

Exhibit K



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**MARK MONSOUR, et al.
VS.
MENU MAKER FOODS, INC.**

Case No. 05-1204-MLB

**DEPOSITION OF EDWARD FAIRCHILD
DECEMBER 14, 2005**

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1 A Uh-huh.

2 **Q So is that a yes?**

3 A Yeah. I --

4 **Q It's -- what the reason --**

5 A Yeah. I mean, they -- it wasn't really formal

6 training. It wasn't like a clinic or a school

7 or anything like that.

8 But, I mean, produce business is different

9 than most businesses. A lot of it just comes

10 through hard knocks and being there, you know.

11 **Q What type of training did you receive at**

12 **Monsour's?**

13 A Training at -- the main reason I went there was

14 to institute a -- a tomato program and some

15 stuff here at Menu Maker. So I think his name

16 -- I'm not sure if this is right or not. I

17 think his name is Danny. Does that -- Danny.

18 Spent a lot of time with Danny working through

19 a tomato program, some time with Mark and some

20 time with Pete.

21 **Q What -- what year was this you did this**

22 **training?**

23 A I couldn't tell you.

24 **Q Do you remember if it was in the '90s or in the**

25 **years of 2000?**

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1 A It had to be in the '90s because by 2000, I had

2 moved to a different position.

3 **Q Now, if I understood you right, it was a tomato**

4 **program?**

5 A Uh-huh.

6 **Q When -- when you say uh-huh or huh-uh, I have**

7 **to --**

8 A Yes. Yes.

9 **Q Thank you. Just so you know, when you say**

10 **things like that, I need to ask you yes or no**

11 **because it's difficult --**

12 A Okay. Yes.

13 **Q -- to read on the record.**

14 A Yes. I'm sorry.

15 **Q Now, why -- why did Dick Graves send you to**

16 **Monsour's for tomato program training? Was it**

17 **because they had a good tomato program?**

18 A Because they were making money.

19 **Q Do you have any knowledge as to the reputation**

20 **of Monsour's tomato programs during that period**

21 **of time?**

22 A Very good. I mean, but -- I mean, it started

23 with Dick coming down and saying, you know, is

24 there any -- how can we -- how can we make

25 money on this tomato thing like -- like they do

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1 at other places? And I said, Dick, I don't --I

2 mean, I'm new at this. I don't know -- I don't

3 know that much about it.

4 He said, Well, how can we find out? So I

5 did some research and met with a couple guys on

6 the St. Louis market and --

7 **Q And they said Monsour's was a good, quality**

8 **place to learn?**

9 A Well, I -- Dick knew Pete. Mr. Graves -- or

10 Dick Graves and -- and Pete Monsour, I guess,

11 were -- were friends. And -- and I'm sure that

12 Pete opened up how much -- what he was doing, I

13 mean, how much money he was making on the

14 tomatoes and that kind of stuff to Dick. So

15 that -- I'm sure that's what aroused -- I think

16 it came up after Dick had spent some time down

17 there or something. I think it aroused Dick

18 that they were making money on their tomato

19 program and we weren't.

20 **Q After you were the produce buyer, then what**

21 **position did you go to?**

22 A It -- I think -- I mean, I think it was called

23 Director of Operations. I was in charge of

24 warehouse, hiring and scheduling, shipping,

25 receiving, I mean, I would call it from the

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1 truck and to the truck because, at the dock, it

2 became -- the drivers and that were not under

3 -- under me. They were under Melvin and Craig.

4 So inside operations as far as warehouse,

5 shipping and receiving.

6 **Q Okay. And as Director of Operations, you**

7 **answered to Dick Graves, and that was it?**

8 A Well, I answered to Dick Graves -- the whole

9 time I was here, I always answered to Dick

10 Graves and -- and Phil until they hired Mr. --

11 Mr. Cox.

12 **Q Okay.**

13 A Then I answered more to Creighton than -- than

14 Dick.

15 **Q Even -- when you were Director of Operations,**

16 **the only two people that you reported to was**

17 **Creighton Cox and Dick Graves?**

18 A And Phil Magruder.

19 **Q Who is Phil Magruder?**

20 A I -- I don't know what -- I'm not sure what

21 kind of titles that -- that there is at Menu

22 Maker, but he was like General Manager or --

23 and then Creighton was like General Manager.

24 Maybe General Manager of some different areas

25 or whatever.

