

Highway 46 Holdings, LLC. vs. Michael and Jacqueline Myers
APPEAL

1 IN THE CIRCUIT COURT, NINTH
2 JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

3 CASE NO.: 08-CA-1466

4 HIGHWAY 46 HOLDINGS, LLC,

5
6 Plaintiff,

7 vs.

8 MICHAEL B. MYERS,
9 JACQUELINE M. MYERS,
SOUTHEAST COMMUNICATIONS,
10 COMPANY OF CENTRAL FLORIDA
DONALD J. HACHENBERGER,
GLENDA A. HACHENBERGER,

11 Defendants.

12 _____/

13 Volume II

14 PROCEEDINGS: JURY TRIAL

15 BEFORE: HONORABLE DONALD A. MYERS

16 DATE: MARCH 14, 2017

17 TIME: 8:55 A.M. - 4:11 P.M.

18 PLACE: ORANGE COUNTY COURTHOUSE
425 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801

19 STENOGRAPHICALLY
20 REPORTED BY: SHOSHANA KRAMER, RPR, CRR

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22

23

24

25

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

2 MARC JONES, ESQUIRE
3 OF: J. MARC JONES, P.A.
4 2472 WEST STATE ROAD 426
5 SUITE 3024B
6 ORLANDO, FLORIDA 32765
7 407-359-9900
8 STEPHANIE@JMARCIJONESPA.COM
9 APPEARING ON BEHALF OF THE PLAINTIFF
10
11

12 DAMON A. CHASE, ESQUIRE
13 OF: CHASE FREEMAN
14 1525 INTERNATIONAL PARKWAY
15 SUITE 4021
16 LAKE MARY, FLORIDA 32746
17 407-333-7337
18 DAMONCHASE@CHASEFREEMAN.COM
19 APPEARING ON BEHALF OF PLAINTIFF AND DONALD
20 HACHENBERGER
21

22 GUS BENITEZ, ESQUIRE
23 OF: BENITEZ LAW GROUP, P.L.
24 1223 EAST CONCORD STREET
25 ORLANDO, FLORIDA 32803
407-894-5000
GUS@ARBENITEZ.COM
APPEARING ON BEHALF OF DEFENDANTS

16 MARIANE L. DORRIS, ESQUIRE
17 R. SCOTT SHUKER, ESQUIRE
18 OF: LATHAM, SHUKER, EDEN & BEAUDINE, LLP
19 111 NORTH MAGNOLIA AVENUE
20 SUITE 1400
21 ORLANDO, FLORIDA 32801
22 407-481-5800
23 MDORRIS@LSEBLAW.COM
24 RSHUKER@LSEBLAW.COM
25 APPEARING ON BEHALF OF GLENDA JOY STONE

22 ALSO PRESENT:

23 DONALD J. HACHENBERGER
24 GLENDA HACHENBERGER
25 MICHAEL MYERS
JACQUELINE MYERS

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3 *****

4 THE COURT: Good morning, everybody.

5 Let's go on the record.

6 I understand there are couple of preliminary
7 items. I'd like to address those before our
8 remaining juror arrives.

9 MR. CHASE: Mr. Jones is going to address you.

10 THE COURT: Mr. Jones.

11 MR. SHUKER: Thank you, your Honor.

12 We found some information about a juror,
13 Desire'e, that she was dishonest yesterday afternoon
14 in the voir dire process.

15 Specifically, your Honor, when questions were
16 asked about previous litigation experience, she
17 didn't mention anything. And if you recall, the
18 Court specifically came out and gave a long list of
19 things, including eviction action.

20 We found out Ms. Desire'e not only was
21 dishonest on the form, she has been charged with a
22 second degree misdemeanor, driving without a
23 license, and she was involved in two eviction
24 actions, both of which resolved to her favor.

25 And it's our position -- and the case law says

1 that in order for her to be removed, the issue has
2 to be specific or relevance to the case at hand, and
3 our position is an eviction action.

4 This case is essentially about eviction of
5 Mr. Myers from his business and his removal from the
6 premises, and we believe that her experience in the
7 eviction action, and it being resolved to her
8 satisfaction, may prejudice the way she decides this
9 case.

10 So it's regrettable, we actually like her, we
11 think she would make a good jury member, and
12 opposing counsel both agree with that, but I think
13 we're all in agreement that she should probably be
14 removed.

15 THE COURT: Mr. Benitez.

16 MR. BENITEZ: Judge, it may be wise to just go
17 ahead and interview her, have the Court interview
18 her, find out the extent of these statements or
19 this -- these facts, to see if she should be
20 removed. We wouldn't like to lose the juror on the
21 first day of trial, if possible.

22 THE COURT: Understood, but if she admits that
23 if she's the defendant to two eviction actions and I
24 guess lied, I think that's problematic, at best.

25 MR. SHUKER: We concur.

1 THE COURT: Interesting, when I spoke with her
2 employer last night -- she was the one that was very
3 concerned that I contact her employer. Employer was
4 very pleasant and understood that she was being
5 called for jury duty.

6 She did say that Ms. Desire'e works on
7 commission and that she's going to be losing out on
8 significant opportunities for compensation. I said,
9 I appreciate that, and she didn't share that with
10 us. Apparently she didn't seem to be concerned
11 about, it either.

12 But I'm glad to talk with her when she -- is
13 she here? Is she one of the jurors that was here?

14 THE DEPUTY: That was the one that was missing.

15 MR. BENITEZ: It gets stranger and stranger.

16 THE COURT: Yes.

17 Other preliminary matters?

18 And I'll speak with her when she gets here.

19 Briefly.

20 MR. CHASE: Yes, sir. There is an issue
21 regarding the parole evidence rule and we had
22 mentioned that it was going to come up. I know that
23 the Court would certainly prefer motions in limine
24 with regard to this, but having gone back through
25 the file, that if we were to prevail on a motion in

1 limine, it would have only prompted an amendment to
2 pleadings.

3 And then I realized our amendments are closed.
4 You can't go back and amend. But that's clearly an
5 appealable issue, is amending the pleadings.

6 One thing is certain at trial, you cannot amend
7 the pleadings. It's very difficult, anyway, you
8 can't try -- trial by implied consent and that sort
9 of thing.

10 The issue about the parole evidence rule is --
11 and I have a case. I walked out -- I had two
12 Federal cases decided and I walked out with the
13 wrong one, so I pulled the one that I'd like to
14 bring the Court's attention to. It is Johnson V.
15 FPL. And I can bring it up on the thing.

16 And it is -- it's a case cited in Florida Law
17 and in Fed. 162 F3d 1290. And, Judge, if you could
18 scroll up to show the -- oh, it's up there, Judge,
19 there it is. Johnson Enterprises, Inc., V. FPL
20 Group, 162 F3d, 1290, the Court of Appeals, 11th
21 Circuit.

22 And it's important to note -- and I'm not sure
23 really how to handle -- it's a -- in Florida,
24 evidence of a prior or contemporaneous oral
25 agreement is inadmissible to vary or contradict the

1 unambiguous language of a valid contract. The rule
2 applies when the parties contend the written
3 contract incorporate their final and complete
4 agreement. One way to demonstrate such intent is
5 through the use of a merger clause.

6 And, of course, this case has the letter
7 agreement and the operating agreement, both have
8 merger clauses, which say there are no oral
9 agreements, this is it, this is everything.

10 Reading on from the case, it says -- it quotes
11 Section 22 of 1987 contracts entitled entire
12 agreement, which states: This agreement contains
13 the entire agreement between Telesat, which was the
14 other party, and JEJ. There are no other agreements
15 or understandings stated or implied except as are
16 contained herein.

17 It is hereby further understood that any
18 changes, modifications, or alterations of this
19 agreement shall be in writing and executed by all
20 parties hereto.

21 When a contract contains such a merger clause,
22 the agreement is deemed to be integrated such that
23 evidence of a prior or contemporaneous agreement
24 shall not be admitted to contradict the terms of the
25 contract. There are, however, several exceptions to

1 the parole evidence rule that permit the
2 introduction of evidence of prior oral agreements,
3 even though the final written contract was intended
4 to be integrated.

5 We addressed two of these exceptions. Parole
6 evidence may be admitted, one, to show that the oral
7 agreement induced the signing of the written
8 contract, which is what we would have here; or, two,
9 to explain a latent ambiguity in the written
10 contract, which we did not have.

11 As to the first exception, Florida courts
12 recognize an inducement exception to the parole
13 evidence rule, whereby parole evidence is admissible
14 to establish a contemporaneous oral agreement, which
15 induced the execution of a written contract, though
16 it may vary, change or reform the instrument.

17 The parties submitting the parole evidence
18 under this exception -- this is important, sir --
19 the party admitting or submitting parole evidence
20 under this exception, however, carries a heavy
21 burden of proof.

22 Can you scroll up. I lost my place.

23 The party submitting parole evidence under this
24 exception, however, carries a heavy burden of proof.

25 The inducement exception requires the oral agreement

1 to be shown by evidence that is clear, precise, and
2 indubitable; that it should be found that the
3 witnesses are credible; that they distinctly
4 remember the facts to which they testify; and that
5 they narrate the details exactly, and that their
6 statements are true.

7 That cites Mallard, which is Florida Supreme
8 Court case found at 164 So. at 678. I do have
9 copies of matters that I'll present to the Court and
10 opposing counsel. See also Rood at 698, So.2d 430.

11 As the trial judge noted -- and this is really
12 important. As the trial judge noted, in applying
13 the inducement exception, we do not believe that
14 when the existence of the contemporaneous oral
15 agreement rests solely on a credibility choice
16 between two witnesses, the proof of that accord is
17 clear, precise and indubitable.

18 Having reviewed the record, including the
19 unanimous testimony denying the existence of an oral
20 mileage guarantee in Johnson's inconsistent
21 testimony regarding the substance of the alleged
22 guarantee, we agree with the district court that
23 JEJ's evidence concerning the oral mileage guarantee
24 was not clear and precise and indubitable.

25 The district court, therefore, directly held

1 that the evidence was inadmissible under the
2 inducement exception to the parole evidence rule.

3 Indubitable is an interesting word. Citing
4 Black's Law dictionary, indubitable proof, evidence,
5 which is not only found incredible, but is of such
6 weight and directness as to make out facts that it's
7 alleged beyond a doubt.

8 In this case, it is without question that the
9 Myers, or at least in their sworn complaints, their
10 verified, said there was this agreement for -- this
11 escrow agreement to hold the documents that they
12 signed in escrow. And they made that agreement with
13 Kevin Donaghy, who is the attorney for the
14 Hachenbergers, and acting with authority to present
15 the offer that the Hachenbergers were making and
16 accept their signed signatures in the documents.

17 Kevin Donaghy testified that the position that
18 there is absolutely no escrow agreement, there was
19 absolutely no way that there was a -- because the
20 parties -- he actually paid the Myers the money and
21 they deeded over property. That's not escrow, he
22 said. So he unequivocally denies that there was
23 such an agreement.

24 In light of that, in light of this case,
25 there's no way that can be indubitable standard in

1 order to make it admissible.

2 Here's my issue, though. In this case, it
3 appears as though that language, or the testimony
4 came in, and -- but then later they say it's
5 inadmissible, I don't know how you do that. And I
6 don't know how the Court can rule that it's
7 inadmissible because you have a he said/he said,
8 without hearing what he said and he said.

9 So it seems to me that while on the one hand,
10 inadmissible means it should not go to the jury, on
11 the other hand, how does the court determine whether
12 or not it should go to the jury unless the Court
13 hears the testimony.

14 And that is the situation. So I feel that it
15 is incumbent upon us to make sure that we make the
16 objection certainly before the testimony, but before
17 opening statements as well. I think that it's
18 important to make sure that you make your record and
19 make the objections along the way.

20 I do not know how the Court, however, can
21 decide something on a he said/he said without
22 hearing what each party said.

23 Respectfully, submitted, sir.

24 THE COURT: Tell me, direct me to the quote
25 that you were reading. What you see on your

1 monitors ends up very small on my monitor. It's not
2 readable. So --

3 MR. CHASE: I'm sorry.

4 THE COURT: That's all right. If I had one of
5 these monitors, I would be fine, but this one is
6 super small.

7 So direct me to the headnote inside the case
8 that where you were reading the quote from.

9 MR. CHASE: Your Honor.

10 MR. SHUKER: Your Honor, it starts at page 1310
11 in the decision.

12 MR. CHASE: It says -- there were several
13 quotes of a lot of it, which -- do you remember
14 which particular quote?

15 THE COURT: I see it. I just found it.
16 Actually, I'm fine, thank you.

17 Thank you.

18 MR. CHASE: Also, I forgot to mention, in order
19 to comply, it has to contradict an express term.
20 Both the letter agreement and the operating
21 agreement specifically state that these agreements
22 effective as of this date, July 7, 2005. And so, to
23 say that, no, they're not effective right now
24 because we're going to come back, change that later,
25 breaches that express term, sir.

1 THE COURT: Thank you.

2 Mr. Benitez.

3 MR. BENITEZ: Yes, your Honor.

4 Your Honor, I didn't know that this was an
5 issue until he stood up here in the podium and
6 actually disclosed it to the Court for the first
7 time. We didn't even talk about it this morning.
8 So I'm kind of unprepared to deal with it.

9 Except that I've got -- he provided to me a
10 copy of the case, and this laptop, which I have on
11 my desk and I've looked at and, unquestionably, the
12 case indicates that that parole evidence is
13 admissible in the fraudulent inducement. In fact,
14 that's only the way to prove fraudulent inducement.

15 In this case, we're not even -- we haven't even
16 heard the testimony with respect to our position in
17 the case. Our position in the case, those contracts
18 were only signed with the understanding that they
19 were going to be kept in escrow and not released.
20 And that there were going to be a number of other
21 issues that needed to be decided before everybody
22 was going to give their permission to go ahead and
23 have it consummated as a deed.

24 So it was -- actually, our first -- our first
25 count is breach of the oral agreement between Kevin

1 Donaghy and the buyers, and Kevin Donaghy acting as
2 the actual authorized agent of Mr. and Mrs.
3 Hachenberger, or with apparent authority to enter
4 into that contract. So the whole issue is, this
5 original oral contract, whether, in fact, it was
6 valid and whether it was breached.

7 And then, with respect to the signing of
8 contracts, if the Court will recall from reading the
9 pleadings, the contracts are actually executed on
10 July 7, 2005, but Mr. Hachenberger, I believe, signs
11 it in September of 2005, which is about two months
12 or so after the fact. And then Mrs. Hachenberger
13 signs it in October, or vice versa. I don't have
14 those necessarily memorized.

15 But it's kind -- and this is after Kevin
16 Donaghy's services are terminated in early
17 September.

18 So our position is that those contracts, the
19 only reason they got to Mr. and Mrs. Hachenberger
20 was because Kevin Donaghy led it out of succession
21 by leaving the contracts behind. So, actually, his
22 office was in the same location as
23 Mr. Hachenberger's office. He was working inside
24 that same office.

25 So I'm not sure -- to summarize, Judge, I'm

1 unprepared to deal with this legal issue in detail.
2 I had no notice that was going to be brought up.
3 This is something that's normally brought up well in
4 advance on motion in limine, or even on motion to
5 dismiss for failure to behave or failure to stay the
6 cause of action.

7 But at this time, I submit to the Court that
8 this evidence will be admissible in this case based
9 on the pleadings and our status at this point.

10 THE COURT: I think the case law that's been
11 cited gives us some evidence for the standard for
12 the Court to consider, but I think I'm,
13 unfortunately, still in a position where I have to
14 hear the evidence in order to make those
15 determinations.

16 MR. CHASE: I agree.

17 THE COURT: And, regretfully, I want to say
18 regretful because if it turns out that the evidence,
19 indeed, doesn't rise to that level of proof, there
20 may be an issue that I would have to take away from
21 the jury. I don't know, obviously, until I hear the
22 evidence. I have never heard anybody testify in
23 this case. I'm in no position to be evaluating what
24 the weight of that testimony's going to be until
25 I've actually heard it.

1 So I think what we have to do is, we have to
2 listen to it, we have to address an appropriate
3 motion at an appropriate point during the trial.

4 And, Mr. Benitez I will give you some time to
5 take a look at that case law and determine whether,
6 indeed, that's the right standard and whether that's
7 the proper way for the Court to apply it.

8 MR. BENITEZ: Thank you, Judge.

9 To be perfectly candid with the Court, I read
10 it as the Court was reading it, and it appears to be
11 that it's going to be the right standard.
12 Everything indicates that.

13 That's not my point. My point was what the
14 Court had just mentioned, that we're not in a
15 position to make those decisions at this time.

16 THE COURT: That's fine. But I will say this,
17 I haven't had a chance -- are the contracts marked
18 at this point?

19 MR. CHASE: Yes, sir.

20 THE COURT: Could I have those, please.

21 MR. CHASE: Sir, the best one for you to look
22 at is the closing statement, which is the bound
23 document. I believe that would be marked as letter
24 D. Closing statement, sir, is letter D for
25 identification. That's it, sir. That has -- that

1 has everything.

2 THE COURT: Okay. Thank you. I'll take a look
3 at this during your opening statements.

4 And because there's a couple of issues that you
5 all haven't argued, that I'm aware of, that the
6 Court needs to address, one of those is to whether
7 the contract contains a nonreliance provision in
8 addition to the merger clause.

9 There's been some case law that's come out here
10 recently out of the 5th DCA, within the last couple
11 of weeks, that addresses this issue of nonreliance
12 and whether there are specific provisions. It
13 appears it might have come those types of things
14 were not merger clauses, or one that finding whether
15 there's a waiver provision.

16 So I'll take a look at the contract documents,
17 but I think we charge ahead, we hear the testimony,
18 and the Court evaluates it as I hear it. And I'll
19 again familiarize myself more intimately with this
20 case law that it is, indeed, the appropriate
21 standard or not.

22 MR. CHASE: Understood, sir. One idea,
23 certainly we respect everything, but just throwing
24 an idea out there, it may be something for the Court
25 to consider that it might be testimony that the

1 Court would rather hear outside of the presence of
2 the jury, I understand.

3 THE COURT: I don't think we could practically
4 accomplish that because of the length of time it
5 would take to elicit testimony. In addition, if
6 it's coming in, there needs to be comment about it
7 in openings, and I think it would be improper to
8 take it out of openings until we heard the
9 testimony.

10 But, again, if I determine it's appropriate to
11 take away from the jury, I'll do that.

12 MR. CHASE: Understood.

13 Just for the record, my objection to parole
14 evidence would be overruled at this time?

15 THE COURT: Well, I'm not overruling it, I'm
16 simply making no ruling. And you'll have to object
17 contemporaneously with the presentation of parole
18 evidence. What Mr. Benitez says and what you say is
19 not evidence, it is what you expect the evidence to
20 show. If the parties can't get it in, they can't
21 get it in.

22 MR. CHASE: Understood, sir.

23 THE COURT: Any other preliminary matters from
24 the plaintiff?

25 MR. CHASE: No, sir.

1 THE COURT: Mr. Benitez, anything else before
2 openings?

3 MR. BENITEZ: No, your Honor.

4 THE COURT: Mr. Shuker?

5 MR. SHUKER: No, your Honor.

6 THE COURT: Do we have all of our jurors here?

7 THE DEPUTY: Yes, Judge.

8 THE COURT: I'd like to visit just briefly with
9 Ms. Jerlisha Desire'e, Juror Number 79.

10 Before we do that, hang on, do you have any of
11 the paperwork of your background search?

12 MR. SHUKER: I don't, your Honor. It was
13 pulled off a public record.

14 THE COURT: Do you have citations or case
15 records, case numbers?

16 MR. SHUKER: I will --

17 THE COURT: Bring her in.

18 MR. CHASE: Your Honor, it would be --

19 THE COURT: Correct.

20 THE DEPUTY: Juror entering.

21 THE COURT: Good morning.

22 Come on in right here. Have a seat.

23 MS. DESIRE'E: Anywhere?

24 THE COURT: That's good. Just a little closer.
25 Have a seat right there.

1 Ms. Desire'e, first of all, I did speak with
2 your employer yesterday, and she had contact with
3 me.

4 MS. DESIRE'E: Yes, she called me.

5 THE COURT: So we had a pleasant conversation.
6 I don't think there were any issues there.

7 But I do have a concern. There was a question
8 asked yesterday during the course of voir dire and,
9 actually, the Court asked it. I explained that
10 there were a number of different types of lawsuits
11 that people could be involved in, and that it was
12 important that you disclose the existence of your
13 participation or involvement in a lawsuit.

14 In that list of items, I included that if you
15 had been a party to an eviction, that would be
16 relevant. You did not volunteer, in response to
17 that question, any participation in lawsuits. And
18 during a public record search, we've determined that
19 it appears that you were, indeed, involved in two
20 eviction cases.

21 Is that accurate?

22 MS. DESIRE'E: I got the letter, but I didn't
23 get out already -- I paid everything. I didn't went
24 to court, nothing like that. I was -- I can't
25 remember that.

1 THE COURT: Were there two circumstances where
2 that --

3 MS. DESIRE'E: I only remember one, that was
4 for Knob Hill, and it was just late on the payment,
5 but -- they send the paperwork, but we dispute it.
6 I never got like evicted or thrown out of my house.
7 Nothing. I ended my lease correctly.

8 THE COURT: Were you ever served with any sort
9 of notice from the court about this eviction action
10 showing that you were a party and a defendant to a
11 that issue?

12 MS. DESIRE'E: I can't remember if -- a letter
13 came in the mail, but to say as if a marshal, anyone
14 come to me, no.

15 THE COURT: Do you recall approximately when
16 that was?

17 MS. DESIRE'E: 2013, '14. I was only like a
18 year in that apartment.

19 THE COURT: Okay.

20 Bear with me just one second, please.

21 MS. DESIRE'E: Sure.

22 THE COURT: December of 2014, was there a
23 notice posted on your door by a process server?

24 MS. DESIRE'E: Can't remember. Honestly.

25 And the only one I know, the only apartment I

1 got any kind of notice was Knob Hill, or Affinity.

2 Affinity, Knob Hill, that was their name.

3 But they both were paid off thing, and I
4 finished my lease at the end of February, and I
5 moved out -- I mean, end of January and I moved out.

6 THE COURT: Did you enter into a settlement
7 stipulation, ma'am, settling that case and agreeing
8 to pay the money?

9 MS. DESIRE'E: I agreed to pay. I paid them
10 the rent and everything, yeah.

11 THE COURT: Did you enter into a written
12 stipulation, ma'am?

13 MS. DESIRE'E: Written?

14 THE COURT: Yes, ma'am.

15 MS. DESIRE'E: Can't remember. Honestly. I
16 don't know if I wrote something to --

17 THE COURT: 2014 CC 160690 case, there's a
18 settlement stipulation. Can you pull that up,
19 please. 16069-14-CC.

20 And, ma'am, have you ever been charged with a
21 second degree misdemeanor for driving with your
22 license suspended?

23 MS. DESIRE'E: I think I got a ticket for that.

24 THE COURT: Did you understand that that was a
25 criminal citation as opposed to a civil citation?

1 MS. DESIRE'E: No.

2 That one, I paid the ticket.

3 THE COURT: Can you retrieve this document and
4 show it to Ms. Desire'e, please.

5 Ma'am, you recognize your signature on the
6 second page of that document?

7 MS. DESIRE'E: Yes.

8 THE COURT: Okay. So you entered into a
9 settlement stipulation.

10 MS. DESIRE'E: This was the one --

11 THE COURT: Knob Hill.

12 MS. DESIRE'E: -- the apartment complex gave
13 me.

14 THE COURT: Okay. And you see it's got a case
15 number at the top there?

16 MS. DESIRE'E: Yes.

17 THE COURT: That you were the defendant in that
18 case?

19 MS. DESIRE'E: Okay, now I understand this one.

20 But I didn't do it with attorney or anything, I
21 did it with a leasing people.

22 THE COURT: And, ma'am, in June of 2014, you
23 were hand-delivered papers by a process server in a
24 case, again by Knob Hill, Affinity?

25 MS. DESIRE'E: In June?

1 THE COURT: In June of 2014, did a process
2 server hand you papers?

3 All right, counsel, would you approach, please.

4 (The following is a conference held at the
5 bench.)

6 THE COURT: This is our microphone here. Can
7 you hear me all right?

8 Thoughts?

9 MR. BENITEZ: I agree --

10 THE COURT: Just let her go?

11 MR. SHUKER: Yes, sir.

12 THE COURT: All right. Thank you.

13 (Bench conference concluded.)

14 THE COURT: Ms. Desire'e, during the course of
15 the jury selection process, I reiterated many times
16 how important it was to obtain truthful responses
17 from people.

18 Unfortunately, your responses were not
19 truthful, and --

20 MS. DESIRE'E: I'm sorry.

21 THE COURT: Excuse me?

22 MS. DESIRE'E: No, I said I didn't remember it,
23 I'm sorry.

24 THE COURT: Okay.

25 MS. DESIRE'E: I thought it was -- I didn't --

1 when you said like attorney, I tried to remember
2 everything, and I didn't remember this one. That
3 one was my -- with the notice for the eviction, the
4 hand delivery thing with the -- the leasing people,
5 I did not go to court, nothing, no attorney, nothing
6 was sent. It was just like, hey, you paid up and
7 just had added more in the monthly.

8 I didn't remember that one. Honestly. I
9 apologize.

10 THE COURT: Is there anything else you'd like
11 to tell me? Because I need to finish what I was
12 saying.

13 MS. DESIRE'E: Sorry.

14 THE COURT: I reiterated many times, multiple
15 times, how important it was that the information you
16 give be accurate. And there were three instances of
17 issues that you did not report to us that were
18 inaccurate responses on your part.

19 They've cost us to go through a lot of time and
20 effort, working with you, and me personally, to
21 spend my time and effort on your behalf trying to
22 work with your employer to make sure that you were
23 in a good place here with us in jury service.

24 Under these circumstances, I cannot permit you
25 to continue to serve on the jury. At this time I'm

1 going to discharge you from jury service.

2 MS. DESIRE'E: Thank you.

3 THE COURT: Do you have any personal belongings
4 in the room back there?

5 MS. DESIRE'E: Yeah, my bag and --

6 THE COURT: I'm going to ask that you describe
7 those to the deputy, the deputy's going to retrieve
8 those for you. And if you head out this door here,
9 the deputies will take your juror badge from you.

10 MS. DESIRE'E: Okay.

11 THE COURT: Just pause there, ma'am. Bringing
12 out your personal belongings.

13 Ma'am, ma'am, is that all of your belongings?

14 MS. DESIRE'E: Yes, sir.

15 THE COURT: Okay, thank you.

16 MS. DESIRE'E: Thank you.

17 (Juror exiting.)

18 THE COURT: I would intend to just let the
19 remainder of the jurors know that Ms. Desire'e is
20 unable to continue with us, and that we'll slide
21 folks on over and press on forward.

22 Is that acceptable?

23 MR. SHUKER: Yes, sir.

24 THE COURT: So Ms. Desire'e would've been in
25 the --

1 THE DEPUTY: She's number 8.

2 THE COURT: First seat, so take away 8,
3 exactly, and just have them slide over.

4 Perfect. Thank you.

5 MR. SHUKER: Your Honor.

6 (Discussion held off the record.)

7 MR. BENITEZ: Judge, you think we can move it
8 back just a little bit so I got a view of all the
9 jurors.

10 THE COURT: You're welcome to relocate.
11 There's a seat over there in the corner that's on
12 the end of the seats. That allows you to see all of
13 the jurors. If you want to see what's being written
14 here, you're going to have to relocate anyway.

15 So, the other alternative is there's a seat
16 back here, Mr. Benitez, in this corner as well, will
17 allow you to see that, as well as to see all of the
18 jurors. I have no problem with you relocating there
19 if you'd like to.

20 MR. BENITEZ: Thank you, your Honor.

21 THE COURT: Yes.

22 MR. BENITEZ: And, your Honor, could I get the
23 camera started, so it can run smoothly.

24 THE COURT: We're going to take a break after
25 this opening just to allow you to set up technology.

1 Thank you.

2 Okay. Plaintiff, ready for openings?

3 MR. CHASE: Yes, sir.

4 THE COURT: Mr. Benitez, understand we'll take
5 a quick break to allow you to set up technology.

6 MR. BENITEZ: Thank you, your Honor.

7 THE COURT: Other than that, you're good?

8 MR. BENITEZ: Thank you, your Honor.

9 MR. SHUKER: I'm good. Can I have one minute
10 with Mr. Chase?

11 THE COURT: Yes.

12 MR. CHASE: Thank you, your Honor.

13 THE COURT: Thank you.

14 All right, let's return the jury, please.

15 THE DEPUTY: Yes, sir.

16 MR. BENITEZ: Your Honor, should I relocate
17 now?

18 THE COURT: I'll explain to them that you're
19 going to relocate. That way everybody's
20 understanding.

21 If you would, Mr. Benitez, turn off your mike.

22 THE DEPUTY: Jury's entering.

23 (Jury entering.)

24 THE COURT: Good morning.

25 Thank you.

1 You may be seated.

2 Good morning. Welcome back, ladies and
3 gentlemen. I hope you enjoyed a restful evening and
4 that you're excited about beginning today. We all
5 are.

6 As we do this, I want to just call a couple of
7 things to your attention. Each of you should have
8 been provided at this point a pen and some paper.
9 As we discussed yesterday, if you'd like to take
10 notes, you're welcome to do so. If not, that's up
11 to you.

12 Also, once the witness' testimony begins,
13 that's the paper for you to write questions on if
14 you have questions for the witness, if necessary.

15 You may have noticed that when you enter and
16 exit the courtroom, that we all stand. We do out of
17 courtesy and honor and respect really for the work
18 that you're doing as jurors.

19 When you come and go, you're welcome to come
20 and be seated. If you don't, we're going to end off
21 in a standoff. Please understand that's our
22 motivation for doing that. We really are very
23 grateful to you for the work that you're doing, so
24 thank you.

25 We're going to begin this morning, we have

1 opening statements from counsel.

2 And as the Court indicated to you yesterday,
3 this is not evidence. The lawyers will provide
4 evidence. They'll give you an overview of what you
5 can expect the evidence will show during the course
6 of the case.

7 As we do this, it is possible that the
8 attorneys will need to relocate inside the courtroom
9 while another lawyer is speaking. So, for example,
10 I think Mr. Chase is going to give the opening
11 statement. Mr. Benitez, in order to be able to see,
12 is going to relocate over to a chair over here so he
13 can see everything that's being written on the
14 drawings.

15 Don't take anything from that, it's just our
16 accommodation to make sure everything is on the
17 same -- everything is on the same page.

18 We're ready to begin, Mr. Chase.

19 MR. CHASE: Sir, ma'am, may it please the
20 court.

21 THE COURT: Yes, sir.

22 MR. CHASE: Good morning, folks.

23 Here we go. Getting going, I hope everybody
24 got a good night's sleep and, as promised, we're
25 going to have really great reading, fantastic

1 phenomenal reading here in just a little bit. I'm
2 going to tell you a little bit what the case is
3 about, a little bit more than you've heard. Of
4 course, we said it's a contract case, but you need
5 to know a just a little bit more.

6 What happened was -- and I did this because I'm
7 kind of a visual guy. If you talk to me, I can hear
8 it, but sometimes if I hear it and I see it as well,
9 it means a little bit more to me, and it sinks in.

10 We have a lot of players going on, and so you
11 can't know the players without a score card, so I'm
12 just going to write up who we have.

13 We have Don Hachenberger. That's a long name,
14 Hachenberger. It's not Hochenberger, he'll tell
15 you.

16 And then we have Glenda Joy Stone. She used to
17 be Hachenberger. They were married, and they were
18 married for a long time, but, unfortunately, a few
19 years ago they did divorce. And so, those are the
20 Hachenbergers. And they'll be referred to as the
21 Hachenbergers. And so when you hear Hachenbergers,
22 that's what we're talking about.

23 And then you have the Myers. You have Michael
24 Myers and Jacqueline Myers. She is sometimes
25 referred to as Jackie. So when we refer to Myers,

1 that's what we're talking about. Everybody agrees.
2 So it's the Hachenbergers and the Myers, but
3 everybody understands that Glenda is now Stone.

4 All right. So what happened was, the Myers
5 were avid collectors of this memorabilia and
6 something called petrobilia. And you're going to
7 probably see that name a few times. And the
8 evidence is going to show that petrobilia just has
9 to do with automobiles, and particularly like gas
10 pumps and things like that. It's just old, antique
11 auto related stuff.

12 And so they had a amassed just a ton of this
13 really, really cool memorabilia and it was their
14 passion. And I don't think that there's any
15 question about that. The Hachenbergers were
16 entrepreneurs. They had a lot of businesses and
17 things like that, and they would invest in
18 businesses.

