

11-19-2009

# Thomas v. Thomas Clerk's Record v. 3 Dckt. 36857

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

## Recommended Citation

"Thomas v. Thomas Clerk's Record v. 3 Dckt. 36857" (2009). *Idaho Supreme Court Records & Briefs*. 2543.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/2543](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/2543)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

Supreme Court No. 36857-2009  
Volume No. 3 of 6

IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

---

R. DREW THOMAS,  
Plaintiff/Respondent

VS

RONALD O. THOMAS, ELAINE K. THOMAS  
And THOMAS MOTORS, INC., an Idaho Corporation  
Defendant/Appellants.

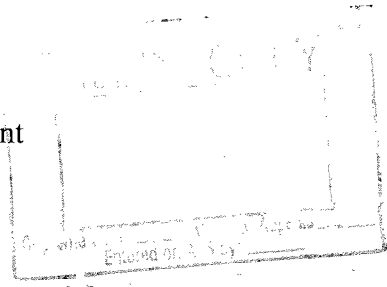
---

*Appealed from the District Court of the Third Judicial  
District of the State of Idaho, in and for the County of Gem,*

*Honorable Juneal C. Kerrick, District Judge*

William A. Morrow  
Attorney for the Appellant

John J. Janis  
H. Ronald Bjorkman  
Attorney for Respondent



---

Filed this \_\_\_\_\_ day of \_\_\_\_\_, 2009

36857

\_\_\_\_\_, Clerk  
Deputy

courts allow enforcement of oral contracts made for an indefinite period, which is to be determined by a stated future event, if it was possible- even though it may be unlikely-that the stated event could have occurred within a year. *See Frantz, supra: General Auto Parts Co., Inc. v Genuine Parts Co.*, 132 Idaho 849, 856, 979 P.2d 1207, 1214 (1999) (Section 9-505 does not govern oral contracts that might have been fully performed and terminated within a year); *Whitlock v. Haney Seed Co.*, 110 Idaho 347, 348, 715 P.2d 1017, 1018 (Ct. App. 1986) (“even if a contract appears on its face to anticipate performance for more than one year, it may fall outside the statute if it is subject to a condition or contingency that could occur within a year, terminating further performance”).<sup>1</sup> *See also* 72 Am. Jur. 2d Statute of Frauds § 17 (“It is the general rule that although the arrival of the time at which a duty will be imposed on the defendant to act is dependant on the happening of a contingency, the contract is not within the statute if this contingency may happen within a year.”) Whether the statute of frauds applies to bar an alleged contract is a question of fact for the jury. *See for e.g. Burton v. Atomic Workers Federal Credit Union*, 119 Idaho 17, 803 P.2d 518 (1990).

In this case, according to Drew and Ron’s oral agreement, Ron had a duty to transfer Thomas Motors to Drew whenever he retired. According to the parties’ agreement, as soon as Drew left Lanny Berg and began operating Thomas Motors, he was entitled to receive the business upon Ron’s retirement. The evidence establishes that while Ron estimated he would

---

<sup>1</sup> “Numerous authorities have variously held or stated that in order to bring a contract within the *infra annum* clause, it must appear affirmatively from the terms and conditions of the contract that it is not to be performed within the year or does not admit of performance within that time. This statement of the rule has also been reiterated in the form that, unless it appears from the contract itself that it is not to be performed within one year, an oral contract is not within the statute of frauds, even though full performance within that time appears improbable.” 72 Am. Jur. 2d Statute of Frauds § 12. “[A] contract must be impossible of performance within one year if it is to be proscribed by the statute of frauds. It is the generally accepted rule that to bring a contract within the operation of this [*infra annum*] provision of the statute, there must be an express and specific agreement not to be performed within such period, for if there is possibility of performance within a year, the agreement is not within the statute.” 72 Am Jur. 2d Statute of Frauds § 14. *See also* 72 Am. Jur. 2d Statute of Frauds § 15.

retire at age sixty-two or sixty-three, he also indicated he might retire, or semi retire, earlier or later than age sixty-two or sixty-three. In fact, he could have chosen to retire at any time while Drew was operating Thomas Motors, within a year after Drew began operating Thomas Motors or within ten years after.

Therefore, Drew and Ron's oral contract did not contain an affirmative time for performance, but was for an indefinite duration and could have been performed within one year. Such an oral contract falls outside the statute of frauds. *See* 72 Am. Jur. 2d Statute of Frauds § 15; *see also for e.g. General Auto Parts, supra* at 856, 1214 (an alleged oral agreement whereby plaintiff, General Auto, was to continue as exclusive retailer for defendant's products "as long as there was a [member of the] Workland [family] running General Auto" was not barred by the statute of frauds because "[w]hile such an agreement manifestly contemplates a long-term relationship extending over a period of years-if not generations-the agreement was capable of completion within one year."); *Darknell v. Coeur D'Alene & St. Joe Transp. Co.*, 18 Idaho 61, 108 P. 536 (1910) (alleged agreement whereby corporation would employ plaintiff as assistant manager so long as he retained ownership of the corporation's stock was not barred by the statute of frauds even though the plaintiff continued employment for three years); *Hubbard v. Ball*, 59 Idaho 78, 81 P.2d 73 (1938) (contract whereby the plaintiff was to perform care of the decedent during his lifetime in exchange for certain payment was not barred by the statute of frauds).<sup>2</sup>

Furthermore, contracts of indefinite duration, which can be performed in one year, and which are performed when the contingency occurs are fully executed and, therefore, none of the

---

<sup>2</sup> Compare for e.g. *Seder v. Grand Lodge*, 35 Idaho 277, 206 P. 1052 1922 (parties' oral agreement was to terminate on the happening of a specific event, which was specifically scheduled to occur more than one year after the agreement was entered into); *Treasure Valley Gastroenterology Specialists, P.A. v. Woods*, 135 Idaho 485, 20 P.3d 21 (2001) (alleged oral non-competition agreement which was for a fixed term of two years was barred by the statute of frauds); *Allen v. Moyle*, 84 Idaho 18, 367 P.2d 579 (1961) (alleged oral seven-year employment contract was barred by the statute of frauds because the parties had affirmatively fixed the duration of the contract to be for more than one year), *Frantz, supra* (oral covenant not to compete for a period of five years was barred by the statute of frauds).

contract performance is within the Statute of Frauds. *See Darknell, supra see Aldape v. Sate of Idaho*, 98 Idaho 912, 913-14, 575 P.2d 891, 892-93 (1978) (“the Statute of Frauds is a bar only to proof of executory, that is, unperformed contracts and is not a bar to proof of executed contracts”).

Finally, the oral contract alleged by Drew is not barred by Idaho Code § 9-505(4), which requires contracts for conveyance of interests in real estate to be in writing. *See* I.C. § 9-505(4). First, the evidence establishes Drew and Ron’s oral contract was for the transfer of a business, Thomas Motors, not the transfer of real property. Secondly, even if real estate on which the business was located or onto which the business might expand was also to become Drew’s upon Ron Thomas’s retirement, the transaction involving the real estate would have been incidental to Ron’s oral contract to transfer of Thomas Motors to Drew. In other words, Drew and Ron Thomas’s oral agreement concerning Thomas Motors did not depend upon transfer of land. *See Spence v. Howell*, 126 Idaho 763, 771, 890 P.2d 714, 722 (1995).

For these reasons, Ron and Drew’s oral contract is not barred by the Statute of Frauds and Ron’s assertion to the contrary must be rejected.

## **2. Equitable Estoppel Applies to Bar the Defendants’ From Asserting the Statute of Frauds**

Even if the court were to decide the oral contract alleged by Drew is within the statute of frauds, Ron is barred from raising the statute as a defense by the doctrine of equitable estoppel.

Because “[t]he purpose and intent of the statute of frauds is to prevent fraud and not aid in its perpetration [courts] will so far as possible refuse to allow it to be used as a shield or cloak to protect fraud, or as an instrument whereby to perpetrate a fraud or wrong, or to work an injustice. . . [the statute] ought not to be used as a means to allow persons who have made a promise to circumvent their obligations.” 73 Am. Jur. 2d Statute of Frauds § 468. Therefore, the

doctrine of equitable estoppel exists to prevent promisors from using the statute of frauds as a means of escaping obligations, which in the interests of fairness and justice, they should be required to honor. *See Frantz, supra* at 1005, 1068, 1073 (1986); *Charpentier v. Welch*, 74 Idaho 242, 248, 259 P.2d 814, 817-818 (1953).

In order to establish entitlement to equitable estoppel and prevent inequitable application of the statute of frauds, the party alleging existence of an oral contract must establish the following elements: as related to the party estopped the elements are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts, and as related to the party claiming estoppel, the elements are: (1) lack of knowledge and of means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially. *See Burton, supra* at 522, 21. Whether a party is equitably estopped from asserting the statute of frauds is a question of fact for the jury. *See id.*

In this case, Drew is clearly entitled to bar Ron from asserting the statute of frauds. The evidence establishes Ron unequivocally promised to give Drew Thomas Motors if Drew left his employment at Lanny Berg and devoted his time and energy to building Thomas Motors. Furthermore, Ron continuously represented and reassured Drew that Thomas Motors was a family business, which would belong to Drew whenever Ron retired. There can be no doubt Ron expected that based upon his promise to give Drew Thomas Motors, Drew would expend an extraordinary amount of time and energy, at great financial and personal sacrifice, in order to

build the business. As a consequence Ron's repeated unequivocal promises and continued representations that Thomas Motors would be family business that would become Drew's whenever Ron retired, Drew had every reason to believe Ron's promise. Furthermore, because of their close familiar relationship, Ron would have expected Drew to place an exceptional degree of trust in Ron and it was perfectly natural and reasonable for Drew. Indeed, why else would Drew have left a secure, satisfactory employment position to undertake the risks of establishing a new business unless he expected to receive a return for his efforts.

In the end, however, Drew relied upon his father's promises to his detriment. Ron received nearly three million dollars from selling a business, which Drew had built, and Drew had absolutely nothing to show for his efforts over eight and a half years. Given the existence of evidence that Ron continually misused Thomas Motors financing for his personal gain, refused to enter a written contract with Drew, and pocketed all the proceeds after sale of Thomas Motors, about which he lied and tried to keep secret from his own son, there is, at a minimum, an issue of fact as to whether Ron intended all along to let Drew build Thomas Motors so that Ron alone could profit from the business.

Under these circumstances, allowing Ron to escape his obligations to his son by asserting the statute of frauds, would amount to allowing Ron to perpetrate a fraud and would be a great injustice against Drew. Therefore, if Ron is permitted to assert the statute of frauds as a defense in this case, Drew will be entitled to assert equitable estoppel to bar Ron's defense.

**3. Drew and Ron Thomas Formed a Contract Which was  
Definite and Certain as to All Material Terms**

Ron argues that even if Drew's oral contract claim is not barred by the statute of frauds, the claim must fail because the contract alleged was not definite and certain in all its material terms. Ron claims the parties' agreement as alleged by Drew included Drew's payment of a

purchase price, the amount of which was never agreed upon by Ron and Drew. Ron's assertions are misleading and without basis.

The evidence unquestionably establishes the terms of Ron and Drew's agreement: Drew would leave his employment at Lanny Berg to devote his time and energy to building and operating Thomas Motors, and, in exchange, Ron agreed to give Drew Thomas Motors whenever Ron retired. As the evidence shows Ron repeatedly expressed his intent to give Drew Thomas Motors. Ron even told Drew he was refusing to sign a written contract whereby Drew would purchase Thomas Motors because Ron was going to "give" Drew the business. Indeed, the Idaho Supreme Court has held there was an issue of material fact as to existence of an oral contract under circumstances which were strikingly similar to the circumstances in this case. *See Harbaugh v. Myron Harbaugh Motor, Inc.*, 100 Idaho 295, 597 P.2d 18 (1979)<sup>3</sup>; *see also Welch v. Whelpley*, 62 Mich. 15, 28 N.W. 744 (1886).

While it appears Drew and Ron discussed whether Drew would provide Ron and Elaine Thomas with retirement income from Thomas Motors, the parties never agreed Drew's receiving Thomas Motors would be contingent upon his providing Ron and Elaine with income during their retirement. The record shows, Drew simply wanted to ensure his parents were provided for during their retirement with income from the family business. The amount of payments to Ron and Elaine, if any, was to be determined after Thomas Motors had been transferred to Drew. Furthermore, such payments may have been made as rent for the business premises or in exchange for financial or other assistance provided by Ron.

For these reasons, Drew and Ron's contract was definite and certain in all its material terms. However, to the extent there are any doubts concerning the terms of the parties' contract,

---

<sup>3</sup> It must be noted that the *Harbaugh* Court found there were issues of material fact based upon much scantier evidence than exists in this case.



the record clearly contains sufficient evidence concerning parties' intent to allow the matter to be decided by a jury.

**B. THE DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON DREW'S CLAIMS RELATING TO WRITTEN AGREEMENTS WHICH WERE DRAFTED BY THE DEFENDANT RON THOMAS**

In Count IV of Drew's *Verified Complaint and Demand for Jury Trial*, he has alleged an alternative breach of contract claim based upon written contracts, which were drafted by Ron's attorney, the late Carl Harder, during late August or early September of 2000. Ron asserts the written contracts, which were drafted after Ron and Drew entered their oral agreement, contain the controlling terms of the parties' relationship with respect to Thomas Motors. Ron further asserts Drew's obligations under the written contracts were conditions precedent to Ron's duty to transfer Thomas Motors, and because Drew did not perform his obligations Drew's breach of contract claim must fail. Even a casual review of the evidence, however, will show Ron's assertions are completely baseless.

At the very minimum, there exist genuine issues of material fact as to whether Ron and Elaine Thomas executed the contracts before Ron sold Thomas Motors in March of 2006 and as to whether Drew was ever provided with the executed contracts and given an opportunity to perform his contractual duties. If Ron and Elaine did indeed sign the contracts at some point before selling Thomas Motors, without ensuring Drew was notified they had decided to enter the contracts after all, then Drew was still deprived of the benefit of Thomas Motors before he had an opportunity to perform his obligations under the contracts. In other words, under those circumstances, Ron would have breached the contracts by selling Thomas Motors.

As the court is well aware, Drew's position is that there are factual issues as to whether Ron and Elaine signed the contracts before they sold Thomas Motors might be resolved through

non-destructive forensic document testing. Thus, Drew is seeking additional time to respond to Ron's motion for summary judgment so he will have an opportunity to obtain results of the forensic testing. *See* Arnett Rule 56(f) Aff.

Even without having the benefit of forensic test results, the record establishes Drew's claim for breach of written contract must be decided by a jury.

**C. THE DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON DREW'S CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

The Defendants assert Drew's claim for Breach of the Implied Covenant of Good Faith and Fair Dealing must fail because a legally enforceable contract was never formed between Drew and Defendant Ron Thomas. As discussed above, however, at a minimum, a genuine issue of material fact exists as to whether the parties did form a legally enforceable contract and, moreover, the evidence shows there is a genuine issue of material fact as to whether Ron breached the covenant of good faith and fair dealing implied in the parties' contract.

Idaho law recognizes a cause of action for breach of an implied covenant of good faith and fair dealing. *Hinkson v. Bernhoft*, 2005 WL 2847382, \*1 - 2 (D.Idaho, 2005); *see also Jenkins v. Boise Cascade Corp.*, 108 P.3d 380, 389 (Idaho 2005); *Metcalf v. Intermountain Gas Co.*, 778 P.2d 744 (Idaho 1989). "The implied covenant of good faith and fair dealing is a covenant implied by law in the parties' contract." *Fox*, 52 P.3d at 855 (quoting *Idaho Power Co. v. Cogeneration, Inc.*, 9 P.3d 1204, 1216 (Idaho 2000)). The covenant requires parties to perform and enforce contractual provisions in good faith. *See Jenkins, supra; Hecla, supra*, at 414. A violation of the covenant occurs when a party violates, nullifies, or significantly impairs any benefit of the contract. *See Fox v. Mountain West Elec., Inc.*, 137 Idaho 703, 710, 52 P.3d 848, 855 (2002). The standard for determining whether a party has breached the covenant is an

objective one, which must be made by considering a party's reasonableness in carrying out the contract provisions. *See Hecla, supra.*

The evidence undeniably establishes there is an issue of fact as to whether Ron breached the implied covenant of good faith and fair dealing by improperly manipulating Thomas Motors's finances for his personal gain and by selling Thomas Motors for a significant profit, at the expense of Drew, who was expending his time and efforts in order to build a viable business from which he would be compensated for his sacrifices.

**D. THE DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON DREW'S CLAIM FOR QUASI CONTRACT**

The Defendants assert Drew's claim for equitable relief based upon quasi contract must fail because Drew cannot establish he conferred any benefit upon Ron for which he was not fully and adequately compensated. For the reasons discussed below, however, the Defendants are not entitled to summary judgment on Drew's claim for equitable relief.

In cases like this case, even if an express contract is found not to exist between the parties, the party benefiting from the actions of the other party has an implied obligation to compensate the other party for the benefit(s) received. A contract implied-in-law is not a true contract at all, but is a legal fiction, a non-contractual obligation created by the courts to provide a contractual remedy where none existed at common law. *See Allen v. Dunston*, 131 Idaho 464, 466-67, 958 P.2d 1150, 1152-53 (1998). The obligation is " 'imposed by law for the purpose of bringing about justice and equity without reference to the intent or the agreement of the parties and, in some cases, in spite of an agreement between the parties.'" *Id.* The court is precluded from applying the equitable doctrine of implied-in-law, or quasim, contract only when an express agreement is found to be enforceable. *See Blaser v. Cameron*, 121 Idaho 1012, 1017, 829 P.2d 1361, 1366 (Ct. App. 1991).

Relief available under implied-in-law, or quasi contract, includes quantum meruit, which permits recovery of the reasonable value of services rendered or materials provided, and unjust enrichment, which allows recovery of the value of a benefit received by one party that would be inequitable for that party to retain without compensating the party who conferred the benefit. *See Great Plains Equipment, Inc. v. Northwest Pipeline*, 132 Idaho 754, 767, 979 P.2d 627, 640 (1999). A party establishes a claim for compensation under the quantum meruit or unjust enrichment by showing (1) s/he conferred upon another party (2) the recipient demonstrated appreciation of the benefit, and (3) the recipient accepted the benefit under circumstances that would be inequitable for the recipient to retain the benefit without compensating the party who conferred the benefit. *See Gibson v. Ada County*, 142 Idaho 746, 759, 133 P.3d 1211, 1224 (2006).

In this case, the evidence undisputedly establishes Drew conferred benefits upon Ron, which Ron actually sought and also accepted under circumstances that would be wholly inequitable for Ron not to compensate Drew. With talk of creating a long-lasting family business and of giving Drew Thomas Motors when Ron retired, Ron convinced Drew to leave a highly satisfactory position in order to apply his knowledge of and experience in new car sales towards establishing and building Thomas Motors. For eight years, Drew spent twelve to fourteen hours a day, including weekends, operating Thomas Motors. Drew functioned in the roles of general manager, sales manager, inventory manager, finance and insurance manager, and sales person simultaneously. While he was performing these functions, Drew received a salary which was far below the market rate paid to general managers at medium size dealerships in the Treasure Valley. Consequently, Thomas Motors and Ron were benefited by the value of services, which Drew provided at well-below market rates in order to get Thomas Motors off the ground. In fact,

Thomas Motors simply would not have become a viable business without the benefit of Drew's services.

Despite Ron's mismanagement of Thomas Motors's finances and lack of cooperation with respect to making necessary improvements, Drew managed to establish a new car dealership which received a "Five-Star" rating from Chrysler. Moreover, it was through Drew's efforts alone that Thomas Motors was able to avoid foreclosure after Ron had caused the business to fall behind in payments on its flooring line of credit. Without Drew's experience, hard work, and persistence, Ron would not have had a viable business to sell to the Bill Bucker group. The evidence clearly establishes Drew expected, and Ron knew he expected, compensation for his efforts beyond the below-market compensation he received while he was operating Thomas Motors.

**1. Drew Has Sought Additional Time to Respond to the Defendants' Motion For Summary Judgment in Order to Allow His Retained Expert to Complete a Report Providing An Analysis of the Value Drew Conferred Upon Ron Thomas**

Drew has retained the GEC Group, which has assigned appropriate experts to complete a report providing an analysis and valuation of the benefits Drew conferred upon Thomas Motors and Ron and, potentially, a business valuation. Thus, Drew has asked the court to allow him additional time to respond to Ron's motion for summary judgment so Drew's experts can complete their valuation of the benefits conferred by Drew. *See* Arnett Rule 56(f) Aff.

**2. Even Without the Expert Analysis An Issue of Fact Exists As to Whether Drew Conferred a Substantial Benefit Upon Ron Thomas**

As already discussed above, even without the benefit expert analysis of the value of the benefits Drew conferred upon Ron, there is clearly a factual issue as to whether Drew is entitled

to compensation under quantum meruit and/or unjust enrichment. *See Pierson v. Pierson*, 63 Idaho 1, 115 P.2d 742 (1941) (finding three sons were entitled to relief in their quantum meruit actions in which they sought compensation for benefits conferred upon their father in the form of their services provided to develop the family farm).

**E. THE DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON DREW'S CLAIM FOR FRAUD**

The Defendants assert they are entitled to summary judgment as to Drew's claim for Fraud because Drew cannot establish that Ron's alleged statements, in which he promised Drew Thomas Motors, were false at the times when they were made. For the reasons discussed below, however, there is, at a minimum, a genuine issue of material fact as to whether Ron committed fraud against his son.

In order to establish a prima facie case for fraud, the claimant must prove nine elements: (1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury. *See Christiansen Family Trust v. Christensen*, 133 Idaho 866, 872, 993 P.2d 1197, 1203 (1999). A promise or statement that an act will be undertaken sometime in the future is actionable if the speaker made the promise without intending to keep it. *See Magic Lantern v. Dolsot*, 126 Idaho 805, 807, 892 P.2d 480, 482 (1995) (overruled on other grounds); *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 205, 61 P.3d 557, 563 (2002) (a fraud claim can be based upon a representation of future events if the claimant proves the speaker had no present intention of following through on the representation at the time the representation was made). Some courts have recognized a cause of action for fraud when the speaker makes a promise with reckless disregard as to whether the promise will or will not be performed. *See*

*Hocks v. Hocks*, 95 Or. App. 40, 767 P.2d 1369 (1989) (affirming judgment in favor of son on fraud claim brought against father, who had promised to transfer a portion of the family business to the son in exchange for the son's working at the business).

In this case, the evidence raises significant questions as to whether when Ron promised to give Drew Thomas Motors he actually intended to do so. Ron's continuous misuse and misapplication of Thomas Motors's credit and revenue for his own benefit, his refusal to invest resources in improving the business, his refusal to enter a written contract whereby Drew would be entitled to sell the business, and his undisclosed sale of the business and pocketing of all the proceeds were actions completely inconsistent with his expressed intentions to give Thomas Motors to Drew. *See Hocks, supra* at 45-46, 1372-73. At a minimum, there is a genuine factual issue as to whether Ron was ever certain he wanted to give Thomas Motors to Drew. *See id.* In other words, there is a question of fact as to whether Ron simply made promises to Drew in order to induce Drew to undertake efforts which would benefit Ron financially. Therefore, the Defendants are not entitled to summary judgment on Drew's claim for Fraud.

#### **V. CONCLUSION**

For the foregoing reasons, the Defendants' motion for summary judgment as to the Plaintiff's claims should be denied.

DATED this 13<sup>th</sup> day of August, 2007.

  
\_\_\_\_\_  
Sarah H. Arnett

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
X  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Response to SJ.doc



FILED <sup>AM</sup> 2:45 PM

AUG 13 2007

SHIRLEY DANNON, CLERK  
DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
wam@whitepeterson.com  
dwilkinson@whitepeterson.com  
sarnett@whitepeterson.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,

Plaintiff,

vs.

RONALD O. THOMAS, ELAINE K.  
THOMAS and THOMAS MOTORS, INC., an  
Idaho Corporation,

Defendants.

CASE NO. CV 2006-492

AFFIDAVIT OF R. DREW  
THOMAS IN OPPOSITION TO  
SUMMARY JUDGMENT

STATE OF IDAHO )

: ss.

County of Canyon )

R. DREW THOMAS, being duly sworn upon oath, deposes and says:

1. I am the Plaintiff in the above-entitled matter and I make this affidavit based upon my personal knowledge of the matters discussed herein.
2. I am the son of the Defendants Ronald O. Thomas (“Ron”) and Elaine K. Thomas and the brother of Monte Thomas (“Monte”) and Rick Thomas (“Rick”).
3. As I explained in my deposition, which was taken in this case on June 26, 2007, during the summer of 1996, while I was employed as the sales manager at Lanny Berg Chevrolet in Caldwell, Idaho, Ron repeatedly proposed that I leave Lanny Berg in order to help establish and to run a new car dealership, which he wanted to establish on the premises of what was then Johannesen Motors, a new and used car dealership in Emmett, Idaho. As I also testified, my father repeatedly told me that if I left Lanny Berg to run the new car dealership in Emmett, the dealership would be mine whenever he retired, but he would not purchase the dealership unless I first agreed to leave Lanny Berg Chevrolet and operate and manage the new dealership in Emmett. As I testified previously, during September of 1997 I did leave my position at Lanny Berg in order to manage and operate Thomas Motors with the understanding it would be mine upon Ron’s retirement
4. Ron’s experience in the auto retail sales industry consists almost entirely of used car sales.
5. I have nearly eighteen years experience in the auto retail sales industry and my experience consists of both new and used car sales. There are significant differences between operating new and used car dealerships. The primary

difference is that in operating a new car dealership, the retailer must meet and comply with all of the manufacturer/franchisor's requirements. These requirements include layout of the dealership premises, marketing approaches, maintaining inventory diversity, meeting minimum sales requirements, and providing mechanic's services, and maintaining credentials of sales and service personnel. Another primary difference is that new car dealerships must operate computer programs allowing the dealer to conduct customer credit checks and to exchange data and other information with the manufacturer/franchisor.

6. During my conversations with Ron prior to and in the summer of 1997 and repeatedly during the years 1997 through 2006, when I was managing and operating Thomas Motors, Ron expressed to me he did not know anything about operating a new car dealership and he did not want any part of having to work with a franchisor and meeting the franchisor's requirements.

Consequently, he relied completely upon me to ensure that Thomas Motors was operating in compliance with Chrysler's requirements and to maintain a good relationship with Chrysler's Dealer-Relations department.

7. Lanny Berg was a very successful auto dealership. During the eight years I was employed there, I worked closely with the owner/operator/general manager, Lanny Berg, Sr. and Lanny Berg, Jr. Through working with the Bergs and through general observation and experience, I gained a great deal of knowledge about how to run a successful new car dealership. Thus, when I left Lanny Berg and came to operate Thomas Motors in the fall of 1997, I brought all my energy and knowledge of how to operate a successful new car business

including how to meet the manufacturer/franchisor requirements discussed above, how to recruit and keep good employees, particularly good salespeople, service and parts personnel, how to develop the right inventory mix to stay competitive in the Treasure Valley area, how to maximize the benefits from resources offered by the manufacturer/franchisor, and how to ensure the dealership employs a competent team to include a motivated finance and insurance manager, who will be able to establish good relationships with the franchisor/manufacturer's lending department and with other lenders and insurance companies. Having a good finance and insurance manager is absolutely essential in order to ensure customers can be offered a wide range of products and thereby ensure customers are able to purchase and protect cars they want. Because Ron did not have experience in these and other areas of operating a new car dealership, he told me he was relying upon me to use my experience in order to establish Thomas Motors.

8. During our conversations, which occurred before Ron bought Johannesen Motors and throughout the years until Ron sold Thomas Motors in March of 2006, he repeatedly stated to me, or in my presence, that Thomas Motors would be mine whenever he retired. Throughout this same time period, Ron repeatedly expressed to me, or in my presence, his intent that Thomas Motors would be a family business to be passed to me then to my children and their children. Ron also repeatedly stated to me and to my brothers that he wanted to distribute his other businesses, Lot-of-Cars and a NAPA auto parts store to his

sons. I would get Thomas Motors, Monte would get Lot-of-Cars, and our brother, Rick would get the NAPA store.

9. From late 1997 through about late 2005, during family gatherings, Ron, Monte, I, my mother, and my other brother, Rick, spent hours discussing long-term plans for Thomas Motors. All of those discussions turned on the assumption that Thomas Motors would belong to me whenever Ron retired.
10. While Ron stated his estimated times for retirement were sixty-two or sixty-three, he would also indicate he might go into retirement, or semi retirement, at an earlier or later time.
11. I had been very happy working at Lanny Berg. I had been given a significant promotion to sales manager, I was being well compensated financially, I typically worked only eight to nine hours five days a week, and I had time to pursue my hobbies and spend time with my kids. Therefore, I did not undertake operating and managing Thomas Motors because I needed a job. I did so because I was offered an opportunity and I wanted to build a family business which would be mine and which I could pass along to my children and my children's children in the future. I undertook operation and management of Thomas Motors because my father promised that if I did so, the business would be mine.
12. Throughout the nearly nine and half year period, from when Ron proposed that I come work with him to establish Thomas Motors until he sold the business in March of 2006, Ron never stated I would pay any purchase price for the business. Our agreement was that I would leave Lanny Berg and give my

efforts and experience in building Thomas Motors in exchange for his "giving" me the business whenever her retired. While I felt it would be fair and wanted to ensure that Ron and my mother received some retirement income from the business, I need to clarify that my receiving the business was not contingent upon my paying them retirement income. The retirement income might have been in the form of rental payments or a return for financial or other assistance my father would provide. The amount of retirement income that was discussed was to be \$3,000 to \$5,000.

13. During September through November 1997, I spent countless hours on the Thomas Motors premises ensuring the facilities were set up in compliance with Chrysler's requirements, overseeing installation of and learning about software systems necessary for operating a new car dealership, hiring good salespeople, and developing the right inventory mix of new and used cars in order to compete with other dealerships in the area.
14. From September of 1997 through about September of 2000, I worked twelve to fourteen hour days six days a week. I would typically arrive at about 7:30 a.m. and take care of everything that needed to be done to open for business each day, including putting on the coffee, setting up the showroom, moving and parking cars on the lot, and ensuring the computer systems were fully operational. I acted as general manager, sales manager, and inventory manager, which are all full-time positions in other medium size auto dealerships. I also functioned as the finance and insurance manager, which is a full-time position in other medium size auto dealerships. This position required

passing a state test. The finance manager's position is crucial to a successful business because that person ensures customers can obtain financing and insurance necessary to purchase the vehicles they want. The finance manager must cultivate and maintain strong relationships with lenders and insurance companies. Furthermore, lenders and insurance companies usually required that they receive a certain number of accounts through Thomas Motors each year. In addition to performing the management functions, I would also spend several hours each day working directly with customers.

15. Throughout the years I was attempting to build Thomas Motors into a successful new car dealership, Ron did not participate in any of the day-to-day management. He did not want to observe or even learn about what maintaining the new car dealership entailed and was invited to do so many times. However, Ron insisted upon controlling and managing all of Thomas Motors's check book. Consequently, he controlled how all resources would be spent, and if I wanted to make an improvement, I could not do so unless he agreed to make funds available. For example, I could not hire a qualified person without Ron agreeing to make the funds available to do so.
16. From the fall of 1997 until October 2004 I urged Ron to provide funding to hire a full-time finance and insurance manager. I knew from my past experience and from the dealer relations people at Chrysler that having a full time finance and insurance manager would enable Thomas Motors to sell a lot more vehicles and be more profitable. Ron, however, absolutely refused to provide funding. When Ron finally agreed to hire a full-time experienced finance and insurance

manager on a ninety-day trial period during 2004, at the urging of Chrysler's dealer relations manager, John Nunley, Thomas Motors' revenues increased significantly.

17. On countless occasions from September of 1997 until the spring of 2006, I stressed to Ron that it was crucial that Thomas Motors pay its salespeople competitive salaries and commissions. Ron, however, absolutely refused to cooperate with me in my attempts to keep good, motivated salespeople, and service and parts personnel at Thomas Motors. Most of the good salespeople we employed would quit because Ron refused to compensate them and would also manipulate the sales records in order to reduce their commission.
18. Because Ron controlled Thomas Motors' check book, he controlled when and how sales proceeds and other income would be applied to payment of Thomas Motors's bills and debts. During 1997 through 2002, Thomas Motors had a line of credit which was issued by Wells Fargo. The line of credit was called a "flooring line" because it was used for purchasing inventory- new cars and used cars up to seven years old. The flooring line was paid with proceeds from auto sales. By the summer of 2000 Thomas Motors was indebted to Wells Fargo in the amount of approximately \$300,000 for advances from the flooring line. Wells Fargo was threatening to foreclose.
19. Due to Thomas Motors's financial difficulties, which had been caused by Ron's spending habits, I became very concerned about whether I should continue with my efforts to build a business which Ron would not be able to deliver upon his retirement because it would be foreclosed by creditors. I continued my efforts,



however, in reliance on Ron's and my contract and because I wanted to establish a family business to pass on to my children and/or my brothers' children.

20. During the fall of 2000, Ron's accountant, Rob Wilde and I worked with Wells Fargo in order to get the flooring line paid down and avoid foreclosure. We had to obtain extensions, and the interest rate on the line of credit was increased significantly. We also obtained alternative financing through Key Bank.
21. Starting in September of 2000, I kept Thomas Motors open for business into the evenings seven days a week. I continued to perform all of the functions described above in Paragraph 14, including countless hours working directly with customers. The sales revenues improved, but instead of applying the increased revenues to building the inventory and improving employee compensation, the proceeds went to pay down the flooring line.
22. For a period of about 10-12 months, from August of 2000 until June or August 2001, Ron allowed me to recruit good salespeople and to pay them competitive compensation and commissions. Additionally, the staff's morale increased. Consequently, sales began to improve.
23. Even with the difficulties Thomas Motors faced due to Wells Fargo's threatened foreclosure, Chrysler awarded Thomas Motors its "Five-Star" rating for excellence in sales and service in 2002. That rating is typically given only to larger, more established dealerships.
24. Eventually, however, Ron began to interfere again with my efforts to maintain a competent, motivated, well-compensated staff. Although Thomas Motors

obtained a new flooring line from Key Bank in 2002, Ron once again began misapplying sales proceeds and otherwise manipulating Thomas Motors's finances so that by the time he sold Thomas Motors in 2006, Thomas Motors owed more than \$200,000 on the flooring line issued by Key Bank.

25. During the years 1997 through 2006, sales managers at smaller and medium size dealerships in the Treasure Valley were paid an annual salary from \$60,000 to \$100,000 and finance and insurance managers were paid an annual salary of \$60,000 to \$150,000. During the same period, general managers at smaller and medium size dealerships in the Treasure Valley were paid an annual salary from \$100,000 to \$200,000. Therefore, although I ultimately received an annual salary from Thomas Motors in the amount of about \$60,000, I was being paid within the salary range paid to sales managers, not general managers. I had much more responsibility and was performing many more functions than a sales manager would perform. Furthermore, managers in small and medium size dealerships are given annual vacation time and are able to take holidays and weekends off. I took only two vacations in eight years, worked on holidays, and on weekends. I received only my salary from Thomas Motors and minimal annual bonuses from Chrysler, which amounted only to \$5,000 or less each year.

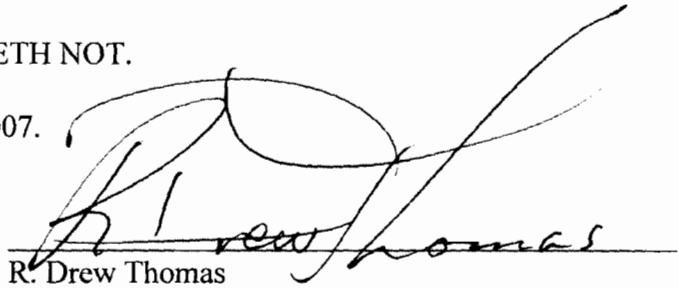
26. As I testified in my June 26, 2007, deposition, when I signed the contracts, copies of which are Exhibits 3,4,and 5 of my deposition, on September 19, 2000, there were no other signatures on any of the documents. Based upon my conversations with Ron's attorney, the late Carl Harder, I expected copies of

the contracts to be provided to me after they had been executed by my parents.  
I never received any copies of executed contracts.

27. Based upon my experience in working in the new car sales industry and in working with Wells Fargo concerning Thomas Motors's flooring line, I feel I could have obtained a flooring line secured by Thomas Motors's inventory had I acquired Thomas Motors's pursuant to the contract between me and my father, even if it meant bringing in a partner. So long as Thomas Motors was bringing the required amount of sales revenue, my father's assistance in obtaining the flooring line would have been unnecessary.
28. I am now working as the sales manager at Bill Bucker Chrysler Dodge Jeep, which is what Thomas Motors became after Ron sold the business in March 2006.

FURTHER YOUR AFFIANT SAYETH NOT.

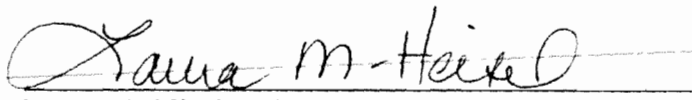
DATED this 13<sup>th</sup> day of August, 2007.

  
R. Drew Thomas

SUBSCRIBED AND SWORN to before me by R. Drew Thomas this 13 day of August, 2007.

(SEAL)



  
Notary Public for Idaho  
Commission Expires: 01-19-2013

CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
X  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

h  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

lmh/W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Aff of Drew Thomas.SJ Response.doc

FILED <sup>AWI</sup> 2:41 PM

AUG 13 2007

SHILLY GANNON, CLERK  
DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
*wam@whitepeterson.com*  
*dwilkinson@whitepeterson.com*  
*sarnett@whitepeterson.com*

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,

Plaintiff,

vs.

RONALD O. THOMAS, ELAINE K.  
THOMAS and THOMAS MOTORS, INC., an  
Idaho Corporation,

Defendants.

CASE NO. CV 2006-492

AFFIDAVIT OF MONTE  
THOMAS IN OPPOSITION TO  
SUMMARY JUDGMENT

STATE OF IDAHO )

: ss.

County of Canyon )

MONTE THOMAS, being duly sworn upon oath, deposes and says:

1. I make this affidavit based upon my personal knowledge of the matters discussed herein.
2. I am the son of the Defendants Ronald O. Thomas ("Ron") and Elaine K. Thomas and the brother the Plaintiff, Drew Thomas ("Drew").
3. During 1996 through March of 2000 I was residing in Nashville, Tennessee. During 1996-1997 I had regular telephone contact with both Ron and Drew. During my telephone conversations with Ron, he told me that he wanted to purchase Johannesen Motors, which was a new and used car dealership in Emmet, Idaho. Ron told me he Drew was leaving his position as sales manager at Lanny Berg Chevrolet in Caldwell, Idaho, in order to run the new car dealership Ron envisioned and that the dealership would be Drew's when Ron retired. He told me he knew Drew had a lot of experience in and knowledge about the new car business and that Drew would manage all aspects of the dealership. Ron also told me repeatedly he would not purchase Johannesen Motors unless Drew agreed to leave his job with Lanny Berg and to run the new dealership. Ron told me that if Drew agreed to run the new car dealership, the dealership would be Drew's whenever Ron retired.
4. During our conversations which occurred before Ron bought Johannesen Motors and throughout the years until Ron sold Thomas Motors in March of 2006, he repeatedly stated to me, or in my presence, that Thomas Motors would be Drew's whenever Ron retired. Throughout this same time period, Ron repeatedly expressed to me, or in my presence, his intent that Thomas Motors would be a family business to be passed on by Drew to his children or his

siblings' children. Ron also repeatedly stated to me and to my brothers that he wanted to distribute his other businesses, Lot-of-Cars and a NAPA auto parts store to his sons. Drew would get Thomas Motors, I would get Lot-of-Cars, and our brother, Rick Thomas, would get the NAPA store.

5. From late 1997 through about late 2005, during family gatherings, Ron, Drew, my mother, and my other brother, Rick, spent hours discussing long-term plans for Thomas Motors. All of those discussions turned on the assumption that Thomas Motors would belong to Drew whenever Ron retired. While Ron stated his estimated times for retirement were sixty-two or sixty-three, he would also indicate he might go into retirement, or semi retirement, at an earlier or later time.
6. After I moved back to Idaho in March of 2000, I started working for Ron and Drew as a new and used car salesman at Thomas Motors. I continued to work at Thomas Motors until the business was sold in March of 2006.
7. From March 2000 until late August or September 2000, Drew and I both worked six days a week at Thomas Motors. I often worked ten to twelve hour days and Drew would work twelve to fourteen hour days.
8. Throughout the entire time I worked at Thomas Motors, I observed Drew handling all of the day-to-day general management as well as acting as the sales manager, the finance and insurance manager (i.e. person who is responsible for providing customers with financing and insurance products), and inventory manager, and handling human resource matters. Drew also took care of numerous tasks such as getting the office and showroom up and running

each morning and parking cars out on the lot. In addition to performing all of these functions, Drew also put in countless hours working directly with customers.

9. Throughout my employment at Thomas Motors, I did not observe Ron learning about or performing any of the day-to-day management functions which Drew performed. Ron would come to the Thomas Motors premises periodically. His visits usually lasted less than an hour.
10. From conversations with Ron and Drew and my observations of day-to-day activities at Thomas Motors, I learned that it was primarily Ron who actively engaged and maintained control over the management of Thomas Motors' business finances.
11. Throughout the time I was working with Drew at Thomas Motors, Ron repeatedly commented to me that he did not like the idea of having to deal with Chrysler and to meet all of Chrysler's requirements for its dealerships and that Drew was better suited to operating the Chrysler dealership and had management abilities superior to Ron's.
12. During August of 2000, while Drew was away on vacation in Challis, Idaho, Ron came to Thomas Motors and asked me to assemble all of the staff present on the Thomas Motors premises in the showroom because Ron wanted to meet with us. After we had assembled in the showroom, Ron announced Thomas Motors was going to be Drew's, and Ron was no longer going to participate in operating the business, and any involvement Ron had with the business would be through Drew's direction only.



13. During the summer of 2000, I had learned from Ron and Drew that Thomas Motors had fallen behind with payments on its line of credit used for purchasing inventory (referred to as a "flooring line"). Thomas Motors was indebted to Wells Fargo (which had issued the flooring line) in the amount of approximately \$300,000. When Drew returned to Thomas Motors after Ron's announcement discussed above in Paragraph 12, Drew's primary focus became increasing sales in order to pay off the flooring line and avoid foreclosure by Wells Fargo. Drew had put in a tremendous amount of time and effort to make Thomas Motors a viable business, which was to be his business, and he wanted to make sure the business was not going to be lost. Because I viewed Thomas Motors as a family business, I wanted to do all I could to help Drew preserve the business from foreclosure. Thus, starting in about September 2000, Thomas Motors was open for business seven days a week, and Drew and I worked seven days a week. We spent eight to nine hours each day serving customers. Drew continued to work twelve to fourteen-hour days performing all of his other management tasks in addition to working directly with customers.

14. Throughout the time I worked at Thomas Motors, Drew's goal was to hire competent, motivated staff, who wanted to be part of the growing business. Drew wanted to ensure the staff, particularly the salespeople, had received competitive rates of compensation and other financial incentives. Having good salespeople is absolutely essential for operating a successful car dealership. Ron, however, insisted upon paying the salespeople, including me, as little as

possible in salary and commissions. Consequently, good salespeople would quit because they became frustrated and discouraged.

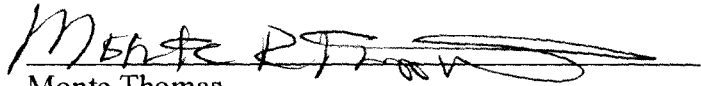
15. For some time after Ron made his announcement discussed above in Paragraph 12, he stayed away from Thomas Motors altogether. Drew was able to keep the staff motivated. Chrysler even issued Thomas Motors a "Five-Star" rating, which are usually issued only to larger dealerships.
16. On or about September 19, 2000, I reviewed the draft agreements, which are Exhibits 3,4,and 5 to the June 26, 2007, *Video Taped Deposition of R. Drew Thomas* ("Thomas Depo) (*see Affidavit of Sarah H. Arnett In Opposition to Summary Judgment*, Exhibit A). I reviewed the documents when Ron's attorney, the late Carl Harder, brought them over to Thomas Motors for Drew to sign. I reviewed the documents before Drew signed them. At the time I reviewed the documents, they did not contain any signatures.
17. About three to four weeks after September 19, 2000, I asked Ron whether he had signed the agreements (Exhibits 3,4,5 to the Thomas Depo). I told him Drew was concerned and wanted to know when Ron was going to sign the documents. Ron responded that he was not going to sign the documents. He said he didn't know why Drew would want to enter an agreement to buy something Ron was going to give him. He instructed me to tell Drew to "calm down" and to let Drew know Ron was there for us.
18. Ron did not ever tell me he intended to sell Thomas Motors to a third party. He did not tell me at the time he had entered the agreement to sell the business and he did not make a general announcement to the Thomas Motors staff. Ron's

sale of Thomas Motors came as a complete surprise to the Thomas Motors staff as well as to me, Drew, and our brother Rick.

19. Since Thomas Motors was sold I have continued working as a salesperson for Bill Bucker Chrysler Dodge Jeep.

FURTHER YOUR AFFIANT SAYETH NOT.

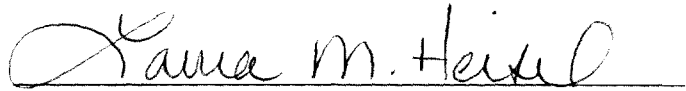
DATED this 13 day of August, 2007.

  
Monte Thomas

SUBSCRIBED AND SWORN to before me by Monte Thomas this 13 day of August, 2007.

(SEAL)



  
Notary Public for Idaho  
Commission Expires: 01-19-2013

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
x  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

λ  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

Imh/W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Aff of Monte Thomas.SJ Response.doc

FILED <sup>AWI</sup> 2:41 PM

AUG 13 2007

SHELLY GANNON, CLERK -  
*[Signature]* DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
*wam@whitepeterson.com*  
*dwilkinson@whitepeterson.com*  
*sarnett@whitepeterson.com*

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,

Plaintiff,

vs.

RONALD O. THOMAS, ELAINE K.  
THOMAS and THOMAS MOTORS, INC., an  
Idaho Corporation,

Defendants.

CASE NO. CV 2006-492

AFFIDAVIT OF RICK THOMAS  
IN OPPOSITION TO SUMMARY  
JUDGMENT

STATE OF IDAHO )

: ss.

County of Canyon )

RICK THOMAS, being duly sworn upon oath, deposes and says:

1. I make this affidavit based upon my personal knowledge of the matters discussed herein.
2. I am the son of the Defendants Ronald Thomas (“Ron”) and Elaine Thomas and the brother the Plaintiff, Drew Thomas (“Drew”).
3. During the summer of 1997, Ron told me he wanted Drew to leave his position as sales manager at Lanny Berg Chevrolet in Caldwell, Idaho, in order to run the new car dealership Ron envisioned and the dealership would be Drew’s whenever Ron retired.
4. During our conversations which occurred throughout the years until Ron sold Thomas Motors in March of 2006, he repeatedly stated to me, or in my presence, that Thomas Motors would be Drew’s whenever Ron retired. Throughout this same time period, Ron repeatedly expressed to me, or in my presence, his intent that Thomas Motors would be a family business to be passed on by Drew to his children or his siblings’ children. Ron also repeatedly stated to me and to my brothers that he wanted to distribute two of his other business, Lot-of-Cars and a NAPA auto parts store, to his sons. Drew would get Thomas Motors, I was to get the NAPA store, and our brother, Monte, would get the used car business, Lot-of-Cars. During 1999-2004, I would often go for drives with Ron. During those drives Ron would repeatedly say things like, “I’m doing this for my family,” and would talk about distributing his business to me, Monte, and Drew.
5. From late 1997 until about late 2005, during family gatherings, Ron, Drew, my mother, and my other brother, Monte Thomas, spent hours discussing long-

term plans for Thomas Motors. All of those discussions turned on the assumption that Thomas Motors would belong to Drew whenever Ron retired. While Ron stated his estimated times for retirement were sixty-two or sixty-three, he would also indicate he might go into retirement, or semi retirement, at an earlier or later date.

