COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
C.A. No. MICV2008-04641

* * * * * * * * * * *
JOHNSON GOLF MANAGEMENT, INC.,*
Plaintiff, *
*
vs. *
*
TOWN OF DUXBURY, et al., *
Defendants. *
* * * * * * * * * * *

DEPOSITION OF BRYAN J. MORRISSEY, taken on behalf of the Defendant, pursuant to the Massachusetts Rules of Civil Procedure before Nancy A. Ruvido, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, CSR No. 126193, at the offices of Follansbee and McLeod, LLP, 536 Granite Street, 3rd Floor East, Braintree, MA, on **Friday**, **August 31**, **2012**, commencing at 10:35 a.m.

APPEARANCES:

STEPHEN R. FOLLANSBEE, ESQ., Follansbee and McLeod, LLP, 536 Granite Street, 3rd Floor East, Braintree, MA 02184 (For the Plaintiff)

EVAN C. OUELLETTE, ESQ., Brody, Hardoon, Perkins & Kesten, LLP, One Exeter Plaza, Boston, MA 02116 (For the Defendant)

NINA PICKERING-COOK, ESQ., Anderson & Kreiger, LLP, One Canal Park, Suite 200, Cambridge, MA 02141 (For the Defendant)

ALSO PRESENT:

MR. DOUGLAS JOHNSON
MR. JASON LARAMEE

INDEX

EXHIBITS

P R O C E E D I N G S

Stipulations

It is stipulated by counsel for the parties that all objections, except as to the form of the question, and motions to strike, will be reserved to the time of trial.

The witness will read and sign a copy of the transcript within 30 days of his counsel's receipt thereof. If the transcript is not returned within 30 days, it will be deemed accurate as transcribed.

(WITNESS SWORN.)

DIRECT EXAMINATION

BY MR. OUELLETTE:

Q. Good morning, Mr. Morrissey. My name's Evan Ouellette, and I represent the defendants in this matter. I'm sure you've been deposed before.

A. I have.

Q. Just generally, as I'm sure you're aware, I'll be asking questions. Your attorney's obviously here with you.

I just ask that you allow me to complete my question before you start answering so that we can have an accurate record.

If you need to take a break at any time for any reason, if you want to speak with your attorney, just tell me. Of course that's no problem. I just ask that you answer the question that's posed unless your attorney's instructed you not to.

MS. PICKERING-COOK: Can I just jump in and clarify. Are you representing Bryan today as his attorney?

MR. FOLLANSBEE: No. I'm representing Johnson Golf.

MS. PICKERING-COOK: Okay.

BY MR. OUELLETTE:

Q. Mr. Morrissey, when did you receive your CPA?

A. 1987, I believe.

Q. You work for LMHS. What does that stand for?

A. It is the shortened version of the original name which was Leone, Morrissey, Henriksen and Synan.

Q. How long have you worked there?

A. Twenty-three years. I'm a founder -- I founded the firm.

Q. How long has LMHS worked with Johnson Golf Management?

A. At least a decade.

Q. And what services have they performed for Johnson Golf?

A. Audit and tax.

Q. Have you or anyone else from LMHS served as an expert for any other cases that Johnson Golf Management has had either in -- well, in any capacity?

A. No.

Q. Do you know if anyone's compiled an expert report like what's been done in this case?

A. I don't think so.

Q. So you have not?

A. Can I ask Doug?

Q. Sure. I can backtrack a little bit. Have you been involved in any way in any other litigation that Johnson Golf Management has been involved in, you personally?

A. I don't -- no.

MR. FOLLANSBEE: Just for clarity of it, he's never testified on behalf of Johnson Golf in any case, although the raw data that his firm has created may have been entered as exhibits, but it wasn't through his testimony.

MR. OUELLETTE: Okay.

Q. So you've never been deposed in any case involving Johnson Golf before?

A. No.

Q. And you've never testified --

A. No.

Q. -- in court?

A. No.

Q. And to the best of your knowledge no one from LMHS has been deposed or has testified in any case involving Johnson Golf?

A. No one has.

Q. And you put together two expert reports in this case, as I'm sure you're aware. Do you know of any other expert reports that have been put together by anyone from LMHS for cases in which Johnson Golf has been involved?

A. I don't think so, but I could verify

that. But I don't think so.

Q. And have you personally done that?

A. No.

Q. Have you served as an expert in any other case, not including Johnson Golf?

A. No.

Q. You've --

A. Does this constitute expert witness sitting here?

Q. It does.

(Pause.)

A. Then yes.

Q. What cases have you served as an expert in?

A. One case involved the purchase and sale of an office supply dealership.

Q. Do you remember the names of any parties in that case?

A. I do.

Q. What were they?

A. New England Office Supply and Union Office Interiors -- or versus Union Office Interiors.

Q. What did you do in that case?
A. That case went to court, and I gave testimony in court.
Q. Did you prepare an expert report similar to what you've done in this case?
A. I do not believe so.
Q. Were you deposed?
A. I do not believe so.
Q. But you did testify at the trial?
A. Yes.
Q. And who was your client?
A. Union Office Interiors. Well, both. They were both clients. They're both still clients, as odd as that sounds.
Q. Who did you testify in behalf of?
A. Union Office Interiors.
Q. Okay. When was that?
A. It was a long time ago.
Q. Approximately?
A. 1994.
Q. Do you remember what court that was in?
A. Suffolk, I believe.
Q. Suffolk Superior?

A. Yes.

Q. What other cases have you served as an expert in?

(Pause.)

Q. Let me backtrack. What was your role as an expert in that particular case? What did you do for Union Office Interiors?

A. Provided information on the operating results of the company. Very boring testimony.

Q. Was the testimony regarding lost profits?

A. No, it was not a lost profits case. It was a litigation. It was a business that they -- it was a business transaction gone bad.

Q. In what other cases have you served as an expert, either in putting together an actual report or being deposed or testified?

A. Most of the business transactions that we are involved in have not, through the years, gotten to the litigation point. They have been negotiations that have settled through mediation.

Q. In any of those cases that didn't reach trial, did you put together a report for use in the litigation?

A. Yes. The -- do you want me to answer that with a yes or --

Q. Yes is fine if yes is the answer. What cases did you do that in?

A. Shaughnessy versus Shaughnessy, the crane and rigging company in Boston.

Q. What was your role in that case? What were you asked to do?

A. That was a majority shareholder case dispute. And that was a lot of forensic accounting, ultimately resulting in a proposal to buy the entire company.

Q. Was your role in that case limited to putting together an expert report?

A. It involved review of historical information, understanding the existing marketplace, and putting together a business plan to acquire the company.

Q. Who did you represent in that case?

A. The company was owned a hundred percent by the Shaughnessy family. There was a 59 percent owner and a 41 percent owner. I represented the

41 percent owner, the Shaughnessy family.

Q. Was that also in Suffolk Superior Court?

A. Yes.

Q. And when was that litigation?

A. '98.

Q. What other cases have you served as an expert in?

A. I think that's it.

Q. So since 1998, approximately 1998, you haven't compiled an expert report or served as an expert in any other capacity in any other litigation, is that accurate, to the best of your knowledge?

A. I think so, yes.

Q. Have you ever been disqualified as an expert?

A. No.

Q. Meaning, has anyone ever designated you as their expert and a judge has determined you were not qualified to serve as an expert in the litigation?

A. No.

Q. Have you ever served as an expert witness on the topic of calculating lost profits prior to this case?
A. No.
Q. What do you know about this litigation?
A. I know that Doug had a -- Johnson Golf Management had a contract to operate North Hill Golf Course. I know that contract ended in 2008. And they operated it on a temporary basis for 2009 and '10.
I know that Johnson Golf Management is seeking to be compensated for lost profits from losing that contract.
Q. What did you do to prepare for your deposition today?
A. Nothing, unfortunately.
Q. What is your role in this litigation? What were you asked to do as an expert?
A. I was asked to assemble a worksheet consisting of revenue and cost of revenue utilizing rates the -- rates included in the request for proposals as provided to us.
Q. How much have you been paid for your

services?

A. At this point nothing.

Q. Have you submitted any bills or invoices as to what you expect to be paid for your services in this case?

A. No.

Q. What documents did you review in creating -- well, strike that.

You created two reports, is that accurate?

A. Yes.

Q. One back in October of 2011 and one that was submitted earlier this week, I believe, called the August 2012 report?

A. Yes.

Q. Does the August 2012 report supersede, meaning, does it take the place of, the October 2011 report?

A. Yes, it does.

Q. What documents did you review in creating the report? And if you want to start with what documents you reviewed in creating the October 2011 report, that might be the best way to go through it.

A. The October 2011 report utilized our historical information -- the historical information from the golf course and changed the lease expense to be consistent with what was provided to us as to what the cost would be to Johnson Golf going forward.

MR. OUELLETTE: Let's mark this as Exhibit 1, please.

(Exhibit No. 1 was marked for identification.)

Q. I've just handed you what's been marked as Exhibit 1, which is the October 19th, 2011 report we've been referencing.

(Pause.)

MR. OUELLETTE: Why don't we just mark the second one, too.

(Exhibit No. 2 was marked for identification.)

Q. I think I asked you what documents you reviewed in putting together your October 2011 report. I'm trying to remember if you answered that question.

A. You did and I did.

Q. What were you specifically asked to do in creating this October 19, 2011 report which we've marked as Exhibit 1?

A. Summarize the historical information for the operating activities of North Hill Golf Club -- Country Club, I think it's actually called -- and project that information through 2013, I believe.

Q. What were you asked to do when creating the August 23, 2012 report?

A. Assemble the same report, but having received more current information or more information, including that information in the document.

Q. What documents did you look at when you were creating the August 2012 report?

A. In addition to the historical information, we looked at the RFP, request for proposal, which included in it new and revised rates, greens fee rates, membership rates, cart rates, going forward.

Q. I just want to take you through the October report first.

It says in the first paragraph here that you made some pro forma gross profit calculations. What does that mean?

