All right. And do you understand that Mr. Andrews did
19 not participate in the negotiations or the arbitration of this
20 debt?

21 A. True.

22 Q. He was not a party to it, he didn't give testimony, he
23 didn't attend?

24 A. I understand.

25 Q. All right. And what evidence do you have other than the

1 fact that Silicon Gaming says this debt existed, what evidence
2 do you have to show that Mr. Hugh Andrews knew about this debt?

3 A. Just the inference that when you go out and buy close to
4 \$2 million of a product to put into your inventory, that that's
5 a major decision that's being made by those in control of the
6 business. And that later on when you go to the lawyer and ask
7 for this assignment deal to be cooked up, that -- and the
8 lawyer is told one of the reasons for doing this is IGT being
9 on the horizon with this claim, that the -- those in control of
10 the business are well aware of that too.

11 Q. All right.

12 A. And plus a million bucks got paid out.

13 Q. Yes, sir. Early on.

14 A. Well, well before the year 2002. And, you know, my
15 inference there is if somebody's stroking a check for a million
16 bucks, that it would not go unnoticed by him in my opinion.

17 Q. Your inference is that Mr. Andrews is the one stroking
18 the check?

19 A. No. My inference is that seven figures is enough money
20 to -- if that money is being paid, it would come to his
21 attention.

22 Q. All right. But you don't have any factual evidence from
23 any document or any deposition testimony to confirm that
24 inference, do you?

25 A. That he knew that a million bucks was being paid?

1 Q. Yes, sir.

2 A. I don't remember him being asked about that.

3 Q. Yes, sir. That he had actual knowledge of this
4 transaction at any point from where it went south through to
5 when ultimately the assignment was made to him.

6 A. You know, it's been my inference -- I don't remember him
7 testifying that he knew about, you know, the court battles and
8 the ins and the outs, but it's been my inference that did not
9 happen without him knowing about it.

10 Q. And with respect to the assignment that was made in
11 November 2002 as far as Mr. Andrews being involved in providing
12 information or requesting this assignment from the lawyers at
13 Ten State Street, there's no factual information that you have
14 about that, is there?

15 A. I don't know that he met personally with Mr. Scrantom,
16 but people on his behalf were meeting with Mr. Scrantom because
17 the whole purpose of the transaction was to serve Mr. Andrews.

18 Q. Well, people on behalf of Drews Distributing were meeting
19 with Mr. Scrantom, weren't they?

20 A. Well, on both, because those are two parties to the
21 transaction.

22 Q. Because Drews Distributing had 16 promissory notes where
23 they were into Mr. Andrews for \$2.1 million, didn't they?

24 A. Drews owed him back. True.

25 MR. COGGINS: That's all I have. Thank you, sir.

1 THE COURT: Mr. Payne, remember this is a bench trial
2 now, and I --

3 MR. PAYNE: Nothing further, your Honor.

4 THE COURT: All right. Thank you. Thank you,
5 Professor Freeman. Have a good trip. Take a short break.

6 (Brief recess at 11:32 am until 11:46 am.)

7 THE COURT: All right. Call your next witness
8 please.

9 MR. PAYNE: Your Honor, we call Hugh Andrews to the
10 stand please.

11 HORACE H. ANDREWS, II, Plaintiff's witness, sworn

12 MR. PAYNE: Your Honor, I have the originals of his
13 exhibit or his depositions I'm going to open up. And in your
14 book there is a copy of his deposition.

15 DIRECT EXAMINATION BY MR. PAYNE:

16 Q. Good morning, Mr. Andrews. Jeff Payne. We've met
17 previously, and I've got a few questions I need to ask you
18 here. You were the sole shareholder of Drews Distributing. Is
19 that correct?

20 A. I believe that's correct.

21 Q. And is the company still in existence?

22 A. It is.

23 Q. Okay. You're still the sole shareholder?

24 A. Yes.

25 Q. And you've been the sole shareholder since its inception

1 back in 1981?

2 A. Yes.

3 Q. All right. And your wife and you are on the board of
4 directors of Drews Distributing?

5 A. That's correct.

6 Q. And you and your wife, Pam Andrews, have been sole
7 members of the board of directors since the company's
8 inception?

9 A. I believe that's correct.

10 Q. And your wife, Pam Andrews, was never an employee of the
11 company?

12 A. No, sir.

13 Q. All right. She had no involvement with the business, did
14 she?

15 A. No, sir.

16 Q. Your children were never employees of the company?

17 A. No.

18 Q. You were?

19 A. I was.

20 Q. Okay. And we had previously asked for minutes of any
21 kind of meetings of either the shareholders or board of
22 directors, and the only thing we were produced with were what's
23 been marked as Exhibits 15 and 16; is that correct?

24 A. That's correct.

25 Q. And those were minutes from when y'all created the

1 company and then some minutes that were created right before
2 the assets were assigned to you in 2002?

3 A. Correct.

4 Q. Okay. Now, your corporate accountant was Mr. Eddie
5 Brown?

6 A. Correct.

7 Q. And for many years?

8 A. Yes.

9 Q. Okay. And from day one or?

10 A. I'm not sure, but probably so.

11 Q. He's very familiar with your financial situation?

12 A. Yes, sir.

13 Q. And Mr. Brown used to perform audits, audited records for
14 Drews Distributing, Inc., didn't he?

15 A. I think -- I think we did attempt to do that in later
16 years. I don't think it was in the beginning years.

17 Q. Okay. This is what's Plaintiff's Exhibit 28. If you
18 would look at that for a second. Tell us what's the date of
19 that particular document.

20 A. March 5, 1999.

21 Q. All right. And who is it -- what is it? What is
22 Exhibit 28?

23 A. It's a document from Swaim Brown and Elliott,
24 accountants. It looks like it says they are planning to
25 perform an audit, audit the financial statements for the year

1 ending December 31, 1998.

2 Q. And it's addressed to who?

3 A. It's addressed to the board of directors of Drews
4 Distributing.

5 Q. All right. Flip on over to page two of Exhibit 28 and
6 see what Mr. Brown says about minutes from the board of
7 directors meetings.

8 A. The top -- very top you're looking at here?

9 Q. Yes.

10 A. "Lack of board of directors meeting minutes. We noted
11 that the company is not preparing minutes from the board of
12 directors meetings. We recommend that the company prepare
13 minutes at least annually."

14 Q. Okay. So Mr. Brown told you y'all needed to start
15 preparing minutes back in 1999, didn't he?

16 A. Yes, sir.

17 Q. And Mr. Brown said there weren't any prior to '99. Do
18 you think there were?

19 A. I think there were. Yes, sir.

20 Q. You just put that because he didn't have them?

21 A. That's I assume.

22 Q. And, in fact, you and Pam never got together say in 1999
23 or 2000 to have any kind of meetings, did you?

24 A. Me and my wife met on several occasions at board meetings
25 at Drews building. I'm not -- specific dates I can't --

1 Q. But not '99 because I think that's when you told me that
 2 was the heyday of your drug use and you were living down at the
 3 beach and she wasn't real happy with that?
 4 A. That doesn't preclude that I might have showed up for a
 5 board meeting, but probably not.
 6 Q. Okay. Or 2000, you and Pam didn't have any kind of
 7 meetings of the board in the year 2000, did you?
 8 A. I don't know. I don't recall.
 9 Q. Or 2001, did you?
 10 A. I do not recall.
 11 Q. Because you don't have any of the minutes of any of
 12 those?
 13 A. They -- I vaguely remember a stack of minutes about
 14 two inches thick, okay. And I think that when we were sending
 15 records to Mr. Tim Scrantom, I think we sent him all that stuff
 16 we had. However, he says he don't have it or don't recall ever
 17 getting it, but somewhere I remember a big stack of meetings
 18 that we had over the years.
 19 Q. All right. And what I was specifically asking about
 20 though is '99 when you were living down at the beach.
 21 A. I can't tell you specifically whether '99, 2000, 2001 was
 22 in that stack. Very well may have been.
 23 Q. Well, in 1999 you were living at the beach, weren't you?
 24 A. I lived at the beach, but I made a lot -- you know, I
 25 made trips back here pretty regular.

1 Q. But you and your wife were separated at that time?
2 A. That's correct.
3 Q. And you were living with your girlfriend down there?
4 A. That's correct.
5 Q. And I believe you told me that '99 was the heyday of your
6 drug use -- or 2000 -- '99, 2000?
7 A. 2000, 2001. Yes, sir.
8 Q. Okay. Well, in June of 1998 Silicon Gaming shipped Drews
9 Distributing 200 Odyssey poker machines, didn't they?
10 A. That's correct.
11 Q. And they invoiced you 1.78 million dollars for those
12 games?
13 A. That's also correct.
14 Q. All right. Exhibit 17 is a copy of that invoice, isn't
15 it?
16 A. Yes, sir.
17 Q. Okay. Ultimately Drews Distributing and Silicon Gaming
18 entered into a distributorship agreement, didn't they?
19 A. That's correct.
20 Q. And prior to the formal distribution agreement being
21 entered into you on behalf of Drews signed what's called a
22 letter agreement with Silicon Gaming, didn't you?
23 A. Yes.
24 Q. And Drews Distributing committed to purchase those games,
25 didn't they?

1 A. Yes. Let me -- can I explain a little bit? What -- from
2 day one what happened, the situation we -- initially when we
3 started with them, we agreed to buy 20 games from them, and we
4 agreed to have some changes done. And for that we paid them
5 right sum as I recall something around \$300,000. The changes
6 we never could get. And this transpired over a year, so we
7 never could get them to make the adequate changes that we felt
8 we needed for South Carolina.

9 And we had pretty much reached the point that we
10 didn't feel like they could respond in any time frame that we
11 needed to ever be able to sell the games again, so we actually
12 went out to visit them in California, I believe, and to pretty
13 much say, hey, if y'all can't get things done, let's just
14 figure out where we stand here and settle up and go home.

15 At that time they had a four deck poker machine that
16 they showed us that looked really good. They needed money
17 really bad. They wanted to work something out with these 200
18 games. I need to tell you we only ordered 20 games. They
19 shipped 200 without us even knowing they were coming and they
20 want -- all the time they kept wanting us to purchase them,
21 that at that time was because they wanted their stock to look
22 good so they shipped and booked it as a sale to booster up
23 their stock. It had nothing to do with me agreeing to it.

24 So when we got there at California and looked at this
25 good game that we decided we wanted and liked to have, they

1 agreed to do changes. We said -- we give them a million
2 dollars so that we agreed to buy the 200 games, and they agreed
3 to make changes to the games and have them -- have it completed
4 in 90 days. Based on that when they got the completion done we
5 would pay them the rest of the money.

6 Now, they never -- they never finished their
7 software. They never shipped it to us. They refused to give
8 us the four deck poker. Based on that I wouldn't pay them the
9 rest of the money and I was wondering, you know, when -- you
10 know, and somewhere in there after that I got doing the drugs
11 and stuff, and Fletcher and them was handling all this. And
12 when I'd check with them, you know, they'd say it's handling it
13 and everything, I was looking to get my million three back, not
14 to pay them an additional 700,000.

15 Q. You paid them a million dollars and y'all entered into
16 distribution -- distributor agreement, which is Exhibit 76?

17 A. That is correct, yes, sir.

18 Q. And whether the games worked or not, the judge disagreed
19 with you and said Drews Distributing owes over a million
20 dollars?

21 A. I didn't participate in the arbitration. Looking back I
22 wished I'd have been there, but ultimately the arbitration
23 judge awarded --

24 Q. Well, let me ask you now, you didn't participate in it.
25 You gave a deposition in it, didn't you?

1 A. I don't -- yes, I'm sure I did. Yeah.

2 Q. Let me show you what -- this looks like you gave a

3 deposition in January of 2002 up at the McNair Law Firm, didn't

4 you?

5 A. Yes, sir.

6 Q. So --

7 A. I didn't go -- I did not go to California for the

8 arbitration hearing.

9 Q. Because your lawyer kind of implied you had nothing to do

10 with this whole venture, yet you gave the deposition.

11 A. (Nods head affirmatively.)

12 Q. And one of the questions to you in that deposition was,

13 "What types of decisions were you involved in with respect to

14 SGI after Mike Fletcher entered the picture?" Answer: "I

15 think anything major between us would -- I would get consulted

16 on, but that's pretty much it." "All right." Question: "So

17 you weren't really involved in requesting changes for the

18 game?" Answer: "At some point I sat down and thought up some

19 of the changes we needed to the game. Probably Mr. Owens,

20 Travis would have been in on the day-to-day seeing whether I

21 could get those changes made or not or carried out." Question:

22 "How about once the dispute arose and SGI started sending you

23 bills, were you involved in responding?" Answer: "Yes."

24 Question: "To what extent?" Answer: "To the extent that

25 trying to be reasonable with them, trying to explain that I had

1 never ordered the games and I didn't owe them for the games.
2 They need to come back, take them back, to ladder -- that when
3 we did enter an agreement to purchase those games, after they
4 had or a couple of years when they sent them to us, that was if
5 they had made certain changes to the game and everything, which
6 they never performed, and I was involved in knowing all about
7 that."

8 A. That's what I just testified to.

9 Q. But you're acting like you didn't have much involvement
10 with this case and you were there, weren't you?

11 A. I did -- what I said was I did not go to the arbitration.
12 I did not -- no, I did not have much to do with the case.

13 Q. And you knew Drews Distributing owed Silicon Gaming that
14 extra \$780,000, didn't you?

15 A. I know they owed us a million three back.

16 Q. You knew they were wanting \$780,000 from you, didn't you,
17 in 1999?

18 A. Yes.

19 Q. They kept asking for that money, didn't they?

20 A. They did.

21 Q. When do we get the balance?

22 A. When do I get the product?

23 Q. Y'all had a fight about that?

24 A. Yes, sir.

25 Q. And you lost?

1 A. Yes, sir.

2 Q. Now, in late 1998 I believe you told me you were
3 president of the South Carolina Coin Operators Association?
4 1999?

5 A. Yes, sir.

6 Q. It was in 1998?

7 A. I think it was a 2-year term, so I'm not sure exact date,
8 but --

9 Q. And that was when things were heating up in the
10 legislature, weren't they, about the changes to video poker?

11 A. Yes, sir.

12 Q. And you were frequently in Columbia, not lobbying, but
13 meeting with the legislators?

14 A. That's correct.

15 Q. I think Mike Fletcher was in Columbia quite often as
16 well?

17 A. He was.

18 Q. So you were very familiar with what was going on, the
19 proposals in the State House and how it was going to affect the
20 industry, weren't you?

21 A. Yes, sir.

22 Q. And in June or July Governor Hodges actually called back
23 a special session of the legislature, didn't he?

24 A. You know, yes, I was involved. Yes, I knew what was
25 going on at the time. Can I recall dates, specifics today, no,

1 sir, I don't remember. I just can't. I'm sorry.

2 Q. But you remember when I think it was Act 125 got passed
3 in June or July of 1999, don't you?

4 A. I remember that there -- yeah, about the 125, but
5 specifically as a time I do not. I mean I can't sit here and
6 correlate with exact times of stuff happening. I'm sorry. I
7 can't do it.

8 Q. And your sales pretty much stopped after that statute got
9 passed, didn't they?

10 A. No, sir. The sales pretty -- well, the middle -- I don't
11 know when that got passed, but the middle of -- the middle of
12 '99 in the middle of the year is right when our sales fell off,
13 so if it correlates to that.

14 Q. That's right. So mid year would be June, wouldn't it?

15 A. Yes, sir.

16 Q. And after that middle of 1999 I think is pretty much when
17 you told me here your business started shutting down. Is that
18 right?

19 A. Well, what we did was, yeah, the machine business had
20 slowed. We had employees. We turned to other things and we
21 got involved with AdSpace real heavy. We made a lot of trips
22 to the Caribbean, Belize, Venezuela, Isle of Margaree,
23 Dominican Republic, looking to go see where we could operate
24 these games down there and spent a lot of resources and time,
25 effort trying to do that.

1 Q. But your business pretty much shut down though in 1999?

2 A. I don't know what you call shut down. I mean we quit

3 doing sales. The employees, I think, stayed.

4 Q. All right. Let me show you -- let's look at your

5 deposition. You started laying off people right about June --

6 A. I'm not sure.

7 Q. -- 1999?

8 A. I'm not sure when we laid off people. That's what I'm

9 trying to say. As far as those things did happen, the

10 timetable of when they happened is what I can't sit here and

11 tell you exactly when it happened.

12 Q. All right. I'm going to hand you both of your

13 depositions. You can just follow along here with me, Mr.

14 Andrews. This was -- I'm going to first refer to page 21 of

15 your first deposition, line 21. And I asked you, I said, "Now,

16 let's see. Besides you and Mr. Fletcher, who were the other

17 key employees at Drews in 1998, '99 and 2000? And I think I

18 met Travis." Answer: "Travis Owens. I guess that's about it.

19 Claudia. We shut down around the middle of 1999." Flip on

20 over to 22. "I mean as far as any sales or business it just

21 died, you know, about June or July of 1999. The state didn't

22 go out of business until later, but as far as any machines they

23 quit, you know, so" --

24 A. Exactly what I just said, yes, sir.

25 Q. So that's -- when you say you shut down, you don't mean

1 shut down --

2 A. I don't mean the business shut down. I mean sales shut
3 down. I'm sorry.

4 Q. Shut down. Exhibit 25 is an e-mail from a Travis to Mr.
5 Kevin Peterson who was at Silicon Gaming, and in that e-mail
6 it's dated June 30, 1999, and Mr. Travis Owens mentions that --
7 he says we're going to start laying off employees about that
8 day. And I just wanted to know if that's -- if what he's
9 saying is accurate.

10 A. Okay.

11 Q. Travis is mentioning in there about laying off employees
12 in June of '99, isn't he? Isn't he?

13 A. He is.

14 Q. Okay. And he wouldn't say it if it wasn't true, would
15 he?

16 A. You need to ask him, but I don't think so.

17 Q. If -- you started to lay off people around that time
18 because your sales stopped, didn't you?

19 A. Yeah, but I mean I'm not aware of when we laid off people
20 or whatever. Travis or Claudia would maybe be more -- be able
21 to answer your question better. I'm sorry.

22 Q. Now, in 1999, 2000 -- well, in 1999 you weren't really a
23 whole lot involved with the operation of Drews Distributing,
24 were you?

25 A. No, sir.

1 Q. Mike Fletcher was running the show in '99?

2 A. Yes, sir.

3 Q. And 2000, same thing?

4 A. Yes, sir.

5 Q. You weren't performing any services for Drews
6 Distributing?

7 A. I wouldn't say I wasn't performing any services. I would
8 say I was there some, but as far as the day-to-day, the
9 day-to-day operations of the company pretty much Mike Fletcher
10 run everything. I would just check in with him.

11 Q. Now and then you'd check in with him?

12 A. Correct.

13 Q. And from the beach?

14 A. Correct.

15 Q. Because you were running -- you had to run all your other
16 companies too, didn't you?

17 A. Mike was helpful with some of those too from time to
18 time. If somebody would call him, he might call me if I needed
19 to --

20 Q. Because you had what?

21 A. 18 corporations.

22 Q. 18 corporations going on during that time?

23 A. That's correct.

24 Q. And Mike was helping you run those as well?

25 A. He did help some, yes, sir.

1 Q. But you certainly weren't focusing all your time and
2 energy in '99 and 2000 on Drews Distributing, were you?

3 A. No, sir.

4 Q. Now, even though you weren't focusing all your time and
5 energy on Drews Distributing you sure were getting some
6 distributions from Drews Distributing in 1999, weren't you, Mr.
7 Andrews?

8 A. Yes. I mean most of the dividends that was taken out of
9 the company during those years that y'all talking about, four
10 or five or six million dollars or even more, it was to pay the
11 income tax that passed through to me that had to be paid.

12 Q. Pay income tax?

13 A. Yes, sir.

14 Q. All right. Later on y'all amended those income tax
15 returns, didn't you? In fact --

16 A. Yes.

17 Q. -- you got yourself a big refund, didn't you, Mr.
18 Andrews?

19 A. Yes, sir. Yes, sir.

20 Q. Did you ever put that refund check back into Drews
21 Distributing?

22 A. No, sir.

23 Q. You didn't do it. Drews paid the taxes, didn't they --

24 A. Drews --

25 Q. -- for you?

1 A. You know, if you take -- if you take my income in '98 was
2 eight and a half million dollars, six million dollars of it was
3 probably made from Drews Distributing. And then you take the
4 fact that I got to pay \$4 million personal income tax and that
5 money's sitting over there in Drews, you've got to get it to
6 pay your taxes.

7 The only time I reached into Drews to ever get any
8 money was when I had to have it, when I was broke everywhere
9 else, when I had to pay taxes and didn't have it nowhere else,
10 because my whole business I had tried to leave money in Drews
11 so we could sell games to people on credit and finance it for
12 them, and that took money. So my whole life had been spent to
13 try to leave money in there if could I.

14 Q. That's right. And then Drews helped you pay the taxes?

15 A. Correct.

16 Q. And you got a refund and you never --

17 A. Yes.

18 Q. -- gave it back to Drews, did you?

19 A. No, sir.

20 Q. All right. Let me show you Exhibit 6 here that has some
21 of those distributions on it. Looks like in January of '99 you
22 received \$500,000 for a distribution.

23 A. January '99?

24 Q. March -- you don't disagree with that, do you?

25 A. I'm not -- I just -- I'm not able to follow --

- 1 Q. Flip on down to March of '99. It's about the eighth
- 2 entry.
- 3 A. Okay. March of '99, half a million dollars, manual
- 4 check. Yes, sir.
- 5 Q. All right. Then a few weeks -- well, April 12 got a
- 6 million dollars distribution, didn't you?
- 7 A. Yes, sir.
- 8 Q. And June '99 you got \$500,000, didn't you?
- 9 A. That's correct.
- 10 Q. August '99 another 500,000?
- 11 A. Correct.
- 12 Q. September '99 another 500,000?
- 13 A. Correct.
- 14 Q. October got a wire transfer for \$262,000. And then
- 15 shortly -- well, right before that October you got a check for
- 16 \$176,000, didn't you, Mr. Andrews?
- 17 A. That's correct.
- 18 Q. Now, as you testified earlier you weren't doing much work
- 19 for the company in '99, 2000, 2001, were you?
- 20 A. That's correct.
- 21 Q. You got paid \$297,000 in 1999 from Drews Distributing,
- 22 didn't you?
- 23 A. Yes, sir.
- 24 Q. And then in 2000 you paid yourself \$297,000 again, didn't
- 25 you?

1 A. Yes, sir.

2 Q. 2001 you cut it a little bit, but you still got

3 \$131,596 --

4 A. Okay.

5 Q. -- for salary, didn't you?

6 A. Yes, sir.

7 Q. That's on top of other salaries you're getting from all

8 your other 18 companies, isn't it?

9 A. No, sir.

10 Q. You got paid from other sources, didn't you, besides --

11 A. I think the only salary I drew was from Drews.

12 Q. From Drews. The rest would have been interest income or

13 distributions of some sort from these other entities?

14 A. I --

15 Q. Well, like H&J, for instance, do you own part of H&J?

16 A. Yes, sir.

17 Q. And you owned how much of it?

18 A. 50 percent.

19 Q. And H&J in the year 2000 paid you over \$500,000 in draws,

20 didn't they?

21 A. If you say so.

22 Q. Okay.

23 A. I don't know.

24 Q. We'll get to in it just a second. All right. Now, you

25 tell me your wife didn't work for the company and yet Drews

1 Distributing bought her a BMW X5, didn't they?

2 A. Yes, sir.

3 Q. And that was for her personal use?

4 A. Yes. And she did -- she did run some errands and stuff

5 for the company from time to time. We'd run her, you know, to

6 Greenville here and there. You know, we'd reimburse her for

7 gas, but, yeah, to some degree you could say it was personal.

8 Q. I might come run errands for you if you let me drive

9 around in a BMW X5. That would be nice. Now, you bought

10 yourself in 2002 a BMW M3?

11 A. That's correct.

12 Q. And Drews Distributing paid for it?

13 A. Yes, sir.

14 Q. And that's while you were living down in Florida?

15 A. Yes, sir.

16 Q. And I think you were in drug rehab down in Florida

17 sometime during --

18 A. I was.

19 Q. -- 2002? Okay. And you weren't doing any work for Drews

20 during that time while you were down in Florida, were you, Mr.

21 Andrews?

22 A. No, sir.

23 Q. You just weren't up to it.

24 A. No, sir. That's correct.

25 Q. Now, AdSpace was a separate company from Drews

1 Distributing, wasn't it?

2 A. It was.

3 Q. Separate corporation, wasn't it?

4 A. It was, yes, sir.

5 Q. And AdSpace -- but Drews paid AdSpace's bills, didn't
6 they?

7 A. I'm sure it did.

8 Q. I think AdSpace was running up some pretty good charges
9 at strip clubs and stuff, weren't they?

10 A. I don't know.

11 Q. And I think Mr. Fletcher said you approved of it, you
12 knew that they were over there at the strip clubs?

13 A. I don't know about AdSpace when he said that, but I mean
14 I know that Drews Distributing, that Mr. Fletcher had a credit
15 card that he entertained some people.

16 Q. Just entertaining them over there. And you never voiced
17 any displeasure with him spending the money at the various
18 strip clubs to entertain --

19 A. Actually I did.

20 Q. You did?

21 A. When I become aware of it, but. . .

22 Q. Now, in addition to paying AdSpace expenses the airplane
23 expenses were just astronomical in the year 2000. Drews paid
24 over 500 --

25 MR. HODGE: Object to the form of the question.

1 THE COURT: Rephrase it.

2 BY MR. PAYNE:

3 Q. Drews has paid \$537,000 for airplane expenses in the year

4 2000, didn't they?

5 A. I don't know.

6 Q. Don't know. Okay. Let's look at your financial

7 statement here. This is Exhibit 30. And actually I'll need --

8 no, we'll start with 30. This is the year 1999. And your

9 airplane expenses were \$265,000 in 1999, weren't they?

10 A. 265, yes, sir.

11 Q. 265. And that was an airplane -- Drews didn't even own

12 the airplane, did it?

13 A. That's correct.

14 Q. Your other -- your company Andrews Aviation owned an

15 interest in a Cessna Citation, I believe it was?

16 A. Correct.

17 Q. And Drews didn't own the airplane. Your company Andrews

18 Aviation owned it?

19 A. (Nods head affirmatively.)

20 Q. And you were the sole shareholder of Andrews Aviation,

21 weren't you?

22 A. Yeah, but I'm sure -- I'm sure everybody understands and

23 this court understands that the liability of an airplane, that

24 you don't want to hold it in a corporation that's got assets in

25 it. Okay. So that's why you have -- you know, that's why you

1 have another corporation to distance yourself in case somebody
2 got killed in an airplane.

3 Q. Well, and --

4 A. As far as we bought -- you know, as far as airplane's
5 use, you know, it was used primarily for Drews business. And
6 also in that year that you're talking about, 2000, we -- that's
7 when I was talking about we were flying all over the Caribbean
8 visiting different countries to try to see about putting
9 machines in there and operating them.

10 Q. And a lot of those trips were for Tri-Star though too,
11 weren't they, Mr. Andrews?

12 A. Ultimately we ended up doing a deal with -- in Dominican
13 that involved Tri-Star as a partner in it, but pretty much when
14 we were going -- when we were -- had our employees in Drews and
15 we were looking to, you know, get some revenue coming into the
16 company, we were flying -- actually flying down there and
17 looking. One or two of them occasions we took Mr. Broome with
18 us, but, no, Tri-Star -- in that -- in that series of time
19 looking before we got involved Tri-Star really wasn't in the
20 picture.

21 Q. Well, you used it for Drews' purposes, but you also used
22 it for Tri-Star's purposes?

23 A. Tri-Star used the plane some. H&J used the plane some
24 and pretty much would reimburse us for the use of the plane.
25 In the case of Tri-Star we probably never got paid. It

1 probably just got booked to --

2 Q. You just added it to the tab, I think, is what you told

3 me in your deposition?

4 A. That's correct.

5 Q. You let Tri-Star -- or Drews would pay for the Tri-Star

6 trip and then y'all would add that to a receivable balance --

7 A. That's correct.

8 Q. -- from Tri-Star?

9 A. Yes, sir.

10 Q. And in the year 2000 I think your airplane expenses were

11 over \$500,000, weren't they?

12 A. You throw that figure again. This was '99.

13 Q. That's '99. Here's 2000. \$537,000?

14 A. That's correct.

15 Q. And, in fact, Drews would loan money to Andrews Aviation,

16 wouldn't they, so Andrews Aviation could make the payment for

17 the airplane. Isn't that true?

18 A. Should ask my accountant.

19 Q. Okay.

20 A. And bookkeeper.

21 Q. Well --

22 A. I don't know.

23 Q. -- there was a note that everybody had to pay for that

24 airplane, wasn't it?

25 A. Yes, sir.

- 1 Q. Okay. And Andrews Aviation didn't have any money to pay
2 it, did they?
- 3 A. No, sir.
- 4 Q. Okay. And Andrews Aviation would get that money from
5 Drews Distributing, wouldn't they?
- 6 A. Yes, sir.
- 7 Q. Okay. All right. Mr. Andrews, when June 30, 2000, came
8 around, that's when video poker was outlawed in the state of
9 South Carolina, wasn't it?
- 10 A. Yes, sir.
- 11 Q. And at that point I think you told me there were 34,000
12 licensed poker machines in the state of South Carolina?
- 13 A. Correct.
- 14 Q. And machines were virtually worthless at that time,
15 weren't they?
- 16 A. Pretty much. Yes, sir. Low value. Maybe a Pot of Gold
17 was probably -- I think the market was around a thousand bucks.
- 18 Q. And there was no place to sell them, were there?
- 19 A. No, sir.
- 20 Q. You couldn't sell them in Nevada, could you?
- 21 A. No, you could not sell them, never could.
- 22 Q. Couldn't sell them in New Jersey?
- 23 A. Never could. And then, of course, that's prior to them
24 going out of business. You couldn't have sold them five years
25 ago or, you know, you couldn't have sold them any time in those

1 jurisdictions.

2 Q. Or to Cherokee, North Carolina. You couldn't sell them
3 up there, could you?

4 A. No.

5 Q. And I think you told me there's just nowhere to sell
6 games?

7 A. What we -- that's why we looked to the Caribbean. We
8 looked to possibly go down there and operate games, and the
9 fact we could probably buy them at -- you know, we'd paid
10 \$7,500 apiece for these games that was now worth a thousand
11 bucks maybe if you'd find a buyer. So we thought we could pick
12 up some and go down there and operate them. The fact they
13 might not make near the money they made in South Carolina, but
14 the fact that they would make some money and you didn't have a
15 lot of money in them at that point, that maybe we could make a
16 living down there. That's why we were spending so much time
17 there.

18 Q. And so you or Drews sold whatever games, Pot of Golds
19 that y'all had to Tri-Star, didn't they?

20 A. We did.

21 Q. Okay. All of the Pot of Golds that you had or later
22 acquired, you sold them to Tri-Star on credit?

23 A. Right.

24 Q. Tri-Star never paid you a nickel for them, did they, the
25 ones that were sold in 2000, 2001 and 2002?

1 A. At the time you're talking about we went and operated
2 them, Tri-Star never paid anything and doesn't look like
3 they're going to.

4 Q. And even though you couldn't get rid of the Pot of Golds,
5 y'all have implied somehow that these Odyssey machines are
6 worth millions of dollars, haven't you?

7 A. Well, the same -- the same thing applies for South
8 Carolina for me that they don't even have the software in them
9 to work anywhere, then they -- as I look at them, I have no
10 value for them in that respect. As far as if IGT would give us
11 some software to where I could go to a jurisdiction and operate
12 them, then they would have a value. I mean y'all -- your
13 client holds the cards. I mean he's got me the way -- the way
14 he's got the games sitting there in my -- in my warehouse
15 they're useless to me, but they're very valuable to him.

16 Q. Why didn't you take them to the Dominican Republic and
17 try to use them --

18 A. I don't have any software to run them. Do you not
19 understand?

20 Q. Well, the games -- you ran the games in South Carolina
21 when you had them here?

22 A. We tried them. They're -- the games are very slow to
23 play the way they are. If you change from one game to another,
24 it takes maybe a minute and a half for the next game to come
25 back up. Kind of like if you're running a computer at home,

1 you know, and was on the old dial-up system and you're used to
2 some fast internet service, it's kind of that's what we've got
3 here. We've got stuff that won't work.

4 Q. It's just outdated. It's like an old computer system,
5 isn't it? You talking about dial-up versus internet. I mean
6 dial-up was fast at one time.

7 A. I wouldn't say it's outdated. I'd just say it's not the
8 right -- to go into any jurisdiction, any gambling
9 jurisdiction, even out of the country to go somewhere, pretty
10 much there's a set of laws you have to go by. To operate in
11 South Carolina, a set of laws. To operate in New Jersey, a set
12 of laws. And they all differ and the software has to be
13 critiqued to meet that market. And so to go sell them
14 somewhere I've got to have the assistance of IGT.

15 Q. But IGT doesn't support the Odyssey machines anywhere, do
16 they?

17 A. I don't know.

18 Q. It's not their obligation to continue supporting some
19 outdated --

20 A. I think they bought --

21 Q. -- machine, is it?

22 A. The company they bought had a \$90 million tax credit
23 deal. They bought it for 45 million. It was a wash and they
24 shut it down. It was a way to close their competition.

25 Q. Yes, sir. They don't have to keep supporting a game that

1 they don't want to keep supporting, do they?

2 A. No. They want to sell their own.

3 Q. Right.

4 A. They bought that company just to shut it down.

5 Q. And the games though when you had them, they worked up
6 there in Dillon, South Carolina because y'all were using them
7 up there?

8 A. We plugged them up and tried to operate them. They
9 didn't get any play.

10 Q. Nobody played them, did they?

11 A. Nobody played them.

12 Q. And you were --

13 A. That was prior to me purchasing them.

14 Q. Well, no, that was when you were test marketing in
15 January --

16 A. That was when I agreed to take --

17 Q. -- early 1999?

18 A. That was when --

19 THE COURT: Don't be talking over each other. Listen
20 to the question first. Let him give you answers.

21 THE WITNESS: Okay.

22 BY MR. PAYNE:

23 Q. Now, in 2000 after the video poker went out of business
24 in South Carolina y'all wrote down the value of your inventory,
25 didn't you?

- 1 A. I assume.
- 2 Q. You wrote it down by, I think, over a million dollars,
- 3 1.7 million dollars actually, and that's because the games
- 4 weren't really worth any more, right?
- 5 A. You're saying we did what, sir?
- 6 Q. You wrote down the value of your inventory by --
- 7 A. All my inventory in Drews. Yes, sir, sure did.
- 8 Q. That's because the games weren't worth much any more?
- 9 A. Well, they had -- you had no market, yes, sir. And, you
- 10 know, yes, sir. I guess that's correct.
- 11 Q. The Pot of Golds somehow is not worth much, but y'all
- 12 want to make a big deal about the Odyssey still being worth a
- 13 lot of money. Why is it the Pot of Gold can't be worth
- 14 anything and the Odyssey can't be worth anything either?
- 15 A. I don't know. We -- when I went to -- I went to Vegas
- 16 one time shortly after that. The Odysseys were out there in
- 17 operation. A casino had some for sale for \$5,400 apiece, so,
- 18 you know, I don't know what they're worth, but they had more
- 19 value to -- they had considerable amount more value to IGT than
- 20 they did to me, because they actually held the software to do
- 21 things with them.
- 22 Q. Now, once the video poker went out in June 2000 Drews
- 23 bought H&J's Pot of Golds machines, didn't they?
- 24 A. Correct.
- 25 Q. And they bought 187 games for \$187,000, didn't they?

1 A. Correct.

2 Q. And you owned half of H&J?

3 A. Yes, sir.

4 Q. And in the year 2000 from H&J you received over \$500,000,
5 didn't you?

6 A. If you say so, yes, sir.

7 Q. Well, let's look at it.

8 A. Well, I don't have the document in front of me.

9 Q. We know it's a long time ago. Let's look at Exhibit
10 Number 40. It's got the schedule of owners' draws from H&J and
11 it shows \$533,000 that you received from H&J in the year 2000.
12 And that's accurate, isn't it?

13 MR. COGGINS: Your Honor, I'm going to note an
14 objection to draws from H&J unless there's some foundation that
15 the money came from Drews. If it's money generated by H&J,
16 it's a separate corporation, I think that's totally irrelevant
17 to any issue before the court.

18 THE COURT: What you got to say about that, Mr.
19 Payne?

20 MR. PAYNE: Well, it's very relevant because Drews
21 sends a check over to --

22 THE COURT: I don't know that yet. It's not in the
23 record.

24 MR. PAYNE: Well, he said they paid \$187,000 for the
25 machines from H&J.

1 THE COURT: Well, that's different. That's a
2 different animal than taking a \$500,000 draw.

3 MR. PAYNE: Well, the way you link it up is why in
4 the world are they sending out checks to another company,
5 Judge, that he's related to, H&J, it's 187,000? And the reason
6 he's doing it, buying their games, is because he through
7 another animal is collecting \$533,000 from H&J.

8 THE COURT: Well, you're going to have to get some
9 testimony in the record for that out of him.

10 MR. PAYNE: These are admitted, your Honor, already
11 into evidence. These are the draws from H&J.

12 THE COURT: That doesn't mean that money came from
13 Drew yet.

14 MR. PAYNE: This is what they have testified to and
15 admitted in a request to admit that he received --

16 THE COURT: I don't know that. See, I don't have
17 that in the record here.

18 MR. PAYNE: All right.

19 THE COURT: You may have it in your request to admit,
20 but I haven't heard it.

21 MR. PAYNE: That he received 533,000 --

22 THE COURT: And the money came from Drews.

23 MR. PAYNE: No. No. No. It came from H&J. I'm
24 sorry.

25 THE COURT: How is that relevant?

1 MR. PAYNE: Because he is taking assets to a company
2 that he's related to and he's got the incentive to give a check
3 over to this other company. It's a way to siphon money. And
4 then on the same token he's getting \$533,000 back from that
5 company to himself directly.

6 THE COURT: Well, maybe I'm misunderstanding. The
7 only amount of money that went -- that's been testified to was
8 \$187,000 went to H&J.

9 MR. PAYNE: That's correct.

10 THE COURT: All right. So he takes money out of his
11 -- out of the business that he -- another business, what does
12 that have to do other than the \$187,000 to do with Drews?

13 MR. PAYNE: Well, it has something to do with Mr.
14 Andrews and his incentive to siphon money from Drews
15 Distributing over to his related company under the guise of
16 purchasing inventory because he's on the take from that other
17 company.

18 THE COURT: I don't disagree with what you're trying
19 to say, but you've only established it's \$187,000.

20 MR. PAYNE: That went from Drews to H&J.

21 THE COURT: Yeah. Right.

22 MR. PAYNE: This is evidence that \$533,000 came from
23 H&J back to Mr. Andrews.

24 THE COURT: And what's -- tie it up for me.

25 MR. PAYNE: You don't think it provides a motive

1 or --

2 THE COURT: No.

3 MR. PAYNE: -- incentive for somebody to give money
4 to another company from a company that he's also receiving it
5 from?

6 THE COURT: But, Mr. Payne, only to the extent that
7 the Drews put money in that company. \$187,000 is all you --
8 all you've said went into that company.

9 MR. PAYNE: That's right. And the check was written
10 in August of 2000, and after August of 2000, your Honor, the
11 checks back to Mr. Andrews from Drews Distributing total up to
12 more than that. There's a \$250,000 one in October 2000 and
13 here we are looking to come to Drews, where are the assets?
14 Don't have any. What happened to them? Well, I wrote a check
15 to my related company. Okay, that's good, but you also got it
16 back, the 187 or 533.

17 THE COURT: Mr. Coggins, what you got to say about
18 it?

19 MR. COGGINS: Your Honor, I would stipulate that the
20 \$187,000 going out is relevant to the plaintiff's theory.
21 Again though, as far as what is earned from an unrelated
22 company, unrelated business operations, has no relevance to any
23 siphoning of anything from Drews to the extent that it
24 happened.

25 THE COURT: I sustain the objection to the extent

1 that the inference being drawn is that it exceeds more than
2 \$187,000. He has a legitimate business with H&J. He can draw
3 from that company. Now, if Drews put more money in there than
4 187,000, I'll let you go there.

5 MR. PAYNE: Thank you, your Honor.

6 BY MR. PAYNE:

7 Q. Now, the games that you did buy from H&J, those went
8 straight to Tri-Star, didn't they, Mr. Andrews?

9 A. I don't know whether they went to -- straight to Tri-Star
10 or straight to us and then to Tri-Star, but ultimately they
11 ended up at Tri-Star.

12 Q. And actually all these games from Drews Distributing, the
13 ones that H&J had, y'all all had them in the same warehouse up
14 in North Carolina, didn't you, right at 2000?

15 A. I think so.

16 Q. And then you moved them all over to Georgia at some
17 point?

18 A. Yes, sir.

19 Q. And so it's not like they're getting shipped anywhere.
20 It's just a matter of that pile is now mine versus Tri-Star's?

21 A. That's correct.

22 Q. Okay. And some of your other companies, 18 other
23 companies had their games up in North Carolina or Georgia,
24 didn't they?

25 A. And I think we ultimately ended up purchasing them and

1 Tri-Star ended up with them, yes, sir.

2 Q. Okay. You bought some from Andrews Amusements?

3 A. Correct.

4 Q. And that was a company that at one time you owned half of
5 it, didn't you?

6 A. At one time I owned all of it.

7 Q. Okay. And you and your son had owned Andrews Amusements?

8 A. Correct.

9 Q. And I think you bought -- looks like April of 2002 you
10 bought about \$59,000 worth of inventory and assets from Andrews
11 Amusements. Is that right?

12 A. Yes, sir.

13 Q. And you also -- Drews Distributing also bought \$37,000
14 worth of games from Drews Industries?

15 A. Correct.

16 Q. And Drews Industries was a company that you owned half
17 of, didn't you?

18 A. Correct.

19 Q. Now, did you ultimately own a hundred percent of Drews
20 Industries?

21 A. No, sir. Only -- Drews Industries only owned half of it.

22 Q. And that was an operator of games out in convenience
23 stores or whatever?

24 A. Me and a gentleman named Kenny Lender in Columbia, South
25 Carolina, we operated equipment together.

1 Q. Now, I think you told me at your deposition when you sold
2 all those games that you had over to Tri-Star, you didn't have
3 a lot of choice on where to sell them; is that right?

4 A. That's correct.

5 Q. And you added that to their receivable --

6 A. Correct.

7 Q. -- they already owed to Drews Distributing?

8 A. Correct.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. And when the first 300 and some odd games went to
12 Tri-Star right at the end of video poker, Tri-Star owed Drews
13 over a million dollars at that time, didn't they?

14 A. Yes, sir.

15 Q. And that was for prior machines and goods sold to
16 Tri-Star, wasn't it?

17 A. That's correct.

18 Q. So whatever else you sold you added it to the tab?

19 A. That's correct. Basically Tri-Star, me and a gentleman
20 named Quinton Broome were in partners together in South
21 Carolina. We had expanded real hurriedly. The businesses in
22 South Carolina went away and we were upside down. The only way
23 the chance that we had to either just stop and call it a day
24 and we lost money or try to bail ourself out, we ended up going
25 to Dominican and trying to make a go of it to bail us out. It

1 was more crucial to Quinton than it was to me because I mean he
2 was fixing to lose everything he had, and I liked to not --
3 help people and not see that happen.

4 Q. And when you sold those games in 2000, 2001, 2002 to
5 Tri-Star, there was no collateral given back to Drews
6 Distributing, was there?

7 A. I don't -- I don't know that there was or wasn't. At one
8 time I was hoping that -- I think I said in one of the
9 depositions I was hoping we had -- I could find -- I think that
10 Mr. Fletcher did one or two. I said I wished I had them to
11 beat him over the head with to try get paid, but ultimately it
12 seems to be pretty much unsecured.

13 Q. And there's no loan documents or anything between
14 Tri-Star and Drews Distributing?

15 A. I think there's one or two, but there's not nothing to
16 cover the mass of the money, yeah, correct.

17 Q. Which today is millions, right?

18 A. Yeah, by my calculations it's like four and a half
19 million dollars with interest and everything.

20 Q. But Tri-Star during 2000, 2001 and 2002 while Drews is
21 selling on credit to Tri-Star, Tri-Star is paying you
22 significant sums, aren't they, Mr. Andrews?

23 A. Yes. What Mr. Broome would do was -- what I wished he
24 would do would be to pay back the Drews indebtedness, and once
25 it got paid and me and he were even as partners -- actually I

1 even had about \$400,000 more into the company than he did, but
2 once -- besides the Drews debt, but once that -- if we could
3 get that all paid back and get even and then start dispensing
4 equally money to both of us, I would have been happy.

5 But what Mr. Broome was doing since he was running
6 the show was he would write himself a \$30,000 check to pay back
7 his loans he put in. He would send me a likewise check to pay
8 back the loans that I had put in, so ultimately his loans was
9 getting paid back and my loans was getting paid back. The
10 outstanding indebtedness of Drews was not being paid, and this
11 was against my wishes.

12 Q. Right. Just never got Drews paid back, did you?

13 A. No, sir.

14 Q. But you seemed to get your half, didn't you?

15 A. I didn't seem to get the money the way I wanted to get
16 it, but I was receiving some money. Yes, sir.

17 Q. Lots of money, wasn't it?

18 A. It might be lots --

19 Q. Hundreds of thousands of dollars?

20 A. I'm not sure how much. It's -- when you look at a guy
21 that's beat you out of four and a half million dollars,
22 whatever he sent me wasn't -- wasn't very good.

23 Q. Now, in August of 2000 there was a blowup. You had to
24 start loaning money to Drews, didn't you?

25 A. Yes, sir.

1 Q. And that was because Drews could not pay its bills at
2 that time, could it?

3 A. I'm sure it was, yeah, a cash flow problem. Yes, sir.

4 Q. But you couldn't pay the bills without that money?

5 A. You need to ask my secretary. If I couldn't pay the
6 bills, I don't know. I know we needed money. If I was asked
7 -- if she wanted to transfer money and she asked me, I told her
8 to do so. She may have even at liberty done some without me
9 saying okay. I don't know.

10 Q. She would normally call you up --

11 A. I think so.

12 Q. -- say we need some money, Mr. Andrews?

13 A. Right.

14 Q. Let me just make sure we're clear on this bit about
15 whether you could pay the bills or not. On your deposition at
16 page 125, you can flip to it if you like, the question was, "A
17 couple more things and then we'll end at this juncture. It
18 looks like in August of 2000 if you look at Exhibit 46, and I
19 don't have the notes attached to them, but you started loaning
20 money to Drews. I think you loaned 400 -- 500,000 to them in
21 August of 2000?" Answer: "At what time? Question: "August
22 of 2000." Answer: "Okay." "Was Drews pretty much out of cash
23 at this time? That's why you got the money?" Answer: "I
24 assume that it was." Question: "I mean you wouldn't have had
25 to loan money to it if it was able to meet its obligation?"

1 Answer: "Right. Right."

2 So you think you could meet your obligations without
3 those loans?

4 A. All I'm saying is that if Claudia called me and said she
5 needed some money put in the company, she needed \$500,000, I
6 said, "Okay. Put it in." As to what bills she was behind on
7 or had to pay, you need to ask her.

8 Q. But she told you that we needed it to pay payroll and pay
9 the bills and other things, didn't she, Mr. Andrews?

10 A. She wouldn't have had to say that. She would have just
11 had to say, "Hugh, you know, I need to put \$500,000 over into
12 the account. Is it okay?" I would have said, "Yeah."

13 Q. Okay. Now, the arbitrator out in California ultimately
14 awarded Silicon Gaming a judgment against Drews over
15 \$1.5 million in September of 2002, didn't he?

16 A. Okay.

17 Q. And Mike Fletcher was keeping you informed about that
18 case out in California, wasn't he?

19 A. Yes.

20 Q. And you knew when that judgment came down against Drews
21 Distributing, didn't you?

22 A. I don't know exactly when I knew it, but at some point,
23 yeah, I did know it some time, yes, sir.

24 Q. Because you started working on the assignment of those
25 assets to yourself round about September, October 2000, didn't

1 you, Mr. Andrews?

2 A. I don't know. I think we had been working with Mr.
3 Scrantom for several months, I think, as to how we would go
4 about, you know, shutting Drews down because I was continually
5 putting money in it.

6 Q. And Mr. Scrantom sent you the assignment paperwork while
7 you were in drug rehab in Florida, didn't he?

8 A. I don't recall. Maybe.

9 Q. You don't remember him sending you the paperwork to sign
10 while you were down there?

11 A. No, sir. No, sir, I don't. I'm sorry.

12 Q. But the plan to assign all the assets was your plan or
13 the lawyer's plan?

14 A. Must have been the lawyer's plan.

15 Q. But you went along with it, right?

16 A. I signed the papers at some point, yes, sir.

17 Q. And you ultimately received all the assets of Drews
18 Distributing except for the Odyssey game machines. Is that
19 right?

20 A. That's correct.

21 Q. And after that point actually there was nothing left in
22 the company after you assigned all those assets, were there?

23 A. Except the games that I paid a million three for that I'm
24 still storing for somebody today.

25 Q. Well, let's look at Plaintiff's Exhibit 35, which is your

1 tax return for the year 2002. And this kind of ties in with
2 how valuable these Odyssey games were, but look here at this
3 third page and look at the end of the tax year. How many
4 assets are reported on your 2002 tax return, Mr. Andrews?

5 A. Help me where you're heading.

6 Q. Total assets, line 15, end of tax year. What's the value
7 of those?

8 A. Okay. Zero.

9 Q. There's nothing left, is there, Mr. Andrews?

10 A. Not according to that it's not.

11 Q. Zero the year 2002?

12 A. That's what that says.

13 Q. And a few days after that assignment you received a check
14 from Leisure Time because of a bankruptcy claim that Drews had
15 against Leisure Time, didn't you?

16 A. That's correct.

17 Q. It was actually Vision Gaming had bought Leisure Time, I
18 believe, in the bankruptcy over in Atlanta. Is that right?

19 A. That's correct.

20 Q. And on November 18th Vision Gaming paid you \$183,000 to
21 resolve the claim that you now had as a result of the
22 assignment?

23 A. We had a \$2.8 million judgment. We received that check
24 from the bankruptcy court. I think they bought -- and they
25 issued us some stock, and that stock we sold for like five

- 1 cents a share or something.
- 2 Q. Right after -- right after the assignment you got
- 3 \$183,000 from that claim in bankruptcy?
- 4 A. That's correct.
- 5 Q. And that was Drews' claim in bankruptcy, wasn't it?
- 6 A. Yes. Yes, sir.
- 7 Q. Because Drews won the verdict against --
- 8 A. Yes, sir.
- 9 Q. -- Leisure Time?
- 10 A. Yes, sir. That's correct.
- 11 Q. And then after the assignment and after receiving that
- 12 \$183,000 you received some stock, 521,000 shares of stock to be
- 13 exact --
- 14 A. (Nods head affirmatively.)
- 15 Q. -- in Vision Gaming?
- 16 A. Correct.
- 17 Q. Turned around, you sold that stock to something called
- 18 Crystal Group?
- 19 A. That's correct.
- 20 Q. And you sold it for \$104,000?
- 21 A. That's correct.
- 22 Q. And that all went into your pocket?
- 23 A. Yes, sir.
- 24 Q. Right after the assignment, month or two afterwards?
- 25 A. Yes, sir. I had -- really had no control over when the

1 bankruptcy court was going to award or settle up.

2 Q. Now, you were an owner of a company called Integrated
3 Merchants, weren't you?

4 A. I own a company -- I own part of a company called
5 Integrated Merchants, yes, sir.

6 Q. And Integrated Merchants actually owed Drews significant
7 sums, didn't they?

8 A. I'm not --

9 Q. Hundreds of thousands of dollars?

10 A. I'm not aware. Maybe it does. I don't know.

11 Q. Let's look at the Exhibit 73 here. Actually let's look
12 at 41. And this is your aged accounts receivable ledger, Drews
13 Distributing aged receivable ledger, and on it are some entries
14 for Integrated Merchant Systems, Mr. Andrews, and it looks like
15 Integrated owes Drews at that time over 300 and some odd
16 thousand dollars. Is that correct? This is the total, isn't
17 it, \$333,000 for two invoices back in 1999 and 1998?

18 A. That's correct.

19 Q. Okay. And you never made any effort to collect that
20 money from Integrated Merchants, did you?

21 A. I don't even know anything about it. I'm sorry.

22 Q. Didn't know anything about it, so you didn't make any
23 effort to try to collect that money, did you?

24 A. No. I mean I'm not aware of whether it exists or doesn't
25 exist. It's probably a question for the bookkeeper.

1 Q. And yet in the year 2000 you received over \$175,000 from
2 Integrated Merchants, didn't you?

3 A. I don't know. For the record I'd like to say I don't
4 think I own Integrated Merchant Systems. Okay. When we
5 started, I think my -- I think my children owned Integrated
6 Merchant Systems, but I'm not sure.

7 Q. Well, you've got some ownership interest in it, don't
8 you?

9 A. I may. It may be just a percent or something. I'm not
10 sure.

11 Q. And you're getting significant sums from Integrated
12 Merchants?

13 A. That's why when you said that I'm not aware of what's
14 going here. You probably -- we need to ask Claudia when she
15 gets on the --

16 MR. PAYNE: I'm sorry, Judge.

17 Q. Let's see how you answered the interrogatory on that
18 issue. Integrated Merchant Systems, this is Exhibit 71, you
19 got a two percent --

20 A. Two percent.

21 Q. -- ownership interest in it. All right. Let's see how
22 much you received from Integrated Merchants.

23 A. I guess if I only own two percent of it, I don't know why
24 I would receive \$175,000.

25 Q. All right. This is your 2000 tax return. All right.

1 This 2000, 2000 has Integrated Merchants, you receiving \$95,000
2 from them that year. Does that ring a bell?

3 A. It doesn't ring a bell, but --

4 Q. But it's on --

5 A. Yes, sir.

6 Q. If it's on your tax return, it would be accurate though,
7 wouldn't it?

8 A. Must have got it, yes, sir.

9 Q. In 2001 Integrated Merchants, 175,000 in 2001.

10 A. Okay. This says interest income, and this other one says
11 interest income.

12 Q. Okay. So you're getting interest income from Integrated
13 Merchants?

14 A. Where I've loaned them a couple million dollars at one
15 time. Yes, sir, now we're making sense. Okay.

16 Q. All right. That's Exhibits 37 and 38. Those are your
17 personal tax returns?

18 A. (Nods head affirmatively.)

19 Q. But during that time you made no effort to collect that
20 money that was owed to Drews Distributing from Integrated
21 Merchants, did you?

22 A. I don't even know about it.

23 Q. Don't know anything about it, but it's on the books
24 though, isn't it?

25 A. Yes, sir. Well, yes, sir.

1 Q. And you never made any effort in 2000 or 2001 to collect
2 any of the money that Tri-Star owed to Drews Distributing, did
3 you?

4 A. I expect I had some conversations with Quinton from time
5 to time. It's just that we never -- we never -- we're in
6 litigation now. We never sung from the same hymn book. I
7 couldn't get him to do what I wanted him to do.

8 Q. But you never sued -- Drews Distributing never sued
9 Tri-Star in --

10 A. Not much use to sue Tri-Star when Tri-Star didn't have
11 any money in it and the assets were sitting down in the
12 Dominican and what are you going to get? Yes, sir.

13 Q. Well, Exhibit 70 is your answers to your interrogatories.
14 And your lawyers sent us this, and it's got a list of
15 everything that you're getting from Tri-Star, so Tri-Star is
16 paying you something. They're just not paying Drews anything.

17 A. That's correct.

18 Q. And that's over \$900,000 you got from Tri-Star --

19 A. That's correct.

20 Q. -- in 2003 through 2005?

21 A. I think that's correct. Yes, sir.

22 Q. And in 2001 you got \$415,000 from Tri-Star, didn't you?

23 A. That's correct.

24 Q. And you never made any effort on behalf of Drews to try
25 to collect Drews' money, did you?

1 A. It wouldn't have done any good.

2 Q. Because you owed my client the money at that time, wasn't

3 it, Mr. Andrews?

4 A. Had nothing to do with that.

5 Q. Didn't want to pay them.

6 MR. PAYNE: Beg the court's indulgence, your Honor.

7 THE COURT: Are you going to be much longer?

8 MR. PAYNE: No, sir, your Honor. Two more things.

9 THE COURT: Take your time.

10 BY MR. PAYNE:

11 Q. Mr. Andrews, just so I'm clear, the assignment during

12 2002, you were corresponding with Mr. Scrantom at that time

13 regarding the assignment, weren't you?

14 A. I'm saying I probably talked with him. Today I don't

15 recall, you know, actually talking to him, but I probably did,

16 yes, sir.

17 Q. You were talking to him before they mailed the assignment

18 to you down at drug rehab in Boca Raton, Florida, weren't you?

19 A. Maybe.

20 Q. All right. If he's put it in one of his e-mails, we've

21 got one that's Exhibit 56 in a reference talking to you. And

22 it says, "Hugh acknowledged to me the other day that certain

23 receivables were mis-booked to Drews in error and it should

24 have been booked to Tri-Star." Do you remember doing that with

25 Mr. Scrantom's office?

1 A. I don't, but I think I know what we're talking about.
2 The -- originally I sold some equipment out of Drews
3 Distributing to a company overseas and that -- Quinton called
4 me and said that he -- because these games went out of the
5 warehouse in Georgia he said that he had done the same thing
6 with Tri-Star, and so we backed out -- in other words, I had
7 invoiced them and he said he had, so I backed that invoice out
8 or had, you know, people do it at the office and turn around
9 and bill Tri-Star for the games because Tri-Star supposedly
10 billed -- had billed these other people for the games. Later
11 in -- later in life down the road I find out that Tri-Star
12 never sold the games to anybody, that we just backed it out and
13 sold it to Tri-Star. So Mr. Broome, my partner, lied to me on
14 that, so that's -- that's how that -- I think that's the
15 transaction that we're talking about.

16 Q. So you remember clarifying that issue with Mr. Scrantom
17 about that sale?

18 A. I don't remember specifically talking to Mr. Scrantom
19 about it, but I think that must be what that's talking about.

20 Q. And I believe that was Callum --

21 A. That was Callum.

22 Q. -- that you sold those games to?

23 A. That's correct.

24 MR. PAYNE: That's it, your Honor. No further
25 questions.

1 THE COURT: All right. We'll take a lunch break till
2 two o'clock. And, Mr. Andrews, you can't talk to your lawyers
3 about your testimony.

4 THE WITNESS: Understand, your Honor. Thank you.

5 THE COURT: All right. We'll see you about two.

6 (Recessed for lunch at 12:55 pm. Reconvened at
7 1:59 pm. Mr. Andrews returned to the witness stand.)

8 THE COURT: All right, Mr. Coggins.

9 MR. COGGINS: Thank you, your Honor.

10 CROSS-EXAMINATION BY MR. COGGINS:

11 Q. All right. Mr. Andrews, I want to go back over with you
12 a few things that Mr. Payne had asked you about earlier today
13 before our lunch break. Now, in 1999 and 2000 you were largely
14 absent from the operations of Drews Distributing, weren't you?

15 A. That's correct.

16 Q. And the president of the company at that time was Mr.
17 Mike Fletcher. Is that right?

18 A. Yes, sir.

19 Q. And Mr. Fletcher would have been running the day-to-day
20 operations. Is that correct?

21 A. That's correct.

22 Q. And he would have been making the decisions about paying
23 bills, contesting claims, hiring people, firing people, all
24 those type things?

25 A. Yes, sir.

- 1 Q. And from time to time he would consult with you or talk
- 2 with you and kind of let you generally know what was going on,
- 3 but he made those decisions; did he not?
- 4 A. That's correct.
- 5 Q. And with respect to the use of the airplane and the use
- 6 of the American Express card and all those type things, those
- 7 were decisions made by Mr. Fletcher, weren't they?
- 8 A. That's correct.
- 9 Q. And those were not things that he necessarily got your
- 10 approval for?
- 11 A. That's correct.
- 12 Q. In fact, I believe you testified with Mr. Payne's
- 13 questions that when you found out what some of the charges on
- 14 the American Express bill were for, y'all had some
- 15 conversations about it?
- 16 A. That's correct.
- 17 Q. Now, in 1999, 2000 one of the reasons that you were not
- 18 actively involved in the company was because of this drug
- 19 addiction you had?
- 20 A. That's correct.
- 21 Q. And ultimately ended up in treatment in 2002; is that
- 22 right?
- 23 A. Yes, sir.
- 24 Q. Okay. And during that period of time from '99 to 2002
- 25 were you somewhat impaired in your judgment and ability to be

1 involved in various business activities?

2 A. At the time I probably didn't think so, but today, yes,
3 sir, very much impaired.

4 Q. All right. Were you like the typical addict in that you
5 didn't admit you had a problem until right before you went to
6 rehab?

7 A. I think I had known I had a problem for a while, but it's
8 just you wake up every day saying I'm going to -- I'm going to
9 beat this thing today. You just can't do it on your own.

10 Q. All right. Now, Mr. Andrews, let's talk about this
11 Silicon Gaming agreement or transaction. And I'm going to let
12 you look at Plaintiff's Exhibit Number 18 and slide it in like
13 that. And I believe Mr. Payne made some reference to this
14 during his direct examination, but I wanted to go over this
15 with you. Now, this is essentially a letter of intent. Is
16 that correct?

17 A. Yes, sir.

18 Q. And at the bottom of the page it's signed by some
19 representatives of Silicon Gaming, and it's also signed by Mr.
20 Fletcher as president of Drews Distributing and you as CEO. Is
21 that correct?

22 A. That's correct.

23 Q. All right. And the date of this letter of intent is
24 what?

25 A. December 21, 1998.

1 Q. All right. And it talks about in the letter -- it's a
2 letter addressed to you. Is that correct?

3 A. That's correct.

4 Q. And it indicates in the letter that, "Drews Distributing
5 and Silicon Gaming have agreed in principal to an exclusive
6 distributor agreement for the Odyssey product in North and
7 South Carolina." Is that right?

8 A. That's correct.

9 Q. Says that, "A final document will be drafted and executed
10 prior to December 31, 1998." That didn't happen. It was
11 January of '99 before that got done. Is that right? Or do you
12 remember?

13 A. I don't remember.

14 Q. Okay. Secondly it says, "Upon execution of the
15 distributor agreement Drews will wire transfer Silicon Gaming
16 one million as partial payment for the 200 Odyssey units
17 previously shipped to Drews Distributing." That happened, did
18 it not?

19 A. That happened.

20 Q. All right. And those 200 Odyssey units had been at Drews
21 for some time prior to December 1998, hadn't they?

22 A. They had.

23 Q. It then says that "Silicon Gaming, Inc., and Drews
24 Distributing, Inc., will mutually agree upon additional changes
25 and enhancements to Odyssey hardware and software with a

1 targeted delivery date of February 17, 1998."

2 A. Correct.

3 Q. Now, that was actually referring to a delivery date that
4 had occurred ten months before. Is that right?

5 A. The soft -- the machines had been there before. The
6 software that we are talking about in the agreement was to
7 come. In other words, when we had that meeting, agreed to pay
8 the million bucks, within 90 days, which must be that day, they
9 had agreed to ship us the new software to go in those games to
10 make them work.

11 Q. All right.

12 A. It never happened.

13 Q. All right. The date, the delivery date of February 17,
14 '98, if that date is correct, that actually had occurred prior
15 to this, the delivery of the machines?

16 A. Yes, sir.

17 Q. Okay. Now then, the next thing says, "Upon delivery of
18 said Odyssey hardware and software changes and enhancements,
19 Drews Distributing, Inc., agrees to wire transfer the
20 outstanding balance remaining," et cetera, et cetera?

21 A. That's correct.

22 Q. Based upon your knowledge, Mr. Andrews, was the software
23 changes and enhance -- were the software changes and
24 enhancements ever delivered?

25 A. No, sir.

1 Q. And that was the basis of your disagreement with Silicon
2 Gaming, was it not?

3 A. That is correct.

4 Q. All right. And at the last point at which you were
5 involved in this transaction your position was not only do I
6 not owe them anything else, they owe me one point three?

7 A. They either owe me the software or they owe me my money
8 back.

9 Q. Okay. And at the last point you were involved in this
10 that was your position; is that right?

11 A. That's correct.

12 Q. And from that point forward Mr. Fletcher and the lawyers
13 were handling this and only keeping you advised from time to
14 time?

15 A. That is correct.

16 Q. And given the fact that you were under an impairment at
17 that time, do you really have any recollection today as to how
18 much of that stuff you -- you recall or how much you
19 appreciated?

20 A. No, sir. Just pretty -- I've told you pretty much in
21 this courtroom about everything I remember about it.

22 Q. All right. Up through 2002 when at some point you
23 indicated you were told about the outcome of the arbitration,
24 up through 2002 were you still looking for your 1,300,000?

25 A. I was.

1 Q. And, in fact, I believe there was a counterclaim involved
2 in the arbitration action, wasn't there?

3 A. Yes, there was.

4 Q. Now, in fact, Mr. Andrews, if you will look at the index
5 sheet to Plaintiff's Exhibits -- and I'm sure that I'm going to
6 get these things out of the binder. There we go. If you look
7 at the index sheet, sir, over here on page two there are
8 numerous e-mails in 1999 to and from Silicon Gaming about this
9 transaction, aren't there?

10 A. Yes, sir.

11 Q. And all of those are between Travis Owens who was an
12 employee there at Drews, and representatives of Silicon. Is
13 that correct?

14 A. That is correct.

15 Q. In fact, there's only one letter reference there, a
16 June 1999 letter to you about this account, and it shows no
17 response, doesn't it?

18 A. I believe it's September 30 of '99.

19 Q. Excuse me. September 30. And it shows no responsive
20 letter from you?

21 A. No.

22 Q. Because the fact of the matter is you weren't involved in
23 this transaction, were you?

24 A. That's correct.

25 Q. Now, with respect to the assignment that took place in

1 November of 2002, the assignment of certain assets of Drews, I
2 believe the testimony was in your direct examination that you
3 were in rehab, I believe Mr. Payne said down in Florida, when
4 all this was going on with Mr. Scrantom. Is that right?

5 A. That's what he said, yes, sir.

6 Q. Okay. Do you recall?

7 A. I don't.

8 Q. All right. And again if we look at the index of the
9 exhibits offered by the plaintiff in this case, other than that
10 one e-mail that references some conversation with you, you're
11 not the one providing information, are you?

12 A. No, sir.

13 Q. That was being done by Mr. Fletcher?

14 A. (Nods head affirmatively.)

15 Q. Ms. Humphries, your wife, your lawyers, your accountants,
16 other people, wasn't it?

17 A. That's correct.

18 Q. Let's look at this assignment. And for the court's
19 reference it is Plaintiff's Exhibit Number 65. And
20 specifically, Mr. Andrews, let's look at Attachment D.
21 Attachment D is the list of things that are actually assigned
22 to you. Is that correct?

23 A. Yes, sir.

24 Q. All right. Now, the first thing that's assigned to you
25 when you were asked about this on direct are the receivables

1 from Tri-Star. Is that right?

2 A. Yes, sir.

3 Q. Mr. Andrews, did I understand you to say that you were

4 the sole shareholder in Drews Distributing?

5 A. Correct.

6 Q. What was your interest in Tri-Star?

7 A. 50 percent.

8 Q. And in fact, it was because you did not have controlling

9 interest in Tri-Star that you couldn't ever get your partner,

10 Mr. Broome, to agree to pay the invoice. Isn't that right?

11 A. That is correct, yes, sir.

12 Q. And you're a businessman. I believe there was some

13 testimony that at one point you were involved with 18 different

14 corporations?

15 A. That's correct.

16 Q. Does it make any sense that you would assign an asset

17 that you as principal shareholder through your company own a

18 100 percent of to a company in which you only owed -- owned

19 50 percent?

20 A. No, it wouldn't, but I don't think that's what they're --

21 they're doing here. This was assigned to me.

22 Q. Yes, sir.

23 A. Which I owned a 100 percent of me. Okay.

24 Q. Yes, sir.

25 A. All right. But, no, it wouldn't make any sense if -- to

1 take a company you owned a 100 percent of and assign it over to
2 a company you had 50 percent of.

3 Q. That's right. Because you don't have control either way,
4 do you?

5 A. No, sir.

6 Q. And in fact the receivables that are referenced there are
7 these games that Mr. Payne asked you about, aren't they?

8 A. Yes, sir.

9 Q. That's money that's owed for the purchase of these games?

10 A. That's correct.

11 Q. That I believe that you and Mr. Payne established were
12 largely worthless at that time?

13 A. That's correct.

14 Q. And to this day have you been paid anything on those
15 receivables? Have you been paid on that debt?

16 A. I'm not sure. I don't think so.

17 Q. All right. You have earned operating income out of
18 Tri-Star; is that correct?

19 A. Yes. And it may -- some of it may have been paid to me
20 as a dividend or whatever, but I pretty much think it was paid
21 to me as back on loan repayments of money that I had originally
22 put into Tri-Star.

