

Exhibit I

KENNETH GOODWIN 2/20/2006

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARK MONSOUR, SHEILA)
MONSOUR and MONSOUR'S, INC.,)

Plaintiffs,)

VS.) Case No. 05-1204-MLB

MENU MAKER FOODS, INC.,)

Defendant.)

DEPOSITION OF KENNETH GOODWIN
TAKEN ON BEHALF OF THE PLAINTIFFS

February 20, 2006

KENNETH GOODWIN 2/20/2006

<p style="text-align: right;">Page 50</p> <p>1 Q (By Mr. James) We are back on the 2 record. Did you happen to discuss that pending 3 question with Mr. Wachtel during the break? 4 A No. 5 Q You correct my recollection if I'm 6 mistaken, but my understanding is I was asking you 7 about the second time that you had gone to Pittsburg 8 or gone to Monsour's? 9 A Yes. 10 Q And you indicated that you thought it was 11 in April or May of 2002? 12 A Correct. 13 Q Okay. And then now back to who do you 14 believe -- who did you go with on that trip? 15 A I believe it was with Creighton. 16 Q Do you recall anybody else that went with 17 you? 18 A No. 19 Q Do you recall what the purpose of that 20 second trip was for? 21 A Yes. 22 Q Tell me about that. 23 A I had received a call from Mark Monsour, 24 who expressed some concerns about the amount of 25 inventory that was still left in the warehouse.</p>	<p style="text-align: right;">Page 52</p> <p>1 or belief with you that you had purchased most of 2 what you could? 3 A His comments were, "There is a lot of 4 inventory still in the building here." And wanted to 5 know where we were at on purchasing it. 6 Q Do you recall the time frame between the 7 telephone call from Mark Monsour and the lapse until 8 you drove to Monsour's in Pittsburg? 9 A I don't recall the exact timing but it was 10 relatively soon. I want to say the following week we 11 went down. 12 Q The best of your recollection he called 13 you in one week, the next week you and Creighton get 14 in the car and drive down there? 15 A Correct. 16 Q Did you ever have any knowledge of any 17 type of agreement between Dick Graves and Mark 18 Monsour that all of the inventory would be purchased 19 and taken between four and six weeks after the asset 20 purchase agreement? 21 A I have no knowledge of that. 22 Q Nobody ever mentioned that to you? 23 A I don't recall there being a specific time 24 table. 25 Q But it's fair to say we discussed both</p>
<p style="text-align: right;">Page 51</p> <p>1 Q Okay. So you go down in April or May of 2 2002, in approximation, and this is in response to a 3 call that you got from Mr. Monsour about a concern of 4 inventory in the warehouse; correct? 5 A Correct. 6 Q Tell me about the call from Mr. Monsour, 7 what you recall him saying. 8 A He just felt like there was still a lot of 9 inventory left in the building, and had not seen much 10 activity in regards to us purchasing inventory in the 11 recent weeks, and called to find out what was going 12 on. 13 Q So it's safe to say he expressed some 14 concern about the amount of inventory that had not 15 been purchased? 16 A Yes. 17 Q What was your response to him? 18 A My response what that based on the 19 inventory reports that he had been given, we felt 20 like we had purchased most, if not all, of what we 21 felt like we could. But that I would discuss it with 22 Creighton, and that was the reason for our trip down 23 there, was so that I could walk around and look and 24 see for myself what was still down there. 25 Q And obviously he didn't share that opinion</p>	<p style="text-align: right;">Page 53</p> <p>1 times you have actually been on the Monsour property 2 in Pittsburg; correct? 3 A Correct. 4 Q Have you gone down there since Menu Maker 5 had taken over that, especially not Monsour's 6 anymore, have you visited your operations in 7 Pittsburg? 8 A I don't recall other than those two 9 times. 10 Q After Mark telephoned you and says he has 11 this concern, what is your -- well, first -- strike 12 that. Do you recall anything else that was said in 13 the conversation between you and Mark Monsour? And I 14 am specifically referring to the telephone call about 15 the concerns of the inventory. 16 A No. 17 Q You indicated that you had met and talked 18 to Mark Monsour once in person, and now we have a 19 phone conversation with Mr. Monsour; did you ever 20 talk to him at any other time that you can recall? 21 A Yes. 22 Q Okay. Tell me about that. 23 A I received a telephone call from him I 24 believe in February of '02. He expressed his concern 25 about the cooperation that he was receiving from Ron</p>

14 (Pages 50 to 53)

KENNETH GOODWIN 2/20/2006

Page 54

1 Orr in regards to the produce segment of the business.
 2 Q Let me see if I can get the time line and
 3 the order down. Well, give me the order of when you
 4 had the first trip down to Monsour's, when you got
 5 the phone call about the Ron Orr concern, when you
 6 got the phone call about the inventory concern, and
 7 then the second time, could you put those in order
 8 for me?

