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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas, Business Court Program

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2020-001645
Case No. 2019-CP-23-00998

McMillan Pazdan Smith, LLC, ... Plaintiff/Counterclaim Defendant-Respondent,

v.

Donza H. Mattison,. Defendant/Counterclaimant-Appellant,

Donza H. Mattison, in a Derivative
Capacity on Behalf of McMillan Pazdan
Smith, LLC,. Third-Party Plaintiff-Appellant,

v.

Rondald G. Smith, Joseph M. Pazdan,
Brad B. Smith, and Chad C. Cousins. Third-Party Defendants-Respondents.

RECORD ON APPEAL (Volume 2 of 4)

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

McMILLAN PAZDAN SMITH, LLC,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 DONZA H. MATTISON, ET AL.,)
)
 DEFENDANTS.)
 _____)

2019-CP-23-00998

TRANSCRIPT OF RECORD

NOVEMBER 6, 2019
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH

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

ATTORNEYS FOR PLAINTIFF:

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KATIE E. TOWERY, ESQ.
THOMAS H. KEIM, JR., ESQ.

ATTORNEY FOR DEFENDANTS:

DAVID E. ROTHSTEIN, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** For the record, this is McMillan Pazdan
2 Smith, LLC versus Donza H. Mattison, et al. This is a
3 motion for a protective order from subpoenas to non-parties.
4 Is that correct, Mr. Outten?

5 **MR. OUTTEN:** That's correct, Your Honor.

6 **THE COURT:** And this is your motion?

7 **MR. OUTTEN:** Yes, sir.

8 **THE COURT:** I'll be glad to hear from you.

9 **MR. OUTTEN:** May it please the Court, Your Honor?

10 **THE COURT:** Yes, sir.

11 **MR. OUTTEN:** Your Honor, Donza Mattison was a former
12 employee of McMillan Pazdan and Smith, which is an
13 architectural firm. This dispute is about the value of her
14 membership units in this LLC. A Severance Agreement was
15 negotiated after her separation from the firm, which sets
16 forth the methodology by which the value of these shares is
17 to be determined. And this appears in paragraph 2(j) of the
18 Severance Agreement.

19 And with your permission, Your Honor, I'd like to hand
20 up a copy of the Severance Agreement because I think it
21 might be helpful to the Court in considering the -- from
22 discovery disputes that are before the Court this morning.
23 May I approach?

24 **THE COURT:** Absolutely. And I think I have it, but go
25 ahead. Thank you.

1 **MR. OUTTEN:** Your Honor, there's also a derivative
2 action, which has been pled by Ms. Mattison. Your Honor,
3 may recall that the derivative action was first mentioned
4 in the demand letter Mr. Rothstein sent to Mr. Keim while
5 they were negotiating the value for equity appearing in the
6 last paragraph or next to the last paragraph of the letter.

7 The derivative action, Your Honor, was and is being
8 used as leverage against McMillan Pazdan and Smith so that
9 Ms. Mattison can get more for her equity than she's entitled
10 to under the contract she executed with McMillan Pazdan and
11 Smith. Your Honor's already ruled on the pre-suit demand
12 for that derivative action, but you've not yet ruled on
13 whether or not Ms. Mattison is an adequate representative of
14 the members of McMillan Pazdan and Smith.

15 I think it's useful, Your Honor, to keep in mind that
16 there are fundamental differences between an individual
17 action and a derivative action. In order for Ms. Mattison
18 to maintain this action, she must demonstrate that she
19 represents other members of McMillan Pazdan and Smith, that
20 is, that the other members of McMillan Pazdan and Smith wish
21 to join her in this derivative action or that they support
22 the bringing of this derivative action. Otherwise, if
23 that's not the case, the derivative action is nothing but an
24 individual action by Ms. Mattison in disguise, which, as we
25 know, violates Rule 23.

1 While that issue is not before the Court this morning,
2 we point it out because at some point we'll be asking Your
3 Honor to rule on this issue, that is, whether this
4 derivative action is one on behalf of the members of
5 McMillan Pazdan and Smith or one that Ms. Mattison has
6 decided to bring.

7 Your Honor, with regard to discovery, quite
8 unfortunately, Ms. Mattison's trying to make the discovery
9 as burdensome and expensive to McMillan Pazdan and Smith as
10 possible. In effect, her requests are for every financial
11 and corporate document for the last 10 years. That's
12 basically what she's asked for in the request to us directly
13 and in the subpoenas I have been sent.

14 Again, Your Honor, this request is made even though
15 she, with the advice of counsel, Mr. Rothstein, who's here
16 with us this morning, signed an Agreement, and she said this
17 is how I'm going to value my units of the firm.

18 **THE COURT:** May I interrupt you?

19 **MR. OUTTEN:** Yes, sir.

20 **THE COURT:** May I ask Mr. Rothstein a question, if you
21 don't mind?

22 **MR. OUTTEN:** Yes, sir.

23 **THE COURT:** Mr. Rothstein, are these subpoenas directed
24 solely towards the derivative action and not towards the
25 separation claim?

1 **MR. ROTHSTEIN:** They are relevant to both the
2 derivative action and the valuation of her shares.

3 **THE COURT:** How would they be relevant to the valuation
4 claim?

5 **MR. ROTHSTEIN:** Your Honor, our argument is that
6 there's a process called normalization where if there are
7 insider or self-dealing transactions or what they call
8 related party transactions, those have to be added back when
9 you're valuing a case. If the managers of the firm have
10 taken out excessive compensation and bonuses, that's really
11 more of a return on their shares rather than a normal
12 business expense, so that has to be added back to the firm.

13 And so we've asked for the original information from
14 Markel Valuation, who did the very first valuation of --
15 that's right after the merger or upon the merger. We tried
16 to get that from MPS. They sent us a document that's called
17 a draft. It's not the final version. We've asked for his
18 bills. We wanted to find out what he did, what he used in
19 coming up with his valuation.

20 We've also subpoenaed a firm called CEO Solutions,
21 which reportedly did some type of a salary survey or
22 something to determine -- I think they used his work to
23 justify some very substantial pay increases within the last
24 four or five years. So we want to see what that's all
25 about.

1 HDH Advisors is a firm out of Atlanta that McMillan
2 Pazdan and Smith has used, I think, since 2013 to do an
3 annual, quote, valuation of the firm for various purposes.
4 We've subpoenaed them for their information, correspondence
5 back and forth between MPS, what they relied on, what they
6 used in their valuations.

7 And basically what they do is they take the information
8 that McMillan Pazdan -- this is not an independent business
9 appraisal. This is -- they're relying on what management
10 tells them about projected growth and, you know, expected
11 income and stuff like that. So we want to see that
12 information.

13 And then we've subpoenaed CMP of Spartanburg, which is
14 the -- CMP stands for the initials of the wives of the two
15 principals in Spartanburg that own the building that the
16 Spartanburg offices rented from. And we're contending that
17 that's an above market rent that's being paid back to the
18 family of one of the owners. So we've subpoenaed
19 information about the leases and expenses of that building.

20 **THE COURT:** So, Mr. Rothstein, you're representing to
21 me as an officer of the court that the matters being or the
22 information being subpoenaed goes to both the valuation
23 claim and the derivative claim?

24 **MR. ROTHSTEIN:** That is correct.

25 **THE COURT:** All right. Thank you, sir. Mr. Outten, I

1 just ---

2 **MR. OUTTEN:** Your Honor, ---

3 **THE COURT:** --- wanted to clarify something.

4 **MR. OUTTEN:** --- let's think about this normalization
5 claim. And I understand what he's saying. What he's saying
6 is that if excessive compensation or benefits were paid to
7 the founding members, that should be put back into the firm
8 and could raise the value of her equity. And we all
9 understand that.

10 But they're asking for information that goes back 10
11 years. Now that couldn't possibly be relevant to the
12 derivative claim. The statute's long run on any claim for
13 something that happened 10 years ago. So if this were truly
14 just to find out what happened with regard to this
15 normalization or valuation, the claim should have been --
16 the subpoena should have been limited to three years, but
17 they weren't. And they go back 10 years.

18 And I'll give you some examples of the overreaching
19 that we have here. CMP of Spartanburg owns a space that
20 McMillan Pazdan leases in Spartanburg. That's true. And we
21 gave them the original lease agreement and the extensions.
22 And we gave them the spreadsheet of all rental payments from
23 2009 to 2018.

24 I just want to make sure the Court knows we've gone
25 overboard to give them information to avoid exactly what

1 we're doing this morning, that is, having a discovery
2 dispute before Your Honor. So we gave them the original
3 lease agreement, all extensions. We've gave them all the
4 lease payments from 2009 to 2018.

5 You know what they want, Your Honor? They want member
6 distributions from CMP from September of 2009 to the
7 present. It's hard to imagine a more irrelevant discovery
8 request. If they say that the rent is above market, they've
9 already got all the information they need to prove that.
10 They've got what was paid and they've got the lease
11 agreement.

12 But to go further and say I want member distribution
13 from this LLC owner from 2009 -- again, that's the reason
14 why we're here. They want documents related to the purchase
15 of a property. How can that possibly be relevant to this
16 dispute? Their claim is that the rent was above market.
17 That has nothing to do with the purchase of the property,
18 but that's why we couldn't reach an agreement.

19 And, frankly, Your Honor, we made the proposal to Mr.
20 Rothstein on Friday to try to avoid this. And we made a
21 proposal. For example, we said with regard to HDH, Mr.
22 Rothstein, will you limit the request in the subpoena to
23 seek only information that has not previously been produced
24 by McMillan Pazdan and Smith? He refused.

25 We asked with regard to the subpoena to Markel

1 Valuation, will you limit the request of the subpoena to
2 seek the final valuations? He refused that request. So I
3 don't know how he could represent as an officer of the court
4 that these go to valuation where he's asking for information
5 that's 10 years old.

6 I'll give you another example. He asked for the tax
7 returns. So here's what we gave him, Your Honor. We gave
8 him tax returns from 2009 to 2017. We gave him all
9 financial review reports from 2009 to 2017. So this is not
10 one of those cases that you have where a corporate party is
11 refusing to participate in discovery. We've participated.
12 We've given him all that information. I don't know what
13 more information could be reasonably requested.

14 I understand discovery's broad, Your Honor. I've been
15 to a few of these hearings over the years, and I understand
16 that, but it's not unlimited. And this Court is charged
17 with the responsibility, as you know very well, to identify
18 whether or not the -- or to determine whether discovery
19 responses are reasonably tailored to get information that
20 will assist in resolving the dispute.

21 I'll give you another example. They sent a subpoena to
22 Q. Stanford Halliday, III. And Mr. Halliday has not
23 performed work for McMillan Pazdan and Smith in over 10
24 years. Over 10 years. We told Mr. Rothstein that. I tried
25 to engage Mr. Rothstein in a discussion to avoid this. We

1 said, look, this guy hasn't worked -- this gentleman hasn't
2 worked for McMillan Pazdan and Smith since early 2009.
3 Nevertheless, no, I want the subpoena in place.

4 So, Your Honor, we believe that these requests are far
5 too broad, seek information that couldn't possibly be
6 relevant to this dispute. If he wants information related
7 to valuation, normalization, at most that should be limited
8 to three years.

9 And also we think that any request should be limited to
10 information we haven't already given them. Let's consider
11 the express language of Rule 45, says when you're getting
12 information in discovery from a non-party, the lawyer
13 drawing the request has the burden to draw it as narrowly as
14 possible to minimize the burden on the non-party. That
15 hasn't happened here.

16 You know, when you have all these things, I'm not going
17 to go through them again, but when you're asking somebody
18 that hasn't worked for the firm in 10 years to respond to
19 the subpoena, you're violating Rule 45. So, Your Honor, we
20 think our motion for protective order should be granted.

21 We're still willing to work with Mr. Rothstein on
22 getting things that he says reasonably relate to this
23 normalization issue even though we think it's irrelevant
24 because of the provision in the Severance Agreement is
25 binding. We're still willing to work with him on this, Your

1 Honor, but these subpoenas are far too broad, and our motion
2 for protective order should be granted.

3 **THE COURT:** Let me ask you something, Mr. Outten, if I
4 may.

5 **MR. OUTTEN:** Yes, sir.

6 **THE COURT:** And I'm not asking, so I know -- I don't
7 know. You mentioned earlier that there are factors that the
8 Court has to consider as to whether or not Ms. Mattison is a
9 proper representative to bringing a derivative action.

10 **MR. OUTTEN:** Yes, sir.

11 **THE COURT:** What are those factors? Do you have -- is
12 there a -- does the case law list the factors that I have to
13 consider in determining whether or not she's a proper
14 representative member to bring the derivative action?

15 **MR. OUTTEN:** I don't have that case law with me, but my
16 recollection -- and if it's incorrect, then I certainly
17 apologize ---

18 **THE COURT:** That's fine.

19 **MR. OUTTEN:** --- to the Court, but that you're an
20 adequate typical representative of the members, that is,
21 that the members generally support this, the claims that
22 you're making and join you in the claims that you're making
23 and that the other members similarly situated, that is,
24 other members who have responsibility or members like Ms.
25 Mattison that they have similar claims and urge the bringing

1 of those claims against the entity.

2 **THE COURT:** Let me say this for both parties'
3 understanding. You know, I denied your motions to dismiss
4 and your amended motion to dismiss on the technical basis of
5 the pleading requirements.

6 **MR. OUTTEN:** Yes, sir.

7 **THE COURT:** And the timing of the pleading
8 requirements.

9 **MR. OUTTEN:** Yes, sir.

10 **THE COURT:** I, quite frankly, have some doubts in my
11 mind, without making any ruling, Mr. Rothstein, as to
12 whether or not your client is a proper representative member
13 to bring such an action. And I understand everyone wants to
14 gain any advantage they can legally in litigation to help
15 their side, but I am loath to allow Ms. Mattison to continue
16 with vexatious discovery under a theory that she's yet to be
17 determined to be a proper representative.

18 So my idea today is that I want to limit discovery to
19 the issue of valuation, normalization, or issues along those
20 lines, and on the issues of whether or not she is an
21 appropriate representative to bring this derivative action,
22 but not beyond that, okay? Because while her claims may be
23 very valid, I'm not suggesting, Ms. Mattison, that it's not,
24 I don't know anything to the contrary, I'm just saying right
25 now I don't see the benefit to anyone in causing very

1 expensive discovery to be engaged in by both sides when she
2 has yet to be determined to be appropriate person to be
3 bringing those claims, okay? And so I'm going to let you
4 speak, but that's going to be the way I'm proceeding.

5 And I also want to forewarn both sides that I am a firm
6 believer -- I know both of you guys have been in front of me
7 before, that you have free discovery, you give it out, but
8 there is a limitation to that as well. And I'm not above
9 issuing sanctions by way of costs and fees or otherwise if I
10 feel like that's being abused, okay? With that being said,
11 anything further, Mr. Outten?

12 **MR. OUTTEN:** No, Your Honor. Thank you.

13 **THE COURT:** All right. Mr. Rothstein, be glad to hear
14 from you.

15 **MR. ROTHSTEIN:** And, Your Honor, I mean, the term
16 vexatious, I know you weren't using that to cast any
17 dispersion, but I think Mr. Outten's -- I just want to, I
18 guess, clear up some, I think, what are some
19 mischaracterizations of what has happened here.

20 **THE COURT:** Sure.

21 **MR. ROTHSTEIN:** I have worked very diligently with them
22 to try and voluntarily get the information. While Ms.
23 Mattison is still a shareholder we're requesting -- this was
24 before we even mediated the case pre-suit, we requested
25 financial information. We weren't given the financial

1 information that we asked for.

2 I filed the lawsuit, sent the subpoenas out. Mr.
3 Outten said, wait, you know, before you get all these
4 subpoenas, we had this pending motion to dismiss. He filed
5 his motion to quash the subpoenas. He said, why don't you
6 bring -- see what the judge rules on them and see what you
7 get from us first, and then if you don't -- if you're not
8 satisfied that you've gotten everything, you can reissue the
9 subpoenas. I said, fine, even though the rules say I can do
10 discovery in whatever order I want to do it, I agreed with
11 Mr. Outten, and that's fine.

12 **THE COURT:** Okay.

13 **MR. ROTHSTEIN:** So I withdrew the subpoenas or agreed
14 not to contest his motion to dismiss the first time. He
15 withdrew that motion without prejudice.

16 After Your Honor ruled on it or we had the second
17 hearing on the derivative action claim, I reissued the
18 subpoenas. And we had, by that time, had gotten the first
19 set of production from Mr. Outten, and it was not -- it
20 didn't cover what we wanted from these third parties, and so
21 I reissued the subpoenas.

22 And Mr. Outten said, well, you can't issue those
23 subpoenas first. You're not being reasonable. You haven't
24 sent us a deficiency letter telling us what we haven't
25 produced to you.

1 I mean, that -- and he's complaining about like an
2 undue burden on HDH. His proposal yesterday was to take to
3 HDH what they provided to us, have them compare, you know,
4 what they have versus what they provided to us. I mean, you
5 talking about an undue burden on a non-party. I mean, I'm
6 sure most of this stuff is electronic. They can just either
7 send me a Dropbox link or send me a flash drive.

8 I mean, this is not, you know, I think Mr. Outten keeps
9 saying, well, we're going to ask them to go back 10 years.
10 Well, this firm was formed in 2009 or the merger of the two
11 architectural firms. Since that merger the leaders -- the
12 top of the firm have been very tight-lipped about what they
13 provide to the members of the firm in terms of the financial
14 information, disclosures about what their compensation has
15 been and that type of stuff.

16 So, you know, I think, you know, I know the Statute of
17 Limitations is normally three years, but if there's a, you
18 know, fraudulent concealment or an effort to hide the
19 information, I think the discovery rule would apply and also
20 an equitable tolling argument would apply.

21 And, Your Honor, I understand your ruling ---

22 **THE COURT:** Equitable tolling, don't they have to do by
23 their conduct it leads you to sit on your rights but not
24 assert them?

25 **MR. ROTHSTEIN:** That's right.

1 **THE COURT:** Okay. What kind of conduct would that be?
2 Even if -- even if on the other side they fraudulently
3 concealed it, that's one thing. But what have they done to
4 have her sit on her rights to lead her to do so?

5 **MR. ROTHSTEIN:** Well, under the Operating Agreement the
6 compensation and benefits of the managers are supposed to be
7 presented to the shareholders for approval -- for a vote for
8 approval. That's never been done. And when Ms. Madden --
9 Ms. Mattison would push back against, they -- they'd say,
10 well, we're not being paid as managers, we're being -- this
11 is -- we're being paid as founders, which is, you know, a
12 term that's nowhere in the Operating Agreement.

13 Your Honor, you know, I'm not trying to use the
14 derivative action in any capacity other than to bring the
15 fair value of her shares back to the firm. We tried to
16 mediate this case before litigation was filed. They are the
17 ones that filed the litigation. We have these compulsory
18 counterclaims. And then they sort of forced our hand with
19 this.

20 You know, we've got a fundamental disagreement about
21 what the firm is worth. I think Your Honor has already
22 ruled and, you know, about whether she's a fair and adequate
23 representative of the firm to have a derivative action to go
24 forward, you know, needs to have some discovery ---

25 **THE COURT:** Well, for the record, I've ruled that the

1 pleadings were not deficient -- they were deficient, they
2 were correct from a timing standpoint. I think Mr. Outten's
3 argument was, even with my ruling, they didn't make a pre-
4 suit demand that was adequate, and, therefore, it should be
5 dismissed again.

6 I've not, to my knowledge, ruled in any form or fashion
7 that Ms. Mattison is a proper representative ---

8 **MR. ROTHSTEIN:** No, I'm not saying you have. I think
9 what you said is that issue needs to be -- discovery ---

10 **THE COURT:** Get more discovery, right.

11 **MR. ROTHSTEIN:** That's right.

12 **THE COURT:** Okay.

13 **MR. ROTHSTEIN:** And so, you know, there hasn't been a
14 motion to bifurcate discovery to say we're going to limit
15 discovery only to whether she's a fair and adequate
16 representative ---

17 **THE COURT:** Well, at the end of the day -- at the end
18 of the day, that still would fall on me if I feel like
19 there's abuse of discovery. And I'm not -- and, again, I'm
20 not saying that you were engaging in abuse of discovery.
21 I'm not saying that you're engaged in vexatious discovery.
22 I'm saying that I want to keep it from getting to that
23 point.

24 And I understand what you're trying to do, I think.
25 Sometimes I think I know things that I don't and probably

1 more often than not. But it can get out of hand very
2 quickly.

3 **MR. ROTHSTEIN:** I agree with that. And ---

4 **THE COURT:** But going back, I think that even with a
5 discovery rule, nine years seems to be well beyond anything
6 that would be covered by -- even by a discovery rule.

7 **MR. ROTHSTEIN:** Right. Well, the problem is is that
8 the -- every year that HDH does a valuation, they rely to
9 some extent on what the prior valuation was. And so they
10 sort of, you know, if there's a problem from the very
11 beginning, it's going to affect what happens all the way
12 down to today.

13 **THE COURT:** Well, let me ask you this. If you start
14 with a more limited time-frame and then you feel like you
15 need to go back further, isn't that something you can come
16 back and seek at a subsequent time instead of doing it all
17 at one time?

18 **MR. ROTHSTEIN:** Well, I'll give you an example. The
19 Markel Valuation ---

20 **THE COURT:** Yes or no to my question, please, sir.

21 **MR. ROTHSTEIN:** I think that's possible. Certainly.

22 **THE COURT:** Okay. Go ahead.

23 **MR. ROTHSTEIN:** To give you an example, in 2010, right
24 after the firm merged in the last quarter of 2009, the
25 partners all got together and they said, we agree that the

1 value of the firm is 10.8 million dollars. We have 100,000
2 shares outstanding. That's a, you know, dollar eight per
3 share.

4 **THE COURT:** Right.

5 **MR. ROTHSTEIN:** I'm sorry, a hundred and eight dollars
6 (\$108.00) per share. Four years later -- three years later
7 in 2013 this HDH group was first hired. They said the value
8 of the share was sixty-one dollars (\$61.00) per share. You
9 know, it almost, you know, lost 40 percent of its value in
10 three years. And in that same period of time the firm has
11 increased, you know, their revenue growth by, you know, 18
12 or 19 percent.

13 And so -- they also did something -- they added
14 discounts for marketability and minority shares status.
15 They took 30 percent of the value of the firm off of the top
16 to say this is what each share is now worth. They didn't do
17 that in 2010 when they first came up, this is the value of
18 our firm.

19 So I think -- and then there was no valuation done
20 until 2013. And they did a rear valuation in the summer of
21 2013. They still haven't provided us the information for
22 that. There's a draft document in a chain of emails that I
23 just happened to come across that has the draft version of
24 it, but the only thing they've given us was done at the end
25 of 2014.

1 I want to see what HDH did in 2013 and what the purpose
2 of it was. Because I think the purpose of it was was to
3 establish a low value to get one of the other partners out
4 of the -- it was the second highest shareholder at the time,
5 to get him -- to screw him out of the value of his shares.
6 And so they used this HDH group for -- to manipulate the
7 stock price to benefit the three guys at the top.

8 And, I mean, that's -- there's a pattern of that, Your
9 Honor. And they're trying to say that HDH Advisor's number
10 is the number that she's stuck with. That's not what the
11 Severance Agreement says.

12 The Severance Agreement says -- and it tracks the
13 language of the original Operating Agreement. It says that
14 we will try to, in good faith, come together to try and
15 establish the value or agree upon a value. They're going to
16 provide us all the financial information to do that.

17 If we can't come up with an agreement -- it says the
18 Operating -- it says the amended Operating Agreement
19 controls whether this is a proper dissolution or not --
20 dissociation. But the original Operating Agreement is what
21 controls what happens if we don't come up to an agreement.

22 And what's supposed to happen is we hire an independent
23 appraiser, both sides pay half of that, and that independent
24 appraiser's numbers, what it is. They've never -- they've
25 never tried to do that. They said you're stuck with HDH

1 Advisor's numbers. They brought a -- lawsuits asking Your
2 Honor for a declaratory judgment saying she's stuck with
3 that number. That's -- and we don't agree with that.

4 So, I mean, this is not as simple a case as Mr. Outten
5 is suggesting, that it's all about she agreed to the
6 Severance Agreement that this is how we're going to do it.
7 That's not what the Severance Agreement says.

8 **THE COURT:** Right.

9 **MR. ROTHSTEIN:** So, Your Honor, you know, so we've
10 gotten two sets of discovery from Mr. Outten. I sent him a
11 very lengthy deficiency notice a couple of weeks ago. So he
12 says, well, you can come over to our office, and we'll make
13 available what you want to look at that you think we haven't
14 provided.

15 And so I said, great. Ms. Mattison and I will be
16 there. This was last week. We'll do it tomorrow at 2:00.
17 I said, Ms. Mattison and I will be there to look over the
18 documents in your office. And they said, no, wait a minute,
19 Ms. Mattison can't be there. I said, why not?

20 And I don't understand, I mean, they're saying, well,
21 Ms. Mattison -- they've got concerns about Ms. Mattison
22 being in their office and whether she's going to be there
23 for a couple of hours, she could overhear, you know, people
24 talking in the hall or in the office about the
25 attorney/client privilege. I mean, they could do that in my

1 office.

2 So I know there's no motion been filed as to this, but
3 they're trying to prevent Ms. Mattison from helping me with
4 a document review. All that's going to do is add to the
5 expense. You know, Ms. Mattison could help me go through
6 and tell what's relevant and what's missing.

7 You know, for them to suggest that Ms. Mattison is
8 being vexatious in this case, I mean, we're trying to be
9 very reasonable. I told the -- in my cover letter of the
10 subpoenas, I said, you know, I'm happy to pay for the
11 expense of the copying and production of these documents.
12 Let me know the costs. If you've got any questions about
13 this, let me know.

14 You know, Markel shouldn't have very much stuff. He's,
15 you know, he's got the stuff that he originally did. And I
16 think he made a proposal to McMillan Pazdan and Smith to do
17 an appraisal the same time they hired HDH Advisors. I'd
18 like to see that information to see, you know, how thorough
19 his job would have been compared to what HDH ended up
20 charging. The CEO Solutions shouldn't have much
21 information.

22 HDH Advisors, you know, again, I don't think the
23 response we got from MPS -- from HDH Advisors is complete.
24 And I'd like to see their work product and what HDH actually
25 relied on in coming up with their valuation.

1 And the issue of the CMP, the others in the office in
2 Spartanburg, Your Honor, we believe that Ron Smith has been
3 acting as a manager of CMP of Spartanburg. We've seen some
4 legal documents where he's signed Ron Smith, manager of CMP.
5 If he has a hidden ownership interest or is taking money out
6 of CMP of Spartanburg, I think we have a right to know that.

7 You know, in terms of the accounting stuff from the old
8 accountant, you know, I don't have a problem either trying
9 to limit that to, you know, a certain period of time, you
10 know, going back to 2013 or something like that. I'm fine
11 with that. But I don't think it's an extensive or overly
12 burdensome request to try to get the information, you know,
13 from a third party even if it's just to confirm, you know,
14 what was provided from that.

15 **THE COURT:** Right.

16 **MR. ROTHSTEIN:** So, Your Honor, you know, I understand
17 your comments about being efficient and cost effective in
18 discovery. And I assure you we're trying to do that.

19 **THE COURT:** Well, have you received any objections from
20 any of the non-parties as to the subpoena themselves?

21 **MR. ROTHSTEIN:** No. No, we haven't.

22 **THE COURT:** All right. Thank you, sir. Mr. Outten.

23 **MR. OUTTEN:** Your Honor, the first thing I want to
24 cover is Mr. Rothstein just stood right here and told you
25 that the valuation was determined according to the original

1 Operating Agreement. You may remember that.

2 I would ask the Court to look at 2(j). What he ---

3 **THE COURT:** At what?

4 **MR. OUTTEN:** --- just said ---

5 **THE COURT:** Look at what, please?

6 **MR. OUTTEN:** Look at 2(j) of the Severance Agreement.

7 Now, let's make sure we understand what happened. Mr.
8 Rothstein and Mr. Keim spent two or three months negotiating
9 the terms of this Agreement. Weeks? Okay. But the point
10 is she was represented by counsel.

11 Mr. Rothstein stood at this podium and said it's
12 controlled by the original Operating Agreement. What he
13 said is not true. Look at 2(j). The final sentence of 2(j)
14 says the proper dissociation will be handled separately from
15 this Agreement and will be done in accordance with the
16 September 30th, 2015 Operating Agreement.

17 This Agreement was signed by Ms. Mattison with the
18 advice and counsel of David Rothstein. So how in the world
19 he can stand up here and represent to Your Honor that the
20 value of the shares will be determined by the original
21 Operating Agreement is beyond me.

22 The second thing he said is we're being reasonable.
23 Well, is it really reasonable to ask for an accountant's
24 documents who hasn't worked for the company in nine years?
25 Is it really reasonable after we've ---

1 **THE COURT:** That's the Elliott Davis?

2 **MR. OUTTEN:** No, that's ---

3 **THE COURT:** Halliday?

4 **MR. OUTTEN:** --- Halliday. And for ---

5 **THE COURT:** Hang on. Just one second. Let me ---

6 **MR. OUTTEN:** I'm sorry.

7 **THE COURT:** HDH is Halliday? No.

8 **MR. OUTTEN:** No. Halliday ---

9 **MR. ROTHSTEIN:** McAbee, Schwartz and Halliday.

10 **THE COURT:** Oh, I see it. Excuse me. McAbee,
11 Schwartz, okay.

12 **MR. OUTTEN:** Right. He hadn't performed work for over
13 10 years.

14 And he complains about Elliott Davis. He wants
15 information from Elliott Davis. We've given him eight years
16 of tax returns. We've given him financial review reports
17 for eight years. The suggestion to you that we haven't
18 cooperated fully in discovery is simply not true.

19 He asked for -- he just told you he wanted
20 distributions from a totally separate LLC. How far does
21 discovery go, Your Honor?

22 Mr. Smith is going to have to disclose every business
23 interest that he has because Ms. Mattison claims, but has
24 yet to be determined whether or not she has a derivative
25 action. Your Honor's made that clear. We don't know that

1 yet. But she claims she has a derivative action.

2 And because of that mere claim that appears in a
3 pleading Mr. Ron Smith has to disclose other business
4 interests that he has and pull in people who have nothing to
5 do with this. Reasonable? No, sir, it's not reasonable at
6 all.

7 Now, with regard to HDH Advisors, what Mr. Rothstein
8 told you about that is simply untrue. We used them to value
9 the shares, the membership units. And, Your Honor, it may
10 help you to know that there have been many transactions
11 where shares have been bought and sold based upon a
12 valuation done by HDH. There's no manipulation of the
13 value.

14 The founding members about which Mr. Rothstein
15 complains have sold their shares for the valuation that HDH
16 came up with. In other words, they agreed to divest
17 themselves of membership units that they owned based on this
18 valuation. So I don't know -- there's absolutely no factual
19 basis for this notion that it was a manipulation.

20 And then Mr. Rothstein has some other complaint about
21 how the valuation is done, that it wasn't a complete
22 evaluation. But that's what the parties agreed to. And
23 that's why I want to keep coming back to it.

24 You know, we had a Severance Agreement that Ms.
25 Mattison signed. And the expectation was that we've

1 resolved all issues. And as soon as the HDH evaluation
2 comes back, we'll do the math and go through the agreed upon
3 methodology and then this will be completed and the
4 separation will be complete. That didn't happen. And we've
5 tried to do that. We've tried to go beyond that to avoid
6 litigation, but it hasn't happened.

7 But, Your Honor, you were absolutely correct when you
8 said earlier we need to -- I think our motion for protective
9 order should be granted for the reason that I really don't
10 think it's incumbent upon a judge to look through the
11 requests and decide which ones are appropriate and which
12 ones are not. And I've had that discussion many times, and
13 I know Your Honor has too. But I think that we've
14 demonstrated that these are overly broad and that our motion
15 for protective order should be denied [sic].

16 You asked about the subpoenas. We -- and if I made a
17 mistake, this is on me. But we've contacted Markel, HDH and
18 told them that we have moved for this protective order. So
19 we didn't see any purpose to be served by a further
20 objection. If that was a mistake, Your Honor, I made it.

21 **THE COURT:** That's fine.

22 **MR. OUTTEN:** But that's why you didn't hear from that.

23 But my point is, we've demonstrated that these requests
24 in these subpoenas are overly broad by Rule 45. And I think
25 our motion for protective order should be granted.

1 Having said that, discovery's still ongoing. So is
2 there more requests for information related to valuation
3 which is within three years? Requests related to
4 normalization? We're going to respond to those.

5 I know how Your Honor feels about discovery. We're
6 going to respond to those. We're not going to stonewall his
7 discovery requests. But we feel like we have to make a
8 motion like this when you're trying to go back to 2009. It
9 simply can't aid in the resolution of this dispute.

10 **THE COURT:** Thank you, sir. Mr. Rothstein.

11 **MR. ROTHSTEIN:** Yes, sir.

12 **THE COURT:** You know, Mr. Outten does have a good point
13 under the Severance Agreement under 2(j) that whether or not
14 you contend that's a valid valuation agreement, you agreed
15 and your client agreed that that would be the basis for your
16 evaluation.

17 **MR. ROTHSTEIN:** Your Honor, ---

18 **THE COURT:** Whether or not it's a valid agreement or
19 not based on their, you know, procedures up until that
20 point.

21 **MR. ROTHSTEIN:** I think he's misreading -- the language
22 of that ---

23 **THE COURT:** I'm looking at it myself. It says -- hang
24 on. It says the proper dissociation will be handled
25 separately from this Agreement and will be done in

1 accordance with the September 30th, 2015 Operating
2 Agreement.

3 **MR. ROTHSTEIN:** That's right.

4 **THE COURT:** And correct me if I'm wrong, because again,
5 I often am, that previously you argued that the September
6 30th Operating Agreement was not -- it was not appropriate
7 because they didn't follow the proper procedures leading up
8 to that. So it's basically a null and void document.

9 **MR. ROTHSTEIN:** That's correct.

10 **THE COURT:** But even assuming it is a null and void
11 document as to the entities -- plaintiff in this action, you
12 and your client agreed freely and voluntarily to base your
13 valuation on that Agreement.

14 **MR. ROTHSTEIN:** You're confusing the terms proper
15 dissociation with valuation. And there's two different
16 concepts.

17 If you'll look at the Agreement, it says in terms of
18 the valuation of her shares, what are they worth, we're
19 going to track -- and I didn't say it's bound by the -- it
20 said tracks the procedure in the original Operating
21 Agreement, which was that the parties are going to try to
22 get together and come up with a valuation. Right?

23 If they can't come up with a valuation -- and, again,
24 we're supposed to be given the financial information to
25 allow us to do that. The dissociation issue talks about if

1 you improperly dissociate, you know, you lose a certain
2 percentage of not evaluation, but, I mean, what they pay
3 you. There's a -- there's a schedule for how the value of
4 your shares is paid out ---

5 **THE COURT:** You have an employee claim and a
6 shareholder claim.

7 **MR. ROTHSTEIN:** That's right.

8 **THE COURT:** Okay.

9 **MR. ROTHSTEIN:** And ---

10 **THE COURT:** But ---

11 **MR. ROTHSTEIN:** And what Mr. Outten is saying is that
12 we agreed to use the HDH value. And we never agreed to
13 that. We agreed that we would try to work it out, both
14 sides getting the financial information together. And they
15 jumped the gun on that.

16 Normally the HDH report was done in about June or July
17 of the year after the close of the fiscal year. What
18 happened here is Ms. Mattison -- the Separation Agreement
19 was that she would resign in February and that we would get
20 together and try and get a valuation of her shares together
21 within a couple of months.

22 Well, at that point she ended up getting ---

23 **THE COURT:** Sick.

24 **MR. ROTHSTEIN:** --- breast cancer.

25 **THE COURT:** Right.

1 **MR. ROTHSTEIN:** And so we -- that kept being delayed,
2 and delayed, and delayed, ---

3 **THE COURT:** Right.

4 **MR. ROTHSTEIN:** --- and we never got the financial
5 information.

6 Well, they, unbeknownst to us, ran out to HDH after the
7 very, like, first week of January and said we need this
8 valuation done immediately. And so ---

9 **THE COURT:** Well, let me ask you this. Does the
10 September 30th, 2015 Operating Agreement that's referenced
11 in 2(j) have a valuation language in it?

12 **MR. ROTHSTEIN:** What it says is that the management
13 committee is allowed to come up with a -- there's no
14 formula, there's no -- it says they're allowed to come up
15 with a valuation of the shares if -- annually. If they
16 don't do it annually for two years, then there's some other
17 procedure that comes into play.

18 But there's no formula saying, you know, this is what
19 the value is worth or there's a discount for 10 percent for
20 this, 20 percent for this, you know, for control and
21 marketability. That's not spelled out in the Operating
22 Agreement.

23 When Ms. Mattison was originally approached about, you
24 know, they wanted her out of the company, this was in
25 November of 2017, there was a memo that they provided her

1 that says this is how the shares will be valued. We're
2 going to try and come together to reach an agreement. If we
3 can't reach an agreement, each side will pay half of a, you
4 know, an independent -- do a full valuation of the shares.

5 And that's the -- that's the language that tracks the
6 original Operating Agreement. And that's what we thought we
7 were using when we agreed to the Severance Agreement because
8 that's the same language, we'll both come together, get all
9 the financial information, you know, about what's provided
10 to this independent person, we both pay half of it.

11 And, Your Honor, I mean, that -- the original Operating
12 Agreement says that if any change is made to your voting
13 rights or your financial interests in the firm, it has to be
14 approved unanimously by all the shareholders. Ms. Mattison
15 and Mr. Dikeman (ph.) never signed any agreements or any
16 amendments beyond that. So, you know, if they're trying now
17 to say that the September 2005 amendment, you know,
18 controls, that's just not -- that's not true.

19 And, you know, this is all, you know, I'm not trying to
20 misrepresent what's in the Severance Agreement. There's
21 just a fundamental difference between what the term proper
22 dissociation means and what valuation means. And that
23 language you just read in 2(j) says this is how we're going
24 to handle the proper dissociation. It doesn't say how we're
25 going to handle the valuation.

1 And if you'll look, there's a paragraph earlier in the
2 valuation that says -- it doesn't say we're going to use the
3 HDH number, period. It says we're going to try and come
4 together, they're going to provide all the financial
5 information we request. And if we can't agree on a
6 valuation, then we're going to -- and I don't think it
7 addresses what happens after that.

