

Transcript of the Testimony of **Michael Johnston**

Date: July 31, 2015

Volume: I

Case: In the Matter of the Marriage of Wendy Marie Meigs and Jody Neal Meigs

O'Neal Probst Wells

Phone: 713-521-1314

Fax: 713-521-1299

Email: depos@opwreporting.com

Internet: www.opwreporting.com

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1 A. There were two reasons. First was the company
2 had a significant amount of debt and outstanding
3 liabilities. This would be an opportunity for the
4 corporate entity to either raise capital or reduce debt
5 and liabilities. Secondly, it was deemed necessary
6 because Mrs. Meigs was refusing to sign the renewal of
7 our existing SB- -- line of credit at the bank, which
8 would have forced the note due, payable. Neither
9 the corporation nor any of the shareholders had the
10 capitalization to pay that note upon receipt.

11 (Exhibit 30 marked)

12 Q. (By Mr. Zucker) I'm going to hand you
13 Exhibit 30.

14 MR. FRANKFORT: You're jumping from 17 to
15 30?

16 MR. ZUCKER: We'll come back and fill it
17 in.

18 MR. FRANKFORT: I'm sure you will.

19 MR. ZUCKER: I just found it hard to keep
20 them all in order.

21 Q. (By Mr. Zucker) So let me ask you, is the --
22 is Exhibit 30 a copy -- a true and correct copy of
23 shareholder meeting minutes for a shareholder meeting
24 for Asyntria that occurred on July 25, 2014?
25

A. It appears to be so.

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1 Q. And if you look at page 5 of this Exhibit 30,
2 that's a copy of the actual notice of shareholder
3 meeting that was sent out?

4 A. Uh-huh.

5 Q. And the notice date is July 23, 2014. Do you
6 see that?

7 A. Yes.

8 Q. And that's in fact the date that notice was
9 sent out?

10 A. Yes.

11 Q. Was it sent out to all shareholders?

12 A. Yes.

13 Q. How was it delivered to Ms. Meigs?

14 A. Electronically.

15 Q. And do you have a receipt showing that she got
16 the notice of shareholder meeting?

17 A. I'm not sure.

18 Q. So the notice date is July 23rd, and the
19 meeting actually occurred two days later on July 25th.
20 Do you see that?

21 A. Yes. I do know that she received the notice
22 because of correspondence from her attorney, so yes.

23 Q. Okay. But the notice was sent out on
24 July 23rd; correct?

25 A. Yes.

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1 Q. The meeting actually occurred on July 25th;
2 correct?

3 A. Yes.

4 Q. And that certainly wasn't 21 days notice of
5 this meeting; was it?

6 A. No.

7 Q. And do you know whether 21 days is required for
8 this particular type of transaction to occur?

9 A. According to our bylaws.

10 Q. According to the Business Organizations Code?

11 A. I'm not aware.

12 Q. Okay. If 21 days notice is required for this
13 type of action, that's news to you; correct?

14 MR. FRANKFORT: Object to the form of
15 question.

16 MR. BRADY: I'll join the objection.

17 Q. (By Mr. Zucker) You can answer.

18 A. Yes.

19 Q. And so at the meeting there was a vote -- was
20 it a vote of the directors or vote of the shareholders
21 to eliminate the preemptive rights and increase the
22 number of authorized shares?

23 A. This was a shareholder meeting minute.

24 Q. At some point after the certificate of
25 amendment, which is Exhibit 17, was signed and filed

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1 with the Secretary of State, did Asyntria issue
2 additional shares to you?

3 A. Yes.

4 Q. And your shares increased from 500,000 to
5 850,000; correct?

6 A. As a result of shares being issued by Asyntria?

7 Q. Correct.

8 A. No.

9 Q. So how did you get the additional 350,000
10 shares?

11 A. I received 200,000 shares issued by Asyntria,
12 and I also maintained an additional 250,000 shares that
13 was transferred to me by Mr. Meigs.

14 Q. Okay. So a total of 450,000 shares, and you
15 ended up with 950,000 shares; correct?

16 A. Yes.

17 Q. When did you receive the 200,000 additional
18 shares from Asyntria in relation to Exhibit 17 being
19 filed with the Secretary of State?

20 A. After.

21 Q. And how shortly after?

22 A. I don't recall.

23 Q. As of the time that you filed this document
24 with the Secretary of State, had the documentation to
25 issue you the additional 200,000 shares already been

[18] (Pages 69 to 72)

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1 A. No.

2 Q. At any point did Jody tell you that he no
3 longer wanted to cancel the promissory note so that you
4 could keep the shares?

5 A. No.

6 Q. There was just no follow-up at all between the
7 two of you; correct?

8 A. I followed up with him, and then there was no
9 response.

10 Q. Have any of Asyntria's vial labeling machines
11 been used by Scripts Pharmacy?

12 A. Vial labeling machines?

13 Q. What was the answer?

14 A. I'm asking you. Vial labeling machine?

15 Q. Yeah. Was there any equipment that is
16 associated with labeling that belonged to Asyntria that
17 was used by Scripts?

18 A. No.

19 (Exhibit 19 marked)

20 Q. (By Mr. Zucker) I'm going to hand you
21 Exhibit 19. Is this a certificate of formation for a
22 company, an LLC called The Apothecary Group, LLC, that
23 you formed?

24 A. Appears to be so.

25 Q. And this was formed in November of 2014. Do

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1 THE WITNESS: Sales calls to physicians.