9 A The first incident would be the trip down
 10 that we -- that Creighton and I took down to meet
 11 with the sales force, not -- soon after the sales
 12 force joined our sales force. That would have been
 13 the first incident. The second was the phone call I
 14 received concerning Ron Orr, and Mark's concerns
 15 there. And then the last would be the trip down I
 16 took in response to his concerns about how much
 17 inventory was left in the building.

18 Q And we had the phone call before that trip
 19 that precipitated the last trip; correct?

20 A Correct. Correct.

21 Q Any other contacts you had with Mark
 22 Monsour, conversations that you can recall?

23 A None that I can recall.

24 Q Tell me more about the telephone call in
 25 February, 2002, where he already had concerns about

Page 55

1 Ron Orr in regard to the produce, what do you recall
 2 Mr. Monsour saying?

3 A He asked me to get with Ron to facilitate
 4 better communication between Ron and his produce guy
 5 down in Monsour's -- Rick, I believe, but I'm not
 6 positive. And that was -- that was the conversation.

7 Q Do you recall what your response was?

8 A I told him I would be glad to speak with
 9 Ron and see if I could determine what obstacles there
 10 may be, what may be causing the problem between Ron
 11 and his produce guy.

12 Q So early February of 2002, Mark is
 13 telephoning you and expressing concerns about Ron
 14 Orr?

15 A I don't recall if it was early February,
 16 but I believe it was sometime in February, to my best
 17 recollection.

18 Q Fair enough, with that clarification. But
 19 it's expressing concerns about Ron Orr particularly?

20 A Correct.

21 Q What did you do when you got that
 22 telephone call?

23 A I went in and spoke with Ron and told him
 24 that I had received a telephone call from Mark
 25 Monsour, and that he was concerned about the

Page 56

1 communication between the two companies, specifically
 2 he was waiting for Ron to supply average weekly sales
 3 numbers on produce items.

4 Q Mark felt like he hadn't gotten those
 5 weekly sales numbers?

6 A Yeah, Mark didn't feel like they had all
 7 the information they needed to begin supplying us
 8 with produce.

9 Q And I guess I didn't ask, continue on the
 10 chain of command earlier. Is Ron Orr a parallel to
 11 you, or is he someone that is at a lower level?

12 A At that time Ron reported to me. He was
 13 the purchasing manager, and also in charge of
 14 produce.

15 Q So it was a natural telephone call. You
 16 were being contacted about one of your employees?

17 A Correct.

18 Q And someone you were directly responsible
 19 for?

20 A Correct.

21 Q Did Ron admit to you that he hadn't been
 22 sending these average weekly sales reports?

23 A Ron had produced to me documents that he
 24 said had been faxed to Monsour's, and my response
 25 back to him was, "Well, let's send them again. They

Page 57

1 are saying they don't have it. They are looking for
 2 information. You need to get ahold of Rick and find
 3 out what exactly they think they are missing."

4 Q So at this point it sounds to me like you
 5 feel like Mark is communicating to you saying, "Hey,
 6 we want to make this work," and you are, in turn,
 7 trying to make efforts to make it work as well; is
 8 that fair?

9 A Yes.

10 Q What did Ron say to you when you said,
 11 "Hey, let's send these again"?

12 A He was exasperated, it was my feeling. He
 13 felt like he had been performing the way he should
 14 have been, and didn't quite understand why I would
 15 have received a phone call from Mark.

16 Q Did you feel like you were giving Ron a
 17 reprimand at this point?

18 A Oh, no.

19 Q More just let's see what we can do to
 20 figure this out?

21 A Yes.

22 Q There had been some testimony early on in
 23 this case by Mr. Fairchild saying that he had heard
 24 Mr. Orr say that he didn't approve of the agreement
 25 and he didn't like the agreement; had you heard Mr.