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1 And I'd say that I kind of maybe
 2 overlapped the two areas that Creighton and --
 3 and Phil were handling. I think Melvin's also
 4 a General Manager. But I didn't have anything
 5 to do with transportation. So I don't think I
 6 interacted with him.
 7 And they may -- and they may call it
 8 something different than that. I -- I'm not
 9 sure exactly what they call it. But Dick and
 10 -- Dick and Creighton and Phil are the three
 11 guys that I always answered to.
 12 **Q And just so I understand it, let's put it in**
 13 **layman terms and make certain I say this right.**
 14 **As Director of Operations, you were in charge**
 15 **of the -- of the products, whether it's food,**
 16 **inventory or produce, once it left the truck or**
 17 **getting it onto the truck?**
 18 A I would say getting it -- getting it loaded on
 19 the truck.
 20 **Q Okay.**
 21 A And then the -- then transportation took over
 22 as far as the drivers and taking care of the
 23 equipment. All the in-house equipment and all
 24 that kind of stuff and -- and all that, I took
 25 care of. But then Melvin and Craig took care

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1 of everything -- drivers and trucks and
 2 transportation.
 3 **Q Okay. That's getting it onto the truck. And**
 4 **getting it off the truck, once it left the**
 5 **truck, it was under your control again?**
 6 A Yeah. Oh, yes. I said yeah again, didn't I?
 7 **Q Yeah is okay. It's just -- it's the uh-huh and**
 8 **the huh-uh that are problematic. Okay. Let's**
 9 **-- let's skip ahead and let's talk specifically**
 10 **about the year 2002.**
 11 A Okay.
 12 **Q Are you aware that at some point in time Menu**
 13 **Maker began buying produce and/or food service**
 14 **goods from Monsour's, Inc.?**
 15 A Yes.
 16 **Q Do you have any recollection as to when that**
 17 **was, approximately?**
 18 A It -- I -- I couldn't tell you an exact month.
 19 It -- it seems to me like it probably started
 20 in early spring.
 21 **Q Okay. I'll represent to you that the Asset**
 22 **Purchase Agreement between Menu Maker Foods and**
 23 **Monsour's, Inc., was dated January 31st, 2002.**
 24 A Okay. That -- that sounds right. I mean, I'd
 25 say we started moving product in February and

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1 March. It seems -- I mean, that seems
 2 reasonable to me. I'm not -- I couldn't tell
 3 you exactly. I mean, I don't know exactly when
 4 it was.
 5 **Q When Monsour's and Menu Maker Foods started**
 6 **doing business together, did you ever overhear**
 7 **Ron Orr make comments about -- about his**
 8 **opinions as to whether he wanted to continue to**
 9 **do business with Monsour's, Inc.?**
 10 A Oh, Ron didn't like -- Ron didn't like the
 11 situation.
 12 **Q Did you overhear him make comments to that**
 13 **effect on more than one occasion?**
 14 A Oh, I think that -- yeah. I mean, Ron made it
 15 clear that he didn't like the situation. And
 16 -- do you want me to just answer you directly
 17 or --
 18 **Q You can expand.**
 19 A I mean, I -- I mean, I -- just like I -- when I
 20 talked to both you guys, I mean, I wouldn't
 21 have liked it either. I mean --
 22 **Q Okay. Let's talk about that. Prior to this**
 23 **afternoon, you have had a chance to talk with**
 24 **both Menu Maker's counsel and myself**
 25 **representing the plaintiffs in this case,**

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1 **right?**
 2 A Yes.
 3 **Q And everybody today wants you to provide honest**
 4 **and accurate testimony, and nobody's tried to**
 5 **get you to do anything contrary to that, true?**
 6 A Ab -- absolutely not.
 7 **Q You and I have personally talked together on**
 8 **two different occasions, once on the phone and**
 9 **once in person, right?**
 10 A Yes.
 11 **Q And you and Menu Maker Foods' counsel talked to**
 12 **together on one other occasion?**
 13 A One occasion. Yeah.
 14 **Q Do you have knowledge as to why Ron Orr didn't**
 15 **like the situation?**
 16 A I don't have any direct knowledge. I can
 17 assume, if I put myself in his position, why he
 18 didn't like -- if I make myself the buyer and
 19 since I had been the produce buyer before, if I
 20 make myself the buyer, I can understand why he
 21 didn't like the situation.
 22 **Q If you were the produce buyer, why wouldn't you**
 23 **like the situation?**
 24 MR. WACHTEL: Let me -- let me just
 25 lodge an objection to the form of the question.

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1 And -- and I will tell the witness that from
 2 time to time, sir, I am allowed to object to
 3 questions. I am not allowed to direct you not
 4 to answer. And I won't.
 5 So after I lodge an objection, you're free
 6 to answer the question. You may not remember
 7 what it was by the time we get through with --
 8 with this, but such as -- so you'll understand
 9 how the deal works.
 10 **Q (By Mr. DeVaughn) Let me -- let me re-ask you**
 11 **the question just so you remember what it was.**
 12 **If you were the produce buyer, under the**
 13 **scenario of -- of the situation which**
 14 **Monsour's, Inc., and Menu Maker Foods are doing**
 15 **business, why would you not like the situation?**
 16 MR. WACHTEL: Object to the form of
 17 the question.
 18 A Am I supposed to answer?
 19 **Q (By Mr. DeVaughn) Oh, yeah. You still answer.**
 20 **Just let him assert an objection, and then you**
 21 **can still answer.**
 22 A Because it's unreasonable to ask a produce
 23 buyer to buy all his produce from one person.
 24 And there's three our four reasons why.
 25 The first reason is if it would have -- if