19 And the evidence is going to show that the
20 Myers approached the Hachenbergers to ask them if
21 they would invest in a concept that is now the
22 Route 46 entertainment district. And the concept
23 was to build a barbecue-themed restaurant that has
24 all the -- that really displays the memorabilia.
25 Kind of like if you walk into Cracker Barrel, you

1 know how it has all the old stuff, and it's kind of
2 cool when you go through the store. Well, this is
3 like that times a thousand.

4 And so they had -- what they wanted to do was
5 build the small barbecue place and then like a bar
6 for bands and things like that, and a formal dining
7 room for more formal dinners. And so it's like a
8 big complex and they could have events there and
9 things like that. So it was a pretty big deal, so
10 it was going to cost a lot of money.

11 So the Myers reached out to the Hachenbergers
12 to invest. And they ultimately did invest. And the
13 ultimate result of that was this company called
14 Highway 46 Holdings, LLC, which means limited
15 liability.

16 All right. Going to refer to that often as
17 just Highway 46, so if we were saying Highway 46,
18 we're talking about the company. Okay.

19 All right. So Mr. Jones and I represent Don
20 Hachenberger and Highway 46. And Mr. Benitez,
21 represents the Myers.

22 And then there's another company, Southeast.
23 I'm going to write it small because it doesn't come
24 up a lot. And he represents that company, too, and
25 it's a -- has a part of this. And you'll see that.

1 But let's not get bogged down. Highway 46 Holdings,
2 LLC is the company.

3 And so what happened was, is they got together,
4 Hachenbergers invested the money, the Myers invested
5 their stuff, and they ended up building this
6 beautiful complex. And then, ultimately, the
7 relationship started going the wrong direction. And
8 that's why we're here. So everybody knows who we're
9 talking about, right? Okay.

10 Okay. Now, we talked about the case is about a
11 contract. And what is a contract. It's when people
12 get together and they make a deal. And so, the
13 evidence is going to show to the Hachenbergers, Don
14 and Glenda, the deal was about this case, and why
15 we're here is about enforcing that deal. They
16 figured they entered into a deal and now it needs to
17 be enforced. Because somebody doesn't want to go by
18 the deal.

19 There's an additional issue about some money
20 that the Hachenbergers are saying that specifically
21 Don and Glenda didn't really have a lot to do with
22 it. We need to talk about that. Specifically,
23 Mr. Myers took some money from the company that he
24 shouldn't have, and so it's -- they need to get the
25 money back.

1 So really the two things that the Hachenbergers
2 are here to do is to prove that there was a deal,
3 that they had the contract, and that Mr. Myers took
4 some money that they shouldn't have. And those are
5 the two things.

6 The evidence will show that to the Myers the
7 case is about something completely different. It's
8 about control. It's about total control for
9 Mr. Myers. And what happened was, was when they
10 entered into the deal and they created Highway 46
11 Holdings, they set it up in such a way -- because
12 the Hachenbergers were the ones putting in all the
13 money, they set it up so that, ultimately, Don
14 Hachenberger would have control, had the ability to
15 come in and take control, if he deemed it necessary.
16 And he had absolute control over everything.

17 So you're setting up -- and it was an even
18 partnership, 25 percent to Don Hachenberger,
19 25 percent to Glenda Hachenberger, 25 percent to
20 Ms. Myers, and 25 to Mr. Myers. But, ultimately,
21 when you set up an LLC, there has to be a manager
22 and a managing member. And Don Hachenberger was the
23 irrevocable manager. He could not -- you can't lose
24 control.

25 Having said that, Don Hachenberger's not a

1 restauranteur, he's an investor, and so he was there
2 to invest in money. It was Mr. Myer's dream and
3 Ms. Myer's dream. And so Mr. Myers had all the
4 ideas and the concept that he wanted to go forward
5 and create his dream.

6 And so, initially, the parties agreed that
7 while Don Hachenberger had the ability to take
8 control, Mr. Myers could run the build-out and do
9 things and build this big building and all this
10 stuff and apply to the memorabilia that he loved and
11 set everything up.

12 And that worked for a while, as things started
13 to get going. It's -- but then after a while, the
14 relationship between Don and Mike, Mr. Myers and
15 Mr. Hachenberger, started going south, because
16 Mr. Myers had an awful lot of power.

17 What would happen was, that Mr. Myers was doing
18 the build-out and so they hired a general
19 contractor, who comes in and hires subcontractors to
20 build things and -- but Mr. Myers was the face of
21 the company. He was the one taking care of
22 everything. And he was the one telling people what
23 to do.

24 And so, he would have the general contractor do
25 A, B, C, and D. And then the general contractor was

1 charged with going out and getting the subs to do
2 that. And Mr. Hachenberger would come and check in
3 from time to time, because he started -- it was a
4 lot of money going in to build this really
5 impressive complex.

6 And when he got out there, he saw things that
7 he didn't agree with. He thought that they were
8 really -- they were just really bad decisions about
9 how to build it out, about how things would flow,
10 how the things were going to work. And, ultimately,
11 it was his money and it was his say.

12 But when he would talk to Mr. Myers about it,
13 Mr. Myers, the evidence will show, was becoming
14 increasingly aggravated and increasingly
15 intimidating.

16 Mr. Hachenberger would show up and want to have
17 a conversation about, hey, we can't have the
18 bathroom door open to where the people in the dining
19 room can look straight at the urinal every time
20 somebody opens the door. We need to fix that. And
21 instead of trying to work together, Mr. Myers would
22 get angry, get loud, and get right in his face.

23 And there will be testimony Mr. Myers has a
24 habit of getting right in your personal space, like
25 right in your space, in an intimidating way that

1 it's going to be my way or the highway, no, we're
2 not going to change it, it's done.

3 And Mr. Hachenberger just kept trying over and
4 over to work things out. That's one example. He's
5 going to testify ultimately, about numerous examples
6 that Mr. Myers was becoming increasingly difficult
7 to work with.

8 And so after about two years of this, right at
9 two years, Mr. Hachenberger finally came in and
10 said, I need to take over control. It's costing way
11 too much. It's costing more than I thought. It's
12 costing more than what we budgeted. You're doing
13 things that I disagree with, that I wholeheartedly
14 disagree and I think are bad business decisions.
15 And so I'm asserting my right to take control.

16 And that was the end. Mr. Myers didn't like
17 that. He didn't like anybody taking control of him
18 because that's -- the evidence will show that's what
19 he wants. That's what he has to have, is control.
20 And that's why he's here today, is because he wants
21 control back.

22 But we have to look at the agreements and we
23 have to do what's right because the agreements
24 are -- and everybody said, everybody promised, that
25 they would do what the Judge instructed them on the

1 law, and everybody remembers that from yesterday.

2 And the Judge is going to instruct you what a
3 contract is. And you have your own common sense.
4 And when you come in here, you don't leave your
5 common sense at the door, you bring it in with you.

6 Here's what I have to prove. And you should
7 know that because it's a little weird, it's not
8 like -- this is nothing like television, it's -- we
9 are plaintiffs and we brought an action against the
10 Myers. The Myers. Then we brought an action to
11 enforce this agreement and to get back the money
12 that the Myers took.

13 And then the Myers came back and counterclaimed
14 against the Hachenbergers for a number of things,
15 most of which had to do with trying to get control
16 back.

17 So what's going to happen is, we're going to
18 put on our case about the things that we sued the
19 Myers for. The Myers are going to put on a case
20 that defends that and also puts on their allegations
21 against the Hachenbergers. And the Hachenbergers
22 are going to get back up and defend those
23 allegations.

24 So you have to -- again, it's kind of you can't
25 know the players without a score card. So now you

1 know the circuit, how we're going to get there, but
2 it's kind of going to bounce around a little bit.

3 But, ultimately, this is what we have to prove.
4 This is my job. That on July 7, 2005, the parties
5 entered into a contract -- and I'm going to put a
6 box there because I'm going to come back later and
7 I'm going to ask you if I have did what I was
8 supposed to do.

9 The second thing that I have to prove is that
10 Mr. Myers took some money that he shouldn't have.
11 And that's a conversion claim. Going to come back
12 later.

13 Now, this is what we're going to do. Right
14 after Mr. Benitez and Mr. Shuker finishes their
15 opening statements, we're going to go through and
16 we're going to take a look at what the contract is.

17 And you're going to see a document. It's about
18 this thick, and it has the Myers' signatures, it has
19 their initials on every single page. It has the
20 Hachenbergers' signatures on every single page.
21 That is clear as a bell, that says this is their
22 contract, and it's dated 7/7/05, over and over.

23 You're going to see in the contract that I'm
24 going to present to you this morning, you're going
25 to see checks where Don Hachenberger, pursuant to

1 the contract, some \$288,000 to the Myers that day,
2 July 7, 2005. The Myers accepted the money.

3 You're going to see deeds where the Myers
4 deeded over the property, on which Route 46 sits,
5 over to Highway 46 Holdings, consistent with the
6 contract. And so, every -- they did everything that
7 they were supposed to do.

8 You're going to hear testimony, the Myers moved
9 all of the memorabilia that they promised in the
10 contract. They would move it all into a storage
11 facility that would be paid for by Highway 46
12 Holdings.

13 And then they started an inventory to write
14 down what all it was for insurance so they can get a
15 number on it and figure out how much everything's
16 worth so that they could value it.

17 So you're going to see all of that, and
18 probably by lunch, okay, this, right here, number
19 one, it is -- my job is going to be done I think
20 probably by lunch.

21 Now, Mr. Benitez is going to get up and he's
22 got an opportunity to cross examine Mr. Hachenberger
23 about the things that I said or the things that
24 Mr. Hachenberger actually says that are in the
25 contract. And he's entitled to do that.

1 But at the end of that, I think the contract
2 will clearly -- or the evidence will clearly show
3 that there was no doubt the contract between these
4 parties.

5 Second thing, that is my job, is to show this
6 money. This afternoon David Chauvin is going to
7 come in and testify to -- and he'll be done
8 probably -- depending on how long it takes
9 Mr. Benitez with the cross examination of
10 Mr. Hachenberger, Mr. Chauvin will probably be done
11 by the end of the day today. All right.

12 And he's going to come in and he's going to
13 testify that he was a subcontractor for the -- doing
14 the build-out. And this is back when Mr. Myers was
15 in control of things and when David Chauvin was a
16 contractor, and he built the bars. He was a
17 millworker, and so it's all the woodwork for the
18 bars and all that sort of thing.

19 And then he was doing his thing and then he got
20 contacted by Mr. Myers, that and Mr. Myers said, I
21 want you to submit an invoice to the general
22 contractor for labor, some \$58,000 or so for labor.
23 And then Dave Chauvin said, but I'm not owed \$58,000
24 for labor.

25 Mr. Myers says, submit the invoice and the

1 general contractor will pay it with money that he
2 gets from Don Hachenberger, because Don Hachenberger
3 is the one funding everything, and then I'll let you
4 know later what to do with the money.

5 And then later, as time goes on, Mr. Myers
6 contacts David Chauvin and says, send this money to
7 this company. And one of the companies is a company
8 that is run by Ms. Myers and their son Sean Myers,
9 that never did anything for Route -- for Highway 46
10 Holdings. It's just -- and it was thousands of
11 dollars, just send that to them.

12 Then he contacted him again and said, send this
13 other money to this other company, run by a
14 gentleman by the name of Daryl Phillips, who had
15 done things for Highway 46 Holdings, but needed to
16 get paid. There was a fire at the Myers' house.
17 And so Daryl Phillips went over, and went over and
18 worked on how to fix that.

19 And so, Mr. Myers went and paid Daryl Phillips
20 for the work that Daryl Phillips did on the Myers'
21 house from the money that he got from the
22 contractor, who got the money from Don Hachenberger.
23 And then, because there was a little bit of money
24 left, some \$8,000 or so, told him, just give me the
25 rest straight to Mike Myers. That's not right.

1 At the end of the day, I'm going to be able to
2 come in -- I'm going to be able to check right there
3 that David Chauvin's going to testify that those
4 things happened and that that constitutes a
5 conversion of money out and away from Highway 46
6 Holdings, and specifically from the Hachenbergers.

7 It's important to note about Ms. Glenda -- back
8 when all of this was taking place, the Hachenbergers
9 entered into this deal, Don and Glenda were married,
10 and they had dozens of businesses together, just a
11 bunch of businesses. But they had been kind of
12 moving apart for a while.

13 And Glenda was often -- or Mrs. Hachenberger
14 was often doing things in one part of the country,
15 and Mr. Hachenberger was often doing things in
16 another part of the country, but they were moving
17 apart from each other.

18 While they were still married, however, the
19 companies that they would get involved with, they're
20 still -- that was marital property, and so they
21 always had to sign things together.

22 Mrs. Hachenberger just never had anything -- like as
23 far as talking, negotiating, or anything like that,
24 she was just -- I think that there were some
25 questions in voir dire about -- from Mr. Benitez,

1 about if -- I believe it was, it might have been --
2 about sometimes a husband and wife will sign a
3 contract and they just kind of sign it on together
4 where one side is doing all the negotiating.

5 The evidence will show Mr. Hachenberger was the
6 Hachenberger doing all of the negotiating. Glenda
7 Hachenberger would sign documents that she felt that
8 she needed to, but it's -- but at the same time, she
9 wasn't like intimately involved in the day-to-day
10 operations and everything that was going on.

11 Still, however, it's important, that all of the
12 money that was invested by the Hachenbergers, it was
13 the Hachenbergers jointly, it was both of their
14 money. And the money also that was taken,
15 ultimately, was money that was contributed to the
16 Highway 46 Holdings project by the Hachenbergers,
17 including Ms. Glenda.

18 So that's what we believe that the evidence is
19 going to show. And I think that it's going to be --
20 it's going to be pretty quick. I think that -- I
21 know that you guys have been told it's going to be a
22 three-week trial. We should have ours done today.

23 And so, and then the Myers will get up and
24 they'll put on a case about some things. And,
25 again, I watched everything that they say, it's

1 about getting control back. And as they don't like
2 Don Hachenberger being in control, even though they
3 signed these contracts that gave him complete
4 control.

5 And so I'm not sure how long that'll take, but
6 as soon as we get done with that, then we'll give it
7 to you and hope that you guys render us a good
8 decision.

9 Thank you.

10 THE COURT: Thank you.

11 Folks, we're going to take just a quick break
12 to set up some technology to be ready for the next
13 opening statement. So I'm going to ask you to step
14 back into the jury room for just a couple of
15 minutes.

16 You want to just leave your note pads on the
17 chairs there, facedown, please.

18 We'll be in recess for five minutes.

19 (Jury exiting.)

20 THE COURT: Mr. Benitez, go ahead and set up
21 what you need technology wise.

22 MR. BENITEZ: Yes, your Honor.

23 THE COURT: We'll be in recess for five
24 minutes, if anybody needs the restroom.

25 (Discussion held off the record.)

1 THE DEPUTY: Jury entering.

2 (Jury entering.)

3 THE COURT: All right. Thank you. You may be
4 seated.

5 I think I neglected to mention to you that
6 Ms. Desire'e's just going to be unable to continue
7 with us for jury service, so we'll be seven. And
8 continue on with that.

9 Thank you all for sliding over.

10 All right, we're ready to continue.

11 You may relocate, Mr. Benitez.

12 MR. BENITEZ: Thank you, your Honor.

13 Good morning, ladies and gentlemen. Welcome
14 back.

15 And as you've already gotten a glimpse of what
16 opening statement is all about, an opening statement
17 is for me to stand up here and kind of walk you
18 through what I believe the presentation of the
19 evidence will be. And nothing that we say up here
20 is evidence. Nothing that Mr. Chase said is
21 evidence. We're just trying to give you some
22 guidance.

23 And in this case, it's very important, because
24 this case is quite extensive and quite complicated
25 in a sense, and mostly for somebody that hasn't

1 lived through this case for the last ten years, like
2 some of us participants. So I'm going to do the
3 best I can to kind of give you a roadmap of what
4 you're going to encounter in this case.

5 And I would like to think that it's as simple
6 as Mr. Chase has indicated, but it's not.
7 Mr. Chase's case initially is on a conversion. That
8 means that he's accusing Mike Myers of taking
9 something. And as he indicated, that was during the
10 time when he was the manager and the controlling
11 person of the joint venture between him and the
12 Hachenbergers.

13 And the issue of the contract is going to be a
14 real significant issue in this case. It's not
15 really part of his case on the conversion. It is
16 part of our case in our counterclaims.

17 And the way it works in court, the plaintiff is
18 the person that first files the lawsuit. So there's
19 no -- there's no control over who wins the race to
20 the courthouse. It's whoever gets here first.

21 So whoever gets here first is given the name
22 plaintiff, which is Mr. Chase's client. And the
23 second person is the defendants, which are my
24 clients. It doesn't matter -- it has no
25 significance other than they filed first. So please

1 keep that in mind. And mostly when you think or you
2 start looking at the letter agreement and the
3 operating agreement, which are the two agreements
4 that are at issue in this case.

5 This case started out, and the way I want to
6 present it to you, during this trial is going to be,
7 I'm going to give you a history of the Myers and how
8 they became involved so engulfed in antiques,
9 petrobilia, memorabilia, antique cars, license
10 plates, all kinds of stuff, to the point where they
11 had millions of dollars of memorabilia, and I'll
12 just use that for a short phrase of petrobilia and
13 everything else, but, you understand, antique items
14 with great value.

15 So they got into it a long time ago, and then
16 they came and stumbled on a piece of property that
17 they were able to purchase. And it was a bunch of
18 sections in the property. Eventually they bought
19 all the sections composing the property that we're
20 talking about today. And they owned it well before
21 they met the Hachenbergers.

22 And they started then going through the process
23 of permitting the place. Because they
24 conceptualized a smokehouse. They conceptualized a
25 barbecue place. They conceptualized a place where

1 they can display their antiques. So they started to
2 conceptualize it, which includes permitting it.
3 They went through getting special permits, audio
4 permits. Very expensive process, and they spent
5 hundreds of thousands of dollars of doing that.

6 At some point in time, they saw their vision,
7 they saw what they conceptualized and they said we
8 need some help. We've got millions of dollars in
9 memorabilia, but we need some help to go ahead and
10 put this venture forth, and they started looking for
11 investors.

12 Now, they eventually came with the
13 Hachenbergers and they formed a relationship. But
14 it's important for you to keep in mind that at that
15 point in time, there'll be testimony with respect to
16 what Mike Myers and Jacqueline Myers were willing to
17 put together. They were not just going to give away
18 the million dollars worth of property, memorabilia,
19 they're not going to give away their land. They're
20 not going to give away their dream and their
21 concept.

22 They just wanted an investor, somebody that
23 would be able to finance the place. Either finance
24 it by loaning the money or finance by signing a
25 guarantee with a bank so that they can get the loans

1 necessary to make their concept, their dream, a
2 reality.

3 And that's how they approached. They
4 approached a lot of people. Some of the people that
5 they approached you may be hearing testimony from
6 during this trial. And that was the essence. The
7 essence was that.

8 The problem comes in -- and the reason why
9 we're now talking about a letter agreement and an
10 operating agreement, and you're going to hear those
11 words relentlessly during this trial, just about
12 every day we're going to talk about the letter
13 agreement or the operating agreement.

14 And what the evidence is going to show, in the
15 state of Florida, when you set up a limited
16 liability company, like Highway 46 Holdings, LLC,
17 you have to register it with the state. And the way
18 you do that is you organize it. You file articles
19 of organizations. And then, during the filing of
20 those articles of organizations, you indicate who's
21 going to be the manager, or managers, controlling
22 that company.

23 In this case, the evidence will show that
24 Donald Hachenberger went ahead and filed articles of
25 organization for this limited liability company.

1 And he appointed comanagers, himself and Mike Myers.
2 And that was in approximately May of 2005. They
3 were still talking about how they were going to do
4 this joint venture, what their responsibility's
5 going to be. Exactly who was going to do what and
6 who was going to be responsible for what.

7 During this negotiation, there was an attorney,
8 the attorney was Kevin Donaghy, and you'll hear
9 about Kevin Donaghy. Kevin Donaghy was Donald
10 Hachenberger's and Glenda Hachenberger's attorney.

11 And that he represented them and he also
12 represented Highway 46 Holdings, LLC, because he was
13 the one that had the doings of organizing the
14 corporation or the company, and he was the attorney.
15 He was going to serve as the attorney for the
16 company.

17 Not only that, eventually in the letter
18 agreement, he appoints himself as secretary of that
19 company.

20 But getting back to the organization, the
21 company's organized, Kevin Donaghy does the
22 paperwork, and now they have to do something that is
23 called an operating agreement, if they want to. The
24 law in the state of Florida doesn't require it, but
25 the evidence will show that in this case, there was

1 an attempt at doing an operating agreement.

2 And the operating agreement basically is like a
3 bylaws in a corporation, it kind of regulates the
4 company. So when people have a dispute and you want
5 to know whether you have the right to do something,
6 you go look at the operating agreement.

7 In this case, they not only did -- they tried
8 to draft an operating agreement, but they also tried
9 to draft a letter agreement.

10 Now, letter agreement is just what it is. It's
11 just an agreement between the parties in this case.
12 And the evidence will show that in May of 2005, Mike
13 Myers met with Kevin Donaghy and he showed him some
14 draft forms and they talked about it and they had
15 some questions and some problems.

16 They then went ahead and met again in July 7,
17 2005. And July 7th is going to be a very, very,
18 very important date in this case. July 7, 2005 is
19 when the second meeting that Mike Myers has with
20 Kevin Donaghy, the attorney for the Hachenbergers,
21 they are presented with an operating agreement and a
22 letter agreement.

23 They spend hours there at their office, and
24 eventually Kevin Donaghy obtains the signature of my
25 clients, Mike and Jacqueline Myers, on the letter

1 agreement, and the operating agreement.

2 The evidence will show that that's not the end.
3 Because at that point in time, Kevin Donaghy during
4 that meeting would not allow access to Donald or
5 Glenda Hachenberger. Would not interchange,
6 negotiate, change anything that he had already
7 prepared for that meeting. Instead, what he did is,
8 he tried to convince the Myers to go ahead and sign
9 the agreements, the letter agreement and the
10 operating agreement, and leave it with him.

11 And the reason why Mike Myers and Jacqueline
12 Myers eventually signed the agreements was because
13 there was something else going on.

14 Remember, I told you about the property, the
15 land that was permitted to do the conceptional (sic)
16 that Jackie and Mike Myers had conceptualized. And
17 the permits were going to be expiring. Also, the
18 bank was owed money and the bank needed to get paid
19 on the land.

20 So two things were motivating the transaction
21 at that point. And, at that time, if the permits
22 were not renewed, it would have been very hard to
23 get them back.

24 So what they decided to do is go ahead and
25 transfer the land from Mike Myers to Highway 46

1 Holdings. They did that that day. Mike Myers also
2 received some money for that and for all the money
3 that they had spent conceptualizing and permitting
4 the property. But, they had a lot of issues.

5 You just don't go into a business relationship
6 with somebody at this level without ironing out
7 everything. That includes ironing out how you're
8 going to operate, who's going to have authority,
9 whether there's by sale agreements, employment
10 agreements, and so on.

11 And the evidence will show that during this
12 meeting, this extensive meeting where they were
13 shown these documents, and you'll see the documents
14 and you'll be able to try to read them for yourself,
15 but when that is all going on, the Myers were
16 saying, we're not going to sign, we're not going to
17 sign unless we get everything done.

18 And Kevin Donaghy indicated that he's going to
19 hold the signed documents in escrow. He's going to
20 go ahead and record the land, because that needed to
21 be done. And that was done. But I'm going to -- he
22 was going to keep the letter agreement and the
23 operating agreement that he finally got the Myers to
24 sign in escrow, which means that he was not going to
25 release it, to anybody, to the Hachenbergers, for

1 signature, until they resolved all their
2 differences.

3 Now, what the evidence will also show is during
4 this meeting, Mike Myers and Jackie Myers said, when
5 Kevin Donaghy was telling him, hey, listen, we'll
6 take care of everything, just sign these documents,
7 I'll keep them in escrow.

8 Before they signed them, they said, no, we
9 don't believe you. That's not good enough. Give me
10 something that shows that there's things to do, that
11 this is not a done deal. Because they didn't want
12 to happen what is now happening.

13 And what Kevin Donaghy did is left the room,
14 typed up a note to Donald Hachenberger, and you'll
15 see that note, with a number of items left to be
16 done. The Myers then received that note and said,
17 that's not good enough. Because later on I'm going
18 to -- later on something may happen.

19 And they took a copy of the letter agreement
20 that they were given on May of 2005. Remember, I
21 told you that the evidence will show that there was
22 a prior meeting with a letter agreement and the
23 operating agreement on May of 2005. During that
24 time, there was a letter agreement, a proposal,
25 which Mike Myers had carried to the meeting on

1 July 7th.

2 And Mike Myers said to Kevin Donaghy, no, that
3 note from your -- whether you typed it or your
4 secretary typed it, or whoever, it's not good
5 enough. Write on top of this document the things
6 that we have left to do. And you will have in
7 evidence, handwritten by Kevin Donaghy, those items.

8 Further, I submit to you the evidence will show
9 that, in fact, Kevin Donaghy told them that they
10 weren't going to release the documents, the letter
11 agreement or the operating agreement.

12 The evidence will also show that nobody, Glenda
13 Hachenberger, nor Donald Hachenberger, signed the
14 agreement in July of 2005. Nor did they sign it in
15 August of 2005. Further indicating that what Kevin
16 Donaghy told the Myers was, in fact, was. That is,
17 that he was going to hold it in escrow and not let
18 it out.

19 Kevin Donaghy then leaves the employment of
20 Donald Hachenberger, for whatever reason, whether he
21 was fired or resigned, that's for you to decide, or
22 to consider, depending on the testimony. But he
23 left in September. And his office was in the same
24 office as Donald Hachenberger.

25 And the evidence will show that on

1 September 27, 2005, Donald Hachenberger somehow gets
2 the letter agreement and the operating agreement and
3 signs it. And then eventually in October, I
4 believe, 2005, Glenda Hachenberger signs it.

5 I submit to you that the evidence is that the
6 only reason they were able to sign is because Kevin
7 Donaghy left their employment and left the contracts
8 in his office, because his office was in Donald
9 Hachenberger's office.

10 And now, those are the letter agreements that
11 you are going to get paraded during this trial, with
12 signatures from everybody as effective letter
13 agreements and operating agreement. And I submit to
14 you that the evidence will be that those are not.

15 And, in fact, there was an agreement by Kevin
16 Donaghy as the agent of Donald Hachenberger and
17 Glenda Hachenberger to hold those things in escrow
18 and to hold them there and not let them out until
19 everything was resolved. And that was breached.

20 And that is our first claim. That is our very,
21 very first claim in this case. A breach of an oral
22 agreement by Kevin Donaghy, to keep that letter
23 agreement and operating agreement in escrow, in his
24 possession, in his custody and control. And not
25 allow anybody to let it, to let it, let it be

1 signed. Because this would happen.

2 And you will read -- and I submit to you that
3 once you get the letter agreement, you will read it.
4 And I will ask you to read it. Because it is
5 difficult to understand why anybody would have
6 signed those without having all kinds of things
7 qualify. So our claim is the breach of contract.

8 But also I've got, I submit, the Myers have
9 three other claims, right next to that that are
10 related. And that is, fraud in the inducement.

11 We're claiming that Kevin Donaghy, as the agent
12 for Donald Hachenberger and Glenda Hachenberger,
13 fraudulently induced my clients to sign that
14 agreement under the pretense that he was going to
15 hold it as a nonbinding agreement in his possession
16 and not give it to Donald Hachenberger or Glenda
17 Hachenberger to sign it.

18 And the next one would be intentional, that he
19 did it intentionally. But if you don't find that he
20 did it intentionally, we have negligently, that he
21 negligently left it behind when he left his office,
22 or he gave it to Donald Hachenberger against the
23 express understanding of my clients.

24 And those are the first claims that we have.

25 Now, the problem is, as you can imagine, that

1 the letter agreement Kevin Donaghy leaves in
2 September of 2005, there will be testimony that
3 Donald Hachenberger and Mike talked and tried to
4 work out things. And they, basically, said, hey,
5 listen, we'll work it out at the at the end when we
6 figure out the bottom line and this and that.

7 And nothing really got finalized until about
8 2007, when Donald Hachenberger decided to change the
9 entire concept of this project. It was
10 conceptualized as Gassey Jack's. And you'll see
11 evidence of that conception. And that's how it was
12 sold. That's how Mike Myers and Jackie Myers were
13 selling investors to come in, Gassey Jack's. And
14 that's how it proceeded.

15 And he was in full control, and he was a
16 comanager, and that comanager position was renewed
17 in 2006, by Donald Hachenberger, in 2007, by Donald
18 Hachenberger. So at some point in time, Donald
19 Hachenberger decided that he didn't like the Gassey
20 Jack's concept. And four weeks -- about four weeks
21 before opening the smokehouse for Gassey Jack's, he
22 terminated Michael Myers.

23 Now, the evidence will show he had no right to
24 do so. But he relied on the letter agreement and
25 the operating agreement that was released from

1 escrow. And he said, I've got control of -- the
2 letter agreement that says that I've got control.
3 The letter agreement says whatever I say needs to be
4 done, and I'm terminating you.

5 And he got him out of the project, physically.
6 I mean physically to the point that he used law
7 enforcement to get him off the property. And as a
8 result, he's been shut off from the business. He
9 didn't continue to receive his mail, he didn't have
10 access to his property.

11 And when he shut it down, he included property
12 that didn't even come under the heading memorabilia,
13 petrobilia or anything else similar. It was just
14 the personal property of Mike Myers, like air
15 compressors, books that belonged to his family,
16 things that -- whatever was in the warehouses or the
17 possession or control that Donald Hachenberger could
18 exercise under this letter agreement, that was kept
19 from Mike Myers and has been kept for the last seven
20 or so years.

21 And that is part of our other claim, our
22 claim -- next claim is conversion, that Donald
23 Hachenberger has taken and Highway 46 has taken the
24 property of Mike Myers. Not only the memorabilia,
25 which arguably could be within the confines of the

1 letter agreement and the operating agreement, but
2 his personal property.

3 And we're going to be asking you to render a
4 verdict that he took it, and that the damages should
5 be awarded for that.

6 When you run a limited liability company as a
7 manager, you have certain responsibilities. And
8 some of those responsibilities include a duty of due
9 care and a duty to exercise your power and your
10 discretion and good faith and fairly deal with the
11 members and the comanagers.

12 And we are also bringing a case against Donald
13 Hachenberger for violating those duties. It
14 includes everything I've mentioned, taking his mail,
15 taking his property, terminating his services.

16 I forgot to mention the evidence will show that
17 Mike Myers was being paid for his services at that
18 point he was terminated from his employment. And
19 only because Donald Hachenberger thinks he has the
20 right to do that under the letter agreement. That
21 should've been kept in escrow.

22 And the evidence will show, and we'll present
23 to you, the evidence, the property that has been
24 taken and the values that are reasonable as to that
25 property. Mike Myers is a well -- is a very

1 competent person in the field of antiques and he'll
2 provide to you that information.

3 So, getting back to what started this entire
4 phase of my opening statement, when we talk about
5 the letter agreement, first, it doesn't belong
6 there. But when it gets to the right place and we
7 get to present the evidence, you will see that
8 that -- the evidence will show that there is no
9 letter agreement. That, in fact, the parties are
10 50/50. That the parties are what they are.

11 And I also mentioned to you that if you look at
12 the letter agreement, if you get to that point that
13 you're looking at the letter agreement, because you
14 think, well, maybe there's something here, and
15 you're looking at it, look at it carefully.

16 Because what the letter agreement basically
17 says is that Donald Hachenberger is just going to
18 take over monetarily. In other words, he's going to
19 go ahead and pay off the land that's owed
20 1.3 billion. And the property was appraised within
21 two years of that date at about 2.9 million. But
22 he's going to pay off about 1.3, and then he's going
23 to give Mike Myers about 300,000 for the expenses
24 that he's paid.

25 And he pays that, but then he says, that's a

1 note, I need it back. So it's almost like he's
2 lending the money. Under the lender -- the same
3 thing for the 300,000 for the 400,000, depending on
4 how you look at it, he's not giving it, he's lending
5 it. Not only that, in the letter agreement, he
6 gives himself a 1 percent managing fee. Remember,
7 he's not managing. As of 2007, Mike Myers is doing
8 everything. He gives himself --

9 What I'm getting at is, the evidence will show
10 that the letter agreement itself is so unreasonable
11 and one-sided, that it's not even -- it's not even
12 close to being fair, to the point that Hachenberger
13 gave nothing, no consideration to Mike Myers for
14 that letter agreement. Just, basically, hey, I'm
15 going to give you, and then you give me all the
16 property.

