



16:32:04 1 Q. And what did you do when you received Exhibit
16:32:06 2 61?

16:32:06 3 A. Called up Floyd, said to Floyd, "Hey, Floyd,
16:32:13 4 what gives? I thought you and Don had settled this
16:32:18 5 thing for \$500,000, and Don was going to walk away.
16:32:24 6 And I see this thing still binds him to five years of
16:32:27 7 being a consultant."

16:32:30 8 Q. And when was this conversation you had with
16:32:32 9 Mr. Jahner?

16:32:36 10 A. Right around August 1, if Don -- got it the
16:32:43 11 day after Don got it, I think. If he got it the 31st,
16:32:48 12 I got it the 1st, might have been the 2nd I got it. It
16:32:51 13 was either the 1st or 2nd of August of 2006.

16:32:55 14 Q. Okay. So you call up Mr. Jahner and say, I
16:32:57 15 thought this was a termination. What gives here?

16:33:00 16 A. Yeah, I thought this was a settlement of -- I
16:33:03 17 said, why would Don ever agree to half the amount and
16:33:06 18 still be bound for five years?

16:33:10 19 Q. What did Mr. Jahner say?

16:33:12 20 A. Floyd kind of laughed and said, well, we might
16:33:14 21 want to consult with him here and there, doesn't have
16:33:16 22 to do much work. You know, we are going to hardly
16:33:20 23 barely call him ever. And I laughed, and I said, you
16:33:22 24 know, at this point I kind of know what's -- obviously
16:33:26 25 what's going on and said, you know, I think probably

16:33:28 1 the last guy in the world that Mark Cuban would ever
16:33:32 2 want to consult with is Don Nelson. Why you are you
16:33:37 3 doing this? You know, what's the purpose of it? You
16:33:39 4 know you are not going to use him as a consultant. Why
16:33:41 5 are you doing this?

16:33:42 6 And we went back and forth, kind of
16:33:45 7 friendly conversation. And then finally Floyd brought
16:33:47 8 up the idea, well, is Don going to get another job? I
16:33:51 9 said yeah, maybe, maybe. And then he basically started
16:33:56 10 talking about how, well, if he does get a job, we can
16:33:59 11 offset his earnings against deferred compensation. And
16:34:04 12 I told him he was nuts, and I had just moved offices.
16:34:11 13 I had just left my firm, had my office, and had all my
16:34:15 14 stuff in boxes. And I said, you know -- he said, oh,
16:34:18 15 no, that's what the contract says. I said I don't
16:34:21 16 think it says that.

16:34:21 17 So, you know, fax it to me, I don't want
16:34:24 18 to go through all my boxes, just fax me the copy and
16:34:28 19 I'll show you how it doesn't because I'm real familiar
16:34:30 20 with the contract. I'll go through it and so forth.

16:34:32 21 Q. Okay.

16:34:33 22 A. That's how we left it. But I also asked him,
16:34:37 23 I said, basically, Floyd, you got two choices. You
16:34:40 24 either can -- we can either settle this for a lump sum
16:34:45 25 and we'll walk way, or pay Don the money as it becomes

16:34:49 1 due every two weeks and pay him. I said is there some
16:34:52 2 amount you are willing to pay as a lump sum to do it?
16:34:56 3 I'll bet you Don -- if I asked him, I'll bet you Don
16:34:59 4 would take \$400,000. I don't know, give me a number.
16:35:02 5 Let's start talking. And he said he had -- he couldn't
16:35:04 6 do that, something to that effect.

16:35:06 7 Q. Okay. Did you have any further conversations
16:35:09 8 with Mr. Jahner after that?

16:35:13 9 A. Yeah. I think we sparred a little bit after I
16:35:15 10 got the contract about what the contract meant and
16:35:18 11 trying to explain to him earned and accrued, stuff
16:35:21 12 we've been talking about here, that once something
16:35:23 13 vested you had to pay it, and you can't offset against
16:35:27 14 that. Look at the language, you can only offset
16:35:31 15 against unearned, I said, which means that -- all that
16:35:34 16 means is you can offset against his consultant's
16:35:39 17 salary.

