

1
2
3
4
5
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8
9
10
11
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REPORTER'S RECORD
VOLUME 2 OF 5 VOLUMES
TRIAL COURT CAUSE NO. 10-07748-A

GERI TEX, L.L.C., AND DFW) IN THE DISTRICT COURT
SUPER GROUP I, L.L.C.,)
PLAINTIFFS,)
VS.) DALLAS COUNTY, TEXAS
DR. NEERAJ R. SHARMA,)
DEFENDANT.) 14TH JUDICIAL DISTRICT

TRIAL ON THE MERITS

On the 6th day of December, 2011, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Eric V. Moyé, Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by computerized stenotype machine.

DIANE L. ROBERT, CSR, RPR
TEXAS CSR NO. 2179
Expiration Date: 12/31/2012
Official Court Reporter of the 14th
Judicial District Court
Dallas County, Texas
600 Commerce Street, Dallas, Texas 75202
214-653-7298

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VOLUME 2
Trial on the Merits
December 6, 2011

	PAGE	VOL.
Appearances	8	2
Proceedings	8	2
Agreed Motion for Continuance	9	2
Court's Ruling	10	2
Motions in Limine	10	2
Court's Ruling	12	2
Jury Panel Instructed	21	2
Jury Voir Dire by Mr. Bell	25	2
Jury Voir Dire by Mr. Sands	51	2
Defendant's Motion to Strike for Cause	76	2
Court's Ruling	76	2
Jury Instructions	80	2
Opening Statement by Mr. Bell	93	2
Opening Statement by Mr. Sands	101	2
PLAINTIFFS' WITNESSES:		
Lana Sparkman Ralston	Direct	Cross V.Dire
By Mr. Bell	107 v2	
By Mr. Sands		116 v2
By Mr. Bell	117 v2	
Court's Ruling	139	2
Court's Ruling	153	2
By Mr. Sands		156 v2
By Mr. Bell	169 v2	

1	David Wayne Ralston	Direct	Cross	V.Dire	
	By Mr. Bell	172 v2			
2	By Mr. Sands		182 v2		
3	Plaintiffs rest			183	2
4	DEFENSE WITNESSES:				
5	Neeraj Sharma, M.D.	Direct	Cross	V.Dire	
	By Mr. Sands	185 v2			
6	By Mr. Bell		205 v2		
	By Mr. Sands	223 v2			
7					
8	Defendant's Motion for Directed Verdict			225	2
9	Response by Mr. Bell			227	2
10	Response by Mr. Sands			233	2
11	Evening recess			234	2
12	Adjournment			234	2
13	Reporter's Certificate			235	2
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1
2
3
4
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8
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13
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ALPHABETICAL INDEX OF WITNESSES

	Direct	Cross	V.Dire
Ralston, David Wayne	172 v2	182 v2	
Ralston, Lana	107 v2 117 v2 169 v2	156 v2	116 v2
Sharma, Neeraj	185 v2 223 v2	205 v2	

TRIAL EXHIBITS					
EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	VOL.	
1	Resolution Authorizing the Opening and Maintaining of a Bank Account and Designating the Persons Authorized to Sign Checks for Payment of Money from the Account	86	87	2	
2	Certificate of Formation of Geri Tex, L.L.C.	86	87	2	
3	2008 Schedule K-1	86	87	2	
4	Letter dated September 27, 2007, from Office of Secretary of State to Lawyer's Aid Service, Inc., Re: Geri Tex, L.L.C.	86	87	2	
5	Certificate of Filing from Office of Secretary of State	86	87	2	
6	Letter dated September 30, 2009, to George Valedon-Stevenson, M.D., from GeriTex, L.L.C., Subject: Termination of Employment	86	87	2	
7	2010 U.S. Return of Partnership Income Form 1065	86	87	2	
8	2009 Depreciation and Amortization Form 4562 for GeriTex, L.L.C.	86	87	2	
9	2009 U.S. Return of Partnership Income Form 1065	86	87	2	

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2
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EXHIBITS OFFERED BY THE PLAINTIFF

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	VOL.
1	(Unidentified)	87		2
2	(Unidentified)	87		2

EXHIBITS OFFERED BY THE DEFENDANT

EXHIBIT	DESCRIPTION	OFFERED	ADMITTED	VOL.
1	GeriTex, LLC Worksheet to Calculate Cash Available for Distribution	88	90	2

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

2 (Open Court; Proceedings commenced at 9:29 a.m.)

3 *THE COURT:* Number 10-07748, Geri Tex,
4 L.L.C., versus Sharma.

5 *MR. BELL:* James Bell for the Plaintiffs,
6 Your Honor, and Jason Friedman.

7 *MR. SANDS:* Shep Sands and Andy
8 Nicolopoulos for the Defendant, Your Honor.

9 *THE COURT:* Okay. How long you gentlemen
10 going to need to try this case?

11 *MR. BELL:* Two days.

12 *THE COURT:* How many witnesses you plan to
13 put on?

14 *MR. BELL:* Three, four. The Plaintiff's
15 case.

16 *MR. SANDS:* And we'll have at least two,
17 maybe three, Your Honor.

18 *THE COURT:* Okay. All right. You-all
19 stand by.

20 *MR. SANDS:* Thank you, Your Honor.

21 *THE COURT:* Thank you.

22 *(Pause in the proceedings; different*
23 *docket matter taken up by the Court.)*

24 *THE COURT:* All right. We are on the
25 record in 10-7748, Geri Tex versus Sharma.

1 Mr. Bell, Mr. Sands? All right. I show
2 this on our docket sheet as a non-jury trial and it
3 shows up on the system as a jury trial.

4 Let's go off the record.

5 *(Discussion off the record ensued.)*

6 **THE COURT:** Do we have any matters we need
7 to bring up before we bring up the jury?

8 **MR. DAUGHERTY:** Respectfully, Your Honor,
9 can I have five or ten minutes to set up some equipment?

10 **THE COURT:** We'll have some time for you,
11 don't worry about that.

12 Do we have anything we need to take up
13 before we bring up a jury?

14 **MR. BELL:** Maybe one thing, Your Honor.

15 **THE COURT:** Which would be?

16 **MR. BELL:** I'm not trying to go back on
17 your ruling, I just want to give you an update. I think
18 both -- I wasn't here yesterday, I think both parties'
19 clients, I'm not sure, signed off on a continuance.
20 This is what I got third hand, and that's okay, I don't
21 want to disturb the jury in pulling them up, I just
22 wanted to let you know, that's all.

23 **THE COURT:** Let me know what?

24 **MR. BELL:** I was told that one of the --

25 **MR. JASON FRIEDMAN:** We filed a new joint

1 motion with our clients' signature for a continuance
2 yesterday.

3 *THE COURT:* Okay. I'm denying that
4 motion.

5 There was a Motion for Leave to File a
6 third-party petition which was filed --

7 Are there any motions we need to take up
8 at this point? Gentlemen?

9 *MR. SANDS:* Yes, Your Honor. On November
10 the 11th Defendant/Counter-Plaintiff, Dr. Sharma,
11 filed Motion to Exclude Plaintiffs' Evidence and
12 Testimony.

13 *THE COURT:* Was that set for hearing?

14 *MR. BELL:* No.

15 *THE COURT:* Actually I see a motion filed
16 on November 30th.

17 *MR. SANDS:* I'm sorry, Your Honor, I
18 misread that.

19 *THE COURT:* That's all right.

20 We have what appears to be one Motion in
21 Limine.

22 *MR. SANDS:* Your Honor, there was -- our
23 Motion in Limine was e-Filed.

24 *THE COURT:* When?

25 *MR. SANDS:* This morning.

1 *THE COURT:* Is there a -- are motions in
2 limine addressed in the Scheduling Order?

3 *MR. SANDS:* I'm sorry, Your Honor, I
4 didn't hear that.

5 *THE COURT:* That does not appear on the
6 system. Have you gentlemen conferred meaningfully about
7 one another's -- with regard to your motions in limine?

8 *MR. BELL:* I'm sorry, Your Honor?

9 *THE COURT:* Have you gentlemen conferred
10 meaningfully with regard to your motions in limine?

11 *MR. SANDS:* No, sir.

12 *MR. BELL:* No, Your Honor.

13 *THE COURT:* Why not?

14 *MR. JASON FRIEDMAN:* We haven't had an
15 opportunity, we were trying to schedule a mediation and
16 work out our issues and then we ended up --

17 *MR. BELL:* Happy to do it right now, Your
18 Honor, or whatever you -- the Court's convenience; you
19 tell me. I would love to confer on the Motion in
20 Limine.

21 *THE COURT:* You're supposed to confer on
22 the motion -- I note that the motion does not have a
23 Certificate of Conference. I'm not going to consider
24 either of them. Does your motion have a Certificate of
25 Conference?

1 MR. SANDS: No.

2 THE COURT: All right. Both motions are
3 denied on that basis.

4 Counsel, I'm troubled by --

5 Let's go on the record.

6 There are two Motions in Limine that are
7 filed in this matter; neither motion complies with the
8 rule in that neither motion has a Certificate of
9 Conference.

10 I understand that counsel has not
11 conferred meaningfully as they're required to with
12 regard to the -- to the Certificate of Conference.

13 I continue to be exceedingly troubled by
14 the failure of counsel to follow the rules.

15 I do not want -- I do not expect and I
16 will not tolerate lawyers that do not follow the Rules
17 of Civil Procedure and the rules of this Court.

18 Do I make myself clear?

19 MR. BELL: Yes, Your Honor.

20 MR. SANDS: Yes, Your Honor.

21 THE COURT: Sheriff, how soon will we have
22 a jury up?

23 THE BAILIFF: They're on their way and
24 we've got the lists.

25 THE COURT: Okay. All right. How long --

1 This case is going to take approximately two days to
2 try. How long do you want for voir dire?

3 *MR. BELL:* Forty-five minutes, Your Honor.

4 *THE COURT:* Typically offer 15 to 20
5 minutes per day of trial testimony. Are we going to
6 have two full days of trial testimony?

7 *MR. BELL:* I'm -- Maybe two days tops, I
8 think.

9 *MR. SANDS:* I will agree with that, Your
10 Honor, day and a half.

11 *THE COURT:* All right. Each side will
12 have 30 minutes for voir dire, ten minutes to open.

13 *MR. BELL:* Your Honor, can I motion the
14 Court for a 25-minute opening, if at all possible, if it
15 comports with the Court's scheduling?

16 *THE COURT:* Twenty-five minutes to open
17 for two days of testimony? You may -- No, I'm not going
18 to give you that much time, no.

19 Anything else we need to take up before we
20 bring up the panel? Have you gentlemen conferred with
21 regard to exhibits?

22 *MR. JASON FRIEDMAN:* No, sir.

23 *THE COURT:* Okay. You will now confer
24 with regard to exhibits. I expect the parties to reach
25 agreement with regard to the admissibility of all of the

1 exhibits except those for which either side believes
2 there is no good faith basis for the admission of said
3 exhibits. Confer immediately.

4 *(Pause in the proceedings; different*
5 *docket matter taken up by the Court.)*

6 *THE COURT:* All right.

7 *THE BAILIFF:* Number 3 and Number 28, MIA.

8 *THE COURT:* And I assume nobody knows who
9 they are, correct?

10 *THE BAILIFF:* That is correct, sir.

11 *(Sotto voce discussion ensued.)*

12 *THE COURT:* Hold on just a second,
13 Sheriff. I'm sorry, Mr. Sands.

14 *MR. SANDS:* Yes, Your Honor. Thank you.

15 I would make an objection as far as
16 Counsel for Plaintiff making any type of oral opening
17 argument during the voir dire process, because what he's
18 putting up on the PowerPoint is what I believe was going
19 to be in opening and now they're telling me they've got
20 two different ones.

21 *THE COURT:* Okay. My understanding was
22 you looked at what was given me which is a PowerPoint
23 and you said you had no objection to that being used
24 during voir dire. Did I misunderstand you, Mr. Sands?

25 *MR. SANDS:* No, Your Honor. Something's

1 developed since then and maybe it can be clarified, that
2 they have different ones and one's not complete; one
3 PowerPoint for voir dire --

4 *THE COURT:* I assume that the PowerPoint
5 which Mr. Bell gave me is the only PowerPoint that he's
6 going to put in front of the jury, that he would not put
7 something in front of the jury that he hadn't shown the
8 Court first.

9 *MR. BELL:* That's right.

10 *THE COURT:* Okay.

11 *MR. BELL:* Can I just explain one thing,
12 Your Honor?

13 *THE COURT:* I'm not sure I need an
14 explanation after that, Mr. Bell.

15 *MR. BELL:* Well, there's an opening which
16 I haven't gotten yet --

17 *THE COURT:* Mr. Bell?

18 *MR. BELL:* Okay. Yes, Your Honor.

19 *(Sotto voce discussion ensued.)*

20 *THE COURT:* Let's bring in the jury.

21 *THE BAILIFF:* Yes, sir.

22 *(Sotto voce discussion ensued.)*

23 *THE COURT:* Have a seat, gentlemen.

24 There will only be -- Counsel, there will
25 only be one person talking at a time in this Court. I

1 don't want conversations going on back and forth while
2 I'm speaking, is that clear?

3 *MR. BELL:* Yes, Your Honor.

4 *(Jury panel enters courtroom.)*

5 *THE COURT:* You may be seated.

6 Counsel, we are missing Panel Member
7 Number 3 and 28. 3 and 28.

8 Mr. Thornton, would you -- Mr. Witanra and
9 Mr. Cooley, slide down a little bit so there's a space
10 between you and Mr. Ryan.

11 And, Ms. Fowler, you and Mr. Armenta scoot
12 over. Thank you very much.

13 *THE COURT:* Good morning, ladies and
14 gentlemen.

15 *PANEL MEMBERS:* Good morning.

16 *THE COURT:* My name ...

17 *THE BAILIFF:* Juror, Judge.

18 *(Venireperson enters courtroom.)*

19 *THE COURT:* I think that's Mr. Subjeck.
20 Are you Mr. Subjeck?

21 *UNIDENTIFIED MAN:* No. I must be in the
22 wrong court. Sorry.

23 *THE COURT:* All right. Sheriff, find out
24 where he's supposed to be and then shoot him.

25 *(Laughter.)*

1 *THE COURT:* Good morning, ladies and
2 gentlemen.

3 *PANEL MEMBERS:* Good morning.

4 *THE COURT:* My name is Eric Moyé and I'm
5 the Presiding Judge of the 14th District Court of
6 Texas where you are currently serving.

7 Let me start with one preliminary matter.
8 Are there any members of the panel, and I'll just see by
9 a show of hands, who has not received a tip as to how to
10 get out of their jury service today? Anybody who didn't
11 get a tip? Okay. We've got our work cut out for us.

12 I do want to thank you for being here.
13 Before we get too far down the road in this, please keep
14 in mind that even tho- -- those of you who are not going
15 to be chosen are providing a valuable service.

16 The 12 of you who will serve on this jury
17 are providing the second most valuable service you can
18 as a citizen. The first is voting. The second is your
19 jury service. We couldn't make this process work
20 without you. The civil justice system would not work
21 without you.

22 Before I get too far down this road let me
23 ask all of you to please take a moment and turn off your
24 cellphones, your other electronic devices, turn them
25 off.

1 While you're in the court you may not
2 communicate with anyone through the use of any
3 electronic device. You may not use your phones, your
4 text message services, e-mails, chat rooms, blogs,
5 social networks or anything else that our children
6 figure out how to work like Facebook, Twitter and
7 MySpace. If you need to be reached by someone during
8 the time of your jury service, the Sheriff will give the
9 12 of you who are serving a phone number where people
10 can call in to reach you for emergencies.

11 You may not record any portion of these
12 proceedings. That is prohibited by law.

13 I said to you a moment ago that jury
14 service was your second most important obligation after
15 voting. The reason it is, is because what you do here
16 helps define us as a civilization. It defines us as a
17 civilization.

18 Alexander Solzhenitsyn said you could
19 define how civilized a society was by the way it treated
20 its prisoners. He probably had that perspective because
21 he spent meaningful time in prison.

22 I think that you can tell a lot about a
23 society by the way that it resolves its disputes. In a
24 society which resolves its disputes by trial by ordeal,
25 or trial by fire, we wouldn't think that that was a

1 particularly civilized society.

2 If we have a society that resolves its
3 disputes by who is the most willing to use violence, we
4 wouldn't think that was a very civilized society. What
5 we do here is trust 12 citizens to resolve disputes that
6 arise between parties.

7 Downstairs in the Central Jury Room we had
8 in the far back corner what was called the Freedom
9 Shrine, and that has the defining documents of our
10 civilization -- of our nation. The Declaration of
11 Independence was one of them, the Constitution was
12 another.

13 I'm sure you-all remember from your high
14 school civics the first Ten Amendments of the
15 Constitution are called the Bill of Rights. And that's
16 where the founding father's set out the rights which
17 distinguish this country from all the others in the
18 world. That's where you find the right to free speech,
19 the right to free expression of religion, the right to
20 assembly, the right to bear arms, and the right to be
21 secure in your homes and your papers and your persons
22 from intrusion from the government. And those are all
23 important rights.

24 There's only one right which is mentioned
25 in the Constitution's Bill of Rights two times; the

1 right to trial by jury. The founding father's thought
2 that that was such an important right that it needed to
3 be mentioned twice. That's how important they thought
4 the right to trial by jury was.

5 After this case is over, one side or the
6 other will have the right to appeal. And there will be
7 more reasons -- there are more bases for appeal than
8 there are people sitting in this room.

9 The one thing that cannot ever be appealed
10 is a decision that the 12 of you make with regard to a
11 finding of fact. The 12 of you who are seated as jurors
12 in this case will get an instruction from me that says
13 you are the sole determiners of the facts in dispute.

14 The Court of Appeals cannot say that you,
15 this jury, should have believed Witness 1 as opposed to
16 Witness 3. The Texas Supreme Court cannot say that you
17 should have believed these documents as opposed to those
18 documents. That's how important we take your role as
19 jurors in this case.

20 Your role is essential. We could not make
21 this process work if you were not here. And so for all
22 of the inconvenience to you and the disruption of your
23 schedules, I hope that you will keep that in mind as we
24 go through these next couple of days.

25 I hope you'll also keep in mind that in

1 the event that one of you were not a juror but instead
2 were a party in a civil lawsuit, I hope that you will
3 comport yourselves as jurors the way that you would want
4 jurors to comport themselves if you had a case that was
5 pending.

6 Enough of that, let's get on with the
7 case, shall we?

8 I'm going to give you a set of
9 instructions now that you must carefully and strictly
10 follow during your time here in this Court. In the
11 event that you do not, you may be guilty of jury
12 misconduct, in which case we would have to start this
13 process all over again. That would be a waste of your
14 time and a waste of the resources of the parties to the
15 case, so please follow my instructions.

16 My initial instructions are as follows:

17 To avoid looking like you are friendly to
18 one side of the case or the other, you should neither
19 mingle with, nor talk to, the lawyers, the witnesses,
20 the parties or anyone else who is involved in this case
21 other than the most casual of greetings such as hello or
22 good morning.

23 Now, these individuals are under the same
24 requirements and restrictions, so they will understand
25 if you are not your typically friendly self.

1 You should neither give to, nor accept
2 from, the lawyers, the witnesses, the parties or anyone
3 else involved in this case any favors however slight,
4 such as rides, food or refreshment.

5 You should not discuss this case with
6 anyone, not even with family members, in person or by
7 any other means until I have discharged you from your
8 duties in this case.

9 You should not allow anyone to discuss the
10 case with you or within your hearing. If anyone does
11 try to discuss this case with you, please tell me
12 immediately. We do not want you to be influenced by
13 something other than the evidence which has been
14 admitted in this Court.

15 The lawyers -- Excuse me. The parties,
16 through their attorneys, have the right to ask questions
17 of you about your background, your experiences and your
18 attitudes. In so doing they're not trying to meddle in
19 your personal affairs but are simply trying to be
20 thorough and choose jurors who are fair and do not have
21 a bias or prejudice in this particular case.

22 Please remember that you took an oath
23 downstairs that you would tell the truth, so you must be
24 truthful when the lawyers ask you questions and you must
25 give complete answers. If you do not answer a question

1 that applies to you, that violates the oath which you've
2 taken.

3 Sometimes a lawyer will ask a question of
4 the whole panel instead of just one person. If that
5 applies to you please raise your hand and keep it raised
6 until you've been called upon.

7 Is there anyone who does not understand
8 these first set of instructions?

9 Good.

10 I understand from the lawyers that this
11 case is going to take approximately two days to try, so
12 that you should have all of the evidence by the end of
13 the day tomorrow.

14 Mr. Bell, is that correct?

15 *MR. BELL:* Yes, Your Honor.

16 *THE COURT:* Mr. Sands, is that correct?

17 *MR. SANDS:* Yes, Your Honor, I believe so,
18 maybe even sooner.

19 *THE COURT:* Thank you very much.

20 Ladies and gentlemen of the panel, you've
21 heard it from the people who know.

22 Mr. Bell, will you introduce yourself and
23 your team please.

24 *MR. BELL:* Yes, Your Honor.

25 May it please the Court. My name's James

1 Bell; I represent DFW Super Group and Geri Tex, two
2 companies in this action, and their corporate
3 representative is a lady, she's on her way here right
4 now, Lana Ralston --

5 *(Mrs. Ralston enters the courtroom.)*

6 *MR. BELL:* In fact, here she is right
7 here. This is Mrs. Ralston. Come on and sit up here.

8 And this is Jason Friedman, he's a partner
9 at Friedman & Feiger. This is Hiawatha Daugherty, he's
10 the computer tech genius to help us put up -- put the
11 PowerPoints up.

12 *THE COURT:* Thank you very much.

13 Mr. Sands?

14 *MR. SANDS:* Yes, thank you, Your Honor.

15 My name is Shep Sands, I'm the attorney
16 with The Ashmore Law Firm, and I'm pleased to represent
17 Dr. Sharma who's sitting here. And Andy Nicolopoulos is
18 also an attorney that works for The Ashmore Law Firm.

19 *THE COURT:* Okay. Thank you very much.

20 Ladies and gentlemen of the panel, is
21 there anyone who knows anybody who's just been
22 introduced?

23 All right. Mr. Bell, you may inquire of
24 the panel.

25

1 Anybody on the first row? Anybody on the
2 second row? No problem -- If the facts and the law and
3 the evidence were to support it, everybody on the first
4 row could award \$17.1 million, right? Yes?

5 And the second row, is that true, yes?
6 And the third row, yes? All right.

7 Now, I've already introduced to you who
8 the folks are in the case. Let me tell you a little bit
9 about what the case is about. It's a partnership
10 dispute. It's a partnership dispute. And like I
11 said -- Can you-all see?

12 Lana Ralston, she's got a company called
13 DFW Super Group and it's a successful nurse practitioner
14 group, and at one point they served over, you know, 40
15 nursing homes throughout the Metroplex. Basically --
16 And she's a nurse practitioner, two Masters degrees,
17 studied forever, went to Texas Woman's, taught at Texas
18 Woman's and got two Masters degrees and she had accounts
19 with 40 nursing homes, providing the nurse practitioners
20 to help elderly folks, sick folks that needed care. And
21 that was her business, that's DFW Super Group's
22 business. You're going to hear a lot about that in this
23 trial.

24 Neeraj Sharma over here is the Defendant;
25 he's a doctor.

1 Prior to meeting my client he didn't
2 really have any clients or contacts in the nursing home
3 business and he needed somebody like Lana Ralston and
4 her company, DFW Super Group, to get into the nursing
5 home business where he could bill for visiting ill and
6 elderly patients, bill on the Medicare system, get in
7 and see quite a few patients because she serviced so
8 many accounts.

9 And so based on a couple of promises they
10 formed a partnership and it's a company called Geri Tex,
11 L.L.C.

12 And the end of the day -- You know, we're
13 here today, Dr. Sharma ended up with nearly all of the
14 clients, 40 nursing homes, most of the staff, and
15 millions of dollars; my client was left with nothing.
16 She's the one that started it.

17 Now, like I said, Geri Tex and DFW ended
18 up with little money, few clients, almost no employees,
19 on the verge of bankruptcy. This is Mrs. Ralston's
20 company that she started from the ground up. Now, first
21 question --

22 *(Sotto voce discussion ensued.)*

23 MR. BELL: Anyone here -- Here's -- Just
24 so I'm -- So I tell you, I'm a little nervous, I'm
25 just -- In voir dire there are no right or wrong

1 answers. I want y'all to feel free to speak up and
2 raise your hand and tell me about your personal -- you
3 know, if it's too personal you just tell me and maybe we
4 can -- the Judge will pull you aside and we can go in
5 and talk in private, but there are no right or wrong
6 answers, and all you -- I mean, all we ask is, you know,
7 yeah, be honest, be forthright about whether or not this
8 case is the right case for you as a juror; it might not
9 be. So there are no right or wrong answers.

10 Having said that, anybody on the first row
11 here been a partner in a business before?

12 Yes, sir. Tell me your name again.

13 *VENIREPERSON NO. 1*: My name is Farle
14 Lutian and I was a partner to a home care business in
15 2002 to 2006 in East Texas.

16 *THE COURT*: Sir, you don't have to stand
17 up, that's quite all right; you can sit down and be
18 comfortable and keep talking.

19 *VENIREPERSON NO. 1*: And we folded up the
20 business in 2009 and the name of the business is
21 Visiting Angels. So that's the extent of my
22 partnership, 50/50.

23 *MR. BELL*: You had a 50/50 partnership?

24 *VENIREPERSON NO. 1*: Yes, sir.

25 *MR. BELL*: And do you mind if I ask you --

1 Well, you don't have to tell me the name of your
2 partner. Was there just two of you, there was --

3 *VENIREPERSON NO. 1:* Yes.

4 *MR. BELL:* And y'all folded up the
5 business and -- And if I'm getting too personal you just
6 let me know to stop. But did you fold up the business?

7 *VENIREPERSON NO. 1:* Yes, sir.

8 *MR. BELL:* Did y'all have a dispute?

9 *VENIREPERSON NO. 1:* To a certain extent
10 it's personal, but I decided to leave the partnership.

11 *MR. BELL:* Okay. Thank you.

12 Anybody else? Yes, sir. What's your name
13 again?

14 *VENIREPERSON NO. 26:* Charles Roberts.

15 *MR. BELL:* And your juror number?

16 *VENIREPERSON NO. 26:* It is -- Sorry.

17 *MR. BELL:* That's all right.

18 *(Cellphone.)*

19 *THE COURT:* I did say all phones off,
20 please.

21 *MS. RALSTON:* Turning it off.

22 *VENIREPERSON NO. 26:* 354.

23 *MR. BELL:* Pardon me?

24 *VENIREPERSON NO. 26:* 354. I was a
25 partner; I owned a franchise -- retail franchise.

1 MR. BELL: And did you -- did that work
2 out well for you?

3 VENIREPERSON NO. 26: Yeah. We've ended
4 up in a sale.

5 MR. BELL: Y'all sold the company?

6 VENIREPERSON NO. 26: Yes.

7 MR. BELL: Anybody else been partners or
8 start -- Yes, ma'am. What's your name?

9 VENIREPERSON NO. 22: My name's Beverley
10 Boone. Juror Number 343, Beverley Boone. I had a 50/50
11 partnership about 20 years ago in an interior design
12 business. We were mutually able to agree on the split
13 and I offered to take over the lease and pay it all out
14 and continue the business myself.

15 MR. BELL: And she got out of the
16 business?

17 VENIREPERSON NO. 22: Uh-huh.

18 MR. BELL: And it was amicable though?

19 VENIREPERSON NO. 22: Yes, yes.

20 MR. BELL: And had it not been -- Well,
21 let me ask you this question: Did your partner steal
22 any business from you?

23 VENIREPERSON NO. 22: No.

24 MR. BELL: Did they take any clients from
25 you?

1 VENIREPERSON NO. 22: No. It was just a
2 matter of her being involved in a lot of volunteer work
3 that just took the time away from the business and I
4 realized that, but it just -- I needed the business
5 myself.

6 MR. BELL: And had your partner taken away
7 the clients or the revenues that y'all had built up, I
8 mean, how would that have made you feel, if they took
9 the business away from you somehow, without you knowing
10 about it.

11 VENIREPERSON NO. 22: Well, I certainly
12 wouldn't have liked it but, you know, honestly, at the
13 time I was in a situation where my livelihood did not
14 depend on that. So I had the resources, so I -- You
15 know what I'm saying? I saw her situation, I saw my
16 situation on it, but I don't know, I can't go back 20
17 years, you know, and say now how I would have been able
18 to do it then, but I -- I don't -- I don't know,
19 honestly.

20 MR. BELL: Thank you very much for
21 sharing.

22 Anybody else? Yes, sir. What's your
23 name?

24 VENIREPERSON NO. 27: My name is Matt
25 Gold, G O L D. 360, my juror number.

1 MR. BELL: Okay.

2 VENIREPERSON NO. 27: I'm currently a
3 partner in a CPA firm, an L.L.C. actually.

4 MR. BELL: Okay.

5 VENIREPERSON NO. 27: And partner in
6 several other businesses.

7 MR. BELL: And partnership's going well
8 and doing fine, --

9 VENIREPERSON NO. 27: Yes.

10 MR. BELL: -- yes? Okay. Anybody here
11 done any business with a nursing home?

12 Yes, Mr. --

13 VENIREPERSON NO. 1: Lutian.

14 MR. BELL: -- Lutian.

15 Anybody other than Mr. Lutian done
16 business with a nursing home in the medical field
17 possibly? No?

18 UNIDENTIFIED VENIREPERSON: Does it count
19 if my husband was there three times?

20 MR. BELL: Well, yeah, I mean it's
21 experience but, yes.

22 UNIDENTIFIED VENIREPERSON: There you go.

23 MR. BELL: Thank you.

24 Does anybody know Lana Ralston here?
25 Anybody on the first row? Anybody on the second row?

1 Third row? No?

2 Anybody know Dr. Sharma? No? Okay.

3 Now, here are a couple of statements: In
4 a business a partner should freely and willingly
5 disclose information to his partners. Anybody on the
6 first row have any feelings or opinions with respect to
7 that? And when I say "the first row", right here, any
8 feelings or opinions with respect to that statement?

9 No?

10 Everybody agree with it? You got to share
11 information freely, you got to disclose it freely and
12 voluntarily. Everybody agree on the first row, yes?

