

1999

Lee O. Barney v. Jon D. Siddoway : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LEE O. BARNEY

Plaintiff and Appellee,

VS.

Appellate Court No. 990579-CA

JON D. SIDDOWNAY and STANDARD

TILE, INC., a Utah Corporation,

Priority No. 15

Defendants and Appellants.

BRIEF OF APPELLANTS JON D. SIDDOWAY and STANDARD TILE, INC.

APPEAL FROM A JUDGMENT IN THE THIRD DISTRICT COURT
ON JUNE 7, 1999
THE HONORABLE DAVID S. YOUNG PRESIDING

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Jon D. Siddoway & Standard Title, Inc.

ORAL ARGUMENT REQUESTED

LEE O. BARNEY)
)
)
Plaintiff and Appellee,)
)
vs.) Appellate Court No. 990579-CA
)
JON D. SIDDOWAY and STANDARD)
TILE, INC., a Utah Corporation,) Priority No. 15
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STATEMENT OF JURISDICTION

The Utah Supreme Court has jurisdiction over this matter pursuant to Utah Code Ann., §78-2-2(3)(k) (1953) as amended. Pursuant to Utah Code Ann. §78-2-2(4), the Supreme Court transferred this matter to the Utah Court of Appeals. The Utah Court of Appeals has jurisdiction over this matter, upon transfer by the Supreme Court, pursuant to Utah Code Ann. §78-2a-2(j).

STATEMENT OF ISSUES & STANDARD OF REVIEW

1. Whether the trial court erroneously concluded as a matter of law that Appellee was entitled to 25% ownership in a corporation owned by Appellant and Appellee, where there is undisputed evidence that Appellee had purchased only 14.5% ownership in the corporation, and the only evidence supporting the trial court's findings that Appellee is entitled to an additional 10.5% ownership is the existence of monies on the corporation's books that were owed to Appellee and the testimony of Appellee's wife that Appellant had taken unequal compensation. Conclusions of law are reviewed under a "correctness" standard. *England v. Horbach*, 944 P.2d 340, 342 (Utah 1997). This issue was preserved repeatedly during the trial of this action and during post trial proceedings. An illustrative example of appellant's preservation of this issue is found at pages 454-60 of the Transcript.

2. Whether the trial court erred in allowing Appellee's wife ("Mrs. Barney") to testify regarding the company's business records without being qualified as and accounting expert. Decisions to admit or exclude expert testimony is an

abuse-of-discretion standard. *Steffensen v. Smith's Management Corporation*, 862 P.2d 1342 (Utah 1993). Appellant preserved this issue by objecting at pages 294-99 of the Transcript.

3. Whether the trial court erred by receiving into evidence improper summaries compiled by Mrs. Barney when the summaries consisted of improper hearsay evidence not compiled in the normal course of business. Decisions on the admissibility of evidence are questions of law which are reviewed for correctness. *State of Utah, v. Ramirez*, 817 P.2d 774, 782 (Utah 1991); *Grayson Roper Ltd. Partnership v. Finlinson*, 782 P.2d 467, 470 (Utah 1989). Appellant preserved this issue by objecting to the introduction of summaries at pages 294, 298-302, 307, 309-11, 313-14, 321, 323, and 324-25 of the Transcript.

4. Whether the Court erred by refusing to allow Siddoway to cross-examine Mrs. Barney regarding her summaries of STI business records and by refusing to allow Siddoway to offer testimony to rebut Mrs. Barney's testimony and Summaries. Decisions to admit or exclude testimony is an abuse-of-discretion standard. *Steffensen v. Smith's Management Corporation*, 862 P.2d 1342 (Utah 1993). Appellant preserved this issue by pretrial motion to exclude Mrs. Barney's summaries on pages 4-7, 348, 352, 360, and 365 and 458, of the Transcript.

STATEMENT OF DETERMINATIVE STATUTES AND PROVISIONS

1. Utah Rules of Evidence, Rule 602. Lack of personal knowledge.

A witness may not testify to a matter unless evidence is introduced

sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

2. Utah Rules of Evidence, Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

3. Utah Rules of Evidence, Rule 803(6). Hearsay Exceptions. (Records of Regularly Conducted Activity)

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

4. Utah Rules of Evidence, Rule 1006. Summaries.

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

STATEMENT OF THE CASE

Appellant Jon Siddoway, ("Siddoway") formed Standard Tile, Inc. ("STI") in 1986 and, through 1989, owned either 99 or 100% of the stock of the corporation. Sometime prior to March of 1989, Siddoway approached Appellee, Lee O. Barney ("Barney") about joining Siddoway in working his current contracts and becoming a shareholder and

partner in STI. The parties discussed the terms and ultimately reached a verbal agreement concerning Barney's entry into STI sometime prior to March 31, 1989.

Some terms and details of that verbal agreement are in dispute. However it is not disputed that STI agreed to pay Barney's pre-existing debts; that Barney would receive the same pay for tile setting work as Siddoway; that Siddoway and Barney would each have the use of a company vehicle; that profits from STI would be paid in bonuses split 75/25 between Siddoway and Barney; and that Barney would have the option of purchasing up to 25% of STI with his bonus money at a rate of \$1000.00 per 1% of the outstanding stock of STI.

Siddoway managed the business, including administration of all finances and accounts for both businesses. Corporate accounting was done through an independent accounting firm and CPA named Tubber Okuda.

The parties had a falling out in February of 1996. In July of 1996 Barney filed a Complaint in the Third Judicial District Court seeking to recover unspecified damages allegedly owed to Barney by Siddoway in connection with the parties' business relationships. The Complaint also sought an accounting and corporate dissolution.

Siddoway filed a pre-trial motion in limine seeking to exclude newly-introduced damage summaries compiled by Barney's wife, Kristi Barney ("Mrs. Barney"). The summaries were made available to Siddoway at the final pretrial conference, just days prior to trial, and after Mrs. Barney's deposition and the close of discovery. Thus Siddoway was afforded no opportunity to cross-examine Mrs. Barney on the summaries

in deposition or any other discovery prior to trial. At trial, the court denied Siddoway's motion in limine.

A three day bench trial was held February 17-19, 1999. The trial was marred by constant interruptions, repeated instances of judicial examination of witnesses and preclusion of Siddoway's attempts to introduce evidence. The trial court took over examination of Siddoway and aggressively intimidated him with derisive comments about his character and his conduct of the business.

During the trial, the court received into evidence Mrs. Barney's damage summaries, and then improperly limited Siddoway's cross examination of Mrs. Barney on those summaries. The court also precluded testimony by the company accountant (Mr. Okuda) relating to those summaries, and then precluded Siddoway's counsel from examining Siddoway with regard to the content of Mrs. Barney's summaries.

The court ultimately drew upon Mrs. Barney's summaries to find that Barney had acquired 25 percent ownership of STI and that Barney was entitled to 50 percent of the assets taken from STI by Siddoway.

Appellant raised objections to the court's proposed Findings of Fact and Conclusions of Law, but the objections were overruled by the trial court which signed its Findings of Fact and Conclusions of Law as well as the Order and Judgment on June 7, 1989. Appellants now appeal from the court's order and entry of final judgment.

STATEMENT OF FACTS

A. Evidence Bearing on the Court's Erroneous Finding that Mr. Barney Acquired 25% Ownership in Standard Tile, Inc.

1. Mr. Siddoway testified that when Mr. Barney came to Standard Tile, the company paid off Mr. Barney's prior company debts which amounted to more than \$8,000.00 but less than \$12,000.00. (Transcript, p. 166). Those debts included material bills at Florida, Dowel Tile and Contempo as well as \$1,200 or \$2,000 in IRS taxes. (Transcript, p. 166).

2. Mr. Siddoway testified to his understanding that Mr. Barney's prior debts were paid off without obligation for repayment by Mr. Barney—"it was a cost of doing business." (Transcript, p. 167).

3. Mr. Barney testified that Standard Tile absorbed between \$3,000.00 and \$5,000.00 of Mr. Barney's prior debt, and that at the end of the first year Mr. Siddoway told him that he would have to pay back the debt before he could purchase stock with the remainder of his bonus. (Transcript, pp. 207-208).

4. Mr. Siddoway testified that for purposes of motivating Mr. Barney to increased attention to the good of the company, (Transcript, p. 164) he and Mr. Barney entered an agreement that Mr. Barney could purchase up to 25% of Standard Tile by paying \$1,000.00/share up to \$25,000.00 (Transcript, p. 99), and that Mr. Barney did not try to negotiate a different price for the stock and that Mr. Barney agreed to a 25% maximum purchase. (Transcript, pp. 158-159).

5. Mr. Barney testified that he agreed with Mr. Siddoway that he had the option to purchase up to 25% of Standard Tile for \$25,000.00 for \$1000.00 per percent. (Transcript, p. 236).

6. Mr. Okuda testified that he understood the agreement between Mr. Siddoway and Mr. Barney to be that Mr. Barney could buy up to 25% of Standard Tile at the rate of \$1,000.00/share. (Transcript, pp. 424-425).

7. Mr. Barney testified that near the end of the first year of his employment at Standard Tile, Mr. Siddoway told him that because the company had paid off Mr. Barney's debts, Mr. Barney would have to pay book value for company stock, with a company value of \$100,000.00. (Transcript, pp. 201-202).

8. Mr. Siddoway testified that Mr. Barney was told the terms and accepted them. (Transcript, pp. 167-168). Mr. Barney testified that he agreed to the purchase price of \$25,000.00. (Transcript, p. 202).

9. Mr. Siddoway testified that Mr. Barney made decisions with respect to when stock would be purchased. (Transcript, p. 481). Mr. Barney understood that the bonus money was his and he could use it to purchase stock or take the money. (Transcript, p. 484-85). On at least one occasion, Mr. Barney chose to apply his bonus to remodel work on his house. (Transcript, p. 481-82).

10. Mr. Siddoway testified that Mr. Barney chose to apply three of his bonuses to stock purchases. There were other bonuses he received and chose not to apply them to stock purchase. (Transcript, p. 482).

11. Mr. Siddoway testified that Mr. Barney told Mr. Siddoway how he wanted his bonuses handled, whether he wanted to purchase stock or apply the bonus to other things. (Transcript, p. 484). This decision making process occurred each time a bonus was declared. (Transcript, p. 485).

12. Mr. Barney testified that bonus checks were written out by Mr. Siddoway and handed to him with all the "information" on them and that he would then sign the check back over to Mr. Siddoway, without discussion. (Transcript, p. 204).

13. Mr. Barney testified that at the end of the second year he made his first stock purchase for approximately \$6,000.00 (Transcript, p. 210), but he could not remember the date of his second stock purchase. (Transcript, p. 211).

14. Mr. Okuda testified that Mr. Barney's first purchase of stock was November of 1990 when he paid a net total of \$1,500.00 toward stock in Standard Tile. (Transcript, p. 416). Mr. Barney's second stock purchase occurred December of 1990 when Mr. Barney was issued a bonus check of \$10,000.00 from which he paid \$7,000.00 to purchase stock. (Transcript, p. 416).

15. Mr. Okuda testified that Mr. Barney received a bonus for \$10,000.00 in December of 1994 from which \$3,900.00 was deducted for taxes, \$6,000.00 for stock purchase and Mr. Barney received a check for the balance of \$61.42. (Transcript, p. 420-21).