17 The dispute is also going to be, with respect
18 to the -- what happened -- if you accept the letter
19 agreement, what happens -- what happened on July 7,
20 2005, was the memorabilia was given to Donald
21 Hachenberger and Highway 46, or was it not. And
22 then, what memorabilia was given to Highway 46 or
23 was not.

24 And you will look at that contract and that
25 contract -- and I'll point it out during the trial,

1 the contract says, agrees to transfer. So it says
2 Myers agrees to transfer some memorabilia. And
3 then, later on in that same paragraph, it says, and
4 the parties will get together and identify the
5 memorabilia being transferred and the value to it.

6 And I submit to you that those are important
7 considerations for you to keep in mind. You've got
8 to look at that paragraph carefully, because their
9 position right now is that Mike Myer's memorabilia,
10 wherever it is, even in his private home, belongs to
11 Donald Hachenberger or Highway 46.

12 So, the point is, that when you look at this
13 case, overall this case is -- and I -- I hate to use
14 the same words that Mr. Chase used, he used that
15 during voir dire and he's used it again, and that
16 is, bully. This is -- this is a case that the
17 evidence will present there is a bully on the block.

18 But it isn't Mike Myers. And it isn't Jackie
19 Myers. But there is one.

20 With respect to the last claims that we have,
21 the duty of care, and the good faith and fair
22 dealing, those are statutory; in other words, that's
23 the law. The Judge will instruct you on the law.

24 And I submit to you that Hachenberger's conduct
25 of having taken over the project under the pretense

1 of the letter agreement, and then taken all his
2 property, including property that could not possibly
3 be conceptualized as memorabilia or petrobilia, or
4 anything else, and keeping it and exercising
5 dominion and control, is enough having to convert
6 the property. And also violates the duty of care
7 and the good faith and dealing inherent in every
8 action by a manager.

9 And I appreciate your -- and I hope I haven't
10 given you too much, but I think it's important for
11 you to know this at the start, even though nobody
12 expects you to memorize it, it took us a while to
13 get a handle on it, anyways, as the years went by.
14 But it was important to let you know where we're
15 going to end up.

16 We're going to end up -- it's going to be a
17 long road, but at the end, the issue's going to be
18 whether those letter agreements and operating
19 agreement should ever, ever have formed a basis for
20 anybody to make any kind of a claim.

21 Thank you.

22 THE COURT: Thank you.

23 Do you need a reset or are you comfortable to
24 proceed?

25 MR. SHUKER: I'm comfortable with the jury.

1 THE COURT: That's fair. Let's proceed.

2 MR. SHUKER: May I approach.

3 THE COURT: You may. Thank you.

4 MR. SHUKER: May I begin, your Honor?

5 THE COURT: You may. Thank you very much.

6 MR. SHUKER: Thank you.

7 Good morning. Nice to see you all again. To
8 reintroduce myself, my name is Scott Shuker.

9 Sitting at counsel table with me is my partner
10 Marianne Dorris. She's also my partner in life,
11 she's my wife. So we really -- when we bring things
12 home, we really bring things home.

13 And also at counsel table is Ms. Glenda Joy
14 Stone. And, as you've heard, she was the former
15 wife of Donald Hachenberger, and she changed her
16 name in 2013, after the divorce was final.

17 I'm a firm believer in getting straight to the
18 point. And there are really two points in this
19 case.

20 The first point is that in everything you'll
21 see, there were two documents signed by Ms. Stone,
22 and by the Myers, and Donald Hachenberger. And
23 those documents became effective on July 7, 2005.
24 And those documents are the operating agreement,
25 which is, in essence, a contract that says how an

1 LLC works. And a letter agreement that further
2 specified how this LLC that would own the
3 entertainment complex would work.

4 And those two documents make very clear one
5 thing -- several things, but one thing as to my
6 client. She was a passive investor. She let her
7 and her husband's money be used, but beyond that,
8 she didn't play really any role in operating this
9 restaurant or the decisions it would make.

10 The second point in this case is the
11 overwhelming lack of evidence about the role or the
12 statements or the behavior of my client, Ms. Stone.
13 You will hear from a number of witnesses, and you'll
14 see a whole bunch of documents and almost none of
15 those, other than the operating agreement and the
16 letter agreement, will involve my client.

17 And we believe that through the two documents
18 she did sign, and through the lack of evidence from
19 the other witnesses, and the documents that you see,
20 regarding Ms. Stone, you'll be led to the
21 inescapable conclusion that she is not liable for
22 what went on here, and she is certainly not liable
23 to the Myers.

24 To be more specific on what will come out, what
25 we believe the evidence will show, there -- or won't

1 show, there will be no evidence that Ms. Stone made
2 any decisions on how to build this restaurant, how
3 to pay for its operations. She never participated
4 in the design of it or the -- whether it was a
5 Gassey Jack's or Highway 46.

6 She never hired an employee. She never fired
7 an employee. She never hired a lawyer. She never
8 hired a CPA. And she never negotiated with vendors
9 or the builders. So then, what will the evidence
10 show that Ms. Stone was doing regarding this?

11 We'll put Ms. Stone on the stand. What we'll
12 demonstrate is the following: Don and Glenda had a
13 marriage that lasted 38 years. Through that
14 marriage, they two were together, and you'll learn
15 that they built from scratch what ultimately became
16 the largest franchisee of Re/Max in the east coast.
17 And that they were successful in that business that
18 they built from scratch. And they raised a family.

19 But, as is often the case, unfortunately, that
20 marriage started to turn sour. And in August of
21 '04, so before any of this happened, Don and Glenda
22 separated.

23 And at the same time, this was going on, this
24 upheaval of a 38-year marriage starting to come
25 apart, they also had to decide how to transition

1 this business they built, the very successful Re/Max
2 business. And so there was a huge amount of
3 upheaval in Ms. Stone's life. And she actually
4 decided, because of that, in August of '04, to move
5 to Colorado.

6 So these initial discussions where you heard
7 Mr. Benitez said there was a lawyer there for
8 Mrs. Hachenberger, Ms. Stone, no, there wasn't. She
9 moved to Colorado, and the evidence will show she
10 didn't participate, she didn't negotiate, and she
11 certainly didn't authorize anyone to speak on her
12 behalf.

13 Glenda actually will testify she knew that
14 there was this business opportunity, and all she
15 knew of it is that it was going to be a car or a
16 memorabilia-themed restaurant, and she thought that
17 would provide a good vehicle, no pun intended, for
18 her son to get involved in a business. Because he
19 was trying to find what he was going to do in life,
20 and he loved cars. So that's what she knew about
21 it.

22 The upheaval that started in the summer of '04,
23 for Ms. Stone continued through the formative years
24 of this business, in '05, '06 and '07. Ms. Stone
25 lost a grandchild in March of '05, came back to

1 Florida for that. And then went back to Colorado.
2 She dealt with a long-term illness of her parents,
3 who passed -- both passed in '07, and she was
4 traveling back and forth to Oklahoma to deal with
5 that.

6 And what you will find is, this restaurant and
7 the building of it and the constructing of it and a
8 number of these issues were the last thing on her
9 mind. What she did is, at the request of
10 Mr. Hachenberger, she signed an operating agreement,
11 as did everybody else, and a letter agreement, as
12 did everybody else. And those said that they were
13 effective on July 7, 2005.

14 It also said a very other important thing.
15 They say no other agreements, no other oral
16 agreements are effective, anything else said that's
17 not in these two, are not effective. And we're
18 going to live and die by these two agreements.

19 Importantly, Ms. Stone also agreed that their
20 money that they made through the years with these
21 Re/Max could be used to help fund this business.
22 And over 1.5 million in the initial year of this, of
23 her and her husband's money, was used to pay off
24 this property that the Myers owned that was in
25 default with a bank loan and behind on its taxes.

1 So they helped bail out -- their money helped
2 bail out the Myers' property.

3 You heard Mr. Benitez say, and they will try
4 and introduce evidence, that a Mr. Donaghy, a
5 lawyer, made some kind of statements on Glenda
6 Myers' -- or Glenda Stone's behalf. And we believe
7 the evidence will show that Mr. Donaghy was never
8 Ms. Stone's attorney. He represented their
9 businesses, the Re/Max business. And he did the
10 work for Highway 46. He drafted these documents,
11 but he was never her attorney.

12 She never signed an engagement letter with him.
13 She never paid him to be her attorney. And she
14 certainly from Colorado, which is where she was on
15 July 7th, never authorized him to say anything about
16 holding things in escrow, or oral agreements, or
17 certainly didn't attempt to have him induce the
18 Myers to sign all these pages and initial all these
19 pages and accept their \$1.3 million to pay off their
20 defaulted bank loan. She never did any of that.

21 And before you get to those statements, you
22 should be clear that there will be no evidence that
23 there was ever a written escrow agreement. This is
24 an alleged oral escrow agreement, and the only
25 witnesses who will say and testify to this escrow

1 agreement are the Myers. The ones who then would
2 benefit by it.

3 Ms. Stone will not testify that there was an
4 escrow agreement. Mr. Hachenberger will not testify
5 that there was an escrow agreement. Mr. Donaghy
6 will not testify that there was an escrow agreement.
7 And there certainly was never one in writing.

8 So what you will be left with are two documents
9 that everybody signed, unrebutted, that the Myers
10 took 286,000 from my client on that day to go pay
11 their past due taxes and pay the past due bank loan.
12 And then took almost 1.3 million from my clients to
13 pay off the loan that was in default.

14 Because once the bank defaults and was getting
15 ready to foreclose on that property, then that dream
16 was gone, whatever it was. And so it was actually
17 my clients that saved that.

18 And while Mr. Benitez talked about, well, there
19 was this oral escrow agreement and they never
20 thought it would come out while things were worked
21 out. There will be no evidence that prior to
22 Mr. Myers being fired two years later, no evidence,
23 that he ever said to Don, Glenda or Highway 46, hey,
24 the documents aren't done.

25 And never said, hey, don't take -- don't pay

1 the \$1.3 million to the bank, the documents aren't
2 done. We didn't -- we didn't pay the \$1.3 million
3 for four months after July 7th. We paid some
4 interest payments right away.

5 So time went on. The evidence will show months
6 and months went on, with nobody saying, hey, the
7 documents aren't done, hey, when are we going to
8 take these documents out of escrow. The evidence
9 will show that that never came up until Mr. Myers
10 was fired.

11 So, we believe two things. As I said, getting
12 to the point, one, my client signed two documents
13 that unambiguously showed she allowed her money to
14 be invested and had no real role after that. And
15 she didn't take part of anything that happened after
16 this.

17 And that the only evidence that is anything
18 other than the two written documents were something
19 that was created by the Myers for the benefit of
20 Mr. -- the Myers, and who -- nobody else who comes
21 to talk to you will have any understanding of. And
22 that never came up during the many months when my
23 clients were spending millions saving their
24 property.

25 Pardon me, I'm not choked up. I just got the

1 same cold that the Judge does.

2 Thank you for your attention. And I look
3 forward to seeing you again. Thanks.

4 THE COURT: Thank you, counsel.

5 Now, folks, it's about 10:40. Let's go ahead
6 and take our midmorning recess. We'll be recessed
7 for 15 minutes. So we'll resume back at 10:55.

8 During this time, all of the same cautions will
9 apply. I'm going to tell this to you every time you
10 leave, so forgive me for repeating myself. They're
11 very important.

12 Don't talk to each other or anybody else, face
13 to face or electronically, about the case.

14 Don't conduct any independent research on
15 anything having to do with any of the issues in the
16 case.

17 And, again, please forgive counsel, if you
18 happen to run into them during a break or lunch
19 hour, that they can't communicate with you. If they
20 did, it would be improper.

21 And certainly I would expect that you would
22 report that to the deputy if that occurred.

23 All right. Thank you very much.

24 You may recess for 15 minutes.

25 (Jury exiting.)

1 THE COURT: We'll be in recess for 15 minutes.

2 If you could, just go ahead and reset the
3 courtroom, Mr. Chase, be ready for
4 Mr. Hachenberger's testimony.

5 Thank you.

6 MR. CHASE: Yes, sir.

7 (Discussion held off the record.)

8 THE DEPUTY: Everyone please rise, the court
9 will come to order.

10 THE COURT: All right. I had a request from
11 two of the jurors to contact employers or other
12 circumstances.

13 Ms. Apo asked that I contact the elementary
14 school where she's trying to get her child
15 preregistered.

16 I've accomplished that, worked out arrangements
17 for her to be able to do that. So that's a
18 nonissue, I think it's going to be resolved.

19 The other call, I've not had a chance yet to
20 make to the employer, who I'll continue working on
21 behalf of. That's on behalf of Mr. Rucker, Juror
22 Number 222.

23 All right, plaintiff ready?

24 MR. CHASE: Yes.

25 THE COURT: Return the jury, please.

1 (Jury entering.)

2 THE COURT: All right. Thank you.

3 You may be seated.

4 Ms. Apo, I just wanted to update you. I did
5 speak with the elementary school and I have some
6 news for you. After lunch break, I'll take just a
7 minute to share that with you privately.

8 MS. APO: Okay, thank you.

9 THE COURT: Thank you.

10 All right, we are ready to proceed with
11 testimony.

12 Mr. Chase, call your first witness.

13 MR. CHASE: If it pleases the Court, we would
14 call Donald Hachenberger to the stand.

15 THE COURT: Thank you.

16 Mr. Hachenberger, if you would step forward,
17 please.

18 THE WITNESS: Can I bring this water?

19 THE COURT: Yes, you may. Thank you.

20 Sir, if you would pause, raise your right hand,
21 face the clerk to be sworn.

22 THEREUPON,

23 DONALD HACHENBERGER

24 was called as a witness and, having first been duly
25 sworn, testified as follows:

1 THE COURT: Thank you, sir.

2 If you could just walk on around and have a
3 seat in that chair right there. The chair will
4 spin, but won't move forwards or backwards. You
5 have to adjust that microphone where it's
6 comfortable.

7 THE WITNESS: All right, thank you.

8 DIRECT EXAMINATION

9 BY MR. CHASE:

10 Q. Good morning, Mr. Hachenberger.

11 A. Good morning.

12 Q. We're going to take some of your testimony a
13 little out of order because I want to try to get as much
14 of the reading done before everybody goes to lunch,
15 because it's really hard to read after lunch.

16 MR. CHASE: May I approach the witness, Judge.

17 THE COURT: You may.

18 Q. I'm showing you what's been previously marked
19 for identification as Plaintiffs' D.

20 Can you take a look at that and tell me if you
21 recognize that document?

22 MR. CHASE: And for the record, counsel has
23 been given a copy.

24 A. Yes, sir, I do.

25 Q. And what is that document?

1 A. This is the closing statement, the operating
2 agreement, and the letter agreement, and all the
3 exhibits attached to it.

4 **Q. Do you recognize that to be a true and accurate**
5 **representation of the documents you recall back then?**

6 A. Yes, sir.

7 MR. CHASE: At this time, we would submit that
8 in evidence as Plaintiffs' Exhibit 1, sir.

9 THE COURT: Any objections?

10 MR. BENITEZ: Lack of foundation, Judge, for
11 each exhibit. It sounds like this is -- I
12 apologize. Lack of foundation.

13 THE COURT: Approach, please.

14 (A bench conference was held outside the
15 hearing of the jury.)

16 THE COURT: Those are the closing documents,
17 are they not coming in evidence?

18 MR. BENITEZ: They are coming in evidence.

19 THE COURT: Then what's the objection?

20 MR. BENITEZ: My objection is they're, coming
21 in with, explaining the cherry items.

22 THE COURT: If they're all coming in, what
23 difference does it make?

24 Don't you want to be able to refer to them as
25 well?

1 MR. BENITEZ: Eventually they're going to come
2 in. Yes, yes, they will come in, Judge. I'm
3 just -- my objection is that they were
4 cherry-picking and explaining to the jury.

5 THE COURT: Mr. Benitez, that's nonsensical.
6 If all of these documents are coming in,
7 there's no objections raised to any of them, are
8 there?

9 MR. CHASE: No, sir.

10 THE COURT: On the exhibit list.
11 They're coming in, any objections are waived.
12 (Bench conference concluded.)

13 THE COURT: Just for the record, the objections
14 are waived and the document will be received in
15 evidence as the Plaintiffs' Exhibit Number 1.

16 MR. CHASE: Thank you, Judge.

17 Am I back on?

18 THE COURT: If you'll hand that to the clerk so
19 she can mark it appropriately, please.

20 (Plaintiffs' Exhibit D for identification was
21 admitted in evidence as Plaintiffs' Exhibit 1.)

22 BY MR. CHASE:

23 **Q. Mr. Hachenberger, we're going to jump right in.**

24 **All right, sir, you got your -- you got reading**
25 **lenses on?**

1 A. Is it possible to make this a little larger?

2 **Q. I think so.**

3 A. I'm old.

4 **Q. Can you see that?**

5 A. Yes, sir, I can.

6 **Q. And can you publish that to the jury.**

7 A. Closing statement. The following is the
8 closing statement on July 7, 2005, pursuant to that
9 Highway 46 Holdings, LLC letter agreement and the
10 operating agreement of Highway 46 Holdings. The parties
11 acknowledge that the following documents have been
12 executed today.

13 **Q. Next. There's a list of six items there.**

14 **Could you publish those to the jury.**

15 **Are those the items that were signed that day?**

16 A. Correct. Number 1, Highway 46 Holdings, LLC,
17 letter agreement.

18 Number 2, Highway 46 Holdings, operating
19 agreement.

20 Number 3, the assignment of licenses, permits,
21 plans, contracts and warranties.

22 Number 4, the owner's affidavit.

23 Number 5, a quitclaim bill of sale.

24 And number 6, special warranty deed for State
25 Road 46 property.

1 **Q. Could you publish that next item.**

2 A. Michael and Jacqueline Myers, by their
3 signature below, confirm that they have received the
4 amounts due them as set forth below, and acknowledge
5 that Highway 46 Holdings, LLC, has received the amounts
6 due the company.

7 **Q. Is that an acknowledgment that everybody got**
8 **what they were supposed to get?**

9 A. Yes, sir.

10 **Q. On that day, July 7, 2005?**

11 A. Yes, sir.

12 **Q. What's the next thing say?**

13 A. Closing statement, Hachenberger noninterest
14 bearing loan, within 120 days, for \$1,300,000.

15 **Q. Did you, in fact, make that loan?**

16 A. Yes, sir.

17 **Q. Next -- or and then what's the next thing it**
18 **says?**

19 A. Interest-bearing loan of \$400,000 paid by prior
20 contributions for Highway 46 expenses, interest payment,
21 to Fifth Third Bank.

22 **Q. Before you go on further --**

23 A. I did.

24 **Q. That's the 75,000?**

25 A. I'm sorry.

1 **Q. That's okay.**

2 A. Highway 46 expenses of \$75,000?

3 **Q. Yes, sir.**

4 A. Interest payment to Fifth Third Bank for
5 \$7,491.63.

6 **Q. Does that represent money that you had already**
7 **tendered?**

8 A. Yes, sir.

9 **Q. And what is the next statement?**

10 A. Contribution upon execution, a check to Michael
11 and Jacqueline Myers for \$288,974.83. Check --

12 **Q. Sir, did you tender that money to Michael and**
13 **Jacqueline Myers?**

14 A. Yes. Yes, sir.

15 **Q. And did they accept it?**

16 A. Yes, sir.

17 **Q. Did they cash it?**

18 A. Yes, sir.

19 **Q. It was a cashier's check; is that correct?**

20 A. That's correct.

21 **Q. The money left your bank account?**

22 A. Yes, sir.

23 **Q. What's the next thing?**

24 A. Check to Highway 46 Holdings, LLC, for
25 \$28,533.54.

1 Q. And you made that payment as well?

2 A. Yes, sir.

3 Q. And what was the total contribution by the
4 Hachenbergers on that date?

5 A. \$1,700,000.

6 Q. Is that Michael Myers' signature?

7 A. Yes, sir, it is.

8 Q. Jacqueline Myers' signature?

9 A. Yes, sir.

10 Q. Your signature?

11 A. Yes, sir.

12 Q. Glenda's --

13 A. Yes, sir.

14 Q. Mrs. Hachenberger's signature?

15 A. Yes, sir.

16 Q. Now, those signatures were later, though,
17 weren't they?

18 A. Well, some of them --

19 Q. Mike Myers and Jacqueline Myers, did they sign
20 on July 7, 2005?

21 A. Yes, sir.

22 Q. And you signed in September of 2005?

23 A. That's correct.

24 Q. And Ms. Hachenberger signed in October 2005?

25 A. Yes, sir.

1 **Q. Why was it that you didn't sign until**
2 **September?**

3 A. I, for 25 years or so, belonged to a horseback
4 riding group in Colorado that I would go and spend a
5 week on a horseback with a group of about 150
6 businessmen. And I would typically go for the month of
7 July, sometimes more, to get ready to get used to riding
8 the horse, get the horse ready. And so I spent that
9 time period typically in Colorado.

10 **Q. And so, you were out of town when this**
11 **happened?**

12 A. Correct.

13 **Q. And Kevin Donaghy handled it for you?**

14 A. That's correct.

15 MR. CHASE: I'm sorry, that's leading, Judge,
16 but I'm just trying to get through some of the
17 fundamentals.

18 THE COURT: I understand.

19 **Q. And was Mrs. Hachenberger in town when this**
20 **happened?**

21 A. No.

22 **Q. And she signed it later?**

23 A. That's correct. She was in Colorado.

24 **Q. Did both of you sign it when you came back to**
25 **town?**

1 A. Yes, sir.

2 **Q. Then you signed it in front of the same notary**
3 **who notarized that, Myers' signatures?**

4 A. Correct.

5 **Q. Is that -- let's move on to the next one.**
6 **What is that, sir?**

7 A. That's the heading, Highway 46 Holdings, LLC,
8 letter agreement, and says: This letter agreement is
9 entered into by and between Donald J. Hachenberger,
10 Glenda A. Hachenberger, Michael Myers, and Jacqueline
11 Myers, effective July 7, 2005. The parties expressly
12 agree as follows.

13 **Q. And in that, it said effective July 7, 2005?**

14 MR. CHASE: I'm sorry, can you bring that back
15 up, Mr. Jones?

16 Judge, this, I believe, would be the second
17 page of the exhibit.

18 **Q. In the top, the highlighted part, it says**
19 **effective July 7, 2005?**

20 A. Yes, sir.

21 **Q. Does that mean that that contract went into**
22 **effect on July 7, 2005, when the Myers signed it?**

23 A. Yes, sir. Very common in a lot of these
24 documents.

25 **Q. What's the next one?**

1 MR. CHASE: Mr. Jones, sorry for the big
2 paragraph, but could you please publish that to the
3 jury.

4 A. Paragraph number 1, Michael Myers, on behalf of
5 himself, Southeast Communications, Incorporation of
6 Central Florida, Inc., Jano, Inc., and Jacqueline Myers
7 approached Donald Hachenberger seeking a business
8 relationship. The Myers proposed that the Myers and the
9 Hachenbergers to establish a limited liability company
10 to establish a barbecue restaurant business in central
11 Florida.

12 The Myers would provide the assets described
13 herein and the Hachenbergers would provide capital and
14 access to capital through guarantees of certain of the
15 company's obligations, as --

16 **Q. Can you hold on just a second.**

17 **So it says -- this is the first time I'm doing**
18 **this. So it says the Myers will provide the assets**
19 **described herein and the Hachenbergers will provide --**
20 **see that was terrible -- capital. So I'm not ever going**
21 **to do that again. All right.**

22 **But that sentence right there, I'm sorry, does**
23 **that mean that the Myers were going to contribute**
24 **physical assets?**

25 A. Yes.

1 **Q. And the Hachenbergers were going to contribute**
2 **cash?**

3 A. Correct.

4 **Q. And did you, in fact, contribute cash to this**
5 **venture?**

6 A. Yes, sir, a lot of it.

7 **Q. How much?**

8 A. To date?

9 **Q. To date.**

10 A. Pardon me?

11 **Q. To date, from that point on?**

12 A. To date, it's approximately \$25 million.

13 **Q. Can you continue reading, please?**

14 A. The Myers would -- I'm sorry, I did that -- as
15 a result of the proposal.

16 **Q. I'm sorry, it says that the -- to continue to**
17 **provide capital and access to capital through guarantees**
18 **of certain of the company's obligations. And, as a**
19 **result -- okay.**

20 A. As a result of the proposal, Donald J.
21 Hachenberger, Glenda A. Hachenberger, Michael Myers and
22 Jacqueline Myers have formed Highway 46 Holdings to
23 pursue the establishment of a barbecue-themed
24 restaurant. The proposed business intends to utilize
25 the assets set forth herein.

1 **Q. That's the physical assets?**

2 A. I'm assuming that that's where we are.

3 **Q. Okay.**

4 A. I mean, described in the document.

5 **Q. Yes, sir.**

6 **Did you and Mrs. Hachenberger contribute any**
7 **physical assets?**

8 A. Maybe one piece at one point, but not any
9 significant amount.

10 **Q. The vast majority, practically everything --**

11 A. Almost all.

12 **Q. -- physical assets was contributed by the**
13 **Myers?**

14 A. Yes, sir.

15 **Q. Okay.**

16 MR. CHASE: What's the next sentence say, or
17 next part?

18 Can you publish that please to the jury?

19 A. Pardon me?

20 **Q. Can you publish that, sir.**

21 A. Yes, the Myers' contributions. Number two,
22 Michael Myers and Jacqueline Myers are the owners of
23 that certain real estate located on State Road 46, the
24 SR 46 property.

25 **Q. Can I stop you there.**

1 **The SR 46 property, is that highlighted?**

2 A. It is.

3 **Q. Is that a quoted term, so the property that**
4 **real, the land and dirt is going to be referred to in**
5 **this contract as the SR 46 property?**

6 A. Yes, sir.

7 **Q. Does that only refer to the land and dirt or --**
8 **I withdraw the question.**

9 **Basically, it's land and dirt, SR 46 property,**
10 **correct, sir?**

11 A. Correct.

12 **Q. Okay. And are those identified by the parcel**
13 **number below that?**

14 A. They are.

15 **Q. And is that represented by four and a half**
16 **acres, plus or minus?**

17 A. Yes, sir.

18 MR. CHASE: Go to the next one, Mr. Jones.

19 **Q. Please publish that to the jury.**

20 A. Michael Myers and Jacqueline Myers confirm that
21 the SR 46 property is encumbered by a loan and mortgage
22 originally in favor of Southern Community Bank currently
23 held by Fifth Third Bank. Principal and interest due on
24 the loan is approximately \$1,285,000 as of July 7, 2005.

25 **Q. Does that mean that at -- on July 7, 2005, they**

1 owed about \$1,285,000 on the SR 46 property?

2 A. They owed that to Fifth Third Bank.

3 Q. Thank you, sir.

4 MR. CHASE: What's the next one, Mr. Jones?

5 Q. Can you please publish that to the jury, sir.

6 A. Fifth Third Bank has declared the
7 above-referenced note due and payable.

8 Q. Do you recognize those initials?

9 A. I do.

**10 Q. Is that Mike Myers, Jacqueline Myers, Donald
11 Hachenberger and Glenda Hachenberger's initials, sir?**

12 A. It is. All four of us.

13 MR. CHASE: Okay. What's the next one,
14 Mr. Jones?

15 Q. Can you please publish that to the jury.

16 A. Number 5, Michael Myers and Jacqueline Myers
17 are the sole owners of drawings, licenses, plans,
18 permits, and other intellectual property related to a
19 unique barbecue restaurant concept known as quote,
20 Gassey Jack's, end quote, collectively these plans,
21 permit assets, drawings and other intellectual property,
22 quote known, as the Gassey Jack's assets. A more
23 detailed list of which is attached hereto as Exhibit A.

**24 Q. At the back of this agreement, is there an
25 Exhibit A that details assets?**

1 A. Yes, sir.

2 **Q. What's the next sentence?**

3 **Please publish that to the jury.**

4 A. Michael Myers and Jacqueline Myers are the sole
5 owners of substantial amounts of certain unique
6 petrobilia, Americana memorabilia, antiques, classic
7 automobiles, parenthesis, the memorabilia assets.

8 **Q. When that's quoted like that in parenthesis,**
9 **does that essentially say from now on when it refers to**
10 **memorabilia assets, it's referring to all those,**
11 **petrobilia, Americana memorabilia, antiques, classic**
12 **automobiles?**

13 A. Yes, it is. Some of which are represented on
14 the attached CD, Exhibit B, and particularly, including
15 the automobiles listed on Exhibit C.

16 **Q. Was there an Exhibit B that was attached to**
17 **this letter of agreement when it was signed?**

18 A. Yes, that was the CD.

19 **Q. And what did the CD contain?**

20 A. It contained photographs of the part of the
21 memorabilia that was to be contributed by the Myers.

22 **Q. And some of which are represented on the**
23 **attached CD, correct?**

24 A. That's correct.

25 **Q. And so, that didn't say that was going to be**

1 **all of the memorabilia?**

2 A. That's correct.

3 **Q. And then it says, the automobiles on Exhibit C.**

4 **Is there an Exhibit C attached to this**

5 **document?**

6 A. There is.

7 **Q. And are there automobiles listed on it?**

8 A. There are automobiles listed and titles of
9 automobiles.

10 **Q. Please publish that to the jury, sir.**

11 A. Michael Myers and Jacqueline Myers are the sole
12 owners of Jano, a company which owns certain classic
13 automobiles, and a Department of Motor Vehicle dealer
14 license, as more particularly set forth in the attached
15 Exhibit D.

16 **Q. Is there an Exhibit D attached to this**
17 **document?**

18 A. Yes.

19 MR. CHASE: What's the next one, Mr. Jones?

20 **Q. Please publish that to the jury, sir.**

21 A. Michael Myers and Jacqueline Myers are the sole
22 owners of Southeast Communications Corporation of
23 Central Florida, Inc., in parenthesis, Southeast, a
24 company, holding a single asset, a 4 COP liquor license,
25 a copy of which is attached hereto as Exhibit E.

1 **Q. Is an Exhibit E attached to this document?**

2 A. Correct.

3 **Q. That describes that 4 COP liquor license?**

4 A. Well, the state issues very different types of
5 licenses. The 4 COP is the best liquor license that you
6 can have that allows you to do four different things.

7 **Q. You can sell liquor on premises that can be**
8 **consumed on premises, that sort of thing?**

9 A. On premises, off premises, package, and I
10 forget what the fourth one is.

11 **Q. Yes, sir.**

12 MR. CHASE: What's the next, Mr. Jones?

13 **Q. Please publish that to the jury, sir.**

14 A. Michael Myers and Jacqueline Myers,
15 individually, and on behalf of Southeast and Jano,
16 hereby agree to transfer all rights, title and interest
17 in the Gassey Jack's assets, comma, the memorabilia
18 assets, the SR 46 property, the Southeast liquor
19 license, the Jano classic automobiles, and Department of
20 Motor Vehicle license, to Highway 46 Holdings, LLC, the
21 company.

22 **Q. Did that statement right there, combined with**
23 **their signatures, in essence, convey all of those assets**
24 **to Highway 46 Holdings, LLC?**

25 A. They agreed to transfer those things to us,

1 yes.

2 **Q. All rights, title and interest in them?**

3 A. Correct.

4 **Q. Could you read the next sentence, please? In**
5 **addition.**

6 A. In addition, the parties agree that some of the
7 assets scheduled to be contributed by the Myers will be
8 purchased by the company for \$300,000.

9 **Q. The company being Highway 46. Was that**
10 **because did the Myers need some cash to come out of**
11 **this?**

12 A. They did.

13 **Q. And \$300,000 would do it?**

14 A. Was agreed to, yes.

15 **Q. What's the next one?**

16 A. Michael Myers and Jacqueline Myers, on behalf
17 of themselves, and as owners of Southeast and Jano,
18 agree to fully cooperate and execute all administrative,
19 legal, and other documents required to transfer the
20 above-recited assets to the company.

21 MR. CHASE: What's the next one, Mr. Jones?

22 **Q. The parties.**

23 A. The parties have agreed to a net equity value
24 of \$1,300,000, for the SR 46 property.

25 **Q. Was that the equity that the Myers in the**

1 property over and above what it was worth that was owed
2 to the bank?

3 A. Yes, this would reference the value that would
4 be used to create the equity contribution within the
5 corporate documents.

6 Q. So, essentially, if the property was worth
7 \$2.6 million, and you had to pay off \$1.3 million, they
8 were essentially contributing \$1.3 million of land into
9 the company, along with the other assets?