6. During 1999, Ron convinced me to leave a secure, promising employment position with the State of Idaho in order to run the Thomas Auto store he owned. He told me I would be contributing to the family efforts to build a future for all of us.
7. Sometime during mid October of 2000, when I was visiting with Ron in his office at Lot-of-Cars, he opened the top right hand drawer of his desk and pulled out a bunch of papers containing type-written text. He asked me "have you seen these." I responded by asking what the papers were and he told me it was "the contract" Drew wanted him to sign. I then asked if he were going to sign the contract, and he responded, "Hell no, I'm not going to sign those sons of bitches," and threw the papers back into the drawer.
8. Ron did not ever tell me he intended to sell Thomas Motors to a third party. He did not tell me at the time he had entered the agreement to sell the business. Ron's sale of Thomas Motors came as a complete surprise to the Thomas Motors staff as well as to me, Drew, and our brother Monte.

---

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 13 day of August, 2007.

*Rick Thomas*

\_\_\_\_\_  
Rick Thomas

SUBSCRIBED AND SWORN to before me by Rick Thomas this 13 day of August, 2007.

(SEAL)



*Laura M. Heisel*

\_\_\_\_\_  
Notary Public for Idaho

Commission Expires: 01-19-2013



**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
X  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

lmh/W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Aff of Rick Thomas.SJ Response.doc

FILED 135 AM PM

AUG 14 2007

SHELLEY GANNON, CLERK DEPUTY

William A. Morrow
Dennis P. Wilkinson
Sarah H. Arnett
WHITE PETERSON, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB No.: 2451, 6020, 6545
wam@whitepeterson.com
dwilkinson@whitepeterson.com
sarnett@whitepeterson.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,
Plaintiff,
vs.
RONALD O. THOMAS, ELAINE K.
THOMAS and THOMAS MOTORS, INC., an
Idaho Corporation,
Defendants.
CASE NO. CV 2006-492
AFFIDAVIT OF JOHN NUNLEY
IN OPPOSITION TO SUMMARY
JUDGMENT

STATE OF OREGON
County of Washington

JOHN NUNLEY, being first duly sworn, deposes and says as follows:

1. I make this affidavit based upon my personal knowledge of the matters set forth herein.
2. Attached hereto as Exhibit "A" and incorporated herein by reference is a true and correct copy of a statement, which I prepared on July 25, 2007, concerning my interactions with the above-named Defendant Ronald Thomas and the Plaintiff Drew Thomas involving the Chrysler dealership, Thomas Motors, which they operated from 1997 until 2006.

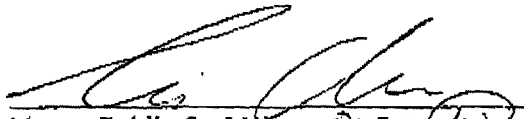
FURTHER YOUR AFFIANT SAYETH NAUGHT.

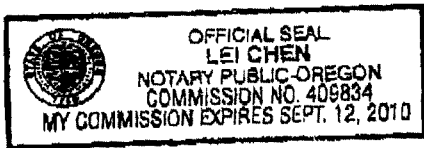
DATED this 13 day of August, 2007.

  
 \_\_\_\_\_  
 John Nunley

SUBSCRIBED AND SWORN to before me by John Nunley this 13 day of August, 2007.

(SEAL)

  
 \_\_\_\_\_  
 Notary Public for ~~Idaho~~ Oregon  
 My Commission Expires: 09-12-2010



**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

To Whom It May Concern:

Please use this letter for reference in my past dealing with Drew Thomas.

I first met Drew when I worked for Chrysler Financial in 1997. I was the credit analyst for retail offerings for Thomas Motors when they first opened after purchasing the old Johansson Motors and obtaining approval from DaimlerChrysler.

Later that year, I became the outside dealer representative for the Boise Idaho market and called on Thomas Motors, until my retirement in 2006. During the entire time I was their representative Drew Thomas acted as General Manager among many other duties. The actual owner Ron Thomas never was active in the day to day operations of the dealership. Over the course of a few years Ron Thomas said to me that he was going to leave the dealership to his sons Drew and Monte as a way of providing a significant future for them. During this time Ron operated Lot O' Cars a non-franchised used car outlet. However, since he was the 100% owner of Thomas Motors he controlled many of the decisions made at that store and would not let Drew make the necessary changes required in business operations to be successful and increase the business. Coming from his background as a small used car lot owner he did not show the necessary business knowledge required to run a factory franchised dealership. On the other hand, Drew with his previous experience at franchised dealerships knew what to do but Ron would not let him proceed. Preferring instead to attempt to control the business based on his experience in a vastly different environment from a factory franchised dealership. For example, he decided several years ago that the parts inventory was too low and ordered more than a nine month supply of parts. The factory wants dealers to have about a 3 month supply and most dealership analysts agree that anything over 2 months is excessive. Unlike vehicle inventory which can be financed parts are paid in cash with the result that the dealership suffered a tremendous blow to their equity position and working capital.

They needed to increase the vehicle inventory substantially to keep customers from going to Boise or Nampa to buy their new and used vehicles; Ron did not want to spend the money on increased inventory. He was against hiring a finance manager with the result of having almost no aftermarket product sales - which, in the competitive environment that dealers face today, is essential. He did not want to pay the salaries and commissions needed to employ and retain good salespeople, technicians and managers for parts, service, sales and finance. Acting on my suggestion, Drew presented a plan to Ron that they hire on a 90 day trial period an experienced finance manager to see what would happen with finance department revenue. From the start it was a success and brought the dealership much needed income. After the trial period Ron took credit for the idea and blamed Drew for not doing it from the beginning.

**EXHIBIT A**

000443

The downside to these events over an eight or nine year period was that Ron decided to sell the dealership. It was purchased by an experienced owner with other franchised outlets. They immediately made most of the changes that Drew wanted to make with the result that vehicle sales have increased almost 4 times what they had been at Thomas Motors. Ron cut Drew out of any chance to buy or run the dealership after having sacrificed all of his time. With a few exceptions Drew spent almost all of his time getting Thomas Motors cleaned up and operating on a level that had not been there prior. The previous owner had run the business in the ground. The facility was substandard and the inventory mix deplorable. Drew took on those tasks and made it successful but lacking the support from Ron Thomas was unable to execute the necessary business model to take the business to the next level.

I cannot imagine what he must feel now that he knows he was severely taken advantage of by his own father who broke his promise to leave him the dealership. Drew worked hard depending on that promise for his future - that he would be the owner instead of just an employee.

John Nunley  
Dealer Relations Manager  
DaimlerChrysler Financial Services  
1978 - 2006

FILED 135 AM PM

AUG 14 2007

SHELLY GANNON, CLERK DEPUTY  
*[Signature]*

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
wam@whitepeterson.com  
dwilkinson@whitepeterson.com  
sarnett@hotmail.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,	)	
	)	<b>CASE NO. CV 2006-492</b>
Plaintiff,	)	
	)	<b>AFFIDAVIT OF JANIS FLOWERS</b>
	)	<b>IN OPPOSITION TO SUMMARY</b>
vs.	)	<b>JUDGMENT</b>
	)	
RONALD O. THOMAS, ELAINE K.	)	
THOMAS and THOMAS MOTORS, INC., an	)	
Idaho Corporation,	)	
	)	
Defendants.	)	

STATE OF IDAHO )  
: ss. )  
County of Gem )

JANIS FLOWERS, being duly sworn upon oath, deposes and says:

1. I make this affidavit based upon my personal knowledge of the matters discussed herein.
2. During 1997 I was employed by the Defendant Ronald Thomas ("Ron") at the used car dealership, Lot-of-Cars, which he owned at that time.
3. After Ron and the Plaintiff, Drew Thomas ("Drew"), had established a Chrysler dealership called Thomas Motors, in Emmett, Idaho, in the fall of 1997, Ron transferred me to Thomas Motors. I was employed as the head bookkeeper at Thomas Motors from November 1, 1997, until Ron Thomas sold the dealership in March of 2006. I am now employed as a bookkeeper at Bill Buckner Chrysler Jeep Dodge, which is what Thomas Motors became after it was sold by Ron.
4. Throughout my employment at Thomas Motors, Drew acted as the general manager, financing manager (i.e. coordinating financing for customers' purchases), sales manager, new and used car inventory manager, and a salesperson. Drew also handled all human resources related matters.
5. When the business first opened, Drew undertook and accomplished all of the steps necessary to make Thomas Motors an operational new-car dealership which would be in compliance with Chrysler's requirements for its dealerships. For example, Drew was responsible for ensuring the Thomas Motors premises was laid out in compliance with Chrysler's requirements. Drew also obtained all of the auto-dealer specific computer systems, which were necessary for successful operation of a new-car dealership.
6. Throughout my employment at Thomas Motors, Drew was always the first person to arrive on the premises in the morning. I worked Monday through Fridays. I typically



arrived at about 8:00 a.m., and Drew would already be there working. He took care of putting the coffee on, setting up the showroom, making sure the computer systems were running properly, and generally doing whatever was necessary to ensure the dealership was ready to open for business each day. I typically left work each day at about 5:00 p.m., and Drew was always still working when I left. I do not recall Drew taking any more than two or three short vacations during the nearly five and a half years I was employed at Thomas Motors.

7. Throughout my employment at Thomas Motors, I did not observe Ron learning about or performing any of the day-to-day management functions which Drew performed. Ron would only come to the Thomas Motors premises a couple of times during the week. His visits usually lasted less than an hour.
8. Ron only actively engaged and maintained control over the management Thomas Motor's business finances.
9. Throughout my employment at Thomas Motors, I heard Ron state to various Thomas Motors employees that Thomas Motors was going to be Drew's business when Ron retired. I heard Ron make such statements on numerous occasions.
10. During August of 2000 while Drew was away on vacation in Challis, Idaho, Drew's brother, Monte Thomas, informed all of the staff present on the Thomas Motors premises that they were to assemble in the showroom because Ron wanted to meet with us. After we had assembled in the showroom, Ron announced Thomas Motors was going to be Drew's, and Ron was no longer going to participate in operating the business, and any involvement Ron had with the business would be through Drew's direction only.

11. Throughout my employment at Thomas Motors, my bookkeeping duties included keeping track of accounts payable, handling all accounts receivable, tracking the inventory, coordinating customer financing for car purchases, preparing deposits, preparing budgets, and preparing financial statements. Paying bills, payroll, and business operating financing were handled at the Lot-of-Car offices by Ron and his sister, Shirley Youngstrom. All Thomas Motors's income was reported to Ron, who then decided how the income would be applied to payment of overhead, bills, payroll, and lines of credit or how the income would be used otherwise.
12. Throughout my employment at Thomas Motors, Thomas Motors would often receive bills for repairs performed by a body shop business owned by Ron. However, the cars on which the repairs had been performed had never been and were never made part of Thomas Motors's inventory. I learned the cars on which the repairs had supposedly been performed were wrecked cars Ron had purchased at auctions.
13. From 1997 through 2003, Thomas Motors had a line of credit which was issued by Wells Fargo. The operating line is referred to as a "flooring line" because the purpose of such lines of credit is to provide auto dealerships with funds to acquire an inventory of new cars and used cars up seven years old. Beginning in about 1998 I observed that Ron was using monies from Thomas Motors's operating line of credit for purposes other than maintaining Thomas Motors's inventory.
14. On a number of occasions, Ron would send cars which had never been part of the Thomas Motors inventory, but which belonged to Lot-of-Cars, to the crushers and then instruct me to list the cars as retails sales from Thomas Motors.

15. Thomas Motors would sometimes purchase a used car from the Lot-of-Cars inventory in order to meet customers' needs. On these occasions, Ron would increase Lot-of-Cars's price for the cars so as to maximize Lot-of-Cars's profit at Thomas Motors's expense (i.e. Thomas Motors's cost to purchase would go up thereby causing its profit on the sale to diminish).
16. Throughout my employment with Thomas Motors, I observed Drew always wanted to treat the employees fairly and reward good work by providing competitive wages and other financial incentives. Ron, however, continuously undermined Drew's relationship with the employees.
17. During my employment with Thomas Motors, Ron would sometimes direct me to take several thousand dollars in sales proceeds for cars sold by one Thomas Motors salesperson and make it appear as though the proceeds were generated through other sales. Ron engaged in this practice in order to reduce the commissions Thomas Motors was obligated to pay to salespersons.
18. In addition to his practice of reducing the amount of commissions paid to salespersons, Ron would often arbitrarily refuse to pay Thomas Motors's employees overtime. He would claim there was something suspect or inaccurate about the hours the employees were reporting. If an employee questioned him, he would be so difficult and intimidating that the employee would usually back down or quit.
19. Ron's manipulation of Thomas Motors's finances, which I have described herein, undermined the financial stability and success of Thomas Motors.
20. During my employment with Thomas Motors, Ron would occasionally make unfavorable comments to me about Drew's ability to run Thomas Motors. I was

always surprised by these comments because they didn't seem to fit with Ron's other statements concerning giving Thomas Motors to Drew.

21. Ron did not give me any prior notice of his intention to sell Thomas Motors in 2006.

He did not make a general announcement to all of the employees.

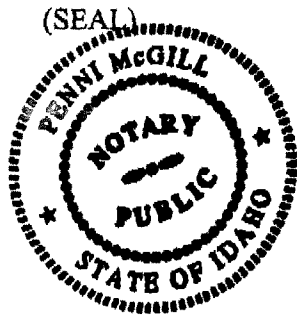
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 13<sup>th</sup> day of August, 2007.

Janis E. Flowers  
Janis Flowers

SUBSCRIBED AND SWORN to before me by Janis Flowers this 13<sup>th</sup> day of August, 2007.

Penni McGill  
Notary Public for Idaho  
Commission Expires: 8/16/08



**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis	_____	US Mail
HEPWORTH, LEZAMIZ & JANIS	_____	Overnight Mail
537 W. Bannock Street, Ste. 200	_____	Hand Delivery
P.O. Box 2582	<u>X</u> _____	Facsimile No. <u>208-342-2927</u>
Boise, ID 83701-2582		

H. Ronald Bjorkman	<u>X</u> _____	US Mail
Attorney at Law	_____	Overnight Mail
109 N. Hays	_____	Hand Delivery
P.O. Box 188	_____	Facsimile No. <u>208-365-4196</u>
Emmett, ID 83617-0188		

  
 \_\_\_\_\_  
 WHITE PETERSON, P.A.

lnh\W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Aff of Janis Flowers.SJ Response.doc

William A. Morrow  
Dennis P. Wilkinson  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023  
wam@whitepeterson.com  
dwilkinson@whitepeterson.com

FILED 135 AM  
PM

AUG 14 2007

SHELLY GANNON, CLERK  
*Shelly Gannon* DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

\_\_\_\_\_  
R. DREW THOMAS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
RONALD O. THOMAS, ELAINE K. )  
THOMAS and THOMAS MOTORS, INC., an )  
Idaho Corporation, )  
 )  
Defendants. )  
\_\_\_\_\_

CASE NO. CV 2006-492  
AFFIDAVIT OF J. ROBIN WILDE  
IN OPPOSITION TO SUMMARY  
JUDGMENT

STATE OF IDAHO )  
 ) : ss.  
County of Gem )

- J. ROBIN WILDE, being duly sworn upon oath, deposes and says:
1. I make this affidavit based upon personal knowledge of the matters set forth herein.
  2. From about 1994 until 2003, I performed tax and accounting services for the above-named Defendant, Ron Thomas ("Ron"). During this time I performed accounting services for both Ron personally and several different businesses conducted as

separate entities. Included was a used car dealership in Emmett, Idaho, called Lot-of-Cars, and from 1997 until 2006, a Chrysler dealership in Emmett, Idaho, called Thomas Motors. I did accounting and tax work in connection with both Lot-of-Cars and Thomas Motors.

3. At the end of 1996, Ron spoke with me about purchasing Johannesen Motors, a GM and Chrysler and used car dealership in Emmett, Idaho. He said that his son, the Plaintiff, Drew Thomas ("Drew") would to leave his position at Lanny Berg Chevrolet in Caldwell, Idaho, to manage the new Chrysler dealership. Ron told me that the purchase of Johannesen was contingent on Drew agreeing to leave Lanny Berg to operate the Chrysler dealership.
4. Throughout the ten-year period from the spring of 1996 until March of 2006, Ron repeatedly told me that he was going to give Thomas Motors to Drew.
5. In the fall of 2000 Ron indicated that he wanted to sell Thomas Motors to his son Drew. He left it to me to engage an attorney, the late Carl Harder, to draft the appropriate contracts and documents necessary to complete the sale. As was his habit, Ron was completely disengaged from this process and it was left to Carl, myself, and Drew to accomplish the task. On September 19, 2000, Carl brought over three contracts, which he had drafted and which Drew had already signed earlier in the day. I had previously reviewed the contracts, which related to Ron's sale of Thomas Motors and the Thomas Motors premises to Drew. When Carl handed the contracts to Ron for his signature, Ron just put them in a desk drawer and made a vague reference to reviewing them with Elaine Thomas before he signed them. Throughout September and October of 2000, Carl (who most often communicated directly with

me) contacted me repeatedly to ask me whether Ron and Elaine had signed the contracts. During that same period, I asked Ron numerous times whether he had signed the contracts. He deflected the questions on each occasion until he finally dismissed the matter entirely by saying "why would I sign it if I am going to give Drew the business anyway." Finally, I gave up my attempts to obtain the signed contracts for Carl. I never saw Ron or Elaine sign the contracts, nor did I see Ron or Elaine's signatures on the originals or copies of the contract between 2000 and 2006.

6. Throughout the ten-year period during which Ron owned Thomas Motors, he made all of the dealerships' financial decisions. Consequently, he alone determined whether revenues would be applied to payment of debts and for other business purposes.
7. From Thomas Motors' inception in the Fall of 1997 Ron routinely failed to comply with the terms of the line of credit issued by First Security Bank (which became Wells Fargo). The line of credit, called a "flooring line," was to be used to purchase inventory for Thomas Motors and, under the terms of the agreement with First Security, was to be paid with proceeds from auto sales. Ron repeatedly failed to apply sale proceeds against the flooring line within the short window of time allowed by the bank. Consequently, Thomas Motors became "out of trust" with Wells Fargo. By the summer of 2000, Thomas Motors owed approximately \$300,000 on the flooring line. The account was sent to the Special Assets division and Wells Fargo threatened foreclosure and other legal action



8. It was only through Drew's and my joint efforts that Thomas Motors was able to establish and comply with a work-out plan necessary to avoid foreclosure. Once again, Ron took no active part in working with Wells Fargo.
9. Ultimately, through Drew's and my joint efforts, we were able to obtain new financing for Thomas Motors from Key Bank. Again, Ron took no active role in obtaining the financing.
10. Throughout the time Ron controlled Thomas Motors's business finances, he routinely shuffled revenue from Thomas Motors, a viable business, to other non-viable businesses he was determined to sustain against all efforts to convince him of the folly. Consequently, he diverted valuable resources from Thomas Motors. The proceeds could well have been used to increase inventory and make other improvements to the business.
11. Ron's business decisions were questionable at best. For example: When work on Thomas Motors vehicles done at Ron's other businesses He would charge full retail rates for the work. This would distort the actual performance of each business involved in these types of transactions.
12. Ron often "moved" inventory costs from one vehicle to another which distorted cost of sales as well as gross and net profit for the period.
13. As a result of Ron's manipulation of Thomas Motors's finances, inventory levels dropped dramatically which severely impacted sales (negatively) and it became increasingly more difficult manage the business finances

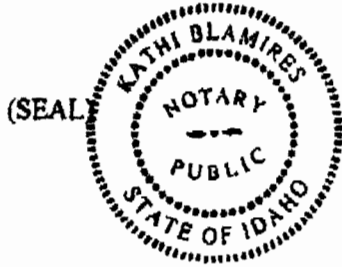
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 13 day of August, 2007.

000455

J. Robin Wilde  
J. Robin Wilde

SUBSCRIBED AND SWORN to before me by J. Robin Wilde this 13 day of August, 2007.



Kathi Blamires  
Notary Public for Idaho  
Commission Expires: ~~RESIDING AT EMMETT, ID~~  
MY COMM. EXPIRES MAY 4, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13 day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
X\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927 ✓

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
X\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196 ✓

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

FILED 200 AM  
PM

AUG 16 2007

SHELLY CANNON, CLERK  
DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023  
wam@whitepeterson.com  
dwilkinson@whitepeterson.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RONALD O. THOMAS, ELAINE K. )  
 THOMAS and THOMAS MOTORS, INC., an )  
 Idaho Corporation, )  
 )  
 Defendants. )

CASE NO. CV 2006-492  
AFFIDAVIT OF SARAH H.  
ARNETT IN SUPPORT OF I.R.C.P.  
56(f) MOTION

STATE OF IDAHO )  
 : ss.  
County of Canyon )

SARAH H. ARNETT, being first duly sworn, deposes and says as follows:  
1. I am one of the attorneys of record for the Plaintiff in the above-entitled matter and make  
this affidavit based upon personal knowledge of the matters set forth herein.

2. Attached hereto as Exhibit "A" and incorporated herein by reference is a true and correct copy of excerpts from the June 20, 2007, *Deposition of Ronald O. Thomas* ("Ron Thomas Depo").
3. The Plaintiff has scheduled the deposition of Shirley Youngstrom, sister of the above-named Defendant Ron Thomas for August 17, 2007. Mrs. Youngstrom was Ron Thomas's bookkeeper throughout the time periods relevant to this case. Mrs. Youngstrom assisted Ron Thomas with handling all of Thomas Motors's business finances from 1997 through 2006. *See Ron Thomas Depo*, p. 61, l. 24 - p. 62, l. 25.
4. On June 20, 2007, the Plaintiff took the deposition duces tecum of Defendant Ron Thomas. During the deposition, Mr. Thomas explained he had not provided all documents in his possession which are responsive to the subpoena duces tecum. There are hundreds of documents responsive to the subpoena duces tecum which the Plaintiff has yet to review. The Plaintiff made Mr. Thomas's deposition a continuing deposition, which may be resumed should the Plaintiff wish to question Mr. Thomas concerning the un-reviewed documents in his possession. *See Ron Thomas Depo*, pp. 213 - 214.
5. The Plaintiff has recently retained the GEC group to assess the Plaintiff's economic damages in this case. A true and correct copy of GEC's retainer is attached hereto as Exhibit "B" and incorporated herein by reference.
6. In order to resolve the issue as to when the parties signed the written contracts at issue in this case, the Plaintiff intends to submit the original contract documents to a forensic document expert, Speckin Forensic Laboratories, in Okemos, Michigan, for non-destructive forensic testing and/or examination.

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

DATED this 13<sup>th</sup> day of August, 2007.

Sarah H. Arnett  
Sarah H. Arnett

SUBSCRIBED AND SWORN to before me by Sarah H. Arnett this 15<sup>th</sup> day of August, 2007.

(SEAL)

Cindy Bishop  
Notary Public for Idaho  
My Commission Expires: 9/21/2011

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

X  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

Steven N. Arnett  
WHITE PETERSON, P.A.

lmh\W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Aff of SHA.56(f) Motion.doc

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,	)	
	)	Case No. CV 2006-492
Plaintiff,	)	
	)	
vs.	)	
	)	
RONALD O. THOMAS, ELAINE K.	)	
THOMAS and THOMAS MOTORS, INC.,	)	
an Idaho Corporation,	)	
	)	
Defendants.	)	
	)	

VIDEOTAPED DEPOSITION OF RONALD O. THOMAS

June 20, 2007

Boise, Idaho

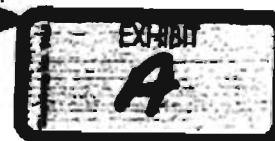
Reported By:

Pamela J. Leaton, CSR #200, RPR

**COPY**



1618 W. Jefferson ▼ Boise Idaho ▼ 83702  
(800) 588-3370 ▼ (208) 343-4004 ▼ (208) 343-4002 Fax



Ronald O. Thomas

June 20, 2007

Thomas v. Thomas, et a

1 inventory?  
 2 A. Everything.  
 3 Q. Flooring line?  
 4 A. I had the say so on everything.  
 5 Q. Okay. Total say so about absolutely  
 6 everything?  
 7 A. Everything.  
 8 Q. Employment issues?  
 9 A. If I -- unless I would delegate somebody to  
 10 do it, and if I told Drew to hire somebody or whatnot,  
 11 that was okay. But until then, if I -- if I said that.  
 12 But other than that, I run everything. I run all of it.  
 13 Q. All right. So the buck stops with you, as  
 14 far as Thomas Motors goes?  
 15 A. Absolutely.  
 16 Q. What about -- I think I understand your  
 17 role, to some degree.  
 18 What about Drew's role? What was Drew's  
 19 role when he started working at the car lot?  
 20 A. Drew was -- Drew was supposed to keep an eye  
 21 on the place and manage it and sell and make it work.  
 22 MR. KLUKSDAL: Let's take a quick break. Five  
 23 minutes.  
 24 MR. WILKINSON: Okay. That would be good.  
 25 (Break taken from 10:54 a.m. to 11:06 a.m.)

Page 60

1 Q. (BY MR. WILKINSON) Mr. Thomas, before the  
 2 break we were talking about the terms of Drew's  
 3 employment at the -- at Thomas Motors. And you had made  
 4 the statement that his job was to manage and to make it  
 5 work.  
 6 As far as manage goes, what kind of things  
 7 did you expect of him to manage Thomas Motors?  
 8 A. Well, anything that makes it work. Sell  
 9 cars. If the help has a problem, to find out and let me  
 10 know. If we need inventory, if we need money, if we  
 11 need -- whatever it takes to make a dealership run for  
 12 him to let me know what it is.  
 13 Q. Okay. So his job, managing-wise, was to  
 14 sell cars, deal with employment issues, report to you  
 15 about inventory, report to you about whether or not you  
 16 need money?  
 17 A. Report to me about everything that goes on  
 18 over there, so -- because I wasn't there to run it. I  
 19 have half a dozen of these other ones I was running,  
 20 too.  
 21 Q. Is it fair to say with regard to Thomas  
 22 Motors, then, Drew was sort of your right-hand man?  
 23 A. For Thomas Motors.  
 24 Q. Okay.  
 25 A. Well, Drew was right-hand man for Thomas

Page 61

1 Motors, but remember it all went through Shirley. He  
 2 pretty much had to get the paperwork to Shirley. And I  
 3 visited with Shirley. I didn't -- I didn't have much  
 4 talking with Drew about things. He would come over. I  
 5 talked with Shirley. And then if they needed to be  
 6 addressed, I talked to Drew.  
 7 Q. Okay. So just so I understand. So the  
 8 paperwork and everything from Thomas Motors went from  
 9 Drew to Shirley?  
 10 A. Right.  
 11 Q. And then it went from Shirley to you?  
 12 A. Right.  
 13 Q. So as far as the bookkeeping goes -- I mean,  
 14 did you give Shirley any sort of direction on what she  
 15 was supposed to be doing?  
 16 A. She was supposed to keep an eye on the other  
 17 bookkeepers at Thomas Motors. If there was anything  
 18 that -- that I needed to know, it was up to them to get  
 19 that information to Shirley, that Shirley could get it  
 20 to me.  
 21 Q. Okay. So she kept her eye on other  
 22 bookkeepers?  
 23 A. She -- yes. She was --  
 24 Q. I'm sorry.  
 25 A. Yes. Yes.

Page 62

1 Q. And you keep your eye on her?  
 2 A. I didn't keep my eye on Shirley. Shirley  
 3 kept her eye on me. Shirley was hired to baby-sit me  
 4 and take care of me and feed me the information I needed  
 5 to know because one guy didn't have time to run around  
 6 taking care of all of these businesses.  
 7 The highlights of what needed to be -- is  
 8 what was her job. If anything looked like it was out of  
 9 the ordinary, it was her job to bring it to my  
 10 attention.  
 11 Q. Okay. How did you decide between you and  
 12 Shirley what needed to be reported to you?  
 13 A. Shirley is a very, very smart, honest,  
 14 commonsense person, and she's my sister.  
 15 Q. Oh.  
 16 A. And she pretty much knows what I want, when  
 17 I want, and what I need to do. She's involved with both  
 18 feet.  
 19 Q. All right. I didn't know she was your  
 20 sister.  
 21 A. She's probably the only other person on this  
 22 planet, other than Elaine, that I trust with my life.  
 23 Q. Did you have any other employees that you  
 24 trusted?  
 25 A. Well, I trusted my employees, but not to the

Page 63



Ronald O. Thomas

June 20, 2007

Thomas v. Thomas, et al.

1 A. He wasn't taking -- followed what I wanted  
 2 done. He wouldn't sell the cars that I bought. He  
 3 wouldn't take and -- I just don't think that he was able  
 4 to -- I'm not saying it's all his fault. I just don't  
 5 think he -- I think he lost interest in it when he took  
 6 and he knew he couldn't get the thing bought.  
 7 Q. Okay. But nonetheless, he was still working  
 8 hard out there?  
 9 A. I think he was gone quite a bit. He'd take  
 10 off here and there and whatnot. As far as the place, I  
 11 think -- I think Drew worked, yeah.  
 12 Q. All right. The documents that are really  
 13 important in this case are 3, 4, and 5, the managerial  
 14 agreement, the agreement for the purchase, and the  
 15 commercial lease.  
 16 A. Right.  
 17 Q. Now, if I understand your testimony  
 18 correctly, you're testifying that you signed all of  
 19 these documents on September 16th, 2000; correct?  
 20 A. Right.  
 21 Q. That you and Elaine both signed them?  
 22 A. Yes.  
 23 Q. And that when you signed them, Drew's  
 24 signature was not on the documents?  
 25 A. Not on the documents.

Page 212

1 deposition of Ronald Thomas, unless Mr. Kluksdal has  
 2 some questions.  
 3 MR. KLUKSDAL: I don't have any questions.  
 4 THE WITNESS: Can we open up a deposition again?  
 5 MR. KLUKSDAL: We'll talk about it later.  
 6 MR. WILKINSON: All right. Thank you.  
 7 THE WITNESS: Thank you. Appreciate you being  
 8 good about it.  
 9 (The deposition concluded at 3:00 p.m.)  
 10 (Signature requested.)

Page 214

1 Q. Now, you know, we've talked a lot about  
 2 Drew, of course, but you have other sons who are  
 3 involved in other businesses.  
 4 Did you ever agree to give or sell NAPA Auto  
 5 Parts to Rick?  
 6 A. No.  
 7 Q. Okay. That never was an agreement you had  
 8 with Rick?  
 9 A. No. He didn't have any money.  
 10 Q. So no agreement with him?  
 11 A. No.  
 12 Q. And you never represented to him that you  
 13 wanted to sell it to him or give it to him?  
 14 A. No.  
 15 Q. Did you represent that to anybody else?  
 16 A. No.  
 17 MR. WILKINSON: All right. I think that is it.  
 18 We would reserve the right to reopen the deposition when  
 19 future documents are provided to us. Because it sounds  
 20 to me like there are a lot of documents out there, and  
 21 we don't have them right now. And some questions might  
 22 arise as to -- your insight is going to be valuable for  
 23 that, so we would reserve the right to open up the  
 24 deposition again.  
 25 And with that, that would conclude the

Page 213

(This section is blank in the original document)



**THE GEC GROUP**

August 10, 2007

Sarah Arnett  
White Peterson  
Canyon Park at the Idaho Center  
5700 E. Franklin Road, Suite 200  
Nampa, ID 83687

RE: *Thomas v. Thomas*

Dear Ms. Arnett:

This letter constitutes a retainer agreement between the law firm of White Peterson and The GEC Group, Inc. Under this agreement, The GEC Group will provide economic consulting services as you may require in the above cited matter.

Our fees for research, consultation, report preparation, and deposition and trial testimony will be billed at our standard billing rates as outlined in the attached fee schedule. Expenses associated with our work in this matter will be billed at cost. Fees and out-of-pocket costs will be billed every month during the periods of activity on your behalf, regardless of the completion status of the project. Invoices are payable upon presentation and any payment not received within 30 days of the invoice date will be billed monthly with interest compounded at 1.5% per month. In addition, you will be responsible for all attorney fees, court costs, and any other charges associated with the collection of any past due balance.

This agreement will become effective upon receipt of a signed copy of this retainer agreement and a retainer fee of \$5,000.

Name: Cornelius A. Hofman

Name (printed): \_\_\_\_\_

Signature: *CA Hofman*

Signature: \_\_\_\_\_

Firm: The GEC Group

Firm: \_\_\_\_\_

Date: August 10, 2007

Date: \_\_\_\_\_



( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( )

FILED 7:00 AM  
PM

AUG 16 2007

SHELLEY CANNON, CLERK  
DEPUTY  
*[Signature]*

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
wam@whitepeterson.com  
dwilkinson@whitepeterson.com  
sarnett@whitepeterson.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,	)	
	)	<b>CASE NO. CV 2006-492</b>
Plaintiff,	)	
	)	<b>PLAINTIFF'S I.R.C.P. 56(f)</b>
	)	<b>MOTION</b>
vs.	)	
	)	
RONALD O. THOMAS, ELAINE K.	)	
THOMAS and THOMAS MOTORS, INC., an	)	
Idaho Corporation,	)	
	)	
Defendants.	)	

COMES NOW, the above-named Plaintiff, DREW THOMAS, by and through his undersigned counsel of record, the law firm of White Peterson, P.A., pursuant to Rule 56(f) of the Idaho Rules of Civil Procedure, and hereby files his *Plaintiff's I.R.C.P. 56(f) Motion*. This motion is supported by the record in this case and the *Affidavit of Sarah H. Arnett In Support of I.R.C.P. 56(f) Motion ("Arnett Aff.")* filed contemporaneously herewith.

This case was filed on June 21, 2006. A trial date has not been set and, therefore, a pre-trial order setting discovery cut-off dates has not yet been entered. The parties are still engaged in conducting significant discovery.

On July 19, 2007, the Defendants filed *Defendants' Motion for Summary Judgment* together with supporting affidavits. The hearing on the Defendants' motion for summary judgment has been set for August 27, 2007. Consequently, the Plaintiff is required to file his response to the motion by August 13, 2007.

The Plaintiff has scheduled the deposition of Shirley Youngstrom, sister of the above-named Defendant Ron Thomas for August 17, 2007. *See Arnett Aff.* Mrs. Youngstrom was Ron Thomas's bookkeeper throughout the time periods relevant to this case. Mrs. Youngstrom assisted Ron Thomas with handling all of Thomas Motors's business finances from 1997 through 2006. *See Arnett Aff.* Mrs. Youngstrom has personal knowledge concerning a number of the allegations in the Plaintiff's complaint, including most of the matters addressed in the Defendants' motion for summary judgment. Thus, the Plaintiff must be able to take Mrs. Youngstrom's deposition before responding to the motion.

On June 20, 2007, the Plaintiff took the deposition duces tecum of Defendant Ron Thomas. During the deposition, Mr. Thomas explained he had not provided all documents in his possession which are responsive to the subpoena duces tecum. There are hundreds of documents responsive to the subpoena duces tecum which the Plaintiff has yet to review. The Plaintiff made Mr. Thomas's deposition a continuing deposition, which may be resumed should the Plaintiff wish to question Mr. Thomas concerning the un-reviewed documents in his possession. *See Arnett Aff.* The un-reviewed documents in Mr. Thomas's possession relate to the accounts and operations of Thomas Motors and will likely provide important information relevant to the matters raised by the Defendants in their motion for summary judgment. Therefore, the Plaintiff

must have the opportunity to review the documents in Mr. Thomas's possession and to depose him concerning those documents before responding to the Defendants' motion.

The Plaintiff has recently retained the GEC group to assess the Plaintiff's economic damages in this case. *See Arnett Aff.* In their motion for summary judgment, the Defendants assert the Plaintiff cannot establish the value of equitable relief to which he is entitled under his quasi contract theories of recovery. Thus, the Plaintiff must have an opportunity to obtain his expert's damages analysis and report in order to address the Defendants' assertions on summary judgment.

Finally, in their motion for summary judgment, the Defendants assert the terms contained in certain written contracts drafted during August or September 2000 control the parties' relationship with respect to Thomas Motors. The affidavits filed in support of and in opposition to summary judgment, clearly establish there is an issue of fact as to when the Defendants signed the contracts. Thus, to obtain the best evidence to resolve when the documents were signed, the Plaintiff will renew his efforts to obtain the original contracts in order to submit them to an expert, Speekin Forensic Laboratories, in Okemos, Michigan, for non-destructive forensic testing and/or examination. *See Arnett Aff.* The Plaintiff will seek to obtain the original documents through stipulation of the parties or, if ultimately necessary, by court order pursuant to Rule 34 of the Idaho Rules of Civil Procedure; *see also for e.g. Diepenhorst v. City of Battle Creek*, 2006 WL 1851243 (W.D. Mich.). Therefore, the Plaintiff must have an opportunity to conduct further discovery concerning the contracts at issue before responding to the Defendants' motion for summary judgment.

For these reasons, the Plaintiff requests the court enter an order continuing the hearing on the Defendants' motion for summary judgment for ninety (90) days in order to permit sufficient time to complete the discovery discussed herein.

ORAL ARGUMENT IS REQUESTED

DATED this 13<sup>th</sup> day of August, 2007.

WHITE PETERSON, P.A.

By: *Sarah H. Arnett*  
Sarah H. Arnett  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of August, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

X  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

*Steven M. Arnett*  
WHITE PETERSON, P.A.

cb:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Rule 56(f) Mo..doc

John J. Janis (ISB No. 3599)  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582  
Telephone No. (208) 343-7510  
Fax No. (208) 342-2927

FILED 3:00 AM  
PM

AUG 20 2007

SHELLY GANNON, CLERK  
*Shelly Gannon* DEPUTY

H. Ronald Bjorkman (ISB No. 1765)  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, Idaho 83617-0188  
Telephone No. (208) 365-4136  
Fax No. (208) 365-4196

Attorneys for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

\*\*\*\*\*

R. DREW THOMAS,	)	
	)	
Plaintiff,	)	Case No. CV 2006-492
	)	
vs.	)	
	)	<b>DEFENDANTS' MEMORANDUM IN</b>
	)	<b>OPPOSITION TO PLAINTIFF'S</b>
RONALD O. THOMAS, ELAINE K.	)	<b>I.R.C.P. 56(f) MOTION</b>
THOMAS and THOMAS MOTORS,	)	
INC., an Idaho Corporation,	)	
	)	
Defendants.	)	
	)	
	)	

\*\*\*\*\*

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S I.R.C.P. 56(f) MOTION - 1

000469

The plaintiff has submitted a substantial record in opposition to the Defendants' Motion for Summary Judgment, but accompanies that with a request for additional time to provide additional responses to the Motion under I.R.C.P. 56(f). In response, the defendants respectfully submit this Motion is not well taken, there are no good cause grounds offered to support the Motion, and it should be denied.

The plaintiff offers four basic reasons for his Rule 56(f) Motion, each of which will be addressed separately and in turn:

1. Plaintiff first expresses a desire to take the deposition of Shirley Youngstrom, which has actually already taken place on Friday, August 17, 2007. Mrs. Youngstrom is the sister of the defendant Ron Thomas, who also served as a bookkeeper for his business activities for a number of years. Plaintiff claims he "must be able to take Mrs. Youngstrom's deposition before responding to the Motion." The only explanation offered for this is that Mrs. Youngstrom purportedly has personal knowledge concerning a number of the allegations in plaintiff's Complaint and matters addressed in the Defendants' Motion for Summary Judgment. However, these are just conclusory statements with nothing offered in the way of specifics as to what Mrs. Youngstrom could possibly offer that has anything to do with the issues related to the Motion for Summary Judgment.

It is true that Mrs. Youngstrom would have some personal knowledge of how financial transactions were accounted for in the respective businesses, and perhaps other issues that are actually disputed issues of fact in this case in general. However, the Defendants' Motion for Summary Judgment is based exclusively on matters that are not disputed issues of fact. In fact, all of the issues raised by the Defendants' Motion for Summary Judgment boil down to attacking the



legal validity of the causes of action, that have nothing to do with the many issues of fact that exist between the parties to this case. Simply put, Mrs. Youngstrom could not have any personal knowledge that relate to any of the arguments that are presented on the summary judgment motion.

As the defendants have made clear in their Motion, all of the issues and arguments raised in support of the Motion work off the assumption that any actual disputed issues of fact are to be construed in favor of the plaintiff. Those are the well-established standards that govern summary judgment motions in general, and it is on that basis that the defendants have filed their Motion. In fact, all of the arguments in the summary judgment start off with the proposition that even if the statements and allegations of the plaintiff are to be taken as true, the causes of action raised in the plaintiff's Complaint should be dismissed as a matter of Idaho law, because there are no genuine issues of material fact about the legal validity of those causes of action. In short, the plaintiff has already taken the deposition of Shirley Youngstrom and there is nothing about that deposition that serves as a good reason to delay the summary judgment proceedings.

2. The deposition duces tecum for the deposition of Mr. Ron Thomas. The plaintiff next complains about the fact that Mr. Thomas did not provide documents which were fully "responsive to the subpoena duces tecum" for his deposition which took place two months ago, on June 20, 2007. After receipt of the Notice of Deposition Duces Tecum, defense counsel wrote to plaintiff's counsel objecting to the "duces tecum" portion of the Notice. A true and correct copy of that letter, dated May 31, 2007, is attached as Exhibit "A". This letter identifies the basis upon which the defendant objected to responding to the duces tecum. Plaintiff's counsel, in other words, was well aware of the fact that Mr. Thomas was not bringing any documents to the deposition over and above those which had already been provided in response to the written discovery responses

about a year earlier. There was never any motion to compel filed by the defendants to the written discovery responses provided to the plaintiff in the summer of 2006, and the deposition duces tecum notice tracked largely with those discovery requests. It is hardly fair for the plaintiff to complain about this duces tecum notice at this point.

Moreover, and in any event, at least most of the documents being referenced here have to do with accounting transactions that took place while Thomas Motors was an existing business from 1997 through the end of 2005. Once again, while the plaintiff has made allegations of financial improprieties occurring during those years (which issues are hotly disputed), that has absolutely nothing to do with any of the issues presented on the Motion for Summary Judgment. Again, the summary judgment challenges the legal validity of the causes of action raised by the plaintiff in his Verified Complaint, *based upon the plaintiff's own testimony*. The fact that the plaintiff has sat idly by in dealing with following up requests for financial documents that have nothing to do with the issues on summary judgment, hardly amounts to a ground to allowing additional time to respond to the Motion.

3. The plaintiff recently hired Corey Hoffman for an economic analysis - The plaintiff next indicates that he has just recently hired Corey Hoffman, a forensic economist, to "assess plaintiff's economic damages." Here again, there are several responses to this, but they are similar to the themes expressed above.

To begin with, the plaintiff filed this lawsuit in June of 2006. That is well over a year ago. The plaintiff apparently waited for 14 months to even get around to the prospect of hiring an expert to deal with the damages aspects of this case. In essence, they are asking the Court to sanction the defendants being punished for the plaintiff's lack of timeliness or diligence.

Further, the plaintiff specifically indicates that Mr. Hoffman is hired to assess his claimed economic damages, which again have absolutely nothing to do with any issue presented on summary judgment. The summary judgment issues are all targeting the liability aspects of the case, and only the liability aspects of the case. The damages issues are irrelevant to that.

4. The forensic testing issue. The plaintiff next and finally complains it desires an opportunity to have the original written contracts evaluated by some expert who supposedly has the ability to date the ink on paper, or some such thing. There are several responses to this as well.

The Court may recall this particular issue was presented to the Court in this case already last September and October. Specifically, the plaintiff filed a Motion to Compel the defendants to physically provide him with the original contracts, so they could send these off for some type of forensic testing (which was unspecified and unidentified at the time). The matter was presented to the Court and the Court rejected and denied the Motion. That decision was made in October of 2006. The plaintiff has done absolutely nothing about this issue since then, which was 10 months ago.

Moreover, this forensic testing issue once again has nothing to do with the issues on summary judgment. The bottom line object of this testing all apparently relates to the plaintiff's efforts to disprove the validity of the written agreements, by claiming the defendants did not actually sign them until well after the fact. The plaintiff is simply ignoring the fact that the defendants have openly conceded there is a least a factual issue about this (although the defendants do strenuously contest the assertions by the plaintiff in this regard). In any event, for purposes of the Motion for Summary Judgment, the defendants recognize and understand that issues of fact must be resolved in favor of a non-moving party, i.e., the plaintiff on the Motion for Summary Judgment in this case.

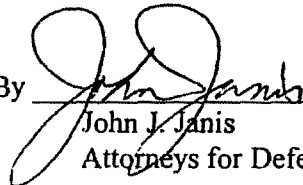
Whether these written contracts were signed by the defendants at the time they claim or some other time is simply not at issue in the defendants' Motion for Summary Judgment.

In sum, the defendants respectfully submit that plaintiff has offered no "good cause" for extending the time to file further opposition to the defendants' Motion for Summary Judgment. The pertinent rule, *I.R.C.P. 56(f)*, requires the plaintiff to establish that he "cannot for reasons stated present by affidavit facts essential to justify [his] opposition" to the Motion for Summary Judgment. The only thing the plaintiff has established he cannot do is to put together affidavits or expert reports that relate to damages or other accounting type issues that have nothing to do with the issues presented on the Motion for Summary Judgment. Accordingly, the defendants respectfully request that the Rule 56(f) Motion be denied.

DATED this 20<sup>th</sup> day of August, 2007.

HEPWORTH, LEZAMIZ & JANIS

By

  
John J. Janis  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

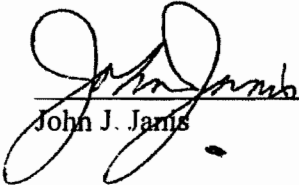
The undersigned, a resident attorney of the State of Idaho, with offices at 537 W. Bannock Street, Suite 200, P.O. Box 2582, Boise, Idaho 83701, and one of the attorneys for the Defendants in this matter, certifies that on this 20<sup>th</sup> day of August, 2007, he caused to be served a true and correct copy of the above and foregoing by the method indicated below, and addressed to the following:

William A. Morrow  
Dennis R. Wilkinson  
WHITE, PETERSON, PA  
5700 E. Franklin Rd., Ste. 200  
Nampa, Idaho 83687-7901

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, Idaho 83617-0188

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

  
\_\_\_\_\_  
John J. Janis

BOISE OFFICE  
(208) 343-7510  
Fax: (208) 342-2927  
537 West Bannock Street  
P O Box 2582  
Boise, ID 83701-2582

**H E P W O R T H , L E Z A M I Z & J A N I S , C H D .**  
**L A W O F F I C E S**  
- ESTABLISHED 1952 -

TWIN FALLS OFFICE  
(208) 734-7510  
Toll Free: (877) 343-7510  
Fax: (208) 734-4115  
133 Shoshone Street North  
P O. Box 389  
Twin Falls, ID 83303-0389

J. Charles Hepworth  
John J. Janis  
John W. Kluksdal

John C. Hepworth  
John T. Lezamiz  
Robyn M. Brody  
Benjamin J. Cluff  
Joel A. Beck

May 31, 2007

VIA FACSIMILE - 208-466-4405

Dennis P. Wilkinson  
WHITE PETERSON  
5700 E. Franklin Road, Ste. 200  
Nampa, Idaho 83687-7901

Re: Thomas v. Thomas  
HL&J File No.: 06-2-023

Dear Mr. Wilkinson:

Thank you for your Notice of Deposition Duces Tecum we received on May 30, 2007. Please review our prior correspondence and e-mails with James Vavrek. We asked for Drew Thomas' deposition quite some time ago, and before there was a request for Ron Thomas' deposition. We have not received any proposed dates for Drew Thomas' deposition and will appreciate it if you provide us some proposed dates.

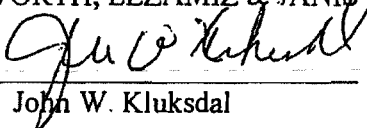
I would also like to note that the duces tecum notice does not provide us with 30 days to respond. We object to it on that basis. More importantly, however, it appears that this duces tecum notice is an attempt to avoid the normal discovery processes for parties to litigation. We have already objected to producing many of the documents requested, and stand by our objections. The requested documents are overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. We have in good faith responded to your discovery requests, so if you have any issue with those responses, please address them with us. If we cannot reach a resolution, you obviously have the option to file a motion to compel, and we can call off the deposition if you like.

Thank you for your attention to this matter.