2 Q. (By Mr. Zucker) You are -- are you currently a
3 director of Asyntria?

4 A. Yes.

5 Q. And are you currently the president and CEO of
6 Asyntria?

7 A. Yes.

8 (Exhibit 20 marked)

9 Q. (By Mr. Zucker) Asyntria. I'm going to hand
10 you Exhibit 20. Is this a certificate of forfeiture of
11 Asyntria, Inc.'s charter that was sent to you earlier
12 this year? Has Asyntria's charter been forfeited?

13 A. I have recently learned that, yes.

14 Q. And has its charter been reinstated?

15 A. It's currently being processed.

16 Q. When did you file documentation to process the
17 reinstatement?

18 A. My accountant has taken care of that. I don't
19 know the specific date.

20 Q. I'm going to skip Exhibit 21, but
21 Straden-Schaden's certificate was forfeited as well
22 earlier this year?

23 A. I don't remember.

24 (Exhibit 21 marked)

25 Q. (By Mr. Zucker) I'm going to hand you

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1 you see that?

2 A. Yes.

3 Q. Who prepared this document?

4 A. I believe I did.

5 Q. Did a lawyer assist with this?

6 A. No.

7 Q. What was -- what is The Apothecary Group, LLC?

8 A. It is a business entity that I opened for
9 partnerships that related to Scripts Pharmacy.

10 Q. And what are those partnerships?

11 A. For marketing efforts.

12 Q. Are you the sole owner?

13 A. Manager, yes.

14 Q. Okay. Are you the sole member and sole
15 manager?

16 A. Yes, sir.

17 Q. Does Apothecary Group, LLC, do any business as
18 we sit here today?

19 A. Very limited.

20 Q. And what is that limited business that it does?

21 A. Marketing and rate insurance for the pharmacy.

22 Q. What does it do in order to market the
23 pharmacy?

24 A. Sales calls to physicians.

25 MR. BRADY: Sells what to physicians?

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1 Exhibit 21. Does that refresh your recollection about
2 whether its charter was forfeited?

3 A. Yes.

4 Q. And it was in fact forfeited?

5 A. Yes.

6 (Exhibit 22 marked)

7 Q. (By Mr. Zucker) And then I'll hand you
8 Exhibit 22. Is that a true and correct copy of the
9 Secretary of State's document that was filed to
10 reinstate its forfeiture?

11 A. Appears to be so, yes.

12 Q. And its charter was in fact reinstated?

13 A. Yes.

14 Q. You would agree that the charter of Asyntria
15 was forfeited as of June 22, 2015; correct?

16 A. Yes.

17 Q. So -- and we'll come back to the ultimate
18 transaction later, but when Straden-Schaden entered into
19 the stock purchase agreement with Asyntria on June 20 --
20 I'm sorry -- on -- effective July 1st, Asyntria's
21 charter at that point in time was forfeited; correct?

22 A. Yes.

23 (Exhibit 23 marked)

24 Q. (By Mr. Zucker) I'm going to hand you
25 Exhibit 23. And if you can ignore the name Todd Zucker

[25] (Pages 97 to 100)

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1 at the top of the page, does that first page of
2 Exhibit 23 appear to be an e-mail that you sent to Wendy
3 and Jody Meigs on March 22, 2015?

4 A. Yes.

5 Q. And that attaches the attached letter of
6 intent; correct?

7 A. Yes.

8 Q. And in the first sentence there you say,
9 Attached is a copy of the letter of intent that the
10 attorney drafted to move forward. Do you see that?

11 A. Yes.

12 Q. Which attorney was that?

13 A. Mr. Frankfort.

14 Q. I'm sorry. What?

15 A. Mr. Frankfort.

16 Q. Mr. Frankfort. Okay. What discussions had you
17 had prior to sending this letter of intent to Wendy and
18 Jody about wanting to redeem your shares?

19 A. We'd had a variety of conversations exploring
20 every potential scenario and opportunity that we could
21 think of for several months.

22 Q. And tell me about those things that you
23 discussed to try to resolve the issues?

24 A. The first proposal and concept was to, in
25 essence, split the company into its two primary

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1 divisions, which I would maintain one division. Jody
2 and Wendy would remain -- maintain the other division.
3 I made a variety of offers in regards to letting them
4 maintain the assets of their division and basically walk
5 away without any liabilities of Asyntria. There was
6 discussion of them maintaining Asyntria, the
7 corporation, and me simply taking one of the divisions.
8 There was a discussion of me buying them out completely.

9 Q. And in terms of the discussion, buying them
10 out, was there any purchase price discussed?

11 A. Yes.

12 Q. What was that purchase price?

13 A. I believe it was either 26 or 28 cents a share.

14 Q. And who came up with that proposed purchase
15 price?

16 A. It was based on Jody informed me that him and
17 Wendy had spoke and that their bottom line was a total
18 of \$250,000, including stock and any outstanding debts,
19 liabilities. So we reverse engineered that and came up
20 to that valuation.

21 Q. So, basically, what you had discussed was
22 \$250,000 would be paid by you and in exchange you would
23 receive Wendy's 250,000 shares of stock plus Jody's
24 remaining 100,000 shares of stock. Is that accurate?

25 A. Plus the promissory note would be void. It

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1 would be for all outstanding shares.

2 Q. So you would basically be paying 150,000 plus
3 canceling the \$100,000 promissory note that you owed to
4 Jody. Is that accurate?

5 A. It would have -- it would have been the 26 or
6 28 cents per share with the promissory note being
7 voided, those shares going -- returning back to Jody and
8 total purchase price at the 26 or 28 cents a share.