It says specifically: "On behalf of Johnson Golf Management and as requested by you, we have assembled pro forma gross profit calculations for North Hill Country Club."

A. It is a projection formatted based on certain assumptions. It's not historical. It's a going forward.

Q. And what does gross profit mean?

A. Gross profit is after your variable costs, directly attributable to that operating activity.

Q. Does that take into account fixed costs?

A. It takes into account costs specific to generating that revenue, directly related to generating that revenue. Some of those costs can be fixed. Most of those costs would be variable.

By example, the lease cost of the golf course is a fixed cost. Fertilizers for the golf course is a variable cost.

Q. Why would you not take into account say fertilizer for the golf course when doing your gross -- well, rather, when you're doing your lost profit calculation?

A. We did.

Q. You did. So you'd include variable costs as well in the gross profit calculation?

A. Yes.

Q. Are there any costs that you would not include within the gross profit calculation?

A. Yes.

Q. What would those be?

A. Corporate overhead, costs not directly assignable to the operating activities of that location.

Administrative salaries, vehicle expenses for management, salaries of management, items of that nature.

Q. What's the difference between gross profit and net profit?

A. Overhead or administrative costs.

Q. You did not put together a net profit calculation in this instance; is that correct?

A. That is correct.

Q. Were you asked specifically to put together a gross profit calculation, or were you given a more general set of instructions as to simply determine the lost profit?

I guess what I'm asking is: Who made the determination to calculate a gross profit calculation? Was it you or were you instructed to do that?

A. I was provided the lost profit case on Ricky Smith, and upon reading that concluded that fixed overhead costs were not a component of that lost profits case.

Attorney Follansbee and I had a conversation and concluded that the appropriate presentation here is through gross profit.

Q. What is the Ricky Smith case?

A. It is a lost profits case.

Q. It's not a case in which you or your firm was involved?

A. No.

Q. Was that sort of a -- just a case to use as an example as to how to calculate lost profits as it had been done in another similar litigation?

A. Yes.

Q. And you calculated lost profits in this case based on how they were calculated in that one particular case?

A. I calculated the gross profits lost based on that case, but as well as my own logic as to why overhead isn't an appropriate calculation in determining lost profits.

Q. Your report goes on to say -- why was it your logic to not include overhead within your lost profit calculation?

A. Because the gross profit generated by any site once removed is a 100 percent loss to the bottom line for the simple reason that the overhead remains constant. I know that's accounting speak, but --

Q. Would the overhead remain constant -- we'll get into this a little bit more. But would there be instances where the overhead wouldn't necessarily remain constant if you no longer had any of the demands required by that particular site that was now closed down, that your overhead needs would change or diminish?

A. Overhead is a relatively fixed number, but if your operating activities changed significantly, then you would be able to make changes -- you would have to make changes to your overhead.

Q. For instance, if you had a golf course and you no longer operated the golf course, you would then have an excess of golf course equipment that you no longer needed to run that site which could potentially be sold or used to replace older equipment at another golf course. Something like that.

Would something like that enter into your calculations as to whether or not to use overhead --

A. No.

Q. -- in your profit calculation?

A. The equipment -- the cost of the equipment is included in your cost of goods sold -- in your gross profit calculation. It is an expense in arriving at that number.

So the cost of maintaining your Easy-Go's and your carts and your mowers, those costs are included in arriving at -- that's an expense in arriving at your gross profit number.

So that's not a component of overhead. That is a cost that is assigned to the site.

Q. So you would take into account that you no longer needed to maintain that equipment as part of your lost profit calculation?

A. That's a confusing question. You would include that -- in a lost profit calculation you would include that as a component of your cost.

Q. And the fact that that cost would now be removed, because you would no longer need to maintain that equipment for that particular site, would that enter into your lost profit calculation in this case?

A. No. I must not be explaining the calculation correctly.

The lost profit calculation runs out the revenue in the projection period and the direct costs associated with generating that revenue.

And included in those direct costs is all of the costs of equipment ownership and operation of maintenance.

So if the revenue is 700,000, to generate that revenue you need superintendents, equipment, fertilizers, fuel, which are subtractions from the revenue to get to the gross profit line.

So if you lost the revenue, you then would lose the cost. So from 700, there's 500 in costs. So what the loss is to Johnson Golf is the 200 which is the gross profit.

Q. Okay. It's stated within the report that you were provided with and this report is based on -- your calculations were assembled based on historical revenue costs and revenue information provided by the company.

What was the historical revenue information that you were provided with?

A. Bank statements, general ledgers, paid invoices, payroll, tax returns, all of their accounting records.

Q. Were you provided with those in connection with creating this particular report or back when you were creating their audit and financials during the years involved? Do you know what I mean?

A. Yes. We were provided that information at the time of our original work.

Q. Okay. So if you're looking at the year of 2006, and you're looking at the historical revenue from that year in creating your report, you didn't actually have the accounting records from 2006 in front of you while creating this report; you just had your auditing financial information?

A. And our work papers. In our accounting work papers we keep copies of certain documents which we deem relevant to the work.

Q. Do you know what those were in this case, what you looked at particularly in creating this report?

A. Well, specifically, no. But we would have each year's working papers available to us as we prepared the summary report, the October 11th and August 12th letters, from each of those years.

Q. You were provided, I assume, the years of information of 2006, 2007, 2008?

(Pause.)

Q. Those are the years -- those are the

historical years and the historical data years that you were looking at when you created your report?

A. I believe so.

Q. Do you want to take a look at your report?

(Witness reviewing document.)

A. Yes.

Q. Did you look at any other years? The report states that: "These pro forma gross profit calculations were assembled based on historical revenue and costs of revenue information provided by the Company for the years ended December 31, 2006, through 2008."

(Witness reviewing document.)

A. I guess I would say not specifically.

Q. What does that mean?

A. It means --

Q. My question is: Did you look at any other years, other than 2006, 2007, 2008 calendar years, any data from any other years?

A. A lot of this information is assembled together. We keep historical files on the company. So we have the benefit of hindsight.

So years prior to '06 could have been in the work sheets that we originally looked at in developing this, but they were not -- three years was deemed a good snapshot.

Q. You didn't base any of your conclusions in the October 2011 report based on any other years?

A. No.

Q. No years other than 2006, 2007, 2008, correct?

A. Correct.

Q. Why did you choose those years?

A. We concluded that that gave us a good view of the trends going on.

Q. Why did you choose three years?

(Pause.)

Q. Let me backtrack on that.

A. Yeah.

Q. Were you asked or were you told in creating your report what years to use, or did you personally make the determination as to how many years you would use and what years to use?

A. That was my determination.

Q. Okay. Why did you choose a three-year period as opposed to more or less?

A. In my opinion going back to '05 or '04 the data was too old.

Q. Why? What would make that data not useful because of its age?

A. Just because of its age. Change in rate structures, change in the economy. And I don't have that data in front of me, so I'm not sure, but it could have been that '04 and '05 looked like '06 and that -- so we didn't need to use four, because three years gave us the window that seemed most appropriate.

Q. You did look at the data from other years and then decided not to use those years in your calculations?

A. I'm not sure about that.

Q. I mean, did you look at 2005 and then determine not to use 2005 in the calculations?

A. I'm not sure about that.

Q. Do you remember if you looked at any other years, other than 2006, 2007, 2008, during the process of creating this report?

A. My apologies for being redundant, but I'm not sure about that.

Q. Okay. Then I guess I have to ask you again why you chose these three particular years. Do you have a memory of how you came to choose these three particular years, if you don't recall if you looked at any others?

A. I do a lot of valuation work. And in that your judgment as to what is most appropriate is how you develop your reports.

This report was prepared ten months ago. So I'm not sure what deciding factors were involved in choosing three years, other than the reasons were that it made sense.

Q. And I don't want to be redundant either, but do you know why it made sense? Do you know what your determination was based on that it made sense to use these three years?

A. I feel like I've answered this question a number of times.

I think it gave a sense of the trends that were going on. It was -- it appeared unbiased in that we ran the three years out and we took the averages of those three years and it was an improving trend.

So it accounted for some economic fluctuations by averaging the positive trend. And that's that.

Q. Why is it important to use I guess a number of years in determining lost profits going forward?

A. This first letter of October 19th attempts to calculate the gross profits lost in an appropriate, not flowery, light.

Three years of an improving run rate, not just utilizing the third year which was the highest year in the window, I believe, shows reasonableness, in my opinion, as to the fact that things may not continue to get better each year.

Q. So you would use multiple years in your calculation in order to account for economic fluctuations?

A. You may.

Q. Would one year not adequately account for economic fluctuations, if you used one year as opposed to an average of multiple years?

A. It depends what facts are known. It depends. There is no absolute in valuation.

Q. You chose the three-year window in order to more appropriately account for economic trends, I believe, in economic fluctuations over a period; is that accurate?

A. Yes. We attempted to present a reasonable picture.

Q. Would it be less reasonable, then, to choose simply one year's data and then calculate future lost profits based on that short window?

A. Again, it depends on what is known.

Q. Well, based on what you knew in October of 2011, was it reasonable to choose a three-year window as opposed to a one-year window in order to account for economic trends and economic fluctuations?

A. Well, the letter actually provides summary data on two years and three years.

Q. Yes. I believe it has two years. It has a two-year window. It accounts for a three-year window. And it accounts for -- and then an average of the two- and three-year window.

A. Correct.

Q. So in each of those you chose to use a multiple year window and an average of those years. Was the reason for that to better account for economic fluctuations and trends that might occur over time, whereas it would be less reasonable to choose just a single year because it wouldn't account for those things?

A. The reason for it was to provide Attorney Follansbee with some information from a couple of different viewpoints.

Q. The report goes on to state: Historical costs of revenue information was provided by the Company.

What were you provided for historical cost of revenue information?