13 Everybody here on this first row? Yes?

14 Okay. What about the second row? Yes?
15 Yes?

16 Everybody agrees on the third row?

17 Okay. And what about the proposition that
18 a partner has a right to know about possible business
19 opportunities for the partnership? In other words,
20 y'all are -- y'all are doing business together and
21 another opportunity presents itself as a result of being
22 in business together, should the partner who's going to
23 develop this new business opportunity, should he tell
24 his partner about it? Everybody -- Anybody disagree
25 with that on the first row? Y'all agree? Yeah?

1 Juror number -- Juror Number 5,
2 Mr. Wintanra.

3 *VENIREPERSON NO. 5:* Witanra, actually.

4 *MR. BELL:* Okay.

5 *VENIREPERSON NO. 5:* I guess so.

6 *MR. BELL:* Yes, sir? Everybody agree?
7 Anybody have any comments or opinions with respect to
8 that statement?

9 *UNIDENTIFIED VENIREPERSON:* If the
10 opportunity's completely unrelated to, say, nursing in
11 this case.

12 *MR. BELL:* What if it's completely
13 related?

14 *UNIDENTIFIED VENIREPERSON:* Absolutely.

15 *MR. BELL:* You got to disclose it.

16 *UNIDENTIFIED VENIREPERSON:* Right. Yeah.

17 *MR. BELL:* You've got to tell your partner
18 about it, right?

19 *UNIDENTIFIED VENIREPERSON:* Yes.

20 *MR. BELL:* Okay. Now, what about the
21 proposition that a partner should never put his or her
22 own interest before the interests of either their
23 partner or the partnership itself?

24 Mr. Cooley?

25 *VENIREPERSON NO. 6:* Uh-huh.

1 MR. BELL: What's your feeling about that
2 statement?

3 VENIREPERSON NO. 6: Well, if you did --

4 MR. BELL: I don't mean to put you on the
5 spot.

6 VENIREPERSON NO. 6: That's okay, it's all
7 right. You enter into a partnership outside of your
8 personal life that's first, that's business.

9 MR. BELL: Business is business and you've
10 got -

11 VENIREPERSON NO. 6: Business is business.

12 MR. BELL: -- and you've got to put your
13 partners first.

14 VENIREPERSON NO. 6: Absolutely, one
15 hundred percent.

16 MR. BELL: You got to tell the truth.
17 Everybody agree that you've got to be
18 loyal to your partners? Yeah? Okay.

19 And you've got to disclose the money you
20 make from the partnership, right? Everybody on the
21 first row agree? Does anybody have an opinion that they
22 would like to share? Help me out here; I feel like I'm
23 doing all the talking.

24 Yes, sir?

25 VENIREPERSON NO. 24: I might have a

1 little problem with the one right before that if I may.

2 MR. BELL: Sure.

3 VENIREPERSON NO. 24: I mean, if you're in
4 a partnership --

5 MR. BELL: This one.

6 VENIREPERSON NO. 24: Yeah. If you're in
7 a partnership and an opportunity comes, I mean, I think
8 that you may tell them about an opportunity but you may
9 want to pursue that opportunity if it, you know, is
10 something better for you. Does that make sense?

11 MR. BELL: That makes sense but would you
12 agree with me that you have got to -- I mean, I'm not
13 trying to put words in your mouth, but would you agree
14 that you've still got to tell your partner about it, you
15 can't just do it --

16 VENIREPERSON NO. 24: Yeah.

17 MR. BELL: -- behind their back or
18 covertly, would you agree with that?

19 VENIREPERSON NO. 24: Oh, yeah, I wouldn't
20 do it behind their back, but your statement is "should
21 never put his or her interests before the interests of
22 the partnership" which I think generally that's okay,
23 but if you have a situation where you might be able to
24 branch out or, you know, leave the partnership, you
25 know, you should be able to do that but, yes, you should

1 be forthright and tell your partner what you're looking
2 at.

3 MR. BELL: Thank you very much. I --
4 Thank you very much. Does everybody agree with -- Tell
5 me, Mr. ...

6 VENIREPERSON NO. 24: Bruce Tanner, 352.

7 MR. BELL: Mr. Tanner.

8 Anybody have any different views than
9 Mr. Tanner?

10 UNIDENTIFIED VENIREPERSON: I guess for me
11 it would be a matter of what does the partnership
12 contract say.

13 MR. BELL: What if it's oral, the
14 partnership agreement?

15 UNIDENTIFIED VENIREPERSON: I don't
16 believe in those.

17 MR. BELL: So --

18 UNIDENTIFIED VENIREPERSON: I don't
19 either.

20 MR. BELL: Okay. Well, that's a good --
21 that's interesting.

22 UNIDENTIFIED VENIREPERSON: When you're
23 going into a partnership and it's a serious business
24 like that, I just don't believe in oral contracts.

25 MR. BELL: What if one of your -- What if

1 the partner refuses to sign the agreement? You sign
2 off -- He agrees to it, you sign off on it, he agrees to
3 all of the provisions, you sign off on it but he never
4 puts his signature on it.

5 *UNIDENTIFIED VENIREPERSON:* I wouldn't do
6 that.

7 *MR. BELL:* Okay. Anybody here agree that
8 oral partnership agreements -- an agreement to be a
9 partner -- if -- Well, let me back up. We're here in
10 Texas, right? I mean, your word is your bond. How many
11 people agree with that proposition? Right?

12 *UNIDENTIFIED VENIREPERSON:* Used to be.

13 *MR. BELL:* Used to be.

14 *(Laughter.)*

15 *MR. BELL:* Still -- For you your word is
16 your bond, though, right?

17 *UNIDENTIFIED VENIREPERSON:* (Nods head
18 affirmatively.)

19 *MR. BELL:* And your word is your bond,
20 right?

21 *UNIDENTIFIED VENIREPERSON:* (Nods head
22 affirmatively.)

23 *MR. BELL:* Yeah, I mean, you got to tell
24 the truth and if you say that you're going to be oral
25 partners and you're going to be partners, then it means

1 you're partners, doesn't it, whether you've got a signed
2 agreement, a written agreement or not. At the end of
3 the day, if y'all shook on it and money's exchanging
4 hands, is it -- is it still your view you're not a
5 partner?

6 *UNIDENTIFIED VENIREPERSON:* Not legally,
7 no.

8 *MR. BELL:* No?

9 *UNIDENTIFIED VENIREPERSON:* I think people
10 are naive to believe so, they're naive to believe.

11 *MR. BELL:* That you would be --

12 *UNIDENTIFIED VENIREPERSON:* That you enter
13 into a partnership with a large sum of money or business
14 or interest and that the verbal word is going to stick,
15 I mean, that's -- I mean, you're talking back in the
16 '50s and '60s, yes, that's the way it was but now these
17 days the morals are totally different.

18 *MR. BELL:* What if you don't have an
19 oral -- Well, how many -- Tell me your name, ma'am.

20 *VENIREPERSON NO. 9:* Petrita Rodriguez,
21 257.

22 *MR. BELL:* Mrs. Rodriguez?

23 *VENIREPERSON NO. 9:* Uh-huh.

24 *MR. BELL:* How many people agree with
25 Mrs. Rodriguez? You can raise your hands.

1 (Show of hands.)

2 UNIDENTIFIED VENIREPERSON: What did she
3 say, I'm sorry?

4 MR. BELL: Go ahead.

5 VENIREPERSON NO. 9: That was a long
6 winded --

7 MR. BELL: Give us the short version.

8 VENIREPERSON NO. 9: The short version is
9 I think people are naive to believe that if they enter
10 into an oral agreement that in the next five or ten
11 years that would stick, in a court. It's just not
12 binding.

13 MR. BELL: Well, let me ask you this: If
14 the law said that oral contracts -- and Judge Moyé is
15 going to give you what the law is. Okay? If the law
16 said that oral contracts and oral partnerships are
17 valid, they're just as enforceable as those that are
18 written down, would you, Mrs. Rodriguez, be able to
19 follow the law and follow the --

20 VENIREPERSON NO. 9: Absolutely,
21 absolutely.

22 MR. BELL: And how about -- would -- Tell
23 me your name, ma'am.

24 VENIREPERSON NO. 10: Elizabeth Todd.

25 MR. BELL: Elizabeth Todd. And would you

1 be able to follow the law and the facts even if you had
2 an oral partnership and an oral contract?

3 *VENIREPERSON NO. 10:* Yeah. I think the
4 difficult part would be that he said/she said part
5 without it in print, in writing, to see exactly what,
6 you know, he said/she said, then it becomes, you know,
7 the oral part gets a little jumbled.

8 *MR. BELL:* Sure. I understand.

9 But everybody here would be able to
10 follow -- And you, ma'am, you would be able to follow
11 the law as Judge Moyé instructs us, that oral
12 partnerships and oral contracts are just as enforceable
13 as written ones? Yes? Or no? It's okay, there are no
14 right or wrong answers here.

15 *UNIDENTIFIED VENIREPERSON:* If the law
16 says it but it's still going to be extremely muddy.

17 *MR. BELL:* Still muddy?

18 *UNIDENTIFIED VENIREPERSON:* Still muddy
19 because there's just no -- I don't know.

20 *MR. BELL:* What if you have a reliance
21 factor? What if you've got a company worth 12 to
22 \$17 million and you go into a partnership with a doctor
23 and he basically steals every single one of your
24 contracts, steals every single one of your nurse
25 practitioners, in that case would you be -- are those --

1 is that one of those kind of factors where you would
2 say, you know what, more likely than not they had an
3 enforceable agreement. Would that be one of those
4 situations?

5 What's your name, ma'am?

6 *VENIREPERSON NO. 12:* Valerie.

7 *MR. BELL:* Valerie?

8 *VENIREPERSON NO. 12:* Opry.

9 *(Interruption by the reporter.)*

10 *MR. BELL:* What's your --

11 *VENIREPERSON NO. 12:* Valerie Opry, 232.

12 232.

13 *MR. BELL:* What's your opinion?

14 *VENIREPERSON NO. 12:* I guess -- I'm not
15 really aware of the oral contract law but I guess if
16 it's enforceable then -- but I just have to hear the --
17 have to hear it all.

18 *MR. BELL:* Sure. If -- If my client had
19 40 nursing homes -- Well, hypothetically my client had
20 40 nursing homes and lost all the contracts because she
21 decided to do business with a doctor, would -- but the
22 agreement wasn't in writing, would you tend to want to
23 enforce an agreement after she's lost all of her
24 business, would you tend to want to believe her that
25 there really was an agreement, that she was willing to

1 contribute all her time, her labor, her millions of
2 dollars in investments, would you be willing to --

3 *THE COURT:* Just a minute, ma'am.

4 *MR. SANDS:* Your Honor, I would object
5 that counsel's trying to get a commitment at this time
6 based on facts that are not in evidence and never will
7 be in evidence.

8 *THE COURT:* Objection is sustained.
9 Rephrase your question, please, Mr. Bell.

10 *MR. BELL:* I'm going to --

11 Your Honor, how much time do I have left?

12 *THE COURT:* You have 8 minutes and 40
13 seconds.

14 *MR. BELL:* Thank you, Your Honor.

15 Thank you all for ... Okay. I'm going to
16 talk about a new area a little bit. In Texas we've got
17 partnerships -- Anybody here know what the term
18 "fiduciary duty" means? Have you heard it? Yes?

19 *VENIREPERSON NO. 2:* It's your
20 responsibility to do good for the business, whatever
21 that may be, to -- you know, to the partnership.

22 *MR. BELL:* Right. Can you say it louder?

23 *VENIREPERSON NO. 2:* It's your
24 responsibility to -- in all your dealings in the
25 business to do what is best for the business.

1 MR. BELL: That's right. Do you-all agree
2 with that -- Tell me your name again, sir.

3 VENIREPERSON NO. 2: Ryan, Vincent.

4 MR. BELL: Do you agree with that
5 proposition, sir?

6 VENIREPERSON NO. 2: Yes.

7 MR. BELL: Yes? Everybody here on the
8 first row?

9 And everybody agree on the first row that
10 partners, you owe each other a duty of loyalty? How
11 many people, if you can raise your hand, agree with that
12 position?

13 *(Show of hands.)*

14 MR. BELL: You've got to be loyal to each
15 other, right? How many people agree that when you're
16 dealing with each other you got to deal in good faith
17 and deal with each other fairly?

18 How many people on the first row, if you
19 could just raise your hand because I'm going to try and
20 get through this a little quicker. Yes?

21 You got to be honest, right? You got to
22 be honest. Everybody on the first row agree with that?
23 Second row? Everybody agrees with that. Good.

24 And what about self-dealing? This is an
25 interesting concept. What does it mean to self-deal?

1 VENIREPERSON NO. 1: To get to a contract
2 or get business outside of the realm of your
3 partnership. Nothing to do with, you know, I want to do
4 this for myself without -- for my own benefit, not for
5 the benefit of the partnership or my partner.

6 MR. BELL: And not tell your partner about
7 these new opportunities or tell your partner about the
8 money you're making on the side, right?

9 VENIREPERSON NO. 1: Well, it's --
10 self-dealing by -- by itself is, well, it's
11 self-explanatory, you deal for yourself.

12 MR. BELL: That's right.

13 VENIREPERSON NO. 1: Uh-huh, you know.

14 MR. BELL: That's right. And how many
15 folks, just because I'm running short on time, on the
16 first row, self-dealing is wrong. Yes?

17 Okay. You got to act with integrity,
18 you've got to disclose everything. What about
19 accounting? Do you have to account to your partner?
20 What's your name?

21 VENIREPERSON NO. 7: Paul Christy, Paul
22 Christy. 251, I believe.

23 MR. BELL: Sure. And, Mr. Christy, do you
24 believe that you got to account to your partners, the
25 money? So you've got two partners in a partnership,

1 you've got to say, listen, we made X amount in revenues,
2 here were all of our expenses, and at the end of the day
3 we've got a net of X amount and you get 50 percent and I
4 get 50 percent. How many people agree that that's
5 probably the way you should do it? Yes? Yes?

6 *UNIDENTIFIED VENIREPERSON:* Yes.

7 *MR. BELL:* We talked about opportunities,
8 now I want to talk to you a little bit just briefly
9 about the burden of proof in a case.

10 Now, in a -- in a -- how many people know
11 what the burden of proof is in a criminal case? Beyond
12 a reasonable doubt, right?

13 And in a civil case the burden is much
14 lower for the Plaintiff, okay? It's -- We must prove
15 our case, my client's case, by a preponderance of the
16 evidence. And what that means is it's the greater
17 weight of the credible evidence, okay? And it's
18 basically 50.1 to 49.9 or 51/49. So if these two note
19 pads were equal in size -- if the Defendant produced
20 that much evidence, and assume these pads are equal, and
21 we produced this much evidence but I had one little
22 index card more, who meets the burden?

23 *UNIDENTIFIED VENIREPERSON:* Index card.

24 *MR. BELL:* Index card. How many people
25 agree that index card wins? I just got to show one

1 little bit more, right?

2 All right. Now, does anybody believe
3 since we're the Plaintiff in this case that I ought to
4 -- that I need to prove my case by more than a
5 preponderance of the evidence, more than -- if our
6 evidence is equal, more than an index card? Anybody --
7 Anybody believe that?

8 First row, everybody agree that that's all
9 I need to show -- the Plaintiff needs to show? Yes?

10 UNIDENTIFIED VENIREPERSON: (Nods head
11 affirmatively).

12 MR. BELL: Okay. Now, in this --

13 THE COURT: I'm sorry, would you -- Was
14 that a yes? Which juror was that, please?

15 VENIREPERSON NO. 12: Yes. 232.

16 THE COURT: Would you hold up your hand
17 for us, please? Thank you, Ms. Opry.

18 VENIREPERSON NO. 12: (Nods head
19 affirmatively.)

20 THE COURT: Thank you.

21 MR. BELL: Thank you. Now, at the end of
22 the day, you know, I believe the evidence in this case
23 is going to show that DFW Super Group and --

24 MR. SANDS: Your Honor, I would object
25 that he's making argument.

1 *THE COURT:* Objection is overruled.

2 Proceed.

3 *MR. BELL:* Thank you, Your Honor.

4 I believe at the end of the day this case,
5 after all the evidence, and it's going to be short,
6 you're going to hear testimony, and that's what really
7 counts in this case, what you're going to hear in the
8 box, the testimony from the witnesses, that my client's
9 entitled to 17 -- This is a big and important case for
10 her, huge. Spent her whole life building this company.
11 She's going to ask -- and I think the evidence is going
12 to show that she's entitled to \$17.1 million.

13 Anybody here an the first row -- This is
14 really important, that you speak freely, it's okay.
15 Anybody believe that I ought -- that the Plaintiffs need
16 to show more than a preponderance, like, maybe beyond a
17 reasonable doubt or a different burden, that I've got to
18 show a little bit more than that 51 percent, or
19 51.1 percent, or that index card to get to that
20 \$17.1 million number, if the facts and the evidence show
21 it? Anybody here on the first row?

22 No? You're okay with that?

23 *UNIDENTIFIED VENIREPERSON:* (Nods head
24 affirmatively.)

25 *MR. BELL:* You, sir?

1 UNIDENTIFIED VENIREPERSON: I'm okay with
2 it.

3 MR. BELL: You, sir?

4 UNIDENTIFIED VENIREPERSON: Yeah.

5 MR. BELL: Yes?

6 UNIDENTIFIED VENIREPERSON: (Nods head
7 affirmatively.)

8 MR. BELL: Yes, ma'am?

9 UNIDENTIFIED VENIREPERSON: (Nods head
10 affirmatively.)

11 MR. BELL: Yes, ma'am?

12 UNIDENTIFIED VENIREPERSON: (Nods head
13 affirmatively.)

14 MR. BELL: Sir?

15 UNIDENTIFIED VENIREPERSON: Yes.

16 MR. BELL: Ma'am?

17 UNIDENTIFIED VENIREPERSON: Yes.

18 MR. BELL: Everybody on the second row?

19 SECOND ROW: (Nodding heads
20 affirmatively.)

21 MR. BELL: Everybody on the second row
22 over here? Anybody have any comments, opinions, tell me
23 why I'm wrong or what I did wrong. Everybody's on board
24 with that proposition? Does anybody have any comments
25 about it?

1 VENIREPERSON NO. 19: I wanted to bring up
2 that I did have a partnership with another couple. Me
3 and my wife did a hair salon in Garland in '91 and it
4 didn't work out very well. They did things that were
5 not right and they didn't say anything about it.

6 MR. BELL: And y'all got harmed.

7 VENIREPERSON NO. 19: Yes.

8 MR. BELL: And if you're harmed because
9 somebody's not honest, because somebody didn't tell the
10 truth, because your partner wasn't loyal, do you think
11 that that person ought to pay?

12 VENIREPERSON NO. 19: Absolutely.

13 MR. BELL: How many -- Tell me your name,
14 sir.

15 VENIREPERSON NO. 19: Larry Dilda, 318.

16 MR. BELL: Dilder?

17 VENIREPERSON NO. 19: Dilda.

18 MR. BELL: Mr. Dilda.

19 How many people agree with Mr. Dilda,
20 raise your hand, please.

21 *(Show of hands.)*

22 *(Timer.)*

23 THE COURT: Thank you; that's your time.

24 MR. BELL: Thank you, Your Honor.

25 Thank you very much, ladies and gentlemen,

1 for your honesty. Thank you.

2 *THE COURT:* Mr. Sands, do you wish to
3 inquire of the panel?

4 *MR. SANDS:* Yes, Your Honor; thank you.

5 *THE COURT:* You may proceed.

6 *MR. SANDS:* Thank you, Your Honor.

7 **JURY VOIR DIRE**

8 **ON BEHALF OF THE DEFENDANT**

9 *MR. SANDS:* Good morning, almost good
10 afternoon. Many of the questions and what was covered
11 here we would agree to, we would share some of this
12 obviously. Quite frankly, I'm shocked at this amount
13 that was placed on here so I won't be covering this --
14 what was it, 17 million?

15 *MR. BELL:* 17.1.

16 *MR. SANDS:* Which we've never heard before
17 today. In fact, --

18 *THE COURT:* Excuse me, Counsel.

19 *MR. SANDS:* Yes, Your Honor?

20 *THE COURT:* Inquire of the panel. That's
21 argument; that's inappropriate.

22 *MR. SANDS:* Thank you, Your Honor.

23 I would like to know -- Initially it was
24 shown what your thoughts were with regard to frivolous
25 lawsuits. And, of course, that's been in the news for

1 years, decade now. I would like to know each of you
2 what your thought is if someone gets their feelings hurt
3 because a business deal, partnership maybe didn't go as
4 they expected and then they try to go down -- run down
5 to the courthouse and get some type of windfall, what
6 would your thoughts be that that could be a frivolous
7 lawsuit?

8 And you are Mr. Farle.

9 *VENIREPERSON NO. 1:* Yes, sir.

10 *MR. SANDS:* Would you agree that if
11 someone tried to do that, that that would be considered
12 a frivolous lawsuit if that had no basis in law or fact?

13 *VENIREPERSON NO. 1:* It could be.

14 *MR. SANDS:* It could be. Thank you.

15 Mr. Ryan?

16 *VENIREPERSON NO. 2:* Yeah, it's -- That's
17 a tough one there. If -- I think spilling coffee on
18 yourself and suing is a frivolous lawsuit. But when it
19 comes to partnerships that's sketchy, but you did
20 mention law and fact. It depends on where the law
21 stands on that --

22 *MR. SANDS:* Thank you.

23 *VENIREPERSON NO. 2:* -- that partnership.

24 *MR. SANDS:* Thank you. You are Mr. -- I'm
25 sorry. -- Juror Number --

1 *VENIREPERSON NO. 6:* Cooley, 240.

2 *MR. SANDS:* And what are your thoughts,
3 sir, on someone who maybe things didn't go as well as
4 they expected them to or how they wanted them to?

5 *VENIREPERSON NO. 6:* Well, like you said,
6 if there was no basis or any fact then I agree. If it's
7 just for the sake of suing, yeah, I'm not a fan of that.

8 *MR. SANDS:* Is there anyone who would be a
9 fan of that, that someone just because it didn't go
10 their way then they run down to the courthouse and try
11 to get a bunch of money from somebody, just pick some
12 number way up there. Let me ask you about --

13 *THE COURT:* Just a minute. I want you-all
14 to be quiet while he's up. I don't want any discussion,
15 I don't want any distraction and I don't want to have to
16 say that again.

17 *MR. BELL:* Yes, Your Honor.

18 *THE COURT:* I'm sorry, Mr. Sands, for the
19 interruption. You may proceed.

20 *MR. SANDS:* Thank you, Your Honor.

21 My client, Dr. Sharma, has a counterclaim.
22 They pooled some money together, as far as the numbers
23 that have been talked about, not a whole lot, roughly
24 \$57,000 that they put -- \$54,000 that they put together
25 jointly in this basically start-up company where they're

1 trying to do something good.

2 And what I would like to know is what --
3 what you-all would feel about the fact that if the -- if
4 the oral business disagreement causes them to part ways,
5 if one partner would be able to change the bank account
6 so that the other partner freeze the other partner out
7 of his roughly 27,000.

8 Is there anyone that thinks that someone
9 would be entitled to do that just because there was a
10 business disagreement, that things weren't working out
11 as they had originally saw fit. You're shaking your
12 head and you are Number...

13 *VENIREPERSON NO. 10:* 268.

14 *MR. SANDS:* And your name?

15 *VENIREPERSON NO. 10:* Elizabeth Todd.

16 *MR. SANDS:* Yes, Mrs. Todd. What are your
17 thoughts on that? Someone just unilaterally changing a
18 bank account that had roughly \$54,000 in it and saying,
19 no, we have a disagreement and now you're not entitled
20 to your half of the money that we're going to disburse.
21 Would that be the right thing to do in your opinion?

22 *VENIREPERSON NO. 10:* No. I mean, I feel
23 like if there's still -- if there's a personal
24 disagreement with the business that needs to stay
25 personal, the business is the business, you shouldn't

1 freeze someone out.

2 *MR. SANDS:* Now, I believe that you also
3 expressed an opinion about verbal contracts versus
4 written contracts. Is it your opinion that a written
5 contract would maybe be more prudent in the overall
6 business partnership arrangement?

7 *VENTIREPERSON NO. 10:* I mean, I feel like
8 it was. I mean, I'll agree with her that it's just
9 naive in this day and age to go into a business contract
10 without having something in writing.

11 *MR. SANDS:* What about someone seeking
12 other opportunities -- if a business venture isn't going
13 as they initially hoped, seeking other business
14 opportunities that may be in that same general area,
15 that same field?

16 *VENTIREPERSON NO. 10:* Outside the
17 partnership?

18 *MR. SANDS:* Yes.

19 *VENTIREPERSON NO. 10:* I still feel like
20 even if you have an oral agreement with no written, you
21 know, signed contract, that if it's a partnership, it's
22 a partnership the whole way.

23 *VENTIREPERSON:* It also depends on the oral
24 law. It also depends on that law of oral agreements and
25 if it -- if it's, you know, it's valid then obviously

1 that's what you would go by.

2 *MR. SANDS:* Right.

3 Mr. Tanner?

4 *VENIREPERSON NO. 24:* Yes, sir?

5 *MR. SANDS:* Along these same lines I
6 believe that you had stated with regards to some of your
7 impressions or opinions that you believe an individual
8 could develop other business opportunities while still
9 being in partnership. Would you agree with me, sir,
10 that there are a lot of individuals or other businesses
11 even that are in multiple partnerships?

12 *VENIREPERSON NO. 24:* Absolutely.

13 *MR. SANDS:* Do you have any other thoughts
14 on that?

15 *VENIREPERSON NO. 24:* No.

16 *UNIDENTIFIED VENIREPERSON:* I'll somewhat
17 agree on that too. You know, if you disclose the fact
18 that you might venture out on your own from the
19 beginning, then the other person in the partnership
20 would already be aware of that. I mean, I feel like if
21 this partnership and this business is just your stepping
22 stone to get somewhere else and that was disclosed from
23 the beginning, then that would be okay, but if it was
24 something was done malicious and behind the back of the
25 other partner, that's not okay.

1 *MR. SANDS:* What about the two people
2 decide they're going to try something new, do a joint
3 venture and see if it works out. If it works out it
4 works out, if it doesn't then it doesn't.

5 How much time's remaining, Your Honor?

6 *THE COURT:* Twenty-two minutes, 25
7 seconds.

8 *MR. SANDS:* Thank you.

9 Again, a lot of this is covered so I don't
10 want to repeat. I want to get through this as quick as
11 possible but there are a couple of items that...

12 Again, now we've -- I've addressed tort
13 reform and verdicts being too high.

14 Is there anyone who hasn't heard of
15 frivolous lawsuits being filed at the courthouse which
16 has no basis in law or in fact?

17 Also, with regard to the introduction of
18 who's who in the case, Dr. Sharma was not without any of
19 his own companies, he'd already been successful. And I
20 think that the evidence will show you that that wasn't
21 an accurate portrayal of the clients when they first met
22 and formed Geri Tex.

23 Okay. This is not our position. With
24 regard to -- Well, let me ask you this: If something's
25 represented to you as you're being --

1 *(Man enters courtroom.)*

2 *THE COURT:* Excuse me just a minute.
3 Sheriff, -- Are you Mr. Tran?

4 *MR. TRAN:* Yes.

5 *THE COURT:* You are very late, sir.

6 *MR. TRAN:* I waited down there.

7 *THE COURT:* I understand.

8 Sheriff, take him back downstairs, have
9 him reassigned, would you please?

10 *THE BAILIFF:* Yes, sir.

11 *THE COURT:* Again, Mr. Sands, I'm sorry
12 for the interruption. You may proceed.

13 *MR. SANDS:* Thank you, Your Honor.

14 Has anyone ever had any bad experiences
15 with lawyers misrepresenting facts to them or misleading
16 them? I noticed that some on here have actually been a
17 party to a lawsuit. I would like to start at the
18 beginning. Looks like no, no. Mr. Cooley?

19 *VENIREPERSON NO. 6:* Uh-huh.

20 *MR. SANDS:* You have been a party to a
21 lawsuit?

22 *VENIREPERSON NO. 6:* (Nods head
23 affirmatively.)

24 *MR. SANDS:* What kind of suit did that
25 involve?

1 *VENIREPERSON NO. 6:* I lost my house.

2 *MR. SANDS:* Okay. Who else has been a
3 party to a lawsuit?

4 Yes, sir, and you're number ...

5 *VENIREPERSON NO. 20:* 322, Armando
6 Arellano.

7 *MR. SANDS:* And can you explain just
8 generally what the circumstances were?

9 *VENIREPERSON NO. 20:* I was about 17 years
10 old --

11 *THE COURT:* Would you speak a little bit
12 louder for me, please?

13 *VENIREPERSON NO. 20:* I was 17 years old
14 and I had a lawsuit with a dentist that started the
15 treatment on braces but would not finish it.

16 *MR. SANDS:* And so you were the Plaintiff
17 in that lawsuit?

18 *VENIREPERSON NO. 20:* Uh-huh.

19 *MR. SANDS:* Next person that's been a
20 party. Yes, sir?

21 *UNIDENTIFIED VENIREPERSON:* Thirty years
22 ago I rented a trailer and it had a flat when I brought
23 it back, and it was a dispute of replacing the tire or
24 not replacing the tire.

25 *MR. SANDS:* And so did you actually --

1 how -- How did that end up? Did you go to trial?

2 *UNIDENTIFIED VENIREPERSON:* Small claims I
3 believe.

4 *MR. SANDS:* Thank you.

5 Yes, ma'am, and you're number...

6 *VENIREPERSON NO. 13:* 292. Kim Maner.

7 *MR. SANDS:* And what were the
8 circumstances with regards to you being a party to a
9 suit?

10 *VENIREPERSON NO. 13:* It was tuition for
11 my daughter's private school.

12 *MR. SANDS:* Could you be a little bit more
13 specific?

14 *VENIREPERSON NO. 13:* She -- When she was
15 going to the school she wasn't very happy with it and we
16 went and talked -- because it was privately held and
17 were told we could get out of it and then he sued us.

18 *MR. SANDS:* So how would you describe your
19 experience in that lawsuit?

20 *VENIREPERSON NO. 13:* Well, ultimately we
21 won because he was shady.

22 *MR. SANDS:* Did you actually go to trial
23 in that case?

24 *VENIREPERSON NO. 13:* Yes, sir, we did.

25 *MR. SANDS:* And how did you feel about the

1 lawyers in that case?