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1 I would have been the buyer, I would have been
 2 in the middle of some contracts and stuff with
 3 other people on some lids and stuff on lettuce
 4 and different things like that, which -- which
 5 would have made it impossible for me to do
 6 that.
 7 Cut salad program, Mark didn't offer cut
 8 salads, so he'd have to buy -- he'd have to buy
 9 his cut salad somewhere else.
 10 To -- to be in the produce business and to
 11 be a good produce buyer, you've got to kind of
 12 -- you've got to kind of have wings. You've
 13 kind of got to go and try to make money and --
 14 and do what you're doing. And to limit you to
 15 one person to purchase from doesn't, like, do
 16 that.
 17 And I'm sure that Ron felt like somebody
 18 had just taken his -- taken his -- his wings
 19 away. And I would have felt very much that
 20 same way if I would have been the buyer.
 21 **Q As Director of Operations, the agreement that**
 22 **Dick Graves negotiated with Monsour's, Inc.,**
 23 **did it stand to affect you financially in any**
 24 **way?**
 25 A Yeah. I think it affected my bonuses. Yeah.

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1 I mean, I'd like -- I'd like to not really go
 2 into that too much, my personal financial
 3 information.
 4 **Q I understand.**
 5 A But it -- I mean, I felt like it was going to
 6 -- I felt like it was going to affect me, not
 7 necessarily the produce situation, but the
 8 whole situation in general because we were
 9 expand -- we were expanding a lot of labor to
 10 make the deal with Monsour's work.
 11 I thought -- I thought it was a bad
 12 business decision for Menu Maker. I --
 13 **Q Did you feel that this deal that Dick Graves**
 14 **negotiated with Monsour's, Inc., was going to**
 15 **affect you financially positively or to your**
 16 **detriment?**
 17 A Negatively.
 18 **Q And just to make sure I understand --**
 19 A I thought it was going to affect the whole
 20 company of Menu Maker negatively.
 21 **Q Because your -- you said because expenses were**
 22 **going up?**
 23 A Expenses were going to be -- I mean, in the
 24 beginning -- and I don't know how the whole
 25 thing ended up because I was gone towards the

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1 end. But in the beginning, it was a huge
 2 expenditure for Menu Maker because we were
 3 sending out light trucks. My percentage of my
 4 -- my per piece percentages of labor went --
 5 almost doubled. And it was -- I felt like it
 6 was a bad business decision for Dick.
 7 **Q Did -- based upon your observations and your**
 8 **discussions with -- with other representatives**
 9 **of Menu Maker Foods, did Ron Orr believe it was**
 10 **a bad decision, too?**
 11 A That, I couldn't -- I mean, I couldn't tell
 12 you. I know Ron Orr was unhappy with the --
 13 with the produce situation. But as far as the
 14 overall decision, I -- I couldn't tell you.
 15 **Q Did -- based upon what you overheard and your**
 16 **observations and based upon your discussions,**
 17 **did Ron Orr believe it was a bad business**
 18 **decision with respect to the produce?**
 19 A Yeah. Yeah. I don't -- and I honestly -- I
 20 don't think Ron would tell you any different.
 21 I mean, I think --
 22 **Q Let's talk about transporting the -- the**
 23 **produce between Menu Maker Foods and -- and**
 24 **Monsour's, Inc.'s facility.**
 25 **Do you have knowledge as to what time of**

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1 **15 to 19 hours. Is that accurate?**

2 MR. WACHTEL: Object -- I'm going to

3 object to the form of the question.

4 **Q (By Mr. DeVaughn) Is that accurate?**

5 A Yeah.

6 **Q Let's talk about the type of trailers that were**

7 **being used to transport Monsour's produce to**

8 **Menu Maker Foods. Can you tell me what type of**

9 **condition those trailers were in, based upon**

10 **your observation?**

11 A There -- there was a wide variance of trailers

12 at Menu Maker, some better trailers, some older

13 trailers. It -- we -- they bought -- they were

14 all food service trailers.

15 I mean, they were the same trailers that

16 we delivered all the product for Menu Maker's

17 customers out of.

18 **Q And --**

19 A They were designed for food service delivery.

20 I mean, the trailers were set up and designed

21 for food service delivery.

22 **Q Now, food service delivery is different from**

23 **hauling produce; is that accurate?**

24 A Yeah. If you were ordering produce from the

25 coast, it would come in on a different set-up

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1 than a food service delivery trailer. Yeah.