Very truly yours,

HEPWORTH, LEZAMIZ & JANIS

By

  
John W. Kluksdal

JWK/sf  
pc: Ron Bjorkman (via fax)

EXHIBIT A

Reply to Boise office

000476

John J. Janis (ISB No. 3599)  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582  
Telephone No. (208) 343-7510  
Fax No. (208) 342-2927

**FILED** ~~AM~~ <sup>3:20</sup> ~~PM~~

AUG 20 2007

SHELLY GANNON, CLERK  
*[Signature]* DEPUTY

H. Ronald Bjorkman (ISB No. 1765)  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, Idaho 83617-0188  
Telephone No. (208) 365-4136  
Fax No. (208) 365-4196

Attorneys for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

\*\*\*\*\*

R. DREW THOMAS,	)	
	)	
Plaintiff,	)	Case No. CV 2006-492
	)	
vs.	)	
	)	<b>DEFENDANTS' MOTION TO STRIKE</b>
	)	<b>PORTIONS OF AFFIDAVIT OF</b>
RONALD O. THOMAS, ELAINE K.	)	<b>PLAINTIFF</b>
THOMAS and THOMAS MOTORS,	)	
INC., an Idaho Corporation,	)	
	)	
Defendants.	)	
	)	
	)	

\*\*\*\*\*

DEFENDANTS' MOTION TO STRIKE PORTIONS OF AFFIDAVIT OF PLAINTIFF - 1

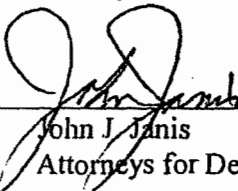
000477

COMES NOW the defendants in the above-entitled action, by and through their attorneys of record, and hereby move this Honorable Court for an Order striking those portions of the Affidavit offered by the plaintiff in opposition to the Defendants' Motion for Summary Judgment, specifically those portions of the Affidavit wherein the plaintiff: (1) claims a need to "clarify" his prior testimony about whether or not he needed to pay for the business; and (2) that portion of the Affidavit which discusses when he was supposed to get the business pursuant to the alleged oral agreement as something other than a specific time when his father turned 63 years old. This Motion is made on the grounds and for the reasons that these two particular subject matters addressed in the plaintiff's Affidavit are squarely contradicted by his prior deposition testimony and the Plaintiff's Verified Complaint in this action, as explained in more detail in the Reply Brief of Defendants on their Motion for Summary Judgment.

RESPECTFULLY SUBMITTED This 20<sup>th</sup> day of August, 2007.

HEPWORTH, LEZAMIZ & JANIS

By

  
\_\_\_\_\_  
John J. Janis  
Attorneys for Defendants



**CERTIFICATE OF SERVICE**

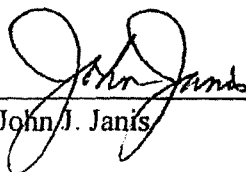
The undersigned, a resident attorney of the State of Idaho, with offices at 537 W. Bannock Street, Suite 200, P.O. Box 2582, Boise, Idaho 83701, and one of the attorneys for the Defendants in this matter, certifies that on this 20<sup>th</sup> day of August, 2007, he caused to be served a true and correct copy of the above and foregoing by the method indicated below, and addressed to the following:

William A. Morrow  
Dennis Wilkinson  
WHITE, PETERSON, PA  
5700 E. Franklin Rd., Ste. 200  
Nampa, Idaho 83687-7901

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, Idaho 83617-0188

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

  
\_\_\_\_\_  
John J. Janis

John J. Janis (ISB No 3599)  
 HEPWORTH, LEZAMIZ & JANIS  
 537 W. Bannock Street, Ste. 200  
 P.O. Box 2582  
 Boise, ID 83701-2582  
 Telephone No. (208) 343-7510  
 Fax No. (208) 342-2927

H. Ronald Bjorkman (ISB No. 1765)  
 Attorney at Law  
 109 N. Hays  
 P.O. Box 188  
 Emmett, Idaho 83617-0188  
 Telephone No. (208) 365-4136  
 Fax No. (208) 365-4196

Attorneys for Defendants

FILED 3:15 AM  
 PM

AUG 20 2007

SHELLY GANNON, CLERK  
 DEPUTY  
*Rachel Gannon*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

\*\*\*\*\*

R. DREW THOMAS,  
 )  
 )  
 Plaintiff, )

Case No. CV 2006-492

vs. )

SECOND AFFIDAVIT OF RONALD O.  
 THOMAS

RONALD O. THOMAS, ELAINE K.  
 THOMAS and THOMAS MOTORS,  
 INC., an Idaho Corporation,

Defendants. )

\*\*\*\*\*

STATE OF IDAHO            )  
  )ss.  
County of Ada                )

RONALD O. THOMAS, being first duly sworn upon oath, hereby deposes and states as follows:

1. I am one of the defendants in the above-entitled action, and have personal knowledge of the facts attested to herein.

2. My wife Elaine and I were the owners of a substantial amount of land in the area where the business known as Thomas Motors was located. More specifically, we owned very close to 8.5 acres in that area which included the approximate one and one-half acres on which the business of Thomas Motors was located. Attached as Exhibit "A" is a map of the area where our land was located, that separates the various lots. This is a color copy, and the lots that are highlighted in green and yellow represents the lots that my wife and I owned up until the time frame of the end of 2005 and early 2006. The business known as Thomas Motors was located within Lot 13.

3. In October of 2005, I was approached from some investors located in Utah about buying Lot 14 on Exhibit "A" hereto, which consisted of 1.827 acres of bare land. This investment group was known as Smith, Brubaker, Haacke Real Estate Services, which I understood was based out of Salt Lake City, Utah. I eventually agreed to sell Lot 14 to this investment group for the sum total of \$600,000. Attached as Exhibit "B" hereto is a copy of the original real estate purchase contract, which involved the initial agreement by my wife and I to sell this 1.827 acres on Lot 14 to this investment group from Utah. I understood the investors intended to develop the area for retail use, and they were going to arrange for the installation and hook-ups of sewer and water to these

properties.

4. After I had committed to sell Lot 14 on Exhibit "A" hereto to the investment group in Utah, I was approached by another investor from Walnut Creek, California, about his desire to also purchase Lot 14, which group included Mr. Joseph Azuz. Mr. Azuz's group actually sent me a written confirmation expressing a commitment to purchase Lot 14 for the overall purchase price of \$650,000. Attached as Exhibit "C" is a copy of the proposed "Vacant Land Real Estate Purchase and Sale Agreement and Receipt for Ernest Money" sent to us by Mr. Azuz's group, dated October 28, 2005. By this time, however, I had already committed to sell Lot 14 to the Utah investment group so I had to reject the proposal by Mr. Azuz, even though it involved a \$50,000 higher purchase price.

5. In January of 2006, the business of Thomas Motors was scheduled to be sold at an auction. The auction for the Thomas Motors business was specifically scheduled for January 18, 2006. It was shortly before this auction taking place, however, when I was approached about the prospect of selling not only the Thomas Motors business, but also various parcels of land to the investment group that included Mr. Bill Buckner. This investment group also included Mr. Don Ovitt, and it was Mr. Ovitt with whom I primarily dealt with. Mr. Ovitt made it clear his investment group was interested in purchasing as much land as we could sell them, in the area surrounding the parcel upon which Thomas Motors was located.

6. By the time I was working with Mr. Ovitt, I had heard that the Utah investment group may have lost one of their prospective tenants they had intended for purposes connected with Lot 14. and I thought they might be interested in arranging for part of Lot 14 to actually go to the investment group that included Mr. Ovitt and Mr. Buckner. By this time, in January of 2006, we had

not yet closed on the transaction involving the sale of the land located within Lot 14 to the Utah investment group. I contacted the Utah investment group about the prospect of having some of the property located within Lot 14 being sold to the Buckner-Ovitt group, and the Utah investment group eventually got back to me and indicated they would sell the eastern half of Lot 14 for \$400,000. There was, of course, an increased value to this, since the Utah group was otherwise going to arrange for sewer and water to be hooked up to Lot 14.

7. I thereafter contacted Mr. Ovitt, and he indicated his group would pay \$400,000 for the eastern half of Lot 14, which amounted to 0.915 of an acre ( $\frac{1}{2}$  of 1.827 acres). This \$400,000 for the purpose of adding the eastern one-half of Lot 14 to the other acres that the Buckner-Ovitt group had already agreed to purchase, in addition to Thomas Motors, was then added to the overall purchase price. After adding this \$400,000, the overall purchase price agreed to be paid by the Buckner-Ovitt group for all of the parcels of land and Thomas Motors, was \$2,900,000. A copy of the "Seller's Closing Statement" relating to the sale to the Buckner/Ovitt group is attached hereto as Exhibit "D."

8. The actual land that was included in the sale to the Buckner-Ovitt group is highlighted in yellow on the map attached Exhibit "A" hereto. The western half of Lot 14, which was purchased by the Utah investment group, is highlighted in green on Exhibit "A" hereto.

9. The overall number of acres purchased by the Buckner-Ovitt group was approximately 7 and  $\frac{1}{2}$  acres (I believe it was actually 7.562 acres). This included, of course, the plot of land upon which Thomas Motors was located, which was on Lot 13 on Exhibit "A" hereto. The lot upon which Thomas Motors was located was the only lot that had any buildings or fixtures on it. The other parcels of land purchased by the Buckner-Ovitt group, as well as the western half

of Lot 14 purchased by the Utah group, was all bare land.

10. There is no doubt that most of the value that went into the \$2,900,000 agreed to be paid by the Buckner-Ovitt group was in the land they were purchasing, and a comparatively very small portion of the sales proceeds were for the "business" of Thomas Motors. I believe this is at least illustrated by the above-referenced fact that the Buckner/Ovitt group paid \$400,00 for less than one acre of bare land (the eastern half of Lot 14), and in the overall purchase and sale they ended up with a little more than 7 ½ acres of land.

11. I had to use \$161,500 of the proceeds my wife and I received from the sale of the eastern half of Lot 14 to pay directly to Key Bank as the amount we were out of trust with them in the Thomas Motors business as of December, 2005.

12. I also had to use the sale proceeds from the Ovitt/Buckner group to pay off the balance of the mortgage I had with Key Bank on the land parcels (\$756,516.55), as well as the loan I had with Washington Trust Bank for purposes of financing the parts and fixtures for the Thomas Motors business (\$85,526.35). I also paid Mark Bottles a commission of \$100,000 from the sale to the Buckner/Ovitt group which I had agreed to pay him if he could find a legitimate buyer for the Thomas Motors business before it went to auction. The three debts referenced in this paragraph are line items listed in the Seller's Closing Statement in attached Exhibit "D."

13. Attached as Exhibit "E" are copies of some checks (total of \$469,778.92) I have managed to locate that represent personal monies my wife and I put into Thomas Motors business for the purpose of attempting to keep it afloat and/or allow Thomas Motors to reimburse the bank for monies that we became "out of trust" with our flooring line. These checks are examples of loans my wife and I made from our personal accounts to the Thomas Motors business for these purposes.

Other than whatever monies we received from the sale of Thomas Motors and the various parcels of land sold to the Buckner/Ovitt group, however, none of these loans were ever repaid.

DATED this 17<sup>th</sup> day of August, 2007.

Ronald O. Thomas  
Ronald O. Thomas

SUBSCRIBED AND SWORN TO before me this 17<sup>th</sup> day of August, 2007.



Sharron D. Fadness  
Notary Public for Idaho  
Residing at Boise  
My Commission Expires 12.1.12

**CERTIFICATE OF SERVICE**

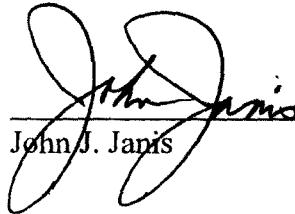
The undersigned, a resident attorney of the State of Idaho, with offices at 537 W. Bannock Street, Suite 200, P.O. Box 2582, Boise, Idaho 83701, and one of the attorneys for the Defendants in this matter, certifies that on this 17<sup>th</sup> day of August, 2007, he caused to be served a true and correct copy of the above and foregoing by the method indicated below, and addressed to the following:

William A. Morrow  
WHITE, PETERSON, PA  
5700 E. Franklin Rd., Ste. 200  
Nampa, Idaho 83687-7901

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

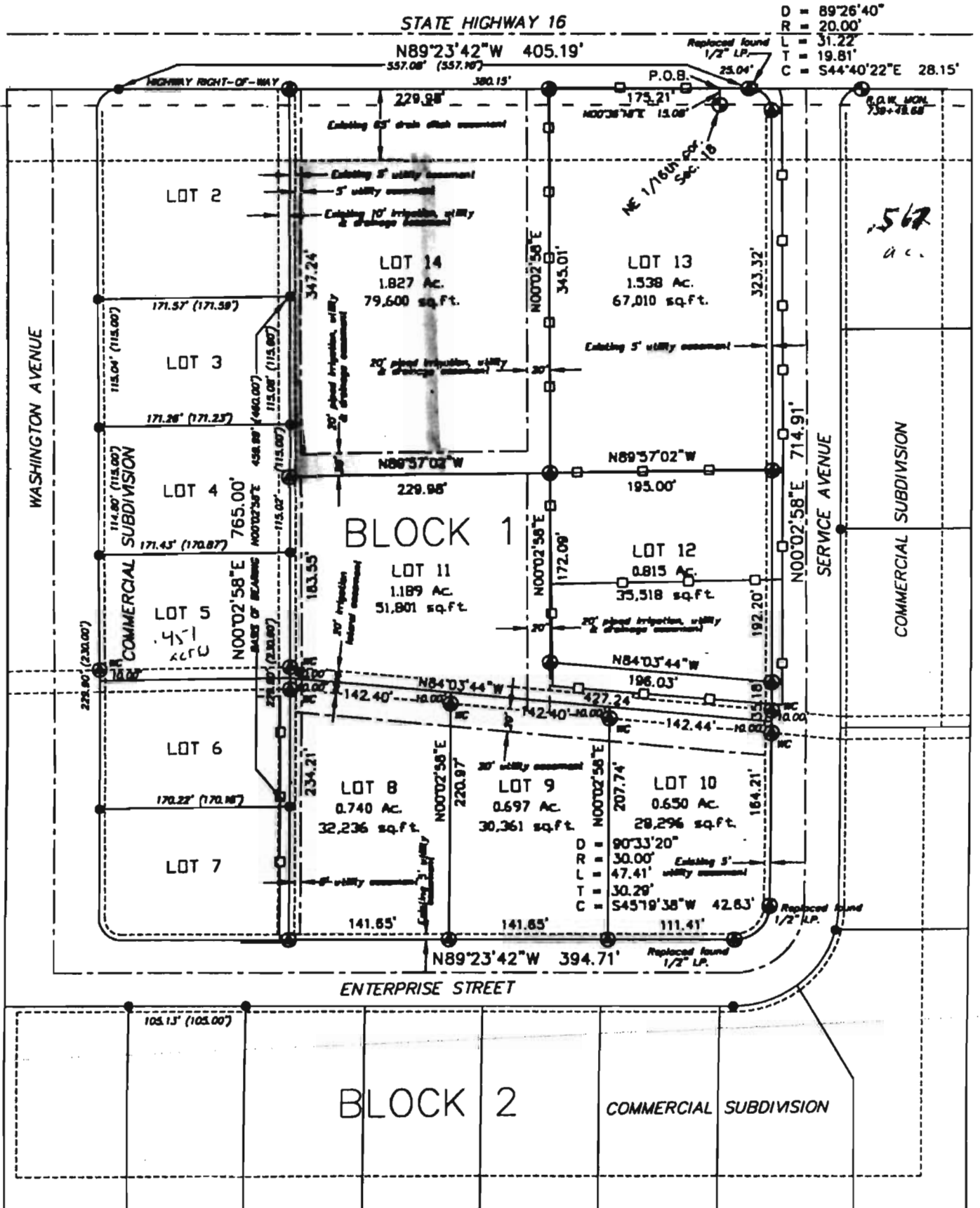
H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, Idaho 83617-0188

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

  
\_\_\_\_\_  
John J. Janis



000487



= LAND purchased by Buckner group

= 0.915 acre parcel purchased by Utah investors

000488

000489

**COMMERCIAL - INDUSTRIAL - INVESTMENT  
REAL ESTATE PURCHASE CONTRACT**

This is a legally binding Contract. It has been prepared by the Utah Association of REALTORS<sup>®</sup> for the use of its members only, in their transactions with clients and customers. Parties to this contract may agree, in writing, to alter or delete provisions of this contract. Seek advice from your attorney or tax adviser before entering into a binding contract.

**EARNEST MONEY RECEIPT**

The Buyer, Smith Brubaker Heacote, L.C. or Assigns, offers to purchase the Property described below and delivers as Earnest Money Deposit \$5,000.00 in the form of check, to:

The Brokerage, to be deposited within three business days after Acceptance of this Offer to Purchase by all parties.  
 The Title/Escrow Company identified below.

Brokerage or Title/Escrow Company: The Utah Group

Address: 150 East Social Hill Avenue, Suite 528, Salt Lake City, Utah 84111

Received by: Alicia White

On Date Of Acceptance

Phone Number: 801-536-3198

(If Title/Escrow Company) for deposit no later than \_\_\_\_\_

**OFFER TO PURCHASE**

1. **PROPERTY:** All of the property shown on Exhibit #1 and consists of approximately 1.83 acres

Address: Approximately Highway 16 & Washington

City: Emmett County: \_\_\_\_\_

State: Idaho

For legal description, see:  Attached Addendum  Preliminary title report when available as provided below.

1.1 **INCLUDED ITEMS.** Unless excluded herein, this sale shall include all fixtures presently attached to the Property. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: None

1.2 **EXCLUDED ITEMS.** These items are excluded from this sale: None

2. **PURCHASE PRICE AND FINANCING.** Buyer agrees to pay for the Property as follows:

\$ 5,000.00 Earned Money Deposit

Loan Proceeds:

Representing the liability to be assumed by Buyer under an existing assumable loan  with  without Seller being released of liability in this approximate amount with  Buyer  Seller agreeing to pay any loan transfer and assumption fees. Any net differences between the approximate balance of the loan shown above and the actual balance at Closing shall be then adjusted in  cash  other: \_\_\_\_\_

From new institutional financing on terms no less favorable to the Buyer than the following: \_\_\_\_\_ (interest rate for first period prior to adjustment, if any); \_\_\_\_\_ (amortization period); \_\_\_\_\_ (term). Other than these, the loan terms shall be the best obtainable under the loan for which the Buyer applies below.

From Seller-held financing, as described in the attached Seller Financing Addendum.

Other: \_\_\_\_\_

\$ 585,000.00 Balance of purchase price in cash at closing

\$ 600,000.00 TOTAL PURCHASE PRICE

3. **CLOSING.** This transaction shall be closed on or before February 28, 2008. Closing shall occur when: (a) Buyer and Seller have signed and delivered to each other (or to the escrowable company), all documents required by this Contract, by the Lender, by written escrow instructions signed by the Buyer and the Seller, and by applicable law; (b) the monies required to be paid under these documents have been delivered to the escrow title company in the form of collected or cleared funds; and (c) the deed which the Seller has agreed to deliver under Section 6 has been recorded. Seller and Buyer shall each pay one-half of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated as set forth in this Section. All deposits on hand shall be transferred to Buyer at Closing. Prorations set forth in this Section shall be made as of  date of Closing;  date of possession;  other: \_\_\_\_\_

4. **POSSESSION.** Seller shall deliver possession to Buyer within at Closing hours after Closing.

5. **CONFIRMATION OF AGENCY DISCLOSURE.** At the signing of this Contract the Listing Agent N/A represents  Seller  Buyer, and the Selling Agent N/A represents  Seller  Buyer. Buyer and Seller confirm that prior to signing this Contract  
Page 1 of 6  
REPC, Emmett-1.83 Acres

written disclosure of the agency relationship was provided to him/her. Members of the Buying Entity are licensed real estate brokers in the State of Utah and will be representing themselves in this transaction. Brokerage indemnification. If any person asserts a claim to a finder's fee, brokerage commission or other compensation an account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming will indemnify and hold the other party harmless for, from and against any claims related thereto. This will survive the Closing or the cancellation of this Agreement.

6. TITLE TO PROPERTY AND TITLE INSURANCE. (a) Seller has, or shall have at Closing, fee title to the Property and agrees to convey such title to Buyer by [X] general [ ] special warranty deed, free of financial encumbrance as warranted under Section 10.6; (b) Seller agrees to pay for, and furnish Buyer at Closing with, a current standard form Owner's policy of title insurance in the amount of the Total Purchase Price; (c) the title policy shall conform with Seller's obligations under subsections (a) and (b). Unless otherwise agreed under Section 8.4, the commitment shall conform with the title insurance commitment provided under Section 7.1.

If the Buyer elects to obtain a full-coverage extended ALTA policy of title insurance under (b), the cost of this coverage, above that of a standard Owner's policy, shall be paid for by the [X] Buyer [ ] Seller. Also, the cost of a full-coverage ALTA survey shall be paid for by the [X] Buyer [ ] Seller.

7. SPECIFIC UNDERTAKINGS OF SELLER AND BUYER.

7.1 SELLER DISCLOSURES. The Seller will deliver to the Buyer the following Seller Disclosures no later than the number of calendar days indicated below which shall be days after Acceptance:

- [ ] (a) a Seller Property Condition Disclosure for the Property, signed and dated by Seller
  - [X] (b) a commitment for the policy of title insurance required under Section 8, to be issued by the title insurance company chosen by Seller, including copies of all documents listed as Exceptions on the Commitment
  - [X] (c) a copy of all loan documents relating to any loan now existing which will encumber the Property after Closing;
  - [X] (d) a copy of all leases and rental agreements now in effect with regard to the Property together with a current rent roll;
  - [ ] (e) operating statements of the Property for its last \_\_\_ full fiscal years of operation plus the current fiscal year through \_\_\_ certified by the Seller or by an independent auditor;
  - [ ] (f) tenant Estoppel agreements;
  - [ ] (g) Survey of the pad together with corner stakes
- (Days)  
 \_\_\_\_\_ 15  
 \_\_\_\_\_ 15  
 \_\_\_\_\_ 15  
 \_\_\_\_\_ 15  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- [Handwritten Signature]*  
*[Handwritten Signature]*  
*[Handwritten Signature]*

Seller agrees to pay any charge for cancellation of the title commitment provided under Subsection (b).

If Seller does not provide any of the Seller Disclosures within the time periods agreed above, the Buyer may either waive the particular Seller Disclosure requirement by taking no timely action or the Buyer may notify the Seller in writing within \_\_\_ calendar days after the expiration of the particular disclosure time period that the Seller is in Default under this Contract and that the remedies under Section 16 are at the Buyer's disposal. The holder of the Earnest Money Deposit shall, upon receipt of a copy of Buyer's written notice, return to the Buyer the Earnest Money Deposit without the requirement of further written authorization from the Seller.

7.2 BUYER UNDERTAKINGS. The Buyer agrees to:

- [ ] (a) apply for approval of the assumption or funding of the loan proceeds described in Section 2 by completing, signing, and delivering to the Lender the initial loan application and documentation required by the Lender and by paying all fees as required by the Lender (including appraised fee) no later than \_\_\_ calendar days after Acceptance; and
- [ ] (b) no later than \_\_\_ calendar days after Acceptance, obtain from the Lender to whom application is made under subsection (a) a written commitment to approve the assumption of the existing loan or to fund the new loan subject only to changes of conditions in Buyer's credit worthiness and to normal loan closing procedures; or, if Buyer elects, providing the Seller with absolute assurance, within the same time frame, that the proceeds required for funding the Total Purchase Price are available.

These Buyer Undertakings are at the sole expense of the Buyer and are material elements of this Contract for the benefit of both the Buyer and the Seller.

If Buyer does not initiate any Buyer Undertaking and provide Seller with written confirmation in the time agreed above, the Seller may either waive the particular Buyer Undertaking requirement by taking no timely action or the Seller may notify the Buyer in writing within \_\_\_ calendar days of the expiration of the particular undertaking time period that the Buyer is in Default under this Contract and that the remedies under Section 7.6 are at the Seller's disposal. The holder of the Earnest Money Deposit shall, upon receipt of a copy of Seller's written notice, deliver to the Seller the Earnest Money Deposit without the requirement of further written authorization from the Buyer.

7.3 **ADDITIONAL DUE DILIGENCE.** The Buyer shall undertake the following Additional Due Diligence elements at its own expense and for its own benefit for the purpose of complying with the Contingencies under Section 6:

- (a) Ordering and obtaining an appraisal of the Property if one is not otherwise required under Section 7.2;
- (b) Ordering and obtaining a survey of the Property if one is not otherwise required under Section 6;
- (c) Ordering and obtaining any environmentally related study of the Property;
- (d) Ordering and obtaining a physical inspection report regarding, and completing a personal inspection of, the Property;
- (e) Requesting and obtaining verification that the Property complies with all applicable federal, state and local laws, ordinances and regulations with regard to zoning and permissible use of the Property.

Seller agrees to cooperate fully with Buyer's completing these Due Diligence matters and to make the Property available as reasonable and necessary for the same.

8. **CONTINGENCIES.** This offer is subject to the Buyer's approving, in its sole discretion, the Seller Disclosures, the Buyer Undertakings and Additional Due Diligence matters in Section 7. However, the Buyer's discretion in approving the terms of the loan under Subsection (b) is subject to Buyer's covenant with regard to mutually acceptable financing terms under Section 2.

8.1 Buyer shall have 30 calendar days after the times specified in Section 7.1 and 7.2 for receipt of Seller Disclosures and for completion of Buyer Undertakings to review the content of the disclosures and the outcome of the undertakings. The latest applicable date under Section 7.1 and 7.2 applies for completing a review of Additional Due Diligence matters under Section 7.3.

8.2 If Buyer does not deliver a written objection to Seller regarding a Seller Disclosure, Buyer Undertaking or Due Diligence matter within the time provided in Section 8.1, that item will be deemed approved by Buyer.

8.3 If Buyer objects, Buyer and Seller shall have 10 calendar days after receipt of the objections to resolve Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. Likewise, the Buyer is under no obligation to accept any resolution proposed by the Seller. If Buyer's objections are not resolved within the stated time, Buyer may void this Contract by providing written notice to Seller within the same stated time. The holder of the Earnest Money Deposit shall, upon receipt of a copy of Buyer's written notice, return to Buyer the Earnest Money Deposit without the requirement of any further written authorization from Seller. If this Contract is not voided by Buyer, Buyer's objection is deemed to have been waived. However, this waiver does not affect warranties under Section 7D.

8.4 Resolution of Buyer's objections under Section 8.3 shall be in writing and shall become part of this Contract.

9. **SPECIAL CONTINGENCIES.** This offer is made subject to: See Below  
 The terms of attached Addendum # N/A are incorporated into this Contract by this reference

9.1 **Feasibility Period:** That the Buyer is satisfied with Buyer's investigations and inspections with respect to the Property and this transaction, in that regard, for a period ending at the earlier of 5:00 o'clock p.m. (Salt Lake City time) January 30, 2008 (the "Feasibility Period"). Buyer will have the absolute right to cancel this Agreement for any reason whatsoever, in Buyer's sole and absolute discretion. However, until buyer cancels, Buyer will proceed in good faith with Buyer's preliminary investigatory steps with respect to this transaction. During the Feasibility Period, Buyer, its representatives and agents shall have the right to come onto the Property to conduct surveys, soil, hydrology, and other physical testing and inspection, and to conduct environmental studies and assessments. Unless Buyer gives written notice of cancellation prior to the expiration of the Feasibility Period, then Buyer will be deemed to have elected not to cancel the Agreement under this provision. The Buyer will have the option to extend the Feasibility Period an additional Thirty-(30) days with a written notice prior to January 30, 2008, by depositing an additional \$2,000 Earnest Money Deposit. With the written notice the Earnest Money Deposits will become non-refundable to the Buyer if this sale shall fail for any reason, except for denial of the Buyer's site plan as presented to the City of Emmett. All Earnest Money Deposits will be applied towards the

**Purchase Price at Closing.** The Closing will take place within Thirty- (30) days following the end of the extended Feasibility Period.

- 9.2 City and Development Approvals: This offer will be subject to the City approvals for the Buyer's intended use on the property. Said use is to be retail per the existing Commercial zone and Master Plan that has been approved by the City. The Buyer's intentions are to have a 7000 SF retail building (which will include some stocking and warehouse space) built. During the Buyer's Feasibility Period, and at the expense of the Buyer, the Buyer will finalize a lease with the Buyer's Tenant and prepare all site plans for City approvals. The Closing is contingent on the successful execution of the lease with the Buyer's proposed Tenant, but the non refundable dates mentioned in Paragraph 9.1 still apply, and will be the Seller's sole recourse, if this sale shall fail for any reason, except for a breach of Seller's obligations.
- 9.3 Seller Warranties: The Seller will furnish the Buyer with all existing surveys, soils and Environmental Reports. It will be the responsibility of the Buyer to confirm the availability of utilities and accesses prior to end of the Buyer's Feasibility Period or the Closing deadline. At Closing the Buyer accepts the Property in "AS IS" condition with no further Seller representations or warranties.
- 9.4 Closing: The closing Deadline will be within thirty- (30) days from the date that the Buyer has obtained all governmental approvals, or the date on which the Feasibility Period expires, but not to be later than February 28, 2008, unless extended by mutual consent of both parties.
- 9.5 Buyer's Cooperation: The Buyer agrees to cooperate fully with the Seller in a 1031 Tax Free Exchange, should the Seller elect this option in lieu of a cash sale. In accordance with all laws and regulations the Buyer agrees to complete any forms, sign any documents required by the Escrow Agent or Facilitator to qualify this sale as a Tax Free Exchange in accordance with the IRS 1031 Tax Free Exchange guidelines. All expenses associated with a Tax Free Exchange will be the responsibility of the Seller. If this sale shall fail for any reason, any work done by the Buyer, including, but not limited to Environmental studies, engineering, surveys and City information and applications will be given to the Seller.
- 9.6 Seller and Buyer Confidentiality: The Buyer and Seller agree to keep all information regarding this sale and any use thereof in confidence, and to always act in Good Faith regarding this transaction.
- 9.10 Seller's Elections on title Companies and Idaho Approved forms: In as much as the Buyer is a Development Company located in Salt Lake City, Utah, this offer is being prepared and presented on Utah approved forms and with deposits being made and title work done with a Utah company. At the discretion of the Seller and as directed by the Seller's Agent, this offer may be transposed onto Idaho approved forms with the use of an Idaho based Title Company. It would be the preference of the Buyer that a title company that is underwritten by First American Title be used, if possible.

**10. SELLER'S LIMITED WARRANTIES.** Seller's warranties to Buyer regarding the Property are limited to the following:

- 10.1 ~~When Seller delivers possession of the Property to Buyer, it will be broom clean and free of debris and personal belongings;~~
- 10.2 ~~Seller will deliver possession of the Property to Buyer with the plumbing, plumbed fixtures, heating, cooling, ventilating, electrical and sprinkler (indoor and outdoor) systems, appliances, and fireplaces in working order;~~
- 10.3 ~~Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller;~~
- 10.4 ~~Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations;~~
- 10.5 ~~Seller will be responsible for repairing any of Seller's moving-related damage to the Property;~~
- 10.6 ~~At Closing, Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all such obligations which Buyer has not so assumed;~~
- 10.7 ~~As of Closing, Seller has no knowledge of any claim or notice of an environmental, building or zoning code violation regarding the Property which has not been resolved.~~
- 10.8 Seller Warrants that there are no leases or liens encumbering the property except as following \_\_\_\_\_

000495

11. **VERIFICATION OF WARRANTED AND INCLUDED ITEMS.** After all contingencies have been removed and before Closing, the Buyer may conduct a "walk-through" inspection of the Property to determine whether or not items warranted by Seller in Section 10.1, 10.2, 10.3 and 10.4 are in the warranted condition and to verify that items included in Section 1.1 are presently on the Property. If any item is not in the warranted condition, Seller will correct, repair or replace it as necessary or, with the consent of Buyer and (if required) Lender, escrow an amount at Closing to provide for such repair or replacement. The Buyer's failure to conduct a "walk-through" inspection or to claim during the "walk-through" inspection that the Property does not include all items referenced in Section 1.1 or is not in the condition warranted in Section 10, shall constitute a waiver of Buyer's rights under Section 1.1 and of the warranties contained in Section 10.
12. **CHANGES DURING TRANSACTION.** Seller agrees that no changes in any existing leases shall be made, no new leases entered into, and no substantial alterations or improvements to the Property shall be undertaken without the written consent of the Buyer.
13. **AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, or other entity, the person signing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller and the heirs or successors in interest to Buyer or Seller. If the Seller is not the vested Owner of the Property but has control over the vested Owner's disposition of the Property, the Seller agrees to exercise this control and deliver title under this Contract as if it had been signed by the vested Owner.
14. **COMPLETE CONTRACT.** This instrument (together with its Addenda, any attached Exhibits, and Seller Disclosures) constitutes the entire Contract between the parties and supersedes all prior dealings between the parties. This Contract cannot be changed except by written agreement of the parties.
15. **DISPUTE RESOLUTION.** The parties agree that any dispute or claim relating to this Contract, including but not limited to the disposition of the Earnest Money Deposit and the breach or termination of this Contract, shall first be submitted to mediation in accordance with the Utah Real Estate Buyer/Seller Mediation Rules of the American Arbitration Association. Each party agrees to bear its own costs of mediation. Any Agreement signed by the parties pursuant to the mediation shall be binding. If mediation fails, the procedures applicable and remedies available under this Contract shall apply. Nothing in this Section shall prohibit the Buyer from seeking specific performance by the Seller by filing a complaint with the court, serving it on the Seller by means of summons or as otherwise permitted by law, and recording a *lis pendens* with regard to the action provided that the Buyer permits the Seller to refrain from answering the complaint pending mediation. Also, the parties may agree in writing to waive mediation.
16. **DEFAULT.** If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller as liquidated damages a sum equal to the Earnest Money Deposit or sue Seller for specific performance and/or damages. If Buyer elects to accept the liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. Where a Section of this Contract provides a specific remedy, the parties intend that the remedy shall be exclusive regardless of rights which might otherwise be available under common law.
17. **ATTORNEY'S FEES.** In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.
18. **DISPOSITION OF EARNEST MONEY.** The Earnest Money Deposit shall not be released unless it is authorized by: (a) Section 7.1, 7.2 and 8.3; (b) separate written agreement of the parties, including an agreement under Section 15 if (a) does not apply; or (c) court order.
19. **ABROGATION.** Except for express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.
20. **RISK OF LOSS.** All risk of loss or damage to the Property shall be borne by Seller until Closing.
21. **TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this transaction. Extensions must be agreed to in writing by all parties. Performance under each Section of this Contract which references a date shall be required absolutely by 5:00 p.m., Mountain Time on the stated date.
22. **COUNTERPARTS AND FACSIMILE (FAX) DOCUMENTS.** This Contract may be signed in counterparts, and each counterpart bearing an original signature shall be considered one document with all other bearing original signature. Also, facsimile transmission of any signed original document and re-transmission of any signed facsimile transmission shall be the same as delivery of an original.



- 23. **ACCEPTANCE.** Acceptance occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or the other party's agent that the offer or counteroffer has been signed as required.
- 24. **OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 5:00 p.m. Mountain Daylight Time, October 26, 2005, this offer shall lapse; and the holder of the Earnest Money Deposit shall return it to the Buyer.

29 EH

Eldon J. Haacke  
(Buyer's Signature)

\_\_\_\_\_  
(Offer Reference Date)

Smith Brubaker Haacke L.C.-Eldon Haacke-Managing Member  
Buyer's Name (please print)

2231 East Murray-Holladay Road, Salt Lake City, Utah 84117  
(Notice Address)

801-278-4688  
(Phone)

**ACCEPTANCE/REJECTION/COUNTER OFFER**

Acceptance of Offer to Purchase: Seller accepts the foregoing offer on the terms and conditions specified above.

\_\_\_\_\_  
(Seller's Signature)

\_\_\_\_\_  
(Date) (Time)

\_\_\_\_\_  
Seller's Name (please print)

\_\_\_\_\_  
(Notice Address)

\_\_\_\_\_  
(Phone)

Rejection. Seller Rejects the foregoing offer.  
(Seller's initials) \_\_\_\_\_ (Date) \_\_\_\_\_ (Time)

Counter Offer: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Counter Offer #\_\_\_\_\_.

**DOCUMENT RECEIPT**

State Law requires Broker to furnish Buyer and Seller with copies of this Contract bearing all signatures (One of the following alternatives must therefore be completed).

A.  I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

SIGNATURE OF SELLER

SIGNATURE OF BUYER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

B.  I personally caused a final copy of the foregoing contract bearing all signatures to be mailed on \_\_\_\_\_, 200\_\_\_\_ by certified Mail and return receipt attached hereto to the 9 Seller 9 Buyer, Sent by \_\_\_\_\_

Seller's Initials ( ) Date \_\_\_\_\_ Buyer's Initials ( ) Date \_\_\_\_\_

000495

**ADDENDUM TO REAL ESTATE PURCHASE CONTRACT  
#1**

SMITH BRUBAKER HAACKER REAL ESTATE SERVICES  
BROKERAGE AND MANAGEMENT  
LICENSED REAL ESTATE BROKER

This is an Addendum to the Real Estate Purchase Contract dated \_\_\_\_\_ between Smith Brubaker Haacker L.C. and/or Asslons as Purchaser and \_\_\_\_\_ as Seller (the "Contract"), concerning the property known as 1.83 acres or lot 13, located in Emmett, Idaho, as more specifically described in the Contract.

The term "Real Estate Purchase Contract" shall be deemed to include a Deposit Receipt, Earnest Money Contract, or any similar document.

1. The Seller agrees to grant the needed easements across lots 5 & 14 for installation of the needed utilities for developability of lot 13 and for the benefit of both the Buyer and Seller. Seller also agrees to work with Buyer in obtaining any of the needed permits from the city for the development of this property.
2. Buyer and Seller will determine the location of the agreed upon easements though lots 5 & 14, said location will be mutually accepted by both Buyer and Seller. The locations of the easements will not interfere with the current owner's future developability of lots 5 & 14.

In the event of any conflict between the terms of this Addendum and the Contract, the terms of this Addendum shall prevail. All other terms of the REPC not modified shall remain the same.

Seller: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_

Purchaser: Edna V. Haacker  
 By: \_\_\_\_\_  
 Title: Managing Member  
 Address: 2231 E. Murray-Holladay  
5th, Ut. 84117

**ADDENDUM TO REAL ESTATE PURCHASE CONTRACT**

**#2**

SMITH BRUBAKER HAACKE REAL ESTATE SERVICES  
BROKERAGE AND MANAGEMENT  
LICENSED REAL ESTATE BROKER

This is an Addendum to the Real Estate Purchase Contract dated November 4, 2005, between Smith Brubaker Haacke L.C. and/or Assigns as Purchaser and Ronald O. Thomas as Seller (the "Contract"), concerning the property known as 1.83 acres or lot 13, located in Emmett, Idaho, as more specifically described in the Contract.

The term "Real Estate Purchase Contract" shall be deemed to include a Deposit Receipt, Earnest Money Contract, or any similar document.

It is hereby agreed that the purchase agreement shall contain the following changes.

1. The Property shall be reduced in size to 0.915 acre with dimensions as shown on Exhibit "A".
2. Buyer agrees to pay to Seller the amount of \$200,000.00 for said Property (0.915 acre), together with an easement for ingress and egress over and across the Property as dictated in the Deed of Declaration and Easement Agreement and the sketch shown in and attached as Exhibit "B". Seller agrees to the form of said easement upon execution of this addendum. Seller agrees to grant easements over and across the North side of Lot 5 and the West side of Lot 11 so that Buyer can construct a sewer line.
3. Buyer shall be obligated to stub the sewer to the South East corner of the Property being purchased. It is our intention to do so based upon the Sewer Drawing, bringing sewer down Washington Ave. and across proposed Lot 5 and Lot 11 as shown in Exhibit "C".
4. Buyer will make all intentions to close on said Property on or before February 28, 2006. Closing shall be the later of February 28, 2006 or 15 days after Seller obtains the official lot split from Emmett City and executed all the needed easements as indicated above.
5. The Property shall be conveyed subject to the easement described in Exhibit B. This easement shall be reserved in the deed conveying the Property.
6. Buyer shall bring city water and sewer services to the Property at Buyer's expense. Seller shall be allowed to connect to these services without cost to seller, except for normal city connection fees.

Both parties shall sign this Agreement on or before January 31, 2006, or the original extended contract shall remain in force.

Seller: \_\_\_\_\_

Buyer: SMITH BRUBAKER HAACKE L.C.

By: \_\_\_\_\_

By: [Signature]

Title: \_\_\_\_\_

Title: member - manager

Address: \_\_\_\_\_

Address: 2231 E. 4800 SOUTH

Date: \_\_\_\_\_

Date: 1-25-06

**ADDENDUM TO REAL ESTATE PURCHASE CONTRACT**

**#2**

SMITH BRUBAKER HAACKE REAL ESTATE SERVICES  
BROKERAGE AND MANAGEMENT  
LICENSED REAL ESTATE BROKER

This is an Addendum to the Real Estate Purchase Contract dated November 4, 2005, between Smith Brubaker Haacke L.C. and/or Assigns as Purchaser and Ronald O. Thomas as Seller (the "Contract"), concerning the property known as 1.83 acres or lot 13, located in Emmett, Idaho, as more specifically described in the Contract.

The term "Real Estate Purchase Contract" shall be deemed to include a Deposit Receipt, Earnest Money Contract, or any similar document.

It is hereby agreed that the purchase agreement shall contain the following changes.

1. The Property shall be reduced in size to 0.915 acre with dimensions as shown on Exhibit "A".
2. Buyer agrees to pay to Seller the amount of \$200,000.00 for said Property (0.915 acre), together with an easement for ingress and egress over and across the Property as dictated in the Deed of Declaration and Easement Agreement and the sketch shown in and attached as Exhibit "B". Seller agrees to the form of said easement upon execution of this addendum. Seller agrees to grant easements over and across the North side of Lot 5 and the West side of Lot 11 so that Buyer can construct a sewer line.
3. Buyer shall be obligated to stub the sewer to the South East corner of the Property being purchased. It is our intention to do so based upon the Sewer Drawing, bringing sewer down Washington Ave. and across proposed Lot 5 and Lot 11 as shown in Exhibit "C".
4. Buyer will make all intentions to close on said Property on or before February 28, 2006. Closing shall be the later of February 28, 2006 or 15 days after Seller obtains the official lot split from Emmett City and executed all the needed easements as indicated above.

Both parties shall sign this Agreement on or before January 31, 2006, or the original extended contract shall remain in force.

Seller: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Buyer: SMITH BRUBAKER HAACKE L.C.

By: [Signature]

Title: member - manager

Address: 2231 E. 4900 South  
Salt Lake City, Utah

Date: 1-25-06

000499



**RE-24 VACANT LAND REAL ESTATE PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY**



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 ID# 282005 DATE October 28, 2005

2 LISTING AGENCY NA Office Phone # \_\_\_\_\_ Fax # \_\_\_\_\_

3 *idaho* Selling Agent Wendy Myers - Capshaw - Nina Cadwell Phone # \_\_\_\_\_

4 SELLING AGENCY Cadwell Commercial R. E. Office Phone # 343-5605 Fax # \_\_\_\_\_

5 Selling Agent David Cadwell E-Mail dcadwell@idahoctr.com Phone # 850-3333

6 1. BUYER: Joseph Azuz INC. (Hereinafter called "BUYER")

7 agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"

8 COMMONLY KNOWN AS \_\_\_\_\_

9 City \_\_\_\_\_ County \_\_\_\_\_ ID, Zip \_\_\_\_\_

10 Legally described as: Lot 13 Blk 1A of Ronald O. Thomas Property

11 OR Legal Description Attached as addendum # \_\_\_\_\_ (Addendum must accompany original offer.)

12 2. \$ 650,000 PURCHASE PRICE: Six hundred fifty thousand & no/100 DOLLARS,

13 payable upon the following TERMS AND CONDITIONS (not including closing costs)

14 3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

15 \$ 10,000 A. EARNEST MONEY: BUYER hereby deposits Ten thousand & no/100 DOLLARS

16 as Earnest Money evidenced by:  cash  personal check  cashier's check  note (due date): \_\_\_\_\_

17  Other \_\_\_\_\_ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account  upon receipt,  upon acceptance by all parties and shall be held by:  Listing Broker  Selling Broker  \_\_\_\_\_

18 for the benefit of the parties hereto. The responsible Broker shall be \_\_\_\_\_

19 B. ALL CASH OFFER:  YES  NO If this is an all cash offer do not complete lines Subsection C, fill blanks with "0" (Zero). IF CASH OFFER BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY, BUYER agrees to provide SELLER within 30 business days from the date of this agreement, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

20 C. NEW LOAN PROCEEDS:

21  FIRST LOAN of \$ NA not including mortgage insurance. This Agreement is contingent upon BUYER obtaining the following type(s) of financing:  FHA  VA  CONVENTIONAL  HFA  RURAL DEVELOPMENT  OTHER \_\_\_\_\_ with interest not to exceed \_\_\_\_\_ % for a period of \_\_\_\_\_ year(s) at:  Fixed Rate  Other \_\_\_\_\_ BUYER shall pay no more than \_\_\_\_\_ point(s) plus origination fee if any. SELLER shall pay no more than \_\_\_\_\_ point(s). Any reduction in points shall first accrue to the benefit of the  BUYER  SELLER  Divided Equally  N/A.

22  SECOND LOAN of \$ \_\_\_\_\_ for a period of \_\_\_\_\_ year(s) at:  Fixed Rate  Other \_\_\_\_\_ BUYER shall pay no more than \_\_\_\_\_ point(s) plus origination fee if any. SELLER shall pay no more than \_\_\_\_\_ point(s). Any reduction in points shall first accrue to the benefit of the  BUYER  SELLER  Divided Equally  N/A.

23 LOAN APPLICATION: BUYER  has applied  shall apply for such loan(s) within \_\_\_\_\_ business day(s) of SELLER'S acceptance. Within \_\_\_\_\_ business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within \_\_\_\_\_ business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

24 FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

25 BUYER'S Initials (AB) (\_\_\_\_\_) Date 10-28-05 SELLER'S Initials (\_\_\_\_\_) (\_\_\_\_\_) Date \_\_\_\_\_

26 This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

000500

PROPERTY ADDRESS: Ronald O. Thomas Property ID#: 282005

**D. ADDITIONAL FINANCIAL TERMS:**

- Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
- Additional financial terms are contained in a **FINANCING ADDENDUM** of same date, attached hereto, signed by both parties.

\$0 640,000 **E. APPROXIMATE FUNDS DUE AT CLOSING:** Cash at closing, not including closing costs, to be paid by BUYER at closing, in GOOD FUNDS, which includes: cash, electronic transfer funds, certified check or cashier's check. Any net difference between the approximate balances of the loan(s) shown above, which are to be assumed or taken subject to, and the actual balances of said loan(s) at closing of escrow shall be adjusted in Cash Other: \_\_\_\_\_.

**4. OTHER TERMS AND/OR CONDITIONS:** \$10,000 E.F. to be deposited w/ 3 days of accepted offer  
This offer is subject to verification of address to Hwy 524 Review and  
approval of final survey and plat, subdivision of easement from West  
Street within 30 days of accepted offer. This offer is part of 1031  
exchange with no cost of effect to Seller.  
Buyer has right to 1-time 10 30 day extension for above verification

Buyer will pay any real estate fees.  
Buyer has option to purchase entire property until Nov. 30, 2005.  
To purchase

**5. "NOT APPLICABLE DEFINED:"** The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

**6. INSPECTION: BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:**

- A. **SIZE:** Square footage and lot size. (Any numerical statements regarding these items are APPROXIMATION ONLY, and have not been and will not be verified and should not be relied upon by BUYER.)
- B. **LINES AND BOUNDARIES:** Property lines and boundaries, septic, and leach lines (Fences, walls, hedges, and other natural or constructed barriers or markers do not necessarily identify true property boundaries. Property lines may be verified by surveys.)
- C. **ZONING AND LAND USE:** Inquiries, investigations, studies or any other means concerning past, present or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the property, BUYER's intended use of the property, future development, zoning, building, size, governmental permits and inspections. Both parties are advised that Broker does not guarantee the status of permits, zoning or code compliance. The parties are to satisfy themselves concerning these issues.
- D. **UTILITIES AND SERVICE:** Availability, costs, and restrictions of utilities and services, including but not limited to, sewage, sanitation, water, electricity, gas, telephone, cable TV and drainage.
- E. **UTILITIES, IMPROVEMENTS & OTHER RIGHTS:** SELLER represents that the property does have the following utilities, improvements, services and other rights available (describe availability): \_\_\_\_\_
- F. **HAZARDOUS MATERIALS:** The real estate broker(s) or their agents in this transaction have no expertise with respect to toxic waste, hazardous materials or undesirable substances. BUYERS who are concerned about the presence of such materials should have the property inspected by qualified experts. BUYER acknowledges that he/she has not relied upon any representations by either the Broker or the SELLER with respect to the condition of the property that are not contained in this Agreement or in any disclosure statements.
- G. **TAX LIABILITY:** The BUYER and SELLER acknowledge that they have not received or relied upon any statements or representations by the Broker with respect to the effect of this transaction upon BUYER's or SELLER's tax liability.