2 *VENIREPERSON NO. 13:* I didn't have a
3 problem with either side, they were both doing their
4 jobs for their clients.

5 *MR. SANDS:* Thank you. Anyone else that's
6 been a party to a suit?

7 Yes, ma'am, you are Number ...

8 *UNIDENTIFIED VENIREPERSON:* 301.

9 *MR. SANDS:* If you could tell us briefly.

10 *UNIDENTIFIED VENIREPERSON:* It was just a
11 car accident lawsuit. I was a verdict (sic). We did go
12 to trial for it.

13 *MR. SANDS:* And you were the one that
14 was -- you filed the lawsuit?

15 *UNIDENTIFIED VENIREPERSON:* No.

16 *MR. SANDS:* So someone sued you.

17 *UNIDENTIFIED VENIREPERSON:* Uh-huh.

18 *UNIDENTIFIED VENIREPERSON:* Excuse me.

19 *MR. SANDS:* Yes, sir?

20 *UNIDENTIFIED VENIREPERSON:* I thought of
21 one other thing. The employer that I worked for I had
22 testified, where I wasn't named in -- I don't know if
23 there's a distinction in what you're -- if that makes a
24 difference, but I testified in a couple of construction
25 related cases and I also worked as a consultant for a

1 law firm for a surety industry.

2 *MR. SANDS:* Was that here in Dallas?

3 *UNIDENTIFIED VENIREPERSON:* Yes.

4 *MR. SANDS:* And what was the name of the
5 law firm?

6 *UNIDENTIFIED VENIREPERSON:* I can't
7 remember.

8 *MR. SANDS:* Thank you for bringing that
9 up.

10 *UNIDENTIFIED VENIREPERSON:* Sure.

11 *MR. SANDS:* Has anyone -- Yes, sir?

12 *UNIDENTIFIED VENIREPERSON:* It didn't
13 occur to me at the time but it happens in my business
14 all the time, but I was -- an injunction was brought
15 against me. I'm in sales and in my business there's
16 noncompetes. And I guess the -- when I left a company
17 the owner of that company -- usually it's a nastigram
18 saying cease and desist, do not steal clients. He went
19 all the way and got an injunction which in my opinion is
20 unheard of. You've got to prove fault, you've got to
21 prove harm. And I was gone three weeks.

22 So his lawyer had him sign an affidavit
23 that I broke my laptop, left, you know, no paper trail
24 so they could not track who I was stealing within three
25 weeks. So that was basically an injunction that I felt

1 his lawyer instructed him to -- all you got to do is
2 sign this, there's no way to prove against it.

3 *MR. SANDS:* Okay. Thank you for bringing
4 that up.

5 If there were not noncompete agreements
6 signed, do you believe that a nurse or a doctor or
7 anyone else for that matter would have the freedom to
8 work where they wanted?

9 *UNIDENTIFIED VENIREPERSON:* If there were
10 not legal documents saying they can't?

11 *MR. SANDS:* Right. If they hadn't signed
12 a contract saying I won't compete against you and they
13 say, okay, well, this is a better opportunity for me, I
14 would like to -- I would like to go in this direction
15 because this individual seems to know a lot more about
16 what they're doing, would you --

17 *UNIDENTIFIED VENIREPERSON:* If I didn't
18 sign something, something wasn't signed, surely, it's a
19 right to work and especially here in Texas, you do what
20 you want.

21 *MR. SANDS:* Is there anybody else that has
22 an issue with that or doesn't agree with that or you
23 didn't hear what he said?

24 *UNIDENTIFIED VENIREPERSON:* I didn't hear
25 him very well.

1 *MR. SANDS:* Well, he was talking about
2 basically having the right to work and freedom to work
3 where you want, and if you don't have a noncompete -- if
4 you don't sign a noncompete agreement, it -- if you find
5 somebody that you feel is going to give you a greater
6 opportunity, that you should be able to work with who
7 you want to work with.

8 *UNIDENTIFIED VENIREPERSON:* So this is an
9 employer/employee relationship where you did not sign a
10 noncompete?

11 *MR. SANDS:* That's correct.

12 *UNIDENTIFIED VENIREPERSON:* Okay. So it's
13 totally different from a partnership where you agreed to
14 be partners with somebody.

15 *MR. SANDS:* Well, --

16 *UNIDENTIFIED VENIREPERSON:* That's totally
17 different, yeah. Okay. Okay. I'm with you.

18 *MR. SANDS:* And that was already covered,
19 again I don't want to go back through it.

20 Is there anyone that would disagree with
21 that? With these statements up here?

22 With regard to the burden and the
23 Plaintiffs' burden -- And my client has a burden as a
24 Plaintiff because he's a Counter-Plaintiff in this suit.
25 And he's not seeking \$17 million. He wants his half of

1 the 54,000 back that he's entitled to when they went
2 their separate ways. So roughly he's seeking for actual
3 damages the \$27,000, not 17 million.

4 Is there anyone -- So my client has his
5 burden of proof, it's the same burden, preponderance of
6 the evidence. But would you agree with me -- or would
7 anyone disagree with me that they have to prove that
8 Mrs. Ralston and her company is entitled to every dime
9 that they're seeking, whether it's -- they're only
10 entitled to 5 cents or this 17 million? Is there anyone
11 who would disagree with me that they've got to prove it,
12 they have to prove the amount of damages, this
13 \$17 million that they're seeking?

14 What are your thoughts on the damage
15 issue?

16 *UNIDENTIFIED VENIREPERSON:* Based on their
17 business, what it did or what possibly it didn't do and
18 what the income level or revenue level should be, that
19 would have to be a factor.

20 *MR. SANDS:* Would you expect them to have
21 to prove their damages in order to prevail?

22 *UNIDENTIFIED VENIREPERSON:* (Nods head
23 affirmatively.)

24 *MR. SANDS:* Is there anyone that would
25 disagree with that or has any comments about that, that

1 they have to -- they have a legal duty to prove every
2 dime of their damages?

3 Yes, sir?

4 *UNIDENTIFIED VENIREPERSON:* I would like
5 to know, like, the 17.1, is that based -- the monetary
6 amount, is it based on future revenues rather than what
7 the business is actually worth?

8 *MR. SANDS:* I can't comment on that at
9 this time because we're just trying to find out what
10 your biases and prejudices are. But ask yourself that
11 question if you're on this panel.

12 *UNIDENTIFIED VENIREPERSON:* Sir, are you
13 saying, for instance, that if I have an impression that
14 there's \$8 million deserved but not 17 million, that I
15 have an opinion one way or another to say, well, I
16 couldn't agree to 17 million, I might be able to agree
17 to a lower amount? Is that what you're trying to get
18 at?

19 *MR. SANDS:* Well, I'm just trying to get
20 what different opinions might be as to whether you've
21 got to prove your damages. You can't just walk into a
22 courtroom and say, Hey, you owe me 17 million or
23 8 million, or whatever number you pick out of the air
24 might be, you can't just walk in and then collect on a
25 judgment for that. You've got to come in -- Would you

1 agree with me that you've got to come in and prove that
2 you're owed a certain amount of money or that you're not
3 entitled to it?

4 *UNIDENTIFIED VENIREPERSON:* Exactly.

5 *VENIREPERSON NO. 19:* Can I --

6 *MR. SANDS:* Yes, sir. You're ...

7 *VENIREPERSON NO. 19:* I think there's a
8 lot -- 318, Larry Dilda.

9 *MR. SANDS:* Thank you.

10 *VENIREPERSON NO. 19:* The partner I had,
11 we did good business and then they started doing things
12 that I didn't know about. And it's minor compared to
13 what this is, but they put a couple of drink machines
14 and I didn't know that they owned it. I didn't find out
15 for a year. Then they borrowed money and I didn't know
16 about it for six months. Then they borrowed money
17 again, didn't know about it for six months.

18 If you haven't got honesty between two
19 people to sit down and shake their hands, paper is
20 useless in my opinion. It's got to be between the
21 people, not -- but that's my opinion.

22 *MR. SANDS:* Thank you. I appreciate that.

23 Does anyone else have anything that they
24 would -- that they feel -- that they're kind of wanting
25 to speak out and say, an opinion that they have or

1 something that they think that any of the attorneys
2 should know about in order to allow us to pick a jury
3 that's going to be fair and impartial?

4 Does anyone have any prejudice or biases
5 that they can think of that, you know, they're thinking,
6 well, I'm wondering if I should bring this up to Shep or
7 should I -- does he want to hear about this, because
8 now's the time to do it and I would ask you to do that
9 because it would only be fair to Mrs. Ralston and to
10 Dr. Sharma.

11 Yes, ma'am?

12 *UNIDENTIFIED VENIREPERSON:* Well, earlier
13 when they asked the question, my husband was actually in
14 a partnership, it wasn't myself. And when the partner
15 decided to dissolve the partnership he just closed up
16 the shop and went home and my husband got nothing, so he
17 had to sue him to get a little bit out of it. And he
18 did finally get a judgment on that, but it didn't come
19 from the partnership honesty, came from the lawsuit.

20 *MR. SANDS:* Thank you. And that's what
21 I'm talking about, anything that --

22 *UNIDENTIFIED VENIREPERSON:* But it was 20
23 years ago, 30 years ago -- 25 anyway. And I had forgot
24 about it.

25 *UNIDENTIFIED VENIREPERSON:* I also think

1 that, you know, in order to get the \$17.1 million that,
2 you know, the evidence would have to be there, that
3 that's a lot of damages and I don't think that just --
4 if it's kind of like feelings hurt and just suing him
5 for all you've got, I don't agree with that at all.

6 *MR. SANDS:* Is there anyone who didn't
7 hear that, because I think that's very important that
8 that opinion and impression was stated. Is there anyone
9 who would disagree with that, that they've got to
10 prove -- they can pick whatever number they want out,
11 but they've got to prove their damages in order to
12 prevail in this lawsuit?

13 *UNIDENTIFIED VENIREPERSON:* If the
14 evidence is there for 17.1 million then --

15 *MR. SANDS:* If it's there then --

16 *UNIDENTIFIED VENIREPERSON:* -- fair game.

17 *MR. SANDS:* -- you would award it.

18 *UNIDENTIFIED VENIREPERSON:* Yeah.

19 *MR. SANDS:* But if it's not there or if
20 there are no damages --

21 *UNIDENTIFIED VENIREPERSON:* Right.

22 *MR. SANDS:* -- then you would be able to
23 award zero dollars.

24 *UNIDENTIFIED VENIREPERSON:* (Nods head
25 affirmatively.)

1 *UNIDENTIFIED VENIREPERSON:* Where does the
2 preponderance of the evidence come into play in
3 determining validity of the \$17 million?

4 *MR. SANDS:* Well, the Judge will instruct
5 you on the law, but the preponderance of the evidence,
6 just the nose of the football over the 50-yard line.

7 *UNIDENTIFIED VENIREPERSON:* To determine
8 whether \$17 million is correct or not?

9 *MR. SANDS:* I would say generally, yes, I
10 just don't want to -- I don't want to get out of bounds
11 here because it's -- the Judge will instruct on the law.

12 Does anyone have anything else that
13 they're considering bringing up but are hesitant to do
14 it? Now's the time.

15 *UNIDENTIFIED VENIREPERSON:* Was this
16 partnership an oral partnership or did they actually
17 sign anything?

18 *MR. SANDS:* I think the facts will show
19 and we could agree that it was an oral partnership.
20 They signed a formation document, one. It's a start-up
21 company.

22 *UNIDENTIFIED VENIREPERSON:* Is an oral
23 contract legally binding in the State of Texas?

24 *MR. SANDS:* A formation -- I don't want
25 to -- a forma- -- They set up a corporation; it's a

1 one-page document.

2 *UNIDENTIFIED VENIREPERSON:* See, I just
3 want to know was it legal and do you have to have,
4 like -- like a third-party witness to say these two
5 shook hands.

6 *THE COURT:* Counsel, -- Members of the
7 panel, I will give you instructions to the extent that
8 are necessary that will tell you the --

9 *(Sotto voce discussion ensued.)*

10 *MR. SANDS:* Last thing --

11 *THE COURT:* May I finish now?

12 *MR. SANDS:* Can I do one mor- --

13 *THE COURT:* May I -- I was speaking.

14 *MR. SANDS:* I'm sorry, Your Honor.

15 *THE COURT:* I will give you ladies and
16 gentlemen instructions that will tell you the elements
17 of a contract which you will be bound to follow as a
18 matter of law if you're seated on this jury, okay?
19 Thank you.

20 *MR. SANDS:* Thank you, Your Honor.

21 The last item I have, the last question I
22 have for you, is there anyone -- Or let me just ask you,
23 if you were brought in as a panelist and certain facts
24 were misrepresented to you, would you hold that against
25 one of the parties? Would you tend to -- Once the

1 evidence came out and you thought back to what was
2 represented to you during voir dire, would you tend to
3 hold that against either party?

4 *THE COURT:* Just a minute.

5 *MR. BELL:* Object; he's trying to get the
6 jury to commit to one way or the other, based on form of
7 the question.

8 *THE COURT:* Objection to the form of the
9 question is sustained.

10 *MR. SANDS:* I have nothing further, Your
11 Honor.

12 *THE COURT:* Thank you.

13 Are there any members -- Are there any
14 members of the panel who have a matter or circumstance
15 which touches on your jury service that you don't feel
16 comfortable discussing with your new 34 best friends,
17 anything any of you want to talk about outside the
18 presence of the rest of the jury that impacts your
19 service?

20 Okay. Hang on just a second. You are
21 Mr. Gold?

22 *VENIREPERSON NO. 27:* Yes.

23 *MR. SANDS:* Okay. Hold on for us just a
24 minute, Mr. Gold, if you don't mind.

25 Anybody else? Okay. Ladies and

1 gentlemen, I'm going to ask you in a moment to step
2 outside; I'm going to visit with -- I'm going to visit
3 with the lawyers and we will continue on. You will
4 probably be outside for about ten minutes, maybe 15
5 minutes at the outside.

6 We may have some questions. Some of the
7 lawyers may want to ask some questions of some of you
8 individually, so I will want you to make sure you just
9 stay out here. If we need to find one of you I don't
10 want to have to send my bailiff traveling all over the
11 courthouse looking for you. Okay? So step back
12 outside, we will strike the panel, we will then seat 12
13 of you and then we'll proceed on.

14 Mr. Gold, you can just stay right there
15 for us.

16 *(Jury panel leaves courtroom.)*

17 **THE COURT:** Mr. Gold, step up here if you
18 don't mind.

19 One lawyer from each side.

20 How are you today?

21 **VENIREPERSON NO. 27:** Fine, thank you.

22 **THE COURT:** How long you been here from
23 New York?

24 **VENIREPERSON NO. 27:** That's probably 30
25 years.

1 *THE COURT:* Okay. Me too.

2 *VENIREPERSON NO. 27:* Really?

3 *THE COURT:* Yeah. Actually I want you to
4 turn this way a little bit so the court reporter can
5 hear you.

6 *VENIREPERSON NO. 27:* Okay.

7 *THE COURT:* And you gentlemen may want to
8 step around to the other side of him and back and if
9 you're not speaking be seated.

10 Yes, sir?

11 *VENIREPERSON NO. 27:* Couple of things I
12 didn't feel was appropriate to mention there. One was
13 you asked if I knew of any of the attorneys.

14 *THE COURT:* Right.

15 *VENIREPERSON NO. 27:* I do not know any of
16 these gentlemen but I'm very familiar with one of the
17 firms, I do business with them.

18 *THE COURT:* Which firm is that?

19 *VENIREPERSON NO. 27:* Friedman & Feiger, I
20 work with several of the attorneys there.

21 Another thing is my practice -- I'm a CPA.
22 And my practice is -- my particular end of the practice
23 is significantly loaded with physicians and physician
24 practices. So I'm very involved in working with doctors
25 and their practices and LLCs and formations of entities.

1 *THE COURT:* All right.

2 *VENIREPERSON NO. 27:* So I can tell you --
3 I'm just going to say this. It would trouble me that
4 there's not a Members Agreement and written
5 documentation between two businesses of these sizes to
6 justify the transactions that happened, so I would -- it
7 would be -- I would find that questionable and might
8 affect my opinion of it being -- the validity of a deal
9 like that.

10 *THE COURT:* Mr. Daugherty, I'll be
11 bringing jurors back in in a few minutes; you can't
12 leave that table there.

13 *MR. DAUGHERTY:* I'm fixing to move it,
14 sir, I'm just trying to be quiet.

15 *THE COURT:* Thank you, sir, I appreciate
16 it.

17 *VENIREPERSON NO. 27:* That's all.

18 *THE COURT:* Okay. Thank you very much.
19 Would you step on back outside with your colleagues
20 please.

21 *VENIREPERSON NO. 27:* Thank you.

22 *(Mr. Gold leaves courtroom.)*

23 *THE COURT:* Any comment from either side
24 with regard to Mr. Gold?

25 *MR. SANDS:* Yes, Your Honor, we would move

1 the strike for cause.

2 *THE COURT:* Any objection?

3 *MR. BELL:* No objection. So are we going
4 to count --

5 *THE COURT:* Okay. All right. Number 27,
6 Mr. Gold, is struck for cause.

7 *MR. BELL:* Does that count -- Okay. Can
8 I ...

9 *THE COURT:* What's your issue, Mr. Bell?

10 *MR. BELL:* I had a root canal on Saturday.

11 *THE COURT:* Sorry to hear that.

12 *MR. BELL:* That's okay. I'm taking
13 medication. I've got to go to the bathroom every
14 probably, like, 30 minutes based on -- Just wondering if
15 I can go run to the restroom real quick, and I'll be
16 right back.

17 *THE COURT:* Do you have any -- Do we have
18 any panel members that you wish to speak to further?

19 *MR. BELL:* Not as it relates to cause but
20 for peremptories I did want to -- Oh, no. No, Your
21 Honor.

22 *THE COURT:* Please listen to what I ask
23 you.

24 *MR. BELL:* Yes, Your Honor.

25 *THE COURT:* Pretty please.

1 *MR. BELL:* Yes, Your Honor.

2 *THE COURT:* You may be excused.

3 Mr. Sands, do you have any panel members
4 you wish to speak to individually?

5 *MR. SANDS:* No, Your Honor.

6 *THE COURT:* Okay.

7 *(Mr. Bell leaves and returns.)*

8 *THE COURT:* All right. Do we have any
9 challenges for cause from the Plaintiff?

10 *MR. BELL:* I'm sorry, Your Honor, can you
11 repeat that?

12 *THE COURT:* Challenges for cause.

13 *MR. BELL:* No, Your Honor.

14 *THE COURT:* Okay. Do we have any
15 challenges for cause from the Defendants?

16 *MR. SANDS:* No, Your Honor.

17 *THE COURT:* Okay. All right, gentlemen,
18 here's what I want you -- what I want you to do. Take
19 the first page of your sheet, tear it off. Where it
20 says "Prepared by", put either "Plaintiff" or
21 "Defendant" and the last name and the number, 1 through
22 36, of the jurors you wish to challenge peremptorily, 1
23 through 36, not the juror identification number that
24 shows up here.

25 Everybody follow me? Everybody follow me?

1 *MR. SANDS:* Yes, Your Honor.

2 *THE COURT:* Why don't the three of you go
3 into one of the conference rooms.

4 Why don't you-all stay here.

5 Take about five minutes and let's get that
6 done. Thank you.

7 *(Pause in the proceedings.)*

8 *THE COURT:* Gentlemen, I would like your
9 lists right now please. Sheriff has asked for them two
10 times. Let me have your lists now. Mr. Sands,
11 Mr. Friedman.

12 *MR. BELL:* May I approach?

13 *THE COURT:* I want your lists now, yes.

14 *MR. SANDS:* I need to sign, Your Honor.

15 *THE COURT:* I don't need it signed, just
16 let me have it.

17 Sheriff, bring them in, please.

18 *THE BAILIFF:* Yes, sir.

19 *THE COURT:* Counsel, it's my intention to
20 bring the panel members back in, to seat the 12 jurors,
21 to give them the oath, to excuse them for the noon hour.

22 Over the noon hour you will confer. I'm
23 sorry. -- you will confer with regard to exhibits as I
24 instructed you earlier and we will do openings right
25 after we break, right after the noon hour's complete.

1 Is your first witness here, Mr. Bell?

2 MR. BELL: It's going to be -- Yes, Your
3 Honor.

4 THE COURT: Thank you.

5 *(Jury panel enters courtroom.)*

6 THE BAILIFF: Slide all the way down, fill
7 in.

8 THE COURT: Please move all the way down
9 so people don't have to step over you. Thank you.

10 You may be seated.

11 Ladies and gentlemen, thank you very much
12 for your time and your patience. When I call your name
13 please come forward and be seated 1 through 5 and 6
14 through 12.

15 Clarence Thornton. Gerald Cooley. Paul
16 Christy. Edith Holland. Valerie Opry. Lasonya Hearn.
17 Shawayne McGraw. Jacob Starkey. Michael Janicek.
18 Armando Arellano. Paul Garibay. Beverley Boone.

19 Will all of you please stand, raise your
20 right hand and be sworn.

21 *(The oath was administered to the jury.)*

22 THE COURT: You may be seated.

23 Are they needed to downstairs?

24 THE BAILIFF: No, sir.

25 THE COURT: Ladies and gentlemen of the

1 panel, those of you who were not sworn -- I'm sorry. --
2 who were not selected to be jurors in this matter, this
3 concludes your jury service; you are discharged for the
4 day. If you need a certification of the fact that
5 you've been here today they will provide that for you in
6 the Central Jury Room; you are free to go. Thank you
7 very much.

8 *(Jury panel leaves the courtroom.)*

9 *THE COURT:* You may be seated.

10 Ladies and gentlemen of the jury, welcome.
11 As you have been chosen to serve on this jury, because
12 of the oath that you have taken, you are now officials
13 of this Court and active participants in the public
14 administration of justice.

15 I've given each of you a set of written
16 instructions which you are required to follow during
17 your term as jurors in this court.

18 The first four of those have been provided
19 to you earlier and you will continue to abide by them.
20 The remainder are as follows:

21 You should not talk about this case with
22 anyone during the pendency of the trial and not even
23 with other members of the jury until the end of the
24 trial. You should not discuss this case so that you
25 don't form opinions about the case before you've heard

1 everything including my instructions and the Court's
2 charge.

3 After you've heard all of the evidence you
4 will go to the jury room to discuss this case with other
5 jurors and to deliberate upon your verdict.

6 You should not do any investigation about
7 the facts of this case. For example, do not try to get
8 information about this case, the lawyers, the witnesses,
9 or the issues from outside of this courtroom. Don't go
10 to any place mentioned in this case to inspect premises.
11 Do not inspect any items mentioned in the case unless
12 they are presented to you as evidence in this case.
13 Don't look things up in law books, dictionaries, public
14 records to learn more about this case. Don't look up
15 anything on the Internet to learn more about this case,
16 and don't let anyone do any of these things for you.

17 This rule is important because we want a
18 trial based only on evidence presented in open court.
19 Your conclusions about this case must be based only on
20 what you see and hear in this courtroom because the law
21 does not permit you to base your conclusions on
22 information not presented in open court.

23 All information must be presented in open
24 court so the parties through their lawyers can test it
25 and object to it as necessary. Information from other

1 sources does not go through this important process here
2 in the courtroom.

3 In addition, information from other
4 sources such as the Internet may be completely
5 unreliable. As a result, if you investigate anything
6 about this case on your own, you will compromise the
7 fairness to the parties and you jeopardize the results
8 of the trial. So don't do it.

9 Do not tell other jurors your own
10 experiences or those of other people. You may have
11 special knowledge of something such as business,
12 technical or professional information. You may even
13 have expert knowledge or opinions or may know what
14 happened in this or some other case. For you to tell
15 other members of the jury about this information is
16 improper because that would mean the jurors are
17 considering things which were not presented in court.

18 You may not consider attorneys' fees
19 unless I instruct you to. You may not consider, guess
20 or speculate as to whether or not any party is covered
21 in whole or in part by insurance.

22 During the trial if taking notes will help
23 focus your attention on the evidence, you may use notes
24 and the bailiff will provide you with paper and pens for
25 that very purpose.

1 You may not use personal electronic
2 devices to record any of the testimony or to take notes.

3 If taking notes may distract you, please
4 do not do it. Keep in mind that you may not share your
5 notes with other members of the jury during your
6 deliberations, they are for your own personal use. You
7 can leave your notes in the jury room where they will be
8 guarded by the bailiff, and after the trial, if you
9 don't want to keep your notes they will be destroyed.

10 It is your duty to listen to and consider
11 the evidence and to determine fact issues that I will
12 submit to you before the end of the trial. After you've
13 heard all of the evidence I will give you instructions
14 to follow as you go through your deliberations. They
15 will have specific questions for you to answer.

16 You will not be asked, nor should you
17 consider, which side will win. Instead, answer specific
18 questions that I give you and don't give any concern to
19 the affect your answers will have on the final judgment
20 in this case.

21 Again, each juror must obey my
22 instructions. If you do not follow them, you will be
23 guilty of jury misconduct and I will start this whole
24 process over again with a new trial. That means all of
25 your time will have been wasted.

1 Is there anyone who does not understand my
2 instructions? If so please advise me.

3 You may each keep a copy of your
4 instructions for you to refer to during the trial. If
5 you have any questions please direct them to Sheriff
6 West or to myself.

7 Here's how we're going to proceed: We're
8 going to break in just a couple minutes for one hour for
9 lunch. The Sheriff will take you to the jury room where
10 you will convene and where you will be when we are not
11 in trial.

12 I will try really hard to make sure that
13 all of your time is spent here in the courtroom taking
14 testimony so we don't misuse as much of your time as
15 possible.

16 We will break for exactly one hour.
17 Please keep in mind that doesn't mean an hour and ten
18 minutes or you shouldn't start heading back here after
19 an hour. If you wait -- If you're ten minutes late,
20 it's not just the Court you're inconveniencing, but it's
21 all of your colleagues; they will be waiting on you
22 because we cannot start until all of you are here.

23 We will reconvene in an hour. We will
24 work for about an hour and a half, we'll take a
25 15-minute break, and then we will work to the end of the

1 day which will be sometime between 4:30 and 5:00
2 o'clock.

3 We will convene tomorrow morning promptly
4 at 9:30. That means at 9:30 you should be assembled in
5 the jury room ready to commence the day's testimony.

6 You will have all of the evidence by the
7 end of the day tomorrow as the lawyers have promised
8 you.

9 Does anybody have any questions? Okay.
10 Thank you so much for your time. I appreciate your
11 being here and your willingness to serve, I'm going to
12 give you an extra minute; you will have one hour and one
13 minute for lunch. We will convene at 1:10.

14 Thank you very much. Please follow the
15 bailiff.

16 *THE BAILIFF:* All rise.

17 *(Jury leaves courtroom.)*

18 *THE COURT:* Counsel, we will not be
19 breaking for lunch; you will be working on reaching your
20 agreements with regard to exhibits, and we will preadmit
21 prior to the jury coming back in all of the -- all of
22 the exhibits that are going to be a part of the evidence
23 in this case. Understood?

24 Any matters we need to take up? Okay.

25 Thank you, Mrs. Robert; you're excused.

1 *(Luncheon recess began at 12:09 p.m.)*

2 *THE COURT:* Okay. Let's go on the record.
3 Counsel, when we were last here I
4 instructed you to come to agreement with regard to the
5 admissibility and offer of exhibits. Where are we?

6 *MR. SANDS:* Yes, Your Honor. We've agreed
7 to stipulate to all the exhibits --

8 *MR. JASON FRIEDMAN:* Except for three.

9 *MR. SANDS:* -- except for three; we may
10 agree on those.

11 *THE COURT:* Okay. Let's have the numbers
12 of the exhibits upon which we have agreement.

13 What are the numbers upon which we have
14 agreement?

15 Plaintiff -- Plaintiff has offered which
16 exhibits, 1 through what?

17 *MR. JASON FRIEDMAN:* We jointly offer them
18 as Exhibits 1 through 9.

19 *THE COURT:* Okay. So what we call Trial
20 Exhibits 1 through 9 offered by both sides?

21 *MR. JASON FRIEDMAN:* Yes.

22 *MR. SANDS:* That's correct.

23 *THE COURT:* Exhibits 1 through 9 are
24 admitted without objection.

25 *(Trial Exhibits Nos. 1-9 admitted.)*

1 *THE COURT:* There are three exhibits over
2 which there are -- for which objection has been
3 interposed, correct?

4 Mr. Daugherty, you're going to have to
5 hang on just a minute, please.

6 Which of those -- Those, I presume, are
7 being offered by the Plaintiff, correct?

8 *MR. JASON FRIEDMAN:* Yes.

9 *THE COURT:* One, 2 and 3?

10 *MR. JASON FRIEDMAN:* Just 1 and 2.

11 *THE COURT:* Plaintiffs' 1 and 2, let me
12 see them please.

13 What's the objection to -- If you're not
14 speaking please be seated.

15 What's the objection to Plaintiffs' 1 and
16 2?

17 *MR. SANDS:* Hearsay, Your Honor, and also
18 they haven't been properly authenticated. And in
19 addition, Your Honor, they weren't timely produced in
20 response to discovery requests.

21 *THE COURT:* Response?

22 *MR. JASON FRIEDMAN:* They were provided as
23 a supplement to discovery as the rule permits ongoing --

24 *THE COURT:* When?

25 *MR. JASON FRIEDMAN:* At mediation last

1 week. And I was going to prove them up through the
2 testimony of Mrs. Ralston who is the business record
3 custodian of records.

4 *THE COURT:* Okay.

5 *MR. SANDS:* As I might point out, Your
6 Honor, those are not from any business that Lana Ralston
7 is a officer, director, employee, and those are from a
8 separate legal entity, North Texas Medical Billing;
9 they're not part of her business records.

10 *THE COURT:* Well, they certainly don't
11 appear to say that but based on anything that is on
12 those -- I don't see "North Tex" identified anywhere on
13 here. That's something that you will -- I will give you
14 the opportunity to voir dire her on when the exhibits
15 are offered during the trial. I'm going to reserve my
16 ruling on -- I'm going to reserve my ruling on
17 Plaintiffs' 1 and 2.

18 You may retrieve these now.

19 *MR. JASON FRIEDMAN:* May I approach?

20 *THE COURT:* Uh-huh.

21 Mr. Sands?

22 *MR. SANDS:* Yes, Your Honor. If I may
23 approach. This would be Sharma's Exhibit Number 1.