A. All of the same information I described earlier: general ledgers, the chart of accounts.

Q. For the years of 2006, 2007, 2008?

A. Yes.

Q. And do you know -- I know it says December 31st through 2008. Is it actually more accurate to say it would have been September 30th, 2006 through September 30th, 2008? Is that the information you were looking at?

A. The company's fiscal year is September. The projection period is on a calendar year, I believe.

Q. But the actual data that you looked at, what was that time period?

A. That was ending September 30th.

Q. The report says December 31st, 2006 through 2008.

What should that say as to the information that you were provided by the company, the historical costs and income data?

A. No. That's accurate. The information they provided us was consistent with the timeline under which they were under contract with Duxbury, which -- their contract ended on a calendar year basis.

So we had the information through the calendar -- we covered all 12 months. It's just when the company's fiscal year ends.

Q. Did you use that 36-month period here that's described in making your calculations or was it a different period?

Meaning, you may have been provided with that data, but was that the data that you actually used?

A. We would have used the fiscal year-ends.

Q. So would that have been September 30, 2006?

A. Yes.

Q. Through September 30th, 2008?

A. It would have been October 1st through September 30th.

Q. The report goes on to state again that you used three-year and two-year average gross profits, in addition you calculated an average of the three-year and two-year averages. I think you've already explained why you did that.

But then it guess on to state that, Calculations of cost of revenue were based upon historical performance as well, with two exceptions: depreciation expense was excluded from the calculation, and lease expense.

Why did you exclude depreciation expense from your calculation?

A. Depreciation is a non-cash item, and it's not -- it's not a -- it's really an add-back from a -- it's an add-back from a cash flow analysis.

Q. Can you maybe just explain to me what you mean by depreciation in the first page of your letter, depreciation of what?

A. Equipment.

Q. Depreciation of the assets?

A. Yes.

Q. Why would that -- if you maintain the assets and they continue to depreciate, why would that not be included in the cost of revenue?

A. It's not included in the cash flow because the company had funded that. So it's truly additional cash lost.

So to include depreciation expense in your lost profits calculation is punishing the cash flow to the extent of the depreciation, because you truly have lost that cash.

Q. Could you, I suppose, if you no longer are running a golf course, you could sell those items that are no longer necessary and then you wouldn't have the depreciation or you could replace similar items in other courses that are getting older and need to be replaced with the existing items that you had used at North Hill.

And would that affect depreciation, or was that taken into account at all in determining whether or not to include depreciation and cost of revenue?

A. No.

Q. And why was the lease expense not included within the cost of revenue calculation?

A. It was. It just wasn't included based on historical. It was included based on the anticipated lease expense going forward.

Q. Under what was included in the RFP documents? Meaning, what Johnson had bid?

A. When we prepared this letter, we were not in possession of the RFP. So we were provided this information that indicated what the revs, the new revs would be. And that's what I believe was included in the schedule.

Q. Can you take me through the report and just sort of explain to me what the line items are, what they stand for, especially under Revenues and Cost of Revenues, and explain to me how you reach your calculations.

A. Sure. In the report itself or in the accompanying data?

Q. Well, why don't we start with: Based upon the information above, we have calculated pro forma gross profit for years ending in 2009 through 2013 as follows, and go from there.

(Pause.)

A. Okay. This schedule indicates what the dollars lost would be in each of the five years based on a three-year average, two-year average and an average of the two and three years.

Those numbers are the end result of the second page of the accompanying information.

Q. Why did you include an average of the three- and two-year period?

A. To get another data point.

Q. Why would that data point be used?

A. It's more information.

Q. Why go through the trouble?

A. It's more information. It's more

information. It helps you draw -- more information enables you to draw better conclusions.

Q. Can you take me through what is the third page of the report that includes the Revenues and Cost of Revenues?

A. The historical information?

Q. Yes. And initially -- I think we're both looking at the same page. It says Historical Information. The date on that, it says September 30th, 2006 through 2008.

Is that actually the time period that you would have looked at the data?

A. Yes. This is three historical P & L's or income statements for gross profit calculations for Johnson Golf for 2006, 2007, 2008 for the North Hill Country Club.

Q. So the 2006 year, what was the time period that you were looking at to determine the revenue and cost of revenue for the 2006 year?

A. October 1st, 2005 through September 30th, 2006.

Q. Okay. Is it fair to say, then, that the heading should say October 1st, 2005 through

September 30th, 2008?

A. Fair to say.

Q. Rather than September 30th, 2006?

A. Yes.

Q. Can you take me through the revenues, please.

A. Fees and dues consists of greens fees, cart fees, annual memberships or prepaid fees for those fiscal years.

Pro shop sales consists of golf balls, golf gloves, hats, bags of tees, probably shag balls, other sundry items, candy bars maybe. And food and beverage is the bar.

Q. Were there any other revenues that were taken in by Johnson Golf that weren't accounted for within these three categories?

A. Not to my knowledge.

Q. Could you take me through the cost of revenue line items?

A. Direct payroll consists of employees who work on the golf course, in the pro shop, in the restaurant.

Q. What employees would not be included in direct payroll?

A. There are no Duxbury -- there are no employees located at North Hill Country Club whose payroll is not included in that direct payroll.

Q. What about officials of the company, are they included under direct payroll?

A. I do not believe so.

Q. Is Doug Johnson's salary included in direct payroll?

A. I do not believe so.

Q. How about payroll taxes?

A. Payroll taxes are directly tied to the direct payroll. It's Social Security, Medicaid, state unemployment.

Q. Contract services?

A. I don't really know what that is. Minimal amount.

Q. Do you know what that line item stands for?

A. Yeah. That would be typically if, let's say you brought somebody in from the outside on a consulting basis to look at why you have a fungus growing on the fourth green and you couldn't figure it out, so you might hire somebody from the USGA to come in and take a look at that.

Or, if you try to make modifications to the golf course and you want to get some other advice, bring somebody in on a contract basis.

Q. Do you know what documents you looked at in coming up with those particular numbers for contract services?

A. I do not. Well, general ledger.

Q. And was it also your -- is it fair to say you relied on your own audited reports from each of these years as well as your general ledger for all of these line items in creating your report?

A. Yes.

Q. Equipment purchases?

A. Specifically I don't know what that is, but at that price it could have been a mower. It could have been a gang mower for cutting fairways. It could have been a utility vehicle.

Q. Actually, I meant to ask you. Are there any portion of payroll taxes which would not have been included within the cost of revenue?

Meaning, were there any additional payroll taxes that were paid out in any of these years that you didn't account for in creating your lost profit calculation?

A. No.

Q. Gas, oil and grease?

A. That's fueling the carts, the mowers.

Q. Just a question. Any idea why gas, oil and grease was so minimal in 2006 as opposed to every other year?

A. Not really. Only that it could have been misposted. I don't know.

Q. Well, do you know what you looked at to make sure that that was an accurate number for 2006?

I mean, what did you do to ensure that that was an accurate number, what's reflected on the report, as to the actual cost expended for gas, oil or grease by Johnson Golf in 2006?

A. I don't really think we would have delved in too deeply into that because we didn't use any one year in our end result.

Q. Well, you averaged three years?

A. We did.

Q. And you did two-year calculations?

A. Right.

Q. So 2006 would be between -- account for half or a third of the data that you based this report on?

A. That's true, but it's tempered by the other two years. If you look at the three year and two year, the two-year average is 24,000. The three-year average is 16. So the average of the two and three is somewhere around 20.

Q. Do you know if that's an accurate number, the $1035 that was spent on gas, oil and grease by Johnson Golf at the North Hills Golf Course in 2006?

A. No, I don't.

Q. What does insurance mean, this line item insurance? What does that account for?

A. That accounts for insuring the vehicles on the golf course.

Q. Any other types of insurance?

A. Probably liability, property.

Q. Were there any insurance expenses that

Johnson Golf paid as part of running the North Hill Golf Club that aren't included within this insurance line item?

A. Not to my knowledge.

Q. Do you know why again in 2006 the amount that's indicated on your report for insurance expenses seems to be so low compared to the other two years?

A. I do not.

Q. Do you know what you looked at or what you based that 2006 calculation on, that only $2,203 was spent on insurance by Johnson Golf in 2006 for the North Hill Golf Club?

A. Do I know what we looked at? Is that the question?

Q. Yes. What did you base that number on?

A. Same reports as we based everything on, as I've indicated before. The general ledger, our audited financial statements.

Q. Did you make any inquiry as to why that number didn't seem to jibe with the other years?

A. No, I don't believe so.

Q. What does operating supplies cover?

A. Fertilizers, tee markers, anything that gets consumed on the golf course. Sand for the bunkers.

Can I say something for one second?

Q. Sure.

A. When we issued the letter of October, we indicate in the last sentence of the first paragraph: "This letter supersedes our letter of October 19th, 2011."

Q. Yes.

A. So --

Q. I'll go through that report, too.

A. But I'm sure -- if, in fact, this supersedes this (indicating), is this relevant?

Q. I think it is.

A. Okay.

Q. And I will go through both reports, I promise.

MR. FOLLANSBEE: You don't have to.

Q. Are there any operating supplies or any items that would come under the heading of operating supplies that you didn't account for in creating this cost of revenue line item for office supplies in your 2011 report?

A. No.

Q. Do you know of any other money spent by Johnson Golf at North Hill Golf Course on, again, operating supplies that you don't account for?

A. No.

Q. And, again, in 2006 do you have any knowledge as to why the operating supplies at North Hill were only $5,502, when they were at least ten times that in every other year that you looked at?

A. I would suspect that there's probably a grouping error within these accounts.

Q. Okay. What do you mean by that?

A. You could have operating supplies accidentally posted into pro shop purchases by example.

It results in the same, you know, net expense, but it's just in the wrong -- it's a geographic problem, not a cost problem.

Q. Do you know where the rest of the insurance expense and gas, oil and grease expenses might be geographically speaking?

A. No, I don't, as I look at 2006, sitting here in 2012.

Q. Who would know how those expenses were segregated so that we could have a better understanding of what the accurate groupings and expenses were for the 2006 year, do you know?