10 A. That's correct.

11 Q. And that's what that is documenting?

12 A. That's correct.

13 Q. Thank you.

14 What's the next one?

15 A. The parties will enter into a capital
16 contribution agreement that would detail the property
17 transferred and agreed upon value.

18 Q. And did you ever come to an agreement on the
19 value of the property?

20 A. The value of the real property was 1.3 million.

21 Q. The equity was 1.3, the value was 1.2?

22 A. The equity?

23 Q. Yes, sir.

24 A. The Myers' equity in that capital contribution
25 agreement was outlined as 1.3 million.

1 **Q. Yes, sir.**

2 **And in the other property, did you have to**
3 **inventory it before you could value it?**

4 A. Yes, sir.

5 **Q. Did it take a while to get it inventoried?**

6 A. It did.

7 **Q. By the time it got inventoried, were you in a**
8 **position where you could -- was all of this going on?**

9 A. That's correct. I believe it had to be first
10 assembled into one location and then the listing, I
11 think we ended up with over 6,000 individual items.

12 **Q. Did the parties right after this start**
13 **assembling it in one location?**

14 A. Yes, sir.

15 **Q. Did you move everything into a warehouse?**

16 A. We moved -- we started moving things into the
17 warehouse, and that continued for a couple of years
18 after that.

19 **Q. Okay. And as it was moved in, there was an**
20 **attempt to inventory -- put a bar code on it?**

21 A. My request to Mr. Myers, that he not start
22 moving it in until as it went in, it could be
23 inventoried. And that happened for a while. And then
24 he got anxious and rambunctious with it and started just
25 dumping it in, and it was in no order, it was totally

1 just randomly stacked up in the warehouse.

2 Q. Did you have discussions with Mr. Myers about
3 the way that he was moving the stuff in?

4 A. We always had heated discussions about him
5 telling me he could do it any way he wanted, didn't
6 matter, he was the guy running the show.

7 Q. But, ultimately, after did there come a time
8 when you asserted control of the company?

9 Moving forward a little bit, I just want to
10 move in a piece of evidence.

11 Did there come a time when you took control of
12 the company?

13 A. Yes, sir.

14 Q. And did you have the inventory finished?

15 A. Yes, sir.

16 Q. Sir, at this time, I don't know if I can show
17 it to you, it's a bunch of stuff. There are -- as
18 Plaintiffs' Exhibit H for identification purposes, in
19 evidence, we've moved in, it's 6,824 individual pieces
20 of memorabilia, as that term is broadly defined in the
21 documents that have been inventoried and bar coded,
22 that's been disclosed.

23 Is that inventory that you've seen on this
24 before? Is that a true and accurate representation of
25 the inventory that you recall producing?

1 A. Yes, sir.

2 MR. CHASE: Sir, we would move it in as
3 Plaintiffs' 2.

4 THE COURT: Any objection?

5 MR. BENITEZ: No objection.

6 MR. CHASE: Thank you, Judge.

7 THE COURT: All right. That'll be received as
8 Plaintiffs' Number 2.

9 (Plaintiffs' Exhibit H for identification was
10 admitted in evidence as Plaintiffs' Exhibit 2.)

11 THE COURT: Members of the jury, these items
12 that have been received into evidence are now
13 available for witnesses to testify about during the
14 course of the trial.

15 And these and all of the other items of
16 evidence will be made available to you during your
17 deliberations so you can inspect them further.

18 MR. CHASE: What's the next one, Mr. Jones?

19 **Q. Is that everybody's initials on that page?**

20 A. Yes, sir.

21 **Q. And is -- have you -- how long have you been in**
22 **business?**

23 A. Well, I started -- I had my first business at
24 age 12. I'm 72 now.

25 **Q. Can I ask you more about that when we get back**

1 from lunch?

2 Done reading?

3 A. Sixty years.

4 Q. What is the purpose of initialing each page at
5 the bottom?

6 A. I came from the franchising business with the
7 Re/Max organization and we had, you know, 30, 40-page
8 documents. And to be assured that nobody substituted
9 pages, to be sure that everybody acknowledged every
10 single item, you know, every page was looked at. They
11 were -- we had them -- we had all parties initial every
12 page.

13 Q. Thank you, sir.

14 MR. CHASE: What's the next one, Mr. Jones?

15 Q. Please publish that to the jury, sir.

16 A. The Hachenbergers' contributions, Donald J.
17 Hachenberger and Glenda Hachenberger, will contribute to
18 the company a noninterest-bearing loan in the amount of
19 \$1,300,000, which shall be used to pay off the Fifth
20 Third loan referenced above.

21 Q. Next.

22 What is that, sir?

23 A. And an interest-bearing loan of \$400,000,
24 bearing interest at a prime rate of 2 -- at a prime plus
25 2 percent, adjusted quarterly based upon the Wall Street

1 Journal composite prime rate.

2 Q. Next, sir?

3 A. Parties acknowledge and agree that prior to the
4 date of execution of this agreement, the Hachenbergers
5 have contributed 82,400 -- I'm sorry, let me skip down.
6 \$82,461.93.

7 Q. And is that made up of the 75,000 and the
8 \$7,461 that you testified about --

9 A. That's correct.

10 Q. -- on the very first page?

11 A. Yes, sir.

12 Q. So we don't have to read all of that again?

13 A. Yes, sir.

14 Q. And that \$7,461 was a payment to Fifth Third
15 Bank for the property that you made for the Myers?

16 A. That's correct.

17 MR. CHASE: Mr. Jones.

18 A. The Hachenbergers shall pay, upon execution of
19 this agreement, Mike Myers and Jacqueline Myers, the
20 amount of 285 --

21 Q. 88, sir?

22 A. \$288,974.83, which is made up of the \$300,000
23 payment referenced above, less a reduction of
24 \$11,025.17, for the 2004 taxes on that property.

25 Q. The \$300,000 referenced above, was that the

1 cash that the Myers needed to take back for everything
2 that they're contributing that they just needed some
3 cash back for?

4 A. It was.

5 Q. The 300 itself -- we're not talking about the
6 taxes yet, the 300, is that what was described a minute
7 ago as the cash back that they were taking from the
8 deal?

9 A. Yes, it is.

10 Q. Okay. And then -- but that was reduced by
11 \$11,025 because you paid the property taxes on the
12 property?

13 A. That's correct.

14 Q. Okay. What's the next, one, please.

15 A. The Hachenbergers, shall also pay to Highway 46
16 Holdings, LLC the amount of \$28,533.54 upon execution of
17 this agreement.

18 Q. I think we established that was paid, sir?

19 A. It was, yes.

20 Q. Next, please?

21 A. Within 120 days, the Hachenbergers shall pay
22 off the note to Fifth Third referenced in
23 paragraph three here and the balance of any --

24 Q. Don't worry about the balance.

25 A. I'm sorry.

1 Q. It's -- but it says within 120 days that you're
2 going to pay off the note to Fifth Third Bank, correct?

3 A. That's correct.

4 Q. Did you do that?

5 A. We did pay off the loan.

6 Q. Yes, sir.

7 What's next, please?

8 Is that a breakdown of everything that you
9 paid? It's basically the same thing as the front page?

10 A. That's correct.

11 Q. What is next, sir?

12 Is that everybody's initials at the bottom of
13 the page?

14 A. All four initials, confirming and
15 acknowledging.

16 Q. What's up next?

17 Please publish that to the jury.

18 A. The assets of the company may be used to secure
19 the payment of the Hachenbergers' contribution,
20 including a mortgage on SR 46 property, and a security
21 agreement on all of the other assets transferred to the
22 company.

23 Q. The only assets that were transferred to the
24 company were the assets the Myers transferred; is that
25 correct?

1 A. That's correct.

2 **Q. And does this say that those assets that the**
3 **Myers transferred to the company could be used as**
4 **collateral for the money that you were loaning to the**
5 **company?**

6 A. That's accurate.

7 MR. CHASE: What's next please, Mr. Jones?

8 A. Any further contributions made by the
9 Hachenbergers may be structured as loans. All such
10 loans shall bear interest at such rate, be secured in
11 such manner, and be repayable upon such terms as the
12 manager may determine.

13 The parties expressly agree and understand that
14 all future loans and all contributions made by the
15 Hachenbergers shall be repaid, including all interest
16 that may be due thereon, prior to any termination
17 distribution to Michael and Jacqueline Myers.

18 **Q. Did you, in fact, consistent with this, and in**
19 **furtherance of the company, make future loans to the**
20 **company?**

21 A. Sure did.

22 **Q. Up to \$25 million?**

23 A. In that range, yes.

24 **Q. Handing you what's been marked as Composite**
25 **Exhibit J for identification purposes, which I will**

1 represent is letters of credit for construction loans,
2 and/or operating loans.

3 Do you recognize those documents, sir?

4 A. I do, yes.

5 Q. Do those -- does my statement that they're
6 lines of credit for construction loans?

7 A. They are, yes.

8 Q. And operating loans; is that accurate?

9 A. Yes.

10 Q. Do that accurately reflect the documents?

11 THE COURT: Counsel, I need you to pause for
12 just a minute.

13 Mr. Hachenberger, it's very important for him
14 to finish his question before you can respond. I
15 know you can anticipate sometimes, but our court
16 reporter is trying to take everything down and it's
17 very difficult when you all talk over each other.
18 So slow down just a little bit.

19 MR. CHASE: Yes, sir.

20 At this time we would move as what's been
21 previously marked Plaintiffs' Exhibit J for
22 identification purposes into evidence as Plaintiffs'
23 Exhibit 3.

24 THE COURT: Any objections?

25 MR. BENITEZ: No objections.

1 THE COURT: That will be received in evidence
2 then as the Plaintiffs' Exhibit 3.

3 (Plaintiffs' Exhibit J for identification was
4 admitted in evidence as Plaintiffs' Exhibit 3.)

5 THE COURT: You may approach.

6 MR. CHASE: Thank you, sir.

7 What's the next please, Mr. Jones?

8 **Q. Please publish that to the jury, sir.**

9 A. The parties expect that the assets of the
10 company shall be utilized as collateral for a working
11 capital loan, acquisition loan, and/or construction
12 loans related to the company's planned entry into the
13 barbecue restaurant industry.

14 **Q. That's more discussion about what the**
15 **collateral would be for this 25 million that you put in?**

16 A. Correct.

17 **Q. And when I say you, you and Mrs. Hachenberger?**

18 A. That's correct.

19 MR. CHASE: The next please, Mr. Jones.

20 **Q. Please publish that to the jury.**

21 A. Operations. Initially, Michael Myers shall be
22 the president of the company and Donald J. Hachenberger
23 shall be the chief executive officer, CEO. Kevin
24 Donaghy, Esquire, shall serve as secretary for the
25 company.

1 The company will be a managed limited liability
2 company, managed limited liability company, and Donald
3 J. Hachenberger shall serve as the manager.

4 **Q. And limited liability company is the manager**
5 **and boss?**

6 A. Absolutely.

7 **Q. It's a -- but in this you made Mr. Myers**
8 **president, correct?**

9 A. That's correct.

10 **Q. And did you allow him to run with this project**
11 **initially, and as of July 7, 2005, did you allow**
12 **Mr. Myers to run with the project to be in charge of**
13 **things?**

14 A. Yes, sir.

15 **Q. Had you had any restaurant experience before?**

16 A. No, sir.

17 **Q. All right.**

18 MR. CHASE: What's next please, Mr. Jones?

19 **Q. Is that everybody's initials?**

20 A. Those are everybody's initials, yes.

21 MR. CHASE: What's the next, please?

22 **Q. Did you know whether or not Mr. Myers had any**
23 **restaurant experience?**

24 A. I do know that he did not.

25 **Q. Did Mrs. Myers have any restaurant experience?**

1 A. Not to my knowledge.

2 **Q. Okay.**

3 MR. CHASE: Please publish the next one.

4 **Q. All right. I'm sorry. Sorry. Publish this to**
5 **the jury, please.**

6 A. Michael Myers and Jacqueline Myers hereby
7 irrevocably grant Donald J. Hachenberger the right to
8 appoint the company's manager, who shall have the
9 ability to determine any and all matters pertaining to
10 the company, with the exception of changing the
11 allocation or distribution provisions of the company's
12 operating agreement.

13 **Q. So does that say that you get to decide who the**
14 **boss is?**

15 A. Absolutely.

16 **Q. And you can do anything you want except**
17 **changing the way money gets distributed?**

18 MR. BENITEZ: Objection, leading.

19 **Q. That's true?**

20 THE COURT: Sustained.

21 Rephrase.

22 **Q. It says what it says.**

23 MR. CHASE: Next, please.

24 **Q. Can you please publish that to the jury.**

25 A. Michael Myers and Jacqueline Myers are fully

1 aware that this gives effective and complete control of
2 the company to the Hachenbergers on all company matters.

3 This control includes, but is not limited to,
4 decisions regarding company's direction, encumbering of
5 assets, sale of assets, acquiring liabilities, the sale
6 of the company, termination of operation, and
7 dissolution of the business, and all other matters.

8 **Q. Is something -- a clause like this in a**
9 **contract that gives you absolute control over**
10 **everything, something typical when you're putting in so**
11 **much more money than your partners?**

12 A. Very much so.

13 MR. CHASE: What's the next thing, please,
14 Mr. Jones?

15 **Q. Please publish that to the jury.**

16 A. The company has entered into a lease agreement
17 for leased space in the Monroe Commerce South.

18 **Q. You don't have to read that.**

19 **Was that the warehouse? Is that a warehouse?**

20 A. That is a warehouse.

21 **Q. And what is in that warehouse?**

22 A. That's where Mike Myers and other employees put
23 all of the memorabilia assets and all of the things that
24 were being contributed by the Myers.

25 MR. CHASE: What's the next, please?

1 Q. Please publish that to the jury.

2 A. The members --

3 Q. Let me ask you this. By reading all of that,
4 does that say did everybody get 25 percent interest in
5 the company?

6 A. Yes.

7 Q. You got 25 percent?

8 A. Yes.

9 Q. Glenda Hachenberger got 25 percent?

10 A. Yes.

11 Q. Mr. Myers got -- I'm sorry, I'm speaking over
12 you. That's my fault.

13 Mr. Myers got 25 percent, sir?

14 A. Correct.

15 Q. And Mrs. Myers got 25 percent?

16 A. Correct.

17 Q. So is it true then that while you had complete
18 control of the company, all of you owned it equally?

19 A. That's accurate.

20 MR. CHASE: What's the next, please?

21 A. Still do.

22 Q. Still do.

23 Is it -- are you asking the Court to dissolve
24 the company?

25 A. No.

1 **Q. Are you asking the Court to not be a partner**
2 **with the Myers anymore?**

3 A. Not at all.

4 MR. CHASE: What's next, please, Mr. Jones?

5 **Q. Is that everybody's initials?**

6 A. It is, yes, sir.

7 MR. CHASE: And what's next, Mr. Jones?

8 **Q. Please -- there's a lot. It's important.**
9 **Please publish that to the jury.**

10 A. While the parties expect to have every success
11 in their venture in the restaurant, the parties wish to
12 clarify the respective positions in the event that a
13 termination of the company occurs. These rights under
14 the termination or other winding up of the business of
15 the company may not be modified without the written
16 consent of all members.

17 The provisions of paragraph 17,
18 notwithstanding. Upon the sale of a company capital
19 asset, termination or winding up of the business, the
20 following is the order of distribution of the company
21 assets. First position is the secured third-party debt.

22 **Q. Is there any secured third-party debt right**
23 **now?**

24 A. No, sir.

25 **Q. Okay. What's in the second position?**

1 A. Secured position, contributions, or debt.
2 Secured Hachenberger unreturned capital.

3 **Q. Is that the 25 million?**

4 A. It is.

5 **Q. This lawsuit was filed, I believe, January of**
6 **2008. Does that sound correct?**

7 A. Yes, sir.

8 **Q. Have the Myers contributed any money to**
9 **operating or keeping Highway 46 Holdings, LLC going**
10 **since then?**

11 A. No, sir.

12 **Q. How much have you contributed since then,**
13 **approximately?**

14 A. I think -- what was the date you referenced?

15 **Q. January 2008, sir.**

16 A. I think we were about 10 million in at that
17 point. And I think --

18 **Q. So about 15 million?**

19 A. We've contributed approximately 15 million
20 since then.

21 **Q. And they've contributed nothing?**

22 A. Correct.

23 **Q. Have you ever made any money on Highway 46**
24 **Holdings, LLC?**

25 A. No, sir.

1 **Q. Is it making money right now?**

2 A. No.

3 **Q. Do you loan it money each month to continue**
4 **going as a business venture?**

5 A. Yes, I do.

6 **Q. Is that because you have partners and you owe**
7 **them a duty, to do the best you can, to keep that**
8 **company going?**

9 A. It is.

10 MR. CHASE: What's the next, Mr. Jones?

11 **Q. Please publish that to the jury.**

12 A. Notwithstanding the allocation set forth above,
13 the Hachenbergers, or any entity designed --

14 **Q. Designated?**

15 A. I'm sorry, designated.

16 **Q. Sorry, sir.**

17 A. -- by them, shall be entitled to a management
18 fee of 1 percent of the company's gross revenues.

19 **Q. Have you ever taken 1 percent management fee?**

20 A. No, sir.

21 **Q. Ever?**

22 A. No, sir.

23 **Q. What's the next?**

24 A. The parties realize that a new business venture
25 is inherently fraught with risk and assumptions

1 regarding the member's compatibility, the overall
2 business climate, cost, human resource issues, and
3 zoning, planning and permitting considerations, and a
4 magnitude of other issues.

5 **Q. Multitude of other issues.**

6 A. Multitude.

7 **Q. It's hard to read. It is.**

8 A. I'm struggling with that.

9 The parties have resolved to move forward in
10 good faith to establish the barbecue-themed restaurant
11 business. The parties each acknowledge that initially
12 there are multiple possibilities under consideration.

13 **Q. Multiple possibilities being what ultimately**
14 **this project is going to end up being, sir?**

15 **What does that mean?**

16 A. It does mean that. I also believe that it --
17 we were looking at other options, like a franchise for
18 an outfit called Famous Dave's.

19 **Q. So is it true then that it wasn't absolutely**
20 **going to be Gassey Jack's?**

21 A. That's correct.

22 MR. CHASE: What's next, Mr. Jones?

23 **Q. Is that everybody's initials on that page?**

24 A. They're all on the page.

25 **Q. Yes, sir.**

1 MR. CHASE: What's next, Mr. Jones?

2 Q. Please publish that to the jury, sir.

3 A. Michael Myers and Jacqueline Myers expressly
4 understand that the assets which they have contributed
5 to the company are at risk. And that any dissolution or
6 other winding up of business, the possibility exists
7 that they could receive no distribution.

8 Q. Does that mean that because the contract says
9 that you're first in line to get paid back your 25
10 million, that it's possible that their assets that they
11 contributed back in 2005, would be being used as
12 collateral would be unavailable to them in a winding up
13 of the company?

14 A. If it were wound up today, that would be
15 accurate.

16 Q. Have you -- all right.

17 What's next?

18 A. Further, they understand that based on the
19 assignment of their right to vote their shares, that the
20 decision on such matters shall be made by Donald J.
21 Hachenberger in his sole judgment.

22 Q. What's next?

23 Or let me ask you a question about that?

24 The winding up, did there come a time where you
25 were unable to keep Route 46 open?

1 A. I chose not to keep it open.

2 Q. And the -- but you -- still you loaned it money
3 to maintain the storage, to maintain the building and
4 all that; is that true?

5 A. We were under --

6 MR. BENITEZ: Leading.

7 MR. CHASE: That was leading. I apologize.

8 May I rephrase it?

9 THE COURT: Rephrase, please.

10 Q. When it was closed, did you continue to loan
11 the company money?

12 A. Yes, sir.

13 Q. And approximately how much would you loan it
14 every month?

15 A. Well, I used to use the term of about \$1,500 a
16 day, so probably 50 or \$60,000 a month.

17 Q. And during this time -- now, when you guys
18 first entered into this agreement in 2005, it sounds
19 like -- I don't want to lead you, but it sounds like you
20 and Mrs. Hachenberger had a lot of money.

21 Did y' all have a lot of money back then?

22 A. Yes, sir. That was yes.

23 Q. And do you -- do you still have the money to be
24 able to just write checks like that?

25 A. Not anymore. No, sir.

1 **Q. How long have you been borrowing money to loan**
2 **money to Highway 46 to keep it going?**

3 MR. BENITEZ: Objection, leading.

4 THE COURT: Overruled.

5 A. After our divorce, after the crisis of 2008,
6 and the things that transpired after that, I think at
7 about 2013, I was able to have a friend start funding,
8 loaning me money, to use to keep this going.

9 **Q. So about the last four years you've been**
10 **borrowing money?**

11 A. That's correct.

12 **Q. To loan Highway 46 money?**

13 A. That's correct.

14 **Q. And you owe that money back that you've been**
15 **borrowing?**

16 A. I do.

17 MR. CHASE: What's the next, Mr. Jones?

18 **Q. Can you please read that, sir.**

19 A. Each party has had the right to be represented
20 by counsel of their own choice and expense.

21 **Q. Counsel, what does counsel mean?**

22 A. That would be their own attorney.

23 MR. CHASE: What's next, Mr. Jones?

24 **Q. Please publish that to the jury.**

25 A. The parties.

1 **Q. That's important?**

2 A. Agree.

3 **Q. Please publish that to the jury.**

4 A. The parties agree that they shall not rely on
5 oral or other representations of a party except as are
6 specifically set forth in the articles of organization
7 of the company, the company's operating agreement, and
8 the capital contribution agreement, and this letter
9 agreement.

10 MR. CHASE: What's next?

11 **Q. Agreed and understood?**

12 A. That's correct.

13 **Q. What's below that?**

14 A. Signatures.

15 **Q. So Michael Myers?**

16 A. Michael Myers.

17 **Q. Is that Michael Myers' signature?**

18 A. Yes.

19 **Q. Did it actually strike through agreed, and**
20 **understood -- where he writes so agreed and understood**
21 **is directly over his signature?**

22 A. I think that's -- agreed and understood is
23 directly over his signature. I believe his style of
24 signature.

25 **Q. And for the record, strikes through it actually**

1 has independent meaning. And what I intended to say in
2 my question was, is agreed and understood directly over
3 Michael Myers' signature?

4 A. That's correct.

5 Q. And what's below that?

6 Is that Jacqueline Myers' signature?

7 A. Jacqueline Myers' signature.

8 Q. And what's below that, is that Glenda?

9 A. Glenda, yes.

10 Q. And what's below that?

11 A. My signature.

12 Q. And what's below that?

13 A. Initials.

14 Q. Even though they signed it, they don't have to
15 initial it if they sign it?

16 A. That's correct.

17 Q. But they did.

18 A. Yes.

19 MR. CHASE: What's next, Mr. Jones?

20 And these are -- are those the -- can you go
21 more slowly Mr. Jones, I'm sorry.

22 Q. Is this the notarization of each of the
23 signatures?

24 A. That's correct.

25 Q. And that first one, is that July 7, 2005, of

1 Michael Myers?

2 A. Yes.

3 Q. And who is that, who he is the notary?

4 A. Katherine Houser.

5 MR. CHASE: And what's the next one, Mr. Jones?

6 Q. Is that July 7, 2005, notary of Jacqueline
7 Myers?

8 A. Yes.

9 Q. And who's the notary?

10 A. Same, Katherine Houser.

11 MR. CHASE: And what's the next one, Mr. Jones?

12 Q. Is that the notarization of your signature,
13 sir?

14 A. Yes.

15 Q. Is that on the 27th day of September, 2005?

16 A. Yes.

17 Q. Is that the next time you were in town and saw
18 Ms. Houser so that she could be the same one to notarize
19 your signature?

20 A. Yes.

21 MR. CHASE: And what's the next one, Mr. Jones?

22 Q. Is that the notarization of Glenda
23 Hachenberger's signature?

24 A. Yes.

25 Q. Is that on October 8, 2005?

1 A. Yes.

2 **Q. And was that the next time she was in town**
3 **around Linda Houser, so she could notarize her**
4 **signature?**

5 A. Yes.

6 **Q. And is that everybody's initials at the bottom**
7 **of the page?**

8 A. It is.

9 MR. CHASE: What's next, Mr. Jones?

10 **Q. And can you publish that to the jury, sir.**

11 A. Exhibit A, the Gassey Jack's assets, include,
12 whether listed specifically herein or not, all plans,
13 permits, drawings, governmental approvals, and other
14 intellectual property related to the establishment of
15 the Gassey Jack's themed restaurant at Highway 46 and
16 Elder Road, Sanford, Florida, or elsewhere.

17 **Q. And what's below that?**

18 A. Signatures.

19 **Q. Is that everybody's signature?**

20 A. It's Michael Myers, Jacqueline Myers, myself,
21 and Glenda Hachenberger.

22 **Q. Did the Myers, in fact, tender all the -- those**
23 **plans, drawings and permits and all that to Highway 46**
24 **Holdings?**

25 A. They did.

1 MR. CHASE: What's next, sir?

2 Q. Is that the -- is that Exhibit B?

3 A. That is Exhibit B, yes.

4 Q. And that's the CD that's up there?

5 A. That's correct.

6 Q. It's a copy of the CD that's up there?

7 A. Correct.

8 Q. It's a -- and are those the signatures of
9 everybody?

10 A. That's correct.

11 MR. CHASE: And what is next, Mr. Jones?

12 Q. That says Composite Exhibit C and D. Do you
13 see where it says that?

14 A. I do.

15 Q. And then there are signatures of everybody?

16 A. That's correct.

17 MR. CHASE: And what's after that, Mr. Jones.

18 Q. Is that the -- those are the vehicles that --
19 antique cars?

20 A. Yes, sir.

21 Q. And --

22 MR. CHASE: What's the next, Mr. Jones?

23 Q. Those are the signatures on all of that?

24 A. That's correct.

25 MR. CHASE: And what's the next, Mr. Jones?

1 Q. And those are signatures at the bottom of that
2 title?

3 A. That's correct.

4 Q. Or is that -- I'm sorry. Is that a title to
5 one of the cars?

6 A. Yes, sir.

7 MR. CHASE: What's next Mr. Jones?

8 Q. Is that title for one of the cars?

9 A. Yes, sir.

10 Q. And everybody signed it?

11 A. Yes.

12 MR. CHASE: What's next?

13 Q. Is that a title of one of the cars?

14 A. Yes.

15 Q. And everybody signed it?

16 A. Yes.

17 Q. Is that title on one of the cars?

18 A. Yes.

19 Q. And everybody signed it?

20 A. Yes.

21 Q. Is that title on one of the cars?

22 A. Yes.

23 Q. And everybody signed it?

24 A. Yes.

25 Q. Is that a picture of a truck?

1 A. It is.

2 **Q. Pickup truck.**

3 **And everybody signed it?**

4 A. Tow truck, yes.

5 **Q. Is that title on the car?**

6 A. Yes.

7 **Q. Everybody signed it?**

8 A. Yes.

9 **Q. Is that title on the cars?**

10 A. Yes.

11 **Q. And everybody signed it?**

12 A. Yes.

13 **Q. Is that title on one of the cars?**

14 A. Yes.

15 **Q. And everybody signed it?**

16 A. Yes.

17 **Q. Is that the title of one of the cars?**

18 A. Yes.

19 **Q. And everybody signed it?**

20 A. Yes.

21 **Q. Is that title of one of the cars?**

22 A. Yes.

23 **Q. Everybody signed it?**

24 A. Yes.

25 **Q. Title on one of the cars?**

1 A. Yes.

2 **Q. Everybody signed it?**

3 A. Yes.

4 **Q. Is that a title to one of the cars?**

5 A. Yes.

6 **Q. Did everybody sign it?**

7 A. Yes.

8 **Q. Is that a title to one of the cars?**

9 A. Yes.

10 **Q. Did everybody sign it?**

11 A. Yes.

12 **Q. Is that a title to one of the cars?**

13 A. Yes.

14 **Q. Did everybody sign it?**

15 A. Yes.

16 **Q. Is that a title to one of the cars?**

17 A. Yes.

18 **Q. And everybody signed it?**

19 A. Yes.

20 **Q. What is that?**

21 Oh, that's -- is that the -- what is it?

22 A. That is the dealer license.

23 **Q. Okay. And everybody signed it at the bottom?**

24 A. That's initialed by all parties.

25 **Q. Okay.**

1 MR. CHASE: What's next?

2 Q. Exhibit E. Everybody signed it?

3 A. Those are signatures, yes.

4 MR. CHASE: What is next?

5 A. That is --

6 Q. Is that the liquor license?

7 A. That's the -- yes, that's correct.

8 Q. What's next?

9 Everybody signed it?

10 A. Yes.

11 Q. What's next?

12 Is that the check -- or what is that?

13 A. That is an official check from Southeast, or AM
14 South Bank, in the amount of \$288,974.83.

15 Q. And everybody --

16 A. It's actually a copy of the receipt. It's the
17 customer copy of the receipt, yes.

18 Q. And then everybody signed acknowledging that
19 check?

20 A. That's correct.

21 Q. And then the operating agreement --

22 MR. CHASE: Judge, it is ten to 12. I would
23 love to keep going.

24 THE COURT: Let's keep going.

25 MR. CHASE: Thank you.

1 **Q. What's --**

2 MR. CHASE: Sorry, ladies and gentlemen of the
3 jury, but it's just better to get it done before
4 lunch.

5 We're going to try to go as quickly as
6 possible.

7 BY MR. CHASE:

8 **Q. What's -- what do we got? What is that,**
9 **Mr. Hachenberger?**

10 A. Operating agreement of Highway 46 Holdings,
11 LLC.

12 **Q. Is that -- is that dated July 7th, 2005?**

13 A. Yes.

14 **Q. And it has all of your names on it?**

15 A. That's correct.

16 MR. CHASE: What's next?

17 **Q. Everybody signed it?**

18 A. Everybody signed it, yes.

19 MR. CHASE: What's the next page of that
20 document, Mr. Jones?

21 **Q. Is that the table of contents?**

22 A. Yes.

23 **Q. And everybody signed it?**

24 A. Initials, yes.

25 **Q. Yes, sir.**

1 **What's the next one?**

2 **And could you please publish that to the jury.**

3 A. This operating agreement of Highway 46
4 Holdings, LLC, a Florida limited liability company, is
5 effective as of July 7, 2005.

6 **Q. Does that mean that that operating agreement**
7 **became effective on July 7, 2005?**

8 A. That's what that means, yes.

9 MR. CHASE: What's next, Mr. Jones?

10 **Q. Does that identify all the members of the LLC**
11 **as being you and Mrs. Hachenberger, Mr. Myers and**
12 **Mrs. Myers?**

13 A. That's correct.

14 MR. CHASE: What's the next, Mr. Jones?

15 **Q. Is that everybody's initials on the bottom of**
16 **that page?**

17 A. That's correct.

18 MR. CHASE: What's next, Mr. Jones?

19 **Q. Can you please publish that to the jury, sir.**

20 A. It's a subparagraph A capital contributions of
21 the members on the effective date, the members have
22 contributed the property or loans set forth in the
23 capital contribution agreement attached as Exhibit B.

24 **Q. On the effective date, is that the July 7,**
25 **2005, date that's on the front of this document?**

1 A. Yes, it is.

2 **Q. What's next?**

3 **Does that say that each of you are 25 percent**
4 **members?**

5 A. That's correct.

6 **Q. So each of you still have an equal share?**

7 A. Yes.

8 MR. CHASE: What's next, Mr. Jones?

9 **Q. Is that everybody's initials acknowledging?**

10 A. Yes, it is.

11 MR. CHASE: What's next, Mr. Jones?

12 **Q. Please publish that to the jury, sir.**

13 A. It's the subparagraph -- I think it's C, right
14 to withdraw capital. No member has the right to
15 withdraw any capital that it has contributed to the
16 company, except in accordance with the provisions of
17 this operating agreement.