24 *THE COURT:* Okay. You may.

25 *MR. BELL:* Can I see the exhibit?

1 (Document handed to counsel and the
2 Court.)

3 *THE COURT:* What's the basis for the
4 objection to this exhibit?

5 *MR. JASON FRIEDMAN:* The same objection;
6 it's hearsay, it's not authenticated.

7 *THE COURT:* This is a document of your
8 client, is it not? It says Geri Tex, L.L.C., worksheet.

9 *MR. JASON FRIEDMAN:* It was created by --

10 *THE COURT:* Mr. Friedman, would you please
11 just answer the question --

12 *MR. JASON FRIEDMAN:* No, sir.

13 *THE COURT:* -- I pose to you?
14 Is this a document of your client's?

15 *MR. JASON FRIEDMAN:* No.

16 *THE COURT:* Okay. Tell me the origin of
17 this document if you know.

18 *MR. JASON FRIEDMAN:* I don't.

19 *THE COURT:* I thought -- I understood you
20 to start to answer me by saying it was "created by".

21 *MR. JASON FRIEDMAN:* The Defendant.

22 *THE COURT:* Is that correct, Mr. Sands?

23 *MR. SANDS:* Not to my knowledge, Your
24 Honor, it was created by the CPA for Geri Tex and is
25 part of Geri Tex's records that was submitted by the CPA

1 as part of regular --

2 *THE COURT:* I only want to hear from one
3 lawyer per issue throughout the trial, one.

4 Do you dispute that it was created by the
5 CPA for the Plaintiff?

6 *MR. JASON FRIEDMAN:* I -- Yes. I don't
7 know. There's no business record affidavit with it.

8 *THE COURT:* All right. I'm going to --
9 I'm going to accept the word of an Officer of this Court
10 saying that a document is created by someone. In the
11 absence of your telling me to the contrary the hearsay
12 objection's overruled.

13 Do you have another objection?

14 *MR. JASON FRIEDMAN:* No business record
15 affidavit.

16 *THE COURT:* That objection is overruled as
17 well.

18 Plaintiffs' -- I'm sorry. Sharma 1 is
19 admitted over objection.

20 *(Sharma Exhibit No. 1 admitted.)*

21 *THE COURT:* Do we have anything else we
22 need to take up before we bring in the jury?

23 *MR. BELL:* Yes, Your Honor.

24 *THE COURT:* What might that be?

25 *MR. BELL:* Just wanted to let your -- May

1 I approach? I'm going to do a PowerPoint in opening;
2 I've already conferred with counsel, showed it to him,
3 and I don't know if the Court wanted a copy.

4 *THE COURT:* Do you have any objection to
5 it?

6 *MR. SANDS:* Not as it was presented to me,
7 Your Honor.

8 *THE COURT:* I do not assume that an
9 Officer of this Court is going to show you one thing and
10 then offer something else.

11 *MR. SANDS:* And that's not what I meant.
12 As far as that goes, that's fine, we agreed to that.

13 *THE COURT:* Okay. That's all I was
14 asking.

15 *MR. SANDS:* All right.

16 *MR. BELL:* Your Honor, may I -- would you
17 like a copy of it?

18 *THE COURT:* I'll take a copy of it, sure.

19 *MR. BELL:* May I approach?

20 *THE COURT:* Sure.

21 You may come and acquire this, Mr. Sands.
22 Anything else?

23 *MR. SANDS:* No, Your Honor.

24 *MR. BELL:* No.

25 *THE COURT:* All right. As soon as we've

1 got 12 jurors we will reconvene.

2 Mr. Sands, are you going to open at the --
3 at this point or are you going to open after -- at the
4 commencement of your case in chief?

5 MR. SANDS: Your Honor, is it possible for
6 me to split it?

7 THE COURT: No, absolutely not. You do
8 one or the other; you know -- Which is it going to be?

9 MR. SANDS: It's going to be now, Your
10 Honor.

11 THE COURT: Okay. All right. Each side
12 will have ten --

13 Excuse me. Mr. Friedman, you weren't here
14 when I started -- Let's go off the record.

15 *(Pause in the proceedings.)*

16 THE BAILIFF: All rise

17 *(Jury enters courtroom.)*

18 THE COURT: You may be seated.

19 MR. DAUGHERTY: I'm trying to get the
20 projector to go.

21 THE COURT: Sheriff, will you offer him
22 assistance if you don't mind, please.

23 Mr. Bell, are you ready to proceed with
24 your opening?

25 MR. BELL: As soon as the -- Yes, Your

1 Honor, waiting for this to queue up. As soon as it
2 queues up, I'm ready, Your Honor.

3 Is it possible maybe we could dim the
4 lights just a bit?

5 *(Sotto voce discussion ensued.)*

6 *THE COURT:* All right. Let's proceed as
7 if we were still back in the days before technology
8 ruled the day.

9 You may proceed with your examination.

10 *(Sotto voce discussion ensued.)*

11 **OPENING STATEMENT**

12 *MR. BELL:* May it please the Court, Your
13 Honor.

14 *THE COURT:* You may proceed.

15 *MR. BELL:* Thank you.

16 Ladies and gentlemen, this case -- in a
17 partnership you've got to be careful, you've got to make
18 good and careful decisions. You've also got to be
19 loyal. You've got to put your partner's interest before
20 that of your own, and you've got to be honest, you've
21 got to tell the truth and disclose all of the facts.

22 Sorry about this.

23 *MR. DAUGHERTY:* Keep going.

24 *MR. BELL:* All right. So here's the deal.
25 If you're not honest and if you're not loyal and you're

1 not careful in a partnership and your partner loses
2 money and most of her business, the law says and the
3 Judge is going to instruct you, the law says you've got
4 to pay for the harm.

5 Now, that's why we're here today. Now
6 here's the story about DFW Super Group, that's one of
7 the Plaintiffs in the case.

8 In 2000, Lana Ralston, who you were
9 introduced to earlier this morning, this is Mrs. Ralston
10 right here, founded a company called DFW Super Group.
11 The company provides nurse practitioner staff and
12 billing support to medical nursing homes. And she
13 invested her money, time, labor, over a million dollars
14 in developing and nurturing nursing and medical
15 contracts with over 40 nursing homes throughout the
16 Metroplex.

17 And she treated thousands of patients,
18 hundreds of contacts, dozens of nurse practitioners, in
19 DFW Super Group, all devoted to caring for our mothers,
20 our fathers, aunts, uncles and our grand-folks.

21 And her revenues in 2000 to 2007, 1.7
22 million dollars annually, okay? And the valuation of
23 her business -- and this is just kind of standard in the
24 nursing home business, standard multiplier is three
25 times. So three times \$1.7 million you get 5.1 million

1 dollars. That's what her business is worth.

2 You got a liquidation value of
3 1.5 million. Somebody offered her -- Sorry, I'll get
4 out of your way. -- offered her \$1.5 million at one
5 point for DFW Super Group.

6 And this is the Defendant, Neeraj Sharma.
7 Neeraj Sharma was a doctor without a hospital or a
8 practice, he needed a job, he wanted to work in nursing
9 homes but he had no contacts, he didn't have the
10 contacts, he didn't have the nursing home clients, he
11 had no patients. And so what did he do? He sought out
12 DFW Super Group because they had the 40 different
13 nursing homes and hospitals and had all the contacts and
14 all the patients.

15 And so he wanted to join forces with DFW
16 to recruit doctors for nursing homes. Together they
17 formed a company called Geri Tex.

18 Now, the way it works is DFW Super Group
19 has a bunch of nurse practitioners, several of them, and
20 they treat patients throughout the Metroplex in the 40
21 or 45 different nursing homes. And what -- And
22 Ms. Ralston -- Mrs. Ralston had the contacts with this
23 group. And what she and Dr. Sharma sought out to do,
24 what the deal was, she would bring him to all the
25 nursing homes, set him up with the patients, set him up

1 with the contacts, set him up with everybody to help him
2 get his business off the ground. So they formed a
3 company call Geri Tex. A lot of times I'll call it "the
4 partnership".

5 And Dr. Sharma's end of the deal was he
6 promised to get and grow the business and manage the
7 medical care.

8 So Geri Tex, the partnership formed
9 between Dr. Sharma and Mrs. Ralston, was to provide
10 quality doctors to nursing homes, that hired and
11 assigned doctors as well as handle all logistics, and
12 projected revenues for the doctors side of it for Geri
13 Tex, because, you know, they bill the Medicare numbers,
14 et cetera, is about 4 to \$6 million a year if Dr. Sharma
15 showed up -- And this is what the evidence is going to
16 show. -- if he showed up and did what he said he was
17 going to do, revenues would have been around 4 to
18 \$6 million.

19 So what did Lana Ralston do? She
20 introduced Dr. Sharma to the hospitals, to the patients,
21 to the nursing homes, other doctors, nurses and nurse
22 practitioners. She provided the money, the networking,
23 the business and the logistical expertise.

24 What was Dr. Sharma's duties? The lead
25 doctor, the manager: Visits patients, recruits doctors,

1 recruits patients, recruits centers.

2 And he did all of the above. But what he
3 didn't do is he didn't tell Mrs. Ralston about his own
4 secret company called Texas Senior Healthcare and his
5 own personal gain. And this is at the expense of Geri
6 Tex and DFW.

7 Now, Dr. Sharma used the proceeds from all
8 the business that he got as a result of dealing with
9 Mrs. Ralston and DFW Super Group, used the proceeds and
10 invested in his own secret company called Texas Center
11 Healthcare.

12 So what did -- what did -- how did
13 Dr. Sharma destroy Geri Tex and DFW? He set up his own
14 company, Texas Senior Healthcare, to compete directly --
15 compete directly with the very company he wanted to
16 start and be a partner with Mrs. Ralston.

17 He went in, he threatened the nurse
18 practitioners -- Because he's the doctor, he gets to
19 hire and fire if he's now in control of the contracts
20 with the nursing homes. He threatened the nurse
21 practitioners that their jobs would disappear and that
22 they would have to come to work for him or they'd lose
23 their jobs.

24 He diverted several business opportunities
25 away from Geri Tex and DFW, stole patients, stole

1 nursing home accounts, stole medicare billings, stole
2 collections, didn't enter proper coding, didn't bill
3 properly under medicare, never provided an accounting,
4 never provided -- told Mrs. Ralston what the partnership
5 made, what Geri Tex made, how much his secret company,
6 Texas Senior Healthcare, was making. He didn't tell her
7 any of this stuff. That's what the evidence is going to
8 show in this case.

9 So, by going behind Lana's back,
10 Dr. Sharma -- at the end of the day he destroyed Geri
11 Tex. He destroyed the partnership he had with Mrs.
12 Ralston.

13 And by taking all the nursing home
14 contracts and the nursing homes, taking that business
15 away and firing all the nurse practitioners, what did he
16 do? He simultaneously destroyed the very business that
17 she spent seven years cultivating, building from
18 nothing.

19 So his actions, and the evidence is going
20 to show this, destroyed both Geri Tex and DFW Super
21 group.

22 And if not for Neeraj Sharma, Geri Tex
23 would have been worth in excess of 12 million today, and
24 DFW Super Group would have been worth about
25 \$5.1 million.

1 So here's -- here's a deposition from
2 Dr. Sharma.

3 *QUESTION: When did you stop working for Geri*
4 *Tex?*

5 *ANSWER: Well, I started seeing patients on my*
6 *own in May of 2010.*

7 *QUESTION: Did you resign your position as*
8 *president of Geri Tex?*

9 *ANSWER: No, not to my recollection.*

10 *QUESTION: Were you fired as president of Geri*
11 *Tex?*

12 *ANSWER: Not to my knowledge.*

13 *MR. BELL:* The whole time Lana entrusted
14 her business dealings, her finances, her accounts, her
15 practitioners, her doctors, her nurses with Dr. Sharma.

16 So, at the end of the day, in this case
17 the Judge is going to instruct you on the law and
18 there's going to be a Charge that the Judge gives you at
19 the end of the case, and it's going to ask you about
20 fiduciary duties and what certain duties are owed to
21 partners. And some of those duties include the duty of
22 care, the duty of loyalty and the duty of honesty.

23 So, by setting up his own competing
24 company and never telling -- never telling Mrs. Ralston
25 about it, he -- he wasn't careful, that wasn't being

1 loyal, that wasn't being honest.

2 By threatening her nurses, threatening
3 their jobs, hiring them away, that wasn't being careful,
4 that wasn't being loyal and it certainly wasn't being
5 honest.

6 Stealing patients, stealing nursing home
7 accounts, the 40 that she painstakingly created for
8 years, that he just was able to swoop up because he's a
9 doctor. Medicare billings. Collections --

10 (Timer)

11 THE COURT: Thank you, Mr. Bell; that's
12 your time.

13 MR. BELL: Thank you very much, Your
14 Honor.

15 Thank you very much, ladies and gentlemen.

16 THE COURT: Will you turn that off? Thank
17 you, Mr. Daugherty.

18 Mr. Sands, you have the option of opening
19 now or at the commencement of your case in chief.

20 MR. SANDS: Yes. Now, Your Honor, if that
21 pleases the Court.

22 THE COURT: You may proceed.

23 MR. SANDS: Your Honor, is it okay if I
24 move the podium?

25 THE COURT: Yes, sir, it is.

1 Mr. Daugherty, will you remove the
2 projector out of the well please.

3 Mr. Sands, if you'll lean that back it
4 will roll, it will be easier for you to move, I think.

5 **OPENING STATEMENT**

6 *MR. SANDS:* First I want to thank you all
7 for your time performing your civic duty.

8 As you've already noticed the Plaintiff
9 and Plaintiffs' counsel gets to go first, so I hope
10 you'll take the time and listen to me, too, because I'm
11 shocked at these numbers that have been thrown up. We
12 don't know where they came from. When they started
13 talking about it in voir dire, we're literally shocked.

14 The last time that Mrs. Ralston testified
15 during her deposition, I believe on November the 2nd of
16 this year, so a little over a month ago, she didn't know
17 what her damages were, she didn't know if she had any
18 damages.

19 I asked her if it was over a dollar.

20 Well, I think so.

21 You're going to hear this testimony.
22 She's going to testify obviously and we're going to go
23 into her deposition testimony.

24 All this is, is simply an opportunity for
25 Mrs. Ralston to come in here because she's bitter that

1 things didn't work out the way that she wanted and she's
2 taken a huge shot at my client. And these are
3 outrageous allegations.

4 *THE COURT:* Counsel, that's closing
5 argument. Restrict your argument --

6 *MR. SANDS:* Well, --

7 *THE COURT:* Excuse me. Restrict your
8 argument to what you expect the evidence to show,
9 please.

10 *MR. SANDS:* Yes, Your Honor.

11 I expect the -- I expect the evidence to
12 show that she suffered no damages. I expect the
13 evidence to show that my client did suffer damages of
14 roughly 27,000 that should have been dispersed to him
15 when they decided to go their separate ways, and that
16 also he's incurred attorneys' fees throughout this
17 ordeal of having to defend himself. There's also
18 roughly thirteen thousand, I believe, just thirteen
19 thousand, in some medical billing that was collected
20 after they parted ways in May of 2010, and that's what
21 his damages are, and that's what he'll seek to collect.
22 Not a million, not 5 million, not 14.

23 And I would respectfully request, this is
24 so important, that you hold Plaintiff and her counsel
25 accountable for what they've represented to you here as

1 to the amount of their damages.

2 They have no expert that can come in and
3 testify as to the valuation of their damages. They
4 still have -- until today, in a jury trial, where they
5 get to come in here and force my client to trial and
6 attempt to get some type of big verdict against him,
7 they've produced no evidence of any damages; they just
8 come in here and ask for it, which is what I was
9 speaking about or asking about during voir dire.

10 So, I'll ask you to please hold them
11 accountable for what they've represented to you up here
12 on their PowerPoint. Please give my client the
13 opportunity to give his testimony and his evidence and
14 his side of what happened.

15 Ultimately it's our position that this was
16 a venture that started out in good faith and it just
17 didn't work out. There were personality differences.
18 Dr. Sharma was a little bit more aggressive. Being
19 business oriented, things weren't happening as he liked
20 to and I think it was a different philosophy, but
21 ultimately there are no damages that she suffered.

22 I mean, we've been trying to ascertain --
23 saying, well, tell me what your damages are, and until
24 today we've never heard this and then there are these
25 outrageous numbers that they're going to be seeking from

1 you --

2 *MR. BELL:* I'm just going to object to the
3 extent that it's not talking about again the evidence --
4 what the evidence will prove --

5 *THE COURT:* Objection to the argumentative
6 nature of the opening is sustained.

7 *MR. SANDS:* We believe the evidence will
8 show that she has suffered no damages. We believe that
9 the evidence will show that she has bad feelings and
10 that she's very upset about what happened. We believe
11 the evidence will show that Dr. Sharma did act in good
12 faith; it just didn't work out for them. That's what
13 the bottom line is, and so they went their separate
14 ways.

15 They had a conference at a Starbucks in
16 2010, May of 2010, and basically at that point they
17 agreed that they would go their separate ways. I
18 believe there was some -- it was rather heated
19 discussions is my understanding of it, and at that point
20 in time Dr. Sharma was shut out of Geri Tex, he didn't
21 have an opportunity to try to make amends for anything.
22 But one thing we will show is that regardless of what
23 happened and the reasons that it happened, ill feelings,
24 the personality differences, there are no damages that
25 have been suffered.

1 As for any breach of fiduciary duty or any
2 breach of contract, they have the one document which
3 you'll see we've already agreed to stipulate to almost
4 all of the exhibits so we'll get through this rather
5 quickly, as quick as possible, but Dr. Sharma did not
6 breach any fiduciary duties. And it's our position is
7 that they're going to attempt to paint him in a bad
8 light, which they've called him all kinds of names in
9 the Original Petition. They've been using this tactic
10 throughout the litigation. We say where's the beef.
11 Literally, where are your damages?

12 I understand that it didn't go the way the
13 parties wanted but they have -- we don't believe that
14 they'll --

15 *THE COURT:* Just a minute.

16 *MR. BELL:* I'm just going to object to the
17 same, talking about -- going into the pleadings is
18 not -- is evidence -- is not evidence --

19 *THE COURT:* Objection is sustained.

20 *MR. SANDS:* When the testimony resumes or
21 begins in this case -- Pardon me. -- we believe that the
22 evidence will show that the tactics that have been used
23 is simply almost extortion.

24 *THE COURT:* Objection is sustained.

25 Counsel.

1 MR. SANDS: May I move on, Your Honor?

2 THE COURT: This is the last time I'm
3 going to instruct you to keep your opening to the facts
4 as you believe that they're going to be adduced from the
5 witness stand. I do not want you to argue, I do not
6 want you to characterize.

7 MR. SANDS: I apologize about that. We're
8 very passionate about this case --

9 THE COURT: Counsel? Did I not make
10 myself clear?

11 MR. SANDS: I apologize, Your Honor.

12 THE COURT: Just don't do it again.

13 MR. SANDS: We believe that there is no
14 evidence to support their claims and that we believe we
15 will provide evidence to you that Dr. Sharma acted in
16 good faith, and we would respectfully request that you
17 give us the opportunity to provide you with our defense
18 and not make up your mind before Dr. Sharma gets an
19 opportunity to testify. Thank you.

20 THE COURT: Will you take the lecturn with
21 you, please. Thank you.

22 Step up for a moment, gentlemen.

23 Pardon us one second, ladies and
24 gentlemen, while we talk about you.

25 *(Bench conference; off the record.)*

1 *THE COURT:* Let's proceed. Call your
2 first witness, Mr. Bell.

3 *MR. BELL:* Plaintiffs call Lana Ralston,
4 Your Honor.

5 *THE COURT:* Mrs. Ralston, come forward and
6 be sworn.

7 *(Witness sworn.)*

8 *THE COURT:* State your full name for the
9 record please.

10 *THE WITNESS:* Lana Sparkman Ralston.

11 *THE COURT:* Be seated; speak directly into
12 the microphone.

13 Proceed with your inquiry.

14 *MR. BELL:* May I stand?

15 *THE COURT:* You must stand, yes.

16 *MR. BELL:* Thank you, Your Honor.

17 **LANA SPARKMAN RALSTON,**
18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 *BY MR. BELL:*

21 Q. Ma'am, would you introduce yourself to the
22 ladies and gentlemen of the jury?

23 *THE COURT:* I think I just covered that.

24 *MR. BELL:* Okay.

25 Q. And are you married?

1 A. I am.

2 Q. Okay. And do you have any children?

3 A. I have two children.

4 Q. What are their names?

5 A. JP is 20 and Nicholas is 16.

6 Q. And what's your husband's name?

7 A. My husband's name is David.

8 Q. David Ralston?

9 A. Yes, sir.

10 Q. Okay. And do you have any -- do you have any
11 hobbies? Just tell the jury a little bit about yourself
12 so that they get to know you.

13 A. Okay. I have two very active kids in both of
14 their schools and I'm heavily involved with volunteers
15 and Young Men's Service Leagues and philanthropy. I do
16 multiple philanthropies in Collin County and try to keep
17 my kids involved in both of those. I work full time, I
18 have a clinic and I do nursing homes.

19 Q. And are you from the Dallas/Fort Worth area?

20 A. Yes, I was born in Fort Worth.

21 Q. And where did you go to high school?

22 A. I went to Richland High School in North
23 Richland Hills.

24 Q. And did you go to college after high school?

25 A. Yes, I did.

1 Q. Where did you go, ma'am?

2 A. I spent the first couple of years at a junior
3 college in Tarrant County and then I went to Texas
4 Woman's University to get my Bachelor's Degree in
5 Nursing. And then I went back to school at Texas
6 Woman's University to get a Nursing Administration
7 Masters, and I began to teach at Texas Woman's
8 University and they put me through the Nurse
9 Practitioner Program at UTA because they needed faculty
10 to open their own graduate school.

11 Q. So you were -- You got a Master's Degree in
12 nursing from Texas Woman's University?

13 A. Yes, sir.

14 Q. And then you were one of a couple of students
15 that got brought over to University of Texas at
16 Arlington to start a new program, is that --

17 A. There was three faculty that was chosen to go.

18 Q. And you were one of the faculty that was chosen
19 to go.

20 A. Yes, sir.

21 Q. And you attained another Master's Degree?

22 A. Yes, sir.

23 Q. And in what field?

24 A. Family practice, nurse practitioner.

25 Q. And have you received any awards throughout the

1 years being a nurse practitioner in the nursing field?

2 A. I've received a few through the professional
3 associations. I was on the Texas Board of Nurse
4 Practitioners. Some medically underserved areas, I was
5 appointed to various boards.

6 Q. And let's talk a little bit about your work
7 history. What did you do when you graduated from
8 University of Texas at Arlington with your -- I guess
9 your second Masters?

10 A. My husband at the time had a client who was a
11 physician on MLK and we obtained --

12 Q. MLK is?

13 A. I'm sorry. Martin Luther King Boulevard.

14 Q. Okay.

15 A. And the physician was unable to practice for --
16 as it turned out, for about a year, and we obtained
17 special permission from the board for me to graduate
18 immediately and go and run his clinic on Martin Luther
19 King.

20 Q. Tell the jury kind of what's the difference
21 between a nurse, a nurse practitioner and maybe a
22 doctor. What are the differences between the three?

23 A. Well, I will tell the difference between a
24 nurse practitioner. And it's basic -- I diagnose, I
25 treat, I prescribe medication and completely treat the

1 patient.

2 When I was on Martin Luther King, it's a
3 medically underserved area; so, I ran the clinic for the
4 doctor that had stipulations against his license and
5 just kept his practice together until he could have his
6 license reinstated.

7 Q. And then what did you do after serving --
8 serving at the clinic -- serving at that clinic? What
9 did you do after that?

10 A. I went and worked for Southwest Physician
11 Associates which was a large Baylor Hospital IPA of
12 1200, 1500 physicians, mostly comprised of the Baylor
13 physicians, and I did various consulting work for them,
14 business plan, with the president of the IPA.

15 Q. In about 2000 you started a company which is
16 why we're here, it's a company called DFW Super Group,
17 right?

18 A. Right.

19 Q. (BY MR. BELL) Can you tell --

20 MR. BELL: Your Honor, actually may I
21 approach with counsel? I want to see if I can use the
22 writing board.

23 THE COURT: You may. No need to approach
24 for that.

25 MR. BELL: Is it okay right here, Your

1 Honor?

2 *THE COURT:* Mr. Sands, if you want to step
3 over to the back of the jury box so that you can see
4 that, that's fine.

5 Let's proceed on.

6 *MR. BELL:* Thank you, Your Honor.

7 Q. *(BY MR. BELL)* So in 2000 you started a company
8 called DFW Super Group, right?

9 A. Yes, sir.

10 Q. Will you tell the ladies and gentlemen of the
11 jury what does DFW Super Group do. DFW Super
12 Group, Inc.?

13 A. No, it's an L.L.C.

14 Q. Okay. So what does DFW Super Group do?

15 A. Basically we provide -- back in that time there
16 wasn't anyone really that went to nursing homes,
17 patients were untreated and when they got sick enough
18 they were sent to the ERs at the hospital. No one was
19 particularly interested in going to nursing homes to see
20 them because it would mean time away from a busy medical
21 practice and a lack of revenue because this is Medicare
22 primarily. That means that they pay lower rates than
23 office patients do.

24 So I perceived a need and, plus, really
25 enjoyed working with the elderly and started working

1 with nursing homes in East Texas and McKinney.

2 And what I would do is I would work with
3 the attending physicians or the medical director of a
4 nursing home and we would meet the patient's needs and
5 if they looked like they were getting sick or having a
6 urinary tract infection we could take care of that on
7 the spot, rather than them getting so sick that they had
8 to go to the ER.

9 Q. But DFW Super Group was your group because
10 you're a nurse practitioner and it basically --

11 *THE COURT:* Counsel, don't lead your
12 witness.

13 *MR. BELL:* Sorry, Your Honor.

14 Q. *(BY MR. BELL)* What if any kind of folks did
15 DFW Super Group employ in order to service the nursing
16 homes?

17 A. Nurse practitioners?

18 Q. Yes, ma'am.

19 A. Okay.

20 Q. So -- And about how many contracts between
21 2004 -- I'm sorry. How many nursing homes between 2000
22 and 2007 did DFW Super Group have? About 35 to 45?

23 A. Probably around 40 but not all at the same
24 time.

25 Q. So probably around 40?

1 A. Right.

2 Q. And would you -- In terms of revenues, what
3 would you say the revenues were for DFW Super Group?

4 A. The gross revenues? Probably 1.5. One to 1.5.

5 Q. So 1 to \$1.5 million a year?

6 A. Average.

7 Q. Okay. And what to somebody like Dr. Sharma,
8 Defendant in this case, what's -- tell the jury why a
9 company like DFW Super Group would be important to
10 somebody like him.

11 A. Kind of the same reasons it was important in
12 the first place. He was a hospitalist and he did not
13 always go or have time to see his patients which is how
14 I ended up meeting him, was a nursing home complaining
15 they never saw him or he took care of his patients and
16 they would like to contact him with regards to my
17 services.

18 I had a good reputation with the nursing
19 homes, took good care of the patients.

20 Q. So it was -- DFW Group would have, you know,
21 several nursing homes all over the Metroplex.

22 *THE COURT:* Counsel, do not lead your
23 witness, please.

24 *MR. BELL:* Sorry. Yes, Your Honor.

25 Q. What if -- In terms of numbers, what would you

1 say -- What was the most important asset in DFW Super
2 Group?

3 A. The most important asset was the employees and
4 our good reputation.

5 Q. And the good reputation with?

6 A. The nursing homes, the clients, the other
7 physicians that we worked with. We had a great
8 reputation.

9 Q. Okay.

10 A. With families.

11 Q. And you talked a little bit about the average
12 revenues, 1 to 1.5. Did it ever get higher than 1.5?

13 A. It did. It did get, I believe, around 1.7 at
14 one -- one time.

15 Q. At one time?

16 A. Yes.

17 Q. And would you sell a -- We're still talking
18 about DFW Super Group. When -- A company like DFW Super
19 Group, what's the multiplier? It would be like on gross
20 revenue -- the highest gross revenue. Would it be -- If
21 you were trying to sell the business. Would it be two
22 times, three times, four times the multiplier?

23 A. Usually three times --

24 MR. SANDS: Your Honor, I would object;
25 this calls for expert testimony, and if necessary I

1 would like to take this witness on voir dire.

2 *THE COURT:* Response.

3 *MR. BELL:* If he can -- I don't have a
4 problem with him taking the witness on voir dire but I
5 think I can lay the foundation if the Court lets me ask
6 my next five questions.

7 *THE COURT:* You may take a brief voir
8 dire.

9 **VOIR DIRE EXAMINATION**

10 *BY MR. SANDS:*

11 Q. Mrs. Ralston, what experience, if any, do you
12 have in the valuation of companies?

13 *THE COURT:* Have a seat, Mr. Bell.

14 A. I have a Master's Degree that included graduate
15 finance and accounting and business.

16 Q. What expertise -- My question is --

17 A. I am not a CPA or an evaluator.

18 Q. And you're not an expert in the valuation of
19 companies.

20 A. You are correct.

21 *MR. SANDS:* Thank you.

22 Pass the witness, Your Honor.

23 **DIRECT EXAMINATION (CONTINUED)**

24 *BY MR. BELL*

25 Q. Have you ever participated in the sale or the

1 recapitalization of a business before in the medical
2 field?

3 A. Yes, sir.

4 Q. And what was that business?

5 A. After I did the clinic on Martin Luther King
6 and when I was working with Southwest Physician
7 Associates we did a business development that we sold to
8 Vencor of Louisville -- out of Louisville.

9 Q. And what was the purchase price?

10 A. 1 million.

11 Q. So you've participated in the sale of medical
12 businesses in -- Have you participated in the
13 business -- sale of businesses in the past in the
14 medical field?

15 A. Yes, sir.

16 Q. Do you think you're qualified -- Who is the CEO
17 of DFW Super Group?

18 A. I am, sir.

19 Q. Who do you think would be in the best position
20 to determine the actual valuation based on revenues of
21 what the company is worth? Would it be you or would it
22 be a stranger?

23 A. You know, quite honestly, I think probably a
24 CPA would be the most qualified. I don't -- You know, I
25 don't have the credentials for -- to make that

1 evaluation. I mean, that's what I think.

2 *THE COURT:* All right. Let's proceed on.

3 *MR. BELL:* Sure.