BUYER chooses  to have inspection;  not to have inspection. If BUYER chooses not to have inspection skip the remainder of section 6. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 30 business day(s) of acceptance, complete these inspections and give to SELLER written notice of items disapproved of. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property. BUYER'S acceptance of the condition of the property is a contingency of this Agreement.

**SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:**

1. If BUYER does not within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2. If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 5 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYERS inspection contingency.

BUYER'S Initials (RT) (\_\_\_\_\_) Date 10-28-05 SELLER'S Initials (\_\_\_\_\_) (\_\_\_\_\_) Date \_\_\_\_\_

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

000501

PROPERTY ADDRESS: \_\_\_\_\_

ID#: 282005

3. If the SELLER elects not to correct the disapproved items, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 5 business days that they will not continue with the transaction and will receive their Earnest Money back.

4. If SELLER does not respond within the strict time period specified, BUYER shall have the right to cancel this agreement in writing.

5. If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER, unless required by local law.

7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects, which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

8. TITLE INSURANCE:

(A) TITLE COMMITMENT: Prior to closing the transaction,  SELLER or  BUYER shall furnish to BUYER a commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have 5 business day(s) from receipt of the commitment or not less than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the condition of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within \_\_\_\_\_ business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B) TITLE COMPANY: The parties agree that Wheeler (Boise) Title Company located at Front Street shall provide title policy and preliminary report of commitment.

(C) STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER. The risk assumed by the title company in the standard coverage policy is limited to matters of public record.

(D) EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

(E) EXTENDED COVERAGE OWNER'S POLICY: A standard title policy does not cover certain potential problems or risks such as liens (i.e. a legal claim against premises for payment of some debt or obligation, boundary disputes, claims of easement and other matters of claims if they are not of public record at time of closing.) However, under Idaho law, such potential claims against the premises may have become legal obligations before the purchase of the home and yet may not be of public record until after the purchase. It is recommended that BUYER talk to a title company about what it offers in the way of extended coverage title policies and endorsements. This extended coverage owner's policy is for the benefit of the owner and provides similar coverage like provided by the extended coverage lender's policy.

Extended Coverage Owner's Policy requested  Yes  No. Additional premium paid by:  BUYER  SELLER.

9. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

10. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any moneys or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

11. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's.  Yes  No  N/A

12. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents:  Yes  No  N/A Association fees/dues are \$ NA per NA  BUYER  SELLER  N/A to pay Homeowner's Association SET UP and/or property TRANSFER FEES of \$ NA at closing.

BUYER'S Initials (AS) (\_\_\_\_\_) Date 10-28-05 SELLER'S Initials (\_\_\_\_\_) (\_\_\_\_\_) Date \_\_\_\_\_

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

000502



PROPERTY ADDRESS: \_\_\_\_\_

ID#: 282005

211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249

**13. FARM/CROPS/TIMBER RIGHTS:** SELLER, or any tenant of SELLER, shall be allowed to harvest, sell or assign any annual crops which have been planted on the Property prior to the date of this Contract, even though said harvest time may occur subsequent to the date of the settlement of this contract, unless otherwise agreed by attached addendum. If the crop consists of timber, then neither SELLER nor any tenant of SELLERs shall have any right to harvest the timber unless the right to remove same shall be established by attached addendum. Notwithstanding the provisions hereof, any tenant who shall be leasing the Property shall be allowed to complete the harvest of any annual crops that have been planted prior to the date of Contract Acceptance as previously agreed between SELLER and Tenant. **ANY AND ALL SUCH TENANT AGREEMENTS ARE TO BE ATTACHED.**

**14. NOXIOUS WEEDS:** BUYER of the property in the State of Idaho should be aware that some properties contain noxious weeds. The laws of the State of Idaho require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For more information concerning noxious weeds and your obligations as an owner of property, contact your local county extension office.

**15. MINERAL RIGHTS:** Any and all mineral rights which are already included with the property will be included in the sale of this property unless otherwise stipulated.

**16. WATER RIGHTS:** Description of water rights, water systems, wells, springs, water, ditches, ditch rights, etc., if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein:

**17. RISK OF LOSS:** Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this Agreement shall be voidable at the option of BUYER.

**18. BUSINESS DAYS & HOURS:** A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

**19. SEVERABILITY:** In the case that any one or more of the provisions contained in this Agreement or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or unenforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**20. FACSIMILE TRANSMISSION:** Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

**21. ADDITIONAL CONTINGENCIES AND COSTS:** The closing of this transaction is contingent upon written satisfaction or waiver of the following contingencies. Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated and by no later than time of closing. Some costs are subject to loan program requirements. In addition, the parties shall satisfy all contingencies set forth in this section by (Date): \_\_\_\_\_ unless otherwise agreed to by the parties.

COSTS	COSTS				CONTINGENCIES	CONTINGENCIES			
	BUYER	SELLER	Shared Equally	Not Applicable		BUYER	SELLER	Shared Equally	Not Applicable
Appraisal Fee				X	Environmental Inspection (Phase 1)			X	
Long Term Escrow Fees				X	Environmental Inspection (Phase 2)				X
Closing Escrow Fee			X		Environmental Inspection (Phase 3)				X
Survey		X			PERC Test				X
Flood Certification/Tracking Fee				X	Zoning Variance				X
Title Ins. Standard Coverage Owner's Policy		X			Soil(s) Test(s)		X		
Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy				X	Hazardous Waste Report(s)		X		
Additional Title Coverage				X					
Water Rights Transfer Fee				X					
Attorney Contract Preparation Fee				X					

BUYER'S Initials (AB) (\_\_\_\_\_) Date 10-28-05 SELLER'S Initials (\_\_\_\_\_) (\_\_\_\_\_) Date \_\_\_\_\_

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

000503

250  
251  
252  
253  
254  
255  
256  
257  
258  
259

PROPERTY ADDRESS: \_\_\_\_\_

ID#: 282005

260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330

**22. COUNTERPARTS:** This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

**23. ENTIRE AGREEMENT:** This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

**24. DEFAULT:** If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER's Broker, provided that the amount to be paid to SELLER's Broker shall not exceed the Broker's agreed-to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER's Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER's Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

**25. SALES PRICE INFORMATION:** SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor's Office by either party or by either party's Broker.

**26. TIME IS OF THE ESSENCE IN THIS AGREEMENT.**

**27. CLOSING:** On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) December 31, 2005. The parties agree that the CLOSING AGENCY for this transaction shall be Winnale Title - Boise located at Front Street (David Choate) If a long-term escrow / collection is involved, then the long-term escrow holder shall be NA.

**28. POSSESSION:** BUYER shall be entitled to possession  upon closing or  date \_\_\_\_\_ at \_\_\_\_\_  am /  pm. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of closing.

**29. SPECIAL CONSIDERATIONS AND CONTINGENCIES:** This Agreement is made subject to the following special considerations and/or contingencies which must be satisfied prior to closing: \_\_\_\_\_

**30. REPRESENTATION CONFIRMATION:** Check one (1) box in Section 1 and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYERS(s) and SELLER(s).

- Section 1:**  A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).  
 B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.  
 C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).  
 D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

- Section 2:**  A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).  
 B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.  
 C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).  
 D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (AB) (\_\_\_\_\_) Date 10-28-05 SELLER'S Initials (\_\_\_\_\_) (\_\_\_\_\_) Date \_\_\_\_\_

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

000504

PROPERTY ADDRESS: \_\_\_\_\_ ID#: 282005

331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398

**31. ACCEPTANCE:** BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) \_\_\_\_\_ at (Time) \_\_\_\_\_  A.M.  P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

**32. BUYER'S SIGNATURES:**

SEE ATTACHED BUYER'S ADDENDUM(S): \_\_\_\_\_ (Specify number of BUYER addendum(s) attached.)

BUYER Signature [Signature] BUYER (Print Name) Albert L. Benaroya  
Date 10-28-05 Time 7:00  A.M.  P.M. Phone # \_\_\_\_\_ Cell # \_\_\_\_\_  
Address 1103 Maggie Lane City Walnut Creek State CA Zip 94597  
E-Mail Address \_\_\_\_\_ Fax # \_\_\_\_\_

BUYER Signature \_\_\_\_\_ BUYER (Print Name) \_\_\_\_\_  
Date 10-28-05 Time \_\_\_\_\_  A.M.  P.M. Phone # \_\_\_\_\_ Cell # \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
E-Mail Address \_\_\_\_\_ Fax # \_\_\_\_\_

**33. SELLER'S SIGNATURES:**

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # \_\_\_\_\_

SELLER Signature \_\_\_\_\_ SELLER (Print Name) Ronald O. Thomas  
Date \_\_\_\_\_ Time \_\_\_\_\_  A.M.  P.M. Phone # \_\_\_\_\_ Cell # \_\_\_\_\_  
Address P.O. Box 505 (550 S. Wash) City Emmett State ID Zip 83617  
E-Mail Address \_\_\_\_\_ Fax # \_\_\_\_\_

SELLER Signature \_\_\_\_\_ SELLER (Print Name) \_\_\_\_\_  
Date \_\_\_\_\_ Time \_\_\_\_\_  A.M.  P.M. Phone # \_\_\_\_\_ Cell # \_\_\_\_\_  
Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
E-Mail Address \_\_\_\_\_ Fax # \_\_\_\_\_

This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®. USE BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

000506

# ALLIANCE

TITLE & ESCROW CORP  
 250 FIFTH ST. STA. 101 BOISE, ID 83702  
 208.947.9100 fax 208.947.9199

**SELLER'S CLOSING STATEMENT**  
 Estimated

Escrow Number: 5000631338DC  
 Escrow Officer: David Choate

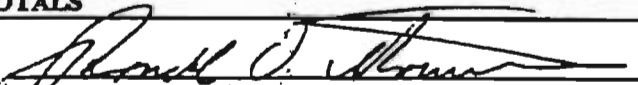
Title Order Number:  
 Date: 03/29/2006 -11:56:20AM  
 Closing Date: 03/31/2006

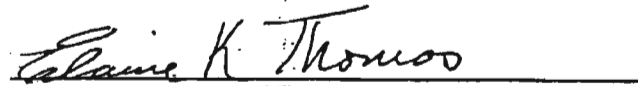
Buyer/Borrower: Bill Buckner Dodge, Chrysler, Jeep, Inc.

Seller: Ronald O. Thomas and Elaine K. Thomas

Property: 2110 & 2121 Service Ave And Bare Lot 5, Emmett, ID 83617

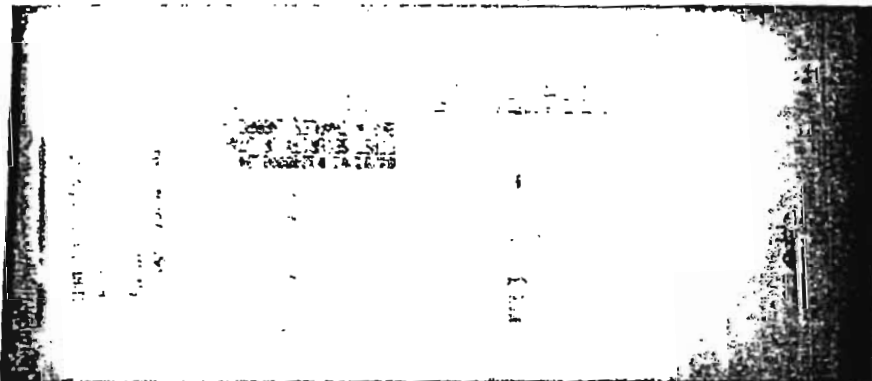
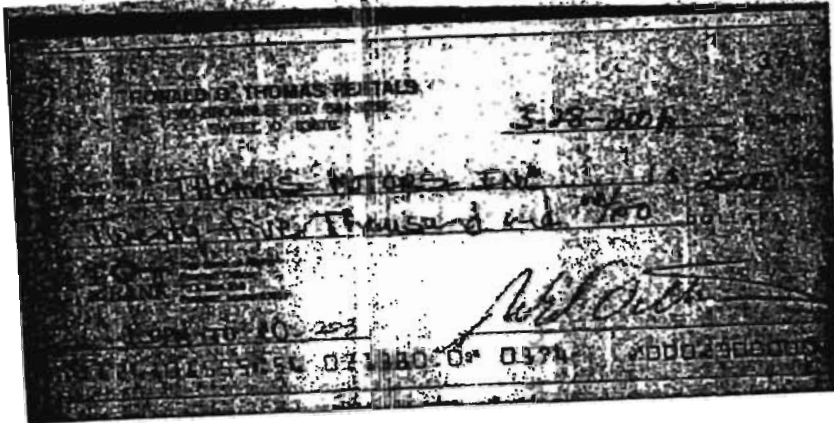
<b>TOTAL CONSIDERATION</b>			<b>2,900,000.00</b>
<b>PRORATIONS/ADJUSTMENTS:</b>			
Est. 2006 Prop. Tax RP00255501 @ 7,141.78 per 12 month(s) 1/01/2006 to 3/31/2006		1,741.42	
Est. 2006 Prop. Tax RP00255505 @ 436.38 per 12 month(s) 1/01/2006 to 3/31/2006		106.41	
Est. 2006 Prop. Tax RP0025508 @ 783.70 per 12 month(s) 1/01/2006 to 3/31/2006		191.09	
Est. 2006 Personal Prop. Tax PP0204100 @ 1,328.00 per 12 month(s) 1/01/2006 to 3/31/2006		323.82	
<b>COMMISSION(S):</b>			
Selling Broker: Mark Bottles Real Estate		100,000.00	
Broker Carried Note			50,000.00
<b>TITLE CHARGES</b>			
Owner's Premium for 2,900,000.00: Alliance Title & Escrow Corp.		6,580.00	
Reconveyance Fee: Alliance Title & Escrow Corp.		63.00	
<b>ESCROW CHARGES TO: Alliance Title &amp; Escrow Corp.</b>			
Escrow Fee		750.00	
UCC Termination Filing Fee		6.00	
Wire Payoff Fee		25.00	
<b>LENDER CHARGES</b>			
New Deed of Trust to Ronald O. Thomas and Elaine K. Thomas:		1,750,000.00	
<b>LOAN PAYOFF: KeyBank Western Loan Services</b>			
Discharge of Mortgage	756,516.55		
Total Loan Payoff		756,516.55	
<b>LOAN PAYOFF: Washington Trust Bank</b>			
Equipment Payoff Good Through 4-3	85,526.35		
Total Loan Payoff		85,526.35	
<b>ADDITIONAL DISBURSEMENTS:</b>			
Second 1/2 2005 Taxes PP0204100: Gem County Assessor		664.00	
Long Term Escrow Set Up Fee: Alliance Title & Escrow Corp.		150.00	
<b>BALANCE DUE YOU</b>		<b>247,356.36</b>	
<b>TOTALS</b>		<b>2,950,000.00</b>	<b>2,950,000.00</b>

  
 Ronald O. Thomas

  
 Elaine K. Thomas

000507

000508



Date: July 13, 2007

Wells Fargo Fax Cover Page

Page 2 of 2

Reference: 1000135317857:1000135324857:1000135309856

RONALD O. THOMAS  
 ELAINE THOMAS  
 P.O. BOX 505  
 ENNETT, ID 83817-0505

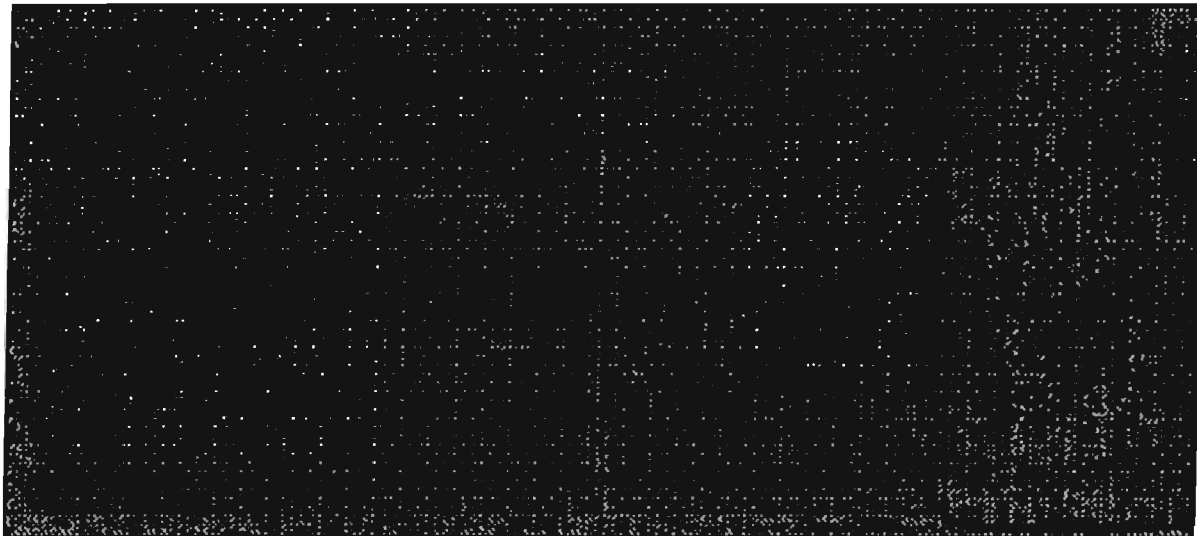
92-379 1241 0071284137  
 1566  
 Date 2-19-04

Pay to the Order of THOMAS MOTORS \$ 75000.00  
Seventy-five Thousand and no/100 Dollars

Wells Fargo Bank Northwest N.A.  
 102 W. Main St.  
 Emmett, ID 83617  
 www.wellsfargo.com

Memo: \_\_\_\_\_

⑆ 24 103799⑆ 0071284137⑆ 1566 ⑆0007500000⑆



R/T Number 12410379  
 Sequence Number 002244862878  
 Account Number 0071284137

Processing Date 20040220  
 Amount 75000.0  
 Check Number 000000000001566

000510



RONALD O. THOMAS RENTALS  
11500 BROWNLEE RD. 584-3539  
SWEET, ID 83670

636

6-28-2004

92-155/1241

PAY TO THE  
ORDER OF

THOMAS MOTORS

\$ 30,000<sup>00</sup>

Thirty Thousand <sup>00</sup>/<sub>100</sub>

DOLLARS



Key Bank of Idaho  
Emmett Office  
PO Box 218  
Emmett, Idaho 83617

MEMO

Company loan

*[Handwritten signature]*

⑆ 24 10 1555 ⑆ 94 02 1888 01 ⑆ 0636 ⑆ 0003000000 ⑆

78317707 1 06/28/04 30,000.00

ENDORSE HERE

141 10 1000

KeyBank National Assoc.

.003 FOR DEPOSIT ONLY

THOMAS MOTORS

471281007362

00 N... THIS LINE

KEY BANK

037

JUN 28 94

125000574  
KEYBANK N.A. 6818 882  
SEATTLE, WA 98101

000511

17707 1 06/28/04 30,000.00

RONALD O. THOMAS RENTALS  
44588 BROWNLEE RD. 504-5558  
LEWISTON, ID 83870

645

8-4-2004

82-153/1241

PAY TO THE  
ORDER OF

THOMAS MOTORS

\$ 30,000.<sup>00</sup>

Thirty Thousand and <sup>00</sup>/<sub>100</sub>

DOLLARS



Key Bank of Idaho  
Emmett Office  
P.O. Box 218  
Emmett, Idaho 83617

(Flooring)

*[Signature]*

MEMO

Company loan

⑆124101555⑆54 021880 0⑆ 0645 ⑆0003000000⑆

76362853 3 08/04/04 30,000.00

CREDIT TO THE ACCOUNT OF  
WITHIN NAMED PAYEE  
KEY BANK NATIONAL ASSOCIATION  
124101555  
ABSENCE OF ENDORSEMENT GUARANTEES

125000574  
KEY BANK N.A. 6782 952  
SEATTLE, WA 98105  
760062853

362853 3 08/04/04 30,000.00

000512

RONALD O. THOMAS RENTALS

646

~~MEMBER NUMBER NO. 304-0000~~

~~SWEET, ID 83670~~

8-9-2004

92-155/1241

PAY TO THE ORDER OF

THOMAS MOTORS INC.

\$ 25,000.<sup>00</sup>

Twenty five Thousand and <sup>no</sup>/<sub>100</sub> DOLLARS



Key Bank of Idaho  
Ernest Office  
P.O. Box 218  
Ernest, Idaho 83617

Company Loan

⑆ 24101555⑆ 54 021880 ⑆ 0646

⑆0002500000⑆

78270119 1 08/09/04 25,000.00

ENDORSED COPY

DEPOSIT TO THE ACCOUNT OF  
WITHIN 0 3 12 6 4 P M  
ACTION

KEY BANK OF IDAHO

ABSENCE OF ENDORSEMENT GUARANTEES

KEY BANK

037

AUG - 9 04

125000574  
KEY BANK N.A. 6639 882  
SEATTLE WA 98104

⑆0000000000⑆

000513

270119 1 08/09/04 25,000.00

RONALD O. THOMAS RENTALS  
11500 BROWNLEE RD. 584-3539  
SWEET, ID 83670

655

10-8-2004

92-155/1241

PAY TO THE  
ORDER OF

THOMAS MOTORS

\$ 10,000.00

Ten Thousand and 00/100

DOLLARS



Key Bank of Idaho  
Emmett Office  
P.O. Box 218  
Emmett, Idaho 83617

*[Handwritten signature]*

MEMO

*Company loan*

⑆124101555⑆54 021880 0⑈ 0655

⑈0001000000⑈

78043004 4 10/07/04 10,000.00

1019 3 6  
1250005744  
KEYBANK N.A. 6423 002  
SEATTLE, WA 98178044  
7800043004

43004 4 10/07/04 10,000.00

000514

RONALD O. THOMAS RENTALS

656

~~11500 BROWNLEE RD. 584-9399~~  
SWEET, ID 83670

10-18-2004

92-155/1241

PAY TO THE  
ORDER OF

THOMAS MOTORS

\$ 175,000.<sup>00</sup>/<sub>100</sub>

One Hundred Seventy-five Thousand <sup>00</sup>/<sub>100</sub> DOLLARS



Key Bank of Idaho  
Emmett Office  
P.O. Box 218  
Emmett, Idaho 83617

*[Handwritten Signature]*

MEMO Company loan

⑆ 24 10 1555 ⑆ 54 021880 0⑈ 0656 ⑈0017500000⑈

78641525 2 10/19/04 175,000.00

1000 51 - ERI

PAY TO THE ORDER OF  
KeyBank National Association  
FOR DEPOSIT ONLY  
THOMAS MOTORS INC.  
471281007362  
125000574  
KEYBANK N.A. 6756 662  
SEATTLE, WA 98122004

541525 2 10/19/04 175,000.00

000515

Date: July 17, 2007

Wells Fargo Fax Cover Page

Page 3 of 4

Reference: 2000126530573:2000126536573:2000126500573

RONALD O. THOMAS  
 ELAINE THOMAS  
 P.O. BOX 509  
 EMMETT, ID 83817-0509

1804

8-29-05  
Date

88-379/1241 3361  
0071284137

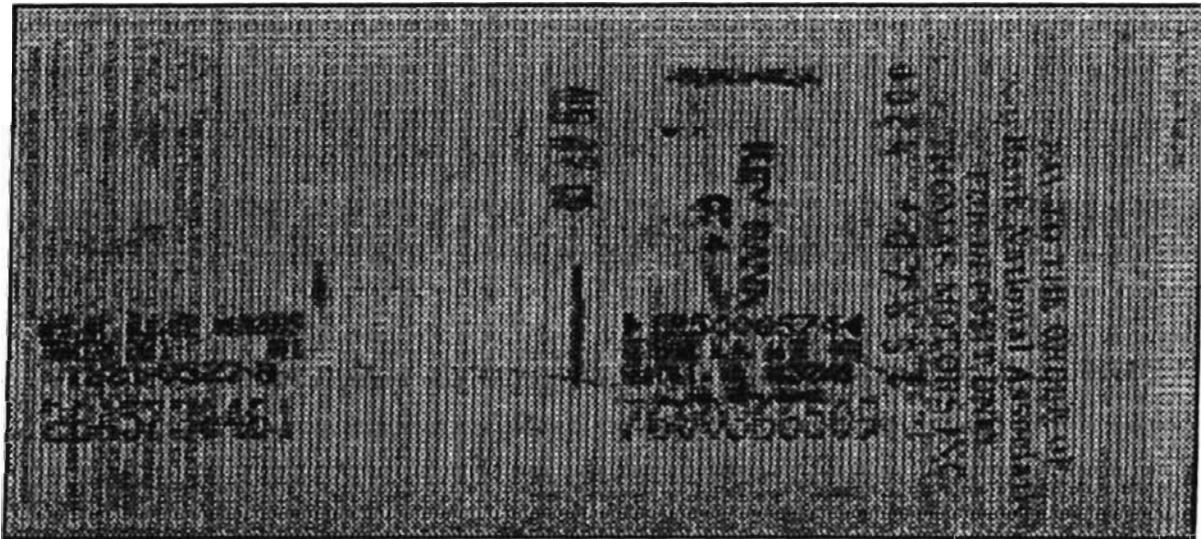
Pay to the Order of Thomas Motors \$ 35,219.92

Thirty Five Thousand Two Hundred Ninety Nine and 92/100 Dollars

WELLS FARGO  
 Wells Fargo Bank, N.A.  
 www.wellsfargo.com

For eo loan

⑆124103799⑆ 0071284137 01804 ⑈0003521992⑈



R/T Number 12410379  
 Sequence Number 002645730461  
 Account Number 0071284137

Processing Date 20050830  
 Amount 35219.92  
 Check Number 00000000001804

Date: July 17, 2007

Wells Fargo Fax Cover Page

Page 4 of 4

Reference: 2000126530573:2000126536573:2000126500573

RONALD O. THOMAS  
 ELAINE THOMAS  
 P.O. BOX 365  
 EMMETT, ID. 83617-0505

1821

10-11-05  
Date

92-3791241 3361  
 0071284137

Pay to the Order of Thomas Motors \$ 40,000.00

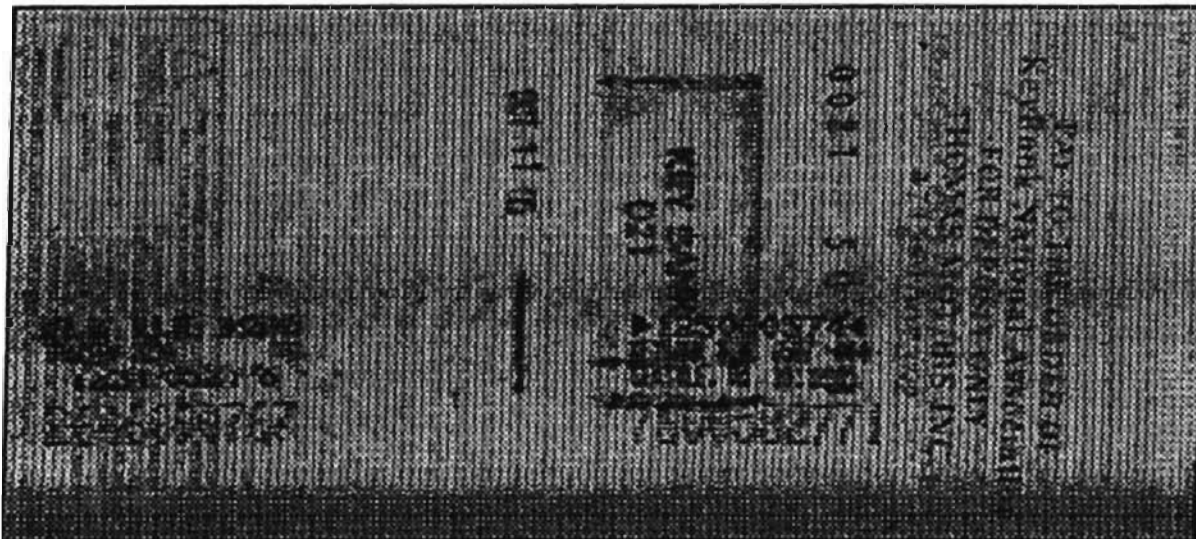
Forty Thousand and no/100 Dollars

WELLS FARGO  
 Wells Fargo Bank, N.A.  
 Idaho  
 wells Fargo.com

For Co. loan

*[Signature]*

⑆ 124103799⑆ 0071284137 01821 ⑈0004000000⑈



R/T Number 12410379  
 Sequence Number 002646090767  
 Account Number 0071284137

Processing Date 20051012  
 Amount 40000.0  
 Check Number 00000000001821

000517

RONALD O. THOMAS RENTALS

744

~~11000 ORIGINALS RD - 864-0588~~  
~~SHEET 10-83870~~

2-2-2006

92-155/1241

PAY TO THE  
ORDER OF

THOMAS MOTORS

\$ 24,559.<sup>00</sup>

Twenty-four Thousand Five Hundred Fifty-nine & 00/100ths



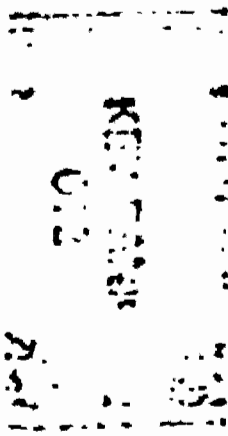
Key Bank of Idaho  
Erwinville Office  
P.O. Box 218  
Erwinville, Idaho 83617

MEMO Co. Loan

+1: 224 10 1555 1:54 021880 0# 0744 #0002455900#

76591212 4 02/02/06 24,559.00

FEB - 1 2006



PC12 11

1250005744  
KEYBANK N.A. 6365 002  
02022006

76591212

For deposit only  
Thomas Motors

391212 4 02/02/06 24,559.00

000518



John J. Janis (ISB No. 3599)  
 HEPWORTH, LEZAMIZ & JANIS  
 537 W. Bannock Street, Ste. 200  
 P.O. Box 2582  
 Boise, ID 83701-2582  
 Telephone No. (208) 343-7510  
 Fax No. (208) 342-2927

**FILED** 3:15 AM  
 PM  
 AUG 20 2007  
 SHELLY GANNON, CLERK  
 Deputy  
*Ronald Thomas*

H. Ronald Bjorkman (ISB No. 1765)  
 Attorney at Law  
 109 N. Hays  
 P.O. Box 188  
 Emmett, Idaho 83617-0188  
 Telephone No. (208) 365-4136  
 Fax No. (208) 365-4196

Attorneys for Defendants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

\*\*\*\*\*

R. DREW THOMAS,	)	
	)	
Plaintiff,	)	Case No. CV 2006-492
	)	
vs.	)	
	)	<b>DEFENDANTS' REPLY BRIEF ON</b>
	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT</b>
RONALD O. THOMAS, ELAINE K.	)	
THOMAS and THOMAS MOTORS,	)	
INC., an Idaho Corporation,	)	
	)	
Defendants.	)	
	)	
	)	

\*\*\*\*\*

## INTRODUCTION

In response to the Defendants' Motion for Summary Judgment, plaintiff has made a sizeable record addressing things that are *not* at issue in the Motion, but precious little in the way of things that *are* at issue. For example, the plaintiff goes to great lengths to submit friendly Affidavits that portray him in a favorable light, while at the same time attempting to portray his father in a negative light on issues that have nothing to do with the summary judgment motion. The defendants accordingly believe there is a definite need here to refocus on the actual issues presented on this Motion. When the proverbial smoke here clears on the otherwise fairly straightforward facts and issues, the defendants believe and respectfully submit it is clearer than ever that summary judgment should be granted in this case.

The defendants will again address each of the five causes of action of the plaintiff's Complaint separately and in turn, with an eye towards responding to pertinent arguments raised by the plaintiff.

### THE ORAL CONTRACT CLAIM

The defendants raised two separate arguments against Count One of the plaintiff's Verified Complaint in this case, which alleges a breach of an oral contract: (1) the terms of the alleged oral contract were *according to the plaintiff's own testimony* so vague and indefinite in their material terms to be legally unenforceable; and/or (2) the Statute of Frauds applies to this alleged oral agreement, and the claim is therefore barred since there is nothing in writing supporting the alleged agreement. Each of these will again be addressed in turn.

#### A. The indefiniteness issue.

In support of the original Motion, the defendant quoted from the plaintiff's deposition

testimony verbatim regarding the specifics of the oral agreement he claims to have reached with his parents, that serves as the basis of Count One of his Complaint. According to the plaintiff, the substantive terms of the supposed agreement boiled down to nothing more than “the business will be yours” when Mr. Thomas turned 63 years old, and the plaintiff repeatedly testifying that he *always* understood he would “have to” pay for the business at a price to be determined in the future. The defense accordingly argued that this so-called agreement was too vague and indefinite in all the material terms necessary to be considered a legally enforceable agreement. The lack of a price term, and leaving this particular material term open for future negotiation, was specifically used as an example of a substantively material term missing from the alleged oral agreement at issue based upon the plaintiff’s own testimony.

In response to this, the plaintiff addresses only this price issue and does a complete about face on his own sworn testimony. In direct contravention of his very clear and unambiguous deposition testimony, he now claims in an Affidavit that while he “felt it would be fair and wanted to ensure that Ron and my mother received some retirement income from the business, I need to clarify that my receiving the business was not contingent upon my paying them retirement income.” (*Affidavit of R. Drew Thomas*, ¶ 12 at p. 6). When compared with the plaintiff’s actual deposition testimony, however, this newly fashioned version can hardly be called a “clarification,” it represents a diametrically opposed version of events.

In his deposition, the plaintiff repeatedly made it clear that he always understood he would not be “given” the business for free, but instead that he would “have to” pay for it at a price to be determined sometime in the future. In the plaintiff’s brief opposing the Motion, counsel characterizes the defense argument based upon this purchase price being a material term left out the

alleged oral agreement as being “misleading and without basis.” (*Plaintiff’s Response Brief to Defendants’ Motion for Summary Judgment at p. 19*). This accusatory statement is hardly deserved. There is absolutely nothing misleading or baseless about an argument premised directly upon the sworn testimony of the plaintiff himself, that is quoted verbatim.

The excerpts of the plaintiff’s actual testimony on this subject were quoted in the defendants’ brief initially supporting the present Motion. With the plaintiff’s Affidavit squarely contradicting his previously sworn testimony, those excerpts are worth repeating here. In the words of the plaintiff:

Now, you’ve got to remember too I never thought that I was going to get this place for free. That never crossed my mind that I’d ever get it for free.

*R. Drew Thomas depo, p. 86, ll. 15-17 (emphasis added).* Later in the same deposition, the plaintiff point blank testified:

I never thought I would get it for free. I knew I would have to pay something for it.

*R. Drew Thomas depo, p. 102, ll. 5-7 (emphasis added).* It is emphasized again these are the words of the plaintiff himself, in sworn testimony. It is thus his words that establish the obligatory nature of his understanding of the agreement requiring him to pay for the business, specifically stating he always knew he would “have to” pay for it.

Later again in the deposition, the plaintiff openly acknowledged once again that when his dad purportedly promised him that the “dealership would be yours” that he understood from the discussions with his father that he was going to have to pay a price for it, but that the actual price term was not specifically discussed:

Q. You at least understood that you wouldn't be getting the business for nothing, but there was no specific discussion about what you would have to pay?

A. Correct.

*R. Drew Thomas depo, p. 104, l. 104 (emphasis added).* At yet another place in the plaintiff's deposition, he once again openly acknowledged that the terms of the agreement that he purportedly reached with his dad were extremely vague in nature, and that his understanding of the agreement he had with his father would have involved him paying for it, but the price term and other financial terms were left open to future discussion or negotiation:

Q. And so how much - - so things like how much you would have actually had to pay for the business, what would have happened to the debt, all of that was to be worked on in some manner down the road, non-specific, otherwise you didn't have a specific term of agreement?

A. Correct.

\* \* \*

Q. But again, back to my point, as far as your understanding of what kind of agreement you had reached with your dad, the idea in terms of what you would have had to pay for and what would happen with the specific finances when you took over were left open to future discussion or negotiation?

A. That sounds accurate.

*R. Drew Thomas depo, p. 182, ll. 18-23; p. 183, ll. 16-21; p. 184, ll. 21-25; p. 185, ll. 1-2 (emphasis added).* Note this last excerpt of the plaintiff's testimony relates specifically to his understanding of the alleged oral "agreement" he had reached with his father, again where he specifically acknowledges his understanding that he would have "had to" pay for getting the business, but the price was left open to "future discussion or negotiation."

At yet another part of the plaintiff's deposition he once again expressed his understanding that the agreement he claims to have reached with his father required him to pay for

the business, but again the amount was to be “worked out down the road.” In this part of the deposition, the plaintiff was discussing his understanding of the oral agreement following his signing of the written agreements (which he claims were thereafter withdrawn by the defendant):

- Q. But you understood at least - - and the point I’m trying to get at is he really wasn’t going to give it to you; he was really going to sell it to you?
- A. In one fashion or another, he kept saying he had it handled. How he had it handled, I don’t know. You’d have to ask him.
- Q. And that’s my question. So at that point, this discussion following your signing of Exhibits 3 and 5 [the written agreements] when he said he’s going to give it to you, your understanding is that you’re going to have to pay for it in some way but you don’t have an understanding of the specific terms of how much you would have to pay for it, right?
- A. Correct.
- Q. That would be worked out down the road?
- A. Correct.

*R. Drew Thomas depo, p. 112, ll. 8-23 (emphasis added).*

There is simply no squaring the plaintiff’s Affidavit claiming he really did not understand he’d “have to” pay for the business, with the clear and unambiguous testimony he offered in his deposition on multiple occasions in which he left no doubt that he understood at all times that he was going to “have to” pay for the business. Simply put, the plaintiff’s Affidavit squarely contradicts his deposition testimony.

It is a well accepted rule of summary judgment procedure, that a Court should reject an affidavit from a party opposing a motion for summary judgment that squarely contradicts that same party’s earlier deposition testimony. In the federal courts, for example:

Under Federal Rule of Civil Procedure 56(c) the District Court shall grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and

the moving party is entitled to judgment as a matter of law. Generally, the Court is not allowed to decide issues of credibility in ruling on a motion for summary judgment. Therefore, a special problem is presented when a party opposing summary judgment submits an affidavit that contradicts the affiant's prior deposition testimony on a material issue. Recognizing that the objectives of summary judgment would be seriously impaired if the District Court were not free to disregard a conflicting affidavit, all federal circuits agree that where a party attempts to overcome a motion for summary judgment by submitting an affidavit that squarely contradicts the party's earlier deposition testimony the Court may properly grant the motion despite the conflict.

*131 A.L.R. Fed. 403, § 2, (1996)* (“*Propriety Under Rule 56 of the Federal Rules of Civil Procedure, of granting summary judgment when deponent contradicts in affidavit earlier admission of fact in deposition.*”) The Idaho Appellate Courts have likewise adopted and followed this principle. See *Keeven v. Estate of Keeven, 126 Idaho 290, 298, 882 P.2d 457, 465 (Ct. App. 1994)* (“[A] sham affidavit which directly contradicts prior testimony may be disregarded on a summary judgment motion.”); *Frazier v. J.R. Simplot Co., 136 Idaho 100, 29 P.3d 936 (2001)* (stating “we may agree that the purpose of summary judgment is served by a rule that prevents a party from creating sham issues by offering contradictory testimony.”); *Tolmie Farms, Inc., v. J.R. Simplot Co., 124 Idaho 607, 610, 862 P.2d 299, 2303 (1993)* (agreeing that “the purpose of summary judgment is served by a rule that prevents a party from creating sham issues by offering contradictory testimony.”)

The defendants respectfully submit that the Court should follow this well-established principle here as well, and reject the plaintiff's affidavit attempt to create a factual issue where none otherwise exists. His deposition made it absolutely clear that he always understood that the agreement he had with his father would have involved him actually paying for it, not getting it for free, but that the price term was left open for future negotiation.

Moreover, and in any event, it is also clear at this point that again based upon the plaintiff's own submissions that there was no meeting of the minds between the parties regarding this alleged oral agreement on the necessary material terms. It is of course one of the most fundamental principles of contract law that in order to have a legally enforceable agreement, the evidence must clearly establish the parties had a "meeting of the minds" on all the pertinent and material terms.

To be enforceable, the contract must embody a distinct understanding of the parties, showing a meeting of the minds as to all necessary terms of the contract.

*Dursteler v. Dursteler*, 108 Idaho 230, 697 P.2d 1244 (Ct. App. 1985). See also, e.g. *Heritage Excavation, Inc. v. Briscoe*, 141 Idaho 40, 105 P.3d 700 (2005); *Potts Const. Co. v. North Kootenai Water Dist.*, 141 Idaho 678, 116 P.3d 8 (2005); *Barry v. Pacific West Const., Inc.*, 140 Idaho 827, 103 P.3d 440 (2004). "Proof of a meeting of the minds requires evidence that the parties had a mutual understanding of all of the terms of their agreement, and that they mutually assented to be bound by each of those terms." See, *Thomas v. Schmelzer*, 118 Idaho 353, 356, 796 P.2d 1026 (Ct. App. 1990).

Here, the submissions of the plaintiff clearly establish there was none. The parties to this alleged oral agreement clearly did not have the requisite meeting of the minds on a number of material terms, specifically including this price issue. The plaintiff's deposition leaves no doubt that he always understood that he was going to have to pay for the business at a price to be determined in the future. Even his Affidavit indicates an intention on his part to provide payments to his mother and father of some undetermined amount, for which there was some vague discussions about being a monthly payment of \$3,000 to \$5,000. In fact, the plaintiff adds even more confusion to this issue



by offering an affidavit from someone who expressed the understanding that the defendant was actually not going to give the business to the plaintiff only, but instead to two of his three sons. In the affidavit offered by the plaintiff of John Nunley, Mr. Nunley indicates that the defendant Ron Thomas told him he was going to leave the dealership “to his sons Drew and Monte.” *See Affidavit of John Nunley, Exhibit “A” (emphasis added).*

In any event, the record before the Court clearly demonstrates the parties simply did not have a meeting of the minds regarding what the plaintiff would pay for getting this business when his dad retired. The plaintiff clearly understood that he was in fact going to make payments of some kind to his mother and father, and his deposition testimony established that he always understood that he was going to have to pay for the business as a specific term of the agreement he purportedly reached with his father, but that payment issue was simply a term that had not been resolved at any point, no less when the agreement was allegedly reached.

In addition to all the above, a point remaining unaddressed by the plaintiff regards all the other material terms of the agreement that were so indefinite as to make any such alleged agreement legally unenforceable. There was no “meeting of the minds” on a number of material terms, in other words. One such term, for example, regards the alleged time for the actual performance of the agreement. The plaintiff goes to great lengths to avoid the Statute of Frauds argument, by asserting the original agreement that he is claiming he had with his father was that he would get the business when his father retired. As will be addressed further below, he has previously taken the position that the time for performance was specific to when his father would retire at 63 years old. Now, however, he is claiming the agreement actually set the time for performance (i.e. the time for the transfer of the business) to take place whenever his father retired without having any

set time for that occurrence. In fact, the plaintiff now concedes that the alleged oral “contract did not contain an affirmative time for performance, but was for an indefinite duration.” (*Plaintiff’s Brief in Opposition to Motion for Summary Judgment at p. 15*).

Again, it is a basic principle of contract law that in order to have a legally enforceable agreement, the agreement must be complete and definite in all of its material terms. *See, e.g., Wood v. Simonson, 108 Idaho 699, 701 P.2d 319 (Ct. App. 1985)*. Likewise, if terms necessary to a contract are left open for future resolution, the contract is absolutely unenforceable. *See, e.g., Dursteler v. Dursteler, 108 Idaho 230, 697 P.2d 1244 (Ct. App. 1985)*. It is for this reason that the courts have also consistently held that any kind of “agreement to agree” is unenforceable because the terms are so indefinite. There is no enforceable contract that comes into being when the parties leave a material term for future resolution, as that creates a mere “agreement to agree.” *See, e.g., Maroun v. Wyreless Systems, Inc., 141 Idaho 604, 114 P.3d 974 (2005)*.

Here, yet another of the terms of this supposed oral agreement between the parties that was unsettled regards this actual time set for the performance. The plaintiff now alleges that there was no set time set for this, but only tied to when his father unilaterally decided to retire, if ever. The plaintiff’s claims in this case now boil down to asserting that the time for performance of the alleged agreement he had with his parents was as indefinite and uncertain as can possibly be. It was up to his father to decide when he wanted to retire, which could have taken place shortly after the agreement was reached, could have taken place when he turned 63 years old or later, or obviously could never have taken place if his father decided not to retire at any point before he died. The time set for performance is thus another material term of the contract that was clearly so indefinite and uncertain as to make the agreement being alleged by the plaintiff, according to the plaintiff’s own

assertions, legally unenforceable.

The plaintiff also acknowledges that the very nature of the alleged oral agreement he had with his father, involving the transfer of a business, would obviously have to have other material terms negotiated one way or the other, and that such terms were not reached but rather were left open to future resolution. For example, it is self-evident if there were ever a time that came for the actual transfer of the business, the business at that point would naturally have some outstanding accounts receivable (i.e. money owed from customers to be paid in the future) as well as some outstanding debt. The plaintiff himself acknowledges there would have to be an agreement reached at some point regarding how to handle such significant financial issues. In fact, the plaintiff himself acknowledges that all such financial terms were rather vague, were completely unresolved as of the time any such agreement was made, and that they were left open for future discussion or negotiation:

Q. Well, in fact, as I'm understanding, other than the specifics that are addressed in the written contracts . . . all the terms of any agreement you had with your dad were rather vague?

A. Other than everything would be taken care of, it's all going to be handled.

\* \* \*

Q. And so how much - - so things like how much you would have had to actually pay for the business, what would have happened to the debt, all of that was to be worked on in some manner down the road, non-specific, otherwise you didn't have a specific term of agreement?

A. Correct.

\* \* \*

Q. But again, back to my point, as far as your understanding of what kind of agreement you had reached with your dad the idea in terms of what you would have had to pay for and what would happen with the specific finances when you took over were left open to future discussion or negotiation?

A. That sounds accurate.

*R. Drew Thomas depo, p. 182, ll. 18-23; p. 183, ll. 16-21; p. 184, ll. 21-25; p. 185, ll. 1-2 (emphasis*

*added*). The bottom line is the plaintiff well understood that whenever the time came for actual performance of this alleged oral agreement there were very significant financial issues that would have to be resolved in one form or another, but there had been no agreement on how these would be dealt with. Rather, they were left for future discussion or negotiation. Here again, the plaintiff's testimony further establishes this point as the following excerpt illustrates in talking specifically about the fact that the business would have some debt at the time any transfer would take place:

- Q. That at the time you would have taken over the business, the business itself would have had significant debt.
- A. Would have had some debt.
- Q. What would have happened to the debt, based on your understanding of what was going to happen in any deal between yourself and your mom and dad, what was going to happen to that debt? Who was going to take care of it?
- A. Well, the way Ron talked is he would be involved in it until I could get on with my own, on my own two feet and pay it off and him off as far as the business, the liability. He said that we'd work it out.
- Q. It was something to be worked out, the terms of which - - the specific terms of which were to be worked out in the future?
- A. He never would get specific. He always would be very open to - - very vague about how we were going to do it. But it was always going to be done, that he assured me of that. I could not hardly get a specific out of him.
- Q. Well, in fact, as I'm understanding, other than the specifics that are addressed in the written contracts . . . all the terms of any agreement you had with your dad were rather vague?
- A. Other than everything would be taken care of, its all going to be handled.

*R. Drew Thomas depo, p. 182, ll. 14-25; p. 183, ll. 1-15 (emphasis added).* The plaintiff's own testimony thus establishes the basic point being made here. That is, there were many material terms that would simply have to be an essential part of any agreement involving his mother and father transferring the business to him, that were simply not negotiated or were left open for future

resolution or agreement. As the Idaho Court of Appeals has stated:

If terms necessary to a contract are left for future negotiation, the contract cannot be enforced.

*Dursteler v. Dursteler*, 108 Idaho 230, 234, 697 P.2d 1244 (Ct. App. 1985)(*emphasis added*). The Idaho Court of Appeals' decision in the *Dursteler* case is particularly significant here. The facts of the case are materially similar, and more importantly the legal principles upon which the case was decided is basically dispositive of the issues presented in this case.

