

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Clifton Newman, Circuit Court Judge

Case No. 2015-CP-10-05463

The Boathouse at Breach Inlet, LLC, by and through
its member, Laurence O. Stoney, Jr., ...Appellant,
v.

Richard S.W. Stoney, individually and as Member-manager
of The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC, Defendants

and

Theodore Stoney, Jr., individually and as Trustee for Richard Stoney, Jr.
and Gregory G. Holmes, Third-Party Intervenors,

of whom

Richard S. W. Stoney, individually and as Member-manager
of The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC is Respondent.

RECORD ON APPEAL - VOLUME I

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STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

The Boat House at Breech Inlet,
LLC, by and through its member,
Laurence O. Stoney, Jr.,

Plaintiff

vs.

Richard S. W. Stoney, et al.

Defendants.

IN THE CIRCUIT COURT

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM**

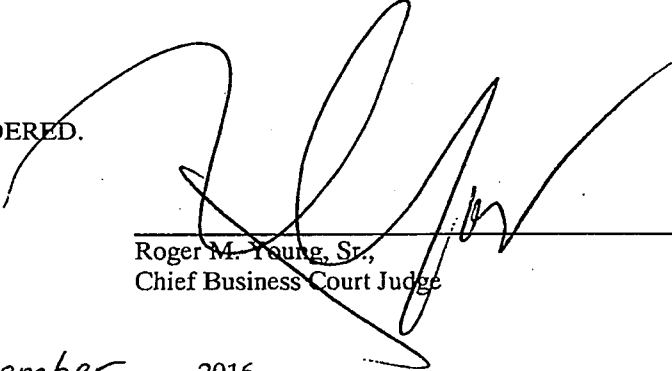
CASE NO.: 2015-CP-10-5463

FILED
2016 DEC -9 AM 11:57
JULIE J. ARYSTROM
CLERK OF COURT

☒ It is hereby ordered that assignment to the Business Court Pilot Program for **Charleston County** is **granted**. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable Clifton Newman** to hear and handle all pretrial motions and other matters pertaining to this case.

☐ It is hereby ordered that assignment to the Business Court Pilot Program for County is **denied**.

And it is SO ORDERED.



Roger M. Young, Sr.,
Chief Business Court Judge

This 5th day of December, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5463

The Boathouse at Breach Inlet, LLC,
by and through its member, Laurence
O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually
and as member-manager of The
Boathouse at Breach Inlet, LLC and
Crew Carolina, LLC.

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION
TO AMEND COMPLAINT**

FILED
2017 MAR 21 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY 2

Date of Hearing: January 27, 2107
Presiding Judge: Clifton Newman

Attorneys for Plaintiff: Stafford J McQuillin III
Scott Y. Barnes
Pierce T. MacLennan

Attorney for Defendant: Capers G. Barr III
Attorney for Intervenors: George J. Kefalos

This matter came before the Court on Plaintiff the Boathouse at Breach Inlet, LLC's *Motion to Amend Complaint* ("Motion"), which was made pursuant to SCRCP 15(a). Counsel for Defendants and Proposed Intervenors did not consent to the Motion, which necessitated a hearing on the Motion. For the reasons set forth below, the Court hereby grants Plaintiff's Motion to Amend.

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APPLICABLE STANDARD

In pertinent part, Rule 15(a) provides that “a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15(a), SCRCP. “[T]his rule strongly favors amendments, and the court is encouraged to freely grant leave to amend.” *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987). “Rule 15 ‘evinces a bias in favor’ of granting amendments and ‘unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.’” *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (internal citations omitted). “It is the responsibility of a party opposing an amendment to establish prejudice.” *Id.* at 507, 369 S.E. 2d at 158. The prejudice envisioned by Rule 15 “envision[s] a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Pool v. Pool*, 329 S.C. 324, 328-329, 494 S.E.2d 820, 823 (1998).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff the Boathouse at Breach Inlet, LLC (“Boathouse”) filed its original Complaint on October 9, 2015. The Boathouse moved to amend its Complaint on November 23, 2016 to: (1) conform its Complaint to the proof as discovered from documents produced in discovery after the original Complaint was filed in this matter; and (2) to make clear that Plaintiff does not claim to represent the interests of Proposed Intervenors.

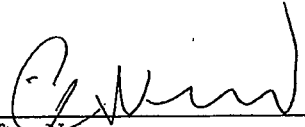
Defendants and Proposed Intervenors did not establish “prejudice” as that word has been defined by South Carolina courts in the context of Rule 15. *Pool v. Pool*, 329 S.C. 324, 328-329, 494 S.E.2d 820, 823 (1998) (“a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it”). Additionally, this Court finds there is no substantial reason to deny

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leave to amend. As such, this Court concludes that the Boathouse should be given leave to amend its Complaint. "Leave to amend pleadings pursuant to Rule 15, SCRPC, shall be liberally and freely given when justice so requires and does not prejudice any other party." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Id.*

IT IS SO ORDERED.

This the 16th day of March, 2017.



Clifton Newman
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and through its member, Laurence O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as member-manager of The Boathouse at Breach Inlet, LLC and Crew Carolina, LLC,

Defendants.

Theodore Stoney, Jr., individually and as Trustee for Richard Stoney, Jr. and Gregory G. Holmes,

Third-Party Intervenors.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5463

ORDER

FILED
2019 MAY 20 PM 4:01
JULIE J. ARMSTRONG
CLERK OF COURT

Date of Hearing/Trial: December 13 – 14, 2018
Presiding Judge: Clifton Newman
Attorneys for Plaintiff: Stafford J. McQuillin III
Scott Y. Barnes
Tyler K. Gilliam
Attorney for Defendants: Capers G. Barr III
Attorney for Intervenors: George J. Kefalos
Court Reporter: Karen V. Anderson

At the request of the parties, the Court held a preliminary hearing (the “Hearing”) on the issue of whether the derivative-action plaintiff, Laurence Stoney, has standing to maintain this derivative action filed on behalf of the plaintiff, The Boathouse at Breach Inlet, LLC (the “Company” or the “Boathouse”), a restaurant situated at Breach Inlet on the Isle of Palms. For the reasons set forth

below, the Court finds that the derivative-action plaintiff has standing to maintain this action on behalf of the Company.

With respect to the evidence presented at the Hearing, Plaintiff's counsel consented to Defendants' and Intervenor's counsel's request to call witnesses. Defendants' and Intervenor's counsel likewise consented to Plaintiff's counsel's request that the Court be permitted to consider the affidavit of Plaintiff's forensic accounting expert, Don Hollerbach.¹

BURDEN OF PROOF

The parties agree that where defendants to a derivative action challenge the plaintiff's standing, "[t]he burden is on defendants to show that the plaintiff will not fairly and adequately represent the company and its Members." *See Halstead Video, Inc. v. Guttillo*, 115 F.R.D. 177, 179 (N.D. Ill. 1987); *see also Guenther v. Pac. Telecom, Inc.*, 123 F.R.D. 341, 344 (D. Or. 1987) ("The burden is on defendants to show that [the representative-plaintiff] is an inadequate representative."); *Brandon v. Brandon Const. Co. Inc.*, 300 Ark. 44, 50, 776 S.W.2d 349, 353 (1989) ("The burden of showing that the party bringing a derivative action does not fairly and adequately represent the interests of the shareholders is always on the defendant.").

BACKGROUND

On October 9, 2015, Laurence Stoney, a minority member of the Boathouse, filed this derivative action on behalf of the Company against Defendants, Richard Stoney and Crew Carolina, LLC ("Crew Carolina"). The Defendant, Richard Stoney, is the Manager and majority member of the Boathouse. Richard Stoney is also the Manager of co-Defendant, Crew Carolina, a single member LLC owned by Richard Stoney that provides management services to the Boathouse and to other, unrelated restaurants. The complaint provides, "[t]he central allegation of this Complaint is that

¹ Defendants maintained a relevance objection regarding the Hollerbach affidavit. The Court, overruled this objection, finding that the affidavit was relevant on the issue of whether the Defendants and Intervenor have unclean hands.

Defendant R. Stoney misappropriated and converted in excess of \$4,000,000.00 from the Boathouse to Defendant Crew Carolina . . . for his own personal use and for use in separate business ventures.” (*Amended Complaint*, ¶ 6). As its sole remedy, Plaintiff “seeks repayment of the funds back to the Boathouse.” *Id.*

At the Hearing, Defendants and Third-Party Intervenors proffered numerous affirmative defenses concerning Laurence Stoney’s standing as a derivative-action Plaintiff. These included the equitable defenses of laches, unclean hands, and judicial estoppel, and the legal defense that Laurence Stoney is not “fairly and adequately” representing the Company’s interest in maintaining this derivative action, as required by Rule 23(b)(1), SCRCF.

PRELIMINARY FINDINGS OF FACT

1. Richard Stoney is the Manager and majority member of the Company. As the Company’s Manager, Richard Stoney exercised unilateral control over the Company’s finances, which he ran through his solely-owned management company, Crew Carolina.

2. Laurence Stoney is a minority member of the Company and had no control over the Company’s finances.

3. The parties stipulate that Laurence Stoney is not “similarly situated” to any other member of the Company. *Stipulation*, filed December 7, 2018.

4. The Court finds credible testimony supports a finding that Laurence Stoney is pursuing this derivative action because he believes that Defendants misappropriated Company assets, which he believes should be returned to the Company. As he testified, “[t]his case is about finding four and a quarter million dollars that’s missing that needs to go back to The Boathouse, sir. That’s what this case is about.” (December 13–14, 2018 Hearing Transcript (“Trans.”), p. 105:7-9). When asked why he filed this lawsuit, Laurence Stoney testified, “I seek to make [the] Boathouse at Breach Inlet whole. It will need to recover the [misappropriated] funds.” (Trans., p. 125:16-17).

5. The Court finds credible evidence that Laurence Stoney is not pursuing this derivative action primarily because of animus towards Richard Stoney. When asked at the Hearing if he had “animosities against [his] cousin Richard,” Laurence Stoney replied, “No, I don’t.” (Trans., p. 35:2-4). This testimony corroborates Laurence Stoney’s deposition testimony. (Laurence Stoney Dep., p. 10:2-4).

6. The Court does not find credible evidence that supports Defendants’ and Intervenors’ theories that Lori Stoney (the ex-wife of Richard Stoney) encouraged Laurence Stoney to file this action, that Lori Stoney is the driving force behind this action, or that Lori Stoney has colluded with Laurence Stoney in this action. When Lori Stoney was asked about her involvement in this litigation she testified, “I have not been involved in this litigation” (Trans., p. 86:15). She also testified with respect to this litigation, “I did not know what Laurence’s plan was. I did not know what he was going to do as far as filing a case. I did not read any complaint. I was not consulted about that. He did what he did. At some point, I found out he had filed the case.” (Trans., p. 82:20-24). Laurence Stoney also denied any collusion or involvement by Lori in the filing of this action. (Trans., p. 36:12, 126:2-4). Laurence Stoney was asked, “[h]as Lori Stoney . . . influenced you in any way to file this lawsuit”? He answered plainly, “No.” (Trans., p. 126:2-4).

7. Without making any findings of fact, the Court finds credible evidence sufficient to support the allegation that Richard Stoney misappropriated money from the Company. Richard Stoney admitted that he took money from the Boathouse, put it into Crew Carolina, and used that money to fund other, unrelated entities, and to pay for personal expenses. Specifically, at the Hearing Plaintiff’s counsel asked Richard Stoney, “[s]ir, you don’t dispute that you took money from the Boathouse at Breach Inlet to fund other businesses and personal matters; is that correct”? Richard Stoney replied, “I do not.” (Trans, p. 204:13-16). Plaintiff’s counsel also asked Richard Stoney, “[w]ere you taking money from the Boathouse and putting it in Crew and using it to fund other

entities"? Richard Stoney replied, "I admitted that." (Trans., p. 206:3-6). The affidavit of Don Hollerbach corroborates Richard Stoney's testimony. In his affidavit, Hollerbach writes:

[The Boathouse] and Richard Stoney commingled funds. [The Boathouse] appears to be the funding mechanism for other ventures and personal spending of Mr. Stoney.

Affidavit Don Hollerbach ¶ 4. Hollerbach then cites numerous examples of Richard Stoney using Company monies, filtered through Crew Carolina, to fund personal expenses and other, unrelated business.

8. Without making any findings of fact, the Court finds credible evidence sufficient to support the allegation that Intervenors knew that Richard Stoney was misappropriating Company assets, and that Intervenors benefitted financially from Richard Stoney's misappropriations. With respect to Intervenor Theodore Stoney, Richard Stoney's brother, Hollerbach writes, "[t]he Boathouse issued checks to Wells Fargo directly on Theodore Stoney's behalf for Theodore Stoney's mortgage." *Affidavit Don Hollerbach* ¶ 4. Hollerbach also notes, "Crew [Carolina] also made . . . payments in excess of \$80,000 to or on behalf of Theodore Stoney and his company, the Stoney Company . . ." *Id.* With respect to the Intervenor Gregory Holmes, who did not attend the Hearing, Hollerbach's affidavit provides, "Gregory Holmes, as a member of Holmes Capital Management, LLC, received \$173,458.95 in disproportionate distributions." *Id.* Hollerbach notes:

Richard Stoney and Gregory Holmes were advised by a CPA that Richard Stoney was not permitted to make any disproportionate distributions to his friend and business partners, Gregory Holmes unless the purported operating agreement for the Boathouse was amended and signed by all members. . . . However, Richard Stoney ignored this advice, and proceeded with making improper disproportionate distributions to Gregory Holmes without amending the purported operating agreement.

Id.

9. Without making any findings of fact, the Court finds credible evidence sufficient to support the allegation that Laurence Stoney did not know that Richard Stoney was using Boathouse

monies to fund other business. Defense counsel elicited from Laurence Stoney the following testimony:

Q. You knew what Crew Carolina was doing, Crew Carolina was . . . managing the expenses of [multiple] restaurants?

A. I did not know what was going on and how the funds were being commingled or even if they were. All I knew was that the distributions were going down every year from Breach Inlet and the place seemed to be just rocking and rolling with customers. That's all I knew. I never got to see the numbers. Only thing is, at the end of the year, I get a, what is it, K1.

(Trans., p. 41:15-23). When asked about Richard Stoney's impetus for forming Crew Carolina and its operating practices, Laurence Stoney testified, "Richard formed [Crew Carolina] for his own devices. I have no idea why he formed it. And I didn't know that all of the finances and all would be comingled." (Trans., p. 32-33:25-02). Defense counsel also asked Laurence Stoney, "You knew that Crew was taking all the revenue from all of the restaurants into one account and paying the expenses of the restaurants"? In response, Laurence Stoney answered, "I did not know that for a fact, no." (Trans., p. 109:1-4).

10. It appears that Laurence Stoney developed suspicions that Richard Stoney was using Company monies improperly because the amount of Laurence Stoney's distributions decreased. As cited above, Laurence Stoney testified:

Q. You knew what Crew Carolina was doing, Crew Carolina was . . . managing the expenses of [multiple] restaurants?

A. I did not know what was going on and how the funds were being commingled or even if they were. *All I knew was that the distributions were going down every year from Breach Inlet and the place seemed to be just rocking and rolling with customers. That's all I knew. . . .*

(Trans., p. 41:15-23) (emphasis added).

11. Without making any findings of fact, the Court finds credible evidence sufficient to support the allegation that Laurence Stoney asked Richard Stoney for Company financial records

and that Richard Stoney did not provide those records. Defendants' Exhibit 1 to the Hearing is a letter addressed to Laurence Stoney from Richard Stoney, in which he writes, "it is my understanding . . . that you would like to see 'everything' that has impacted the two restaurants you are involved in . . . as well as Crew's books to the extent that Crew's expenses are passed along to the restaurants." Defendant's Hearing Exh. 1, August 9, 2005 Letter from Richard Stoney to Laurence Stoney ("Exh.1"); Trans. p.109:6-10). When Laurence Stoney was asked about requesting financial information from Richard Stoney at the Hearing, he confirmed that he sought—but never received—financial records. (Trans, p.109:6-10) ("I asked for the [financial] information which I was not given.").

12. The Court finds that Laurence Stoney asked Richard Stoney if he was misappropriating Company assets, and that Richard Stoney represented to Laurence Stoney that he was not misappropriating Company Assets. In Exhibit 1, the letter from Richard Stoney to Laurence Stoney, Richard Stoney writes, "I am . . . insulted by the insinuation that I have mismanaged or misappropriated funds in the restaurants and/or Crew." Exh. 1.

13. The Court finds that it was reasonable for Laurence Stoney to rely on Richard Stoney's attestations that he was not misappropriating Company assets. Richard Stoney was the manager of the Company and represented to his cousin, Laurence Stoney, a minority member of the Company, that the Company was struggling because of factors outside of Richard Stoney's control. Richard Stoney wrote:

Certainly I have had some decisions to make, as Managing Member and majority owner of the respective restaurants, that were necessary to the operations of the restaurants that were not necessarily 'profitable' . . . , but they were my judgment calls on the best way to manage the business functions of the locations in question for the long-term.

...

I know it is frustrating that increased competition and cost of goods has decreased our sales and profitability, but I cannot control the rapid expansion of dining options in

East Cooper any more than I can control beef and lobster prices. At the end of the day, you have to trust me. I'm not in business with my family and dear friends in an attempt to skim profits or benefits not available to them as well.

Exh. 1.

14. The Court finds that the attorneys representing the Plaintiff are qualified to conduct this litigation on behalf of the Company.

CONCLUSIONS OF LAW

I. This action to recover Company assets is properly brought in a derivative capacity.

Defendants and Intervenor argue that Laurence Stoney should sue for damages in his personal capacity rather than derivatively on behalf of the Company because Defendants and Intervenor allege that this action is about unpaid distributions. The evidence does not support this conclusion. Throughout this action the only remedy that Plaintiff has requested is the return of Company monies. Plaintiff's Complaint provides, "[t]he central allegation of this Complaint is that Defendant R. Stoney misappropriated and converted in excess of \$4,000,000.00 from the Boathouse This suit seeks repayment of the funds back to the Boathouse." (*Amended Complaint*, ¶ 6) (emphasis added).

Based upon the pleadings and the evidence presented at the Hearing, the Court finds that Laurence Stoney is not seeking to recover for any individualized loss. Instead, Plaintiff is attempting to recover a Company asset, Company monies, which Plaintiff claims that Richard Stoney misappropriated individually and through the vehicle of his single-member LLC, Crew Carolina. Accordingly, only the Company can maintain this lawsuit to recover its assets, and Laurence Stoney correctly brought this suit as a derivative action, and cannot sue to recover Company assets in his personal capacity.

II. Laches does not bar Laurence Stoney from maintaining this action.

A derivative action is one in equity, and only the doctrine of laches applies—not the statute of limitations. *Pelfrey v. Bank of Greer*, 270 S.C. 691, 695, 244 S.E.2d 315, 317 (1978); *McDuffie v. O'Neal*, 324 S.C. 297, 308, 476 S.E.2d 702, 707 (Ct. App. 1996). Laches is the negligent failure to act for an unreasonable period of time. *Gray v. South Carolina Public Service Authority*, 284 S.C. 397, 400, 325 S.E.2d 547, 549 (1985). But delay alone in the assertion of a right is not enough. A party asserting the laches defense also must prove that the opposing party had knowledge of the wrong committed, and that it was materially prejudiced by the opponent's unreasonable delay in bringing an action. See *Archambault v. Sprouse*, 218 S.C. 500, 63 S.E.2d 459 (1951); *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004) (both holding that the party to be lached must have had actual knowledge of the wrong committed or must have refused to embrace an opportunity to ascertain facts about the wrong committed); *Gibbs v. Kimbrell*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct. App. 1993) (holding that a party cannot maintain a laches defense unless it can prove that it was materially prejudiced by the opponent's unreasonable delay). Thus, to succeed, the party asserting laches bears the burden of proving (1) delay, (2) unreasonable delay based on knowledge of a known right, **and** (3) material prejudice caused by the delay in asserting the known right. *Emery*, 361 S.C. at 215, 603 S.E.2d at 602; *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 297, 519 S.E.2d 583, 599 (Ct. App. 1999).

Here, based on the evidence presented at the hearing, Defendants and Intervenor have not met their burden, and laches does not apply to bar Plaintiff's claim because (A) Defendants and Intervenor appear to have unclean hands, (B) Laurence Stoney did not rest on a known right, and (C) neither Defendants nor Intervenor were materially prejudiced by the timing of the filing this lawsuit. Each of these reasons, *alone*, is sufficient to find that Plaintiff's claim is not barred by the equitable defense of laches.

A. Neither Defendants nor Intervenors can assert the equitable defense of laches because Defendants and Intervenors appear to have unclean hands.

Laches is a defense in equity. It is a time honored maxim of equity that “he who seeks equity must do equity.” Accordingly, the equitable defense of laches is not available to those who come into the court with “unclean hands.” Put simply, a party has unclean hands, and cannot assert a laches defense, where they have acted in bad faith or unfairly with respect to the matter at issue.

1. Richard Stoney appears to have unclean hands.

Both Richard Stoney’s testimony and Don Hollerbach’s affidavit each credibly alleges that Richard Stoney acted in bad faith when he breached his statutorily prescribed fiduciary duties owed to the Company and its Members.

2. Intervenors appear to have unclean hands.

The Intervenors also appear to have unclean hands with respect to the matter at issue. Specifically, the testimony from the Hearing and Don Hollerbach’s affidavit each credibly support the allegation that Intervenors knew that Richard Stoney was misappropriating Company monies, but did not intercede on behalf of the Company as they were benefitting from Richard Stoney’s misappropriations from the Boathouse. Defendants and Intervenors did not present evidence at the Hearing to counter the evidence presented by Plaintiff in the form of Don Hollerbach’s affidavit that Intervenors appear to have unclean hands. Because the Court finds that Intervenors, Theodore Stoney and Gregory Holmes, appear to have unclean hands, Intervenors cannot assert the equitable defense of laches.

B. Laurence Stoney did not rest upon a known right.

“As with waiver, laches arises upon the failure to assert a known right” *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (Ct. App. 1994), *citing Ex parte Stokes*, 256 S.C. 260, 182 S.E.2d 306 (1971); *Byars v. Cherokee County*, 237 S.C. 548, 118 S.E.2d 324 (1961). The party asserting the laches defense bears the burden of proof, and must prove that the

opposing party "had actual knowledge or inquiry notice of the facts forming the basis of its claim" *Provident Life & Acc. Ins. Co.*, 317 S.C. at 479, 451 S.E.2d at 929.

After weighing the evidence presented at the Hearing, the Court finds that Defendants have not sufficiently shown that Laurence Stoney *actually knew* that Richard Stoney was using Boathouse monies to fund other business and for personal expenses.

C. Defendants and Intervenors did not prove that they were materially prejudiced by the timing of the filing of this lawsuit.

In South Carolina, the party asserting laches bears the burden of proving that he was materially prejudiced by his opponent's delay in bringing suit. *Provident Life*, 317 S.C. at 479, 451 S.E.2d at 929. The Court of Appeals explained:

Prejudice is an essential element of laches. In order to constitute laches, the delay in bringing suit must have caused some injury, prejudice or disadvantage to the party claiming laches. It is reversible error to apply and bar relief to the plaintiff where defendant has enjoyed a benefit and not suffered a detrimental change of position attributable to the delay.

317 S.C. at 479, 451 S.E.2d at 929.

At the Hearing, Defendants and Intervenors did not offer evidence that any supposed delay in bringing this action by Laurence Stoney caused them to suffer a detrimental change in position.

III. Laurence Stoney does not appear to have unclean hands.

Defendants and Intervenors argue that Laurence Stoney cannot maintain this derivative action because he has unclean hands. Despite the fact that Laurence Stoney was a minority member in the Company with no control over the Company's finances, Defendants and Intervenors suggest that Laurence Stoney has unclean hands because they allege that he knew about and consented to Richard Stoney's misappropriations from the Company. The Court disagrees.

Without making any findings of fact, the Court finds credible evidence sufficient to support the allegation that Laurence Stoney did not know that Richard Stoney was using Boathouse profits to fund other unrelated businesses and to pay for personal expenses for himself and Intervenors.

IV. Plaintiff is not judicially estopped from arguing that Laurence Stoney is not similarly situated to other members of the Company and is a class of one.

Plaintiff amended its Complaint pursuant to Rule 15, SCRCP, to remove this statement.

Therefore, this argument is without merit.

V. The Court finds that Laurence Stoney is fairly and adequately representing the interests of the Company.

Rule 23(b)(1) provides that a derivative-action plaintiff has standing to maintain a derivative suit where they “fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the [company].” Guided by Rule 23(b)(1), this Court must first determine which members of the Company, if any, are “similarly situated” to the representative-plaintiff to determine if Laurence Stoney is a suitable derivative-action plaintiff.

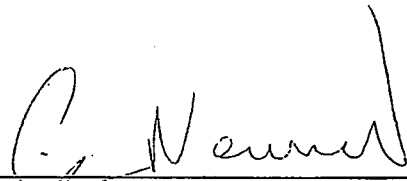
Where, as here, there are no members similarly situated to a derivative-action plaintiff, the derivative-action plaintiff is treated as a class of one and is not required to represent the interests of any other member in a company. *See e.g., Larson v. Dumke*, 900 F.2d 1363 (9th Cir. 1990), *cert. denied sub nom. Round Table Pizza, Inc. v. Larson*, 498 U.S. 1012, 111 S. Ct. 580 (1990) (finding that a shareholder can be a legitimate class of one where other shareholders are not similarly situated to the derivative-action plaintiff).

“The burden is on the defendants to show that the plaintiff will not fairly and adequately represent the corporation and its [similarly situated] shareholders.” *Halstead Video, Inc.*, 115 F.R.D. 177, 179 (N.D. Ill. 1987); *see also Guenther v. Pac. Telecom, Inc.*, 123 F.R.D. 341, 344 (D. Or. 1987) (“The burden is on defendants to show that [the representative-plaintiff] is an inadequate representative.”); *Brandon*, 300 Ark. 44, 50, 776 S.W.2d 349, 353 (1989) (“The burden of showing that the party bringing a derivative action does not fairly and adequately represent the interests of the shareholders is always on the defendant.”).

The Court finds that Defendants and Intervenor cannot meet their burden, and that Laurence Stoney can maintain this lawsuit on behalf of the Company because (A) Laurence Stoney is a class of one and is not required to represent the interests of other members of the Company, and (B) Laurence Stoney is fairly and adequately representing the interests of the Company in this derivative action.

AND IT IS SO ORDERED.

May 9, 2019



Clifton Newman
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and
through its member, Laurence O. Stoney,
Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
member-manager of The Boathouse at
Breach Inlet, LLC and Crew Carolina, LLC,

Defendants.

Theodore Stoney, Jr., individually and as
Trustee for Richard Stoney, Jr. and Gregory
G. Holmes,

Third-Party Intervenors.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5463

**ORDER PRELIMINARILY
DENYING MOTION TO DISSOCIATE**

On January 16, 2020, a hearing was held on the motion of the Defendants to dissociate Laurence Stoney from the Boathouse at Breach Inlet, LLC. The motion was made pursuant to S.C. Code Ann. § 33-44-601(6)(iii), which permits courts to expel limited liability company members who have “engaged in conduct relating to the business of the company which makes it not reasonably practicable to carry on the business with the member.” Based on the arguments presented the motion is preliminarily Denied.

PRELIMINARY FINDINGS OF FACT AND CONCLUSION OF LAW

The Court makes a preliminary finding that the Defendants have not established that Laurence Stoney has engaged in conduct that makes it impracticable for the Company to carry on its business. Section 33-44-601(6)(iii) is clear that the Court should dissociate a member from a company only if it is the conduct of the member that made it “not reasonably practicable” to carry on the business.

The phrase “not reasonably practicable to carry on business” in Section 33-44-601(6)(iii) sets a high bar. In the seminal case on this issue, the New Jersey Supreme Court held that dissociation was only appropriate where a member has engaged in conduct such that “it [would] be unfeasible, despite reasonable efforts, to keep the LLC operating while the disputed member remains affiliated with it.” *IE Test, LLC v. Carroll*, 226 N.J. 166, 182 (2016). Defense counsel contends the Boathouse continues to be a successful restaurant venture. This contention contradicts the assertion that the conduct of Laurence Stoney makes it impracticable to carry on the business.

CONCLUSION

Pursuant to Rule 54(b), SCRCP, the Court preliminarily denies the motion to dissociate subject to review and revision at the trial of this matter.

AND IT IS SO ORDERED.

February 24, 2020

Clifton Newman
Presiding Judge



Charleston Common Pleas

Case Caption: Boathouse at Breach Inlet LLC The , plaintiff, et al VS Richard S W
Stoney , defendant, et al
Case Number: 2015CP1005463
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
The Boathouse at Breach Inlet, LLC, by and)
through its member, Laurence O. Stoney,)
Jr.,)
Plaintiff,)
vs.)
Richard S.W. Stoney, individually and as)
Member-manager of The Boathouse at)
Breach Inlet, LLC and Crew Carolina, LLC,)
Defendants.)

Theodore D. Stoney, Jr., individually and as)
Trustee for Richard Stoney, Jr. and Gregory)
G. Holmes,)
Third-Party Intervenors.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-10-5463

ORDER

This case came before the Court for a non-jury trial on March 9, 10, and 11, 2020. The Plaintiff Laurence O. Stoney, Jr. was present with his attorneys, Stafford J. McQuillin, III, Tyler K. Gilliam, and Scott Y. Barnes, of the firm Haynsworth Sinkler Boyd P.A. Defendants Richard S. W. Stoney and Crew Carolina, LLC, appeared represented by their attorney, Capers G. Barr, III. Intervenor Theodore Stoney, Jr. appeared represented his attorney, George K. Kefalos, who was present only one day of the trial. Mr. Kefalos also appeared on behalf of Intervenor Gregory G. Holmes, who did not appear.

Based on the testimony, the exhibits, arguments, briefs and other memoranda of counsel, I make the following findings of fact and conclusions of law:

PROCEDURAL HISTORY

This case was filed October 9, 2015 as a shareholder derivative action pursuant to South Carolina Code Sections 33-44-1101, *et seq.*, and Rule 23(b)(1), South Carolina Rules of Civil Procedure (hereafter, "Rule 23(b)(1)"). The Complaint was filed initially indicating it was on behalf of the LLC "and its members". By order filed December 9, 2016, the case was assigned to Business Court.

The original complaint was thereafter amended alleging *inter alia*, that Plaintiff would fairly and adequately represent the interests of Boathouse "and any other similarly situated members". The causes of action alleged in the Amended Complaint were for breach of fiduciary duty, conversion, personal liability for unlawful distributions under Code Section 33-44-407, for an accounting, for unjust enrichment, for attorney fees and costs, for an Order to pierce the corporate veil of the Defendant Crew Carolina, LLC, and for declaratory relief ordering that Defendant Richard Stoney is not entitled to payment of his legal fees by the company, Boathouse at Breach Inlet, LLC.

The Answer of Defendants Richard Stoney and Crew Carolina was filed, asserting a general denial and pleading affirmative defenses, including failure to state a cause of action; the Statute of Limitations; *Laches*; that Plaintiff lacks standing because he files this action only for his personal benefit and not for the corporate benefit; that the conduct of Defendant, Richard Stoney is protected by the business judgment rule; waiver and estoppel; dishonest conduct by Plaintiff; and that the action was filed out spite and vindictiveness; lacking of LLC member support; unclean hands; and attorney fees.

By order this Court granted the intervention of LLC members, Theodore D. Stoney and Gregory Holmes. Ted Stoney and Gregory Holmes filed their Answer to the Amended Complaint, opposing the action.

The parties filed a Stipulation that Plaintiff Laurence Stoney "is not similarly situated to any other member of the Boathouse at Breach Inlet, LLC" and Laurence Stoney brings the action as presently postured a "class of one."

On December 13 and 14, 2018, a hearing was held at the request of both parties on the issue of the standing of Laurence Stoney to maintain the action. The Motion of the Defendants sought an Order finding that Laurence Stoney lacked standing to bring the within action. This Court preliminarily denied the relief sought by the Defendants without prejudice, thereby allowing the action to proceed.

On January 5, 2020, Defendants filed a Motion to Dissociate Plaintiff Laurence Stoney from the LLC, alleging that it is not reasonably practicable to continue the business with Laurence Stoney as a member. Following a hearing, the Court issued an Order preliminarily denying the Motion to Dissociate, without prejudice.

The Court preliminarily ruled that Laurence Stoney could adequately defend the vindication of a corporate interest as representative of the derivative shareholder suit and should be given the chance at trial to do so. Having now conducted the trial, it is clear to the Court that Laurence Stoney did not seek to vindicate a corporate wrong as originally presented, but rather was acting through personal vindictiveness. The preliminary ruling of the Court finding that Laurence Stoney has standing to bring this action is reversed based on the findings and conclusions contained in this Order. The Court further grants the relief seeking to dissociate Laurence Stoney from the Company.

FINDINGS OF FACT

The Parties: Formation of the Boathouse at Breach Inlet, LLC.

Defendant Richard Stoney is an attorney on active status with the South Carolina Bar, although his principal occupation since 1997 has been that of restaurateur. The Third-Party Intervenor Theodore Stoney, Jr. ("Ted") is the brother of Richard, and a retired realtor. Plaintiff Laurence O. Stoney, Jr. ("Laurence") is a first cousin of Richard and Ted. Laurence owns and operates a ship chandler business, Coleman Supply Company, that supplies ships serving the Port of Charleston with a broad range of provisions, from food to tools, maritime, and navigational materials.¹

At trial, the Court heard conflicting testimony as to whether Richard and Laurence, who are two years apart in age, had been close in their younger years. Richard and Ted Stoney described that Laurence had been arrogant in their younger years but had matured by the time of the formation of the Boathouse restaurants in 1997 and 1999.

To start the Boathouse restaurant, Richard negotiated a lease agreement with option to purchase the Breach Inlet property from its owner, and he borrowed with a second mortgage on his Sullivan's Island home to fund construction. Richard testified that he had long been intrigued by the hospitality industry, and that he had been inspired to begin the Boathouse restaurant after a visit to the California coast. Before commencing the Breach Inlet venture, He performed his due diligence by consulting texts, attending seminars, and consulting with restaurant professionals before commencing the Breach Inlet venture.

Richard needing additional capital to fund startup cost of the restaurant borrowed from US Foods, a food purveyor for the restaurant, and offered membership interests in the LLC to his

¹ Because three parties, and other witnesses, bear the surname "Stoney", they will be referred to by their first names in most instances, for clarity.

brother Ted, and to his cousin Laurence. It was then, in the Fall of 1997, that Richard formed the LLC party to this case, The Boathouse at Breach Inlet, LLC. Ted contributed \$50,000.00, in addition to providing his personal services to the business during the period of construction. (The Boathouse at Breach Inlet will sometimes be referred to in this Order as "Boathouse" or "Breach Inlet".) Laurence contributed \$28,750.00. The initial membership interests in the LLC were: Richard Stoney, 80%; Laurence Stoney, 5%; Ted Stoney, 10%; and a 5% interest was created for the son of Richard, Richard Stoney, Jr., which is held in trust by Ted.

In subsequent years, Richard transferred portions of his interest to others, so that at the time of trial the membership interests in the Boathouse at Breach Inlet, LLC were held: Richard Stoney, 60%; Laurence Stoney, 5%; Ted Stoney, 10%; Ted Stoney as trustee for Richard Stoney, Jr., 5%; Lori Stoney (Richard Stoney's former wife), 5%; Lori Stoney as trustee for Croft Stoney (daughter of Richard and Lori), 5%; and Greg Holmes, 10%.

The Business Plan.

Upon its opening, the Boathouse restaurant was an immediate success, owing in large part to two things: its location at Breach Inlet, and the creative talents of Richard Stoney. Building upon that success, Richard then formed a second Boathouse restaurant in the City of Charleston named Boathouse on East Bay. At that point, Richard acted based upon research, the advice of persons experienced in the restaurant industry, and in general business administration to form a management company that he named Crew Carolina, LLC, a single member LLC of which Richard Stoney is the sole member.

The Crew Carolina management concept was this: the business costs associated with accounting and personnel management, the common costs of health, worker's compensation and liability insurance, and the costs of food and restaurant material acquisition would be radically

reduced when multiple restaurant operations are consolidated under an umbrella of common management. At the same time management tasks, as well as operational tasks (including servers), associated with each restaurant could be shared among fewer management and operational personnel than would be required with multiple restaurants operating separately. Richard testified that he envisioned that four or five restaurants operating under central management would provide the most viable return on the investments of the principals.

After the formation and opening of Boathouse at East Bay, additional restaurants were opened in Asheville, North Carolina and Knoxville, Tennessee. Other restaurants were opened in the Charleston area: Carolina's on Exchange Street, and Boathouse on Ellis Creek, on James Island. The potential savings of operational costs to the associated entities under the consolidated management concept, including to Boathouse at Breach Inlet, was significant.

Another related entity was also formed, Blue Water Management, that published a cookbook, sold food products at retail grocery stores, and operated a catering service from its offices on Romney Street in the City of Charleston.

The accounting and financial management services of Crew Carolina entailed a central banking concept whereby daily receipts of the various restaurants were "swept" daily to a central Crew Carolina bank account. The common and individual receipts and expenses of each related entity were accounted for, and expenses were paid, by Crew Carolina.

In the circumstances where the revenue of one restaurant did not cover the individual expense of the restaurant, the additional money needed was "borrowed" from the revenues in Crew Carolina's central account. These "loans" were regularly accounted for and were regularly reported on the books of Crew Carolina and on the books of the related entities as "due to/due from" entries. This operating framework was openly accounted for on the books, and was known

to all members, including the plaintiff Laurence Stoney.

The Contentious Relationship Between Richard Stoney and Laurence Stoney.

In early 1999, after Breach Inlet had been in business a little more than a year, Richard held a meeting with Laurence and others to explain the concept of central management provided by Crew Carolina. The members of the two restaurant LLCs that had been formed as of that date were essentially the same: Richard, Laurence, Ted, and Ted as Trustee for Richard, Jr. were members of both LLCs. Additionally, in the East Bay restaurant the sister of Richard and Ted, Beverly was a member, as was Charleston attorney Michael Molony.

The East Bay restaurant was located on leased property owned by the Drew family. Heated disagreement arose between the tenant and landlord due to the physical condition of the property which was subject to tidal flooding that created mold, mildew and odor issues. The relationship rapidly deteriorated causing Richard and Ted to begin negotiations with the Drew family in order to purchase the property to protect the interests of the restaurant. Although Laurence knew that Richard and Ted were attempting to buy the land, he surreptitiously approached the Drew family and made offers to buy the property for himself. Richard only learned of the attempt by Laurence after the attorney of the Drew family disclosed it to him.

Laurence would not admit in his testimony at trial that his attempted purchase of the East Bay property was disloyal to the LLC, stating instead that it was "a good business deal". When asked why he did not inform Richard and Ted of his overtures to purchase the land, his response was, "why would you tell your competitors?".

In 2009, Richard Stoney and his then wife, Lori Stoney, were separated and a divorce action was filed by Lori. In Family Court, Lori Stoney sought to be awarded Breach Inlet as part of her equitable division of the marital assets. Lori called upon Laurence to support her case. Although

Laurence testified that he had been subpoenaed to appear, he nevertheless admitted that he had voluntarily appeared with Lori in the office of her lawyer to prepare for his testimony. At trial, Laurence testified that he would not object to the award of Breach Inlet to Lori as a marital asset, or to the hiring of an outside manager.

The ship chandler company of Laurence Stoney also does business with several of the same purveyors who supply food to the Boathouse at Breach Inlet restaurant. At trial, Laurence conceded that he had discussed the credit issues of Breach Inlet with multiple food purveyors. When challenged about those communications and their effect on Breach Inlet, Laurence coyly attempted to elude answering, eventually responding that "it was the truth" and "could have been disloyal" to Breach Inlet.

Ted Stoney testified about numerous threats that Laurence made regarding Richard. He recalled a conversation in June of 2010 in which Laurence repeated his allegation that Breach Inlet was "slow in paying its bills".

In 2015 when Ted and Laurence were discussing a dispute relating to their adjoining properties in Berkeley County, Laurence told Ted that 'I'm going to get Richard. I'm going to turn his world upside down.' Ted described the conversation as "very intimidating". "I remember that quite vividly because I was personally shaking after the confrontation."

Losses of the Company; LLC Member Support for the Lawsuit.

The accounting expert of the Plaintiff concluded that the Boathouse at Breach Inlet had sustained a loss of \$4,194,264.66 representing liabilities owned by Crew Carolina in the "due to/due from" category previously described. The accounting expert further concluded that, another liability of \$42,835.19 is owed by Richard Stoney individually in the same "due to/due from" category.

Notwithstanding the undisputed evidence of the loss as noted above to the Boathouse at Breach Inlet, LLC, not a single member other the former wife of Richard Stoney, Lori supports Laurence in pursuing the lawsuit. Laurence holds a 5% interest and Lori holds a 5% interest. Therefore, 90% of the membership of the Boathouse at Breach Inlet, LLC oppose this lawsuit.

The Future of the Boathouse at Breach Inlet, LLC.

Laurence Stoney was not invited to participate in other restaurants held by the LLC after 1999 because it was not reasonably practicable for him to do so in light of the contentious relationship between Richard and Laurence, as manifested by the attempts of Laurence to buy the East Bay property, his testimony against Richard in the divorce trial, his criticisms of Breach Inlet to food purveyors, and the obvious distrust between them. In his testimony before the Court, Laurence candidly testified, "I don't want to be in the restaurant business with Richard"; and although it would be difficult but not impossible for them to continue as members together, he agreed it would not be practicable: "that's a good term".

Richard and Ted both testified that it would not be reasonably practicable to carry on the business of the Boathouse at Breach Inlet with Laurence as a member.

Upon consideration of all of the evidence, particularly evaluating the credibility of the witnesses, contrary to my preliminary findings, the conduct of Laurence Stoney related to the Company establishes that he does not seek to vindicate a corporate wrong. He has breached the implied covenant of good faith and fair dealing in several particulars: Laurence was aware as early as 1999, that the cash generated by the Boat House at Breach Inlet was being used to support other restaurants and made no complaint as long as he benefitted; Laurence admittedly engaged in communications with food purveyors and Ted Stoney of the Boathouse at Breach Inlet restaurant in which he was critical of the credit standing of Boathouse to those purveyors causing strain to

Boathouse with the purveyors. Laurence attempted to purchase the land of Boathouse on East Bay despite knowing that Richard and Ted were attempting to purchase the land for the benefit of the restaurant. Additionally, Laurence testified adversely to Richard Stoney in the divorce trial between Richard and Lori Stoney, advocating that the Family Court award the interest of Richard in Breach Inlet to Lori, and further advocating change of management.

CONCLUSIONS OF LAW

A shareholder derivative action is one in equity. *Straight v. Goss*, 383 S.C. 180, 678 S.E.2d 443 (Ct. App. 2009), *McDuffie v. O'Neal*, 324 S.C. 297, 302-303, 476 S.E.2d 702, 705 (Ct. App. 1996). A derivative action is brought by a shareholder or member in the name or right of the corporation or LLC to redress an injury sustained by, or to enforce a duty owed to, the corporation. *Rivers v. Wachovia Corp.*, 665 F.3d 6110 (4th Cir., 2011), citing *Fletcher*, *Cyclopedia of the Law of Corporations*, Section 5939-5940 (Rev. Ed. 2011).

By filing a derivative claim a shareholder acts in the stead of the corporation as a corporate surrogate seeking vindication of a corporate right. The assurance demanded by due process and Rule 23 is that the representative party in a class action be free of any interest which holds the potential of influencing his conduct of the litigation in a manner inconsistent with the interests of the class. *Davis v. Comed, Inc.*, 619 F.2d 588 (6th Cir., 1990) (internal citations omitted.) To the extent the real party in interest is the corporation, (in this case the LLC), the representative party must be free of any interest which holds the potential of influencing his conduct in a manner inconsistent with the interests of the company. The heart of the action is the corporate claim and must not be the representative's own. See *Sweet v. Bermingham*, 65 F.R.D. 551 (U.S.D.C. N.Y., 1975), citing *Ross v. Bernhard*, 396 U.S. 531, 24 L.Ed.2d 729, 90 S.Ct. 733(1970).

Courts have examined several factors or elements in determining whether a particular

derivative plaintiff can provide the requisite fair and adequate representation. Typically, the elements are intertwined and it is frequently a combination of factors which leads a court to conclude a plaintiff does not fulfill the requirements of Rule 23(b)(1). Among the elements which the courts have evaluated in considering whether a derivative plaintiff meets all Rule 23's representation requirements are: economic antagonisms between representative and class; the remedy sought by plaintiff in the derivative action; indications that the named plaintiff was not the driving force behind the litigation; plaintiff's unfamiliarity with the litigation; other litigation pending between plaintiff and defendants; the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action, itself; plaintiff's vindictiveness towards defendants; and, finally, the degree of support plaintiff was receiving from the shareholders he purported to represent. *Davis v. Comed, Inc.*, supra, 619 F.2d at 593-594.

"A plaintiff in a shareholder derivative action owes the corporation his undivided loyalty. The plaintiff must not have ulterior motives and must not be pursuing an external personal agenda... In deciding this question, the court may properly consider the amount of plaintiff's stake in the corporation as balanced against his interests and how the litigation may affect his interests... The court may properly consider the plaintiff's vindictiveness toward the defendant, and whether his action is inspired by a personal agenda, in determining whether the plaintiff is an adequate representative of the stockholders." *Smith v. Ayres*, 977 F.2d. 946 (5th Cir. 1992). (Internal citations omitted.)

Personal Motivation.

Rather than filing an individual action, which Laurence could have done under code section 33-44-410, he chose to file a shareholder derivative action under which, if he were to succeed, the company could execute against the LLC membership of Richard, thus effectively removing the

sixty percent member by a five percent member and entirely disabling the management of the LLC. Although this issue was addressed preliminarily, the Court reverses its preliminary findings, which are unsupported by the complete record at trial.

I conclude that Laurence is acting in pursuit of personal gain and not in the best interest of the Company as his conduct has caused direct harm to the Company. Although the Court preliminarily ruled that Laurence could adequately defend the best interest of the Company, the Court reverses its preliminary finding, which is unsupported by the complete record.

Vindictiveness toward Defendant

At trial, more evidence of the animus of Laurence was presented through the testimony of Ted Stoney, which detailed threats and disloyal statements on multiple occasions. Memorably Laurence told Ted, "I'm going to get Richard. I'm going to turn his world upside down".

In the United States Fifth Circuit Court of Appeals case of *Smith v. Ayres*, supra, the Court affirmed the dismissal by the District Court of the Plaintiff stockholder derivative suit, finding that the putative plaintiff (also a "class of one"), lacked standing to pursue the case because of, inter alia, his personal animus toward the defendant. In that case, Ayres was general counsel for the family corporation. Citing the United States Sixth Circuit Court decision in *Davis v. Comed*, (supra), the *Smith v. Ayres* court held that the trial court, in dismissing the case, properly considered vindictiveness of the plaintiff toward the defendant. The Court recited the testimony of the Plaintiff Smith at trial: Smith testified that he "is committed to ruin ten years of (Ayres life) because I'm going to be sure that Pat Holloway prevails...and he – if he thinks this is even the end of the tenth round, I mean we're – we're not even in the first round." 977 F.2d at 949.

The *Smith v. Ayres* testimony is quite similar to the testimony of Ted Stoney, demonstrating that Laurence intended to cause great hardship for Richard through the present litigation.

The Court concludes that Laurence is not a fair and adequate representative under Rule 23(b)(1). His motivations are more vindictive and personal, than they are to vindicate a corporate wrong. The equitable remedy sought by Laurence is too tainted by his inappropriate conduct, particularly in light of the overwhelming opposition to the action by ninety percent of the membership of the LLC.

Dissociation.

As previously noted, the Court issued an Order on February, 24, 2020, preliminarily denying Motion of the Defendant to Dissociate Laurence Stoney from the LLC. Having now heard the entire case, the Court reverses this prior order.

The term “dissociation” refers to the change in relationships among the dissociated member of an LLC, the company, and the other members caused by a ceasing of a member to be associated in the carrying on of the business of the company. An action for dissociation is equitable in nature. *Park Regency, LLC v. R & D Development of the Carolinas*, 402 S.C. 401, 741 S.E.2d 528 (Ct. App. 2012). See also *Ballard v. Robinson*, 399 S.C. 588, 733 S.E.2d 107 (2012).

A member may be dissociated from a limited liability company on application by the company or another member by judicial determination, if the court finds that the member “engaged in conduct relating to the business of the company which makes it not reasonably practicable to carry on the business with the member”. S.C. Code Ann. Section 33-44-601(6)(iii). The three LLC members who appeared in the trial of this case, Laurence Stoney, Richard Stoney, and Ted Stoney, each testified that it was not reasonably practicable to carry on the business of the LLC with Laurence Stoney as a member. Laurence further testified: “I don’t want to be in the restaurant business with Richard”.

The Court finds the Supreme Court of New Jersey in the case of *IE Test, LLC v. Carroll*,

226 N.J. 166, 140 A.3rd 1268 (N.J. Sup. Ct. 2016), to be persuasive. Notably, all parties cite the case to the Court. The language of the New Jersey LLC Statute, as discussed in the *IE Test* case, uses the same “not reasonably practicable” standard as South Carolina. The Court similarly concludes that the words of the statute should be given their ordinary meaning and significance: “reasonable” to mean “fair, proper or moderate under the circumstances, sensible”; and “practicable” to denote “reasonably capable of being accomplished; feasible in a particular situation.” Black’s Law Dictionary (10th Ed. 2014). Thus, the pivotal language of the statute requires that the court find, in order to dissociate a member, that it must be unfeasible, despite reasonable efforts, to keep the LLC operating while the disputed member remains affiliated with it.

The standard for dissociation is not met by mere conflict among LLC members, however. Rather, the question the Court must address is whether the LLC can be managed notwithstanding the conflict. In *IE Test*, the New Jersey Supreme Court cited seven factors for consideration, which were substantially borrowed from the Colorado case of *Gagne v. Gagne*, 338 P.3rd 1152 (Colo. App. 2014); qualifying the factors, however, to say that the analysis is a case specific one, that each case must be decided on its own merits, and that there is neither a requirement that all factors support a conclusion, nor a single factor that determines the outcome. The *IE Test* factors relevant to dissociation, “among others that may be relevant to a particular case” are: (1) the nature of the LLC member’s conduct relating to the LLC’s business; (2) whether, with the LLC member remaining a member, the entity may be managed so as to promote the purposes for which it was formed; (3) whether the dispute among the LLC members precludes them from working with one another to pursue the goals of the LLC; (4) whether there is a deadlock among the members; (5) whether, despite that deadlock, members can make decisions on the management of the company

pursuant to the operating agreement or in accordance with applicable statutory provisions; (6) whether, due to the financial position of the LLC, there is still a business to operate; and (7) whether continuing the LLC with the LLC member remaining a member, is financially feasible.

The Court assigns great weight to the positions of the parties who agree that it is not reasonably practicable to continue the business of the LLC with Laurence as a member. The denigration of the business of the restaurant by Laurence to its food vendors, his efforts to cause a change of ownership or management through the Family Court divorce trial, and his attempts to purchase the East Bay Street land without disclosing his efforts to Richard, Ted or to any other member, signify a member relationship of a significantly negative magnitude, sufficient to disrupt the orderly operation of the LLC in the future.

I conclude that Laurence Stoney has engaged in conduct that makes it not reasonably practicable to carry on the business with Laurence as a member. The distributional interest of Laurence in the LLC must therefore be Ordered dissociated by the Court.

The South Carolina Limited Liability Act provides in Section 33-44-701 that upon dissociation of a member the company shall purchase the distributional interest of the dissociated member under a negotiation protocol set forth in that section. Upon failure of the parties to agree, the dissociated member may petition the Court to determine the fair value of the dissociated member's share pursuant to Section 33-41-702.

Because the conclusions reached herein are dispositive of all claims and defenses of Plaintiff and Defendants not otherwise addressed, I deem it unnecessary to discuss them.

Based upon the finding that Laurence Stoney is not an appropriate representative in this shareholder derivative action and that he should be ordered dissociated from the Company, it is,

ORDERED that the relief sought by the Plaintiff is hereby DENIED; and it is further,

ORDERED that the LLC membership interest of Laurence O. Stoney in the Boathouse at Breach Inlet, LLC is hereby dissociated from the LLC; and it is further,

ORDERED AND ADJUDGED that within thirty (30) days from the filing of this Order the Boathouse at Breach Inlet, LLC shall comply with the requirements of Section 33-44-701(b) of the Code of Laws of South Carolina, as amended, and commence the statutory process for the purchase of the distributional interest of Laurence Stoney by the Company; and it is further

ORDERED that each party shall bear its own costs and expenses incurred herein.

Clifton Newman
Presiding Judge
South Carolina Business Court

Columbia, South Carolina

July 2, 2020



Charleston Common Pleas

Case Caption: Boathouse at Breach Inlet LLC The , plaintiff, et al VS Richard S W
Stoney , defendant, et al
Case Number: 2015CP1005463
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

The Boathouse at Breach Inlet, LLC, by and)
through its member, Laurence O. Stoney,)
Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually and as)
Member-manager of The Boathouse at)
Breach Inlet, LLC and Crew Carolina, LLC,)

Defendants.)

Theodore D. Stoney, Jr., individually and as)
Trustee for Richard Stoney, Jr. and Gregory)
G. Holmes,)

Third-Party Intervenors.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-10-5463

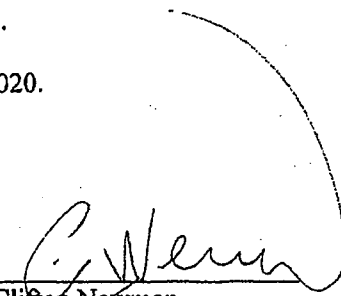
**ORDER DENYING
MOTION TO ALTER OR AMEND**

This matter is before the Court on a Motion of the Plaintiff to Alter or Amend the Order of the Court filed on July 7, 2020.

Having fully considered the 59(e) Motion of the Plaintiff, the Court finds that the evidence supports the facts, legal analysis, and conclusion of the Order. Therefore, the Order of the Court should not be Altered or Amended.

The Motion to Alter or Amend is therefore DENIED.

AND IT IS SO ORDERED this 31st day of July 2020.


Clifton Newman
Presiding Judge



Julie J. Armstrong
Charleston County Clerk of Court

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Circuit Court Case Details
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Boathouse at Breach Inlet LLC The , plaintiff, et al VS Richard S W Stoney , defendant, et al

Case Number:	2015CP1005463	Court Agency:	Common Pleas	Filed Date:	10/09/2015
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Newman, Clifton		
Disposition:	Ended by Non Jury	Disposition Date:	07/07/2020	Disposition Judge:	Newman, Clifton
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Boathouse at Breach Inlet LLC The	NEF(08-28-2020 11:18:59 AM) Notice/Other	Filing		08/28/2020-11:32		
Boathouse at Breach Inlet LLC The	Notice of Appeal to Court of Appeals for Order Filed 7/7/20	Filing		08/28/2020-11:18		
Stoney, Richard S W	NEF(08-25-2020 04:40:06 PM) Reply/Other	Filing		08/25/2020-16:50		
Stoney, Richard S W	Richard S W Stoney's Return to the Order Dated July 7th	Filing		08/25/2020-16:40		
Boathouse at Breach Inlet LLC The	NEF(08-10-2020 10:45:38 AM) Order/Other	Filing		08/10/2020-10:45		
Boathouse at Breach Inlet LLC The	Order Denying motion to Alter or Amend	Order		08/10/2020-10:45		
Stoney, Richard S W	NEF(07-27-2020 05:36:47 PM) Reply/Other	Filing		07/28/2020-09:05		
Stoney, Richard S W	Richard S W Stoney's Return to Pitffs Motion to Alter or Am	Filing		07/27/2020-17:36		
Boathouse at Breach Inlet LLC The	NEF(07-16-2020 02:11:38 PM) Motion/Alter and/or Amend	Filing		07/16/2020-14:15		
Stoney, Laurence O Jr	Motion/Alter and/or Amend	Motion		07/16/2020-14:11	07/16/2020-14:11	
Stoney, Richard S W	NEF(07-07-2020 10:38:40 AM) Order/Other	Filing		07/07/2020-10:38		
Stoney, Richard S W	Order/Relief Sought by Pitff Is Denied etc	Order		07/07/2020-10:38		
Stoney, Richard S W	NEF(05-11-2020 11:06:50 AM) Order/Order Cover Sheet \$25....	Filing		05/11/2020-12:00	07/07/2020-12:00	
Stoney, Richard S W	Order/Order Cover Sheet \$25.00	Filing		05/11/2020-11:06	07/07/2020-11:06	
Boathouse at Breach Inlet LLC The	NEF(05-04-2020 02:49:37 PM) Proposed Order/Other	Filing		05/05/2020-13:42	07/07/2020-13:42	
Boathouse at Breach Inlet LLC The	Order/Order Cover Sheet \$25.00	Filing		05/04/2020-14:49	07/07/2020-14:49	
McQuillin, Stafford John III	4/13/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		03/12/2020-09:17	07/07/2020-09:17	
Barr, Capers G. III	4/13/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		03/12/2020-09:17	07/07/2020-09:17	
Kefalos, George J.	4/13/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		03/12/2020-09:17	07/07/2020-09:17	
Gilliam, Tyler Keith	4/13/2020_NJR_Roster/Notice of Case Roster Publication Sent	Action		03/12/2020-09:17	07/07/2020-09:17	
Boathouse at Breach Inlet LLC The	NEF(03-09-2020 07:12:42 AM) Motion/In Limine	Filing		03/09/2020-09:58	07/07/2020-09:58	
Boathouse at Breach Inlet LLC The	Supplemental Motion/In Limine	Motion		03/09/2020-07:12	03/09/2020-07:12	
Boathouse at Breach Inlet LLC The	NEF(03-06-2020 01:55:48 PM) Motion/In Limine	Filing		03/06/2020-14:03	07/07/2020-14:03	
Boathouse at Breach Inlet LLC The	Motion In Limine & Memo in Support	Motion		03/06/2020-13:55	07/07/2020-13:55	
Boathouse at Breach Inlet LLC The	NEF(03-06-2020 01:30:47 PM) Motion/In Limine	Filing		03/06/2020-13:53	07/07/2020-13:53	
Boathouse at Breach Inlet LLC The	Motion/In Limine (filed in error)	Motion		03/06/2020-13:30	07/07/2020-13:30	
Boathouse at Breach Inlet LLC The	NEF(02-24-2020 04:31:40 PM) Order/Other	Filing		02/24/2020-16:31	07/07/2020-16:31	
Boathouse at Breach Inlet LLC The	Order Preliminarily denying Motion to Dissociate	Order		02/24/2020-16:31	07/07/2020-16:31	
Boathouse at Breach Inlet LLC The	NEF(02-21-2020 03:50:00 PM) Order/Order Cover Sheet \$25....	Filing		02/24/2020-09:53	07/07/2020-09:53	
Boathouse at Breach Inlet LLC The	Order/Order Cover Sheet \$25.00	Filing		02/21/2020-15:50	07/07/2020-15:50	
Stoney, Richard S W	NEF(01-28-2020 10:14:47 AM) Memo/Memo in Support	Filing		01/28/2020-11:06	07/07/2020-11:06	

Stoney, Richard S W	Crt Parties Supplemental Memo In Support of Mot/Dissociate	Filing		01/28/2020-10:14	07/07/2020-10:14	📄
Boathouse at Breach Inlet LLC The	NEF(01-22-2020 03:57:53 PM) Memo/Memo In Opposition	Filing		01/22/2020-16:06	07/07/2020-16:06	📄
Boathouse at Breach Inlet LLC The	Plaintiff's Memo In Opposition to Motion to Dissociate	Filing		01/22/2020-15:57	07/07/2020-15:57	📄
Stoney, Theodore D	NEF(01-16-2020 04:22:03 PM) Memo/Memo In Support	Filing		01/16/2020-16:22	07/07/2020-16:22	📄
Stoney, Theodore D	Memo In Support of Defnts Motion to Dissociate & Buyout	Filing		01/16/2020-16:22	07/07/2020-16:22	📄
Boathouse at Breach Inlet LLC The	NEF(01-15-2020 12:06:44 PM) Memo/Memo In Opposition	Filing		01/15/2020-13:20	07/07/2020-13:20	📄
Boathouse at Breach Inlet LLC The	Pitff's Memo In Opposition to Motion to Dissociate	Filing		01/15/2020-12:06	07/07/2020-12:06	📄
Stoney, Richard S W	NEF(01-07-2020 03:10:13 PM) Motion/Other	Filing		01/07/2020-15:21	07/07/2020-15:21	📄
Stoney, Richard S W	Motion/Dissociate Laurence O. Stoney	Motion		01/07/2020-15:10	07/07/2020-15:10	📄
Boathouse at Breach Inlet LLC The	NEF(01-03-2020 02:11:22 PM) Motion/Compel	Filing		01/03/2020-14:16	07/07/2020-14:16	📄
Boathouse at Breach Inlet LLC The	Motion/Compel to Defnts	Motion		01/03/2020-14:11	07/07/2020-14:11	📄
Boathouse at Breach Inlet LLC The	NEF(11-14-2019 12:19:43 PM) Order/Scheduling Order	Filing		11/14/2019-12:19	07/07/2020-12:19	📄
Boathouse at Breach Inlet LLC The	Order/Scheduling Order	Order		11/14/2019-12:19	07/07/2020-12:19	📄
	Remittitur From Court Of Appeals-Motion to Dismiss Granted	Filing		10/24/2019-17:16	07/07/2020-17:16	📄
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		09/25/2019-11:38	07/07/2020-11:38	📄
McQuillin, Stafford John III	Pitff Motion/Interim Relief & Crt/Srv	Motion		09/25/2019-09:26	07/07/2020-09:26	📄
Stoney, Richard S W	Notice of Appealing Order from Judge Newman, srv	Filing		09/18/2019-09:22	07/07/2020-09:22	📄
	Order Denying Motion to Alter or Amend	Order		09/17/2019-16:10	07/07/2020-16:10	📄
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		07/30/2019-15:40	07/07/2020-15:40	📄
McQuillin, Stafford John III	Pitff Motion/Scheduling Order & Crt/Srv	Motion		07/30/2019-13:38	07/07/2020-13:38	📄
	Plaintiff's Response to Defendants' Reply, crt/srv	Filing		06/13/2019-11:52	07/07/2020-11:52	📄
Stoney, Richard S W	Reply to Memo In Opposition to Motion/Reconsider, crt/srv	Filing		06/10/2019-14:05	07/07/2020-14:05	📄
	Piff's Memo In Opposition to Mot/Alter or Amend Order, srv	Filing		06/05/2019-08:56	07/07/2020-08:56	📄
Barr, Capers G. III	Defnt Motion/Amend Findings & Crt/Srv	Motion		06/04/2019-14:24	07/07/2020-14:24	📄
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		06/04/2019-11:27	07/07/2020-11:27	📄
	Pitff's Memo In Opposition to Motion/Protective Order, srv	Filing		05/24/2019-08:39	07/07/2020-08:39	📄
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		05/22/2019-12:22	07/07/2020-12:22	📄
Barr, Capers G. III	Defnt Motion/Protective Order & Crt/Srv	Motion		05/22/2019-09:26	07/07/2020-09:26	📄
	Order on Laurence Stoney Standing to Maintain Action	Order		05/20/2019-10:03	07/07/2020-10:03	📄
	Stipulation of Defendants & 3rd Party Intervenor	Filing		02/01/2019-08:54	07/07/2020-08:54	📄
	Plaintiff's Memo In Support of Motion for Hearing, crt/srv	Filing		12/12/2018-08:58	07/07/2020-08:58	📄
	Affidavit of Lori D. Stoney	Filing		12/12/2018-08:56	07/07/2020-08:56	📄
	Stipulation, crt/srv	Filing		12/07/2018-09:01	07/07/2020-09:01	📄
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		11/21/2018-16:15	07/07/2020-16:15	📄
McQuillin, Stafford John III	Pitff Motion for Hearing & Crt/Srv	Motion		11/21/2018-12:12	07/07/2020-12:12	📄
	Pitffs' Memo In Opposition to Motion to Bifurcate, crt/srv	Filing		11/08/2018-08:59	07/07/2020-08:59	📄
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		10/29/2018-15:09	07/07/2020-15:09	📄
McQuillin, Stafford John III	Pitff Motion/Compel & Crt/Srv	Motion		10/29/2018-10:55	07/07/2020-10:55	📄
Barr, Capers G. III	Certificate Of Service	Filing		03/29/2018-11:48	07/07/2020-11:48	📄
Barr, Capers G. III	Defnt & 3rd Party Intervenor Mot to Bifurcate & Memo	Motion		03/29/2018-11:47	07/07/2020-11:47	📄
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		03/29/2018-09:37	07/07/2020-09:37	📄
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		03/28/2018-16:12	07/07/2020-16:12	📄
McQuillin, Stafford John III	Plaintiff Motion for Entry of Amended Scheduling Order, srv	Motion		03/28/2018-11:15	07/07/2020-11:15	📄
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		08/08/2017-08:58	07/07/2020-08:58	📄
Barr, Capers G. III	Defnts Motion to Compel Supp Discovery & crt/srv	Motion		08/07/2017-08:50	07/07/2020-08:50	📄
	Answer of 3rd party Intervenor	Filing		07/24/2017-11:51	07/07/2020-11:51	📄
Boathouse at Breach Inlet	Order/granting motion to	Order		06/22/2017-11:44	07/07/2020-11:44	📄

LLC The	Intervene					
Boathouse at Breach Inlet LLC The	Order on Plntff's Mot to Compel Discovery Responses	Order		06/22/2017-11:35	07/07/2020-11:35	
Barr, Capers G. III	Motion/Compel Discovery Responses & cert/srv	Motion		06/19/2017-15:03	07/07/2020-15:03	
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		06/19/2017-11:45	07/07/2020-11:45	
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		06/12/2017-16:29	07/07/2020-16:29	
McQuillin, Stafford John III	Motion/Compel by plaintiff, crt/srv	Motion		06/12/2017-11:25	06/22/2017-11:25	
	Applicant Intervenor's Memo in support of Mot/Intervene, srv	Filing		05/04/2017-14:23	07/07/2020-14:23	
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		05/04/2017-11:24	07/07/2020-11:24	
Kefalos, George J.	Amended Motion to Intervene by Atty Kefalos, crt/srv	Motion		05/04/2017-09:22	06/22/2017-09:22	
Stoney, Richard S W	Certificate Of Service	Filing		04/13/2017-08:58	07/07/2020-08:58	
Stoney, Richard S W	Answer of Richard Stoney & Cre Carolina to Amended Cmplnt	Filing		04/13/2017-08:57	07/07/2020-08:57	
	Filing: Verified Amended Derivative Complaint, Crt/Srv	Filing		03/28/2017-10:53	07/07/2020-10:53	
	Order/granting plntff's mot to amend cmlnt	Order		03/21/2017-16:54	07/07/2020-16:54	
McQuillin, Stafford John III	Roster/Notice of Case Roster Publication Sent	Action		02/01/2017-09:02	07/07/2020-09:02	
Kefalos, George J.	Roster/Notice of Case Roster Publication Sent	Action		02/01/2017-09:02	07/07/2020-09:02	
Barr, Capers G. III	Roster/Notice of Case Roster Publication Sent	Action		02/01/2017-09:02	07/07/2020-09:02	
Boathouse at Breach Inlet LLC The	Memo in Opposition to Motion for Continuance, crt/srv	Filing		01/26/2017-13:29	07/07/2020-13:29	
Barr, Capers G. III	Motion/Continuance by Theodore Stoney, crt/srv	Motion		01/26/2017-13:27	07/07/2020-13:27	
Kefalos, George J.	Motion/Motion Filing Fee	Filing		01/26/2017-11:31	07/07/2020-11:31	
Boathouse at Breach Inlet LLC The	Memo in Support of Motion to Amend Complaint, crt/srv	Filing		01/25/2017-16:16	07/07/2020-16:16	
	Plaintiffs Memo in Opposition to Motion to Intervene, srv	Filing		01/25/2017-16:03	07/07/2020-16:03	
	Plaintiffs Memo in Opposition to Motion to Disqualify, srv	Filing		01/25/2017-15:37	07/07/2020-15:37	
	Affidavit/Affidavit of Don M Hollerbach	Filing		01/25/2017-10:23	07/07/2020-10:23	
	Affidavit/Affidavit of Patricia Thomas	Filing		01/25/2017-10:22	07/07/2020-10:22	
	Affidavit of Nathan M Crystal In Opposition to Intervenor	Filing		01/25/2017-10:21	07/07/2020-10:21	
	Affidavit/Affidavit of Lori D Stoney	Filing		01/25/2017-10:19	07/07/2020-10:19	
Boathouse at Breach Inlet LLC The	Order/Order Filing Fee	Filing		12/22/2016-10:27	07/07/2020-10:27	
Boathouse at Breach Inlet LLC The	Consent Scheduling Order	Order		12/21/2016-10:31	07/07/2020-10:31	
	Order/Assign Case to Business Court-Judge Newman	Order		12/09/2016-12:19	07/07/2020-12:19	
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		11/28/2016-16:21	07/07/2020-16:21	
McQuillin, Stafford John III	Motion/Case Assignment to Business Court by plaintiff, srv	Motion		11/28/2016-11:11	07/07/2020-11:11	
Boathouse at Breach Inlet LLC The	Motion/Motion Filing Fee	Filing		11/23/2016-15:26	07/07/2020-15:26	
McQuillin, Stafford John III	Motion/To Amend Complaint, crt/srv	Motion		11/23/2016-09:37	07/07/2020-09:37	
McQuillin, Stafford John III	Roster/Notice of Case Roster Publication Sent	Action		11/03/2016-09:12	07/07/2020-09:12	
Kefalos, George J.	Roster/Notice of Case Roster Publication Sent	Action		11/03/2016-09:12	07/07/2020-09:12	
Barr, Capers G. III	Roster/Notice of Case Roster Publication Sent	Action		11/03/2016-09:12	07/07/2020-09:12	
Kefalos, George J.	Motion/Motion Filing Fee	Filing		10/18/2016-15:33	07/07/2020-15:33	
Kefalos, George J.	Motion/Intervene & Remove Counsel by defendant, crt/srv	Motion		10/18/2016-10:05	05/03/2017-10:05	
Boathouse at Breach Inlet LLC The	ADR/Notice of ADR	Action		08/03/2016-10:53	07/07/2020-10:53	
Barr, Capers G. III	Roster/Notice of Motions Roster Publication Sent	Action		06/07/2016-11:25	07/07/2020-11:25	
McQuillin, Stafford John III	Roster/Notice of Motions Roster Publication Sent	Action		06/07/2016-11:25	07/07/2020-11:25	
Boathouse at Breach Inlet LLC The	ADR/Alternative Dispute Resolution (Workflow)	Action		05/06/2016-16:46	08/03/2016-16:46	
Stoney, Richard S W	Motion/Motion Filing Fee	Filing		05/06/2016-12:21	07/07/2020-12:21	
Barr, Capers G. III	Motion/Compel by defendant, crt/srv	Motion		05/06/2016-11:41	07/12/2016-11:41	
Stoney, Laurence O Jr	Archived Document	Filing		05/05/2016-00:00	07/07/2020-00:00	
Boathouse at Breach Inlet LLC The	Archived Document	Filing		05/05/2016-00:00	07/07/2020-00:00	
Stoney, Richard S W	Answer of Richard Stoney & Crew Carolina LLC & cert/srv	Filing		11/12/2015-11:32	07/07/2020-11:32	
	Service/Acceptance Of Service	Filing		10/13/2015-11:47	07/07/2020-11:47	

4/8/2021

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Boathouse at Breach Inlet LLC The	Summons & Complaint	Filing	10/09/2015-16:44	07/07/2020-16:44	

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10- 5463

The Boathouse at Breach Inlet, LLC,
by and through its member, Laurence
O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually
and as member-manager of The
Boathouse at Breach Inlet, LLC and
Crew Carolina, LLC.