4 Q. (BY MR. BELL) And in your -- have you ever --
5 have you looked at business -- other businesses that do
6 the same or similar thing that DFW does?

7 A. Yes, sir.

8 *MR. SANDS:* Objection, Your Honor, as
9 to -- it's vague, ambiguous.

10 *THE COURT:* Objection is overruled. Let's
11 move along.

12 Q. (BY MR. BELL) And you've thought about
13 purchasing other nursing home companies -- Have -- What,
14 if anything, have you done with respect to wanting to
15 purchase other nursing home companies?

16 A. I've made some inquiries.

17 Q. And as a general rule what is the kind of
18 multiplier on gross revenues have you seen in your
19 experience as a CEO of DFW Super Group and, oh, by the
20 way, wanting to purchase another nursing home company?

21 A. I have seen that same valuation used.

22 Q. So about a three times multiplier?

23 A. Yes, sir.

24 Q. Okay. So \$1.7 million times a three times
25 multiplier gets you \$5.1 million, right?

1 A. Yes, sir.

2 Q. So would you say DFW Super Group with -- What,
3 if anything, would you say with respect to the value of
4 DFW Super Group given the fact that it was servicing
5 over 40 nursing homes and hundreds and hundreds of
6 patients?

7 A. It was a very profitable and -- It was a very
8 high quality company.

9 Q. And would you say \$5.1 million is a fair
10 valuation for it? When it was -- Before Dr. Sharma got
11 involved.

12 A. Yes.

13 Q. Okay. Now, in 2007 you and Dr. Sharma formed a
14 company.

15 A. Yes, sir.

16 Q. Can you tell the jury a little bit about the
17 company.

18 A. The company was called Geri Tex and what we
19 were going to do is hire physicians into Geri Tex and I
20 had DFW that contained the nurse practitioners, and
21 Dr. Sharma was going to recruit physicians because he
22 had been over a physician group that was hospitalists,
23 but he got fired from the hospital in McKinney and he
24 let his company -- Excuse me. -- Texas Seniors go dead.
25 And so he wanted to start a new company with me and he

1 had tons of physician contacts, and we would put the
2 physicians into Geri Tex and together we thought, you
3 know, we could provide really good quality care to the
4 Metroplex nursing homes.

5 He had contacts that I didn't have an
6 expertise and I had some things that he didn't have and
7 I was going to train him how to do nursing homes. He
8 had maybe four or five patients spread between two
9 nursing homes when I met him.

10 MR. BELL: May I approach the witness,
11 Your Honor, with some water?

12 THE COURT: Sure.

13 THE WITNESS: Thank you.

14 Q. (BY MR. BELL) And what was to be the split in
15 Geri Tex? Was it a 50/50 kind of deal?

16 A. There was another practitioner that was helping
17 me because all of the work that we were doing for Geri
18 Tex to set it up was not --

19 THE COURT: The question was what was the
20 deal --

21 THE WITNESS: I'm sorry.

22 THE COURT: The question was what was the
23 deal for the split. I want you to listen to the
24 question that's posed and answer just that question.

25 THE WITNESS: Okay.

1 Q. (BY MR. BELL) Did y'all have kind of a 50/50
2 deal in Geri Tex?

3 A. As it turned out.

4 Q. Is that yes?

5 A. Yes.

6 Q. Okay. Just for the court reporter.

7 Okay. And what did Dr. Sharma need to do
8 in order to make Geri Tex successful?

9 A. Recruit physicians, see patients, submit his
10 billing.

11 Q. And was part of -- Just so the jury
12 understands, was part of the way in which Geri Tex was
13 going to be successful was going to be --

14 THE COURT: Counsel.

15 MR. BELL: Let me try it again.

16 THE COURT: Do not lead your witness.

17 Q. (BY MR. BELL) What, if anything, did Geri Tex
18 have to do with any possible success of -- I'm sorry.
19 What, if anything, did DFW Super Group have to do with
20 any potential success there might be for Geri Tex?

21 A. Well, DFW Super Group had all the contacts and
22 all the nursing homes -- a lot of the nursing homes in
23 tact, and that made a really wonderful opportunity for
24 the physicians that Geri Tex would employ and for
25 doctor -- and for Geri Tex.

1 Q. What, if any, kind of introductions did you
2 make for Dr. Sharma?

3 A. I introduced him to several of the homes and
4 the administrators. I had had an opportunity to
5 purchase Dr. Hardy Morgan's practice in Richardson. He
6 was the Medical Director of The Village of Richardson
7 and The Meadows, and I was presented with an opportunity
8 as he was retiring to purchase his practice. I did
9 that, and I brought Dr. Sharma in to take Dr. Morgan's
10 place. So he was put into The Village of Richardson and
11 introduced there through me. He was presented with a
12 whole vast amount of patients, and it was a great
13 opportunity for him.

14 Q. And what were the kinds of promises that
15 Dr. Sharma made?

16 A. That he would do marketing, that he would
17 recruit physicians, and that he would recruit other
18 nursing homes.

19 Q. Did Dr. Sharma do any of the five things listed
20 here?

21 A. No, sir.

22 Q. And from your perspective why was the reason --
23 the partnership you formed with Dr. Sharma, what was the
24 reason why it fell apart?

25 A. Dr. Sharma didn't do anything that he was

1 supposed to do or he didn't try. I mean, he was
2 recruiting the physicians for his own supposedly dead
3 Texas Senior Care company, and all the work and effort
4 that I went putting into it that was non-reimbursable,
5 he would always be too busy to go and do the things that
6 it took that didn't involve money, and so I would do
7 that with one of my nurse practitioners and, you know,
8 we just basically built the business up.

9 I recruited all the physicians that it
10 contained myself. And the ones that were in Geri Tex I
11 went out and recruited. And, you know, after he got it
12 established -- after I got it established, he went and
13 took it. And he took my staff and their territories
14 from DFW Super Group that was -- I had five nurse
15 practitioners leave at once. They had -- They had been
16 instructed to hold their billing and -- because he would
17 take their billings that they were holding when he got
18 their numbers in through the new company. They -- He
19 met with them secretly for two months and planned this
20 with them, told them they would lose their territory if
21 they did not come and work for him. One of them went to
22 work for a corporation and the other four went to work
23 for him.

24 Q. What about -- What, if anything, did Dr. Sharma
25 do with respect to the stealing of nursing homes?

1 A. He -- I mean, he took them. He would not let
2 one of the Geri Tex physicians come back and see her
3 patients, and she was seeing everybody at The Village of
4 Richardson and he had signs put up or -- I don't know, I
5 mean, had the administrator post the signs that she
6 could no longer see her patients. And he basically took
7 that building and he told my husband and I the morning
8 at Starbucks that he was done with Geri Tex and he was
9 going to take the nurse practitioners and my buildings.

10 Q. He was done with Geri Tex and that he was going
11 to take your buildings. Right?

12 A. Yes, sir.

13 *THE COURT:* Counsel, don't repeat the
14 witness's testimony. Let's proceed on.

15 *MR. BELL:* Yes, Your Honor.

16 Q. *(BY MR. BELL)* What, if anything, can you tell
17 the jury with regard to -- Actually I'll withdraw the
18 question.

19 Did you consider yourself a partner, if
20 anything, with Dr. Sharma?

21 A. Yes, I did, and worked very hard to build Geri
22 Tex. I kept thinking in my mind, well, he's going to
23 kick in one of these days and start working. He always
24 had an excuse not to go to the nursing home or put
25 forward effort to recruit doctors. And, you know, I

1 said, okay, I'll handle it and -- but I never dreamed
2 because he was --

3 *THE COURT:* All right. Listen --

4 *THE WITNESS:* Okay.

5 *THE COURT:* I want you just listen to the
6 question that's --

7 *THE WITNESS:* Okay.

8 *THE COURT:* Ma'am?

9 *THE WITNESS:* I'm sorry.

10 *THE COURT:* And the court reporter can
11 only take one of us down at a time.

12 *THE WITNESS:* Yes, sir.

13 *THE COURT:* Listen to the question that's
14 posed; answer only that question.

15 *THE WITNESS:* Yes, sir.

16 Q. (BY MR. BELL) So you considered -- you were
17 talking about whether or not you felt like you were
18 partners and whether or not you were legally partners
19 with Dr. Sharma, right?

20 A. Yes, sir.

21 Q. And what kind of obligations do you feel like
22 you owed to Dr. Sharma?

23 A. The highest quality behavior that I could
24 exhibit and I owed -- I mean, that's how you run a
25 successful business. If it needs attention you pay

1 attention to it and you do whatever it takes whether
2 it's reimbursable or not, to get the job done.

3 Q. And what, if anything, do you know about --

4 MR. BELL: Strike that.

5 Q. What, if anything, do you know with respect to
6 Dr. Sharma's starting of his own new business?

7 A. Just that, you know, he felt he was entitled to
8 take my staff, that it was just business. And that's
9 the kind of response that he had to my husband and I,
10 it's just business and I can take your buildings and
11 your staff, it's a free country.

12 Q. And what was the name of the new company that
13 he set up?

14 A. The it was his dead company, Texas Senior Care.

15 Q. Texas Senior Care? I'm sorry, I didn't mean --
16 Was the name of it Texas Senior Care or Texas Senior
17 Healthcare?

18 You got to -- It's okay.

19 A. I think it was Texas Senior Healthcare.

20 Q. Okay.

21 What if any kind of accounting did
22 Dr. Sharma do for Geri Tex, y'all's partnership?

23 A. He had the -- all the bank accounts, and he
24 never sent me a statement of -- I assume that he --
25 there was some accounting to the CPA. I think there

1 actually was, but I never saw the checkbook. The bank
2 statements, everything was mailed to him and, you know,
3 I just had to rely --

4 *THE COURT:* Ma'am, the question was what
5 kind of accounting did Dr. Sharma do for the --

6 *THE WITNESS:* For me?

7 *THE COURT:* -- partnership?

8 *THE WITNESS:* Nothing.

9 *THE COURT:* Would you like to say that
10 again when I'm not speaking so the court reporter gets
11 both of us down please.

12 *THE WITNESS:* Yes, sir.

13 *THE COURT:* Answer again.

14 *THE WITNESS:* He provided nothing to me.

15 *THE COURT:* Thank you.

16 Q. (BY MR. BELL) And how did that make you feel,
17 being a partner in this business with Dr. Sharma?

18 A. Just kind of naive and ridiculous.

19 Q. Did you feel like you opened up your business
20 you created, DFW Super Group, to him and let him in?

21 *MR. SANDS:* Objection --

22 *THE COURT:* Just a minute.

23 *MR. SANDS:* Objection; leading.

24 *THE COURT:* Objection is sustained.

25 Counsel, step up just a minute.

1 Ladies and gentlemen, if you want to stand
2 up and stretch your legs, you may.

3 MR. BELL: May I approach?

4 THE COURT: I asked you to step up.

5 (Bench conference; off the record.)

6 THE COURT: Thank you very much. You may
7 proceed with your inquiry, Counsel.

8 MR. BELL: Thank you, Your Honor.

9 Q. (BY MR. BELL) What if any kind --

10 THE COURT: Return to counsel table.

11 MR. BELL: Should I be seated or may I
12 stand, Your Honor?

13 THE COURT: As I said earlier, you stand
14 when you talk in this Court, Mr. Bell, you've been here
15 before.

16 MR. BELL: May I proceed?

17 THE COURT: Proceed.

18 Q. (BY MR. BELL) What if any kind of emotion did
19 you feel as a result of -- if any, as a result of
20 letting Dr. Sharma into your business, DFW Super Group?

21 A. Very sad, like I had made a mistake.

22 Q. And why did you feel like it was a mistake?

23 A. Because we wasn't working as a team and going
24 out and developing the business.

25 Q. And what, if anything, do you feel in terms of

1 telling the jury about the destruction of DFW Super
2 Group? I mean, is it producing the same as what it was
3 before or not?

4 A. No, it is not.

5 Q. And, go ahead, you can explain.

6 A. It was just --

7 MR. SANDS: I'll object, Your Honor, calls
8 for a narrative response.

9 THE COURT: Objection is sustained.

10 Q. (BY MR. BELL) What did you mean when you said
11 that DFW Super Group's pretty much destroyed?

12 A. Well, when you take a whole group of people out
13 of it at the same time and lose a bunch of territories
14 it's very hard to recover from that. And, you know,
15 that's DFW, but from Geri Tex he removed the physicians
16 from their responsibilities to the patients as well.

17 Q. And do you -- What is your belief, if any,
18 about whether or not you were careful when you were
19 partners with Dr. Sharma?

20 A. I was always careful. I -- That's how you're a
21 partner; you treat the other side with respect, you tell
22 them everything that's going on and you build a
23 business.

24 Q. And what, if anything, were you in terms of
25 being loyal to Dr. Sharma?

1 A. I was one hundred ten percent loyal.

2 Q. And what, if anything, -- What were you, if
3 anything, with respect to being honest as it related to
4 being a partner with Dr. Sharma?

5 A. I was always honest to the point of probably
6 being naive.

7 Q. And can you tell the ladies and gentlemen of
8 the jury about whether or not you believed Dr. Sharma
9 was careful with your investments or not?

10 A. I just know that he didn't do what he was
11 supposed to. I did -- You know, there was not any kind
12 of personality conflict. I mean, I was the best partner
13 anybody could have, and, you know, once again did all of
14 the work for no pay, to try and establish the company
15 and bring in the physicians, and, you know, while he was
16 working away doing whatever at the hospital.

17 Q. What, if anything, do -- do you have to say
18 about how Dr. Sharma was loyal to you and the
19 businesses?

20 A. Well, he was not. He stole my employees, my
21 nurse practitioners, and he stole the territories and
22 the nursing homes. It wasn't just a business thing; you
23 just don't do that to other people.

24 Q. What about -- What, if anything, with respect
25 to his honesty and his dealings with you and the

1 companies?

2 A. He was dishonest.

3 Q. Now, you're asking --

4 MR. BELL: I'll withdraw that question.

5 Q. Who controlled the bank accounts?

6 A. Dr. Sharma.

7 Q. And in terms of getting an accounting, you -- I
8 think you -- I don't want to ask you the same question I
9 asked you earlier, but in terms of financial documents,
10 what, if any, kind of financial documents did he provide
11 to you?

12 A. He did not provide any documents to me.

13 Q. And assuming Geri Tex was -- had -- Assuming
14 Geri Tex combined with DFW Super Group's contacts,
15 assuming it was successful, what kind of like -- what
16 kind of revenues would it have generated or what
17 projections were made, if you know, ma'am?

18 MR. SANDS: I'll object, Your Honor, to
19 the extent it calls for this witness to speculate and
20 she's already testified she's not an expert.

21 THE COURT: It's her company, I'll let her
22 testify. Objection is overruled.

23 A. Probably -- And I did think about this a lot.
24 Probably 20 to 25 million had he acted appropriately and
25 put the physicians in place and we would have just -- if

1 we were really good, which I thought we were, we would
2 have done a great job and had all of the business.

3 Q. And when you get to the -- Are you talking
4 about it would have done 5 to \$6 million a year and then
5 it's a multiplier, or are you saying -- you're telling
6 the jury that you think Geri Tex would actually have
7 done \$25 million a year?

8 A. It would have after the start-up.

9 Q. After the start-up at some point it would
10 have --

11 A. Oh, yeah.

12 Q. And what makes this kind of business -- Tell
13 the jury why this kind of business is so profitable.

14 A. Because there's a -- It's not so profitable, I
15 guess -- I mean, like, there's not office buildings and
16 that kind of stuff, it's just -- What makes it, I guess,
17 work is the patients are getting such good care and
18 we're checking on them, we're making sure they're
19 staying out of the hospital and being treated in the
20 nursing home if they can, or if they need to go to the
21 hospital or have something done, we're picking up on it
22 right away. So it -- And it's just a -- it's a very
23 beneficial business to the patients involved. So that
24 makes the nursing homes really like us and our
25 reputation spreads.

1 Q. And what's your belief, if any, with regard to
2 whether or not your company that you started in 2000,
3 DFW Super Group, is it pretty much shattered and
4 destroyed?

5 A. It's -- It's about -- not even half of what it
6 was.

7 Q. But it's still operating?

8 A. It's still operating.

9 Q. And did you ever at any point have any offers
10 on DFW to sell it?

11 A. I did in 2007.

12 Q. And what was that offer, do you remember?

13 A. It was 1.5 million.

14 Q. And was that like a liquidation value offer or
15 was that on -- on a revenue multiplier model?

16 A. I think it -- I'm not for sure.

17 Q. All right. And would you attribute -- What if
18 any -- What if any fault would you attribute to
19 Dr. Sharma's conduct and the loss or destruction of some
20 of DFW's business and loss of accounts and things?

21 A. I'm sorry. Can you --

22 Q. That's okay. Yeah.

23 MR. BELL: May I reask, Your Honor?

24 THE COURT: Please.

25 Q. (BY MR. BELL) What if any kind of fault would

1 you attribute, in terms of percentage, to Dr. Sharma for
2 the loss and destruction of DFW -- DFW's business over
3 the last year or two?

4 A. We've gone down at least 50 percent, more in
5 some cases. I lost areas.

6 Q. What I'm asking, would you -- is it
7 Dr. Sharma's fault or do you think it's, you know, we're
8 in a bad economy? Or can you directly -- would you
9 directly attribute the destruction to Dr. Sharma?

10 A. It's Dr. Sharma's destruction.

11 Q. For sure?

12 A. For sure.

13 Q. Okay. And, ma'am, you're asking for
14 substantial -- You were here during voir dire,
15 Mrs. Ralston, you're asking for a lot of money from the
16 jury, right?

17 A. Right.

18 Q. I think 17 --

19 *THE COURT:* (Tapping).

20 I'm sorry, Mr. Bell. Proceed.

21 *MR. BELL:* No problem, Your Honor.

22 Q. (BY MR. BELL) You were asking for
23 \$17.1 million.

24 A. Yes.

25 *MR. SANDS:* Your Honor, I would object to

1 this witness testifying at this point as to what she's
2 asking for this jury. As we've stated in the motion
3 that's been filed with the Court, that up until today
4 she has never provided us --

5 *MR. BELL:* I'm going to object.

6 *THE COURT:* He's not finished speaking;
7 don't interrupt.

8 *MR. SANDS:* ... up until today. It's a
9 violation of the discovery rule. She has never provided
10 us with a dollar amount.

11 *THE COURT:* When did you make a request
12 for it of the Plaintiff?

13 *MR. SANDS:* Your Honor, the first request
14 was made July -- roughly July 13th, 2010. She served
15 her Responses to Request for Disclosure on
16 August 13th, 2010.

17 *THE COURT:* May I see them, please?

18 *(Document handed to the Court.)*

19 *THE COURT:* In which request are you
20 referencing, Counsel?

21 *MR. SANDS:* With regard to the amount of
22 damages that she's sustained.

23 *THE COURT:* Will you tell me the number?

24 *MR. SANDS:* Sorry, Your Honor. 194.2 (d)
25 as in David.

1 *THE COURT:* Okay.

2 *MR. SANDS:* In addition --

3 *THE COURT:* Was there any -- Mr. -- Who's
4 going to respond?

5 *MR. JASON FRIEDMAN:* (Indicating.)

6 *THE COURT:* Okay. Mr. Friedman, when did
7 you -- Did you make a further response to this request?

8 *MR. JASON FRIEDMAN:* I did.

9 *THE COURT:* May I see it, please?

10 *MR. SANDS:* Your Honor, I would object.

11 *THE COURT:* I would like to see it, first.

12 *MR. JASON FRIEDMAN:* May I approach?

13 *THE COURT:* Uh-huh.

14 *MR. JASON FRIEDMAN:* Your Honor, may I add
15 something?

16 *THE COURT:* Can I see it first? Thank
17 you.

18 *(Document handed to the Court.)*

19 *THE COURT:* Was there a supplement to this
20 response?

21 *MR. JASON FRIEDMAN:* Yes, Your Honor.

22 *THE COURT:* May I see it as well, please.

23 *MR. JASON FRIEDMAN:* It was just a verbal.

24 *THE COURT:* I'm sorry?

25 *MR. JASON FRIEDMAN:* I was going -- I

1 thought you wanted...

2 *THE COURT:* Did you make a supplement to
3 this response? Did you serve on the Defendant a
4 supplemental response?

5 *MR. JASON FRIEDMAN:* Yes.

6 *THE COURT:* May I see it please?

7 *MR. JASON FRIEDMAN:* I think that's it.

8 *THE COURT:* To -- To the one that you just
9 gave me, Mr. Friedman, I'm asking you if this -- this
10 document which was served on December 5th, 2011, --

11 Ladies and gentlemen of the jury, as much
12 as I hate to do this I'm going to have to excuse you for
13 a couple of minutes while we talk about this outside
14 your presence, so we're going to take our midafternoon
15 break of 15 minutes just a little bit early, okay?

16 *THE BAILIFF:* All rise.

17 *(Jury leaves courtroom.)*

18 *THE COURT:* You may be seated.

19 You may stand down, ma'am.

20 All right. This supplement was -- I'll
21 hear from -- You wanted to add something else,
22 Mr. Friedman, go ahead.

23 *MR. JASON FRIEDMAN:* Your Honor, one of
24 the reasons why that wasn't supplemented earlier was
25 because the Defendant would not produce necessary

1 documents in order to -- for me to make a proper
2 financial calculation.

3 *THE COURT:* Did you file a Motion to
4 Compel those documents, production of those documents?

5 *MR. JASON FRIEDMAN:* I don't know.

6 *THE COURT:* Okay.

7 *MR. SANDS:* Your Honor, if I may. I would
8 also -- I would like to take the witness on voir dire.

9 *THE COURT:* No, I just -- all I want to do
10 is talk right now about whether or not the response is
11 sufficient to let the Plaintiff testify about this --
12 this damage amount that she's asserting she's due,
13 that's all I want -- I want our focus to be just there,
14 please.

15 *MR. SANDS:* Yes, Your Honor. Obviously
16 over a year and however many months that's been -- 14,
17 15 months -- we've been asking for what the amount of
18 damages that she's seeking, and pursuant to the Rules of
19 Civil Procedure she's absolutely obligated to provide us
20 with that information or it's automatically excluded.

21 In addition, Your Honor, the deposition of
22 my client was taken -- was taken March 2011, so she's
23 had all that time to try to calculate damages and still
24 hasn't provided us with an amount that she's seeking
25 from my client.

1 In addition, Your Honor, on November the
2 2nd, 2011, I took Mrs. Ralston's deposition and asked
3 her, quote, *What amount of damages are you seeking from*
4 *our client?*

5 *ANSWER: I do not know.*

6 *THE COURT:* Well, the record reflects --
7 Excuse me. The response that was just provided to the
8 Court was served yesterday.

9 Rule 193.5 requires -- actually
10 193.5(2) (b) notes that "An amendment or supplement made
11 less than 30 days prior to trial is not made reasonably
12 promptly."

13 On that basis I'm going to -- as well as
14 the bases stated by counsel for the defense I'm going to
15 sustain the objection to the witness's testifying as to
16 \$17 million and I'm going to instruct the jury that they
17 may not consider her testimony on that issue.

18 *MR. BELL:* Your Honor, may I make a
19 record?

20 *THE COURT:* You may.

21 *MR. BELL:* I don't have the rule in front
22 of me but I think good cause -- May I approach? I've
23 got the Plaintiff's Original Petition.

24 *THE COURT:* I've got that here as well.

25 *MR. BELL:* 193.6, it's automatic unless

1 there's good cause. Good cause permits a Trial Court to
2 excuse failure and di- --

3 *THE COURT:* I'm familiar -- I'm familiar
4 with what the rule says, Counsel. What are you
5 asserting is your good cause?

6 *MR. BELL:* Well, that there's no surprise
7 here. You don't have to put --

8 *THE COURT:* I'm asking about good cause,
9 I'm not asking about lack of surprise; those are two
10 different issues.

11 *MR. BELL:* I understand.

12 *THE COURT:* Then respond to my question.

13 *MR. BELL:* The good cause is the Defendant
14 was on notice. I don't have to allege damages other
15 than to say the minimal jurisdictional limits of the
16 Court. And throughout this petition that was filed I
17 asked for all actionable, consequential, incidental
18 damages --

19 *THE COURT:* Counsel, I understand, and
20 putting it in -- putting a generic statement in an
21 Original Petition is not sufficient. I've made my
22 ruling. If there's another document you want to put
23 into the record other than your Original Petition I'll
24 hear you; otherwise, I don't want you to continue
25 arguing a motion that I've already ruled upon.

1 *MR. BELL:* Is there a damage amount that I
2 can argue for?

3 *THE COURT:* Is there a damage amount that
4 you have responded to in the Request for Disclosures?

5 *MR. BELL:* Damage -- Minimum
6 jurisdictional limits of the Court, I'm --

7 *THE COURT:* That's not appropriate.

8 What does that mean to the jury, Counsel?
9 Anything? Anything at all? If you tell them the
10 minimal jurisdictional amount of this Court?

11 I didn't think so.

12 *MR. JASON FRIEDMAN:* Your Honor?

13 *THE COURT:* I said awhile ago I only
14 wanted one person per side to argue. Now, we started
15 with Mr. Bell -- we started with Mr. Friedman, we've
16 gone to Mr. Bell, you want to go back now, Counsel? I
17 told --

18 *MR. JASON FRIEDMAN:* Your Honor, --

19 *THE COURT:* -- you the way --

20 I am unaccustomed to people not following
21 my instructions, I really am, and I'm not going to get
22 used to it, okay? One person per side argues a motion.
23 I've made my ruling on this motion.

24 *MR. JASON FRIEDMAN:* I was going to add in
25 hopes of making the trial more efficient we had the same

1 issue with the Counter-Plaintiffs who never provided an
2 accounting in their 194's on how to --

3 *THE COURT:* We're not at that point yet,
4 are we?

5 *MR. JASON FRIEDMAN:* Okay. I just --

6 *THE COURT:* We're not at that point yet,
7 are we?

8 *MR. JASON FRIEDMAN:* No, sir.

9 *THE COURT:* Each of you may reacquire your
10 documents.

11 *MR. BELL:* May I use the restroom, Your
12 Honor?

13 *THE COURT:* We are in recess.

14 *(Recess from 2:23 to 2:40 p.m.)*

15 *THE COURT:* We're going to back up just a
16 little bit.

17 Right before we broke Mr. Bell posed a
18 question with regard to the elements of damage and the
19 amount of damage which he could put on in evidence.
20 When we reconvened I've asked opposing counsel,
21 Mr. Sands, to respond.

22 Mr. Sands' response truncated is that --
23 truncated by me, is that the Plaintiff should not be
24 able to put on any testimony with regard to any amount
25 of damages because the Plaintiff has failed to disclose

1 same in the Response to Disclosures and also in -- did
2 not disclose same in terms of lost profits in discovery
3 answer to a deposition. Is that it in a nutshell, Mr.
4 Sands?

5 *MR. SANDS:* Clarification, Your Honor.

6 *THE COURT:* Please.

7 *MR. SANDS:* Any evidence of damages.

8 *THE COURT:* Right. Okay. Clarification
9 noted. All right.

10 Your response, Mr. Bell, is that I am --
11 that you are entitled, with all due respect, to put on
12 evidence with regard to non-economic damages. I've
13 invited you to direct my attention to them -- to where
14 that's identified in the response to Request for
15 Disclosures. Where will we find that?

16 *MR. BELL:* Well, non-economic -- There's
17 economic damage in these Request for Disclosure that I'm
18 looking at. I think these are the ones you're talking
19 about being served untimely. And to answer your
20 question, I don't know where they are in the 194s
21 because I don't know -- and I could be wrong, with all
22 due respect, but I'm reading 194, and I'm sure you're
23 going to tell me I'm wrong, but it says, "The amount and
24 any method of calculating economic damages." Doesn't
25 say anywhere in 194, and you're probably going to tell

1 me I'm wrong, but I don't know where in the rule it
2 says -- talks about non-economic damages.

3 *THE COURT:* And that is the basis upon
4 which you believe you're entitled to put on evidence of
5 non-economic damages; is that correct?

6 *MR. BELL:* One of the basis.

7 *THE COURT:* That's the basis which you've
8 identified to this point, correct?

9 *MR. BELL:* And I think I can also ...

10 *THE COURT:* That is the basis to which
11 you've -- which you've identified to this point, am I
12 correct?

13 *MR. BELL:* To this point -- At this point
14 in time subject to modification, yes.

15 *THE COURT:* I really didn't need all of
16 the qualifications, Mr. Bell, and I don't appreciate it.

17 All I want is a direct answer to the
18 direct question that I pose to you, okay?

19 I'll let you get on to the rest of your
20 argument; I want to make sure I understand it and the
21 qualification doesn't assist me.

22 What's your response to that, Mr. Sands?

23 *MR. SANDS:* I disagree, Your Honor.

24 *THE COURT:* Okay. And where will you give
25 me -- where will you point me to authority that

1 discusses non-economic damages?

2 *MR. SANDS:* I'm looking, Your Honor. It
3 goes back to 193.6, Your Honor. Specifically -- It's
4 clear on its face, Your Honor. 193.6, "A party who
5 fails to make, amend or supplement a discovery response
6 in a timely manner may not introduce in evidence the
7 material information that was not timely disclosed."

8 *THE COURT:* I understand -- I understand
9 that and I'm familiar with 196 -- 193.6(a).

10 Mr. Bell has made an argument suggesting
11 that the disclosure rules speak to economic damages as
12 opposed to non-economic damages and that's what I want
13 you to restrict yourself to at this point.

14 *MR. SANDS:* Our position, Your Honor,
15 would be the plain meaning rule.

16 *THE COURT:* Thank you.

17 Mr. Bell, what is the -- what is the rule
18 to which you refer when you say that you are entitled to
19 offer -- that the disclosures speak only to economic
20 damages?

21 *MR. BELL:* The rule is 194.2(d), "the
22 amount and any method of calculating economic damages."

23 And I also had another argument --

24 *THE COURT:* I hadn't gotten there yet,
25 Mr. Bell, please. Let's just handle one at a time.

1 *MR. BELL:* Yes, sir. Yes, Your Honor.

2 *THE COURT:* Mr. Sands, Mr. Bell suggests
3 to us that 194.2(d) speaks only to calculating economic
4 damages.

5 *MR. SANDS:* Working through this, Your
6 Honor, our position would be that they didn't include
7 non-economic damages in their factual theories.

8 *THE COURT:* Okay. All right. Thank you.