15 (Pages 54 to 57)

KENNETH GOODWIN 2/20/2006

Page 58

1 Orr say things like that.
 2 A Yes.
 3 Q Tell me what you recall Ron Orr saying?
 4 A He was very concerned about Monsour's
 5 ability to supply us with the produce that we needed
 6 with the quality that we needed.
 7 Q Is it safe to say that Ron didn't like the
 8 agreement?
 9 A That was the impression that I got.
 10 Q Did you feel like he was upset that he had
 11 to follow through with this agreement?
 12 A He was very agitated and felt like this
 13 agreement was going to have a negative impact on our
 14 produce sales.
 15 Q Do you ever recall Mr. Orr saying, "This
 16 agreement is just not going to work"?
 17 A Yes.
 18 Q Let's do this, in part: when did you first
 19 learn that Ron felt that this was going to have a
 20 negative impact on Menu Maker produce sales?
 21 A In that meeting that we had up in Dick's
 22 office with Creighton, and the agreement to buy
 23 inventory was explained, and the agreement to
 24 purchase produce was explained.
 25 Q So before you ever got the call from Mark

Page 59

1 expressing concerns about Ron Orr, you already knew
 2 that Ron Orr didn't like the produce agreement?
 3 A He was not in favor of the agreement.
 4 Q And you already knew that Ron felt it was
 5 going to adversely affect Menu Maker Foods?
 6 A Yes.
 7 Q And you had already heard Ron say he
 8 didn't think this agreement was going to work?
 9 A Yes.
 10 Q How did Mr. Cox or Mr. Graves respond when
 11 Ron said, "This isn't going to work. I don't like
 12 it," or he was agitated?
 13 A Mr. Graves explained to him that we were
 14 going to make every effort to make it work, and we
 15 would continue to do so until we determined it wasn't
 16 going to work.
 17 Q And was that in that original meeting when
 18 you first learned about the asset purchase agreement?
 19 A Correct.
 20 Q Do you recall -- I just want to be clear,
 21 is that just your recollection as a general
 22 understanding of what Mr. Graves conveyed to Ron, or
 23 do you specifically recall Dick saying, "We are going
 24 to do everything we can to make this work until we
 25 figure out that it's not going to work"?

Page 60

1 A That is my recollection of the
 2 conversation.
 3 Q So you don't remember the specifics of
 4 what --
 5 A No.
 6 Q -- Dick said?
 7 A No.
 8 Q Did you have any conversations with Ron
 9 after that meeting with Dick and Creighton when you
 10 first learned about the asset purchase agreement,
 11 about his concern, his agitation, his not wanting it
 12 to work?
 13 MR. WACHTEL: Object to the form. Go
 14 ahead.
 15 A I did have at least one conversation with
 16 Ron.
 17 Q (By Mr. James) Tell me about that
 18 conversation. Was it a pick me up, "Ron, you can do
 19 this," or was it, "Ron, I'm your boss. You need to
 20 follow Dick's instructions"? Give me a flavor for
 21 that conversation.
 22 A I wanted to give him an opportunity to
 23 vent his frustrations and express his concerns so
 24 that I better understood what we might be faced
 25 with. Buyers tend to be very protective about their

Page 61

1 product categories that they buy. And take a lot of
 2 pride in -- especially in produce, take a lot of
 3 pride in the product that they -- that we would
 4 deliver to our customers.
 5 Q So it sounds like this was more what I
 6 think most people would consider a good management
 7 technique, you were just hearing out your subordinate
 8 about his concerns?
 9 A Correct.
 10 Q Why did you feel like you needed to do
 11 this? Did you feel that Ron didn't get to express
 12 all his concerns to Dick before Dick said, "We are
 13 going to do it until it doesn't work, then we are
 14 going to quit"; is that why?
 15 A Yeah, part of being a manager is
 16 understanding where your people are at, where their
 17 heads are at, and to get ahead of any potential
 18 problems that might be arising.
 19 Q So is it safe to say that what you just
 20 described for me, that was your purpose in meeting
 21 with Mr. Orr after the meeting?
 22 A That's correct, I wanted to better fully
 23 understand, because the produce business is a kind of
 24 a business of its own, and it's not one that I
 25 understand completely, and wanted to have a better

16 (Pages 58 to 61)

