

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,  
10 SOUTHEAST COMMUNICATIONS,  
COMPANY OF CENTRAL FLORIDA  
DONALD J. HACHENBERGER,  
GLEND A. HACHENBERGER,

11 Defendants.

12 \_\_\_\_\_/  
Volume III

13 PROCEEDINGS: JURY TRIAL

14 BEFORE: HONORABLE DONALD A. MYERS

15 DATE: MARCH 15, 2017

16 TIME: 8:52 A.M. - 4:59 P.M.

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

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

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24 GLENDA HACHENBERGER  
25 MICHAEL MYERS  
JACQUELINE MYERS

1 I N D E X

2

3 TESTIMONY OF MICHAEL MYERS

4 DIRECT EXAMINATION BY MR. BENITEZ.....343, 505  
5 CROSS EXAMINATION BY MR. SHUKER.....487

6

7

E X H I B I T S

8 DEFENDANTS' EXHIBITS

9 NUMBER PAGE MARKED IN EVIDENCE

10 1.....319

2.....319

11 3.....319

4.....337

12 5.....430

6.....454

13 7.....583

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1 P R O C E E D I N G S

2 (CONTINUED FROM VOLUME II.)

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4 THE COURT: All right. Good morning.

5 MR. CHASE: Good morning, sir.

6 MR. BENITEZ: Good morning, sir.

7 THE COURT: We have -- I think we finished up  
8 with our ex-parte short matters, so let's go ahead  
9 and address a couple of these legal issues that are  
10 slated for this morning.

11 Our jury will not be here until 9:30, so I  
12 think we've got about 35-plus minutes to see if we  
13 could work through some of these matters.

14 Where does it make the most sense to start?

15 MR. SHUKER: Good morning.

16 MR. CHASE: Mr. Shuker's taking the stand.

17 MR. SHUKER: Good morning, your Honor.

18 Scott Shuker and Marianna Dorris on behalf of  
19 Glenda Stone.

20 There were two issues that are discrete. One  
21 is testimony of value will come up by the Myers and  
22 we have several arguments to that. And then the one  
23 is this Exhibit 18, letter of July 8th, and whether  
24 that's hearsay.

25 I have legal argument and cases on both as to

1 why both types of evidence should be excluded. So  
2 we're happy to go and let Mr. Chase give his two  
3 cents and Mr. Benitez his. My argument on both will  
4 be 5 to 10 minutes. So --

5 THE COURT: Okay, you may proceed.

6 MR. SHUKER: Thank you.

7 You have a preference of which we start with,  
8 your Honor?

9 THE COURT: First start with the exhibit  
10 letter, if we could, please.

11 MR. SHUKER: The letter?

12 THE COURT: Yes.

13 Which, again, I do not have a copy of at this  
14 point unless you all have marked it for evidence.

15 MR. BENITEZ: I have the letter.

16 THE COURT: Yes.

17 MR. CHASE: For the record, Judge, is that --

18 THE COURT: Sorry.

19 Mr. Benitez, you've given this to me, is this  
20 something you marked?

21 Is that your exhibit tab at the bottom?

22 MR. BENITEZ: Yes, your Honor.

23 THE COURT: Okay. I don't know what that mark  
24 means, 19-A. We mark exhibits for identification  
25 with letters.

1 MR. BENITEZ: No, your Honor --

2 THE COURT: Once they are received in evidence,  
3 they receive numbers.

4 MR. BENITEZ: No, your Honor, what we did is,  
5 we had -- like I explained to the Court, we had an  
6 initial exhibit list, we want to --

7 THE COURT: Let me just clarify this. It's  
8 marked incorrectly, okay, so we have to remark it.  
9 It may correspond to some list somewhere, but we're  
10 not operating on the list, you're operating in the  
11 courtroom, and the courtroom rules are this needs to  
12 be identified with a letter.

13 So we're going to mark this exhibit for  
14 identification as the Defendants' -- do they have  
15 letters yet?

16 MR. BENITEZ: Not yet.

17 THE COURT: This will be Exhibit A.

18 MR. BENITEZ: I do not have --

19 THE COURT: This will be Defendant's A so that  
20 we know what we're referring to.

21 Thank you.

22 You may proceed.

23 MR. SHUKER: Thank you, your Honor.

24 So this letter, I think the starting point in  
25 the analysis is why is it being offered. And you

1 queried Mr. Benitez on that very subject yesterday.  
2 And we would proffer that it can only be used to  
3 show evidence that the documents executed on the  
4 prior day were either to be held in escrow or were  
5 to be held pending amendments.

6 That's the only point of this letter, because  
7 the letter's actually hearsay within hearsay saying  
8 we sent this to you, Kevin. Kevin, you sent this to  
9 us, and we appreciate that you'll hold these  
10 documents.

11 And it's unclear whether it's an escrow or  
12 whether it's to be amendments, but the point of the  
13 whole letter is to make clear what they have in  
14 Count 1. Count 1 is a breach of an oral contract.  
15 It's been classified as an oral escrow contract, but  
16 it's really an agreement to agree.

17 So this letter can only be used to prove what  
18 was said at that meeting. Otherwise, it's not  
19 relevant. I think Mr. Benitez will make two  
20 arguments, which I think are unavailing. So it's  
21 clearly hearsay.

22 If you're trying to argue there's an exception  
23 because it's their then state of mind under 803 --  
24 90.803 -3, first of all, your Honor, again, we'd say  
25 it's not to show a state of mind because it's to

1 show what happened the day before, but -- and so,  
2 903 -- 90.803-381 is not applicable because you're  
3 offering to show what you said the day before and  
4 what was said to you.

5 And two is, you can't use that because it's a  
6 statement of the after-the-fact belief offered to  
7 prove what was believed at the time, not what you  
8 believe now. So you don't get into A2.

9 And then, finally, your Honor, under 90.803(b),  
10 there are significant circumstances that show lack  
11 of trustworthiness with this letter, including the  
12 fact that there's no evidence of delivery to anyone.  
13 Nobody on our side ever saw it. There's no evidence  
14 of how they delivered it.

15 And, more importantly, they didn't act  
16 consistent with this letter. This letter seems to  
17 say that we're going to make amendments, these eight  
18 amendments to the agreement. And if we don't, we'll  
19 give you your money back.

20 Well, not only did they never give the money  
21 back or offer to give it back, they took more money  
22 four months later. So they acted entirely  
23 inconsistent with this letter that purports to say,  
24 we're going to make eight amendments.

25 So, because of that lack of trustworthiness,



1 your Honor, because it's a statement of  
2 after-the-fact belief offered to prove a day  
3 earlier, it doesn't meet the state of mind.

4 And, finally, your Honor, as important, the  
5 Myers' state of mind is not an issue. The issue is  
6 Count 1: Was there a contract on July 7th to hold  
7 this agreement pending for further modifications.  
8 That's the count that it applies to. It's -- it's  
9 being used for Count 1.

10 So I think that might be one argument that  
11 Mr. Benitez will make, that it is a statement of  
12 then existing mental condition. The only other  
13 possible one I could conceive would be statements in  
14 a document affecting the interest and property under  
15 90.803-15.

16 Now, there is no case law in Florida that I  
17 could find on the Florida rule, but we do have the  
18 statute itself. And, actually, your Honor, I think  
19 the best indication of why this isn't applicable is  
20 the defendant rule is identical and there is sparse  
21 Federal rule.

22 But the advisory committees to Federal rule of  
23 evidence 830-15 say that this exception would apply  
24 to ancient or dispositive documents that record  
25 recitals of fact.

1           The classic example of the statement in a  
2 document that affects interest in property is a  
3 deed, or a bill of sale. The document itself, the  
4 deed or the bill of sale, is hearsay. But it  
5 transfers property. And because it does that, it  
6 meets the exception.

7           The bill of sale is hearsay. But because it  
8 reflects the act -- and this case, your Honor, this  
9 statement doesn't affect the interested property.  
10 They already had their 25 percent interest in  
11 Highway 46 LLC. Not really relevant to purpose of  
12 the document. The purpose is to prove that they  
13 don't want that document, the operating agreement,  
14 to be binding.

15           And then the last prong, if you could even find  
16 that this is a document regarding property, is that  
17 the dealings with the property since have to be  
18 consistent with the truth of the 8/8 letter or the  
19 7/8 letter.

20           So that's the final prong under the statute for  
21 the statements in the document, and the dealings  
22 since then are inconsistent with the letter. Again,  
23 the letter says very clearly, if we can't reach a  
24 deal on these eight points, we'll give you the money  
25 back.

1           And I quote where that's at, it's not -- pages,  
2     but the fourth page in, your Honor, says, in the  
3     second paragraph: Obviously, if we are unable to  
4     work out the omissions in the draft yesterday, we  
5     will return the dollars which you have advanced to  
6     us.

7           That never happened. Two years after the fact  
8     it hadn't happened. So we're led to believe that  
9     we're making amendments for two years, and then,  
10    even after it was filed, he didn't say, hey, where  
11    are the eight amendments. Give us -- we'll give you  
12    the money back.

13          So, your Honor, either of those hearsay  
14    exceptions, either the statement in documents,  
15    again, I don't think it applies at all because the  
16    document itself doesn't do anything. The letter,  
17    the 7/8 letter, it's not a deed, it's not a bill of  
18    sale. There's no trustworthiness in a self-serving  
19    letter. So I don't think it applies.

20          I don't think mental condition applies, for  
21    reasons I've said, and it clearly is hearsay because  
22    it's offered to prove what they said to Mr. Donaghy  
23    and what he said to them, as applicable to Count 1.

24           THE COURT: Thank you.

25           Anything additional to that, Mr. Chase?

1 MR. CHASE: Yes.

2 To add -- and I'm not going to repeat counsel's  
3 arguments, I'm going to add to them, but I am going  
4 to expound on, one, the lack of trustworthiness.  
5 Judge, that's a statute -- and I don't think counsel  
6 cited the statute, it is 90.803 sub 3, that says --  
7 and we're saying this then existing mental  
8 condition, because that's what Mr. Benitez e-mailed  
9 us last night that he was going to be relying on.

10 Said that -- it reads: The statement of the  
11 declarants of the then existing state of mind,  
12 emotion or physical sensation, including a statement  
13 of intent, plan, motive, design, mental feeling,  
14 pain, or bodily health, when such evidence is  
15 offered to, one, prove the declarant's state of  
16 mind, emotion, or physical sensation at that time,  
17 or at another time, when such state is an issue, in  
18 the action.

19 Two: Prove or explain acts of subsequent  
20 conduct of the declarant.

21 B: However, this subsection does not make  
22 admissible an after-the-fact statement of memory or  
23 belief to prove the fact remembered or believed  
24 unless such statement relates to the execution,  
25 revocation, identification, or terms of the

1 declarant's will.

2 Two: A statement made under circumstances that  
3 indicate its lack of trustworthiness. Here --

4 THE COURT: Would you turn your microphone on.

5 MR. CHASE: I'm sorry, Judge.

6 Here the -- it says, again, the -- it is not  
7 admissible if it's entered to prove what you  
8 remember or believed. And it's not admissible if  
9 the circumstances are untrustworthy. And so the  
10 Court has to consider the circumstances.

11 We have a situation where it is awkward, to say  
12 the least, that someone would raise the issue of  
13 mental state of mind on a contract case to try to  
14 get out of a written document that they signed.

15 But if we go forward with that and look at this  
16 particular document, and whether or not it's  
17 trustworthy, it's a handwritten page that counsel  
18 represented yesterday, was not even delivered to  
19 Mr. and Mrs. Hachenberger. It was given to the  
20 secretary of Re/Max, who is not Mr. and Mrs.  
21 Hachenberger, said it was hand delivered to a  
22 secretary.

23 This is a deal that they had just signed the  
24 day before, some 70-odd pages, which included a deed  
25 to convey property, which conveyed hundreds of

1 thousands of dollars to flow to them, and a check  
2 that they then -- and there's plenty of evidence,  
3 all their communications were by e-mails,  
4 long-winded e-mails from Mr. Myers.

5 But this one was a handwritten document, hand  
6 dated, and didn't show up -- nobody knows anything  
7 about it and it didn't show up until a year and a  
8 half into the litigation, where it was anonymously  
9 filed in suit.

10 Two complaints, two verified complaints, signed  
11 by the Myers and two other complaints signed by  
12 Mr. Benitez, had been filed prior to this coming  
13 out, where they spent 60 or 70 pages describing all  
14 of these facts and these transactions, and nobody  
15 ever mentioned anything about this letter. And then  
16 all of a sudden it pops up, this handwritten letter.  
17 And then all of the sudden, that is the bulk of  
18 their claim.

19 And there are additional other things, reasons  
20 why it's untrustworthy. But I think those alone say  
21 that is hardly a reliable document.

22 Then we look at the parole evidence throughout  
23 that document. It is talking about the terms of the  
24 deal and what we understood going into the deal.

25 While parole evidence, the Court has broad

1 discretion, it's not a rule of evidence, it's  
2 substantive law.

3 But it's -- and generally statements with  
4 regard to intent are before or at the time of the  
5 written document, at the same time. This, I will  
6 concede, was the day after, but it was very close in  
7 time.

8 But it's saying things that happened prior to  
9 and leading up, so it's just a backdoor way of  
10 getting in a bunch of parole evidence about what the  
11 intent of the parties were. So it's inadmissible as  
12 to the parole evidence.

13 It's inadmissible to relevance, because the  
14 things that they're saying in there had been reduced  
15 to writing. And there's a ton of information in  
16 there about how they feel and about their love for  
17 the memorabilia and how they would never do these  
18 things, and they would never give their stuff away  
19 and all these things.

20 And that's clearly designed to evoke sympathy  
21 from the jury so that they say, oh, these poor  
22 folks, they gave away all their stuff. And it's --  
23 so I would expound on the hearsay rule, the parole  
24 evidence and relevance, respectfully.

25 Also, there's a case that I cited. It cites

1 that -- or that I will cite, supporting 90.803-3,  
2 where it talks about the lack of trustworthiness.  
3 It's Cotton V. State, 763 So.2d 437. And I'm -- I'm  
4 citing that out of Earhart's (sic), Judge. I have  
5 not Shepardized that case. I'm just reading it out  
6 of the Earhart's.

7 And it's talking about -- it's a criminal case,  
8 no use of discretion, excluding defendant's  
9 statement under his arrest that he did not know the  
10 substance was cocaine, the statement cannot be  
11 construed a statement of an existing state of mind  
12 offered for the reasons contemplated by  
13 Section 90.803. Rather, the statement is precisely  
14 the type of self-serving exculpatory statement that  
15 has traditionally been regarded as inadmissible  
16 hearsay because of its lack of reliability and  
17 trustworthiness. And that's exactly what this is.  
18 Respectfully, sir.

19 THE COURT: Mr. Chase, twice you have  
20 already -- this shows up anonymously in the docket.

21 MR. CHASE: Yes, sir, the --

22 THE COURT: What's the date that that appears  
23 in the docket?

24 MR. CHASE: It's sometime around, I would say,  
25 March of 2009. That's off the top of my head. I



1 apologize, Judge.

2 THE COURT: Is it connected with something?

3 MR. CHASE: There was -- they amended again.  
4 So they amended one day -- I think it's right there  
5 together -- the document shows up and there's an  
6 amendment where now that, for the first time, they  
7 raise the issue of this letter, and they're kind of  
8 at the same time or within a day apart.

9 But, so Mr. Benitez filed an amendment once  
10 again of the prior four pleadings that they had, and  
11 then all of the sudden it's just this document is  
12 filed in the Court.

13 THE COURT: All right. Thank you.

14 Mr. Benitez.

15 MR. BENITEZ: Judge -- and that would be a  
16 surprise to me to have been -- without any reference  
17 to anything that had been submitted to the Court, so  
18 I don't have any recollection of that, and I haven't  
19 had a chance to review it, whatever Mr. Chase is  
20 referring to.

21 Last night, I went ahead and conveyed to both  
22 attorneys my position. Also, I gave them my case  
23 law. Also, I gave them my citations and all that.  
24 That's why they have been referencing to it.

25 The cases that I found, Judge, with respect

1 to -- well, first of all, our position is clearly  
2 that that letter is not hearsay. It's not offered  
3 for the truth asserted therein. It's offered for  
4 this document, Mr. Myers' state of mind.

5 THE COURT: Let's be clear.

6 Are you saying it's not hearsay or you're  
7 saying that it falls within an exception to hearsay?

8 MR. BENITEZ: My first position, it is not  
9 hearsay. There is nothing in that letter that we're  
10 trying to prove by submitting the letter. In other  
11 words --

12 THE COURT: You're not trying to prove  
13 Mr. Donaghy's statements about what he intended to  
14 do with those documents?

15 MR. BENITEZ: No, your Honor, I'm not. I am  
16 not attempting to prove anything contained in that  
17 letter other than Mr. Myers' state of mind at that  
18 point. And given --

19 THE COURT: You're mixing apples and oranges.  
20 It's either not hearsay or it's hearsay and,  
21 therefore, falls within the state of mind exception.

22 MR. BENITEZ: Yes, your Honor. My first  
23 position is it is not hearsay.

24 THE COURT: And what is the purpose of it?

25 MR. BENITEZ: The purpose is to -- like I said,

1 I can not use the same words that are related in the  
2 hearsay exception, Judge, but --

3 THE COURT: You have to, because otherwise it's  
4 hearsay. And if you have to use the words of the  
5 exception, then it is hearsay, but falls within an  
6 exception.

7 The definition of hearsay is an out-of-court  
8 statement --

9 MR. BENITEZ: Right.

10 THE COURT: -- made by your clients, offered to  
11 prove the truth of the matters asserted inside of  
12 the document. If your contention is that it is not  
13 being offered to prove the truth of the matters  
14 asserted, then why is it being offered?

15 MR. BENITEZ: To show Mr. Myers' state of mind  
16 on July 8th.

17 THE COURT: Okay.

18 MR. BENITEZ: I don't -- Judge, there's nothing  
19 in that letter that I'm going to argue to the jury  
20 that that's necessarily what happened. What I am  
21 asserting -- nothing, nothing specifically. It's  
22 not that Mr. Donaghy gave them the -- those items,  
23 or gave them a list or anything like that.

24 Even if this matter's contained in the letters  
25 that he might have said, I am not basing -- I am not

1 submitting that for that purpose. I've got Mr. Mike  
2 Myers to testify and Jacqueline Myers to testify  
3 with respect to what happened during that meeting.  
4 I don't need that letter to prove up what happened  
5 in that meeting.

6 What I need to establish is what happened the  
7 day after. And the day after, Mr. Mike Myers and  
8 Mrs. Jacqueline Myers went ahead -- and Mike Myers  
9 is the one that delivered it to Donald and Glenda  
10 Hachenberger by delivering it to their secretary at  
11 Re/Max.

12 And that's what I'm trying to establish, what  
13 was said at that time, what was said to the --  
14 Glenda Hachenberger and Donald Hachenberger. I am  
15 not going to go and argue --

16 THE COURT: What was said to Glenda and Donald  
17 Hachenberger.

18 MR. BENITEZ: Through the letter.

19 THE COURT: On the day following.

20 MR. BENITEZ: Through the letter -- yes,  
21 through the letter.

22 The letter then gets received by them. And  
23 they can argue they didn't receive it. They can  
24 argue they didn't get it. They can argue they  
25 didn't read it, even if they got it. They can argue

1 all that. My -- the testimony from my client's  
2 going to be that he delivered that letter.

3 So that is the purpose that I am submitting  
4 this letter, is to show what was done on that day,  
5 July 8th.

6 THE COURT: That's to prove the truth of the  
7 matter asserted.

8 MR. BENITEZ: But -- no, it isn't. It's to  
9 prove that he delivered the letter. Not what was  
10 said in the letter.

11 THE COURT: Then, okay, I'll stipulate, and I'm  
12 sure they'll stipulate, that your folks delivered  
13 the letter. But we're not going to talk about the  
14 contents, right? Isn't that what you're arguing to  
15 me?

16 MR. BENITEZ: No, your Honor, I'm not arguing  
17 that we're not going to talk about the content. I'm  
18 telling you what my purpose submitting to the jury  
19 is not to prove the matter asserted therein, period.  
20 That's all I'm telling the Court. I'm telling  
21 nothing else.

22 THE COURT: What's the purpose, though?

23 MR. BENITEZ: The purpose is to show what Mike  
24 Myers did on July 8th. And also to show what he  
25 conveyed to Glenda Hachenberger and Donald

1 Hachenberger. He told them that and this is what he  
2 told them at that point in time. They can then  
3 explain what they did with that, if they received  
4 it. If they didn't receive it, or whatever.

5 But my purpose is to establish Mr. Myers' state  
6 of mind. Also, to establish that, in fact, that he  
7 didn't think there was a done deal, he didn't  
8 understand it to be a done deal.

9 THE COURT: That's the truth of what's asserted  
10 in the letter.

11 MR. BENITEZ: No.

12 THE COURT: It is. Every other line says the  
13 draft agreements, the draft agreements. That's --  
14 you're wanting the jury to believe that those are  
15 drafts, they weren't finals.

16 MR. BENITEZ: But by what he did, not what he  
17 said, necessarily. In other words, Judge, I'm  
18 not -- we do this all the time. We submit evidence  
19 that can be used for various things and may be used  
20 for proving something at some particular time, and  
21 there may be a double purpose for that, for that  
22 particular piece of evidence.

23 In this case, I am articulating to the Court  
24 that I don't need to prove what happened on July 7th  
25 through that letter. I've got the live testimony of

1 Mr. and Mrs. Myers for that.

2 What I'm proving is that letter was written,  
3 that letter was delivered, and that's it. That's  
4 the essential purpose of that letter. Later on it  
5 becomes important because of the rescission counts  
6 and so on, because of notice of rescission, or  
7 rescinding the offer, if there was an offer, if the  
8 Court finds that there was an offer, to go ahead and  
9 enter into this contract then.

10 THE COURT: Where in this letter does it deal  
11 with what you believe to be a rescission or  
12 cancellation of the agreement?

13 MR. BENITEZ: Just by the general talk that's  
14 basically saying, if you don't -- if we don't agree  
15 to a deal, I'll give you back the money.

16 THE COURT: But he never gave him back the  
17 money.

18 MR. BENITEZ: No, he did not.

19 THE COURT: And, in fact, he took more money.

20 MR. BENITEZ: Yeah.

21 THE COURT: And he allowed money to be invested  
22 in the development of the property, did he not?

23 MR. BENITEZ: To an extent, yes. Some of the  
24 property that's been testified to here he has no  
25 knowledge of.

1 THE COURT: How does he ever get to rescission  
2 under these circumstances where the property's been  
3 improved?

4 MR. BENITEZ: That will be your determination.

5 THE COURT: No. How can -- I'm asking how can  
6 I restore the parties to their precontract status  
7 when there have been improvements made to the  
8 property?

9 MR. BENITEZ: Because we're not rescinding the  
10 project, we're rescinding the letter agreement. And  
11 the Court can do that.

12 THE COURT: With what consequence?

13 MR. BENITEZ: The consequences that they own  
14 50/50. The consequence that they are in the joint  
15 venture, but they don't have this document that was  
16 obtained by fraud to go ahead and use against  
17 Mr. and Mrs. Myers.

18 THE COURT: I think this letter is  
19 self-serving.

20 MR. BENITEZ: Okay.

21 THE COURT: I think it is hearsay. And it does  
22 not fall within an exception to hearsay under 90.803  
23 sub 3, the statement of then existing mental  
24 emotional or physical condition.

25 MR. BENITEZ: Judge, may I -- may I present my



1 evidence. Because I haven't gotten to the point  
2 where if the Court found that it was hearsay, I've  
3 got some authority to present to the Court which I  
4 presented to the opposing attorneys last night.

5 THE COURT: Bring it on. I've been asking for  
6 it. Bring it up.

7 MR. BENITEZ: If I may approach the bench, your  
8 Honor.

9 THE COURT: You may.

10 MR. BENITEZ: The first one will be Dorsey V.  
11 Reddy. This is Case Number 931 So.2d 259, out of  
12 the 5th DCA from 2006.

13 The second one is Massey versus State, 109  
14 So.3d 324, and it's a 5th District 2013 case.

15 And the last one is FDIC versus Amos. And that  
16 is a Federal case out of Pensacola. And it is 2016  
17 U.S. District, Lexis 7113, is what I have got here.

18 I apologize for not having the complete  
19 citation.

20 And, Judge, our argument with respect to the  
21 fact that if the Court finds this to be hearsay,  
22 that, in fact, it is an exception to the hearsay  
23 rule.

24 And as I've pointed out to opposing counsel  
25 last night, Section 90.803, Subsection 3A and B,

1 statement of Myers' then existing state of mind, the  
2 statement of intent or plan being offered to prove  
3 their state of mind at issue is admissible under  
4 90 -- 90.803, subsection 3A, and to prove or explain  
5 their subsequent conduct is Section 90.803-3B.

6 And under both of those cases, along with  
7 Dorsey and Reddy and -- Dorsey versus Reddy that I  
8 presented to the Court, the statements offered to  
9 show the state of mind of the Myers' and also notice  
10 to Glenda and Donald Hachenberger.

11 THE COURT: Notice to them of what?

12 MR. BENITEZ: Notice of their -- of their  
13 position with respect to those documents they  
14 executed the day before.

15 THE COURT: That these were drafts.

16 MR. BENITEZ: That they what? That they were  
17 drafts?

18 THE COURT: So the truth --

19 MR. BENITEZ: Which is the essence of this  
20 case.

21 THE COURT: The truth of the matter asserted.

22 MR. BENITEZ: That's why we're talking about a  
23 hearsay exception.

24 My position is two. First, it's not hearsay.  
25 You've overruled me on that. It is hearsay for the

1 purposes of this discussion. Now I'm telling you  
2 that it's an exception to the hearsay rule under two  
3 specific exceptions.

4 THE COURT: 90.803-3 A, 1 and 2?

5 MR. BENITEZ: 3A and B.

6 THE COURT: No, B is what is -- is not  
7 admissible.

8 MR. BENITEZ: Okay. I apologize, I must have  
9 thought 1 and 2.

10 THE COURT: Okay. 1, 2. So that's the  
11 argument?

12 MR. BENITEZ: That's the argument.

13 THE COURT: Okay. So 1 is to prove the  
14 declarant's state of mind, emotion or physical  
15 sensation at that time. So this would be at the  
16 time the letter was written.

17 MR. BENITEZ: Right.

18 THE COURT: Or at any other time when such  
19 state is at issue in the action.

20 MR. BENITEZ: Yes.

21 THE COURT: So why is it an issue in the action  
22 a day after he has signed an agreement?

23 MR. BENITEZ: It shows how -- why that  
24 agreement -- our entire theory of this case is that  
25 there was no agreement. Even though he signed the

1 agreement, there clearly is undisputed that there  
2 was no signature by the other parties. So it was  
3 not a completed contract.

4 So the uncompleted contract that we're  
5 referring to, his state of mind with respect to that  
6 uncompleted contract, explaining exactly the state  
7 of mind with respect to what happened on July 7th.

8 THE COURT: Isn't it his state of mind on  
9 July 7th that mattered?

10 MR. BENITEZ: It is, but his state of mind on  
11 July 8th is evidence of his state of mind on  
12 July 7th. It says exactly what he was thinking at  
13 that time.

14 It is so close in time, Judge, that it's  
15 difficult to make a point with respect to it being  
16 two different incidents or circumstances; one  
17 relates to the other and the other relates to the  
18 one.

19 THE COURT: Okay. Any other arguments?

20 MR. BENITEZ: No, your Honor.

21 THE COURT: Okay. I'm going to sustain the  
22 objections to the introduction of what is marked for  
23 identification as Defense Exhibit A. And to be  
24 clear, I believe that the document is hearsay. It  
25 is an out-of-court statement that the defense wants

1 to use for the purpose of proving the truth of the  
2 matters asserted in the letter.

3 As such, there has to be an exception to the  
4 hearsay rule that will allow its introduction.  
5 90.803-3, subsections 1 and 2 of A, relate to  
6 statements of declarant's then existing state of  
7 mind, emotion or physical sensation, that where that  
8 state is at issue, but it is no longer at issue on  
9 the following day.

10 This is a self-serving statement that is being  
11 offered to show what now is the position of the  
12 defendant in the case; that they didn't have any  
13 completed agreement.

14 As such, it is highly suspect. The  
15 circumstances under which it apparently was  
16 delivered are suspect. And it does not meet the  
17 requirements or circumstances that indicate  
18 trustworthiness. Instead, there's a lack of  
19 trustworthiness indicated.

20 None of your clients will testify to their  
21 conversations with Mr. Donaghy on the 7th, their  
22 understanding of the walkaway from that time or even  
23 related to what they believe the agreement was at  
24 that time. They've argued an oral escrow agreement.  
25 They can argue that.

1           But this is not admissible evidence. And it is  
2 not trustworthy, so the Court's going to exclude it.

3           MR. BENITEZ: And, your Honor, my clients will  
4 be -- I want to ask the Court's direction with  
5 respect to whether my clients can testify to the  
6 writing of that letter and delivery of that letter.

7           THE COURT: No, sir.

8           MR. BENITEZ: So I'm precluded from mentioning  
9 the letter in its totality in these proceedings?

10          THE COURT: That's correct.

11          MR. CHASE: Thank you, your Honor.

12          MR. SHUKER: I know we're up against the 9:30.  
13 My value argument is about five minutes.

14          Do you want to save it for a later break so we  
15 can start with Mr. Myers' testimony?

16          THE COURT: Yes, please.

17          MR. BENITEZ: Break and then argue values so  
18 they're not waiting.

19          THE COURT: Yes, please.

20          MR. SHUKER: Thank you.

21          MR. BENITEZ: Judge, if I may.

22          THE COURT: Yes, sir.

23          Just so it's clear, if you have other exhibits,  
24 Mr. Benitez, that need to be marked, we already have  
25 Defense A. So please mark them accordingly with

1 letters to follow them, not this number/letter  
2 sequence that you had previously.

3 MR. BENITEZ: May I have a few minutes, your  
4 Honor, just to get organized while we bring the jury  
5 back.

6 THE COURT: You may. We still got two,  
7 three minutes before they're supposed to be  
8 assembled.

9 MR. BENITEZ: Would you consider some  
10 objections to some of the issued exhibits or we can  
11 get them out of the way? They're relatively simple.

12 THE COURT: If we can do it in about five  
13 minutes.

14 MR. BENITEZ: Instead of in front of the jury.

15 THE COURT: If we can do it in about five  
16 minutes.

17 MR. BENITEZ: May I come up there.

18 THE COURT: Yes.

19 MR. BENITEZ: Judge --

20 THE COURT: Mr. Chase, we've having argument.

21 MR. CHASE: I'm sorry, I didn't -- I thought we  
22 were off the record.

23 THE COURT: We're on the record.

24 MR. CHASE: I'm sorry, sir.

25 MR. BENITEZ: Judge, I've got some exhibits.

1 I've got an exhibit of the warranty deed, the  
2 initial warranty deed that Mr. Mike Myers got for  
3 the property just to submit with respect to the  
4 purchase price. There's an objection I understand  
5 to the deed being admitted.

6 MR. CHASE: It's irrelevant, it's hearsay, the  
7 purchase price. The purchase price isn't relevant  
8 to anything, it's not pled on anything. There's --

9 THE COURT: When was the purchase made?

10 MR. CHASE: Back in 1987.

11 MR. BENITEZ: It's just the deed -- it's not  
12 the purchase price or anything, it's just a copy of  
13 the deed to show the jury that it was purchased back  
14 in 1987.

15 THE COURT: There's no dispute that he owns the  
16 properties, right?

17 MR. BENITEZ: Right.

18 MR. CHASE: So.

19 MR. BENITEZ: Okay.

20 MR. CHASE: So it's just irrelevant.

21 THE COURT: Mr. Chase.

22 MR. CHASE: I'm sorry, Judge. I'm sorry.

23 THE COURT: Your objection is sustained to  
24 relevance.

25 MR. CHASE: Thank you, Judge.



1 MR. BENITEZ: And, Judge, there was some talk  
2 about an appraisal of the property. And I've just  
3 got it here and I wanted to get it in front of the  
4 jury. It's the exact price that everybody's been  
5 quoting, \$2.9 million.

6 MR. CHASE: It's hearsay. You're the one who  
7 brought up the appraisal and you brought it up in  
8 your questioning, and it's -- you said hearsay -- an  
9 appraisal is absolutely hearsay. You didn't list  
10 any experts on your witness list, so that's expert  
11 testimony.

12 MR. SHUKER: What he said.

13 THE COURT: Why is it hearsay?

14 MR. BENITEZ: It is hearsay. But it's  
15 mentioned. I just thought I could submit it to the  
16 jury.

17 THE COURT: Sustained.

18 MR. BENITEZ: Okay. And then the last one,  
19 Judge, I've got some exhibits with some -- and I  
20 believe your objections are with respect to the  
21 sketch and the -- these things or --

22 MR. CHASE: I think you have an issue with  
23 predicate, foundation, the -- I don't think  
24 Mr. Myers drew those, one, relevance, because  
25 they're pictures of something that's remote in time

1 of what he pictured at some time. Parole evidence,  
2 because the only thing that you could possibly  
3 introduce that to say this is what I intended.

4 THE COURT: Pictures of a dream.

5 MR. BENITEZ: Yes, sir.

6 THE COURT: I'll allow it.

7 MR. BENITEZ: Thank you, Judge.

8 MR. CHASE: Thank you, Judge.

9 MR. BENITEZ: That would be Exhibit E for  
10 identification.

11 So, Judge, I'll omit the other exhibits.

12 THE COURT: So we need B next.

13 MR. BENITEZ: E would be number one.

14 THE COURT: We need B next.

15 MR. BENITEZ: Oh, but I can't take -- okay,  
16 I'll just wait to --

17 THE COURT: If you just want to cross through  
18 what you've written and you just put the letter B,  
19 then we could offer it and we'll be able to address  
20 it.

21 MR. BENITEZ: Okay. Then I'll go ahead and --

22 THE COURT: And I think my clerk is probably  
23 going to fix it.

24 MR. CHASE: No objection to -- are you going to  
25 mark it C so that -- go ahead and mark it C.

1 MR. BENITEZ: Yeah.

2 MR. CHASE: No objection to what's been marked  
3 as Defendant's C for identification purposes.

4 No objection to what's been marked as  
5 Defendant's D for identification purposes.

6 MR. BENITEZ: And can I move them into evidence  
7 now or do you want me to do it in front of the jury?

8 THE COURT: All right, so B, C, and D --

9 MR. CHASE: Yes, sir.

10 THE COURT: -- are all without -- over  
11 objection as to B and without objections to your  
12 others, those will be received as to Defense 1, 2, 3  
13 and 4.

14 MR. BENITEZ: Thank you, your Honor.

15 MR. CHASE: Thank you, your Honor.

16 THE COURT: Sorry. Is it B, C and D?

17 MR. CHASE: It's B, C and D.

18 So 1, 2, 3.

19 THE COURT: This shouldn't be hard.

20 (Defendants' Exhibits B, C and D for  
21 identification were admitted into evidence as  
22 Defendants' Exhibits 1, 2 and 3.)

23 Just D, so next would be E.

24 MR. SHUKER: Object.

25 MR. CHASE: Predicate, hearsay, relevance,

1 there's no date on it, it's just --

2 MR. BENITEZ: This is -- this is the item that  
3 Kevin Donaghy had typed up while they were in the  
4 meeting on July 7, 2005, came out and gave it to the  
5 Myers. It's been part of the exhibits in all of the  
6 pleadings.

7 THE COURT: Sorry. Come on up.

8 Okay. So your client is going to testify that  
9 he was given a copy of this by Kevin Donaghy.

10 MR. BENITEZ: Yes, your Honor, on July 7, 2005.

11 THE COURT: It's been alleged that Mr. Donaghy  
12 was an agent of Highway 46. So why would this not  
13 be, extend admission.

14 MR. CHASE: I think if he's an agent of  
15 Highway 46, it would be an admission to that. If  
16 there's no date, there's still no predicate to it.  
17 If he comes in -- if he does testify that he was  
18 given that document on that date, as a statement I  
19 would believe that would be admissible, sir.

20 MR. SHUKER: Your Honor.

21 THE COURT: Yes.

22 MR. SHUKER: I also think best evidence.  
23 There's a cut and paste. Where's the original?  
24 There should be a date. I don't think -- that's not  
25 what Mr. Donaghy gave him. That's a cut and paste

1 of something. You could see the copy lines. And so  
2 my concern is that this came out of an earlier  
3 meeting, because they had meetings in March, and  
4 this is being fabricated for the purpose of saying  
5 this happened at the hearing.

6 If he wants to bring Mr. Donaghy in and say,  
7 did you give this to them on that date, or if he has  
8 something to identify a date, but the date's really  
9 important.

10 THE COURT: Not everything is dated. And I  
11 don't think that's necessary if he can lay the  
12 predicate through their testimony that on that date  
13 this is the document that was given to them.

14 I do have a question, though, Mr. Benitez.  
15 Is --

16 MR. BENITEZ: Yes.

17 THE COURT: Is your client going to testify to  
18 that?

19 MR. BENITEZ: Yes, your Honor.

20 THE COURT: That there was nothing else on this  
21 sheet of paper with the exception of this list?

22 MR. BENITEZ: Judge, I -- this is -- this is  
23 what we've submitted previously, but Mr. Chase has  
24 asked me to white it out. This is what I had  
25 originally.

1 MR. SHUKER: I haven't seen it.

2 MR. BENITEZ: And this is actually what I  
3 believe I filed in the court files at the  
4 appropriate time, and that's what was written, but  
5 he wanted me to take it off.

6 THE COURT: Whose handwritten marks are those?

7 MR. BENITEZ: I believe they're Mr. Myers'. I  
8 believe. Are those your hand --

9 May we approach.

10 THE COURT: No. That conversation is not on  
11 the record.

12 (Discussion held off the record.)

13 MR. BENITEZ: That's Mr. Myers', Judge.

14 MR. SHUKER: Your Honor, may I be heard on --

15 THE COURT: Yes.

16 MR. SHUKER: To use that would be up for us to  
17 believe Mr. Donaghy typed in the middle of a page at  
18 an angle. It's just not what he gave them. It's a  
19 copy.

20 Where's the original? Where's the best  
21 evidence?

22 And when you -- and I understand you could use  
23 copies, but when you have something that's at an  
24 angle, without a date, that a lawyer happened to  
25 give you --

1           MR. BENITEZ: And, Judge, the original is in  
2 Kevin Donaghy's file. This was a copy that was  
3 given to him during the conversations they had on  
4 July 7, 2005. Kevin Donaghy went back, had this  
5 typed up and said this is -- and put it -- clipped  
6 it right on top of the file. Say we're leaving,  
7 that's it, this is staying this way until we get  
8 these issues resolved.

9           So that comes up from Mr. Kevin Donaghy.

10          THE COURT: Here's what we're going to do. I'm  
11 going to have to hear the predicate testimony. I  
12 can't rule on that. I have to hear the predicate  
13 testimony. But you understand the objections.

14          MR. BENITEZ: Yes, sir.

15          THE COURT: Do not put that in front of the  
16 jury until you have met the predicate objections and  
17 offer it, so you can show it to him, ask him if he  
18 recognizes it. Ask -- I'm sorry, put it in front of  
19 him, ask him if he recognizes it, have him testify  
20 to the predicate facts about how it is that he came  
21 into possession of this, sufficient to meet the best  
22 evidence rule issues, as well as the other concerns  
23 that you're hearing expressed. I think those are  
24 fair concerns on predicate.

25          Once the predicate is laid, you may offer it

1 and then we can talk about the substance of this,  
2 but there will be no conversation about the  
3 substance until we've laid the foundation.

4 MR. BENITEZ: And that's through --

5 THE COURT: Mr. Myers.

6 MR. BENITEZ: -- Mr. Myers. And so you don't  
7 want me to offer it during Mr. Myers' presentation  
8 then, even at that end, or do you want me to wait?

9 THE COURT: I don't -- sorry, sometimes I feel  
10 like I'm saying things, but I'm not communicating  
11 well. I'm reading them, they look great. Maybe you  
12 guys should read these, too.

13 What I'm saying, Mr. Benitez, is, with  
14 Mr. Myers on the stand, you need to lay the  
15 foundation of predicate to be able to overcome the  
16 best evidence rule and the other concerns that have  
17 been addressed about authenticity. Once laid, you  
18 may offer the document without testimony about its  
19 substance.

20 If it's admitted, it's fair game. If it's not  
21 because there's still a foundation concern, you got  
22 to address the foundation concern.

23 MR. BENITEZ: And, Judge, do you want me to use  
24 the one that Mr. Chase asked me to do, cleaning it  
25 up, or the one that I've got that's been throughout



1 the files in the presentation in this case?

2 I mean, I'll do either. I'll do either.

3 THE COURT: Doesn't matter to me.

4 MR. CHASE: This one, I think --

5 THE COURT: Mr. Myers is going to testify that  
6 those are his marks, so.

7 MR. CHASE: I'd rather use the clean one  
8 because he's written Jano on there. That's -- I  
9 don't know and the checkmarks I think would indicate  
10 like, yes, we've agreed to this, to the jury. So  
11 I'd rather use a clean one.

12 THE COURT: Okay.

13 MR. BENITEZ: And, Judge, the letter agreement,  
14 is there was a letter agreement given to Mr. Mike  
15 Myers on -- in May of 2005, which he brought to the  
16 meeting in July 7th. At that time, at the end of  
17 the meeting, after Mr. Donaghy gave him those list  
18 of items that we just went through, and the Myers  
19 were not satisfied and asked him to repeat it in --  
20 on top of the letter agreement. So he wrote these.

21 And this is -- I would like to offer this into  
22 evidence with the proper foundation.

23 THE COURT: He who wrote this?

24 MR. BENITEZ: This is Kevin Donaghy's, but it  
25 was in the presence of Mike Myers and Jackie Myers.

1 THE COURT: That's the original of that.

2 MR. BENITEZ: No, your Honor, I actually have  
3 the original, but --

4 THE COURT: Objections?

5 MR. CHASE: It's parole evidence. This is a  
6 draft that was given to him in May. The documents  
7 at the top -- if the testimony's going to be that  
8 Kevin Donaghy wrote that, then I think that  
9 everything else is out.