9 What further theory do you have, Mr. --
10 What further argument do you now wish to make, Mr. Bell?

11 *MR. BELL:* Yes, Your Honor. You know,
12 I've stated earlier and Your Honor was very familiar
13 with good cause and you --

14 *THE COURT:* That's a non-starter. I don't
15 find that you've shown good cause for a supplementation
16 at the -- the day before trial.

17 *MR. BELL:* Well, I left out an element of
18 good cause which it states in the rule which is 19- --
19 193.6(2), "The failure to timely make, amend or
20 supplement the discovery response will not unfairly
21 surprise or unfairly prejudice the other parties."

22 *THE COURT:* Okay.

23 *MR. BELL:* Well, since the beginning of
24 the case -- We're talking about just unfair prejudice to
25 them. Since the beginning of the case --

1 *(Sotto voce discussion ensued.)*

2 *MR. BELL:* The Original Petition in this
3 case, Your Honor, and I'm happy -- If I may approach.

4 *THE COURT:* I've got a copy of the
5 Original Petition right here before me, thank you.

6 *MR. BELL:* Paragraph 22, 23, 24 in the
7 tortious interference section.

8 *THE COURT:* Right.

9 *MR. BELL:* Paragraph 30 --

10 *THE COURT:* Hold on -- No, no, no. Hang
11 on just a minute, please.

12 Okay. 22, 23 and 24 are assertions that
13 the Plaintiff -- Excuse me. -- that the Defendant has
14 tortiously interfered with current and prospective
15 business relations. And it states that the Plaintiffs
16 have suffered economic damage, potential lost cost, lost
17 profits and exemplary damages. Okay.

18 *MR. BELL:* And Paragraph 30 says the
19 conduct has caused the Plaintiffs actual, consequential,
20 incidental damages --

21 *THE COURT:* Right.

22 *MR. BELL:* -- including lost profits which
23 we hereby sue.

24 *THE COURT:* Right. Let me ask you this:
25 Where -- Where in the petition does the Plaintiff give

1 Defendant notice that he's seeking damages -- Defense
2 counsel asserted prior to my sustaining an objection
3 that he was shocked to find out, did not know
4 \$17 million until today.

5 Where will I find that he's been given
6 notice of -- and is no longer put in the position of
7 being surprised at your request from this petition?

8 **MR. BELL:** Yes, Your Honor. Had -- Couple
9 things. Had the Defendant properly noticed this motion,
10 Number 1; and Number 2, do what we all do in Texas
11 practice. You file special exceptions. That's what you
12 got to do. You got to file special exceptions and be
13 more specific. This -- They were put on notice --

14 **THE COURT:** I --

15 **MR. BELL:** -- of all the damages --

16 **THE COURT:** I think that asking for the
17 information in disclosures is sufficient. I don't find
18 persuasive the argument that the only way that he can
19 seek that information is via special exception.

20 **MR. BELL:** May I see our -- I'm sorry,
21 Your Honor.

22 *(Sotto voce discussion ensued.)*

23 **MR. BELL:** Well, do you find persuasive
24 the argument that -- I mean, he's put on notice with our
25 petition about what all the facts are that basically

1 destroyed these -- this lady's two businesses.

2 *THE COURT:* We're not talking about the
3 facts, Counsel, and let's keep our focus on the subject
4 at hand.

5 *MR. BELL:* Yes, Your Honor.

6 *THE COURT:* Which is testimony and
7 evidence about the amount of damages, please.

8 *MR. BELL:* I -- I think maybe the question
9 is what is it I can do in this situation short of the
10 harsh remedy the Court is, I think, possibly inclined to
11 grant as it relates to economic damages, what remedy
12 short of that could, at my expense, or my client's
13 expense, help the Defendants not be -- not claim that
14 they were unfairly surprised? Is that a taking of a
15 deposition right here right now in the courtroom? Is it
16 coming to my office? I'll pay for the deposition, pay
17 for the court reporter, we'll come right back, they're
18 on notice. Is it -- I mean, what -- I think the real
19 question is, in terms of equity, what is it that I could
20 do -- what is it --

21 *THE COURT:* The question -- With all due
22 respect, Mr. Bell, the question is a question that I
23 pose. The question which I pose is where in the
24 petition do we find the elements that give the
25 Plaintiff -- that put the Defendant on notice as to the

1 fact that you are seeking \$17 million?

2 You answered that by instructing as to how
3 proper procedure should be done in Texas. I'm not
4 persuaded by that.

5 I am exceedingly troubled by the manner in
6 which this case is being presented.

7 *MR. BELL:* The answer is you can't find
8 the Number \$17.1 million.

9 *THE COURT:* Can you find any number?

10 *MR. BELL:* The answer is no, not as it
11 relates specifically to a number, but Texas law -- and
12 if you gave me ten minutes I can go pull --

13 *THE COURT:* Counsel, I came out here
14 prepared to try this case and I expect lawyers to be
15 prepared to try it as well.

16 *MR. BELL:* But the Plaintiff doesn't have
17 the obligation to put all her damages in the -- in the
18 petition.

19 *THE COURT:* I agree with you. The
20 Plaintiff does have an obligation to put the damages in
21 a properly served Request For Disclosure.

22 The original disclosure was insufficient.
23 The supplementation I find to be insufficient as well,
24 and more importantly, I find it not to be timely.

25 *MR. BELL:* Can we talk --

1 *THE COURT:* Can "we" who talk?

2 *MR. BELL:* May I say something, Your
3 Honor?

4 *THE COURT:* Go ahead. As long as it's
5 responsive to what I've just said.

6 *MR. BELL:* I think it is.

7 What about talking about this 6 -- this
8 \$17.1 million not in terms of damages, but in terms of
9 what these two witnesses can really testify to which is
10 the valuation of these companies; that's not damages.
11 They're talking about just simply in a vacuum, what's
12 the valuation. They can talk about the valuation of
13 their company.

14 *THE COURT:* I think we've already had
15 testimony as to the value of the company, have we not?

16 *MR. BELL:* I believe we have, Your Honor.

17 *THE COURT:* Okay. So we don't need to
18 have that again, do we?

19 *MR. BELL:* As it relates to my witness or
20 to -- if I'm cross-examining?

21 *THE COURT:* I'm talking about the witness
22 we've got on the stand right now.

23 *MR. BELL:* As it relates to the witness on
24 the stand right now I think she's testified plainly as
25 to what the valuation is.

1 *THE COURT:* I think she has.

2 Mr. Sands?

3 *MR. SANDS:* Well, it would be repetitive,
4 we would object on that basis.

5 *THE COURT:* Okay.

6 *MR. SANDS:* And irrelevant at this point,
7 Your Honor. And immaterial.

8 *THE COURT:* Other than your damage
9 testimony do you have anything else from this witness?

10 *MR. BELL:* Yes, Your Honor, as it relates
11 to non-economic damages, the pain and suffering, the
12 emotional turmoil, and -- you know, they didn't move to
13 bifurcate so I want to talk about, you know,
14 misapplication of fiduciary property, a cap buster, I
15 want to talk about punitive damages.

16 *THE COURT:* Well, we've already been -- We
17 broke at 14:22, we started 13:10. I asked you how long
18 you were going to be with this witness, you said between
19 half an hour and an hour. We're already at an hour and
20 ten minutes. I don't want this made up as we go along;
21 that's not efficient and that's not in the best interest
22 of the jury's time.

23 How much longer do you want with this
24 witness?

25 *MR. BELL:* Maximum 20 minutes. I'll take

1 less.

2 *THE COURT:* Mr. Bell, it's inconceivable
3 to me that you put your client on the stand and you're
4 not -- you don't know how long you're going to be with
5 the witness.

6 Sheriff, line the jury up, please.

7 *THE BAILIFF:* Yes, sir.

8 *THE COURT:* I hereby rule that the
9 supplementation filed yesterday is not timely and
10 pursuant to 193.5(2) (b) is presumptively made
11 unreasonable.

12 There is no -- Even assuming arguendo that
13 the supplementation was timely, it does not identify the
14 amounts of economic damages sought; and, therefore, the
15 Court will sustain the objection of the Defendants to
16 the testimony regarding economic damages.

17 Bring them in.

18 *THE BAILIFF:* All rise.

19 *(Jury enters courtroom.)*

20 *THE COURT:* You may be seated.

21 Return to the witness stand, ma'am.

22 Ladies and gentlemen of the jury, I
23 apologize for not making the most efficient use of your
24 time. There's some matters that we needed to take up
25 outside your presence that impact the trial, and I'm

1 sorry, I didn't mean to make you wait and I assure you
2 we don't do it cavalierly.

3 Be seated.

4 The objection is sustained to the -- to
5 the damage testimony as proffered.

6 Yes, sir?

7 *MR. SANDS:* Yes, Your Honor, if I may, I
8 would like to invoke the Rule.

9 *THE COURT:* The trial's already started;
10 I'm not going to let you invoke the Rule at this point.

11 You have 15 minutes to proceed with this
12 witness.

13 *MR. BELL:* Thank you, Your Honor.

14 Q. (*BY MR. BELL*) Mrs. Ralston, I want to talk a
15 little bit about -- you know, pain and suffering a
16 little bit that you've gone through as a result from
17 having to deal with Dr. Sharma.

18 Can you tell the jury what, if any, kind
19 of pain or feelings you have experienced as a result of
20 having dealt with Dr. Sharma as your partner?

21 A. I think just the feelings that anybody would
22 have about having their business stolen and just
23 destroyed. I've not -- I've had difficulty sleeping,
24 I've had difficulty with -- I mean, he not only took my
25 nurse practitioners, some of them were my good friends

1 that he maligned me to. And one of them was a friend
2 for nine years, but he made me sound terrible to them
3 and just blew up relationships in the nursing homes. I
4 mean, we weren't allowed to enter into the nursing homes
5 that I had gone into for years. Is that ...

6 Q. And what, if anything, would you say about ill
7 will or his -- Dr. Sharma's motive based on your
8 experiences in dealing with him? What could you tell
9 the jury about that?

10 A. He -- He -- I don't know how he sleeps at
11 night, I really don't. I mean, just to steal and just
12 act like it's just part of business, that I take
13 everything that you have and it's okay in the name of
14 business. And I don't even -- you know, I'm -- It's not
15 gotten really any better; I'm totally devastated over
16 what he did. And it's not right; he shouldn't be
17 allowed to do that. I'll pass the witness, Your Honor.

18 *THE COURT:* All right. Thank you.

19 Mr. Sands, do you wish to inquire of this
20 witness?

21 *MR. SANDS:* Yes, Your Honor, if it please
22 the Court.

23 *THE COURT:* You may proceed.

24 *MR. SANDS:* Thank you, Your Honor.

25

1 **CROSS-EXAMINATION**

2 BY MR. SANDS:

3 Q. Mrs. Ralston, what efforts have you made since
4 we'll call it the breakup meeting that occurred at
5 Starbucks in May of 2010, what efforts have you made to
6 continue to build your business?

7 A. I have recruited other homes and some employees
8 but I can't put them back in the areas that he took.

9 Q. Any other efforts you've made to remain
10 competitive to increase your company's business?
11 Businesses. Excuse me.

12 MR. BELL: Objection; asked and answered.

13 THE COURT: Overruled.

14 A. I'm sorry, I don't know what -- To remain
15 competitive? I mean, I haven't gone and tried to
16 recruit his employees. Is ...

17 MR. SANDS: Objection; nonresponsive, Your
18 Honor.

19 THE COURT: It appears to me she doesn't
20 really understand the question. Why don't you --

21 Ma'am, if you don't understand a question
22 that he poses to you, just say "I don't understand it"
23 or ask him to rephrase it.

24 Why don't you try the question one more
25 time, Mr. Sands.

1 MR. SANDS: Sure.

2 THE COURT: Thank you.

3 Q. (BY MR. SANDS) Mrs. Ralston, my question is
4 what additional efforts, other than what you've just
5 testified to, have you made to keep your businesses
6 competitive and to build those businesses?

7 A. Marketing and trying to obtain some different
8 areas.

9 Q. What kind of marketing have you conducted
10 specifically?

11 A. That's a long time. I mean, I've done a lot of
12 things, from going and visiting homes in other areas and
13 meeting their employees and physicians like I've always
14 done.

15 Q. Anything else?

16 A. I mean, I don't really understand what you're
17 getting at.

18 Q. Well, you've testified to this jury that you're
19 a very successful businesswoman and that you build up
20 these million dollar companies and what I would like for
21 you to explain to the ladies and gentlemen of the jury
22 as to what efforts you have made to market your
23 businesses since you had the breakup at the Starbucks in
24 May of 2010?

25 MR. BELL: Objection; multifarious and

1 asked and answered.

2 *THE COURT:* Question's been asked and
3 answered; let's plow some new ground, Counsel.

4 Q. Mrs. Ralston, on behalf of --

5 *MR. SANDS:* Strike that.

6 Q. Mrs. Ralston, With regard to DFW Super Group
7 and Geri Tex did you have any Noncompete Agreements with
8 the nurses that you complain of that Dr. Sharma
9 allegedly took from you?

10 A. Yes, I did.

11 Q. Have you ever produced those to us?

12 A. I've produced them to my attorneys.

13 Q. Mrs. Ralston, earlier this afternoon when you
14 were testifying in response to questions from your
15 attorney, you testified that the business was, and I
16 quote, it's not so profitable. Yet you've represented
17 to this jury through your counsel and through your
18 testimony that, in fact, these businesses are worth
19 millions of dollars. So my question to you, ma'am, is
20 what would you consider to be profitable?

21 *MR. BELL:* Objection; compound, and it
22 mischaracterizes her earlier testimony.

23 *THE COURT:* The objection is overruled.
24 Witness can answer.

25 *THE WITNESS:* I think what I mean is that

1 if there's a lot of people working, the total gross can
2 add up to be very profitable -- I mean, like a lot of
3 money is what I meant. But, you know, that all goes
4 back, most of it, to the employees themselves, or to the
5 physicians that we work with or it's paid out in
6 marketing fees.

7 Q. Okay. So when you're talking -- I'm sorry, go
8 ahead.

9 A. I -- No -- I just mean is that what your
10 question meant.

11 Q. So the 1.7 million in revenues, that doesn't
12 take into account expenses, other types of overhead,
13 that's just pure revenue; is that correct? It
14 doesn't -- It doesn't assess the net value that was
15 received; is that correct?

16 A. I don't know, it's just gross receipts.

17 Q. So it doesn't accurately reflect net profit,
18 does it?

19 A. It was not profit, it was revenue.

20 *THE COURT:* The question was does it
21 reflect profit.

22 *THE WITNESS:* No.

23 *THE COURT:* Okay. Proceed.

24 Q. (BY MR. SANDS) Mrs. Ralston, have you ever had
25 any professional valuation of Geri Tex performed?

1 A. I have had the CPA firm look at my business and
2 evaluate it.

3 Q. Did they provide you a formal valuation of Geri
4 Tex, your CPA firm?

5 A. They thought the offer that I received in 2007
6 was maybe a little low, but I was not interested in
7 selling my business; that's my mission, is to do nursing
8 homes.

9 Q. Mrs. Ralston, what was your title at Geri Tex?

10 A. Member.

11 Q. Do you know what your title today is at Geri
12 Tex?

13 A. Member. It's an L.L.C.

14 Q. And as we sit here today is Dr. Sharma still a
15 member of Geri Tex?

16 A. I would not think so.

17 Q. As we sit here today does Dr. Sharma still own
18 stock in Geri Tex?

19 A. No.

20 Q. And why is that?

21 A. He doesn't want anything to do with Geri Tex.

22 Q. So who assumed control over Dr. Sharma's stock?

23 A. Over his stock?

24 Q. Yes.

25 A. I guess Geri Tex withheld the stock -- held the

1 stock.

2 Q. So who's the owner of the stock in Geri Tex
3 today?

4 A. I am.

5 Q. You are? Okay. What happened to Dr. Sharma's
6 percentage of stock in Geri Tex?

7 A. He walked away from it.

8 Q. Would you explain to the ladies and gentlemen
9 of the jury, please, what you did with regard to the one
10 Geri Tex account at Chase after y'all had the meeting at
11 Starbucks in May of 2010?

12 MR. BELL: Objection; assumes facts not in
13 evidence.

14 THE COURT: Overruled.

15 THE WITNESS: Yes, my CPA called me --

16 MR. SANDS: Your Honor, I'm going to
17 object as to what her CPA said as to hearsay.

18 THE COURT: The question is, ma'am, what
19 did you do with regard to the one Geri Tex account after
20 you-all had the meeting at Starbucks in May 2010.

21 THE WITNESS: I went to my CPA firm.

22 THE COURT: Okay.

23 Q. (BY MR. SANDS) And what happened next with
24 regard to the Chase account of Geri Tex?

25 A. I was instructed to go to the bank --

1 *THE COURT:* No, ma'am, don't talk about --
2 We've got rules that would prohibit you from saying what
3 somebody else told you. So what you can -- just testify
4 as to what you did, not what you were instructed to do.

5 *THE WITNESS:* I went to the bank.

6 Q. *(BY MR. SANDS)* And what did you do once you
7 got to the bank, ma'am?

8 A. Talked to the president of the bank.

9 Q. And what efforts, if any, did you take at the
10 bank to transfer the funds out of the Geri Tex account
11 or to change the Geri Tex account?

12 A. The bank president did -- changed it.

13 Q. How did he change it?

14 A. He set up another number for the account.

15 Q. Okay. So were all of those funds transferred
16 from the one account to a separate account?

17 A. I think just the number was changed.

18 Q. So the number was changed and what was the --
19 what was the reason for that change, to your knowledge?

20 A. The people -- the CPA and the bank --

21 *THE WITNESS:* Can I say what they said?

22 *MR. SANDS:* Objection; hearsay, Your
23 Honor.

24 *THE COURT:* Objection is sustained.

25 The question is what was the reason for

1 the change.

2 *THE WITNESS:* Because he had stole so much
3 from me they presumed that money was not -- no longer
4 safe.

5 Q. *(BY MR. SANDS)* Okay. Now, --

6 *THE WITNESS:* I received instructions to
7 change the account and I don't know how to get around
8 that.

9 *MR. SANDS:* I'll object as hearsay, Your
10 Honor.

11 *THE COURT:* Objection is sustained.
12 Jury's instructed to disregard.

13 Q. *(BY MR. SANDS)* Ma'am, the bank representative
14 and the CPA aren't here for cross-examination purposes.

15 A. Okay.

16 Q. That account was changed -- The account number
17 was changed at your direction; is that correct?

18 Or if you would like me to rephrase?

19 A. Thank you.

20 Q. You were the one that had the authority to
21 change the account number at Chase on the Geri Tex
22 account to another account; is that correct?

23 A. I presume so, since they changed it.

24 Q. Thank you. And what was the approximate amount
25 of money that was in the account at that time?

1 A. I don't know, Dr. Sharma was receiving the
2 statements.

3 *THE COURT:* Ma'am, please just answer the
4 question that's posed to you. If you don't know it's
5 fine to say "I don't know".

6 *THE WITNESS:* I don't know.

7 Q. *(BY MR. SANDS)* You don't have any idea?

8 *THE COURT:* She says she doesn't know,
9 Counsel; let's proceed along.

10 Q. *(BY MR. SANDS)* Mrs. Ralston, at the time that
11 you had these concerns with Dr. Sharma did you ever have
12 any meetings with him to discuss your concerns?

13 A. No, he would no sit down and met.

14 Q. What efforts did you take to meet with him?

15 A. I called him and I texted him several times,
16 especially when the nurse practitioners were telling me
17 that he was trying to have secret --

18 *MR. SANDS:* Objection, Your Honor.

19 *THE COURT:* Objection is sustained.

20 Ma'am.

21 *THE WITNESS:* I'm sorry.

22 *THE COURT:* Please. Just -- You're going
23 to have an opportunity to have Mr. Bell ask you more
24 questions later on if he deems it's appropriate under
25 the rules. For the time being, all I want you to do is

1 just listen to the question that's posed and just answer
2 the question that Mr. Sands is asking you, okay? All
3 right? Do you need to take a minute to compose
4 yourself? Are you okay?

5 *THE WITNESS:* I'm good. (Crying).

6 Q. (BY MR. SANDS) Mrs. Ralston, did you ever send
7 Dr. Sharma a letter or any type of written
8 correspondence with regard to allegations that you
9 believe he was breaching his fiduciary duty with regard
10 to Geri Tex?

11 A. I believe my husband did that.

12 Q. You believe he did or do you know if he did?

13 A. I'm 99 percent sure he did.

14 Q. Have you ever produced that letter to us?

15 A. I don't know.

16 Q. Did you on behalf of Geri Tex ever send
17 Dr. Sharma a letter or any type of written
18 correspondence with regard to the allegations that you
19 believed he was breaching his fiduciary duty?

20 A. No, I wouldn't have done that to a partner.

21 Q. Well, you've made these very serious
22 accusations and you've come in here asking for millions
23 of dollars against my client. Don't you believe, ma'am,
24 it would be important --

25 *THE COURT:* Just a minute. Are you going

1 to make an objection?

2 MR. BELL: When he's done, yes, Your
3 Honor.

4 THE COURT: What's your objection?

5 MR. BELL: Argumentative.

6 THE COURT: Objection is sustained.

7 I don't want you to just stand up and
8 just -- If you're ready to make an objection, stand up
9 and make your objection; I don't want you to just stand
10 up and --

11 MR. BELL: Should I interrupt?

12 THE COURT: Am I not speaking clearly to
13 you, Mr. Bell?

14 MR. BELL: Yes, Your Honor.

15 THE COURT: Objection to the argumentative
16 nature is sustained.

17 Rephrase your question if you please,
18 Mr. Sands.

19 MR. SANDS: Yes, Your Honor. Thank you.

20 Q. (BY MR. SANDS) Would you agree with me, Mrs.
21 Ralston, that allegations of breach of fiduciary duty
22 against Dr. Sharma are very serious allegations?

23 A. Yes.

24 Q. Would it not be important to you, ma'am, for
25 you to try to communicate, whether it be orally or

1 through a letter, to discuss what your concerns were
2 with regard to these alleged breach of fiduciary duties?

3 A. I tried to communicate with Dr. Sharma at least
4 twice a week every week. So I don't know how you could
5 say that. I was an excellent partner.

6 Q. (BY MR. SANDS) Wouldn't it have been important
7 to you, ma'am, to put your concerns in writing to
8 Dr. Sharma?

9 A. I don't know why that would be important, I
10 texted him all the time.

11 Q. As one of the individuals that was in charge of
12 Geri Tex, would you permit an employee to voluntarily
13 terminate the relationship with Geri Tex and go to work
14 with another company if they chose to do so?

15 MR. BELL: Objection; relevance.

16 THE COURT: How is that relevant?

17 MR. SANDS: Well, Your Honor, she's made
18 allegations that my client stole -- stole various
19 employees from her companies.

20 THE COURT: Objection is overruled.

21 Witness will answer.

22 THE WITNESS: Those aren't allegations,
23 that's the truth. He took them all at the same time and
24 they all went to work for him. Is that -- I mean, he
25 stole them.

1 MR. SANDS: Object; nonresponsive.

2 THE COURT: Objection is sustained.

3 The question is, ma'am, would you permit
4 an employee to voluntarily terminate their relationship
5 with Geri Tex and to go to work with another company if
6 they chose to do so? "Yes" or "No."

7 THE WITNESS: So -- Okay. I guess yes.
8 There's more to it.

9 Q. (BY MR. SANDS) Did any of the nurse
10 practitioners ever tell you that Dr. Sharma was forcing
11 them to work with him?

12 MR. BELL: Objection; calls for hearsay.

13 THE COURT: Objection is sustained.

14 Q. (BY MR. SANDS) Ma'am, is this lawsuit really a
15 question of monetary damages or is it the fact that
16 maybe your feelings have been hurt?

17 A. It is -- It is both my feelings I guess you
18 would say is hurt. I'm -- Somebody's tried to destroy
19 me. Is it monetary as well? Yes, it is; a huge chunk
20 of my business was taken.

21 Q. And have you done anything to get that business
22 back?

23 A. I have.

24 MR. SANDS: I'll pass the witness, Your
25 Honor.

1 *THE COURT:* Thank you.

2 Anything further of this witness,

3 Mr. Bell?

4 *MR. BELL:* Just a few questions, Your

5 Honor.

6 *THE COURT:* Proceed.

7 *MR. BELL:* Thank you.

8 **REDIRECT EXAMINATION**

9 *BY MR. BELL:*

10 Q. Mrs. Ralston, why did Dr. Sharma walk away from
11 the stock for Geri Tex? Is it because he'd already
12 taken --

13 *THE COURT:* Counsel, don't lead your
14 witness. The question is posed, why did he walk away.

15 *THE WITNESS:* He had walked away because
16 he took everything that Geri Tex was meant to be and he
17 set up a competing company.

18 Q. And what was the name of the competing company?

19 A. Texas Senior Healthcare.

20 Q. And is it your belief, if any beliefs that you
21 may have, that he also walked away because he destroyed
22 the business of DFW Super Group?

23 A. That was --

24 *THE COURT:* Just a minute.

25 *MR. SANDS:* I'll object, Your Honor,

1 under -- that calls for speculation, --

2 *THE COURT:* It's also leading.

3 *MR. SANDS:* -- leading.

4 *THE COURT:* Do not lead your witness.

5 Objection is sustained.

6 Pose another question, Counsel.

7 *MR. BELL:* Yes, Your Honor.

8 Q. (BY MR. BELL) Counsel asked you a question
9 about whether or not you would allow a nurse to
10 voluntarily terminate to go work for another company.
11 Remember that question?

12 A. Yes.

13 Q. If -- would you -- Under normal circumstances
14 where a partner didn't set up a secret company, is that
15 one of the circumstances, if any, that you might allow
16 an employee to get out of their employment contract?

17 A. As long as they weren't directly competing,
18 that was their noncompete.

19 Q. And would you be upset if anything if the
20 reason why they terminated is because they had a secret
21 deal with your partner behind your back?

22 *MR. SANDS:* Objection; leading.

23 *THE COURT:* Sustained.

24 Q. (BY MR. BELL) What are your beliefs as it
25 relates to whether or not a nurse should be able to

1 term -- can voluntarily terminate if they go and work
2 with your partner behind your back, what are your
3 beliefs?

4 A. I don't know that I really -- I mean, partners
5 don't do that. This is my first experience with
6 somebody who would act like that. I mean, it's wrong.

7 Q. And counsel also suggested that this was all
8 about -- maybe all about money. I mean, is it all about
9 money for you or --

10 A. No, I want my Village of Richardson back and my
11 nursing homes back. I want Dr. Falola to be able to go
12 to work. (Crying)

13 Q. Why do you want them back?

14 A. I worked years for them. I've been at Village
15 of Richardson since 2000 and he took it from me. I
16 invested years (crying) there, bought Dr. Morgan's
17 practice; he didn't pay anything for any of this. I put
18 in all the hours and the work. It's just devastating.

19 MR. BELL: I'll pass the witness, Your
20 Honor.

21 THE COURT: Thank you.

22 Anything further of this witness,
23 Mr. Sands?

24 MR. SANDS: No, Your Honor.

25 THE COURT: Thank you very much.

1 You may stand down.

2 Call your next witness, please, Counsel.

3 *MR. BELL:* Yes, Your Honor. Mr. Ralston.

4 *THE COURT:* Mr. Ralston, come forward and
5 be sworn.

6 *(Witness sworn.)*

7 *THE COURT:* State your full name for the
8 record, please.

9 *THE WITNESS:* David Wayne Ralston.

10 *THE COURT:* Be seated; speak directly into
11 the microphone.

12 **DAVID WAYNE RALSTON,**
13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 *BY MR. BELL:*

16 Q. Mr. Ralston, how long have you been married to
17 Lana -- Mrs. Ralston?

18 A. Thirty-one years in April.

19 Q. And y'all have a couple kids together, right?

20 A. Yes.

21 Q. What can you tell the jury about the kind of
22 effort and maturity in business dealings and efforts
23 that Mrs. Ralston put in, in to setting up DFW Super
24 Group?

25 A. She really created the concept of that nursing

1 home practice of using nurse practitioners and put in
2 hours and hours and hours of effort to develop that
3 business and to develop the relationships among the
4 nursing homes and nurse practitioners, physicians and
5 other parties.

6 Q. Before I go into that actually, maybe tell the
7 jury a little bit about your background. Are you --
8 What do you do for a living? You're a --

9 A. I'm an attorney.

10 Q. And where did you work for the last -- You were
11 a partner at a law firm for quite a few years?

12 A. I was a partner with the firm of -- when I left
13 it was Underwood Perkinson & Ralston since -- I was a
14 member of the firm beginning in 1985 and a partner since
15 1990. I recently left that firm and established my own
16 firm.

17 Q. And what do you do now?

18 A. I'm an attorney and practice law in -- with my
19 own firm.

20 Q. Did you do employment law, employment
21 benefits, --

22 A. I do --

23 Q. -- 401k's, retirement?

24 A. I do employee benefit plans, E.R.I.S.A. related
25 work, corporate related work in relation to my clients

1 that I have with the employee benefit area.

2 Q. Okay. And during the years 2000 through even
3 today 2011, has Lana put in her heart and soul in DFW
4 Super Group?

5 *THE COURT:* Just a minute.

6 *MR. SANDS:* Objection, Your Honor. I'm
7 going to object that it's ...

8 *THE COURT:* Objection to the leading
9 nature of the question is sustained.

10 Counsel, please. I've instructed you now
11 four or five times not to lead your witness; I really
12 don't want to have to do it any more.

13 *MR. BELL:* Yes, Your Honor.

14 Q. *(BY MR. BELL)* What, if anything, can you
15 testify as it relates to Lana's efforts over the last
16 couple of years in DFW?

17 A. She's continued her efforts to market within
18 the nursing home community and within the healthcare
19 community to establish new working relationships with
20 nursing home directors, nursing homes, physicians, to be
21 able to replace the business that was lost at the time
22 that Dr. Sharma left.

23 Q. And have you had a chance to meet -- Sorry. Do
24 you know Dr. Sharma?

25 A. I have met Dr. Sharma, yes.

1 Q. Okay. How many times have you met Dr. Sharma?

2 A. Probably at least half a dozen times.

3 Q. And what, if anything, did you witness as it
4 related -- Well, can you --

5 MR. BELL: Strike that. I'll withdraw
6 that question.

7 Q. Can you tell the jury a little bit how -- your
8 version of how Geri Tex and DFW Super Group kind of got
9 together and how the business plan was going to work?