16. Mr. Okuda testified that both Mr. Barney and Mr. Siddoway consulted him in allocation of bonus money to stock purchases. (Transcript, p. 419).

17. Mr. Okuda testified that another bonus of \$7,500.00 was issued to Mr. Barney in 1995 however, after taxes and accounts receivable were deducted, for an unknown reason, the balance of \$5,370.00 was never distributed to Mr. Barney in a check. The money sits on the company books as a note payable to Mr. Barney for \$5,370.00. (Transcript, p. 421-22).¹⁴³.

18. Mr. Okuda Testified that loans to the company by either partner (such as bonuses left in the company) were classified in accounts 285 and 290. He further testified that loans or debits from the company accounts to Mr. Barney and Mr. Siddoway were tracked under account numbers 135 and 136. (Transcript, p. 427).

B. Evidence Bearing on the Court's Erroneous Qualification of Kristi Barney as an Expert Accounting Witness.

19. Kristi Barney testified that her only educational qualification to testify as an expert accountant was an associates degree in accounting from Mountain West Business College, which she received after attending school for a little more than a year. Her only work experience to qualify her as an expert was her work as a customer service agent for the United Parcel Service and as a book keeper for PFC, an equipment leasing firm. (Transcript, pp. 295-296). She also testified that she had worked for some accountants on a part-time basis doing tax returns. (Transcript, pp. 292). Most recently, she worked for three years for Larry H. Miller (auto businesses) as an office manager, where her duties included generating monthly financial statements. (Transcript, pp. 291-292).

20. Kristi Barney testified that she had no experience in preparing damage

summaries for litigation and had never been qualified in a court of law to testify as an expert on matters of accounting. (Transcript, p. 296).

21. Kristi Barney initially denied having been sued by her former employer PFC. Later, her counsel stipulated that she was in fact sued by her former employer, PFC. (Transcript, p. 297).

22. The Court then heard Defendant's proffer of documentation and testimony that would show Kristi Barney was sued by her former employer PFC in a suit arising from her having taken money from the company and that she confessed to judgment for the money owed. (Transcript, pp. 297-298).

C. Evidence Bearing on the Court's Erroneous Admission of Kristi Barney's Summaries of Excess Benefits, Including Exhibit 14.

Evidence as to Whether the Summaries Were Summaries of Business Records.

23. Kristi Barney testified that she prepared her summary of alleged personal benefits going to Mr. Siddoway based upon the bank statements, canceled checks, invoices, financial statements quarterly and annually, along with tax returns and depreciation schedules as well as information regarding real property which was subpoenaed from title companies. (Transcript, p. 293).

24. Kristi Barney testified that she attempted to summarize excess benefits taken by Mr. Siddoway from Standard Tile on Plaintiff's Exhibit 14 by reviewing financial statements and actual copies of checks and any back up documentation provided with the checks, going year by year from 1990 through 1996, listing checks, dates, the

payee and the account code from the company general ledger. (Transcript, pp. 299-302).

25. Kristi Barney testified that she did not review all the checks available in Standard Tile financial records in compiling her summary. (Transcript, pp. 302, 328).

26. Kristi Barney testified that in preparing her summary of excess personal benefits to Mr. Siddoway, she only looked at things which looked like they were personal expenses of Mr. Siddoway. (Transcript, p. 302).

27. Kristi Barney testified that 290 was a payable account, meaning that it was a liability to the company—a debt that the company must pay to Mr. Siddoway. She stated that there were many entries going back and forth, both debit and credit entries which became a little confusing. (Transcript, p. 315).

28. Kristi Barney testified that there were many more journal entries than what she included in her summary. (Transcript, p. 316).

29. Kristi Barney then testified to certain entries made which she had been unable to explain by supporting documentation, including: an entry showing that Mr. Siddoway loaned the company \$4,500.00 (Transcript, p. 317); several other loans in the first four entries which represented loans from Mr. Siddoway to the company (Transcript, p. 318).

30. Kristi Barney testified that her summary of unequal personal benefits was based upon her assumption that Mr. Barney should receive a commensurate, equal benefit in every respect from the corporation that Mr. Siddoway received. That assumption was based on what her husband had told her about the agreement. (Transcript, p. 336).

31. Kristi Barney testified that when she was unable to locate supporting documentation for a check which she listed as a personal benefit to Mr. Siddoway, she had no idea of the purpose of the check and would be speculating if asked to state a purpose for such a check. (Transcript, pp. 340-341).

32. Kristi Barney testified that she had performed her calculations assuming a 25/75% ownership relationship from the very beginning of the parties' relationship even though stock was not purchased by Mr. Barney until later. (Transcript, p. 340).

33. Kristi Barney testified that she had looked for all checks that were paid for either partner, (Transcript, p. 342), and that she made a summary of Mr. Barney's notes payable and receivable from Standard Tile but did not include that summary in the Court summary. (Transcript, p. 342).

34. Kristi Barney testified that she did not list checks in her summary which indicated a benefit to Mr. Barney. (Transcript, p. 342).

Evidence as to Whether Kristi Barney Had any Probative Knowledge of the Contents of the Summaries.

35. Kristi Barney testified that after reviewing the payroll records of officer's compensation she listed an excess of \$13,489 in excess salary and bonuses to Mr. Siddoway. (Transcript, p. 378). But she admitted not knowing how much of alleged excess compensation of \$13,489.00 she attributed to Mr. Siddoway might have been bonus money to which he was entitled as a 75% owner. (Transcript, pp. 378-379).

36. Kristi Barney testified that she had questions about some entries that she

could find no explanation for—where she could see things went from one account to another but wasn't able to tell why. (Transcript, p. 315).

37. Kristi Barney admitted that she had not way to verify whether or not an electronic key pad installed on Mr. Siddoway's home garage was for purposes of allowing employees access to the garage to pick up job materials stored there. (Transcript, p. 342).

38. Kristi Barney testified that she was not aware that money paid to The Sports Club was for fishing supplies attendant to a company promotional fishing trip for employees, customers and potential customers. (Transcript, p. 344).

39. Kristi Barney admitted that she did not know from personal knowledge that Mr. Siddoway had sold Jazz tickets and did not know what year it might have happened and did not know for what price the tickets were allegedly sold. (Transcript, pp. 354-355).

40. Kristi Barney admitted a lack of knowledge as to the actual make, model, year or use of the fax machine or other office equipment she had estimated and attributed as a personal benefit to Mr. Siddoway. (Transcript, pp. 365-367).

41. Kristi Barney testified that with regards to her summary listed as Plaintiff's exhibit 20, her review of the company records did not permit her to determine what was or was not a justifiable expense. (Transcript, p. 397).

Evidence As to Whether the Summaries Improperly Selected Only Information From Business Records That Disclosed Mr. Siddoway's Transactions and Disregarded Mr. Barney's Transactions.

42. Kristi Barney admitted that Standard Tile paid for a fireplace insert in her home but did not include the transaction in any Summary. (Transcript, p. 342).

43. Kristi Barney admitted that Standard Tile paid for stucco and electrical work on the Barney's residence, and for remodeling work to create a home office and bedroom in the garage, but that she did not attempt to calculate the value of those improvements for purposes of her summaries of benefits to Mr. Siddoway. (Transcript, p. 343).

44. Kristi Barney admitted that Standard Tile paid for and maintained her husband's truck while he was employed there but that she did not attempt to calculate the value of that benefit in her summary to the Court. (Transcript, p. 344).

45. Kristi Barney admitted that she included a check for \$4,950.00 to Pacific Charters as a personal benefit to Mr. Siddoway even though she knew about the company's promotional fishing trip which her husband, Mr. Barney, went on. (Transcript, p. 345).

46. Kristi Barney admitted that she and her husband attended Jazz games using company Jazz tickets (Transcript, p. 353) and admitted that the basis of her assigning the value of the company Jazz tickets to Mr. Siddoway was that he attended the games when she and her husband attended. (Transcript, p. 354).

47. Kristi Barney admitted that her husband had dental work done at the company's expense via a trade with the Dentist, but did not include the value of the trade on the Summary. (Transcript, p. 357).

48. With regard to Jazz tickets owned by Standard Tile, Mr. Siddoway testified that Mr. Barney as well as everyone else in the company was given a chance to use them. (Transcript, p. 148).

Evidence That the Company Followed Appropriate Accounting Practices and that Kristi Barney's Opinion of Excess Benefits is Unsupported by the Summaries.

49. Mr. Siddoway testified that he was in charge of signing checks on Standard Tile's checking account. (Transcript, p. 137).

50. Mr. Siddoway testified that he supplied the accountant with a computer printout indicating the category for each check drafted—and when the accountant had questions he called Mr. Siddoway and the accountant would then make appropriate changes to assigned categories. (Transcript, p. 138).

51. Mr. Siddoway testified that he performed all administrative chores, including the bidding, (except occasional bidding by Mr. Barney) all the paperwork, all book work, all ordering of materials, "from six in the morning to eight . . . and then from four or five at night until sometimes midnight"—working substantially more than 40 hours a week. (Transcript, p.163).

52. Mr. Okuda testified that Mr. Siddoway had maintained company records effectively and properly. (Transcript, p. 411).

53. Mr. Okuda testified that when his review of Mr. Siddoway's accounting left him with a question regarding the proper classification of any given expense or draft on Standard Tile accounts he called Mr. Siddoway and then made a decision as to the proper

classification based on Mr. Siddoway's explanation of the purchase. (Transcript, pp. 411-412).

54. Mr. Okuda testified that Standard Tile's record keeping and accounting were performed in the usual manner--typical of such companies. (Transcript, pp. 409-411).

55. Mr. Okuda testified that he had reviewed all drafts on Standard Tile accounts submitted by Mr. Siddoway and that he had found that expenses and benefits taken by the partners were properly accounted for and drafts were appropriately categorized such that Mr. Okuda had no reason for concern as to the legitimacy of any transaction. (Transcript, pp. 411-412).

56. Mr. Okuda further testified that payouts from Standard Tile appeared proper. (Transcript, p. 412).

57. Mr. Okuda explained that on occasion, both partners took advances from the company in anticipation of bonuses at year's end, and so for accounting purposes, account no. 135, representing loans to Mr. Siddoway; and account no. 136 representing loans to Mr. Barney; were set up and the advances were referred to as "notes receivable" to the company (Transcript, p. 420).

58. With regard to the Jazz tickets purchase by the company, Mr. Siddoway testified that Standard Tile had purchased Jazz tickets for approximately 15 years and that the Jazz tickets were primarily used for business development, advertising and employees. (Transcript, p. 192).

59. Mr. Siddoway testified that his job was advertising and business development, and that when he used the Jazz tickets, he took potential new business or on-going clients and that it was a very successful method of developing business. (Transcript, pp. 192-193).

60. Mr. Siddoway testified that as president of the company, he made the decision as to how the tickets would be used, including giving them to employees (Mr. Barney included) on certain occasions. (Transcript, p. 193).

61. With regard to proper categorization of drafts on Mr. Siddoway's company accounting, Mr. Okuda testified as an example that a payment to South Jordan City had been determined by he and Mr. Siddoway to be personal in nature and so it was listed as an account receivable or loan by the company. (Transcript, p. 432).