Defendant.

VERIFIED
DERIVATIVE COMPLAINT

2015 OCT -9 PM 4:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

COMES NOW the Boathouse at Breach Inlet, LLC, by and through its member Laurence O. Stoney, Jr., complaining of the above-named Defendant and alleging as follows:

THE PARTIES

1. The Boathouse at Breach Inlet, LLC (the "Boathouse") is a South Carolina limited liability company authorized to do business in South Carolina. The primary business of the Boathouse is a restaurant located on the Isle of Palms in Charleston County, South Carolina.

2. Laurence O. Stoney, Jr. ("L. Stoney") is a citizen and resident of Charleston County, South Carolina. He is a member of the Boathouse and brings this action in a representative capacity and not in his individual capacity.

3. Defendant Richard S.W. Stoney ("R. Stoney") is a citizen and resident of Charleston County, South Carolina. He is a member and the manager of the Boathouse.

4. Defendant Crew Carolina, LLC ("Crew Carolina") is a South Carolina limited liability company, wholly owned and managed by R. Stoney.

5. This action is being brought by L. Stoney, on behalf of the Boathouse, against R. Stoney and Crew Carolina as a derivative action pursuant to S.C. Code Ann. § 33-44-1101 *et seq.*

6. Plaintiff brings this action derivatively in the right and for the benefit of the Boathouse to redress R. Stoney's breaches of fiduciary duty, unjust enrichment, conversion and other violations of law and to address the financial mismanagement of the Boathouse by R. Stoney at least in part through improper payments, loans, or advances to Crew Carolina.

7. This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

8. Plaintiff will fairly and adequately represent the interests of the Boathouse and its members in enforcing and prosecuting the rights of the Boathouse.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the Defendants and over the subject matter of this action.

10. Venue is proper in the Court of Common Pleas for Charleston County.

FACTS

11. The Boathouse was formed on November 21, 1997. At that time, the members entered into an Operating Agreement.

12. The Boathouse has been controlled by the R. Stoney since its formation.

13. The original members of the Boathouse were R. Stoney (as member-manager), L. Stoney, Theodore D. Stoney, Jr., and Theodore Stoney, Jr, as trustee for the benefit of Richard S.W. Stoney, Jr. under agreement dated November 19, 1997.

14. Upon information and belief, R. Stoney has added additional members to the Boathouse and the current members are as follows: R. Stoney, L. Stoney, Theodore D. Stoney, Jr., and Theodore Stoney, Jr, as trustee for the benefit of Richard S.W. Stoney, Jr.; Lori Stoney; Croft Stoney; and Holmes Capital Management, LLC.

15. Following the admission of Lori Stoney, Croft Stoney and Holmes Capital Management, LLC, the Boathouse had no written operating agreement.

16. Under the terms of the 1997 Operating Agreement, the manager, R. Stoney, had broad powers that were only subject to limitation by the nonwaivable provisions of the South Carolina Limited Liability Company Act ("LLC Act"). According to R. Stoney's sworn testimony, "the buck stops with me . . . I make the decisions right or wrong."

17. Crew Carolina, as described by R. Stoney, is "a management company for various restaurants" including the Boathouse.

18. The instant derivative action seeks to recover significant sums of monies wrongfully diverted to Crew Carolina from the Boathouse by R. Stoney for personal use or use in other personal business ventures to the detriment of the Boathouse.

19. Over the last 5 months, L. Stoney, through his counsel, has made earnest efforts with R. Stoney to induce remedial action on R. Stoney's part. Specifically, L. Stoney, through counsel, had four meetings with R. Stoney's counsel on the following dates: (1) May 27, 2015; (2) June 15, 2015; (3) June 24, 2015; and July 31, 2015. At each meeting, R. Stoney's counsel was provided with an outline identifying R. Stoney as the wrongdoer, describing the factual basis

of the wrongful acts and harm to the Boathouse, and requesting remedial relief. For example, the outlines stated the following regarding R. Stoney's wrongful acts and harm to the Boathouse:

- a. "Based on the 2013 Federal Income Tax Return, Richard Stoney improperly took \$3,807,322 out of the Boathouse at Breach Inlet, LLC."
- b. "Richard has diverted significant sums from the LLC to Crew Carolina, LLC and to himself personally."
- c. "Richard used the funds diverted to Crew Carolina, LLC for his own personal use or uses in other businesses he controls (commingled funds)."
- d. "Richard has used the Boathouse to guarantee his personal debt and other business obligations."
- e. "Richard failed to collect the substantial sums due from Crew Carolina, LLC and himself that are owed to the LLC."
- f. "Because Richard Stoney systematically drained money out of the Company, it was forced to borrow money from Related Parties."
- g. "Richard Stoney, as the Manager of the Company, violated his fiduciary duty of care and obligation of good faith and fair dealing."

In addition to identifying R. Stoney as the wrongdoer and describing the factual basis of the wrongful acts and harm to the Boathouse, the outlines presented at each meeting requested remedial relief with various alternative remedial actions, including the following:

- a. "Loans/advances to Crew Carolina, LLC and Richard stop immediately."
- b. "Crew Carolina and Richard immediately repay advances/loans (and market rate interest) made to them by the LLC."

- c. "Alternatively, the Company will retain an unbiased business lawyer as Special Independent Counsel for the purposes of determining whether or not it is appropriate for the LLC to pursue an action derivatively."
- d. "Alternatively, Richard Stoney should be replaced as the LLC's Manager by an independent third party and, Crew Carolina, LLC should be replaced as the Management Company by an independent third party operator."

At each meeting, counsel for L. Stoney explained the outlines and answered questions from R. Stoney or his counsel. Despite these efforts, R. Stoney refused to take any remedial action, including L. Stoney's request to R. Stoney that the Boathouse retain an unbiased business lawyer to serve as Special Independent Counsel for the purposes of determining whether or not it was appropriate for the Boathouse to pursue an action derivatively.

20. In addition to the four meetings with counsel, L. Stoney voluntarily participated in mediation with R. Stoney, and counsel has met with the mediator on four separate occasions over the period of a month. Despite L. Stoney's earnest efforts, R. Stoney has refused to remedy the damage he caused to the Boathouse and its members.

21. All efforts to convince R. Stoney, as majority member and manager, to cooperate in bringing this action against himself and his wholly owned limited company Crew Carolina have not succeeded, including L. Stoney's request to R. Stoney that the Boathouse retain an unbiased business lawyer to serve as Special Independent Counsel for the purposes of determining whether or not it was appropriate for the Boathouse to pursue an action derivatively. Any future efforts are not likely to succeed because this action involves claims of wrongdoing by R. Stoney to the detriment of the Boathouse. As set forth in further detail below, R. Stoney has

engaged in egregious breaches of his fiduciary duties to the company and fraudulently misappropriated and converted significant sums of company property.

22. Plaintiff has made multiple demands on R. Stoney, as manager of the Boathouse, to remedy his and Crew Carolina's wrongdoings, and any further demands are excused because R. Stoney has complete control over the Boathouse. A demand to R. Stoney that he bring an action in the name of the Boathouse against himself or his wholly owned limited liability company, Crew Carolina, will to be futile and useless because R. Stoney was and is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action against himself and his wholly owned company, Crew Carolina. Unless L. Stoney is permitted to bring this derivative action, the Boathouse will be without any immediate and certain remedy, resulting in a complete failure of justice, and the general principles of equity and fairness will be defeated. L. Stoney alleges this lawsuit is needed to prevent injustice because it is readily apparent that material company rights and assets are being invaded and misused by R. Stoney and those rights cannot otherwise be protected without this lawsuit.

23. L. Stoney was a member of the Boathouse during the time R. Stoney committed the wrongdoings complained of herein. L. Stoney remains a member of the Boathouse as of the date of the commencement of this action.

24. R. Stoney was a member and the manager of the Boathouse at the time he committed the wrongdoings complained of herein. R. Stoney remains a member and the manager of the Boathouse as of the date of the commencement of this action.

25. R. Stoney and Crew Carolina have and continue to commit wrongful acts to the detriment of the Boathouse by, *inter alia*:

- a. misappropriating and converting millions of dollars (upon information and belief, this number exceeds \$4,000,000) from the Boathouse to Crew Carolina to fund other entities in which R. Stoney owns wholly or in part, including Lake Julian and Carolinas;
- b. commingling of finances among business entities that R. Stoney owns wholly or in part without permission from the members of the Boathouse;
- c. wrongfully transferring monies to Crew Carolina, himself, members of his family, and close personal friends and business associates;
- d. upon information and belief, making improper cash disbursements from the Boathouse and Crew Carolina (with money loaned to Crew Carolina from the Boathouse) for R. Stoney's personal use;
- e. failing to collect and/or repay the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- f. failing to impose and collect interest on the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- g. upon information and belief, using the Boathouse to guarantee R. Stoney's personal and other business obligations without the knowledge of other members;
- h. upon information and belief, misappropriating and converting company funds to pay for Crew Carolina and his defense costs in connection with this matter; and

i. failing to provide financial records, including profit and loss statements, for the Boathouse in order to conceal R. Stoney and Crew Carolina's improper actions.

26. R. Stoney has and continues to conceal the wrongful acts described above.

27. R. Stoney's wrongful acts as described above were not within his actual authority as manager and violated his fiduciary duties of care and obligations of good faith and fair dealing as manager.

28. As alleged herein, R. Stoney engaged in reckless conduct, intentional misconduct, and knowing violated the law.

29. R. Stoney's wrongful acts as described above were outside the ordinary course of the Boathouse's business.

30. The Boathouse has been damaged as a result of these actions, and R. Stoney's efforts to conceal and deny this wrongdoing has further harmed the Boathouse.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

31. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

32. At all times relevant to this lawsuit, R. Stoney was the manager of the Boathouse and Crew Carolina served as the management company to the Boathouse. As such, R. Stoney owed the fiduciary duties of care and the obligations of good faith and fair dealing to the Boathouse and all of its members. This obligation required R. Stoney to act in a manner beneficial to the Company and its members with regard to any decision or action taken on behalf of the company.

33. R. Stoney has breached his fiduciary duties of care and the obligations of good faith and fair dealing to the Boathouse and all of its members to the detriment of the Boathouse by, *inter alia*:

- a. misappropriating and converting millions of dollars (upon information and belief, this number exceeds \$4,000,000) from the Boathouse to Crew Carolina to fund other entities in which R. Stoney owns wholly or in part, including Lake Julian and Carolinas;
- b. commingling of finances among business entities that R. Stoney owns wholly or in part without permission from the members of the Boathouse;
- c. wrongfully transferring monies to Crew Carolina, himself, members of his family, and close personal friends and business associates;
- d. upon information and belief, making improper cash disbursements from the Boathouse and Crew Carolina (with money loaned to Crew Carolina from the Boathouse) for R. Stoney's personal use;
- e. failing to collect and/or repay the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- f. failing to impose and collect interest on the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- g. upon information and belief, using the Boathouse to guarantee R. Stoney's personal and other business obligations without the knowledge of other members;

h. upon information and belief, misappropriating and converting company funds to pay for Crew Carolina and his defense costs in connection with this matter; and

i. failing to provide financial records, including profit and loss statements, for the Boathouse in order to conceal R. Stoney and Crew Carolina's improper actions.

34. As discussed in more detail above, R. Stoney has breached his fiduciary duties by failing to act with due care and with the utmost good faith and fair dealing for the benefit of the Boathouse and its members, all as described in detail in the preceding paragraphs.

35. The Boathouse was damaged as a proximate result of these breaches of fiduciary duties and is entitled to recover actual damages, including pre-judgment interest, from R. Stoney and Crew Carolina, in an amount to be determined by the Court.

36. Further, because these actions were willful, wanton, or taken with a reckless disregard of the Boathouse's rights, the Boathouse is entitled to recover punitive damages from R. Stoney and Crew Carolina, to the extent allowed by law.

FOR AN ADDITIONAL CAUSE OF ACTION
(CONVERSION)

37. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

38. The Boathouse claimed and claims an interest in the monies that were wrongfully transferred by R. Stoney to Crew Carolina, himself, members of his family, and close personal friends and business associates as set forth above.

39. Upon information and belief, R. Stoney and Crew Carolina converted the funds transferred to Crew Carolina for R. Stoney's own personal use or the uses of his other business ventures without Plaintiff's permission.

40. As a direct and proximate result of this conversion, the Boathouse suffered damages for which it seeks actual and punitive damages together with pre-judgment interest.

FOR AN ADDITIONAL CAUSE OF ACTION
(PERSONAL LIABILITY FOR UNLAWFUL DISTRIBUTIONS, S.C. CODE ANN. § 33-44-407)

41. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

42. S.C. Code Ann. § 33-44-407 provides that a manger is personally liable to the company for distributions made in violation of the operating agreement, if there was an operating agreement. Alternatively, if there is no operating agreement, the statute governs the relationship between the members, managers and the company. S.C. Code Ann. § 33-44-103.

43. Under the statute, distributions are required to be in equal shares. S.C. Code Ann. § 33-44-405(a).

44. Under either alternative, R. Stoney, as manager of the Boathouse, has and continues to approve and make improper, disproportionate distributions, which (until this year) have been concealed.

45. R. Stoney, as manager, did not perform his duties in compliance with Section 33-44-409 as discussed herein.

46. As a result, R. Stoney is personally liable to the Boathouse for the amount of disproportionate distributions that he approved and made as manager.

FOR AN ADDITIONAL CAUSE OF ACTION
(ACCOUNTING)

47. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

48. Given the aforementioned financial wrongdoing by R. Stoney, the Boathouse seeks and demands a full accounting and examination of R. Stoney's personal records, Crew Carolina, LLC's records and the Boathouse's financial records to the fullest extent available under the South Carolina Uniform Limited Liability Act and/or equitable principles.

49. The aforementioned relief is necessary for the Boathouse to determine the precise nature of the aforementioned financial wrongdoing and to determine whether R. Stoney is responsible for other instances of financial mismanagement, breach of fiduciary duty and wrongdoing to the detriment of the Boathouse.

FOR AN ADDITIONAL CAUSE OF ACTION
(UNJUST ENRICHMENT)

50. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

51. R. Stoney and Crew Carolina, LLC are in possession of the Boathouse's profits and have retained them in the form of advances to Crew Carolina, LLC and/or R. Stoney, which in justice and equity belong to the Boathouse and are retained to the detriment of the Boathouse.

52. R. Stoney and Crew Carolina, LLC were unjustly enriched as a result of the numerous self-dealing and self-interested transactions R. Stoney caused the Boathouse to undertake as described more fully in the preceding paragraphs.

53. There was no justification of the enrichment of R. Stoney and/or Crew Carolina, LLC.

54. To the extent there is no other remedy at law, the Boathouse is entitled to recover the amount by which R. Stoney or Crew Carolina, LLC have been unjustly enriched, including pre-judgment interest, in an amount to be determined by the Court.

FOR AN ADDITIONAL CAUSE OF ACTION
(ATTORNEY'S FEES AND COSTS)

55. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

56. S.C. Code Ann. § 33-44-1104 provides for the recovery of reasonable expenses, including reasonable attorney's fees and costs in the event a derivative action for a limited liability company is successful.

57. L. Stoney, in his representative capacity, requests that this Court grant him such reasonable expenses, including reasonable attorney's fees and costs as authorized by statute to compensate him for bringing the present action.

FOR AN ADDITIONAL CAUSE OF ACTION
(Piercing Corporate Veil/Alter Ego)

58. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

59. Upon information and belief, R. Stoney is the sole member of Crew Carolina, LLC.

60. Upon information and belief, R. Stoney has consistently failed to observe the necessary corporate formalities with respect to Crew Carolina, as required by law, in comingling the funds of Crew Carolina and the Boathouse and R. Stoney's personal finances, in utilizing Crew Carolina as his "incorporated pocketbook," and failing to keep each company's financial affairs separate, siphoning "corporate" (company) funds, failing to maintain and keep

"corporate" records, and has otherwise so intermingled his personal and financial affairs with Crew Carolina that he has become, and is, the alter ego of Crew Carolina.

61. Failing to disregard Crew Carolina's "corporate form" and hold R. Stoney liable for his alter ego would work a fundamental unfairness against the Boathouse.

62. The alter ego relationship between R. Stoney and Crew Carolina entitles the Boathouse to "pierce the corporate veil" or disregard the corporate entity and recover against the individual, R. Stoney, for claims, debts, and damages as alleged hereinabove in this Complaint against Crew Carolina.

FOR AN ADDITIONAL CAUSE OF ACTION
(DECLARATORY JUDGMENT)

63. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

64. There exists an actual controversy between the Boathouse and Richard Stoney involving their respective rights, liabilities and legal relations relative to each other.

65. The Boathouse is entitled under the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, to a judgment of this Court declaring the rights, liabilities and relations of the parties hereto. Specifically, the Boathouse, by and through L. Stoney, is entitled to declarations that:

- a. Under the South Carolina Uniform Limited Liability Act, R. Stoney and Crew Carolina are not entitled to indemnification from the Boathouse to defend their wrongful acts as alleged herein. S.C. Code Ann. § 33-44-403, Rpt. Cmt. (A "manager is therefore entitled to indemnification only if the act was within the member or manager's actual authority." "A member or manager is therefore not

entitled to indemnification for conduct that violates the duty of care set forth in Section 33-44-409(c).")

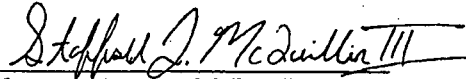
b. R. Stoney is required to repay any money taken from the Boathouse to pay Crew Carolina, LLC and his legal fees in connection with this matter.

66. The Boathouse requests that this Court grant it such costs as authorized by statute to compensate it for bringing the present action.

PRAYER FOR RELIEF

WHEREFORE, the Boathouse, by and through L. Stoney, prays that judgment be granted in its favor against Defendant R. Stoney and Crew Carolina for:

- (A) an award of actual and consequential damages in an amount to be determined;
- (B) an award of punitive damages;
- (C) an award of reasonable attorney's fees and costs;
- (D) an award of pre-judgment interest;
- (E) a full accounting;
- (F) an order piercing the corporate veil that disregards the corporate entity and allows the Boathouse to recover against the individual, R. Stoney, for claims, debts, and damages as alleged in this Complaint against Crew Carolina;
- (G) an order declaring that R. Stoney and Crew Carolina are not entitled to indemnification from the Boathouse to defend their wrongful acts;
- (H) an order requiring the repayment of money taken by R. Stoney from the Boathouse to pay Crew Carolina, LLC and his legal fees in connection with this matter;
- (I) for such other further legal and equitable relief as the Court deems just and proper.



Scott Y. Barnes (SC Bar #: 528)

Stafford J. McQuillin III (SC Bar #: 78203)

Pierce T. MacLennan (SC Bar #: 101797)

Haynsworth Sinkler Boyd, P.A.

134 Meeting Street, 4th Floor

Charleston, SC 29401

(843) 724-1120

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

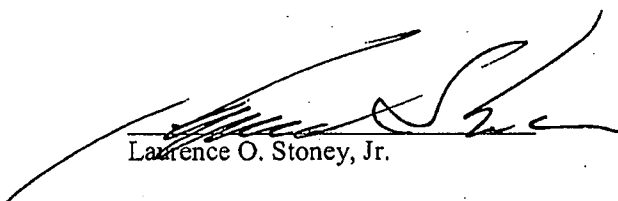
October 9, 2015

15-5463

VERIFICATION

I, Laurence O. Stoney, Jr., am the Plaintiff in the foregoing Verified Derivative Complaint. I have reviewed the Complaint, and the matters alleged therein are true of my own knowledge or from my review of documents, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

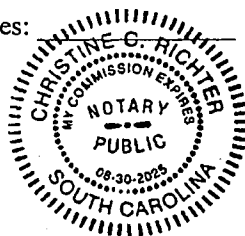

Laurence O. Stoney, Jr.

Subscribed and sworn before me

This 9 day of October, 2015

Christine C. Richter

My commission expires:



2015 OCT -9 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
The Boathouse at Breach Inlet, LLC,)
by and through its member, Laurence)
O. Stoney, Jr.,)
Plaintiff,)
vs.)
Richard S. W. Stoney, individually and as)
Member-manager of The Boathouse at)
Breach Inlet, LLC and Crew Carolina, LLC)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No: 2015-CP-10-5463

ANSWER OF RICHARD S. W. STONEY
AND CREW CAROLINA, LLC

FILED
2015 NOV 12 AM 10:27
CLERK OF COURT
J. ARMSTRONG

Defendants Richard S. W. Stoney and Crew Carolina, LLC answer the Complaint of Laurence O. Stoney, Jr., as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint are denied, except as otherwise answered.
2. The allegations of the following paragraphs are admitted: 1, 3, 4, 9, 10, 11, 12, 13, 14 and 59.
3. The allegations of the following paragraphs are denied: 5, 6, 7, 8, 15, 18, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 60, 61, 62, 63, 64, 65, and 66.
4. Answering paragraph 2, Defendants admit only that Laurence Stoney is a resident of Charleston County and a member of Boathouse at Breach Inlet, LLC, (hereafter "Breach Inlet").
5. Answering paragraph 16, Defendants admit only that Breach Inlet is governed by the 1997 Operating Agreement and by the provisions of the South Carolina LLC Act.

6. Answering paragraph 17, Defendants aver that Crew Carolina, LLC was formed in 1998 for purposes, inter alia, of consolidating the administrative management of Breach Inlet, and subsequently of The Boathouse at East Bay, LLC (hereafter "East Bay") (of which Laurence Stoney was a member), a Boathouse at Lake Julian and Boathouse at Ellis Creek; all with the knowledge and acquiescence of Laurence Stoney for more than fifteen years prior to his filing of the within action.

7. Answering paragraph 19, Defendants aver that, through his attorneys, Laurence Stoney made a succession of strident, unreasonable demands on behalf of Laurence Stoney against Richard Stoney, in every instance accompanied by short and arbitrary time deadlines; none of which were calculated for any purpose other than to profit Laurence Stoney individually, and to penalize Richard Stoney, individually; and none of which were designed for the benefit of Breach Inlet.

8. Answering paragraph 20, Defendant avers that Plaintiff has improperly alleged matters and communications arising in mediation, contrary to the letter, if not the spirit, of Rule 8 of the South Carolina ADR Rules. Accordingly, the allegations of paragraph 20 are denied.

9. Answering paragraph 23, Defendants admit only that Laurence Stoney has been a member of Breach Inlet since its formation on November 21, 1997.

10. Answering paragraph 24, Defendants admit only that Richard has been the member/manager of Breach Inlet since its formation on November 21, 1997.

11. Answering paragraph 32, Defendants admit only that Richard owes the statutory duties set forth in Code Section 33-44-409.

12. Answering paragraph 42, Defendants crave reference to Code Sections 33-44-407 and 33-44-103, and they deny any allegations inconsistent with the language of those statutory sections.

13. Answering paragraph 43, Defendants crave reference to Code Section 33-44-405, and they deny any allegations inconsistent with the language of that statutory section.

14. Answering paragraph 56, Defendants crave reference to Code Section 33-44-1104, and he denies any allegations inconsistent with the language of that statutory section.

FOR A SECOND DEFENSE

15. The allegations of the Complaint fail to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

16. The claims of Plaintiff are barred by the Statute of Limitations.

FOR A FOURTH DEFENSE

17. The claims of Plaintiff are barred of the Equitable Doctrine of Laches.

FOR A FIFTH DEFENSE

18. The claims of Plaintiff should be dismissed because Plaintiff seeks only to benefit himself individually, and does not act in the best interests of Breach Inlet or its members.

FOR A SIXTH DEFENSE

19. The conduct of Richard Stoney about which Plaintiff complains is protected and privileged under the Business Judgment Rule.

FOR A SEVENTH DEFENSE

20. The claims of Plaintiff are barred by the Doctrines of Waiver and Estoppel.

FOR AN EIGHTH DEFENSE

21. Plaintiff cannot fairly and adequately represent the interests of Breach Inlet and its members because of his past disloyal, deceitful, deceptive and dishonest conduct; because his animus in pursuing the within action is to punish Richard Stoney; and because the majority of members of Breach Inlet do not support Plaintiff's actions herein.

22. Richard and Laurence are first cousins.

23. On or about November 21st, 1997 Richard formed a business entity known as The Boathouse at Breach Inlet, LLC ("Breach Inlet") and on that same date he filed Articles of Organization with the South Carolina Secretary of State.

24. At Richard's invitation, Laurence invested the sum of \$28,500 into Breach Inlet, for which he received a 5% membership share.

25. Laurence also signed an Operating Agreement, that defines the relationship of the parties as members of Breach Inlet; the terms and provisions of which are incorporated herein by reference.

26. Breach Inlet is a seafood restaurant, located at Breach Inlet, a tidal inlet between Isle of Palms and Sullivan's Island, South Carolina in Charleston County. The restaurant was created in 1997 according to a menu scheme adopted by Richard, that affords to its customers fresh, local seafood and alternative selections of side orders, which made its menu offering, at the time, different from other local seafood restaurants.

27. In December of 1998 and January of 1999 Richard formed two additional business entities:

a. On December 21, 1998 Richard formed Crew Carolina, LLC, ("Crew"), a single member LLC of which Richard is the sole member. Crew was formed for the purpose of

consolidating and coordinating the administration and management of a future group of restaurants, to be formed.

b. On January 8, 1999 Richard formed The Boathouse on East Bay, LLC ("East Bay"), adopting the same business model and menu model that had been established at Breach Inlet.

28. At Richard's invitation, Laurence invested in East Bay, for which he received a 4% interest in the LLC.

29. Richard is informed and believes that Laurence was aware of, and that he acquiesced to, the business model: that is, to expand the Boathouse restaurants as a chain, with central administrative management to be provided by Crew.

30. The central management model of administering multiple restaurants is not unique to the Boathouse chain, and on information and belief it is utilized by other restaurant groups in the Charleston area, as well as outside the Charleston area.

31. The Operating Agreements of Breach Inlet and of East Bay, to which Laurence was a signator, gives Richard as Manager of Breach Inlet and East Bay the authority to contract for centralized management, as was made between Breach Inlet, East Bay and Crew Carolina.

32. Laurence was paid substantial distributions by Breach Inlet for the years 1999, 2000, 2001, 2002, 2003, 2004 and 2010.

33. On July 22, 2002 Richard formed a third Boathouse, known as "Boathouse at Lake Julian", ("Lake Julian") located in Asheville, North Carolina; and on December 10, 2008 he formed a fourth Boathouse known as "Boathouse on Ellis Creek", located on James Island in Charleston County.

34. Laurence was not offered the opportunity to invest in either Lake Julian or Ellis Creek, although he asked to do so, because Laurence had participated in conduct that was disloyal and disruptive to East Bay and to the business model to which he had acquiesced, as hereafter alleged.

35. When East Bay began operating in 1999, the property from which it operated was located at 549 East Bay Street, and was leased from "14 Chapel, LLC" an entity owned or controlled by James Drew.

36. After operating 549 East Bay Street for several years, disputes and differences arose between East Bay and the landlord over, among other things, maintenance issues and upkeep of the property; such that the dispute and the conditions of the property were not furthering the best interests of the ongoing restaurant business.

37. In the circumstances, Richard concluded that the best business course of action for East Bay would be to purchase the property at 549 East Bay Street from Mr. Drew.

38. As an example of Laurence's disloyalty: knowing the stresses placed on the business operations of East Bay and on Richard because of the disputes with the landlord, and while Richard was negotiating with Drew to buy 549 East Bay Street, Laurence deceptively, secretly and surreptitiously attempted to purchase 549 East Bay Street, himself, from Mr. Drew.

39. Laurence did not disclose to Richard, or to any person affiliated with Richard, or with East Bay, his surreptitious attempts to purchase 549 East Bay Street.

40. Richard is informed and believes that Laurence attempted to buy 549 East Bay in order to gain leverage to undermine and to cause harm to Richard and to East Bay.

41. Although Laurence did not acquire title to 549 East Bay Street, and it was purchased by Boathouse at East Bay, LLC, Laurence's devious, dishonest and disloyal acts were contrary to, if not the letter, at least the spirit, of East Bay's Operating Agreement and Laurence's status as a member of East Bay.

42. When East Bay closed because of financial exigency Richard assumed and fully paid its debts without a capital call to its members, thereby enabling Laurence, and the other members, to avoid a financial liability.

43. Richard is informed and believes that, as another act of disloyalty, Laurence conspired with Lori Stoney, Richard's former wife, and with Charleston restaurateur Bill Hall in Lori's case against Richard in Family Court, to wrest control of Breach Inlet from Richard.

44. On information and belief, in furtherance of the conspiracy above alleged Bill Hall, restaurant owner of Hall's Chophouse on King Street, would have taken over the management responsibilities, and perhaps the controlling ownership of Breach Inlet.

45. In furtherance of the conspiracy with Lori Stoney and Bill Hall, Laurence testified against Richard in the Family Court proceedings, and Bill Hall appeared in the same Family Court proceeding to testify as to the management of Breach Inlet, although Hall did not testify in the final analysis.

46. In addition to Laurence's acts of deception and disloyalty, he has also defamed Richard, as is more fully alleged in a separately filed claim.

FOR A NINTH DEFENSE

47. The allegations of paragraphs 1-46 are incorporated herein.

48. The claims of Plaintiff are barred by the equitable doctrine of unclean hands.

FOR A TENTH DEFENSE

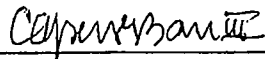
49. The allegations of paragraphs 1-48 are incorporated herein.

50. Plaintiff is and should be liable to Defendant for his attorney fees and for the costs of this action.

WHEREFORE, having fully answered the complaint of Plaintiff, Richard Stoney prays:

1. That the relief sought in the Complaint of the Plaintiff be denied;
2. That the Plaintiff be ordered to pay Defendant's costs and expenses, including a reasonable legal fee;
3. For such other and further relief as may be proper.

BARR, UNGER, MCINTOSH, LLC



Capers G. Barr, III
SC Bar No: 00542
Barr, Unger and McIntosh
11 Broad Street (29401)
P.O. Box 1037
Charleston, SC 29402
Telephone: 843-577-5083
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cgb@barrungermcintosh.com
Attorney for Defendant

Charleston, South Carolina
November 11, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
The Boathouse at Breach Inlet, LLC)
by and through its member, Laurence)
O. Stoney, Jr.,)
)
Plaintiff,)
)
vs.)
)
Richard S.W. Stoney, individually)
and as Member-manager of The)
Boathouse at Breach Inlet, LLC and)
Crew Carolina, LLC)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015 -CP-10-5463

MOTION TO INTERVENE
AND REMOVE PLAINTIFF'S
COUNSEL

FILED
2016 OCT 18 PM 3:28
JULIE J. ARMSTRONG
CLERK OF COURT

TO: SCOTT Y. BARNES, STAFFORD J. MCQUILLIN III, AND PIERCE T. MACLENNAN, ATTORNEYS FOR THE PLAINTIFF

PLEASE TAKE NOTICE that Theodore D. Stoney (individually and as Trustee for Richard Stoney, Jr.) and Gregory Holmes (collectively, "Intervenors"), will move before the Ninth Judicial Circuit, Court of Common Pleas, County of Charleston, ten (10) days following this Motion or at such time and place as the Court may deem appropriate for an Order (1) granting their intervention in the above-captioned action and (2) disqualifying Plaintiff's Counsel from representing the Boathouse at Breach Inlet, LLC and its members in the present action.

This Motion is made pursuant to Rules 24 and 23(b)(1) of the South Carolina Rules of Civil Procedure and Rule 1.7 of the South Carolina Rules for Professional Conduct. The grounds for this Motion are (1) Intervenors are members of the Boathouse at Breach Inlet, LLC and have an interest in the subject of this action, (2) the disposition of this action may

impair or impede Intervenor's ability to protect that interest, (3) the Intervenor's interest is inadequately represented by the parties, (4) particularly, Laurence Stoney does not fairly and adequately represent the interests of the Boathouse at Breach Inlet, LLC or its members, and (5) a conflict exists in Haynsworth Sinkler Boyd's representation of the Boathouse at Breach Inlet, LLC and its members.

STANDARD OF REVIEW

Intervention

Rule 24(a) of the South Carolina Rules of Civil Procedure governs intervention as a matter of right, while Rule 24(b) governs permissive intervention. Specifically, Rule 24 provides:

- (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
- (b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Intervention as a Matter of Right

Pursuant to Rule 24(a)(2), a movant may intervene as a matter of right by meeting the following requirements: (1) establish timely application; (2) assert an interest relating

to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. Berkeley Electric Co-op., Inc. v. Town of Mount Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (S.C. 1990); see also In re Horry County State Bank, 361 S.C. 503, 508, 604 S.E.2d 723 (S.C. App. 2004).

The requirements set forth under Rule 24(a)(2) need not be applied rigidly. "We interpret the rules to permit liberal intervention particularly where, as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected." Berkeley Electric, 302 S.C. at 191, 394 S.E.2d at 715. "[W]e avoid 'setting up rigid applications of Rule 24(a)(2)' and take each case 'in the context of its unique facts and circumstances.'" In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723 (S.C. App. 2004), citing Berkeley Electric 302 S.C. at 191, 394 S.E.2d at 715.

Permissive Intervention

Even where intervention as of right is not available, Rule 24(b) provides separately and independently for permissive intervention (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

Representation of Members in a Derivative Action

Rule 23(b)(1) of the South Carolina Rules of Civil Procedure sets forth the requirements for bringing a derivative action. The Rule state, "[a] derivative action may not be maintained **if it appears** that the plaintiff does not fairly and adequately represent

the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.” Rule 23(b)(1), SCRCP. [Emphasis added]

Conflict of Interest

Rule 1.7 of the South Carolina Rules of Professional Conduct addresses whether a lawyer may represent a client in one matter while simultaneously advocating against the client’s interests in a separate matter.

Rule 1.7(a) states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Comment 6 to Rule 1.7 states:

Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client’s informed consent. **Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.** The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer’s ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client’s case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer’s interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. [Emphasis Added]

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Laurence Stoney filed the present lawsuit purporting to be a derivative action, citing S.C. Code Ann §33-44-1101. In reality, however, the suit represents a personal dispute

between Laurence Stoney and Richard Stoney over monies supposedly due Laurence Stoney and is a thinly disguised effort to oust Richard Stoney as Managing Member of The Boathouse. The Intervenor's oppose the derivative action because they do not agree with Laurence Stoney's assertion that Richard Stoney has breached his fiduciary duty to the LLC, but on the contrary believe he has fulfilled his duties as Managing Member and successfully guided The Boathouse to profitability for 20 years. As detailed below, the Intervenor's believe that permitting the derivative action to proceed will waste the assets of the LLC and endanger the company's future success.

The Membership Interests of the Boathouse at Breach Inlet, LLC are held as follows:

- Richard Stoney holds a sixty percent (60%) Membership Interest.
- Theodore Stoney holds a ten percent (10%) Membership Interest.
- Theodore Stoney holds a five percent (5%) Membership Interest in trust for Richard Stoney, Jr.
- Gregory Holmes holds a ten percent (10%) Membership Interest.
- Lori Stoney holds a five percent (5%) Membership Interest.
- Lori Stoney holds a five percent (5%) Membership Interest in trust for Croft Stoney.
- Laurence Stoney holds a five percent (5%) Membership Interest.

Paragraph 8 of the complaint states: "Plaintiff [Laurence Stoney] will fairly and adequately represent the interests of the Boathouse **and its members** in enforcing and prosecuting the rights of the Boathouse." [Emphasis Added]

Richard Stoney, Theodore Stoney (individually and as trustee for Richard Stoney, Jr.), and Gregory Holmes oppose this derivative action because they believe Richard

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Stoney has properly discharged his fiduciary duty to the LLC and that pursuing the derivative action is a waste of the LLC's assets. Collectively, these members hold eighty-five percent (85%) of the membership interests in the Boathouse at Breach Inlet, LLC. As noted above, the remaining fifteen percent (15%) of membership interests are held by Laurence Stoney (5%) and Lori Stoney (5% individually; 5% in trust for Croft Stoney). Lori Stoney and Richard Stoney are engaged in marital litigation. Croft Stoney is their minor daughter.

The case is, in reality, an effort by Laurence Stoney to enforce the payment of distributions he claims are due him personally and an effort to seize control of the company. This lawsuit represents Laurence Stoney's second attempt to take over the management and ownership of the Boathouse at Breach Inlet, LLC from Richard Stoney. In February of 2011, during Richard and Lori's marital litigation, Lori Stoney filed a motion seeking to take over the management and ownership of the Boathouse. The motion was denied. However, Laurence Stoney testified on behalf of Lori Stoney at trial, stating that he thought he was entitled to more distributions than he had received. (Transcript at 944) Again, this is a personal claim, not a derivative one. Laurence also testified that he would have no objection if Lori were given a controlling interest in the entity. (Id. at 965) When asked about Lori's lack of experience in operating a restaurant, he testified, "She's been around Richard, you know. So she must know something." (Id. at 1004). Despite his misgiving about what he was owed, Laurence testified that he had not reviewed the Boathouse's books despite being offered the opportunity to review them because it entailed him going to the Boathouse's office. (Id. at 983). The office, according to Laurence's own testimony,

was located around the corner from where Laurence worked. (Id. 1006). Laurence also testified that he had never written Richard about his complaints; he also acknowledged receiving several letters from Richard over the years regarding the numbers at the Boathouse at Breach Inlet. (Id. at 984).

The filing of the derivative action is pretextual. Laurence Stoney did not consult with Theodore Stoney, Gregory Holmes, or Richard Stoney, Jr. prior to filing this derivative action and has not asked that they join in this lawsuit. Laurence Stoney has never contacted Theodore Stoney, Gregory Holmes, or Richard Stoney, Jr. regarding the present lawsuit or the allegations contained therein.

Richard Stoney has served as managing-member of the Boathouse at Breach Inlet since it was organized in 1997. As reflected in its annual tax returns and member KIs, the Boathouse at Breach Inlet has reported a profit every year since it opened.

ARGUMENT

I. Intervenor's Motion to Intervene is a Matter of Right Under Rule 24(a)(2)

Intervenor's Motion to Intervene should be granted because Intervenor meets the requirements set forth under Rule 24(a)(2), SCRPC. As set out further below, Intervenor's motion is timely; Intervenor, as a Member of the Boathouse at Breach Inlet, LLC, has a significant interest in the subject of this action; Intervenor's interests in the Boathouse at Breach Inlet, LLC may be substantially diminished if it is not permitted to intervene; and Laurence Stoney does not effectively represent Intervenor's interests in this case.

A. Intervenor's Motion to Intervene is Timely

In Davis v. Jennings, the South Carolina Supreme Court noted that a court must

consider the following factors in determining whether a motion to intervene is timely: 1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention. 304 S.C. 502, 504, 405 S.E.2d 601, 603 (S.C. 1991), see also Ex parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (S.C. 1992).

In the instant case, all requirements are readily satisfied: 1) Despite purporting to represent their interests in this derivative action, Laurence Stoney has never contacted the Intervenor regarding this action or the allegations contained therein (see affidavit). Intervenor found out about this derivative action upon being notified by Richard Stoney in October 2015 prior to The Post & Courier article (attached). 2) Intervenor had hoped that the named parties in this action could resolve this dispute without going to trial. In any event, Intervenor have moved less than a year from the filing of the Complaint (10/19/16) and less than nine months from the filing of the Answer (11/12/16). 3) Litigation has not progressed since the filing of the Answer and no other significant developments have taken place. 4) Given the stage of litigation, the original parties would not suffer any prejudice from granting Intervenor's Motion for Intervention. Intervenor, however, would be highly prejudiced if not permitted to intervene because Laurence Stoney purports to represent their interests in an action that they oppose and threatens to waste the LLC's assets.

B. Intervenor Have a Significant Interest in the Property and Transactions That Are at Issue in this Lawsuit

Intervenors meet the second requirement for intervention as a matter of right under Rule 24(a)(2) because they have an interest relating to the property or transaction, which is subject of the action. Specifically, the Intervenors are each members of the Boathouse at Breach Inlet, LLC. Their membership interests in the Boathouse at Breach Inlet, LLC are as follows: Theodore Stoney owns a ten percent (10%) membership interest; Theodore Stoney also holds a five percent (5%) membership interest as trustee for Richard Stoney, Jr.; Gregory Holmes owns a ten percent (10%) membership interest. Indeed, the Intervenors collectively hold a twenty-five percent interest (25%) in the Boathouse at Breach Inlet, LLC, whereas Laurence Stoney owns a five percent (5%) interest.

Moreover, in Ex parte Gov't Emp.'s Ins. Co. v. Goethe, the South Carolina Supreme Court stated:

[A] party must have standing to intervene in an action pursuant to Rule 24, SCRPC. Bailey v. Bailey, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994). A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a "real party in interest." Id. "A real party in interest . . . is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." Id. (citations omitted).

Ex parte Gov't Emp.'s Ins. Co. v. Goethe, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007).

Here, the Intervenors have standing to intervene because they have a real, actual, material and substantial interest in the subject matter of this derivative action: Each of the Intervenors are members of the Boathouse at Breach Inlet, LLC and, as set out below, have an interest in preserving the LLC's assets.

C. Intervenors' Ability to Protect Their Interests Will Be Impaired if They Are Not Permitted to Intervene in this Action

In Berkeley Electric, the Supreme Court of South Carolina noted:

The Sagebrush test further requires that the prospective intervenor demonstrate that without its intervention, the disposition of the case may impair or impede its ability to protect its interest. To meet that requirement, a party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene.

Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 190, 394 S.E.2d 712, 715 (S.C. 1990), citing Spring Construction Co., Inc. v. Harris, 614 F.2d 374 (4th Cir.1980).

Intervenors' ability to protect their interest will be impaired if they are not permitted to intervene in this action because Laurence Stoney purports to represent their interests in an action that they oppose and they would be unable to challenge his false claims. Intervenors oppose this derivative action and contend that it is damaging to the Boathouse at Breach Inlet and their interests as members because it would result in wasting the LLC's assets. Specifically, this derivative action is wasteful to the Boathouse at Breach Inlet, LLC because 1) Laurence Stoney is incurring legal bills on behalf of the LLC to prosecute what is in reality a personal claim against Richard Stoney, not a legitimate derivative claim; and 2) pursuant to Article VIII of the Boathouse at Breach Inlet Operating Agreement, the LLC will be obligated to indemnify Richard Stoney for the legal costs incurred in defending this frivolous action.

Additionally, Intervenors assert that Laurence Stoney's spurious claims have damaged their interests by creating negative publicity for what has been a consistently profitable restaurant. (See 10/15/15 Post and Courier article). The Intervenor's suspect that the Laurence Stoney, through his attorneys, leaked the lawsuit to the Post and Courier in an effort to hurt Richard. (See affidavit).

The Intervenor has benefited from being a member of the Boathouse at Breach Inlet, LLC and asserts that Richard Stoney is an effective manager, who despite facing increasing competition from countless new restaurants has run a profitable business for nearly twenty years. Laurence Stoney's derivative action is a bald-faced attempt to usurp the management of the Boathouse at Breach Inlet and threatens to undermine the success of the business. Clothing a personal dispute in the guise of a derivative action would in effect allow Laurence Stoney to pay for his personal litigation with the LLC's funds. Accordingly, Intervenor's ability to protect their interest will be impaired if they are not permitted to intervene in this action.

D. Laurence Stoney Does Not Adequately Represent Intervenor's Interests in this Action.

Intervenor meets the fourth requirement for intervention as a matter of right under Rule 24(a)(2) because Laurence Stoney does not adequately represent Intervenor's Interests in this action. On the contrary, Intervenor **oppose** the derivative action brought by Laurence Stoney and dispute the allegations contained therein. Laurence Stoney is meddling in the day-to-day operations of a successful business for his personal gain and aggrandizement. Further, as demonstrated above, the Intervenor contends that this derivative action is damaging to the Boathouse at Breach Inlet and their interests as members. To permit a personal dispute between Laurence Stoney and Richard Stoney to proceed as a derivative action would result in a wasting of the LLC's assets.

Despite Laurence Stoney's assertion that he "will fairly and adequately represent the interests of the Boathouse and its members," Laurence Stoney **did not consult** with Theodore Stoney, Gregory Holmes, or Richard Stoney, Jr. prior to filing this derivative

action and **has not asked that they join** in this lawsuit. In fact, Laurence Stoney has **never contacted** Intervenor's regarding the present lawsuit or the allegations contained therein (see affidavit). This lack of communication is particularly surprising considering that the Boathouse at Breach Inlet's members all reside in Charleston County and two of the Intervenor's are Laurence's relatives.

In Berkeley Electric, the South Carolina Supreme Court adopted the following "Sagebrush Test" for determining the adequacy of representation: (1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent. Berkeley Electric Co-op., Inc. v. Town of Mount Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (S.C. 1990); see also In re Horry County State Bank, 361 S.C. 503, 508, 604 S.E.2d 723 (S.C. App., 2004).

In the instant case, an application of the Sagebrush Test demonstrates that Laurence Stoney does not adequately represent Intervenor's interests in the present action: 1) Despite purporting to represent the interests of the Boathouse and its members, Laurence Stoney will not make all of the Intervenor's arguments; indeed the Intervenor's oppose the derivative action brought by Laurence Stoney. 2) Laurence Stoney is unwilling to make Intervenor's arguments at trial because they run contrary to his own. 3) As non-managing members of the Boathouse at Breach Inlet, LLC, who oppose the derivative action, Intervenor's offer different knowledge, experiences, or perspectives on the proceedings that would otherwise be absent. "The burden of demonstrating inadequacy of representation

is on the applicant. [citation omitted] This burden is minimal and the applicant need only show that the representation of his interests "may be" inadequate." Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (S.C. 1990), citing Trbovich v. United Mine Workers of America, 404 U.S. 528, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972). Intervenor meets this burden. Consequently, Intervenor meets the fourth requirement for intervention as a matter of right under Rule 24(a)(2).

II. In the Alternative, Permissive Intervention is Appropriate Under Rule 24(b).

As demonstrated above, Intervenor meets the requirements for intervention as a matter of right. However, in the event that the Court determines that Intervenor does not meet the requirements of Rule 24(a)(2), permissive intervention under Rule 24(b) is proper in the alternative.

Rule 24(b), SCRPC states:

Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. [...] In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The requirements for permissive intervention are met in this case. Intervenor's claim that Laurence Stoney's does not fairly and adequately represent their interests in the derivative lawsuit raises questions of law and fact in common with the main action.

Similarly, as set out above, this motion is timely and will result in no prejudice to the existing parties.

Moreover, Rule 23(b)(1) mandates that that a "derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the

interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.” Rule 23(b)(1), SCRCP. Permissive intervention is thus appropriate.

III. Plaintiff’s Counsel, Haynsworth Sinkler Boyd, PA, Should Be Removed as Counsel for Plaintiff because a Conflict Exists in its Representation of the Boathouse at Breach Inlet, LLC and its Members

Plaintiff brings this action as a derivative action for the benefit of the Boathouse at Breach Inlet, LLC and its members. However, an inherent conflict exists in that Haynsworth Sinkler Boyd, P.A. is currently in active litigation against a member of the Boathouse whose interests it purports to represent in this derivative action. Specifically, the law firm of Haynsworth Sinkler Boyd is currently in active litigation against Gregory Holmes, a ten percent (10%) member in the Boathouse at Breach Inlet, LLC (Gregory G. Holmes v. Patricia Thomas, Case No. 2015-CP-1002688). In that case, the law firm of Haynsworth Sinkler Boyd represents Patricia Thomas against Gregory Holmes.

Pursuant to Rule 1.7 of the South Carolina Rules of Professional Conduct, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. Specifically, Comment 6 to Rule 1.7, SCRPC states:

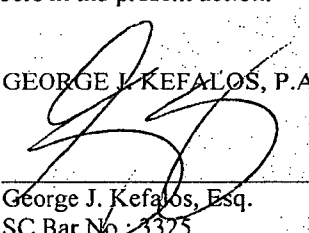
Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. **Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.** The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest

in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. [Emphasis added]

CONCLUSION

For each of the foregoing reasons, Intervenor respectfully requests that the Court grant their Motion to Intervene and disqualify Plaintiff's Counsel from representing the Boathouse at Breach Inlet, LLC and its members in the present action.

GEORGE J. KEFALOS, P.A.



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Charleston, South Carolina
October 18, 2016

**AFFIDAVIT OF
DR. GREGORY B. ADAMS**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

The Boathouse at Breach Inlet, LLC by
and through its member, Laurence O.
Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
Member-manager of The Boathouse at
Breach Inlet, LLC and Crew Carolina,
LLC,

Defendants.

CA# 2015-CP-10-5463

AFFIDAVIT OF
EXPERT OPINION OF
DR. GREGORY B. ADAMS
IN SUPPORT OF
MOTION TO INTERVENE AND
DISQUALIFY PLAINTIFF'S COUNSEL

PERSONALLY APPEARED before me Gregory B. Adams who, being duly
sworn, deposes and says that:

1. It is my expert opinion, held to a reasonable degree of professional certainty,
 - A. that in representing Plaintiff in this case, the law firm of Haynsworth Sinkler Boyd, P.A. [H.S.B.] and its lawyers Scott Y. Barnes, Stafford J. McQuillin III, and Pierce T. MacLennan have improper, unconsented concurrent conflicts of interest and are violating their duties as lawyers under the South Carolina Rules of Professional Conduct adopted by the South Carolina Supreme Court to govern them;
 - B. that they are under an ethical duty to withdraw from representing Plaintiff; and
 - C. that they cannot possibly "fairly and adequately represent the interests of the ... members" as required by Rule 23(b)(1), SCRCP, since their representation of the interests of Gregory G. Holmes violates Rules 1.7 and 1.10 of the Rules of Professional Conduct, Rule 407 SCACR.

- D. If the H.S.B. lawyers fail to honor their ethical duty to withdraw and continue to violate the Rules of Professional Conduct, they should be disqualified by the Court to preserve the integrity of the judicial system.
- 2. My expert opinions are based upon the following facts, law, and analysis:
 - A. Haynsworth Sinkler Boyd, P.A. [H.S.B.] and specifically its lawyers William Howell Morrison and Stafford J. McQuillin III are representing Patricia D. Thomas in a lawsuit entitled *Gregory Galvin Holmes v. Patricia D. Thomas*, Civil Action No. 2015-CP-10-2688, pending in the Ninth Circuit Court of Common Pleas, Charleston County. Their representation of Patricia D. Thomas has been ongoing for some time and continues today. It includes both defending her as Defendant and actively asserting counter-claims against Gregory G. Holmes. Thus H.S.B. and its lawyers Morrison and McQuillin are representing a client who is directly adverse to Gregory G. Holmes within the meaning of Rule 1.7(a)(1) of the South Carolina Rules of Professional Conduct, Rule 407 SCACR, which defines and prohibits representing a client “if the representation involves a concurrent conflict of interest.”
 - B. It would be professional misconduct for either Morrison or McQuillin to represent or advise Gregory G. Holmes in any matter of any sort while the *Holmes v. Thomas* case is pending, as it is at this time, without their obtaining the informed consent of both Holmes and Thomas and satisfying the other requirements of Rule 1.7(b); fulfilling all of the conditions of Rule 1.7(b) is the only way in which a lawyer may properly undertake representation that “involves a concurrent conflict of interest.” Because this is a concurrent conflict of interest and the H.S.B.

lawyers have not obtained the informed consent of Mr. Holmes, the absolute prohibition applies whether the two cases are related or not.

C. "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7" Rule 1.10(a) of the Rules of Professional Conduct, Rule 407 SCACR. Thus not only are Morrison and McQuillin personally prohibited from representing Gregory G. Holmes in the lawsuit and claims against Richard Stoney, but all of the lawyers associated in the H.S.B. firm are prohibited from doing so by Rule 1.10. H.S.B. lawyers Scott Y. Barnes and Pierce T. MacLennan are just as tainted and thus forbidden from representing Plaintiff as are Morrison and McQuillin.

D. Plaintiff and his H.S.B. lawyers, Barnes, McQuillin, and MacLennan, have alleged that "Plaintiff will fairly and adequately represent the interests of the Boathouse and its members in enforcing and prosecuting the rights of the Boathouse." This is patently untrue.

- i. Rule 23(b)(1), SCRCR, requires that Plaintiff and his H.S.B. lawyers "fairly and adequately represent the interests of the [LLC] members" including Gregory G. Holmes, who is a member owning a ten percent interest in the Boathouse at Breach Inlet, LLC – an interest twice the size of Plaintiff's.
- ii. Mr. Holmes personally is a member of the LLC; Plaintiff's allegation in his complaint that the interest belongs to Holmes Capital Management, LLC is factually incorrect, as is proven by the records and IRS filings of Boathouse at Breach Inlet, LLC and

the February 21, 2012, Order of the Honorable Daniel E. Martin, Jr. in *Holmes v. Holmes*, 2010-DR-10-2076.

- iii. It is not possible for H.S.B. or any of its lawyers including Plaintiff's counsel Barnes, McQuillin, and MacLennan to "fairly and adequately represent the interests of" LLC member Gregory G. Holmes because, as a matter of law, they are subject to a forbidden concurrent conflict of interest in doing so.

E. Additionally, Plaintiff and his H.S.B. counsel Barnes, McQuillin, and MacLennan, repeatedly plead in the Complaint that Boathouse at Breach Inlet, LLC needs to retain an unbiased business lawyer as Special Independent Counsel for the purposes of determining whether it is appropriate for it to pursue an action derivatively. Thus Plaintiff's H.S.B. counsel Barnes, McQuillin, and MacLennan have admitted that they are neither unbiased nor independent in bringing this derivative action.

- i. Rule 2.1 of the Rules of Professional Conduct, Rule 407 SCACR, requires a lawyer to "exercise independent professional judgment." Plaintiff's counsel admit that they cannot do so on behalf of Boathouse at Breach Inlet, LLC and its members.
- ii. This admission in the Complaint establishes the falsity of the Complaint's allegation that "Plaintiff will fairly and adequately represent the interests of the Boathouse and its members in enforcing and prosecuting the rights of the Boathouse" as well as Plaintiff and his HSB counsel's inability to comply with the requirement of Civil Procedure Rule 23(b)(1) that they "fairly and adequately represent the interests of" Gregory G. Holmes.

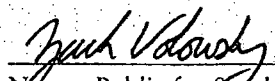
- F. The law firm of Haynsworth Sinkler Boyd, P.A. and its lawyers Scott Y. Barnes, Stafford J. McQuillin III, and Pierce T. MacLennan are violating the South Carolina Rules of Professional Conduct in representing Plaintiff in this action and must withdraw or be disqualified.
3. My resumé, attached as Exhibit A, demonstrates why federal and state courts, including the South Carolina Supreme Court and Court of Appeals, have held that I am qualified as an expert witness.
- A. I am a tenured law professor at the University of South Carolina School of Law, where I have been teaching since 1978. My subjects of expertise include lawyers' ethics, professional responsibility, and fiduciary duties.
 - B. I have earned a J.S.D. (Doctor of Juridical Science) and an LL.M. from Columbia University, as well as my J.D. from Louisiana State University.
 - C. Federal and state courts in South Carolina have recognized my expertise, including the South Carolina Supreme Court in *State v. Morris*, 376 S.C. 189, 656 S.E.2d 359 (2008) (holding that I am qualified as an expert witness and that my expert testimony was accurate and proper) and *Smith v. Haynsworth, Marion, McKay & Guerard*, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding that I was qualified as an expert witness on issues of lawyers' duties and it was reversible error to rule otherwise), and the Court of Appeals in *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004) (holding it was reversible error to discount my expert opinion in a legal malpractice case and to refuse to give it efficacy). Additionally, three South Carolina Attorneys General, the South Carolina Secretary of State, and the United States Attorney for the District of South Carolina have relied upon my expertise to guide and

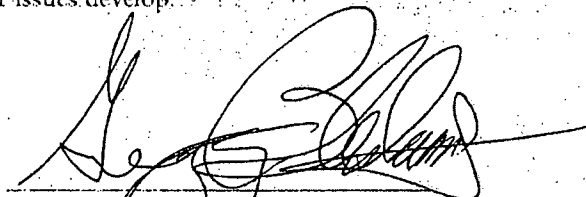
assist them in significant criminal investigations and prosecutions, and the United States Securities and Exchange Commission has retained me as an expert witness on lawyers' duties.

4. Evidence I have reviewed, including pleadings, motions, memoranda, and correspondence in *Holmes v. Thomas*, *Holmes v. Holmes*, and this case, as well as the records of the S.C. Secretary of State and other documentary evidence support the allegations of the Motion and thus my expert opinions. These are the kinds of factual sources customarily relied upon by experts in this field.
5. I hold all of the expert opinions I have expressed in this affidavit to a reasonable degree of legal certainty; the results are more probable than not.
6. I have been retained as an expert witness by counsel for Intervenor. My expert opinions are based upon the allegations of the Motion to Intervene and Disqualify Plaintiff's Counsel (which I assume to be true because of the supporting evidence I have reviewed) and the evidence I have reviewed at this time, as outlined above; these opinions are, therefore, subject to expansion and modification as further evidence or issues develop.

Further the affiant sayeth not:

Sworn to and subscribed before me
this 14th day of October 2016.


Notary Public for South Carolina
My Commission Expires: 09-27-2020


Dr. Gregory B. Adams

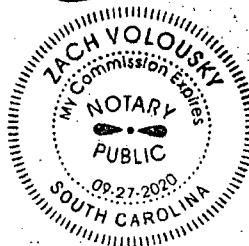


EXHIBIT A



DR. GREGORY B. ADAMS

UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW
701 Main Street, Columbia, South Carolina 29208

PROFESSIONAL EXPERIENCE

Law Professor (tenured), University of South Carolina, 1978-present.

SUBJECTS TAUGHT: Professional Responsibility; Ethical Issues in Criminal Practice; Judicial Ethics; Legal Profession; Legal Technology; Contracts; Corporate Law; Business Planning; Agency, Partnership & Limited Liability Companies; Antitrust; International Business Law; European Union Law.

Associate, University of South Carolina Rule of Law Consortium (2011-present).

Founding Director, Program on Judicial Ethics, Selection, Accountability, and Independence, University of South Carolina School of Law (2003-12).

Visiting Professor of Law, Pskov Volny University, Pskov, Russia, Spring 2001.

Visiting Professor of Law, University of Southampton, Southampton, England, Fall 1989.

Visiting Professor of Law, Rutgers University, Newark, NJ, 1983-1984.

Stagiaire, Commission of the European Communities (European Union), Brussels, Belgium, 1979.

Research Associate, Institute of European Studies, University of Brussels (U.L.B.), 1979.

Visiting Scholar, Faculté de Droit, Université Catholique de Louvain, Louvain-la-Neuve, Belgium, 1978.

Assistant Professor, Southern University School of Law, 1975-1977.

Consultant, Louisiana Legislative Council, 1976-1977.

Attorney with Breazeale, Sachse & Wilson, Baton Rouge, LA, 1973-1975.

Admitted to Practice by the Louisiana Supreme Court on October 5, 1973.

EDUCATION

J.S.D. 1986

Columbia University School of Law New York, New York

Dissertation: Control of Monopoly Power in Europe and the United States

LL.M. 1979

Columbia University School of Law New York, New York

Thesis: E.E.C. and U.S. Antitrust Regulation of Monopolists' Refusals to Deal

Jervey Fellow in Foreign Law, Parker School, Columbia University, 1977-1979.

J.D. 1973

Louisiana State University Law Center Baton Rouge, LA

Order of the Coif; Louisiana Law Review; Moot Court Board; Winner, Robert Lee Tullis Moot Court Competition before the Louisiana Supreme Court.

B.S. 1977

Louisiana State University Baton Rouge, LA

Phi Kappa Phi

College of Arts & Science, Vanderbilt University Nashville, TN 1966-1968

5/20/2015

HONORS AND RECOGNITION

Outstanding Faculty Publications Award, University of South Carolina School of Law
(April 2006, Book, Runner Up)

Louisiana State University Law Center Hall of Fame

Twenty Year Who's Who Honoree

Who's Who in the World

Who's Who in America

Who's Who in American Law

Who's Who in American Education

Who's Who in the South and Southwest

Who's Who of Emerging Leaders in America

Who's Who in Law Education

Dictionary of Int'l Biography (Cambridge, U.K.)

State v. Morris, 376 S.C. 189, 656 S.E.2d 359 (2008) (holding GBA qualified as an expert witness and that GBA's expert testimony was accurate and proper)

Smith v. Haynsworth, Marion, McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996) (holding GBA qualified as an expert witness; reversible error to rule otherwise)

Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct. App., 2004) (holding it was reversible error to discount GBA's expert opinion and fail to give it efficacy)

Davis v. Hamm, 300 S.C. 284, 387 S.E.2d 676 (Ct. App., 1989) ("excellent discussion of the ramifications of these statutes" in "Litigation of Corporate Law Disputes After the Recent Amendments of the Corporate Code," in Current Issues in Civil Litigation, S.C. Bar Continuing Judicial Legal Education Seminar 1989)

PUBLICATIONS

South Carolina Corporate Practice Manual (2nd ed. 2005, S.C. Bar) (lead author, coauthors: Burkhard, Cleveland, Clark, Hellwig, Merline).

"Reflections on the Reactions to Proposed Rule 8.5: Consensus of Failure," 36 S. Texas Law Review 1101 (1995).

"Introductory Remarks to the Conference on the Commercialization of the Legal Profession," 45 S.C. L. Rev. 883 (1994) (with Nathan M. Crystal).

Report of the Proceedings, Conference on the Commercialization of the Legal Profession (with Nathan M. Crystal): "Summary of Discussion of Frankel Paper," 45 S.C.L. Rev. 901; "Summary of Discussion of Palay/Galanter Paper," 45 S.C.L. Rev. 929; "Summary of Discussion of Martyn Paper," 45 S.C.L. Rev. 961; "Summary of Discussion of Dimitriou Paper," 45 S.C.L. Rev. 999 (1994).

"The Ethical Lawyer," occasional column in the S.C. Trial Lawyer Bulletin since 1994.

"Suing Corporations and Those Behind Them," 1992 S.C. Trial Lawyer Bulletin 17.

South Carolina Corporate Practice Manual (S.C. Bar, 1989) (with Cleveland, Burkhard, McWilliams).

"European and American Antitrust Regulation of Pricing by Monopolists," 18 Vanderbilt Journal of Trans. Law 1 (1985).

"Antitrust Constraints on Single-Firm Refusals to Deal by Monopolists in the European Economic Community and the United States," 20 Texas Int'l L. J. 1 (1985).

"The 1981 Revision of the South Carolina Business Corporation Act," 33 S.C. L. Rev. 405 (1982).

"Inheritance Taxation of Trusts," in 11 L. Oppenheim & S. Ingram, Louisiana Civil Law Treatise, Trusts (1977).

AMICUS CURIAE BRIEFS DRAFTED

- Ex Parte Strom, in re Collins Entertainment Corp. v. Columbia "20" Truck Stop*, 343 S.C. 257, 539 S.E.2d 699 (2000) (establishing that attorney's duties to client continued until court granted motion relieving attorney as counsel of record).
- Linder v. Insurance Claims Consultants*, 348 S.C. 477, 560 S.E.2d 612 (2002) (on behalf of the S.C. Bar, clarifying scope of activities constituting the practice of law).
- Brown v. Bi-Lo*, 354 S.C. 436, 581 S.E.2d 836 (2003) (on behalf of the S.C. Trial Lawyers Association, protecting the confidentiality of physician-patient relationship).

PUBLIC SERVICE

- Member, American Bar Association Ethics and Professionalism Committee, A.B.A. Law Practice Division (2015-2017).
- Member, American Bar Association Law Practice Futures Initiative, A.B.A. Law Practice Division (2015-2016).
- Expert Witness, United States Securities and Exchange Commission, *U.S. S.E.C. v. Staples* (2013)
- Invited Expert Witness, Judicial Merit Selection Study Committee, SC Senate (9/17/07)
- Member, S.C. Bar, Professional Responsibility Committee, 1993-2012 (chair or member of numerous subcommittees, including Ethics 2000 Subcommittee; presented Ethics 2000 recommendations to S.C. Bar House of Delegates).
- Member, S.C. Bar, Unauthorized Practice Committee, 1994, 2000-2003.
- Member, S.C. Bar, Technology Committee, 1996-1998.
- Ethics Consultant, South Carolina Association for Justice, 1994-2014.
- Co-Founder and Vice-President, South Carolina Association of Ethics Counsel, 2000-present.
- Expert Witness and advisor to the South Carolina Attorney General in the criminal investigation and prosecutions for securities fraud in connection with the failure of Carolina Investors and HomeGold Financial, 2003-2008.
- Expert Consultant for the South Carolina Department of Natural Resources, re: piercing the corporate veil, 2000.
- Expert Consultant for the South Carolina Department of Health and Environmental Control, re: piercing the corporate veil to impose environmental liability under CERCLA, 1997-1999.
- Reporter, South Carolina Uniform Commercial Code Article 2A (South Carolina Law Institute for the South Carolina General Assembly, 1996-2001).
- Expert Witness and advisor to the South Carolina Attorney General in criminal prosecution of John O'Quinn, Esq. for unauthorized practice of law and illegal solicitation, 1996-1997.
- Co-Reporter, Conference on the Commercialization of the Legal Profession, Charleston, S.C., May 1993.
- Expert Witness for the United States before the Federal Grand Jury investigating securities fraud, May 1993.
- Member, Governing Board, Center for Law, the Legal Profession, and Public Policy, 1991-93, 1998-2000.
- Member, Blue Ribbon Committee on Corporate Law, South Carolina Secretary of State, 1991-95.
- Securities Law Expert for the South Carolina Attorney General in connection with the bankruptcy of Patriots Point Associates, 1989-91.

Advisor to the S.C. Deputy Securities Commissioner and the S.C. Senate Judiciary Committee on Corporate Law issues.
Co-Reporter, South Carolina Business Corporation Act of 1988 (South Carolina Law Institute for the South Carolina General Assembly, 1986-88).
Member, Louisiana State Law Institute, Civil Code Revision Committee, 1975-1977.