8 But they never got us to that point because they never
9 gave me the financial information to allow us to come up
10 with a fair value for the shares. They ran out and got HDH
11 and says, here's the number, you're stuck with it.

12 You know, we -- this is what we've used to sell off
13 some of our shares in the past or, I mean, it's not true,
14 Your Honor. I mean, they will sell maybe 20 shares of their
15 16,000 shares and say, well, that's a fair market value
16 because we accepted that when we sold our shares. They keep
17 manipulating the share price to suit them, Your Honor. And
18 there's a pattern and history of this.

19 And I think if you look at this issue of who's the
20 proper person to bring this claim, Ms. Mattison is the only
21 person who's sort of no longer under the thumb of the three
22 managing partners of this firm and the COO. And so she --
23 she is the one that can stand up for everybody in terms of
24 deciding what the true value of the firm is.

25 She's not doing this for herself. This is ---

1 **THE COURT:** I disagree with you there. She's
2 definitely doing it for herself. I mean, clearly -- and no
3 impugnement to you, ma'am. But, obviously, anybody in
4 litigation, rightfully, is doing their utmost best to
5 maximize their return or minimize their payout. That's just
6 the nature of litigation. So certainly she's trying ---

7 **MR. ROTHSTEIN:** Well, if you think ---

8 **THE COURT:** --- to do it for herself.

9 **MR. ROTHSTEIN:** --- of this -- if you think of the firm
10 as a piggy bank, right? And she says, okay, I've got three
11 percent of whatever's in that piggy bank, right? And so
12 when she decided to dissociate from the piggy bank, she
13 realizes that the owners or the guardians of the piggy bank
14 have been taking money out of the piggy bank for years that
15 they shouldn't have been taking out. That money's going to
16 go back into the piggy bank.

17 And that's what we're trying to do with the derivative
18 action. She doesn't get all the money that goes back into
19 the piggy ---

20 **THE COURT:** I understand that.

21 **MR. ROTHSTEIN:** --- bank. She just gets her, you know,
22 her ---

23 **THE COURT:** Percentage.

24 **MR. ROTHSTEIN:** --- ownership share of it.

25 So there's two parts to it, too, Your Honor. If you're

1 going to come up with a fair value of the firm, if there are
2 these normalization calculations, it's the same type of
3 information in discovery that we get in terms of what's a
4 reasonable compensation and, you know, should all these
5 people be getting their spousal's disability and long-term
6 care insurance paid without any knowledge to the other side?
7 Should these people be getting their country club dues paid
8 and their, you know, car leases and all this kind of stuff
9 that's not provided to anybody else in the firm? And nobody
10 other than the three people that are getting the benefit had
11 ever approved any of that.

12 So, you know, I think they're, I mean, this is a
13 legitimate shareholder derivative case. And we know we have
14 an uphill battle. And we'll have expert witnesses, and
15 forensic accountants, and economists to support our
16 position.

17 **THE COURT:** All right. Thank you, sir. Mr. Outten,
18 may I ask you one further question?

19 **MR. OUTTEN:** Yes, sir.

20 **THE COURT:** If you have any further comments, fine.
21 Does the September 30th, 2015 Operating Agreement, and,
22 quite frankly, 2(j) does refer to employees dissociation.
23 It doesn't necessarily refer to shareholders valuation. But
24 does it have language that controls the valuation of a
25 shareholder's payout upon dissociation or sale?

1 **MR. OUTTEN:** Yes, sir, it does.

2 **THE COURT:** Okay.

3 **MR. OUTTEN:** And I don't have it before me ---

4 **THE COURT:** I have it somewhere. I'll find ---

5 **MR. OUTTEN:** What it says is the value is fair market
6 value as determined by the executive committee. And that's
7 in the Operating Agreement. And it's what all the members
8 are bound by. It's what Ms. Mattison agreed to be bound by.
9 So what happens is when you look at the Agreement, it
10 says -- and they do valuations every year. And it's
11 necessary for lots of reasons. So it's not like there was
12 one valuation done for Ms. Mattison or for this litigation
13 that was -- that was something unusual or outlier that we
14 did to try to minimize the amount of her -- that's not at
15 all what happened. This was done in the normal course of
16 business.

17 And so what the Operating Agreement, which they agreed
18 controls, what it says about value of membership units is
19 that the fair market value will be determined by the
20 executive committee. And what the executive committee will
21 do is hire a qualified firm to determine what that is, which
22 is a part of many operating agreements in LLC's like this,
23 as you know.

24 So the answer to your question is, yes. The Operating
25 Agreement says that the responsibility for fair market value

1 will be determined by the executive committee who will hire
2 a qualified appraiser. And that was done year, after year,
3 after year.

4 So when Mr. Rothstein says, no, there's no methodology,
5 that's just not so. And the valuation that was -- that HDH
6 came up with was binding, not just on Ms. Mattison, but on
7 all transactions related to membership units. And that
8 happened before the dispute with Ms. Mattison, and it's
9 happened after the dispute that we -- this is the way we do
10 this.

11 Right or wrong, that's what the Agreement says. It's
12 not up to us really to second guess the Agreement once it's
13 reduced to writing. And if the writing says the executive
14 committee determines fair market value, then that's what
15 she's agreed to. And, again, she agreed to it right here.

16 Now, the other thing is Mr. Rothstein, I think, said
17 something like she's standing up for the other members.
18 That's a new procedural rule that I'm not aware of.

19 A derivative action is very clear. A derivative action
20 may only be brought if the other members of the LLC support
21 it. It can't be -- there's absolutely no case authority to
22 support that a two percent owner of an LLC can bring a
23 derivative action unless the court can find support from the
24 other members. Otherwise, as I said at the beginning of my
25 comments, it's an individual action.

1 As Your Honor sort of alluded to a few minutes ago that
2 she's trying to maximize her position in this litigation,
3 that's fine. All litigants do it. I don't have a problem
4 with that.

5 But, again, when we consider this derivative action, it
6 can't be, well, I speculate that others are afraid to do it
7 or my speculation is that -- that I'm doing it and they wish
8 they were -- there's absolutely no procedural basis for a
9 lawsuit like that. If you want to bring a derivative
10 action, you've got to come into this court and say, Judge
11 McIntosh, this is our evidence, this is our support for the
12 fact that the other members join me in this derivative
13 action, otherwise, she's left with her individual action.

14 **THE COURT:** All right. Thank you, sir. Mr. Rothstein,
15 any final comments?

16 **MR. ROTHSTEIN:** Your Honor, I mean, I think that's
17 important. This is -- he's trying to re-litigate the
18 motions to dismiss, which has already been denied.

19 The issue on, I mean, I think if you look at the phrase
20 valuation and the provision that's in the Severance
21 Agreement, it's -- there's a section for valuation, there's
22 a section for proper dissociation. And those two are not
23 the same thing.

24 And, you know, the purpose of today's motion -- hearing
25 is not to re-litigate the motions to dismiss or whether

1 she's a fair and adequate representative of the ---

2 **THE COURT:** All right.

3 **MR. ROTHSTEIN:** --- for the class. We're here on a
4 motion to quash and a motion for a protective order.

5 **THE COURT:** All right. Thank you. I'm going to look
6 at the Severance Agreement and Operating Agreement further
7 in regards to the motion to quash.

8 I am *sua sponte*, however, ruling now that from this
9 point forward any discovery involving this case is limited
10 to the normalization and valuation of her claims or her
11 claims as a shareholder or employee. And it's limited
12 beyond that to whether or not she will be appropriate
13 representative with regard to the derivative claim. There's
14 not going to be any wide-ranging discovery under the
15 derivative claim until that determination has been made as
16 to whether or not she's appropriate representative.

17 I'm going to ask Mr. Outten to please draft me an
18 order, if you would, listing the factors that I need to
19 consider because I can't summarize them off the top of my
20 head as to what constitutes a proper representative.
21 Certainly share it with Mr. Rothstein and forward it to me
22 once y'all agree on it. If you can't agree, then send it to
23 me. And you send me your objections, and I'll make a
24 determination.

25 I'll make a ruling on your motion to quash once I look

1 through this a little bit further, okay?

2 **MR. OUTTEN:** Your Honor, may I ask a question?

3 **THE COURT:** Yes, sir.

4 **MR. OUTTEN:** With regard to the normalization and
5 valuation ---

6 **THE COURT:** And I hesitate to say normalization and
7 valuation because I can think -- if you took the derivative
8 case out, just say it wasn't pending or wasn't part of this
9 suit, I don't want to just limit her to normalization and
10 valuation in her discovery on that claim, only appropriate
11 discovery regarding her claim without consideration of her
12 derivative claim, okay?

13 And so I might be too restrictive in saying
14 normalization, valuation. I think that's probably primarily
15 the function that you're looking at or the area, but, you
16 know, I'm not sophisticated or intelligent enough to see the
17 areas that Mr. Rothstein may want to get in without
18 consideration of the derivative claim.

19 What I'm trying to do is prevent wide-ranging discovery
20 with regard to the derivative claim that has no regard or no
21 connection or nexus to her claim that is the underlying
22 claim in this matter without consideration in the derivative
23 claim. Does that answer your question?

24 **MR. OUTTEN:** Yes, sir. I was only asking if we're
25 going to put a time limitation, that is, we go back three

1 years, we go back four years?

2 **THE COURT:** Well, I think that that would be subject to
3 further motion. I've listened to what you said. I do think
4 that, Mr. Rothstein, nine years is pretty wide-ranging. I
5 think it might be too far. I'm not ruling that.

6 Can you agree as we sit here today with regard to the
7 -- my *sua sponte* ruling, to a time-frame? And if you need
8 additional time to come back to the Court to explain ---

9 **MR. ROTHSTEIN:** I'll agree to the Markel -- the very
10 original valuation that was done in 2009. And then from the
11 2013 HDH's involvement forward, I think is fair. But, you
12 know, ---

13 **THE COURT:** Do you have a problem with that, Mr.
14 Outten? Because I -- without having the benefit of looking
15 at those documents, I just don't know. I mean ...

16 **MR. OUTTEN:** So 2014 ---

17 **MR. ROTHSTEIN:** '13.

18 **THE COURT:** He said he wanted the Markel 2009 and then
19 2013 forward H -- H ---

20 **MR. ROTHSTEIN:** HDH. Yes, sir.

21 **THE COURT:** HDH.

22 **MR. ROTHSTEIN:** Because I think that's -- if there were
23 errors in the beginning, they carried through, you know,
24 throughout the whole process that HDH was involved in.

25 **MR. OUTTEN:** I'm not sure we have all that. But if we

1 have it, we'll -- we'll produce it. I'm not sure that -- we
2 go ---

3 **THE COURT:** I'm not going to make that ruling. If
4 y'all can agree, obviously, that's what I'm encouraging.
5 Otherwise, I'm going to limit my ruling today to my *sua*
6 *sponte* ruling, holding the other motion to quash and for
7 protective order under abeyance until I go back to look at
8 this matter again, okay?

9 **MR. ROTHSTEIN:** Judge, in terms of tomorrow, this
10 document review, can we get some guidance on whether Ms.
11 Mattison can help me review? I mean, ---

12 **THE COURT:** Yeah. I, quite frankly, think that's
13 totally unreasonable. I think that Ms. Mattison should be
14 allowed to be there.

15 **MR. ROTHSTEIN:** Thank you.

16 **THE COURT:** Yeah. And she doesn't need me to preach to
17 her. She knows that she's got to conduct herself in an
18 appropriate ---

19 **MR. ROTHSTEIN:** Absolutely.

20 **THE COURT:** --- manner.

21 **MR. ROTHSTEIN:** And I'll be there the whole time ---

22 **THE COURT:** And if there's ever a problem, do you have
23 my cell phone? I know you have my cell phone because we've
24 had conferences on it before. I'll give it to you. Call
25 me, and we'll deal with it right then and there.

1 **MR. ROTHSTEIN:** Okay.

2 **THE COURT:** Okay, sir? So if you want to step forward,

3 ---

4 **MR. ROTHSTEIN:** Okay.

5 **THE COURT:** --- I'll give you my cell phone.

6 (Pause)

7 **THE COURT:** All right. Anything further, Mr. Outten,
8 before we break?

9 **MR. OUTTEN:** No, Your Honor. I would like to put on
10 the record that with regard to this issue of Ms. Mattison
11 coming to our office, I'm concerned about it.

12 **THE COURT:** I mean, you gave some very general,
13 speculative things that could happen. I thought those were
14 at best speculative. You know, she -- as a lawyer you are
15 requiring Mr. Rothstein to come in in somewhat in the dark.
16 I know he's very intelligent, but she has a working
17 knowledge of this stuff too and could be helpful.

18 And I used to always hate to have to go to somebody's
19 place of business and sit down and try to figure out
20 something without somebody helping me do it. And --
21 because, first of all, I wasn't smart enough to go through
22 and do it. But I don't see any reasons.

23 Now, if she comes there and she causes a problem or
24 there's some legitimate concerns, pick up the phone and call
25 me. I'll stop, and I'll rule on it. And I'll issue

1 appropriate orders including sanctions.

2 **MR. OUTTEN:** Fair enough, Your Honor.

3 **THE COURT:** All right.

4 **MR. OUTTEN:** Thank you.

5 **THE COURT:** Thank you. Mr. Rothstein, anything further
6 before we break?

7 **MR. ROTHSTEIN:** No, sir. Thank you for your time ---

8 **THE COURT:** All right. Have a good day, ladies and
9 gentlemen.

10 (Hearing Ended at 10:01 am)

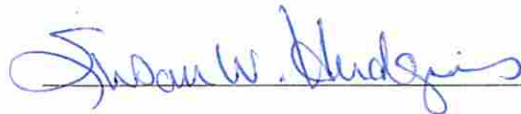
11 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 6th day of November 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 13, 2019



Circuit Court Reporter

State of South Carolina
County of Greenville

Court of Common Pleas

McMillan Pazdan Smith, LLC)

Plaintiff,)

v.)

Donza H. Mattison)

Defendant.)

Transcript of Record
2019-CP-23-00998

May 12, 2020
Greenville, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

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

Sam Outten, Esquire
Attorney for the Plaintiff

Tom Keim, Esquire
Attorney for the Plaintiff

David Rothstein, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

* * * * *

THE COURT: Okay. Before we get started, does everybody agree to disposing of this mat -- or these matters remotely as opposed to being physically present in the courtroom?

MR. OUTTEN: Your Honor, on behalf of McMillan Pazdan and Smith, we consent.

THE COURT: And Mr. Rothstein?

MR. ROTHSTEIN: Yes, sir. We do consent.

THE COURT: Okay. And, first, there is a motion for summary judgment by McMillan as to the representative -- of Ms. Mattison to represent, then we'll proceed with the derivative action.

You -- also, there's some discovery issues that you have. Mr. Rothstein said, "Okay. One, two, three, and five, we agree to." Number four, which is the thing involving the place over in Spartanburg, you do not agree with; is that correct?

MR. ROTHSTEIN: That's correct, Your Honor.

THE COURT: From plaintiff's perspective, Mr. Outten, any other matters that I didn't address that we're going to need to take up today?

MR. OUTTEN: Well, Your Honor, one of our motions for protective order has to do with the

1 deposition of Paulette Myers, and I do think we need
2 to discuss that motion, Your Honor.

3 THE COURT: Okay. Well, just make sure we --
4 you bring it up and we'll cover it.

5 I would like -- it seems to me that we ought to
6 go to the issue of the representative capacity of
7 Ms. Mattison first because I think that disposes of
8 some issues potentially or doesn't dispose of them
9 potentially.

10 And the question I have, I've read through both
11 of your materials, quite frankly, and some of the
12 questions that I have that, number one, from the
13 plaintiff's perspective: Is the determination of
14 whether a shareholder fairly and adequately
15 represents a corporation in a derivative action a
16 question of law for the Court to decide.

17 MR. OUTTEN: Yes, sir, it is.

18 THE COURT: And, Mr. Rothstein, do you agree
19 with that as well?

20 MR. ROTHSTEIN: It's -- it's definitely for the
21 Court to decide, Your Honor. I think there -- there
22 are some factual issues that on summary judgment
23 would need to be taken in the light most favorable
24 to Ms. Mattison.

25 THE COURT: Well, let me -- let me go back.

1 I'm going to go to the summary judgment issue in a
2 second, but I want to ask you as a matter of law in
3 regards to how it's disposed of for the Court to
4 decide, right?

5 MR. ROTHSTEIN: Yes, sir.

6 THE COURT: Okay. And my next question is kind
7 of what you were leading into: Is -- is the summary
8 judgment the proper mechanism by which that
9 determination is to be made, or is it some other
10 mechanism like by way of motion to dismiss?

11 Sam, what was your -- what's your feelings?

12 MR. OUTTEN: Well, Your Honor, here's the
13 reason why we filed a motion for summary judgment.

14 THE COURT: Okay.

15 MR. OUTTEN: My recollection is, we filed a
16 motion to dismiss. And one of the grounds for the
17 motion to dismiss was that Ms. Mattison was not a
18 fair and adequate representative of the members of
19 the LLC.

20 THE COURT: Right.

21 MR. OUTTEN: And that Your Honor at one of the
22 first hearings granted discovery on that issue. And
23 I'm not reading your order, so if I get it wrong
24 it's not on purpose, that I am going to grant
25 Ms. Mattison the right to conduct some -- and

1 McMillan Pazdan and Smith. I'm not suggesting we
2 would exclude them, but I'm going to grant
3 Ms. Mattison the right to conduct some discovery,
4 and that discovery included document requests and
5 then it also included the taking of some
6 depositions.

7 And so, procedurally, Your Honor, we filed a
8 motion for summary judgment because at this stage
9 some discovery has been done, and that is the reason
10 why I filed -- I filed it that way procedurally. It
11 could be couched as a motion to dismiss.

12 THE COURT: Okay.

13 MR. OUTTEN: I think the important thing, Your
14 Honor, is both parties have agreed that this is a
15 matter of law for the Court.

16 THE COURT: Right.

17 MR. OUTTEN: However we -- however we couch it
18 procedurally, I think that this is a matter of the
19 Court examining the record before and then making a
20 legal determination as to whether Ms. Mattison
21 fairly and adequately represents the members of
22 McMillan Pazdan and Smith.

23 THE COURT: I agree with that.

24 Now, Mr. -- David, if you would, what's your
25 response as to the summary judgment issue?

1 Obviously, I think you think that summary judgment
2 is a necessary vehicle to dispose of this or you
3 wouldn't be raising the arguments that you're
4 making, but go ahead and respond if you would.

5 MR. ROTHSTEIN: Yes, sir. I think there're
6 factual disputes that on their motion for summary
7 judgement would have to be construed in the light
8 most favorable to Ms. Mattison. I think if you use
9 the rules of summary judgment in this case, the
10 member statements that Mr. Outten primarily relies
11 upon are not properly in the form of a Rule 56(E)
12 affidavit.

13 And Mr. Outten is correct. If you did grant us
14 the right to conduct discovery -- and as Your Honor
15 will remember, we tried to schedule six depositions
16 over a three-day period in December about a week
17 before you had a status conference with us before
18 this hearing on the motion to disqualify.

19 And you said, "Look, I'm not going to get --
20 you guys need to schedule the depositions
21 yourselves. I'm not going to get involved in that.
22 The depositions can go..."

23 When I attempted to get with Mr. Outten to
24 schedule the depositions, everything was a fight.
25 You know, I tried to do the depositions in my office

1 on convenient days when people may be up here.

2 Mr. Outten initially said, "No. You've got to go to
3 Charlotte or Charleston to do these depositions."

4 And it took us three months to just schedule three
5 depositions. And when I asked for dates for the
6 other three deponents, he said, "We're not going to
7 allow those to go forward," and he filed a motion
8 for summary judgement and the motion to protect.

9 So we have not had an opportunity to depose a
10 sufficient number of people in the case. I don't
11 think I need to depose everybody -- all of the
12 members, but I certainly want to depose more than
13 three.

14 THE COURT: Well, let me ask you this. You
15 seem to concede in your memorandum or your motion in
16 support and opposition the idea that all of the
17 minority shareholders are not in favor of this
18 derivative action. Is that a fair statement?

19 MR. ROTHSTEIN: Well, they've expressed that in
20 statements that were done in November, but when I
21 started to take these depositions, they hadn't even
22 seen the complaint at the time they signed those
23 statements. And ---

24 THE COURT: Right.

25 MR. ROTHSTEIN: --- you know, they were mislead

1 into thinking that the firm had hired an independent
2 attorney to represent the minority interest. It was
3 the same lawyer that they've hired as an expert
4 witness on the conflict issue, Your Honor. So I
5 think there's a lot of misinformation that has been
6 given to these minority members by the third-party
7 defendants, you know, who are sort of the filter for
8 all the information that the minority is getting.
9 So I think Mr. Outten's primary goal in trying to
10 limit me from taking depositions is to keep the
11 other minority members from knowing the truth.

12 THE COURT: Well, you know what, those
13 accusations aside, the concern that I have and I'll
14 tell y'all, when I went through your memorandum,
15 David, I was reading through it, and you prepared a
16 nice brief and you honestly set forth the package,
17 but the biggest thing that I've seen is whether or
18 not Ms. Mattison could perform as a fiduciary with
19 her underlying claim for increased -- from 829,000
20 to 267,000.

21 And that, quite frankly, based on prior
22 submissions in the record, that this derivative case
23 is purely leveraged to increase the amount of her
24 take. And that's a big concern I have because even
25 if I were to let you continue, she continues on that

1 way, her attorney's fees award is going to be
2 astronomical. And that doesn't make sense to me,
3 but go ahead.

4 MR. ROTHSTEIN: Well, Your Honor, first of all,
5 I think it was improper for Mr. Outten to put the
6 numbers on our settlement discussions into his
7 brief. I mean, that's clearly covered by Rule 408.

8 THE COURT: And aside from the numbers, the
9 clear uncontested issue between the parties in your
10 correspondence to Sam is that, "We reject this offer
11 that you have given us. And if you don't settle
12 with us, we're going to file this derivative
13 action." It's clearly, based on your own language,
14 a leverage being used in this case, and I don't see
15 how any time you can get around it, especially since
16 I'm making the call.

17 MR. ROTHSTEIN: Well, Your Honor, I mean, there
18 was nothing improper in her doing that. We went to
19 mediation after that letter was sent.

20 THE COURT: And I'm not saying that it was
21 improper and I'm not suggesting you did anything
22 unethical, and please don't construe me to say that.

23 The reason I raise that issue is solely as to
24 whether or not she could fairly and adequately
25 represent this corporation. I think from what I've

1 seen is that she is bringing this derivative claim
2 solely for the purpose of enhancing her valuation of
3 her shares and her dispute with the plaintiff. And
4 as such, she's also the only nonemployee shareholder
5 there. And I think that there's some real issues
6 about her capably representing the corporation and
7 being able to perform a fiduciary under these
8 circumstances. And you will be doing your hardest
9 to try to show that she is. I'm just, quite
10 frankly, not sure that she can.

11 And so let me ask you this, and I'm giving you
12 the benefit of my thoughts after reading these
13 briefs, but assuming that you go through and you're
14 allowed to take the other three minority
15 shareholders' deposition ---

16 MR. ROTHSTEIN: Right.

17 THE COURT: --- other than you trying to say,
18 "Well, you weren't given this information. You
19 weren't given this information, and does that change
20 your mind," what else would you hope to elicit with
21 regard to the issue of the representative capacity?

22 MR. ROTHSTEIN: I think that's about it, Your
23 Honor.

24 THE COURT: Okay.

25 MR. ROTHSTEIN: And, Your Honor, you know, a

1 derivative action, I'm sure you've had derivative
2 actions and class actions under Rule 23, the normal
3 rule ---

4 THE COURT: It's not a normal thing, but I've
5 had a few. Yes, sir.

6 MR. ROTHSTEIN: Yes, sir. And a derivative
7 action is sort of a second cousin to the Rule 23
8 class action.

9 THE COURT: The burden of proof is different.
10 It's on the defendant as opposed to the plaintiff.
11 I got that.

12 MR. ROTHSTEIN: Okay. But the idea is
13 whether -- I mean, can Ms. Mattison vigorously and
14 diligently represent the people she's trying to
15 represent?

16 THE COURT: Let me tell you something, if you
17 have the -- and then first of all, she's not really
18 representing the majority of the shareholders. You
19 would agree with that? She's representing the
20 corporation. And it's really to prevent impression
21 of the minority shareholders, right?

22 MR. ROTHSTEIN: That's right.

23 THE COURT: Okay. And if all the other
24 minority shareholders are, in fact, still employees,
25 which she's not, and they're saying, "I don't want

1 this case to go forward," and she does, but she has
2 an underlying claim for valuation which she's hoping
3 to increase, how could she ever adequately
4 represent?

5 MR. ROTHSTEIN: Well, the question is, can she
6 represent similarly situated shareholders?

7 THE COURT: I don't buy that argument, but
8 you can try it. And I thought it was very clever,
9 but I don't buy the fact that she's the only one
10 similarly situated being the nonemployee
11 shareholder. I don't buy that. Okay.

12 MR. ROTHSTEIN: Well, another thing, Your
13 Honor, that distinguishes Ms. Mattison from two of
14 the three people that we deposed already is, she is
15 what they call a 2 percent shareholder. She's above
16 the 2 percent threshold, and there are about five of
17 them or six of them in the firm. Everybody else did
18 not receive -- I mean, everybody else received their
19 shares as compensation. They didn't buy into the
20 firm like Ms. Mattison and some of these other
21 shareholders did.

22 THE COURT: Well, is that a valid distinction
23 as to whether or not they're being oppressed or not?
24 It doesn't matter how they came about it, does it?

25 MR. ROTHSTEIN: Well, the two insignificant

1 shareholders, Ms. Meyers and Mr. Joslin, testified
2 that they don't want to get involved in this because
3 their shares in the firm are so insignificant, it
4 doesn't make material difference for them.

5 THE COURT: Oh, so you're saying that the ones
6 who have these -- the 2 percent or the ones on near
7 or equal footing as Ms. Mattison were not allowed to
8 be deposed?

9 MR. ROTHSTEIN: We deposed one of them. It's
10 K.A. Jacobs. The other two or three that we've
11 attempted to depose, have -- Sam has not allowed
12 that to go forward.

13 MR. OUTTEN: Your Honor, the record needs to
14 reflect that Mr. Rothstein is the one who chose
15 which members he wanted to depose.

16 THE COURT: Okay.

17 MR. OUTTEN: And these distinctions make no
18 difference, Your Honor.

19 THE COURT: I don't think they make any
20 distinction either. I tell you, I do have a little
21 problem, Sam, with just saying you can't depose
22 these people when you have an unverified or
23 un-notarized. You don't have sworn statements
24 provided by them or the opportunity to ask them the
25 basis of their opinions to as to whether or not you

1 can proceed.

2 On the other hand, I really -- Mr. Rothstein,
3 David, I don't think that at the end of the day if
4 all of those minority shareholders say, "We're not
5 interested in proceeding. She can go forward with
6 hers," I don't think she can adequately represent
7 the corporation in a derivative action. Okay.

8 MR. ROTHSTEIN: Well, Your Honor, can I -- can
9 I be heard on that?

10 THE COURT: Yeah, but I want to -- let me point
11 out something to you if I can. If she loses on that
12 point, then there's an issue of attorney's fees,
13 which the math that keeps getting greater. You
14 know, I can't tell you necessarily how they're
15 going -- how they're going to testify. I have a gut
16 feeling that I know. At the end of the day, it's
17 going to be contrary to her interest as to award
18 fees. I mean, because I think these cases are --
19 people need to get their fees awarded to them one
20 way or the other. You may get yours, but I'll be
21 glad to hear from you.

22 MR. ROTHSTEIN: Again, getting back to this
23 class action issue, Ms. Mattison is actually the
24 best person to bring this claim because she's the
25 only one that doesn't have to fear retaliation by

1 the majority.

2 THE COURT: If she remained the shareholder and
3 didn't have -- but was agreeable to proceeding with
4 the payout of her claim, didn't have an underlying
5 claim, I would tend to agree with you. But the fact
6 that she doesn't and that the real issue behind this
7 derivative case, in my view, is that she's trying to
8 seek a higher payout.

9 MR. ROTHSTEIN: No question about that, Your
10 Honor, but there's nothing wrong with that. I mean,
11 it -- and if that's what's going to happen ---

12 THE COURT: That is one of the factors that you
13 cite in determining whether or not somebody can
14 fairly and adequately represent the corporation in
15 this derivative action, right?

16 MR. ROTHSTEIN: Well, to some extent, but if --
17 if she had a -- say she filed a sexual harassment
18 lawsuit against McMillan Pazdan and Smith, that type
19 of a lawsuit would probably preclude her from being
20 a valid -- a derivative action representative, but
21 here she didn't start the litigation. This was
22 litigation that was started by McMillan Pazdan and
23 Smith about what is the value -- fair market value
24 of her shares.

25 THE COURT: Well, that litigation was heading

1 down the path one way or the other I suspect.

2 You're right, they are the plaintiff in this case.

3 Here's something that comes across. You know,
4 I do hear you and I agree that because she is no
5 longer on a -- has to be in fear of her employment
6 continuing over there with them, she may be a little
7 bit more aggressive in asserting her claims.

8 But at the same time, the fact that she has
9 asserted her claims for the underlying payout of her
10 shares and the associated legal bills to the
11 corporation, and in the event that she has a bigger
12 payout than what she has been offered in this case,
13 it may have the affect of opposite of what -- of the
14 other minority shareholders and dilute their
15 interest in the firm. I don't know how it could be.
16 I'm not saying that, but it seems to me that that is
17 an issue.

18 MR. ROTHSTEIN: Two issues on that, Your Honor.
19 Number one, I believe this -- this case is covered
20 by insurance and so it's not coming out of the
21 pockets of the -- the -- the firm at all.

22 THE COURT: Okay.

23 MR. ROTHSTEIN: Number two, to the extent that
24 it would be coming out of the firm, we've requested
25 that the -- that the third-party defendants not use

1 firm assets to defend this case. You know, we think
2 that independent counsel needs to be of the basis of
3 our motion to dismiss.

4 And the other thing, Your Honor -- and our
5 motion to disqualify. The other thing, Your Honor,
6 is the benefit of the case does not go directly to
7 Ms. Mattison. It goes into the firm and
8 Ms. Mattison's 2 percent.

9 THE COURT: Listen, you can say that all day
10 long, but your ultimate goal is to increase what her
11 buyout is. And if you ---

12 MR. ROTHSTEIN: Absolutely.

13 THE COURT: --- say anything other than that, I
14 won't. Okay.

15 MR. ROTHSTEIN: I agree with that 100 percent
16 that's the goal, but there's nothing wrong with
17 that.

18 I mean, Your Honor, that's -- the analogy I
19 gave before about the piggy bank. If you have an
20 LLC, the sole purpose was to guard the piggy bank.
21 And you had the three majority managers of that
22 piggy bank taking out loans from of the banks of the
23 shareholders that didn't belong to them, the Court
24 and Ms. Mattison would want to dissociate from the
25 piggy bank company. The first thing you have to do

1 is figure out much money should be in the piggy
2 bank. And if the -- if the majority shareholders or
3 the people in control and the members have been
4 siphoning all the money out of the piggy bank for
5 years, there's nothing wrong with that -- those two
6 things proceeding simultaneously.

7 THE COURT: I agree, but the problem again that
8 I'm telling you that I'm having with her proceeding
9 in this case is, number one, that the other minority
10 shareholders are saying, "We don't want it and we
11 don't want this suit." And they would be the
12 oppressed people with benefits of going forward and
13 having a revaluation, if that were to occur. And
14 I'm not saying that it would occur, even if they
15 said, "We want to go forward."

16 Because, quite frankly, looking at the
17 documents, to me you have a 2000-, what, -15
18 operating agreement which you say was amended
19 illegally because Ms. Mattison didn't sign off on
20 it, but yet her -- what you're basing this off of is
21 her severance agreement with the -- or cessation
22 agreement with the company where they agree to value
23 her shares by that exact document. So that's a
24 different contractual document. Am I wrong in
25 that?

1 MR. ROTHSTEIN: It's a little bit -- a little
2 bit off on that, Your Honor. We -- our contention
3 is that the severance agreement says that she -- it
4 doesn't track the language of the amended 2015
5 operating agreement. What it says is that, the
6 parties will get together and try -- and right after
7 the first of the year and eval -- and try and come
8 together on -- on the terms of the agreement.

9 And it also says that the company had to give
10 us all the financial information that I requested to
11 allow us to make a reasonable calculation of the
12 fair market value, and that never happened.

13 What -- what happened is, they ran out and --
14 and got a -- this HDH company to do an appraisal
15 five or six months before they had ever done one
16 before.

17 THE COURT: Well, according to what I heard and
18 read in Sam's memorandum, they had been doing it for
19 the last five proceeding years.

20 MR. ROTHSTEIN: They have, but they always did
21 it in July or August. And there's a history of
22 manipulating that HDH number, Your Honor. When they
23 were buying out Brian Deichman who was the largest
24 shareholder in the firm, they actually came up with
25 a number that was like \$63 a share. And two weeks

1 later, they came up with a number that was \$128 a
2 share or something like that.

3 And -- I mean, there's -- there's a history of
4 them manipulating this HDH that I don't think is a
5 valid fair market value appraisal for the firm and
6 that's something, you know, we intend to get into on
7 discovery. That initial \$800 -- that \$800,000
8 number that Mr. Outten put in his brief, that was
9 based on our expert's criticism of the HDH
10 appraisal.

11 I think that, frankly, the number will be
12 higher once the excessive profits and the rent money
13 that was paid out improperly that's the subject of
14 our derivative shareholder action is put back into
15 the firm. But, again, the beneficiary of the
16 derivative action is the firm itself. And,
17 certainly, the third-party defendants are going to
18 feel some pain by that because they're going to have
19 to put money that they put out back into the firm,
20 but the minority shareholders won't value that. The
21 value of the firm will increase.

22 And there's no -- I'm not trying to -- well,
23 from the idea that we're trying to maximize the
24 value of her claim, that's absolutely what we're
25 trying to do. And that's what my fiduciary duty to

1 her is to try and maximize that claim, but I'm not
2 using it as a strike suit or a retaliatory thing.

3 Well, if you'd rather pay her this, wouldn't
4 that bleed the company dry in kind of a vindictive
5 case. This is -- we legitimately think that there
6 were a lot of money taken out of the firm by the
7 managing third-party defendants that needs to be put
8 back in before her shares were.

9 The other thing I have ---

10 MR. OUTTEN: May I be heard on a couple of
11 points, please?

12 THE COURT: Hang on. Yeah, Sam, go ahead.

13 MR. OUTTEN: Your Honor, I am surprised to hear
14 Mr. Rothstein say that he is trying to gain
15 advantage in this individual lawsuit for the value
16 of this equity, that that's a part of the reason why
17 he's bringing the derivative action.

18 We respectfully request that Your Honor look at
19 the cases. And what the cases say are what Your
20 Honor said earlier. You were right. The cases say
21 you can't be an adequate -- a fair and adequate
22 representative in a derivative action if your goal
23 is to improve your position or gain leverage in the
24 individual lawsuit. And I can send Your Honor as
25 many cases as you want on that. And now we've had

1 Mr. Rothstein say that's absolutely what we are
2 trying to do.

3 And so if you look at the cases, they say you
4 can't bring a derivative action. You can't do it to
5 gain advantage in an individual lawsuit. We have
6 cases for that proposition. Your Honor is
7 absolutely right. And so when you consider whether
8 or not this derivative lawsuit can go on, the cases
9 say you cannot do exactly what Mr. Rothstein says
10 he's doing.

11 Now, there are a couple other things, Your
12 Honor, that -- that I think are important here when
13 we look at this issue as an issue of fair and
14 adequate representative. Every member signed the
15 operating agreement that we've been talking about,
16 and that's the foundational document upon which the
17 firm does business. Mr. Rothstein and his client
18 are trying to get you to declare that that document
19 is invalid. How in the world can he be -- can
20 Ms. Mattison be the representative of members when
21 they have that conflict, that is if Mattison is
22 successful, it undoes the foundational document that
23 all the other members have signed.

24 The other thing is, if you read Mr. Rothstein's
25 brief and affidavit, he's accused all of the members

1 of misleading the Court. He's accused all of the
2 members of dishonesty. He's accused them of being
3 subject to being coerced and involuntarily signing
4 these member statements. So he purports to --
5 Ms. Mattison purports to represent all of these
6 members that are dishonest, that have mislead the
7 Court, that are giving the Court incorrect
8 information. That can't be, Your Honor.

9 Other thing that Ms. Mattison is trying to do
10 is, there are two shareholders that were -- or two
11 members that were given shares over the last couple
12 of years. That's another thing that Ms. Mattison is
13 trying to undue. She seeks to say that she is an
14 adequate representative of those members. And what
15 she wants you to do, Your Honor, is to issue an
16 order that that transaction was invalid and divests
17 them of their membership units.

18 And so there are just no circumstances under
19 which Ms. Mattison can be a fair and adequate
20 representative of the members of this LLC. Your
21 Honor, you put your finger right on it. And if we
22 look back at the letter, we see what Mr. Rothstein
23 says in his letter. He says, "If we are unable to
24 resolve this matter before the tolling agreement
25 expires on February 1, 2019, Ms. Mattison intends to

1 file not only an action for judicial valuation of
2 her shares, but also a shareholder derivative action
3 on behalf of NPS against the members of the
4 management committee for systematically overpaying
5 themselves in the form of excessive compensation,
6 bonuses, fringe benefits, and related third-party
7 lease transaction -- transactions for years.

8 And so what do we know when we look at that,
9 Your Honor? We know that if MPS had paid
10 Ms. Mattison what she wanted for her shares for her
11 membership units, then there would have been no
12 derivative action. That's directly contrary to the
13 reason why Rule 23 exists. Rule 23 exists so that
14 someone can bring an action for the benefit of the
15 corporation.

16 And Your Honor already has -- has figured this
17 out based upon your earlier comments. This action
18 is not for the benefit of MPS, which is what a
19 derivative action is supposed to be. We all know
20 that. This action is for the benefit of Donza
21 Mattison. And, again, don't take my word for it,
22 take Mr. Rothstein's word for it. We wouldn't be
23 here arguing about this derivative action if MPS had
24 decided to pay Ms. Mattison the amount of money that
25 she wanted for her shares.

1 Now, I also want to go back and answer a
2 question Your Honor asked. You said, "Sam, what
3 about stopping the depositions at -- at three
4 depositions and not going forward?"