18 **Q. Does that mean nobody can take any property out**
19 **of the company?**

20 A. That --

21 **Q. -- without -- unless the operating agreement**
22 **says so?**

23 A. Yes, sir.

24 MR. CHASE: Okay, what's next?

25 **Q. Can you read that, sir? It's kind of small.**

1 A. I could, but you might have to get about two
2 inches away from the screen.

3 **Q. All right.**

4 A. What part would you like me to read?

5 **Q. Can you start with except as otherwise provided**
6 **or, say?**

7 A. I'm sorry, that says 210.

8 **Q. What about all items, can you see that? All**
9 **items of capital event gain doesn't -- it's okay?**

10 A. Now I could see that. I could see it now.
11 Sorry.

12 **Q. All right. Do you see where it says all items**
13 **of capital event gain?**

14 MR. BENITEZ: Excuse me. Are you referring to
15 paragraph --

16 MR. CHASE: It's paragraph H and I.

17 A. Okay. That I've got a problem with.

18 **Q. All right. It's a --**

19 A. I could see B and -- B and something.

20 **Q. Okay. It's --**

21 A. Now it just got larger.

22 **Q. There you go.**

23 A. Wonderful.

24 **Q. How about this?**

25 A. It got skinny.

1 **Q. May I ask you, without reading it?**

2 THE COURT: It's at the bottom there.

3 THE WITNESS: Thank you.

4 THE COURT: Redirecting him in the document
5 itself and please direct counsel as well, very
6 small.

7 **Q. Sir, it's at the bottom.**

8 MR. CHASE: Sorry, Judge.

9 **Q. Mr. Hachenberger, can you read that to the**
10 **jury, please, allocation of capital event gain?**

11 A. It's a subparagraph B.

12 **Q. B. I thought it was an H.**

13 A. I'm sorry.

14 **Q. No, I don't know.**

15 THE COURT: It's B.

16 Go ahead, sir.

17 A. I think it's B. Allocation of capital event
18 gain, except as otherwise provided in Section 5-I, all
19 items of capital event gain arising out of or resulting
20 from any capital event, shall be allocated to the
21 members in the order of priority and to the extent
22 specified below.

23 **Q. Continue, please.**

24 A. Subparagraph I, then, first to Donald and
25 Glenda, to the extent of, and in proportion to the

1 amount by which the unreturned capital contributions of
2 each exceeds his capital of account balance.

3 **Q. Please return the exhibit to the Judge, sir.**

4 MR. CHASE: Mark, what is next, is that
5 everybody's initials?

6 A. Yes, sir.

7 **Q. What's next?**

8 A. Second, to Michael and Jacqueline, to the
9 extent of and in proportion to the amount by which the
10 unreturned capital contributions of each exceeds his
11 capital account balance.

12 MR. CHASE: What's next, Mr. Jones?

13 **Q. Does -- in the event of a liquidation of the**
14 **company, it is also first to you and Glenda?**

15 A. Yes.

16 **Q. And then second to Michael and Jacqueline?**

17 A. Yes.

18 **Q. And when I say Donald and Glenda, they were**
19 **suppose -- we were supposed to use last names, but it's**
20 **referred to as Donald and Glenda and Michael and**
21 **Jacqueline in the document, correct?**

22 A. Yes.

23 MR. CHASE: What's next, sir?

24 **Q. Is that everybody's initials?**

25 A. It is.

1 MR. CHASE: What's next?

2 Q. Did everybody initial the next page, sir?

3 A. Yes.

4 MR. CHASE: What's next?

5 Q. Please read that to the jurors.

6 A. It looks like a subparagraph A, powers: The
7 business of the corporation will be managed by Donald,
8 and as its sole manager, who may exercise all such
9 powers of the company. Donald is irrevocably appointed
10 as sole manager.

11 Q. What does irrevocably mean to you?

12 A. Never to be changed.

13 MR. CHASE: What's next, sir?

14 Q. Please publish that to the jury.

15 A. Donald has the power to make any and all
16 officers of the corporations -- of the corporation, and
17 as such, so names the following officers.

18 Q. Did you make Mr. Myers president?

19 A. Yes.

20 Q. And you CEO?

21 A. Correct.

22 Q. And Kevin Donaghy secretary?

23 A. Correct.

24 Q. And you also -- does it say -- what does --

25 after that, it says Donald has the power?

1 A. Donald has the power to specify the
2 responsibilities of each officer.

3 MR. CHASE: What's next?

4 **Q. Please publish that to the jury.**

5 A. Members specifically acknowledge that Donald J.
6 Hachenberger has the -- has -- I'm so sorry. Members
7 specifically acknowledge that Donald J. Hachenberger has
8 irrevocably been appointed manager of Highway 46
9 Holdings LLC, and has full authority to conduct any and
10 all business on behalf of the company, up to and
11 including the sale of the company, dissolution, and
12 winding up of business.

13 **Q. There's been a lot of talk about up to and**
14 **including sale of the company and dissolution and**
15 **winding up of the business.**

16 **You've never done that, have you?**

17 A. I have never done that.

18 **Q. In fact, you've -- or have you loaned money to**
19 **keep the company going?**

20 A. I have.

21 **Q. For years? Since 2013?**

22 A. I think it's been about --

23 MR. BENITEZ: Asked answered.

24 THE COURT: Objection sustained.

25 Move on, please.

1 MR. CHASE: Okay, thank you.

2 Q. Next, is that everybody's initials at the
3 bottom of the page?

4 A. Yes, sir.

5 Q. Please publish that to the jury.

6 A. Number 7, paragraph 7, management, subparagraph
7 A, management, subject to the provisions of this
8 agreement, Donald J. Hachenberger, the manager, has full
9 power and control over the conduct and operation of the
10 company's business.

11 This party specifically acknowledges that
12 Donald J. Hachenberger may take any action up to and
13 including the sale of the company, or the sale of the
14 underlying assets of the company.

15 MR. CHASE: And they include, Mr. Jones?

16 A. Everything.

17 MR. CHASE: Mr. Jones, here we go, buddy.

18 Q. And then the next paragraph, does that give
19 specific authorizations?

20 A. It does.

21 Q. But they're not limited to those, correct?

22 A. That's correct.

23 MR. CHASE: What's next, Mr. Jones?

24 Q. You could acquire real estate, if you wanted
25 to; is that true?

1 A. Correct.

2 Q. Could you appoint officers?

3 A. Yes, sir.

4 Q. Could you arrange financing and borrow money?

5 A. Yes.

6 Q. And including borrowing money from any other
7 member?

8 A. Correct.

9 Q. From any member?

10 A. Correct.

11 Q. You could incur all expenditures on behalf of
12 the company?

13 A. Yes.

14 Q. Could you refinance, increase and modify loans
15 in that thing, in that nature?

16 A. Yes.

17 Q. Do you employ and dismiss from employment any
18 and all employees, agents, independent contractors,
19 managers, brokers, attorneys, and accountants?

20 A. Yes, sir.

21 Q. And did you, in fact, terminate Mr. Myers as an
22 employee?

23 A. I did.

24 Q. Did you pay all closing and organizational
25 costs that you needed to pay?

1 A. Yes.

2 Q. What's next?

3 You can reimburse members if they, for their
4 reasonable -- what's next, I can't read it.

5 You can open accounts and handle the finances
6 in the banks?

7 A. Yes.

8 Q. What's next?

9 Could you determine the appropriate accounting
10 method to use for the company?

11 A. Yes.

12 Q. What's next?

13 Could you execute, sign, acknowledge and
14 deliver any and all instruments to effectuate any of the
15 foregoing?

16 A. Yes.

17 MR. CHASE: What's next, Mr. Jones?

18 Q. Did everybody agree to that?

19 A. Everybody agreed by initials on the bottom of
20 that page.

21 Q. What's next?

22 Please publish that to the jury.

23 A. It's subparagraph C, transactions with related
24 parties. The manager may, on behalf of and at the
25 expense of the company, transact any manner or business

1 with himself or any other member or a firm in which
2 the -- any member or a partner, officer, director,
3 stockholder, or affiliate, of any of them has an
4 interest or whatever terms he deems reasonable or
5 satisfactory.

6 Q. So that means that you as a manager of
7 Highway 46, does that mean that you, Donald
8 Hachenberger, individually, can loan the company money?

9 A. Yes.

10 Q. And execute agreements, did it say that?

11 A. Yes.

12 Q. What's next?

13 And when I say at this point, you, Donald,
14 Hachenberger, that was you and Mrs. Hachenberger, too,
15 correct?

16 A. Correct.

17 Q. Please publish that to the jury.

18 All members waive?

19 A. All members waive any claim of breach of
20 fiduciary duty or conflict of interest arising out of
21 any such transactions or courses of dealing.

22 Q. Are the Myers suing you right now for a breach
23 of your duties?

24 A. I think so, yes.

25 Q. What's next?

1 One of the things that you're suing for is a
2 breach of your duties removing or terminating Mr. Myers'
3 employment?

4 A. Yes.

5 Q. What's next?

6 Please publish that to the jury.

7 A. Management fee, the Hachenbergers --

8 Q. Hold on. It's the one percent thing, that was
9 the same thing in the letter agreement.

10 Did you ever take 1 percent management fee?

11 A. No, sir.

12 Q. What's next?

13 Please publish that to the jury.

14 A. Employment of agents and professionals, the
15 manager may engage on behalf of, and at the expense of,
16 the company, such persons, firms -- excuse me.

17 Q. You don't have to read all of that. That's
18 just a lot of lawyer stuff.

19 Just keep going and get through -- you can --
20 it's just not that -- that's kind of important, can you
21 read that?

22 A. Execution. I'm sorry.

23 Q. That's all right, it's hard to read. I'm
24 sorry.

25 A. I can't really read that. I'm so sorry.

1 THE COURT: Section F.

2 Q. That's all right. Where it says exculpation of
3 members?

4 A. I don't know what that means, exculpation.

5 Q. You don't have to know what that means.

6 A. Exculpation of members. No manager, member,
7 nor its affiliates, nor their directors, stockholders,
8 agents, officers and employees will be liable,
9 responsible for, or accountable, in damages or otherwise
10 to the company, or any of the members or their
11 successors or assignees for any acts performed or
12 omitted which are within the scope of the authority
13 conferred on the manager or its affiliates, agents,
14 officers, and employees by this operating agreement.

15 Provided that such manager, or such affiliate,
16 director, stockholder, agent, officer, or employee, will
17 act in good faith within what it reasonably believes to
18 be the scope of its authority, for a purpose it
19 reasonably believes to be not opposed to in the interest
20 of the company, and are not guilty of willful misconduct
21 or gross negligent -- negligence.

22 Q. Does that paragraph then define what
23 exculpation is?

24 A. It does. I didn't understand it before,
25 though, the word.

1 Q. I understand.

2 So have you ever made any decision with regard
3 to the company, its assets, its members, or any of its
4 employees, that you didn't believe was in the best
5 interest of the company?

6 A. I have not.

7 Q. Have you ever done anything that is any sort of
8 willful misconduct with regard to the company?

9 A. No.

10 Q. Have you ever -- do you know any instances
11 where you were grossly negligent --

12 A. No.

13 Q. -- with regard to your decisions in the
14 company?

15 A. No.

16 THE COURT: Counsel, approach, please.

17 (A bench conference was held outside the
18 hearing of the jury.)

19 THE COURT: Did you taste the -- you're well
20 out of your case now and into defense's case, and
21 you need to wrap this up by about 12:15, if we can.
22 Let these folks go on lunch or they'll be distracted
23 here.

24 So focus on getting the agreement in and save
25 these questions for the defense because they aren't

1 relevant.

2 MR. CHASE: Understood.

3 (Bench conference concluded.)

4 MR. CHASE: Mr. Jones, we're going to go much
5 more quickly.

6 BY MR. CHASE:

7 **Q. What's next?**

8 **And that's the signatures.**

9 **What's next? Signatures. Signatures.**

10 **Good job, Mr. Jones.**

11 **Signatures, signatures, signatures.**

12 **And what is this?**

13 **Q. Can you please publish that to the jury, sir.**

14 A. Counterparts. This agreement may be executed
15 in counterparts, each of which was to be deemed an
16 original, and all of which, taken together, will be
17 deemed one operating agreement.

18 **Q. Did that contemplate that it wasn't going to be**
19 **signed all at the same time?**

20 A. Yes.

21 **Q. What's next?**

22 **Please publish that to the jury, sir.**

23 A. Subparagraph C, entire agreement. This
24 agreement represents the entire agreement and
25 understanding of the parties, all prior or concurrent

1 agreements, understandings, representations, and
2 warranties, in regard to the subject matter have been
3 merged into this agreement and are superseded entirely.

4 MR. CHASE: What's next?

5 A. According --

6 **Q. Please publish that to the jury.**

7 A. Accordingly, the members execute this agreement
8 agree to be bound by this agreement and swear that the
9 statements set forth herein are true and correct.

10 **Q. What's next?**

11 A. My signature.

12 **Q. Next?**

13 A. Glenda's signature.

14 **Q. Next?**

15 A. Michael Myer's signature.

16 **Q. Next?**

17 A. And Jacqueline Myer's signature.

18 **Q. What's next, Mr. Jones? Are those the**
19 **notaries?**

20 A. That's correct.

21 **Q. Keep going. Go through it.**

22 **All the signatures were notarized, sir?**

23 A. Yes.

24 **Q. Is that Exhibit A to the agreement?**

25 A. Yes.

1 **Q. Is that everybody's signature at the bottom?**

2 A. Yes.

3 MR. CHASE: What's next, Mr. Jones?

4 **Q. Is that everybody's signature at the bottom of**
5 **it?**

6 A. Yes.

7 **Q. Everybody's signature at the bottom of it?**

8 A. Yes.

9 **Q. Everybody's signature at the bottom of it?**

10 A. Yes.

11 **Q. Everybody's signature at the bottom of it?**

12 A. Yes, sir.

13 **Q. Everybody's signature -- these are the exhibits**
14 **that everybody signed at the bottom?**

15 A. Yes.

16 **Q. That's the --**

17 MR. CHASE: Go quickly, Mr. Jones.

18 **Q. Did they sign all the licenses?**

19 Is that what they used and consistent with the
20 **agreement?**

21 A. Yes.

22 **Q. Intending to be legally bound, yes?**

23 A. Yes.

24 **Q. Could you please publish that to the jury.**

25 A. Number 4, binding effect. This agreement that

1 will be binding upon and in order to benefit of
2 assignor, assignee, and their respective successors and
3 assigns.

4 Q. Is that the signatures?

5 A. Michael Myers, Jacqueline Myers.

6 Q. Okay. That was then assigned, you and Glenda
7 did not have to sign that; is that correct?

8 A. That's correct.

9 MR. CHASE: What's next, Mr. Jones?

10 Q. That was signatures, an owner's affidavit.
11 Is this where -- is this document an owner's
12 affidavit where Michael and Jackie Myers affirm that
13 they owned the property, the SR 46 property?

14 A. Yes.

15 Q. Okay.

16 MR. CHASE: What's next, Mr. Jones?

17 Q. And they signed the bottom of the pages?

18 A. Yes.

19 Q. And they signed the document at the end of it?

20 A. Yes.

21 Q. And then was notarized?

22 A. Yes.

23 MR. CHASE: What's next, Mr. Jones?

24 Q. And then the property is identified up there as
25 parcel number, and they signed the bottom of that?

1 A. Yes.

2 MR. CHASE: What's next, Mr. Jones?

3 **Q. Is that a quitclaim? Just go through it**
4 **quickly.**

5 **Is that where Mr. and Mrs. Myers quitclaimed**
6 **the property?**

7 A. Yes.

8 **Q. To Highway 46 Holdings?**

9 A. Yes.

10 MR. CHASE: And keep going, Mr. Jones.

11 Keep going.

12 Keep going.

13 **Q. 7th day of July 2005, and then they signed it**
14 **at the bottom.**

15 A. That's correct.

16 **Q. And notarized it?**

17 A. Yes.

18 MR. CHASE: What's next, Mr. Jones?

19 **Q. Is that the legal description?**

20 A. Yes.

21 MR. CHASE: Next, Mr. Jones?

22 **Q. Signed it at the bottom?**

23 A. Yes.

24 MR. CHASE: What's next, Mr. Jones?

25 **Q. Signed at the bottom of the personal property,**

1 **and that says -- please publish that to the jury.**

2 A. Exhibit B, additional personal property. The
3 buildings and other improvements and all personal
4 property located on the real property described on
5 Exhibit A.

6 MR. CHASE: Go next, Mr. Jones.

7 **Q. Is that a special warranty deed?**

8 A. Correct.

9 **Q. Where the -- is that where the property was --**

10 MR. CHASE: Hold on, Mr. Jones.

11 **Q. Was that specifically conveyed to Highway 46**
12 **Holdings?**

13 A. It was.

14 **Q. And then ultimately that was recorded with the**
15 **clerk?**

16 A. Yes.

17 MR. CHASE: What's next, Mr. Jones?
18 Go quickly.

19 **Q. And they signed -- initialed the bottom of**
20 **that page.**

21 A. Yes.

22 **Q. And signed it back?**

23 A. Yes.

24 **Q. And notarized it?**

25 A. Yes.

1 **Q. On July 7, 2005?**

2 A. Yes.

3 **Q. And there is the property identified in**
4 **Exhibit A to the special warranty deed, and they signed**
5 **that?**

6 A. Yes.

7 **Q. And there is -- and that just outlined more of**
8 **the deal, and they signed that?**

9 A. Yes.

10 MR. CHASE: That's done. Back up. Close that.
11 That's not there yet.

12 All right. So, can you turn that off.

13 At this time, Judge, and it would be a great
14 time to stop for lunch.

15 THE COURT: Great.

16 MR. CHASE: Sorry. I'm really sorry.

17 THE COURT: All right, ladies and gentlemen,
18 it's about 12:15. We're going to take our lunch
19 recess. We'll be in lunch until 1:45, so an hour
20 and a half.

21 During lunch recess, all of the same cautions
22 apply. It's possible that you have struck up
23 acquaintances or friendships, at this point, you
24 might want to go out for lunch together. You're
25 welcome to do that, you just can't talk about the

1 case or anything having to do with jury service.

2 As you head out into the community, it's
3 possible that you run into parties, court staff, or
4 myself, and I just want you to understand we do take
5 seriously our responsibility not to talk with you or
6 not to do anything that might infer that we're
7 improperly intending to influence you in any fashion
8 in the case.

9 So we appreciate your forgiveness that that
10 conduct might be considered to be rude. So thank
11 you for that.

12 Please don't conduct any independent research.
13 And if you're a Facebooker or other social media or
14 WhatsApp, please don't post anything on social media
15 or websites in connection with this case. All right
16 thank you.

17 Ms. Apo, if you will just remain behind for a
18 moment, please.

19 The remainder of the jury will be dismissed at
20 this time.

21 (Jury exiting.)

22 THE COURT: Thank you.

23 You may be seated.

24 Ms. Apo, I spoke with Ms. Rivera at Water Ridge
25 Elementary, and she says if you are in line or

1 somebody's in line for you, and you are one of the
2 first 40 or 45, you're able to register, they will
3 help you personally at 8 o'clock. You can make your
4 appointment at 8 o'clock that morning so they can
5 work out, resolve whatever paperwork issues are with
6 you.

7 So you need to be here and she's not going to
8 force you to come back for an appointment after
9 9 o'clock, so they will take care of you at
10 8 o'clock.

11 She did want you to know that there's been a
12 change to the program and this may or may not
13 interest you any longer, but apparently, it's now a
14 mornings only program.

15 MS. APO: Okay.

16 THE COURT: For three hours per day starting in
17 August.

18 MS. APO: Okay.

19 THE COURT: All right. So, Ms. Rivera --

20 And so, when you're in line, if you make it
21 into that initial group that's going to get to
22 qualify to have a child there. You just need to ask
23 for Ms. Rivera. She said she will arrive at
24 6 o'clock that morning so she will be prepared to
25 assist you.

1 MS. APO: Okay, thank you.

2 THE COURT: And if you are running a little bit
3 late to get here, please just call us and let us
4 know. We'll understand.

5 MS. APO: Okay, thank you.

6 THE COURT: Thank you very much.

7 You're excused.

8 (Juror exiting.)

9 THE COURT: All right. Thank you.

10 You may step down, Mr. Hachenberger.

11 Any issues to take care of over lunch for the
12 plaintiff?

13 MR. CHASE: No, sir.

14 THE COURT: Mr. Benitez.

15 MR. BENITEZ: No.

16 THE COURT: Mr. Shuker?

17 MR. SHUKER: No.

18 THE COURT: Thank you. So be back here at
19 1:45, ready to go.

20 (A recess was taken.)

21 THE COURT: Mr. Hachenberger, if you'll come to
22 take the stand, please.

23 Back on the record.

24 MR. CHASE: Yes, sir. I was going to ask --

25 I'm ready to tender the witness, but I wanted to ask

1 him two questions about the title and the 4 COP
2 license. I realize I did say it was just two
3 questions.

4 The question I would ask: Did you request
5 Mr. Myers to turn over the titles.

6 The answer, I believe, is going to be yes.

7 Did he do it.

8 No, that was the titles are done.

9 The 4 COP license, did you request the 4 COP
10 license?

11 Yes.

12 Did they turn it over, the 4 COP license?

13 No.

14 There is two pieces of evidence with regard to
15 that. I don't know how important they are, but it
16 is where Myers initially transferred the 4 COP
17 license, and there was a date on it. And then a
18 month later they came back and withdrew.

19 It's kind of important. I'd like to get him to
20 get that in there. So it's more than two questions.
21 So, I'm sorry, but that's really it.

22 THE COURT: Any objection to handling that now?

23 MR. BENITEZ: No, your Honor.

24 THE COURT: Let's do that now.

25 MR. CHASE: Thank you.

1 MR. BENITEZ: Judge, just one question.

2 THE COURT: Yes.

3 MR. BENITEZ: I was looking for that exhibit
4 that the witness was using and I couldn't find it,
5 the booklet.

6 THE WITNESS: You handed me yours.

7 THE COURT: I did.

8 MR. BENITEZ: Oh, I see it now.

9 THE COURT: It's right here.

10 MR. BENITEZ: Thank you, your Honor.

11 THE COURT: You're welcome.

12 Go ahead, Mr. Chase.

13 MR. CHASE: Yes, sir.

14 THE COURT: You're all welcome to be seated.

15 I'm just standing out of a desire to do something a
16 little different.

17 MR. CHASE: You need a bench that raises up.

18 THE COURT: I do.

19 BY MR. CHASE:

20 Q. Mr. Hachenberger, did you request Myers to
21 tender -- to sign over the titles to all those
22 automobiles to Highway 46?

23 A. Yes.

24 Q. Did they sign over the titles to Highway 46?

25 A. No, sir.

1 **Q. Did you ask the Myers to sign over the 4 COP**
2 **license to Highway 46?**

3 A. Yes, sir.

4 **Q. Did they sign over the 4 COP license to**
5 **Highway 46?**

6 A. No, sir.

7 **Q. I'd like to show you now what's been marked as**
8 **Plaintiffs' Exhibit E for identification purposes.**

9 MR. CHASE: May I approach the witness, sir.

10 THE COURT: You may.

11 **Q. Do you recognize that document, sir?**

12 A. I do.

13 **Q. Is that -- what is that document?**

14 A. This is the affidavit of transfer where
15 Jacqueline Myers was in the process of turning over the
16 license for -- liquor license to Highway 46 Holdings.

17 **Q. Admitted.**

18 MR. CHASE: Judge, we would admit that as --
19 Madam Clerk, is that Plaintiffs' 4?

20 THE COURT: Any objections?

21 MR. BENITEZ: No objection.

22 THE COURT: Hang on. That's not going back to
23 the jury, though.

24 MR. CHASE: No, sir.

25 THE COURT: Right. So we're going to have to

1 keep two separate exhibit lists. One for the
2 non-jury portion and one for the jury portion.
3 Otherwise we will be missing exhibits and the
4 sequence of what goes with the jury.

5 MR. CHASE: Understood, sir.

6 Can that be Exhibit 1 NJ?

7 THE COURT: Yes, that'll be Plaintiffs' 1 NJ,
8 it should be non-jury.

9 It does not go back to the jury, Madam Clerk.

10 (Plaintiffs' Exhibit E for identification was
11 admitted in evidence as Plaintiffs' Exhibit NJ-1.)

12 MR. CHASE: Thank you, Judge.

13 BY MR. CHASE:

14 **Q. Next, if I may show you what's been previously**
15 **marked as Plaintiffs' Exhibit F for identification**
16 **purposes.**

17 **Can you tell me if you recognize that document,**
18 **sir?**

19 A. Yes, I do.

20 **Q. And what is that document?**

21 A. This is Jacqueline Myers' withdrawal of the
22 signature of the liquor license transfer.

23 MR. CHASE: We would move that in as
24 Plaintiffs' 2 NJ in evidence.

25 THE COURT: Any objections?

1 MR. BENITEZ: No, your Honor.

2 THE COURT: Then it will be received as
3 Plaintiffs' 2 NJ.

4 (Plaintiffs' Exhibit F for identification was
5 admitted in evidence as Plaintiffs' Exhibit NJ-2.)

6 Also not to go back with the jury.

7 MR. CHASE: Sir, at this time I'm going to
8 tender the witness.

9 THE COURT: Okay, thank you.

10 Any cross as to those issues?

11 MR. BENITEZ: Yes, your Honor.

12 THE COURT: Okay. Go ahead.

13 CROSS EXAMINATION

14 BY MR. BENITEZ:

15 Q. Mr. Hachenberger, you indicated that you asked
16 the Myers to transfer the title.

17 When did you do that?

18 A. I probably did it 10 or 15 times. Most
19 specifically, in a meeting with Kevin Donaghy that we
20 had about five months after Mr. Myers' termination.

21 Q. Do you have a date and a time?

22 A. I do not know the exact date or time.

23 Q. Do you know the month it was done?

24 A. I'm sorry, I do not know. It was approximately
25 five months after the termination of Mr. Myers.

1 **Q. And the termination of Mr. Myers came on**
2 **June 27, 2007?**

3 A. I believe that's the accurate date, yes.

4 **Q. So it would have been two months after June 27,**
5 **2007?**

6 A. I'm sorry, I think it was five months after
7 that.

8 **Q. I apologize. Five months.**

9 A. Whatever that would be.

10 **Q. Okay. So we're talking November or December of**
11 **2005?**

12 A. Sometime in that area.

13 **Q. And this was a verbal conversation you had?**

14 THE COURT: Counsel, I'm sorry, but 2005, or
15 2007?

16 A. Seven.

17 MR. BENITEZ: Seven. I apologize.

18 THE COURT: That -- I just want to be clear for
19 my --

20 MR. BENITEZ: I'm glad we're going outside the
21 jury for this, Judge.

22 THE COURT: Okay.

23 BY MR. BENITEZ:

24 **Q. So let me go back, because I think I might have**
25 **messed that up.**

1 **June 27th, 2007, is when you terminated Mike**
2 **Myers as the president?**

3 A. I terminated his employment, yes.

4 **Q. And you then removed him from the premises at**
5 **that time?**

6 A. I asked him to leave at that point, yes.

7 **Q. And did he leave?**

8 A. I don't recall exactly. I think the answer is
9 no. But I don't know if he left then, and then later
10 came back on the property, but -- so I'm not certain.

11 **Q. Okay. And when he came back on the property,**
12 **you had a sheriff remove him, correct?**

13 A. I'm not sure that's exactly accurate. I asked
14 him to leave again. And when he refused, I called the
15 sheriff's department for some support. During which
16 time, a sheriff's officer arrived, and I said, this is
17 an ex-employee that I would like off the premises.

18 **Q. And at that time, you removed him, correct?**
19 **With the help of a sheriff?**

20 A. Well, I appreciate what you're trying to do,
21 but I don't think I removed him. I asked that he not be
22 on the property, and I think we even invoked a trespass
23 warrant.

24 And so, we approached it as carefully as we
25 could to accomplish the task.

1 **Q. And who is we?**

2 A. When I use the term we, I meant myself, the
3 other employees, we had security officers, we had all
4 sorts of different people that were part of that
5 process, yes.

6 **Q. You, but you ordered his removal, correct?**

7 A. I told him as an ex-employee he was not welcome
8 on the property.

9 **Q. Did you have any other subsequent conversation**
10 **with Mr. Myers regarding the title transfers after that**
11 **meeting or encounter you had with him, either in**
12 **November or December of 2007?**

13 A. I believe there were several discussions about
14 it. But I don't remember the specifics of it.

15 **Q. Were there any other meetings? Was it just one**
16 **meeting or was it more meetings?**

17 A. It's been ten years ago and so I'm not certain,
18 but I believe we had at least one meeting that involved
19 myself and Kevin Donaghy.

20 **Q. That's the meeting you were referring to,**
21 **correct?**

22 A. That's the one, yes.

23 **Q. That's the only one you're sure of?**

24 A. Well, that's correct. There could be others.
25 At this point, I distinctly remember that one.

1 Q. Okay. At this point you don't have any
2 personal recollection of any other meeting with Mike
3 Myers in 2007?

4 A. Not a --

5 Q. After he was fired?

6 A. Not a clear thought.

7 Q. With respect to the 4 COP, you were going to be
8 operating the operating -- well, I'll withdraw that.
9 Jacqueline Myers did sign over the 4 COP
10 license after that meeting, or during that meeting,
11 correct?

12 A. I'm sorry, I didn't hear the first part of it.

13 Q. During the meeting that you had in November of
14 2007, where Mike Myers and Jackie Myers, did Jackie
15 Myers transfer to you the 4 COP license?

16 A. I don't believe that it was a physical thing
17 she could transfer. She signed the application either
18 at that meeting or very close to that meeting, and I
19 think there was a date on it.

20 Q. Okay. At that --

21 A. But then it never was transferred.

22 Q. And at that meeting, do you recall -- well --
23 Are you aware whether or not Jacqueline Myers
24 has that liquor license on her?

25 A. I don't have first-hand information, but I've

1 heard that that has since been sold to Mike Good.

2 Q. And you've known that for a number of years,
3 correct?

4 A. I have, yes.

5 Q. So why is it that you're trying to get specific
6 performance in this case to force Jackie Myers to give
7 you something she doesn't have?

8 A. Because I believe it was the point of this
9 suit, and that the sale of it has a financial
10 implication that I had to buy a different COP and I had
11 to pay for it, because she didn't transfer as she had
12 agreed to do.

13 So it's an important thing. I don't know what
14 the current value is, but I'm guessing 120 to \$150,000
15 fee to replace the license that she didn't transfer when
16 she said she would.

17 Q. So you're not asking this court to force
18 Jacqueline Myers to specifically perform the transfer of
19 her former liquor license, correct?

20 MR. CHASE: Calls for a legal conclusion.

21 Objection.

22 MR. BENITEZ: I'm asking --

23 THE COURT: That's sustained.

24 It's really a remedy issue the Court's going to
25 have to consider based upon the facts.

1 They've demanded that. That's the complaint.
2 It asks for specific performance. It may or may not
3 be possible because of the transfer. We'll have to
4 address that.

5 MR. BENITEZ: Nothing -- and, Judge, as I
6 understand, we're still going to be able to present
7 evidence after the jury verdict on these equitable
8 issues.

9 THE COURT: That's correct.

10 MR. BENITEZ: And I may recall him at that
11 time.

12 THE COURT: That's fine.

13 MR. BENITEZ: Thank you, your Honor.

14 THE COURT: Okay, thank you.
15 Redirect.

16 MR. CHASE: No, sir. But with regard to --
17 kind of going forward, I would assume that after
18 Mr. Hachenberger receives cross examination, we'll
19 be calling David Chauvin. There are exhibits that
20 are attached to his affidavit.

21 When we got together and we went over exhibits,
22 there was no objections expressed initially. There
23 were no objections expressed to any of my exhibits,
24 including an affidavit with attachments from David
25 Chauvin. Clearly an affidavit itself could be

1 objectionable, and the exhibits, however, would not
2 be.

3 When we did the pretrial statement, there was
4 the joint pretrial statement, I was going forward on
5 what has been represented that there are no
6 objections, so I submitted it, 1156 or 57, filed
7 with the Court.

8 Right there, immediately thereafter,
9 Mr. Benitez did file his own exhibit lists, and
10 included mine, and properly objected before the
11 Court's deadline of noon to the affidavit. That's a
12 valid objection.

13 However, the affidavit is sitting there, marked
14 as an exhibit with identification purposes. The
15 affidavit, I would agree with Mr. Benitez, is
16 objectionable and should come out, but the exhibits
17 have to -- or I'm going to attempt to get them in.
18 And then, but how, I need to, it's already in. It's
19 in, it's sitting there on the table as a document
20 for identification purposes.

21 I don't know how the Court would want to break
22 that down. I would like --

23 THE COURT: I presume you would agree,
24 Mr. Benitez, that the affidavit should be removed.

25 MR. BENITEZ: Yes, definitely, Judge.

1 MR. CHASE: Can I just pull that out.

2 THE COURT: So, by stipulation, you may remove
3 the affidavit from the exhibit that's been marked --
4 what is the letter for identification?

5 MR. CHASE: It is -- I, sir, Plaintiffs' I for
6 identification purposes.

7 THE COURT: So plaintiffs' I, by stipulation,
8 remove the affidavit. We'll address the objections
9 to the attachments during the testimony, as
10 appropriate.