KENNETH GOODWIN 2/20/2006

Page 86

Page 88

1 belief that the freezer had been shut down, quit
 2 working, product thawed, refroze, and that was our
 3 speculation. I don't know if anybody knew that for
 4 certain. But based on the problems that we were
 5 having, we felt like the frozen goods were a loss.
 6 Q So in May of 2002, to the best of your
 7 recollection, you told Mark or Jim, whoever you met
 8 with, "Hey, everything that is in the freezer we
 9 can't use"?
 10 A I don't believe -- I did not personally
 11 communicate that. I believe that was communicated by
 12 either Creighton or Dick.
 13 Q So that's probably something that you
 14 decided, and then you communicated to Mr. Cox or Mr.
 15 Graves, and then to your understanding, they
 16 communicated that to Mark Monsour?
 17 A That is my understanding, yes.
 18 Q Were you the one that made that call? I
 19 am just trying to get a feel as far as who made the
 20 decision who went and looked in the freezer and said,
 21 "Hey, based upon my knowledge, we can't use any of
 22 that stuff"; would that have been you?
 23 A I believe that was a group consensus.
 24 Q You and Mr. Cox?
 25 A Yes.

1 Q So sometime in the spring of 2002 or
 2 shortly after you had been pulling inventory?
 3 A Correct.
 4 Q To use your words, you contacted the Baron
 5 Spices people; correct?
 6 A Correct.
 7 Q Do you recall who you talked to at Baron
 8 Spices?
 9 A Rick Remming.
 10 Q What was the subject of your conversation
 11 with Mr. Remming?
 12 A Spices lose their robust flavor over time,
 13 and I asked Rick to go down there and take a look at
 14 the inventory, and see what was still of good dates
 15 that we should purchase, and would they take care of
 16 anything that wasn't -- it's not uncommon for a
 17 supplier to reimburse you for product that you have
 18 to throw away because it didn't sell in a timely
 19 fashion.
 20 Q Kind of keep a good relationship with you
 21 as a big customer?
 22 A Correct.
 23 Q So if I understand your response
 24 correctly, you were kind of wanting Rick Remming to
 25 go down and do an evaluation and tell you about the

Page 87

Page 89

1 Q Anybody else in on that --
 2 A I don't recall who else was there.
 3 Q And I take it at this point in May of 2002
 4 when we were doing this inventory evaluation -- well,
 5 strike that. That's a bad question. Prior to that
 6 second trip, had you made any efforts to help
 7 Monsour's sell products to other people?
 8 A Yes.
 9 Q Okay. Tell me about those.
 10 A I made contacts to several vendors.
 11 Q Let me interrupt you right there.
 12 A Okay.
 13 Q Do you remember the vendors that you
 14 contacted?
 15 A Well, three come to mind; Baron Spices,
 16 Degraffenreid pickle, and Rotella Bakery.
 17 MR. JAMES: Off the record.
 18 (WHEREIN, a discussion was held off the
 19 record.)
 20 Q (By Mr. James) All right. Back on the
 21 record. When did you contact the Baron Spices
 22 people?
 23 A I can't say for certain, but it was not
 24 long after we started pulling inventory from
 25 Monsour's.

1 quality of these spices?
 2 A Based on the purchase dates that we saw on
 3 the inventory reports given to us by Monsour's, I had
 4 concern that several of the products were very old,
 5 and needed to be destroyed.
 6 Q Do you recall what -- do you recall what
 7 percentage of the products Rick said thumbs up, you
 8 guys should take and sell?
 9 A I do not.
 10 Q But I take it though, and I jumped to an
 11 assumption, did Mr. Remming follow through on your
 12 request and go down there?
 13 A Yes, he did.
 14 Q Do you recall the time frame as to when he
 15 went down there and gave it a look-see?
 16 A I believe it was within a week or two of
 17 our conversation.
 18 Q Do you recall, Mr. Remming did give you an
 19 opinion as far as what was good and what wasn't good;
 20 correct?
 21 A Correct.
 22 Q Did he give you the rebate or the credit,
 23 whatever the term is for the spices that he didn't
 24 think were good?
 25 A He reimbursed, and I don't know if it was

23 (Pages 86 to 89)

KENNETH GOODWIN 2/20/2006

Page 90

1 Menu Maker Foods or Monsour's for the obsolete
2 inventory. I do not recall whether we bought it all
3 and he reimbursed us, or if he just reimbursed
4 Monsour's for -- but there was a reimbursement for
5 old product.