5 THE COURT: Right.

6 MR. OUTTEN: Well, I have a couple of responses
7 to that.

8 First, Mr. Rothstein represented to you that
9 these member statements were coerced or
10 involuntarily given. That statement was wrong. He
11 had no evidence for that, and there is no evidence
12 in their depositions that that occurred.

13 THE COURT: Let me say this, I think that what
14 David said is that these are present employees.
15 They are minority shareholders. They want to
16 continue their employment. They are making these --
17 signing these statements without even having looked
18 at, read, or seen any information about this to
19 determine whether or not there's any accuracy behind
20 it ---

21 MR. OUTTEN: But -- but ---

22 THE COURT: --- and of them. Go ahead.

23 MR. OUTTEN: Well, Your Honor, if we look back
24 at the transcripts and look back at his briefs, what
25 he said was that they've been coerced or

1 involuntarily given. Now, that is just absolutely
2 nut true. Mr. Rothstein had no basis for it then.
3 He has no basis for it now, and that's not what the
4 members say.

5 And Mr. Rothstein is trying to impose some
6 investigative duty on the members that doesn't exist
7 anywhere in the rule or anywhere in the case law.
8 There's no duty. I'd like to see a case that
9 Mr. Rothstein can produce that says unless a certain
10 investigation is done, their opposition to the
11 derivative action doesn't matter or is not
12 meritorious. It doesn't exist.

13 And what happened is, for each one of these
14 members, they testified -- if Your Honor is -- I
15 know you're busy and lack time to read all this
16 deposition finding, but -- but what they said is
17 that before they were deposed, they read the
18 derivative action, and they read the allegations
19 that Mr. Rothstein made in the derivative action.
20 Each and every one of those members read the
21 derivative action before they were deposed.

22 And so at their deposition two things -- two
23 things happened. They said, "Yes, we read the
24 allegations of the derivative claims and we do not
25 support it. In fact, we oppose it."

1 And Mr. Rothstein also makes an issue of,
2 "Well, these statements were not given under oath,"
3 but he omits the fact that each of the three
4 deponents affirmed the member statements under oath.
5 Each one of them, Judge. And so, Your Honor, when I
6 move for protective order that we not go any further
7 and not take any depositions, it was based on Rule
8 1. It was based on the following: They, meaning
9 the South Carolina Rules of Civil Procedure, shall
10 be construed to secure the just, speedy, and
11 defensive determination of every action.

12 And so my analysis was this, there was never
13 any evidence of Mr. Rothstein's representation that
14 the statements were coerced or involuntarily given.
15 Then three depositions were taken and they confirm
16 that. No. These were not given involuntarily. I
17 signed them voluntarily. I stand behind these
18 statements. I'm opposed to the derivative actions.
19 There is no investigative duty.

20 And so since this is a matter of law, Your
21 Honor, and since we have all of those witnesses
22 testifying so clearly that they were against the
23 continuation of this derivative action, I thought it
24 appropriate to bring this before Your Honor and let
25 Your Honor decide if we're going to allow discovery

1 to continue because we believe -- MPS believes that
2 the record is clear and Ms. Mattison cannot go
3 forward as a fair and adequate representative of the
4 members of this LLC.

5 And everyone knows, Your Honor, that what this
6 really is, is an ex-employee who's trying to do two
7 things, enhance the value of her equity and hurt
8 this LLC all she can, even though that's not a
9 proper purpose of a derivative action.

10 So, Your Honor, we think that based upon the
11 record before you, and Mr. Rothstein's conceded it's
12 a matter of law. That means, Your Honor, you can
13 decide at any time. You can decide it at a motion
14 to dismiss stage right after the -- the case was
15 filed. You can decide it now. You could decide it
16 at the summary judgment stage. We think the record
17 is more than sufficient for Your Honor to make a
18 ruling that she cannot go forward as a fair and
19 adequate representative.

20 And, again, Your Honor, two key things. One,
21 all the members oppose this and the cases uniformly
22 say that you can't use a derivative action to gain
23 advantage of your individual lawsuit. We just heard
24 Mr. Rothstein say that's exactly what he's doing two
25 times.

1 Now, one more point and I'll be quiet.

2 Mr. Rothstein goes into the operating agreement and
3 what it says and what it doesn't say. Let's keep in
4 mind the following: Mr. Rothstein represented
5 Ms. Mattison in the negotiation of that severance
6 agreement, and she signed it while being represented
7 by Mr. Rothstein. And in that agreement, she agrees
8 that her shares will be value -- valued according to
9 the terms of the operating agreement.

10 And so since she agreed to that in the
11 severance agreement, that they would use the
12 valuation methodology contained in the operating
13 agreement, then that's all really that the Court
14 needs to -- or that ends really the Court's analysis
15 of that. These two parties have agreed to a
16 methodology, and there's no reason to look behind it
17 to get into it exactly what it means because the
18 parties have already agreed that that's how the
19 shares are going to be valued. And, again, she
20 signed the agreement voluntarily saying the
21 methodology called for in the 2015 operating
22 agreement will be used to value the shares.

23 So, Your Honor, that's all I have.

24 Respectfully, we believe that the Court should order
25 that the derivative action be dismissed. We believe

1 that we are entitled to the attorney's fees that
2 have been incurred since Mr. Rothstein received on
3 December 2nd a copy of all the member statements
4 saying "we oppose this."

5 So at that point, he's got a copy of all the
6 member statements saying they oppose it. He's got
7 no evidence other than his speculation, an unfounded
8 accusation that they're coerced or involuntarily
9 given, and he's got -- he knows he's already written
10 a letter saying he's using the derivative action to
11 gain advantage in his action regarding the value of
12 his equity.

13 So what we want, Your Honor, is attorney's fees
14 from that point forward because we've -- we've
15 asked -- requested that Mr. Rothstein pursuant to
16 Rule 11 dismiss the derivative action and he
17 persisted. And he persisted on the grounds that
18 they were involuntarily given. They were coerced.
19 Now we have the depositions. Now we have under oath
20 testimony before the Court that that didn't happen.

21 So, Your Honor, again, we would respectfully
22 request that the derivative action be dismissed, and
23 then we go on with whatever discovery and whatever
24 is ahead of us in the action for valuation on the
25 act. Thank you.

1 THE COURT: Mr. Rothstein, anything in reply?

2 MR. ROTHSTEIN: Yes, Your Honor. There's quite
3 a bit. First of all, on the involuntarily -- or
4 involuntary first. I'm not suggesting that someone
5 put a gun to these minority members' head and said,
6 "Here sign this or I'll shoot you" or directly
7 expressing threat, "If you don't sign this, you're
8 going to lose your job."

9 What I'm suggesting is that the person who told
10 them what the lawsuit is about and what the
11 information that Ms. Mattison alleged was not true
12 is one of the third-party defendants. There's an
13 inherent bias there. And if you look at Exhibit B
14 to our brief, which is the covered e-mail in the
15 letter that sent out these blank statements, it was
16 sent out by Chad Cousins who's a third-party
17 defendant.

18 And he -- he basically -- although he didn't
19 say, "If you don't sign this document, you'll --
20 you'll be fired." He says that in closing, "We know
21 the members of MPS are united in their commitment to
22 the firm and its continued success." He said
23 that -- basically saying, if you -- if you support
24 Ms. Mattison's claim, you're not being loyal to the
25 firm and its continued success.

1 THE COURT: Now, let me ask you this right
2 quick, David, and I don't mean to interrupt you.
3 Let me ask you this, the only thing that I would
4 even consider before deciding this motion is
5 potentially deposing the other minority shareholders
6 and see whether they agree or disagree. Right now,
7 you have everybody's signed statement that we're not
8 in agreement with this case proceeding.

9 And so, effectively, what you're really trying
10 to do is bring up information that you hope they
11 don't have so maybe you can get one of them to
12 change their mind in their deposition from their
13 prior statement. I mean, that's about the long and
14 short of it, isn't it?

15 MR. ROTHSTEIN: Well, I mean, not necessarily.
16 I mean, I think that the statements -- basically,
17 the thing that jumped out at me in those statements
18 is, it doesn't say we know of some facts that are
19 contradicted in Ms. Mattison's claim. It said,
20 "We're not aware of any facts that support her
21 claim."

22 And every deposition I've taken so far, these
23 are four third-party defendants kept the facts from
24 the minorities that of course they're going --
25 they're not going to know about any facts that

1 support her claim, but they don't know the facts
2 that directly contradict her claim either. I
3 have -- I'm not trying to recruit people to join the
4 case. I don't think that needs to happen and I ---

5 THE COURT: I'd have to disagree you on that,
6 David, but go ahead.

7 MR. ROTHSTEIN: So the other thing that Sam
8 said was that I'm trying to class all the minority
9 people as liars or -- or -- I'm not casting any
10 aspersions on anybody but the four third-party
11 defendants in this case, Your Honor. It's not the
12 fact that they're misleading us. They're just
13 ignorant of the fact.

14 THE COURT: And let me -- let me ask you --
15 changing gears with you. A point that I didn't put
16 my hands around until I heard Sam argue a minute ago
17 is that if, in fact, you are successful in
18 proceeding with the derivative action and is
19 successful in that action, what you would
20 effectively do is divest one or more minority
21 shareholders and their position in the company.
22 You're saying that they -- they received equity
23 interest in the corporation in contravention of the
24 operating agreement in 2015. Is that not true?

25 MR. ROTHSTEIN: Well, we did file a declaratory

1 judgement action based to that effect, Your Honor,
2 but here's the thing. If the shares were given to
3 people illegally and what -- and once Ms. Mattison
4 is out of the picture, they can give those shares
5 back. They can amend the -- the -- the ---

6 THE COURT: I'm not buying that, David, at all.
7 That's just ---

8 MR. ROTHSTEIN: Your Honor, there are certain
9 things that -- that the -- that the original
10 operating agreement said had to be unanimous, and
11 the statute requires that for specific reasons.

12 If a company went ahead and they ignored that
13 at the oppression of one of the minority
14 shareholders, that happens every time. If you bring
15 a claim to enforce an ultra vires act of the
16 corporation and, you know, things have occurred and
17 new people have joined the firm and all that, that
18 happens, but the -- but Ms. Mattison has a legal
19 right under the statute and the original operating
20 agreement and maybe collateral consequences that may
21 need to be fixed down the road, but that's not a
22 concern here, Your Honor.

23 THE COURT: I disagree. That is the concern as
24 to whether or not she adequately can represent this
25 corporation with these people being minority

1 shareholders as part of that, so I think that is
2 definitely the focus on this.

3 MR. ROTHSTEIN: Again, that's not something
4 that's irreparable. If they want to give, you know,
5 Mr. Joslin his 53 shares after this case is over,
6 there's nothing to prevent them from doing that.

7 THE COURT: All right. Go ahead. I
8 interrupted you, David. Go ahead. I'm going to let
9 you ---

10 MR. ROTHSTEIN: Mr. Outten says, well, he's got
11 case law that says you can't be a fair and adequate
12 person if you're currently engaged in litigation --
13 individual litigation of your own. What he's
14 leaving out is the keyword "unrelated." And you
15 can't sue the company in an unrelated case and
16 expect to be a fair and adequate representative, but
17 here the valuation of the firm is inextricably tied
18 to the derivative action.

19 And another thing I want to point out, Your
20 Honor, is this is the only avenue Ms. Mattison can
21 have to bring this claim, not an individual claim
22 where she could bring in a -- like a suppression
23 case or a -- I mean, she's no longer involved in the
24 day-to-day operations of the firm.

25 The only way she could bring relief over this

1 breaches -- these breaches of fiduciary duty is
2 through a derivative action. That belongs to the
3 corporation and not herself. Well, there's a legion
4 of cases out there that say, Your Honor, you can't
5 bring this individually if it's a corporate related
6 case. It has to be done through a derivative
7 action.

8 The other thing I'd like to point out, Mr. --
9 Mr. Mattison -- I mean, Mr. Outten said that if
10 Ms. Mattison settled her case according to my
11 2019 -- January 2019 demand letter, there would be
12 no derivative action. That is not true.

13 Ms. Mattison couldn't bring a derivative
14 action, but any other shareholder could bring a
15 derivative action for the exact same thing. And
16 that's the whole purpose of this Rule 23 is you're
17 dealing with res judicata and collateral estoppel
18 from people that are not named in the lawsuit.

19 So if Ms. Mattison never filed a derivative
20 action, there would be no collateral estoppel for
21 res judicata. Any other shareholder could still
22 bring the same claim. So Mr. -- Mr. Outten is wrong
23 in that regard. The derivative action would still
24 exist, it's just that Ms. Mattison wouldn't be the
25 one bringing it.

1 And I think it's wrong for Mr. Outten to cite
2 Rule 1 of the -- of the South Carolina Rules of
3 Civil Procedure to me. That rule as Your Honor
4 knows requires the parties to engage in resolving
5 the cases in the most fair and expeditious manner.
6 Everything I've tried to do in this can has been met
7 with resistance. I'll use that as con word for
8 Mr. Outten's cite.

9 When we -- now, we're trying to take these
10 depositions, I noticed six depositions. He said,
11 "Which three do you want to do first?" And I named
12 the three I wanted to do first. And then he sent me
13 a letter and said, "Okay. We'll start with the
14 other -- the other three." So I said, "Well, I want
15 to start with A, B, and C," and he said, "No. We're
16 going to start with X, Y, and Z."

17 Every deposition so far, Your Honor, has been
18 ordered at the time that satisfies Mr. Outten before
19 normal business days starts. He's deposed artificial
20 witness on ---

21 MR. OUTTEN: Your Honor, this is a waste of
22 time for him to attack me. That's not -- whether or
23 not Mr. Rothstein wants to ---

24 THE COURT: Guys. Guys. Guys. Go back to
25 that point, David.

1 MR. ROTHSTEIN: No. That was only the point I
2 wanted to make is I think it's ironic that
3 Mr. Outten is trying to cite Rule 1 of the
4 rules that ---

5 THE COURT: Let me say this, both of you are
6 zealous litigators on behalf of your client's
7 positions. I recognize that, which causes you to
8 have direct estoppel disagreement sometimes, and
9 that's the nature of litigation. Okay.

10 So, David, listen, here is what I'm telling you
11 I'm thinking that -- I think that I could very well
12 get off procedurally right now based on what's
13 before me, either doing -- doing a dismissal
14 pursuant to Rule 12 with no right to refile or
15 granting summary judgment as to her representative
16 capacity status.

17 Now, if I were to do that, and the reason I
18 would do it under either way, is that Ms. Mattison
19 clearly as the claim is antagonistic to the
20 corporation. I don't think she can perform
21 fiduciary obligations and still maintain a right to
22 increase buyout of her shares, especially when you
23 have certain shareholders who will be divested from
24 their claims, the time away from the corporation or
25 the business tending to the obligations at suit,

1 potential cost of attorney's fees, as well as
2 potential devaluation of somebody else's shares,
3 either not having the shares divested by the
4 increased cost and the increased payout of her
5 shares.

6 Now, that being done, I would look at having
7 you guys proceed under the issue of buyout of her
8 shares and proceed with things and hold attorney's
9 fees in abeyance.

10 The other part of it, I am not totally
11 concerned with -- I'm not totally comfortable with
12 making that call without having the remaining
13 shareholder -- minority shareholders' depositions
14 taken on the sole -- sole issue which limits my
15 prior order of whether or not they want to proceed
16 with the derivative action with her being the
17 representative or just proceed at all. That case,
18 that's going to run up attorney's fees.

19 So that's my thoughts on it. I'm not going to
20 rule right this second, but I'm going to rule by the
21 end of the day or the end of the week. I just want
22 to throw that out to both of you as to where I'm
23 coming from. I clearly do not believe that
24 Ms. Mattison is a proper representative of a
25 derivative action. I think its sole purpose is for

1 leverage, but I would allow you out of purport due
2 diligence and discovery possibly to go forward with
3 the other three you were -- how many -- how many is
4 left undisposed, Sam?

5 MR. OUTTEN: Originally, Mr. Rothstein wanted
6 six and three have been deposed.

7 THE COURT: Okay. So that's what I'm thinking.
8 I'm jumbling those two together, but I -- if I don't
9 hear from y'all how you want to proceed, say, by the
10 end of this week, I'm going to make a rule by Friday
11 at 5:00 -- ruling by Friday at 5:00. Okay. Got me?

12 MR. OUTTEN: Yes, sir.

13 THE COURT: Okay. Mr. Rothstein, as to the
14 representative issue, anything further?

15 MR. ROTHSTEIN: Well, Your Honor, again, this
16 is -- I know I put this in my brief, but they have
17 the burden of proof.

18 THE COURT: I think he's met that burden of
19 proof quite frankly. I'm not going to deal with the
20 other issues right now. I'm going to hold them in
21 abeyance because I think this would be somewhat
22 dispositive.

23 And I can tell you and I think you know,
24 Mr. Rothstein, I'm probably going to grant motion
25 either under 12 or this Rule 56, but that would be

1 contingent upon you going forward with the other
2 three and them having some kind of testimony we
3 don't anticipate.

4 MR. ROTHSTEIN: Your Honor, Rule -- Rule 56(F)
5 you can do that, Your Honor. You can defer ruling
6 on summary judgement until after I've had a
7 reasonable opportunity to take those three
8 depositions.

9 THE COURT: I understand that. I do understand
10 that part of it. I may not understand a whole lot,
11 but I do understand that.

12 MR. ROTHSTEIN: Yes, sir.

13 THE COURT: But what I'm trying to say to you,
14 David, is make an informed decision as to whether,
15 you know, you want to proceed with the additional
16 accrual of fees and costs for those depositions with
17 the slight chance that they're going to change their
18 testimony, or just hold the attorney's fees issue in
19 abeyance and y'all go forward with the valuation
20 claims and fight those out from there. Okay. You
21 got me?

22 MR. ROTHSTEIN: Yeah, well, I mean, I believe
23 it's granted to me if Sam's not able to get the
24 witnesses to sort of reaffirm their unsworn
25 statements, but, you know, I don't know that that's

1 going to be sufficient, but I understand Your
2 Honor's thinking.

3 THE COURT: Right.

4 MR. OUTTEN: Your Honor, is Mr. Rothstein
5 suggesting that I'm going to suggest that the
6 witnesses not tell the truth at their depositions?
7 I'm sure the record is clear that I object
8 strenuously to that accusation by him, but, Your
9 Honor, there are some issues that -- that we need to
10 talk about I think with regard to the deposition.

11 THE COURT: Let me tell you right now, the
12 deposition is not going to have anything to do with
13 any kind Spartanburg practice and the overpayment or
14 underpayment of that practice at all. It would --
15 if it goes forward, it'll be on the sole issue of
16 the minority shareholders desire that a derivative
17 case go forward, whether or not it be her or
18 somebody -- Ms. Mattison or somebody else or having
19 it proceed with her as the representative. Okay.
20 That's it.

21 MR. ROTHSTEIN: Judge, I understand your
22 thought, but there are three things that we believe
23 are self-dealing transactions, and that Spartanburg
24 lease is one of the key things. And I know Your
25 Honor ruled on this during a very brief discussion

1 we had during Ms. Myers' deposition. And,
2 basically, what she says is, she doesn't know
3 anything about the Spartanburg lease.

4 And you said, "Well, if she's testified she
5 doesn't know anything, you can't go further on
6 that." So with her not to know one of the three --
7 it's like the three legs of a stool. That's one of
8 the three legs of our stool is the Spartanburg
9 lease. And ---

10 THE COURT: I think it is really a pole, the
11 pole being that you're going forward to gain
12 leverage on your buyout of your shares. I don't
13 think it's a stool. I think it's purely by
14 leverage, and I'm just not buying it. Okay. I'm
15 trying to give you an opportunity, but I'm not going
16 to let -- I'm not going to let you go forward at
17 this juncture and deal with this Spartanburg lease.

18 Okay. Now, down the line, that may be
19 applicable, it may not. But right now, you need to
20 have -- your lady is in a very precarious position
21 as to whether or not she is a proper class
22 representative in my view. Now, the Court of
23 Appeals, Supreme Court may say, "McIntosh is just
24 wrong," and disagree and let you have that
25 opportunity. I just -- I just don't think she is a

1 good representative quite frankly. And I've tried
2 to hint that to you, but I want to give you a chance
3 to be able to gauge this discovery and then because
4 maybe things come up you don't know, but that lease
5 I'm not going to let you get into.

6 MR. ROTHSTEIN: Well, Your Honor, I've picked
7 up on your hints believe it or not, but, I mean,
8 basically right now ---

9 THE COURT: You're doing your job you're
10 supposed to be doing, but at this point I got to do
11 mine.

12 MR. ROTHSTEIN: Yes, sir.

13 THE COURT: Okay. So y'all come up with some
14 resolution by the end of the day -- end of the week.
15 I'm going to issue an order by the end of the
16 business day on Friday. Okay.

17 MR. OUTTEN: Yes, sir.

18 THE COURT: All right, guys, thank you. And
19 everything else is held in abeyance until after
20 that.

21 MR. OUTTEN: Yes, sir.

22 THE COURT: Thank you, guys. Take care.

23 MR. ROTHSTEIN: Thank you, Your Honor.

24 (The proceedings concluded at 1:53 p.m.)

25 - - -

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 12th day of May, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 1, 2020

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS
2019-CP-23-00998

COUNTY OF GREENVILLE)

McMILLAN PAZDAN SMITH, LLC,)

PLAINTIFF/COUNTERDEFENDANT,)

vs.)

DONZA H. MATTISON,)

DEFENDANT/COUNTERCLAIMANT.)

DONZA H. MATTISON, in a)
Derivative Capacity on Behalf)
of McMILLAN PAZDAN SMITH, LLC,)

TRANSCRIPT OF RECORD

THIRD-PARTY PLAINTIFF,)

vs.)

RONDALD G. SMITH, JOSEPH M.)
PAZDAN, BRAD B. SMITH and)
CHAD C. COUSINS,)

THIRD-PARTY DEFENDANTS.)

October 26, 2020

Greenville, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, JUDGE

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

SAMUEL W. OUTTEN, ESQ.

KATIE ELIZABETH TOWERY, ESQ.

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Attorney for the Defendant Mattison

CHERYL A. SMITH

Circuit Court Reporter

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(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

PAGE

There were no witnesses called.

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 3:24 p.m.)

THE COURT: Mr. Rothstein, this is your motion to reconsider my motion granting summary judgment on the derivative claim filed by Ms. Mattison. I've read your memorandum, much of which is basically rehashing a lot of the arguments you had before, but I'd be glad to hear from you.

MR. ROTHSTEIN: Yes, sir. Appreciate it. We're all familiar with the saying you don't get a second chance to make a first impression. Well, I'm hoping this will be a second chance for me.

And, Your Honor, in preparing for the hearing today, I went back and looked at some of the transcripts from the original hearings. And in the very first hearing, I think Mr. Outten had filed a motion to dismiss and he made his argument. Before I even had a chance to say a word, Your Honor said, quite frankly, "I think the derivative action is probably not going to survive." And I think from that point on, we felt like we've had a very uphill battle in this case. And I'm hoping ---

THE COURT: Let me point out something to you and Mr. Outten, you probably know anyway. You guys love to throw back my comments to you on a transcript, but until I sign an order, there's nothing final about that

1 whatsoever, okay?

2 MR. ROTHSTEIN: I understand.

3 THE COURT: All right. Thank you.

4 MR. ROTHSTEIN: I understand.

5 But, you know, first impressions can be very powerful
6 things, but they're often wrong and I'm hoping I can
7 convince Your Honor that your eventual outcome in the case
8 on summary judgment was also wrong. I know it's very
9 difficult to convince a judge to change his mind, but, you
10 know, that's ---

11 THE COURT: Well, you did on the attorneys fees. I
12 changed my mind on that.

13 MR. ROTHSTEIN: I do appreciate that.

14 I think, from the very beginning, Mr. Outten has
15 portrayed this case as Ms. Mattison trying to use the
16 threat of a derivative action as some sort of lever to
17 gain more than her fair share in the evaluation of her
18 ownership interest in McMillan Pazden Smith. And the
19 reason I think that's unfair, and just as a hypothetical,
20 let's say they offer her a dollar per share. We say, "No.
21 We really think that the fair market value is \$3 per
22 share." We went to mediation with an expert witness and
23 we offered \$3 per share was our initial number. We didn't
24 go \$3.25 unless you -- you know, we're going to file this
25 derivative action and let you pay us more than the fair

1 market value. We said that the fair market value is \$3
2 per share. And at mediation we were less than what our
3 experts, you know, said we're entitled to.

4 I don't want to get too much into the details, but
5 when the mediation broke up, the mediator basically said,
6 "Look, I think we're at an impasse," and he made a
7 suggestion about coming up with a mediator's number. And
8 that number was much closer to our number than it was to
9 their number, but it was substantially below what our
10 expert had determined to be the fair market value of this
11 case. So I think the notion that she's just doing this to
12 drive a wedge to the company to try to get more than her
13 fair market value is not correct.

14 And when we had this exchange during the summary
15 judgment hearing this past May, I think something was
16 taken or misconstrued. I mean, Your Honor said, "Well,
17 she's just" ---

18 THE COURT: Let me say this to you, Mr. Rothstein. I
19 well recognize that what your argument is that if you
20 bring additional surplus into the LLC, then that will
21 increase the value of her equity in the business. I
22 understand that, okay?

23 MR. ROTHSTEIN: That's right.

24 THE COURT: But I also understand that this case was
25 not filed until there was a dispute as to the evaluation

1 of her equity ---

2 MR. ROTHSTEIN: That's correct.

3 THE COURT: --- and I think probably would not have
4 been filed unless there was a dispute as to her equity
5 that exists today. And so that's my feeling.

6 MR. ROTHSTEIN: No question about that, Your Honor.
7 And for Mr. Outten to portray Ms. Mattison as sort of a
8 disgruntled former employee just trying to harm the
9 company is absolutely untrue. I mean, you know,
10 Mr. Outten was not involved in the negotiations over the
11 employment matters. And it didn't take a couple of
12 months. It took two to three weeks. And, you know, they
13 were very -- I mean, it wasn't a very contentious
14 discussion.

15 And Ms. Mattison actually credits the company for
16 saving her life, because, you know, she was on medical
17 leave for a while. Before her medical leave ran out and
18 she would have had to go on COBRA or whatever, she went
19 ahead and got all these tests done, and that's how she
20 found her breast cancer early. So, I mean, it was just a
21 serendipitous thing that -- you know, that her separation
22 of employment occurred when it did.

23 Now, the severance agreement that we signed -- that
24 Ms. Mattison signed and I helped negotiate said -- again,
25 it set aside the employment stuff, we're settling that,

1 we're going to leave the valuation of her shares for a
2 later date. And it says that we will mutually -- right
3 after the first of the year, we will mutually try to get
4 together and arrive at a value. That's what the severance
5 agreement says. It also says that McMillan Pazden Smith
6 has to turn over all the financial information that I
7 request. Well, they turned over some of it, but not
8 everything we wanted.

9 And when we started looking through the financial
10 records, which Ms. Mattison had not had an opportunity to
11 request while she was an employee, she found some very
12 revealing things. And I've got a couple of things I want
13 to show you. This is not just her subjective thinking
14 that the managers are overpaid. I've got a chart here I'd
15 like to hand up, Your Honor. This was used in one of the
16 depositions. If I can approach the bench.

17 THE COURT: Uh-huh.

18 MR. ROTHSTEIN: And I know it's very hard to read,
19 but I tried to get it all on one page.

20 The bottom axis shows ---

21 MR. OUTTEN: Your Honor, I don't mean to interrupt
22 Mr. Rothstein, but just so the Court is clear, this is a
23 document that Mr. Rothstein created. This did not come
24 from McMillan Pazden and Smith. He says it's accurate
25 based upon documents that we produced, but I don't want

1 the Court to suffer from the misapprehension that this is
2 one of our documents that we gave Mr. Rothstein.

3 THE COURT: I'm suffering from a lot of
4 misapprehension, I can assure you. But the bottom line
5 is, you know, I'm going to give you leeway because I know
6 this is an important case for everybody. And -- but the
7 bottom line is the standard on a motion for
8 reconsideration is very limited. So ---

9 MR. ROTHSTEIN: I agree, Your Honor.

10 So if you'll look at the red line, and this -- the
11 bottom axis is the timeline that shows the merger in late
12 2009 all the way up to the time Ms. Mattison left. The
13 red line shows the managing partners and their total
14 compensation, and then the faint green line in the middle
15 shows the compensation of the other third-party defendant
16 who's the COO of the company. And right here in this big
17 gap between 2014 and 2015 is when the firm changed its
18 operating agreement. And this is what Ms. Mattison
19 objected to and didn't sign.

20 And what it did was it changed what they call the
21 required interest of the members is sort of what the
22 supermajority is from 66 2/3 percent to 75 percent. So if
23 there was a decision that required a supermajority, they
24 now had to -- I'm sorry. It was the other way. It went
25 from 75 percent to 66 2/3 percent. And the reason that's

1 significant is because the second-leading shareholder at
2 the firm in 2014 sold his interest. And he had, I think,
3 almost as much as Mr. Ron Smith, who is the leading
4 shareholder. So his interest got split up and they all
5 went to Mr. Cousins, who's the COO, and to members of the
6 executive committee who also vote on compensation matters,
7 and I think a new partner that was just coming in. Those
8 are the only people that were offered Mr. Deichman's
9 shares. Mr. Deichman sold his shares for \$63 a share, and
10 in the next year they were valued -- like a week later
11 after his shares -- I'm sorry. He actually sold them for
12 \$44 a share, and it went up to sixty -- I'm sorry -- \$122
13 a share the very next week.

14 And so after that change occurred, you can see this
15 huge spike in what the compensation of the total members
16 was, and that was something that was supposed to be
17 presented to the minority members. The compensation of
18 the managing members of the firm was supposed to be
19 approved by the minority members, and it had to be
20 approved by a requisite number, that number that went from
21 75 percent to 66 2/3.

22 So after Mr. Deichman sold his shares, all the four
23 third-party defendants had enough money or had enough
24 ownership interest that they could basically pay
25 themselves whatever they wanted without any kind of a

1 check. And so that's what Ms. Mattison discovered when
2 she finally had access to the medical records -- I mean
3 the financial records of the firm. She also discovered a
4 lot of bonuses, perks, extracurricular type things that
5 the firm was paying for, for these guys that they were not
6 paying for anybody else: country club membership, IPTAY
7 membership, tickets to the national championship games at
8 Clemson and all this kind of stuff. But they're also
9 paying benefits like disability insurance and long-term
10 care insurance for not just the members, but also their
11 spouses. And that was something that was never approved
12 by the minority members of the firm.

13 The third leg of the stool, as I described before,
14 was this Spartanburg lease issue. And we do have an issue
15 about whether they were paying above market rates, and we
16 hired an expert witness to try and do an analysis. But
17 when we served a Rule 34 request to inspect the premises,
18 we got an objection, they filed a motion for a protective
19 order, we filed a motion to compel, and that was never
20 ruled on by the Court.

21 But it's not just the market value of the rent. It's
22 in two thousand -- I think it was 2008 or 2009, right
23 before the -- shortly before the merger, the owners of the
24 property, who were the wives of the two founding partners,
25 Caroline Smith and Pam Deichman, they own a company called

1 CMP properties in Spartanburg. It's an LLC that just the
2 two of them own, and it owns the building in Spartanburg
3 that McMillan Pazdan Smith rents from. They converted the
4 building into condos and sold half of the upstairs to a
5 law firm, so they lost about at least 25 percent of their
6 square footage in the building, but they continued to
7 charge well over a year and a half or two years the full
8 -- like as if the per square foot under the lease was
9 being paid for the entire building. So everyone we depose
10 in the case said, "Well, if that really is what happened,
11 that money should come back to the firm."

12 And, Your Honor, you'll recall there was a lot of
13 discussion in the deposition. We had to get Your Honor
14 on the phone a number of times about that specific issue.
15 And the reason that Mr. Outten was trying to keep that
16 from the minority members is because it's not just
17 Ms. Mattison's opinion about what happened. We have the
18 actual records to show that the rent continued at the same
19 level after the condo -- after the business was -- or the
20 building was sold for condos.

21 So this is not just Ms. Mattison, you know, being a
22 disgruntled former employee or having an ax to grind.
23 This is truly about her trying to bring money back into
24 the firm so she can get a fair market value for her
25 investment in this firm.

1 Now, one thing that Your Honor's order does not
2 recognize is the burden of proof in this situation, who
3 has the burden of proving that Ms. Mattison would not be a
4 fair and adequate representative as she's trying to bring
5 in this derivative action. And the burden falls on the
6 people that are trying to oppose the derivative action.
7 It's not Ms. Mattison's burden to show that she's a fair
8 and adequate representative. They have to come in and
9 show evidence that she's not a fair and adequate
10 representative.

11 THE COURT: Well, wouldn't the evidence have to be
12 that she seeks to divest some of the minority shareholders
13 of their equity in all -- regardless of her saying, "I
14 will sign anything saying I'm not doing that," that's the
15 net effect of that.

16 MR. ROTHSTEIN: Well, it's really not, Your Honor.
17 There were a number of people that came into the firm
18 after she was no longer employed.

19 THE COURT: The agreement she wouldn't sign made them
20 equity owners.

21 MR. ROTHSTEIN: Well, they -- she never -- they were
22 never -- never presented that information to her. There
23 are two or three people in the firm that have joined since
24 she's left, and Mr. Outten's saying, "Well, you're going
25 to divest them of their ownership." That's not what she's

1 intending to do. She's not intending to divest anybody of
2 their ownership, and she submitted that in an affidavit to
3 Your Honor.

4 Now, we do have a claim -- a counterclaim in the main
5 suit where we say that things that were done in violation
6 of the statute were in violation of the original operating
7 agreement. There were some things that required unanimous
8 consent of the shareholders. One of those things is any
9 amendment to the operating agreement that affects a
10 member's financial interest. And so when they went from
11 that supermajority issue going from 75 percent to
12 66 2/3 percent, that was something that Ms. Mattison
13 objected to as that affects her financial interest.

14 The statute also requires that any additional -- like
15 addition of new partners has to be unanimous, has to
16 receive the unanimous consent of everybody. That's
17 according to the LLC statute. And, Your Honor, we just
18 pointed out that they've taken acts in violation of both
19 the operating agreement and the LLC statute that we
20 believe should have no force and effect. But Ms. Mattison
21 is not trying -- I mean, she has a personal relationship
22 with some of these people that came in after. I think one
23 of the guys she's known since he was a child, so she wrote
24 a letter of recommendation to Clemson Architecture for
25 this kid. She's not trying to divest him of any interest.

1 And she said in her affidavit that she's offered to sign
2 whatever paper she needs to do to make sure those people
3 are still partners in the firm. That's not her intent.

4 And so, Your Honor, the question, this issue about
5 fair and adequate ---

6 THE COURT: Well, let me -- thinking about what you
7 just said -- excuse me, Mr. Rothstein. Let me ask you
8 this. Wouldn't that, in effect, be your client picking
9 and choosing which of these other actions on the part of
10 the LLC without her consent that she's going to -- I'm
11 going to agree to this one but I'm not going to agree to
12 this one, I'm going to agree to this but I'm not going to
13 agree to this, just kind of picking and choosing which one
14 she wants to agree? And either it's illegal or it's not,
15 right?

16 MR. ROTHSTEIN: Well, for example, this issue about
17 the changing the -- any change to the operating agreement
18 that affects her financial interest, she could say, "I'm
19 going to object to that. I don't think that's fair." But
20 then these other two people come in and say, "These people
21 are up for a partnership vote. How do you vote on it?"
22 She can approve that without approving the other.

23 THE COURT: But her position has kind of persistently
24 or consistently been that these things that required
25 100 percent participation in the vote, anything done

1 without my voting for it, it's just not proper,
2 regardless.

3 MR. ROTHSTEIN: Well, that's not accurate, Your
4 Honor. She was never given the paperwork to sign for
5 these last two partners that came in. They never even
6 bothered to ask her to vote. So, you know, she's not
7 being obstructionist about anything that ---

8 THE COURT: I'm not saying that she's an
9 obstructionist.

10 MR. ROTHSTEIN: Yeah.

11 THE COURT: I'm just saying I'm trying to get clear
12 in my mind what her position is, because either she takes
13 the position that either things required 100 percent
14 participation in a vote or required just that, and
15 therefore, if it's done without it or with no force and
16 effect or they're void or either I get to blue-pen it and
17 pick out and choose which ones I think I like and which
18 ones I don't like, which I don't think is the case.

19 MR. ROTHSTEIN: So, well, I understand. But, Your
20 Honor, I mean, if she was presented an opportunity to vote
21 on these new partners, she would vote for those new
22 partners. I mean, it's not something that affects her
23 financial interest.

24 THE COURT: I see what you're saying. All right.
25 Thank you.

1 MR. ROTHSTEIN: So, Your Honor, getting back to the
2 burden of proof, this whole -- the reason for this
3 Rule 23(b)(1) is like a class action. You know, you've
4 got somebody that's supposed to be representing others,
5 and so this representative lawsuit is going to bind
6 everybody else, you know, even if they're not a party to
7 the case. So you have to make sure that the
8 representative who's bringing this action is going to
9 fairly and adequately represent the -- whoever she's
10 representing so they're not bound by res judicata without
11 having a fair opportunity, you know, to make sure their
12 case is fully heard.

13 The plaintiffs and the third-party defendants in this
14 case have sort of flipped things on their head, and
15 they're basically saying that Ms. Mattison is being too
16 aggressive in pursuing this claim, which is -- you know, I
17 think that that's the whole fair and adequate thing is
18 you're trying to make sure that the class representative
19 or the derivative action representative is going to
20 vigorously pursue the case and not sell out the case for
21 her own interest. And I don't think anybody could accuse
22 Ms. Mattison in this case of -- you know, of being
23 ineffective or not being interested in the case.

24 And I think if you look at those eight factors that
25 are from that Sixth Circuit case, Davis vs. Comed, which

1 seems to be, you know, a leading case across the country,
2 there are eight factors the Court is supposed to look at.
3 If you look at seven of the eight factors, we win hands
4 down on seven or eight of the eight factors. And, you
5 know, if in school I got seven out of eight questions
6 right on a test, that's an 87 1/2. That's a pretty good
7 grade for me. So they only focus on the last factor,
8 which is the degree of support that Ms. Mattison is
9 receiving from the members of the -- you know, that she's
10 purporting to represent.

11 THE COURT: What percentage ownership is her equity?

12 MR. ROTHSTEIN: A little over 2 percent. I think
13 it's like 2.3 or ---

14 THE COURT: So somebody who has a little over
15 2 percent can bring an action on behalf of the LLC when
16 the majority of the other minority holders say, "Don't
17 want it."