23 Q. Back before this assignment?

24 A. Way before, yes, sir.

25 Q. Okay. All right. Now, with respect to payments of money

1 out of Drows to you, and payments of money from you into
2 Drows --
3 A. (Nods head affirmatively.)
4 Q. -- did I understand you to say that Ms. Humphries or
5 somebody at the company would call you and say we need some
6 money?
7 A. That's -- that has happened. That did happen --
8 Q. All right.
9 A. -- occasionally. I'm not sure it happened for all of
10 these loans --
11 Q. Okay.
12 A. -- but it did some time. I mean my guess is she may have
13 turned to Mr. Fletcher at some time, and if I had been in a
14 habit of every time she needed money saying give it to her, she
15 might have said we need some money and they said go ahead and
16 transfer it. I don't know.
17 Q. All right.
18 A. But certainly some of the time they asked me, yeah.
19 Q. But those -- those situations where you put money into
20 the business arose out of you being informed that the company
21 was in need of money. Is that right?
22 A. Yes, sir.
23 Q. Okay. Now, with respect to you taking money out of the
24 company, was this something you just came up with on your own
25 or would this be times where the accountant or somebody would

1 tell you we need to do a distribution?

2 A. It would always be under some of those scenarios.

3 Q. All right. And with respect to the accounting between
4 your companies, did you rely on your accountants, Ms. Humphries
5 and Mr. Fletcher to make sure that all of the bookkeeping
6 entries were done to make sure that everything was reconciled?

7 A. Yes, sir. I will tell you, you know, during the years
8 that Claudia kept my books there at Drews -- we've been in
9 business like 25 years -- we've been audited on several
10 occasions. I know a couple of things was zero, zero changes,
11 and she was very much commended for what a good bookkeeper she
12 was.

13 Q. All right. You had no reason to doubt these folks when
14 they would tell you you needed to do something?

15 A. No, sir.

16 Q. Now, with respect -- with respect to the operation of
17 Drews after July of 2000, Drews essentially had no other means
18 of revenue after July of 2000, did it?

19 A. No, sir.

20 Q. And wasn't the reason that Mr. Fletcher explored starting
21 up this AdSpace business and got you involved in that was to
22 try to generate some revenue where you could keep your
23 employees and keep the business going?

24 A. It was where I could keep my employees employed.

25 Q. Just like your efforts to go out and try to find other

1 markets in which she could market these games was toward the
2 same end?

3 A. That's correct.

4 Q. And, in fact, that's the reason that you loaned the
5 company another \$2.1 million after you knew that the principal
6 business of the company had been declared illegal?

7 A. Yes, sir. I didn't want to quit, didn't want to give up.

8 Q. Now, in connection with the debts to you and this
9 assignment of these assets in payment of those debts, the games
10 that were the source of this transaction, the genesis of this
11 transaction, they were not -- I mean they were not transferred
12 to you, were they?

13 A. They were not. They are still -- they're still
14 available.

15 Q. So you preserved the asset that was at the center of this
16 controversy?

17 A. Yeah, at a cost of storing them cost of \$18,000 a year.

18 Q. And have done that ever since 2002?

19 A. That's correct.

20 Q. And they're still available today?

21 A. Yes.

22 MR. COGGINS: I believe that's all I have. Mr. Hodge
23 may have something for you.

24 THE COURT: Mr. Hodge.

25 MR. HODGE: Bear with me just a second, your Honor.

1 Nothing, your Honor.

2 THE COURT: Anything in --

3 MR. PAYNE: Just a few questions, your Honor.

4 REDIRECT EXAMINATION BY MR. PAYNE:

5 Q. Mr. Andrews, I think you've testified that Mr. Fletcher
6 was president of the company; is that right?

7 A. That's correct.

8 Q. And but you were CEO of company, weren't you?

9 A. That's correct.

10 Q. And I think the letter agreement with Silicon Gaming in
11 1998, you signed that as CEO --

12 A. CEO.

13 Q. -- didn't you?

14 A. Correct, yes, sir.

15 Q. All right. And you -- I think you just testified you
16 weren't really involved with the Silicon Gaming litigation to
17 any extent. Is that right?

18 A. Not the litigation. The actual -- that agreement I was
19 there, you know, when we signed the agreement and stuff.

20 Q. But when you testified at your deposition in January 2002
21 at the McNair Law Firm, you were reminded of what all was going
22 on in that litigation at that time, weren't you?

23 A. I assume so, yes, sir.

24 Q. You talked to your lawyers --

25 A. Yes, sir.

1 Q. -- before you gave the deposition?

2 A. Yes, sir.

3 Q. And they told you what was going on?

4 A. Sure. It's just I guess if you got 18 corporations and
5 it's been a long time since you done business and you're
6 sitting here and specific dates, it's just hard to remember.
7 I'm not trying to avoid a question or not answer it correctly.
8 It's just hard to remember.

9 Q. That's all right. Well, I just want to be clear.

10 A. Yes, sir.

11 Q. When you gave that deposition in January of 2002, you met
12 with your lawyers prior to that deposition and you knew all
13 about what was going on in that Silicon Gaming lawsuit, didn't
14 you?

15 A. Yeah. Yeah.

16 MR. PAYNE: Thank you. That's all.

17 THE COURT: Mr. Coggins.

18 MR. COGGINS: Just one question.

19 RECROSS-EXAMINATION BY MR. COGGINS:

20 Q. Mr. Andrews, with respect to that deposition in that
21 lawsuit, at that time in January of 2002 did those lawyers at
22 McNair tell you that they still thought you were going to win
23 the case?

24 A. Yes.

25 MR. COGGINS: That's all I have.

1 THE COURT: Thank you, sir. You can step down. Call
2 your next witness please.

3 MR. BYRD: If your Honor please, I'll take the next
4 witness.

5 THE COURT: All right, Mr. Byrd.

6 MR. BYRD: Mr. Markel, please.

7 JOHN R. MARKEL, Plaintiff's witness, sworn

8 DIRECT EXAMINATION BY MR. BYRD:

9 Q. I'm sorry, Mr. Markel. I was somewhat distracted.

10 MR. BYRD: I believe the deputy clerk had him read
11 his name into the record.

12 THE CLERK: Yes, sir.

13 MR. BYRD: Thank you.

14 Q. Mr. Markel, would you describe for us here your
15 educational background.

16 A. I attended public schools in states of New York and
17 California. I entered Duke University in 1965, graduated in
18 1969. I then was on active duty in the U.S. Air Force for
19 four years. After that I went to graduate school at the
20 University of South Carolina where I obtained a master of
21 accountancy degree in 1974, and then I went to work for a
22 national accounting firm.

23 Q. Let me ask you your degree from Duke was in what
24 discipline?

25 A. My major was economics.

1 Q. Okay. And you got a master of accountancy degree from
2 the University of South Carolina, I think you said in 1974?

3 A. That's correct.

4 Q. And thereafter talk to us a little bit about your work
5 experience.

6 A. Okay. Upon finishing graduate school I went to work for
7 a national accounting firm, Deloitte Haskins and Sells, took
8 the CPA exam and passed it. After -- this was in Raleigh,
9 North Carolina. I then went to work for a small accounting
10 firm in Raleigh and stayed there a couple of years. Then in
11 1977 I joined Elliott Davis in Greenville, which is a CPA firm,
12 and I was -- became a partner in that firm in 1985. And I
13 worked on their largest commercial clients as an auditor.

14 Q. Now, when you say auditor, would you just explain that a
15 little bit.

16 A. Okay. I audited the financial statements of -- of a
17 number of large companies and supervised a staff to do that.
18 In the mid '80s I became involved in valuation and litigation
19 work and did that along with my audit work for a number of
20 years. Then in 1995 it became such a large part of my practice
21 that I got out of the auditing part of the practice and started
22 Valuation and Litigation Services Division of Elliott Davis.
23 And I did that until 2003 when the Sarbannes-Oxley Act was
24 passed and it made it difficult for Elliott Davis to be in the
25 auditing business and in the valuation business, so I purchased

1 that division from Elliott Davis, moved across town with --
2 with myself and the people who worked in that division and
3 started my own company, Markel Valuation.

4 Q. Have you been practicing in that area since that time?

5 A. Yes. In valuation and in forensic accounting.

6 Q. Valuations, we probably all understand that. Just
7 describe it very briefly what that is, and then also describe
8 for us what actually forensic accounting is.

9 A. Okay. One of the things that we do is we appraise the
10 stock of closely held corporations that don't have a ready
11 market for their securities for estate purposes or for planning
12 purposes or for business divorces or for marital divorces.
13 Forensic accounting is a -- is another name for investigative
14 accounting. It's an interdisciplinary specialty within the
15 accounting profession. It applies the tools of accounting
16 theory, financial analysis and econometrics in order to
17 investigate methodically the economic evidence underlying a
18 legal proceeding. So it's -- it's a -- as I said, is a
19 specialty within accounting that uses investigative techniques
20 to uncover economic reality.

21 Q. And what services were you asked to provide in this case,
22 Mr. Markel?

23 A. I was approached by Jeff Payne in late 2002 or early
24 2003. It was his hypothesis that there were -- there was
25 significant economic evidence that pointed to piercing of the

1 corporate veil of Drews, and he asked me to look at documents,
2 financial records of Drews and make an analysis of those,
3 summarize my findings and either support or refute his
4 hypothesis.

5 Q. Would that assignment fall within the subdiscipline you
6 have described as forensic accounting?

7 A. Yes.

8 Q. Have you testified before as an expert witness in courts?

9 A. Yes.

10 Q. In federal or state courts?

11 A. I have testified in deposition and at trials a total of
12 49 times in federal court and state Court of Common Pleas and
13 Probate Court and in Family Court.

14 MR. BYRD: All right. Your Honor, at this time we
15 would offer Mr. Markel as an expert in accounting matters to
16 include forensic accounting, analysis of the going concern
17 issue as to Drews, and evidence with regard to the issue of
18 piercing the corporate veil and related matters.

19 THE COURT: Any objection to his qualifications?

20 MR. COGGINS: No objection.

21 THE COURT: All right. You may proceed.

22 MR. BYRD: Thank you, your Honor.

23 BY MR. BYRD:

24 Q. If you would, Mr. Markel, describe the work done in terms
25 of the evidence and documentation that you reviewed.

1 A. Okay. I looked at a number of documents, financial
2 statements for Drews for the years 1998 through 2001, federal
3 income tax returns for those same years, as well as the year
4 2002, general ledger and disbursement ledger for the years '98
5 through 2001, the disbursements ledger for 2002, the accounts
6 receivable aging reports for 1997 through 2 -- through the year
7 2000, and then a number of other records, timeline of key
8 events, the order granting petition to confirm the arbitration
9 award, the complaint dated April of 2003, the year 2000
10 inventory write-off by line item, schedule entitled Tri-Star
11 Expenses Paid by Drews, a schedule entitled AdSpace Expenses
12 Paid by Drews and the distributor agreement by and between
13 Silicon Gaming, Nevada, and Drews Distributing dated January
14 15, 1999.

15 Q. Mr. Markel, you referred to numerous ledgers and
16 journals. Those -- all of those records were for what entity?

17 A. For Drews Distributing, Inc.

18 Q. All right, sir. Have you reached any conclusions or
19 formulated any opinions to a reasonable degree of accounting
20 certainty with regard to the work you've done?

21 A. Yes.

22 Q. And could you tell us what those opinions were or
23 conclusions are please.

24 A. They could -- they could be summarized as follows:
25 Number one, that Hugh Andrews exercised absolute control over

1 Drews. Number two, that funds were transferred between Drews
2 and Hugh Andrews and between Drews and entities under common
3 ownership or control of Drews without formal notes and without
4 payment of interest. Three, that significant personal expenses
5 of Hugh Andrews, his family members and associates were paid by
6 Drews. Number four, that there was a lack of corporate
7 formalities and a lack of respect for the corporate entity.
8 Hugh Andrews extracted large sums from Drews even as Drews
9 revenues were falling rapidly. Number five, payments were made
10 to or on behalf of related parties in preference to the lawful
11 obligations of outsiders such as IGT. Number six, Drews was
12 not adequately capitalized. Mr. Andrews' withdrawals made it
13 insolvent at least as early as December in the year 2000. Mr.
14 Andrews was not preserving Drews as a going concern. And
15 number seven, Mr. Andrews could have taken out less funds and
16 in the years 2000 and 1999, and if he had, the company would
17 not have been insolvent at such an early date.

18 Q. And do you have detailed findings of fact or findings and
19 conclusions which support those opinions and conclusions, Mr.
20 Markel?

21 A. I do.

22 Q. You have issued a report or actually two reports in this
23 case, I think. Is that correct?

24 A. Two reports.

25 Q. All right, sir. And your first report was issued in

1 January of 2005, I believe.

2 A. That's correct.

3 Q. Mr. Markel, I ask you to take a look at what has been
4 marked as Plaintiff's Exhibit 2. Is that your report?

5 A. Yes, it is.

6 Q. That's the January 17th, 2005 report?

7 A. Yes.

8 Q. Mr. Markel, I call your attention please to your report
9 at Roman Numeral V, which is found on page four of that report,
10 that is your detailed findings.

11 A. Yes, I see that.

12 Q. We're on page four, Roman Numeral V, detailed findings of
13 Exhibit Number 2. Okay? Talk to us a little bit about
14 numbered paragraph one.

15 A. Okay. Paragraph one just shows how \$433,606 was paid to
16 H&J of South Carolina in the form of two checks both in January
17 of 1999.

18 Q. And that information was gathered from what source, Mr.
19 Markel?

20 A. The cash disbursement ledgers of Drews Distributing.

21 Q. All right. Let me ask you about paragraph two. Tell us
22 about that.

23 A. That's a summary of the amounts paid during the year 1999
24 from Drews to Andrews Aviation. Andrews Aviation is a related
25 company under common ownership and control. That shows a total

1 of approximately \$444,000 was paid in seven different checks
2 from January of '99 to September of '99.

3 Q. And let me ask you about your paragraph four, which is
4 located on page five of your report, Mr. Markel. Tell us about
5 that.

6 A. Okay. That's a summary of the distributions paid to Hugh
7 Andrews during the year 1999. He was to have paid a total of
8 \$3,939,507.98 in dividends.

9 Q. And from what source information did you gather that
10 summary?

11 A. We obtained this from the cash disbursements -- the
12 so-called cash disbursements ledger of Drews Distributing.

13 Q. Okay. Let me ask you if I could about your paragraph
14 five.

15 A. Okay. This was a summary of rents paid to Hugh Andrews
16 during the year 1999, a total of \$312,500 for the period
17 January through December 1999.

18 Q. And this information was gathered from records of Drews
19 also?

20 A. I got it from the cash disbursements ledger of Drews.

21 Q. And the dates here, those dates, do those reflect the
22 dates of those actual --

23 A. The actual -- these are actual -- this is actually the
24 check register of Drews, and these are individual -- we
25 scrutinized each line item of the ledger and pulled out these

1 expenses for expenditures, and that's what each one of these
2 represents, a date, a check number and the payee and the
3 amount.

4 Q. All right. Talk to us a little bit about, if you would,
5 paragraph six.

6 A. Okay. Drews paid credit card bills totaling \$106,315
7 during 1999 for -- these were -- these were a number of
8 payments for credit card bills, and they were lumped into one
9 category called meetings and seminars.

10 Q. Was there any substantiation provided as to the business
11 purpose of those meetings and seminars?

12 A. We could find none in the --

13 Q. All right.

14 A. -- documents we were provided.

15 Q. Let me ask you about paragraph seven of your findings
16 there, Mr. Markel.

17 A. Okay. During 1999 Drews Distributing paid Holly Andrews,
18 the daughter of Hugh Andrews, a total of \$15,289, \$10,000 in
19 interest expense, \$289 for vehicle fuel expense, and \$5,000 in
20 interest payable for a total of 15,289.

21 Q. Did you find any documentation supporting those interest
22 payments to Mr. Andrews' daughter?

23 A. We find no -- no record of interest bearing instruments
24 to -- to Ms. Andrews, nor did we find a receipt for the vehicle
25 fuel.

1 Q. Did you note in the financial statement for the year
2 ending December 31, 1999, any debt owed to Holly Andrews?

3 A. At the -- at the end of the year there were no -- there's
4 no payable recorded to her, no.

5 Q. Okay. Did you ever see a payable recorded to her?

6 A. No.

7 Q. In your paragraph eight, what's that?

8 A. Okay. That shows -- that shows what was paid by Drews to
9 Andrews Aviation during the year 2000, five different checks
10 totalling \$200,000. Andrews Aviation is a related company
11 under common control with Drews Distributing.

12 Q. And those payments were made on the dates as reflected in
13 your summary on --

14 A. Right.

15 Q. -- in paragraph eight?

16 A. January, April, June, October and November.

17 Q. Let me ask you if you will explain to us paragraph nine.

18 A. Okay. On -- we noted that on April 26, 2001, documents
19 were filed with the South Carolina Secretary of State to
20 register AdSpace Network Solution as a South Carolina
21 corporation. And on March 30, 2000, \$106,230 was transferred
22 by wire from Drews. The notation on the wire stated that
23 transfer was for AdSpace inventory. We could not determine
24 whether this was a legitimate arm's length transaction with
25 AdSpace.

1 Q. Was there any indication in any of the records that were
2 provided to you that AdSpace was a wholly owned subsidiary of
3 Drews?

4 A. I don't recall.

5 Q. But as of April 26, 2001, it was a separate entity
6 controlled by someone other than Drews?

7 MR. COGGINS: Objection. Leading.

8 THE COURT: Sustained. Rephrase.

9 BY MR. BYRD:

10 Q. Is there any indication that Drews had any interest in
11 AdSpace?

12 A. No.

13 Q. Paragraph ten of your report, talk to us about that, if
14 you would please, Mr. Markel.

15 A. During the year 2000 Drews Distributing paid directly to
16 Hugh Andrews \$65,000 in management fees, a \$40,000 check in
17 January and a \$25,000 check in February.

18 Q. And tell us about that February the 11th, 2000, payment
19 to Mr. Andrews.

20 A. Well, it was marked as H&J management fees. That was the
21 notation on the -- in the disbursements ledger.

22 Q. That Drews was paying Mr. Andrews management fees for
23 H&J?

24 A. That's -- that's what the notation seemed to say.

25 Q. All right, sir. Talk to us about paragraph 11 of your

1 report please, Mr. Markel.

2 A. That's a summary of the rent paid during the year 2000 by
3 Drews Distributing to Hugh Andrews. Total of 312,000 was paid
4 to Mr. Andrews for rent for that year, looks like a total of
5 ten checks.

6 Q. And these checks were written on the dates that you have
7 in your schedule here?

8 A. Right. January, February, March, April, May, June,
9 August, September, October and December.

10 Q. All right, sir. Tell us your findings with regard to
11 paragraph 12.

12 A. Okay. During the year 2000 Drews Distributing paid H&J
13 of South Carolina \$2,000 -- \$200,005 in two different checks,
14 both in the month of August. Well, yeah, two checks. Check
15 6477 and check 4396.

16 Q. Let me ask you about paragraph 13.

17 A. Okay.

18 Q. What did your findings conclude here, Mr. Markel?

19 A. Okay. During the year 2000 Drews paid \$95,415 in
20 expenses for meetings and seminars. 57,000 of that were
21 meetings and seminar expenses that were attributed to AdSpace
22 according to the notation.

23 Q. Was there any documentation or substantiation of the
24 business purpose for any of these expenses provided?

25 A. No.

1 Q. I'm going to ask you to look at your paragraph 14 and
2 also your paragraph three, indicating payments to R.L. Nichols.
3 Tell us what you know about those payments, Mr. Markel.

4 A. Well, I noted them when I was going through the ledger
5 that there were recurring payments made to R.L. Nichols &
6 Company which I knew to be a furniture and interior design
7 company here in Spartanburg, and it just didn't seem to be --
8 at these large amounts to be -- just seemed to be a very
9 unusual expense, so we decided to list them out. A total of --
10 during 1999 a total of \$91,666 was paid to R.L. Nichols, and in
11 the year 2000, 2001 total of \$33,333 was paid to R.L. Nichols.

12 Q. Well, I think -- I beg your pardon. I think you skipped
13 over paragraph 14, which is what I'd called your attention to.

14 A. Oh, sorry. During the year 2000 approximately \$100,000
15 was paid to R.L. Nichols, so over the two years '99 and 2001 a
16 total of almost \$192,000 was paid to R.L. Nichols.

17 Q. And were all of those payments in equal monthly amounts?

18 A. Well, looks like couple of times they paid two months at
19 once, but, yeah, they were always the same amount.

20 Q. Okay. Did you have -- were you provided with any
21 substantiation or documentation as to the business purpose for
22 those payments by Drews?

23 A. None on the documents I was provided, no.

24 Q. All right. I would ask you to explain to us or describe
25 for us your detailed finding paragraph 15.

1 A. Okay. During the year 2000 a total of \$388,298 were
2 recorded for display units for AdSpace. In other words, Drews
3 paid for AdSpace's display units during the year 2000 to the
4 tune of \$388,000. And also a BMW vehicle for a price of
5 \$59,734 was purchased by Drews.

6 Q. That was in the year 2000?

7 A. That's correct.

8 Q. And your finding number 16?

9 A. During the year 2001 Drews paid Hugh Andrews \$78,000 in
10 rent in three equal payments of \$26,000.

11 Q. Do you have any knowledge if Drews was using any part of
12 that building at that time, 2001?

13 A. I do not know.

14 Q. All right, sir. Talk to us if you will about your
15 finding in paragraph 17.

16 A. Okay. During the year 2001 Drews paid American Express
17 bills totaling at least \$68,424. Over \$53,000 of that amount
18 was charged to meeting expense and was allocated in a lump sum
19 rather than individual meeting expense line items, so I don't
20 have -- we did not see any specific documentation for those
21 expenditures.

22 Q. Did you see any documentation substantiating the business
23 purpose of those expenses?

24 A. No.

25 Q. I think you've already talked about the paragraph 19,

1 Drews payments to R.L. Nichols. Describe for us your findings
2 in paragraph 20.

3 A. Between October and December of 2001 Drews Distributing
4 paid Mike Fletcher \$20,400 for legal fees.

5 Q. To your knowledge is Mike Fletcher a lawyer?

6 A. He is -- he is not unless it's a different Mike Fletcher.

7 Q. All right, sir. Talk to us about your finding, detailed
8 finding 21.

9 A. During the year 2001 Drews paid a total of \$257,000 in
10 airplane expenses. During that same year Drews' gross revenues
11 totaled only \$115,000.

12 Q. And your findings with regard to paragraph 22.

13 A. Officer compensation went from 462,000 in '99 to 471,000
14 in 2000, even though Drews revenues declined 89 percent from 11
15 -- from 11 million to 1.2 million.

16 Q. And talk to us about your detailed findings in paragraph
17 23.

18 A. For the year 2000 officers compensation did decline from
19 471,000 down to 233,000, declined a little over 50 percent, but
20 Drews' revenues for that year declined over 90 percent and
21 officers compensation for 2001 exceeded its gross revenues by a
22 \$117,000.

23 Q. And I think in your finding 21, that's the same year that
24 airplane expenses were 257, right?

25 A. That's correct.

1 Q. Talk to us about your detailed finding 24 please, Mr.
2 Markel.

3 A. Airplane expenses increased from 265,000 in '99 to
4 \$537,000 in 2000 even as their revenues declined almost
5 90 percent. Just to put the magnitude of those airplane
6 expenses into perspective, the \$537,000 could purchase 586
7 round trip first class air fares from Los Angeles to Atlanta.

8 MR. COGGINS: Objection, your Honor. Relevance and
9 prejudice. In this case there's been no foundation laid that
10 this witness even knows what these air fares were for or
11 whether there was common carrier service to the places these
12 people were going. He's simply trying to do this to try to
13 give some basis to this huge number, and it's clear that the
14 prejudice outweighs the probative value.

15 THE COURT: I'd overrule your objection.

16 BY MR. BYRD:

17 Q. And next paragraph, Mr. Markel.

18 A. Airplane expenses were 257,000 in 2001 even though gross
19 revenues were only 115,000. Again, to put this magnitude of
20 airplane expense into perspective, this \$257,000 could purchase
21 267 round trip first class air fares from Atlanta to Los
22 Angeles at the current rate -- at rates in effect at that time
23 -- or at actually January 2005 prices.

24 Q. All right, sir. Would you describe for us detailed
25 findings of paragraph 26.

1 A. Okay. From January '99 to December of '99 Drews accounts
2 receivable aging increased significantly. That means that
3 their accounts receivable became much more past due. At the
4 end of January 1999 24 percent of the receivables were more
5 than 90 days old. By the end of December of '99 over
6 96 percent of the receivables were over 90 days old. We --
7 could I not find what the specific cause of that shift was. It
8 could be that collections efforts were just --

9 MR. HODGE: Object to the speculation.

10 THE COURT: Sustained.

11 BY MR. BYRD:

12 Q. Thank you. Talk to us, Mr. Markel about your detailed
13 finding at paragraph 27.

14 A. During the year 2002 Drews Distributing paid to ABH,
15 Rhino and Will Byrun a total of \$58,819. These were recorded
16 in the general ledger as airplane expenses.

17 Q. Now, you may have misspoken. What is the amount there in
18 paragraph 27?

19 A. \$52,819.

20 Q. Yes, sir. Were you provided with any substantiation or
21 documentation justifying the reasonableness of those?

22 A. They are just noted as airplane expenses.

23 Q. Okay. Your finding at paragraph 28?

24 A. During 2002 Drews paid \$21,910 to ABH for payment on a
25 note on the airplane.

1 Q. And your detailed finding 29, Mr. Markel?

2 A. During 2002 Drews paid \$58,088 to purchase a BMW vehicle.

3 Q. And?

4 A. And also they made -- Drews made \$12,809 in loan payments
5 for a BMW vehicle.

6 Q. Is that the one you referred to in the earlier paragraph?

7 A. I just know they were marked as being for a BMW vehicle.

8 Q. All right. Your detailed findings with regard to
9 paragraph 30?

10 A. During 2002 Drews paid Hugh Andrews a total of \$78,421
11 for inventory, for professional legal fees and for interest
12 expense.

13 Q. And was there any substantiation or documentation for
14 those payments?

15 A. No.

16 Q. I would call your attention to page 16 of Exhibit 2, Mr.
17 Markel, which you have identified as your Appendix C to your
18 report.

19 A. Yes.

20 Q. And I see that you have the statements of income for the
21 years ended December 31, 1998, through 2001. From what source
22 did you gain this information, Mr. Markel?

23 A. There were financial statements prepared by the
24 accounting firm of Brown Swaim and Elliott were provided to me.

25 Q. For what entity?

1 A. For Drews Distributing.

2 Q. All right. And what was the amount of operating profit
3 in the year 1999, Mr. Markel?

4 A. Operating profit for the year 1999 was a negative
5 \$1,312,957.

6 Q. All right, sir. Now, why is the earnings before interest
7 and taxes different than the operating profit?

8 A. Well, two items were added back, as can be seen there,
9 management fee income in the amount of \$167,000 and settlement
10 proceeds from the Leisure Time lawsuit of \$3,361,000.

11 Q. All right, sir. If I can now refer you back to page five
12 of that report if I'm correct about that -- I think I'm not.
13 Let me see. I'm looking for the page that has the balance
14 sheet, and I think it's 15. Right. I'm sorry. Page 15 of
15 that report.

16 A. Okay.

17 Q. And in 1999 what happened to retained earnings between
18 1998 and 1999?

19 A. Retained earnings declined from 9.3 million to 7.6
20 million.

21 Q. And I believe your previous detailed findings indicated
22 that the corporation from December 1998 to 1999 paid
23 \$3.9 million in dividends to Mr. Andrews. Is that correct?

24 A. During the year 1999, yes.

25 Q. All right, sir. And would that have any effect on

1 retained earnings?

2 A. That would be -- that would be a reduction of retained
3 earnings, yes, would be a debit to retained earnings.

4 Q. All right. I want to now go to your second report, Mr.
5 Markel, if you will hand that down to me. Thank you, sir. I'm
6 handing up to you what has been marked as Plaintiff's Exhibit
7 Number 3. Can you identify that for us, Mr. Markel?

8 A. Yes.

9 Q. Is that your second report?

10 A. That's my report dated February 28, 2006.

11 Q. If you would, go to tab two of that report, which is
12 found, I believe, on page 17. Is that correct?

13 A. Well, tab two starts on page 15.

14 Q. All right, sir. I beg your pardon. Are you looking at
15 the trial exhibit?

16 A. Yes.

17 Q. Okay. I need to get that. As I understand, there was
18 some change by PDF to Word that changed the pagination around a
19 little bit.

20 A. Right. If you can -- you can use this Plaintiff's
21 Exhibit and just describe what you're looking at and I can look
22 at my own copy of the report.

23 Q. Okay. I have a copy now of what you're looking at, the
24 trial exhibit, and I think we can --

25 A. Okay.

1 Q. -- we can get on the same page literally. Okay. Now,
2 the exhibit that you're looking at, the trial exhibit which is
3 your second report issued in 2006, your tab two begins on page
4 15; is that correct?

5 A. That's correct.

6 Q. All right, sir. Now, would you explain to the court what
7 you were doing at Tier 2 or tab two what you refer to as your
8 Tier 2 analysis of the statements of assets and liabilities.

9 A. This is on page 16? You're looking at page 16? Just
10 want to make sure.

11 Q. Well, I'm looking at the Drews Distributing, Inc.,
12 Statement of Assets and Liabilities - Tier 2 Analysis,
13 December 31, 1998.

14 A. Okay.

15 Q. All right. Now, my question for you generally speaking
16 at tab two you described Tier 2 Analysis of Statements of
17 Assets and Liabilities as of December 31, 1998, 1999, 2000, and
18 2001. Correct?

19 A. Right.

20 Q. All right. Now, explain to the court, if you would, what
21 you're doing in this analysis.

22 A. Okay. Part of this -- the purpose of this analysis is to
23 get -- derive financial statements that are realistic, so I had
24 to make certain what we call normalization adjustments, what we
25 call -- I mean in the financial analysis profession we call

1 normalization adjustments.

2 Q. And you used the term "realistic", what do you mean by
3 that?

4 A. Well, often these -- the financial statements prepared by
5 Swaim Brown and Elliott, number one, were prepared on an income
6 tax basis, which often times does not truly reflect economic
7 reality. Number two, there are certain distortions built into
8 these statements that Swaim Brown and Elliott probably should
9 have made, but didn't. So I'm giving effect to those so that
10 we can analyze them -- analyze the proper and accurate
11 financial position of Drews Distributing. So in order to do
12 that I have to make certain adjustments to the balance sheet..

13 Q. All right, sir. I'm going to call your attention to the
14 analysis you did for the year December 31, 1998. Okay?

15 A. Okay.

16 Q. Are you looking at that statement?

17 A. Yes.

18 Q. All right, sir. Now, in the far left-hand column there
19 is a description of assets and liabilities and equity. Where
20 did those descriptions come from?

21 A. They came from financial statements prepared by Swaim
22 Brown and Elliott.

23 Q. So these were the account descriptions that were actually
24 on the balance sheets that were provided to you for Drews,
25 correct?

1 A. Yes.

2 Q. All right. In the next column headed As Originally
3 Stated, tell us what that number is -- or those numbers are, I
4 should say.

5 A. Those numbers are my normalization adjustments. They're
6 -- in the second column?

7 Q. No. I'm in the first column under As Originally Stated.
8 I first asked you about the descriptions which are all the way
9 to the left side of the page.

10 A. I'm sorry.

11 Q. And those descriptions came from where?

12 A. From Swaim Brown and Elliott's statements.

13 Q. All right, sir. Now, I've moved to the next column under
14 the heading As Originally Stated. Tell us what that is and
15 where it came from.

16 A. That came from Swaim Brown and Elliott also.

17 Q. So those are the exact numbers that were in the financial
18 statements that were provided to you. Is that correct?

19 A. Yes.

20 Q. All right. Now, tell us what you did, not specifically,
21 with regard to these numbers we're looking at, but generally
22 what you were doing under the next column headed normalization
23 adjustments.

24 A. There I was making whatever adjustments would need to be
25 made to reflect the economic reality of the situation for that

1 particular line item.

2 Q. All right, sir. And then the next column which you have
3 headed As Adjusted, tell us what that is.

4 A. That's just adding those lines across.

5 Q. Okay. Adding from As Originally Stated, either
6 subtracting or adding your normalization adjustment to get the
7 amount that's included in the third column as adjusted,
8 correct?

9 A. Yes.

10 Q. All right. And you took that approach with regard to all
11 four years?

12 A. Yes.

13 Q. You're approaching it the same way for '98, '99, 2000 and
14 2001?

15 A. Yes.

16 Q. All right, sir. Now, is there a description or
17 explanation of the normalization adjustments included in the
18 report?

19 A. Yes.

20 Q. And are you looking at the trial exhibit report, Mr.
21 Markel?

22 A. Yes. That's located on -- on page 20 of exhibit --
23 Plaintiff's Exhibit 3.

24 Q. Okay. If you would, talk to us in the order of your
25 explanation, take us to the adjustment in the years '98 through

1 2001 so we can follow your explanation and the actual entries
2 that you made, if you can do that for us.

3 A. Okay. You're saying go to -- go to normalization
4 adjustment number one and do it for all four years?

5 Q. Yes, sir.

6 A. Okay. I can do that.

7 Q. All right.

8 A. All right. Normalization adjustment number one reads,
9 "To record unbooked balance of liability to IGT regarding
10 Invoice Number 101603." Okay. For the December 1998 balance
11 sheet on page 16 of Exhibit 3 we see down in the liability
12 section of the balance sheet that we're making a -- under -- on
13 the accounts payable line we're making -- you see normalization
14 adjustment number one, bracketed \$1,780,000.

15 Q. Does that increase or decrease the payables or
16 liabilities on that balance sheet, Mr. Markel?

17 A. Payables would have a normal credit balance, so we're
18 adding a credit, so it would increase the payable balance.

19 Q. Increase the liability?

20 A. Increase the liability from 189,000 to a 1,969,000.

21 Q. All right. Is there another adjustment one in any of the
22 other years?

23 A. Yes. Now, at the end of 1998 IGT or Drews had not yet
24 made their one million dollar payment. They didn't do that
25 till January of '99. So in '98 it appears as the full amount

- 1 of invoice.
- 2 Q. All right.
- 3 A. A 1,780,000.
- 4 Q. Now, Mr. Markel, you increased the liability by that
- 5 amount. Did you determine that that liability was not
- 6 reflected on the balance sheet as of 12/31/98?
- 7 A. I did.
- 8 Q. Okay. So until you made that adjustment it was not
- 9 reflected in payables?
- 10 A. That's correct.
- 11 Q. All right, sir. Now, there's another number on one of
- 12 the following balance sheets with regard to payable to IGT?
- 13 A. Right. On page 17 of Plaintiff's Exhibit 3, which is the
- 14 December 1999 balance sheet, you look down in the liability
- 15 section on the accounts payable line and see adjustment number
- 16 one for \$780,000 in brackets. That means that we're adding an
- 17 additional 780,000 in liabilities.
- 18 Q. Adding it to what?
- 19 A. Adding it to accounts payable.
- 20 Q. As it was reflected in the balance sheet for 12/31/99?
- 21 A. Right.
- 22 Q. All right, sir. Making the total liability after the
- 23 adjustment?
- 24 A. Of \$781,324.
- 25 Q. All right. Now, does adjusting entry one appear on the

1 other balance sheets?

2 A. It appears on page 18, which is the balance sheet for
3 December 2000, and also on the balance sheet for December of
4 2001, because that amount was still unpaid as of each of those
5 year ends.

6 Q. And it still had not been included on Drews' financial
7 statements?

8 A. That's correct.

9 Q. If you would then, go to your explanation of
10 normalization adjustment column number two.

11 A. Okay. This -- this item is to record late payment
12 charges on unpaid balance of liability to IGT. The detailed
13 computation of this number is shown at tab four of my report,
14 which is located at page 29 of Plaintiff's Exhibit 3.

15 Q. That's the detailed calculation for the late payment
16 penalties which you described as explanation two?

17 A. Right.

18 Q. And take us to where that appears or those adjustments
19 appear on the balance sheets.

20 A. Okay. On page 16 of Plaintiff's Exhibit 3, which is the
21 December '98 balance sheet, you look down on -- under the
22 liabilities section and we see adjustment number two for
23 \$76,247.

24 Q. Now, why did you make that adjustment to notes payable
25 related party, Mr. Markel?

1 A. That's a mistake. Instead of being to that line it
2 should be to accrued expenses, which is just two lines below
3 that.

4 Q. All right.

5 A. But the effect on total liabilities would be the same.

6 Q. So it would have no impact on what the total liabilities
7 as adjusted was?

8 A. No, and it would have no impact on -- we're doing all
9 this so I can do some ratio analysis and would have no effect
10 on ultimate ratios that I compute.

11 Q. All right, sir. And did you make that calculation and
12 adjustment for the year December 31, 1999?

13 A. I did. That's shown on page 17 and that's -- here again,
14 that got on the wrong line. That was on the -- put on the
15 sales tax payable line instead of the line right below it,
16 accrued expenses. But again, it wouldn't have any effect on my
17 ratio calculation.

18 Q. All right, sir. And moving now to the December 31, 2000,
19 balance sheet, does that adjusting entry appear there?

20 A. Right. It's grown now to -- because it's another year
21 has passed, to \$245,020 and it is on the right line this time,
22 accrued expenses.

23 Q. All right, sir. And then for the year ended December 31,
24 2001, does that adjustment appear?

25 A. Yes. It appears in the amount of \$314,552, and again it

1 should be on the accrued expenses line, but, again, it wouldn't
2 make any difference in the total payments.

3 Q. It would have the same impact on the increase to total
4 liabilities?

5 A. Yes.

6 Q. Now, if you would give us the explanation for your entry
7 number three.

8 A. Okay. Number three says, "Sum of all offsetting entries
9 to equity." What that means is this is a double entry
10 bookkeeping system that we're working with here, so any time
11 you make a debit there has to be a corresponding credit entry.
12 Any time you make a credit entry there has to be a
13 corresponding debit entry. Item three just takes all of the
14 offsetting entries to the equity line item.

15 Q. And that offsetting entry -- why don't we come back to
16 that entry after I ask you about the other three. Let's go, if
17 you would, into an explanation of number four and we'll come
18 back to --

19 A. Okay.

20 Q. All right.

21 A. Okay. Number four is, "To reclassify the amount due to
22 stockholder to a current liability status." Okay. This
23 adjusting entry does not appear in the years '98 or '99. It
24 does, however, appear in the year 2000 down in the liability
25 section. And as you can see, all I'm doing is reclassifying

1 the due to stockholder from a non-current liability to a
2 current liability.

3 Q. And why did you move that amount from a long term or
4 non-current to a current liability?

5 A. Because I believe that it better reflects the actual
6 payment, expected payment terms.

7 Q. Okay.

8 A. And for the year 2001 on page 19, again, we're
9 reclassifying from long-term to current.

10 Q. Okay. That was the amount of money owed to whom?

11 A. To Mr. Andrews.

12 Q. All right, sir.

13 A. And here again it gets on the wrong line item, but it
14 doesn't -- it still gets in the current liabilities, which is
15 where it belongs.

16 Q. All right, sir. Talk to us, if you would, about
17 adjusting explanation number five.

18 A. Okay. Explanation of this is, "To make allowance for
19 uncollectible receivables over 60 days old." What I'm doing is
20 writing off those receivables that have been outstanding for
21 over 60 days. In 1998 the way we did this we actually went
22 into the accounts receivable aging and --

23 Q. Went into what?

24 A. The accounts receivable aging and accumulated all those
25 accounts over 60 days.

1 Q. And that was a document that you --

2 A. That was supplied by -- it was a Drews Distributing
3 document.

4 Q. All right, sir. And did you make adjustments in years
5 after 1998?

6 A. Yes. In '98 it was -- totaled 2,127,000. In '99 it
7 totaled 2,387,000. In year 2000 it totaled 2,443,000. In the
8 year 2001 it totaled 2,406,000.

9 Q. Talk to us about your explanation number six for the
10 normalization adjustment.

11 A. Okay. The explanation here is, "To write down inventory
12 to reflect and overstocked items" in 1999. Okay. In the year
13 2000 Drews Distributing made a -- made an adjustment to their
14 inventory totaling a 1,773,000.

15 Q. When you say an adjustment, what was the adjustment?

16 A. They wrote down their inventory to a lower value.

17 Q. Okay. So that adjustment was reflected in their
18 financial records for 2000?

19 A. Right. So I didn't have to make an adjustment in 2000.

20 Q. Right.

21 A. But what I'm doing is throwing that back into the year
22 1999. I'm saying that that drop in value should also have been
23 reflected in the year 1999 because by the end of 1999 video
24 poker had already become illegal in South Carolina, and so if
25 that was the basis behind making the adjustment in the year

1 2000, that if it should have been made in 2000, it also should
2 have been made in the year 1999. So I'm just making their own
3 adjustment, but making it a year earlier.

4 Q. All right, sir. Now, let's go back to your explanation
5 number three, the normalization entry that you have identified
6 as number three. And carry us through, if you will, in each
7 one of the statements how we arrive or how you arrived at the
8 total equity adjustment number, number three.

9 A. Okay. If you look on page 16, Statement of Assets and
10 Liabilities for 1998, we see there's an adjustment, a negative
11 adjustment to assets of 2,127,000. We see that there's two
12 adjustments to liabilities, one for 1,780,000 and one for
13 76,000. Those two items total up to -- do not total up to
14 2,127,000. In order to make them add up to that we need to add
15 in another number, and that number is 3,983,247, which is shown
16 on the total equity line. So it's the offset to the -- to make
17 -- to make the entries to assets and liabilities agree.

18 Q. And is the net effect of the adjustments to assets and
19 the adjustments to liabilities reflected in entry description
20 three?

21 A. Yes, it is.

22 Q. All right. And looking at 1998, what does that
23 normalization adjustment represent?

24 A. That represents a decline in equity of almost \$4 million.

25 Q. All right, sir. And talk to us about that same number

1 for the next year, December 31, 1999.

2 A. Okay. For 1999 we have two decreases to asset accounts,
3 one to accounts receivable, one to inventory totaling
4 4,160,000. Then we have two increases to current liabilities,
5 one to accounts payable of 780,000, and one to accrued expenses
6 of a 157,000. So we have a decrease in assets plus an increase
7 in liabilities. All that -- both those add up to a decrease in
8 equity.

9 Q. In what amount for 1999?

10 A. 5,097,000.

11 Q. And that has the effect?

12 A. Of reducing equity from 7.6 million to 2.5 million.

13 Q. All right, sir. Describe for us that number on the
14 balance sheet for 12/31/2000 please, Mr. Markel.

15 A. Okay. We see there that accounts receivable is reduced
16 by 2.4 million. We see that there is an increase to accounts
17 payable of 780,000, an increase to accrued expenses of 245,000,
18 so we have a decrease in assets of 2.4 million, an increase in
19 liabilities of 1.1 million, so we have total decrease in equity
20 of 2.1 plus 1.1 or 3,468,000.

21 Q. And that has the effect of what on equity?

22 A. Has the effect of reducing equity from 3,317,000 positive
23 to a 150,563 negative.

24 Q. All right, sir. And that's at 12/31/2000?

25 A. Right.

1 Q. Now, describe for us that cumulative entry number three
2 for 12/31/2001.

3 A. Okay. We have at the end of that year reduction in
4 accounts receivable of 2.4 million, an increase of accounts
5 payable of 780,000, an increase in -- an increase in accrued
6 expenses due to late payment charges of 314,000, so we have a
7 decrease in assets of 2.4 million and a increase in liabilities
8 of 1.1 million, which means that equity has to go down 2.4 plus
9 1.1 or 3.5 million, so equity decreases from 2,021,000 positive
10 to a 1,478,000 negative.

11 Q. Based on that analysis on a balance sheet analysis basis
12 when did Drews Distributing, Inc., become insolvent?

13 A. Okay. On the balance sheet test that would be when --
14 when equity goes negative, and that would occur as of December
15 31, 2000, where it's shown total equity is a 150,000 negative,
16 but it would also show as of December 31, 2000, if you look at
17 current assets, adjusted current assets in that same balance
18 sheet is 1,166,000 and total current liabilities is 1,795,000.
19 Well, because current assets are so much less than current
20 liabilities they would have a great deal of difficulty paying
21 their current liabilities on time in the normal course of
22 business, so they meet both tests of insolvency. Their assets
23 are less than their debts, and they would have a great deal of
24 difficulty paying their current liabilities.

25 Q. Now, you've been here all day and you've heard the

1 testimony and discussion about the dividends that Mr. Andrews
2 pulled out of the company in 1999, \$3.9 million and some
3 change?

4 A. Right.

5 Q. Right? That was based on the information that was
6 provided to you by Drews was in cash, correct?

7 A. Yes.

8 Q. All right. And they had a chart up here which they
9 showed to a couple of the witnesses where Mr. Andrews put back
10 in over \$2 million of cash?

11 A. Right.

12 Q. Now, why -- why didn't that increase the equity when he
13 put that cash back in, Mr. Markel?

14 A. Well, obviously just by looking at the -- at the balance
15 sheet they were insolvent at that point whether he -- at that
16 point even though I don't remember the exact chart when he put
17 those amounts back in, but obviously at the end of December
18 they were insolvent.

19 Q. When he took it out, what was the nature of the
20 distribution to him?

21 A. Cash.

22 Q. And a charge to what?

23 A. A charge to equity.

24 Q. All right. So that distribution reduced equity, right?

25 A. That's right.

1 Q. Now, what about when he put this two million plus dollars
2 back in, did that increase equity?

3 A. No, it didn't increase equity because it was put back in
4 as debt. It was put back in as due to shareholder, so he
5 didn't -- he didn't make a capital contribution back. He just
6 loaned the company the cash, which had -- which didn't --
7 didn't do anything for its equity. All it did was increase its
8 debt and really make it even more insolvent.

9 Q. Okay. I would like, if you would, to show you Trial
10 Exhibit 35, and I call your attention to page four, I believe
11 it is.

12 A. Okay. This is the federal income tax return for Drews
13 Distributing?

14 Q. For what year?

15 A. For 2002.

16 Q. And does that federal income tax return contain a balance
17 sheet for the corporation?

18 A. Yes. On page four.

19 Q. And what does it reflect the assets of Drews are on
20 12/31/2002?

21 A. Zero.

22 Q. And what does it reflect the liabilities that Drews still
23 owes to Mr. Andrews at 12/31/2002?

24 A. The amount due to Mr. Andrews is \$1,332,315.

25 Q. On the two definitions of insolvency that you have

1 described to us here, on 12/31/2002, is Drews solvent or
2 insolvent?

3 A. Clearly insolvent.

4 Q. By how much?

5 A. Well, one measure of it would be that debts exceed assets
6 by a 1,332,000.

7 Q. And that's at 12/31/2002?

8 A. That's correct.

9 Q. Mr. Markel, if I could call your attention back to what
10 has been marked as Exhibit Number 3. I call your attention --
11 I'm somewhat confused by the pagination now between these two
12 versions of the same report. What page contains the synthesis
13 of your findings in the trial exhibit? Roman Numeral V, I
14 believe it is?

15 A. It starts on page seven at the very bottom and continues
16 on, finishes on page eight.

17 Q. All right, sir. I would like, if you would, look at
18 under Synthesis of Findings Roman Numeral VI or you look at
19 paragraph four and tell us about the opinion you have formed
20 with regard to that matter.

21 A. Okay. Item four reads, "The Tier 2 analysis shows that
22 Drews was grossly undercapitalized at least as early as
23 December 31, 2000. That is the equity was negative at that
24 point in time."

25 Q. And explain to us your opinion and finding with regard to

1 paragraph five.

2 A. "Tier 2 analysis shows that Drews was insolvent in the
3 equity sense. That is being unable to meet its obligations as
4 they come due at least as early as December 31, 2000."

5 Q. And your opinion as reflected at paragraph six?

6 A. "The Tier 2 analysis shows that Drews was insolvent in
7 the bankruptcy sense, that is the fair value of the assets is
8 exceeded by the amount of debt at least as early as December
9 31, 2001, and probably earlier."

10 Q. Okay. Your Statement of Assets and Liabilities - Tier 2
11 Analysis for December 31, 2000, and I think that's at page 18
12 of the exhibit; is that correct?

13 A. Year 2000?

14 Q. Yes, sir. Okay. And that reflects what with regard to
15 the insolvency issue referred to in your paragraph six?

16 A. Related to paragraph six? Well, we see on page 18
17 there's negative equity, but it's relatively close to zero in
18 the scheme of things. So I said I did not state it absolutely
19 until -- state that fact absolutely until December 31, 2001.

20 Q. All right, sir. Do you have an opinion to a reasonable
21 degree of accounting certainty about the insolvency of Drews
22 Distributing, Inc., at 12/31/2000?

23 A. It was certainly insolvent in the equity sense, and I'd
24 say it was marginally insolvent in the balance sheet sense at
25 that time as well.

1 Q. All right, sir. In addition to doing the analysis that
2 you have just described for us, did you do any other analyses
3 of the financial information that was provided to you?

4 A. Yes.

5 Q. And do you describe those findings within the synthesis
6 Roman Numeral VI?

7 A. I do.

8 Q. Okay. Tell us about those, if you would, please, Mr.
9 Markel.

10 A. Okay. Under item one, Roman Numeral VI, I use several
11 forms of solvency analysis, three of them. I used the capital
12 structure ratio analysis, a Z-Score analysis and a capital
13 structure composition analysis.

14 Q. And are these analyses recognized generally in your
15 discipline profession to evaluate solvency of entities?

16 A. Yes.

17 Q. All right, sir. Tell us what your findings were with
18 regard to these three different tests.

19 A. Well, all of them showed that Drews was heading toward
20 insolvency sometime during the year 2000.

21 Q. All right, sir. And were those analyses consistent with
22 your Tier 2 analysis?

23 A. Yes. They in effect corroborated my Tier 2 analysis.

24 MR. BYRD: If you'd bear with me for just a minute,
25 your Honor.

1 BY MR. BYRD:

2 Q. Mr. Markel, as you were describing your adjustments at
3 Tier 2, you talked about writing down accounts receivable over
4 60 days from the account receivable aging information that was
5 provided by Drews?

6 A. Yes.

7 Q. Is there any authoritative literature supporting that
8 write-down?

9 A. Yes, of course. I mean you're supposed to write down any
10 asset to its -- to its realizable amount, and a commonly use
11 convention for that for accounts receivable is to look at their
12 aging, and many companies really arbitrarily write off all
13 receivables over a certain age, but it's a widely used
14 technique.

15 MR. BYRD: Okay. Thank you. Your Honor, I'm through
16 if you'll give me a minute to clean up my mess here.

17 THE COURT: All right. We'll just take a little
18 break and come back.

19 (Brief recess at 3:44 pm. Reconvened at 4 o'clock
20 pm.)

21 THE COURT: All right. Who's going, Mr. Coggins?

22 MR. COGGINS: Yes, sir.

23 CROSS-EXAMINATION BY MR. COGGINS:

24 Q. Good afternoon, Mr. Markel. You got your reports in
25 front of you?

1 A. I do.

2 Q. Okay. All right. We're going to -- we're going to try
3 this and allow you to refer to your copy rather than the
4 exhibit copy and see if that may help us stay on same the page.
5 Now, did I understand you in your testimony when Mr. Byrd was
6 asking you questions to say that your primary audit experience
7 had been with larger corporations?

8 A. When I say larger corporations?

9 Q. Yes, sir. As opposed to small closely held family
10 corporations.

11 A. They were all closely held family corporations.

12 Q. All right.

13 A. They all were in the revenue range of two million to a
14 hundred million.

15 Q. A hundred million is not too small.

16 A. Most of them were in the -- 80 percent of them were in
17 the range of 7 million to 40 million.

18 Q. All right. Would you agree with me that at least as far
19 as the internal bookkeeping goes that smaller companies tend to
20 be a little less formal than larger companies?

21 A. I don't know if I can make that generalization, but --

22 Q. All right. Well, a company that has ten employees and a
23 part-time bookkeeper tends to be a little bit loser with its
24 documentation than a company that has 500 employees and an
25 accounting staff, wouldn't you --

1 A. That's not been my experience.

2 Q. Oh, really. Okay. All right. Let's talk about your
3 assignment in this case. You were contacted by Mr. Payne, is
4 that correct?

5 A. That's correct.

6 Q. And let's go to your first report, your January 2005
7 report, and if you would look at page three for me.

8 A. Okay.

9 Q. And you describe your assignment there under Roman
10 Numeral II?

11 A. Yes.

12 Q. And, Mr. Markel, it would be fair to say, wouldn't it,
13 that you came to this assignment with a bit of agenda, did you
14 not?

15 MR. BYRD: Your Honor please, I hate to interrupt,
16 but the pages that he's working on are different than the pages
17 that your Honor and your Honor's clerk have, so --

18 THE COURT: Okay. We'll just share with him right
19 there.

20 BY MR. COGGINS:

21 Q. Let's see if we can coordinate this.

22 A. I think if you just use -- just refer to the Roman
23 Numeral number and Arabic number under that, I can find it, and
24 you're using the same one the judge is using, so that should
25 work.

1 Q. That's fine. And I believe it is page three and it's
2 Roman Numeral II, Assignment.

3 A. Okay.

4 Q. All right. And you indicate down there -- if you look at
5 the last two sentences, you indicate that your assignment was
6 to scrutinize certain records, documents and transactions of
7 Drews during the period 1998 to 2002, and then you say, "Mr.
8 Markel was then to summarize his findings as economic evidence
9 that might support piercing of the corporate veil of Drews."
10 When you were given this assignment, you were told we need
11 economic evidence to support our piercing the corporate veil of
12 Drews Distributing. Wasn't that your assignment?

13 A. My -- right, that was my assignment.

14 Q. All right. And that's what --

15 A. But my assignment was to prove it or disprove it.

16 Q. No, sir. That's not what you said. You said in your
17 report that your job was then to summarize your findings as
18 evidence, as economic evidence that might support piercing of
19 the corporate veil of Drews. Doesn't say or might not.
20 Doesn't say or refute. It says to support it, doesn't it?

21 A. That's what it said, but I think you're reading something
22 in there that's not there.

23 Q. Well, I think we're going to get into a lot of reading
24 into things that isn't there. Number one under your expert
25 opinions, which is Roman Numeral III immediately below that,

1 your first enumerated finding is, "My observations provide
2 significant economic evidence that Hugh Andrews exercised
3 absolute control over Drews during the period 1998-2002."
4 Correct?

5 A. That's what it says.

6 Q. All right. Now, economic evidence. When you speak of
7 economic evidence, you're looking simply at the amounts of
8 money paid to Mr. Andrews. Is that correct?

9 A. I'm looking at all the transactional evidence that I
10 scrutinized.

11 Q. Yes, sir. But the transactional evidence that you
12 scrutinized, general ledgers and financial statements and
13 balance sheets, don't tell you who was making the decisions, do
14 they?

15 A. No.

16 Q. In fact, controlling person is a legal concept in
17 corporate law, isn't it?

18 A. I don't know.

19 Q. All right. Controlling person is not something that you
20 are prepared to give expert testimony about, is it?

21 A. No, I'm not. It's not appropriate for me to give a legal
22 opinion.

23 Q. Exactly. And you've heard testimony here today because
24 you were sitting right back there, that during this period of
25 time the president of the corporation was Mr. Mike Fletcher.

1 Did you hear that?

2 A. I heard that, yes.

3 Q. All right. You also heard testimony that Mr. Fletcher
4 was in charge of all the day-to-day decisions, check requests,
5 payment of bills, those type things, correct?

6 A. I heard that, yes.

7 Q. All right. You also heard that during this period of
8 time Mr. Hugh Andrews was under a significant impairment
9 because of a drug addiction and subsequently was in
10 rehabilitation and at one point was in rehabilitation in the
11 state of Florida, not even in the state of South Carolina. Did
12 you hear that?

13 A. I heard that.

14 Q. All right. So the fact of the matter is Mr. Andrews
15 didn't exercise absolute control over Drews, did he?

16 A. I don't think I can infer that from what you said, but --

17 Q. All right. The only economic evidence you have or, as
18 you said, the transactional records and the transactional
19 records that you are referring to are these payments that
20 you've summarized to Mr. Andrews, to his family and to these
21 other companies. Is that right?

22 A. Right.

23 Q. That's the only economic evidence you're talking about.
24 Is that right?

25 A. Right.

1 Q. Okay. Now, you say that my observation showed that Mr.
2 Andrews engaged in a pattern of dysfunctional management
3 behavior that viewed in its totality showed that he was not
4 preserving Drews as a going concern. Again, you're drawing an
5 inference from these transactional records. Is that right?

6 A. That's correct.

7 Q. From these payments?

8 A. Correct.

9 Q. You have no basis in fact to know who was exercising
10 management control over Drews during this period, whether it
11 was dysfunctional or not, do you?

12 A. I was not there during that period of time. I did not
13 follow them around every day and watch what they did, no.

14 Q. And you haven't reviewed the testimony of the people who
15 were there, have you?

16 A. I have seen some of Mr. Andrews' deposition testimony.

17 Q. Well, let's go --

18 A. And I heard the testimony this morning.

19 Q. Let's go to Attachment A, because clearly you -- you
20 offered these opinions before you heard any testimony this
21 morning.

22 A. Attachment A?

23 Q. Yes, sir. Attachment A to your report. Appendix A --

24 A. There is no -- okay.

25 Q. Excuse me. Appendix A. And I believe it's at page 12.

1 And that is the same in the exhibit. This doesn't reflect that
2 you reviewed any deposition testimony, does it?

3 A. Well, I did, but I didn't place any -- I didn't place any
4 weight on it, so it's not listed.

5 Q. All right. So you did not list it even though you
6 reviewed it. Is that what you're telling us?

7 A. Right.

8 Q. So this list of documents and records provided to you is
9 erroneous. Is that right?

10 A. No, these are -- no, it's not erroneous.

11 Q. Is it incomplete?

12 A. No, it's not incomplete either.

13 Q. Were you provided deposition testimony which you
14 reviewed?

15 A. I was not given copies. I was given access to it, so
16 that's why I didn't list it.

17 Q. All right. So if you reviewed a document but you didn't
18 get to keep it, you didn't list it. Is that right?

19 A. That's right.

20 Q. Okay.

21 A. Or if I didn't put any -- or if I didn't put any weight
22 on it. In this particular case I didn't -- I didn't receive a
23 copy of it, nor did I place any weight on it, so it really
24 didn't seem appropriate to put it on the list.

25 Q. All right. Well, let's look at what is on the list.

1 Let's look at number 18, Chart of Payments to Hugh Andrews.
2 That was a document prepared by plaintiff's counsel, wasn't it?
3 A. Right.
4 Q. That's a summary of other sources?
5 A. Right. But I was provided with a copy of that, so I felt
6 compelled to list it even though I did not put any weight on
7 it.
8 Q. So even though you didn't put any weight on it you did
9 list this one, but you didn't list the deposition because you
10 didn't put any weight on it. Is that right?
11 A. Yeah. But I wasn't -- I didn't receive a copy of the
12 deposition.
13 Q. All right.
14 A. I think there's a significant difference there.
15 Q. Payments to Affiliates and Questionable Payments, number
16 19. Again, that is a summary provided by plaintiff's counsel,
17 isn't it?
18 A. And I was provided with a paper copy of that.
19 Q. Yes, sir. And it's not original source material. It's a
20 summary provided by --
21 A. And I did not --
22 Q. -- plaintiff's counsel?
23 A. And I did not place any weight on it.
24 Q. All right. Number 20, Payments to H&J. Again, that is a
25 summary document prepared by plaintiff's counsel, isn't it?

- 1 A. Right. And I was provided a paper copy of that, and I
2 duly listed it, but I did not place any weight on it.
- 3 Q. Number 21, Timeline of Key Events. Again, that was a
4 summary that was provided by plaintiff's counsel, wasn't it?
- 5 A. That was.
- 6 Q. And that was your basis for establishing times in this
7 case, wasn't it?
- 8 A. I -- I used that as a source, yes.
- 9 Q. All right. The order granting the petition to --
- 10 A. But I also used -- let me finish. I also used newspaper
11 accounts of when -- when the acts came into effect. I also
12 used other documents. That was not my sole source.
- 13 Q. Okay. But you didn't list those either, did you?
- 14 A. No, I did not.
- 15 Q. All right. Then number 22, the Order Granting the
16 Petition to Confirm the Arbitration Award. Again, that was
17 supplied by plaintiff's counsel. Is that correct?
- 18 A. I'm sorry. Could you repeat the question.
- 19 Q. Yes, sir. Number 22 on your list, the Order Granting the
20 Petition to Confirm the Arbitration Award.
- 21 A. Yes.
- 22 Q. United States District Court in California. You got a
23 copy of that from plaintiff's counsel. Is that correct?
- 24 A. Correct.
- 25 Q. And that's the only document that you list here that you

1 reviewed concerning this transaction between Drews and Silicon
2 Gaming, is that right, as far as the business transaction?

3 A. The invoice.

4 Q. Okay. And the invoice is not listed either, but you did
5 see that?

6 A. Well, it was an attachment to the -- it was an attachment
7 to this order. It was all part of the same package.

8 Q. All right. Then number 23 is the complaint that was
9 filed in this case by the plaintiff. Is that right?

10 A. That's right.

11 Q. Okay. All right. Now, let's go back to your opinions on
12 page three, Roman Numeral III. You indicate that your
13 observations support the hypothesis that Mr. Andrews
14 transferred large sums out of Drews even at a time when Drews'
15 revenues were rapidly falling. Do you see that?

16 A. Yes.

17 Q. All right. Now, if you look at the timeline that the
18 plaintiff provided you that you indicated you referred to, the
19 large sums that were paid out to Mr. Andrews were in '98 and
20 '99, were they not?

21 A. I think that's right.

22 Q. And, in fact, the video poker became legal -- became
23 illegal rather, July 1, 2000. Is that right?

24 A. That's when -- I believe that's when all the machines had
25 to be out of the state, yes.

1 Q. Yes, sir. Yes, sir. And the -- well, let me ask you if
2 you know, when was the decision by the Supreme Court that made
3 video poker illegal?

4 A. I believe that was in October of '99.

5 Q. Okay. Now, let's come on over and talk about these
6 detailed findings that you have which are on -- beginning on
7 page four. The first finding you list are the payments from
8 Drews to H&J. Correct?

9 A. That's correct.

10 Q. Do you know what H&J is?

11 A. I just know it's a company under common ownership and
12 control. That's all I know.

13 Q. All right. And where did you get that information from?

14 A. I don't recall.

15 Q. Could it have been plaintiff's counsel?

16 A. I don't remember.

17 Q. All right. Do you know what these payments were for?

18 A. No.

19 Q. You have no idea whether or not these payments were a
20 legitimate business expense or not, do you, Mr. Markel?

21 A. I just know that they were -- they were payments made.

22 Q. Yes.

23 A. I don't make any other representation than that.

24 Q. Okay. These were just ledger entries. Is that correct?

25 A. Right.

1 Q. All right. Now, you also in number two you talk about
2 these payments to Andrews Aviation, and you say a related
3 entity. What was the relationship?

4 A. I don't know exactly. I know -- I believe Hugh Andrews
5 had some sort of ownership interest in Andrews Aviation, but --

6 Q. Do you know if Andrews Aviation was a wholly owned
7 subsidiary of Drews Distributing?

8 A. I don't know.

9 Q. You indicate in number three that money was paid to R.L.
10 Nichols. Again, you don't know what that money was for, do
11 you?

12 A. No. It looked unusual.

13 Q. Yeah. You're just going -- you're just going by ledger
14 entries?

15 A. Right.

16 Q. Okay. Did you ask for any backup information?

17 A. I believe we asked for it, but it just never came.

18 Q. Now, when you say we, you mean the plaintiff's team?

19 A. No, I mean my company.

20 Q. Your company. Okay. Who did you ask for it?

21 A. I went through Turner Padgett firm.

22 Q. All right. Well, for example, with H&J when you asked
23 about those payments, did Mr. Byrd not tell you he was the
24 attorney for H&J? Did he -- they not have any information for
25 you?

1 A. I don't recall what was said.

2 Q. 1999, looking at number four, Drews paid Hugh Andrews a
3 total of 3.9 million dollars plus in dividends. 1999 Drews was
4 still making money, wasn't it?

5 A. That's -- that's right, but they paid 1.4 million after
6 -- of that after sales dropped way off.

7 Q. Yes, sir, but they were -- even though sales were less
8 than they had been, they were still substantial, weren't they?

9 A. No, I'm talking about the payments that were made in
10 August, September, October and November. They paid out 1.4
11 million even after sales had dropped off even after it was
12 pretty clear that the video poker was going away.

13 Q. Well, to be fair 1.3 million of that was paid before
14 October 1st, wasn't it, before the decision in Joy Time
15 Amusement, wasn't it?

16 A. Right.

17 Q. And prior to that decision the video poker operators and
18 the manufacturers and suppliers of machines thought that they
19 were going to be able to overcome this, didn't they?

20 A. I don't know.

21 Q. Well, Act 125 had passed the legislature. There was
22 going to be a public referendum. They were gearing up for that
23 referendum.

24 A. I'm not that familiar with the politics of it.

25 Q. So you just don't know what the company strategy or

1 mindset was at that point in time, do you?

2 A. No.

3 Q. All right. Let's look at number five, rent payments. Do
4 you have any evidence that Drews Distributing was not using the
5 building up at John Dodd Road for which that rent was paid?

6 A. I don't know whether they were using the building or not.

7 Q. All right. Mr. Markel, in your experience is it unusual
8 for an owner to own the real estate and have his company lease
9 the building back from it?

10 A. No, it's very common.

11 Q. All right. Now, number six, you talk about the credit
12 card bills for meetings and seminars in 1999, 106,000, and you
13 say, "Because of their large dollar amount I suspect a
14 significant portion is for personal expenses not related to
15 meetings and seminars as legitimate business expense." That's
16 just pure speculation on your part, isn't it?

17 A. That's precisely why I used the word "suspect".

18 Q. Yes. That's just suspicion that you're trying to use to
19 create a perception here that is sympathetic to the plaintiff's
20 case, isn't it?

21 A. No, it's not. It's because I felt that by not -- I felt
22 it required some sort of modifier --

23 Q. Yes, sir.

24 A. -- just to show that it seemed like a large amount for
25 meetings and seminars.

1 Q. Yes, sir. And because --

2 A. And that's why I used the word "suspect", which if I'm --
3 I think the dictionary definition of that word is to imagine
4 something without support. So that's -- that's the reason I
5 used the word "suspect", that it's intentionally put in there
6 just to modify it. To leave that sentence out would be to have
7 it distorted the other way.

8 Q. No, sir. To leave that sentence out would be to present
9 the facts unvarnished, wouldn't it?

10 A. No, I don't agree with you.

11 Q. All right. You wanted to put your suspicion in because
12 you wanted to push it in a certain direction. And you
13 indicated in your testimony with Mr. Byrd that the reason you
14 had that suspicion was that you were not provided any
15 substantiation. Is that correct?

16 A. No. The reason was because it was such a large amount it
17 was hard for me to conceive that they would spend that much on
18 a company this size on meetings and seminars. It wasn't
19 because of the substantiation. It was because of the
20 magnitude.

21 Q. Yes, sir. But if there had been receipts that showed
22 that as legitimate business expenses, then whether you thought
23 in your world it was reasonable or not, it could have been
24 documented, couldn't it?

25 A. But that wasn't provided to me. That's just one more

1 strike against it.

2 Q. Yes, sir. And let me ask you about that. Did you ask
3 for that?

4 A. I don't recall.

5 Q. Well, I found that exceedingly odd since our office had
6 collected and copied for the plaintiffs the credit card
7 receipts and statements for 1999 and 2000 and they're not
8 listed on your list of documents reviewed and you apparently
9 never saw them.

10 A. Actually I don't think those came in until a long time
11 after I finished. This report was finished over 14 months ago,
12 and I don't think those -- I remember getting word about those,
13 but they came in a long time after I finished this report.

14 Q. Well, let's look over at your second record, your
15 supplemental report, which would be Exhibit 3, I believe,
16 Plaintiff's Exhibit 3. And lets look at tab number five, which
17 is your list of documents and records provided to the expert.

18 MR. COGGINS: I believe that's on page 33 of the
19 court's exhibit.

20 Q. You got that for me, Mr. Markel?

21 A. Yes.

22 Q. Now, this report was done February 28th of this year,
23 wasn't it?

24 A. Right.

25 Q. A month ago today?

1 A. Right.

2 Q. You don't have those listed on it either, do you?

3 A. No, they were not provided to me.

4 Q. All right. Let's go back to your original report, back
5 to number seven. You talk about payments to Holly Andrews.
6 You didn't request documents for -- your period of review was
7 only from '98 through 2002. Is that correct?

8 A. That's correct.

9 Q. All right. So if Holly Andrews had made a loan to the
10 company in an earlier year and these were interest payments,
11 and I believe you indicated that they were -- they were listed
12 as interest payments, but you could find no record of the note,
13 if that note was in an earlier year, you wouldn't have seen it,
14 would you?

15 A. If it were in an earlier year why wasn't it on their
16 balance sheet? Why wasn't it in their general ledger? If it
17 was still outstanding it should have been there. That's --
18 that's why I say it wasn't -- it wasn't there. This was an
19 item that by its absence cries out to be listed as an
20 exception.

21 Q. Yes, sir. The payments were listed though, weren't they?
22 That's where you took them from, from the general ledger?