10 A. The business plan was to establish a company
11 that would support the services of advanced nurse
12 practitioners to provide services in nursing homes and
13 to work in conjunction with physicians who would perform
14 medical supervision and medical director duties in
15 relation to the services provided by the advanced
16 practitioners.

17 Q. And as it -- Are you the attorney for DFW Super
18 Group, one of the attorneys?

19 A. I would generally provide General Counsel
20 services in relation to the companies that were involved
21 in these activities.

22 Q. What, if anything, could you say as it relates
23 to the success of DFW prior to Dr. Sharma getting into
24 business with Lana?

25 A. It -- Very successful. It was able to provide

1 a specialized skillset of nursing services to nursing
2 home patients that seemed to have a tendency to be
3 underserved in terms of the provision of medical care
4 within the structure of the nursing homes had to operate
5 to provide medical services and nursing services.

6 Q. And when's -- Were you at the
7 Starbucks's meeting --

8 A. Yes.

9 Q. -- that counsel for Dr. Sharma referenced
10 earlier?

11 A. Yes.

12 Q. Okay. Can you tell the jury a little bit about
13 that meeting at Starbucks -- What was the reasoning
14 behind the meeting at the Starbucks?

15 A. My recollection -- My recollection is that we
16 just -- it was an opportunity to get together, to
17 discuss operations and issues with respect to the
18 operation of the business. And I would very often
19 attend meetings like that, along with other physicians
20 and other advanced nurse practitioners, just to be able
21 to respond to any questions with regard to the operation
22 of the company. My recollection is we didn't have any
23 idea that the result of the meeting was the purpose of
24 the meeting.

25 Q. What was the result of the meeting?

1 A. Dr. Sharma indicated that he was no longer
2 going to be associated with Geri Tex and was not going
3 to continue with Geri Tex.

4 Q. What did Dr. Sharma say, if anything, as it
5 related to the accounts Lana had set up through DFW with
6 the nursing homes?

7 A. I don't know that he really said anything other
8 than that he was no longer going to be associated with
9 Geri Tex. I think we had discussions when he
10 indicated -- when he indicated that he was no longer
11 going to be associated with Geri Tex that he -- we had a
12 discussion about an opportunity to discuss with nurse
13 practitioners, with the nursing homes, the situation
14 that apparently had occurred.

15 Q. And what situation -- Can you elaborate for me
16 on what situation you're speaking about?

17 A. The situation that Dr. Sharma was no longer
18 going to be associated with Geri Tex and presumably not
19 being associated with any of the activities with the
20 Geri Tex -- the nursing homes and the nurse
21 practitioners that Geri Tex worked with.

22 Q. And what toll, if any, -- if any, has the
23 partnership dispute between Dr. Sharma and your wife
24 taken on your wife as you've perceived it, if anything?

25 A. It's been -- It's been very stressful because

1 there was an immediate loss of the Geri Tex ability to
2 work with the nursing homes in which -- with the nurse
3 practitioners and who had been working those facilities
4 on behalf of DFW Super Group, it was an immediate
5 response that those were no longer possible to be
6 serviced through DFW Super Group. So, again, it was
7 a -- very stressful in terms of the ability to maintain
8 the revenues and the activities of the company at that
9 point in time.

10 Q. Did y'all -- What, if anything, did you and
11 your wife try and do to, I guess, make sure the
12 relationship didn't deteriorate any more?

13 A. I know my wife was very active in trying to
14 contact and discuss the situation with Dr. Sharma. She
15 would try to make contact and have the ability to
16 discuss operational issues involving Geri Tex. Just,
17 again, in efforts to try to discuss any issues the
18 advanced nurse practitioners might have with respect to
19 the operations of the business and of the nursing homes
20 and the activities within the nursing homes.

21 Q. And did -- based on your dealings with
22 Dr. Sharma, what, if anything, did he do to try and
23 salvage what could have been a very profitable
24 relationship?

25 MR. SANDS: I'll object, Your Honor, to

1 the extent that it's calling for this witness to
2 speculate as to what acts my client did to further the
3 business.

4 *THE COURT:* That objection is sustained.

5 Q. (BY MR. BELL) In your dealings with
6 Dr. Sharma, what, if anything, did he do to indicate
7 that he was willing to try and make -- use his best
8 efforts to make what could have been a very profitable
9 business relationship?

10 A. To --

11 *MR. SANDS:* Your Honor, I'll object;
12 that's vague, ambiguous.

13 *THE COURT:* Objection is sustained.

14 Q. (BY MR. BELL) Did you witness Dr. Sharma try
15 and --

16 *MR. BELL:* Strike that.

17 Q. (BY MR. BELL) Did it seem like Dr. Sharma
18 wanted to make the business deal work?

19 A. Based on the meeting that I attended at the
20 Starbucks, no.

21 Q. And you testified earlier that DFW was
22 successful, do you think based on your dealings with
23 Dr. Sharma and your wife and the business practices that
24 Geri Tex should have been, you know, really valuable?

25 *MR. SANDS:* Objection, Your Honor;

1 speculation, ambiguous, vague, "really valuable?"

2 *THE COURT:* Hang on just a second.

3 Objection is sustained.

4 Q. (BY MR. BELL) Did you provide counseling to
5 Geri Tex, legal counseling?

6 A. I was -- I would support the formation of the
7 corporation, support the preparation of the documents
8 associated with the corporation, you know, with the
9 business and provide those to the members.

10 Q. And have you dealt with business -- in your
11 legal career have you dealt with businesses like a Geri
12 Tex or DFW Super Group?

13 A. Yes, I've assisted with those types of entities
14 and those types of organizations.

15 Q. And when you say you've "assisted", does that
16 mean you've ...

17 A. I've provided legal counsel and provided
18 representation.

19 Q. And did the business model seem like it would
20 have been really successful had Dr. Sharma performed his
21 end of the deal?

22 *THE COURT:* Just a minute.

23 *MR. SANDS:* Objection, Your Honor; calls
24 for speculation. There's no foundation this witness is
25 qualified to provide expert testimony.

1 THE COURT: Objection is sustained.

2 Q. (BY MR. BELL) Is your wife here really for the
3 money? Is it all about the money for her like counsel
4 suggested at one point?

5 A. I think anybody that's involved in the
6 healthcare industry any more is probably not entirely in
7 it for the money. It has been able to -- has
8 demonstrated that it's been a very successful form of
9 business in terms of providing those nursing services
10 within the nursing homes. It's -- It's been a mechanism
11 to provide an income and compensation to her through her
12 own businesses, so it's been successful certainly in
13 that respect.

14 But again, I think it's been a -- also a
15 -- also large and partly a provision of service which
16 we -- my experience -- at one point I was a hospital
17 administrator and hospital manager, and I always found
18 that nurses were very much in -- in -- performed their
19 services just out of a mission of providing services to
20 their patients, and that people that provided medical
21 services in hospitals and nursing homes are largely
22 providing services to the patients out of the need to
23 provide those services.

24 Q. Okay. What, if anything, did Dr. Sharma tell
25 you about the company that he set up, Texas Senior

1 Healthcare?

2 A. I really had no conversations with Dr. Sharma
3 about that company.

4 MR. BELL: I'll pass the witness, Your
5 Honor.

6 THE COURT: Thank you.

7 Any questions of this witness, Mr. Sands?

8 MR. SANDS: Just a couple, Your Honor.

9 THE COURT: You may proceed.

10 MR. SANDS: Thank you.

11 **CROSS-EXAMINATION**

12 BY MR. SANDS:

13 Q. Mr. Ralston, based on your personal
14 observations and your personal knowledge, in fact,
15 Dr. Sharma did extend efforts to help market and help
16 grow Geri Tex; isn't that correct?

17 A. Yes, prior to his leaving in -- leaving the
18 company, yes.

19 Q. Mr. Ralston, were you paid, compensated, for
20 your professional legal services in setting up the
21 formation documents of Geri Tex?

22 A. To be honest, generally I would provide the
23 organizational documents and those services based on
24 just the cost to prepare those documents, the cost of
25 forming the corporation. There may have been occasion

1 where I would be paid legal services, I don't recall
2 specifically, but generally I would just provide my
3 services at no cost but be paid for any cost involved in
4 filing fees and things of that nature.

5 Q. So you work for free?

6 MR. BELL: Objection; argumentative.

7 THE COURT: Objection is sustained.

8 MR. SANDS: I'll pass the witness, Your
9 Honor.

10 THE COURT: Thank you. Anything further
11 of this witness?

12 MR. BELL: Nothing further, Your Honor.

13 THE COURT: You may stand down, sir;
14 you're excused.

15 Call your next witness, Mr. Bell.

16 MR. BELL: Plaintiff rests, Your Honor.

17 THE COURT: All right.

18 MR. SANDS: Your Honor, there are a couple
19 matters we would like to take up outside the presence of
20 the jury if it pleases the Court.

21 THE COURT: I understand, but -- Well,
22 step up for just a minute, Counsel.

23 Ladies and gentlemen, stand up and stretch
24 your legs while we talk about you.

25 *(Bench conference; off the record.)*

1 *THE COURT:* Thank you, Counsel. Thank
2 you, Mr. Sands. I will give you the opportunity to make
3 the motion that you wish to timely after the jury's left
4 for the day.

5 Okay. Call your first witness if you
6 please.

7 *MR. SANDS:* Your Honor, I'm sorry, is
8 there any way that we could take a five-minute break?

9 *THE COURT:* Up to them. Do you want to go
10 forward or --

11 *JUROR:* (Indicating.)

12 *THE COURT:* We'll take five minutes.

13 *MR. SANDS:* It's a bathroom break.

14 *THE COURT:* That's more information than
15 we needed. Five-minute break. You're excused.

16 *(Jury leaves courtroom.)*

17 *THE BAILIFF:* All rise.

18 *(Jury enters courtroom.)*

19 *THE COURT:* You may be seated.

20 Mr. Sands, call your first witness.

21 *MR. SANDS:* Yes, thank you, Your Honor.
22 Call Dr. Sharma to the stand.

23 *THE COURT:* Come forward, sir, and be
24 sworn.

25 *(Witness sworn.)*

1 *THE COURT:* State your full name for the
2 record please.

3 *THE WITNESS:* Neeraj Raman Sharma.

4 *THE COURT:* Be seat; speak directly into
5 the microphone.

6 You may proceed, Mr. Sands.

7 *MR. SANDS:* Thank you, Your Honor.

8 **NEERAJ SHARMA, M.D.,**

9 having been first duly sworn, testified as follows:

10 **DIRECT EXAMINATION**

11 *BY MR. SANDS:*

12 Q. Would you state your name.

13 *THE COURT:* I think I just covered that.
14 Both of you-all did that.

15 *MR. SANDS:* I apologize.

16 *THE COURT:* That's all right.

17 *BY MR. SANDS:*

18 Q. Dr. Sharma, how are you currently employed?

19 A. I'm employed by Texas Health Physicians
20 Group -- Physicians Group.

21 Q. And explain for the jury please what that
22 business is about.

23 A. Texas Health Physicians Group is the physician
24 organization arm of Texas Health Resources which is the
25 parent company of Presbyterian Health System in the

1 Dallas area, Presbyterian Health System, Arlington
2 Memorial Hospital in Arlington and Harris Methodist in
3 Fort Worth, that entire system is THR, Texas Health
4 Resources. They have a physician organization called
5 THPG, or Texas Health Physicians Group, and I am
6 employed by that group.

7 Q. Would you state briefly, Dr. Sharma, what your
8 background is, your family background, where you're
9 from.

10 A. Okay.

11 Q. Just give us a snapshot.

12 A. Yes. My family's originally from India. I
13 came to this country at the age of about seven months.
14 Lived in the Dallas area since I was three. Grew up
15 here, went to Richardson, went to school here, went away
16 to college at Duke University in North Carolina, came
17 back to Texas in 1992 when I graduated college and went
18 to San Antonio where I attended medical school at the
19 University of Texas Health Sciences Center in San
20 Antonio. I subsequently stayed there in San Antonio for
21 three more years to do my residency in internal
22 medicine. After that time I came back home.

23 Q. Are you married?

24 A. Yes, I am.

25 Q. Do you have any children?

1 A. I have two daughters, ages five and seven.

2 Q. Dr. Sharma, in 2007 professionally what were
3 you doing then?

4 A. I was at that time a hospitalist.

5 Q. Would you explain what a "hospitalist" is
6 please.

7 A. Yes. "Hospitalist" is a relatively new term.
8 It came into force in about the late 1990s. And it
9 refers to generally an internal medicine physician, such
10 as myself, who specializes purely in the care of
11 patients in the acute hospital setting, as opposed to
12 the traditional model of practice which would be, you
13 know, your doctor has an office and they would sometimes
14 see their own patients round in the hospital. Instead,
15 we would take care of the patients exclusively in the
16 hospital on behalf of those primary care physicians and
17 discharge them back to their care when they were
18 discharged from the hospital.

19 Q. Okay. Dr. Sharma, you've heard some argument
20 and statements with regard to -- basically that you
21 didn't have any business, weren't a good businessman,
22 you needed Mrs. Ralston to kick start your professional
23 business career. Would that be accurate?

24 A. That would be completely inaccurate.

25 Q. Explain if you would please.

1 A. I started my own practice in 2001, November, as
2 a hospitalist. Prior to that I had worked for a group
3 in Mesquite. I resigned from that position to move to
4 the Allen/McKinney area where I started my own practice.
5 I was a hospitalist on my own, by myself, in my own
6 practice solo for two and a half years. That meant that
7 I was on-call 24 hours a day, 7 days a week, 365 days a
8 year. I did that on my own. I subsequently in 2004
9 hired additional physicians. And in 2008 our practice
10 was -- our hospital practice was acquired by a large
11 nationwide public company.

12 Q. And how did you come to meet Lana Ralston?

13 A. I was introduced to Mrs. Ralston I believe
14 sometime in 2007, if I'm not mistaken, at one of the
15 nursing homes in Allen where the administrator there
16 knew her and thought that her nurse practitioners could
17 provide some additional services to our patients.

18 Q. So did you develop a business relationship at
19 some point with Mrs. Ralston?

20 A. Initially her nurse practitioners under Med 1,
21 which is the name of her DFW Super Group, I guess,
22 practice, would provide --

23 Q. For clarification, Med 1 is -- it's DFW Super
24 Group doing business as --

25 A. DBA Med 1.

1 Q. So they're one in the same; is that correct?

2 A. That is correct, but generally we refer to them
3 as Med 1, that's how they marketed themselves, as Med 1.

4 Q. Could you repeat the question, Mr. Sands?

5 Q. Yes. How did your professional business
6 relationship develop with Mrs. Ralston?

7 A. Thank you.

8 Q. So the administrator at that facility
9 introduced us, I thought -- he thought it would be a
10 good idea to have her nurse practitioners provide
11 services for our patients in the nursing home. And so
12 we elected to try it out and it seemed to -- it seemed
13 to be an okay arrangement. They were -- You know, her
14 nurse practitioners would come see the patients pretty
15 frequently.

16 Q. And how was the billing done with regard to the
17 nurse practitioners and the doctors?

18 A. Well, they -- they billed for their own
19 services and the way it works in the care of patients in
20 nursing facilities is you cannot have two different
21 practitioners see the patient on the same day, sometimes
22 not even within the same month. They're limited by
23 Medicare rules, and generally Medicare when they set
24 rules everybody else follows those rules, whether it's
25 Medicaid or insurance companies, that patients in

1 various categories can only be seen certain number of
2 times by a provider and they define "provider" as
3 physician or nurse practitioner.

4 So if the nurse practitioner sees a
5 patient, for example, this month, unless there's a
6 sudden or, you know, acute change in the patient's
7 condition, they can't be seen again by a physician until
8 the following month.

9 Q. Did that particular procedure -- legal
10 procedure begin to create difficulties in your opinion
11 based on your background, experience, education and
12 training?

13 MR. BELL: Objection; leading, Your Honor.

14 THE COURT: Objection is sustained. Don't
15 lead your witness.

16 Q. (BY MR. SANDS) Dr. Sharma, as we progress
17 through here, in order to expedite this, can we have the
18 agreement that you'll base all of your answers and
19 responses to my questions on your background, education,
20 experience, knowledge and training?

21 MR. BELL: Objection; leading.

22 THE COURT: That's -- That's not leading.
23 Objection is overruled.

24 THE WITNESS: Yes.

25 Q. (BY MR. SANDS) Thank you. Explain how -- Did

1 any difficulties develop with regard to your association
2 with Geri Tex?

3 A. Absolutely. The major problem was we were not
4 able to develop the physician side of the business,
5 primarily because the patients were all being seen very
6 frequently by the Med 1 nurse practitioners.

7 It's a situation just as I explained where
8 if they've seen the patient, the Geri Tex doctor can't;
9 it's prohibited by the rules. You know, for them to do
10 it -- to see that patient frequently would -- would
11 violate the rules and potentially set you up for
12 Medicare fraud. So it was -- that was -- that was the
13 major problem.

14 Q. And so how did that create problems for you
15 with regard to profitability in running a successful
16 business?

17 A. Well, it wasn't profitable. You cannot be
18 profitable if you don't have enough work for the
19 physicians to do. If they don't have enough work to do
20 because the nurse practitioners are doing all their work
21 for them, then it's very difficult to have enough volume
22 to keep them employed; they'll obviously search for
23 gainful employment somewhere else or be dissatisfied
24 with what you do.

25 Q. What marketing efforts did you make on behalf

1 of Geri Tex, if any?

2 A. I made a lot of marketing efforts. I reached
3 out to the various -- not just the nursing homes but
4 their corporate entities above them, to try to work with
5 them to build our presence in the facilities.

6 Q. And would you -- could you -- would it be
7 possible, I know it's been awhile, for you, to the
8 extent that you can, list some of the various facilities
9 that you marketed on behalf of Geri Tex?

10 A. I marketed Stonegate Senior Care which has
11 several facilities; one is Baybrook Village in McKinney.
12 At the time they had two other facilities which are no
13 longer under their management; one is Victoria Gardens
14 in Allen and Victoria Gardens in Frisco. The Plaza at
15 Richardson. I'm trying to remember.

16 I believe those are the ones that we
17 marketed primarily under that company. There's another
18 company, Fundamental, L.L.C., they ran The Village of
19 Richardson in addition to other -- other facilities.

20 There was Cantex which ran facilities --
21 still runs a facility in Frisco called Prairie Estates,
22 another one in Allen called The Belmont. Those would be
23 several of the ones that I reached out to their
24 corporate entities or their corporate, you know,
25 clinical officers, their operating officers, their VPs,

1 to get them to understand the -- the value-add that we
2 were trying to bring.

3 Could I get some water please?

4 *THE COURT:* Sheriff, we're apparently out
5 of water if you don't mind, please. Thank you, sir.

6 Proceed.

7 Q. *(BY MR. SANDS)* What recruiting efforts did you
8 make, if any, on behalf of Geri Tex?

9 A. My efforts in recruitment were primarily to --
10 How shall I say it? Try to close the opportunities we
11 had with doctors that had been sourced for us. So, we
12 would have a physician that has -- you know, was brought
13 to our attention, it would be my job to try to go
14 through the contracting process with that physician, to
15 explain their duties, to -- really to, you know, sell
16 them on the job.

17 Q. And so did you meet with any doctors to arrange
18 that?

19 A. I did.

20 Q. Now, Dr. Sharma, when did you first start --

21 *MR. SANDS:* Strike that.

22 Q. *(BY MR. SANDS)* Dr. Sharma, how would you
23 describe your efforts to promote Geri Tex during this
24 time period up until May 10th?

25 A. I felt that I had -- If I may get a glass of

1 water first before I answer.

2 MR. NIKOLOPOULOS: Your Honor, if I may
3 approach.

4 THE COURT: You may.

5 MR. NIKOLOPOULOS: Thank you.

6 THE WITNESS: Excuse me. Thank you so
7 much.

8 Could you please repeat the question.

9 Q. (BY MR. SANDS) Yes. How would you describe
10 your efforts to promote Geri Tex?

11 A. I tried the best I could. I tried the best I
12 could. The problem was that the facilities did not
13 understand how it operated. They kept looking and
14 saying, well, okay, you have the doctors but you have
15 these nurse practitioners that's a different company and
16 who are we -- who's accountable to us? Who's going to
17 be in charge of the quality aspect of the nurse
18 practitioners if they don't work for you, if they're a
19 separate company?

20 Q. And how was the billing handled with regard to
21 Geri Tex?

22 A. Geri Tex was billing -- went through North
23 Texas Medical Billing which is the same company that did
24 Med 1's billing. And that was turned in directly to
25 North Texas Medical Billings representatives. I did not

1 lay hands on any of the billing.

2 Q. Did you ever make any attempts or efforts to
3 address any of the issues that you were having with Geri
4 Tex with Mrs. Ralston?

5 A. I did, I did. I was very concerned that
6 efforts I was making to build the Geri Tex business were
7 not building the Geri Tex business but were serving only
8 to build Med 1's business of which I had no relation.
9 And it was a real waste of effort for me to build
10 someone else's business. And especially --

11 Q. Could you be more specific about that.

12 A. Well, there were several episodes during later
13 half of 2009 and early 2010 in which I communicated to
14 Mrs. Ralston that I wanted to bring the business
15 together, but if I'm building the patients for Geri Tex
16 and the patient volume for Geri Tex, then that nurse
17 practitioner volume that feeds off of that should be
18 under Geri Tex as well. That's -- That would be the
19 only way to efficiently run the business.

20 Q. And did you meet any resistance to that?

21 A. She refused it.

22 Q. Was that a problem, in your opinion?

23 A. It was.

24 Q. And, again, why would that have been a problem?

25 A. I felt it was a problem because the business

1 model, as such, was simply unsustainable.

2 Q. And so at this point you realized that maybe
3 this wasn't going to work out with Mrs. Ralston; is that
4 correct?

5 A. I absolutely had that feeling at that point.

6 Q. So what happened next with regard to the
7 unwinding, so to speak, of Geri Tex?

8 A. Well, in the early part of May, prior to our
9 meeting at the Starbucks in Plano, I had sent an e-mail
10 to the CPA to ask her how much money was available for
11 distributions.

12 Q. What was the name of the CPA?

13 A. Teresa -- Teresa Walker. I believe.

14 Q. And did you get a response?

15 A. I did.

16 Q. And what was the response?

17 A. She sent me a -- what appeared to be a
18 spreadsheet by e-mail that detailed how much money was
19 in the --

20 MR. BELL: I'm going to object to hearsay.
21 It's talking about a document which speaks for itself.

22 THE COURT: That objection is sustained.

23 Q. (BY MR. SANDS) Did you formulate any opinions
24 based on your review of the spreadsheet that you
25 received from CPA Walker?

1 A. I did.

2 Q. And what were those opinions?

3 A. The opinion was that the distribution due to
4 myself as well as to Mrs. Ralston was roughly \$27,500.

5 Q. And was that -- where was that money being held
6 to your knowledge?

7 A. Excuse me. That money was being kept in the
8 account at Chase Bank.

9 Q. And that was the account that Mrs. Ralston
10 testified about earlier?

11 A. I believe so.

12 Q. And are you seeking damages from Mrs. Ralston
13 for your percentage share of the disbursement of those
14 funds?

15 A. Yes, I am.

16 MR. BELL: Your Honor?

17 THE COURT: Yes?

18 MR. BELL: May we approach? I think we
19 have the same -- you told us to bring it up at this
20 point in time.

21 THE COURT: (Knocking).

22 You wish to interpose an objection?

23 MR. BELL: Yes, Your Honor.

24 THE COURT: What is the basis of the
25 objection?

1 MR. BELL: It's not in their Request For
2 Disclosures and Mr. Friedman can talk about what's in
3 their Request For Disclosures.

4 MR. SANDS: Your Honor, I'm sorry. I
5 could make a suggestion, that that could wait until the
6 end of this direct, to address the damages issue; that
7 way we can cover everything else.

8 THE COURT: Let's do that.

9 MR. SANDS: Okay. Thank you, Your Honor.

10 THE COURT: Objection is sustained.

11 Q. (BY MR. SANDS) Would you explain the
12 circumstances. What happened at Starbucks, May of 2010?

13 A. It was -- I believe it was May the 10th or
14 11th. And it was in the midmorning, I just dropped my
15 children off at school. And I asked to meet
16 Mrs. Ralston. Without informing me beforehand she
17 brought Mr. Ralston to the meeting which she had never
18 done before. I had met him only once or twice in a
19 social occasion.

20 And we sat down with a coffee and I said
21 specifically that I really did not feel that the current
22 business model of Geri Tex was sustainable, that it was
23 benefiting only her business of Med 1, and that being
24 the case, I did not want to continue to support its
25 operations and we should split the business.

1 Q. And what was Mrs. Ralston's reaction at that
2 time?

3 A. I don't remember the exact words but there was
4 a lot of yelling involved.

5 Q. And who was doing the yelling?

6 A. She was.

7 Q. Did you do any yelling?

8 A. I -- Not to my recollection, sir.

9 Q. And so how did that -- how did that meeting end
10 at Starbucks?

11 A. Well, I was a bit embarrassed because we're in
12 the middle of Starbucks and quite a scene was made, and
13 I just said, you know what, I've left you with a
14 proposal on how to divide the business and I need to
15 have a reply. And they promised that they would get me
16 a reply.

17 Q. And did you receive a reply?

18 A. I did not. Well, I did, I got the lawsuit
19 eventually.

20 Q. Were you surprised when you were served with
21 the lawsuit?

22 MR. BELL: Objection; relevance.

23 THE COURT: Sustained.

24 Q. (BY MR. SANDS) So explain for the jury please
25 professionally what you -- what you began to do next.

1 MR. BELL: Objection; calls for narrative.

2 THE COURT: Overruled.

3 THE WITNESS: Could you please repeat the
4 question, Mr. Sands.

5 Q. (BY MR. SANDS) Yes. Explain to the jury what
6 you did professionally next. What was your next step?

7 A. Immediately from the meeting I went to go see
8 patients. I had patients to round on.

9 Q. You saw patients, but in a little bit bigger
10 picture?

11 A. I started developing -- Well, I continued to
12 develop the company that I had already had for several
13 years and that had been operating for several years.

14 Q. And that company being?

15 A. Texas Senior Healthcare.

16 Q. Now, with regard to The Village of Richardson,
17 are you currently -- Excuse me. -- is Texas Senior
18 Health currently handling that business?

19 A. It is currently seeing some patients at that
20 facility.

21 Q. And what other facilities is Texas Senior
22 Health currently seeing?

23 A. Would you like the entire list?

24 Q. No, just --

25 A. Probably about 18 facilities throughout the

1 metroplex.

2 Q. And do you believe based on your personal
3 knowledge that Mrs. Ralston did what was necessary to
4 further the business of Geri Tex?

5 A. No.

6 Q. And why do you -- what factual basis do you
7 have for that?

8 A. I felt that she did everything she could to
9 support Med 1, to support her business. She didn't
10 really do anything to support Geri Tex.

11 Obviously if you're having your nurse
12 practitioners from your company see all the patients,
13 when are the doctors going to have a chance to see them?
14 They're not.

15 Additionally, she took those doctors up to
16 her clinic on Highway 380 between Denton and Salina
17 there, and had them spend the day or half day up there.
18 Well, if they're up there for a day a week, they're not
19 available to see patients in the nursing homes.

20 So it was really a situation where the
21 operation of the physician practice of Geri Tex was
22 being made impossible by her company's activities.

23 Q. As a result of you being sued and you having to
24 file your countersuit, have you incurred attorneys'
25 fees?

1 A. More than I would like to think about, yes.

2 Q. And are you asking for an award of attorneys'
3 fees?

4 A. I am.

5 Q. And you're asking for an award of reasonable
6 and necessary attorneys' fees; is that correct?

7 A. Yes.

8 Q. And your expenses that you have incurred as a
9 result of this litigation?

10 A. Yes.

11 Q. Is it your opinion, Doctor, that Geri Tex
12 and -- that Geri Tex breached the agreement that it had
13 with you?

14 A. I feel -- I feel that they did.

15 Q. And you are seeking damages in this suit; is
16 that correct?

17 A. I am.

18 Q. And you've been present during the course of
19 discovery that's been conducted in this lawsuit; is that
20 correct?

21 A. I have.

22 Q. Attended depositions?

23 MR. BELL: Objection; leading.

24 THE COURT: Let's move on, Counsel.

25 Q. (BY MR. SANDS) You have -- Have you apprized

1 the Plaintiffs of the damages that you're seeking in
2 this lawsuit?

3 *MR. BELL:* Objection; leading.

4 *THE COURT:* Overruled.

5 *THE WITNESS:* Yes, I did.

6 Q. (BY MR. SANDS) And when did you do that?

7 A. In March of this year when I gave my deposition
8 to Mr. Friedman.

9 Q. And was that the only time that you've apprized
10 them of your damages to your knowledge or recollection?

11 A. I can't recall if there was another.

12 Q. But your deposition again was when?

13 A. March of 2010, I don't remember the exact -- it
14 was -- Well, it was sometime during the NCA tournament
15 because my team lost, I recall that. Latter part of
16 March.

17 Q. And what damages did you state to Mr. Friedman
18 during your deposition that you were seeking from the
19 Plaintiffs?

20 *MR. BELL:* Objection; impermissible use --
21 He's talking about what he testified to in a deposition.

22 *MR. SANDS:* I'm -- I'm asking him, Your
23 Honor, when he apprized the Plaintiffs of his claim and
24 the amount of said claims for damages.

25 *THE COURT:* That objection is overruled.

1 *THE WITNESS:* Can you repeat the question
2 again?

3 Q. (*BY MR. SANDS*) If you can answer --

4 When do you know for sure that you
5 apprized the Plaintiffs of your claim for damages in
6 this lawsuit and the amount of the damages?

7 A. I apprized Mr. Friedman in the deposition of
8 March 2011, the date I cannot recall exactly, and the
9 amount was roughly the 27,000 plus small amount of the
10 distribution we talked about, as well as my attorneys'
11 fees.

12 Q. And at that time did you have the information
13 necessary, including documentation regarding the
14 billing, in order to describe the additional damages
15 that you were seeking from the Plaintiffs?

16 *MR. BELL:* Objection -- Objection;
17 leading.

18 *THE COURT:* That objection is sustained; I
19 think we've got the testimony in, I'm satisfied. Let's
20 move on.

21 *MR. SANDS:* Pass the witness.