18 MR. ROTHSTEIN: Well, and that kind of brings up the
19 issue of, well, what did the minority members actually
20 say? And they issued these written statements. They're
21 all identical, you know. They're in the record. And if
22 you look at the email, and if I could hand up another --
23 this was an exhibit we've already filed to our first
24 summary judgment opposition as Exhibit B, but just for
25 Your Honor's convenience, I'll hand it up again.

1 This was the email from Chad Cousins, who, again, was
2 the COO at the time but now is CEO, where he circulated
3 this proposed statement. And I think if you look at it,
4 again, there's the draft of the statement on page 9496,
5 the Bates label. And if you look at his attachment, he's
6 telling the parties, "We believe the claims made" -- this
7 is the first part I have highlighted on page 9497. "We
8 believe the claims made in Ms. Mattison's derivative
9 action are meritless and are not aligned with the interest
10 of the other managers. The managers of MPS have always
11 been transparent with the other members in her assertions
12 that the managers receive excess -- excessive compensation
13 benefits are not true." And then he goes on to say that
14 they hired an independent consultant to look at the
15 compensation structure, and they've been more than
16 forthcoming, are insulted by the unfounded accusations.

17 Everybody that we deposed so far said that at the
18 time they signed these statements, they had not even seen
19 Ms. Mattison's pleadings, the actual counterclaims itself.
20 They said the only information they had was this statement
21 that Mr. Cousins wrote and a statement that Ms. Mattison
22 presented in opposition to this new board being voted on.
23 And one of the people that she objected to being on the
24 board was this so-called independent expert that
25 Mr. Cousins hired back in 2014 when that number on his

1 compensation went through the roof. Mr. Cousins hired
2 this gentleman at CEO Solutions. His name is Todd
3 Mitchell. He's now the person -- the outside board
4 member. So to say that he's an independent consultant is
5 outrageous.

6 The next page -- and Mr. Cousins, I've highlighted a
7 few other things that basically says that if the Court
8 finds that she does not represent everybody, then they're
9 going to dismiss the case on the merits. And then he says
10 that we have hired Mr. Higgins, attorney Bill Higgins, to
11 be a neutral third-party independent counsel if you have
12 any questions. Well, you'll remember Mr. Higgins was
13 submitted as an expert witness in this case when I filed
14 my motion to disqualify Mr. Outten's firm from
15 representing the firm and the individual third-party
16 defendants. Well, Mr. Outten has now taken the
17 representation of three different entities, not just the
18 firm, not just the third-party defendants, but he's also
19 undertaken the representation of these minority
20 shareholders that have filed these member statements.
21 Again, the member statements are unsworn.

22 And I think if you look carefully at the member
23 statements, basically what they say is we're not aware of
24 any facts that support Ms. Mattison's claims. And so they
25 are actually saying we don't believe Ms. Mattison's

1 actions are accurate because we've known these guys for
2 15 or 20 years, and we've never seen any indication that
3 they've been dishonest or unfair in their dealing with us.
4 What they don't know is what Ms. Mattison didn't know
5 until she was let go of the firm and asked to see the
6 books, which is that these people have, you know, in 2014
7 to 2015 dramatically increased their bonuses and total
8 compensation. The secret "ramp" occurred. Again, they
9 were never approved by the minority shareholders through
10 this requisite member requirement that's in the operating
11 agreement.

12 So the last part of Mr. Cousins' statement is what I
13 think is somewhat coercive. And he says, "In closing we
14 know that the members of MPS are united in their
15 commitment to the firm. Ms. Mattison is not with us." So
16 he's creating this "you're either with us or against us"
17 kind of mentality. And, oh, by the way, here's a form you
18 can sign to -- if we get this from everybody, the judge is
19 going to dismiss Ms. Mattison's case. Well,
20 unfortunately, that's not -- or fortunately for us that's
21 not the way the law works.

22 You know, I think you have to look at what these
23 people were told that they were signing and what their
24 motivations were for signing the -- and I'm not suggesting
25 that anybody said, "Look, if you don't sign this, you're

1 fired," but these guys know ---

2 THE COURT: You kind of insinuate that in your brief.
3 That's the way I took it that they are signing these
4 because they felt pressure that if they don't, then they'd
5 have adverse employment consequences.

6 MR. ROTHSTEIN: And there's definitely that implied
7 pressure. I mean, there may not have been an expressed
8 threat to that effect, but these guys know there's only
9 about two or three people in the firm whose ownership
10 stake in the firm is larger than their annual salary.
11 Most of the minority shareholders were gifted their shares
12 and may own less than 1 percent of the company which may
13 in total be worth less than \$100,000. But they're making,
14 you know, pretty good money staying there, and they have,
15 I guess, an opportunity at some point to, you know, maybe
16 buy additional shares. But -- so, I mean, their financial
17 interest is to stick with the guys that are signing their
18 paychecks, Your Honor.

19 And when Mr. Outten undertakes or represents these
20 guys at the deposition and preps them for the deposition
21 and asks the same leading questions of everyone at the end
22 of the deposition, it's pretty obvious that they're all
23 going to agree with Mr. Outten's statement. And so I
24 think there was a lot of pressure to bear on these
25 individuals. Two of the depositions actually said, "If we

1 could prove that the firm continued to pay the same amount
2 of rent after it went condo, would you be in favor of
3 bringing that money back into the firm?" And they were
4 all, "Yes, we would." Mr. Ballard said that. And I gave
5 him a hypothetical example where, you know, if he found
6 out that the firm had sold three other firm vehicles and
7 continued to pay insurance on the three vehicles it sold,
8 would that have a detrimental impact on the bottom line?
9 And he said, "Yeah, absolutely." It's the same exact
10 thing with the rent here, Your Honor.

11 So this issue of -- I think the member statements
12 themselves need to be looked at with suspicion. And I did
13 raise this issue. There are a lot of courts out there
14 that have said, you know, you can have a class -- a
15 derivative action where you're representing a class of
16 one. And I know you kind of dismissed that kind of
17 quickly, but I think that's an important concept to
18 realize here, Your Honor. I mean, not only is
19 Ms. Mattison in the best position to bring this case,
20 she's the only one that's had access to the financial
21 records. She's the only one that's seen under the skirt,
22 so to speak. She knows what's going on, and she's trying
23 -- I mean, she's been prevented from making the other side
24 aware of that. I mean, every time we try to do discovery,
25 we get an objection or a motion to -- you know, we tried

1 to subpoena, I think, six or seven third parties in this
2 case to get information, and, you know, we were met with
3 objections and motions to quash.

4 One last thing I'd like to hand up, Your Honor, is an
5 article from the March 2020 South Carolina Lawyer magazine
6 published by the South Carolina Bar. It's an article
7 written by three of Mr. Outten's -- three attorneys in
8 Mr. Outten's law firm. I think there are two partners and
9 one associate.

10 And the reason this article is called -- "Dead on
11 Arrival" is the title of the article -- is because it says
12 if a person tries to bring an individual claim based on
13 damages that they have as a -- because of their ownership
14 of shares, that claim is dead on arrival unless it's
15 brought as a derivative action. And Ms. Mattison can only
16 bring -- get redress for what she's alleging through a
17 derivative action lawsuit. And if nobody else in the firm
18 is interested in putting their own neck on the line to
19 support her in this case, she can proceed as a class of
20 one. She can represent herself in a derivative action
21 capacity. Now, any money she receives as a result of that
22 would not go directly to her. It would go into the firm,
23 and then the firm would be evaluated once that additional
24 -- those additional assets are brought back into the firm,
25 and she would get her fair market value out when Your

1 Honor does a judicial determination.

2 And one thing I would like to point out in this
3 article on the second page where they're talking about the
4 fiduciary duties that boards and directors and officers
5 and majority shareholders owe, and the first part I have
6 highlighted there, it says, "Such fiduciaries cannot take
7 actions that benefit themselves at the expense of the
8 corporation. For example, they cannot engage in
9 transactions that divert proceeds for themselves or
10 otherwise reward themselves with self-dealing bonuses."
11 And that is the example of a breach of fiduciary duty that
12 gives rise to a derivative action lawsuit, and that's
13 exactly what Ms. Mattison has alleged in this case, Your
14 Honor. Again, this is not just her subjective gut feeling
15 that these guys are being overpaid. We have hard
16 financial records to support that.

17 One more thing I'd like to mention, Your Honor,
18 before I sit down is the severance agreement. The
19 severance agreement does not say that Ms. Mattison's --
20 the valuation of her shares are going to be determined by
21 HDH Advisors. It does not say it's going to be determined
22 by the board or the managing members. What it says is
23 after the 2017 year, early 2018 the parties will get
24 together and mutually try to arrive at the determination.

25 THE COURT: Let me ask you this, because I haven't

1 gone back to look at those documents recently, in all
2 candor, but I remember that there was a contractual
3 document relating to her termination of her employment
4 status that said that the value of her shares is not
5 affected by this, but it will be valued according to, I
6 think, the amended restated 2015 operating agreement,
7 which is an individual -- isn't that what it says?

8 MR. ROTHSTEIN: That's not what it says, Your Honor.
9 And I think this is a very important point. Because, Your
10 Honor, in the order you quoted from the severance
11 agreement, or it was the proposed order that was prepared
12 by Mr. Outten. And let me find it here and I can read the
13 actual quote so I'm not missing something. All right.
14 It's on page 10 of my brief, Your Honor. And this -- it
15 says, "The parties agree that the value of employees
16 membership units shall be mutually determined in early
17 2018 following the close of year-end 2017 with company
18 providing access to all current and prior year financial
19 reports, tax returns and other financial information."

20 THE COURT: Let me ask -- I read that. I read your
21 brief over twice.

22 MR. ROTHSTEIN: Yeah.

23 THE COURT: But let -- I do recall having to go back
24 through I could have sworn it was an amended restated
25 operating agreement of 2015 where you went through the

1 different provisions, and it had value and you had
2 different things you had to go to to come up with the
3 valuation. And that was pursuant to the termination
4 agreement that she had with the plaintiff in this case.
5 And, you know, I have to go back and correct myself. But
6 I thought it's more than just the language you were
7 submitting to me that they were going to mutually agree on
8 the value based on these things. It's a lot more specific
9 than that.

10 MR. ROTHSTEIN: Two lines later it says that her
11 proper dissolution from the firm -- I'm sorry --
12 disassociation, proper disassociation ---

13 THE COURT: Right.

14 MR. ROTHSTEIN: --- will be handled according with
15 the September 2015 amended and restated operating
16 agreement.

17 THE COURT: Right.

18 MR. ROTHSTEIN: I agree it says that. But that term
19 "proper disassociation" does not mean value. What "proper
20 association" means is that if she properly disassociates,
21 there's not penalty, there's no reduction in the value of
22 her shares.

23 THE COURT: Well, then it does ---

24 MR. ROTHSTEIN: And there's a payout -- there's a
25 payout schedule for how she's to be paid.

1 THE COURT: But there's a formulation too as to how
2 it's developed, isn't it? Or calculated. Excuse me.

3 MR. ROTHSTEIN: What it says is -- what it says is
4 the board can come up with -- can have the firm evaluated
5 every year. And that -- I think that valuation is
6 supposed to be conclusive. But that's not what this --
7 what not her severance agreement says. Her severance
8 agreement says the parties will mutually attempt to get
9 together after they provide us all the information. And,
10 Your Honor, this was -- again, this was way before
11 Mr. Outten ever got involved in the case we ended up
12 signing a confidentiality agreement that acknowledged
13 there was a dispute over the valuation of her shares.

14 THE COURT: Right.

15 MR. ROTHSTEIN: We signed a tolling agreement that
16 said, you know, there's a deadline for her to bring a
17 claim for judicial evaluation is 120 days. We tolled that
18 agreement, and then right before the mediation, Mr. Outten
19 got involved and said he thinks the valuation is based on
20 the HDH Advisor's opinion, and that's it. And that's not
21 what the agreement says. The severance agreement says
22 that the parties will mutually agree to get together and
23 see if they can work this out. And that's the language
24 that tracks the original operating agreement. If they
25 can't come up with a mutually agreeable value, the parties

1 are supposed to share the cost of hiring a third or
2 another neutral business appraiser to come up with the
3 value. That was never done here. What they did is they
4 rushed out ---

5 THE COURT: Let me ask you this. Even if I deny your
6 motion today, she's not forestalled following that relief
7 if that's what the valuation provisions are for evaluating
8 her equity. She's not to be prevented from at least
9 seeking that remedy here in the courtroom, is she?

10 MR. ROTHSTEIN: Well, the problem is that they didn't
11 -- they didn't abide by the mutually determined language.
12 They rushed out and hired HDH Advisors. And HDH Advisors
13 had been used in the past every year since 2013, but they
14 usually do their evaluation in November or -- I'm sorry,
15 like July or August, sometime later in the year. They
16 rushed out in the first week of January and said, "We need
17 you to do this" ---

18 THE COURT: That doesn't answer my question, though.
19 I mean, and my question to you is -- I'm going to give you
20 a chance to talk to him, but hang on. Give him a chance
21 to argue, okay?

22 Even if I say, "Look, she's out on the derivative,"
23 okay, which I've done, and you've got an uphill battle, as
24 you well know, but even so, that doesn't prevent her from
25 seeking the remedies you're just talking about, even if

1 they have gone and gotten this valuation, hey, I want to
2 have a third party, we mutually split it. What's to
3 prevent you from doing that or at least seeking that?

4 MR. ROTHSTEIN: They filed a lawsuit saying we can't
5 do that. We're stopped by the HDH Advisors claim.

6 THE COURT: Well, I mean, but that's what the whole
7 issue is, whether or not they can force you and do that,
8 not so much this derivative. But go ahead.

9 MR. ROTHSTEIN: And the other problem is, Your Honor,
10 this issue about the derivative action would have to be
11 decided finally before the valuation is done. I mean, if
12 we had taken appeal of this case and you proceed with the
13 trial and the Court of Appeals later says, "Yes, she has a
14 right to bring this derivative action" ---

15 THE COURT: I agree with that. I mean, if -- you
16 know, and it's probably one of these interlocutory issues.
17 But I would think that you can't get the valuation done
18 until the issue of derivative action or not has to be
19 determined because -- you know, I agree with that.

20 MR. ROTHSTEIN: And we'd be fine with that type of
21 evaluation. I mean, that's what the original operating
22 agreement said, that's what the memo that Ms. Mattison was
23 given by the -- in November when they tried to sort of
24 force her out of the firm, they say, "Here's a memorandum
25 of how we're going to do this." And they did offer her --

1 you know, they're complaining about us saying, "Well, it
2 was a lowball offer." I mean, they offered her probably
3 25 percent less ---

4 THE COURT: I don't need to hear offers. I really
5 don't.

6 MR. ROTHSTEIN: Yeah. So, you know, I think that
7 would be a perfectly reasonable argument for Your Honor to
8 say, yeah, you're going to hire a third-party evaluator to
9 give them the fair access, not just stuff that's being fed
10 to them by Mr. Outten's clients, but a true business
11 valuation. I think that would be a very appropriate
12 remedy in this case.

13 THE COURT: Well, anyway, you might want to check
14 with Ms. Mattison.

15 (Pause in proceedings.)

16 MR. ROTHSTEIN: Ms. Mattison is pointing out that if
17 you do the valuation before the derivative action is sort
18 of exhausted, the firm's not really made whole before, you
19 know ---

20 THE COURT: I understand that. So that's your
21 argument the whole time is I want to bring more money in
22 because it will increase her value, right?

23 MR. ROTHSTEIN: That's right. Thank you, Your Honor.

24 THE COURT: All right. Mr. Outten?

25 MR. OUTTEN: May it please the Court. Sam Outten and

1 Katie Towery on behalf of MPS. Also for MPS, Joe Pazdan
2 is here in the courtroom and Chad Cousins.

3 Your Honor, before I talk about the motion to
4 reconsider, I want to make sure MPS's position on this
5 valuation of equity is clear, and that is you are correct,
6 and it's disappointing that Mr. Rothstein represented to
7 the Court that it wasn't -- the value of the equity wasn't
8 supposed to be determined by the September 2015 operating
9 agreement. You remembered that accurately. Mr. Rothstein
10 negotiated it. And how he can stand up and tell this
11 court that that's not what was agreed upon, I'm not sure
12 how he does that, but that will be an issue, I suppose,
13 down the road, Your Honor.

14 But just to make clear for the record, this severance
15 agreement says that there is a methodology in the
16 September '15 amended restated operating agreement by
17 which the parties agree to value the equity. And that's
18 exactly what MPS did. We had the value of the firm
19 evaluated by HDH Advisors. We did exactly what the
20 severance agreement, which Mr. Rothstein negotiated and I
21 did not, what we agreed to do under the severance
22 agreement, and then made that offer to Ms. Mattison. And
23 she declined it, and that's what resulted in all of this
24 litigation. But you are correct, Your Honor. It's the
25 September '15 amended and restated operating agreement is

1 what the parties agreed to use to value her shares.

2 Now, with regard to this motion to reconsider, Your
3 Honor ruled correctly on the motion for summary judgment,
4 and Ms. Mattison has given you no reason to reconsider it.

5 And let's think about what Mr. Rothstein is really
6 asking you to do, Your Honor. What's he really asking you
7 to do? He wants more discovery, right? He wants more
8 depositions. He wants more document production. He's
9 arguing that the ruling is premature because he's not been
10 permitted to do more discovery. It's in his brief and he
11 said as much.

12 Well, let's think about that, Your Honor. Here is
13 Mr. Rothstein's 18-page memorandum in support of his
14 motion to reconsider. You know what, Your Honor? There's
15 no testimony cited in here. He took six depositions.
16 They took approximately 30 hours despite the limited
17 scope. We didn't want to call you every hour, Your Honor.
18 We're trying to be considerate of the fact that you have a
19 busy schedule. We did have to call you a couple of times.

20 So he's got 30 hours of depositions. He's got
21 thousands and thousands of documents that we produced.
22 And he says, "Your Honor, I want you to reconsider your
23 motion granting -- or your order granting the motion for
24 summary judgment." He doesn't put any testimony here to
25 support a derivative action. Testimony is referenced

1 maybe once in here, but there's no document that we gave
2 them in discovery in here.

3 What conclusion does that lead us to? Why doesn't
4 this memo asking you to reconsider your ruling say this
5 witness, K.J. Jacobs, testified to this, William Jocelyn
6 testified to this, Paulette Myers testified to this?
7 Because all of the testimony was against him. All of the
8 testimony supported the ruling that Your Honor made. And
9 so that leads us to this conclusion, that you made the
10 correct ruling and that more discovery, which
11 Mr. Rothstein's really here asking for, would be a waste
12 of time. It would be a waste of time for you to provide
13 that we have to do more discovery, because it will be more
14 of the same. And why is that? Because there is no
15 evidence to support a derivative action.

16 What's the truth, Your Honor? The truth is that
17 Ms. Mattison owns 2 percent of this company, and she's
18 acting contrary to the interest of 98 percent of the
19 company, of the firm. That's not a derivative action.
20 That's not what a derivative action is for. And you've
21 had every single minority member submit a statement.

22 Mr. Rothstein likes to say -- well, first of all, he
23 accused me of coercing the statements and then he found
24 out later I didn't have anything to do with the statements
25 being executed. But there were six members who were

1 deposed. Every one of those members affirmed their
2 statements under oath. I don't know why Mr. Rothstein
3 left that out. I hope it wasn't intentional, but it was
4 left out of his argument this afternoon, it was left out
5 of his brief.

6 So there is no reason to continue down this road,
7 because what do we know, Your Honor? A derivative action
8 is supposed to be on behalf of the firm, on behalf of MPS
9 where there is some impropriety, where there is
10 self-dealing. It's not Ms. Mattison's subjective view.
11 What you heard was a lot of speculation, sadly
12 misrepresentations, and just disagreement with how much
13 compensation the leaders of the firm receive or their
14 perks. That's not a derivative action.

15 So where we are this afternoon is significant
16 discovery has been taken by Mr. Rothstein, 30 hours of
17 depositions, thousands of documents, he files an 18-page
18 brief and didn't cite Your Honor to any evidence. If he
19 had some, we should expect it to be in there so he could
20 argue, Your Honor, look, I've already got some evidence to
21 support this derivative action. If you'll allow more
22 discovery, I could get more. But that's not in there.

23 Your Honor, I've already touched on this, but a
24 derivative plaintiff must represent the interest of the
25 other members. That's not a requirement that MPS came up

1 with or that Sam Outten came up with. In this case, every
2 member of MPS opposes the derivative action. Davis
3 against Comed says you must consider support from the
4 other members. She has no support from the members she
5 claims to represent.

6 Second is Ms. Mattison brought this derivative action
7 for an improper purpose. She brought it as leverage for
8 her equity action. In fact, Mr. Rothstein, for about the
9 fourth or fifth time, confirmed that this afternoon when
10 he said, "Well, there would be no derivative action if
11 we'd reached an agreement on the equity." He sent a
12 letter on January 14, 2019, which Your Honor saw at the
13 very first hearing we had on this case. And I think Your
14 Honor made a comment along the lines of, you know, it
15 looks like this derivative action was an effort to gain
16 leverage.

17 But we had a hearing on May the 12th of this year.
18 And during that hearing, on three separate occasions,
19 Mr. Rothstein said, "I'm bringing this derivative action
20 for leverage in my claim for equity, in Ms. Mattison's
21 claim for equity." Well, what's the problem with that?
22 The problem with it is the cases say you can't do that.
23 And we've cited those cases in our brief. I don't know if
24 Your Honor has had a chance to review them, but that's one
25 of the primary reasons, primary basis upon which

1 derivative actions are dismissed. They're dismissed
2 because you're bringing it for an improper purpose. You
3 have a personal or individual claim, which Ms. Mattison
4 has, and you bring the derivative action to try to
5 leverage that. And Your Honor knows it's clear in the
6 transcript. In fact, Mr. Rothstein used the word at least
7 twice and maybe three times when he was asked if that were
8 the purpose of it, he said, "Absolutely." I think Your
9 Honor asked him a question along the lines of, well, it
10 looks to me like the derivative action is being brought to
11 leverage the claim for equity. You asked a question.
12 That's not a quote, but a question like that. What did
13 Mr. Rothstein respond? "Absolutely." So the cases are
14 uniform in saying you can't do that. You can't bring a
15 derivative action to gain leverage in an individual
16 action.

17 Now, Mr. Rothstein touched on this, but let's think
18 about what she's asking for. She's asking the Court to
19 find that the September '15 -- September 2015 operating
20 agreement is invalid when every other member of the firm
21 that signed -- signed the operating agreement and had been
22 acting pursuant to its provisions. So how can
23 Ms. Mattison say she represents them? There's a conflict
24 there. She wants to invalidate the operating agreement,
25 but the members of MPS have been acting pursuant to its

1 terms. It's been the document upon which they operated
2 their firm.

3 She also wants to divest two of the members of their
4 equity. And we've discussed this, but Your Honor, I
5 think, used the phrase "pick and choose." He wants this
6 relief, but when it was discovered that that meant that
7 she was acting contrary to the members she claims to
8 represent, she said, "No, I'll reach in and pull that out.
9 I want this relief when it suits me, but when it doesn't,
10 I'll just pull it out, just withdraw it." Well, it
11 doesn't work that way. It's in her pleadings. The
12 pleadings haven't been withdrawn. And she can't represent
13 members she's trying to divest of their membership
14 interest.

15 Your Honor, I've touched on this, but we need to keep
16 in mind, I think, that a derivative action is a unique
17 type of claim. It's described in the case law as a remedy
18 of last resort, and the law imposes strict requirements on
19 a stockholder's right to sue derivatively. It's a
20 challenge to the board's managerial authority. When you
21 read the comments on derivative action, they say generally
22 we have to be careful, careful with the derivative
23 actions. Why? If we don't, we're going to change
24 corporate governance in this country to having to deal
25 constantly with derivative actions. And that's why the

1 pleading requirements are heightened, and that's why they
2 get thrown out with much more frequency than just about
3 any other type of claim. Again, you're acting as a
4 representative of the other members of the LLC, and
5 importantly, not your own interests. Again, here Mr.
6 Rothstein admitted he would not have filed the derivative
7 claim if the equity claim had settled. So what do we
8 know, Your Honor? We know she's bringing the derivative
9 claim to help her equity claim, and that's not allowed.

10 And, Your Honor, the cases are also uniform that if
11 you don't meet the standard of fairly and adequately
12 representing the interest of the other members who are
13 similarly situated, the claim must be dismissed. And,
14 Your Honor, I've given this a lot of thought. And I don't
15 know MPS, what else MPS can do to demonstrate that she's
16 acting contrary to the interest of this firm. We
17 submitted a statement of every single member, every single
18 one. Then he deposed six of the members. Every single
19 one of them said, "This is my statement, and I affirm it
20 under oath." They said, "We oppose the bringing of this
21 derivative action. Donza Mattison does not represent us.
22 Donza Mattison is trying to harm the firm where I work."
23 Two of the last deponents said -- I asked them, "Are you
24 asking Judge McIntosh to dismiss the derivative claim?"
25 and they said, "Yes."

1 So very respectfully, Your Honor, I don't know what
2 else we can do to demonstrate that what this is is a
3 2 percent owner holding our firm hostage by this
4 derivative action, and Your Honor recognized that and has
5 properly ruled. And with the evidence in the record,
6 there is absolutely no basis to change that ruling.
7 98 percent of the ownership of the firm oppose this claim.
8 27 of the 28 members not only oppose this claim, but
9 they've affirmatively stated there is no impropriety or
10 self-dealing among the leaders of the firm.

11 Now, let me talk about the statements for just a
12 moment. Mr. Rothstein says, "Well, you should be
13 suspicious of the statements." Well, where's the
14 requirement in the case law that we get statements? There
15 is no requirement. There is no requirement of that. We
16 got that to demonstrate beyond any doubt that Ms. Mattison
17 was acting contrary to the interests of the members of the
18 firm, and we did it. And they all testified and they all
19 said that they were happy with the way things were going
20 at the firm, that they trusted and respected the leaders
21 of the firm, that they had always acted honorably, that
22 they didn't know of one instance in the 15 or 20 or
23 25 years when they had done something which was dishonest
24 or deceptive or self-dealing.

25 So I don't know what else we can do, Your Honor, to

1 demonstrate that this is one disgruntled ex-employee out
2 to try to harm the firm. Mr. Rothstein said, "Well,
3 there's no -- there's no evidence that we're trying to
4 harm the firm." Well, yes, there is. There's a whole lot
5 of it. I'll give you an example. We got Your Honor on
6 the phone during the deposition of Paulette Myers, and I
7 said, "Judge, Ms. Myers doesn't know anything about the
8 Spartanburg lease."

9 And Your Honor said, "Well, if she's testified that
10 she doesn't know anything about the Spartanburg lease,
11 Mr. Rothstein, you need to move on." And what else did
12 you say? "Sam, this witness is not going to testify about
13 the Spartanburg lease at trial. You can't go to a
14 deposition and say she doesn't know anything and then have
15 her testify at trial."

16 And I said, "Yes, Your Honor. That is very fair and
17 I understand."

18 And after that, for reasons that I don't understand
19 that were just abusive, Mr. Rothstein asked the next eight
20 or ten questions, directly violated your order, and the
21 next hour was on the Spartanburg lease agreement, after
22 you had ruled don't go into it anymore.

23 Your Honor, again, all the members of MPS testified
24 that Donza Mattison's actions are harming the company.
25 They're an architectural firm. Service firms operate in

1 part on reputation. They don't want to be in this
2 litigation. They don't want this derivative action to
3 continue, and it should not.

4 Now, not only is she acting contrary to the interests
5 of the firm, another reason why this can't continue, Your
6 Honor's ruled correctly, is she acting in her own -- she
7 is acting in her own self-interest. She's trying to hurt
8 MPS. And I'll tell you something, Your Honor. Sometimes
9 -- sometimes as lawyers we don't appreciate the
10 significance of this, but this has been -- this has been a
11 burden on MPS to have to deal with this. This derivative
12 action never should have been brought, and it's been a
13 burden to have to deal with it. It's been disruptive to
14 MPS, and it should -- this motion should be denied, and we
15 should not have to spend any more time or resources on it.

16 Your Honor, I want to respond to a few things that
17 Mr. Rothstein said. He stood up and he said, "Well, the
18 threat to gain more than her fair share for her equity is
19 unfair." But that's what Mr. Rothstein said when you
20 asked him the questions on May the 12th of this year. He
21 said that was exactly what he was doing. He used the word
22 "absolutely," and he said, "There's no question about it."
23 That's what he said. Again, more evidence that Your
24 Honor's ruling is correct.

25 He handed up an exhibit. I apologize for

1 interrupting Mr. Rothstein's presentation, but I want the
2 Court to know that's not evidence. That's not a basis to
3 change your ruling. That's not evidence. That's a
4 document Mr. Rothstein just created.

5 He's trying to create this impression, Your Honor,
6 that the members don't know, that they would join
7 Ms. Mattison if they only knew. But I want Your Honor to
8 understand that, during these four-, five-, six-hour
9 depositions, that that chart that he handed up, he would
10 hand to the witnesses, and he would say, "Look how much
11 money the leaders of your firm are making. This is how
12 much you're making. Your compensation increased this
13 much, their compensation increased this much." So they
14 were fully informed during their deposition.

15 And every single one of those six members said,
16 "That's fine with me." In fact, they went further than
17 that and said, "Mr. Rothstein, this represents the
18 contribution that these -- the leaders of our firm are
19 making." One of them said -- Mr. Rothstein asked him
20 about Ron Smith, why Ron Smith's compensation was more
21 than his. This is Dave Ballard, I believe. Mr. Ballard
22 says, "I have no problem with that. Ron Smith brings in
23 so much business to this firm, that he earns every penny
24 of it. I'm glad to be working with him, and I have
25 absolutely no problem." So this notion that they're in

1 the dark is simply not true. They've all been shown all
2 this information.

3 Now, Mr. Rothstein talked about the burden of proof.
4 Well, look at the evidence in the record. Six
5 depositions, we've had 23 member statements, on and on and
6 on. So accepting for a moment, Your Honor, that we have
7 the burden of proof, we've more than met that burden of
8 proof. Those 23 member statements are in the record and
9 we've got six depositions of members who say, "We don't
10 want this derivative action to go forward. We don't want
11 Ms. Mattison to represent us. We oppose this derivative
12 action from going any further."

13 And along those lines, Mr. Rothstein suggested, oh,
14 they'd read her claim, so when they signed these
15 statements, they really didn't know. But what he failed
16 to tell Your Honor was that Ms. Mattison submitted a
17 document at a member meeting explaining her position in
18 the derivative action. And every one of those members
19 testified that they had read that before they filed their
20 statements. Every one of the six members who were deposed
21 testified that, in the preparation sessions, they had read
22 every word of her derivative action. So this notion that
23 Mr. Rothstein is trying to get Your Honor to accept that
24 they didn't really understand what Ms. Mattison was
25 claiming is not true. Again, they all read what

1 Ms. Mattison submitted and testified that they did, and
2 they all read the derivative action before they were
3 deposed, and they told Mr. Rothstein that.

4 Mr. Rothstein is trying to get Your Honor interested
5 in this class of one, which is sort of an interesting
6 doctrine. But if you read the documents on the class of
7 one, you come away with this: There are rare exceptions
8 or rare factual situations where the only way that the LLC
9 can be represented is by one, and the leading cases are
10 where there are three or four members. And so the
11 allegation in those cases is that three or more members
12 are aligned against one, and so the only way to protect
13 the LLC is for one of the members to go against the three.
14 But there are no cases like this where there are
15 28 members of the firm and one member can contradict the
16 will, the overwhelming will of the firm and bring these
17 claims. There's no case like that. This class of one
18 doctrine doesn't apply here.

19 Your Honor, I'm trying not to repeat myself.

20 Your Honor, I do want to say something about
21 Exhibit B that was handed up. I don't know what
22 Mr. Rothstein, how he thinks that helps his derivative
23 action. But the first page of it, page number 9494, says
24 in the second sentence, "We've additionally asked K.J.
25 Jacobs to be a coordinator rather than Joe, Brad, Ron or

1 me if needed for any further assistance and communication
2 any members might need with Mr. Higgins." What does that
3 tell you? He's trying to divorce the four of them from
4 the process. And if Your Honor was asked -- I don't know
5 how you'd be asked as a judge, but if you were asked as a
6 lawyer, you'd probably say that's a good idea that, you
7 know, the four leaders of the firm who are the subject of
8 this derivative action shouldn't be involved in getting
9 these statements done, and that's exactly what happened.

10 In the highlighted versions of this document, we
11 believe the claims made in Ms. Mattison's derivative
12 action were meritless and are not aligned with the
13 interest of the other members. Mr. Cousins is absolutely
14 right about that. All the other members of the firm are
15 against what she's trying to do. She is trying to
16 second-guess the decisions made by the firm. She's trying
17 to make up motivations that don't exist.

18 And so, Your Honor, what Mr. Cousins wrote here is
19 absolutely right. Your Honor granted summary judgment.
20 Mr. Cousins must have been right. It says, "The managers
21 of MPS have always been transparent with the other
22 members, and her assertions that the managers receive
23 excessive compensation and benefits are not true." Well,
24 let's think about that. Everyone who testified, all six
25 members said, "If we ask for information, they would give

1 it to us. They are transparent with us." Every single
2 one of them. Every one of them. He says, "We have always
3 been more than forthcoming about the firm's finances, and
4 are, frankly, insulted by Ms. Mattison's unfounded
5 accusations." Absolutely right. These are unfounded
6 accusations of self-dealing and impropriety, and nobody
7 else in the firm shares them. So Mr. Cousins is
8 absolutely right.

9 I also want to take a minute and talk about
10 Mr. Rothstein's constantly criticizing Bill Higgins, and I
11 don't think he understands this. Respectfully, I don't.
12 But in order to create a process where the members could
13 sign the statements or not, we hired Mr. Higgins as a
14 resource to learn about the case and to tell them what a
15 derivative action was, why it was brought, et cetera. And
16 we incurred that expense to try to go the extra mile to
17 make sure that our members knew what a derivative action
18 was and what their options were. There's absolutely no
19 legal requirement, Judge, for us to do that.

20 And this notion -- I don't understand Mr. Rothstein's
21 constantly attacking Mr. Higgins, who, by the way, is one
22 of the leading experts on ethics in the State of South
23 Carolina. You might remember that Mr. Higgins was
24 appointed by Chief Justice Toal to assist with rewriting
25 or revising the rules of professional conduct. But like

1 everybody else, like the four members of the -- leading
2 MPS, like me, Mr. Higgins is just doing the wrong thing,
3 lying, misrepresenting, hiding, concealing. Well, that's
4 not true at all. Mr. Higgins came in to try to engage in
5 a process that was above-board, frankly, that Your Honor
6 would approve of. We were trying to design a process that
7 this court would look at and say, you know what? This
8 firm is going above and beyond what they're required to
9 do. The fact that he submitted an affidavit on the
10 conflicts of interest issue doesn't have anything to do
11 with his ability to serve in that capacity. So that's the
12 kind of firm MPS is, a process that is above-board,
13 incurring extra expense and taking extra time to do the
14 right thing.

15 Your Honor, in conclusion, there is no derivative
16 claim here. Respectfully, Your Honor, I don't know how we
17 can make that any clearer. I've done my best. You
18 allowed Mr. Rothstein to conduct a significant amount of
19 discovery. You did. And I'm not taking issue with that.
20 I understand why you did that, Your Honor. We respect
21 your ruling, of course.

22 But going back to where I started, if he had turned
23 up any evidence to support a derivative action, where is
24 it? Where are the documents attached to this memo that we
25 -- thousands of documents we produced to him? Where's the

1 cites to the deposition testimony? 30 hours of
2 depositions. So he's turned up absolutely nothing to
3 support his derivative action after Your Honor said -- you
4 know what? It was in October of last year, I believe, and
5 I think Your Honor said something along the lines of I'm
6 not going to dismiss this derivative action. We're going
7 to conduct discovery on whether Ms. Mattison is a fair and
8 adequate representative of the other members of the firm.
9 I think that's a fair statement of what Your Honor ruled.
10 And that happened. And now we've gone through it, and
11 Your Honor's original instinct on this was correct.

12 There's no evidence to support this. It's got to be
13 more than subjective complaints and speculation. Your
14 Honor made the proper ruling here. This motion should be
15 denied.

16 Thank you.

17 THE COURT: Thank you, sir.

18 All right. Very briefly.

19 MR. ROTHSTEIN: Judge, I'm not disparaging
20 Mr. Higgins. I have all the respect in the world for
21 Mr. Higgins. What I'm challenging is the firm's use of
22 Mr. Higgins. No member of the firm took them up on the
23 opportunity to contact Mr. Higgins. It wasn't like
24 Mr. Higgins came in and gave a presentation. They used
25 Mr. Higgins to say we're going to hire this independent

1 counsel if you have any other questions to try and show
2 that they're being neutral. But that's not what happened.
3 They know very well that Mr. Higgins had already been
4 hired by the Nelson Mullins firm. And, again, Mr. Higgins
5 has not made an opinion in this case other than on the
6 conflict of interest.

7 And, Your Honor, I take great exception to Mr. Outten
8 trying to put words in my mouth. If you go back and read
9 the transcript from the May hearing -- and I'll quote it
10 right here. It's actually in your order. I never used
11 the word "leverage," you never used the word "leverage,"
12 never used the word "extortion," never used the word
13 "blackmail," never used this as a strike suit. And here's
14 what I said. Your Honor said, The real issue behind this
15 derivative case, in my view, is that she's trying to seek
16 a higher payout, higher payout for equity. No question.
17 I said, No question about that, Your Honor, but there's
18 nothing wrong with that. I didn't say she was using this
19 as leverage to extort a higher payout. What I'm saying is
20 bring the derivative action, bringing the ill-gotten gains
21 back into the firm will have the effect of increasing the
22 payout for her equity. That's all I'm recognizing.

23 Then the Court says later, "Your ultimate goal is to
24 increase what her buyout is." Absolutely we're trying to
25 increase what her buyout is. Otherwise, we would have

1 just taken their offer at the beginning and not incurred
2 hundreds or tens of thousands of dollars of attorney's
3 fees. So I said, Absolutely. I agree with that
4 100 percent. That's the goal. But there's nothing wrong
5 with that. Again, I'm saying this is not leverage or
6 extortion. We're just trying to seek the fair value of
7 her shares.