9 Q. And ultimately did you send him a draft of an
10 agreement for that proposed transaction?

11 A. Yes.

12 Q. And who prepared that draft agreement?

13 A. Mr. Frankfort.

14 Q. And I assume Mr. Frankfort represents you and
15 was not representing Asyntria?

16 A. That's correct.

17 Q. And in connection with those discussions, was
18 there any attorney who was representing Asyntria?

19 A. No, because it was a personal transaction. I
20 was offering to buy their shares.

21 Q. Well, in one case you were offering to redeem
22 your shares as reflected in Exhibit 23; correct?

23 A. Yes, they had their own separate counsel.

24 Q. Okay. And under Exhibit 23 you would be -- the
25 company would redeem your shares. The company would

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1 purchase, in effect, your shares and in exchange you
2 would get the assets that were listed on Schedule 3;
3 correct?

4 A. Yes. It would be a redemption of stock in
5 exchange for all of the assets and assumption of
6 liabilities listed on that exhibit -- schedule, rather.

7 Q. And if you look on that schedule, there's --
8 the last item there is The Johnston Group debt
9 liability, approximately \$75,000. Let me ask you, what
10 is The Johnston Group?

11 A. The Johnston Group is a d/b/a of
12 Straden-Schaden.

13 Q. So it was debt that was owed by Asyntria to
14 Straden-Schaden?

15 A. That's correct.

16 Q. What was that debt -- what comprised that debt?

17 A. It was a variety of things. I don't recall
18 each line item.

19 Q. And there was the Amegy Bank loan and line of
20 credit of \$94,000. Do you see that?

21 A. Uh-huh.

22 Q. Was Wendy a guarantor on that line of credit?

23 A. Yes.

24 Q. And you and Jody were also guarantors on it?

25 A. Yes.

[26] (Pages 101 to 104)

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1 first got into this Asyntria enterprise?

2 A. I looked at him as a mentor, as a close friend,
3 and had a tremendous amount of respect for him.

4 Q. And then how has that changed over recent
5 months?

6 A. I have no respect for him, no trust in him, and
7 I believe the relationship was fraudulent probably the
8 entire time, and I'm repulsed by him.

9 Q. And why do you now think that -- why, looking
10 back, do you think that there was never any true
11 friendship on Jody's part from the beginning?

12 A. Based on documents that I have uncovered and
13 based on Wendy's deposition, it's clear that there was
14 improper motivation, conspiracy to act against me and
15 lying to me for years.

16 Q. And what documents have you uncovered that you
17 just referred to?

18 A. E-mail communications between Wendy and Jody
19 that exist on his work computer.

20 Q. And Asyntria owns that computer?

21 A. Yes.

22 Q. Does Asyntria have any kind of privacy or
23 nonprivacy policy?

24 A. Asyntria has a policy that any and all things
25 on work computers are the sole property of the company.

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1 Q. Is that a written policy?

2 A. Yes.

3 Q. When was that put in effect?

4 A. I don't recall.

5 Q. And how did you get access to these documents?

6 A. By opening his computer, going through his
7 Outlook file.

8 Q. Was his computer password protected?

9 A. Yes, all the computers were, and we each had
10 passwords for every individual's computer.

11 Q. And so you went into the Outlook and reviewed
12 the e-mails that were in his Outlook on his computer?

13 A. Yes, his business e-mail Outlook.

14 Q. And when did that take place?

15 A. Over the last two, three months.

16 Q. Going back to Exhibit 6, was Robin Luke in
17 Houston for this meeting?

18 A. No, she was -- she is not a stockholder of the
19 company.

20 Q. So she didn't participate in the meeting?

21 A. No.

22 Q. Who prepared this notice of special meeting?

23 A. I believe it was Mr. Frankfort.

24 Q. The stock purchase agreement starts on the next
25 page, the second page of Exhibit 6. Do you see that?

[Page 115]

1 A. Page 6 or Exhibit 6?

2 Q. Exhibit 6.

3 A. Yes, I see.

4 Q. And the agreement is between Straden-Schaden
5 and Asyntria; correct?

6 A. Yes.

7 Q. Those are both corporations?

8 A. Well --

9 Q. What's that?

10 A. Yes.

11 Q. Okay. And in the whereas clause it says
12 purchaser, which is Straden-Schaden; right?

13 A. Where --

14 Q. Do you see the first whereas clause?

15 A. Yes, purchaser is represented, Straden-Schaden.

16 Q. Purchaser is defined as Straden-Schaden?

17 A. Yes.

18 Q. True?

19 A. Yes.

20 Q. And so Straden-Schaden is going to purchase
21 from the seller, and the seller is Asyntria. Do you see
22 that?

23 A. Yes.

24 Q. And what it's purchasing is all of the assets,
25 liabilities, and shares of capital stock of seller;

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1 correct?

2 A. Correct.

3 Q. So was this a stock sale or an asset sale or
4 both?

5 A. I can't answer that. I'm not a lawyer.

6 Q. And in the notice on the first page of
7 Exhibit 6 under Item 3, if you could turn to that, it
8 says the proposal is to review and discuss on the
9 approval or rejection of the offer by Straden-Schaden to
10 purchase all outstanding shares of the corporation.

11 Do you see that?

12 A. As set forth in the offer attached, yes.

13 Q. Okay. And so in the attached offer under that
14 whereas, the sold items are defined as assets,
15 liabilities, and shares of capital stock of seller;
16 correct?

17 A. Correct.

18 Q. Okay. The shares of Asyntria were not owned by
19 Asyntria, were they? I mean, Asyntria didn't own its
20 own capital stock; correct?

21 A. I don't know legally how that works. I think
22 it's referred to as outstanding shares.

23 Q. Yeah. But you owned 950,000 shares; correct?

24 A. Correct.

25 Q. And Wendy owned 250,000 shares; correct?

[29] (Pages 113 to 116)

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1 A. Correct.