23 A. Right. But there were no -- there were no corresponding
24 liabilities shown in the general ledger of Drews.

25 Q. All right.

1 A. But there were, as I've shown here, interest expense, but
2 no liability to match it up with.

3 Q. All right.

4 A. And that's precisely why I listed it, because that's
5 extremely unusual.

6 Q. All right. But you don't know whether there was a valid
7 liability or not. All you know is that there wasn't one listed
8 on the ledger sheet that you saw?

9 A. I -- what I know is they didn't have one listed.

10 Q. Okay.

11 A. If they -- if they had one and it wasn't listed, that's a
12 failure in their record keeping process, which is another
13 problem.

14 Q. All right. But let's try to keep this to what you know,
15 okay. Now, let's come down to number eight, the Andrews
16 Aviation. Again, just as in '99, you don't know the
17 relationship between the companies and you don't know what
18 these payments are for, do you?

19 A. No. I just know that it's a large amount.

20 Q. All right. And you don't know who authorized the
21 payments, do you?

22 A. No.

23 Q. All right. Let's come down to number nine. This has to
24 do with the formation of AdSpace Network, and as it indicates
25 there, Mr. Fletcher was named as the agent. Is that correct?

1 A. That's what it says.

2 Q. All right. And \$106,230 was wired to AdSpace and it says
3 that this was for inventory, correct?

4 A. That's what it says.

5 Q. All right. And then you make another one of these
6 editorial comments where you say, "Whether this was a
7 legitimate arm's length business transaction remains to be
8 proven." Well, as we sit here today, Mr. Markel, you don't
9 have any facts to prove it one way or the other, do you?

10 A. No, but I put that in there so that it wouldn't be taken
11 to mean that I thought it was a legitimate arm's length
12 transaction. I just put that in there --

13 Q. Yes, sir.

14 A. -- so that to draw attention to that. I don't know
15 whether it is or not.

16 Q. Yes, sir. Because God forbid that it would be taken any
17 other way than the way your client wants it to be taken. Let's
18 come down and look at the payments to Hugh Andrews for
19 management fees in number ten. Again, you don't know what
20 those payments were for, do you?

21 A. No.

22 Q. All right. And with respect to H&J management fees, you
23 don't know what that was for?

24 A. No.

25 Q. You don't know what the relationship is between those

1 companies?

2 A. No.

3 Q. And apparently you did not inquire, did you?

4 A. I don't recall.

5 Q. All right. Let me ask you this, now you indicated that
6 Swaim Brown and Elliott, the CPA firm who had been doing the
7 accounting work for this company for a number of years, you
8 indicated that you had some problems with some of their
9 information and some of the documents you were provided. Did
10 you ever -- did you ever call up Eddie Brown at Swaim Brown and
11 Elliott?

12 A. No.

13 Q. Did you ever ask him about any of this?

14 A. I wouldn't -- it would be improper for me to do so.

15 Q. It would be improper for you to contact Mr. Brown? Did
16 you ever ask --

17 A. Yeah, and it would be improper for him to speak to me.

18 Q. Did you ever ask plaintiff's counsel to take Mr. Brown's
19 deposition and maybe furnish him with some questions to ask
20 him?

21 A. I don't remember.

22 Q. All right. As far as you know that was never done, was
23 it?

24 A. I don't know whether it was done or not.

25 Q. You never saw any deposition from the accountant, did

1 you?

2 A. No.

3 Q. All right. And again with respect to the rent payments
4 in the year 2000 you have no information to indicate that Drews
5 Distributing did not use the building throughout that year, do
6 you?

7 A. No.

8 Q. All right. And then number 12, payments to H&J, the
9 \$200,000 with two checks. Again, you don't know what those are
10 for, do you?

11 A. No.

12 Q. Then number 13 is 2000, and, again, this is the credit
13 card bills for meetings and seminars. And, again, as you
14 indicated, you didn't review the credit card statements, did
15 you?

16 A. They weren't available when I wrote this report.

17 Q. All right. And when they were available to you before
18 you wrote your supplemental report, you didn't review them then
19 either, did you?

20 A. No.

21 Q. All right. And then the R.L. Nichols payments, again,
22 you've already indicated you have no idea what those are for.
23 Is that correct?

24 A. That's right.

25 Q. All right. Now, number 15, during 2000, 388,000 some odd

1 dollars was recorded as display units for AdSpace. Do you know
2 what the business of AdSpace was?

3 A. I believe they sold ads in LCD screens to be put up in
4 bars and restaurants.

5 Q. All right.

6 A. That kind of thing.

7 Q. You heard that this morning. Is that right?

8 A. Yes.

9 Q. Okay. And do you have any idea what the size or cost of
10 these screens were?

11 A. No.

12 Q. And, again, you don't know what their relationship was to
13 Drews. Is that right?

14 A. No, I don't, but it was -- it's still -- I listed it
15 because it's a discretionary expense by Drews. They didn't
16 have to write those checks and --

17 Q. All right.

18 A. -- that's why I have been listing all along is these are
19 discretionary expenses that could be paid or not paid. They
20 are not in the nature of income taxes or property taxes that
21 would be -- would have to be paid, if they're not, the
22 government would seize your property, that kind of thing.

23 Q. But the conclusion you draw from that, Mr. Markel, is
24 that Mr. Andrews, Mr. Hugh Andrews was the one directing all of
25 these payments and the one benefiting from all these payments.

1 Isn't that true?

2 A. No. I'm just noting that they were -- these expenditures
3 were made.

4 Q. Because the purpose --

5 A. I don't take it -- I don't think there's anything in
6 there -- in here saying that I take it to that -- I jump to
7 that conclusion.

8 Q. Well, if we come back over to your expert opinions you
9 talk about that there's economic evidence that he was
10 exercising absolute control over Drews during the period,
11 correct?

12 A. Well, receipt of millions of dollars in dividends looks
13 to me like absolute control.

14 Q. Yes, sir. But then under your detailed findings -- and I
15 assume these are the detailed findings to support your
16 opinions. Is that correct?

17 A. Yes.

18 Q. You list all these payments, don't you?

19 A. Right.

20 Q. So you do relate them back to Mr. Andrews, don't you?

21 A. Indirectly.

22 Q. All right. All right. Then we come down to number 17 in
23 2001, the American Express bills. And, again, meeting expense,
24 meeting and seminar, and, again, you raise your suspicion, but
25 you don't have any evidence as to whose personal expenses you

1 think this went to --

2 A. No.

3 Q. -- do you? You don't have any evidence that it went to
4 personal expenses, do you?

5 A. No.

6 Q. You don't have any evidence that it wasn't legitimate
7 because you didn't review the substantiating documentation?

8 A. That's right.

9 Q. All right. Now, some of these are similar to earlier
10 years. Let me try to move this along. Let's come down to 22
11 and 23, and this is where we get into compensation of officers.
12 Do you know who the officers in Drews Distributing were?

13 A. I heard testimony this morning.

14 Q. All right.

15 A. Mr. Andrews was chief executive officer. Mike Fletcher
16 was president.

17 Q. All right. And other than the detail on the
18 distributions to Mr. Andrews that was prepared by the
19 plaintiff's counsel, you don't know how this money was
20 allocated, do you?

21 A. No, but that really wasn't -- that really wasn't germane
22 to what I was doing.

23 Q. All right. And you don't know who authorized the payment
24 of salaries, do you?

25 A. No.

1 Q. And then in 23 in 2001 when the salaries were cut more in
2 half -- more than in half, you don't know who authorized that
3 reduction, do you?

4 A. No. But there again it's not -- wasn't germane to what I
5 was doing. I was merely pointing out that it would -- officer
6 compensation, which is a discretionary expense, actually
7 exceeded revenues.

8 Q. Yes, sir. But when a company's primary business becomes
9 illegal so that its revenue stream drops to nearly zero, it
10 would not be unusual for it to have expenses that exceed its
11 revenue?

12 A. I know no businesses that can continue on for very long
13 like that.

14 Q. Yes, sir. And we're going to get to that part of it in
15 just a few minutes. Now, let's look over on page nine, Roman
16 Numeral VI, Synthesis of Findings. Let's look at number one,
17 part (b), because you've already -- we've already talked about
18 the dividends to the shareholder. You say, "Large payments to
19 related parties for services that appear to be discretionary
20 relative to Drews operations." The fact of the matter, Mr.
21 Markel, is you don't know what services or products those
22 payments were for, do you?

23 A. No, I don't, but I don't know that that's very relevant.

24 Q. Well, any payment is discretionary, isn't it?

25 A. No. I just gave an example a while ago about taxes is

1 one nondiscretionary expense.

2 Q. All right. And --

3 A. Payroll is another. Payroll of wage type employees.

4 Q. Yes, sir. And Mr. Andrews testified this morning, and
5 you've heard him that he testified that that's why he was
6 putting money back in, why he was loaning money to the
7 corporation so they could meet those obligations to payroll.
8 Do you recall that?

9 A. Yeah, I recall that part of the testimony. Yeah.

10 Q. Okay. And you also recall the testimony that a large
11 part of these distributions were distributions taken at the
12 instance of the accountants to pay taxes. Do you recall that?

13 A. Yes, sir.

14 Q. Neither of those are discretionary, are they?

15 A. No. But we're talking here about dividends to the
16 shareholder, not about Item (b).

17 Q. Well, with respect to Item (b) with respect to H&J, with
18 respect to Andrews Aviation, with respect to AdSpace, you don't
19 know what those companies did, you don't know what the
20 relationship between the companies were and you don't know what
21 products or services were provided, do you?

22 A. No. Except that revenues were falling rapidly and there
23 was no discernible service that these entities were providing.

24 Q. All right.

25 A. The relationship between the two seemed to be very

1 skewed.

2 Q. All right. In your opinion?

3 A. In my opinion.

4 Q. All right. Now, let's look at number four. You indicate
5 that, "Significant declines in revenue were not accompanied by
6 cut-backs in administrative expenditures, either in percentage
7 or absolute terms." By that you mean that you don't think they
8 reduced costs as much as they should have based on what -- how
9 their revenues declined?

10 A. Yeah, I'll agree with that statement.

11 Q. All right. What you're doing is trying to substitute
12 your judgment for the business judgment of the management of
13 the company, aren't you?

14 A. No. I'm just giving my opinion.

15 Q. Yes, sir. And your opinion is based just solely on these
16 numbers, isn't it?

17 A. Yeah. But you have revenues in free fall and
18 expenditures that's not tracking that. It just seemed
19 irrational to me, and I think it seemed irrational to most
20 observers.

21 Q. Well, if you had read some deposition testimony, you
22 might have learned from the deposition of Mr. Travis Owens that
23 they let go over half of the employees in 1999. Now, that
24 would have been consistent with the decline in revenues in
25 1999, wouldn't it?

1 A. No. They probably should have let go 90 percent, not
2 50 percent, because that's how much their revenues declined.

3 Q. Well, and ultimately they laid off additional employees,
4 but you don't know that because you didn't review the
5 testimony?

6 A. Yeah, but a lot of this is timing too. You know, it's
7 one thing to say, well, they did it later. That's -- that
8 doesn't cut it.

9 Q. Yes, sir. But I mean we could argue that with any
10 corporation, couldn't we? There are a lot of people right now
11 who think General Motors has not laid off enough people soon
12 enough to save that company, and now they're behind the eight
13 ball and they're having to try to catch up. I'm sure you've
14 heard those news reports, haven't you?

15 A. I have.

16 Q. All right. It's a hard thing to let people go and
17 deprive them of their livelihood, isn't it?

18 A. I don't know whether it is or not. I've certainly fired
19 people.

20 Q. Yes, sir. But when you have to let go virtually the
21 entire work force, that's a tough thing?

22 A. You have to do what you have to do.

23 Q. All right. You've never experienced a situation where a
24 company tried to hold on, tried to find alternative sources of
25 revenue, tried to borrow money to see if they could weather the

1 storm, never been in any situations like that?

2 A. Yes, sir.

3 Q. All right. That's not an irrational thing to do. In
4 fact, that's fairly common thing that happens with companies
5 that get in trouble?

6 A. Yeah, but those situations do not even resemble this.

7 Q. Well, again, you don't know whether they did or not
8 because you never reviewed the deposition testimony about where
9 all this expense money was going and the activities that were
10 being undertaken by Mr. Fletcher and others at the company to
11 try to save the company?

12 A. I don't -- I don't think that necessarily matters.

13 Q. Let's look again in your initial report -- excuse me.
14 Let's go to your supplemental report. And that will be page
15 18. This is your tab two, Tier 2 analysis. Let's talk about
16 these adjustments.

17 A. This is in my 2006 report.

18 Q. Yes, sir. Tab two of your attachments to that report.

19 A. Okay.

20 Q. And as I understand it, what you did here was you took
21 the balance sheet of Drews as it actually was, as it was
22 prepared by its accountants, and then you made adjustments that
23 you came up with to come up with an adjusted total or an
24 adjusted number. Is that right?

25 A. Yes, sir.

1 Q. Okay. And the first adjustment that you put in -- and
2 I'm going to try to take these in the order of your footnotes.
3 The first adjustment is down under accounts payable, and you
4 slip in -- as of December 31, 1998, the first year that you do,
5 you slip in a liability or an account payable of \$1,780,000.
6 Is that right?

7 A. That's right.

8 Q. Okay. And I'm assuming that that is intended to be the
9 amount due for these machines from Silicon Gaming. Is that
10 right?

11 A. That's correct.

12 Q. Okay. Bear with me just one second. I'm going to show
13 you Plaintiff's Exhibit 18. That was not among the documents
14 you reviewed, was it?

15 A. I have to -- you have to give me a minute to read it.

16 Q. Yes, sir. Please take all the time you need.

17 A. Okay.

18 Q. All right. And does that appear to be a letter of
19 agreement or letter of intent between representatives of
20 Silicon Gaming and Drews Distributing, dated December 21, 1998?

21 A. Well, it's -- it's a letter from one to the other, yes.

22 Q. All right. Well, did you read the content of the letter?

23 A. Yes.

24 Q. And in that letter doesn't it indicate an agreement or an
25 intention as to an agreement as to payment terms?

1 A. You're talking about the last bullet point, Invoice
2 Number 101603, no later than 90 days after receipt? Is that
3 what you're talking about?

4 Q. Yes, sir. Actually I'm talking about bullet point two,
5 where it says, "Upon execution of distributor agreement Drews
6 Distributing will wire transfer Silicon Gaming \$1 million as
7 partial payment for the 200 Odyssey units." Bullet point
8 three, "Silicon Gaming and Drews Distributing will mutually
9 agree upon additional changes and enhancements to the Odyssey
10 hardware and software with a targeted delivery date of
11 February 17." It says '98. Then, "Upon delivery of the
12 Odyssey hardware and software changes and enhancements Drews
13 agrees to wire the outstanding balance no later than 90 days."
14 Is that correct?

15 A. Right.

16 Q. All right. And that's dated December 21, 1998?

17 A. Okay.

18 Q. So \$1,780,000 was not due on December 31, 1998, was it?

19 A. I can't tell from that letter.

20 Q. All right, Mr. Markel. We assume for the sake of
21 argument that the million dollar wire transfer that they're
22 talking about in that letter and the balance that they're
23 talking about in that letter and the invoice number that
24 they're talking about in that letter, which corresponds to the
25 invoice you saw, if we assume that we're talking about the same

1 indebtedness?

2 A. Right.

3 Q. And they have a letter agreement between the parties that
4 says once the distributorship agreement is signed you will send
5 us a million, then we're going to deliver the games with
6 whatever changes we agree on, and after we deliver the games
7 with those changes, then within 90 days you'll pay us the
8 balance, if that's what's in that December 21, 1998 letter,
9 then there's not an account payable for \$1,780,000 on that same
10 invoice for those same machines as of December 31, is there?

11 A. I don't agree with that.

12 Q. All right. Well, let me ask it another way. Isn't it
13 true that the reason you got that listed is because of the
14 invoice, which is Exhibit 17, Plaintiff's Exhibit 17, that is
15 dated June 30, 1998?

16 A. Right.

17 Q. All right. So you use that invoice, and, in fact, not
18 only did you list it as an account payable right under there
19 with footnote two, you got late charges that you calculated up
20 to that six months, don't you?

21 A. Right.

22 Q. All right. And if this invoice is referenced in
23 Exhibit 18, the letter I just read to you, and by its own terms
24 from SGI says that that money is not owed at that point in
25 time, then your adjustment would be incorrect, wouldn't it?

1 A. But it's still -- it's still a liability that's going to
2 be due. I don't -- I don't -- I really don't understand your
3 questions. It's still a payable. At December 31, '98, there's
4 an outstanding invoice in that amount and --

5 Q. All right.

6 A. -- it's still belongs in there.

7 Q. All right.

8 A. That's clear.

9 Q. All right. You heard the testimony that these machines
10 were shipped without being ordered. Have you ever seen any
11 purchase order or any agreement to purchase these machines that
12 is consistent with the date of that invoice?

13 A. This -- this payable that I put on here is consistent
14 with that invoice.

15 Q. All right. And that's all you know, and that's all
16 you're going with. Is that right?

17 A. It's based on the invoice.

18 Q. Okay. That's fine. Let's go up to the top, because on
19 December 31, 1998, the only other adjustment you have is under
20 accounts receivable. And did I understand you to say that you
21 basically just took any accounts receivable that were over
22 60 days and wrote them off?

23 A. Yes.

24 Q. All right. And that's just a number you pulled out of
25 the air, isn't it?

- 1 A. No. I mean we computed how many were over --
- 2 Q. Yes, sir.
- 3 A. -- 60 days.
- 4 Q. But the 60-day limit is just an arbitrary number you
- 5 chose?
- 6 A. Right.
- 7 Q. Could have been 90?
- 8 A. Could have been 90 days. Could have been 45 days, right.
- 9 Q. All right. Could have been 180 days?
- 10 A. Right.
- 11 Q. All right. And I believe you testified right at the end
- 12 of your testimony with Mr. Byrd that there's a wide range of
- 13 dates that various companies use, and it's usually a pretty
- 14 arbitrary number as to what date companies use to write off bad
- 15 debt?
- 16 A. Right.
- 17 Q. Okay. So this is just your number?
- 18 A. Yes.
- 19 Q. Okay. All right. Let's look at '99. Now, in '99 you
- 20 give credit for the million dollars paid on the wire transfer
- 21 down there under accounts payable, number one, and you have a
- 22 balance of \$780,000?
- 23 A. Right.
- 24 Q. All right. So they made the payment as indicated in
- 25 Exhibit 18, didn't they?

1 A. Yes.

2 Q. All right. In a fashion that was considered timely by
3 SGI under the terms of that letter agreement?

4 A. I don't -- I don't know enough --

5 Q. All right.

6 A. -- to answer that one way or the other.

7 Q. But nevertheless you're still counting late charges from
8 June 30, '98, aren't you?

9 A. Right.

10 Q. Okay. And then up here on accounts receivable, again,
11 you're just arbitrarily picking 60 days. Is that right?

12 A. Right.

13 Q. And on inventory you're taking a decrease in inventory
14 that Drews showed in 2000 and just arbitrarily pushing it back
15 to '99, aren't you?

16 A. Well, it's not arbitrary. It's --

17 Q. Well --

18 A. -- it's to reflect the decline in value.

19 Q. What evidence do you have as to what the value was in
20 '99?

21 A. We know that there's significant outside economic events
22 took place that were out of Drews control that would have
23 caused the value of inventory to decline. Drews thought so
24 themselves at the end of 2000. All I'm doing is throwing that
25 back into 1999, and rather than arbitrarily change that number,

1 I just used what they used.

2 Q. And just threw it back a year earlier?

3 A. Right.

4 Q. Without any knowledge of what those machines are actually
5 worth at any particular time? You're not an expert on what
6 gaming machines are worth, are you?

7 A. No.

8 Q. Okay. You just took their number and backed it up a year
9 so you could take that out of their assets?

10 A. To reflect the decline in value, yes.

11 Q. Yes, sir. To reflect a decline in value that you aren't
12 qualified to reflect.

13 A. I used their adjustment. I mean -- and I haven't
14 purported it to be any more than that. I very clearly
15 stated --

16 Q. Yes, sir.

17 A. -- what I've done.

18 Q. But you used the adjustment that they in their business
19 judgment after being in this business for 20 something years
20 had made in 2000 and just decided to up and throw it back to
21 '99, correct?

22 A. Yeah, but that's not such an uncommon occurrence.
23 Sometimes if you -- if you'll be presenting comparative
24 financial statements and you have the benefit of hindsight,
25 you'll actually throw an adjustment into a prior year. They

1 even have accounting pronouncements about that. It's called a
2 prior period adjustment.

3 Q. All right. Let's look at 2000. Number one is the same,
4 still showing the 780. Number two, you've just jacked that up
5 based on passage of time for the late charges that you're
6 claiming. Number three is just the total of what you've got in
7 that column. Is that right?

8 A. Right.

9 Q. Then number four --

10 A. Just a reclassification.

11 Q. Yeah. Tell me about number four.

12 A. It's just reclassifying the amount due to the stockholder
13 from long-term to current.

14 Q. All right. And why would you make that change?

15 A. Just to facilitate computation of the ratios.

16 Q. To make your numbers work out?

17 A. No, to make them reflective of what they should be.

18 Q. In your opinion?

19 A. Of course, in my opinion.

20 Q. All right. And with respect to the accounts receivable,
21 again, we're just chopping off at 60 days?

22 A. Yes.

23 Q. Okay. Now, it was your testimony, I believe, that Drews
24 was insolvent on or before December of 2000, December 31, 2000?

25 A. Right.

1 Q. Okay. And you were indicating that you were using the
2 balance sheet test, and I think you also referred to a
3 bankruptcy test and an equity test. Aren't those all the same
4 thing?

5 A. No.

6 Q. Okay. When you have negative equity, that's what you're
7 using here to get insolvency. Is that right?

8 A. It actually meets the insolvency test under both tests.

9 Q. Okay. And if in fact it was insolvent at that point in
10 time in 2000, and assuming for the sake of argument that you're
11 correct and it was insolvent, it was insolvent at that point in
12 time, Drews Distributing could have declared bankruptcy,
13 correct?

14 A. I mean I'm not -- I'm not a lawyer. I can't really --

15 Q. Well --

16 A. -- opine on that.

17 Q. That is a remedy for insolvent debtors, isn't it?

18 A. I don't think you even -- to declare Chapter 11 I don't
19 think you even have to be insolvent.

20 Q. All right. So Drews could have done that, correct?

21 A. I don't know what they could have done.

22 Q. Okay.

23 A. I mean I feel like that calls for a legal opinion, and
24 I'm not -- it's not appropriate for me to do that.

25 Q. All right. Is it your understanding as an accountant

1 that a company that is having trouble meeting its obligations
2 and certainly one that is insolvent as you understand that term
3 from an accounting standpoint, that one of the options
4 available to it is to declare bankruptcy?

5 A. Certainly.

6 Q. All right. And do you understand that if the company
7 declared bankruptcy, this debt, whatever it was, by Silicon
8 Gaming would have been an unsecured debt?

9 A. I don't know.

10 Q. Are you a --

11 A. You showed me that letter. Now, I'm not sure.

12 Q. All right. All right.

13 A. Again, that calls for a legal conclusion, not an
14 accounting conclusion.

15 Q. That's fine. At that point though at any rate their fate
16 would have been up to the bankruptcy court. Is that right?

17 A. That's right.

18 Q. Okay. All right. Now, this Tier 2 analysis, you do this
19 so that you can then go on to perform a ratio analysis. Is
20 that correct?

21 A. Well, yeah, the three. The ratio analysis, the Z-Score
22 analysis and the composition analysis.

23 Q. And based on all of those analysis as of this time period
24 around 2001 -- 2000, 2001, this company becomes insolvent --

25 A. Yes.

1 Q. -- based on your numbers?

2 A. Yes.

3 Q. And, of course, your numbers are derived from the
4 adjustments that you have made to the company's actual numbers?

5 A. Yes, sir.

6 Q. If you don't make those adjustments, if you take the
7 company's balance sheet financial statements exactly as they
8 are, exactly as the company CPAs prepared them, you don't come
9 up with the same ratios, don't come up with the same Z-Scores,
10 do you?

11 A. No, because you're using different numbers. Of course,
12 you don't. You wouldn't come up with the same numbers.

13 Q. That's right. And so based on the adjustments you made
14 you get your numbers?

15 A. Right. But to do them on unadjusted numbers would be
16 distorting and misleading.

17 Q. Well --

18 A. Some very large adjustments need to be made. Maybe they
19 shouldn't be exactly as I've done them, but some very large
20 adjustments must be made.

21 Q. Yes, sir, but, Mr. Markel, the only adjustments we have
22 are the ones that you made. And the fact of the matter, sir,
23 is that you made adjustments that would result in numbers that
24 would lead to ratios and would lead to Z-Scores that would come
25 back and support your opinion and your agenda from the

1 beginning, which was that this corporation's veil should be
2 pierced, that this stockholder was in absolute control and that
3 he got the money and SGI ought to be paid?

4 A. If you're suggesting, sir, that I jiggered these numbers
5 to make it come out right, that's as far from the truth as it
6 can be.

7 Q. Well, there's no -- there's no table, there's no
8 authoritative source, there's no generally accepted place that
9 we can go to and see that any accountant who did what you did
10 would have come up with the exact same adjustments, is there?

11 A. No. I mean it's more of an art than a science.

12 Q. Exactly.

13 A. But you could put 50 other people like me up here, and
14 they would all make significant adjustments to this.

15 Q. Like you said, Mr. Markel, it's an art, isn't it?

16 A. Yes.

17 Q. And you've been paid well for the picture you painted,
18 haven't you?

19 A. I've been paid for my time, yes.

20 Q. Yes, sir. These folks as of February 28 paid you
21 \$21,500, haven't they?

22 A. Right.

23 Q. And I imagine you've done some preparation before trial
24 and you've got some time here today that you're going to charge
25 them for?

1 A. That's right.

2 Q. And you've given them the result that they wanted to get,
3 haven't you?

4 A. I don't know what result they wanted.

5 MR. COGGINS: That's all I have.

6 THE COURT: Mr. Hodge, are you going to be
7 cross-examining?

8 MR. HODGE: Yes, sir.

9 THE COURT: I'll bring you back in the morning.

10 MR. HODGE: Do what?

11 THE COURT: I'll bring you back in the morning
12 because I've got some questions too.

13 MR. HODGE: Okay.

14 THE COURT: I've got a wrongful death approval
15 hearing will take five minutes in the morning at 9:30, so y'all
16 be here at 9:30, I'll be -- I'm going to do it back in chambers
17 any way. So I might be 10 minutes late, but I'm here. See you
18 in the morning.

19 (Recessed at 5:02 pm.)

20 ***

21 I N D E X

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13	Defendant's Exhibits Number 1 through 30 marked	
14	into evidence.)	
15		
16		
17	(Plaintiff's Exhibit Number 4, expert report of	27
18	John C. Freeman, offered into evidence.)	
19		
20	***	
21		
22		
23	I certify the foregoing is a correct transcript from the record	
24	of proceedings in the above entitled matter.	
25	S/Jean L. Cole, RMR 4/1/06	

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Jean L. Cole, RMR

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

INTERNATIONAL GAME TECHNOLOGY,
INC.,

Plaintiff

-versus-

HORACE HUGH ANDREWS, II and
DREWS DISTRIBUTING, INC.,

Defendants

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)
) 7:03-1407

) 3/29/06

) Spartanburg, SC
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TRANSCRIPT OF BENCH TRIAL (Volume 2)

BEFORE THE HONORABLE HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

For the Plaintiff: JEFFREY L. PAYNE, ESQ.
R. WAYNE BYRD, ESQ.
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For Deft Andrews: CHARLES J. HODGE, ESQ.
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PO Box 10732
Greenville, SC 29603

The proceedings were taken by mechanical stenography and the
transcript produced by computer.

1 (Reconvened at 9:45 am. John Markel returned to the
2 witness stand.)

3 THE COURT: Nothing like giving a million and a half
4 dollars away at 9:30 in the morning. Makes for a good day.
5 All right, Mr. Hodge.

6 MR. HODGE: Thank you, your Honor.

7 CROSS-EXAMINATION BY MR. HODGE:

8 Q. Mr. Markel, I can't tell you how I've been anticipating
9 getting to cross-examine an accountant given my math ability.
10 I was fascinated by the number that you have been paid. Did
11 you say that you were paid \$21,000 to issue two reports?

12 A. Yes.

13 Q. Does that include yesterday and today?

14 A. No.

15 Q. How much more?

16 A. I don't know. I haven't figured it up.

17 Q. And I tell you what else fascinates me, did you say that
18 you had not read the deposition of Mike Fletcher?

19 A. I read portions of it.

20 Q. Portions of it. Did you read the deposition of Claudia
21 Humphries?

22 A. No.

23 Q. Do you understand that that lady and Mr. Mike Fletcher
24 you were running the day-to-day operations?

25 A. I heard that testimony.

1 Q. Yes, sir. You heard that, but in your report you said
2 Hugh Andrews exercised absolute control. Isn't that right?

3 A. That's what I said in my report.

4 Q. If I understood you yesterday, you used some
5 normalization where you adjusted numbers. Is that corrected?

6 A. I made some normalization adjustments, yes.

7 Q. Some normalization adjustments. And if I also understood
8 your testimony you said something about what we like to do is
9 we like to look and see what economic reality is based on the
10 transactions. Is that right? Did I get that straight?

11 A. I made a statement similar to that, yes.

12 Q. Okay. Now, in order to get this economic reality don't
13 you think it would be helpful to have adequate information
14 before you rendered these opinions?

15 A. Is that a question?

16 Q. Yeah. For example, you mentioned Mr. R.L. Nichols and
17 questioned some payments to him. Did you understand that Mr.
18 Nichols was actually a consultant who handled the rental
19 properties within Andrews and Drews Distributing?

20 A. I did not know that.

21 Q. Well, why didn't you just make an inquiry, Mr. Markel?
22 Wouldn't that have been the thing to do to say, hey, I want to
23 find out about this. What does this mean? What's this about?
24 Wouldn't that be what a proper expert would do who was trying
25 to give an objective analysis to the overall situation?

1 A. I didn't ask that question.

2 Q. You sure didn't. And you didn't ask any questions about
3 airplanes, did you, sir? All you said to this court was there
4 were these enormous airplane expenses.

5 A. That's right.

6 Q. Do you know how much a windshield costs for a Cessna
7 Citation II?

8 A. No, I don't.

9 Q. Well, it's \$63,000, Mr. Markel. Now, did you understand
10 that there was a contract and a -- there was obligations,
11 contractual obligations to pay on that airplane? Did you
12 understand that?

13 A. I didn't understand that Drews had an obligation.

14 Q. But did you understand that --

15 A. They obviously made payments.

16 Q. -- Andrews Aviation was a wholly owned subsidiary of
17 Drews?

18 A. I knew they were related.

19 Q. Now, when you looked at the time frame of 2000-2001, did
20 you find the information where Drews was trying to sell that
21 aircraft?

22 A. No.

23 Q. Do you understand what the aircraft market was back in
24 those times?

25 A. No.

1 Q. Would it surprise you that it was a terrible market, that
2 the economy was down, that it was virtually impossible to sell
3 an aircraft?

4 A. I have no knowledge.

5 Q. Well --

6 MR. BYRD: Your Honor please, if I might interpose an
7 objection here. The lawyer here is testifying. There's
8 absolutely no evidence in the record about the market for this
9 airplane, whether it was or was not marketable, what the value
10 of it was and no indication that there's going to be any
11 evidence like that.

12 THE COURT: I have given y'all both liberty to
13 testify a little bit in this trial. No sense changing it now.

14 MR. BYRD: Thank you, Judge.

15 THE COURT: But, Mr. Hodge, hold it down.

16 MR. HODGE: I will.

17 BY MR. HODGE:

18 Q. Let me just ask you this with regard to the airplanes,
19 with your own experience did you recognize that fuel prices
20 rose dramatically after the year 2000?

21 A. I don't have any knowledge of that one way or the other.

22 Q. You don't remember fuel prices going up, Mr. Markel?
23 Surely you drive an automobile.

24 A. I don't -- I don't know when they went up. They
25 certainly went up and down over the last 15 years.

- 1 Q. Do you agree with the general concept that you've got to
2 spend money to make money?
- 3 A. That's an old proverb.
- 4 Q. Well, I mean do you agree with it?
- 5 A. I suppose so.
- 6 Q. So it's not completely baffling that they would fly to
7 places to try to get other businesses started in order to keep
8 this concern going?
- 9 A. No.
- 10 Q. All right. Now, in your testimony you mentioned some
11 notes payable to Holly Andrews, correct?
- 12 A. Right.
- 13 Q. And you were not aware of any indications that that money
14 was actually owed?
- 15 A. Right.
- 16 Q. All right. Now, I've already shared this with defense
17 counsel. Mrs. Claudia Humphries went back and got the general
18 ledger. Tell me what it says.
- 19 A. Loans payable.
- 20 Q. What's the amount?
- 21 A. This was 1997. \$50,000.
- 22 Q. Okay. And I'll ask you to take a look at this financial
23 statement for the years ended December 31, '98 and '97.
24 Currently -- excuse me, note payable related party, '97. How
25 much is listed?

- 1 A. Fifty thousand.
- 2 Q. Okay.
- 3 A. But her name is not on here anywhere. I mean how was I
- 4 supposed to know that?
- 5 Q. Well, what you could have done, Mr. Markel, for your
- 6 \$21,000 is to ask somebody, but you chose not to do that.
- 7 Isn't that right?
- 8 A. I did not choose that. Those were the parameters under
- 9 which I worked.
- 10 Q. If a shareholder infuses capital into the corporation, is
- 11 he not entitled to be paid back?
- 12 A. Infuses capital into the cooperation?
- 13 Q. That's correct.
- 14 A. Infusion of capital generally means a permanent
- 15 contribution.
- 16 Q. If a shareholder lends money to a corporation, is he
- 17 entitled to get paid back?
- 18 A. That's a different story. Yeah, it's an obligation, a
- 19 debt obligation.
- 20 Q. Well, isn't that what happened in this case?
- 21 A. Can you be more specific?
- 22 Q. Well, did you not look at the notes that were executed in
- 23 infusion of capital by Mr. Andrews? Excuse me, infusion of
- 24 money, the loans made by Mr. Andrews? Did you examine that?
- 25 A. I'm aware of those, yes.

1 Q. Were you aware of it when you made your report?

2 A. Yes.

3 Q. Were you aware of, Mr. Markel, when you made your report
4 that those 200 Odyssey machines, the subject of this action,
5 were preserved and are available for retrieval by these
6 defendants -- by these plaintiffs rather?

7 A. I heard that in the testimony yesterday.

8 Q. Well, did you read the depositions of IGT's own people,
9 Mr. Grevelis and Mr. Pennington?

10 A. No.

11 Q. You didn't read those?

12 A. No.

13 Q. Well, don't you think it's important to have all the
14 information, especially when you're charging \$21,000? Yes or
15 no?

16 A. I can't answer that with a yes or no.

17 Q. You can't answer that one. Because I asked Mr.
18 Pennington, "Can Odyssey machines be adapted to applications
19 for IGT?" And he said, "Yes." And I said, "How much does it
20 cost?" And he said, "In the thousand dollar neighborhood."
21 Then I asked him, "Well, once you spend that thousand, what's
22 it worth?" He says, "50,000 a year." Now, since you're the
23 accountant do the math for me, 200 machines times 50 a year,
24 what does that come to?

25 A. I'd have to have a calculator.

1 Q. How about \$10 million. I can even do that in my head.
2 Does that sound about right?

3 A. If you say so.

4 Q. All right. That would more than satisfy this debt,
5 wouldn't it, sir?

6 A. \$10 million is more than 780,000, yes.

7 Q. Now, did you hear the testimony that these dividends paid
8 to Mr. Andrews were used to pay taxes?

9 A. I heard that, yes, sir.

10 Q. And did you tell me that that is not discretionary,
11 that's something that you've got to pay?

12 A. That's right. Generally you have to pay taxes, yes.

13 MR. HODGE: Your Honor, I want to offer this general
14 ledger sheet and this financial statement of Drews from '98.

15 THE COURT: Any objection?

16 MR. BYRD: Your Honor, first of all the '98 financial
17 statement is in evidence and we have already stipulated that
18 the general ledger comes in.

19 MR. HODGE: So I guess there's no objection.

20 THE COURT: All right.

21 THE CLERK: This would be?

22 MR. COGGINS: I believe it will be 31.

23 THE CLERK: Thank you. Exhibit Number 31.

24 MR. HODGE: And make this 32.

25 (Defendant's Exhibit Number 31, Loans payable,

1 marked into evidence.)

2 (Defendant's Exhibit Number 32, Drews Distributing
3 financial statement, marked into evidence.)

4 BY MR. HODGE:

5 Q. Did you look at the general ledger?

6 A. Yes.

7 Q. Well, if you looked at the general ledger, you would have
8 seen Holly's name is mentioned right here on Defendant's
9 Exhibit 31. Do you see that?

10 A. It's not on the other sheet though.

11 Q. Now, I thought it was interesting that this forensic
12 accounting tries to determine the economic reality, because
13 when you look at accounting entries, all you see is numbers.
14 Isn't that right? You have to get more information to
15 determine why something was paid, for example, the airplane
16 expense or this repayment to Holly. So you really can't get a
17 full picture of what's going on until you get that additional
18 information, can you, Mr. Markel?

19 A. I don't know how to answer that.

20 Q. Mr. Markel, you mentioned something about these machines
21 and their value, and I think you even used the term
22 "insolvency" way before June or July of 2000. Is that correct?

23 A. No, that's not.

24 Q. Did I hear --

25 A. That wasn't my testimony.

1 Q. Do you believe that this company was insolvent before
2 June or July of 2000? Did I miss your testimony?

3 A. I think my testimony said it was insolvent as of
4 December 2000 and possibly earlier. That was my testimony.

5 Q. Despite the fact that these 200 machines existed?

6 Despite the fact that they can be worth \$50,000 a year?

7 A. But they were written down to zero on Drews balance sheet
8 in 2002.

9 MR. HODGE: All right, sir.

10 THE COURT: Mr. Byrd, anything further?

11 MR. BYRD: Your Honor, I do have some questions. I
12 noted your comment yesterday.

13 THE COURT: I do have some.

14 MR. BYRD: Do you want me to go before?

15 THE COURT: Yeah.

16 MR. BYRD: All right.

17 REDIRECT EXAMINATION BY MR. BYRD:

18 Q. Mr. Markel --

19 A. Mr. Byrd, I do have a correction I need to make to
20 yesterday's testimony on cross if I could.

21 MR. BYRD: Could he make that correction, your Honor?

22 THE COURT: Sure.

23 A. Reference was made to these credit card invoices, and
24 when I went back to my office last night and went to the files,
25 I realized that I did have those copies. I think I testified

1 yesterday that I didn't -- never got copies of them, but I did
2 get copies, looked at them a number of months ago. They really
3 had no -- they had no impact on my work. They were extremely
4 unhelpful. They really just didn't have anywhere near enough
5 data on them supporting the expenditures, so I just -- when I
6 put my report together, I just failed to list them because they
7 really had no impact, but I did want to clear that up.

8 Q. Okay. Thank you, sir. I want to talk to you about
9 counsel's suggestion of R.L. Nichols being managing or being a
10 manager of the real estate for Drews. I want to ask you to
11 look at the financial statements for Drews for the years '98,
12 '99, and I'm going to give you the exhibit numbers, Mr. Markel.

13 A. Okay.

14 Q. But I want you to look at the financial statements for
15 '98, '99, 2000 and 2001 and tell me -- tell the court if
16 there's any one single piece of real estate owned by Drews
17 and/or owned by Andrews Aviation which is a wholly owned
18 subsidiary of Drews. Now, financial statement for '98 is
19 Number 28.

20 A. Okay.

21 Q. Is there any real estate owned -- first let me note, if
22 you would, look at the accountant's letter transmitting that
23 financial statement. Is there any indication that that is a
24 consolidated financial statement that involves any other
25 affiliate?

- 1 A. It doesn't say in the letter, no, one way or the other.
- 2 Q. All right, sir.
- 3 A. That's not always definitive though.
- 4 Q. All right. Is there any real estate listed on that
5 balance sheet?
- 6 A. No.
- 7 Q. All right, sir. Look at Exhibit Number 30, which is the
8 financial statement for 1999.
- 9 A. Okay.
- 10 Q. Is there any real estate owned by the corporation in
11 1999?
- 12 A. No.
- 13 Q. All right, sir. Look at Exhibit Number 32. Is there any
14 real estate owned by those corporations in 2000?
- 15 A. Not according to the balance sheet.
- 16 Q. All right, sir. Look at the letter of transmittal from
17 the CPA, and what does he tell us about financial statement
18 consolidation in that letter of transmittal?
- 19 A. Well, it's a combined statement.
- 20 Q. For which entities?
- 21 A. Drews Distributing, Inc., and Andrews Aviation, Inc.
- 22 Q. All right, sir. So by that time when Andrews Aviation,
23 Inc., was a wholly owned subsidiary --
- 24 A. Well, they weren't a wholly owned subsidiary. It's just
25 -- I mean it doesn't look like they were. The reason I say

1 that is it says Andrews Aviation, Inc., is an S corporation.

2 Q. Okay.

3 A. And the corporation can't be a shareholder in a S corp,
4 so --

5 Q. All right.

6 A. -- I'd have to infer from that that it's not a wholly
7 owned subsidiary, that there's some other connection between
8 the two.

9 Q. What is the accountant telling us about whether these
10 financial statements are consolidated or not?

11 A. Well, he says they were combined, which means they were
12 put -- put together. You could put two companies under common
13 ownership together, brother-sister corps.

14 Q. All right.

15 A. Instead of calling them consolidation it's called a
16 combination. It's just a technical difference.

17 Q. Okay. Are the assets -- all of the assets of the two
18 entities included on the balance sheet?

19 A. They should be -- they should be.

20 Q. All right. If in fact what the CPA said he had done is
21 combined them, then all of the assets of both those entities
22 would be there?

23 A. Right. Line item by line item.

24 Q. All right. And is there any real estate at all --

25 A. No.

1 Q. -- on that balance sheet? If you would look at Exhibit
2 Number 34 please.

3 A. Okay.

4 Q. Is there any real estate owned by the company in 2001?

5 A. No real estate.

6 Q. All right, sir. So if they were paying R.L. Nichols to
7 manage real estate, it wouldn't have been managing Drews real
8 estate, would it?

9 A. No.

10 Q. Yesterday during cross-examination you were asked to look
11 at Exhibit Number 18, the letter of December 1998, Exhibit
12 Number 18.

13 A. Okay.

14 Q. This was the December 21, 1998, letter signed by someone
15 from Silicon Gaming and Mr. Andrews. And there was a
16 suggestion made that it was inappropriate to accrue this
17 liability of \$1,780,000 on the 12/31/1998 financial statement.
18 Now, I would call your attention to the last bullet point,
19 which says that, "Upon delivery of said Odyssey hardware and
20 software changes and enhancements Drews Distributing, Inc.,
21 agrees to wire transfer the outstanding balance remaining on
22 the original 200 Odyssey units."

23 Now, if at December 21, 1998, there was an
24 outstanding balance, would it be appropriate or inappropriate
25 under general accepted accounting principles to book that

1 liability as of 12/31/1998?

2 A. Under generally accepted accounting principles looks like
3 you have no choice but to book it.

4 Q. Thank you. And you see Mr. Andrews' signature on that
5 letter. I think you testified --

6 A. I do.

7 Q. -- that he signed that letter?

8 A. Yes.

9 Q. All right. I think Mr. Andrews testified at least on
10 cross, if not on direct, that he had to start putting money in
11 the company because it couldn't pay its bills. Now, if a
12 company has reached the point that it can't pay their bills as
13 they come due, is it by definition insolvent?

14 A. That's -- that's the -- the equity -- so-called equity
15 definition of insolvency, yes.

16 Q. All right.

17 A. Not being able to pay your bills when they come due.

18 Q. All right. You've heard some testimony about AdSpace.
19 Your files indicate and records indicate that AdSpace was set
20 up as a separate corporation in 2001. Correct?

21 A. That's right.

22 Q. All right, sir. If all of these expenses and purchases
23 for AdSpace's benefit were made for that company, was there any
24 economic benefit whatsoever to Drews for those expenses at
25 least after AdSpace was set up as a new corporation?

1 A. I don't see how unless there was an agreement to combine
2 them at a later date or something.

3 Q. I want to talk to you a little bit about the accounts
4 receivable aging. You used the 60-day aging as the demarcation
5 for writing the accounts receivable down and you were attacked
6 right vigorously about that yesterday. I want you to look at,
7 if you would, Exhibit 73. And I think that's in this file.
8 Tell us what Exhibit Number 73 is.

9 A. It's accounts receivable aging as of August 2000.

10 Q. Okay. Now, let's just assume for the benefit -- let's
11 don't do that. Let me ask you to look at your report -- at
12 your report, second report, the Tier 2 balance sheets for 1998
13 and 1999 for Drews.

14 A. Okay.

15 Q. And that's at Tier 2 at tab two, correct?

16 A. Right.

17 Q. All right, sir. What do those financial statements
18 reflect with regard to solvency of Drews at the end of 1998?

19 A. They appear to be solvent.

20 Q. All right. So you do not suggest in your professional
21 opinion that Drews was insolvent in '98?

22 A. No.

23 Q. Does it matter then what adjustment you make to accounts
24 receivable for 1998?

25 A. As to solvency it wouldn't make any difference.

1 Q. All right, sir. Now, what about 1999? What conclusion
2 did you reach or opinion do you have with regard to solvency of
3 Drews in 1999?

4 A. They appear to be solvent.

5 Q. Would it matter then as to the solvency issue as whether
6 or not you adjusted accounts receivable?

7 A. No. Even with the adjustment they are solvent.

8 Q. All right. So it did not result in insolvency in your
9 analysis?

10 A. No.

11 Q. Or conclusion? Now, let's go to 2000. The date of that
12 balance sheet is what, Mr. Markel?

13 A. December 31, 2000.

14 Q. All right, sir. Now, let's go back to the accounts
15 receivable aging report that I asked you to look at, Exhibit
16 Number 73. And that's as of August 2000. Is that correct?

17 A. Yes.

18 Q. All right, sir. If you would take a minute and review
19 that accounts receivable aging report and tell us what
20 conclusion you would have reached or what adjustment you would
21 have made if you had used a 120 days. That aging report shows
22 accounts receivable in what classifications or categories?

23 A. Less than 31 days, greater than 30, greater than 60,
24 greater than 90 and greater than a 120.

25 Q. All right, sir. If you would take a minute and look at

1 that aging report and tell us where the accounts receivable at
2 August 2000 stood with regard to aging.

3 A. Looks like -- looks like about 95 percent of it is
4 greater than a 120 days.

5 Q. Greater than a 120 days at August 2000, correct?

6 A. Right.

7 Q. All right. And the date of the balance sheet in 2000 is
8 how many months after that?

9 A. Four months.

10 Q. So that would be 120 days plus 120 days. That would be
11 240 days, correct?

12 A. That's right.

13 Q. At 12/31/2000 the uncollected accounts receivable aged
14 about 95 percent, I think you said, would then be 240 days old,
15 not 60 days old, right?

16 A. That's right.

17 Q. All right, sir. And I think you corrected your testimony
18 earlier. I know you did -- we all know you did -- with regard
19 to the American Express bills, but I'd like for you to look at
20 Exhibit Number 72.

21 A. Okay.

22 Q. And does Exhibit 72 actually contain the American Express
23 bills, the American Express receipts and the detail with regard
24 to those bills for those periods reflected therein?

25 A. It appears to, yes.

1 Q. All right, sir. I now ask you to look at Exhibit Number
2 9, which is in evidence in this case, and do you see what that
3 schedule is?

4 A. Yes.

5 Q. And what are those?

6 A. It's Tri-Star expenses paid by Drews.

7 Q. And what does it say parenthetically there?

8 A. American Express.

9 Q. All right. So now we have looked at two things. We've
10 looked at the American Express bills and the detail information
11 about those bills, and we've now looked at a summary of what
12 those bills were for. Now I'd ask you to look at Exhibit 10.
13 And what is that, Mr. Markel?

14 A. It's a schedule that's called AdSpace Expenses Paid by
15 Drews American Express.

16 Q. Okay. So now we have looked at the American Express
17 details and we've looked at summaries of what those American
18 Express bills were for, correct?

19 A. Yes.

20 Q. Now I'd ask you to look at Exhibit Number 11. And what
21 is that?

22 A. It's a schedule that says Strip Club Charges Paid by
23 Drews --

24 Q. All right, sir.

25 A. -- 2000 and 2001.

1 Q. Now, if those three schedules along with the detail of
2 the American Express bills and the payments by Drews on those
3 bills, the canceled checks that actually paid those bills are
4 in evidence, does that information support or refute the
5 conclusions you reached about the payment of those American
6 Express bills in your report?

7 A. I think it supports it.

8 MR. BYRD: Your Honor, that's all I have. Thank you.

9 THE COURT: Mr. Coggins or Mr. Hodge, anything
10 further?

11 MR. COGGINS: Your Honor, I have a couple if you want
12 me to go before you.

13 THE COURT: Sure. If I strike a nerve with you, I'll
14 give you a chance to clean it up.

15 RECROSS-EXAMINATION BY MR. COGGINS:

16 Q. Mr. Markel, if you will keep those Plaintiff's Exhibits
17 there handy. I apologize. It may take me longer to haul these
18 notebooks over here than it will to ask the question. Couple
19 of things that Mr. Byrd went back over with you that I want to
20 touch on. First of all, Plaintiff's Exhibit 18, that
21 December 21, 1998, letter, if you would turn to that please.

22 A. Okay.

23 Q. I just want to make sure that we clarify what this letter
24 -- what this letter says. Mr. Byrd referred you to the last
25 bullet point, which talks about, "Upon delivery of the Odyssey

1 hardware and software changes and enhancements Drews
2 Distributing agrees to wire transfer the outstanding balance
3 remaining on the 200 Odyssey units no later than 90 days after
4 receipt." Do you see that?

5 A. Yes.

6 Q. Now, that clearly refers to the delivery not only of the
7 hardware, not only the machines, but also the software changes
8 and enhancements Mr. Andrews testified about yesterday, doesn't
9 it?

10 A. Yes.

11 Q. So the fact of the matter is that as of December 21,
12 1998, that bill hadn't come due because those software changes
13 and enhancements hadn't been delivered, had they?

14 A. I still think it should be recorded as a liability here.

15 Q. Oh, I understand. If somebody issues an invoice to you,
16 you record it as a liability whether you bought the stuff,
17 asked for it to be delivered, whether it's defective,
18 regardless. If somebody sticks a bill in the mail to you, your
19 position is you put it on the sheet, is that right?

20 A. This particular bill needs to be booked as a liability.

21 Q. Yes, sir.

22 A. That's my position.

23 Q. Yes, sir. But, Mr. Markel, you understand the English
24 language and you can read this letter, can't you, sir?

25 A. Yes.

1 Q. And it is an agreement between the parties signed by
2 representatives of both Drews Distributing and Silicon Gaming,
3 isn't it, sir?

4 A. Right.

5 Q. And it provides a schedule for payments for these
6 machines and the software accompanying them, doesn't it?

7 A. That's right.

8 Q. And it is dated December 21, 1998, isn't it?

9 A. That's right.

10 Q. And it contemplates future payments, a million dollars
11 when the distributorship agreement is signed and the balance to
12 be transferred once all this is delivered, including the
13 software changes and enhancements, correct?

14 A. Right.

15 Q. That's what it says?

16 A. Right.

17 Q. Despite what it says though, you went ahead and booked
18 this liability and started assessing late charges as of June
19 30, '98, didn't you, in your adjustments?

20 A. I did that because that's the correct way to treat it.

21 Q. All right. Now, in testimony with Mr. Byrd, you
22 indicated that if a company gets to the point that they can't
23 pay their bills as they come due, that is the definition of
24 insolvency or I believe you said the definition of equity
25 insolvency. Is that correct?

- 1 A. That's right.
- 2 Q. All right. In times of poor cash flow, cash crunch, is
3 it unusual for companies to have to borrow to be able to pay
4 current liabilities?
- 5 A. It's not unusual.
- 6 Q. In fact, it happens every day. Isn't that right?
- 7 A. That's right.
- 8 Q. And if those companies can get that credit extended to
9 them, they're not insolvent, are they?
- 10 A. If they can get it extended to them, yes.
- 11 Q. Right. Now, down the road if they're unable to repay it
12 or if they come to a point in time where the lender says no
13 more, they may be insolvent as of that point. Correct?
- 14 A. Right. And we're talking here about an arm's length
15 lender too.
- 16 Q. Right.
- 17 A. Not a related party.
- 18 Q. All right. But in this case, whether it's a bank or it's
19 a shareholder, the company was able to obtain credit?
- 20 A. Well, the owner loaned --
- 21 Q. Correct.
- 22 A. -- the company some money.
- 23 Q. Correct. And loaning the company money, and not just
24 some money, over \$2 million, would be inconsistent with any
25 conclusion about siphoning off money, wouldn't it?

1 A. Can you restate the question.

2 Q. I'll try to. If you have a dominant shareholder, an
3 owner who is wanting to loot his company, who's wanting to
4 siphon off the assets, the cash of the company, wouldn't it be
5 inconsistent for that owner to then turn around and loan the
6 company \$2.1 million over about a 16-month period?

7 A. I guess he just did what he had to do.

8 Q. Yes, sir. And the fact of the matter is that's what was
9 going on with this company, wasn't it? They were faced with
10 their whole product line, their entire source of revenue being
11 declared illegal by the state, and they were scrambling around
12 trying to figure out some way to develop other streams of
13 revenue and keep the doors open? Is that right?

14 A. If he hadn't taken it out, he wouldn't have had to put it
15 back in.

16 Q. Yes, sir. But in your own calculations one of the things
17 you hypothesize about is you arbitrarily pulled the sum
18 \$2 million out of the air, that if he hadn't taken two million
19 of the dividends back in '98, they would have had money. Well,
20 the fact of the matter is he put two million in cash back in,
21 didn't he?

22 A. He put two million in and then I think he took more out.
23 I think the statement he put two million in is probably not
24 telling the whole story.

25 Q. All right. Well, the numbers as far as what went in and

1 when it went in and what came out and when it came out are
2 pretty well established by the exhibits, aren't they?

3 A. For the years '98 through 2001, yes, sir.

4 Q. Well, and through 2002?

5 A. Yes, for 2002 as well.

6 Q. All right. Now, the last thing is this accounts
7 receivable aging report. And Mr. Byrd got up here -- this is
8 Exhibit 73, if you need to look at it, but it's the accounts
9 receivable aging report for August of 2000. And Mr. Byrd got
10 up here this morning and asked you to calculate what the aging
11 was on those receivables that was greater than a 120 days.

12 A. I didn't calculate it. I just read it off the sheet.

13 Q. All right. And you synthesized that 27 page report that
14 quickly?

15 A. There's a total on the back, last page.

16 Q. Okay. So you just read it. You were going by the total
17 on the back?

18 A. That's what I said. I just read it off the last page.

19 Q. Okay. So you don't know if that's accurate or not, you
20 were just going by the number at the back?

21 A. I read the number off the last page.

22 Q. Okay. And nevertheless, that's not the number that you
23 chose to use when you did your calculations, your adjustments?

24 A. No, because I used the December figure.

25 Q. Right. And you -- and you used 60 days, not 120 days?

1 A. Right.

2 Q. All right. Now, with respect to your adjustments, Mr.
3 Byrd asked you about the fact that on your adjustments for '98
4 and '99 since you didn't find that the company was insolvent,
5 that those adjustments really didn't make any difference as far
6 as insolvency. Do you remember that question?

7 A. For those years, yes.

8 Q. For those years, right. But those adjustments did make a
9 difference for your ultimate conclusions in this case, didn't
10 they, Mr. Markel?

11 A. I'm sorry?

12 Q. Yes, sir. Because in your conclusions in this case you
13 find that the company's position is deteriorating alarmingly,
14 deteriorating rapidly and that therefore it was wrong to make
15 dividend distributions during those years, that Mr. Andrews
16 should not have taken out as much as he did. Isn't that right?

17 A. Right. Their condition was deteriorating.

18 Q. Right. And by making those adjustments you caused the
19 paper trail of that condition to deteriorate at a much more
20 rapid rate than the actual numbers being reported by the
21 accountants and by the company, didn't you?

22 A. Yes, they would appear to be.

23 Q. And that propped up your ultimate conclusion that there
24 was significant economic evidence of absolute control by Mr.
25 Andrews, didn't it?

1 A. Can you restate that.

2 Q. Yes, sir. By you artificially causing the company's
3 position to look worse than it was earlier than it was, it made
4 those distributions and dividend checks in those earlier years
5 in '98 and '99 when the company's still functioning while video
6 poker is still legal and they're still selling machines, it
7 made that performance of the company look worse so that it
8 correspondingly made those dividends and distributions look
9 worse, didn't it?

10 A. I don't agree with your characterization that I
11 artificially made it look worse. I'm just trying to reflect
12 economic reality.

13 Q. Yes, sir. You tried --

14 A. In addition -- in addition to that I recomputed this
15 morning these accounts receivable allowances making them a 120
16 days rather than 60 days, and it makes no difference to my
17 conclusion. Makes very little difference in the numbers.

18 Q. Yes, sir. But the fact --

19 A. And I did it not with Mr. Byrd's August figure, but with
20 the exact December figure out of the accounts receivable aging,
21 and it makes no difference.

22 Q. All right. So despite the fact that you were still on
23 the stand overnight and despite the fact that you shouldn't
24 have been talking with plaintiff's counsel y'all just both came
25 up with the number 120 days?

1 A. I did not talk to plaintiff's counsel. I did that on my
2 own.

3 MR. COGGINS: All right. That's all I have. Thank
4 you.

5 THE COURT: Now, neither side should take any comfort
6 or discomfort in the questions I ask. If I strike a nerve and
7 you feel compelled, I'll let you jump back in.

8 EXAMINATION BY THE COURT:

9 Q. Did you do any assessment as to whether or not the amount
10 of rent was reasonable or unreasonable?

11 A. No, I did not. I don't -- I'm not aware of the -- I
12 didn't like do a rough square footage test or anything like
13 that. I just noted that it was -- appeared it was they were
14 paying large dollar amounts in rent, but I'm not making any
15 judgment as to whether it was reasonable or unreasonable.

16 Q. Now, if -- would it have made any -- as I understand the
17 assignment, no money was pulled out at the time of the
18 assignment. It was rather the assets, the equipment, cars, et
19 cetera, is that your understanding of the assignment?

20 A. I really don't know. I'd have to look it up.

21 Q. Did you -- did you in your analysis determine what the
22 value of the assignment was?

23 A. No. Really I just -- I didn't go much beyond, you know,
24 middle of 2000, so. . .

25 Q. If he had made -- Mr. Andrews had made capital

1 contributions instead of a loan, at the time -- at the various
2 dates that money was given to the company, would it have made
3 any difference in the solvency or insolvency of the company?

4 A. It certainly would have made a difference to the ratio
5 analysis. To a financial analyst it would make a difference
6 because once you put it in as capital it's permanent and you're
7 not supposed to be able to just get it out at a whim.

8 Q. I understand. But he didn't get it out if I understand
9 the assignment. He got the assets in lieu of the debt.

10 A. Okay.

11 Q. So what I'm trying to figure out is, number one, what is
12 the value of the assignment; and, number two, the fact that he
13 put \$2 million in at the times he did wouldn't have made any
14 difference?

15 A. Wouldn't have made any difference for?

16 Q. In the solvency of the company?

17 A. Well, it would make a difference if they were able to pay
18 the bills on time. It depends, you know, there's two
19 definitions of insolvency. One of them is being able to pay
20 your bills on time. The other is do your debts exceed the fair
21 value of your assets? So that would depend on which -- which
22 definition you're looking at.

23 Q. Now, on your Z-Scores it really doesn't make any
24 difference, does it, in 1998 and '99 whether he took \$3 million
25 out of that company or not because he had --

1 A. No, he was still solvent even with my -- what my
2 adjustments were.

3 Q. And the Z-Score is 8.3, which is substantially larger
4 than 2.6 base line?

5 A. Right.

6 Q. Now, how -- give me some understanding how those numbers
7 relate. How good is an 8.3?

8 A. Well, 8.3 is just -- it's just a number.

9 Q. As opposed to 2.6?

10 A. It's -- it's considerably better than 2.6. It would
11 indicate a company that's not heading toward insolvency. It's
12 just -- the test was devised as a -- to look at a company and
13 say go or no go. Is it heading toward insolvency or not?

14 Q. All right. Well, I see that in both -- well, actually in
15 1999 the Z-Score was higher than '98. It was 8.4. And then it
16 goes to a negative, if I understand your chart in 2000.

17 A. Right. And negative, of course, is not good.

18 Q. And I have tried to stay out of politics for a while, but
19 as I understand it, 2000 was a watershed year for video poker.
20 It was the undoing of video poker. Am I correct?

21 A. I really don't know. 2000?

22 Q. Uh-huh.

23 A. Oh, you mean as far as the law goes?

24 Q. Yeah.

25 A. Basically undone in the last part of '99 and certainly

1 undone by 2000.

2 Q. Okay. Now, it doesn't make any difference to me whether
3 you book the 1.7 million in '98 or '99, nor does it make any
4 difference to the health of the company in 1990, does it?
5 1998.

6 A. No. No. It would have been -- even if you hadn't booked
7 that it would be even more solvent.

8 Q. Right. I haven't looked at all the evidence yet, so tell
9 me why you singled out distributors like Nichols, Andrews
10 Aviation and H&J. What caused you to do that? Because I
11 haven't seen all the expenditures. I don't know. There might
12 be some others out there.

13 A. Okay. One of the things -- one of the textbook things
14 you're supposed to look for in a company that's heading toward
15 insolvency is if they're making payments that are discretionary
16 in nature. And when we were -- when I was going through the
17 ledgers for these years, all I did was try to highlight
18 expenditures that appeared to be, number one, sizable expenses
19 that didn't appear to have anything to do with the main
20 business of the company. They weren't payments to --

21 Q. Well --

22 A. -- electronic board manufacturer or whatever.

23 Q. Right.

24 A. Second thing would be that they were large and that they
25 possibly had some -- there was some possibility that they would

1 be discretionary in nature. Now, I was at somewhat of a
2 disadvantage because in my position I don't have full access to
3 the records as I would if I was the CPA for the company, so my
4 idea was just to highlight these large expenditures.⁵ And it
5 could be that they are perfectly legitimate both in the nature
6 of those expenses and at their particular magnitude, but that's
7 why they were highlighted. Why would a company like this that,
8 you know, would not appear to bring customers in, why would
9 they, you know, have to be making large expenditures to a
10 furniture and interior decorating company? What is that?

11 Q. Well, unfortunately for the last 14 years these video
12 poker people were very litigious, and I've had to try several
13 of them. Let me suggest to you that they're -- they were cash
14 happy until the legislature undid them or the Supreme Court.
15 Am I to understand that the \$3 million dividend paid to Mr.
16 Andrews in '99, I guess, was that unreasonable in light of the
17 value of the company?

18 A. They certainly had a huge cash flow.

19 Q. That's mostly what they had was cash.

20 A. And, you know, again, I'm not making any judgment as to
21 whether it's -- whether it was reasonable that year, but I
22 guess I am making a judgment saying they knew there were things
23 in place that might cause video poker to go away and a prudent
24 man would try to shore up their assets and make some plans to
25 do something else, have a plan B instead of pulling most of the

1 cash out of the company. And, again, I was just trying to
2 highlight that. And in this particular case it wasn't like
3 there was any one thing that pointed toward this kind of
4 behavior, but a whole group of things. This is what I call
5 dysfunctional management behavior, pulling money out and
6 spending money on items that didn't seem to be directly related
7 to the business, that kind of thing.

8 Q. Using your normalization adjustment technique,
9 notwithstanding how they kept their books, why did you not
10 assign value to the 200 machines that they still had for
11 purposes of adjusting the true picture of the company? And I
12 don't know what they're worth. Assume they have value.

13 A. Well, for 2000 and 2001 really basically made the
14 assumption that they had a very low value. That was -- that
15 was my implicit assumption.

16 Q. I haven't looked at the receivables yet. I assume you
17 did. Were most of those receivables from other video type --
18 video poker type folks?

19 A. Yes.

20 Q. And would it be reasonable to assume that they were all
21 baling out, business is over, therefore I'm not going to pay?

22 A. Yeah. There were probably a number of them that were
23 like that. I think not all of them were in-state. You'd
24 really have to go through one by one. But that would probably
25 be a good exercise to do because they do -- they're different

1 in character. In other words, there are some were just
2 in-state buyers, and, yeah, that's kind of a no brainer. They
3 wouldn't -- after a point in time that machine would be
4 producing nothing.

5 Q. Right.

6 A. But then there were other buyers that really fell in a
7 different category.

8 THE COURT: All right. Anybody else need to ask
9 anything? I'll give you a chance if you do.

10 MR. BYRD: Nothing from us, your Honor.

11 MR. HODGE: (Shakes head negatively.)

12 THE COURT: All right. Thank you, sir. Who is your
13 next witness?

14 MR. PAYNE: Your Honor, we're just going to introduce
15 the deposition testimony of --

16 THE COURT: You got the printouts as to -- I mean --

17 MR. PAYNE: Of the designation?

18 THE COURT: Of the designations.

19 MR. PAYNE: Yes, sir. We will need to grab those.

20 MR. BYRD: Your Honor, we need a little clarification
21 about how you want us to proceed here. There's some confusion
22 about it.

23 THE COURT: I don't want to hear it one time and then
24 read it again, so what I'd prefer you to do is give the
25 designations to the court reporter. Give me a copy and each of

1 y'all share a copy and I'll read those. Now, if you feel it's
2 necessary to speak a little bit about some of the depositions,
3 I don't mind that, but I'll be -- I'm certainly going to read
4 whatever is given me.

5 MR. PAYNE: If I've got pages, do you want me to read
6 them into the record or just hand them to --

7 THE COURT: No, just give the court reporter a copy
8 or we'll give her a copy.

9 MR. PAYNE: Would you like a copy of the actual pages
10 that were designated for your use?

11 THE COURT: Sure. Yes.

12 MR. PAYNE: All right. Let's see, Mike Fletcher now
13 is a witness that's now unavailable, and they have agreed -- we
14 have agreed that they can use that deposition in their case.
15 I'm not sure which pages.

16 MR. COGGINS: Your Honor, on Mr. Fletcher's
17 deposition what we propose to do, Mr. Payne had some excerpts
18 that he wanted to introduce. Now as a result of Mr. Fletcher's
19 unavailability we would like to submit the entire deposition.

20 THE COURT: Okay. But I really -- okay. I just need
21 to know what he wants me to publish.

22 MR. PAYNE: Here is the designations for Mr.
23 Fletcher.

24 THE COURT: Now, we're talking about -- Mr. Coggins
25 we're talking about Mr. Fletcher's deposition of 12/19/05?

1 MR. COGGINS: Yes, sir.

2 THE COURT: Okay. I got you.

3 MR. PAYNE: These are the actual pages for your Honor
4 and your law clerk's reference for Mr. Fletcher. We also have
5 Ms. Claudia Humphries. Do you want a copy too? I can maybe
6 save you some time. This would be for your Honor. Do we need
7 the originals? This would be the original for Mr. Fletcher,
8 then the originals for Ms. Humphries.

9 THE COURT: Ms. Humphries is going to testify?

10 MR. COGGINS: Yes.

11 MR. PAYNE: Do you want to keep these?

12 THE CLERK: No, sir, I've got copies. I'll just make
13 copies of the pages.

14 THE COURT: All right. Now, y'all understand except
15 for Mr. Fletcher now only those designated portions of Ms.
16 Humphries deposition will be put into the record?

17 MR. COGGINS: Yes, sir. And I wanted to check on
18 that. When Mr. Payne had provided us with the proposed
19 excerpts with Ms. Humphries, we did have one responsive
20 excerpt. Jeff, did you add that to your list?

21 MR. PAYNE: I think so, but double check.

22 MR. COGGINS: If not I have that excerpt here.

23 MR. PAYNE: Which page was it?

24 MR. COGGINS: It was page 59, line 25 through page 60
25 line 7 page.

1 MR. PAYNE: It's in there.

2 MR. COGGINS: That will do it.

3 MR. PAYNE: Also, your Honor -- your Honor, I'll be
4 glad to summarize any of this if you're interested.

5 THE COURT: I'll read it.

6 THE CLERK: These are all the same people.

7 MR. PAYNE: That's three of Ms. Andrews, yes, sir.
8 This will be the original for her. And then we have Mr. Travis
9 Owens. I'm just proud I have all the originals, Judge. I
10 actually found them all.

11 THE COURT: Do y'all do this different in Florence?
12 Do they take the whole deposition down there and scan it in?

13 MR. PAYNE: I think.

14 THE COURT: We're lean and mean up here.

15 MR. PAYNE: Getting too much paper. And then lastly,
16 your Honor, Mr. Pennington and Mr. Grevelis. They will have
17 the originals of those, and I don't have copies of the actual
18 pages for these two, but since they were cross-examining them
19 in Mr. Grevelis' deposition and Mr. Pennington I have the
20 designations here, but I don't have copies of those.

21 MR. HODGE: Judge, I was going to have somebody go
22 back and make copies of the specific pages. I don't have
23 copies, but I've got the designations.

24 THE COURT: No need to go to that trouble. Just give
25 me the designations because I've got --

1 MR. PAYNE: I was going to say they actually have it
2 as their exhibit. And let me double check because I had added
3 some pages. In my e-mail to y'all I added six or seven pages.