2 **Q Based upon your training in the produce**

3 **industry, your experiences, and based upon your**

4 **knowledge in the industry, the type of trailers**

5 **that Menu Maker Foods was using to transport**

6 **their produce from Monsour's facility to here,**

7 **given the length of time that produce was on**

8 **these trailers, that was not an appropriate use**

9 **of those trailers for that situation, true?**

10 MR. WACHTEL: Object to form.

11 A Yeah. Let me -- and let me answer that

12 question -- let me expand and answer that

13 question. If I was a salesman and I was

14 selling a two-day run, I was selling product --

15 my truck was going to leave here on Monday

16 morning and I was going to -- my drive was

17 going to deliver on Monday and deliver on

18 Tuesday, my truck was going to sit overnight,

19 my food -- for food service delivery, I would

20 have less produce business on Tuesday than I

21 had on Monday.

22 **Q (By Mr. DeVaughn) And why is that?**

23 A Merely to the fact that that product was

24 sitting on the trailer overnight.

25 **Q Now, based upon your experience and knowledge**

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1 **in the industry, those weren't the type of**

2 **trailers that you would have chosen to keep**

3 **produce on for 15 to 19 hours, true?**

4 A True. But I would -- I wouldn't choose to keep

5 produce on any trailer 15 to 19 hours.

6 **Q But there's --**

7 A And that would -- and that would -- if I was

8 the produce buyer, that would have been one of

9 the things that I saw wrong with the situation.

10 If -- temperature changes are what affects

11 produce in a negative way and on that trailer

12 and going across unrefrigerated docks is going

13 to affect produce quality.

14 And if I'm -- if I'm -- if I'm buying

15 produce from Mark or anybody else, any --

16 anybody else and it's going from my cooler to a

17 non-refrigerated dock when I get it, that's one

18 time. And then I'm loading it across a

19 non-refrigerated dock onto a truck. That's two

20 times. Menu Maker's going to unload it on a

21 non-refrigerated dock, and that's three times.

22 If I ordered lettuce directly from

23 California, it's going to go from a

24 refrigerated cooler to a refrigerated dock to a

25 refrigerated truck that's going to keep

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1 excellent temperature all the way to Jeff City.

2 It's going to see my dock one time instead of

3 three. So, obviously, the quality's going to

4 be better because the temperature change is

5 what affects the quality of the produce.

6 **Q Let's talk about temperature change. The**

7 **trailers that Menu Maker Foods was utilizing to**

8 **haul the produce from Monsour's, Inc., to Menu**

9 **Maker Foods had temperature fluctuations, true?**

10 MR. WACHTEL: Object to form.

11 A Yeah. They're going to go through defrost

12 cycles. And that's a long -- I mean, that's a

13 long time.

14 **Q (By Mr. DeVaughn) What's a long time?**

15 A To be on a truck that long. It's going to go

16 through some defrost cycles. And -- but I'm

17 not -- I mean, I'm not that -- and, also,

18 here's the other thing. If it's cold, that

19 rear unit's going to blow hot air.

20 And when it's blowing hot air, if you've

21 got produce right there, it's blowing it right

22 on the produce. It just -- and that's -- I'm

23 sure that that's part of the reason that Ron

24 didn't -- didn't like the situation.

25 **Q What you're saying is when it's cold outside in**

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1 A Yeah. Me and Ron made that decision together.
 2 That was -- me and Ron Orr made that decision
 3 together that we were going to move somebody.
 4 Ron was having problems with Ronnie, and I was
 5 having problems with Ronnie. And we moved him
 6 to a position we thought he could handle
 7 better. Plus, we needed a little help because
 8 they put an older guy down on night crew and
 9 kind of helped stabilize that a little better,
 10 too, because Ron is an older guy.

11 **Q The individual that replaced Ronnie Boss as**
 12 **Quality Assurance/Receiver was who?**

13 A I believe it was Jonathan -- I believe his name
 14 was Jonathan Eickhorst. I don't know if that's
 15 his last name.

16 MR. DEVAUGHN: Tell you what, we've
 17 been going almost an hour. Why don't we take a
 18 five-minute break, and we'll get back on.
 19 (Break in proceedings.)

20 **Q (By Mr. DeVaughn) Mr. Fairchild, we're back on**
 21 **the record. Do you understand that you're**
 22 **still under oath?**

23 A Yes, sir.

24 **Q I want to go back and -- and talk to you**
 25 **specifically about some of the comments that**

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1 **you personally overheard Ron Orr making**
 2 **concerning Monsour's.**

3 **Did you ever overhear Ron Orr saying**
 4 **orally that he did not want to buy produce from**
 5 **Monsour's?**

6 A Yeah. I heard him say -- Ron say he didn't
 7 want to do it.

8 **Q Now --**

9 A I believe -- I mean, I believe I was in his
 10 office and he was on the phone with somebody.
 11 I think he was actually on the phone with
 12 somebody from Monsour's when I -- I mean, when
 13 I -- but I'm -- I'm not -- I wasn't -- me and
 14 Ron weren't big friends, so we didn't hang out
 15 together or go have a drink together or things
 16 like that.

17 So, I mean, I -- I didn't hear him say
 18 that continually. I mean, I overheard
 19 conversations here and there. But he -- he
 20 never said it directly to me either.