A. I don't think, without additional work, anybody.

Q. Your company did audited financial statements for the year of 2006 for Johnson Golf; is that correct?

A. Correct.

Q. Would your company have information as to how these expenses were grouped or what the actual expenses were for each of these line items in 2006?

Would you be able to determine that based on the data that your company has?

A. I believe so.

Q. Did you do that prior to today?

A. Did we do -- well, this report was issued in 2007. The '06 report would have been issued in 2007.

Q. Okay.

A. So if you are asking if we could go back and look at the groupings within these accounts, we could certainly do that.

And if there are mispostings within categories, we could re-classify them. If that is what you're asking, we could certainly do that.

Q. You didn't do that for purposes of your 2011 expert report?

A. We did not.

Q. Who made the determination as to what expenses would be categorized in a particular category?

A. The books are maintained by the client, by the bookkeeper for the company. So the original books and records are created by the client.

We take that information and we selectively test transactions. An audit is not a 100 percent examination of transactions. It would be prohibitively expensive to do that. So you test a sample of transactions.

If there is a geography problem in that something gets posted to supplies that should possibly be posted to insurance, we are more interested in the overall percentages as opposed to the detail.

So if we look at a margin of 20 percent or 22 percent and it's reasonable when we look at the company as a whole, we move forward from that.

Q. What is the category, Other Direct Costs?

A. I don't really know. That could be -- I don't know. It's an immaterial number.

Q. Can you give me an example of any expense that fell under that particular line item from any of those three years?

A. I would be guessing.

Q. I don't want you to guess.

A. Okay.

MR. FOLLANSBEE: Can we take a five-minute break?

MR. OUELLETTE: Sure.

(Brief recess taken.)

BY MR. OUELLETTE:

Q. We just took a short break. Did you review any documents during the break that are

relevant to this case or your testimony?
A. Not really.
Q. Did you review any documents during the break?
A. No. We just looked at this letter for a minute and then used the men's room. And here we are.
Q. The October 2011 report?
A. Correct, yes.
Q. Who came up with these category names for cost of revenue?
A. They are fairly common use.
Q. Did you come up with them -- meaning your company -- or did the client come up with them?
A. Both. I don't know.
Q. You know what I mean? Did --
A. Direct payroll is direct payroll.
Q. Right. But there are things that are a little bit more amorphous that we've spoken about, like operating supplies and equipment purchases, insurance, other direct costs.
Who came up with those category names?

A. We did.

Q. But it wasn't your determination as to what costs would fall under each category; that was left up to the client?

A. Yes. The client records the transactions as they occur.

Q. In putting together your 2011 report, you didn't look at any invoices or receipts or any raw data for the 2006 year; is that correct?

A. In putting together the October 2011 letter?

Q. Yes.

A. That's correct.

Q. Do you know if anyone at your company at any time took any steps to determine whether or not the amounts listed next to each of these categories in 2006 were accurate?

A. Yes.

Q. Do you know what was done particularly with respect to the line item of insurance to determine that the amount spent on that category was accurate?

A. No, I do not. What I know for certain is that payroll is by site. Payroll taxes are by site. Lease expense is by site. So in those three accounts you have almost 300,000 of the 373 listed.

Q. So is it possible that some of these costs of revenue which are not necessarily site specific, that the numbers here in 2006 are low because those cost of revenues -- those costs of revenue were put under another site rather than North Hill?

A. It is always possible that accounts could get misposted between sites.

Q. Do you know if accounts got misposted between sites for the cost of revenue of insurance in 2006?

A. No, I do not know that.

Q. What about for gas, oil and grease?

A. I do not know that either.

Q. Do you know if expenses for office supplies were misposted for a separate site? Meaning, that the actual costs that were spent at North Hill were not accounted for and instead accounted under the cost of revenue at another site for the year 2006?

A. I understand the question, and I do not know if that happened.

Q. What falls under the heading of pro shop purchases?

MR. FOLLANSBEE: Object to the form.

Q. What type of --

MR. FOLLANSBEE: You can answer it.

Q. What type of expenses -- there's a cost of revenue line item, pro shop purchases. What would fall under that line item, what type of expenses?

A. Items that are resold from the pro shop, golf balls, tees, hats, shirts. I don't think there's a lot of retail going on in that pro shop, but that's what it would primarily be.

Q. How about repairs and maintenance?

A. Repair and maintenance is repairing and maintaining what needs to be repaired and maintained.

Q. Is that equipment as well as the grounds?

A. It would really be equipment. The grounds -- maintenance of the grounds would be done by their own labor forces.

Q. Do you know if there was any misposting to another site of expenses for repairs and maintenance at the North Hill Golf Club in 2006?

A. I do not.

Q. And I asked that because again the cost of revenue under that line item is only a little over a thousand dollars, $1,353. It's quite a bit more for each and every other year that you looked at.

(Pause.)

Q. Do you know why that is?

A. I do not.

Q. Is it possible that that cost was actually put under the cost of revenue of another site for that year?

A. It's possible.

Q. And that would effect the overall cost of revenue data for North Hill in 2006; is that accurate?

A. That is accurate.

Q. What would be included under the line item of restaurant purchases?
A. Food and beverage purchases from purveyors.
Q. What about telephone?
A. On-site phone.
Q. Do you know if there are any other telephone expenses paid by Johnson Golf Management for the North Hill site that are not included in these cost of revenue numbers on your October report?
A. No, I do not.
Q. Do you know if there are -- if any mispostings for the years of 2007 or 2008 where costs attributable to running North Hill were actually put under costs of revenue for another site so that they wouldn't be accounted for in your report?
A. No, I do not.
Q. Do you know if anything was done to check that? I believe you said there are some expenses that are site specific, some that are spread out.

What was done to make sure that the costs that are site specific weren't put under another site?

A. It wouldn't -- the intent is to generate accurate financial information --

Q. Sure.

A. -- from which you manage your company. So you're doing yourself a disservice if you're not at least attempting to keep your books in an accurate fashion.

So if you were to look at the North Hill -- let me pause for a second. I know you said wait until you ask the question fully and then I answer it. Can I also color things or no?

MR. FOLLANSBEE: Absolutely. Use every crayon in the box to color them, Bryan.

MS. PICKERING-COOK: Answer however you feel most appropriately answers the question.

A. Okay. These expenses for the non -- certain expenses are absolutely by site. Obvious. You know, Kelly, where does this individual work? This individual works at North Hill. Where does this individual work? This individual works at this site. Okay?

Payroll is an easily identified expense by site. Lease expense is an easily identified by site expense.

Any item that is identified to that site is directly charged to that site. The other direct expenses are on a companywide basis. Okay?

You might buy a pallet of fertilizers that you're going to use at five locations. Okay? So those costs, which are direct, directly related to the production of your revenue, are allocated by site based on revenue.

So if North Hill represents -- or North Hill represents a percentage of the total revenue of Johnson Management. Okay? These direct expenses that are for all sites are allocated based on that.

So -- does that make sense, what I'm saying to you?

Q. It does. I'm surprised by it. I want to make sure I understand. So --

A. Let me just finish.

Q. Yeah.

A. So what I'm trying to tell you is that these expenses that you're questioning, they tie to the company as a whole.

So on a companywide basis in 2006 for whatever reason insurance was low. Could have been that they were overcharged for workers' comp and general liability and got a big rebate. Okay?

So this is -- this is in relation to the expenses companywide.

Q. Just so I understand. I may be a little bit confused by what you just said. There's non-site specific --

A. Direct expenses.

Q. -- direct expenses. And there are a lot of those under your cost of revenue heading.

A. But they add to an immaterial dollar. They really do. They don't add to -- you could lump every -- other than --

Q. Well, why don't we start by saying: What are the site-specific expenses under the Cost of Revenue heading?

A. Direct payroll, payroll taxes, lease

expense. Those are the ones I know of off the top of my head. I could go back and look.

But the other remaining direct costs wouldn't be lumped into this site to the benefit of this site. That's not how it works. It's spread.

Q. Just so I understand, then, these numbers for each of the remaining categories under Cost of Revenue, they don't necessarily reflect what was actually spent at North Hill; that number is based on a percentage of North Hill's --

A. Use fertilizer as an example.

Q. Yeah.

A. Use seed and fertilizer. Okay? If they spend $20,000 on fertilizer, and you're buying it from a supplier, that supplier isn't necessarily going to give you a bill for each golf course.

You're going to buy what you know you need for the season.

Q. Right.

A. And then you're going to allocate that across all of your sites.

Q. So then how do you determine what percentage of that overall purchase will be attributed to the cost of revenue of North Hill?

A. Based on revenue.

Q. So am I correct, then, there's a lot of these expenses that are companywide; and in order to determine what the cost is at each course, what cost of that overall purchase you're going to attribute to each course, you look at the amount of revenue that that course brings in and you determine what percentage of the overall revenue that course brings in and --

A. To the whole.

Q. As a part of the entire Johnson Golf Management Company?

A. Correct.

Q. And then you assign that percentage to the purchase, and that's how you determine what the cost for each site is going to be?

A. Exactly.

Q. So that -- do you see any flaws in that calculation?

A. No.

Q. I mean -- so it doesn't --

A. I don't.

Q. That number doesn't necessarily reflect what -- you know, for instance, if you spend $20,000 on fertilizer, that number that comes under the fertilizer heading of cost of revenue for North Hill, that doesn't actually mean how much money was spent on fertilizer at North Hill?

A. It's a systematic rational allocation of those common direct expenses.

Q. What if --

A. The reason I was saying this to you is, you know, using, you know, any of these miscellaneous categories that you're talking about, it's not like you would see a low number in one site and a high number in another site. They're going to be proportionate across all sites.

Q. Well, what if one company has a -- what if one site has a much higher revenue than another site?

A. Then they would absorbing a higher percentage.

Q. Why would the amount of revenue that you're taking in, the percentage of the overall, indicate to you the amount of the percentage of fertilizer that you're going to need to run a particular site? Why would those percentages necessarily match up?