2 Q. Wendy is not a party to this agreement;
3 correct?

4 A. I don't understand the legal process in which
5 companies sell stocks to other companies every day
6 across the country. I don't know what the legal term
7 is, so I can't answer that.

8 MR. ZUCKER: Objection. Nonresponsive.

9 Q. (By Mr. Zucker) Wendy is not a party to this
10 stock purchase agreement, is she?

11 A. I do not know.

12 Q. You're not a party to this stock purchase
13 agreement, are you?

14 A. I do not know.

15 Q. Asyntria did not have the power, authority or
16 right to sell Wendy's shares to Straden-Schaden, did it?

17 A. To my understanding, yes.

18 Q. You think that Asyntria had the right to sell
19 shares that were owned by Wendy Meigs to
20 Straden-Schaden? That's your understanding?

21 A. That's my understanding, yes.

22 Q. Do you own any stock in any publicly traded
23 entities?

24 A. Yes.

25 Q. Do you believe -- what do you own stock in?

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1 Just give me a name of one company.

2 A. Apple.

3 Q. So do you believe that Apple has the power to
4 sell your shares to a third party?

5 A. I know that companies sell and are bought, or
6 bought and sold every day, and I doubt that each person
7 that owns one share of Apple has the ability to stop
8 such transaction. I think you're also referring to a
9 publicly traded company, and that's not the case with
10 us.

11 Q. That's exactly right. So you think that in a
12 privately -- a private company, the company itself has
13 the power to sell one shareholder's stock to another
14 third party? Is that your understanding?

15 A. It's my understanding, yes.

16 Q. Okay. Do you know why this stock purchase
17 agreement was selling assets, liabilities, and stock as
18 opposed to just assets or liabilities or shares of
19 capital stock?

20 A. The document was prepared by my legal counsel.

21 Q. And where did your understanding about the
22 ability of the corporation to sell stock of one
23 shareholder to a third party come from? And if it came
24 from counsel, I don't want to know that, but if it came
25 from some other source, I want to know.

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1 A. Part of it from the Business Organizations
2 Code, Chapter 10.

3 Q. Well, this is not an exchange, is it? This
4 transaction does not involve an exchange; right?

5 A. It's my understanding that Chapter 10 is not
6 just exchanges.

7 Q. This is not a conversion, is it?

8 A. I don't know.

9 Q. It's not a merger, is it?

10 A. I don't know.

11 Q. And Chapter 10 covers mergers, interest
12 exchanges, conversions, and sales of assets; right?

13 A. I don't know.

14 Q. But you've read Chapter 10?

15 A. Yes.

16 Q. And you read it before you sent out this notice
17 of shareholders' meeting?

18 A. Yes.

19 Q. Asyntria was one of the parties to this
20 transaction; correct?

21 A. Yes.

22 Q. And Straden-Schaden was another party to the
23 transaction; correct?

24 A. Yes.

25 Q. Who represented Straden-Schaden in this

[Page 120]

1 transaction from a legal standpoint? What lawyer
2 represented Straden-Schaden?

3 A. Mr. Frankfort.

4 Q. And who represented Asyntria in this
5 transaction? *Does he represent in this transaction?*

6 A. Mr. Brady represents Asyntria.

7 Q. In this lawsuit; correct?

8 A. He has been retained as counsel prior to this
9 lawsuit.

10 Q. Mr. Brady had been retained by Asyntria prior
11 to the date the stock purchase agreement was entered
12 into?

13 A. I don't know the specific date.

14 Q. Did Mr. Brady represent Asyntria in connection
15 with the stock purchase agreement? *- retainer 7/28/15*

16 A. Yes.

17 MR. ZUCKER: Do you want to take a break?

18 MR. BRADY: Sure.

19 MR. ZUCKER: Take five minutes.

20 (Recess from 1:06 to 1:12)

21 MR. ZUCKER: Back on the record.

22 Q. (By Mr. Zucker) So in Exhibit 6 we've got a
23 stock purchase agreement that's between Straden-Schaden,
24 Inc., and Asyntria, Inc.; correct?

25 A. Yes. It covers the assets and the liabilities.

[30] (Pages 117 to 120)

[Page 121]

1 Q. And the notice of meeting is prepared by
2 Mr. Frankfort; correct?
3 A. Yes. I had to update it with a dial-in number
4 and that information.
5 Q. Okay. And then Mr. Frankfort represented
6 Straden-Schaden, Inc., correct, in connection with this
7 stock purchase agreement?
8 A. Yes.
9 Q. And what lawyer represented Asyntria in
10 connection with this stock purchase agreement?
11 A. Mr. --
12 MR. FRANKFORT: Objection. Form.
13 A. Asyntria, Inc., received legal counsel from
14 Mr. Brady.
15 Q. (By Mr. Zucker) Before this stock transaction,
16 this stock purchase --
17 A. Yes.
18 Q. -- agreement was entered into?
19 A. Yes.
20 Q. And he represented Asyntria for purposes of
21 this stock purchase agreement?
22 A. He provided legal counsel.
23 Q. And as we sit here today, what does
24 Straden-Schaden own? Does it own stock of Asyntria?
25 A. To my understanding, yes.