10 I think, based on the Court's -- not  
11 representation -- finding that Kevin Donaghy was an  
12 agent of either Highway 46 or Don Hachenberger, it  
13 would be an admission by a party opponent, which  
14 would be admissible, but none of the rest is.

15 So it's like you have to get rid of all of  
16 this. You can't -- you can't slip in -- because  
17 it's dramatically different, so -- it's parole  
18 evidence and you can't slip that in and have the  
19 jury back there in the deliberation room saying, oh,  
20 wow, this is what they originally intended, why  
21 didn't that make it to the final agreement they  
22 signed. So.

23 MR. BENITEZ: Which --

24 MR. CHASE: -- blank it out. Make it look  
25 like -- make it look like that. So it needs to be

1 redacted.

2 MR. BENITEZ: Judge --

3 THE COURT: Mr. Shuker.

4 MR. SHUKER: A, your Honor, it's hearsay. If  
5 it is Mr. Donaghy's writing, then it's an admission  
6 against Highway 46.

7 B, it says draft on it, so, therefore, if it's  
8 being used to contradict the final document, it's  
9 not relevant and it's parole evidence.

10 MR. BENITEZ: It is very relevant. It shows  
11 what the parties did and their negotiations before  
12 the letter agreement and the comparison and what  
13 happened. And I'll explain that Mr. Myers -- what  
14 happened in May, what happened between May and July  
15 and what happened in July.

16 And, Judge, I do have the original here. This  
17 is the original. If I may approach the bench.

18 MR. CHASE: That one's different.

19 MR. BENITEZ: This one, the difference is that  
20 he, Mr. Chase, has asked me to take away everything  
21 that's handwritten that wasn't there with Donaghy.  
22 And I believe the only thing that Donaghy wrote  
23 would've been the blue ink, Judge. And this marking  
24 right here, that's also in the same color ink.

25 So Mr. Chase --

1 MR. CHASE: I'm having trouble.

2 MR. BENITEZ: -- has asked me to go ahead and  
3 white it out, so what I did is, I reproduced an  
4 identical and left the upper and the marking of that  
5 paragraph. Everything else I deleted.

6 I'm willing to use either of them, but --

7 THE COURT: What -- why is that relevant?  
8 What's the draft of the agreement offered to  
9 explain?

10 MR. BENITEZ: Judge, this is relevant because  
11 the parties were negotiating the agreements and this  
12 is one version of the agreement.

13 THE COURT: We have a final agreement.

14 MR. BENITEZ: But --

15 THE COURT: How -- you want to use that to  
16 explain what should have been in the more final  
17 agreement? I agree. You say it's not final.

18 MR. BENITEZ: Right.

19 THE COURT: But it's more final.

20 MR. BENITEZ: Well, Judge, it's not final. At  
21 that point the testimony is even by the undisputed  
22 testimony on July 7th, it wasn't final. They walk  
23 in, based on having reviewed this agreement, and all  
24 of the sudden they're shown another agreement that  
25 they've typed up -- I guess Mr. Donaghy typed up --

1 between May and July, and never showed it to them on  
2 July 7th.

3 And all of the sudden, gets them to sign the  
4 agreement with the understanding that there were  
5 still issues to be done and the agreement was to be  
6 kept in escrow. I think this is extremely material  
7 to the jury to understand that the parties --

8 THE COURT: I'm really confused about your  
9 positions. And this is what I'm struggling with,  
10 Mr. Benitez. On the one hand, you want to say it  
11 was not a final agreement, it was just a draft. But  
12 on the other hand, you want to say it was a final  
13 agreement to be held in escrow.

14 MR. BENITEZ: No. I apologize if I said that,  
15 I misspoke. Sometimes -- Judge, I did not say it's  
16 a final agreement. I said this is an agreement.

17 THE COURT: What's he holding in escrow then.  
18 If it's just a draft, what's he holding in escrow.

19 MR. BENITEZ: Because he got them to sign it.

20 THE COURT: Is it a draft or is it a signed  
21 agreement?

22 MR. BENITEZ: It is a draft. According to our  
23 position, it's a draft.

24 THE COURT: Then why would a draft agreement  
25 ever be held in escrow?

1 MR. BENITEZ: Because the attorney who is the  
2 escrow agent told the person that doesn't have any  
3 legal background, sign it and I'll hold it in  
4 escrow. And I'll hold it and it's not going to be  
5 given to Mr. and Mrs. Hachenberger. And, in fact, it  
6 wasn't until September. So --

7 THE COURT: But if it's a draft, it doesn't  
8 matter if it's given to Mr. and Mrs. Hachenberger.

9 MR. BENITEZ: But they signed it, Judge.

10 THE COURT: But it -- okay, they signed a  
11 draft.

12 MR. BENITEZ: Right.

13 THE COURT: It has no legal effect. Why would  
14 you hold it in escrow?

15 MR. BENITEZ: Because you got them to sign it.  
16 You got them -- you as the attorney said, you sign  
17 it and I'll hold it back. You're challenging my  
18 entire case.

19 And Mr. and Mrs. Myers' presentation, Judge,  
20 their testimony is going to be that these were not  
21 completed documents. And to show that, we'll  
22 compare it with this one that was done on May that  
23 is drastically different than the one in July.

24 THE COURT: That's not going to happen. That  
25 document is out. You can redact it and put

1 Mr. Donaghy's notes in if you believe that this was  
2 relevant, and indicate this was a prior draft.

3 But the terms of it are not going to be offered  
4 to explain what the parties intended. There's an  
5 agreement that they signed. That is the best  
6 expression of intent on their part.

7 If there's a separate agreement for escrow, and  
8 we're going to talk about this later today whether  
9 that's even admissible, this oral agreement for  
10 escrow, which directly -- it seems to me directly  
11 contradicts the terms of the letter agreement that  
12 says this is effective.

13 MR. CHASE: July 7th.

14 THE COURT: July 7, 2005.

15 MR. BENITEZ: Judge, that -- but it wasn't  
16 effective July 7, 2005.

17 THE COURT: The document says that it was.

18 MR. BENITEZ: But --

19 THE COURT: You want to offer parole evidence  
20 to the vary of that, of an escrow agreement.

21 MR. BENITEZ: I want to offer the evidence how  
22 that document got signed, and the purpose for that  
23 document. I'm having a little bit of trouble  
24 understanding this.

25 Judge, we've got an agreement that my client

1 said was not final, was not binding, and the  
2 attorney that prepared it said so.

3 THE COURT: Even though your client operated  
4 consistent with it?

5 MR. BENITEZ: The clients did not operate  
6 consistently with it, Judge. That letter agreement  
7 says that there's going to be one manager, Donald  
8 Hachenberger. Actually, Mike Myers and Donald  
9 Hachenberger were managers in 2005, 2006, 2007,  
10 until --

11 THE COURT: But they built a development  
12 together. They spent money on construction. Your  
13 client accepted money upfront. He accepted money  
14 all along as an employee during the construction  
15 process, as a project manager, or some role like  
16 that.

17 MR. BENITEZ: With the understanding that they  
18 were going to work out their deal.

19 THE COURT: And if they didn't.

20 MR. BENITEZ: And finalize it.

21 THE COURT: And if they couldn't.

22 MR. BENITEZ: And if they couldn't, then they  
23 come to court, Judge. But -- and they -- what  
24 happened is, they were released from escrow. They  
25 were gone ahead and signed by the Hachenbergers,



1 Mike Myers never received the copy of the signed  
2 documents in 2005.

3 THE COURT: We're far afield.

4 Court's ruling is that the draft agreement is  
5 not admissible. To vary or alter the terms of what  
6 was signed by your clients, that will be parole  
7 evidence. That is not coming in for that purpose.

8 MR. BENITEZ: And, Judge --

9 THE COURT: It is not. The draft agreement is  
10 not coming in.

11 Mr. Donaghy's comments written on top of it are  
12 admissible and relevant, and I will allow that to be  
13 admitted, but you're going to have to redact the  
14 rest of it.

15 MR. BENITEZ: And, Judge, I'm not just solely  
16 offering this document for --

17 THE COURT: I have ruled, Mr. Benitez. Thank  
18 you.

19 MR. CHASE: Thank you, sir.

20 MR. BENITEZ: Judge, do you want to go  
21 through --

22 THE COURT: There are more?

23 MR. BENITEZ: Yes, your Honor, there are.

24 THE COURT: Come on, let's go.

25 MR. BENITEZ: Okay. This is an invoice of

1 property purchased on May 9, 2007.

2 And if I may --

3 THE COURT: Yeah, you may.

4 MR. BENITEZ: -- provide it to the Court.

5 THE COURT: Okay. What is this?

6 MR. BENITEZ: That is a memorabilia that was  
7 purchased by Mr. Mike Myers and Jackie Myers in  
8 2007, which is included in some of the property  
9 that's being held by Donald Hachenberger and  
10 Highway 46.

11 THE COURT: Okay. Objection?

12 MR. CHASE: Hearsay, relevance, and it's  
13 getting into the valuation situation.

14 THE COURT: Okay. This is his actual purchase  
15 price in May of '07.

16 Why couldn't he testify to this?

17 MR. CHASE: I think that he can testify to it.  
18 I don't think that that document can come in, plus  
19 all the prices.

20 THE COURT: So you want him to testify to each  
21 item.

22 MR. CHASE: Can I see it, Judge?

23 THE COURT: Yeah.

24 MR. CHASE: Judge, what would be the relevance  
25 of the fact that he purchased the -- I'm sorry. I'm

1 asking the Court a question. That's improper.

2 I don't see the relevance of the amount that he  
3 paid for a particular item in determining what would  
4 be the relevance of that, just all by itself, the  
5 fact that he purchased an item is relevant --

6 THE COURT: At auction.

7 MR. CHASE: -- at auction, that's relevant.

8 THE COURT: Is that not evidence of fair market  
9 value?

10 MR. CHASE: I think --

11 I would agree with that.

12 THE COURT: I agree with you the document is  
13 hearsay.

14 MR. CHASE: At auction. I think considering  
15 that it's an auction, I agree that's fair market  
16 value.

17 THE COURT: Right. I mean, you have a willing  
18 buyer, a willing seller who negotiated or chosen to  
19 pay these prices for these items. The document is  
20 hearsay. I have no problem with that idea.

21 MR. CHASE: It just comes in as a chunk rather  
22 than one by one.

23 THE COURT: Right.

24 MR. CHASE: I get that. And it's -- it's -- I  
25 guess we could cross examine on it just whether or

1 not it's reliable.

2 MR. SHUKER: We don't have an objection.

3 THE COURT: All right. It's hearsay.

4 Either you all agree it comes in or we ask him  
5 the question and he can talk about it as a lot, this  
6 is what he paid for this lot of stuff. But,  
7 otherwise, I think we have to listen to him testify  
8 to each item and what he paid for each item, which  
9 does not make sense.

10 MR. CHASE: Can we have a moment, Judge?

11 THE COURT: Yes.

12 Do we have all of our jurors?

13 THE DEPUTY: Yes, Judge.

14 THE COURT: Thank you.

15 MR. SHUKER: We have no objection to that, your  
16 Honor.

17 MR. CHASE: No objection, Judge.

18 THE COURT: All right.

19 MR. SHUKER: Without waiving when we get to the  
20 other valuation stuff.

21 THE COURT: Understood.

22 MR. SHUKER: That's fine. That's a third-party  
23 source.

24 THE COURT: All right. So, Mr. Benitez, that  
25 will be received in evidence then as the

1 Plaintiffs' -- or excuse me, the Defense 4.

2 (Defendants' Exhibit F for identification was  
3 admitted into evidence as Defendants' Exhibit 4.)

4 MR. BENITEZ: And, Judge, we've got a list of  
5 property of the Myers' and it's ten -- well, it's  
6 going to be F -- G, exhibit G.

7 THE COURT: G?

8 MR. CHASE: And it goes to the values, again,  
9 it's --

10 THE COURT: Is it just a list of the property,  
11 Mr. Benitez?

12 MR. BENITEZ: It is. It's a list of  
13 memorabilia and stuff. Judge, and that's one of the  
14 issues that may be -- with respect to value.

15 What I'm trying to do is, I'm trying to get to  
16 a position where, as opposed to going through this  
17 massive list of items, because there's thousands and  
18 thousands, which if I'm required to do, I'm going to  
19 have to do.

20 But I'd like to have him in a position where he  
21 can just express the values with respect to the  
22 category of items, for instance, narrow it down.  
23 We've talked about this before, the memorabilia, the  
24 personal property that's not included in  
25 memorabilia, and then the vehicles.

1 THE COURT: Okay. But I understand their  
2 objections to doing that.

3 MR. BENITEZ: Right.

4 THE COURT: So what I'm asking, is this simply  
5 a list?

6 MR. BENITEZ: No, sir.

7 THE COURT: I've asked that twice now.

8 MR. BENITEZ: I've said it's a list of  
9 memorabilia.

10 THE COURT: Does it do anything else? Does it  
11 have values?

12 MR. BENITEZ: Yes, your Honor.

13 THE COURT: Well, that would seem significant.  
14 What is the source of values?

15 MR. BENITEZ: Mr. Myers.

16 THE COURT: Upon what predicate?

17 MR. BENITEZ: The predicate of the fact that  
18 he's well-knowledged in the field. He's been doing  
19 it for a long period of time. And he's  
20 well-regarded in the industry. And he's got  
21 knowledge of all these values. He as the owner of  
22 the property can testify with respect to his own  
23 property, and he's got a value to assign to them.

24 And he can do it one of two ways. He can go  
25 individually item by item, subject to cross

1 examination, and I think he will do very well, or we  
2 can do it in a general format and just give his  
3 opinion with respect to those values.

4 MR. CHASE: Sir, can I make a quick argument --  
5 I'm sorry.

6 MR. SHUKER: Your Honor, this goes to my five  
7 or ten-minute argument on him testifying as to value  
8 that I thought we would do when we had a break. I  
9 don't think he needs to do this this morning to  
10 explain his background.

11 I could get into the reasons why that's not  
12 competent, nor is Mr. Myers competent to testify on  
13 this, but that's a longer argument. So rather than  
14 keep the jury waiting, he doesn't need to do this  
15 this morning.

16 MR. CHASE: I've got a shorter argument as to  
17 why he can't. One, he didn't list Mr. Myers as an  
18 opinion witness or an expert witness. In fact, he  
19 specifically listed him as a fact witness. Said  
20 Michael Myers, liability and fact witness. Did not  
21 list anything about damages.

22 While an owner of a particular piece of  
23 property may testify as to what he believes the  
24 value is, if he has the proper foundation for it, he  
25 still needs to be listed as an expert. Because we

1 have to have the opportunity to be advised and be on  
2 notice that he's going to testify -- somebody's  
3 going to testify -- as to values so that we can then  
4 rebut it.

5 There was a case management order that required  
6 disclosure of expert witnesses. Mr. Benitez didn't  
7 disclose any expert witnesses, so we didn't retain  
8 any to rebut said expert witness. So, therefore, he  
9 is a fact witness or a lay witness and, generally,  
10 this is citing --

11 THE COURT: I'm going to --

12 MR. CHASE: Yes, your Honor.

13 THE COURT: We're going to address this later.  
14 Just don't address that this morning. Okay. We've  
15 only got two hours before the lunch time, anyway, at  
16 this point.

17 MR. BENITEZ: Yes, your Honor, real quick.  
18 These are -- these are the --

19 THE COURT: Mr. Benitez.

20 MR. BENITEZ: Yes, your Honor.

21 THE COURT: You have pressed the patience of  
22 the Court.

23 MR. BENITEZ: Okay.

24 THE COURT: We are -- and I know you all  
25 understand this in one sentence, but there is



1 constant tension between the lawyers wanting to  
2 resolve issues at the last minute and the Court  
3 having a jury waiting back there now, who was  
4 directed to arrive late, left early yesterday,  
5 directed to arrive late today, and has now been  
6 sitting back there for half an hour.

7 That's just not acceptable. It's rude, it's  
8 unprofessional, and I'm not going to address our  
9 jurors in that fact.

10 This is addressed to all counsel, not just to  
11 you, Mr. Benitez. I appreciate this could have all  
12 been addressed by motions in limine, and no motions  
13 in limine were filed in an eight-year-old case. So  
14 I can get to them when I get to them, while the  
15 witness is on the stand, but I just can't continue  
16 to keep the jury waiting.

17 MR. CHASE: Understood, Judge.

18 THE COURT: Let's return the jury, please.

19 THE DEPUTY: Jury entering.

20 (Jury entering.)

21 THE COURT: Thank you.

22 You may be seated.

23 Good morning, ladies and gentlemen.

24 Ms. Apo, any success this morning?

25 MS. APO: I didn't go.

1           THE COURT: You didn't. Okay. Well, I'm  
2 sorry, I hope that's not anything related to all  
3 this.

4           But I appreciate your patience with us again  
5 this morning. As I told you, we do continue to work  
6 even when we've asked you to wait. And as a  
7 consequence to the time that we've spent through  
8 this morning, we've been successful in working  
9 through some evidentiary issues.

10           And there are a number of documents that  
11 Mr. Benitez has offered into evidence that have now  
12 been received in evidence. We've done that outside  
13 of your presence to just smooth these things along.  
14 You'll hear Mr. Benitez question his witnesses about  
15 some documents that are in evidence.

16           Again, all of those documents will be available  
17 to you during your deliberations so you'll have a  
18 further opportunity to inspect them.

19           We're ready to proceed with the defense case,  
20 as well as the counterclaim. So this is a defense  
21 of the issues that are raised by Highway 46  
22 Holdings, as well as affirmative claims that are  
23 being made by Mr. and Mrs. Myers, defendants,  
24 counter plaintiffs in the case.

25           Mr. Benitez, you may call your first witness.

1 MR. BENITEZ: Yes, your Honor.

2 I will call Mike Myers to the stand.

3 THE COURT: Thank you.

4 Sir, just come up on. Watch your step on your  
5 way up. Again, that seat will turn or spin, but it  
6 won't move forward or backwards, so just adjust the  
7 mike as necessary.

8 THE DEPUTY: Raise your right hand, face the  
9 clerk to be sworn in.

10 THE CLERK: Do you solemnly swear or affirm  
11 that the testimony you're about to give in this  
12 cause is the truth, the whole truth and nothing but  
13 the truth?

14 THE WITNESS: Yes, I do.

15 THEREUPON

16 MICHAEL MYERS

17 was called as a witness and, having first been duly  
18 sworn, testified as follows:

19 THE COURT: Thank you.

20 Sir, just come on up. Watch your step on your  
21 way up. Again, that seat will turn or spin, but it  
22 won't move forward or backwards so just adjust the  
23 mike as necessary.

24 DIRECT EXAMINATION

25 BY MR. BENITEZ:

1           **Q.    Mr. Myers, can you hear me?**

2           A.    Yes, sir.

3           **Q.    Please state your name.**

4           THE COURT:  I cannot.

5           MR. BENITEZ:  You cannot.

6           THE COURT:  No.

7           Did you -- is it on?

8           MR. BENITEZ:  Hello.  Hello.

9           THE DEPUTY:  Um, you want us to fix that  
10          microphone?

11          THE COURT:  Are you going to use the podium  
12          there?

13          MR. BENITEZ:  Can you all hear me?

14          THE COURT:  Yes.  Thank you.

15          MR. BENITEZ:  Is that better?

16          Can you all hear me?

17          THE COURT:  Yes.  Thank you.

18          MR. BENITEZ:  Is that better?

19   BY MR. BENITEZ:

20          **Q.    Please state your name, sir.**

21          A.    Michael Brent Myers.

22          **Q.    And how old are you, sir?**

23          A.    How old am I?  I am 64.

24          **Q.    And where do you reside?**

25          A.    I live at 1100 Fieldwood Boulevard in Lake

1 Mary, Florida.

2 Q. And bring your microphone closer to you.

3 Okay. And how long have you lived there?

4 A. I've been in my home about 37 years.

5 Q. Thirty-seven years?

6 Okay. And who do you live with there?

7 A. I live with my wife, Jackie.

8 Q. And is she present in the court?

9 A. Yes.

10 Q. And tell us a little bit about your background.

11 Where did you go to school?

12 A. Where did I go to school?

13 Q. Yes, sir.

14 A. I grew up in Louisville, Kentucky. I am a  
15 Kentucky boy. I went to undergraduate school, got my BS  
16 on an athletic scholarship. I got my master's in  
17 assistantship at Oklahoma State University as assistant  
18 basketball coach.

19 When I came out of graduate school I took a  
20 coaching job in Eastern High School in Louisville,  
21 Kentucky, so I've had a lot of teaching experience  
22 through the years. When I was teaching, it was the  
23 beginning of quarterly busing, so as a brand new  
24 teacher, they were -- I was a head coach and as an  
25 assistant coach, and they had assigned me to a different

1 school, which was our rival school.

2 So at that time the Balfour Company had  
3 interviewed me three or four times, and then offered me  
4 a job and said, hey, if you will leave your coaching  
5 position, we will double your salary and buy you a new  
6 car.

7 So when I was driving a little Vega Chevrolet,  
8 I was happy to get a brand new Pontiac. And it was a  
9 good opportunity, and it kind of sent me in the  
10 direction that I ended up spending 33 years in the  
11 school in the corporate recognition business.

12 So I worked for Balfour for 27 years. And then  
13 I was vice president of Jostens for three years before.

**14 Q. And what were you doing for them, what was your  
15 function?**

16 A. At Balfour, I started out as a director of  
17 marketing. I was a sales rep. I went on to be a  
18 regional sales manager, and I was regional vice  
19 president.

**20 Q. And about what year are we talking about?**

21 A. I sold the business in 1997.

**22 Q. And up to that point in time, had you gotten  
23 into antiques or --**

24 A. Oh, yes, I had. There were five franchises in  
25 Florida at the time, so I ended up -- I always worked

1 out of Lake Mary. I always worked right here in  
2 Orlando, but I covered the -- started out covering all  
3 of the east coast.

4 So I ran from Palm Beach to Jacksonville. And  
5 then, as a couple other retiree representatives got to  
6 the point where they wanted to relieve their duties, and  
7 I ended up purchasing all of the five franchises in  
8 Florida.

9 So I covered the whole state of Florida. I  
10 would drive about 70,000 miles a year. So when you're  
11 driving 70,000 miles a year, if you've ever driven that  
12 much, that's a lot of time in the car. So I was gone  
13 early in the morning and late at night. And it gave me  
14 a great opportunity to go by antique stores when I  
15 finished up the school days, 4 o'clock, 4:30, when all  
16 the people in the schools were gone, I would spend an  
17 extra hour searching for valuables and antiques and  
18 stuff on the way back home.

19 **Q. How long did you do that for?**

20 A. Gosh, 33 years. 33 years.

21 **Q. And make sure you speak up because I don't know**  
22 **if I'm the only one, I can't hear you very well.**

23 A. Do you hear me okay? Sorry.

24 **Q. And what did you do -- kind of run how you**  
25 **got -- how you kept up with the antiques? Did you --**

1 did you follow it up? Did you make it a life adventure?

2 Did you make --

3 A. Well, I think --

4 Q. How important did it become? Let me start  
5 again.

6 A. Okay.

7 Q. When you first got into antiques, what were you  
8 doing?

9 A. I was teaching, coaching, as a sales and --

10 Q. But how did you get into that antiques? Did  
11 you go to flea markets? Did you go to garage sales?  
12 What did you do?

13 A. We started -- I was a car builder. I built a  
14 lot of street rides, so I was very invested in antique  
15 vehicles and old cars and trucks and stuff.

16 So every weekend before I had my children, I  
17 would -- you know, Jackie and I would get in the car 4  
18 clock in the morning and go to Moultrie, Georgia, or go  
19 to Tallahassee, or go somewhere for a car show.

20 And I love the old stuff, I'm really a fan of  
21 the 1930s and 1940s vintage things. But I found that  
22 when I went to all these car shows, mainly they were in  
23 Florida, Georgia, Alabama, what I call the south, and  
24 I'm from Louisville. So I was constantly making trips  
25 to our factory in Louisville.



1           So I would run from Orlando to Louisville, and  
2 instead of taking my car, I would take my truck, so if I  
3 found something on the way, in Tennessee or Nashville, I  
4 could go and grab it. Every time I time came from a  
5 meeting I would have what I call collectibles that I had  
6 bought, and they were items from a \$10 item to maybe a  
7 special 8 or \$900 item.

8           So it was a -- it became a hobby that Jackie  
9 and I really got involved with. Because we not only  
10 loved the signage -- I was a marketing guy so I was  
11 really enamored with advertising, old advertising.

12           When you think back, and most of you as jurors  
13 are young, you're young, so a lot of people don't  
14 understand some of the way things were done in the '30s  
15 and '40s, and the way the signs were made and that. All  
16 the old porcelain signs were complementary signage, you  
17 know, like in -- I grew up on a farm in Kentucky, and so  
18 we had about probably a mile and a half to go to the  
19 store. We didn't have 7/Elevens or anything that was  
20 there. And those days they had deposit bottles.

21           So I would go over and the lady that ran the  
22 store, she would give me her Coke signs.

23           MR. CHASE: Objection, your Honor.

24           THE COURT: Just a second. When there's an  
25 objection, if you could just pause, please. We need

1 to address.

2 We need you to ask him a question.

3 MR. BENITEZ: Thank you, your Honor.

4 THE COURT: Thank you.

5 **Q. Eventually you acquired quite a bit of**  
6 **antiques.**

7 A. Yes.

8 **Q. And you know that we're here about the property**  
9 **that is referred to as Highway 46, correct?**

10 A. Yes, sir.

11 **Q. Okay. Referring your attention to that piece**  
12 **of property, just the land, when did you purchase that**  
13 **land?**

14 A. That was purchased in 19 -- I think 1987.

15 **Q. And how did that come about?**

16 A. Well, it was the antique collection and the old  
17 cars had grown to the point where I didn't have room in  
18 my home, so I needed a place to put my stuff. And we'd  
19 already -- always lived in Lake Mary, and at that time  
20 Lake Mary was a very small community. And on State Road  
21 46 there was nothing out there. There was a couple of  
22 old houses and a couple of things. And I was driving by  
23 going to Sanford and there was a gentleman putting a for  
24 sale by owner sign on a lot that was --

25 MR. CHASE: Objection, your Honor, narrative.

1 THE COURT: Sustained.

2 BY MR. BENITEZ:

3 Q. And who was the owner?

4 A. John Emerson.

5 Q. Okay. And did you negotiate a deal with him to  
6 purchase the property?

7 A. I did, right there on the spot.

8 Q. And was the -- did you get financing for that  
9 property?

10 A. No, sir. John held a mortgage for me. I had  
11 bought my home so I didn't have a lot of money and --

12 MR. CHASE: Objection, your Honor, narrative.

13 THE COURT: Just a second, please.

14 Sir, I need for you to respond to the question  
15 that's asked, and then allow another question to be  
16 asked, instead of just kind of heading down that  
17 path. I'm sure you know where this is headed. I'm  
18 sure your counsel knows, but let's do this in a  
19 question/answer format. Okay?

20 THE WITNESS: Okay.

21 BY MR. BENITEZ:

22 Q. You purchased the property in 1987.

23 Did you purchase any other property other than  
24 the one that you purchased in 1987, to make up  
25 Highway 46?

1           A.     Later on, I was able to purchase that first  
2 parcel from Mr. Emerson. Then after I paid it off, the  
3 parcel next door, I knew the neighbor, know who owned  
4 the property. And he was going to sell his piece, which  
5 was a one-acre piece. I purchased that from him.

6           When I got that one paid off, there was another  
7 acre behind it that belonged to Mr. and Mrs. Staffer,  
8 and I eventually coached him into selling their property  
9 by paying them in advance. And they could live in the  
10 home for three years until I could get everything ready  
11 for the project.

12          **Q.     Okay. And did you -- why did you purchase the**  
13 **property?**

14          A.     Because I wanted to -- I had -- my office was  
15 always downtown Orlando, so -- and I required a lot of  
16 office time, so I was spending a lot of time on the  
17 weekends, an hour down, an hour back, and I wanted to  
18 build an office that was close to my home.

19          **Q.     And did you at some point in time conceptualize**  
20 **using that property for a restaurant or an entertainment**  
21 **center?**

22          A.     Yes. Immediately, which I shouldn't have done  
23 because it cost a lot more in taxes, but I went ahead  
24 and went through all the zoning processes, to take it  
25 from being an agricultural parcel and a residential

1 parcel to a PCD, planned commercial development, which  
2 gives me the right in Seminole County to negotiate all  
3 of the factors that go into that property. Where the  
4 turn lanes are --

5 MR. CHASE: Objection, narrative,  
6 nonresponsive.

7 THE COURT: Just a second, please.  
8 Sustained.

9 MR. BENITEZ: Okay.

10 BY MR. BENITEZ:

11 Q. Mr. Myers, and you developed -- you had an  
12 intent to develop the property, correct?

13 A. Yes, sir.

14 Q. And you developed the property for -- to do a  
15 restaurant, a barbecue restaurant?

16 A. Well, we were going to build the Gassey Jack's  
17 Smokehouse Garage.

18 Q. And did you have architectural draw -- prints  
19 and conceptuels done --

20 A. Yes, sir.

21 Q. -- for that purpose.

22 Did you do plans and specifications for that  
23 purpose?

24 A. Yes.

25 Q. And you went ahead and got a number of permits,

1 correct?

2 A. Yes, sir.

3 Q. And a lot of those permits were special permits  
4 to be able to do things in that property that you would  
5 not otherwise be able to do, correct?

6 A. Yes, sir.

7 Q. And that included being able to sell liquor on  
8 that property?

9 A. Yeah. That was a special -- it required a  
10 special permit.

11 Q. And did you get a permit for the sound?

12 A. Yes.

13 Q. If it's an entertainment center, there's going  
14 to be a lot of sound?

15 A. In order to have outdoors amplified sound, it  
16 required a special permit that we had to do an  
17 exhaustive study and present it to the Board of County  
18 Commissioners when they would permit it, and whether it  
19 was a proper location to allow it.

20 Q. And that was eventually granted, correct?

21 A. Yes, sir. Unanimously.

22 Q. When did you start really putting your concept  
23 into play as far as going in and start getting the  
24 permits? If you could give us a reference of a year?

25 A. Well, it started in the mid' 90s and then --

1 you know, each of those processes cost a lot of money.

2 Each of those processes --

3 MR. CHASE: Objection, nonresponsive.

4 The question was what year he stated. Mid-90s,  
5 and then he started going into permitting.

6 THE COURT: Sustained.

7 Sir, again you need to limit your responses to  
8 the question that is being asked.

9 THE WITNESS: Yes, sir.

10 A. I would say 1998.

11 **Q. 1998, that's when you really got started doing**  
12 **this permitting?**

13 A. Yes.

14 **Q. And this -- and you conceptualized what -- at**  
15 **that point in time, did you have a concept? Did you**  
16 **have a feel for what you were going to start doing?**

17 A. Yes, sir.

18 **Q. And what was that?**

19 A. Well, we were trying to combine a couple of  
20 different things that -- the antique market, which we  
21 loved, so we wanted to include antique vehicles, cars.  
22 We had put together a great connection of memorabilia.  
23 So we basically -- and I was a barbecue connoisseur.  
24 That I had spent a lot of time in the barbecue business,  
25 I competed on a competition tour. I had worked for a

1 lot of the restaurants.

2 So I wanted to -- basically, Jackie and I had a  
3 pretty defined goal. As a schoolteacher, she could  
4 retire in 30 years. With Balfour, I knew that I could  
5 retire --

6 MR. CHASE: Your Honor, objection, narrative.

7 THE COURT: Sustained.

8 **Q. Mr. Myers, I know this is an important case for**  
9 **you, and I know you've been anxious to be heard --**

10 A. Okay.

11 **Q. -- but try to listen to my questions and then**  
12 **respond to my question.**

13 A. Yes, sir.

14 **Q. Okay. Thank you.**

15 **The concept, the first concept that you had,**  
16 **was it Gassey Jack's or was it something else?**

17 A. We started out we were going to use -- we  
18 wanted to create a fun vehicle bar and antiques.

19 **Q. And did you have a name for it at that point in**  
20 **time?**

21 A. Original name was going to be Shorty's.

22 **Q. And Shorty's was going to entail what?**

23 A. Basically, a vintage decorated bar and barbecue  
24 house.

25 **Q. So, basically, a -- some place to have some**



1 **barbecue and a side bar?**

2 A. Yes.

3 **Q. Was it a big place that you were**  
4 **conceptualizing at that point, or a small place? Can**  
5 **you give us an idea?**

6 A. It was a -- I would say smaller, medium-sized  
7 place.

8 **Q. And did that concept of yours change to**  
9 **something else at some point in time?**

10 A. Yes, sir.

11 **Q. And when did that happen?**

12 A. That happened -- the area -- you know, of  
13 course, when we purchased the property, there was -- you  
14 know, pretty inexpensive and it wasn't a lot going on.  
15 As Lake Mary and the I-4 corridor --

16 **Q. Let me ask you, when did it happen? Just give**  
17 **me a date so we can --**

18 A. 2002.

19 **Q. What is it?**

20 A. 2002.

21 **Q. So in 2002, you went from Shorty's to something**  
22 **else, correct?**

23 A. Yes.

24 **Q. And in 2002, had you already started getting**  
25 **permits at that point in time, or were you just starting**

1 to --

2 A. We had completed all the zoning. We had the  
3 PCD in place.

4 Q. And that meant that you had to go in and get a  
5 platted commercial development; is that correct?

6 A. That's correct.

7 Q. And that's a process that you do with the  
8 county?

9 A. Yes, sir.

10 Q. And you have to submit plans and  
11 specifications, surveys and so on?

12 A. Site engineering, everything.

13 Q. Did you do that?

14 A. Yes, sir.

15 Q. And you submitted what we will refer to as the  
16 PCD, correct?

17 A. We did all the traffic studies, did everything  
18 that was required for a planned commercial development.

19 Q. Okay. And that's under your intent to do  
20 Shorty's at that location, correct?

21 A. Yes.

22 Q. And then in 2002, it changed to something else?

23 A. Yes, sir.

24 Q. What did it change to?

25 A. Bruce Willis had a franchise control, a patent

1 on the name Shorty's, so we changed it to Gassey Jack's  
2 Smokehouse Garage.

3 **Q. So somebody else had that name?**

4 A. Yes.

5 **Q. And you had to change --**

6 A. There was some initial conversation of  
7 franchising doing a Bubbalou's.

8 **Q. Did that ever happen?**

9 A. No, sir.

10 **Q. And Bubbalou's is what?**

11 A. Bubbalou's is a local gentleman that owns four,  
12 five barbecue restaurants.

13 **Q. And then in 2002, then you changed it to Gassey  
14 Jack's?**

15 A. Yes.

16 **Q. Is that where Gassey Jack's occurred for the  
17 first time, 2002?**

18 A. Yes, sir.

19 **Q. And when was your concept at that point -- and  
20 I'm taking you back to 2002, not to today, not to five  
21 years ago, or ten years ago, but back in 2002, what was  
22 your concept for Gassey Jack's?**

23 A. Well, we had built a pretty large building so  
24 we didn't want to give up the building that we had  
25 built, so we were going to renovate it and use the

1 building.

2 I also owned a real nice rusty cabin that was  
3 part of a Kitty Roger's Estate on Markham Woods Road  
4 that Disney used as a retreat. And so that came up as  
5 an auction item. So Jackie and I bought that and moved  
6 it to Lake Sylvan, with the idea that we could use that  
7 as a center piece for the barbecue.

8 **Q. Would that be like a smokehouse?**

9 A. That's exactly what that's called.

10 **Q. Is it being used now?**

11 A. Yes. We physically moved it -- by Youngblood  
12 Movers physically moved it down. We had to wait 'til  
13 the Rinehart Road construction was finished in order  
14 to --

15 MR. CHASE: Objection, narrative.

16 THE COURT: Sustained.

17 Folks, let's take a brief recess, if we could.

18 We'll be in recess for five minutes.

19 THE DEPUTY: Jurors leaving.

20 (Jury exiting.)

21 THE COURT: You may be seated.

22 Mr. Myers, I recognize that this -- you lived  
23 this and there's a story behind every piece of this  
24 for you. But this jury's here to decide only the  
25 issues that are relevant to the lawsuit.

1 I need for you to listen very carefully to the  
2 question that your lawyer asks you and to answer  
3 only that question, without the side trails for the  
4 other stories associated with what's going on here.

5 When you do that, you're distracting the  
6 jurors, you're distracting the rest of us from being  
7 able to hear the facts that matter. And your  
8 lawyer's the one who's made that determination.  
9 He's obviously well-versed in the facts, he knows  
10 what he needs to hear from you in order to prove his  
11 case.

12 Listen to his questions, answer his questions.  
13 I don't want to have to call you out in front of the  
14 jury --

15 THE WITNESS: Yes, sir.

16 THE COURT: -- in a rude fashion or in a harsh  
17 fashion. I've really tried to be polite and I'll  
18 continue to do that unless you continue to ignore my  
19 instructions on how you're to answer the questions.

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. Five-minute recess.

22 MR. BENITEZ: Judge, may I give the witness  
23 some water.

24 (Discussion held off the record.)

25 THE COURT: Let's return the jury, please.

1 THE DEPUTY: Jury entering.

2 (Jury entering.)

3 THE COURT: All right. Thank you.

4 You may be seated.

5 Mr. Benitez, you may presume.

6 MR. BENITEZ: Thank you, your Honor.

7 BY MR. BENITEZ:

8 Q. I believe we were in the range of 2002. Do you  
9 recall that, Mr. Myers?

10 A. Yes, sir.

11 Q. And at that point in time, you had changed the  
12 concept from Shorty's to Gassey Jack's, in your mind?

13 A. Yes.

14 Q. And at that point, back in 2002 -- because I'd  
15 like to take the jury step by step, if it's possible.  
16 So back in 2002, what did you conceptualize Gassey  
17 Jack's as being? Was it the same as Shorty's, or was  
18 it -- had it expanded at that point?

19 A. Well, it was still pretty much the same. We  
20 had a five-acre parcel. We had moved the cabin -- we  
21 were in the process of moving the cabin to the site, and  
22 we wanted to use the building that was in existence.

23 Q. Okay. So you -- the concept was still the  
24 same?

25 A. Yes.

1           **Q.    Basically, a barbecue and a bar?**

2           A.    Yes.

3           **Q.    Is that correct?**

4           A.    Yes.

5           **Q.    And you indicated that you have five acres?**

6           A.    Yes, sir.

7           **Q.    What did you do at that point in time when you**  
8 **changed to the concept to Gassey Jack's?**

9           A.    Well, it was a matter of just trying to reach  
10 out to people that we knew, architects, builders and so  
11 forth, to begin trying to put quotes together on what it  
12 would take to be able to build it.

13          **Q.    Okay. At that time, did you retain an**  
14 **architect?**

15          A.    Yes, sir.

16          **Q.    Did you get drawings made up?**

17          A.    Yes, I did.

18          **Q.    Did you get plans and specifications made up?**

19          A.    Partially.

20          **Q.    Okay. What do you mean by partially?**

21          A.    Well, we had -- we were looking at this --  
22 different layers that the county required. So we went  
23 to site first. So we did the site construction, got all  
24 the quotes on what it would cost to clear the site, what  
25 was involved in St. Johns Water River Management to do

1 that, roads with the PCD.

2 We had to negotiate with the county on the way  
3 the roads and the access lanes, all the fire, what was  
4 going to be the fire services there, everything that was  
5 involved in those commercial buildings.

6 **Q. So a whole bunch of people got involved at that**  
7 **point?**

8 A. Yes.

9 **Q. Correct.**  
10 **Including surveyors?**

11 A. Yes.

12 **Q. Engineers?**

13 A. Yes.

14 **Q. And you talked about a traffic issue. What was**  
15 **that?**

16 A. The county required a traffic study, so we had  
17 to hire a consulting company to do a special track of  
18 study to determine what the impact was going to be with  
19 the traffic on the roads, on the road that was being  
20 expanded. They were putting in Seminole County bike  
21 trails so we had to deal with putting the bike trail in  
22 front of the project.

23 **Q. And did you deal with trying to get -- now this**  
24 **is in Route 46, correct?**

25 A. That's what was Gassey Jack's Smokehouse.



1 Q. State Road 46, okay. But I mean the road is  
2 actually called State Road 46?

3 A. That's correct.

4 Q. And it's between -- it's east of I-4 and --

5 A. Sanford.

6 Q. East of I-4, correct?

7 A. Yes, sir.

8 Q. Would you say it's about a mile or two down?

9 A. A little less than that.

10 Q. And if you're going from I-4, it's on the  
11 left-hand side?

12 A. Yes, sir.

13 Q. So people coming from Orlando would get off I-4  
14 and then would have to turn into the property, correct?

15 A. Yes, there was a decelerate lane added and it  
16 was a turn lane, but what happened, I-4 was changed so  
17 they completely revamped the right exit to Sanford, so  
18 now we had to get off where the new mall was.

19 Q. Did you do the decelerating lane also?

20 A. Yes.

21 Q. Did you get the permits for that?

22 A. I dealt with DOT personally and handled  
23 everything with DOT.

24 Q. And you got that approved and you got -- did  
25 you get that installed?

1 A. Yes.

2 Q. So there is a decelerating lane?

3 A. Yes.

4 Q. And is that on State Road 46?

5 A. 46, yes, sir.

6 Q. 46. And is it used today?

7 A. Yes, sir. Ah-ha.

8 Q. Okay.

9 A. One of the big things is that we wanted to  
10 maintain the entrance to the property off of State Road  
11 46 so that you could make a right turn right into the  
12 property.

13 Q. Okay. And did you spend quite a bit of money  
14 doing that?

15 A. Quite a bit.

16 Q. And -- but it finally got approved and it is  
17 permitted at this time, correct?

18 A. Yes, sir.

19 Q. Is it being used at this time?

20 A. Yes, sir.

21 Q. Okay. Is that an entrance to the facilities?

22 A. It's normally locked up, but it's -- yeah, it's  
23 there.

24 Q. Okay. It's there, but it's not being used?

25 A. I can't use it.

1 MR. CHASE: Your Honor, may we approach.

2 THE COURT: You may.

3 (A conference was held at the bench outside of  
4 the hearing of the jury.)