21 **Q When you overheard that specific phone comment,**
 22 **did you specifically hear him talk about**
 23 **Monsour's and its produce which allowed you to**
 24 **understand that he was talking about Monsour**
 25 **and its produce?**

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1 A I knew he was because when -- that was when I
 2 was -- I was in his office behind the quality
 3 control guy after some -- after we had had some
 4 -- there were some problems or something. I
 5 was trying to figure out what we were going to
 6 do because in the middle of having problems, I
 7 mean, there's still -- we've still got a lot of
 8 things to do out here. So I was chasing the
 9 cooler guy back out of Ron's office. Let's
 10 make a decision and let's go, you know.

11 **Q Now, before the break, you had testimony that**
 12 **-- that you believed that at least at some**
 13 **point in time, some of Monsour's -- or Menu**
 14 **Maker Foods' produce were on these same type of**
 15 **trailers for two days. You mentioned the**
 16 **second-day run.**

17 A Yeah. And I'm not -- I don't remember if at
 18 that time -- I've been here a long time, and we
 19 used to have a lot of two-day runs. I don't
 20 know at that time if we had any two-day runs or
 21 not. But we had sold produce before on those
 22 same style of trailers and had two-day runs.

23 **Q Would you agree with me that not much produce**
 24 **was sold on the second-day run because of the**
 25 **condition of the produce, true?**

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1 A Yeah. If I'm a salesman, I'm going to expect
 2 to sell less produce on the second half of my
 3 run than the first.

4 **Q Because of the condition of the produce?**

5 A Yeah. I mean, I'm selling -- it's not going to
 6 be -- it's not going to be as good.

7 **Q And the reason it's not going to be good is**
 8 **because of the fluctuating temperatures on the**
 9 **trailer, true?**

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

12 **Q (By Mr. DeVaughn) Based upon your knowledge**
 13 **and experience?**

14 MR. WACHTEL: I object to the form of
 15 that question.

16 A It -- yeah. It's not going to be -- it's not
 17 -- I mean, I'm going to expect to sell less.
 18 The quality is going to be down. And, I mean,
 19 I don't think that this is -- the quality is
 20 going to be down a longer period -- the more
 21 temp -- let me say this: I believe the more
 22 temperature changes, the longer the product's
 23 sitting on that truck, the less the quality is
 24 going to be.
 25 That's why when I was a produce buyer, I

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1 bought as much produce directly from the
 2 growing areas as I possibly could, because it's
 3 going to be better quality.
 4 **Q (By Mr. DeVaughn) You previously testified**
 5 **that you -- you did remember an occasion when**
 6 **Mark Monsour came to Menu Maker Foods to meet**
 7 **with Dick Graves and to review the unloading of**
 8 **-- of Monsour produce.**
 9 A Yes. I -- yeah. I remember that. Yes.
 10 **Q Do you remember there being a C&C Produce**
 11 **delivery truck already at the Menu Maker**
 12 **facility and in the process of being unloaded?**
 13 A I don't remember that. But that's -- I mean,
 14 that's -- that's very possible. I mean --
 15 **Q Do you remember Mark Monsour making comments to**
 16 **you about the C&C delivery -- about the produce**
 17 **being delivered from C&C being the same**
 18 **quantity and the same items as the Monsour's**
 19 **produce order that day?**
 20 MR. WACHTEL: Object to the form of
 21 the question?
 22 A That -- That, I don't -- I don't exactly
 23 remember that, no.
 24 **Q (By Mr. DeVaughn) Based upon your knowledge**
 25 **and experience from being in this industry for**

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1 **the number of years that you have, can you tell**
 2 **me just the general reputation of the quality**
 3 **of C&C produce?**
 4 MR. WACHTEL: Object to the form of
 5 the question. No foundation.
 6 **Q (By Mr. DeVaughn) You can answer.**
 7 A I did not buy -- I didn't buy produce from C&C.
 8 **Q And why was that?**
 9 A If I was going to buy out of Kansas City, I
 10 would have bought from Liberty, if it was me.
 11 **Q Why if -- why when you were a produce buyer did**
 12 **you not buy from C&C?**
 13 A Actually, I bought -- I didn't buy any produce
 14 from Kansas City. I did all my business out of
 15 St. Louis because I believe the houses in St.
 16 Louis are better. I use people in -- in St.
 17 Louis who get a lot more dollars in produce
 18 business because, in my mind, that meant
 19 inventory turns and fresher product.
 20 So I limited my business to -- my
 21 secondary business of things that I couldn't
 22 buy direct, I bought a lot of it from United
 23 Fruit & produce because they handled Dierburg's
 24 and they got a huge value -- volume through
 25 Dierburg's. And I believe that gave me more