22 *THE COURT:* Proceed.

23 *MR. BELL:* Thank you, Your Honor.

24 **CROSS-EXAMINATION**

25

1 BY MR. BELL:

2 Q. Dr. Sharma, you seem like you're pretty
3 knowledgeable in the business area, right?

4 A. I try my best.

5 Q. You've been a member or partner of several
6 different companies --

7 THE COURT: Counsel.

8 MR. BELL: Yes, Your Honor.

9 Q. Several different companies over the last few
10 years, right?

11 A. Yes.

12 Q. Why don't you tell the jury the names of the
13 companies that you're a partner in and owner in or
14 member of.

15 A. Okay. Currently?

16 Q. Yes, sir.

17 A. Okay. Currently the only company that I'm a
18 member of is one called Light Flower, L.P., and that's
19 the only one.

20 Q. No Texas Senior Healthcare? I thought you
21 talked about that earlier.

22 A. Yeah, I did, and Texas -- I also explained to
23 you I'm now employed by Texas Health Physicians Group.

24 Q. So Texas Senior Healthcare is no longer in
25 existence?

1 A. It's no longer in existence as that entity,
2 that's correct.

3 Q. So you withdrew it and forfeited with the Texas
4 Secretary of State?

5 A. I don't know if the forfeiture has been done.
6 I've not forfeited the entity but we're not operating
7 it.

8 Q. No, I understand. So do you know whether or
9 not the entity is still in existence right now or not?

10 A. The entity still would be in existence.

11 Q. It is?

12 A. Yes, it is.

13 Q. And are there any other entities still in
14 existence today that you operated in the last couple of
15 years?

16 A. That are currently still in existence?

17 Q. Yes, sir.

18 A. A family trust doesn't count, does it? I mean,
19 our family trust.

20 Q. No, no, no, I'm talking about medical companies
21 like Geri Tex, Texas Senior Healthcare. What other
22 companies did you operate?

23 A. That are currently in existence, none.

24 Q. What about between 2007 and 2010? You operated
25 Texas Senior Healthcare, Light House, what else?

1 A. Light Flower.

2 Q. Light Flower.

3 A. And the other one is -- was Hospital Medicine
4 Associates of Texas.

5 Q. Okay. So we've got -- Just so I'm clear, we've
6 got Light Flower -- Tell me the other one.

7 A. Excuse me. Could I get some more water,
8 please; I'm sorry, I'm not feeling well today.

9 Hospital Medicine Associates of Texas.

10 Q. Hospital?

11 A. Medicine Associates of Texas.

12 MR. NIKOLOPOULOS: May I approach, Your
13 Honor?

14 THE COURT: Go ahead.

15 THE WITNESS: Thank you so much.

16 A. And Texas Senior Healthcare obviously we've
17 discussed.

18 Q. (BY MR. BELL) And then Geri Tex, right?

19 A. Yes.

20 Q. And Light Flower -- Light Flower, Hospital
21 Medicine Associates of Texas, Texas Senior Healthcare
22 and Geri Tex, and those companies were all in existence
23 between 2007 and 2010, true?

24 A. Correct. Correct.

25 Q. And are you a partner in Light Flower?

1 A. I'm just -- Actually that's my wife's company,
2 so it's not really a medical company at all.

3 *MR. BELL:* Objection; nonresponsive.

4 *THE COURT:* Sustained.

5 Q. *(BY MR. BELL)* Are you a partner in Light
6 Flower?

7 A. No.

8 Q. Are you a member or a manager?

9 A. I'm a member.

10 Q. Okay. So it's an L.L.C.

11 A. It's an L.P, so I guess I would be a partner
12 then, wouldn't I?

13 Q. Okay. So -- Just so the jury's clear --

14 A. If I may --

15 *THE COURT:* Hang on now.

16 *THE WITNESS:* Sorry.

17 *THE COURT:* This is not like a normal
18 conversation between regular people. You've got to let
19 him ask the question he wants and you just need to
20 answer that question; you have to let him finish first
21 so the court reporter gets you both down.

22 *THE WITNESS:* Yes, sir.

23 *THE COURT:* Your lawyer will have the
24 opportunity to fill these -- fill any gaps that he needs
25 as the case -- as the case develops.

1 Let's forge ahead now, let's....

2 MR. BELL: Yes, Your Honor, I'm going to
3 try and forge ahead.

4 THE COURT: Please --

5 Q. Hav- --

6 THE COURT: -- do.

7 MR. BELL: I'm sorry, Your Honor, I didn't
8 mean to interrupt you.

9 THE COURT: I said please do.

10 Q. (BY MR. BELL) So Light Flower -- You're a
11 partner in Light Flower, true?

12 A. No. It's a little bit more complicated than
13 that.

14 Q. Give me the short version.

15 THE COURT: Hang on just a minute. Step
16 up, gentlemen.

17 MR. BELL: May I approach?

18 THE COURT: You can stand up and stretch
19 your legs for a moment, ladies and gentlemen.

20 *(Bench conference; off the record.)*

21 THE COURT: Thank you. Thank you very
22 much. Mr. Bell, you may proceed.

23 THE WITNESS: Excuse me, Your Honor. Is
24 it possible to get a tissue or a Kleenex of some sort.

25 THE COURT: Yes, we can.

1 Go ahead with your examination.

2 Sheriff?

3 Q. (BY MR. BELL) Just -- I want to help the jury
4 understand what companies you're involved in between
5 2007 and 2010. You got Light Flower, L.P., that's a
6 partnership, right?

7 A. That's correct.

8 Q. Okay. Are you a partner in Light Flower?

9 A. Not individually.

10 Q. You have another entity that's a partner.

11 A. That's correct.

12 Q. What's the name of that entity?

13 A. It's -- There's two partners or one is Light
14 Flower Holdings, L.L.C., and the other one is our family
15 trust.

16 *THE WITNESS:* Thank you, sir.

17 Q. And are you a member in Light Flower Holdings,
18 L.L.C.?

19 A. No, that's a single member L.L.C. also owned by
20 the trust.

21 Q. And are you a beneficiary of the trust?

22 A. A beneficiary and -- Yes, I am. Yes

23 (Inaudible.)

24 *(Interruption by the reporter.)*

25 *THE WITNESS:* The answer to his question

1 is yes.

2 Q. (BY MR. BELL) Okay. Hospital Medicine -- This
3 second of the five companies, Hospital Medicine
4 Associates of Texas, were you a member, a partner?

5 A. Again, we set it up along the same structure,
6 so there was an L.L.C. called HMAT, L.L.C.

7 Q. So there's another L.L.C.

8 A. Yeah. The L.L.C. and the trust -- Family Trust
9 again are partners. And this was advised by our estate
10 planning attorney.

11 THE COURT: Okay. Let's move on to
12 something that's going to be of assistance to the jury
13 in answering the questions that will be posed to them.

14 MR. BELL: Yes, sir. Yes, Your Honor.

15 Q. (BY MR. BELL) So between 2007 and 2010, it
16 would be safe to say that you're part of five to seven
17 different companies, right?

18 A. All related but, yes.

19 Q. Okay. And you've heard of the term fiduciary
20 duties, right?

21 A. I have.

22 Q. And in the partnership with your wife, I mean,
23 you owe your wife and your family fiduciary duties,
24 right?

25 A. Yes.

1 Q. Okay. You got to give them the -- you owe them
2 the duty of care, right? You've got to be careful in
3 the decisions you make, right?

4 A. Right.

5 Q. You got to be loyal to them, right?

6 A. Right.

7 Q. You've got to be honest with them, right?

8 A. Yes.

9 Q. Now, you testified that as it relates to Geri
10 Tex one of the reasons -- or you testified that you
11 tried the best you could, do you remember testifying as
12 to how much effort and help and what you put into Geri
13 Tex, do you remember testifying to that earlier?

14 A. Yes.

15 Q. Okay. Wouldn't it be fair to the ladies and
16 gentlemen of the jury that there's no way that you could
17 have put in the proper amount of time to Geri Tex if
18 you're operating five to seven different other
19 companies?

20 A. That's not an accurate characterization.

21 Q. Well, it's certainly an accurate
22 characterization that you had -- at the same time Geri
23 Tex -- you formed Geri Tex with my client, that you were
24 running Hospital Medicine Associates of Texas, true?

25 A. True.

1 Q. And that was your own medical business, true?

2 A. True.

3 Q. And what did that business do? It provided
4 medical care, true?

5 A. True.

6 Q. And Geri Tex provided medical care, true?

7 A. True.

8 Q. And we talked a little bit earlier about
9 fiduciary duties. I mean, one of the fiduciary duties
10 is you've got a duty not to compete with your partners,
11 right? Wouldn't you agree with that?

12 A. It depends on the circumstance.

13 Q. Okay. Let me ask you this: As a general rule,
14 would you agree that partners in a business ought to be
15 able to compete with one another?

16 A. It depends if -- It depends on how the business
17 operates and whether it operates.

18 Q. So it depends whether or not -- So as it
19 relates to Geri Tex, it was one of those circumstances
20 where you could compete against Geri Tex but you just
21 didn't want to tell Lana Ralston about it, right?

22 A. That's not an accurate characterization.

23 Q. So you did tell Lana Ralston that you were
24 competing against her.

25 MR. SANDS: Your Honor, I'll object; this

1 is getting argumentative.

2 *THE COURT:* That objection is overruled.

3 Q. (*BY MR. BELL*) You told Lana Ralston that you
4 were competing against her, right?

5 A. Yes.

6 Q. You told her that rather than sending business
7 to Geri Tex, the very business where you tried the best
8 you could, you're telling this jury that you told Lana
9 that you were sending all the business to Geri Tex
10 rather than to -- rather than sending it to either
11 Hospital Medicine Associates of Texas or Texas Senior
12 Healthcare.

13 A. I don't understand your question. You have to
14 rephrase that please.

15 Q. Su- -- I'm not going to rephrase it; I'll ask
16 it again.

17 A. Okay.

18 Q. Is it your sworn testimony that you told Lana
19 Ralston that you were competing, okay, with Geri Tex,
20 and the way in which you were competing was diverting
21 Geri Tex's business opportunities to your different
22 companies; namely, Hospital Medicine Associates of Texas
23 and Texas Senior Healthcare. Did you tell her that?

24 A. That is not my testimony.

25 Q. Did you tell her that is what I'm asking.

1 A. No, I did not tell her that, as you expressed
2 it.

3 Q. Okay. So you didn't tell her that you were
4 sending business to Texas Senior Healthcare.

5 A. I did tell her that.

6 Q. So you didn't tell her that you were sending
7 Geri Tex business to Hospital Medicine Associates of
8 Texas.

9 *THE COURT:* Just a minute.

10 *MR. SANDS:* Objection; repetitive,
11 argumentative.

12 *THE COURT:* That objection is sustained.

13 Q. (*BY MR. BELL*) How many hours are there in a
14 day?

15 A. Twenty-four.

16 Q. And you run six or seven different companies,
17 right?

18 A. That's not an accurate characterization of
19 that.

20 Q. So the five to seven different companies that
21 you testified earlier you don't have any involvement in?

22 A. Well, the single member LLCs that were partners
23 with the trust to make the --

24 *MR. BELL:* Objection; nonresponsive.

25 *THE COURT:* The objection is overruled.

1 *THE WITNESS:* May I answer, sir?

2 *THE COURT:* Yes, you may.

3 *THE WITNESS:* Thank you.

4 A. The single member LLCs that we referred to
5 HMAT, L.L.C., Texas Senior Healthcare General, L.L.C.,
6 those LLCs were formed and then that LLC was a silent
7 partner with the trust in the operation of the limited
8 partnership.

9 So those other companies were formed at
10 the time we formed the companies, with the assistance of
11 our legal counsel, and the only time we had to deal with
12 that was every year when we filed our tax returns
13 because we had to file a trust return and a -- the LLC
14 K-1's. But outside of that, I focused on my practices.
15 I was not spending time operating those businesses
16 because they did not require operation as I've just
17 explained to you.

18 Q. Okay. If you and I are partners in a business
19 together, okay, and we're working in nursing homes,
20 okay, is it okay for me, without your consent -- and I'm
21 just wondering -- without your consent, without your
22 knowledge, to set up a competing business and not tell
23 me about it? Is that okay to do?

24 A. If you did that and the way you expressed it,
25 then, yes.

1 Q. It would be okay --

2 A. It would not be okay -- Or, no, it would not be
3 okay.

4 Q. Now, how did you get in to all the nursing
5 homes? It was through Mrs. Ralston, right?

6 A. No.

7 Q. So you had all the nursing home accounts
8 already?

9 A. Explain what you mean by "accounts".

10 Q. Did you have all the contacts at the various
11 nursing homes?

12 A. I had a lot of the contacts. I had been a
13 hospitalist for ten years in that market.

14 Q. What nursing homes did you have in 2007?

15 A. The Victoria Gardens facilities, Baybrook,
16 Homestead in McKinney, then some what we call Long Term
17 Acute Care Hospitals LTAC, where nurse practitioners
18 can't practice. That would be Life Care Hospital in
19 Plano, Select Specialty Hospital in Plano. That's what
20 comes to mind right now.

21 Q. I'm talking about nursing homes, not hospitals.

22 A. Well, I gave you the list of nursing homes as
23 well.

24 Q. Okay.

25 A. As best I can reca --

1 Q. So about four or five nurs- --

2 I don't want to speak over you, I
3 apologize.

4 A. I know, I wasn't finished. As best as I can
5 recall.

6 Q. And did you serve Presbyterian Village North?

7 A. I did not.

8 Q. What about The Meadows?

9 A. I personally did not.

10 Q. What about The Village of Richardson?

11 A. At the time I started at Med -- with
12 Mrs. Ralston, no, I did not.

13 Q. And DFW had certain accounts, right? And when
14 y'all split up did you work at -- had you begun working
15 at some of the nursing homes that Lana Ralston
16 introduced you to?

17 A. I had been working at The Village of Richardson
18 specifically because the patients were placed -- had
19 been placed in 2007 under my care. I had been the
20 attending physician of record on those patients for
21 approximately three years.

22 Q. And do you think it was careful to take Geri
23 Tex's patients and divert them to Texas Senior
24 Healthcare, do you think it was careful?

25 A. I don't understand what you mean.

1 Q. Do you think it was the right thing to do, to
2 take patients that were Geri Tex's patients and move
3 them to Texas Senior Healthcare?

4 A. I thought it was the right thing to do to take
5 care of the patients that were assigned to me.

6 Q. And do you think that was the loyal thing to
7 do?

8 A. I don't know the answer to that.

9 Q. Do you think there's some things -- And you can
10 be honest with the jury. Do you think there's some
11 things that you could have done --

12 MR. SANDS: Your Honor, I'll object to
13 that comment.

14 THE COURT: That's inappropriate. Don't
15 do that.

16 Objection sustained.

17 Q. (BY MR. BELL) Do you believe that there are
18 things that you could have done to be more honest in
19 your dealings with Mrs. Ralston and DFW Super Group?

20 A. No, I expressed to her on multiple occasions my
21 concerns about the fact that the NPs were taking all the
22 business and there was no place, no room, no
23 opportunities for Geri Tex doctors to see those patients
24 that we had, that any business that I would -- was
25 establishing was really not supporting Geri Tex at all

1 but was supporting Med 1.

2 In addition, I expressed to her my
3 concerns that her Med 1 nurse practitioners were seeing
4 patients that belonged to physicians that competed with
5 the Geri Tex physicians at those facilities, thereby
6 undermining the value that we as Geri Tex brought if our
7 NP partners are working for our competition, and she did
8 nothing to remedy that.

9 Q. What was the proposal that you gave her at the
10 Starbucks?

11 A. That we would split the business, she could
12 take PVN and all the rest and I would take The Village
13 and we would go our separate ways, we would split the
14 money that was remaining in the account and off we would
15 go.

16 Q. Who was the president of Geri Tex?

17 A. I had been assigned the president of Geri Tex.

18 Q. Did you put any money into the purchase of
19 Dr. Harley Morgan's practice?

20 A. No, I did not.

21 Q. And how much money in terms of revenues did
22 Texas Senior Healthcare do between 2007 and today?

23 A. I don't have the numbers at the top of my head.

24 Q. Million a year?

25 A. No -- God, no. I wish.

1 Q. I'm talking about revenues, not --

2 A. I wish too. No. Give me a minute to think.

3 THE COURT: Okay. The witness has
4 testified he doesn't know. Let's move on please.

5 Q. (BY MR. BELL) Is there anything that Lana
6 Ralston -- I mean, I've heard you testify on direct. Is
7 there anything she brought to the table in your view,
8 did she do anything for the business?

9 A. Well, she brought her Med 1 nurse
10 practitioners. And everything that we did seemed to
11 feed her Med 1 nurse practitioners.

12 Q. Did she bring you contacts?

13 A. Define what you mean by "contacts".

14 Q. What do you think I mean by "contacts"?

15 A. That's why I'm asking you to define what you
16 mean by "contacts", sir.

17 Q. So after the Starbucks meeting which contract
18 did you end up pretty much taking over, which home or
19 homes did you pretty much end up taking over?

20 A. Well, there was no contract to take over at
21 all; there are no contracts.

22 Q. So you assumed responsibility over what
23 accounts?

24 A. I already had responsibility over The Village
25 of Richardson.

1 Q. And Lana introduced you to The Village of
2 Richardson, true?

3 A. Yes.

4 Q. Did you tell her that you were taking The
5 Village of Richardson account?

6 A. That was the proposal that I had made -- that I
7 gave to them.

8 MR. BELL: Objection; nonresponsive.

9 THE WITNESS: Yes.

10 Q. And do you think that was the loyal thing to
11 do?

12 A. Yes, I do.

13 Q. And when you were the president of Geri Tex for
14 three or so years, I mean, you would definitely have
15 sent Mrs. Ralston financial statements on a monthly
16 basis, right?

17 A. No, the CPA did the financials.

18 Q. Did you send Lana Ralston financial statements
19 on a monthly basis?

20 A. I did not.

21 Q. Did you send Lana Ralston any financial
22 statements?

23 A. I did not.

24 Q. And you were the president of Geri Tex, true?

25 A. That is true.

1 Q. Did you send Lana Ralston financials for
2 Hospital Medicine Associates of Texas, one of the
3 competing companies of Geri Tex?

4 A. I did not.

5 Q. Did you send Mrs. Ralston financial information
6 for Texas Senior Healthcare, another competitor of Geri
7 Tex to Mrs. Ralston?

8 A. I did not.

9 Q. Do you think it would have been the loyal and
10 careful thing to do and honest thing to do, would be to
11 send the financial information to Mrs. Ralston of the
12 two competing companies you had with your partner?

13 A. No, because Hospital Medicine Associates was
14 not a competing entity; it's a hospital business.

15 MR. BELL: Pass the witness, Your Honor.

16 THE COURT: All right. Do you have any
17 redirect of this witness?

18 MR. SANDS: Two questions, Your Honor.

19 THE COURT: Two questions you may ask.

20 MR. SANDS: Thank you.

21 **REDIRECT EXAMINATION**

22 BY MR. SANDS:

23 Q. Dr. Sharma, is it your position that through
24 Geri Tex Mrs. Ralston fraudulently transferred the Geri
25 Tex account that contained the Geri Tex funds that

1 you've testified to?

2 *MR. BELL:* Objection; leading and
3 multifarious.

4 *THE COURT:* Overruled. Witness will
5 answer.

6 *THE WITNESS:* Yes, it is.

7 Q. Second question: Why did you not send Mrs.
8 Ralston the statements that counsel has just asked you
9 about before he passed the witness?

10 A. The bank statements were sent every month to
11 the CPA, in addition to which Mrs. Ralston had the
12 contact with the billing company. She had the
13 information available at the billing company about Geri
14 Tex's billing and collections. She also had the contact
15 with the CPA. So those would be pieces of information
16 that she would have access to primarily before I would.

17 *MR. SANDS:* Pass the witness.

18 *THE COURT:* Thank you.

19 Anything further of this witness?

20 *MR. BELL:* No, Your Honor.

21 *THE COURT:* Thank you very much. You may
22 stand down.

23 *THE WITNESS:* Thank you, Your Honor.

24 *THE COURT:* Ladies and gentlemen of the
25 jury, I'm going to excuse you for the evening. Please

1 be back ready to receive the remainder of the testimony
2 tomorrow morning. We will start promptly at 9:30, so I
3 would like you-all assembled in the jury room about
4 9:15 or 9:20.

5 Okay. Sheriff, you've got cell digits for
6 everybody?

7 *THE BAILIFF:* Yes, sir.

8 *THE COURT:* Thank you very much. Remember
9 my admonition; keep an open mind, don't discuss this
10 matter with anyone until after I send -- until after I
11 excuse you. Have a great night. Thank you.

12 *THE BAILIFF:* All rise.

13 *(Jury leaves courtroom.)*

14 *(Sotto voce discussion ensued.)*

15 *THE COURT:* All right. You may be seated,
16 ladies and gentlemen.

17 Mr. Sands, you -- at the close of the
18 Plaintiffs' case-in-chief you requested the opportunity
19 to make a motion that would not be timely if not made at
20 that point. I asked you to hold on to that until after
21 we had an opportunity to maximize the jury's time. And
22 you may make your motion in a timely manner at this
23 point.

24 *MR. SANDS:* Thank you, Your Honor. If I
25 may, at this time Defendant and Counter-Plaintiff,

1 Dr. Sharma, moves for a directed verdict based on the
2 fact that one of the elements was missing. There's
3 no -- no evidence whatsoever of damages, there's
4 insufficient testimony on non-economic damages such as
5 pain and suffering, given the fact that there were no
6 physical manifestations that were testified about, only
7 a couple of vague references, to how she had incurred
8 pain and suffering. And without any type of physical
9 manifestation, symptoms, there -- by way of law there
10 cannot be an award for pain and suffering.

11 And also, Your Honor, that there was no --
12 no testimony or evidence offered of -- with regard to
13 gross receipts, with regard to profits.

14 And, Your Honor, Mrs. Ralston herself
15 admitted that she was not -- he asked her if she was
16 expert in business valuation and her answer was an
17 unequivocal no.

18 *THE COURT:* Okay.

19 *MR. SANDS:* And it's our position, Your
20 Honor, that that would require expert testimony.

21 *THE COURT:* Well, I think that the owner
22 of a company is qualified to testify to the value of
23 that company, so I don't find that to be persuasive.

24 Let me hear a response with regard to the
25 lack of evidence on economic damages and the

1 insufficiency of the evidence on non-economic damages.

2 *MR. BELL:* As to which claim, Your Honor?

3 *THE COURT:* I think they were fairly
4 comprehensive.

5 *MR. SANDS:* That's correct, Your Honor, as
6 to all claims.

7 *MR. BELL:* Well, as it relates to tortious
8 interference with prospective business relations I'm
9 assuming that we've got all elements except for damages
10 and that's the only thing we're talking about.

11 Dr. Sharma just testified that --

12 *THE COURT:* Yeah, but this -- his
13 testimony cannot be -- the motion should have been
14 made -- the motion would have been made but for my
15 instruction prior to his taking the stand, so you cannot
16 rely on his testimony.

17 *MR. BELL:* Okay. Well, you've got damages
18 of valuation that the company -- there's been a loss of
19 value, loss in profits, there's been a diminution in the
20 value of the company. That's --

21 *THE COURT:* Do we have any numbers to go
22 along with those?

23 *MR. BELL:* Tax returns, Your Honor, which
24 are in the evidence, I think exhibits -- What numbers
25 are they?

1 *(Sotto voce discussion ensued.)*

2 MR. BELL: One through 10.

3 MR. SANDS: One through 9.

4 MR. BELL: Evidence in the records --

5 THE COURT: Excuse me. Tax returns are
6 Exhibits 1 through 9?

7 MR. BELL: Don't quote me, I'm --

8 THE COURT: Well, Counsel, I'm -- Wait a
9 minute, wait a minute. You're an Officer of this Court.
10 Don't tell me not to quote you if you just made a
11 representation to me.

12 Are you telling me that the tax returns
13 are Exhibits 1 through 9?

14 MR. BELL: I can't tell one way or the
15 other.

16 Tax returns are 9, 8, 7 --

17 Do you have the rest of them?

18 *(Sotto voce discussion ensued.)*

19 MR. BELL: They're 7 and 8.

20 THE COURT: All right. Proceed with your
21 argument.

22 MR. BELL: Nine.

23 Tax returns are in the record, they're in
24 evidence. Got a diminution in the value. Lost --

25 THE COURT: What is the evidence -- What

1 is the evidence of the diminution in the value?

2 *MR. BELL:* At its peak this company was
3 doing -- prior to Dr. Sharma's tortious conduct, it was
4 doing between a million and \$1.5 million a year.

5 *THE COURT:* Uh-huh.

6 *MR. BELL:* And now it is a barely
7 surviving company. No -- Very little employees, nothing
8 left of this thing on --

9 *THE COURT:* Counsel, you're making a jury
10 argument and I want -- what I need from you is
11 references to the record.

12 This witness testified that at this point
13 the company's worth X. At another point after an act
14 the company was worth Y, or one-third X.

15 *MR. BELL:* Any way I can get a copy of the
16 dirty and I can have this to you first thing in the
17 morning.

18 *THE COURT:* Of the what?

19 *MR. BELL:* Of the dirty, of the dirty
20 transcript.

21 *THE COURT:* Not in time for you to make a
22 response to the motion that's being made now, no, sir.

23 *MR. BELL:* So, I think the testimony in
24 the record is the value of Geri Tex at -- is \$12 million
25 on a three times multiplier. My client is the owner of

1 the company. The projected revenues were between 4 and
2 \$6 million. We're just talking about Geri Tex.

3 You heard testimony about how
4 Dr. Sharma -- And I'm not talking about out of his own
5 mouth, Dr. Sharma -- Mrs. Ralston testified that
6 Dr. Sharma diverted opportunities, stole patients, stole
7 accounts.

8 *THE COURT:* Counsel, what I understand
9 Mr. Sands' argument to be is there is not evidence of
10 damages. I don't think he argued that there's no
11 evidence or allegation that Dr. Sharma did anything bad
12 and that's what you're arguing.

13 I want you to -- I want you to refine your
14 focus to the issue that is actually on the table.

15 *MR. BELL:* Okay. The evidence is Geri Tex
16 lost its business, so its value is zero. It has no
17 value.

18 *THE COURT:* All right. Anything else?

19 *MR. BELL:* You -- You also have the amount
20 of money that was invested, over a million dollars that
21 Lana Ralston invested and DFW Super Group in developing
22 and nurturing this confidential information, these
23 nursing homes, these contacts, these nurse
24 practitioners, these doctors.

25 So if we're not talking about benefit of

1 the bargain -- If we're talking about benefit of the
2 bargain, it would be \$5.1 million and she testified to
3 that. If we're talking about the lost reliance measure,
4 it's a million dollars. And if we want to talk about
5 Geri Tex -- Geri Tex, its projection and the record --

6 Where are the exhibits that were admitted,
7 guys?

8 I apologize, Your Honor. If you can give
9 me just one moment.

10 That's 7, 8 and 9.

11 Certainly -- I mean, you have the tax
12 returns for Geri Tex. You have ...

13 *(Sotto voce discussion ensued.)*

14 *MR. BELL:* So that's with actual damages,
15 Your Honor. I wish I had a chance to collect the
16 exhibits here.

17 *THE COURT:* Well, Counsel -- Excuse me.
18 You knew the exhibits that you wanted to offer in time
19 for you to have command of them now, so I don't find
20 your lamentation to be appropriate.

21 Thank you very much.

22 *MR. BELL:* Can I talk about non-economic
23 damages now?

24 *THE COURT:* Go ahead.

25 *MR. BELL:* Counsel said that the client

1 had no physical manifestations of physical damage is
2 what he said on the record before Your Honor.

3 My client testified in the box and said
4 she couldn't sleep, has emotional problems, has trouble,
5 et cetera. And even her husband, I believe, testified
6 to that. I don't have the record in front of me but I
7 know that's part of the record.

8 *THE COURT:* Just a moment.

9 Proceed.

10 *MR. BELL:* Did you find it, Your Honor, in
11 the -- All right. Sorry.

12 So you've got evidence in the record of
13 non-economic damages, pain and suffering, all the
14 suffering she's --

15 *THE COURT:* Where is the evidence of pain?

16 *MR. BELL:* She can't sleep.

17 *THE COURT:* Where is the evidence of pain?

18 *MR. BELL:* I mean, not being able to sleep
19 is a symptom of experiencing pain and suffering and is a
20 physical manifestation of pain.

21 *THE COURT:* Will you concede that the
22 only -- that is the only evidence of manifestation of
23 pain?

24 *MR. BELL:* I won't concede that.

25 *THE COURT:* What other ones are there?

1 *MR. BELL:* Hurt limbs, inability to
2 work --

3 *THE COURT:* What did she testify in terms
4 of other -- her testimony of other manifestation of
5 pain? She didn't testify about hurt limbs.

6 *MR. BELL:* That's right.

7 *THE COURT:* She didn't testify about
8 inability to work.

9 *MR. BELL:* I think she may have said she
10 was depressed over -- but I don't want to say that
11 because I don't have the record in front of me. I
12 thought I heard something along those lines.

13 *THE COURT:* All right. Anything else?

14 *MR. BELL:* No, Your Honor.

15 *THE COURT:* All right. Thank you very
16 much. You may be seated.

17 Last word?

18 *MR. SANDS:* As my response, Your Honor,
19 with regard to -- I'm going over my notes, however, my
20 recollection supports the notes, it was with regard to
21 the pain and suffering. It has to be -- The case law
22 says it has to be severe along with other manifestations
23 and she testified that the business was destroyed,
24 quote-unquote and she had difficulty sleeping.

25 *THE COURT:* I think that's right.

1 I'm going to carry the motion.

2 How many witnesses are you putting on
3 tomorrow, Mr. Sands?

4 *MR. SANDS:* Possibly one, Your Honor.

5 *THE COURT:* All right. We're through for
6 the evening. Thank you.

7 *(Evening recess began at 4:56 p.m.)*

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1 STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Diane L. Robert, Official Court Reporter in
4 and for the 14th District Court of Dallas County, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in
9 this volume of the Reporter's Record in the above-styled
10 and numbered cause, all of which occurred in open court
11 or in chambers and were reported by me.

12 WITNESS MY OFFICIAL HAND, on this the 5th day
13 of January, 2012.

14
15
16 BY: /s/DIANE L. ROBERT
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