5 MR. CHASE: He's going down a road -- what's  
6 going on is, there is an issue about using the front  
7 entrance on State Road 46. And Mr. Myers built the  
8 building too close to the gate, so there's -- cars  
9 can't pass each other, they clog there, and they run  
10 into stuff.

11 So right now, Don Hachenberger keeps the gate  
12 closed and you enter from the side. And he wants to  
13 bring up the fact that Don Hachenberger is closing  
14 the gate right now that is in the front.

15 What Don Hachenberger's doing right now has no  
16 relevance to any of the pleadings. It's not pled.  
17 He's just trying to say what's happening right now  
18 is not relevant to anything that we're doing, that  
19 was pled nine years.

20 MR. BENITEZ: It is background information.  
21 I'm not sure I was going to get into it as much  
22 detail as Mr. Chase has just mentioned. But with  
23 respect to the use of the property today, we do have  
24 a claim for lack of due care. And, like I said, I  
25 withdraw all that, I wasn't going to get into that.

1 But other --

2 THE COURT: Okay, we'll stop there.

3 MR. CHASE: You said -- but you had already  
4 said is it being used now and that's when I stood up  
5 and approached.

6 THE COURT: So just leave it.

7 MR. BENITEZ: If I bring it up again, I'm going  
8 to ask you, Judge, before I do.

9 THE COURT: Good. Thank you.

10 (Bench conference concluded.)

11 THE COURT: Thank you. Move on.

12 BY MR. BENITEZ:

13 **Q. Mr. Myers, so, going back to developing Gassey**  
14 **Jack's, you indicated you got all the permits and so on.**

15 **When were you able to get the permits actually**  
16 **issued by Seminole County, what year, approximately?**

17 A. Well, we started right before the 2004  
18 hurricane.

19 **Q. So --**

20 A. And then --

21 **Q. When did you get them, when did they actually**  
22 **get issued?**

23 A. Must have been the fall of 2005, in early of  
24 2006, for the finished plans for the building as it sits  
25 now.

1           **Q.    And in 2005, did you have some permits that**  
2 **were expiring?**

3           A.    Yes.

4           **Q.    What permits were expiring in 2005?**

5           A.    The site permit.

6           **Q.    Okay.  And that -- and the importance of that**  
7 **site permit was what?**

8           A.    Well, we had moved the cabin -- Rinehart Road  
9 was finished, we moved the cabin to the site, was  
10 preparing to start construction on it.  The site plans  
11 by Seminole County were based on a 2000 code, before the  
12 hurricane.

13                   Well, when the hurricanes of 2004 came through,  
14 Seminole County changed the codes, which, in quick  
15 sense, it would require us to fill the five-acre parcel  
16 an extra eight to ten inches of dirt.  So it means that  
17 we had to spend an extra 250 to \$350,000 of excess dirt  
18 to bring it up to the crown of the road, which is what  
19 the requirement was.

20           **Q.    So in 2004, 2005, you're starting to -- 2006,**  
21 **you're starting to build, correct?**

22           A.    Yes.

23           **Q.    Let me take you back before then.  Okay.  At**  
24 **some point -- at some point in time did you feel that**  
25 **you needed an investor to come in and invest money with**

1 you to develop the concept?

2 A. Yes. We had received a -- Jackie and I was  
3 able to get a \$2.1 million loan from -- at the time was  
4 Southern Community Bank.

5 Q. Let me ask it a little differently.

6 Well, once you brought that up, the  
7 \$2.2 million loan was to do what?

8 A. To build Gassey Jack's.

9 Q. And you obtained that moneys, correct?

10 A. Yes.

11 Q. And that's what you used to get the permits?

12 A. Yes.

13 Q. After you got that -- and that loan would've  
14 been what year?

15 A. That's probably 2004.

16 Q. Okay. And then -- are you sure, or not?

17 A. No, I'm -- I don't recall exactly what the date  
18 was. Somewhere around that neighborhood.

19 Q. So, when did you start -- give me a year -- I'm  
20 just getting a reference. So give me a year when you  
21 started looking for investors actively?

22 A. 2003.

23 Q. 2003, you need -- you were looking for  
24 investors.

25 What were you looking for?

1           A.    I was looking for someone that could do the  
2 financing.

3           MR. CHASE:  Objection, your Honor.

4           May we approach?

5           THE COURT:  Just a second.  Please.

6           MR. CHASE:  May we approach.  I'm sorry, Judge.

7           THE COURT:  Yes, sir.

8           (A conference was held at the bench outside of  
9 the hearing of the jury.)

10          MR. CHASE:  What he's looking for in terms of  
11 the investor -- this is my concern.  He's going to  
12 go down the road of parole evidence.  What I was  
13 looking for was my intent to have somebody who would  
14 do this and let me do that, and that guy would do  
15 that, which is going to get into the terms of their  
16 deal.  That's my concern.

17          I think that on its face, what were you looking  
18 for, an investor, if the answer was somebody who  
19 would invest some money, all right.  But if he  
20 starts going into the -- somebody who we could work  
21 with, or this could happen, and somebody would let  
22 us use our memorabilia and use this and not that,  
23 and all that sort of thing, is going to get into the  
24 parole evidence.

25          So I guess what I'm saying is, I'm trying to

1 get it before it just blows up in front of the jury,  
2 that he's going down the road that he's eliciting  
3 questions that quite likely are going to end up with  
4 answers that are going to be about what his intent  
5 was when he entered into a written agreement that  
6 summed up whatever the deal was.

7 MR. BENITEZ: I think it's pertinent  
8 information and relevant information for my client  
9 to testify what kind of an investor he was willing  
10 to -- this is part of the background. This is part  
11 of his thinking. This is part of what he was asking  
12 for.

13 And that's why he was -- and I think what  
14 Mr. Chase is referring to is there's a letter that  
15 he wrote, a detailed letter exactly explaining what  
16 kind of an investor he was looking at to Donald  
17 Hachenberger, that Donald Hachenberger agreed to. I  
18 don't see why that's irrelevant.

19 THE COURT: Overruled.

20 MR. CHASE: Okay, thank you, Judge.

21 (Bench conference concluded.)

22 THE COURT: You may continue.

23 MR. BENITEZ: Thank you, your Honor.

24 BY MR. BENITEZ:

25 Q. Mr. Myers, what kind of an investor were you



1    **looking for?**

2           A.    A financial investor.

3           **Q.    A what?**

4           A.    A financial investor.

5           **Q.    And what does that mean, a financial investor?**

6           A.    Many times I guess I've always referred to as a  
7    silent partner, someone that had the ability to help us  
8    go to a bank and secure the additional financing that we  
9    needed to build a building and open a project.

10          **Q.    Did you intend to relinquish your --**

11                   MR. CHASE:  Objection, parole evidence, Judge.

12                   THE COURT:  Sustained as asked.

13                   Rephrase it.

14   BY MR. BENITEZ:

15          **Q.    Did you want an investor to work side by side**

16 **with you?**

17                   MR. CHASE:  Objection, parole evidence.

18                   THE COURT:  Number one.  I haven't heard the  
19    entire question.  I can't rule until I hear the  
20    entire question.

21                   MR. CHASE:  Understood, sir.

22                   THE COURT:  So just be patient.

23                   MR. CHASE:  Yes, sir.

24                   THE COURT:  Rephrase the question.

25   BY MR. BENITEZ:

1           **Q.    Were you looking for an investor to work side**  
2 **by side with you or an investor to be able to finance**  
3 **the project?**

4           MR. CHASE:   Objection.

5           THE COURT:   Objection's overruled.

6           Go ahead, sir.

7           MR. CHASE:   Thank you, Judge.

8           THE COURT:   Mr. Myers, you need to wait until  
9 I've had a chance to address the objection before  
10 you answer.

11          THE WITNESS:   Okay. Yes, sir.

12          THE COURT:   The objection's overruled.

13          Go ahead, sir.

14          A.    I was looking for a financial investor.  
15 Someone that could help, that had the equity and the  
16 ability to go to the bank and finance the project for  
17 us.

18          **Q.    That would -- would that be being able to go to**  
19 **the bank and sign a guarantee for a loan to do the**  
20 **project?**

21          MR. CHASE:   Objection, leading.

22          THE COURT:   Sustained.

23          A.    Yes.

24          THE COURT:   The objection's sustained, sir.

25          When the objection is sustained, you need to wait

1 for another question. But once I've sustained the  
2 objection to the question, you cannot answer it.

3 Disregard -- members of the jury, disregard the  
4 response. That should not play a role in your  
5 deliberations.

6 BY MR. BENITEZ:

7 **Q. Did you -- what did you do to try to find**  
8 **investors?**

9 A. Well, we knew quite -- we had done a -- we  
10 decided to do a market test. So we leased a place down  
11 on Orange Avenue to introduce Gassey Jack's. So we took  
12 our branding, we took our concepts, everything that was  
13 going to control Gassey Jack's, and we did a marketing  
14 test.

15 And the response was wonderful. People liked  
16 the theme, they loved the old vintage antiques, the  
17 service station, the vehicles. And then during that  
18 time, we met a number of people who they thought they  
19 would be interested in participating in the project.

20 **Q. And what year was this?**

21 A. This would have been 2003, 2004.

22 **Q. And at that point in time, you're referring to**  
23 **one particular event that you had, is that what you**  
24 **referred to?**

25 A. It is what we did, we actually opened up a bar,

1 Gassey Jack's.

2 **Q. Actually on the -- on site, correct?**

3 A. No, it was off site. This was downtown  
4 Orlando.

5 **Q. Okay. And you brought in investors**  
6 **conceptualizing what you were going to put on?**

7 MR. CHASE: Objection, leading.

8 THE COURT: Sustained.

9 **Q. Did -- where were you looking for the**  
10 **investors? How did you look for the investor, I should**  
11 **ask.**

12 A. We first went to people that we knew, that we  
13 thought were financially secure, that would have an  
14 interest in our Gassey Jack's project.

15 **Q. And these are local people?**

16 A. Local people, contractors, business people,  
17 that we knew personally.

18 **Q. And did you express to them what the concept**  
19 **was?**

20 A. Exactly. Ah-ha. We put together an investor  
21 packet that we had with photographs, materials, and  
22 things that we could sit down and explain what we were  
23 doing.

24 **Q. And did you -- was Mr. Good one of those**  
25 **investors?**

1 MR. CHASE: Objection, leading.

2 THE COURT: Overruled.

3 A. Yes.

4 **Q. And who is Mr. Good?**

5 A. Mr. Good at the time -- I think he's -- I know  
6 he's a partner, but at the time he was a CEO of Briar  
7 Construction, which is a large -- large construction  
8 firm in Sanford.

9 **Q. And did you -- and you've known -- you knew him**  
10 **before the presentation, or did you just meet him at the**  
11 **presentation?**

12 A. Yes, I did. I leased two warehouse spaces for  
13 our memorabilia from him.

14 **Q. And did he provide you a proposal?**

15 A. I provided him a proposal.

16 **Q. Did he provide you back a proposal?**

17 A. Yes, sir. We had met two or three times.

18 **Q. Okay. And were you able to see eye to eye?**

19 A. He was interested in maybe doing something with  
20 the site work, because that was his vocation, so he  
21 wanted to maybe do a partial investment.

22 **Q. So that didn't work out?**

23 A. No, sir.

24 **Q. And you had -- you approached other investors,**  
25 **correct?**

1 MR. SHUKER: Objection, leading.

2 THE COURT: Sustained.

3 **Q. Did you approach other investors?**

4 A. Yes, sir.

5 **Q. How did you come about to meet Donald**  
6 **Hachenberger?**

7 A. I had -- as I said, we were leasing two  
8 warehouse spaces for KBC Corporation, which was owned by  
9 the Briar Corporation, and in that same complex,  
10 Mr. Hachenberger's son, DJ, had a trailer business  
11 located in that complex.

12 **Q. And did he put you in contact with his father?**

13 A. I met DJ and I -- and spent quite a bit of time  
14 with him. DJ's a great guy. And he would come over and  
15 look at all the memorabilia when I came back from  
16 auctions.

17 MR. CHASE: Objection, narrative.

18 THE COURT: Overruled.

19 Go ahead.

20 A. And one day we were chatting. He said, hey, he  
21 said, you know --

22 MR. SHUKER: Objection, your Honor, hearsay.

23 THE COURT: Objection sustained.

24 Sir, you need to talk about it without the  
25 specifics about the remarks that were made.

1           If you'll direct him, that would be helpful.

2           MR. BENITEZ: Yes, your Honor.

3 BY MR. BENITEZ:

4           **Q. After that conversation that you had with**  
5 **Donald Hachenberger's son, did you meet Donald**  
6 **Hachenberger?**

7           A. Yes.

8           **Q. When was your first meeting with Donald**  
9 **Hachenberger?**

10          A. 2004.

11          **Q. Okay. And do you remember the location of that**  
12 **meeting?**

13          A. We arranged to meet. I think we had our  
14 breakfast at the Marriott in Lake Mary. And then I took  
15 him over to show him the site, the complex, some of the  
16 plans. Took him over to the KBC warehouses, showed him,  
17 my collection of memorabilia and chatted about what we  
18 were -- what we were trying to do.

19          **Q. And did you approach him as a potential**  
20 **investor?**

21          A. We exchanged a few e-mails and a few phone  
22 calls, yes.

23          **Q. When did you have a serious conversation with**  
24 **Mr. Hachenberger regarding possibly coming and being a**  
25 **part of the Gassey Jack's project?**

1           A.     It was probably three or four months after  
2     that.

3           **Q.     And in what setting? Did you meet with him in**  
4 **person? Did you call him? Did you write him a letter?**

5           A.     We had another meeting.

6           **Q.     And where was the meeting?**

7           A.     I think I was -- we had two meetings after  
8     that. We had one -- another one at the Marriott,  
9     because it was convenient for both of us. And then  
10    Jackie and I, he invited us to dinner at the Stonewood  
11    Grill in Lake Mary. So Jackie and I -- he had not met  
12    Jackie at that point, so we had dinner one night and  
13    talked about the project.

14          **Q.     And about what time was that, what date? Is**  
15 **there a date that you recall?**

16          A.     It was probably early 2004.

17          **Q.     And what happened after that, did you -- you**  
18 **had dinner with Glenda Hachenberger, Donald**  
19 **Hachenberger?**

20          A.     No, never. I did not meet Glenda until --  
21    Glenda was in charge of -- she was involved in a  
22    Children's Miracle Network, and we, Jackie and I, went  
23    out to a fundraiser that she was hosting and met her.

24          **Q.     And that was after this meeting with Donald**  
25 **Hachenberger?**



1 A. That was before.

2 Q. Before.

3 A. Yeah.

4 Q. So at this dinner meeting that we're referring  
5 to, what next -- what next contact did you have with  
6 Mr. Hachenberger?

7 A. During that meeting, we reviewed everything  
8 that we were looking for, everything that we were  
9 looking for as an investor. What we were trying to do  
10 personally, what we were trying to do with the project  
11 and, basically, what we -- Don felt like he was very  
12 interested in the project.

13 Q. Okay. Well, let me keep you on that dinner  
14 meeting. That dinner meeting, what did you talk about  
15 with Mr. Hachenberger and what did Mr. Hachenberger talk  
16 to you about? What kind -- give the jury an idea of  
17 what was said?

18 A. Well, Don was the president of the Re/Max of  
19 North Carolina, Florida, and South Carolina, as it was  
20 represented to me. So Don was very successful.

21 MR. CHASE: Objection, relevance.

22 THE COURT: On the relevance grounds,  
23 overruled.

24 Sir, respond -- listen to the question, though,  
25 and respond carefully to the question, please.

1                   Rephrase.

2   BY MR. BENITEZ:

3           **Q.   Yeah. Tell us what was said?**

4           MR. CHASE: Objection, narrative, calls for a  
5   narrative.

6           THE COURT: Overruled.

7           Go ahead.

8           A.   We reviewed everything that was going on in our  
9   lives, what we were -- what our goals were for the  
10   property, what our goals were for us personally. I had  
11   two children in college. I wanted to get off the road.  
12   I had spent 30 years on the road, sometimes a hundred  
13   nights out of the year.

14           MR. CHASE: Objection, narrative.

15           THE COURT: The objection is sustained.

16           **Q.   And, Mr. Myers, that is what you're telling**  
17   **Donald Hachenberger?**

18           A.   Yes.

19           **Q.   Okay. Like I said, what I'm asking you is,**  
20   **specifically, what was said during that meeting. So**  
21   **just --**

22           THE COURT: You're going to need to direct him  
23   more than that.

24           MR. BENITEZ: Okay.

25           THE COURT: How long was your initial meeting,

1 sir?

2 A. The initial meeting?

3 THE COURT: I'm sorry, the meeting at the  
4 restaurant.

5 A. Probably two and a half hours.

6 THE COURT: You're going to need to direct him.

7 MR. BENITEZ: Okay.

8 **Q. During those two and a half hours, Mr. Myers,**  
9 **did you talk about your desires with respect to what you**  
10 **wanted to do with Gasseys Jack's?**

11 A. Yes.

12 **Q. Okay. And what did you tell Donald**  
13 **Hachenberger regarding what you wanted to do out at**  
14 **Gasseys Jack's?**

15 A. Well, we had done extensive planning so we had  
16 already begun looking --

17 MR. CHASE: Objection, parole evidence.

18 THE COURT: Just answer.

19 Overruled.

20 Go ahead.

21 A. -- already looking at --

22 MR. CHASE: Objection, hearsay.

23 THE COURT: Overruled.

24 Go ahead.

25 A. What we were looking at, we had -- we were

1 friends with some of the best people in town. We had  
2 two people that wanted to come work for Gassey Jack's  
3 that were landlord experience, cooks and chef. We had  
4 the best bar -- beverage manager in town. So it was a  
5 big interesting prospect.

6 We talked to Don about staffing, what he wanted  
7 the bar to represent in the community. That Jackie and  
8 I would be retiring, we would be taking over Gassey  
9 Jack's and be running it as day-to-day operators,  
10 everything about it.

11 **Q. And, specifically, with respect to his**  
12 **involvement with it and what you were looking for him to**  
13 **be involved, what did you tell him, if anything?**

14 A. Well, it wasn't what I told him, it was what he  
15 told me.

16 MR. CHASE: Objection, nonresponsive.

17 THE COURT: Overruled.

18 Go ahead.

19 A. It's a great project, but I'm busy, busy, I've  
20 got a number of companies, he said, I would never get  
21 into the restaurant business. I've been asked several  
22 times to get into the restaurant business, I would never  
23 get into the restaurant business, but I think I would  
24 get into the Mike Myers business.

25 He loved the project. He had some national

1 award-winning hot rods, he and his son. So there was  
2 a -- there was a valid interest. You know, age wise he  
3 knew the memorabilia, as far as -- he loved everything  
4 that we were doing.

5 **Q. He had at that time looked at already your**  
6 **memorabilia and memorabilia collection?**

7 A. He had had a tour of the facility.

8 **Q. Now, did you have a -- did you agree to**  
9 **anything at that meeting?**

10 A. Don, at that point --

11 THE COURT: Sir, sir, did you agree to anything  
12 at that meeting?

13 A. Yes, yes.

14 **Q. Okay, and what was it that you agreed to?**

15 A. That we could -- we had the ability to be  
16 partners.

17 **Q. Did you work out the deal? Did you work out**  
18 **the specifics of the agreement that you would enter**  
19 **into?**

20 A. No, sir.

21 **Q. Okay. And then, how did you leave that**  
22 **meeting?**

23 A. Well, again, Don was in town and out of town  
24 very, very little. And he at that time told us that --  
25 we were familiar with -- he was traveling to Colorado,

1 that he had a home in Colorado, and that we would --  
2 that, basically, he understood everything we were doing  
3 and loved the project.

4 **Q. But then, when was your next meeting with him**  
5 **of any substance?**

6 A. We had a couple meetings at his offices at  
7 Re/Max. There was a couple things that we participated  
8 in, a catering, he asked us to do a catering for his  
9 Re/Max people.

10 THE COURT: Sir, when was the next meeting that  
11 you had?

12 THE WITNESS: I don't recall the exact date.

13 **Q. Okay.**

14 A. In the 2000 -- mid-2004.

15 **Q. When was your next contact after that, that you**  
16 **recall? If you don't recall, that's fine. But if you**  
17 **recall, when was your next contact with Mr. Hachenberger**  
18 **after that, the very next?**

19 A. About two months later.

20 **Q. And what was the purpose of that meeting with**  
21 **Mr. Hachenberger?**

22 A. That he wanted to proceed with the project.

23 **Q. Okay. Where was that meeting?**

24 A. That was at his Re/Max office.

25 **Q. And who was present at that meeting?**

1           A.    Basically, his secretary showed me in and I met  
2 with Don.

3           **Q.    And how long did the meeting last?**

4           A.    Probably an hour.

5           **Q.    Did you discuss any of the specific terms of**  
6 **your arrangement?**

7           A.    We had discussed them.  The big -- big  
8 discussion occurred at Stonewood.

9           **Q.    Just, Mr. Myers --**

10          A.    Yes.

11          **Q.    -- I asked you if you had any discussions about**  
12 **any of the terms.  So your answer would normally be --**

13          A.    Yes.

14          **Q.    -- either yes or no, and then I ask you another**  
15 **question.**

16          A.    Yes, sir.

17          **Q.    Okay.  So what was the substance of that**  
18 **conversation?**

19          A.    Don had purchased -- he and Glenda had  
20 purchased a large seed company in South Carolina.  He  
21 extended an invitation to Jackie and I in South  
22 Carolina, and to look at this new acquisition that they  
23 had done with the Park Seed Company.

24          **Q.    Did you take them up on the offer?**

25          A.    Yes.  He said that would be a great opportunity

1 that we could visit and get to know each other and talk  
2 about the project.

3 **Q. And then did you travel to North Carolina?**

4 A. Yes, Jackie and I drove to South Carolina, met  
5 with him.

6 **Q. Sir.**

7 A. And took a tour of the facility.

8 **Q. How long did you spend there?**

9 A. It was a day and a half.

10 **Q. And when was your next meeting with Donald**  
11 **Hachenberger with respect to Gassey Jack's, or I should**  
12 **say -- let me ask you: Any meetings with Donald**  
13 **Hachenberger after that, when was the next?**

14 A. At that time, most of the conversations were by  
15 phone, e-mails.

16 **Q. Did you ever have another sit-down meeting with**  
17 **him up to May 2005?**

18 A. Yes. Very briefly, we had met --

19 **Q. Let me ask you this again.**

20 A. Yes.

21 **Q. You said yes. So when was that meeting?**

22 A. I don't recall the exact date, but he was  
23 getting ready to leave for a big Re/Max -- what I call  
24 whistle stop tour, and he was going to be gone for a  
25 long time. And he suggested that I come by the Re/Max



1 office and meet with Kevin Donaghy, his attorney.

2 **Q. So he was getting ready to leave on a tour and**  
3 **he told you to meet with Kevin Donaghy?**

4 A. Yes.

5 **Q. And who is Kevin Donaghy?**

6 A. Kevin Donaghy was represented to us as Don and  
7 Glenda Hachenberger's --

8 MR. SHUKER: Objection, your Honor.

9 May I approach?

10 THE COURT: You may.

11 Approach, please.

12 (A conference was held at the bench outside of  
13 the hearing of the jury.)

14 MR. SHUKER: What Don said is hearsay. As to  
15 Don's interest, it's an admission. As to Glenda's  
16 it was not. Don cannot say that Don -- he  
17 represented Glenda. That's it. That's a hearsay  
18 statement and it doesn't qualify as an admission  
19 against interest because Glenda didn't make it.  
20 Done can't make statements on her behalf.

21 THE COURT: Her husband can't make statements  
22 on her behalf?

23 MR. SHUKER: No, no.

24 THE COURT: Okay.

25 MR. SHUKER: Not --

1 THE COURT: I'm not sure who made the  
2 statement, first of all, though. So that's the  
3 initial concern.

4 MR. BENITEZ: Right.

5 THE COURT: You haven't asked him appropriately  
6 the foundation question as to how it is he knew who  
7 Mr. Donaghy was representing. Did Mr. Donaghy say  
8 that or did Don say that?

9 MR. BENITEZ: Right. Donald -- I believe his  
10 testimony was that Donald --

11 THE COURT: He hasn't testified to that --

12 MR. SHUKER: I was just about to say that Don  
13 told me that Donaghy represented he and Glenda.

14 THE COURT: Hang on a second. I want to do  
15 this outside the presence of the jury because I  
16 understand the issue, but I'm not convinced of it.  
17 But I understand it.

18 So let's do this -- let's just take a brief  
19 recess and then I want you to ask him these  
20 questions and lay the foundation for it.

21 (Bench conference concluded.)

22 THE COURT: Folks, rather than keep you here  
23 while we have a legal discussion, I'm going to go  
24 ahead and release you back for five minutes. Let's  
25 just take a short recess.

1           Bear with us and we'll get this issue resolved  
2           and have you back in quickly to move forward.  
3           Five-minute recess. And all the same cautions still  
4           apply.

5           THE DEPUTY: Jurors, follow me.

6           (A recess was taken.)

7           THE COURT: All right, your Honor.

8           MR. CHASE: Your Honor, I'm sorry. Does the  
9           Court have rules about the counsel speaking with  
10          witnesses while the witness is on the stand?

11          THE COURT: As to clients, no.

12          MR. CHASE: Okay. Understood.

13          THE COURT: He's entitled to benefit of  
14          counsel. He's a party.

15          MR. CHASE: Thank you, sir.

16          THE COURT: There are no clear rules on that  
17          issue.

18          MR. CHASE: I agree. That's why --

19          THE COURT: Florida Bar, call it, I've looked  
20          and I just can't seem to find any case law that  
21          prohibits it expressly. And if I had said something  
22          or there had been a concern earlier on, we would  
23          have addressed it. But in this context, no.

24          MR. CHASE: That's why I had asked it, maybe  
25          the Court had ruled.

1 MR. BENITEZ: Judge, normally I don't do it,  
2 except the Court had instructed me to do it while I  
3 was up here, so I figured it was okay. But I was  
4 just asking him about something insignificant,  
5 actually.

6 THE COURT: All right. So what -- have a seat,  
7 sir, and I want to ask you a couple of questions,  
8 see if we can figure this out with precision here.

9 Who contacted you -- I'm sorry. Did you  
10 contact Mr. Hachenberger or did he contact you to  
11 make arrangements for you to come to the Re/Max  
12 office?

13 THE WITNESS: I made a -- his -- Katherine  
14 Harris, his secretary, called me and said --

15 THE COURT: Try to speak in the microphone.

16 THE WITNESS: His secretary, Katherine Harris,  
17 called me and said, Don will be available at this  
18 time.

19 THE COURT: And so at that time, all you  
20 understood was what, that you were going to be  
21 meeting with him?

22 THE WITNESS: Don Hachenberger.

23 THE COURT: Okay. So you show up at the  
24 offices.

25 When is this?

1 THE WITNESS: I don't recall exact dates, sir.

2 THE COURT: A month?

3 THE WITNESS: Which time are we talking about?

4 THE COURT: This time that's been the subject  
5 of this conversation, where you were contacted and  
6 apparently told that somehow you were going to be  
7 spending time with Kevin Donaghy.

8 THE witness: I lost you.

9 MR. BENITEZ: Yes, your Honor.

10 BY MR. BENITEZ:

11 **Q. Mr. Myers, right before May of 2005, the**  
12 **secretary told you to go and meet with -- or sometime**  
13 **before May of 2005, Hachenberger told you to meet with**  
14 **him, correct? Is that --**

15 A. Yes.

16 THE COURT: I don't want you to lead him  
17 through this, counsel. That's the whole point.

18 MR. BENITEZ: No. Oh, I'm sorry, I apologize.  
19 I thought -- I will do --

20 **Q. Mr. Myers, the conversation that you're just**  
21 **referring to, where the secretary told you to meet with**  
22 **the Hachenbergers?**

23 A. She called me and told me that Don would be  
24 available to meet with me at a specific time.

25 THE COURT: Okay.

1 A. But I don't recall the exact time.

2 THE COURT: All right. Did she tell you you  
3 would be meeting with anybody else?

4 THE WITNESS: No.

5 THE COURT: Was this prior to May or was this  
6 in May of 2005?

7 THE WITNESS: This is prior, this is prior to  
8 May.

9 THE COURT: Okay. So prior to May of 2005,  
10 Glenda Harris contacts you, says --

11 THE WITNESS: Katherine Harris.

12 THE COURT: Excuse me, Katherine Harris says  
13 this is the time that we'd like you to meet with  
14 Donald Hachenberger.

15 THE WITNESS: Correct. Said Don will be  
16 available at that time.

17 THE COURT: Okay. So you come into the office  
18 on that day, and who is there?

19 THE WITNESS: Katherine greets me and takes me  
20 into Don's office, and I meet with Don.

21 THE COURT: Okay. At some point is Mr. Donaghy  
22 mentioned?

23 THE WITNESS: He introduces me. He takes me  
24 down the hallway, he introduces me to Don, to the  
25 Kevin Donaghy.

1 THE COURT: And what does he say to you when he  
2 introduces you to Mr. Donaghy?

3 THE WITNESS: That he is his attorney.

4 THE COURT: That Mr. Donaghy is whose attorney?

5 THE WITNESS: Don's attorney.

6 THE COURT: Does he say that he represents  
7 anybody else? Does Mr. Hachenberger say to you that  
8 Mr. Donaghy represents anybody other than  
9 Mr. Hachenberger?

10 THE WITNESS: I don't recall.

11 THE COURT: Okay. No issue.

12 MR. SHUKER: Thanks.

13 THE COURT: All right.

14 MR. BENITEZ: Can I ask those questions?

15 THE COURT: Yes, you may ask those questions.

16 Sir, you need to listen very carefully to the  
17 questions that are asked, answer only those  
18 questions.

19 THE WITNESS: Okay.

20 THE COURT: Don't stray, please.

21 Return the jury, please.

22 MR. CHASE: Your Honor.

23 THE COURT: Approach.

24 (A conference was held at the bench outside of  
25 the hearing of the jury.)

1           MR. SHUKER: Can we check the realtime, because  
2           the reason I jumped up because I heard him calling  
3           his name.

4           THE COURT: I did, too, part of the problem  
5           that it was inartfully asked as a predicate and --  
6           but it never came out who said that he represented  
7           these folks. So that was from Mr. Donaghy or  
8           whether Mr. Hachenberger said that, that's why I  
9           wanted to go back through that exercise. That's all  
10          he's going to testify to, so.

11          MR. SHUKER: I just didn't know whether that  
12          should be stricken.

13          MR. CHASE: I think, rather than a curative  
14          instruction, if he asks it that way and he says  
15          specifically he told me he represents Don, that  
16          clears you of Glenda.

17          MR. SHUKER: Yeah.

18          (Bench conference concluded.)

19          THE DEPUTY: Jury's entering.

20          (Jury entering.)

21          THE COURT: All right. Thank you.

22          You may be seated.

23          You may proceed, counsel.

24 BY MR. BENITEZ:

25          **Q. Donald Hachenberger's secretary calls you over**



1 to -- calls you and tells you to go over, that  
2 Mr. Donald Hachenberger wants to meet with you, correct?

3 A. Yes.

4 Q. And do you go over?

5 A. Yes, I do.

6 Q. And where are you -- where do you go? You get  
7 there, and then who do you talk to first?

8 A. The Re/Max offices are on a complete floor of a  
9 big building. I'm greeted by a receptionist and I'm  
10 taken back to meet Katherine Harris.

11 Q. So you get to the office, you meet Donald  
12 Hachenberger's secretary?

13 A. Yes.

14 Q. And does she take you to Don Hachenberger?

15 A. Yes.

16 Q. And where does she take you?

17 A. His office was adjacent to where her work area  
18 was.

19 Q. And then what happened?

20 A. We were just greeting each other, talking  
21 about -- personal, what's going on with him, what's  
22 going on with me, what's going on with the project.

23 Q. Did he take you to meet Kevin Donaghy?

24 A. Yes, he did.

25 Q. Did he tell who Kevin Donaghy represented?

1 A. He told me that he was his attorney.

2 Q. And how did you get to Kevin Donaghy, did you  
3 walk down the hall to a room?

4 A. It was a large executive office building so he  
5 took me down the hallway to his suite.

6 Q. Kevin Donaghy's suite?

7 A. Yes.

8 Q. And then what happened?

9 A. He introduced me to him. We exchanged  
10 pleasantries and talked about, I understand you're  
11 building a project and this, and we're going to be doing  
12 some business.

13 Q. How long did that meeting last?

14 A. About 15, 20 minutes.

15 Q. And that was your first meeting with Kevin  
16 Donaghy?

17 A. Yes.

18 Q. Did you have any other meetings with either  
19 Kevin Donaghy or Donald Hachenberger after that meeting?

20 A. Yes.

21 Q. And when was the next meeting?

22 A. The next meeting Kevin Donaghy called me and  
23 said, hey, if you're in the area, stop by and see me.

24 Q. And do you know when that was?

25 A. Probably it was two or three weeks.

1           **Q.    After your meeting initially?**

2           A.    It was before the May meeting, so I would say  
3 probably sometime in early April of 2005.

4           **Q.    And did you go meet with Kevin Donaghy?**

5           A.    Yes, I did.

6           **Q.    And what was the substance of that meeting?**

7           A.    He sat down and asked me -- you know, tell me,  
8 tell me about the project, what was involved in the  
9 project, what are you guys trying to accomplish in it.  
10 And he pulled some documents.

11                   We had -- the situation came about up where he  
12 was using the terms letter agreement, operating  
13 agreements, and so forth. And I was not familiar with  
14 that nomenclature at all. The only thing I understood,  
15 basically, was an employment contract. So he said,  
16 well, let me show you. So he reached in his file --

17                   MR. CHASE: Your Honor, may we approach.

18                   THE COURT: You may.

19                   (A conference was held at the bench outside of  
20 the hearing of the jury.)

21                   MR. CHASE: The employment contract, that's a  
22 big issue in this case. One of the things that he  
23 was saying is that, no, we don't have a deal because  
24 I was supposed to have an employment contract. I  
25 was supposed to have an employment contract, that's

1 why we don't have a deal, we don't have a meeting of  
2 the minds.

3 There's no employment contract, it comes up  
4 over and over, but all those documents, all the  
5 scribblings, all the little things that he said, the  
6 employment contract is parole evidence, is what he  
7 thinks what the deal was.

8 And there was a letter agreement, operating  
9 agreement. I don't know what that was. I wanted an  
10 employment contract.

11 MR. BENITEZ: The testimony's relevant with  
12 respect to this meeting and what they discussed and  
13 the employment agreement is relevant.

14 THE COURT: Why isn't it parole evidence?  
15 Respond to the objection for me, it's not relevance  
16 objection, it's a parole evidence objection.

17 MR. BENITEZ: Because I don't believe it's  
18 parole evidence in any way you slice it, because  
19 what is the evidence to, everybody, you're assuming,  
20 Judge, that they had a fait accompli, a done deal, a  
21 contract. They don't have a contract.

22 Our theory of the case is that they never had a  
23 meeting of the minds and never had a contract, so  
24 why would we ever even get to the parole evidence  
25 issue. We're trying to establish what the parties

1 negotiated what the parties' contact was.

2 THE COURT: Then we're back to this issue  
3 again. If there was no contract, what was the  
4 escrow agreement?

5 MR. BENITEZ: I'm not sure I understand why the  
6 Court is tying the two together. The escrow  
7 agreement -- there was an agreement, oral agreement,  
8 whether you call it an escrow agreement or an  
9 agreement just to hold something pending final  
10 completion of the negotiated terms.

11 Whatever you want -- whatever level -- label  
12 you want to give to it, our position is there was  
13 not an agreement, but there was an agreement -- an  
14 oral agreement to keep these items that they got  
15 them to sign in escrow.

16 THE COURT: But you want to offer evidence of  
17 terms that contradict what your clients signed. Not  
18 just add to, but contradict. That's parole  
19 evidence.

20 MR. BENITEZ: But, Judge, it's not -- but it's  
21 not a contract. So we only get to parole evidence.  
22 And besides, it's not -- I'm not sure it's  
23 contradicted unless you say that everything that's  
24 not included in the letter agreement is therefore  
25 excluded.

1           It could have been a separate employment  
2 agreement that would have been drafted by the  
3 parties, just like the contribution agreement. That  
4 was a separate agreement all together that was never  
5 drafted by the parties.

6           THE COURT: That the purpose of the merger  
7 provision in the documents your client signed, that  
8 you don't want to call a contract.

9           MR. BENITEZ: It's not a contract.

10          THE COURT: Then what is it?

11          MR. BENITEZ: It is an offer to contract,  
12 subject to having all the other issues resolved. In  
13 other words, the parties had a number of issues, the  
14 parties cannot survive just on the letter agreement  
15 and the operating agreement. There were other  
16 things that were in play that needed to be  
17 negotiated between the parties.

18          And, you know, I think that the disconnect,  
19 Judge, is that you're taking the premise that there  
20 was an agreement, because you've looked at an  
21 agreement with all the signatures.

22          My position is, there was not an agreement.  
23 There was an agreement -- on July 7th when they  
24 signed it, Hachenberger -- the Hachenbergers had not  
25 signed it.

1 THE COURT: But I'm unclear what it is that's  
2 being held in escrow.

3 MR. BENITEZ: The letter agreement and the  
4 operating agreement until all the other contracts  
5 are done.

6 THE COURT: What other contracts?

7 MR. BENITEZ: Other contracts, like the  
8 employment contract, the buy-sell contract, and  
9 correcting the letter agreement, because their  
10 testimony's --

11 THE COURT: So those were final, but you felt  
12 like there were more agreements that needed to be  
13 reached.

14 MR. BENITEZ: No, no, they were not final.

15 THE COURT: That's what you just said.

16 MR. BENITEZ: No, they were not final, they  
17 were terms still to be agreed to and corrected.  
18 Their testimony's going to be there's a lot of  
19 problems with this letter agreement.

20 THE COURT: I don't understand holding drafts  
21 in escrow. That just doesn't make any sense to me.

22 MR. BENITEZ: Nothing here makes sense.

23 THE COURT: What's the escrow duty, what duty  
24 does Mr. Donaghy have to hold a draft in escrow?

25 MR. BENITEZ: Because he agreed to do that.

1 It's like if I come to you --

2 THE COURT: But a draft has no legal effects.  
3 So he's under no legal duty to hold it if it's a  
4 draft.

5 MR. BENITEZ: But the only reason my clients  
6 agreed to sign the letter agreement and the  
7 operating agreement was because they were being told  
8 that it would not be final, that they are not final  
9 documents.

10 My complaint is relieved of that allegation,  
11 nonbinding and unenforceable. Now you're taking the  
12 position --

13 THE COURT: Although you want to rescind it,  
14 but that's a different issue.

15 MR. BENITEZ: Rescind the --

16 THE COURT: Rescind means I recognize it's  
17 valid, Judge, but I want you to rescind the  
18 agreement.

19 MR. BENITEZ: But if you look in my pleadings,  
20 Judge, that's not my pleadings. The rescission  
21 count in this case is, if you think that by having  
22 signed the drafts, what we consider the drafts, the  
23 letter agreement and the operating agreement on  
24 July 7th, as an offer of the contract, we're  
25 rescinding that offer to contract.



1 THE COURT: You're rescinding an offer to  
2 contract?

3 MR. BENITEZ: To contract, yes.

4 And, remember, nobody's filed a motion to  
5 dismiss for failure to state a cause of action.  
6 This is a cause of action that's been on the  
7 pleadings now for many, many years.

8 MR. CHASE: Affirmative defenses.

9 THE COURT: Affirmative defense for failure to  
10 stay a cause of action, which can be raised even at  
11 trial.

12 MR. BENITEZ: No, I understand. But we just  
13 said nobody's moved. It's true, nobody's moved.

14 THE COURT: No, but it's out there. You're  
15 telling half the story, Mr. Benitez, and that's the  
16 problem I have. And this has happened now multiple  
17 times this morning.

18 I asked you about this list of the personal  
19 property, is that just a list. Yes, Judge, it's  
20 just a list, it's not -- it's got values on it.

21 MR. BENITEZ: Judge.

22 THE COURT: That's half the story, and I have a  
23 problem with that. You need to come forward and  
24 affirmatively carry your burden to this Court of  
25 truth and candor, period.

1           MR. BENITEZ: Judge, I have been truthful and  
2 candid with the Court.

3           THE COURT: You have not.

4           MR. BENITEZ: And I apologize if I've left  
5 something out.

6           Judge, with respect to this case, this is a  
7 complicated case. I understand. But I think  
8 there's a disconnect between what the Court is  
9 thinking and what I've pled in black and white in  
10 the pleadings in this case.

11          I am talking --

12          THE COURT: Your pleadings don't get around  
13 evidence rules.

14          MR. BENITEZ: I understand, Judge, but  
15 you're -- but, Judge, my -- you're asking me how  
16 could there be a rescission -- well, my -- my first  
17 count is a breach of contract, for having failed to  
18 hold these agreements in escrow, nonbinding and  
19 unenforceable. Escrow is just the short term for  
20 having held --

21          THE COURT: What are your damages for that?

22          MR. BENITEZ: The damages for that?

23          THE COURT: For failing to hold in escrow a  
24 document that is unenforceable?

25          MR. BENITEZ: Significant damages, Judge,

1 because --

2 THE COURT: What are the damages?

3 MR. BENITEZ: The damages are that they were  
4 allowed out of escrow. They went ahead and signed  
5 them. And now they've convinced you that, in fact,  
6 they're enforceable contracts.

7 THE COURT: No, no, no. If they are  
8 unenforceable documents, and that's your  
9 contention --

10 MR. BENITEZ: Right.

11 THE COURT: That he failed to hold in escrow  
12 unenforceable documents.

13 MR. BENITEZ: No, but that's not -- I  
14 apologize, Judge, if that's what you're thinking.

15 THE COURT: Shifting standing here,  
16 Mr. Benitez.

17 MR. BENITEZ: No, your Honor, I'm not.

18 THE COURT: I'm taking your words and you're  
19 telling me no, that's not what you meant.

20 MR. BENITEZ: No. I said they're  
21 unenforceable, nonbinding contracts, drafts.

22 THE COURT: Then how can there be damages for  
23 releasing a draft of a contract?

24 MR. BENITEZ: Because they haven't accepted the  
25 fact that they're drafts, they're saying they're

1 binding contracts.