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1 quality produce.
 2 **Q Based upon your experience in the -- and**
 3 **background in the industry, surely you've**
 4 **referred -- you've heard of certain produce**
 5 **suppliers as "junk houses"?**
 6 A Yeah. And I've heard that about everybody in
 7 Kansas City.
 8 **Q Okay.**
 9 A I -- and that's the truth. But if I was -- if
 10 I had to be -- if I had to buy from Kansas
 11 City, personally, I would have bought from
 12 Liberty, but that was because I had some rep --
 13 I had some personal ties there. I knew the
 14 people who were -- were buying at Liberty.
 15 And Charlie Wilson, the guy who trained
 16 me, bought a lot of -- a lot of stuff from
 17 Liberty, so I knew -- I knew those guys. So if
 18 I was going to buy on the Kansas City market,
 19 that's where I would have bought from.
 20 Now, let me -- let me say something. You
 21 get -- in the produce business, you get tied in
 22 with who can do what you need them to do. And
 23 like I said earlier, for -- I don't believe
 24 that -- Ron Orr was probably in some buying
 25 contracts and some different things with cuts

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1 out and some stuff like that.
 2 And if I remember right, I think some of
 3 that stuff got delivered to us off C&C trucks.
 4 So that could have been part of the reason that
 5 he was purchasing there. I mean, I don't know
 6 that, but --
 7 **Q Now, when you were an employee of Menu Maker**
 8 **Foods, you only went down to Monsour's facility**
 9 **after they started doing business together on**
 10 **one occasion that was --**
 11 A One occasion.
 12 **Q And that was when?**
 13 A I don't know the exact date. I believe -- it
 14 was shortly before I no longer worked there. I
 15 believe it was -- it was August or September.
 16 I believe that's what it was. It was either --
 17 I've been thinking about this because both of
 18 you -- both you gentlemen asked me that
 19 question.
 20 So it was -- it was between late July and
 21 early September when I left Menu Maker. And I
 22 was sent down there with some other people from
 23 Menu Maker, and we did an inventory of product
 24 that was left there in the dry and in the
 25 frozen.

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1 **Q Okay. When you went down there in August or**
 2 **Sep -- July, August or September of 2002, would**
 3 **you agree with me there was still a significant**
 4 **amount of inventory there?**
 5 A There was some inventory there. And our
 6 intentions from Menu Maker were to -- to
 7 purchase as much of that inventory as we could.
 8 I mean, the -- to -- anything that was -- was
 9 compatible with what we had or that we could
 10 ship for what we had, and -- and we -- we were
 11 -- we were trying to -- to take out.
 12 And I did one side -- there was a number
 13 of people there from Menu Maker. But,
 14 basically, the way I was trying to get -- what
 15 I was trying to get to was Russ Dean work one
 16 side and we work the other side. So then me
 17 and Russ could talk about products that we --
 18 we felt like we could still bring to Menu
 19 Maker.
 20 **Q Okay.**
 21 A And --
 22 **Q As Director -- you were still Director of**
 23 **Operations at that time?**
 24 A Yeah. I had the same job.
 25 **Q As Director of Operations, was one of your**

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1 **responsibilities essentially merging or**
 2 **acquiring Monsour's food service inventory into**
 3 **Menu Maker Foods?**
 4 A Yeah. And I -- and I made every effort to do
 5 that. And -- and Jason Thompson at Menu --
 6 Jason Thompson more than me because, obviously,
 7 when you're buying inventory from somebody
 8 that's been sitting on their floor, it's going
 9 to be -- some of it's going to be dated, and
 10 it's got to be mixed into your inventory and
 11 shipped to where your inventory and that
 12 inventory both get to the customer while the
 13 dates were still good.
 14 And Jason Thompson did an extremely
 15 excellent job of getting that done with the
 16 product that came from Monsour's.
 17 **Q Let me ask you this: Did anybody at Menu Maker**
 18 **Foods tell you there was a certain time frame**
 19 **that you were supposed to get that inventory**
 20 **merged into yours?**
 21 A I do not remember anybody ever telling me a
 22 time frame.
 23 **Q When I say merged, did anybody ever tell you**
 24 **any type of time frame that Monsour -- that**
 25 **Menu Maker Foods was supposed to purchase the**

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1 **inventory from Monsour's?**
 2 A No. I was never -- I was never told a time
 3 frame. And that -- I worked through Purchasing
 4 back to some guys at Monsour's to try to get
 5 that inventory here. So, I mean, Purchasing
 6 was trying to buy it as -- as their order
 7 cycles came up and -- and some different
 8 things. So there was a lot of people trying to
 9 work together.
 10 **Q Had you known that there was a specific time**
 11 **frame, you'd agree with me that you, as**
 12 **Director of Operations, would have devoted**
 13 **resources from Menu Maker Foods to hurry up the**
 14 **process, true?**
 15 MR. WACHTEL: Object to the form of
 16 the question.
 17 A I could have done something. It would have
 18 depended on -- on how much pressure they would
 19 have -- they would allow -- they would allow me
 20 to put on Purchasing because Purchasing had a
 21 big -- that was a big -- I mean, it wasn't just
 22 me. It wasn't just -- I mean, it wasn't just
 23 Operations saying, Send this, send it, send it,
 24 send it.
 25 I mean, Purchasing was trying to mix in