4 MR. PAYNE: I don't have y'all's either.

5 (Attorneys conferring off the record.)

6 MR. HODGE: This is for Grevelis and Pennington from
7 our standpoint.

8 THE COURT: For the plaintiff? All right.

9 MR. HODGE: For defendants.

10 THE COURT: I mean defendants.

11 MR. HODGE: But we've got them all included.

12 THE COURT: Okay. All right. Let me make sure what
13 I've got here now. I've got Travis Keith Owens. I've got
14 Pamela Andrews. I've got -- I've got Claudia Humphries and
15 Mike Fletcher's designations by the -- by the defense and the
16 entire deposition's going to be used by the defendants. And
17 then I have Grevelis. Is that everything?

18 MR. PAYNE: And Pennington.

19 THE COURT: Pennington. I haven't got Pennington
20 yet.

21 MR. PAYNE: And is the errata sheet in the original
22 on Pennington? The errata sheets are in their exhibits. I was
23 just --

24 MR. COGGINS: Defense exhibit includes the entire
25 Pennington and Grevelis depositions and errata sheets are in

1 there.

2 THE COURT: All right. I've got them.

3 MR. PAYNE: I don't see the errata sheet in Mr.
4 Pennington's, but it is part of their trial exhibit, your
5 Honor. That would go with this. Plaintiffs rests.

6 THE COURT: All right. Now, let's make sure Mr.
7 Bostic and I are on the same page here. All right. We've got
8 Grevelis and Pennington in the book here.

9 THE CLERK: Yes, sir.

10 THE COURT: I don't need the original.

11 THE CLERK: Okay.

12 THE COURT: We've got Owens, Pamela Andrews.

13 THE CLERK: Yes, sir.

14 THE COURT: Claudia Humphries.

15 THE CLERK: Yes, sir.

16 THE COURT: Mike Fletcher.

17 THE CLERK: Mike Fletcher.

18 THE COURT: Is that it?

19 MR. COGGINS: That should be it.

20 THE CLERK: Then yesterday, sir, they read out of
21 this first one on Mr. Andrews.

22 THE COURT: Correct.

23 THE CLERK: But I'll just make copies of that for the
24 court.

25 THE COURT: Copies of that is fine. Motions.

1 MR. COGGINS: Your Honor, on behalf of Drews at this
2 point we would have no motions. We acknowledge that the
3 judgment against Drews Distributing is enforceable against
4 Drews Distributing. The only assets that we have are the 200
5 Odyssey machines which are still available for tender.

6 THE COURT: All right. Mr. Hodge.

7 MR. HODGE: Your Honor, on behalf of Mr. Hugh Andrews
8 we ask for dismissal of the claim against him. They have not
9 presented evidence sufficient to justify piercing the corporate
10 veil. Clearly this case is far stronger from the defendants'
11 standpoint than Sturkie was. Each element has been addressed
12 and they simply have lacked the proof to justify piercing the
13 corporate veil, so we ask that he be dismissed as a party
14 defendant.

15 THE COURT: All right. I would deny your motion at
16 this time. Of course, you're well aware that this is an equity
17 case, so we just need to hear it all out.

18 MR. HODGE: Yes, sir.

19 THE COURT: Let's take a short break. How many
20 witnesses have y'all got?

21 MR. COGGINS: Your Honor, on behalf of Drews we will
22 be calling Ms. Humphries and Mr. Owens and that's all. I will
23 have -- I believe Mr. Hodge will have one or two witnesses.

24 THE COURT: All right. I have an engagement where I
25 need to leave about 4:30 this afternoon, so --

1 MR. COGGINS: I don't anticipate I'll be long with
2 either one.

3 THE COURT: Okay. I mean I've got the rest of the
4 week, but I know y'all would like to get back to Florence.

5 MR. COGGINS: Yes, sir.

6 THE COURT: Okay. Take a short break.

7 (Brief recess at 10:56 am. Reconvened at 11:12 am.)

8 THE COURT: All right. Let's see, Mr. Coggins, you
9 want to go first?

10 MR. COGGINS: Yes, sir. Your Honor, at this time we
11 call Mrs. Claudia Humphries around.

12 IRIS CLAUDIA HUMPHRIES, Defendant's witness, sworn

13 DIRECT EXAMINATION BY MR. COGGINS:

14 Q. All right. You are Claudia Humphries?

15 A. I am.

16 Q. Where do you live, Ms. Humphries?

17 A. 1854 Melvin Hill Road, Campobello, South Carolina.

18 Q. And are you currently employed?

19 A. I am.

20 Q. Where do you work?

21 A. For Drews Industries.

22 Q. And how long have you been affiliated with Drews
23 Industries?

24 A. For 12 or 14 years maybe.

25 Q. All right. And were you at any time employed by Drews

1 Distributing, Incorporated?

2 A. I was employed also by Drews Distributing until 2002.

3 Q. All right. And what was your position -- excuse me, what

4 is your position with Drews Industries?

5 A. I'm bookkeeper.

6 Q. Okay. What was your position with Drews Distributing?

7 A. Bookkeeper, Human Resources, office manager.

8 Q. All right. And did you hold that position for some

9 period of time with Drews Industries?

10 A. With Drews Industries I've been there since -- for 12,

11 14 years.

12 Q. Okay. And I'm sorry, I misspoke. How long did you hold

13 those positions with Drews Distributing?

14 A. From 2002 -- 1987 to 2002.

15 Q. All right. And did you work --

16 A. Excuse me.

17 Q. Excuse me?

18 A. 1983.

19 Q. 1983 to 2002?

20 A. Yes.

21 Q. All right. And if you would please, explain to the court

22 in speaking of your time with Drews Distributing, explain to

23 the court sort of what the scope of your duties were in those

24 positions.

25 A. Well, they sort of changed a little bit, you know. At

1 first I was kind of like the head bookkeeper, and then when I
2 went to school I learned bookkeeping manually. When we moved
3 into the new building and hired Mike Fletcher, he wanted the
4 stuff done on computer. I kind of shied away from that and
5 said that, you know, they could hire somebody that was more
6 computer literate than I was. And so I went over into the
7 Human Resources, kind of became like Hugh's personal secretary,
8 but stayed in the accounting somewhat.

9 Q. All right. Now, in this case the plaintiff has primarily
10 focused on the years from 1998 to 2002 and, Ms. Humphries, I
11 want to focus on those years.

12 A. Okay.

13 Q. You indicated that there was some change in your duties
14 at some point with respect to the computerization of the
15 records and that type thing?

16 A. Right.

17 Q. Approximately when did that occur?

18 A. That would have been '97-'98 when we moved into the new
19 building.

20 Q. Okay. And after 1997-'98 did you have any responsibility
21 for making ledger entries or preparing checks or recording
22 checks or reconciling statements for Drews Distributing?

23 A. Very little. On occasion I would do manual checks if
24 Mike was out of the office or something and was required to
25 have a check signed that they need to go pick up something, I

1 was signer on the account, I could do that, but the checks were
2 all done on the computer. He signed all the checks or most of
3 the checks.

4 Q. All right. And who was handling those bookkeeping
5 functions in those years for Drews Distributing?

6 A. There was a variety of girls. Tess Knight and Hope,
7 April, Sandy.

8 Q. All right. Anybody in particular?

9 A. Tess and Hope did most of it.

10 Q. All right. And you said that the company hired Mr.
11 Fletcher. What was Mr. Fletcher's title when he was hired?

12 A. He was to be the president.

13 Q. And so he was president of Drews Distributing for this
14 entire period, this 1998 through 2001, 2002?

15 A. Correct.

16 Q. And in his position as president did he make the
17 day-to-day decisions for the company?

18 A. Yes, he did.

19 Q. Was he your boss?

20 A. Yes, he was.

21 Q. And did he give you direction about what to do?

22 A. Yes, he did.

23 Q. All right. Now, with respect to Mr. Andrews, Mr. Hugh
24 Andrews, was he involved in the day-to-day running of the
25 company in those years?

1 A. No, he was not.

2 Q. Was he even physically present during those years?

3 A. Not very often.

4 Q. And with respect to his personal accounting or
5 bookkeeping, his personal checking account and that type thing,
6 was there a totally different person who kept up with that?

7 A. Yes. That was Patty Clayton.

8 Q. All right. And tell me a little bit about how checks
9 would be issued if you had -- you said that sometimes you would
10 sign checks because you were signer on the account. If you had
11 bills to pay at the end of the month, just how did the company
12 go about handling that?

13 A. They would just put the invoices and what not into the
14 computer when they came in, and then like each Friday Tess
15 would run the bills that had to be paid and stuff. She'd just
16 run the checks, attach the checks to the invoices, lay them on
17 Mike's desk. He signed them. She mailed them. She put them
18 into the register and took care of them.

19 Q. All right. And if Mike was not available, would that be
20 the situation where you would sign the checks?

21 A. If they could not wait until he returned then I would
22 sign them, but usually she either did them in advance if she
23 knew he was leaving town.

24 Q. Okay. Who had the authority or who exercised the
25 authority to determine what bills were paid and what checks

1 were signed?

2 A. Mike most of the time.

3 Q. All right. Who else would do that?

4 A. On occasion I would.

5 Q. Okay. Now, did the company have certified public
6 accountants who prepared periodic financial statements,
7 prepared the taxes, did those type things?

8 A. Yes, we did.

9 Q. And who was that?

10 A. Eddie Brown's office has done it for -- since I was
11 there. In fact, I was hired through Eddie Brown's office to
12 work for Hugh because I had worked with him prior to going to
13 work for Hugh.

14 Q. All right. And with respect to payment of taxes and
15 distributions to the shareholder and that type thing, what role
16 did the accountant's office play over the years in your
17 experience?

18 A. When they would do the tax return at the end of the year,
19 they would just figure up estimated tax payments, give those to
20 Patty and she would just when the time came take care of them.

21 Q. All right. If there was a check issued by Drews
22 Distributing, what was your -- to Mr. Andrews, for example,
23 let's say a dividend check, what was your experience about how
24 that would be generated?

25 A. It -- I don't recall any one specific time that Hugh ever

1 came to me and asked for a dividend check. It usually came
2 from Patty in regards to taxes or most of the time I'm thinking
3 taxes that she would come and say, "I need to get a dividend
4 check for Hugh so that we can make his estimated tax payment."

5 Q. All right. Tell me about the effect on the business at
6 Drews Distributing when video poker became illegal.

7 A. Well, I guess we all sort of saw it coming and so we knew
8 that there were going to be hard times ahead and what not and a
9 lot of people were going to lose their jobs and it just kind of
10 played out that way.

11 Q. All right. Now, in 1999 did the company start making
12 layoffs because of the political climate regarding video poker?

13 A. I'm sure we laid a few people off, I'm sure.

14 Q. And did those layoffs continue?

15 A. Yes, they did.

16 Q. All right. And who was the last employee of Drews
17 Distributing?

18 A. Me.

19 Q. And you left in 2002?

20 A. Yes.

21 Q. And effectively you just went to the payroll of a
22 different company?

23 A. Correct.

24 Q. What, if anything, did you know about this dispute with
25 Silicon Gaming?

1 A. Very little. I would hear, you know, Mike and Nate or
2 Travis and Hugh talking a little bit, but, you know, I was not
3 on the inside loop of that.

4 Q. Based on your observations who was primarily responsible
5 for meeting with the lawyers and coordinating the efforts of
6 the company in connection with that dispute?

7 A. Mike.

8 Q. Mr. Fletcher?

9 A. Yes.

10 Q. And was he making all of the operational decisions during
11 that period of time?

12 A. Yes.

13 Q. Did you have any personal knowledge of the assignment of
14 assets to Mr. Andrews in November of 2002?

15 A. I did gather together some of the records and what not.
16 I didn't know exactly what it was for, but -- at that time and
17 then later I became aware of what it was for.

18 Q. All right. And who requested that you gather those
19 records together?

20 A. I'm not exactly certain. I think it was Ten State Street
21 and then, you know, I'm not even sure if Mike Fletcher was
22 involved at that time, but I think he was, but I think it was
23 Ten State Street.

24 Q. All right. Now, when did Drews finally wind up for all
25 intents and purposes? Was that when you left the payroll or at

1 some earlier point?

2 A. I'm sorry.

3 Q. When did Drews Distributing, excuse me, finally wind up
4 for all intents and purposes?

5 A. 2002.

6 Q. 2002?

7 A. Yes.

8 Q. Now, one of the items that was included in the assignment
9 of assets to Mr. Andrews was some accounts receivable from
10 Tri-Star. Are you familiar with that?

11 A. Somewhat, yes.

12 Q. All right. And had Drews Distributing been keeping up
13 with the Tri-Star balance and carrying those receivables?

14 A. Yes.

15 Q. To the best of your knowledge though had there been any
16 payments by Tri-Star on those receivable?

17 A. There might have been a few incidental small invoices
18 that were taken care of when the account first opened, but, no,
19 not toward the end, no.

20 Q. When you say towards the end, I'm talking about in this
21 '98, '99, 2000 period.

22 A. No. No.

23 Q. Now, after the assignment of assets there was still
24 furniture and equipment at Drews Distributing, was there not?

25 A. Correct.

1 Q. And were you aware that there were still these Odyssey
2 machines in storage?

3 A. Yes.

4 Q. Are you familiar with the business known as AdSpace?

5 A. Somewhat, yes, I know.

6 Q. Okay. And what was your understanding of the purpose of
7 AdSpace?

8 A. I know we purchased some plasma TV screens that we tried
9 to put some out in the rest areas, that we did some work down
10 at Myrtle Beach. There was a lady that was hired to do some of
11 that, Louise Welch. Other than that I really don't know a
12 whole lot about it.

13 Q. All right. Do you know about the relationship between
14 Drews Distributing and AdSpace as far as the companies?

15 A. I know it was a totally different owned company. It was
16 a separate company entity completely, but I'm not even -- I
17 think Hugh owns it all, but I'm not even completely sure of
18 that.

19 Q. All right. And were Drews Distributing employees used in
20 this attempt to start up AdSpace?

21 A. Some of them were. They kind of were transferred over to
22 those roles and then we did hire a couple, yes.

23 Q. All right. And was that a way to keep from having to lay
24 those people off?

25 A. Absolutely.

1 Q. Now, during this period of time, again talking about this
2 2000, 2001, 2002 video poker has gone away, did Mr. Andrews
3 have to loan money to the company in order for your employees
4 to be paid and your bills to be paid?

5 A. Yes.

6 Q. And did he do so?

7 A. He certainly did.

8 Q. And you've seen the summary of the notes and the deposits
9 that are in evidence, and it shows 16 loans over this period, a
10 total of about \$2.1 million?

11 A. (Nods head affirmatively.)

12 Q. Were you aware that there were a significant number of
13 loans both in number and amount?

14 A. Yes, I was.

15 Q. During the period of time in 2000 and 2001 after the
16 video poker had gone away were you aware of Mr. Fletcher and
17 others affiliated with Drews Distributing making a number of
18 trips to various places trying to seek out new markets?

19 A. Yes, I was.

20 Q. And was that something that was done on a regular basis?

21 A. It seems like it was kind of confined to like within a
22 six months time and stuff that they did like four or five trips
23 that I know they went to the Dominican and Venezuela and
24 Belize, and it seemed like there were a couple other places in
25 there too.

1 Q. And during the period of time they were trying to make a
2 go of the AdSpace business did they also make trips to --

3 A. Yeah.

4 Q. -- meetings, shows, seminars, and video distributors
5 licensees, that type thing to try to set up that business?

6 A. Sure. They went to the West Coast several times, went to
7 Las Vegas a couple of times, seems like a place in the Midwest
8 once or twice.

9 Q. All right. And Mr. Fletcher was still driving the bus on
10 this, was he not?

11 A. Yes, he was.

12 Q. Now, with respect to payment of expenses, credit card
13 expenses, fuel expenses, business expenses, who was responsible
14 for reviewing those and approving those at Drews Distributing
15 during this period of time?

16 A. Mike was.

17 MR. COGGINS: That's all I have. Please answer any
18 questions --

19 THE COURT: Cross-examination, Mr. Payne.

20 CROSS-EXAMINATION BY MR. PAYNE:

21 Q. Ms. Humphries, just a few questions for you. So in '99
22 and 2000 you were not handling the books and records for Drews
23 Distributing, were you?

24 A. Not solely. Tess was still there, so she was still doing
25 most of it, but, yeah, somewhat I was involved.

- 1 Q. I think at your deposition you said, "I really wasn't
- 2 doing all that much in '99 and 2000 for Drews Distributing."
- 3 A. Right.
- 4 Q. "Tess was handling the books."
- 5 A. Yes.
- 6 Q. Okay. But you did handle the bookkeeping for Drews
- 7 Distributing -- I mean Drews Industries?
- 8 A. Yes.
- 9 Q. Also known as Drews Gaming?
- 10 A. Correct.
- 11 Q. Crown?
- 12 A. Yes, sir.
- 13 Q. Powertronics?
- 14 A. Yes.
- 15 Q. Drews, LP?
- 16 A. Yes.
- 17 Q. And y'all did all that accounting at the Drews
- 18 Distributing facility, didn't you?
- 19 A. Yes, we did.
- 20 Q. And you kept the books of Andrews Aviation?
- 21 A. Somewhat I did that also.
- 22 Q. Andrews Aviation was a separate corporation that Mr.
- 23 Andrews owned, wasn't it?
- 24 A. Correct.
- 25 Q. And that Andrews Aviation, had they filed a consolidated

1 return --

2 A. I believe so.

3 Q. -- I believe with Drews Distributing. Is that right?

4 A. I believe so.

5 Q. The Tri-Star debt, which I think you started keeping like

6 a manual ledger --

7 A. Correct.

8 Q. -- for Tri-Star? Look at Exhibit 65B. Help you with

9 that one. It's a little tricky to find. It's D-2. And is

10 that the ledger you referred to that's on Plaintiff's

11 Exhibit 65D-2?

12 A. Yes.

13 Q. All right. It reflects no payments being made by Drews

14 -- by Tri-Star to Drews, does it?

15 A. No, it does not.

16 Q. And you started keeping up with that ledger it was around

17 2001 sometime?

18 A. Yeah, I think it was transferred over in 2000 or 2001,

19 yes.

20 Q. 2001?

21 A. Yes, sir.

22 Q. Now, I think you told me at your deposition that somebody

23 did ask you for some minutes of board of directors meetings,

24 and I think you had a file of some of sort. Is that right?

25 A. There was a file at one time, but, you know, I don't know

1 if it was in the transference of moving to the new building or
2 exactly, but. . .

3 Q. And the new building was in '97, right?

4 A. '97, '98, I'm not certain. Some place in that point.

5 Q. All right. And you were here yesterday when you looked
6 at Mr. Brown's notes in his financial statement or we talked
7 about Mr. Eddie Brown's notes and he stated that in his letter
8 to Drews Distributing --

9 A. Right.

10 Q. -- that there were no minutes of any meetings, were
11 there?

12 A. That he was inquiring about if there had been any
13 meetings or there should be some meetings, yes.

14 Q. And when the distributions were being made to Mr. Andrews
15 in 1999, there were no minutes from any board of directors
16 meetings authorizing those distributions, was there?

17 A. I wouldn't know about that. I was not included at board
18 meetings, so I don't know.

19 Q. But you were his personal secretary. Wouldn't you know
20 about that?

21 A. No. I mean I kept track of his appointments and what
22 not, but as far as included in board meetings, no, I was not.

23 Q. Okay. But you were not aware of any board minutes
24 authorizing any distributions to Mr. Andrews in 1999, were you?

25 A. I knew there was a file of minutes that I had seen at one

1 time and we could not locate them.

2 Q. All right. But that was prior to the move to the new
3 building, wasn't it?

4 A. I said I don't know if they had gotten lost during that
5 time, I just had not looked for them or there was no need to
6 look for them or what.

7 Q. And the distributions that were made to Mr. Andrews in
8 1999, several of those, the dividends distributions, you signed
9 the checks for them, didn't you?

10 A. Yes, I did.

11 Q. And you had basically informed Mr. Andrews, I think, on
12 some of them that you needed money in order to pay the bills
13 for Dreds Distributing, didn't you?

14 A. (No response.)

15 Q. That you needed the money from Mr. Andrews -- let me back
16 up -- the loans from Mr. Andrews?

17 A. Talking about the evidence, right?

18 Q. Okay. When you asked him to borrow some money or he
19 needed to loan the money, you told him we need some money to
20 pay the bills?

21 A. Sometime I would either ask him or if I knew Mike was
22 going to talk to Hugh, I would ask Mike to tell Hugh that we
23 needed some money or if Patty was going to talk to Hugh, then
24 she would do it. There were times that we couldn't locate Hugh
25 and that we just did it.

1 Q. And the first loan they have referenced here in August
2 the 7th of 2000 was a \$500,000 loan?

3 A. (Nods head affirmatively.)

4 Q. And I believe you had testified earlier that we needed
5 the money to pay the bills. Wasn't that correct?

6 A. Yes.

7 Q. And Mike Fletcher, he actually quit working at Drews
8 Distributing in 2001, didn't he?

9 A. I think -- I'm not exactly sure what the timeline was
10 when he quit drawing a salary and then he just drew like a
11 consulting fee for a while. He wasn't there full-time, no.

12 Q. Okay. In 2002 he was not there full-time, was he?

13 A. No, sir.

14 Q. Exhibit 72. I believe you have that one if you would
15 just flip over to those. And those are the American Express
16 bills that were paid by Drews Distributing, and I note a lot of
17 them have the words "Tri-Star" written on them or "AdSpace"
18 written on them if you look to the actual -- let's look at --

19 A. To the receipts.

20 Q. -- on Exhibit 72. Flip back there -- they're in
21 chronological order -- to the October statement, check number
22 6682 is attached to it. Keep going. I think the next one.
23 They are stapled.

24 A. Okay.

25 Q. Try that one.

1 A. Okay.

2 Q. All right. If you flip through the October statement for
3 the American Express bill and you see the charges that are to
4 Tri-Star AdSpace?

5 A. Okay.

6 Q. And Mr. Fletcher would actually write Tri-Star on those
7 charges, wouldn't he, so that you would keep up with who the
8 bill was for?

9 A. So that Tess would keep up with it.

10 Q. Tessa was doing it or Tess was doing it?

11 A. This is her writing on the front of it.

12 Q. Okay. And there's actually a separate set of books kept
13 for AdSpace, wasn't there?

14 A. Yes. She did keep a separate set of books, I believe.

15 Q. Yet this check was written off the Drews Distributing
16 account to pay this bill, wasn't it, Ms. --

17 A. Yes. AdSpace wasn't generating enough income to pay all
18 the bills, so we would just put it in as a loan from Drews.

19 Q. Drews had to pay those bills?

20 A. Yes.

21 Q. Well, how about Tri-Star, it had to pay Tri-Star's bills
22 too, didn't it?

23 A. I think usually -- I don't know exactly how it was
24 handled. Like I said, I was not that involved with it and I
25 don't know if it was added to their account or if we just

1 reimbursed it and then later got a check back from Tri-Star. I
2 don't -- I don't know. I'm sorry.

3 Q. But no doubt that Drews Distributing is paying the bills
4 for Tri-Star and for AdSpace?

5 A. The check is generated from Drews Distributing account,
6 yes.

7 MR. PAYNE: Beg the court's indulgence. That's it,
8 your Honor.

9 THE COURT: Anything further, Mr. Coggins? Mr.
10 Hodge, you got any questions?

11 MR. HODGE: No, sir.

12 THE COURT: Thank you, ma'am. You may step down.
13 Call your next witness.

14 MR. COGGINS: Your Honor, at this time we'd call Mr.
15 Travis Owens.

16 TRAVIS K. OWENS, Defendant's witness, sworn
17 DIRECT EXAMINATION BY MR. COGGINS:

18 Q. Mr. Owens, where do you live?

19 A. 221 Jacob Creek Drive, Inman, South Carolina.

20 Q. And are you currently employed?

21 A. Self-employed.

22 Q. And what do you do?

23 A. I have some rental property, own a small percentage in a
24 local family run bakery and I have about 15 locations I run
25 amusement equipment, pool tables, jukebox, arcade type stuff.

- 1 Q. All right. And how long have you been in that business
- 2 for yourself?
- 3 A. The rental business probably started in '03, the bakery
- 4 in '97-'98, the amusement probably middle of '03.
- 5 Q. All right. Prior to 2003 were you employed at some point
- 6 by Drews Distributing, Incorporated?
- 7 A. Yes, sir.
- 8 Q. When were you working at Drews Distributing?
- 9 A. I believe I started part-time employment in '93.
- 10 Q. All right. And was that while you were in school?
- 11 A. I was in college, yes, sir.
- 12 Q. And did you go to work full-time after you got out of
- 13 college?
- 14 A. Upon graduation I was offered a full-time position late
- 15 '95, '96.
- 16 Q. And how long did you work at Drews?
- 17 A. Until 2000, and then I think I was moved over to Drew
- 18 Industries for about six months and then opted out and went out
- 19 on my own.
- 20 Q. Okay. So you were there until sometime in mid 2001 --
- 21 A. Yes, sir.
- 22 Q. -- thereabouts?
- 23 A. Yes, sir.
- 24 Q. What were your job duties at Drews Distributing?
- 25 A. Initially it was part-time. They allowed me to come in

1 in between classes, days I didn't have any classes. I would do
2 anything from shipping and receiving to parts, working out in
3 the manufacturing area. Then upon graduation Mr. Fletcher was
4 already on board and he basically made me plant manager over
5 the manufacturing end of it.

6 Q. Okay. And what did you manufacture?

7 A. Well, we manufactured change machines which you see in
8 laundries, arcades. Just put a dollar in, get four quarters
9 out. And then we basically distributed various types of gaming
10 equipment, and they would come in partially assembled and then
11 we would install printers, validators, maybe the software and
12 then get them ready for sale.

13 Q. All right. And in the mid to late '90s were most of
14 these machines video poker machines?

15 A. Yes, sir.

16 Q. And during the period of time when you first went to work
17 at Drews was the company experiencing good business?

18 A. Yeah, I would say so.

19 Q. All right. Moving a lot of machines?

20 A. Between '96 and early '99, yeah, a lot of equipment.

21 Q. All right. And did you have supervisory duties in your
22 role at Drews?

23 A. Yes, sir. Anywhere from 12 to 18 employees.

24 Q. All right. And to give the court some idea of the size
25 of the company at that time, how many employees all together

1 were there approximately?

2 A. I would say 30, 30 plus.

3 Q. Okay. And again, the plaintiff in this case is focusing
4 on the period of time from 1998 to 2002, so I want to focus on
5 that period of time at least up through the time you were still
6 there.

7 A. Okay.

8 Q. During that period of time who was in charge of Drews
9 Distributing?

10 A. I answered to Mike Fletcher.

11 Q. And as far as day-to-day operational decisions, was it
12 your impression that Mr. Fletcher was making all those
13 decisions?

14 A. Yes, sir.

15 Q. Did Mike handle the payment of bills? Did Mike sign the
16 checks?

17 A. That I don't know a whole lot about. I wasn't in that
18 department. I was making sure purchase orders were placed, I
19 got my equipment in so I could get the equipment out.

20 Q. Okay. And was Mike your boss with respect to what
21 equipment got shipped, what equipment came in, all those type
22 duties that you --

23 A. The larger POs he authorized. If it was smaller items,
24 myself or other employees had to do those, but the big ticket
25 items came through him.

1 Q. All right. And during that period of time did you see
2 very much of Mr. Andrews at all?

3 A. Not a whole lot.

4 Q. All right. And did you have any understanding about
5 whether or not during this period of time Mr. Andrews had had
6 an impairment as a result of a drug addiction?

7 A. Yes, sir.

8 Q. All right. And based on your knowledge there at the
9 company and based on any interaction you may have had with Mr.
10 Andrews did you believe that to be the case?

11 A. The few times that he was in and visibly seeing him or
12 speaking, yeah, you could tell.

13 Q. All right. And during this period of time was Mr.
14 Andrews living at home with his wife?

15 A. Not to my knowledge.

16 Q. All right. Were you aware of him having several
17 girlfriends during this period of time?

18 A. Yes, sir.

19 Q. And did he live with two or three of them in various
20 locations at various times?

21 A. From my understanding, yes.

22 Q. All right. And that would -- all of those were outside
23 of Spartanburg County?

24 A. Yes, sir.

25 Q. All right. Let's talk about this Silicon Gaming

1 transaction. Were you involved in that in any way?

2 A. Pretty much from the beginning that was -- when we moved
3 in the mill building in March of '98, Kevin Peterson came out,
4 a representative for SGI. Kevin and I got along fine. I was
5 given that as my project.

6 Q. And what was the project?

7 A. We were looking for a new game to bring into the state.
8 I think our exclusive distributorship agreement with Leisure
9 Time was coming up late '98, middle of '99 -- I'm not sure
10 specific dates -- so we were trying to get a new product line
11 to introduce in the state. And since I had been there so long
12 I kind of knew the parameters that the state operated under, so
13 I was the chosen one to work with SGI's employees to get a game
14 ready for South Carolina.

15 Q. All right. And in 1998 when SGI shipped 200 Odyssey
16 machines to Drews Distributing, had you placed an order for
17 those machines?

18 A. Me personally, no, and to my knowledge I don't think a PO
19 was ever generated.

20 Q. Well, in being in charge of that project and being in
21 charge of the shipping and receiving, were you expecting those
22 machines when they showed up?

23 A. I was expecting 20, not 200.

24 Q. Okay. And what was the reason for the 20?

25 A. I think in '97 at the World Gaming Congress out in Vegas

1 usually held October, November, Mike and Hugh went out, met --
 2 saw this great game, met with them, liked it, decided to take a
 3 few. As a matter of fact, I think they sent us one of the
 4 first 15 units as a demo that was ever manufactured. I
 5 remember it coming in as a white cabinet, this real odd looking
 6 piece of equipment to us generally for what we were used to.
 7 Whether that was a verbal agreement, I don't know, initially on
 8 the 20.

9 Q. All right. When the 200 showed up, were they ready for
 10 play?

11 A. No, sir.

12 Q. All right. And did that cause a problem that you had 200
 13 games all of a sudden?

14 A. They were basically just shipped for us to store. I mean
 15 South Carolina has to run pretty much when we were in business
 16 no coin in, no coin out. Initially the Odyssey was equipped
 17 for a hopper, which would dispense tokens or coins, which is
 18 illegal in the state of South Carolina, so they had to be
 19 adopted for a printer. SGI had never installed a printer, so
 20 that was one of the obstacles we had to get over.

21 Q. All right. And in the weeks and months after the
 22 delivery of these noncompliant machines did you participate in
 23 meetings with SGI representatives trying to get this worked
 24 out?

25 A. Most of my stuff was just transmission over e-mail. I

1 think my first trip out was the middle of '98 I think is when
2 we went out. I actually went to San Francisco for about
3 two weeks and worked with those guys on the platform and the
4 printer issues and that type of stuff.

5 Q. All right. Now, you've been present throughout the
6 trial, have you not?

7 A. Yes, sir.

8 Q. And you've heard reference to Plaintiff's Exhibit 18,
9 which is this letter agreement dated December 21, 1998. Were
10 you part of a meeting around Christmas time in '98?

11 A. I was present on the trip. As far as the actual meeting
12 I recall an SGI employee by the name of Paul Miltenberger and
13 Andrew Pascal and Hugh. I was kind of left out of that because
14 I really didn't have anything to do with the actual
15 distributorship agreement, but I knew when we went out there it
16 was either to lets speed up things or lets end this marriage
17 and hope we can be friends and go on down the road.

18 Q. All right. What was your understanding of the outcome of
19 that meeting?

20 A. I thought it was very good what the games that they had
21 showed us and, you know, I thought it was moving ahead.

22 Q. Okay. Let me ask it another way. What did you
23 understand was supposed to happen after that?

24 A. Oh, as far as that we were supposed to get -- I think the
25 last South Carolina trade show we were having was in -- last

1 one we had was in '99, which was probably around February or
 2 March, April somewhere. It just kind of moved from year to
 3 year as far as the dates. We were hoping to have everything, a
 4 good gaming platform ready by the time of this show to kind of
 5 launch the new era of the Odyssey for all the customers to see
 6 and kind of get this thing going off the ground.

7 Q. All right. And when you say gaming platform, are you
 8 talking gaming platform that would be installed in these 200
 9 machines?

10 A. Yes, sir.

11 Q. All right. And did you ever receive that gaming
 12 platform?

13 A. Not a complete model.

14 Q. All right. And because you never received the complete
 15 or acceptable model, is that what led to the dispute that
 16 ultimately led to the arbitration?

17 A. From my understanding, yes.

18 Q. Okay. And you participated in the arbitration, did you
 19 not?

20 A. Yes, sir.

21 Q. You gave testimony?

22 A. Yes, sir.

23 Q. All right. And you also, Travis, I believe, was sort of
 24 the point man before it got that far in terms of trying to work
 25 things out with Silicon Game, were you not?

1 A. As far as the platform issues and functionality of the
2 game, yes.

3 Q. And, in fact, in Plaintiff's Exhibits there are a whole
4 list of exhibits beginning with Exhibit 20 on down through
5 about 25 that are a series of e-mails in 1999 going back and
6 forth between you and Silicon Gaming where y'all are trying to
7 work this out. Are you familiar with e-mailing them back and
8 forth?

9 A. Yes, sir.

10 Q. All right. And with respect to the arbitration
11 situation, who at Drews Distributing was -- was sort of calling
12 the shots on that? Who was meeting with the lawyers? Who was
13 coordinating the plan of attack?

14 A. Mike Fletcher.

15 Q. All right. And who was making the decisions about what,
16 if anything, would be paid to Silicon and what, if anything,
17 Silicon had to provide in order to get paid?

18 A. I assume Mike, because he was in control of everything
19 else at that time.

20 Q. All right. Now, with respect to the arbitration hearing
21 itself, based on your understanding of the project, your
22 understanding of the transaction, what had gone on, what were
23 your expectations of what would happen at arbitration?

24 A. Going in I didn't think we would lose, you know. The
25 games were there available to be taken back. I didn't -- I

1 didn't foresee the outcome of what happened.

2 Q. Would it be fair to say that nobody involved from Drews'

3 standpoint foresaw the outcome?

4 A. That would be correct.

5 Q. Based on your knowledge of being involved with that

6 situation did everybody expect that you would end up getting

7 money back from Silicon Gaming?

8 A. I don't know as far as that, but I guess me personally

9 felt that, you know, with money that was paid and the games

10 were still there, we would just kind of say, here, take the

11 equipment back and, you know, we'll count our losses maybe and

12 go on. I didn't really know -- I know I've heard mention of a

13 countersuit and all that. I didn't really know the details of

14 that.

15 Q. Did you understand there to be any expectation by Mr.

16 Fletcher or people involved in this that they -- there was any

17 possibility they would owe money at the end of the day?

18 A. No.

19 Q. And I believe you indicated that you left the company

20 some time in 2001?

21 A. Yeah.

22 Q. Now, tell me about how the outlawing of video poker

23 affected the business of Drews Industries, Drews Distributing

24 rather.

25 A. Pretty much detrimental.

1 Q. All right. Did it pretty much take away the only revenue
2 stream the company had?

3 A. At the present time, yeah, I mean that was it.

4 Q. As a result of that did you as the supervisor in the
5 warehouse participate in decisions to try to cut expenses?

6 A. Yes, sir.

7 Q. Did you lay some people off?

8 A. I had to lay -- you know, I kept three or four drivers
9 that would stay in rotation. I had to cut those guys back
10 because sales had kind of dropped off so I didn't need as many.
11 As far as the number of machines that we were ordering, they
12 had cut back, so I didn't need as many people to help get those
13 ready, so, yeah.

14 Q. All right. And when did you start making those cut-
15 backs?

16 A. Mid to late 1999.

17 Q. All right. And did that continue on into 2000?

18 A. Yeah. Predominantly after I think October is when the
19 ruling came down, any employee that was held on was just the
20 sales that we had and then we knew that by, I guess, June 30 of
21 2000 we could no longer warehouse any items that was related to
22 a gaming device, so we needed employees to move that stuff to
23 our next warehouse and wherever, so we cut down.

24 Q. All right. Did you participate in efforts to try to
25 generate revenue during that winding down period?

1 A. I did.

2 Q. Did Drews Distributing try to sell off some of its games?

3 A. Yes.

4 Q. Was there a problem in trying to sell off the games?

5 A. You know, late -- late '99 sales weren't as great, but

6 they were -- they were -- there were sales there and even early

7 in 2000 simply because of the fact we had the games. There

8 were other markets. I know a lot of South Carolina operators

9 went to West Virginia, went to Georgia, went to North Carolina.

10 Just, you know, it's a software change to be able to operate in

11 those areas. They could buy the equipment from us, get the

12 software from Leisure Time direct, and, you know, so there was

13 still a market for them even well on past June of 2000.

14 Q. All right. But in order to market those in other

15 locations you had to be able to get the software changes from

16 the manufacturer, didn't you?

17 A. Yes.

18 Q. And so if the manufacturer refused to provide that, the

19 game would essentially be worthless?

20 A. To us, yes.

21 Q. Okay.

22 A. As far as in South Carolina, yes.

23 Q. All right. Well, as far as anywhere else if it's set up

24 for South Carolina?

25 A. Exactly.

1 Q. All right. Now, with respect to trying to generate
2 revenue, did you also participate in efforts to try to locate
3 other markets where the games could be placed?

4 A. Yeah. I didn't go on any trips, never made a trip to
5 Dominican or Venezuela, all that. Most of my stuff was, you
6 know, Mike -- at that time Mike or we would do Internet search
7 on gaming laws or stuff like that and see if there were any
8 areas that we could go to.

9 Q. All right. And you indicated that you didn't go on any
10 trips, but were you aware of Mike Fletcher making numerous
11 trips during that period of time?

12 A. Yes, sir.

13 Q. And were a lot of those trips outside the country?

14 A. Yes, sir.

15 Q. In fact, Latin America and the Caribbean were one of the
16 prime places that was looked at, was it not?

17 A. Yes, sir.

18 Q. Now, in addition to trying to sell games and in addition
19 to trying to place games, did the company also try to develop a
20 new line of business?

21 A. I've heard mention of AdSpace. We went into that.

22 Q. All right. And you did some work for AdSpace?

23 A. Yes, sir.

24 Q. And were there others Drews Distributing employees who
25 were retained to work on AdSpace?

1 A. Yes, sir.

2 Q. And was AdSpace housed there at Drews Distributing?

3 A. Yes.

4 Q. And were you essentially using Drews Distributing, I

5 guess, assets, equipment, that type thing, trucks, whatever to

6 try to get this business up and off the ground?

7 A. Yes.

8 Q. And was the idea to try to get another revenue stream to

9 keep the doors open?

10 A. Yes.

11 Q. And was that successful?

12 A. No.

13 Q. Was there also travel involved in connection with trying

14 to get that business up and running?

15 A. Yeah. That -- I did have a part in the travel as far as

16 AdSpace was concerned.

17 Q. All right. And was that travel to meet with distributors

18 and go to shows and look at possible market areas?

19 A. It was predominantly venues to put the placement in. I

20 remember we met with, I think it was SNG, which was a big

21 management -- they managed arenas throughout the U.S. I know

22 we went to Palm Springs or Palm Dessert or California and met

23 with those -- those guys and we did a trade show in Myrtle

24 Beach, traveled around the state of Georgia working for the

25 Department of Tourism to put signage in every welcome center.

1 Q. All right. And what was the reason for you spending your
2 last few months of employment on the payroll of Drews
3 Industries as opposed to Drews Distributing?

4 A. I really don't know why the change was made, but it was
5 basically -- I was -- had been there since '93, knew a lot of
6 the, I guess, day-to-day operations of Drews, what have you, so
7 I guess I was the last man standing that could fill a lot of
8 voids.

9 Q. And, in fact, in those last months you spent a good deal
10 of your time trying to recondition these machines and get them
11 in condition to where they could be placed or sold?

12 A. Yes.

13 Q. And the Odyssey machines as of the time you left the
14 company were still in storage?

15 A. Yes.

16 Q. And they were still in like-new condition?

17 A. Still on pallets, shrink wrapped.

18 Q. Never opened?

19 A. Never opened.

20 MR. COGGINS: Thank you. That's all I have.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION BY MR. PAYNE:

23 Q. Just a few questions, Mr. Owens. You -- the entire time
24 you worked for Drews Distributing that was the only company
25 that you ever worked for for Mr. Andrews, wasn't it?

1 A. That was it. That I drew a salary from, yes.

2 Q. Now, you were never on the payroll of any other company

3 owned by Hugh Andrews, were you?

4 A. No, sir.

5 Q. Drews Distributing was it?

6 A. That's it.

7 Q. And you stayed on that payroll until 2004. Isn't that

8 right?

9 A. I was thinking maybe mid 2003. Could be wrong.

10 Q. Well, let's be clear here. On page 11 of your deposition

11 I asked you what -- line 24, "What were you doing at Drews in

12 2002, '3 and '4?" And you told me what all you were doing.

13 You said, "Mainly I was cleaning up loose ends from the

14 shutdown, working stuff with Tri-Star."

15 A. Correct. Like I say, I could be wrong, but I think my

16 last days were middle of 2003. Could be wrong. I mean it's a

17 lot of stuff has happened.

18 Q. Let's see one other spot. I'm sorry, your Honor. This

19 is also from page 11. Yes, here it is. Line 16, "When did you

20 last work for Drews?" "Early 2004, maybe around April," was

21 your answer.

22 A. Okay. It may be '04, not '03.

23 Q. Now, June of 2000 Drews Distributing could not sell the

24 games that it had in stock, could it?

25 A. June of two -- you talking about the Pot of Golds and all

1 that?

2 Q. Whatever you had in inventory.

3 A. No.

4 Q. You couldn't sell it?

5 A. No.

6 Q. And you ended up basically selling them on credit to

7 Tri-Star, didn't you?

8 A. The invoice shows that. I mean that was not my decision.

9 Q. All of the games that you had or that Drews Distributing

10 had in stock in June of 2000 were ultimately sold to Tri-Star,

11 weren't they?

12 A. Yes.

13 Q. All right. And even in 2000 Drews Distributing went out

14 and acquired more games. After June of 2000 Drews went out and

15 acquired more games, didn't they?

16 A. Yes.

17 Q. And they bought 187 games from H&J, didn't they?

18 A. Yes.

19 Q. And those games were turned around and sold to Tri-Star,

20 weren't they?

21 A. Yes.

22 Q. And all these games were up in North Carolina in the same

23 warehouse, wasn't like you had to ship them anywhere, but the

24 H&J games were in the same warehouse as --

25 A. North Carolina or Georgia. I'm not sure when we had to

1 move out of North Carolina, but, yeah, shared the same
2 warehouse.

3 Q. And Andrews Amusements games were up there in that same
4 warehouse?

5 A. Yes.

6 Q. And Drews Gaming games were up there in that same
7 warehouse?

8 A. Yes.

9 Q. All right. And Drews actually in 2002 goes out and buys
10 games from Drews Gaming, didn't they?

11 A. I think so.

12 Q. And in 2002 they buy some more games from Andrews
13 Amusements, don't they?

14 A. Yes.

15 Q. Then those games in 2002 were sold and shipped to or
16 given to Tri-Star, weren't they?

17 A. Yes.

18 Q. And those games ultimately made their way to the
19 Dominican Republic for Tri-Star, didn't they?

20 A. Yes.

21 Q. And, in fact, while you were still on the payroll of
22 Drews Distributing you were working a couple of days a week up
23 in Lavonia, Georgia getting those games ready to be shipped to
24 the Dominican Republic, weren't you?

25 A. Yes, sir.

1 Q. And you would commute, I think you told me, for about a
2 year or year and a half you were driving up to Lavonia, Georgia
3 getting those games ready?

4 A. Yes, sir.

5 Q. And not only did you get the games ready, you helped with
6 the export paperwork for Tri-Star, didn't you?

7 A. Yes, sir.

8 Q. And it wasn't an easy task getting all those games ready
9 to ship to the Dominican Republic, was it?

10 A. Cold days in warehouses wasn't fun.

11 Q. And you said a year, year and half I think is how long?

12 A. Yeah, somewhere around there.

13 Q. And you never were a Tri-Star employee, were you?

14 A. No, sir.

15 MR. PAYNE: Beg the court's indulgence.

16 Q. Mr. Owens, you were up here testifying a little bit about
17 what you thought was going to happen in the arbitration and you
18 gave that same testimony in that arbitration out in California,
19 didn't you?

20 A. I really can't recall exactly what I said.

21 Q. You got out there and told the judge what he thought and
22 what you thought and why y'all didn't owe the money and all
23 that, didn't you?

24 A. Yes, sir.

25 Q. And you lost, didn't you?

1 A. Yes, sir.

2 Q. And you lost in September of 2002, didn't you?

3 A. I'm not exactly sure when the -- whatever was awarded,
4 but, yes, sometime around there.

5 Q. You knew you'd lost whenever that award came down, didn't
6 you?

7 A. Yeah.

8 Q. And you knew you sort of were going to lose when a prior
9 -- didn't they have an interim award that came down --

10 A. I have --

11 Q. -- said you were going to lose?

12 A. I have no idea.

13 Q. But no doubt when that award came down, you were informed
14 of when and Drews Distributing had lost against Silicon Gaming
15 in arbitration in California?

16 A. At some point in time, yes.

17 MR. PAYNE: That's all.

18 THE COURT: Anything further, Mr. Hodge?

19 MR. HODGE: Just a couple, your Honor.

20 CROSS-EXAMINATION BY MR. HODGE:

21 Q. Mike Fletcher was making the decisions regarding Silicon
22 Gaming; isn't that right?

23 A. Yes.

24 Q. And Mike Fletcher sold the games on credit to Tri-Star,
25 didn't he?

1 A. He -- I may have generated the invoice.
 2 Q. Yeah.
 3 A. But, yeah, I mean I was instructed --
 4 Q. By Mike?
 5 A. -- to do so by Mike, yes.
 6 Q. All right. Now, there were some e-mails that had been
 7 introduced as Plaintiff's Exhibits, and those e-mails were
 8 between you and the SGI folks. Isn't that right?
 9 A. That's correct.
 10 Q. And SGI knew about the legal problems in South Carolina
 11 with continuance of the business, because you told them, didn't
 12 you?
 13 A. Yeah, but they -- they got on line and kept up with The
 14 State paper. I mean those guys were all over it.
 15 Q. They knew all about it?
 16 A. Yes.
 17 Q. SGI never named Hugh Andrews in the arbitration
 18 proceeding, did they?
 19 A. Not to my knowledge.
 20 Q. Under that arbitration agreement they had a year to do
 21 so, didn't they?
 22 A. I guess.
 23 Q. Talking about that award, when y'all went out there,
 24 y'all were paid a million dollars for the machines and the rest
 25 of the money to be paid was contingent on them supplying

1 software so they would be operable in South Carolina. Isn't
2 that correct?

3 A. Correct.

4 Q. They never supplied that software, did they?

5 A. Not up until today.

6 Q. Okay. They haven't supplied the software?

7 A. No.

8 Q. They own the software. They've got the control and
9 technology for the software, but they won't give it to us, will
10 they?

11 A. That's correct.

12 Q. So I guess it amazed you that an award was made against
13 Drews based on those facts?

14 A. Like I said, didn't expect it.

15 Q. SGI nor IGT has ever made any attempt to retrieve those
16 machines that are still wrapped up and in perfect shape?

17 A. No, sir.

18 MR. HODGE: Thank you.

19 THE COURT: Anything further?

20 MR. COGGINS: Nothing further.

21 THE COURT: All right. Thank you, sir. You may step
22 down. Call your next witness.

23 MR. COGGINS: Your Honor, with the exception of the
24 tendering of the deposition of Mr. Fletcher, which is already
25 in, that makes Drews Distributing's case.

1 THE COURT: All right. Mr. Hodge.

2 MR. HODGE: This might be fairly lengthy.

3 THE COURT: Well, you want to go to lunch now and
4 come back?

5 MR. HODGE: No, sir. Doesn't matter to me, whatever
6 your pleasure is.

7 THE COURT: How long is lengthy?

8 MR. HODGE: I think, you know, 45 minutes, an hour.

9 THE COURT: That's all right. We'll go to one and
10 break.

11 MR. HODGE: All right. Your Honor, as part of our
12 case in chief we've already given you the deposition excerpts
13 of Grevelis and Pennington.

14 THE COURT: Correct.

15 MR. HODGE: With that we call Mr. Tim Scrantom.

16 TIMOTHY D. SCRANTOM, Defendant's witness, sworn

17 DIRECT EXAMINATION BY MR. HODGE:

18 Q. You are Tim Scrantom?

19 A. That's correct.

20 Q. What is your occupation?

21 A. I'm a lawyer.

22 Q. How long have you been a lawyer?

23 A. 23 years.

24 Q. Give the judge the benefit of your education.

25 A. Undergraduate degree at Stetson University. Law degree

1 at University of Georgia with honors. Postgraduate studies in
2 various European universities. Masters in law at the London
3 School of Economics, basic education.

4 Q. Are you licensed to practice?

5 A. Yes. I'm licensed in the United States and South
6 Carolina, Georgia and the District of Columbia and abroad. I'm
7 an English barrister, and I'm also admitted to practice in
8 about six other countries.

9 Q. What is the nature of your practice?

10 A. Principally international tax and corporate law.

11 Q. And can you give us the benefit of some of the cases
12 you've been involved with.

13 A. I've done a number of different matters for large and
14 small companies ranging from, I guess, the local ones, BMW to
15 Hugh Andrews. I've been involved in a number of fairly high
16 profile cases in the money laundering area and the terrorism
17 area involving various companies like Libya and Saudi Arabia
18 and so forth.

19 Q. Did you have to do, for example, with the Lockerbie case?

20 A. Yes.

21 Q. What was your involvement with that?

22 A. I was hired by Lloyds of London in PanAm World Airways to
23 settle the pending and outstanding business and insurance
24 subrogation claims and for the Lockerbie disaster.

25 Q. Are you a professor at the University of South Carolina?

1 A. Yes.

2 Q. What do you teach?

3 A. I should say I'm an adjunct professor. For the last
4 11 years I have taught international business transactions and
5 international tax. Three years ago I started a -- conceived
6 and founded an institute at Greys Inn London where I have
7 barrister's chambers called the Institute for Transnational
8 Dispute Resolution, which is a joint venture with the law
9 school in Columbia.

10 Q. Do you have an office in Charleston, South Carolina?

11 A. Sort of. I've kind of closed it down, but it's at a low
12 hum now.

13 Q. Where do you maintain your offices at?

14 A. Principal office now is London and Washington.

15 Q. Okay. Have you ever been qualified as an expert in the
16 area of piercing the corporate veil?

17 A. Yes.

18 Q. And what -- in what context?

19 A. Several cases where I've been asked to testify as an
20 expert witness. One where my client was the U.S. government
21 Resolution Press Company. Interestingly on the other side of
22 that case was John Freeman. So, yes, I do have experience with
23 it.

24 Q. All right. And obviously you're familiar with the
25 concept of piercing the corporate veil?

1 A. Yes, I am.

2 MR. HODGE: I'd like to offer Tim Scrantom as an
3 expert in the area of corporate veil and piercing.

4 THE COURT: Well, let me ask you this now, you're
5 taking an inconsistent position.

6 MR. HODGE: Yes, sir. And I'm sort of doing it under
7 a reservation of rights so to speak. We made -- you know, we
8 made our arguments. The court ruled against us on that.

9 THE COURT: I haven't ruled against you yet. I just
10 simply said I was going to take his testimony and then see.

11 MR. HODGE: Well, our position is if we didn't have
12 -- if you did ultimately allow Professor Freeman to testify and
13 we didn't have rebuttal evidence, we would be sort of left out
14 in the cold. So, you know, if you determine that -- that our
15 initial arguments about Freeman not testifying were correct,
16 then I assume the court could disregard it, Mr. Scrantom's
17 opinions.

18 THE COURT: Mr. Byrd, you got a position?

19 MR. BYRD: Your Honor please, we're double checking,
20 but I don't think Mr. Scrantom's ever been listed as an expert
21 witness in this case and it would be highly prejudicial if he's
22 offered now as an expert. I may be correct if you'll give me a
23 minute just to check.

24 MR. HODGE: Wouldn't be prejudicial at all, your
25 Honor, because these very questions were asked of him at his

1 deposition when Mr. Payne took it. I asked him the questions.

2 MR. BYRD: Your Honor, this witness has not been
3 listed as an expert witness on this issue regardless of what
4 questions he was asked and not disclosed to us as an expert
5 witness to render an opinion on this issue.

6 THE COURT: Well, I can solve this problem for you.
7 Insofar as the Professor Freeman talked about facts I'm going
8 to consider that. His ultimate opinion is inadmissible. Same
9 here. Talk about facts, but he can't tell me that they don't
10 need to pierce the corporate veil, nor can Professor Freeman do
11 that. Case law is pretty clear and it's not only -- you're
12 relying on state law, but federal law is equally clear.

13 MR. HODGE: Yes, sir. The Sinclair case.

14 THE COURT: But now insofar as talking about facts
15 just like Professor Freeman did and without saying it should be
16 pierced or it shouldn't be, then that's my call based on the
17 facts that each side testifies to. So to that extent I'll let
18 him testify about the facts that you consider, so I'm giving
19 you the ruling on Professor Freeman too.

20 MR. HODGE: All right, sir.

21 THE COURT: I mean you may not be able to back pedal,
22 but what I'm just telling both sides they're not going to tell
23 me how to rule one way or the other. They can talk about
24 things leading up to it, that's fine.

25 MR. HODGE: Okay.

1 THE COURT: Now, either get -- if you can't get
2 unwound from where you're headed, just remember I'm not going
3 to pay any attention to what he says about piercing or not
4 piercing.

5 MR. HODGE: Yes, sir.

6 BY MR. HODGE:

7 Q. All right. With that said, tell me what Ten Straight --
8 Ten State Street is or was.

9 A. Law firm. It's still in existence.

10 Q. Okay. And what's the emphasis?

11 A. International law, principally international tax and
12 finance, but also it's international law.

13 Q. And do you advise clients on asset protection?

14 A. Some, yeah.

15 Q. Okay. How did you come to know Hugh Andrews?

16 A. He was -- I think we were originally hired by one of his
17 other lawyers, if I recall Dave Merline, years ago. I think
18 the initial engagement was a professional engagement, which a
19 lot of our engagements are, that is lawyers hiring us to advise
20 them.

21 Q. Did you know him for a number of years prior to this
22 2001-2002 time frame?

23 A. Yes. A number of years. Probably three or four maybe at
24 that point.

25 Q. Okay. That would have been before any issues arose with

1 SGI?

2 A. Apparently, yes. I mean based on the dates I've heard.

3 Q. All right. Now, going to the time frame that deals with
4 this subject matter, did Ten State Street examine, look at,
5 perform some work for Hugh?

6 A. Yes.

7 Q. All right. Just tell us what the nature of it was.

8 A. If we're referring specifically to '01 or the transfer of
9 assets --

10 Q. Correct.

11 A. -- that specifically, because we've done a number of
12 things for Hugh with Hugh over the last eight years, I guess it
13 is now, if I recall the genesis of that was a phone call from
14 Hugh where he asked what he could do about money that the
15 company Drews owed him. And I do remember I didn't really know
16 about the facts that he was describing to me over the phone, so
17 I was sort of just taking it in, said I would need to look at
18 some paper. But essentially the request was he is owed money
19 by Drews and he wanted to know what his rights were to be paid
20 by Drews or to have Drews' assets in lieu of payment. That was
21 the genesis of it.

22 Our -- this was the point at which I was really
23 involved in the -- in that engagement really just at the
24 beginning, but I asked him if he had valid debt. He said yes.
25 I asked him if -- if the debt was memorialized by promissory

1 notes or some other writing. He said yes. I said, "So and you
2 really advanced the money, this is not some sort of carried
3 obligation for unpaid management fees or bonus or something?"
4 He said, "No, I really put the money in." I said, "Well, okay.
5 That's interesting." I said, "Why don't you send me the
6 notes," which he did. I say he did. Maybe Claudia did or
7 someone with the company.

8 Q. In all fairness when you had that discussion, what did
9 you expect to receive?

10 A. I was frankly a little surprised, given my experience
11 with small closely held companies. I mean often people claim
12 they're owed money and there may be a notation in the books
13 somewhere, but they hadn't gone to the trouble to actually make
14 a promissory note. Nine times out of ten with a small company
15 that's what I find.

16 So I was -- you know, I was not only surprised to see
17 the notes that were sent, but I was equally surprised to see
18 the whole series of them that seemed to have been done even
19 contemporaneously with the advances themselves, which is really
20 unusual. I mean usually small companies, they get around to
21 collecting all their legal work on sort of a bi-annual basis
22 and sweep everything up, but these notes seemed to have all
23 been done as the money was put into the company.

24 Q. So after you got that material what did you do?

25 A. Well, when I got over that sort of initial surprise at

1 the housekeeping I, you know, examined the notes. They all
2 appeared to be the same. I think I had a followup call with
3 Hugh or someone to ask, you know, inquire into the genuineness,
4 were they all signed. I mean do you have copies. They were
5 advances, et cetera, et cetera. And the word I got back was
6 they're -- you know, they're all perfectly valid notes.

7 The other thing that I recognized was all the notes
8 were basically identical if I recall. We hadn't done anything
9 to prepare them. I was just -- in fact, I think Mike Fletcher
10 may have prepared them or some other lawyer, but there was
11 language in the note that created a security interest over the
12 assets of Drews Distributing, Inc., and I saw that language
13 and, of course, I immediately wondered, well, you've got a
14 security agreement here. The security interest seems to have
15 attached because there's been disbursement of money under the
16 note, but did you ever file to perfect or what is the nature of
17 the assets that the security interest is over and does anything
18 need to be done to perfect?

19 And so we got into a dialogue. There was some papers
20 sent back and forth by Claudia or Hugh or Mike and my firm
21 where we collected information, and determination was reached
22 that -- in fact, I think we did a UCC search, and we determined
23 that they had never filed apparently to perfect over the assets
24 that they needed to file to perfect on, and so we prepared a
25 UCC-1 financing statement, filed it with Secretary of State

1 centrally, I guess. May have filed something in Spartanburg, I
2 can't remember. And, you know, our position at that point was
3 if we -- you know, if we failed to advise this creditor --
4 again, Drews Distributing was not our client, Hugh was. If we
5 failed to advise this creditor that they should be perfecting
6 their security interest, we'd have probably been negligent, so
7 we were in between a bit of a rock and a hard place, I suppose,
8 not that at that point we had any reason to be concerned about
9 filings, so we filed.

10 Next question was -- that was done pretty
11 immediately. There was a sense of immediacy that this filing
12 had never been done apparently according to our search. And
13 next we went into the analysis of what could be done. And our
14 position eventually came out that Hugh was a secured creditor.
15 The credit or loan was valid. The security interest was valid,
16 and so our attention turned to what are the rights of the
17 secured creditor vis-a-vis a company, even one that, of course,
18 he's I suppose the sole shareholder of, and so we got into that
19 analysis.

20 Q. All right. And tell me about that analysis.

21 A. It was a rather extensive internal analysis. I didn't
22 perform it myself. I had other lawyers in my firm and my
23 paraprofessionals do most of it, but I was involved, but
24 essentially we looked at the issues surrounding the creation
25 and nature of the -- of Hugh's loans. We considered

1 information that we had been given primarily perhaps
2 exclusively by lawyers at the McNair Firm who were involved in
3 the dispute with then IGT, I suppose, about the status of that
4 case, the arbitration and so forth. We consulted with other
5 lawyers, including Nelson Mullins in their Atlanta office, who
6 I think was representing Hugh in some other matters. So we
7 took in a great deal of information from other law firms. We
8 also took in a fair amount of paper information from Claudia --
9 from Claudia and some from Hugh, but I think at that point Hugh
10 was faded out of the picture temporarily.

11 Q. Do you understand that the dispute was between Silicon
12 Gaming and Drews? It never involved IGT until after the
13 arbitration award?

14 A. Yes.

15 Q. In fact, they had to amend the award?

16 A. Yes. Well, I'm aware of that now in the course of these
17 proceedings, but I wasn't at the time.

18 Q. Okay.

19 A. And clearly presented to us though was the, you know, the
20 possibility that if IGT -- forgive me if I keep referring to
21 that, but that's how I knew the case, if IGT were successful
22 ultimately, would Hugh as a secured creditor of Drews be doing
23 anything improper or if not improper, would he be doing
24 anything assailable by realizing on his -- on his security?
25 And so our research looked at what we thought were the relevant

1 legal issues focused on South Carolina law. I looked at a
2 little bit of California law, I think there was a lawyer
3 submitted there.

4 And our conclusion was, you know, nothing is without
5 risk in life. You know, could someone attack the transfer? I
6 suppose so. But we didn't think that if they attacked it, if
7 anyone attacked it, any creditor, that it would ultimately be
8 overturned, rescinded would be the remedy. I don't know that
9 we ever gave Hugh that conclusion. We didn't issue a written
10 opinion to him, but we did prepare internal memoranda.

11 We were very thorough with our research, very careful
12 with it. We mooted it around the office. I mean obviously
13 this is a serious kind of issue, had several lawyers consider
14 the matters. We gave it very thorough consideration. And the
15 conclusion was that it seemed to us that under the relevant law
16 as a secured creditor Hugh had the right to demand payment and
17 if payment couldn't be made, then to take assets that at least
18 started to approximate the value of the debt.

19 Q. And specifically did you consider the Dewitt Truck
20 Brokerage case and the Sturkie case?

21 A. Yes.

22 Q. I'd 'like to ask you something about the factors, okay?
23 Was this corporation grossly undercapitalized?

24 A. Not as far as I knew. I didn't see any evidence of that.
25 I knew it had been in existence for 23 years, seemed to have

1 thrived. One question that we probed with officers at Drews --
2 I think at this time Hugh might have been in rehab -- was the
3 question of, you know, we thought the critical point on
4 solvency was and that was are you paying your debts? I mean do
5 you have any creditors? Naturally we were concerned about the
6 possibility that if there were two or more creditors, they
7 could throw Drews Distributing into bankruptcy and that could
8 have other implications. And I remember being rather amazed
9 that I believe Mike Fletcher told us, "No, we don't -- we don't
10 have any creditors. We pay everyone or had paid everyone."

11 Now, at that time I would be remiss if I didn't say
12 that we were aware of the arbitration proceeding going on in
13 California, I think it was, but the information to us was that
14 they had no creditors who they had not paid. They were current
15 on their payables, and we took that as being sort of the most
16 liberal interpretation of the insolvency test, that is can you
17 actually pay your debts when they are due? The answer was yes.

18 Then, of course, we considered the specie at issue in
19 this case, which was the games themselves. We were told that
20 they were still held by the company, that they hadn't been
21 unwrapped literally or figuratively, and that the dispute was
22 over whether -- notwithstanding certain counterclaims that we
23 understood they had against IGT, whether if Drews were to
24 retain these very machines that the complainant wanted payment
25 for, that whether that wouldn't in an equitable fashion be

1 somehow equivalent to the claim that the plaintiffs were
2 making.

3 We engaged in inquiry about that and were convinced
4 that based on facts that management gave us that the retention
5 of these very games in the company should satisfy the second
6 possible insolvency test, which is the balance sheet test, that
7 is they had enough assets on its balance sheet to meet the
8 claims creditors.

9 Q. Now, you're aware of their representative Mr. Pennington
10 who says you can make \$50,000 a year on these games?

11 A. Yes. And I think we were aware of that thinking at the
12 time. We were made aware of that thinking. I mean I was
13 pleased to hear some confirmation of it from the plaintiff's
14 employees, but, no, our understanding at the time was these
15 games sat. They were probably saleable somewhere. They were
16 most saleable, of course, in the hands of the people that made
17 them. And so we were led to believe that this case, wherever
18 it came out eventually, the arbitration case, could be settled
19 by, you know, sort of a replevin of the machines or perhaps the
20 delivery of the software that was needed to operate them and
21 they could be sold to third parties or something of that
22 nature.

23 Q. Did you see where this plaintiff or its predecessor ever
24 made any effort to mitigate its damages?

25 A. Well, I -- it's a little outside the scope of what --

1 what I was involved with, but based on what I've seen and heard
2 in this case it would seem to me that there certainly is an
3 opportunity to -- opportunity to mitigate.

4 Q. Well, let me ask you this --

5 A. They haven't taken that.

6 Q. They haven't taken it?

7 A. Not to my knowledge. I mean to my knowledge the games
8 are still sitting in a warehouse somewhere, and they're, you
9 know, they have questionable value in the hands of Drews and
10 potentially extraordinary value in the hands of the plaintiffs.

11 Q. All right. Have you described fully with regard to the
12 capitalization issue?

13 A. Well, you know, capitalization is an interesting
14 question. I mean it was one thing that we looked at in the
15 context of one of the potential arguments that could be leveled
16 against Drews or Hugh for the -- for the transfer of the
17 assets. I mean we, you know, considered a number of factors,
18 among them the fact that the Dewitt case itself, you know,
19 seemed to contain language that as we like to say in the law is
20 sort of a hedge shot on the whole claim by the plaintiff, and
21 that was the fact that a thin capitalization argument by a
22 plaintiff in piercing the corporate veil case is usually --
23 usually can't be made in a breach of contract case. Okay?

24 And the theory for that, footnote 13 in Dewitt, the
25 theory for that is that when one party deals with another party

1 and negotiates a contract, the credit worthiness of the two
2 contracting parties is the only thing that should be relevant
3 and not the credit worthiness of the shareholder or someone
4 else. So, you know, we did -- we considered that issue and
5 that was one thing that, you know, sort of went on the positive
6 side of the ledger check list in advising, you know, what could
7 be done.

8 Q. Was there a personal guarantee in Dewitt?

9 A. Yeah. I mean that's really the distinguishing
10 characteristic of Dewitt. And, in fact, I've taught the Dewitt
11 case before to classes and I've mused before that Dewitt wasn't
12 really about grafting this concept of fundamental unfairness
13 onto the -- onto the old style corporateness test for piercing
14 the corporate veil. What it was really about was a situation
15 where an insider, the president and chief shareholder, sole
16 shareholder, had made a personal guarantee for his company.
17 Okay. And in the context of a contract and the personal
18 guarantee was promised, but it wasn't in writing. And as the
19 lawyers, of course, in the room know, a promise of a guarantee
20 has to be in writing in South Carolina to be enforceable.

21 So I think the Dewitt court in the Fourth Circuit,
22 faced with the unenforceability potentially of the personal
23 guarantee, sought to sort of graft this fundamental unfairness
24 in the context of quasi fraud. I mean the president saying to
25 the creditor, "Don't worry. If the company can't pay, I'll

1 pay." So it was a bit of an aberration, I think, Dewitt. But
2 certainly I know of no personal guarantees given here, and we
3 inquired about that. In fact, I believe that the issue of the
4 potential -- I never saw the agreements with IGT, but the
5 potential to bring Hugh personally into the arbitration was
6 always there, and I saw it as some relevance that it was never
7 done. He wasn't asked to join the arbitration.

8 Q. Let's talk about a second factor under Sturkie, that
9 failure to observe corporate formalities. Did you find a
10 failure in this case?

11 A. I didn't really examine that that carefully. I mean I
12 was advised at the time, again, by several other lawyers that
13 -- including former in-house counsel to Drews, that they had
14 kept accurate records. I think maybe we asked for them to be
15 sent to us and maybe they couldn't be found. This was in 2002,
16 but we were assured by several very convincing people, fellow
17 members of the bar, that they existed, and so we left it at
18 that.

19 You know, I will say that further to the whole
20 question of what, you know, would one expect out of a company
21 of this type, closely held, single shareholder, 23, 24 years of
22 existence, you wouldn't expect many corporate documents. And
23 so, you know, we were surprised as we were with the notes, that
24 the housekeeping seemed to be in order.

25 Q. Dividends were paid in this case. Is that correct?

1 A. That's what I understand. I don't know that we were
2 really aware of that at the time we did our analysis, but based
3 on the testimony I've heard I've looked through the -- Mr.
4 Markel's report, one of his reports, and so I'm aware that they
5 have been paid. I'm also aware that they would need to have
6 been paid. As a tax professor I'm pretty familiar with the tax
7 issues that are involved here, and I know it is absolutely
8 garden variety that an accounting firm would tell the -- tell
9 the shareholder or the managers of an S corporation or an LLC
10 that taxed as a partnership or disregarded ending, that they
11 needed to make distribution.

12 So frequently, in fact usually decisions about
13 distributions for S corporations are made by accountants, and
14 the shareholders, the managers sit on the side and shrug their
15 shoulders and go whatever you say. That's because having
16 elected the S status, which is no corporate tax, something our
17 U.S. congress said we could do and should do, the shareholder
18 is saddled with the tax liability for all the earnings and
19 profits in the business even if they're not distributed to him.

20 So there really is a interesting tension that our own
21 congress has created between incentivating companies,
22 corporations to be S corporations and at the same time telling
23 them that they've got to abide by all these corporate
24 formalities. The two are kind of inconsistent, that is the tax
25 world, the real world of how companies operate and the law

1 relating to piercing the corporate veil.