6 Q So you took some and somebody got
7 reimbursed for the rest?

8 A Correct.

9 Q Do you have any idea of the overall value
10 of the spices that were present at the time?

11 A I would guess not more than 1,500 to
12 \$2,000. Spices don't cost a lot of money. And --
13 but that would just be a guesstimate on my part.

14 Q Just so we are clear, and I understand you
15 are guessing, I want that to be clear, that 1,500 to
16 2,000, is that the total value of all of the spices
17 down there?

18 A Correct.

19 Q Do you recall any other conversation that
20 you had with Mr. Remming about the Baron Spices,
21 other than what we have talked about?

22 A No.

23 Q The Degraffenreid pickles, you indicated
24 that you had contacted somebody at Degraffenreid; do
25 you know who you contacted?

Page 91

1 A Dave McCauley.

2 Q When do you recall giving Mr. McCauley a
3 call?

4 A A similar time frame as Baron Spices,
5 within a couple weeks of us beginning purchase.

6 Q Same type of deal, did you ask Mr.
7 McCauley to go down and look at the Degraffenreid
8 pickles there?

9 A Yes, and the reason I contacted him was,
10 one, he was close in proximity to the Monsour's
11 warehouse, but two, one of the dead inventory items
12 that Gene had been trying to sell off was quite old
13 and he had a fairly substantial amount of that
14 product.

15 Q By that product, you mean a bunch of
16 pickles?

17 A Yes, a bunch of pickles. It seems to me
18 maybe a hundred cases or a hundred pails of pickles.
19 So I was very concerned about that product and asked
20 him to go down and do the same thing, evaluate the
21 inventory.

22 Q The same procedure with Baron, did you ask
23 Mr. McCauley to evaluate what was good and give a
24 credit for the rest that was there?

25 A Correct.

Page 92

1 Q And Mr. McCauley did that?

2 A I don't believe -- I don't recall his
3 specific resolution, but I do not believe that he
4 covered all of the cost associated with outdated
5 product.

6 Q Did he tell you, "Hey, Mr. Goodwin, these
7 pickles are thumbs up, go ahead and take those," or
8 were all of the pickles outdated?

9 A I believe there were some that were still
10 good.

11 Q Okay. So some of the pails of pickles you
12 take and some are outdated. And you believe that he
13 didn't reimburse somebody for the outdated pickles?

14 A I don't recall what his final resolution
15 was.

16 Q Do you have any idea on the value of the
17 pickles?

18 A No.

19 Q What would you guess a hundred pails of
20 pickles can be purchased for?

21 A Well, depending on what they are, I -- you
22 know, roughly \$1,200.

23 Q The only other vendor I recall you telling
24 me you contacted was a bakery, and I forgot their
25 name?

Page 93

1 A Rotella.

2 Q Okay. Tell me about who you contacted at
3 Rotella Bakery?

4 A Bud Dougherty.

5 Q Oh, is this the memo that you were telling
6 me about earlier that you found from Rotella?

7 A Yes.

8 Q So what was the purpose of contacting
9 Rotella?

10 A To do a similar inventory evaluation, to
11 have him look at the product. Those are all breads,
12 and have a short shelf life. I picked vendors that
13 we both did business with because I felt like that
14 was the best place to start where we could, you know,
15 hopefully have a little bit of leverage with that
16 vendor to go in and provide us some relief or
17 Monsour's relief on some obsolete inventory.

18 Q That seems to make some sense. Do you
19 know where the Rotella bakery -- do you know where
20 they are based out of?

21 A Omaha, Nebraska.

22 Q Did Mr. Dougherty, you recall him going
23 down there because he issued the memo?

24 A Correct.

25 Q If I recall from your previous testimony

24 (Pages 90 to 93)

KENNETH GOODWIN 2/20/2006

Page 94

1 the entirety of the Rotella bread was not
 2 salvageable; correct?
 3 A I think that there was some good product
 4 there.
 5 Q Do you have any idea as to the estimated
 6 value of the Rotella bread?
 7 A I do not.
 8 Q And do you know whether Mr. Dougherty gave
 9 a credit to somebody based upon that out of date --
 10 A I believe he did, yes. There was one
 11 other vendor.
 12 Q That's what I was going to ask you. Any
 13 other vendors that you recall? Sounds like you
 14 recall one.
 15 A Yes, Con Agri, their meat division.
 16 Q Okay. So the other vendor was the Con
 17 Agri meat division; who was your contact there?
 18 A I can picture him. He is from Nixa,
 19 Missouri, and I don't recall his -- I'm terrible with
 20 names.
 21 Q That's fine. That's okay. Tell me about
 22 the resolution -- well, first of all, what was Con
 23 Agri going to evaluate?
 24 A They had a lot of meat products, some
 25 fresh, some frozen. Our first concern of course was