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1 Q. So Straden-Schaden is now a parent company of
2 Asyntria as the subsidiary?
3 MR. FRANKFORT: Objection. Form.
4 MR. ZUCKER: What's the objection?
5 MR. FRANKFORT: Calls for a legal
6 conclusion.
7 A. Straden-Schaden owns the shares of Asyntria.
8 Q. (By Mr. Zucker) When -- in connection with
9 this stock transaction, the stock purchase agreement
10 reflected in Exhibit 6, who at Asyntria made the
11 decision to engage Mr. Brady?
12 A. I did as CEO.
13 Q. And who spoke with Mr. Brady on behalf of the
14 company?
15 A. I did.
16 Q. After the stock purchase agreement was
17 executed, was the stock transfer to Straden-Schaden
18 recorded on the books, in the minute book of Asyntria?
19 A. Yes.
20 Q. And so if we were to look at Asyntria's minute
21 book, we would see a stock ledger that shows
22 Straden-Schaden as the owner of the stock of Asyntria?
23 A. Yes.
24 Q. Where are the share certificates for Wendy
25 Meigs' interest?

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1 A. They have been requested, but they have not
2 been received.
3 Q. And so as of this date, Wendy has never
4 delivered her share certificate or endorsed it over to
5 Straden-Schaden; correct?
6 A. No.
7 Q. That's correct?
8 A. That's correct.
9 Q. And Jody Meigs has not endorsed his share
10 certificate to transfer his shares to Straden-Schaden;
11 correct?
12 A. Correct.
13 Q. You would agree that this transaction was not
14 in the ordinary course of Asyntria's business. True?
15 A. I don't understand the question.
16 Q. Was Asyntria in the business of selling all of
17 its corporate stock to third parties?
18 A. No.
19 Q. According to -- if you look at the stock
20 purchase agreement, Section 2(b) on page 1 of the stock
21 purchase agreement, do you see that?
22 A. Yes.
23 Q. It said that, "The Consideration shall be paid
24 by promissory note, executed by Purchaser, and payable
25 to each shareholder of Seller."

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1 Do you see that?
2 A. Yes.
3 Q. And why was it payable to each shareholder of
4 seller?
5 A. I don't know.
6 Q. And it talks about a promissory note, but the
7 promissory notes weren't attached to this notice or the
8 stock purchase agreement, were they?
9 A. No. They were executed at closing.
10 Q. And so when this notice was circulated, the
11 promissory note had not been sent to Jody and Wendy;
12 correct?
13 A. Correct.
14 Q. And the promissory notes -- there was no
15 specification of an interest rate for the promissory
16 note in the stock purchase agreement, was there?
17 A. Not that I'm aware of.
18 Q. There was no provision for a default interest
19 rate; correct?
20 A. I don't believe so.
21 Q. And there was no provision for a guarantee,
22 like a personal guarantee by you or anyone else; right?
23 A. I don't remember.
24 Q. Do you see it in here?
25 A. I don't have a copy of the promissory note.

[31] (Pages 121 to 124)

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Q. I'm just saying in here, the stock purchase agreement that was sent to Wendy and Jody as shareholders, that did not include the promissory notes; correct?

A. Correct.

Q. And when this refers to the promissory note, it doesn't specify -- and when I say "this," the stock purchase agreement itself that was included in the notice doesn't specify that there would be a security agreement securing the promissory note with the stock that was being bought; right?

A. I don't believe so. I'm not sure.

Q. There was no provision in this stock purchase agreement that anybody would indemnify Ms. Meigs for any of the debts of the company that she might have guaranteed or been obligated for; correct?

A. No.

Q. And it says the closing is going to occur on July 1, 2015. It's on page 2, Section 3(a). Do you see that?

A. Yes.

Q. And the closing did in fact occur on July 1st?

A. Yes.

Q. And the charter of Asyntria was still forfeited as of that day; correct?

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a noncompete and that Wendy was not willing to withdraw her EEOC claim. That if I wanted them to sign a noncompete, they would want more money, and, otherwise, if that's not the case, he made a formal request to go ahead and have the promissory note canceled and returned for the stock.

Q. And so as you sit here today, you think that at some point you -- you think that the promissory note that you executed in favor of Jody Meigs as maker for \$125,000 in exchange for his 250,000 shares, it's your understanding that as we sit here today that promissory note has been voided or canceled?

A. That's my belief.

Q. And you believe that the 250,000 shares that Jody owns that you have in your possession as a result of owning -- or having possession of the share certificate, you believe that you have an obligation to give those shares back to Jody. Is that accurate?

A. Yes.

Q. And when do you intend to give those shares back to Jody?

A. I'm not sure yet.

Q. Have you had discussions with Jody about waiting until after the divorce is finalized in order to get that accomplished?

[Page 126]

A. Apparently, yes.

Q. As of July 1, 2015, you were still in possession of Jody's stock certificate; correct?

A. Correct.

Q. And did you endorse those shares over to Straden-Schaden?

A. No.

Q. And so as we sit here today, how were those 250,000 shares that you had purchased from Jody reflected on the books of the corporation?

A. Those hadn't been finalized yet.

Q. Is there any reason they have not yet been finalized?

A. I was waiting for a response from Jody.

Q. Your offers, did that still stand to sell back those 250,000 shares in exchange for canceling the promissory note?

A. It's my belief that the e-mail that he sent voided the promissory note.

Q. What e-mail did he send that voided the promissory note?

A. The e-mail stating, in a previous communication when we were trying to negotiate some type of path forward and separating the company or buying one another out, that the two concerns were, was not willing to sign

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A. I've had no conversations with Jody.

Q. When is the last time you spoke with Jody?

A. Approximately two months ago.

Q. And it's your understanding that as part of the stock purchase agreement Straden-Schaden did not purchase your shares of stock, the 250,000 shares that you had that you bought from Jody?

A. I'm not sure.

Q. Does Straden-Schaden own your shares of stock that you originally had, the 950,000?

A. Yes.

Q. And at the time -- as of July 1st when this transaction was executed, the stock purchase agreement, you were the president, the 950,000 share shareholder, and one of the directors of Asyntria; correct?