11 What I'd like to do is, let's go ahead and get
12 our jury back in. We're going to cross examine as
13 to these limited issues that have been presented on
14 direct, which is -- basically, is the thoughts on
15 the conversion and the contract, the existence of
16 the contract.

17 And then you'll have opportunity, Mr. Shuker,
18 if you'd like to ask any questions at that point.
19 And then we're going to come back around to
20 redirect.

21 Following that, you could put on -- is it
22 Mr. Chauvin?

23 MR. CHASE: Yes, sir, Chauvin.

24 THE COURT: And we can address these exhibits.

25 But in the meantime, yes, please just remove

1 the affidavit.

2 Mr. Benitez.

3 MR. BENITEZ: Yes, your Honor, just in response
4 to what Mr. Chase said, initially when I inspected
5 the exhibits, I did object and I filed written
6 objections, and they were part of my proposed
7 pretrial statement. So we can go back to the
8 e-mails and my correspondence with Mr. Chase
9 indicating the objections.

10 At that time, Mr. Chase had --

11 THE COURT: Mr. Benitez, you have timely filed
12 the objections. I'm not going to address --

13 MR. BENITEZ: No, but he's representing that I
14 didn't do it or -- and I take --

15 THE COURT: I understand --

16 MR. BENITEZ: -- exception.

17 THE COURT: I understand that you take umbrage
18 and exception for that, and I would like for that to
19 stop, folks. I just don't know how to anticipate
20 what's coming to be able to stop it, but it's not
21 productive to us moving forward.

22 So what I have is the pretrial statement that
23 show objections to certain exhibits, and I'll
24 certainly address those as necessary.

25 MR. BENITEZ: And, Judge, just for your sake,

1 I'm just reacting, I'm not the one that brought it
2 to the table.

3 THE COURT: I hear you, but it's not a
4 productive use of our time. So let's move forward,
5 okay.

6 Let's get the jury back in.

7 THE DEPUTY: Jury entering.

8 (Jury entering.)

9 THE COURT: Thank you.
10 You may be seated.

11 Members of the jury, I recognize that from time
12 to time we'll have you be back here, in this case,
13 at a quarter 'til 2, and now we've had you sit back
14 here for a little bit longer than 15 minutes.

15 But I want to assure you we are in here
16 working, doing what we can to make the presentation
17 of evidence more efficient for you all. So, please,
18 trust that we are continuing to work even in those
19 times where we've asked you to wait back there for
20 us, in an effort to try to expedite things and push
21 the case along. So I appreciate your patience.

22 At this time, do you have any further
23 questions, Mr. Chase, for Mr. Hachenberger at this
24 time?

25 MR. CHASE: Sir, I would tender the witness,

1 Judge.

2 THE COURT: Thank you very much.

3 And so we'll at this time hear cross
4 examination.

5 Mr. Benitez.

6 MR. BENITEZ: Thank you, your Honor.

7 Judge, is this mike --

8 THE COURT: It is, it is. So if you intend to
9 stay there and you want to turn that one off, you
10 can utilize the one on the podium.

11 MR. BENITEZ: Thank you, your Honor.

12 THE COURT: We'll let you know if we can't hear
13 you.

14 MR. BENITEZ: Mr. Hachenberger, can you hear
15 me?

16 THE WITNESS: Yes, sir.

17 MR. BENITEZ: Now it sounds different.

18 THE COURT: It is different, but we can still
19 hear you.

20 MR. BENITEZ: Okay.

21 CROSS EXAMINATION

22 BY MR. BENITEZ:

23 Q. Back in September of 2005, you had an office,
24 over at -- I believe the name is Re/Max of Florida,
25 Inc., correct?

1 A. Yes.

2 **Q. Is that where your physical location was?**

3 A. That was one office at one of my companies,
4 yes.

5 **Q. Is that where you worked from?**

6 A. When I was doing Re/Max of Florida business,
7 yes.

8 **Q. Okay. Back in September of 2005, were you**
9 **working out of that office or another office?**

10 A. Well, I'm -- it's difficult to -- well, it's
11 not difficult to answer. I had an office at home, I had
12 an office at Re/Max. I had offices in California, an
13 office in Medford, Oregon. I had offices in South
14 Carolina, several offices that were at businesses that I
15 owned.

16 **Q. Okay. Where was your principal office in**
17 **September of 2005?**

18 A. As it relates to each business, it would be
19 different at different of those locations. I mean,
20 based on what business I was dealing with.

21 **Q. Okay. What businesses were you dealing with in**
22 **September 2005?**

23 A. I had horticulture businesses. I had all sorts
24 of real estate offices. I had -- I had insurance
25 operations and things of that nature.

1 **Q. With respect to Highway 46, what office did you**
2 **work from?**

3 A. I primarily worked either from home or from my
4 office in Colorado, or from the Re/Max office on that --
5 on this project.

6 **Q. Okay. And that would be Re/Max of Florida,**
7 **Inc., correct?**

8 A. Correct.

9 **Q. So you would spend some time, but not the**
10 **principal amount of time, at the same office building**
11 **location at Kevin Donaghy, correct?**

12 A. That's correct.

13 **Q. And Kevin Donaghy was your attorney at that**
14 **time?**

15 A. Kevin --

16 **Q. In August of 2005, he was your attorney,**
17 **correct?**

18 A. Kevin Donaghy was employed by Re/Max of Florida
19 and had offices in that building, yes.

20 **Q. Okay. And was he also your attorney?**

21 A. I'm not sure I could be specific about that
22 because he worked on projects for multiple companies and
23 very little for me personally, but -- based upon what
24 projects he might do something for me personally. But
25 he was an employee of Re/Max of Florida.

1 **Q. Okay. So he was just an employee of yours at**
2 **Re/Max of Florida in 2005, is that what you're trying to**
3 **say?**

4 A. I'm saying that he was an employee of Re/Max of
5 Florida in 2005, yes.

6 **Q. And what -- tell the jury what kind of work he**
7 **did for you?**

8 A. Re/Max of Florida was primarily a franchising
9 business, where we sold Re/Max franchises to real estate
10 brokers, which has a certain level of legality to it. I
11 mean, a lot of legality to it. But we had lots of
12 different issues that were ongoing, enforcement of
13 contracts, things of that nature. And Kevin was the
14 person primarily responsible for those things at Re/Max
15 of Florida.

16 **Q. So he was responsible for legal work for**
17 **Re/Max; is that correct?**

18 A. That's correct.

19 **Q. Okay. And did you have him involved in**
20 **Highway 46 Holdings in 2007?**

21 A. I did. Yes.

22 **Q. And in --**

23 MR. CHASE: 2007 or 2005?

24 MR. BENITEZ: Excuse me, 2005.

25 A. 2005, yes, I did.

1 **Q. Okay. So when Highway 46 was formed in May of**
2 **2005, Kevin Donaghy was working as your attorney,**
3 **correct?**

4 A. Kevin Donaghy was the -- employed by Re/Max of
5 Florida. He did work for Re/Max of Florida and other
6 companies that I was involved with, including Highway 46
7 Holdings, yes.

8 **Q. So did he organize Highway 46?**

9 A. I believe the answer to that is yes.

10 **Q. And he and you -- and he was also your attorney**
11 **when he did Highway 46 in 2005, correct?**

12 A. Well, again, I don't know the legal definition
13 of my attorney. He was an attorney and he was employed
14 by one of my companies to do work for different
15 companies. I don't know that I would characterize him
16 as my attorney, so much as the in-house attorney for my
17 companies.

18 **Q. Why is it that you're having difficulties**
19 **recognizing that Kevin Donaghy was your attorney back in**
20 **2005?**

21 MR. SHUKER: Objection, your Honor, asked and
22 answered.

23 THE COURT: On that basis, overruled.

24 A. Would you repeat the question?

25 MR. CHASE: Objection, calls for legal

1 conclusion as to what --

2 THE COURT: Sustained.

3 Q. There is no question that Kevin Donaghy
4 organized Highway 46, in other words, submitted the
5 paperwork to Tallahassee division of corporation to
6 organize Highway 46 Holdings, correct?

7 A. That's correct.

8 Q. And there's no equivocation in your mind that
9 Kevin Donaghy was not retained by Mike or Jacqueline
10 Myers, correct?

11 A. To the best of my knowledge, he was not
12 retained by them, that's correct.

13 Q. To your knowledge, does he -- did he ever
14 represent Michael Myers or Jacqueline Myers?

15 A. I know of no circumstances where he represented
16 them, no. But, again, I don't know the legal definition
17 of some of those things.

18 Q. Okay. We've talked about this morning, a
19 letter agreement and operating agreement. Those were
20 drafted by Kevin Donaghy, correct?

21 A. Kevin was a part of the creation of those with
22 me, and Kevin was responsible for getting them prepared,
23 and he presented them to the Myers, yes.

24 Q. Okay. Would it be a fair statement to say he's
25 the one that produced the final drafts of the letter

1 agreement and the operating agreement that were
2 eventually signed by you?

3 A. Again, I think it might be a detail, but I'm
4 sure he didn't produce them. He had a paralegal that
5 worked for him that probably produced them, but Kevin
6 was a part of the creation and presented, I know that,
7 for a fact.

8 Q. When he was drafting the letter agreement, was
9 he drafting it for you under your instructions?

10 A. He and I worked on those very carefully
11 together on an ongoing basis.

12 Q. Okay. But my question is, was he working under
13 your instructions -- excuse me, under your directions to
14 produce a letter agreement when he produced the letter
15 agreement?

16 A. I think the answer is yes.

17 Q. And the same thing for the operating agreement?

18 A. I think so, yes.

19 Q. And you also hired him to represent Glenda
20 Hachenberger, your wife, at the time, correct?

21 A. I don't believe he ever directly represented
22 Glenda other than Glenda was a shareholder in Re/Max of
23 Florida. He was employed by Re/Max of Florida, and when
24 he was doing work on the Re/Max business, he would have
25 been involved in something that she was a part of --

1 **Q. Okay. But she --**

2 A. -- in this --

3 **Q. I'm sorry. I apologize. Go ahead.**

4 A. That's all.

5 **Q. Glenda Hachenberger was a part of Highway 46**
6 **Holdings' LLC, correct?**

7 A. She still is.

8 **Q. She still is?**

9 A. Yes.

10 **Q. How is she?**

11 A. Her -- she's in this lawsuit, first of all.

12 **Q. Okay.**

13 A. And is defending her position in this lawsuit,
14 as based upon her ownership of Re/Max -- or of
15 Highway 46 Holdings.

16 **Q. Is it your testimony today that Glenda**
17 **Hachenberger has not transferred her interest to you?**

18 A. I'm sorry, I forgot that totally. She has
19 transferred her interest in our divorce to me.

20 **Q. And there's no doubt in your mind?**

21 A. There's no doubt in my mind that that happened,
22 that's correct. I was confusing the two issues of that
23 suit and the transaction. I apologize.

24 MR. BENITEZ: May I approach the witness, your
25 Honor.

1 THE COURT: You may.

2 BY MR. BENITEZ:

3 Q. I'm going to tender to the witness Exhibit 7 --
4 Exhibit 1 for plaintiff.

5 MR. BENITEZ: And if I may stand here and ask
6 him a question, Judge.

7 THE COURT: You may.

8 Q. And I want you to -

9 THE COURT: I need you to turn your microphone
10 on if you're going to do that.

11 MR. BENITEZ: I'm not used to this.

12 THE COURT: Can you hear?

13 MR. BENITEZ: Can you hear me, Judge?

14 THE COURT: Yes, thank you.

15 BY MR. BENITEZ:

16 Q. Mr. Hachenberger, I'm going to tender to you
17 Exhibit 1 for the plaintiff that has been admitted into
18 evidence, and I want you to read to the jury
19 paragraph 28, which is one of the paragraphs you did not
20 read initially.

21 A. Yes.

22 THE COURT: Counsel, is this paragraph 28 of
23 which document?

24 MR. BENITEZ: Oh, Exhibit 1. Oh, I'm sorry,
25 the letter agreement within Exhibit 1.

1 THE COURT: Thank you.

2 A. And this is page 7 of that document, and it was
3 29.

4 MR. BENITEZ: No, sir. 28.

5 A. 28. The parties agree that an interest in the
6 company may only be transferred with the approval of a
7 majority of the other members.

8 Q. Thank you.

9 That clearly means that you cannot have Glenda
10 Hachenberger transferring her interest to you without
11 Mike Myers' and Jackie Myers' agreement, correct?

12 A. I think that would normally be accurate, except
13 that I had the voting authority of those of Mike and
14 Jackie's interest.

15 Q. And I'm going to --

16 MR. BENITEZ: May I approach the witness again.

17 THE COURT: You may.

18 MR. BENITEZ: Exhibit 1. I want you to go
19 through Exhibit 1 and show me anywhere where you
20 were given that interest. And I'm going to refer
21 your attention to --

22 MR. CHASE: Your Honor, may we approach.

23 THE COURT: You may approach, please.

24 (A bench conference was held outside the
25 hearing of the jury.)

1 MR. SHUKER: Tab and scope of direct, I don't
2 know how --

3 MR. CHASE: The weight and scope.

4 MR. BENITEZ: He went through the entire --

5 THE COURT: One at a time.

6 MR. BENITEZ: Sorry.

7 THE COURT: Okay. Scope was the issue.

8 MR. SHUKER: Yes.

9 THE COURT: Okay.

10 MR. CHASE: I join in this.

11 MR. BENITEZ: I think it's within the scope of
12 direct examination.

13 THE COURT: Why?

14 MR. BENITEZ: Why? Because they've talked --

15 THE COURT: Why does this relate to the
16 conversion claim or the existence of a contract?

17 MR. BENITEZ: Because, if they are complying
18 with this agreement, they should be compliant with
19 this agreement. But my theory of the case and my
20 client's position is that there is no agreement, and
21 the clients were dealing without this agreement.

22 So my next question's going to be, but this
23 agreement is not enforced.

24 THE COURT: His transferring shares is
25 something that you contend wasn't enforced, you want

1 to criticize him for that.

2 MR. BENITEZ: No, your Honor. No, your Honor.

3 I'm saying the letter agreement is saying you cannot
4 transfer anybody's shares without the consent of the
5 majority members.

6 THE COURT: Right.

7 MR. BENITEZ: That can never happen in this
8 case unless the Myers agree. And that was done.

9 THE COURT: We've already established your
10 point, but what's the -- so what's the issue?

11 The next question is a legal issue that is
12 outside the scope of the issues of the plaintiffs'
13 claim in this case. You're defending against the
14 plaintiffs' claim. That doesn't open everything in
15 the agreement to being cross examined right now.
16 Okay.

17 MR. CHASE: Thank you, Judge.

18 (Bench conference concluded.)

19 BY MR. BENITEZ:

20 Q. You believe, Mr. Hachenberger, that this letter
21 is an agreement enforceable, correct?

22 A. Of course, yes.

23 Q. Okay. And you're also referred -- and you also
24 believe that the operating agreement is enforceable,
25 correct?

1 A. Yes, I do.

2 Q. You did not sign either agreement in July of
3 2005, correct?

4 A. That's correct.

5 Q. And you indicated to the jury that you were out
6 on a one-week excursion with some horses; is that
7 correct?

8 A. I indicated that I was in Colorado, that
9 included a one-week excursion on horses, yes, but I was
10 there longer than that.

11 Q. Okay. Do you have faxes in Colorado?

12 A. I'm sorry?

13 Q. Do you have faxes -- fax machines in Colorado?

14 A. Yes.

15 Q. And you have an office in Colorado?

16 A. Correct. In my home.

17 Q. And you use e-mails, correct?

18 A. That's correct.

19 Q. And you remember the conversation during direct
20 examination with the language in the operating agreement
21 about counterparts? You remember that?

22 A. I do.

23 Q. Okay. And I believe you read it to the jury.
24 It said, this agreement may be executed in counterparts,
25 each of which will be deemed an original and all of

1 **which, taken together, will be deemed one operating**
2 **agreement. Remember that?**

3 A. I do.

4 **Q. Is that correct?**

5 A. Yes, I do remember that, yes.

6 **Q. And you're a businessman, correct?**

7 A. Yes. Yes, sir, I'd like to think of myself as
8 that.

9 **Q. And you've done a lot of business and a lot of**
10 **contracts, correct?**

11 A. Correct.

12 **Q. And there are occasions when parties are spread**
13 **out throughout the U.S. or Florida, and they have to**
14 **sign agreements or signature pages and then scan them**
15 **and send them to other parties, correct?**

16 A. I think technically the answer to that is yes,
17 except they choose to do that that way.

18 **Q. Right. Right.**

19 A. It would be my answer to that, yes, I've done
20 it.

21 **Q. And that is exactly what this provision says.**
22 **It says not that you may delay two months in signing**
23 **your side of the agreement, but that, in fact,**
24 **counterparts can be used so that the agreement can be**
25 **signed on one particular day, or soon thereafter,**

1 correct?

2 A. That's correct. The part that you said is
3 correct, but I think that's a choice that I made not to
4 do that.

**5 Q. Okay. So you intentionally made a choice not
6 to sign the agreement until September 27, 2005?**

7 A. I am positive I did not intentionally make the
8 choice not to sign it until a certain date. But I think
9 I chose to sign it at a time that was convenient, and
10 that was in September, when I was back in Florida.

**11 Q. So this is a -- are you in agreement with me
12 this is a multimillion dollar deal or venture, correct?**

13 A. Correct.

**14 Q. You've already testified to the jury that you
15 spent \$25 million, correct?**

16 A. That's correct.

**17 Q. So this is a significantly high monetary value
18 deal, correct?**

19 A. That's correct.

**20 Q. And you thought that you didn't have to sign
21 the agreement until September 27, 2005?**

22 A. I'm not wanting to agree with you that I
23 thought I didn't. I thought I had a choice of when it
24 was signed, and I made that choice.

25 Q. Have you ever entered into an agreement where

1 one party signs and the other one doesn't for two
2 months? Have you ever had another deal that you can
3 tell this jury that it has occurred to you?

4 A. Well, I cannot tell a specific example of that,
5 but, typically, in our franchising business, it was very
6 common for one party to sign at one point in time, and
7 then the other party, typically was me, signing it
8 later.

9 We would sell a franchise, the individual
10 franchisee would sign the documents, and then at a later
11 date I would sign it. And I've seen that happen in
12 several instances, lots of instances, yes.

13 Q. You're a businessman, you've had a lot of
14 contracts before. You would agree with me that a
15 contract is not a contract until both parties sign,
16 correct?

17 MR. CHASE: Objection, leading conclusion.

18 MR. SHUKER: Objection.

19 THE COURT: Sustained.

20 Q. Why did Glenda Hachenberger not sign until
21 October 8, 2005?

22 MR. CHASE: Objection, speculation.

23 MR. SHUKER: Objection on issue of predicate.

24 THE COURT: The objection is sustained.

25 Speculation.

1 **Q. Do you know why Glenda Hachenberger didn't sign**
2 **until October 8, 2007?**

3 A. I'm assuming that it was that she was in
4 Colorado at the time. I think that was the reason.
5 But --

6 **Q. And she was in the business, correct?**

7 A. Glenda was a part of all of the businesses that
8 I was involved with, yes.

9 **Q. So would you classify her as a very**
10 **well-experienced and educated business woman?**

11 A. Very definitely, yes.

12 **Q. And she would have been working out of an**
13 **office -- was she working out of an office in Colorado?**

14 A. I'm not certain I could answer that for you.

15 **Q. Kevin Donaghy was let go by you in September of**
16 **2005, correct?**

17 A. He was employed, did you say?

18 **Q. Let go.**

19 A. Oh. I'm sorry. That's not correct, no.

20 **Q. Did you fire him?**

21 A. No, sir.

22 **Q. Did he resign?**

23 A. He did resign.

24 **Q. Okay. And why did he resign?**

25 A. That would -- I don't know that I could tell

1 you. We had a -- we had a confrontation about his
2 attendance at that time at a convention, and I asked him
3 to return from the conference to Florida. We were in
4 Denver in a conference and I asked him to return to
5 Florida, because I wasn't happy with how he was
6 conducting himself there.

7 And when he returned, he spent the weekend, and
8 when I got back on Monday, I had his resignation letter.

9 **Q. And what date was that?**

10 A. I'm sorry, I do not know that specific date.

11 **Q. Do you remember the day of the conference or**
12 **the weekend of the conference?**

13 A. That's been ten years ago, or 12 years ago, I
14 do not recall the exact -- it probably would have been
15 in August, at a time during the summer conference of
16 Re/Max.

17 **Q. Okay. So at the very latest, it would be by**
18 **about the first week of September of 2005?**

19 A. I don't -- I'm not certain of that date.

20 **Q. And his offices were in your office, or I**
21 **should say in Re/Max of Florida, Inc.'s office, correct?**

22 A. That's correct.

23 **Q. Now, this letter agreement that you went**
24 **through --**

25 MR. BENITEZ: And if I may approach the witness

1 one more time, your Honor.

2 THE COURT: You may.

3 **Q. Mr. Hachenberger, do you remember reading parts**
4 **of paragraph 9 of the letter agreement, which is a**
5 **page 2 of 8 of the letter agreement part of Plaintiffs'**
6 **Exhibit 1?**

7 A. You mean today?

8 **Q. Yes, sir.**

9 A. I need to look at it. I do remember, yes.

10 **Q. Okay. I noticed that there was some parts that**
11 **were not read. Can you read for me -- or, first of all,**
12 **tell the jury -- if you read starting here, if the**
13 **parties cannot agree -- or excuse me, the parties will.**
14 **Do you see where I'm pointing?**

15 A. I see where you're pointing.

16 **Q. I want you to read that one sentence.**

17 A. You asked me to read two of them.

18 **Q. No.**

19 A. Is it the if the parties cannot agree part?

20 **Q. The next sentence.**

21 A. Or the if the parties will enter?

22 **Q. The parties will enter.**

23 A. The parties will enter into a capital
24 contribution agreement that will detail the property
25 transferred and agreed-upon value.

1 **Q. Thank you.**

2 **That capital contribution agreement was never**
3 **drafted, was it?**

4 A. I believe we entered into a part of the capital
5 contribution agreement that related to the real estate,
6 yes.

7 **Q. I'm talking about the capital contribution**
8 **agreement that you just read to the jury. Was that**
9 **capital contribution agreement ever drafted by Kevin**
10 **Donaghy?**

11 A. I believe that I answered that, yes, that it is
12 a part of the -- that relates to the real estate. There
13 is a capital contribution agreement, I believe, that's a
14 part of that.

15 MR. BENITEZ: I apologize, your Honor, I need
16 to go back to the witness.

17 **Q. I'm going to give you, Mr. Hachenberger,**
18 **Plaintiffs' Exhibit 1, and I want you to find this**
19 **contribution agreement that you're referring to.**

20 A. I may have -- excuse me. I may have confused
21 the creation of one with the description of the capital
22 contribution agreement in the letter agreement. And I
23 know -- I'm sorry I took so much time, but this is
24 70-some pages of document.

25 Here's what I was confusing it with, on page 4.

1 **Q.** And, Mr. Hachenberger, if you don't mind, for
2 the sake of the jury, why don't you identify the
3 document that you're referring to also, so that the
4 Court can follow.

5 A. Thank you.

6 It's the operating agreement, page 4, where we
7 described capital year, and I think it references -- it
8 was page 4, item 4, where we defined the capital
9 contributions. And it says, on the effective -- on the
10 effective date, which would be the July 7th, the members
11 have contributed the property or loans set forth in the
12 capital contribution agreement attached as Exhibit D.
13 And then I did not find an Exhibit B, but maybe I
14 overlooked it.

15 THE COURT: I'm sorry, sir, Exhibit B or D?

16 THE WITNESS: It is -- yes, it is here.

17 THE COURT: B as in boy or --

18 THE WITNESS: B as in boy.

19 THE COURT: Thank you.

20 A. And it says, it's -- and it doesn't mention --
21 it doesn't mention that that was -- that was what I was
22 referring to, that it does go on to say, that was what I
23 was referencing.

24 **Q.** Okay.

25 A. So I did not find it, no.

1 **Q. Page 4 of the operating agreement only refers**
2 **to the contribution agreement, correct?**

3 A. I'll have to look and see if it refers to
4 anything else. There are other things on that page, I
5 believe.

6 **Q. Okay. Let me rephrase the question.**

7 The question is, looking at paragraph 4A of the
8 operating agreement that you referred the jury to, it
9 says -- and, here, follow with me and correct me if I'm
10 wrong -- capital contributions?

11 A. I can't see it, I'm sorry.

12 **Q. I'm sorry. I'll tell you what, then why don't**
13 **you read the first -- the first sentence of 4A for the**
14 **jury?**

15 A. It's paragraph 4, capital -- subparagraph A,
16 capital contributions of the members.

17 **Q. That's the head, correct?**

18 A. That's the head.

19 **Q. Now, there's a period and now there's a**
20 **sentence?**

21 A. Says, semicolon, on the effective date, the
22 members have contributed the property or loans set forth
23 in the capital contribution agreement attached as
24 Exhibit B.

25 **Q. And you would agree with me that there is no**

1 capital contribution agreement on Exhibit B, correct?

2 A. I would agree with that, yes.

3 Q. And you would agree with me also that you've
4 never seen 'til today's date a capital contribution
5 agreement, correct?

6 A. That's correct. The reason I haven't seen one
7 is because there was no accurate inventory that had been
8 done, no agreement on the amounts or value of the
9 contributions to be able to establish that.

10 Q. Clearly in the letter agreement and the
11 operating agreement, there's a reference to a capital
12 contribution agreement that was going to contain an
13 identification of the memorabilia and the other property
14 of the Myers that was going to be part of Highway 46,
15 correct?

16 A. Yes, sir, definitely. Absolutely.

17 Q. That capital contribution agreement to today's
18 date has not been drafted, let alone signed, correct?

19 A. There could have been a draft, but nothing has
20 ever been signed, that's accurate.

21 Q. Have you ever seen a draft?

22 A. I have not, no.

23 Q. Okay. Now, I think you testified when
24 Mr. Chase was here asking you questions about the fact
25 that you had a lot of money back then, but you don't

1 **have a lot of money now; is that accurate?**

2 A. Probably pretty much, yeah.

3 **Q. Okay. And you sold that at one point, Re/Max,**
4 **the franchise, correct?**

5 A. That's correct.

6 **Q. And you made a lot of money?**

7 A. Yes.

8 **Q. And tell the jury how much money you made?**

9 A. I don't know exactly.

10 **Q. But it was over 100 million, correct?**

11 MR. CHASE: Objection, relevance.

12 MR. BENITEZ: It is relevant.

13 THE COURT: Would you like to approach?

14 MR. BENITEZ: Yes, your Honor.

15 THE COURT: Approach, please.

16 (A bench conference was held outside the
17 hearing of the jury.)

18 MR. BENITEZ: Objection. First point. By
19 asking those kind of questions, it fits into our
20 theory of the case, or our perspective of the
21 evidence, that initially he became an investor in
22 this project. But once he got, he basically took
23 over the project, he was doing it out of, and for
24 his own self-gratification.

25 So, the fact that he might have sold the

1 business for 100 million, I think is the number that
2 we were given previously, is significant. It fits
3 into our argument that that's the reason he took
4 over this project. Because he never intended to be
5 part of the project. He was supposed to be an
6 investor who basically signed on the lease, got the
7 financing, and provide some financing and capital.

8 THE COURT: There's -- what's the difference if
9 it's 100 or greater than 100 or 180, specifically?

10 MR. BENITEZ: No. That's why I wasn't --

11 THE COURT: Does it make a difference?

12 MR. BENITEZ: No, that's why I was asking
13 generally, Judge. I don't really care what he gives
14 me, so -- but I want an answer. If he says over 100
15 million, that's fine.

16 MR. CHASE: He didn't plead anything like that,
17 or that was the theory of the case, that he didn't
18 care, so he was going to take over. So it's not
19 relevant. To me, it's probative versus prejudicial.
20 It's extremely prejudicial.

21 MR. BENITEZ: It's not, Judge. I've been
22 criticized for a lot of things in my pleadings too
23 much, so this has been our argument all along,
24 that's been our testimony. He's basically taking
25 over the project.

1 And the testimony from our witness he doesn't
2 really care what --

3 THE COURT: The objection is sustained.

4 MR. CHASE: Thank you, Judge.

5 (Bench conference concluded.)

6 THE COURT: Thank you.

7 You may proceed.

8 MR. BENITEZ: Thank you.

9 BY MR. BENITEZ:

10 **Q. Now, you have indicated that now you've had to**
11 **borrow money. You remember that testimony?**

12 A. I do, yes.

13 **Q. From whom?**

14 MR. CHASE: Objection, relevance.

15 THE COURT: Just a second, please.

16 Sustained:

17 MR. BENITEZ: Could I have a second with my
18 client, Judge?

19 THE COURT: You may.

20 MR. BENITEZ: Nothing further at this time,
21 your Honor.

22 THE COURT: Thank you.

23 Redirect. I'm sorry. I apologize. Hang on.

24 I apologize, Mr. Shuker.

25 MR. SHUKER: Thank you, your Honor.

1 May I inquire?

2 THE COURT: Yes, you may. Thank you.

3 MR. SHUKER: Thank you.

4 CROSS EXAMINATION

5 BY MR. SHUKER:

6 Q. Good afternoon, Mr. Hachenberger.

7 How are you?

8 A. I'm good. Thank you.

9 Q. Just a few questions.

10 I think you said that you went to -- can you
11 hear me okay?

12 A. I can, yes.

13 Q. I think you said you went to Colorado in July
14 to prepare for something in August; is that correct?

15 A. Yes.

16 Q. So that was not a business trip, was it?

17 A. No. It was a pleasure trip with a bunch of
18 friends.

19 Q. And you said it involved horses and horseback?

20 A. Correct.

21 Q. And in the operating agreement that you signed,
22 there are notaries' signatures on there, are there not?

23 A. That's correct.

24 Q. You didn't happen to have notaries with you on
25 those horses, did you?

1 A. No.

2 Q. And did you view this time in July and August,
3 both in 2005, and historically, as kind of a sabbatical
4 for you?

5 A. Very definitely.

6 Q. And did you leave behind other business deals
7 when you went to Colorado?

8 A. Yes, sir, definitely.

9 Q. So was there anything pernicious or -- sorry?

10 A. I don't know what that word means.

11 Q. Anything negative in your not signing this
12 agreement on July 7th?

13 A. Very standard operating procedure.

14 Q. So you just went in July and August, as you had
15 other years, to get your head clear and leave the other
16 world behind?

17 A. I think in the year 2005, that would have been
18 my -- probably my 20th year of doing that, of going to
19 Colorado and riding with a group of people.

20 Q. There's nothing in nefarious regarding that the
21 Myers and this contract?

22 A. Nothing. No. We were all getting along fine
23 then.

24 Q. And you did pay them \$286,000, or you caused
25 that to happen; is that correct?

1 A. That, plus more, yes.

2 Q. And the restaurant wasn't up then; it was a
3 piece of dirt?

4 A. That's correct, construction was just
5 beginning.

6 Q. So from your perspective, there was no need to
7 rush back and sign it? You paid their money, you paid
8 their past due taxes, you paid some interest payments on
9 their defaulted bank debt, there's no need for you to
10 rush back and sign that; is that correct?

11 A. That's correct.

12 Q. Mr. Benitez just asked you about this capital
13 contribution agreement. Now, I think you said that was
14 a to-be-done document once the parties agreed on the
15 value of their memorabilia, correct?

16 A. That's accurate, yes.

17 Q. And that agreement didn't say, well, if we
18 don't get that agreement done, the whole shooting match
19 is off, did it?

20 A. Definitely not.

21 Q. Right. So it was just an agreement that was
22 contemplated, it could be done afterwards, but it didn't
23 affect the viability or the legitimacy of the operating
24 agreement or letter?

25 A. Not in any way, shape or form.

1 MR. SHUKER: I have no further questions.

2 THE COURT: Thank you.

3 Redirect?

4 MR. CHASE: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. CHASE:

7 Q. Do you still have this exhibit with you, sir?

8 A. Me?

9 Q. Yes, sir.

10 A. No.

11 Q. I think we've established that all these
12 documents were -- went in effect in July 7th of 2005.

13 Is that your recollection?

14 A. Yes.

15 Q. The Myers signed all the documents on July 7,
16 2005?

17 A. Correct.

18 Q. Could you go to the -- page 2 of 8, the letter
19 agreement, please, sir?

20 A. Yes.

21 Q. The paragraph 9, I think you read a little bit
22 of that a few minutes ago on cross examination?

23 A. Yes.

24 Q. Could you read again, starting at if -- or, I'm
25 sorry, start at: The parties have agreed to a net

1 equity value. It's midway in the paragraph, and is on
2 the far end.