Page 95

1 the fresh product. And I asked him to go evaluate
 2 the situation down there.
 3 Q And what was Mr. Dougherty's -- well,
 4 first of all did Mr. Dougherty go evaluate?
 5 MR. WACHTEL: I don't think it's Mr.
 6 Dougherty.
 7 Q (By Mr. James) I'm sorry. The Con Agri
 8 man, we can't remember his name, did he go evaluate
 9 the products at Monsour's?
 10 A There was a problem, and I don't recall
 11 that he specifically went to evaluate the products.
 12 I called him, and he called -- made a couple phone
 13 calls and called me back, and stated, because
 14 Monsour's had an outstanding balance with their
 15 company, they were not interested in any kind of
 16 reclamation process.
 17 Q So based upon that memory, you don't
 18 believe that the unnamed Con Agri individual ever
 19 went to the Monsour facility?
 20 A I don't believe he did.
 21 Q Do you recall whether -- did Menu Maker
 22 purchase any of the Con Agri meat products, do you
 23 remember?
 24 A I don't recall specifically, but I would
 25 guess that we did.

Page 96

1 Q Do you have any guesstimate as to the
 2 value of these Con Agri meat products?
 3 A No.
 4 Q Any other vendors that you contacted to
 5 try to help Monsour sell inventory?
 6 A There were several, but I don't recall
 7 specifically who they were.
 8 Q Vendors that you contacted?
 9 A Correct.
 10 Q Okay. So you think in addition to these
 11 four, there is at least a couple others that you just
 12 can't think of.
 13 A At least a couple.
 14 Q Did you make any other efforts to help
 15 Monsour sell its inventory, other than what we have
 16 already talked about? You don't need to repeat
 17 anything that we have discussed.
 18 A We were trying to work with the supplier
 19 community, but we ran into some major obstacles.
 20 Q So you don't think, other than the vendors
 21 listed, and the ones that you have mentioned, that
 22 any other produce -- I'm sorry -- dry, frozen goods
 23 you were able to help sell; is that correct?
 24 A The vendors we contacted were reluctant to
 25 assist us because of outstanding balances with their

Page 97

1 companies.
 2 Q I understand that. Any other efforts that
 3 you can think of that you made to help Monsour sell
 4 the outstanding dry and frozen goods?
 5 A They were given -- they, Monsour's were
 6 given the names of some salvage folks. I don't -- I
 7 believe Ron provided some names and numbers, but I'm
 8 not positive who it was, but there was some salvage
 9 enterprises.
 10 Q So you think the only other thing that was
 11 done was give them these salvage numbers and say,
 12 "Hey, contact them and see what you can do."
 13 A That's all that I'm aware of, yes.
 14 Q I take it from the term "salvage," we are
 15 talking cents on the dollar purchasers?
 16 A Correct.
 17 Q And I have from my watch that we have been
 18 going for about two hours. Do you need to take a
 19 break?
 20 THE WITNESS: Yeah, a quick break would
 21 be nice.
 22 (WHEREIN, a recess was taken.)
 23 Q (By Mr. James) Back on the record after a
 24 brief break. Mr. Goodwin, were you the individual
 25 that was going to be in charge of the inventory

25 (Pages 94 to 97)