8 And then I said, "We're trying to maximize the value
9 of her claim." That's absolutely what we're trying to do.
10 We're trying to get as much as possible from the Court in
11 terms of what the fair value of her shares are. It's not
12 -- we're not trying to extort anybody. The derivative
13 action goes hand-in-hand with the valuation of the shares.

14 Now, the other thing that Mr. Outten keeps -- and
15 he's done this from the very beginning, and I think this
16 is why Your Honor has a bad first impression of the case
17 is he's conflating the idea of valuation on one hand, what
18 the valuation of her shares is, and the process of the
19 proper dissociation. And I would like to ask Mr. Outten
20 this question. If ---

21 THE COURT: No. You don't get to ask questions.

22 MR. ROTHSTEIN: No. Just hypothetically. The
23 agreement says, "The parties agree that the value of
24 employees' membership units shall be mutually determined
25 in early 2018 following the close of year 2017 with

1 company providing access to all current and prior year
2 financial reports, tax returns and other financial
3 information requested by employees' counsel." What does
4 that mean? If she's going to be bound by the 2015
5 operating -- there's no need to put that in there. The
6 valuation exercise was they were going -- they're going to
7 give us the information, we're going to sit down and try
8 and hash things out. That never happened. That's what
9 the severance agreement said.

10 THE COURT: Again, what does that have to do with the
11 derivative case? That's her case on her equity value,
12 okay?

13 MR. ROTHSTEIN: The limited information they did
14 disclose to us showed the basis ---

15 THE COURT: Again, that's still on the value of her
16 shares. It has nothing to do with the derivative case.

17 MR. ROTHSTEIN: Well, that's how we learned about the
18 derivative action, Your Honor, is we got the financial
19 information. She goes, "Holy mackerel, these guys are
20 paying themselves a tremendous amount of money." We never
21 knew that.

22 We finally got the information about the lease in
23 Spartanburg. We didn't know that they were paying for
24 square footage that they had sold to this law firm. And I
25 think it's very telling when they called Ms. Myers,

1 Paulette Myers, she's now one of the board members, I
2 think, of the firm, she said, "I don't know anything about
3 this Spartanburg lease." Well, how can she say that
4 Ms. Mattison's claims in the derivative action have no
5 merit when a third of her allegations involve the
6 Spartanburg lease? So, I mean, Mr. Outten can't say,
7 well, these people -- I mean, you can't ask them questions
8 about things they don't know about.

9 THE COURT: All right. I'm going to get you to go
10 ahead and start wrapping it up, please.

11 MR. ROTHSTEIN: And, Your Honor, the issue about
12 evidence, we put -- Ms. Mattison submitted an affidavit.
13 She verified her complaint. That's legitimate evidence
14 for summary judgment. Unsworn statements by people are
15 not legitimate evidence for summary judgment. Evidence --
16 or statements that are based on hearsay or based on what
17 somebody else told you or what you don't believe or what
18 you don't know are not competent evidence for summary
19 judgment.

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

21 Let me just say this for the record. Both you
22 lawyers are very well learned and well prepared. You
23 worked me pretty hard on this case. You're great lawyers.
24 But I'm not going to change my position. I think that
25 she's not a fair representative, and I think that she is

1 using the derivative case to increase the value of her
2 individual claim, which is not appropriate, and therefore,
3 I am going to abide by or stand by my original order.

4 A point that you brought up, though, Mr. Rothstein, I
5 thought was interesting because this may be immediately
6 appealable. I don't make a -- you know, obviously, I
7 can't say one way or the other, but it certainly would
8 seem to have packed a substantial right that you have to
9 proceed, so it may be immediately appealable.

10 So that being the case, does everybody agree -- if
11 not, let's consider it and we may have to meet again, that
12 if he does appeal this case -- and, Mr. Outten, I'm going
13 to ask you to draw me an order, please, denying the
14 motion ---

15 MR. OUTTEN: Yes, sir.

16 THE COURT: -- for reconsider.

17 But do you disagree that the underlying action on the
18 valuation of her shares should be stayed except
19 potentially discovery -- well, I guess stayed, period,
20 while any appeal is pending?

21 MR. OUTTEN: Well, I think -- I haven't given it a
22 lot of thought.

23 THE COURT: Give it some thought, okay?

24 MR. OUTTEN: I would like if Your Honor does not mind
25 if I give that some thought ---

1 THE COURT: Yeah.

2 MR. OUTTEN: --- and then I'll certainly respond to
3 the Court's inquiry.

4 THE COURT: Well, and I understand what
5 Mr. Rothstein's been arguing the whole time is, look, if
6 we win on the derivative case, then by the time her \$100
7 is turned into \$200 or \$150, I mean, I understand that
8 basic argument, but so if that's the case, let's give that
9 some thought. We might have to have another meeting again
10 as to whether we stay or how we stay it pending the
11 appeal, okay?

12 MR. OUTTEN: I understand, Your Honor. Just the
13 first thought that occurred to me is that -- and I know
14 we're going to get back together is that I think if you
15 look at the severance agreement that Your Honor's comments
16 about it are accurate, and I think that can be disposed of
17 very quickly. It says this is how we're going to do it
18 according to this agreement, and if we're right about
19 that, that may affect us.

20 THE COURT: Well, and I hear you. But here's the
21 situation to me that if -- yeah, on one hand you have
22 Ms. Mattison signing an agreement whether or not she voted
23 on or not, because at the time she signed this severance
24 agreement saying we're going to make our valuation based
25 on this 2000 amended and restated agreement, she knew she

1 didn't sign it and she knew she didn't approve it. But
2 she still said this is going to be the basis of how we're
3 going to value my shares. That's my interpretation. And
4 I'm not -- obviously not ruling, but that's what my memory
5 seems to be.

6 But if I'm incorrect, which I'm apt to be, and they
7 send this case back after you've already had a resolution
8 of her shares claim, then it seems you're going to have to
9 reopen that other case and come back and have them
10 revalued. It seems to me you have to wait. That's my
11 thought. Okay.

12 MR. OUTTEN: Well, Your Honor, if you would permit me
13 to give that some thought ---

14 THE COURT: Oh, absolutely. Yeah. This is -- yeah.
15 I mean, it's not even before me today.

16 But anyway, gentlemen, y'all are way smarter than I
17 am. I appreciate the hard work you put into the case. I
18 just have to make a decision one way or the other. That
19 being the case, would you draft me an order, please.

20 MR. OUTTEN: Yes, sir.

21 THE COURT: All right. Thank you. Y'all take care.

22 (WHEREUPON, proceedings concluded at 4:35 p.m.)
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 26th day of October, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 13, 2020



Cheryl A. Smith, CVR-M

Court Reporter

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON
2 COUNTY OF GREENVILLE PLEAS FOR THE THIRTEENTH
JUDICIAL CIRCUIT

3 - - -

4 MCMILLAN PAZDAN SMITH, LLC, : Case No.
: 2019-CP-23-00998
5 Plaintiff-Counterclaim :
Defendant, :
6 vs. :
DONZA H. MATTISON :
7 :
Defendant-Counterclaimant. :
8 :
DONZA H. MATTISON, in a :
9 Derivative Capacity On :
Behalf of Mcmillan Pazdan :
10 Smith, LLC, :
: :
11 Third-Party Plaintiff, :
vs. :
12 RONDALD G. SMITH, JOSEPH M. :
PAZDAN, BRAD B. SMITH, and :
13 CHAD C. COUSINS, :
: :
14 Third-Party Defendants. :

15 DEPOSITION OF WILLIAM RICHARD JOSLIN
16

17 DATE TAKEN: Friday, January 17, 2020
18 TIME BEGAN: 10:02 a.m.
19 TIME ENDED: 2:12 p.m.
20 LOCATION: Nelson Mullins Riley & Scarborough
21 301 South College Street, 23rd Floor
Charlotte, North Carolina
22
23 REPORTED BY: Karen Kidwell, RMR, CRR
EVERYWORD, INC.
P.O. Box 1459
24 Columbia, South Carolina 29202
803-212-0012
25

10:06:14	1	question. Is that fair?
10:06:16	2	A. Yes. Thank you.
10:06:18	3	Q. What did you do to prepare for your
10:06:20	4	deposition today?
10:06:21	5	A. I met briefly with Mr. Outten.
10:06:23	6	Q. Okay. And did you review any documents?
10:06:32	7	A. I did.
10:06:33	8	Q. What documents did you review?
10:06:34	9	A. I reread the -- the materials that were
10:06:38	10	provided to me relevant to this situation. I believe
10:06:47	11	there's two -- two documents.
10:06:49	12	Q. Okay. First of all, how long did you meet
10:06:52	13	with Mr. Outten?
10:06:54	14	A. Approximately an hour and a half.
10:06:56	15	Q. Okay. Was anyone else in the meeting with
10:06:58	16	you?
10:06:58	17	A. No.
10:06:58	18	Q. Okay. Was that meeting here in Charlotte?
10:07:01	19	A. No.
10:07:01	20	Q. Okay. Where was that meeting?
10:07:03	21	A. In Greenville, South Carolina.
10:07:06	22	Q. Okay. And what day was that meeting in
10:07:10	23	Greenville?
10:07:11	24	A. It was yesterday.
10:07:15	25	Q. Do you regularly travel to the Greenville

10:07:17	1	area?
10:07:19	2	A. I do.
10:07:19	3	Q. How often would you say you travel to
10:07:21	4	Greenville, on a monthly basis?
10:07:23	5	A. I travel to Spartanburg and Greenville on
10:07:25	6	a weekly basis. And it varies from one to two to
10:07:30	7	possibly three times a week.
10:07:32	8	Q. Okay. And you said that you reread
10:07:43	9	materials provided to you. Who provided the
10:07:46	10	materials to you?
10:07:51	11	A. They were provided by the -- I guess Chad
10:07:56	12	Cousins was the COO at that time.
10:08:01	13	Q. Okay. And when did he give you these
10:08:03	14	materials?
10:08:05	15	A. This was back in -- I believe in November,
10:08:10	16	if I recall correctly.
10:08:12	17	Q. Okay. November of 2019?
10:08:15	18	A. Yes, sir.
10:08:18	19	Q. And what materials did he provide to you,
10:08:20	20	specifically?
10:08:21	21	A. This was a -- forgive me if I use the
10:08:25	22	wrong terminology -- a complaint by Ms. Mattison, and
10:08:30	23	a response letter to that from McMillan Pazdan Smith.
10:08:40	24	Q. Okay. I'm going to show you a couple of
10:08:43	25	documents, just to make sure we're on the same page.

1 (Exhibit 1 was marked for identification.)

2 (Exhibit 2 was marked for identification.)

3 BY MR. ROTHSTEIN:

10:09:25 4 Q. Do you recognize Exhibit 1?

10:09:32 5 A. Yes, I do.

10:09:33 6 Q. Okay. Is that what you were referring to

10:09:34 7 when --

10:09:35 8 A. Yes. I used the word "complaint."

10:09:36 9 "Protest." Yes, sir.

10:09:38 10 Q. Okay. But Exhibit 1 is the document you

10:09:42 11 just referred to as the complaint by Ms. Mattison?

10:09:45 12 A. Yes.

10:09:45 13 Q. Okay. And do you recognize Exhibit 2?

10:09:53 14 A. Yes, I do -- yes. Yes.

10:09:55 15 Q. Okay. And I don't know how those

10:09:58 16 documents were transmitted to you, but does that

10:10:01 17 include the second --

10:10:02 18 A. It does.

10:10:03 19 Q. -- document? The response?

10:10:07 20 A. Yes, sir.

10:10:07 21 Q. Anything else you can recall, the

10:10:10 22 materials that were provided to you by Mr. Cousins?

10:10:12 23 A. No.

10:10:13 24 Q. Okay. And we'll get back to those in a

10:10:18 25 minute, if you just set those aside. Do you believe

10:10:21 1 that Mr. Outten is representing you in this matter?

10:10:25 2 A. I do.

10:10:25 3 Q. Okay. Do you think he's representing you
10:10:28 4 individually, or do you think he's representing you
10:10:30 5 as a member of the firm?

10:10:37 6 A. He's representing me as a member of the
10:10:40 7 firm.

10:10:41 8 Q. Okay. Do you believe that the minority
10:10:47 9 members of MPS are being represented by counsel other
10:10:51 10 than Mr. Outten?

10:10:56 11 A. I don't know the answer to that question.

10:10:58 12 Q. Okay. Have you ever met with an attorney
10:10:59 13 named Bill Higgins --

10:11:01 14 A. No, sir.

10:11:01 15 Q. -- or William Higgins?

10:11:03 16 A. No, sir.

10:11:03 17 Q. Have you ever communicated with
10:11:04 18 Mr. Higgins?

10:11:05 19 A. No, sir.

10:11:05 20 Q. Do you have an understanding of what
10:11:06 21 Mr. Higgins's role is in this case?

10:11:10 22 A. Per the meeting that we have and what's in
10:11:14 23 this document you just shared with me, yes.

10:11:18 24 Q. What is your understanding of what
10:11:19 25 Mr. Higgins's role in the case is?

10:11:21 1 A. That he is an ethics attorney, and should
10:11:25 2 I have had any questions or need to -- for
10:11:30 3 information, it was my prerogative to contact
10:11:33 4 Mr. Higgins.

10:11:35 5 Q. Okay. And if you look at Exhibit 2, if
10:11:40 6 you'll get that out, that we just looked at a minute
10:11:44 7 ago. And if you'll turn to page 2 of Exhibit 2.

10:11:51 8 Do you recall receiving a memo from Chad
10:11:54 9 Cousins on or about November 13th where he discusses
10:11:58 10 Mr. Higgins?

10:12:00 11 A. Yes.

10:12:01 12 Q. Do you know who actually hired
10:12:05 13 Mr. Higgins?

10:12:08 14 A. I guess not.

10:12:09 15 Q. Okay. Did you have anything to do with
10:12:12 16 selecting Mr. Higgins?

10:12:14 17 A. I did not.

10:12:15 18 Q. Do you know who's paying Mr. Higgins?

10:12:17 19 A. I do not.

10:12:18 20 Q. Okay. At the -- I guess second-to-last
10:12:21 21 paragraph of this memo of November 13th, it
10:12:27 22 indicates, "If you have any questions regarding the
10:12:30 23 derivative action, the firm has retained Bill
10:12:33 24 Higgins, a well respected ethics lawyer who practices
10:12:36 25 in Columbia, South Carolina, as independent counsel

10:12:39 1 to answer such questions."

10:12:42 2 Did you believe that Mr. Higgins was
10:12:44 3 supposed to be an independent counsel?

10:12:47 4 MR. OUTTEN: I object to the form of the
10:12:48 5 question.

10:12:50 6 You can answer, Bill.

10:12:52 7 THE WITNESS: I didn't give it any thought
10:12:54 8 at all, sir.

9 BY MR. ROTHSTEIN:

10:12:55 10 Q. Okay. What is your understanding of that
10:12:57 11 term, "independent counsel"? When you read that,
10:12:59 12 what did you think Mr. Cousins meant by "independent
10:13:02 13 counsel"?

10:13:06 14 A. If I were permitted to interpret that, I
10:13:10 15 would view that as a third party, as a type of
10:13:15 16 consultant.

10:13:15 17 Q. Okay. Do you know why it was necessary or
10:13:17 18 the firm felt it necessary to retain an independent
10:13:20 19 counsel?

10:13:23 20 A. I can only speculate.

10:13:25 21 Q. Okay. What is your speculation about
10:13:26 22 that?

10:13:28 23 A. I would further speculate that the
10:13:29 24 majority of us have no experience in a derivative
10:13:35 25 action lawsuit. First time I'd ever heard of one.

10:13:40 1 Q. Okay. Do you know if -- did you do any
10:13:44 2 looking or -- did you look up Mr. Higgins on his
10:13:50 3 firm's website?

10:13:51 4 A. I did not.

10:13:52 5 Q. Do you know if he has any specific
10:13:54 6 expertise in corporate law or derivative action-type
10:13:57 7 law?

10:13:58 8 A. I do not know.

10:13:59 9 Q. Okay. Have you ever paid any -- to your
10:14:08 10 knowledge, have you ever paid money toward the
10:14:11 11 retention of Mr. Higgins to represent whoever he's
10:14:14 12 representing in this matter?

10:14:16 13 A. I have not.

10:14:16 14 Q. Okay. What is your understanding of -- I
10:14:27 15 know you've said you had never heard of a derivative
10:14:30 16 action before. What is your understanding of what a
10:14:32 17 derivative lawsuit is?

10:14:36 18 A. And it's going to be limited, because I
10:14:38 19 have, as I stated, no experience in it. My
10:14:43 20 understanding of this issue is that it's a -- it's
10:14:46 21 a -- I guess a countersuit being brought about by the
10:14:52 22 Plaintiff requesting members of the firm to join in
10:14:58 23 that as a -- I guess a form of a countersuit.

10:15:02 24 Q. Okay. The lawsuit we're here about today,
10:15:05 25 do you know who initiated this lawsuit, the McMillan

1 BY MR. ROTHSTEIN

10:33:24 2 Q. Do you know who was involved in the
10:33:26 3 decision to sue Ms. Mattison?

10:33:29 4 A. I do not.

10:33:30 5 Q. Okay. Did you ever see a draft of a
10:33:33 6 complaint, before it was filed, of the lawsuit
10:33:36 7 against Ms. Mattison?

10:33:39 8 A. I don't believe so.

10:33:43 9 Q. And tell me what your understanding is of
10:33:46 10 the legal dispute. And I know you're not a lawyer.
10:33:49 11 I just want your layperson's understanding of what
10:33:52 12 the dispute is between Ms. Mattison and the firm.

10:33:59 13 A. My understanding of the undertakings
10:34:01 14 here --

10:34:01 15 Q. Yes.

10:34:02 16 A. -- is that there's a dispute as to the
10:34:04 17 value, the shareholder value, that Ms. Mattison holds
10:34:09 18 in relation to her severance from the -- from MPS,
10:34:14 19 and participation as a member.

10:34:18 20 Q. Okay. And what is your understanding of
10:34:23 21 what MPS was trying to accomplish by filing a lawsuit
10:34:25 22 against Ms. Mattison?

10:34:29 23 A. I don't really have an understanding.

10:34:31 24 Q. And the document that you just looked at,
10:34:35 25 Exhibit 4, is Ms. Mattison's response to the

10:34:37 1 complaint, and she's asserted counterclaims against
 10:34:41 2 both MPS and what's called a third-party complaint,
 10:34:44 3 which is that derivative lawsuit that we've . . .

10:34:48 4 Are you aware that Ms. Mattison is
 10:34:50 5 attempting, in the derivative claim, to bring a suit
 10:34:53 6 on behalf of the firm itself?

10:34:55 7 A. I am aware of that.

10:34:56 8 Q. Okay. And are you aware that's she's
 10:35:01 9 attempting to bring a claim against Mr. Ron Smith,
 10:35:04 10 Joe Pazdan, Brad Smith, and Chad Cousins?

10:35:09 11 A. Yes, I am.

10:35:10 12 Q. And do you have an understanding of why
 10:35:11 13 she is bringing -- or what she's alleging that
 10:35:14 14 Misters Smith, Pazdan, Smith, and Cousins did in
 10:35:18 15 violation of the firm's rights?

10:35:22 16 A. Limited, based on my very brief reading of
 10:35:27 17 this document yesterday.

10:35:28 18 Q. Okay. Are you aware that if Ms. Mattison
 10:35:32 19 prevails in her derivative claim against the managing
 10:35:36 20 partners of the firm, or managing members of the
 10:35:38 21 firm, that any proceeds of that lawsuit would go back
 10:35:41 22 into the firm?

10:35:44 23 A. I believe I read that.

10:35:45 24 Q. Okay. I mean, do you have an
 10:35:47 25 understanding that that's what would happen if she

10:35:49 1 wins the derivative claim against --

10:35:51 2 A. Not beyond what I've read.

10:35:53 3 Q. Okay. Have you done anything to determine

10:36:01 4 whether Ms. Mattison's allegations in the lawsuit and

10:36:04 5 her counterclaims or third-party complaint is -- any

10:36:09 6 of those allegations are accurate?

10:36:10 7 A. I have not.

10:36:11 8 Q. Okay. Do you have an opinion about

10:36:14 9 whether Ms. Mattison's allegations in the third-party

10:36:18 10 complaint against the managing members of the firm

10:36:21 11 are true?

10:36:23 12 A. I don't have an opinion.

10:36:24 13 Q. Okay. How long have you been a member of

10:36:31 14 MPS?

10:36:32 15 A. A member?

10:36:33 16 Q. Yes.

10:36:37 17 A. I don't know. I'd have to -- it's been

10:36:39 18 several years now.

10:36:41 19 Q. Okay. I've got some documents that might

10:36:41 20 help you with that.

10:36:42 21 A. Refresh my memory? Thank you.

22 (Exhibit 5 was marked for identification.)

23 BY MR. ROTHSTEIN:

10:36:58 24 Q. I show you Exhibit 5. And I understand

10:37:03 25 that you were a --

10:37:04 1 MR. OUTTEN: Let's go off the record.

10:37:06 2 Let's go outside. These documents weren't

10:37:08 3 provided more than two days. I'm going to

10:37:12 4 discuss them.

10:37:13 5 MR. ROTHSTEIN: That's fine.

6 (A recess transpired from 10:37 a.m. until

7 10:39 a.m.)

10:39:38 8 MR. ROTHSTEIN: All right. Back on the

10:39:39 9 record.

10 BY MR. ROTHSTEIN

10:39:42 11 Q. Exhibit 5, have you ever seen a listing of

10:39:47 12 the ownership shares of McMillan Pazdan Smith before?

10:39:56 13 A. Possibly in some -- some form.

10:39:58 14 Q. Okay. I understand that you were a member

10:40:00 15 of -- or a -- not a member, but an employee of

10:40:07 16 McMillan Smith & Partners. Is that the name of the

10:40:10 17 firm in Spartanburg prior to the merger?

10:40:14 18 A. That's correct.

10:40:14 19 Q. Okay. When did you first start working

10:40:16 20 for McMillan Smith & Partners?

10:40:17 21 A. October 6th, 2006 -- October 16th, excuse

10:40:21 22 me. October 16th, 2006.

10:40:23 23 Q. Okay. And you were in the Spartanburg

10:40:27 24 office?

10:40:27 25 A. Yes, sir.

11:40:01 1 question.

11:40:02 2 THE WITNESS: I see these as allegations.

3 BY MR. ROTHSTEIN:

11:40:04 4 Q. Right. Do you have any information to
11:40:07 5 dispute those allegations?

11:40:10 6 A. I do not.

11:40:11 7 Q. Okay. So it's possible that the
11:40:13 8 allegations could be true, right?

11:40:15 9 MR. OUTTEN: Object to the form of the
11:40:16 10 question.

11 BY MR. ROTHSTEIN:

11:40:19 12 Q. Do you acknowledge that it's possible that
11:40:21 13 the allegations Ms. Mattison have made are true?

11:40:27 14 MR. OUTTEN: Same objection.

11:40:30 15 THE WITNESS: I'm not sure how I should
11:40:31 16 answer this. I've been presented with
11:40:33 17 information here I've never seen before, and
11:40:35 18 you're asking me questions about this that I'm
11:40:38 19 just --

20 BY MR. ROTHSTEIN:

11:40:39 21 Q. As a layperson, what would you --

11:40:41 22 MR. OUTTEN: He's not -- I don't believe
11:40:42 23 he's finished answering the question.

11:40:44 24 THE WITNESS: I'm just not understanding
11:40:46 25 the -- the purpose here, for me to conduct

11:40:50 1 myself without speculating on this material
11:40:54 2 before me.
3 BY MR. ROTHSTEIN:
11:40:55 4 Q. I mean, you seem like a pretty smart guy.
11:40:57 5 Do you have a master's degree in architecture?
11:41:00 6 A. I do.
11:41:00 7 Q. How much schooling would that involve?
11:41:03 8 A. Six years.
11:41:04 9 Q. Okay. If -- if somebody made these
11:41:08 10 allegations as to one of your business partners, how
11:41:11 11 would you go about verifying whether they were true
11:41:14 12 or not?
11:41:15 13 MR. OUTTEN: I object to the form.
11:41:21 14 THE WITNESS: May I answer that question
11:41:22 15 with a question?
16 BY MR. ROTHSTEIN:
11:41:23 17 Q. Sure.
11:41:24 18 A. Why would I have to do that?
11:41:26 19 Q. Let's assume you felt like you were being
11:41:28 20 cheated out of your fair share of the firm's profits,
11:41:30 21 and you wanted to see if that was true or not. How
11:41:33 22 would you go about doing it?
11:41:35 23 MR. OUTTEN: I certainly object to that
11:41:36 24 question. The witness hasn't testified to
11:41:39 25 anything like that.

11:41:41 1 THE WITNESS: Yes, sir. This is a
11:41:43 2 deposition. I understand I'm here to answer
11:41:46 3 questions. And this is becoming a hypothetical
11:41:49 4 discussion, in my opinion.

5 BY MR. ROTHSTEIN:

11:41:52 6 Q. So you're fully satisfied that the three
11:41:55 7 members -- three managing members of the firm and
11:41:57 8 Mr. Cousins have paid themselves appropriately?

11:42:00 9 A. Yes. I have no reason to dispute that.

11:42:02 10 Q. Okay. What is your belief that they're
11:42:05 11 paid appropriately based on?

11:42:10 12 A. Their ownership in the firm and the
11:42:14 13 success of the firm.

11:42:15 14 Q. Okay.

11:42:15 15 A. They own it.

11:42:16 16 Q. You just -- you trust them to do the right
11:42:19 17 thing, right?

11:42:19 18 A. Yes.

11:42:20 19 Q. What if they did the wrong thing? What if
11:42:24 20 they pay themselves \$10 million a year? Do you think
11:42:27 21 that would be appropriate?

11:42:28 22 MR. OUTTEN: Object to the form.

11:42:30 23 THE WITNESS: Based on my knowledge of the
11:42:32 24 firm's business, that wouldn't be possible.

25

1 BY MR. ROTHSTEIN:

11:42:36 2 Q. Okay. What if -- how much money do you
11:42:41 3 believe the firm made in profit this year?

11:42:46 4 A. I'd have to look in the -- in the records.

11:42:48 5 Q. Can you give me a ballpark within a
11:42:51 6 million dollars?

11:42:54 7 A. It's going to be a million or so.

11:42:57 8 Q. Over a million dollars in excess profit?

11:43:00 9 A. Probably.

11:43:01 10 Q. Okay. And in your understanding, there's
11:43:04 11 a method that whoever is in charge of making that
11:43:07 12 determination splits up the profit and distributes it
11:43:10 13 to the owners according to their shares, right?

11:43:12 14 MR. OUTTEN: I object to the form of the
11:43:14 15 question.

11:43:16 16 THE WITNESS: There's -- there's also
11:43:17 17 considerations for the 250 people that support
11:43:22 18 this operation, to reward them with bonuses.

19 BY MR. ROTHSTEIN:

11:43:27 20 Q. Okay.

11:43:28 21 A. So . . .

11:43:29 22 Q. If the three guys at the top and
11:43:32 23 Mr. Cousins, the four guys that you say are running
11:43:35 24 the firm, or were running the firm, decided, "Hey,
11:43:37 25 we're the owners. We're going to take all that

	1	EXAMINATION
	2	BY MR. OUTTEN:
02:01:35	3	Q. Mr. Joslin, please look at Exhibit 11.
02:01:42	4	Exhibit 11 is a statement signed by you,
02:01:45	5	correct?
02:01:46	6	A. That's correct.
02:01:47	7	Q. Dated November 18th, 2019, correct?
02:01:51	8	A. That's correct.
02:01:55	9	Q. Do you see at the top where it says
02:01:56	10	"McMillan Pazdan Smith, LLC, Member Statement in
02:02:00	11	Opposition to Derivative Action"? Do you see that?
02:02:03	12	A. I do see that.
02:02:06	13	Q. What I'd like you to do, Mr. Joslin, is
02:02:09	14	take a minute and read Exhibit 11 in full. Tell me
02:02:14	15	when you are finished reading it, please.
02:02:55	16	A. I've completed reading it.
02:02:57	17	Q. And you know you're under oath today?
02:02:59	18	A. I do.
02:03:00	19	Q. And under oath, do you affirm all of the
02:03:05	20	statements made in Exhibit 11?
02:03:09	21	A. I do.
02:03:18	22	Q. Mr. Joslin, did anyone force you to sign
02:03:23	23	this statement dated November 18th, 2019?
02:03:28	24	A. No, sir, they did not.
02:03:30	25	Q. Did anyone coerce you, try to force you or

02:03:37 1 pressure you into signing Exhibit 11?

02:03:41 2 A. No, they did not.

02:03:43 3 Q. Did you sign Exhibit 11 voluntarily?

02:03:48 4 A. I did.

02:03:50 5 Q. Did you have the choice or option not to

02:03:55 6 sign Exhibit 11?

02:03:58 7 A. I did.

02:04:00 8 Q. And you chose to sign Exhibit 11

02:04:05 9 voluntarily, of your own accord, right?

02:04:09 10 A. That's correct.

02:04:15 11 Q. Look, if you would, at Exhibit 4, which is

02:04:24 12 this document. Please turn to page 17 of Exhibit 4.

02:04:43 13 Tell me when you're there.

02:04:47 14 A. I have page 17 before me.

02:04:50 15 Q. And the allegations of Ms. Mattison's

02:04:57 16 derivative action appear on pages 17, 18, 19, 20, 21,

02:05:09 17 22, 23, and 24, one sentence at the top of page 25.

02:05:19 18 Do you see that?

02:05:20 19 A. I do.

02:05:21 20 Q. And have you had an opportunity to review

02:05:24 21 the allegations Ms. Mattison has made in her

02:05:28 22 derivative complaint?

02:05:30 23 A. Yes, I have.

02:05:33 24 Q. Do you support Ms. Mattison's bringing

02:05:36 25 this derivative action against Ronald Smith, Joe

02:05:42 1 Pazdan, Brad Smith, and Chad Cousins?

02:05:48 2 A. I do not.

02:05:49 3 Q. Do you oppose Ms. Mattison bringing this

02:05:53 4 derivative claim against Ron Smith, Joe Pazdan, Brad

02:05:58 5 Smith, and Chad Cousins?

02:06:00 6 A. I do.

02:06:01 7 Q. And in your time with the firm, are you

02:06:07 8 satisfied and pleased with the way these gentlemen

02:06:11 9 have run the firm?

02:06:14 10 A. Yes, I am.

02:06:16 11 Q. Do you know of any dishonest or

02:06:19 12 self-dealing act committed by Ron Smith, Joe Pazdan,

02:06:23 13 Brad Smith or Chad Cousins during your time with the

02:06:27 14 firm?

02:06:28 15 A. I do not.

02:06:30 16 Q. Now, you were asked a number of questions

02:06:35 17 by Mr. Rothstein about the compensation of the

02:06:40 18 management group. Do you remember those questions?

02:06:43 19 A. I do.

02:06:44 20 Q. Do you remember that you were shown

02:06:46 21 Exhibit 8, which shows the -- their compensation? Do

02:06:50 22 you remember that?

02:06:50 23 A. I do.

02:06:54 24 Q. Do you have any concern or complaint about

02:06:55 25 the compensation earned by Ron Smith, Joe Pazdan,

02:06:59	1	Brad Smith or Chad Cousins?
02:07:02	2	A. I have no concern or complaint about their
02:07:05	3	compensation.
02:07:05	4	Q. And you were asked a number of questions
02:07:08	5	about the rent for McMillan Pazdan Smith's space in
02:07:13	6	Spartanburg. Do you remember those questions?
02:07:14	7	A. I do.
02:07:15	8	Q. And Exhibit 9 is the layout of the space.
02:07:24	9	Remember looking at that?
02:07:26	10	A. I do remember.
02:07:27	11	Q. Remember, Mr. Rothstein showed you a flier
02:07:29	12	from Spencer Hines about office space for lease in
02:07:36	13	Spartanburg, marked as Exhibit 10. Do you remember
02:07:38	14	that?
02:07:41	15	A. I do.
02:07:43	16	Q. Do you have any concern or complaint about
02:07:44	17	the rent that is being paid to C&P for the leased
02:07:51	18	space of MPS in Spartanburg?
02:07:57	19	A. I have no concern and I have no complaint.
02:08:02	20	Q. Have you had, during your time at MPS, the
02:08:05	21	opportunity to work with Ron Smith?
02:08:09	22	A. I have.
02:08:10	23	Q. On many occasions?
02:08:13	24	A. Initially when I joined the firm as
02:08:16	25	McMillan Smith & Partners, yes.

02:08:18	1	Q. Do you consider Mr. Smith to be an
02:08:20	2	honorable man?
02:08:21	3	A. Absolutely.
02:08:22	4	Q. Trustworthy?
02:08:23	5	A. Absolutely.
02:08:24	6	Q. Honest?
02:08:25	7	A. Absolutely.
02:08:26	8	Q. High character?
02:08:30	9	A. Absolutely.
02:08:31	10	Q. Have you ever known Mr. Smith to do
02:08:33	11	anything which was dishonest, or even cutting
02:08:37	12	corners, ever?
02:08:39	13	A. Ever, no, sir, I have not -- or do not.
02:08:43	14	Q. Do you know of any dishonest or
02:08:48	15	self-dealing act by Chad Cousins?
02:08:53	16	A. I do not.
02:08:56	17	Q. Or by Joe Pazdan?
02:08:58	18	A. I do not.
02:08:59	19	Q. Or by Brad Smith?
02:09:01	20	A. I do not.
02:09:03	21	Q. Are you pleased with the leadership these
02:09:07	22	gentlemen have exhibited in running the firm?
02:09:13	23	A. Absolutely am.
02:09:15	24	Q. And do you consider -- we've talked about
02:09:18	25	Ron Smith. Do you consider Joe Pazdan, Brad Smith,

02:09:22 1 and Chad Cousins to be honorable, honest,
02:09:26 2 high-character individuals?
02:09:28 3 A. I do. All three of very high integrity.
02:09:33 4 Q. And do you trust the manner in which
02:09:35 5 they're running the firm?
02:09:36 6 A. I do.
02:09:36 7 Q. And can you envision any circumstances in
02:09:40 8 which you would join this derivative action of -- or
02:09:45 9 purported derivative action of Ms. Mattison's against
02:09:48 10 those gentlemen?
02:09:50 11 A. Absolutely not. I cannot.
02:09:56 12 MR. OUTTEN: Those are all the questions I
02:09:57 13 have. Thank you, sir.
02:10:01 14 MR. ROTHSTEIN: Jut a couple follow-ups.
15 FURTHER EXAMINATION
16 BY MR. ROTHSTEIN:
02:10:04 17 Q. After you received -- or prior to signing
02:10:07 18 Exhibit 11, did you have any discussions about the
02:10:11 19 derivative action with any colleagues, co-members of
02:10:17 20 the firm, about the derivative action?
02:10:20 21 A. No, I did not.
02:10:21 22 Q. Did you do any research into
02:10:23 23 Ms. Mattison's allegations to see whether they were
02:10:26 24 true or false, prior to signing Exhibit 11?
02:10:33 25 A. I did not. Not beyond the information

STATE OF SOUTH CAROLINA IN THE COURT OF
 COMMON PLEAS OF THE
COUNTY OF GREENVILLE THIRTEENTH JUDICIAL CIRCUIT

MCMILLAN PAZDAN SMITH, LLC, CIVIL ACTION NO.
 Plaintiff- 2019-CP-23-00998
Counterclaim Defendant,
 vs.
DONZA H. MATTISON,
 Defendant.

DONZA H. MATTISON, in a
Derivative Capacity on
Behalf of MCMILLAN PAZDAN
SMITH, LLC,
Third-Party Plaintiff,
 vs.
RONDALD G. SMITH, JOSEPH M.
PAZDAN, BRAD B. SMITH, and
CHAD C. COUSINS,
Third-Party Defendants.

DEPOSITION OF KEITH ALLEN JACOBS, II

DATE TAKEN: January 29, 2020

TIME BEGAN: 8:30 a.m.

TIME ENDED: 12:30 p.m.

LOCATION: Rothstein Law Firm, P.A.
 1312 Augusta Street
 Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

1 you did not get sleep last night, anything like
2 that?

3 A. No, sir.

4 Q. Okay. Can you tell me what you did to
5 prepare for your deposition?

6 A. I met Sam for the first time Monday
7 afternoon and was given a copy of the derivative
8 lawsuit, which I read; I've re-read the statement
9 that I signed; and then I've re-read the Statement
10 of Protest that Donza filed at our last recent
11 principals meeting.

12 Q. Was this the first time you had actually
13 seen a copy of the derivative lawsuit, the actual
14 document itself?

15 A. Yes, sir.

16 Q. Okay. Any other documents that you
17 reviewed?

18 A. No, sir.

19 Q. Was anyone in the meeting with you and Mr.
20 Outten?

21 A. No, sir.

22 Q. Okay. Did you review any deposition
23 transcripts -- or, I guess, the only one that has
24 been taken is Bill Joslin. Did you review Mr.
25 Joslin's deposition transcript?

1 A. No.

2 Q. Did you talk with Mr. Joslin about his
3 deposition testimony?

4 A. No, sir.

5 Q. Other than Mr. Outten, did you speak with
6 anyone else about the deposition? What kind of
7 questions I might ask, or what you could expect, or
8 how to answer questions?

9 A. No, sir.

10 Q. Who do you understand Mr. Outten to be
11 representing in this case?

12 A. My firm and me, the shareholders of the
13 firm, with the exception of Donza, of course.

14 Q. Do you also understand that Ms. Mattison
15 has filed suit on behalf of the firm against four
16 individuals that are sort of the principal
17 shareholders of the firm?

18 A. I do understand that, yes, sir.

19 Q. And you understand Mr. Outten to be
20 representing those individual members as well?

21 A. I do understand that.

22 Q. Have you ever met an attorney named Bill
23 Higgins?

24 A. I have not met Bill Higgins, no, sir.

25 Q. Have you ever communicated with Bill

1 Higgins?

2 A. I don't believe -- I don't believe I have.
3 I was given -- he was given to the nonmanaging
4 principal shareholders as a resource to reach out to
5 if we had any questions, concerns about the
6 relationship between Sam, and Joe, Brad, Ron, and
7 Chad. And I actually was the one that offered that
8 resource to the rest of the shareholders in the
9 firm. I did not -- I did not take him -- I did not
10 take advantage of that resource. I didn't see any
11 need to do that.