2 THE COURT: They're either binding or they're  
3 not. If you want me to accept the position that  
4 they're not, what are the damages for releasing a  
5 nonbinding contract?

6 MR. BENITEZ: That they become binding and,  
7 therefore, we're here in court because you're  
8 enforcing --

9 THE COURT: No, no, no.

10 MR. BENITEZ: No?

11 THE COURT: No. That doesn't make any sense.  
12 That may be what you pled, but that doesn't make any  
13 sense.

14 MR. BENITEZ: Okay.

15 THE COURT: Legally.

16 MR. BENITEZ: My damages -- if my damages -- if  
17 you take the nonbinding contracts and drafts that  
18 were represented to my clients to be nonbinding and  
19 drafts on July 7, 2007, and then let them out of  
20 your hands -- when you told my clients I'm not going  
21 to leave them out of my hands, I'm going to keep  
22 them in the file until we decide everything, and if  
23 we don't have a deal, we don't have a deal. If we  
24 have a deal, we have a deal.

25 And then you're saying that if they went ahead

1 and let it out, what are my damages? My damages are  
2 now you've got -- as opposed to a draft and a  
3 non-enforceable agreement, now you've got a binding  
4 agreement.

5 THE COURT: It didn't -- his releasing it  
6 didn't make it binding.

7 MR. BENITEZ: His releasing of it was a breach  
8 of the contract he had with my clients.

9 THE COURT: The release of the contracts did  
10 not make them any more binding than they were when  
11 you contend he got them.

12 MR. BENITEZ: Right.

13 THE COURT: So then there's no contract and no  
14 damages.

15 MR. BENITEZ: Judge, but once they were  
16 released and the Hachenbergers signed it, now  
17 they're enforcing that contract.

18 THE COURT: It's now a contract?

19 MR. BENITEZ: No, it's not.

20 THE COURT: Then what are they enforcing?

21 MR. BENITEZ: They're enforcing that contract.

22 THE COURT: It's either a contract or it's not.  
23 You can't have it both ways.

24 MR. BENITEZ: Our position is, it's not a  
25 contract, it's not enforceable, and that's not

1 binding.

2 THE COURT: Then there are no damages from  
3 release from escrow.

4 MR. BENITEZ: Yes, there are, because if they  
5 released it from escrow and they end up signing it,  
6 and then they kick them off the job and steal 4,  
7 \$5 million of their property based on the letter  
8 agreement and the operating agreement, there are  
9 damages.

10 THE COURT: So the letter agreement and the  
11 operating agreement are enforceable.

12 MR. BENITEZ: No, my position --

13 THE COURT: I'm not doing this anymore. You  
14 can't make your position clear to me. We started  
15 with this.

16 MR. CHASE: He had mentioned employment  
17 agreement. Get a curative instruction to disregard  
18 that he mentioned the employment agreement.

19 MR. BENITEZ: What?

20 MR. CHASE: It's parole evidence.

21 MR. BENITEZ: Judge, it's not parole evidence.

22 THE COURT: Why didn't you move for summary  
23 judgment in this case? If you believed there was a  
24 contract, why are we here?

25 MR. CHASE: Because of all the other motions

1 prior to getting here. Again, when I said  
2 earlier -- and I apologize, Judge, it's strategy.

3 The thing is, is anything that you do, the more  
4 you get entangled, the more you're pulled in. And  
5 so, if I had to file a motion for summary judgment,  
6 I'd won, and then he'd amended his pleadings, he  
7 would have come back with something else. He would  
8 have had always had something to survive.

9 THE COURT: But you're wanting me to make a  
10 ruling, in essence, that this is a contract.

11 MR. CHASE: Yes, sir.

12 THE COURT: Now that's a summary judgment issue  
13 in the middle of trial.

14 MR. CHASE: It's -- I agree, Judge, but if you  
15 look at the way that the pleadings have gone  
16 forward, nothing -- and it did, it's true, he got  
17 dismissed. There were multiple motions to dismiss  
18 multiple times. Multiple times he was dismissed  
19 with prejudice, and it kept coming by.

20 Meanwhile, years have gone by, my clients spend  
21 \$15,000 on average a month to store this stuff  
22 because of the injunctions saying get the trial, get  
23 the trial, and the reality is, we do have the right.  
24 His pleadings are a mess, so let's go to trial on  
25 his pleadings. Let's go.

1           And, I'm sorry I'm laying that in your lap, but  
2           that was -- it's absolute strategy. That's why you  
3           don't have motions in limine. If a motion in limine  
4           was filed and then we prevail on it, and I think we  
5           would have prevailed on a lot of motions in limine,  
6           then he would have just amended and we would have  
7           said, you can't amend because your time to amend has  
8           passed, and that would have been an appealable  
9           issue, clearly.

10           So now we're back into the Fifth again, and the  
11           Fifth probably would have said, no, you got to let  
12           him --

13           THE COURT: Here's what we're going to do. I'm  
14           maybe right or wrong about this, Mr. Benitez, this  
15           is how I interpret the evidence and how I interpret  
16           the pleadings, and how I interpret how we're going  
17           to go forward.

18           You have pled a cause of action for breach of  
19           this escrow agreement, oral agreement to hold the  
20           documents, whatever you want to call it. I'm not  
21           sure you can prove damages from that. But I'm going  
22           to allow you to put evidence on of whatever there's  
23           conversations there were that you believe led to  
24           this escrow agreement. Okay. That's coming in.

25           MR. CHASE: Understood, sir.



1           THE COURT: I'm going to allow you to put in  
2 evidence of whatever he can testify to competently  
3 about his conversation with Kevin Donaghy about  
4 other issues that were not addressed by the  
5 contract. That list of things that you contend were  
6 not addressed by the contract.

7           And that that's your client's -- the basis for  
8 your client's belief that he was in escrow pending  
9 the resolution of these other issues.

10           We are not going to talk about the negotiations  
11 any further. Because the negotiations are parole  
12 evidence. They are, they just simply are, and  
13 there's no way around that.

14           So, as to the additional things that need to be  
15 resolved, we can talk about that. But it is parole  
16 evidence to talk about the substance of negotiations  
17 leading up to the signed document.

18           I am -- I think you're entitled, as fraud in  
19 the inducement, to put in evidence or testimony of  
20 those things that don't directly contradict the  
21 document that your client signed. So, to the extent  
22 that they are additional, I think that's appropriate  
23 and I'll allow it.

24           But as to these negotiations, employment  
25 agreements, except to the extent that something at

1 the end was said, hey, where's my employment  
2 agreement, that's why you're holding this in escrow.  
3 You can do that, but that's got to come in.

4 MR. CHASE: Understood, Judge. Case law is  
5 really clear that you can't have a standing  
6 objection. I'm going to have to make some -- I'd  
7 like, to the extent that I could, to have an  
8 standing objection about the parole evidence, about  
9 the things that you just mentioned, certainly based  
10 off of the federal case that I cited, but I will pop  
11 up from time to time.

12 THE COURT: You'll have to do what you have to  
13 do. I can't give you a standing objection.

14 MR. CHASE: I know.

15 THE COURT: I just think for appeal purposes,  
16 you have to do what you have to do. But I don't  
17 think there's -- I hear you, Mr. Benitez. I don't  
18 think it's what you pled, and I don't think it is  
19 reflected by the facts. But I'll let you go that  
20 far with it.

21 MR. CHASE: Thank you, Judge.

22 MR. BENITEZ: And, Judge, can you make -- can  
23 you clarify for me exactly what I'm not to do so I  
24 don't do it.

25 I don't want to even deviate the slightest.

1           THE COURT: I appreciate that.

2           To the extent that he was going to talk about  
3 all the conversations with Kevin Donaghy about all  
4 the things that he -- his goals and purposes and  
5 intentions, that's parole evidence. That would vary  
6 the terms of what they ultimately agreed to. And  
7 I'm finding that by signing that, they agreed to the  
8 things that are part of that document now.

9           Now, if the agreement was to hold it in escrow  
10 pending these other things that needed to be  
11 accomplished, that's something different. And I  
12 think the case law says additional terms that don't  
13 conflict with the terms of what they signed is fair  
14 game for purposes of parole evidence.

15          MR. BENITEZ: Okay.

16          THE COURT: So, you need to move on past the  
17 conversations about the negotiations of the contract  
18 and get down to what happened when they were there  
19 signing this agreement.

20          MR. BENITEZ: Thank you.

21          MR. CHASE: Thank you, Judge.

22          (Bench conference concluded.)

23          THE COURT: I apologize, folks. Thank you for  
24 your patience.

25 BY MR. BENITEZ:

1 Q. Did you have a -- you had a meeting with  
2 Donald -- - or Kevin Donaghy in May of 2005, correct?

3 A. Yes.

4 Q. Okay. And how did that meeting come about?

5 A. He called me to ask me to come see him at the  
6 Re/Max office.

7 Q. And was there any additional information that  
8 they gave you about coming over to his office on that  
9 day?

10 A. I don't recall.

11 Q. And he himself called?

12 A. Yes.

13 Q. And did you go over?

14 A. Yes, sir.

15 Q. And what happened during that conversation --  
16 what happened during that meeting, what was done? Or  
17 let me --

18 A. We have --

19 Q. Let me break it a down a little bit.

20 Were you given a form?

21 MR. CHASE: Objection, leading.

22 THE COURT: Overruled.

23 Go ahead.

24 Q. Were you given a form, some -- a form of some  
25 type to review?

1           A.     I was given a sample of a -- of a document that  
2 Don Hachenberger used in his LLC agreements.

3           **Q.     And did you -- were you shown any other**  
4 **document at that point in time?**

5           A.     What Kevin referred to as an operating  
6 agreement.

7           **Q.     Okay.  And did you take the only document that**  
8 **you -- let me rephrase it.**

9                   **The document that you took from that meeting,**  
10 **was the letter agreement?**

11          A.     They were -- you know, it was a bunch of pages  
12 of stuff.

13                 MR. BENITEZ:  Judge, may I have a side bar real  
14 quick to find out.

15                 THE COURT:  Yes.

16                   (A conference was held at the bench outside of  
17 the hearing of the jury.)

18                 MR. BENITEZ:  Can I ask him what Kevin and him  
19 talked about during that meeting, or are you  
20 preventing me from doing that?

21                 THE COURT:  I'm preventing you from getting  
22 into negotiations or conversations about what his  
23 expectations were because those are the things that  
24 he would say that should have been.  This document  
25 doesn't reflect those things.

1           To the extent they're add-ons, you can talk  
2           about it. To the extent that they are expressly  
3           conflicted by the terms of the document that he and  
4           his wife signed, that's parole evidence.

5           MR. CHASE: Just go to July 7th.

6           (Bench conference concluded.)

7 BY MR. BENITEZ:

8           **Q. How long did your meeting with Kevin Donaghy**  
9           **last that day?**

10          A. Mr. Benitez, are you referring to the May 5th  
11 meeting?

12          **Q. May 2005 meeting, yes.**

13          A. Okay. How long did it last?

14          **Q. Yes.**

15          A. I was probably there an hour.

16          **Q. And you talked to Kevin Donaghy. And was there**  
17 **anything signed during that meeting?**

18          A. No, sir.

19          **Q. Was there any conversations between you and**  
20 **Kevin Donaghy and Donald Hachenberger during that**  
21 **meeting?**

22          A. No, sir.

23          **Q. Was he -- Donald Hachenberger or Glenda**  
24 **Hachenberger put on the phone with you during that**  
25 **meeting?**

1 A. No.

2 Q. Leading up to this meeting, did you have any  
3 conversation with either Donald Hachenberger or Glenda  
4 Hachenberger?

5 A. No.

6 Q. After this meeting, in May of 2005, did you  
7 return -- did you get a -- did you get a call from Kevin  
8 Donaghy?

9 A. Yes.

10 Q. And what was that call for?

11 A. After the May 5th meeting?

12 Q. Yes.

13 A. I had talked -- let me recount. I had talked  
14 to Don about the expiration situation on the code and  
15 the site plans.

16 Q. And explain that to the jury. What was the  
17 expiration of the code?

18 A. We had received a -- the permits had been  
19 renewed twice previously and they were set to expire.  
20 What the effect was if the permits expired and they were  
21 not renewed, then we would lose our 2000 code building  
22 requirements, which made a difference of 350 or  
23 \$400,250, depending on what the money was it took to  
24 fill the dirt for the whole entire site, which was five  
25 acres.

1           **Q.    And when was the expiration date, do you**  
2 **remember?**

3           A.    It was happening, I think it was right in July,  
4 first week of July.

5           **Q.    Okay.  And what did -- was there any decision**  
6 **of what to do about that?**

7           A.    Yes.  Don told me that he would get with Kevin  
8 Donaghy and we would proceed with transferring the  
9 property.

10          **Q.    And what property were you going to be**  
11 **transferring?**

12          A.    I had three commercial properties that had made  
13 up those properties that Jackie and I bought over the  
14 years.

15          **Q.    And what else was decided between you and**  
16 **Donald Hachenberger regarding the property, if anything?**

17          A.    Well, first of all, the property -- at that  
18 time I had had a two year-old contract for the property  
19 and appraisal of \$2.9 million.

20                   MR. CHASE:  Objection, Judge.

21                   MR. BENITEZ:  Well --

22                   THE COURT:  Just a second.

23                   The objection is sustained.

24                   Members of the jury, that testimony is  
25 stricken.  You are absolutely to disregard that



1 testimony. It should play absolutely no role  
2 whatsoever in your deliberations.

3 Mr. Myers, I have cautioned you, you need to  
4 listen carefully to the question that's asked and  
5 respond to the question that was asked only.

6 THE WITNESS: Yes, sir.

7 BY MR. BENITEZ:

8 **Q. Okay. Did you have any other conversation with**  
9 **Donald Hachenberger after that one?**

10 A. Yes.

11 **Q. And when was that? And was it over the phone**  
12 **or in person?**

13 MR. CHASE: Objection, compound question.

14 THE COURT: Overruled.

15 Go ahead.

16 A. Both. We had met again, it was in person, when  
17 he was in town.

18 **Q. Which came first, the telephone conversation or**  
19 **the in-person meeting?**

20 A. Telephone conversation.

21 **Q. And what was the nature of that telephone**  
22 **conversation?**

23 A. Basically, that we wanted to proceed with what  
24 we were doing and that we needed to go ahead and renew  
25 the permits. And to do that, we had to transition the

1 property. Kevin Donaghy had formed the LLC of  
2 Highway 46 Holdings, LLC. He had registered it. And it  
3 was -- it was done that month before, prior to that  
4 time.

5 **Q. And you said you also met with Donald**  
6 **Hachenberger?**

7 A. Yes.

8 **Q. And when was this next meeting?**

9 A. I don't recall exactly the day of it.

10 **Q. Then, eventually, did you get to a meeting on**  
11 **July 7, 2005?**

12 A. Yes.

13 **Q. And that was a meeting with Kevin Donaghy?**

14 A. Yes.

15 **Q. And did you -- what was the purpose of the**  
16 **meeting?**

17 A. To transition the property. We were going to  
18 title and change the property over from Michael and  
19 Jackie Myers to Highway 46 Holdings that he had set up.

20 **Q. Was that the only purpose of that meeting?**

21 A. No.

22 MR. CHASE: What was the date?

23 A. I had --

24 MR. CHASE: I'm sorry. What was the date?

25 MR. BENITEZ: July 7, 2005.

1 MR. CHASE: Okay, thank you.

2 A. In Don and I's conversation, we had talked  
3 about the expenses that Jackie and I had incurred on the  
4 property within the last -- before that date, which  
5 was -- which totaled about \$600,000. And I asked Don,  
6 I said, Don, if we're going to do this thing, we're  
7 going to be 50/50 partners, are you willing.

8 MR. CHASE: Objection, parole evidence.

9 THE COURT: Sustained.

10 A. Reimburse --

11 THE COURT: The objection's sustained.

12 **Q. Did Mr. Donaghy bring some agreements to that**  
13 **meeting?**

14 A. Yes, he did.

15 **Q. And was that one of the agreements what was**  
16 **what we've been referring to as the letter agreement?**

17 A. Yes.

18 **Q. The other agreement was an operating agreement?**

19 A. That's what they called it.

20 **Q. And there were -- there was also a deed,**  
21 **correct?**

22 A. There was what, sir?

23 **Q. A deed?**

24 A. Yes.

25 **Q. Okay. How long did -- was this meeting with**

**1 Kevin Donaghy on July 7, 2005?**

2 A. Well, the first thing we did probably was about  
3 an hour, hour and 15 minutes.

**4 Q. Okay. And what -- what happened -- and I'm  
5 talking about what happened -- what happened during that  
6 meeting?**

7 A. We discussed the land parcels, why they had to  
8 be transferred today. We discussed the fact that Don  
9 had committed to reimburse us for 50 percent of --

10 MR. CHASE: Objection, parole evidence.

11 THE COURT: Sustained.

12 MR. BENITEZ: Just -- may I approach the  
13 witness, your Honor?

14 THE COURT: You may.

15 BY MR. BENITEZ:

**16 Q. Mr. Myers, let me show you what has been marked  
17 as Exhibit 1 into evidence, Plaintiffs'.**

**18 Have you ever seen this exhibit in this form  
19 prior to this lawsuit having been filed?**

20 A. First time that I saw that was when we received  
21 a summons that was delivered to our residence.

**22 Q. Okay. But was it bound the way it's bound  
23 here?**

24 A. No, sir.

**25 Q. Okay. You mean the content of Exhibit 1 you've**

1 got as part of the complaint that was filed in this  
2 case?

3 A. Yes.

4 Q. Is that the first time you saw those?

5 A. Yes.

6 Q. And if you can, was -- this was a --

7 MR. BENITEZ: May I stay here, Judge.

8 THE COURT: You may.

9 Q. This was a meeting that occurred on July 7,  
10 2005, correct?

11 A. Yes.

12 Q. And at that time, you signed certain documents,  
13 correct?

14 A. Yes.

15 Q. And why is it that you signed certain documents  
16 on that date?

17 I'll rephrase that.

18 Was Donald Hachenberger at this meeting?

19 A. No, sir.

20 Q. Was Glenda Hachenberger at this meeting?

21 A. No.

22 Q. Was the meeting just you, Jackie Myers, and  
23 Kevin Donaghy?

24 A. That's correct.

25 Q. And you've seen Exhibit 1, I just showed it to

1 you, correct?

2 A. Yes.

3 Q. Let me give it back to you.

4 A. Okay.

5 Q. Have you -- those are -- look through it real  
6 quick and tell me, are those your signatures on

7 Exhibit 1?

8 A. Yes.

9 Q. Okay. Were there any -- were there any  
10 signatures by Glenda Hachenberger on July 7, 2005?

11 A. No.

12 Q. Were there any signatures by Donald  
13 Hachenberger on July 7, 2005?

14 A. No. He -- they were out of town, both of them.

15 Q. Okay, but what's the answer to my question?

16 A. No.

17 Q. During this meeting that you had with Kevin  
18 Donaghy on July 7, 2005, did you ask Kevin Donaghy to  
19 get Donald Hachenberger on the phone?

20 A. Yes, I did.

21 Q. And what did Kevin Donaghy tell you?

22 A. They were unavailable.

23 Q. Did you repeat your request to get Donald  
24 Hachenberger on the phone a number of times during this  
25 meeting?

1           A.    Yes, when we perused the documents, there were  
2 lots of -- lots of issues.

3           **Q.    And -- but, regardless, you never spoke to**  
4 **Donald Hachenberger on July 7, 2005?**

5           A.    No, sir.

6           **Q.    Did Kevin Donaghy even make an attempt at**  
7 **trying to get a hold of Donald Hachenberger?**

8           A.    No.

9           **Q.    Did he just simply tell you that he was not**  
10 **available?**

11          A.    Yes.

12          **Q.    Did Kevin Donaghy tell you that the letter**  
13 **agreement and the operating agreement would not be**  
14 **released to Donald Hachenberger or Glenda Hachenberger**  
15 **for their signature?**

16          A.    Yes.

17               MR. CHASE:  Objection.  Objection, the parole  
18 evidence --

19               THE COURT:  Overruled.

20               MR. CHASE:  -- that we discussed earlier.

21               THE COURT:  Overruled.

22               Go ahead.

23          A.    Yes.

24          **Q.    As you were leaving -- well, during this**  
25 **meeting, did he -- did you have problems with the**

1 **agreements, the letter agreement and the operating**  
2 **agreement?**

3 A. All the documents were incorrect.

4 MR. CHASE: Objection, parole evidence.

5 I'm sorry, Judge, I have to make the objection.

6 THE COURT: I understand.

7 Overruled.

8 You may answer the question again just to make  
9 sure the jury has heard your response.

10 A. Yes, they were incorrect.

11 **Q. During this meeting, you request -- did you**  
12 **request Kevin Donaghy to write down a note to Donald**  
13 **Hachenberger as to things that were yet to be decided?**

14 A. Yes.

15 MR. CHASE: Object, parole evidence.

16 THE COURT: Overruled.

17 Go ahead.

18 **Q. Did he write that, did he type that up?**

19 A. Yes, he left the conference room and returned  
20 in about ten minutes with a typed memo to Don  
21 Hachenberger from Kevin Donaghy.

22 MR. BENITEZ: May I approach the witness, your  
23 Honor?

24 THE COURT: You may.

25 **Q. And, Mr. Myers, take a look at what has been**



1 marked as Defense Exhibit E for identification.

2 Is this the note that Kevin Donaghy returned  
3 after leaving the office -- his office and gave you on  
4 July 7, 2005?

5 A. Yes.

6 Q. And Exhibit E --

7 MR. BENITEZ: Exhibit E, well, your Honor, I  
8 would offer it into evidence at this time.

9 THE COURT: Objections?

10 MR. CHASE: I think we discussed it earlier,  
11 but now I'm looking at it as --

12 THE COURT: Let's approach, please.

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

15 MR. CHASE: The -- I know that Mr. Shuker  
16 asked, but where is that on here, where is the E?

17 MR. BENITEZ: Right here.

18 MR. CHASE: I'm sorry, I really just couldn't  
19 find it.

20 MR. BENITEZ: Typed items given to Myers by  
21 Kevin Donaghy.

22 MR. CHASE: I see that.

23 MR. BENITEZ: 7/7.

24 MR. CHASE: All that's left --

25 MR. SHUKER: I think this is best evidence. It

1 appears to be a copy that's clearly not the  
2 original, and there's no indication of the date, and  
3 there's no indication of -- of the -- how that was  
4 prepared. So I'd like to be able to voice that, or  
5 I can do that on cross, I suppose, if you find it.

6 THE COURT: But the bottom line is, he was  
7 given a copy. He's never in possession, as far as  
8 we know, of an original of this that was addressed  
9 to somebody else. This is memorializing, according  
10 to his testimony, points at issue. I don't think  
11 the date is essential. He's testified he was given  
12 it on that date and so I'm going to find it  
13 admissible.

14 MR. SHUKER: Okay.

15 MR. BENITEZ: Thank you.

16 MR. CHASE: Thank you, Judge.

17 THE COURT: You want to take it.

18 MR. BENITEZ: I can take it or you can take it.

19 (Bench conference concluded.)

20 THE COURT: The objection's overruled. And  
21 what was previously marked as Defense E will be  
22 received as Defendant's 5. Thank you.

23 (Defendants' Exhibit E for identification was  
24 admitted into evidence as Defendants' Exhibit 5.)

25 BY MR. BENITEZ.

1           **Q.    Mr. Myers?**

2           A.    Yes, sir.

3           **Q.    Let me show you Exhibit 5 into evidence. Can**  
4 **you -- what are the -- what is Exhibit 5?**

5           A.    Exhibit 5 --

6           MR. CHASE: I've got to make the objection.

7           Parole evidence, Judge.

8           THE COURT: Overruled.

9           Go ahead, sir.

10          A.    During the meeting, as soon as we began to  
11 review the documents that had been given to us.

12          THE COURT: Sir, what is Exhibit 5?

13          THE WITNESS: It is a memo to Don Hachenberger  
14 from Kevin Donaghy, that says notes from Michael  
15 Myers' meeting.

16          **Q.    Okay. And the Michael Myers meeting was the**  
17 **meeting on July 7, 2005?**

18          A.    That's correct.

19          MR. CHASE: Objection. It misstates the  
20 evidence, it doesn't have a date on that document.

21          THE COURT: Overruled.

22          Go ahead.

23          MR. CHASE: Thank you, Judge.

24          MR. BENITEZ: And, Judge, if I may now publish  
25 that to the jury.

1 THE COURT: You may.

2 Okay. You're going to be handed this document.

3 As I've said previously, this and all the other  
4 documents that are in evidence will be available for  
5 your closer review during the point of  
6 deliberations, so you can just scan it at this  
7 point.

8 BY MR. BENITEZ:

9 Q. And, Mr. Myers, that letter contains -- or that  
10 page exhibit contains a list of items, correct?

11 A. Eight items, sir.

12 Q. Okay. Can you explain what those items are to  
13 the jury?

14 A. Yes.

15 MR. CHASE: Objection, parole evidence.

16 MR. BENITEZ: Let me do --

17 MR. CHASE: Judge.

18 THE COURT: Overruled.

19 A. The first one is contract for Mike Myers. I  
20 had always worked in a corporate setting and I required  
21 a contract.

22 THE COURT: Sir.

23 THE WITNESS: Just read --

24 THE COURT: Read the list.

25 THE WITNESS: Okay. Contract from Michael

1 Myers, death agreement, buy/sell, Famous Dave's  
2 financials and coddling (sic), dealership licenses,  
3 operating agreement, line of credit, Myers' note,  
4 memorabilia note.

5 **Q. Okay. And these were items that were still**  
6 **left undecided?**

7 MR. SHUKER: Objection, your Honor.

8 MR. BENITEZ: I'll rephrase.

9 **Q. Are these items that were left undone and yet**  
10 **to be negotiated between you and Donald Hachenberger --**

11 A. No.

12 **Q. -- and Glenda Hachenberger?**

13 A. We had already discussed those prior to this  
14 meeting.

15 MR. CHASE: Objection, parole evidence.

16 A. But the documents --

17 THE COURT: Just a second, sir. There's an  
18 objection.

19 Overruled.

20 Go ahead.

21 **Q. Go ahead.**

22 A. These had all been discussed very thoroughly  
23 with Donald Hachenberger, but when we showed up for the  
24 meeting on July the 7th, these were not reflected in any  
25 of the documents.

1           **Q.    So you had concerns about those -- did you have**  
2 **concerns about those not being reflected in the**  
3 **documents that you were asked to sign?**

4           A.    Yes, sir.

5           **Q.    Okay.  And what was decided at that point?**

6           A.    That we really couldn't even sign the  
7 agreements and we couldn't go forward with anything.

8           **Q.    And what did Kevin Donaghy tell you?**

9           A.    Kevin Donaghy said that, well, if you'll go  
10 ahead and we can transfer this property today, we will  
11 hold these in escrow until the Hachenbergers return to  
12 town, and then we would get back together and review  
13 those documents.

14                   MR. CHASE:  Objection as to that answer, parole  
15 evidence.

16                   THE COURT:  Overruled.

17                   Go ahead.

18           **Q.    And then take the jury through -- well, take --**  
19 **what happened after you refused to -- let me rephrase**  
20 **it.**

21                   **Did you refuse to sign the letter agreement and**  
22 **the operating agreement specifically?**

23           A.    Jackie and I refused to sign anything.

24           **Q.    Okay.  And that included including the deed?**

25           A.    Including everything, yes.

1           **Q.    And then, when Kevin told you that he would**  
2 **hold this in escrow, did you decide to do something?**

3           A.    We discussed all of these things that are  
4 listed on this agreement.

5           **Q.    Okay.  And then was there a decision made as to**  
6 **those items in that list?**

7           A.    Kevin Donaghy at that time advised us that:  I  
8 am your attorney, as well as the Hachenbergers'  
9 attorney, that I represent Highway 46 Holdings, that the  
10 LLC had been set up as a 50/50 partnership, and that  
11 nothing could be done unless you were happy with the  
12 agreements.  When the Hachenbergers return, we would get  
13 back together and work out any questions or details.

14                   MR. CHASE:  Objection, parole evidence, as to  
15 that answer.

16                   THE COURT:  Overruled.

17                   Go ahead.

18           **Q.    When he gave you that document that's in front**  
19 **of you, did you do anything further?**

20           A.    Yes.  By that time, we had been in the meeting  
21 about 30 minutes, and I had some concerns.  So he left  
22 the room and he went and he had this either typed or he  
23 typed it himself, and he brought it back.  And I said,  
24 now, let's go over this.

25                   And when I looked at the document, basically,

1 you know, we were trans -- we were -- Kevin Donaghy was  
2 asking us to sign away our property that was worth  
3 \$3 million, and so we had to have some assurances. When  
4 I looked at this I said --

5 MR. CHASE: Objection, narrative.

6 THE COURT: Sustained.

7 **Q. When you -- when you were given that document**  
8 **and --**

9 MR. BENITEZ: May I approach, your Honor?

10 THE COURT: You may.

11 BY MR. BENITEZ:

12 **Q. When you were given Exhibit 5 for defense, you**  
13 **did not accept -- did you accept this as good enough for**  
14 **you to then go ahead and sign something for Kevin**  
15 **Donaghy?**

16 A. No, I did not.

17 MR. CHASE: Objection, parole evidence.

18 THE COURT: Overruled.

19 Go ahead.

20 A. No, I did not.

21 **Q. And then did you ask -- did you have further**  
22 **conversations with Kevin Donaghy at that point?**

23 A. Yes, sir, I did.

24 **Q. And what were those conversations that you had?**

25 MR. CHASE: Objection, parole evidence.



1 THE COURT: Overruled.

2 A. That when I came to the meeting -- when Jackie  
3 and I came to the meeting, we had the documents that  
4 Kevin Donaghy had given us on May 5th. I had those in  
5 front of me on the conference table.

6 And I said when I received this document --

7 THE COURT: Mr. Benitez.

8 MR. BENITEZ: Yes, your Honor.

9 Q. So after you got Exhibit 5, correct, you  
10 then -- did you -- did you ask Donaghy -- let me  
11 rephrase that.

12 Did you have some concerns about this note not  
13 being enough to document the fact that you were going to  
14 get together later on and negotiate and finalize other  
15 agreements?

16 A. Yes, I did.

17 Q. And did you at that point in time ask Kevin  
18 Donaghy to do something else?

19 A. Yes. I asked Kevin -- I had to --

20 Q. Let me -- that's just the question.

21 A. Yes, I did.

22 Q. Yes, you did.

23 Now, I want to ask you what you did?

24 A. I asked Kevin -- I had the documents that he  
25 had given us on May 5th, right in front of me. I said,

1 Kevin, I said, I want you to write down in your own  
2 handwriting everything that is listed on that sheet of  
3 paper.

4 MR. CHASE: Objection as to --

5 A. So it could be identified as Kevin Donaghy knew  
6 at that time.

7 THE COURT: Sir, there's an objection. I need  
8 you to pause when there's an objection, please.

9 MR. CHASE: Objection, parole evidence, as to  
10 that answer.

11 THE COURT: Overruled.

12 Go ahead.

13 MR. CHASE: Thank you, sir.

14 A. That I wanted his signature that there was a  
15 clear understanding in his penmanship of what had to be  
16 done for us to consummate any kind of a deal with this  
17 Gassey Jack's and Don Hachenberger. So I made him  
18 physically write in his own penmanship on the top of  
19 that draft document that he had given us exactly what  
20 those were going to be.

21 **Q. And did you have him write that, actually**  
22 **handwrite it?**

23 A. Handwrote it with a blue pen, and I actually  
24 had and received the pen that he wrote with it, the  
25 ballpoint pen -- very expensive pen.

1 MR. CHASE: Objection, narrative.

2 THE COURT: Sustained.

3 MR. BENITEZ: Judge --

4 MR. CHASE: Your Honor, may we approach?

5 THE COURT: You may.

6 (A conference was held at the bench outside of  
7 the hearing of the jury.)

8 MR. BENITEZ: Pursuant to your previous ruling,  
9 I'm going to go back and cut off with this and just  
10 leave this in.

11 I was wondering if you wanted me to let him use  
12 this exhibit at this time without publishing it to  
13 the jury, or do you want me to cut it off here?

14 THE COURT: I want you to cut it off.

15 MR. BENITEZ: Okay. And then should I put a  
16 blank page behind it so that it's -- where the  
17 location in the page on this exhibit is located, or  
18 do I leave it as a -- you understand what I'm saying  
19 is, it's going to be described to the jury as part  
20 of an agreement, but you're blanking out the  
21 agreement, right?

22 THE COURT: That's correct.

23 MR. BENITEZ: Do you want me to just blank out  
24 the agreement? That would be the most accurate  
25 thing to do.

1 MR. CHASE: My problem is that you've been  
2 walking around in front of the jury with it and  
3 they're watching that, and he's describing it, they  
4 wrote it on the top in blue pen and they're seeing  
5 that document.

6 MR. BENITEZ: They haven't read it.

7 THE COURT: They shouldn't be seeing it at all.  
8 You should not be walking around with it because  
9 it's the agreement, and now, when they get it,  
10 they're going to get it with just the handwriting on  
11 it.

12 So put it away, deal with over lunch hour to  
13 get it appropriately redacted, and then he can --  
14 we'll come back and he can identify it.

15 MR. BENITEZ: Do you want me to black out  
16 everything on the agreement?

17 THE COURT: No. I want you to just take the  
18 white piece of paper and cover it up and those will  
19 be the notes that were written -- he can testify  
20 that those were the notes written by Mr. Donaghy.

21 MR. BENITEZ: You don't want any of the other  
22 pages?

23 MR. CHASE: Thank you, Judge.

24 THE COURT: That's correct.

25 And I'm getting frustrated with him continuing

1 to ignore my instructions and volunteer information  
2 that's absolutely irrelevant and potentially  
3 prejudicial. He's walking himself down a dangerous  
4 road.

5 So you have him at lunch, you better  
6 communicate to him about my level of frustration and  
7 the concern I have about the direction he's taking  
8 this case.

9 MR. BENITEZ: And do you want to recess at this  
10 time for lunch.

11 THE COURT: No. Let's go 'til noon.

12 (Bench conference concluded.)

13 BY MR. BENITEZ:

14 **Q. After you had him write those things on that**  
15 **document, what happened?**

16 A. He took the typewritten version and put it in a  
17 manilla envelope, took a paper clip, and clipped that to  
18 the file.

19 **Q. And did he say anything to you?**

20 A. He told me that he would hold this in escrow  
21 until the Hachenbergers returned.

22 MR. CHASE: Objection, parole evidence as to  
23 that answer, sir.

24 THE COURT: Overruled.

25 **Q. Did you have any other conversations with**

1 Donna -- Don -- excuse me, with Kevin Donaghy after  
2 July 7th, 2005?

3 A. No, sir.

4 Q. In July of 2005?

5 A. No, sir.

6 Q. How about in August of 2005?

7 A. No, sir.

8 Q. How about September of 2005?

9 A. No, sir.

10 Q. The next contact that you had with Kevin  
11 Donaghy was when?

12 A. He was -- I was told by Mr. Hachenberger --

13 Q. Well, let me --

14 MR. SHUKER: Objection.

15 Q. I'm just asking you a question --

16 THE COURT: Sustained.

17 Reask the question, please.

18 Q. I'm just asking you a question and I'm asking  
19 for a date or a reference point. So when is it that you  
20 had your next conversation with Kevin Donaghy after  
21 July 7, 2005?

22 A. Probably February of '07.

23 Q. Okay. Did you have conversations with Donald  
24 Hachenberger regarding those items that needed to be  
25 done?

1 A. Yes.

2 MR. CHASE: Objection.

3 THE COURT: Overruled.

4 Go ahead.

5 **Q. And when was your next conversation with Donald**  
6 **Hachenberger regarding those items?**

7 A. Don had --

8 MR. CHASE: Objection, relevance.

9 THE COURT: Overruled.

10 MR. CHASE: Thank you, Judge.

11 A. Don had called me -- he was traveling and he  
12 called me, and we had a phone discussion.

13 **Q. And when was that?**

14 A. Couldn't tell you the exact date. It was  
15 probably in -- probably sometime in late August, early  
16 September.

17 **Q. And what was the substance of that**  
18 **conversation?**

19 MR. CHASE: Objection, relevance.

20 THE COURT: Sustained.

21 **Q. Did you have any other conversation with Donald**  
22 **Hachenberger after that September 2005 conversation?**

23 A. Yes.

24 **Q. When was --**

25 THE COURT: I apologize.

1           Would you approach, please.

2           (A conference was held at the bench outside of  
3 the hearing of the jury.)

4           THE COURT: You asked him a question about what  
5 was the substance of that conversation. I sustained  
6 the objection.

7           MR. BENITEZ: Yes, sir.

8           THE COURT: But what was he going to answer?

9           MR. BENITEZ: He was probably going to answer  
10 that they were going to get together and work that  
11 out. And he specifically said -- I'm not sure if  
12 this is -- don't hold me to it, Judge, but whether  
13 this conversation or the next one, basically, Donald  
14 Hachenberger's statement is, don't worry about that,  
15 we'll work it out once the financing is done. In  
16 other words, how much money has been spent on the  
17 project.

18           Because, remember, Donald Hachenberger was  
19 going to be -- even if you look at the letter  
20 agreement and the operating agreement, everything  
21 that he gives into this venture is a loan. So what  
22 they were going to do is refinance it with a lender  
23 and he was going to guarantee it. That was the  
24 benefit of Donald Hachenberger in the deal.

25           MR. CHASE: What happened after July 7th, 2005,



1 with regard to the terms of their deal is  
2 irrelevant. He didn't plead anything about things  
3 that occurred afterward. It's the things that he  
4 didn't -- the things that would be relevant were the  
5 things about the alleged breach of duty and breach  
6 of good faith and fair deal.

7 With regard to the contractual relationship,  
8 that was all done on July 7, 2005, that's it, there  
9 is no more.

10 MR. BENITEZ: That's not our case, obviously,  
11 I've expressed it to the Court.

12 THE COURT: I think, because of the Court's  
13 ruling, narrowing the issue to the fraud in the  
14 inducement and the breach of the escrow agreement,  
15 that he can testify with respect to the facts about  
16 those issues that occurred after July the 7th.

17 So, for example, if he -- if he would say --  
18 I'll tell you, let's go ahead and take the -- let's  
19 let the jury take lunch.

20 MR. CHASE: Yes, sir.

21 (Bench conference concluded.)

22 THE COURT: Ladies and gentlemen, and it's just  
23 before noon, I hate to keep you waiting here as we  
24 have these lengthy discussions. I appreciate your  
25 patience with us.

1           We are going to recess for lunch. We'll be in  
2 lunch for an hour and a half, so until 1:30. I need  
3 you to return at 1:30 to the spot designated by the  
4 deputy, and be ready to go.

5           Over the lunch hour, please remember the  
6 cautions that I've given to you: Don't talk to each  
7 other or anyone else face to face or by laptop about  
8 the case or anything having to do with jury service.

9           Don't conduct any independent research on any  
10 of the people, places or issues involved in the  
11 case.

12           Don't post anything on any social media or  
13 other websites concerning the involvement in the  
14 case or anything about the case itself.

15           And please forgive us if you run into us over  
16 the lunch hour, we just can't have any contact with  
17 you. That's so hard, I see you and I really  
18 recognize you and I do want to say, oh, I hope  
19 you're enjoying your day, whatever it may be. We  
20 just can't do that because we wouldn't want even the  
21 appearance that somebody communicated something  
22 improper to you, and we have to resolve those  
23 issues.

24           We'll be in recess until 1:30. Thank you.

25           THE DEPUTY: Jurors, follow me.

1 (Jury exiting.)

2 THE COURT: Counsel, go get lunch. Come on  
3 back at 1 o'clock to address those issues.

4 MR. CHASE: Thank you, Judge.

5 (A recess was taken.)

6 THE COURT: Thank you. You may be seated.

7 The issue that we were discussing when we broke  
8 had to do with conversations between the witness,  
9 Mr. Myers, and Mr. Hachenberger following the July  
10 meeting; is that correct?

11 MR. CHASE: Yes.

12 MR. BENITEZ: No, your Honor. Actually, I  
13 thought -- and I'm not sure which one you're  
14 referring to, but I thought I had not at that point  
15 gotten to July 7th, but we might have.

16 We did talk about -- so I'm not sure, which one  
17 you're -- you mean the very last conversation, your  
18 Honor?

19 THE COURT: No.

20 MR. BENITEZ: No.

21 THE COURT: You had finished going through the  
22 July 7th meeting --

23 MR. BENITEZ: Yes, sir.

24 THE COURT: -- with Mr. Donaghy, your  
25 question -- and I can pull it up here -- was

1 directed to conversations that Mr. Myers had had  
2 with Mr. Hachenberger following --

3 MR. BENITEZ: After.

4 THE COURT: -- that.

5 MR. BENITEZ: Yes, your Honor.

6 THE COURT: When was the next conversation?

7 You told me what you thought the substance of  
8 your client's testimony was likely to be was that  
9 they had had a conversation, that Mr. Hachenberger  
10 had told him --

11 MR. BENITEZ: Oh, okay.

12 THE COURT: Let's work through these other  
13 issues, we'll get to that later.

14 MR. BENITEZ: Okay.

15 THE COURT: Is that not what you told me?  
16 Did I misunderstand?

17 MR. BENITEZ: I'm not sure. You want me to  
18 recite what I told you with respect to the  
19 conversation?

20 THE COURT: I'm just trying to understand what  
21 it is that your client's going to testify to.

22 MR. BENITEZ: Yes. His -- the substance of his  
23 conversation would be basically that they spoke and  
24 they agreed to go ahead and wait until he gets a new  
25 attorney retained and until the finances -- I

1 believe, until the project was somewhat completed.