KENNETH GOODWIN 2/20/2006

<p style="text-align: right;">Page 98</p> <p>1 purchased from Monsour's? When I say inventory, I am</p> <p>2 referring to the dry and frozen goods, not the</p> <p>3 produce?</p> <p>4 A That responsibility fell on me first.</p> <p>5 Q So it's safe to say Dick or Creighton or</p> <p>6 somebody above you made this asset purchase decision,</p> <p>7 but you were the guy that was going to make it work</p> <p>8 on the dry and frozen goods end?</p> <p>9 A Correct.</p> <p>10 Q You used a little clarifier, at first,</p> <p>11 what do you mean by that, that you were the one in</p> <p>12 charge of it first?</p> <p>13 A I guess what I should say is I was</p> <p>14 ultimately responsible for it and from there I</p> <p>15 formulated the plan to purchase the inventory, and</p> <p>16 instructed my purchasing staff on how to proceed.</p> <p>17 Q Did Mr. Graves or Mr. Cox give you any</p> <p>18 other instructions other than we are going to go</p> <p>19 purchase this inventory, get it done, type stuff?</p> <p>20 A Oh, there were several rules to work by</p> <p>21 that were explained at that initial meeting.</p> <p>22 Q That you got from either Mr. Graves or Mr.</p> <p>23 Cox?</p> <p>24 A Correct.</p> <p>25 Q Tell me about those rules.</p>	<p style="text-align: right;">Page 100</p> <p>1 A Yes.</p> <p>2 Q And basically with those instructions, it</p> <p>3 was your deal, you were to go make it happen?</p> <p>4 A Correct.</p> <p>5 Q And you knew that it was important to move</p> <p>6 fast on this inventory because some of it probably</p> <p>7 was going to expire, as we previously talked about?</p> <p>8 A Yes, the perishable items became our</p> <p>9 immediate focus.</p> <p>10 Q When did you make arrangements to go get</p> <p>11 perishable items? It's my understanding you didn't</p> <p>12 go down there again, you went before the agreement</p> <p>13 and then sometime in that May time frame that you</p> <p>14 have estimated, when did we make the arrangements to</p> <p>15 go get the perishables?</p> <p>16 A We were provided with an inventory product</p> <p>17 list and that's what we worked from, their inventory</p> <p>18 product list, and we went through and identified, or</p> <p>19 my staff did, the perishable items.</p> <p>20 Q When did you do this identification?</p> <p>21 A The very same week that we were told this</p> <p>22 is what we are doing.</p> <p>23 Q So you think within a week of the asset</p> <p>24 purchase date signature you identified these</p> <p>25 perishable items?</p>
<p style="text-align: right;">Page 99</p> <p>1 A We only bought it if we sold it to our</p> <p>2 customers or theirs.</p> <p>3 Q Okay.</p> <p>4 A When I say "theirs," those customers we</p> <p>5 were acquiring through the addition of their sales</p> <p>6 staff.</p> <p>7 Q The second rule that you recall?</p> <p>8 A We were not to pay more for it than</p> <p>9 current market value.</p> <p>10 Q Third rule?</p> <p>11 A It had to be in good condition, and</p> <p>12 wholesome.</p> <p>13 Q Any other rules, or does that represent</p> <p>14 what you recall?</p> <p>15 A We were to do it as quickly as possible.</p> <p>16 Q You were just told quickly as possible, no</p> <p>17 time frame though as to complete it by this time;</p> <p>18 correct?</p> <p>19 A I don't recall a specific time frame.</p> <p>20 Q Okay. So basically with those</p> <p>21 instructions -- well, who gave you those instructions?</p> <p>22 Was that Mr. Cox or was that Mr. Graves?</p> <p>23 A Both.</p> <p>24 Q In one meeting they said, "Hey, Ken, this</p> <p>25 is how we are going to do it"?</p>	<p style="text-align: right;">Page 101</p> <p>1 A Correct.</p> <p>2 Q How soon do you think the perishable items</p> <p>3 were taken from Monsour's and got out in the market?</p> <p>4 A As soon as they were identified we tried</p> <p>5 to get them here. We tried to buy them immediately.</p> <p>6 Q Did we have some perishable items that</p> <p>7 Menu Maker didn't take?</p> <p>8 A I don't recall.</p> <p>9 Q You have no idea of the percentage of the</p> <p>10 perishable items that Menu Maker was able to take or</p> <p>11 wasn't able to take?</p> <p>12 A No.</p> <p>13 Q Is there anybody else that would know that</p> <p>14 information more than you?</p> <p>15 A Not that I am aware of.</p> <p>16 Q Just some time has passed and we just</p> <p>17 don't remember?</p> <p>18 A I never calculated percentages of</p> <p>19 inventory pulled when I went through this process.</p> <p>20 Q So other than we know that there were some</p> <p>21 perishable items that were left, and weren't used,</p> <p>22 and some were taken, no additional information other</p> <p>23 than that? And if you don't remember, you don't</p> <p>24 remember.</p> <p>25 A We may have taken it all. I'm not</p>

26 (Pages 98 to 101)