12 Q. Okay. Do you know if any other minority
13 members, I mean, spoke with Mr. Higgins? Have you
14 ever learned that or talked to any minority
15 shareholders about that?

16 A. To my knowledge, no one has.

17 MR. ROTHSTEIN: Let's mark this as Exhibit
18 1.

19 (Whereupon, the court reporter marked Defendant's
20 Exhibit Number 1 for identification.)

21 EXAMINATION RESUMED BY MR. ROTHSTEIN:

22 Q. The court reporter has handed you Exhibit
23 1. Have you ever seen Exhibit 1 before?

24 A. I'm not sure I've seen it as Exhibit 1,
25 but I'm familiar with all the documents in Exhibit

1 MR. OUTTEN: I object to the form of the
2 question.

3 EXAMINATION RESUMED BY MR. ROTHSTEIN:

4 Q. Was 2018 a tough year for the firm?

5 A. It depends on what you're talking about.

6 Q. Okay. Were there any layoffs in the firm
7 in 2018?

8 A. Not that I recall.

9 Q. Have you ever been told that the current
10 lawsuit between MPS and Ms. Mattison has had an
11 impact on the timing or amount of any distributions
12 to the firm members?

13 A. No.

14 (Whereupon, the court reporter marked Defendant's
15 Exhibit Number 7 for identification.)

16 EXAMINATION RESUMED BY MR. ROTHSTEIN:

17 Q. Do you recognize Exhibit 7?

18 A. Yes, sir.

19 Q. Okay. And is that your signature there at
20 the bottom?

21 A. It is.

22 Q. And you printed your name, "KJ Jacobs"?

23 A. Correct.

24 Q. And you signed this document. It's dated
25 November 14, 2019. Is that the date you signed it?

1 A. Yes, sir.

2 Q. Okay. And if I recall correctly, this is
3 the same document that Mr. Cousins sent by e-mail,
4 which we previously looked at as Exhibit 1, correct?

5 A. He sent the unexecuted version, of course,
6 and I signed a copy of it, yes.

7 Q. All right. Do you know who drafted this
8 particular -- who drafted sort of the template form?

9 A. No, sir.

10 Q. Okay. It looks like you dated it the very
11 next day after you received it, is that right?

12 A. It appears I received it on the 13th and
13 signed it on the 14th, yes.

14 Q. Okay. In paragraph six of this document,
15 you state -- well, first of all, did you read this
16 document before you signed it?

17 A. Yes, sir.

18 Q. Did you understand the document before you
19 signed it?

20 A. Yes, sir.

21 Q. Okay. Did you discuss the document with
22 legal counsel before you signed it?

23 A. I did not.

24 Q. Okay. Did you discuss this document with
25 any of your colleagues, meaning other members of the

1 firm, before you signed it?

2 A. No.

3 Q. In paragraph six of Exhibit 7, you state,
4 "I have reviewed and have been provided adequate
5 information about the allegations of Mattison's
6 derivative action against the Third-Party
7 Defendants." How did you determine that you had
8 been provided adequate information or had reviewed
9 adequate information to make a decision about
10 whether to support her claim or not?

11 A. I understood the nature of her
12 allegations, and I have spent however many years
13 we've determined working in our firm, and I don't --
14 I don't believe that they're founded, and I don't
15 agree with it, and I was comfortable signing it. I
16 believe that I have adequate information that tells
17 me that the allegations are not true.

18 Q. What is your understanding of what Ms.
19 Mattison's specific allegations against the
20 Third-Party Defendants are?

21 A. I mean, I think -- generally, I think
22 she's alleging that they're taking advantage of
23 their positions to spend money and do things in a
24 way that's not consistent with either our operating
25 agreement or the spirit of the firm.

1 Q. Okay. Are you familiar with the term
2 "self-dealing"?

3 A. As an architect, yes.

4 Q. What is your understanding of what the
5 term "self-dealing" means?

6 A. I would say a version of what I just
7 described. That using someone's position to further
8 improve their position, whether it's financially or
9 otherwise.

10 Q. Have you ever been made aware of what the
11 compensation to the Third-Party Defendants; Mr. Ron
12 Smith, Joe Pazdan, Brad Smith, and Chad Cousins, has
13 been over the past five or six years?

14 A. I read in the derivative lawsuit
15 references that you provided about total
16 compensation. I have absolutely no way of knowing
17 if those are true. I don't know how total
18 compensation -- how you defined it, and I have never
19 been privy to any salary of anyone other than the
20 people that I described previously.

21 Q. Okay. What about the benefits and perks
22 that Mr. Ron Smith, Joe Pazdan, Brad Smith, and/or
23 Chad Cousins have authorized for themselves over the
24 years? Have you been privy to any of that
25 information?

1 A. I don't know what you're talking about
2 specifically.

3 Q. Like country club memberships, for
4 example? Were you aware that the firm pays for some
5 -- one or more of the principals' country club
6 memberships?

7 A. I'm aware that our firm spends money in
8 ways that we think is appropriate to continue to get
9 more work and continue to do better. And I
10 understand that that does include what you just
11 described, and it also includes at least discussions
12 to do that with even nonprincipals in the firm.

13 Q. Okay. That's part of like your marketing
14 or business development, networking, rainmaking kind
15 of thing?

16 A. We view it that way.

17 Q. Okay. What about benefits like disability
18 insurance or long-term care insurance?

19 A. I was in the room for a few high level --
20 I've heard those terms before. We've talked about
21 key man insurance and things like that. I've never
22 been a part of any discussion that ever gave me any
23 pause that we were doing anything that wasn't
24 completely appropriate.

25 Q. Okay. Were you aware that some of the

1 A. I didn't have a conversation with him.

2 Q. What are your impressions of Ms. Mattison
3 as a person?

4 MR. OUTTEN: As a person?

5 EXAMINATION RESUMED BY MR. ROTHSTEIN:

6 Q. As a person, what are your impressions of
7 her?

8 MR. OUTTEN: I instruct the witness not to
9 answer that question. That has nothing to do
10 with this lawsuit. It's improper, it's
11 harassing the witness.

12 MR. ROTHSTEIN: It's not a harassing
13 question.

14 MR. OUTTEN: It absolutely is. It doesn't
15 have anything to do with this lawsuit with the
16 derivative action, the counterclaims you've
17 made. His personal opinion of Ms. Mattison has
18 nothing to do with this.

19 MR. ROTHSTEIN: I respectfully disagree.
20 I don't think it's an improper instruction not
21 to answer. And I have asked --

22 MR. OUTTEN: That's fine, but I instruct
23 him not to answer the question of what his
24 personal opinion of Ms. Mattison is, and you're
25 harassing the witness.

1 MR. ROTHSTEIN: I've asked him the
2 question one time. How is that harassment?

3 MR. OUTTEN: Because it's totally improper
4 to try to inject something like that into this
5 lawsuit. Mr. Jacobs is here in good faith,
6 he's answered all of your questions. There's
7 no reason to harass him and ask him about an
8 issue which you know very well that is not an
9 issue in this lawsuit.

10 MR. ROTHSTEIN: It absolutely is an issue
11 in the lawsuit, Sam.

12 MR. OUTTEN: His personal opinion of Ms.
13 Mattison?

14 MR. ROTHSTEIN: Yes.

15 MR. OUTTEN: I disagree. And if we need
16 to get back together to answer that question,
17 then so be it.

18 EXAMINATION RESUMED BY MR. ROTHSTEIN:

19 Q. And in your observations and experience at
20 the firm, has Ms. Mattison been an outspoken
21 minority shareholder?

22 A. I think if she has a question or disagrees
23 with something, she says it. I wouldn't categorize
24 that as outspoken.

25 Q. Okay. Did she raise -- in your

1 experience, did she raise a lot of questions during
2 regular member meetings?

3 A. I don't really recall. Probably, but I
4 don't really recall.

5 Q. Okay.

6 A. She pays close attention to what's being
7 presented and asks questions when she has questions.

8 Q. Did she frequently question policy changes
9 that the managing members of the firm wanted to
10 make?

11 A. You'd have to give me an example to know
12 if I remember. I don't specifically recall anything
13 in particular, but...

14 Q. Do you recall her ever standing up for our
15 employees in the firm -- either employees or
16 shareholders of the firm?

17 A. Yeah.

18 Q. Okay. Do you recall at some point there
19 was a proposal to eliminate staff overtime in the
20 firm?

21 A. We have that discussion every time there's
22 a recession.

23 Q. Do you recall Ms. Mattison standing up for
24 the staff members that were asked to work overtime?

25 A. I don't have a recollection of that.

1 Mattison, do you have an understanding of what that
2 would mean for the value of your membership units?

3 A. I guess not, no. I don't know what you
4 mean by that.

5 Q. Well, if Ms. Mattison convinces the judge
6 that the fair market value of the firm is actually
7 greater than what MPS offered her for her shares,
8 you understand that that could increase the value of
9 your shares?

10 A. I do understand that.

11 (Whereupon, the court reporter marked Defendant's
12 Exhibit Number 15 for identification.)

13 EXAMINATION RESUMED BY MR. ROTHSTEIN:

14 Q. Have you ever seen Exhibit 15 before?

15 A. No, sir.

16 Q. This is an affidavit that Mr. Outten filed
17 in this case. You see the caption at the top of the
18 page, "McMillan Pazdan Smith, LLC, versus Donza
19 Mattison"?

20 A. Yes, sir.

21 Q. And it has a file stamp electronically
22 filed on December 11, 2019 at 11:23 a.m. in the
23 Greenville Court of Common Pleas. Do you see that?

24 A. Yes, sir.

25 Q. Have you ever seen this document before?

1 A. No, sir.

2 Q. I'll ask you if you look to -- have you
3 ever seen Mr. Higgins' qualifications as an
4 attorney?

5 A. I know very little about Mr. Higgins other
6 than he was outside counsel from Columbia.

7 Q. Do you know if he practices -- or do you
8 know what his area of practice is?

9 A. I don't know anything about Mr. Higgins
10 other than he's the third-party attorney in
11 Columbia.

12 Q. Did you ever look him up on his firm's
13 website?

14 A. I don't know anything about him other than
15 the fact he's a third-party attorney from Columbia.
16 I'm sorry.

17 Q. All right. I'm going to ask you to look
18 at page 3 of Exhibit 15.

19 A. Okay.

20 Q. Paragraph 7 says, "I have been engaged by
21 Nelson Mullins on behalf of MPS." Is that your
22 understanding of how Mr. Higgins got involved in
23 this case, that he was engaged by Nelson Mullins on
24 behalf of MPS?

25 A. I believe I stated before that I didn't

1 know how that had come to be.

2 Q. Were you aware that Mr. Higgins was
3 proffered as an expert witness in whether or not
4 Nelson Mullins has a conflict of interest in
5 representing both the firm generally and the
6 individual managing members of the firm in the same
7 lawsuit?

8 A. Ask me that question again.

9 Q. Yes. Were you aware that Mr. Higgins was
10 hired or proffered as an expert witness in the issue
11 of whether there is a conflict of interest between
12 Nelson Mullins representing both MPS and the
13 individual members of the firm?

14 A. I was not aware of that.

15 Q. Is your reading of paragraph seven, "I
16 have been engaged by Nelson Mullins on behalf of
17 MPS," is that consistent with your understanding
18 that Mr. Higgins was an independent counsel in this
19 case?

20 A. I don't know how that came to be.

21 Q. Do you know whether Mr. Higgins has any
22 expertise in derivative action lawsuits?

23 A. I don't know anything about Mr. Higgins
24 other than he's a third-party attorney in Columbia.
25 I'm sorry.

1 Q. But Mr. Higgins was represented to you by
2 Mr. Cousins as an independent counsel, isn't that
3 right?

4 MR. OUTTEN: Object to the form of the
5 question.

6 THE WITNESS: Would you ask it a different
7 way?

8 EXAMINATION RESUMED BY MR. ROTHSTEIN:

9 Q. Mr. Higgins was presented by Mr. Cousins
10 as an independent counsel for the minority members
11 of the firm, isn't that right?

12 A. He was characterized as not the person
13 that was representing the four of them.

14 MR. ROTHSTEIN: Let's mark this one.
15 (Whereupon, the court reporter marked Defendant's
16 Exhibit Number 16 for identification.)

17 EXAMINATION RESUMED BY MR. ROTHSTEIN:

18 Q. Do you recognize Exhibit 16?

19 A. Yes, sir.

20 Q. Do you see your signature on page 2 of
21 Exhibit 16?

22 A. I do.

23 Q. Okay. What is your understanding of the
24 context in which -- or your understanding of why
25 this document was signed?

1 you would mark that as the next exhibit -- or
2 as Plaintiff's 2.

3 (Whereupon, the court reporter marked Plaintiff's
4 Exhibit Number 2 for identification.)

5 - - -

6 EXAMINATION

7 - - -

8 BY MR. OUTTEN:

9 Q. Mr. Jacobs, have you seen this document
10 before titled, "Verified, Amended Answer,
11 Counterclaims, and Third-Party Complaint"? Have you
12 seen it before?

13 A. Yes, sir.

14 Q. And let's look at -- have you reviewed the
15 the allegations of the derivative action made by Ms.
16 Mattison in what's been marked as Plaintiff's
17 Exhibit 2?

18 A. Yes, I have.

19 Q. All right. And do those allegations begin
20 on page 17?

21 A. They do.

22 Q. And have you reviewed the allegations Ms.
23 Mattison has made on pages 17, 18, 19, 20, 21, 22,
24 and 23? Have you checked to make sure that you've
25 reviewed all those allegations?

1 A. Yes, I have.

2 Q. And before reviewing those allegations --
3 get the Exhibit 2 before you, please, and turn over
4 to the second page. Do you see at the top where it
5 says, "Formal Protest of November 4th, 2019 Member
6 Meeting by Donza H. Mattison." Do you see that?

7 A. Yes, sir.

8 Q. And have you reviewed what Ms. Mattison
9 writes in this document, which goes on for almost
10 three pages? Have you reviewed those?

11 A. Yes, sir, I have.

12 Q. And look at Exhibit 7, please.

13 A. Yes, sir.

14 Q. Is Exhibit 7 a statement which you signed
15 voluntarily?

16 A. Yes, sir.

17 Q. Did anyone coerce you into signing Exhibit
18 7?

19 A. No, sir.

20 Q. Did you have the opportunity or the choice
21 to refuse to sign Exhibit 7, as a member of McMillan
22 Pazdan Smith?

23 A. Yes, sir.

24 Q. Was it your choice to sign Exhibit 7?

25 A. It was my choice to sign it.

1 Q. And you're under oath today, Mr. Jacobs.
2 You know that, correct?

3 A. I do.

4 Q. Please review all 11 paragraphs of Exhibit
5 7 and tell me when you're finished, please.

6 A. (Reviewing.) I'm finished.

7 Q. Do you state, under oath, that the
8 statements made in paragraphs 1 through 11 are true
9 and accurate?

10 A. I do.

11 Q. And do you affirm that today under oath?

12 A. Yes, sir, I do.

13 Q. Mr. Jacobs, do you want to join the
14 derivative lawsuit of Donza Mattison?

15 A. I do not.

16 Q. Do you support the derivative lawsuit
17 filed by Ms. Mattison?

18 A. I do not.

19 Q. Do you oppose the derivative lawsuit
20 brought by Donza Mattison?

21 A. I do.

22 Q. Do you believe the allegations she has
23 made again Mr. Pazdan, Mr. Smith -- Mr. Brad Smith,
24 Mr. Ron Smith, and Mr. Chad Cousins are false?

25 A. I do believe that.

1 Q. Do you believe the allegations made by Ms.
2 Mattison in her derivative lawsuit are untrue?

3 A. I do.

4 Q. Do you remember in responding to Mr.
5 Rothstein's questions about a member's meeting that
6 the other members were angry and frustrated? Do you
7 remember that?

8 A. Yes, sir.

9 Q. To your knowledge, were the members angry
10 and frustrated because they wanted to do what they
11 could to get the issue resolved and dismiss the
12 lawsuit?

13 A. Yes, sir.

14 Q. Do you know of any of the minority members
15 of McMillan Pazdan Smith who support this derivative
16 action filed by Ms. Mattison?

17 A. Other than the author of it, no.

18 Q. Other than Ms. Mattison?

19 A. Correct.

20 Q. Let me ask it this way. Other than Ms.
21 Mattison, to your knowledge, do all of the other
22 members of McMillan Pazdan Smith oppose this
23 derivative action?

24 A. They do.

25 Q. And how long have you been working there?

1 You testified to this a couple of times. Over 20
2 years?

3 A. Yes, sir.

4 Q. During those 20 years, have you ever seen
5 -- do you know anything about Ron Smith doing
6 something that was unethical or dishonest?

7 A. No, sir.

8 Q. To your knowledge, is he a man of high
9 character and high integrity?

10 A. Yes, sir.

11 Q. Have you ever known Brad Smith to do
12 anything dishonest or unethical?

13 A. No, sir.

14 Q. Is he a man of high character and high
15 integrity?

16 A. Yes, sir.

17 Q. Have you ever witnessed Joe Pazdan do
18 anything which is unethical or dishonest?

19 A. No.

20 Q. Is he a man of high character and high
21 integrity?

22 A. Yes.

23 Q. Has Chad Cousins ever done anything
24 unethical or dishonest?

25 A. No.

1 Q. Is he a man of high character and high
2 integrity?

3 A. Yes.

4 Q. Do all of these men exercise leadership
5 for the benefit of the firm?

6 A. Yes.

7 Q. Do you have any questions about their
8 honesty in their roles as leaders of this firm?

9 A. No.

10 Q. Any at all?

11 A. No, sir.

12 Q. Over 20 years?

13 A. No, sir.

14 Q. Do you support the leadership provided to
15 the firm by Ron Smith, Brad Smith, Joe Pazdan, and
16 Chad Cousins?

17 A. I do.

18 Q. Do you know of any information which
19 supports any of the allegations made by Ms. Mattison
20 in this derivative complaint?

21 A. No.

22 MR. OUTTEN: Those are all the questions I
23 have, Mr. Jacobs. Thank you.

24 MR. ROTHSTEIN: I have a couple of
25 follow-up on that.

1 Q. Okay. Is Ms. Mattison currently the only
2 member of the firm who has no reason to fear
3 retaliation by one of the managing members?

4 MR. OUTTEN: I object to the form.

5 THE WITNESS: I didn't follow your
6 question anyway. I'm sorry.

7 EXAMINATION RESUMED BY MR. ROTHSTEIN:

8 Q. You understand that Ms. Mattison is the
9 only current member of the firm who is not presently
10 employed by McMillan Pazdan Smith, right?

11 A. I do understand that, yes, sir.

12 Q. So she can make the allegations that she's
13 made without fear of losing her job, isn't that
14 right?

15 A. I understand your question. Yes.

16 MR. ROTHSTEIN: No further questions.

17 - - -

18 EXAMINATION

19 - - -

20 BY MR. OUTTEN:

21 Q. Mr. Jacobs, you were shown lots of
22 information about the compensation paid to Ron
23 Smith, Brad Smith, Joe Pazdan, Chad Cousins. Do you
24 remember being shown that information that was
25 Exhibit 11 and then another document that Mr.

1 Rothstein showed you?

2 A. Yes, sir.

3 Q. Do you have any complaints about the
4 compensation made by Ron Smith, Brad Smith, Joe
5 Pazdan, and Chad Cousins?

6 A. I do not, and I have no way of verifying
7 if those are correct or not.

8 MR. OUTTEN: Thank you.

9 MR. ROTHSTEIN: Nothing further.

10 THE COURT REPORTER: What about signature?

11 MR. OUTTEN: Reserve.

12 THE COURT REPORTER: Did you want a copy?

13 MR. OUTTEN: Yes.

14 - - -

15 (Witness excused.)

16 - - -

17 (Deposition was concluded at 12:30 p.m.)

18 - - -

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STATE OF SOUTH CAROLINA IN THE COURT OF
 COMMON PLEAS OF THE
COUNTY OF GREENVILLE THIRTEENTH JUDICIAL CIRCUIT

MCMILLAN PAZDAN SMITH, LLC, CIVIL ACTION NO.
 Plaintiff- 2019-CP-23-00998
Counterclaim Defendant,
 vs.
DONZA H. MATTISON,
 Defendant.

DONZA H. MATTISON, in a
Derivative Capacity on
Behalf of MCMILLAN PAZDAN
SMITH, LLC,
Third-Party Plaintiff,
 vs.
RONDALD G. SMITH, JOSEPH M.
PAZDAN, BRAD B. SMITH, and
CHAD C. Cousins,
Third-Party Defendants.

DEPOSITION OF DOROTHY PAULETTE MYERS

DATE TAKEN: February 19, 2020
TIME BEGAN: 8:00 a.m.
TIME ENDED: 11:40 p.m.
LOCATION: Rothstein Law Firm, P.A.
 1312 Augusta Street
 Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
 EveryWord, Inc.
 P.O. Box 1459
 Columbia, South Carolina 29202
 803-212-0012

1 MR. OUTTEN: Object to the form.

2 THE WITNESS: I apologize. You need to
3 repeat that.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. What is your understanding of who at MPS
6 has the responsibility or right to ensure that
7 members that owe a fiduciary duty to the firm are
8 complying with those fiduciary duties?

9 A. You're asking who was responsible?

10 Q. Or has the right.

11 A. I apologize. I do not know what "who has
12 the right" means.

13 Q. Who has a right to enforce or, I guess,
14 ensure that the fiduciary duties are being followed?

15 A. Who is responsible for doing it?

16 Q. Yes.

17 A. I would say all of the managing -- all of
18 the management.

19 Q. Okay. What about who has the right to --
20 are you aware that every owner of the firm or anyone
21 that holds ownership units of the firm has a right
22 to make some type of objection or voice concerns
23 about whether the managers are complying with their
24 fiduciary duties?

25 MR. OUTTEN: I object to form and to the

1 extent it requests a legal opinion or a
2 conclusion.

3 THE WITNESS: I'm not sure I understand
4 completely the question. Are you asking me if
5 I can object to decisions?

6 EXAMINATION RESUMED BY MR. ROTHSTEIN:

7 Q. Yes, let's start with you as --

8 A. Me, as a member?

9 Q. Yes, as a member. Before you became a
10 board member, do you think you had a right to ensure
11 that the managing elements of the firm were acting
12 consistent with their fiduciary duties?

13 A. I'm really not sure how to answer that, I
14 do apologize. We're a fairly transparent firm, and
15 I do feel definitely before I was a board member I
16 could ask a question related to that to anyone in
17 the management.

18 Q. And I guess the gist of my question is who
19 do you think the fiduciaries of the firm are
20 accountable to?

21 MR. OUTTEN: Object to the form and to the
22 extent it requests a legal opinion or
23 conclusion.

24 THE WITNESS: Tell me again. Who is
25 responsible?

1 EXAMINATION RESUMED BY MR. ROTHSTEIN

2 Q. Who are the fiduciaries of the firm
3 accountable to?

4 A. To all the members.

5 Q. And do you believe that all the members of
6 MPS have an equal right to raise allegations that
7 the managers, officers, or directors of the firm
8 have not acted consistently with their fiduciary
9 duties?

10 MR. OUTTEN: Object to the form.

11 THE WITNESS: I believe we are all willing
12 to state our -- yes, our opinion. Is that the
13 answer -- not the answer, but I think I
14 understand the question, but I'm not positive.
15 You're asking me do I believe -- me -- we'll
16 leave Donza out of it. Me, as a person, can I
17 object to if I think something is incorrect or
18 not related to the individual share of
19 responsibilities? Yes, I feel I can do that.

20 EXAMINATION RESUMED BY MR. ROTHSTEIN:

21 Q. And you have that right as a -- I think
22 you have 41 membership units in the firm?

23 A. (Witness nodding head.)

24 Q. Do you think your right as a 41-member
25 unit holder are equal to Donza Mattison's rights as

1 a 2,000-plus member?

2 A. I've never once thought that my opinion is
3 based on my number of shares to the management.

4 Q. Okay. So your understanding is that if
5 you have a piece of the firm, no matter how small it
6 is, that you have a right to raise concerns about
7 fiduciary duties?

8 MR. OUTTEN: Object to the form.

9 THE WITNESS: Oh, my goodness, yes.

10 EXAMINATION RESUMED BY MR. ROTHSTEIN:

11 Q. Good. Now, what about employees that
12 don't have an ownership interest in the firm? Do
13 you think that they have a right to question
14 management or raise concerns about whether there's a
15 fiduciary duty being violated?

16 A. So I don't really understand the legal
17 part of that. But the honesty -- and even before I
18 was a member of the firm, yes, if I -- yes, I felt
19 comfortable questioning someone. So I don't really
20 understand the legal part of that.

21 Q. Okay. Do you believe that Ms. Mattison's
22 interests in preventing or remedying breaches of
23 fiduciary duties against the firm are any different
24 than any other minority members' interests?

25 MR. OUTTEN: Object to the form. Requests

1 a legal opinion or conclusion.

2 THE WITNESS: Yes, I don't have an opinion
3 on that.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. The fact that Ms. Mattison is no longer an
6 active employee of the firm actually makes her a
7 better protector of the firm's fiduciary duties,
8 wouldn't you agree to that?

9 MR. OUTTEN: I'll object to the form of
10 the question.

11 THE WITNESS: No.

12 EXAMINATION RESUMED BY MR. ROTHSTEIN:

13 Q. Why do you say that?

14 A. Because she's not there day to day.

15 Q. Okay. Well, she doesn't have to worry
16 about being retaliated against by one of the
17 managing members, does she?

18 MR. OUTTEN: Object to the form.

19 THE WITNESS: That is true, but that is
20 not -- that is not something that -- I don't
21 think anyone would be afraid of within our
22 firm.

23 EXAMINATION RESUMED BY MR. ROTHSTEIN:

24 Q. I mean, she can question decisions of the
25 firm's managers without fear of losing her job at

1 this point, isn't that right?

2 A. You might say that --

3 MR. OUTTEN: Object to the form.

4 THE WITNESS: -- but I don't feel like
5 anybody would feel -- like I do not feel I
6 would lose my job for questioning.

7 EXAMINATION RESUMED BY MR. ROTHSTEIN:

8 Q. Tell me what you know about Ms. Mattison's
9 lawsuit. I mean, Ms. Mattison's Counterclaims or
10 Third-Party Complaints against the managing members
11 of MPS.

12 A. I know what I read in the derivative
13 lawsuit and that derivative paper, that's what I
14 understand.

15 Q. Okay. So have you read any of the Orders
16 from the judge? I know we just looked at Exhibit 1,
17 but have you read any other Orders from the judge?

18 A. No.

19 Q. Have you listened to or reviewed any
20 transcripts of any of the hearings that have
21 occurred in this case?

22 A. No.

23 Q. Are you aware that MPS actually started
24 the lawsuit against Ms. Mattison in February of
25 2019?

1 Q. Okay. Now, you're aware that Ms. Mattison
2 has filed Counterclaims against MPS?

3 A. Yes.

4 Q. Okay. And you're also aware that she's
5 filed what's called a derivative claim on behalf of
6 MPS and its minority members against Ron Smith, Joe
7 Pazdan, Brad Smith, and Chad Cousins?

8 A. Yes.

9 Q. Do you know what a shareholder or a member
10 derivative action is?

11 MR. OUTTEN: Object to the extent it calls
12 for a legal opinion or conclusion.

13 EXAMINATION RESUMED BY MR. ROTHSTEIN:

14 Q. I know you're not a lawyer. I'm not
15 asking for a legal opinion. I'm just asking if you
16 have an understanding of what a member or
17 shareholder derivative action is?

18 A. I have been explained that.

19 Q. Was that explanation from one of the
20 attorneys in the case?

21 A. Yes.

22 Q. Okay. Do you know what Ms. Mattison has
23 specifically alleged with respect to the Third-Party
24 Defendants; being Ron Smith, Joe Pazdan, Brad Smith,
25 and Chad Cousins?

1 A. Just what was written in the one -- in the
2 one paper that we reviewed.

3 Q. Okay. And is it your understanding that
4 Ms. Mattison is alleging self-dealing by the
5 managing members and the COO of the firm?

6 A. Yes, I was.

7 Q. And there are basically three basic
8 categories of allegations of self-dealing. Are you
9 aware that Ms. Mattison has raised issues with
10 regard to the Spartanburg office lease?

11 A. No.

12 Q. Okay. Are you aware that Ms. Mattison has
13 raised concerns about excessive compensation on
14 bonuses that have been paid to the managing members
15 and the COO since the merger?

16 A. No.

17 Q. Okay. Are you aware that Ms. Mattison has
18 alleged that the managing members and COO have
19 authorized excessive benefits and perks for
20 themselves?

21 A. No, but assuming that's under the language
22 of derivative action.

23 Q. Okay. You said you were not familiar with
24 any of those three categories of allegations. What
25 do you think the derivative action is about?

1 A. What do you mean? What do I think it's
2 about?

3 Q. Yes.

4 A. Well, I was explained that.

5 Q. Okay. So your only knowledge of what the
6 derivative case is about comes from what a lawyer
7 has said to you?

8 A. Yes.

9 Q. Okay. Have you done anything, either
10 yourself or with any committee or board members, to
11 investigate whether the allegations that Ms.
12 Mattison has made are true?

13 A. No.

14 Q. Do you have an opinion about whether the
15 allegations that Ms. Mattison has raised against the
16 Third-Party Defendants are true?

17 A. Yes.

18 Q. Okay. What is your opinion?

19 A. That they are untrue.

20 Q. Okay. And what is that opinion based on?

21 A. That opinion probably is based on my
22 day-to-day operations with those people.

23 Q. Okay. Would it be fair to say that your
24 opinion about Ms. Mattison's claim is based on what
25 other people have told you about the merits of her

1 period.

2 Q. So when you submitted an affidavit or a
3 statement to the court saying that you're not aware
4 of anything that supports Ms. Mattison's claim,
5 you're not referring to anything with regard to the
6 Spartanburg office?

7 MR. OUTTEN: I object to the form of the
8 question. You can answer.

9 THE WITNESS: Repeat the question.

10 MR. ROTHSTEIN: Well, let me just show you
11 your statement.

12 (Whereupon, the court reporter marked Myers Exhibit
13 Number 8 for identification.)

14 EXAMINATION RESUMED BY MR. ROTHSTEIN:

15 Q. Do you recognize Exhibit 8?

16 A. Yes.

17 Q. And this is a statement that you signed on
18 November 13th of 2019, is that correct?

19 A. Yes.

20 Q. Okay. Did you read the document before
21 you signed it?

22 A. I did.

23 Q. Okay. Did you understand the document
24 when you signed it?

25 A. I think, yes.

1 Q. Did you discuss the document with anybody
2 before you signed it?

3 A. No. I mean, discussed it with other
4 members, just briefly.

5 Q. Okay. What other members did you discuss
6 it with?

7 A. Members in my office.

8 Q. In the Charleston office?

9 A. Yes.

10 Q. Did you discuss it with K.J. Jacobs?

11 A. I did not.

12 Q. In this document on paragraph six, you
13 indicated, "I have reviewed and have been provided
14 adequate information about the allegations of Ms.
15 Mattison's derivative action against the Third-Party
16 Defendants." How did you know that you have been
17 provided adequate information about her allegations?

18 A. I can only know what I was given at the
19 time.

20 Q. And you weren't given anything about the
21 Spartanburg office, were you?

22 A. No, I was not.

23 Q. And, in fact, you testified earlier you
24 have never even heard of C & P of Spartanburg, PLLC,
25 correct?

1 A. That's correct.

2 Q. How did you know that the information you
3 have been provided was adequate to make an opinion
4 about whether the allegations Ms. Mattison made were
5 true or not?

6 A. How can I know? How can I know any
7 decision I make? It's only based on what I know at
8 that particular time.

9 Q. When you say you've been provided adequate
10 information, how did you know it was adequate?

11 A. I'm not sure I can answer that. I would
12 say I was provided the information at that time.

13 Q. Who provided you the information?

14 A. Well, all we were provided was a -- you
15 know, the particular letter that was sent in, that's
16 all we were provided.

17 Q. Okay.

18 (Whereupon, the court reporter marked Myers Exhibit
19 Number 9 for identification.)

20 EXAMINATION RESUMED BY MR. ROTHSTEIN:

21 Q. Do you recognize Exhibit 9?

22 A. Yes.

23 Q. And my understanding is that Exhibit 9 was
24 an e-mail that was sent from Chad Cousins to the
25 members of MPS on Wednesday, November 13th, 2019 at

1 approximately 9:12 a.m. in the morning. Do you see
2 that?

3 A. Yes.

4 Q. And you signed the statement the same day,
5 on November 13th, 2019, correct?

6 A. That's correct.

7 Q. And in the e-mail it says -- Mr. Cousins
8 writes, "In follow-up to our most recent principals
9 meeting, please see the attached letter and member
10 statement for each member's consideration. We've
11 additionally asked K.J. Jacobs to be a coordinator
12 rather than Joe, Brad, Ron, or me if needed for
13 further assistance in communication any members
14 might need with Mr. Higgins." Have you ever met
15 with Mr. Higgins?

16 A. No.

17 Q. Have you ever spoken with Mr. Higgins?

18 A. No.

19 Q. Do you know who Mr. Higgins is?

20 A. Yes, I know he was -- he was available to
21 us to call to ask questions --

22 Q. Okay.

23 A. -- before we signed this if we needed to.

24 Q. Okay. On the second page of Exhibit 9 is
25 a memo. Was that memo attached with the e-mail, to

1 your knowledge?

2 A. I cannot remember.

3 Q. The e-mail says, "Please see the attached
4 letter and member statement."

5 A. Yes.

6 Q. Was this attached to the letter?

7 A. Yes, we received this. We also received a
8 previous exhibit -- or we were shown a previous
9 exhibit during the principals meeting.

10 Q. Okay.

11 A. Yes, we were provided all of this.

12 Q. Okay. And when you say you were shown a
13 previous exhibit, are you talking about something
14 we've already looked at in the deposition?

15 A. The derivative.

16 Q. Okay. In this letter, page 2 of Exhibit
17 9, Mr. Cousins says, "As you all know, Donza
18 Mattison has brought a derivative action purportedly
19 on behalf of the members of MPS against Ron Smith,
20 Joseph Pazdan, Brad Smith, and me. In order to
21 maintain the action, Ms. Mattison must be found to
22 fairly and adequately represent the interests of the
23 other members of MPS.

24 "At our recent principals meeting, a
25 request was made by several of the members for a

1 statement to be provided by which they might express
2 their disagreement with the attempted derivative
3 action by Ms. Mattison. Attached for your review
4 and consideration please find a member statement in
5 opposition to derivative action. If you agree with
6 the statement and wish to voice your opposition to
7 Ms. Mattison's derivative action, you may sign and
8 return the statement to me. You are not required to
9 sign this statement, and the decision to do so is
10 voluntary.

11 "If you have any questions regarding the
12 derivative action, the firm has retained Bill
13 Higgins - a well-respected ethics lawyer who
14 practices in Columbia, South Carolina -- as
15 independent counsel to answer such questions. You
16 can set up a call or meeting with Mr. Higgins by
17 contacting him directly at," the phone number and
18 e-mail address. "Thank you to everyone for their
19 consideration of this matter."

20 Do you recall reading this letter from Mr.
21 Cousins?

22 A. Yes.

23 Q. In the second paragraph there, it says
24 that a request was made by several of the members
25 for a statement. Do you recall that kind of

1 discussion during the principals meeting?

2 A. Yes.

3 Q. Okay. Who do you recall making requests
4 for some type of statement?

5 A. I do not remember.

6 Q. Did you make a request for that type of a
7 statement?

8 A. I don't think that I did--

9 Q. Okay.

10 A. -- but I do not remember.

11 Q. All right. And then the next page of
12 Exhibit 9 is the statement that you signed, right?
13 And then the third -- I'm sorry. The fourth page,
14 it looks like a two-page response to Donza
15 Mattison's November 4th, 2019 letter. Pages 9497
16 and 9498, were these also attached to the e-mail
17 from Mr. Cousins?

18 A. I believe so.

19 Q. Okay. This particular response doesn't
20 say anything about the Spartanburg office, does it?

21 A. It does not.

22 MR. ROTHSTEIN: Okay.

23 (Whereupon, the court reporter marked Myers Exhibit
24 Number 10 for identification.)

25 EXAMINATION RESUMED BY MR. ROTHSTEIN:

1 Q. Have you ever seen Exhibit 15 before?

2 A. I might have perused it last night with my
3 attorney, but not before that, no. I've never seen
4 it and I did not really look at it either.

5 Q. So just to make sure I understand your
6 testimony, your testimony is you've never really
7 reviewed Exhibit 15, the Verified Amended Answer,
8 Counterclaims, and Third-Party Complaint in this
9 matter?

10 MR. OUTTEN: Object to the form.

11 THE WITNESS: I've not reviewed it in
12 depth.

13 EXAMINATION RESUMED BY MR. ROTHSTEIN:

14 Q. If you'll turn to page 20 starting on
15 paragraph 108, and I'm just going to ask you to read
16 there, to yourself, through 111.

17 MR. OUTTEN: What paragraph are you asking
18 her to read?

19 MR. ROTHSTEIN: Paragraphs 108 through
20 111.

21 EXAMINATION RESUMED BY MR. ROTHSTEIN:

22 Q. Paragraphs 108 through 111. Just read it
23 to yourself.

24 A. (Reviewing.)

25 Q. Do you know of any information that --

1 facts or evidence that refutes the allegations made
2 in paragraphs 108, 109, 110, and 111?

3 MR. OUTTEN: Let me put on the record,
4 this is yet another violation by Mr. Rothstein
5 of Judge McIntosh's Order to move on. And I'm
6 going to let her answer that question, but
7 that's going to be it.

8 THE WITNESS: Just repeat the question,
9 please.

10 EXAMINATION RESUMED BY MR. ROTHSTEIN:

11 Q. Do you know any facts or evidence that
12 refute Ms. Mattison's allegations in paragraphs 108
13 through 111?

14 A. I don't have enough knowledge to refute or
15 support this information. I don't have enough
16 background.

17 (Whereupon, the court reporter marked Myers Exhibit
18 Number 16 for identification.)

19 EXAMINATION RESUMED BY MR. ROTHSTEIN:

20 Q. Have you ever seen Exhibit 16 before? And
21 again, I'll represent to you this isn't a complete
22 document, this is just an excerpt from a document.
23 Have you ever seen a business valuation report from
24 HDH Advisors, LLC, similar to Exhibit 16?

25 A. I do not know. I did not review it in

1 hourly rates that takes a whole sheet, a whole sheet
2 of paper for folks, depending on what they're doing
3 on their particular project.