A. Correct.

Q. And at that same time you were the sole owner and manager of Straden-Schaden, Inc.? I'm sorry. The sole owner and director of Straden-Schaden, Inc.; correct?

A. Correct.

Q. Why weren't the 250,000 shares that were originally owned by Jody and then sold to you part of this stock purchase agreement?

MR. FRANKFORT: Object to the form of the

[32] (Pages 125 to 128)

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1 question.

2 A. They were. They were still listed under myself
3 as part of that 950,000.

4 Q. (By Mr. Zucker) Okay.

5 A. And based on legal counsel, I now realize that
6 he had in fact voided the promissory note prior to that.

7 Q. And so if he voided the promissory note, why
8 aren't those 250,000 shares still part of the stock
9 agreement, stock purchase agreement?

10 MR. FRANKFORT: Object to the form of the
11 question.

12 A. They are listed in there. They're currently
13 listed under me because I -- at that point in time, I
14 was under the understanding that the promissory note in
15 exchange for those shares of stocks was still valid.

16 Q. (By Mr. Zucker) There's a letter from you to
17 the stockholders of Asyntria dated June 19 that's
18 included in Exhibit 6 immediately after the stock
19 purchase agreement?

20 A. Yes.

21 Q. And it said that you're placing -- or that the
22 purchase offer is placing a premium valuation on the
23 company of \$390,000. Do you see that?

24 A. Yes.

25 Q. And how did you come up with that

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1 Q. And you believe that as a result of that that
2 ownership of those shares was with Jody; correct?

3 A. That's my understanding.

4 Q. And so, in fact, as of June 22nd, Wendy owned
5 250,000 shares. Is that true?

6 A. Yes.

7 Q. And as of that date, Jody owned 350,000 shares.
8 True?

9 A. True.

10 Q. And you owned 700,000 shares; correct?

11 A. Yes.

12 Q. And at that meeting to -- that was put to have
13 the stockholders of Asyntria vote on whether to enter
14 into the stock purchase agreement, Jody voted no;
15 correct?

16 A. Correct.

17 Q. And Wendy voted no; correct?

18 A. Correct.

19 Q. Were there any negotiations over the purchase
20 price that was reflected in the notice of meeting that's
21 Exhibit 6 or the stock purchase agreement?

22 A. I'm not following your question.

23 Q. The 30 cents a share that was contained in this
24 stock purchase agreement, were there any negotiations
25 between any parties about that number?

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1 determination?

2 A. It was a combination of multiple factors,
3 including looking at assets versus liabilities versus
4 current state of the business as a result of where Jody
5 had led the operations into, future earning potential.
6 It was a variety of matters.

7 Q. Did you have an appraisal conducted before this
8 stock purchase agreement was entered into?

9 A. No.

10 Q. Did you have an appraisal of Asyntria conducted
11 before June 19, 2015?

12 A. No.

13 Q. Did you have any kind of third party fairness
14 opinion executed in connection with this transaction?

15 A. I received advice, but there was no written
16 execution.

17 Q. Now, you say that you currently believe that as
18 of the date of this transaction the promissory note from
19 you to Jody had already been voided. True?

20 A. Can you repeat it?

21 Q. You believe that as of June 22nd, the date this
22 notice of special meeting was sent out, you believe that
23 the promissory note from Jody Meigs to you had been
24 voided or canceled; correct?

25 A. That is my understanding.

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1 A. That number represented a premium out of good
2 will that I was placing based on the price per share
3 that had been discussed and negotiated previously with
4 no communication coming back that price per share was an
5 issue.

6 Q. But essentially you made an offer, which is
7 reflected in your letter that's part of Exhibit 6, that
8 says the stock purchase offer of 30 cents per
9 outstanding shares placing a premium, yada, yada, and
10 then in the end it says, "Do not be mistaken. The stock
11 purchase valuation will only be offered through the
12 upcoming shareholder meeting. If this offer is
13 rejected, any future offers will be strictly calculated
14 based on fair market valuations, which would be in the
15 range of 1 cent to 5 cents per share."

16 Do you recall that?

17 A. Yes.

18 Q. And so Straden-Schaden made an offer to
19 Asyntria for 30 cents a share; correct?

20 A. Correct.

21 Q. And then did anybody on Asyntria's part
22 negotiate to try to get that number higher?

23 A. No.

24 Q. And it sounds like it's a take it or leave it
25 kind of deal?

[33] (Pages 129 to 132)

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1 A. At that point, yes.
 2 Q. You're good with math; right?
 3 A. I believe so, yes.
 4 Q. So if the total outstanding shares are
 5 1.3 million shares and 700,000 voted to approve this
 6 transaction, what percentage is that?
 7 A. I believe it's roughly 53, 54 percent.
 8 Q. That's pretty good. That's not --
 9 A. Told you.
 10 Q. That's not 66 percent; right?
 11 A. 53 is not 66, no.
 12 Q. That is not 75 percent; right?
 13 A. No.
 14 Q. In connection with the stock purchase agreement
 15 and the discussions leading up to it, did anybody on
 16 behalf of Asyntria ask for a personal guarantee from you
 17 to guarantee Straden-Schaden's promissory note?
 18 A. Yes, and that was communicated to their
 19 attorney at that point that that would not be an issue.
 20 Q. Providing a guarantee?
 21 A. Yes.
 22 Q. So why wasn't that included in the stock
 23 purchase agreement?
 24 A. Well, when parties stop communicating and
 25 negotiating, start making the offer that you want to

[Page 134]