KENNETH GOODWIN 2/20/2006

Page 114

Page 116

1 shorted our inventory. We've got less inventory on
 2 hand, which causes a lot of problems, as you can
 3 imagine.
 4 Q Sure.
 5 A The customers need to purchase a product,
 6 we don't have it because of that situation.
 7 Q What is the next complaint you recall from
 8 Mr. Carpenter that you specifically -- if you recall
 9 any?
 10 A Specifically, I don't.
 11 Q Okay. How about Mr. Metcalf, what
 12 complaint do you specifically recall of his, the
 13 product?
 14 A With him it was frying oil.
 15 Q Okay.
 16 A And there was a large quantity of frying
 17 oil on their inventory report. We tried to purchase
 18 it.
 19 Q Similar to the french fries?
 20 A Similar to the fries, yeah, we didn't get
 21 it.
 22 Q Anything other than frying oil with Mr.
 23 Metcalf that you can recall he had a complaint about?
 24 A Not specifically, no.
 25 Q Okay. Were you ever familiar with the

1 goods.
 2 A As far as purchasing it and making
 3 decisions on purchasing it would have been --
 4 Q The people ---
 5 A -- my staff, myself and Ron.
 6 Q So there might have been some other people
 7 doing some leg work?
 8 A Correct.
 9 Q But nobody else making decision?
 10 A Warehouse people and so forth.
 11 Q One of the concerns that you had
 12 previously told me with the purchase of the Monsour's
 13 inventory was that you were going to be required to
 14 buy less from your normal suppliers, and sometimes
 15 they wouldn't sell in that small a quantity; is that
 16 a fair statement?
 17 A Yeah, their -- I think what I said was,
 18 you know, vendors have minimum shipment requirements,
 19 usually based on pounds or cases. And so when --
 20 whatever we bought from Monsour's, we didn't buy from
 21 them, so that created some potential problems for us
 22 as far as getting all of the other products that we
 23 needed.
 24 Q Did it cause potential problems or did it
 25 cause problems? I mean can you remember, hey, that

Page 115

Page 117

1 estimated value of the inventory being in the
 2 \$750,000 to \$800,000 range as outlined in the asset
 3 purchase agreement? That's probably a bad question.
 4 Let's try it again. In the asset purchase agreement
 5 I will represent to you there is a representation of
 6 a value of \$750,000 to \$800,000; have you ever heard
 7 those numbers before?
 8 A I didn't become aware of those numbers
 9 until the -- when I was informed of the details of
 10 the lawsuit.
 11 Q So at the time, in the '02 time frame when
 12 you were visiting with Mr. Cox and Mr. Graves you
 13 didn't know that number; correct?
 14 A I don't recall ever hearing that number.
 15 Q Did Mr. Cox or Mr. Graves ever ask you to
 16 give a dollar valuation at any time of the Monsour's
 17 inventory?
 18 A No.
 19 Q To your knowledge, did they ask anybody to
 20 give a valuation of the Monsour's inventory?
 21 A Not to my knowledge.
 22 Q Is there anybody else involved in this
 23 inventory process other than who you previously
 24 named? And when I'm saying "inventory process," I'm
 25 saying Menu Maker taking the Monsour's dry and frozen

1 was a problem, or is that just one of the concerns
 2 that up front you said, hey this could be a problem?
 3 A Yeah, it -- it was just potentially a
 4 problem. I don't think we had very many issues in
 5 that regard.
 6 Q Can you think of any specific issues that
 7 you had in that regard?
 8 A Nothing that we didn't overcome.
 9 Q Did the purchase of Monsour's and the
 10 asset purchase agreement, did it positively affect
 11 your bonus, negatively affect your bonus or no effect
 12 at all?
 13 A No effect.
 14 Q So when you heard what Mr. Cox and Mr.
 15 Graves instructed you to do, you didn't have any
 16 concern that it was going to affect your year-end
 17 bonus.
 18 A Yeah, I guess there was a slight concern.
 19 Q But nothing that materialized?
 20 A Well, in retrospect, yes. Everything I
 21 purchased, or everything we purchased from Monsour's,
 22 not through normal supplier channels, did not bring
 23 the rebates that you would normally get, had you
 24 placed the order through the direct supply channel.
 25 Q And that rebate program directly affects

30 (Pages 114 to 117)

MIDWEST LITIGATION SERVICES

www.midwestlitigation.com

Phone: 1.800.280.DEPO(3376)

Fax: 314.644.1334