4 Q. Is that rate sheet published?

5 A. Yes, it's published every year.

6 Q. Is that per project or is that something
7 firm-wide?

8 A. No, it's firm-wide, and we attach it to
9 every contract that we negotiate.

10 Q. Do you know what the ranges of hourly
11 rates are on those sheets?

12 A. No. It's probably \$50 to \$225. It rates
13 all the way from the administrative staff up to a
14 managing principal.

15 Q. You said that now that you have been on
16 the board, that you've had some, I guess, access to
17 some of the compensation information of the firm
18 members. Is that accurate?

19 A. No.

20 MR. OUTTEN: Object to the form.

21 EXAMINATION RESUMED BY MR. ROTHSTEIN:

22 Q. Have you ever had access to compensation
23 information about the firm members?

24 A. Please repeat it -- and you repeat it,
25 too.

1 Q. Have you ever had access to financial
2 information about the compensation of the firm
3 members, either their base salary or their bonuses?

4 A. No. No, what we've had to approve, as a
5 board member, is a total package for bonuses for the
6 whole firm, we approve that amount. That's
7 distributed throughout the firm.

8 Q. If you would get back out the Complaint --
9 I'm sorry, the Amended Complaint, Exhibit 15,
10 Third-Party Complaint, I want to ask you to read
11 paragraphs -- this is on page 18. I'm going to ask
12 you to read to yourself paragraphs 100 through 107.

13 A. How far?

14 Q. To 107.

15 A. (Reviewing.)

16 Q. Are you finished?

17 A. Yes.

18 Q. Are you aware of any facts or evidence
19 that directly refute any of the allegations in
20 paragraphs 100 through 107 of Ms. Mattison's
21 Verified Amended Answer, Counterclaims, and
22 Third-Party Complaint?

23 MR. OUTTEN: I object to the form of the
24 question.

25 THE WITNESS: Please repeat the question.

1 EXAMINATION RESUMED BY MR. ROTHSTEIN:

2 Q. Are you aware of any facts or evidence
3 that directly refutes or contradicts any of the
4 allegations that Ms. Mattison has made in paragraphs
5 100 through 107?

6 MR. OUTTEN: I object to the form of the
7 question.

8 THE WITNESS: First of all, I don't have
9 knowledge to substantiate this information.

10 EXAMINATION RESUMED BY MR. ROTHSTEIN:

11 Q. Okay.

12 A. Okay. And then the second answer maybe
13 that I might say in paragraph 107, I would have to
14 go back and check, but I don't know if our operating
15 agreement states that.

16 Q. Okay.

17 A. So I do not have knowledge this
18 information is correct or incorrect.

19 Q. You just have no way of knowing one way or
20 the other?

21 A. Yes, right.

22 MR. OUTTEN: Object to the form.

23 EXAMINATION RESUMED BY MR. ROTHSTEIN:

24 Q. If you wanted to investigate whether the
25 allegations from Ms. Mattison's Third-Party

1 Complaint, with regard to the managing members'
2 compensation, are accurate or not, do you think you
3 could do that?

4 MR. OUTTEN: I object to the form of the
5 question.

6 THE WITNESS: Do I think I could find out
7 the information?

8 EXAMINATION RESUMED BY MR. ROTHSTEIN:

9 Q. Yes.

10 A. By asking?

11 Q. Yes.

12 A. Yes.

13 Q. How would you go about either verifying or
14 refuting the allegations in regard to the amounts of
15 the pay and the increases in pay since the firm was
16 formed in 2009?

17 A. I am not sure if it's relevant to me to
18 want to necessarily do that.

19 Q. But if you were going to do it, what
20 information would you need?

21 A. I would have to ask. I would have to ask
22 for the information.

23 Q. Do you know if you have a right, as a
24 member of the firm, to ask for that information?

25 A. I do not know. I do not know.

1 or Smith, will be determined in the future?

2 A. Right.

3 Q. But those --

4 A. They could roll off the board, yes, in
5 three years.

6 Q. And if you wanted to take a three-year
7 slot three years from now, you could put --

8 A. If I were elected, yes.

9 Q. And then you would move from a one-year
10 term to a three-year term?

11 A. Yes.

12 Q. So the way it's structured now, they're
13 always going to have that specific length of service
14 on the board?

15 A. Yes.

16 Q. And you don't know about term limits, like
17 how many terms you can run for?

18 A. I can't remember. I can't remember.

19 (Whereupon, the court reporter marked Myers Exhibit
20 Number 21 for identification.)

21 EXAMINATION RESUMED BY MR. ROTHSTEIN:

22 Q. Have you ever seen Exhibit 21 before?

23 A. No, I do not believe so.

24 Q. Okay. Do you know what an affidavit is?

25 A. Yes.

1 Q. Okay. And your testimony is you have not
2 seen this particular affidavit from William O.
3 Higgins?

4 A. I do not believe so.

5 Q. Okay. And your understanding of Mr.
6 Higgins --

7 A. Oh, I have seen this. Yes.

8 Q. Oh, you have seen the affidavit?

9 A. I think so. Let's go through it.

10 Q. Do you know what Mr. Higgins' sort of area
11 of practice is?

12 A. Ethics.

13 Q. Okay. Do you know whether he has any
14 expertise or experience in corporate litigation,
15 like a derivative action lawsuit?

16 A. I do not know that.

17 Q. Your understanding was that Mr. Higgins
18 was hired to be independent counsel for the minority
19 members of the firm?

20 A. Yes.

21 Q. What does that term "independent counsel"
22 mean to you?

23 A. It means he represents my interest and I
24 -- you know, he was hired so we had someone to talk
25 to outside of our leadership team.

1 Q. Do you know who actually hired Mr.
2 Higgins?

3 A. Probably MPS.

4 Q. Okay. Did you have anything to do with
5 the selection of Mr. Higgins as an independent
6 counsel?

7 A. I did not.

8 Q. Do you know why it would be necessary for
9 the firm to hire an independent attorney?

10 MR. OUTTEN: Object to the form of the
11 question.

12 THE WITNESS: Do I know why it would be
13 necessary to have him?

14 EXAMINATION RESUMED BY MR. ROTHSTEIN:

15 Q. For the firm to hire an independent
16 attorney --

17 MR. OUTTEN: Object to the form of the
18 question.

19 EXAMINATION RESUMED BY MR. ROTHSTEIN:

20 Q. -- for the firm?

21 A. I do not know why. At that particular
22 time, I thought it was to help us have someone to
23 ask questions, if we had any questions.

24 Q. If you'll look at page 7 -- I'm sorry,
25 paragraph seven of Mr. Higgins' affidavit, paragraph

1 seven says, "I have been engaged by Nelson Mullins
2 on behalf of MPS." Do you see that?

3 A. Yes.

4 Q. Is that consistent with your understanding
5 of what his role in the case is?

6 MR. OUTTEN: Object to the form of the
7 question. It asks the witness to give a legal
8 interpretation to this document.

9 MR. ROTHSTEIN: I'm just asking her
10 understanding.

11 THE WITNESS: My understanding, he was
12 hired so we had a person to call if we had any
13 concerns about signing the previous document
14 that you showed me.

15 EXAMINATION RESUMED BY MR. ROTHSTEIN:

16 Q. And that's what Chad Cousins told you was
17 his role?

18 MR. OUTTEN: Object to the form of the
19 question.

20 EXAMINATION RESUMED BY MR. ROTHSTEIN:

21 Q. How do you know that Mr. Higgins is acting
22 in your best interest as a minority member of the
23 firm and not for Chad Cousins' interest?

24 MR. OUTTEN: Object to the form of the
25 question.

1 THE WITNESS: I cannot know that, but I
2 didn't take the opportunity to reach out to
3 him.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. If Mr. Cousins and/or one of the three
6 managing members of the firm hired Mr. Higgins,
7 would that give you concern about whether he's truly
8 an independent counsel or not?

9 A. No, it does not give me concern.

10 Q. Why not?

11 A. It just does not give me concern.

12 Q. Do you know whether lawyers have a
13 fiduciary duty to their clients?

14 A. Whoo.

15 Q. You do not know?

16 A. I do not know. But yes, they should.

17 Q. Okay.

18 (Whereupon, the court reporter marked Myers Exhibit
19 Number 22 for identification.)

20 EXAMINATION RESUMED BY MR. ROTHSTEIN:

21 Q. Do you recognize Exhibit 22?

22 A. Yes, sir.

23 Q. And is your signature on the --

24 A. Yes.

25 Q. -- last page of Dorothy P. Myers?

1 Charleston office.

2 MR. OUTTEN: Fine. I instruct the witness
3 not to answer the question, because we all
4 know, Mr. Rothstein, you're still trying to ask
5 about the Spartanburg office. That's as clear
6 as a bell.

7 MR. ROTHSTEIN: You're instructing the
8 witness not to answer that question. Okay.
9 I'll move on to another question.

10 EXAMINATION RESUMED BY MR. ROTHSTEIN:

11 Q. If Ms. Mattison's allegations that the
12 managing members of the firm and the executive
13 committee have authorized excessive bonus payments
14 and compensation for themselves, do you think that
15 could give rise to a conflict of interest?

16 MR. OUTTEN: I object to the form and
17 object that it asks the witness for a legal
18 opinion about the rules of professional
19 conduct.

20 THE WITNESS: One more time. Ask the
21 question, please.

22 EXAMINATION RESUMED BY MR. ROTHSTEIN:

23 Q. If we went through Ms. Mattison's
24 allegations in her Third-Party Complaint, one of
25 them is that the executive committee has --

1 specifically Ron Smith, Joe Pazdan, Brad Smith, and
2 Chad Cousins, who are responsible for setting
3 compensation and salary, have overpaid themselves
4 for a number of years. Do you understand that to be
5 one of her allegations?

6 A. I do understand that.

7 Q. If that allegation is proven to be true,
8 that those four people would have made the
9 compensation decisions, have preferred their own
10 pocketbook rather than the other members of the
11 firm, if that were proven to be true, do you think
12 that would be conflict among the board?

13 MR. OUTTEN: Object to the form.

14 EXAMINATION RESUMED BY MR. ROTHSTEIN:

15 Q. Or among the members of the board?

16 MR. OUTTEN: Calls for speculation, asks
17 for a legal opinion under the rules of
18 professional conduct.

19 THE WITNESS: I have no idea how to answer
20 that question.

21 EXAMINATION RESUMED BY MR. ROTHSTEIN:

22 Q. Do you know anything about the benefits
23 that the managing members receive?

24 A. The benefits?

25 Q. Job benefits, perks.

1 A. Not really.

2 Q. Okay. One of the allegations that Ms.
3 Mattison has made in her Third-Party Complaint is
4 that the -- if you'll look again on page 19 of
5 Exhibit 15, paragraph 106, "Third-Party Defendants
6 have also authorized extensive fringe benefits for
7 themselves and their spouses that are not available
8 to other members of the firm, including leases of
9 luxury automobiles, country club memberships,
10 college alumni athletic club contributions, health
11 savings accounts, disability insurance, life
12 insurance, long-term care insurance for themselves
13 and their spouses, higher 401(k) retirement
14 contributions, and expense accounts and company
15 credit cards used for personal entertainment meals
16 and travel." Do you see that allegation?

17 A. I do.

18 Q. Do you know whether -- I mean, do you have
19 any evidence or facts that directly refute those
20 allegations?

21 MR. OUTTEN: Object to the form of the
22 question.

23 THE WITNESS: I don't have facts to
24 support or refute that.

25 EXAMINATION RESUMED BY MR. ROTHSTEIN:

1 attorneys' fees.

2 MR. ROTHSTEIN: I don't have any other
3 questions. Thank you.

4 - - -

5 EXAMINATION

6 - - -

7 BY MR. OUTTEN:

8 Q. Ms. Myers, look with me at Exhibit 10.
9 Does this say "Nomination Ballot"?

10 A. Yes.

11 Q. Is the date November the 4th, 2019?

12 A. Yes.

13 Q. Do you see Donza Mattison's name printed
14 on Exhibit 10?

15 A. Yes.

16 Q. And then a signature next to her printed
17 name, do you see that?

18 A. Yes.

19 Q. And then turn over to the second page. Do
20 you see where it says, "Formal Protest of November
21 4th, 2019 Member Meeting by Donza H. Mattison"? Do
22 you see that?

23 A. Yes.

24 Q. And have you had an opportunity to read
25 the two and a half pages of Ms. Mattison's formal

1 protest?

2 A. Yes, I have.

3 Q. And did you have an opportunity to read
4 this formal protest of Ms. Mattison before you
5 executed the member statement, which is marked as
6 Exhibit 8 to your deposition?

7 A. Yes, I did.

8 Q. Now, let's look at Exhibit 9. Exhibit 9
9 is a -- the first page is an e-mail from Chad
10 Cousins to MPS principals. Do you see that?

11 A. Yes.

12 Q. And did you receive this e-mail from Mr.
13 Cousins?

14 A. Yes, I did.

15 Q. Okay. And the second page at the top has
16 a date November 13th, 2019. Do you see that?

17 A. Yes.

18 Q. From Chad Cousins. Do you see that?

19 A. Yes.

20 Q. And Mr. Rothstein read a lot of this to
21 you earlier. Do you remember reviewing this --

22 A. I do.

23 Q. -- letter from Mr. Cousins?

24 A. I do.

25 Q. Did this letter communicate to you and the

1 other members that executing the member statement
2 was voluntary?

3 A. Yes.

4 Q. Do you see right here where it says, "You
5 are not required to sign this statement and the
6 decision to do so is voluntary"? Do you see that?

7 A. I do.

8 Q. And at that time, that is on November the
9 13th, 2019, did you believe execution of the member
10 statement was voluntary?

11 A. Yes.

12 Q. Did anyone ever force you or coerce you to
13 sign the member statement?

14 A. No.

15 Q. And earlier, do you remember answering
16 questions about Mr. Bill Higgins?

17 A. Yes.

18 Q. And your understanding was Mr. Higgins was
19 a resource to answer questions you and the other
20 members may have, is that right?

21 A. That's correct.

22 Q. And did you understand he was to answer
23 questions about the derivative action?

24 A. That is correct.

25 Q. And questions about the claims Ms.

1 Mattison purports to make in that derivative action?

2 A. Yes.

3 Q. And any other related legal questions you
4 may have, is that fair?

5 A. Yes.

6 Q. And then the next page to Exhibit 9 is a
7 form of the "Member Statement In Opposition To
8 Derivative Action," correct?

9 A. Yes.

10 Q. And did you execute this statement?

11 A. I did.

12 Q. And that is what is marked as Exhibit 8 to
13 your deposition, correct?

14 A. That's correct.

15 Q. And does Exhibit 8 bear your signature?

16 A. It does, yes, sir.

17 Q. And take a minute and read Exhibit 8,
18 please, and tell me when you're done.

19 A. (Reviewing.) Okay.

20 Q. Do you understand the court reporter
21 placed you under oath before your deposition began?

22 A. Yes.

23 Q. And under oath, do you affirm all of the
24 statements made in Exhibit 8, which you signed?

25 A. I do affirm that.

1 Q. Now, do you remember Mr. Rothstein asking
2 you questions about the compensation of the senior
3 management or senior leadership?

4 A. Yes.

5 Q. Do you have any complaints or criticisms
6 about the compensation received by the senior
7 management or the leadership of MPS?

8 A. I do not.

9 Q. Mr. Rothstein asked you lots of questions
10 about the rent paid by MPS in Spartanburg. Do you
11 remember those questions?

12 A. Yes.

13 Q. Do you have any complaint or criticism
14 about the rent paid by MPS in Spartanburg?

15 MR. ROTHSTEIN: I'm going to object to
16 that question, because you've -- if you want to
17 open the door, that's fine, but you have
18 instructed me not to go into the Spartanburg
19 rent issue. If you want to open the door to
20 it, have at it.

21 MR. OUTTEN: I'm not opening the door, Mr.
22 Rothstein. I allowed you to ask lots of
23 questions about it. So I am going to ask her
24 that question. And I allowed you to ask a
25 whole lot of questions about it, so you're not

1 going to prevent me from asking one.

2 EXAMINATION RESUMED BY MR. OUTTEN:

3 Q. Do you have any complaints or criticisms
4 about the rent MPS paid in Spartanburg?

5 A. No.

6 Q. And generally, Exhibit 15 is the Verified
7 Amended Answer, Counterclaim, and Third-Party
8 Complaint. Do you remember looking at that?

9 A. Yes.

10 Q. And before your deposition, did you read
11 paragraphs 92 through 124, which are the allegations
12 of Ms. Mattison's derivative action prior to your
13 deposition?

14 A. Did I read it prior to my deposition
15 today?

16 Q. Yes.

17 A. No, except glancing in preparation. No, I
18 did not read it until today.

19 Q. And have you had a chance to review it?

20 A. I have had a chance to review it, yes.

21 Q. And do you have any concerns, complaints,
22 or criticisms about any issue raised by Ms. Mattison
23 in this derivative action that you are looking at?

24 A. I do not.

25 Q. Ms. Myers, do you support the bringing of

1 this derivative action by Ms. Mattison?

2 A. Say it again.

3 Q. Do you support the bringing of this
4 derivative action by Ms. Mattison?

5 A. No, I do not support the bringing of the
6 action. No.

7 Q. Ms. Myers, do you oppose the bringing of
8 this derivative action by Ms. Mattison?

9 A. I do oppose.

10 Q. And you have been working for MPS since
11 2013 or '14, right?

12 A. Yes.

13 Q. And in that time, have you witnessed any
14 conduct on the part of Ron Smith, Brad Smith, Joe
15 Pazdan, or Chad Cousins which caused you any
16 concern?

17 A. No.

18 Q. Have you witnessed any dishonest or
19 self-dealing acts at all by Ron Smith, Brad Smith,
20 Joe Pazdan, and Chad Cousins during your time with
21 the firm?

22 A. No.

23 Q. And do you remember the questions that Mr.
24 Rothstein asked you about adequate information,
25 which appears in paragraph six of your statement

1 marked as Exhibit 8? Do you remember those
2 questions?

3 A. Yes.

4 Q. And is part of the adequate information
5 that you have your day-to-day experience working
6 with these gentlemen?

7 A. Are you asking -- tell me one more time.
8 Please repeat it. Yes, I have adequate information,
9 based on my experiences.

10 Q. With Ron?

11 A. Conducting business with them.

12 Q. You have been in business with Ron Smith,
13 Brad Smith, Joe Pazdan, and Chad Cousins since about
14 2013 or '14?

15 A. January 2014.

16 Q. And during that time, have they ever
17 engaged in any dishonest or self-dealing conduct at
18 all, that you're aware of?

19 A. Not that I'm aware of.

20 Q. And has Ron Smith, Brad Smith, Joe Pazdan,
21 and Chad Cousins been transparent in leading MPS?

22 A. Yes.

23 Q. And do you have any complaints or
24 criticisms at all about the leadership provided by
25 Ron Smith, Brad Smith, Joe Pazdan, or Chad Cousins,

1 their leadership of MPS?

2 A. No, not at all.

3 MR. OUTTEN: Those are all the questions I
4 have. Thank you very much.

5 MR. ROTHSTEIN: I have a couple to follow
6 up on some of that.

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. ROTHSTEIN:

11 Q. On Exhibit 10 -- I'm sorry. Exhibit 9,
12 which was the memo from Chad Cousins. Did any of
13 the management or the leadership at McMillan Pazdan
14 Smith tell you that Bill Higgins was hired as an
15 expert witness in the case by Nelson Mullins on the
16 issue of whether there was a conflict of interest
17 from Nelson Mullins continuing to represent the
18 individual members?

19 MR. OUTTEN: Object to the form.

20 THE WITNESS: I do not know.

21 EXAMINATION RESUMED BY MR. ROTHSTEIN:

22 Q. You don't have any knowledge that Higgins
23 was hired as an expert witness by Nelson Mullins?

24 A. No.

25 Q. All you've been told is that Higgins was

1 an independent counsel for the firm -- for the
2 minority members of the firm, is that right?

3 A. Yes.

4 Q. If Mr. Higgins were hired as an expert
5 witness for Nelson Mullins, would that give you some
6 concern about whether he was truly an independent
7 counsel or not?

8 MR. OUTTEN: I object to the form of the
9 question. It also completely misunderstands
10 the role of an expert witness. They're not
11 advocates, they're independent witnesses.

12 THE WITNESS: So the question is would I
13 have any objections to him being an expert
14 witness and being our counsel?

15 EXAMINATION RESUMED BY MR. ROTHSTEIN:

16 Q. Do you think he could be an expert witness
17 and an independent counsel at the same time?

18 MR. OUTTEN: Object to the form. That
19 misstates the role of Mr. Higgins and generally
20 of an expert witness.

21 THE WITNESS: I don't have enough
22 information to know.

23 EXAMINATION RESUMED BY MR. ROTHSTEIN:

24 Q. Mr. Outten also asked you if you supported
25 Ms. Mattison's derivative action. You said no. And

1 asked you if you opposed the derivative action and
2 you said yes. He didn't ask you why. Why do you
3 oppose the derivative action?

4 A. Why do I oppose the derivative action?
5 Well, I feel like -- yeah, it's a feeling, so I
6 can't say it. This has been drawn out. It's taking
7 a lot of time and resources from our entire firm,
8 not just me today, but in times I've had to discuss
9 it previously. And I do feel it's -- it has been a
10 waste of our time. I feel like my personal time has
11 been pulled away from projects I need to be working
12 on today and many other days.

13 Q. Any other reason that you oppose the
14 derivative action?

15 A. Well, you brought up two things;
16 compensation and Spartanburg -- which I know we're
17 not supposed to say now -- but I don't feel that is
18 enough to make me change my opinion in that at all,
19 you know. I did not know the compensation
20 previously. I don't know many people's
21 compensations in my firm, but, you know, they are
22 the leadership of the firm and they've done a good
23 job so far, from my opinion.

24 Q. Are there any facts or evidence that could
25 come out in the discovery in this lawsuit that could

1 change your opinion about whether to support this
2 claim or not?

3 MR. OUTTEN: Object to the form.

4 THE WITNESS: I cannot answer that. I
5 cannot know. I cannot know what I would think
6 in the future.

7 EXAMINATION RESUMED BY MR. ROTHSTEIN:

8 Q. And Mr. Outten also asked you if you're
9 aware of any self-dealings, dishonest acts by any of
10 the managing principals and you said, "Not that I'm
11 aware of," right?

12 A. Yeah. No, I don't know anything.

13 Q. But you don't know anything about the
14 Spartanburg lease?

15 A. I know nothing about the Spartanburg
16 lease.

17 Q. You know nothing about their compensation?

18 A. I did not until today.

19 Q. And you don't know anything about their
20 perks and benefits?

21 A. No, but you've alluded to all that, so I
22 have learned more today, and my mind is still the
23 same.

24 Q. And Mr. Outten also asked you if you
25 believed that the managing leadership of the firm

1 has been transparent about its dealings with the
2 firm, and I think you said, yes, you do believe they
3 have been transparent?

4 A. I think they have been transparent in what
5 is a normal business operation experience.

6 Q. But they haven't been transparent about
7 the details of the Spartanburg lease with you or any
8 of the other minority members of the firm, have
9 they?

10 MR. OUTTEN: I object to the form of the
11 question. It's not proper to argue with the
12 witness.

13 MR. ROTHSTEIN: I asked her.

14 EXAMINATION RESUMED BY MR. ROTHSTEIN:

15 Q. Is that correct? They haven't been
16 transparent about the details of the Spartanburg
17 lease, have they?

18 MR. OUTTEN: Same objection, to the form
19 of the question.

20 THE WITNESS: I haven't been privy to any
21 of the leases in any of the offices and it's
22 because I'm not interested. Maybe if I would
23 ask, I might have that, but I'm not privy to
24 any of that information, because it doesn't
25 interest me in any activities.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
COMMON PLEAS OF THE
THIRTEENTH JUDICIAL CIRCUIT

MCMILLAN PAZDAN SMITH, LLC,
Plaintiff-
Counterclaim Defendant,
vs.
DONZA H. MATTISON,
Defendant-
Counterclaimant.

CIVIL ACTION NO.
2019-CP-23-00998

DONZA H. MATTISON, in a
derivative capacity on
behalf of MCMILLAN PAZDAN
SMITH, LLC,

Third-Party Plaintiff,

vs.

RONDALD G. SMITH, JOSEPH M.
PAZDAN, BRAD B. SMITH, and
CHAD C. COUSINS,
Third-Party Defendants.

VIDEOTAPED DEPOSITION OF DONALD LEWIS LOVE, JR.

DATE TAKEN: June 17, 2020

TIME BEGAN: 9:57 a.m.

TIME ENDED: 3:54 p.m.

LOCATION: Nelson Mullins Riley & Scarborough,
LLP
2 West Washington Street
Suite 400
Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 use the restroom. Or something like that, just feel
2 free to ask. Number two, if I ask you a question
3 that you don't understand or it's not clear what I'm
4 asking, please ask me to rephrase or repeat the
5 question rather than asking Mr. Outten, okay?

6 A. Okay.

7 Q. And I'm not exactly sure how long we will
8 be here, but again, if we need to take a break for
9 lunch or you take a break to use the restroom,
10 you're not allowed to talk about the substance of
11 your testimony with anyone, including Mr. Outten,
12 okay?

13 A. Okay.

14 Q. Can you tell me what you did to prepare
15 for the deposition?

16 A. Read back over the documents that have
17 been filed up until now.

18 Q. Okay. What documents did you review?

19 A. I don't know the names of them, but the
20 original Complaint and the document that was turned
21 in at the members meeting at the vote.

22 Q. You're talking about Ms. Mattison's
23 protest statement?

24 A. Correct. Yes, sir.

25 Q. Okay. And other than the court documents

1 that have been filed in the case and the protest
2 statement, have you reviewed any other documents?

3 A. No, sir.

4 Q. Okay. Did you speak with anyone about the
5 deposition?

6 A. Mr. Outten.

7 Q. Okay. And I'm not interested in any
8 discussion you had with Mr. Outten. Did you speak
9 with any of the -- your coworkers at McMillan
10 Pazdan & Smith?

11 A. I did not.

12 Q. Okay. Can you recall reviewing any other
13 documents other than the court filings -- some of
14 the court filings or maybe one or more of the court
15 filings and the protest statement?

16 A. I did not.

17 Q. Have you reviewed any deposition
18 transcripts?

19 A. No, sir.

20 Q. Have you spoken with any of the people
21 that have been deposed in this case already?

22 A. No, sir.

23 Q. And by that, I mean Mr. Joslin, Mr.
24 Jacobs, or Ms. Myers?

25 A. I have not.

1 Q. Okay. When did you review the court
2 filing document?

3 A. Yesterday.

4 Q. Okay. Have you ever seen that document
5 before yesterday?

6 A. Which one?

7 Q. The court filings that you reviewed
8 yesterday. Well, first of all, how many documents
9 -- court filing documents do you recall reviewing
10 yesterday?

11 A. Just one.

12 Q. Okay. Is that the first time you had ever
13 seen that document?

14 A. Yes.

15 Q. Had you ever had discussions with anyone
16 at McMillan Pazdan & Smith about Ms. Mattison's
17 derivative action lawsuit?

18 A. Yes.

19 Q. Okay. Who have you talked to about the
20 derivative action lawsuit?

21 A. Ron Smith.

22 Q. Anyone else?

23 A. I think the whole thing has been discussed
24 with all the members from time to time. So, I mean
25 that would --

1 Q. Would that be like --

2 A. I guess that would count.

3 Q. Okay. Do you recall discussing the
4 derivative action lawsuit in regular member
5 meetings?

6 A. I don't remember if it was in a regular
7 meeting or if it was just a discussion, but it was
8 discussed.

9 Q. Okay. When did you speak with Ron Smith
10 about the derivative action lawsuit?

11 A. I don't know. I mean, at some point.

12 Q. Okay. Have you had multiple meetings with
13 him or multiple discussions with him about it?

14 A. Not more than two or three.

15 Q. Okay. What can you recall Ron Smith
16 saying about the derivative action lawsuit?

17 A. He just attempted to explain what was in
18 the -- in the derivative action.

19 Q. Okay. Can you recall any of the substance
20 of what he told you about it?

21 A. Just the same thing that I read yesterday.
22 So he tried to explain what was in that document.

23 Q. Okay. Did he provide you any
24 documentation or evidence to refute the allegations
25 that Ms. Mattison had made in her derivative claim?

1 A. No.

2 Q. Did you ever do any type of independent
3 verification or did you ever do any investigation
4 into the allegations that Ms. Mattison had made?

5 A. I did not.

6 Q. Okay. Do you know of any other members of
7 McMillan Pazdan & Smith who have done such a, you
8 know, investigation or determination about whether
9 the allegations are truthful?

10 A. I do not.

11 Q. Okay. We'll get into that a little bit
12 more, but can you give me educational background,
13 other than Dorman? I know you --

14 A. I graduated from Clemson University in
15 1986 with a bachelor of arts and design.

16 Q. Okay. Any other formal education?

17 A. No.

18 Q. No graduate school?

19 A. Correct.

20 Q. Now, when did you become licensed as an
21 architect?

22 A. About 1992.

23 Q. And explain to me what the process for
24 becoming licensed as an architect is.

25 A. At the time, the process was without a

1 against you by the South Carolina Board of
2 Architectural Examiners?

3 A. I have not.

4 Q. At McMillan Smith & Partners, did you have
5 any type of area of expertise or interests in
6 practicing -- I mean, which sort of area of
7 architecture did you focus on?

8 A. I worked a lot in K-12 building, as well
9 as historic preservation.

10 Q. Is that your -- has it always been your
11 area of expertise or interest?

12 A. Yes.

13 Q. Are you currently assigned any particular
14 studio at McMillan Pazdan & Smith?

15 A. I'm currently in the K-12 studio.

16 Q. Do you have any leadership role -- or have
17 you ever had any leadership role in the K-12 studio?

18 A. I have not.

19 Q. How did you -- or how long have you known
20 Donza Mattison?

21 A. I would say some time 1992 or 1993,
22 whenever she started at McMillan Smith & Partners.

23 Q. Were you guys in architectural school
24 together at Clemson?

25 A. We were in school together, but I didn't

1 know Donza in school.

2 Q. Was she behind or ahead of you in school?

3 A. Ahead.

4 Q. Do you know how many years?

5 A. One.

6 Q. And who started first at McMillan Smith &

7 Partners? Was it you or Ms. Mattison?

8 A. I did.

9 Q. Do you know how long after you started
10 there, Ms. Mattison came to work there?

11 A. I don't.

12 Q. Okay. Did you and Ms. Mattison work
13 closely together for some period of time at McMillan
14 Smith & Partners?

15 A. We worked on different projects, but --
16 you know, in the same office.

17 Q. Okay. In terms of proximity to each
18 other's desk or workspace, do you recall where you
19 and Ms. Mattison were assigned when she first
20 started at McMillan Smith & Partners?

21 A. I think she may have sat directly behind
22 me, when she first started.

23 Q. Was she also on the K-12 team or the K-12
24 studio?

25 A. Yes.

1 Q. Did you ever work together on any
2 projects?

3 A. I can't think of any, but there may have
4 been some.

5 Q. Did you and Ms. Mattison ever collaborate
6 or like one of you would go to the other for help
7 with questions or --

8 A. Certainly.

9 Q. Would you say you know Ms. Mattison pretty
10 well, from a professional standpoint?

11 A. From a professional standpoint, yes.

12 Q. How many years would you say you worked
13 together as architects with Ms. Mattison?

14 A. Maybe 25.

15 Q. Okay. What is your impression of her
16 skill and competency as an architect?

17 A. She's very competent.

18 Q. In your observations of Ms. Mattison, is
19 she a thorough and conscientious person?

20 A. I think so.

21 Q. Okay. Would you consider her a
22 detail-oriented person?

23 A. Yes.

24 Q. I guess all architects have to be somewhat
25 detail-oriented, is that fair?

1 A. Some.

2 Q. Okay. Did you ever observe Ms. Mattison's
3 interactions with other coworkers at McMillan Smith
4 & Partners?

5 A. Yes.

6 Q. Okay. Did she seem to get along with her
7 peers and support staff?

8 A. Yes.

9 Q. Okay. Did you ever observe Ms. Mattison
10 to be particularly outspoken about issues that came
11 up -- in the business-related issues that came up in
12 the firm?

13 A. Yes.

14 Q. Okay. Did you ever personally observe
15 anything about Ms. Mattison, during your
16 professional interactions with her, that caused you
17 to question her integrity?

18 A. No.

19 Q. Okay. Did you ever personally observe
20 anything about Ms. Mattison, during your
21 professional interactions with her, that caused you
22 to question her truthfulness?

23 A. No, I did not.

24 Q. Okay. Have you ever heard anyone at the
25 firm raise a question or doubt about her integrity

1 or truthfulness prior to this lawsuit being filed?

2 A. Say that again.

3 Q. Have you ever heard anyone at the firm,
4 either McMillan Smith & Partners or McMillan Pazdan
5 & Smith, raise a question or doubt about her
6 integrity or truthfulness?

7 A. No, I have not.

8 Q. Okay. Did you ever observe anything about
9 Ms. Mattison's behavior that you considered to be
10 petty or vindictive?

11 A. I can't think of anything.

12 Q. Okay. During your interactions with Ms.
13 Mattison, both at McMillan Smith & Partners or later
14 at McMillan Pazdan & Smith, did she seem to take an
15 interest in the business aspects of the firm?

16 A. She did.

17 Q. Okay. Did you and Ms. Mattison frequently
18 talk about the operations of the firm?

19 A. Not frequently.

20 Q. Okay. Did you ever talk with Ms. Mattison
21 about decisions that were being made by the
22 leadership of the firm, either McMillan Smith &
23 Partners or McMillan Pazdan & Smith?

24 A. I did.

25 Q. Can you recall any specific examples of

1 things that you and Ms. Mattison talked about with
2 regard to the business practices of the firm?

3 A. Not anything specific.

4 Q. Did Ms. Mattison, during your
5 observations, interactions with her, seem dedicated
6 to the successful operation of the firm?

7 A. I think she did.

8 Q. Was Ms. Mattison ever shy about expressing
9 her opinions or asking tough questions within the
10 firm?

11 A. She was not.

12 Q. Okay. Was she one of the more outspoken
13 partners?

14 A. She was.

15 Q. Okay. Did she occasionally push back
16 against decisions by some of the managers, or
17 managing members, or executive leadership of the
18 firm?

19 A. She did.

20 Q. Okay. To your recollection, did Ms.
21 Mattison ever voice objections to how things were
22 being done within the firm or decisions that were
23 being made within the firm?

24 A. Sometimes.

25 Q. Okay. Do you recall Ms. Mattison speaking

1 up at any partner meetings or shareholders meetings
2 about proposed changes to policies and procedures,
3 or changes to operating agreements, or things of
4 that like?

5 A. I don't remember any specifics, no.

6 Q. Okay. Do you recall on some occasion that
7 Ms. Mattison refused to sign certain corporate
8 documents of the company?

9 A. No, I didn't keep up with who signed it.

10 Q. Okay.

11 MR. OUTTEN: At this point, I want to mark
12 this e-mail from Judge McIntosh dated
13 Wednesday, May the 20th, and it concerns the
14 scope of this deposition. And I want to put on
15 the record that Judge McIntosh said in part,
16 "My ruling is clear. The depositions of the
17 minority shareholders is limited to the issue
18 of whether or not they want a derivative action
19 to continue and if so, whether the Defendant
20 should be the representative."

21 I'd like this to be marked as Exhibit 1 or
22 Plaintiff's 1, because I think that we're
23 already outside the scope of that to some
24 degree and want to make sure that we keep in
25 mind Judge McIntosh's ruling as we go forward

1 today.

2 (Whereupon, the court reporter marked Love Exhibit
3 Number 1 for identification.)

4 MR. ROTHSTEIN: And for the record, I will
5 read the first sentence of the e-mail that Mr.
6 Outten omitted. "Gentlemen, I cannot and will
7 not attempt to preemptively rule on upcoming
8 depositions."

9 EXAMINATION RESUMED BY MR. ROTHSTEIN:

10 Q. All right. When did you -- so when did
11 you actually become a partner in the McMillan Smith
12 & Partners firm?

13 A. About 1996.

14 Q. Before I get into that, going back to Ms.
15 Mattison, do you recall Ms. Mattison ever sticking
16 her neck out to go to management on behalf of sort
17 of her colleagues in terms of requesting a salary
18 increase or other types of issues within the firm?

19 A. She did.

20 Q. Okay. Was she somewhat courageous in that
21 regard? Would you consider her to be a courageous
22 person?

23 A. I don't know if it was courageous or not,
24 but she did what she felt she needed to do.

25 Q. Okay. Was she sticking up just for

1 going back and asking questions about a 2009
2 operating agreement is a waste of time and it's
3 improper.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. Let me ask you about another section of
6 the agreement. Do you understand what the term
7 "disinterested member" means?

8 MR. OUTTEN: I instruct the witness not to
9 answer any questions about Exhibit 3, for the
10 reasons that I have stated.

11 MR. ROTHSTEIN: Can we take a short break?

12 THE VIDEOGRAPHER: Off the record at
13 11:16 a.m.

14 (Whereupon, a recess was taken.)

15 (Whereupon, the court reporter marked Love Exhibit
16 Number 4 for identification.)

17 THE VIDEOGRAPHER: On the record at
18 11:24 a.m.

19 EXAMINATION RESUMED BY MR. ROTHSTEIN:

20 Q. Mr. Love, the court -- or I just handed
21 you Exhibit 4. Do you recognize Exhibit 4?

22 A. Yes.

23 Q. Okay. Is that one of the documents you
24 reviewed, in preparation for your deposition,
25 yesterday?

1 A. Yes.

2 Q. Okay. And had you seen this document
3 before yesterday?

4 A. No.

5 Q. Did you have a chance to read the document
6 yesterday?

7 A. I did.

8 Q. Okay. The first page of the document is
9 just Ms. Mattison's, I guess, protest to the vote on
10 the approval of the MPS board of directors, the
11 slate of directors from November 4th, 2019. Were
12 you at the meeting where Ms. Mattison submitted this
13 protest?

14 A. I was.

15 Q. Okay. Do you recall Ms. Mattison standing
16 up and saying that she was submitting her ballot
17 under protest and had attached a letter?