In *Dursteler*, the plaintiff and defendant were family members who entered into a contract for the sale of property, as well as an agreement to establish a partnership to operate a mink ranching business on that same property. *Dursteler*, 108 Idaho at 232. After the written contract was signed, the sellers moved out of the ranch, and the buyers moved in. *Id.* However, the partnership formed by the parties eventually needed to provide money to finance the mink ranching operations until it could eventually receive revenue from the sale of mink pelts. *Id.* The buyers ultimately needed to get an assignment of the seller's shares in a feed cooperative that for all practical purposes represented the only source of food for the mink on the ranch. However, they could not agree on a price for those shares. *Dursteler*, 108 Idaho at 233. The partnership also needed to file tax returns and identify the income and expenses attributable to the partnership, as distinguished from the income/expenses generated by pre-partnership activities of the sellers alone. *Id.* at 233. Here again, the parties could not agree on how such an allocation should be met. *Id.* The parties had not addressed any of these areas of disagreement in the contract they had otherwise reached with each other. *Id.* This fact alone ultimately turned out to be fatal to any of the claims based on a breach of contract. The District Court ultimately ruled there was no enforceable contract

at all because the parties had not reached agreement on terms that were “essential” to carrying out their agreement. *Dursteler, 108 Idaho at 233*. On appeal, the Court of Appeals first stated the basic legal principles of contract law that applied there, that are equally applicable to this case:

A contract will be enforced if it is ‘complete, definite and certain in all its material terms, or contains provisions which are capable in themselves of being reduced to certainty.’ To meet this standard the contract must embody a distinct understanding of the parties, showing a meeting of the minds as to all necessary terms of the contract. The obligations of the parties must be identified so that the adequacy of performance can be ascertained. If terms necessary to a contract are left for future negotiation, the contract cannot be enforced.

*Dursteler, 108 Idaho at 233-234*. These quoted principles of contract law stated by the Court of Appeals in *Dursteler*, of course, are the very same fundamental principles of contract law that have been cited by the defendants in this case.

The Court of Appeals in *Dursteler* then went on to address whether the trial court had correctly ruled that the problems which caused the controversy between the parties, were “essential” to their agreement, and the fact that they had not previously negotiated such terms meant there was no legally enforceable contract. In that regard, the Idaho Court of Appeals stated and held as follows:

Here, as noted above, the evidence is undisputed that the parties failed to reach an understanding as to how the partnership initially would raise money to run the ranch, how the buyers ultimately would get food for the mink, and how the partnership would report its income and expenses. The question is whether the trial judge correctly concluded, as a matter of law, that these items were essential to the contract. We hold that he did. Absent agreement on these items, the parties’ obligations to each other with respect to operation of the ranch could not be fully ascertained. Continuation of the ranch as a going business was a fundamental ingredient of the transaction. Accordingly, we sustain the court’s ruling that the contract was fatally incomplete and therefore unenforceable.

*Dursteler, 108 Idaho at 234 (emphasis added).* Thus, both the district court and the appellate court unanimously concluded that a contract which failed to include negotiated terms that were “essential” to carrying out the purposes of the underlying contract, or which were a “fundamental ingredient of the transaction,” meant the contract was “fatally incomplete” and therefore legally unenforceable.

The very same thing is true here. The “agreement” that the plaintiff alleges to have reached with his father clearly and obviously did not include a number of “essential” terms or terms that would represent a “fundamental ingredient of the transaction.” That is, terms that would have to be a part of any such agreement in order to carry out the very purposes of the agreement. Here again, the plaintiff himself openly acknowledges that if and when the business would ever be transferred to him it would be absolutely necessary for the parties to have worked out these very significant financial issues including who would be responsible for the outstanding debts of the business at the time. Obviously, the parties would also have to have reached agreement on who would receive the benefit of any outstanding accounts receivable at the time of the transfer as well. These are obviously financial issues that are very significant and fundamental to any transaction involving the transfer of an entire business. Yet it is an undisputed fact that the parties had not reached agreement on any of these terms, even according to the plaintiff himself. In order for a business to be transferred to another, it is more than obvious that these type of financial issues have to be resolved. With the plaintiff here acknowledging these “essential” terms were never resolved or agreed upon, the dispositive facts here are materially identical to those of the *Dursteler* case. As stated by the Idaho Court of Appeals the lack of having reached agreement on such significant material terms makes any agreement between the parties “fatally incomplete and therefore unenforceable.”

In sum, the defendants respectfully submit that the oral agreement that serves for the basis of Count One of the plaintiff's Complaint in this case, based upon the testimony of the plaintiff himself, is far too vague and indefinite in various material terms and that any such agreement is legally unenforceable as a matter of law.

**B. The Statute of Fraud issues.**

In the Motion for Summary Judgment, the defense next argued in the alternative that the oral contract claim is barred by the Idaho Statute of Frauds. This was based on the fact the plaintiff had alleged the agreement was the business would be transferred to him specifically when Ron Thomas turned 63 years old. At the time of the agreement in 1997, that meant the agreement would not and could not happen until April of 2005, some 7 or 8 years later. On this basis, the defense argued the agreement by its own terms could not possibly have been performed within one year, and was therefore barred by the statute of Frauds. In addition, the plaintiff argued to the extent the plaintiff was claiming any parcels of land were included in his alleged oral agreement, that part would likewise be barred by the Idaho Statute of Frauds.

In response to the one year issue, the plaintiff now says in an affidavit the agreement was not actually set to occur when Mr. Thomas turned 63 years old, but only when Mr. Thomas decided to retire. This, according to the plaintiff, was discussed as possibly happening when his father turned 63 years old, but that it could also have been sooner or later (or for that matter not happened at all if the plaintiff's assertions are taken to their logical extension). Once again, this represents another about face by the plaintiff. In Count One of the plaintiff's Verified Complaint the plaintiff specifically alleged that the agreement that served as the basis for this breach of oral contract claim contained in Count One was that:



Defendant would give him Thomas Motors when defendant turned age 63.

*Verified Complaint and Demand for Jury Trial, ¶ 23 at p. 5 (emphasis added).* This was a Verified Complaint wherein the plaintiff acknowledged he had read the allegations of the Complaint and verified under oath “that the matters therein stated are true and correct.” Similarly, in his deposition, the plaintiff indicated that his understanding of the agreement with his father was that the plaintiff would get the business when Mr. Thomas retired at 63 years old:

- Q. When you joined, you told me repeatedly today that you understood your dad had indicated that while you hadn’t discussed anything in the way of a specific price, that you were going to buy the business from him and it was going to go to you when he retired at 63?
- A. Before this got started, when he initially brought me over to Lanny Berg, we never discussed buying. But I never assumed I was going to get it for free. He always said he had it worked out, that it would be mine when he retired.
- Q. And that was going to happen at 63, you understood?
- A. That was the number he always told me.

*R. Drew Thomas depo, p. 181, ll. 3-15 (emphasis added).*

Now, however, contrary to the point blank allegations of his Verified Complaint and his sworn testimony, the plaintiff claims in his Affidavit that his father only “estimated” that he might retire at age 62 or 63, but his dad also indicated he “might go into retirement, or semi-retirement at an earlier or later time.” *Affidavit of R. Drew Thomas, ¶ 10 at p. 5.* On this basis, the plaintiff argues it was theoretically possible for his father to have retired within one year, and since the Statute of Frauds is to be construed narrowly, the Statute does not bar the claim.

It is certainly true that the Idaho Appellate Courts have repeatedly held that the one year provision of the Statute of Frauds should be construed narrowly. This would mean if the

plaintiff's Affidavit is to be accepted as fairly reflective of the agreement he alleges to have reached with his dad, the one year provision of the Statute of Frauds would not apply. However, this Affidavit offering from the plaintiff is once again in stark contrast to the point blank allegations of his Verified Complaint, as well as his sworn deposition testimony. There was nothing subtle, ambiguous or confusing about this when the plaintiff specifically alleged the agreement was for him to get Thomas Motors "when defendant turned age 63." He verified this allegation to be true and correct under oath. It was only in response to the argument on summary judgment that if this specific allegation were to be taken as true it is barred under Idaho's Statute of Frauds, that the plaintiff comes up with an Affidavit that changes the terms of the agreement to be something other than "when defendant turned age 63." Here again, it is well established in Idaho and everywhere else in the United States that a Court can disregard an affidavit offered in opposition to a motion for summary judgment by a party that squarely contradicts that same party's earlier testimony. That should again be the result here.

On the land issue, specifically the defendants' arguments that to the extent the plaintiff was claiming that any land was involved in this alleged oral agreement, it was likewise barred by Idaho's Statute of Frauds, the plaintiff point blank indicates he is not claiming there was any real property or land involved as part of his oral contract. Specifically, in response to this argument the plaintiff through counsel states "the evidence establishes Drew and Ron's oral contract was for the transfer of a business, Thomas Motors, not the transfer of real property." (*Plaintiff's Response Brief in Opposition to Motion for Summary Judgment at p. 16*)(*emphasis added*). The defense will thus take the word of plaintiff's counsel representing on behalf of the plaintiff to this Court that the oral contract at issue in Count One of the plaintiff's Complaint does not involve any

land or real property. Defendants will accordingly not address the issue any further as being moot. Defendants would, however, request the record in this case more definitively reflect this fact, in the form of a stipulation on the record, or ruling from the Court.

This discussion of real property does, however, raise another separate factual point that seriously deserves to be clarified. In the brief offered by the plaintiff in opposition to the Motion for Summary Judgment, counsel represents to the Court, several times, that the “business” of Thomas Motors alone was sold for nearly \$3 million dollars. In one example of this, counsel for the plaintiff represents as a fact that the defendant “sold Thomas Motors to an investment group headed by Bill Buckner for nearly \$3 million dollars.” *See Plaintiff’s Response Brief in Opposition to Motion for Summary Judgment at pp. 10-11.* This is followed by a citation for the Court to “see” the Affidavits of five different individuals, without reference to any specific part of such Affidavits. *Id.* In reality, none of the referenced Affidavits even address the subject of how much the business of Thomas Motors was sold for. More importantly, the representation that “Thomas Motors” was sold for nearly \$3 million dollars is simply untrue. In fact, it is not even close to being true.

The group involving Mr. Buckner not only purchased the “business” of Thomas Motors, but a substantial amount of land that surrounded the parcel of land upon which Thomas Motors was located. The sale of this land, as opposed to the Thomas Motors “business,” represented the overwhelming part of the value received by Mr. Thomas for the overall sale to the group headed by Mr. Buckner. The Thomas Motors “business” taken in isolation represented very little of the overall amounts agreed to be paid by the investment group that included Mr. Buckner. This point was referenced in the initial Affidavit of the defendant Mr. Thomas submitted in support of the Motion for Summary Judgment. It made a point of referencing the fact that the investment group

that included Mr. Buckner not only wanted to buy Thomas Motors, and the land upon which Thomas Motors was located, but also various other very valuable parcels of land that are adjacent to or surrounding Thomas Motors. (See *Affidavit of Ron Thomas*, ¶ 14 at pp. 7-8).

With the plaintiff now representing that it was the business alone that commanded a sale of “nearly \$3 million dollars,” there is a need to further expand on this Affidavit of Mr. Thomas so that Court can understand that is simply not true. The plaintiff has obtained copies of the sale documents to the Buckner group, and accordingly knows this.

The Second Affidavit of Ron Thomas submitted along with this Brief explains more about what was actually sold to the Buckner group and how it was the land values that generated the lion’s share of the sales price. In summary of that, the Buckner group purchased a total of 7.562 acres of land, including the approximate one acre sized lot on which Thomas Motors was located. The land value for each of these acres were exceptional, and the facts undeniably indicate each acre commanded hundreds of thousands of dollars each for the bare land alone. In fact, when an additional lot became available after the initial agreement was reached, the Buckner group paid \$400,000 for this lot that was just short of one acre in size that was bare land. (See *Second Affidavit of Ronald O. Thomas at p. 4*). This alone tends to at least illustrate what the other six and one half acres were worth, and how much value there was in the land sales alone, compared with the value of the business.

It is thus readily apparent and indisputable that the substantial amount of land that was purchased by the investment group that included Mr. Buckner commanded most of the value for the monies they paid to Ron and Elaine Thomas for the purchase of both the land and the Thomas Motors business. The undeniable fact is the Thomas Motors “business” actually generated

comparatively little in the way of the overall purchase price paid by the investment group that included Mr. Buckner. In making these references, the plaintiff also omits any discussion of the fact that Thomas Motors business was in serious debt at the time, and that debt had to be paid off with the sale proceeds received, most of which came from the value of the land alone, not the “business” of Thomas Motors. In any event, although the defendants believe that any questions regarding the amounts received for the sale of Thomas Motors actually has nothing to do with the issues presented on this Motion for Summary Judgment, the defendants also believe this inaccurate representation of fact deserved to be clarified.

#### **IMPLIED COVENANT OF GOOD FAITH/FAIR DEALING CLAIM**

As the plaintiff points out, “the Implied Covenant of Good Faith and Fair Dealing is a covenant implied by law in the parties’ contract.” *See, Fox v. Mountain West Elec., Inc., 137 Idaho 703, 52 P.3d 848 (2002).* Again, there has to be a legally enforceable existing contract in place to begin with, in order to trigger or attach any kind of implied covenant of good faith and fair dealing. As discussed at length above, the defendants respectfully submit it is very clear in this case there is no legally enforceable oral agreement to begin with, upon which to attach an implied covenant claim.

#### **THE QUASI CONTRACT CLAIM**

In response to the defendants’ Motion directed at the quasi-contract claim of the plaintiff’s Verified Complaint (Count Three), the plaintiff is basically alleging the purported “benefit” inequitably received by the defendants, relates to the plaintiff being allegedly underpaid as an employee in various ways. The plaintiff does not, however, address the primary point raised by the defendant that this type of alleged “benefit” does not give rise to a claim for unjust enrichment

as a matter of law. Again, Idaho law clearly provides that a party cannot make recovery for unjust enrichment “where there is an enforceable express contract already covering the same subject matter.” See, e.g., *Blaser v. Cameron*, 121 Idaho 1012, 829 P.2d 1361 (Ct. App. 1991); *Marshall v. Bear*, 107 Idaho 201, 687 P.2d 591 (Ct. App. 1984); *Triangle Min. Co., Inc., v. Stauffer Chemical Co.*, 753 F.2d 734 (9<sup>th</sup> Idaho 1985).

Regardless of whether plaintiff believes he was underpaid for his employment services, it is undisputed that he had an employment agreement with Thomas Motors for an agreed upon salary, and he was paid that salary. This was an existing contract that was already in place covering the very same subject matter that is at issue in this unjust enrichment claim. Simply put, he is legally precluded from seeking additional compensation for his employment services for which he was paid, based upon a theory of quasi-contract as a matter of law. This only makes sense. Any other rule of law would open the floodgates for disgruntled employees to seek higher salaries in the form of damages based upon theories of unjust enrichment. The law of unjust enrichment was certainly never intended to allow such results, which is why the law disallows unjust enrichment claims when there is an already existing contract in place to cover the same subject matter at issue. Summary judgment should accordingly be granted on this cause of action as well.

#### **THE WRITTEN CONTRACT CLAIM**

The arguments offered initially in support of summary judgment against the plaintiff's “alternative” cause of action for breach of the written agreements were twofold: (1) the plaintiff could not possibly prove the elements necessary to establish a breach of written agreement, since the plaintiff has consistently claimed and attempted to prove there is no legal validity to these written agreements; and (2) in any event, the plaintiff openly acknowledges he made no effort to comply

with any of the terms of these written agreements. The fact that the plaintiff is actually making a claim for breach of the written agreements is in every conceivable way possible contradicted by the plaintiff himself. Each of these points are still undeniably true, as the record he provides in opposition to the Motion makes exceptionally clear.

The plaintiff goes to great lengths to establish at least a factual issue as to when these written agreements were signed, all for the purpose of attempting to prove these agreements are not valid. The plaintiff also goes to great length to try and prove his father told him he would not hold the plaintiff to the terms of the written agreement, and it was on that basis he never treated the written agreements as having any legal validity. In other words, the plaintiff himself seeks to disprove the validity of these agreements in every way possible, which obviously means he cannot and will not attempt to prove his “alternative” breach of the written agreements claim, as stated in Count Four of the Complaint.

In response to the Motion, the plaintiff otherwise spends much time talking about what the defendants are claiming about the validity of these written agreements. But, that has little or nothing to do with the summary judgment motion which is of course directed at what the plaintiff is claiming in this case. Far from trying to prove the elements of this breach of the written agreement claim, the plaintiff is going to great lengths to try to disprove this claim by denying the validity of these written agreements. To overstate the obvious, if a party makes a claim, that party bears the burden of proving that claim. Here, the plaintiff could hardly have made it clearer he has no intention of even trying to prove any claim based upon these written agreements.

In addition, the plaintiff makes no effort at disputing the fact that he himself did not comply with any of the obligations imposed upon him by these written agreements. The plaintiff

himself openly acknowledged now he did nothing to comply with any of these contractual obligations in his sworn testimony, and now offers nothing in the way of affidavits or otherwise contradicting this on the present motion. It is simply an undisputed fact at this point that the plaintiff had various obligations imposed upon him if these written agreements were to have any legal force or effect, and he made no effort to comply with any of them.

In short, there is no question of fact that is even remotely raised about this claim. The plaintiff would obviously bear the burden of proving the elements for a breach of the written agreement, and the plaintiff has made it exceptionally clear he does not intend to do so, and cannot possibly do so.

#### **THE FRAUD CLAIM**

The primary challenge raised to the plaintiff's fraud claim (Count Five of the Complaint) was that the plaintiff could not possibly prove that any alleged statement made by the defendant about transferring the business to the plaintiff at some point in the future was a false statement when made. In response, the plaintiff offers a substantial record discussing alleged facts which took place long after any alleged statement by his father back in 1997, but not one scintilla of evidence supporting any notion that any alleged statement made by the defendant Mr. Thomas back in 1997 was a false statement at the time it would have been made. On the contrary, much of the record provided by the plaintiff boils down to affidavit offerings from his posse of supporters that, if anything, establish that any such statements made by the defendant Ron Thomas would have been true when made. That is, the plaintiff offers affidavits from a number of people who also claim that well after 1997 the defendant Mr. Thomas made statements to them also suggesting the business was going to be transferred to Drew at some point in the future. The plaintiff, in other words, is



attempting to establish that his father was telling everybody in sight of his willingness and desire to transfer the business to Drew at some point in the future. That point, however, completely contradicts the suggestion that any such similar statements made back in 1997 to the plaintiff would have been false when made. The only thing established by the substantial record offered by the plaintiff is that such statements were true when made, was consistent with statements that were again made to others for years afterwards, and it was only 7 or 8 years later when the business was sold that the defendant changed his mind. In other words, the record provided by the plaintiff at most establishes that any such statements by the defendant in 1997 were true when made, but the defendant changed his mind some 7 or 8 years later.

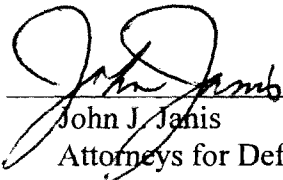
However, the elements of actionable fraud specifically require evidentiary proof that the misrepresentation of fact being alleged was in fact an untrue statement at the time it was made. As argued by the defendants in their initial brief, it is clear under Idaho law that a failure of proof establishing a statement was false when made (as opposed to a record establishing the person making the statement later changed their mind) is fatal to an actionable fraud claim. *See, Magic Lantern Productions, Inc., Dulsot, 126 Idaho 805, 892 P.2d 480 (1995)*. That point has been specifically challenged by the defendants on this Motion for Summary Judgment, and the plaintiff has not produced any competent evidence that even remotely or inferentially supports that element of actionable fraud. The claim for fraud should therefore be dismissed on summary judgment as well.

### CONCLUSION

Based upon the foregoing, the defendants respectfully pray that summary judgment be granted on the five counts of the plaintiff's Complaint in this action.

DATED this 17<sup>th</sup> day of August, 2007.

HEPWORTH, LEZAMIZ & JANIS

By   
John J. Janis  
Attorneys for Defendants

**CERTIFICATE OF SERVICE**

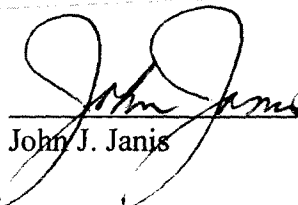
The undersigned, a resident attorney of the State of Idaho, with offices at 537 W. Bannock Street, Suite 200, P.O. Box 2582, Boise, Idaho 83701, and one of the attorneys for the Defendants in this matter, certifies that on this 17<sup>th</sup> day of August, 2007, he caused to be served a true and correct copy of the above and foregoing by the method indicated below, and addressed to the following:

William A. Morrow  
Dennis R. Wilkinson  
WHITE, PETERSON, PA  
5700 E. Franklin Rd., Ste. 200  
Nampa, Idaho 83687-7901

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, Idaho 83617-0188

U.S. Mail  
 Hand Delivered  
 Overnight Mail  
 Telecopy (Fax)

  
John J. Janis

FILED 2:10 PM  
SEP 10 2007  
SHELLY GANNON, CLERK  
DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
wam@whitepeterson.com  
dwilkinson@whitepeterson.com  
sarnett@whitepeterson.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,

Plaintiff,

vs.

RONALD O. THOMAS, ELAINE K.  
THOMAS and THOMAS MOTORS, INC., an  
Idaho Corporation,

Defendants.

CASE NO. CV 2006-492

PLAINTIFF'S MOTION TO STRIKE  
THE SECOND AFFIDAVIT OF  
RON THOMAS

COMES NOW the above-named Plaintiff, R. DREW THOMAS, by and through his attorneys of record, the law firm of White Peterson, P.A., pursuant to Rule 56 of the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence, and hereby files his *Plaintiff's Motion to Strike the Second Affidavit of Ron Thomas*.

## INTRODUCTION

The hearing on the Defendant's *Motion for Summary Judgment* was originally scheduled for August 27, 2007. On August 20, 2007, the Defendants served their *Defendant's Reply Brief on Motion for Summary Judgment* together with the *Second Affidavit of Ronald O. Thomas* ("Second Affidavit"). After the Defendants had served their reply brief and the Second Affidavit, the court notified the parties that the summary judgment hearing had been continued to September 27, 2007.

The Second Affidavit was clearly served untimely under Rule 56(c) of the Idaho Rules of Civil Procedure, which provides the party moving for summary judgment must serve supporting affidavits at least twenty-eight days before the time fixed for the hearing on the motion. *See* I.R.C.P. 56(c). Even if the court decides to overlook the un-timeliness, however, the majority of the statements contained in the Second Affidavit should be stricken because, for the reasons discussed below, the statements are inadmissible or, at a minimum, the statements should not be considered by the court in its decision on the Defendants' motion for summary judgment.

## ARGUMENT

As the court is well aware, Rule 56(e) of the Idaho Rules of Civil Procedure requires affidavits filed in support of summary judgment to be made on the affiants' personal knowledge, to show affirmatively that affiants are competent to testify to the matters stated in their affidavits, and to set forth such facts as would be admissible in evidence. *See* I.R.C.P. 56(e). The majority of the statements contained in the Second Affidavit are inadmissible under the Idaho Rules of Evidence.

The majority of Ron Thomas's statements in the Second Affidavit discuss the items of property purchased from the Defendants and the total purchase price paid for those properties by

the Bill Buckner investment group in early 2006. It must be noted that Ron Thomas does not specify what portion of the purchase price was for purchase of the Thomas Motors, Inc. business. The Defendants are, apparently, attempting to use the Second Affidavit as a basis to suggest the Thomas Motors, Inc. business had no appreciable value as of March 2006, when it was sold to the Bill Buckner group of investors, and also that the Defendants did not derive any significant benefit either from the Plaintiff's efforts in building and operating Thomas Motors, Inc. or from the sale of Thomas Motors, Inc. However, establishing the market values of the Plaintiff's services and of Thomas Motors, Inc. as a going concern at the time it was sold will require testimony from experts who have performed valuations of the services and business.<sup>1</sup> Therefore, none of the statements made by Ron Thomas concerning the total purchase price the Bill Buckner group paid for Thomas Motors, Inc. and various pieces of property owned by the Defendants is relevant to the question of Thomas Motors, Inc.'s value absent admissible testimony from a member of the investment group as to the group's motivations for purchasing the business and properties,<sup>2</sup> the value the group attributed to the business, and the reasons for attributing said value, and, more importantly, expert testimony establishing the value the Bill

---

<sup>1</sup> In his opposition to summary judgment, the Plaintiff has addressed the fact the Defendants sold Thomas Motors, Inc. because the fact the Defendants sold the business and, apparently, received some financial benefit from its sale are relevant to his claims for breach of contract and equitable relief. Nevertheless, the Plaintiff did not intend to suggest to the court that the total purchase price received by the Defendants establishes the market value of the Thomas Motors, Inc. business as of March 2006. While it is permissible for the Defendants to clarify for the court what items of property were purchased and the total purchase price paid by the Bill Buckner group for all of the properties, it is absolutely impermissible for the Defendants to go beyond simply clarifying these points and to mislead the court by suggesting there is a direct correlation between the purchase price paid by the group for the real properties and the business and the actual market value of Thomas Motors, Inc. at the time the business was sold. Likewise, Ron Thomas's statements concerning the amount paid by the Bill Buckner group have no relevance to the question of the market value of the property on which Thomas Motors, Inc. was located unless a qualified appraiser provides testimony establishing the price the group was willing to pay is somehow relevant to determining the fair market value of the property in March of 2006. Clearly, the questions of business and property valuation must be left to the experts, who will determine which, if any, of the circumstances involved in the sale to the Bill Buckner group are relevant to the questions of valuation.

<sup>2</sup> That is, was the group's primary motivation obtaining real property, a going business, or a going business at a price which was less than its fair market value, etc.

Buckner group placed on the business is relevant in some way to determining the fair market value of the business at the time it was sold.<sup>3</sup> See I.R.E. 401, 402, 701,702.

Furthermore, to the extent Ron Thomas is purporting to comment upon the value of Thomas Motors, Inc. as a going business in of March of 2006, his statements are irrelevant because he is not a qualified expert on business valuation. See I.R.E. 401, 402, 701,702.

The Plaintiff will address each paragraph of the Second Affidavit which contains objectionable statements.

**Paragraphs 3,4,6**

Paragraphs 3,4, and 6 all discuss offers made to purchase a piece of the Defendants' property, which is identified as Lot 14 on Exhibit A to the Second Affidavit and which is adjacent to the property on which Thomas Motors, Inc. was located. These statements are completely irrelevant to the issues addressed in the Defendants' motion for summary judgment, including issues relating to the Plaintiff's claims for breach of contract and equitable relief. See I.R.E. 402.

The purchase prices offered for Lot 14, which, apparently, the Defendants were selling separately from the Thomas Motors, Inc. business, has nothing whatsoever to do with the March 2006 market value of the business (and may or may not be relevant to establishing the March 2006 appraised value of the property on which Thomas Motors, Inc. was located). Thus, Ron Thomas's statements concerning the prices two third parties, who were wholly unrelated to the sale of Thomas Motors, Inc. were willing to pay for the neighboring Lot 14, are irrelevant. Likewise, Ron Thomas's statements concerning the price the Bill Buckner group offered to pay

---

<sup>3</sup> Cleary, in this case, it is not unlikely there were circumstances unrelated to the actual fair market value of Thomas Motors, Inc., such as Ron Thomas's purported belief he urgently needed to sell the business, which affected the price Ron Thomas was willing to accept and the price the Bill Buckner group paid, or was willing to pay, for the business.

for a portion of Lot 14 is are irrelevant to the question of Thomas Motors, Inc.'s value as a business in March of 2006.

For these reasons, the statements contained in Paragraphs 3, 4, and 6 of the Second Affidavit are irrelevant and misleading. Therefore, Paragraphs 3, 4, and 6 together with Exhibits B and C to the Second Affidavit should be stricken.

**Paragraph 5**

Paragraph 5 of the Second Affidavit contains the following statement: "Mr. Ovitt made it clear his investment group was interested in purchasing as much land as we could sell them, in the area surrounding the parcel upon which Thomas Motors was located." To the extent this statement is being offered to prove that the Bill Buckner investment group was primarily interested in purchasing property, not Thomas Motors, Inc., and/or that the group attributed more value to the land it wanted to purchase than to the business, the statement is inadmissible hearsay. See I.R.E. 801, 802. Furthermore, as discussed above, the relevancy of the amount of land purchased by the Bill Buckner group, the amount paid for the land and Thomas Motors, Inc., and the value the group attributed to the land versus the business must be established through testimony of business valuation experts. See I.R.E. 401,402,701,702. Therefore, Paragraph 5 is also irrelevant and should be stricken.

**Paragraphs 7, 8, 9**

Paragraph 7 discusses the Bill Buckner group's agreement to pay \$400,000 for a portion of Lot 14 and that the group paid the Defendants a total purchase price of \$2,900,000 for land and Thomas Motors, Inc. Paragraph 8 contains statements concerning the location of parcels of land included in the sale to the Bill Buckner group. Paragraph 9 contains statements as to the total number of acres purchased by the group and a statement that all of the purchased land

except the land on which Thomas Motors, Inc was located was bare land. The statements contained in Paragraph 7, 8, and 9, are not relevant to the issues raised on summary judgment.

Once again, for the reasons discussed above, the amount of land purchased and the total purchase price paid by the Bill Buckner group is irrelevant to the valuation of Thomas Motors, Inc. in March of 2006 unless the relevancy of such information is established through testimony by a member of the group and business valuation experts. See I.R.E. 401,402,701,702. Therefore, the statements contained in Paragraphs 7, 8, and 9 together with Exhibit D to the Second Affidavit are irrelevant and misleading and should be stricken.

**Paragraph 10**

Paragraph 10 contains the following statement: "There is no doubt that most of the value that went into the \$2,900,000 agreed to be paid by the Buckner-Ovitt group was in the land they were purchasing, and a comparatively very small portion of the sales proceeds were for the 'business' of Thomas Motors, Inc." Ron Thomas then opines: "I believe this is at least illustrated by the above-referenced fact that the Buckner/Ovitt group paid \$400,000 for less than one acre of bare land (the eastern half of Lot 14), and in the overall purchase and sale they ended up with a little more than 7 ½ acres of land." These statements are completely lacking in foundation and, consequently, are conclusory and irrelevant. See I.R.E. 401,402,701. Moreover, as with all of Ron Thomas's other statements concerning the amount of property purchased and the total purchase price paid by the Bill Buckner group these statements are irrelevant to the March 2006 market value of the Thomas Motors, Inc. business unless the relevance is established through testimony by a member of the investment group and business valuation experts. Therefore, for these reasons, Paragraph 10 should be stricken.



**Paragraphs 11 and 12**

In Paragraphs 11 and 12 Ron Thomas states the Defendants had to apply proceeds from the sale of Thomas Motors, Inc. and other properties to pay off loans issued by Key Bank and Washington Trust Bank. Mr. Thomas, however, has failed to provide foundation establishing the relevance of this statement to any of the issues on summary judgment, particularly the issues of the market value of Thomas Motors, Inc. at the time it was sold in March of 2006 and the benefit received by the Defendants from the Plaintiff's efforts in building and operating the business. The relevance, if any, of outstanding debts owed by Thomas Motors, Inc. and/or Defendant Ron Thomas when Thomas Motors, Inc. was sold must be established through testimony of business valuation experts.

Furthermore, whether the Defendants chose to apply proceeds from the sale to the Bill Buckner group to pay off the mortgage(s) on properties other than the Thomas Motors, Inc. premises is irrelevant to any of the issues raised on summary judgment.

Finally, in Paragraph 12 Ron Thomas also states the Defendants used \$100,000 in proceeds from the sale to the Bill Buckner group to pay a commission to a Mr. Mark Bottles, who, apparently, found the Bill Buckner group and facilitated arrangements for the group's purchase of Thomas Motors, Inc. and property from the Defendants. There is no foundation whatsoever establishing the relevance of the Defendants' payment of the commission to any of the issues concerning the market value of Thomas Motors, Inc. or the benefit they received from their son's efforts in building and managing Thomas Motors, Inc. Once again, the relevance, if any, of the fact the commission was paid will have to be left to the experts.

For these reasons, Paragraphs 11 and 12 are irrelevant and should be stricken.

**Paragraph 13**

Paragraph 13 addresses "loans" to Thomas Motors, Inc., which Ron Thomas claims he made to the business. However, Paragraph 13 lacks any foundation which would establish the payments referenced therein were actually loans to Thomas Motors, Inc. and, more importantly, how the payments are relevant to any of the issues on summary judgment, including the benefit the Defendants received from the Plaintiff's services. The relevance, if any, of the Defendants' purported payments to Thomas Motors, Inc. will have to be shown through expert testimony. Therefore, Paragraph 13 is conclusory and irrelevant and should be stricken together with Exhibit E to the Second Affidavit.

ORAL ARGUMENT IS REQUESTED

DATED this 10th day of September, 2007.

WHITE PETERSON, P.A.

By: Sarah H. Arnett  
Sarah H. Arnett  
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
X  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

  
\_\_\_\_\_  
WHITE PETERSON, P.A.

lmh/W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\Mot to Strike 2nd Aff of Ron Thomas.DOC

FILED 2:10 AM  
PM

SEP 10 2007

SHELLY GANNON, CLERK  
*(Signature)* DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
*wam@whitepeterson.com*  
*dwilkinson@whitepeterson.com*  
*sarnett@whitepeterson.com*

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

R. DREW THOMAS,  
Plaintiff,

vs.

RONALD O. THOMAS, ELAINE K.  
THOMAS and THOMAS MOTORS, INC., an  
Idaho Corporation,  
Defendants.

CASE NO. CV 2006-492

SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF OPPOSITION  
TO SUMMARY JUDGMENT

COMES NOW the above-named Plaintiff, R. DREW THOMAS, by and through his attorneys of record, the law firm of White Peterson, P.A., pursuant to Rule 56 of the Idaho Rules of Civil Procedure, and hereby files his *Supplemental Authority in Support of Opposition to Summary Judgment*.

## SUPPLEMENTAL AUTHORITY

### A. Quasi Estoppel

In addition to the authority presented by the Plaintiff in his memorandum in opposition to summary judgment the Plaintiff presents the following authority addressing the doctrine of quasi estoppel in support of his opposition to the Defendants' motion for summary judgment on the Plaintiffs' claim for breach of oral contract.

"Quasi-estoppel prevents a party from reaping an unconscionable advantage, or from imposing an unconscionable disadvantage upon another, by changing positions." *Garner v. Bartschi*, 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). The elements of quasi estoppel are as follows: "(1) the offending party [has taken] a different position than his or her original position and (2) either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in." *Atwood v. Smith*, 143 Idaho 110, 138 P.3d 310, 315 (2006). "Quasi-estoppel, unlike equitable estoppel, does not require misrepresentation by one party or actual reliance by the other." *See Garner supra*.

It is the Plaintiff's position that, at a minimum, there is a genuine issue of material fact as to whether the Defendant Ron Thomas, by attempting to assert the statute of frauds in order to bar the Plaintiff's breach of oral contract claim, is taking a position, which directly contradicts his original position that he and the Plaintiff had formed an agreement whereby the Plaintiff would receive the business, Thomas Motors, Inc., upon Ron Thomas's retirement, in exchange for the Plaintiff leaving his employment as a sales manager with Lanny Berg Chevrolet and building Thomas Motors, Inc. and acting as its general manager. Further, there are clearly genuine issues

of material fact as to whether (1) the Plaintiff was induced by his father's promises to leave a financially secure, successful employment position and commit his time and energies to build and manage Thomas Motors, Inc. at great personal and financial sacrifice; (2) whether as a result of his son's sacrifices and efforts the Defendant Ron Thomas gained the advantages of having use of income from Thomas Motors, Inc. and an established dealership to sell, and (3) whether the Defendant Ron Thomas caused a disadvantage to his son, the Plaintiff, by inducing him to sacrifice his successful employment position and financial security and to expend an extraordinary amount of time and energy in operating Thomas Motors, Inc., at below-market compensation without providing the Plaintiff with any return for his sacrifice and investment as originally promised. Finally, there is definitely a factual issue as to whether, under the circumstances in this case, it is unconscionable for the Defendant Ron Thomas to be permitted to bar his son's oral contract claim after Ron Thomas has gained an advantage from his son's efforts and continuously re-affirmed, both to the Plaintiff and third parties, that he had agreed to transfer Thomas Motors, Inc. to the Plaintiff in exchange for the Plaintiff's efforts in building and operating the business.

**B. Contract Formation**

During oral argument on summary judgment, the Plaintiff will refer to the following authority when addressing the Defendants' argument that the parties failed to form an enforceable contract.

The Plaintiff will cite to the standard for determining whether an enforceable contract has been formed, which is set forth by the Idaho Court of Appeals in *Dursteler v. Dursteler*, 108 Idaho 230, 233-34, 697 P.2d 1244, 1247-48 (Ct. App. 1985): "A contract will be enforced if it is 'complete definite and certain in all its material terms, or contains provisions which are capable

in themselves of being reduced to certainty'. . . To meet this standard the contract must embody a distinct understanding of the parties, showing a meeting of the minds as to all necessary terms of the contract." *Id.* (internal citations omitted). Additionally, the Plaintiff will refer to the following authority establishing that the question of whether there is a meeting of the minds as to all essential contract terms is generally a question for the trier of fact. *See Crittenden v. Crane*, 107 Idaho 213, 687 P.2d 996 (Ct. App. 1984) (whether there is a meeting of the minds as to all essential terms of a contract is a determination for the trier of fact); *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 159 P.3d 870, 874-75 (2007); *Watson v. Idaho Falls Consol. Hospitals, Inc.*, 111 Idaho 44, 47, 720 P.2d 632, 635 (1985) ("A jury question is presented when the existence of a contract is in issue and the evidence is conflicting or admits of more than one inference. . . . Hence, if the existence of the contract is not disputed or the evidence of the contract is not conflicting and admits of but one inference, the court may address the issue of the existence of a contract as a matter of law"); *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 368, 679 P.2d 640, 645 Idaho, 1984. ("When the existence of a contract is in issue, and the evidence is conflicting or admits of more than one inference, it is for the jury to decide whether a contract in fact exists. . . . This Court has stated that '[g]enerally the determination of the existence of a sufficient meeting of the minds to form a contract is a question of fact to be determined by the trier of fact.'"); *C.H. Leavell and Company*, 90 Idaho 502, 414 P.2d 873, 877 (1966).


C. **IDJIs on Contract Formation**

During oral argument on summary judgment, the Plaintiff may refer to the following Idaho civil jury instructions on contract formation: IDJI 6.01-Elements of Contract Introduction

(attached hereto as Exhibit "A"); IDJI 6.05.1 – Agreement On All Material Terms (attached hereto as Exhibit "B").

DATED this 10th day of September, 2007.

WHITE PETERSON, P.A.

By:   
Sarah H. Arnett  
Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of September, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis	_____	US Mail
HEPWORTH, LEZAMIZ & JANIS	_____	Overnight Mail
537 W. Bannock Street, Ste. 200	<u>X</u>	Hand Delivery
P.O. Box 2582	_____	Facsimile No. <u>208-342-2927</u>
Boise, ID 83701-2582		

H. Ronald Bjorkman	<u>X</u>	US Mail
Attorney at Law	_____	Overnight Mail
109 N. Hays	_____	Hand Delivery
P.O. Box 188	_____	Facsimile No. <u>208-365-4196</u>
Emmett, ID 83617-0188		

  
WHITE PETERSON, P.A.

W:\Work\T\Thomas. R Drew 21971\Thomas Motors, Inc.000\Pleadings\Supp Authority Supporting SJ Opp.DOC



**SECTION 6.00 INSTRUCTIONS – CONTRACTS**

IDJI 6.01.1 – Elements of contract - introductory

**INSTRUCTION NO. \_\_\_\_**

**A contract is an agreement between two or more parties to do or not do something that is supported by consideration.**

**There are four elements to complete a contract. Every contract must have these four elements. The four elements are:**

- 1. Competent parties;**
- 2. A lawful purpose;**
- 3. Valid consideration; and**
- 4. Mutual agreement by all parties to all essential terms.**

**It is not disputed that the following elements are present in the contract alleged in this case: [State the elements of the contract that are not in dispute, such as “The parties are competent to enter into a contract, and the alleged contract was for a lawful purpose.”].**

Comment:

The committee recommends that this instruction be used only where the jury actually needs a "lecture on contracts" The detailed instruction should usually be unnecessary, as only specific issues in dispute need be covered.

IDJI 6.05.1 – Agreement on all material terms

**INSTRUCTION NO. \_\_**

**In this case, (party) alleges that all parties did not agree to all essential terms of the contract. This requirement is sometimes referred to as the "meeting of the minds," and means that all parties to a contract must have understood and accepted all of the essential terms of the contract.**

**There is no contract unless all of the essential terms have been communicated to all parties, understood by all parties, and accepted by all parties.**

FILED 5:10 AM  
PM

SEP 10 2007

SHELLY GANNON, CLERK  
*[Signature]* DEPUTY

William A. Morrow  
Dennis P. Wilkinson  
Sarah H. Arnett  
WHITE PETERSON, P.A.  
5700 East Franklin Road, Suite 200  
Nampa, Idaho 83687-7901  
Telephone: (208) 466-9272  
Facsimile: (208) 466-4405  
ISB No.: 2451, 6023, 6545  
*wam@whitepeterson.com*  
*dwilkinson@whitepeterson.com*  
*sarnett@whitepeterson.com*

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

\_\_\_\_\_  
R. DREW THOMAS,  
Plaintiff,

vs.

RONALD O. THOMAS, ELAINE K.  
THOMAS and THOMAS MOTORS, INC., an  
Idaho Corporation,  
Defendants.

)  
)  
) **CASE NO. CV 2006-492**

)  
) **SECOND AFFIDAVIT OF SARAH**  
) **H. ARNETT IN OPPOSITION TO**  
) **SUMMARY JUDGMENT**  
)  
)  
)

\_\_\_\_\_  
STATE OF IDAHO )  
: ss. )  
County of Canyon )

SARAH H. ARNETT, being duly sworn upon oath, deposes and says:

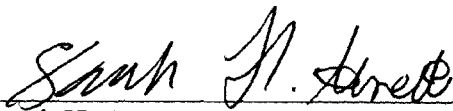
1. I am one of the attorneys for the Plaintiff in the above-entitled case and I make this affidavit based upon my personal knowledge of the matters discussed herein.
2. Shirley Youngstrom is Defendant Ron Thomas' sister. During the years 1996 through 2006, Ms. Youngstrom was an employee of the Defendants' business Lot of Cars, but was never an employee of Thomas Motors, Inc.. However, during this same period Ms. Youngstrom assisted her brother with overseeing bookkeeping and other financial management relating to Thomas Motors and with his personal finances.
3. The Plaintiff took the deposition of Shirley Youngstrom on August 17, 2007, after serving his response to summary judgment on August 13, 2007. Attached hereto as Exhibit "A" and incorporated herein by reference is a true and correct copy of the complete transcript of the August 17, 2007, *Videotaped Deposition of Shirley Youngstrom* ("Youngstrom Depo").
4. In her deposition, Ms. Youngstrom testified to records for Thomas Motors, Inc. being stored in hundreds of boxes on the premises of the Defendants' residence. *See* Youngstrom Depo, p. 28, l. 2 – p. 29, l. 11, p. 35, l. 14- p. 36, l. 2. Discovery of the Thomas Motors, Inc. documents being stored on the premises of the Defendants' residence is a subject of the Plaintiff's pending Rule 56(f) motion.
5. In her deposition, Ms. Youngstrom explained the control Defendant Ron Thomas maintained over the Thomas Motors, Inc. finances, particularly the accounts payable, business loans, payroll, and car sales, throughout the years the Plaintiff was managing Thomas Motors, Inc. *See* p. 36, ll. 5-8, p. 52, l. 17 – p. 53, l. 16, p. 54, ll. 11-15, p. 55, l. 10 – p. 59, l. 2, p. 63, ll. 12-22, p. 65, ll. 7-14, p. 66, ll. 5-23,

p. 78, l. 22 – p. 79, l. 5, p. 122, l. 17 – p. 123, l. 1, p. 123, ll. 13-16, p. 124, ll. 2-6,  
p. 126, l. 22 – p. 127, l. 6, p. 127, ll. 19-21, p. 128, ll. 4-22, p. 129, ll. 7-12.

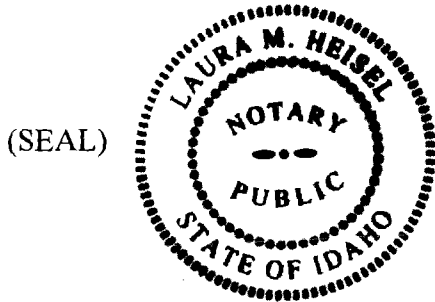
6. On page 84 at lines 10 – 21 of her deposition, Ms. Youngstrom discussed how cars would be sold between Lot of Cars and Thomas Motors, Inc. and how Lot of Cars would charge Thomas Motors, Inc. for work performed on Thomas Motors vehicles in the Lot of Cars shop.
7. In her deposition, Ms. Youngstrom testified regarding comments Defendant Ron Thomas made to her relating to the meeting he held with Thomas Motors employees in August 2000 regarding the Plaintiff's management of Thomas Motors. *See* Youngstrom Depo, p. 102, l. 17 – p. 103, l. 20, p. 104, ll. 1-14.
8. In her deposition, Ms. Youngstrom testified that Ron Thomas maintained control of the Thomas Motors, Inc. finances even after September of 2000, when the Plaintiff signed the management agreement, which is at issue in this case. *See* Youngstrom Depo, p. 104, ll. 17-21, p. 107, ll. 7-17, p. 111, l. 19 – p. 112, l. 13, p. 120, ll. 14-21.
9. In her deposition Ms. Youngstrom testified that during 2000 the Plaintiff's salary was increased because Defendant Ron Thomas wanted to ensure the Plaintiff continued as general manager of Thomas Motors, Inc. *See* Youngstrom Depo., p. 120, l. 22 – p. 121, l. 5.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 10<sup>th</sup> day of September, 2007.

  
\_\_\_\_\_  
Sarah H. Arnett

SUBSCRIBED AND SWORN to before me by Sarah H. Arnett this 10<sup>th</sup> day of September, 2007.