Wouldn't golf courses need an equal amount of fertilizer? Do you understand what I'm saying? Why is it based on revenue?

One site could be doing much better than another site. That doesn't mean it needs a lot more fertilizer or that more fertilizer is actually being used.

A. Well, if one site is a nine-hole golf course and one site is an 18-hole golf course, stands to reason that the 18-hole golf course would generate more revenue. It's more grass. It would use more fertilizer.

Q. Sure. Well, say you have two nine-hole golf courses, and they have about the same amount of grass. But one of them is taking in about twice as much revenue for whatever reason.

The numbers that you use would reflect that that nine-hole golf course, that has the same amount of grass as the other, is using twice as much fertilizer, or that twice as much money is being spent on fertilizer for that identical golf course that's bringing in twice the revenue.

A. If you have a site that is struggling --

Q. Well, is that accurate?

A. I'm getting -- I'm giving a little color on that statement.

If you have a site that is struggling, you will probably take steps to conserve dollars in other areas.

Like, your labor costs will probably be less, because maybe you'll be mowing the fairways once a week as opposed to twice.

You might let the rough grow in certain areas, that on the high-revenue-producing golf course you're cutting the rough in those areas.

So your comment is considered -- was considered in preparing these numbers. But you have to devise a methodology for allocating out the remainder of these costs.

Q. How about something like contract services, is that --

A. That would be site specific.

Q. That's site specific?

A. Yes.

Q. Does that mean that the numbers indicated in your report spent on contract service at North Hill actually reflect the amount spent on contract services, or is that based on a percentage of North Hill's overall revenue under the Johnson Golf Management Company?

A. No. That should be an identified cost, just like payroll. It should be. Although I don't know why you're focusing on that because it's such an immaterial amount of money.

Q. I'm trying to figure out which costs are actual and which costs are based on a percentage of revenue.

A. Well, the three that I told you that I know off the top of my head are payroll, taxes and lease expense.

Q. There are many others, including contract services --

A. I think pro shop purchases is direct to the site, too, but I don't want to go on the record saying that without checking it.

Q. So could pro shop purchases be based on the percentage of overall revenue in the company that Johnson Golf brought in for those particular years as opposed to what they actually spent on pro shop purchases for those years?

A. I think pro shop purchases is by site.

Q. Do you know of any other line items under cost of revenue that is by site in that it actually reflects the amount spent at that particular site?

A. I will -- I would have to go back and look in our work papers, but I believe restaurant purchases and pro shop purchases are both by site.

Q. Do you know if repairs and maintenance is by site?

A. I don't think so.

Q. Do you know if insurance is by site?

A. I believe insurance is allocated.

Q. Meaning that it's determined on a percentage basis rather than an actual cost of the site basis?

A. Yes.

Q. Do you know how operating supplies is calculated? Is that by site or is that based on a

percentage of overall revenue?
A. I -- I'm not sure. I think that is allocated.
Q. What about gas, oil and grease?
A. Same.
Q. Allocated?
A. Yes.
Q. Telephone?
A. I think that's allocated.
Q. Equipment purchases?
A. By site.
Q. That would be by site?
A. That's by site.
Q. Other direct costs?
A. Allocated.
Q. Utilities?
A. I'm not sure about utilities. I would have to look.
Q. You're not sure if that's by site or whether it's allocated based on a percentage of overall revenue?
A. Correct.
Q. Do you know of any other accounting

methods that could be used in determining the cost of revenue for a particular site other than allocation based on a percentage of overall revenue?

A. Yes. You can do it based on labor.

Q. What does that mean? Could you explain what that method would be?

A. You could allocate -- it's the same approach but using your labor as a percentage of total labor times that expense.

Q. Maybe I don't understand. What do you mean by labor?

A. Direct labor. Direct payroll. I'm sorry.

Q. Okay. So instead of using revenue, you use direct payroll?

A. You could.

Q. Meaning, I guess you look at what the direct payroll at this site is, and you determine what all these allocations are based on the percentage that that site is of the total direct payroll of the company?

A. Yes.

Q. Any other methods that could be used?
A. I'm sure there are other methods but none that would seem appropriate to me. You can do it based on acreage.
Q. Would there be a standard operating method for this type of situation where you're trying to allocate costs for expenses that are non-site specific?
A. Any method that provides a reasonable and consistent allocation by site.
Q. Would it be possible for some of these cost of revenue line items that were calculated through the allocation method we've discussed, would it be possible to actually determine the amount that was spent at the site for that particular year on these line items, such as repairs and maintenance or gas, oil and grease?
A. I suppose you could refine the allocations through discussions with on-site management, course superintendents. You could probably refine it.
Q. That wasn't done in coming up with the numbers that was -- on which your report is based,

however; is that correct?

A. That is correct.

Q. Could you take me through the calculations that are included on page four of the report, the Pro Forma Gross Profit Calculations.

A. This is the three year, two year and average of the two and three years for the five-year period 2009 to 2013.

The revenue is constant, allowing for no increases or decreases, just assumed rateable in the calculation period.

And the cost of sales is also rateable throughout the calculation period with the exception of lease expense changes which were provided to us.

Q. Why did you keep revenue constant? Why did you assume that in coming up with your calculations in this report?

A. At the time we prepared this report we did not have the information that is in the RFP, so we did not have any knowledge of rate increases at that time.

And given the state of the -- of where the economy was at that time, we prepared this on a flat line basis.

Q. And why did you assume that the cost of revenue would remain constant throughout the five-year period?

A. It was a reasonable assumption.

Q. Were there any trends or market factors that you discovered that would have affected revenues going forward, starting in October of 2008, going forward during that five-year period?

A. Again, I think this is a conservative presentation even from the information that we had at that time.

We do a number of golf courses. We do the accounting and taxes for a number of golf courses. And what we were seeing in the industry was that the high-end golf courses were losing market share and the lower priced golf courses were gaining share. People were trading in the hundred dollar round for the $50 round.

So we left this flat, again to present in a -- present this in a conservative light in our opinion.

Q. Did you account for inflation in any of these costs?

A. Inflation was really running pretty flat, but no, we did not. We could have. We probably should have. But we left the revenue flat so we left the costs flat.

Q. Is North Hill a high-end or low-end golf course?

A. It's a nice golf course, but it is not a high-end golf course.

MR. JOHNSON: It's called low end. I'd like to get $50 for 18 holes. It's like 33 or something like that.

Q. Is it low end amongst public golf courses or low end amongst the whole category of golf courses including public and private?

A. Fee-wise it is at the low end. The greens fees are very reasonable there.

Q. Amongst public golf courses even?

A. Yes.

MR. FOLLANSBEE: Off the record.

(Discussion off the record.)

MR. OUELLETTE: Would you mark

this as three and this as four, please.

(Exhibit Nos. 3 & 4 were marked for identification.)

Q. I've just handed you a document that's been marked Exhibit 3 which is titled, Johnson Golf Management, Inc. Audited Financial Statements and Supplementary Information, Years Ended September 30th, 2007 and 2006.

Also, a document that's been marked as Exhibit 4, which is headed, Independent Auditors' Report on Supplemental Information. And that's dated December 10th, 2007.

Did you rely on either of these documents in putting together your October 2011 report?

(Witness reviewing documents.)

A. Yes.

Q. Did you rely on -- which one, or both, did you rely on?

A. We would have relied on both.

Q. Did you rely on both in creating your August 2012 report as well?

A. No, we did not.

Q. Did you rely on either of these

documents in creating your August 2012 report?

A. No, we did not.

Q. Am I correct that your company, LMHS, created both of these documents?

A. Yes, that is correct.

Q. Did you personally have a role in creating either of these documents?

A. Yes.

Q. What was your role in creating the document that's been marked as Exhibit 3, the Audited Financial Statement and Supplementary Information?

A. I have overall responsibility for this report.

Q. What about Exhibit 4, the Report on Supplementary Information?

A. I have overall responsibility for that report as well.

Q. What does "overall responsibility" mean?

A. It means I'm not generating the work, but I'm doing final review and signing off on its release.

Q. Can you just tell me generally what the purpose of creating this document, number three, was and what was done to create it?

A. The only reason Johnson Golf is audited is to comply with contractual obligations for certain of their leases.

Outside of that a company of this size and structure would have no need to be audited. So that's why we created it.

Q. And what did you do to create this document?

A. We conducted our audit of the books and records of Johnson Golf.

Q. What was the purpose in creating Exhibit No. 4, the Report on Supplementary Information?

A. Certain of the leases have site-specific financial statement requirements. So in order to get to the individual by site financials, you have to tie it all in together anyway.

Q. Is it accurate to say that Exhibit 4, the Report on Supplemental Information, breaks down the audit by sites, whereas the initial audit does not?

Meaning, Exhibit No. 4 has information that's specific to North Hill, whereas Exhibit No. 3 deals only with the company as a whole?

A. That is correct.

Q. How did you use Exhibit No. 4 in coming up with your October 2011 report?

A. It is the starting point for the October 2011 report.

Q. I know we've talked about this a bit, but beyond this report and the numbers included within it, what else did you look at in creating your October 2011 report?

A. Can I ask you to repeat that? I'm sorry.

Q. Sure. I believe you just said this was the starting point. Beyond this document, Exhibit No. 4, what did you look at? Where did you go after you started?

A. We would have reviewed the work papers in conjunction with writing that letter. But this would be the -- the work was done. The letter, I think indicates --

(Witness reviewing document.)

A. Right. As the letter states: "These pro forma gross profit calculations were assembled based on historical revenue and cost of revenue information."

Q. What was the historical revenue, cost of revenue information that you looked at in creating this report, Exhibit No. 4, for North Hill?

A. Client's books and records.

Q. What would those include?

A. General ledgers, expense analysis, payroll, tax returns, bank statements.

Q. On page 13 of this document, which is the third page in --

A. Yes.

Q. Actually, why don't we look at 2006 first, which would be I guess page 16.

MR. FOLLANSBEE: Which exhibit are we on?