18 A. I don't remember if she stood up or not,
19 but I remember her passing the letter across the
20 table.

21 Q. Okay. Was the letter made available to
22 you and the other members of the firm?

23 A. Later, it was.

24 Q. Okay. When was it made available to you?

25 A. I don't know the date.

1 Q. Okay. Was it within a month?

2 A. I don't know the date.

3 Q. Okay. And did you read it at the time it
4 was made available to you?

5 A. I don't remember.

6 Q. Okay. When you read the document
7 yesterday -- and I'd like to go through it paragraph
8 by paragraph. Anything stand out to you that you
9 know to be untrue?

10 A. I don't have any information about any of
11 it.

12 Q. Okay. So you don't have any information
13 to dispute any of the allegations that she made in
14 the document, do you?

15 A. Well, I think I would dispute it with my
16 record of having worked there as long as I have and
17 my relationship with the people that are in
18 question. So I think from that standpoint, I could
19 dispute it that way. I don't have any paperwork.

20 Q. Okay. I'm going to look at paragraph one
21 of her formal protest. It says, "Having dedicated
22 over 20 years of my life to this firm, I feel like I
23 have earned the right to be treated fairly and
24 respectfully." Do you agree with that statement?

25 A. Certainly.

1 Q. Okay. And the next sentence says she's
2 thanking everyone in advance for giving a few
3 minutes of their time, right. Next sentence says,
4 "First, I would like to take this opportunity to
5 clear up some potential misinformation about the
6 lawsuit currently pending between McMillan Pazdan
7 Smith, LLC, and myself in the Greenville County,
8 Court of Common Pleas." The next sentence says, "I
9 did not start this lawsuit." Do you agree that Ms.
10 Mattison did not start the lawsuit?

11 A. I don't know for sure.

12 Q. Okay. The next sentence says, "This past
13 February, my lawyer and I were trying to negotiate
14 in good faith to reach an amicable and fair
15 resolution on the value of my units subsequent to my
16 dissociation of the prior year." Do you have any
17 knowledge about the negotiations that occurred
18 between Ms. Mattison and MPS about the valuation of
19 her shares?

20 A. I don't have any.

21 Q. Okay. The next sentence says, "MPS sued
22 me first seeking a court order to force me to accept
23 what I and my financial experts believe was a
24 low-ball offer at a fraction of their true worth."
25 Are you aware that MPS actually sued Ms. Mattison?

1 A. I didn't know about it until I read this.

2 Q. Okay. So were you not aware that the firm
3 had actually brought a lawsuit against Ms. Mattison,
4 seeking to require her to accept a certain number
5 for her membership units?

6 MR. OUTTEN: I object to the form. That
7 misstates what the substance of the lawsuit is
8 completely.

9 EXAMINATION RESUMED BY MR. ROTHSTEIN:

10 Q. I mean, were you aware at the time that
11 MPS was suing Ms. Mattison?

12 A. I may have been.

13 Q. Okay. Then the next thing says, "If you
14 haven't already, I would encourage each of you to
15 read my Amended Answer, Counterclaims, and
16 Third-Party Complaint filed on July 30th of this
17 year, as it will explain in a great deal what this
18 case is really about." After you received this
19 protest -- or reviewed the protest, did you, in
20 fact, review the Amended Answer, Counterclaims, and
21 Third-Party Complaint?

22 A. I did not.

23 Q. Okay. So at the time you submitted a
24 statement saying that you don't agree with her
25 derivative claim, you hadn't even looked at her

1 derivative claim, is that right?

2 A. I hadn't read it, no.

3 Q. Okay. What did you know about it at the
4 time?

5 A. It was explained to us, by Ron.

6 Q. Okay. And anyone else explain anything
7 about the derivative claim but Ron?

8 A. We may have had some discussions with Chad
9 about it, but I don't remember exactly.

10 Q. Okay. Other than two of the people that
11 were being sued, meaning Ron and Chad, did anyone
12 else tell you about the -- anything about the
13 Complaint?

14 A. No.

15 Q. Would you agree that Ron and Chad have a
16 vested interest in defending themselves from the
17 Complaint?

18 MR. OUTTEN: I object to the form of the
19 question.

20 THE WITNESS: I don't think that was their
21 reason for explaining it to us.

22 EXAMINATION RESUMED BY MR. ROTHSTEIN:

23 Q. Okay. But you would agree that they're
24 the ones being sued and they're the ones that are
25 giving you the explanation of why they're being

1 sued, is that right?

2 A. Yes.

3 Q. So you didn't get any independent advice
4 from anybody who was not being sued about whether
5 Ms. Mattison's Third-Party Complaint had --

6 MR. OUTTEN: I object to the form of the
7 question.

8 EXAMINATION RESUMED BY MR. ROTHSTEIN:

9 Q. -- merit, right?

10 A. I did not.

11 Q. So would you agree that because they're
12 being sued, they have sort of a bias against the
13 lawsuit to begin with?

14 MR. OUTTEN: I object to the form of the
15 question.

16 THE WITNESS: I don't think that was the
17 reason they explained it to us.

18 EXAMINATION RESUMED BY MR. ROTHSTEIN:

19 Q. Okay. Tell me what you can recall Chad
20 Cousins and Ron Smith explaining to you about the
21 case.

22 A. The details.

23 Q. Okay. What did they say about Ms.
24 Mattison's allegations that they had systematically
25 overpaid themselves for years?

1 A. What do you mean, what did they say?

2 Q. Did they specifically address that
3 allegation that Ms. Mattison said --

4 A. Yes.

5 Q. -- that they submitted -- I mean, that
6 they approved excessive compensation for themselves?

7 A. Yes.

8 Q. Okay. And what did they say in response
9 to that? Just that it wasn't true?

10 A. Correct.

11 Q. Okay. Did they tell you what the actual
12 amounts of the compensation that they had approved
13 for?

14 A. They did not.

15 Q. Okay. So they just made a blanket
16 statement, "that's untrue"?

17 A. Correct.

18 MR. OUTTEN: I object to the form of the
19 question.

20 EXAMINATION RESUMED BY MR. ROTHSTEIN:

21 Q. Did they ever offer to show you the
22 documentation about what they made during those
23 years?

24 A. I didn't ask for it.

25 Q. I know you didn't ask for it, but did they

1 to be years of self-dealing transactions by the four
2 individuals in charge of the firm, who have approved
3 substantial increases in their pay and benefits that
4 have far out-paced the increases in compensation and
5 benefits that other members of the firm have
6 received." Do you see that?

7 A. Yes, sir.

8 Q. Did you understand that that's one of her
9 allegations, was that the approval of the managing
10 members and Mr. Cousins' compensation was done by
11 themselves? They approved their own salaries, is
12 that right?

13 A. Yes, sir.

14 Q. Okay. And she's alleging that the rate of
15 their increase has exceeded the rate of increase of
16 other members of the firm, right?

17 A. That's what she says, yes.

18 Q. Okay. Do you have any information or
19 knowledge about that issue?

20 A. I don't.

21 Q. Okay. Did you ever do anything to attempt
22 to determine whether that allegation was true or
23 not?

24 A. I did not.

25 Q. Okay. So you're just basing your, I

1 guess, disapproval of that claim on the fact that
2 you've known these guys for years and you think it
3 would be out of character for them to do that, is
4 that right?

5 MR. OUTTEN: I object to the form of the
6 question, and it misstates what the witness
7 testified to. That's not what he said.

8 EXAMINATION RESUMED BY MR. ROTHSTEIN:

9 Q. Okay. What specifically is your
10 disagreement with Ms. Mattison's allegation, that
11 the managing members and Mr. Cousins have
12 systematically approved excessive pay increases for
13 themselves?

14 A. I think it's not necessarily up to her to
15 determine whether it's excessive or not. We've had
16 a relationship with these guys for a long time and
17 have felt like that they've always had the best
18 interest of the company at heart, and so there's no
19 reason for me to think now that they don't.

20 Q. Okay. You've just never seen any evidence
21 to contradict that belief of yours, right?

22 A. No, I've never seen any evidence that
23 would make me think that they were doing things that
24 they shouldn't be doing.

25 Q. Okay. The next sentence -- let me ask you

1 this. Is there anyone in the firm, other than Mr.
2 Cousins, Mr. Ron Smith, Joe Pazdan, and Brad Smith,
3 is there any check or balance on how they're paid?

4 A. Not to my knowledge.

5 Q. Okay. What's the -- other than cash flow,
6 what would be -- what's to stop them from paying
7 themselves millions of dollars a year?

8 MR. OUTTEN: I object to the form of the
9 question. It asks for speculation.

10 THE WITNESS: Well, I think it goes back
11 to what we said before -- or what I said
12 before, which was the integrity of the people
13 that we're talking about, I think, is what
14 would prohibit them from just paying themselves
15 whatever they wanted to.

16 EXAMINATION RESUMED BY MR. ROTHSTEIN:

17 Q. Okay. The next sentence of Exhibit 4
18 says, "The way the MPS operating agreement was
19 originally set up, manager compensation was supposed
20 to be disclosed to the full membership with an
21 opportunity to vote on it." Do you agree with that
22 sentence?

23 MR. OUTTEN: Object --

24 THE WITNESS: I don't remember. Sorry.

25 EXAMINATION RESUMED BY MR. ROTHSTEIN:

1 agreement?

2 A. I have not.

3 Q. Okay. I mean, Ms. Mattison has never made
4 a legal claim that she's been discriminated against
5 based on her gender or disability, has she?

6 A. Not that I know of.

7 Q. Okay. Were you aware that Ms. Mattison
8 voluntarily resigned from MPS in February of 2018?

9 A. No.

10 Q. You never saw her resignation letter?

11 A. No.

12 Q. The firm never did an announcement that
13 said Ms. Mattison is voluntarily resigning from the
14 firm?

15 A. I don't remember.

16 Q. Okay. Next paragraph of the letter we
17 were looking at in Exhibit 5 of the memo, it says,
18 "At our most recent principals meeting, a request
19 was made by several of the members for a statement
20 to be provided by which they might express their
21 disagreement with the attempted derivative action by
22 Ms. Mattison." Do you recall that occurring during
23 the principals meeting?

24 A. I do.

25 Q. Okay. And who can you recall would be the

1 several members of the firm that asked for some sort
2 of a statement?

3 A. I don't remember specifically.

4 Q. Do you remember any of them?

5 A. No, sir.

6 Q. Do you recall if it was more than one?

7 A. It was.

8 Q. Okay. Do you know if that meeting was
9 recorded in any way?

10 A. I don't.

11 Q. Are the principals meeting typically
12 recorded?

13 A. I don't know.

14 Q. Okay. You attended that meeting in
15 person, right?

16 A. I did.

17 Q. The people that were requesting these
18 statements, were they in person or on the phone?

19 A. In person.

20 Q. Anybody participating remotely that made
21 that request?

22 A. I don't remember.

23 Q. Do you recall whether Mr. Pitts made such
24 a request?

25 A. I don't remember.

1 Q. Okay. What about Mr. Jacobs? Do you
2 recall whether or not he made a request?

3 A. I don't recall anybody that made that
4 request.

5 Q. But you didn't make that request, did you?

6 A. I may not have initiated it, but I agreed
7 with it when it was brought up.

8 Q. Okay. Tell me what you can recall about
9 how it was brought up.

10 A. I think it came out as something like,
11 "Hey, is there anything that we can do to help bring
12 this to a close?"

13 Q. Okay. Who did you ask that to?

14 A. I didn't, but --

15 Q. Whoever it was, who did they ask that to?

16 A. I think it was just asked in the group, as
17 to did anybody have any ideas about what could be
18 done to help with the issue at hand and what, you
19 know, could be done.

20 Q. And who responded?

21 A. Again, I think the group responded to,
22 you know, what if we signed a letter saying that we
23 don't agree with the derivative action.

24 Q. Okay. Do you remember who proposed that?

25 A. I don't.

1 Q. Was it Mr. Cousins?

2 A. I don't remember.

3 Q. Could it have been Mr. Cousins?

4 A. It could have been anybody in the room.

5 Q. Okay. What about Ron Smith?

6 A. I don't know that he was there -- no, I
7 take that back. He probably was there, but I don't
8 remember who did it.

9 Q. Did he make a suggestion that everybody
10 sign a letter?

11 A. I don't think so.

12 Q. What about Brad Smith?

13 A. I don't remember who made it.

14 Q. Okay. What about Joe Pazdan? You don't
15 remember whether he did it?

16 A. (Witness shaking head.)

17 Q. Okay. It's possible that it could have
18 been one of the four of them, right?

19 A. It had to be somebody.

20 Q. All right. The next sentence says,
21 "Attached for your review and consideration, please
22 find a member statement in opposition to derivative
23 action." Was it your understanding that Mr. Cousins
24 is the one that drafted the member statement and
25 opposition to derivative action.

1 MR. OUTTEN: I'll object to the form of
2 the question.

3 THE WITNESS: I don't know who drafted it.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. Okay. But it came from Mr. Cousins,
6 right?

7 A. Eventually.

8 Q. Okay. All right. Did you have anything
9 to do with the drafting of the member statement in
10 opposition to derivative action?

11 A. I did not.

12 Q. The next sentence says, "If you agree with
13 the statement and wish to voice your opposition to
14 Ms. Mattison's derivative action, you may sign and
15 return the statement to me," right?

16 A. That's what it says.

17 Q. Okay. And it says, "You're not required
18 to sign this statement. The decision to do so is
19 voluntary." Did you feel that you were free to make
20 the decision about whether or not to sign this
21 statement?

22 A. I did.

23 Q. Okay. Was there any kind of pressure put
24 on you from other members to sign this statement?

25 A. No, sir.

1 Q. Okay. Did you ever discuss -- before you
2 signed this statement, did you ever discuss it with
3 any of your colleagues?

4 A. I didn't.

5 Q. Okay. The next sentence says, "If you
6 have any questions regarding the derivative action,
7 the firm has retained Bill Higgins, a well-respected
8 ethics lawyer who practices in Columbia, SC as
9 independent counsel to answer such questions." Did
10 you ever talk to Mr. Higgins?

11 A. I did not.

12 Q. Do you know of any minority members who
13 talked to Mr. Higgins?

14 A. I don't know of any.

15 Q. Okay. Was any type of group meeting set
16 up with Mr. Higgins, to your knowledge?

17 A. Not to my knowledge.

18 Q. Okay. What is your understanding of what
19 independent counsel -- what Mr. Cousins was
20 referring to when he said, "the firm has hired
21 independent counsel"?

22 A. My understanding of this was that if we
23 had questions that we didn't want to talk to Chad or
24 the others about we could talk to Mr. Higgins about
25 it and get a neutral response.

1 Q. Okay. So you were led to believe by Mr.
2 Cousins that Mr. Higgins was completely separate and
3 independent from the Third-Party Defendants?

4 MR. OUTTEN: Object to the form of the
5 question.

6 THE WITNESS: I wouldn't say that I was
7 led to believe by Mr. Cousins, but that was the
8 assumption that I made.

9 EXAMINATION RESUMED BY MR. ROTHSTEIN:

10 Q. All right. Did that give you some
11 comfort, that the firm was willing to hire an
12 independent attorney to provide assistance in your
13 decision?

14 A. It did.

15 Q. Okay. But to your knowledge, nobody ever
16 took Mr. Cousins up on his, I guess, offering that
17 Mr. Higgins was available to answer any questions,
18 right?

19 A. I don't know.

20 Q. Were you aware that Mr. Higgins was
21 actually hired by Nelson Mullins Riley and
22 Scarborough?

23 MR. OUTTEN: I object to the form of the
24 question.

25 THE WITNESS: I don't know.

1 EXAMINATION RESUMED BY MR. ROTHSTEIN:

2 Q. Do you know who Nelson Mullins Riley and
3 Scarborough is?

4 A. I do.

5 Q. That's the firm that's defending the
6 Third-Party Defendants, isn't that right?

7 A. Yes.

8 Q. If they were the ones that hired Mr.
9 Higgins, do you think Mr. Higgins could really be
10 independent?

11 MR. OUTTEN: I object to the form of the
12 question.

13 THE WITNESS: I can't really say what Mr.
14 Higgins can do.

15 EXAMINATION RESUMED BY MR. ROTHSTEIN:

16 Q. Okay. To your knowledge, nobody -- none
17 of the minority members ever selected their own
18 attorney to look at this, did they?

19 A. I don't know.

20 Q. Okay. You never have sought any type of
21 independent legal advice about whether to join or
22 support the derivative action?

23 A. I have not.

24 Q. Okay. The next sentence -- or I'm sorry.
25 The next page of Exhibit 5 is the actual statement,

1 and then there is two pages after that that are, it
2 looks like, response to Donza H. Mattison's November
3 4th, 2019 letter. Do you recall reading Mr.
4 Cousins' response?

5 A. Yes.

6 Q. Do you know who actually -- or do you have
7 an understanding of who wrote this response?

8 A. I do not.

9 Q. Okay. But again, it came from Mr.
10 Cousins, right?

11 A. Yes.

12 Q. Okay. The first sentence says, "Since the
13 inception of this lawsuit between McMillan Pazdan &
14 Smith and Donza Mattison, we have kept the members
15 apprised of the status of the case." What is your
16 recollection of how you were kept apprised of the
17 status of the case, as a member of the firm?

18 A. Typically, it would be discussed in the
19 principals meetings or if we had a off -- or had a
20 separate conversation, it would be with Ron in our
21 office.

22 Q. Okay. So everything you've heard about
23 the status of the case came from one of the
24 Third-Party Defendants, is that right?

25 A. Yes.

1 Q. Okay. And it says, "While we have not
2 previously felt the need to address her baseless
3 allegations in detail, we believe it is now
4 necessary to respond to the letter that she attached
5 to her nomination ballot at the member meeting on
6 November 4, 2019." Would you agree that you have
7 not -- or that the leadership of MPS had not
8 addressed Ms. Mattison's allegations in detail up to
9 that point?

10 A. It was summarized, but not to the level of
11 detail as the Complaint.

12 Q. Okay. And again, at this time, you had
13 not seen the Complaint, right?

14 A. Correct.

15 Q. Okay. The next sentence says, "First and
16 foremost, Ms. Mattison's claim that there has been,
17 quote, potential misinformation is untrue. Here are
18 the facts." Number one, -- I'm sorry. Next it
19 says, "Ms. Mattison left the firm in 2017." Do you
20 know when Ms. Mattison actually left the firm?

21 A. I do not.

22 Q. Okay. Next sentence says, "When we
23 received HDH Advisors' valuation following the close
24 of fiscal year 2017, we made an offer to repurchase
25 her shares, based on the per-unit price determined

1 by HDH." Have you ever seen the valuation that HDH
2 Advisors did as of the close of fiscal year 2017?

3 A. Not the document, no.

4 Q. Okay. Have you ever seen any documents
5 that HDH Advisors has created?

6 A. No.

7 Q. Do you know anything about HDH Advisors?

8 A. No, sir.

9 Q. Okay. Do you know who hired HDH Advisors?

10 A. I do not.

11 Q. Do you know how long HDH Advisors had been
12 working for MPS?

13 A. I do not.

14 Q. Okay. The next sentence says, "The firm
15 made no attempt to negotiate her down from this
16 stated value, and we by no means made her a low-ball
17 offer." Do you know what -- do you have any
18 knowledge of what the firm's original offer to Ms.
19 Mattison was to purchase her shares?

20 A. I do not.

21 Q. So you have no way to evaluate whether or
22 not it was a low-ball offer?

23 A. Correct.

24 Q. Okay. Next says, "However, Ms. Mattison
25 refused to accept this offer and wanted a much

1 higher value for her units." I'll stipulate that
2 that's accurate. It says, "The firm initiated the
3 lawsuit only after Ms. Mattison refused to accept
4 our offer, which was consistent with the provisions
5 of the operating agreement and her severance
6 agreement. MPS simply asked the court to declare
7 that Ms. Mattison's severance agreement was a valid
8 and enforceable contract, and for her dissociation
9 to be conducted in accordance with the September
10 30th, 2015 operating agreement."

11 Next sentence says, "In response, Ms.
12 Mattison asserted Counterclaims against MPS and
13 brought a derivative action against Joe Pazdan, Brad
14 Smith, Ron Smith, and Chad Cousins. We believe the
15 claims made in Ms. Mattison's derivative action are
16 meritless and are not aligned with the interests of
17 the other members." Do you believe that Ms.
18 Mattison's derivative action is aligned with the
19 interests of the Third-Party Defendants?

20 MR. OUTTEN: Object to the form.

21 THE WITNESS: I don't understand the
22 question.

23 EXAMINATION RESUMED BY MR. ROTHSTEIN:

24 Q. Ms. Mattison has -- in her derivative
25 action has actually sued the four Third-Party

1 Defendants, right?

2 A. Right.

3 Q. In that suit, she's asking the court to
4 require these people to return to the firm money
5 that was obtained through self-dealing transactions,
6 right?

7 A. Right.

8 Q. So the four Third-Party Defendants are
9 clearly not aligned with Ms. Mattison's interests in
10 this case, would you agree with that?

11 A. I would agree with that, yes, sir.

12 Q. Okay. Next sentence says, "The managers
13 of MPS have always been transparent with the other
14 members, and her assertions that the members receive
15 excessive compensation and benefits are not true."
16 I think we talked about this earlier, but the
17 Third-Party Defendants -- or what was your
18 understanding of what it means when Mr. Cousins said
19 that the Third-Party Defendants or managers of MPS
20 have always been transparent with the other members?

21 MR. OUTTEN: I'll object to the form.

22 What's the question again, Mr. Rothstein?

23 EXAMINATION RESUMED BY MR. ROTHSTEIN:

24 Q. What is your understanding of what Mr.
25 Cousins meant by that?

1 November --

2 MR. OUTTEN: What exhibit is this?

3 MR. ROTHSTEIN: 9.

4 MR. OUTTEN: What is 8?

5 MR. ROTHSTEIN: 8 was the document you
6 marked, the transcript, I think -- no. I'm
7 sorry.

8 MR. OUTTEN: Thank you. I think you're
9 right.

10 MR. ROTHSTEIN: No, I'm sorry. That was
11 7. 8 was the flyer.

12 MR. OUTTEN: 7 was the transcript, and 8
13 was the NAI documents?

14 MR. ROTHSTEIN: Yes.

15 MR. OUTTEN: Okay.

16 EXAMINATION RESUMED BY MR. ROTHSTEIN:

17 Q. All right. Looking back at Exhibit 9, do
18 you recall signing this statement?

19 A. Yes, sir.

20 Q. Did you read the document before you
21 signed it?

22 A. I did.

23 Q. Okay. Paragraph 6 you state, quote, "I
24 have been" -- "I have reviewed and have been
25 provided adequate information about the allegations

1 of Ms. Mattison's derivative action against the
2 Third-Party Defendants." Do you see that?

3 A. Yes, sir.

4 Q. Okay. Who provided you information about
5 the allegations in Ms. Mattison's Third-Party
6 Complaint?

7 A. Mr. Cousins and Mr. Smith.

8 Q. Okay. Anyone other than Mr. -- was it
9 Brad Smith or Ron Smith?

10 A. Ron.

11 Q. Did anyone other than Ron Smith and Brad
12 Smith provide you any information?

13 A. Possibly.

14 Q. Okay. Who else would have?

15 A. Well, if -- so it would have been Brad
16 Smith and Joe Pazdan.

17 Q. Okay. But the information -- the sole
18 information you've received about the allegations in
19 Ms. Mattison's derivative action came from the very
20 people that she was suing?

21 A. Correct.

22 Q. Okay. How did you determine that the
23 information was adequate?

24 A. It was explained to me in a way that I
25 could understand it and so I felt like that was

1 adequate.

2 Q. Okay. But you've already testified that
3 you didn't have information about the amount of the
4 compensation paid to those gentlemen by MPS, right?

5 A. Right.

6 Q. You've also indicated you didn't have
7 information about the benefits that the managing
8 members and their family received from MPS, right?

9 A. Right.

10 Q. And you testified you're not familiar at
11 all with the arrangements of the Spartanburg lease,
12 correct?

13 A. Correct.

14 Q. Those are the three things that Ms.
15 Mattison has alleged in her derivative action,
16 right?

17 A. Yes.

18 Q. Okay. And you haven't been provided any
19 information about whether or not those allegations
20 are truthful or supportable by evidence, other than
21 what Mr. Brad Smith, Joe Pazdan, Ron Smith, and
22 Cousins have provided to you, isn't that right?

23 MR. OUTTEN: I object to the form, and
24 it's testimony by Mr. Rothstein. Please ask
25 him a question. Instead of testifying whether

1 or not he agrees with you or not, ask him a
2 question.

3 MR. ROTHSTEIN: I did.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. Isn't that correct? That the only --

6 A. Can you restate it?

7 Q. Yes. The only information that you've
8 gotten about whether Ms. Mattison's allegations are
9 meritorious comes from the very people that she's
10 suing, isn't that right?

11 A. That's correct.

12 Q. And what information did you actually
13 review? I know you were provided information by one
14 or more of the Third-Party Defendants, but did you
15 review any independent information?

16 A. I did not.

17 Q. Okay. Did you discuss Ms. Mattison's
18 allegations with any of your co-owners of McMillan
19 Pazdan & Smith other than the Third-Party
20 Defendants?

21 A. I don't think so.

22 Q. The next paragraph says, "In my capacity
23 as a member of MPS, I have considered Mattison's
24 allegations and determined that the derivative
25 action is not in the best interest of the other

1 members of MPS." How did you make that
2 determination?

3 A. I don't think it's in the best interest of
4 the other members that we sued, the four named
5 individuals.

6 Q. Okay. Are there any circumstances under
7 which you could imagine suing or agreeing to -- for
8 MPS minority members to sue the four Third-Party
9 Defendants?

10 MR. OUTTEN: I object to the form.

11 THE WITNESS: I mean, I can't think of
12 anything that would cause me or the others to
13 want to sue them, no.

14 EXAMINATION RESUMED BY MR. ROTHSTEIN:

15 Q. Okay. The next sentence, paragraph eight,
16 says, "I know of no facts which support Mattison's
17 derivative action against the Third-Party
18 Defendants." The simple fact is that you don't know
19 of any facts that contradict Ms. Mattison's
20 allegations, do you?

21 MR. OUTTEN: I object to the form of the
22 question.

23 THE WITNESS: Well, the fact, as we
24 discussed before, is my working relationship
25 with them over the last -- with Ron with 25

1 years and the others for, you know, over 10, I
2 don't have any reason to think that they would
3 be anything but fair.

4 EXAMINATION RESUMED BY MR. ROTHSTEIN:

5 Q. And that's based on your observations of
6 their character and your working relationship with
7 them, right?

8 A. Correct, and their dealings --

9 MR. OUTTEN: I object to the form of the
10 question. Go ahead and answer.

11 THE WITNESS: Their dealing with other
12 people, too, clients and such, you know.

13 EXAMINATION RESUMED BY MR. ROTHSTEIN:

14 Q. And Ms. Mattison, at the time she was
15 employed at McMillan Pazdan & Smith, seemed to have
16 the same opinion of those gentlemen? I mean, would
17 you agree with that?

18 MR. OUTTEN: I'll object to the form.

19 EXAMINATION RESUMED BY MR. ROTHSTEIN:

20 Q. Did she ever make any statements or
21 allegations that she thought that the COO and the
22 three managing members of the firm were engaging in
23 self-dealing and overpaying themselves?

24 A. She never said that to me specifically,
25 no.

1 EXAMINATION RESUMED BY MR. ROTHSTEIN:

2 Q. Do you recognize Exhibit 22?

3 A. I don't recognize it.

4 Q. You can see on page 3 of the document, it
5 appears to be your signature, Donald Love?

6 A. It is.

7 Q. And I know you may not recognize the
8 electronically filed stamp on the right margin, but
9 do you recall signing a document about joint --
10 consenting to joint representation of the firm?

11 A. Yes.

12 Q. Do you know what the -- how was this
13 document proposed to you? Do you remember who
14 actually submitted it to you or asked you to sign
15 it?

16 A. I do not.

17 Q. Was it a lawyer that asked you to sign it,
18 or was it one of your colleagues of yours at
19 McMillan Pazdan & Smith?

20 A. I don't remember.

21 Q. Do you know what the purpose of this
22 document was?

23 A. There was a question about whether the
24 four named individuals should be represented by the
25 same counsel as the firm.

1 Q. Did you seek independent legal advice
2 about that issue?

3 A. I did not.

4 Q. Do you know if any of your minority member
5 colleagues at McMillan Pazdan & Smith sought legal
6 advice on that issue?

7 A. I do not.

8 (Whereupon, the court reporter marked Love Exhibit
9 Number 23 for identification.)

10 EXAMINATION RESUMED BY MR. ROTHSTEIN

11 Q. I show you Exhibit 23. Have you ever seen
12 Exhibit 23 before?

13 A. I have not.

14 Q. Do you recognize named William O. Higgins
15 as the same attorney, Bill Higgins, who Chad Cousins
16 said was an independent attorney that was hired to
17 answer questions to the board -- I mean, to the
18 minority members?

19 A. I assume that's the same person.

20 Q. And I'm going to ask you to look at page 3
21 of Mr. Higgins' affidavit. Paragraph 7, it says, "I
22 have been engaged by Nelson Mullins on behalf of
23 MPS." Do you have any reason to dispute Mr.
24 Higgins' sworn statement to that effect?

25 A. I do not.

1 MR. OUTTEN: What was the question Mr.
2 Rothstein asked again, Madam Court Reporter?
3 (Whereupon, the court reporter read back the
4 previous question.)

5 MR. OUTTEN: Thank you.

6 EXAMINATION RESUMED BY MR. ROTHSTEIN:

7 Q. Were you aware that Mr. Higgins was hired
8 by Nelson Mullins to serve as an expert witness on
9 the issue of whether there was a conflict of
10 interest or not?

11 A. I was not.

12 Q. Do you believe it's consistent for Mr.
13 Cousins to inform the minority members that they've
14 hired an independent counsel, identified as Mr.
15 Higgins, the same person who was an expert witness
16 for McMillan Pazdan & Smith in the attorney
17 disqualification motion?

18 MR. OUTTEN: I instruct the witness not to
19 answer that question.

20 EXAMINATION RESUMED BY MR. ROTHSTEIN:

21 Q. Does it give you any concern that Mr.
22 Cousins represented to you and the other minority
23 members at McMillan Pazdan & Smith that Mr. Higgins
24 was an independent attorney?

25 MR. OUTTEN: I instruct the witness not to

1 derivative action. It asks for a legal
2 opinion.

3 EXAMINATION RESUMED BY MR. ROTHSTEIN:

4 Q. Let me ask it this way. Do you understand
5 Ms. Mattison's current ownership interest in MPS is
6 approximately 2.278 percent?

7 A. Right.

8 MR. ROTHSTEIN: That's all the questions I
9 have.

10 - - -

11 EXAMINATION

12 - - -

13 BY MR. OUTTEN:

14 Q. Mr. Love, let me ask you a few questions.
15 If you would first get Exhibit 9 before you.

16 A. Okay.

17 Q. Do you want to bring a derivative action
18 on behalf of McMillan Pazdan & Smith against Ron
19 Smith, Brad Smith, Joe Pazdan, and Chad Cousins?

20 A. No, I do not.

21 Q. Do you want Donza Mattison to represent
22 the members of McMillan Pazdan & Smith in bringing a
23 derivative action against Ron Smith, Brad Smith, Joe
24 Pazdan, and Chad Cousins?

25 A. No, I do not.

1 Q. Do you believe that Donza Mattison fairly
2 and adequately represents you and the other members
3 of MPS in bringing this derivative action?

4 MR. ROTHSTEIN: Object to the form of the
5 question.

6 THE WITNESS: No, I do not.

7 EXAMINATION RESUMED BY MR. OUTTEN:

8 Q. Do you believe that the derivative action
9 is in the best interest of the members of McMillan
10 Pazdan & Smith?

11 A. No, I did not.

12 Q. Do you support the derivative action Donza
13 Mattison has filed?

14 A. No, I do not.

15 Q. Do you oppose the derivative action that
16 Donza Mattison has filed?

17 A. Yes, I do.

18 Q. Please look at Exhibit 9. This is the
19 "Member Statement And Opposition to Derivative
20 Action" which you signed, is that correct?

21 A. Yes.

22 Q. Did you sign this statement voluntarily?

23 A. I did.

24 Q. Did anyone force or coerce you to sign
25 this statement?

1 A. No, they did not.

2 Q. Is this statement complete and accurate,
3 to the best of your knowledge?

4 A. It is.

5 Q. Do you understand that you are under oath
6 today?

7 A. Yes, sir.

8 Q. Do you affirm this statement under oath?

9 A. Yes, sir, I do.

10 Q. Let's look at paragraph 6. It says, "I
11 have reviewed and have been provided adequate
12 information about the allegations of Mattison's
13 derivative action against the Third-Party
14 Defendants." Did I read that accurately?

15 A. Yes, sir.

16 Q. Do you believe you had adequate
17 information to sign this statement in opposition to
18 the derivative action?

19 A. I do.

20 Q. Paragraph 7, "In my capacity as a member
21 of MPS, I have considered Mattison's allegations and
22 determined that the derivative action is not in the
23 best interest of the other members of MPS." Did I
24 read that accurately?

25 A. Yes, sir.

1 Q. And how long have you worked with McMillan
2 Pazdan & Smith, including McMillan Smith prior to
3 the merger?

4 A. 28 years.

5 Q. And you were asked questions by Mr.
6 Rothstein about if your opposition to the derivative
7 action were based on an assessment of character. Do
8 you remember those questions?

9 A. Yes, sir.

10 Q. Well, over 25 years, have you had the
11 opportunity to interact with Ron Smith, Brad Smith,
12 Joe Pazdan, and Chad Cousins personally?

13 A. Yes.

14 Q. And does that interaction include
15 professional interaction?

16 A. It does.

17 Q. It includes opportunities and challenges
18 before the firm?

19 A. Yes.

20 Q. It includes interaction with the firm's
21 business partners, clients, is that correct?

22 A. Yes, sir.

23 Q. And so have you had an opportunity to
24 witness the conduct of Brad Smith, Ron Smith, Joe
25 Pazdan, and Chad Cousins in a number of different

1 settings?

2 A. I have.

3 Q. Have you ever seen any of these four men
4 do anything which was dishonest or deceitful?

5 A. I have not.

6 Q. Ever, one time?

7 A. No, sir.

8 Q. And so is your opposition based in large
9 part to witnessing their conduct?

10 A. Yes, sir.

11 Q. Over a long period of time?

12 A. Correct.

13 Q. And so there are facts surrounding their
14 conduct that form the basis of your view that this
15 derivative action should not go forward?

16 A. That's correct.

17 Q. Do you know of -- Mr. Rothstein asked you
18 about facts. Do you know of any facts, any facts
19 which support the allegations Ms. Mattison has made
20 regarding self-dealing and excessive compensation?

21 A. I don't.

22 Q. Any fact, at any time?

23 A. I don't know of any fact, at any time, no.

24 Q. Now, Mr. Rothstein marked 24 different
25 exhibits today, and you have them before you, is

1 that right?

2 A. Yes, sir.

3 Q. And you were asked questions about each
4 and every one of these exhibits, is that right?

5 A. Yes, sir.

6 Q. Now, having reviewed, at least in part,
7 these exhibits and listened to Mr. Rothstein's
8 questions, has your opinion changed regarding your
9 opposition to this derivative action?

10 A. No, it has not.

11 Q. Have you seen today in the information
12 presented by Mr. Rothstein any facts which support
13 Ms. Mattison's allegations of self-dealing or
14 excessive compensation?

15 A. No, sir, I have not.

16 Q. Any facts at all?

17 A. No, sir.

18 Q. Do you understand that the presiding judge
19 in this case may consider your statement in deciding
20 whether Donza Mattison is a fair and adequate
21 representative of the other members of MPS?

22 A. Yes, sir.

23 Q. And again, Mr. Love, do you know of any
24 dishonest self-dealing or fraudulent acts committed
25 by Ron Smith, Brad Smith, Joe Pazdan, or Chad

1 Cousins at any time?

2 A. No, sir, I do not.

3 Q. Have you witnessed any conduct by Ron
4 Smith, Brad Smith, Joe Pazdan, or Chad Cousins, like
5 that alleged by Donza Mattison in the derivative
6 action?

7 A. I have not.

8 Q. And you reviewed the allegations of the
9 derivative action today, correct?

10 A. I did, yes, sir.

11 Q. And you have reviewed it before this
12 deposition, correct?

13 A. That's correct.

14 Q. It was one of the documents you reviewed
15 in preparation for this deposition?

16 A. That's correct.

17 Q. So you have reviewed the allegations of
18 Ms. Mattison's derivative action at least twice,
19 correct?

20 A. Yes, sir.

21 Q. And is there any -- are there any facts to
22 support any of the allegations that she makes
23 regarding self-dealing or excessive compensation?

24 A. No, sir.

25 Q. And after being deposed today by counsel

1 for Ms. Mattison for five hours or so and after
2 looking at these exhibits and being asked questions
3 about them, do you still oppose the derivative
4 action?

5 A. Yes, sir, I do.

6 Q. And as a member of McMillan Pazdan &
7 Smith, is it your wish that Judge McIntosh dismiss
8 the derivative action?

9 A. Yes, it is.

10 MR. OUTTEN: Thank you, sir. Those are
11 all the questions I have.

12 MR. ROTHSTEIN: I just have a couple
13 follow-up.

14 - - -

15 EXAMINATION

16 - - -

17 BY MR. ROTHSTEIN:

18 Q. You just testified you have been at MPS
19 for 28 years, right?

20 A. Correct.

21 Q. I mean, your entire career essentially as
22 an architect has been with MPS or its predecessor,
23 McMillan Smith & Partners, correct?

24 A. For the most part, yes.

25 Q. And you depend on McMillan Pazdan & Smith

1 for your livelihood, is that right?

2 A. To an extent.

3 Q. Okay. Now, what is your current age?

4 A. 56.

5 Q. And I understand you have two children
6 that are not yet in college?

7 A. Correct.

8 Q. And the four individuals that Ms. Mattison
9 seeks to sue in the derivative claim individually
10 are Ron Smith, Joe Pazdan, Brad Smith, and Chad
11 Cousins. You understand that, right?

12 A. Correct.

13 Q. And any or all of these four people have
14 the authority or ability to terminate your
15 employment at McMillan Pazdan & Smith at will, is
16 that correct?

17 MR. OUTTEN: I instruct the witness not to
18 answer that question. It's totally improper.

19 MR. ROTHSTEIN: It goes exactly to his
20 motivation for testifying. It's a perfectly
21 legitimate question.

22 MR. OUTTEN: It absolutely doesn't go to
23 his motivation for testifying, David.

24 MR. ROTHSTEIN: It does. It's called
25 bias, Sam.