Laura M. Heibel  
Notary Public for Idaho  
My Commission Expires: 01-19-2013

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10<sup>th</sup> day of September, 2007, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

John J. Janis  
HEPWORTH, LEZAMIZ & JANIS  
537 W. Bannock Street, Ste. 200  
P.O. Box 2582  
Boise, ID 83701-2582

\_\_\_\_\_  
\_\_\_\_\_  
X  
\_\_\_\_\_

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-342-2927

H. Ronald Bjorkman  
Attorney at Law  
109 N. Hays  
P.O. Box 188  
Emmett, ID 83617-0188

X  
\_\_\_\_\_  
\_\_\_\_\_  
X

US Mail  
Overnight Mail  
Hand Delivery  
Facsimile No. 208-365-4196

Sarah H. Arnett  
WHITE PETERSON, P.A.

lmh/W:\Work\T\Thomas, R Drew 21971\Thomas Motors, Inc.000\Pleadings\2nd Aff of SHA.SJ Opp.DOC

1 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM  
3

4 R. DREW THOMAS, )

) Case No. CV 2006-492

5 Plaintiff, )

6 vs. )

7 RONALD O. THOMAS, ELAINE K. )

8 THOMAS and THOMAS MOTORS, INC., )

9 an Idaho Corporation, )

10 Defendants. )  
11  
12  
13

14 VIDEOTAPED DEPOSITION OF SHIRLEY YOUNGSTROM

15 August 17, 2007

16 Emmett, Idaho  
17  
18  
19  
20

21 Pamela J. Leaton, CSR #200, RPR

Page 2

1 VIDEOTAPED DEPOSITION OF SHIRLEY YOUNGSTROM  
 2  
 3 BE IT REMEMBERED that the videotaped  
 4 deposition of SHIRLEY YOUNGSTROM was taken by the  
 5 Plaintiff at the Gem County Courthouse, located at  
 6 415 East Main Street, Emmett, Idaho, before Associated  
 7 Reporting, Inc., Pamela J. Leaton, a Court Reporter and  
 8 Notary Public in and for the County of Ada, State of  
 9 Idaho, on Friday, the 17th day of August, 2007,  
 10 commencing at the hour of 10:00 a.m. in the  
 11 above-entitled matter.  
 12  
 13 APPEARANCES:  
 14 For the Plaintiff: WHITE PETERSON, P.A.  
 By: Dennis P. Wilkinson, Esq.  
 By: Sarah H. Arnett, Esq.  
 15 5700 East Franklin Road, Suite 200  
 16 Nampa, Idaho 83687-7901  
 Telephone: (208) 466-9272  
 Facsimile: (208) 466-4405  
 dwilkinson@whitepeterson.com  
 17  
 18 For the Defendants: H. RONALD BJORKMAN  
 19 Attorney at Law  
 109 North Hays  
 20 Post Office Box 188  
 Emmett, Idaho 83617-0188  
 21 Telephone: (208) 365-4136  
 Facsimile: (208) 365-4196  
 Bjorkman@bigskytel.com  
 22  
 23 Also Present: Cassandra Radcliffe, Videographer

Page 3

1 INDEX  
 2 EXAMINATION  
 3  
 4 SHIRLEY YOUNGSTROM PAGE  
 5 By: Mr. Wilkinson 5  
 6  
 7  
 8 EXHIBITS  
 9 NO.  
 10 1. Notice of Taking Audio-Visual Deposition 26  
 of Shirley Youngstrom (3 pages)  
 11 2. Management Contract, RD THOMAS 000115 - 107  
 000117 (3 pages)  
 12  
 13 3. Commercial Lease and Purchase Agreement, 135  
 RD THOMAS 000076 - 000103 (28 pages)  
 14 4. Agreement for Purchase and Sale of 135  
 Business Assets, RD THOMAS 000104 -  
 15 000114 (11 pages)  
 16

Page 4

1 P R O C E E D I N G S  
 2  
 3 MR. WILKINSON: My name is Dennis Wilkinson. I'm  
 4 a member of the law firm White Peterson, and we  
 5 represent Drew Thomas in the matter of Drew Thomas  
 6 versus Thomas Motors, Inc.  
 7 VIDEOGRAPHER: Dennis?  
 8 MR. WILKINSON: Let's go off the record.  
 9 (A discussion was held off the record.)  
 10 MR. WILKINSON: Again, my name is Dennis  
 11 Wilkinson. I'm a member of the law firm of White  
 12 Peterson. We represent Drew Thomas in the matter of  
 13 Drew Thomas versus Ron Thomas and Thomas Motors.  
 14 This deposition is being made on behalf of  
 15 Drew Thomas, the plaintiff, and is being videotaped by  
 16 Cassandra Radcliffe, who is an employee of the White  
 17 Peterson law firm, whose business address is 5700 East  
 18 Franklin, Nampa, Idaho.  
 19 Today's date is the 17th of August, and the  
 20 time is approximately 10:00 a.m. The location of the  
 21 deposition is the courthouse in Gem County in Emmett,  
 22 Idaho. And the deponent's name is Shirley Youngstrom.  
 23 Now if other Counsel will please identify  
 24 themselves.  
 25 MR. BJORKMAN: I'm Ron Bjorkman, and I represent

Page 5

1 the defendants.  
 2 MS. ARNETT: I'm Sarah Arnett, and I'm also an  
 3 attorney from White Peterson, representing plaintiff.  
 4 MR. WILKINSON: And, Ron, we don't have any  
 5 stipulations or objections --  
 6 MR. BJORKMAN: No.  
 7 MR. WILKINSON: -- we need to place on the record?  
 8 MR. BJORKMAN: No.  
 9 MR. WILKINSON: All right. If you could swear the  
 10 witness.  
 11  
 12 SHIRLEY YOUNGSTROM,  
 13 a witness having been first duly sworn to tell the  
 14 truth, the whole truth, and nothing but the truth, was  
 15 examined and testified as follows:  
 16  
 17 MR. WILKINSON: All right. Thank you.  
 18  
 19 EXAMINATION  
 20 BY MR. WILKINSON:  
 21 Q. Could you please tell me your name.  
 22 A. Shirley Youngstrom.  
 23 Q. And how do you spell your last name?  
 24 A. Y-O-U-N-G-S-T-R-O-M.  
 25 Q. All right. And where do you live,



Page 6

1 Ms. Youngstrom?  
 2 A. I live in Emmett.  
 3 Q. And do you presently work?  
 4 A. No.  
 5 Q. Could you tell me what your address is?  
 6 A. 1110 Airport Road.  
 7 Q. Could you please tell me what your phone  
 8 number is.  
 9 A. 365-2381.  
 10 Q. Is that your home phone?  
 11 A. Yes.  
 12 Q. Have you ever had your deposition taken  
 13 before?  
 14 A. No.  
 15 Q. All right. Have you been involved in any  
 16 sort of litigation prior to this?  
 17 A. No.  
 18 Q. Okay. So no civil lawsuits?  
 19 A. No.  
 20 Q. No criminal lawsuits?  
 21 A. No.  
 22 Q. All right. Well, let me just kind of tell  
 23 you some basic guidelines for a deposition.  
 24 Have you ever seen one being taken before?  
 25 A. No, I haven't.

Page 8

1 whatever you need to do. So that's not a problem.  
 2 A. Okay.  
 3 Q. And the last thing, I guess, that we need to  
 4 talk about is that we need to make sure that we don't  
 5 talk over each other.  
 6 A. Okay.  
 7 Q. And I can almost guarantee it's going to  
 8 happen today at some point. And I'll do it to you, and  
 9 you might do it to me, we'll just have to remember to  
 10 try and keep it straight.  
 11 A. Okay.  
 12 Q. Okay. So you testified you've never been a  
 13 party to any other lawsuit?  
 14 A. No.  
 15 Q. Now, while you were -- my understanding is  
 16 that you were employed by your brother, Ron Thomas;  
 17 correct?  
 18 A. Yes.  
 19 Q. All right. And during the time you were  
 20 employed by Mr. Thomas, had you ever been involved in  
 21 any sort of lawsuit regarding his business stuff?  
 22 A. No.  
 23 Q. No?  
 24 All right. Was the business ever involved  
 25 in any sort of small claims actions or anything like

Page 7

1 Q. Okay. There's just a few rules that we need  
 2 to cover.  
 3 First of all, before you answer any  
 4 questions, allow me to finish my question. Do you  
 5 understand?  
 6 A. Yes.  
 7 Q. Okay. The second thing is in any deposition  
 8 you need to remember to answer audibly.  
 9 A. Okay.  
 10 Q. Okay. So if it's a yes-or-no question or  
 11 whatever, you need to say yes or no rather than shaking  
 12 your head or uh-huhs and huh-uhs.  
 13 Do you understand?  
 14 A. Yes.  
 15 Q. Very good. And we have to do that for her.  
 16 A. Right.  
 17 Q. Yeah. She can't get your nods down very  
 18 well.  
 19 The other thing I want to mention, too, is  
 20 that it's not a marathon. If you need a break at any  
 21 time, just tell me.  
 22 A. Okay. I almost did it.  
 23 Q. All right. So, yeah, if you need a break,  
 24 if you feel uncomfortable, whatever, we can take a break  
 25 for five minutes or whatever and allow you to do

Page 9

1 that?  
 2 A. Oh, well, yes, there were some small claims  
 3 on vehicles that had been repossessed or claims had been  
 4 made, yes, but I wasn't directly involved in that.  
 5 Q. Okay. So regarding those small claims  
 6 actions, you never had any involvement?  
 7 A. No.  
 8 Q. As far as preparing documents that needed to  
 9 be submitted to the court in small claims actions, did  
 10 you have any involvement in that?  
 11 A. Sandra Mills did most of those.  
 12 Q. Okay. And who is Sandra Mills?  
 13 A. She was another bookkeeper for Ron Thomas.  
 14 Q. When did you start working for Ron Thomas?  
 15 A. September of 1995.  
 16 Q. Okay. And what was the business that you  
 17 were working for?  
 18 A. Lot of Cars Auto Sales.  
 19 Q. And how long did you work there?  
 20 A. I worked until he sold the business to  
 21 Hannigan's in September of 2006.  
 22 Q. Okay. So roughly nine years?  
 23 A. Yes.  
 24 Q. And did Sandra Mills work there then during  
 25 those nine years as well?

Page 10

1 A. No, Sandra -- oh, I'm not sure what years  
 2 she came, but approximately been there five years, six  
 3 years.  
 4 Q. Okay. When did Sandra Mills start working  
 5 there?  
 6 A. I would have to guess, 2001, 2002.  
 7 Q. So between 1995 when you started at Lot of  
 8 Cars and the time that Sandra started working there,  
 9 which would have been roughly 2000, were there any sort  
 10 of civil lawsuits or small claims lawsuits that you were  
 11 involved in with Lot of Cars?  
 12 A. No.  
 13 Q. Okay.  
 14 A. No.  
 15 Q. And then between, I guess, September of 2000  
 16 and September of 2006, how many lawsuits, small claims  
 17 or otherwise, do you think Lot of Cars was involved in?  
 18 A. Oh, six to eight, I'm guessing.  
 19 Q. What was the nature of those lawsuits?  
 20 A. Generally it was cars that had been  
 21 repossessed, or accounts that had not been paid, and Ron  
 22 was trying to recoup some of the money back.  
 23 Q. And you had testified earlier that Sandra  
 24 Mills handled most of that?  
 25 A. Yes.

Page 11

1 Q. And when you say "handled most of that,"  
 2 what do you mean?  
 3 A. She filled out the paperwork. She filed the  
 4 papers with the court. Took care of the bankruptcy  
 5 papers that came in, and -- and she went to testify with  
 6 Ron.  
 7 Q. Oh, she did?  
 8 A. She did, yes.  
 9 Q. Okay. And as far as these six to eight  
 10 lawsuits -- well, strike that.  
 11 You testified earlier that she handled most  
 12 of them.  
 13 A. Yes.  
 14 Q. Does that means she handled most of them?  
 15 A. I was trying to -- all of them went to her.  
 16 I was trying to think if there was any before she came  
 17 that we did. And I can't remember if there were or not.  
 18 Q. Okay. But after she was there, did she  
 19 handle all of them?  
 20 A. Yes.  
 21 Q. All right. So you had no involvement with  
 22 any lawsuits from September of 2000 to September of  
 23 2006?  
 24 A. I would say that was correct.  
 25 Q. Okay. And you also had no involvement with

Page 12

1 any sort of lawsuits, civil or otherwise, between 1995  
 2 and 2000?  
 3 A. Not that I can remember.  
 4 Q. Now, where are you from, Ms. Youngstrom?  
 5 A. Originally?  
 6 Q. Uh-huh.  
 7 A. Colorado.  
 8 Q. Okay. And apparently you moved to Idaho at  
 9 some point?  
 10 A. Very young. 14 years old.  
 11 Q. Okay. So did you go to school in Idaho?  
 12 A. Yes.  
 13 Q. Did you go to high school?  
 14 A. Yes.  
 15 Q. And did you graduate?  
 16 A. Yes.  
 17 Q. Where did you graduate from?  
 18 A. Emmett High School.  
 19 Q. What year was that?  
 20 A. Oh, 1963.  
 21 Q. So did you get any further education after  
 22 you graduated from high school?  
 23 A. No. I went right to work.  
 24 Q. Where did you work?  
 25 A. I was a personnel payroll clerk for Gem

Page 13

1 Canning Company, later to be known as Stockly-Van Camp.  
 2 Q. And that was in 1963 that you started?  
 3 A. Correct.  
 4 Q. And how long did you work there?  
 5 A. Until 1967.  
 6 Q. And I apologize, maybe I wasn't listening  
 7 well enough.  
 8 Did you say you did bookkeeping?  
 9 A. I was the personnel and payroll clerk.  
 10 Q. Okay. What happened in 1967 that you left  
 11 that job?  
 12 A. I had my first baby.  
 13 Q. Oh. And how many children do you have?  
 14 A. Four.  
 15 Q. And so did you take a break from working for  
 16 a while?  
 17 A. No. I just got to stay home.  
 18 Q. That's a better way to put it.  
 19 A. Yeah.  
 20 Q. Okay. So with the understanding that you  
 21 were working pretty hard at home, I mean, when was the  
 22 next time that you were outside the home working?  
 23 A. For Ron in 1995.  
 24 Q. Okay. So you took almost 30 -- well, I  
 25 guess about 28 years staying at home before you got back

Page 14

1 out in the workforce?  
 2 A. Correct.  
 3 Q. All right. Could you just tell me a little  
 4 bit about the facts and circumstances leading up to you  
 5 working with Ron?  
 6 A. He had asked me to come and help him set up  
 7 his books. And at that time I thought it would be just  
 8 temporary getting started. And I wound up staying.  
 9 Q. Why do you think he asked you to help him  
 10 set up his books?  
 11 A. He just needed somebody to help him. He  
 12 knew I could do it, and he asked me if I would. And I  
 13 said yes.  
 14 Q. Did you have experience setting up books  
 15 prior to this?  
 16 A. Working with the canning company, I had done  
 17 some bookkeeping there, too. And my husband is the  
 18 secretary for Sand Hollow Ditch Company, and there's a  
 19 lot of record keeping there that I helped him with.  
 20 Q. Okay. And when you say "setting up books,"  
 21 what does that entail exactly?  
 22 A. Taking in the money coming in, the bills  
 23 going out. Filing his -- for his federal ID and state  
 24 withholding and sales tax, and turning all those reports  
 25 in.

Page 15

1 Q. Okay. And this started in September of  
 2 1995?  
 3 A. Correct.  
 4 Q. And was Lot of Cars just getting started at  
 5 that point?  
 6 A. Yes.  
 7 Q. So you were there essentially from the  
 8 beginning?  
 9 A. From the beginning.  
 10 Q. So had he ever started selling cars or doing  
 11 any sort of business with Lot of Cars prior to your  
 12 coming there?  
 13 A. No, not yet. They were still working on the  
 14 lot.  
 15 Q. Okay. And you started in September of 1995;  
 16 correct?  
 17 A. Correct.  
 18 Q. When did the business sort of get rolling?  
 19 A. I think July 1995 was when they officially  
 20 filed their papers. I think.  
 21 Q. Okay. And you were there in the beginning?  
 22 A. Yes.  
 23 Q. Did you have any sort of partnership role in  
 24 the business?  
 25 A. No.

Page 16

1 Q. All right. So you were just employed by  
 2 Ron?  
 3 A. Just an employee.  
 4 Q. And did you have anybody else at that point  
 5 when you started in September 1995 doing bookkeeping or  
 6 anything else?  
 7 A. No.  
 8 Q. So you were it?  
 9 A. Yes.  
 10 Q. How many employees were there at that time?  
 11 A. Ron and I, and that was it until he had --  
 12 he had one guy -- I can't think of his name -- that came  
 13 and was like putting desks together and watching the lot  
 14 and stuff like that.  
 15 Q. Okay. Now, as I understand it, Ron is your  
 16 brother; correct?  
 17 A. Yes.  
 18 Q. And could you just describe for me presently  
 19 what your relationship is like with Ron Thomas?  
 20 A. Well, he's my brother. I'm still trying to  
 21 clear up Lot of Cars and Thomas Motors, closing things  
 22 for the business that's slowly dwindling down. I'm not  
 23 employed by him, I'm just helping him finish it.  
 24 Q. Okay. What is your relationship like with  
 25 him?

Page 17

1 A. Good.  
 2 Q. Do you see him very often?  
 3 A. He brings mail once a week, twice a week.  
 4 Q. Is your relationship right now mostly  
 5 business, as far as this clearing up Lot of Cars and  
 6 Thomas Motors, or is it mostly personal?  
 7 A. I don't see him regularly, no, personally.  
 8 It's just business. We talk when he comes about when  
 9 he's going to take a trip, or how everybody is, or --  
 10 As far as does he come to my house, and do  
 11 we go places, or do I go to his house, no.  
 12 Q. Now, have you had any conversations with  
 13 Mr. Thomas about this lawsuit since the time that it was  
 14 filed?  
 15 A. Yes, I have.  
 16 Q. How many conversations do you think you've  
 17 had with him?  
 18 A. Eight or ten.  
 19 Q. And do you remember approximately when they  
 20 started?  
 21 A. I think -- I don't know what you call it  
 22 when Drew first filed -- well, this is after the closing  
 23 of Lot of Cars?  
 24 Q. Yes.  
 25 A. I was trying to think. I knew about

Page 18

1 Elaine's deposition. He brought me a copy of the actual  
 2 lawsuit.  
 3 Before that, I just knew that -- I don't  
 4 know what you would call it, when Drew demanded -- a  
 5 demand letter, I guess, but I was still working. Lot of  
 6 Cars was opened then.  
 7 Q. Okay. So how did you come about seeing the  
 8 demand letter?  
 9 A. All the mail comes across my desk.  
 10 Q. Okay. So are you the one that actually  
 11 opened the demand letter?  
 12 A. Yes.  
 13 Q. And did you read the demand letter?  
 14 A. Just to the fact of knowing what it was.  
 15 But I think we had mailed -- we had certified mail, we  
 16 had faxes, we had two or three things, the same letter  
 17 sent to us.  
 18 Q. So what was the -- when you saw the demand  
 19 letter, when do you think that was, approximately?  
 20 A. 14, 16 months ago.  
 21 Q. Okay. So maybe close to a year-and-a-half  
 22 ago?  
 23 A. Yes.  
 24 Q. Can you tell me what your initial impression  
 25 was when you saw the demand letter?

Page 19

1 A. My personal?  
 2 Q. Yes.  
 3 A. I was quite surprised. I didn't understand  
 4 it. Why? I was glad it wasn't one of my children.  
 5 Q. All right. You say you were surprised.  
 6 A. Yes.  
 7 Q. Why were you surprised?  
 8 A. I couldn't understand why Drew would do that  
 9 to his dad.  
 10 Q. Do what?  
 11 A. Expect to have a lot of money given to him.  
 12 Q. After you read this demand letter, what did  
 13 you do with it?  
 14 A. Filed it.  
 15 Q. Well, did you --  
 16 A. I mean, yes. Yes. Actually -- actually,  
 17 before I read it, I had given it to Ron, and then he had  
 18 given it back to me.  
 19 Q. Okay. And did you and Ron have any  
 20 discussions about the demand letter?  
 21 A. He was surprised. He didn't understand  
 22 also. He was upset. Couldn't understand why Drew would  
 23 do that to him.  
 24 Q. Okay. Now, you say that -- you testified  
 25 earlier that you actually saw the complaint; is that

Page 20

1 correct?  
 2 A. Yeah.  
 3 Q. And how did you come about to see the  
 4 complaint?  
 5 A. Same way. The letter come, and I opened it,  
 6 and I had given it to Ron. He always gives me things to  
 7 read, and I had read through it.  
 8 Q. You did read the complaint?  
 9 A. Yes.  
 10 Q. And, again, I guess, what was your initial  
 11 impression of the complaint?  
 12 A. Again, surprised. Couldn't understand why,  
 13 again. And didn't realize he felt that way about the  
 14 business. It supposedly was to be given to him. I  
 15 didn't know anything about that.  
 16 Q. Okay. Did you review the complaint with  
 17 Ron?  
 18 A. I think -- I think not at that time. I  
 19 think he went to his lawyer with that then.  
 20 Q. All right. Have you had discussions with  
 21 Ron about the complaint?  
 22 A. Yes.  
 23 Q. And what has Ron told you about the  
 24 complaint?  
 25 A. That Drew was expecting to have the business

Page 21

1 given to him. That he didn't know he was going -- that  
 2 Drew didn't know that he was going -- it was going to be  
 3 sold. And that he felt like he needed to be compensated  
 4 for it.  
 5 Q. Okay. And I mean, did Ron say anything else  
 6 about the complaint or about Drew's position?  
 7 A. I don't understand.  
 8 Q. Well, did he say anything else about the  
 9 allegations contained in the complaint, or, you know,  
 10 Drew's feeling that he was owed something from the  
 11 business? I mean, did he have an opinion about that?  
 12 A. He didn't believe that he should be.  
 13 Q. And did he explain to you why?  
 14 A. Drew had been paid a salary the whole time  
 15 he was managing the store. He didn't think that Drew  
 16 should -- no, why should he have a part of it?  
 17 Basically it was what he was compensated for selling.  
 18 Q. Okay. So we've talked about a couple of  
 19 conversations. We talked about the conversation after  
 20 the demand letter. We've talked about a conversation  
 21 after receiving the complaint.  
 22 You testified earlier that there was  
 23 approximately eight to ten conversations. Can you tell  
 24 me about the next conversation that you had?  
 25 A. It would probably have been when he talked

Page 22

1 with the lawyer about it. And then when he had informed  
 2 me that Ron Bjorkman had suggested John Janis for a  
 3 lawyer.  
 4 You're making this hard for me.  
 5 Again, I knew when -- oh, well, I knew about  
 6 Sandy's deposition, because she had to leave work for  
 7 that. And Elaine's deposition. I -- I was instructed  
 8 to find some documents.  
 9 Q. All right. Hold on for just a moment. I  
 10 just want to make sure that I sort of have these  
 11 chronological and make sure --  
 12 A. Well, I'm not sure they're chronological  
 13 either.  
 14 Q. Okay. Well, all right, we talked about one  
 15 conversation regarding the demand letter; correct?  
 16 A. Uh-huh.  
 17 Q. You to answer yes or no.  
 18 A. Yes.  
 19 Q. During the conversation you had regarding  
 20 the demand letter, was anyone else present?  
 21 A. No. I think just Ron and I.  
 22 Q. Okay. And where did that conversation take  
 23 place?  
 24 A. In the office at Lot of Cars.  
 25 Q. In regard to the complaint, was anybody else

Page 23

1 present for that conversation?  
 2 A. No.  
 3 Q. And where did that conversation take place?  
 4 A. In the office of Lot of Cars.  
 5 Q. All right. Now, we've talked about this  
 6 third conversation, and you've said that he was going to  
 7 talk to a lawyer.  
 8 A. Same question?  
 9 Q. Yes.  
 10 A. In the office at Lot of Cars.  
 11 Q. And was anybody else present for that?  
 12 A. No. He was in my office.  
 13 Q. All right. And we've talked about another  
 14 conversation where you were instructed to find  
 15 documents?  
 16 A. Yes.  
 17 Q. Who instructed you to find documents?  
 18 A. Ron.  
 19 Q. Where did this conversation take place?  
 20 A. In my office at Lot of Cars.  
 21 Q. And was anybody else present for that  
 22 conversation?  
 23 A. No.  
 24 Q. Can you tell me what documents you were  
 25 instructed to find?

Page 24

1 A. The management agreement, and the agreement  
 2 for Drew to buy the business.  
 3 Q. The purchase and sale agreement?  
 4 A. Yes.  
 5 Q. And did you produce those documents?  
 6 A. I produced copies.  
 7 Q. Where are they?  
 8 A. No, I did have the original, too. I did  
 9 have the original, too. And then it went to Ron  
 10 Bjorkman.  
 11 Q. All right. Did you give those documents to  
 12 Ron Bjorkman?  
 13 A. No. Ron did.  
 14 Q. All right. So did you give the original  
 15 document to your brother, then?  
 16 A. Yes.  
 17 Q. And then he, in turn, based on your  
 18 information, gave them to Mr. Bjorkman?  
 19 A. Yes.  
 20 Q. Were you instructed to find any other  
 21 documents?  
 22 A. Not at that time.  
 23 Q. Do you recall from then until now any other

Page 25

24 conversations with Ron Thomas regarding this litigation?

Page 25

1 mail, mostly just how things were going with it.  
 2 Q. And how has he described that to you?  
 3 A. That he felt confident that the lawyer was  
 4 taking care of things. I'm not sure what you want me to  
 5 say.  
 6 Q. I don't want you to say anything. I'm just  
 7 wondering, you know, what he said to you. That's all.  
 8 A. Basically just what was in -- you know, in  
 9 the complaint, that he couldn't believe that Drew -- we  
 10 would discuss things like him not knowing Drew -- not  
 11 saying he didn't know when it was going to be sold, and  
 12 I knew that was different.  
 13 I can't remember everything that was in  
 14 Drew's demand letter and everything on it. Basically  
 15 how things were going. How the lawsuit was proceeding.  
 16 Q. Okay. And he told you that he felt  
 17 confident?  
 18 A. Yes.  
 19 Q. What else has he told you about how it's  
 20 proceeding?  
 21 A. That it was slow.  
 22 Q. Well, I would agree to that, most of these  
 23 things are pretty slow.  
 24 A. Yeah.  
 25 MR. WILKINSON: May I have this marked as Exhibit

Page 27

1 preparation for today's deposition?  
 2 A. I only talked with Ron about the time and  
 3 date, and when I had to do it. He tried to reassure me  
 4 that it was -- it wasn't this big, evil thing.  
 5 Q. Okay.  
 6 A. And that I shouldn't worry.  
 7 Q. When did you have this discussion with Ron?  
 8 A. I didn't receive my -- being served on me  
 9 until the 7th of August. So it would have been -- I  
 10 called him to tell him that I had been served.  
 11 Q. Okay. Now, in this conversation you had  
 12 with Ron, did you discuss areas that you might be asked  
 13 about?  
 14 A. Nothing specific, no.  
 15 Q. Okay. In general, then -- I mean, what did  
 16 he tell you about how this would proceed, and what you'd  
 17 be asked about?  
 18 A. I don't think he told me that I'd -- what  
 19 I'd be asked about. Just to tell the truth and tell  
 20 what I knew.  
 21 Q. Did you have any discussions with anybody  
 22 else, other than Ron, in preparation for today?  
 23 A. I had talked with John Janis.  
 24 Q. Okay. And it's my understanding that John  
 25 Janis does not represent you; is that correct?

Page 26

1 No. 1?  
 2 (Deposition Exhibit No. 1 was marked.)  
 3 Q. (BY MR. WILKINSON) All right. Shirley --  
 4 can I call you Shirley?  
 5 A. Yes.  
 6 Q. All right. This is a document that's been  
 7 marked as Exhibit 1. Have you seen that document  
 8 before?  
 9 A. Yes.  
 10 Q. And what is it?  
 11 A. It's a deposition for me to -- for a  
 12 deposition.  
 13 Q. Okay. And if I turn your attention to the  
 14 second page, it says "Deponent, Shirley Youngstrom,"  
 15 which is you, and it has the time, the date, and the  
 16 place. And we're here, and this is the place.  
 17 So in preparation for the deposition that  
 18 you're going to give today, what did you do to prepare?  
 19 I can break that down for you, if you'd  
 20 like.  
 21 A. Okay.  
 22 Q. All right. Did you review any documents in  
 23 preparation for today's deposition?  
 24 A. No.  
 25 Q. Did you have any discussions with anybody in

Page 28

1 A. No, he does not.  
 2 Q. Can you tell me when you had the  
 3 conversation with John Janis?  
 4 A. He had called me a day or so before. I  
 5 can't remember how many days, because my -- I can't  
 6 remember if the 7th was on a Monday, and so it was the  
 7 weekend, but he had called to say that he had received  
 8 the paper that I was going to be deposed.  
 9 Q. Now, had you ever talked to John Janis  
 10 before?  
 11 A. Yes.  
 12 Q. And when did you talk to John Janis before?  
 13 A. He had -- first time he called me was about  
 14 finding the document for the purchase agreement.  
 15 Second time was -- well, he had called  
 16 sometimes at the office, but that was for Ron. I was  
 17 just intercepting calls for him, not really talking with  
 18 me.  
 19 And then I guess the next time was out to  
 20 Ron's house where all the documents are stored. I was  
 21 asked to go out and help locate some other documents.  
 22 Q. By Mr. Janis?  
 23 A. No. Ron asked me to do it. He just said  
 24 that John would be there.  
 25 Q. And was John there?

Page 29

1 A. Yes.  
 2 Q. When was that meeting?  
 3 A. Oh, three or four weeks ago.  
 4 Q. And it was at Ron's house?  
 5 A. Yes.  
 6 Q. And where is that?  
 7 A. 3470 Fuller Road.  
 8 Q. Fuller?  
 9 A. Fuller Road.  
 10 Q. Is that F-U-L-L-E-R?  
 11 A. Correct.  
 12 Q. Do you remember -- I guess I already asked  
 13 you. You say it was three or four weeks ago?  
 14 A. Yes.  
 15 Q. All right. Who was present for this  
 16 meeting?  
 17 A. Ron, Elaine, John Janis, and myself.  
 18 Q. Do you remember approximately what time that  
 19 meeting was?  
 20 A. I think I went out at 9:00. I don't think  
 21 John came until 10:00.  
 22 Q. What happened when you got there to the  
 23 meeting?  
 24 A. There was just certain documents he asked me  
 25 if I could find.

Page 30

1 Q. And when you say "he asked you," you mean --  
 2 A. John.  
 3 Q. -- John?  
 4 A. John, yes.  
 5 Q. All right. And what documents were those?  
 6 A. Some copies of checks that had been written  
 7 to Thomas Motors. Payroll records for Drew. I'm not  
 8 sure the others. I think the others we already had --  
 9 we'd already had.  
 10 Q. Well --  
 11 A. And he was interested in how much -- where  
 12 everything was stored. There was five businesses stored  
 13 there, records of five businesses being stored there,  
 14 and how hard it would be to collect other information.  
 15 Q. Okay. And where was everything stored?  
 16 A. Part of it is stored in a shop that Ron has.  
 17 And another -- which I haven't seen, I've just been  
 18 told, is -- it's like a enclosed cubical thing, I think,  
 19 that was off a truck.  
 20 Q. What do you mean?  
 21 A. It's like a service box off of a truck that  
 22 had been taken off of a truck. I mean, it's like  
 23 insulated, kind of box. I've not seen it.  
 24 Q. Okay. And where is this?  
 25 A. It's at Thomas Motors -- it's at Ron

Page 31

1 Thomas's.  
 2 Q. And you didn't see it while you were there?  
 3 A. No, I didn't.  
 4 Q. And in your search for documents, you didn't  
 5 go through that?  
 6 A. I didn't go through that.  
 7 Q. All right. So what did you go through in  
 8 your search for documents?  
 9 A. I went through file boxes there in the shop.  
 10 Q. File boxes?  
 11 A. Yes.  
 12 Q. Now, are you pretty familiar with the kinds  
 13 of documents that were generated during the time that  
 14 you worked at Thomas Motors, and the time that you  
 15 worked at Lot of Cars?  
 16 A. Yes.  
 17 Q. And did it appear to you that the majority  
 18 of the documents that were generated between 1995 and  
 19 2006 were present at the shop?  
 20 A. For Thomas Motors?  
 21 Q. Correct.  
 22 A. I didn't look through that much of Thomas  
 23 Motors. I was -- because generally I have copies of a  
 24 lot of things that I was looking for. And I looked for  
 25 those in Lot of Cars' file boxes because I had copies of

Page 32

1 them.  
 2 Q. Okay. All right. So the first thing that  
 3 you were looking for were copies of checks to Thomas  
 4 Motors?  
 5 A. Yes.  
 6 Q. And specifically what were you looking for?  
 7 A. Moneys that Ron had to put into the  
 8 business.  
 9 Q. And what did you find, if anything?  
 10 A. Several of them.  
 11 Q. Can you describe for me what you found?  
 12 A. Copies of checks, actual checks from bank  
 13 statements.  
 14 Q. Okay. So you found bank statements?  
 15 A. Yes. Uh-huh.  
 16 Q. And for what period of time did these bank  
 17 statements cover?  
 18 A. From 1997 to 2006.  
 19 Q. All of them?  
 20 A. I don't know if we found all of them yet.  
 21 Q. Do you think you found most of them?  
 22 A. Uh-huh.  
 23 THE REPORTER: Your answer?  
 24 THE WITNESS: Yes.  
 25 Q. (BY MR. WILKINSON) All right. What did you

Page 33

1 do with these bank statements after you found them?  
 2 A. Gave copies to John. No, I actually gave  
 3 him the checks.  
 4 Q. You didn't give bank statements to him?  
 5 A. No.  
 6 Q. What do you do with the bank statements?  
 7 A. They're still with the bank -- with the bank  
 8 statement envelopes.  
 9 Q. So they're still in the shop?  
 10 A. Yes.  
 11 Q. All right. You had -- are you telling me  
 12 that you had all of the checks that were written during  
 13 that time period?  
 14 A. Yes.  
 15 Q. Can you give me an example of what kind of  
 16 checks we're talking about? I mean, generally you said  
 17 money that Ron put into the business, but, I mean, what  
 18 else was there?  
 19 A. In the bank statements?  
 20 Q. In the checks.  
 21 A. The statement.  
 22 Q. Okay.  
 23 A. The deposits. The checks.  
 24 Q. Okay.  
 25 A. Canceled checks.

Page 35

1 A. Correct.  
 2 Q. How many -- and this is another  
 3 approximation. I mean, how many other checks did you  
 4 have that were still kept at the shop at Ron's house  
 5 that weren't given over to John Janis?  
 6 A. From '97 to 2006?  
 7 Q. Uh-huh.  
 8 A. All of them.  
 9 Q. So are we talking thousands of checks?  
 10 A. Thousands.  
 11 Q. And those -- you actually witnessed these to  
 12 be at the shop; correct?  
 13 A. Yes.  
 14 Q. How many -- I mean, how many -- how many  
 15 boxes of documents are we talking about that were stored  
 16 in the shop?  
 17 A. 500.  
 18 Q. 500 boxes?  
 19 A. (Witness nodding.)  
 20 Q. How large are the boxes?  
 21 A. Regular file boxes.  
 22 Q. Okay. And based on your search, and based  
 23 on your experience working there, would you say that  
 24 this appeared to be sort of the sum total of all the  
 25 documents generated during the time that Thomas Motors

Page 34

1 Q. Canceled checks. And these would be checks  
 2 for what?  
 3 A. Every check that was written out of the  
 4 business.  
 5 Q. Okay. So anything that had to do with  
 6 running the business, you still had all the checks for  
 7 it?  
 8 A. Yes.  
 9 Q. All right. And these checks were given to  
 10 John Janis?  
 11 A. Certain checks were given to John Janis.  
 12 Q. Not all the checks?  
 13 A. No.  
 14 Q. What certain checks were given to John  
 15 Janis?  
 16 A. Money that Ron had had to pay into Thomas  
 17 Motors, basically, to keep the flooring going.  
 18 Q. How many checks are we talking about?  
 19 A. I'm not sure.  
 20 Q. Can you approximate for me?  
 21 A. Eight.  
 22 Q. Eight checks?  
 23 A. (Witness nodding.)  
 24 Q. All right. And so those eight checks were  
 25 given to John Janis; correct?

Page 36

1 was alive?  
 2 A. Yes.  
 3 Q. How did you go about just finding these  
 4 eight checks out of 500 boxes of stuff?  
 5 A. Went through every check -- see, the checks  
 6 were brought to me at Lot of Cars. After they were done  
 7 reconciling their checks, they were brought to Lot of  
 8 Cars.  
 9 Q. But these checks were stored at Ron's place;  
 10 right?  
 11 A. Yes. After the business closed.  
 12 Q. Did you have any difficulty finding the  
 13 checks?  
 14 A. It was time consuming.  
 15 Q. How long did it take you?  
 16 A. Most of the day.  
 17 Q. All right. You got there about nine  
 18 o'clock; right? When did you leave?  
 19 A. Around 4:30.  
 20 Q. Was Janis there the whole time, too?  
 21 A. No.  
 22 Q. How long was he there?  
 23 A. 2:30.  
 24 Q. Was he going through boxes as well?  
 25 A. No.



1 Q. Just you?  
 2 A. Just me.  
 3 Q. What was he doing, just standing there  
 4 giving you orders?  
 5 A. No. Most of them I had already found before  
 6 he got there.  
 7 Q. Oh, okay.  
 8 All right. So they asked you to get checks  
 9 related to money that Ron had put into Thomas Motors to  
 10 keep the flooring line going?  
 11 A. Right.  
 12 Q. You say that he also asked you to find  
 13 payroll records for Drew?  
 14 A. Yes.  
 15 Q. And were you able to do that?  
 16 A. Yes.  
 17 Q. What did you find?  
 18 A. I was looking specifically for W-2s.  
 19 Q. And were you able to locate those?  
 20 A. Yes.  
 21 Q. So you found his W-2s. Did you find  
 22 anything else regarding the payroll for Drew?  
 23 A. Just the records, the same thing that would  
 24 be there for everybody.  
 25 Q. What other records are you talking about?

1 A. Payroll. Each month's payroll, his 941s,  
 2 his SUTA. He would be on the SUTA reports.  
 3 Q. Is that it?  
 4 A. Yeah.  
 5 Q. Okay. Now, I know what a W-2 is, but I  
 6 don't know what a 941 is. What is that?  
 7 A. 941 is a federal withholding.  
 8 Q. And you found all of that for Drew?  
 9 A. Yes.  
 10 Q. For the time period that he worked at Thomas  
 11 Motors?  
 12 A. I was looking specifically for 1997.  
 13 Q. Okay. So is that all you found, then, was  
 14 1997?  
 15 A. No, I have the other -- I have the others.  
 16 I know where they're at, but that's the one I was  
 17 specifically interested in.  
 18 Q. Why?  
 19 A. When he started work.  
 20 Q. I mean, why were you particularly interested  
 21 in 1997 when he started, and not so much in the later  
 22 years when he was working there?  
 23 A. I already knew what he was earning on later  
 24 years from his Social Security form that's sent out each  
 25 year.

1 Q. Okay. So 1997 was just the year that you  
 2 guys weren't sure --  
 3 A. Right.  
 4 Q. -- of what he made?  
 5 A. Right.  
 6 Q. What is a "SUTA"?  
 7 A. State Unemployment Tax.  
 8 Q. And did you successfully find those records?  
 9 A. Yes.  
 10 Q. And they were -- again, were they in the  
 11 shop?  
 12 A. Yes.  
 13 Q. And for what years were you looking for the  
 14 SUTA?  
 15 A. 1997.  
 16 Q. Same reason?  
 17 A. Yes. That wasn't something that John had  
 18 asked me to do, it was something I wanted to know.  
 19 Q. Why?  
 20 A. I wanted to verify when he started work,  
 21 because I wasn't sure in 1997 when he started working.  
 22 Q. But why did you want to know specifically  
 23 what the numbers were in 1997 for Drew?  
 24 A. Because I wanted to know when he started  
 25 working in 1997.

1 Q. Why?  
 2 A. Because we were managing then, and I needed  
 3 to know when -- when the reports started for him.  
 4 Q. I guess what I'm asking is, is if John Janis  
 5 didn't direct you to do it, and Ron Thomas didn't direct  
 6 you to do it, why did Shirley Youngstrom feel that 1997  
 7 was so important to get this information?  
 8 A. Well, Drew had made the statement, I had  
 9 been told, and I'm not sure who told me, that when he  
 10 left Lanny Berg that he took a cut in pay.  
 11 And I wasn't sure on how bad the cut in pay  
 12 was, or I was trying to verify what he had made in  
 13 previous years as to when he started working at Lot of  
 14 Cars -- or Thomas Motors.  
 15 Q. And who told you that, do you think?  
 16 A. I think Ron and I discussed it.  
 17 Q. All right. So copies of checks to Thomas  
 18 Motors, payroll records for Drew. Is there anything  
 19 else that you were looking for?  
 20 A. No, I don't think so.  
 21 Q. Okay. So it took from nine o'clock in the  
 22 morning until about 4:30 in the afternoon to find these  
 23 documents?  
 24 A. Yes.  
 25 Q. How many of those 500 boxes did you have to

1 go through?

2 A. I didn't go through the ones that I knew

3 that were marked "Car Deals" or "Accounts Payable" or

4 "Accounts Receivable," I didn't look through those, so

5 -- what was the question again?

6 Q. I was just wondering how many of those 500

7 boxes you looked through.

8 A. I would say that I looked through all of

9 them -- I didn't -- and when I say 500 boxes being

10 there, there would have been Lot of Cars 2, Emmett Auto

11 Care, Emmett Auto Parts in there, and I didn't look

12 through those, just the ones that were marked payroll

13 or --

14 Q. Did you look for the payroll records for

15 anybody else?

16 A. No.

17 Q. Just Drew?

18 A. Yes.

19 Q. And during this time that you were there on

20 that particular day, did you have any conversations with

21 John Janis about the litigation?

22 A. No, just trying to find the documents that

23 would -- he wanted, if I could find them. And he -- he

24 was -- he went and looked in the trailer to make sure

25 how much I had to go through. He wasn't going to make

1 it an unbearable task for me.

2 Q. Okay. Other than just talking about what

3 documents were necessary, did you have any other

4 conversations with him?

5 A. No.

6 Q. And you say that he called you prior to your

7 deposition; correct?

8 A. To let -- yes, that he had received it. I

9 hadn't received mine yet.

10 Q. Can you tell me about the substance of the

11 conversation you had with John Janis right prior to your

12 deposition?

13 A. When he called for the deposition -- to tell

14 me about the deposition?

15 Q. Yes.

16 A. Just that I would -- that he had received a

17 notice that I was going to be deposed and the date and

18 time and where. And then I was served a day or two

19 later.

20 Q. What else did he say about the deposition?

21 A. He told me where it was going to be. Again,

22 reassured me that you guys weren't big bullies, and to

23 tell what I knew.

24 Q. Do you have an opinion about whether we're

25 big bullies or not now?

1 A. No, I don't.

2 Q. Okay. Thanks.

3 Okay. Did you discuss with him areas of

4 inquiry or anything else?

5 A. Areas of inquiry?

6 Q. I guess what I'm saying, did he say, listen

7 Shirley, you're going to be asked about these contracts

8 with Drew?

9 A. No.

10 Q. All right. Did he say, listen, Shirley, you

11 know, you're going to be asked about your relationship

12 with Drew, and what you think about what Drew is doing?

13 A. No.

14 Q. All right. Did you have any specific

15 conversations with him about the facts and circumstances

16 about this case at all?

17 A. Say that again.

18 Q. Did you have any discussions with him

19 regarding the facts and circumstances in this case as it

20 relates to your testimony at all?

21 A. My opinion?

22 No. No, I think the only conversation we

23 had was about documents.

24 Q. Okay. Well, I'm talking about the

25 conversation that you had with him prior to the

1 deposition today.

2 A. No. Other than he told me to tell the truth

3 and tell what I knew.

4 Q. Okay. But he didn't talk to you about any

5 specific facts regarding the case?

6 A. No.

7 Q. He didn't talk to you about what you might

8 be asked?

9 A. No.

10 Q. And he didn't talk to you about how you

11 should respond?

12 A. No.

13 Q. Other than Ron and John, did you have any

14 conversations with anybody else prior to your

15 deposition, getting ready?

16 A. No.

17 Q. Now, you had testified earlier, I believe

18 you did, that you had some or you do have some documents

19 in your possession regarding Thomas Motors?

20 A. In my possession?

21 Q. Yes.

22 A. No, I think -- the only thing I would have

23 would be -- there was a canceled contract on a

24 customer's insurance he bought, and that he was needing

25 a refund. And with the Thomas Motors' account closed, I

Page 45

1 was having to make that refund out of Ron's account.  
 2 Q. Okay. Is that the only documentation, only  
 3 thing in your possession personally that you have  
 4 regarding Thomas Motors?  
 5 A. Yes. Ron has it all.  
 6 Q. Okay. What about Lot of Cars, do you have  
 7 any documentation in your possession regarding Lot of  
 8 Cars?  
 9 A. Just bills that I've paid since we closed.  
 10 Tax returns that I've -- like the SUTA and FUTA that I  
 11 had to close those accounts and finish that quarter.  
 12 Q. I'm sorry, so bills paid?  
 13 A. Uh-huh.  
 14 Q. SUTA. And what else?  
 15 A. The 941s, 941 -- be the quarterly reports  
 16 for Lot of Cars for the last quarter when we closed.  
 17 Q. All right. And these are employee  
 18 documents?  
 19 A. Yes.  
 20 Q. Do you have anything else regarding Lot of  
 21 Cars?  
 22 A. No, I don't -- I think it's all with Ron.  
 23 Q. Okay. Now, regarding -- you said you had  
 24 documents related to bills paid. What do you mean by  
 25 that?

Page 46

1 A. Phone bill, electric bill.  
 2 Q. And what time period are we talking about?  
 3 A. From the time Lot of Cars closed, which was  
 4 September 1st, 2006.  
 5 Q. Okay. And you also have the employment  
 6 documents for the last quarter?  
 7 A. Yes.  
 8 Q. Do you have anything else?  
 9 A. I have other employment records, because I  
 10 was having to find -- for Lot of Cars, because I was  
 11 having to find for one of the employees his earnings for  
 12 the last four years for a Social Security thing. So I  
 13 do have other payroll records of Lot of Cars.  
 14 Q. Okay. Anything else?  
 15 A. No. No.  
 16 Q. Do you have any employment records  
 17 pertaining to Thomas Motors?  
 18 A. No.  
 19 Q. Do you have any employment records in your  
 20 possession pertaining to Drew Thomas?  
 21 A. No.  
 22 Q. Now, we've talked, I guess, in pretty -- in  
 23 some detail, anyway, with conversations you've had with  
 24 Ron, and conversations you've had with John Janis.  
 25 Over the last couple of years, have you had

Page 47

1 any conversations with Drew Thomas about this  
 2 litigation?  
 3 A. With Drew, no.  
 4 Q. Have you talked to Drew at all?  
 5 A. Other than to wave at him when I see him in  
 6 the car.  
 7 Q. What's your opinion of Drew?  
 8 A. I love Drew. I think he's wrong what he's  
 9 doing.  
 10 Q. Why?  
 11 A. Now we're getting personal.  
 12 Q. I know. I know we are. I just need to know  
 13 why you disagree with what Drew is doing.  
 14 A. I don't think any child should do to their  
 15 dad what they're doing.  
 16 Q. What Drew is doing?  
 17 A. Yep.  
 18 Q. But, again, you haven't had any  
 19 conversations with Drew about it?  
 20 A. No, not with Drew.  
 21 Q. Have you had any conversations with Monte?  
 22 A. Yes.  
 23 Q. When did you have a conversation with Monte?  
 24 A. Monte saw me outside of Pizza Hut, and he  
 25 got out of his car, and I was waiting in the car, and he

Page 48

1 came and talked with me.  
 2 Q. When was that?  
 3 A. I would say six months ago.  
 4 Q. Was --  
 5 A. Not for sure.  
 6 Q. Okay. Approximately?  
 7 A. Approximately.  
 8 Q. Was anybody else present for the  
 9 conversation?  
 10 A. My husband was in picking up the pizza. He  
 11 came back and sat in the car for the last little bit of  
 12 the conversation.  
 13 Q. And during the conversation, were you  
 14 sitting in the car?  
 15 A. Yes.  
 16 Q. So did Monte just come to your window?  
 17 A. Yes. Just squatted down to the car and was  
 18 talking with me.  
 19 Q. Tell me about the conversation.  
 20 A. Basically he was telling me -- I'm trying to  
 21 think how he started.  
 22 We talked about the lawsuit that was going  
 23 on. Not the specifics about it, just that it was going  
 24 on.  
 25 I asked him why Drew was doing it. He said

1 Drew just wants to be -- have a pat on the back. I  
 2 said, are you concerned about your parents?  
 3 He told me -- oh, I made some statement that  
 4 I wasn't going to be happy if I had to go in and do a  
 5 deposition. He says, no, none of us are. And he  
 6 started telling me about all the different people that  
 7 probably would be deposed.  
 8 He also told me that records would be  
 9 probably called in. Basically that was kind of it.  
 10 Q. Okay. Did you talk about the facts and  
 11 circumstances behind this lawsuit at all with Monte?  
 12 A. No.  
 13 Q. Did you talk to Monte about your opinion  
 14 regarding Drew filing the lawsuit?  
 15 A. No. I just -- my only question to him,  
 16 again, was why? And did they care what happened to  
 17 their parents?  
 18 Q. What was Monte's response to your question  
 19 of why?  
 20 A. He said Drew just wanted a pat. I said,  
 21 well, what would make Drew happy. And he said Drew just  
 22 wanted to be recognized for what he had done, and he  
 23 just needed a pat on the back.  
 24 Q. That's all Monte said?  
 25 A. That's all he said.

1 this lawsuit?  
 2 A. No.  
 3 Q. What about your husband?  
 4 A. Only things like that I would probably be  
 5 called in to testify. He knew basically that -- what  
 6 the complaint was, that Drew was wanting the money, but  
 7 no particulars.  
 8 Q. Okay. You are aware, I guess, having read  
 9 the demand, having read the complaint, and having kind  
 10 of been involved in this, that Drew is claiming that  
 11 there was a promise made to him regarding the business.  
 12 Do you understand that?  
 13 A. I understand that.  
 14 Q. Did you ever hear Ron make any promise to  
 15 Drew regarding what would happen with the business?  
 16 A. No.  
 17 Q. Did you ever hear Ron during the course of  
 18 your employment at Lot of Cars or during the course of  
 19 the time that Thomas Motors was opened, say that he was  
 20 going to give the business to Drew?  
 21 A. No.  
 22 Q. Did you ever hear him say that he was going  
 23 to sell the business to Drew?  
 24 A. I only knew that he was going to sell the  
 25 business to him from the purchase agreement that they

1 Q. Did you ever talk to -- or have you ever  
 2 talked to Rick about this?  
 3 A. No.  
 4 Q. Now, other than Drew, Monte -- we've talked  
 5 about these people. We've talked about Drew. We've  
 6 talked about Drew. We've talked about Ron. We've  
 7 talked about John Janis.  
 8 Have you had any discussions with anybody  
 9 else about this litigation?  
 10 A. Elaine was -- I talked only with her about  
 11 how upset she was.  
 12 Q. So you've talked to Elaine?  
 13 A. Uh-huh.  
 14 Q. Did you ever talk to anyone that -- while  
 15 you were still working at Lot of Cars about this?  
 16 A. No. Just to sit down and have a  
 17 conversation, no.  
 18 Q. So never had a conversation with any one of  
 19 your coworkers at Lot of Cars?  
 20 A. No.  
 21 Q. Did you have any conversations with anybody  
 22 from Thomas Motors?  
 23 A. No.  
 24 Q. Other than who we've discussed leading up to  
 25 Elaine, have you had conversations with anybody about

1 had agreed on.  
 2 Q. Okay. And separate and apart from that  
 3 purchase agreement -- I mean, were there ever any  
 4 conversations that you can recall with Ron Thomas, or  
 5 anything you overheard from Ron Thomas where he said,  
 6 this business is going to be Drew's?  
 7 A. No.  
 8 Q. Never said it?  
 9 A. No.  
 10 MR. WILKINSON: All right. We've been going for  
 11 about an hour, so I'm going to suggest we take about a  
 12 five-minute break, if that's okay.  
 13 THE WITNESS: Okay.  
 14 MR. WILKINSON: Okay. We're off the record.  
 15 (Break taken from 10:59 a.m. to 11:06 a.m.)  
 16 MR. WILKINSON: Let's go back on the record.  
 17 Q. (BY MR. WILKINSON) All right. Now we're  
 18 going to start talking specifically about your  
 19 employment, and what you were doing at Lot of Cars and  
 20 Thomas Motors.  
 21 A. Okay.  
 22 Q. So you told me earlier that you began  
 23 working in 1995 at Lot of Cars?  
 24 A. Correct.  
 25 Q. You were setting up the books?