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1 the order cycles. If we were -- if we were
 2 long on products when the product came in, the
 3 inventory control guy had to get it in the back
 4 stocking system so it got pulled at the right
 5 time to make sure the product that went to the
 6 customer was good if it was dated prior to
 7 products we had.
 8 So I -- that -- it's not just -- I want to
 9 make it clear that it's not just a matter of
 10 throwing a bunch of stuff on a truck and bringing
 11 it to Menu Maker. It -- it could not work that
 12 way.
 13 **Q (By Mr. DeVaughn) But had somebody told you**
 14 **that there was a time frame, you, as Director**
 15 **of Operations, would have gotten it done sooner**
 16 **had you been told?**
 17 MR. WACHTEL: Object to form.
 18 A I would have -- I could have tried to get
 19 something done sooner, if I could have gotten
 20 Purchasing to work with me. And if I could
 21 have got Director of Purchasing to put some
 22 pressure on Purchasing, yeah, I could have done
 23 it faster to a certain -- yeah. I could have
 24 done it faster.
 25 But -- but I think -- I think -- I felt

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1 **Q You testified earlier that -- that it was your**
 2 **opinion that -- that -- I will paraphrase you**
 3 **-- that Mr. Orr wouldn't have liked having to**
 4 **do business with Monsour's and you wouldn't**
 5 **have liked having to do it.**
 6 A No.
 7 **Q Do you remember?**
 8 A Right. I --
 9 **Q Have you ever read the Asset Purchase**
 10 **Agreement?**
 11 A No.
 12 **Q Any portion of it?**
 13 A No.
 14 **Q Has anybody ever read any portion of it to you,**
 15 **if you can recall?**
 16 A I don't know if -- if -- if they were -- were
 17 reading it to me. But this -- this gentleman
 18 right here said something to me about the Asset
 19 Purchase Agreement.
 20 **Q Mr. DeVaughn?**
 21 A Yeah.
 22 **Q The gentleman's name, Mr. DeVaughn?**
 23 A Yeah. Mr. DeVaughn. But I don't know if he
 24 was -- I mean, I don't know if he was reading
 25 it. It was just a short statement. I mean, it

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1 wasn't --
 2 **Q But did anybody out here at Menu Maker give you**
 3 **a copy of it to read?**
 4 A No.
 5 **Q All right.**
 6 A I had no idea that there was any kind of -- of
 7 agreement to -- to do anything. I mean --
 8 **Q Ever?**
 9 A I thought -- should I say what I think? I
 10 mean, do you care?
 11 **Q Go ahead.**
 12 A I thought that Dick was making a bad business
 13 decision because he was a good guy. I mean, I
 14 didn't --
 15 **Q Same kind of fellow who -- who helps small**
 16 **restaurants get insurance coverage? That kind**
 17 **of guy?**
 18 A Yeah. Dick's a good guy. I mean, I -- Dick's
 19 a good guy. I mean, I --
 20 **Q Dick's a good guy?**
 21 A Yeah. I mean, it looked to me like that-- from
 22 my position -- and I said this earlier. From
 23 my position, this was a horrible business
 24 decision for Dick. And I felt that way, and I
 25 -- and I actually verbalized that --

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1 **Q To Dick?**
 2 A -- more than one time. Yeah.
 3 **Q Did you?**
 4 A Yeah.
 5 **Q What did he say?**
 6 A Absolutely. Because I never -- I mean, I never
 7 held back with Dick. I didn't --
 8 **Q What did he say to you?**
 9 A I -- I can't remember what he said. It's --
 10 that he -- I think what he said was he was
 11 looking at the long-term, not the short-term.
 12 I mean, it would have been something like that,
 13 because short-term, all it did was cost him a
 14 lot of money, a lot of labor dollars, a ton of
 15 labor dollars.
 16 **Q Let me -- let me go to one other area really**
 17 **quickly, and then I'll be finished. Do you**
 18 **have any knowledge of Ron Orr setting out to**
 19 **sabotage the agreement between Menu Maker and**
 20 **Monsour's?**
 21 A I would have to say -- I would have to say no
 22 to that. I have no direct knowledge of --
 23 **Q Did you set out to sabotage the agreement?**
 24 A Absolutely not. I did every -- I didn't know
 25 what the agreement was, but I did everything I

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1 could to try to get their inventory mixed in
 2 with mine that was -- the inventory that we
 3 were -- that was coming through Purchasing to
 4 us.
 5 MR. WACHTEL: Thank you very -- wait.
 6 Wait. Thank you very much. I don't have my
 7 further questions.
 8 REDIRECT EXAMINATION
 9 BY MR. DEVAUGHN:
 10 **Q I've got some follow-up questions for you, Ed.**
 11 A Okay.
 12 **Q You clear -- you -- you stressed no direct**
 13 **knowledge about Ron Orr sabotaging the business**
 14 **relationship. Had you heard that through the**
 15 **rumor mill at Menu Maker Foods?**
 16 MR. WACHTEL: I'm going to object to
 17 the form of the question because it seeks to
 18 admit hearsay.
 19 **Q (By Mr. DeVaughn) You can answer.**
 20 A My answer would be that I -- I think that Ron
 21 Orr felt like -- and I didn't know till --
 22 actually, I didn't know till today that he was
 23 supposed to be buying a hundred percent of the
 24 produce from Monsour's because he -- because he
 25 -- he couldn't have done that. I mean, he

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1 couldn't do that.