3 A. The one that starts with in addition?

4 Q. No, sir. I'm sorry. I'll walk over there to
5 show you.

6 It's right there.

7 A. The parties have agreed.

8 Q. The parties have agreed that -- can you read
9 that like slowly?

10 A. The parties have agreed to a net equity value
11 of \$1,300,000 for the SR 46 property.

12 Q. Stop.

13 Okay. Now, that is -- this is in the capital
14 contribution portion of the letter agreement, correct?

15 A. It is, yes.

16 Q. And so what that is saying is that the value of
17 the equity, I think we just said -- and this is leading.
18 I apologize. But I'm just bringing it up, you've
19 already testified to this. The \$1.3 million, is that
20 the equity in the real property that the -- you guys
21 agreed on that value, correct?

22 A. That's correct.

23 MR. BENITEZ: Objection to form, leading.

24 THE COURT: The objection is sustained.

25 You can rephrase the question.

1 Q. Was that an agreed upon value?

2 A. Yes.

3 Q. Okay. All right. So you just read parties
4 have agreed to net equity value of 1.3 million for the
5 State Road 46 property, okay. And then what does it
6 say, and...starting with and?

7 A. I lost my place, I'm sorry.

8 Q. Right after the 1.3 million, and read it
9 slowly.

10 A. And shall establish a value for the memorabilia
11 assets transferred.

12 Q. Hold on. Transferred to the company?

13 A. To the company.

14 Q. Okay. Shall establish a value for the
15 memorabilia assets transferred to the company.

16 Does that indicate to you that on July 7, 2005,
17 was there a value of those assets?

18 A. There was no way that there could be a value at
19 that point in time.

20 Q. Did that have something to do with an
21 inventory?

22 A. A lot to do with it, yes.

23 Q. Could there be value without an inventory?

24 A. I don't know how there could be.

25 Q. All right. What is the next sentence?

1 A. If the parties cannot agree on a value, the
2 parties shall jointly select an appraiser to determine
3 value.

4 Q. Okay. Does that sound like something that had
5 to occur that day?

6 A. Couldn't have. No.

7 Q. So it was something that was contemplated, that
8 establishing the value for the memorabilia assets could
9 that happen in the future?

10 A. Definitely in the future, yes.

11 Q. Is that why -- is there a reason why you had an
12 inventory made, that's been admitted into evidence, with
13 the 6,824 items on it?

14 A. In anticipation of a still need to establish
15 that capital contribution agreement, but we know then
16 what we're going to be valuing.

17 Q. How long did it take to get the inventory done?

18 A. Well, it was an ongoing project for probably
19 three year -- two and a half -- two and a half years,
20 maybe.

21 Q. So that was after all, so by the time that was
22 done, you guys, you, the Hachenbergers and the Myers,
23 were into the litigation at that point?

24 A. We were adversarial at that point after
25 Mr. Myers' firing.

1 **Q. Was there any way at all, in your estimation,**
2 **to get an agreement onto the value of those memorabilia**
3 **assets once you guys were in litigation?**

4 A. We would have never been able to agree on
5 anything.

6 **Q. Okay. And then the next sentence, it says, the**
7 **parties will. Can you read that?**

8 A. I'm going to as soon as I find it. The parties
9 shall --

10 **Q. The parties will. After, it says?**

11 A. Oh, okay. I'm sorry. I'm there now. The
12 parties will enter into a capital contribution agreement
13 that will detail the property transferred and agreed
14 upon value.

15 **Q. Period.**

16 A. Period.

17 **Q. Okay. Is that something that was contemplated**
18 **was going to happen on July 7, 2005?**

19 A. Not possible for it to happen that date.

20 **Q. And the detail of the property was the**
21 **inventory?**

22 A. Correct.

23 **Q. And the inventory is done?**

24 A. It is done today, yes.

25 **Q. Is all that's left is to agree upon the value?**

1 A. Yes.

2 MR. BENITEZ: Objection, leading.

3 THE COURT: Sustained.

4 Q. If you can't figure out the value, what does
5 the contract say that you have to do?

6 Go back up two sentences.

7 A. If the parties cannot agree on a value, the
8 parties will jointly select an appraiser to determine
9 the value.

10 Q. Do you believe that you can jointly select an
11 appraiser?

12 A. Everything so far has been really difficult to
13 accomplish.

14 Q. Okay. All right. So let's go to the operating
15 agreement.

16 And Mr. Benitez asked you about a capital
17 contribution agreement, you said that you thought the
18 part that would have been done that related to the real
19 estate, but then you couldn't find it?

20 A. Yes, sir.

21 Q. On page 4, you cited paragraph 4, that says --
22 can you read that again? That starts with on the
23 effective date.

24 A. That's on page 4?

25 Q. Yes, sir.

1 **Can you bring it up?**

2 A. It's in paragraph 4?

3 **Q. In paragraph 4. You read it when Mr. Benitez**
4 **was cross examining you. Page 4, paragraph 4, where it**
5 **says capital?**

6 A. Okay.

7 **Q. Of the operating agreement, sir.**

8 A. I'm there.

9 **Q. All right. On the effective date, can you read**
10 **that?**

11 A. On the effective date -- well, the heading,
12 that's what was confusing me. I'm sorry. Capital
13 contributions of the members is the heading.

14 **Q. Yes, sir.**

15 A. It says on the effective date, the members have
16 contributed the property or loans set forth in the
17 capital contribution agreement attached as Exhibit B.

18 **Q. As Exhibit B. Can you turn to Exhibit B?**

19 A. Well, yeah, I just --

20 **Q. Are you there, sir?**

21 A. I'm at Exhibit B, yes.

22 **Q. All right.**

23 A. Where it says additional personal property.

24 **Q. Okay. Do you see where it says, the un -- or**
25 **can you read the sentence that says the unreturned**

1 **capital contributed by the party?**

2 A. I'm sorry --

3 **Q. Is set forth as follows?**

4 A. I'm sorry, I'm not seeing the same thing.

5 **Q. I think you're looking at Exhibit B to the**
6 **assignment. Exhibit B to the operating agreement.**

7 A. Sorry.

8 **Q. That's all right. That's the assignment.**

9 A. That's the same problem I had.

10 **Q. That's Exhibit C. That's Exhibit B.**

11 A. Thank you.

12 **Q. Can you start reading right there?**

13 A. That's what I was looking for before.

14 **Q. Can you hold that up to the jury so they can**
15 **see the exhibit.**

16 **Okay. Can you start reading where it says, the**
17 **return -- the unreturned capital contributed?**

18 A. Okay. Exhibit B.

19 **Q. Do you see where it says, the unreturned**
20 **capital contributed? Right there.**

21 A. I do. I'm sorry.

22 **Q. That's all right.**

23 A. I'm slow.

24 **Q. I understand, sir.**

25 A. Just give me a little bit of time here.

1 The unreturned capital contributed by the
2 parties is set forth as follows.

3 **Q. And below that, does it have Michael and**
4 **Jacqueline Myers?**

5 A. It has, yes.

6 **Q. What does it say for the net equity and real**
7 **property?**

8 A. Net equity in real property, \$1,300,000.

9 **Q. And then below that does it say Michael and**
10 **Jacqueline Myers?**

11 A. It does.

12 **Q. And it says the memorabilia assets --**

13 A. To be determined.

14 **Q. It says to be determined?**

15 A. It does say.

16 **Q. That's because it was not determined on**
17 **July 7th --**

18 A. That's correct.

19 **Q. -- 2005.**

20 **What does it say directly below to be**
21 **determined?**

22 A. The parties will agree on a liquidation value
23 of the memorabilia assets within 180 days of closing, or
24 have the assets appraised. The agreed upon or
25 determined value will be the unreturned capital

1 contribution.

2 Q. Okay. So that -- would that then be added to
3 this capital contribution agreement?

4 A. Yes, yes.

5 Q. Which is attached as Exhibit B to the operating
6 agreement?

7 A. Yes.

8 Q. And it gives you 180 days to either agree on
9 it, and then after 180 days, if you can't agree on it.
10 That you get it appraised?

11 A. Correct.

12 Q. Is that the capital contribution agreement that
13 just doesn't have a value for memorabilia assets,
14 Mr. Hachenberger?

15 A. That's correct. That's the one I was looking
16 for when Mr. Benitez was up here.

17 MR. CHASE: Thank you.

18 Tender, or nothing further, Judge.

19 THE COURT: Okay. Thank you.

20 Any questions from our jury?

21 Okay. Thank you, sir.

22 You may step down.

23 Counsel, if you can retrieve the exhibits,
24 please.

25 MR. CHASE: Yes, sir.

1 THE COURT: Folks, it's five minutes before
2 three. I think this is a good opportunity for our
3 midafternoon recess. You may recess for 15 minutes.
4 We'll resume back with testimony ten minutes after
5 three.

6 All the same cautions still apply after this
7 break.

8 THE DEPUTY: Jury's leaving.

9 Follow me.

10 (Jury exiting.)

11 THE COURT: We're going to recess for
12 15 minutes, please.

13 MR. CHASE: Thank you, Judge.

14 (Discussion held off the record.)

15 THE DEPUTY: Everyone please rise. The Court
16 will come to order.

17 THE COURT: Thank you.

18 You may be seated.

19 Mr. Chase, you have your next witness?

20 MR. CHASE: Yes, sir. We would call in David
21 Chauvin.

22 THE COURT: Let's get him into the courtroom
23 and then you can call him.

24 Mr. Jones, you want to go get him.

25 MR. SHUKER: Sure, no problem.

1 MR. CHASE: I'm sorry, I thought --
2 THE COURT: No, no.
3 MR. CHASE: I got you there.
4 THE COURT: Everybody's got a job.
5 MR. CHASE: All right.
6 THE COURT: All right, thanks.
7 Let's return the jury.
8 THE DEPUTY: Jury entering.
9 (Jury entering.)
10 THE COURT: All right, thank you.
11 You may be seated.
12 Mr. Chase, call your next witness, please.
13 MR. CHASE: I'm going to call David Chauvin.
14 THE COURT: Mr. Chauvin, step forward, please.
15 Come around the gate. Right, follow the deputy
16 there. Keep your hands out of your pockets.
17 Raise your right hand, face the clerk to be
18 sworn in.
19 THEREUPON,
20 DAVID CHAUVIN
21 was called as a witness and, having first been duly
22 sworn, testified as follows:
23 THE COURT: Thank you, sir.
24 Could you step right around here. There's a
25 chair up here. Just watch your step up. The chair

1 will spin, but will not move forwards or backwards.

2 So just adjust that microphone.

3 THE WITNESS: Okay.

4 DIRECT EXAMINATION

5 BY MR. CHASE:

6 Q. Good afternoon, Mr. Chauvin.

7 My name is Damon Chase. We just met right
8 after lunch out there in the hallway.

9 Is that the first time that we've met, sir?

10 A. That's correct.

11 Q. I have spoken to you on the phone, though, a
12 couple of times in the past couple of day informing you
13 that we'd be asking you to testify here today?

14 A. Yes, sir, you did.

15 Q. Have I ever spoken to you before then?

16 A. No, sir.

17 Q. This is Marc Jones with me.

18 Has he ever spoken to you at all?

19 A. I don't think so. I don't think I've ever met
20 him.

21 Q. He said hello out in the hallway.

22 A. Out in the hallway, just a few minutes ago.

23 Q. And do you know Don Hachenberger?

24 A. I have -- I do.

25 Q. Do you recognize Mr. Myers?

1 A. I do.

2 **Q. Mr. Mike Myers?**

3 A. I do.

4 **Q. And he's sitting here right behind me, right**
5 **next to Mr. Benitez?**

6 A. Yes, sir, I recognize him.

7 **Q. Can you please tell the jury a little bit about**
8 **what you were doing in and around 2005, 2006, 2007?**

9 A. With regards to this situation, I operated a
10 company by the name of Millwork International.

11 **Q. Yes, sir.**

12 A. We were a design build millwork firm. We did
13 high-end millwork, and I had met Mr. Myers previously,
14 and I had actually done work in his home. I don't
15 remember how long prior, but had seen him several times
16 since.

17 **Q. Yes, sir.**

18 A. And he invited me to look at the project with
19 him early 2007, if I'm not mistaken.

20 **Q. Can I -- thank you for that.**

21 **Can I ask you about -- just go more**
22 **particularly, what is millwork?**

23 A. Millwork is, basically, all of this fine
24 woodwork you see standing, and running trim, cabinetry,
25 moldings. In this case, we built a bar. We did

1 ceiling. We did booths. Just anything that you would
2 see as a -- other than structural type of wood, visible
3 wood, and a finished project, both residential and
4 commercial.

5 Q. And you said that -- did you end up doing some
6 millwork for the Highway 46 Holdings LLC, that is, the
7 Route 46 Entertainment District?

8 A. Yes, I did.

9 Q. And what was your understanding what was Mike
10 Myers' responsibilities with regard to that project, if
11 any? If you know.

12 A. As I mentioned, I knew Mike from previous years
13 and he had owned that property for a number of years.
14 He was a collector, and he had a dream of opening -- it
15 was called -- Gassey Jack's was his theme, you know, and
16 he lived and breathed that dream for years, ever since I
17 had met him originally.

18 He's got more memorabilia and stuff than
19 anybody I've ever seen. And he was a collector and he
20 was -- also just wanted to have an entertainment venue.

21 Q. When you were working the work that you
22 performed out of the -- what -- we'll call it the Gassey
23 Jack's project, the work that you performed out there,
24 was that for the -- directly for Michael Myers or was
25 that for a general contractor?

1 A. I did both. I was working -- you know, Mike
2 was acting as a superintendent, as well as an owner
3 while I was there. He was there daily. All my meetings
4 were negotiated with him. All of my pricing was
5 negotiated to him. And the construction company I was
6 involved with, but Mike was -- I would call Mike not
7 only the owner, but the project manager. He had the
8 vision and dream, and it was -- so the interchange
9 between he and I was just that.

10 **Q. Was this around 2007?**

11 A. I think that's when we did -- it's ten years
12 ago.

13 **Q. Yes.**

14 A. But I think we started the project -- my
15 involvement was in early 2007. I had been in my --
16 invited to the project, I would almost say maybe it was
17 as early as sometime in January, but I cannot -- the
18 date's 10 years ago, and I don't have any records, but
19 I'm doing this by memory.

20 **Q. I understand.**

21 **Do you recognize a company called McCartney and**
22 **McCartney, Inc.?**

23 A. They were the general contractor on the job, as
24 far as I knew, that's it.

25 **Q. Now, normally would a general contractor be**

1 responsible for contracting with the subcontractors?

2 A. As a rule of thumb, but a lot of our contracts
3 were done directly with owners.

4 Q. Yes, sir.

5 A. Both residential and commercial. It's a large
6 percentage. The work that we do is extremely high end,
7 and it's not uncommon -- I work for both homeowners and
8 designers, as well as general contractors. So it was
9 not an abnormal situation for me to work with Mike.

10 Q. Is there -- we're going to -- we're going to --
11 the jury, everybody is -- we're going to go visit the
12 complex Friday afternoon.

13 Can you tell the jury what exactly you built
14 out there?

15 A. If it's wood and it's visible, other than the
16 floors, I did it. It was Mike's vision and concept, and
17 I did -- I actually designed to meet his needs. So
18 you'll enjoy it, it's a beautiful facility.

19 Q. I don't think they knew that they were going
20 yet, but now they do. Going on a field trip.

21 All right. So I'm going to direct your
22 attention to May of 2007. This is during the time that
23 you were performing millwork services for McCartney and
24 Company. Do you remember that?

25 A. That's correct.

1 **Q. Did Mr. Myers have an occasion to ask you to**
2 **submit an invoice to McCartney and Company, Inc., the**
3 **general contractor?**

4 A. He did.

5 **Q. And what was the invoice for?**

6 A. The invoice was for, what I understood to be,
7 future work. It came about by -- I had told Mike when
8 we first started, that I had just taken over the
9 company. That's the only reason I remember it's 2007.
10 I had basically just bought the company from our
11 partner. I did not have a line of credit.

12 And I told Mike that any and everything had to
13 be paid promptly or I would not be able to function on a
14 job that size. So, and I -- basically, the day that he
15 told me about that invoice, I also remember very
16 clearly, it was one of the biggest days of my life, my
17 workload had just gone over \$2 million first time in
18 history.

19 **Q. Congratulations.**

20 A. And it was 2.2 million. And I was excited.
21 And knowing how Mike was an excited guy, and I told him
22 and, you know, what he saw in that was, I need a slot
23 for future work after. There's going to be several
24 things that we need done. And I just want to get a slot
25 in your work. I just want to make sure you continue

1 working with me in this project after C of O.

2 **Q. At the time that Mr. Myers instructed you to**
3 **submit an invoice to the general contractor, were you**
4 **owed any money?**

5 A. No, sir. I thought the favor --

6 THE COURT: You need to slow down, our court
7 reporter's trying to take down what you're saying.
8 So this was an exciting time.

9 A. It was an exciting time. It was an exciting
10 time. I had a tremendous amount of work and the
11 customers were paying me in advance. So.

12 **Q. And do you remember how much that invoice was?**

13 A. I don't remember the exact amount, it was
14 something slightly south of \$60,000.

15 THE COURT: Sir, did you say south of \$60,000?

16 THE WITNESS: That's correct.

17 THE COURT: Thank you.

18 MR. CHASE: Judge, may I approach?

19 And this has been stapled together as a
20 composite exhibit, so we're going to go through it
21 one at a time.

22 THE COURT: Is it marked for identification?

23 MR. CHASE: It is marked for identification as
24 Plaintiffs' Exhibit I for identification.

25 BY MR. CHASE:

1 **Q. Sir, would you take a look at Exhibit A to that**
2 **exhibit.**

3 **Do you recognize that document?**

4 A. Yes, sir. This is the invoice I prepared in
5 accordance with Mike's request.

6 **Q. And how much is the invoice?**

7 A. \$56,320.10.

8 **Q. Is that the amount that Mike told you to submit**
9 **the invoice for?**

10 A. Yes, it is.

11 **Q. Do you know the reason why it's an odd number,**
12 **\$56,320.10?**

13 A. There were several pending quotes that we were
14 in different stages of design and negotiating on. I
15 would assume that it would be -- I don't remember
16 exactly what they were. There were a couple of big
17 items and there were a bunch of little things we were
18 talking about. So I think Mike went and, you know, got
19 that number, and that's what he asked me to do.

20 **Q. Did he tell you that what he would -- to hold**
21 **on to the money?**

22 A. He told me that, you know, there was going to
23 be work after the CO. And there was no specific -- you
24 know, anything specifically that he said he needed, but
25 he wanted items.

1 I do remember a community board, some display
2 cases, and items like that, things that were not
3 necessarily getting -- you know, have to have before the
4 CO.

5 **Q. Did you think it was odd that an owner would**
6 **pay you \$56,320.10 for things that may happen in the**
7 **future?**

8 A. You know, I at the time could not work without
9 deposits, and it's not unusual. I have had people tell
10 me that they want something.

11 And, basically, at the time, Mr. Chase, I was
12 working eight months out, I had eight months of work
13 ahead of me. So, you know, it was not unusual for me
14 to -- I was quoting to people and contracts and I was
15 quoting 20- to 24-week delivery at that point.

16 And Mike said I just want some -- I want to
17 make sure you hold a slot for me.

18 **Q. So it's like a slush fund; is that what you**
19 **call it?**

20 A. No, I don't think I would call it that.

21 **Q. I -- and I didn't mean to put words in your**
22 **mouth. I apologize. I didn't understand what you said.**
23 **It was -- wasn't it?**

24 A. It was basically for a slot.

25 **Q. Slot?**

1 A. A slot in production.

2 Q. Oh. That was the word that I missed. I'm
3 sorry.

4 A. Okay, yeah.

5 Q. Can you look at what is attached as Exhibit B
6 to what has previously been marked as Plaintiffs' I in
7 evidence. Or, no, I'm sorry, for identification
8 purposes, not in evidence.

9 A. Okay, I have it.

10 Q. That's for the record.

11 A. I'm sorry?

12 Q. Can you look at Exhibit B, sir?

13 A. Yes, I am.

14 Q. Do you recognize that?

15 A. That's a check that we received in -- I
16 submitted that invoice.

17 Q. That's the \$56,320.10?

18 A. That's correct.

19 Q. From McCartney Company -- McCartney and
20 Company, Inc.?

21 A. That's correct.

22 Q. And it says down at the bottom for Gassey
23 Jack's?

24 A. Yes, it says Gassey Jack's. And then I have a
25 handwritten note, customer deposit.

1 **Q. And did --**

2 A. I took all deposits at that time, and I
3 still -- I'm no longer in business, but all deposits
4 were put in as a liability because I owed people is what
5 I felt when, you know, a lot of bill people don't do
6 that, but I took any deposit and charged it to my
7 liabilities. It was not revenue or not expense.

8 **Q. I understand.**

9 **And what's the date of that check?**

10 A. 6/13/2007.

11 **Q. And did you cash that check, sir?**

12 A. I deposited it in my operating account.

13 **Q. Yes, sir. That was -- so in May, Mr. Myers --**
14 **just so I'm clear on the timing on it -- he asked you to**
15 **submit an invoice for labor? Did he say to make it for**
16 **labor?**

17 A. I don't recall that it was for labor. It was
18 just for future work, is what I remember. I mean, we
19 were providing labor and material, but I don't know that
20 it was exclusively for labor.

21 **Q. I'm going to show you --**

22 MR. CHASE: If I may approach, Judge.

23 THE COURT: You may.

24 **Q. Do you remember signing an affidavit in January**
25 **of 2009?**

1 A. Yes, sir, I do.

2 **Q. I'm going to ask you --**

3 A. I don't remember the date, but I do remember --

4 **Q. I understand.**

5 **Does that help jog your recollection?**

6 A. Yeah, I remember signing that.

7 **Q. Was it Myers that told you to invoice it as**
8 **labor?**

9 A. I can't say for sure. Everything we did, we
10 did the labor and material contracts. So.

11 **Q. Can I let you see that again?**

12 **Just read that sentence to yourself, starting**
13 **with the amount.**

14 A. It's certainly to be some labor involved in it,
15 but I don't remember that as being --

16 **Q. Do you remember making the statement, the**
17 **amount of the invoice and the description of the work in**
18 **the invoice, as quote, labor unquote?**

19 THE COURT: Just a second.

20 MR. BENITEZ: Objection.

21 May we have a side bar.

22 THE COURT: You may approach.

23 (A bench conference was held outside the
24 hearing of the jury.)

25 THE COURT: Come here by the microphone.

1 Thank you.

2 And I was told by the court reporter you
3 specifically need to talk closer to the mike.

4 MR. BENITEZ: Judge, my objection is, he's now
5 quoting from an affidavit. That's not proper. He's
6 now almost testifying from the affidavit.

7 And he can use it to refresh the recollection
8 of the witness, which I thought that's what he was
9 doing, but he can't just start quoting from the
10 affidavit.

11 I object to that.

12 MR. CHASE: It's an inconsistent statement from
13 the sworn statement of the witnesses, he's saying
14 something different.

15 THE COURT: Sworn testimony of the witness, why
16 can't he be impeached with it?

17 I tried to -- witness made a prior statement
18 that was under oath. He's now testifying
19 inconsistently with that. Why can't he be impeached
20 with his prior sworn testimony?

21 MR. BENITEZ: I didn't understand that that's
22 what he was doing, Judge. The way it was, it
23 appeared to me, from my vantage point, he was
24 refreshing the witness' recollection. And when the
25 witness says yes, he then proceeds to quote from it

1 just to regurgitate that.

2 THE COURT: That's not what happened.

3 So the objection's overruled.

4 MR. CHASE: Thank you so much.

5 (Bench conference concluded.)

6 THE COURT: You may proceed.

7 BY MR. CHASE:

8 Q. Isn't it true that in January of 2009, you said
9 the amount of the invoice and the description of the
10 work in the invoice's labor were selected by Myers and
11 not by me?

12 A. That's correct.

13 Q. And so, that was in May. Then you got the
14 check, I believe, in June. And then, in September of
15 2007, did the Myers instruct you to do anything with
16 that money?

17 A. I don't remember the date. Let me -- can I
18 look at the next exhibit. I think that might help you,
19 my memory wise.

20 Q. Let me show you this to help you refresh your
21 recollection.

22 Did you have an opportunity to review your
23 affidavit before you came in here?

24 A. I did.

25 Q. Okay.

1 A. Yes. I no longer retained a copy.

2 Q. I understand.

3 You want to just read this paragraph to
4 yourself?

5 A. Okay. Yeah, based on this, it was September 7,
6 2007.

7 Q. I'm going to ask you questions about it. You
8 want to go ahead and refresh your recollection -- that's
9 not really appropriate. I'm sorry.

10 If I ask you a question that you have trouble
11 remembering, then I can show you this.

12 A. That's fine.

13 Q. So, in September of 2007, did the Myers reach
14 out to you again?

15 A. He did.

16 Q. And what did he instruct you to do?

17 A. He instructed me to write a check to Sequential
18 Media, basically saying he and his partner -- he was
19 having trouble getting funds from his partner. And
20 these people needed to be paid. I had not earned the
21 money, so I saw nothing wrong with returning it.

22 Q. And that was \$18,620.40?

23 A. Yes, sir.

24 Q. Who is Sequential Media?

25 A. I have no idea. I think they were involved in

1 the sound equipment, but I didn't have any kind of
2 direct contact with them.

3 Q. Can you look at the next exhibit, sir?

4 A. I can. B?

5 Q. I'm sorry, I think it's C. It's a check to
6 Sequential Media for 18,620.

7 A. That's my handwriting, possibly.

8 Q. I think we're looking at two different things.
9 I'm looking at this.

10 A. Oh, no. I'm sorry. So you're on Exhibit C.

11 Q. Yes, sir.

12 A. That would be a check -- we used Quickbooks,
13 and that would be what you get when you print a
14 Quickbooks check. That was in the ledger, yes, sir.

15 Q. And the next exhibit is, you said, your
16 handwriting, that's Exhibit D?

17 A. That's correct. Yes, sir.

18 Q. Is that what you wrote down when Mr. Myers
19 asked you to write this check to Sequential Media?

20 A. I'm thinking that was a phone call, as I
21 recall, and Mike gave me the address, and that I wrote
22 it down, as instructed, and followed up with sending a
23 check out to that address.

24 Q. Okay. So that your handwritten note is what
25 you wrote at the time that Mr. Myers called you and

1 asked you to do that and you wrote down what he wanted
2 to do?

3 A. That's correct.

4 Q. And it says Sequential Media, LLC, it has an
5 address, and then \$18,620.40?

6 A. Yes, sir, that's correct.

7 Q. At that same time, did Mr. Myers send you
8 another fax, or did he reach out to you again about
9 instructions to disburse more money?

10 A. He did. I don't remember the date, but, yes.

11 Q. Was it in September of 2007?

12 Let me show you --

13 A. Let me see.

14 Q. It's a long time.

15 A. I did consequently write another check. I'm
16 just trying to get the date.

17 Q. That's all right. It was a long time ago.
18 Everybody gets that.

19 A. That is correct. That is correct.

20 Q. I'm going to ask you the amount, too?

21 A. Okay.

22 Q. Is it in the exhibit?

23 There you go.

24 Did Mr. Myers ask you to send somebody else a
25 check?

1 A. He did.

2 Q. And who did he ask you to send a check to?

3 A. Daryl Phillips.

4 Q. And how much was that check for?

5 A. \$29,410.50.

6 Q. And do you recognize the Exhibit E, it looks
7 like that?

8 A. Yeah. That's --

9 Q. Do you recognize that?

10 A. That's a copy of a fax.

11 Q. That's the fax that you received from Mike
12 Myers?

13 A. Yes, sir, that's -- yeah, that's correct.

14 Q. And does that look like a true and accurate
15 representation of the fax you received from Mr. Myers?

16 A. I'm sorry, could you repeat that?

17 Q. I'm sorry. Just lawyer junk.

18 Does that look like a true and accurate
19 representation -- does that look like the fax that you
20 received from Mr. Myers back then?

21 A. Yes, I think it is. Yes, sir.

22 Q. Had you ever had any relationships with
23 Sequential Media?

24 A. No, sir.

25 Q. Have you ever had any relationships with Daryl

1 Phillips?

2 A. No, sir.

3 Q. Do you know anything about Daryl Phillips?

4 A. I don't. No, I can't say that I know anything
5 about him. I think they both -- I think he and
6 Sequential Media, both --

7 Q. Don't say what you think, I'm just asking you.

8 A. I don't know him. I don't know.

**9 Q. I didn't mean that in a nasty way. It's just
10 important, we're not allowed to speculate.**

11 A. I understand.

12 I don't know him.

13 Q. Yes, sir.

**14 The next exhibit looks like another one of
15 those Quickbooks checks from you. You see that?**

16 A. Yes, sir.

17 Q. And that's \$29,410.50?

18 A. That's correct, yes, sir.

**19 Q. Is that the check that you wrote to Daryl
20 Phillips?**

21 A. Yes, sir. That's a copy of the ledger.

**22 Q. And then, in May of 2008 -- is that almost a
23 year later?**

24 A. I don't remember the --

25 Q. So that's -- he first contacted you in

1 **May 2007, right?**

2 A. I'm sorry, what was that?

3 **Q. Mr. Myers first contacted you in May of 2007,**
4 **asking you to write this invoice for labor for**
5 **\$56,320.10; is that right?**

6 And then he told you he'd let you know what to
7 do with the money later?

8 That is a yes?

9 A. I'm sorry. Yes, sir.

10 **Q. And then in May 2008, did he call you and ask**
11 **you to do anything else with the money that was left?**

12 A. I think -- I don't have the math directly in
13 front of me, but this more than likely with the other
14 two checks made that amount, and he asked me to write it
15 to him.

16 **Q. Directly to Michael Myers?**

17 A. That's correct.

18 **Q. And how much is that?**

19 A. \$8,289.20.

20 **Q. And do you see the next exhibit?**

21 A. That's another copy of the Quickbook.

22 **Q. The check for \$8,289.20?**

23 A. Quickbook ledger.

24 **Q. Does that look like your check?**

25 A. Yes, sir.

1 MR. CHASE: At this time, Judge, we would move
2 in Plaintiffs' Exhibit I for identification into
3 evidence as Plaintiffs' Exhibit -- madam?

4 THE CLERK: It would be 4.

5 MR. CHASE: 4.

6 THE COURT: Any objection?

7 MR. BENITEZ: No objection.

8 THE COURT: That will be received in evidence
9 as Plaintiffs' 4.

10 Could you retrieve that from the witness for
11 the clerk to mark it in.

12 MR. CHASE: Yes, sir.

13 Thank you, sir.

14 (Plaintiffs' Exhibit I for identification was
15 admitted in evidence as Plaintiffs' Exhibit 4.)

16 BY MR. CHASE:

17 **Q. During this time, did you speak regularly with**
18 **Mr. Myers?**

19 A. I wouldn't say regularly. During the project,
20 obviously, when we were working, I was there at least
21 three times a week.

22 **Q. What about in May 2007, between May 2007, and**
23 **May 2008, when you were holding that money?**

24 A. I don't think I have -- I don't think I had
25 very many conversations with him. I'm -- no, sir.

1 Q. Okay. On that fax that you received from Mike
2 Myers, it is Exhibit E to Plaintiffs' Exhibit 4, that's
3 the fax that it says: Dave, send deposits for cabinets
4 to Daryl Phillips, is that what it says? The fax.

5 This right here. I'm just asking you to read
6 it.

7 A. Send deposit for a cabinet.

8 Q. It says, Dave, send deposits for cabinet
9 components to Daryl Phillips?

10 A. Yeah, that's the fax I received.

11 Q. And that's what you received from Mike Myers?

12 A. Yeah.

13 Q. And up in the right-hand corner it says, State
14 Farm fire damages?

15 A. It does.

16 Q. Mr. Myers' personal home had been -- had caught
17 on fire around that time, didn't it?

18 A. I wasn't aware of that.

19 Q. Are you aware that Route 46 Entertainment
20 District ever caught on fire?

21 A. I don't think so, I've never heard anything
22 like that.

23 Q. Thank you, Mr. Chauvin, I appreciate your
24 testimony.

25 MR. CHASE: Judge, we would tender the witness.

1 THE COURT: Counsel, approach, please.

2 (A bench conference was held outside the
3 hearing of the jury.)

4 THE COURT: Mr. Benitez, I think you had asked
5 actually for Mr. Shuker to go first.

6 Would you prefer that still, and then for you
7 to be able to have the last cross?

8 MR. BENITEZ: Sure.

9 THE COURT: Is that --

10 MR. BENITEZ: Yeah, if you don't mind.

11 MR. CHASE: Okay. Thank you.

12 (Bench conference concluded.)