PRESENTATIONS

- "Regulating Unauthorized Multijurisdictional Virtual Law Practice," S.C. Law School (2/22/16)
- "Practice-Specific Concerns Regarding Cyber Attacks," Panel Moderator, Cyber Attacks & Civil Liability, S.C. Law Review Symposium (2/5/16)
- "Highlights from the Technology and Law Seminar: Why Do I Have To Understand This Stuff?," Fifth Annual Everything You Need To Know About Ethics, S.C.A.E.C. - S.C. Bar CLE, Columbia, SC (1/15/16)
- "Future Ethics for Lawyers in the Age of the Jetsons," Twentieth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/17/15)
- "Ethical Management of Technology: Survival Techniques for Lawyers and Law Firms," Technology Techniques & Security for Litigators and Transactional Lawyers, S.C. Bar CLE, Columbia, SC (12/10/15)
- "The Ethics of Technology in Law Practice," Technology Techniques & Security for Litigators and Transactional Lawyers, S.C. Bar CLE, Columbia, SC (12/10/15)
- "Technology for Safe & Sane Lawyering," S.C. Bar LEAPP Law Office Management School (10/1/15)
- "Cybersecurity Ethics: Encryption for Solo Lawyers and Small Law Firms," LPM-TECH CONFERENCE 2015, S.C. Bar Solo & Small Firm Section, Columbia, SC (9/18/05)
- "Minister of Justice, Guardian of the Constitution," 14th Circuit Solicitor's Office Career Prosecutor Program and Externship, Bluffton, SC (6/1/15)
- "Ethics for Criminal Defense Counsel in the Age of Social Media and the Internet," Federal Public Defender Seminar for Criminal Justice Act Attorneys (5/8/15)
- "Ethics of Lawyers Working for Nonprofits & Serving on Nonprofit Boards," South Carolina Nonprofit Corporate Update, S.C. Bar CLE, Columbia, SC (2/5/15)
- "Ethics of Confidentiality Online: Cybersecurity & Encryption," Fourth Annual Everything You Need To Know About Ethics, S.C.A.E.C. - S.C. Bar CLE, Columbia, SC (1/16/15)
- "*Fabian v. Lindsay*: Lawyers' Liability to Intended Beneficiaries," with Professor S. Alan Medlin, Nineteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/12/14)
- "Cybersecurity: Lawyers Safely Using Smartphones, Email, and the Cloud in the Age of International Hackers and Government Spies," S.C. Bar CLE, Columbia, SC (8/26/14)
- "Ethics for Prosecutors," 14th Circuit Solicitor's Office Career Prosecutor Program and Externship, Bluffton, SC (6/30/14)
- "Modification of Fees and Other Contract Questions: Rules 1.8 and 1.5," Third Annual Everything You Need To Know About Ethics, S.C.A.E.C.-S.C. Bar CLE, Columbia, SC (1/17/14)
- "Modification of Fee Agreements During the Representation: Ethical Duties, Fiduciary Duties, Contract Law," Eighteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/12/13)
- "Legal Ethics and Social Media: How to Stay Out of Trouble and Protect Your Lawyer's Law License," Palmetto Paralegal Association Seminar, Columbia, SC (10/16/13)

- "Professional Responsibility for Prosecutors," 14th Circuit Solicitor's Office Career Prosecutor Program and Externship, Bluffton, SC (May 29-30, 2013)
- "War of the Roses & Roses, LLC: The Sequel - When Partners Leave the Firm," Everything You Need To Know About Ethics, S.C.A.E.C.-S.C. Bar CLE, Columbia, SC (1/18/13)
- "Getting Paid, Keeping the Money, and Safeguarding Your License: How to Manage Your Cash Flow, Trust Account, and Bottom Line Under the New Rules Without Inviting a Visit from Disciplinary Authorities," Seventeenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/6/12)
- "Getting Paid, Keeping the Money, and Safeguarding Your License: How to Manage Your Cash Flow, Trust Account, and Bottom Line Under the New Rules Without Inviting a Visit from Disciplinary Authorities," S.C. Association for Justice, Auto Torts Seminar, Buckhead Ritz Carlton, Atlanta, GA (12/1/12)
- "Mike Nifong - Aberrational Rogue?," U.S.C. Law School Symposium on Prosecutorial Ethics and Duties, Columbia, SC (3/16/12)
- "How to Get Paid Now!," Everything You Need To Know About Ethics, S.C.A.E.C.-S.C. Bar CLE, Columbia, SC (1/13/12)
- "Current Professional Responsibility Issues for Litigators," S.C. Tort Law Update, S.C. Bar CLE, U.S.C. Law School (1/6/12)
- "Fiduciary Duties of Estate Planning & Probate Lawyers: General Principles and S.C. Cases," Sixteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/13/11)
- "Advanced Ethics for Legislative Attorneys," South Carolina General Assembly, Columbia, SC (10/5/11)
- "Judicial Ethics for S.C. Workers' Compensation Commissioners," S.C. Workers' Compensation Commission Continuing Judicial Ethics Seminar, Columbia, SC (11/16/10)
- "Ethics for Legislative Attorneys," South Carolina General Assembly, Columbia, SC (10/6/10)
- "Current Ethical Issues and Trends," York County Bar Association Ethics CLE, Panel with S.C. Supreme Court Justice Costa M. Pleicones and S.C. Disciplinary Counsel Lesley M. Coggiola, Esq., Rock Hill, SC (3/12/10)
- "Lawyers in the Crosshairs: Recent South Carolina Cases of Concern to Estate Planning and Probate Lawyers," Fourteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/15/09)
- "Judicial Ethics for S.C. Workers' Compensation Commissioners," S.C. Workers' Compensation Commission Continuing Judicial Ethics Seminar, Columbia, SC (11/17/09)
- "Regulating Lawyer Behavior Through Recent South Carolina Tort Cases: Issues of Lawyer Ethics, Professionalism, and Liability," S.C. Tort Law Update, S.C. Bar CLE, U.S.C. Law School (11/13/09)
- "Lawyers' Ethical Responsibilities and the Torture Memoranda," Amnesty International Panel Discussion, University of South Carolina, Columbia, SC (4/15/09)
- "The 'Of Counsel' Agreement," S.C. Bar Annual Convention, Myrtle Beach, SC (1/24/09)
- "Ethical Duties in Family Estate Planning," Thirteenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/11/08)
- "Teaching Professional Responsibility in U.S. Law Schools," Southeastern Ass'n of Law Schools, Ritz Carlton, Palm Beach, FL (7/31/08)
- "Judicial Selection in the United States," S.C. Supreme Court Teachers Institute, Columbia, SC (6/23/08)
- "Corporate Lawyers as Fiduciaries," S.C. Bar Annual Convention, Charleston, SC (1/25/08)

- "My Heroes Have Always Been Lawyers and They Still Are, It Seems," Twelfth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, SC (12/13/07)
- "Prosecutorial Ethics: Was the Duke Lacrosse Case an Aberration or the Tip of the Iceberg?," SCTLA Annual Convention, Hilton Head Island (8/3/07).
- "Malpractice Liability of Estate-Planning Lawyers," Eleventh Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/7/06).
- "Ethics for Trial Lawyers: How to Avoid Those Hidden Land Mines," S.C.T.L.A. Auto Torts Seminar XXIX, Ritz-Carlton, Buckhead, Atlanta, GA (12/2/06).
- "Ethical Issues for the Sports Attorney-Agent: Lessons from *Vortex v. Ware*," International Sport and Entertainment Management Conference, Metropolitan Convention Center, Columbia, SC (11/9/06).
- "Ethics in Workers Comp Practice: Negotiation," ASCCAWC Annual Convention, Grove Park Inn, Asheville, NC (11/4/06).
- "Probate Judges and Lawyers: Prohibition of *Ex Parte* Communications," Fourteenth Annual Probate Bench/Bar Conference, Columbia, SC (9/15/06).
- "The Future Regulation of Lawyer Advertising Under the Proposed S.C. Rules of Professional Conduct," SCTLA Annual Convention, Hilton Head Island (8/4/06).
- "Free Speech and Judicial Selection: Implications of *White v. Republican Party*," Southeastern Association of Law Schools, The Breakers Hotel, Palm Beach, FL (7/20/06).
- "The New South Carolina Rules of Professional Conduct," Tenth Annual Charleston County Probate Court Seminar, The Mills House Hotel, Charleston, S.C. (12/15/05).
- "Ethical Use of Discovery Under the Workers' Compensation Act; Contact with Employer Witnesses; Use of Subpoenas in a Workers' Compensation Case; Frivolous Defenses: What to do About Them," ASCCAWC Annual Meeting, Grove Park Inn, Asheville, N.C. (11/4/05).
- "Applying the SC Code of Judicial Conduct to Workers' Compensation Commissioners: Lessons for Lawyers Practicing Before the Commission," SCWCEA Educational Conference CLE, Marriott Myrtle Beach Resort (10/24/05).
- "The New SC Rules of Professional Conduct: You Really Can't Do THAT Anymore!," SCWCEA Educational Conference, Marriott Myrtle Beach Resort (10/24/05).
- "Newly Revised Frivolous Procedures Act & Other Ethical Issues," SCTLA Tort Reform Seminar, Columbia, S.C. (10/14/05).
- Moderator and Coordinator, S.C. Corporate Practice Seminar, S.C. Bar CLE, U.S.C. Law School (9/30/05). Speaker: "Ethical Issues in S.C. Corporate Law for the General Practitioner and the Corporate Lawyer:
 - Ethical Issues Presented by Choices of Control Devices
 - Ethical Issues Arising from Threats of Owner Liability
 - The Big Ethical Question: Who Is The Client?"
- "The Code of Judicial Conduct: Does It Effect How We Practice Workers' Comp?," S.C. Bar CLE, U.S.C. Law School (8/26/05).
- "Ethics Seminar: The New Rules of Professional Conduct," SCTLA Annual Convention, Hilton Head Island (8/5/05).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, Richland County Bar Association (11/5/04).
- "Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Charleston, S.C. (8/18/04).
- "The New S.C. Lawyers' Oath," C.L.E. Seminar, S.C. Bar, Charleston, S.C. (6/25/04).
- "Judicial Ethics Review," J.C.L.E. Ethics Seminar, S.C. Court Administration Magistrates' Training Program, Columbia, S.C. (4/23/04).

- "Ethics 2000 and Lawyers' Fees," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel, Columbia, S.C. (11/15/03).
- "The Ethical Implications of *Brown v. Bi-Lo*," S.C. Workers Comp. Educational Ass'n Educational Conference, Kingston Plantation, Myrtle Beach, S.C. (10/20/03).
- "Ethics 2000: The New Rules of Professional Conduct & Multi-Jurisdictional Practice of Law," C.L.E. Ethics Seminar, Investors Title Insurance Co. Seminars (9/17/03 Rock Hill, 9/12/03 Hilton Head).
- "Ethics 2000: The New Rules of Professional Conduct — You Can't Do That Anymore!," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/8/03).
- "Political & Legal Ethics: The Pitfalls to Avoid," C.L.E. Ethics Seminar, S.C. Bar Annual Convention (Young Lawyers Division) (1/24/03).
- "Recent Developments in Legal Ethics," C.L.E. Ethics Seminar, S.C. Bar & S.C. Association of Ethics Counsel (12/14/02).
- "Current Ethical Issues in Real Estate Practice," C.L.E. Ethics Seminar, Security Title Insurance Company (11/8/02).
- "Ethics of Attorney's Fees for Domestic Law Attorneys," C.L.E. Ethics Seminar, S.C. Bar (9/20/02).
- "Discovery Abuse and Litigation Ethics," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/3/02).
- "Discovery Abuse, Litigation Ethics, Supervision and Other Horrors," C.L.E. Ethics Seminar, S.C.T.L.A. Convention, Hilton Head, S.C. (8/2/02).
- "Ethical Issues in Attorney Marketing Under the Amended Rules," C.L.E. Ethics Seminar, S.C. Bar (7/26/02).
- "Ethics in the Practice of Criminal Law," C.L.E. Ethics Seminar, S.C. Bar (5/10/02).
- "Professional Ethics in the Real World: Communication with Witnesses," C.L.E. Ethics Seminar, Ass'n S.C. Claimants' Attorneys for Workers Comp. (5/3/02).
- "Lawyers and Paralegals Practicing Law When and Where They Shouldn't," C.L.E. Ethics Seminar, S.C. Bar and South Carolina Ass'n of Ethics Counsel (12/15/01).
- "Proposed Disclosure Rule and Goods Funds Statute in South Carolina," C.L.E. Ethics Seminar, S.C. Bar (8/17/01).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/3/01).
- "Ethical Perils for Family Practitioners: Keeping Your License and Keeping Your Practice," C.L.E. Ethics Seminar, S.C. Bar (12/2/00).
- "Ethical Issues in Workers Compensation Practice," C.L.E. Ethics Seminar, S.C. Workers' Comp. Educational Ass'n, Kingston Plantation, Myrtle Beach, S.C. (10/23/00).
- "The Things That Make Paralegals Indispensable: Technology and the Future of the Practice of Law," Paralegal Continuing Education Seminar, S.C.T.L.A. Convention (8/5/00).
- "Recent Developments in Ethics and Professional Responsibility," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/4/00).
- "The Internet — Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," SC Defense Trial Attorney's Association & SC Claim Manager's Association CLE at Grove Park Inn, Asheville, N.C. (7/29/00).
- "The Internet — Legal Ethics in Cyberspace: Marketing on the Web and Communicating Via Email Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (4/28/00).

- "The Responsibility of Administrative Law Judges to Control Unethical and Unprofessional Conduct by Lawyers: Ethical Prohibitions, Remedies and Sanctions," ALJ CLE Seminar, Southern States Association of Administrative Law Judges (3/17/00).
- "S.C. Appellate Procedure: The New Relationship Between the Supreme Court and the Court of Appeals," Paralegal Continuing Education Seminar, Ass'n S.C. Claimant Attorneys for Workers Comp., Asheville, N.C. (1/22/00).
- "Professionalism: Advertising Ethically Under the Amended S.C. Rules of Professional Conduct," C.L.E. Ethics Seminar, S.C. Bar (1/14/00).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/11/99).
- "Hot Issues in Ethics: Marketing Under the Rules of Professional Conduct and the Amended South Carolina Rules Governing Advertising," C.L.E. Ethics Seminar, S.C. Bar (10/29/99).
- "Ethical and Professional Responsibility Issues in Litigation: Discovery Abuse," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (12/12/98).
- "Multi-Jurisdictional Practice of Law: *Pro Hac Vice* Admission and Unauthorized Practice," C.L.E. Ethics Seminar, S.C. Bar (12/8/98).
- "Discovery Abuse: Bane of Professionalism? Ethical Prohibitions & Court-Ordered Sanctions," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/14/98).
- "*Hedgepath & McCormick* and the Ethics of Ex-Parte Communication with Treating Physicians," Workers Comp. C.L.E. Seminar, S.C.T.L.A. Convention (8/14/98).
- "Legal Ethics for a Multi-State Law Firm," C.L.E. for a Major S.C. Law Firm (8/8/98).
- "Prudent Ethical Conduct after *Hedgepath*," Medical Staff, McLeod Hospital, Florence, S.C. (4/6/98).
- "What is the Effect of *Hedgepath* on Doctors' Duties to Workers' Comp Patients?" S.C. Workers Comp. Educational Ass'n Annual Meeting, Charleston, S.C. (2/22/98).
- "Confidentiality, Privilege, and the Attorney as Witness, Gossip, or Snitch," C.L.E. Ethics Seminar, S.C. Bar and Univ. of South Carolina School of Law (1/10/98).
- "Law Firm Breakups and Departing Lawyers," C.L.E. Ethics Seminar, S.C. Bar and University of South Carolina School of Law (12/13/97).
- "*Hedgepath* & Lawyers' Professional Conduct: Implications in Workers' Compensation Proceedings," C.L.E. Seminar, The Association of South Carolina Claimant Attorneys, Asheville, N.C. (11/14/97).
- "Ethics: Judicial Immunity for Administrative Law Judges," J.C.L.E. Seminar, Chief Administrative Law Judges Conference, Charleston, SC (11/6/97).
- "*Hedgepath* and the Rules of Professional Conduct: Who Can We (and They) Talk to Now?" C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/15/97).
- "Ways to Get in Trouble: Old and New," C.L.E. Ethics Seminar, U.S.C. School of Law (12/7/96).
- "Ethics for the Modern Lawyer on the Information Superhighway," C.L.E. Ethics Seminar, S.C.T.L.A. Convention (8/9/96).
- "Mobile Lawyers and Mobile Clients," C.L.E. Ethics Seminar, U.S.C. School of Law (12/95).
- "Constitutional Restrictions on Regulation of Lawyer Advertising," House of Delegates, S.C. Bar (1/21/94).
- "Ethical Issues Facing Law Firms," C.L.E. Seminar, University of South Carolina School of Law (1/9/93).
- "Ethical Issues in Office Practice," C.L.E. Seminar, University of South Carolina School of Law (12/5/92).
- "Lawyer Television Advertising: A Video Presentation," U.S.C. Law School Faculty Ethics C.L.E. (10/22/92).

- "The Ethical Dilemma of Corporate Counsel," C.L.E. Seminar, Farm Credit Sys. General Counsels Conference (10/7/92).
- "Lawyer Advertising-The Great Debate," Moderator, C.L.E. Ethics Seminar, S.C.T.L.A. Conv. (8/14/92).
- "Civil Litigation," in Ethical Issues in Litigation, C.L.E. Seminar, University of South Carolina School of Law (1/11/92).
- "Shareholders' Rights in Disputes with a Corporation and those in Control," in Planning for Business Corporations: A Guide for General Practitioners, C.L.E. Seminar (1/3/92).
- "Ethical Issues in Civil Litigation," Legal Ethics and Professional Responsibility, C.L.E. Seminar (12/6/91).
- "A Walk Through the New South Carolina Rules of Professional Conduct," C.L.E., U.S.C. School of Law (1/12/91).
- "Corporate Litigation and Liabilities of Corporations, Directors, Officers, and Shareholders after the 1988 Revision of the South Carolina Business Corporation Act," in Current Issues in Civil Litigation, a C.J.E. Seminar (4/14/89).
- "Fundamental Corporate Changes and Dissenters' Rights under the South Carolina Business Corporation Act of 1988," in The New South Carolina Corporation Act, C.L.E. Seminar (12/16/88).

UNIVERSITY AND COMMUNITY SERVICE

- Parliamentarian, University of South Carolina School of Law Faculty, 2004-2007, 2008-2014.
- Member, Dean Review Committee for the Dean of the College of Criminal Justice, 2003.
- Member, Faculty Manual Revision Committee, Faculty Senate, University of South Carolina, 1998-1999.
- Parliamentarian, University of South Carolina Faculty, 1997-2004.
- Member, Steering Committee, University of South Carolina Faculty Senate, 1997-2004.
- Faculty Senator, University of South Carolina, 1983-1985, 1995-1998, 2000-2003.
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1995-1996.
- Faculty Advisor, ABA National Appellate Advocacy Competition Team, University of South Carolina School of Law, 1982-1983 (winner Regional Competition).
- Faculty Advisor, National Moot Court Team, University of South Carolina School of Law, 1980-1981.
- Committee Chairman, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1996-2003.
- Scoutmaster & Founder, BSA Troop 788, St. David's Episcopal Church, Columbia, SC 1992-1996.
- Assistant Scoutmaster, Committee Chairman, Committee Member, BSA Troop 388, Windsor United Methodist Church, Columbia, SC 1986-1992.
- Junior Warden, Vestry, St. David's Episcopal Church, Columbia, SC 1984-1987.
- Chorister, Good Shepherd Episcopal Church, Columbia, SC 1999-2004.
- Chorister, St. David's Episcopal Church, Columbia, SC 1984-1998.
- Chairman, Christian Education Committee, St. Michael and All Angels Episcopal Church, Columbia, SC 1981-1983.
- President, Richland Northeast High School P.T.S.O., Columbia, SC 1992-1997.
- Member, Richland School District Two Strategic Planning Committee, Columbia, SC 1995-96.
- Member, Richland School District Two Ridge View High School Planning Committee, Columbia, SC 1993-1994.

**AFFIDAVIT OF
GREGORY G. HOLMES**

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Theodore D. Stoney, Jr., individually)
and as trustee for Richard Stoney, Jr.,)
and Gregory G. Holmes, In re:)
The Boathouse at Breach Inlet, LLC,)

Third-Party Intervenor Applicants,)

vs.)

The Boathouse at Breach Inlet, LLC)
by and through its member, Laurence)
O. Stoney, Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually)
and as Member-manager of The)
Boathouse at Breach Inlet, LLC and)
Crew Carolina, LLC)

Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015 -CP-10-5463

**AFFIDAVIT OF
GREGORY G. HOLMES**

PERSONALLY appeared before me, Gregory G. Holmes, who after being duly sworn,
deposes and states as follows:

My Interest in the Boathouse at Breach Inlet, LLC

1. I am a member of the Boathouse at Breach Inlet, LLC (the Boathouse).
2. I own a ten percent (10%) membership interest in the Boathouse.
3. This ten percent (10%) interest was initially acquired through Holmes Capital Management, LLC (HCM), a holding company that was co-owned by my ex-wife, Constance Holmes, and me during our marriage, as a result of a loan which was converted to an ownership interest.

4. Constance and I were divorced on February 21, 2010. The Divorce Decree awarded me one hundred percent (100%) of HCM's interest in the Boathouse. (See page 6 of 22, paragraph 2 of Order Approving Agreement and Decree of Divorce, dated February 21, 2010, incorporating Property, Support, and Custody Settlement Agreement, attached.)
5. Sadly, Constance passed away on February 23, 2013.

Laurence Does Not Represent My Interests In This Derivative Action

6. Even though Laurence states that he represents my interests in the lawsuit, he does not represent me or my interests in any way.
7. Laurence has never contacted me about this lawsuit or spoken to me about the accusations made in the lawsuit against Richard. To my knowledge, he has never contacted Ted Stoney or Richard Stoney, Jr. about this lawsuit either. I think this is strange given that all of us live in Charleston.
8. I only found out about this lawsuit and that it was filed as a derivative action when Richard told me about it.
9. I have known Lori for many years. My ex-wife and I were good friends with Richard and Lori during the course of our respective marriages. We vacationed together, our children were also friends, and we frequented each other's homes.
10. During Richard and Lori's divorce, I recall that Lori tried to take over the management of the Boathouse as well as Richard's interest. Laurence testified on Lori's behalf at trial and claimed that he thought he was entitled to more money than he had received in distributions. This was back in 2011. He also said that Lori would make a better manager than Richard despite not having any experience in running a restaurant. Lori and Laurence were not successful in taking over the Boathouse at trial. Laurence is now using this derivative lawsuit to try to accomplish the same thing that he tried to do back then.
11. Richard has done an excellent job operating the Boathouse and has run a profitable business since I have been a member, and to my knowledge, well before that as well. There is no basis for filing this action against Richard, particularly as derivative action.
12. This lawsuit has done nothing but create negative press for what is otherwise a profitable business. For instance, as a result of filing this derivative suit, the Post and Courier published a front-page story on Laurence's accusations (attached). I believe this type of press is harmful to the restaurant, particularly a restaurant that has up to now enjoyed a reputation as a wholesome family-oriented destination.

13. In bringing this lawsuit as a derivative action, it appears to me that Laurence is only looking out for his own interest, and not the interests of the members or the company. As mentioned above, Laurence has long claimed that he is owed more in member distributions than he has received. That is a personal issue and not one that I share. If Laurence thinks he is legally owed more than he has received, he should file a personal lawsuit against Richard, not a derivative one.
14. This lawsuit is tremendous waste to the Boathouse's resources. Laurence is accumulating legal bills in the name of the Boathouse for an action that is not supported by the majority of the members. The only other person who might possibly support this action is Richard's ex-wife who has previously tried to take over the Boathouse and was unsuccessful and is still engaged in marital litigation with Richard to this day.
15. Filing this lawsuit as derivative action is self-serving in that Laurence is in effect trying to pay for his personal litigation with the Boathouse's funds. I certainly do not believe that the Boathouse or its members should be responsible for these fees.
16. This lawsuit is also a waste to the Boathouse because the Boathouse will have to indemnify Richard for the costs he has accumulated in defending himself against this derivative action.

I Do Not Consent to Haynsworth Sinkler Boyd, P.A.'s Representation

17. Lawrence Stoney is represented in this action by Haynsworth Sinkler Boyd and claims to represent my interest in this litigation. He does not. And I do not consent to being represented by Haynsworth Sinkler Boyd.
18. Haynsworth Sinkler Boyd are currently representing someone against me in a separate lawsuit. (Gregory G. Holmes v. Patricia Thomas, Case No. 2015-CP-1002688).
19. I do not, in any way consent to Haynsworth Sinkler Boyd's representation of my interests as a member of the Boathouse at Breach Inlet, LLC. and seek to intervene in this derivative action for the purpose of inter alia, seeking the removal of Haynsworth Sinkler Boyd as my attorney.

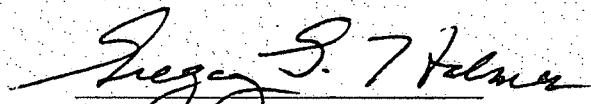
Conclusion

20. Laurence does not adequately represent my interests in this lawsuit. Laurence's reasons for filing this lawsuit are personal in nature. The lawsuit should have been filed as a personal lawsuit against Richard, not a derivative action. This derivative action is a complete waste of the Boathouse's resources and threatens to harm my

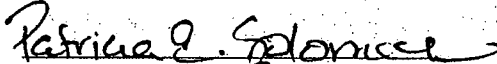
interest in the company. Therefore, I ask to intervene in this matter to protect my interests.

21. I also request that Haynsworth Sinkler Boyd be prevented from representing the interests of the Boathouse and its members because the firm is suing me in a separate action and cannot adequately represent my interests while suing me at the same time.

[FURTHER AFFIANT SAYETH NAUGHT!]


Gregory G. Holmes

Sworn and subscribed before me
this 10th day of October, 2016.


Notary Public for SC
My Commission Expires: 1/7/24

**ATTACHMENT 1
DIVORCE DECREE
PAGE 6 OF 22**

party receives more than his or her fifty percent (50%) share, he or she shall immediately pay the difference to the other party to effect an equal division.

2. HCM loaned the sum of \$250,000 to Richard Stoney for Boathouse at Breech Inlet. The parties' investment was converted to a 10% ownership interest in the restaurant. The parties anticipate a return of approximately \$50,000 annually. GREG shall receive one hundred percent (100%) of the parties' interest in this investment. Richard Stoney, or his agent, is hereby authorized to distribute such sums directly to GREG in accordance with this provision.

3. HCM invested the sum of \$600,000 in Boathouse at Ellis Creek. Of the \$600,000 investment, \$100,000 represents a third mortgage on the real property on which a restaurant is to be built. The remaining \$500,000 represents an equity position in the restaurant, but the parties do not presently know the percentage ownership or the rate of return on this investment, if any. Any and all sums paid as a result of HCM's investment in Boathouse at Ellis Creek shall be paid directly to CONSTANCE, and GREG waives any and all interest to same. Richard Stoney, or his agent, is hereby authorized to distribute one hundred percent (100%) of any sums related to the HCM investment directly to CONSTANCE in accordance with this provision. In the event GREG receives any sums as a result of the investment, he shall immediately pay those sums directly to CONSTANCE.

4. HCM also invested \$200,000 in Earl Properties, formerly known as Bayview Properties, and each party specifically agrees that any proceeds or loan repayments by this entity are to be distributed with CONSTANCE receiving fifty percent (50%) and GREG receiving fifty percent (50%).

5. At all times each party shall be solely responsible for any taxes, including capital gains, which may be associated with his or her interest in these properties, and each party holds the other harmless therefrom and indemnifies him or her from same.

6. To the extent operating agreements or other documents require modification to reflect the parties' ownership as set forth above, both GREG and CONSTANCE agree to cooperate to ensure the proper documents are executed in a timely fashion and shall be equally responsible for the cost of preparation of these documents, if any. The parties will consult to determine whether Holmes Capital Management should continue to operate, and will remain equal partners of HCM unless otherwise agreed.

E. Other Business Interests.

CTH
CTH

6 of 22

SSJ
GCH

ATTACHMENT 2
POST & COURIER ARTICLE
OCT. 14, 2015



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Lawsuit alleges Charleston County restaurant owner diverted at least \$3.8M



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[David Wren](https://apps.pbcs.dll/personalia?ID=207)

[\(/apps/pbcs.dll/personalia?ID=207\)](https://apps.pbcs.dll/personalia?ID=207) ✉

Email (<mailto:dwren@postandcourier.com>) [@David_Wren](#)

https://twitter.com/#!/David_Wren

Oct 14 2015 2:02 pm ⌚ Oct 14 3:54 pm





A long-running family dispute has landed in state court with one cousin accusing the other of improperly taking millions of dollars from The Boathouse at Breach Inlet restaurant on the Isle of Palms.

Laurence Stoney, a member of The Boathouse at Breach Inlet LLC, filed a lawsuit late last week on behalf of the corporation alleging that cousin Richard Stoney misappropriated at least \$3.8 million from the restaurant.

Richard Stoney could not immediately be reached for comment. He has not filed an answer to the complaint but his lawyer, Capers Barr III, has been served with the lawsuit.

Barr declined to comment on the specifics of the case, but he said the two cousins have a long history of disputes.

"They've been feuding for years," Barr said Wednesday. "This is just another chapter."

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He also said his client intends to fight the allegations and will be filing an answer to the lawsuit in the coming weeks.

Laurence Stoney's lawyer, Mac McQuillin, declined to comment, saying "the lawsuit speaks for itself."

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How to Get Ready for the Fall Charleston Real Estate Surge

The Charleston area real estate market is moving into a busy time of year. The summer vacation season has ended, and buyers are eager to see what's new in the home listings.

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According to the complaint, millions of dollars have been diverted from the Boathouse restaurant to another corporation Richard Stoney controls called Crew Carolina LLC, which manages restaurants.

Although tax records allegedly show the amount to be at least \$3.8 million, Laurence Stoney said in his lawsuit that the amount could top \$4 million.

The court documents allege Richard Stoney used the money for personal reasons, in other businesses he controls and to guarantee personal debts and business obligations.

The lawsuit states that McQuillin met four times with Barr from May through July in an unsuccessful attempt to resolve the dispute. The two sides also participate in mediation but Richard Stoney "has refused to remedy the damage he caused to the Boathouse and its members," court documents state.

The Boathouse at Breach Inlet is asking a judge to award unspecified actual, consequential

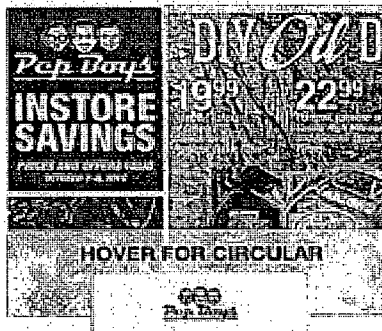
and punitive damages as well as repayment of money allegedly misappropriated. It also wants a full accounting of the funds it says were taken as well as financial records for Richard Stoney, The Boathouse at Breach Inlet and Crew Carolina.

No court date has been scheduled.

Reach David Wren at (843) 937-5550 or on Twitter at @David_Wren_

Keywords [Breach Inlet \(/section/search&facet.filter=Keywords:Breach%20Inlet\)](#)
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[Restaurant industry \(/section/search&facet.filter=Keywords:Restaurant%20industry\)](#)
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**AFFIDAVIT OF
THEODORE D. STONEY, JR.**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015 -CP-10-5463

EX PARTE:)

Theodore D. Stoney, Jr., individually)
and as trustee for Richard Stoney, Jr.,)
and Gregory G. Holmes, In re:)
The Boathouse at Breach Inlet, LLC,)

**AFFIDAVIT OF
THEODORE D. STONEY, Jr.**

Third-Party Intervenor Applicants,)

IN RE:)

The Boathouse at Breach Inlet, LLC)
by and through its member, Laurence)
O. Stoney, Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually)
and as Member-manager of The)
Boathouse at Breach Inlet, LLC and)
Crew Carolina, LLC)

Defendant.)

PERSONALLY appeared before me, Theodore D. Stoney, Jr., who after being duly sworn, deposes and states as follows:

1. I have been a member of the Boathouse at Breach Inlet, LLC (the Boathouse) since it started in 1997.
2. I own a ten percent (10%) membership interest in the Boathouse. I also hold an additional five percent (5%) membership interest in the Boathouse as trustee for my nephew, Richard Stoney, Jr.
3. Richard S. W. Stoney is my brother. Laurence Stoney is my first cousin.

4. Laurence Stoney has filed this lawsuit as a derivative action. The lawsuit states that he will fairly and adequately represent the interests of the members. However, Laurence does not represent my interests or the interests of the members.
5. Richard Stoney, Gregory Holmes, and myself, both individually and as trustee for Richard Stoney, Jr. oppose this lawsuit because it stems from Laurence's personal issues with Richard and is wasteful to the Boathouses resources. Together, we own eight-five percent of the Boathouse's membership interests.
6. Laurence Stoney owns a five percent (5%) membership interest. The remaining ten percent is held by Lori Stoney, Richard's ex-wife, who is currently engaged in marital litigation against Richard. (Lori holds five percent (5%) individually and five percent (5%) as trustee for their daughter, Croft Stoney). Richard gifted Lori and Croft their shares during the course of his marriage to Lori.
7. Lori and Laurence have been scheming for years to take over the management and ownership of the Boathouse from Richard. Back in February of 2011, during Richard and Lori's divorce litigation, Lori filed a motion seeking to take over management and ownership of the Boathouse. Laurence even testified on her behalf during trial, stating that he thought he was owed more money than he has received. Fortunately, their attempts to take over the restaurant were unsuccessful.
8. Even though Laurence says that he represents my interests and the interests of the other members, he has never contacted me, Richard Stoney, Jr., or Gregory Holmes about this lawsuit.
9. Laurence did not even have the courtesy to tell me that he filed a lawsuit on behalf of the Boathouse at Breach Inlet, despite saying he represents my interests. I had to find out about the lawsuit being filed from Richard. The following day, I also had to read about it in a disgraceful article that was published in the Post and Courier (attached). It is my suspicion that Laurence and his attorneys leaked the lawsuit to the Post and Courier in an effort to hurt Richard.
10. This lawsuit has nothing to do with the interests of the members or the Boathouse. Laurence filed this action because he believes he is owed certain membership distributions. Laurence's reasons for filing this lawsuit are personal to him. If he wants to address his issues with Richard, he should file a personal lawsuit against Richard and not involve me or the other members.
11. I also find it peculiar that Haynsworth Sinkler Boyd could claim to represent my interests when they have previously represented people against me. I have also learned that they are involved in a lawsuit against Gregory Holmes, a member of

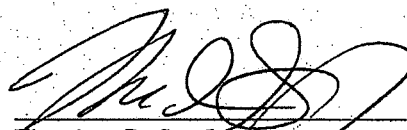
the Boathouse that they claim to represent in this derivative action.

12. The accusations contained in the lawsuit are harmful to the Boathouse. Besides creating negative publicity, this lawsuit is a tremendous waste of the Boathouse's resources and threatens to undermine its future success. Laurence is incurring legal bills in the name of the Boathouse to pursue a lawsuit that the members oppose. Further, Laurence's actions have caused Richard to spend money on attorneys' fees to defend himself. Under the Boathouse's Operating Agreement, the Boathouse will have to indemnify Richard for these costs.
13. Richard is an effective manager, who despite facing increasing competition from countless new restaurants has run a profitable business for nearly twenty years.
14. Laurence, however, has been disruptive to the Boathouse since it was formed. He has never contributed any funds to capital improvements nor has he been involved in its operation for the past nineteen years. For example, when the Boathouse's kitchen needed to be expanded after its first year to accommodate the growing business, Laurence refused to contribute to its cost. Richard took out significant loans in his own name for the benefit of the Boathouse, spending close to \$450,000. The overhaul increased the size of the kitchen by 30-40 percent, added a much-needed freezer and cooler, and added an employee restroom. In addition, a second floor office with a separate storage area was added. Laurence benefited from this expansion without assuming any of the risk. To my knowledge he's more than quadrupled his initial investment.
15. Laurence has also made a habit of being unnecessarily caustic to the Boathouse's members and disparaging to and of its management and staff. For example, I have witnessed him launch into expletive-laden tirades against Harold Pratt Thomas, who served as the Boathouse's CPA, and Bobby Pearlman, who served as the Boathouse's attorney.
16. Laurence has a history of being disloyal to the Boathouse and its related businesses. For example, Laurence and I were also members of the Boathouse at East Bay. When the then-owners of the building at 549 E. Bay Street, brothers Jed and Jeff Drew, requested that all the members sign the lease, Laurence refused. Richard and I assumed the risk. Some years later, the property came up for sale. The building, which dated back to the mid-1800s, had foundation and moisture issues, which needed to be remedied. Richard and I felt we had no choice but to purchase the building. Despite knowing that Richard and I were under contract to purchase the property, Laurence contacted the lawyer for the seller behind our backs in an attempt to purchase the property for himself. We found out about Laurence's actions when the seller's attorney called Richard to tell him about them.
17. Laurence does not like Richard. The severity of Laurence's distaste for Richard

became apparent to me during an exchange I had with him prior to the filing of this lawsuit. A month or so before the lawsuit was filed, I ran into Laurence at the Carolina Yacht Club, where both of us are members. I arrived at the club around 5:30 in the evening. Laurence was sitting in his usual place at the end of the bar next to the kitchen door. I walked over to say hello and exchanged pleasantries while I waited for a friend to join me. We engaged in some small talk in which he told me that his son was working for a dredge company in King's Bay, Georgia making \$90,000 a year. Then, completely out of the blue, Laurence stuck his finger in my face and said that he needed to talk to me. He proceeded to accuse me of being un-neighborly because I had dug a ditch across my side of the road at our family's farm and that it was an attempt to prevent him from using the old road, which we call King's Highway. I explained to him that the ditch was not on his property, but rather on property owned by Richard and me. I also told him that I was tired of his son and his employees tearing up our road and that their use interfered with my duck pond during duck season and my friend Dennis Fleming's deer hunting stand during deer season. Laurence continued to go on, accusing me of being un-neighborly. He then went on to state that he was going to come after my brother, Richard, and turn his whole world upside down.

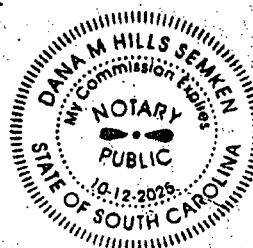
18. Laurence's reasons for filing this lawsuit are 100% personal and have nothing to do with the interests of the members of the Boathouse. He does not represent my interests and is wasting the Boathouse's assets by bringing this lawsuit as a derivative action. As a result, I request to intervene in this lawsuit to protect my interests as a member of the Boathouse at Breach Inlet, LLC as well as the interests of my nephew and of the Boathouse itself. I also request that this lawsuit be dismissed.

[FURTHER AFFIANT SAYETH NAUGHT!]


Theodore D. Stoney, Jr.

Sworn and subscribed before me:
this 30th day of September, 2016.

Printed Name Dana M. Hills Semken
Notary Public for Charleston County
My Commission Expires: 10-12-25



ATTACHMENT 1
POST & COURIER ARTICLE
OCT. 14, 2015



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Lawsuit alleges Charleston County restaurant owner diverted at least \$3.8M



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David Wren

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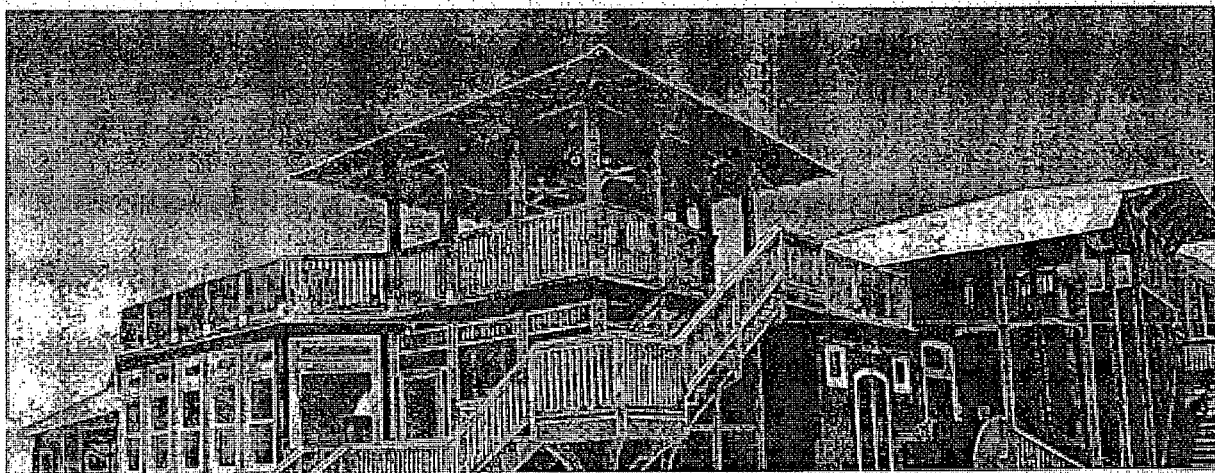
Email (<mailto:dwren@postandcourier.com>)



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Oct 14 2015 2:02 pm Oct 14 3:54 pm





A long-running family dispute has landed in state court with one cousin accusing the other of improperly taking millions of dollars from The Boathouse at Breach Inlet restaurant on the Isle of Palms.

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Richard Stoney could not immediately be reached for comment. He has not filed an answer to the complaint but his lawyer, Capers Barr III, has been served with the lawsuit.

Barr declined to comment on the specifics of the case, but he said the two cousins have a long history of disputes.

"They've been feuding for years," Barr said Wednesday. "This is just another chapter."

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He also said his client intends to fight the allegations and will be filing an answer to the lawsuit in the coming weeks.

Laurence Stoney's lawyer, Mac McQuillin, declined to comment, saying "the lawsuit speaks for itself."

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The Charleston area real estate market is moving into a busy time of year. The summer vacation season has ended, and buyers are eager to see what's new in the home listings.

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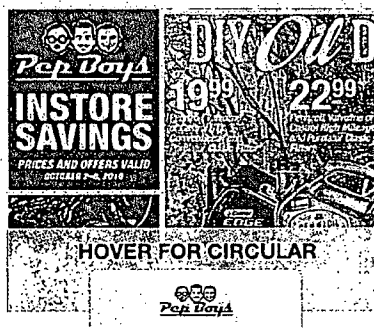
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No court date has been scheduled.

Reach David Wren at (843) 937-5550 or on Twitter at @David_Wren_

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**INTERVENORS
PROPOSED PLEADING**

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Theodore D. Stoney, Jr., individually)
and as trustee for Richard Stoney, Jr.,)
and Gregory G. Holmes, In re:)
The Boathouse at Breach Inlet, LLC,)
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Boathouse at Breach Inlet, LLC and)
Crew Carolina, LLC)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015 -CP-10-5463

**Proposed Answer of
Third-Party Intervenor Applicants**

Third-Party Intervenor, Gregory G. Holmes and Theodore D. Stoney, Jr., individually and as trustee for Richard S.W. Stoney, Jr., being members of the Boathouse at Breach Inlet, LLC, answer the Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint are denied, except as otherwise answered.
2. The allegations of the following paragraphs are admitted: 1, 3, 4, 9, 10, 11, 12, 13, and 59.
3. The allegations of the following paragraphs are denied: 5, 6, 7, 8, 15, 18, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 60, 61, 62, 63, 64, 65, and 66,

4. Answering paragraph 2, Third-Party Intervenors admit only that Laurence Stoney is a resident of Charleston County and a member of the Boathouse at Breach Inlet, LLC (hereafter "Breach Inlet"); Third-party Intervenors deny that Laurence Stoney brings this action in a representative capacity.
5. Answering paragraph 14, Third-Party Intervenors admit only that the current members are as follows: Richard Stoney, Laurence Stoney, Theodore D. Stoney, Jr. (individually and as trustee for Richard Stoney, Jr.), Lori Stoney (individually and as trustee for Croft Stoney), and Gregory G. Holmes.
6. Answering paragraph 16, Third-Party Intervenors admit only that Breach Inlet is governed by the 1997 Operating Agreement and by the provisions of the South Carolina LLC Act.
7. Answering paragraph 17, Third-Party Intervenors aver that Crew Carolina, LLC was formed in 1998 for purposes, inter alia, of consolidating the administrative management of Breach Inlet, and subsequently of The Boathouse at East Bay, LLC (hereafter "East Bay") (of which Laurence Stoney was a member), a Boathouse at Lake Julian and Boathouse at Ellis Creek; all with the knowledge and acquiescence of Laurence Stoney for more than fifteen years prior to his filing of the within action.
8. Answering paragraph 19, Third-Party Intervenors aver that; through his attorneys, Laurence Stoney made a succession of strident, unreasonable demands on behalf of Laurence Stoney against Richard Stoney, in every instance accompanied by short and arbitrary deadlines; none of which were calculated for any purpose other than to profit Laurence Stoney individual, and to penalize Richard Stoney, individually; and none of which where designed for the benefit of Breach Inlet or its members.
9. Answering paragraph 20, admit that Plaintiff has improperly alleged matters and communications arising in mediation, contrary to the letter, if not the spirit, of Rule 8 of the South Carolina ADR Rules. Accordingly, the allegations of paragraph 20 are denied.
10. Answering paragraph 23, Third-Party Intervenors admit only that Laurence Stoney has been a member of Breach Inlet since its formation on November 21, 1997.
11. Answering paragraph 24, Third-Party Intervenors admit only that Richard has been member/manager of Breach Inlet since its formation on November 21, 1997.
12. Answering paragraph 32, Third-Party Intervenors admit only that Richard owes the statutory duties set forth in Code Section 33-44-409.
13. Answering paragraph 42, Third-Party Intervenors crave reference to Code Sections

33-44-407 and 33-44-103, and they deny any allegations inconsistent with the language of those statutory sections.

14. Answering paragraph 43, Third-Party Intervenor craves reference to Code Section 33-44-405, and they deny any allegations inconsistent with the language of that statutory section.
15. Answering paragraph 56, Third-Party Intervenor craves reference to Code Section 33-44-1104, and they deny any allegations inconsistent with the language of that statutory section.

FOR A SECOND DEFENSE

16. Plaintiff does not fairly and adequately represent the interests of Breach Inlet and its members. Despite purporting to represent their interests, Plaintiff has never contacted the Third-Party Intervenor regarding the present action or the allegations contained within. The Third-Party Intervenor opposes this action for the reasons stated herein.

FOR A THIRD DEFENSE

17. The claims of Plaintiff should be dismissed because the Plaintiff seeks only to benefit himself individually, and does not act in the best interests of Breach Inlet or its members.
18. Plaintiff's reasons for filing this action stem from his personal dissatisfaction with Richard Stoney and his belief that he is due more in distributions than he has received; these claims are personal in nature and more appropriately brought as a direct action under S.C. Code § 33-44-410, not as a derivative action.
19. This action is, in reality, an effort by Laurence Stoney to enforce the payment of distributions that he claims are due to him personally and an effort to seize control of the company. Clothing a personal dispute in the guise of a derivative action would allow Laurence Stoney to pay for his personal litigation with the Breach Inlet's funds.

FOR A FOURTH DEFENSE

20. This lawsuit is wasteful to the assets of Breach Inlet because Laurence Stoney is incurring legal bills on behalf of Breach Inlet to prosecute an action that is (1) opposed by [the majority of] the members, and (2) a personal claim against Richard Stoney, not a legitimate derivative claim; and because Breach Inlet, in accordance with its Operating Agreement, will be obligated to indemnify Richard Stoney for the legal costs incurred in defending this [frivolous or unwarranted] action.

FOR A FIFTH DEFENSE

21. The allegations of the Complaint fail to state facts sufficient to constitute a cause of action.

FOR A SIXTH DEFENSE

22. The claims of Plaintiff are barred by the Statute of Limitations.

FOR A SEVENTH DEFENSE

23. The claims of Plaintiff are barred by the Equitable Doctrine of Laches.

FOR AN EIGHTH DEFENSE

24. The Conduct of Richard Stoney about which Plaintiff complains is protected and privileged under the Business Judgment Rule.

FOR AN NINTH DEFENSE

25. The claims of Plaintiff are barred by the Doctrines of Waiver and Estoppel.

FOR A TENTH DEFENSE

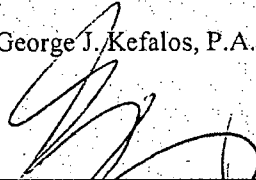
26. The allegations of paragraphs 1-25 are incorporated herein.
27. Plaintiff is and should be liable to Defendant and Third-Party Intervenors for their attorneys' fees and for costs of this action.

WHEREFORE, having fully answered the complaint of Plaintiff, Third-Party Intervnors pray:

1. That the relief sought in the Complaint of Plaintiff be denied.
2. That the Plaintiff be ordered to pay Defendant and Third-Party Intervenors' costs and expenses including reasonable legal fees;
3. For such other and further relief as may be proper.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

George J. Kefalos, P.A.



George J. Kefalos, Esq.
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Charleston, SC 29401
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george@kefaloslaw.com

Charleston, South Carolina
October 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5463

The Boathouse at Breach Inlet, LLC,
by and through its member, Laurence
O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually
and as member-manager of The
Boathouse at Breach Inlet, LLC and
Crew Carolina, LLC.

Defendant.

MOTION TO AMEND COMPLAINT

BY

J. ARTHUR STRONG
JULY 23 2016
CLERK OF COURT

2016 JUL 23 PM 3:25

FILED

PLEASE TAKE NOTICE that Plaintiff the Boathouse at Breach Inlet, LLC ("Boathouse"), through its undersigned attorneys, will move at a time and place to be arranged by the Court and counsel involved for an Order allowing the Boathouse to amend its Complaint. Defense counsel has indicated that he may consent to this Motion after he has time to study the proposed complaint.

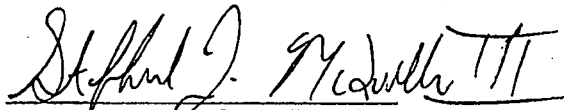
This motion is made pursuant to S.C.R.C.P. 15. "[T]his rule strongly favors amendments, and the court is encouraged to freely grant leave to amend." *Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987). "Rule 15 'evinces a bias in favor' of granting amendments and 'unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial.'" *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (internal citations

omitted). "In the absence of a proper reason, such as bad faith, undue delay, or prejudice, a denial of leave to amend is an abuse of discretion." *Id.* "Delay in seeking leave to amend pleadings, regardless of the length of the delay, will not ordinarily be held to bar an amendment in the absence of a finding of prejudice." *Id.* at 508, 369 S.E. 2d at 159. "It is the responsibility of a party opposing an amendment to establish prejudice." *Id.* at 507, 369 S.E. 2d at 158.

Here, Defendants will suffer no undue prejudice from the proposed amendment. The basis for the motion is that through discovery, the Boathouse has gained new information relating to its claims. A copy of the proposed Verified Amended Derivative Complaint is attached to this motion as Exhibit A.

Please be present to defend if so minded.

Respectfully submitted,



Scott Y. Barnes (SC Bar #: 528)
Stafford J. McQuillin III (SC Bar #: 78203)
Pierce T. MacLennan (SC Bar #: 101797)
Haynsworth Sinkler Boyd, P.A.
P.O. Box 340
Charleston, SC 29402
(843) 724-1120

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

November 23, 2016

2015-CP-10-5463

CERTIFICATE OF SERVICE

I hereby certify that I have had a true and correct copy of Plaintiff's Motion to Amend Complaint served upon Defendant's counsel of record by U.S. Mail, this 23 day of November, 2016:

Capers G. Barr, III, Esq.
Barr, Unger McIntosh, LLC
11 Broad Street
Charleston, SC 29401

Kathy M. Gulick
Kathy M. Gulick

Charleston, South Carolina

FILED
2016 NOV 23 PM 3:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC,
by and through its member, Laurence
O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually
and as member-manager of The
Boathouse at Breach Inlet, LLC and
Crew Carolina, LLC.

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5463

VERIFIED AMENDED
DERIVATIVE COMPLAINT

COMES NOW the Boathouse at Breach Inlet, LLC, by and through its member Laurence O. Stoney, Jr., complaining of the above-named Defendant and alleging as follows:

THE PARTIES

1. The Boathouse at Breach Inlet, LLC (the "Boathouse") is a South Carolina limited liability company authorized to do business in South Carolina. The primary business of the Boathouse is a restaurant located on the Isle of Palms in Charleston County, South Carolina.

2. Laurence O. Stoney, Jr. ("L. Stoney") is a citizen and resident of Charleston County, South Carolina. He is a member of the Boathouse and brings this action in a representative capacity and not in his individual capacity.

3. Defendant Richard S.W. Stoney ("R. Stoney") is a citizen and resident of Charleston County, South Carolina. He is a member and the manager of the Boathouse.

4. Defendant Crew Carolina, LLC ("Crew Carolina") is a South Carolina limited liability company, wholly owned and managed by R. Stoney.

5. This action is being brought by L. Stoney, on behalf of the Boathouse, against R. Stoney and Crew Carolina as a derivative action pursuant to S.C. Code Ann. § 33-44-1101 *et seq.*

6. Plaintiff brings this action derivatively in the right and for the benefit of the Boathouse to redress R. Stoney's breaches of fiduciary duty, unjust enrichment, conversion and other violations of law and to address the financial mismanagement of the Boathouse by R. Stoney at least in part through improper payments, loans, or advances to Crew Carolina.

7. This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

8. Plaintiff will fairly and adequately represent the interests of the Boathouse and similarly situated members in enforcing and prosecuting the rights of the Boathouse.

9. Theodore D. Stoney, Jr., individually and as trustee for Richard Stoney, Jr., and Gregory G. Holmes, if a member, are not similarly situated members, and each have benefited from the alleged improprieties of the current management as discussed herein.

10. R. Stoney, Theodore D. Stoney, Jr., individually and as trustee for Richard Stoney, Jr., and Gregory G. Holmes are motivated by their individual interests, rather than the good of the Boathouse.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the Defendants and over the subject matter of this action.

12. Venue is proper in the Court of Common Pleas for Charleston County.

FACTS

13. The Boathouse was formed on November 21, 1997. At that time, the members entered into an Operating Agreement ("the 1997 Operating Agreement").

14. The Boathouse has been controlled by the R. Stoney since its formation.

15. The original members of the Boathouse and signatories to the operating agreement were R. Stoney (as member-manager), L. Stoney, Theodore D. Stoney, Jr., and Theodore Stoney, Jr, as trustee for the benefit of Richard S.W. Stoney, Jr. under agreement dated November 19, 1997.

16. Upon information and belief, R. Stoney has added additional members to the Boathouse and the current members are as follows: R. Stoney, L. Stoney, Theodore D. Stoney, Jr., and Theodore Stoney, Jr, as trustee for the benefit of Richard S.W. Stoney, Jr.; Lori Stoney; Croft Stoney; and Holmes Capital Management, LLC.

17. Following the admission of Lori Stoney, Croft Stoney and Holmes Capital Management, LLC, the Boathouse had no written operating agreement.

18. Under the terms of the 1997 Operating Agreement, the manager, R. Stoney, had broad powers that were only subject to limitation by the nonwaivable provisions of the South Carolina Limited Liability Company Act ("LLC Act"). According to R. Stoney's sworn testimony, "the buck stops with me . . . I make the decisions right or wrong."

19. Crew Carolina, as described by R. Stoney, is "a management company for various restaurants" including the Boathouse.

20. The instant derivative action seeks to recover significant sums of monies (more than \$4,000,000) wrongfully diverted to Crew Carolina from the Boathouse by R. Stoney for

personal use or use in other personal or family business ventures to the detriment of the Boathouse.

21. For over five months, L. Stoney, through his counsel, made earnest efforts with R. Stoney to induce remedial action on R. Stoney's part. Specifically, L. Stoney, through counsel, had four meetings with R. Stoney's counsel on the following dates: (1) May 27, 2015; (2) June 15, 2015; (3) June 24, 2015; and July 31, 2015. At each meeting, R. Stoney's counsel was provided with an outline identifying R. Stoney as the wrongdoer, describing the factual basis of the wrongful acts and harm to the Boathouse, and requesting remedial relief. For example, the outlines presented to R. Stoney at each meeting stated the following regarding R. Stoney's wrongful acts and harm to the Boathouse:

- a. "Based on the 2013 Federal Income Tax Return, Richard Stoney improperly took \$3,807,322 out of the Boathouse at Breach Inlet, LLC."
- b. "Richard has diverted significant sums from the LLC to Crew Carolina, LLC and to himself personally."
- c. "Richard used the funds diverted to Crew Carolina, LLC for his own personal use or uses in other businesses he controls (commingled funds)."
- d. "Richard has used the Boathouse to guarantee his personal debt and other business obligations."
- e. "Richard failed to collect the substantial sums due from Crew Carolina, LLC and himself that are owed to the LLC."
- f. "Because Richard Stoney systematically drained money out of the Company, it was forced to borrow money from Related Parties."

- g. "Richard Stoney, as the Manager of the Company, violated his fiduciary duty of care and obligation of good faith and fair dealing."

In addition to identifying R. Stoney as the wrongdoer and describing the factual basis of the wrongful acts and harm to the Boathouse, the outlines presented at each meeting requested remedial relief with various alternative remedial actions, including the following:

- a. "Loans/advances to Crew Carolina, LLC and Richard stop immediately."
- b. "Crew Carolina and Richard immediately repay advances/loans (and market rate interest) made to them by the LLC."
- c. "Alternatively, the Company will retain an unbiased business lawyer as Special Independent Counsel for the purposes of determining whether or not it is appropriate for the LLC to pursue an action derivatively."

At each meeting, counsel for L. Stoney explained the outlines and answered questions from R. Stoney or his counsel. Despite these efforts, R. Stoney refused to take any remedial action, including L. Stoney's request to R. Stoney that the Boathouse retain an unbiased business lawyer to serve as Special Independent Counsel for the purposes of determining whether or not it was appropriate for the Boathouse to pursue an action derivatively.

22. In addition to the four meetings with counsel, L. Stoney voluntarily participated in mediation with R. Stoney, with counsel meeting with the mediator on four separate occasions over the period of a month. Despite L. Stoney's earnest efforts, R. Stoney has refused to remedy the damage he caused to the Boathouse and its members.

23. All efforts to convince R. Stoney, as majority member and manager, to cooperate in bringing this action against himself and his wholly owned limited company Crew Carolina have not succeeded, including L. Stoney's request to R. Stoney that the Boathouse retain an

unbiased business lawyer to serve as Special Independent Counsel for the purposes of determining whether or not it was appropriate for the Boathouse to pursue an action derivatively. Any future efforts are not likely to succeed because this action involves claims of wrongdoing by R. Stoney to the detriment of the Boathouse. As set forth in further detail below, R. Stoney has engaged in egregious breaches of his fiduciary duties to the company and fraudulently misappropriated and converted significant sums of company property.

24. Plaintiff has made multiple demands on R. Stoney, as manager of the Boathouse, to remedy his and Crew Carolina's wrongdoings, and any further demands are excused because R. Stoney has complete control over the Boathouse. A demand to R. Stoney that he bring an action in the name of the Boathouse against himself or his wholly owned limited liability company, Crew Carolina, will be futile and useless because R. Stoney was and is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action against himself and his wholly owned company, Crew Carolina. Unless L. Stoney is permitted to bring this derivative action, the Boathouse will be without any immediate and certain remedy, resulting in a complete failure of justice, and the general principles of equity and fairness will be defeated. L. Stoney alleges this lawsuit is needed to prevent injustice because it is readily apparent that material company rights and assets are being invaded and misused by R. Stoney and those rights cannot otherwise be protected without this lawsuit.

25. L. Stoney was a member of the Boathouse during the time R. Stoney committed the wrongdoings complained of herein. L. Stoney remains a member of the Boathouse as of the date of the commencement of this action.

26. R. Stoney was a member and the manager of the Boathouse at the time he committed the wrongdoings complained of herein. R. Stoney remains a member and the manager of the Boathouse as of the date of the commencement of this action.

27. R. Stoney and Crew Carolina have and continue to commit wrongful acts to the detriment of the Boathouse by, *inter alia*:

- a. misappropriating and converting over \$4,000,000 from the Boathouse to Crew Carolina to fund other entities in which R. Stoney owns wholly or in part, including using the Boathouse as "blood donor for the hemorrhages that are Lake Julian and Carolinas";
- b. commingling of finances among business entities that R. Stoney owns wholly or in part without permission from the members of the Boathouse, which continued even after R. Stoney was explicitly advised to stop this unlawful practice by his lawyer Bobby Pearlman, Esquire;
- c. wrongfully using Boathouse monies to pay obligations for his brother, Theodore D. Stoney, Jr., including using Boathouse monies to pay for Theodore D. Stoney, Jr.'s mortgage;
- d. providing 50% discounts on meals at the Boathouse in exchange for personal loans;
- e. wrongfully transferring Boathouse monies to Crew Carolina, himself, members of his family (including Theodore D. Stoney, Jr., individually and as trustee for Richard Stoney, Jr.), and close personal friends and business associates (including Gregory G. Holmes);

- f. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid Theodore D. Stoney, Jr.'s life insurance premium;
 - g. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid significant sums to Theodore D. Stoney, Jr. in lieu of him receiving distributions from the Boathouse;
 - h. upon information and belief, making improper cash disbursements from the Boathouse and Crew Carolina (with money loaned to Crew Carolina from the Boathouse) for R. Stoney's personal use;
 - i. failing to collect and/or repay the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
 - j. failing to impose and collect interest on the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
 - k. upon information and belief, using the Boathouse to guarantee R. Stoney's personal and other business obligations without the knowledge of other members;
 - l. upon information and belief, misappropriating and converting company funds to pay for Crew Carolina and his defense costs in connection with this matter; and
 - m. failing to provide financial records, including profit and loss statements, for the Boathouse in order to conceal R. Stoney and Crew Carolina's improper actions.
28. R. Stoney has and continues to conceal the wrongful acts described above.

29. R. Stoney's wrongful acts as described above were not within his actual authority as manager and violated his fiduciary duties of care and obligations of good faith and fair dealing as manager.

30. As alleged herein, R. Stoney engaged in reckless conduct, intentional misconduct, and knowing violated the law.

31. R. Stoney's wrongful acts as described above were outside the ordinary course of the Boathouse's business.

32. The Boathouse has been damaged as a result of these actions, and R. Stoney's efforts to conceal and deny this wrongdoing has further harmed the Boathouse.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

33. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

34. At all times relevant to this lawsuit, R. Stoney was the manager of the Boathouse and Crew Carolina served as the management company to the Boathouse. As such, R. Stoney owed the fiduciary duties of care and the obligations of good faith and fair dealing to the Boathouse and all of its members. This obligation required R. Stoney to act in a manner beneficial to the Company and its members with regard to any decision or action taken on behalf of the company.

35. R. Stoney has breached his fiduciary duties of care and the obligations of good faith and fair dealing to the Boathouse to the detriment of the Boathouse by, *inter alia*:

- a. misappropriating and converting over \$4,000,000 from the Boathouse to Crew Carolina to fund other entities in which R. Stoney owns wholly or in part,

including using the Boathouse as "blood donor for the hemorrhages that are Lake Julian and Carolinas";

b. commingling of finances among business entities that R. Stoney owns wholly or in part without permission from the members of the Boathouse, which continued even after R. Stoney was explicitly advised to stop this unlawful practice by his lawyer Bobby Pearlman, Esquire;

c. wrongfully using Boathouse monies to pay obligations for his brother, Theodore D. Stoney, Jr., including using Boathouse monies to pay for Theodore D. Stoney, Jr.'s mortgage;

d. providing 50% discounts on meals at the Boathouse in exchange for personal loans;

e. wrongfully transferring Boathouse monies to Crew Carolina, himself, members of his family (including Theodore D. Stoney, Jr., individually and as trustee for Richard Stoney, Jr.), and close personal friends and business associates (including Gregory G. Holmes);

f. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid Theodore D. Stoney, Jr.'s life insurance premium;

g. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid significant sums to Theodore D. Stoney, Jr. in lieu of him receiving distributions from the Boathouse;

- h. upon information and belief, making improper cash disbursements from the Boathouse and Crew Carolina (with money loaned to Crew Carolina from the Boathouse) for R. Stoney's personal use;
- i. failing to collect and/or repay the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- j. failing to impose and collect interest on the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- k. upon information and belief, using the Boathouse to guarantee R. Stoney's personal and other business obligations without the knowledge of other members;
- l. upon information and belief, misappropriating and converting company funds to pay for Crew Carolina and his defense costs in connection with this matter; and
- m. failing to provide financial records, including profit and loss statements, for the Boathouse in order to conceal R. Stoney and Crew Carolina's improper actions.

36. As discussed in more detail above, R. Stoney has breached his fiduciary duties by failing to act with due care and with the utmost good faith and fair dealing for the benefit of the Boathouse, all as described in detail in the preceding paragraphs.

37. R. Stoney acted against the specific advice of his lawyer and willfully breached his fiduciary duties of care and obligations of good faith and fair dealing as manager as is set forth in the following "Interoffice Memorandum":

TO: RICHARD
FROM: CHIP
SUBJECT: COMINGLING OF FINANCES AMONG THE ENTITIES /
CURRENT CASH PLAN AND PAYROLL

This memo is to memorialize a portion of our conversation this afternoon with Bobby Pearlman, Esquire at his office. During the course of the meeting, the subject of which was tangential to the subject of this memo, Mr. Pearlman indicated that any commingling of funds between business entities without identical ownership is not permitted without written permission from the various members. Specifically he looked at me and stated that I "need to stop doing that", and indicated to you that common majority ownership across entities "didn't matter" but in fact increases the need to keep the finances strictly separated.

38. The Boathouse was damaged as a proximate result of these breaches of fiduciary duties and is entitled to recover actual damages, including pre-judgment interest, from R. Stoney and Crew Carolina, in an amount to be determined by the Court.

39. Further, because these actions were willful, wanton, or taken with a reckless disregard of the Boathouse's rights, the Boathouse is entitled to recover punitive damages from R. Stoney and Crew Carolina, to the extent allowed by law.

FOR AN ADDITIONAL CAUSE OF ACTION
(CONVERSION)

40. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

41. The Boathouse claimed and claims an interest in the monies that were wrongfully transferred by R. Stoney to Crew Carolina, himself, members of his family, and close personal friends and business associates as set forth above.

42. Upon information and belief, R. Stoney and Crew Carolina converted the funds transferred to Crew Carolina for R. Stoney's own personal use or the uses of his other business ventures without Plaintiff's permission.

43. Upon information and belief, R. Stoney never had any intention of paying back the significant sums (which exceed \$4,000,000) advanced to Crew Carolina from the Boathouse. Indeed, R. Stoney was asked, "Why are you continuing to book these expenses, if Crew has no prospect of paying them?". While the advances were booked as loans to Crew Carolina, they were, in fact, personal draws by R. Stoney. The Boathouse's current accountant also stated, "One of the first statements Chip mentioned to me when I took over filing the tax returns for the Boathouse was that the Crew receivable would not be paid." In reality, Crew Carolina, LLC was nothing more than a vehicle and a scam that allowed R. Stoney to wrongfully commingle funds.

44. As a direct and proximate result of this conversion, the Boathouse suffered damages for which it seeks actual and punitive damages together with pre-judgment interest.

FOR AN ADDITIONAL CAUSE OF ACTION
(PERSONAL LIABILITY FOR UNLAWFUL DISTRIBUTIONS, S.C. CODE ANN. § 33-44-407)

45. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

46. S.C. Code Ann. § 33-44-407 provides that a manger is personally liable to the company for distributions made in violation of the operating agreement, if there was an operating agreement. Alternatively, if there is no operating agreement, the statute governs the relationship between the members, managers and the company. S.C. Code Ann. § 33-44-103.

47. Under the statute, distributions are required to be in equal shares. S.C. Code Ann. § 33-44-405(a). Under the 1997 Operating Agreement, distributions are required to be made to all members in the same proportions as profits and losses are allocated to the members.

48. Under either alternative, R. Stoney, as manager of the Boathouse, has and continues to approve and make improper, disproportionate distributions to himself, Gregory Holmes and Theodore D. Stoney, Jr. as trustee for Richard Stoney, Jr., which until recently have been concealed.

49. R. Stoney was specifically advised by his CPA that he was not permitted to make any disproportionate distributions to his friend and business partner, Gregory Holmes, unless the purported operating agreement was amended. However, R. Stoney ignored this advice, the statute, and the language of the 1997 Operating Agreement and willfully made improper, disproportionate distributions Gregory Holmes.

50. R. Stoney, as manager, did not perform his duties in compliance with Section 33-44-409 as discussed herein.

51. As a result, R. Stoney is personally liable to the Boathouse for the amount of disproportionate distributions that he approved and made as manager.

FOR AN ADDITIONAL CAUSE OF ACTION
(ACCOUNTING)

52. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

53. Given the aforementioned financial wrongdoing by R. Stoney, the Boathouse seeks and demands a full accounting and examination of R. Stoney's personal records, Crew Carolina, LLC's records and the Boathouse's financial records to the fullest extent available under the South Carolina Uniform Limited Liability Act and/or equitable principles.

54. The aforementioned relief is necessary for the Boathouse to determine the precise nature of the aforementioned financial wrongdoing and to determine whether R. Stoney is responsible for other instances of financial mismanagement, breach of fiduciary duty and wrongdoing to the detriment of the Boathouse.

FOR AN ADDITIONAL CAUSE OF ACTION
(UNJUST ENRICHMENT)

55. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

56. R. Stoney and Crew Carolina, LLC are in possession of the Boathouse's profits and have retained them in the form of advances to Crew Carolina, LLC and/or R. Stoney, which in justice and equity belong to the Boathouse and are retained to the detriment of the Boathouse.

57. R. Stoney and Crew Carolina, LLC were unjustly enriched as a result of the numerous self-dealing and self-interested transactions R. Stoney caused the Boathouse to undertake as described more fully in the preceding paragraphs.

58. There was no justification of the enrichment of R. Stoney and/or Crew Carolina, LLC.

59. To the extent there is no other remedy at law, the Boathouse is entitled to recover the amount by which R. Stoney or Crew Carolina, LLC have been unjustly enriched, including pre-judgment interest, in an amount to be determined by the Court.

FOR AN ADDITIONAL CAUSE OF ACTION
(ATTORNEY'S FEES AND COSTS)

60. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

61. S.C. Code Ann. § 33-44-1104 provides for the recovery of reasonable expenses, including reasonable attorney's fees and costs in the event a derivative action for a limited liability company is successful.

62. L. Stoney, in his representative capacity, requests that this Court grant him such reasonable expenses, including reasonable attorney's fees and costs as authorized by statute to compensate him for bringing the present action.

FOR AN ADDITIONAL CAUSE OF ACTION
(Piercing Corporate Veil/Alter Ego)

63. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

64. Upon information and belief, R. Stoney is the sole member of Crew Carolina, LLC.

65. Upon information and belief, R. Stoney has consistently failed to observe the necessary corporate formalities with respect to Crew Carolina, as required by law, in comingling the funds of Crew Carolina and the Boathouse and R. Stoney's personal finances, in utilizing Crew Carolina as his "incorporated pocketbook," and failing to keep each company's financial affairs separate, siphoning "corporate" (company) funds, failing to maintain and keep "corporate" records, and has otherwise so intermingled his personal and financial affairs with Crew Carolina that he has become, and is, the alter ego of Crew Carolina.

66. Failing to disregard Crew Carolina's "corporate form" and hold R. Stoney liable for his alter ego would work a fundamental unfairness against the Boathouse.

67. The alter ego relationship between R. Stoney and Crew Carolina entitles the Boathouse to "pierce the corporate veil" or disregard the corporate entity and recover against the

individual, R. Stoney, for claims, debts, and damages as alleged hereinabove in this Complaint against Crew Carolina.

FOR AN ADDITIONAL CAUSE OF ACTION
(DECLARATORY JUDGMENT)

68. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

69. There exists an actual controversy between the Boathouse and Richard Stoney involving their respective rights, liabilities and legal relations relative to each other.

70. The Boathouse is entitled under the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, to a judgment of this Court declaring the rights, liabilities and relations of the parties hereto. Specifically, the Boathouse, by and through L. Stoney, is entitled to declarations that:

a. Under the South Carolina Uniform Limited Liability Act, R. Stoney and Crew Carolina are not entitled to indemnification from the Boathouse to defend their wrongful acts as alleged herein. S.C. Code Ann. § 33-44-403, Rpt. Cmt. (A “manager is therefore entitled to indemnification only if the act was within the member or manager’s actual authority.” “A member or manager is therefore not entitled to indemnification for conduct that violates the duty of care set forth in Section 33-44-409(c).”)

b. R. Stoney is required to repay any money taken from the Boathouse to pay Crew Carolina, LLC and his legal fees in connection with this matter.

71. The Boathouse requests that this Court grant it such costs as authorized by statute to compensate it for bringing the present action.

PRAYER FOR RELIEF

WHEREFORE, the Boathouse, by and through L. Stoney, prays that judgment be granted in its favor against Defendant R. Stoney and Crew Carolina for:

- (A) an award of actual and consequential damages in an amount to be determined;
- (B) an award of punitive damages;
- (C) an award of reasonable attorney's fees and costs;
- (D) an award of pre-judgment interest;
- (E) a full accounting;
- (F) an order piercing the corporate veil that disregards the corporate entity and allows the Boathouse to recover against the individual, R. Stoney, for claims, debts, and damages as alleged in this Complaint against Crew Carolina;
- (G) an order declaring that R. Stoney and Crew Carolina are not entitled to indemnification from the Boathouse to defend their wrongful acts;
- (H) an order requiring the repayment of money taken by R. Stoney from the Boathouse to pay Crew Carolina, LLC and his legal fees in connection with this matter;
- (I) for such other further legal and equitable relief as the Court deems just and proper.

Scott Y. Barnes (SC Bar #: 528)
Stafford J. McQuillin III (SC Bar #: 78203)
Pierce T. MacLennan (SC Bar #: 101797)
Haynsworth Sinkler Boyd, P.A.
P.O. Box 340
Charleston, SC 29402
(843) 724-1120

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

November ____, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5463

The Boathouse at Breach Inlet, LLC,
by and through its member, Laurence
O. Stoney, Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually
and as member-manager of The
Boathouse at Breach Inlet, LLC and
Crew Carolina, LLC.

Defendant.

VERIFIED AMENDED
DERIVATIVE COMPLAINT

FILED
2017 MAR 28 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Boathouse at Breach Inlet, LLC, by and through its member Laurence O. Stoney, Jr., complaining of the above-named Defendant and alleging as follows:

THE PARTIES

1. The Boathouse at Breach Inlet, LLC (the "Boathouse") is a closely held South Carolina limited liability company authorized to do business in South Carolina. The primary business of the Boathouse is a restaurant located on the Isle of Palms in Charleston County, South Carolina.

2. Laurence O. Stoney, Jr. ("L. Stoney") is a citizen and resident of Charleston County, South Carolina. He is a member of the Boathouse and brings this action in a representative capacity and not in his individual capacity.

3. Defendant Richard S.W. Stoney ("R. Stoney") is a citizen and resident of Charleston County, South Carolina. He is a member and the manager of the Boathouse.

4. Defendant Crew Carolina, LLC ("Crew Carolina") is a South Carolina limited liability company, wholly owned and managed by R. Stoney.

5. This action is being brought by L. Stoney, on behalf of the Boathouse, against R. Stoney and Crew Carolina as a derivative action pursuant to S.C. Code Ann. § 33-44-1101 *et seq.*

6. Plaintiff brings this action derivatively in the right and for the benefit of the Boathouse to redress R. Stoney's breaches of fiduciary duty, unjust enrichment, conversion and other violations of law and to address the financial mismanagement of the Boathouse by R. Stoney at least in part through improper payments, loans, or advances to Crew Carolina. The central allegation of this Complaint is that Defendant R. Stoney misappropriated and converted in excess of \$4,000,000.00 from the Boathouse to Defendant Crew Carolina, a company wholly owned and managed by R. Stoney, for his own personal use and for use in separate business ventures. This suit seeks repayment of the funds back to the Boathouse.