2 I think that Ron Orr felt very -- not

3 unlike I would have, felt very tied into that,

4 to having to do that. Not -- and not just with

5 Monsour's. If I was told, Buy all your produce

6 from this person, period, as a produce buyer,

7 you just can't function and -- and do your job

8 like that. I'm sure Ron Orr felt that way.

9 But -- but if I worked for Dick and Dick

10 said, This is what you're doing and this is

11 what we're going to do, I would eventually --

12 after complaining to him, I would eventually do

13 the best I could to make that happen. And --

14 and I would say that Ron Orr probably did the

15 same thing. I -- I don't know. I mean, me and

16 Ron were not that close.

17 **Q I understand. My specific question, though,**

18 **was you said you had no direct knowledge about**

19 **Ron Orr sabotaging the business relationship.**

20 **My question to you was you had heard that in**

21 **the rumor mills at Menu Maker Foods, true?**

22 MR. WACHTEL: I object to that

23 question.

24 **Q (By Mr. DeVaughn) True?**

25 A Yeah. I mean, that -- that -- that had been a

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1 rumor. But -- yeah. But I have no direct

2 knowledge of that, and Ron Orr never said that

3 -- never said that to me. But that --

4 **Q That was something --**

5 A I knew he didn't like the situation.

6 **Q But that was something that you had heard**

7 **people talk about at Menu Maker Foods, true?**

8 A Yeah. I mean, I -- yes.

9 **Q When Dick Graves told you that he thought that**

10 **this acquisition of Monsour's -- Monsour's --**

11 **let me strike that.**

12 **When Dick told you that he thought that**

13 **this would benefit Monsour -- strike that. Let**

14 **me rephrase my question. I'm getting the**

15 **entities mixed up.**

16 **When Dick Graves told you that he thought**

17 **that the Asset Purchase Agreement would benefit**

18 **Menu Maker Foods in the long-term, did he**

19 **elaborate on how it was going to help Menu**

20 **Maker Foods out in the long-term?**

21 A No. And we weren't talking about the Asset

22 Purchase program. What we were talking about

23 was -- see, I had no direct knowledge of -- of

24 what that was or any of that.

25 What -- what I knew is that we were

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1 shelling -- that we were spending a -- a

2 shuttle guy, a delivery guy, and 25 hours -- 25

3 or 30 hours labor on delivering a tenth as much

4 products as we were putting on our other trucks

5 that we got delivered with one guy in eight

6 hours.

7 So, to me, it just looked like -- how are

8 we making money? It wasn't about the Asset

9 Purchase program. It was about us delivering

10 product --

11 **Q Produce?**

12 A -- in -- in Pittsburg, Kansas when the trucks

13 were empty. And -- and to get the product

14 there, I had to -- it takes a lot longer -- let

15 me -- let me step back.

16 Part of -- part of the way I was paid was

17 bonuses on -- on -- on picking productivity and

18 errors and that kind of thing. And let me say

19 that when my guy went to -- to pull, say, 2,000

20 cases for one truck, his pieces per hour and

21 his errors per hour would be much better than

22 they were when he went to pull 120 cases for

23 one truck. So it increased our labor dollars

24 right there at the operational end.

25 Then, plus, we had a shuttle driver and a

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1 delivery driver to deliver less product than we

2 were delivering out of here with one driver in

3 seven or eight hours or nine hours. So, to me,

4 it just looked like a horrible business

5 decision unless down future -- future they saw

6 a lot more business in the area or something.

7 **Q Did -- did Dick tell you how he thought it**

8 **would benefit Menu Maker Foods in the**

9 **long-term?**

10 A No. But I'm talking about that from my end as

11 far as labor, labor dollars.

12 **Q With respect to the -- the freezer at**

13 **Monsour's, Inc., if a drain had become**

14 **obstructed or clogged and the freezer unit had**

15 **cycled, you know, defrosted, where would the**

16 **water have gone? Where would the con --**

17 **condensation have gone? Where would the water**

18 **have gone?**

19 A I mean, from experience at Menu Maker, close to

20 the unit. Close to the unit. A lot of times

21 just down the unit, and then you can see it

22 form ice actually on the unit or near that

23 area.

24 **Q What would happen to this water when the**

25 **freezer unit cycled back to freeze?**