13 THE COURT: Mr. Shuker, you may inquire on
14 cross.

15 MR. SHUKER: I have no questions, your Honor.
16 Thank you.

17 THE COURT: Thank you.

18 Mr. Benitez.

19 MR. BENITEZ: Thank you, your Honor.

20 CROSS EXAMINATION

21 BY MR. BENITEZ:

22 Q. Good afternoon, Mr. Chauvin.

23 Did I pronounce it correctly?

24 A. You did it very well.

25 Q. Okay. Can you see me?

1 A. I can.

2 **Q. Okay. With respect to that invoice, the**
3 **initial invoice, the \$56,000, had you previously given**
4 **some quotes to Mike Myers?**

5 A. As stated earlier, we had talked about a lot of
6 different projects that would go on in the restaurant,
7 as far as, you know, later dates. And the only two I
8 can recall offhand that had any size was the community
9 board, which was going to be placed on a -- from the
10 parking lot entrance into the -- into the waiting area,
11 or the foyer, if you would.

12 And the other one was some display cases.
13 There were several other conversations. I really don't
14 remember what they were. And the display cases would've
15 been in the waiting area as well.

16 **Q. That would have been in what is referred to as**
17 **the garage area, maybe?**

18 A. No. The garages, as I recall, was just that,
19 it was separate, it was garage doors and glass doors,
20 both sides.

21 Then the building has what would have been a
22 place that someone waiting for seating, or something of
23 that, you know, would've been an area -- inner area
24 between the garage and the bar, was, as I recall it,
25 would have been the waiting area.

1 **Q. Okay.**

2 A. And --

3 **Q. I'm sorry?**

4 A. That's it.

5 **Q. You have some quotes about some cabinets over**
6 **and staging equipment, cabinets to house the staging**
7 **equipment?**

8 A. There was a stage -- we really didn't do a
9 whole lot on the stage, but there was an area behind the
10 courtyard that was going to be used, basically, for
11 auctions, as well as musical performances.

12 And we never did do anything back there. I
13 might have done a little bit of work in one of the
14 restrooms, but I don't -- I don't think I did that work,
15 no, sir.

16 THE COURT: Just one second.

17 Mr. Chauvin, it's very important that you let
18 Mr. Benitez finish his question before you respond.

19 THE WITNESS: Okay.

20 THE COURT: And, Mr. Benitez, it's very
21 important that -- you know better, please wait for
22 the witness to finish an answer before you jump in
23 with your next question.

24 I have the benefit of realtime here and I'm
25 seeing the challenges that our court reporter's

1 having keeping up with the conversation up here. So
2 just speak one at a time, please.

3 MR. BENITEZ: Yes, sir.

4 THE COURT: Thank you.

5 BY MR. BENITEZ:

6 **Q. The \$56,000 invoice, did that come from your**
7 **previous quotes to Mike Myers?**

8 A. It -- I'm sure that's where he obtained it
9 because we talked about future work, yes, sir.

10 **Q. And I'm asking because it's a very specific**
11 **number, it's to the penny, I believe, correct?**

12 A. Right. And my quotes would have pennies on
13 them because we always stated value, and then tax on top
14 of it. It was rare to use ballpark numbers in my quote
15 system.

16 **Q. Did Mike Myers ever tell you to keep your**
17 **transactions with him secret?**

18 A. No, sir.

19 **Q. Did he ever give you the sense that this was**
20 **something that was being done on the side for ulterior**
21 **motives?**

22 A. I never thought that or felt that.

23 **Q. Do you feel that today?**

24 A. No. I mean, I don't think my relationship with
25 Mike changes because of anybody's questions. I think --

1 **Q. And with respect to the affidavit that**
2 **Mr. Chase had shown, that affidavit was done by**
3 **Mr. Donald Hachenberger's previous attorney, correct?**

4 A. That's correct. I don't remember his name, but
5 Mr. Hachenberger and a young attorney, his name started
6 with a T, asked for an interview or meeting with me. I
7 said yes.

8 And they came over -- 30 minutes to an hour was
9 the conversation, and at the end, they said, would you
10 be willing to sign an affidavit if we took the basis of
11 this meeting and put it in writing for you. And I said
12 absolutely.

13 **Q. And then did you receive that affidavit later**
14 **on?**

15 A. I don't remember how I received it, but I think
16 it must have been -- there's no fax mark or anything, it
17 must have been in the mail. And I received it in the
18 mail and executed it and --

19 **Q. But you didn't write the affidavit, correct?**

20 A. No, sir.

21 **Q. Okay.**

22 MR. BENITEZ: Thank you, sir.

23 THE COURT: Thank you.

24 Redirect?

25 MR. CHASE: Can I have just a moment, Judge?

1 THE COURT: You may.

2 MR. CHASE: Nothing further, Judge.

3 THE COURT: Okay. Thank you.

4 Any questions from our jury?

5 So remember to raise your right hand high.

6 Take a moment, jot down your question.

7 Any questions for this witness? Anybody have
8 any questions?

9 No.

10 Thank you, sir. You may step down.

11 Mr. Chase, call your next witness, please.

12 MR. CHASE: Donald Hachenberger.

13 THE COURT: Mr. Hachenberger, if you'll step
14 back to the stand, please.

15 Mr. Hachenberger, you were previously sworn so
16 it's not necessary to be sworn again, you are still
17 under oath.

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you.

20 DIRECT EXAMINATION

21 BY MR. CHASE:

22 **Q. Mr. Hachenberger, who is Sequential Media?**

23 A. That is a company that's owned by the Myers'
24 son, Sean, and Jackie, Jacqueline Myers.

25 **Q. Has Sequential Media ever done any work for**

1 Highway 46 Holdings?

2 A. No, sir.

3 Q. Who's Daryl Phillips?

4 A. Daryl Phillips is what I would categorize as a
5 sound company. He's the proprietor of that.

6 Q. Has he done work for Highway 46?

7 A. He has.

8 Q. Quite a bit?

9 A. I would not say a lot by other comparisons, but
10 he's done work for us, yes.

11 Q. You heard the testimony about the payment to
12 Daryl Phillips from Mr. Chauvin for where -- and he was
13 paid \$29,410.50.

14 Did Mr. Phillips do anything in or around
15 September 2007, or anywhere close to there, that he
16 wasn't paid directly from Highway 46?

17 A. No, he did not do any other work that he was
18 not paid directly from Highway 46.

19 Q. The testimony was that, in 2007, Myers asked,
20 Mr. Chauvin to make payments to Sequential Media and to
21 Daryl Phillips.

22 When was Michael Myers terminated?

23 A. He was terminated June 27th of 2007.

24 Q. Did Michael Myers have any authority to direct
25 any business for Highway 46 Holdings in September of

1 2007?

2 A. No.

3 Q. In May of 2008 -- I'm sorry. When was the --
4 when was this lawsuit filed?

5 A. I believe it was January of 2008.

6 Q. And January -- I'm -- is it fair to say that
7 you and Mr. Myers were pretty adversarial in January of
8 2008?

9 A. That would be an understatement.

10 Q. In May of 2008, did Mr. Myers have authority --
11 any authority whatsoever -- to direct funds to himself?

12 A. No, sir.

13 MR. CHASE: Tender the witness, Judge.

14 THE COURT: Mr. Shuker.

15 MR. SHUKER: No questions.

16 THE COURT: Thank you.

17 Mr. Benitez.

18 CROSS EXAMINATION

19 BY MR. BENITEZ:

20 Q. Mr. Hachenberger, you were not in charge of
21 construction back in May of 2007; is that correct?

22 A. Mike was the one doing the bulk of that in
23 2007, yes.

24 Q. Until June 27, 2007, Michael Myers was in
25 charge, correct?

1 A. He was.

2 **Q. And he handled all the subcontractors and all**
3 **the contractors on site, correct?**

4 A. He did.

5 **Q. And how is it that you came to notice a \$56,000**
6 **invoice payment to Mr. Chauvin?**

7 A. After I terminated Mike Myers' employment, and
8 immediately after that, I had several people doing what
9 I would call A forensic audit, looking back on all the
10 costs and all the items that he was involved with, to
11 see if there were any improprieties, or if there were
12 things left undone that should be completed by me.

13 It was in that forensic audit that we uncovered
14 this bill. And then I reached out personally to
15 Mr. Chauvin to ask him what that was for, and it was at
16 that point that he shared the information with me that
17 he did.

18 **Q. And that's the same information that he shared**
19 **with the jury today, correct?**

20 A. Yes, sir.

21 **Q. He hasn't changed any part of that story since**
22 **he first spoke to you, correct?**

23 A. You know, I'm guessing, no. I think that's why
24 he put the affidavit in writing, so that we could all
25 remember it now, 12 years later, ten years later,

1 whatever it is.

2 MR. BENITEZ: Thank you.

3 THE WITNESS: Yes, sir.

4 THE COURT: Any redirect?

5 MR. CHASE: No, sir. Plaintiff --

6 THE COURT: Any questions from our jury?

7 None.

8 Thank you.

9 All right. You may step down,

10 Mr. Hachenberger.

11 MR. CHASE: Plaintiff would rest its initial
12 case-in-chief.

13 THE COURT: Thank you.

14 Counsel, would you approach, please. Just on
15 schedule.

16 (A bench conference was held outside the
17 hearing of the jury.)

18 THE COURT: All right. So you obviously held
19 true to your word; you got your case done quickly.

20 Are you ready with some folks?

21 MR. BENITEZ: Not right now, Judge. But what
22 I'm trying to do is -- this is my thoughts, if I may
23 share with the Court.

24 The longest thing that I want to take is, I've
25 got to go through the history, which is going to

1 take a little bit, but then the memorabilia and the
2 values to the memorabilia.

3 So what I've done is, I've narrowed down the
4 exhibits and, also, I'm going to run some numbers by
5 Mr. Chase and see if we can arrive at some kind of a
6 streamline to get those taken care of, if we can.

7 You know, you're going to look at me funny and
8 probably say something, but this is kind of the case
9 that can actually go to the jury pretty quick.

10 And I'm saying, if we didn't have the jury view
11 on Friday, I would say Friday or even early next
12 week if we can get that accomplished. So I'm going
13 to try to do that.

14 THE COURT: Are you optimistic about this
15 stipulation with respect to the memorabilia?

16 MR. CHASE: We've discussed it a lot, and
17 it's --

18 MR. BENITEZ: We were real close at one point.

19 MR. CHASE: I think -- I think that in
20 discussing strategy with Mr. Shuker, I think that
21 Mr. Benitez has a serious problem making this case
22 for valuation. And so -- and Mr. Hachenberger, I
23 don't -- I mean, I'm not ready to make that
24 decision.

25 THE COURT: All right, fair enough.

1 MR. CHASE: I'm always wide open.

2 MR. BENITEZ: Judge --

3 THE COURT: Go ahead.

4 MR. BENITEZ: Judge, I'm going to suggest --
5 Mr. Shuker and I have a difference of opinion. I
6 think he's wrong, he thinks I'm wrong. Classic.
7 And maybe if he -- if there is a question like that,
8 because I think close to our arrangements was real
9 valid, if the Court can give us a little time to
10 have this legal issue in valuation, it may save a
11 lot of time in the long run. It may be a solution.

12 MR. CHASE: What we would do, is that maybe
13 sometime if the jury's out for a little bit, we
14 could have that argument.

15 But what ultimately would be, I think,
16 tantamount to a motion in limine that would prevent
17 him from presenting any evidence about valuation.
18 Depending on how you rule on that. If you rule that
19 he could put on evidence, then we can talk about
20 trying to stipulate to the amount.

21 THE COURT: All right. What if we break for
22 the afternoon here then, and have the jury come back
23 at 9:30 tomorrow, can you be prepared to address
24 that issue at 9?

25 MR. BENITEZ: Well, Judge, it's going to be his

1 motion in limine so I think you can get it on track
2 and present it. I can be ready.

3 THE COURT: I'm not going to deal with it in
4 writing.

5 MR. BENITEZ: Oh, no, no. I mean -- I mean, if
6 he can just let me know what the issues are.

7 THE COURT: I think you know what the issues
8 are. I think everybody knows what the issues are.

9 MR. BENITEZ: I'm not sure I understand it,
10 Judge, to be honest with you.

11 MR. CHASE: I think he -- it's a trial, he's
12 got to be ready for trial.

13 MR. BENITEZ: Oh, I'm ready, I'm ready.

14 THE COURT: Mr. Shuker?

15 MR. SHUKER: What I simply was trying to convey
16 before, that without an expert, and having him
17 testify as to items, I have not seen an evidence
18 that Mike Myers owns these various items. There's
19 some owned by Mike Myers, Inc., some by Sean Myers,
20 and some by Mike Myers.

21 So on items that are clearly owned by Mike
22 Myers, he can testify to value. Now, those others,
23 I don't think he can because he's not the owner.

24 MR. CHASE: That's another issue, Judge,
25 liquidation value, because the contract -- if you

1 find that there is a contract that says that there's
2 liquidation value. It says specifically --

3 THE COURT: As opposed to fair market value.

4 MR. CHASE: Yes, sir. And so is he
5 qualifies -- he didn't list any experts. I think
6 there's the issue. In addition, normally --

7 THE COURT: I don't want to be rude, but I have
8 a jury sitting here. Your question is: Can we use
9 them for the next hour?

10 Do you have something that you can present in
11 the way of background or other history that you
12 think is important to come from your client not
13 directly related to the valuation issues? Or do I
14 need to let them go and let us have a conversation
15 about this.

16 MR. BENITEZ: Judge my suggestion is to let
17 them go, let's talk this out. Because I'm -- like I
18 said, I think Damon -- Mr. Chase and I were very
19 close, there wasn't any dispute as to ownership.
20 Then Mr. Shuker got a hold of some receipts and what
21 he's basing his statement on is that the initial
22 receipt may have been on Mike Myers, Jackie Myers,
23 or some sort of company.

24 There's no evidence that's going to be
25 submitted in this trial other than --

1 THE COURT: I'm not going to address that right
2 now.

3 I think what I want to know, Mr. Benitez, is,
4 do you have something for this jury to do for the
5 next hour because they're sitting over here looking
6 at me going, Judge, what are we doing here.

7 MR. CHASE: Let's let them go. We have a lot
8 of stuff to talk about it.

9 MR. BENITEZ: I would agree with Mr. Chase.

10 MR CHASE: Let them go. It's the end of the
11 day. Beat the traffic. We can talk about stuff for
12 the rest -- there's plenty to talk --

13 THE COURT: That's right.

14 (Bench conference concluded.)

15 THE COURT: Members of the jury, from time to
16 time during course of the case, we come to a
17 breaking place where it just makes sense for us to
18 go ahead and take a recess. I think we're at that
19 place for today.

20 I appreciate the hard work that you've invested
21 with us during this time. We continue to work to
22 narrow the issues and to try to make the
23 presentation of the evidence more efficient for you.

24 So what I think we can do is, I can make
25 productive time of the next hour or so with the

1 attorneys tonight. That'll help us to continue to
2 do that for you. I'm optimistic that we are
3 shortening the length of the trial, and I know this
4 is a lengthy trial, so we're doing everything we can
5 to do that.

6 I do want to briefly talk to you about the
7 field trip that's now been disclosed to you. We are
8 anticipating making a trip on Friday afternoon. At
9 this point, time and date may change, but I'll give
10 you some notice if it does.

11 And the goal would be simply to go out to the
12 location of the project that's referred --
13 described, for you to see firsthand what it is that
14 the witnesses have been testifying about.

15 If we do that, we're going to ride out there
16 together, all ride together with you in a van, with
17 some security. And the counsel and the parties will
18 all come separately and meet us all there.

19 When we get there, there won't be any testimony
20 taken, you can just simply be for you to walk and
21 observe. If there are questions to be asked, we'll
22 give you an opportunity to write down questions, and
23 I'll consult with the counsel and see if it's
24 possible for us to respond to those.

25 We are going to need our court reporter to come

1 with us as well, in the event we run into those
2 types of issues.

3 What I'm suggesting to you is on Friday or on
4 another date, and we'll give you at least a day's
5 notice to wear comfortable clothes to walk in,
6 comfortable shoes to walk in. I suggest probably
7 not high-heels and something that's more
8 comfortable, surer footing for you to walk through
9 the project with. It's not a construction site, to
10 my understanding.

11 MR. CHASE: No, sir. It's nice. It's really
12 nice.

13 THE COURT: It is very nice, but I just don't
14 want anybody having any tripping issues, trip and
15 fall issues, be safe and secure.

16 So we'll continue to keep you advised of that
17 plan over the week as we know more information and
18 firm up the plans to accomplish that. But for this
19 evening, I think we're at a good stopping place.

20 You've consistently heard me not to talk about
21 the case with each other or with anybody else. And
22 I want to begin to implore with you why that's
23 important.

24 As you receive the evidence, it's very natural
25 in our mind to begin to try to weave together the

1 pieces of evidence as you've heard it. It's
2 important that you not do that yet because that is
3 really the beginning of the deliberative process.

4 And I've shared with you in the instructions
5 and I've ordered you in the instructions, that you
6 are not to deliberate until you have received all of
7 the evidence, all of the Court's instruction on the
8 law, and the attorneys' final arguments or
9 presentations. It would be premature for you to do
10 that now.

11 When you begin to put voice to the ideas in
12 your head about the testimony that you've heard,
13 you've begun deliberating. And, again, that would
14 be premature. The only appropriate time for that is
15 when you are all together in the jury room after
16 having received all of the information that's
17 necessary.

18 So, please, don't talk about the case, not with
19 each other or with anybody else. That's going to be
20 difficult. You're now two days down here at the
21 courthouse, folks are going to start to ask
22 questions, if they haven't already, what are you
23 doing down there, what's the case about, tell me the
24 about the lawyers, tell me about -- you just can't
25 talk about that.

1 And you need to tell them the Judge has told
2 you you can't talk about that. I'll play the bad
3 guy, that's fine, put it on my shoulders. But just
4 please continue to keep these things to yourself.

5 Please, also, no independent research, people,
6 places, things involved. And don't post any
7 discussions on any websites about anything that
8 you've seen or heard during the course of this
9 trial. Keep all of that to yourself.

10 We're going to resume tomorrow morning. I
11 think we can safely do that at about 9:30 tomorrow
12 morning, so that'll give you a little extra time in
13 the morning. And I just don't want you to sit here
14 while we're doing some work. I know we do have some
15 work to do in the morning.

16 So please be here at 9:30, ready to go and
17 we'll go to testimony at that point.

18 Thank you again for your attention.

19 Any questions as we head out for the recess
20 this evening?

21 Okay. Thank you. You could just leave your
22 note pads on the chairs. See you tomorrow morning,
23 9:30.

24 THE DEPUTY: Jurors, follow me.

25 (Jury exits.)

1 THE COURT: I've heard Mr. Shuker describe what
2 he perceives the issue to be, Mr. Benitez, in terms
3 of the proof regarding the valuation of the
4 memorabilia, using that in the grand scope. I would
5 like to be prepared at 9 o'clock tomorrow morning,
6 to tackle that legal issue, in terms of the proof
7 that you believe that you have or the reasons that
8 you believe that Mr. Myers is competent to testify
9 to those issues.

10 I would like some case law. I think I'm
11 familiar with it, but I would like to see what it is
12 that you are relying upon in your respective
13 positions, and if deciding that legal issue can be
14 of help to you all in narrowing either the
15 presentation of testimony or the manner in which it
16 is presented, or perhaps by reaching a stipulation.
17 And I think that's a half hour well spent and I'm
18 happy to do that with you.

19 Are there other issues that we can address this
20 evening that would be helpful for you all.

21 I do need to ask, Mr. Benitez, who you intend
22 to call tomorrow so everybody can be prepared and we
23 can continue to move forward.

24 MR. BENITEZ: I would expect to call Mike Myers
25 to the stand tomorrow, Judge.

1 THE COURT: Okay, and only Mr. Myers?

2 MR. BENITEZ: I think he will take more than a
3 day.

4 THE COURT: Okay.

5 MR. BENITEZ: Even if we work things out, it
6 may take a day and a half or something.

7 THE COURT: I will say I've been very
8 pleasantly surprised -- and surprised is the wrong
9 word. I've been very pleased to see you all
10 focusing on the issues very directly and not
11 spending a lot of time on superfluous issues, and so
12 I appreciate that.

13 And, Mr. Benitez, I know you made some
14 significant narrowing of your opening statement
15 today. That did not go unnoticed. I appreciate
16 that and I think the jury appreciated it.

17 And, nevertheless, I think we're all clear on
18 what the issues are, so I think it was effective for
19 both -- all counsel, really, you've taken what could
20 be a very complicated set of claims and
21 circumstances and I think narrowed it down very well
22 for the jury to be able to understand.

23 So I'm optimistic in Mr. Myers' testimony
24 tomorrow that we'll be able to continue down that
25 path. I do recognize there's some history that

1 needs to be put out there for the jury and some
2 interactions and some things that become relevant to
3 the various claims. But I do encourage you to use
4 the time that you have this evening to hone in on
5 that direct examination and the cross examinations,
6 as well, so that we can continue to make this level
7 of progress. I'm optimistic, I think, the pace that
8 we're moving.

9 MR. CHASE: Sir, there is an additional issue
10 that maybe we can make the use of time to discuss a
11 little bit more. I think probably a heads up to the
12 Court more than anything else. The huge -- I think
13 the biggest, more than anything issue in this is the
14 parole evidence rule as it applies to this escrow
15 agreement.

16 The second issue is the existence of this
17 handwritten letter that's dated July 8, 2005, that I
18 am certain that Mr. Benitez is going to try to
19 introduce into evidence. The objections with regard
20 to that are numerous and that would be something
21 that, I think, at some point needs to be taken care
22 of while the jury's not sitting there. Because
23 that's definitely something that the jury would have
24 to go out and sitting in the room and so if we
25 could --

1 THE COURT: Is this the list of additional
2 terms that your client felt needed to be resolved?

3 MR. BENITEZ: No, your Honor.

4 THE COURT: Okay.

5 MR. BENITEZ: He's referring to the letter that
6 came on July 8, 2007, after the meeting with Kevin
7 Donaghy, which, basically, was a letter documenting
8 the meeting and saying let's get together to finish
9 up the other issues.

10 THE COURT: 2005?

11 MR. BENITEZ: I'm sorry, I apologize, Judge.
12 I'm really trying not to get the dates wrong, but,
13 yes, 2005.

14 MR. CHASE: It's a letter that is very much
15 contested by everybody. It didn't come up until a
16 year and a half into the litigation. Nobody -- the
17 only people who will testify anything about it are
18 the Myers, that they sent it prior to that showing
19 up in the court file, anonymously filed in the court
20 file, it was -- there were four pleadings submitted
21 by the Myers, two of which were verified, where they
22 spent 60 and 70 pages telling their story and
23 nowhere did they ever tell the story about a
24 handwritten letter that purportedly revokes their
25 signature.

1 Although, in addition to that, that letter in
2 no way actually says I revoke my signature. What
3 that letter says is that I would like additional --
4 we have additional things to consider. It's wholly
5 irrelevant. It's hearsay. It's self-serving
6 hearsay. It's prejudicial as can be. It is
7 unreliable.

8 It is a handwritten letter, when all of the
9 evidence that they have, all of the whole time prior
10 up to this meeting, and after the meeting were all
11 e-mails. And Mr. Myers was adept at e-mail. He
12 would send long, long e-mails.

13 And so there are -- again, in short, there are
14 big problems with that letter.

15 MR. SHUKER: And, your Honor, if I may add to
16 that, I apologize, there is no evidence that it was
17 ever delivered. Nobody other than the Myers will
18 say that it was sent.

19 More importantly, or as importantly, the
20 operating agreement is clear on how notices are to
21 be sent. If this is some kind of rescission or some
22 kind of declaration, and that is delivered
23 return-receipt, or FedEx, with proof of delivery,
24 that doesn't even come close to meeting the
25 requirements for notices under the operating

1 agreement.

2 THE COURT: But that assumes the operating
3 agreement was in force.

4 MR. SHUKER: Well, if this was sent to rescind
5 it, you would -- you sign something saying how you
6 are going to deliver any notices under it. And that
7 wasn't, so --

8 MR. CHASE: And --

9 MR. BENITEZ: And, Judge, that letter came up
10 in the file. I don't know where Mr. Chase -- and I
11 apologize if I'm forgetting something, but I've been
12 involved in this case since day one, I don't
13 remember this magically appearing in the court file.

14 I know that our legal theories changed
15 throughout during the case, and the first few years
16 we were struggling with the pleadings, because the
17 Court is aware, and at that point -- at one point in
18 time when I started pleading the rescission count,
19 it was based on this letter, based on the fact that
20 if they took the position that there was an offer
21 that could be accepted two months later, that the
22 rescission, that there was a rescission on July 8th.

23 But that's -- that's after the fact, after our
24 initial contention that there is no letter
25 agreement, because we had an agreement never to make

1 it binding. So if it's not, if it is binding after
2 July 7th, if we get -- if they get past that hurdle,
3 our rescission count is basically as of July 8th,
4 the very next day, months before the Hachenbergers
5 signed the agreement, before it could possibly
6 become effective.

7 No matter what the agreement says and no matter
8 what the testimony has been, the law is, the
9 agreement becomes effective at the time when the
10 other party accepting it. There has to be an offer
11 and an acceptance.

12 So our contention is, they're saying that,
13 well, Mike Myers is going to be -- and Jackie Myer
14 is going to be the only person who are going to
15 testify to it. So be it. They are going to testify
16 to that.

17 THE COURT: So how does this get in?

18 MR. BENITEZ: That gets in because that's
19 the -- that shows what the terms were on July 7th.
20 So it not only goes to the rescission count --

21 THE COURT: Why is it not hearsay? It's your
22 client's out-of-court statement --

23 MR. BENITEZ: It is.

24 THE COURT: It's your client's out-of-court
25 statement offered to prove the truth of the matter

1 asserted.

2 How does it come into evidence? Is it hearsay?

3 MR. BENITEZ: Let me think for a second, Judge.

4 Because nobody -- none of the other parties have
5 raised the issue.

6 MR. SHUKER: It's on our --

7 THE COURT: They just raised it.

8 MR. SHUKER: It's on our pretrial statement.

9 We objected to it over and over.

10 MR. BENITEZ: Hearsay.

11 MR. SHUKER: Yes, I told you.

12 THE COURT REPORTER: I'm sorry --

13 THE COURT: Just a second.

14 MR. BENITEZ: That was a notice by my client,
15 to the opposing parties giving them a letter. Is
16 there not a letter from one party to the other, it's
17 admissible. I don't think it's hearsay. Mostly if
18 they're declaring he's able to testify and he's
19 subject to cross examination, I believe -- is that,
20 isn't it?

21 THE COURT: Isn't this -- I mean, he can
22 testify, but isn't this an out-of-court statement?

23 MR. BENITEZ: Judge, I don't believe it's
24 inadmissible based on hearsay.

25 THE COURT: You're going to have to get me some

1 law.

2 MR. BENITEZ: I will. I'll get it tonight.

3 I'm jumping on it as I'm talking to you.

4 THE COURT: I think I know where you're headed,

5 but you're going to need some law to convince me

6 that this meets those requirements. And I'm -- this

7 does a lot of things, though, and not all of it may

8 be admissible, ultimately. And there may be issues

9 with whether -- I mean, how was it delivered?

10 MR. BENITEZ: Mike Myers delivered it.

11 THE COURT: He handed it to him.

12 MR. BENITEZ: He hand delivered it to the

13 secretary.

14 THE COURT: To some secretary.

15 MR. BENITEZ: Of Donald Hachenberger.

16 MR. SHUKER: With Glenda in Colorado.

17 MR. BENITEZ: Who, the testimony is, wasn't

18 participating in anything.

19 MR. SHUKER: Wait.

20 THE COURT: When this is done, we're going to

21 have to confront -- I agree with you, there's lots

22 of issues, and I'd rather not do it with the jury

23 waiting.

24 So when in Mr. Myers' testimony do you

25 anticipate that this letter will become an issue?

1 First thing?

2 MR. BENITEZ: Not first thing, your Honor.

3 MR. CHASE: Can I --

4 MR. BENITEZ: Afternoon, possibly.

5 THE COURT: So we could address it over the
6 lunch hour, if necessary.

7 MR. BENITEZ: Yeah. Judge, can we try to make
8 that part of the 9 o'clock also, or no?

9 THE COURT: We can, but a lot of that that's
10 going to depend on how efficient you are on arguing
11 that other issue.

12 I'm happy to address it as early as we can,
13 that's why I'm asking you when does this become an
14 issue.

15 MR. BENITEZ: It's not going to be immediate.
16 I've got a lot of history.

17 THE COURT: I sense there are a lot of issues,
18 so let's be prepared to narrow them and focus in on
19 what they are. And let's, again, have some sort of
20 case law.

21 Thank you.

22 MR. SHUKER: Thank you, your Honor.

23 THE COURT: Other issues that you anticipate?

24 MR. CHASE: That's the two big ones, the parole
25 and that.

1 THE COURT: The parole evidence rule, I just
2 think I'm just going to have to hear it. I don't
3 like it, and if it were a bench trial, I'd feel much
4 more comfortable, but I feel like I have to hear the
5 evidence before I can rule it on the admissibility.

6 MR. CHASE: Understood, Judge.

7 THE court: I'll look at this case and I'm
8 going to look at it some more tonight. I'm not
9 entirely clear on the context where they use the
10 word testimony, whether they meant testimony at
11 trial or testimony in deposition that would be
12 presented to the Court.

13 So I just want to focus in a little bit more on
14 the issues. And, folks, I'll just apologize again,
15 I hate being sick. I'm trying to stay focused and
16 really stay clear on these issues, but I will
17 concede I'm not 110 percent right now. And but I'm
18 doing everything I can in the off-time that we have
19 to continue to read and be as focused.

20 MR. CHASE: We appreciate you staying in and
21 doing the trial a lot -- there are a number of
22 judges who would say trial's canceled because I
23 don't feel well, and so we appreciate you being
24 here.

25 THE COURT: Sunday night I thought about it,

1 but I didn't think that would be fair. I do feel
2 better today, but, by the way, I do feel like I'm
3 absolutely on the way back. I just -- you know, so
4 I'll spend some time tonight reading that case a
5 little bit more closely.

6 And I did get a chance to review the key
7 sections of the agreement that I was concerned
8 about. So I do have some thoughts, but I want to
9 continue to look at that testimony as it comes in.

10 MR. CHASE: Yes, sir.

11 Do you want a courtesy copy of the closing
12 statement, sir?

13 THE COURT: If you have an extra copy, I would
14 be grateful of that. Thank you.

15 MR. CHASE: Yes, sir.

16 THE COURT: Mr. Benitez.

17 MR. BENITEZ: Yes. Yes, your Honor.

18 So the issues for tomorrow for 9 o'clock that
19 we should be prepared to argue would be hearsay and
20 value.

21 THE COURT: Hearsay -- well, not just hearsay,
22 admissibility of that document, that there had been
23 a number of objections that were raised.

24 MR. CHASE: Yes, sir.

25 THE COURT: In fact, if I could put my hands on

1 the pretrial quickly, we've got the pretrial
2 statement, so you know exactly what the objections
3 were that were raised to that. Hearsay was one of
4 them. There are others, if I recall.

5 MR. CHASE: Yes, sir.

6 MR. SHUKER: Yes.

7 THE COURT: So I want to address the
8 admissibility of that document and then I want to
9 address the valuation issues.

10 Okay. Anything else?

11 Please be here tomorrow at 8:45. And the
12 reason I say that is, like this morning, ex-parte
13 was done quickly, I would expect it to be done like
14 that as well. That means we would gain another
15 15 minutes of argument time.

16 MR. BENITEZ: Thank you.

17 MR. SHUKER: Thank you, your Honor.

18 THE COURT: Thank you.

19 We'll be in recess for tomorrow morning.

20 (TIME NOTED: 4:11 P.M.)

21 (CONTINUED IN VOLUME III.)

22

23

24

25

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3)
4 COUNTY OF ORANGE)

5
6 I, SHOSHANA KRAMER, RPR, CRR, Notary Public,
7 State of Florida, I was authorized to and did
8 stenographically report the foregoing proceedings; and
9 that the transcript, pages 25 through 283, is a true and
10 accurate record of my stenographic notes.

11
12 I FURTHER CERTIFY that I am not a relative, or
13 employee, or attorney, or counsel of any of the parties,
14 nor am I a relative or employee of any of the parties'
15 attorney or counsel connected with the action, nor am I
16 financially interested in the action.

17 Dated this 20TH day of SEPTEMBER, 2018.

18

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Shoshana Kramer
SHOSHANA KRAMER, RPR, CRR

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