MR. OUELLETTE: Exhibit 4.

A. Exhibit 4, page 16.

Q. And the heading is Johnson Golf

Management, Inc., Statements of Operation and Accumulated Deficit By Location, Year Ended September 30th, 2006.

And then it breaks down Revenue, Cost of revenue, et cetera, for each of the golf courses owned by Johnson Golf Management. That's the page I'm referencing.

A. Yes.

Q. Can you take me through the -- on the left-hand side there are categories. Can you take me through what some of those mean?

The first being Revenue, obviously. And I think we've discussed that quite a bit. The next is Cost of Revenue, which we've discussed.

And then Gross Profit. Is that the same gross profit right there that you're looking at when you come up with your lost profit numbers in your reports?

A. Yes, with the exceptions as noted.

Q. The next line is General and Administrative Expenses. What does that mean?

A. That's the fixed overhead.

Q. Those expenses would not be accounted for in your profit calculations?

A. That is correct.

Q. Why is that?

A. Because those are the expenses that are not site-specific. Those are expenses that are not directly related to the production of revenue, is a more accurate term or statement.

Q. Could you say that statement again? I'm sorry.

A. Those are the expenses that are not directly related to the production of revenue.

Q. The next line down says, Earnings From Operations. What does that reflect?

A. That is profit after you've absorbed everything but interest expense into your --

Q. Then there's another line that says, Other Expenses.

A. Yes.

Q. Which includes interest expense and settlement expense?

A. That is correct.

Q. And then the next line down says, Earnings Before Income Taxes. What does that reflect?

A. That is the net earnings on a by site basis before the payment of any income taxes.

Q. Then the next line is Income Taxes. So the final line is Net Earnings. What does that reflect?

A. That is the net earnings after all costs, including income taxes, by site.

Q. Why in creating this audit do you look at net earnings?

A. We are rendering an opinion on the financial position of the company as a whole. So we have to look at the company on a companywide basis from top line to bottom line and balance sheet strength.

Q. Then why do you not just stop at gross profit? Why do you continue to add additional calculations to reach net earnings?

A. Because the net earnings are after you absorb the overhead of corporate office, administrative, marketing, all of the costs that are not directly related to the production of income.

Q. The next page in this report is page

17, and it states, Schedules of Cost of Revenues By Location, for the year ended September 30th, 2006.

A. Yes.

Q. And then there are some numbers next to or under the heading of North Hill?

A. Yes.

Q. Are those the exact numbers you used when determining what North Hill's costs of revenue were for the year 2006 in your October report?

A. I believe without the line item for depreciation, yes, they are.

Q. So you made some accommodation for the number that's under Lease, correct?

A. On a going-forward basis, that is correct.

Q. Other than the lease number and the depreciation number, they're the same numbers, though, that you used?

A. In the 2006 column for the October 2011 letter?

Q. Correct.

A. Yes. And there would not have been an adjustment to the lease amount on a historical basis. It would only have been on a going-forward basis.

Q. Why do you include depreciation in this calculation of schedule of revenues when you completed your audit?

A. Because for a GAP, Generally Accepted Accounting Principles, complete financial statement, depreciation is a component of that, of that complete financial.

MR. FOLLANSBEE: Is this a good time?

MR. OUELLETTE: If you want to -- do you want to take a lunch now?

MR. FOLLANSBEE: We can go off the record.

(Discussion off the record.)

(Brief recess taken.)

BY MR. OUELLETTE:

Q. Do you know what percentage of overall revenue North Hill represented during the three years that you looked at, 2006, 2007, 2008?

A. I can look here. 2007 looks like it's about -- it's 12 -- 12 percent, 13 percent.

Q. Where are you getting that?

A. I'm just taking -- this is on page 13.

Q. Yes.

A. Just looking at North Hill's total revenue -- actually, we would have used fees and dues and -- as a percentage of total fees and dues.

MS. PICKERING-COOK: Let the record reflect he's looking at Exhibit 4, I believe.

A. Yes.

Q. So you're looking at page 13 of Exhibit 4?

A. Yes.

Q. You would have only looked at fees and dues, not overall revenue; is that accurate?

A. We did not -- I believe -- this is going to get a little confusing. Okay.

Q. Maybe I'll be clear on what I'm looking for.

A. Okay.

Q. We talked a lot about whether or not costs of revenue was specifically a reflection of what was spent at that site, calculated in that manner, or if they were calculated on an allocation basis, meaning that they were calculated based on the percentage that that site represented of the overall revenue for the company.

I think you may have just told me that the overall revenue of the company is not the total revenue, but indeed it is just the fees and dues line. Is that accurate?

A. Okay. So it's a little more -- a little bit more in the calculation than that.

Q. Sure. What was the percentage that you used when you calculated it?

A. Okay. Here's the math. You have some sites that pay a lease expense to the city or town. You have other sites that are paid a management contract. Okay? So they don't pay a site lease.

So the calculation is fees and dues, minus lease expense. So in that way you can compare that with the sites that don't have a lease expense that just get paid a management contract.

I know that's confusing.

Q. No. I think I understand.

A. So it is really -- it's a percentage

revenue to total revenue. It's your site revenue to total revenue.

Q. And that doesn't include pro shop sales or food and beverage as part of the revenue costs?

A. Correct. But it does include contract management.

Q. So, for instance, I see South Shore here as one of the golf courses that's managed, and there's a contract management number of $180,000?

A. Correct.

Q. Meaning that you don't get -- he doesn't get paid -- the company doesn't get paid based on its profits; it gets paid a contracting amount?

A. Correct.

Q. And so you would use that number for South Shore as opposed to any actual fees and dues or other revenue that's earned at that site?

A. That's correct.

Q. But for North Hill you would use the fees and dues number, minus what was paid under the lease agreement to the town?

A. Yes.

Q. Are there other ways to create the revenue calculation that you're going to use in order to calculate the cost of revenue?

A. In this particular case it's -- that's not an easy task. I mean, like I said to you earlier, you could do it based on payroll. That is a method of allocation, based on payroll.

We chose to allocate the remaining cost based off of a revenue basis.

Q. Were there other alternatives that you could choose from in determining how to do that? For instance, could you take into account pro shop sales as part of revenue, especially when some of the -- or food and beverage sales, for instance?

Would you use those as part of the overall revenue calculation? Would that be an option?

A. No. Because you don't have pro shop revenue and you don't have food and beverage revenue at both of those managed contract sites.

Q. What about using the actual fees and dues that were collected in order to determine the revenue number at the sites that have a management contract, so that you could actually look at the amount of money that was earned?

A. That information is not available to us. I don't have that information.

Q. Would that be helpful in order to determine what the revenue number was that you were going to use in order to determine what the cost of revenue would be at those sites?

A. I don't know.

Q. If you look at page 18 of the report, the last page. It's the Schedule of General and Administrative Expenses By Location --

A. Yes.

Q. -- for 2006. That's Exhibit 4.

A. Yes.

Q. Could you take me through what each one of these line items stands for? Meaning, what type of expenses would have come under each one of these line items?

A. Yes. Salaries and wages. That -- again, those are specifically assigned. Those are administrative functions assigned to their sites.

Q. I'm not sure if I understand what that means. What does that mean? Whose salary and wages are calculated under the administrative expenses?

A. I would have to look at the payroll reports to tell you that. I could do that. But I'm not really comfortable with telling you that right now.

Q. Then what makes this line item of salaries and wages different than the direct payroll line item under cost of revenue?

A. Because these salaries would not be directly related to the production of revenue.

Q. Can you give me an example of what salaries that would be?

A. Yes. Let's say you had a general manager for the overall operation at Whaling City, that person is not out, you know, using a step meter on the greens or, you know, managing or maintaining the golf course.

That person is in an overall supervisory capacity, but yet is an employee of Whaling City. Just as an example.

Or Beverly. You know, I don't know off the top of my head who that person is or what their exact function is, but it would be more of a general manager, not a direct line.

Think of it in terms of, if you have a factory and somebody's out in the factory operating a machine. When that company calculates their cost of sales, that machine operator is part of the cost of sales.

The person that's in-house scheduling shifts is an indirect cost, or the person that's in-house doing payroll is not a direct cost. They are an indirect cost.

Q. Is that person specific to the site? For instance, the money here that comes under North Hill, would that reflect the salary and wage of someone who worked specifically at North Hill or that worked companywide?

A. I'm not certain. I believe these are site specific. But you can't hang me out to dry, though. I have a right to go look.

Q. No. I understand. I'm trying to understand -- so this number, for instance, 2006, the 2,554 number that comes under salaries and wages at North Hill, you didn't subtract that number from gross profits? You didn't account for that number?

A. Correct. We didn't include any overhead. Any indirect costs. We did not include any overhead costs, we did not include in the calculation, that's correct.

Q. Well, specifically for salaries and wages -- and I understand you didn't include overhead costs in your lost profits valuation.

If the North Hill Golf Course was no longer run by Johnson Golf Management, then presumably they would not continue to pay the salary of the person who was working at the North Hill site that was earning this salary and wages; isn't that accurate?

A. That's true.

Q. So why would you not account for that within your lost profits evaluation? Why would -- why would you not account for that?

A. Because these costs are assumed that -- they're basically in place. You know, I'd have to take a look at the salaries and wages administratively. I think they're all assigned by person. I believe they are.

But before I render an opinion on that I'd like to look at the work paper.

Q. Okay. Please do. What I'm trying to figure out is why this cost wouldn't come out of, you know, the cost calculation that's involved in your lost profits calculation.

What about payroll taxes, what comes under that line?

A. It's payroll taxes, Social Security, Medicaid, unemployment.

Q. So what makes the payroll taxes that come under your general and administrative expenses spreadsheet different than the payroll taxes that come under your cost of revenue spreadsheet?