7. This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

8. Plaintiff will fairly and adequately represent the interests of the Boathouse and any other similarly situated members in enforcing and prosecuting the rights of the Boathouse.

9. R. Stoney, Theodore D. Stoney, individually and as trustee for Richard Stoney, Jr., and Gregory G. Holmes, if a member, are not similarly situated members, and each have benefited from the alleged improprieties of the current management as discussed herein.

10. R. Stoney, Theodore D. Stoney, individually and as trustee for Richard Stoney, Jr., and Gregory G. Holmes oppose this action and are motivated by their individual interests, rather than the good of the Boathouse.

11. Specifically, R. Stoney, Theodore Stoney, and Gregory Holmes oppose this derivative action and ask the Court to permit Defendants' looting of the Boathouse.

12. The suit was filed to advance the interests of the Boathouse.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the Defendants and over the subject matter of this action.

14. Venue is proper in the Court of Common Pleas for Charleston County.

FACTS

15. The Boathouse was formed on November 21, 1997. At that time, the members entered into an Operating Agreement ("the 1997 Operating Agreement").

16. The Boathouse has been controlled by the R. Stoney since its formation.

17. The original members of the Boathouse and signatories to the operating agreement were R. Stoney (as member and manager), L. Stoney, Theodore D. Stoney, and Theodore Stoney, as trustee for the benefit of Richard S.W. Stoney, Jr. under agreement dated November 19, 1997.

18. Upon information and belief, R. Stoney has added additional members to the Boathouse and the current members are as follows: R. Stoney, L. Stoney, Theodore D. Stoney, Theodore Stoney, as trustee for the benefit of Richard S.W. Stoney, Jr.; Lori Stoney; Lori Stoney as trustee for the benefit of Croft Stoney; and Holmes Capital Management, LLC.

19. Following the admission of Lori Stoney, Lori Stoney as trustee for the benefit of Croft Stoney and Holmes Capital Management, LLC, the Boathouse had no written operating agreement.

20. Under the terms of the 1997 Operating Agreement, the manager, R. Stoney, had broad powers that were only subject to limitation by the nonwaivable provisions of the South Carolina Limited Liability Company Act ("LLC Act"). According to R. Stoney's sworn testimony, "the buck stops with me . . . I make the decisions right or wrong."

21. Crew Carolina, as described by R. Stoney, is "a management company for various restaurants" including the Boathouse.

22. The instant derivative action seeks to recover significant sums of monies (more than \$4,000,000) wrongfully diverted to Crew Carolina from the Boathouse by R. Stoney for personal use or use in other personal or family business ventures to the detriment of the Boathouse.

23. For over five months, L. Stoney, through his counsel, made earnest efforts with R. Stoney to induce remedial action on R. Stoney's part. Specifically, L. Stoney, through counsel, had four meetings with R. Stoney's counsel on the following dates: (1) May 27, 2015; (2) June 15, 2015; (3) June 24, 2015; and July 31, 2015. At each meeting, R. Stoney's counsel was provided with an outline identifying R. Stoney as the wrongdoer, describing the factual basis of the wrongful acts and harm to the Boathouse, and requesting remedial relief. For example, the outlines presented to R. Stoney at each meeting stated the following regarding R. Stoney's wrongful acts and harm to the Boathouse:

- a. "Based on the 2013 Federal Income Tax Return, Richard Stoney improperly took \$3,807,322 out of the Boathouse at Breach Inlet, LLC."

- b. "Richard has diverted significant sums from the LLC to Crew Carolina, LLC and to himself personally."
- c. "Richard used the funds diverted to Crew Carolina, LLC for his own personal use or uses in other businesses he controls (commingled funds)."
- d. "Richard has used the Boathouse to guarantee his personal debt and other business obligations."
- e. "Richard failed to collect the substantial sums due from Crew Carolina, LLC and himself that are owed to the LLC."
- f. "Because Richard Stoney systematically drained money out of the Company, it was forced to borrow money from Related Parties."
- g. "Richard Stoney, as the Manager of the Company, violated his fiduciary duty of care and obligation of good faith and fair dealing."

In addition to identifying R. Stoney as the wrongdoer and describing the factual basis of the wrongful acts and harm to the Boathouse, the outlines presented at each meeting requested remedial relief with various alternative remedial actions, including the following:

- a. "Loans/advances to Crew Carolina, LLC and Richard stop immediately."
- b. "Crew Carolina and Richard immediately repay advances/loans (and market rate interest) made to them by the LLC."
- c. "Alternatively, the Company will retain an unbiased business lawyer as Special Independent Counsel for the purposes of determining whether or not it is appropriate for the LLC to pursue an action derivatively."

At each meeting, counsel for L. Stoney explained the outlines and answered questions from R. Stoney or his counsel. Despite these efforts, R. Stoney refused to take any remedial action,

including L. Stoney's request to R. Stoney that the Boathouse retain an unbiased business lawyer to serve as Special Independent Counsel for the purposes of determining whether or not it was appropriate for the Boathouse to pursue an action derivatively.

24. In addition to the four meetings with counsel, L. Stoney voluntarily participated in mediation with R. Stoney, with counsel meeting with the mediator on four separate occasions over the period of a month. Despite L. Stoney's earnest efforts, R. Stoney has refused to remedy the damage he caused to the Boathouse and its members.

25. All efforts to convince R. Stoney, as majority member and manager, to cooperate in bringing this action against himself and his wholly owned limited company Crew Carolina have not succeeded, including L. Stoney's request to R. Stoney that the Boathouse retain an unbiased business lawyer to serve as Special Independent Counsel for the purposes of determining whether or not it was appropriate for the Boathouse to pursue an action derivatively. Any future efforts are not likely to succeed because this action involves claims of wrongdoing by R. Stoney to the detriment of the Boathouse. As set forth in further detail below, R. Stoney has engaged in egregious breaches of his fiduciary duties to the company and fraudulently misappropriated and converted significant sums of company property.

26. Plaintiff has made multiple demands on R. Stoney, as manager of the Boathouse, to remedy his and Crew Carolina's wrongdoings, and any further demands are excused because R. Stoney has complete control over the Boathouse. A demand to R. Stoney that he bring an action in the name of the Boathouse against himself or his wholly owned limited liability company, Crew Carolina, will be futile and useless because R. Stoney was and is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action against himself and his wholly owned company, Crew Carolina. Unless L. Stoney is

permitted to bring this derivative action, the Boathouse will be without any immediate and certain remedy, resulting in a complete failure of justice, and the general principles of equity and fairness will be defeated. L. Stoney alleges this lawsuit is needed to prevent injustice because it is readily apparent that material company rights and assets are being invaded and misused by R. Stoney and those rights cannot otherwise be protected without this lawsuit.

27. L. Stoney was a member of the Boathouse during the time R. Stoney committed the wrongdoings complained of herein. L. Stoney remains a member of the Boathouse as of the date of the commencement of this action.

28. R. Stoney was a member and the manager of the Boathouse at the time he committed the wrongdoings complained of herein. R. Stoney remains a member and the manager of the Boathouse as of the date of the commencement of this action.

29. R. Stoney and Crew Carolina have and continue to commit wrongful acts to the detriment of the Boathouse by, *inter alia*:

- a. misappropriating and converting over \$4,000,000 from the Boathouse to Crew Carolina to fund other entities in which R. Stoney owns wholly or in part, including using the Boathouse as "blood donor for the hemorrhages that are Lake Julian and Carolinas";
- b. commingling of finances among business entities that R. Stoney owns wholly or in part without permission from the members of the Boathouse, which continued even after R. Stoney was explicitly advised to stop this unlawful practice by his lawyer Bobby Pearlman, Esquire;

- c. wrongfully using Boathouse monies to pay obligations for his brother, Theodore D. Stoney, including using Boathouse monies to pay for Theodore D. Stoney's mortgage;
- d. providing 50% discounts on meals at the Boathouse in exchange for personal loans;
- e. wrongfully transferring Boathouse monies to Crew Carolina, himself, members of his family (including Theodore D. Stoney, individually and as trustee for Richard Stoney, Jr.), and close personal friends and business associates (including Gregory G. Holmes);
- f. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid Theodore D. Stoney's life insurance premium;
- g. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid significant sums to Theodore D. Stoney in lieu of him receiving distributions from the Boathouse;
- h. making improper cash disbursements from the Boathouse and Crew Carolina (with money loaned to Crew Carolina from the Boathouse) for R. Stoney's personal use;
- i. failing to collect and/or repay the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- j. failing to impose and collect interest on the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;

- k. upon information and belief, using the Boathouse to guarantee R. Stoney's personal and other business obligations without the knowledge of other members;
- l. upon information and belief, misappropriating and converting company funds to pay for Crew Carolina and his defense costs in connection with this matter; and
- m. failing to provide financial records, including profit and loss statements, for the Boathouse in order to conceal R. Stoney and Crew Carolina's improper actions.

30. The following items from the Boathouse's General Ledger contain examples that demonstrate how Defendant Richard Stoney improperly used funds belonging to the Boathouse:

Kensington Plantation

Owned by Richard Stoney and Theodore Stoney

- 35992 - \$2,750 "As needed to cover mortgage for Kensington"
- 37262 - "Pay latino workers at Kensington"
- 37249 - "Other expenses at Kensington, \$160 is going to victor for Kensington work."
- 36480 - "Cash for Tractor"
- 35927 - "Richard requested this cash for a dinner at Kensington"
- 36960 - "Kensington Groceries"
- 36708 - "Tempo was allowed to get some advances on his causal labor pay . . . Work done for RS"

Payments to or on Behalf of Richard Stoney

Richard Stoney's Polo Horses and Polo Matches

- 36333 - "Shipping polo horses for a match, horse feed, polo fees, weekend money"
- 37079 - "\$5,000 for a horse"

- 37191 – “\$2,000 Vet hospital bills for Sophie snake bits, rs weekend cash”
- 36256 – “Horse Feed and Horse Feeding Person”
- 36053 – “Horse Shoes”

Other Personal Payments

- 36716 – “\$14,000 MISC / Ellis Creek Clos.” Ellis Creek is a separate business venture owned in part by Richard Stoney.
- 36728 – “\$2,000 – Cash for RS x-mas”
- 36718 – “\$2,500 – Cash needed to deposit to RS account”
- 36295 – “\$150 – CASH / RS Hair Cut”
- 36254 – “\$230 – Richard Swiss Watch Repair”
- 35958 – “\$423.62 – Richard Grocery List – Richard has taken from BH for his personal use”
- \$18,095.00 for Richard Stoney’s annual life insurance premium.

Payments to or for the benefit of Theodore Stoney

- The Boathouse issued checks to Wells Fargo directly on Theodore Stoney’s behalf for Theodore Stoney’s mortgage. On March 4, 2014, the Boathouse issued a check to Wells Fargo for \$3,006.93, and the memo line indicates “Ted Stoney Loan #00264293068 Obligation #18.” (Boathouse_61234). On June 24, 2014, the Boathouse issued another check to Wells Fargo for \$2,707.93, and the memo line indicates “Customer #00264293068 Obligation #18.” (Boathouse_62091).
- 37201 “\$2,500 – Wells Fargo Ted Pmts [Theodore Stoney’s Mortgage]”
- 37185 – “\$5,000 TED – back payments on Wharfside [Theodore Stoney’s Mortgage]
- 35930 – “\$2541.66 – MISC/Ted Stoney”
- Defendant Crew Carolina also made similar payments in excess of \$80,000 to or on behalf of Theodore Stoney and his Company, the Stoney Company, including a \$3,039.58 check written from Crew Carolina to Mass Mutual Financial Group.

(Boathouse_55110) Crew's General Ledger indicates that this payment was for:
"Ted's Mass Mutual Payment, Policy #011159407."

Payments to or on Behalf of Gregory Holmes

- 37747 – "\$15,943.00 payment for Greg Holmes . . . He has signed an agreement and it is filed in breach inlet permanent files."
- The General Ledger and tax returns for the Boathouse indicate that Gregory Holmes, as a member of Holmes Capital Management, LLC, received \$173,458.95 in disproportionate distributions. Both Richard Stoney and Gregory Holmes were advised by a CPA that Richard Stoney was not permitted to make any disproportionate distributions to his friend and business partner, Gregory Holmes, unless the purported operating agreement for the Boathouse was amended and signed by all members. *See* (Boathouse_06370, 10/26/2011 Email from CPA to Richard Stoney and Gregory Holmes) ("ALL of this is subject to an amended and executed operating agreement"); *see also* (Boathouse_06373, Memo to Richard Stoney and Gregory Holmes dated 10/25/2011) ("A business attorney should be obtained to update the operating agreement with preferred distribution status. It should be signed and executed by all members of the LLC."). However, Richard Stoney ignored this advice, and proceeded with making improper disproportionate distributions to Gregory Holmes without amending the purported operating agreement.

Payments to or for the benefit of Richard Stoney, Jr.

- 36890 – "Cash to pay for jr ticket . . . used pmt for that purpose at MTPD. For running stop."
- 36965 – "RSWSJR / 5.13.14 – from rs as bday present for jr for nola trip."
- 37247 – "\$450 down pmt on suit for jr.'s wedding"
- 36343 – "\$850 – rsjr bday cash, rs personal cash repay js 150"
- The General Ledger for the Boathouse indicates that Richard Stoney Jr. also received \$27,217.12 in disproportionate distributions.

31. R. Stoney has and continues to conceal the wrongful acts described above.

32. R. Stoney's wrongful acts as described above were not within his actual authority as manager and violated his fiduciary duties of care and obligations of good faith and fair dealing as manager.

33. As alleged herein, R. Stoney engaged in reckless conduct, intentional misconduct, and knowing violated the law.

34. R. Stoney's wrongful acts as described above were outside the ordinary course of the Boathouse's business.

35. The Boathouse has been damaged as a result of these actions, and R. Stoney's efforts to conceal and deny this wrongdoing has further harmed the Boathouse.

FOR A FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)

36. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

37. The Boathouse is a manager-managed LLC pursuant to S.C. Code Ann. § 33-44-301 (2016).

38. In a manager-managed LLC, the manager owes fiduciary duties to the Company and its members, including the obligation of good faith and fair dealing. S.C. Code Ann. § 33-44-409(h) (2016).

39. At all times relevant to this lawsuit, R. Stoney was the manager of the Boathouse and Crew Carolina served as the management company to the Boathouse. As such, R. Stoney owed the fiduciary duties of care and the obligations of good faith and fair dealing to the Boathouse and all of its members. This obligation required R. Stoney to act in a manner

beneficial to the Company and its members with regard to any decision or action taken on behalf of the company.

40. R. Stoney has breached his fiduciary duties of care and the obligations of good faith and fair dealing to the Boathouse to the detriment of the Boathouse by, *inter alia*:

- a. misappropriating and converting over \$4,000,000 from the Boathouse to Crew Carolina to fund other entities in which R. Stoney owns wholly or in part, including using the Boathouse as "blood donor for the hemorrhages that are Lake Julian and Carolinas";
- b. commingling of finances among business entities that R. Stoney owns wholly or in part without permission from the members of the Boathouse, which continued even after R. Stoney was explicitly advised to stop this unlawful practice by his lawyer Bobby Pearlman, Esquire;
- c. wrongfully using Boathouse monies to pay obligations for his brother, Theodore D. Stoney, including using Boathouse monies to pay for Theodore D. Stoney's mortgage;
- d. providing 50% discounts on meals at the Boathouse in exchange for personal loans;
- e. wrongfully transferring Boathouse monies to Crew Carolina, himself, members of his family (including Theodore D. Stoney, individually and as trustee for Richard Stoney, Jr.), and close personal friends and business associates (including Gregory G. Holmes);

- f. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid Theodore D. Stoney's life insurance premium;
- g. upon information and belief, R. Stoney through Crew Carolina (with money loaned to Crew Carolina from the Boathouse) paid significant sums to Theodore D. Stoney in lieu of him receiving distributions from the Boathouse;
- h. making improper cash disbursements from the Boathouse and Crew Carolina (with money loaned to Crew Carolina from the Boathouse) for R. Stoney's personal use;
- i. failing to collect and/or repay the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- j. failing to impose and collect interest on the substantial sums due from Crew Carolina and R. Stoney to the Boathouse;
- k. upon information and belief, using the Boathouse to guarantee R. Stoney's personal and other business obligations without the knowledge of other members;
- l. upon information and belief, misappropriating and converting company funds to pay for Crew Carolina and his defense costs in connection with this matter; and
- m. failing to provide financial records, including profit and loss statements, for the Boathouse in order to conceal R. Stoney and Crew Carolina's improper actions.

41. As discussed in more detail above, R. Stoney has breached his fiduciary duties by failing to act with due care and with the utmost good faith and fair dealing for the benefit of the Boathouse, all as described in detail in the preceding paragraphs.

42. R. Stoney acted against the specific advice of his lawyer and willfully breached his fiduciary duties of care and obligations of good faith and fair dealing as manager as is set forth in the following "Interoffice Memorandum":

TO: RICHARD
FROM: CHIP
SUBJECT: COMMINGLING OF FINANCES AMONG THE ENTITIES /
CURRENT CASH PLAN AND PAYROLL

This memo is to memorialize a portion of our conversation this afternoon with Bobby Pearlman, Esquire at his office. During the course of the meeting, the subject of which was tangential to the subject of this memo, Mr. Pearlman indicated that any commingling of funds between business entities without identical ownership is not permitted without written permission from the various members. Specifically he looked at me and stated that I "need to stop doing that", and indicated to you that common majority ownership across entities "didn't matter" but in fact increases the need to keep the finances strictly separated.

43. The Boathouse was damaged as a proximate result of these breaches of fiduciary duties and is entitled to recover actual damages, including pre-judgment interest, from R. Stoney and Crew Carolina, in an amount to be determined by the Court.

44. Further, because these actions were willful, wanton, or taken with a reckless disregard of the Boathouse's rights, the Boathouse is entitled to recover punitive damages from R. Stoney and Crew Carolina, to the extent allowed by law.

FOR AN ADDITIONAL CAUSE OF ACTION
(CONVERSION)

45. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

46. The Boathouse claimed and claims an interest in the monies that were wrongfully transferred by R. Stoney to Crew Carolina, himself, members of his family, and close personal friends and business associates as set forth above.

47. Upon information and belief, R. Stoney and Crew Carolina converted the funds transferred to Crew Carolina for R. Stoney's own personal use or the uses of his other business ventures without Plaintiff's permission.

48. R. Stoney used the Boathouse and Crew Carolina as his "incorporated personal ATM machines."

49. Upon information and belief, R. Stoney never had any intention of paying back the significant sums (which exceed \$4,000,000) advanced to Crew Carolina from the Boathouse. Indeed, R. Stoney was asked, "Why are you continuing to book these expenses, if Crew has no prospect of paying them?". While the advances were booked as loans to Crew Carolina, they were, in fact, personal draws by R. Stoney. The Boathouse's current accountant also stated, "One of the first statements Chip mentioned to me when I took over filing the tax returns for the Boathouse was that the Crew receivable would not be paid." In reality, Crew Carolina, LLC was nothing more than a vehicle and a scam that allowed R. Stoney to wrongfully commingle funds.

50. As a direct and proximate result of this conversion, the Boathouse suffered damages for which it seeks actual and punitive damages together with pre-judgment interest.

FOR AN ADDITIONAL CAUSE OF ACTION
(PERSONAL LIABILITY FOR UNLAWFUL DISTRIBUTIONS, S.C. CODE ANN. § 33-44-407)

51. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

52. S.C. Code Ann. § 33-44-407 provides that a manger is personally liable to the company for distributions made in violation of the operating agreement, if there was an operating agreement. Alternatively, if there is no operating agreement, the statute governs the relationship between the members, managers and the company. S.C. Code Ann. § 33-44-103.

53. Under the statute, distributions are required to be in equal shares. S.C. Code Ann. § 33-44-405(a). Under the 1997 Operating Agreement, distributions are required to be made to all members in the same proportions as profits and losses are allocated to the members.

54. Under either alternative, R. Stoney, as manager of the Boathouse, has and continues to approve and make improper, disproportionate distributions to himself, Gregory Holmes as a member of Holmes Capital Management, LLC, and Theodore D. Stoney as trustee for Richard Stoney, Jr., which until recently have been concealed.

55. R. Stoney was specifically advised by his CPA that he was not permitted to make any disproportionate distributions to his friend and business partner, Gregory Holmes, unless the purported operating agreement was amended. However, R. Stoney ignored this advice, the statute, and the language of the 1997 Operating Agreement and willfully made improper, disproportionate distributions Gregory Holmes as a member of Holmes Capital Management, LLC.

56. R. Stoney, as manager, did not perform his duties in compliance with Section 33-44-409 as discussed herein.

57. As a result, R. Stoney is personally liable to the Boathouse for the amount of disproportionate distributions that he approved and made as manager.

FOR AN ADDITIONAL CAUSE OF ACTION
(ACCOUNTING)

58. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

59. Given the aforementioned financial wrongdoing by R. Stoney, the Boathouse seeks and demands a full accounting and examination of R. Stoney's personal records, Crew Carolina, LLC's records and the Boathouse's financial records to the fullest extent available under the South Carolina Uniform Limited Liability Act and/or equitable principles.

60. The aforementioned relief is necessary for the Boathouse to determine the precise nature of the aforementioned financial wrongdoing and to determine whether R. Stoney is responsible for other instances of financial mismanagement, breach of fiduciary duty and wrongdoing to the detriment of the Boathouse.

FOR AN ADDITIONAL CAUSE OF ACTION
(UNJUST ENRICHMENT)

61. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

62. R. Stoney and Crew Carolina, LLC are in possession of the Boathouse's profits and have retained them in the form of advances to Crew Carolina, LLC and/or R. Stoney, which in justice and equity belong to the Boathouse and are retained to the detriment of the Boathouse.

63. R. Stoney and Crew Carolina, LLC were unjustly enriched as a result of the numerous self-dealing and self-interested transactions R. Stoney caused the Boathouse to undertake as described more fully in the preceding paragraphs.

64. There was no justification of the enrichment of R. Stoney and/or Crew Carolina, LLC.

65. To the extent there is no other remedy at law, the Boathouse is entitled to recover the amount by which R. Stoney or Crew Carolina, LLC have been unjustly enriched, including pre-judgment interest, in an amount to be determined by the Court.

FOR AN ADDITIONAL CAUSE OF ACTION
(ATTORNEY'S FEES AND COSTS)

66. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

67. S.C. Code Ann. § 33-44-1104 provides for the recovery of reasonable expenses, including reasonable attorney's fees and costs in the event a derivative action for a limited liability company is successful.

68. L. Stoney, in his representative capacity, requests that this Court grant him such reasonable expenses, including reasonable attorney's fees and costs as authorized by statute to compensate him for bringing the present action.

FOR AN ADDITIONAL CAUSE OF ACTION
(Piercing Corporate Veil/Alter Ego)

69. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

70. Upon information and belief, R. Stoney is the sole member of Crew Carolina, LLC.

71. Upon information and belief, R. Stoney has consistently failed to observe the necessary corporate formalities with respect to Crew Carolina, as required by law, in comingling the funds of Crew Carolina and the Boathouse and R. Stoney's personal finances, in utilizing Crew Carolina as his "incorporated personal ATM machine" and failing to keep each company's financial affairs separate, siphoning "corporate" (company) funds, failing to

maintain and keep "corporate" records, and has otherwise so intermingled his personal and financial affairs with Crew Carolina that he has become, and is, the alter ego of Crew Carolina.

72. Failing to disregard Crew Carolina's "corporate form" and hold R. Stoney liable for his alter ego would work a fundamental unfairness against the Boathouse.

73. The alter ego relationship between R. Stoney and Crew Carolina entitles the Boathouse to "pierce the corporate veil" or disregard the corporate entity and recover against the individual, R. Stoney, for claims, debts, and damages as alleged hereinabove in this Complaint against Crew Carolina.

FOR AN ADDITIONAL CAUSE OF ACTION
(DECLARATORY JUDGMENT)

74. All of the above allegations are restated by the Boathouse, by and through L. Stoney, as if set forth herein verbatim.

75. There exists an actual controversy between the Boathouse and Richard Stoney involving their respective rights, liabilities and legal relations relative to each other.

76. The Boathouse is entitled under the South Carolina Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 *et seq.*, to a judgment of this Court declaring the rights, liabilities and relations of the parties hereto. Specifically, the Boathouse, by and through L. Stoney, is entitled to declarations that:

- a. Under the South Carolina Uniform Limited Liability Act, R. Stoney and Crew Carolina are not entitled to indemnification from the Boathouse to defend their wrongful acts as alleged herein. S.C. Code Ann. § 33-44-403, Rpt. Cmt. (A "manager is therefore entitled to indemnification only if the act was within the member or manager's actual authority." "A member or manager is therefore not

entitled to indemnification for conduct that violates the duty of care set forth in Section 33-44-409(c).”)

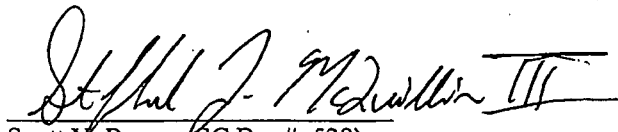
b. R. Stoney is required to repay any money taken from the Boathouse to pay Crew Carolina, LLC and his legal fees in connection with this matter.

77. The Boathouse requests that this Court grant it such costs as authorized by statute to compensate it for bringing the present action.

PRAYER FOR RELIEF

WHEREFORE, the Boathouse, by and through L. Stoney, prays that judgment be granted in its favor against Defendant R. Stoney and Crew Carolina for:

- (A) an award of actual and consequential damages in an amount to be determined;
- (B) an award of punitive damages;
- (C) an award of reasonable attorney’s fees and costs;
- (D) an award of pre-judgment interest;
- (E) a full accounting;
- (F) an order piercing the corporate veil that disregards the corporate entity and allows the Boathouse to recover against the individual, R. Stoney, for claims, debts, and damages as alleged in this Complaint against Crew Carolina;
- (G) an order declaring that R. Stoney and Crew Carolina are not entitled to indemnification from the Boathouse to defend their wrongful acts;
- (H) an order requiring the repayment of money taken by R. Stoney from the Boathouse to pay Crew Carolina, LLC and his legal fees in connection with this matter;
- (I) for such other further legal and equitable relief as the Court deems just and proper.



Scott Y. Barnes (SC Bar #: 528)
Stafford J. McQuillin III (SC Bar #: 78203)
Pierce T. MacLennan (SC Bar #: 101797)
Haynsworth Sinkler Boyd, P.A.
P.O. Box 340
Charleston, SC 29402
(843) 724-1120

ATTORNEYS FOR PLAINTIFF

CHARLESTON, SC

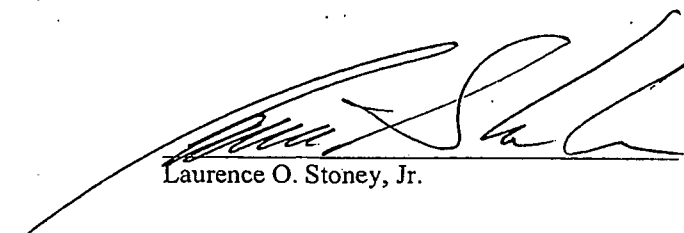
March 28, 2017

15-5463

VERIFICATION

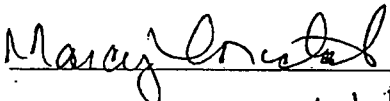
I, Laurence O. Stoney, Jr., am serving in my representative capacity for Plaintiff the Boathouse at Breach Inlet, LLC in the foregoing Verified Amended Derivative Complaint. I have reviewed the Verified Amended Derivative Complaint, and the matters alleged therein are true of my own knowledge or from my review of documents, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of South Carolina that the foregoing is true and correct.

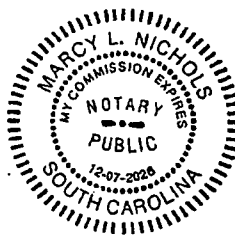

Laurence O. Stoney, Jr.

Subscribed and sworn before me

This 17th day of March, 2017



My commission expires: 12/1/2026



FILED
2017 MAR 28 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

THE BOATHOUSE AT BREACH INLET,
LLC, BY AND THROUGH ITS MEMBER,
LAURENCE O. STONEY, JR.,

Plaintiff,

vs.

RICHARD S.W. STONEY,
INDIVIDUALLY AND AS MEMBER-
MANAGER OF THE BOATHOUSE AT
BREACH INLET, LLC AND CREW
CAROLINA, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5463

ANSWER OF
RICHARD S. W. STONEY AND
CREW CAROLINA, LLC TO
AMENDED COMPLAINT

FILED
2017 APR 13 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants Richard S. W. Stoney, and Crew Carolina, LLC, answer Plaintiffs' Amended Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations of the Complaint are denied, except as otherwise answered.
2. The allegations of the following paragraphs are admitted: 1, 3, 4, 13, 14, 15, 17, and 70.
3. The allegations of the following paragraphs are denied: 5, 6, 7, 8, 9, 10, 11, 12, 19, 20, 22, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 71, 72, 73, 74, 75, 76 and 77.
4. Answering paragraph 2, Defendants admit only that Laurence Stoney is a resident of Charleston County and a member of Boathouse at Breach Inlet, LLC, (hereafter "Breach Inlet").

5. Answering paragraph 16, Defendants allege that Richard Stoney has served as manager of The Boathouse since its formation, and they deny any allegations of paragraph 16 inconsistent with this answer.

6. Answering the allegations of paragraph 18, Defendants admit that Theodore D. Stoney, Jr. as trustee for the benefit of Richard S. W. Stoney, Jr., Lori Stoney, Lori Stoney as trustee for the benefit of Croft Stoney, and Holmes Capital Management, LLC have been added as additional members to The Boathouse, LLC, and they deny any allegations of paragraph 18 inconsistent with this answer.

7. Answering paragraph 20, Defendants admit only that Breach Inlet is governed by the 1997 Operating Agreement and by the provisions of the South Carolina LLC Act.

8. Answering paragraph 21, Defendants aver that Crew Carolina, LLC was formed in 1998 for purposes, *inter alia*, of consolidating the administrative management of Breach Inlet, and subsequently of The Boathouse at East Bay, LLC (hereafter "East Bay") (of which Laurence Stoney was a member), a Boathouse at Lake Julian and Boathouse at Ellis Creek; all with the knowledge and acquiescence of Laurence Stoney for more than fifteen years prior to his filing of the within action.

9. Answering paragraph 23, Defendants aver that, through his attorneys, Laurence Stoney made a succession of strident, unreasonable demands on behalf of Laurence Stoney against Richard Stoney, in every instance accompanied by short and arbitrary time deadlines; none of which were calculated for any purpose other than to profit Laurence Stoney individually, and to penalize Richard Stoney, individually; and none of which were designed for the benefit of Breach Inlet.

10. Answering paragraph 24, Defendant avers that Plaintiff has improperly alleged matters and communications arising in mediation, contrary to the letter, if not the spirit, of Rule 8 of the South Carolina ADR Rules. Accordingly, the allegations of paragraph 24 are denied.

11. Answering paragraph 27, Defendants admit only that Laurence Stoney has been a member of Breach Inlet since its formation on November 21, 1997.

12. Answering paragraph 28, Defendants admit only that Richard Stoney has been the member/manager of Breach Inlet since its formation on November 21, 1997.

13. Answering paragraph 37, Defendants admit that The Boathouse is a manager-managed LLC, and that Code § 33-44-301 contains provisions relating to manager-managed LLC's, as do other sections of the South Carolina Code.

14. Answering paragraph 38, Defendants admit that South Carolina Code § 33-44-409 (h) describes general standards of member and manager conduct in a manager-managed LLC; and they deny any allegations of paragraph 38 inconsistent with this answer.

15. Answering paragraph 39, Defendants admit only that Richard Stoney owes the statutory duties set forth in Code Section 33-44-409.

16. Answering paragraph 52, Defendants crave reference to Code Sections 33-44-407 and 33-44-103, and they deny any allegations inconsistent with the language of those statutory sections.

17. Answering paragraph 53, Defendants crave reference to Code Section 33-44-405, and they deny any allegations inconsistent with the language of that statutory section.

18. Answering paragraph 67, Defendants crave reference to Code Section 33-44-1104, and they deny any allegations inconsistent with the language of that statutory section.

FOR A SECOND DEFENSE

19. The allegations of the Complaint fail to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

20. The claims of Plaintiff are barred by the Statute of Limitations.

FOR A FOURTH DEFENSE

21. The claims of Plaintiff are barred by the Equitable Doctrine of Laches.

FOR A FIFTH DEFENSE

22. The claims of Plaintiff should be dismissed because Plaintiff seeks only to benefit himself individually, and does not act in the best interests of Breach Inlet or its members.

FOR A SIXTH DEFENSE

23. The conduct of Richard Stoney about which Plaintiff complains is protected and privileged under the Business Judgment Rule.

FOR A SEVENTH DEFENSE

24. The claims of Plaintiff are barred by the Doctrines of *Waiver* and *Estoppel*.

FOR AN EIGHTH DEFENSE

25. Plaintiff cannot fairly and adequately represent the interests of Breach Inlet and its members because of his past disloyal, deceitful, deceptive and dishonest conduct; because his animus in pursuing the within action is to punish Richard Stoney ("Richard"); and because the majority of members of Breach Inlet do not support Plaintiff's actions herein.

26. Richard and Laurence Stoney ("Laurence") are first cousins.

27. On or about November 21, 1997 Richard formed a business entity known as The Boathouse at Breach Inlet, LLC ("Breach Inlet") and on that same date he filed Articles of Organization with the South Carolina Secretary of State.

28. At Richard's invitation, Laurence invested the sum of \$28,500 into Breach Inlet, for which he received a 5% membership share.

29. Laurence also signed an Operating Agreement, that defines the relationship of the parties as members of Breach Inlet; the terms and provisions of which are incorporated herein by reference.

30. Breach Inlet is a seafood restaurant, located at Breach Inlet, a tidal inlet between Isle of Palms and Sullivan's Island, South Carolina in Charleston County. The restaurant was created in 1997 according to a menu scheme adopted by Richard, that affords to its customers fresh, local seafood and alternative selections of side orders, which made its menu offering, at the time, different from other local seafood restaurants.

31. In December of 1998 and January of 1999 Richard formed two additional business entities:

a. On December 21, 1998 Richard formed Crew Carolina, LLC, ("Crew"), a single member LLC of which Richard is the sole member. Crew was formed for the purpose of consolidating and coordinating the administration and management of a future group of restaurants, to be formed.

b. On January 8, 1999 Richard formed The Boathouse on East Bay, LLC ("East Bay"), adopting the same business model and menu model that had been established at Breach Inlet.

32. At Richard's invitation, Laurence invested in East Bay, for which he received a 4% interest in the LLC.

33. Richard is informed and believes that Laurence was aware of, and that he acquiesced to, the business model: that is, to expand the Boathouse restaurants as a chain, with central administrative management to be provided by Crew.

34. The central management model of administering multiple restaurants is not unique to the Boathouse chain, and on information and belief it is utilized by other restaurant groups in the Charleston area, as well as outside the Charleston area.

35. The Operating Agreements of Breach Inlet and of East Bay, to which Laurence was a signator, gives Richard as Manager of Breach Inlet and East Bay the authority to contract for centralized management, as was made between Breach Inlet, East Bay and Crew Carolina.

36. Laurence was paid substantial distributions by Breach Inlet for the years 1999, 2000, 2001, 2002, 2003, 2004 and 2010.

37. On July 22, 2002 Richard formed a third Boathouse, known as "Boathouse at Lake Julian", ("Lake Julian") located in Asheville, North Carolina; and on December 10, 2008 he formed a fourth Boathouse known as "Boathouse on Ellis Creek", located on James Island in Charleston County.

38. Laurence was not offered the opportunity to invest in either Lake Julian or Ellis Creek, although he asked to do so, because Laurence had participated in conduct that was disloyal and disruptive to East Bay and to the business model to which he had acquiesced, as hereafter alleged.

40. When East Bay began operating in 1999, the property from which it operated was located at 549 East Bay Street, and was leased from "14 Chapel, LLC" an entity owned or controlled by James Drew.

41. After operating 549 East Bay Street for several years, disputes and differences arose between East Bay and the landlord over, among other things, maintenance issues and upkeep of the property; such that the dispute and the conditions of the property were not furthering the best interests of the ongoing restaurant business.

42. In the circumstances, Richard concluded that the best business course of action for East Bay would be to purchase the property at 549 East Bay Street from Mr. Drew.

43. As an example of Laurence's disloyalty: knowing the stresses placed on the business operations of East Bay and on Richard because of the disputes with the landlord, and while Richard was negotiating with Drew to buy 549 East Bay Street, Laurence deceptively, secretly and surreptitiously attempted to purchase 549 East Bay Street, himself, from Mr. Drew.

44. Laurence did not disclose to Richard, or to any person affiliated with Richard, or with East Bay, his surreptitious attempts to purchase 549 East Bay Street.

45. Richard is informed and believes that Laurence attempted to buy 549 East Bay in order to gain leverage to undermine and to cause harm to Richard and to East Bay.

46. Although Laurence did not acquire title to 549 East Bay Street, and it was purchased by Boathouse at East Bay, LLC, Laurence's devious, dishonest and disloyal acts were contrary to, if not the letter, at least the spirit, of East Bay's Operating Agreement and Laurence's status as a member of East Bay.

47. When East Bay closed because of financial exigency Richard assumed and fully paid its debts without a capital call to its members, thereby enabling Laurence, and the other members, to avoid a financial liability.

48. Richard is informed and believes that, as another act of disloyalty, Laurence conspired with Lori Stoney, Richard's former wife, and with Charleston restaurateur Bill Hall in Lori's case against Richard in Family Court, to wrest control of Breach Inlet from Richard.

49. On information and belief, in furtherance of the conspiracy above alleged Bill Hall, restaurant owner of Hall's Chophouse on King Street, would have taken over the management responsibilities, and perhaps the controlling ownership of Breach Inlet.

50. In furtherance of the conspiracy with Lori Stoney and Bill Hall, Laurence testified against Richard in the Family Court proceedings, and Bill Hall appeared in the same Family Court proceeding to testify as to the management of Breach Inlet, although Hall did not testify in the final analysis.

FOR A NINTH DEFENSE

51. The allegations of paragraphs 1-50 are incorporated herein.

52. The claims of Plaintiff are barred by the equitable doctrine of unclean hands.

FOR A TENTH DEFENSE

53. The allegations of paragraphs 1-52 are incorporated herein.

54. Plaintiff is and should be liable to Defendant for his attorney fees and for the costs of this action.

WHEREFORE, having fully answered the complaint of Plaintiff, Richard Stoney prays:

1. That the relief sought in the Complaint of the Plaintiff be denied;

-
2. That the Plaintiff be ordered to pay Defendant's costs and expenses, including a reasonable legal fee;
3. For such other and further relief as may be proper.

BARR, UNGER, MCINTOSH, LLC

Capers G. Barr, III

Capers G. Barr, III
SC Bar No: 00542
Barr, Unger and McIntosh
11 Broad Street (29401)
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Charleston, SC 29402
Telephone: 843-577-5083
Facsimile: 843-723-9039
cgb@barrungermcintosh.com
Attorney for Defendant

Charleston, South Carolina
April 12, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015 -CP-10-5463

The Boathouse at Breach Inlet, LLC)
by and through its member, Laurence)
O. Stoney, Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually)
and as Member-manager of The)
Boathouse at Breach Inlet, LLC and)
Crew Carolina, LLC)

Defendant.)

ANSWER OF
THIRD-PARTY INTERVENORS

Theodore D. Stoney, Jr., individually)
and as trustee for Richard Stoney, Jr.,)
and Gregory G. Holmes,)
Third-Party Intervenor.)

FILED
2011 JUL 24 PM 1:48
JULIE J. ANASTASIO
CLERK OF COURT

Third-Party Intervenor, Gregory G. Holmes and Theodore D. Stoney, Jr., individually and as trustee for Richard S.W. Stoney, Jr. (Third-Party Intervenor), being members of the Boathouse at Breach Inlet, LLC, answer the Plaintiff's Verified Amended Derivative Complaint (Amended Complaint) as follows:

JURISDICTION

1. The Third-Party Intervenor was granted the right to intervene in the above-captioned action by Order of this Court on June 22, 2017 and by consent of the Parties.

FOR A FIRST DEFENSE

2. All allegations of the Plaintiff's Amended Complaint are denied, except as otherwise answered.

3. The allegations of the following paragraphs are admitted: 1, 3, 4, 13, 14, 15, 17, and 70.

4. The allegations of the following paragraphs are denied: 5, 6, 7, 8, 9, 12, 19, 22, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 71, 72, 73, 74, 75, 76, 77.

5. Answering paragraph 2, Third-Party Intervenors admit only that Laurence Stoney is a resident of Charleston County and a member of the Boathouse at Breach Inlet, LLC (hereafter "Boathouse"); Third-party Intervenors further deny that Laurence Stoney brings this action in a representative capacity.

6. Answering paragraphs 10 and 11, Third-Party Intervenors admit only that they oppose this derivative action, and further allege that Laurence Stoney seeks only to benefit himself individually, and does not act in the best interests of the Boathouse or its members. Third-Party Intervenors deny the remaining allegations of paragraphs 10 and 11.

7. Answering paragraph 16, Third-Party Intervenors allege that Richard Stoney has served as manager of the Boathouse since its formation, and they deny any allegations of paragraph 16 inconsistent with this answer.

8. Answering paragraph 18, Third-Party Intervenors admit that Theodore D. Stoney, Jr. as trustee for the benefit of Richard S.W. Stoney, Jr., Lori Stoney, Lori Stoney

as trustee for the benefit of Croft Stoney, and Holmes Capital Management were added as additional members to the Boathouse, and they deny any allegation of paragraph 18 inconsistent with this answer. Further answering paragraph 18, Third-Party Intervenors allege that Gregory Holmes, not Holmes Capital Management, is a current member of the Boathouse.

9. Answering paragraph 20, Third-Party Intervenors admit only that the Boathouse is governed by the 1997 Operating Agreement and by the provisions of the South Carolina LLC Act.

10. Answering paragraph 21, Third-Party Intervenors aver that Crew Carolina, LLC was formed in 1998 for purposes, inter alia, of consolidating the administrative management of The Boathouse at Breach Inlet, LLC, and subsequently of The Boathouse at East Bay, LLC (of which Laurence Stoney was a member), a Boathouse at Lake Julian and Boathouse at Ellis Creek; all with the knowledge and acquiescence of Laurence Stoney for more than fifteen years prior to his filing of the within action.

11. Answering paragraph 23, Third-Party Intervenors aver that, through his attorneys, Laurence Stoney made a succession of strident, unreasonable demands on behalf of Laurence Stoney against Richard Stoney, in every instance accompanied by short and arbitrary time deadlines; none of which were calculated for any purpose other than to profit Laurence Stoney individually, and to penalize Richard Stoney, individually; and none of which were designed for the benefit of the Boathouse. Further answering, paragraph 23, Third-Party Intervenors allege that despite initially purporting to represent their interests, Laurence Stoney did not consult with the Third-Party Intervenors prior to

initiating a derivative action nor has he ever contacted them with regards to the present lawsuit or the underlying allegations.

12. Answering paragraph 24, Third-Party Intervenors allege that despite purporting to represent their interests at the time, Plaintiff did not consult with or inform the Third-Party Intervenors about any mediation proceedings with Richard Stoney. Further answering paragraph 24, Third-Party Intervenors aver that Plaintiff has improperly alleged matters and communications arising in mediation, contrary to the letter, if not the spirit of Rule 8 of the South Carolina ADR Rules. Accordingly, the allegations of paragraph 24 are denied.

13. Answering paragraph 27, Third-Party Intervenors admit only that Laurence Stoney has been a member of Breach Inlet since its formation on November 21, 1997.

14. Answering paragraph 28, Third-Party Intervenors admit only that Richard Stoney has been the member/manager of Breach Inlet since its formation on November 21, 1997.

15. Answering paragraph 37, Third-Party Intervenors admit that The Boathouse is a manager-managed, LLC and that Code § 33-44-301 contains provisions relating to manager-managed LLC's, as do other sections of the South Carolina Code.

16. Answering paragraph 38, Third-Party Intervenors admit that South Carolina Code § 33-44-409(h) describes the general standards of member and manager conduct in a manager-managed LLC; and they deny any allegations of paragraph 38 inconsistent with this answer.

17. Answering paragraph 39, Third-Party Intervenors admit only that Richard

Stoney owes the statutory duties set forth in Code Section 33-44-409.

18. Answering paragraph 52, Third-Party Intervenors crave reference to Code Sections 33-44-407 and 33-44-103, and they deny any allegations inconsistent with the language of those statutory sections.

19. Answering paragraph 53, Third-Party Intervenors crave reference to Code Section 33-44-405, and they deny any allegations inconsistent with the language of that statutory section.

20. Answering paragraph 67, Third-Party Intervenors crave reference to Code Section 33-44-11-4, and they deny any allegations inconsistent with the language of that statutory section.

FOR A SECOND DEFENSE

21. The allegations of the Complaint fail to state fact sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

22. The claims of Plaintiff are barred by the Statute of Limitations.

FOR A FOURTH DEFENSE

23. The claims of Plaintiff are barred by the Equitable Doctrine of Laches.

FOR A FIFTH DEFENSE

24. The claims of Plaintiff should be dismissed because Plaintiff seeks only to benefit himself individually, and does not act in the best interests of the Boathouse or its members.

25. Plaintiff's reasons for filing this action stem from his personal dissatisfaction

with Richard Stoney and his belief that he is due more in distributions than he has received; these claims are personal in nature and more appropriately brought as a direct action under S.C. Code § 33-44-410, not as a derivative action.

26. This action is, in reality, an effort by Laurence Stoney to enforce the payment of distributions that he claims are due to him personally and an effort to seize control of the company.

27. Plaintiff does not fairly and adequately represent the interests of the Boathouse and its members. Despite initially purporting to represent their interests, Plaintiff never consulted the Third-Party Intervenors prior to initiating a derivative action. Plaintiff has never contacted the Third-Party Intervenors regarding this lawsuit or the allegations contained therein.

FOR A SIXTH DEFENSE

28. The conduct of Richard Stoney about which Plaintiff complains is protected and privileged under the Business Judgment Rule.

FOR A SEVENTH DEFENSE

29. The claims of Plaintiff are barred by the Doctrines of *Waiver* and *Estoppel*.

FOR AN EIGHT DEFENSE

30. Plaintiff cannot fairly and adequately represent the interest of the Boathouse and its members because of his past disloyal, deceitful, deceptive and dishonest conduct; because his animus in pursuing the within action is to punish Richard Stoney; and because the majority members of the Boathouse do not support Plaintiff's actions herein.

FOR A NINTH DEFENSE

31. The claims of Plaintiff are barred by the equitable doctrine of unclean hands.

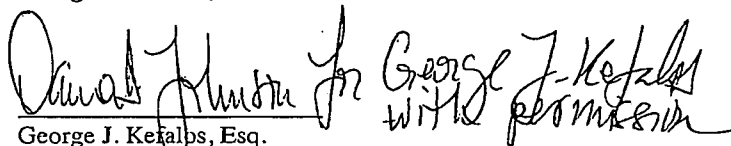
FOR A TENTH DEFENSE

32. Plaintiff is and should be liable to Third-Party Intervenor's for their attorneys' fees and for the costs of this action.

WHEREFORE, having fully answered the complaint of Plaintiff, Third-Party Intervenor's pray:

1. That the relief sought in the Amended Complaint of Plaintiff be denied; and
2. That Plaintiff's claims be dismissed as a derivative action; and
3. That the Plaintiff be ordered to pay Defendant and Third-Party Intervenor's costs and expenses including reasonable legal fees; and
4. For such other and further relief as may be proper.

George J. Kefalos, P.A.

 George J. Kefalos, Esq.
SC Bar No: 2290
46A State Street
Charleston, SC 29401
Telephone: (843) 722-6612
Fax: (843) 377-1310
george@kefaloslaw.com

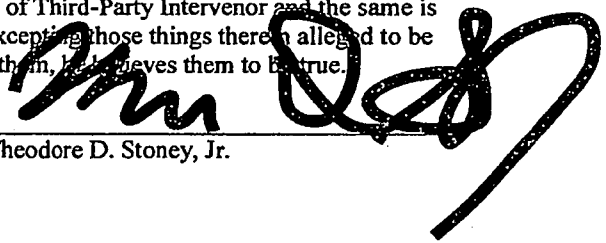
Attorney for Third-Party Intervenor's

Charleston, South Carolina
July 27, 2017

VERIFICATION

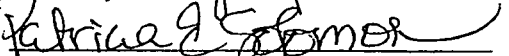
PERSONALLY appeared before me, Theodore D. Stoney, Jr., who, being duly sworn, says:

1. That he is the Defendant so named in the above matter.
2. That he has read the foregoing Answer of Third-Party Intervenor and the same is true of his own knowledge, save and excepting those things therein alleged to be upon information and belief, and as to them, he believes them to be true.



Theodore D. Stoney, Jr.

SWORN AND SUBSCRIBED before me
this 24 day of July, 2017



PATRICIA J. PALMER
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 1/7/24

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

The Boathouse at Breach Inlet, LLC)
by and through its member, Laurence)
O. Stoney, Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually)
and as Member-manager of The)
Boathouse at Breach Inlet, LLC and)
Crew Carolina, LLC)

Defendant.)

Theodore D. Stoney, Jr., individually)
and as trustee for Richard Stoney, Jr.,)
and Gregory G. Holmes,)

Third-Party Intervenors.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015 -CP-10-5463

FILED
2018 MAR 29 AM 9:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

**DEFENDANT AND THIRD-PARTY
INTERVENORS' JOINT RULE 42(B)
MOTION TO BIFURCATE AND
MEMORANDUM IN SUPPORT**

TO: SCOTT Y. BARNES, STAFFORD J. MCQUILLIN III, AND PIERCE T. MACLENNAN,
ATTORNEYS FOR THE PLAINTIFF

MOTION TO BIFURCATE

Defendant Richard S.W. Stoney (hereafter, "Defendant"), and Third-Party Intervenors Gregory G. Holmes and Theodore D. Stoney, Jr., individually and as trustee for Richard Stoney, Jr. (hereafter, "Intervenors"), jointly move pursuant to Rule 42(b), South Carolina Rules of Civil Procedure ("SCRCP"), for an order bifurcating discovery and trial of this case into two phases. Phase one would determine whether the putative plaintiff, Laurence Stoney, is an adequate representative plaintiff as required by Rule 23(b)(1) SCRCP to bring a derivative action on behalf

of the Boathouse at Breach Inlet, LLC ("Boathouse"). Phase two would address Plaintiff's allegations that Defendant Richard Stoney misappropriated Boathouse funds for his personal use and for use in related restaurant business ventures, and would only arise should the Court rule that Plaintiff is an adequate representative.

The grounds for the motion are that a phased hearing of the separate issues in this case would be conducive to expedition and economy for the parties as well as for the court; and on the further grounds discussed in the Memorandum below.

MEMORANDUM IN SUPPORT.

1. Undisputed Facts.

The Boathouse is a predominately family owned LLC formed by Richard Stoney in 1997, that operates a restaurant on the Isle of Palms at Breach Inlet. The seven members of the Boathouse are as follows:

- (1) Richard Stoney holds a sixty percent (60%) Membership Interest.
- (2) Theodore Stoney ("Ted"), Richard's brother, holds a ten percent (10%) Membership Interest.
- (3) Ted Stoney holds a five percent (5%) Membership Interest in trust for Richard's adult son, Richard Stoney, Jr.
- (4) Gregory Holmes, who is not related to the Stoney family, holds a ten percent (10%) Membership Interest.
- (5) Lori Stoney, who is Richard Stoney's former wife, holds a five percent (5%) Membership Interest.
- (6) Lori Stoney holds a five percent (5%) Membership Interest in trust for Croft Stoney, who is the adult child of Lori and Richard Stoney
- (7) Laurence Stoney, Richard and Ted Stoney's first cousin and putative plaintiff in this case, holds a five percent (5%) Membership Interest.

On October 9, 2015, Laurence Stoney brought this action alleging that Richard Stoney, the

majority member and manager, mismanaged the company and misappropriated funds from the Boathouse for his personal use and for use in related restaurant business ventures. (Amended Derivative Complaint, ¶6).

In their answers to Plaintiff's complaint, Defendant Richard Stoney and Intervenor allege, *inter alia*, that Laurence Stoney does not fairly and adequately represent the interests of the Boathouse or its members; and that the complaint should be dismissed for this reason.

As reflected in affidavits to which reference will hereafter be made, Plaintiff's action is opposed by members owning 90% of the membership interests in the LLC. Stated differently, this action is supported only by Laurence Stoney and Richard's ex-wife Lori Stoney.

2. Derivative Actions.

The right of a member of an LLC to file a derivative action on behalf of the LLC is statutorily prescribed. *Section 33-44-1101*, Code of Laws of South Carolina for 1976, as amended. (Hereafter, "Code Section"). Notably, the LLC act also allows for a member to file a direct action to enforce the member's rights. *Code Section 33-44-410*. A significant difference between the two forms of action is that in a derivative suit a plaintiff may recover his attorney fees and costs. *Code Section 33-44-1104*; whereas in a direct action he may not.

Derivative actions, whether arising in a corporation or an LLC, are governed by Rule 23(b)(1) of the South Carolina Rules of Civil Procedure. ("SCRCP"). A derivative suit is an equitable action brought by a shareholder (or member) in the name or right of the corporation (or LLC) to redress an injury sustained by, or to enforce a duty owed to, the corporation. *Rivers vs. Wachovia Corp.* 665 F3d 610 (C.A.4, 2011), citing *Fletcher Cyclopedia of the Law of Corporations* Sec. 5939-5940 (rev.ed. 2011.) It is particularly available where the individual

shareholder has no individual right of redress to file an action on his own behalf.

Rule 23(b)(1) sets forth the technical prerequisites for pleading a derivative action: requiring prior demand, and for the form of the complaint. The Rule also provides a substantive, threshold criterion for the maintenance of the derivative action: The Rule requires that “ *The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.*” (Emphasis added.)

The Boathouse is manager-managed, and Richard Stoney has been its manager since inception in 1997. In a manager-managed LLC, the members have no rights in the management and conduct of the company's business unless otherwise provided in the operating agreement. Section 33-44-404(b). However, as before stated, individual members may sue directly for their damages. They may also bring a derivative action if the prerequisites of Rule 23(b)(1) have been met.

However, derivative suits are not favored, particularly in closely held corporations. The rule was designed to protect against potential abuse stemming from derivative actions and “seeks to prevent the unrestrained use of derivative actions by minority shareholders, which would undermine the basic principle of corporate governance that the decisions of the corporation should be made by its management or, in certain situations, by an affirmative vote of a majority of the shareholders.” *Carolina First Corp. v. Whittle*, 343 S.C. 176, 185, 539 S.E.2d 402, 407 (Ct. App. 2000) (internal citations omitted).

“Derivative actions have been characterized as a remedy of last resort because these actions impinge on the inherent role of corporate management to conduct the affairs of the corporation,

including the power to bring suit.” *Id.* citing *Renfro v. FDIC*, 773 F.2d 657, 658 (5th Cir.1985). For this reason, the law imposes certain prerequisites on a stockholder’s right to sue derivatively. *Id.* citing *Kaplan v. Peat, Marwick, Mitchell & Co.*, 540 A.2d 726, 730 (Del.1988).

It is with these fundamental principles in mind that Defendant and Third-Party Intervenors seek bifurcation of this case. If Plaintiff does not meet the threshold prerequisite of fairly and adequately representing the interests of the shareholders as required by Rule 23(b)(1), this action may not proceed. Bifurcating the trial would allow the parties and the Court to first resolve the threshold question whether Laurence Stoney is a suitable derivative plaintiff without the need to simultaneously delve into the very costly and time intensive financial allegations implicated by Plaintiff’s claims of mismanagement and misappropriation; and the disputed quantifications of extensive accounting records that would certainly arise in a trial of all issues together.

3. Bifurcation Under Rule 42(b), SCRPC.

a. The Standard for Bifurcation

Rule 42(b) SCRPC governs bifurcation. The Rule states in pertinent part: “[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim...or of any separate issue...” The trial judge has discretion whether to bifurcate a trial. *Durham v. Vinson*, 602 S.E.2d 760, 360 S.C. 639 (2004) at FN 2, citing *Senter v. Piggly Wiggly Carolina Co.* 341 S.C. 74, 77, 544 S.E. 2d 575 (2000). “A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice.” *Winthrop Univ. Trs. For State v. Roofing*, 418 S.C. 142, 166, 791 S.E.2d 152, 165 (Ct. App. 2016), citing *Creighton v. Coligny Plaza Ltd. P’ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998).

South Carolina Courts have used bifurcation as a tool “to help clarify and simplify the issues.” *Durham v. Vinson*, 602 S.E.2d 760, 360 S.C. 639 (2004) at FN 2. Courts have also bifurcated cases to eliminate the expenses related with unnecessary expert witness testimony and to reduce the length of trial. See *Creighton v. Coligny Plaza Ltd.*, 334 S.C. 96, 109, 512 S.E.2d 510 (the trial court bifurcated the case three weeks before trial, noting “bifurcation would eliminate the expense of having out of state doctors testify to [Plaintiff’s] damages if the jury entered a defendant’s verdict in the liability trial.”) See also *Winthrop University Trustees, etc. v. Roofing*, 418 S.C. 142, 166, 791 S.E.2d 152, 165 (Ct. App. 2016), (the Court of Appeals noted, “We find the circuit court properly exercised its discretion in bifurcating the trial. Because most of the damages witnesses would not be called during the liability phase, the circuit court reasoned it would save time and resources by trying the liability phase separately. We find the bases for the circuit court’s ruling—convenience and judicial economy—are legitimate reasons for bifurcation. See Rule 42(b), SCRPC.”)

In the within case, the two issues before the Court are manifestly distinct. The threshold question whether Laurence Stoney is a proper representative Plaintiff can be easily separated from Plaintiff’s claims of corporate mismanagement and misappropriation of funds. The first issue concerns the conduct of the Plaintiff, his motives and interests in bringing this action, and whether those interests are in line with similarly situated shareholders (and also whether there are any similarly situated shareholders). The second issue, Plaintiff’s allegations concerning the conduct of Richard Stoney, requiring the forensic review of extensive records as well as expert testimony, would be a time consuming and costly process that could become unnecessary if the court were to find in Phase one of a trial that Laurence Stoney cannot be a proper representative plaintiff as

required by Rule 23(b)(1).

Bifurcating trial and discovery in this case would greatly reduce costs to the parties. Plaintiffs' accountant expert has produced thousands of pages of documents, including their billing records reflecting billings to date to Plaintiff of more than thirty eight thousand dollars. Should Phase one of a bifurcated trial demonstrate that Laurence Stoney is not an adequate representative plaintiff, the parties would save enormous costs and time. Expert accounting evidence would not be necessary in a bifurcated hearing to determine whether Laurence Stoney is a proper representative plaintiff.

The Court would also save considerable time and resources should Phase one determine that Laurence Stoney is not an adequate representative plaintiff. As in the case of *Durham vs. Vinson, supra*, bifurcating the trial would "help clarify and simplify the issues" and would be conducive to expedition and judicial economy – two proper grounds and reasons for bifurcation. Furthermore, the Phase one issues will require less discovery, less trial preparation, and less trial time, and can be ready for trial in advance of the time required than would a trial encompassing both Phases of this case.

Because the issues and the evidence in each Phase would be distinct, no injustice or prejudice will result from bifurcating the issues for discovery and trial.

4. Because Prima Facie Evidence Exists That Laurence Stoney Cannot "Fairly and Adequately Represent the Interests of Members Similarly Situated", the Motion to Bifurcate Should be Granted.

The parties have to date only exchanged written discovery; no depositions have yet been taken. However, based only upon written records there is a greater than *prima facie* showing that

Laurence Stoney cannot fairly and adequately represent the interests of other members of the Boathouse. The *prima facie* evidence justifies a bifurcated hearing of the separate issue in this non-jury matter.

South Carolina decisions on the adequacy of a representative plaintiff in a derivative lawsuit are sparse. However, Federal court decisions construing the adequacy of representation under the Federal Rule employ a two-pronged test: (1) The representative party must vigorously and conscientiously prosecute the action; and (2) The interests of the unnamed plaintiffs must not be antagonistic to the interests of the representative party. See, e.g., *DuPont v. Wyly*, 61 F.R.D. 615 (D.Del., 1973); *Mersay v. First Republic Corp. of America*, 43 F.R.D. 465 (S.D.N.Y., 1968); *First American Corporation v. Foster*, 51 F.R.D. 248 (N.D.Ga., 1970); *Schupack v. Covelli*, 512 F. Supp. 1310, 1312-13 (W.D. Pa. 1981); *Lewis v. Curtis*, 671 F.2d 779, 788-89 (3d Cir.), cert. denied, 459 U.S. 880, 103 S.Ct. 176, 74 L.Ed.2d 144 (1982); *Owen v. Modern Diversified Industries, Inc.*, 643 F.2d 441, 443-44 (6th Cir.1981) (no antagonistic interests); *GA Enterprises, Inc. v. Leisure Living Communities, Inc.*, 66 F.R.D. 123, 125-27 (D.Mass.1974), *aff'd*, 517 F.2d 24, 26-27 (1st Cir.1975).

Other courts have considered certain additional factors to determine the adequacy of a plaintiff's representation. The most relevant of these factors to the current action include: (1) the degree of support received by the plaintiff from other shareholders (see *Rothenberg v. Security Management Co.*, 667 F.2d 958, 961 (11th Cir.1982) (citations omitted); (2) the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action itself; and (3) plaintiff's vindictiveness toward the defendants. See *Davis v. Comed, Inc.*, 619 F.2d 588, 593-94 (6th Cir.1980). These factors are "intertwined or interrelated, and it is frequently a combination of

factors which leads a court to conclude that the plaintiff does not fulfill the requirements” of the rule. *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990).

a. **Laurence Stoney has not vigorously and conscientiously prosecuted this action.**

Laurence Stoney testified on behalf of the Defendant’s former wife Lori Stoney at a Family Court hearing in May, 2011, that Richard Stoney was not making sufficient distributions and that he (Laurence) was entitled to more money than he had received. (See Exhibit “A”, Transcript of Laurence Stoney, at p. 944). Despite his complaints about what monies he was owed, Laurence testified that he had not reviewed the Boathouse’s books after being offered the opportunity to review them, because to do so would entail him going to the Boathouse’s office. (Ex. “A” at p. 983). That office, according to Laurence’s own testimony, was located around the corner from where Laurence worked. (E. “A” at p. 1006). Laurence also testified that he had never written Richard about his complaints; he also acknowledged receiving several letters from Richard over the years regarding the “numbers” about the Boathouse. (Ex. “A” at p. at 984). This lawsuit was not filed until October 9, 2015. The equitable doctrine of laches is defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. *Robinson v. Estate of Harris*, 698 S.E.2d 214 (S.C. 2010). Both Rule 23(b)(1) and the doctrine of laches¹ required Laurence to timely act. Instead, he let the claim languish for years and slept on his rights. He should not be allowed to

¹ The doctrine of laches applies in shareholder derivative suits as they are actions in equity. *McDuffie v. O’Neal*, 476 S.E.2d 702 (S.C.App. 1996). For purposes of this motion, Defendant and Intervenor argue laches, but do not concede this action is properly brought as a derivative action and, therefore contend the applicable statute of limitations and discovery rule also apply.

bring it now, under the circumstances.

b. Laurence Stoney has demonstrated a desire to usurp control of the Boathouse and seeks only a buyout of his own interest in the company.

This lawsuit represents the second attempt (and arguably the third) by Lori and Laurence Stoney to take over the management and control of the Boathouse from Richard Stoney. A February 2011 Family Court hearing in the Stoney divorce case was held pursuant to Lori Stoney's motion seeking a Family Court order that she take over the management and control of the Boathouse. The motion was denied.

Thereafter, at the Family Court hearing in May 2011 on the merits, Laurence Stoney testified on behalf of Lori Stoney that he would have no objection if Lori were given a controlling interest in the entity. (Ex. "A" at p. 965). When asked about Lori's lack of experience in operating a restaurant, he testified, "She's been around Richard, you know. So she must know something." (Ex. "A" at p. 1004). Laurence's support for placing management and control of the Boathouse in the hands of an inexperienced and unqualified manager demonstrates his personal animosity towards Richard, and his divergent interests from those of the other members.

That Laurence Stoney's interests diverge from those of the other members and is driven by a motive for personal gain is further shown by certain email exchanges between Laurence and Richard prior to the filing of this action. On December 16, 2014, Richard Stoney, aware of Laurence's dissatisfaction with Richard's management and wanting to resolve the discord between them, emailed Laurence to discuss buying out Laurence's interest in the Boathouse. The following email exchange ensued:

From: Richard Stoney <richard@crewcarolina.com>
Subject: Boathouse 5 percent interest
Date: December 16, 2014 at 10:16:12 AM EST

□To: Laurence Stoney <Stoney@colemanmarine.com>

Laurence, hope all is well. 2015 is about over and I am trying to complete a number of things before the end of the year. The last thing I want, given all that has transpired in my life over the past 5 plus years, is to prolong the discord between us. If you are interested in trying to resolve as gentleman your interest in Breach I would suggest a meeting before Christmas. It would be my hope by meeting that we could reach a favorable resolution to this ongoing issue and put it behind us. Should you be willing to meet I would further suggest that we agree on a neutral and detached 3rd person to mediate for a couple hrs. Randell I am sure could give you the name of a few mediators. Regardless I would appreciate us initiating in the near future a civilized dialogue to get something moving. I will wait to hear back from you. Regards-Richard

Subject: Boathouse
From: "Laurence Stoney" <stoney@colemanmarine.com>
Date: Tue, December 16, 2014 11:45 am
To: <richard@crewcarolina.com>

Richard, A brief outline of what you have in mind would be helpful. LOS

From: Richard Stoney [mailto:richard@crewcarolina.com]
Sent: Wednesday, December 17, 2014 11:30 AM
To: Laurence Stoney
Subject: Re: Boathouse

Laurence, I am unfortunately still covered up with some other matters but wanted to get back to you a brief response per your request. My primary goal is to try and get with you as soon as possible, either alone or preferably with a 3rd party, and wind up in a mutual satisfactory way before the end of the year a buyout of your 5 percent of Breach. If we could reach an agreeable price I would need to have you agree to payment over 24 months or so along with a present day/transaction interest rate collateralized by your stock. I have a noon appointment I must attend but am free later today or tomorrow to either chat or meet. Understandably I anticipate that we will need to commit to setting aside some time to try and resolve this impasse. Communication I feel is the key. Just let me know if you think we can make some progress and your general thoughts. Thanks - Richard

Subject: RE: Boathouse
From: "Laurence Stoney" <stoney@colemanmarine.com>
Date: Wed, December 17, 2014 2:40 pm
To: "Richard Stoney" <richard@crewcarolina.com>
Cc: "Randell C. Stoney, Jr." <rstone@barnwell-whaley.com>, <paultinkler@tinklerlaw.com>, <sbarnes@hsblawfirm.com>

Richard, I think the best way to go at this is for you to make your BEST offer up front. Keep in mind what you already owe me, plus interest and a cap rate based on recast numbers. Try 10% per year compounded yearly on all past due and a cap rate of 6% based on \$25,000 per year. Standing by L

From: Richard Stoney [mailto:richard@crewcarolina.com]
Sent: Wednesday, December 17, 2014 3:16 PM
To: Laurence Stoney

Cc: Randell C. Stoney, Jr.; <paultinkler@tinklerlaw.com>; <sbarnes@hsblawfirm.com>
Subject: Re: Boathouse

Laurence, based on the fact that you have copied our cousin Randell and two other attorneys I think it is obvious we are not going to get anywhere short of minimally mediation. Let me know - Richard

Subject: RE: Boathouse
From: "Laurence Stoney" <stoney@colemanmarine.com>
Date: Wed, December 17, 2014 3:23 pm
To: "Richard Stoney" <richard@crewcarolina.com>
Cc: "Randell C. Stoney, Jr." <rstone@barnwell-whaley.com>, <paultinkler@tinklerlaw.com>, <sbarnes@hsblawfirm.com>

Richard, Like I said make your best offer and we might not need all the pain. L

Notably, two of the attorneys copied by Laurence Stoney in his reply email to Richard were Scott Barnes of Haynsworth Sinkler Boyd, who is one Laurence's lawyers in this case, and Paul Tinkler, Lori Stoney's *divorce* attorney. The subject matter of the email was the sale of Laurence Stoney's personal interest in the Boathouse, not a "derivative action" for the benefit of the LLC.

Laurence Stoney's final position in that exchange was to offer to sell his personal interest in the Boathouse. His words? "Richard, Like I said make your best offer and we might not need all the pain. L." (Emphasis added.) Movants expect the evidence will show that Laurence seeks only to cash out his interest, and at the same time have his legal fees paid by the LLC. If this is proved in a Phase one hearing, it sets up a clear conflict of interest between Laurence, the Boathouse and the other members. Laurence cannot be undividedly loyal to the Boathouse while also attempting to leverage a buyout for himself or to undertake a takeover of the company for his own personal benefit. "A plaintiff in a shareholder derivative action owes the corporation his undivided loyalty. The plaintiff must not have ulterior motives and must not be pursuing an external personal agenda." *Smith v. Ayres*, 977 F.2d 946 (C.A.5 (Tex.), 1992).

- c. Laurence Stoney has little support from the shareholders he purports to represent as his interests are antagonistic to those of the other shareholders.

Nearly all members and member-beneficiaries of the Boathouse oppose this derivative action – most of whom have intervened in this suit to actively oppose it. Specifically, Richard Stoney, Sr., Gregory Holmes, Theodore Stoney, Richard Stoney, Jr., and Croft Stoney, representing 90% of the membership interests, oppose this derivative action and contend that it is damaging to the Boathouse and to their interests as members because it would result in the waste of the Boathouse's assets, damage to its institutional reputation, and damage to its financial interests. (See supporting affidavits, attached as follows: Exhibit "B", Ted Stoney; Exhibit "C", Greg Holmes; Exhibit "D", Croft Stoney). This derivative action is wasteful, harmful and unwarranted because:

- 1) Laurence Stoney is incurring legal bills on behalf of the LLC to prosecute a claim which has no support from the other shareholders;
- 2) pursuant to Article VIII of the Boathouse Operating Agreement, the LLC will be obligated to indemnify Richard Stoney for the legal costs incurred in defending this action (see LLC Operating Agreement, Ex. "D");
- 3) the lawsuit has propagated, and will likely propagate more bad publicity in the community that is harmful to the business (see P&C Article);
- 4) the members of the Boathouse, including Lori Stoney have benefitted from the actions of the current management; and
- 5) as is reflected in its annual tax return and member K1s, the Boathouse has reported a profit every year since it opened in 1997. In sum, the suit is simply not in the best interests of the company.