2 Q. While we're talking about Mr. Markel, you heard him
3 testify about that Plaintiff's Exhibit 18, I believe it was,
4 which was the letter that said you don't pay us the rest of the
5 money until we send you --

6 A. Yes.

7 Q. -- the computer software --

8 A. Yes.

9 Q. -- where your machines will operate?

10 A. Yes.

11 Q. You know that they never did send that software?

12 A. That's what I understand, yes.

13 Q. Okay. Is there something called a FAS B-5?

14 A. Well, F-A -- yes, financial accounting standards. It's
15 Rule 5.

16 Q. Now, would that require a company to list as a liability
17 on their books something that wasn't due?

18 A. Well, in answer to that question the answer is I would
19 hope not, but if the question were, you know, do the -- would
20 Rule 5 require disclosure of a contingent liability that was
21 subject to a condition precedent, okay, the delivery of the
22 software, I'm sure accountants and lawyers probably debate
23 that. I don't think so. I mean, again, you've got not only
24 the contingency, but you've got the condition precedent coupled
25 with that, which is delivery of the conforming goods, so I

1 don't think so.

2 Q. Mr. Markel came up with a number of opinions and
3 conclusions based on this transactional analysis he says he
4 employed. I want to ask you, do ledgers generally include in
5 detail the bona fides of transactions, the specifics?

6 A. Company ledgers?

7 Q. Yes.

8 A. No. In the --

9 Q. For example --

10 A. -- somewhere in the corporate records --

11 Q. -- would it tell you why exactly you spent X number of
12 dollars on an aircraft?

13 A. No. I mean I think that differs from company to company,
14 and clearly, I mean one thing I could be concerned about with
15 maybe some of the expert testimony that I understand has gone
16 on is the perspective needs to be on the close company and not
17 the public large company. The realities of what a small
18 company does is -- I mean I think it's astounding sometimes
19 that they have good records and the discipline of kind of
20 external financial managers and outside accountants, but an
21 audited company, I mean clearly one subject to Sarbannes-Oxley,
22 for example --

23 COURT REPORTER: I'm sorry?

24 A. Sarbannes-Oxley is going to behave completely differently
25 from a closely held company where the obligation of the

1 directors, the officers and the company is really only to the
2 shareholder than to the public -- to a shareholder I should
3 say.

4 Q. Have we covered the issue of insolvency adequately or do
5 you want to address some of that?

6 A. Well, I mentioned that in our analysis looking back at
7 what we were doing in 2002, we asked fairly extensive questions
8 of management whether they could pay their debts, whether they
9 had cash flows and assets. We were told yes. In fact, I -- it
10 sticks out in my mind because I remember -- I remember the
11 statement, "We've paid all of our creditors -- we do pay all
12 our creditors." So, of course, in the context of this company,
13 this particular company and this particular industry and this
14 particular state in 2002 I was rather surprised at that.

15 But that in our mind sort of took off the table the
16 problem of an involuntary bankruptcy because there weren't any
17 creditors. So in terms of the so-called -- I don't refer to it
18 this way, but the equity test, as Mr. Markel said, or the
19 can-you-pay-your-debts-when-they-become-due test, we were told
20 yes, completely solvent. As to the question of balance sheet,
21 we were told that the company had significant assets. I think
22 there were a lot of differences as to what those assets are
23 worth.

24 One thing that we did consider, I don't think we saw
25 the balance sheet of the company at the time, that this came to

1 us orally through talking to lawyers and managers, but we were
2 aware that the IGT games were property of the company.

3 Now, I've been kind of intrigued by some of the
4 testimony, Mr. Markel's testimony particularly, that these
5 machines were valued at zero. And I thought to myself when he
6 was testifying that it's actually for someone in his position,
7 I think, a little disingenuous, that it's his position being
8 sort of a forensic accountant to know that an S corporation is
9 going to keep its books in a certain fashion and value its
10 assets in a certain way, perhaps valuing games at zero for tax
11 purposes, which is really the only view that anyone needs to
12 take of the books of the company. There's no reporting
13 obligation to the SEC. There are no public shareholders. So
14 the only people that care are the accountants, and the only
15 reason they care is for tax purposes. Okay.

16 So the fact that the IGT games were carried as zero,
17 again, I found a little disingenuous that he in his analysis
18 wouldn't have said my client, their games are worth more than
19 zero. I was frankly amazed at that. We considered they had
20 value in our analysis, so under both the balance sheet test and
21 the pay-your-debts-when-due test being the only two tests of
22 insolvency that are really relevant in the North American
23 common law world, we considered this company to be solvent.

24 Now, that led us, of course, into, you know, looking
25 at, I think, a statute that's very relevant here, the so-called

1 anti-assignment statute. We considered several things about
2 that. One is it doesn't make any distinction between secured
3 creditors and unsecured creditors, makes no distinction. I
4 mean it's an old statute. It's way old, not as old as the
5 Statute of Elizabeth, but back in the 16th, 17th century. So
6 it makes no distinction between someone like a Hugh Andrews who
7 had a secured debt and an unsecured creditor.

8 But the most important thing about the
9 anti-assignment statute relating to solvency or insolvency was
10 the fact that the anti-assignment statute says that an
11 insolvent debtor may not do this or that. Okay? Now, it
12 doesn't say a debtor cannot do something that might render him
13 to be insolvent. It says that an insolvent debtor. In other
14 words, that statute presupposes, only operates if the debtor is
15 insolvent when a transfer is made. By all of our examination
16 at the time this debtor, Hugh -- Drews Distributing, was not
17 insolvent.

18 Q. Why is limited liability so important?

19 A. Well, it's -- I mean it's the backbone of the corporate
20 world world wide. I teach classes sometimes. I keep quoting
21 an economist magazine from 2000 when they did their Millenium
22 edition covering the last thousand years and the last hundred
23 years, who I respect the economist, a little liberal, but I
24 respect him. And they said that the most important development
25 in the world of business in the last hundred years, that is in

1 the 20th century was the development of limited liability. And
2 it said the reason for that was that it's so important is there
3 would be no business. There would be no commerce. There would
4 be no capital formation if it weren't for limited liability,
5 that is to say a shareholder can put money into a company and
6 know that that's the extent of his risk, otherwise the world of
7 business wouldn't exist. And I think the case law respects
8 that, I mean the approach that all jurisdictions take to the
9 potential Pandora's box of opening a company up and holding
10 shareholders liable.

11 Q. Were there adequate corporate records in this case?

12 A. Based on the information I have I think there were normal
13 corporate records. Again, I haven't seen them, but this is
14 based on what lawyers have told me. Now, you know, there is an
15 interesting point about the whole corporate records issue. I
16 mean this company was incorporated in 1981, 24 years ago. That
17 was before the statutory close corporation law was enacted here.
18 Okay? It was before the world of so-called limited liability
19 companies, LLCs, which are now so pervasive.

20 I mean if you go to lawyers now, I find -- tax and
21 structuring lawyers and say I need an entity, and the first
22 thing they say you need is an LLC. Well, I don't really, you
23 know, agree with that. Frankly the one reason I shy away from
24 LLCs -- with foreigners I always shy away from them, but with
25 purely domestic U.S. transactions is that there's very little

1 case law on this very issue. I mean do they provide limited
2 liability? The statute says so, but do they really provide it?

3 The challenge for a company like Drews, Incorporated,
4 before all these nice modern corporate inventions is that it's
5 bound by supposedly these old rules of keeping corporate
6 records. LLCs do not have to keep corporate records. If they
7 never kept a corporate record, it would be 100 percent in my
8 opinion irrelevant, with all due respect, your Honor, to the
9 issue of piercing the corporate veil.

10 Likewise the statutory close corporation, which could
11 have been incorporated here had Mr. Andrews started the
12 business eight years later, six years later, wouldn't require
13 any corporate records whatsoever. This is irrelevant. These
14 are anachronisms really, I think.

15 Q. Did you -- did you see any evidence that Mr. Andrews
16 siphoned funds out of this corporation?

17 A. No. I mean I -- that's a statement as to what was
18 examined at the time in 2002 and also what I've seen and heard
19 in this case and read in some depositions. I mean I know that
20 distributions were made at the accountant's request largely to
21 cover Mr. Andrews' personal tax liability which he was saddled
22 with by virtue of having elected to be an S corporation. I
23 know that there were some transfers to affiliated companies,
24 Tri-Star or whatever, but it always seemed to me a little
25 paradoxical, I guess, if there was an untoward act in Drews

1 transferring assets to one of these other companies, it didn't
2 make much business sense because it was going from a company
3 that Hugh owned a 100 percent to a company that he owned
4 sometimes less than 50 percent of. So I don't -- I'm not aware
5 of all the details, but I haven't seen evidence of it, no.

6 Q. If Drews has been a C corporation, what would have been
7 the distributable earnings position?

8 A. I mean it would pay corporate level tax. It would have
9 paid -- back in the '80s for those of us old enough to remember
10 that, corporate taxes were on up there. They're lower now, but
11 I think on average over 24 to 25 years it would have paid out
12 state and federal in the range of 40 plus percent of all these
13 revenues to the IRS or the Tax Commission. This company didn't
14 have to do that obviously because the tax, in fact, fell on Mr.
15 Andrews.

16 Q. What about the factor of use as a mere facade for
17 operations of its dominant stockholders?

18 A. I mean I don't -- I don't really see evidence of that
19 either. I know in our dealings with the company Hugh Andrews
20 was rather mercurial and usually we were dealing with someone
21 else at, you know, Drews or one of the affiliated companies, so
22 -- and I know Hugh is involved with a number of companies. I
23 don't profess to know all of them, but I mean I would think if
24 someone were using something as a facade they wouldn't have
25 several of them and they would be more personally apparent in

1 the company than Hugh is.

2 Q. The final factor is there remained an unsatisfied
3 judgment. The machines are available. Have the defendants
4 made an attempt to retrieve them?

5 A. Not to my knowledge. I mean I haven't been involved in
6 that, but, again, that was a critical issue. There's also an
7 important issue speaking about, a quote, "unsatisfied
8 judgment". You know, in my experience as a lawyer arbitration
9 awards are kind of strange things. They're taken as gospel,
10 but they're not really gospel. They're not -- they're --
11 they're not gospel in the sense that they don't -- they don't
12 amount to a quote, "judgment debt". At least I'm not aware of
13 that case law if it exists. A arbitral award can be turned
14 into a judgment debt obviously, as these people did, but I
15 don't know that was until -- I can't remember the date. I mean
16 if it was a magic date, it was maybe at the end of '03 or '02
17 or something.

18 Q. '02. Let's kind of shift to the business of fundamental
19 unfairness, the second prong. And first of all and I think
20 you've already said Hugh Andrews made no personal guarantees to
21 SGI or IGT. Is that correct?

22 A. We were told not. I mean I don't have any evidence one
23 way --

24 Q. When they took your deposition, did they present you with
25 any evidence of that having taken place?

1 A. No.

2 Q. All right. So what fundamental unfairness exists in this
3 case?

4 A. Well, that's a good question. I mean there's not a lot
5 of evidence of that. I mean the two principal cases, one in a
6 federal court, one in a South Carolina state court of appeals,
7 only one of them found a fundamental unfairness, and, again,
8 that was Dewitt Trucking Brokers and that was where the
9 president, who was operating a facade for himself in a
10 incorporation, made a personal guarantee. So, you know, if you
11 look for instruction on what can constitute fundamental
12 unfairness beyond the making of a personal guarantee by the
13 sole shareholder and president that later is reneged on by the
14 way, what else could constitute fundamental unfairness? Well,
15 the Sturkie case didn't find any fundamental unfairness. They
16 refused to pierce the corporate veil. It's hard to say. I
17 mean there's principles of equity in --

18 Q. In Sturkie there was admitted evidence of all eight
19 factors, wasn't there?

20 A. I think so.

21 MR. HODGE: Bear with me. Thank you.

22 THE COURT: I think we'll break for lunch, come back
23 at two. Did he ask -- we'll break until two o'clock. Did he
24 ask him anything that you didn't hear in the deposition?

25 MR. BYRD: I don't think so.

1 THE COURT: Okay. Well, then I will -- I implicitly
2 overruled your objection, but I would expressly do it now that
3 you weren't prejudiced by the testimony of the witness. You
4 were aware of what he was going to ask. All right. See you at
5 two.

6 (Recessed for lunch at 1:01 pm. Reconvened at 2:09
7 PM.)

8 THE COURT: All right. Come on back.

9 (Timothy Scrantom returned to the witness stand.)

10 THE COURT: All right. Let's see.

11 Cross-examination, Mr. Byrd.

12 MR. BYRD: Yes, sir. Thank you, your Honor.

13 CROSS-EXAMINATION BY MR. BYRD:

14 Q. Good afternoon, Mr. Scrantom.

15 A. Afternoon.

16 Q. I'm Wayne Byrd. I've had the pleasure of meeting you
17 here earlier today, but I'll introduce myself formally to you.
18 I have a couple of questions. I'd like to start with something
19 you dealt with kind of in the middle, your characterization of
20 John Markel as disingenuous, I think was terminology you used,
21 in considering the valuation of the machines. Is that correct,
22 my recollection?

23 A. I don't think I said -- I don't think I said he was
24 disingenuous. I said I thought it is disingenuous for him to
25 not to consider the value of the machines in this

1 characterization.

2 Q. All right, sir. And you went on to explain your
3 rationale for having reached that conclusion is that this is
4 not a public company subject to Sarbanes-Oxley.

5 A. I did.

6 Q. So the financial statements --

7 A. I don't think I reached that conclusion.

8 Q. Okay. Did I understand you to say that it didn't matter
9 that the equipment had been written down on the financial
10 statements -- written off of the financial statements, that
11 those financial statements weren't important?

12 A. No, I don't think I said that. I think I said that the
13 way they were carried on the financial statements was probably
14 for tax reasons, and the way they were carried was a
15 determination probably made by accountants who don't have
16 public responsibilities. They've only got responsibilities to
17 the shareholders, so --

18 Q. All right, sir.

19 A. -- maybe that was --

20 Q. And I believe in your opening testimony you said you're a
21 tax lawyer?

22 A. Well, I'm trained as a tax lawyer, practice as a tax
23 lawyer with a number of firms, several firms and teach tax law.

24 Q. All right, sir. I ask you --

25 A. International tax.

1 Q. You don't know anything about United States federal
2 income tax?

3 A. Well, international tax is federal U.S. income tax, but I
4 tend to focus my area of expertise on the --

5 Q. All right.

6 A. -- subpart F of the code.

7 Q. Subpart F, which is?

8 A. Foreign.

9 Q. Yes, sir. I'd ask you to look at Exhibit 31. Exhibit 31
10 should be the federal income tax return for Drews for the year
11 ending 12/31/200. Is that what you're looking at?

12 A. Yes.

13 Q. All right, sir. I'd ask you to read the statement which
14 every taxpayer has to sign when they file a tax return, the
15 part about penalties of perjury. You're familiar with that?

16 A. Yes, sir.

17 Q. All right, sir. How about read that into the record for
18 us.

19 A. What specifically?

20 Q. Where it says, "Under penalties of perjury I declare."
21 Do you see that --

22 A. Yes.

23 Q. -- Mr. Scrantom? How about read that into the record.

24 A. "Under penalties of perjury I declare that I have
25 examined this return, including accompanying schedules and

1 statements, and to the best of my knowledge and belief, it is
2 true, correct and complete declaration of preparer,
3 parenthesis, other than taxpayer, is based on all information
4 of which preparer has any knowledge."

5 Q. All right, sir. So the tax return preparer, the
6 accountant here, Mr. Brown, and the qualified officer of the
7 corporation both sign that return and file it with the Internal
8 Revenue Service under penalties of perjury. Isn't that
9 correct?

10 A. No, that's incorrect. This one I'm looking at is not
11 signed.

12 Q. Is the one you're looking at like the one I'm looking at,
13 Mr. Scrantom?

14 A. Yes, sir.

15 Q. All right. You do see Mr. Brown's signature on that
16 document, don't you, Mr. Scrantom?

17 A. Yeah.

18 Q. All right.

19 A. Signed by Mr. Brown.

20 Q. All right. And are you suggesting now to this court and
21 to me that that tax return was not filed by the taxpayer and
22 not signed by the taxpayer?

23 A. I frankly don't have a clue, I'm afraid.

24 Q. Well, do you know that this tax return was produced to us
25 with the representation that that was the tax return filed by

1 Dews?

2 A. I'm not aware of that.

3 Q. Well, you should know that information for purposes of my
4 examination, and I ask you to assume that fact, Mr. Scrantom.
5 Can you do that?

6 A. Well, sure I can assume most anything, but if I'm not
7 testifying as an expert, I don't know that assumptions are
8 really relevant. Facts seems to me relevant.

9 Q. I only want to examine you about what you've testified
10 about, Mr. Scrantom --

11 A. Okay.

12 Q. -- and nothing else. Now, if you would look at page four
13 of that exhibit, you see that balance sheet?

14 A. Yes.

15 Q. All right. Have you ever seen it before?

16 A. I don't recall.

17 Q. All right, sir. Whether you have or you have not?

18 A. That's correct. I don't recall whether I have or have
19 not.

20 Q. Your testimony earlier today was that you had not seen
21 any of the financial statements. Is that correct?

22 A. I don't know that I've said I have not seen any. And I
23 should make a distinction too that there were -- if the focus
24 is on what my law firm has seen, it's entirely possible one or
25 the other members of my law firm have seen this, but I'm

1 telling you I personally have not.

2 Q. All right, sir. Thank you.

3 A. I don't think. I mean I could have, but I just don't
4 remember.

5 Q. All right. Looking on page four here, still on
6 Exhibit 31, line three, and tell us what the inventory for
7 Drews Distributing, Inc., at the end of 2000 -- I'm sorry 1999
8 or the beginning of 2000 was on that balance sheet, Mr.
9 Scrantom.

10 A. At the beginning \$3,449,252 and at the end \$660,625.

11 Q. All right, sir. So during 2000 Drews wrote down their
12 machine inventory, correct? Is that correct?

13 A. I don't know how they came about that conclusion. I mean
14 if it was technically a writedown, if it was a depreciation, I
15 don't know. I have no real involvement with this, and I don't
16 know if it's really helpful to speculate about what the
17 accountants did.

18 Q. Let's don't speculate. Let's move over in that same
19 exhibit to the statement three, several pages over. I'll tell
20 you it's about four pages, five, six pages over. I'm sorry the
21 pages are not -- I'm sorry, it is numbered. Numbered ten.
22 Bottom of the page you should see numbers.

23 A. Statement three.

24 Q. All right. This is a statement three from the form
25 1120S. It's a schedule which is part of that return. Do you

1 see that?

2 A. Yes.

3 Q. All right, sir. And do you see the next to the last
4 entry on other deductions, inventory adjustment \$1,793,082?

5 A. Yes, I see that.

6 Q. So of the decline in machine inventory during 2001,
7 \$1,793,000 of that was attributable to a write-down. Isn't
8 that correct, Mr. Scrantom?

9 A. Again, I don't -- I don't know what method the
10 accountants used.

11 Q. Well, we know it's not depreciation, right?

12 A. Well, again, I don't know. I'm not an accountant too, by
13 the way. I'm sorry.

14 Q. Oh, I understood you to opine on what Financial
15 Accounting Standards Board Statement 5 says about booking
16 accounts payable, and you're not even an accountant?

17 A. No. I think I prefaced my response to that question by
18 saying that I wasn't really qualified in that area, but I was
19 familiar with it.

20 Q. All right.

21 A. Just as John Freeman.

22 Q. I'm sorry.

23 A. Just as Professor Freeman would be as well. He's not an
24 accountant.

25 Q. All right, sir. Let's look at the face of Exhibit 31.

- 1 A. First page?
- 2 Q. First page, yes, sir. And I focus your attention on line
- 3 21. The ordinary loss for the year 2000 was \$4,252,370, right?
- 4 A. That's what it says, yes.
- 5 Q. And that loss passes directly through to Mr. Andrews,
- 6 right?
- 7 A. Well, not exactly. I mean it would -- I'd have to look
- 8 at the K-1 to tell you that.
- 9 Q. Well, why don't you do that.
- 10 A. I'm not sure where it is.
- 11 Q. Well, it's attached, as required by law, to the tax
- 12 return.
- 13 A. I'm aware of that.
- 14 Q. Page 15.
- 15 A. Sure. What exhibit number?
- 16 Q. Aren't we on Exhibit 31, page 15?
- 17 A. Right.
- 18 Q. All right.
- 19 A. Yes. That is ordinary loss that showed up on Hugh
- 20 Andrews' K-1 and there were other -- his other income and so
- 21 forth shown on K-1 as --
- 22 Q. All right. But with regard to Drews and the K-1
- 23 attributable to Drews, line 21, ordinary loss of 4,252,370
- 24 transfers straight directly to Mr. Hugh Andrews' K-1, correct?
- 25 A. It does go to his K-1. I was taking exception to your

1 statement that it went directly to him because it doesn't go
2 directly to him. It's up to other adjustments on K-1, but it
3 goes directly to K-1, that's correct.

4 Q. The effect of that net operating loss to Mr. Andrews is
5 the exact converse of the effect of ordinary income of Drews on
6 Mr. Andrews' personal income tax return, isn't it, Mr.
7 Scrantom?

8 A. It's the direct con -- contrary to income?

9 Q. Converse.

10 A. The converse of it.

11 Q. In other words, if it's taxable income from Drews, Mr.
12 Andrews, as you so articulately testified, has to pay the
13 income tax on that, right?

14 A. If it were income?

15 Q. Yes, sir.

16 A. If it were income and subject to the other items on the
17 K-1, then this particular K-1 would result in taxable income to
18 him probably, but, again, that's speculation because it's a
19 loss and did he pay income tax? I don't -- I don't have a
20 clue. I assume he gets more than one K-1.

21 Q. Well, I understood your testimony earlier today, Mr.
22 Scrantom, to be that while, of course, Mr. Andrews has to pay
23 the income tax on the income of Drews, therefore, it made all
24 the sense in the world that he would reach into the company and
25 take out the cash to pay the tax because he has to pay the tax.

1 Now, wasn't that your testimony?

2 A. No. No. My testimony was that -- that the accountants
3 probably would have advised him to take a distribution to pay
4 his tax. I don't think I said he reached in anywhere. I think
5 my testimony was the accountants probably advised him to take a
6 distribution to pay tax when he had taxable income.

7 Q. All right. Well, let's look at Exhibit 27 right there in
8 front of you please. Now, that's the 1120S for Drews for 1998,
9 which shows \$4,570,000 in taxable income, correct?

10 A. It shows -- yes, well, it shows ordinary income, right.

11 Q. Ordinary income? And if you go over to Mr. Andrews' K-1,
12 which is part of that tax return, that number appears on his
13 K-1 at page 14, right?

14 A. Yes.

15 Q. All right. The exact same number, 4,570,374?

16 A. That's correct.

17 Q. And that tax return would have given rise to a pass
18 through for Mr. Andrews for the year 1998 for which he would
19 have to pay tax in 1999, correct?

20 A. He would have net taxable income probably by virtue of
21 this particular K-1. Did he pay tax? What was his tax
22 position? I don't know.

23 Q. Okay. I want to talk to you a little bit about that.
24 Under the law Mr. Andrews would have been required to file
25 estimates of his 1998 tax liability during the year 1998,

1 right?

2 A. For distributions from an S corp?

3 Q. Well --

4 A. On what basis?

5 Q. -- you're familiar with the requirement for taxpayers to
6 file quarterly estimates --

7 A. Yes.

8 Q. -- of income tax during the year?

9 A. Yes. And that requirement comes from several different
10 places. I just asked you which one you were talking about.

11 Q. Right. And so through the year of 1998 presumably Mr.
12 Andrews would have been filing quarterly estimates, paying the
13 tax?

14 A. Not necessarily.

15 Q. So you presume otherwise?

16 A. No, I said not necessarily. He -- he could have an
17 obligation to, you know, to pay on a quarterly paying basis,
18 but that depends on previous tax years. So, for example, if he
19 had -- I haven't looked at it, but if he had zero income the
20 year before, the answer to your question would be no. If he
21 had a lot of income, the answer to your question would be
22 maybe.

23 Q. Okay. Have you taken time to look at Mr. Andrews'
24 individual income tax returns?

25 A. No.

1 Q. Let's look at Exhibit 36. This is his individual income
2 tax return for the year 1999, correct?

3 A. Appears to be. Again, this one is not signed.

4 Q. It is signed by the accountant?

5 A. Yes.

6 Q. And you're suggesting by that comment that maybe Mr.
7 Andrews didn't file his tax return or didn't sign it?

8 A. No, I just don't know.

9 Q. All right, sir.

10 A. There is a space for him to have signed, so, you know,
11 this one is not signed.

12 Q. Well, let's look, if you would, to line 64 and 65, which
13 is on page seven. His total payments were \$2,114,000, correct?

14 A. That's what it says.

15 Q. And he was entitled to a refund of \$420,000, right?
16 That's line 66A.

17 A. Well, I'm trying to interpret what you're saying very
18 literally, in fact, applied some amount of that to his
19 estimated future tax, but he was -- I guess he was entitled to
20 it. Yeah, that's -- did he actually take it? I don't know.

21 MR. HODGE: I object.

22 THE COURT: I'm sorry?

23 MR. HODGE: I object to the relevance of the line. I
24 thought he was laying a foundation for something, but I see --

25 THE COURT: I don't know where he's headed either,

1 but I'll give you a little more room.

2 MR. BYRD: I think I'll bring it all back together,
3 Judge.

4 BY MR. BYRD:

5 Q. It says on line 66a of this return, "Amount of line 65
6 you want refunded to you," and that says \$420,000, right?

7 A. Yes.

8 Q. Okay.

9 A. That's the refund amount.

10 Q. All right. Now, we were talking about the tax return for
11 the year 2000, which had a net loss for Mr. Andrews. Do you
12 need me to remind you which tax return, which exhibit it is,
13 31?

14 A. The Drews tax return generated a K-1 with a negative
15 balance.

16 Q. Right. \$4,252,000?

17 A. That's what I see.

18 Q. That would pass through to Mr. Andrews' personal tax
19 return?

20 A. Should have been.

21 Q. Okay. And he would be entitled to a refund of income
22 taxes for previous years, right?

23 A. Depends on what his liability was.

24 Q. If he had a liability in a previous year, which we just
25 looked at --

1 A. Yes.

2 Q. -- and he paid it, he would be entitled to file a claim
3 for refund and get it back; wouldn't he, Mr. Scrantom?

4 A. I should be clear, I don't file tax returns except for my
5 own, and most tax lawyers don't, so a lot of questioning about
6 returns, I can talk about tax principles, but what did he do as
7 a matter of tax planning, should he have done, I'm afraid I --

8 Q. You can't help me there?

9 A. I can't help you. I mean could I if I had the time and
10 documents and a calculator and a better set of glasses. I had
11 to buy these last night.

12 Q. All right, sir. Your testimony in part was that you
13 along with all these other lawyers that you were consulting
14 with and Mr. Andrews and his staff concluded that those
15 machines from Drew -- from IGT had value and that's the reason
16 the company was not insolvent at any time or one of the
17 reasons?

18 A. That was one reason why under the balance sheet test, and
19 as I -- I don't know if I pointed this out very artfully, but
20 South Carolina really hasn't adopted solidly either test, so if
21 you're trying to determine whether someone's insolvent under
22 South Carolina law, it's a bit of a crap shoot frankly. But,
23 you know, the fact that the machines were part of the assets of
24 Drews we were told and that they had value was a relevant
25 factor in our conclusion that probably under the balance sheet

1 test, were that applicable, that the company would be solvent.

2 Q. All right, sir. Let's take a look at Exhibit 35, page
3 four. In December of 2002 at 12/31/2002, the balance sheet,
4 which was part of the tax return which was prepared by Mr.
5 Brown, indicated that the value of the inventory at Drews was
6 zero, correct?

7 A. At the end of '02 that's what that says, yes.

8 Q. That's December 31, which was about 47, 48, 50 days after
9 you prepared an assignment of whatever other assets there were
10 in Drews to Mr. Andrews?

11 A. I didn't prepare the assignment, first of all, but it --
12 I mean whenever this was filed, I'm not sure. I mean it was
13 roughly contemporaneous, and that's why I was making this
14 statement earlier that, you know, what an accountant does on a
15 tax return balance sheet, which is a confidential document, and
16 as I'm sure you're aware, accountants take different positions
17 for financial and tax accounting purposes, for some reason he
18 put zero. I don't have a clue why.

19 Q. Well, we do know that he did it under penalties of
20 perjury. We at least know that, don't we?

21 A. Well, that's a good question, because, again, you know,
22 if you're asking me about return preparer liability and duties,
23 this one's not signed by anybody. So, you know, I don't know
24 if anybody's made a representation this is correct. This is
25 Exhibit 35, but it's not signed by the taxpayer. It's not

1 signed by an accountant. If an accountant were to take that
2 position and the taxpayer didn't sign the return, is the
3 accountant signing the return under penalty of perjury? I
4 don't think so. I don't believe so.

5 Q. So you take the position that 2601 of the code and this
6 statement regarding a preparer's obligation, you just don't
7 agree with it?

8 A. No. I'm pointing you back to the -- back to the
9 statement on the return. I mean there is a place for an
10 officer to sign and then there's a place where a, quote, "paid
11 preparer" to sign. The statutory penalty statement, does it
12 apply to the paid preparer? The answer is I don't think so.

13 Q. All right, sir.

14 A. But I could go research that. I just don't know.

15 Q. Let me ask you about this. You do know about aiding and
16 abetting tax fraud? You know about that, don't you?

17 A. Yeah.

18 Q. Okay. And if this tax return was, in fact, signed by
19 some authorized officer at Drews and filed with the Internal
20 Revenue Service, it has to be correct in all material points,
21 right?

22 A. Well, it should be, but I mean the preparer -- it also
23 says here that the preparer is -- declaration of preparer is
24 based on all information of which preparer has any knowledge.
25 I mean that's the out for the preparer.

1 Q. Okay.

2 A. If he has knowledge of it, then he's bound to properly
3 disclose it.

4 Q. What about the taxpayer, Mr. Scrantom?

5 A. Well, the taxpayer here is the corporation, first of all.

6 Q. Yes.

7 A. Okay. I don't see that it's signed by an officer, and so
8 I'm not sure who -- I don't see a signed return.

9 Q. Okay.

10 A. If you showed me a signed return, I could -- I could
11 probably gin up some kind of opinion, which would be a legal
12 opinion, not an accounting opinion, about what duties the
13 signer would be under.

14 Q. Let me ask you a simple question. Are tax returns filed
15 with the federal government supposed to be true and correct,
16 Mr. Scrantom?

17 A. Of course they are.

18 Q. Thank you very much. That's all I need from you. Now,
19 Exhibit 35, would you look at page one of Exhibit 35.

20 A. Was I already looking at 35?

21 Q. Yes, sir.

22 A. Maybe I was looking at the wrong one.

23 Q. 1120S.

24 A. Got you. Exhibit 35.

25 Q. That income tax return contained an operating loss or an

1 ordinary loss of \$3,352,000, correct?

2 A. Correct.

3 Q. Okay. And if you will look over at page 12, Mr. Andrews'
4 K-1, that loss passed through him on his K-1, correct.

5 A. That's correct.

6 Q. And if he paid any income tax before 2002, he could file
7 a claim for refund, if he paid any income tax, right?

8 A. If this -- if this were the totality of his personal tax
9 position, that would probably be fair.

10 Q. All right.

11 A. I mean you can't file -- you obviously cannot file a
12 claim for refund based on a negative number on K-1. Okay. So
13 based on this document it's -- it doesn't have any tax
14 significance in terms of refund, so just to be clear about it.

15 Q. Let's talk about statutory close corporations and LLCs a
16 little bit. Okay? You said that Drews was incorporated in
17 1981 before the South Carolina legislature adopted the
18 recommendation to enact statutory close corporation provision
19 of the corporate code, right?

20 A. Well, I think it was before that the code was enacted.

21 Q. Yes, sir.

22 A. I don't know about the recommendation.

23 Q. 1981 -- excuse me?

24 A. Yeah. I could be wrong about the date. I thought it was
25 '86.

1 Q. There's no question though at any time after it was
2 enacted any corporation in South Carolina could elect to alter
3 their articles of incorporation to become a statutory close
4 corporation. Isn't that true?

5 A. There was some debate about that.

6 Q. There's not any debate about it now, is there?

7 A. Not many people are using the close corporation statute
8 if you talk to legislature people --

9 Q. All right, sir.

10 A. -- but, you know, could you convert notionally? Yes.

11 Q. All right.

12 A. How would one go about converting? Frankly the
13 legislature didn't produce a decent form.

14 Q. All right.

15 A. And so, you know, people looked at it, boy, this would be
16 a good idea, but we don't know how to do it.

17 Q. All right, sir. At any rate Drews is not a statutory
18 close corporation, correct?

19 A. As far as I know.

20 Q. And Drews was not an LLC, correct?

21 A. No.

22 Q. It was a regular corporation under the South Carolina
23 Code?

24 A. Correct.

25 Q. Correct. And under the South Carolina Code a regular

1 corporation to pay a dividend it has to be authorized by action
2 of the board of directors, correct?

3 A. That's true.

4 Q. All right, sir. And I think you concluded in your office
5 that there were no minutes for Drews except the ones you
6 prepared?

7 A. No, I don't think I concluded that.

8 Q. You don't?

9 A. If I said that, I must have misspoken.

10 Q. Okay. Well, let's look at Trial Exhibit Number --

11 A. By the way, I didn't prepare the minutes too, but I --
12 you need to understand I'm here as an officer of my company
13 effectively, so the only way I can take any references to you
14 unless I specifically say this is my personal knowledge, is
15 knowledge that may have existed in my company or something.

16 Q. Okay. You do acknowledge that your law firm prepared the
17 minutes for the assignment in 2002, don't you, Mr. Scrantom?

18 A. They prepared, I think, two sets of minutes that I saw,
19 two sheets of paper.

20 Q. All right. One was a set of minutes for the board of
21 directors, dated November the 13th, 2002, and the other was a
22 set of minutes of the board of directors dated November the
23 13th, 2002, correct.

24 A. I would have to look back.

25 Q. All right, sir. Look at Exhibit 15 and 16, if you would

1 please.

2 A. Okay.

3 Q. Looked at both of them, 15 and 16?

4 A. Okay. Yes, I have seen them.

5 Q. All right. Now, you don't deny that your office prepared

6 those minutes, do you, Mr. Scrantom?

7 A. Well, I mean we didn't prepare -- I know we didn't

8 prepare the first pages of those exhibits.

9 Q. Mr. Scrantom, I just want you to look at the minutes for

10 November the 13th, 2002, for the shareholders and board of

11 directors and tell me if you did or did not in your office

12 prepare them.

13 A. All right. I think the answer is yes.

14 Q. Thank you.

15 A. But they are minutes of a meeting. I mean usually when

16 we do things -- I think I had this discussion with Jeff. When

17 we do things, we do things by consent resolution, but this is

18 minutes of a meeting, and so presumably, you know, we weren't

19 -- we didn't attend the meeting. Did we prepare this paper? I

20 think so. I think I saw -- Jeff showed me a fax where someone

21 in my office had sent it out. I don't have personal knowledge

22 though.

23 Q. You actually have a communication in your file from your

24 office forwarding these minutes to Drews' office up here near

25 Spartanburg, don't you?

1 A. I would have to look back at that communication. My best
2 recollection from my deposition was that there was a
3 communication. I didn't write it. I didn't have firsthand
4 knowledge of it, and to tell you under penalty of perjury in
5 this case I'd like to see it before I do. Sorry to be so
6 precise.

7 Q. Okay. I'd ask you to look at Exhibit Number 62, Mr.
8 Scrantom, please, sir.

9 A. 62?

10 Q. Yes.

11 A. Okay.

12 Q. That was Exhibit 14 to your deposition, correct?

13 A. I don't know. If you say so. I mean -- I don't mean to
14 be uncooperative, but there's no exhibit number on here, so I
15 just can't -- I don't recall the exhibit number.

16 Q. Here's your deposition, Mr. Scrantom.

17 A. What would you like me to do, compare the exhibit
18 numbers?

19 Q. Look at that exhibit number please.

20 A. What was the number again?

21 Q. Exhibit Number 14. Can you confirm please, sir, that
22 Exhibit Number 14 of your deposition is Exhibit Number 62 in
23 this trial?

24 A. It appears so.

25 Q. All right. And you confirm in your deposition, sir, that

1 those were notes out of your files and your law firm's office,
2 correct?

3 A. Yes.

4 Q. All right, sir. If you go to the second page of those
5 notes under Andrews at numbered paragraph four, read into the
6 record what that says please.

7 A. Andrews numbered paragraph four. "Drews, check by-laws
8 re annual meeting. Draw up minutes for annual meeting.
9 Claudia spoke with HHA re Callum invoice can be moved to
10 Tri-Star."

11 Q. All right, sir. Your folks in your law firm were talking
12 about creating minutes that didn't exist?

13 A. I -- I don't know.

14 Q. You don't know? All right.

15 A. I mean if you're asking me what this was about, I think
16 -- I think I testified in my deposition that this was done by a
17 paralegal. It was not done by a lawyer, first of all. And
18 what -- what was he referring to? I mean there's -- I don't
19 think there's a date on here. I don't know when it was done.
20 For all I know this -- this -- it says, "Check bylaws re" -- it
21 says, "Check bylaws re annual meeting. Draw up minutes for
22 annual meeting." I mean may have been talking about the
23 upcoming year.

24 Q. Okay.

25 A. If you're implying that a paralegal may have made a note

1 based on something -- I don't know where this came from -- that
2 we should draw up a minute of a meeting, your firm does that
3 every day. We do that frequently.

4 Q. Thank you, Mr. Scrantom. When you were introduced as a
5 witness and you were describing your practice, you said your
6 specialty or one of them is preservation of assets?

7 A. I don't think so.

8 Q. You didn't say that?

9 A. I don't think so.

10 Q. Is your practice involved with preservation of assets?

11 A. I think, sure.

12 Q. And preservation from what?

13 A. Why I don't know. I mean preservation. I mean we are
14 involved in estate planning. We are involved in corporate
15 structuring. Every time you set up a corporation that's asset
16 protection obviously.

17 Q. Okay.

18 A. Every time you set up an LLC you are trying to protect
19 the proposed ongoing business venture from liabilities of
20 shareholders. Again, your firm does that many times a day
21 probably.

22 Q. Well, let's talk about this specific engagement, that is
23 the engagement which started with Exhibit Number 51, your
24 letter to Mr. Andrews on October the 10th, 2002.

25 A. Okay.

1 Q. You signed this letter on behalf of your firm, Ten State
2 Street, correct?

3 A. Yes. This was actually signed by my secretary for me.

4 Q. And did she have authority to do that?

5 A. Yes, she did.

6 Q. All right. This was to Mr. Andrews, and on October the
7 10th, 2002, you say that you're "pleased to have the
8 opportunity to provide him with general corporate advice in
9 connection with personal business planning." Personal business
10 planning, right?

11 A. Yeah.

12 Q. Okay. And the way this thing came down was that Hugh
13 Andrews called you and told you that he was owed some money by
14 Drews and that the company had some liabilities, and you were
15 aware of the arbitration and he wanted to know what you could
16 do to help him, right?

17 A. No.

18 MR. HODGE: Object to misleading form of the
19 questions.

20 A. Yeah. That's not what I said. I mean there are pieces
21 of that if which if I saw them together were probably all
22 accurate, but I think what I said was he called me and asked me
23 what he could do about these debts that he was owed.

24 Q. All right. I ask you look at page 34 of your deposition,
25 Mr. Scrantom.

1 A. Yes.

2 Q. Okay. And beginning in the middle of line ten you say,
3 "The way that this particular engagement unfolded was we got a
4 call from Hugh Andrews to say I'm owed all this money by the
5 company. The company has some liabilities. We were aware of
6 the arbitration and he said basically what can I do." Now, are
7 those words that came out of your mouth that day?

8 A. Well, I have to look at the question I was asked.

9 Q. Okay.

10 A. If you'd like me to read here, it may take a minute.

11 Q. Take as much time as you need. I think it's pretty
12 important. The fact finder may disagree with me.

13 A. Well, this simple point without taking the time to read
14 the context because this was well into my deposition, the
15 complete answer to that question that you just quoted from was,
16 "That's a good question. There was so much conversation with
17 Ned Nicholson at the McNair firm in this period that I can't
18 recall specific conversations. And I don't think I have
19 records of specific conversations other than the ones I've
20 given you." Those conversations with Ned Nicholson, a partner
21 of McNair, were about the IGT case. Okay. And I said -- I go
22 on to say, "But at some point the way this particular
23 engagement unfolded was we got a call from Hugh Andrews." Now,
24 I don't think that Hugh Andrews and I talked about the
25 arbitration in that first conversation is my point. I mean I

1 know that the first conversation that I had with Hugh Andrews
2 about the arbitration was after I talked to Ned Nicholson.

3 Now, if I said --

4 Q. You pretty sure about that?

5 A. I'm pretty sure, yeah.

6 Q. Okay. Well, let's look at Exhibit Number 54, Trial
7 Exhibit Number 54.

8 A. I'm looking at it.

9 Q. This is October the 18th, 2002. This is a note of a
10 telephone conference with somebody in your law firm, correct?

11 A. Yes, a secretary.

12 Q. Okay. And the information that was communicated on that
13 day was what, sir?

14 A. Well, according to this note it appears to be a note of a
15 conversation with Ned Nicholson.

16 Q. Yes, sir.

17 A. And it -- I'm not sure why it was made. I mean I don't
18 know that I ever saw this until it was produced. This wasn't a
19 memo that was given to me. It was a personal note that was
20 made to a file by a secretary, paralegal secretary and why did
21 she make it, when did she make it, what was the context, all I
22 can tell is the context appears to be a conversation with a
23 partner at McNair.

24 Q. Okay. How do you know it's a secretary?

25 A. I recognize the handwriting.

1 Q. You do? And would it be this --

2 A. It's the same person that wrote the other exhibit that I
3 have referred to. Secretary, paralegal.

4 Q. I thought that you said it was a paralegal?

5 A. Well, paralegal secretary. We're a small firm. We have
6 to wear a lot of hats.

7 Q. All right. I think you testified that you never
8 represented Drews, you only represented Mr. Andrews. Isn't
9 that correct?

10 A. That's what I -- I believe. And frankly since my
11 deposition I was asked that on a question, and I have never
12 gone back and confirmed it, but I don't think we represented
13 Drews.

14 Q. And when you prepared the assignment, your office
15 prepared the assignment -- which it did, right?

16 A. As far as I know. Again, I didn't prepare it. To
17 clarify in my deposition I made this point that the assignment
18 was prepared with input from several people outside of our
19 firm. So, you know, I don't mean to split hairs with you, but,
20 you know, if I prepare something, I sit down and to author it
21 myself with no input. If you and I prepare something, I
22 wouldn't necessarily say I prepared it. I would say we
23 prepared it. Okay. So the final draft of the assignment
24 apparently emanated from our office, Ten State Street.

25 Q. All right, sir. And you are familiar with the

1 arbitration award in California, right?

2 A. At what time?

3 Q. In October of 2002.

4 A. Somewhere in there we became aware of it, yeah?

5 Q. All right, sir. And if you would look at Exhibit Number

6 1, which is in the binder right over your right shoulder, Mr.

7 Scrantom.

8 A. Okay.

9 Q. And you'll see that arbitration award was dated

10 September 13th, if I'm not mistaken, final award?

11 A. Yes.

12 Q. September 13, 2002, the arbitrator issued his final

13 award, right?

14 A. That's what it appears. I don't know that I have seen

15 this document before.

16 Q. All right, sir. But you were aware of that, correct?

17 A. Was I aware of an award? Yes.

18 Q. All right, sir. And you were also aware in your offices

19 that Mr. Nicholson anticipated a judgment being entered in the

20 federal court, the United States district court for the

21 Northern District of California around November the 15th, 16th

22 or 17th, weren't you?

23 A. I -- personally I'm not sure.

24 Q. I'm talking about your office, all the people that worked

25 on this matter.

1 A. Yeah. I would have to refer to their notes, and if you
2 can help me with that, I'm happy to verify they're true.

3 Q. I beg your pardon. We just referred to that note, right?

4 A. Okay.

5 Q. What Mr. Ned Nicholson said about that.

6 A. Well, we debated this some in my deposition. What this
7 person was writing, again, it's a nonlawyer, so I don't think
8 we should assume any legal content here in a way this is being
9 described. It says -- I don't know what the first line says,
10 but this says, "Worst case scenario. Judgment against Drews
11 rendered in Northern California." Now, when I was asked what a
12 nonlawyer meant by worst case scenario, I take those words at
13 their absolute literal meaning. That is the worst case
14 scenario for the rest of your days you will be hit by a truck
15 when you walk outside, but hopefully that doesn't happen.

16 Now, Mr. -- I don't know what Mr. Nicholson told Mr.
17 Broadwater, but it led Mr. Broadwater to say not oh God, this
18 is going to happen, but this is the worst case. And in my
19 parlance that means a possibility.

20 Q. Your office was operating under the worst case scenario
21 assumption; were you not?

22 A. Well, I mean I think lawyers generally do that, yeah.

23 Q. All right, sir. Thank you. If you would look at
24 Exhibit 1, the second part of that is actually the judgment
25 that was rendered.

1 A. Exhibit 1?

2 Q. Yes, sir.

3 A. This was the say -- that again. This was a judgment --

4 Q. Following the arbitration award, Mr. Scrantom, I think
5 you'll see as part of Exhibit 1 was the order of the United
6 States district court --

7 A. Yes.

8 Q. -- for the Northern District of California --

9 A. I see that.

10 Q. -- confirming that arbitration award?

11 A. I would have to read this. This says order granting
12 petition to confirm. I mean if that's what you say it did, I
13 believe you.

14 Q. Okay. So I think to use your term at least by the time
15 of that order it became the gospel, it was a judgment, right?

16 A. I think that's a legal conclusion. I could read this.
17 I've never read it before.

18 Q. That's okay.

19 A. If you say so.

20 Q. The judge has got it. He's totally capable of reading
21 it. Now, let's look at --

22 A. I should make something clear. I mean I feel like I mean
23 you're sort of attacking me on this issue and I should make
24 clear that any understandings, knowledge, facts, belief that we
25 had at any time concerning the status, prospects, legal

1 sufficiency or nature of what was going on with IGT came to us
2 100 percent from a senior partner at the McNair firm. Okay?
3 And his beliefs about it as expressed to us were that it was
4 going to be fought and defeated at any number of levels. And
5 so assailing me about Mr. Nicholson's beliefs and judgments is
6 not really going to do much good. You ought to ask him.

7 Q. I don't intend to be assailing you, sir. I just want to
8 know what your firm knew and when they knew it --

9 A. Right.

10 Q. -- and what you were trying to do --

11 A. We did not have this document.

12 Q. No, sir.

13 A. We did not have any factual actual paper or anything
14 concerning this case. The only information we got about this
15 case until eventually we were faxed a copy of something which
16 was a month or so down the road, two months down the road, well
17 after I think we had done our analysis, was what Ned Nicholson
18 gave us, what he told us, what he believed and so forth. So
19 the facts of what were going on we didn't have actual knowledge
20 of them. I didn't read that arbitral award as goodness, we
21 should do something here.

22 Q. Excuse me, Mr. Scrantom. Let me interrupt you here. You
23 just testified a few minutes ago that you were operating, you
24 were planning, you were preparing documents in your office
25 based upon the worst case scenario, correct?

1 A. Yeah. I think so, yeah.

2 Q. And the worst case scenario happened, correct?

3 A. Well, let me look at what Mr. Broadwater said. We're --
4 sir, we're arguing about something that someone else wrote.

5 Okay? Now, I don't mean to be difficult, but I just didn't
6 write it. Worst case scenario, judgment against Drews issued.

7 I mean is that the only -- if you like for me to answer another
8 question, which is why were we preparing these documents, I
9 could give you any number of reasons. For example, there were
10 15 promissory notes at issue here, all executed at different
11 times over the period of about 18 months. Okay? Certain of
12 those notes were about to -- the statute of limitations was
13 about to expire on them.

14 Q. When? When were they about to expire?

15 A. We thought within -- within five months.

16 Q. In October -- in October of 2002 you thought the statute
17 was going to expire in five months?

18 A. I think that was the conclusion. You've got the notes.
19 We can look at them.

20 Q. First note was August of 2000. See that?

21 A. It would be eight months, eight or nine. I mean the
22 statute of limitations on a demand note, as you probably know,
23 under South Carolina law is three years.

24 Q. Yes, sir.

25 A. And these were demand notes.

1 Q. Yes, sir.

2 A. And so, again, the client contacted us. He said, "What
3 should I do about these notes?" When we finally saw them, our
4 advice to him was, you know, they're expiring. You need to do
5 something.

6 Q. In August?

7 A. Whenever the contact was.

8 Q. No. I mean the first note was going to expire in August
9 of 2003, right, Mr. Scrantom?

10 A. Oh, yeah, that was the date of it.

11 Q. All right, sir. So there was no urgency in October of
12 2002 about this statute of limitations issue, was there?

13 A. Oh, I don't know. I think that all lawyers when they get
14 inside of a year with the statute of limitations, they're
15 looking at -- particularly where you've got a series of notes
16 and, you know, we didn't know when the advances really were.
17 We assumed the dates were correct. The simple point was you've
18 created demand instruments. The statute of limitations on
19 demand instruments runs in three years. Okay. Three years
20 from the date of making. Okay? Now, did we know those notes
21 were made exactly on the dates they were dated? Well, that's
22 all we could assume. I'm just -- I said there are several
23 reasons. That's one, one reason we were doing the work we were
24 doing.

25 Q. What was another one?

1 A. I mean the issue of potential creditor claims, and
2 specifically this one was an issue. However, we were told by
3 the McNair firm that it was a worst case scenario.

4 Q. All right, sir.

5 A. That it was -- that it was unlikely. I can remember a
6 conversation with Ned Nicholson where he said, "I don't think
7 they're going to get this thing enforced," and he gave me about
8 ten reasons why.

9 Q. All right, sir.

10 A. Including illegality of the contract because they were
11 trying to enforce an arbiter award in South Carolina where the
12 contract was arguably illegal because of the nature of the
13 property that was being sold in light of then current South
14 Carolina law, and he told me about constitutional claims and
15 counterclaims. So, yeah, we viewed it as worst case scenario.

16 Q. All right, sir. So the statute of limitations running on
17 the notes was one thing?

18 A. (Nods head affirmatively.)

19 Q. And the judgment by IGT against Drews, right?

20 A. The fact that the business was -- was winding down. The
21 fact that Hugh Andrews hadn't been paid on the notes. The fact
22 that, you know, a significant factor, an economic factor is
23 that Hugh Andrews' notes, again, we didn't make them -- I just
24 saw them -- were bearing interest at 10 percent a year. That's
25 some pretty pricey money these days. And so the question was

1 did these notes continue to exist so that Drews continues to
2 accrue interest, which would be the total amount of the notes
3 probably between -- probably about \$240,000 per year.

4 Q. And lo and behold after the assignment they did continue
5 to accrue interest. The notes weren't even satisfied, were
6 they, Mr. Scrantom?

7 A. I think they were satisfied.

8 Q. You do?

9 A. I mean I don't know. That's up to whoever holds them.

10 Q. Well, look at Exhibit Number 35, page four.

11 A. Okay. Page four?

12 Q. Page four. Loans from shareholders still on the balance
13 sheet, \$1,332,000. And in fact, Mr. Payne when he took your
14 deposition, you explained to him ad nauseam why the notes
15 weren't going to be satisfied, didn't you, Mr. Scrantom, that
16 there was no way to know what the value of the assignment of
17 assets was, therefore the notes were not going to be satisfied.
18 Isn't that what you told Mr. Payne then?

19 A. What I -- what I think I told Mr. Payne was -- was that
20 it was unknown what the value of the assets were. We didn't
21 know what the value of the assets were. We were led to believe
22 they were less than the amount of the debt. And I mean if I
23 were to take Mr. Markel's testimony though, which I now
24 understand as to the value of the assets, it would seem that
25 Mr. Andrews -- Mr. Andrews exchanged assets that were

1 essentially worthless for two and a half million dollars worth
2 of debt, and that was Mr. Markel's testimony.

3 I don't know that I would agree with that, but I
4 don't know that I've formed really an opinion about it, but as
5 to what the accountant did, again, I don't know. It shows
6 remaining loans from shareholders a million four. Why -- why
7 does it show a million four when the face amount was -- was
8 more than that? I mean I don't know what to speculate about
9 this about what went through the accountant's mind.

10 Q. All right.

11 A. I didn't instruct the accountant. I didn't give the
12 accountant any information. In fact, I've never talked to the
13 accountant.

14 Q. I ask you to look, Mr. Scrantom, if you would, at
15 Exhibit 57. You identify this as actually a document you
16 prepared, Mr. Scrantom?

17 A. This is a response to an e-mail which I wrote the
18 response, yes.

19 Q. Okay. And in all caps you refer Mr. Jenkins to your
20 comments? Where he says -- Mr. Jenkins is in your office,
21 right?

22 A. Correct.

23 Q. Was a lawyer?

24 A. Yes.

25 Q. Okay. Not a paralegal or secretary?

1 A. No.

2 Q. Okay. And he tells you he's drafting a unilateral
3 assignment is essentially what that says, and you say in
4 response, "Perhaps the assignment should be gussied up with
5 recitals as to the existence of a perfected security interest
6 and the creditor's right under the Uniform Commercial Code to
7 take possession any way. The action should probably be subject
8 of a consent resolution by the board of the debtor. Also we
9 should alert client to tax consequences of the foreclosure. I
10 think they are simple. Drews will have forgiveness of debt at
11 some point and Andrews will have some measure of deductible bad
12 debt after the fat lady sings." Now --

13 A. There before the grace of God go I on internal e-mails
14 the way we talk to our partners.

15 Q. All right.

16 A. But there it is.

17 Q. All right. And this was on November the 7th, 2002,
18 right?

19 A. Yes.

20 Q. Okay. And the e-mail from Mr. Jenkins was in, I think as
21 you said, European --

22 A. Yes, it must have been.

23 Q. -- style, that is the first number is the day in Europe
24 by their practice?

25 A. So must have been November -- this looks like it was the

1 day after his e-mail to me.

2 Q. As in military days, 6/11/2002 means the 6th day of
3 November, 2002, and you respond on the next day, the 7th?

4 A. That's what it is.

5 Q. And by the 11th day of November your office had prepared
6 an assignment, had prepared minutes to approve the assignment
7 and had forwarded them up to Drews' offices for the corporate
8 entity to execute. Isn't that right?

9 A. If you say so.

10 Q. Okay. Look at --

11 A. I don't have the dates.

12 Q. Okay. Well, just look at the minutes 15 and 16 that were
13 prepared, and if you'd like to look at the assignment to
14 refresh your recollection about the date of it --

15 A. 15 and 16.

16 Q. -- it's Exhibit 65.

17 A. The only thing I'm taking exception with at this point
18 was when things were prepared and sent. I just don't know. I
19 see the date on this is November 13. I see the date on this
20 e-mail is November 7.

21 Q. And the date on the assignment?

22 A. Is November 11.

23 Q. All right. Let me talk to you just a little bit about
24 the insolvency issue. As far as you're concerned until today
25 you had no recollection of having looked at any balance sheets

1 of Drews. Is that correct?

2 A. If we're talking about prior to this time, okay, prior to
3 November 6.

4 Q. 2002?

5 A. 2002.

6 Q. Yes, sir.

7 A. Had I seen a balance sheet? Again, I'm not sure. I mean
8 maybe I did, maybe I didn't. It was five years ago.

9 Q. But you didn't spend any time examining the balance sheet
10 or the assets of the company to reach the conclusion that the
11 company was not undercapitalized, did you?

12 A. Well, I don't know that I did that analysis. I think it
13 was done in my office, but me personally, I'm not sure what
14 went into that.

15 Q. Yet you've come here today and testified that it was not
16 undercapitalized and you don't have any idea what the people in
17 your office determined about that?

18 A. No. I think -- I don't think it was undercapitalized,
19 but I do think that, you know, in the law you have to either
20 take a snapshot or a movie picture. Okay? If we're taking a
21 snapshot of a moment in time, okay, was the company
22 undercapitalized at that moment in time, I can tell you this,
23 the day after most corporations are formed they are
24 undercapitalized.

25 Q. You don't have any reason to believe this one was, do

1 you?

2 A. 99 percent, a hundred percent are, until that first
3 capital subscription check is written. Okay? Then they get
4 capital and they are not undercapitalized, and then they have
5 revenues and losses. The point is if you want to ask me a
6 question about capitalization, you need to give me a snapshot
7 date and then I can tell you whether I have an opinion about it
8 or not.

9 Q. Well, you've already rendered an opinion, Mr. Scrantom,
10 about it.

11 A. Well, I think what I said earlier about capitalization
12 was that -- was that we didn't think -- we felt it was good
13 argument it wasn't even relevant in this context.

14 Q. All right, sir. All right.

15 A. That was, again, because of the fact that the law seems
16 to indicate that in a contract dispute capitalization is not
17 really an issue.

18 Q. That is if a company is undercapitalized at the time the
19 contract is entered into, the parties are deemed to have gone
20 into the contract with their eyes wide open, right? I mean
21 that's essentially what the theory of the law is?

22 A. That's essentially it.

23 Q. Okay. This contract was entered into in 1999 or earlier
24 in 1998. Do you have any idea what the capitalization of the
25 company was at that time?

1 A. Do I have any idea? I have a sense it had a fair amount
2 of retained earnings which were carried as capital --

3 Q. Yes, sir.

4 A. -- until such time as they were distributed.

5 Q. Okay. All right. Okay. Now --

6 A. So I would say, no, I would think in '99 it had a ton of
7 capital.

8 Q. Well, this whole idea of piercing the corporate veil
9 certainly applies to -- in the context of contracts, doesn't
10 it, contract liabilities?

11 A. It can, sure.

12 Q. And it certainly applies to what's going on from the time
13 the contract is entered into, breached and collection efforts
14 are attempted to evaluate the solvency and the conduct of the
15 shareholder all during that period?

16 A. Well, if you're suggesting that a shareholder has a duty
17 to preserve its assets or its capital or whatever you want to
18 call it from the moment it enters into a contract until the
19 moment that it has the sheriff, you know, executing and levying
20 on its assets, I squarely disagree with that for the same
21 reason the U.S. Supreme Court has said very clearly that their
22 federal courts have no prejudgment attachment. I mean there
23 isn't necessarily a duty to preserve assets for potential
24 creditors during the life of the company, and if that were the
25 case, the world would be in chaos.

1 Q. Mr. Scrantom, have you ever heard of the concept, the
2 legal concept of deepening insolvency?

3 A. I've heard of that, yeah.

4 Q. And you know that once a corporation hits insolvency and
5 thereafter the officers, directors and shareholder then have a
6 fiduciary duty to the creditors. You know that, don't you, Mr.
7 Scrantom?

8 A. I'm familiar with that concept. That's not a black
9 letter principle of law in this state I don't believe.

10 Q. Okay. So you don't think that there's any fiduciary
11 responsibility of the officers and directors and a majority
12 shareholder of a corporation to a creditor once the corporation
13 becomes insolvent?

14 A. It depends on the circumstances.

15 Q. All right.

16 A. There can be circumstances where fiduciary duties are
17 relevant --

18 Q. All right.

19 A. -- but I have to qualify regarding closely held company.
20 Okay? And I suppose you have to look at the kind of
21 insolvency, the nature of the insolvency. It can happen, but
22 if you're telling me or if you're asking me to agree with the
23 legal principle that any, quote, "insolvent company" by some
24 measure of insolvency, the officers all of a sudden take on
25 fiduciary duty to creditors, I don't think they do.

1 Q. You're not familiar with that law?

2 A. No. I'm familiar with the concept. I'm saying I don't
3 think it applies in every single case which I took --

4 Q. All right. And we know based on the balance sheet on the
5 2002 tax return that the result of the assignment to Mr. Hugh
6 Andrews was that the company was completely insolvent, that
7 transaction in and of itself, if no other ever before, created
8 insolvency, correct?

9 A. According to whom? Repeat that question.

10 Q. According to the balance sheet on the 2002 income tax
11 return of Drews, Mr. Scrantom, that document --

12 A. What was that again?

13 Q. 35.

14 A. I don't -- I don't think I'm going to agree with the
15 question because I would imagine that the accountants would
16 have said something about the insolvency, but that's -- okay.
17 The balance sheet.

18 Q. Page four. That document we looked at several times
19 today.

20 A. Sorry. You're far more familiar with it than I am. Does
21 this -- your question is does this show this company is
22 insolvent?

23 Q. Yes, sir.

24 A. No, I don't think so. I mean, you know, we have to
25 define insolvency, spend a lot of time talking about that.

1 Q. Let's just do the assets versus liabilities test. The
2 assets on that balance sheet are zero, right? Yes or no, and
3 then explain.

4 A. The assets at the end of the year --

5 Q. Yes.

6 A. -- are zero.

7 Q. Zero.

8 A. Again, I personally think that's incorrect based on what
9 I have heard, and I don't know why it was put there though.

10 Q. Okay. And the liabilities on 12/31/2002 of Drews -- of
11 Drews had been confirmed by court order in California and that
12 liability is not even on that balance sheet, is it?

13 A. I don't know. I haven't studied it.

14 Q. You're looking at it, are you not?

15 A. Well, it's a detailed piece of paper. I'd like a minute
16 to look at it.

17 Q. All right.

18 A. I don't know. It doesn't appear to be on it.

19 Q. So if you compare the assets of zero to the liabilities
20 that are there, it's insolvent, correct?

21 A. Well, again, if you compare to the assets that are there,
22 okay, but I think this is, as I've said about 12, 14 times now,
23 I don't know why this shows for income tax purposes, this is
24 not for fiduciary purposes, corporate law purposes, equitable
25 purposes or any other purposes, what the assets of this company

1 are. All right. And if you're asking me based on what I heard
2 from the lawyers of the company about the assets of the
3 company, that number is incorrect.

4 Q. All right, sir.

5 A. Now, is it false? Is it perjurious? That I don't know.

6 Q. All right.

7 A. I think it's -- I think it's an aberrant valuation of the
8 assets.

9 Q. All right.

10 A. Specifically your client's assets.

11 Q. All right, sir.

12 A. Or your client's gains.

13 Q. All right, sir. Do you know who the chief executive
14 officer of Drews was on 12/31/2002?

15 A. No.

16 Q. All right, sir. You don't know it was Mr. Hugh Andrews?

17 A. (Shakes head negatively.) I don't know.

18 Q. You don't. Okay. Now, you said that in your opinion
19 Drews had complied with corporate formalities?

20 A. Yes. I mean they had substantially complied barring the
21 accounting concept in the realities of how a closely held
22 corporation is.

23 Q. All right. You saw no minutes of board of directors
24 meetings approving distributions or dividends, correct?

25 A. No, I don't think we actually reviewed them.

- 1 Q. All right, sir.
- 2 A. Relied on other lawyers when they said they existed.
- 3 Q. Okay. Nobody ever told you that there were any minutes
- 4 approving distributions of dividends to Mr. Andrews, did they?
- 5 A. We were -- again, we were told by lawyers that
- 6 appropriate corporate records were kept and that they
- 7 memorialized corporate action.
- 8 Q. All right.
- 9 A. We didn't look behind them.
- 10 Q. And the only minutes you have any knowledge of were those
- 11 minutes that were created by your office for a meeting that was
- 12 going to happen November the 13th, 2002, and the only other
- 13 minutes you ever saw would have been the minutes reflecting the
- 14 meeting of the board of directors and shareholders when the
- 15 corporation was organized in 1981?
- 16 A. That I don't know.
- 17 Q. All right, sir. But other than that you didn't see
- 18 anything?
- 19 A. No. Again, me personally I don't know. I don't know
- 20 that I saw any other minutes.
- 21 Q. All right.
- 22 A. But what -- what did others see? Where are they? I'm
- 23 not sure --
- 24 Q. All right.
- 25 A. -- to my personal knowledge.

1 Q. But you're the one that came in here and expressed an
2 opinion about corporate formalities, right?

3 A. Yes.

4 Q. Okay.

5 A. And I think I made it clear that my beliefs about
6 corporate formalities is based on what -- a combination of
7 things, what I understand exists by way of minutes and records
8 of this company and also what I understand the law to be about
9 the standards for keeping such records, and I think that the
10 standards were met.

11 Q. All right, sir. And what about resolutions of the board
12 of directors approving all these notes payable to Mr. Andrews,
13 did you ever see any resolutions of the board of directors
14 approving those notes, that debt obligation --

15 A. No.

16 Q. -- anywhere?

17 A. Told they were -- they were properly approved.

18 Q. You were told that they were properly approved? And who
19 told you that?

20 A. I don't know. It wouldn't have been told to me, but it
21 was probably told by Mike Fletcher.

22 Q. But you have no recollection of anybody telling you that
23 right now? Do you have any recollection at this time of
24 anybody ever telling you that --

25 A. Telling me?

1 Q. Yes, sir. That there were resolutions approving the
2 loans --

3 A. Specifically approving those loans?

4 Q. Yes, sir.

5 A. I don't know that I have that specific knowledge.

6 MR. BYRD: All right. Just a minute, your Honor.
7 Thank you, Mr. Scrantom.

8 THE COURT: Mr. Coggins, you got any questions?

9 MR. COGGINS: Yes, sir. Just a couple.

10 CROSS-EXAMINATION BY MR. COGGINS:

11 Q. Mr. Scrantom, when you were doing this work in the fall
12 of 2002, did you ask for information from Drews Distributing?

13 A. Yes.

14 Q. And when I say you, I mean your firm.

15 A. Yes.

16 Q. And --

17 A. I did.

18 Q. Based on your understanding was all the information that
19 you asked for provided to you?

20 A. That I can't answer.

21 Q. All right.

22 A. I know we got information, but I know also Hugh was in a
23 rehabilitation center, so I don't know. We received -- I think
24 we received a lot of information.

25 Q. All right. And to that point the people you dealt with

1 at Drews at the corporation were Mr. Fletcher, Ms. Humphries;
2 is that correct?

3 A. Yes.

4 Q. In other words, Hugh was pretty much out of the picture
5 while this was going on, wasn't he?

6 A. Oh, yeah. He was -- well, there was a period where he
7 went out of the picture. Exactly where I'm not sure.

8 Q. All right. Well, let me refer you to -- let's see where
9 the trial exhibits -- you've got the trial exhibits. Look at
10 Exhibit Number 16, Plaintiff's Exhibit Number 16.

11 A. Okay.

12 Q. The minutes for the directors meetings. And this is on
13 the assignment?

14 A. Uh-huh.

15 Q. And I believe after all the back and forth we ultimately
16 established that these minutes were most likely prepared by
17 your office. Is that correct?

18 A. Yeah, I think so.

19 Q. And do those minutes not reflect that Mr. Andrews, Mr.
20 Hugh Andrews was absent at the time this was done?

21 A. Yes.

22 Q. And who was it signed by?

23 A. Pamela Andrews.

24 Q. And that's Mr. Andrews' wife; is that right?

25 A. As far as I know, yes.

1 Q. Do you have any recollection about how they were getting
2 along at this time?

3 A. In fact, I don't think they were getting along. Well, I
4 don't know how they were getting along, but I wouldn't have
5 been surprised if they were not getting along. We considered
6 as part of our analysis that, you know, it was better if, you
7 know, someone other than Hugh signed these things anyway,
8 particularly under the adverse circumstances that I think their
9 marriage was under.

10 Q. All right. And with respect to the information
11 specifically that you were getting about the arbitration with
12 Silicon Game, with SGI, that information was coming from Mr.
13 Nicholson and Mr. Fletcher; was it not?

14 A. Yes. I think exclusively. I don't think there was
15 anyone else.

16 Q. All right. And they were providing you with all of the
17 information about that that you asked for; were they not?

18 A. Yes.

19 Q. All right. And I'm going to show you Defendant's Exhibit
20 Number 24 and ask you if that is a memorandum with attachments
21 prepared by your office in connection with this matter?

22 A. Yes.

23 Q. And, Mr. Scrantom, if you will look at about the third
24 page in, there's a diagram of sorts?

25 A. Yes, sir.

1 Q. And if I'm reading this correctly, and you correct me if
2 I'm wrong, but this is basically a working diagram showing
3 Drews Distributing, Tri-Star, Callum, Mr. Andrews, Mr. Quinton
4 Broome, who's also a shareholder or owner in Tri-Star, and
5 showing all the interrelations between these companies,
6 correct?

7 A. Yes.

8 Q. Sort of like a worksheet for your folks?

9 A. Uh-huh.

10 Q. And up in the left-hand corner you specifically have a
11 notation about this claim or potential claim by Silicon Game;
12 do you not?

13 A. Yes.

14 Q. All right. Now, if you would, while we're talking about
15 this take a look at Plaintiff's Exhibit Number 62, and I
16 believe that will be in the book behind you.

17 A. Okay.

18 Q. And Mr. Byrd asked you about note four. Look at note
19 number one.

20 A. Yes.

21 Q. And what does it indicate that you were researching and
22 considering?

23 A. It says, "Case law, piercing veil, fraudulent conveyance,
24 review memos."

25 Q. All right. So would it be fair to infer from that, Mr.

1 Scrantom, that nobody was trying to hide anything from your
2 firm, you were being given information about all potential
3 claims and all potential, as you characterized it, worst case
4 scenarios?

5 A. Yes.

6 Q. Based on that and using your best legal judgment, you
7 provided advice to Mr. Andrews?

8 A. Yes.

9 Q. And as a result of the advice that you provided to Mr.
10 Andrews, Drews Distributing, which was in dire financial
11 straits at this point, received a benefit or at least a
12 potential benefit in the satisfaction of some of the debt it
13 was carrying?