62. Mr. Okuda testified that the corporation had been treated fairly in all respects and that there was no hidden or manipulated money. (Transcript, p. 433).

63. With regard to proper categorization of drafts on company accounts, Mr. Okuda testified that charges incident to a vacation Mr. Siddoway had taken had been properly classified as personal. (Transcript, p. 434).

64. Mr. Okuda testified that loans to the company or to partners were normal in a construction company like Standard Tile. (Transcript, p. 436).

65. Mr. Okuda explained that journal notes of "officer compensation" represented bonuses paid to both partners. (Transcript, p. 438).

66. Mr. Okuda explained that the amount questioned by Kristi Barney

(\$71,816.40) on her summaries was actually a calculation of wages due to Mr. Siddoway for extra work in the company, but the money had never been paid because the company did not have the money to pay it. Ultimately the amount had been written off. (Transcript, p. 439).

67. Mr. Okuda, testified that Mrs. Siddoway's relationship to the company was not unusual, that she performed many services for the company such as making deliveries to the accountants, keeping some books and records and running a lot of errands but that she was not compensated on payroll for any services she rendered to Standard Tile or S&B. (Transcript, p. 440).

68. Mr. Okuda testified that he had determined that there were no improper benefits to either party. (Transcript, p.442).

69. Mr. Okuda testified that he had reviewed Kristi Barney's summary of "excess compensation" transactions with regard to Mr. Siddoway and that the entries she had selected as improper were actually proper business transactions and could be explained. (Transcript, p. 437).

ARGUMENT SUMMARY

The trial court erroneously concluded that Barney was entitled to 25% ownership in STI. This conclusion was based upon a prior erroneous conclusion, unsupported in the record, that a declared and unpaid bonus could be converted to a stock purchase payment and that uncalculated and unspecified "excessive compensation" to Siddoway could be converted to stock purchase payments for Barney in the amount necessary to bring

Barney's stock ownership to 25%.

The testimony established that Barney and Siddoway agreed that Barney could purchase up to 25% of the stock of STI at the rate of \$1,000 per 1% of stock. Barney paid \$14,500 toward stock purchase. The trial court is not empowered to redefine the terms and status of agreements between the parties. By redefining bonuses and "excessive compensation" as stock purchases, the court improperly intervened in the parties' contract.

Had the trial court applied the law correctly, it would have concluded that Barney was entitled to 14.5% of the ownership of STI and applied that percentage to the distribution of STI's assets, arriving at a total judgment of \$25,584.66.

The trial court erred in qualifying Mrs. Barney as an expert accounting witness because (1) she was not qualified by knowledge, skill, experience, training, or education to provide scientific, technical or other specialized knowledge to the court. Mrs. Barney had no professional certification and no experience or training to provide forensic or investigative accounting testimony and opinion

The trial court erred in receiving "summaries" prepared by Mrs. Barney where the evidence conclusively demonstrated that the summaries could not satisfy the requirements of Rule 1006, U.R.E. and were based on speculation and conjecture. Mrs. Barney testified that she improperly selected only certain documents and limited information to include in her summaries, ignoring other records and thus misleading the court. The trial court compounded the error by relying directly on inadmissible summaries to determine

the amount of ownership to be awarded Barney and to calculate the amount of the judgment. Furthermore, Mrs. Barney had no knowledge of the content of many of the documents she purported to summarize and could not explain the nature of the transactions upon which she was opining.

The trial court erred repeatedly in admitting evidence over appellant's objections, and compounded the gravity of the error by improperly refusing to permit appellant to cross examine or introduce evidence to rebut the improperly admitted evidence.

This Court should reform the judgment and reduce Barney's ownership to 14.5% in accordance with the law and evidence. This Court should properly apply such percentage of ownership to the assets of STI and reform the judgment and reduce Barney's award to \$25,584.66.

ARGUMENT

I. THE TRIAL COURT ERRONEOUSLY CONCLUDED THAT BARNEY WAS A 25% SHAREHOLDER IN STI AND ERRONEOUSLY APPLIED THAT PERCENTAGE TO THE DISTRIBUTION OF CERTAIN ASSETS.

Based on its findings, the trial court erroneously concluded, as a matter of law, that "Barney was a 25 percent owner in the corporation STI." (Conclusions no. 1) and applied that percentage of ownership to certain assets of the corporation in order to distribute the value of the assets to the owners. On appeal, conclusions of law by the trial court are reviewed under a correctness standard. *State v. Ramirez*, 817 P.2d 774, 782 (FN3) (Utah 1991). As stated in *Ferree v. State*, 784 P.2d 149, 151 (Utah 1989), "this Court accords no deference to the legal decision of the trial court."

At trial, it was undisputed that Barney had the right to purchase up to 25% of STI for a purchase price of \$1,000 per percentage point. (Transcript, pp. 236, 158-159; *see also* Finding no. 14.) It is also undisputed that in order to purchase stock, Barney designated amounts from his periodic bonuses to be applied to stock purchases. (Transcript, pp. 204, 483-484.) Finally, it was undisputed that "Barney paid \$14,500 out of his bonuses toward purchase of stock" (Finding no. 15.) Neither party presented any evidence showing Barney purchased more than \$14,500 in stock. The evidence showed that Barney was required (in every purchase) to affirmatively assign money to stock purchases. (Transcript, pp.203-204, 483-484, 419). The facts also show that more often than not, he chose to use his bonus money elsewhere. Company records showed that in the five years between 1989 and 1996, Barney only applied bonus money to stock purchases three times; twice in 1989 and once in 1994. (Transcript, pp. 416-421).

In order to boost Barney's ownership percentage to 25%, the trial court found, without any basis in fact or law, that a bonus belonging to Barney that had not been paid out and had not been designated or assigned by Barney to purchase stock, "should be applied toward the stock purchase bringing the total stock purchase to \$19,870 or a total of 19.87 percent of the stock." (Findings no. 16.) Then, again, without any basis in fact or law, the trial court found that "excess benefits taken by Siddoway" should also be considered a stock purchase by Barney and he "is therefore a 25 percent shareholder in STI." (Findings no. 19.) No basis existed for the trial court's creation of an additional 10.5% ownership by Barney in STI.

A court cannot redefine the terms and the status of an agreement between two parties. Persons dealing at arm's length are entitled to contract on their own terms without intervention of the court to raise the parties above the effects of their own bargain or to rewrite a contract to supply terms omitted by the parties. *Hal Taylor Associates v. Union America, Inc.*, 657 P.2d 743 (Utah 1982). By redefining an account payable to Barney as a stock purchase and assigning alleged unequal benefits taken by Siddoway to additional purchases of stock. In essence, the court intervened in the parties' contract and placed Barney in a more favorable position than he placed himself.

The trial court erroneously applied a multiplier of 25% to the value of certain assets of STI in making its findings as to the amount of damages in this case. In Findings of Fact 24 and 25, the trial court calculates the value of certain real property assets at \$110,549.26 and awards Barney judgment in the amount of \$27,598.57, or 25% of the total value of the assets. Similarly, the trial court awards Barney 25% of the value of the company's equipment. By erroneously adding 10.5% onto Barney's ownership, the trial court improperly inflated the percentage of STI assets payable to Barney. In a proper calculation, the trial court should have found that Barney was entitled to 14.5% of \$110,549.26, or \$16,029.64.

The trial court made additional errors in awarding Barney a share of the assets of the corporation. As set forth in Finding no. 32, the court concluded that an account receivable which STI carried from Siddoway in the amount of \$13,415.63. It is clear from the records of the corporation that the foregoing amount was carried on the books as

a note receivable from Siddoway, an asset of the company. Mrs. Barney also recognized that notes receivable from owners to the company were and should be treated as assets of the corporation. (Transcript, pp. 330-31.) However, the court, rather than applying a correct percentage of ownership to determine Barney's entitlement, applied a 50% figure as though the debt was excessive compensation. The court's erroneous application of this account receivable constitutes an error of law. Barney should be awarded 14.5% of the account receivable in the amount of \$1,945.26.

The trial court applied a multiplier of 25% to the value of certain assets of STI in making its findings as to the amount of damages in this case. In Findings 24 and 25, the trial court calculates the value of certain real property assets at \$110,549.26 and awards Barney judgment in the amount of \$27,598.57, or 25% of the total value of the assets. Similarly, the trial court awards Barney 25% of the value of the company's equipment.

II. THE TRIAL COURT ERRED IN QUALIFYING KRISTI BARNEY AS AN EXPERT TO TESTIFY AS TO FORENSIC AND CORPORATE ACCOUNTING.

The trial court erroneously qualified Mrs. Barney as an expert accounting witness and permitted her to testify as to her forensic accounting of the financial records of STI. Mrs. Barney was permitted to testify that she had made an analysis of the records of the company and give her opinion that the records established Siddoway had received excessive benefits from the company. However, Mrs. Barney was not qualified by education, training, experience or any other permissible basis to give opinion testimony on the matters offered. In the absence of adequate expert qualifications, Mrs. Barney's

testimony, both in verbal and written form, constitutes inadmissible hearsay, speculation, conjecture and opinion.

Utah Rule of Evidence 702 governs the admission of expert testimony. Rule 702 states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The trial court has the primary responsibility for determining whether a particular witness qualifies as an expert. *Shurtleff v. Jay Tuft & Co.*, 622 P.2d 1168 (Utah 1980). An appellate court reviews the trial court's decision to accept or exclude expert testimony under an abuse of discretion standard. *Steffensen v. Smith's Management Corp.*, 862 P.2d 1342 (Utah 1993).

At the beginning of Mrs. Barney's testimony, Appellants objected to her proffered qualification as an expert and to her introduction of improper "summaries" containing subjective conclusions and opinion concerning the records of the corporation. The court overruled appellants' objections. (Transcript, pp. 294-299). Notably, the court received the summaries as "illustrative of her testimony" indicating that appellants' objections go to the weight given the summaries, and specifically indicated appellants would be permitted to cross examine on the summaries. (Transcript, p. 298). Appellants also objected to the summaries based upon surprise and inability to question the witness during discovery concerning the summaries. The trial court overruled this objection as

well. (Transcript, pp. 301-02).

Here, the trial court clearly abused its discretion in allowing Mrs. Barney to offer "expert" accounting testimony regarding allegedly improper benefits and compensation received by Siddoway. The nature of the expert testimony provided by Mrs. Barney was forensic and investigative in nature. She did not merely compile a summary of the records and testify descriptively of what the records contained; rather, she examined the financial books and records of corporation as an (unqualified) forensic or investigative auditor and drew conclusions about what the records meant, when the meaning of the records was not apparent on the face of the records. She offered into evidence a damage summary, containing subjective and "expert" analysis on what transactions constituted improper receipt of excessive personal benefits by Siddoway – as opposed to legitimate corporate expenses, charges or purchases. This type of accounting exercise requires a specialized training and education in the fields of forensic analysis, investigative auditing, and business tax knowledge.

However, as Mrs. Barney testified, she is not even a Certified Public Accountant, let alone a forensic or investigative auditor or tax accountant. She had never previously been qualified by a court of law as an accounting expert and had never provided damage summaries in litigation. Mrs. Barney's relevant education consists of an Associate Degree in accounting from Mountain West Business College in 1987 which took approximately a year to earn. (Transcript, pp. 295 -296). Her "accounting experience" consists of working part time with several accountants doing accounting and tax returns

(Transcript, p. 292), and a three year stint as an office manager who generated monthly financial statements. She testified to other "qualifying" work as a temporary United Parcel Service customer service agent. (Transcript, pp. 291-292).