2 So they know what they -- finances involved was.

3 THE COURT: So that's --

4 MR. BENITEZ: Something along those lines.

5 THE COURT: Okay.

6 MR. BENITEZ: I'm not verbatim his testimony,  
7 Judge.

8 THE COURT: Understood.

9 And your objection to that?

10 MR. CHASE: Relevance, Judge.

11 THE COURT: Any others?

12 MR. CHASE: Its parole evidence if it refers  
13 back to negotiations.

14 THE COURT: Mr. Shuker?

15 MR. SHUKER: The same.

16 THE COURT: All right, I'll allow that.

17 MR. CHASE: Thank you, Judge.

18 MR. BENITEZ: Judge, and I apologize if I'm not  
19 supposed to bring it up, but I was wondering if you  
20 had a chance to reflect on your ruling with respect  
21 to prior to the July 7, 2005, meeting with respect  
22 to conversations between the parties, with respect  
23 to things that needed to be done.

24 Also, I have gone ahead and corrected Mr. Chase  
25 and has approved the top of the letter agreement,

1 I've cut it off from one of my copies.

2 THE COURT: Okay.

3 MR. BENITEZ: But I was wondering if the Court  
4 would reconsider its prior ruling with respect to  
5 that. Based on the fact that we've got not only a  
6 breach of an oral contract to keep in escrow, but  
7 also we've got the fraud in the inducement with  
8 respect to the letter agreement and the operating  
9 agreement.

10 And I -- our -- we can not -- I don't think  
11 that we can reasonably prove our case without  
12 getting into the conversations that they had and the  
13 dealings that they had prior to the July 7, 2005  
14 hearing -- meeting, including, the entire body of  
15 Exhibit Q for identification, which is the  
16 reduced -- or the top portion of the proposed letter  
17 agreement that was tendered to the -- to Mr. Myers  
18 on May 5th of 2005.

19 I am kind of been -- I've been kind of held  
20 tight with respect to that. I don't see how I can  
21 prove the fraud in the inducement with getting into  
22 that. And I understand the objection was parole  
23 evidence, but I don't think that's an appropriate  
24 objection with respect to the fraud in the  
25 inducement.

1 THE COURT: Okay. But I've read your count  
2 here, Count 2, fraud in the inducement, and it  
3 doesn't relate to this prior negotiations. That  
4 isn't the alleged fraud. The alleged fraud relates  
5 to -- according to you, this is paragraph 96.

6 MR. BENITEZ: Right.

7 THE COURT: -- of your second amended  
8 complaint.

9 That the operating agreement -- the  
10 represent -- misrepresentations of material fact  
11 that you allege, that the operating agreement,  
12 letter agreement, preliminary nonbinding working  
13 drafts, that if Myers signed those things, the  
14 documents would remain nonbinding.

15 That the operating agreement, letter agreement  
16 were not enforceable or binding against Myers. That  
17 they would remain in his file folder, where he put  
18 it until all issues were reserved -- resolved with  
19 finality.

20 None of this relates to the prior negotiations,  
21 how does -- how could that possibly be anything but  
22 parole evidence?

23 MR. BENITEZ: Well, Judge, it would be an  
24 indicator that, in fact, there wasn't a done deal on  
25 July 7th, 2005.

1 THE COURT: That's not what you pled, though.

2 MR. BENITEZ: For example --

3 THE COURT: That's not what you pled. That's  
4 not what you've alleged is the fraud.

5 You've alleged that the material  
6 misrepresentations relate to what happened in the  
7 July 7th meeting. So you've gotten the testimony in  
8 concerning that.

9 If those are material misrepresentations that  
10 were relied on by your client to their detriment,  
11 and you've suffered damages, have you not  
12 established your cause of action?

13 MR. BENITEZ: Yes, your Honor. I'm not,  
14 necessarily saying that it's -- I'm saying that  
15 that's relevant evidence with respect to the fraud  
16 in the inducement.

17 We've got a contract that was done on May 5th,  
18 or proposed contract that was presented to the  
19 Myers. Then there's another one presented in  
20 July 7th, that is significantly different.

21 I think those are considerations why it would  
22 explain why the Myers came in on July 7, 2005, and  
23 said, we don't have an agreement. We've got a lot  
24 of issues here. What are we going to do. We're not  
25 going to sign.



1           And then they were -- they were induced to sign  
2 based on the representation that this is not a done  
3 deal, we're going to resolve the issues.

4           But those facts from that previous letter  
5 agreement, even though they may not go to the heart  
6 of the allegations in the complaint, they're facts  
7 that are important to decide whether, in fact, the  
8 Myers were under the impression that, hey, listen,  
9 we're being given some contracts we don't agree to.  
10 They're even materially different from the ones that  
11 they got on May 5th. And they're not in a position  
12 to go ahead and sign.

13           And they were induced to sign based on  
14 representations that they were not going to be  
15 binding, they were not going to be enforceable, and  
16 they were not going to be produced.

17           So I'm not saying it's my entire case, Judge,  
18 but right now it's a fact that should be in evidence  
19 that is material and relevant to the fraud in the  
20 inducement and the other counts that I've got.

21           THE COURT: I disagree. And I'll stand by my  
22 ruling.

23           MR. BENITEZ: Okay.

24           THE COURT: I think it's still parole evidence  
25 that's offered for the purposes of explaining what

1 the agreement -- your client's position should've  
2 been, that it wasn't. And it is not the basis of  
3 the fraud in the inducement and, therefore, it's not  
4 necessary.

5 Your client signed an agreement and may have  
6 done so with the understanding that they were going  
7 to work out additional terms, as I've allowed the  
8 jury to hear, but it's unrelated to the prior  
9 negotiations that culminated in the agreement that  
10 they signed.

11 So the Court stands by its ruling.

12 MR. BENITEZ: Judge, Mr. Chase has agreed to  
13 that. Can this be admitted or should I admit it in  
14 front of the jury?

15 THE COURT: Whichever's your preference.  
16 You'd like to admit it now?

17 MR. BENITEZ: Yes, your Honor.

18 THE COURT: Then go ahead.

19 What's it marked for identification?

20 MR. BENITEZ: Q.

21 THE COURT: Q for identification will be  
22 received in evidence as the Defendant's 6.

23 (Defendants' Exhibit Q for identification was  
24 admitted into evidence as Defendants' Exhibit 6.)

25 MR. CHASE: Yes, with the renewed parole

1 evidence objection. It is overruled.

2 THE COURT: I agree, overruled.

3 MR. CHASE: Your Honor --

4 MR. SHUKER: Your Honor -- I'm sorry.

5 THE COURT: Go ahead.

6 MR. SHUKER: I see a bunch of things here that  
7 look like the memorabilia and valuation.

8 Do you want to hear that argument?

9 THE COURT: If we could address that, can you  
10 cut that down by five or so minutes?

11 MR. SHUKER: I certainly can.

12 I'm relying on three cases, your Honor.

13 Can I hand them up? May I approach?

14 THE COURT: Please.

15 MR. SHUKER: Your Honor, there are two issues,  
16 and one they may be able to overcome and the other  
17 probably will require voir dire potentially of the  
18 witness.

19 The first is that only an owner -- assuming  
20 that the person is not then qualified as an expert,  
21 only an owner -- and disclosed as an expert -- can  
22 testify as to value.

23 And on a number of the items there's just no  
24 indication that Mr. Myers is the owner. And some of  
25 them, in fact, say that their son is the owner or

1 Mike Myers, Inc. is the owner. And they may be able  
2 to overcome the Mike Myers, Inc. by showing he's an  
3 authorized agent or was the president of Mike Myers,  
4 Inc.

5 We need that predicate before we get to him  
6 being an owner. Assuming we can get past that, and  
7 maybe Mr. Benitez can give me a list and show me how  
8 they say they own it, because we don't need to do  
9 that in front of the jury.

10 But assuming he is the owner, that's only the  
11 start of it. Because what the case law shows, I  
12 start with the Allied Van Line case, your Honor.  
13 And's what it says under headnote 2 is that the  
14 testimony of value has to be substantially  
15 incompetent.

16 In this case, it was one where somebody was  
17 saying the price of antiques went up or the price of  
18 furniture went up over 20 years old, and the court  
19 decided that, yes, she's an owner, she can testify  
20 to value. But that's just not substantial and  
21 competent evidence. That's one.

22 The second case, your Honor, is that, so if  
23 we're looking at this testimony that the owner must  
24 be submitted -- sufficiently familiar with the  
25 property. And so that's the Trailer Ranch case

1 under headnotes 12, 13, 14.

2 And, again, ordinarily, may testify as to  
3 value. However, the presumption I'm looking on,  
4 where it says 12, 13 and 14, that an owner  
5 sufficiently familiar with the property could then  
6 give an admissible opinion as to value is a fragile  
7 one. If it can be shown that the owner or the agent  
8 of the owner, corporation does not have such  
9 familiarity, the opinion evidence is not admissible.

10 And then going to the third, your Honor, the  
11 Loury - Lowry case, for the last part of this  
12 analysis -- and it's the last paragraph, four, the  
13 proper measure of damages for the loss of personal  
14 property is the market value on the day of the loss.

15 In this case, Mr. Benitez said the day of the  
16 loss is when Mr. Myers was fired in June of 2007.

17 So what we need to establish through voir dire  
18 probably, or proffer, is that Mr. Myers can give  
19 competent and substantial evidence as to each of the  
20 6,000 items. You can't just say general  
21 memorabilia. An expert could've. But he chose not  
22 to hire one.

23 But as to each of those 6,000 items, competent  
24 and substantial evidence as to what its fair market  
25 value was in June 2007. And he can't just -- as the

1 Fifth Circuit recently said in oral argument, base  
2 it on what Ms. Cleo said.

3 So if I get him up and I said, well, 1934  
4 Duesenberg, what was it worth in 2007. And why do  
5 you say that? He can't just say because I love  
6 collecting. It's been my lifelong dream. It's my  
7 hobby to do collecting.

8 Your Honor, I collected baseball cards for  
9 15 years growing up. Spent almost on all my money  
10 on it, and have a collection of over 3,000 of them.  
11 But I can't tell you what my 1969 Mickey Mantle was  
12 worth. I could go to the Topps book and tell me  
13 what it's worth.

14 And if he did that, that's fine. But I don't  
15 know that he has. I think his testimony's going to  
16 be, I've always collected, I love collecting, I  
17 bought and sold over time, so I can testify. That  
18 is not, I would proffer, your Honor, competent,  
19 substantial, and is certainly not evidence of what  
20 the fair market value was in June 2007, for each of  
21 those items.

22 And what they should have done is hired an  
23 expert. Could've given us a nice neat report. But  
24 they didn't.

25 So my suggestion, your Honor, is, you got to

1 get a proffer of testimony as to how he's going to  
2 go through -- how he's going to lay this predicate,  
3 competent, substantial, familiar, and fair market  
4 value in June of '07.

5           Once we hear that proffer, then we could decide  
6 whether we need his testimony so we can voir dire  
7 him outside the presence of the jury. That would be  
8 my request, but I don't -- I haven't heard anything  
9 to tell me other than he likes collecting and he  
10 bought a bunch. That he was a trader or knew what  
11 the fair market value of these 6,000 items were in  
12 June of 2007.

13           THE COURT: I heard your argument earlier,  
14 Mr. Chase, about the disclosure issue.

15           Anything else to add?

16           MR. CHASE: No, sir. I would join Mr. Shuker's  
17 argument.

18           THE COURT: Okay.

19           Mr. Benitez.

20           MR. BENITEZ: Your Honor, I've provided this  
21 case to the opposing attorneys before. It's a Fifth  
22 DCA.

23           THE COURT: Can you turn your microphone on.

24           MR. BENITEZ: Oh, sorry.

25           THE COURT: But I'll take that paper. Just

1 stand by the podium.

2 MR. BENITEZ: Yes, Judge.

3 Did I give you the one that's underlined? I  
4 shouldn't have.

5 THE COURT: It is not, Mr. Benitez.

6 MR. BENITEZ: Your Honor, and the point of that  
7 case is that, basically, an owner is able to testify  
8 as to the value of his property. This is all Mike  
9 Myers' property. As a matter of fact, the parties  
10 have even considered stipulating to the value of at  
11 one point in time, and there's no dispute really on  
12 the record, or otherwise, that this is the property  
13 of Mike Myers and Jacqueline Myers.

14 So those are not really -- I understand that  
15 it's -- that that's the discussions between the  
16 attorneys, but I bring it up for a point. We're  
17 bringing up at the time of trial arguments, like I  
18 haven't disclosed the experts.

19 They've known that Mike Myers is --

20 THE COURT: Set aside that issue, I'm not  
21 concerned about that issue.

22 MR. BENITEZ: Yeah. Okay.

23 But, Judge, in this case, Mike Myers has an  
24 extensive experience. You'll see that as soon as  
25 you go Friday and see the collection that he's



1       amassed.

2               That by itself is an indicator of the  
3       significant competency he has to testify as to value  
4       of the property in question. It can be subject to  
5       cross examination.

6               THE COURT: Did he overpay for it?

7               MR. BENITEZ: Did he what?

8               THE COURT: Did he overpay for his collection?

9               MR. BENITEZ: I don't know.

10              THE COURT: I don't, either.

11              And that's the problem. So that gets to the  
12       heart of what the issue is. What is it that he  
13       bases his thoughts or opinions on about the value of  
14       this property that belongs to him?

15              MR. BENITEZ: His extends --

16              THE COURT: Where does it come from?

17              MR. BENITEZ: From his experience.

18              THE COURT: What experience?

19              MR. BENITEZ: Experience of buying and selling  
20       the memorabilia, the petrobilia, and the  
21       automobiles, the antique automobiles.

22              THE COURT: So far I've heard experience of  
23       buying things. I haven't heard any experience of  
24       selling things.

25              And the point here is, are you going to be able

1 to lay a predicate for him to be able to establish  
2 that he has sufficient knowledge with the property,  
3 the characteristics, its uses and the purpose, and  
4 that he has experience in dealing with each of these  
5 pieces, 6,000 some-odd pieces of property.

6 So if he's -- I'm just going to use an example.  
7 This may be far out there. If he's got 10 Coca-Cola  
8 trays, okay. Was that -- when did he buy them. Has  
9 he -- 20 years ago. He's hung on to them.

10 What's --

11 MR. BENITEZ: Judge, he will testify, he can  
12 spend whatever time is necessary for him to  
13 adequately cross examine him with respect to that.  
14 But he is the owner of the property and he -- on top  
15 of that, it's not like even if --

16 THE COURT: The owner is a fragile presumption.  
17 The case law says so. Let's move you past the fact  
18 that he's the owner of this -- some of this  
19 property. He we'll talk about corporate issues in a  
20 minute. He is the direct owner of some this  
21 property.

22 What is his knowledge and experience base to be  
23 able to give his opinions about its value as of  
24 June 2007. Is that the degree? And that's the date  
25 that we're concerned with.

1 MR. BENITEZ: June 22, 2005.

2 THE COURT: 2000 --

3 MR. BENITEZ: 2007, your Honor.

4 THE COURT: So June 2007. What's his basis to  
5 be able to testify values as of June of 2007, for  
6 each piece of the collection?

7 MR. BENITEZ: Okay. Well, he could testify to  
8 that -- I don't have the particular knowledge with  
9 respect to exactly what he would be testifying to,  
10 Judge.

11 My point here is that the owner is entitled to  
12 give a value to his property. That's not a  
13 question, did Michael Myers and Jacqueline Myers own  
14 the property. Even though there's been  
15 conversations before the Court that, in fact, other  
16 entities may have owned it, they are the owners of  
17 the property. It hasn't been disputed.

18 THE COURT: How do you say that? It is  
19 disputed. These folks are saying that the  
20 corporations own some of that property.

21 MR. BENITEZ: Oh, I apologize. Then if we're  
22 talking about that, I'm kind of making my arguments  
23 on the assumption that the letter agreement and the  
24 operating agreement did not operate as a conveyance  
25 of their property. I'm assuming that we're right

1 before that. At the time of -- at the -- at the --  
2 yeah, I -- on July 7, 2005 -- '7, there's a dispute  
3 of whether, in fact, the Highway 46 owns the  
4 property or Mike Myers.

5 THE COURT: That's not the issue.

6 MR. BENITEZ: Okay.

7 THE COURT: There are two other corporate  
8 entities involved here.

9 MR. BENITEZ: Yes, your Honor.

10 THE COURT: Correct?

11 MR. BENITEZ: Yes, your Honor.

12 THE COURT: That own title to some of this  
13 property. The cars, for example, are not owned in  
14 Mike Myers' name, are they?

15 MR. BENITEZ: Yes, your Honor. And they're  
16 also owned --

17 THE COURT: All of the vehicles.

18 MR. BENITEZ: No, your Honor.

19 Some of them are owned by his son jointly with  
20 Mike Myers, Sean Myers. But there's no other  
21 corporate entity, that I'm aware of.

22 I thought you were alluding to the fact that if  
23 the letter agreement and the operating agreement --

24 THE COURT: No?

25 Isn't your contention, Mr. Shuker, that some of

1 this property is owned by corporate entities.

2 MR. SHUKER: Yes. From looking at some of the  
3 exhibits, it looked like it was.

4 THE COURT: Okay. So give me an example,  
5 please.

6 MR. CHASE: Also, your Honor, some of the  
7 titles attached to the letter agreement, titles to  
8 the vehicles are in Sean Myer's name alone. There  
9 are some that are Sean Myers and Michael Myers and  
10 there are some that are just Sean Myers.

11 THE COURT: Right. So those --

12 MR. SHUKER: Right.

13 THE COURT: So those are the kind of things, if  
14 he's not an owner, if he's not a record owner, some  
15 of these vehicles are in the name of Sean Myers  
16 only.

17 MR. BENITEZ: Agreed 100 percent. I don't  
18 believe -- I thought my pleadings were -- is one  
19 count Mike Myers, Jackie and Mike Myers and the  
20 other one is Mike Myers and Sean Myers. I don't  
21 believe that there's an allegation that we're  
22 seeking in this case.

23 There is a pending Seminole County case by Sean  
24 Myers for his own property that's titled under his  
25 name alone.

1 THE COURT: Here's the title --

2 MR. BENITEZ: Yes.

3 THE COURT: -- to a 1935 -- could be '36 -- I'm  
4 sorry, Ford four-door -- the most specifics I could  
5 see about the vehicle -- whose registered owner is  
6 Sean Michael Myers.

7 MR. BENITEZ: Right. And we're not alleging  
8 that -- we're not asking for a replevin of that  
9 vehicle or for a conversion of that vehicle.

10 If you look at my counts, my counts are divided  
11 into two counts. Count 1, all the property jointly  
12 owned by the Myers; Count 2, all the property owned  
13 jointly by Mike Myers and Sean Myers, which  
14 obviously that vehicle is not included.

15 THE COURT: All right. And a 1930-something  
16 Chevrolet two-door, same thing, Sean and Michael  
17 Myers.

18 MR. BENITEZ: That's subject to the Seminole  
19 County case that's pending.

20 MR. SHUKER: Your Honor, may I be heard?

21 THE COURT: Just one second.

22 There's an independent dealer license that was  
23 transferred. Are you seeking value for that?

24 THE COURT: There's an independent dealer  
25 license that was transferred. Are you seeking value

1 for that?

2 MR. BENITEZ: I think that's the liquor license  
3 you're referring to, Judge?

4 THE COURT: No. Independent. It's an  
5 independent dealer and owner vehicle license that  
6 was transferred. You're not seeking value for that.

7 MR. BENITEZ: No, not seeking anything. I  
8 think --

9 THE COURT: So the only thing you are  
10 representing to me that you're attempting to have  
11 Mr. Myers solicit or elicit opinions about value are  
12 those things that are titled either in his name  
13 personally or his name and Sean Myers personally.

14 MR. BENITEZ: Or Jackie Myers.

15 THE COURT: Or Jackie Myers.

16 How can he testify as to Jackie Myers if he's  
17 not the owner?

18 MR. BENITEZ: Because, I thought you mentioned  
19 jointly, so if she --

20 THE COURT: Joint between the two.

21 MR. BENITEZ: If Jackie Myers and Michael Myers  
22 are jointly, I think Mike Myers has every right to  
23 testify to the value.

24 THE COURT: If he is a title owner.

25 MR. BENITEZ: Title owner.

1 THE COURT: So now we are past the ownership  
2 issue, he owns for the moment, Mr. Shuker.

3 MR. SHUKER: No. I'm fine with it.

4 THE COURT: What qualifies him to express  
5 opinions of value for all 6,000 items as of June of  
6 2007, almost two years after he surrendered  
7 possession of this to Highway 46?

8 MR. BENITEZ: By the fact that the rule or the  
9 law is, and I quote, the rule allowing in order to  
10 testify regarding value of his properties is based  
11 on the owner's presumed familiarity with the  
12 characteristics of the property, his knowledge or  
13 acquaintance with its use and purpose. And  
14 experience in dealing with it.

15 He is the owner of the property, so I submit to  
16 the Court he is entitled to give his opinion with  
17 respect to the value. It's subject to cross  
18 examination, subject to qualifications raised by the  
19 opposing counsel. But he's entitled to give that  
20 value.

21 On top of that, Judge, normally, an owner  
22 doesn't have the kind of experience that Mike Myers  
23 has, but Mike Myers has extensive experience in  
24 dealing with memorabilia, in dealing with his own  
25 property. And he should be entitled to testify not



1 only to the memorabilia and the automobiles and the  
2 petrobilia, but also his own personal property that  
3 was taken, which includes air compressors, cords,  
4 all kinds of stuff.

5 THE COURT: Does he have experience dealing  
6 with that stuff, too?

7 MR. BENITEZ: He is the owner.

8 THE COURT: Okay. That's not enough.

9 And so, if that's what you're relying on, if  
10 that's the sole thing that you're relying on,  
11 Mr. Benitez, I've said this now multiple times,  
12 that's not enough.

13 MR. BENITEZ: All right.

14 THE COURT: Case law says -- and I'm looking  
15 now at the opinion that was provided by Mr. Shuker,  
16 this is in the Trailer Ranch versus Levine case at  
17 523 So.2d 629. An owner may ordinarily testify as  
18 to the value of the property owned.

19 However, the presumption that an owner is  
20 sufficiently familiar with property to give an  
21 admissible opinion as to its value is a fragile one.

22 If it be shown that the owner, or the agent of  
23 an owning corporation, as here, does not have such  
24 familiarity, the opinion evidence is not admissible,  
25 not a cross examination issue, but a threshold

1 predicate issue as to his familiarity.

2 And I think the case that you've cited gives us  
3 the level of familiarity that's required based on  
4 familiarity of the characteristics of the property,  
5 knowledge, or acquaintance with its uses and  
6 purposes, and his experience in dealing with it.

7 So if he bought these ten Coca-Cola trays  
8 20 years ago, and hasn't purchased anymore, hasn't  
9 sold any, hasn't done something to try to stay  
10 current in that market associated with those items,  
11 how is he competent to offer opinion testimony as to  
12 its value?

13 MR. BENITEZ: He is. He is competent to give  
14 that opinion testimony in this case because of the  
15 level of his knowledge. And he'll be subject to  
16 cross examination, Judge.

17 THE COURT: No. You keep saying that,  
18 Mr. Benitez, but I'm rejecting it outright because  
19 the case law rejects it outright. You have the  
20 burden of laying the foundation for the  
21 admissibility of the opinion first.

22 MR. BENITEZ: Judge, and just going back to the  
23 case that you cited, that Mr. Shuker cited, that  
24 he's talking about being familiar with the property,  
25 and I don't know what else to tell the Court. He

1 has extensive experience. He'll be able to testify  
2 to it.

3 We can proffer him, if the Court would like,  
4 but he's in a position where he should be able to  
5 give its value, his opinion testimony with respect  
6 to value.

7 THE COURT: Again, we chose not to address this  
8 issue by motion in limine, folks, I have no choice  
9 but to listen and rule on objections to the  
10 testimony.

11 If he's going to testify as to his knowledge  
12 and experience with respect to each of these 6,000  
13 issues, if that's how we choose to do this, that's  
14 fine, we've got 12 days. But I'm trusting you're  
15 going to be very efficient as we go through this  
16 process.

17 MR. BENITEZ: And, Judge, that was the whole  
18 purpose of trying to streamlining this case to go  
19 ahead and make it easier for the Court, but the  
20 Court has instructed me to go by each line item of  
21 the 6,000.

22 THE COURT: No, I'm not instructing you to do  
23 that, Mr. Benitez. The testimony does not matter to  
24 me. Okay. You have a case to put on in front of  
25 the jury. You need to prove your case, however it

1 is you choose to do that.

2 I've told you what I believe the evidentiary  
3 burden is under the case law. Do that in the  
4 fashion you want to do it. If you think they'll sit  
5 and listen to you do that for 6,000 separate items,  
6 that's up to you.

7 I can't compel the parties to agree to  
8 something. You're here to try your case, try your  
9 case.

10 Mr. Shuker.

11 MR. SHUKER: Your Honor, and, again, I  
12 apologize for not bringing the motion in limine  
13 sooner or not bringing it before. That's my error.

14 Would it help, and does it make sense, to do a  
15 voir dire of him outside the presence of the jury  
16 so --

17 THE COURT: It would take us all afternoon to  
18 do that.

19 MR. SHUKER: No. Just in general. Because  
20 from my perspective, if he hasn't seen or touched  
21 any of these items in two years, you'll make a  
22 ruling -- we believe that you'll make a ruling that  
23 he's not sufficiently familiar with it.

24 THE COURT: How long do you think this proffer  
25 will take?

1 MR. SHUKER: For me? Are you asking me or him?

2 THE COURT: I'm asking you.

3 MR. SHUKER: Oh, I would put him on cross  
4 examination and probably 15 minutes.

5 THE COURT: All right. Tell the jury, please,  
6 that we'll be here on the stand till 2 o'clock. I  
7 appreciate their patience.

8 Mr. Myers, take the stand, please.

9 (The following took place outside the presence  
10 of the jury.)

11 THE COURT: Okay, Mr. Benitez, please proffer  
12 what you would proffer as to his qualifications to  
13 opine to the value of the 6,000 items.

14 MR. BENITEZ: Yes, your Honor.

15 THE COURT: And I'll accept that he's the owner  
16 because that's all you're pursuing, so we need not  
17 pursue his ownership of the items.

18 BY MR. BENITEZ:

19 Q. Mr. Myers?

20 A. Yes, sir.

21 Q. You've been here while the Court has indicated  
22 that he wants you to go ahead and show your experience  
23 and knowledge with respect to your property.

24 Do you understand that?

25 A. Yes, sir.

1 Q. Okay. So I want to ask you a series of  
2 questions for the purpose of eliciting your experience  
3 and background.

4 A. Okay.

5 Q. So, go ahead and tell me when you first got  
6 involved -- and we're going to concentrate on the  
7 memorabilia as opposed to the antique cars or the  
8 petrobilia and so on.

9 A. Okay.

10 Q. The memorabilia, when did you first become  
11 involved in collecting or -- excuse me, in buying  
12 memorabilia?

13 A. In excess of 35 years.

14 Q. Okay. And what do you consider memorabilia?

15 A. Memorabilia is a term that's used loosely. But  
16 it could be a lot of things. I mainly use the term for  
17 anything that's old, vintage signs, advertising. Lots  
18 and lots of my stuff is antique advertising, porcelain  
19 signs.

20 I'm a big petrobilia, service station  
21 memorabilia, old furniture, coin op machines, coke  
22 machines, soda pop, all those things fall under the term  
23 memorabilia.

24 Q. And you said that you got involved in  
25 memorabilia when?

1 A. I've been collecting for over 35 years.

2 **Q. And how did you get started?**

3 A. By attending auctions, car shows, flea markets,  
4 sales, yard sales, petrobilia sales. You know, there's  
5 familiarity, some of the -- we have two big shows a year  
6 that really mark the prices of what current pricing is  
7 on memorabilia.

8 Jim Daniel's Auction in Sylvester, Georgia, is  
9 one of the largest that's used, and if a Coke machine, a  
10 model 44 sells --

11 **Q. Let me stop you for a second. You're going to**  
12 **have to go slower so everybody can keep track of exactly**  
13 **what you're saying.**

14 A. Okay.

15 **Q. So let's go back to the question that I just**  
16 **asked you, and let me break it down.**

17 You mentioned petrobilia in that response,  
18 correct?

19 A. Yes, sir.

20 **Q. Can you explain to the Court what petrobilia**  
21 **is?**

22 A. Petrobilia is a term that is used for gasoline  
23 and petroleum product advertising.

24 **Q. Okay. And so anything related to gasoline,**  
25 **gasoline pumps, gasoline signs would be petrobilia?**

1           A.     It could be a gas can.    Could be an  
2 advertisement.    Could be a glass face on a gas pump.  
3 Could be the type of pump that it is, the type of handle  
4 it is, the type of hose it is.

5           **Q.     And when did you start collecting petrobilia?**

6           A.     Same thing, 35 years ago, I worked as at a  
7 Shell station so my affinity for Shell products began my  
8 real boost in collecting petrobilia.

9           **Q.     And what did you do at the Shell station?**

10          A.     I was a service station, made \$12 a week.   Next  
11 to my school.

12          **Q.     And what did that entail?**

13          A.     That involved me selling gasoline for a dollar  
14 and 77 cents and cleaning windshields and changing oil  
15 and working.

16          **Q.     And then memorabilia, same thing, you've been**  
17 **involved for the last 35 years you've testified,**  
18 **correct?**

19          A.     Yes.

20          **Q.     And memorabilia, what would you include in**  
21 **memorabilia, would that be everything but petrobilia?**

22          A.     No.   It would be -- well, a lot of people would  
23 term anything old as memorabilia, but in my collection,  
24 it mainly refers to soda pop, all types of soda pop,  
25 older products, car related clocks, jewelry, cases,



1 vintage cases, refrigerators, signage, anything that is  
2 in those 1920s, '30s, '40s era.

3 **Q. And then license plates, antique license**  
4 **plates, do they have a specific name for it or --**

5 A. License plates by state, but, you know, when  
6 you are referring to an NOS, which means new old stock,  
7 it means that product has never been used, but -- it's a  
8 1930s item, but has never been used.

9 So there's a lot of products that's involved in  
10 this lawsuit that are new old stock items that are brand  
11 new items that have never been used, even though they  
12 were manufactured in those years of 1920, 1930s.

13 **Q. You mean that they were not used in the market,**  
14 **they were not --**

15 A. Correct.

16 **Q. -- bought and sold.**

17 A. Maybe they have. For instance, I have several  
18 Coca-Cola products that I purchased directly from the  
19 Coke museum that were new old stock items, they were  
20 made in the era, but have never been displayed or never  
21 been used.

22 **Q. And so, if we kind of narrow down the field,**  
23 **petrobilia, memorabilia, and Coke items, is there any**  
24 **other category that we can narrow down?**

25 A. Well, we've got a lot of soda pop, a lot of

1 what they call collectibles, license plates, clocks,  
2 fans, brass fans, porcelain fans, all types of things.  
3 Memorabilia -- one thing that's changed in the market  
4 that's really driven the prices up is the industrial  
5 decor, retro. People that are decorating, they use the  
6 license plates.

7 Now, it used to be in the old days a license  
8 plate was only sought after by a car or a garage guy.  
9 Now people are using them on their everyday decor, on  
10 their shelves in their homes, and every place. A lot of  
11 those prices have come up with that.

12 The biggest thing with memorabilia or  
13 petrobilia is the condition of the product. If you got  
14 something that's a 9.5 or above, it demands 150 percent  
15 more than the average price. If you got an item that's  
16 new old stock, means it has no imperfections whatsoever,  
17 so it's a perfect piece.

18 In Route 46, there were many, many new old  
19 stock items that were removed from the warehouse and  
20 people drilled holes in them, put them on their walls.  
21 They have been outside on the building. And they have  
22 taken the value of those products way down.

23 So a new old stock item must fit the parameters  
24 that it is a new old stock and has no imperfections in  
25 that product.

1           **Q.    And a new old stock is NOL?**

2           A.    NOS, new old stock.

3           **Q.    Got it.**

4           A.    So if you look at an advertisement on eBay or  
5 any auctions that they advertise NOS, a lot of  
6 collectors these days, especially your high-end  
7 collectors only collect NOS stuff. So unless it's 9.5  
8 or a 10, it's not what they're looking for.

9                   A lot of my stuff are 8 and a half and 9s,  
10 because a lot of the items I purchased for my own  
11 decorating collections.

12           **Q.    And how do you determine -- how do you**  
13 **determine a value for those items?**

14           A.    First of all, you have to inspect the item, see  
15 what condition it is. You have to rate it. And then  
16 see what the problem is. See what the demand is. You  
17 may have a new old stock item that is not sought after,  
18 so the value of that item is not going to be like a new  
19 old stock 1930 7Up sign or a 1930 Moxie sign because  
20 there's more people who want that specific item.

21           **Q.    And how long have you been doing this kind of**  
22 **work?**

23           A.    Well, seriously, you know, of course,  
24 collecting is -- requires financial resources. There  
25 was a point in time when it was nothing for me to spend

1 \$50,000 at an auction of petrobilia and memorabilia.

2 Q. Okay. Now, I've got a number of exhibits here  
3 that we put together, photographs of some of the  
4 memorabilia in your collection?

5 A. Yes, sir.

6 Q. Is that correct?

7 And I'm going to give you -- let me -- before I  
8 give you these, what about automobiles, antique  
9 automobiles, are you familiar with their value?

10 A. Yes, sir.

11 Q. And have you been dealing with them for a time?

12 A. I've -- probably ten, 12 street rides  
13 personally, I attend many, many car shows. I attend the  
14 Turkey Ride Run Auction 25 consecutive years in a row,  
15 I'm still associated with many of the car clubs. So,  
16 yes.

17 Q. That brings me, do you have -- those  
18 memorabilia collectors have an association or a group or  
19 an organization?

20 A. Yes.

21 Q. And what is the name of that?

22 A. It's -- usually it's done by the clubs. For  
23 instance, we've got a regional Orlando Coca-Cola club.  
24 We're having a National Coca-Cola Conference this summer  
25 here in Orlando, in the summer, and it will be bring

1 tens of thousands of people to Orlando because of the  
2 Coca-Cola National Collectors meeting.

3 **Q. Do you hold a position in that organization?**

4 A. I am the vice president of the local Coca-Cola  
5 club, two years ago.

6 **Q. And have you had other positions in other  
7 similar organization --**

8 THE COURT REPORTER: I didn't get your whole  
9 question. Do you want to repeat it?

10 **Q. Have you held other positions, similar  
11 positions?**

12 A. Yes, I served as officers in car clubs.

13 **Q. And can you please give the Court some idea of  
14 what those clubs were, when they were, and what their  
15 purpose was?**

16 A. For instance, we were charter members of the  
17 Time Travelers. That started in Sanford.

18 THE COURT: What was that, sir?

19 THE WITNESS: That was -- the first membership  
20 was probably 1982.

21 THE COURT: What have you done for them lately?

22 THE WITNESS: Well, my son owns a BMW Porsche  
23 performance shop, so we're active in the Porsche  
24 club, Porsche PCA. And the local car people we put  
25 on a meeting every Friday night that we sponsor,

1 includes Ferraris, Porsches, BMWs, vintage cars. So  
2 we sponsor two major meets a year. So I would say  
3 I'm pretty involved.

4 THE COURT: Vintage Porsches, vintage BMWs.

5 THE WITNESS: BMWs and other cars, too.

6 Anybody that's got a nice vintage car. We have  
7 Chevrolets, convertibles in our -- I own a '25  
8 Chevrolet. I only a '25 Model T Ford. I've got a  
9 '38 Chevrolet sedan. I've got a '34 Chevy coupe.  
10 I've got various pickup trucks from 1941, 1928, 1927  
11 Chevrolet.

12 THE COURT: These are all vehicles that were  
13 not transferred to Highway 46?

14 THE WITNESS: That's correct.

15 THE COURT: Okay. You told me a lot about your  
16 buying experience.

17 THE WITNESS: Okay.

18 THE COURT: How about the other side of things?

19 THE WITNESS: Selling. I have a -- all of my  
20 street rides through the years were built on  
21 Coca-Cola. So when I went to a car show, if it was  
22 in Moultrie, Georgia, or Savannah or Atlanta, when I  
23 was at those shows, I was a buyer.

24 If you talk to the people who are major buyers  
25 and purchasing memorabilia and you mention my name,

1           there's nobody that does not know Mike Myers. I  
2           have people that I'm on the phone with on Sunday  
3           nights.

4                   I just was in Ormond Beach and visited one  
5           collector, but I probably know 90 percent of all the  
6           regional collectors in America.

7                   THE COURT: My question was about selling  
8           experience, sir.

9                   THE WITNESS: Okay. Well, I guess -- and my  
10          comment, I didn't finish, Judge, I'm sorry. All my  
11          street rides were based built on my selling of  
12          Coca-Cola and soda pop products. So I would buy the  
13          products, sell the products, and bid on the cars.

14                  THE COURT: All right.

15          **Q. And would that include your other memorabilia,**  
16 **you would buy and sell?**

17          A. Yes, sir.

18          **Q. And are you familiar with their value back in**  
19 **2007?**

20          A. A lot of those items that are priced are  
21 directly from the original receipt. So a comment was  
22 made on --

23                  THE COURT: Sir.

24                  MR. BENITEZ: No.

25          A. Am I familiar? Yes. Am I familiar with the

1 2007? Yes.

2 THE COURT: Okay. How?

3 THE WITNESS: Depending on what the product is,  
4 if it's porcelain signs, those have increased about  
5 7 and a half percent per year. If it's a new old  
6 stock item, they've increased about 18 percent per  
7 year based on the product and what it is. If it's a  
8 metal tin sign, of course, it's determined if it's a  
9 flat sign or an embossed sign. So those prices,  
10 some of the items have lost value, a lot of the  
11 petrobilia have come down in prices, you know.

12 In 19 -- in 2007, a Coca-Cola '44, which is the  
13 smallest, most sought after Coca-Cola machine, you  
14 could not find one for less than 5,000. I could go  
15 out and buy one today for 3,000.

16 So they've actually dropped in value because of  
17 the demand, you know, as the older people that were  
18 so acclimated to those visibilities and those  
19 advertising products, they're dying off, they're  
20 losing interest. So some of those products are not  
21 worth what they used to be.

22 The petrobilia that are the porcelain signs.  
23 The bigger signs, the decor pieces, have just  
24 escalated. If it's a new old piece, it is 20 times  
25 what it was worth in 2007. It just depends on the



1 product.

2 If you bought a Hyundai in 19 -- in 2007, it's  
3 not worth very much right now. If you bought a  
4 Ferrari, it's worth a lot.

5 THE COURT: I'm not concerned about what  
6 happened to the value between 2007 and today. I'm  
7 concerned about the value in 2007.

8 THE WITNESS: Put it this way, your Honor, I  
9 don't know who would be more fitting that you could  
10 bring into this courtroom to understand those values  
11 than me.

12 THE COURT: I'm sure you feel that way.

13 All right. Anything else?

14 BY MR. BENITEZ:

15 **Q. What other experience do you have other than**  
16 **what you just mentioned to the court, with respect to**  
17 **buying and selling memorabilia, petrobilia, and antique**  
18 **cars?**

19 A. It's like my children, you know, my petrobilia  
20 is my most number one hobby. It's what I do when I'm  
21 not working, I watch it on the Internet, I watch it on  
22 eBay. I watch it. I love it. I work on it. I restore  
23 it. It's what I do.

24 **Q. Okay. And you've -- as part of this case,**  
25 **you've gone ahead and put lists together with the values**

1 of the property, correct?

2 A. Yes, sir.

3 Q. And you've also put together photographs of the  
4 property?

5 A. Yes, sir.

6 Q. Is there -- if I was to show you -- if anybody  
7 here was to show you an item from any of the photographs  
8 that we have, would you be able to give it a value?

9 A. Yes, sir.

10 Q. Okay.

11 MR. BENITEZ: I can maybe let them do it.

12 THE COURT: I'm sure they might.

13 MR. BENITEZ: They're going to do it.

14 THE COURT: I'm sure he will.

15 BY MR. BENITEZ:

16 Q. With respect to organizations and -- membership  
17 and organizations, sir, positions as an officer, are  
18 there any others that you haven't mentioned to the Court  
19 yet?

20 A. Not that would be relative to this.

21 MR. BENITEZ: Okay, thank you.

22 THE COURT: Cross? Mr. Shuker.

23 MR. SHUKER: May I inquire, your Honor?

24 THE COURT: You may.

25 MR. SHUKER: The CD ROM that has the list of

1 items that's already admitted in evidence, can you  
2 pull it?

3 MR. CHASE: You're actually pulling up the  
4 inventory, the CD ROM was attached to the.

5 THE COURT: Operating agreement.

6 MR. CHASE: Yes, sir. What's being pulled up  
7 right now is the inventory that was performed by  
8 Highway 46.

9 THE COURT: Is that on the thumb drive?

10 MR. CHASE: Yes, sir. It's now been copied to  
11 here and the thumb drive is back up here. But what  
12 he's getting ready to get --

13 MR. SHUKER: Let me move over here and go on  
14 while you do that. I have other things. I don't  
15 want to lose time.

16 CROSS-EXAMINATION

17 BY MR. SHUKER:

18 **Q. Mr. Myers, just -- just tell me when it comes**  
19 **up -- I heard you on direct say that the most important**  
20 **thing you do when you value this is to inspect it,**  
21 **correct?**

22 A. Yes, sir.

23 **Q. How many of those petrobilia signs did you**  
24 **inspect in June 2007?**

25 A. In June of 2007? Every single one.

1 Q. You went into the warehouse in June 2007?

2 A. In 2007?

3 Q. Yes.

4 A. Yes, sir. I dealt with them every day.

5 Q. No, no. Weren't they in the warehouse?

6 A. Yes, sir. That's where I was working out of.

7 Q. And so you went and inspected them?

8 A. I was there with them, living, breathing, right  
9 there.

10 Q. Okay. And did you make notes of that  
11 inspection?

12 A. For what purpose, sir?

13 Q. What quality you found them in in June 2007?

14 A. If I had purchased those products, I knew what  
15 they were.

16 Q. Okay. And let's take a couple of the bigger  
17 ticket items. Are the cars more expensive, in general,  
18 and valuable than little signs?