16:35:40 18 So -- you know, so if you were to fire
16:35:43 19 Don today, you would have to pay unearned consultant's
16:35:47 20 salary for the next four and a half years or whatever
16:35:50 21 it is. But subject to an offset, you are going to get
16:35:54 22 that back obviously, because any job Don's going to
16:35:56 23 take 50 percent of it is going to wipe out the
16:35:58 24 consultant's salary in a minute. So I said that's your
16:36:00 25 burn. You got to think about that. Your burn is the

16:45:08 1 continue working this evening and maybe go until, I
16:45:12 2 don't know, 7:00 or 8:00 if we need to whatever,
16:45:15 3 whatever works. You guys know what -- what's ahead.
16:45:18 4 You know who your witnesses are and probably how long
16:45:20 5 they are going to take. You need to guide me about
16:45:22 6 that, but I just think that for this evening we ought
16:45:26 7 to at least finish this witness. If there is another
16:45:29 8 short witness, let's do that. If you want to do
16:45:31 9 another one, I am good with that, too.

16:45:33 10 MR. MELSHEIMER: Your Honor, we can talk
16:45:34 11 about it. My sense would be that we should go past
16:45:38 12 5:00 obviously.

16:45:39 13 THE ARBITRATOR: Why don't you guys talk
16:45:41 14 and kind of tell me what you think we need.

16:45:43 15 MR. MELSHEIMER: And maybe we could also
16:45:45 16 start instead of at 9:00, we could maybe start at 8:30.

16:45:49 17 THE ARBITRATOR: I'm good with that, but
16:45:50 18 frankly I'd rather go -- I mean, I'm good with both of
16:45:53 19 those things.

16:45:53 20 MR. MELSHEIMER: Just have a little extra
16:45:55 21 time tomorrow, too.

16:45:56 22 THE ARBITRATOR: Yeah, I would
16:45:57 23 although -- I mean, I've probably got a longer travel
16:46:00 24 time than anybody else here. I just -- I get caught in
16:46:03 25 traffic, I mean, 8:30's fine. I do it periodically,

17:41:41 1 equitable disgorgement was at a conference call. I
17:41:46 2 don't think we've even used that term since we started
17:41:49 3 the arbitration. And so I am just simply going to
17:41:52 4 mention that that's -- I mean, I don't know if that's a
17:41:56 5 remedy that one would be entitled to in the event that
17:42:00 6 you prevail on breach, or if that is an independent,
17:42:04 7 stand-alone cause of action that results from some --
17:42:08 8 some breach other than by contract.

17:42:11 9 MR. MELSHEIMER: You know, we believe
17:42:13 10 it's in the case, and we certainly have -- we believe
17:42:18 11 we have adduced evidence to support it and will
17:42:22 12 certainly argue it, and whether -- how it's presented
17:42:26 13 in the briefing, there are sort of two different
17:42:32 14 glosses that you have put on it. And, you know, we
17:42:35 15 will certainly consider that when we are -- when we are
17:42:37 16 presenting the briefing, Your Honor.

17:42:38 17 THE ARBITRATOR: Those were all just
17:42:40 18 questions.

17:42:40 19 MR. MELSHEIMER: Sure, understood.

17:42:41 20 THE ARBITRATOR: But in terms of when you
17:42:45 21 made your pre-arbitration briefs, you presented it in
17:42:48 22 the way that you probably expected to present it at the
17:42:51 23 arbitration. Post arbitration is what I would view
17:42:55 24 as -- I mean, you might have referred -- you refer to
17:42:58 25 this as the world's longest summary judgment. I like

17:43:01 1 to think that post-arbitration briefs are a
17:43:04 2 substitution for closing remarks. And so I'd like for
17:43:07 3 you to, you know, focus on the things you need to focus
17:43:11 4 on, but also if you would, please, give me some
17:43:14 5 response to those as well.

17:43:17 6 MR. DAVENPORT: We will do it, Judge.

17:43:19 7 MR. MELSHEIMER: We will.

17:43:20 8 THE ARBITRATOR: It's been an honor.

17:43:22 9 Thank y'all very much. You have been pretty civilized.

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I, Jerry L. Callaway, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that the above and foregoing pages 421 - 800 contain a full, true and correct transcription of the proceedings taken by me in the above-styled cause.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 27th day of June, A.D., 2008.

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