Mrs. Barney also worked at "PFC" for approximately two years performing accounting activities (Transcript, p. 292). Significantly, Mrs. Barney was sued by PFC for wrongfully taking money from the company and failing to perform her accounting duties competently which exposed PFC to liability from third parties. Siddoway proffered that Mrs. Barney admitted that she had wrongfully taken the monies and judgment was entered against her (Transcript, p. 298). It is also pertinent that Mrs. Barney is directly related as the spouse of the Plaintiff/Appellee and her "expert" opinion is biased and would violate professional standards concerning conflicts of interest.

If Mrs. Barney was not properly qualified as an expert, her testimony would be inadmissible on the matters about which she testified. For example, as a lay witness, she had no foundation to testify about the books and records of STI because she had never been an employee or accountant for STI. Her testimony would be inadmissible hearsay. Her speculative conjecture would be inadmissible lay opinion testimony. Any other testimony that she could offer would have no probative value because she was not witness to any agreement between the parties, and could provide no personal knowledge testimony about the financial transactions described in her summaries.

The trial court abused its discretion when it qualified Mrs. Barney as an expert witness capable of providing expert accounting testimony in this matter.

III. THE TRIAL COURT ERRED IN ACCEPTING INTO EVIDENCE IMPROPER SUMMARIES BY MRS. BARNEY.

Even if it is determined that Mrs. Barney was qualified to give expert testimony, her opinions and conclusions are based on conjecture and speculation.

A. Mrs. Barney's Summaries Were Shown to Consist of Improper Opinion, Speculation and Conjecture.

Where an "expert" testifies that his or her opinion is based upon speculation, it is proper to strike the expert's opinion from the record. *Stevenson v. Goodson*, 924 P.2d 339, 347 (Utah 1996). The general rule regarding the certainty of an expert's opinion is that the expert may not give an opinion which represents a mere guess, speculation, or conjecture. *State v. Jarrell*, 608 P.2d 218, 231 (Utah 1980). See also 2 Jones on Evidence, s 14:29 (6th ed. 1972).

Siddoway objected to the speculative nature of Mrs. Barney's testimony and summaries but was overruled each time. (Transcript, pp. 304, 307, 321, 323-324, 352, 361-365). *Wilson v. Guaranteed Securities Co.*, 23 P.2d 921 presents a scenario very similar to the instant case. In *Wilson*, the Supreme Court held that in an action to rescind the exchange of notes and mortgage for stock in a securities company, permitting the state auditor, who qualified as an expert accountant, to express an opinion as to the financial condition of securities company was error, where the auditor knew nothing about the company except what was shown by its books and there was no basis in fact for the deductions and calculations made by the auditor. The court stated:

"And in no event was it proper for [the auditor] to express an

opinion as to [the solvency of the company] until the facts upon which his opinion was founded were before the court so that the court might determine whether the alleged facts upon which the conclusion was based were real, and also whether the facts, if found to be true, justified the conclusion or opinion expressed." *Id.* at 925.

In the present case, before effective cross-examination was terminated by the trial court, it was revealed that much of Ms. Barney's testimony and the summaries she prepared was based on pure speculation and guesswork. For example, see the statements of fact contained in paragraphs 35 through 41, above. During cross-examination Mrs. Barney admitted that her conclusion that Siddoway had wrongfully received excess compensation and benefits was based on speculation. Exhibit 14 includes a column entitled "comments" which purports to show supporting documentation for how Mrs. Barney reached the conclusion that each check identified in the exhibit constituted an excessive and improper benefit to Siddoway. However, in many instances, Mrs. Barney simply states "no documentation" in the "comment" column. When no documentation existed to show whether a benefit received by Siddoway was proper or not, she simply speculated that it was an improper. The following testimony highlights this problem.

Q. Now let's look at the next check, 3288 to Price Savers. You say there's no documentation there.

A. Right.

Q. What caused you to conclude that was a benefit that someone took in property from the corporation?

A. I don't have anyway of knowing if that's what it was because there's absolutely no documentation to back it up.

(Transcript, p. 340)

Mrs. Barney also testified that speculation was necessary as to many of the items listed on Plaintiff's Exhibit 14:

Q. So, you can offer no opinion as to what the specific use of the check was where there is a statement that says no documentation?

A. That's correct. I can offer an opinion, but I can't offer proof.

Q. You'd be speculating, wouldn't you?

A. Pardon.

Q. You'd be speculating?

A. Yes.

(Transcript, p. 241).

Because Mrs. Barney admitted that Exhibit 14 and her testimony was based on mere speculation, it was an abuse of the trial court's discretion to admit the exhibit and her testimony on this issue.

B. Exhibit 14 and Other "Summaries" Do Not Satisfy the Requirements of Rule 1006, Utah Rules of Evidence, and the Trial Court Erred in Admitting Such Exhibits as Summaries.

In addition to the evidentiary defects inherent in speculation and conjecture, Exhibit 14 is rendered inadmissible because it is not a summary, as contemplated and required by the Rules of Evidence. Rule Utah Rules of Evidence, Rule 1006 provides as follows:

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

Exhibit 14 cannot be considered admissible as a summary since it does not present in the form of a chart, summary or calculation the contents of voluminous writings, recordings, or photographs which cannot be conveniently examined by the judge in court. To the contrary, the exhibit does not even attempt to summarize voluminous writings. It merely contains a list of identified checks or charge transactions, selected by Mrs. Barney from records she reviewed. Such a selective list is not a summary. In fact it is the product of a deliberate effort to produce only a portion of the records and writings of the party. The problem can best be seen in the following testimony:

Q. And this summary [Exhibit 14] does not summarize, does it, every single check that was ever written from 1990 to 1996, does it?

A. No.

Q. In fact, correct me if I'm wrong, what you've tried to do here is simply pull out things that looked like they were personal expenses of Mr. Siddoway, correct?

A. That's right.

Q. And that's what you've done.

(Transcript, p. 302).

Mrs. Barney testified that she did not review all the checks available in Standard Tile financial records in compiling her summary and that in preparing her summary of excess personal benefits to Siddoway, she only looked at things which looked like they were personal expenses of Siddoway.. (Transcript, pp. 302, 328). Mrs. Barney testified that account 290 was a payable account, meaning that it was a liability to the company—a debt that the company must pay to Siddoway. She stated that there were many entries going back and forth, both debit and credit entries which became a little confusing.

(Transcript, p. 315) and there were many more journal entries than what she included in her summary. (Transcript, p. 316).

Mrs. Barney also testified that she had looked for all checks that were paid for either partner, (Transcript, p. 342), and that she made a summary of Barney's notes payable and receivable from Standard Tile but did not include that summary in the Court summary. (Transcript, p. 342). She testified that she did not list checks in her summary which indicated a benefit to Barney. (Transcript, p. 342). This kind of selective inclusion or exclusion of information flies in the face of Rule 1006. Moreover, the very nature of the "summaries" offered by Mrs. Barney violate the Rule by pretending to summarize voluminous documents not put into evidence when many documents contained in the records of the company were ignored and purposely excluded, thus misleading the court into assuming that the "summary" is complete.

The other exhibits offered by Mrs. Barney as "summaries" are similarly inadmissible for the foregoing and other reasons. Plaintiff's Exhibit 15 is Mrs. Barney's summary of the value of STI's assets at the time of dissolution. On cross examination, it was demonstrated that Mrs. Barney was not qualified to value the assets, did not have adequate facts upon which to base her conclusions and relied on her husband for estimated values even though she was the only witness offered by Barney for the purpose of valuing STI assets. Mrs. Barney did not know the year, make or model of the fax machine she valued (Transcript, pp. 365-367) and she relied on her husband to determine the value of a grout pump (Transcript, pp. 367-368). Further, no foundation was laid by

Barney to establish that Mrs. Barney was qualified to value the assets. Despite Siddoway's objections that Mrs. Barney was not qualified to value the assets and her estimates were not based on fact (Transcript, pp. 369-370), the trial court admitted her testimony and Exhibit 15.

Plaintiff's Exhibit 16, is a summary of closing documents on properties owned by STI which Barney alleges shows excess income Siddoway took as a result of the property sales. (Transcript, pp. 373-374). Here again, on cross-examination, it was shown that Mrs. Barney's conclusion in this regard had no basis in fact and was merely speculation. Regarding Lot 211 Hearthstone, Mrs. Barney did not know: why the amount stated belonged to Standard Tile and was improperly taken by Siddoway (Transcript, pp. 374-375); how much STI paid for the lot; when STI sold the lot; the nature of the transaction whereby STI sold the property; how much Siddoway paid for the property; whether Siddoway paid STI for the property; nor whether the money that went into the construction of the house on the property was paid for by Siddoway or STI. (Transcript, p. 375-377). Despite Mrs. Barney's total lack of knowledge concerning the underlying facts surrounding the disposition of these properties, she concludes that the income generated by these sales was improperly retained by Siddoway. Even more incredible is that the trial court admitted Mrs. Barney's testimony and Exhibit 16 and apparently relied on it to conclude that Siddoway had improperly retained the income from the sale of these properties. As a result, the trial court awarded Barney \$27,598.57 as his 25% interest in these properties. (Trial Court Finding Nos. 24 and 25) The trial court's reliance on Mrs.

Barney's testimony and summary, which was clearly speculative and lacked foundation, was an abuse of discretion and prejudicial to Siddoway.

The trial court found that STI purchased an automobile which was used exclusively by Siddoway and his wife. (Finding No. 31). Relying on Mrs. Barney's testimony and her summary which is Plaintiff's Exhibit 19, the court found that STI had made payments on the car from 1994 to 1996 in the amount of \$12,402.20 then awarded Barney 50% of this amount which is \$6,201.10. This finding and the trial court's reliance on Mrs. Barney's testimony and Exhibit 19 was an abuse of discretion and prejudicial to Siddoway because it was shown on cross examination that Mrs. Barney unaware that the car was used by Mrs. Siddoway on STI business and therefore, a proper business expense. (Transcript, pp. 390-391).

Because Mrs. Barney was not qualified to offer expert accounting and valuation testimony in this case, and the testimony she did offer was speculative, it was an abuse of discretion for the trial court to admit her testimony and summaries. Accordingly, the trial court's findings which relied on this "evidence" must be reversed.

C. The Trial Court Erred in Admitting and Then Relying upon Inadmissible Evidence in Mrs. Barney's Summaries.

"Whether a piece of evidence is admissible is a question of law and we always review questions of law under a correctness standard." State v. Ramirez 817 P.2d 774, 782 (FN3) (Utah 1991).

For the summaries to be admissible, they must qualify both as an exception to the

hearsay rule under Rule 803(6), Utah Rules of Evidence, governing the admission of business entries, and as a proper summary under Utah Rule of Evidence 1006. *Shurtleff* at 1174; *Trolley Square Assoc. v. Nielson*, 886 P.2d 61 (Utah Ct. App. 1994).