19 A. Of course.

20 Q. So there's a 1938 Chevrolet sedan, what was it  
21 worth in June 2007?

22 A. Approximately -- a '38 Chevrolet?

23 Q. Yup.

24 A. \$16,000.

25 Q. And what do you base that on?

1 A. What I base it on?

2 **Q. Yes.**

3 A. That's probably based on the price that -- what  
4 they were selling for on that day when I bought it.

5 **Q. Selling that day when you bought it, I don't**  
6 **understand.**

7 A. In June --

8 **Q. Of 2007?**

9 A. It was just based on what the -- what the  
10 demand -- how many of those were available, how many  
11 people were looking for a 1938 Chevrolet.

12 **Q. I guess I don't understand. Maybe I'm not**  
13 **asking the question properly.**

14 **You didn't buy that item in June 2007, correct?**

15 A. Did you ask me what it would be worth in 2007?

16 **Q. And you hadn't sold one of these items since**  
17 **then, have you?**

18 A. There's not many '38 Chevrolet sedans around.

19 **Q. So the answer to my question is no, you haven't**  
20 **sold one?**

21 A. No, sir.

22 **Q. And so then, in June 2007, how did you come up**  
23 **with that value that you gave me?**

24 A. How did I come up with the value?

25 **Q. Yeah. You said in June 2007, that sedan was**

1    **worth \$16,000, right?**

2           A.    Yes, sir.

3           **Q.    Why?**

4           A.    Because that was -- that was what a vehicle of  
5   that type, based on what the demand of that vehicle was,  
6   would be worth.

7           **Q.    And what do you base it on?**

8           A.    Well, it's based on condition -- I'm assuming  
9   that you are talking about the '38 Chevy that I own?

10          **Q.    Yes.**

11          A.    So that car is an original 6-cylinder car that  
12   has not been restored.  It's been painted.

13          **Q.    Did anybody offer to buy that from you in  
14   June 2007?**

15          A.    It was not for sale.

16          **Q.    Do you know of any other sales of them in  
17   June 2007?**

18          A.    No, sir.

19          **Q.    So, again, you have no idea what the value of  
20   that car was in June 2007?**

21          A.    I base it on what I viewed when I went to  
22   auctions and sales, and other cars.

23          **Q.    How many auctions did you go to in 2007, when  
24   that '38 Chevy sedan --**

25          A.    In that month?

1 Q. Yes.

2 A. None.

3 Q. Okay. In three, four months, how many Chevy  
4 sedans did you see auctioned?

5 A. Probably five, six.

6 Q. '38 Chevy sedans?

7 A. I looked at four or five '38 sedans the other  
8 day on the Internet.

9 Q. No, no, within June 2007?

10 A. I probably didn't look at any. I was probably  
11 busy.

12 Q. So 25 museum port purchase -- Myers 25 museum  
13 purchase Chevrolet Cabriolet, what was the value of that  
14 in June 2007?

15 A. That's a real rare car. I would say probably  
16 25, \$28,000.

17 Q. What was that based on, what's your opinion?

18 A. Based on the fact that in that particular car,  
19 it has a Chevrolet Brothers steering wheel. It's in  
20 excellent, perfect condition. It was restored. It was  
21 a 97 Point car that was purchased out of Tallahassee,  
22 Florida.

23 Q. How many of those type of cars did you sell in  
24 the year preceding June 2007?

25 A. None, sir.

1           Q.    How many have you sold in the year subsequent  
2 to June 2007?

3           A.    I haven't because they were repossessed and  
4 taken.

5           Q.    Have you -- so the answer is none?

6           A.    None.

7           Q.    Let's try and answer my question, sir.

8           A.    Yeah.

9           Q.    And did you look at any learned treatises in  
10 June 2007, to determine what the value of either of  
11 those cars were?

12          A.    No, sir.

13          Q.    And did you talk to any people who regularly  
14 bought and sold those type of cars back in June 2007, as  
15 to what those values would be?

16          A.    I talked to people in the exchange, but, no,  
17 not on that particular car.

18          Q.    So, basically, you're just saying, in general,  
19 your knowledge of antiques allows you to then pick a  
20 number out of the air for that value? You didn't buy or  
21 sell anything similar to it in the year preceding or  
22 succeeding the June 2007, right?

23          A.    No, sir.

24               MR. SHUKER: Your Honor, we would offer that he  
25 is not qualified to give opinion as to values



1 without some experience in selling.

2 THE COURT: Mr. Chase, any questions?

3 MR. CHASE: Judge, I think it would be  
4 cumulative. I don't know if it would help the  
5 Court. What I would do is, I would go through the  
6 inventory and I would pick random items and say how  
7 many of these did you sell in and around June. They  
8 would be cumulative, I think, to that.

9 THE COURT: You know, I appreciate that that  
10 might be the best evidence, but it's not necessary.  
11 I mean, that would -- on that theory, I could never  
12 estimate the value of my home as an owner of my  
13 home. I haven't bought or sold a home in too long.  
14 You know, 18 years. But I have -- I know very well  
15 what the value of my house is. And it's predicated  
16 upon the types of things that Mr. Myers has  
17 indicated.

18 So I'm inclined to allow the testimony. If  
19 there's specific items for which you raise  
20 challenges, we can address those specific things.  
21 But, otherwise, I think there's been sufficient  
22 predicate laid to allow him to express his opinion  
23 about the value.

24 On the other issue that you had raised,  
25 Mr. Chase, I gave you short drift in speaking with

1 counsel, but I do think this is a unique context,  
2 where the owner is the one who's expressing the  
3 opinions, and that I don't believe it's necessary,  
4 even under our expert disclosures, to make a  
5 disclosure of that fact. I think it's easy enough  
6 to learn those things and probably should've been  
7 anticipated where there's been no expert disclosed.

8 MR. CHASE: Thank you, sir.

9 THE COURT: All right.

10 MR. BENITEZ: Judge, can I ask a question?

11 I'm faced with the dilemma of either going  
12 through all the items individually, which is a  
13 daunting task that I don't -- I don't want to impose  
14 on anybody or myself, and I just want to kind of get  
15 clarification from the Court.

16 My position is going to be to generally elicit  
17 information with respect to the entire memorabilia,  
18 as far as then price, and letting it then be subject  
19 to cross examination.

20 I know that's kind of a trial tactic or  
21 technique, or whatever you want to call it, but I'm  
22 asking for the Court's guidance if, in fact, I'm  
23 allowed to do that, and at least put it in front of  
24 the jury, the value of his qualifications, and then,  
25 move on.

1           But I am prepared, based on everything that I  
2   put together, to go through line item by line item,  
3   but that is -- that's not going to be easy.

4           THE COURT:  It's not.  I'm here for 12 days.

5           MR. BENITEZ:  After 12 days, we don't have any  
6   more days.

7           THE COURT:  I understand.

8           MR. BENITEZ:  So --

9           THE COURT:  This isn't an issue of my creating.  
10   Mr. Benitez.  You knew this coming in.  And we had  
11   ways to try to resolve it, but haven't done so.

12          MR. BENITEZ:  And we tried.  We were close.

13          THE COURT:  Well --

14          MR. BENITEZ:  Can't --

15          THE COURT:  You make an attempt and a method,  
16   but there are other methods that could be utilized  
17   in the eight years that this case is pending to try  
18   to determine these types of issues, and we sit here  
19   in trial and resolve them.

20          If y' all have a conversation and see if you  
21   could reach an agreement.

22          MR. BENITEZ:  Can we have ten minutes.

23          THE COURT:  You could have five minutes.  This  
24   jury's coming back here at ten minutes after 2.

25          (Discussion held off the record.)

1 THE COURT: Do you have a stipulation you're  
2 going to enter into?

3 THE DEPUTY: Jury in.

4 (Jury entering.)

5 THE COURT: All right. Thank you.  
6 You may be seated.

7 Members of the jury, I want to thank you again  
8 for your patience.

9 At this time, the parties have agreed to  
10 certain facts. And the parties are going to read a  
11 stipulation onto the record. You are to accept this  
12 fact as true. Okay. As if it's been proven.

13 MR. CHASE: Yes, sir. If it pleases the Court,  
14 the parties have reached an agreement that there  
15 are -- that on the Route 46 property and the  
16 Highway 46 Holdings property that includes a  
17 warehouse, that we're all going to go to on Friday,  
18 there's two warehouses on the property that the  
19 building sits on.

20 And in those two warehouses, there is a ton of  
21 memorabilia, there is a ton of antique cars,  
22 personal property and everything. The total value  
23 of everything on that property and in those two  
24 warehouses is \$3.6 million. That does not include  
25 the land itself and the buildings on the land.

1 Correct, Mr. Benitez?

2 THE COURT: Is that correct, Mr. Benitez?

3 MR. BENITEZ: Judge, if I can have a side bar.

4 THE COURT: Yes, you may.

5 (A conference was held at the bench outside of  
6 the hearing of the jury.)

7 THE COURT: I thought that was in the bag.  
8 What happened?

9 MR. BENITEZ: It was, but we just got to it and  
10 we hadn't written anything down. We got as far as  
11 this, and I hadn't -- and he's complaining now that,  
12 in fact, the 3.6 doesn't include the personal  
13 property.

14 MR. CHASE: It's everything personal.

15 MR. BENITEZ: That's why --

16 THE COURT: Everything there except the land.  
17 And you signed it. What's left?

18 MR. BENITEZ: Huh?

19 THE COURT: That's everything.

20 MR. BENITEZ: He's saying that he thought we  
21 were talking about a number of memorabilia.

22 THE COURT: That's not what that says.

23 MR. BENITEZ: I understand that that's not what  
24 it says, and that's my initials. I'm just telling  
25 the Court as soon as we got a deal, before we even

1 had a written stipulation there, was announced that  
2 there was a stipulation, we rushed through it. And  
3 that's my --

4 THE COURT: Okay. But that's the stipulation,  
5 it's signed.

6 MR. BENITEZ: Okay.

7 THE COURT: Well, my job is to enforce  
8 stipulations.

9 Tell me where the ambiguity is.

10 MR. BENITEZ: Because we were talking about  
11 memorabilia.

12 THE COURT: No, this is the written agreement.

13 MR. BENITEZ: Right.

14 THE COURT: Where's the ambiguity?

15 MR. BENITEZ: The ambiguity comes in as to what  
16 everything is.

17 THE COURT: All right.

18 MR. BENITEZ: And, Judge, the only other  
19 problem we're going to have, that we should have  
20 resolved, is what -- how that breaks down. Because  
21 the problem is -- this is where the problem's coming  
22 in. That he thought he was talking about the  
23 antiques and the memorabilia and not the personal  
24 property that's been taken.

25 So even though we've got a figure of 3.6, we

1 got to figure out -- let's assume the stipulation  
2 stays. We need to figure out what's personal  
3 property and what's memorabilia.

4 THE COURT: He can testify to that out of  
5 3.6 million. But that's the number that he's  
6 stipulated to.

7 MR. BENITEZ: Well, I --

8 THE COURT: Mr. Benitez, you made a deal. And  
9 when you make a deal, you stand by your deals.

10 MR. BENITEZ: But, Judge, it happened real  
11 quick.

12 THE COURT: This is a contract. It's a written  
13 contract.

14 I want that filed with the clerk.

15 MR. CHASE: Yes, your Honor.

16 THE COURT: Okay. And that's the law. My job  
17 is to enforce stipulations.

18 MR. CHASE: Should we redact that? That was my  
19 notes for the --

20 THE COURT: Just tear it off or cut it off or  
21 something.

22 MR. CHASE: Yes, sir.

23 THE COURT: I mean, that's the deal.

24 MR. BENITEZ: But the problem is that Mr. Myers  
25 had not confirmed the deal when I came back.

1           Apparently, he was under a misconception. I  
2    hate to do this because I'm the one that wanted to  
3    get something worked out. So I'm the guy that's  
4    favoring getting this resolved.

5           THE COURT: So what do you propose I do?

6           MR. BENITEZ: What I would have proposed would  
7    be to give me some -- a few minutes with Mike Myers  
8    so I can put him at ease. And mostly since he's  
9    going to be taking the stand.

10          THE COURT: The jury at this point has  
11    technically been waiting longer than they've been  
12    listening to testimony today. And it's 2:25 in the  
13    afternoon, and now you want some more time to  
14    assuage your client's feelings that you did or did  
15    not have authority to enter -- did you have  
16    authority to enter the deal?

17          MR. BENITEZ: The way it went down --

18          THE COURT: This is a yes or no question, did  
19    you have authority to enter the deal?

20          MR. BENITEZ: Apparently not, based on what  
21    Mr. Myers is saying.

22          THE COURT: Okay, I'll take the break and I'm  
23    going to inquire.

24                 (Bench conference concluded.)

25          THE COURT: Ladies and gentlemen, I'm sorry,



1 but I'm going to have to ask you to step back into  
2 the jury room again while we resolve an issue.

3 Again, I appreciate your patience. And,  
4 hopefully, this is going to save us some time.

5 (Jury exiting.)

6 THE COURT: Mr. Myers, come take the stand,  
7 please.

8 MR. BENITEZ: Judge, do you mind if I talk to  
9 him first. I think it may be worth it.

10 THE COURT: Yes, please talk to him.

11 MR. BENITEZ: Thank you.

12 Mr. Myers --

13 THE COURT: I've never experienced this in a  
14 trial.

15 (Discussion held off the record.)

16 THE COURT: Back on the record, Mr. Benitez.

17 MR. BENITEZ: Yes, your Honor. Conferring with  
18 my client, he's agreed to the stipulation of 3.6,  
19 and my understanding of the stipulation that  
20 includes the personal property, the memorabilia, and  
21 the autos, all put together is for the -- Mike Myers  
22 apportion that accordingly.

23 THE COURT: All of the contents, in essence.

24 MR. BENITEZ: Yes, your Honor.

25 THE COURT: And is he going to be able to

1 appportion that?

2 MR. BENITEZ: Yes, your Honor.

3 THE COURT: All right. Okay.

4 All right. What I would like to do is, hang  
5 on, let's take two minutes. And I want you to write  
6 out the stipulation, and I want it to be read again  
7 to the jury, so it's clear what it is that's being  
8 agreed to.

9 Does your client know the breakdown right now,  
10 Mr. Benitez, on personal property versus the  
11 memorabilia, petrobilia and other contents?

12 MR. CHASE: Can I see, Judge, the other Number  
13 1 in evidence so that I can quote that language?

14 I see it. Thank you.

15 THE COURT: Yes.

16 MR. CHASE: He's not going to agree to a  
17 quote --

18 (Discussion held off the record.)

19 THE COURT: Let's go on the record.

20 All right. Have the parties reached a written  
21 stipulation that will be read to the jury?

22 MR. CHASE: This stipulation doesn't affect  
23 Sean's cars. It doesn't affect any automobiles  
24 titled solely to Sean Myers.

25 MR. BENITEZ: With that understanding, Judge,

1     yes, we do have a stipulation.  And I will sign it  
2     at this time on behalf of my clients.

3             MR. CHASE:  Thanks, Gus.

4             THE COURT:  With your client's authority.

5             MR. BENITEZ:  Yes, your Honor, I do have my  
6     client's authority.

7             MR. CHASE:  And I have signed it on behalf of  
8     Highway 46 Holdings and Don Hachenberger, with their  
9     authority, sir.

10            And Don Hachenberger, sitting here to my left,  
11    is acknowledging the same.

12            THE COURT:  Are you prepared to read that to  
13    the jury?

14            MR. CHASE:  Yes.

15            THE COURT:  Is Glenda a party to that as well?

16            MR. SHUKER:  Yes.  As much as I'd like to spend  
17    eight days going through signs.

18            THE COURT:  Let's return the jury.

19            MR. CHASE:  I'm sure you want me to file this  
20    with the clerk when I'm done.

21            THE COURT:  I want you to read it and file it,  
22    yes, please.

23            THE DEPUTY:  Jury's entering.

24            (Jury entering.)

25            THE COURT:  All right.  Thank you.

1           You may be seated.

2           Members of the jury, when you were last here a  
3 moment ago, we started to read a stipulation to you.  
4 We now have refined a stipulation a little bit in a  
5 way that is going to save us a tremendous amount of  
6 time.

7           And so the parties are agreed to the facts that  
8 are a part of this stipulation and, again, must  
9 accept these facts as true.

10          Mr. Chase.

11          MR. CHASE: Yes, sir, strictly as it relates to  
12 Case Number 2008 CA 1466 in Circuit Court in and for  
13 Orange County, Florida, the parties stipulate as  
14 follows:

15           The total value of all memorabilia, petrobilia,  
16 antique autos, and personal property currently in  
17 possession of Highway 46 Holdings, LLC, located on  
18 State Road 46, in Sanford, comma, the Church Street  
19 Warehouse, and Bobby Lee Point Warehouse, is  
20 \$3.6 million.

21          THE COURT: Thank you.

22          We'll file that stipulation with the clerk,  
23 please.

24          MR. CHASE: Yes, sir.

25          THE COURT: Okay. I believe we were

1 interrupted in the testimony of Mr. Myers.

2 Mr. Myers, if you'll come return to the stand,  
3 please.

4 Mr. Benitez, you may resume.

5 MR. BENITEZ: Thank you, your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. BENITEZ:

8 **Q. Mr. Myers, I want to refer your attention back**  
9 **to the July 7, 2005 -- or 2005 meeting with Kevin**  
10 **Donaghy. Okay?**

11 A. Yes, sir.

12 **Q. So, at that meeting, did Kevin Donaghy tell you**  
13 **that the letter agreement was a preliminary draft?**

14 A. Yes, sir.

15 MR. CHASE: Objection, parole evidence.

16 THE COURT: Overruled.

17 Go ahead.

18 **Q. Did Kevin Donaghy, on July 7, 2005, tell you**  
19 **that the operating agreement was a preliminary draft?**

20 A. Yes, sir.

21 MR. CHASE: Objection, relevance -- I'm sorry,  
22 not relevance, parole evidence.

23 THE COURT: Same ruling.

24 **Q. On July 7, 2005, did Kevin Donaghy tell you**  
25 **that the letter agreement was nonbinding?**

1 A. Yes, sir.

2 MR. CHASE: I'm sorry. Objection, parole  
3 evidence.

4 THE COURT: Overruled.

5 Go ahead, sir.

6 MR. BENITEZ: I think he answered, Judge.

7 A. Yes, sir.

8 THE COURT: Okay, thank you.

9 **Q. On July 7, 2005, did Kevin Donaghy tell you**  
10 **that the operating agreement was not binding?**

11 MR. CHASE: Objection, parole evidence.

12 A. Yes, sir.

13 THE COURT: Mr. Myers, you can see that  
14 Mr. Chase is standing, he's prepared to make an  
15 objection. If you can pause before you answer,  
16 please.

17 THE WITNESS: Okay.

18 THE COURT: That way we make sure I could rule  
19 on the objection before you answer.

20 THE WITNESS: Yes, sir.

21 THE COURT: The objection is overruled.

22 Go ahead, please.

23 MR. CHASE: Thank you.

24 BY MR. BENITEZ:

25 **Q. On July 7, 2005, did Kevin Donaghy tell you**

1 that the letter agreement was a working copy, a work in  
2 progress?

3 MR. CHASE: Objection, parole evidence.

4 THE COURT: Overruled.

5 A. Yes, sir, he did.

6 Q. On July 7, 2005, did Kevin Donaghy tell you  
7 that the operating agreement was a work in progress?

8 MR. CHASE: Objection, parole evidence.

9 THE COURT: Overruled.

10 A. Yes, sir, he did.

11 Q. On July 7, 2005, did Kevin Donaghy tell you  
12 that even if you sign the letter agreement or the  
13 operating agreement, that they would still be  
14 nonbinding?

15 MR. CHASE: Objection, parole evidence.

16 THE COURT: Overruled.

17 A. Yes, sir, he did.

18 Q. Did Kevin Donaghy on July 7, 2005, tell you  
19 that if you signed the letter agreement and the  
20 operating agreement, they would not be enforceable  
21 against you?

22 MR. CHASE: Objection, parole evidence.

23 THE COURT: Overruled.

24 A. Yes, sir, he did.

25 MR. CHASE: I'm going to object to leading as

1 well. He's just taking him through with the  
2 statements that were made.

3 THE COURT: Overruled.

4 Go ahead.

5 MR. CHASE: Thank you, Judge.

6 Q. On July 5th, or July 7th, 2005, did Kevin  
7 Donaghy tell you that the letter agreement that you  
8 signed and that Jackie Myer signed would remain in his  
9 possession and not be given to either Donald  
10 Hachenberger or Glenda Hachenberger?

11 MR. CHASE: Objection, parole evidence.

12 THE COURT: Overruled.

13 MR. CHASE: And objection, leading.

14 Q. Make sure you look this way. I know you're  
15 looking at me, Mr. Myers, try to look over there,  
16 because there may be an objection.

17 THE COURT: Overruled.

18 Go ahead.

19 A. Yes, sir, he did.

20 Q. On July 7, 2005, did Kevin Donaghy tell you  
21 that until you had a meeting of the minds with Donald  
22 Hachenberger and Glenda Hachenberger regarding your  
23 joint venture, that there would be no binding agreements  
24 and that the letter agreement would not be binding?

25 MR. CHASE: Objection, parole evidence.



1           Objection, compound question.

2           Objection, leading.

3           THE COURT: Overruled.

4           MR. BENITEZ: Withdraw with respect to --

5           THE COURT: Overruled.

6           Go ahead.

7           A. Yes, sir, he did, he told me that.

8           **Q. Did Kevin Donaghy on July 7th, 2005, also tell**  
9 **you that without your authorizations, the letter**  
10 **agreement or the operating agreement would not be**  
11 **released from escrow?**

12           MR. CHASE: Objection, parole evidence and  
13 leading.

14           THE COURT: Overruled.

15           A. Yes, sir, he did.

16           **Q. Did Kevin Donaghy on July 7, 2005, tell you**  
17 **that he was going to schedule a meeting with Donald**  
18 **Hachenberger and yourself to resolve issues?**

19           MR. CHASE: Objection, parole evidence and  
20 leading.

21           THE COURT: Overruled.

22           A. Yes, sir, he did.

23           **Q. On July 7th, 2005, did Kevin Donaghy tell you**  
24 **that the remaining issues between you and Donald**  
25 **Hachenberger and Glenda Hachenberger would be resolved**

1 through negotiations?

2 MR. CHASE: Objection, parole evidence and  
3 leading.

4 THE COURT: Overruled.

5 Go ahead, sir.

6 A. Yes, sir.

7 Q. Did Kevin Donaghy tell you on July 7, 2005,  
8 that the operating agreement and letter agreement would  
9 be redrafted or corrected as necessary before being  
10 released?

11 MR. CHASE: Objection, parole evidence and  
12 leading, sir.

13 THE COURT: Overruled.

14 A. Yes, sir, he did.

15 Q. Was there ever a follow-up meeting to discuss  
16 the letter agreement and the operating agreement with  
17 Kevin Donaghy after July 7, 2005?

18 A. No, sir.

19 Q. Did you understand as you left July 7, 2005,  
20 the meeting with Kevin Donaghy on that day, that there  
21 was not a binding agreement with respect to the letter  
22 agreement?

23 MR. CHASE: Objection, relevance.

24 THE COURT: Sustained.

25 Q. Now, the -- I previously showed you Exhibit 1,

1 correct?

2 A. Yes, sir.

3 THE COURT: For the record, that's  
4 Plaintiffs' 1.

5 Q. Did anybody ever give you a copy of all these  
6 documents before you were served with a lawsuit in this  
7 case?

8 A. No, sir.

9 Q. Had you seen any of these documents signed by  
10 Donald Hachenberger or Glenda Hachenberger before you  
11 were served with a lawsuit in this case?

12 A. No, sir.

13 Q. Now, you were the -- you indicated to the jury  
14 that on May of 2005, Highway 46 Holdings, LLC was  
15 organized, correct?

16 A. Yes, sir.

17 Q. Were you appointed a comanager to Highway 46  
18 Holdings, LLC in May of 2005, when it was organized?

19 A. Yes, sir.

20 Q. Did you perform your duties as a manager for  
21 the Highway 46 Holdings, LLC all the way up to the time  
22 that you were terminated on June 27, 2007?

23 A. Yes, sir.

24 Q. Are you aware that there's annual reports due  
25 every year for a limited liability company?

1 A. Yes, sir.

2 Q. And were you updated the information for the  
3 managers or the officers of the company?

4 A. Did I update it?

5 Q. No, no. Are you aware that that's a fact?

6 A. Yes, sir, annually. We do that annually.

7 Q. So Tallahassee gives you annually a request to  
8 file an annual report, correct?

9 A. Yes, sir.

10 Q. And you -- and were there annual reports filed  
11 for the year 2006, for Highway 46 Holdings, LLC?

12 A. Yes, sir.

13 Q. And who were indicated as the managers in  
14 that -- well, let me rephrase it.

15 You were one of the managers for Highway 46  
16 Holdings, LLC, correct?

17 A. Yes, sir.

18 Q. The other manager was Donald Hachenberger,  
19 correct?

20 A. Yes, sir.

21 Q. And who filed the annual report for 2006, if  
22 you know?

23 A. I don't know. It was done, I'm assuming, by  
24 Don.

25 Q. And then, for 2007, the annual?

1           MR. CHASE: Objection, speculation, to the  
2           answer.

3           THE COURT: Untimely. Move on.

4           **Q. For 2007, the annual report was -- was the**  
5           **annual report filed for Highway 46 Holdings, LLC for**  
6           **2007?**

7           A. Yes, sir.

8           **Q. And were you still indicated as being a**  
9           **comanager in that annual report?**

10          MR. CHASE: Objection, hearsay.

11          THE COURT: Sustained.

12          **Q. Were you still the a manager for Highway 46 in**  
13          **2007?**

14          A. Yes, sir. Through June.

15          **Q. Did you transfer any of your memorabilia to**  
16          **Highway 46 Holdings, LLC?**

17          A. No, sir.

18          **Q. Have you transferred any personal property to**  
19          **Highway 46 Holdings, LLC?**

20          A. No, sir.

21          **Q. Have you ever been shown a contribution**  
22          **agreement that's referred to in the letter agreement?**

23          A. No, sir.

24          **Q. Was it ever your intention to -- let me**  
25          **rephrase that.**

1           **Tell the jury what happened -- well, let me ask**  
2 **you: After July 7, 2005 occurred, and there was a**  
3 **subsequent conversation with Donald Hachenberger,**  
4 **correct?**

5           A.    Yes.

6           **Q.    What was the substance of that conversation?**

7           MR. CHASE:  Objection, relevance.

8           THE COURT:  The objection's sustained.

9           You need to rephrase the question and direct  
10          the witness with respect to this issue.

11          The question's too vague and it's difficult to  
12          know whether it was relevant or not.

13          MR. BENITEZ:  Yes, your Honor.

14         BY MR. BENITEZ:

15          **Q.    With respect to finalizing the letter agreement**  
16 **and the operating agreement, did you have any**  
17 **conversations with Donald Hachenberger after July 7,**  
18 **2005?**

19          MR. CHASE:  Objection, parole evidence.

20          THE COURT:  Overruled.

21          Go ahead.

22          A.    Yes, sir, several times.

23          **Q.    When was the next meeting after July 7, 2005,**  
24 **that you had with Donald Hachenberger?**

25          A.    It wasn't a meeting -- I was told that when

1 Kevin --

2 THE COURT: Sir, when was the next meeting?

3 That's the question.

4 THE WITNESS: When he returned from his trip.

5 **Q. And do you remember approximately when he**  
6 **returned from his trip?**

7 A. Maybe late August.

8 **Q. And where did that conversation take place?**

9 A. Came at the site of the project.

10 **Q. Okay. Was it a scheduled meeting or was it a**  
11 **happenstance that you guys were --**

12 A. He just showed up.

13 **Q. Okay. What were you doing at the time?**

14 A. I was looking at some plans and marking some  
15 things on the property.

16 **Q. And what was the -- did you guys talk about the**  
17 **letter agreement or the operating agreement?**

18 A. Not letter agreement or operating agreement,  
19 specifically, but -- you know, when we were going to try  
20 to get back together and finalize things, but he told me  
21 that --

22 THE COURT: Sir, did you talk about the letter  
23 agreement or the operating agreement? That's the  
24 question.

25 THE WITNESS: Yes, sir.

1           **Q.    Okay.  And what did he tell you about the**  
2 **letter agreement or the operating agreement?**

3           MR. CHASE:  Objection.  Objection, relevance  
4           and parole evidence.

5           THE COURT:  Overruled.

6           A.    I posed the question that when are we going to  
7 get back together.

8           **Q.    And what did he say?**

9           A.    He said that --

10          MR. CHASE:  Objection, relevance and parole  
11          evidence.

12          THE COURT:  Overruled.

13          A.    He said not to worry about it, stay focused on  
14 what we were doing, as far as getting the construction  
15 going.  He was involved in a big Re/Max -- what I call  
16 whistle tour, and he was busy, busy working.  He was  
17 trying to see every agent that he had in the territory.

18          MR. CHASE:  Objection.

19          THE COURT:  Overruled.

20          **Q.    And at that point in time, just to give the**  
21 **jury kind of a reference, what was happening at the**  
22 **project at that point in time?  Had you started doing**  
23 **significant construction with Donald Hachenberger or**  
24 **were you doing still things under what you were doing**  
25 **before Donald Hachenberger?**



1           A.     Basically, that, we were still in the  
2 preliminary trying to finalize some building plans and  
3 zonings issues, and just working through the project and  
4 speaking to vendors and trying to make decisions on  
5 little things.

6           **Q.     So then after your conversation with Donald  
7 Hachenberger, what happened next with respect to either  
8 the letter agreement or the operating agreement?**

9           A.     Nothing. I did not see Donald hardly at all  
10 until after -- must have been September, because they  
11 had a big Re/Max national meeting and -- which Kevin  
12 Donaghy was --

13                   MR. CHASE: Objection, narrative.

14                   THE COURT: Sustained.

15           **Q.     Okay. So your -- did you have a next meeting  
16 with Donald Hachenberger, or do you recall a next  
17 meeting or -- with Donald Hachenberger?**

18           A.     Yes, sir.

19           **Q.     Okay. And this is -- we're talking about 2005,  
20 you understand?**

21           A.     Yes, sir.

22           **Q.     Okay. And when was that? Just tell me when  
23 that was?**

24           A.     The late -- late fall, probably Octoberish.

25           **Q.     And what was the sub -- what was the reason for**

**1 that meeting?**

2 A. Just basically to review what we were doing.  
3 And we were trying to get a warehouse rented and  
4 established. And, you know, just daily work that we  
5 were doing on the project.

**6 Q. Okay.**

7 A. Kind of a status update because he had been  
8 gone for several, several weeks.

**9 Q. And was there any mention about finalizing the  
10 letter agreement, the operating agreement and all the  
11 other agreements that you were talking about?**

12 A. Yes, sir.

13 MR. CHASE: Objection, relevance and parole  
14 evidence.

15 THE COURT: Overruled.

16 A. Yes, sir.

**17 Q. And what was the substance of that  
18 conversation?**

19 MR. CHASE: Objection, relevance and parole  
20 evidence.

21 THE COURT: Overruled.

22 Go ahead.

23 A. When we were going to try and get back  
24 together, because he had terminated Kevin Donaghy during  
25 the Re/Max meeting in Denver.

1 MR. CHASE: Objection.

2 Move to strike as nonresponsive.

3 THE COURT: Sustained.

4 The answer to -- the witness' response is  
5 stricken. And you're instructed to disregard that.  
6 It should play no role in your deliberations.

7 **Q. Did he retain another attorney?**

8 A. His comment to me was --

9 MR. CHASE: Objection, relevance.

10 **Q. Just answer my question.**

11 THE COURT: Mr. Myers.

12 THE WITNESS: Yes.

13 THE COURT: Mr. Myers.

14 THE WITNESS: Yes.

15 THE COURT: I need you to focus and listen to  
16 the questions, answer the questions that are asked.  
17 You need to stop volunteering information.

18 THE WITNESS: Okay.

19 **Q. Did he retain another attorney after Kevin**  
20 **Donaghy in 2005?**

21 MR. CHASE: Objection, relevance.

22 THE COURT: Overruled.

23 Go ahead.

24 A. No.

25 **Q. Did he retain another attorney in 2006?**

1 A. No.

2 MR. CHASE: Objection, relevance and lack of  
3 foundation.

4 THE COURT: Approach, please.

5 MR. CHASE: How would he know, it would be  
6 speculating.

7 THE COURT: Approach, please.

8 (A conference was held at the bench outside of  
9 the hearing of the jury.)

10 THE COURT: Why is this relevant?

11 MR. BENITEZ: Why is that relevant, because he  
12 was told that he was going to get another attorney  
13 to start drafting the documents, and then he didn't  
14 get an attorney for the rest of 2005, or 2006. And  
15 then Kevin comes back on board around May of 2007.

16 THE COURT: Why don't we just --

17 MR. BENITEZ: What's that?

18 THE COURT: The objection is sustained.

19 MR. CHASE: Thank you, sir.

20 (Bench conference concluded.)

21 BY MR. BENITEZ:

22 **Q. What happened, what was going on with the**  
23 **project in late 2005, after your last meeting with**  
24 **Donald Hachenberger? What did you guys start doing?**

25 A. We began work on the cabin, basically, work on

1 the whole project, you know, he had to put silk fencing  
2 up to begin the major construction.

3 We were meeting with McCartney and going  
4 through all the details and guidelines on all the  
5 chases, the BOS systems, everything that was going to be  
6 involved in the project. Because we started from the  
7 ground up, so we did all the underlying work, which was  
8 over 2200 chases and lots and lots of detail.

9 **Q. And did you start actual construction of Gassey**  
10 **Jack's?**

11 A. Yes, we did.

12 **Q. At that point it was Gassey Jack's?**

13 A. Gassey Jack's Smokehouse Garage.

14 **Q. And that was -- was that your concept?**

15 A. Yes, it was.

16 **Q. Your initial concept.**

17 **And did Donald Hachenberger and Glenda**  
18 **Hachenberger agree with that concept?**

19 A. Yes, sir.

20 MR. CHASE: Objection, parole evidence.

21 THE COURT: The objection is -- well, the  
22 objection is sustained.

23 You need to rephrase the question and lay a  
24 foundation for it.

25 Go ahead.

1           **Q. Did you -- was there any disagreement with your**  
2 **concept in 2005, with -- let me rephrase.**

3                   **Did Don -- did Donald Hachenberger disagree**  
4 **with the Gassey Jack's concept in 2005?**

5           A. No, sir.

6           **Q. Did Glenda Hachenberger disagree with the**  
7 **Gassey Jack's concept in 2005?**

8                   MR. SHUKER: Objection, foundation.

9                   THE COURT: Sustained.

10                   Lay a foundation.

11           **Q. How many meetings did you have with Glenda**  
12 **Hachenberger?**

13           A. One.

14           **Q. And when was that?**

15           A. That was during the visit to Park Seed.

16           **Q. Say that again?**

17           A. That was the visit when they invited us to the  
18 Park Seed acquisition that they had purchased in South  
19 Carolina.

20           **Q. At that time, did she -- what was her**  
21 **impression of the concept, your concept, Gassey Jack's?**

22                   MR. SHUKER: Objection, your Honor, foundation.

23                   THE COURT: Sustained.

24                   Lay the foundation.

25           **Q. Did you talk to her about Gassey Jack's at that**

1 time?

2 A. Yes.

3 Q. And did you explain to her what your concept  
4 was?

5 A. Yes, I did.

6 Q. Did she reply in any fashion?

7 A. Very favorable, very -- just cordial and loved  
8 the whole project, thought it was great.

9 Q. And that was your only meeting with Glenda  
10 Hachenberger?

11 A. We had talked when we attended -- Jackie and I  
12 attended one of her fundraisings, The Miracle Network,  
13 that we went out and did a fundraising with her one  
14 night. And we had a chance during the breaks and  
15 reception area to talk. And Glenda was always  
16 cordial --

17 MR. CHASE: Objection, narrative.

18 THE COURT: Sustained.

19 Q. Did you have any complaints from Glenda  
20 Hachenberger in 2005, regarding Gassey Jack's?

21 A. No, sir.

22 Q. Any complaints with respect to anything going  
23 on with Highway 46 Holdings, LLC?

24 A. No, sir.

25 Q. Okay. Was Highway 46 Holdings, LLC going to be

1 **doing the operational aspect of Gassey Jack's?**

2 A. No, sir.

3 **Q. Who was going to be doing that?**

4 MR. CHASE: Objection, vague as to time.

5 THE COURT: Sustained.

6 Lay the foundation and particularly as to  
7 timeframe.

8 **Q. Okay. Timeframe would be 2005, during the --**  
9 **let me take it back.**

10 On May of 2000 and -- or July 7, 2005, was  
11 Highway 46 Holdings, LLC going to be the operating  
12 company of the smokehouse, the bar, and so on, at Gassey  
13 Jack's?

14 A. No, sir.

15 **Q. Who was going to be the operating company?**

16 A. It was set up for Southeast Communications  
17 Company of Central Florida, DBA Gassey Jack's.

18 **Q. And who owned that company?**

19 A. That was owned by Jackie.

20 **Q. And that company is the company that was going**  
21 **to be doing the operating, in other words, setting up**  
22 **the vans, the events and so?**

23 A. Everything operationally would be done through  
24 DBA Gassey Jack's Southeastern Communication Company of  
25 Central Florida, which also held a liquor license.



1           **Q. Did you actually -- and I'm jumping up now to**  
2 **2007, or so, when eventually the smokehouse gets opened,**  
3 **was there any events that were held by that company, by**  
4 **Southeast?**

5           A. Yes.

6           MR. CHASE: Objection, relevance.

7           THE COURT: Would you like to respond as to  
8 relevance?

9           Yes or no, would you like to respond?

10          MR. BENITEZ: No, your Honor, not at this time.

11          THE COURT: Sustained.

12          MR. CHASE: Thanks.

13 BY MR. BENITEZ:

14          **Q. During 2005 and 2006, how involved was Donald**  
15 **Hachenberger in the affairs of Highway 46 Holdings?**

16          A. Really, absolutely none.

17          **Q. Did he -- did there come a time when he became**  
18 **more involved?**

19          A. After he terminated me.

20          **Q. And prior to that, did he get more involved**  
21 **prior to that, immediately prior to that?**

22          A. In January of '07, he became involved.

23          **Q. And what was happening in January of '07, where**  
24 **he became more involved?**

25          A. Don up until that time would come by and see me

1 at the site. Usually he would come by and bring  
2 breakfast to me. And Sunday mornings was the time we  
3 went through and I reviewed --

4 MR. CHASE: Objection, narrative.

5 THE COURT: Sustained.

6 Sir, respond to the question, please.

7 A. Would you repeat the question, Mr. Benitez?

8 **Q. Yes.**

9 **How was it that he became more involved in**  
10 **January of 2007?**

11 A. He would come over and see me at the building  
12 site.

13 **Q. And in 2006, he didn't do that frequently?**

14 A. No, he was not around.

15 **Q. In 2007, when he started getting involved, did**  
16 **he start making any decisions with respect to anything**  
17 **having to do with Highway 46 Holdings?**

18 A. Yes, he did.

19 **Q. And what in particular did he start getting**  
20 **involved with?**

21 A. He came over and had requested a couple of  
22 changes in the construction.

23 **Q. Okay. And what were those changes, sir?**

24 A. The first one was initially to have the door in  
25 the front of the cabin exchanged, to open inward instead

1 of outward.

2 **Q. Okay. And why was that important to him?**

3 A. I don't know.

4 **Q. Excuse me. I'll rephrase.**

5 **Do you know why that was important to him?**

6 A. He didn't like it.

7 **Q. And what was he proposing to do?**

8 A. To reverse the door.

9 **Q. And then, what other changes?**

10 A. A little time after that, he came by and he did  
11 not like the millwork that Dave Chauvin had installed in  
12 the garage bar.

13 **Q. And this is Dave Chauvin who testified here**  
14 **yesterday, correct?**

15 A. Yes.

16 **Q. And what did he not like about his work?**

17 A. The fact that it was wood.

18 **Q. It was wood what?**

19 A. It was wood.

20 **Q. And what did he want to see instead?**

21 A. He wanted to -- he didn't like it because it  
22 looked like the other bar in the main ballroom, so he  
23 wanted to have a -- something different. Concrete.

24 **Q. And was something different done?**

25 A. Yes, we tore out a \$50,000 bar and replaced it

1 with concrete.

2 **Q. And were the doors from in and out, did you**  
3 **replace those too?**

4 A. I didn't.

5 **Q. Okay.**

6 A. But they were changed.

7 **Q. Was it changed after you were terminated?**

8 A. Yes.

9 **Q. What other changes did he want?**

10 A. He wanted the two areas in the front reception  
11 areas to be fully enclosed. Gassey Jack's concept was  
12 having, basically, a very open atmosphere for the  
13 people, and the transition from the two different bar  
14 areas to the cabin and to the band stage area, and so  
15 forth. And Don was very, very paranoid about security,  
16 he wanted to have doors everywhere and to close in  
17 everything at the top.

18 **Q. And were changes made while you were still in**  
19 **charge?**

20 A. A few.

21 **Q. What were they?**

22 A. We changed some doors. And that's about all I  
23 can remember.

24 **Q. And any other changes he's suggested or**  
25 **requested?**

1           A.     Well, we had an issue with the construction on  
2 the four garage bay areas that basically was -- we  
3 needed three or four extra feet of length to be able to  
4 accommodate what we were trying to do with the retail  
5 area and the storage cars and so forth.

6           **Q.     And what was the result of that?**

7           A.     We did a change order with McCartney and had  
8 them extended.

9           **Q.     Anything else that Mr. Hachenberger had a  
10 problem with prior to you moving or being terminated on  
11 June 27, 2007?**

12          A.     Well, in January of that year, January 2007,  
13 Don began to have a lot of problems with -- basically,  
14 he wanted to change the venue names, wanted to change --  
15 didn't like the logo that we had used for seven years  
16 prior to that. Just a lot -- a lot of things.