A. I must be doing a terrible job of explaining this. But it's costs associated with the production of income, are included in your direct costs. That's how -- that's cost accounting.

Q. So why are these payroll taxes that come under the administrative expenses not related to the production of revenue; whereas, the payroll taxes that come under your cost of revenue sheet are? I'm looking for --

A. Okay. So the payroll taxes that are in the direct costs are a percentage of that direct payroll.

The payroll taxes that are in general administrative costs are a percentage of the general and administrative payroll.

Q. Whose payroll taxes are these? Can you give me an example of who those individuals would be?

A. Let's say you have a general manager -- you mean specific to North Hill or in general?

Q. Specific to North Hill.

A. Let's say you -- I don't know -- I'll give you a possible example. If you had a bookkeeper on-site and you paid that person whatever, $300 a month, to come in and work a half a day.

They would have somewhere around ten percent burden for payroll taxes on top of what you pay them. That's what that is.

Q. And would you agree that you're not taking into account those payroll taxes into your lost profit calculation?

A. I would agree.

Q. And what comes under advertising?

A. That I'm quite certain is an allocation of what was -- could be hats, could be Johnson Golf Management hats.

Maybe they spent -- maybe that number is $8400. I can't even read it with glasses. Maybe they spent $8400, and we spread that across all sites.

Q. Would there be advertising specific to the North Hill site, or would that be a expenditure for Johnson Golf?

A. Maybe. I don't know if there was specific to North Hill.

Q. Would you agree that advertising spent on North Hill, that money should be included in your lost profit costs, or your lost profit calculation, because that would be a cost no longer shouldered by Johnson Golf Management if they didn't run the North Hill Golf Course anymore?

A. I would not -- I would tell you that that is not a direct cost. That's a marketing cost which falls under -- it's just -- the way a financial statement flows is revenue, cost to produce that revenue, and administrative costs to run the business administratively.

Q. When you were calculating lost profits, though, would you look at costs that aren't direct costs, but they are costs that would no longer be shouldered by Johnson Golf if they were to no longer run the North Hill Golf Course?

Even if they're not what you've termed as direct costs, they're still costs that are associated with running the particular site.

It seems as though there are costs that come under that category that are not being accounted for. Is that accurate?

A. I suppose we could debate that. You know, I mean, in discussing advertising, we're talking about $84. So I don't know how much time we want to talk about it. But --

Q. That may also beg the question as to, do you know if anyone looked at whether or not that $84 amount was accurate for the 2006 year, as it is extremely small compared to the amount of advertising that was spent for North Hill for the other years you looked at, 2007, 2008?

A. What was the question there?

Q. Do you know what would have been done to determine the accuracy of that $84 amount for advertising for 2006 at North Hill, as it seems --

A. No. I think, Evan, that was an allocation. I think -- I believe that -- it looks like it's about ten percent of it, or one percent of it.

I can't tell if that's an eight -- the number's hard to read.

Q. Maybe just to go back a little bit, then.

So under that allocation, the math that we were talking about before, for 2006, if you look at North Hill's fees and dues, they are about 139 -- I need glasses, too -- somewhere about 139,000?

A. Yup.

MS. PICKERING-COOK: What page are you looking at?

MR. OUELLETTE: This is page 16.

(Pause.)

Q. Then you would subtract the lease expense, which was -- you have it as $107,000 -- $107,500?

A. Right. You'd subtract the lease expense from the total as well.

Q. So the revenue for North Hill in 2006 would have been somewhere around $30,000 based on that calculation, and that's the calculation you were using in order to determine cost of revenue?

A. I believe it was -- maybe it was total revenue minus lease expense. I'd have to go back and look. But it's revenue minus lease expense.

Q. Okay. You don't know at this present time how you determined the cost of revenue for North Hill during any of those three years in your report; is that accurate?

A. No, that's not accurate.

Q. Well --

A. I think that the -- there is a question on how some of the expenses are allocated, whether it's based on total revenue minus lease expense or fees and dues minus lease expense.

Q. Do you know which calculation you used in order to determine the overall revenue and cost of revenue for the North Hill Golf Course?

A. We're not talking about the revenue. The revenue -- the revenue is the revenue. We're talking about the non-site specific costs of revenue.

Q. Yes.

A. So my answer to you is I am not sure if it's total revenue minus leases or if it's fees and dues minus leases.

Q. If you see page 14 of Exhibit 4, which is the breakdown of revenues, I think it shows why I'm interested in this, because the fees and dues for North Hill in 2006 were about $139,000, but the total revenue --

A. Hold on. Let me catch up to you. What page?

Q. Page 14.

A. 14 is Schedule of Cost of Revenues By Location?

Q. Yes.

A. Okay.

Q. Whether you used fees and dues or total revenue is important, because the fees and dues reflected in your calculation, about 139,000, whereas the total --

A. I can tell you by looking.

Q. -- the total revenue is about $485,000.

A. We used the total revenue. I would say looking at this now, Evan, we used total revenue; otherwise, it wouldn't make sense.

Q. Do you see the line item that says that $287,000 were attributed to pro shop sales that year?

A. That's a misposting. That belongs in -- 200 of that, or 250 of that belongs in fees and dues.

Q. How do you know that?

MS. PICKERING-COOK: Where is that? I'm sorry.

A. Page 16.

MR. FOLLANSBEE: Which exhibit are you on?

MR. OUELLETTE: It's page 16, not 14. The font is small.

MR. FOLLANSBEE: Okay.

A. Again, that's a geography issue. That belongs in fees and dues, the majority of that. There's no way the pro shop would do that kind of revenue.

Q. How do you know how much of that was misposted and how much of it belongs under fees and dues?

A. I'd have to just go back and look at the record.

Q. So you believe it was total revenue including pro shop sales and food and beverages that you used in your allocation math?

A. It would have had to have been, otherwise this wouldn't make any sense, yes.

Q. Was that steady throughout 2007 and 2008 as well? I mean, was that the same calculation you used in determining your 2007, 2008 numbers, the inclusion of the pro shop sales and food and beverage numbers?

A. Yes. I would say yes. It's based on total revenue minus lease expense.

Q. Why would you use pro shop sales and food and beverage sales revenue as part of your allocation math to determine what the non-site specific cost of revenue would be?

(Pause.)

A. I would say because it gave us a more accurate picture.

Q. Well, how would the amount of food and beverages sold at North Hill as a proportion of the amount of food and beverages sold throughout Johnson Golf Management at all of its sites give you a more accurate picture as to what amount of insurance or operating supplies or telephone costs were spent at North Hill?

A. I think two things. One, the amount of expenditures that we are talking about allocating would not have varied greatly by any reasonable approach.

And, two --

Q. Why do you say that?

A. And, two, because the revenue groupings within revenue categories we probably didn't rely on a hundred percent.

The pro shop sales is a good example. Knowing that the pro shop doesn't do a quarter of a million dollars of revenue at North Hill, a lot of that revenue is fees and dues.

Q. Beverly probably didn't sell a half a million dollars worth of food and beverages either.

A. I don't know that. Beverly had a full restaurant.

MR. LARAMEE: A hundred outings.

MR. JOHNSON: Weddings.

MR. FOLLANSBEE: Can we go off the record.

(Discussion off the record.)

BY MR. OUELLETTE:

Q. Going back to the last page talking about general administrative expenses, what would come under dues and subscriptions?

This is the last page of Exhibit 4. We were going down the left-hand column. I'm continuing in that vein.

A. That could be a subscription to Superintendents Magazine. I would have no idea.

Q. Why would you not account for that cost in your lost profit calculation, the amount spent at North Hill on dues and subscriptions?

A. Because you would still continue with those magazines. You would still maintain that expense whether North Hill was in place or not.

Can I go back to the revenue piece, because I think you're getting concerned about something that isn't a concern.

Q. Sure.

A. If a greens fee is rung up through fees and dues, then it's coming through fees and dues. If there's -- if there are 200 memberships available and they're going to be available on December 1st, and those are going to be -- and it's going to be on a first come first served basis, it could be that in 2006 all of those revenues, all of those memberships were rung in by the pro shop.

So they got posted to pro shop sales, as opposed to fees and dues. So the -- again, it doesn't affect the revenue.

It got posted to pro shop sales, but it is really -- you probably need a tag line that said, Pro shop sales dash memberships.

Q. Well, if at North Hill --

A. Do you understand what I'm saying?

Q. I do. But see if I'm correct. If at North Hill in 2006, $287,000 gets put under pro shop sales rather than fees and dues, and the revenue calculation on which you base your cost of revenue is based on fees and dues and not total revenue, you get a totally different number for cost and revenues than you would have if that number, the 287,000, was added to fees and dues, because if you add it to fees and dues, then the fees and dues number at North Hill would be a substantially larger number and therefore larger percentage of the total.

You understand what I'm saying?

A. I do.

Q. So the way in which you calculate your cost of revenues is important for your lost profit calculations.

And the way in which you calculate the revenue determines how a lot of those cost of revenues are calculated.

So what I've been trying to figure out is how you -- how you determine what the percentage is in the cost of revenue calculation.

And I think you've told me that -- I think you initially told me that it was fees and dues minus lease.

A. Right.

Q. And then after going over the numbers for 2006, you now believe it's total revenue?

A. Minus lease.

Q. Minus lease. But I don't know if we've established what it would be for 2007, 2008.

Do you know how you calculated that number for 2007, 2008? And was that the calculation that you used at all of the sites or just North Hill?

A. Okay. Two questions. Two answers. I'm not sure if it was total revenue. I believe it was total revenue. I can easily verify that for you.

Q. Do you see how if it's total revenue minus lease versus fees and dues minus lease, especially in North Hill, that you would result in a totally different number?

A. I do.

Q. Okay. So --

A. And the approach was the same in all years.

Q. Okay. But you don't know at this moment which approach you used?

A. Not with a hundred percent certainty. Having looked at '06, it certainly appears that it would have had to have been done on total revenue.