Utah R. Evid. 1006 renders summaries inadmissible where they are not made in the ordinary course of business but in anticipation of litigation. *Id.* Siddoway objected to each of Barney's Exhibits 14 through 23 as inadmissible summaries but was overruled by the trial court. (Transcript, pp. 304, 306-307, 309, 310, 311, 313, 314, 321, 324, 361-365, 370,).

The trial court committed reversible error when it relied on Exhibit 14 in its findings 18, 19, 30 and 32. This Exhibit is inadmissible under both Utah Rule of Evidence 803(6) and 1006. Mrs. Barney's summaries were all offered as summaries of the financial records of STI (Transcript, pp.305-22.) The summaries were prepared shortly before trial, not in the regular course of business of STI and therefore inadmissible hearsay under Utah Rule of Evidence 803 and the trial court erred in admitting them into evidence and relying on them in its findings.

Further, only Exhibit 14, which listed numerous checks spanning several years, can arguably be characterized as a summary of voluminous writings which could not be conveniently examined by the trial court. Mrs. Barney admitted that there were only a couple pages of closing documents summarized in Exhibit 16. (Transcript, p. 373)

These exhibits are not even true summaries of STI's business records because they include opinions and conclusions reached by Mrs. Barney. (Exhibit 14 contains a

comment column) Mrs. Barney also testified that she only included those checks on Exhibit 14 which arguably showed an improper benefit to Siddoway. She excluded any checks which may have demonstrated benefits received by Barney. (Transcript, pp. 328-329) Exhibit 15 includes her opinion as to the present value of the equipment that STI owned at its dissolution. The record clearly indicates that the trial court erred in admitting Mrs. Barney's summaries.

IV. THE TRIAL COURT'S ACCEPTANCE OF INADMISSIBLE AND PREJUDICIAL EVIDENCE AND SUBSEQUENT INTERFERENCE WITH APPELLANT'S EXAMINATION ON THE ISSUES PRESENTED CONSTITUTED A CUMULATIVE ERROR WHICH PREVENTED FAIR ADJUDICATION.

Where the cumulative effect of multiple errors by the trial court prevents a party from receiving a fair trial, the case should be reversed, and if necessary, remanded for a new trial. *Whitehead v. American Motors Sales Corp.*, 801 P.2d 920, 928 (Utah 1990). In *Whitehead*, the court found that the trial court erroneously excluded evidence offered by defendants which was necessary to rebut the assertions that plaintiffs made to establish liability. The error was compounded by unduly restricting the scope of defendants' cross-examination. As a result, the court in *Whitehead* could not say that substantial rights of the defendants were not affected and reversed and remanded for a new trial. *Id.*

Similarly, in this case, the trial court committed a series of errors with regard to Mrs. Barney and her testimony, that when taken together, denied Siddoway the opportunity to a fairly rebut that testimony. First, Siddoway made a pre-trial motion to exclude Mrs. Barney's summaries because they were disclosed until after discovery in the

case was closed and Mrs. Barney's deposition had been taken. (Transcript, p. 4.)

Siddoway had no opportunity to examine Mrs. Barney regarding the summaries or to conduct any discovery based upon the summaries. They were not produced to Siddoway until approximately ten days before trial (Transcript, p. 7.) and therefore the trial court severely prejudiced Siddoway by allowing these summaries (which are entirely hearsay) to come into evidence.

Second, the trial court compounded its error when it unduly limited Siddoway's opportunity to cross-examine Mrs. Barney (who had been improperly qualified as an expert witness) on the details of her summaries. Because the trial court had qualified her as an expert witness, Siddoway should have been granted even more leeway in the scope of the cross-examination than might be allowed with a factual witness:

"Having offered his expert opinion, the witness exposes himself to interrogation which ordinarily would have no place in the cross-examination of a factual witness, but the expert exposes himself to the most searching kind of investigation into his qualifications, the extent of his knowledge and the reasons for his opinion, including facts and other matters upon which it is based."

Whitehead at 924, citing *Chrysler Corp., v. Todorovich*, 580 P.2d 1123, 1133 (Wyo.

1978). Siddoway's counsel expressed his intention to review each individual entry on Mrs. Barney's summaries to determine the basis for her conclusion that the listed benefits and compensation were improper. (Transcript, pp. 347-348). The court responded on several occasions that instead of trying to impeach Mrs. Barney, counsel should simply rebut her testimony through testimony from Siddoway or Mr. Okuda. (Transcript, pp.

348, 352, 360, and 365). Therefore, the limitations imposed by the trial court on Siddoway's cross-examination of Mrs. Barney were an abuse of the trial court's discretion inasmuch as they substantially prejudiced Siddoway.

Third, in addition to limiting Siddoway's cross-examination of Mrs. Barney, and in spite of its earlier statements that it would allow Siddoway to rebut Mrs. Barney's testimony, the trial court would not allow Mr. Okuda to rebut the specific findings of Mrs. Barney in her summaries. (Transcript, pp. 446-447). The trial court made it clear that it did not want to hear a detailed examination of the records noted in Mrs. Barney's summaries. (Transcript, pp. 449-452). In short, the trial court put Siddoway in the untenable position of not being able to thoroughly cross-examine Mrs. Barney on her findings and conclusions, and not being able to rebut her testimony by offering testimony of the corporation accountant--the individual in the best position to explain financial records and whether excessive benefits were taken by either party.

Fourth, the trial court precluded Siddoway from rebutting Mrs. Barney's testimony and the information set forth in Exhibit 14 through his own testimony as to the purpose and justification behind each transaction. (Transcript, pp. 456-458.) Mr. Siddoway was prepared to explain each transaction described in Exhibit 14 and prove either the legitimate business purpose for each, or that it was properly accounted for as an advance to Siddoway which was subsequently reimbursed to STI. (*Id.*) However, as the record indicates, the trial court interrupted the proceedings to again state its decision with regard to Siddoway's excess benefits and Barney's shares of stock. (Transcript, pp. 457-460.)

When Siddoway's attorney acknowledged the court's intent to avoid review of the contents of Exhibit 14, (again noting his intention to put Siddoway on the stand to explain those transactions) the court confirmed to both attorneys that he would not consider examination of the transactions on Exhibit 14 and directed Siddoway's attorney to pursue other testimony. (Transcript, pp. 460-461).

Finally, as he was directing counsel to stay away from the contents of Exhibit 14, the trial court announced its intent to find a 25% stock ownership in Barney, based upon the excess compensation and benefits alleged in Mrs. Barney's summaries. (Transcript, pp. 457-458; 462, lines 12-22.)

Each of the forgoing errors—by themselves—justifies reversal of the trial court's finding that Barney owned 25% of STI. However, even if this Court determines otherwise, the cumulative effect of the trial court's multiple errors is sufficient for this Court to conclude that Siddoway was denied the opportunity to rebut hearsay evidence contained in Mrs. Barney's summaries—which the trial court eventually declared was the basis for augmenting Barney's percentage of ownership in STI. (Transcript, p. 457.)

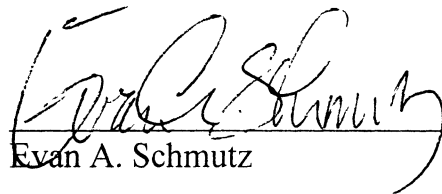
CONCLUSION AND STATEMENT OF RELIEF SOUGHT

The trial court erroneously concluded that Mr. Barney is entitled to 25% of the ownership of STI, and further erred in applying that percentage to the assets of the corporation in awarding Mr. Barney a judgment in the amount of \$41,036.17. The judgment also erroneously includes 50% of a note receivable from Mr. Siddoway, which should correctly have been treated as an asset of the corporation. The court should have

distributed 14.5% of the same to Mr. Barney.

For the reasons set forth above, this court should reform the judgment to award a 14.5% ownership interest in the assets of STI to Mr. Barney and award him judgment in the amount of \$25,584.66. In the alternative, this Court should reverse the trial court's judgment and remand this matter for recalculation of damages based upon a 14.5% ownership of STI by Mr. Barney.

HILL, JOHNSON & SCHMUTZ, L.C.



Evan A. Schmutz

CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2000, I caused a true and correct copy of the foregoing brief to be served by depositing the same in the U.S. mail, first class postage prepaid, addressed to the following:

Larry Kirkham
Richards, Brandt, Miller & Nelson
50 South Main St. #700
Salt Lake City, UT 84144

A handwritten signature in black ink, appearing to read "L. Kirkham", is written over a horizontal line.

ADDENDUM

1. EXHIBIT A

FINDINGS OF FACT AND CONCLUSIONS OF LAW
Third District Court-June 7, 1999

2. EXHIBIT B

ORDER AND JUDGMENT
Third District Court-June 7, 1999

3. EXHIBIT C

PLAINTIFF'S EXHIBIT 14
"Summary of excess benefits taken by Siddoway from Standard Tile"

EXHIBIT A

FINDINGS OF FACT AND CONCLUSIONS OF LAW
Third District Court-June 7, 1999

JUN 07 1999

SALT LAKE COUNTY

By _____
Deputy Clerk

Larry A. Kirkham [1832] for:
LARSON, KIRKHAM & TURNER, L.C.
Attorney for Plaintiff
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107
Telephone: (801) 263-2900

THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEE O. BARNEY,)	
)	FINDINGS OF FACT AND
Plaintiff,)	CONCLUSIONS OF LAW
vs.)	
)	
)	
JON D. SIDDOWAY and STANDARD)	Case No. 960905245CN
TILE, INC., a Utah corporation,)	
)	Judge David S. Young
Defendant.)	

THE ABOVE-CAPTIONED matter came on for trial before the honorable David S. Young, District Court Judge, commencing Wednesday February 17, 1999, at the hour of 10:00 a.m. The trial lasted for three (3) days, February 17, 18, and 19. The Plaintiff, Lee O. Barney, was represented by his counsel, Larry A. Kirkham, of the firm of Larson, Kirkham & Turner, L.C. The Plaintiff was present personally during the course of this trial. The Defendant Jon D. Siddoway and Defendant Standard Tile, Inc. were represented by Evan A. Schmutz of the firm of Hill, Harrison, Johnson & Schmutz. Defendant, Jon D. Siddoway, was present personally during the three (3) days of trial.

The Court took the testimony of the witnesses including the parties as well as received documentary evidence during the course of the trial. At the close of trial, on Friday, February 19,

1999, the Court rendered its' opinion. The Plaintiff by and through counsel prepared proposed Findings of Fact and Conclusions of Law as well as an Order and Judgment which was objected to by the Defendant. The Plaintiff also filed a motion for an appointment of a receiver and a Memorandum of Costs. The Defendant filed a Motion to Tax Costs. The Motion to Tax Costs, Motion for an Appointment of a Receiver, and the objections regarding Findings of Fact, Conclusions of Law, and the Order and Judgment were heard by the Court on Tuesday May 18, 1999, commencing at the hour of 8:30 a.m. The Court made rulings with respect to the motions, objections to the Findings of Facts, Conclusions of Law, and accordingly makes the following Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. Plaintiff, Lee O. Barney, hereafter referred to as Barney, and Defendant, Jon D. Siddoway, hereafter referred to as Siddoway, are individuals and residents of Salt Lake County, State of Utah.
2. Defendant, Standard Tile, Inc., hereafter STI, is a Utah corporation with its' principal place of business is in Salt Lake County, State of Utah.
3. The corporation, STI, was organized in 1986, by Siddoway, and Siddoway owned 100 percent of the stock of the corporation from 1986, up to and including 1989.
4. In or about the first part of March of 1989, Barney was approached by Siddoway for the purpose of becoming a shareholder in STI and also becoming a partner with Siddoway in all future business endeavors.