Despite initially purporting to "represent the interests of the Boathouse and its members in

enforcing and prosecuting the rights of the Boathouse," Laurence Stoney never contacted Gregory Holmes, Theodore Stoney, or Richard Stoney, Jr. regarding the underlying action. It was only after these members filed a Motion to Intervene and challenge the present action that Laurence Stoney changed his initial position to now claim that he no longer represents their interests and that the Intervenor is not "similarly situated members." However, this argument has no basis in fact or law because Intervenor, just as Laurence Stoney (and Croft Stoney who also opposes this derivative action), are all minority shareholders and therefore, are all similarity situated.

The only member who has expressed support for Laurence Stoney in this case is Lori Stoney, the ex-wife of Richard Stoney who is currently embroiled in marital litigation against Richard and has been actively attempting to take over the management and ownership of Boathouse for the past eight years. Lori Stoney certainly has a personal animus towards Richard, and because of her unique relationship with Richard as well as her protracted marital litigation with him, Lori Stoney is not similarly situated with any other shareholder, including Laurence. See *Steinberg v. Steinberg*, 434 N.Y.S.2d 877, 106 Misc.2d 720 (N.Y. Sup., 1980), finding that "[T]he circumstances in their totality strongly indicate that the derivative action was deliberately instituted to obtain leverage in the matrimonial proceeding, as a "weapon in the total ... arsenal".

Where a representative plaintiff has little to no support from any of the other shareholders, including his fellow minority shareholders, he does not fairly and adequately represent the interests of the shareholders or those similarly situated. See *Kuzmickey v. Dunmore Corp.*, E.D.Pa.1976, 420 F.Supp. 226 (holding the plaintiff, who owned sixteen percent of stock of defendant corporation, did not fairly and adequately represent the interests of the shareholders and, hence, could not maintain a derivative action that charged the president and vice president with

mismanagement where individual defendants owned seventy percent of the stock between them and submitted affidavits of the remaining six shareholders, each of whom contended that plaintiff did not represent their interests and that suit was not brought in the best interests of the corporation); *see also Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990) (holding plaintiff who owned 23.4% of corporation's stock was not similarly situated with other shareholders because he did not have the support of other shareholders and other shareholders were either defendants or had an economic interest in supporting current management and benefited from current management; therefore Plaintiff could not bring a derivative suit and dismissal was warranted).

CONCLUSION

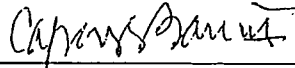
This case should be bifurcated to allow the conclusion of discovery on the Phase one issue and then to set a hearing to first determine whether Laurence Stoney is an adequate representative plaintiff to bring the present lawsuit as a derivative action on behalf of the Boathouse and its members, before the full merits of the suit are tried. For the reasons stated above, Defendant Richard Stoney, Sr., and Intervenor Gregory Holmes, Theodore Stoney, and Richard Stoney, Jr., respectfully request that this Court grant their Joint Rule 42(b) motion to bifurcate.

(Nothing Follows On This Page.)

The undersigned has consulted with counsel for Laurence Stoney in good faith to resolve the matter contained in this motion, but without success.

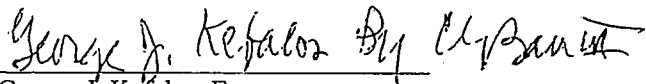
Respectfully Submitted,

BARR, UNGER, MCINTOSH, LLC



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Charleston, South Carolina
March 28, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and
through its member, Laurence O. Stoney,
Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
member-manager of The Boathouse at
Breach Inlet, LLC and Crew Carolina, LLC,

Defendants.

Theodore Stoney, Jr., individually and as
Trustee for Richard Stoney, Jr. and Gregory
G. Holmes,

Third-Party Intervenors.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5463

STIPULATION

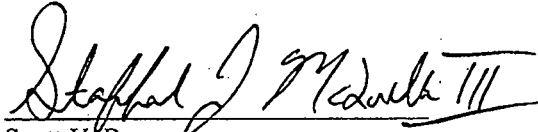
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Pursuant to Rule 43(k), it is hereby stipulated that Laurence O. Stoney is not similarly
situated to any other member of the Boathouse at Breach Inlet, LLC.

SIGNATURES ON FOLLOWING PAGE

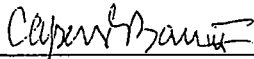
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C. Stoney
by K. McPherson

WE SO STIPULATE.



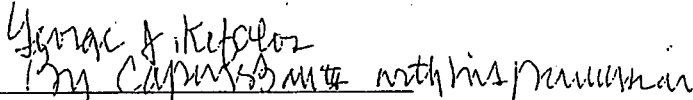
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and
through its member, Laurence O. Stoney,
Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
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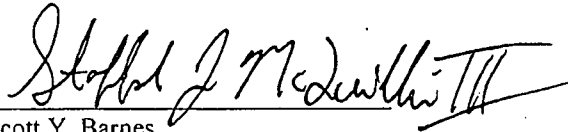
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

At the hearing on December 13 and 14, 2018, Defendants and Third Party Intervenors objected to the Court considering Don Hollerbach's testimony in the form of an affidavit by arguing that affidavit evidence was not competent. In response, the Court indicated that he would consider the affidavit but that either party could depose Don Hollerbach. Following the hearing, Defendants and Third Party Intervenors emailed the Court and indicated that "[w]e respectfully reserve our objections to the relevance of Mr. Hollerbach's evidence; but we do not oppose its affidavit form."

NOW THEREFORE, pursuant to Rule 43(k), Defendants and Third-Party Intervenors stipulate that they do not oppose the affidavit form of Don Hollerbach's testimony submitted in evidence by Plaintiff for the Court's consideration at the December 13 and 14, 2018 hearing.

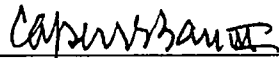
However, Defendants and Third-Party Intervenors reserve their relevance objections as to the substance of Mr. Hollerbach's testimony as stated at the hearing.

WE SO STIPULATE AND CONSENT.



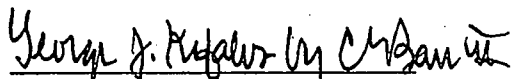
Scott Y. Barnes
Stafford J. McQuillin III
Tyler Gilliam
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134 Meeting Street, 4th Floor
Charleston, SC 29401

Attorneys for Plaintiff



Capers G. Barr, III
Barr, Unger McIntosh, LLC
11 Broad Street
Charleston, SC 29401

Attorney for Defendants



George J. Kefalos
George J. Kefalos, P.A.
46A State Street
Charleston, SC 29401

with his permission

Attorney for Third-Party Intervenors

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and
through its member, Laurence O. Stoney,
Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
member-manager of The Boathouse at
Breach Inlet, LLC and Crew Carolina, LLC,

Defendants.

Theodore Stoney, Jr., individually and as
Trustee for Richard Stoney, Jr. and Gregory
G. Holmes,

Third-Party Intervenors.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5463

**NOTICE OF MOTION AND MOTION
TO DISSOCIATE LAURENCE O.
STONEY FROM THE BOATHOUSE AT
BREACH INLET, LLC AND BUYOUT
OF MEMBERSHIP INTEREST AT FAIR
VALUE**

TO: STAFFORD J. MCQUILLIN III, ESQ., SCOTT Y. BARNES, ESQ., AND TYLER
GILLIAM, ESQ., ATTORNEYS FOR THE PLAINTIFF

PLEASE TAKE NOTICE that Third-Party Intervenors, Gregory G. Holmes, and Theodore D. Stoney, Jr., individually and as trustee for Richard S.W. Stoney, Jr., jointly with Defendant Richard S.W. Stoney, Sr. respectfully move before the Ninth Judicial Circuit, Court of Common Pleas, County of Charleston for an Order dissociating Plaintiff Laurence O. Stoney from the Boathouse at Breach Inlet, LLC ("Boathouse") and ordering the sale of his five percent (5%) membership interest to the Boathouse at fair value. This Motion is made pursuant to S.C. Code § 33-44-601(6)(iii), § 33-44-702, and Section 3.24 of the Boathouse at Breach Inlet Operating Agreement (Exhibit A). **The moving parties respectfully request that a hearing on this Motion be expedited and set on January 16, 2020 before the Honorable Clifton Newman in the Circuit**

Court for Georgetown County or at such other time and place that is convenient for the Court. The Grounds for this request for an expedited hearing is that the parties to this case are already scheduled to participate in a hearing on said date before Judge Newman in Georgetown, who is otherwise not scheduled to return to Charleston until March of 2020.

Relevant Facts and Procedural History

The Boathouse at Breach Inlet, LLC operates a family-oriented seafood restaurant located on the Isle of Palms, South Carolina. Richard Stoney, Sr. has served as managing member of the Boathouse since it was organized in 1997. The members of the Boathouse are as follows:

- Richard Stoney, Sr. holds a sixty percent (60%) Membership Interest.
- Theodore Stoney holds a ten percent (10%) Membership Interest.
- Theodore Stoney holds a five percent (5%) Membership Interest in trust for Richard Stoney, Jr.
- Gregory Holmes holds a ten percent (10%) Membership Interest.
- Lori Stoney holds a five percent (5%) Membership Interest.
- Lori Stoney holds a five percent (5%) Membership Interest in trust for Croft Stoney.¹
- Laurence Stoney holds a five percent (5%) Membership Interest

Since initiating this lawsuit, Lawrence Stoney has taken three different, contradictory positions as to whose interests he represents: Initially, Laurence asserted that he represented “the interests of the Boathouse and its members.” (Complaint, Para. 8). However, he notably failed to contact the other members before filing a derivative lawsuit on their behalf. In fact, ninety percent (90%) of the members and member-beneficiaries oppose this derivative action. These members and member-beneficiaries have never authorized Laurence Stoney to represent their interests. Next, Laurence Stoney amended his complaint to assert that he will only represent the interests of “other

¹ Richard Stoney and Lori Stoney are formerly husband and wife. They are engaged in marital litigation. Croft Stoney is their adult child. Croft Stoney opposes this derivative action.

similarly situated members”, and that the Third-Party Intervenors (Gregory Holmes, Theodore Stoney, and Richard Stoney, Jr.) are not similarly situated to him. (Amended Complaint, Para. 9). Finally, four years after initiating this lawsuit, Laurence entered in a stipulation stating that “Laurence O. Stoney is not similarly situated to any other member of the Boathouse at Breach Inlet, LLC.” [Emphasis added] In other words, Laurence Stoney does not represent the interests of any Boathouse member other than himself. He went from allegedly representing the interests of all other members to none at all. For purposes of clarity, a more detailed timeline of the procedural history in this case is set forth below for the Court’s review:

- **On October 9, 2015**, Laurence Stoney filed this lawsuit as a derivative action on behalf of the Boathouse, asserting that he “will fairly and adequately represent the interests of the Boathouse **and its members** in enforcing and prosecuting the rights of the Boathouse.” (Complaint, Para. 8, Emphasis Added). Despite the foregoing assertion, Laurence Stoney **did not consult** with Theodore Stoney, Gregory Holmes, or Richard Stoney, Jr. (Third-Party Intervenors) or Croft Stoney prior to filing the derivative action.
- **On October 18, 2016**, Third-Party Intervenors filed a Motion to Intervene, alleging *inter alia*, that Laurence Stoney does not fairly and adequately represent their interests as members of the Boathouse at that Rule 23(b)(1) mandates that a “derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association.” When confronted about his failure to contact any of the other members prior to initiating a lawsuit on their behalf, Laurence Stoney stated, “Plaintiff initially believed the members of the Boathouse would readily support the Boathouse’s claim [...]” (Memorandum in Opposition to Motion to Disqualify, filed January 25, 2017,

Page 7). It is worth noting that all members lived in the greater Charleston area at the time Laurence filed this derivative action.

- **On November 23, 2016**, over one month after Third-Party Intervenors filed their Motion to Intervene, and more than one year after filing Plaintiff's initial complaint, Laurence Stoney filed a Motion to Amend his Complaint. Laurence now alleged that "the basis for the motion is that through discovery, the Boathouse has gained new information relating to its claims."
- **On March 28, 2017**, Laurence Stoney filed an Amended Complaint. Contrary to his initial Complaint, in which Laurence asserted that he "will fairly and adequately represent the interests of the Boathouse and its members in enforcing and prosecuting the rights of the Boathouse," Laurence now alleged that he will represent the interest of the Boathouse and other **similarly situated members**. Plaintiff's Amended Complaint further alleged, for the first time, that Third-Party Intervenors "are not similarly situated members, and each have benefited from the alleged improprieties of the current management." (Amended Complaint, Para. 9). Laurence Stoney, it appeared, would purportedly represent the interests of the Boathouse as well as those of Lori Stoney and Croft Stoney.
- However, **on December 7, 2019**, over two years after amending his Complaint to allege that he would represent "other similarly-situated members," Laurence Stoney entered into a stipulation, stating, "**Laurence O. Stoney is not similarly situated to any other member of the Boathouse at Breach Inlet, LLC.**" (Stipulation, Exhibit B). This stipulation represents a third change in position: Laurence Stoney does not represent the interests of any Member other than himself.

Standard of Review

"The term 'dissociation' refers to the change in the relationships among the dissociated

member [of an LLC], the company and the other members caused by a member's ceasing to be associated in the carrying on of the company's business." *Park Regency, LLC v. R&D Dev. of the Carolinas, LLC*, 402 S.C. 401, 411, 741 S.E.2d 528, 533 (Ct. App. 2012), citing S.C. Code § 33-44-601. "[A]n action for dissociation is [...] equitable in nature." *Id.* See also *Ballard v. Robinson*, wherein the South Carolina Supreme Court affirmed the trial court's decision, ordering a Company to buy the stock of a minority shareholder who had filed a derivative action against the majority. In rendering its decision, the Supreme Court noted that "[a] shareholder's derivative action, as well as stockholder oppression, is one in equity." 399 S.C. 588, 733 S.E.2d 107 (2012).

The South Carolina Uniform Limited Liability Corporation Act of 1996 ("Act") sets forth the procedure for dissociation of LLC members and buyout of their membership interests. Specifically, S.C. Code § 33-44-601(6)(iii) states:

Events causing member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events: [...] (6) on application by the company or another member, the member's expulsion by judicial determination because the member: [...] (iii.) engaged in conduct relating to the company's business which make it not reasonably practicable to carry on the business with the other member. [Emphasis added]

In addition, § 33-44-702 of the Act authorizes the Court to determine the fair value of a party's distributional interest, setting forth the factors that the Court should consider:

Court action to determine fair value of distributional interest.

(a) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(1) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, **any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose**, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(2) specify the terms of the purchase including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the

company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(3) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price. [...] [Emphasis added]

Finally, the Boathouse at Breach Inlet, LLC Operating Agreement authorizes the Company to buyout a Member's interest upon their dissociation from the Company. Section 3.24 of the Operating Agreement sets forth the agreement of the parties:

§ 3.24 Buyout of disassociating member.

If, following the death, retirement, resignation, **expulsion**, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company, a Majority in Interest of the remaining Members vote to continue the Company, **the disassociating Member shall be entitled to receive any distribution which the disassociating Member was entitled to receive prior to the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company.** Subject to any Agreement of the Members otherwise, **the Member shall additionally receive the fair value of the Member's Membership in the Company as of the date of the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company determined as provided in Section 33-44-701 of the Act.** The date of payment shall be made pursuant to the provisions of Section 33-44-701 (b) of the Act. [Emphasis added]

Argument

This court should dissociate Laurence Stoney from the Boathouse at Breach Inlet, LLC and order the Company to purchase Laurence's membership interest because A) Ninety percent (90%) of the Boathouse members and member-beneficiaries oppose this derivative action, B) Laurence Stoney, holding a five percent (5%) membership interest in the Boathouse, has stipulated that he does not represent the interests of any other member of the Boathouse, C) Laurence Stoney's conduct, including the lack of candor regarding whose interests he represents throughout this litigation, does not make it reasonably practicable to conduct business with him as a member, D) an

Order dissociating Laurence Stoney from the Boathouse and ordering the Company to purchase his interests would provide an equitable solution to Laurence's purported personal discontent with how the Boathouse has been managed, while at the same time honoring the wishes of the majority, and E) This Court is authorized to render a judicial determination dissociating Laurence Stoney from the Boathouse and ordering the purchase of his membership interest at fair value under the South Carolina Uniform Limited Liability Company Act, the Boathouse at Breach Inlet, LLC Operating Agreement, and under the equitable powers bestowed upon this Court in dealing with derivative actions and the dissociation of LLC Members.

Defendant and Third Party Intervenor reserve the right to supplement this Motion with additional facts, law, and affidavits.

Respectfully submitted,

BARR, UNGER, & MCINTOSH, LLC

/s/Capers G. Barr, III

Capers G. Barr, III

SC Bar No.: 00542

11 Broad Street (29401)

P.O. Box 1037

Charleston, SC 29402

Telephone: (843) 577-5083

Facsimile: (843) 723-9039

cgb@barrungermcintosh.com

Attorney for Defendant Richard S.W. Stoney, Sr.

and

GEORGE J. KEFALOS, ESQ.

/s/George J. Kefalos

George J. Kefalos, Esq.

SC Bar No: 2290

46A State Street

Charleston, SC 29401

Telephone: (843) 722-6612

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george@kefaloslaw.com

Attorney-for Third Party Intervenors

Charleston, South Carolina
January 6, 2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and
through its member, Laurence O. Stoney,
Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
member-manager of The Boathouse at
Breach Inlet, LLC and Crew Carolina, LLC,

Defendants.

Theodore Stoney, Jr., individually and as
Trustee for Richard Stoney, Jr. and Gregory
G. Holmes,

Third-Party Intervenors.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5463

STIPULATION

2018 DEC -7 PM 12:59
CLERK OF COURT
BY

Pursuant to Rule 43(k), it is hereby stipulated that Laurence O. Stoney is not similarly
situated to any other member of the Boathouse at Breach Inlet, LLC.

SIGNATURES ON FOLLOWING PAGE

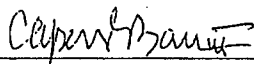
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C/S
b2k mca

WE SO STIPULATE.



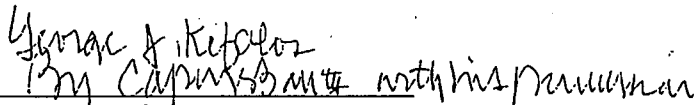
Scott Y. Barnes
Stafford J. McQuillin III
Tyler Gilliam
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134 Meeting Street, 4th Floor
Charleston, SC 29401

Attorneys for Plaintiff



Capers G. Barr, III
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11 Broad Street
Charleston, SC 29401

Attorney for Defendants



George J. Kefalos
George J. Kefalos, P.A.
46A State Street
Charleston, SC 29401

Attorney for Third-Party Intervenor

2015-CP-10-5463

CERTIFICATE OF SERVICE

I hereby certify that I have had a true and correct copy of the foregoing served upon all counsel of record by hand delivery and email, this 7th day of December 2018:

Capers G. Barr, III, Esq.
Barr, Unger McIntosh, LLC
11 Broad Street
Charleston, SC 29401

George J. Kefalos, Esq.
George J. Kefalos, P.A.
46A State Street
Charleston, SC 29401

Kathy Gulick
Kathy Gulick

Charleston, South Carolina

2018 DEC -7 PM 12:59
CLERK OF COURT
BY _____

**BARR, UNGER
& MCINTOSH**
ATTORNEYS AT LAW

Capers G. Barr, III
Direct Dial: 843-377-1226
Email: cgb@barrungermcintosh.com

December 6, 2018

Via e-mail and By Hand

Stafford J. McQuillin, III, Esq.
Haynsworth, Sinkler Boyd, P. A.
134 Meeting Street
Charleston, SC 29401

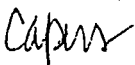
Re: Laurence O. Stoney, Jr., et. al. vs. Richard S. W. Stoney, et. al.
Case No: 2015-CP-10-5463
Our File No: 2015-1098

Dear Mac:

Enclosed is the Rule 43(k) stipulation that I have signed, for myself representing Richard, and for George Kefalos with his permission, for Ted and Greg.

With kind regards,

Sincerely yours,



Capers G. Barr, III

CGBIII/raa

Enclosures (as stated)

cc: Richard S. W. Stoney, Esq. (w/enclosures)
George Kefalos, Esq. (w/enclosures)
Jesse Sanchez, Esq. (w/enclosures)

Haynsworth Sinkler Boyd, P.A.

Date Rec'd 12/6/18
C/M # 37631-1
Routing _____
Calendared _____

11 Broad Street P.O. Box 1037 Charleston, SC 29402
Telephone 843-577-5083 Fax 843-723-9039

ELECTRONICALLY FILED - 2020 Jan 07 3:10 PM - CHARLESTON - COMMON PLEAS - CASE#2015CP1005463

**HAYNSWORTH
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STAFFORD J. MCQUILLIN III
DIRECT DIAL NUMBER 843.724.1120
EMAIL mmcquillin@hsblawfirm.com

December 7, 2018

VIA HAND DELIVERY

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

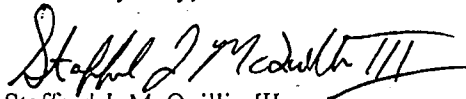
Re: The Boathouse at Breach Inlet, LLC by and through its member, Laurence O. Stoney, Jr. v.
Richard S.W. Stoney
Case No. 2015-CP-10-5463
HSB File No. 37631-1

Dear Ms. Armstrong:

Enclosed for filing and entry into the record of the above-referenced matter, please find an original and one copy of a binding Stipulation. Please file the Stipulation, have it entered in the record, and return a file-stamped copy to me with my courier.

By copy of this letter, I am serving all counsel with a copy of the same.

Yours very truly,


Stafford J. McQuillin III

SJM/kmg

Enclosures

cc (w/encl.): Capers G. Barr III, Esq.
George J. Kefalos, Esq.

ELECTRONICALLY FILED - 2020 Jan 07 3:10 PM - CHARLESTON - COMMON PLEAS - CASE#2015CP1005463

OPERATING AGREEMENT
(Management by Member-Manager)
OF
THE BOATHOUSE AT BREACH INLET, L.L.C.

This Operating Agreement of THE BOATHOUSE AT BREACH INLET, L.L.C. (the "Company") dated effective as of the 21st day of November, 1997, is (a) adopted by the Manager (as defined below) and (b) executed and agreed to, for good and valuable consideration, by the Members.

ARTICLE I - DEFINITIONS

§1.1 Generally

As used in this Operating Agreement, the following terms have the following meanings:

"Act" means the South Carolina Uniform Limited Liability Company Act of 1996 and any successor statute as amended from time to time.

"Articles" means the Articles of Organization filed with the Secretary of State of South Carolina by which THE BOATHOUSE AT BREACH INLET, L.L.C. was organized as a South Carolina Limited Liability Company under and pursuant to the Act.

"Bankrupt Member" means a Member who within the meaning of Section 33-43-802(A)(4) of the Act, (a) makes an assignment for the benefit of creditors, (b) files a voluntary petition in bankruptcy, (c) is adjudicated a bankrupt or insolvent, (d) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, (e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of this nature or (f) seeks, consents to, acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Carolina are closed.

"Capital Contribution" means any contribution by a Member to the capital of the Company.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Company" means THE BOATHOUSE AT BREACH INLET, L.L.C., a South Carolina Limited Liability Company.

"Company Liability" means any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

"Company Minimum Gain" means an amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with §704 of the Code and the Regulations issued thereunder, as the same may be issued and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any taxable year equals: the sum of Nonrecourse Deductions allocated to that Member (and to that Member's predecessors in interest) up to that time and the distributions made to that Member (and to that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company Minimum Gain plus their aggregate share of decreases resulting from revaluations of Company Property subject to one or more Company Nonrecourse Liabilities.

"Company Nonrecourse Liability" means a Company Liability to the extent that no Member or related person bears the economic risk of loss (as defined in §1.752-2 of the Regulations) with respect to the liability.

"Default Interest Rate" means a rate per annum equal to the lesser of (a) one percent (1.0%) plus a varying rate per annum that is equal to the Wall Street Journal prime rate as quoted in the money rates section of the Wall Street Journal which is also the base rate on corporate loans at large United States money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"Delinquent Member" means a Member who does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement.

"Dispose", "Disposing" or "Disposition" means a sale, assignment, transfer, exchange, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

"Distributional Interest" means all of a Member's interest in distributions by the Company.

"General Interest Rate" means a rate per annum equal to the lesser of (a) the *Wall Street Journal* prime rate as quoted in the money rates section of the *Wall Street Journal* which is also the base rate on corporate loans at large United States Money center commercial banks, from time to time as its prime commercial or similar reference interest rate, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by applicable law.

"Lending Member" means those Members, whether one or more, who advance the portion of the Delinquent Member's Capital Contribution that is in default.

"Majority in Interest" means the majority vote of both those Members owning a majority of the capital and those Members holding a majority of the Net Profits and Net Losses of the Company.

"Manager or Managers" means RICHARD S. W. STONEY, or any Person hereafter elected as a Manager of the Company as provided in this Operating Agreement, but does not include any Person who has ceased to be a Manager of the Company.

"Member" means any Person executing the Articles, this Operating Agreement, or hereafter admitted to the Company as a Member as provided in this Operating Agreement, but does not include any Person who has ceased to be a Member in the Company.

"Member Minimum Gain" means an amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the Company property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any taxable year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum Gain on the last day of the immediately preceding taxable year with the Minimum Gain on the last day of the current taxable year. Notwithstanding any provision to the contrary contained herein, Member Minimum Gain and increases and decreases in Member Minimum Gain are intended to be computed in accordance with §704 of the Code or the Regulations issued thereunder, as the same may be issued and interpreted from time to time.

"Member Nonrecourse Liability" means any Company Liability to the extent of liability is nonrecourse under state law, and on which a Member or related person bears the economic risk of loss under §1.752-2 of the Regulations because, for example, the Member or related person is the creditor or a guarantor.

"Membership" means any Member's interest in the Company, including, without limitation, rights to distributions (liquidating or otherwise), allocations, information and to consent or approve.

"Membership Interest" means a Member's right to share in profits and losses, and right to share in distributions, and has the same meaning as the term "Limited Liability Company Interest" defined in Section 33-43-102 of the Act.

"Net Losses" means the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

"Net Profits" means the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate as appropriate on the tax return of the Company filed for federal income tax purposes.

"Nonrecourse Liabilities" means Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

"Offsettable Decrease" means any allocation that unexpectedly causes or increases a deficit in the Member's Capital Account as of the end of the taxable year to which the allocation relates attributable to depletion allowances under §1.704(b)(2)(iv)(k) of the Regulations, allocations of loss and deductions under §§704(e)(2) or 706 of the Code or under §1.751-1 of the Regulations, or distributions that, as of the end of the year are reasonably expected to be made to the extent they exceed the offsetting increases to such Member's Capital Account that reasonably are expected to occur during or (prior to) the taxable years in which such distributions are expected to be made (other than increases pursuant to a Minimum Gain Chargeback).

"Operating Agreement" has the meaning given that term in the introductory paragraph.

"Person" includes an individual, partnership, limited partnership, limited liability company, foreign limited liability company, trust, estate, corporation, custodian, trustee, executor, administrator, nominee or entity in a representative capacity.

"Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative.

"Property" means all real property and personal property owned by the Company.

"Required Interest" means fifty (50%) percent of all Membership Interests.

Other terms defined herein have the meanings so given them.

ARTICLE II - ORGANIZATION

§2.1 Formation.

The Company has been organized as a South Carolina Limited Liability Company by the filing of Articles pursuant to the Act and the issuance of a certificate of organization for the Company by the Secretary of State of South Carolina.

§2.2 Name.

The name of the Company is THE BOATHOUSE AT BREACH INLET, L.L.C. and all Company business must be conducted in that name or such other names that comply with applicable law as the Members may select from time to time.

§2.3 Registered Office.

The registered office of the Company required by the Act to be maintained in the State of South Carolina shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Members, may designate from time to time in the manner provided by law.

§2.4 Registered Agent.

The registered agent of the Company in the State of South Carolina shall be the initial registered agent named in the Articles or such other Person or Persons as the Members, may designate from time to time in the manner provided by law.

§2.5 Principal office in the United States; other offices.

The principal office of the Company in the United States shall be at such place as the Members may designate from time to time, which need not be in the State of South Carolina, and the Company shall maintain records there which are required by Section 33-43-405 of the Act and shall keep the street address of such principal office at the registered office of the Company in the State of South Carolina. The Company may have such other offices as the Members may designate from time to time.

§2.6 Purposes.

The purposes of the Company are the acquisition of the Property and real estate investment, business property investment, leasing, management and all other activities not prohibited by law which are incidental thereto.

§2.7 Foreign qualification.

Prior to the Company's conducting business in any jurisdiction other than South Carolina, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Members, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Operating Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

§2.8 Term.

The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

§2.9 Mergers.

The Company may merge with another entity subject to the requirements of Sections 33-44-904 through 33-44-907 of the Act.

§2.10 No state-law partnership.

The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Operating Agreement may not be construed to suggest otherwise.

ARTICLE III - MEMBERS

§ 3.1 Admission of members.

After the formation of this Company, a person becomes a new Member:

(1) in the case of a person acquiring a Membership directly from this Company, on compliance with the provisions of Section 3.2 and 3.4 of this Agreement governing admission of new Members or, if this Operating Agreement contains no relevant admission provisions, on the written consent of all Members; and

(2) in the case of an assignee of a Membership if there is the consent of the Manager to permit the admission of a substituted Member pursuant to Section 33-44-503 of the Act.

§3.2 Representations and warranties.

Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a corporation, it is duly organized, validly existing and in good standing under the law of the state of its incorporation and is duly qualified and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); (b) if that Member is a limited liability company, it is duly organized, validly existing, and (if applicable) in good standing under the law of the state of its organization and is duly qualified and (if applicable) in good standing as a foreign limited liability company in the jurisdiction of its principal place of business (if not organized therein); (c) if that Member is a partnership, trust, or other entity, it is duly formed, validly existing, and (if applicable) in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in clause (a), (b), or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee, or other Member thereof, (d) that Member has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Operating Agreement and to perform obligations hereunder and all necessary actions by the board of directors, shareholders, manager, members, partners, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Operating Agreement by that Member have been duly taken; (e) that Member has duly executed and delivered this Operating Agreement; and (f) that Member's authorization, execution, delivery and performance of this Operating Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

§ 3.3 Restrictions on the disposition of a membership

Membership and transferability of Memberships in the Company are substantially restricted. Neither record title nor beneficial ownership of a Membership may be transferred or encumbered without the consent of the Manager at the time of transfer. This Company is formed by a closely-held group who know and trust one another, who will have surrendered certain management rights (in exchange for limited liability) based upon their relationship and trust. Capital is also material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. These restrictions upon ownership and transfer are not intended as a penalty, but as a method to protect and preserve existing relationships based upon trust and the Company's capital and its financial ability to continue.

A Disposition of a Membership in the Company may not be effected without the consent of the Manager at the time of Disposition.

It is the intent of the Members that the tax status of this Company be the same as for a partnership, and except as allowed by the Code and any corresponding rules and regulations, it is intended that this Company shall not allow free transferability of interests, and to the extent possible, this Operating Agreement shall be read and interpreted to prohibit the free transferability of interests of any Member. Any attempted Disposition by a Person of an interest or right in or in respect of the Company other than in accordance with this section shall be, and is hereby declared, null and void ab initio.

An assignee who becomes a Member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a Member under this Operating Agreement and the Act. Unless otherwise provided by this Operating Agreement, an assignee who becomes a Member also is liable for the obligations of the assignor to make contributions but is not obligated for liabilities unknown to the assignee at the time the assignee became a Member and which could not be ascertained from this Operating Agreement. Whether or not an assignee of a Membership becomes a Member, the assignor is not released from the assignor's liability to this Company.

(1) Subject to the provisions of the following sections, (i) a Person to whom a Membership in the Company is transferred has the right to be admitted to the Company as a Member with the interest in Net Profits, Net Losses, and capital so transferred to such Person, if (A) the Member making such transfer grants the transferee the right to be so admitted, and (B) such transfer is consented to in accordance with this section.

(2) The Company may not recognize for any purpose any purported Disposition of a Membership unless and until the other applicable provisions of this section have been satisfied and the Manager has received, on behalf of the Company, a document (i) executed by both the Member effecting the Disposition (or if the transfer is on account of the death, incapacity, or liquidation of the transferor, his representative) and the Person to which the Membership is Disposed, (ii) including the notice address of any Person to be admitted to the Company as Member and its agreement to be bound by this Operating Agreement in respect of the Membership being obtained, (iii) setting forth the Person's interest in Net Profits, Net Losses and capital after the Disposition of the Member effecting the Disposition and the Person to which the Membership is Disposed (which together must total the interest in Net Profits, Net Losses and capital of the Member effecting the Disposition before the Disposition), and (iv) containing a representation and warranty that the Disposition was made in accordance with all applicable laws and regulations (including securities laws) and, if the Person to which the Membership is Disposed is to be admitted to the Company, its representation and warranty that the representations and warranties in this Operating Agreement are true and correct with respect to that Person. Each Disposition and, if applicable, admission complying with the provisions of this section is effective as of the first day of the calendar month immediately succeeding the month in which the Manager receives the notification of Disposition and the other requirements of this section have been met.

(3) For the right of a Member to Dispose of a Membership or of any Person to be admitted to the Company in connection therewith to exist or be exercised, (i) either (A) the Membership subject to

the Disposition or admission must be registered under the Securities Act of 1993, as amended, and any applicable state securities laws or (B) the Company must receive a favorable opinion of the Company's legal counsel or other legal counsel acceptable to the Manager to the effect that the Disposition or admission is exempt from registration under those laws and (ii) the Company must receive a favorable opinion of the Company's legal counsel or of other legal counsel acceptable to the Manager to the effect that the Disposition or admission, when added to the total of all other sales, assignments, or other Dispositions within the preceding 12 months, would not result in the Company's being considered to have terminated within the meaning of the Code. The Manager, however, may waive the requirements of this sub-part of this section.

(4) The Member effecting a Disposition and any Person admitted to the Company in connection therewith shall pay, or reimburse the Company for, all costs incurred by the Company in connection with the Disposition or admission (including, without limitation, the legal fees incurred in connection with the legal opinions referred above) on or before the tenth day after the receipt by that Person of the Company's invoice for the amount due. If payment is not made by the date due, the Person owing that amount shall pay interest on the unpaid amount from the date due until paid at rate per annum equal to the Default Interest Rate.

§ 3.4 Additional Members.

Additional Persons may be admitted to the Company as Members and Memberships may be created and issued to those Persons and to existing Members at the direction of the Manager. The terms of admission or issuance must specify the percentage of Net Profit and Net Loss allocable to such Person and the Capital Contribution applicable thereto, and may provide for the creation of different classes or groups of Members and having different rights, powers, and duties. The Manager shall reflect the creation of any new class or group in an amendment to this Operating Agreement indicating the different rights, powers, and duties, and such an amendment need be executed only by the Manager. Any such admission also must comply with the requirements described elsewhere in this Operating Agreement and is effective only after the new Member has executed and delivered to the Manager, as appropriate, a document including the new Member's notice address, its agreement to be bound by this Operating Agreement, and its representation and warranty that the representations and warranties required of new Members are true and correct with respect to the new Member. The provisions of this section shall not apply to Dispositions of Membership.

Notwithstanding the foregoing, the Members of the Company shall have a preemptive right to acquire additional, newly created Memberships of the Company, or securities of the Company convertible into or carrying a right to subscribe or acquire Memberships, except to the extent limited or denied by this Operating Agreement or the Articles.

§3.5 Interests in a member.

A Member that is not a natural person may not cause or permit an interest, direct or indirect, in itself to be Disposed of such that after the Disposition, (a) the Company would be considered to have terminated within the meaning of Section 708 of the Code or (b) without the consent of the Manager and a Required Interest that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the breaching Member shall sell, the breaching Member's Membership all in accordance with Section 3.24.

§ 3.6 Information.

In addition to the other rights specifically set forth in this Operating Agreement, each Member is entitled to all information to which that Member is entitled to have access pursuant to Section 33-44-408' of the Act under the circumstances and subject to the conditions therein stated. The Members agree, however, that the Manager from time to time may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members, and that it is not just or reasonable for those Members or assignees or representatives thereof to examine or copy that information.

The Members acknowledge that from time to time, they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member or the Manager, except for disclosures (i) compelled by law (but the Member must notify the Manager promptly of any request for that information, before disclosing it, if practicable), (ii) to advisers or representatives of the Member or Persons to which that Member's Membership may be Disposed as permitted by this Operating Agreement, but only if the recipients have agreed to be bound by the provisions of this section or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality. The Members acknowledge that breach of the provisions of this section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute or both. Accordingly, the Member agree that the provisions of this section may be enforced by specific performance.

§ 3.7 Liabilities to third parties.

Except as otherwise expressly agreed in writing, no Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a Court.

§3.8 Withdrawal.

No Member may withdraw from the Company as a Member prior to the date specified in the Articles of Organization for dissolution of the Company.

§ 3.9 Classes and voting.

Unless the Articles state to the contrary or as provided by this Operating Agreement two or more classes or groups of one or more Members is established, there shall be one class of Members. A Required Interest of the Members of this Company, at a duly authorized annual or special meeting may elect to establish different classes or groups of Members. If so, the following provisions shall apply:

- (1) The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of Members.
- (2) If two or more classes or groups of one or more Members are established, then each class or group of Members, as far as waiver of notices, action by consent without a meeting, establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote, shall be governed by the same provisions of this Operating Agreement as pertain to one class or group of Members.
- (3) Prompt notice of the taking of an action under this Operating Agreement that require less than unanimous written consent of the Members and that may be taken without a meeting shall be given to the Members who have not consented in writing to the taking of the action.
- (4) For the purposes of this section, the taking of an action includes amending this Operating Agreement or creating, under provisions of this Operating Agreement, a class of Membership that was not previously outstanding.

§ 3.10 Place and manner of meeting.

All meetings of the Members shall be held at such time and place, within or without the State of South Carolina, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 3.11 Conduct of meetings.

All meetings of the Members shall be presided over by the Chairman of the meeting, who shall be a Manager (or representative thereof). The chairman of any meeting of Members shall determine

the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him in order.

§ 3.12 Annual meeting.

The annual meeting of the Members for the transaction of all business which may come before the meeting shall be held on December 15 in each year (if not a legal holiday and, if a legal holiday, then on the next business day following) at the hour specified in the notice of the meeting. If the annual meeting is not held on the date above specified, the Manager shall cause a special meeting of the Members in lieu thereof to be held as soon thereafter as convenient, and any business transacted or election held at that meeting shall be as valid as if held at the annual meeting. Failure to hold the annual meeting at the designated time shall not work a dissolution of the Company.

§ 3.13 Voting lists.

The Manager, officer, or agent having charge of the records reflecting the Membership of each member of each class, if more than one class, shall make, at least ten (10) days before each meeting of Members, a complete list of the Members, entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and percentage of Membership of each Member of each class, if more than one class, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office of the Company and shall be subject to inspection by any Member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any Member during the whole time of the meeting. The original records reflecting the Membership of each Member of each class, if more than one class, shall be prima facie evidence as to who are the Members entitled to examine such list or records or to vote at any meeting of Members.

Failure to comply with the requirements of this Article shall not affect the validity of any action taken at such meeting.

§ 3.14 Special Meetings.

Special meetings of the Members may be called at any time by the Manager or by the holders of at least ten (10%) percent of the Members entitled to vote at such meeting.

Special meetings of Members may also be called by the Manager upon the written request of the holders of at least ten percent (10%) of the Membership entitled to be voted at such meeting. Such request shall state the purpose or purposes of such meeting and the matters proposed to be acted on thereat.

§ 3.15 Notice.

Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten

(10) nor more than sixty (60) days before the date of the meeting either personally or by mail, or at the direction of the officer or person calling the meeting, to each Member entitled to vote at the meeting, provided that such notice may be waived as provided in this Operation Agreement. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Company, with postage thereon prepaid. Any notice required to be given to any member hereunder or under the Articles of Organization need not be given to the Member if (A) notice of two consecutive annual meetings of the Company and all notices of meetings held during the period between those annual meetings, if any, or (B) all (but in not event less than two) payments (if sent by first class mail) of distributions during a twelve-month period have been mailed to that person, addressed at his address as shown on the records of the Company, and have been returned undeliverable. Any action or meeting taken or held without notice to such person shall have the same force and effect as if the notice had been duly given.

§ 3.16 Quorum of members.

Unless otherwise provided in the Articles, the holders of a majority of the equity interests of Memberships entitled to vote, as determined from the capital contribution of each Member as recorded by the books of the Company, represented in person or in proxy, shall constitute a quorum at a meeting of Members. The vote of the holders of a majority of the equity interests of Memberships entitled to vote, for each class if more than one class, and thus represented at a meeting at which a quorum is present shall be the act of the Members' meeting, unless the vote of a greater number is required by law, the Articles or this Operating Agreement.

§ 3.17 Majority vote; withdrawal of quorum.

With respect to any matter when a quorum is present at any meeting, the vote of the holders of a majority of the equity interests of Memberships (or Membership Interests as represented by percentage of capital contribution), present in person or represented by proxy, having voting power with respect to that matter, shall decide such matter brought before such meeting, unless the matter is one upon which, by express provision of the Articles or this Operating Agreement, or by any express provision of the statutes which is applicable to such vote unless overridden by the Articles, a different vote is required, in which case such express provision shall govern and control the decision of such matter. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

§ 3.18 Voting of membership.

Except as otherwise provided in the Act, each outstanding Member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of Members, except to the extent that the voting rights of the Member of any class or classes are limited or denied by the Articles or by this Operating Agreement.

On each matter submitted to a vote of the Membership (as opposed to a vote of the Members) each outstanding Membership shall be entitled to vote its percentage interest in the Company as set forth in Section 5.1 of this Operating Agreement.

Memberships owned by another limited liability company or corporation, the majority of the Memberships or voting stock of which is owned or controlled by this Company, and Memberships held by this Company in a fiduciary capacity shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total Memberships at any given time.

A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable and the proxy is coupled with an interest.

§ 3.19 Action without meeting.

Any action required by the Act to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all the Memberships for each class, if more than one class, entitled to vote with respect to the action that is the subject matter of the consent, and such consent shall have the same force and effect as a unanimous vote of the Members. Every written consent pursuant to this section shall be signed, dated and delivered in the manner required by, and shall become effective at the time and remain effective for the period specified by, the Act. A telegram, telex, cablegram, or similar transmission by a Member, or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this section. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action. For purposes of this section, the taking of the action includes amending this Operating Agreement or creating, under provisions of this Operating Agreement, a class of Memberships that was not previously outstanding.

§ 3.20 Assignment of distributional interest.

Unless otherwise provided by this Operating Agreement:

- (1) a Distributional Interest is assignable in whole or in part;
- (2) an assignment of a Distributional Interest does not entitle the assignee to become, or to exercise rights or powers of, a Member;

(3) an assignment entitles the assignee to receive distributions, to which the assignor was entitled, to the extent those items are assigned and allocates to the assignee the assignor's allocable share of Net Profit and Net Loss; and

(4) until the assignee becomes a Member, the assignor Member continues to be a Member and to have the power to exercise any rights or powers of a Member.

§ 3.21 Distribution in kind.

Except as provided by the Articles or this Operating Agreement, a member, regardless of the nature of the Member's contribution, may not demand or receive a distribution from this Company in any form other than cash.

§ 3.22 Right to distribution.

Subject to the Act, at the time that a Member becomes entitled to receive a distribution, with respect to a distribution, that Member has the status of and is entitled to all remedies available to a creditor of the Company.

§ 3.23 Limitation on distribution.

No distribution may be made if, after giving effect to the distribution:

(1) the Company would not be able to pay its debts as they become due in the usual course of business; or

(2) the Company's total assets would be less than the sum of its liabilities plus, unless otherwise provided in this Operating Agreement, the amount that would be needed, if the Company were to be dissolved, wound up and terminated, at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of other Members whose rights are superior to the rights of the Member receiving the distribution. The Company may base a determination that a distribution is not prohibited upon the provisions of Section 33-44-406(b) and (c) of the Act.

§ 3.24 Buyout of disassociating member.

If, following the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company, a Majority in Interest of the remaining Members vote to continue the Company, the disassociating Member shall be entitled to receive any distribution which the disassociating Member was entitled to receive prior to the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued

Membership of a Member in the Company. Subject to any Agreement of the Members otherwise, the Member shall additionally receive the fair value of the Member's Membership in the Company as of the date of the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued Membership of a Member in the Company determined as provided in Section 33-44-701 f the Act. The date of payment shall be made pursuant to the provisions of Section 33-44-701(b) of the Act.

ARTICLE IV - CAPITAL CONTRIBUTIONS

§ 4.1 Initial contributions.

Each initial Member shall make the Capital Contribution described for that Member on Exhibit A at the time and on the terms specified on Exhibit A and shall make such additional capital contributions as may be required of Members from time to time and at any time. The value of the Capital Contributions shall be as set forth on Exhibit A. No interest shall accrue on any Capital Contribution and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Operation Agreement. Each additional Member shall make such Capital Contribution at such time as established by a Required Interest.

§ 4.2 Subsequent contributions.

Without creating any rights in favor of any third party, each Member shall contribute to the Company, in cash, on or before the date specified as hereinafter described that Member's pro rata share of all monies that in the judgment of a Required Interest, is necessary to enable the Company to cause the assets of the Company to be properly operated and maintained and to discharge its costs, expenses, obligations, and liabilities. The Manager, following the Members' determination of the need for additional capital, shall notify each Member of the need for Capital Contributions pursuant to this Section 4.2 when appropriate, which notice must include a statement in reasonable detail of the proposed uses of the Capital Contributions and a date (which date may be no earlier than the fifth Business Day following each Member's receipt of its notice) before which the Capital Contributions must be made.

§ 4.3 Failure to contribute.

If a Member does not contribute by the time required all or any portion of a Capital Contribution that Member is required to make as provided in this Operating Agreement, the Company may exercise, on notice to that Member (the "Delinquent Member"), one or more of the following remedies:

(1) taking such action (including, without limitation, court proceedings) as a Required Interest may deem appropriate to obtain payment by the Delinquent Member of the portion of the Delinquent Member's Capital Contribution that is in default together with interest thereon at the Default Interest Rate from the date that the Capital Contribution was due until the date that it is made, all at the cost and expense of the Delinquent Member;

(2) permitting the other members on a pro rata basis or in such other percentages as they may agree (the "Lending Member", whether one or more), to advance the portion of the Delinquent Member's Capital Contribution that is in default, with the following results:

(a) the sum advanced constitutes a loan from the Lending Member to the Delinquent Member and a Capital Contribution of that sum to the Company by the Delinquent Member pursuant to the applicable provisions of this Operating Agreement,

(b) the principal balance of the loan and all accrued unpaid interest thereon is due and payable in whole on the tenth day after written demand therefor by the Lending Member to the Delinquent Member,

(c) the amount of the loan bears interest at the Default Interest Rate from the day that the advance is deemed made until the date that the loan, together with all interest accrued on it, is repaid to the Lending Member,

(d) all distributions from the Company that otherwise would be made to the Delinquent Member (whether before or after dissolution of the Company) instead shall be paid to the Lending Member until the loan and all interest accrued on it have been paid in full to the Lending Member (with payments being applied first to accrued and unpaid interest and then to principal),

(e) the payment of the loan and interest accrued on it is secured by a security interest in the Delinquent Member's Membership, as more fully set forth in this section, and

(f) the Lending Member has the right in addition to the other rights and remedies granted to it pursuant to this Operating Agreement or available to it at law or in equity, to take any action (including without limitation, court proceedings) that the Lending Member may deem appropriate to obtain payment by the Delinquent Member of the loan and all accrued and unpaid interest on it, at the cost and expense of the Delinquent Member;

(3) exercising the rights of a secured party under the Uniform Commercial Code of the State of South Carolina, as more fully set forth in this Section; or

(10) exercising any other rights and remedies available at law or in equity.

Each Member grants to the Company, and to each Lending Member with respect to any loans made by the Lending Member to that Member as a Delinquent Member pursuant to this section, as security, equally and ratably, for the payment of all Capital Contributions that Member has agreed to make and the payment of all loans and interest accrued on them made by Lending Members to that Member as a Delinquent Member pursuant to this section, a security interest in and a general lien on its Membership and the proceeds thereof, all under the Uniform Commercial Code of the State of South Carolina. On any default in the payment of a Capital Contribution or in the payment of such a loan or interest accrued on it, the Company or the Lending Member, as applicable, is entitled

to all the rights and remedies of a secured party under the Uniform Commercial Code of the State of South Carolina with respect to the security interest granted in this section. Each Member shall execute and deliver to the Company and the other Members all financing statements and other instruments that the Manager or the Lending Member may request to effectuate and carry out the preceding provisions of this section. At the option of the Manager or a Required Interest, as appropriate, or a Lending Member, this Operating Agreement or copy hereof may serve as a financing statement.

§ 4.4 Return of contributions.

A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its capital account, or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. A Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions.

§ 4.5 Advanced by members.

If the Company does not have sufficient cash to pay its obligations, any Member(s) that may agree to do so with the Manager's consent may advance all or part of the needed funds to or on behalf of the Company. An advance described in this section constitutes a loan from the Member to the Company, bears interest at the General Interest Rate from the date of the advance until the day of payment, and is not a Capital Contribution.

§ 4.6 Maintenance of capital accounts.

The Company shall establish and maintain Capital Accounts for each Member. Each Member's Capital Accounts shall be increased by (1) the amount of any money actually contributed by the Member to the capital of the Company, (2) the fair market value of any property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the Company takes such property, within the meaning of §752 of the Code), and (3) the Member's share of Net Profits and of any separately allocated items of income or gain except adjustments required by the Code. Each Member's Capital Account shall be decreased by (1) the amount of money actually distributed by the Company to the Member, (2) the fair market value of any property distributed to the Member, as determined by the Company and the Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such property within the meaning of § 752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss.

§ 4.7 Distribution of assets.

If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market value immediately prior to their distribution.

§ 4.8 Sale or exchange of interest.

In the event of a sale or exchange of some or all of the Member's Interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the assignee, to the extent it relates to the portion of the interest transferred.

§ 4.9 Compliance with Section 704(b) of the Code.

The provisions of this Article IV as they related to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocation of profits, losses, income, gain and credit pursuant to Article V to have substantial economic effect under the Regulations promulgated under § 704(b) of the Code, in light of the distributions made pursuant to Articles V and XI and the Capital Contributions made pursuant to this Article IV. In cases where § 704(C) and § 1.704-3 of the Regulations apply to Company property, Members' Capital Accounts shall be adjusted in accordance with § 1.704-1(b)(2)(iv)(g) of the Regulations for allocations to them of income, gain, loss, and deduction (including depreciation, depletion, amortization, or other cost recovery) as computed for book purposes, with respect to property. Notwithstanding anything herein to the contrary, this Operating Agreement shall not be construed as creating a deficit restoration obligation.

ARTICLE V - ALLOCATIONS AND DISTRIBUTIONS

§ 5.1 Allocations of net profits and net losses from operations.

Except as may be required by § 704(c) of the Code, and Section 5.2, 5.3 and 5.4 of this Article V, Net Profits, Net Losses, and other items of income, gain, loss, deduction and credit shall be initially apportioned among the Members as follows:

Richard S. W. Stoney	83%
Theodore D. Stoney, Jr., as Trustee for the Benefit of Richard S. W. Stoney, Jr. under Agreement dated November 19, 1997	04%
Laurence O. Stoney, Jr.	05%
Theodore D. Stoney, Jr.	08%

All profits and losses, etc., of the Company enterprise will be shared pro rata by the Members according to the percentage of the capital accounts of each as recorded on the books of the Company.

§ 5.2 Company minimum gain chargeback.

If there is a net decrease in Company Minimum Gain for a taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member's share of the net decrease in Company Minimum Gain. A Member's share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding taxable year. A Member's share of any decrease in Company Minimum Gain resulting from a revaluation of Company Property equals the increase in the Member's Capital Account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. A Member is not subject to the Company Minimum Gain Chargeback Requirement to the extent the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a Recourse Liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of § 1.752-2 of the Regulations) for the newly guaranteed, refinanced, or otherwise changed liability.

§ 5.3 Member minimum gain chargeback.

If during a taxable year there is a net decrease in Member Minimum Gain, any member with a share of that Member Minimum Gain (as determined under § 1.704-2(i)(5) of the Regulations) as of the beginning of that taxable year must be allocated items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Company Minimum Gain. A Member's share of the net decrease in Member Minimum Gain is determined in a manner consistent with the provisions of paragraph § 1.704-2(g)(2) of the Regulations. A Member is not subject to this Member Minimum Gain Chargeback, however, to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Liability due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a Company Nonrecourse Liability. The amount that would otherwise be subject to the Member Minimum Gain Chargeback is added to the Member's share of Company Minimum Gain. In addition, rules consistent with those applicable to Company Minimum Gain shall be applied to determine the shares of Member Minimum Gain and Member Minimum Gain Chargeback to the extent provided under the Regulations issued pursuant to § 704(b) of the Code.

§ 5.4 Qualified income offset.

In the event any Member, in such capacity, unexpectedly received an Offsettable Decrease, such Member will be allocated items of income and gain (consisting of pro rata portion of each item of partnership income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible.

§ 5.5 Interim distributions.

From time to time, the Manager shall determine in their reasonable judgment to what extent, if any, the Company's cash on hand exceeds the current and anticipated needs, including, without limitation, needs for operating expenses, debt service, acquisitions, reserves, and mandatory distributions, if any. To the extent such excess exists, the Manager may make distributions to the Members in the same proportions as Net Profits and Net Losses are allocated to Members. Such distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by the Manager.

ARTICLE VI - MANAGER

§ 6.1 Management by Manager. Except for situations in which the approval of the Members is required by this Operating Agreement or by nonwaivable provisions of applicable law, and subject to the provisions of §6.2, (i) the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managers; and (ii) the Managers may make all decisions and take all actions for the Company not otherwise provided for in this Operating Agreement, including, without limitation, the following:

- (1) entering into, making, and performing contracts, agreements, leases, management contract and other undertakings binding the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and making all decisions and waivers thereunder;
- (2) opening and maintaining bank and investment accounts and arrangements, drawing checks and other orders for the payment of money and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (3) maintaining the assets of the Company in good order;
- (4) collecting sums due the Company;
- (5) to the extent that funds of the Company are available therefore, paying debts and obligations of the Company;
- (6) acquiring, utilizing for Company purposes, and disposing of any asset of the Company;
- (7) selecting, removing, and changing the authority and responsibility of lawyers, accountants, and other advisers and consultants;
- (8) obtaining insurance for the Company;
- (9) determining distributions of Company cash and other property as provided in §5.5.

§ 6.2 Actions by Manager; Committees; Delegation of Authority and Duties.

(1) In Managing the business and affairs of the Company and exercising its powers, the Manager shall act (i) through meetings and written consents as may be provided or limited in other provisions of this Operating Agreement; and (ii) through committees pursuant to §6.2 (2).

(2) The Manager may, from time to time, designate one or more advising committees, each of which shall be comprised of the Manager and one or more Members. At every meeting of any such committee, the presence of a majority of all the Members thereof shall constitute a quorum, and the affirmative vote of a majority of the Members present shall be necessary for the adoption of any resolution. The Manager may dissolve any committee at any time, unless otherwise provided in the Articles or this Operating Agreement.

(3) The Manager may, from time to time, designate one or more Persons to be officers of the Company who are not Managers. No officer need be a resident of the State of South Carolina or a Member. Any officers so designated shall have such authority and perform such duties as the Manager may, from time to time, delegate to them. The Manager may assign titles to particular officers. Unless the Manager decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Manager. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same Person. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager.

(4) Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Manager. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Manager whenever in its judgment the best interests of the Company will be served thereby; provided, however, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Manager.

(5) Any Person dealing with the Company, other than a Member, may rely on the authority of any one Manager or officer in taking any action in the name of the Company without inquiry into the provisions of this Operating Agreement or compliance herewith, regardless of whether that action actually is taken in accordance with the provisions of this Operating Agreement.

§ 6.3 Powers of Manager. The Manager is an agent of this Company for the purpose of its business and the act of a Manager, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company business or

business of the kind carried on by the Company, binds the Company, unless the Manager so acting has, in fact, no authority to act for this Company in the particular matter, except as provided in Section 33-44-301(c) of the Act, and the person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

§ 6.4 Number and Term of Office. The Manager of the Company shall be RICHARD S. W. STONEY. He shall serve as Manager of the Company for the life of the Company or upon removal as provided in Section 6.5 of this Agreement or upon resignation as provided in Section 6.6 of this Agreement. Unless otherwise provided in the Articles, the Manager need not be a Member or resident of the State of South Carolina.

§ 6.5 Removal. Any and all Managers may be removed, either for or without cause, at any special meeting of Members by the affirmative vote of two thirds of the Members entitled to vote at elections of Managers. The notice calling such meeting shall give notice of the intention to action upon such matter, and if the notice so provides, the vacancy caused by such removal may be filled at such meeting by vote of sixty six and two thirds (66.666%) percent of the Memberships represented at such meeting and entitled to vote for the election of Managers.

§ 6.6 Resignations. Any Manager may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified then at the time of its receipt by the other Managers, if any. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

§ 6.7 Vacancies. Any vacancy occurring in the Managers may be filled by the affirmative vote of a majority of the Required Interest, though less than a quorum of the Managers. A Manager elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Manager position to be filled by reason of an increase in the number of Managers shall be filled by election at an annual meeting or at a special meeting of Members called for that purpose.

§ 6.8 Place and Manner of Meetings. Meeting of the Managers, regular or special, may be held either within or without the State of South Carolina. Managers may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting as provided herein shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 6.9 First Meetings. The first meeting of the newly elected Managers shall be held without further notice immediately following the annual meeting of Members, and at the same place, unless by unanimous consent of the Managers then elected and serving, such time or place shall be changed.

§ 6.10 Regular Meeting of Manager. A regular meeting of the Managers may be held at such time as shall be determined from time to time by resolution of the Managers.

§ 6.11 Special Meeting of Manager. The Secretary shall call a special meeting of the Managers whenever requested to do so by the President or any two Managers. Such special meeting shall be held at the time specified in the notice of meeting. Except as otherwise expressly provided by statute, or by the Articles, or by this Operating Agreement, neither the business to be transacted at, nor the purpose of, any special meeting need be specified in the notice or waiver of notice.

§ 6.12 Notice of Manager's Meetings. All meetings of the Managers (annual, regular, or special) shall be held upon two (2) days written notice stating the date, place and hour of meeting delivered to each Manager either personally or by mail or at the direction of the President or the Secretary or the officer or person calling the meeting.

In any case where all of the Managers execute a waiver of notice of the time and place of the meeting, no notice thereof shall be required, and any such meeting (whether annual, regular or special) shall be held at the time and at the place (either within or without the State of South Carolina) specified in the waiver of notice. Attendance of Managers at any meeting shall constitute a waiver of notice of such meeting, except where the Managers attend a meeting for the express purpose of not objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 6.13 Action Without Meeting. Any action required by statute to be taken at a meeting of the Managers, or any action which may be taken at a meeting of the Managers, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Managers. Such consent shall have the same force and effect as a unanimous vote at a meeting.

§ 6.14 Quorum; Majority Vote. At all meetings of the Managers a majority of the number of Managers fixed by the Operating Agreement shall constitute a quorum for the transaction of business unless a greater number is required by law or by the Articles. The act of a majority of the Managers present at any meeting at which a quorum is present shall be the act of the Managers unless the act of a greater number is required by the statute, by the Articles or by this Operating Agreement. If a quorum shall not be present at any meeting of the Managers, the Managers present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

§ 6.15 Approval or Ratification of Acts or Contracts by Members. The Managers in their discretion may submit any act or contract for approval or ratification at any annual meeting of the Members or at any special meeting of the Members called for the purpose of considering any such act or contract, and any act or contract that shall be approved or be ratified by a Required Interest shall be as valid and as binding upon the Company and upon all the Members as if it shall have been approved or ratified by every Member of the Company.

§ 6.16 Interested Managers, Officers and Members.

(1) Interested Managers. No contract or transaction between this Company and one or more of its Managers or officers, or between this Company and any other limited liability company, corporation, partnership, association, or other organization in which one or more of its Managers or officers are managers or officers or have a financial interest, shall be void or voidable solely for this reason, solely, because the Manager or officer is present at or participates in the meeting of Managers or of a committee of Managers which authorizes the contract or transaction, or solely because such Manager's or Managers' votes are counted for such purpose, if:

(a) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Managers or the committee, and the Managers or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Managers, even though the disinterested Managers be less than a quorum; or

(b) The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(c) The contract or transaction is fair as to this Company as of the time it is authorized, approved, or ratified by the Managers, a committee thereof, or the Members.

(2) Common or interested Managers may be counted in determining the presence of a quorum at a meeting of the Managers or of a committee which authorizes the contract or transaction.

(3) This provision shall not be construed to invalidate any contract or transaction which would be valid in the absence of this provision.

§ 6.17 Compensation. By resolution of the Managers, the Managers may be paid their expenses, if any, of attendance at each meeting of the Managers and may be paid a fixed sum for attendance at each meeting of the Managers or a stated salary as Manager. No such payment shall preclude any Manager from serving the Company in any other capacity and receiving compensation therefor. Members of any special or standing committees may, by resolution of the Managers, be allowed like compensation for attending committee meetings.

ARTICLE VII - INDEMNIFICATION

The Company shall indemnify the Members, and agents for all costs, losses, liabilities, and damages paid or accrued by such Members, or agents in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State.

ARTICLE VIII - TAX MATTERS PARTNER

RICHARD S. W. STONEY is designated as "tax matters partner pursuant to § 6231(a)(7) of the Code. Any Member designated as tax matters partner shall take such action as may be necessary to cause each other Member to become a notice partner within the meaning of § 6223 of the Code. Any Member who is designated tax matter partner may not take any action contemplated by §§ 6222 through 6232 of the Code without the consent of a Required Interest.

ARTICLE IX - NOTICE

Any notice or communication required or permitted to be given by any provision of this Operating Agreement shall be in writing and shall be deemed to have been given and received by the Person to whom directed (a) when delivered personally to such Person or to a Member or Manager of the Company to which directed, or (b) when posted in the United States mail if sent by registered or certified mail, postage and charges prepaid, addressed to the Person to which directed at the address of which such Person has notified the Company and all of the Member.

ARTICLE X - DISSOLUTION, LIQUIDATION AND TERMINATION

§ 10.1 Dissolution.

The Company shall dissolve and its affairs shall be wound upon the first to occur of the following:

- (1) the written consent of all Members;
- (2) upon the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or the occurrence of any other event which terminates the continued Membership of a Member in this Company, unless there are at least two remaining Members and unless within ninety (90) days of an event described herein a Majority in Interest of the remaining Members agree in writing to continue the business of the Company; and
- (4) upon entry of a judicial decree that:
 - (i) the economic purpose of the Company is likely to be unreasonably frustrated;
 - (ii) another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;
 - (iii) it is not otherwise reasonably practicable to carry on the Company's business in conformity with the Articles of Organization and the Operating Agreement;
 - (iv) the Company failed to purchase the Member's distributional interest as required by § 33-44-701 of the Act; or

(v) the Managers or Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to a Member; and

(5) entry of a decree of judicial dissolution of the Company under Section 33-44-801(b) of the Act or administrative dissolution as provided in Section 33-44-809 of the Act; and

(6) disassociation or death of a member who is also a manager subject to the provisions of Section 33-44-801(b)(3) of the Act, as amended from time to time.

§10.2 Winding up and termination.

On dissolution of the Company, the Manager shall act as liquidator or may appoint one or more Members as liquidator. If there is no Manager, then a Required Interest of the Members will appoint one or more Members as liquidators. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the liquidator are as follows:

(1) as promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed as applicable.

(2) the liquidator shall cause the notice described in Section 33-44-807 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 33-44-808 of the Act;

(3) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation and any advances described in Section 4.5) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(4) all remaining assets of the Company shall be distributed to Members as follows:

(a) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the capital accounts of the Members;

(b) with respect to all Company property that has not been sold, the fair market value of that property shall be determined and the capital accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the capital accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and

(c) Company property shall be distributed among the Members in accordance with the positive capital account balances of the Members, as determined after taking into account all capital account adjustments for the taxable year of the Company during which the liquidation of the Company occurs (other than those made by reason of this clause (3)); and those distributions shall be made, if possible, by the end of the taxable year of the Company during which the liquidation of the Company occurs.

All distributions in kind to the Members shall be made subject to the Liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 10.2. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

§ 10.3 Deficit capital accounts.

Notwithstanding anything to the contrary contained in this Operating Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Operating Agreement to all Members in proportion to their respective interests in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

§ 10.4 Article of dissolution.

After the dissolution of the limited liability company pursuant to Section 33-44-801 of the Act, the Manager or the authorized Member shall file Articles of Dissolution with the Secretary of State of South Carolina and take such other actions as may be necessary to terminate the Company. An "Authorized Member" will be a Member or Members appointed by a Required Interest.

ARTICLE XI - GENERAL PROVISIONS

§ 11.1 Books and records.

The Company shall maintain those books and records as provided by the Act and as it may deem necessary or desirable. All books and records provided for by the Act shall be open to inspection of the Members from time to time and to the extent expressly provided by the Act, and not otherwise. The Members may examine all such books and records at all reasonable times. The Company shall keep and maintain the following records in its principal place of business.

- (1) a current list that states:
 - (a) the name and mailing address of each current and past Member;
- (2) copies of the federal, state and local information or income tax returns for the Company's six most recent tax years.
- (3) a copy of the Articles and the Operating Agreement, all amendments or restatements, executed copies of any powers of attorney, and copies of any document that creates, in the manner provided by the Articles or Operating Agreement, classes or groups of Members;
- (4) unless contained in writing in the Operating Agreement:
 - (a) a writing seeking out the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each Member and the times at which or events upon the happening of which any additional Capital Contributions are to be made by each Member;
 - (b) a writing stating events, if any, upon the happening of which the Company is to be dissolved and its affairs wound up; and
 - (c) other writings prepared pursuant to a requirement, if any, in any Operating Agreement.
- (5) correct and complete books and records of account of the Company.

The Company shall maintain its records, if any, in written form or in another form capable of conversion into written form within a reasonable time.

The Company shall keep in its registered office in South Carolina and make available to Members on reasonable request the street address of its principal United States Office in which the records required by this section are maintained or will be available.

The Company shall keep its books on the cash method of accounting.

§ 11.2 Amendment or modification.

The Operating Agreement may be amended and modified from time to time only by a written instrument adopted and executed by all Members. No Member or Manager shall have any vested rights in the Operating Agreement.

§ 11.3 Checks, notes, drafts, etc.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to the Company shall be signed or endorsed by a designated person which may be appointed by the Manager. The designated person may be a Manager(s), officer(s), Member(s), or other person(s) as may from time to time be designated.

§ 11.4 Headings.

The headings used in this Operating Agreement have been inserted for convenience only and do not constitute matter to be construed in interpretation.

§ 11.5 Construction.

Whenever the context so requires, the gender of all words used in this Operating Agreement includes the masculine, feminine, and neuter and the singular shall include the plural, and conversely. All references to Articles and Sections refer to articles and sections of this Operating Agreement, and all references to Exhibits, if any, are to Exhibits attached hereto, if any, each of which is made a part hereof for all purposes. If any portion of this Operating Agreement shall be invalid or inoperative, then, so far as is reasonable and possible:

- (1) The remainder of this Operating Agreement shall be considered valid and operative; and
- (2) Effect shall be given to the intent manifested by the portion held invalid or inoperative.

§ 11.6 Entire agreement; supersedure.

This Operating Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

§ 11.7 Effect of waiver or consent.

A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other

obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

§ 11.8 Binding effect.

Subject to the restrictions on Dispositions set forth in this Operating Agreement, this Operating Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

§ 11.9 Governing law; severability.

This operating agreement is governed by and shall be construed in accordance with the law of the State of South Carolina excluding any conflict-of-laws rules or principle that might refer the governance or the construction of this operating agreement to the law of another jurisdiction. In the event of a direct conflict between the provisions of this Operating Agreement and (a) a mandatory provisions of the Articles, or (b) any mandatory provision of the Act, the applicable provision of the Articles or the Act shall control. If any provision of this Operating Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Operating Agreement and the application of that provision to other Persons or circumstances is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

§ 11.10 Further assurances.

In connection with this Operating Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Operating Agreement and those transactions.

§ 11.11 Notice to members of provisions of this agreement.

By executing this Operating Agreement, each Member acknowledges that he or she has actual notice of (a) all of the provisions of this Operating Agreement, including, without limitation, the restrictions on the transfer of Membership set forth in Article III, and (b) all of the provisions of the Articles. Each member hereby agrees that this Operating Agreement constitute adequate notice of all such provisions, and each Member hereby waives any requirement that any further notice thereunder be given.

§ 11.12 Counterparts.

This Operating Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

§ 11.13 Conflict provisions.

To the extent that one or more provisions of this Operating Agreement appear to be in conflict with one another, then a Required Interest, shall have the right to choose which of the conflicting provisions are to be enforced. Wide latitude is given to a Required Interest, in interpreting the provision of this Operating Agreement to accomplish the purposes and objectives of the Company, and may apply this Operating Agreement in such a manner as to be in the best interest of the Company, in their sole discretion, even if such interpretation or choice of conflicting provisions to enforce is detrimental to one or more Members.

§ 11.14 Attorney's Representations.

The parties all acknowledge that the Company's counsel, ROBERT B. PEARLMAN, prepared this Agreement on behalf of and in the course of his representation of the Company, and that:

- (1) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN THAT A CONFLICT EXISTS AMONG THEIR INDIVIDUAL INTERESTS; AND
- (2) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- (3) THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- (4) THE PARTIES HAVE RECEIVED NO REPRESENTATIONS FROM MR. PEARLMAN ABOUT THE TAX CONSEQUENCES OF THIS AGREEMENT; AND
- (5) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN THAT THIS AGREEMENT MAY HAVE TAX CONSEQUENCES; AND
- (6) THE PARTIES HAVE BEEN ADVISED BY MR. PEARLMAN TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL; AND
- (7) THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT TAX COUNSEL.

The undersigned, being all the initial Members, if any, as specified in the Articles, hereby certify that the foregoing Operating Agreement was unanimously adopted by the Members, effective the 21st day of November, 1997, TO WITNESS WHICH we have hereunto affixed our signatures.

WITNESS:

Kathleen Kelley
Laurence O. Stoney, Jr.

Richard S. W. Stoney
RICHARD S. W. STONEY

Theodore D. Stoney, Jr.
THEODORE D. STONEY, JR., as TRUSTEE
FOR THE BENEFIT OF RICHARD S. W.
STONEY, JR. UNDER AGREEMENT
DATED NOVEMBER 19, 1997.

Theodore D. Stoney, Jr.
THEODORE D. STONEY, JR.

Laurence O. Stoney, Jr.
LAURENCE O. STONEY, JR.

EXHIBIT A

<u>MEMBER</u>	<u>INITIAL CAPITAL CONTRIBUTION</u>	<u>PERCENTAGE EQUITY INTEREST</u>
1. Richard S. W. Stoney	\$	83.0 %
2. Theodore D. Stoney, Jr., as Trustee for the Benefit of Richard S. W. Stoney, Jr. Under Agreement dated November 19, 1997.	\$ 25,000	04.0 %
3. Laurence O. Stoney, Jr.	\$ 28,750	05.0 %
4. Theodore D. Stoney, Jr.	\$ 50,000	08.0 %

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The Boathouse at Breach Inlet, LLC, by and
through its member, Laurence O. Stoney,
Jr.,

Plaintiff,

vs.

