

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**

OFFICES MISSOURI ■ ILLINOIS ■ KANSAS

HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101

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Page 6

1 A Yeah. Right in there.
 2 Q And then where did you go after being night
 3 foreman?
 4 A Dick wanted me to move into the -- we were just
 5 starting to get in the produce business. And I
 6 spent a lot of time with Dick, and he was
 7 trying to talk me into being trained by this
 8 old guy he had here that was going to be the
 9 produce buyer.
 10 I kind of fought the job off for about
 11 three or four months, and then I went ahead and
 12 took it because it moved me to days and I was
 13 married and had kids and stuff.
 14 Q Okay.
 15 A And so then I was a produce buyer.
 16 Q When you say Dick, are you referring to Dick
 17 Graves?
 18 A Uh-huh. Yeah.
 19 Q Now, you said at one point in time you did
 20 become a produce buyer?
 21 A Yeah. That -- at that time. Then I was --
 22 then I was the assistant produce buyer. And
 23 Charlie Wilson, this guy, trained me. He died
 24 about -- I'm not sure -- six or seven months
 25 into it, and then I -- I just took over

Page 7

1 produce.
 2 Q When did you become a produce buyer? What --
 3 what year was it about?
 4 A I'm not sure because in the beginning I was
 5 like quality control and produce and -- and I
 6 drove -- drove a truck to St. Louis market and
 7 picked up produce. See, we were just starting
 8 the produce business, and we didn't have much
 9 volume.
 10 So I ran as to St. Louis two or three days
 11 a week and picked up produce for our orders.
 12 And I -- I mean, I -- I can't -- I couldn't
 13 even guess get close for you.
 14 Q Okay. Sometime around 1995, 1996?
 15 A Yeah. Yeah.
 16 Q And how long did you stay in the position of
 17 produce buyer?
 18 A I believe about three years.
 19 Q Okay. Now, when you were the produce buyer,
 20 were you the head produce buyer?
 21 A Yes.
 22 Q Did you have any produce buyers underneath you?
 23 A Well, I had a quality control guy, but I
 24 trained -- but I used him for more than quality
 25 control. I mean, I trained him to do

Page 8

1 everything that I did.
 2 Q Who was it that you trained?
 3 A John Stegman.
 4 Q When you were produce buyer, did Menu Maker
 5 Foods send you to any type of formalized
 6 training with respect to produce?
 7 A They didn't, but I -- I searched it out on my
 8 own.
 9 Q Okay.
 10 A Two or three different ways. I had -- I went
 11 to a formal clinic situation, and then I
 12 followed the -- I took a vacation and followed
 13 the USDA guy around the St. Louis market for
 14 about three days.
 15 And then I actually went to Monsour's, and
 16 -- and some of the guys there trained me.
 17 Q Just out of curiosity, why didn't Menu Maker
 18 Foods send you to any type of training?
 19 A I don't know. I mean, I -- I didn't ask. I
 20 just -- well, they did. I mean, they had
 21 something to do with me going to Monsour's.
 22 They -- I mean, they set that up. Dick set
 23 that up for me to go there and spend some time
 24 down there.
 25 Q When you were a produce buyer?

Page 9

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?

Page 26

1 Foods' employee, the driver, would be at
 2 Monsour's facility at four or five in the
 3 morning?
 4 A Well, I mean, he -- we tried to get him out of
 5 here by 11, so as soon as he could get there.
 6 I mean, he's pulling a double, so he can't run
 7 real hard, but --
 8 Q I see. So the driver would leave Menu Maker
 9 Foods' facility around 11 at night, drive to
 10 Pittsburg to pick up the trailer?
 11 A Yes.
 12 Q The loaded trailer?
 13 A Well, actually, he was just hauling back
 14 empties. I mean, if he happened to pull back a
 15 loaded trailer, it would just be because we
 16 were getting produce from them or we were
 17 pulling part of their inventory.
 18 Because we did the same thing with the
 19 inventory we pulled from their warehouse. It
 20 came back the same way, so --
 21 MR. JAMES: Dustin, stop.
 22 (Break in proceedings.)
 23 Q (By Mr. DeVaughn) Okay. We had to change
 24 tapes.
 25 A Okay.

Page 27

1 Q This is a videotaped deposition. The first
 2 tape was full. That's why we're on this new
 3 tape.
 4 Let me go back -- I just want to make
 5 certain I'm clear. Menu Maker Foods would send
 6 its driver to Monsour's Pittsburg facility to
 7 pick up the -- the trailer that Monsour's
 8 loaded; is that right?
 9 A Okay. Maybe let me -- let me try this again.
 10 The guy -- the shuttle driver for Menu Maker,
 11 he would leave Menu Maker with two loaded
 12 trailers for delivery the next day --
 13 Q I see.
 14 A -- by drivers who were -- I guess that Menu
 15 Maker had hired that live there. So he pulled
 16 down two loaded trailers. And his job was to
 17 pull down two loaded and pull back two empties.
 18 Q Okay.
 19 A If there happened to be product on those
 20 trucks, then he would haul those back.
 21 Q When you say if there happened to be product,
 22 you're talking about produce from Monsour's
 23 coming back to Menu Maker?
 24 A Or inventory from there or warehouse inventory
 25 or -- could be returns from -- from the prior

Page 28

1 delivery day. All that stuff, he would pull
 2 back to Menu Maker.
 3 Q Okay. What time did those drivers -- based
 4 upon your knowledge, what time did those
 5 drivers typically leave Pittsburg to go back to
 6 Menu Maker Foods?
 7 A I would think they would have been out of there
 8 by -- as quickly as they could, you know.
 9 Q I'm asking what time of the day.
 10 A I'm thinking probably 6:00 in the morning.
 11 Q Okay.
 12 A Seven o'clock in the morning.
 13 Q And then driving --
 14 A Probably five, if they were having a great day.
 15 I mean, it would depend on what kind of day the
 16 driver was having. But sometime early a.m.
 17 Q But based upon your observations and your
 18 experiences here, the trailers that were loaded
 19 with Monsour produce would, on average, arrive
 20 at Menu Maker Foods' docks, loading docks --
 21 unloading docks sometime between nine and noon?
 22 A I think so. Yeah. Yeah. I mean --
 23 Q Given those -- given those times, based upon
 24 your knowledge and -- and observations, then,
 25 the produce was on those trailers anywhere from

Page 29

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