1 make.
 2 Q. So you knew basically that Ms. Meigs wanted to
 3 have a guarantee in connection with any stock purchase
 4 agreement; correct?
 5 A. Yeah. I also knew she wanted \$5 million
 6 valuation for the company a year or two ago that wasn't
 7 accurate.
 8 MR. ZUCKER: Objection. Nonresponsive
 9 after the word "yeah." I think that was the word.
 10 Q. (By Mr. Zucker) But Ms. Meigs had asked for a
 11 guarantee; correct?
 12 A. To me?
 13 Q. To -- through her lawyers to your lawyers?
 14 A. No.
 15 Q. To you?
 16 A. No.
 17 Q. Did somebody ask you for a guarantee?
 18 A. It was discussed via Jody to me.
 19 Q. Okay. And you knew that was an issue for them;
 20 correct?
 21 A. Yes.
 22 Q. And then when it came time to actually put
 23 together the stock purchase agreement, there was no
 24 provision for a guarantee in the stock purchase
 25 agreement; correct?

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1 A. Correct.
 2 Q. And the reason was, you weren't going to
 3 volunteer a guarantee if they weren't communicating. Is
 4 that fair?
 5 A. They had stopped all communication.
 6 Q. So my question is, you weren't going to
 7 volunteer the guarantee if they weren't continuing to
 8 negotiate with you?
 9 A. That's true.
 10 Q. Okay. And then did Asyntria's shareholders --
 11 I'm sorry. Strike that.
 12 Did Wendy or Jody ask for a security
 13 interest to secure the promissory note?
 14 A. No.
 15 Q. Did Wendy or Jody ask that the promissory note
 16 bear interest if it was payable over time?
 17 A. No.
 18 Q. In connection with the negotiations between
 19 Asyntria and Straden-Schaden to move forward with the
 20 stock purchase agreement, did the lawyer representing
 21 Asyntria make any request that the stock purchase
 22 agreement include a guarantee from you?
 23 A. I don't recall.
 24 Q. Do you know if Asyntria's lawyer made any
 25 request that the stock purchase agreement include any

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1 sort of indemnification of the shareholders that were
 2 being bought out?
 3 A. I don't recall.
 4 Q. Did Asyntria's lawyer make any request that
 5 there be a security agreement to secure the promissory
 6 note that was being given by Straden-Schaden?
 7 A. I don't recall.
 8 Q. Do you know what percentage vote was required
 9 to approve a transaction under Chapter 10 of the
 10 Business Organizations Code?
 11 A. I don't recall off the top of my head.
 12 (Exhibit 24 marked)
 13 Q. (By Mr. Zucker) I'm handing you Exhibit 24.
 14 Is Exhibit 24 a true and correct copy of the Asyntria,
 15 Inc., shareholder meeting -- meeting minutes for the
 16 meeting that occurred on June 222, 2015?
 17 A. Appears to be so, yes.
 18 Q. And you prepared these?
 19 A. Yes.
 20 Q. It was your intention to make an accurate
 21 written record of what transpired at the meeting;
 22 correct?
 23 A. Yes.
 24 Q. These minutes that are in Exhibit 24 reflect
 25 each vote that was taken during that meeting; correct?

[34] (Pages 133 to 136)

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1 A. Yes.

2 Q. It says that in -- under "Proceedings," the
3 first one, it says, "Review, discuss and vote on the
4 removal of Jody Meigs as a director of the Corporation."
5 Do you see that?

6 A. Yes.

7 Q. And it says the votes were recorded as follows:
8 You voted yes for each of your 950,000 shares.
9 Mr. Meigs voted no and Ms. Meigs voted no; correct?

10 A. Correct.

11 Q. But we know now that you didn't own 950,000
12 shares. You only owned 700,000 shares; correct?

13 A. Based on my current understanding, yes.

14 Q. And then there was an appointment of Robin Luke
15 to be a director of the corporation; correct?

16 A. Correct.

17 Q. That was based on the same vote?

18 A. Correct.

19 Q. And then there was a vote -- after review and
20 discussing, there was a vote on the offer by
21 Straden-Schaden to purchase all of the outstanding
22 shares, and the vote went the same way. Johnston voted
23 yes for his 950,000 shares and Mr. and Mrs. Meigs voted
24 no; correct?

25 A. Correct.

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1 Q. And these are the only minutes for that
2 meeting; correct?

3 A. Yes.

4 Q. You haven't created any amended minutes for the
5 meeting?

6 A. No.

7 Q. Do you know if Asyntria ever had any power of
8 attorney from Wendy Meigs to sell her stock?

9 A. I don't know.

10 Q. Do you know if Asyntria ever had any stock
11 power to sell her stock?

12 A. I don't know.

13 Q. And you testified that there was never any
14 buy/sell agreement between the shareholders; correct?

15 A. Correct.

16 Q. And Wendy never agreed to sell her stock, did
17 she?

18 A. Correct.

19 Q. And she, in fact, objected to the sale
20 reflected in the stock purchase agreement; correct?

21 A. She voted no.

22 Q. And after the sale, it's your belief that
23 Straden-Schaden owns the stock in Asyntria?

24 A. That's my belief, yes.

25 Q. Were any assets of Asyntria transferred to

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1 Straden-Schaden after the stock purchase agreement was
2 executed?

3 A. Yes.

4 Q. What assets?

5 A. There was money transferred.

6 Q. What money?

7 A. What do you mean? I don't know how to define
8 money.

9 Q. Well, so -- okay. So you said asset -- after
10 the stock sale was completed and let's say after
11 July 1st, it's your testimony that some assets, at least
12 some assets of Asyntria were transferred to
13 Straden-Schaden; correct?