Richard S.W. Stoney, individually and as
member-manager of The Boathouse at
Breach Inlet, LLC and Crew Carolina, LLC,

Defendants.

Theodore Stoney, Jr., individually and as
Trustee for Richard Stoney, Jr. and Gregory
G. Holmes,

Third-Party Intervenors.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-10-5463

**PLAINTIFF'S MOTION TO ALTER OR
AMEND**

Pursuant to Rules 52 and 59, SCRCP, Plaintiff, the Boathouse at Breach Inlet, LLC (the "*Boathouse*"), moves this Court to alter or amend its order filed July 7, 2020. The Boathouse hereby incorporates its pre-trial memoranda and post-trial proposed order as to why it was entitled to judgment in this case, and advises the Court that it made omissions and errors regarding the facts and law in this matter, including but not limited to, the following:

Omissions and Errors of Fact

1. The Court erred by failing to consider testimony and evidence presented by the witnesses Jamie Stabler, Chip Robinson, Dennis Jarvis, and Don Hollerbach relating to Richard Stoney's actions with respect to the Boathouse, including those matters discussed on pages 4-10 of the Boathouse's proposed order.

2. The Court correctly notes on pages 8 and 9 of its order that there was an undisputed loss in excess of \$4 million in liabilities between the Boathouse and Crew Carolina, LLC. However, the Court erred by excusing that loss simply because the majority of the members oppose the lawsuit. This, quite simply, is exactly the type of harm derivative actions were designed to remedy. The mere fact that the majority member was responsible for the misappropriations does not excuse that conduct.

3. The Court erred by failing to consider any evidence regarding Defendant Richard Stoney's *admitted* breach of his fiduciary duties regarding his unilateral and covert amendment to the Boathouse's lease, which Richard Stoney acknowledged damaged the Company.

4. The Court erred by failing to consider any evidence regarding Defendant Richard Stoney's *admitted* breach of his fiduciary duty by causing the Boathouse to confess judgement in the amount of one million eight hundred thousand dollars (\$1,800,000) on Richard Stoney's behalf when Richard Stoney defaulted on a personal loan from Charleston Capital Corporation.

5. The Court erred when it incorrectly stated the Boathouse's membership. The Court failed to account for the member Michael Cox, who holds a five percent (5%) membership interest. The Court also did not recognize that Richard Stoney sold five percent (5%) of his interest to Michael Cox, thus leaving him with a fifty-five percent interest (55%)—not a sixty percent (60%).

6. The Court erred in finding that ninety percent (90%) of the membership of the Boathouse oppose this action. The Court did not hear testimony from the members Michael Cox, Gregory Holmes, or Lori Stoney on this point. The Court also failed to consider that the five percent (5%) interest of Croft Stoney, Richard Stoney's daughter, is held in trust and managed by Lori Stoney.

7. The Court erred by making a conclusory determination that Richard Stoney informed the Boathouse's members about his purported "central management" concept in 1999 because it heard no evidence to support this conclusion.

8. The Court erred by concluding that Laurence Stoney is acting in pursuit of personal gain because it heard no evidence to support this conclusion. Laurence Stoney brought this action solely in a representative capacity on behalf of the Boathouse seeking the return of Boathouse funds that were *admittedly* misappropriated. He is not a party to this action in any individual capacity.

9. The Court erred by ignoring the testimony presented on the Boathouse's ability to continue to operate. Richard Stoney testified that the business has always been and remains a successful venture and that he expects the Boathouse to thrive in 2020.

Omissions and Errors of Law

1. The Court did not address whether Richard Stoney has unclean hands, whether the business judgment rule applied to his actions, or whether his actions were permitted under the business judgment rule if it applied.

2. The Court erred by sustaining Richard Stoney's motion for the equitable remedy of disassociation under § 33-44-601 without determining if Richard Stoney has unclean hands.

3. The Court erred by ignoring the plain-language of Rule 23(b)(1), which provides that a "derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association" (emphasis added). The Court improperly considered Laurence Stoney's motivations for bringing the action on behalf of the Company, a consideration not-contemplated by the statute. Moreover, as this is a "class of one" derivative action, Defendants

should be limited to procedural challenges of Laurence Stoney's standing as there are no members that he is tasked with fairly and adequately representing and therefore the test of fair and adequate representation does not apply.

4. Alternatively, the Court erred by employing the eight-factor test from *Davis v. Comed*, 619 F.2d 588 (6th Cir. 1990) (the "*Davis Test*") to determine if Laurence Stoney was a fair and adequate representative of similarly situated members. South Carolina has not adopted this test, and instead has only considered whether a Plaintiff has "vigorously pursued the action" and "is represented by qualified counsel." Likewise, the *Davis* test is inapplicable to "class of one" derivative actions.

5. The Court erred by considering only one of the eight *Davis* factors after acknowledging that it is a "combination of [the *Davis*] factors" that a Defendant must satisfy to demonstrate that a representative-plaintiff is not a fair and adequate representative of the class of similarly situated members (of which there are none). Further the Court erred by emphasizing Laurence Stoney's "vindictiveness." Common sense and case law dictates that a member of an LLC who discovers that manager has improperly used Company funds to personally benefit himself will exhibit frustration towards the manager. However, the derivative suit evolved as a means of providing a remedy to the Company for the misappropriated funds.

6. The Court erred by considering the percentage of the membership that supported the derivative action. The percentage of membership support for the action has no bearing on any analysis regarding Laurence Stoney's standing.

7. The Court erred by relying on the case *Smith v. Ayres*, 977 F.2d. 946 (5th Cir. 1992). The *Smith* case is not precedent in South Carolina, it contradicts the overwhelming corpus of law on derivative actions, and its holdings evaluating a member's fitness to represent a class of

members is entirely inapplicable to "class of one" derivative actions. Further, the facts in *Ayres* are distinguishable from the facts presented at trial.

8. The Court erred by stating that Laurence Stoney owed the Boathouse a duty of good faith and fair dealing, and accordingly erred in finding that Laurence Stoney breached a duty he did not owe.

9. The Court erred by stating that Laurence Stoney could have filed an action in his individual capacity under Section 33-44-410.

10. The Court procedurally erred by disregarding Plaintiff's arguments at trial and in its memoranda that the Boathouse is the real party in interest—not Laurence Stoney in his individual capacity. Despite Plaintiff's opposition, the Court improperly permitted Defendants to seek relief against Laurence Stoney in his personal, individual capacity by filing a motion to disassociate Laurence Stoney under Section 33-44-601.

11. The Court erred by misapplying Section 33-44-601(6)(iii), which strictly evaluates whether it is reasonably practicable for a business to continue to operate with a given member. The Court ordered Laurence Stoney disassociated from the Boathouse despite being presented with no evidence that Laurence Stoney's presence in the Company made it impracticable or unfeasible for the Boathouse to continue to operate. In fact, all of the evidence indicates that the Boathouse is a thriving concern despite having it manager, Richard Stoney, admittedly "rob" it of over four million dollars (\$4,000,000). In this manager-managed LLC, Laurence Stoney as an individual member and passive investor has no ability to direct the operations of the company.

12. The Court erred by misapplying Section 33-44-601(6)(iii), which mandates that to be disassociated from a company, a member must have "taken some action with respect to the company" making it impracticable for the business to continue to operate with the member. The

Court improperly ordered Laurence Stoney disassociated from the Boathouse based on actions (allegedly) taken years ago with respect to an unrelated company, the Boathouse at East Bay, LLC. Likewise, even if Laurence Stoney expressed frustration about the Boathouse to vendors (a fact Plaintiff vehemently disputes), those actions were indisputably in the past, and the Boathouse has continued as a successful venture for years after those (alleged) actions. The Court therefore pointed to no actions that Laurence Stoney took with respect to the Boathouse that made it infeasible for the business to continue to operate with him as a member, as it has done since 1997.

13. The Court erred by permitting the Boathouse to be looted by its manager, and by dismissing the Company representative's action, creating a situation where a legal entity was *admittedly* wronged and now has no legal or equitable remedy. Therefore, the Court set a dangerous precedent that filing a lawsuit to recover misappropriated business assets after catching a manager with his hand in the cookie jar warrants expulsion of a passive investor with no control over the company's operations or finances.

Pursuant to Rule 52(c) and in light of the COVID-19 pandemic, the Court is permitted, in its discretion, to determine this motion on the briefs filed by the parties without oral argument. The Boathouse asks that the Court issue a new order granting relief in its favor as outlined in its proposed order. In the alternative, the Boathouse asks that the Court issue a ruling as to the matters raised in this motion.

{SIGNATURES ON FOLLOWING PAGE}

Respectfully submitted,

s/ Stafford J. McQuillin III

Scott Y. Barnes (SC Bar #: 528)

Stafford J. McQuillin III (SC Bar #: 78203)

Tyler K. Gilliam (SC Bar #: 103170)

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Attorneys for Plaintiff

July 16, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-10-5463

The Boathouse at Breach Inlet, LLC, by and)
through its member, Laurence O. Stoney,)
Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually and as)
Member-manager of The Boathouse at)
Breach Inlet, LLC and Crew Carolina, LLC,)

Defendants.)

Theodore D. Stoney, Jr., individually and as)
Trustee for Richard Stoney, Jr. and Gregory)
G. Holmes,)

Third-Party Intervenors.)

**RETURN OF DEFENDANT
TO PLAINTIFF'S MOTION
TO ALTER OR AMEND**

Plaintiff has filed his Motion to Alter or Amend this Court's Order filed July 7, 2020. Plaintiff's Motion is set forth in summary form. This Return replies to Plaintiff's summary arguments.

Defendants' basic reply is this: The final Order filed by this Court on July 7, 2020 is amply supported by the record as to its factual findings, and the Court's legal conclusions are well founded and supported by credible authorities.

DISCUSSION:

ALLEGED ERRORS OF FACT

1. Plaintiff argues the Court failed to consider the testimony and evidence presented by four witnesses, but without elaboration, and with no more than a broad conclusory statement. There is no record basis to support Plaintiff's contentions.

2. Plaintiff argues the Court "excused" a Four Million Dollar loss by the Boathouse at Breach Inlet. There is no basis for the argument. The Court properly held that the Plaintiff Laurence Stoney lacked standing to bring a derivative lawsuit. In that circumstance further findings became irrelevant.

3. Plaintiff argues the Court erred by failing to consider any evidence regarding Defendant's breach of fiduciary duties by amending the lease. Just as above, however, the Court does not reach this issue because Plaintiff lacks standing to bring the action.

4. Plaintiff argues a separate breach of fiduciary duty in his paragraph 4. Defendants' response is the same as above to paragraph 3: Because Plaintiff lacks standing the court need no address the issue.

5. Plaintiff argues the Court incorrectly stated the Boathouse membership interests by failing to account for member Michael Cox, and that Richard Stoney's interest was therefore 55% rather than 60%. Although not recited in the Court's Order, the evidence at trial was clear that the interest to Michael Cox did not include Richard Stoney's 5% voting interest, but only encumbered a beneficial interest of 5%. Therefore, Richard Stoney retains a 60% voting interest in the company, even as of today.

6. Plaintiff argues the Court erred in finding that 90% of the membership opposes the action, and that the Court did not hear testimony from Michael Cox, Gregory Holmes or Lori

Stoney on the point; and that the interest of Croft Stoney is held in trust by Lori. As stated above, Richard Stoney did not transfer a 5% voting interest to Michael Cox, therefore the suggestion that the lack of Cox's testimony impacts on the Court's 90% conclusion is incorrect. Gregory Holmes was represented by counsel throughout the trial, who filed an answer on behalf of Mr. Holmes and who advocated on behalf of Greg Holmes against the Plaintiff's position. Although Lori Stoney, who holds a 5% interest for Croft Stoney, daughter of Richard and Lori, did not testify, Croft herself, who holds the beneficial interest testified that she opposed the action. Accordingly, the Court's conclusion that 90% of the membership opposes the action is supported by evidence in the record.

7. Plaintiff argues the Court erred by finding that Richard Stoney informed the Boathouse members about the central management concept of Crew Carolina in 1999 is not supported by the record. Plaintiff is mistaken. At pages 286 to 291 of the trial transcript Richard Stoney testified that the Boathouse at Breach Inlet opened in October 1997; that Boathouse at East Bay opened in February, 1999; that Crew Carolina, the central management company, was formed December 21, 1998. He testified that around the opening of East Bay (February 1999) he convened a meeting at his Broad Street law office; that Laurence Stoney and others were present; that he discussed the business plan he had formulated; that Crew Carolina had been formed and how it would function; that Crew Carolina would be the focal point for managing what were then two restaurants.

8. Plaintiff argues the Court erred in concluding that Laurence Stoney is acting in pursuit of personal gain. There is ample evidence in the record to support the Court's conclusion that Laurence Stoney was acting vindictively and out of spite, and therefore in his own interests, as cited in the Court's Order.

9. Plaintiff argues the Court ignored testimony about the company's ability to continue to operate. There is no basis for argument that the Court ignored this evidence. There was substantial testimony, however, that the Plaintiff himself "did not want to be in the restaurant business with Richard".

ALLEGED ERRORS OF LAW:

1. Plaintiff argues the Court did not address whether Richard Stoney had unclean hands or the business judgment rule. It was not necessary to reach these issues, because the Court found that Laurence Stoney lacked standing to bring the action.

2. Plaintiff argues the Court erred by ordering dissociation without determining if Richard Stoney has unclean hands. As previously argued in Return to the Plaintiff's claims of factual error, the Court found that the Plaintiff lacked standing to bring the action. By concluding that Laurence acted out of spite and vindictively, the Court by inference also concluded that Laurence himself has unclean hands. In the circumstances, dissociation was the proper remedy.

3. Plaintiff argues the Court improperly considered Laurence's motivation for bringing the action. Plaintiff cites no authority, and the argument is manifestly not supported by law.

4. Plaintiff argues the Court erred by applying the eight factor test from *Davis v. Comed, Inc.*, 619 F.2d 588 (6th Cir.1990). Plaintiff himself argued the *Davis v. Comed* test in his opposition to the Preliminary Hearing on standing, and cannot now repudiate that position. Moreover, *Davis vs Comed* is established law.

5. Plaintiff argues the Court erred by considering only one of the eight factors from *Davis v. Comed, Inc.* As cited by the Court in its Order, the case law is clear that not all factors

need be considered or found nor is any single factor determinative. Rather the determination of standing is case specific.

6. Plaintiff argues the Court erred by considering the percentage of membership that supported the action, and that the percentage has no bearing on the analysis of standing. Plaintiff argues the point as an error of law, but without citing any authority.

7. Plaintiff argues the Court erred by relying on the case of *Smith v. Ayres*, 977 F.2d 946 (5th Cir.1992), and that it is not precedent in South Carolina. Plaintiff neither cites authority for the argument, nor does he argue a rationale for it.

8. Plaintiff argues the court erred by concluding Laurence breached the implied covenant of good faith and fair dealing, but cites no authority for his position.

9. Plaintiff argues the court erred by concluding Laurence could have filed an individual action, but does not suggest why this was error.

10. Plaintiff argues that "despite Plaintiff's opposition" the court improperly permitted Defendants to file a motion to dissociate Laurence. This argument is not preserved. Plaintiff never made such argument to the Court contemporaneously at trial.

11. Plaintiff argues the Court misapplied Section 33-44-601 with respect to the standard of "reasonably practicable for a business to continue to operate with a member". Notwithstanding Plaintiff's arguments to this point, the clear evidence was that Laurence Stoney himself testified that it was not reasonably practicable for the business to continue with him as a member.

12. Plaintiff argues that the Court misapplied Section 33-44-601 which mandates that to be dissociated, a member must have taken some action with respect to the company making it impracticable for the business to continue with the member, and that the Court pointed to no

actions that Laurence took to support dissociation. This is a factual argument, and the Court's conclusions are amply supported by evidence in the record.

13. Plaintiff argues that the Court sets a dangerous precedent by permitting the Boathouse to be "looted" by a manager "with his hands in the cookie jar", thus "setting a dangerous precedent". This is hardly a legal argument, but is more an emotional one. Ample evidence is cited by the Court, and appears in the record to support the Court's conclusions that Laurence acted spitefully and vindictively in bringing the action, and that he therefore has no standing to sustain it.

Plaintiff's Motion to Alter or Amend should be denied.

Respectfully,

BARR, UNGER, & MCINTOSH, LLC

/s/Capers G. Barr, III

Capers G. Barr, III

SC Bar No.: 00542

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Attorney for Defendant Richard S.W. Stoney, Sr.

Charleston, South Carolina
July 27, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-10-5463

The Boathouse at Breach Inlet, LLC, by and)
through its member, Laurence O. Stoney,)
Jr.,)

Plaintiff,)

vs.)

Richard S.W. Stoney, individually and as)
Member-manager of The Boathouse at)
Breach Inlet, LLC and Crew Carolina, LLC,)

Defendants.)

Theodore D. Stoney, Jr., individually and as)
Trustee for Richard Stoney, Jr. and Gregory)
G. Holmes,)

Third-Party Intervenors.)

**RETURN OF THE DEFENDANT
RICHARD S. W. STONEY, AS
MEMBER-MANAGER OF
THE BOATHOUSE AT BREACH
INLET, LLC TO THE ORDER OF
THE COURT FILED JULY 7, 2020**

TO: THE HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE:

The Court will please take notice that on August 5, 2020, that is to say within thirty days from the filing of this Court's Final Order filed July 7, 2020, the Defendant Richard S.W. Stoney as Member-Manager of The Boathouse at Breach Inlet, LLC, by the undersigned, complied with the Court's Order requiring compliance with Section 33-44-701(b) of the Code of Laws of South Carolina, as amended, by the delivery by hand to Stafford J. McQuillin, Esq. of a purchase offer

to the Plaintiff Laurence O. Stoney.

Respectfully,

BARR, UNGER, & MCINTOSH, LLC

/s/Capers G. Barr, III

Capers G. Barr, III

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**Attorney for Defendant Richard S.W. Stoney, Sr.,
Individually and as Member-Manager of
The Boathouse at Breach Inlet, LLC**

Charleston, South Carolina

August 25, 2020

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
) Case No. 2015-CP-10-5463
 3)
 4 THE BOATHOUSE AT BREACH INLET,)
 LLC, by and through its member,)
 Laurence O. Stoney, Jr.)
 5)
 Plaintiff,)
 6)
 vs.) Transcript of Record
 7)
 RICHARD S.W. STONEY,)
 8 individually and as)
 member-manager of THE BOATHOUSE)
 9 AT BREACH INLET, LLC, and CREW)
 CAROLINA, LLC,)
 10)
 Defendants.) DATE:
 11) December 13 - 14, 2018
 12)

13 B E F O R E:

14 THE HONORABLE CLIFTON NEWMAN

15

16 A P P E A R A N C E:

17 STAFFORD JOHN MCQUILLIN, III, TYLER GILLIAM and
 SCOTT BARNES
 18 Attorneys for the Plaintiff

19 CAPERS G. BARR, III
 Attorney for the Defendants, Crew Carolina
 20 and Richard S.W. Stoney

21 GEORGE J. KEFALOS,
 Attorney for Defendants Gregory Holmes, Richard S.W.
 22 Stoney, Theodore D. Stoney

23

24 Original transcript ordered by:
 Haynsworth Sinkler Boyd, P.A.

25 Karen V. Andersen, RMR, CRR
 Circuit Court Reporter

1 party, I would move for leave to treating the witness as
2 hostile and would proceed to cross-examine.

3 THE COURT: I think the rules permit you to -- well,
4 he is an adverse party, so you may proceed.

5 MR. BARR: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. BARR:

8 Q. Mr. Stoney, I remember from your deposition that I was
9 sitting right across the table from you and sometimes couldn't
10 pick up all your words. So please try to project so that
11 everybody can hear you today?

12 A. Yes, sir.

13 Q. Where do you live, Mr. Stoney?

14 A. I live in Mount Pleasant.

15 Q. And what is your relationship to my client Richard
16 Stoney?

17 A. We are first cousins.

18 Q. First cousins. And I will go through this again for
19 the record. Is it correct that Richard's brother is Ted, who
20 is here with him in the courtroom today?

21 A. Yes.

22 Q. And so your father and their father were brothers?

23 A. Correct.

24 Q. And I believe your father was a lawyer right here on
25 Broad Street, right?

1 A. Yes, sir.

2 Q. And Richard and Ted's father was a lawyer right here
3 on Broad Street?

4 A. Yes.

5 Q. Who became a county court judge back in the old days
6 when we had county court. And what is your education?

7 A. Three years of college.

8 Q. And where was that?

9 A. Guilford College in Greensboro, North Carolina.

10 Q. And when would that have been?

11 A. '69 through '73.

12 Q. Okay. So I haven't asked you this, but what is your
13 age?

14 A. 68.

15 Q. 68? That's right. I noticed that. Happy birthday.
16 As I was reading your deposition and got your date of birth, I
17 realized we were starting on your birthday. Well, happy
18 birthday. I hope it's not going to be too bad for you.

19 A. Me too.

20 Q. What is your current occupation?

21 A. I'm a small business owner. I own a ship supply
22 company. It's Stoney Marina International doing business as
23 Coleman Marine Supply.

24 Q. And tell the judge what Coleman Marine Supply does?

25 A. We supply marine supplies to ships.

1 Q. And this being a port city, you have a pretty good
2 business going?

3 A. Yes, sir.

4 Q. All right. And it's an old concern, Coleman?

5 A. Yes, sir, under three different names. It's been
6 going since the late 1880s, but continuously going.

7 Q. I think you bought that company?

8 A. Yes, sir. I bought it from Simon Legare Coleman, S.L.
9 Coleman.

10 Q. What year did you buy it?

11 A. '93.

12 Q. Now, what kind of work did you do prior to buying
13 Coleman?

14 A. I was a commodity trader on Wall Street. I had seats
15 on three separate commodity exchanges, and was up there for
16 about 17 years, almost 17 years.

17 Q. So you left Charleston for 17 years. You worked on
18 Wall Street in New York?

19 A. Yes, sir.

20 Q. And what were those years?

21 A. '73 through the December of '89.

22 Q. And I think you told me that between '89 and is
23 it '92, you sort of didn't do much?

24 A. Yes, that's correct.

25 Q. Are you currently married?

1 A. I am not.

2 Q. And have you been married?

3 A. I have been married.

4 Q. And I believe you told me that you have a son who

5 lives in Mount Pleasant?

6 A. Correct.

7 Q. And that you were previously married for three times;

8 is that right?

9 A. Three times, yes, sir.

10 Q. So tell me again the year you returned to Charleston?

11 A. I returned to Charleston in 1992.

12 Q. '92, okay. Now, do you recall being asked to

13 participate in the Boathouse at Breach Inlet?

14 A. Yes, sir.

15 Q. And who asked you to do that?

16 A. Richard Stoney.

17 Q. Richard Stoney. And what is -- I know I told the

18 judge, but I don't testify. So what is the Boathouse at Breach

19 Inlet?

20 A. It is a seafood restaurant on Breach Inlet.

21 Q. What was there before its current status?

22 A. I believe it was an old gas station that had at some

23 point been turned into a little seafood restaurant or

24 something, or little bar or something like that.

25 Q. Not much to speak of, I would assume?

1 A. No.

2 Q. So The Boathouse became something grander than what
3 was there before? Is that fair to say?

4 A. That is correct, fair to say.

5 Q. And you bought a, I believe, a 5 percent interest?

6 A. Correct.

7 Q. For -- was it about 25,000?

8 A. Yeah. I don't know. It was somewhere between 40 and
9 50, I think. I don't remember. It came in two different
10 installments. And I can't remember which. You know, this was
11 20-something years ago. Whatever.

12 Q. And if The Boathouse was formed in 1997, then that's
13 when you became a member? Is that fair to say?

14 A. Right, right.

15 Q. Now, is it correct that once it got started, the
16 Boathouse at Breach Inlet was a pretty immediate success?

17 A. Correct.

18 Q. It did well, didn't it?

19 A. Yes, it did.

20 Q. It's in a great location, right?

21 A. Great location.

22 Q. As they say, location, location, location?

23 A. It helps.

24 Q. It helps. All right. So at some time after The
25 Boathouse at Breach Inlet was formed, was there another

1 Boathouse restaurant formed?

2 A. Yes.

3 Q. And where was that?

4 A. On East Bay Street.

5 Q. So that would be on East Bay Street here in the city,
6 correct?

7 A. Correct.

8 Q. And that was called Boathouse at East Bay?

9 A. Correct.

10 Q. Were you also a member of that?

11 A. Yes, I was.

12 Q. Now, back to Breach Inlet, the Isle of Palms
13 restaurant, I believe the initial three members were you and
14 your cousins Richard and Ted; is that right?

15 A. Correct, I believe so, yeah.

16 Q. And then sometime later on -- and your interest is 5
17 percent, right?

18 A. Correct.

19 Q. Sometime later on, Richard gave an interest to his
20 wife Lori, correct?

21 A. After the fact, I learned that he did that. And he
22 gave, I think, some to his son.

23 Q. And some to his son and some to his daughter?

24 A. Correct.

25 Q. And whether he did that, you didn't object to it, did

1 you?

2 A. I didn't know about it.

3 Q. Once you found out about it, you didn't object to it?

4 A. Wasn't much I could do. It already happened.

5 Q. Why would you object?

6 A. Well, it was in violation of the partnership
7 agreement, number one.

8 Q. Weren't they Stoney's? What was the big deal?

9 A. They are my family too. You've got to let them slide
10 a little bit sometimes on that. All right?

11 Q. So you didn't object, right?

12 A. I didn't object.

13 Q. Okay. So is it correct that today the members of The
14 Boathouse at Breach Inlet then are you and Ted and Richard, and
15 Ted holds an interest for Richard Jr. and Lori, and Lori holds
16 an interest for her daughter Croft, and then Greg Holmes?

17 A. Yes, that's what I understand.

18 Q. So every member of the Boathouse at Breach Inlet is a
19 Stoney except for Greg Holmes, correct?

20 A. It seems that way.

21 Q. Okay. And then who are the members -- who were the
22 members of The Boathouse At East Bay?

23 A. Myself, Teddy, sister Beverly, Beverly Johnson. Who
24 else?

25 Q. Richard, of course?

1 A. Yeah, Richard.

2 Q. And Michael Maloney?

3 A. Michael Maloney, who put it in trust for his twin
4 sons, I believe.

5 Q. And Michael Maloney is a lawyer with Young Clement
6 Rivers, right?

7 A. Correct, yes.

8 Q. Then are you aware that some time along the same time
9 that the East Bay restaurant was formed, that Richard formed a
10 company called Crew Carolina?

11 A. I eventually heard of it, yes.

12 Q. Well, you heard of it pretty quickly, didn't you?

13 A. I don't remember when I heard of it, sir.

14 Q. You don't remember going to meetings with Bobby
15 Pearlman?

16 A. That was for a partnership meeting for the formation
17 of the East Bay Street.

18 Q. Correct. And so let me talk about that. Now, let's,
19 first of all, identify, who is Bobby Pearlman?

20 A. I believe he's one of Richard's attorneys.

21 Q. He's a tax lawyer, isn't he?

22 A. Yes.

23 Q. And his father is Gus Pearlman, who was the probate
24 judge for years next-door?

25 A. That's what I understand.

1 Q. So Bobby was advising as to business matters; is that
2 right?

3 A. Yes, sir.

4 Q. And in that meeting with Bobby, isn't it correct that
5 there was a discussion -- you are getting ready to start a
6 second restaurant -- there was a discussion about consolidating
7 services, correct?

8 A. I assume there was. I mean, it didn't really register
9 with me. I was more concerned about how the partnership
10 agreement for the restaurant on East Bay Street was going to be
11 formed and what stipulations and restrictions would be in
12 there.

13 Q. But, nevertheless, you remember that there was a
14 discussion about this consolidation of services? For
15 example -- let me finish the question. Let me finish the
16 question. For example, two restaurants together would have
17 better buying power for supplies, food, restaurant supplies and
18 the like, than would one standing alone? You remember that,
19 don't you?

20 A. I'm not sure that I remember. I don't know what the
21 argument was for Crew Carolina.

22 Q. I don't know that it was an argument, but,
23 nevertheless, isn't it correct that that was the derivation,
24 that is how Crew Carolina, a management company, became formed?

25 A. Richard formed the company for his own devices. I

1 have no idea why he formed it. And I didn't know that all of
2 the finances and all would be commingled. That was apparently
3 the vehicle they used to co-mingle everything.

4 Q. Well, I didn't ask you anything about commingling, did
5 I?

6 A. No, you didn't.

7 Q. Then why are you talking about it?

8 A. I just to finish my statement. That's all.

9 Q. Mr. Stoney, you are trying to think ahead of me,
10 aren't you?

11 A. Well --

12 Q. You are not thinking of my answers, you are trying to
13 think -- I mean, my questions, you are trying to think of how
14 your answers are going to fool this judge, aren't you?

15 A. Absolutely not so.

16 Q. You deny doing that?

17 A. Yeah.

18 Q. All right. Let's then get back to the agenda. So you
19 don't know anything about Crew Carolina, correct?

20 A. I know what it is.

21 Q. You don't know anything about central management,
22 right?

23 A. I know -- that could be -- could be a valid
24 argument.

25 Q. You don't know anything about leveraging the buying

1 power of food and supplies, right?

2 A. I know all about that.

3 Q. You don't know anything about the idea of sharing
4 management and accounting? You never heard of that?

5 A. Could be. I don't know.

6 Q. You just don't know. Okay. Now, in the early days,
7 is it correct that the distributions to the members of The
8 Boathouse at Breach Inlet were fairly generous?

9 A. Yes, they were.

10 Q. And at some point in time, they dropped off; is that
11 right?

12 A. They started going down on a scale. Every year seemed
13 to be lower than the next year.

14 Q. And they really hit bottom around, what, what year?

15 A. 2007 when they quit coming.

16 Q. Okay. And that's about the year that the world
17 recession hit the economy; is that right?

18 A. That was a year and a half before all of that stuff.

19 Q. Year and a half before that? Okay. Now, do you
20 remember me asking you in your deposition about your
21 relationship growing up with Richard?

22 A. Yes.

23 Q. And what was your relationship?

24 A. We were very close.

25 Q. Close? You said "close". Real close, right?

1 A. Very close, yes, sir.

2 Q. You told me that you have no animosities against your
3 cousin Richard, did you tell me that?

4 A. No, I don't.

5 Q. You told me, I love him. Did you say that?

6 A. Yes, I do say that.

7 Q. You said I always did?

8 A. I always did. We were sort of like brothers.

9 Q. All right. And then I asked you, did there come a
10 time when that changed? Do you remember me asking you that?

11 A. We started drifting apart when things started
12 happening, not happening.

13 Q. Well, don't you remember that your answer was to that
14 question, did there come a time when that change, your answer
15 was, when the checks stopped coming in, it started
16 deteriorating?

17 A. That would be one of the reasons for it, yes.

18 Q. That would be one of the reasons. And that's what you
19 told me, right?

20 A. I believe it to be, yes.

21 Q. Now, I will ask you a little bit more about this
22 later, but you testified against Richard and for his wife, now
23 ex-wife Lori, at a divorce trial in Orangeburg in May of 2011,
24 didn't you?

25 A. I was subpoenaed to testify at that trial. And I

1 simply answered questions, honestly I might add.

2 Q. And in this case, you deny, do you not, that you
3 colluded with Lori Stoney to bring this lawsuit? You deny
4 that?

5 A. Absolutely I deny that.

6 Q. So to set the stage, you say underpinning your filing
7 of this lawsuit, you say that you love your cousin Richard, you
8 have no animosity toward him; is that right?

9 A. That's correct.

10 Q. And you deny colluding with Lori, colluding with Lori,
11 to bring this lawsuit; is that correct?

12 A. I deny, yes.

13 Q. Now, you understand, don't you, that if the judge were
14 to rule that you have standing, and if you were to go to a
15 trial in the case and get a \$4 million judgment on behalf of
16 the corporation against Richard, that he cannot pay that?

17 A. I have no idea what Richard can pay. That would be up
18 to, you know --

19 Q. You understand that the most likely recourse would be
20 to execute against his membership interest in the Boathouse at
21 Breach Inlet, LLC?

22 A. He has many assets. That could be one of them. We
23 aren't there yet.

24 Q. And also execute against the land on which it sits,
25 which he also owns?

1 A. Yes. It's an asset, isn't it?

2 Q. But you deny that to be your agenda in collusion with
3 on Lori; is that correct?

4 A. There was no collusion with Lori. It is not on the
5 agenda. Do you understand that, sir?

6 Q. It's not on the agenda. There's no -- there was no
7 collusion; is that your testimony?

8 A. There was no collusion.

9 Q. No collusion. All right.

10 MR. BARR: Your Honor, I'm going to get into some
11 exhibits now. And I am not electronically inclined, so let's
12 see if I can get it correct. If I could just get this marked
13 as an exhibit for this.

14 (Dft. Exh. 1, Letter dated August 9th, 2005, was
15 marked for identification.)

16 MR. BARR: I'm going to hand a hard copy to the
17 witness, Your Honor.

18 BY MR. BARR:

19 Q. Mr. Stoney, I had the court reporter mark as Exhibit 1
20 in this trial a letter dated August 9th, 2005, addressed to
21 Laurence Stoney at 3561 Legareville Road, Johns Island, from
22 Richard Stoney. Have you had occasion to see that before your
23 testimony here today?

24 A. Yes, I already have a copy of it.

25 Q. You already had a copy of it. So you remember it? Do

1 you remember getting this in August '05?

2 A. No.

3 Q. You had a copy already?

4 A. Yeah, I have a copy of it here.

5 Q. So you remember it?

6 MR. McQUILLIN: Objection.

7 Q. Richard is writing you and he says: Dear Laurence, I
8 want to get back with you regarding your request for
9 information from Chip Robinson, our controller at Crew Carolina
10 LLC.

11 So let me digress. Did you know Chip Robinson?

12 A. Yes.

13 Q. And you knew he was the guy who handled the finances
14 at Crew Carolina?

15 A. He was the bookkeeper, management, or something of
16 that nature.

17 Q. And Crew Carolina was the company you and I were just
18 talking about, which was this management company that you
19 disclaimed any knowledge of?

20 A. I never disclaimed any knowledge of it, sir.

21 Q. I apologize. I misunderstood you. So you do have
22 knowledge of it?

23 A. Yes.

24 Q. Okay. He says, I apologize for the delay. Now, from
25 the context of this, it looks like you had gone to Chip and

1 asked Chip -- and I'm putting my pencil down here -- it is my
2 understanding from Chip that you would like to see everything
3 that is impacted, the two restaurants you are involved in,
4 i.e., Breach and East Bay as well as Crew's books, to the
5 extent that Crew's expenses are passed along to the
6 restaurants. Did I read that correctly?

7 A. You read that correctly, sir.

8 MR. BARR: The witness having identified it, Your
9 Honor, I would move it into evidence.

10 THE COURT: All right.

11 MR. McQUILLIN: Your Honor, due to the nature of this
12 hearing, we will let them put up whatever they wanted and then
13 submit it, since the Court is willing to consider everything
14 that's been submitted.

15 (Defendant's Exhibit 1 is moved into evidence.)

16 Q. So you were asking Chip Robinson, the controller of
17 Crew Carolina, for the records to the extent that Crew's
18 expenses are passed along to the restaurants, right?

19 A. Yes, sir.

20 Q. So you knew as early as 2005, didn't you --

21 A. Yeah.

22 Q. -- that Crew Carolina was a management company, is
23 that correct?

24 A. I learned -- I knew it before then, sir.

25 Q. And you knew that the two restaurants then, which were

1 Breach Inlet and East Bay, you know that the two restaurants
2 had a combined account with Crew, and Crew was managing their
3 accounting, didn't you?

4 A. Yes, as well as several other restaurants Crew was
5 managing. Let's see, Lake Julian, Falls, I guess that was
6 Greenville one, Carolinas, all that stuff, yeah. Okay. Go
7 ahead.

8 Q. Okay. And what Richard says is, it's going to consume
9 quite a bit of time and considerable expense to pull together
10 information on credit card bills, who has a phone, and so
11 forth. I always want to eliminate any concerns you might have.
12 I hope you understand that I cannot cause the operation at Crew
13 to slow down to a crawl to accommodate such --

14 A. Which is, in fact, saying, no, you can't have that
15 information.

16 Q. Okay. And then he says, what I would like to do is
17 sit down and go over what information you are looking for
18 specifically, see if we can pull those things you have
19 questions about. And in the meantime, please keep in mind that
20 Barry Gumb is preparing a valuation --

21 Now, Barry Gumb is a local CPA; is that right?

22 A. That's correct.

23 Q. -- that will, according to Barry, levelize any unusual
24 expenses. It is my assumption based on your agreement to have
25 Barry do the work, that you trust him. Please keep in mind as

1 Barry completes his valuation that I have agreed to a fair
2 value valuation, as opposed to fair market value that will take
3 into account the status of your shares. I did so in an attempt
4 to be overly fair and insure we dissolve the business
5 relationship as gentlemen with no hard feelings.

6 So this is between you and your cousin whom you love,
7 right?

8 A. Yes.

9 Q. And you are already in discord, right?

10 A. I just wanted some documentation where all the money
11 was going. That's all I've ever wanted.

12 Q. You want to know where the money was going?

13 A. Yes. I keep getting, trust me, trust me, everything
14 is fine.

15 Q. You knew what Crew was doing, Crew Carolina was doing,
16 was managing the expenses of these two restaurants?

17 A. I did not know what was going on and how the funds
18 were being commingled or even if they were. All I knew was
19 that the distributions were going down every year from Breach
20 Inlet and the place seemed to be just rocking and rolling with
21 customers. That's all I knew. I never got to see the numbers.
22 Only thing I get is, at the end of the year, I get a, what is
23 it, K-1.

24 Q. You told me in your deposition, though, Mr. Stoney,
25 that you suspected that. You suspected that funds were being

1 commingled?

2 A. Yes.

3 Q. And some expenses for East Bay were being paid out of
4 Breach Inlet's money, didn't you?

5 A. Not necessarily East Bay. East Bay was going -- I
6 just can't imagine why at that point they wanted to have taken
7 the money and put into East Bay. Like I said, there were four
8 other restaurants going on at the same time, which I didn't
9 have anything to do with. Okay? Do you understand?

10 Q. So you suspected that the money from Breach Inlet and
11 East Bay was being used by Crew to support those other
12 restaurants, correct?

13 A. I had my suspicions.

14 Q. You had your suspicions. And that was in 2005, right?

15 A. Yes.

16 Q. Okay. And so, let's see, that's 13 years ago,
17 right?

18 A. Correct.

19 Q. All right. So you and Richard are talking about a
20 buyout, right?

21 A. That was just on the East Bay restaurant.

22 Q. Let's go to the second page then. So Richard told
23 you, I know in the past we've had issues regarding your
24 feelings about my managing of the LLCs, to be specific, for
25 over five years now, you have said in public many unflattering

1 things about me, more directly, accusing me of dishonesty, to
2 numerous persons close to both of us, including Willie Islin,
3 Walter Hundley, Furman Cole, Jimmy Lucas, Stoney Randell, Demi
4 Howard, and so forth, and God only knows who else.

5 Did you do that?

6 A. I probably mentioned the fact that I would like to see
7 an accounting and was not getting an accounting, and I really
8 would like to see an accounting.

9 Q. But you are talking to these other folks about it,
10 aren't you?

11 A. Yes.

12 Q. And you are saying bad things about Richard, aren't
13 you?

14 A. I was telling the truth. There's no slander in the
15 truth, sir. You should understand that.

16 Q. And this is the cousin you love, right?

17 A. Yes.

18 Q. The cousin against --

19 A. This is business. That's family. Don't confuse the
20 two.

21 Q. Same cousin, right?

22 A. Same cousin.

23 Q. He says, I realize that the source of your
24 disillusionment with the restaurant stems from your feeling
25 that you have not received as much as money as you were due.

1 I'm frankly, as I stated before, insulted by the insinuation
2 and so forth.

3 A. Yes, all that.

4 Q. I won't dwell further on that exhibit at this time.

5 A. Well, there's more of it. You didn't finish the
6 paragraph.

7 Q. Your lawyer can ask anything he wants. So there in
8 2005, you are questioning the cost of management, right?

9 A. The cost of management?

10 Q. Yeah.

11 A. I was questioning -- yeah, where was the money?

12 Q. Where was the money?

13 A. Where was the money? That was all. Just in basic
14 terms, where is the money, simple.

15 Q. Now, you testified in your deposition, do you remember
16 that you suspected that Richard was robbing Peter to pay Paul,
17 paying expenses of the less profitable restaurants from the
18 more profitable ones?

19 A. I suspected that.

20 Q. But you used the phrase, didn't you, in your
21 deposition, robbing Peter to pay Paul?

22 A. That was a phrase that Richard had used during his
23 divorce trial.

24 Q. But I asked you, didn't you use it in your
25 deposition?

- 1 A. I repeated it, yes.
- 2 Q. And you suspected that as early as the late 1990s; is
- 3 that correct?
- 4 A. '05.
- 5 Q. What?
- 6 A. It was '05, sir.
- 7 Q. Isn't it correct that you said "yes" in your
- 8 deposition as early as the late 1990s; that because I'm a kind
- 9 and gentle person, I didn't pursue it?
- 10 A. Yes, sir, that's true.
- 11 Q. What?
- 12 A. That is true. I said that.
- 13 Q. So --
- 14 A. Letter was dated '05.
- 15 Q. I am not talking about that letter. I didn't mean to
- 16 mislead you.
- 17 A. Okay.
- 18 Q. But the general tenor of that letter, you suspected
- 19 that was going on since the late 1990s, correct?
- 20 A. Correct.
- 21 Q. And what you told me was, because I'm a kind and
- 22 gentle person, I didn't pursue it?
- 23 A. Right. It's a family matter.
- 24 Q. It's a family matter. But you, nevertheless, talked
- 25 to these folks named in the letter about it, didn't you?

1 A. Yeah.

2 Q. So you now claim that Richard owes \$4 million to the
3 company because of this robbing Peter to pay Paul, right?

4 A. I don't know what Richard did with the \$4 million,
5 but, apparently, it is owed to the company.

6 Q. \$4 million?

7 A. 4-plus million, yeah.

8 Q. Now, if that were recovered and distributed out to the
9 members, your 5 percent share would be \$200,000; is that right?

10 A. I suppose 5 percent of \$4 million is \$200,000, yeah.

11 Q. How much have you paid out in fees and costs in this
12 case today?

13 A. I guesstimate around \$200,000.

14 Q. That's what you said in your deposition, right?

15 A. Yes, sir.

16 Q. So you spent \$200,000 already, right?

17 A. Right.

18 Q. And when I asked you how you could justify spending
19 that kind of money, your answer was, the rule of right over
20 money, didn't you?

21 A. Over right, right over --

22 Q. You said, you know, I don't care if it costs more than
23 that, I'm going to keep paying 'til we get this thing
24 straightened out.

25 A. Straightened out, correct.

1 Q. So that's your position?

2 A. Right.

3 Q. About your beloved cousin Richard?

4 A. That's just about doing the right thing.

5 Q. Just doing the right thing?

6 A. Just doing the right thing. Okay?

7 MR. BARR: I ask that the next exhibit be marked, Your
8 Honor. I believe this was a deposition exhibit.

9 (Dft. Exh. 2, E-mailed dated 6/24/10, was marked for
10 identification.)

11 Q. Mr. Stoney, you got a little confused about this one
12 in your deposition. The top header on that is an E-mail from
13 Ted to me in 2015. But dropping below that, the original
14 message as it reads is from Richard Stoney on June the 24th to
15 Ted Stoney. And then below that is a message from Richard to
16 Laurence Stoney, June 23rd, 2010. Do you remember that?

17 A. I do not, but it's here.

18 Q. Right. You remember us talking about it in your
19 deposition, don't you?

20 A. Not about this e-mail.

21 Q. Oh, you don't? Okay. Well, take a look at it. You
22 want to read it?

23 A. I'm reading it now. I'm a slow reader.

24 Q. Tell me when you've done that.

25 A. Okay. What are your questions?

1 Q. I will refresh your recollection, I think. Don't you
2 remember telling me that in 2010, you got a check for \$10,000
3 for distribution, and you back dated it to 2007. Do you
4 remember telling me that?

5 A. Right, yes.

6 Q. And we talked about that check you got in the context
7 of this e-mail, to refresh your memory, because he said he's
8 sending you --

9 A. I see what it says.

10 Q. -- a distribution, and you subsequently got a check
11 for \$10,000, correct?

12 A. Yes.

13 Q. But in this e-mail, he says to you, paragraph that
14 begins, we just need a number, Ted said true to past conduct,
15 you were abrasive and threatening litigation.

16 A. Yes, Ted says that.

17 Q. I beg your pardon?

18 A. Ted says that a lot.

19 Q. Is that because you do it a lot?

20 A. Possibly.

21 Q. Possibly? Possibly you do threaten litigation?

22 A. I don't -- I've never threatened litigation. Okay?

23 Q. But you were going around town telling the others
24 named in that prior letter what a bad guy Richard was because
25 he wasn't paying you money; is that right?

1 A. Because he was not making the proper distribution.

2 Q. Right. And it's a family matter, but you are also
3 telling them about it, right?

4 A. Yes. I can talk about family matters.

5 Q. And once again, Richard says in the last paragraph, we
6 either need to meet, or instead of threats, let's meet with
7 Rudy Thomas -- who is an accountant, right? -- and try to reach
8 an agreement. If you want to waste money and time like Lori,
9 then tell me who your attorney is and I will cooperate in in
10 any way.

11 But nothing ever became of this, did it?

12 A. Not as I recall, no.

13 Q. Except that you got a \$10,000 check, right?

14 A. I did get a check. I marked it as partial
15 distribution for what was owed to me from 2007.

16 Q. Okay.

17 A. K-1, which I had already paid tax on.

18 MR. BARR: I hand the exhibit to the court reporter,
19 Your Honor.

20 BY MR. BARR:

21 Q. Now, isn't it correct that there came a time when you
22 and Lori Stoney -- well, strike that. We just looked at an
23 exchange in 2010. And that was in the month of June of 2010.
24 And then maybe eight or ten months later, in May of 2011, you
25 testified against Richard in his divorce trial; is that right?

1 A. I was subpoenaed and answered questions at Richard's
2 divorce trial.

3 Q. Well, you were subpoenaed to come to court, right?

4 A. Correct.

5 Q. But before you came to court, you met with Lori and
6 her lawyers at Paul Tinkler's office around the corner at King
7 Street?

8 A. Correct.

9 Q. You weren't subpoenaed to Paul Tinkler's office, were
10 you?

11 A. No, no, sir, I was not.

12 Q. No. You went to Paul Tinkler's office voluntarily,
13 didn't you?

14 A. I did.

15 Q. And you went there to review your testimony in the
16 divorce case, right? Isn't that correct?

17 A. Well, I went there, and they explained to me what the
18 procedure was going to be. I've never been deposed by anyone,
19 to my knowledge, and I was getting ready to be deposed.

20 Q. This was not a deposition. This was a trial, Mr.
21 Stoney.

22 A. I was deposed before the trial, sir.

23 Q. So you met with Lori and her lawyers once before the
24 deposition, and then you were deposed, and then you went to
25 trial? Is that what you are saying?

- 1 A. Correct.
- 2 Q. Okay. But when you met with Lori, that was voluntary,
- 3 wasn't it?
- 4 A. Right.
- 5 Q. Nobody subpoenaed you to go to their office?
- 6 A. No, sir, they didn't.
- 7 Q. You didn't go to talk to Richard about that, did
- 8 you?
- 9 A. No, sir, I didn't.
- 10 Q. And that was to discuss your testimony, isn't that
- 11 right?
- 12 A. That was preparing for my deposition, sir.
- 13 Q. And, ultimately, for the trial, right?
- 14 A. We assumed it was going to trial. Yeah. I figured it
- 15 was going to trial, yeah.
- 16 Q. And in that divorce case between Lori and Richard,
- 17 isn't it correct you knew that Lori was trying to get the
- 18 family court judge to give her Richard's share in the Boathouse
- 19 at Breach Inlet?
- 20 A. Lori was trying to get some form of an equitable
- 21 distribution from their marriage. Part of Richard's assets
- 22 were his interests in the restaurants. And I assumed that Lori
- 23 was going after his assets. And that, of course, would have
- 24 been part of his assets.
- 25 Q. And probably his major asset, wasn't it?

1 A. I have no earthly idea.

2 Q. You have no earthly idea? At that time, the Breach
3 Inlet restaurant was the only active restaurant, wasn't it?

4 A. About --

5 Q. 2011?

6 A. Yeah, '11, whatever.

7 Q. All the others had been closed down?

8 A. I don't know. Was Asheville closed? I don't
9 remember. But, yeah, could have been. Carolina wasn't open?
10 I can't remember when all of them closed.

11 Q. Now, before you went to court in May of 2011, isn't it
12 correct that Lori discussed with you the idea of having Bill
13 Hall take over the management of Breach Inlet?

14 A. Yeah. Let me explain something to you. And this was
15 in the deposition and you can read the deposition, my
16 deposition with you. Lori called me and asked me if I would be
17 opposed, if it shook out at her divorce trial that she got --
18 somehow got controlling interest in the Breach Inlet
19 restaurant, would I be opposed to Bill Hall coming in as
20 management. And I said, no, I would not continue opposed to
21 that.

22 Q. Now let's tell Judge Newman who Bill Hall is.

23 A. Hall Steakhouse. He's a restaurateur in Charleston.

24 Q. Bill Hall is a successful restaurateur in Charleston?

25 A. Very successful.

1 Q. So you agreed with Lori that if she got The Boathouse
2 at Breach Inlet, Bill Hall would be an appropriate person to
3 manage it.

4 A. I agreed that I would have no objection to Bill Hall
5 looking at the situation if and when it came to pass.

6 Q. And that conversation with Lori occurred before you
7 went to testify in the divorce, right?

8 A. I can't remember.

9 Q. And you were prepared to testify there that Bill Hall
10 would be appropriate, but I think the judge wouldn't let that
11 testimony come in?

12 A. I don't remember.

13 Q. You don't remember? Now, do you remember testifying
14 in the divorce hearing about your calling Chip Robinson, that's
15 this same guy who is the controller of the Crew Carolina, and
16 you were asked, why did you call Chip? And you said, to find
17 out where my money was; I would like to have my money.

18 A. Correct.

19 Q. Is that right?

20 A. That is correct.

21 Q. So your constant refrain here about what was going on
22 with Breach Inlet was, where is my money; is that right?

23 A. That is correct.

24 Q. And you said to the family court judge under oath, you
25 said, that, judge, you said, that's the crux of the whole

1 thing; that was your testimony, wasn't it?

2 A. Crux of what thing?

3 Q. Your testimony? That the crux of the whole thing, the
4 crux of your testimony, the crux of your complaint, the crux of
5 your conversation with Chip Robinson, where is my money?

6 A. Where is my money, yes, that's exactly what it was.

7 Q. That was the crux of it?

8 A. Yeah.

9 Q. And you told the family court judge that you felt like
10 a red-headed stepchild and one who hadn't gotten a fair share?

11 A. That is correct, yeah.

12 Q. And you also testified that you had no objection to
13 Lori taking over Richard's interest, didn't you?

14 A. If that's what I said. Had it shaken out that Lori
15 got control of the restaurant, I would have no problem with
16 her. And, obviously, before that, had mentioned getting Bill
17 Hall to come in to be the manager, and I had said that I had no
18 objection to that. He's a successful restaurant manager,
19 restaurateur.

20 Q. There came a time when -- we talked about that second
21 restaurant, the Boathouse at East Bay. There came a time it
22 closed?

23 A. After the fact I was informed it closed. It had
24 closed.

25 Q. That was like 2009 or so?

1 A. I believe that to be, yeah, correct.

2 Q. But prior to that closing, maybe several years prior
3 to that closing, that property on East Bay was leased by the
4 Boathouse at East Bay, wasn't it?

5 A. Yes, sir.

6 Q. And it was leased from a family named Drews,
7 correct?

8 A. Correct.

9 Q. And you knew that family, right?

10 A. Yes.

11 Q. And there was not a good relationship, was there,
12 between the Drews family as landlords and the Stoney family who
13 had the Boathouse at East Bay?

14 A. That was the word on the street.

15 Q. That was the word on the street. And they were
16 butting heads, weren't they?

17 A. Apparently so.

18 Q. So that there came a time when Richard Stoney and Ted
19 Stoney thought that maybe they better buy that property from
20 Mr. Drews; isn't that correct?

21 A. They were going -- they either had to buy it or be
22 evicted.

23 Q. Or be evicted?

24 A. Yeah.

25 Q. In that process, while they are trying to buy the

1 property from Drews, isn't it correct that you went to
2 Mr. Drews and tried to buy that property yourself?

3 A. That is correct.

4 Q. So you deliberately tried to undermine the efforts of
5 Ted and Richard to protect the interest of Boathouse at East
6 Bay, didn't you?

7 A. I thought it was a good business deal. I went in to
8 buy the thing. I offered Jed Drew slightly more money than the
9 boys were paying him. And he said, talk to my lawyer. And I
10 talked to his lawyer. And the lawyer for the family said, no,
11 it's not worth it. It's not worth it because Richard will sue
12 and you will -- you know, you won't have any advantage in the
13 extra money. You will lose it.

14 Q. Before trying to buy that property out from under
15 them, you never tried --

16 A. It was not necessarily buying it out from under them.
17 It was buying a piece of property. Now, there was \$2.75
18 million, and this was, what, how many years ago, 10 years ago?
19 It would have had a reasonable income all the through. And
20 what is that property worth today? I will give you that it's
21 worth a lot more than \$2.75 million.

22 Q. My question to you, Mr. Stoney, is, didn't you think
23 that was an act of disloyalty to the Boathouse at East Bay to
24 be trying to buy the property out from under them?

25 A. I have no idea. That would not have been disloyalty.

1 My restaurant interest was in East Bay restaurant, not in the
2 property. That would be a separate business deal. Had I known
3 the property was actually for sale, I would have put in a bid
4 on it earlier. But I didn't hear about it until the last
5 minute, very simply.

6 Q. And so you didn't consider that to be an act of
7 disloyalty?

8 A. No.

9 Q. It was just business to you?

10 A. It was business.

11 Q. Involving your cousins, Richard and Ted?

12 A. Well, the restaurant was their business. Land deal
13 was something else.

14 Q. Did you talk to -- did you tell Michael Maloney what
15 you were trying to do?

16 A. I can't remember. Possibly. We didn't communicate a
17 lot.

18 Q. And when I was questioning you in your deposition, as
19 I am now, your final statement about the matter was, it was a
20 business deal, damn. Isn't that correct?

21 A. I thought we just went through that. Yes, it was a
22 business deal.

23 Q. You used those words, didn't you?

24 A. I believe so, if you say so, verbatim, whatever.

25 Q. Now, after your testimony in May of 2011, on behalf

1 Richard -- I mean, on behalf of Lori against Richard, you and
2 Lori remained in contact about Richard, didn't you?

3 A. We had a couple of phone conversations.

4 Q. And you shared e-mails, didn't you?

5 A. Maybe one or two, whatever.

6 Q. One or two e-mails? Well, let's go through one or two
7 then.

8 A. Go through all of them. I don't remember how many
9 e-mails.

10 MR. BARR: Your Honor, I would ask the court reporter
11 to mark this next exhibit as 3.

12 (Whereupon, there's an off-the-record discussion.)

13 THE COURT: Mr. McQuillin says he has no objection to
14 any of these. They are all in evidence unless I hear Mr.
15 McQuillin --

16 MR. BARR: Mr. McQuillin is stipulating everything is
17 admitted unless I hear differently. Fair enough?

18 (Defendant's Exh. 3, 9/17/12 E-mail, is moved into
19 evidence.)

20 Q. So we are going to take a look at Exhibit 3. And
21 being an e-mail chain, is a little awkward to -- why don't we
22 start on page two of this e-mail, Mr. Stoney. And you would
23 say on page 2, the bottom message is from Heather, whose last
24 name I can't pronounce, to Lori, sending the K-1 forms for
25 Breach Inlet. This is dated September 17th of 2012. And then

1 going up the chain, Lori then sends out an e-mail, hey, guys --
2 it doesn't say who she sends them to -- just wanted to brag
3 about my wonderful investment in 5 percent of BHBI, Boathouse
4 at Breach Inlet. I just found out I get to pay taxes on 25K.

5 And then the next e-mail up says, any scoop about the
6 sale tomorrow?

7 And that appears to be from you to Lori dated
8 September the 25th, 2012. Now, have I correctly explained
9 that?

10 A. You've read it, sir. What sale was that in reference
11 to? Do you have any idea?

12 Q. Yeah, I think I got another e-mail I will show you
13 next. Has to do with foreclosure sale. Remember we talked
14 about that?

15 A. Yeah, okay.

16 Q. Okay. And then the first page of Exhibit 3, is an
17 e-mail from you back to Lori, that's nice, six years in a row,
18 great profit, zero distribution, a little thing called money.
19 Right?

20 A. Yes.

21 Defendant's Exh. 4, E-mail dated 9/6/12, is moved
22 into evidence.)

23 BY MR. BARR:

24 Q. Next exhibit is marked No. 4, Mr. Stoney. And
25 starting from the bottom, on Wednesday, September the 6th,

1 2012, Lori wrote, care to sit with me at the hearing tomorrow?
2 And then you responded, where? Do you see that? Do you see
3 that?

4 A. Top or bottom?

5 Q. Start from the bottom up.

6 A. Yeah. I asked her, what is the hearing all about.

7 Q. Above that you say, what is the hearing all about?

8 And she says, downtown at Broad and Meeting courthouse. It is
9 the actual foreclosure hearing. And then you responded and
10 said, I'm in. Call me in the a.m. Is that correct?

11 A. Yeah. What were we foreclosure on this time?

12 Q. I don't know that I know.

13 A. I don't know either. So, you know, what is the point?

14 Q. Point is that Lori is communicating with you Laurence
15 about a foreclosure involving Richard, correct?

16 A. Appears to be, yeah.

17 Q. Right. And that's in September of 2012, right?

18 A. Yes, sir.

19 Q. The question I asked you leading into this was, isn't
20 it correct that you and Lori continued communicating after that
21 divorce hearing. And I'm just refreshing your memory as to
22 show communications.

23 A. That's kind of you.

24 Q. Thank you.

25 (Defendant's Exh. 5, E-mail dated 9/12/14, is

1 received in evidence.)

2 Q. We marked as Exhibit 5, an e-mail. You are not a
3 recipient of this. Do you remember me asking the questions
4 about it in your deposition?

5 A. Yes, sir.

6 Q. Now, just to publish it, it's from Lori Stoney on
7 Friday, September the 12th, 2014, to Mack McQuillin, who is
8 your lawyer, right?

9 A. Correct.

10 Q. And it's regarding undeliverable mail regarding, hi,
11 can you send me Richard's depo? And Lori says, let's move
12 forward with suing on Crofts's behalf. BTW, if you can get
13 Laurence onboard, I'm going to have to tell the CPA I can't
14 sign that return for her. It might start some interesting
15 dialogue.

16 Now, this is not involving you?

17 A. Correct.

18 Q. This is from Lori to Mr. McQuillin. As of September
19 the 12th of 2014, however, had you engaged the law firm of
20 Haynsworth Sinkler Boyd for this case?

21 A. I would have to look. I can't remember exactly what
22 date I hired --

23 Q. That's what you told me in your deposition. You
24 haven't checked since?

25 A. No, I haven't.

1 Q. Oh, you haven't? Okay. You didn't think that was
2 important?

3 A. It's not as important as running a small business.
4 Okay?

5 Q. Okay.

6 MR. McQUILLIN: Your Honor, we have told Mr. Barr that
7 in interrogatory responses. So Mr. Barr knows that date.

8 THE WITNESS: He knows the answer.

9 MR. BARR: Knows what?

10 MR. McQUILLIN: We responded. Mr. Barr asked
11 specifically the exact question, when did he retain our firm,
12 and we responded and have given that.

13 MR. BARR: I didn't know that.

14 MR. KEFALOS: What is that date?

15 MR. McQUILLIN: I don't know off the top of my head
16 either, but we provided that date in discovery.

17 MR. BARR: I'm sorry, Your Honor. I'm sure I was in
18 that loop, but must have missed it.

19 (Defendant's Exh. 6, E-mail dated 12/16/14, moved
20 into evidence.)

21 Q. Mr. Stoney, we have marked as Exhibit 6 a two-page
22 e-mail, the second page of which is an e-mail from Richard
23 Stoney to you dated December the 16th of 2014. Now, I showed
24 you that prior deposition -- I'm sorry. I showed you that
25 prior exhibit from Lori to McQuillin simply to orient you in

1 point of time. So we know that in September of 2014, Lori
2 e-mailed McQuillin and said, let's sue on Croft's behalf if you
3 can get Laurence on board.

4 A. She couldn't get me onboard.

5 Q. I'm orienting you in point in time. So as of
6 September, October, November, December, here's three months
7 later, Lori is writing you and, once again, this first e-mail,
8 the first part of it, is again asking you to sit down and try
9 to work out a resolution of your differences, isn't it?

10 A. Wait. Wait. Wait. Where are you?

11 Q. Second page, Exhibit 6.

12 A. Richard Stoney to Laurence Stoney. Laurence, hope you
13 are all well, regards Richard. Doesn't say anything about Lori
14 Stoney.

15 Q. No, doesn't say anything. I didn't say that it did.
16 The question was, isn't it correct that in this e-mail, Richard
17 is once again asking you to sit down and try to work out your
18 differences?

19 A. Yeah.

20 Q. Okay. Then let's go to the next, the first page. At
21 the very bottom, at the very bottom, you say, Richard, a brief
22 outline of what you had in mind would be helpful, LOS. Right?

23 A. Yes.

24 Q. Then Richard responded to you on the next day,
25 December the 17th, says, Laurence, I'm unfortunately still

1 covered up with some other matters, but wanted to get back to
2 you a brief response per your request. My primary goal is to
3 try to get with you as soon as possible, either alone or
4 preferably with a third-party, and wind up in a mutual
5 satisfactory way before the end of the year, a buyout of your 5
6 percent of Breach. If we could reach an agreeable price, I
7 would need to have you agree to payment over 24 months or so
8 along with present day/transaction interest rate collateralized
9 by your stock. I have a noon appointment I must attend, but
10 I'm free later and -- so forth.

11 Are you with me on it so far?

12 A. Yes, sir, I'm with you.

13 Q. Then your response is, Richard, I think the best way
14 to go at this is for you to make your best, capitalized, offer
15 up front. Keep in mind what you already owe me, plus interest
16 and a cap rate based on recast numbers. Try 10 percent per
17 year compounded yearly on all past due and a cap rate of 6
18 percent based on \$25,000 per year. Standing by L.

19 A. Okay. That's a very simple statement. Don't you
20 agree?

21 Q. Right.

22 A. Very simple offer, which I'm sure they would jump on
23 right now.

24 Q. Let's look at Richard's response.

25 A. Laurence, that was dated the same date, the 17th at

1 3:16 p.m., he says, Laurence, based on the fact that you have
2 copied our cousin Randell and two other attorneys, I think it
3 is obvious we are not going to get anywhere short of minimally
4 mediation. Let me know, Richard.

5 And Richard chose to whom it was copied. That is
6 Randell Stoney, who is your cousin, right?

7 A. Yes.

8 Q. And Paul Tinkler, who is Lori's divorce lawyer,
9 correct?

10 A. Yes.

11 Q. And Scott Barnes, who is your present lawyer, right?

12 A. Correct.

13 Q. Is that fair to say by December 17th, 2014, you had
14 engaged Haynsworth, Sinkler, Boyd to represent you?

15 A. Quite possibly.

16 Q. Okay. So Richard says, based on the fact that you've
17 copied these lawyers, we need to go to mediation. And your
18 response to that was, Richard, like I said, make your best
19 offer and we might not need all the pain, L. Right?

20 A. Correct.

21 Q. And that's was wrote to this cousin with whom you
22 love?

23 A. Yes, it's a very succinct and clear answer.

24 Q. Beg your pardon?

25 A. It's a very succinct and clear answer. Did you have

1 any trouble understanding what I meant?

2 Q. Make your best offer and we might not need all the
3 pain, correct?

4 A. Right, correct.

5 (Defendant's Exh. 7, Letter dated 12/19/14, was
6 received in evidence.)

7 Q. Do you remember at your deposition, you thought
8 Exhibit 7 was the same as Exhibit 6, because it is Exhibit 6 at
9 the bottom except for the top. Right? So you had that
10 exchange with Richard that you copied to your lawyers. And on
11 Friday, December the 19th, you forwarded that same exchange to
12 Lori Stoney, didn't you, very top?

13 A. Very top, to Lori Stoney, yeah, forwarded, yes.

14 Q. You forwarded it to Lori and you said, try this,
15 didn't you?

16 A. Right.

17 Q. So you were in conversation and in communication with
18 Lori relating to Richard, correct?

19 A. Right.

20 Q. And relating to the things that you were doing getting
21 ready to jump start against Richard, weren't you?

22 A. Capers, you have the sum total of my communications,
23 both voice and e-mail with Lori Stoney right here. You have
24 it, all of it.

25 Q. Thank you. Did you answer the question?

1 A. Ask the question again, please.

2 Q. The answer to the question is yes?

3 MR. McQUILLIN: He asked you ask the question again.
4 He asked you ask the question again.

5 MR. BARR: Would you repeat the question, Madam Court
6 Reporter?

7 (Whereupon, the court reporter reads back the
8 requested question.)

9 BY MR. BARR:

10 Q. That's the question.

11 A. No.

12 Q. No? So this is not a communication where you are
13 saying to Lori -- where you are telling Lori what you are
14 getting ready to do to Richard?

15 A. Well, what I had -- I mean, Richard is the one that
16 got upset about me copying in other lawyers. I mean, what's
17 the big deal?

18 Q. I'm asking you about Lori, though. Let me ask the
19 question. Let me put it in context. You've told Judge Newman
20 that you and Lori did not collude to bring this lawsuit, right?

21 A. That is correct.

22 Q. But we know that Lori wrote these lawyers right here
23 in September saying, sue Richard if you can get Laurence
24 onboard?

25 A. I don't have any control over what Lori Stoney sends

1 to whatever she wants to, sir.

2 Q. I understand that's what you are saying. But that's
3 what you've seen, haven't you?

4 A. I spent -- it's been brought to my attention.

5 Q. We know that by December, you've engaged those same
6 lawyers that Lori was talking to.

7 A. I assume I had by then, yes.

8 Q. Let's look at the next document.

9 (Defendant's Exhibit 8, Letter dated 4/24/15, was
10 moved into evidence.)

11 Q. So we know that Lori is telling Haynsworth Sinkler
12 Boyd to sue Richard if they can get you on board in September,
13 right?

14 A. You have to ask Lori that.

15 Q. Didn't that e-mail say that?

16 A. Yes.

17 Q. We know in December that you got Haynsworth, Sinkler,
18 Boyd onboard, right?

19 A. Yes.

20 Q. And Richard is trying to settle with you, but you are
21 copying them with the e-mails, right?

22 A. What does that got to do with not trying to settle
23 with Richard? I gave Richard a very fair offer.

24 Q. You might try answering the question, Mr. Stoney;
25 isn't that correct?

1 A. Ask the question again, please.

2 (Whereupon, the court reporter reads back the
3 requested question.)

4 A. Correct.

5 Q. And then you forwarded those e-mails to Lori, right?

6 A. Yes.

7 Q. In December?

8 A. I did.

9 Q. Now we are in April. That's four months later, April
10 the 24th. Isn't it correct that this is the letter from
11 Haynsworth Sinkler Boyd that jump starts this case?

12 A. Yes. Actually, wasn't jump starting the case, just
13 asking for information I've been trying to get for years.
14 Wasn't any case, man.

15 Q. Well, as a result of that letter, wasn't there
16 dialogue between Richard and the lawyers and then Richard
17 engaged me?

18 A. I guess so.

19 Q. And then we had some things that we ought not to talk
20 about here trying to get it resolved, but it led to this
21 lawsuit, didn't it?

22 A. I assume it did.

23 Q. And that was the letter that jump started it, didn't
24 it?

25 A. It did start. Didn't jump start it, just asking for

1 some information, that's all, sir.

2 (Defendant's Exh. 9, E-mail dated 5/4/15, was
3 received into evidence.)

4 Q. So maybe you were mistaken when you told me earlier
5 what you had seen was the substance of your communication with
6 Lori?

7 A. Yes, sir, obviously, I was.

8 Q. So Exhibit 9, is it not, is a letter from -- I mean,
9 an e-mail from Lori to you May 4th, 2015, and just came across
10 this, I'm not sure what this is, and Court of Appeals decision,
11 my case should literally be out any day. We will let you know
12 what happens. May 5th you then say, good luck on your appeal.
13 Scott, Mack and I are in process with Richard as we speak, L.
14 Is that what you said to her.

15 A. In process.

16 Q. All right.

17 A. Yes.

18 Q. And then Lori says, interesting, if he is trying to
19 get it done before appellate decision? And then the top final
20 message is, you say to her, please, and you put it in capitals,
21 please let us know the instant your appeal comes back, L.
22 Isn't that what you said?

23 A. Yes, I was just interested. I was curious.

24 Q. So your lawyers have jump started the case, and you
25 are still in communication with Lori about what she had started

1 in started in September of 2014; isn't that right?

2 A. I suppose we were communicating about something, yeah.
3 Just interested to find out when her divorce appeal was coming
4 back.

5 (Defendant's Exh. 10, E-mail dated 3/9/16, is
6 received in evidence.)

7 BY MR. BARR:

8 Q. Now, Mr. Stoney, let me let you look at this e-mail
9 chain. The first page of it, just publish what it is, seems to
10 be an e-mail from Lori to you on March 9th and your reply. And
11 then the second page is also March the 9th. Tell me when
12 you've read it.

13 A. Okay.

14 Q. Let's start on the second page at the bottom of the
15 e-mail. On March 9th, 2016, Lori writes you, accountants for
16 you, who is doing that for you? Can I please, please somehow
17 get whatever info you find from 2011 forward? This is the last
18 info I have. And I know we are going to end up having our case
19 remanded. Sigh. How is everything else in your world? I'm
20 going to the Bahamas in two weeks with Barbara -- and so forth
21 and so forth. And you respond saying, Lori, I'm not sure who
22 the accountants are, but I'm told it will be after April 15th
23 before they get back to me. Is that what you said to her?

24 A. Yes.

25 Q. Okay. Let's go to the first page. On March the 9th

1 at 2:56 p.m., Lori is writing you saying, hey, Bud -- that's
2 you, right?

3 A. Correct.

4 Q. She's calling you Bud, right?

5 A. I guess so.

6 Q. She says, what is the latest? Still no word on the
7 appeal, unfortunately.

8 Why don't you read to us what you reply. You read it
9 into the record.

10 A. All right. The usual expected foot-dragging crap.
11 Last I heard, the accountants were going through books.
12 Comment from all -- this is after they looked at the books,
13 Dick is toast.

14 Q. And Dick, of course, is Richard Stoney?

15 A. Cousin Richard, yes.

16 Q. So this cousin whom you love --

17 A. Yes.

18 Q. -- you are telling his ex-wife, Dick is toast?

19 A. Dick is toast.

20 Q. And you feel know acrimony toward him, do you?

21 A. No.

22 Q. But Dick is toast?

23 A. Right, just a phrase.

24 Q. Now, you were asked in your deposition about your
25 recollection of Richard and Lori together. And you remember

1 testifying that when they were together back when they weren't
2 separated, they lived a high lifestyle. Do you remember being
3 asked about that?