14 A. Abatement of interest, which I assumed happened. The
15 accountants didn't count that.

16 Q. All right. Now, let's look at some of these balance
17 sheet questions that Mr. Byrd asked you about, and let's look,
18 if you will, if I can get the Plaintiff's Exhibit Number, let's
19 look at Plaintiff's Exhibit Number 31. That should be the 2000
20 Drews tax return.

21 A. Okay.

22 Q. All right. Give me just a second to catch up with you.
23 And if you will come over -- if you will come over to that
24 balance sheet page, I believe it's page four on the return.

25 A. Yes.

1 Q. All right. And you were asked about the adjustment on
2 the inventory. Do you recall that?

3 A. Yes.

4 Q. Now, do you have any idea as to whether or not any
5 adjustment related to these Odyssey machines or the Pot of Gold
6 machines or some combination of the two?

7 A. No, I don't know. As I told the questioner, I don't
8 know.

9 Q. All right. Let's look at Exhibit 35, which is the 2002
10 return. And, again, page four, the balance sheet. And, again,
11 at the beginning of the year it shows inventories of 827 and at
12 the end of the year it shows inventory of zero?

13 A. Uh-huh.

14 Q. You don't know what comprises that inventory, do you?

15 A. No.

16 Q. And if we assumed that this zero is correct at the end of
17 the year, would that seem to indicate to you that the Odyssey
18 machines were not being carried as inventory for tax purposes?

19 A. I would think it's -- it's impossible. I mean if the
20 number were anything other than zero, I might wonder --

21 Q. All right.

22 A. -- but zero there, I can only assume that the Odyssey
23 games are either not shown or are carried as zero.

24 Q. All right. Well, let me ask you this, and forgive me, I
25 may have to phrase this in the form of a hypothetical because

1 I'm not sure exactly how much testimony you have overheard in
2 this case. Were you present when there was testimony about the
3 fact that the Odyssey machines were never made playable for
4 South Carolina?

5 A. Yes.

6 Q. Okay. And you are aware or are you aware that video
7 poker became illegal at midnight on June 30, 2000, and machines
8 were contraband after that moment in time?

9 A. I am aware of that.

10 Q. All right. So those machines after that point in time
11 could not even be maintained in the state of South Carolina,
12 could they?

13 A. That was my understanding.

14 Q. All right. And so for a South Carolina corporation
15 operating in the state of South Carolina with machines that
16 ostensibly were supposed to have been made playable for South
17 Carolina under South Carolina rules, those machines would have
18 no value to that company, would they?

19 A. Arguably not.

20 Q. All right.

21 A. There could be an issue of legality of even showing them
22 on the balance sheet. That's what occurred to me.

23 Q. All right. So could that be a possible explanation for
24 why they're not shown on the tax returns for Drews?

25 A. There are, as I said earlier, a lot of reasons why they

1 might not be on a tax return that do not inform, certainly do
2 not govern whether they were on the company's books and
3 records.

4 Q. All right. But that would not mean that those machines
5 did not retain value for the company that owned the
6 intellectual property and the technology to update those
7 platforms and make them playable in multiple other states for
8 multiple other games?

9 A. Again, the tax return valuation is fiction created for
10 the Internal Revenue Service by accountants. It's whatever
11 they want it to be.

12 Q. And in connection with work that you did for Hugh Andrews
13 and in connection with the assignment that your firm created,
14 the Odyssey machines were never assigned out of Drews, were
15 they?

16 A. Not to my knowledge. I mean I was led to believe they
17 are still there today.

18 Q. Those machines in new condition were maintained and
19 preserved as assets of Drews Distributing; were they not?

20 A. As far as I know.

21 Q. And in fact, with respect to fiduciary duty, those
22 machines have been warehoused and stored and maintained now for
23 an additional four years at the expense of someone other than
24 the plaintiff for the plaintiff's benefit, since they're the
25 only ones with the technology to make them worth anything?

1 A. That's my understanding.

2 Q. Thank you, sir.

3 A. I mean it was our -- I should add that it was our advice
4 when the -- when the whole question what to do with the
5 machines came up, was to keep them, store them. And if this
6 worst case scenario dealing with this arbitral award ever came
7 to pass, the machines would be there to give back to the -- the
8 claimant.

9 MR. COGGINS: That's all I have. Thank you, Mr.
10 Scrantom.

11 THE COURT: Mr. Hodge, do you have any?

12 REDIRECT EXAMINATION BY MR. HODGE:

13 Q. Mr. Byrd asked you about that tax return of 2002.

14 A. Uh-huh.

15 Q. And I think he referred to a loss carry forward of those
16 notes, right?

17 A. Yes.

18 Q. Would that imply to you -- would that imply to you that
19 the value of the assignment was negligible?

20 A. Well, yeah. I mean assuming the accountants looked at
21 that in preparing the return, there was adjustment in the face
22 amount of the loans from shareholders that reduced it down.
23 They accounted for it. Again, all I said earlier with respect
24 to valuation of the assets being assigned, we'll -- you know,
25 we don't know what they are worth.

1 Q. Has this group ever provided you with a value of the
2 assignment?

3 A. No.

4 MR. HODGE: Okay.

5 THE COURT: Anything else, Mr. Byrd?

6 RECROSS-EXAMINATION BY MR. BYRD:

7 Q. Has this group ever provided you with a value of those
8 machines or have they ever provided you with a value of the
9 assignment?

10 A. I mean this is the first I am seeing that the accountants
11 apparently assigned some kind of value to it.

12 Q. You know at the time your office prepared the assignment
13 in November, October and November of 2002, the actual amount --
14 and we've heard it over and over and over again here at this
15 trial was \$2,152,000?

16 A. Uh-huh.

17 Q. We knew that?

18 A. Uh-huh.

19 Q. So in October that was the amount of the debt, and by
20 December 31 the debt went down to a 1,332,000, is that right?

21 A. That's -- that's -- that's what it appears from this.

22 Q. That's approaching \$900,000, isn't it?

23 A. Yes. So in other words there was a reduction on loans
24 from shareholders. Now, you know, could there be other loans
25 from shareholders that we never knew about? I don't know. But

1 assuming that this balance at the end of the year '02 is the
2 remaining balance of those notes, yes, it apparently went down
3 by some \$800,000.

4 Q. Closer to 900,000, isn't it?

5 A. I'm not as familiar with that number as you are.
6 Something like that.

7 Q. 8 to \$900,000. And you know that all Mr. Andrews got was
8 that assignment that your office prepared and those assets that
9 were assigned at that time, correct?

10 A. All that he got?

11 Q. Yes, sir.

12 A. All that he got for -- in -- for what? Forgiveness of
13 the debt?

14 Q. For partial payment, some payment from those promissory
15 notes?

16 A. I don't know what he got. Again, I don't know what this
17 number -- why this number was reduced.

18 MR. BYRD: Thank you. I have nothing further.

19 THE COURT: All right. Thank you, sir. You may step
20 down. Interestingly enough, the write-down on the inventory is
21 82 cents difference between the cost of the machines, but I
22 don't know what that means. Thank you. How many more
23 witnesses, Mr. Hodge?

24 MR. HODGE: That's it for us, your Honor.

25 THE COURT: All right. Let me take a quick break and

1 come back and discuss a few things with you. I'll hear you on
2 your motions then.

3 (Brief recess, then reconvened at 3:45 pm.)

4 THE COURT: I forgot. Do you have anything in reply?

5 MR. BYRD: No, sir.

6 THE COURT: Motions, anybody?

7 MR. COGGINS: I assume none from the plaintiff?

8 MR. BYRD: None.

9 THE COURT: No motions from plaintiff.

10 MR. COGGINS: Your Honor, I would at this time simply
11 indicate again for the court that we acknowledge that Drews has
12 this indebtedness. There is a judgment against Drews
13 Distributing that has not been set aside on appeal, and so from
14 that standpoint we owe the money. I'm not sure that it's our
15 place to argue about any imputation of money or any misconduct
16 by Mr. Andrews, and I'll certainly let Mr. Hodge speak to that,
17 however, there's been a lot of -- a lot of accusations and
18 assertions made by plaintiff about the corporate governance of
19 Drews, and for that reason I would note a motion in the record
20 for a directed verdict on the issue of piercing the corporate
21 veil. The factors don't -- the burden of proof is not met as
22 to the factors in this case. The secondary prongs do not apply
23 and that Drews acted appropriately as a corporation under
24 difficult circumstances.

25 THE COURT: I note your motion. Mr. Hodge.

1 MR. HODGE: Your Honor, we move for a directed
2 verdict on behalf of Mr. Andrews. They simply have not
3 provided enough proof to this court to pierce the corporate
4 : veil, and the most important thing is they haven't mitigated
5 their damage. They've got an asset to collect that will
6 satisfy this judgment, millions over by their own testimony.

7 THE COURT: All right. Note your motion. All right.
8 I don't know whether you want to or not, but if you in light of
9 the testimony want to revise your proposed orders and findings,
10 I'll give you ten days to do that. In any event you need to
11 now exchange those with opposing counsel when you get ready to
12 submit them. On the Statute Elizabeth claim what is the burden
13 of proof in your mind?

14 MR. PAYNE: Excuse me, your Honor. I'm sorry.

15 THE COURT: On the Statute of Elizabeth claim what do
16 you believe is the burden of proof, clear and convincing or
17 preponderance of the evidence?

18 MR. PAYNE: Your Honor, to be honest I haven't
19 researched that to know. I would think preponderance. Fraud
20 is always clear and convincing, but you don't have to prove
21 fraud in order for a fraudulent conveyance.

22 THE COURT: Well, let me follow that up, let's assume
23 -- I'm just asking, assume there's a finding of solvency, then
24 you would have to prove fraud, wouldn't you?

25 MR. PAYNE: Not as to fraudulent conveyance, your

1 Honor. Fraudulent conveyance is simply if he had the actual
2 intent to defraud, which could be proven by those various
3 badges of fraud, then you don't have to actually -- then
4 insolvency never comes into the picture. You know, it's
5 left -- it's actually left him unable to pay his debt is the
6 way the Statute of Elizabeth would read. If he actually
7 intended to defraud us by virtue of assigning all his assets
8 which left him unable to fulfill a contractual obligation or
9 Drews Distributing to fulfill their obligations to us, then you
10 look at the badges of fraud and at that point you determine
11 whether it was a fraudulent conveyance or not. I can brief it
12 as well.

13 THE COURT: You might ought to do that.

14 MR. PAYNE: All right, sir.

15 THE COURT: You could just put it in a proposed
16 order.

17 MR. PAYNE: Just put it in the order.

18 THE COURT: Yeah. Anybody -- anybody got any
19 questions?

20 MR. BYRD: Your Honor, as I understood your first
21 comments, that was with regard to revision to the proposed
22 findings of fact and conclusions of law?

23 THE COURT: Right.

24 MR. BYRD: Would it be permissible for us to also
25 submit a post-trial brief which we would share with the other

1 side?

2 THE COURT: Sure. And also for purposes of the
3 record any motion -- any ruling that I made is tentative, and
4 if I change my ruling, I'll address that in the order,
5 particularly -- I guess the two biggest issues were the two
6 witnesses on the law school professors.

7 MR. BYRD: All right, sir.

8 THE COURT: I can't think --

9 MR. COGGINS: Your Honor, one point. With respect to
10 the revisions to the proposed findings of fact and conclusions
11 of law, I understand those are ten days and we'll exchange
12 those in advance. To the extent that plaintiff files a
13 post-trial brief on any issue, we would like an adequate amount
14 of time to respond to that.

15 THE COURT: Five days?

16 MR. COGGINS: Five days is fine.

17 THE COURT: And just e-mail your proposed whatever
18 you're going to send me. That way we can manipulate it, let's
19 just say. All right. Enjoyed trying the case with you.

20 ***

21 I N D E X

22 WITNESS FOR THE PLAINTIFF

23 JOHN R. MARKEL

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1 financial statement, marked into evidence

2
3 ***

4 I certify the foregoing is a correct transcript from the record
5 of proceedings in the above entitled matter.

6 S/Jean L. Cole, RMR 4/3/06
7
8
9

10 _____
Jean L. Cole, RMR

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

International Game Technology,	)	
	)	
Plaintiff,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	
vs.	)	
	)	
Horace Hugh Andrews, II	)	
and Drews Distributing, Inc.	)	C.A. No.: 7:03-1407-HFF
	)	
Defendants.	)	
	)	
	)	
	)	

In this action Plaintiff International Game Technology, Inc. (IGT) seeks to pierce the corporate veil of Defendant Drews Distributing Inc. (Drews) and to hold Defendant Horace Hugh Andrews, II (Andrews) personally liable for the obligations of Drews. IGT also seeks other related remedies under South Carolina law. A non-jury trial was held on March 28-29, 2006, and the Court now makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. IGT is a corporation organized and existing under the laws of the State of Nevada and is the successor-in-interest to Silicon Gaming, Inc. (SGI), a California corporation.
2. Drews is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business located in Spartanburg, South Carolina.
3. Andrews is a citizen and resident of Spartanburg County, South Carolina and is the principal shareholder of Drews.
4. There is complete diversity of citizenship between the parties hereto and the amount in controversy, as set forth herein below, is in excess of \$75,000.

5. On April 17, 2003, IGT filed this action against Defendants seeking to enforce and collect a \$1.53 million judgment entered in confirmation of an arbitration award against Drews and an additional judgment for \$107,000 for post-arbitration interest and attorney's fees. IGT further seeks to hold Andrews individually responsible for payment of such judgments.

6. The underlying arbitration award arises out of a contractual dispute between Drews and SGI. In 1998 and 1999, Drews purchased two hundred Odyssey video gaming machines from SGI pursuant to a distributorship agreement which contained an arbitration clause. After a dispute arose between the parties as to their various rights, duties, and obligations under the distributorship agreement, SGI filed a demand for arbitration in California on October 25, 1999. In response, Drews filed a lawsuit in the United States District Court for the District of South Carolina seeking damages against SGI and a stay of the arbitration proceeding in California. The United States District Court for the District of South Carolina stayed the arbitration and SGI appealed that decision. On March 29, 2001, the United States Court of Appeals for the Fourth Circuit reversed the decision of the District Court and remanded with instructions that the contractual dispute between SGI and Drews proceed to arbitration in California in accordance with the distributorship agreement.

7. In December, 2000, IGT acquired all of the stock in SGI for a purchase price of \$45 million. IGT then allowed SGI to become an inactive and dormant corporation. Apparently, IGT then ceased production and marketing of SGI's "Odyssey" game platform so as to remove it as a competitor to IGT's "Game King" platform.

8. On or about September 18, 2001, an arbitrator was appointed to preside over the arbitration. The arbitration hearing took place February 25-27, 2002 in San Francisco, California. Andrews was not a party to the arbitration proceeding nor did he participate in such as a party representative or witness. His only involvement was to give deposition testimony in his lawyer's

office in January 2002.

9. The arbitrator issued an interim award on June 27, 2002, and entertained comments and arguments regarding that interim award. As a result, multiple briefs were filed by the parties regarding this interim award. Prior to the arbitrator's final award, Drews, on August 31, 2002, filed a lawsuit captioned *Drews Distributing, Inc. vs. International Game Technology*, in the United States District Court for the District of South Carolina, Civil Action No. 7:02-2896-25 in which it sought to vacate the arbitrator's award.

10. The arbitrator, after reviewing all submitted briefs from both parties, returned a final award on September 13, 2002, in favor of SGI on all of its claims and awarded it a total judgment of \$1,533,826.39. On that same date, IGT filed a petition with the United States District Court for the Northern District of California to confirm and enforce the arbitration award.

11. IGT was not a party to the arbitration proceeding, nor was it a party to the underlying agreement with Drews. Further, no assignment of SGI's rights and interests in the arbitration proceeding and award had been assigned to IGT as of the date of this filing.

12. After IGT filed the foregoing petition, Drews filed a motion in United States District Court for the District of South Carolina to stay concurrent proceedings. IGT then filed its own motion to transfer the venue of the South Carolina action to California. The South Carolina District Court held a hearing on these motions on October 16, 2002, and, thereafter, issued its order denying Drews' motions and granting IGT's motion to transfer venue to California.

13. On November 11, 2002, Drews assigned certain assets to Andrews in consideration and payment of certain promissory notes issued by Drews to Andrews for loans made by Andrews to Drews on August 7, 2000; August 31, 2000; February 8, 2001; March 29, 2001; April 18, 2001; May 14, 2001; June 14, 2001; August 6, 2001; October 9, 2001; January 4, 2002; March 19, 2002;

April 10, 2002; June 7, 2002; September 19, 2002; October 3, 2002; and October 21, 2002. The total \$2,152,000.

14. The two actions identified above, which were addressed to the arbitration award, were thereafter consolidated in California upon consent of the parties. The United States District Court for the Northern District of California, on November 19, 2002, confirmed the arbitrator's award and on January 2, 2003, awarded IGT an additional judgment for \$107,000 for interest and attorney's fees that had accrued since the initial arbitration award. Thereafter, IGT enrolled the judgments in the United States District Court for the District of South Carolina.

15. On March 28, 2006, a two-day trial commenced before this Court. Andrews was called as an adverse witness by IGT and was questioned in detail concerning transactions which occurred before and after the arbitration award. The essence of his testimony revealed that Drews was twenty-five years old and that it had been very successful up until the time video poker was declared illegal in June of 2000 by the South Carolina Supreme Court. After that date, Andrews personally loaned the company \$2,152,000. A total of sixteen such loans were made beginning August 7, 2000, and continuing through October 21, 2002. During this period, Andrews operated under an impairment due to drug addiction for which he went through rehabilitation in Florida during the month of October, 2002.

Andrews' testimony revealed that, during this time, Mike Fletcher was running the day-to-day operations of the business and Claudia Humphries was handling much of the bookkeeping. His testimony further revealed that substantial dividends were paid to him in 1998 and 1999. A reading of the pertinent financial records, together with the testimony from Andrews and Claudia Humphries, indicates that these dividends were for the payment of taxes. Significantly, there were no such distributions in the 2001-2002 time frame surrounding the arbitration award.

16. The only assets of Drews remaining available for satisfaction of the subject judgments are the two hundred Odyssey video-gaming machines still being held by Drews. The testimony from Andrews, as well as all other witnesses, made it clear that those machines were and have continued to be available for IGT to retrieve at any time in satisfaction of the arbitration award.

17. In its attempt to pierce the corporate veil of Drews and hold Andrews personally liable for the judgment debt described above, IGT presented Professor John Freeman (Freeman) as an expert witness at the trial of this case, together with a report authored by Freeman in support of IGT's position. (Pl.'s Ex. 4.) Although containing some factual conclusions which are derived from other exhibits in this case, the overwhelming thrust of Freeman's report is an argument on behalf of IGT as to the ultimate legal issue for decision by this Court. Likewise, his testimony was simply an elaboration of his opinion that the corporate veil should be pierced in this case.

To that end, Professor Freeman was adamant in his testimony that the eight factors to be considered in piercing actions under *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct.App. 1984), apply in this case. The bulk of Freeman's testimony surrounded his opinion that Drews was not properly capitalized, failed to observe corporate formalities, and was looted by its dominant shareholder.

First, Freeman's conclusion that Drews was undercapitalized is undercut by the other evidence presented to the Court. Specifically, the Court finds that Drews retains a major asset, namely the two hundred Odyssey gaming machines sold to it by SGI. The Court bases this finding on establishing that Drews has preserved these machines and has stored them in a leased warehouse in Georgia at a cost of \$18,000 per year.

As to the value of the machines, the testimony of Theodore Grevelis, the Director of Sales for the North Central United States Gaming Division of IGT, is particularly probative. He was offered

as a Fed. R. Civ. P. 30(b)(6) deposition witness as to the capabilities, programming, and specifications of the Odyssey gaming machines. He was formerly employed by SGI. (Grevelis Dep. 8, 9, 15, December 1, 2005.) Grevelis noted after IGT purchased SGI there were resellers selling the games to Third World markets. He acknowledged that Odyssey machines are still in use today and further acknowledged that the machines were generating up to \$200 per day and continued to be in use generating revenue for operators. (Grevelis Dep. 19, 20, 33, December 1, 2005.) Grevelis testified that IGT sells games all over the world and, through its subsidiaries, places games all over the world. (Grevelis Dep. 35, December 1, 2005.) He further noted that IGT was the largest gaming machine company in the world. (Grevelis Dep. 36, December 1, 2005.)

Richard Pennington is Executive Vice President of Corporate Strategy for a subsidiary of IGT. He was also offered as a 30(b)(6) deposition witness by IGT. He testified that Odyssey Machines could be adapted to applications for International Game Technology or any of its subsidiaries. (Pennington Dep. 58, November 17, 2005.) He also testified that he knew how much it would cost to modify an Odyssey Machine to make it compatible. He testified this cost would be approximately \$1,000. (Pennington Dep. 59, November 17, 2005.) He noted that once the \$1,000 was spent the machine would be worth \$50,000 per year in revenue to a Native American Tribe. (Pennington Dep. 59, November 17, 2005.) He also noted that IGT sells to Native American Tribes and acknowledged that IGT held gaming licenses and received income from the use of machines. (Pennington Dep. 59-62 November 17, 2005.) He further acknowledged that Odyssey machines, such as those sold to Drews, are still in use today. (Pennington Dep. 83, November 17, 2005.)

Based on this testimony, the Court finds that Drews retains a major asset with substantial value. Accepting that insolvency is defined as the inability to pay one's debts or the lack of means

to pay one's debts, *Black's Law Dictionary* 811 (8th Ed. 2004), the Court finds that Drews is not insolvent and, therefore, not undercapitalized.

Second, Freeman testified that Defendant lacked corporate records. This testimony, however, is countered by the evidence of multiple corporate records which were introduced into evidence. (See Def.'s Ex. 1-26.) Other witness testimony also rebuts Freeman's conclusions. Andrews, for example, testified that, in addition to the corporate minutes produced at trial, there were other corporate minutes which apparently had been lost in the transfer to Ten State Street, the firm of Tim Scrantom. Andrews also testified that corporate counsel, Curt Stodghill, prepared minutes on several occasions during his employment with Drews.

Third, Freeman testified that corporate funds were siphoned off by the dominant shareholder. The evidence indicates, however, that cash infusions were made by Andrews in the form of loans totaling well over \$2.1 million and that monies paid to Andrews were dividends distributed to him for the purpose of paying taxes.

18. IGT also presented the testimony of John Markel, an accountant, to support the proposition that the corporate veil of Drews should be pierced. Mr. Markel's initial report appears in the record as Plaintiff's Exhibit 2 while his supplemental report was admitted as Plaintiff's Exhibit 3.

The thrust of Mr. Markel's testimony was his analysis of the solvency of Drews based upon its balance sheets, tax returns, and selected expenditures to third parties. With respect to the balance sheets, Mr. Markel made a number of adjustments from year to year to reflect the economic reality surrounding Drews' operations. Markel also pointed out that Drews' 2002 tax return reflected zero assets as of December 31, 2002, and that Andrews was still owed \$1,332,315 at that time. Finally,

as to the expenditures to third parties, Markel speculated that these may have been discretionary preferential payments to related entities or persons.

Although Markel's testimony was helpful in many respects, his conclusions as to Drews' solvency are unpersuasive. First, Markel admitted that he did not include the two hundred Odyssey machines owned by Drews in his calculation of Drews' assets. Second, he testified that he had no specific knowledge of whether the excessive payments made by Drews were for the purpose of siphoning or for a legitimate repayment of loans made to the corporation by Andrews. Rather, he simply highlighted the payments as suspicious.

In addition, Markel's testimony that Drews paid excessive dividends fails to convince. Initially, Markel admitted that the dividends taken out in 1998 and 1999 were not excessive in light of earnings in those years. He went on to assert, however, that dividends were excessive in 1999 because the company was declining in that year and was aware that the demise of video poker was at hand. This view, however, is at odds with the testimony that the political and legal fight to keep video poker legal continued on through 1999 and into 2000. More importantly, this view is also at odds with the uncontradicted testimony of Drews' management that they were actively exploring new markets in and out of this country for their product even as late as 2001. Finally, this view is inconsistent with Markel's own analysis as Drews' unadjusted Z-score, a predictor of insolvency, was higher (better) in 1999 than in 1998.

Based upon the foregoing, this Court finds that Markel's opinions as to Drews' solvency and Andrews' control over the corporation are not persuasive.

19. The Court finds that the decline and ultimate failure of Drews coincided with video poker becoming illegal as of midnight June 30, 2000. Nevertheless, the Court finds that Drews remains in possession of valuable assets to this day: two hundred Odyssey game machines in new

condition which are stored in a warehouse in Georgia. While these games are worthless to Drews because of the software package currently installed, the deposition testimony of IGT's Richard Pennington and Ted Grevelis (previously discussed above) indicates that these game platforms could be upgraded with IGT's technology at a cost of approximately \$1,000 per unit. After the upgrade, the units could generate \$50,000 per year to a Native American casino operator, a market in which IGT is actively engaged.

20. It has not been proven that Andrews was the controlling person over the affairs of Drews during the times relevant to this action. Rather, the uncontradicted evidence is that the President of the corporation, Mike Fletcher, was in charge of day-to-day operations from the late 1990's through 2001. It was Mr. Fletcher who made the financial decisions, led the sales efforts, made the personnel decisions, and handled the arbitration dispute with Silicon Gaming (IGT). In fact, during this relevant time frame, Andrews was mired in a drug addiction and living in a series of adulterous relationships at Myrtle Beach and in Florida.

21. In 2002, Andrews contacted Tim Scrantom, an international business and tax lawyer with offices in Charleston, South Carolina, about how he might recover some of the more than \$2 million that he had loaned Drews since August, 2000. Scrantom requested, and was provided, appropriate documentation concerning these loans. His office took the necessary steps to secure the debt by way of filing a UCC Financing Statement. Employees of Drews, under the direction of Mike Fletcher, provided Scrantom's office with the requested financial and business data. Ned Nicholson, a lawyer with the McNair firm who was handling the SGI arbitration, kept Scrantom apprised of the status of that matter. Attorneys at Nelson, Mullins, Riley, and Scarborough advised Scrantom of other pending legal matters.

After a thorough review of the information provided, Scrantom's office prepared the paperwork for the Assignment of Assets to Andrews dated November 11, 2002. The documents were then forwarded to Drews for execution by the appropriate corporate officer(s). Significantly, Andrews was not involved in this process, as he was in a drug rehabilitation clinic in Florida at the time.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 (2000). The Court has jurisdiction over the parties to this action under South Carolina law.

2. IGT is the legal holder of the subject judgments against Drews and is entitled to collect these judgments from Drews. *See* Stipulation and Order to Amend the Complaint filed with this Court on February 10, 2004.

3. Drews is a duly organized corporation and legally in good standing with the State of South Carolina.

4. IGT's attempt to pierce Drews' corporate veil to collect from Andrews, or any other shareholder, director or officer fails. A corporation is a separate and distinct legal entity and its debts are not those of its shareholders and officers. *Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co.*, 540 F.2d 681, 683 (4th Cir. 1976). Courts, however, "will decline to recognize this distinction where it would extend the principle of incorporation beyond its legitimate purposes and would produce injustices or inequitable consequences." *Id.* (quoting *Krivo Industrial Supp. Co. v. National Distill. & Chem. Corp.*, 483 F.2d 1098, 1106 (5th Cir. 1973)).

The factual circumstances that courts have deemed significant to the decision to disregard the corporate entity have been rarely articulated with any clarity. *Id.* at 684. The issue is one that is particularly within the province of the trial court to decide, since it is a fact-based determination

which is unique and necessarily varies according to the facts and circumstances of each particular case. *Id.* IGT has not pled--nor is there any evidence of--any actual fraud in the conduct of Drews' business or corporate affairs. However, proof of actual fraud is not a necessary element in a finding to disregard the corporate entity. *Id.* Further, the mere fact that all or almost all of the corporate stock is owned by one individual or a few individuals is insufficient, in itself, to disregard the corporate form. The Court is concerned with reality and not form, *i.e.*, how the corporation actually operated its business and the individual defendant's relationship to that business operation. *Id.* at 685.

There are several factors which courts have deemed important in determining whether the corporate entity should be disregarded. These include whether the corporation was grossly undercapitalized for the purposes of its undertaking, failure to observe corporate formalities; non-payment of dividends, insolvency of the debtor corporation at the time, siphoning of corporate funds by the dominant shareholder, non-functioning of other officers or directors, absence of corporate records, and the fact that the corporation is merely a facade for the operations of the dominant stockholder or stockholders. *Id.* at 685-87; *Sturkie*, 280 S.C. at 453, 313 S.E.2d at 316. The decision to disregard the corporate entity and hold an individual shareholder or officer responsible for the debt of the corporation may not, however, rest on any single factor. Rather, it must involve a number of such factors and, in addition, must present an element of injustice or fundamental unfairness. *Dewitt*, 540 F.2d at 687.

Here, the corporation was formed by all due and necessary legal means. The articles of incorporation were filed with the Secretary of State for the State of South Carolina on August 11, 1981. Corporate by-laws and minutes were established and maintained. Application was made for a separate tax identification number for the corporation, and corporate tax returns were filed for the

corporation in each year of its existence. Indeed, the corporation employed the services of attorneys and accountants throughout the years to provide bookkeeping services and guidance as to the financial and legal formalities required of the corporation.

In addition, the corporation was not grossly undercapitalized at the time of its initial incorporation. Moreover, through the more than twenty years of its existence, its shareholders, including Andrews, have sought to maintain sufficient funds in the company to meet its financial responsibilities. Further, the assignment of assets from Drews to Andrews occurred only after submission of a demand letter for payment of promissory notes from Drews to Andrews as a result of loans for working capital made on multiple occasions by Andrews to Drews over a period of more than two years. IGT does not dispute that the funds reflected by those promissory notes were actually received by Drews and used as working capital in the course of its business operations. Rather than siphoning off funds from Drews, Andrews, as its principal shareholder, infused it with more than \$2 million in working capital to try to maintain operations after the South Carolina Assembly criminalized video poker, resulting in significant business loss.

Further, it is clear that Andrews did not operate the corporation as merely a facade for his own business dealings. Indeed, as a result of a drug addiction problem, Andrews was in a clinic for much of the critical time period in the autumn of 2002 leading up to the assignment of the corporation's principal assets to him in payment of the promissory notes owed to him. Significantly, these debts were secured by virtue of a UCC filing statement which was duly recorded. Also of significance is the fact that the corporation's President, Mike Fletcher, was making all day-to-day business decisions about the operations of the company at this particular time. Furthermore, the ultimate decision to transfer these assets was made based upon legal and financial advice received from accountants and attorneys employed by both Andrews and the corporation for the purpose of satisfying the

indebtedness to Andrews. This transfer was obviously not made by Andrews at his sole discretion. Indeed, even at this time and thereafter, the corporation was continuing to pay its employees as well as its regularly recurring expenses.

Accordingly, based upon the foregoing, when applied to the *Dewitt* factors, it is clear that this is not a case in which it would be appropriate to pierce Drews' the corporate veil.

5. The testimony and arguments of IGT's expert witness, Professor John Freeman, are likewise unpersuasive on the issue of piercing the corporate veil. Freeman chose to center his analysis around the factors set forth in *Sturkie v. Sifly*, 280 S.C. 453, 459, 313 S.E. 2d 316, 319 (Ct.App. 1984). In *Sturkie*, the South Carolina Court of Appeals set forth a two-pronged test to be used to determine whether to pierce the corporate veil. The first prong is an eight-factor analysis of the shareholder's relationship to the corporation and looks to the observance of the corporate formalities by the dominant shareholders. Under this prong, the factors to be considered are:

- (1) Whether the corporation was grossly undercapitalized;
- (2) Failure to observe corporate formalities;
- (3) Non-payment of dividends;
- (4) Insolvency of the debtor corporation at the time;
- (5) Siphoning of funds of the corporation by the dominant stockholder;
- (6) Non-functioning of other officers or other directors;
- (7) Absence of corporate records; and
- (8) The fact that the corporation was merely a facade for the operation of the dominant stockholder.

The second prong requires a plaintiff to prove that fundamental unfairness will result if the corporate veil is preserved.

The initial question before the Court is whether Freeman's report and testimony are admissible into evidence. In general, expert testimony as to issues of law is inadmissible. *Adalman v. Baker, Watts, & Co.*, 807 F.2d 359, 368 (4th Cir. 1986). Indeed, the courts have disallowed a legal expert's opinion on whether corporate officers and directors breached their fiduciary duties because "such testimony is a legal opinion and inadmissible." *Askanase v. Fatjo*, 130 F.3d 657, 673 (5th Cir. 1997). Likewise, courts have recognized that Rules 702 and 704 of the Federal Rules of Evidence prohibit experts from offering opinions about legal issues that are outcome determinative. *See United States v. Sinclair*, 74 F.3d 753, 757 n.1 (7th Cir. 1996).

While elucidating some factual summaries based upon evidence and figures related to Drews' performance during the relevant time period, Freeman's report ultimately embraces the legal conclusion that the Court should pierce Drews' corporate veil. This Court, as trier of both fact and law in this bench trial, will not substitute Freeman's legal opinions for its own. Accordingly, the Court finds Freeman's testimony and report inadmissible to the extent that they make the legal conclusion that IGT's attempt to pierce the veil of Drews should succeed. The Court has considered Freeman's summary of the factual evidence in this case and, as discussed above, finds it unpersuasive.

6. The assignment of assets and payments in the normal course of business to Andrews by Drews do not constitute a fraudulent conveyance. In South Carolina, conveyances to defraud creditors are illegal and subject to be set aside pursuant to the Statute of Elizabeth, S.C. Code Ann. § 27-23-10 (1991). Under that law, a conveyance may be set aside as fraudulent as to an existing creditor under two conditions: (1) where the transfer is made without consideration, where the grantor was indebted to the plaintiff-creditor at the time of transfer, and where, as a result of the transfer, the grantor does not have sufficient assets to pay his indebtedness to the plaintiff; or (2) where the transfer was made by the grantor with actual intent of defrauding the creditor and that intent is imputable to

the grantee even though valuable consideration was paid. *See In Re Haddock*, 246 B.R. 810 (Bankr. D.S.C. 2000). If there is valuable consideration for the transfer, it will be set aside only where the grantor was indebted at the time of the transfer and had an actual intent to defraud creditors imputable to the grantee. *Future Group II v. NationsBank*, 324 S.C. 89, 478 S.E.2d 45 (1996).

Here, there was at all times valuable consideration for all payments made by Drews to Andrews. First, with respect to the distributions to Andrews in 1998 and 1999, these occurred during the time when video poker was still legal and Drews was generating huge amounts of revenue which justified these payments as well as the large salaries being paid to Drews' officers and other employees. There is no question that, despite these payments, based upon the revenue stream at that time, Drews was completely solvent as to any claims by SGI, IGT, or any other potential creditor.

Second, with respect to the November 11, 2002 assignment of assets, again, this was done in payment and satisfaction of duly documented promissory notes resulting from infusions of capital into Drews by Andrews. Since valuable consideration existed for the payments and transfers at issue, and because no actual intent to defraud has been proven, there can be no fraudulent conveyance as a matter of law.

7. IGT contends that Andrews breached his fiduciary duty beginning in 1998 by failing to ensure that sufficient assets of Drews were safeguarded and used to pay its debts to IGT. As an initial matter, the debt to IGT, as well as the amount of the debt, was disputed until it was finally established by issuance of the arbitration award on September 13, 2002. Therefore, Andrews, to the extent he could control the assets of Drews, had no such duty prior to that date. Since the transactions occurring thereafter were properly documented and supported by valuable consideration, there is no breach of fiduciary duty to IGT. Indeed, had Andrews required Drews to preserve funds solely for the payment of a disputed indebtedness to IGT, that in and of itself could have been a breach of his

fiduciary duty to other creditors by showing a preference to a disputed potential creditor against the actual ongoing debts incurred in the normal operation of Drews' business.

8. Because Drews was not an insolvent corporation at the time of the transfer of a portion of its assets to Andrews, and because such transfer was supported by good and sufficient consideration, there was no violation of the South Carolina anti-assignment statute. S.C. Code Ann. § 27-25-10 (1991), *et seq.*

9. The actions of Andrews, in connection with his position as a director of Drews, were not in violation of his duties and obligations pursuant to S.C. Code Ann. § 33-8-330 (2006). The uncontradicted evidence reveals that Andrews, in discharging his duties as a director, was relying upon information, opinions, reports, and statements prepared or presented by certified public accountants, legal counsel, or other advisors to Drews. Accordingly, his actions in that regard are in keeping with his duties and obligations to the corporation and third persons as set forth in S.C. Code Ann. § 33-8-300(a) (2006). *See* S.C. Code Ann. § 33-8-300(b)(2) (2006).

10. In conclusion, the Court observes that the outcome of this case ultimately turns on the credibility of the witnesses offered by the parties and on the burden of persuasion which rests on IGT. The Court finds that, based on demeanor, knowledge of the factual record, and persuasiveness, the witnesses offered by Andrews and Drews were simply more credible than those offered by IGT. The Court also finds that the testimony offered by Andrews and Drews—both witness testimony and documentary evidence—largely offsets the testimony and evidence presented by IGT. This being the case, the Court finds that IGT has not met its burden of persuasion here.

11. Accordingly, the Court concludes that IGT is entitled to judgment against Drews in the amount of its existing judgments, plus interest at the statutory rate from the date of entry of such judgments, and is entitled to take all available steps to collect the same, specifically including the

retrieval of the Odyssey game machines. The Court further concludes that IGT's claims against Andrews must fail and that Andrews is entitled to judgment in this action.

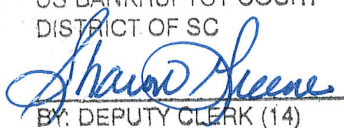
IT IS SO ORDERED.

Signed this 1st day of June, 2006, in Spartanburg, South Carolina.

s/Henry F. Floyd
UNITED STATES DISTRICT JUDGE

FORM B5(10/05)

FORM 5. INVOLUNTARY PETITION

United States Bankruptcy Court District of South Carolina		INVOLUNTARY PETITION
IN RE (Name of Debtor - If Individual: Last, First, Middle) Tri-Star Communications, Inc.		ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)
LAST FOUR DIGITS OF SOC. SEC. NO./Complete EIN or other TAX I.D. NO. (If more than one, state all.) 57-0911893		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) 1041 W.O. Ezell Boulevard SPARTANBURG, SC 29304		MAILING ADDRESS OF DEBTOR (If different from street address)
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS SPARTANBURG		
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED ☐ Chapter 7 ☒ Chapter 11		
INFORMATION REGARDING DEBTOR (Check applicable boxes)		
Petitioners believe: ☐ Debts are primarily consumer debts ☒ Debts are primarily business debts		TYPE OF DEBTOR ☐ Individual ☐ Stockbroker ☐ Clearing Bank ☐ Partnership ☐ Commodity Broker ☐ Health Care Business ☒ Corporation ☐ Railroad ☐ Other: _____
BRIEFLY DESCRIBE NATURE OF BUSINESS Video Amusements		
VENUE ☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. ☐ A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.		FILING FEE (Check one box) ☒ Full Filing Fee attached ☐ Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached.
PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)		
Name of Debtor	Case Number	Date
Relationship	District	Judge
ALLEGATIONS (Check applicable boxes) 1. ☒ Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b). 2. ☒ The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a. ☒ The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount; or 3.b. ☐ Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		COURT USE ONLY TRUE COPY ATTEST: US BANKRUPTCY COURT DISTRICT OF SC  BY: DEPUTY CLERK (14)

If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

OFFICIAL FORM 8 - Involuntary Petition - Page 2
(10/05)

Name of Debtor: Tri-Star Communications, Inc.
Case No. _____

TRANSFER OF CLAIM

☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X H. Hugh Andrews, II
Signature of Petitioner or Representative (State title)

H. Hugh Andrews, II
Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity
H. Hugh Andrews, II
9107 Asheville Highway
Spartanburg, SC 29316

X H. Hugh Andrews, II
Signature of Petitioner or Representative (State title)

Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity

X _____
Signature of Petitioner or Representative (State title)

Name of Petitioner Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity

X [Signature] 12/6/05
Signature of Attorney Date

Name of Attorney Firm (If any)

Address
Telephone No. _____

X _____
Signature of Attorney Date

Name of Attorney Firm (If any)

Address
Telephone No. _____

X _____
Signature of Attorney Date

Name of Attorney Firm (If any)

Address
Telephone No. _____

PETITIONING CREDITORS

Name and Address of Petitioner <u>H. Hugh Andrews, II</u> <u>9107 Asheville Highway</u> <u>Spartanburg, SC 29316</u>	Nature of Claim <u>Business Loan</u>	Amount of Claim <u>130,000.00</u>
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims <u>130,000.00</u>

0 continuation sheets attached
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Best Case Bankruptcy

ARTHUR STATE BANK

Current Date: August 11, 2006

Account Number:
Capture Date: March 02, 2006
Item Number: 40029506875
Posted Date: March 02, 2006
Posted Item Number: 9026
Amount: \$60,000.00
Record Type: Debit

TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH FL 33141

TRI STAR COMMUNICATIONS, INC.
P.O. BOX 4914
SPARTANBURG, SC 29305

4842

DATE 11/3/05 67-103/332

PAY TO THE ORDER OF Hugh Andrews \$ 60,000.00
Sixty-Thousand dollars + 00/100 DOLLARS

MARTIN STATE BANK
SPARTANBURG, SC

FOR final distribution

⑈004842⑈

FOR DEPOSIT ONLY
H HUGH ANDREWS


ARTHUR STATE BANK

Current Date: August 11, 2006

Account Number:
Capture Date: March 02, 2006
Item Number: 40029506874
Posted Date: March 02, 2006
Posted Item Number: 9025
Amount: \$25,000.00
Record Type: Debit

TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH FL 33141

TRI STAR COMMUNICATIONS, INC.
P O BOX 4914
SPARTANBURG, SC 29305

4841

DATE 11/3/05

67-103/632

PAY TO THE ORDER OF Hugh Andrews

Twenty-five thousand dollars ⁰⁰/₁₀₀ 00 DOLLARS \$ 25,000.00

 ATM
Automated
Teller
Machine

 ARTHUR STATE BANK
SPARTANBURG, SC

FOR replacement of check # 4469

004841



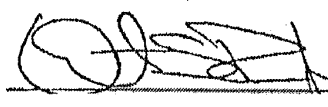
FOR DEPOSIT ONLY
H HUGH ANDREWS



Current Date: August 11, 2006

Account Number:
Capture Date: March 02, 2006
Item Number: 40029506873
Posted Date: March 02, 2006
Posted Item Number: 9024
Amount: \$130,000.00
Record Type: Debit

TRI STAR COMMUNICATIONS, INC.
6565 ALLISON RD
MIAMI BEACH FL 33141

TRI STAR COMMUNICATIONS, INC. P O BOX 4814 SPARTANBURG, SC 29305		4840
DATE <u>11/3/05</u>		67-103/632
PAY TO THE ORDER OF <u>Hugh Andrews</u>	\$ <u>130,000.00</u>	
<u>One hundred thirty thousand + 00/100</u>		DOLLARS
ARTHUR STATE BANK SPARTANBURG, SC		
FOR <u>loan repayment</u>		
#004840		

FOR DEPOSIT ONLY HUGH ANDREWS	
Security Features and Other: - 100% cotton paper - Watermark - Security Thread - Microprint - Color Shifting Ink - Security Glitter - Security Hologram - Security Laser - Security UV - Security IR - Security X-ray - Security Other	

FILED

at ___ O'clock & ___ min. ___ M

NOV 22 2006

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Tri-Star Communications, Inc.,

Debtor

Case Number 05-45299-hb
Chapter 11 - Involuntary

United States Bankruptcy Court
Columbia, South Carolina (26)

ENTERED

ORDER DENYING PETITION FOR INVOLUNTARY RELIEF

NOV 22 2006

This matter comes before the court on the Involuntary Petition of H. Hugh Andrews, II for an order for relief under chapter 11 of the Bankruptcy Code against Tri-Star Communications, Inc., and the reply thereto filed by Tri-Star, by and through its attorney. At the trial of this matter, the parties presented Stipulations of Fact and various agreed exhibits for consideration to aid the court in deciding the following issues:

L. G. R.

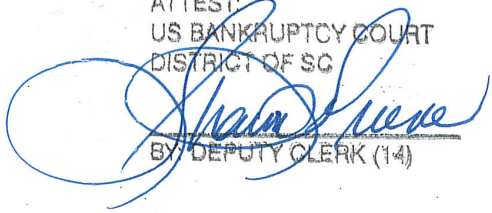
- 1) Was Andrews' petitioning claim satisfied pre-petition, thereby disqualifying him as a petitioning creditor;
- 2) Did Andrews actively refuse acceptance of tender of payment on his claim pre-petition in order to retain a claim qualifying him to serve as a petitioning creditor;
- 3) Did Andrews' acceptance of payment of his claim post-petition extinguish his claim, thereby disqualifying him as a petitioning creditor;
- 4) Does Andrews, an admitted insider of Tri-Star, have standing to be a petitioner in this involuntary case;
- 5) Was Tri-Star generally not paying its debts as they became due?

FINDINGS OF FACT

1. This court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a). This is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(A).

2. Tri-Star is a corporation duly organized and existing under and by virtue of the laws of South Carolina and is in good standing.

1

TRUE COPY
ATTEST:
US BANKRUPTCY COURT
DISTRICT OF SC

BY DEPUTY CLERK (14)

3. The sole shareholders of Tri-Star are Quentin S. Broom, Jr., and Andrews.

Andrews is the petitioning creditor.

4. The parties agree that Tri-Star has fewer than twelve (12) holders of claims against it that are not contingent as to liability or the subject of a bona fide dispute. Further, the petitioning claim exceeds \$12,300.00 in value.

5. On December 7, 2005, Andrews filed the involuntary petition. The petitioning claim is one of \$130,000 indisputably owed by Tri-Star to Andrews at some time pre-petition. This debt also appears on Tri-Star's September 30, 2005 balance sheet.

6. The only potential remaining creditor claim as of the petition date was a claim of Best Games, Inc., an entity controlled by Broom. That alleged claim appears on Tri-Star's balance sheet dated September 30, 2005.

7. Tri-Star's general ledgers are in evidence to indicate its accounts payable activity including the period of January 1, 2005 through August 31, 2005, along with various balance sheets. The most current balance sheet is dated September 30, 2005, indicating assets of \$694,809.20, liabilities of \$260,801.05 (\$130,000 owed to Andrews and \$130,801.05 owed to Best Games, Broom's company, referenced in (5) and (6) above, respectively), and "Total Stockholders' Equity" of \$434,008.15.

8. On November 3, 2005, Broom caused Tri-Star to issue a check to Andrews to satisfy his petitioning claim, along with two other checks in the amounts of \$25,000 and \$60,000, both allegedly representing Andrews' equity in Tri-Star after liquidation of assets. Those checks were sent by certified mail with a return receipt requested through the U. S. Postal Service to Andrews "c/o Claudia Humphries, 9107 Asheville Hwy, Boiling Springs, SC." Humphries is Andrews' secretary, and the mailing address is Andrews' place of business. The U.S. Postal Service returned this mailing to Tri-Star "unclaimed." Thereafter, on December 5,

2005, Patrick E. Knie, counsel for Broom, forwarded correspondence via regular U.S. mail to Curtis W. Stodghill, then counsel for Andrews, enclosing those checks and advising Stodghill of Knie's earlier attempts to mail the check in question.

9. No evidence was presented to support a finding that the mailing was received by Stodghill prior to the filing of the involuntary bankruptcy petition on December 7, 2005. Nor is there evidence that said checks were negotiated prior to the bankruptcy petition filing.

10. Tri-Star has alleged that pre-petition, Andrews actively refused tender of the checks mailed to him in an intentional attempt to retain an undisputed, qualifying claim under 11 U.S.C. § 303(b). However no evidence has been presented that either Andrews or his secretary was aware of the impending arrival of the checks in question or that they refused tender in any way.

11. At some point subsequent to December 5, 2005 but prior to March 1, 2006, it is not disputed that Andrews received the checks in question and deposited them on March 1, 2006, satisfying his petitioning claim that appeared on the September 30, 2005 balance sheet.

12. Tri-Star's primary business was the operation of video poker machines in the Dominican Republic. It is stipulated that on June 27, 2005, without notice, the Attorney General of the Dominican Republic gave a directive that all video poker machine operators had forty-eight (48) hours to remove all machines from the streets in the Dominican Republic and advised Tri-Star that all remaining machines on the street would be confiscated and destroyed.

13. As a result of the actions of the government of the Dominican Republic, Tri-Star, through Broom, undertook to assemble and marshal most of its machines to a warehouse and completed that task by June 30, 2005.

14. On July 4, 2005, the Attorney General issued another directive to all video poker operators that the machines had to be "retired" or removed from the country within twenty (20)

days. Tri-Star tried to manage the situation and monitor the political situation in the hope that the political climate might change and it could resume operations. However, Broom eventually liquidated the assets of Tri-Star rather than resume operations.

15. The evidence presented includes numerous letters between the parties wherein the financial situation of Tri-Star was discussed, including the following:

a. Letter from Broom's attorney to Andrews dated August 10, 2005:

... Quentin [Broom] and Tri-Star's employee, Frank, are working diligently to safeguard the machines, as well as limit all necessary expenses. Quentin is working with Tri-Star's Dominican Republic partner to try and fashion a law to present to the legislature allowing Tri-Star to return to some sportbook locations. This, however, will take some time due to the fact that the legislature will not return from summer vacation until August 16. The legislature is also dealing with the passage of CAFTA which may cause some delay as well.

Quentin does not believe it is an option to export the machines at this point. Most certainly, the machines would be confiscated and destroyed (either by the police or Tri-Star's very influential partner). If the situation does not resolve quickly, it will be necessary to fund Tri-Star to allow the continuation of work to resolve the issue. Quentin is hopeful that it will be resolved by mid-September. ...

b. A second similar letter from Broom's attorney to attorney Charles J. Hodge, assisting Andrews, dated August 17, 2005, containing much of the same information.

c. Letter from Broom's attorney to Stodghill dated September 28, 2005:

... Because of ongoing problems in the Dominican Republic, Quentin [Broom] is making every effort to reduce overhead. In that regard, TriStar has vacated a warehouse in Georgia in an effort to minimize expenses and all remaining equipment in the warehouse belongs to Hugh Andrews or Drew's, Inc. and/or related entities. The rent is \$1,500.00 a month and has been paid through October 1, 2005 and your client needs to take over the rental payments or take steps to remove his equipment from the warehouse.

TriStar will also need to be funded for protection of its assets in the Dominican Republic, overhead, employees and the cost of continued travel to the Dominican Republic for work on impending legislation. The exact

contributions of Mr. Andrews and Mr. Broom have not yet been calculated, however, this letter is notice that contributions will be needed. . . .

d. Letter from Broom's attorney to Stodghill dated September 30, 2005:

As I have indicated in earlier correspondence, Tristar and Worldwide are facing impending financial difficulty due to the recent action of the Dominican Republic's Attorney General who has shut down the video poker gaming industry in that country.

Our latest information is that the new law which would reopen the video poker gaming industry will take approximately another ninety (90) days to pass and our Dominican partner is requesting \$RD 1,250,000 (approximately \$40,000 U.S. dollars) in contributions to help facilitate the passage of the bill with provisions favorable to our industry. In the meantime, Tristar is in dire need of capital. It is recommended that the principals contribute \$20,000 each immediately in order to maintain the operation of the business and our position in the Dominican Republic for thirty (30) additional days.

. . . Worldwide immediately needs \$20,000 for expenses related to the protection of its assets as well as Tristar's, including but not limited to, warehouse rental, security for the equipment, Frank's living expenses, insurance, fuel, legal, accounting, vehicles, and phones, etc. . . .

In summary, time is of the essence. We could lose all of our assets in the Dominican Republic if immediate action is not taken on these issues. It is therefore imperative that we know Mr. Andrews' position so the appropriate measures can be taken to protect these jointly owned businesses and so Mr. Broom can make appropriate decisions concerning his future as well.

e. Letter from Broom's attorney to Stodghill dated October 10, 2005:

. . . On September 30, 2005, Mr. Broom sent Mr. Andrews a letter, through your office as his legal counsel, in which he requested contributions from Mr. Andrews, both to Tri-Star and Worldwide, to keep those entities afloat. While Mr. Broom is hopeful that the political climate will change and that we will eventually be able to resume business operations in the Dominican Republic, Tri-Star and Worldwide will simply not be able to survive without an injection of capital.

Mr. Broom is aware that Mr. Andrews has multiple sources of income in addition to the Tri-Star/Worldwide endeavor, and therefore, the Dominican Republic situation may not be as important to him as it is to Mr. Broom. Mr. Broom, however, relies on the Tri-Star/Worldwide endeavor as his primary source of income. Mr. Broom is not willing to fund Tri-Star and Worldwide on his own and further is not willing to work without being compensated.

If Mr. Andrews does not forthwith contribute the funds requested to Tri-Star and Worldwide, Mr. Broom will begin the process of liquidating the assets of those entities to meet pending financial obligations, including taxes.

Please respond on or before 5:00 p.m. on October 13, 2005. If Mr. Broom receives no response, he will begin the liquidation process.

f. Letter from Stodghill to Broom's attorney dated October 19, 2005:

... You stated that Quentin [Broom] intends to liquidate Tri-Star beginning October 13th. As a 50% stockholder, Quentin does not have authority to effect the liquidation of Tri-Star without Hugh's [Andrews] approval. I request that Quentin ... communicate any proposals regarding Tri-Star's liquidation in sufficient time for Hugu [sic] and me to determine their impact, and approve or disapprove same.

With respect to your letter of September 30th, two weeks after serving Hugh with a law suit related to Tri-Star, you requested that he make additional contributions to Tri-Star and Worldwide Entertainment, S.A. He is not inclined to make any such contributions without a compelling reason to do so. The summary nature of the information contained in your letter was simply insufficient. I request that the specifics underlying those requests be provided to us by Quentin, as Tri-Star's and Worldwide's operating officer. ...

g. Letter from Broom's attorney to Stodghill dated November 4, 2005:

... We specifically requested that each principal contribute funds immediately in a letter of September 30, 2005. Mr. Broom has stood ready to contribute his half but is unwilling to finance the operations of these two (2) entities without an equal contribution by Mr. Andrews.

... Facing the threat and seizure of the video poker machines by both the government and by the owners of the local warehouses, Mr. Broom has had no choice but to liquidate the machines. ...

... Mr. Broom contacted a gaming machine broker in an attempt to determine the value of these machines, if any, in the Dominican. Unfortunately, they are of little value. Nonetheless, Mr. Broom fortunately secured a Dominican who was willing to pay cash for the machines and has sold one thousand one hundred twenty-two (1,122) machines of which nine hundred sixty (960) were operational for a total of Four Hundred Thousand (\$400,000.00) Dollars. This transaction has been consummated in the Dominican, and the proceeds, after the payment of remaining expenses owed by Tri-Star, will be equally distributed as a final distribution to each principal of Tri-Star.

Mr. Broom plans to leave a few thousand dollars in Tri-Star to cover

necessary accounting expenses. . . .

16. On September 16, 2005, Knie, on behalf of Broom, filed a lawsuit against various entities including Andrews in the Spartanburg County Court of Common Pleas. While Tri-Star was not a party to that proceeding, it included allegations relating to Tri-Star to support Broom's causes of action against Andrews and sought recovery of money from Andrews and the other defendants therein. At some point thereafter (no date is evident from the pleadings presented into evidence) Andrews filed an Amended Answer and Counterclaims captioned "Defendant H. Hughes Andrews, Individually and on behalf of Tri-Star Communications, Inc., as a Third-party Plaintiff, v. Quentin S. Broom, Jr., Third-party Defendant." That counterclaim alleged causes of action for recovery on behalf of Andrews and Tri-Star from Broom for breach of fiduciary duty, breach of contract, breach of contract accompanied by a fraudulent act, breach of covenant of good faith and fair dealing, conversion, promissory estoppel, fraud, negligent misrepresentation and various other theories. All third-party plaintiff causes of action arise out of the business relationship between Broom and Andrews and relate to Tri-Star.

17. The parties did not present any evidence indicating that one shareholder or any other corporate officer of Tri-Star has the right to file a voluntary bankruptcy petition on behalf of the corporation without the consent of the remaining shareholder(s).

DISCUSSION AND CONCLUSIONS OF LAW

1) Was Andrews' petitioning claim satisfied pre-petition thereby disqualifying him as a petitioning creditor?

Tri-Star asserts that its mailing of checks to satisfy Andrews' claim disqualifies him as a petitioning creditor. "To constitute a good tender, the law requires payment to be in money, for the proper amount due, made to the proper person, at the proper place." Anderson v. Citizens Bank, 294 S.C. 387, 395, 365 S.E.2d 26, 31 (Ct. App. 1987), overruled on other grounds, Ward

v. Dick Dyer & Assocs., 304 S.C. 152, 403 S.E.2d 310 (1991) (citing Aldrach v. South Carolina Light, Power & Rys. Co., 101 S.C. 32, 85 S.E. 164, 165 (1915) (payment must be in money); Tolbert v. Fouché, 129 S.C. 338, 123 S.E. 859, 861 (1924) (for proper amount due); Maryland Cas. Co. v. Hanson Dredging, Inc., 393 So.2d 595, 596 (Fla. App. 1981) (to the proper person); McFarland v. Christoff, 120 Ind. App. 416, 423, 92 N.E.2d 555, 558 (1950); Waller v. Brooks, 267 Cal. App. 2d 389, 394, 72 Cal. Rptr. 228, 232 (1968) (at proper place)). Payment offered to a person who does not have authority from the creditor to accept it is not tender. Rice v. Palmetto State Life Ins. Co., 196 S.C. 410, 13 S.E.2d 493, 497 (1941). Likewise, "payment offered at a place other than the creditor's place of business is not tender, unless the creditor agrees otherwise." 86 C.J.S. Tender § 16 (2006). See Berley & Kyzer v. Columbia, Newberry & Laurens R.R. Co., 82 S.C. 232, 64 S.E. 397, 398 (1909); Weyand v. Randall, 131 A.D. 167, 115 N.Y.S. 279, 281 (N.Y. App. Div. 1909).

In this case, the parties have stipulated that the checks to satisfy Andrews' claim were originally sent by certified mail with a return receipt requested to Andrews at his business location in care of his secretary, but that they were not cashed. There is no evidence that the certified mail was claimed or that these checks were received or negotiated before the filing of the petition. Further, Knie's mailing dated December 5, 2005 to Stodghill also fails to constitute good tender. First, no evidence was presented that Stodghill had the authority to accept a tender on Andrews' personal behalf. Second, although the mailing from Knie transmitting checks is dated December 5, 2005, there is no evidence that the mailing was received by Stodghill prior to the filing of the involuntary bankruptcy petition on December 7, 2005. In short, the presentation of facts to the court fails to meet all of the elements set forth by Anderson v. Citizens Bank, as there is no evidence that the checks were received and negotiated prior to the filing of the case, and therefore there is no evidence to support a finding that the petitioning claim was satisfied

prior to the filing of the petition. Andrews is therefore not disqualified as a petitioning creditor.

2) Did Andrews actively refuse acceptance of tender of payment on his claim pre-petition in order to retain a qualifying claim, thereby enabling him to serve as a petitioning creditor?

There is no evidence that Andrews or his secretary received the initial notification of awaiting certified mail or that Andrews or his counsel were put on notice of the impending arrival of funds to satisfy the petitioning claim before the petition was filed. Therefore, there is no evidence of any act of manipulation on the part of the petitioning creditor to avoid tender.

3) Did Andrews' acceptance of payment of his claim post-petition extinguish his claim, thereby disqualifying him from serving as a petitioning creditor?

At some point subsequent to December 5, 2005 but prior to March 1, 2006, it is not disputed that Andrews received the checks in question and deposited them on March 1, 2006, satisfying his petitioning claim. A post-petition payment of a debt before the hearing on the involuntary petition does not alter the creditor's status at the time of filing. The date of filing is the operative date for whether a creditor holds a qualified petitioning claim. See Bartmann v. Maverick Tube Corp., 853 F.2d 1540, 1546 (10th Cir. 1988). The petitioner's post-petition acceptance of tender and satisfaction of the petitioning claim has no bearing on his status as a petitioning creditor.

4) Does Andrews, an admitted insider, have standing to be a petitioner in an involuntary case?

11 U.S.C. § 303(b)(2) provides that:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 of 11 of this title - . . .

(2) if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549 or 724(a) of this title, by one or more of such holders that hold in the aggregate at least \$12,300 of such claims.

At issue is whether the limiting language, "excluding any employee or insider of such person" is

solely for the purpose of calculation of "fewer than twelve such holders" or is also for the purpose of excluding insiders from qualifying as petitioning creditors.

Some courts have interpreted § 303(b)(2) to allow an insider, employee or transferee to file an involuntary petition, even though they are excluded from the "fewer than 12" calculation. In re Little Bldgs., Inc., 49 B.R. 889, 890 (Bankr. N.D. Ohio 1985) ("a single creditor is eligible to file an involuntary petition, irrespective of whether that creditor is, or at one time was, an insider"); In re United Kitchen Assocs., 33 B.R. 214, 215 (Bankr. W.D. La. 1983) ("Under the plain meaning of 11 U.S.C. § 303(b)(1) and (2), employees of the debtor may be petitioning creditors for involuntary bankruptcy of the debtor"); Sipple v. Atwood (In re Atwood), 124 B.R. 402, 405 n.2 (S.D. Ga. 1991) ("Petitioning creditors . . . qualify [to file an involuntary petition] even if their claim is voidable").

The Little Buildings court reviewed the language of the statute and explained the basis for its decision to allow an involuntary petition filed by a single creditor, even though that creditor is or was an insider:

Although the [debtor] in this case has argued that the language of the involuntary provisions should be interpreted to mean that insiders must be excluded from the group of claimants eligible to file a petition, the language of the section states, with mathematic-like certainty, that the claims of insiders are excluded only from consideration in determining the number of an alleged debtor's creditors.

49 B.R. at 890-91. The court concluded that, "[i]nsiders are still eligible to initiate involuntary proceedings against the entity they are or were associated with." Id. at 891.

Other courts have reached the opposite result, but none which represents binding authority. See In re Runaway II, Inc., 168 B.R. 193, 198 (Bankr. W.D. Mo. 1994); In re Kreidler

Import Corp., 4 B.R. 256, 259 (Bankr. D. Md. 1980).¹ The analysis of §§ 303(b)(1) and (2) set forth in Little Buildings is convincing. Therefore, this court adopts the interpretation of Little Buildings for the exclusion of insiders for counting purposes only under § 303(b)(2) and thereby finds that Andrews' status as an insider does not impair his qualification as a petitioning creditor.

5) Was Tri-Star generally not paying its debts as they became due?

11 U.S.C. § 303(h)(1) requires a finding by this court that "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount." The test of whether a debtor is "generally not paying" is applied as of the date of the filing of the involuntary petition. Matter of Bishop, Baldwin, Rewald, Dillingham & Wong, Inc., 779 F.2d 471, 475 (9th Cir. 1985). The petitioning creditor has the burden of proving that debts were not being paid as they came due and must show more than just a few unpaid debts. In re Galaxy Boat Mfg. Co., 72 B.R. 200, 203 (Bankr. D.S.C. 1986) (citing Matter of Cinnamon Lake Corp., 48 B.R. 70, 72 (Bankr. M.D. Fla. 1985)). To make this determination the court can look to a mechanical test including the following factors: the timeliness of payment on past due obligations, the amount of debts long overdue, the length of time during which the debtor has been unable to meet large debts, any reduction in the debtor's assets, and the debtor's deficit financial situation. In re Knoth, 168 B.R. 311, 317 (Bankr. D.S.C. 1994); In re Dakota Lay'd Eggs, 57 B.R. 648, 657 (Bankr. D.N.D. 1986). "Although offering guidance, the mechanical test must be employed with regard to any unique circumstances

¹ In Atlas Mach. & Iron Works, Inc. v. Bethlehem Steel Corp., 986 F.2d 709 (4th Cir. 1993) the Fourth Circuit stated that "for purposes of the § 303(b) calculation . . . the following claims are ineligible: (a) claims contingent as to liability, (b) claims subject to a bona fide dispute, (c) claims of employees of the debtor, (d) claims of insiders of the debtor, (e) claims of recipients of voidable transfers. *Id.* at 715 (emphasis added). The court in Atlas Machine acknowledges that it was making the numerical calculation, not determining the particular creditor's standing to bring an involuntary petition. Accordingly, that case provides no assistance to our determination. Similarly, in In re Gills Creek Parkway Assocs., 194 B.R. 59 (Bankr. D.S.C. 1995), this court quoted Atlas Machine to state that "[p]ursuant to [§303(b)], certain types of claims are excluded from consideration; i.e. . . . '(d) claims of insiders of the debtor . . .'" *Id.* at 62 (quoting Atlas Machine, 986 F.2d at 715). However, in Gills Creek, Judge Waites determined that the sole petitioning creditor's claim was the subject of a bona fide dispute under § 303(b)(1) and therefore that creditor was ineligible to bring an involuntary petition. The language of § 303(b)(2) was not at issue in Gills Creek.

attendant to a particular proceeding.” 57 B.R. at 657 (citations omitted).

In this case, as of the petition date only two debts not subject to a bona fide dispute have been identified: the \$130,000 debt to the petitioning creditor, which has now been paid in full via the checks written and transmitted pre-petition but negotiated post-petition; and the \$130,801.05 entry on a financial statement allegedly owed to Best Games, an entity admittedly controlled by liquidating shareholder Broom. There was no evidence presented that any demand was being made for payment of any debt as of the petition date, that the Best Games debt would ever be asserted by Broom, that it or any debt was past due or not being paid as due as of the petition date, nor that the Best Games claim appearing on the September 30, 2005 financial statement was still outstanding as of the date the petition was filed. Further, there is no indication from the evidence that any debt of Tri-Star had been outstanding for any length of time or that Tri-Star experienced any inability to meet large debt obligations as of December 7, 2005. Rather, the evidence presented indicates that from a balance sheet perspective Tri-Star was solvent a little more than two months before the petition, even after considering payment of the alleged remaining debt. Further, documentary evidence states that only one month before the petition was filed, Tri-Star was successfully liquidating its assets to pay outstanding obligations. Broom’s counsel stated that “the proceeds, after the payment of remaining expenses owed by Tri-Star will be equally distributed as a final distribution to each principal of Tri-Star. Mr. Broom plans to leave a few thousand dollars in Tri-Star to cover necessary accounting expenses.” (Excerpt from letter dated November 4, 2005). The evidence further indicates that at Broom’s direction Tri-Star did in fact issue a check to Andrews thereafter for payment of the remainder of his debt plus checks intended by Broom as equity distributions of \$25,000 and \$60,000. The evidence indicates that Tri-Star, through Broom, liquidated assets, paid debts, and the remainder was distributed to equity holders, with a little left in the bank.

Andrews points to a request for a capital contribution from shareholders to meet obligations prior to December 7 as evidence that Tri-Star was not paying debts as they became due. However, the reason for the request as stated in the correspondence is as follows:

Tristar is in dire need of capital. It is recommended that the principals contribute \$20,000 each immediately in order to maintain the operation of the business and our position in the Dominican Republic for thirty (30) additional days.

... Worldwide immediately needs \$20,000 for expenses related to the protection of its assets as well as Tristar's, including but not limited to, warehouse rental, security for the equipment, Frank's living expenses, insurance, fuel, legal, accounting, vehicles, and phones, etc. ...

In summary, time is of the essence. We could lose all of our assets in the Dominican Republic if immediate action is not taken on these issues.

(Excerpt from letter dated September 30, 2005). The primary reason for the capital contribution is protection of assets and ongoing operating expenses. There is no mention of any outstanding and unpaid debts and further the focus is on maintaining the value of Tri-Star's assets for the equity holders, not on repaying debt.

A debtor must neglect more than one debt for the nonpayment of debt to be general. In re Reed, 11 B.R. 755, 760 (Bankr. S.D. W.Va. 1981). Therefore, even if the debt to Best Games is still due, on these facts, that one debt is not sufficient to meet the petitioning creditor's burden of proof, given that the alleged debt was owed to a company controlled by the individual who fashioned the final distribution from Tri-Star to creditors and equity security holders. If the debt in question was a concern, Broom could easily have paid it before making any equity distribution.

While Andrews has shown a reduction of assets by Tri-Star and the winding down of that business, he has failed to meet his burden of proving that as of December 7, 2005, Tri-Star was not paying its *debts* as they came due. Rather, the evidence indicates that the assets of the business were liquidated, relevant debts paid and Broom thereafter distributed funds that were

sufficient to make a distribution to equity holders with a few thousand dollars remaining in the bank. Liquidation of assets resulting in payment of debt, whether voluntary or economically unavoidable, is not the equivalent of a failure to meet creditor obligations as they come due.

It should also be noted that from the evidence presented the only potential claims not satisfied prior to the hearing date, if any, are claims held by insiders or entities they control, not general creditors whose debts were not being paid as contemplated by the statute. This is essentially a dispute between equity holders supplementing litigation already pending in state court. There may be a set of facts which make an involuntary bankruptcy for the benefit of only equity holders appropriate, but as the petitioning creditor has failed to meet his burden of proof pursuant to 11 U.S.C. § 303(h)(1), a decision regarding that question is unnecessary in this case. See In re AXL Industries, Inc., 127 B. R. 482, 485 (Bankr. S.D. Fla. 1991)(involuntary petition by 50% shareholder filed in order for one shareholder to gain leverage over another shareholder in two-party dispute pending in state court was inappropriate where adequate state remedies existed).