14 A. Correct.

15 Q. And you said money was transferred?

16 A. Correct.

17 Q. What other assets?

18 A. I believe that's all.

19 Q. And was the money from Asyntria's bank account?

20 A. Yes.

21 Q. Which bank account?

22 A. Amegy.

23 Q. And how much was in that account that was
24 transferred from Asyntria to Straden-Schaden?

25 A. I don't recall.

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1 Q. Was it less than \$100,000?

2 A. Yes.

3 Q. What was the purpose for transferring money
4 from Asyntria's account to Straden-Schaden's account?

5 A. To reimburse Straden-Schaden for the payment of
6 expenses directly related to Asyntria's operations
7 previously.

8 Q. Has Straden-Schaden sent out any invoices to
9 third parties since the date of the stock purchase
10 agreement being consummated?

11 A. Straden-Schaden?

12 Q. I'm saying has Asyntria sent out any invoices
13 to customers since July 1, 2015?

14 A. Yes.

15 Q. And it's done that in its own name?

16 A. Under the name of Asyntria.

17 Q. Does Asyntria continue to employ people?

18 A. Yes.

19 Q. And who are the current employees?

20 A. It's currently set up where it's myself as the
21 employee of Asyntria. All the other employees are being
22 paid by Straden-Schaden.

23 Q. And these are employees that were formerly
24 employed by Asyntria who are now being employed by
25 Straden-Schaden?

[35] (Pages 137 to 140)

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1 A. Yes.

2 Q. Has Straden-Schaden filed any kind of d/b/a to
3 do business in an assumed name?

4 A. Yes.

5 Q. And what is that d/b/a?

6 A. The Johnston Group, Scripts Pharmacy, RX Press
7 Publications.

8 Q. The business that was associated with Asyntria
9 prior to the stock purchase agreement being consummated,
10 one of those was the NPTA; correct?

11 A. Correct.

12 Q. And that was basically training modules or
13 testing. Is that accurate?

14 A. It was numerous items, yes.

15 Q. And are those still being conducted in the name
16 of Asyntria?

17 A. Yes.

18 Q. Before you entered into the -- before Asyntria
19 and Straden-Schaden entered into the stock purchase
20 agreement, did Asyntria have a certified public
21 accountant review the transaction to determine whether
22 it should be a stock sale versus a sale of assets?

23 A. We did have a review. We did receive counsel
24 from CPAs.

25 Q. And what did the CPAs tell you?

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1 A. I don't remember.

2 Q. Who were those CPAs?

3 A. I don't remember their names.

4 Q. Were they the company's traditional CPAs, or
5 were they ones engaged specifically to look at that
6 transaction?

7 A. Ones engaged specifically to look at the
8 transaction.

9 MR. ZUCKER: Can we take a five-minute
10 break?

11 (Recess from 1:47 to 1:53)

12 Q. (By Mr. Zucker) We were talking before about
13 Exhibit 6, which was the notice of meeting to approve
14 the stock purchase agreement. Prior to that date, did
15 you have any joint meetings with Mr. Frankfort and
16 Mr. Brady to discuss the terms of the stock purchase
17 agreement?

18 MR. FRANKFORT: Objection to -- object to
19 the question concerning attorney-client privilege.

20 MR. ZUCKER: What's the privilege if
21 they're two adverse parties with two different lawyers?
22 I'm talking about joint meetings between you all with
23 the clients as opposed to you with your client.

24 MR. FRANKFORT: I don't know. Doesn't
25 seem right.

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1 MR. ZUCKER: What?

2 MR. FRANKFORT: I said I don't know. Just
3 doesn't -- that doesn't sound right to me.

4 Q. (By Mr. Zucker) Mr. Frankfort represented
5 Straden-Schaden; correct?

6 A. Yes.

7 Q. And Mr. Brady represented Asyntria; correct?

8 A. I received legal counsel from Mr. Brady.

9 Q. You personally?

10 A. Sorry. Asyntria.

11 Q. Asyntria was represented by Mr. Brady as its
12 lawyer; correct?

13 A. Asyntria received legal counsel from Mr. Brady.

14 Q. Do you know if any drafts of the stock purchase
15 agreement were exchanged between Mr. Frankfort on behalf
16 of Straden-Schaden, Inc., and Mr. Brady on behalf of
17 Asyntria?

18 A. I don't know.

19 Q. Do you know which entity paid Mr. Frankfort's
20 fees?

21 A. He's been paid by me personally and through
22 Straden-Schaden.

23 Q. And who paid Mr. Brady's fees?

24 A. Asyntria.

25 Q. But it was Mr. Frankfort who drafted the notice

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1 of special meeting; correct?

2 A. Yes.

3 Q. And it was Mr. Frankfort who drafted the stock
4 purchase agreement; correct?

5 A. Yes.

6 Q. And you're not aware of any red lines or drafts
7 being circulated between Mr. Frankfort and Mr. Brady
8 with respect to that transaction?

9 MR. FRANKFORT: Objection. Form.

10 A. No.

11 Q. (By Mr. Zucker) You sent Ms. Meigs an apology
12 e-mail on June 19, 2015, about the same day you sent the
13 notice of shareholders' meeting; correct?

14 A. Yes.

15 Q. And the apology was because she had been
16 suspicious that her husband had been having an affair,
17 and you now knew that this was true, and you were
18 apologizing for not having believed her; correct?

19 A. That is true.

20 Q. Why did you feel like you had to send her an
21 apology?

22 A. We had a long history. Despite our -- all of
23 our differences, I wouldn't wish something like that on
24 anyone, and it was a genuine apology that I didn't see
25 what was in front of everyone at that point.

[36] (Pages 141 to 144)