Page 53

1 A. Correct.  
 2 Q. And can you just kind of give me an idea  
 3 from 1995 until 2006 what specifically your duties were,  
 4 your job duties starting from 1995?  
 5 A. Okay. I hope I can get all of them in.  
 6 Q. Okay.  
 7 A. I took care of Ron's accounts payable and  
 8 accounts receivable. I did his payroll. And then I was  
 9 trying to think in order of which of the other  
 10 businesses started.  
 11 Q. Well, why don't we do this. Why don't we  
 12 say 1995 you're setting up the books; right?  
 13 A. Okay.  
 14 Q. So were you also doing the accounts payable  
 15 and the payroll?  
 16 A. Yeah, for Lot of Cars.  
 17 Q. Okay. And were there any other businesses  
 18 in 1995?  
 19 A. No.  
 20 Q. What about 1996?  
 21 A. No.  
 22 Q. So were you still just doing the accounts  
 23 payable and the payroll?  
 24 A. Uh-huh.  
 25 Q. Now, is it fair to say, and I'm cheating

Page 54

1 because I'm kind of thinking back to Ron's depo, but he  
 2 basically testified that you were his right-hand woman.  
 3 A. Yes. I've heard him remark that to me. In  
 4 fact, a lot of things got dumped on my desk.  
 5 Q. I mean, so we're talking about accounts  
 6 payable and payroll, but, I mean, I got the impression  
 7 from Ron that you were more to the business than that.  
 8 A. Yes.  
 9 Q. All right. I mean, like what other kinds of  
 10 stuff were you doing?  
 11 A. I fielded most of his phone calls. I was  
 12 doing information for banks, for credit. I did all of  
 13 his personal. Basically just what Ron needed done.  
 14 Q. What Ron needed done?  
 15 A. Uh-huh.  
 16 Q. Is it fair to say that basically all of the  
 17 paperwork that went through Lot of Cars came through  
 18 you?  
 19 A. I would say some didn't.  
 20 Q. Most?  
 21 A. A lot.  
 22 Q. If you were to put a percentage on it, as  
 23 far as the paperwork that went through you, what percent  
 24 would you say it was?  
 25 A. 90.

Page 55

1 Q. So 90 percent went through you.  
 2 And was that pretty much the scope of what  
 3 was going on from '95 to 2006 at Lot of Cars?  
 4 A. Yes.  
 5 Q. Would this also -- would it be fair to say  
 6 -- and I don't know the answer to this. But would it be  
 7 fair to say you were doing the same kind of things for  
 8 Ron's other businesses?  
 9 A. No. No.  
 10 Q. All right. What about Thomas Motors  
 11 specifically?  
 12 A. Thomas Motors, I oversaw their checkbook. I  
 13 was a signer on the checks. It took two signatures, I  
 14 was a signer for checks.  
 15 Bills were brought over for me to go  
 16 through, mostly to make Ron aware of anything that  
 17 looked out of the ordinary, or I thought he needed to be  
 18 aware of. And I initialed those to be signed.  
 19 Payroll, I would just let him know what  
 20 payroll was going to be, and what the car deals looked  
 21 like at the end of the month, like what -- how -- what  
 22 grosses we made on each car deal.  
 23 Q. So as far as Thomas Motors went, basically  
 24 your responsibilities were financially related?  
 25 A. Right.

Page 56

1 Q. All right. So you maintained the checkbook?  
 2 A. I just made sure -- I didn't maintain it,  
 3 no. I made sure what money was going out.  
 4 Q. Okay. Did you balance the accounts?  
 5 A. No.  
 6 Q. How did you make sure what money was going  
 7 out?  
 8 A. Just on what bills were being paid.  
 9 Q. Were you --  
 10 A. And I was a signer on a check. I didn't  
 11 sign a check unless I knew what it was for.  
 12 Q. So you were keeping track of the money that  
 13 was going out?  
 14 A. Right.  
 15 Q. Were you also keeping track of the money  
 16 that was coming in?  
 17 A. No.  
 18 Q. Who was keeping track of that?  
 19 A. Jan Flowers and Penny Holbert. She was  
 20 making the deposits, so...  
 21 Q. Now, as far as bills that were being paid  
 22 for Thomas Motors, could you just pay those by yourself?  
 23 A. Could I pay them by myself?  
 24 Q. Yes.  
 25 A. No.

Page 57

1 Q. So a bill would come in, you would receive  
 2 it, and what would you do with it?  
 3 A. For Thomas Motors?  
 4 Q. Yes.  
 5 A. Jan brought me over the bills. She had them  
 6 all entered in her computer and put in the right  
 7 accounts, and then she brought them over to me to say  
 8 this is what we've got --  
 9 Q. I see.  
 10 A. -- to pay.  
 11 Q. You would review the bills?  
 12 A. Right.  
 13 Q. And then you could authorize payment?  
 14 A. Right.  
 15 Q. Did you have to run that through Ron?  
 16 A. No, other than just if there was something  
 17 out of the ordinary, or did you know about this, and  
 18 have you agreed to this, and --  
 19 Q. What kind of things would be out of the  
 20 ordinary?  
 21 A. Advertising being more than it should be.  
 22 Q. Was it very often that things were out of  
 23 the ordinary?  
 24 A. No, I wouldn't say often. No.  
 25 Q. All right. So, I mean, the bulk of the

Page 58

1 bills that were being paid, you were authorizing without  
 2 Ron?  
 3 A. Right.  
 4 Q. In regard to the payroll, were you also  
 5 authorized to make the checks to employees?  
 6 A. I didn't make the checks. Jan made the  
 7 checks. She did the payroll, but she let me know what  
 8 the payroll consisted of.  
 9 Q. All right. So did you have sort of veto  
 10 power over what was being paid? I mean, did you have to  
 11 authorize it?  
 12 A. Well, the information she gave me, you know,  
 13 I couldn't -- just anything out of ordinary, I asked Ron  
 14 about or anything, and he agreed or -- I don't think we  
 15 ever vetoed anything.  
 16 Q. Okay. But if everything looked all right --  
 17 A. Yeah.  
 18 Q. -- could Shirley Youngstrom say, all right,  
 19 Jan, that looks okay?  
 20 A. Right.  
 21 Q. And it would just get paid?  
 22 A. Right. But Ron and I always went through  
 23 the car deals. And Ron and I would go through them so  
 24 he knew what grosses he had, or what losses he had.  
 25 Q. And would you go through all of the car

Page 59

1 deals with Ron?  
 2 A. Yes.  
 3 Q. All right. And as -- I guess we've  
 4 established that, you know, 90 percent of the paperwork  
 5 is going through you. And we're talking about --  
 6 A. For Lot of Cars.  
 7 Q. For Lot of Cars. We're talking about bills,  
 8 we're talking about payroll, we're talking about  
 9 contracts, all kinds of different things; is that  
 10 correct?  
 11 A. Correct.  
 12 Q. What did you do with these documents that  
 13 you received?  
 14 A. Files.  
 15 Q. And where were they filed?  
 16 A. There at Lot of Cars in file cabinets.  
 17 Q. Okay. Now, were you the person that was  
 18 responsible for doing the filing?  
 19 A. Sandra Mills done a lot of the filing.  
 20 Anything personal, I did.  
 21 Q. And what's personal?  
 22 A. Ron's personal bills, household bills,  
 23 contracts.  
 24 Q. Did you have any role in filing the business  
 25 side of things?

Page 60

1 A. Only when I wasn't busy.  
 2 Q. All right.  
 3 A. I generally took care of all my payroll  
 4 stuff. I filed my own payroll stuff.  
 5 Q. All right. You filed all the payroll stuff.  
 6 A. (Witness nodding.)  
 7 Q. Did you file anything else exclusively, just  
 8 you?  
 9 A. Just Ron's personal things, anything that  
 10 had to do personally with him.  
 11 Q. Who was the person that you just said who  
 12 was also responsible for filing?  
 13 A. Sandra Mills.  
 14 Q. Sandra Mills.  
 15 I take it since you're the person that's  
 16 receiving these documents, you would give them to Sandra  
 17 to file?  
 18 A. Right. That would be after I had been  
 19 through them, and generally initialed and whatnot, she  
 20 would file them for me.  
 21 Q. Okay. And where are those -- or where were  
 22 these files maintained at the time?  
 23 A. In my office in file cabinets.  
 24 Q. How many file cabinets did you have?  
 25 A. We kept two years in the file cabinet, and

1 then every two years we'd -- every year, then, we'd go  
 2 through and take the one out and file them in boxes.  
 3 Q. Okay. Were you the person that was  
 4 responsible for maintaining these files?  
 5 A. Maintaining them, as far as filing them  
 6 or --  
 7 Q. Just making sure that everything was where  
 8 it should be.  
 9 A. I trusted Sandra to -- she pretty well knew  
 10 me pretty well, and she had things where I needed them.  
 11 Q. Did you set up the filing system?  
 12 A. She had a lot to add to it, which helped.  
 13 Q. But did you set it up?  
 14 A. Yes.  
 15 Q. And can you describe what the filing system  
 16 was for me?  
 17 I mean, I knew you would probably do that  
 18 when I asked that question, but can you describe it for  
 19 me?  
 20 A. Like I said, payroll. I had my own payroll  
 21 files. Car deal files were separate. Accounts payable  
 22 files and accounts receivable was in her office.  
 23 Q. Okay. Now, when Lot of Cars closed down,  
 24 were these files -- were these the same files that were  
 25 taken to Ron Thomas' house?

1 taken?  
 2 A. Yes. Yes.  
 3 Q. And basically the same condition as they  
 4 were when you were responsible for maintaining them?  
 5 A. Right. For boxing them up and sending them  
 6 out there.  
 7 Q. All right. Now --  
 8 A. They don't look like that now, but...  
 9 Q. Oh, after you went through them?  
 10 A. Right.  
 11 Q. Yeah, I'm sure.  
 12 Now, in regards to Thomas Motors, we talked  
 13 about the checkbook. You also received bills from  
 14 Thomas Motors; correct?  
 15 A. Yes.  
 16 Q. You did the payroll for Thomas Motors?  
 17 A. Just looked over it. Jan did the payroll.  
 18 Q. Okay. Still, I mean, these were documents  
 19 that you saw?  
 20 A. She did all the figuring on the payroll, but  
 21 I just looked at it before the payroll was done and  
 22 said, yes, do it.  
 23 Q. Now, how were the documents related to  
 24 Thomas Motors maintained?  
 25 A. They were all filed at Thomas Motors.

1 A. Those files were taken to Ron Thomas', yes.  
 2 Q. Okay. And what was your role in getting all  
 3 of these files in boxes and taking them to Ron's house?  
 4 A. Sandra did most of it, and then had the guys  
 5 haul them out there to Ron's house. I knew which ones I  
 6 didn't want to go yet, and which ones to stay.  
 7 Q. Okay. Was it your job to sort of authorize  
 8 what went out there?  
 9 A. There had been weekends -- there had been  
 10 weekends that I wasn't there, like on a Saturday that  
 11 some things had went out to Ron's house that I wished  
 12 would have stayed there a little longer for me, but it  
 13 was okay, I knew where they were.  
 14 Q. Okay. Did you orchestrate this moving of  
 15 the files to Ron's house in any way?  
 16 A. As my idea or --  
 17 Q. Yeah.  
 18 A. They had to be stored somewhere. That's  
 19 under lock and key there.  
 20 Q. And so you felt that that was an appropriate  
 21 place to store the files?  
 22 A. Yes.  
 23 Q. And the files that you saw out at Ron's  
 24 house just a few weeks ago, did they appear to be in  
 25 basically the same condition as they were when they were

1 Q. At Thomas Motors?  
 2 A. Yes.  
 3 Q. And who was responsible for those files?  
 4 A. Jan Flowers and Penny Holbert.  
 5 Q. Did you have any responsibility in regard to  
 6 the Thomas Motors' filings?  
 7 A. No.  
 8 Q. This is Jan Flowers and Penny Holbert?  
 9 A. Uh-huh.  
 10 Q. Were you responsible at all for setting up  
 11 the filing system that was used at Thomas Motors?  
 12 A. No.  
 13 Q. Is it different than the one used at Lot of  
 14 Cars?  
 15 A. Yes, because Chrysler has its own way of  
 16 putting things in slots.  
 17 Q. Did you have access to the documents that  
 18 were filed at Thomas Motors?  
 19 A. No. If I needed something, I just asked  
 20 Jan, and she brought it to me.  
 21 Q. However, I guess, anything that Ron would  
 22 have had personally, if it was related to Thomas Motors,  
 23 you would have been filing still; is that correct?  
 24 A. Correct.  
 25 Q. For example, I think you talked about the

Page 65

1 purchase and sale agreement and the management agreement  
 2 with Drew.  
 3 A. I would have.  
 4 Q. When you were working at Lot of Cars, I  
 5 mean, were you kind of the second in command?  
 6 A. Yes.  
 7 Q. I mean, because I'm hearing you talk, you  
 8 know, and I'm hearing you were the person responsible  
 9 for looking over the bills and authorizing things and  
 10 could write checks. And were, you know, looking at  
 11 various documents. And it sounds to me like you're the  
 12 one that's making the business kind of go.  
 13 What's Ron doing? What's Ron's job?  
 14 A. He makes the decisions. I work for him.  
 15 Q. Is he at Lot of Cars?  
 16 A. Yes.  
 17 Q. All the time?  
 18 A. Yes. His office is there.  
 19 Q. What kind of hours did he work?  
 20 A. 9:00 to 6:00.  
 21 Q. Monday through?  
 22 A. Yeah, Monday through -- well, he was there  
 23 on Saturdays, too, if he didn't have a salesmen in to  
 24 look at the office.  
 25 Q. Did he sell vehicles?

Page 66

1 A. Yes. And that's what I was going to say, he  
 2 sold.  
 3 Q. And then he made the decisions?  
 4 A. Yes. He bought cars.  
 5 Q. Would Ron Thomas have been responsible for  
 6 the financial decisions that were made for Lot of Cars?  
 7 A. Yes.  
 8 Q. Would Ron have been responsible for the  
 9 financial decisions made on behalf of Thomas Motors?  
 10 A. Financial decisions?  
 11 Car sales, no. Financial, as far as loans,  
 12 yes.  
 13 Q. Sure. Loans, working with the bank?  
 14 A. Yes.  
 15 Q. Flooring line of credit?  
 16 A. Set it up, yes.  
 17 Q. Was he responsible for the flooring line of  
 18 credit?  
 19 A. No.  
 20 Q. He's not?  
 21 A. Responsible, as far as paying it, you mean?  
 22 Q. Yes.  
 23 A. Yes, it's in his name.  
 24 Q. Did you have any obligation or any duty in  
 25 regard to maintaining the flooring line of credit for

Page 67

1 Thomas Motors?  
 2 A. Only when it didn't get paid.  
 3 Q. What does that mean?  
 4 A. There was times that the flooring wasn't  
 5 paid, and the bank was hollering for their money, and  
 6 then I was letting Ron know how much it was, and we were  
 7 scrambling for money.  
 8 Q. Who was supposed to be paying the flooring  
 9 line of credit?  
 10 A. Well, Drew should have been aware of it.  
 11 Jan and Penny -- Penny actually was the one keeping  
 12 track of what needed to be paid.  
 13 Q. Okay.  
 14 A. What was sold and what needed to be paid.  
 15 Q. So in regard to the flooring line of credit,  
 16 that bill didn't come to you for Thomas Motors?  
 17 A. No.  
 18 Q. That bill didn't go to Ron?  
 19 A. No.  
 20 Q. That bill went to Penny?  
 21 A. Yes.  
 22 Q. Okay. Because as I understand it, the  
 23 flooring line of credit got into arrears in about 2000,  
 24 September of 2000?  
 25 A. Right.

Page 68

1 Q. Whose fault was that?  
 2 A. I would say Drew's. He was -- or he should  
 3 have been aware of it. He knew what cars was being sold  
 4 and what cars needed paid off.  
 5 Q. Okay.  
 6 A. He should have been on top of what hadn't  
 7 been paid off.  
 8 Q. Could Drew write checks?  
 9 A. He was a signer.  
 10 Q. At any time was Drew responsible for paying  
 11 the flooring line of credit?  
 12 A. That should be part of the management to pay  
 13 it.  
 14 Q. Well, you use the word "should," but I'm  
 15 asking was it?  
 16 A. He did pay cars off, but we were in arrears  
 17 more than once, twice.  
 18 Q. I mean, we established earlier that Ron made  
 19 a lot of the key financial decisions; correct?  
 20 A. As far as -- yes, the business, as far as  
 21 loans to the business.  
 22 Q. Right. And the flooring line of credit was  
 23 in Ron's name?  
 24 A. Yes.  
 25 Q. Did Ron not take a role in paying the



Page 69

1 flooring line of credit?  
 2 A. He left that completely up to Drew. It  
 3 wasn't until we were needing money, and we were behind  
 4 did Ron know about it, that we were behind.  
 5 Q. Did you have any supervisory responsibility  
 6 when you were there at Lot of Cars?  
 7 A. Over me?  
 8 Q. No, did you have any -- did you have to  
 9 supervise anybody?  
 10 A. Everybody just knew that they could come to  
 11 me, and I'd get whatever answer I needed -- they needed,  
 12 or I didn't like say, have you got this done, have you  
 13 got that done.  
 14 Q. That's what I was wondering. I mean, were  
 15 you anybody's boss, quote, unquote?  
 16 A. No.  
 17 Q. Did you have a boss?  
 18 A. Ron.  
 19 Q. And only Ron?  
 20 A. Only Ron.  
 21 Q. Was Ron the only person that you answered  
 22 to?  
 23 A. Yes.  
 24 Q. Did Drew have any authority over you at all?  
 25 A. No, other than us just trying to work

Page 70

1 together on things.  
 2 Q. All right. So when was Thomas Motors  
 3 started?  
 4 A. We started November 1st, 1997, managing. It  
 5 wasn't until January 1st of 1998 that it was actually in  
 6 Thomas Motors' name.  
 7 Q. And did you have any role in getting Thomas  
 8 Motors going?  
 9 A. What information was needed for Chrysler,  
 10 applications to be filled out. Mostly my role would be  
 11 just personal information to the lending agency for Ron  
 12 for him to sign.  
 13 Q. Financial statements for Ron?  
 14 A. Rob Wilde did financial statements. He was  
 15 our accountant. He was paid monthly and did financial  
 16 statements for Lot of Cars and Thomas Motors. Well, did  
 17 for all the businesses.  
 18 Q. All right. So you did the Chrysler  
 19 applications, provided them with personal information.  
 20 Did you have to get any additional funding,  
 21 loans from banks or anything to get Thomas Motors  
 22 started?  
 23 A. I think to get it started Ron had did that  
 24 when he bought it from Johannsen's. That was all set  
 25 up.

Page 71

1 Q. All right. Did you have any role in the  
 2 financing, as far as doing any of the paperwork or  
 3 anything else?  
 4 A. For buying Thomas Motors?  
 5 Q. Correct.  
 6 A. Just filling out Ron's personal information.  
 7 Q. And that's it?  
 8 A. Yeah. Whatever Chrysler -- I mean, Chrysler  
 9 applications. There were some things I couldn't answer  
 10 on Chrysler that had to be filled out by -- I would  
 11 suspect Drew did some of it on about the business. Ron  
 12 probably did part of it.  
 13 Q. Okay. And you mentioned Rob Wilde? Who is  
 14 Rob Wilde?  
 15 A. He's our CPA.  
 16 Q. And was he your CPA the entire time -- I  
 17 guess from 1995 to 1997, was he your CPA at Lot of Cars?  
 18 A. Yes.  
 19 Q. And what kinds of things would Rob Wilde do  
 20 for the business?  
 21 A. He would do financials, income statements.  
 22 Any financial information that was needed for loans,  
 23 taxes, tax returns.  
 24 Q. Between 1995 and 1997, and we're talking  
 25 about Lot of Cars, what was your interaction with Rob

Page 72

1 Wilde? I mean, did you provide him with --  
 2 A. I provided him -- he took all my information  
 3 off check registers and deposits, and he did the  
 4 financials.  
 5 Q. Okay. So when Rob Wilde would prepare the  
 6 financials, it was based on information you would  
 7 provide to him?  
 8 A. Yes.  
 9 Q. And when he would do income statements,  
 10 that was based on information that you would provide to  
 11 him?  
 12 A. Off the check registers and bank statements.  
 13 Q. The financial information that Rob would use  
 14 for loans, for example, that would be based on  
 15 information that you provide to Mr. Wilde?  
 16 A. He should already -- I mean, he should have  
 17 that with his financials each month. He should have all  
 18 the information there.  
 19 Q. Okay. Now, in preparation of the tax  
 20 returns, did you provide Mr. Wilde with the information  
 21 he needed for that?  
 22 A. He took it strictly from check registers,  
 23 even Ron's personal check registers.  
 24 Q. Okay. And these were things you provided to  
 25 Rob Wilde?

Page 73

1 A. Right.  
 2 Q. Now, when Thomas Motors was started, was Rob  
 3 Wilde the CPA for them as well?  
 4 A. Yes.  
 5 Q. And so did you continue this course, I  
 6 guess, of providing him with information so that he  
 7 could do financials?  
 8 A. Yes. But not for Thomas Motors. Jan  
 9 Flowers did that.  
 10 Q. Jan Flowers did for Thomas?  
 11 A. Uh-huh.  
 12 Q. Did you, during the course of Thomas Motors,  
 13 did you provide Rob Wilde with any information for him  
 14 to prepare financials, income statements, financial  
 15 information for loans or tax returns in regard to Thomas  
 16 Motors?  
 17 A. My only would be just personal information  
 18 for Rob, like assets owned, properties.  
 19 Q. All right. So you did not provide Rob Wilde  
 20 any information for Thomas Motors; is that correct?  
 21 A. No. They went through -- through Jan's  
 22 books.  
 23 Q. And you didn't have any supervisory capacity  
 24 of what was being done?  
 25 A. No. No.

Page 74

1 Q. So you didn't know what was being provided  
 2 to Rob Wilde in regard to Thomas Motors?  
 3 A. No.  
 4 Q. However, I guess, if I understand your  
 5 testimony correctly, Rob was also the CPA for Ron's  
 6 private stuff?  
 7 A. Yes.  
 8 Q. And you did provide Rob with all of the  
 9 requisite information regarding Ron Thomas for the  
 10 preparation of taxes and whatever else to Rob?  
 11 A. Right.  
 12 Q. And you did that, what, 1997, 1998 -- how  
 13 long did you do that?  
 14 A. For Ron's personal?  
 15 Q. Correct.  
 16 A. Yeah, 1997.  
 17 Q. Through when?  
 18 A. 2006.  
 19 Q. And so Rob Wilde was the one doing all of  
 20 the financial information, taxes, and what have you,  
 21 during that time period?  
 22 A. I'm trying to think when Rob quit. He got  
 23 us a new CPA. His name was James Warr. And I'm not  
 24 sure when James came.  
 25 Q. How do you spell that last name?

Page 75

1 A. W-A-R-R.  
 2 I would guess 2005.  
 3 Q. Okay. So up until 2005, Rob did it all?  
 4 A. Yes.  
 5 Q. And then you started providing information  
 6 to James Warr?  
 7 A. Right.  
 8 Q. Where is Mr. Warr from?  
 9 A. Wilson Harris, Boise.  
 10 Q. And did he have the same responsibilities as  
 11 Rob Wilde?  
 12 A. Yes, as far as his financial, income tax.  
 13 Yes.  
 14 Q. Would it be fair to say that for the time  
 15 period of '95 through 2005, then, in regard to Lot of  
 16 Cars, that Rob Wilde would have a good deal of  
 17 information regarding financial status of that business?  
 18 A. Yes.  
 19 Q. Would it be fair to say that he would have a  
 20 good grasp of the financial status of Thomas Motors  
 21 during that time period as well?  
 22 A. Yes.  
 23 Q. And would it be also fair to say that he  
 24 would have a good grasp of the personal financial status  
 25 of Ron Thomas?

Page 76

1 A. Yes.  
 2 Q. Now, when did Drew start working there?  
 3 A. November of 1997.  
 4 Q. And do you know the facts and circumstances  
 5 surrounding how Drew came to start working at Thomas  
 6 Motors?  
 7 A. No, I don't. Just that Ron said Drew was  
 8 going to come work.  
 9 Q. And did Ron make any statement to you that  
 10 starting Thomas Motors was contingent on Drew leaving  
 11 his job at Lanny Berg to come over and help him run  
 12 this?  
 13 A. Well, I knew he had to quit Lanny Berg to  
 14 come over to do it.  
 15 Q. I mean, was Ron pretty interested in getting  
 16 Drew over there?  
 17 A. Yes.  
 18 Q. Why?  
 19 A. I think he wanted his sons to come and help  
 20 him run the businesses.  
 21 Q. Well, did he feel -- based on your  
 22 interaction with him, did he feel like Drew had  
 23 something to offer the business?  
 24 A. I'm sure he did. Drew knew -- I know he  
 25 sold used cars. Ron likes to surround his people with,

Page 77

1 I guess -- his employees with people that, you know,  
 2 he's personally involved with.  
 3 I didn't know how much Drew knew -- knew  
 4 about the car business, but...  
 5 Q. Okay. What I'm wondering is, I mean, did  
 6 Ron ever say anything to you, or did you hear from him  
 7 that he needed Drew to come over and manage this  
 8 business?  
 9 A. I knew he wanted Drew to come manage it.  
 10 Q. My question, I guess, is why? Why did he  
 11 want Drew to come over and manage the business?  
 12 A. Family member.  
 13 Q. Was Ron going to even start this business at  
 14 Thomas Motors if Drew wouldn't be willing to come over?  
 15 A. Oh, yes, I think so.  
 16 Q. You think he would have?  
 17 A. Yes.  
 18 Q. So did he ever make a statement to you that  
 19 he wasn't going to unless Drew came over?  
 20 A. No. Not to me.  
 21 Q. Not to you?  
 22 A. No, I never heard -- he never made that  
 23 statement to me.  
 24 Q. Have you ever heard anybody else make that  
 25 statement?

Page 78

1 A. No.  
 2 Q. At around this time in 1997, did you ever  
 3 have any conversations with Drew about why he came over?  
 4 A. No.  
 5 Q. What was your relationship like with Drew in  
 6 1997?  
 7 A. Drew and I didn't talk that much. In 1997,  
 8 that was just two months, I don't know that him and I  
 9 had any conversations about him coming to work.  
 10 Q. Did you have a good relationship?  
 11 A. Sure.  
 12 Q. Now, I guess 1998 would have been Drew's  
 13 first full year there?  
 14 A. Yes.  
 15 Q. What was his job?  
 16 A. He was to manage Thomas Motors.  
 17 Q. And what is it that a manager is supposed to  
 18 do?  
 19 A. Now, I'm not all involved in what a new car  
 20 dealership is like, but he should be overseeing  
 21 everything in the business.  
 22 Q. What does that mean to you, overseeing  
 23 everything in the business?  
 24 A. Thomas Motors car sales, ordering in cars,  
 25 employees, the shop.

Page 79

1 Q. Bills?  
 2 A. Yes.  
 3 Q. Loans?  
 4 A. Loans, I don't know for sure. They're all  
 5 in Ron's name. Has nothing to do with Drew.  
 6 Q. Now, in 1998, that first full year that Drew  
 7 was there, did he have authority over car sales?  
 8 A. Yes.  
 9 Q. Okay. And what was that authority? What  
 10 could he do?  
 11 A. Well, as far as I knew, he -- all car sales  
 12 was through him. He may talk to his dad about  
 13 something, or a trade or something like that, or taking  
 14 in on a new car sales or something like that.  
 15 Q. I guess I don't understand. What do you  
 16 mean when you say all car sales are through him. What  
 17 does that mean?  
 18 A. Through Drew?  
 19 Q. Yeah.  
 20 A. Well, all -- I'm sure, I hope it was that  
 21 way. It was supposed to be set up that all car sales,  
 22 whether it was other salesmen, went through Drew on  
 23 whether the sale, they could accept whatever offers  
 24 or --  
 25 Q. I see. So car salesmen were out there

Page 80

1 selling cars, and they would have to get Drew's  
 2 authority to go through with any particular deal?  
 3 A. Correct.  
 4 Q. Now, would Drew have to turn around and get  
 5 Ron's authority?  
 6 A. I would say only -- only on certain ones  
 7 that was questionable. Maybe an appraisal on a  
 8 trade-in, if the profit margin wasn't as high as we  
 9 needed it to be.  
 10 Q. Okay. So there were circumstances where he  
 11 would have to go to Ron to get permission?  
 12 A. I think -- I don't think it was set up that  
 13 he had to get permission. I think he wanted his dad's  
 14 okay on it.  
 15 Q. All right. Inventory, was Drew solely  
 16 responsible for the inventory?  
 17 A. I don't know.  
 18 Q. You don't know?  
 19 A. I know -- I just know Ron would go to the  
 20 auction to buy cars for him. Drew didn't like to do  
 21 that.  
 22 Q. So would Drew --  
 23 A. Drew did the ordering for new cars. Whether  
 24 or not they talked about what to order, I don't know.  
 25 Q. My question is, could Drew do whatever he

Page 81

1 felt like in regard to inventory?  
 2 A. Yes.  
 3 Q. He could?  
 4 A. Yes.  
 5 Q. So Ron didn't oversee that?  
 6 A. No. Now, if there's something questionable,  
 7 I think Drew would ask him about it.  
 8 Q. Did Drew have the ability to hire and fire  
 9 employees?  
 10 A. Yes.  
 11 Q. And did he make the hiring decisions in  
 12 regards to Thomas Motors?  
 13 A. Yes.  
 14 Q. Did he make the hiring decisions in regard  
 15 to the shop?  
 16 A. Yes.  
 17 Q. Did Drew have any control over the financial  
 18 aspect of the business, or did that run through Ron?  
 19 A. Define "financial."  
 20 Q. I guess what I'm talking about is the -- all  
 21 the sale information, all the money, is that going  
 22 through you and Ron, as far as, you know, being  
 23 deposited in accounts?  
 24 A. No, that went through Drew.  
 25 Q. That went through Drew?

Page 82

1 A. Uh-huh.  
 2 Q. So Drew was responsible for that?  
 3 A. Right.  
 4 Q. Now, during this time frame from '97 to  
 5 2000, how profitable was Thomas Motors?  
 6 A. I'm not sure.  
 7 Q. I'll tell you, having sat through Ron's  
 8 deposition, he wasn't sure either, and he pretty much  
 9 said, well, Shirley is the woman to ask about that.  
 10 A. Oh, yea. I know we had some good years. I  
 11 know we had some bad years.  
 12 Q. Okay. Well, generally speaking, between  
 13 1997 and 2000, would you say that Thomas Motors was a  
 14 viable business?  
 15 A. Yes.  
 16 Q. How about Drew, how would you rate his  
 17 performance?  
 18 A. I don't know how to rate Drew's performance.  
 19 Q. What did you think of him as a manager? Did  
 20 you think he was doing a good job or a bad job?  
 21 A. I don't know.  
 22 Q. You didn't have an opinion?  
 23 A. I didn't.  
 24 Q. Was Ron happy with Drew's performance  
 25 between 1997 and 2000?

Page 83

1 A. He didn't say anything to me.  
 2 Q. He never said, that Drew, he's not doing a  
 3 good job?  
 4 A. No, he never did say that.  
 5 Q. Did he say Drew was doing a good job?  
 6 A. No, I don't think he said that either.  
 7 Q. So did Ron, during that time frame, ever  
 8 comment to you whatsoever about the performance that  
 9 Drew was giving to the business?  
 10 A. Excuse me.  
 11 I don't know whether -- car -- car sales  
 12 that weren't made with a profit, of course, we were  
 13 concerned about.  
 14 I don't think he said one way or the other.  
 15 When -- whenever the first time the flooring line was in  
 16 arrears as much as it was, was our big concern.  
 17 Q. Okay. Which would have been in 2000?  
 18 A. Right.  
 19 Q. All right. But prior to --  
 20 A. Just a second. Sorry.  
 21 Q. Do you need to take a quick break?  
 22 A. Maybe -- maybe until I get this coughing  
 23 over with. Would that be possible?  
 24 Q. That's fine. We can take a couple of  
 25 minutes.

Page 84

1 A. I need to take some more water.  
 2 MR. WILKINSON: We're off the record.  
 3 (Break taken from 11:37 a.m. to 11:46 a.m.)  
 4 Q. (BY MR. WILKINSON) All right. So if I  
 5 understand it correctly, Ron never expressed an opinion  
 6 to you about Drew's performance between 1997 and 2000?  
 7 A. No.  
 8 Q. Does that mean, no, he did not?  
 9 A. No, he did not express an opinion.  
 10 Q. What was the interaction between Lot of Cars  
 11 and Thomas Motors?  
 12 A. Interaction?  
 13 If we wanted to get cars off of their lot to  
 14 sell, we would purchase them from them. If they wanted  
 15 to get cars off our lot, they would purchase from us.  
 16 Q. What else?  
 17 A. We had work orders from them. We paid them.  
 18 If they had work orders or had something detailed at our  
 19 shop, they would pay us. It was just like treating each  
 20 other as a separate company. And we'd write checks for  
 21 those.  
 22 Q. Okay.  
 23 A. Basically independent companies, other than  
 24 as treating each other as a -- if we got a service or a  
 25 vehicle from them, then we'd pay them for that.

Page 85

1 Q. All right. So they would trade inventory?  
 2 A. Not trade. We'd purchase.  
 3 Q. Okay. Can you tell me how that -- can you  
 4 give me like an example of how that would be  
 5 accomplished?  
 6 A. Say Monte had a car sale, and we had a  
 7 pick-up over on the truck that a customer was interested  
 8 in, he'd come over and get it and show it. If they was  
 9 going to go ahead and sell it, then they would purchase  
 10 it. A purchase order -- a wholesale purchase order  
 11 would be written up to Thomas Motors. And after they  
 12 collected their money, they would pay us.  
 13 Q. Okay. Did you have any role in generating  
 14 those wholesale purchase orders?  
 15 A. Yes.  
 16 Q. What was your role?  
 17 A. To write them up as the agreed price.  
 18 Q. And did you file those as well?  
 19 A. Yes. It was treated just as a car sale.  
 20 Q. So if I understand what you're saying, Monte  
 21 who was an employee of Thomas Motors; correct?  
 22 A. Uh-huh.  
 23 Q. He would -- if he had a customer that was  
 24 interested in a certain vehicle that perhaps Lot of Cars  
 25 had --

Page 86

1 A. Uh-huh.  
 2 Q. -- Monte could go to Lot of Cars, get that  
 3 vehicle, and sell it to the customer?  
 4 A. He could, as long as -- yeah.  
 5 Q. And then he could turn around and then pay  
 6 Lot of Cars for that vehicle?  
 7 A. Collect -- right. Correct. Whenever they  
 8 collected their money from the customer sold, then they  
 9 would pay us.  
 10 Q. All right. Would Lot of Cars charge Monte  
 11 the resale price, or would they sell it at --  
 12 A. Whatever they was in it.  
 13 Q. Whatever they were in it?  
 14 A. Purchase price, plus any work orders.  
 15 Q. So essentially their cost?  
 16 A. Right.  
 17 Q. And did that work both ways with Lot of Cars  
 18 buying cars from Thomas Motors?  
 19 A. Yes. Yes. Each -- each dealer has a pack  
 20 on cars. Do you understand what a "pack" is?  
 21 Q. No. Explain it to me.  
 22 A. A pack is -- they may have a \$200 pack or a  
 23 \$600 pack, which would cover any cost that was  
 24 unforeseen, say, a tire or a service that had to be done  
 25 or something. So on retail cars, there would be a pack

Page 87

1 charge to the cost of the car.  
 2 Q. Okay.  
 3 A. Those were taken off for wholesale. So it  
 4 was actually the price that we paid for the car, plus  
 5 whatever work orders.  
 6 Q. Okay. All right. During the time that you  
 7 worked at Lot of Cars, did Ron ever purchase cars for  
 8 Lot of Cars but attribute the cost to Thomas Motors?  
 9 Do you know what I'm saying?  
 10 A. Make them pay, you mean?  
 11 Q. Correct.  
 12 A. No.  
 13 Q. So he never had Thomas Motors, say, purchase  
 14 a vehicle, and then sell it at Lot of Cars and Lot of  
 15 Cars takes the profit?  
 16 A. No.  
 17 Q. All right. Did he use Thomas Motors  
 18 flooring line at all to purchase vehicles for Lot of  
 19 Cars?  
 20 A. When KeyBank was in the flooring, that was  
 21 in the agreement with Bruce McGee and KeyBank, that Lot  
 22 of Cars could use the used car flooring.  
 23 Q. When was that? What years was KeyBank  
 24 involved in the flooring line of credit?  
 25 A. I don't know. It would have to be after

Page 88

1 KeyBank took the flooring out from Wells Fargo.  
 2 Q. Okay. When Wells Fargo had the flooring  
 3 line of credit, which I would represent to you was, I  
 4 believe, from '97 to 2000, would Ron use Thomas Motors'  
 5 flooring line of credit to purchase vehicles for Lot of  
 6 Cars?  
 7 A. No. They would always be in Thomas Motors'  
 8 name.  
 9 Q. But then were they, in turn, sold at Lot of  
 10 Cars?  
 11 A. There would be times when Ron would bring a  
 12 truck or two of Thomas Motors, if he had a customer  
 13 coming in to look at something, bring it over and put it  
 14 on the lot for the customer to look at it, but it would  
 15 belong to Thomas Motors.  
 16 Q. So would he ever include in the inventory of  
 17 Lot of Cars' vehicles that he purchased on the flooring  
 18 line of credit for Thomas Motors?  
 19 A. Say that again.  
 20 Q. I knew you were going to say that.  
 21 MR. WILKINSON: Could you read that back, please.  
 22 (The requested portion of the record was read.)  
 23 THE WITNESS: Not until KeyBank.  
 24 MR. WILKINSON: Pardon me?  
 25 THE WITNESS: Not until the KeyBank had that

Page 89

1 arrangement with KeyBank.  
 2 Q. (BY MR. WILKINSON) So he did not do that  
 3 when Wells Fargo had the flooring line of credit?  
 4 A. Right.  
 5 Q. But he did do that with KeyBank?  
 6 A. Right. But understand that Lot of Cars was  
 7 responsible for that flooring. Lot of Cars was  
 8 responsible for the interest. And Lot of Cars was  
 9 responsible for paying that flooring off when that  
 10 vehicle sold.  
 11 Q. Was there some sort of contract or agreement  
 12 between Lot of Cars and Thomas Motors that made that so?  
 13 A. No, just -- no.  
 14 Q. It was just an understanding?  
 15 A. Right.  
 16 Q. And did Lot of Cars in every single  
 17 circumstance, when they had a vehicle taken from Thomas  
 18 Motors' line of credit, did they pay them back?  
 19 A. Yes. We wrote our own checks. We wrote our  
 20 own checks to Thomas Motors. Thomas Motors, the  
 21 flooring then was taken automatically out of the  
 22 checking account by KeyBank, the flooring person. You  
 23 send in the thing saying what you're paying off.  
 24 Q. All right. And the checks that are related  
 25 to these transactions, did you come across those when

Page 90

1 you were in Ron's shop?  
 2 A. I wasn't looking for them.  
 3 Q. Would they be there, do you think?  
 4 A. I'm sure they would be.  
 5 Q. Because you said you saw a lot of checks.  
 6 A. Right.  
 7 Q. Do you think those checks would be included?  
 8 A. Sure.  
 9 Q. Now, as far as records, record keeping, were  
 10 Thomas Motors and Lot of Cars pretty separate and  
 11 distinct?  
 12 A. Yes.  
 13 Q. Did you intermix moneys at all?  
 14 A. No.  
 15 Q. And who was responsible for maintaining the  
 16 financial records of each business?  
 17 A. Jan Flowers.  
 18 Q. For Thomas Motors?  
 19 A. Thomas Motors. And I did for Lot of Cars.  
 20 Q. Okay. Was Thomas Motors, in your opinion,  
 21 used in any way to supplement Lot of Cars?  
 22 A. No.  
 23 Q. Now, as I understand it, Ron had various  
 24 other businesses, there was a NAPA; is that correct?  
 25 A. Uh-huh.

Page 91

1 Q. Do you remember about when he started NAPA?  
 2 A. I don't remember the year. It was after  
 3 Thomas Motors.  
 4 Q. Okay. Late '90s?  
 5 A. Maybe 2000, 2001.  
 6 Q. Okay.  
 7 A. I'm guessing. I --  
 8 Q. That's fine. What about Lot of Cars 2?  
 9 A. When it started?  
 10 Q. Yes.  
 11 A. After Emmett Auto Parts, after the NAPA  
 12 store.  
 13 Q. What about Emmett Auto Care?  
 14 A. After Lot of Cars 2.  
 15 Q. And the upholstery shop?  
 16 A. That was just a part of Lot of Cars 2. It  
 17 was just a place for the upholstery work to be done.  
 18 Q. So did you have any role in NAPA Auto Parts?  
 19 A. No, other than I could sign on checks when  
 20 they couldn't -- didn't have a signature, somebody to  
 21 sign, I could sign checks.  
 22 Q. Were you responsible in any way for  
 23 maintaining any documents for NAPA Auto Parts?  
 24 A. No.  
 25 Q. Who was?

Page 92

1 A. Cheryl -- I can't -- she just remarried, and  
 2 it used to be Cantrill, and I don't know what her name  
 3 is now.  
 4 Q. When she was doing this, though, it was  
 5 Cheryl Cantrill?  
 6 A. Correct.  
 7 Q. What about Lot of Cars 2, did you have any  
 8 role with Lot of Cars 2?  
 9 A. I paid their bills.  
 10 Q. Did you maintain their documents, then, too?  
 11 A. I brought copies all the time.  
 12 Q. And did you store those?  
 13 A. Yes.  
 14 Q. Who brought you copies?  
 15 A. Roxy Pryor. She did the bookkeeping there.  
 16 Q. Roxy Pryor?  
 17 A. Uh-huh.  
 18 Q. What about Emmett Auto Care?  
 19 A. Cheryl did the book work for Emmett Auto  
 20 Care, too.  
 21 Q. Were these documents that were generated in  
 22 Emmett Auto Care, were they eventually -- did they  
 23 eventually come to you for storage?  
 24 A. They went to Ron's.  
 25 Q. Went to Ron's?

Page 93

1 A. Uh-huh.  
 2 Q. Did they go to you first?  
 3 A. No.  
 4 Q. Just directly to Ron?  
 5 A. Uh-huh.  
 6 MR. BJORKMAN: Do you want to break for lunch  
 7 soon, or what's your thinking?  
 8 MR. WILKINSON: I'm thinking if we can hold out  
 9 for maybe another 45 minutes or so, we could probably  
 10 get it done, unless you want to eat.  
 11 MR. BJORKMAN: That's fine. That's fine.  
 12 MR. WILKINSON: Okay. And that's no guarantee. I  
 13 mean, I hope so.  
 14 MR. BJORKMAN: I want to eat within an hour.  
 15 MR. WILKINSON: What's that?  
 16 MR. BJORKMAN: I said I want to eat within an  
 17 hour. No, that's fine. Go ahead. That's fine.  
 18 MR. WILKINSON: Okay. If we can -- I think we'll  
 19 be done by one o'clock.  
 20 MR. BJORKMAN: Okay. That's fine.  
 21 THE WITNESS: That's fine.  
 22 MR. WILKINSON: Is that all right?  
 23 Okay. I feel bad because we pretty much  
 24 said it was going to go until noon anyway, but I think  
 25 one o'clock.

Page 94

1 MR. BJORKMAN: Okay.  
 2 Q. (BY MR. WILKINSON) All right. Now, in  
 3 regard to NAPA, was Thomas Motors used to supplement  
 4 that business at all?  
 5 A. Thomas Motors used to supplement?  
 6 Q. Was money taken from Thomas Motors to fund  
 7 NAPA in any way?  
 8 A. No.  
 9 Q. Okay. In regards to NAPA, again, was there  
 10 any sort of business interaction between Thomas Motors  
 11 and NAPA?  
 12 A. Thomas Motors bought parts through them.  
 13 Q. Did they buy them at a premium price, or was  
 14 it at cost?  
 15 A. I don't know for sure. I would say cost,  
 16 probably 10 percent up.  
 17 Q. In regard to Lot of Cars 2, was Thomas  
 18 Motors used in any way to supplement Thomas Motors 2 --  
 19 or sorry, Lot of Cars 2?  
 20 A. No.  
 21 Q. Did they have -- was there any sort of  
 22 business interaction between Lot of Cars 2 and Thomas  
 23 Motors?  
 24 A. Yes. They had cars worked on there.  
 25 Q. Lot of Cars 2 had cars worked on at Thomas

Page 95

1 Motors?  
 2 A. No. Well, let's see. They could have.  
 3 Let's see. I would say Thomas Motors had cars worked  
 4 on, like dents and upholstery work done at Lot of Cars  
 5 2.  
 6 Q. Did Thomas Motors have a body shop?  
 7 A. No.  
 8 Q. They did not?  
 9 A. No.  
 10 Q. Did they have the ability to fix dents  
 11 themselves?  
 12 A. No.  
 13 Q. All right. They did have a regular repair  
 14 shop, though; is that true?  
 15 A. Who?  
 16 Q. Thomas Motors.  
 17 A. Yes. A shop, yes.  
 18 Q. All right. So if they needed bodywork done,  
 19 they would take it to Lot of Cars 2?  
 20 A. Sometimes. Sometimes other shops.  
 21 Q. What other shops?  
 22 A. There's Dan's Auto Body in town, and Kim's.  
 23 MR. BJORKMAN: Kim's.  
 24 THE WITNESS: Yeah, Kim's Auto Body.  
 25 Q. (BY MR. WILKINSON) Does Ron have any sort

Page 96

1 of ownership interest in Dan's or Kim's?  
 2 A. No.  
 3 Q. And Lot of Cars 2 also had an upholstery  
 4 shop?  
 5 A. Yes.  
 6 Q. Now, were vehicles also taken from Lot of  
 7 Cars, the original Lot of Cars and worked on at Lot of  
 8 Cars 2?  
 9 A. Yes.  
 10 Q. Was Thomas Motors ever charged for that?  
 11 A. No.  
 12 Q. Okay.  
 13 A. Why would they pay for it?  
 14 Q. Well, I don't know. I'm just wondering.  
 15 A. No. I would say not.  
 16 Q. So Lot of Cars would pay their own --  
 17 A. Yes.  
 18 Q. -- freight?  
 19 A. Yes.  
 20 Q. Was the flooring line of credit that Thomas  
 21 Motors had, was it used to purchase vehicles for Lot of  
 22 Cars 2?  
 23 A. No.  
 24 Q. Never?  
 25 A. Never.