4 A. Yes, sir.

5 Q. They took vacations, cars, jewelry, right?

6 A. Yes, sir.

7 Q. And you accused Richard of skimming, didn't you; did
8 you not?

9 A. When did I accuse him of that?

10 Q. Was there a time when The Boathouse at East Bay was
11 having some financial issues, and they entered into a lease
12 agreement of their parking lot with the accounting firm across
13 the street?

14 A. I asked whether the parking lot fees were going into
15 the restaurant books or straight into Richard's pocket.

16 Q. Correct. So you suspected that Richard was siphoning
17 off money?

18 A. I asked the question. It was never answered as far as
19 I know.

20 Q. But you asked him because you suspected it?

21 A. I suspected it, correct.

22 Q. And that was as long as ago as 1999, isn't that right?

23 A. I don't know, whenever. It makes no -- whatever.
24 When was it?

25 Q. But you testified that was financial misfeasance going

1 on?

2 A. Malfeasance.

3 Q. Malfeasance, that's right. In your deposition you
4 testified that Richard was using Crew Carolina as an ATM; isn't
5 that your testimony?

6 A. If that's what I said.

7 Q. And that's as far back as 1999?

8 A. That's correct.

9 Q. But you didn't do anything about it out of the
10 goodness of your heart?

11 A. The goodness of my heart and being a very patient
12 person and dealing with family.

13 Q. So you just sat on your hands?

14 A. I sat on my hands and took it. I was going through a
15 divorce of my own at the time. And I had better things to do
16 than to fill it with all of this.

17 Q. Now, Mr. Stoney, when you first filed this lawsuit in
18 October of 2015, which was three years ago now --

19 A. Yes, over three years ago.

20 Q. -- over three years ago, right. Do you remember me
21 asking you about this in your deposition? It was a verified
22 complaint, correct?

23 A. I have no idea what deposition, which time.

24 Q. Two weeks ago, in my office up on Broad Street.

25 A. What was the question again?

1 Q. I asked you about the complaint in the deposition in
2 my office down the street?

3 A. Yes, sir.

4 Q. All right. And I asked you, isn't it correct it's a
5 verified complaint?

6 A. It's a verified complaint.

7 Q. Meaning that you swore under oath that what it said
8 was true to the best of your knowledge?

9 A. Yes, sir.

10 Q. Do you remember that?

11 A. Yes.

12 Q. All right. And in that first complaint, you said that
13 you would fairly represent the members of The Boathouse; do you
14 remember that?

15 A. Correct.

16 Q. But before filing that lawsuit, you did not consult
17 with Ted, did you?

18 A. I did not.

19 Q. You didn't consult with Greg Holmes, did you?

20 A. I did not.

21 Q. You didn't consult with Richard, did you?

22 A. No, I did not.

23 Q. The only person you had consulted with was Lori,
24 wasn't it?

25 A. And had really not even consulted with her. This is

1 my own deal. This had nothing to do with Lori.

2 Q. I understand that you say there's no collusion, but
3 Lori was the only member of The Boathouse with whom you
4 communicated about this lawsuit; isn't that correct?

5 A. I suppose it is.

6 Q. Okay. And then after you filed the first complaint,
7 Ted and Greg Holmes came up and said, wait a minute, we don't
8 agree with this, we want to come in and oppose it. Do you
9 remember that? And they hired George Kefalos?

10 A. Yes.

11 Q. You knew that?

12 A. I had heard that.

13 Q. Then you changed your position and amended your
14 complaint. Do you remember that?

15 A. Yeah, after we found out how much money was missing,
16 when it became known there was over \$4 million missing.

17 Q. Mr. Stoney, you said that in your deposition. Do you
18 realize in the first complaint you filed, you alleged it was
19 \$3,8 million?

20 A. Yep.

21 Q. And so you are saying there's this big difference
22 because you find out it's 4 million?

23 A. Correct.

24 Q. Huh? Is that right?

25 A. As I remember, it was only about \$2.5 million at

1 first.

2 Q. Do you want me to show you your first --

3 A. All right. Whatever says, if that's what the number

4 is.

5 Q. Says 3.8, doesn't it?

6 A. Okay. Go ahead.

7 Q. So then you change your position and said you are only

8 to represent folks similarly situated, and Ted and Greg are not

9 because they got some benefits, right?

10 A. Correct.

11 Q. That left only you and Lori, right?

12 A. I don't know Lori -- Lori got benefits too.

13 Q. You didn't say that in that amended complaint, did

14 you?

15 A. I don't remember.

16 Q. Well, let's take a look at it then.

17 A. All right. Just go ahead.

18 MR. BARR: If I can have a minute, Your Honor.

19 BY MR. BARR:

20 Q. Mr. Stoney, I'm opening the seal of your original

21 deposition.

22 A. He's got a copy. I think Mack has got a copy.

23 THE COURT: While you are doing that, we will take a

24 few minutes break.

25 (Whereupon, a recess transpired.)

1 (Off-the-record conference to put Lori Stoney's
2 testimony in at this time.)

3 LORI STONEY,

4 having been duly sworn, testifies as follows:

5 THE CLERK: State your name and spell your last name.

6 THE WITNESS: Lori Dandridge Stoney, S-t-o-n-e-y.

7 DIRECT EXAMINATION

8 BY MR. KEFALOS:

9 Q. You were married formerly to Richard?

10 A. Yes.

11 Q. And you are a 5 percent member of The Boathouse at
12 Breach Inlet?

13 A. Yes.

14 Q. You filed for divorce against Richard in 2009?

15 A. That's correct.

16 Q. And it's now 2018 and the divorce is still not over?

17 A. Indeed, it is not.

18 Q. The property division remains unsettled?

19 A. Correct.

20 Q. One of the outstanding issues that remains is your
21 interest in The Boathouse at Breach Inlet?

22 A. Yes.

23 Q. You have asked the divorce court to award you -- you
24 have 5 percent. You want the Court to give you 51 percent
25 ownership of The Boathouse?

1 any kind of answer. I dropped it.

2 MR. BARR: I have no further questions.

3 RECROSS-EXAMINATION

4 BY MR. McQUILLIN:

5 Q. To be clear, you didn't know about this lawsuit until
6 after it was filed, correct?

7 A. No.

8 Q. So this e-mail is in no way referring to you getting
9 Laurence onboard to file a derivative action, correct?

10 A. No.

11 Q. That's a pretty farfetched theories that the dots are
12 not connected on, correct?

13 A. Yeah.

14 THE COURT: Did you believe the filing of this lawsuit
15 would be in your best interest and the best interest of your
16 daughter, or after learning of it, even though you might not
17 have known in advance, after discovering the lawsuit?

18 THE WITNESS: I believe that what Laurence said
19 earlier is exactly how I feel about this. And I actually said
20 something like this in my deposition. Whatever is right needs
21 to happen. Whatever is right under the law, if money has been
22 taken out of this company, it needs to come back into this
23 company so that people can be appropriately compensated, the
24 company can be well-funded, that that's what needs to happen.
25 So I, frankly, don't even know how this segues into what will

1 happen in my family court case. But I do believe that the
2 right thing should happen. And that, you know, Laurence has
3 good lawyers. They are trying to protect the interests of the
4 entity. And we are members of the entity. And this is
5 probably why the family court says we try to get, you know,
6 married people out of business with each other, because here we
7 are, 10 years later talking about this with me as an ex-wife.
8 You know, it's complicated.

9 But I do think that if someone has taken something
10 they shouldn't have, it should go back into the company and
11 things should be righted. If it didn't answer the question,
12 please tell me and I will have to try again.

13 THE COURT: I have nothing else. Thank you.

14 Any other questions?

15 MR. KEFALOS: Nothing.

16 MR. BARR: Just one, do you know that Laurence takes a
17 position that you and he are not similarly situated?

18 THE WITNESS: I don't know what position Laurence
19 takes about anything.

20 MR. BARR: Thank you. That's all I have.

21 THE COURT: All right. Thank you.

22 LAURENCE STONEY,

23 having been previously sworn, testifies as follows:

24 BY MR. BARR:

25 Q. So, Mr. Stoney, since the recess of your testimony,

1 I've pulled the original exhibits from your deposition. And
2 Exhibit 2 is the verified amended derivative complaint. And do
3 you remember in the first complaint you said you would
4 represent all members. Do you remember that?

5 A. Yes.

6 Q. And then Greg and Ted came in and said, we don't agree
7 to that, and you amended your complaint, right?

8 A. Correct.

9 Q. Okay. So I only have one copy, but I'm going to hand
10 you one, so let me ask the question and then I will hand it to
11 you. Maybe I could use this machine over here so everybody
12 could see it. Okay. I'm throwing it up here. This is the
13 amended complaint.

14 And where I'm going with this, Mr. Stoney, is this.
15 The first complaint you said I represent all members. And I'm
16 suggesting that in this amended complaint, it leaves you and
17 Lori together. That's where I'm headed with this. So just
18 think about that in this context.

19 So in paragraph 8, you say, plaintiff will fairly and
20 adequately represent the interest of The Boathouse and any
21 other similarly situated members enforcing and prosecuting the
22 rights of The Boathouse, right?

23 A. However, there are no other similarly situated
24 members.

25 Q. I'm just asking if that's what it says.

1 A. Yes, it is.

2 Q. Then in paragraph 9, you say Richard Stoney, Ted
3 Stoney, individually and as trustee for Richard, and Greg
4 Holmes, if a member, are not similarly situated members and
5 each have benefited from the alleged impropriety of the current
6 management as discussed herein.

7 Now, Lori is not in that litany, is she?

8 A. Must have been left out. Okay?

9 Q. So you agree with me that as this reads, 8 and 9,
10 leaves you and Lori together, rights?

11 A. I don't know that that's a fact.

12 MR. McQUILLIN: Your Honor, the parties have
13 stipulated, plaintiff and defendant, that Laurence Stoney isn't
14 similarly situated with any other member of the company. He
15 filed the 43k stipulation on that point. So to try to get him
16 to say that something other than what the lawyers have
17 stipulated to, I don't think is proper. Anyway --

18 MR. BARR: That's not what I'm doing, Your Honor.
19 The point here is that this plaintiff is now taking three
20 positions in this case. First he says, I'm representing all
21 members. Then he says I'm representing all members but Lori
22 and me. And then in his deposition last week he said, I'm just
23 representing me, I'm a class of one. And I'm suggesting the
24 reason for that is because he knows that our theory is, he and
25 Lori are colluding and he's trying to avoid it.

1 Q. Isn't that right, Mr. Stoney?

2 A. That's probably what you think, but you are
3 incorrect.

4 Q. I hear you. But that's what these words say, don't
5 they?

6 A. It leaves out Lori's name. I can attest to that.
7 Other than that, nothing.

8 Q. That's where I was getting. That's where I was
9 getting. That's your story, right?

10 A. That is the truth.

11 Q. Okay. So you are a class of one?

12 A. Correct.

13 Q. Right? Now, is it correct that what makes you a class
14 of one is that everybody's got distributions when you did not?

15 A. They enjoyed distributions in one form or another and
16 I did not.

17 Q. And you did not. So the distinction in the classes
18 has to do with distributions; isn't that correct?

19 MR. McQUILLIN: Your Honor, again, we've stipulated to
20 this fact that he's not similarly situated with any other
21 member. That's a legal question as to whether or not -- why
22 he's not similarly situated, that's a legal question.

23 MR. BARR: The objection is improper.

24 THE COURT: All right. You may proceed.

25 BY MR. BARR:

1 Q. So the factual distinction between you and the rest of
2 them is, they got distributions and you didn't, isn't that
3 right?

4 A. That is my stance, yes.

5 Q. So this whole case is about your distributions, isn't
6 it?

7 A. This case is about finding four and a quarter million
8 dollars that's missing that needs to go back to The Boathouse
9 sir. That's what this case is about.

10 Q. You took this case to law because you weren't getting
11 your distributions and everybody else was?

12 A. And once we found out how big the malfeasance was,
13 then we filed this. Okay?

14 Q. And you are spending \$200,000 on a \$200,000 interest;
15 is that right?

16 A. And if I get that \$200,000, I will probably give it to
17 charity. The money is not the point here.

18 Q. When were you last at the Boathouse, Mr. Stoney, this
19 Boathouse at Breach Inlet?

20 A. Last time I was in it, maybe four or five years ago.

21 Q. You haven't been out there in four or five years?

22 A. No.

23 Q. Do you know the name of the manager?

24 A. I do not.

25 Q. Do you know the amount they paid for rent or payroll?

1 A. I do not.

2 Q. Do you know financial needs of the company?

3 A. I do not. Do you have any idea why I don't know?
4 Can't get any information out of them.

5 Q. And then you testified at your deposition that you
6 looked at it out of the corner of your eye and it looked
7 ragged?

8 A. I stopped and drove through the parking lot and
9 noticed that the place looked disheveled and dirty. Closed
10 during the day, and looked ramshackled and rough on the edges.

11 Q. Needed some attention right?

12 A. Needed some attention. For a restaurant doing that
13 kind of business, there's no question it could be afforded.

14 Q. Okay.

15 A. And should be afforded.

16 MR. BARR: Mr. Stoney, thank you very much. That's
17 all I have for now.

18 MR. KEFALOS: Thank you. May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. KEFALOS:

21 Q. Mr. Stoney, you testified that you suspected that
22 Richard was using the restaurant as his personal ATM since
23 1999?

24 A. Something in that neighborhood, yes. Never had any
25 proof, though.

1 Q. And you waited until 2015 to file suit?

2 A. You want a comment? I've already explained why. It
3 was a family matter. I was busy with other things, and I'm a
4 very patient person.

5 Q. Don't you think you could have moved quicker?

6 A. If a frog had wings -- well, yeah, no. I think I
7 moved at the right time.

8 Q. Don't you think you might have been able to stop the
9 losses had you taken earlier action?

10 A. It took me a year legal wrangling just to get the
11 books and the tax returns from the Boathouse.

12 Q. You filed in 2015. And my question is, don't you
13 think you could have stopped some of the losses that you claim
14 today?

15 A. Had I filed, yes.

16 Q. Had you filed?

17 A. Had I filed, yes.

18 Q. Then had you filed in 1999, certainly, would have been
19 able to stop the losses?

20 A. I don't know that to be a fact.

21 Q. And then in 2005, when Mr. Stoney wrote you --

22 A. Which Mr. Stoney?

23 Q. Richard.

24 A. Okay.

25 Q. In Exhibit 1, when Richard Stoney wrote you that he

1 wanted to get -- this is from August 9, 2005 --

2 A. What exhibit is that from the deposition?

3 Q. Well, it's Exhibit 1. I don't know that there's a
4 deposition number on it.

5 A. Okay. This is -- what is your question?

6 Q. Well, we are talking about whether you could stop
7 losses had you taken action in '99. And I'm now taking you to
8 2005. And Mr. Stoney writes you that he understands from Chip
9 that you would like to see everything that has impacted the two
10 restaurants --

11 A. Yes. And he couldn't provide it because they were
12 busy.

13 Q. -- Breach and East Bay as well as Crew's books to the
14 extent that Crew's expenses are passed along to the
15 restaurants?

16 A. Yes.

17 Q. Now, you understood back then that Crew was paying the
18 expenses for both restaurants, didn't you?

19 A. More than two.

20 Q. That is it. Crew was using a sweep account?

21 A. Define a sweep account.

22 Q. Well, Crew was collecting all the money --

23 A. Because I never heard that term before. This is what
24 you asked Lori. I never heard of a sweep account. Define it
25 for me, please.

1 Q. You knew that Crew was taking all the revenue from all
2 of the restaurants into one account and paying the expenses of
3 the restaurants?

4 A. I did not know that for a fact, no.

5 Q. You asked Mr. --

6 A. I asked for the information which I was not given.

7 Q. You were asking for information about Crew's expenses
8 that were being passed --

9 A. As you had just mentioned it, I suspected it. And I
10 wanted something in writing. And I didn't get it.

11 Q. So in 2005, again, you suspected there was some
12 impropriety in the use of Crew's accounts. And you didn't file
13 suit?

14 A. Still no proof.

15 Q. Sure. But you suspected the impropriety?

16 A. Like I said, I'm a patient guy. The money was still
17 coming in until 2007. It was just -- every year it just got
18 lower and lower and lower. Business was booming, as far as I
19 could tell.

20 Q. Don't you think you would have been able to stop the
21 losses had you filed suit in 2005?

22 A. It's a family thing. I told you this already.

23 Q. No. My question is --

24 A. I'm a patient fellow.

25 Q. I don't know -- I don't want to know why you didn't

1 file. My question is, don't you think that if you had filed in
2 2005, when Richard wrote you, that you might have been able to
3 stop some of the losses that you claim -- that you claim today?

4 A. I don't know we would have gotten any information
5 without filing a lawsuit. And I don't think I wanted to get
6 involved in a lawsuit then. I thought maybe Richard would do
7 the right thing and come across with the money. Every time I
8 talked to Richard he just he telling me, oh, it's coming, it's
9 coming, trust me, trust me. And it's in writing here too.

10 Q. Don't you think you would have been able to stop the
11 losses that you are complaining of today --

12 A. I have no idea.

13 Q. -- had you filed --

14 A. Whether I could have stopped the lawsuit.

15 Q. -- had you filed suit in 2005 when you suspected he
16 was using the sweep account improperly?

17 A. It could have been. We've been in lawsuit trying to
18 do now three solid years and still hasn't happened.

19 Q. Now, you got another letter in 2010, didn't you? I
20 think that's Exhibit 2. Do you see Exhibit 2?

21 A. Yes, sir.

22 Q. In the third paragraph, Mr. Richard Stoney writes you,
23 as you know, due to the performance of --

24 A. Additionally, we have never resolved.

25 Q. Your distributions. Because you've been complaining

1 at that point about you want to get paid?

2 A. Yes.

3 Q. And Richard is saying, we haven't resolved your -- the
4 payments that you claimed. And he says, the reason that you
5 haven't gotten payments is -- that nobody from Breach has
6 gotten any payments is because the other restaurants aren't
7 performing right?

8 A. This is dated what?

9 Q. This is dated June of 2010. This is more than five
10 years now. We talked originally 15 years before the lawsuit.
11 We talked about 10 years before the lawsuit. Now this is 5
12 years before the lawsuit.

13 A. It's three years after I filed a lawsuit, tried to get
14 the information and get this thing stopped.

15 Q. But we are talking about June of 2010.

16 A. Okay.

17 Q. Richard explained to you that the reason that nobody
18 is getting paid distributions out of Breach is because the
19 other restaurants aren't performing, right?

20 MR. McQUILLIN: Your Honor, he's making a statement,
21 not asking a question to the witness, and interpreting this
22 e-mail in his own interpretation. So we object.

23 THE COURT: All right. The question part of it is
24 what?

25 BY MR. KEFALOS:

1 Q. Question is, did you understand that the reason you
2 weren't getting distributions from Breach Inlet was because the
3 other restaurants weren't performing well?

4 A. Let's think about that. When was this, in June? So,
5 yeah, I guess that's -- I guess I was informed of that.

6 Q. So in June of 2010 --

7 A. Because it was in '10, does that mean it's the right
8 thing to be happening?

9 Q. In June of 2010, you understood again that the money
10 from Breach Inlet was being used to pay the expenses from some
11 of the other restaurants?

12 A. It just says, as you know, due to the performance of
13 other entities, no other Breach member has received a
14 distribution. Doesn't say it's sending money to these other
15 places. It just says he's reserving capital.

16 Q. Did you understand in 2010 from this e-mail that the
17 reason you weren't getting distributions from Breach was
18 because the other restaurants weren't performing well and the
19 money from Breach was being used to pay their expenses?

20 A. It does not stipulate that they were being used -- I
21 could assume that. I could guess at that. But it does not say
22 that here.

23 Q. So you suspected in 2010 --

24 MR. McQUILLIN: Asked and answered.

25 THE WITNESS: Good God. How many times are you going

1 to ask the same question?

2 BY MR. KEFALOS:

3 Q. Let me ask this question then. Do you think that you
4 might have been able to prevent some of the damages that you
5 claim today had you brought suit in 2010?

6 MR. McQUILLIN: Same objection. Asked and answered.

7 THE WITNESS: Maybe.

8 THE COURT: I sustain the objection. It's been asked
9 many times.

10 BY MR. KEFALOS:

11 Q. Now, Mr. Richard Stoney refers to other entities other
12 than Breach in this Exhibit No. 2 that we are looking at. Did
13 you understand that the other entities -- one of the other
14 entities at that time was --

15 A. I don't know about 2010. I don't remember which one
16 already gone under or getting ready to go under, pre going
17 under, whichever. I don't remember.

18 Q. Do you understand that the other entities that were
19 claiming the Breach money included The Boathouse on East Bay?

20 A. In 2010, boathouse at East Bay already been closed
21 about a year.

22 Q. That's right. In fact, it had been losing money for
23 three or four years?

24 A. Well, losing money on the books, but there's
25 substantial management fees coming out of there. And I think

1 if you analyze the management fees against the losses, it would
2 be suspect if there were even losses.

3 Q. Is it true there was never a capital call made --

4 A. That's correct, there was never a capital call.

5 Q. -- for the losses the East Bay? And did you
6 understand that part of the reason that there was no capital
7 call for the losses at East Bay was because that those losses
8 were being covered by the Boathouse at Breach Inlet?

9 MR. KEFALOS: Let me explain something to you.
10 Partnership at East Bay was a total separate partnership than
11 the Breach Inlet partnership. One on East Bay was already
12 done, closed out. Found out about it after it closed.

13 Q. Answer my question about the capital calls.

14 A. I already answered that. No, I never got a capital
15 call.

16 Q. And did you understand that the reason that you didn't
17 have any capital calls on East Bay was because it was being
18 supplemented by the income from Breach Inlet?

19 A. There were no capital calls because they didn't make
20 the place good and he shut it down and moved all the equipment
21 over to James Island.

22 Q. You understood that the Breach Inlet restaurant was
23 paying some of the expenses --

24 A. I understood no such thing. I had my suspicions.
25 Okay? That's it.

1 Q. So you suspected that the income from Breach Inlet was
2 being used to support East Bay?

3 A. But I never had any proof because I never got any
4 numbers.

5 Q. And did it ever occur to you that the reason you
6 didn't have a capital call on East Bay was because maybe Breach
7 Inlet was supporting East Bay?

8 A. I wouldn't even have an opinion on that. Okay?

9 Q. Is it true you confronted Richard from time to time
10 about the lack of money?

11 A. Yeah.

12 Q. Your lack of distribution?

13 A. Yes, yes.

14 Q. And is it true that Richard would often respond by
15 saying, you are just an old drunk and you don't know what you
16 are talking about?

17 A. Yeah, I got it in writing in stuff here.

18 THE COURT: We have four more minutes before we
19 recess.

20 THE WITNESS: This is from Richard in a letter.

21 THE COURT: Doesn't matter to me, but we have, I
22 think, court personnel and nobody can move until we move.

23 A. This is from Richard. At the end of the day, you just
24 have to trust me. I am not in business with my family and dear
25 friends in attempt to skim profits or benefits not available to

1 them as well.

2 Q. Is it true that Richard would respond to you by
3 saying, you are just an old drunk, you don't know what you are
4 talking about?

5 A. He would occasionally. And then he would say, I'm
6 good for it, it's coming, it's coming.

7 Q. Is it true you have a history of alcohol abuse?

8 A. No.

9 Q. You do drink alcohol?

10 A. I do drink alcohol, yes, sir.

11 Q. Haven't you been so drunk at events at East Bay that
12 you've been asked to leave?

13 MR. McQUILLIN: Your Honor, I object to relevancy.
14 He's asking whether he got drunk at some other restaurant.
15 What does that have to do with this derivative action?

16 A. I've never been asked to leave East Bay.

17 THE COURT: If he wants to answer these questions --

18 THE WITNESS: Okay.

19 BY MR. KEFALOS:

20 Q. Is it true you have a history of cocaine use?

21 A. Not in the last 20 years, sir.

22 Q. Your cocaine was back in the roaring '70s and '80s?

23 A. Yes.

24 Q. Back when you were a commodity trader on Wall Street?

25 A. Yes.

1 Q. Back then, the use of cocaine was widespread?

2 A. It was.

3 Q. And you were part of that culture?

4 A. Unfortunately, I was.

5 Q. And during that time, you pled no contest to a charge
6 of trading without a license?

7 A. No, to executing floor brokerage orders without a
8 license. And I explained it to you what happened.

9 Now, we are going to have to hear this out for two
10 seconds, Your Honor. I was a member of a big firm on Wall
11 Street. We executed floor brokerage. I was a member of a
12 different commodity exchanges.

13 Q. That was Ray Freeman and company?

14 A. Revco, big company.

15 Q. Is that the same Ray Freeman that was sanctioned over
16 100 times?

17 A. Huh?

18 Q. Was that the same Ray E. Freeman & Company that was
19 sanctioned over 100 times?

20 A. That was 10 years after I had left, sir. Okay? You
21 done your homework. Okay? Let me explain to you what it was,
22 because he's making me look bad. I had my floor brokerage
23 license for about five or six years. One year Revco -- you had
24 to apply and send a \$50 check every year for your license.
25 They sent in 19 applications, one of which was mine, and 18 \$50

1 checks. The one check that was missing was mine. I never
2 received any notification from the CFTC. Three years later, I
3 got this letter saying I'm a horrible criminal. I already had
4 my license for the next year, next two or three years. And
5 that's what he's referring to. And in order just to get the
6 legal beagles off my back and the CFTC, there were two little,
7 young lawyers, I just cut a deal with their boss and said, you
8 got to give me something. And he said 50,000. And I said, how
9 about 20? And he said, done. So I give him \$20,000, admitted
10 nothing, and walked back and got my license and went back to
11 work.

12 Q. And this was for the Ray Freeman Company?

13 A. I was an independent broker. I was executing
14 brokerage with them.

15 THE COURT: You must have been making pretty good
16 money back then.

17 THE WITNESS: From time to time.

18 THE COURT: \$20,000?

19 THE WITNESS: Yeah, I had to borrow it.

20 BY MR. KEFALOS:

21 Q. Eventually, in fact, you lost everything? You went
22 bust on Wall Street, didn't you?

23 A. I've had my ups and down. It's thrill of victory and
24 agony of defeat.

25 THE COURT: It's 5:30.

1 MR. KEFALOS: This is a good breaking point.

2 THE COURT: We are going to resume tomorrow morning.
3 We don't have a jury here. So we don't need to rehash
4 anything. We are stopping at this point. At what point are
5 we? We are at Wall Street in a sense, not having a license to
6 do something. Is that Revco that's headquartered in Cleveland?
7 The WITNESS: No, it was Chicago. And originally it
8 was from, I think, Sioux City, Iowa, or someplace like. It's
9 different group, I think.

10 THE COURT: I'm thinking Revco Drugs.

11 THE WITNESS: Has absolutely nothing to do with
12 that.

13 THE COURT: I'm thinking of Revco Drug Store.

14 THE WITNESS: This is Ray Freeman's commodity trading
15 firm.

16 THE COURT: Revco Drug store is Cleveland, drug store.

17 THE WITNESS: Different Revco.

18 (Whereupon, the proceedings are adjourned for the
19 day.)

20 (Whereupon, the hearing continued on 12/14/18.)

21 THE COURT: You are still under oath, sir.

22 BY MR. KEFALOS:

23 Q. Mr. Stoney, is it true that you personally employed
24 the same accounting firm as Crew Carolina?

25 A. Yes.

1 Q. All right. And --

2 A. Crew Carolina has apparently changed years ago, but
3 for a number of years, we had the same accounting.

4 Q. Good. And for those number of years that you used the
5 same accounting firm as Crew Carolina, isn't it true that your
6 accountant talked to their accountant regularly?

7 A. Yes, I assume they did.

8 Q. And isn't it true that their accountant gave your
9 accountant all the numbers? You just never looked at them?

10 A. I have no earthly idea what they exchanged between
11 each other.

12 Q. Well, you know that your accountant gave their -- or
13 their accountant gave your accountant all the numbers?

14 A. Way years past, yes.

15 Q. Back at the time that you had the same firm?

16 A. Yes.

17 Q. And the time -- that changed only five years ago,
18 didn't it?

19 A. I don't have any idea when they -- when Crew left the
20 firm Dixon Hughes, yeah.

21 Q. But there was a time when you used Dixon Hughes, they
22 used Dixon Hughes, and your accountants talked to each other?

23 A. I have to assume so, yeah.

24 Q. Well, more than you assume so. You know that their
25 accountant, Crew Carolina's accountants, gave your accountants

1 all the numbers?

2 MR. McQUILLIN: Objection. Asked and answered. The
3 witness has said "I don't know" five times now.

4 THE COURT: You don't know?

5 THE WITNESS: I do not know, sir.

6 BY MR. KEFALOS:

7 Q. That's not what you testified in your -- when you
8 testified in the divorce proceeding, was it?

9 A. I don't know. What did I say during the divorce
10 proceeding?

11 Q. Well, you remember testifying in 2011 in the divorce
12 proceeding, don't you?

13 A. Yes, I do remember testifying.

14 Q. I'm going to hand you a transcript of your testimony
15 at the divorce proceeding.

16 A. Let's see. Yes, sir, I remember that, sir.

17 Q. Good. And on page 943, you were asked, when was the
18 last time that you received P and L or balance sheet from
19 Breach Inlet. This was 2011 you were asked the last time. Do
20 you remember your answer at that time was, I honestly haven't
21 had a chance to look, I mean, because I use the same accounting
22 firm and I think they just -- you know, my accountant talks to
23 their accountants and they give them all the numbers and all
24 and, you know, I just never saw them.

25 A. And I preface it by, I think they talked to each

1 other.

2 Q. Now, your offices for your operation, your business
3 are just down the street or around the corner from the offices
4 of Crew Carolina?

5 A. Where the offices of Crew Carolina used to be.

6 Q. Used to be. Okay. And was there anything that
7 stopped you from going down to Romney Street where Crew
8 Carolina's office used to be and looking at the books?

9 A. Only time I was allowed to -- I was told I was going
10 to be allowed to look at the books were for the East Bay Street
11 Boathouse. And I was going to have to go into the office
12 physically, sign complete release document and lay eyes on
13 them, no copies, no nothing. And I agreed -- I decided no, I
14 am not going to do that. They can just e-mail me the thing.
15 What do they got to hide?

16 Q. You weren't asked to sign the release. You were asked
17 to sign a confidentiality agreement?

18 A. Confidentiality. But at the same time, I was told we
19 were not going to be able to take anything out of the office.
20 Only thing that was going to happen, we were going to be able
21 to lay eyes on them in the office.

22 Q. So when Crew Carolina closed East Bay, you were given
23 the opportunity to look at the books. But your relationship
24 with -- this was in, what, 2009?

25 A. I guess so.

1 Q. Your relationship with Richard had by that time
2 deteriorated, hadn't it?

3 A. I don't think so.

4 Q. Well, wasn't that the time he was accusing you -- or
5 had he been accusing you of saying bad things about him on the
6 street for 10 years?

7 A. Quite possibly. He always accused me of doing that.
8 It's not the truth.

9 Q. In fact, you did talk to the suppliers for Crew
10 Carolina?

11 A. Suppliers called me, asking me about what I knew about
12 Crew Carolina.

13 Q. Sure. And as a result of your conversation with the
14 suppliers, they put Boathouse on Breach Inlet on a COD payment?

15 A. Absolutely had nothing to do with it. They were
16 already on a COD.

17 Q. You also talked to the bankers who held the mortgage
18 for Crew Carolina, didn't you?

19 A. I did not.

20 Q. You never did?

21 A. I don't think so. I don't even know who the bankers
22 are.

23 Q. You talked to the attorneys. There was a time when
24 the building at the Breach Inlet was --

25 A. No, East Bay Street. Oh, oh. When the foreclosure

1 thing?

2 Q. Yeah.

3 A. I don't know. Who are the attorneys I talked to?

4 Q. Well, you spoke to the attorneys who were handling the
5 foreclosure against Boathouse on Breach Inlet, didn't you?

6 A. Who were there? I don't remember.

7 Q. Well --

8 A. Do you know who they are?

9 Q. When Richard asked you to sign the confidentiality
10 agreement, he was concerned or he had expressed concern that
11 you were saying bad things about him on the street. And
12 yesterday you testified to the fact that you were saying things
13 about him.

14 A. Yeah. So why are we --

15 Q. Is it any surprise that he asked you to sign a
16 confidentiality agreement?

17 A. It wasn't just me. He asked everyone to sign the
18 thing.

19 Q. Given your past behavior, is it any surprise to you
20 that he wanted you to sign the confidentiality agreement?

21 A. No surprise.

22 Q. That is an unreasonable request that you sign --

23 A. The place was already closed. What does he have to
24 hide? Done.

25 Q. Well, these are private records, aren't they?

1 A. Yeah, whatever.

2 Q. They are not a matter for the public, are they?

3 A. I have no idea. You would have to ask an expert.

4 Q. Isn't it reasonable for him to ask that you maintain
5 confidentiality for these records?

6 A. Yes. I don't think it's unreasonable, but I wasn't
7 going to go over there to look at it.

8 MR. KEFALOS: That's all the questions I have of this
9 witness.

10 THE COURT: Anything, Mr. McQuillin?

11 MR. McQUILLIN: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. McQUILLIN:

14 Q. Mr. Stoney, can you please tell the Court what your
15 motivation is and what you seek in this lawsuit?

16 A. I seek to make Boathouse at Breach Inlet whole. It
17 will need to recover the funds.

18 Q. What funds do you seek in this lawsuit?

19 A. Four and a quarter million dollars that we located so
20 far.

21 Q. And where do you want those funds, those four and a
22 quarter million we are talking about, where do you want those
23 to go?

24 A. I want it to go into a separate account for the
25 Boathouse at Breach Inlet. And I want some adult supervision

1 over the checkbook.

2 Q. Has Lori Stoney, who testified yesterday, has she
3 influenced you in any way to file this lawsuit?

4 A. No.

5 Q. You were asked some questions yesterday about whether
6 you consulted with Richard Stoney before filing this lawsuit.
7 And I want to make sure that the Court wasn't misled. You
8 actually asked your lawyers to sit down with Mr. Stoney and his
9 lawyers several times before we filed; is that correct?

10 A. That is correct.

11 Q. At those meetings, the conversation was, this money is
12 missing from the company --

13 MR. BARR: Objection. Objection. Counsel has
14 already established that this is a meeting between the lawyers
15 which he was not present. So he can't testify unless he's
16 going to breach the attorney/client confidentiality and tell
17 the Court what the lawyers told him.

18 THE COURT: Mr. McQuillin.

19 BY MR. McQUILLIN:

20 Q. What do you understand the meetings between the
21 lawyers to have been prior to us filing the lawsuit?

22 MR. BARR: Objection, Your Honor. That calls for
23 hearsay.

24 MR. McQUILLIN: I'm asking for his understanding.

25 MR. BARR: His understanding has to come from some

1 third-party, i.e., his lawyers. So he's asking this witness to
2 tell this Court on the record, what did your lawyers tell you.
3 Now, that sort of dances very carefully on the realm of
4 attorney/client privilege. But beyond that, it's just pure and
5 unadulterated hearsay.

6 BY MR. McQUILLIN:

7 Q. Let me ask it this way. Mr. Stoney, are you aware
8 that in a derivative action, your lawyers have to make demands
9 to the other lawyers prior to filing the lawsuit?

10 A. I am aware of that.

11 MR. BARR: Objection. There is a requirement for
12 demand, but it doesn't say anything about the lawyers doing it,
13 Judge. Mr. Stoney could well have made it.

14 THE COURT: Well, he's asking this witness questions.
15 He's not asking him to argue the point of law. I will overrule
16 the objection.

17 BY MR. McQUILLIN:

18 Q. Mr. Stoney, was it your understanding that in a
19 derivative lawsuit, you, through your lawyers, were required to
20 make various demands on Mr. Stoney to return the money back to
21 the company before he brought this lawsuit?

22 A. That was my understanding, yes.

23 Q. Did you, in fact, participate in a pre-suit mediation?

24 A. I did.

25 Q. Okay. So there were consultations with Mr. Stoney

1 prior to the filing of the lawsuit, correct?

2 A. Yes, there were consultations.

3 MR. BARR: Excuse me, Your Honor. They have pled in
4 their pleadings. And now he's asking this witness about
5 mediation. And counsel should well know what the rules of
6 mediation and the Supreme Court require with respect to that.
7 It's untouchable in this court. It's confidential. And I just
8 think it's improper, unless he wants to open that door and we
9 can go down that perilous pit of what did happen in that
10 mediation. I object to him asking the question.

11 THE COURT: I don't think he wants to open any doors
12 or go down any perilous pits.

13 MR. McQUILLIN: Only thing I was asking was that,
14 there was existence of a mediation. We talked a lot about
15 vindictiveness today and there was no consultation. But we
16 were professional, met with me him four or five times and even
17 tried to mediate before.

18 THE COURT: What procedure took place prior to suit,
19 as far as his involvement, yes.

20 BY MR. McQUILLIN:

21 Q. All right. Did Richard Stoney or anyone from the
22 Boathouse ever inform you that Richard was taking money from
23 the Boathouse at Breach Inlet and funding other entities or
24 using company moneys for personal items?

25 A. They did not.

1 Q. And we talked a lot about suspicions yesterday.

2 A. That is correct.

3 Q. Little bit about suspicions this morning. Did Richard
4 ever come to you and say, for example, I'm going to use several
5 thousand dollars of restaurant money to buy polo ponies?

6 A. He didn't not.

7 Q. Did Richard ever come to you and say, I want to use
8 several thousand dollars of money to pay workers at my
9 plantation Kingston in Berkeley County?

10 A. He did not.

11 Q. When you asked Richard for the financial records of
12 the Boathouse and Crew Carolina, did he refuse to give them to
13 you?

14 A. He did.

15 Q. The only financials he's ever offered to show you are
16 the Boathouse at East Bay after it was closed, correct?

17 A. After it had closed down, yes.

18 Q. Okay. Is that why you initially hired this firm, was
19 to obtain records?

20 A. I had to hire them, yes.

21 Q. Okay. Mr. Stoney, I'm going to show you what's been
22 marked as Defendant's Exhibit 8 that was admitted into evidence
23 yesterday. Do you recall seeing that letter?

24 A. Yes, sir.

25 Q. And --

1 MR. BARR: What's the number again, 8?

2 MR. McQUILLIN: 8.

3 BY MR. McQUILLIN:

4 Q. And does that confirm why you hired this firm? What
5 was this firm's first communication to Mr. Stoney?

6 A. I believe this was it. You tell me.

7 Q. In Exhibit 8, we ask for the company's tax returns, do
8 we not?

9 A. Oh, yes, yes.

10 Q. That's because Richard had not provided those to you
11 previously, correct?

12 A. Correct.

13 Q. When did you get knowledge, and I am not talking about
14 suspicions, but when did you have actual -- when did you get
15 knowledge, and I am not talking about suspicions because the
16 restaurant wasn't doing well, but when did you get actual
17 knowledge that Richard was using Boathouse money to fund
18 personal matters and other businesses?

19 A. Actual knowledge came after you guys forced Richard
20 into turning over the tax records and some of the checkbook.

21 Q. Prior to obtaining the financial records through your
22 lawyers in 2015, did you have any facts about why you were not
23 getting distributions?

24 A. Not facts at all.

25 Q. Prior to 2015, the only thing you had was mere

1 suspicious just because you weren't getting distributions,
2 correct?

3 A. That is correct.

4 Q. All right. And when you had these suspicions, did you
5 confront Richard about them?

6 A. I asked him about them.

7 Q. I want to show you what's been marked as Defendant's
8 Exhibit 1. And when you confronted Richard at one point in
9 August, on August 9th of 2005, sir, can you read aloud into the
10 record what Richard said to you.

11 MR. BARR: Where are we, please?

12 MR. McQUILLIN: We are on Exhibit 1, page, I think,
13 two of that.

14 THE WITNESS: Yeah. Where were we?

15 MR. BARR: Can you give us an approximate idea what
16 part of the page it is?

17 MR. McQUILLIN: Last big paragraph on the page.

18 BY MR. McQUILLIN:

19 Q. Can you read that into the record, sir? When you
20 confronted Richard that you had suspicions something wasn't
21 right, what did he tell you?

22 A. He said, at the end of the day, you have to trust me.
23 I am not in business with my family and dear friends in an
24 attempt to skim profits or benefits not available to them as
25 well. I would think the fact that I haven't had a base salary

1 increase in the history of the company would be just one
2 example of that.

3 Q. So when you confronted your family member, your
4 cousin, that you had suspicions, his typical response was,
5 trust me?

6 A. Trust me.

7 Q. Put your confidence in me, I'm family, correct?

8 A. That's exactly it, yeah.

9 Q. And so you were asked some questions yesterday and
10 Mr. Kefalos and Mr. Barr used the term "sitting on your hands",
11 you weren't sitting on your hands, though, sir; you were
12 trusting and putting your confidence in your cousin, were you
13 not?

14 A. I was. I said that several times.

15 MR. McQUILLIN: Thank you, sir. No further questions.

16 THE COURT: Redirect?

17 MR. BARR: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. BARR:

20 Q. Mr. Stoney, you told us yesterday that as early as in
21 the 1990s, you suspected that Richard was robbing Peter to pay
22 Paul, didn't you?

23 MR. McQUILLIN: Objection, Your Honor. Asked and
24 answered.

25 MR. BARR: There's no such objection. It doesn't

1 exist. It's not in the rule books. It's not in the case.

2 MR. McQUILLIN: It's cumulative evidence.

3 MR. BARR: I'm sorry. I didn't hear what you said.

4 MR. McQUILLIN: I said it's cumulative. We've gone
5 through this 20 times now.

6 MR. BARR: This is redirect. He's examined the
7 witness on the exact subject, Judge.

8 THE COURT: I overrule the objection.

9 BY MR. BARR:

10 Q. Okay. I will ask the question again. You testified
11 when I examined you yesterday that as early as the 1990s, you
12 suspected that Peter -- not Peter, that Richard was robbing
13 Peter to pay Paul. Those were your words, isn't it?

14 A. I had those suspicions.

15 Q. You had those suspicions. And I asked you, well, why
16 didn't you act on them, right?

17 A. Because I put my trust --

18 Q. No, that was not your answer yesterday. Excuse me.
19 I'm asking the questions.

20 MR. McQUILLIN: I would ask that you let the witness
21 please finish his answer.

22 MR. BARR: I haven't finished the question.

23 BY MR. BARR:

24 Q. Isn't it correct that yesterday your testimony was,
25 I'm just a good guy?

- 1 A. I am a good guy.
- 2 Q. Right. But that was your answer yesterday, right?
- 3 A. I am a good guy. And that's one of the main reasons I
- 4 didn't pursue this.
- 5 Q. Now let me ask you this. Have you discussed your
- 6 testimony with anyone since you left the stand yesterday and
- 7 came back here today?
- 8 A. No.
- 9 Q. You haven't?
- 10 A. We discussed the weather walking over here from the
- 11 offices right across the street.
- 12 Q. So now what you are telling the judge is, well,
- 13 really, Judge, the reason I didn't act in the 1990s was not as
- 14 I said yesterday, I'm a good guy, it's because I trusted my
- 15 cousin Richard. Is that what --
- 16 A. I said that yesterday. I said I had no evidence. I
- 17 had no facts. I had suspicions. I told you that. And it was
- 18 family. And I had no real idea what to do except to trust
- 19 Richard.
- 20 Q. Except to trust --
- 21 A. Apparently, that takes a long time to trust him.
- 22 Q. You didn't use the word "trust" yesterday, did you?
- 23 A. I don't know. You tell me.
- 24 Q. The record will speak for itself.
- 25 A. Okay.

1 Q. When you testified at the family court hearing, you
2 testified that the crux of the matter was you hadn't got your
3 money, didn't you?

4 A. That is the crux of the matter.

5 Q. And every time you met with Richard, you wanted to
6 know, where is my money, didn't you?

7 A. Yes, that is correct, until we found out it was four
8 and a quarter million dollars missing. And then all of a
9 sudden, the whole thing changed.

10 Q. And counsel has asked you questions about what
11 occurred after his letter was sent to Richard in April of 2014.

12 A. Eventually.

13 Q. And your efforts to work it out, do you remember
14 that?

15 A. Right, we did try to work it out.

16 Q. And we did try to work it out, but it was about buying
17 out your interest, wasn't it?

18 MR. McQUILLIN: Objection, Your Honor. He's now
19 getting into settlement negotiations and talking about what the
20 substance of pre-suit mediations were, suggesting improperly
21 that our client floated the buyout, when it was, in fact, his
22 client. The Court shouldn't be hearing pre-suit negotiations.

23 MR. BARR: Your Honor, they pled this in their
24 complaint. Counsel, over my objection, has just asked about
25 it. And I think they've opened the door.

1 MR. McQUILLIN: We asked whether mediation occurred,
2 not whether or not Mr. Stoney offered -- tried to buy our
3 client out to prevent this derivative action. That has never
4 been in the pleadings and has never come out except for arguing
5 this objection.

6 MR. BARR: But the inference from the question about
7 mediation was, Judge, that the mediation was about working out
8 the demands made by the lawyers in Exhibit 8, I think,
9 whatever.

10 THE WITNESS: 8.

11 MR. BARR: In Exhibit 8, in Exhibit 8 and which, of
12 course, led to a demand that Richard -- this is attached to
13 their complaint, a demand that Richard relinquish ownership --
14 not ownership, control of the Boathouse, get an outside lawyer,
15 and, ultimately, confess up to whatever the amount of money is
16 that they say now is over \$4 million. But that's really not
17 what happened between this letter and the filing of this
18 lawsuit.

19 THE WITNESS: I would like to comment.

20 MR. McQUILLIN: No, Laurence, no.

21 We said, did a mediation occur. We intentionally
22 didn't talk about the substance at all. And Your Honor has
23 already ruled we didn't open a door there to get into the
24 substance of that. That is not what we were doing. And this
25 is totally improper.

1 MR. BARR: I will withdraw the line of questioning.

2 MR. McQUILLIN: You can't unring the bell.

3 BY MR. BARR:

4 Q. Now, when the suppliers called you about Crew, do you
5 remember Mr. Kefalos asking you that question?

6 A. Yes.

7 Q. And one of the suppliers was Ms. Limehouse?

8 A. There were --

9 Q. Andrea?

10 A. There were several suppliers. And I think either Jack
11 or Andrea Limehouse was one of them.

12 Q. And --

13 A. Asking me if I happened to know anything what was
14 going on and why they weren't getting paid.

15 Q. And Limehouse is Limehouse Produce, which provides
16 food?

17 A. Yes.

18 Q. What did you tell them?

19 A. I don't know.

20 Q. Beg the Court's indulgence?

21 A. I said I don't know, ask Richard.

22 Q. So she called you wanting to know what was going on?

23 A. Yeah, wanted to know if I had any scoop. And I told
24 her I really don't know.

25 Q. Okay. That was it?

1 A. Word on the street is they are having problems. I
2 buy -- I'm in ship supply business. We sell everything to
3 ships that a restaurant buys. Liquor salesmen were coming to
4 me. They were on cash advance for that. It's on the street.
5 I mean, these people talk. I didn't go looking for the scoop,
6 the dirt.

7 Q. Tell me when you are through with your answer.

8 A. I'm through.

9 Q. Now, did you tell Ms. Limehouse that the word on the
10 street is they are having problems?

11 A. She was the word on the street.

12 Q. Excuse me, Mr. Stoney. That wasn't my question. My
13 question is simple. Did you tell Ms. Limehouse that the word
14 on the street is that Richard is having problems?

15 A. I have no idea if I told her that or not. You will
16 have to ask Andrea that.

17 Q. So you are suggesting you may have?

18 A. I could have. I am not going to say I didn't.

19 Q. Thank you, Mr. Stoney.

20 A. But I am not going to say I did either. You
21 understand the difference.

22 MR. KEFALOS: I just have one or two follow-ups.

23 RECROSS-EXAMINATION

24 BY MR. KEFALOS:

25 Q. As I understand it, you just testified that while you

1 So he frequents Hall's Chophouse?

2 No, he doesn't frequent it. He's come into the
3 restaurant a number of times since we've opened it.

4 Have you had any conversations with Laurence Stoney
5 about the Boathouse at Breach Inlet at all?

6 ANSWER: No, sir."

7 MR. BARR: We don't dispute that, Judge.

8 MR. KEFALOS: Next witness would be Ted Stoney,
9 Theodore Stoney. Does the deposition get marked as an exhibit?

10 THE COURT: It should be -- yes, as an exhibit, but I
11 will need to keep it in order to.

12 (Defendant's Exh. 12, Transcript of Bill Hall, is
13 received in evidence.)

14 THEODORE DEBOSE STONEY, JR.,
15 having been duly sworn, testifies as follows:

16 THE CLERK: State your name for the record.

17 THE WITNESS: My name is Theodore Dubose Stoney Jr.

18 DIRECT EXAMINATION

19 BY MR. KEFALOS:

20 Q. Mr. Stoney, you are a 5 percent owner of Boathouse at
21 Breach Inlet?

22 A. Yes, sir.

23 Q. Did the plaintiff confer with you -- 10 percent, I'm
24 sorry, you are 10 percent owner?

25 A. Excuse me. Yes, sir, I'm 10 percent.

1 Q. And you also have the trusteeship of 5 percent for
2 Richard's son?

3 A. That is correct.

4 Q. Did the plaintiff confer with you about bringing this
5 suit before he filed it?

6 A. No, sir.

7 Q. Do you support this suit?

8 A. No, sir.

9 Q. Why not?

10 A. This is a personal dispute between Richard and
11 Laurence. Laurence has filed it as a derivative action so that
12 he can have his attorney's fees paid. It's not fair to the
13 other shareholders in the restaurant that they be obligated for
14 these attorney fees.

15 Q. Mr. Stoney, tell us a little bit about yourself
16 briefly. How have you been employed in your life?

17 A. I worked on the waterfront during the summer years
18 when I was in college. I was in real estate after college. I
19 went back and got a master's degree. Went into the shipping
20 business for 10 years. And then I've been in real estate ever
21 since then.

22 Q. Are you married?

23 A. Yes.

24 Q. Children?

25 A. No children.

1 Q. How long have you been married?

2 A. 28 years.

3 Q. Were you a member of the Boathouse at East Bay?

4 A. Yes.

5 Q. Do you remember when that closed?

6 A. Yes.

7 Q. Had East Bay been making any money in the last years
8 of its operation?

9 A. No, sir.

10 Q. It closed in 2009?

11 A. That is correct.

12 Q. Was there anything that you can identify that caused
13 East Bay's losses?

14 A. The restaurant was doing pretty well until we had a
15 tragic murder there in June of 2003. My neighbor and good
16 friend, Patrick Ringwald, we actually lived two blocks from the
17 restaurant, was murdered on June 28th, just before the 4th of
18 July weekend, which was going to be huge for the restaurant.

19 Q. Was this murder at the restaurant?

20 A. The murder was at the restaurant. We had employees
21 and people that loved that restaurant that would not even go
22 back into the restaurant. And it killed business for over two
23 and a half years.

24 Q. You were a shareholder at the time, along with
25 Laurence?

1 A. Yes, sir.

2 Q. Your cousin?

3 A. Yes, sir.

4 Q. I want you to look for a minute at this exhibit. I
5 think it's 5. No, it's not 5. It's June 23, 2010, it's the
6 e-mail.

7 MR. BARR: I think it's No. 2 maybe.

8 MR. KEFALOS: It is 2. With the court's permission, I
9 will put it on the Elmo.

10 BY MR. KEFALOS:

11 Q. Exhibit 2 is an E-mail from Richard to Laurence dated
12 June 23, 2010. And he references a conversation that you had
13 with Laurence and he says, let's see, as you know, due to the
14 performance of other entities, no other Breach member has
15 received a distribution.

16 Did you know from your conversation referenced in this
17 e-mail whether Laurence knew that the poor performance of these
18 other entities was impacting distributions from Breach?

19 MR. McQUILLIN: Objection, Your Honor. He's asking
20 this witness what my client knew about an e-mail that he wasn't
21 even on. It totally calls for speculation. Based on this
22 e-mail that you are not even copied on or know anything about,
23 what was in Laurence's head, what knowledge did Laurence
24 have.

25 THE COURT: Response?

1 MR. KEFALOS: What I asked is, this e-mail references
2 a conversation that Ted had with Laurence. And I'm asking
3 whether, based on that conversation, he knew whether Ted
4 understood that the poor performance from Breach was due to --
5 whether lack of distribution from Breach was due to the poor
6 performance --

7 THE COURT: Based on this e-mail?

8 MR. KEFALOS: No, based on the conversation referenced
9 in this e-mail.

10 THE COURT: The question is unrelated to the e-mail?

11 MR. KEFALOS: Yes.

12 THE COURT: So ask another question or ask it
13 differently.

14 MR. KEFALOS: I'm sorry?

15 THE COURT: Restate the question to this witness.

16 BY MR. KEFALOS:

17 Q. Do you know whether, back in June of 2010, Laurence
18 was aware that the reason that there were no distributions from
19 Breach Inlet was due to the poor performance of other
20 entities?

21 MR. McQUILLIN: Your Honor, same objection. He's
22 asking this witness what my client knew, what his knowledge
23 was. It calls for -- he has no idea. It's totally speculative
24 testimony as to what my client knew or what he had in his head
25 at the time.

1 THE WITNESS: Laurence stated so.

2 BY MR. KEFALOS:

3 Q. He stated so?

4 A. Yes.

5 Q. Okay.

6 A. That was his gripe.

7 Q. Let me ask you. Did you ever get a capital call, you

8 and Laurence, to cover the losses at East Bay?

9 A. No.

10 Q. Where were you getting the money to pay for the losses

11 at East Bay?

12 A. The money was coming from the Boathouse at Breach

13 Inlet.

14 Q. Did you have a conversation with Laurence about that?

15 A. Not directly about that, but, yes, that's what he

16 implied, that Richard was converting funds from the profitable

17 restaurant to cover the losses at other restaurants.

18 Q. And was that part of the reason you didn't have

19 capital calls at East Bay?

20 A. Yes.

21 Q. Now, were you here when Laurence testified that he

22 loved Richard?

23 A. Yes.

24 Q. How would you characterize the relationship between

25 Laurence and Richard during this business operation?

1 A. Well, the Stoney relationships are kind of weird, to
2 be honest with you. But Laurence and I, we were only about
3 eight months apart. Richard and Randell are only a couple of
4 months apart. And all four of us are about two years apart.
5 So there's a lot of different personalities involved. And
6 Laurence is one of these personalities that he can be very
7 charming and he can be very terse and hard to deal with. So,
8 unfortunately, you never know who you get when you talk to
9 Laurence. It's always different, but --

10 Q. How would you characterize the relationship between
11 Richard and Laurence?

12 A. I believe that Richard -- Laurence was always jealous
13 of Richard. There were five grandsons. Laurence was the only
14 one that did not graduate from college. In fact, the other
15 fours had postgraduate degrees. Richard was a successful
16 attorney. He was successful in the restaurants. He was a
17 popular person.

18 Laurence had had some difficult times, but he always
19 put on a big show. I mean, when he would come to Charleston,
20 he drove a SL Mercedes. And I had no idea he had all these
21 problems in New York until this testimony just yesterday,
22 so ...

23 Q. Let's direct your attention to this letter of August
24 9, 2005. This is Exhibit No. 1.

25 MR. McQUILLIN: Your Honor, just before he asks any

1 questions, this is a letter to Laurence Stoney from Richard
2 Stoney, no copy to Ted at all. He's not even involved in this
3 letter.

4 BY MR. KEFALOS:

5 Q. Are you familiar with this letter?

6 A. Yes, I am familiar with this letter because I worked
7 in the same offices with Richard and I was involved in a lot of
8 the day-to-day stuff going on. And this letter was given to me
9 because it outlines the ongoing problems that Laurence was
10 creating for the restaurants.

11 Q. And did you get this letter back around the time that
12 it was authored in 2005?

13 A. Probably that day or the next day, I would imagine.

14 Q. And were you the one that actually filed this letter
15 last week?

16 A. I found it in some of my files.

17 Q. This letter Richard to Laurence says that, you've been
18 accusing me of dishonesty for five years. Was it true that
19 Laurence had been accusing Richard of dishonesty for five years
20 before this letter?

21 A. Yes. I think he stated yesterday that after the
22 Boathouse on East Bay opened in 2000 -- excuse me, 1999, that
23 he had suspicions. He was talking about it to numerous people.
24 They would talk to me. Furman Cole was one of my best friends.
25 Furman and I -- Demi Howard is my best friend. And Furman Cole

1 was one of my best friends. I was in both of their weddings.
2 So they would tell me different things that Laurence said about
3 Richard and the restaurants.

4 Q. In the letter or the e-mail of June 2010, Richard
5 talked to Laurence about -- it's Exhibit 2. We need -- Ted
6 said, true to past conduct, you were abrasive and threatening
7 litigation. Do you see that?

8 A. Yes.

9 Q. Had he, Laurence, been abrasive and threatening
10 litigation for the past five years?

11 A. Pretty much every time I bumped into him, particularly
12 if he happened to have been drinking or something, which
13 sometimes occurred in the back bar of the yacht club.

14 Q. And was this causing any problems, this abrasive
15 threatening litigation? Did it cause any problems to the
16 business?

17 A. Yes, definitely. He even talked to me one time about
18 the conversation with Limehouse Produce.

19 Q. Limehouse Produce was one of the suppliers?

20 A. One of the suppliers to Coleman Supply and The
21 Boathouse restaurants. And Laurence is good friends with Jack
22 Limehouse. We all knew Jack Limehouse.

23 Q. What did he tell you that he told Limehouse Produce?

24 A. He said that Limehouse Produce was on a cash basis
25 with The Boathouse restaurants. And that the restaurants

1 weren't paying their bills and Richard didn't know what he was
2 doing and, you know, that type of thing.

3 Q. Laurence was telling Limehouse that Richard wasn't
4 paying his bills and Richard didn't know what he was doing?

5 A. Correct.

6 Q. To your knowledge, did Laurence ever contact any of
7 the bankers or lenders for the Boathouse?

8 A. Yes, he did.

9 Q. Did this help the company --

10 A. No, it did not.

11 Q. -- his communications? Oh, was Laurence invited to
12 participate in any other restaurants after Breach Inlet and
13 East Bay?

14 A. The relationship with Laurence had deteriorated ever
15 since the Boathouse on East Bay opened up and --

16 Q. Had it opened in 19 --

17 A. I think it was January, February, of 2000 -- excuse
18 me, 1999. I keep -- I don't know why I keep doing that, but
19 1999. And Laurence --

20 Q. The question was, was he asked or invited to invest or
21 participate in any other of the restaurants that Richard opened
22 after Breach Inlet at East Bay?

23 A. I'm sorry. I lost my train of thought. But what I
24 was going to say is, due to the ongoing problems that he was
25 causing for the restaurants with personnel, vendors, bankers,

1 you name it, friends, general public, Richard did not want him
2 to be involved in any other restaurants.

3 Q. What was Laurence's response or reaction when he
4 learned he wasn't going to be invited --

5 A. He was upset.

6 Q. Let me take you back to the opening of the Boathouse
7 on East Bay in 1999. Were you there?

8 A. Yes.

9 Q. Was Laurence there?

10 A. Yes.

11 Q. Did Laurence cause any problems at the restaurant?

12 A. Yes.

13 Q. What happened?

14 A. He was intoxicated. And he was being demeaning and
15 terse with some of the employees.

16 Q. Were they serving him, or did it cause any problem
17 with him getting served?

18 A. It did. It was so bad that Richard had to ask him to
19 leave.

20 Q. How did Laurence respond to that?

21 A. Not very well.

22 Q. Are you aware of whether Laurence had made direct
23 threats towards Richard?

24 A. On three occasions that I know of, he's threatened
25 Richard through me.

1 Q. Through you?

2 A. Yes.

3 Q. He's told them through you?

4 A. Yes.

5 Q. What did he tell you?

6 A. Sometime prior to 2004, he had a conversation with me
7 in which he complained about Richard using restaurant funds for
8 other restaurants and personal use and that, you know, he was
9 going to get Richard.

10 Q. That was 2004?

11 A. Yeah, and prior. And then the other one was the
12 e-mail that I'm referred to -- it was written as a result of a
13 conversation I had with him probably the day before in 2010. I
14 think it was June 23rd of 2010. And then the most recent one
15 was sometime prior to the filing of this lawsuit, was a
16 conversation that I had with him in the back bar of the
17 Carolina Yacht Club.

18 Q. Tell us what happened there.

19 A. I went in, Laurence was sitting at his typical perch
20 at the bar. And I went over to say hello. And we had a nice
21 conversation. He told me that his son was working for a
22 dredging company in Florida. And then he said, I need to talk
23 to you. And he kind of stuck his finger right in my throat
24 almost, and started going off on I wasn't neighborly. Because
25 I had dug a ditch across a road on Richard and my side of the

1 property, because he had been abusing the road and his
2 employees had been abusing the road. And I just got tired of
3 it. So I had the road blocked off.

4 Then he launched into a tirade about Richard and the
5 same thing, the money being used for Breach Inlet for other
6 entities and he wasn't getting his fair share and he needed his
7 money and Richard was skimming, you know, money from one to pay
8 for the other. And then he said, I'm going to turn Richard's
9 whole world upside-down.

10 MR. KEFALOS: That's all the questions I have for this
11 witness.

12 THE COURT: Mr. Barr.

13 MR. BARR: Just one question.

14 CROSS-EXAMINATION

15 BY MR. BARR:

16 Q. Mr. Stoney, with reference to the conversation you
17 just recounted at the back bar, when was that in relation to
18 your knowledge of the filing of this case?

19 A. It was several months prior to that.

20 MR. BARR: All right. That's all I have. Thank
21 you.

22 THE COURT: Mr. McQuillin.

23 MR. McQUILLIN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. McQUILLIN:

1 Q. Good morning, Mr. Stoney.

2 A. Good morning.

3 Q. If \$4 million was returned to the Boathouse, do you
4 agree with me that would be a good thing for the company?

5 A. I agree that would be a good thing for the company.

6 MR. KEFALOS: Your Honor, I object to this line of
7 questioning. We are here not on the substance of the
8 underlying complaint. We are here on question of standing and
9 that has to do with the suitability of Mr. Laurence Stoney to
10 be plaintiff, whether he's guilty of laches, unclean hands and
11 the like. The remedy that he seeks in the underlying case is
12 not relevant to the question outstanding.

13 MR. McQUILLIN: Your Honor, he previously testified on
14 direct examination that he opposes this lawsuit. And so I'm
15 exploring why he says he opposes it if he's in favor of the
16 remedy sought.

17 THE COURT: All right. I overrule the objection.

18 BY MR. McQUILLIN:

19 Q. So, Mr. Stoney, your answer was yes to my question
20 that you agree with me that if \$4 million was returned to the
21 Boathouse that that would be good for the company, correct?

22 A. It wouldn't be good for me personally or the other
23 shareholders and the Boathouse.

24 Q. And that's exactly my point, sir. It wouldn't be good
25 for you or your brother, would it? Is that correct?

1 Personally, it wouldn't be good for you all, but it would be
2 good for the company? You agree with that statement; is that
3 correct, sir?

4 A. No, I don't agree with that statement.

5 Q. Why not? If \$4 million was returned back to the
6 company, your testimony under oath today is that that would not
7 be good for the company? That's what you are telling this
8 judge?

9 MR. KEFALOS: Your Honor, I object. Mr. Stoney
10 testified that he was opposed to the litigation because it was
11 a personal matter. The question whether \$4 million would help
12 the company is not relevant to the question of whether he
13 supports the litigation personally.

14 THE COURT: I overrule the objection.

15 BY MR. McQUILLIN:

16 Q. Mr. Stoney, you have testified that you are opposed to
17 this action because it would not be good for you and your
18 brother, but that you agree that the return of \$4 million would
19 be beneficial to the company, correct?

20 MR. KEFALOS: Objection. He's mischaracterizing
21 Mr. Stoney's testimony. Mr. Stoney testified that it would not
22 be good for him, his brother and the other shareholders.

23 THE COURT: Overrule the objection.

24 BY MR. McQUILLIN:

25 Q. Mr. Stoney, I'm going to ask you again, do you agree

1 that the return of \$4 million to the Boathouse at Breach Inlet
2 would be good for the company? Yes or no?

3 A. Four million dollars would be helpful for the
4 restaurant.

5 Q. But your testimony is this lawsuit isn't good for you
6 and your brother and the other shareholders? That's your
7 testimony, correct?

8 A. And I don't think it's good for the company.

9 Q. Is your testimony, sir, that you knew Richard was
10 taking money from the Boathouse to support other entities?

11 A. Yes.

12 Q. And you knew it and you benefited from it, did you
13 not?

14 A. I probably did.

15 Q. You didn't object to it?

16 A. No. To be honest with you, I have never looked at the
17 books of the restaurant, Crew Carolina.

18 Q. I want you to be honest with me. You are under oath.

19 A. Yeah.

20 Q. Speaking of honesty, do you believe Richard is an
21 honest and trustworthy guy?

22 A. I absolutely do.

23 Q. If he says nothing is going on, would you believe him?

24 A. Yes.

25 Q. Just like my client did, isn't that right, sir?

1 A. Yes.

2 Q. And, in fact, you made up -- you talked about these
3 conversations from 2004 and 2005 where you claim Laurence
4 Stoney knew that Richard was taking money from the Boathouse to
5 support these other entities. But, sir, if you will read aloud
6 what Richard says in Exhibit 1. This is in August 9th, 2005,
7 letter to my client. What was Richard telling my client?

8 MR. BARR: Where are you, please?

9 MR. McQUILLIN: I'm on page 2 of the letter Mr. Stoney
10 found a couple of days before this hearing.

11 MR. BARR: About where?

12 MR. McQUILLIN: Second paragraph in and the fourth
13 paragraph.

14 BY MR. McQUILLIN:

15 Q. Please read aloud the highlighted portion Richard
16 wrote to my client.

17 A. Says, I'm, frankly, as I have stated before, insulted
18 by the insinuation that I've mismanaged or misappropriated
19 funds for the restaurants and/or Crew Carolina.

20 Q. So Richard, this honest and trustworthy guy, your
21 brother that you believe, is telling Laurence, I didn't do it,
22 in Exhibit 1 --

23 A. That's not what he said. What --

24 Q. Read this next line, please, the highlighted portion.

25 MR. BARR: Is that the same paragraph?

1 THE WITNESS: It's the second paragraph on the bottom:
2 At the end of the day, you have to trust me. I am not in
3 business with my family and dear friends in an attempt to skim
4 profits or benefits not available to them as well. I would
5 think the fact that I haven't had a base salary increase in the
6 history of the company would be just one example of that.

7 Q. And so your testimony is you believe this letter was
8 sent. And this is what your honest and trustworthy brother was
9 telling his cousin, correct?

10 A. Yes, because ...

11 Q. He told his cousin --

12 A. Can I answer the question? I believe every word
13 Richard said, because in the accounting, everything was
14 documented. It was a due-to and -from on every single item.

15 Q. Sir, you just testified you never looked at the books.
16 How, if you haven't looked at the books --

17 A. I didn't look at the books, but I talked to Chip
18 Robinson. I talked to my brother.

19 Q. I understand.

20 A. I talked to accountants.

21 Q. Are you opposed to the Boathouse getting a judgment
22 against your brother, sir?

23 A. I certainly am.

24 Q. And is one of the reason you oppose it because you
25 testified in the divorce trial that he owes you \$2.8 million?

1 A. That's correct. And a lot of that money went into the
2 Boathouse.

3 Q. I understand. So you don't want a judgment against
4 your brother because he owes you 2.8 million, correct?

5 A. No, the company owes me 2.8 million.

6 Q. So you've got interest other than the interest of the
7 company, personal interest, correct? It's a yes-or-no
8 question.

9 A. Yes.

10 Q. All right. Now, in addition to being a member of the
11 Boathouse, you are also a member of entities called Lake Julian
12 and Carolinas, correct?

13 A. Correct.

14 Q. And Laurence was not a member of those companies, was
15 he?

16 A. No.

17 Q. Your brother Richard was, correct?

18 A. Yes.

19 Q. Do you know whether or not Boathouse moneys were used
20 to fund Lake Julian and Carolinas?

21 MR. KEFALOS: Objection, Your Honor. We are getting
22 into the substance of the underlying claim for damages. This
23 hearing, this trial is about standing. Standing has to do with
24 whether Mr. Laurence Stoney is a suitable person to bring the
25 case, whether he's barred by the laches and unclean hands.

1 MR. McQUILLIN: Your Honor, one of the factors that
2 we've cited in our brief that courts look at is the motivations
3 as to why the other members are opposing the action. We are
4 establishing that he has personal motivations that do not align
5 with the company, which is why, in fact, he opposes this
6 action.

7 THE COURT: Overrule the objection.

8 BY MR. McQUILLIN:

9 Q. Sir, you said you were a member of Lake Julian and
10 Carolinas, and so was your brother, correct?

11 A. Correct.

12 Q. But my client, Laurence Stoney, was not, correct?

13 A. No, he wasn't.

14 Q. And you said you were aware that Breach Inlet, the
15 company that my client is a member of, was funding Lake Julian
16 and Carolinas. You knew that, didn't you?

17 A. Yes.

18 Q. But you didn't object to it?

19 A. No.

20 Q. Were you aware that Breach Inlet was referred to as
21 the blood donor for the hemorrhages that are Lake Julian and
22 Carolina? Have you seen this memo before in the divorce trial?

23 A. I don't know if I've seen that particular one.

24 Q. This is a confidential interoffice memorandum with
25 Crew Carolina where Chip Robinson writes Richard -- let me

1 read, says: My accounting world is totally and completely
2 consumed with cash-flow related issues. And he goes on to say,
3 removing Breach Inlet from its role as blood donor for the
4 hemorrhages that are Lake Julian and Carolinas will take care
5 of all of the above.

6 Have you ever seen that document before, sir?

7 A. No, sir.

8 Q. Were you aware that Breach Inlet was the blood donor
9 for these two other entities?

10 A. I never heard that term used before. But I knew that
11 Breach Inlet was supporting some of the other entities. And
12 their accounting was being done and it was nothing done -- you
13 know, it was all above-board. Everything was documented. And
14 at some point, my brother hoped to get an even accounting and
15 everything adjusted accordingly.

16 Q. At the end of the day, sir, you would agree with me
17 that if Breach Inlet, the company is funding all these other
18 entities, all of this money is being removed from the company,
19 that's not a good thing for the Boathouse, is it?

20 A. No, that would not be a good thing for that entity.

21 Q. In fact, your brother calls you robbing Peter to pay
22 Paul. You have heard that term, haven't you?

23 A. Yes, I have.

24 Q. And when you are robbing somebody, that's not a fair
25 thing, is it?

1 A. No.

2 MR. McQUILLIN: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. KEFALOS:

5 Q. You mentioned that you did not personally look at the
6 books of Crew Carolina.

7 A. No. I am not an accountant. And I never looked at
8 the books.

9 Q. But you did speak to a fellow you said was Chip
10 Russell (sic)?

11 A. Chip Robinson. He was the comptroller.

12 Q. And then you talked about due-tos and due-froms?

13 A. Yes.

14 Q. What are they?

15 A. The term I've heard used was a "sweep account". And
16 all -- The Boathouse at Breach Inlet opened up in '97. East
17 Bay opened up in '99. Then some other restaurants opened up
18 early in the 2000s. And the sweep account was set up prior to
19 the opening of the Boathouse on East Bay Street. And it was
20 done simply as a matter of, from my understanding not being a
21 accountant, is all moneys from the different entities would go
22 in there, all the payroll, all the health insurance, vendors,
23 would be paid out of that. And it was an accounting that said
24 due to and from. So it was all documented.