5. The parties reached a verbal agreement sometime prior to March 31, 1989, regarding Barney's participation in the corporation, STI.

6 The terms of the agreement reached by the parties in 1989, and which was to become effective April 1, 1989, was as follows:

a. Barney would become an employee of STI just as Siddoway was an employee of STI.

b. Barney would have the right and/or opportunity to purchase up to a total of 25 percent of the stock in STI from bonuses as more particularly set forth below.

c. Barney and Siddoway agreed that both parties would receive the same monthly base salary commencing April 1, 1989, and continuing thereafter.

d. The parties agreed that each party would receive the use and benefit of a company vehicle commencing April 1, 1989, and thereafter.

e. The parties agreed that any profits from the corporation or operation of the business would be split or divided on the basis of Siddoway receiving 75 percent of the profits and Barney receiving 25 percent of the profits commencing April 1, 1989, and thereafter.

7. At all times relevant hereto, Siddoway controlled all of the financial aspects including the checking account, etc. of STI. At no time did Barney have the right to sign any checks on the corporation checking account or withdraw funds from the corporate account.

8. The corporate books and records including shares of stock, stock register, minutes of meetings, etc., were lost by the company accountant in either 1993, or 1994.

9. Following the loss of the corporate records, no minutes were kept of any meetings thereafter. No notices of meetings or waiver of notice for any meeting was prepared after the original books and records were lost.

10. No corporate resolutions were ever prepared after the records were lost.

11. The Court finds that in 1989, Siddoway represented to Barney that the value of the corporation was \$100,000.00 and Barney would therefore be required to pay into the corporation \$25,000.00 in order to purchase 25 percent of the stock in STI.

12. The parties had a falling out in February of 1996, and Barney no longer worked for the STI after the end of February, 1996.

13. The corporation STI had certain assets in February of 1996, as did the partnership S&B Storage.

14. Based on the representation of Siddoway, Barney agreed to pay up to \$25,000.00 for a 25 percent interest in STI, or \$1,000.00 per percentage point of stock ownership in STI.

15. Barney paid \$14,500.00 out of his bonuses toward purchase of stock at the following times in the following amounts:

<u>Date of Purchase</u>	<u>Amount</u>
November 30, 1990	1,500.00
December 31, 1990	7,000.00
December 31, 1994	6,000.00
Total:	14,500.00

16. In 1996, Barney was allocated a net bonus of \$5,370.00 that was never paid and should be applied toward the stock purchase bringing the total stock purchase amount to \$19,870.00 or a total of

19.87 percent of the stock.

17. The remaining balance owing for the stock purchase ,by Barney, would have been \$5,130.00.

18. Siddoway took benefits and paid personal obligations from corporate funds in which Barney was entitled to share.

19. Barney's share of the excess benefits taken by Siddoway far exceeds the \$5,130.00 and therefore, Barney has paid well in excess of \$25,000.00 for his 25 percent interest in the corporation STI and is therefore a 25 percent shareholder in STI.

20. The corporation was effectively dissolved as of the end of February of 1996, when the parties no longer worked together and when Barney's employment with STI was terminated.

21. From the evidence presented, Barney and Siddoway were the only shareholders of STI.

22. At the time the parties terminated their business relationship, the corporation owned certain assets, most of which were taken by Siddoway.

23. The account receivables, as of termination, were collected and used to pay debts and obligations of STI and accordingly no judgment should be entered in favor of Barney and against Siddoway in this regard.

24. The corporation, STI, had the following assets or interest in real property as of the date the parties terminated and the assets and values are as follows:

- a. Lot 202 Hearthstone Estates, net equity \$63,545.76;
- b. Lot 202 Hearthstone Estates, deposits \$7,800.00;

- c. Lot 211 Hearthstone Estates, purchase price \$38,548.50;
- d. Lot 423 Hearthstone Estates, deposit \$500.00;
- e. For a total of \$110,549.26.

25. These assets were taken by Siddoway and therefore Barney is entitled to a judgment against Siddoway personally for 25 percent of the value of these assets or \$27,598.57.

26. The corporation owned equipment, vehicles, and furnishings at the time the parties separated.

27. The Court finds that the total value of the equipment, vehicles, and furnishings is \$44,666.67.

28. Siddoway has taken or received \$33,500.00 in value of the equipment and Barney has taken or received \$10,438.00 in value of the equipment consistent with Exhibits 15 and 29 offered in evidence.

29. Barney is entitled to a judgment against Siddoway for \$728.68 representing the excess of the equipment received by Siddoway up and above that which was received by Barney.

30. Barney obtained a 25 percent ownership in STI through his bonuses as well as additional excess benefits taken and received by Siddoway to pay personal expenses which were not shared with Barney in accordance with the agreement of the parties.

31. STI also purchased a Lincoln Continental Automobile which was used exclusively by Siddoway and Siddoway's wife. The payments on the automobile, for the period of two (2) years from 1994, through 1996, totaled \$12,402.20, and Barney is entitled to a judgment against Siddoway for an

amount equal to 50 percent of that amount or \$6,201.10. This amount is derived from Barney's Exhibit 19.

32. In February of 1996, Siddoway owed, to STI, the sum of \$13,415.63, which were additional funds taken by Siddoway. Barney is entitled to 50 percent of that amount or a judgment against Siddoway in the amount of \$6,707.82.

33. Barney made a further request for an award and judgment against Siddoway for excess life insurance benefits received by Siddoway. After review of the evidence, however, the Court finds that the benefits received by Barney regarding life insurance on his life as well as the benefits Siddoway received regarding life insurance on his life are consistent with the parties' agreement and therefore no judgment should be awarded to Barney relative to life insurance benefits.

34. Barney's total judgment against Siddoway as it relates to Barney's interest in STI is \$41,036.17.

35. In 1992, the parties entered into a second business arrangement, a partnership, known as S&B Storage.

36. The major asset of the partnership is real property located at 4754 Riverside Drive. This real property consists of land and a building consisting of storage units. This property is located in Salt Lake County and legally described as follows:

21-01-355-008

COM 643.74FT. N & 1442.83FT W & S 13° W 406.44FT FR S 3 COR SEC 1 T 2S
R1W SL MER N 86°45' W 409.88FT TO E BANK OF JORDAN RIVER CHANNEL S
21°10' E 128.3FT S 86°45' E 336.28FT TO W LINE RIVERSIDE DRIVE N 13°14' E
118.62FT TO BEG 1.06 AC

37. The parties, Barney and Siddoway or the partnership S&B Storage, purchased the real property for a total purchase price of \$326,000.00.

38. The down payment on the property was \$40,000.00 of which Barney contributed \$10,416.14 from his 1991, bonus from STI. Siddoway contributed \$33,008.58 from his 1991, bonus from STI. This finding is consistent with the evidence presented in Exhibits 1,2, and 3.

39. A trust deed note on the property was taken back in favor of William and Shirley Baker in the amount of \$286,000.00.

40. All of the monthly payments under the trust deed note in the amount of \$3,157.02 per month were paid from the income from S&B Storage.

41. The title to the real property was taken in the name of Jon D. Siddoway and Dawn Siddoway but nonetheless constitutes property of and an asset of the partnership S&B Storage since the property was acquired with partnership funds and paid for exclusively with partnership funds.

42. S&B Storage, as a partnership, should be dissolved consistent with Utah General Partnership Law and the assets liquidated.

43. The Court indicated at the end of the trial and again on May 18, 1999, that the parties should try and work something out with regard to the assets of S&B Storage partnership including a determination of equity in the real property. The Court finds that unless the parties have reached a settlement with respect to S&B Storage and division of the equity in the property and assets of S&B Storage, a receiver will be appointed by June 14, 1999, to take over the management and operation of S&B Storage.

44. If necessary , the Court will hold a further evidentiary hearing regarding the value of the S&B Property, determination of the net equity therein, and will consider entering judgment for the value. 45. The parties have a dispute with regard to the net income generated by S&B Storage for the years 1996, 1997, and 1998. The parties are instructed to contact Mr. Okuda to determine that net income and Barney's share thereof.

46. Siddoway must also account, to Barney, for the income and expenses for the months of January and February of 1999, and any subsequent months thereafter.

47. At or near the end of the hearing on May 18, 1999, Plaintiff and Defendant by and through their respective counsel, stipulated and agreed that Siddoway would pay to Barney the sum of \$81,000.00 in compromise and full settlement of Barney's equity in the real property and other assets of S&B Storage and all claims and defenses arising in connection therewith except that Siddoway reserved the right, if necessary, to present further evidence to the Court on Siddoway's entitlement to be reimbursed by Barney for management fees and unpaid expenses in connection with his management of the real property of S&B Storage since the formation of the partnership.

48. Siddoway's attorney represented that the amount of \$81,000.00 was contained in his trust account and payment of that amount could be made immediately to Barney.

49. The parties also argued the Motion to Tax Costs and accordingly the Court finds that Plaintiff is entitled to a judgment for costs in the amount of \$1,654.00 which includes filing fees, costs of service of the original Complaint and Summons, deposition costs for the deposition of Jon Siddoway and Tubber Okuda, and witness fees and costs of service for witnesses subpoenaed to testify at trial.

50. The remainder of Plaintiff's requests for costs and as set forth in the Memorandum of Costs is denied.

51. The Court finds there is no basis to award attorney fees and therefore each party should bear their own attorney fees.

CONCLUSION OF LAW

Based on the forgoing Findings of Fact the Court now makes and enters its' Conclusion of Law as follows:

1. At the time of the parties separation in 1996, Barney was a 25 percent owner in the corporation STI and Siddoway was 75 percent owner in the corporation STI.
2. S&B Storage is a partnership within the definition and under the Uniform Partnership Act in Utah.
3. The partnership S&B Storage owned the real property located at 4754 Riverside Drive even though title to real property was originally taken in the name of Jon D. Siddoway and Dawn Siddoway.
4. As set forth above, Plaintiff is entitled to costs consistent with Rule 54 of the Utah Rules of Civil Procedure in the amount set forth above.
5. Siddoway as the majority shareholder in STI and as the managing partner of S&B Storage, owed a fiduciary duty, and duty to account to Barney and therefore Barney is entitled to a judgment against Siddoway.
6. To the extent the foregoing Findings of Fact or any of them constitute a Conclusion of

Law, the same are incorporated herein and by this reference made a part hereof as additional Conclusions of Law.

7. Each party should be ordered to execute such documents as may be necessary to implement the terms of the judgment and order of the Court.

DATED this 7th day of June, 1999.

By the Court:

David S. Young
David S. Young
District Court Judge

Approved as to form:

Evan A. Schmutz
Evan A. Schmutz
Attorney for Defendant

EXHIBIT B

ORDER AND JUDGMENT
Third District Court-June 7, 1999

FILED DISTRICT COURT
Third Judicial District

JUN 07 1999

SALT LAKE COUNTY

By _____
Deputy Clerk

Larry A. Kirkham [1832] for:
LARSON, KIRKHAM & TURNER, L.C.
Attorney for Plaintiff
4516 South 700 East, Suite 100
Salt Lake City, Utah 84107
Telephone: (801) 263-2900
Fax: (801) 263-2902

THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEE O. BARNEY,)	
)	ORDER AND JUDGMENT
Plaintiff,)	
vs.)	
)	
)	
JON D. SIDDOWAY and STANDARD)	Case No. 960905245CN
TILE, INC., a Utah corporation,)	
)	Judge David S. Young
Defendant.)	