1 Q. Was it used for any other purpose, other  
 2 than to purchase vehicles for Thomas Motors or Lot of  
 3 Cars?  
 4 A. No.  
 5 Q. And the flooring line of credit, was it only  
 6 used to purchase vehicles?  
 7 A. Yes.  
 8 Q. Can you think of a circumstance during the  
 9 time that you worked there when the flooring line of  
 10 credit, money from the flooring line of credit was used  
 11 to purchase or fund something else?  
 12 A. No. A flooring line of credit works where  
 13 you have credit set up that you fax into the bank the  
 14 year, make, model, and VIN number of a car that you want  
 15 to floor, plus a book sheet. And then they'll yea or  
 16 nay it. There's no other way any other money can come  
 17 out of there.  
 18 Q. Okay. So the requirements are pretty  
 19 stringent?  
 20 A. Strict, yes.  
 21 Q. But I guess you wouldn't be aware of any  
 22 time that any fake information could have been provided  
 23 to the bank so you could get money for it?  
 24 A. I wouldn't know of anything. They would  
 25 catch that in a flooring check. If your car isn't on

1 A. Yes.  
 2 Q. Now, who specifically is Jan Flowers?  
 3 A. Jan Flowers is the bookkeeper at Thomas  
 4 Motors. She did the Chrysler statements and -- she and  
 5 -- she and I was the one that talked when I had a  
 6 question about things, I -- Jan would get me the  
 7 information, or if she had a question, she would call  
 8 me.  
 9 Q. Okay. Is that all the interaction you would  
 10 have with her?  
 11 A. Just business.  
 12 Q. Well, was Jan chiefly responsible for  
 13 maintaining or doing the bookkeeping for Thomas Motors?  
 14 A. Yes.  
 15 Q. Would Jan have more information than you  
 16 would about Thomas Motors in regard to the bookkeeping?  
 17 A. Yes.  
 18 Q. Did she work for you?  
 19 A. For me?  
 20 Q. Yeah.  
 21 A. She worked for Thomas, but Jan knew that she  
 22 could come to me for stuff.  
 23 Q. And how long did Jan work there?  
 24 A. She started working for me at Lot of Cars.  
 25 And then when Ron purchased Thomas Motors, she went over

1 the lot, they'll say where is that car we floored?  
 2 Q. So nothing like that was ever done?  
 3 A. Yes -- no.  
 4 Q. Okay.  
 5 A. Nothing like that was ever done.  
 6 Q. All right. All right. So when Ron had all  
 7 of these various business going, I mean, how did he  
 8 split his time?  
 9 A. I think he just made his rounds every day,  
 10 check and see if there's problems or --  
 11 Q. Where was his central office at?  
 12 A. Lot of Cars.  
 13 Q. And was he at Lot of Cars every day?  
 14 A. Yes.  
 15 Q. But was he also, I guess, visiting all these  
 16 various businesses?  
 17 A. He did visit, yes.  
 18 Q. How much time would you say that he spent at  
 19 Thomas Motors?  
 20 A. I don't know. I mean, he would disappear,  
 21 and I wouldn't see him for a while.  
 22 Q. So you don't know where he was going?  
 23 A. No.  
 24 Q. One name that has come up in your deposition  
 25 frequently is Jan Flowers.

1 there to be the bookkeeper.  
 2 Q. I'm sorry, when did you say she started  
 3 working?  
 4 A. I don't remember when she started, but she  
 5 was working for Lot of Cars for a while, a short while.  
 6 And then when we bought Thomas Motors, she went over  
 7 there to be the bookkeeper.  
 8 Q. So she was working, at least, I guess, 1996  
 9 on?  
 10 A. No. Oh, yes -- yeah, you're right. If --  
 11 if Thomas Motors started in '97, then she was working  
 12 for me in '96.  
 13 Q. Did you ever have any issues with the -- her  
 14 performance?  
 15 A. None.  
 16 Q. None? Was she a good employee?  
 17 A. Good employee.  
 18 Q. Did you like her?  
 19 A. I like her very much.  
 20 Q. Trust her?  
 21 A. Trust her.  
 22 Q. All right. I'm going to a turn your  
 23 attention to August and September of 2000.  
 24 Now, between 1997 and 2000, did you have a  
 25 conversation with Ron regarding his intentions with Drew



Page 101

1 and the business?  
 2 A. With his intentions to the business?  
 3 Q. Yes.  
 4 A. He was managing. No, not until this  
 5 purchase agreement thing came up.  
 6 Q. Okay. So between '97 and 2000, did Ron ever  
 7 tell you he was going to sell the business to Drew?  
 8 A. No.  
 9 Q. Between '97 and 2000, did he ever say that  
 10 he was going to give the business to Drew?  
 11 A. No.  
 12 Q. And do you think, just based on what you saw  
 13 between '97 and 2000, and sort of based on what you told  
 14 me about what Drew's job was, do you feel like Ron  
 15 relied on Drew?  
 16 A. I think Ron expected him to -- to take care  
 17 of that business, let him know what was going on with  
 18 it, and -- I think that was Drew's job. He was being  
 19 paid for it.  
 20 Q. All right. But in his capacity as the  
 21 manager of Thomas Motors, do you feel like Ron had to  
 22 rely on Drew to run the business?  
 23 A. Sure.  
 24 Q. All right. Now, I asked you if he ever told  
 25 you that during '97 to 2000 if he was going to sell the

Page 102

1 business to Drew, or if he was going to give the  
 2 business to Drew.  
 3 You say that Ron never told you that. You  
 4 never heard that come out of Ron's mouth?  
 5 A. No, not until the purchase agreement came  
 6 up.  
 7 Q. Did anybody else between '97 and 2000 ever  
 8 say to you, Ron's going to sell that business to Drew?  
 9 A. Ron was going to sell it, no. I was  
 10 completely surprised.  
 11 Q. So no one ever told you in that time period  
 12 that Ron is going to give that business to Drew?  
 13 A. No.  
 14 Q. And you never had a conversation with Drew  
 15 then, I guess, regarding that?  
 16 A. No.  
 17 Q. Now, I understand, and I'm sure you've heard  
 18 of this, but I understand that there was a meeting at  
 19 Thomas Motors in August of 2000 where Ron made an  
 20 announcement that Drew was taking over.  
 21 Have you heard of that meeting?  
 22 A. I wasn't aware of the meeting until after it  
 23 was over with. I don't know what was said. I wasn't  
 24 there.  
 25 Q. You weren't there?

Page 103

1 A. No.  
 2 Q. How were you made aware of it?  
 3 A. Just comments made by Ron. Ron had come  
 4 back from the meeting. And comments made from Jan and  
 5 Penny.  
 6 Q. Anybody else?  
 7 A. No, I don't think so.  
 8 Q. What were Ron's comments?  
 9 A. About Drew running the business?  
 10 Q. Correct.  
 11 A. I always thought Drew was running the  
 12 business from the time he started managing it. I didn't  
 13 know what the difference was going to be.  
 14 Q. Well, I understood you thought that, because  
 15 that's what you've testified about.  
 16 But what did Ron tell you when he came back  
 17 from that meeting?  
 18 A. Just that Drew would be running the  
 19 business. That he would be trying to step out of the  
 20 business and let Drew run the business.  
 21 Q. Okay. Well, did you say to him, I thought  
 22 Drew was running the business?  
 23 A. I -- I knew there was the interaction  
 24 between them on cars and whatnot, but Ron was Drew's  
 25 financing, so he had to have some say in the business.

Page 104

1 Q. All right. But his comment to you was he  
 2 was going to step back, and Drew was going to run the  
 3 business?  
 4 A. Correct.  
 5 Q. Did he tell you what that meant?  
 6 A. No.  
 7 Q. He didn't?  
 8 A. No.  
 9 Q. Did he say anything else during that meeting  
 10 with you?  
 11 A. It wasn't really a meeting, it was just  
 12 comments made when he came back.  
 13 Q. Where did those comments take place?  
 14 A. In his office.  
 15 Q. And was anybody else present?  
 16 A. I can't say for sure.  
 17 Q. You say that Jan also made comments to you?  
 18 A. Comments of -- yeah, something was said  
 19 about Drew running the business, that they wouldn't have  
 20 to come over and have checks signed or anything. But  
 21 that didn't happen that way.  
 22 Q. Okay. Was Jan excited at the prospect of  
 23 Drew running the business, or do remember?  
 24 A. I don't remember whether she was or not.  
 25 Q. Do you remember anything else she said about

Page 105

1 the meeting?  
 2 A. No.  
 3 Q. Did she say that Ron made that announcement?  
 4 A. No.  
 5 Q. She didn't?  
 6 A. No, I don't know who -- I don't know who  
 7 made the announcement. I wasn't there.  
 8 Q. Did Ron tell you he made an announcement or  
 9 not?  
 10 A. Just that Drew would be running the  
 11 business.  
 12 Q. All right. You say that Penny also talked  
 13 to you about it. What did Penny tell you?  
 14 A. I think Penny was expecting me not to have  
 15 to sign checks anymore.  
 16 Q. Why do you say that?  
 17 A. She come over, and she said something about  
 18 this will probably be the last time I'll probably be  
 19 coming over. And I go -- I was surprised, like, why?  
 20 Q. What did she say?  
 21 A. Something along the line that Drew would be  
 22 running the business, and -- I don't know for sure  
 23 exactly what she said. Just that there wouldn't need to  
 24 be that step with the girls coming over to me.  
 25 Q. And this is all a big surprise to you?

Page 106

1 A. Totally.  
 2 Q. Were you mad about that?  
 3 A. I questioned it. Why? I thought Drew was  
 4 running the business anyway. I would have been -- my  
 5 surprise would be the fact that Ron was the financial  
 6 benefactor of the businesses. And he owned the  
 7 businesses. But yet not knowing what was going on in  
 8 the business? It surprised me.  
 9 Q. I thought you might be surprised, too,  
 10 because like we've talked, you know, you were the  
 11 right-hand woman.  
 12 A. You say that.  
 13 Q. Well --  
 14 A. Well, I was surprised. I was -- I was  
 15 absolutely surprised. I was surprised that Ron wouldn't  
 16 be involved in the business.  
 17 Q. Did you think it was a good decision by Ron?  
 18 A. No.  
 19 Q. Why?  
 20 A. As long as he had his money in the business,  
 21 I think he needed to know everything that was going on.  
 22 Q. And prior to this time period, would you say  
 23 that Ron did know what was going on with the business?  
 24 I mean, he stayed involved with it?  
 25 A. I think he stayed involved with it to the

Page 107

1 point that Drew let him stay involved with it.  
 2 Q. But nonetheless, he was involved?  
 3 A. They talked about inventory. They talked  
 4 about -- yeah.  
 5 Q. Finances?  
 6 A. Right.  
 7 Q. Now, after August of 2000, then, when this  
 8 -- this change is supposedly to happen, did Drew's  
 9 responsibilities, as far as you were concerned, change  
 10 in any way?  
 11 A. To Thomas Motors?  
 12 Q. Correct.  
 13 A. I wouldn't be aware of what would have  
 14 changed.  
 15 Q. From -- I guess from your viewpoint, did  
 16 anything change?  
 17 A. Not that I know of.  
 18 Q. Let's talk about what the changes were going  
 19 to be.  
 20 MR. WILKINSON: Can I have this marked as Exhibit  
 21 No. 2.  
 22 (Deposition Exhibit No. 2 was marked.)  
 23 Q. (BY MR. WILKINSON) All right. Shirley, I'm  
 24 handing you what's been marked as Exhibit No. 2.  
 25 Do you recognize that document?

Page 108

1 A. Yes.  
 2 Q. What is that?  
 3 A. A management agreement.  
 4 Q. And how do you recognize it?  
 5 A. It was part of the paperwork that was did  
 6 when they did the purchase agreement.  
 7 Q. So you've seen that before?  
 8 A. I have.  
 9 Q. Now, is this something that you maintained  
 10 in filing?  
 11 A. Yes.  
 12 Q. All right. So do you remember approximately  
 13 when you received this document?  
 14 A. After Ron and Elaine signed them, he brought  
 15 them over for me to file.  
 16 Q. Okay. Let me draw your attention to the  
 17 last page.  
 18 All right. There's signatures there. Is  
 19 there a date?  
 20 A. No.  
 21 Q. Is there a date -- I'm not being tricky, I'm  
 22 just not sure now.  
 23 Is there a date anywhere on this?  
 24 A. 1st day of September, 2000.  
 25 Q. Okay. Would that have been about the time

Page 109

1 you received this document?  
 2 A. I think I received it sooner than that.  
 3 Q. You think it was sooner than that?  
 4 A. Yes.  
 5 Q. Who gave it to you?  
 6 A. Ron.  
 7 Q. Did you look at it when Ron gave it to you?  
 8 A. I didn't read it, but I looked to make sure  
 9 it was signed and ready to be put away.  
 10 Q. And when you received it, was it signed?  
 11 A. Yes.  
 12 Q. Have you had any conversations with John  
 13 Janis about the validity of signatures on the management  
 14 contract or the purchase and sale agreement?  
 15 A. No. Validity?  
 16 Q. Have you had any conversations at all about  
 17 the signatures that are on this document or the purchase  
 18 and sale agreement with John Janis?  
 19 A. No.  
 20 Q. Never?  
 21 A. No.  
 22 Q. He's never mentioned the issue of signatures  
 23 on these various documents?  
 24 A. Oh, I thought you meant when -- when -- the  
 25 only thing I -- the only thing I know about is Ron had

Page 111

1 the documents contained in that file cabinet?  
 2 A. Did anybody else come into my office?  
 3 Q. Did anyone else have access to the documents  
 4 that were contained in that file cabinet?  
 5 A. Sandra could have been in my office. Rick  
 6 could have been in my office. Ron could have been in my  
 7 office.  
 8 Q. So Ron had -- potentially had access to that  
 9 file?  
 10 A. Yes.  
 11 Q. Okay. All right. Now, let's take a look at  
 12 this management contract. And I'll turn your attention  
 13 to the first page.  
 14 And it says, I'll draw your attention to  
 15 Section 2. Do you see where it says that? It's bolded  
 16 out.  
 17 A. Uh-huh. Yes.  
 18 Q. It says "Responsibilities."  
 19 "General manager shall have the  
 20 responsibilities for any and all decisions about the  
 21 conduct of the business, including, without limitation,  
 22 (A), the expenditures of revenue and working capital."  
 23 Do you see that?  
 24 A. Yes.  
 25 Q. Did Drew have responsibility for the

Page 110

1 said it. Not what John Janis, no.  
 2 Q. Okay. But with Ron you have had  
 3 conversations?  
 4 A. Something about having Elaine's signature  
 5 checked.  
 6 Q. All right. What has Ron told you?  
 7 A. That they didn't think that was Elaine's  
 8 signature.  
 9 Q. Did he talk to you about anything else  
 10 regarding the signatures?  
 11 A. No.  
 12 Q. All right. And your testimony is that at  
 13 the time that you received this particular document,  
 14 those signatures were there?  
 15 A. Yes.  
 16 Q. And it was Ron Thomas that gave you this  
 17 document?  
 18 A. Yes.  
 19 Q. And you have filed it ever since?  
 20 A. Yes.  
 21 Q. So during the, I guess, the several years  
 22 from 2000 until 2006, were you one that was responsible  
 23 for maintaining this document?  
 24 A. Yes. It was in the file cabinet.  
 25 Q. Okay. Now, did anybody else have access to

Page 112

1 expenditure of revenues and other working capital after  
 2 this document was signed?  
 3 A. I don't know, as far as anybody else having  
 4 any. I don't know of any expenditures and -- that did  
 5 not come through them through bills through me.  
 6 Q. Okay. Did anything in your -- I guess from  
 7 your viewpoint, change in regard to Drew's  
 8 responsibility regarding expenditures of revenues and  
 9 other working capital after this document was signed, I  
 10 mean, compared to how it was between '97 and 2000?  
 11 A. Not to my knowledge.  
 12 Q. Okay. So everything looked about the same?  
 13 A. Same to me.  
 14 Q. All right. B says, "The employment,  
 15 compensation, and termination of all corporation  
 16 employees."  
 17 You stated earlier that from 1997 to 2000  
 18 that Drew had all the ability to hire and fire; correct?  
 19 A. Yes.  
 20 Q. Did he also have the authority to set  
 21 compensation?  
 22 A. Yes.  
 23 Q. All right. So from your vantage point  
 24 between -- after this was signed, did Drew's  
 25 responsibilities change in any way?

Page 113

1 A. I just assumed everything like compensation  
2 and all that was coming from Drew.  
3 Q. Okay. So from your vantage point, Drew  
4 already had the responsibilities as outlined in  
5 paragraph B under Section 2 regarding employees?  
6 A. As far as I knew, yes.  
7 Q. So in regards to hiring and firing and  
8 compensation, nothing changed, really, with Drew?  
9 A. I wouldn't be aware of what had changed.  
10 Q. Okay. The next line says, "Provided,  
11 however, that general manager shall not have the  
12 authority to take any action on behalf of the  
13 corporation that would cause it to incur liabilities  
14 that could not be paid through, No. 1, the corporation's  
15 existing flooring line of credit with First Security  
16 Bank of Idaho; No. 2, corporation's revenues; or No. 3,  
17 additional working capital loan to be provided by  
18 shareholders pursuant to Section 5."  
19 Between '97 and 2000, was Drew responsible,  
20 or did he take any loans on behalf of Thomas Motors?  
21 A. Drew to initiate a loan?  
22 Drew -- the only loans that could have been  
23 made were through Ron's name.  
24 Q. Okay. So Ron was the guy whose name was out  
25 there that had taken all the loans and taken on

Page 114

1 liabilities for the corporation?  
2 A. All the liabilities.  
3 Q. All right. Drew never did that?  
4 A. No.  
5 Q. Section 3 is regards -- or is in regard to  
6 compensation. It says, "He shall be compensated in the  
7 amount of \$5,000."  
8 What was his compensation like between '97  
9 and 2000?  
10 A. It was -- I think it was 2500.  
11 Q. Okay. So this \$5,000, I guess, would have  
12 been a raise to Drew?  
13 A. Correct.  
14 Q. And was that done?  
15 A. Yes.  
16 Q. And did this raise to Drew continue  
17 throughout Drew's employment?  
18 A. He received that the whole time, yes.  
19 Q. All right. And his employment, I guess --  
20 well, actually, the business was sold in March of 2006;  
21 is that right?  
22 A. January 2006, yes. Well, let me think.  
23 I've got to think.  
24 January -- January 18th, 2006.  
25 Q. Okay. So the beginning of 2006 the business

Page 115

1 was sold. And so you're really not all that familiar  
2 with what Drew's employment has been like through then;  
3 correct?  
4 A. Employment as --  
5 Q. Since January of '06.  
6 A. I know he's still working for Bill Buckner.  
7 Q. Right. But you're not involved in the  
8 day-to-day operations?  
9 A. No. No.  
10 Q. You don't know anything about his  
11 compensation?  
12 A. No.  
13 Q. All right. But are you familiar with what  
14 he was being paid from September of 2000 until January  
15 of '06?  
16 A. Correct.  
17 Q. And was it this \$5,000 a month?  
18 A. Yes.  
19 Q. All right. Section 4 is -- well, strike  
20 that.  
21 Why was Drew receiving a raise?  
22 A. He was going to leave if he didn't get it.  
23 Q. How do you know that?  
24 A. Because he packed up all his stuff, and Ron  
25 sent me over there to watch Thomas Motors for a while.

Page 116

1 Q. When was that?  
2 A. I don't remember.  
3 Q. I'm going to guess that it was just prior to  
4 this. Was it?  
5 A. It could have been.  
6 Q. And so you went over there for a while?  
7 A. Couple of weeks.  
8 Q. Couple of weeks.  
9 What were you doing?  
10 A. Just keeping an eye on things.  
11 Q. Running the show?  
12 A. I don't know how good a job I did running  
13 the show. Drew was still there, so...  
14 Q. Oh, Drew was there?  
15 A. Yeah.  
16 Q. So he packed up his things, and what did he  
17 do with his things?  
18 A. I'm not sure. He was in and out of the  
19 office making sure did I know this, did I know that.  
20 Q. Okay. So you went over there for a couple  
21 of weeks because Drew packed up his things?  
22 A. Uh-huh.  
23 Q. However, Drew was still there?  
24 A. Yes.  
25 Q. Who asked you to go over there?

30 (Pages 113 to 116)

Page 117

1 A. Ron.  
 2 Q. What did Ron tell you that you were to do?  
 3 A. Just to keep an eye on things for him.  
 4 Q. What does that mean, keep an eye on things?  
 5 A. I had a pretty good idea how things were run  
 6 in the car dealership. Lot of things I needed help  
 7 with. Mainly just to make sure everything was going to  
 8 run okay.  
 9 Q. Okay.  
 10 A. Did it need help? Did it need help  
 11 somewhere?  
 12 Q. So specifically during this couple of week  
 13 period that you were there, what did you do?  
 14 A. Anything that come across my desk. I didn't  
 15 need to order cars or anything like that. The book  
 16 work. Everything seemed to run fine.  
 17 Q. So you were looking over the book work?  
 18 A. Correct.  
 19 Q. Looking over the bills?  
 20 A. Right.  
 21 Q. Payroll?  
 22 A. Right.  
 23 Q. What else would you have been looking over?  
 24 A. Just making -- employees would come in.  
 25 That things were being taken care of. Customers were

Page 119

1 contract, the general manager" should meet with the --  
 2 or "shall meet with shareholders to provide them with a  
 3 financial review of corporation's business."  
 4 And then it goes on to list, you know, what  
 5 those things are.  
 6 Are you aware of whether or not financial  
 7 reports were actually made to shareholders?  
 8 A. Financial reports were made each month. Jan  
 9 brought them over every month.  
 10 Q. They were made on paper?  
 11 A. Yes.  
 12 Q. But was there any formalized meeting between  
 13 Drew and the shareholders?  
 14 A. No, not to my knowledge. Not at my office.  
 15 Q. Did you review the financial reports that  
 16 were done monthly on paper?  
 17 A. Yes, I looked at them.  
 18 Q. Why would you look at them?  
 19 A. Just to see where we were at on making money  
 20 or not making money. Mostly that would be done with Rob  
 21 when he brought them over to me.  
 22 Q. All right. Were you responsible for storing  
 23 these financial reports?  
 24 A. My copy.  
 25 Q. So you did do that?

Page 118

1 being taken care of.  
 2 Q. Car sale contracts?  
 3 A. No.  
 4 Q. Who looked over those?  
 5 A. Kerry was still there in financing. I don't  
 6 remember.  
 7 Q. Okay. Do you remember any other obligation  
 8 or duty that you had during this couple of week period?  
 9 A. Just trying to oversee it for Ron.  
 10 Q. So why did Ron break down and pay Drew more  
 11 money?  
 12 A. I have no idea.  
 13 Q. I mean, is it your feeling at all, based on  
 14 what you know and what you've seen, that Ron wanted him  
 15 to stay with the business?  
 16 A. Yes, I think he did want him to stay.  
 17 Q. And he was willing to pay Drew more so Drew  
 18 would stay?  
 19 A. Yes.  
 20 Q. Did he have any conversations with you at  
 21 all about why he was willing to pay Drew more?  
 22 A. No.  
 23 Q. Section 4 of this Exhibit 2 that you have in  
 24 front of you deals with financial reports to  
 25 shareholders. It says, "During the term of the

Page 120

1 A. My copy, yes.  
 2 Q. And you also provided these financial  
 3 reports to Ron -- to Rob Wilde?  
 4 A. Rob Wilde provided them to me.  
 5 Q. Oh, I see. So these were reports that Rob  
 6 Wilde was generating?  
 7 A. He brought me a copy and Ron a copy.  
 8 Q. Oh, very good.  
 9 MR. WILKINSON: All right. We only have a couple  
 10 of minutes on the tape. I think we'll go ahead and  
 11 change it. So we're off the record.  
 12 (Off the record.)  
 13 MR. WILKINSON: We're back on the record.  
 14 Q. (BY MR. WILKINSON) The last thing we were  
 15 talking about was the management contract. And I'm just  
 16 going to have you peruse it, just a little bit. And  
 17 basically, Shirley, what I'm wondering is, did anything  
 18 really change with Drew's employment after this  
 19 management contract was signed?  
 20 A. I didn't notice anything changing in how  
 21 things were done at Thomas Motors either.  
 22 Q. Okay. It's fair to say, then, that one  
 23 change that we do agree on is the fact that Drew's  
 24 salary went up; correct?  
 25 A. Yes.

1 Q. And we also agree, I guess, on the fact that  
 2 it went up because Ron wanted to keep Drew there. Is  
 3 that so?  
 4 A. That was my opinion that he wanted to keep  
 5 him there.  
 6 Q. Okay. One thing that I keep thinking about,  
 7 Shirley, and I'm not sure that I understand, is -- and I  
 8 don't want to keep harping on it and go back to it, but  
 9 this flooring line of credit, you had testified earlier  
 10 that Penny was responsible for making that payment?  
 11 A. For letting us know which ones needed to be  
 12 paid off. If she -- if she was funded on it, then it  
 13 needed to be paid off.  
 14 Q. Okay. Let's talk about this just a little  
 15 bit.  
 16 Prior to this management contract being  
 17 signed, which was approximately September of 2000, I  
 18 mean, that's right about the time that the flooring line  
 19 of credit went haywire; is that correct?  
 20 A. Yes, I believe so.  
 21 Q. All right. And how far in arrears was the  
 22 flooring line of credit?  
 23 A. When Wells Fargo was wanting out, \$300,000.  
 24 Q. And how do you receive information from  
 25 Wells Fargo regarding the status of the flooring line of

1 you want to pay off.  
 2 Q. Okay. So Wells Fargo had access to Thomas  
 3 Motors' bank account?  
 4 A. Right. They would put money in when you  
 5 wanted one floored. And when you wanted it paid off,  
 6 you would fax them what vehicle, and they would take the  
 7 money out.  
 8 Q. Okay. So I guess during this time period  
 9 that you guys were \$300,000 in arrears, can you explain  
 10 to me how you became \$300,000 in arrears?  
 11 A. I have no idea. Ron and I had no idea we  
 12 were behind that far.  
 13 Q. Did you or Ron review what vehicles were  
 14 being sold from Thomas Motors?  
 15 A. Only on the car -- when the car deals come  
 16 over, we went through each car deal monthly.  
 17 Q. So you saw the monthly car deals?  
 18 A. Yes.  
 19 Q. Did you see a monthly statement from Wells  
 20 Fargo regarding the flooring line of credit?  
 21 A. No.  
 22 Q. Did anybody?  
 23 A. It should have went to Thomas Motors.  
 24 Q. But that didn't come to you?  
 25 A. No.

1 credit?  
 2 A. They come and do a flooring check. If the  
 3 cars aren't there, they want to know where they've been  
 4 sold -- where they're at, whether they be at the body  
 5 shop or wherever. If they've been sold, and why they're  
 6 not paid off. Then they make a demand.  
 7 Q. I just -- how does it work exactly? You get  
 8 a line of credit from a bank; right?  
 9 A. Correct.  
 10 Q. You purchase your inventory with that line  
 11 of credit?  
 12 A. Correct.  
 13 Q. When a piece of that inventory sells, what  
 14 do you do?  
 15 A. I think you have five days to pay it. I  
 16 think the time limit is five days to pay it off.  
 17 Q. All right. So a vehicle is sold at Thomas  
 18 Motors. And within five days, you need to send whatever  
 19 proceeds are owed to Wells Fargo on the flooring line of  
 20 credit?  
 21 A. Correct.  
 22 Q. Who is responsible for sending those  
 23 proceeds to Wells Fargo in regard to Thomas Motors?  
 24 A. What it is is a fax sheet. Wells Fargo has  
 25 access to our account. And you fax to them what ones

1 Q. Did most everything else come to you?  
 2 A. No. Anything belonging to Thomas Motors,  
 3 came to Thomas Motors. They just brought me a copy.  
 4 Q. Right. But this flooring line of credit is  
 5 also -- is it in Ron's name as well?  
 6 A. Yes.  
 7 Q. And you're responsible for the personal  
 8 deals of Ron Thomas, as far as loans that are in Ron's  
 9 name and what have you; right?  
 10 A. Well, I saw what was -- I mean, they was to  
 11 keep me updated on what was being paid off.  
 12 Q. Well, I'm just wondering, you know, if  
 13 you're responsible for the personal finances of Ron  
 14 Thomas, and his name is on this, why aren't you  
 15 reviewing the documents?  
 16 A. They didn't let me know they weren't paid  
 17 off.  
 18 Q. Who?  
 19 A. Penny and Jan.  
 20 Q. All right. So if we are going to pay them  
 21 off, who's responsible for sending this fax to Wells  
 22 Fargo?  
 23 A. Penny and Jan.  
 24 Q. Nobody else?  
 25 A. I don't think Drew did it. I mean, I don't

Page 125

1 think he went in and did it, but -- that would mess  
 2 Penny and Jan up, if they didn't know what -- I'm sure  
 3 that they let him know which ones needed to be paid off.  
 4 Q. And it's just a matter of sending a fax to  
 5 Wells Fargo?  
 6 A. Correct.  
 7 Q. And that wasn't done?  
 8 A. Undoubtedly not.  
 9 Q. And you're saying it was Penny and Jan's  
 10 responsibility to send that fax?  
 11 A. Yes.  
 12 Q. Did you and Ron do any oversight, as far as  
 13 making sure that these faxes were being sent?  
 14 A. No. I figured that was Drew's job.  
 15 Q. You did do oversight on other bills;  
 16 correct?  
 17 A. Right.  
 18 Q. I mean, for example, you had said I looked  
 19 at the bills from Thomas Motors. If there was anything  
 20 out of the ordinary, I would let Ron know about it.  
 21 A. Right.  
 22 Q. One of the things you said was out of the  
 23 ordinary -- or could be out of the ordinary would be  
 24 advertising budget.  
 25 A. Right.

Page 126

1 Q. Did Ron have a specific budget for running  
 2 Thomas Motors?  
 3 A. Well, for advertising I know he did.  
 4 Q. He did. And what was that?  
 5 A. 5,000 a month.  
 6 Q. Why 5,000 a month?  
 7 A. I could not tell you.  
 8 Q. That was for Thomas Motors?  
 9 A. Yes.  
 10 Q. What about for Lot of Cars?  
 11 A. He did all the advertising, so...  
 12 Q. How much money a month was going out for Lot  
 13 of Cars for advertising?  
 14 A. Maybe two grand.  
 15 Q. Less than Thomas Motors?  
 16 A. Less.  
 17 Q. I mean, wouldn't we agree that this flooring  
 18 line of credit -- I mean, it's got to be maybe the  
 19 single most important loan that Ron Thomas has out  
 20 there?  
 21 A. Possibly one of them, yeah.  
 22 Q. I mean, are you reviewing -- did he have a  
 23 loan to purchase Thomas Motors?  
 24 A. Yes.  
 25 Q. Are you making that payment?

Page 127

1 A. I was.  
 2 Q. Did he have any loans associated with Lot of  
 3 Cars?  
 4 A. Yes.  
 5 Q. Were you making those payments?  
 6 A. Yes.  
 7 Q. I mean, were you making payments on every  
 8 single loan, with the exception of this flooring line of  
 9 credit?  
 10 A. Correct.  
 11 Q. Why wouldn't you be overseeing the flooring  
 12 line of credit?  
 13 A. That was their job to do, and Drew's.  
 14 Q. Who made the decision that that was their  
 15 job to do?  
 16 A. How do we know what they've sold? I didn't  
 17 -- how would I know what they've sold, whether it's been  
 18 funded, whether it's --  
 19 Q. You know what they've sold because you look  
 20 at it monthly; right?  
 21 A. And the payroll part, yes.  
 22 Q. I mean, you're looking at that stuff  
 23 monthly, so you know what they're selling.  
 24 So, I mean, there is a mechanism there for  
 25 you to check it, isn't there?

Page 128

1 A. I never thought of having to do it that way  
 2 because that's what Jan and Penny were doing. It was  
 3 their job to let me know.  
 4 Q. Now, did Thomas Motors have a checking  
 5 account with Wells Fargo?  
 6 A. Yes.  
 7 Q. All right. And this account that we're  
 8 talking about, was the money that would have been paying  
 9 the flooring line of credit taken out of that particular  
 10 account?  
 11 A. Yes.  
 12 Q. And did you receive any sort of statements  
 13 from Wells Fargo regarding that account?  
 14 A. Yes.  
 15 Q. Those statements came to you?  
 16 A. A copy, yeah. After Jan was done with them,  
 17 the statements came to me.  
 18 Q. That was monthly?  
 19 A. Yes.  
 20 Q. Did Ron see those?  
 21 A. I don't know whether he did or not. They  
 22 were available to him.  
 23 Q. One thing I'm wondering, too -- I mean, I  
 24 understand the \$300,000 was in arrears. Is that  
 25 \$300,000 gone?



Page 129

1 A. Ron had to come up with money to pay it.  
 2 Q. Where did it go? I mean, a car was --  
 3 A. In -- in the business? Where did the -- why  
 4 wasn't the money there?  
 5 Q. Well a car was sold; right?  
 6 A. Correct.  
 7 Q. What was done with the proceeds of that  
 8 vehicle?  
 9 A. Bills paid, I guess. Salaries paid, I  
 10 guess. Vehicles bought, I guess.  
 11 Q. That went into the business account?  
 12 A. Yes.  
 13 Q. On all of these vehicles that were in  
 14 arrearages on, all of that money went into the business  
 15 account?  
 16 A. Yes.  
 17 Q. And so, I mean, were you guys spending  
 18 \$300,000 more for that time period than you normally  
 19 would be?  
 20 A. You know, I -- I was shocked when we found  
 21 out we were 300,000 in arrears. But that could be ten  
 22 new cars.  
 23 Q. Do you have any idea, or is there any sort  
 24 of paper trail that would show us where this \$300,000  
 25 went?

Page 130

1 A. It would just have to be through Thomas  
 2 Motors' checking account.  
 3 Q. And do you know what time period this money  
 4 was lost in? What time period that would cover?  
 5 A. Well, flooring checks are done quite often.  
 6 I don't know for sure. Flooring checks are done at  
 7 least quarterly.  
 8 Q. Quarterly?  
 9 Have you seen any documentation that would  
 10 support the fact that these vehicles that were sold,  
 11 that the proceeds from those vehicles were placed in  
 12 your Wells Fargo account?  
 13 A. No, I wouldn't.  
 14 Q. You haven't seen anything?  
 15 A. I wouldn't have seen that, no.  
 16 Q. But your testimony is that the money was  
 17 placed in the Wells Fargo account?  
 18 A. That's the only way you can get it is  
 19 through them putting it in there.  
 20 Q. Who?  
 21 A. Wells Fargo.  
 22 Q. What do you mean?  
 23 A. Wells Fargo would have put the money into  
 24 the account. Jan would have told me if it hadn't been  
 25 in there.

Page 131

1 Q. Okay. I guess what I'm asking is -- okay.  
 2 Wells Fargo puts money in the account. You guys --  
 3 Thomas Motors purchases inventory, right, out of that  
 4 account?  
 5 A. No. No.  
 6 Q. No?  
 7 A. You don't get the money put into the account  
 8 until you buy the vehicle. Let them know what that  
 9 vehicle is, and a booking sheet of what that vehicle is  
 10 worth. Then they will put the money in there.  
 11 Q. Okay. So you purchase the vehicle, and then  
 12 you let Wells Fargo know. And then Wells Fargo puts the  
 13 money in the account?  
 14 A. Exactly.  
 15 Q. And then what do you do with the money  
 16 that's in the account?  
 17 A. The flooring -- pay for the vehicle you  
 18 bought. Then you have to pay Chrysler. If it's a new  
 19 car, it comes from Chrysler, and the bank will pay  
 20 Chrysler automatically.  
 21 Q. Okay.  
 22 A. If it's a new car -- a used car coming from  
 23 like an auction or, say, you traded one in, and you have  
 24 that much value in that car, and you want to turn it  
 25 back into -- instead of a trade, you want to turn it

Page 132

1 back into cash, you floor that vehicle, and that puts  
 2 that much cash into your account.  
 3 Q. So does the money never leave the account?  
 4 I guess it does, because you would send it  
 5 to Chrysler for a new vehicle; right?  
 6 A. Right.  
 7 Q. Or you would send it --  
 8 A. And then the bank would send it to Chrysler.  
 9 Q. But in terms of, say, a used vehicle, you  
 10 would actually use that money to purchase the vehicle;  
 11 right?  
 12 A. Yes. But then a check would have to be  
 13 written to wherever we purchased the vehicle from.  
 14 Q. I see. So does Thomas Motors not have, I  
 15 guess, access to write checks on that account? Or do  
 16 they?  
 17 A. Same account.  
 18 Q. So they could write checks on that account?  
 19 A. Yes.  
 20 Q. So potentially they could write a check on  
 21 that account that would take money that was put there by  
 22 the bank for the flooring line of credit?  
 23 A. Yes.  
 24 Q. Okay. So after a car -- or after one of  
 25 these vehicles is sold, if we wanted to see where the



Page 133

1 proceeds from the sale went for that car, where would we  
 2 look?  
 3 A. In the bank statement.  
 4 Q. That's presuming it was put into the bank;  
 5 right?  
 6 A. Correct. If somebody come in and purchased  
 7 a car and wrote you a check for it, you assumed it would  
 8 go into the -- or if they had it financed through some  
 9 other institution, they would -- they could put the  
 10 money automatically into the account, if you're set up  
 11 to do automatic deposits with that lending institution.  
 12 Q. Okay. All right. So based on what was  
 13 missing at the time in August, September of 2000, were  
 14 they able to identify specific vehicles?  
 15 A. Yes.  
 16 Q. They were?  
 17 A. Because the vehicles were not paid off, and  
 18 they weren't sitting on the lot. And so they go to you  
 19 and say, was this vehicle sold? And you would show them  
 20 the date it was sold, and who it was sold to.  
 21 Q. And so do you -- I'm sorry. Do you have  
 22 documentation to show which vehicles weren't paid back  
 23 on the flooring line of credit?  
 24 A. Thomas Motors would, yes.  
 25 Q. Okay. Did you see that document at the

Page 134

1 time?  
 2 A. Not that document. Penny would make me a  
 3 document over which -- just a handwritten sheet showing  
 4 me the stock number, the vehicle, the customer who  
 5 bought it, when it was funded, how much needed to be  
 6 paid off, and if it was paid off.  
 7 Q. Okay. Now, was any effort made by you guys  
 8 to take a look at those vehicles that somehow escaped  
 9 being paid to sort of trace where the money went on  
 10 those vehicles?  
 11 A. It had to go through the checking account.  
 12 Q. Did it, though?  
 13 A. I just assume, yes.  
 14 Q. Have you seen anything that shows you that  
 15 it did?  
 16 A. Whether it was a bill being paid --  
 17 Q. No, no, no. What I'm wondering, you sell a  
 18 car to Mr. Williams, for example, would we be able to  
 19 see where Mr. Williams' check was deposited into the  
 20 Wells Fargo account, which would be the proceeds from  
 21 that vehicle?  
 22 A. If they identified him on the deposit, yes.  
 23 Q. Okay. And what I'm asking, I guess, did  
 24 Thomas Motors do anything to try to trace the money from  
 25 those individual cars that were missing, the proceeds?

Page 135

1 A. Not to my knowledge.  
 2 Q. Would they have the documentation, say, a  
 3 check from Mr. Williams, for example, would that still  
 4 be something that --  
 5 A. Yes.  
 6 Q. -- Ron Thomas would have?  
 7 A. Well, yes, that he would have now, the  
 8 Thomas Motors' files.  
 9 Q. Now, we've looked at the management  
 10 contract. I'm going to have this marked as -- are we at  
 11 Exhibit 3?  
 12 COURT REPORTER: Uh-huh.  
 13 (Deposition Exhibit No. 3 was marked.)  
 14 MR. WILKINSON: While I'm at it, I'm just going to  
 15 mark Exhibit 4.  
 16 (Deposition Exhibit No. 4 was marked.)  
 17 Q. (BY MR. WILKINSON) All right. Shirley,  
 18 you've been handed what's been marked as Exhibit No. 3  
 19 and No. 4.  
 20 Do you recognize those?  
 21 A. Yes.  
 22 Q. Okay. In regard to Exhibit No. 3, what is  
 23 that?  
 24 A. This is a lease and purchase agreement.  
 25 Q. In regard to Exhibit No. 4, what is that?

Page 136

1 A. It's the agreement for purchase and the sale  
 2 of the business assets.  
 3 Q. Okay. And how do you recognize these  
 4 documents?  
 5 A. Well, the title, for one. The signatures,  
 6 for one.  
 7 Q. Okay. And you're looking at Exhibit No. 3  
 8 right now; correct?  
 9 A. Correct.  
 10 Q. Now you're looking at Exhibit No. 4; is that  
 11 correct?  
 12 A. Correct.  
 13 Q. And what are you looking at?  
 14 A. The agreement to purchase, and the sale of  
 15 the business assets.  
 16 Q. You're looking at the signature page; is  
 17 that right?  
 18 A. Correct.  
 19 Q. And what signatures do you see there?  
 20 A. Ron and Drew Thomas.  
 21 Q. Now, in regard to Exhibits No. 3 and 4, the  
 22 commercial lease and purchase agreement, and the  
 23 agreement for purchase and sale of business assets, did  
 24 you maintain these documents in files?  
 25 A. Yes.

Page 137

1 Q. All right. And when approximately did you  
 2 receive these documents?  
 3 A. The signed ones?  
 4 Q. Correct.  
 5 A. Ron brought them over to me.  
 6 Q. Both of these?  
 7 A. Yes.  
 8 Q. All right. And when did Ron bring them to  
 9 you?  
 10 A. He come from Thomas Motors, him and Elaine  
 11 had signed, and they came in and handed them to me.  
 12 Q. Where were you when he handed them to you?  
 13 A. In my office.  
 14 Q. At Lot of Cars?  
 15 A. At Lot of Cars.  
 16 Q. Who else was there at your office?  
 17 A. Sandy was probably in her office. I doubt  
 18 if anybody else was in the office. The guys would have  
 19 been in back.  
 20 Q. What was Sandy's last name?  
 21 A. Mills.  
 22 Q. Did sandy see Ron give you these documents?  
 23 A. I don't know.  
 24 Q. Did anybody, to your knowledge, see Ron give  
 25 you these documents?

Page 138

1 A. I wouldn't know that. If Sandy was the only  
 2 other one in the office, whether she was watching what  
 3 was going on or not, I don't know. Or what they were.  
 4 Q. I'm sorry. In regard to Exhibit No. 3,  
 5 which is the commercial lease and purchase agreement,  
 6 what did Ron say to you when he handed you this  
 7 document?  
 8 A. Just you need to -- said we signed this. We  
 9 need to put them in the file.  
 10 Q. All right. Did you look at the document?  
 11 A. No.  
 12 Q. You didn't?  
 13 A. Not at that time, no.  
 14 Q. All right. So did you open it up at all?  
 15 A. I opened up, yes, to see if signatures were  
 16 on it.  
 17 Q. Oh, you did?  
 18 A. Yes.  
 19 Q. So you did open it up?  
 20 A. Not to read, just to make sure signatures  
 21 were on it.  
 22 Q. Why?  
 23 A. Because I didn't know whether or not I was  
 24 to keep it out, or we was going in the file to be done,  
 25 if something else needed to be done to it.

Page 139

1 Q. Well, Ron told you that it needed to be  
 2 filed, didn't he?  
 3 A. Yeah.  
 4 Q. All right. And despite that, you still  
 5 opened it up to see that there were signatures?  
 6 A. I did.  
 7 Q. And at that particular point in time were  
 8 there signatures?  
 9 A. Yes.  
 10 Q. And I'll turn your attention to page 22 of  
 11 Exhibit 3, which is the commercial lease and purchase  
 12 agreement.  
 13 A. 23. Okay. 22  
 14 Q. 22, yeah.  
 15 Do those appear to be the same signatures  
 16 that were on that page on the day that you received this  
 17 from Ron Thomas?  
 18 A. Yes.  
 19 Q. And when did you receive this document from  
 20 Ron Thomas?  
 21 A. It was on the day that the last signature  
 22 was on this -- on the -- this one isn't dated, though.  
 23 Q. Exhibit 3, you just said it's not dated.  
 24 What do you mean?  
 25 A. On the signature. Just when the date when

Page 140

1 they were signed.  
 2 Q. Let's look at Exhibit 4 and see if that  
 3 helps you out. And I'm looking at page 9. What is  
 4 that?  
 5 A. Signatures. That was for the purchase of  
 6 the business assets.  
 7 Q. And are those signatures dated?  
 8 A. Yes.  
 9 Q. And what is the date?  
 10 A. September 19th.  
 11 Q. Okay. The first signature is Ron Thomas; is  
 12 that correct?  
 13 A. Yes.  
 14 Q. Which is dated September 16th?  
 15 A. Right.  
 16 Q. And then Drew Thomas, which is dated  
 17 September 19th?  
 18 A. Correct.  
 19 Q. And then on the next page, you have the  
 20 signature of Ron and Elaine Thomas, which are both dated  
 21 the 16th of September, 2000?  
 22 A. Uh-huh.  
 23 Q. Exhibits 3 and 4, were these both handed to  
 24 you at the same time by Ron Thomas?  
 25 A. Yes.

Page 141

1 Q. And do you remember when that was?  
 2 A. He come from Thomas. The last signatures  
 3 had been put on it. And he brought it over and gave it  
 4 to me.  
 5 Q. What did he tell you about how he acquired  
 6 the documents that particular day?  
 7 A. He had come from Thomas Motors.  
 8 Q. About what time did you meet with him, do  
 9 you remember?  
 10 A. Time of the day?  
 11 Q. Yeah.  
 12 A. It was in the afternoon, I think.  
 13 Q. All right. So he came from Thomas Motors.  
 14 Did he tell you that?  
 15 A. Yes.  
 16 Q. He walked into Lot of Cars. And did he have  
 17 these documents with him?  
 18 A. Yes.  
 19 Q. Did he have any other documents with him?  
 20 A. Not that I know of.  
 21 Q. All right. What were his specific  
 22 instructions to you in regards to Exhibits 3 and 4?  
 23 A. Just to file them.  
 24 Q. And after you were told to file them, what  
 25 did you do?

Page 142

1 A. Put them in his personal file.  
 2 Q. You checked the signatures first; is that  
 3 right?  
 4 A. I did.  
 5 Q. All right. Did you check the signatures on  
 6 Exhibit 4?  
 7 A. Yes.  
 8 Q. And you also checked the signature on  
 9 Exhibit 3?  
 10 A. Yes.  
 11 Q. And were all the signatures there?  
 12 A. Yes.  
 13 Q. And then they were placed in the personal  
 14 file?  
 15 A. Yes.  
 16 Q. When is the next time that you set eyes  
 17 again on these documents?  
 18 A. When the demand letter came from Drew.  
 19 Q. All right. So approximately six years  
 20 later?  
 21 A. Oh, wow. Yeah. You -- yeah.  
 22 Q. And they were still in the same file that  
 23 you had put them in in September of 2000?  
 24 A. Yes.  
 25 Q. Did they appear to be in the same condition?

Page 143

1 A. Yes.  
 2 Q. Now, in connection with this litigation, we  
 3 have submitted affidavits signed by Rob Wilde in regard  
 4 to some of the financial transactions surrounding this  
 5 situation.  
 6 Have you seen any affidavit from Rob Wilde  
 7 that we --  
 8 A. No.  
 9 Q. -- submitted?  
 10 A. No.  
 11 Q. We also submitted an affidavit from Jan  
 12 Flowers.  
 13 Have you seen that affidavit?  
 14 A. No.  
 15 Q. From 2000 until 2006 when the business was  
 16 sold, did you have any conversations with Ron about this  
 17 deal that he had to sell the property to Drew?  
 18 A. Just that in the years' time Drew hadn't  
 19 activated anything on the agreement. We just figured it  
 20 wasn't in effect any longer.  
 21 Q. All right. So during this year from  
 22 September of 2000 to September of 2001, did Ron ever  
 23 have you pull these documents?  
 24 A. No.  
 25 Q. To your knowledge, did Ron ever look at

Page 144

1 these documents?  
 2 A. No.  
 3 Q. Did you have a conversation with Ron between  
 4 September of 2000 and September of 2001 regarding the  
 5 sale of the business to Drew?  
 6 A. No.  
 7 Q. When did this conversation occur that you  
 8 just were speaking of where Ron told you that he  
 9 apparently didn't activate it, he's not going through  
 10 with it?  
 11 A. We had talked, not much about this, just is  
 12 Drew going to do anything? Is Chrysler -- has he  
 13 submitted to Chrysler to be approved? And we didn't  
 14 pull the file and look at it, but we just was -- I was  
 15 commenting, because I was wondering if he was doing  
 16 anything to activate the agreement.  
 17 Q. Now, it was my understanding that when you  
 18 received these documents you looked at the signatures;  
 19 right?  
 20 A. Right.  
 21 Q. It sounds to me like you read the documents.  
 22 Did you?  
 23 A. No.  
 24 Q. So how do you know that Drew was supposed to  
 25 do something with Chrysler to activate the agreement?