25 Q. So the due-tos and due-froms was a way of tracking

1 where the money came from and where it went?

2 A. That's correct.

3 Q. And that's all contained in the accounting records,
4 that you understand?

5 A. As far as I understand, yes, sir.

6 Q. So it wasn't like someone was taking the money out and
7 pocketing it? They were keeping the records of where the money
8 came from and where it went?

9 A. Exactly.

10 MR. KEFALOS: That's all the questions I have.

11 MR. BARR: If I may.

12 THE COURT: Yes, sir.

13 RECROSS-EXAMINATION

14 BY MR. BARR.

15 Q. Mr. Stoney, you talked about a couple of conversations
16 with your cousin Laurence, the plaintiff in this case. The
17 last one you described occurred in the back bar of the Yacht
18 Club. And when was the earlier one?

19 A. There was one sometime prior to 2004. It involved a
20 table that I owned that I had left in a house that ultimately
21 ended up on Laurence's section of Kensington. And I have a
22 picture of it in my house in 2004. So I know it occurred prior
23 to 2004, because the argument was over that table. And it led
24 to other issues.

25 Q. I didn't ask the question very well, sir. I meant --

1 I think you testified that Laurence had made several threats
2 against Richard to you.

3 A. Yes.

4 Q. One of them was that conversation in the back bar?

5 A. Correct.

6 Q. And so I was trying to recall what the other one was
7 you described. Was it the one --

8 A. That was one prior to 2004.

9 Q. Okay.

10 A. And then the other one was prior to that e-mail in
11 2010. I think it was --

12 Q. That's the one I was referring to.

13 A. June the 23rd, 2010, I believe.

14 Q. Right.

15 MR. BARR: So, Your Honor, I'm publishing trial
16 Exhibit 2.

17 MR. MCQUILLIN: Your Honor, I don't believe this is
18 proper redirect. This exhibit was never mentioned or even
19 talked about during cross-examination.

20 MR. BARR: It was discussed with reference to the
21 threats, Judge. I believe you crossed him about the threats.

22 MR. MCQUILLIN: I don't believe I ever used the word
23 "threat" in my cross or even asked him about that.

24 MR. BARR: I'm talking about the threats that he
25 testified your client made against Richard to him.

1 MR. McQUILLIN: That was in Mr. Kefalos's direct that
2 you've already had a follow-up on.

3 MR. BARR: Let me withdraw the question. And if I may
4 look at my notes, Judge, certainly wouldn't want to do anything
5 improper here.

6 I think he's probably right, Judge. I think I was
7 responding to Mr. Kefalos's points rather than his. So I think
8 the points have been made.

9 THE COURT: All right. Anything further of this
10 witness?

11 MR. McQUILLIN: Just one question.

12 MR. BARR: Whoa. Whoa. He objected to my
13 examination. He had already closed his. There's no questions
14 more he can ask.

15 THE COURT: This is Mr. Kefalos's witness.

16 MR. BARR: Okay. All right.

17 THE COURT: So he gets one last shot.

18 RE CROSS-EXAMINATION

19 BY MR. McQUILLIN:

20 Q. You were asked questions about the due-tos and
21 due-firms. And I think the implication is that these were all
22 properly accounted for and that sort of thing. So you would
23 agree with me if the books say that Crew Carolina or Richard
24 Stoney owe money back to the Boathouse, it should be paid back,
25 correct?

1 back?

2 A. Well, that would be impossible for him to do.

3 Q. So the answer to my question is, you agree with me
4 that the books show that the money is owed, but your brother
5 can't pay it back and won't pay it back, correct?

6 A. I think he will do everything he can to pay it back.

7 Q. Has he paid a dime back from Crew Carolina?

8 A. Yes, he has.

9 Q. How much has he paid?

10 A. I don't know the answer to that question, but I know
11 I've paid a good bit into it.

12 Q. Which, again, is why you are personally opposed to
13 this action, correct?

14 A. Yes.

15 MR. McQUILLIN: Thank you.

16 THE COURT: All right. Thank you. You may step down.

17 Next witness.

18 MR. BARR: I call Richard Stoney, Your Honor.

19

20 RICHARD STONEY,

21 having been duly sworn, testifies as follows:

22 THE CLERK: State your full name for the record.

23 THE WITNESS: Richard Smith Whaley Stoney.

24 DIRECT EXAMINATION

25 BY MR. BARR:

1 Q. Mr. Stoney, how old are you?

2 A. 66 years of age, Mr. Barr.

3 Q. Where do you live?

4 A. I live in Mount Pleasant.

5 Q. And what is your current occupation or profession?

6 A. I am -- my current occupation has been for the last 10
7 years the restaurant business full-time. For a while -- I've
8 been in the restaurant business for about 20 years. And for a
9 while, I practiced law actively, up until 10 years ago. I
10 still practice some, but --

11 Q. You are getting ahead of my questions. So I will take
12 them one at a time. Are you married?

13 A. I am.

14 Q. What is your wife's name?

15 A. Debra Bowlby.

16 Q. What does your wife do?

17 A. She's a pediatric endocrinologist at the Medical
18 University.

19 Q. What is your education?

20 A. College, law school, completed law school in '79, and
21 then went right to work at the Solicitor's Office in 1979 right
22 out of law school.

23 Q. And after the solicitor's office, what did you do?

24 A. I was at the solicitor's office almost five years.
25 And I went into private practice on the first floor of our

1 family's law building. I started a firm there and practiced
2 actively for over 20, 25 years.

3 Q. And you married Lori Stoney, who testified
4 yesterday?

5 A. Correct.

6 Q. In what year did you marry?

7 A. We were married in October of 1996.

8 Q. And you have a child who is Croft?

9 A. We do.

10 Q. How is she doing today, by the way?

11 A. She's doing very well. And has been doing well the
12 last two or three days. Thank goodness.

13 Q. So you were a practicing lawyer. Tell Judge Newman,
14 how is it a practicing lawyer segued over into the restaurant
15 business?

16 A. Well, I don't want to get off track, but it's always
17 been sort of an interest of mine. When I was at the College of
18 Charleston, when I was 19 years of age, the drinking age, as
19 you may recall, Judge, was 18 at the time. I had mowed lawns
20 and done certain jobs after school. My brother and sister both
21 went off to college and I elected to stay in Charleston. I
22 think my sentence was that I needed to stay with my partners
23 and live in my parents' house. And I was very, very committed
24 to extricating myself from living with my father and mother,
25 who I love to death. So I went out and mowed lawns for a year,

1 year and a half for a landscaping company.

2 And then there was a building on corner of Calhoun and
3 St. Philip Street that was owned by a distant relative. And I
4 thought it was the perfect spot for a bar. And my father
5 thought I lost my mind. And I convinced him to let me do it.
6 And I borrowed the money from Mr. Lee, Henry J. Lee --

7 Q. Mr. Stoney, having known you for many years, let me
8 see if I can help this along. You opened a restaurant in
9 college; is that right?

10 A. That's correct. And then I went -- did not get back
11 in the restaurant business until the Boathouse on Breach
12 Inlet.

13 Q. So how did you learn of that opportunity? And tell us
14 how it got started.

15 A. The property at Breach Inlet was a property that had
16 been used for many things. And it was mainly a floundering
17 restaurant at the time. I learned through a client of mine
18 that it was available. I had been to California and had seen a
19 restaurant there and dined at a restaurant that I think was
20 unique for this area. And that was a restaurant that served
21 four or five types of fish every day, fresh fish. And then you
22 can get sides and you had a choice of two sides. And I thought
23 it would be a great concept for Charleston. So I went out on a
24 limb, knowing very little, and leased the property and started
25 construction in October of '96, I believe. And it took about

1 one year, took about one year to open all total.

2 Q. So what kind of improvements were done to the
3 property?

4 A. Tremendous improvements to the property.

5 Q. So there was a structure there. Did it stay or did
6 you build a new one?

7 A. The structure there was very basic. It was actually
8 right after Hurricane Hugo. And so the owner of the property,
9 his name is John Cantrell, had taken two units, pre-fab units
10 that actually still had wheel bases on them, and moved them in,
11 bolted them together and built a restaurant around that. And
12 we added a foundation built all the way around.

13 The architect was Randy Gibson, who is quite
14 well-known in this area as far as restaurants. And Reggie
15 helped me. And I did 90 percent of the work, contracted
16 everyone. We took a year to build it and opened the door.

17 Q. Forgive me for interrupting you again. I would like
18 to tell the judge, I would like you to tell the judge, first of
19 all, you said you leased the property. Who signed that lease?

20 A. I did.

21 Q. And was there a personal guarantee involved?

22 A. Yes.

23 Q. And what was the term of the lease?

24 A. I honestly can't remember how long, but I'm pretty
25 sure it was a 20-year lease.

1 Q. Were there options to purchase?

2 A. Yes.

3 Q. Ultimately, did you buy the land under that option?

4 A. I did.

5 Q. Do you remember how much you paid for it?

6 A. I honestly can't remember, but it was over a million
7 dollars. It was slightly over a million dollars.

8 Q. When you bought the land, did you personally guarantee
9 it?

10 A. I did.

11 Q. The loan, I mean?

12 A. Personally guaranteed the loan as well as personally
13 guaranteed the lease before, which ultimately became the
14 option.

15 Q. And who paid to construct the original building there?

16 A. I paid all but \$50,000. And the total was somewhere
17 in the neighborhood of about 425- to \$450,000.

18 Q. Did there come a time when you asked your brother and
19 your cousin Laurence if they would be interested, or did they
20 become interested in investing in the property?

21 A. Towards the end, borrowing money --

22 Q. You mean towards the end of construction?

23 A. Towards the end of construction -- borrowing money for
24 a restaurant is not an easy thing to accomplish, back then or
25 now. Banks are just not inclined to loan money to restaurants.

1 And so I was about \$50,000 short to finish the restaurant. And
2 I consulted with my brother. He agreed to put in 25,000. I
3 gave him another 5 percent. And that was 5 percent -- I gave
4 him another 5 percent for his help. He had been helping me off
5 and on for about a year. And during the course of that, at
6 some point, Laurence approached me. And we had a conversation.
7 And he said he had some money and he would consider investing.
8 I had other people interested --

9 Q. How much did Laurence invest?

10 A. \$25,000.

11 Q. Did he invest any more than 25,000?

12 A. No, no. I heard his testimony --

13 Q. Is it correct then that the original three members of
14 the Boathouse, LLC, Boathouse at Breach Inlet, LLC, were you,
15 your brother Ted, and Laurence?

16 A. That's correct.

17 Q. And Ted had a 10 percent interest. Laurence had a 5
18 percent interest. And you held the difference at the time?

19 A. That's correct.

20 Q. And then subsequently, how is it that interest came to
21 be placed in the names of your wife Lori, your son Richard Jr.
22 and your daughter Croft? Were they gifted by you?

23 A. They were.

24 Q. So they were created by gift?

25 A. They were.

1 Q. And was Laurence aware of that when it happened?

2 A. At some point. I'm not sure.

3 Q. Did he ever object to you about it?

4 A. No. He knew. He knew for years, since, I'm sure, as
5 early as 1999.

6 Q. How did the Boathouse at Breach Inlet do financially
7 those early years?

8 A. Well, to put it in context, first of all, the
9 competition east of the Cooper was almost nonexistent back
10 then. Though many people said I was crazy to open the
11 Boathouse because it was off the beaten path, turned out to be
12 quite successful. The menu was very well-received. And got an
13 incredible location as far as views and such. So it was very
14 successful from day one.

15 Q. So were you able to make distributions to the members
16 early on?

17 A. Absolutely.

18 Q. And that included Laurence?

19 A. That included Laurence.

20 Q. Did there come a time then when you looked to open
21 another restaurant?

22 A. Yes.

23 Q. So if the Boathouse at Breach Inlet opened -- was it
24 '97?

25 A. October of '97.

1 Q. So the Breach Inlet opened in '97. And what was the
2 next restaurant you opened?

3 A. Boathouse at East Bay. And, you know, I was such a
4 greenhorn at this that I read multiple books before I opened
5 the first restaurant. And I, you know, subscribed to a weekly
6 periodical known as Restaurant News. And every article I read
7 was that the only way to be successful at any large-scale in
8 the restaurant business was to have at least three or four for
9 buying power, as well as for, you know, the cross-utilization
10 of product, cross-utilization of staff. So my goal was to
11 build four or five Boathouse restaurants. And Breach Inlet was
12 first. East Bay was second.

13 Q. And when was East Bay?

14 A. East Bay opened -- we built it in three months. When
15 I say "we", I was the foreman that ran the job. We built it in
16 three months. And we were opened by some time in February of
17 1998.

18 Q. Was it '98 or '99?

19 A. I believe -- let me see. I have to do math again.
20 February of 99, you are correct.

21 Q. Now, was Laurence also a participant in that?

22 A. He was.

23 Q. In your -- let me ask you about another subject
24 matter, hopefully briefly. In your young adult and college
25 years before you, let's say, became a lawyer, how did you and

1 Laurence get along?

2 A. Laurence, you know, this is unpleasant for everybody.
3 I'm sure unpleasant for Laurence to hear, but Laurence has been
4 a bully since the first day. He's just been a big guy. He
5 grew up, was bigger than anybody. He was a bully to Randell, a
6 bully to Teddy, but none of us took it. We didn't take it at
7 all. And Laurence -- I had a very, very detached relationship
8 with Laurence, even when he went off to New York, which was for
9 some extended period of time.

10 Q. Okay. So you remember him going off to New York to
11 work, as you've described?

12 A. Yes, yes.

13 Q. When you were practicing law after you left the
14 solicitor's office, you said it was on Broad Street?

15 A. That's correct.

16 Q. And tell the Court who Laurence's father was?

17 A. His father was Laurence, my father's younger brother.
18 There were three brothers. Randell, my father, Theodore and
19 Laurence.

20 Q. And what did the senior Laurence Stoney do?

21 A. He was an attorney. And he practiced in the law
22 building that ultimately, when I left the solicitor's office, I
23 went down to Broad Street. I talked with Uncle Laurence.

24 Q. So you practiced in the same building as Laurence's
25 father?

1 A. Same building. And I saw Uncle Laurence pretty much
2 every day for his entire life, entire remainder of his life.

3 Q. Did there come a time when the senior Laurence Stoney
4 came in to some bad health?

5 A. Unfortunately, he became very sick with emphysema,
6 primarily, acute emphysema, to the point where he had an oxygen
7 tank and such. And it was quite sad. I would do all kinds of
8 things with Uncle Laurence and he --

9 Q. Hate to interrupt you again. And during your Uncle
10 Laurence's, let's say, later stages of emphysema, where was
11 Laurence Jr, Laurence in this case living?

12 A. I believe Laurence -- and the chronology that he's
13 laid out over the last couple of days has helped some. But I
14 believe Laurence, the last two years of his father's life, was
15 living in Atlanta with, ultimately, Robin, Robin who ultimately
16 became his wife. And I know she had a place that she had
17 rented --

18 Q. Let me interrupt you again. Did there come a time
19 then when the Laurence Senior's health condition became so
20 severe that you felt you had to speak to your cousin about it?

21 A. It did. I made several calls to Laurence asking him
22 to come back to Charleston. I know Randell, my cousin, was
23 involved as well. Laurence's older brother Tom, who he has
24 never gotten along with, and Tom has never gotten along with
25 any of them, he's the oldest of the grandchildren. And to be

1 quite candid and as polite as I can be, a very strange duck --

2 Q. I'm going to interrupt you again. Did Laurence, your
3 cousin Laurence, the plaintiff in this case, did he come back
4 to Charleston before his father's death?

5 A. Shortly before his father's death.

6 MR. McQUILLIN: Your Honor, we've been going now for
7 10 or 15 minutes. I was fine with a little bit of background.
8 But this has absolutely nothing to do with this case. And so I
9 would ask that we get through the background stuff. And if
10 he's going to ask substantive questions, let's move along.

11 THE COURT: Mr. Barr.

12 MR. BARR: You want me to respond to that?

13 THE COURT: Yes, sir.

14 MR. BARR: Well, I'm leading up to presenting Your
15 Honor with some testimony and evidence relating to the
16 relationship between my client and Laurence at the time my
17 client and Laurence first engaged in his business
18 relationships, which I will proffer my client is prepared to
19 testify that after Laurence's problems in New York, which
20 Laurence talked about on the stock exchange, and the problems
21 that came that he admitted to with the stock exchange, that
22 Laurence came back home shortly before his father's death, and
23 that Laurence -- my client believed that Laurence's actual
24 personality had changed. He was a much kinder and gentler
25 person. He was all contrite. And my client is prepared to

1 testify that because of the problems Laurence had had, that he
2 actually felt sorry for him. And that he -- it was in that
3 context that he and Laurence first engaged in this business
4 relationship.

5 And then, of course, we will get into what happened
6 thereafter. I'm sorry to take so long explaining it. But
7 that's where I'm going. I think it's quite germane to the
8 issue of the vindictiveness that we assert the plaintiff brings
9 to this case. I know that's a long explanation, but that's
10 where we are going.

11 MR. McQUILLIN: I am fine with what Mr. Barr has
12 testified to. If we can move past him now asking his client
13 that for 45 minutes, we are fine with just having you testify
14 to those facts to the Court.

15 MR. BARR: I am not under oath, Your Honor. I'm just
16 proposing to the Court.

17 THE COURT: Okay. You may proceed.

18 MR. BARR: Thank you, Your Honor.

19 BY MR. BARR:

20 Q. I will try to expedite it, Mr. Stoney. Thank you and
21 Your Honor, thank you for your patience.

22 So, Richard, were you generally aware of the problems
23 Laurence had had up in New York?

24 A. I was familiar throughout many of the problems
25 Laurence had.

1 Q. So let me go back to that. When Laurence Jr, the
2 plaintiff in this case, finally came back to Charleston
3 sometime before his father's death, how would you characterize
4 his attitude, his personality at that time?

5 A. Laurence was a different person. I mean, he was
6 humble. He was -- he seemed to want to hang out with the
7 people I was hanging out with. I had a dear friend Demi that
8 Laurence cared about and seemed to love to be around. And so I
9 saw Laurence at least once a week probably for off and on for a
10 couple of years. And, you know, I begged him to come back
11 because of his father's health and discord between his father
12 and his brother, Tom. His brother was threatening to have him
13 committed.

14 Q. Was it this contrite and more humane Laurence then
15 that you dealt with about investing in the Boathouse at Breach
16 Inlet?

17 A. Yes, clearly. Candidly, I was a little reserved
18 because of my past relationships with Laurence, but I thought
19 it was a relationship that would work out and be fine. And,
20 unfortunately, right after we opened the first restaurant, you
21 know, some of the same old Laurence started surfacing. Within
22 a year, year and a half, Laurence was almost back to being
23 Laurence.

24 Q. Okay. But, nevertheless, it was in this context that
25 your cousin Laurence invested in the Boathouse at Breach Inlet,

1 which is the business principally at interest here. But then
2 he also invested at the Boathouse at East Bay, correct?

3 A. That is correct.

4 Q. Somewhere in there, that is the creation of the
5 Boathouse at Breach Inlet and the Boathouse at East Bay, was
6 there the formation of this management company called Crew
7 Carolina?

8 A. Yes. I believe Crew was open some time in '99,
9 shortly before East Bay opened, so sometime maybe December of
10 '99 off the top of my head.

11 Q. Or '98 maybe?

12 A. '98, that's right, Boathouse opened in February
13 of '99.

14 Q. Now, in the context then of the Boathouse at Breach
15 Inlet, the Boathouse at East Bay and the formation of Crew
16 Carolina, would you tell the judge, who is Bobby Pearlman?

17 A. Bobby Pearlman is a tax attorney. I believe it was
18 brought up yesterday. His father was Gus Pearlman, who for 50
19 years or more was probate judge here in Charleston, very
20 well-respected member of the bar, as is Bobby. And Bobby was a
21 tax attorney who my family used. And I used him to help me
22 with formation of these entities.

23 Q. Of these entities, so did Bobby draft the operating
24 agreement for the Boathouse at Breach Inlet?

25 A. He did.

1 Q. And the one at East Bay?

2 A. He did.

3 Q. And Crew Carolina?

4 A. He did.

5 Q. Did there come a time when a meeting was held, I
6 guess, with Bobby and the members, to discuss the relationship
7 between these entities?

8 A. It absolutely occurred. And it occurred approximately
9 two to three months after East Bay opened. I'm not sure
10 exactly when.

11 Q. So to date that then, if the Boathouse at East Bay
12 opened --

13 A. February '99.

14 Q. In February of '99 or some time after that?

15 A. It was.

16 Q. Do you remember where the meeting was?

17 A. Meeting was held at my law office on the first floor
18 of the Stoney Law building, and I was on the first floor.

19 Q. Who was present at the meeting?

20 A. Bobby Pearlman, who was our tax attorney, Hal
21 Pratt-Thomas, who was the accountant, whose firm Pratt-Thomas
22 and Gumb, is the same firm that Laurence used. My sister, who
23 is an investor in East Bay, Michael Maloney, was an investor in
24 East Bay, and then the three founding members of the Boathouse
25 on Breach Inlet, which were my brother Ted, Laurence and

1 myself, as well as Jane Baker, who was my right hand, worked
2 for years for Mayor Riley, but has since, you know, gone off to
3 other things. But she was working for him. She probably
4 worked for me for about five years.

5 Q. With respect then to the role of Crew Carolina -- let
6 me strike that and ask a prior question. Was the meeting
7 primarily conducted by Bobby Pearlman?

8 A. I don't know if it was primarily conducted by Bobby,
9 but we had an agenda. We had an outline.

10 Q. What was discussed then with respect to the role of
11 Crew Carolina in the management of these restaurants?

12 A. Well, it was explained that for many reasons --

13 MR. McQUILLIN: Objection, Your Honor. Hearsay. He's
14 talking about what Bobby Pearlman explained.

15 BY MR. BARR:

16 Q. Was Laurence Stoney present?

17 A. Laurence was present. And Laurence has already
18 testified, if I recall, to some of this case.

19 MR. BARR: I don't think that's hearsay.

20 MR. McQUILLIN: He was about to say what Bobby
21 Pearlman, who is not here, explained at this meeting.

22 MR. BARR: Conversation in the presence with the
23 party. It was a conversation in the presence of the party in
24 which the witness is going to testify the party participated
25 in. And it's got to be --

1 MR. McQUILLIN: If he's going to testify about what my
2 client said, that's fine. But if he's going to testify about
3 what Bobby Pearlman, a third-party who is not here, said at
4 this meeting, that's classic hearsay, being that it's for the
5 truth of the matter asserted.

6 MR. KEFALOS: It's not being offered for the truth of
7 the matter asserted. It's being offered for notice, because if
8 Mr. Stoney is permitted to testify, he will explain that Bobby
9 Pearlman told the plaintiff how the sweep account is going to
10 work for Crew Carolina.

11 MR. BARR: It's about the management process.

12 MR. McQUILLIN: I'm not sure Mr. Kefalos has a dog in
13 this fight. It's not his witness. He hadn't asked the
14 question, but all that being said, I believe that it's classic
15 hearsay if this witness is going to testify as to what Bobby
16 Pearlman explained at this meeting. He's not here today.

17 THE COURT: I sustain the objection.

18 BY MR. BARR:

19 Q. Well, at the meeting, Mr. Stoney, the two restaurants
20 were up and running, correct?

21 A. That's correct.

22 Q. And one of them was the Boathouse at East Bay,
23 correct?

24 A. That's correct.

25 Q. And is it correct that some paintings had been

1 purchased for the Boathouse at East Bay?

2 A. I had commissioned two large paintings of -- the
3 building is huge, unfortunately, ridiculously large. And you
4 can imagine this courtroom, there were bare walls, brick walls.
5 And I had an artist who painted two paintings. We spent not a
6 ton of money, but I made the comment during the meeting that in
7 that I owned, with my group, 95 percent of the restaurant, and
8 that if there was anything, you know, if the restaurant were to
9 close or if we were to change ownership or whatever would
10 happen and the paintings became an issue, that they would
11 belong to me, because it would just be too complicated to buy
12 up two large paintings. And I also mentioned that I was going
13 to receive a car payment and I was going to increase my salary.
14 Laurence absolutely came unglued, used profanity, was extremely
15 rude to Bobby Pearlman, who he had never met, as I understand
16 it. He knew Pratt-Thomas, had known for years. Harold was
17 offended. Jane, everyone was offended. Everyone was shocked.
18 I think everybody walked out. But he was completely out of
19 control. And the demeanor that His Honor witnessed in this
20 courtroom, it is -- it would be a starter kit compared to what
21 happened in that room that night.

22 Q. As of the date of that meeting and as of the date of
23 the up-and-running operations of the Breach Inlet and East Bay
24 restaurants, what was the role of Crew Carolina?

25 A. It was a management company, which is not at all

1 uncommon for restaurants or small businesses where there are
2 multiple locations. And there were many discussions as far as
3 that.

4 Q. What are the advantages to using a management company
5 in the operation of multiple restaurants?

6 A. Well, in restaurants, one of the main reasons is to be
7 able to buy and to receive lower pricing when you deal with
8 some of the big purveyors, such as Sysco or US Foods. If you
9 have -- two restaurants make a big difference, three or four
10 make a huge difference. And discussions I made to the group
11 was that I fully intended to open two or three more
12 restaurants. I also said at that meeting because concern of
13 future restaurants and who might want to come in, that those
14 restaurants would not necessarily be open to, you know, to
15 members that were present, because you never know how the
16 relationship is going to pan out. So I was very careful to
17 point that out. Laurence didn't like that.

18 Q. Does the management company offer any advantage to the
19 direct management functions of the restaurants themselves?

20 A. Well, in many respects because, you know, you have --
21 you duplicate a lot of services. You reduce the duplication of
22 a lot of services. And you have an advantage, which is huge in
23 restaurant business, because the managers and their illnesses
24 and vacation to be able to rotate that management, as well as
25 checking, as well as health benefits.

- 1 Q. Did you also discuss that at that meeting?
- 2 A. Absolutely.
- 3 Q. And was Bobby present, Pearlman present?
- 4 A. Absolutely.
- 5 Q. And was Laurence Stoney present?
- 6 A. Absolutely.
- 7 Q. Are there also advantages from an accounting
- 8 standpoint in the management of funds?
- 9 A. Yes.
- 10 Q. And what are they?
- 11 A. Well, again, I would defer to the accountants, but I
- 12 think it's -- it would make just commonsense, make sense that,
- 13 you know, you have all these different bills coming in. And
- 14 they need to be paid. And, you know, as opposed to separate
- 15 checks and checking accounts, it reduces the number of checking
- 16 accounts and checks to be kept up with, as long as everything
- 17 is properly accounted for, as well as it just saves a lot of
- 18 time managing the restaurants.
- 19 Q. And as of that date, the date of this meeting, had
- 20 there been created this process whereby the deposits from, at
- 21 that point, two separate restaurants were centralized and
- 22 accounted for by Crew?
- 23 A. Yes.
- 24 Q. Was this discussed in that meeting?
- 25 A. Yes, it was.

1 Q. And was Laurence present?

2 A. Yes, he was.

3 Q. Did he object to that?

4 A. No, he did not.

5 Q. What is your memory then of what Laurence contributed
6 to that meeting at your office at which Bobby Pearlman was
7 present on that night?

8 A. Laurence's body language -- and everyone was calm,
9 respectful, polite, professional. Laurence was, as His Honor
10 saw in this courtroom at different times, combative, rude. And
11 I really believe -- I knew he walked out towards the end. He
12 was certainly so rude to Bobby Pearlman, Bobby was just
13 astounded.

14 Q. Was that same behavior by Laurence manifested
15 thereafter, that is to say, at times after that meeting you
16 just described?

17 A. Well, I think probably Teddy referred to the night
18 Breach opened, he was grossly intoxicated. He was towards --
19 after he had been there a couple of hours, intoxicated before
20 he arrived -- it was rather large function. It was probably
21 200 people invited to sample the food and what you call a
22 dress-rehearsal type or closed opening. And Laurence, I can
23 remember where he was sitting, he was only a table away from
24 me, he was so boisterous, I had complaints from people in the
25 room, I had complaints from servers. I finally went over to

1 Laurence and asked him to calm down a couple of times. He was
2 very disrespectful to me. He was respectful to the manager,
3 Sam Richardson at the time. So disrespectful that Sam said,
4 you have to get him out of here. And I told him to leave, and
5 he left.

6 Q. Let me invite your attention to some of the exhibits
7 in the case. These will be principally Exhibits 1 and 2. And
8 I think they are jumbled up here. Do you have copies of them?

9 A. I believe I do. Is No. 1 August 9th?

10 Q. Number 1 is August 9th, 2005, letter.

11 A. Yes, I have that.

12 Q. Now, the meeting that you just described at your law
13 office after East Bay was opened would have occurred somewhere
14 in 1999; is that correct?

15 A. That's correct.

16 Q. This letter, which is Exhibit 1, is dated some six
17 years after that, August of '05. What is it that led to your
18 writing Laurence this letter, Exhibit 1, on August 9th, 2005?

19 A. This letter came about as a result of Chip Robinson,
20 who is our comptroller, had received a phone call from
21 Laurence. And without violating any rules of hearsay, as a
22 result of that conversation, Chip and I talked and decided to
23 write Laurence a letter. Laurence had called. Laurence had
24 asked for certain documents and information. He was extremely
25 rude. And we thought that it was best to get back as soon as

1 possible to explain as much as we could and then leave open a
2 meeting, a follow-up meeting.

3 I would also add that I find it remarkable Laurence
4 has denied that he was not offered multiple times to look at
5 the books. All he had to do was drive over. All we ask is
6 that he come to Crew and look at the box at Crew. That's all
7 we ever asked.

8 Q. Where was -- where were the offices of Crew in
9 relation to his office?

10 A. Less than a two-minute drive. You could walk it in
11 five minutes. We were two blocks away, a very unobstructed
12 area, what you call right off of Morrison Drive.

13 Q. Now, the bottom paragraph of Exhibit 1, it refers to
14 Barry, who is the accountant, Barry Gumb, right?

15 A. Yes.

16 Q. He's doing evaluation. And then you say, I did so in
17 an attempt to be overly fair and ensure we dissolve the
18 business relationships as the gentleman with no hard feelings.

19 So with respect to that sentence, what conversations
20 or communications had occurred between you and Laurence about
21 the business relationships? Had you discussed a buyout of
22 Laurence's interest?

23 A. Laurence had been saying so many awful things about
24 me. And this is at a time when, you know, distributions were
25 all being made. I was doing everything I could to run those

1 businesses as well as I could, including pouring an enormous
2 amount of time into them, my own time. I'm a perfectionist. I
3 would be picking up trash. I did everything. I worked seven
4 days a week many weeks. And Laurence would just -- you could
5 never please Laurence. And so I had a conversation. And
6 getting up with Laurence is almost impossible. I don't
7 remember ever receiving a letter or response to anything from
8 Laurence. I would write and not hear anything.

9 So I would sometimes drive to his place of business
10 and walk in. I know we had a conversation which we walked
11 upstairs to his office shortly before this June meeting with
12 Barry Gumb and I suggested to Laurence, Laurence, Barry is in
13 with Harrell, Barry is married to Laurence and my second
14 cousin, I know he trusted him.

15 Q. Excuse me, Mr. Stoney. This line I'm asking you
16 about --

17 A. Is the bottom paragraph --

18 Q. -- he's talking about dissolving the business
19 relationship with no hard feelings. What I'm asking you is --
20 and maybe I didn't ask it clearly enough. What conversations
21 had you and Laurence had, if you had any, before this letter
22 about dissolving your business relationship?

23 MR. McQUILLIN: Objection, Your Honor. It hasn't been
24 established as to which business this is talking about. This
25 questioning is somewhat misleading, because it doesn't deal

1 with The Boathouse at Breach Inlet. This is not about the
2 entity this case is about. It's about East Bay.

3 MR. BARR: Your Honor, this is a proper objection.
4 I'm trying to conduct my direct examination.

5 MR. McQUILLIN: I would ask he at least lay foundation
6 what entity he's talking about before he questions the witness
7 about it.

8 MR. BARR: That's still not a proper objection. I get
9 to ask my questions. I got to establish a foundation to get
10 the ultimate question, Judge.

11 THE COURT: Overrule the objection.

12 BY MR. BARR:

13 Q. Now, the question, Mr. Stoney, is, what led up to your
14 saying -- I want to find out what communication -- let me say
15 it more precisely. What communications did you and Laurence
16 have, if you had any, that led you to say that -- to refer to
17 dissolving your business relationship as gentlemen? To me, the
18 sentence implies at least that you talked about it; had you?

19 A. We absolutely did.

20 Q. That's what I'm asking. So how long before this did
21 you talk and what did you talk about?

22 A. You see that the date is June 7th.

23 Q. No, it's August --

24 A. No, meeting with Barry Gumb is June 7th. At the
25 bottom is what I'm trying to elude to. I'm sorry. It's June

1 7th. Sometime before June 7th, I will say within a week or two
2 of June 7th, I had driven to Laurence's office, because I could
3 not get him to return my phone call. I remember distinctly
4 going inside, walking upstairs to his office, which I had never
5 been to before, very sparse upstairs. And we talked about
6 meeting with Barry Gumb. I suggested it.

7 At some point, I guess he agreed because we set it up.
8 And it's referenced in here we actually had a meeting.

9 Q. Did you meet with Barry?

10 A. Which I was trying to come up with a formula to buy
11 Laurence out of both restaurants. And at that time, if you
12 know the date of the letter, Breach Inlet was losing money,
13 so -- excuse me, East Bay was losing money. Patrick Ringwald
14 had been horribly removed from this earth.

15 Q. In '03?

16 A. Yeah.

17 Q. And so in response then to counsel's objections, this
18 discussion about dissolving the business relationships would
19 have been in both?

20 A. Correct.

21 Q. And you already met with Barry Gumb on June the 7th?

22 A. Absolutely.

23 Q. All right. And so you are writing him on August the
24 9th. And what is your purpose in writing him on the 9th?

25 A. Well, the purpose was that he made the phone call to

1 Chip, and as a result of the phone call to Chip and the
2 questions being asked and the amount of information he was
3 requesting and giving all that was going on at the time, I
4 simply wanted to narrow down exactly what he needed so that we
5 could supply it to him and move forward and hopefully resume
6 conversations with Barry.

7 I don't remember Laurence ever, ever coming back to me
8 with anything relating to the meeting with Barry or anything
9 following up to this letter.

10 Q. Now, on the second page of Exhibit 1, at the bottom,
11 which is -- let's see. Last, you said, please give me a call
12 at your earliest convenience so we can discuss the information
13 you would like to review. My thoughts are to set up a meeting
14 with Harold Pratt-Thomas and Barry Gumb and Rudy Thomas. All
15 these of those are accountants, right?

16 A. Correct.

17 Q. Which would completely answer all the questions and
18 unfounded suspicions -- sorry -- you apparently have. In the
19 interim, please keep this matter confidential as any outside
20 discussions could impact the LLC.

21 Did Laurence respond to that?

22 A. He never responded in any form.

23 Q. Did you follow up and ask him, Laurence, are you going
24 to respond to me?

25 A. No, I didn't send him another letter. I'm confident

1 that I had a conversation with him. I probably had to drive
2 back over to Coleman, because, you know, it was impossible to
3 get up with Laurence.

4 Q. Let me then invite your attention to Exhibit 2.
5 Exhibit 2 is your e-mail to Laurence on June the 23rd of 2010.
6 And in the final paragraph of that, you say, we either need to
7 meet or instead of threats, let meet with Rudy Thomas and try
8 to work out an agreement. Was there ever a meeting with Rudy
9 Thomas after this?

10 A. No, there was not. There was never a meeting with
11 Rudy Thomas. And Rudy was right in the office, right with
12 Pratt-Thomas, who is copied on this, Harold Pratt-Thomas, and
13 anyone that had been involved in the Boathouse accounting. I
14 also would refer to the upper first sentence, left a message
15 following conversation. I'm confident Laurence never called me
16 back.

17 Q. So that was -- did Laurence respond to this?

18 A. No.

19 Q. Did you try to follow up on it with him?

20 A. I'm confident I did. Laurence was saying so many
21 things and making so many accusations, again, I would note 2005
22 is when all distributions had been paid. And then there's
23 2010, which there had been a period where some distributions
24 had not been paid, but in 2010, I paid him \$10,000.

25 Q. Now, I think you might have made a comment about this

1 a minute ago, but let me ask you about him having access to the
2 books. Did Laurence ever ask you for access to the Boathouse
3 at Breach Inlet books?

4 A. On several occasions we discussed Boathouse, the
5 access to the Boathouse books. Chip wrote several letters to
6 Laurence about the books, always saying, and testified in the
7 domestic trial that, you know, Laurence had full access at any
8 time he wanted with reasonable notice as long as he came to the
9 Boathouse. We were not going to distribute the documents and
10 let them go outside.

11 Q. Did you say Boathouse, come to Boathouse or come to
12 Crew?

13 A. I'm sorry, I didn't mean "Boathouse", Crew, on John
14 Street --

15 MR. KEFALOS: Romney.

16 THE WITNESS: Romney Street. Sorry.

17 BY MR. BARR:

18 Q. How far was that from Laurence's office?

19 A. Again, about three-minute drive at worst and about
20 five-minute walk. And I might add, we were probably at that
21 address for better than 10 years.

22 Q. Now, Laurence testified and admitted that when you and
23 Teddy were trying to buy the land at East Bay on which the
24 Boathouse at East Bay was constructed, that he attempted to buy
25 it out from under you. Did that have -- did that activity of

1 the Laurences have an impact on what you ultimately bought it
2 for?

3 A. Regrettably, it had a big impact. Threw kind of a
4 wrench into the negotiations. And when I say "negotiations",
5 we already had a contract. It was under contract. I believe
6 there were stipulations in the contract, but I do know that,
7 ultimately, the price went up as a result of Laurence's attempt
8 to buy. Laurence -- we had -- and there is a letter that I
9 could produce that shows all of the issues we had at East Bay.
10 We were having tremendous problems with moisture with the
11 building. And the attorney for the Drew family called me. As
12 a result of that conversation, I learned that Laurence was
13 trying to buy the property. Had I not received that phone
14 call, I would not have known that and we might have lost the
15 property. It was -- you know, it would have been devastating
16 to that, the ownership of that LLC, meaning to the members of
17 the LLC.

18 MR. BARR: Your Honor, I'm almost at the end of my
19 direct. And I have some exhibits that will take me a minute to
20 assemble. And I will ask the witness a question about them and
21 turn him over for cross. So if you want to take a brief
22 recess, it might be a good time to do that when I assemble
23 exhibits and give counsel copies.

24 MR. McQUILLIN: Your Honor, we will stipulate to their
25 admission. They are photographs of the Boathouse. He can ask

1 the witness when they were taken, what exhibit. We can roll
2 with it. My cross is not going to be long.

3 THE WITNESS: Your Honor, may I stand up for a minute?
4 I have a very bad back.

5 THE COURT: We will take five minutes.

6 MR. BARR: I just want to assemble them.

7 (Defendant's Exh. 13, Photographs, is received in
8 evidence.)

9 BY MR. BARR:

10 Q. I have handed you a stack of photographs which were
11 marked Exhibit 13. Are you familiar with these?

12 A. I am.

13 Q. Did you take the photographs?

14 A. I did.

15 Q. When did you take them?

16 A. I believe it was last Wednesday when I was over at the
17 house.

18 Q. Do they fairly represent the condition of the property
19 at that time?

20 A. Absolutely.

21 MR. BARR: They are offered with no objection. And I
22 will turn the witness over for cross.

23 MR. McQUILLIN: No objection, Your Honor.

24 THE COURT: Okay. They are in.

25 (Defendant's Exh. 13 is received in evidence.).

1 MR. BARR: Thank you, Mr. Stoney. Answer questions
2 from counsel.

3 CROSS-EXAMINATION

4 BY MR. McQUILLIN:

5 Q. Mr. Stoney, first off, let me tell you that I enjoy
6 your restaurant. I proposed to my wife on Isle of Palms. And
7 the place we had dinner after I proposed was the Boathouse on
8 the back deck that's depicted in those pictures.

9 A. Thank you, Mr. McQuillin, for that statement.

10 Q. I respect you. You are a very likable guy. You can't
11 help but like you. But, unfortunately, we are crossways in a
12 lawsuit. So I'm going to have to ask you some questions.

13 A. I appreciate what you have to do and respect what you
14 have to do.

15 Q. Is it your testimony, sir, that Bobby Pearlman and
16 Laurence were at this meeting where you discussed how you were
17 using Crew to fund other entities, and everybody was okay with
18 that? Is that your testimony to this Court?

19 A. No, I think you are totally misleading and inaccurate.
20 What I said was that, at the meeting -- and I guess I can now
21 get into what Bobby Pearlman said --

22 Q. No. I asked you, is it your understanding that
23 Mr. Pearlman and Laurence approved you using Crew Carolina in
24 the manner in which you did that we've alleged, at that
25 meeting? That was what the testimony --

1 A. I don't think that was the question.

2 Q. It's a yes-or-no question.

3 MR. BARR: Your Honor, I object to the question
4 because he's saying that the manner which it's alleged. That
5 certainly lacks substantial clarity. What does he mean, what
6 we've alleged?

7 MR. McQUILLIN: I will rephrase the question.

8 BY MR. McQUILLIN:

9 Q. Mr. Stoney, at this meeting that you've testified
10 about, is it your testimony that Laurence and Bobby Pearlman
11 knew that you were using Crew Carolina to fund other entities?
12 Yes or no?

13 A. The answer is not a yes-or-no.

14 Q. Let's go back.

15 A. I will say no, and then I will go into it. Okay?

16 Q. Okay.

17 A. At the meeting, I can only reference what was
18 discussed at the meeting, time and place. And that is that it
19 was explained how the accounts were going to be set up, why
20 there was going to be one centralized account, amongst other
21 things that were explained, as I mentioned, you know,
22 increasing my salary and such. At that time, there was no
23 misuse -- no indication of what you are trying to imply now
24 that at that time, at that point in time.

25 Q. So you would agree with me that at this meeting with

1 Mr. Pearlman and my client, it was never discussed that Crew
2 Carolina was going to be funding other entities with Boathouse
3 moneys, correct?

4 A. I would say that's correct at that time and place.

5 Q. Okay. So at this meeting with Bobby Pearlman, it
6 wasn't like Laurence was told, look, I'm going to take a bunch
7 of money from the Boathouse, put it in Crew, and fund Lake
8 Julian and Carolina?

9 A. That's correct.

10 Q. That was not discussed with -- my client did not know
11 about that, correct?

12 A. Absolutely not, second time.

13 Q. Sir, you don't dispute that you took money from the
14 Boathouse at Breach Inlet to fund other businesses and personal
15 matters; is that correct?

16 A. I do not.

17 Q. In fact, you called this practice six times in the
18 family court case "robbing Peter to pay Paul", correct? Do you
19 remember that testimony?

20 A. I remember using the term "robbing Peter to pay Paul".
21 I think contextually, it would be important, contextually. I
22 don't have the transcript in front of me. I don't know that it
23 was six times.

24 Q. Let's put it in context. Page 215 of your trial
25 testimony: As far as where all this money went, it was robbing

1 Peter to pay Paul for four or five years.

2 Do you remember saying that, sir?

3 A. I'm sure I did. That transcript speaks for itself.
4 It's also a time I was in middle of one restaurant that just
5 burned, one man had just been shot, and I absolutely said it.
6 I also went on to discuss the due-tos and due-from that I
7 absolutely accounted for, to an extent that I recall possible,
8 every dime.

9 Q. Have you read the Court of Appeals published opinion
10 about your other litigation?

11 A. Oh, I've read it, and so have you.

12 Q. In fact, they quote you saying in that opinion that
13 you were robbing Peter to pay Paul, correct?

14 A. We can go -- I can see that I used that expression,
15 and I would use it again. Only problem in this particular case
16 is everything is okay as long as Paul, which is Laurence in
17 this case, is getting his fair share. Paul was not complaining
18 when Paul was getting money from Breach Inlet. And every time
19 I brought it up with Paul, meaning Laurence, he would go,
20 separate, separate, totally separate, you know, business. But
21 he had no problems as long as those were being covered. It was
22 only when it was something that affected him that he didn't
23 like

24 Q. This phrase, "robbing Peter to pay Paul", you were
25 robbing the Boathouse, correct? That was your income-producing

1 entity; is that correct?

2 A. Those are your words.

3 Q. Well, tell me this. Were you taking money from the
4 Boathouse and putting it in Crew and using it to fund other
5 entities?

6 A. I admitted that.

7 Q. Okay. So you were taking money from Peter to pay
8 Paul?

9 A. We can continue to use that as the theme throughout
10 this whole case, but what I'm trying to say is yes.

11 Q. Let me ask you this. The Boathouse at times has not
12 been able to make payroll or pay its taxes; is that correct?

13 A. That's correct.

14 Q. The Boathouse --

15 A. Not unusual for most restaurants, particularly during
16 winter months.

17 Q. You would agree with me that if the Boathouse didn't
18 have \$4 million taken out of it, it probably could have met
19 payroll and paid its taxes, correct?

20 A. First of all, this \$4 million dollars you throw out is
21 for other time and another place. And I had not analyzed nor
22 have I seen any of the documents that you have. But,
23 certainly, we have someone employed as well. So as to where
24 that money went and such, it was all documented.

25 Q. This practice that you've now admitted to under oath,

1 did anyone ever tell you that that was wrong, you shouldn't be
2 doing that?

3 A. I think Bobby at one point admonished me, but I don't
4 remember how long ago it was and yet said, just make sure you
5 document, which we had been doing.

6 Q. Bobby is your tax lawyer, correct?

7 A. Tax attorney actually for the business.

8 Q. And you said Bobby admonished you about this
9 practice --

10 MR. BARR: Objection. Objection, Your Honor.

11 MR. McQUILLIN: This is this witness's testimony.

12 MR. BARR: Now, you might recall that I tried to get
13 the witness to testify what the same Bobby Pearlman said at a
14 meeting. And counsel objected it was hearsay. And Your Honor
15 sustained that objection. Now, counsel is trying to get my
16 client to testify about what something Bobby Pearlman told him.
17 I'm objecting. That's hearsay. What's good for one is good
18 for the other.

19 MR. McQUILLIN: It's fine, Your Honor. I've got a
20 memo that was sent by the accountant where it is all
21 documented. So we can get it in. Let's get this -- I'm going
22 to show you this to refresh your recollection. Actually, let
23 me get this back.

24 BY MR. McQUILLIN:

25 Q. Sir, do you recall --

1 MR. BARR: Are you going to hand out copies of
2 exhibit?

3 MR. McQUILLIN: Actually, I don't know that I am yet.

4 BY MR. McQUILLIN:

5 Q. Sir, do you recall --

6 MR. BARR: Before he is asking questions about an
7 exhibit, I'm entitled to see it.

8 THE WITNESS: And I'm entitled to see it as well.

9 MR. McQUILLIN: I'm going to decide whether or not I'm
10 going to put this in. I'm getting ready to ask general
11 questions to see whether he recalls.

12 BY MR. McQUILLIN:

13 Q. Mr. Stoney, do you recall receiving a memorandum from
14 Chip Robinson and being asked about that in your divorce trial?

15 A. To be honest, I do remember something about it, but as
16 far as any details, I do not remember date, time or anything.
17 If you have the document in your hand, I would like to see
18 it.

19 Q. Okay. You don't recall -- you just said you were
20 admonished by Mr. Pearlman. Is this the memo that documents
21 that admonishment?

22 A. What's the date?

23 Q. November 26th, 2007.

24 A. Okay. Could I have a copy of the memo, please?

25 Q. Do you recall receiving this memo, sir?

1 A. Let me look at it now if I can.

2 Q. Mr. Stoney, have you had a chance to look at the
3 document?

4 A. I have not. Give me a second, please. I've read two
5 paragraphs. I haven't finished the whole document, but I read
6 basically half of it.

7 Q. Does this document refresh your recollection as to the
8 admonishment that Mr. Pearlman told --

9 A. If this is the letter I was referring to, I don't
10 remember the details of it.

11 Q. Can you please read out loud into the record the
12 highlighted portions of this memorandum that's dated November
13 26th, 2007, sent to you from Chip Robinson?

14 A. Certainly. This memo is to memorialize a portion of
15 our conversation this afternoon with Bobby Pearlman, Esquire's
16 office. During the course of the meeting, the subject of which
17 was tangential to the subject of this memo, Mr. Pearlman
18 indicated, any commingling of funds between business entities
19 without identical ownership is not permitted without written
20 permission from the various members. Specifically, he looked
21 at me and stated that I need to stop doing that, and indicated
22 to you that common majority ownership across entities didn't
23 matter, in fact, increases the need to keep the financials
24 strictly separated.

25 Q. Thank you, sir.

1 A. Can I not finish looking at it? There's more to it.

2 Q. After Mr. Pearlman said this to you, did you stop your
3 practice, even though he told you you need to stop doing it?
4 Did you stop it?

5 A. I would defer to Chip Robinson, but I do not believe
6 we stopped in the sense of doing the due-tos and due-froms.

7 Q. In fact, after this lawsuit was filed and during the
8 mediation of this case, you were still doing it, weren't you?

9 A. After this lawsuit was filed?

10 Q. Let's see. Let's go to -- in September 2015, were you
11 taking money from the Boathouse to fund personal items? Yes or
12 no?

13 A. I don't know.

14 Q. You don't know? I'm going to have to show you the
15 document where you purchased wine for a wedding?

16 A. Yes, I would appreciate you showing me that.

17 Q. All right. Let's get this marked.

18 MR. BARR: Your Honor, if I may be heard on both of
19 these exhibits, first of. All, what is the memo exhibit
20 number?

21 MR. McQUILLIN: I haven't marked it yet. He says he
22 couldn't recall. I'm showing this --

23 MR. BARR: This is not marked as an exhibit?

24 MR. McQUILLIN: It's not marked as an exhibit.

25 MR. BARR: I know Your Honor has already addressed

1 similar objections in other -- by other witnesses. But we must
2 object because this evidence may certainly be germane to
3 Mr. Stoney's ultimate liability in a lawsuit and to damages.
4 But the issue here today is whether this plaintiff, Laurence,
5 is a competent plaintiff to bring a stockholders derivative
6 suit, whether he has standing. And the clear law is, the rule
7 says, the plaintiff is proper if it addresses the plaintiff.

8 So the question here is what are the plaintiff's
9 credentials, not what sort of bad stuff the defendant might
10 have done. The bad stuff the defendant might have done is
11 addressed either in this derivative case, if the Court denies
12 the standing motion; or if the Court grants standing, then in
13 the personal lawsuit, that Mr. Stoney's, Laurence Stoney, can
14 still bring.

15 So the question about Richard Stoney's misconduct, the
16 subject matter of what's being addressed now, is really not
17 relevant to whether Laurence is qualified to be a
18 representative plaintiff in a stockholders derivative suit.

19 MR. McQUILLIN: Your Honor, if I may, page 32 of our
20 memorandum of law that we've submitted to the Court talks about
21 laches and how laches is a defense in equity. And that's one
22 of the primary things the defendants have asserted today is
23 that my client doesn't have standing to bring this case because
24 he's barred by laches. This is a case from *Taff v. Smith*, 114
25 S.C. 306, it's a time-honored maxims of equity that one who

1 seeks equity must do equity. Accordingly, the equitable
2 defense of laches is not available to those who come to the
3 court with unclean hands.

4 What I'm establishing, Your Honor, is that Mr. Stoney
5 continued to take money from the company and continued to rob
6 Peter to pay Paul. Even after lawyers were involved and were
7 meeting with his lawyer and trying to resolve this case.

8 So I believe it's highly relevant, his actions and
9 when they occurred, to show that he has unclean hands to go
10 against laches. One of the other things --

11 THE COURT: Laches is a basis that's being asserted
12 that Mr. Laurence Stoney did not have standing?

13 MR. McQUILLIN: Yes, Your Honor. If you look at page
14 2 of defendant's pretrial brief, Laurence Stoney is not a
15 suitable person to bring this derivative action because his
16 claim is barred by laches.

17 So we believe that this is relevant that the witness
18 has unclean hands. And it's limited to what he did after he
19 knew it was wrong, because his lawyer told him, and he knew it
20 was belong because Laurence had lawyered up and he was meeting
21 with his lawyer at the time. This is September 2015. We filed
22 in October.

23 THE COURT: I overrule the objection.

24 BY MR. McQUILLIN:

25 Q. Mr. Stoney, does this refresh your recollection that

1 you received weekend cash from the Boathouse?

2 A. Which line are you referring to?

3 Q. In June of 2015 and in September of 2015, does this,
4 first page, does this refresh your recollection that on June
5 4th, 2015, and September 4th, 2015, you received \$750 for
6 weekend cash, azalea? Yes or no?

7 A. No, to be honest, I couldn't tell you. I would have
8 to talk to Janie. I don't know if it was paid back. I don't
9 know. But I see that there's a \$750 put down that says RS.

10 Q. All right. What about on September 19th, 2015, was
11 that close to your son's wedding?

12 A. To be honest, I can't remember.

13 Q. Can't remember the date of your own son's wedding?

14 A. No, I can't. I honestly can't. I can barely remember
15 my name sometimes, but I can tell you this --

16 Q. Do you recall taking money from Boathouse --

17 A. Will you let me finish? Just let me finish. What I'm
18 trying to say is, I also don't know that a check was not
19 written back to the Boathouse. I don't know. You have
20 accountants looking at it, but I'm not sure that's what
21 happened.

22 Q. I didn't ask you that. I'm asking you if you took
23 money out of the Boathouse for weekend cash or for RS wedding
24 wine? You don't remember that?

25 A. I do not remember.

1 Q. You've taken so much cash out of this entity, you
2 don't know when you took it out?

3 A. Listen --

4 Q. Do you dispute the fact that you used cash from the
5 Boathouse to pay for wine for your son's wedding?

6 A. I don't know. I honestly don't know.

7 Q. So your testimony under oath is you don't know?

8 A. I honestly don't know.

9 Q. Do you --

10 A. Would you just let me finish? I know wine was given
11 to me for my son's wedding by some other forebearers. I don't
12 know if I charged this to the Boathouse and reimbursed the
13 Boathouse. I have no idea without looking at my checkbook and
14 talking to Janie, who is my controller.

15 Q. Again, you don't dispute the fact that you used
16 Boathouse moneys for personal expenses, correct?

17 A. At times, that is absolutely correct.

18 Q. You used them --

19 A. You don't let me finish. You've got to allow me to
20 finish, please. What I'm saying is, without seeing the
21 complete picture and without talking to Janie, I could not
22 answer the question truthfully.

23 Q. You can't say one way or the other whether you took
24 money out of the Boathouse in September 2015?

25 A. It appears from your letter that there was wine that

1 was charged to me and there was a \$750 withdrawal given to me.

2 Q. You are aware we mediated this case September 9th; is
3 that correct?

4 A. I am not aware that we did that without you reminding
5 me. If that's what you say, I believe it.

6 Q. After this mediation, according to this general
7 ledger, you were taking money out of The Boathouse to pay for
8 wedding wine?

9 A. If I took money out of The Boathouse since this
10 mediation, it would be minimal, minimal, minimal, minimal.
11 I've taken nothing out of there of any substance. I've
12 certainly had meals comped, which I do at every restaurant I am
13 involved in. That's the way you test the food. That's the way
14 you make sure service is up to par, but probably not even on
15 the average more than \$500 a month.

16 (Plaintiff's Exh. 1, Memorandum from Chip Robinson,
17 was marked for identification.)

18 Q. Mr. Stoney, I'm handing you what's been marked
19 Plaintiff's Exhibit 1, sir. Do you recall receiving this
20 memorandum?

21 A. I can't honestly say I remember receiving it, but I'm
22 confident I did receive it. You mentioned it earlier. I see
23 where it says about the removing Breach from its role as blood
24 donor. I heard that earlier. So I'm sure this memo was
25 received on the date that it's specified.

1 Q. And so in this memorandum, Chip Robinson is writing to
2 you and says that his accounting world is totally and
3 completely consumed with cash flow issues; is that correct?

4 A. Yes, it was absolutely correct at the time. And
5 that's what led to much of what puts us here today.

6 Q. And he says in here that removing The Boathouse of
7 Breach Inlet from its role as blood donor for the hemorrhages
8 that Lake Julian and Carolinas will take care of all of the
9 above, correct?

10 A. That's what he says.

11 Q. In other words, if the Boathouse wasn't giving all
12 of -- giving a bunch of its money to Lake Julian and Carolinas,
13 the payroll issue and things -- the cash flow issues would not
14 be a problem, correct?

15 A. You know, what's interesting about this --

16 Q. Is that correct? I am not asking you what's
17 interesting about this. I'm asking you, was that statement
18 correct?

19 A. What statement?

20 Q. Can you please read back the question to the witness.

21 A. You are referring to the thing about the blood donor?

22 Q. I'm asking --

23 A. I was trying to read -- you are giving me -- to be
24 candid, you are giving me a four-page statement. You've got
25 one sentence highlighted. And I wanted to see contextually

1 what else was in there. And I was attempting to read that. I
2 apologize when the question was read, I mean asked, but once
3 it's read, I will certainly answer it. And then I would like
4 the time to review this document.

5 Q. Let me just -- back up and let me just ask you some
6 simple questions. Was Breach Inlet serving as a blood donor
7 for --

8 A. That is a word --

9 Q. Sir, let me finish my question. It's rude to the
10 court reporter to interrupt. She can't type what both of us
11 are saying.

12 My question to you is, was Breach Inlet serving as
13 blood donor for Lake Julian and Carolinas? Yes or no?

14 A. Blood donor was a word that Chip used. That is not a
15 word I would use.

16 Q. What word would you use?

17 A. I would use that money that was coming from Breach was
18 certainly -- and it's been stated multiple times and stated
19 many ways, including blood donor, that it was being used to
20 address and to help stabilize other entities. And the intent
21 was to -- as Chip says later on in this memo by other entities,
22 that we were all optimistic that things would turn around.
23 This is 2010. This is two years after the meltdown. This is a
24 year after I had gone through -- I had been separated in a
25 horrible divorce action. And there were a lot of things

1 happening at the time, so, yes.

2 Q. You and your brother are members of Lake Julian and
3 Carolinas?

4 A. My brother and myself, my sister and a boy named Tommy
5 Westfelt.

6 Q. There are other members of the Boathouse of Breach
7 Inlet that are not involved in those entities, correct?

8 A. That's correct.

9 Q. And do you believe it's fair to those members to take
10 money from their entity and give it to you and your brother's
11 entity?

12 A. The only --

13 Q. Do you believe it's fair?

14 A. I'm going to answer it this way. Okay? Because I can
15 answer accordingly. You are asking if I believe it's fair. I
16 believe the situation was such, in making a business judgment
17 with everything going on, I was trying to keep everything
18 afloat to the best of my ability and investing some of my own
19 money, borrowing money from my brother, and trying to make sure
20 that everything was staying above-board. And this letter shows
21 that there is encouragement that it could happen.

22 There were other issues going on, but most
23 importantly, the Boathouse at Breach Inlet, I think the fact
24 that is most important is that the only nonmember of multiple
25 of these entities was Laurence. So that 95 percent of the

1 money that came from Breach Inlet came from the people that
2 were involved in these other restaurants.

3 Q. So your testimony is 95 percent of the people
4 benefited from your wrongful actions, but not my client? Is
5 that your defense in this case?

6 A. My answer is as it was about Breach, it was okay as
7 long as Paul, Laurence, benefited by the use of those funds to
8 cover the debts in East Bay. Those debts had to total
9 minimally 300-, \$400,000 when you factor it all in. His share
10 alone of 5 percent, 5 percent of \$40,000 is a significant
11 amount of money, and I could never get Laurence, despite three
12 attempts to sit down with him that are notarized and noted in
13 letters, to sit down and come up with a number and try to
14 settle this thing as gentlemen, which I attempted to do
15 multiple times. My brother would have loaned me the money if I
16 could have made it work. It just didn't happen.

17 Q. When you wrote Laurence in Exhibit 1, on August 9th,
18 2005, you said, I'm frankly, as I have stated before, insulted
19 by the insinuation that I have mismanaged or misappropriated
20 funds from the restaurants and/or Crew, correct?

21 A. Absolutely. And the reason being because I did not at
22 that point at all, not at all.

23 Q. And then you said, at the end of the day, Laurence,
24 you have to trust me, correct?

25 A. Absolutely.

1 Q. I am not in business with my family and dear friends
2 in an attempt to skim profits or benefits not available to them
3 as well? Correct, you said that?

4 A. Yes.

5 Q. You asked for your cousin to trust you?

6 A. Yes. And I also --

7 Q. And then you said, then you said --

8 MR. BARR: Your Honor, can the witness answer?

9 THE WITNESS: You ask me a question and then I get to
10 answer.

11 THE COURT: You must give him an opportunity to answer
12 the question.

13 MR. McQUILLIN: Thank you, Judge.

14 BY MR. McQUILLIN:

15 Q. Mr. Stoney --

16 A. No, I want to answer.

17 Q. What are you answering? Do you even know what the
18 question is? What did I ask you?

19 A. Would you repeat back what the question was, please,
20 what I was trying to explain.

21 (Whereupon, the court reporter reads back the
22 requested answer.)

23 A. What I was trying to explain, if you read this letter,
24 and I hope the Court will in totality, I wanted him to explain
25 everything, basically, about what was going on at the time,

1 including the kitchen expansion of Breach Inlet, security
2 measures at East Bay. Kitchen expansion is a perfect example
3 of Laurence, that he wouldn't sign -- he wouldn't risk
4 anything. I signed personal guarantees on everything. Kitchen
5 expansion of Breach alone cost over \$400,000. I paid for all
6 of it, meaning I paid for it by borrowing money.

7 The security measures at East Bay that we implemented
8 after Patrick Ringwald was killed cost in excess of, I think,
9 35- to \$40,000 a year. He griped about that.

10 And then I went on to paragraph as far as
11 distributions, and even talked about donating -- not donating,
12 distributing \$928 in 2003 from East Bay when the restaurant had
13 lost money. So Laurence has benefited from that 900 whatever
14 it was, \$980, \$928. So, yes, I did ask my cousin to trust me.

15 Q. Are you finished answering, Mr. Stoney?

16 A. Yes, I am.

17 Q. Now, when your cousin approached you with these
18 suspicions that you may be robbing Peter to pay Paul, on page 3
19 of Exhibit 1, you told him that he had unfounded suspicions,
20 correct?

21 A. Well, Mack, you continue to mix up the years. This is
22 2005.

23 Q. Excuse me.

24 A. This Peter to pay Paul was a statement I used candidly
25 in the 2011 domestic case.

1 Q. You told Laurence in 2005 that his suspicions were
2 unfounded, correct?

3 A. I did. And they were.

4 Q. All right. Now, sir, do you dispute the fact that you
5 took \$2,750 out of the Boathouse "as needed to cover the
6 mortgage at Kinsington"?

7 A. When was that?

8 Q. Do you dispute that?

9 A. When was that?

10 Q. I'm asking you do you dispute that?

11 A. I can't answer the question unless you respectfully
12 give me the date.

13 Q. If you can't answer it, say I don't know.

14 A. I don't know until you give me the date.

15 Q. Do you dispute that you have a journal entry 36262,
16 pay Latino workers at Kinsington? Do you dispute that?

17 A. Again, I don't know the date.

18 Q. Do you dispute that --

19 A. I don't know what you are referring to. I don't know
20 what document you have.

21 Q. I'm asking you about entries from your general ledger.
22 And I'm asking you, do you dispute that you used money from the
23 Boathouse for your plantation? Yes or no?

24 A. I have no idea, but I can assure you that if it was,
25 it was minimal. And those guys would have worked and done

1 other things at the restaurants. And I know I paid a lot of
2 that stuff out of my own pocket. I used my own pickup truck.
3 I went and picked up the materials. So it was not substantial.
4 This thing about Latino workers, I can't even imagine the
5 inference of Latino workers, since there was only one Latino
6 that ever worked for me and he was deported. And his name was
7 Tempo (ph).

8 Q. Do you dispute that you used Boathouse moneys to pay
9 for polo horses?

10 A. I don't know what date and time you are talking about.
11 If I did, I am confident I repaid it.

12 Q. Did you use \$5,000 of Boathouse money to pay for a
13 horse?

14 A. If I did, as I said, I'm confident I repaid it.

15 Q. Did you use Boathouse moneys for "shipping polo horses
16 for a match, horse feed, polo ponies weekend money"?

17 A. I have no idea what you are talking about in that.

18 Q. Did you take \$14,000 out of the Boathouse for Ellis
19 Creek miscellaneous? That's a big number. Do you remember
20 doing that?

21 A. If we took \$14,000 -- those books were kept so clean;
22 if that was done, then it was put back in.

23 Q. Do you believe that Jamie properly entered items into
24 the general ledger?

25 A. I think Jamie did the best she could, but there was a

1 lot happening at the time. My \$14,000 might have been early on
2 for Ellis Creek. You won't even give me a date. What date is
3 that? A date would help immensely.

4 Q. Have you ever taken money --

5 A. Can you give me the date?

6 Q. Have you ever taken money out of the Boathouse for
7 Christmas?

8 MR. BARR: Your Honor, I think it's only fair that the
9 witness be provided complete information in order to answer the
10 question. And if counsel has a date, the witness has asked for
11 it, can't he give him a date? If it's not in the document --

12 THE WITNESS: Your Honor, the Ellis Creek, for the
13 Court's edification, Ellis Creek was a restaurant that burned
14 to the ground two weeks after we opened it in 2009. It was a
15 mess, to say the least. I could spend 20 minutes explaining to
16 you what happened thereafter, because we didn't own the
17 property. But for that period of time, it was, I think, six
18 years before I was able to put it back together. And if I
19 borrowed \$14,000, it was put back in.

20 Q. I've got some dates too. Mr. Stoney, you would agree
21 with me that the due-to/due-from is somewhere around \$4 million
22 of money that was not paid back to the Boathouse, correct?

23 A. That figure is a figure y'all have been throwing
24 around. And I have not had that confirmed by anyone that works
25 for me. It's a figure that y'all have thrown out. You put in

1 the newspaper \$3.8 million before the case even was filed.
2 Meaning before the case was public knowledge, there was an
3 article in the newspaper -- not a newspaper, online, meaning it
4 was filed. And that simultaneously, I was contacted by two or
5 three different people to say the day before it came out in the
6 newspaper, that it was already online. So, you know, that's
7 something y'all pushed hard. And I'm convinced that y'all,
8 meaning you and your associates, contacted the newspaper about
9 that \$3.8 million. I would never concede that there's \$3.8
10 million out there.

11 Q. So your testimony is, even though we've sued you and
12 alleged you've taken in excess of \$4 million dollars from the
13 Boathouse, your testimony is that due-to/due-from doesn't
14 exist, or you haven't looked into it at all?

15 A. I have spoken to my controller. I have spoken to my
16 former controller. And I've spoken briefly to a consultant.
17 And they question how you hit those numbers. Okay?

18 Q. Have you looked at the most recent balance sheets?

19 A. No.

20 Q. Have you looked at the several years -- have you
21 looked at any balance sheets since 2010 that shows this
22 due-to/due-from Crew Carolina being multiple millions dollars?
23 Have you ever looked at any of that?

24 A. I know a decision was made by Chip Robinson and the
25 accountants to write off a bunch of this at a certain time.

1 And, again, that's accounting beyond my --

2 THE COURT: We are not going to attempt to resolve the
3 liability situation.

4 MR. McQUILLIN: Sure. And I will move on briefly.

5 BY MR. McQUILLIN:

6 Q. Mr. Stoney, again, you don't dispute the fact that you
7 took money from the Boathouse, gave it to Crew Carolina, and
8 used it for personal expenses and other businesses items,
9 correct?

10 A. I've said that I did not dispute that.

11 Q. And Mr. Pearlman specifically told you that those
12 actions were not permitted unless you had written permission
13 from the other members of the Boathouse, correct?

14 A. Mr. Pearlman also told me thereafter, following that
15 letter when I contacted him, since you opened that door as far
16 as what Mr. Pearlman told me, that as long as we kept accurate
17 accounting as far as due-tos and due-froms, that that was
18 not -- I wouldn't say proper accounting procedure, but that was
19 what we needed to do. And that's what we did.

20 Q. Mr. Pearlman told you in the memo, you needed to get
21 written permission from the other members of the Boathouses.
22 And you never got that from my client, did you?

23 A. No, not from your client. I never got written
24 permission from your client for anything, even earlier, which
25 it was yesterday or early this morning, made comment in an

1 snidey way that I conveyed these interests to my ex-wife and to
2 my children without his permission.

3 What I also did is, one discussion we had with your
4 client, was him putting his interest in the Boathouse at one
5 point in his son's name, which would not have been permissible,
6 but I said it was fine.

7 So, you know, getting Laurence to sign anything would
8 be impossible. Getting Laurence to sign a personal guarantee
9 for any parts of these businesses would have been possible.
10 Getting Laurence to sign on the Breach, on the East Bay lease,
11 impossible. Getting Laurence to do anything is basically
12 impossible. Getting Laurence to respond to a letter is
13 impossible. You know, he sat right there in his office
14 complaining, going to the Yacht Club, boozing it up, talking to
15 everybody in town. As he said, it was on the street. He kept
16 referring, on the street, on the street. Well, he put it on
17 the street.

18 Q. Sir, do you believe that your actions in this case are
19 fair?

20 A. I believe my actions were very reasonable under the
21 like circumstances with everything going on. And that I did it
22 it honorably. And what I'm very tickled about is Laurence, I
23 think in the divorce case, testified that I did not show honor.
24 And if you read what he said at the meeting, that I had assured
25 him that if he invested, that he would be allowed to invest in

1 future restaurants, which is totally untrue. But that I had
2 not lived up to my honor because I denied him, in essence, the
3 implication, his ability to invest in the Boathouse at -- on
4 Lake Julian.

5 Q. Do you think it's honorable to rob Peter to pay Paul?

6 A. I don't think it's honorable to rob Peter to pay Paul.
7 But it's a great expression. It's been used ad nauseam.

8 THE COURT: Any redirect?

9 MR. BARR: Yes, Your Honor. Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BARR:

12 Q. Subject to my objection.

13 Mr. Stoney, as to all of these questions you've about
14 been asked about the Breach Inlet funds that were used for East
15 Bay or used for Lake Julian or were paid for polo ponies or not
16 or for wine, is it correct that every penny of that was
17 accounted for on your books?

18 A. That is correct.

19 Q. And is it correct that they were referred to on your
20 books as due-tos and due-froms?

21 A. Correct.

22 Q. So if a penny went to the restaurant at Lake Julian,
23 then that was showed on the books of your company as a debt
24 owed by Lake Julian back to the central part. And if the money
25 came from Breach Inlet, it was show that Breach Inlet was