Q. How would you verify that?

A. While I'm sitting here?

Q. No.

A. I would go back to our work papers.

Q. You would be able to verify that?

A. Yes.

Q. Is it possible that the fact that the very low cost of revenue numbers in 2006 might mean that, for North Hill, for instance, the $84 on advertising might mean --

A. That's not cost of sales. That's general administrative expenses you're talking about.

Q. All right. That's a good point. How do you calculate the general administrative expenses? Do you use an allocation method?

A. Certain items are by site, just like direct costs. The remaining are allocated.

Q. We haven't gone through all of them yet, but going back to the list on the last page of Exhibit 4, which is page 16, which of those --

MR. FOLLANSBEE: The last page is 18.

MR. OUELLETTE: Yes, 18.

Q. -- which of those categories are fixed by site?

A. I believe, and I'm happy to verify this for you, that salaries and wages, payroll taxes, professional fees.

I believe those four categories are by site -- those three categories are by site, and everything else is allocated.

Q. So what's the calculation that you used to determine the allocated expenses on that list that are administrative expenses like advertising, insurance, travel and entertainment, et cetera?

A. The same as direct -- the same as the allocated direct costs.

Q. And at this moment you're not sure what that method was, whether or not you used total revenue or fees and dues?

A. That's fair to say.

Q. What costs come under insurance in the administrative expenses list?

A. That could be auto insurance on a non-direct vehicle. It could be Doug's car.

Q. Do you know what -- insurance is also a line item on the cost of revenue spreadsheet.

So what makes the insurance that you've categorized as an administrative expense different than the insurance that you've categorized as a cost of revenue?

A. Insuring items such as your golf carts, your general liability, workers' comp for your employees, would all fall under direct.

Q. If you were to not manage the North Hill Golf Course anymore, wouldn't you be less those expenses?

I mean, wouldn't you have to purchase less workers' comp if you have less employees?

A. But those are in your direct costs. Those costs are in that gross profit calculation. They're an expense. They're a deduction in arriving at gross profit. Not the administrative.

Q. Okay. Then I'm asking you what comes under the administrative expenses insurance?

A. And I said, like insuring Doug's car.

Q. What else would be under there other than insuring Doug's car?

A. Not too much else, really. Management's vehicles.

Q. Doug must drive a really nice car.

A. How much is the expense? Or it could be Jason's car and Doug's car. I'm not sure exactly what -- but it's non-direct equipment.

Q. What comes under office expense -- and also insurance, I think you said, would be allocated as opposed to site specific in how you come to the amount of the expense?

A. Yes.

Q. What about office expense?

A. That could be anything from computer supplies to buying coffees to postage. Could be anything that -- miscellaneous item that ends up covering your overhead.

Q. So why would those items not be included in the cost of revenue? There's a line item in cost of revenue that says, I believe it's operating supplies.

A. Yes.

Q. Whereas -- and that's counted towards the lost profit calculations. Yet, there's an administrative expense called Office Expenses, which is not calculated in the lost profit calculation.

So what's the difference between the two? The more specific you can be as to the types of expenses.

A. Okay. In the overhead, in the general administrative, cases of paper, toner cartridges, small items that get expensed, like maybe you bought a printer, maybe you bought a laptop, maybe you had your laptop repaired.

Maybe you had a manager meeting and you bought lunch. Maybe you bought a new phone. Maybe you, you know, whatever would -- maybe you put your postage meter charges through there.

Those are office supplies. Maybe you had a Christmas party, you put that through there.

Q. Those are office supplies?

A. That are in the overhead, in the G&A.
Q. In the general and administrative expenses?
A. Yes.
Q. So those are things that would not be counted in the lost profit calculation?
A. Correct.
Q. If you no longer had to manage the North Hill Golf Course, wouldn't you theoretically buy less paper and less toner?
(Interruption.)
Q. If you no longer had to manage the North Hill Golf Course, wouldn't you then presumably buy less paper, buy less toner, use less postage? Those costs would be associated with running the golf course; wouldn't they be?
A. If you have eight golf courses or seven golf courses and you then go do one less, all of your infrastructure costs are still there.
Your manager meetings, your -- it's a -- it's just a cost of doing business. You have an infrastructure that has a capacity to support a certain level of activity. And whether it's seven

golf courses or six, those costs are relatively fixed.

If you went from seven to two, yeah, you would have experienced a significant drop. But if you're nine going to eight or six going to five, the amount of drop in your overhead would be very minimal, I would suspect.

Q. But aren't there office expenses that are specific to the North Hill Golf Club, like the toner that gets used in the printer at the golf club, the paper that is used at the pro shop, the magazine subscription that gets delivered to that particular golf club, the advertising for that golf club? Why are those general and administrative expenses?

A. Again, at the risk of being redundant, because they're not directly tied to generating revenue.

Q. But wouldn't those be expenses that you no longer had to shoulder if you didn't run the golf club?

A. I can only say not necessarily. Maybe. But I don't believe if you had a seven percent contraction in your business that those costs would go away. They wouldn't be on that site, but they would be spread among the remaining sites.

By example, Doug's car insurance isn't going to be any less.

Q. I'll give you that one. But isn't the purpose of breaking these down by site, breaking all these expenses down by site, to determine what actual costs, or at least what percentage of the total costs, would be attributable to what happens at that site? Isn't that the point of page 18?

A. Again, it's a way -- it's a way to get all of the costs incurred by the company absorbed by all the sites. It is a way to account for everything.

You have the whole and you have in this year seven sites. It's a way to compare all these sites through bottom line.

Q. What comes under professional fees?

A. My bills, lawyers' bills. If you brought in a computer consultant to install a new computer at your office. Those type of expenses.

Q. And that's a site-specific allocation?

I shouldn't say site-specific allocation.

That number that's reflected on this list is site specific?

A. I believe so, yes.

Q. So that was the professional fees that were actually expended at the North Hill Golf Course or for the North Hill Golf Course in 2006?

A. Let me restate that. My fee would be allocated.

Q. Okay.

A. If there was a litigation at a site and they were paying lawyers' bills or something like that, that would be specific to that site.

Q. So that's kind of a hybrid allocation and site specific --

A. Right.

Q. -- number there?

A. Right.

Q. What about Taxes Other?

A. Allocated.

Q. What would come under that? And what I mean is, what are the taxes that are administrative expenses as opposed to the taxes that are cost of revenue?

A. The taxes that are in cost of revenue are payroll, I believe, right?

(Witness reviewing document.)

A. Yes. And the taxes here would be things like personal property tax. You know, the town of Waban sends a personal property tax for, you know, the business equipment that they have in their corporate office.

Q. Do you know --

A. Could be auto excise.

Q. Do you know what any of the specifics would be for North Hill for those taxes that they were paying?

A. I think that's an allocated number.

Q. Okay. What about telephone? What separates the allocated administrative telephone costs from the cost of revenue telephone cost?

A. It's the -- on-site phones are charged to a site. Corporate main number is charged to the overhead.

Q. Travel and entertainment?

A. He lives well, doesn't he? That's Doug entertaining.

Q. Would any of that entertainment have taken place at the North Hill Country Club?

A. Never took me golfing there.

(Pause.)

A. I don't know. I would think not. I think that was probably more Doug out managing his business and buying people lunches as a result.

Q. You also include depreciation in this list as an administrative expense. What's administrative depreciation versus cost of revenue depreciation?

A. Cost of revenue depreciation would be the equipment, mowers. Specific to North Hill, Johnson Golf built the clubhouse. So a lot of that is being depreciated over time.

On the administrative side, again it's items, Doug's vehicle. It could be corporate office. Those items.

Q. That's allocated as well?

A. That's allocated as well.

Q. As for the -- I know you said professional fees, some of it was allocated, some of it was site specific.

For instance, I think you gave the example of you doing the audited financials, you creating audited financials for the North Hill Golf Course would come under that.

A. Yes.

Q. If Johnson Golf no longer ran the North Hill Golf Course, they would no longer have to shoulder the expense of you putting together their audited financials; would they?

A. Yes, incrementally our fee would go down if we didn't have to do this divisional statement.

Q. One hundred percent of your fee for the work you would have done at North Hill would be eliminated if Johnson no longer ran North Hill?

A. That's true.

Q. I think we're going to break soon. Five more minutes.

Staying on Exhibit 4, if you look at page 14 -- nope -- 16 -- if you look at page 16, it's the breakdown of profits for each of the golf courses, including North Hill.

You see on that page there's a general

administrative expenses figure?

A. Yes.

Q. And in this case it's just over $6,000?

A. Yes.

Q. You subtract that from the gross profits in order to determine the earnings from operation; is that correct?

A. That is correct.

Q. And then you also subtract the interest expenses in order to come to the -- as well as income taxes -- in order to come to the net earnings; is that accurate?

A. That is accurate.

Q. And the net earnings in 2006, the amount you come to is $51,929?

A. That is accurate.

MR. OUELLETTE: I think we might as well break at this point. Thank you.

MR. FOLLANSBEE: Okay.

(Whereupon the deposition was suspended at 1:50 p.m.)

WITNESS CERTIFICATE

I, BRYAN J. MORRISSEY, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS _________ DAY OF ________, 2012.

____

BRYAN J. MORRISSEY

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ERRATA SHEET

CASE:_______________________________________

WITNESS: ________________**DATE TAKEN:**__________

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SIGNATURE/DATE: ______________________________

COMMONWEALTH OF MASSACHUSETTS)

NORFOLK, SS.)

I, Nancy A. Ruvido, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, CSR No. 126193, do hereby certify that there came before me on Friday, August 31, 2012, at 10:35 a.m., the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon examined upon his oath, and his examination reduced to typewriting under my direction; and that the deposition is a true record of the testimony given by the witness. I further certify that I am neither attorney or counsel for, nor related to or employed by, any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this 4th day of September 2012.

____

Notary Public
My commission expires:
August 5th, 2016

PLEASE NOTE:
THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS, UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING REPORTER.

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