THE ABOVE-CAPTIONED matter came on for trial before the honorable David S. Young, District Court Judge, commencing Wednesday February 17, 1999, at the hour of 10:00 a.m. The trial lasted for three (3) days, February 17, 18, and 19. The Plaintiff, Lee O. Barney, hereafter referred to as Barney, was present personally and was represented by his counsel, Larry A. Kirkham, of the firm of Larson, Kirkham & Turner, L.C. The Plaintiff was present personally during the course of this trial. The Defendant Jon D. Siddoway and Defendant Standard Tile, Inc. were represented by Evan A. Schmutz of the firm of Hill, Harrison, Johnson & Schmutz. Defendant, Jon D. Siddoway, hereafter referred to as Siddoway, was present personally during the three (3) days of trial.

The Court took the testimony of the witnesses including the parties as well as received documentary evidence during the course of the trial. A Verified Memorandum of Costs and a Motion to Tax Costs as well as a Motion for Appointment of a Receiver and Objection to Findings of Fact and Conclusions of Law was held on May 18, 1999. The Court made rulings with respect to those motions and objections and accordingly entered Findings of Fact and Conclusions of Law. Based on those Findings of Fact and Conclusions of Law,

It is hereby Ordered, Adjudged, and Decreed:

1. Siddoway's Pre-trial Motion for Summary Judgment is denied.
2. Siddoway's Pre-trial Motion to Dismiss is denied.
3. Siddoway's Motion to Dismiss at the close of Plaintiff's case is denied.
4. Siddoway's Motion In Limine is denied.
5. Barney's Motion to Amend Complaint is denied.
6. Barney's Motion for Appointment of a Receiver is granted and unless the parties reach a settlement with regard to division of assets and equity in S&B Storage, a receiver will be appointed on June 14, 1999.
7. Siddoway's Motion to Tax Costs is granted in part and denied in part and Barney is awarded a judgment against Siddoway in the amount of \$1,654.55 representing recoverable costs.
8. The corporation Standard Tile, Inc., hereafter referred to as STI, is hereby dissolved and was in effect dissolved in 1996.
9. Barney is hereby granted judgment against Siddoway individually in the amount of

\$41,036.17 representing Barney's share of assets in the corporation STI which were taken by Siddoway and which should have been paid to Barney.

10. The parties are instructed to talk to Mr. Okuda, the company accountant for S&B Storage, to determine the net income for the years 1996, 1997, and 1998, as well as net income for 1999. Barney is entitled to 25 percent of the net income. If the parties cannot arrive at a figure or reach an agreement, the Court will entertain a further hearing in that regard.

11. Siddoway is ordered to pay to Barney the sum of \$81,000.00 representing the compromise figure dealing with the assets and equity of the property belonging to S&B Storage.

12. Siddoway is granted the right and hereby reserves the right to present further evidence to the Court and make claim for management fees during the period of time S&B Storage, as a partnership, was in place.

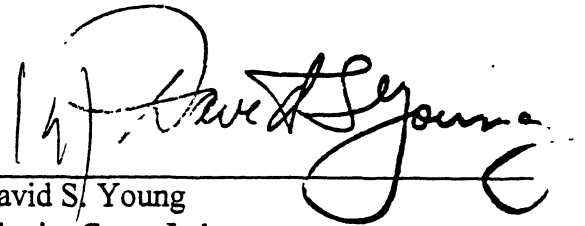
13. No prejudgment interest is awarded to either party and each party shall bear their own costs and attorney fees.

14. The entire judgment as set forth herein including judgment for costs shall bear interest at the judgment rate allowed by statute. The current judgment rate is 6.153 percent.

15. Both parties are ordered to execute any and all necessary documents to carry out the terms of this order and judgment and are ordered to cooperate with each other in resolving the undisputed issues.

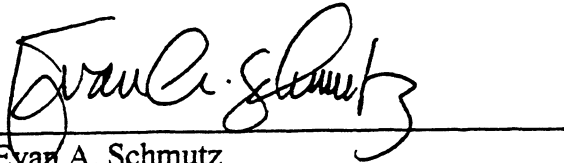
DATED this 7 day of June, 1999.

By the Court:

A handwritten signature in black ink, appearing to read "David S. Young", written over a horizontal line.

David S. Young
District Court Judge

Approved as to form:

A handwritten signature in black ink, appearing to read "Evan A. Schmutz", written over a horizontal line.

Evan A. Schmutz
Attorney for Defendant

EXHIBIT C

PLAINTIFF'S EXHIBIT 14

"Summary of excess benefits taken by Siddoway from Standard Tile"

SUMMARY OF EXCESS BENEFITS TAKEN BY SIDDOWAY FROM STANDARD TILE

Date	CK#	Payee	Acct	Amount	Comments
1990					
12/31/90	JE	Jon Siddoway	135	\$10,000.00	No documentation
06/21/90	3048	Dawn Siddoway	140	\$250.00	Siddoway Personal
09/06/90	3189	First Capitol Life	145	\$320.50	Siddoway disability
11/12/90	3299	New York Life	145	\$480.20	Siddoway disability
08/15/90	3147	America First C.U.	161	\$16,600.00	Purchase Motor home
11/01/90	3288	Price Savers	169	\$269.83	No documentation
01/17/90	2806	Price Savers	505	\$101.35	Siddoway Personal
08/30/90	3178	Zions Bank	505	\$307.00	Zions MasterCard / No documentation
09/06/90	3195	Overhead Door	505	\$68.78	No documentation / No Purpose
10/18/90	3258	Price Savers	505	\$231.70	No documentation
10/26/90	3282	Zions Bank	505	\$69.23	Zions MasterCard / No documentation
11/29/90	3326	Zions Bank	890	\$35.64	Zions MasterCard / No documentation
02/05/90	2835	Zions Bank	610	\$36.13	Zions MasterCard / No documentation
02/27/90	2899	Zions Bank	610	\$27.75	Zions MasterCard / No documentation
04/02/90	2936	Zions Bank	610	\$47.67	Zions MasterCard / No documentation
09/27/90	3232	Zions Bank	610	\$237.47	Zions MasterCard / No documentation
04/09/90	2928	Sportsclub	618	\$590.00	Siddoway Personal / No documentation
06/29/90	3064	Utah Jazz	618	\$705.60	No documentation
07/27/90	3232	Utah Jazz	618	\$1,411.20	
11/29/90	3326	Zions Bank	618	\$20.78	Zions MasterCard / No documentation
12/27/90	3377	Zions Bank	618	\$445.25	Zions MasterCard / No documentation
10/26/90	3284	Founder's Title	619	\$14.00	Siddoway purchases
02/16/90	2849	Allied Clinical Lab	637	\$73.33	Siddoway Medical / Personal
03/19/90	2908	Pioneer Valley Hospital	637	\$79.94	Siddoway Medical / Personal
05/11/90	2997	Alta View Hospital	637	\$252.00	Siddoway Medical / Personal
06/11/90	3046	Pediatric Asso.	637	\$182.00	Siddoway Personal / Personal
03/09/90	2895	First Capitol Life	640	\$320.50	Siddoway Disability
09/25/90	3218	American Concept	640	\$411.00	Siddoway Personal
12/27/90	3377	Zions Bank	643	\$20.00	Zions MasterCard / No documentation
09/06/90	3193	Price Savers	650	\$55.00	No documentation

10/25/90	3265	Price Savers	650	\$136.75	Zions MasterCard / No documentation
10/28/90	3285	Price Savers	650	\$107.59	No documentation
05/01/90	2976	Zions Bank	656	\$55.17	Zions MasterCard / No documentation
01/04/90	2787	D. Adamson	657	\$2,000.00	Siddoway Attorney
04/16/90	2951	T & L Cafe	663	\$162.40	No documentation
04/21/90	2954	Jon Siddoway	663	\$300.00	No documentation
09/06/90	3186	Bostich Stanley	673	\$243.86	No documentation
09/24/90	3209	Bostich Stanley	673	\$372.00	No documentation
08/31/90	3180	Harmons	674	\$150.00	No documentation
04/20/90	2936	Zions Bank	690	\$221.16	Zions MasterCard / No documentation
05/30/90	3015	Zions Bank	690	\$138.52	Zions MasterCard / No documentation
05/31/90	3024	Gus Paulos	690	\$45.63	Zions MasterCard / No documentation
08/30/90	3178	Zions Bank	690	\$717.64	Zions MasterCard / No documentation
09/27/90	3232	Zions Bank	690	\$389.19	Zions MasterCard / No documentation
10/18/90	3257	Americas	690	\$16.98	No documentation
10/26/90	3287	Zions Bank	690	\$603.46	Zions MasterCard / No documentation
10/30/90	3286	Siddoway Service	690	\$79.69	No documentation
11/29/90	3326	Zions Bank	690	\$335.57	Zions MasterCard / No documentation
12/27/90	3377	Zions Bank	690	\$454.35	Zions MasterCard / No documentation
05/01/90	2976	Zions Bank	755	\$1,074.49	Zions MasterCard / No documentation
05/30/90	3015	Zions Bank	755	\$67.34	Zions MasterCard / No documentation
06/09/90	3047	Price Savers	755	\$79.60	No documentation
06/29/90	3069	Zions Bank	755	\$794.66	Zions MasterCard / No documentation
08/02/90	3126	Zions Bank	755	\$495.68	Zions MasterCard / No documentation
12/27/90	3376	Pacifica Charters	810	\$4,950.00	Siddoway Personal Travel / No documentation
05/01/90	2976	Zions Bank	856	\$157.53	Zions MasterCard / No documentation
08/01/90	3122	J. Anderson & Holland	857	\$500.00	Legal / No documentation
05/01/90	2976	Zions Bank	863	\$364.08	Zions MasterCard / No documentation
12/31/90	3382	Sears	873	\$191.23	No documentation
02/19/90	2858	J. Siddoway	874	\$250.00	Siddoway Personal
02/27/90	2869	Zions Bank	874	\$224.05	Zions MasterCard / No documentation
05/11/90	2994	Jon Siddoway	874	\$500.00	No documentation
06/08/90	3041	Jon Siddoway	874	\$500.00	No documentation
06/29/90	3069	Zions Bank	874	\$86.43	Zions MasterCard / No documentation
08/02/90	3126	Zions Bank	874	\$243.83	Zions MasterCard / No documentation
09/27/90	3233	Jon Siddoway	874	\$500.00	
09/29/90	3235	Price Savers	874	\$271.72	No documentation
09/30/90	JE	Jon Siddoway	874	\$2,611.64	Siddoway