17          **Q.     Well, tell us about that. The first thing is,  
18 with respect to the concept or the name?**

19          A.     Well --

20          **Q.     The name was Gassey Jack's, right, in 2005?**

21          A.     Yes.

22          **Q.     And you had the concept already formulated?**

23          A.     At that time, in 2005, all the plans were  
24 permitted by Seminole County and everything was  
25 registered all the way through the building as Gassey

1 Jack's.

2 **Q. Okay.**

3 A. All the permits were even pulled and all of the  
4 business licenses were pulled as late as 2007, as Gassey  
5 Jack's Smokehouse Garage.

6 **Q. In January of 2007, what did Mr. Hachenberger**  
7 **do to start changing the concept or the name?**

8 A. Well, the first step was that, Don had changed  
9 personality wise completely. He had -- he used to come  
10 over and he could not say enough good things about the  
11 project. Then it came to --

12 MR. CHASE: Objection, relevance.

13 It's not --

14 THE COURT: Sidebar.

15 MR. CHASE: I'm sorry. I don't want to  
16 speak -- can I come up and explain why it's not  
17 relevant, if I need to?

18 THE COURT: Approach, please.

19 (A conference was held at the bench outside of  
20 the hearing of the jury.)

21 MR. CHASE: He's going into Don being the  
22 change personality wise. He's beginning to. So  
23 he's getting ready to slam him on his personality --

24 And his pleadings, he's pled him for a lot of  
25 things, none of them were about his personality. So

1           it can only be prejudicial. It's not probative to  
2           anything to say Don was being a bad guy.

3           MR. BENITEZ: Judge, there was testimony by  
4           Mr. Hachenberger about Mr. Mike Myers getting in his  
5           face and all that. So that's a side issue.

6           With respect to this, the relationship of the  
7           parties, it's important, Judge.

8           MR. CHASE: I think in its defense of what I  
9           said.

10          THE COURT: That's all fine, but it's  
11          nonresponsive to the question.

12          MR. BENITEZ: Well, that's what I thought you  
13          had a problem with.

14          MR. CHASE: I did.

15          THE COURT: That wasn't the objection.

16          So draw him -- reign him in.

17          MR. BENITEZ: I'm trying, Judge.

18          (Bench conference concluded.)

19 BY MR. BENITEZ:

20          **Q. Let me refer -- let me refer you back to the**  
21          **Hachenbergers.**

22                   **And did there come a point in time, when your**  
23          **relationship with Mr. Hachenberger changed?**

24          A. Yes, sir.

25          **Q. Okay. And approximately what time is that?**

1 **Are we talking about the January --**

2 A. Really, in December of '06.

3 **Q. Okay. And the first signs that that was**  
4 **occurring was when?**

5 A. We had had a couple of meetings in the  
6 conference room, board type meetings.

7 THE COURT: Sir, when?

8 A. In December of 2006.

9 **Q. And in what setting? Were you guys personally**  
10 **next to each other when you noticed this? Or what is**  
11 **it -- what is it that you -- let me rephrase.**

12 **What is it that you noticed about him changing**  
13 **at that point in time?**

14 A. Just very, very negative.

15 **Q. In what sense?**

16 A. Just in -- Don is a very verbal abusive guy.  
17 So he started just basically cursing and not liking  
18 things, being disrespectful to people on the site and  
19 disrespectful to my staff. Just a total change from  
20 what we had experienced the year and a half prior to  
21 that.

22 **Q. Was there any explanation in your mind for that**  
23 **behavior?**

24 MR. SHUKER: Objection, your Honor,  
25 speculation.



1 THE COURT: Sustained.

2 Q. And then what -- did he end up changing the  
3 concept?

4 A. Yes.

5 Q. Okay. And what do you mean by -- well, it is  
6 no longer called Gassey Jack's, is it?

7 A. No, sir.

8 Q. When you left on June 27, 2007, it was known as  
9 Gassey Jack's?

10 A. Yes, sir.

11 Q. What happened -- what -- how involved was  
12 Donald Hachenberger from December of 2006, to your  
13 termination in June 27, 2007?

14 A. He began being involved in December.

15 Q. Okay. And then, did he hire people in  
16 December?

17 A. At that point, he wanted to bring his  
18 girlfriend in, K2 Evolution.

19 MR. CHASE: Objection.

20 May we approach, Judge?

21 THE COURT: You may.

22 (A conference was held at the bench outside of  
23 the hearing of the jury.)

24 MR. CHASE: He's asserted that there's a  
25 girlfriend. It's highly prejudicial. It's not

1 relevant to anything.

2 Those K words came in -- K2-revolution, who  
3 came in and did marketing, it was not his  
4 girlfriend. Actually, K2 was set up by Glenda and  
5 Don together. K was a friend. Don and Glenda split  
6 up. Have been split up for years.

7 And after this happened, Don ultimately did  
8 become -- have a relationship with that girl, but  
9 way after all this happened.

10 And to sit there and refer to her as a  
11 girlfriend with his wife sitting there right there  
12 is highly prejudicial and not relevant to anything.

13 MR. BENITEZ: Judge, they are divorced. That's  
14 not his wife sitting there.

15 And with respect to -- this goes to one of my  
16 allegations, which is, by hiring and paying his  
17 girlfriend for services not needed and not required,  
18 it should not have been done --

19 THE COURT: What difference does it make  
20 whether it's a girlfriend or a third party?

21 He didn't respond to your question again.  
22 That's the problem. He's determined in his mind, he  
23 wants this jury to hear certain things that he's not  
24 being asked, and I'm tired of it.

25 MR. BENITEZ: Yeah.

1 THE COURT: And I don't know how else to  
2 express this, but at a point, Mr. Benitez, I'm going  
3 to stop him from testifying --

4 MR. BENITEZ: Okay.

5 THE COURT: -- in support of his claims.

6 MR. BENITEZ: Judge, in support of him, I know  
7 him, I've known him for the last ten years, and I  
8 think that's just his nature. I don't think it's  
9 intentional.

10 THE COURT: It's inappropriate. He's been  
11 cautioned. He's now been admonished in front of the  
12 jury.

13 What's left?

14 Shall I sanction him?

15 MR. BENITEZ: No, your Honor, you shouldn't.

16 THE COURT: Get him under control.

17 MR. BENITEZ: Okay.

18 MR. CHASE: Thank you, sir.

19 (Bench conference concluded.)

20 THE COURT: Members of the jury, the last  
21 response that you heard is irrelevant, makes no  
22 difference to anything in this lawsuit. It's  
23 stricken. You're to disregard it.

24 Mr. Myers, I can only admonish you so many  
25 times before the Court has to impose sanctions for

1 your willful disobedience to my orders.

2 Respond to the questions that are asked.

3 THE WITNESS: Yes, sir.

4 A. Would you repeat the question, Mr. Benitez?

5 I thought I had answered it.

6 **Q. Let me -- let me ask you some different**  
7 **questions.**

8 **You mentioned Kay Wertz, correct? Is that how**  
9 **you pronounce her name?**

10 A. Yes, sir.

11 **Q. And Kay Wertz at the time that you referenced**  
12 **was working where?**

13 A. She owns a marketing company. K2 Evolution I  
14 think is the name.

15 **Q. Okay. And she was hired by Donald Hachenberger**  
16 **to do what?**

17 A. Don had come back and asked us to consider  
18 hiring -- he brought a girl named Liz Best to help us  
19 with some of the request for proposals. And Liz was a  
20 consultant for K2, that company.

21 **Q. So Liz Best was working with her at the time?**

22 A. Yes, sir.

23 **Q. Is that correct?**

24 **And they were brought in by Donald**  
25 **Hachenberger?**

1           A.     Correct.

2           **Q.     Did they -- did they have your approval for**  
3 **that when they were brought in initially?**

4           A.     Don and had I had discussions -- realize, we're  
5 building this project on a pretty strict --

6           MR. CHASE:   Objection.

7           MR. SHUKER:   Objection.

8           THE COURT:   The objection is sustained.

9           **Q.     Let me just ask you a question.**

10          THE COURT:   Take a ten-minute recess, folks.

11          At this time, all of the same cautions still  
12 apply.

13          THE DEPUTY:   Jury is leaving.

14          (Jury exiting.)

15          THE COURT:   You may be seated.

16          Mr. Hachenberger --

17          MR. CHASE:   You said Mr. Hachenberger.

18          THE COURT:   I'm sorry.   I apologize.

19          Mr. Myers, I started out with gentle cautions,  
20 urgings, for you to listen carefully to the  
21 questions that were asked by your attorney and to  
22 answer only those questions because it quickly  
23 became apparent to the Court that you have an  
24 agenda.

25          And that is, to come here and tell this jury

1 the things you want them to hear, regardless of what  
2 may be legally relevant and admissible evidence.

3 I've asked your counsel now to speak with you  
4 about it on multiple occasions to no avail. Even  
5 just having been admonished, you continue and  
6 persist in providing responses that are not  
7 answering the questions that are asked.

8 THE WITNESS: It has to be yes or no?

9 THE COURT: Sir, the question asked was: Did  
10 they have your approval for that when they were  
11 brought in initially. That's a question that calls  
12 for a yes or no response.

13 The first sentence out of your mouth was Don  
14 and I had a discussion, realize, we're building this  
15 project on a pretty strict -- and we cut you off at  
16 that point.

17 None of that is responsive to the questions  
18 that are being asked.

19 THE WITNESS: I understand.

20 THE COURT: You understand now?

21 THE WITNESS: Yes, sir.

22 THE COURT: The next time, we're going to stop,  
23 and I'm going to hold the sanctions hearing.

24 Because what you're doing is disruptive --

25 THE WITNESS: I apologize.

1           THE COURT: -- to the order -- now you're  
2 interrupting me. It is disruptive to the orderly  
3 and efficient administration of this case in this  
4 courtroom.

5           You are creating issues in front of the jury  
6 that should be non-issues. That have nothing to do  
7 with this case and the legal merits of this case.

8           At a point, you may leave the court with no  
9 choice but to say that you cannot testify any  
10 further in support of any claims that you want to  
11 pursue in this case. I don't want to do that. I  
12 don't think you want me to do that.

13           I think you'd like a chance for this jury to  
14 hear the case and decide it on its merits. And  
15 that's my goal here, with legally admissible and  
16 relevant information.

17           But if you persist and continue to refuse to  
18 respond directly to your counsel's questions --  
19 these are not bad questions. Mr. Benitez  
20 understands what he has to prove. You're making his  
21 job more difficult. And you are certainly making  
22 mine more difficult in front of this jury.

23           And you are risking a mistrial. A mistrial  
24 means we start this process all over again at your  
25 expense.

1           Stop it. Okay. Please take a minute to speak  
2           with your counsel, figure out whatever it is that  
3           you all have to do for you to respond directly to  
4           his questions so that we can move this case forward.

5           THE WITNESS: Yes, sir.

6           THE COURT: You're in recess 'til 3:30.

7           (A recess was taken.)

8           THE DEPUTY: Jury entering.

9           (Jury entering.)

10          THE COURT: Thank you.

11          You may be seated.

12          You may resume, Mr. Benitez.

13          MR. BENITEZ: Thank you, your Honor.

14 BY MR. BENITEZ:

15          **Q. We were going through some of the changes that**  
16 **were made of Mr. Hachenberger. You remember that?**

17          A. Yes, sir.

18          **Q. And then we were talking about hiring Liz Best.**  
19 **You remember that?**

20          A. Yes, sir.

21          **Q. And did he hire anybody else besides Liz Best**  
22 **and Kay Wertz?**

23          A. He had requested that we take reviews of the  
24 marketing company.

25          **Q. What did you say?**



1           A.     Mr. Hachenberger requested that we look at  
2 reviewing a marketing company to assist us as we're  
3 finishing these last six months of construction.

4           **Q.     But -- and what was that marketing company?**

5           A.     We reviewed three different companies.

6           **Q.     And who were they?**

7           A.     I don't remember the one -- the one that -- Red  
8 Wing or Red Wing that does Corona cigars. The QMG  
9 company was a company that was selected.

10          **Q.     And you said the name was what?**

11          A.     QMG, Quantified Marketing Group.

12          **Q.     And what did they do?**

13          A.     They were a team of people that did everything  
14 from branding to logos, to seating, to fixtures and  
15 furnishings and concepts, and anything related to --  
16 they didn't have a have a lot of experience, but they  
17 had done a couple of -- I think a Mex Tex concept.

18          **Q.     And when did they get involved, give me a**  
19 **timeframe?**

20          A.     We would begin meeting with them in late  
21 December of '06.

22          **Q.     And tell me about them. How did they get**  
23 **involved? What was their next activity within**  
24 **Highway 46 Holdings?**

25          A.     Well, we did a review on -- like a presentation

1 allowance for the three companies. So the three  
2 companies came into the conference room at Re/Max, and  
3 gave Don and I and Liz Best and Brad Nicks and my staff  
4 team. And I think Ms. Wertz was there also.

5 **Q. Well, now that you mentioned your team, in**  
6 **December of 2006, who was your team prior to QMG getting**  
7 **involved, or Ms. Best and Ms. Wertz?**

8 A. I had recruited two culinary people from the  
9 Lanier Corporation, which is a big national corporation,  
10 does a lot of business in the Disney area,  
11 internationally -- so Brad Nicks was my general manager,  
12 Julio Cayo was the other co-owner director. And Tommy  
13 Smith was our local beverage manager.

14 **Q. And then who was doing the construction?**

15 A. McCartney and Company was our general  
16 contractor.

17 **Q. And did McCartney and Company have a contract**  
18 **with Highway 46 to do the construction?**

19 A. No, sir.

20 **Q. By that I mean a written contract?**

21 A. No, sir.

22 **Q. They did have an oral contract, correct?**

23 A. I had known McCartney -- yes.

24 **Q. How long have you known Dan McCartney?**

25 A. Probably 12, 14 years.

1           **Q.     And he's the owner of McCartney and Company?**

2           A.     He's the CEO.

3           **Q.     Who else was part of your group before QMG?**

4           A.     Well, of course, Jackie was involved, you know,  
5     in some of the stuff we were doing internally. But Brad  
6     Nicks, Tommy, you know, Julio and myself were the four  
7     guys that you guys ran off the walls.

8           **Q.     And then after QMG, what did the staff look**  
9     **like? Did it change?**

10          A.     QMG came in and wanted to make lots of changes,  
11     the whole concept, and the conception of Gassey Jack's  
12     was going to be changed.

13          **Q.     Okay. So did -- who -- what changes did they**  
14     **propose initially?**

15          A.     Everything from branding to changing the venue  
16     names, to coming up with all kinds of uniforms, and very  
17     expensive changes, construction wise, physically to the  
18     building, advertising wise. Lots and lots of expensive  
19     suggestions.

20          **Q.     Did you agree with them coming in?**

21          A.     I agreed -- my response was that we should  
22     budget \$100,000 to it, and that would be it. If that  
23     would be of assistance to us.

24          **Q.     What happened after they provided you with**  
25     **these suggestions?**

1           A.     They were going -- we had spent lots of time  
2 and money. Don required that we put together a  
3 financial model before he ever approved being a partner.  
4 And we had already had all the operational books,  
5 manuals and everything for Gassey Jack's. And he  
6 realized that Gassey Jack's was going to be a pretty  
7 simple southern-themed restaurant. Okay.

8           **Q.     So when they got involved, did they -- they**  
9 **obviously changed the name, correct?**

10          A.     They suggested -- no, they didn't change the  
11 name. They suggested different logos. And there was a  
12 lot of time and money spent on trying to get what Don  
13 liked as far as the venue names and the looks and the  
14 logos. Don was very conscious about the branding of  
15 what Gassey Jack's looked like.

16          **Q.     And then, what happened with OMG, what was**  
17 **their next activity?**

18          A.     QMG.

19          **Q.     QMG, what was their next activity besides just**  
20 **recommending these changes?**

21          A.     Well, the first activity was that Don invited  
22 his Re/Max group to join the QMG staff to come over to  
23 the construction site. And I did a walkthrough, a tour,  
24 one afternoon of taking everybody through the facilities  
25 and telling them what each of the facilities were,

1 what -- the way we were going to do things, and  
2 marketing and cabin and the smokehouse and the cooking  
3 and the recipes, and kind of an overview of what Gassey  
4 Jack's Smokehouse was.

**5 Q. And what happened next?**

6 A. Don had wanted a lot more meetings involving  
7 QMG.

**8 Q. And did those meetings take place?**

9 A. They had -- QMG was located in Heathrow,  
10 directly across the interstate from Re/Max of Florida's  
11 offices, so occasionally we would meet in their office.  
12 Occasionally we would meet in the Re/Max office.

**13 Q. And as a result of those meetings, what was the  
14 consequence?**

15 A. We were not -- the Gassey Jack's team  
16 consisting of Brad and Tom and I, we were not happy at  
17 all. We felt like they did not understand the Gassey  
18 Jack's concept. They didn't understand the vintage  
19 memorabilia. They really didn't understand anything  
20 that we were wanting to do. They were trying to brand  
21 it.

**22 Q. And from their point of view, what were they  
23 recommending at that point?**

24 A. Everything. Everything from trying to move it  
25 to an upscale 55/\$60 steak restaurant, you know,

1 something like Fishbones or Charlie's. And so it was  
2 just -- they didn't understand what we were trying to do  
3 and the budget restraints that we were working within.

4 We already had committed to our financial  
5 budget and our operations, so we knew the direction that  
6 he wanted to go and where we had to be price point wise  
7 with all of our food and our beverages.

8 **Q. And about what time are we talking when this is**  
9 **occurring?**

10 A. It would be late December of '06, and really  
11 getting into January and February.

12 **Q. Okay. So we're into February of 2007?**

13 A. Yes, sir.

14 **Q. Okay. And at that point in time, what is your**  
15 **relationship with Donald Hachenberger?**

16 A. I'm trying to appease Don as a partner that,  
17 you know, we can look at some of these other things,  
18 but, realize, that we had spent 19 months in  
19 construction, the building was 90 percent complete. Our  
20 operations were in the works and in progress.

21 So I was pushing back very hard that, you know,  
22 this is not what we agreed to as a partnership. That we  
23 were building Gassey Jack's. I had spent 7 years on the  
24 operations of how Gassey Jack's --

25 MR. CHASE: Objection, narrative.

1 THE COURT: Sustained.

2 Q. Did you articulate those frustrations to Donald  
3 Hachenberger?

4 A. Yes, sir.

5 Q. And what was the result of you voicing those  
6 objections?

7 A. Donald and I had what I would refer to a couple  
8 of knockdown meetings. We had a couple of conference  
9 room meetings where Don got real disrespectful and  
10 verbal abusive to me, and I simply got up and left the  
11 meetings.

12 Q. And how many of those meetings were there?

13 A. There were two.

14 Q. And in the first meeting, who was present  
15 besides yourself?

16 A. The Gassey Jack's team, Brad Nicks, Tommy  
17 Smith, Julio Cayo and Liz Best and Ms. Wertz, and a  
18 couple of times there were some Re/Max secretaries and  
19 so forth that sat in on me.

20 Q. And how about the second meeting, who was  
21 present?

22 A. Basically, the same team with, Aaron (phonetic)  
23 and I and a couple of QMG representatives.

24 Q. Did -- what period of time are we now talking  
25 about with the second meeting that you just described?

1 A. We're in late February, March of '07.

2 Q. And at that point in time, how far away are you  
3 from completing at least construction of the smokehouse?

4 A. About four months.

5 Q. And describe to the jury the smokehouse in  
6 relationship to the entire layout of the center?

7 A. Well, they will enjoy seeing it on their tour  
8 this week. It's -- the smokehouse was a rustic cabin  
9 that we moved over from Markham Woods Road. It was kind  
10 of the center piece of the project. And then we added a  
11 full kitchen concept to it, an outdoor porch, big patio  
12 area that sits right adjacent to the stage. So just a  
13 great place to sit outside on a big patio with  
14 entertainment and live music right there to watch. Real  
15 neat concept.

16 Q. Was that the part of the complex that was going  
17 to be initially finished and opened?

18 A. Yes, that was going be to the first rollout of  
19 the building.

20 Q. Were you still working on the other aspect of  
21 the complex?

22 A. Yes, sir.

23 Q. Of the stage, the bar, the showrooms?

24 A. Yes, sir.

25 Q. When were they scheduled to be completed?



1           A.     We were about three months. We were going to  
2 try to open the cabin in August 1st, and then they would  
3 be open by the end of the year.

4           **Q.     The entire complex?**

5           A.     Yes, sir.

6           **Q.     And about how much money had you spent by the**  
7 **time that -- well, at the time that you were removed**  
8 **from the complex on June 27, 2007, do you know**  
9 **approximately how much money you had all spent on the**  
10 **construction?**

11          A.     We were about -- about a little over  
12 \$5 million.

13          **Q.     Then after your meetings with Donald**  
14 **Hachenberger that you just went through, what is the**  
15 **next thing that occurred, if anything, between you and**  
16 **Donald Hachenberger between then and June 27, 2007?**

17          A.     Well, Don and I -- you know -- of course, you  
18 know, I had spent seven years on the project. Jackie  
19 and I had owned the property for 19 years. So we were  
20 trying to work through the issues that Don had, you  
21 know, personality wise. A project's got to represent  
22 what you are and what the project is.

23                   And, so we were not --

24                   MR. SHUKER: Objection, narrative.

25                   THE COURT: Sustained.

1           **Q. Can you give me a shorter version of what your**  
2 **relationship with Hachenberger was after the second**  
3 **meeting?**

4           THE COURT: The question was, what was the next  
5 thing that occurred between he and Mr. Hachenberger.

6           **Q. Okay. Can you just give me a short version?**

7           A. I requested a private meeting with Don.

8           **Q. Okay. And when did you request a private**  
9 **meeting with Don?**

10          A. There were actually two that were immediately  
11 following the verbal abuse and meetings that we had, I  
12 out walked out of.

13          **Q. So that at that point in time you were asking**  
14 **for another meeting?**

15          A. I was asking for a private meeting to discuss  
16 what's going on here.

17          **Q. And when are we talking, what time reference**  
18 **could you give the jury?**

19          A. I would still say right around that February,  
20 February month.

21          **Q. Okay. And then was there a meeting with Donald**  
22 **Hachenberger, a private meeting?**

23          A. Yes.

24          **Q. And where did that take place?**

25          A. At the site.

1           **Q.    And what part of the site?**

2           A.    We were in the main -- main building.

3           **Q.    And we don't -- the jury doesn't know what the**  
4 **main building is, so explain?**

5           A.    The larger building.

6           **Q.    That would not be the smokehouse?**

7           A.    Correct.

8           **Q.    That would be the other building?**

9           A.    The other building, the main building, we refer  
10 to.

11          **Q.    And who was present at that meeting?**

12          A.    Just Don and I.

13          **Q.    And what was discussed at that meeting?**

14          A.    That what was going on --

15          **Q.    Just tell me what was discussed?**

16          A.    The budget. We were starting to look at  
17 exceeding the budget drastically, and tremendous delays,  
18 and being able to open on time if we were going to make  
19 the construction changes that QMG wanted to make.

20          **Q.    And what else? Was there anything else part of**  
21 **this conversation other than the budget?**

22          A.    The operations. That he was stepping on my  
23 toes. That, you know, Don was -- as a financial  
24 partner, we didn't want to change the project the way we  
25 laid it out that it would be permitted. Everything

1 about Gassey Jack's. We wanted to proceed without all  
2 the interference of QMG.

3 And I had found out that there was a large  
4 contract order to QMG over and above the \$100,000 that I  
5 had agreed to.

6 **Q. The \$100,000? Okay. You mean by Donald**  
7 **Hachenberger?**

8 A. Yes.

9 **Q. Were you not part of that decision-making?**

10 A. No.

11 **Q. And how much was the contract?**

12 A. I don't recall exactly, but it was almost  
13 200,000.

14 **Q. Did you broach the subject with**  
15 **Mr. Hachenberger at that meeting?**

16 A. Yes.

17 **Q. What was his response?**

18 A. The discussion was back to where we were with  
19 the agreements not being completed that we had. You  
20 know, the whole scenario.

21 MR. CHASE: Objection, parole evidence and  
22 relevance.

23 THE COURT: Just a second, sir. There's an  
24 objection. Please pause.

25 MR. CHASE: Objection, parole evidence and

1           relevance. He said back to the agreements not being  
2           completed.

3           THE COURT: Overruled.

4           Go ahead.

5           A. That we were still working on the oral  
6 contracts that we had worked for a year and a half on,  
7 and that we were not --

8           THE COURT: Just a second, sir. That objection  
9           is sustained.

10          That's stricken.

11          MR. CHASE: Thank you, sir.

12          THE COURT: I need you to direct him.

13          **Q. Part of the conversation was the letter**  
14 **agreement and the operating agreement?**

15          A. Not in those terms.

16          **Q. Okay. In general terms?**

17          A. And our partnership, the fact that, you know,  
18 we were in charge of the operations.

19          **Q. And what was the result of the meeting what**  
20 **happened? How did you guys leave?**

21          A. We were going to try to work things out.

22          **Q. Anything in particular that was discussed, or**  
23 **just simply left saying, hey, we got to work it out?**

24          A. That how we treat each other. I had written  
25 him an e-mail. I had met with Liz Best, who is -- a

1 real sharp gal, and she sat down with me at my home and  
2 we suggested that these were the -- I'm trying to think  
3 of the name that we called the letter, the no  
4 negotiating -- no negotiation was the title of the  
5 letter.

6 It was no negotiation was the fact that  
7 here's --

8 MR. CHASE: Objection, hearsay.

9 THE COURT: Sustained.

10 **Q. Okay. So you discussed some things with Liz**  
11 **Best; is that correct?**

12 A. Yes, sir.

13 **Q. Did that result in anything -- any improvement**  
14 **in your relationship with Donald Hachenberger?**

15 A. I think so.

16 **Q. And how had things improved at that point?**

17 A. Well, I felt like we had an understanding -- I  
18 don't know what was going on with Don, but -- he was  
19 changing, but I felt like we had an understanding that  
20 this was my goal with the Gassey Jack's project, this is  
21 what we were going to do. And going forward we were  
22 going to treat each other with respect and not have any  
23 of these verbal abusive meetings and, you know, act like  
24 partners.

25 **Q. And did that work?**

1           A.    No, sir.

2           **Q.    What was your next time -- when did the next**  
3 **conflict between you and Donald Hachenberger arise after**  
4 **that?**

5           A.    There was a meeting called by QMG staff at  
6 their offices, basically, to look at FFD, furniture,  
7 fixtures, designs; chairs, upholstery, carpeting, paint  
8 colors, et cetera.

9           **Q.    And did that meeting take place?**

10          A.    Yes, sir, it did.

11          **Q.    And who was present at the meeting?**

12          A.    The Gassey Jack's staff, along with the QMG  
13 staff and the different directors that QMG had as far as  
14 who was in charge of the branding and the interior decor  
15 and the computer spacing, et cetera.

16          **Q.    And who was part of the Gassey Jack's**  
17 **management team?**

18          A.    Same team, Tommy Smith, Brad Nicks and Julio.

19          **Q.    And yourself?**

20          A.    And myself. At that time, Liz Best was more a  
21 part of our team, also.

22          **Q.    So she would be added to your team at that**  
23 **point?**

24          A.    Yes. Ah-ha. She was helping us.

25          **Q.    And then, what was the result of this meeting**

1 with QMG?

2 A. Don kind of lost his patience in the meeting  
3 and kind of -- it was not a good meeting.

4 Q. What day was this meeting?

5 A. I don't really recall that meeting, but it  
6 would have been probably the first week of June,  
7 something like that.

8 Q. What happened at that meeting?

9 A. What happened?

10 Q. What happened at the meeting?

11 A. We just adjourned the meeting and, you know,  
12 Brad and Gassey Jack's team went back, and we said, no.  
13 We looked at everything that was discussed at the  
14 meeting --

15 MR. SHUKER: Objection, non-responsiveness --  
16 unresponsive, narrative.

17 MR. CHASE: It's hearsay, as well, sir.

18 THE COURT: Sustained.

19 Q. At the meeting, what was discussed?

20 A. At the QMG meeting?

21 MR. CHASE: Objection, ambiguous.

22 Discussed by whom?

23 THE COURT: Overruled.

24 Go ahead.

25 A. Basically, the furniture and fixtures and



1 ongoing changes that Don was trying to drive through  
2 QMG.

3 **Q. Okay. My question is: You mentioned that it**  
4 **got nasty, or something to that effect. What do you**  
5 **mean by that?**

6 A. Just Don was being disrespectful to our staff  
7 and to myself.

8 **Q. Can you describe it?**

9 A. I would -- I mean, when I say verbally abusive,  
10 I think the jury understands that.

11 **Q. And then, what was the next meeting that you**  
12 **had, or the next event that occurred after that with**  
13 **Donald Hachenberger?**

14 A. There was another meeting called at the QMG  
15 building, and it regarded purchasing wine, beverage  
16 menus and staffing.

17 **Q. And who was present at that meeting?**

18 A. Same people, QMG staff and the Gassey Jack's  
19 team, Don, Liz Best, and myself.

20 **Q. And what day was this meeting, if you recall?**

21 A. I believe that was the 26th of June. Or 25th.  
22 That week of June.

23 **Q. So right before you were removed as president**  
24 **of Highway 46 Holdings?**

25 A. Yes.

1 Q. So --

2 A. Same week.

3 Q. So on this day, June 26th, we'll say, what  
4 happened?

5 A. We had a meeting to review all of these things.  
6 And Don came into the meeting and was just lit up, just  
7 immediately started being verbally abusive. Looked over  
8 at Brad Nicks and Tommy Smith and says, we're going to  
9 make a bunch of changes and you guys are going to do it  
10 my way or you're going to be out the door. You're not  
11 going to be working here.

12 And starting to say we're going to do this and  
13 we're going to do that, and we're going to hire all  
14 these people.

15 And it just -- it was everything against what  
16 we had worked on for Gassey Jack's. It was everything  
17 we didn't want Gassey Jack's to be. It was like we were  
18 building Walt Disney World North, and we needed to hire  
19 25 people with big salaries. That there was no way we  
20 could pay for it in the support of what we were doing  
21 with the project.

22 Q. At that -- during that meeting, it was still  
23 Gassey Jack's, right?

24 A. Oh, sure. All the permits, everything was  
25 Gassey Jack's.

1           **Q.    But I mean the concept had not changed at that**  
2 **point?**

3           A.    No, sir.

4           **Q.    Okay.  And how long did that meeting last?**

5           A.    Probably 45 minutes.

6           **Q.    And then when was your next contact with Donald**  
7 **Hachenberger?**

8           A.    Well, I adjourned the meeting.  We walked out  
9 of that meeting.

10          **Q.    Meaning?**

11                   MR. CHASE:  Objection, nonresponsive.

12                   THE COURT:  Sustained.

13          **Q.    When was your next meeting with Donald**  
14 **Hachenberger?**

15          A.    There was not a next meeting.

16          **Q.    This is the day before, or the day -- day**  
17 **before you were removed as president, correct?**

18          A.    I believe it was the day before.

19          **Q.    Day before.**

20                   **So what happened the next day?  What happened**  
21 **June 27, 2005?**

22          A.    2007.

23                   MR. CHASE:  Objection, as to year.

24                   MR. BENITEZ:  Sorry.

25                   MR. CHASE:  That's all right.

1 THE COURT: Rephrase the question, please.

2 Q. June 27, 2007?

3 A. The -- we were working out of the Church Street  
4 warehouse, so the Gassey Jack's people were now working  
5 on finishing up the manuals, the employee manuals and  
6 stuff for the Gassey Jack's Smokehouse Garage.

7 And I think it was around 2 o'clock, a  
8 gentleman that works for Don, I don't recall his last  
9 name, Gene, came in, knocked on the door and said, hey,  
10 I'm here to change the locks on the warehouse.

11 I said, what? What are you talking about?

12 He said, we're going to -- he said, I've  
13 already changed the locks on the other warehouses and  
14 we're going to change the locks on this.

15 Q. And then what happened?

16 A. I was advised that I had been terminated. And  
17 I was --

18 Q. Who --

19 A. -- to leave the warehouse, where all of my  
20 properties and offices, everything was there.

21 Q. And who told you that?

22 A. Gene.

23 Q. And was Gene an employee of you all or a  
24 sheriff or -- who was it?

25 A. He was an employee of Re/Max.

1 MR. CHASE: That was hearsay, all of that.

2 THE COURT: Sustained.

3 Lay the predicate if he knows who this person  
4 is.

5 **Q. Yeah. Do you know who Gene is?**

6 A. I know him by site. I know his name is Gene.  
7 Bedford, I believe, is his last name.

8 **Q. Sit up so you can be in the microphone.**

9 A. Gene Bedford.

10 **Q. But do you know where he works?**

11 A. He -- my knowledge of him and experience with  
12 him during the building of the project, was he worked  
13 for Don Hachenberger.

14 **Q. Okay. And who else was with you at the time**  
15 **that Gene came up to you and said, I'm locking up the**  
16 **warehouse?**

17 A. Brad Nicks, Tommy Smith, Julio.

18 **Q. And were Brad, Tommy and Julio working with you**  
19 **at the warehouse at the time, or did they come for this?**

20 A. No, we were there working as a team.

21 **Q. And then what happened?**

22 A. Sheriff -- Seminole County deputy showed up.

23 **Q. How soon after you were told that they were**  
24 **changing the locks?**

25 A. Probably an hour.

1           **Q.     And then what happened?**

2           A.     Well, I was trying to get some questions  
3 answered. I was making some phone calls. I took the  
4 time to photo the properties, personal properties in the  
5 warehouse, and then Hachenberger showed up.

6           **Q.     That's Donald Hachenberger? Is that yes?**

7           A.     Yes.

8           **Q.     And then what happened when he showed up?**

9           A.     Deputy advised me to leave the premises.

10          **Q.     And did you leave?**

11          A.     Yes, sir.

12          **Q.     Were you allowed to take any possessions out of  
13 the warehouse where you were at?**

14          A.     I didn't attempt to.

15          **Q.     Excuse me?**

16          A.     No, sir.

17          **Q.     And were you allowed back in the main complex  
18 of the Highway 46?**

19          A.     No, sir.

20          **Q.     And then what happened?**

21          A.     The next day I received a termination letter.

22          **Q.     And how did you receive that termination  
23 letter?**

24          A.     I believe it came FedEx (sic).

25          **Q.     And did you receive it at your home?**

1 A. They had it faxed to me, yes.

2 Q. Did you talk to Hachenberger at all about all  
3 this?

4 A. No.

5 Q. Why not?

6 A. I couldn't. There was no reaching him. He  
7 wasn't available. He wouldn't discuss it.

8 Q. Then what happened?

9 A. There was some conversation that we needed a  
10 90-day cooling-off period.

11 Q. And who said that to you?

12 A. Don Hachenberger.

13 Q. And did he say it to you in a telephone  
14 conversation, in-person conversation or by letter, or  
15 what?

16 A. I believe he delivered -- Kevin Donaghy.

17 Q. Excuse me?

18 A. Kevin Donaghy was back on the scene by then.

19 Q. So how you were told about this 90-day  
20 cooling-off period?

21 A. Through Don and through Kevin Donaghy, both.

22 Q. And then what's the next thing that happened?

23 A. He sends me a letter that -- you know, the  
24 termination letter and basically advises me that I'm not  
25 to be on the property, not to be involved in any of the

1 ongoing workings of Gassey Jack's.

2 **Q. And who is "he"?**

3 A. Done Hachenberger.

4 **Q. Did you at one point in time go back to**  
5 **Highway 46 Holdings?**

6 A. Yes, sir.

7 **Q. And what happened then?**

8 A. I had left a meeting and came back and  
9 basically had some invoices. You know, of course, I was  
10 still -- you know, people were calling me saying what's  
11 going on, where's Mike, you know, everything about  
12 Gassey Jack's. There was still a lot of open things  
13 regarding the project.

14 And I went by at lunch time one afternoon to  
15 see Brad Nicks on the site.

16 **Q. And what day would that have been?**

17 A. I don't recall exactly. That was probably  
18 four, five weeks after that. So that would have been  
19 June 27th, probably couple -- second week in July,  
20 something like that. Maybe a little later. I don't  
21 recall the exact date.

22 **Q. And what happened when you came back?**

23 A. Well, when I was at -- I was visiting with Brad  
24 and Cindy Sylinski, who was a girl that I had hired for  
25 the kitchen in the cabin. And I was talking to Brad and



1 going through the invoices that I was giving him, and a  
2 Seminole County deputy sheriff came over and ordered me  
3 to get against the brick wall and roughed me up, frisked  
4 me, and handcuffed me.

5 **Q. And then what happened?**

6 A. Then Don Hachenberger shows up and says -- the  
7 deputy is telling me that he's going to arrest me for  
8 being on the project site. Well, I was the 50 percent  
9 owner of that, which he had no authority whatsoever to  
10 threaten to trespass.

11 MR. SHUKER: Objection, your Honor.

12 THE COURT: The objection is sustained.

13 **Q. So you come back to the site and you're talking**  
14 **to Brad Nicks, correct?**

15 A. Yes, sir.

16 **Q. And a sheriff shows up?**

17 A. Yes, sir.

18 **Q. Is that correct?**

19 A. Yes.

20 **Q. Deputy sheriff?**

21 A. Yes, sir.

22 **Q. That deputy. And Donald Hachenberger's still**  
23 **not there, correct?**

24 A. I didn't see him at the time.

25 **Q. And the deputy then handcuffs you?**

1 A. Correct.

2 Q. Did he give you a reason why he was handcuffing  
3 you?

4 A. He was very rude and, you know, like I said,  
5 pushing on me hard.

6 MR. SHUKER: Objection.

7 Q. Just tell me if he --

8 THE COURT: Just a second, please. Counsel,  
9 one at a time.

10 MR. SHUKER: I think he was about to give  
11 hearsay about what the deputy said.

12 THE COURT: Sustained.

13 Q. When -- as you're -- and where are you exactly  
14 within the complex?

15 A. I am standing in between the cabin and the main  
16 building.

17 Q. So between the smokehouse and the main  
18 building?

19 A. Yes, sir.

20 Q. How long are you standing there handcuffed  
21 until Donald Hachenberger gets there?

22 A. Probably 15 minutes.

23 Q. When Donald Hachenberger gets there, does he  
24 say anything? Yes?

25 A. Yes. Yes, he did.

1           **Q.    What did he say?**

2           A.    He told me to leave the site.  That I had been  
3 terminated and I was no longer employed.  And that if I  
4 didn't leave, he would trespass me.

5           **Q.    And what happened?**

6           A.    They trespassed me.

7           **Q.    You were still handcuffed?**

8           A.    Yes.

9           **Q.    And then what happened after they issued --**  
10 **and, by the way, you mean they trespassed, did they give**  
11 **you a trespass warning?**

12          A.    Yes, sir.

13          **Q.    And then what happened?**

14          A.    Well, of course, I left the -- you know, I was  
15 in a suit and was not prepared to be roughed up or  
16 anything.

17               MR. SHUKER:  Objection.

18               THE COURT:  Sir, the objection is sustained,  
19 please respond to the question.

20               THE WITNESS:  Sorry, I didn't hear that.

21               THE COURT:  Please respond to the question.

22               MR. BENITEZ:  Judge -- your Honor.

23               THE COURT:  Yes, sir.

24               MR. BENITEZ:  Mr. Myers does have a problem  
25 hearing from the left side.

1 THE COURT: Mr. Myers, are you able to hear his  
2 questions?

3 THE WITNESS: Yes, sir.

4 THE COURT: Please respond to them.

5 BY MR. BENITEZ:

6 Q. Did you -- you left, correct?

7 A. Yes, sir.

8 Q. And then what happened next?

9 A. Well, I immediately -- of course, I was pretty  
10 frustrated at the situation and how and why it occurred,  
11 so --

12 MR. CHASE: Objection, narrative.

13 THE COURT: Sustained. Nonresponsive.

14 Q. Did you have another meeting with Donald  
15 Hachenberger after that?

16 A. About five months later.

17 Q. And when was that, on or about? Was that --

18 A. June, July, August, September, October,  
19 probably late October, November.

20 Q. And where did you have that meeting?

21 A. In the Re/Max conference room.

22 Q. And what was the purpose of that meeting?

23 A. Well, of course, when I was terminated, I was  
24 told that --

25 Q. What was the purpose of the meeting?

1 A. To review several issues of our partnership.

2 **Q. And who else was at that meeting?**

3 A. Jackie accompanied me. Kevin Donaghy was  
4 there. Glenda Hachenberger was on the phone by Skype or  
5 speaker phone.

6 **Q. What's a squeaker phone?**

7 A. Speaker phone.

8 **Q. And so it was Jackie Myers, your wife, you,**  
9 **Kevin Donaghy, Donald Hachenberger and Glenda**  
10 **Hachenberger by phone?**

11 MR. CHASE: Your Honor, may we approach?

12 THE COURT: You may.

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

15 MR. CHASE: Maybe it's an objection to improper  
16 question pursuant to the Court's ruling, Mr. Benitez  
17 is doing over and over again where he repeats the  
18 answer. That there's the answer, and so -- and just  
19 did it again. So who all was there, one, two,  
20 three, four, five. So it was one, two, three, four,  
21 five.

22 THE COURT: You did it with the arrest thing.

23 MR. BENITEZ: I apologize. I didn't -- I don't  
24 intentionally do it, I just -- sometimes it's -- it  
25 might have been there was an objection or something

1 and I was getting refocused.

2 I'll pay attention and I will not do it, sir.

3 THE COURT: Thank you.

4 (Bench conference concluded.)

5 BY MR. BENITEZ:

6 **Q. Okay. So what occurred at that meeting?**

7 A. The meeting was kicked off by Don Hachenberger  
8 and it was -- started out very demanding and -- and,  
9 actually, was a -- some verbal comments that we didn't  
10 like. And Jackie immediately said, hey, if this is  
11 not --

12 MR. CHASE: Objection, hearsay, depending on  
13 what she said.

14 A. We requested a --

15 THE COURT: Stop.

16 MR. CHASE: Sir, depending on what she said, it  
17 sounded like he was heading that way.

18 THE COURT: I don't know.

19 Approach, please.

20 (A conference was held at the bench outside of  
21 the hearing of the jury.)