REQUEST FOR FEES AND COSTS PURSUANT TO 11 U.S.C. § 303(i)

As Andrews has failed to meet his burden of proof, the court must address Tri-Star's request for recovery of attorney's fees and costs pursuant to § 303(i). The award of attorney's fees and costs is not automatic but falls within the sound discretion of the trial court. In re Reid, 854 F.2d 156, 159 (7th Cir. 1988); In re Gills Creek Parkway Assocs., 194 B.R. 59, 64 (Bankr. D.S.C. 1995). Whether costs and attorney's fees should be awarded pursuant to § 303(i) is "properly determined by a totality of circumstances test." In re Ross, 135 B.R. 230, 237-39 (Bankr. E.D. Pa. 1991); In re Fox, 171 B.R. 31, 33 (Bankr. E.D. Va. 1994). "The closer the question of dismissal, the less likely it may be appropriate to award counsel fees." Id. at 230. As the court found in favor of Andrews on four of the five issues decided herein, the decision for the

court in fact was a close question. Further, just as one could infer that shareholder Andrews' motivation in filing this petition was solely to benefit himself and not the interests of any creditor of Tri-Star, one could also infer from these facts that Tri-Star's opposition to the involuntary petition, driven by shareholder Broom, was primarily to benefit Broom. Therefore, the court sees no inequities in these facts warranting a shifting of attorney's fees to the losing party. Further, given that the decision herein presented close and somewhat novel questions for the court, the request for fees and costs pursuant to § 303(i) is denied.

IT IS THEREFORE, ORDERED:

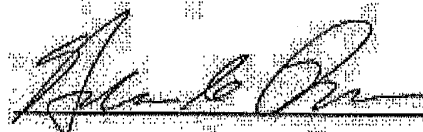
1. That the petitioning creditor has not met his burden of proof as to all of the requirements under 11 U.S.C. § 303, and therefore the relief requested under this section is

DENIED;

2. That the request for fees and costs pursuant to 11 U.S.C. § 303(i) is also **DENIED;**

3. That this case is hereby **DISMISSED.**

November 22, 2006
Spartanburg, SC



United States Bankruptcy Judge

Lee, Broome, MacBay & Associates, P.A.

108 Southport Road, P.O. Box 5476
Spartanburg, S.C. 29304
Fax: 864-574-3672
Phone: 864-574-3620
Email: trussell@lbmanda.com

Fax

To:	Quentin Broom	From:	Timothy L. Russell, CPA
Company:			
Fax:	864-305-868-5576	Pages:	2 Including cover
Phone:	864-978-9003	Date:	10/19/2005
Re:	Note repayments 2002-2005	CC:	

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• Comments:

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Tri-Star Communications, Inc.
Note Payables - Shareholders
Carryover

Date	Note Payables - Shareholders					Loan Repayments		
	Quentin Broom	Beat Games	Jackpot Amusements	Total Q. Broom	Hugh Andrews	Total Q. Broom	Hugh Andrews	
12/31/2001 2002	Balance 253,580.07 Payments (71,929.02)	401,650.00 0.00	45,000.00 0.00	700,230.07 (71,929.02)	1,056,506.88 55,909.00	(71,929.02)	55,909.00	
12/31/2002 2003	Balance 181,851.05 Payments (177,500.00)	401,650.00 0.00	45,000.00 0.00	628,301.05 (177,500.00)	1,112,415.88 (177,500.00)	(177,500.00)	(177,500.00)	
12/31/2003 2004	Balance 4,151.05 Payments (4,151.05)	401,650.00 (140,848.95)	45,000.00 (45,000.00)	450,801.05 (190,000.00)	934,915.88 (275,000.00)	(190,000.00)	(275,000.00)	
12/31/2004 1/1 - 8/31/05	Balance (0.00) Payments 0.00	250,801.05 (130,000.00)	0.00 0.00	260,801.05 (130,000.00)	659,915.88 (529,915.88)	(130,000.00)	(529,915.88)	
8/31/2005	Balance (0.00)	130,801.05	0.00	130,801.05	130,000.00	(589,429.02)	(928,506.88)	



7156 N.W. 72 Ave., Miami Florida, 33166 - U.S.A. Phone: (305) 887-3186 Fax: (305) 887-3482

October 14, 2006

Mr. Quentin Broom

Dear Mr. Broom,

I have offered the 1122 Pot of Gold machines located in the Dominican Republic to five companies. Of which 3 out of the 5 expressed no interest. The offers we did receive were as follows 1 @ \$350 each and 1 @ \$400 each.

The factors of valuing of the equipment are as follow:

1. International Transportation
2. Transportation cost
3. Current legality issue in the Dominican Republic
4. Conditions of a Caribbean environment for the last 4 years
5. The machines not having bill acceptors
6. A 10% for machines the are not working or missing working boards

Please advice as to how you wish me to proceed.

Best Regards,

Lestheer Rodriguez
President

Import • Export • Domestic • New • Used • Refurbished • Parts www.intigamingcorp.com igcorp@bellsouth.net

Octubre 24, 2005
Santo Domingo.

Hemos recibido del señor José Pérez Ced.

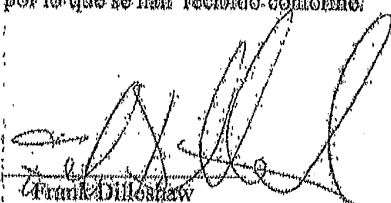
Residente en la Aut.

Duarte Km. 25 Santo Domingo Rep. Dom. la suma de US\$ 400,000.00

(Cuatrocientos mil con 00/100) Dólares por concepto de compra de 1,122 máquinas

POT-O-GOLD, las mismas han sido probadas y aceptadas, en condiciones operantes,

por lo que se han recibido conforme.



Frank Dillashaw

0001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

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4
5 INTERNATIONAL GAME TECHNOLOGY,)
INC.,)
6)
Plaintiff,)
7) Civil Action No.
vs.) 7:0-1407-25
8)
9 HORACE HUGH ANDREWS, II,)
and DREWS DISTRIBUTING, INC.,)
Defendants.)
10
11
12
13

DEPOSITION OF HUGH ANDREWS

14 Pursuant to notice and/or agreement of the parties and
15 the witness, the deposition of HUGH ANDREWS was taken
16 commencing at the hour of 10:05 a.m. on the 7th day of
17 January, 2005, at the offices of Turner, Padgett, Graham
18 & Laney, P.A., 200 East Broad Street, Suite 200,
19 Greenville, South Carolina.
20

21 REPORTED BY: JULIANE E. GOLDBERG, RMR
22
23
24
25

0002

1 APPEARANCES:

2
3 Jeffrey Payne
and C. Pierce Campbell
4 Turner, Padgett, Graham & Laney, P.A.
Fourth Floor
5 1831 West Evans Street
P.O. Box 5478
6 Florence, South Carolina 29502
7 On Behalf of the Plaintiff
8
9 Charles J. Hodge
229 Magnolia Street
10 P.O. Box 2765
Spartanburg, South Carolina 29304
11 On Behalf of the Defendants
12
13

STIPULATIONS:

14 This deposition is being taken pursuant to The Federal
15 Rules of Civil Procedure and Federal Rules of Evidence.
16 The deponent reserves the right to read and sign the
17 transcript of the deposition.

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0003

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19	2001 Cash Disbursements Journal	8/1	
20	Plaintiff's Exhibit Number 22,		
21	2002 Cash Disbursements Journal	8/1	
22	Plaintiff's Exhibit Number 23,		
23	Correspondence between Drew's and Silicon Gaming	8/1	51/19
24	Plaintiff's Exhibit Number 24,		
25	Checks issued to Hugh Andrews	8/1	94/10
0005	Plaintiff's Exhibit Number 25,		
1	Checks issued to Andrews Aviation	8/1	95/15
2	Plaintiff's Exhibit Number 26,		
3	Checks issued to Pam Andrews	8/1	98/22
4	INDEX OF EXHIBITS		
5		MARKED	REF.
6	Plaintiff's Exhibit Number 27,		
7	Checks issued to Holly Andrews	8/1	106/25
8	Plaintiff's Exhibit Number 28,		
9	Checks issued to H&J of South Carolina .	8/1	69/7
10	Plaintiff's Exhibit Number 29,		
11	Checks issued to AdSpace Networks	8/1	
12	Plaintiff's Exhibit Number 30,		
13	Checks issued to Drew Industries	8/1	
14	Plaintiff's Exhibit Number 31,		
15	Checks issued to Century BMW	8/1	90/10
16	Plaintiff's Exhibit Number 32,		
17	Check issued to Andrews Amuse	8/1	102/18
18	Plaintiff's Exhibit Number 33,		
19	Checks issued to BMW Financial Services	8/1	89/12
20	Plaintiff's Exhibit Number 34,		
21	Check issued to ABH Group	8/1	
22	Plaintiff's Exhibit Number 35,		
23	Check issued to AUSA Life Insurance Co., Inc.	8/1	
24	Plaintiff's Exhibit Number 36,		
25	Check issued to Clemson Rugby	8/1	
26	Plaintiff's Exhibit Number 37,		
27	Check issued to Daniel Tollison	8/1	
28	Plaintiff's Exhibit Number 38,		

21	Check issued to Palmetto Bank	8/1	
22	Plaintiff's Exhibit Number 39, Check issued to Inegrated Merchant Systems	8/1	
23	Plaintiff's Exhibit Number 40, Checks issued to Rhino Aviation	8/1	
24	Plaintiff's Exhibit Number 41, Checks issued to NationsBank	8/1	
25			
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1	INDEX OF EXHIBITS (Cont.)		
2			MARKED REF.
3	Plaintiff's Exhibit Number 42, Checks issued to Anderson College	8/1	
4	Plaintiff's Exhibit Number 43, 1999 General Ledger (Partial)	8/1	
5	Plaintiff's Exhibit Number 44, 2000 General Ledger (Partial)	8/1	
6	Plaintiff's Exhibit Number 45, 2001 General Ledger (Partial)	8/1	
7	Plaintiff's Exhibit Number 46, Assignment from Drew's Distributing to Hugh Andrews	8/1	77/16
8	Plaintiff's Exhibit Number 47, March 28, 2001 Aged Receivables	8/1	
9	Plaintiff's Exhibit Number 48, Pilot Log	8/1	107/12
10	Plaintiff's Exhibit Number 49, Hugh Andrews 1999 Tax Return and related schedules	8/1	112/
11	Plaintiff's Exhibit Number 50, Hugh Andrews 2000 Tax Return and related schedules	8/1	115/8
12	Plaintiff's Exhibit Number 51, Hugh Andrews 2001 Tax Return and related schedules	8/1	119/4
13	Plaintiff's Exhibit Number 52, Hugh Andrews 2002 Tax Return and related schedules	8/1	
14	Plaintiff's Exhibit Number 53, Schdule of draws from H&J of South Carolina	8/1	76/6
15	Plaintiff's Exhibit Number 54, 2001 BMW SAV Sales Contract	8/1	89/14
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1	INDEX OF EXHIBITS (Cont.)		
2			MARKED REF.
3	Plaintiff's Exhibit Number 55, August 30, 1999, NBSC statement showing \$500,000 wire transfer	8/1	
4	Plaintiff's Exhibit Number 56, April 13, 2000, invoice from ABH Group .	8/1	111/2
5	Plaintiff's Exhibit Number 57, June 9, 2000, invoice from ABH Group ...	8/1	
6	Plaintiff's Exhibit Number 58,		
7			
8			

9 February 6, 2000, invoice from William
10 Byrum Consulting 8/1
Plaintiff's Exhibit Number 59,
11 Check issued to NBSC 8/1 100/20
12
13 Plaintiff's Exhibit Number 60,
14 Games purchased from Drew Gaming 100/18 100/3
15

16 Reporter's Note: Original exhibits retained by Court
17 Reporter, to be delivered when requested.
18
19
20
21
22
23
24
25

0008

1 (Court Reporter marks Plaintiff's Exhibits
2 1 through 59, identified on index.)

3 HUGH ANDREWS, having been first duly sworn, was
4 examined and deposed as follows:

5 THE WITNESS: I do.

6 MR. HODGE: What we'll do with regard to
7 reading and signing, let me make a decision
8 after we take the deposition; okay?

9 For the record, Don Coggins represents
10 Drew's Distributing. His mother-in-law
11 passed away last night, so he's not going to
12 be able to be with us today. He did not
13 want to disrupt the proceedings because
14 they've been scheduled for a while. So what
15 we've agreed is that the deposition will go
16 forward, but Mr. Coggins will reserve the
17 right to ask any questions that might be
18 appropriate, that he deems appropriate.

19 Likewise, we've got some scheduling
20 conflicts today, and if the deposition has
21 to go beyond 2:30, we've agreed to suspend
22 it and restart it at a mutually convenient
23 time, and we've also agreed to extend the
24 scheduling order subject to the Judge's
25 agreement.

0009

1 MR. PAYNE: Okay.

2 EXAMINATION BY MR. PAYNE:

3 Q. All right. Mr. Andrews, I'm Jeff Payne. I'm the
4 lawyer for IGT, and we'll take your deposition
5 today. Have you ever had a deposition -- or given a
6 deposition before?

7 A. I have.

8 Q. Well, you've probably heard all this, but I'll put
9 it on the record anyway. I'm simply here to ask you
10 some questions, not here to trick you, just need to
11 find out your answer to my specific question. So if
12 at any time I ask you a question you don't
13 understand, please stop me, ask me to rephrase it,

14 because if you give me an answer, I'm going to
15 assume that you understood the question.
16 Also, this is not to wear you out, be a
17 marathon or anything. If at any time you need to
18 stop and go to the rest room or take a break, just
19 let me know. I'll be glad to accommodate you to
20 that, because hopefully we can get through before
21 your lawyer has to leave, but we might not.
22 A. Yes, sir.
23 Q. And so we'll just see how it goes, and then we'll
24 reconvene at a later date.
25 Tell me where you're presently living.
0010
1 A. Presently, I'm at 1650 Belcher Road, Inman,
2 South Carolina.
3 Q. You're no longer in Florida?
4 A. Well, I mean, that would be my main residence in
5 Florida, but I'm up here with my wife and family
6 right now, been here for a couple months.
7 Q. Okay. Where is your -- what's your address in
8 Florida?
9 A. I'm drawing a blank. I'm sorry. I've lived there
10 about a year. Haven't been there in two months. I
11 live in Melbourne. I can't tell you the address.
12 I'm sorry.
13 Q. What's the name of the subdivision?
14 A. Boy, I'm drawing a blank. I'm sorry.
15 Q. Do you have a Florida driver's license?
16 A. Yes, yes. I'm glad you said that. Oh, I live in
17 Portofino Bay, and it's 6311 Portofino Lane,
18 Melbourne.
19 Q. And what's the zip in Melbourne? It's not on
20 that?
21 A. No, it's not on there.
22 Q. Oh, really.
23 A. Yeah, it is. 32940.
24 Q. What's your social security number?
25 A. 249-80-7833.
0011
1 Q. All right. Are you presently married?
2 A. I am.
3 Q. Now, were you in the process of getting divorced?
4 A. My wife had filed, and we've put it on hold.
5 Q. All right. And you said y'all are back living
6 together in Inman?
7 A. Yes, yes.
8 Q. Okay. Do you have any children?
9 A. I have three children.
10 Q. What are their names?
11 A. Well, there's Horace Hugh Andrews, III; there's
12 Holly Hughes is her last name now. She's married.
13 And Dustin.
14 Q. Dustin?
15 A. Dustin. He's 17.
16 Q. All right. Horace Hugh Andrews, III, how old a
17 fellow is he?
18 A. He's 31.
19 Q. Where does he live?
20 A. He lives in Inman.
21 Q. All right. Holly Hughes, where does she live?
22 A. She lives in Tuscaloosa, Alabama.

23 Q. And Dustin is where?
 24 A. He's at home.
 25 Q. All right. Do you have -- do your mother and father
 0012 live in this area?
 1 A. They're both deceased.
 2 Q. Okay. Do you have any -- what's your wife's maiden
 3 name?
 4 A. Pamela Swindle.
 5 Q. Does she have any relatives around the upstate?
 6 A. Yeah. About 50 of them.
 7 Q. What are some of the names besides Swindle and --
 8 any other names?
 9 A. None that I can think of. I'm sorry.
 10 Q. So Holly's now -- is she in school right now?
 11 A. No. She's graduated from college. Her husband is
 12 still in college. He's going to be a professor of a
 13 college eventually.
 14 Q. Where did she go to school?
 15 A. She went to college of Charleston.
 16 Q. Dustin's in high school?
 17 A. Dusty's in, yeah, a day school in Spartanburg.
 18 Spartanburg day school.
 19 Q. How about give me your educational background.
 20 A. Went 12 years to -- you know, finished high school,
 21 graduated from Chapman High School. That's it.
 22 Q. No further vo-tech school, nothing else?
 23 A. (No audible response)
 24 Q. Do you belong to any civic clubs?
 0013
 1 A. No.
 2 Q. Fraternal organizations?
 3 A. No.
 4 Q. Church?
 5 A. No.
 6 Q. Not a member of any church?
 7 A. No.
 8 Q. Have you ever been arrested for a crime other than a
 9 traffic violation?
 10 MR. HODGE: I don't think arrests are
 11 appropriate, but he certainly can talk to
 12 you about convictions. I'm going to
 13 instruct him not to answer on arrests.
 14 BY MR. PAYNE:
 15 Q. Have you ever been convicted of a crime other than a
 16 traffic stop?
 17 A. No.
 18 Q. Are you a member of any professional organizations
 19 in your line of work?
 20 A. Long time member of the South Carolina Corn
 21 Operators Association.
 22 Q. Any other ones?
 23 A. No.
 24 Q. How about political; are you a member of any
 25 political party?
 0014
 1 A. I'm a democrat.
 2 Q. Have you or your companies been involved -- well,
 3 we'll start with you. Have you been involved in any
 4 lawsuits as a Plaintiff or Defendant?
 5 A. Yes. In along about '83, I was involved in a civil

6 suit for copyright infringement.
7 Q. All right. What else besides that case?
8 MR. HODGE: Personally?
9 BY MR. PAYNE:
10 Q. Your divorce case, and then -- yeah, personally.
11 A. At this time, I can't --
12 Q. Fred Collins didn't sue you?
13 A. That. Yes, I'm sorry. With -- I was involved with
14 Leisure Time.
15 Q. Your company sued Leisure Time; right?
16 A. Right, yeah.
17 Q. And did Collins ever sue you? He sued everybody
18 else.
19 A. That was at the same time. He entered into that
20 suit.
21 Q. Okay.
22 A. Yeah, he sued everybody.
23 Q. And then did you or your company -- were y'all
24 involved in the players, the various players that
25 filed those lawsuits? Did they sue you or Drew's
0015
1 Distributing?
2 A. The class action suit, yeah, there were about 42
3 Defendants in it, and I -- one or two of my
4 companies were involved in that.
5 Q. Okay.
6 A. I think H&J of South Carolina, and maybe Drew's.
7 Q. All right.
8 A. And me personally too, I think, in that deal.
9 Q. That ultimately got resolved?
10 A. Yeah.
11 Q. Any other litigation that's ongoing now involving
12 you personally or any company you're associated
13 with?
14 A. There's a lady in Myrtle Beach who filed a suit.
15 It's frivolous. It's not going anywhere. We had
16 daily lived together a while. She is hunting
17 money.
18 Q. She wants some money.
19 A. Yeah. It's not going nowhere.
20 Q. That's in Horry County?
21 A. Yes.
22 Q. All right. Let's see. Drew's Distributing, do you
23 remember when you started Drew's?
24 A. In 1981.
25 Q. All right. And originally, what did Drew's do for
0016
1 its business?
2 A. It purchased video poker machines from Kramer
3 Manufacturing in New Jersey and resold them.
4 Q. And those sales were in South Carolina?
5 A. Yes.
6 Q. In 1998, in that line, in 1998, 1999, was the
7 majority of your sales from video poker machines?
8 A. Yes.
9 Q. And were you selling anything else, like jukeboxes
10 or anything?
11 A. Yes. We sold Wurlitzer jukeboxes, Dynamo pool
12 tables, I think some change machines that we
13 manufactured.
14 Q. What percentage would you say came from video poker

15 versus regular amusement type games?
 16 A. Probably 97 percent of it.
 17 Q. Was video poker?
 18 A. Yeah.
 19 Q. Do you call those Class 3 or Class 4?
 20 A. They called it Class -- well, for licensing purposes
 21 in South Carolina, they called them Class 3's.
 22 Q. It's Class 3; okay. You were the sole shareholder
 23 of Drew's Distributing --
 24 A. Yes.
 25 Q. -- is that right? I'm going to back up just a
 0017
 1 second here. I had a document that's been marked as
 2 Exhibit 9 as the Articles of Incorporation for
 3 Drew's Distributing. You've got a box over there.
 4 Does that look like the articles that were
 5 filed on behalf of Drew's?
 6 A. Yes, sir.
 7 Q. Okay. And who are listed as the -- down at the
 8 bottom of page 1 on Exhibit 9, who's listed as the
 9 officers or directors?
 10 A. Myself and my wife.
 11 Q. And have you and Pam been the sole officers and
 12 directors of the company since day one?
 13 A. To the best of my recollection, yes.
 14 Q. Okay. Now, did y'all ever keep minutes of your
 15 meetings, or did you have any meetings?
 16 A. Yes.
 17 Q. Who kept those minutes?
 18 A. They were -- I don't really know. Best of my -- I
 19 would think that my bookkeeper, Claudia Humphries,
 20 would have those minutes.
 21 Q. I'm going to just show you one, Exhibit 11. That's
 22 a stock certificate, I think, Curt Stodgill gave me.
 23 Does that look like the stock certificate that you
 24 have in Drew's Distributing?
 25 A. Yes, sir.
 0018
 1 Q. Okay. Like I say, you're the sole shareholder; is
 2 that right?
 3 A. That's correct.
 4 Q. You think your bookkeeper would have kept some
 5 minutes. Do you know where those might be?
 6 A. I have no idea.
 7 Q. Okay. They have given me a few documents, two or
 8 three sets of minutes from one meeting in 1981 and
 9 then a meeting later on. Let me show you
 10 Exhibit 13. Those are some minutes from the Board
 11 of Directors meetings. One's the very initial
 12 meeting, it looks like. Flip on over and you'll see
 13 some other minutes of the board meeting in 2002.
 14 And that's all anybody's produced to me to date. Is
 15 that all the minutes that y'all have of any
 16 directors' meetings?
 17 A. I would -- I would think the answer's no, but I do
 18 not know. I'm not...
 19 Q. Okay. Just not sure. You don't know?
 20 A. Yeah, I'm not sure.
 21 Q. But you think y'all had other meetings besides --
 22 A. Sure.
 23 Q. -- these two?

24 A. Oh, yeah.
25 Q. And who would meet when y'all would have Board of
0019
1 Directors meetings?
2 A. Whoever was necessary. Me and my wife, sometimes
3 Mike Fletcher, the president of the company.
4 Q. Now, did Pam work down there?
5 A. No.
6 Q. Was she involved in any of the strategy for the
7 company or anything like that?
8 A. No, no.
9 Q. Mostly it would have been, in the latter years, you
10 and Mike?
11 A. Yes, would have been me and Mike.
12 Q. Who was the attorney for Drew's Distributing in '98,
13 '99, 2000?
14 A. I don't really know. Maybe, possibly Curt Stodgill,
15 possibly sometimes Tim Scrantom, and Thomas
16 Belenchia sometimes.
17 Q. Where is Thomas?
18 A. He's in Spartanburg.
19 Q. Those are sort of your day-to-day --
20 A. Yeah.
21 Q. -- lawyers?
22 A. Yeah.
23 Q. All right. You say your wife didn't work for the
24 company --
25 A. No.
0020
1 Q. -- for Drew's Distributing, but you worked for them;
2 right?
3 A. Yes.
4 Q. And did any of your children work for them?
5 A. No.
6 Q. Did you have any relatives on the payroll?
7 A. My -- at one time my brother-in-law Randall Nichols,
8 possibly -- I'm not -- yeah, I mean, I think he
9 worked for Drew's, I don't know, at one time for a
10 period of time.
11 Q. When you worked for Drew's, say, in '99 and 2000,
12 what benefits did Drew's pay on your behalf?
13 A. I have no idea.
14 Q. Did they have you health insurance?
15 A. I think so.
16 Q. Yeah, who would know a question like that?
17 A. Claudia Humphries.
18 Q. Claudia would be the one. Do you remember them
19 buying you life insurance?
20 A. No. And the reason I say things like that, I had
21 about 18 entities, and -- going on at one time, and
22 you know, different -- one of them may have played
23 different roles. So I had -- I've got health
24 insurance. I don't know who pays it.
25 Q. Okay. And like, your 401(K) retirement type
0021
1 benefits, do you know who was paying that?
2 A. No. I'm sorry.
3 Q. Which one of your entities?
4 A. No.
5 Q. Did you have, like, a company car you drove?
6 A. Yes.

7 Q. And what was your company car?
 8 MR. HODGE: In what time frame?
 9 MR. PAYNE: In '99, 2000, 2001.
 10 THE WITNESS: I don't know. In 2002 I got a
 11 BMW. Probably -- I think I had a '97 BMW.
 12 BY MR. PAYNE:
 13 Q. Was it a seven series?
 14 A. Yes, 740.
 15 Q. And then the 2002 was --
 16 A. A three series.
 17 Q. I noticed in 2001, there was an X5.
 18 A. Um-hum.
 19 Q. Who was driving that one?
 20 A. My wife generally drove it.
 21 Q. Let's see. Besides you and Mike Fletcher, who were
 22 the other key employees at Drew's in '98, '99, 2000?
 23 I think I met Travis.
 24 A. Travis Owens. I guess that's about it. Claudia.
 25 We shut down about the middle of '99. I mean, as
 0022
 1 far as any sales or business, it just died, you
 2 know, about June or July of '99. The state didn't
 3 go out of business until later, but as far as buying
 4 any machines, they quit, you know, so --
 5 Q. Yeah. All right. You were just talking about your
 6 related companies.
 7 A. Um-hum.
 8 Q. Here, let me show you Exhibit 14, which is an answer
 9 your lawyer gave to an interrogatory request that I
 10 gave him, and I didn't know if you could -- if you
 11 knew of any other companies that weren't on that
 12 list, or if --
 13 A. Well --
 14 Q. -- you think that's an accurate list?
 15 A. I think it's probably an accurate list.
 16 Q. Okay. And the only one -- and like I say, I'm not
 17 here to trick you. Drew Gaming, is that Drew
 18 Industries?
 19 A. Yes. They were one and the same. I mean, the
 20 fellow that was in with me on that liked to call it
 21 Drew Gaming, but it was really Drew Industries.
 22 Q. Who was with you on that business?
 23 A. Guy from Columbia, and I can't recall his name right
 24 now.
 25 Q. All right. Well, let me ask you about some of these
 0023
 1 companies. What is ABCO Holdings, L.L.C.?
 2 A. It was just -- it was a corporation that held a
 3 piece of property or two that me and Quinton Broom
 4 owned together.
 5 Q. All right. Where was the property?
 6 A. I think there was one on Highway Number 9 and one on
 7 Asheville Highway, Spartanburg.
 8 Q. Okay. All right. And ABCO of North Carolina,
 9 what's that?
 10 A. Was a piece of property that me and Quinton held
 11 in -- above Myrtle Beach, right at the edge of
 12 North Carolina.
 13 Q. What town did you say?
 14 A. Above Myrtle Beach. Above Little River actually,
 15 just right across --

16 Q. Calabash, somewhere around there?
 17 A. Yeah, right up that way.
 18 Q. And that's just real estate?
 19 A. Yes.
 20 Q. All right. AdSpace, what is AdSpace?
 21 A. AdSpace was a -- kind of an advertising company.
 22 We -- a guy would put as many as 18 ads on a flat
 23 screen T.V., change them every six to ten seconds
 24 was the concept. And we -- the company was from
 25 Las Vegas, but we had AdSpace of South Carolina. In
 0024
 1 other words, we tried to do it, and we tried it in
 2 Myrtle Beach and all around and never got it off the
 3 ground.
 4 Q. What did y'all do with all the screens?
 5 A. We still have the majority of them.
 6 Q. And they're still out there at the Drew's plant?
 7 A. Yes.
 8 Q. How many do you have?
 9 A. I'm not sure.
 10 Q. Plasma screens?
 11 A. Yes.
 12 Q. I think I remember seeing those down at the beach.
 13 AKQJ10, L.L.C., what is that?
 14 A. Ace, King, Queen, Jack, 10. Of course, I don't own
 15 any of it. It held property, I think, and I think
 16 it's in a trust or something for my children.
 17 Q. Is it still in existence?
 18 A. I think so.
 19 Q. Who's the trustee of it?
 20 A. I got no idea.
 21 Q. You're not the trustee of it?
 22 A. I wouldn't know. I mean, I may be.
 23 Q. Who set it up?
 24 A. I don't know. Probably Curt Stodgill.
 25 Q. All right. Andrews Amusements was a proprietorship,
 0025
 1 then it --
 2 A. Originally, I owned, yeah, Andrews Amusements. I
 3 sold half of it to my oldest son. I later sold him
 4 the other half. And I think that's when it got
 5 to -- you know, somewhere along in there got to be
 6 changed to Andrews Amusements, Inc.
 7 Q. Okay.
 8 A. It was probably his -- I'm assuming it was his
 9 doing. I don't know that.
 10 Q. When did you sell him the last half?
 11 A. Oh, Lord. Somewhere in the late 90's, probably '96,
 12 '97.
 13 Q. Do you remember what they paid you for it?
 14 A. I'm not sure, but I think about 300,000.
 15 Q. Did they give you cash, give you what?
 16 A. No, made payments.
 17 Q. Is he still paying you on it?
 18 A. He still owes me some for it, yes.
 19 Q. How often does he make you a payment?
 20 A. He doesn't. It's -- I mean, you know, I think he
 21 owes me about \$15,000 or something like that.
 22 Q. That's better than most of my clients, sell stuff to
 23 their kids.
 24 A. Yeah.

25 Q. All right. And Andrews Amusements, was that just
0026
1 they owned games and put them out in locations?
2 A. Yes.
3 Q. And was this the video poker business?
4 A. Yes, at one time, yes.
5 Q. Is it still fooling with games now or --
6 A. No, but it, you know, for a while did, with just
7 jukeboxes and pool tables and stuff like that.
8 Q. All right. Andrews Aviation, what was that?
9 A. It was a company at one time owned an airplane, a
10 part of an airplane, and we just sort of set that
11 up. I wanted to distance myself a little bit from
12 the airplane in case it crashed and somebody got
13 killed in it or something, so --
14 Q. So it owned part with -- who were the other
15 owners?
16 A. Mr. Charlie Hodge and -- help me out. What was the
17 guy's name?
18 MR. HODGE: Bob Bruce.
19 THE WITNESS: Bob Bruce.
20 MR. PAYNE: I'd seen it in one of the
21 agreements. I just couldn't remember.
22 BY MR. PAYNE:
23 Q. What kind of airplane did it own?
24 A. We had a Citation II jet.
25 Q. Cessna?
0027
1 A. Yeah, Cessna jet.
2 Q. Did it have -- did it own the King Air or that was
3 before?
4 A. First, at first we owned -- the three of us owned a
5 King Air, and we traded it and got the Citation.
6 Q. And you sold your interest in the plane?
7 A. Yes.
8 Q. And when did you do that?
9 A. I'm not sure.
10 Q. Was it after 2001, 2002?
11 MR. HODGE: Do you want me to guesstimate?
12 THE WITNESS: Yeah, you've got as good an
13 idea as I do.
14 MR. HODGE: He's got to tell me I can.
15 MR. PAYNE: Yeah, that's fine.
16 MR. HODGE: Let me think. I think it was
17 2002.
18 THE WITNESS: I don't feel so bad now.
19 MR. HODGE: If it wasn't 2002, it was 2003,
20 but I think it was '02.
21 BY MR. PAYNE:
22 Q. Okay. Because I'm looking at your financial
23 statement here, which is Plaintiff's Exhibit 7, and
24 it still shows airplane expenses in 2001, like
25 \$250,000, \$257,000, so I think he's probably about
0028
1 right. Does that sound about right for the airplane
2 expenses?
3 A. Yes, sir.
4 Q. And let me -- well, we'll go through these in a
5 minute here. In 2000 -- well, let me back up.
6 In the financial statements, I see a lot of
7 airplane expense entries for different years. That

8 all relates to this one airplane, whether it was the
9 King Air or the Cessna --
10 A. Yeah.
11 Q. -- Citation? There weren't any other ones?
12 A. No.
13 Q. What's the picture in your office there? Is
14 that --
15 A. That's the Citation.
16 Q. Okay. I don't know a thing about airplanes.
17 A. That's the jet.
18 Q. All right. Drew's, L.P. -- actually, I'm missing
19 here. What's ARM Investments, L.L.C.?
20 A. I'm sorry. I don't know what that is.
21 Q. All right. Then Classic Jewelers.
22 A. It was a jewelry store that I backed a fellow in in
23 Easley.
24 Q. Okay. Copeland Service Station.
25 A. How it originated was we bought it. It was a shelf
0029
1 corporation. Whether we ever did anything with it
2 or not, I don't know.
3 Q. Did it own anything?
4 A. I don't know. I'm sorry.
5 Q. Crown Amusements; what's that?
6 A. Me and Tim Mahon and Jimmy Rogers owned that thing,
7 and we operated just a few video poker machines.
8 Q. It had, like, locations?
9 A. Yeah. And I don't recall exactly, but I don't think
10 we only had but one or two.
11 Q. And where were those located?
12 A. I'm not sure. One -- I mean, I know one was a
13 little restaurant that Jimmy opened, but I'm not --
14 what little town it was in, I'm not sure. It was
15 somewhere down about Laurens or somewhere.
16 Q. All right. Drew Industries, you were the 100
17 percent shareholder of that, Number 12?
18 A. Yeah. No. At one time I think me and -- the guy's
19 name I couldn't think of earlier was Kenny Lender
20 from Columbia. I think me and Kenny owned that
21 thing.
22 Q. Okay.
23 A. I think I probably bought him out at some point.
24 Q. Was it 50/50 when you --
25 A. I think so, yes, sir.
0030
1 Q. All right. And Drew Industries did what?
2 A. We operated video poker machines in the Columbia
3 area, I think.
4 Q. And you would own machines and then put them in the
5 different locations?
6 A. Yes.
7 Q. Did Drew Industries have any casinos that they
8 owned?
9 A. Yes. I think they had a couple of them. And I'm
10 not sure what the names of them were.
11 Q. But y'all actually owned or leased the property,
12 would put the machines in the property that you
13 owned?
14 A. Yes.
15 Q. And in other situations with Drew Industries, you
16 would put your machines and then split the profits

17 or whatever?
 18 A. Correct, correct.
 19 Q. And mostly that was in Columbia.
 20 A. Columbia.
 21 Q. All right. What's Number 14 there, what's Drew's,
 22 L.P.?
 23 A. I think that's that trust I was talking about that I
 24 have for my family. And I think the reason you see
 25 2 percent there, I think me and my wife control the
 0031
 1 voting stock, and my children have the actual -- the
 2 stock in the company.
 3 Q. Do you know what's in the trust?
 4 A. I think a few things I could tell you. I think -- I
 5 think a company called IMS is in it. I think the
 6 hold -- I think that Ace, King, Jack --
 7 Q. AKQJ --
 8 A. Yeah, I think it's in there. And I think it owns
 9 about three or four pieces of property.
 10 Q. So the trust owns the stock in these different
 11 entities?
 12 A. To the best of my recollection and all, yes.
 13 Q. All right. Golden Beach Properties, who is in
 14 business with you in that one?
 15 A. I got no idea.
 16 Q. Do you know --
 17 A. I can't -- I don't even know what it is.
 18 Q. I'm just going by the name, is it any kind of beach
 19 property you own?
 20 A. I got no idea.
 21 Q. All right. And HH Andrews, Inc.
 22 A. It is pretty much those -- it was a corporation that
 23 we formed. It and HH Andrews Enterprises, Inc., was
 24 two corporations that we founded, ended up just
 25 being shelf corporations. I don't think we ever did
 0032
 1 anything with them.
 2 Q. All right.
 3 A. The reason we did that 'stuff back then, we had to
 4 have -- in order to put machines out in
 5 South Carolina, you had to have been a resident of
 6 South Carolina for two years. So if you were a
 7 business, you also had to have been in business for
 8 two years to own machines in South Carolina, so we
 9 at some point formed some corporations so they'd get
 10 two years old in case we needed them.
 11 Q. I gotcha. All right. H&J.
 12 A. Was a company that put out machines that me and a
 13 fellow by the name of Jim Farrish owned.
 14 Q. And you're still involved in that one?
 15 A. Yes.
 16 Q. And is that still active?
 17 A. I don't think we're doing anything. I think we may
 18 own a couple pieces of property that's still in
 19 there.
 20 Q. But as far as gaming business --
 21 A. No, we're not doing anything.
 22 Q. Do you own any convenience stores?
 23 A. I think there's two, two in that deal.
 24 Q. Do you get any kind of payments from them?
 25 A. I would think the way that worked was that the

0033

1 places are rented, they're making payments to H&J,
2 and you know, at some year end or sometime we may
3 decide to divvy up some money. To my knowledge,
4 there's been none this year.
5 Q. Who oversees the day-to-day --
6 A. Jim Farrish.
7 Q. All right. What are you doing now? Are you -- with
8 all your time?
9 A. I'm retired. I'm not doing much of anything.
10 Q. Not actively involved in any business?
11 A. No.
12 Q. Heritage at Lake Forest.
13 A. That was a corporation that put out -- had five or
14 six video poker machines.
15 Q. Who were you in business with that one?
16 A. Quinton Broom and Charlie Hodge.
17 Q. All right. And that's not doing anything
18 any more?
19 A. No.
20 Q. Integrated Merchants Systems, Inc.
21 A. That is a -- I refer to that sometimes as IMS, but
22 that is a company that routes -- if I'm saying this
23 right, routes or keeps up with money, the ATM
24 machines. If you go to ATM and use it and it draws
25 it from a bank across town, they keep up with

0034

1 paperwork, you know, so-and-so gets the money,
2 whatever. And it's in Matthews, South Carolina.
3 Q. St. Matthews?
4 A. Yes.
5 Q. Who heads up that company?
6 A. A fellow by the name of Joe Sarlo.
7 Q. Now, have you sold any interest that you have in
8 this company or did you always have a smaller
9 percentage?
10 A. No, I -- I -- yes, I -- what I had in it, I give
11 to -- I think I got this right, I give it to Drew's,
12 L.P. In other words, my children. We did a thing
13 where we give up -- the money that -- my exemption
14 when I die for me and my wife will transfer that
15 stock and stuff to the children.
16 Q. And I mean, you gift them. Does that count against
17 your gift for your gift tax?
18 A. Yeah.
19 Q. So you can give them the stock in this --
20 A. Yeah, like, you know, at my death, if I'm going to
21 be exempt the first 650,000 or so, so me and my wife
22 together can give them, you know, a million dollars
23 or so, so that's what we did.
24 Q. All right. So the -- 'cause I noticed historically
25 you've gotten some good checks, at least good to me,

0035

1 in the six digits range from Integrated Merchants
2 Systems, and that now goes into the trust?
3 A. Yes, I think so.
4 Q. Whatever payments they might give out?
5 A. Yeah, 'cause I don't get any of it.
6 Q. All right. New England Cash Dispensing Systems.
7 A. Is an ATM business in Connecticut.
8 Q. Who are you in business in that one with?

9 A. Joe Sarlo for one. Then some people up there. I
 10 don't know their names.
 11 Q. All right. Palmetto Holdings.
 12 A. I think it held property, and the main piece that it
 13 held, I think, was -- at one time was Tri-County
 14 Motor Speedway in Hudson, North Carolina.
 15 Q. And --
 16 A. It was mainly just set up to distance me from the
 17 racetrack in case somebody got killed up there.
 18 Q. And nothing -- does it still own the speedway?
 19 A. No, no.
 20 Q. Is it doing anything?
 21 A. I don't think so.
 22 Q. Okay. Powertronics.
 23 A. Powertronics operated video poker machines.
 24 Q. And who were you in business with with that one?
 25 A. I can't remember that gentleman's name.

0036

1 Q. Where was it?
 2 A. It was near Rock Hill, and we only -- I had one or
 3 two locations.
 4 Q. And how would -- I'm assuming these companies that
 5 you were involved with that were actually owning the
 6 machines, they were buying those machines from
 7 Drew's Distributing?
 8 A. That's correct.
 9 Q. And did they get a special price or -- since you
 10 were connected with the company?
 11 A. It wasn't much of it.
 12 Q. All right.
 13 A. I mean...
 14 Q. Saharrah's.
 15 A. It was a casino in Dillon, South Carolina, and me
 16 and Quinton Broom owned it, I think.
 17 Q. Did Roger Munnerlynn --
 18 A. Yeah.
 19 Q. -- run that thing for you?
 20 A. Yes.
 21 Q. Is it in Hamer? I was pursuing him one time.
 22 A. Good luck.
 23 Q. I just remember that name.
 24 A. Yeah, I'll never forget it.
 25 Q. Roger Munnerlynn.

0037

1 MR. PAYNE: Off the record just a second.
 2 (Pause in the proceedings)
 3 MR. PAYNE: We're back on. Sorry. I just
 4 saw that name.
 5 BY MR. PAYNE:
 6 Q. Sharkies Entertainment.
 7 A. Originally, me and Jim Farrish and a boy from
 8 Anderson, Danny Tollison, owned that, and then I
 9 think I bought Jim's part out, and that's how I got
 10 to be 50 percent partner with Danny Tollison.
 11 Q. And what did --
 12 A. We operated machines.
 13 Q. In the Anderson area?
 14 A. Anderson area, yes.
 15 Q. Who is Danny Tollison? Did you know him?
 16 A. He was a machine operator over in Anderson.
 17 Q. Did he repay you all the money? I noticed some

18 loans going to him.
19 A. No.
20 Q. He still owes you some?
21 A. Yeah.
22 Q. Does he owe it to you or to Drew's?
23 A. I think he owes it to me.
24 Q. Now, when Sharkies was up and running, were you
25 getting a management fee of some sort?
0038
1 A. No, no.
2 Q. Was Drew's Distributing?
3 A. No, I don't think so.
4 Q. How about, like, H&J and the bookkeeping of it, was
5 Drew's handling the bookkeeping?
6 A. I think -- I'm not sure, but yeah, I think we did
7 some work for --
8 Q. Claudia would know?
9 A. Yes, probably.
10 Q. All right. Tolan Properties?
11 A. Tolan Properties was a company me and Danny Tollison
12 had that held some real estate in the Anderson
13 area.
14 Q. Is he still around?
15 A. He is.
16 Q. In Anderson?
17 A. Yes.
18 Q. Do you talk to him much?
19 A. Probably three or four times a year.
20 Q. How about Jim Farrish, do you ever talk to him?
21 A. I haven't talked with Jim in a while.
22 Q. All right. Tri-Star Communications.
23 A. Is a company that me and Quinton Broom owned that
24 operated machines.
25 Q. And it had -- where were their machines?
0039
1 A. All over the place. From Dillon to Spartanburg.
2 Q. And it owned some casinos?
3 A. In the Dillon area. Well, yeah, I think and even in
4 the Spartanburg area.
5 Q. Is it still in business?
6 A. It is.
7 Q. Who's running it?
8 A. Quinton.
9 Q. Have you talked to him lately?
10 A. No.
11 Q. When's the last time you talked to him?
12 A. Probably four months ago.
13 Q. What was that about?
14 A. It was about not -- him taking -- not taking so much
15 free hand of taking money out of the company and
16 stuff and so --
17 Q. Tri-Star?
18 A. Tri-Star owes me a lot of money, and I was wanting
19 to be paid, and Quinton seems to manage to eat up
20 all the money.
21 Q. What --
22 A. It's probably never going to get paid. It's
23 probably going to be --
24 Q. But is it still putting out games and amusements
25 or --
0040

1 A. No, it's not doing much of nothing.
 2 Q. In real estate, how is he making his living right
 3 now?
 4 A. I don't know. I don't know what he's doing.
 5 Q. But you don't know what Tri-Star's doing, what he's
 6 doing with the assets?
 7 A. No.
 8 Q. What happened to the games that Tri-Star owned once
 9 video poker went out?
 10 A. He is operating those games in the Dominican
 11 Republic.
 12 Q. And is he making any money down there?
 13 A. I can't seem to figure that out.
 14 Q. Times are tough.
 15 A. Yeah.
 16 Q. But they took -- did they take all the games down
 17 there --
 18 A. Yes.
 19 Q. -- that they had?
 20 A. Yes.
 21 Q. And that would be including the ones they bought
 22 from Drew's, right at the --
 23 A. Yes.
 24 Q. They bought a bunch of games in August of 2000.
 25 A. Right, right.
 0041
 1 Q. And those went down to the Dominican Republic?
 2 A. Yes.
 3 Q. Youngs Food Stores was convenience stores?
 4 A. Yes.
 5 Q. And y'all sold out?
 6 A. Sold out.
 7 Q. Sumter happy when you got sold out or not?
 8 A. I don't know. You know, that was -- that was -- at
 9 one time me and Jim Farrish attempted to buy Youngs
 10 Food Stores. We were buying up some of the stock,
 11 and when they figured it out, the ones that had
 12 held -- the dairy farmers and a few others didn't
 13 want to sell. They got together and found a group
 14 of people to buy them out, and so we didn't -- we
 15 were trying to do, I guess, a takeover of the
 16 company, and we didn't get it done. So me and Jim
 17 Farrish owned about 14 percent apiece of Young Food
 18 Store.
 19 Q. What's YSF Holdings?
 20 A. That was something they formed after the sale of the
 21 stores for the left over inventory and stuff that
 22 didn't get bought out. In other words, the guy that
 23 has the Scotchman stores bought the business and
 24 several stores, but there was a few -- two or three
 25 stores he didn't want or some inventory he didn't
 0042
 1 take that we ended up with, tried to get rid of.
 2 Q. Now, I saw something listed as Sumter -- Sumter
 3 Holdings Company, Inc. What was that? In 2002,
 4 there's something on your tax return, says Sumter
 5 Holdings Company, Inc., and it was like a five or
 6 \$600,000 sale of some sort.
 7 A. Sumter Holdings. I'm sorry. I don't know.
 8 Q. I didn't know if it was connected to that or not..
 9 Let me ask you a couple more specific.

10 questions. On Andrews Aviation, where did you keep
 11 the books and records for that company?
 12 A. I would think at Drew's building. I would think
 13 Claudia kept them, but I'm not positive.
 14 Q. The checkbook would have been there?
 15 A. Yes, I think.
 16 Q. Tri-Star, Quinton ran that at another location
 17 besides the Drew building, or was it run out of
 18 Drew's?
 19 A. At one time it was run out of Drew's, and in the
 20 last year or so he's kind of moved -- I mean, or
 21 maybe even longer than that, moved away from there,
 22 so I wouldn't know what was going on is the way I
 23 see it.
 24 Q. When's the last time you received any loan repayment
 25 or any kind of compensation from Tri-Star?
 0043
 1 A. Tri-Star just about every month, according to
 2 Claudia, is sending -- they're sending me money.
 3 It's not paying me back on all the money or the
 4 games that were sold. Instead, in other words -- in
 5 other words, I guess if there ends up being 20,000,
 6 40,000 or \$100,000 in Tri-Star, Quinton takes 50 of
 7 it and sends me 50 of it. But it doesn't pay on
 8 the -- the actual -- so it's like me and him had an
 9 investment in Tri-Star. Both of us -- I had about a
 10 million bucks in it, I think, and he had about
 11 600,000 or 700,000, but I also had about three or \$4
 12 million worth of machines I'd sold to him that
 13 that's not getting paid.
 14 Q. And when you get that check, do you just treat it as
 15 an ordinary income or dividend or -- it's not
 16 interest on the note?
 17 A. No. No, it was coming in as -- I guess as a
 18 dividend. I'm not sure. Claudia would know.
 19 Q. She puts it where?
 20 A. I don't know, but puts it somewhere.
 21 Q. Okay. What's Tech Built? I know at one time y'all
 22 were a Tech Built distributor.
 23 A. Yes. Tech Built was a game built -- I believe it's
 24 in Pennsylvania. Guy by the name of Buzz Bruner.
 25 Q. Buzz?
 0044
 1 A. Buzz.
 2 Q. But it was a video poker game.
 3 A. Yes.
 4 Q. All right. Now, you told me earlier you'd been a
 5 lifelong member of the --
 6 A. South Carolina Corn --
 7 Q. -- Corn Operators Association, and you are active in
 8 that organization?
 9 A. I still -- I still try to make meetings if
 10 possible.
 11 Q. In the '99 -- or '98, '99, 2000 time frame, did you
 12 hold any offices in the association?
 13 A. I was probably on the Board of Directors. I
 14 really -- I don't know honestly.
 15 Q. But you have been on the Board of Directors?
 16 A. Yes.
 17 Q. Have you ever been the president of it?
 18 A. Two times.

19 Q. Do you remember when that was?
20 A. I'd say 1990, 1991 for one time, and again in -- I'm
21 not sure, but two times.
22 Q. In --
23 A. About the time Jim Hodge was elected governor.
24 Q. You were on the board?
25 A. President.

0045
1 Q. You were president. Now, in that role were you able
2 to lobby the legislators or the senators?
3 A. Somewhat, yeah.
4 Q. Because I've noticed --
5 A. Oh, in that role -- I mean, we had lobbyists, the
6 association had lobbyists. I didn't actually lobby
7 anybody, but I spent a lot of time down there.
8 Q. Because I noticed they kept saying, well, the
9 legislative session is involved and you're down
10 there and you're working on it, and I just was
11 curious what your role was when they were in
12 legislative session, when all this was so hot and
13 heavy.
14 A. Everything from meeting with representatives and
15 senators to lobbyists and so forth, and the
16 association.
17 Q. Were you down there pretty much full time?
18 A. For the session, pretty much, yes.
19 Q. So you were up to date on all the proposals of what
20 was going on in the legislature?
21 A. Pretty much, yes, sir.
22 Q. And how about the port cases that were going on at
23 that time; were y'all following those closely?
24 A. Yes.
25 Q. And you said y'all -- I think you said earlier y'all

0046
1 pretty well shut down around '99. What did you
2 do --
3 A. We didn't shut down, but I mean, activity come to a
4 halt.
5 Q. Because nobody was going to buy anything.
6 A. Right.
7 Q. What was sort of the death now? Was it Joe
8 Anderson's case when he limited it to 125 payouts or
9 was it...
10 A. No. Pretty much, you had Joe Anderson handling a
11 case that, in my opinion, he was very biased and
12 very -- we didn't send -- the class action lawsuit,
13 and the pressure was on -- the pressure was being
14 applied by him so much, and then over in the
15 legislature we were being forced to take a -- to
16 pass a bill that had some poison pill stuck in it,
17 and we were kind of between a rock and a hard place.
18 If we didn't get a bill passed that we felt like,
19 you know, we were doomed in the class action
20 lawsuit, which it kind of entailed the 125 and the
21 payouts and stuff. So we ended up taking a --
22 through the legislature we ended up passing a bill
23 that said that we would go out of business such and
24 such a date unless we had a favorable vote by the
25 people. The Supreme Court stepped in and severed

0047
1 that law and said that you can -- the part of the

2 bill was still in effect for us to go out of
3 business, but they severed the part that allowed the
4 people to vote on it, so in effect, we just went out
5 of business quietly.

6 Q. But when he -- your sales for '98 were, like, 28
7 million, I think, and in '99 they're 11 million.

8 A. Um-hum.

9 Q. And they started dropping off even early '99.

10 A. Yeah. Basically, we're looking at about a half a
11 year. You had about a half a year's business --

12 Q. And I think --

13 A. -- after that.

14 Q. I was trying to look at the time. I think Joe
15 Anderson decided -- it was around September of '98
16 that the per-day limit meant per day, you couldn't
17 get it over successive days, and it was that -- I
18 mean, that was a big blow, I think, from what I know
19 about the industry.

20 A. Sure.

21 Q. And did people stop buying once that decision came
22 out or --

23 A. I think this -- I can't say that it hinged just on
24 that decision. It kind of hinged on, you know,
25 everything, you know, where -- where's this thing

0048
1 going before Joe Anderson, how's it going to end up,
2 what's the legislature going to do, and then, you
3 know, that slowed everything down. And then, of
4 course, you know, when the Supreme Court severed the
5 law and you're going out of business, it become --
6 you know, that was over with then.

7 Q. Because Hodges signed the law July, '99. Does that
8 sound about right, that Act 125?

9 A. Okay. I don't know.

10 Q. The summer, and then -- actually, the Supreme Court
11 kind of did what Joe Anderson did in July of '99 at
12 Gentry versus Yonce. Do you remember that case?

13 A. No, I don't recall.

14 Q. And then Joytime's the one who challenged.

15 A. Um-hum.

16 Q. Were you happy with Joytime when they filed that
17 challenge?

18 A. No. Nobody was happy with that. That was really
19 Fred Collins. I mean, Fred wanted -- Fred kept
20 calling trying to get somebody to do it, and he
21 talked Charles into doing it. So -- and I really
22 think that at that time, I think Fred thought that
23 we couldn't win a vote and so he was just trying to,
24 you know, mess things up, but he succeeded.

25 Q. But for sure, when that came down, that was --

0049
1 A. Yeah.

2 Q. -- pretty much it. What were your plans; how were
3 you going to -- I mean, you said, I think, early
4 part of '99, basically, y'all were sort of shut
5 down. Did you have a plan as to what you were going
6 to do with Drew's Distributing and the employees as
7 far as transitioning to another business or you were
8 just going to hang it up?

9 A. No. We -- when that went away, we were -- we got
10 heavy into the AdSpace thing, thinking we were going

11 to get in the advertising business, and you know, we
12 dropped two and a half million dollars or so in that
13 project, or you know, a pretty big figure. It might
14 not have been quite that big. And when that didn't
15 go over -- it just seemed like everything we tried
16 to do went south on us.
17 Q. AdSpace would have been your primary -- what you
18 were going to transition into?
19 A. I think so, yeah.
20 Q. Did you have to lay off employees and all in that
21 time frame?
22 A. Yes. Kept employees as long as I could. I kind of
23 kept employees as long as the -- as long as there
24 was money there to pay them, and then one day it
25 just -- it come -- got to a point I couldn't. Had

0050

1 to call an end to it.
2 Q. Now, were you focusing all your time and energy with
3 Drew's Distributing end of '99, 2000?
4 A. No. I had a drug addiction, and I was focusing most
5 of my time on drugs. So I guess I reached a point,
6 I was really depressed in my life and did some
7 things I'm not happy of today, and took up most of
8 my time and energy and everything. So I went
9 through that deal, been clean two years. But --
10 Q. But Mike Fletcher was running the show pretty
11 much?
12 A. Yeah, until -- yeah, until he -- you know, until I
13 had to let him go too because I couldn't afford to
14 pay him either.
15 Q. But you were lobbying in '99 heavy and then Mike was
16 sort of running the show?
17 A. Yeah, Mike -- Mike pretty much was running the show.
18 Mike did a lot -- an awful lot of work in the
19 lobbying area too.
20 Q. Okay.
21 A. So you know, when I say I was there, I don't take
22 too much credit.
23 Q. Yeah. But 2000, wasn't much to do anyway at that
24 point; is that right?
25 A. That's correct.

0051

1 Q. But Mike was doing whatever there was to be done, or
2 do you remember when he left?
3 A. No, I don't know the exact time.
4 Q. All right. Did you, on your personal issues -- I
5 won't get too much into it, but did you have to go
6 into, like, a rehab?
7 A. I did.
8 Q. And do you remember when you went in? Because you
9 knew when you got clean. I was just --
10 A. Yeah. 10/18 of 2002, 2003, whatever. Just a little
11 over two years ago.
12 Q. Okay. All right. Do you want to take a break? Are
13 you all right?
14 A. I'm fine.
15 MR. HODGE: In about 10 or 15 minutes we
16 might.
17 BY MR. PAYNE:
18 Q. I want you to just take a moment and look through
19 what's been marked as Plaintiff's Exhibit 23. These

- clean 2003
- how much did
he make?

20 are some letters and a contract between Drew's and
21 Silicon Gaming. And let me know if you recognize --
22 what you don't recognize as being a letter that you
23 received or sent or a contract that the company
24 received.
25 The first letter, does that look like your
0052
1 signature on it?
2 A. Yes, it is.
3 Q. Okay. And do you remember sending it?
4 A. I don't remember, but -- I mean, I vaguely remember
5 it, yeah.
6 Q. All right. The second page -- I thought they were
7 Bates stamped. Woops. Looks like it's duplicated
8 here. Flip on over to the third page and let me
9 see. I think she's got it twice. But anyway, the
10 second page, have you seen -- do you remember
11 getting that invoice from Silicon Gaming?
12 A. I don't exactly recall it, but I mean...
13 Q. Let me ask you this: Do you remember them shipping
14 you 200 games?
15 A. Yeah, they shipped me 200 games, yes.
16 Q. Around July, '98?
17 A. Yes, sir.
18 Q. All right. The third page looks like it's the same
19 as 1, just doesn't have the underlining on it.
20 A. All right.
21 Q. Look at the fourth page, which is marked Drew's 206.
22 It's a letter back to you; see if you remember
23 getting that.
24 A. Okay.
25 Q. Do you remember getting that letter?
0053
1 A. I think so.
2 Q. Then the next one is Bates stamped Drew's 183.
3 Looks like something you and Mike Fletcher signed.
4 Is that -- do you remember signing that?
5 A. Okay.
6 Q. Is that your signature on it?
7 A. Yes, it is.
8 Q. Do you remember it?
9 A. No.
10 Q. All right. Next page is Drew's 308. It's actually
11 a letter to Mike Fletcher. Have you ever seen this
12 document? I see you're cc'd on it.
13 A. No.
14 Q. You don't remember getting it?
15 A. I don't remember it.
16 Q. Okay. Now, the next document is Drew's 309 through
17 3 --
18 MR. HODGE: 37.
19 BY MR. PAYNE:
20 Q. -- 337, and it's a copy of the distributor
21 agreement. Did y'all -- did you have a distributor
22 agreement with Silicon Gaming?
23 A. Yes.
24 Q. I noticed this one's not signed by you. Do you
25 remember signing this one or something like it?
0054
1 A. I don't recall.
2 Q. Okay. Look at the document after that agreement,

3 which is Drew's Bates stamp numbered 113 down at the
4 bottom.
5 A. Okay, um-hum.
6 Q. It's a letter dated April 26th, '99. Did you -- is
7 that your signature on that one?
8 A. Yes.
9 Q. Okay. Do you remember sending it to Mr. Pascal?
10 A. I don't recall, but yes, I'm sure I did..
11 Q. Okay. Let me ask you about in that letter, Drew's
12 113, down in the last paragraph -- this is in April
13 of '99 -- what do you mean by that last sentence,
14 "This brings me great concern, particularly with the
15 legislature about to change the rules"?
16 A. Yeah, I don't -- I don't know that I -- my whole --
17 my whole experience with Silicon Gaming was they
18 always made promises but they never fulfilled them.
19 Prior to entering into the last -- and they shipped
20 me those games without me wanting them. So when we
21 finally got out there and it was a fellow named Dave
22 Morris and we were talking to him, and he -- they
23 were going to make all these changes if I would buy
24 those games that Mr. Massaro had sent us, and they
25 had some -- they had a four-day poker machine that
0055
1 looked pretty good, and we agreed that if they --
2 you know, they would throw that software in there,
3 fix these games that we would take them. Based on
4 that, I wrote them a check for a million bucks.
5 They never give it. And the whole -- the whole time
6 that we talked to him, I said, you know, "if you
7 don't get me these" -- you know, "if you don't get
8 me the stuff, I'm not going to be able to do
9 anything with it." And I was worried here that if
10 they didn't -- you know, if something happened and
11 we missed the window of opportunity to sell these
12 games that we wouldn't be able to sell them.
13 Q. Did you think that basically you were going to
14 have -- it was going to be illegal at some point,
15 y'all needed to -- if we're going to make it, we're
16 going to have to make it in another year or so?
17 A. I was afraid that might happen. I always thought
18 that if we -- I never thought that the State of
19 South Carolina would put us out of business like
20 they did. I felt like that there would be a
21 phaseout period, 18 months, two years, get to run a
22 game for two years and it would be over with. But
23 the window to sell the games, even if they pass a
24 law that says you can, you know, you only got 18
25 months to run them. Nobody's going to buy them.
0056
1 Q. Right.
2 A. So we had -- you know, if something like that come
3 down, I wanted to have, you know, got -- get these
4 games, get them ready, get them sold.
5 Q. So you were looking to sell these, not really use
6 them in your own --
7 A. That's correct.
8 Q. -- companies to put them out.
9 A. We may have bought some in some of our companies and
10 used them. We probably would have, but you know, as
11 far as -- Drew's Distributing was always about

12 selling stuff.
13 Q. 'Cause didn't you use some of the Odysseys in some
14 of the --
15 A. We tried some.
16 Q. -- casinos?
17 A. Yeah, we tried some with no success, but --
18 Q. And I understand from your attorney those machines
19 are still around. Where are they?
20 A. They're in Georgia in a warehouse, and I want to say
21 that we used -- I doubt we even used 20 of them. I
22 don't know what the figure is, but it's probably 20
23 or less. Maybe ten of them we used or something.
24 The rest of them's brand new with about -- still --
25 everything sitting on them.

0057

1 Q. Which town in Georgia is that?
2 A. I'm sorry. Travis can tell you. I don't know.
3 I've never been to the warehouse down there in
4 Georgia.
5 Q. What else is in that warehouse?
6 A. There's probably -- there's about 50 Tech Builts, I
7 think. There's some old Drew's games that we built
8 in blue cabinets and there's -- there may be a few
9 Pot O Golds.
10 Q. But Drew's Distributing owns all those?
11 A. No. There's -- there's even another operator or two
12 in this state, I think, that's got some equipment in
13 that warehouse, but -- and Tri-Star may have a
14 little something in there. I'm not sure.
15 Q. But the Tech Builts are owned by Drew's; is that
16 right, or you don't know?
17 A. The stuff was owned by Drew's, and it may have been
18 conveyed to me at some time. I'm not sure.
19 Q. All right. Let's get back to Exhibit -- what number
20 is this one? Hold on. Where's my list here. Yeah,
21 Exhibit 23. Let's see. Down at the bottom of the
22 next page is written SGI 1853. It looks like an
23 e-mail.
24 MR. HODGE: What's the Bates stamp on it?
25 MR. PAYNE: 1853.

0058

1 MR. HODGE: 1853; okay.
2 BY MR. PAYNE:
3 Q. Looks like an e-mail from Travis. Have you ever
4 seen this e-mail?
5 A. No.
6 Q. Were you involved in the litigation out in
7 California on this?
8 A. I didn't personally go out there, no, sir, for that.
9 Q. Just Mike and Travis?
10 A. Mike and Travis and the attorney.
11 Q. Okay. Next page is 1852, Bates stamped 1852, and
12 it's from -- the very bottom one is from Travis.
13 Have you ever seen that e-mail?
14 A. No, I don't think so.
15 Q. Then the next page is marked Drew's 109.
16 A. Um-hum.
17 Q. And have you ever seen that e-mail from Travis?
18 A. No, but I do notice something about it. I told you
19 that put out 20. It says here we "just wanted to
20 let you know we placed 35 units in Dillon this

21 week."
 22 Q. Okay.
 23 A. So maybe it's 35.
 24 Q. That was in your casino?
 25 A. Yeah.
 0059
 1 Q. Probably. All right. Next page is Drew's 92. Did
 2 you ever see this particular e-mail? It's actually
 3 two e-mails.
 4 A. I don't recall it.
 5 Q. Okay. Then the next page is SGI 401.
 6 A. Okay.
 7 Q. And it's a message from Mike Fletcher. How about
 8 that e-mail, have you ever seen that one?
 9 A. No.
 10 Q. All right. Next page is Bates stamped SGI 1792.
 11 It's a letter to you from Andrew Pascal dated
 12 June 28th, '99. Do you remember this letter?
 13 A. I don't specifically recall the letter, although I
 14 mean, I -- me and Andrew never got along at all and
 15 we seen things very different. I mean, he was kind
 16 of a yes man. I mean, somebody said, "Hey, why
 17 don't you call and collect this money" and he'd
 18 write a nasty letter like this that really had no
 19 truth in it. But that's just how he was. Nobody
 20 else out there was like him. Mr. Massaro was
 21 very -- Massaro was very nice. Dave Moore was very
 22 nice. Anyway...
 23 Q. Now, did they -- you did use the machine some in 35,
 24 and I guess you didn't have much success with them.
 25 A. No.
 0060
 1 Q. What was the problem?
 2 A. Just nobody played them. We had -- the setup we had
 3 in Dillon there was we had three rooms. You walked
 4 in this casino, to the left and to the right was
 5 Pot O Gold rooms, you know, had 35 each in it. And
 6 the room straight back behind us had the -- we put
 7 the new games in, and did everything we could, but
 8 we just -- you know, sometimes players are creatures
 9 of habit. They went right to the Pot O Golds and we
 10 couldn't get them to play the new machines. You
 11 know, we'd go back and put free games on and let
 12 them play and everything, but they didn't take to
 13 them.
 14 Q. The --
 15 A. But these games never had this later software in
 16 them that we were promised to get because we never
 17 got that software. We were operating --
 18 Q. At this time, in June of '99, you couldn't advertise
 19 jackpots anymore, could you?
 20 A. I don't -- the specifics of the timing and all, I'm
 21 not sure. I don't know.
 22 Q. But did y'all quit after Judge Anderson's decision,
 23 quit advertising the jackpots?
 24 A. I assume we did. I mean, I can't recall exactly
 25 what we did.
 0061
 1 Q. And limiting the winnings to 125 a day?
 2 A. Yeah, yeah. I'm sure we did.
 3 Q. At least in your stores that you were operating, did

4 y'all follow his ruling or did you say, well, that
5 really doesn't apply?
6 A. No, I think we followed --
7 MR. HODGE: Hold on just a second.
8 MR. PAYNE: I'm sorry.
9 MR. HODGE: I've got a bit of a problem when
10 you're asking him did you follow the law or
11 not, okay, because I think we're getting
12 into some fifth -- you know, some issues
13 constitutionally. So I mean, it's obvious
14 Mr. Andrews was not operating these stores,
15 per se. If you want to know whether they
16 had a general policy to follow the
17 directives of the Court, if he knows, I
18 think he can probably respond to that, but
19 I'm going to ask you to be careful on that.
20 BY MR. PAYNE:
21 Q. Yeah. We'll say Tri-Star, for instance, I'm
22 assuming, owns this casino in Dillon; is that right?
23 A. That's correct.
24 Q. All right. So these machines were put into a
25 Tri-Star litigation, and was it your and Mr. Broom's
0062
1 policy to have -- after Judge Anderson's decision,
2 to have no more jackpots blinking on top of the
3 machines, or did that decision come later once the
4 state actually passed a law or issued an opinion
5 that said it?
6 A. I may be wrong about what I'm fixing to say, 'cause
7 I mean, just the timing of everything, when things
8 happened, but I think that he didn't -- the ruling
9 was not that I couldn't have a jackpot, but it
10 couldn't be no bigger than \$125.
11 Q. Okay.
12 A. So I'm thinking that -- and I could be wrong, but if
13 that -- if my memory serves me correctly, we would
14 have probably had a jackpot of \$125, okay, max;
15 okay.
16 Q. Okay. Because I had some operators that said, Sled
17 says we could still do it. His decision doesn't
18 mean anything. I'm just --
19 A. Those would have been machine companies that were
20 not involved in the lawsuit. The 42 Defendants in
21 the lawsuit --
22 Q. Okay. That's right. You were actually -- one of
23 your companies was actually a part of the
24 litigation.
25 A. Probably obligated to do what he said. Everybody
0063
1 else could do what they wanted to.
2 Q. That's what it is. I'm sorry. Because y'all were
3 actually Defendants.
4 A. Which puts you in a crazy position.
5 Q. Competitively, you couldn't compete.
6 A. Yeah, competitively, it would kill you.
7 Q. I forgot you were a party.
8 A. And I kind of remember that's what happened.
9 Especially with Fred Collins being involved in the
10 lawsuit. You know, he was running around with all
11 his stuff cut off and it was killing him because
12 some of his competitors were not.