22 THE COURT: I don't know what she said.

23 MR. BENITEZ: But, Judge, this is the  
24 conversation that's going on. We're not there to  
25 prove anything in particular, this is just

1 conversation between Jackie and the parties in this  
2 case.

3 THE COURT: Right. Well, what is it, what's  
4 the conversation? Is it being offered to prove the  
5 truth of the matter asserted? That's the problem,  
6 is I don't know so I can't -- I don't know how to  
7 rule on the objection.

8 MR. BENITEZ: I don't -- I don't -- there, and  
9 yeah and I'm not too sure. This happens often.

10 THE COURT: Well, no, the bottom line is, I  
11 can't --

12 MR. BENITEZ: Yeah.

13 THE COURT: All I can do at this point, until  
14 you tell me that it meets an exception, it is  
15 hearsay, it's an out-of-court statement of his  
16 codefendant that's being offered, and I don't know  
17 what -- for what purpose. Is it meaningful?

18 MR. BENITEZ: It would be meaningful if it's  
19 the conversation that I'm talking about, but I  
20 didn't think it was at this stage during the  
21 meeting.

22 I thought it was at the end, because at one  
23 point in time Donald Hachenberger tells them that  
24 Jackie Myers is supposed to transfer a liquor  
25 license to him. And Donald Hachenberger said -- and

1           you can later on testify that you were under duress  
2           when you did it.

3           THE COURT: Donald Hachenberger's going to say,  
4           but that's not the question. The question is what  
5           Jackie said.

6           MR. BENITEZ: Yeah, I don't -- that's the only  
7           thing I can imagine, that she might have said  
8           something.

9           MR. CHASE: It might be hearsay.

10          THE COURT: Just on a -- it's sustained.

11          Until he can tell me what it is, I'll hear it  
12          as an exception.

13          MR. BENITEZ: Yeah, I don't really know.

14          MR. CHASE: Thank you, Judge.

15          (Bench conference concluded.)

16 BY MR. BENITEZ:

17          **Q. Without telling me what Jackie may have said,**  
18 **what did Donald Hachenberger say during this meeting?**

19          A. The main purpose, I --

20          **Q. Let me -- I think maybe get back and forth.**  
21 **Because my question was, basically, what's the main**  
22 **purpose of the meeting.**

23                 **Let me ask it this way. Was there a purpose**  
24 **for the meeting? Was the meeting called for a**  
25 **particular purpose?**



1 A. Yes.

2 **Q. What was that particular purpose?**

3 A. To review the status of Gassey Jack's  
4 Smokehouse Garage building.

5 **Q. Okay.**

6 A. And the liquor -- the 4 COP liquor license that  
7 Jackie owned.

8 **Q. Okay.**

9 A. And where we were going from here with the  
10 partnership.

11 **Q. Okay. So during that conversation -- and**  
12 **during that meeting, what did Donald Hachenberger say**  
13 **and what did you say to him, if anything?**

14 A. Well, basically, it started out with that if  
15 you are -- he more or less as a threat, if we are not  
16 going to transfer the liquor license, then he was going  
17 to sue us.

18 **Q. All right. Anything else?**

19 A. There was some issues that had been raised that  
20 he wanted answers on.

21 **Q. Like what?**

22 A. He -- there was an issue that there was \$3,400  
23 of roofing work done on my home, that I had ordered  
24 laminate materials and ordered it through the same  
25 vendor that I had purchased the cabin laminate

1 materials. And he questioned my authority to do that  
2 and the charge for that.

3 **Q. And did you respond?**

4 A. Yes, I did.

5 **Q. Did anything come of that?**

6 A. No, sir.

7 **Q. What else was discussed during this meeting?**

8 A. The liquor license was the main thing. He  
9 wanted Jackie to sign a document to transfer the liquor  
10 license right there that day.

11 **Q. Did Jackie Myers sign that liquor license that**  
12 **day?**

13 A. Well, there's -- transferring a liquor  
14 license --

15 MR. CHASE: Judge, objection.

16 **Q. Just answer that. Just answer that.**

17 A. No.

18 **Q. Did she sign any forms that day?**

19 A. Yes.

20 **Q. What forms did she sign that day?**

21 A. I believe it was called an intent to transfer.

22 MR. SHUKER: Objection, your Honor. The forms  
23 that she signed are hearsay.

24 THE COURT: Overruled.

25 MR. BENITEZ: What is that?

1           A.     It was a form -- basically, a typed up form  
2     that she would authorize transfer of the 4 COP liquor  
3     license.

4           **Q.     How long did this meeting last?**

5           A.     Probably an hour and a half.

6           **Q.     How would you describe the meeting to the jury,**  
7     **cordial, adversarial, hostile?**

8           A.     Adversarial, hostile, very poor.

9           **Q.     At this point in time, we're talking October or**  
10    **November of 2007; is that correct?**

11          A.     Yes, sir.

12          **Q.     Between that time and June 27, 2007, had you**  
13    **been allowed back on the job site other than what you've**  
14    **already relayed to the jury that --**

15          A.     There was one evening that I was allowed in to  
16    the warehouse, that they were threatening me about my  
17    memorabilia.

18                 MR. CHASE:  Objection, narrative.

19                 THE COURT:  Just a second, sir.

20                 What's the objection?

21                 MR. CHASE:  Narrative and nonresponsive.

22                 THE COURT:  Sustained.

23          **Q.     Did you return back to the property between**  
24    **June 27, 2007, and November of 2007?**

25          A.     I think one time.

1 Q. Okay. That one time, do you remember the date?

2 A. No, sir.

3 Q. Do you remember the purpose?

4 A. Yes, sir.

5 Q. And what was the purpose, without mentioning  
6 anything that anybody may have said?

7 A. To walk through the progress of this  
8 construction.

9 Q. Say that again?

10 A. To walk through the progress of the  
11 construction and to visit the warehouse.

12 Q. And who -- did you have Donald Hachenberger's  
13 permission for that?

14 A. Donald Hachenberger was there.

15 Q. Did you meet him?

16 MR. CHASE: Objection, nonresponsive.

17 THE COURT: Overruled.

18 Q. Did you meet him there?

19 A. Yes.

20 Q. Did he -- is he the one -- who coordinated this  
21 meeting on site?

22 A. Kevin Donaghy.

23 Q. And do you remember when this took place?

24 A. Not exactly, I don't.

25 Q. How long did this meeting take place?

1           A.     The meeting we were talking about at the  
2 warehouse, basically, just enough time to walk through  
3 the building and visit the warehouse.

4           **Q.     That's all you did at that meeting?**

5           A.     Yes.

6           **Q.     Had they let you take any of your personal  
7 property out of either Highway 46 Holdings, the main  
8 complex or any other warehouses?**

9           A.     No.

10          **Q.     And this is since June 27, 2007?**

11          A.     That's correct.

12          **Q.     And give the jury some idea -- some description  
13 of some of the property of yours that is still there,  
14 other than memorabilia, or antique motor vehicles?**

15          A.     All the property that was in those facilities,  
16 and we're speaking of two warehouses and the  
17 construction site, are still there today, ten years  
18 later. My tractor --

19                   MR. CHASE: Objection, nonresponsive.

20                   THE COURT: Sustained.

21          **Q.     How many warehouses are there today? Forget  
22 the past, I want to talk today. Today, how many  
23 warehouses are there where there's any of your property  
24 or memorabilia?**

25          A.     Two.

1 Q. And they are at Bobby Lee, correct?

2 A. Bobby Lee Point warehouse.

3 Q. And at Church Street --

4 A. Yes, sir.

5 Q. -- warehouse.

6 Is there some property of yours that is not at  
7 Bobby Lee warehouse or at the Church Street warehouse  
8 off premises from the main building?

9 A. Yes.

10 Q. Where is that?

11 A. Don Hachenberger's trailer business. My  
12 26-foot Pace trailer has been sitting in the field there  
13 since August.

14 Q. Anything else?

15 A. All the memorabilia that is on the walls of the  
16 project are -- belongs to us.

17 Q. So there --

18 A. Can I finish?

19 Q. No.

20 A. Okay.

21 Q. So there's property of yours in the main  
22 building, including the smokehouse, correct?

23 A. Yes.

24 Q. And then there's a Church Street warehouse?

25 MR. CHASE: Objection, improper question,

1 Judge.

2 THE COURT: Sustained.

3 MR. CHASE: Thank you, sir.

4 THE COURT: Repeat. It's just what he  
5 testified to. Let's move forward.

6 BY MR. BENITEZ:

7 **Q. Going back to the main house, talking about the**  
8 **smokehouse and the main house at Highway 46 Holdings,**  
9 **referring to those buildings, we'll call them the**  
10 **smokehouse and the main house, you had -- is there --**  
11 **your memorabilia -- all the memorabilia in the**  
12 **smokehouse and the main house, are they your**  
13 **memorabilia?**

14 A. Yes, sir. There are a few things that I did  
15 not purchase and does not belong to me. Very few. Very  
16 limited.

17 **Q. And give us an idea of how many items that**  
18 **would be, just to get a reference?**

19 A. Well, in the cabin alone, Donald Hachenberger  
20 provided us a nonaudited list of over 2,000 items in the  
21 cabin alone.

22 **Q. No, no, I'm talking about the items that don't**  
23 **belong to you. You said that there are some items?**

24 A. They're in the conference room, in the board  
25 room. There are several photographs that we own the

1 photos, but the frame, they were custom framed and  
2 belong to the -- there's some miscellaneous pieces that  
3 we did not purchase, but I would say 99 percent of  
4 everything in those two buildings belongs to us.

5 **Q. At the time that you were removed on June 27,**  
6 **2007, were there memorabilia and antiques in the**  
7 **smokehouse?**

8 A. No.

9 **Q. Were there any memorabilia or antiques in the**  
10 **main house?**

11 A. No.

12 **Q. Were all the memorabilia and the antiques in**  
13 **either the Church Street warehouse or the Bobby Lee**  
14 **Point warehouse?**

15 A. There was also another Bobby Lee Point  
16 warehouse. There was two Bobby Lee Point warehouses.

17 **Q. There's only one now?**

18 A. Yes, sir.

19 **Q. But then all the memorabilia would be in one of**  
20 **those three warehouses, correct?**

21 A. Yes, sir.

22 **Q. Give me an example of some of the property that**  
23 **is in the ware -- either warehouse today, that does not**  
24 **belong under the category of memorabilia or antiques of**  
25 **any type?**



1           A.    Oh, there's -- just go on and on.  There's  
2  \$6,000 Matco snap-on box.  My air compressor.  My tools.  
3               Lots of family heirlooms.  My photographs of my  
4  mother.

5               Ladders.  A -- smokers, expensive smokers.  
6  Trailers.  Golf cart.  Tractor.  Tools.  All of my  
7  moving equipment from my antique trailers.  Dollies.  
8  Blankets.  Four-wheel wagons.  Aluminum carts.  Cleaning  
9  equipment.  Chain saws, band saws, all types of  
10 equipment, landscaping tools.  Refrigerators.  Equipment  
11 that I purchased for the project.  Stainless steel sink,  
12 stainless steel tables, metal tables.

13              My computers, brand new digital scanner,  
14 digital projector.  My files.  All my Balfour office  
15 equipment.  My Balfour business files.  All of my  
16 leather chairs, office furniture conference room tables.  
17 Calculators, copy machines, two hand copy machines.

18              Ropes, pullies.  Canoes -- our canoes.  Just  
19 thousands of items.

20           **Q.    Are any of those items that you referred and**  
21 **that I'm referring to -- well, are any of those items**  
22 **that are referred to, can they possibly be considered**  
23 **memorabilia?**

24           A.    Absolutely not.  Personal properties.

25           **Q.    And --**

1           MR. BENITEZ: Judge, if I may approach the  
2 witness.

3           THE COURT: You may.

4           **Q. Let me show you what has been marked as**  
5 **Exhibit H for identification, defense. And take a look**  
6 **at it and tell me -- and look through it and I'm going**  
7 **to ask you a question when you get finished.**

8           A. Okay.

9           **Q. And let me ask you: Did you put together that**  
10 **binder?**

11          A. I didn't put this particular binder together,  
12 but these are my photos and my inventories.

13          **Q. Okay. And are those photographs of some of the**  
14 **things that would not be considered memorabilia or**  
15 **petrobilia or antique cars?**

16          A. Yes, sir.

17          MR. BENITEZ: I would move them into evidence  
18 at this time, your Honor.

19          MR. CHASE: Could we see them first, Judge.

20          MR. BENITEZ: Yeah.

21          THE COURT: Yes.

22          MR. BENITEZ: You want to see them?

23          MR. CHASE: Yes, sir.

24          No objection, Judge.

25          THE COURT: With no objection, what was

1           previously as Defendant's Exhibit H for defendant  
2           will be received in evidence as Defendant's 7.

3           Thank you.

4           MR. CHASE:   So that was Defendant's 7.

5           THE COURT:   Correct.

6           MR. CHASE:   Thank you, sir.

7                   (Defendants' Exhibit H for identification was  
8           admitted into evidence as Defendants' Exhibit 7.)

9   BY MR. BENITEZ:

10       **Q.   Mr. Myers, I want to give you what's been**  
11 **marked into evidence as Defendant's Exhibit 7.  And I**  
12 **want you to select a few things from there so I can**  
13 **share with the jury the items that are still in the**  
14 **possession of Highway 46 Holdings, Inc.**

15           THE COURT:   Your microphone, please,  
16           Mr. Benitez.

17           A.   Yes, sir.

18           MR. BENITEZ:   Oh.

19           A.   Okay.  This contains a large number of things.  
20   But the first thing that I had shown on this was these  
21   were photographs of my grandmother, who is 105.  They  
22   kind of raised me.

23           MR. BENITEZ:   Judge, if I may.  For  
24           presentation sake, can I have Mr. Myers come before  
25           the jury and so he can go through the book, as

1       opposed to --

2               MR. CHASE:   Objection, Judge.

3               THE COURT:   I don't know that that's going to  
4       be feasible, but it is a binder.

5               MR. BENITEZ:   Right.

6               THE COURT:   He can take the photographs out and  
7       hold them out.

8               MR. BENITEZ:   Okay.   Then do that, Mr. Myers.

9               MR. CHASE:   I would object to the narrative  
10       testimony, as that he just did with his grandmother  
11       who -- who had a story that went along with the  
12       picture of his grandmother.

13              THE COURT:   Please, sir, just respond to the  
14       questions.

15              THE WITNESS:   Photographs.

16              THE COURT:   Just a second.   There's no  
17       question.

18              Go ahead.

19              MR. BENITEZ:   Judge, what I want him to do is  
20       explain those photographs, to explain to the jury  
21       what they are.

22              THE COURT:   Approach, please.

23              (A conference was held at the bench outside of  
24       the hearing of the jury.)

25              MR. CHASE:   Objection, relevance.

1 THE COURT: What's the monetary value  
2 associated with that? Because that's what you're  
3 trying to prove, right?

4 MR. BENITEZ: No. I'm trying to prove that it  
5 has nothing to do with memorabilia.

6 THE COURT: Understand that.

7 What's the monetary value that's associated  
8 with these things that he contends are his personal  
9 property? And is there any claim for the emotional  
10 distress associated with it?

11 MR. BENITEZ: No, no, no.

12 THE COURT: Then why is it necessary for him to  
13 tell all this long story about his grandmother and  
14 her history?

15 MR. BENITEZ: To explain what it is, Judge.

16 THE COURT: It's his grandmother.

17 MR. BENITEZ: But they don't --

18 THE COURT: Is that memorabilia? No. It was  
19 personal, it was personal to me.

20 Move on.

21 MR. BENITEZ: But can they -- can he at least  
22 say this is a picture of my grandmother?

23 THE COURT: Yes. I just said that.

24 MR. BENITEZ: And then what is the objection?

25 MR. CHASE: She raised me, and he started going

1 into the whole story.

2 MR. BENITEZ: Oh.

3 THE COURT: It's unnecessary.

4 He's trying to paint a picture that he came  
5 here with an agenda for, and I've tried to stop him  
6 here on numerous occasions, but he's walking himself  
7 right back down into that problem.

8 MR. BENITEZ: Okay. I'll give him some  
9 instruction.

10 THE COURT: It's irrelevant and certainly more  
11 prejudicial than it is probative when he heads into  
12 those stories, particularly in this context.

13 (Bench conference concluded.)

14 BY MR. BENITEZ:

15 **Q. Mr. Myers, I'm going to give you some specific**  
16 **instructions how to handle those photographs.**

17 A. Okay.

18 **Q. Okay. Please pay attention.**

19 **What I want you to do is pull the photographs**  
20 **and tell the jurors what they are. Don't -- I don't**  
21 **want the story behind them.**

22 A. Okay.

23 **Q. Unless I ask for them.**

24 **Okay. So just pull out the photographs and**  
25 **show it to the jury. And then tell them what the**

1 **photograph depicts, what it shows?**

2 A. 1979 450 SL Mercedes convertible.

3 **Q. Is that your convertible?**

4 A. Yes.

5 **Q. It's not an antique?**

6 A. No.

7 1952 Chevy pickup.

8 **Q. Is that an antique?**

9 A. Yes, it is.

10 **Q. Is it part of Highway? Highway -- excuse me?**

11 A. I've had it for 30 years. Never part of  
12 anything related to this project.

13 **Q. Okay.**

14 A. This shows a \$6,000 Matco Pro tool chest with a  
15 snap-on air conditioner and Yamaha generator, and the  
16 tools and the cabinetry around it.

17 MR. CHASE: Objection as to the value. There's  
18 no predicate for it.

19 THE COURT: Sustained.

20 You're to disregard the statement concerning  
21 the value of that item.

22 **Q. Mr. Myers, did you hear the Judge?**

23 A. Yes.

24 **Q. Okay.**

25 A. Miscellaneous saws, hand tools, battery

1 charges, personal tool items.

2 **Q. Give them a chance to look at it.**

3 A. Sorry.

4 These are various AV stands to hold projectors  
5 and sounds, speakers, and so forth. This was an out  
6 building that was purchased and moved to the site that  
7 was later destroyed.

8 MR. CHASE: Objection, relevance. I guess it's  
9 already in. I'm sorry, Judge. Withdrawn.

10 A. Various stainless steel cabinetries, equipment  
11 and welding, my welding cart. Several tens of thousands  
12 of Pella windows, architectural Pella windows and doors.

13 **Q. And let me stop you.**

14 **Mr. Myers, with respect to the Pella windows**  
15 **and Pella doors, correct?**

16 A. Yes.

17 **Q. Are those your personal property?**

18 A. Yes, they are.

19 **Q. Are they to be used at Highway 46?**

20 A. I had a chance -- I had a good friend that was  
21 a CFO --

22 MR. CHASE: Objection, your Honor,  
23 nonresponsive, narrative.

24 THE COURT: Sustained.

25 A. The question was, are they my personal



1 property?

2 **Q. Yes.**

3 A. Yes.

4 My childhood bicycle, a Schwinn Sting Ray I  
5 received in 1965, from my mom.

6 MR. CHASE: Objection, as to the childhood,  
7 Judge.

8 THE COURT: The objection is sustained.

9 MR. BENITEZ: Yeah.

10 **Q. And, Mr. Myers, just tell us --**

11 THE COURT: We've been through a sampling of  
12 these. Counsel, it might be more helpful if you  
13 would come up here and select photographs that you  
14 want him to talk about.

15 MR. BENITEZ: Well --

16 THE COURT: And be able to direct him  
17 concerning his testimony, instead of him randomly  
18 selecting photographs.

19 MR. BENITEZ: Well, Judge -- Judge, I think --  
20 I'll give him some further instructions, but I think  
21 he's probably in the better position to pick them  
22 out more efficiently.

23 THE COURT: Approach, please.

24 (A conference was held at the bench outside of  
25 the hearing of the jury.)

1           THE COURT: We've established through his  
2 testimony these are all personal items. They are  
3 not memorabilia, they are not petrobilia, and they  
4 were not a part of the Highway 46 project.

5           You've asked him on his own to go through that  
6 notebook and select some things that are  
7 representative.

8           MR. BENITEZ: I apologize, Judge. I apologize.  
9 Because I think my intent is to anything that's not  
10 obvious, what it's depicting for him to explain it  
11 so that the jury has some sample of it.

12          THE COURT: And that's why you're the lawyer.

13          MR. BENITEZ: Right.

14          THE COURT: And he's the client. You get to  
15 pick and you direct him on his examination and what  
16 his testimony should be. Okay.

17          MR. SHUKER: Your Honor --

18          THE COURT: Yes.

19          MR. SHUKER: Since we're here, I'm a little  
20 confused as to why it's relevant anymore since we  
21 stipulated --

22          MR. BENITEZ: Because -- because we stipulated  
23 to value, but we've got a claim with respect to  
24 personal property that's not been memorabilia or  
25 antiques.

1 THE COURT: You need to break that up.

2 MR. BENITEZ: I apologize.

3 (Bench conference concluded.)

4 Q. Mr. Myers, I'm going to give you some  
5 photographs. What I want you to do is explain to the  
6 jury what they are. Okay? And that's all. I don't  
7 want you to give a history of them, or whatever, unless  
8 I ask you for them. Okay?

9 A. Utility golf cart with an aluminum work bed on  
10 the back.

11 My conference tables and bulletin boards.

12 Several hundred dollars of power extension  
13 strips and cords.

14 MR. CHASE: Objection as to value.

15 THE COURT: Sustained.

16 Q. We're not going to get into value.

17 THE COURT: Disregard the testimony regarding  
18 value, please.

19 A. A toolbox with my name stenciled on it. And  
20 also my Makita work tables at the top.

21 One of two pulley chain saws. My special  
22 woodworking saws.

23 Q. Make sure you hold it up so everybody can see  
24 it. You might want to sit up.

25 A. See okay?

1           My Miter and Makita saw.

2           It's a four-wheel drive John Deere tractor with  
3 a front loader. This is a 16-foot cargo trailer. That  
4 is a custom 34-foot Storm car hauler.

5           Same. This is interior of that car hauler with  
6 custom cabinetry.

7           This is one of my son's muscle car collection.

8           These are BMW motorcycle porcelain signs. This  
9 is a Louisville triple A sign, double-sided neon.

10           MR. CHASE: Objection, Judge. I guess, it  
11 would be better for cross examination. I'm sorry,  
12 sir.

13           THE COURT: Thank you.

**14        Q.    Go ahead.**

15           A.    This is a 1928 Chevrolet pickup.

16           These are Jackie and I's patio old teak  
17 furniture, benches around it, benches.

18           These are some of my taxidermy, hoods of  
19 buffalo and three or four elk and a moose.

20           These are intelligent lighting for the stage.  
21 These happen to be stage lighting. These are abundance  
22 of stage equipment, spotlights, speakers, cords, patch  
23 cords, Rubbermaid carts and dollies for the equipment.

24           Custom painted sign, Mikey's Place.

25           These are a group of 250 chairs with the doors

1 out of the Hard Rock Cafe and the Winter Park Scoreboard  
2 that was taken out of their gym.

3 This is a piece of stained glass that Jackie  
4 and I purchased in April of 2007, for our ceiling.

5 **Q. Just tell us what it is.**

6 THE COURT: Mr. Myers, you're leaning back  
7 against the microphone just making a lot of noise.

8 Thank you.

9 THE WITNESS: Sorry.

10 A. These are two -- these two old hickory smokers  
11 on a trailer that I purchased for the project.

12 It's a better photograph there.

13 This is a personal family Bible.

14 This is a message board that you can program  
15 messages in.

16 This is a digital Epson projector, digital  
17 projector.

18 This is a Stihl pole saw for trimming trees.

19 These are one of -- one of my architectural  
20 cabinets I store my prints and things in.

21 This is my edger, concrete edger. And also  
22 propane tanks.

23 This is my stainless cabinet for bolts and  
24 nuts.

25 These are five-gallon containers of hydraulic

1 oil for my tractor. These are one of four, four-ton  
2 jacks, hydraulic jacks.

3 This shows various file cabinets, office files,  
4 36-inch file cabinets, chairs, air conditioners, and  
5 miscellaneous equipment that Jackie and I own.

6 This is a caricature sketch of my son from one  
7 of the car shows.

8 Multiple dollies, Harper carts, two-wheel  
9 carts, four-wheel dolly, Ram four-wheel dollies.  
10 Special U-haul cart for Coke machines, moving Coke  
11 machines. More of our dollies and equipment.

12 There are ten different ladders and different  
13 sizes that I purchased from Just For Feet.

14 Another chain saw, bar chain, ramps, and jack  
15 stands and hoses.

16 This is a Honda pressure cleaner.

17 Another toolbox and some various equipment and  
18 hand tools that --

19 This is a 16-foot Texas trailer, what they call  
20 a rollback trailer. The bed rolls back so you can drive  
21 your cars right up on it.

22 Additional saws and equipment and miter  
23 equipment.

24 One of two shop vacs, serious Craftsman shop  
25 vacs.

1           This is an autographed -- it looks kind of  
2 funny, but that's really, really a real keepsake, Ed  
3 Raul (phonetic) artwork.

4           This is an ice maker, commercial -- large  
5 commercial ice maker.

6           This is a brand new Porsche wheel.

7           These are another one of the trailers with some  
8 John Deere box plates on the back.

9           This is a vintage oak buffet and a hall tree.  
10          Another toolbox, Rubbermaid toolbox.

11          These are more speakers. These are the EAW  
12 speakers that were purchased from a project out in  
13 Universal.

14          This is an old time clock that was purchased in  
15 April.

16          **Q. Just tell us what it is?**

17          A. Yeah.

18          This is a photo from an auction. These are all  
19 contents that came from an auction Jackie and I attended  
20 in April of '07.

21          This is my grandmother's sewing machine.

22          This is a high school photo of my great uncle,  
23 class photo.

24          This is an organ and a vintage banker's  
25 reception table purchased in May of '07.

1           This is my son's Porsche -- double-sided neon  
2 Porsche sign.

3           These are JBL speaker stands with Makita work  
4 tables.

5           This is a photo of the Jack in the Grass and  
6 two other trailers that we own.

7           This is a picture of a stripped storage  
8 trailer, the large tractor-trailer on the right. And  
9 then the storm trailer. And then a cargo trailer. And  
10 then the Acme trailer, with my tractor sitting in a  
11 field.

12           These are two Rubbermaid bartender carts. So  
13 it was portable, you can roll them out.

14           This is a -- the bottom of a barn wood stand  
15 cabinetry that I ordered, base -- the base cabinet.

16           This is a photo of an Acme -- another Acme  
17 trailer, 16-foot utility trailer.

18           These are my son's lamps from his college  
19 apartment.

20           This is a metal service station from one of my  
21 children.

22           This is a six-volt electric siren with a relay  
23 on it so when you push the green button, you hear the  
24 old -- --

25           **Q. Tell us what it is?**



1           A.     These are family photos with stained glass that  
2 was purchased in April of '07.

3                     My computer.

4                     And a photograph of a radio that was placed in  
5 a refrigeration (sic).

6                     Another one of other stereos used by the  
7 security warehouse.

8                     Larger photo of the hall tree and the hutch.

9                     This is a Dan Fink 1932 Roadster grill and  
10 grill shell, custom painted.

11                    These are two of my Coca-Cola reference books  
12 for collecting and pricing.

13                    My children's John Deere tractor they had when  
14 they were little.

15                    This is the audio system out of my son's M3  
16 BMW.

17                    This is a custom neon clock that I ordered  
18 special. It says Gassey Jack's on it.

19                    This is a parts department, it goes over a  
20 bench in my garage.

21                    These are three large eight-foot resident  
22 gators and some table bases on the bottom, steel.

23                    Family photos. These are tin types. I framed  
24 this when I was in high school.

25                    MR. CHASE: Objection, Judge.

1 A. American flag, it was my grandfather's.

2 THE COURT: The objection is sustained. Just a  
3 description of the item is --

4 MR. BENITEZ: Yes.

5 **Q. Yes, Mr. Myers?**

6 A. I got you.

7 **Q. Do you understand?**

8 A. Yes, sir.

9 **Q. Only a description of the items in the**  
10 **photographs.**

11 A. Yes, sir.

12 **Q. Okay.**

13 A. Old coffee table.

14 Bear head from Cypress Creek High School that  
15 was given to me as a retirement --

16 MR. CHASE: Objection, Judge.

17 A. Okay. Bear head.

18 THE COURT: Mr. Benitez, is it your intent to  
19 go through the entire notebook?

20 MR. BENITEZ: I'm weeding some of them out, but  
21 I've got -- probably I need to publish the entire,  
22 except for the ones I'm pulling out.

23 THE COURT: How much longer do you anticipate?  
24 Is this a good breaking point?

25 MR. BENITEZ: Yes, sir.

1 THE COURT: Okay.

2 All right, folks, it's about 10 minutes before  
3 5, and I think, this is a good breaking point for  
4 us.

5 We'll resume back tomorrow morning at  
6 9 o'clock.

7 I need you to gather back in the spot what the  
8 deputy will show you.

9 Be ready to go at 9.

10 I want to thank you for your attention today.

11 I wanted to remind you do not talk to anybody,  
12 not face to face, not electronic, about anything  
13 having to do with the case or jury service.

14 Please don't do any research on the people  
15 places or issues that you've seen described.

16 Please don't post anything on any social media  
17 or other websites related to the case or your jury  
18 service.

19 Day three. Again, I'm sure folks are starting  
20 to get really curious at home, and just continue to  
21 tell them the judge has instructed us that we're not  
22 permitted to talk about anything having to do with  
23 the case.

24 See you back at 9 o'clock in the morning.

25 Thank you.

1 THE DEPUTY: Jurors leaving.

2 (Jury exiting.)

3 THE COURT: Mr. Benitez, I have some yellow  
4 stickies here if that might help you to keep your  
5 place.

6 MR. BENITEZ: Thank you, your Honor.

7 THE COURT: We'll resume tomorrow morning.

8 After you've been through these photographs,  
9 any sense of how much longer you'll be on direct?

10 MR. BENITEZ: Yes, your Honor. I'll tell  
11 you -- do you want me to -- I apologize, I didn't  
12 hear the whole question.

13 Do you want me to come back tomorrow morning  
14 and tell you how long I have, or now?

15 THE COURT: No, I was just asking now, after  
16 you're finished with these photographs, do you have  
17 a sense for how much longer you have on direct for  
18 Mr. Myers.

19 I'm not holding you to a time limit, I'm just  
20 asking so that we can plan for tomorrow.

21 MR. BENITEZ: I would probably say the morning,  
22 about three hours.

23 THE COURT: Okay.

24 MR. BENITEZ: But I'm not sure, Judge.

25 THE COURT: That's fine. That's fine.

1           And your cross examination, counsel, how long  
2           would you anticipate that? Probably the rest of the  
3           day or something less?

4           MR. CHASE: Sir, I'll try to go quickly.  
5           It's -- but I could see that taking a while. And a  
6           lot of it depends on what that last three hours is  
7           going to be about.

8           No longer than the rest of the day.

9           THE COURT: Okay. And if we get to another  
10          witness tomorrow, who would you anticipate calling?

11          MR. BENITEZ: I would probably call Jackie  
12          Myers, Judge, just to make sure that we can flow  
13          through it real quick.

14          THE COURT: Right.

15          MR. BENITEZ: Without hesitation.

16          THE COURT: Okay. Very good.

17          MR. BENITEZ: And, Judge, are we still set for  
18          Friday, then, for sure in the afternoon.

19          THE COURT: For right now, we're on for Friday  
20          at 1 o'clock. I think you have a van coming at  
21          1 o'clock.

22          MR. CHASE: I thought you said 1:30.

23          THE COURT: I did, but he told me 1 o'clock.

24          I think it -- given traffic considerations, I  
25          thought about it some, I think 1 o'clock is probably

1 better.

2 MR. CHASE: Yes, sir.

3 THE COURT: I'm guessing, tell me, what's your  
4 thoughts on how long we spend out there.

5 MR. CHASE: It's -- I know that  
6 Mr. Hachenberger disagrees with me. I think that to  
7 walk through the main building and everything --  
8 we're just walking through, nobody's talking, and  
9 there's somebody that's just leading us through.  
10 There's no way that takes more than 45 minutes to go  
11 to the warehouse, the big warehouse, the main  
12 warehouse.

13 Even if you went up and down every aisle, which  
14 I don't think you have to, I don't think -- if you  
15 just go around the outside, you can kind of look  
16 down the aisles. I can't see that taking more --  
17 actually being in the building -- more than 20  
18 minutes, so I would say half hour there.

19 The other, Bobby Lee Point warehouse, I think  
20 that's just looking in the doors, because it's a big  
21 open room with just a bunch of stuff on the ground.

22 THE COURT: Are these warehouses on site on the  
23 property?

24 MR. CHASE: They're within a couple blocks  
25 away, but it's not on -- you don't have to get back

1 out on State Road 46.

2 When we get there, we'll go to the main  
3 building initially, walk through there. The drive  
4 to Church Street is five minutes, less. And it's --  
5 I mean, it's right there. So we drive over there.

6 It'll take longer to get people in and out of  
7 the bus probably than to actually walk through it.

8 And then, Bobby Lee Point's right around the  
9 corner from there. That one's really quick -- it's  
10 really just looking in the door and it looks like  
11 construction material on the ground.

12 MR. BENITEZ: And, Judge, the only point I'd  
13 like to bring up -- I've talked to Mr. Chase about  
14 it. There's a trailer, I believe, off site.

15 Is that going to be brought to the main house?

16 MR. CHASE: I don't believe that there is a  
17 trailer off site.

18 If there is.

19 Is there a subject trailer that is not on the  
20 site?

21 MR. HACHENBERGER: Yes, sir.

22 MR. CHASE: Can we get it to the site?

23 MR. HACHENBERGER: I'll -- yes.

24 MR. CHASE: Yes, sir, it will be on site.

25 MR. BENITEZ: Because that would save us going

1 to another time.

2 THE COURT: I understood one destination. So  
3 I'm now learning more as we go talk through this  
4 process.

5 MR. CHASE: Sorry, Judge.

6 THE COURT: So the main site, the two  
7 warehouses and this trailer, will be located at one  
8 of these three places.

9 MR. CHASE: The main trailer will be at the  
10 main site. The trailer that he's talking about,  
11 we'll put it over and put it on the main site. The  
12 main site's going to be very orderly. That's going  
13 to be quick.

14 And it really is interesting. People are -- if  
15 anything, that will go slowly because people will be  
16 stopping to look at stuff. It's a really --

17 THE COURT: What is -- but what is the intent  
18 for bringing the jury out there?

19 MR. CHASE: Mr. Benitez and I -- it was  
20 Mr. Benitez', I guess -- not decision, but  
21 suggestion.

22 Thank you, Mr. Jones.

23 And I agree with it. I think that it's -- it's  
24 tough to comprehend what they're doing from  
25 pictures. It's tough to comprehend what these guys



1 were doing, creating.

2 When you go out there, you get -- it's not just  
3 a restaurant, it's not a Cracker Barrel. It's a  
4 really, really interesting thing.

5 Additionally, I think for all sides involved,  
6 when we talk about this much money, when you go into  
7 that main -- the big warehouse, it is a lot of  
8 stuff. And I mean, it's a lot of really, really  
9 cool stuff. So it's impressive.

10 THE COURT: I understand.

11 I'm not taking the jury on a tour to see cool  
12 stuff.

13 MR. CHASE: I understand.

14 To understand -- the alternative is, in order  
15 to get them to understand -- and I agree with  
16 Mr. Benitez about this. In order to really get them  
17 to fathom what we're talking about, our alternative  
18 would be to show it on a screen in little pieces and  
19 try to show a bunch of pieces and things like that.  
20 And you don't really get it.

21 It's almost like an eminent domain case, where  
22 you don't get it if you don't look at it.

23 THE COURT: If we take them out there,  
24 understanding what we discussed previously, was  
25 there would not be any conversation. We're not

1 going to give them a guided tour.

2 MR. CHASE: That's correct.

3 THE COURT: Because I think that potentially  
4 raises issues.

5 Do we want them to have the opportunity to  
6 write questions down to be answered or are we just  
7 saying no questions, you're just here to see?

8 MR. CHASE: They're just there to see, I would  
9 say, because it's not a -- having -- I've done site  
10 visits before and it's -- it's strict. Everybody --  
11 there's no talking at all. We're not around.

12 It's -- it's you and the deputies. And they're --  
13 Mr. Hachenberger will have somebody there whose job  
14 it is to walk people through and show people around.

15 That person will be in touch with you.

16 And typically how this would be done, it's  
17 however the Court wants, of course, and then -- and  
18 then that person will already know what path to take  
19 and everything. And then you guys just follow him  
20 through.

21 You get out and everybody knows where the bus  
22 is going to stop. Bus is going to unload. The  
23 guy's going to pick you up, say hello to you.  
24 There'll be hi, how are you doing. And then there's  
25 going to be a walk. And then there's going to be a

1 walk through. And then back to the bus.

2 Nobody can talk -- or they can -- I think they  
3 can talk about whatever, the weather, and then you  
4 go to the next warehouse.

5 Usually people -- when people are actually  
6 looking at it, there's no talking at all. The  
7 person would then walk the group through the  
8 warehouse. I would say, just stay on the outside  
9 aisles, which would be very quick.

10 And then as to the Bobby Lee Point warehouse,  
11 that you pull up in the parking lot. Everybody get  
12 out and just look in the door. It's about as big as  
13 this room, and it just has building materials on the  
14 ground stacked up.

15 THE COURT: I would -- this is a little unusual  
16 and I would like them to have the opportunity to  
17 follow up with questions --

18 MR. BENITEZ: Right.

19 THE COURT: -- if necessary.

20 I agree it may not be appropriate for us to  
21 respond to that question there, because we can't  
22 provide evidence or testimony.

23 But I think maybe if we could inform them that  
24 they'll have the opportunity to ask either  
25 Mr. Hachenberger or Mr. Myers questions about what

1 they've seen, to bring their note pads, they can jot  
2 down those questions. And then in followup on  
3 Monday, if that's likely when we'll be back, then  
4 they'll have the opportunity to ask questions here  
5 in the courtroom.

6 I still want our court reporter to go with us  
7 in the event that something comes up that we need to  
8 record.

9 MR. CHASE: Yes, sir.

10 MR. BENITEZ: And, Judge, I don't know if I  
11 misheard Mr. Chase, but I would intend to be there.

12 THE COURT: Yeah, you all are going to follow  
13 us.

14 MR. BENITEZ: It's not going to be --

15 THE COURT: You're going to follow us through  
16 with your clients. Everybody's going to be there.

17 Mr. Chase, just to be clear, I want you and  
18 your clients, I want you following our group.

19 MR. CHASE: Yes, sir.

20 THE COURT: So everybody's there. You could  
21 observe, and if there are issues, we can address  
22 them.

23 MR. CHASE: And so -- and you said following  
24 the group. Would it be then that -- just so that  
25 everybody kind of knows their places, because I need

1 to arrange with the gentleman who's going to be  
2 leading the tour. And that's the gentleman who  
3 currently that's his job, is to show people the  
4 property. So he's the best one to do it.

5 So he would -- he would greet you, the  
6 deputies, and then the folks -- I imagine he'll  
7 probably have two deputies, sir.

8 THE COURT: I would imagine we'll have two.

9 MR. CHASE: All right. So one deputy up by you  
10 and one deputy out in the back by the jurors, and  
11 then the parties behind you guys. And then just  
12 walk through.

13 THE COURT: All right. And make sure it's  
14 clear to this individual that he's not a tour guide,  
15 he's not there to tell us --

16 MR. CHASE: He's not there to talk, of course.

17 THE COURT: He's a line leader, okay.

18 MR. CHASE: Yes, sir.

19 THE COURT: He may help us wander through it.  
20 If there are areas that are not seen that you think  
21 are important to see, you want to direct us to make  
22 sure that you're prepared on the site there to get  
23 us directed to those places, if they're not covered.

24 MR. BENITEZ: Yes, your Honor.

25 MR. CHASE: Can we do that? That would be a

1 good thing to do now and while it's --

2 THE COURT: Well, that's something y' all can  
3 talk about. Just make sure we go everywhere that  
4 each of you believes is important for us to see.

5 MR. CHASE: Yes, sir.

6 THE COURT: But not having been there, I don't  
7 know, I will be living the experience for the first  
8 time right with the jurors.

9 MR. CHASE: Yes, sir.

10 THE COURT: All right. Satisfactory?

11 MR. BENITEZ: Yes, your Honor.

12 THE COURT: Did you have an issue, Mr. Shuker?

13 MR. SHUKER: Not an issue, just a housekeeping  
14 matter, your Honor.

15 THE COURT: Yes, sir.

16 MR. SHUKER: In terms of cross -- and  
17 Mr. Myers, it seems for me to make sense, to go  
18 after Mr. Chase, because I may have very little to  
19 do, depending on what he covers. And the more of  
20 the counts involve him. So I just wanted to make  
21 sure that was fine.

22 And my expectation is, depending on what he  
23 covers, would be no more than 45 minutes.

24 THE COURT: Okay. Thank you for that. I kind  
25 of assumed that. And I appreciate you speaking up.

1 I don't mean to treat you all like the redhead  
2 stepchild. And I apologize for the redhead  
3 reference. That was absolutely unintentional.

4 And just so you know that your role in the  
5 questioning has been less in light of the claims and  
6 the circumstances, so I understand that and I  
7 appreciate it. And, please, always speak up.

8 MR. SHUKER: Thank you.

9 THE COURT: All right. Anything else we need  
10 to take care of this evening?

11 MR. CHASE: No, sir.

12 THE COURT: No.

13 MR. BENITEZ: No, your Honor.

14 THE COURT: Thank you.

15 Everybody go home and get a good night's rest.  
16 I will try to do the same. And perhaps we can make  
17 some better progress.

18 (TIME NOTED: 4:59 P.M.)

19 (CONTINUED IN VOLUME IV.)

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25

1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA )  
3 )  
4 COUNTY OF ORANGE )

5  
6 I, SHOSHANA KRAMER, Notary Public, State of  
7 Florida, I was authorized to and did stenographically  
8 report the foregoing proceedings; and that the  
9 transcript, pages 288 through 611, 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

19

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21

*Shoshana Kramer*  
\_\_\_\_\_  
SHOSHANA KRAMER, RPR, CRR

22

23

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