13 Q. Okay. Let's go on to -- flip to one that's marked
 14 Drew's 53. This is still part of Exhibit 23.
 15 A. Okay.
 16 Q. And a letter from SGI dated September 30th, '99,
 17 from John Penver. And do you remember getting this
 18 letter?
 19 A. I don't specifically remember getting it, but...
 20 Q. All right. Then flip over to the SGI 1909. It's a
 21 letter from you to Mr. Penver.
 22 A. Okay.
 23 Q. We'll start with is that your signature on the Bates
 24 stamp 1910?
 25 A. Correct.
 0064
 1 Q. All right. Then do you remember sending this letter
 2 to him?
 3 A. Okay. Again, it's just been so long, I don't
 4 specifically recall the letter, but now that I've
 5 read it, I mean, I agree with it.
 6 Q. Did you draft that letter or did somebody else do it
 7 for you and you just signed it?
 8 A. It looks like I probably drafted it.
 9 Q. Okay. So at that point, is it pretty much over and
 10 done between y'all? Did y'all --
 11 A. Yeah. You know, we -- it was over and done with us
 12 when we went out -- when we went out to see him
 13 before we entered into this agreement, because the
 14 way they'd handled things, and then, you know, they
 15 showed us that four-deck poker that eventually IGT
 16 sued them over, and it looked so good and all, I got
 17 drawn back into the ball game with them, and that's
 18 when I, you know, agreed to take the machines if
 19 they would make these software changes. So I guess
 20 a man should always go with his gut feeling, I
 21 guess, but I didn't.
 22 Q. When you said it was over, when was that you went
 23 out there?
 24 A. I'm not sure when it was. It would have been at the
 25 time that we coughed up the million dollars and paid
 0065
 1 them.
 2 Q. Okay.
 3 A. Whenever that was. Because we really went out there
 4 just to say, "Look, you know, the way y'all do
 5 business and the way y'all promise stuff and never
 6 get it to us, we're just ready to, you know, wash
 7 our hands and go back home and call it quits." And
 8 you know, at that time they were -- seemed to be in
 9 dire need of some money, and they -- it was like
 10 they would do a deal with us that day, but they
 11 needed money. And so they -- you know, they painted
 12 a rosy picture and we went for it, give them the
 13 money, and then nothing ever happened.
 14 Q. But that trip you're talking about when you thought
 15 it was pretty much over was before the million was
 16 wired to them?
 17 A. Yes; that's correct.
 18 Q. Because they were on you hot and heavy about getting
 19 that million after that meeting, weren't they?
 20 A. Yeah, right.
 21 Q. I saw that. When's it coming?

22 A. Yeah.
23 Q. Okay. The next page is called a Demand for
24 Arbitration, and that's dated October 25th, '99, and
25 does that look like about the time of the --
0066
1 A. Is this the 025?
2 Q. 10/25/99, does that look like about when it
3 started?
4 A. But I mean the bottom one.
5 Q. I'm sorry.
6 A. Or is it over more?
7 Q. It's the -- oh, okay, yeah. Let me ask you. Let me
8 back up. I'm sorry. The 25 was a letter to Mike
9 Fletcher. I didn't know if you had got that. I see
10 you're cc'd on it.
11 A. Okay.
12 Q. Now the rest of that, I don't know why it's stuck on
13 the end. That looks like your signature on that
14 operating agreement, but really I'm talking about
15 the letter right now.
16 MR. HODGE: So what's your question?
17 MR. PAYNE: Did he get a copy of that letter
18 that was sent to Mike Fletcher.
19 THE WITNESS: I probably did.
20 MR. PAYNE: All right. That's all on that
21 particular exhibit.
22 THE WITNESS: Okay.
23 MR. PAYNE: Let's take just a brief break
24 here.
25 (Recess)
0067
1 BY MR. PAYNE:
2 Q. Mr. Andrews, on the machine that SGI was developing,
3 the Odyssey machine that they were developing for
4 you guys at Drew's Distributing, was it going to
5 have \$125 jackpot on it?
6 A. I'm sorry. I don't -- I don't recall.
7 Q. Okay. But you would agree that things were changing
8 rapidly --
9 A. Yes.
10 Q. -- with the regulations as to exactly what the
11 machine was going to need that y'all were going to
12 sell in South Carolina?
13 A. Yes.
14 Q. Whether it was going to be \$500 a day or 125 a day,
15 the legislature --
16 A. Yeah.
17 Q. -- kept bouncing around some ideas.
18 A. That was kind of -- that part was kind of up in the
19 air. I wouldn't deem that to be a very critical
20 thing for Silicon Gaming to adapt to at the last
21 minute. However, more important things would have
22 been, like, the four-day poker machine, to get it
23 on -- you know, get that on -- on the game, to
24 get -- to have the Kenos and stuff that we had to
25 have an element of skill to the game. In other
0068
1 words, what the Keno originally did for us was
2 dropped 20 balls and you won or not. We wanted to
3 drop ten, let the player have the option of then
4 raising his bet or not and then drop the last ten.

5 That pretty much was a skill factor that some of the
6 people had done at Harrah's in North Carolina to
7 make skill -- to be deemed a game of skill. So you
8 know, some of these kind of changes we needed to go
9 ahead and get done, especially that addition of the
10 four-deck poker machine.

11 Q. I gotcha.

12 A. I mean, there may have been some last minute
13 critical things that needed to be done by the
14 legislature passing, but those things I didn't see
15 that would cause them a lot of grief. What was
16 causing me a lot of grief was not going ahead and
17 getting some of these games to get -- so I could get
18 started testing them.

19 Q. Let me show you what I've marked as Plaintiff's
20 Exhibit 16, which is a promissory note from H&J to
21 Drew's.

22 A. Okay.

23 Q. Do you know if that note was ever repaid by H&J?

24 A. I don't know.

25 Q. Well, do you know if H&J owes Drew's any money?

0069

1 A. I don't think it does. I don't think it does, but
2 must have been.

3 MR. HODGE: What number was that, 16?

4 MR. PAYNE: 16.

5 BY MR. PAYNE:

6 Q. Let me show you some checks here, Plaintiff's
7 Exhibit 28, while we're talking about H&J. If you'd
8 look at those and see if you know what the purpose
9 of those checks were for.

10 A. I have absolutely no knowledge.

11 Q. Let me ask you about the last check.

12 A. Okay.

13 Q. Which is Check Number 4396.

14 A. Yes, sir.

15 Q. And it says "187 POG." Do you remember buying some
16 Pot O Golds from H&J?

17 A. I don't.

18 Q. Or Drew's Distributing buying them?

19 A. I don't. It's certainly possible.

20 Q. And do you remember what happened to those machines
21 that you bought in August of 2000?

22 A. I don't recall.

23 Q. Who would know that?

24 A. I don't know.

25 Q. Travis?

0070

1 A. Possibly Travis.

2 Q. Because I had a document, and I don't know where it
3 was, where they bought some machines and then sold
4 them to Tri-Star.

5 A. Okay.

6 Q. And my question is why is Drew's Distributing buying
7 machines from H&J at this point in time, which is
8 August of 2000?

9 A. I don't know. I will say this: If they -- if they
10 bought them -- if there's 187 of them for a thousand
11 bucks apiece, probably bought them 'cause they
12 thought that was a pretty good price. The other
13 thing is that H&J probably had no way to move those

*NO \$400 each
544 later in DM
not bad*

14 games, you know, to get rid of them. They didn't
15 have -- and Drew's may have known where to get rid
16 of them.

17 Q. Yeah, what was the plan for all y'all's game after
18 video poker went out in June of 2000?

19 A. There was -- in the State of South Carolina, were
20 about 34,000 poker machines, and there was no --
21 there was no market. There was no market for them.
22 I say that, and I think a little bit went to
23 Georgia, a little bit went to Alabama, a little bit
24 went to North Carolina, a little bit -- a few of
25 them went to West Virginia, but it was -- it was a
0071

1 saturated market. Nobody wanted to give anything
2 for them. So they became -- they became as little
3 as a thousand bucks apiece. Eventually come back to
4 maybe 2,000 bucks apiece at a period of time, but
5 you know, they were -- one day they were \$7,000 and
6 the next day they were worth a thousand, so --

7 Q. Well --

8 A. Because there were so many of them.

9 Q. And what was -- the machines y'all had, y'all just
10 moved them to different parts of the state or did
11 you try to sell them or --

12 A. We originally moved them, I think, to
13 North Carolina. North Carolina then passed a law
14 that you couldn't store them up there. We then
15 moved them to Georgia. And Georgia passed a law
16 that you couldn't store them down there unless you
17 was a manufacturer or something, and we applied down
18 there and got a variance or whatever where we could
19 store games down there. And I guess we were the
20 only one who could do that. Other operators
21 couldn't carry their games to Georgia to store them,
22 but because we were in manufacturing and
23 distributing, we were able to do that. So that's
24 why some of the operators ended up storing their
25 games at a warehouse that we had originally rented.

0072

1 From there, you know, they set there and set there
2 and set there, and I think we decided to try our
3 luck, me and Quinton did, our luck in the Dominican
4 with them, so --

5 Q. How many games are down in the Dominican Republic?

6 A. I think somewhere around 1,000.

7 Q. And those are some -- they're all Tri-Star's
8 machines, or they're some Drew's and some
9 Tri-Star's?

10 A. No, they're all either Tri-Star's or -- yeah, I
11 guess they're all Tri-Star's.

12 Q. And down in the Dominican Republic, do they have
13 casinos?

14 A. No. They do, yes, sir. They have about, I think,
15 42. At one time I think the number was 42 casinos
16 in the country. We had a deal with the government
17 to run these games in Sport Books. Dominican has
18 about 800 places that Dominican people go bet at the
19 ball games. And in these Sport Books, we put two
20 machines, three machines, four machines on the wall,
21 and --

22 Q. And that's government run, the Sport Books are

23 government run?
24 A. No, it's not government run. They're all
25 individually -- I mean, they're run individually.

0073

1 Q. But you -- other than whatever Tri-Star received
2 from Drew's Industries, there was no other sort of
3 plan to -- or attempts to market and sell your
4 inventory?
5 A. We had nowhere to -- nobody was -- nobody was buying
6 games anywhere, so --
7 Q. Could you use it in Nevada, Atlantic City or --
8 A. I don't -- no, because -- because of licensing, you
9 would never get in Nevada, Atlantic City, anywhere
10 with these games. So they've never been used there.
11 The companies that built them, they never went
12 through the licensing process that they would get
13 them into those places. They pretty much became
14 what we call gray area games. In other words, you
15 could maybe use them in a place where the line
16 hadn't been drawn in the sand yet, either they
17 wasn't sure whether they were legal or illegal. But
18 the legal markets, you know, there were some --
19 there was some of these games years ago got into
20 Florida and into Indian casinos, but I kind of --
21 they got in there, and I don't know how they got
22 there, but I don't think you could sell them
23 any more. So there just wasn't a market for them.
24 Q. So they wouldn't work in Cherokee or --
25 A. Right. Cherokee has them, but you wouldn't be able

0074

1 to sell these used games to --
2 Q. To Harrah's?
3 A. To Harrah's or anything like that.
4 Q. Leisure Time was only in business in South Carolina
5 and North Carolina market?
6 A. Leisure Time sold games into California -- well, I
7 say Leisure Time. Prior to being Leisure Time, when
8 it was --
9 Q. Joytime? Not Joytime.
10 A. No, Pot O Gold people. Anyway, before Leisure Time
11 bought the Pot O Gold company, they were selling --
12 they were selling in the California market, in the
13 Florida market, in, you know, probably another six
14 or seven markets. They wasn't supposed to. They
15 never -- and they -- where they were selling in
16 Indian gaming, I think the federal government got
17 upset with that company for selling into California
18 and a couple places, and where they were fixing to
19 sell to Indians, they kind of pulled the license or
20 something, and so they lost those two or three new
21 markets, and then later Leisure Time bought them,
22 and Leisure Time had no scruples. They'd sell games
23 anywhere. So I think they continued to get in
24 trouble.

25 But years ago, in the early 80's, you could

0075

1 sell games. There were a lot of markets that were
2 unclear, and you could sell amusement devices into
3 those markets, which were -- really ended up being
4 used for gaming purposes. That steadily kept drying
5 up over the years and became less and less. And we

no value!

6 elected -- we had probably sold some games in the
7 early 80's and stuff in, you know, West Virginia,
8 North Carolina, different places that we probably
9 shouldn't have, but when it got somewhere about '93
10 or four, I just elected, I said, "We're not going to
11 sell any more games unless it's here in the State of
12 South Carolina," and we just totally -- anybody come
13 to buy, we wouldn't sell them unless they were doing
14 business in South Carolina. We'd take a tax -- we
15 wanted to know they were licensed and doing business
16 here or we wouldn't sell them any games at all.
17 Q. But say June 30th, 2000, there really wasn't a
18 market for any of these games that y'all had to try
19 to sell anywhere.
20 A. No.
21 Q. How many did you say was in the state, 34,000 --
22 A. There was --
23 Q. -- licensed?
24 A. There were licensed 34,000 video poker machines in
25 the State of South Carolina. Third largest gaming

0076

1 state in the United States.
2 Q. And none of them hardly knew it.
3 A. Nobody knew it. It was the best kept secret.
4 Q. None of the players knew it.
5 All right. Let me show you what's been marked
6 as Plaintiff's Exhibit 53. And it's a list of draws
7 from H&J for the year 2000.
8 A. Okay.
9 Q. And it shows you having received about \$533,000 in
10 draws. Does that sound about right?
11 A. I have no idea. I assume this is correct, yeah.
12 Q. And what is a draw versus a salary?
13 A. I don't know.
14 Q. On your -- and one of the problems is on your 2000
15 tax return, the schedule I need to look at is not on
16 it to break down what your revenue is, and we'll go
17 over that in a little bit.
18 A. Okay.
19 Q. Do you remember getting that much money from H&J in
20 2000?
21 A. I don't, but I assume I did.
22 Q. And if they gave you a check, would you deposit that
23 into your personal account, Drew's account? Where
24 would you --
25 A. I would think personal account.

0077

1 Q. That check I just showed you with Tri-Star, it looks
2 like -- not Tri-Star, with H&J. Looks like y'all
3 bought some inventory right about August of 2000.
4 Do you remember buying any inventory from any
5 companies after it all went out of business?
6 A. Yes, I think so.
7 Q. Who else --
8 A. I don't know. I don't recall, but I mean, I think
9 that -- I think that Tri-Star had about 400
10 machines, so if we're running a thousand of them in
11 Dominican now, we had to buy 600. Now, Tri-Star may
12 have bought some of those direct itself. We may
13 have helped in finding Tri-Star some games. And you
14 know, they may have come through Drew's and right on

15 out to Tri-Star.
16 Q. All right. Let me show you here, Exhibit 46 is the
17 assignment that you received from Drew's.
18 A. Okay.
19 Q. And part of it -- I don't have these pages numbered
20 so bear with me. There is an invoice attached to it
21 back here, if you flip -- it's right after these
22 pages where it tells about software locking up.
23 About four pages behind that.
24 MR. HODGE: That's 46 you're on now?
25
0078

1 BY MR. PAYNE:
2 Q. Yeah. I should number these pages. Go on back
3 almost to the end.
4 A. Oh, okay.
5 Q. Keep going.
6 A. You've got a thank you. I don't know if it's the
7 same one.
8 Q. Yeah. There's a ton of invoices. I didn't copy
9 them all.
10 A. I see.
11 Q. All right. About three pages more. That one. And
12 it's not the easiest thing to read. But it is an
13 invoice from Drew's to Tri-Star dated -- is it dated
14 September 25th, 2000?
15 A. Yes.
16 Q. Okay. And is this for the sale of 129 used
17 Pot O Golds?
18 A. Looks like 189.
19 Q. 189. I'm sorry.
20 A. Okay.
21 Q. 2,000 apiece?
22 A. Okay.
23 Q. Now, did Tri-Star ever pay you for these?
24 A. Probably not.
25 Q. Just kind of got added to the tab?

0079
1 A. Yeah.
2 Q. And I'll get into some detail on -- and where was --
3 if you were shipping something to Tri-Star after it
4 was illegal in South Carolina, would it have gone up
5 to the Georgia warehouse, do you think?
6 A. Yes.
7 Q. And then from Georgia it was going to the Dominican
8 Republic?
9 A. Yes.
10 Q. All right. Back to the first page of the
11 assignment. Is that your wife's signature? And
12 this is Exhibit 46.
13 A. It is.
14 Q. Okay. Who made the decision to assign these assets
15 to you?
16 A. I don't know. Probably -- I wouldn't have made it
17 by myself. Probably -- I don't know whether Curt
18 Stodgill was involved, Tim Scrantom, attorney,
19 someone like that probably.
20 Q. And were there any liens on the assets that were
21 assigned to you? Any bank have a lien or any other
22 lender have a lien on them?
23 A. I don't think so.

24 Q. And were you aware that --
25 A. Oh, there may have been an automobile or something.
0080
1 I don't know.
2 Q. What's the date of the assignment?
3 A. It's November 11th, 2002.
4 Q. Okay. And had SGI or IGT recovered a judgment
5 against Drew's Distributing, or an award from that
6 arbitrator at the time you did this assignment?
7 A. I don't know.
8 Q. You don't remember?
9 A. I don't remember today.
10 Q. Who prepared the first page of Exhibit 46?
11 A. I don't know.
12 Q. But you don't remember that judgment having any
13 bearing on -- or do you remember the judgment having
14 any bearing on your decision to assign these assets
15 to you?
16 A. I don't.
17 Q. All right. Now, the assignment -- a number of
18 things were assigned to you. If you look about on
19 the fifth page, at the bottom there's a page
20 numbered 5.. It's labeled Exhibit D. Sixth page
21 then.
22 A. Okay.
23 Q. There you go.
24 A. Okay.
25 Q. And it's number 1 there. It says claim of DDI,
0081
1 which is Drew's, against Leisure Time, and have you
2 collected any money on that claim?
3 A. Claim of creditor. Okay. We did.
4 Q. After November, 2002?
5 A. I don't know.
6 Q. Okay.
7 A. Sorry.
8 Q. I know Leisure Time paid you a bunch of money.
9 A. Well, yeah. Let me bring you as close to it as my
10 memory will let me. We had -- our first judgment
11 against them, they paid us. The second judgment was
12 for, like, 2.8 million, or some figure like that.
13 We ended up collecting less -- I want to say
14 something like less than \$300,000. Maybe 100,000,
15 200,000 -- I'm not sure of that -- and that was all
16 we ever got.
17 Q. And do you remember --
18 A. Oh, yeah, see where it says almost 2.4 million. I
19 think we collected a little bit of it.
20 Q. They filed bankruptcy.
21 A. Bankruptcy, yeah, so we got --
22 Q. Did you collect it from the bankruptcy court?
23 A. Yeah, just -- I think.
24 Q. What was the second suit for?
25 A. It was a continuance of the first suit. In other
0082
1 words, we had a five-year contract when we took them
2 to court. We were about three years into that
3 contract, and the Court awarded us the \$3.4 million,
4 and they continued to breach our contract till the
5 end of that, and so then we just went back and filed
6 for the --

7 Q. Same thing, breach of a distributor agreement.
 8 A. Yeah. We just -- they just continued what they were
 9 doing till the contract run out so we filed for the
 10 difference.
 11 Q. All right. Who would have gotten the money from the
 12 bankruptcy court; Claudia?
 13 A. Yeah, I think so.
 14 Q. All right. And you don't know if that was before or
 15 after this assignment?
 16 A. I don't, no.
 17 Q. Who is -- did you mention Greg Taube, T-a-u-b-e?
 18 A. I didn't mention him. I don't think I know him.
 19 Q. He's at Nelson, Mullins, I think.
 20 All right. Now, back to that exhibit. It
 21 says, "All receivables due from Tri-Star," which was
 22 like \$2.3 million, and a note. Have you collected
 23 any sums due on those notes receivables since
 24 November of 2002?
 25 A. Where are you at?
 0083
 1 Q. I'm sorry. The second list was they assigned -- or
 2 Drew's assigned to you the Tri-Star's obligations.
 3 A. I don't know. My hunch is that we probably didn't
 4 receive much money, if any, from Tri-Star.
 5 Q. Now, I think you'd told me earlier you'd been
 6 getting some money, but it's --
 7 A. Yeah, but not -- it ain't going towards this. It's
 8 not going where it needs to go.
 9 Q. All right. Who keeps up with what you're getting
 10 from Tri-Star?
 11 A. Claudia.
 12 Q. And does she keep those records at the business?
 13 A. That's correct, I think.
 14 Q. And when I say "the business," Drew's facility out
 15 there?
 16 A. Yes, um-hum.
 17 Q. What's the plan for that building?
 18 A. I'm either going -- hopefully clean it out this year
 19 and try -- you know, it's -- and try to lease it or
 20 sell it.
 21 Q. Does a bank have a lien on it?
 22 A. No.
 23 Q. That's in your individual name.
 24 A. (No audible response)
 25 Q. Is Drew's Distributing still paying your rent on
 0084
 1 it?
 2 A. No.
 3 Q. All right. Number 3 says, "All receivables due from
 4 Mount View Music and Games."
 5 A. Um-hum.
 6 Q. Who is that?
 7 A. That was a guy named Charlie Brown.
 8 Q. Is that the pro football player?
 9 A. No, no. He has made some payments. What his
 10 balance is, I'm not sure.
 11 Q. What was it?
 12 A. He was in the PDL poker machine business operating
 13 games, and he had bought Pot O Golds from us.
 14 Q. Claudia would have gotten this money and was keeping
 15 up with it?

16 A. Yes.
 17 Q. Does she still work for you now?
 18 A. She does, yeah.
 19 Q. Full time?
 20 A. Yeah.
 21 Q. What is she doing?
 22 A. She's keeping the books on the various companies.
 23 Q. Just whatever trickles in?
 24 A. Just winding down, yeah, so to speak.
 25 Q. All right. Number 4 talks about all furniture
 0085
 1 except the SGI games.
 2 A. Right.
 3 Q. Furniture, fixtures, equipment. And it refers to a
 4 depreciation schedule. And we'll let you look at
 5 that, if we can find it. It's at the -- almost at
 6 the -- way back you'll see a page with number 9 on
 7 the bottom of it.
 8 A. Yes.
 9 Q. There you go. Right behind that is sort of a
 10 depreciation schedule. Now, the first lists a bunch
 11 of equipment there, and have you sold any of the
 12 equipment that Drew's Distributing had?
 13 A. I don't -- it's possible we sold something, but
 14 pretty much everything's there.
 15 Q. All right. Who would know that?
 16 A. Travis.
 17 Q. All right.
 18 A. Claudia maybe.
 19 Q. Security System is next, Account Number 1321. That
 20 is still -- have you sold any of that since you got
 21 it in your individual name, November of 2002?
 22 A. Not that I'm aware of.
 23 Q. All right. Furniture and fixtures; that was still
 24 there for the most part?
 25 A. Yes.
 0086.
 1 Q. All right. How about your computers; have you sold
 2 any of those?
 3 A. Pretty much. We might have give one or two away or
 4 something.
 5 Q. All right. Vehicles. It's got an '88 Ford truck.
 6 Do you know if that's still around?
 7 A. '88. I wouldn't think it was around. I don't know
 8 what -- no, sir, I don't think so. '88? Do you
 9 reckon they meant '98?
 10 Q. I don't know. There's a '95 Ford truck, MHVF 80.
 11 Do you know if that one's still there?
 12 A. I don't know.
 13 Q. Then a Ford F350, '96.
 14 A. I wouldn't think it's -- I don't know.
 15 Q. Have you still got some trucks around?
 16 A. We've got three big trucks. They're like F-600's,
 17 F-700's. They -- seem like to me there's one
 18 pickup, older pickup, a black one. It's a Ford.
 19 Q. Are there any liens on those trucks?
 20 A. No.
 21 Q. There's three F-600's?
 22 A. Yes.
 23 Q. And those have the big Drew's --
 24 A. Boxes on the back.

25 Q. -- boxes on the back?
0087

1 A. Yes, sir.
2 Q. Okay. Then it mentions a 1997 BMW. Do you still
3 have that?
4 A. No.
5 Q. And did you get the money when it was sold?
6 A. Yes.
7 Q. So that's been sold in the last couple years?
8 A. Yes.
9 Q. Do you remember who you sold it to?
10 A. Not exactly. A friend of mine named Tim Mahon sold
11 it for me. Now, whether he run it through his books
12 or he just sold it to a guy that went through -- I'm
13 not sure.
14 Q. All right. Next we have a '99 Suburban; must have
15 been, like, a conversion --
16 A. I still got it.
17 Q. -- a fancy -- where is that?
18 A. In Florida.
19 Q. Is it -- what all's in that thing? I see it cost
20 \$68,000. What --
21 A. It was -- at the time I bought it, I went out and
22 went to California and looked at a company called
23 Canopy and a company called Stillen. (Phonetic) I
24 don't know whether you're familiar -- okay. Anyway,
25 they make custom vans and stuff, and they were like,
0088

1 you know, \$95,000 for one of them. I come back and
2 was talking to a Chevrolet dealer all about it. He
3 said, "I can build you one of them things cheaper
4 than that, a lot cheaper than that." So he ordered
5 a van and had it all customized and everything.
6 It's got two T.V.'s in it, two V.C.R.'s. It had
7 a -- it had a set of big brakes on it, different
8 wheels. Just kind of custom. Had a GPS system.
9 Q. It's in Florida?
10 A. Yeah, yeah. It ain't worth about \$10,000.
11 Q. All right. A Jeep Cherokee. Do you still have that
12 around?
13 A. No, it's gone.
14 Q. Did you sell it and get the money for it, you
15 individually?
16 A. I didn't individually. I think my daughter did.
17 Q. Did you give it to her?
18 A. I give it to her, yeah.
19 Q. And she's now sold it?
20 A. Yes.
21 Q. What's your wife drive?
22 A. That X5.
23 Q. The X5. I see a Chevy, '98 Chevy pickup, or '96. I
24 can't read it. Do you know if that's still
25 around?
0089

1 A. I don't think so.
2 Q. Then the BMW X5 your wife is driving.
3 A. Um-hum.
4 Q. Now, I noticed in 2001, there's a 2001 BMW of some
5 sort the company bought, they're making payments on.
6 Why don't we talk about --
7 A. Unless it's mine, I don't know what it is. I was

8 thinking mine was a two, 2002.
9 Q. I'll show you here.
10 A. But there wasn't no payments on it. I don't know.
11 Q. There's one they're paying for \$1,163 a month,
12 Exhibit 33 is a check going out.
13 A. Could it be the X5?
14 Q. Let me pull the contract here. 54. Hold on one
15 second. There's --
16 MR. HODGE: What number are we on now?
17 MR. PAYNE: That's Exhibit 54.
18 MR. HODGE: Are we still going to be
19 referencing back to this Exhibit 46?
20 MR. PAYNE: Yeah, 46. Yeah, we will.
21 THE WITNESS: It's the X5, the one my wife's
22 driving.
23 BY MR. PAYNE:
24 Q. Okay. I couldn't tell because it says "SAV" up
25 there. But that payment's \$1,163 a month, is that
0090
1 what -- and those checks I showed you in Exhibit 33
2 are made out to BMW; you think those are the checks
3 for this particular car?
4 A. Yes, I think so.
5 Q. Is that your name on the bottom of --
6 A. It is.
7 Q. -- Exhibit 54?
8 A. Yes, sir.
9 Q. While I'm talking about trucks or cars here, I
10 noticed -- okay. Exhibit 31 is a check to BMW dated
11 1/15/01, and it looks like that's the down payment
12 on the X5.
13 A. Yes.
14 Q. All right. And you say you've got a three series
15 one; right?
16 A. That's correct, yes. There's no payments on it.
17 Q. You just paid cash for it?
18 A. Yes.
19 Q. Okay. It's part of this check. If you look at the
20 second check on Exhibit 31, there's a check for,
21 like, \$58,000 on June 6th of '02.
22 A. Yeah, right.
23 Q. Is that the car you're referring to?
24 A. I would think so, that's my car.
25 Q. It's a three series?
0091
1 A. Um-hum, M3.
2 Q. M3; okay. All right. I need to start selling you
3 cars. All right. M3, there you go. And you're
4 still driving that.
5 A. I am.
6 Q. It's a two-door?
7 A. Two-door, yeah.
8 Q. All right. Now back to Exhibit 46. I'm sorry to
9 bounce around.
10 A. That's okay. 46.
11 Q. It's got a bunch of -- it just says "leasehold
12 improvements," which is no big deal. Let's skip to
13 the next thing, which is a big item. Look at page 4
14 back there behind. This one was numbered 9, if you
15 find that number 9, it's right -- three or four
16 pages behind it.

17 A. Page 4.
18 Q. All right. Now look at page 4, there down at the
19 bottom you'll see AdSpace, 389 display units.
20 A. Yeah.
21 Q. And you think those are still at the plant?
22 A. Yeah, I think we sold about -- I took two of them to
23 Myrtle Beach at some point in time in a condo I had
24 down there. The girl that was living there stole
25 them. I got two of them in Florida at my house. I
0092
1 think we sold about ten of them, but -- aside from
2 the ones I just told you about.
3 Q. Yeah. How many does that leave y'all with out
4 there?
5 A. I want to say there was about 35 of them, so let's
6 say there's about 20.
7 Q. What are they worth?
8 A. Not much. They got -- the screens are burned in
9 where the -- they set in one -- the displays on them
10 set in one place too long. The ten back a year or
11 so ago that we sold, I want to say we got a couple
12 thousand dollars apiece for them, but they were
13 brand new ones, never been used. The used ones,
14 might as well give them away. They're not --
15 Q. You've still got them out there?
16 A. Yeah, they're still there.
17 Q. The ones that are left are used ones?
18 A. Well, I don't know. There may still be some new
19 ones, used ones. I'm not sure how that breaks
20 down.
21 Q. Travis would know?
22 A. Yeah.
23 Q. All right. Now, we talked a little bit about some
24 trucks being sold, or you gave, like, the Jeep to
25 your daughter and she sold it; sold the '97 BMW.
0093
1 A. Um-hum.
2 Q. And then a couple of these T.V.'s you either have or
3 y'all sold some.
4 A. Yeah.
5 Q. Other than that, is there anything else that you
6 have sold that used to belong to Drew's since this
7 time that you've gotten the money for?
8 A. Right now at the moment, I can't recall anything,
9 no, sir.
10 Q. The M3, is that titled in your name or in Drew's
11 Distributing?
12 A. I don't know. I think it's titled Drew
13 Industries.
14 Q. Drew's Industries.
15 A. I think, yes, sir. I'm not positive about that.
16 Q. All right. AdSpace was a wholly owned company by
17 y'all; that was -- nobody else was involved in
18 that?
19 A. No, nobody was involved in the AdSpace part. I also
20 at one time bought some stock in AdSpace in
21 Las Vegas or Nevada somewhere.
22 Q. Okay.
23 A. And I bought -- give them a half a million dollars
24 and got about 5 percent of their company.
25 Q. Okay.

0094

1 A. And since they borrowed some more money, deleted
2 that stock, and it may have a value, it may not have
3 a value. It ain't going to be a half million
4 dollars. Might be 50,000 or something.
5 MR. PAYNE: All right. Let's eat our lunch
6 here.
7 (Lunch recess)

8 BY MR. PAYNE:

9 Q. Mr. Andrews, I'm going to show you Plaintiff's
10 Exhibit 24, which are a lot of checks that are made
11 out to you. If you would flip through those and
12 look at all of them and what's written at the bottom
13 of them particularly.
14 A. Okay. Yeah. All right, sir.
15 Q. Did you look at the signatures on the ones that have
16 signatures on them on page 2 of the checks, or the
17 second page?
18 A. Are you saying on the back of the checks?
19 Q. Yeah, the back of the check. Do those look like
20 your signature?
21 A. Okay. The question?
22 Q. Is that your signature on the back of those
23 checks?
24 A. No, sir.
25 Q. Whose -- which one is not your signature?

0095

1 A. None of them.
2 Q. Whose --
3 A. I don't believe one of them's mine, no. I looked at
4 every one of them.
5 Q. Whose is it; do you know?
6 A. I assume probably Claudia.
7 Q. And did she have authority to endorse your checks
8 and deposit them into your account?
9 A. Yes.
10 Q. Okay. And if a certain number is listed on your
11 personal tax returns as having -- as what you've
12 received from Drew's Distributing, do you think you
13 received it?
14 A. Sure, yes.
15 Q. Look at these checks, which are Exhibit 25, which
16 are to Andrews Aviation.
17 MR. HODGE: Do you want him to also look at
18 the signatures?
19 THE WITNESS: I'm looking as I go.

20 BY MR. PAYNE:

21 Q. Yeah, if they have it.
22 A. All right, sir.
23 Q. Whose handwriting is that on the back of those
24 checks, the deposit?
25 A. There doesn't seem to be --

0096

1 Q. Consistent?
2 A. Well, it just says -- most of them just say "deposit
3 only." I don't think there's a signature on any of
4 them.
5 Q. Was Claudia handling the --
6 A. Yes, she was.
7 Q. -- Andrews Aviation money?
8 A. Yes.

9 Q. What would you do with this money that was going to
10 Andrews Aviation?
11 A. I assume pay for one-third of the maintenance on the
12 airplane.
13 Q. Okay. 'Cause they would note it in the general
14 ledger as note receivable, Andrews Aviation, and I
15 didn't know if it was being used for expenses or if
16 there was some other obligation that was getting
17 paid by Andrews Aviation that you're aware of.
18 A. I'm not aware.
19 Q. Claudia was --
20 A. Let me say we have a complaint, don't we?

21 MR. HODGE: I think I can answer it. Do you
22 want me to answer it?

23 MR. PAYNE: Yeah, I'm just --

24 MR. HODGE: I think what happened was the
25 King Air was paid off, and then when the

0097

1 King Air was paid off, there was a note that
2 was divided among the three of us.

3 MR. PAYNE: And periodic payments are being
4 made on that note.

5 MR. HODGE: The note was about -- the note
6 was about a million three.

7 MR. PAYNE: 'Cause I keep -- I see a lot of
8 checks going out to Andrews Aviation and
9 then it just adds to notes receivable, and
10 it's 25 or 50,000 or 50,000, so it must have
11 been, like, 25,000 or so a month?

12 MR. HODGE: Yeah. Just so you'll know, that
13 plane is quite expensive, the Citation was.
14 For example, one month we paid 63,000 for
15 windshields.

16 MR. PAYNE: I saw that.

17 MR. HODGE: So I mean, it's, you know -- the
18 numbers, I'm glad it doesn't exist
19 anymore.

20 THE WITNESS: And Drew's Distributing was
21 pretty much the sole user of the airplane.
22 The Andrews Aviation was set up just to
23 distance ourself in case somebody got killed
24 in the airplane, you know. So --
25

0098

1 BY MR. PAYNE:

2 Q. But that was some kind of note -- Andrews Aviation
3 was making a note payment of some sort for the
4 purchase price?

5 A. Would have made two things. It would have been
6 making a payment, and it also would have been paying
7 expenses every month.

8 Q. Okay.

9 A. And --

10 Q. Yeah, I saw that windshield repair bill. The
11 airplane business must be like the yacht business.
12 You just --

13 A. It's worse.

14 Q. You go in there and they just price --

15 A. It was half a windshield too, wasn't it, just one
16 side.

17 Q. It was \$56,000, if I remember right. But if you're

18 up that high in the air, you don't want to be
19 like -- who was the golfer? -- Payne Stewart and
20 that crowd and lose pressure.
21 Let's see here. 27 are some checks going out
22 to Pam Andrews, and it has gas and different things
23 referenced on it. Are you aware of your wife
24 getting some of these things paid? That's 26.
25 A. I'm not familiar with any of these. Claudia

0099
1 probably would be. The very first one I think's a
2 painting we had done that hangs in my office.
3 Q. All right. 3856 --
4 A. Yeah.
5 Q. -- is what you're referring to?
6 A. Yeah. It was a painting of my children and my wife
7 and me, hangs on the wall in the Drew's building.
8 Q. As far as gas reimbursement or whatever is written
9 on some of these later checks --
10 A. Yeah, I'm not going to -- I'm not familiar with
11 that.
12 Q. Did the company pay the insurance on Pam's car, the
13 X5?
14 A. I think so.
15 Q. Did it pay her gas?
16 A. It may have up to a point. I don't know. Just have
17 to check with Claudia.
18 Q. When did y'all separate?
19 A. I left home about four or five years ago. I lived
20 at Myrtle Beach. I've been back home from time to
21 time but not to stay for any length of time. Stayed
22 a week or two, leave again. Most recently I've been
23 back a couple months.
24 Q. But the separation you said was '99, 2000?
25 A. Yeah, somewhere along there.

0100
1 Q. All right. Let's see here. I don't have this one
2 numbered yet, but this is a list I saw last night
3 looking at something. It says, "Games Purchased
4 from Drew Gaming." And didn't know if you were
5 aware of that or when this might have occurred.
6 A. Not -- I'm not exactly sure when, but I mean, I
7 guess it was after everybody went out of business,
8 and this would be the partnership with me and Kenny
9 Lender, which was really Drew Industries, I think.
10 We called -- he called it Drew Gaming, but I think
11 it was Drew Industries. We probably bought his
12 inventory, or half of it was mine anyway.
13 Q. And that Drew's Distributing bought it, say, after
14 June 30 of 2000?
15 A. I'm guessing, yes.
16 MR. PAYNE: Okay. Mark that if you would,
17 please.
18 (Court Reporter marks Plaintiff's Exhibit
19 60, Games Purchased from Drew Gaming.)
20 MR. HODGE: That's Exhibit 60?
21 MR. PAYNE: Yeah.
22 MR. HODGE: What was Exhibit 59?
23 MR. PAYNE: That check to Drew Industries.
24 And I don't know if that --
25 MR. CAMPBELL: Should be in your package.

0101

1 MR. HODGE: I was just going by the index.
2 MR. CAMPBELL: Oh, we added it late. It's
3 not on the index. Sorry.
4 BY MR. PAYNE:
5 Q. And I don't know if it adds up or whatnot, but
6 there's a check that we've marked as Exhibit 59;
7 isn't that right? It's actually to NBSC. Then at
8 the bottom it says "Drew Industries." And I wasn't
9 sure if that matched with this or not, now that I
10 know that's the same thing, and why it's making that
11 payment to NBSC, if y'all were just making a loan
12 payment and in return you got some inventory.
13 A. I hate to guess on this thing. I don't know. But I
14 would think that Kenny Lender, my partner, wanted to
15 be paid for his half of the business and for us --
16 in other words, 50 -- I would think what we done was
17 bought 50 percent -- his 50 percent of Drew
18 Industries, Inc., which he called Drew Gaming, and
19 we probably -- this was probably the inventory that
20 the whole -- that Drew Industries, Inc., had, and we
21 probably agreed to give him \$37,000 for his money,
22 and we probably went and got a cashier's check or
23 something. I mean --
24 Q. Okay.
25 A. -- it's just what -- and I'm just guessing.

0102
1 Q. Because this was November of 2002, this --
2 A. Yeah.
3 Q. -- Check 59, this Exhibit 59. Okay. Although it
4 says "NBSC" on this check, in the general ledger it
5 had "Drew Industries" appeared.
6 A. Yeah, sounds like we probably went and got a
7 cashier's check or wired -- maybe -- I don't know.
8 Maybe wired the money, whatever.
9 Q. Did Claudia ever confer with you on how to classify
10 any checks, say, in '99 or 2000, as to how to book
11 it in the journal entry, or you were pretty much out
12 of that?
13 A. No, I was pretty much out of that. She may have
14 conferred with --
15 Q. Eddie Brown?
16 A. Eddie Brown, yes, sir.
17 Q. I didn't mean to interrupt you. All right.
18 Exhibit 32 is a check made out to Andrews Amusement
19 for \$50,000.
20 MR. HODGE: That was 32?
21 MR. PAYNE: Yeah.
22 BY MR. PAYNE:
23 Q. I think your son owned that company.
24 A. That's correct.
25 Q. And it lists that a BMW was purchased.

0103
1 A. The '97 BMW.
2 Q. All right. Is that one you were -- you wouldn't
3 have been -- were you driving that one for a while
4 or what happened to that one?
5 A. Yeah. What happened, I owned it, or Andrews
6 Amusement owned it, and when -- his wife drove it
7 for a while, my son, and then I bought it from them.
8 Q. And is that a seven series?
9 A. Yes. And it was some kind of settling up of the

10 company, and I mean, I -- I don't remember just how
11 that went down. I mean, I don't know whether
12 they're saying we give him -- we bought 20 games or
13 we give him 20 games, or I'm not sure how that went,
14 but I remember there was some kind of settling up of
15 stuff that we did.

16 Q. But we gave him this check.

17 A. Yeah.

18 Q. "Him" being Andrews Amusement, and we either got
19 those vehicles or got something from him.

20 A. Got or give. I can't tell. I can't tell. Claudia
21 might be more --

22 Q. Claudia would know that. Because she lists in her
23 general ledger inventory and vehicle. But is that
24 the same vehicle you turned around and sold --

25 A. Yes.

0104

1 Q. -- through your friend?

2 A. Yes, it is.

3 Q. Okay. And the truck, you don't know anything about
4 that?

5 A. No. No, I don't.

6 Q. Or the 20 games?

7 A. No. I'm not sure which way that 20 games went or
8 whatever.

9 Q. All right. Travis would know maybe what was added
10 to inventory?

11 A. Maybe.

12 Q. Was he working in 2002?

13 A. Yeah, yeah.

14 Q. On the Citation that was being purchased, and
15 Andrews Aviation was purchasing, I guess, a third,
16 you ultimately sold that?

17 A. Yes.

18 Q. What happened to the sales proceeds from the sale?

19 A. There basically wasn't any. I say that jokingly.
20 Bob Bruce bought the plane, the other third on it,
21 for I think a million three.

22 MR. HODGE: Right.

23 THE WITNESS: We owed the million two or
24 something, and there was less than 100
25 grand, I think, to divide up three way.

0105

1 BY MR. PAYNE:

2 Q. How much did you pay for it?

3 A. 2.4.

4 Q. I wondered about it. I saw something for 660 --

5 MR. HODGE: 2.3.

6 THE WITNESS: 2.3.

7 MR. PAYNE: I saw something about \$666,000
8 for it, but I don't know if that's what was
9 book value versus -- I don't -- I couldn't
10 believe y'all got that.

11 MR. HODGE: The market dropped out.

12 BY MR. PAYNE:

13 Q. When did Bob buy it, the plane?

14 A. I don't recall. It's been two years maybe.

15 Q. All right. Did you say Dan Tollison had repaid you
16 what he owed?

17 A. No.

18 Q. Owed you or the company?

19 A. No.
20 Q. What is Rhino Aviation?
21 A. That's a charter service, airplane service over here
22 in Greenville.
23 Q. And they would sort of handle the operation and
24 maintenance and y'all just cut them a check?
25 A. Well, I had two involvements with Rhino Aviation.
0106
1 One, and it may -- may not have necessarily involved
2 Drew's, but me and Jim Farrish or whatever. One
3 time we rented some air flight time, chartered from
4 them, and we were flying their planes. They had,
5 like, 314 Cessna's, fruit, whatever. And when
6 that -- that was prior to me owning the plane with
7 Charlie. The Citation jet, we got involved with
8 Rhino Aviation in that we got it 135 approved and he
9 was going to fly it, charter it and rent it out for
10 us. We spent a lot of money making that happen and
11 got no results out of it, and his, you know,
12 maintenance bills and stuff on the plane, we just --
13 just sucking us, so we got -- worked our way back
14 out of that deal.
15 Q. But the checks going to Rhino are usually some kind
16 of --
17 A. Probably --
18 Q. -- expenses or gas?
19 A. Probably more expenses on the plane than he had
20 money coming in, yeah.
21 Q. Who was -- William Byron was your pilot?
22 A. Yes.
23 Q. At some point.
24 A. At some time, yeah, off and on.
25 Q. Okay. Here's Exhibit 27. It's a number of checks
0107
1 going to Holly Andrews. And the question would be
2 do you know what those checks are for?
3 A. No.
4 Q. But she didn't work for the company; is that
5 right?
6 A. No.
7 Q. Did your company ever pay her tuition at College of
8 Charleston?
9 A. Not as I know of.
10 Q. And Claudia would know the purpose?
11 A. Yes, yes.
12 Q. Look at Exhibit 48, which is a document called a
13 "Pilot Log." And on the first page it has, looks
14 like, June of '99, and then the second page sort of
15 looks like who's on it. Say June 1, Greer,
16 Myrtle Beach, Augusta, Columbia, Myrtle Beach. And
17 it had "for Quinton" sort of beside it. Where would
18 you be going -- actually, that's Quinton going on
19 that. The next one maybe, Myrtle Beach, Columbia,
20 Darlington, Columbia, Myrtle Beach, Greer, where
21 would you be going in '99 on these trips?
22 A. I don't recall. I think you look at the first one,
23 the 6/1 and 6/2 I think must be -- one's going, and
24 the other ones would be coming back.
25 Q. Coming back, so that would be Quinton. Greer,
0108
1 Charleston, Greer. Where would you be going if you

2 were going to Charleston?

3 A. I don't know. I don't recall. Probably -- I mean,

4 Charleston would probably be to see Tim Scrantom.

5 Q. And which what business were you in with him?

6 A. An attorney.

7 Q. Oh, an attorney.

8 A. An attorney.

9 Q. And what, was he your attorney for the gaming

10 association?

11 A. No. Mine and Quinton's attorney, and my attorney.

12 Q. Okay. If you're going to Myrtle Beach --

13 A. I don't understand all the stops unless we're having

14 some -- I mean, I could have been in Myrtle Beach or

15 Quinton could have been in Myrtle Beach. The plane

16 would have left Greer, went to Myrtle Beach, picked

17 up me or Quinton. Augusta, I don't know, you

18 know.

19 Q. In Myrtle Beach, you had -- in '99, you and Quinton

20 had some business going on down there?

21 A. In where?

22 Q. In Myrtle Beach.

23 A. Well, we still had a building down there. We still

24 had stuff in Dominican. Tim Scrantom was involved

25 with, you know, some of that stuff in Dominican.

0109

1 Q. Quinton didn't work for Drew Industries though, did

2 he?

3 A. No, no.

4 Q. And the Dominican business was Tri-Star; is that

5 right?

6 A. It was. Of course, it owed Drew's a lot of money.

7 Q. All right. Flip on over. Well, down at the bottom

8 of the first page, it says something about to

9 Las Vegas in '99, and Hugh, Mike, Vegas. What's

10 going on out in Vegas?

11 A. Probably the -- could have been two things. We

12 could have went to a gaming convention or we could

13 have went to see Silicon Gaming. I don't recall.

14 Q. Were they in Vegas or in California?

15 A. They were -- well, they had an office in Vegas.

16 Q. Okay.

17 A. Excuse me. AdSpace -- AdSpace had an office in

18 Las Vegas. Silicon Gaming office was in

19 California.

20 Q. All right. What was going on in Philadelphia?

21 A. Probably Tech Built.

22 Q. Did Tri-Star ever have any Tech Built games?

23 A. Drew's bought the Tech Built games originally. We

24 may have sold five or ten to Tri-Star and then we

25 had to take them back because they didn't do well.

0110

1 Q. All right.

2 A. And I may have it a little -- we may have just -- we

3 may have never bought them. We may have just let

4 them try -- let them test them. I'm not sure. But

5 they had some in some of their locations at one

6 time.

7 Q. Who's Buzz?

8 A. Buzz Bruner's the owner of Tech Built.

9 Q. Okay. And then pick up Quinton, pick up Buzz, then

10 to Omaha. What's going on in Omaha?

11 A. We had a programmer that worked out there, that was
 12 from out there that we probably -- at one time, we
 13 were dealing with Tech Built about getting changes
 14 made to their game, and we probably flew out there
 15 to see that programmer.
 16 Q. All right. Let's look at -- Bruce is who?
 17 A. Bob Bruce.
 18 Q. It says "user Bruce." Would that be --
 19 A. Yeah, that would be our other partner.
 20 Q. Other partner?
 21 A. Mine and Charlie's other partner with the plane.
 22 Q. All right. Now, what's a Coolsign meeting?
 23 A. Coolsign was AdSpace. They started out calling it
 24 Coolsign.
 25 Q. All right. Now, ABH Group was who?
 0111
 1 A. Andrews, Bruce and Hodge.
 2 Q. All right. Exhibit 56 is an invoice from ABH Group.
 3 Attached to it, it's talking about Dominican
 4 Republic expenses. The second page of it lists some
 5 expenses for the Dominican trip. Did you go on that
 6 trip?
 7 A. I don't know.
 8 Q. Around February of 2000?
 9 A. I would -- I don't recall.
 10 Q. All right. How many times have you been down to the
 11 Dominican Republic in one of the Andrews Aviation --
 12 or the airplane that Andrews Aviation had an
 13 ownership interest in?
 14 A. I don't know.
 15 Q. Once, twice?
 16 A. I've been to the Dominican several times. More than
 17 five, probably less than ten. Probably went two or
 18 three times in our jet maybe.
 19 Q. Did you -- did Drew's Distributing charge
 20 Tri-Star --
 21 A. Should have.
 22 Q. -- when they were going to Dominican Republic?
 23 A. Yeah. Probably didn't get paid, but...
 24 Q. Did it get added to the tab?
 25 A. I'm sure.
 0112
 1 Q. Should have?
 2 A. Should have, yeah.
 3 Q. All right. How's Quinton get down there today?
 4 A. Flies commercial.
 5 Q. I'll switch gears. All right. Let's look at
 6 Exhibit 49, which is a tax return that I received
 7 from Mr. Brown. Is that 1999?
 8 A. Yes, sir.
 9 Q. And was he authorized to sign the return for you and
 10 your wife, send it in, or did y'all usually sign
 11 them?
 12 A. We normally signed them. He must have filed for an
 13 extension --
 14 Q. Okay.
 15 A. -- is the reason --
 16 Q. And attached to it, it has some W-2s at the back of
 17 it. You see one from -- the first one should be
 18 Drew's -- Drew Industries.
 19 A. Um-hum.

20 Q. And it says there are wages and tips of \$21,600.
 21 A. Okay, yeah.
 22 Q. Were you getting -- is that a W-2? You were on the
 23 payroll --
 24 A. I don't think --
 25 Q. -- at Drew Industries?
 0113
 1 A. I don't think so.
 2 Q. Any reason, whether you're on the payroll or
 3 whatever, to doubt that you got \$21,600 that year?
 4 A. No, I don't doubt it.
 5 Q. That's what I want to know.
 6 A. I mean, I don't recall getting a check from Drew
 7 Industries, Inc. I may have. May have gotten some
 8 kind of compensation that she went back, like -- you
 9 know, such as a while ago, when you had checks to my
 10 daughter Holly and the college or something, that
 11 may have got -- ended up being charged to me.
 12 Q. Okay. Drew's Distributing is your next page, and it
 13 lists wages of 297,469 on a W-2.
 14 A. Okay.
 15 Q. And you were on the payroll at Drew's Distributing.
 16 A. At some point, yeah. I mean, some years I was.
 17 Q. And if you got a W-2, do you think you got at least
 18 this much money from them; is that right?
 19 A. Okay, yes.
 20 Q. 297,000; is that right?
 21 A. Yes.
 22 Q. Okay. And then the next page is H&J, which is a W-2
 23 as well, and it lists 15,000 for '99. Were you on
 24 the payroll at H&J?
 25 A. Not as I recall.
 0114
 1 Q. In '99, did you get, like, a regular check from
 2 H&J?
 3 A. No.
 4 Q. How did you and Jim handle divvying up the money?
 5 A. Well, pretty much H&J was a -- you know, we grew the
 6 business. In a short period of time it was over
 7 with. I don't know whether there was a lot of years
 8 that there was any money to divvy up. I'd seen
 9 earlier where you showed me a paper where, you know,
 10 I'd gotten 500 and some thousand dollars. So I
 11 mean, maybe -- you know, this kind of stuff, Jim
 12 Farrish would write a check, send it to Drew's in
 13 the mail, and Claudia would get it and put it in the
 14 appropriate place and deposit it, and I didn't
 15 necessarily ever know anything about it.
 16 Q. Okay. And this would have come to you though
 17 because this is your personal tax return. You don't
 18 remember you -- or she would get the check and --
 19 A. It wouldn't have come to me. It would have come to
 20 Claudia, and Claudia would have put it in the
 21 appropriate checking account.
 22 Q. Okay.
 23 A. And I still wouldn't necessarily knowed anything
 24 about it.
 25 Q. In '99, where did you keep your personal checking
 0115
 1 account?
 2 A. I don't know.

3 Q. No certain banks you've always dealt with?
 4 A. No. I think with Palmetto Bank. I'm not sure. A
 5 couple more then.
 6 Q. NBSC?
 7 A. NBSC.
 8 Q. All right. Let me show you Exhibit 50, which is
 9 your 2000 return, and evidently whoever made the
 10 copies didn't send us everything, and I have to get
 11 some of the pages on this I'm missing. But the W-2s
 12 are attached there, and I guess look at -- the first
 13 one is from Drew's Distributing --
 14 A. Um-hum.
 15 Q. -- for 297,374.
 16 A. Yes, sir.
 17 Q. And any reason to think you didn't receive that much
 18 money from Drew's Distributing?
 19 A. No, no.
 20 Q. And then the next page says Tri-Star Communications.
 21 It's a 2000 W-2 for \$4,250.
 22 A. Okay.
 23 Q. And it's a W-2. Same thing, any reason to think you
 24 didn't get that money?
 25 A. No.
 0116
 1 Q. Was there any arrangement between you and Quinton as
 2 to how much money was to come to you as a wage or
 3 repayment of debt or anything like that?
 4 A. No.
 5 Q. What was -- did you and Quinton meet during this
 6 time and talk about business and how you're going to
 7 get paid and how much he's going to get paid?
 8 A. No.
 9 Q. He --
 10 A. No. Pretty -- I mean, pretty much what I've always
 11 wanted Quinton to do was pay me back the money, the
 12 money that was owed Drew's Distributing, and then
 13 when we ever -- we get that paid and then get my
 14 part paid back down to where we're equal, we both
 15 start taking money again. But he sees it different.
 16 He takes anywhere from 20 to \$50,000 a month out.
 17 And I can't get him to stop. We're in some
 18 litigation now to try to bring this to a head. We
 19 may lose everything in Dominican doing it because
 20 he's the powerhouse down there. I mean, he's the
 21 guy that's got the connections and gets along with
 22 the guy. I may lose it all, but at this point I
 23 ain't getting paid much anyway, so I'm ready to
 24 bring that to a head, so we --
 25 Q. Has that been filed, that suit been filed?
 0117
 1 A. No.
 2 Q. All right. Look on at your second to the last page,
 3 and it has Drew Industries with a dividend of
 4 \$227,000.
 5 A. Okay.
 6 Q. And any reason to think you didn't get that --
 7 A. No.
 8 Q. -- check? And why was such a big dividend coming
 9 out from Drew's Industries?
 10 A. I got no idea.
 11 Q. No significant event happened with them such that a

12 lot of cash would --

13 A. Well, the significant event that I know of that

14 happened all through those years was Drew's

15 Distributing tax problem flows right through to me.

16 So you know, if I make eight and a half million

17 dollars in a year and \$6 million come -- \$6 million

18 of it comes from Drew's Distributing, then at the

19 end of my year, if I'm going to pay my taxes, I've

20 got to reach out and Drew's Distributing has got to

21 give me \$2 or \$3 million so I can pay my taxes. I

22 don't know what -- you know, what transpired here,

23 whether Claudia --

24 Q. Well, this is Drew's Industries.

25 A. Right.

0118

1 Q. And I didn't -- because I hadn't seen any such

2 significant payments before, and I didn't know if

3 any event occurred with Drew's Industries that led

4 to this --

5 A. I don't -- I don't either. I got no -- it's -- it's

6 possible, in 2000, business is over with, me and the

7 guys I'm partners with. It may be that we had money

8 and was nothing but we divided it up.

9 Q. All right. I'm missing Schedule B on that one,

10 which sort of breaks down --

11 A. I lost \$4 million that year. I might have needed

12 the money.

13 Q. I think -- and that loss came from Drew's

14 Distributing?

15 A. Partly, mostly, yeah.

16 Q. Look at that last page. Statement 9.

17 A. Um-hum.

18 Q. And the loss there for Drew's was --

19 A. 4.2.

20 Q. -- 4.2 million or so.

21 A. Right.

22 Q. And at Drew's Distributing, y'all, number one, wrote

23 off a lot of the accounts receivable and loans

24 receivable; is that right, and you've broke down the

25 value of your inventory.

0119

1 A. That's correct.

2 Q. And gave you a huge loss.

3 A. Correct.

4 Q. Here's 51. Exhibit 51 is your personal -- you and

5 your wife's personal return for 2001, and got

6 amended for -- I think you said it didn't include

7 Tri-Star and Saharrah's, but if you would look at -

8 the W-2s attached to the very last page of that.

9 A. Okay.

10 Q. And in 2000 -- this is 2001 W-2, it says Drew's

11 Distributing, Inc., 131,596.

12 A. Yes, sir.

13 Q. And any reason to doubt that's --

14 A. No, sir.

15 Q. -- how much you received as a wage from Drew's

16 Distributing?

17 A. No, sir.

18 Q. When they -- when Drew's Distributing would pay you,

19 you just -- was that a direct deposit into your

20 account?

21 A. I never seen it.
22 Q. Claudia was handling all this?
23 A. Yes, correct.
24 Q. In 2001, were you living at the beach pretty much
25 full time --
0120
1 A. Yes.
2 Q. -- or were you -- when did you go to Florida?
3 A. About two years ago. Two years ago.
4 Q. Okay. On Tri-Star, I've seen a lot of documents
5 attached to this Exhibit 46 -- there were some
6 different ledgers and things -- but I never did see
7 a promissory note of anything from Tri-Star. Do you
8 know if there ever existed --
9 A. I think there were a couple, but Mike Fletcher would
10 be more in the know of that than me. I haven't come
11 across any to beat Quinton over the head with, but I
12 vaguely remember a couple of them that Mike prepared
13 for us at some time during the year.
14 Q. Looks like most of it's from invoices --
15 A. Yeah, it is, right.
16 Q. -- for sale of equipment to them.
17 A. Um-hum.
18 Q. And when did you and Quinton have a falling out on
19 Tri-Star?
20 A. Well, we've had a lot of disagreements the last two
21 or three years over Tri-Star and the ways things is
22 handled, but we've set, you know, at his house or
23 office, somewhere and tried to talk through it.
24 It's just that -- more recently that it just seems
25 like all the information of what was going on got
0121
1 out from under my thumbs, and which causes doubt and
2 distrust and wonder what's going on. And then I'm
3 sitting trying to talk to him, and we set up some
4 mediation between me and Quinton, and at that I
5 just, you know, told him how I felt about things and
6 not getting paid and everything and about him taking
7 \$20,000 a month out of the company and paying me 20
8 but not paying the notes down. That broke off with
9 us to get back together in a couple of weeks and get
10 some more information that he was to get so I'd know
11 what's going on in Dominican, so I'd know what's
12 going on. That information never came. He in turn
13 got an attorney and quit talking to me and started
14 taking a lot more money out of the company, so
15 that's --
16 Q. And the reason I ask, I didn't see any promissory
17 note on -- when you -- when Drew's assigned to you
18 the Tri-Star debt, whether it was an account
19 receivable or some note receivable, and they call it
20 a note receivable but I've never seen a promissory
21 note for this large sum of money, it looked like
22 they converted accounts receivable over to call it a
23 note, but -- and like I say, back to the question,
24 you're not aware of any promissory note --
25 A. I'm thinking -- my gut feeling is if we prepared
0122
1 one, he probably would not have signed it, you
2 know.
3 Q. Okay.

4 A. I would think there wasn't one, but --
5 Q. When Drew's sold Tri-Star, these machines, in August
6 of 2000, that invoice we looked at earlier, was
7 there any understanding about when they were going
8 to -- when they were going to be paying, or repay
9 Drew's Distributing?
10 A. I don't -- I don't know.
11 Q. You were still on good terms then?
12 A. Yes.
13 Q. Such that you were comfortable with selling more
14 things to Tri-Star on credit?
15 A. I don't say I was comfortable. It's kind of a rock
16 and a hard place. I didn't have anywhere else to go
17 with the equipment, you know. That was our best
18 shot at going down there and making money and being
19 able to pay this stuff back. Otherwise it pretty
20 much was kind of worthless. *

21 Q. Okay. But you thought when those machines were
22 sold -- or did you know they were sold to him in
23 August of 2000?
24 A. I can't say that I did. I can't say that I did.
25 But one thing I can tell you, our intent when we
0123
1 thought we was going to Dominican was we was going
2 to make a lot of money. We was going to pay for
3 this stuff real fast. Truth of the matter, it's
4 never earned but 20, \$20 a week a machine or \$40 a
5 week a machine at best. It's just -- you know, we
6 were used to making six, \$700 a week a machine here
7 in South Carolina, so you know, we thought if it
8 made \$100 a week, we'd pay for it, because it had no
9 value now, we'd pay for it pretty quick down there,
10 but it just didn't pan out that way.
11 Q. And why is that; people just don't play them?
12 A. When we went to Dominican the exchange rate was 16
13 to one; in other words, took 16 of their dollars to
14 make one of ours. They're called pesos, but same
15 thing. It got as high as 54 to one. So if we -- we
16 wasn't making any money when we first went down
17 there. We really wasn't making any money after
18 their money went in the gutter. And we couldn't --
19 in all honesty, we couldn't get the machines out of
20 the country if we wanted to. If we started to try,
21 they'd just take them from us. It's kind of a bad
22 situation. We've just got to make the best of it. *

23 Q. You can't take them out of Dominican Republic?
24 A. I don't think we could. I think the fellow that we
25 do business with down there is so powerful that he'd
0124
1 have us thrown in jail if we showed up and he'd just
2 keep our machines.
3 Q. Does Tri-Star have, like, some employees down there
4 that services the machines?
5 A. One. One employee. I think there's about five
6 work -- Dominican people work down there for his
7 company, I believe, but we kind of oversee them and
8 tell them what to do. Only reason that we've been
9 able to get the money that we've been getting is
10 they're a little bit scared to do without us; can
11 they get the parts and keep the machines running and
12 stuff. But if we tried anything hostile toward --

13 we can't make money there. We'd like to take our
14 machines out. I don't think it -- I don't think
15 we'd last a day.

16 Q. Where does Tri-Star get the parts?
17 A. We -- we help -- Travis helps getting them parts and
18 all, but they've about figured out where -- at one
19 time we were routing everything probably through us
20 to Tri-Star and all, but now I think Tri-Star does
21 it all, pretty much all itself.

22 Q. When did that end, when they were buying parts from
23 y'all, or Tri-Star was buying parts from Drew's
24 Distributing?
25 A. Well, I guess Travis got to where he wouldn't order
0125

1 them, you know, because they hadn't made a payment
2 to us in about three years. We wouldn't order
3 anything unless they, you know, were going to pay
4 us. And so they -- you know, they pretty much --
5 Quinton's father found out, you know, got involved
6 enough to figure out where we were getting
7 everything, and they just kind of got us out of the
8 picture, which is okay.

9 Q. A couple more things and we'll end at this juncture.
10 It looks like in August of 2000, if you look at this
11 Exhibit 46 -- and I don't have the notes attached to
12 them -- you started loaning money to Drew's. I
13 think you loaned \$500,000 to them in August of 2000.
14 A. At what time?
15 Q. August of 2000.
16 A. Okay.
17 Q. Was Drew's pretty much out of cash at that time,
18 that's why you got the money?
19 A. I assume it was.
20 Q. I mean, you wouldn't have had to loan money to it if
21 it was able to meet its obligations.
22 A. Right, right.
23 Q. And that pretty much happened immediately after
24 video poker went out --
25 A. Okay.
0126

1 Q. -- in June; is that right?
2 A. Could be.
3 Q. Like I say, I don't have the notes in front of me,
4 but I have here the amounts. Looks like you did
5 500,000 in August and 187,000 in August. These --
6 do you know where this money was coming from?
7 A. It was, I guess, coming out of our personal account.
8 I don't know.
9 Q. Claudia would know?
10 A. Yeah.
11 Q. She was the one who handled the transfers?
12 A. Yeah.
13 Q. Okay. But did she tell you, "Hey, we're out of
14 money. We need you to start transferring some of
15 your personal money back into the account"?
16 A. I don't recall.
17 Q. Don't know --
18 A. No, I do recall about the time we quit doing
19 business with Drew's Distributing and, you know, I
20 called his assets and everything. I remember at
21 that time I know, you know, she'd been putting money

22 in, putting money in, and I become aware of it, and
 23 I sat down and said, "I can't just keep putting
 24 money in this company like this," and we just agreed
 25 to shut it down, because I mean, it was draining me
 0127 pretty good.
 1
 2 Q. Were you aware that --
 3 A. I mean, we didn't shut it down, but you know, we --
 4 Q. The promissory notes were being signed -- let's see.
 5 Do I have an assignment up here somewhere? I think
 6 Pam was signing the notes. Does that ring a bell?
 7 Did you insist on notes or they were sort of doing
 8 all this?
 9 A. I don't know. If you put it in front of me, I might
 10 recognize it, but I don't recall.
 11 Q. But you don't remember instructing them to transfer
 12 monies into the account?
 13 A. No. I may have, but I don't recall.
 14 Q. Okay. You were having your personal problems about
 15 this time?
 16 A. Yeah.
 17 Q. Okay. But that doesn't mean you wouldn't have
 18 approved it.
 19 A. It doesn't mean I wouldn't have approved it.
 20 Doesn't mean -- I may have been at one or two of
 21 them and not some of the others, you know. I don't
 22 know.
 23 MR. PAYNE: Okay. All right. We'll end it
 24 there and then reconvene at a later date.
 25 MR. HODGE: Let me state on the record that
 0128
 1 Mr. Andrews has authorized me to renew our
 2 standing offer for your company to recover
 3 the machines.
 4 MR. PAYNE: Okay.
 5 MR. HODGE: They're readily available.
 6 We've had this offer outstanding for many,
 7 many months, and --
 8 MR. PAYNE: See, I've never heard of it
 9 since this has been going on. And I'll talk
 10 to them about it.
 11 THE WITNESS: I mean, you know, they've
 12 stayed in Georgia.
 13 MR. HODGE: That's enough.
 14 MR. PAYNE: Okay. I'll address that, and we
 15 can go off at this point.
 16 (Deposition concluded at 2:05 p.m., to be
 17 reconvened at a mutually agreed upon time
 18 and place.)
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 0129

CERTIFICATE

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 2
 3 I, the undersigned, Julianne Goldberg, Notary
 4 Public in and for the State of South Carolina, do hereby

5 certify that the foregoing deposition was taken on the
6 7th day of January, 2005;
7 That the within deponent was sworn to tell the
8 truth and that the foregoing is an accurate transcription
9 of the testimony taken under oath;
10 I further certify that I am neither counsel nor
11 solicitor to any of the parties in said suit, nor
12 interested in the event of the cause.
13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 18th day of January, 2005.
15
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JULIANE GOLDBERG, RMR
Notary Public for South Carolina
My Commission Expires 1/20/14

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To:	Mike Fletcher	From:	Vickie Weaver
At:	TriStar Communications	Telephone:	(843) 937-0110
Fax:	(864) 599-6230	From Fax:	(843) 937-4310
Page(s):	5 (including cover page)	Date:	March 6, 2001

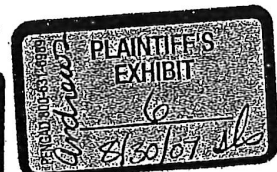
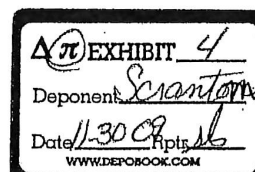
Reference: Operation of Gaming Machines in D.R.

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Mr. Fletcher,

Mr. Le Clercq wanted me to fax this to you.

SHOULD YOU NOT RECEIVE ALL PAGES, PLEASE CALL IMMEDIATELY



Dear Mr. Le Clerq:

In regards to the terms of the telephone conversations held yesterday afternoon and again today, with Emma Mejia, Esq., pertaining assorted issues in connection with the above captioned matter, we must indicate the following:

I. TITLE OVER THE GAMING MACHINES WHILE IN THE D.R.

Pursuant to the terms of the Second Article of the License Agreement executed by and between SISTEVI and the DOMINICAN NATIONAL LOTTERY (DNL), the machines to be use for the purpose of the contract shall be exclusive property of the DNL for the duration of the contract. However, the paragraph of the Fourth Article seems to suggest that the machines will be consigned to the National Lottery just for the clearing out of Customs and the exemption of import duties.

In this sense, the inconsistencies between the agreement's cited provisions are evident, however, by reviewing the entire agreement we should conclude that pursuant to the same, title over the machines shall be held by the DNL while the contract is in force; hence, CALLUM may encounter difficulties when the time comes to register the machines as a foreign investment.

As Ms. Mejia explained before, the Foreign Investment Department of the Central Bank has indicated that they are willing to review CALLUM's situation in regards to the registration of the machines as a foreign investment, notwithstanding the questions over who holds title over them; however, they cannot make any assurances in regards to the granting of the registration.

II. ASSIGNMENT OF RIGHTS UNDER THE AGREEMENT FOR A VIDEO LOTTERY OPERATION IN THE DOMINICAN REPUBLIC.

This agreement does not contain any provision restricting or even regulating Tri-Star prerogative to assign the same to a third party; hence in principle such assignment may be carried out without the need of SISTEVI's authorization to that effect. However, given the nature of the contract, and of the rights granted to TRI-STAR, by means of the same, SISTEVI may argue that the contract cannot be assigned without its consent since such rights were granted taken into account TRI-STAR's qualifications and expertise in regards to video lottery operations, which are essential to the success of the business; hence SISTEVI should be entitled to review the qualifications of the company that will assume TRI-STAR rights and obligations under the contract, prior the assignment of the same.

Given such fact, we believe it is advisable to obtain SISTEVI's written consent pertaining the assignment of TRI-STAR's rights under the agreement in order to avoid future claims in regards to the validity of such transaction.

Likewise, similar consent shall be obtained from the DNL in the event that SISTEVI assigns its rights and obligations under the License Agreement to any third party, for the purpose of further protect such party from any claim that may arise because of such assignment of rights.