Date	CK#	Payee	Acct	Amount	Comments
04/02/90	2936	Zions Bank	890	\$52.50	Zions MasterCard / No documentation
05/01/90	2976	Zions Bank	890	\$321.78	Zions MasterCard / No documentation
05/30/90	3015	Zions Bank	890	\$234.97	Zions MasterCard / No documentation
06/29/90	3069	Zions Bank	890	\$755.58	Zions MasterCard / No documentation
08/02/90	3126	Zions Bank	890	\$598.29	Zions MasterCard / No documentation
TOTAL:				\$56,019.21	
1991					
04/26/91	3561	Zions Bank	138	\$94.54	Zions MasterCard / No documentation
11/07/91	3864	New York Life	145	\$480.20	Siddoway disability
07/05/91	3649	Discover Card	290	\$201.64	No documentation / Siddoway Personal
05/30/91	3604	Zions Bank	505	\$71.31	Zions MasterCard / No documentation
09/01/91	3754	Discover Card	505	\$250.75	No documentation
09/01/91	3755	Zions Bank	505	\$7.84	Zions MasterCard / No documentation
10/04/91	3808	Discover Card	505	\$148.35	No documentation
01/31/91	3435	Zions Bank	610	\$280.00	Zions MasterCard / No documentation
12/05/91	3961	Greecian Gardens	610	\$14.43	Visa Gold
12/17/91	3961	Green Parrot	610	\$78.71	Visa Gold
03/08/91	3491	Zions Bank	618	\$264.99	Zions MasterCard / No documentation
03/15/91	3501	Utah Jazz	618	\$712.80	
03/29/91	3525	Zions Bank	618	\$84.21	Zions MasterCard / No documentation
04/26/91	3561	Zions Bank	618	\$76.71	Zions MasterCard / No documentation
05/30/91	3604	Zions Bank	618	\$103.82	Zions MasterCard / No documentation
07/16/91	3676	Utah Jazz	618	\$298.80	
08/06/91	3716	Discover Card	618	\$19.63	No documentation
09/01/91	3758	Utah Jazz	618	\$774.00	
09/27/91	3795	Utah Jazz	618	\$774.00	
09/27/91	3797	Zions Bank	618	\$33.35	Zions MasterCard / No documentation
10/17/91	3826	Utah Jazz	618	\$2,322.00	
10/17/91	3826	Utah Jazz	618	\$2,322.00	Jazz Tickets
12/04/91	3897	Discover	618	\$19.95	No documentation
12/31/91	4115	Magic Wok	618	\$23.97	Visa Gold
05/30/91	3604	Zions Bank	634	\$1.31	Zions MasterCard / No documentation
12/04/91	3897	Discover	634	\$835.85	No documentation
05/09/91	3582	American	640	\$439.00	No documentation / Siddoway
09/01/91	3757	First Capitol Life	640	\$320.50	Siddoway
09/20/91	3765	CSE Insurance Group	640	\$170.57	No documentation
10/30/91	3825	CSE Insurance Group	640	\$593.80	No documentation
02/19/91	3460	Price Savers	650	\$15.92	No documentation
02/28/91	3471	Price Savers	650	\$67.31	No documentation

Date	CK#	Payee	Acct	Amount	Comments
09/01/91	3754	Discover Card	665	\$40.95	No documentation
09/27/91	3797	Zions Bank	665	\$140.25	Zions MasterCard / No documentation
12/04/91	3897	Discover	665	\$31.81	No documentation
01/05/91	3403	Marine Wholesalers	670	\$714.71	Siddoway / No documentation
04/26/91	3561	Zions Bank	670	\$648.67	Zions MasterCard / No documentation
05/30/91	3602	Discover Card	670	\$47.80	No documentation / Dawn Siddoway
10/30/91	3854	Zions Bank	670	\$28.90	Zions MasterCard / No documentation
11/07/91	3859	Discover	670	\$14.54	No documentation
12/02/91	3961	Plaza Cycle	673	\$371.85	Visa Gold / No documentation
03/08/91	3491	Zions Bank	674	\$247.27	Zions MasterCard / No documentation
06/19/91	3632	Jon Siddoway	674	\$500.00	No documentation
09/01/91	3759	Zions Bank	674	\$117.70	Zions MasterCard / No documentation
09/27/91	3797	Zions Bank	674	\$22.40	Zions MasterCard / No documentation
10/04/91	3810	Jon Siddoway	674	\$300.00	
10/17/91	3823	Harmons	674	\$118.86	No documentation
10/17/91	3845	PACE	674	\$103.99	No documentation
11/18/91	3882	Jon Siddoway	674	\$250.00	No documentation
01/31/91	3435	Zions Bank	683	\$405.00	Zions MasterCard / No documentation
08/06/91	3718	Zions Bank	683	\$129.17	Zions MasterCard / No documentation
11/17/91	3954	Pagoda Restaurant	683	\$43.13	Zions M/C
11/20/91	3950	ZCMI	683	\$58.49	Discover / Dawn Siddoway
11/22/91	3950	Shopko	683	\$15.58	Discover / Dawn Siddoway
11/22/91	3950	ZCMI	683	\$35.26	Discover / Dawn Siddoway
12/08/91	3950	Fred Meyer	683	\$18.35	Discover / Dawn Siddoway
12/09/91	3950	Shopko	683	\$13.93	Discover / Dawn Siddoway
12/09/91	3950	Shopko	683	\$22.29	Discover / Dawn Siddoway
12/09/91	3950	Shopko	683	\$75.49	Discover / Dawn Siddoway
12/10/91	3950	Kmart	683	\$235.34	Discover / Dawn Siddoway
01/31/91	3435	Zions Bank	690	\$57.43	Zions MasterCard / No documentation
01/31/91	3435	Zions Bank	690	\$280.00	Zions MasterCard / No documentation
03/08/91	3491	Zions Bank	690	\$447.99	Zions MasterCard / No documentation
03/29/91	3525	Zions Bank	690	\$133.41	Zions MasterCard / No documentation
04/26/91	3561	Zions Bank	690	\$208.44	Zions MasterCard / No documentation
05/30/91	3604	Zions Bank	690	\$231.41	Zions MasterCard / No documentation
07/05/91	3649	Zions Bank	690	\$61.40	Zions MasterCard / No documentation
08/06/91	3716	Discover	690	\$287.68	No documentation
08/06/91	3718	Zions Bank	690	\$209.18	Zions MasterCard / No documentation
09/01/91	3759	Zions Bank	690	\$381.98	Zions MasterCard / No documentation
10/30/91	3854	Zions Bank	690	\$399.72	Zions MasterCard / No documentation
11/07/91	3862	Discover	690	\$75.00	No documentation
12/04/91	3897	Discover	690	\$29.01	No documentation
12/04/91	3897	Discover	690	\$200.26	No documentation
01/31/91	3435	Zions Bank	755	\$357.48	Zions MasterCard / No documentation

Date	CK#	Payee	Acct	Amount	Comments
01/07/91	3400	Neils R.V.	860	\$236.50	No documentation
05/30/91	3604	Zions Bank	873	\$30.35	Zions MasterCard / No documentation
01/04/91	3399	Jon Siddoway	874	\$700.00	No documentation
04/26/91	3556	Jon Siddoway	874	\$700.00	No documentation
05/15/91	3587	Jon Siddoway	874	\$250.00	No documentation
05/24/91	3601	Jon Siddoway	874	\$600.00	No documentation
07/08/91	3661	Jon Siddoway	874	\$400.00	
08/06/91	3718	Zions Bank	874	\$25.33	Zions MasterCard / No documentation
11/21/91	3892	Jon Siddoway	874	\$300.00	No documentation
09/01/91	3754	Discover	838	\$184.94	No documentation
01/31/91	3435	Zions Bank	890	\$154.90	Zions MasterCard / No documentation
08/06/91	3718	Zions Bank	890	\$192.76	Zions MasterCard / No documentation
09/01/91	3754	Discover	890	\$209.17	No documentation
TOTAL:				\$22,998.33	

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01/22/92	4205	Dixie Woodworks	505	\$1,492.00	No documentation / Check shows "Jons"
01/29/92	3992	Bowells Plumbing	505	\$1,500.00	No documentation
02/25/92	4133	Western States Supply	505	\$2,550.00	No documentation
03/08/92	4246	Standard Builders	505	\$45.47	Invoice 525870 - Siddoway
03/17/92	4164	Superior Supply	505	\$1,214.37	No documentation
04/06/92	4194	Superior Supply	505	\$176.62	No documentation
05/22/92	4275	Bringard Co	505	\$165.21	No documentation
05/23/92	4314	Capital Building Mat	505	\$485.24	No documentation
06/11/92	4340	Metro West	505	\$754.91	Delivery Address / Siddoway Residence
06/22/92	4385	Walmart	505	\$4.63	Discover / Dawn Siddoway
06/26/92	4385	Pace	505	\$66.90	Discover / Dawn Siddoway
06/30/92	4341	Pioneer Sand	505	\$357.81	Delivery Address/Siddoway Personal Residence
07/01/92		Standard Builders	505	\$77.55	Trade Credit
07/01/92	4328	Standard Builders	505	\$213.65	Invoice 536500 - Siddoway
07/01/92		Standard Builders	505	\$2,237.85	Trade Credit
07/07/92	4385	Homebase	505	\$57.30	Discover / Dawn Siddoway
07/10/92	4411	Pay N Pak	505	\$32.37	No documentation
07/10/92	4385	Homebase	505	\$49.90	Discover / Dawn Siddoway
07/10/92	4385	Homebase	505	\$125.79	Discover / Dawn Siddoway
07/10/92	4385	Fred Meyer	505	\$35.03	Discover / Dawn Siddoway
07/11/92	4385	Lighting Specialists	505	\$83.18	Discover / Dawn Siddoway
07/23/92	4362	Mantle Magic	505	\$862.00	No documentation
07/29/92	4370	Standard Builders	505	\$15.53	Invoice 546604 - Siddoway
07/29/92	4370	Standard Builders	505	\$59.61	Invoice 544931 - Siddoway
07/29/92	4370	Standard Builders	505	\$771.27	Invoice 543662 - signed by D. Siddoway
08/16/92	4458	Fred Meyer	505	\$20.23	Purchase by Dawn Siddoway
02/06/92	4155	Grecian Gardens	610	\$13.75	Visa Gold
02/23/92	4155	Texas Reds	610	\$39.91	Visa Gold

Date	CK#	Payee	Acct	Amount	Comments
02/24/92	4155	Grecian Gardens	610	\$14.82	Visa Gold
06/12/92	4411	TGI Fridays	610	\$57.20	Visa Gold
07/01/92	4411	Texas Reds	610	\$20.30	Visa Gold
07/18/92	4411	Fransico's	610	\$32.53	Visa Gold
07/25/92	4411	The Shed	610	\$132.50	Visa Gold
10/31/92	4558	Green Parrot	610	\$56.20	Zions M/C
01/02/92	4115	Sizzler	618	\$22.88	Visa Gold
01/09/92	4115	Grecian Gardens	618	\$12.46	Visa Gold
01/15/92	4115	Grecian Gardens	618	\$11.05	Visa Gold
01/22/92	4115	Green Parrot	618	\$91.11	Visa Gold
01/29/92	4115	Green Parrot	618	\$39.88	Visa Gold
03/17/92	4163	Utah Jazz	618	\$2,250.00	Jazz Tickets
03/18/92	4216	Grecian Gardens	618	\$8.37	Visa Gold
03/24/92	4216	Village Inn	618	\$12.38	Visa Gold
03/26/92	4216	Green Parrot	618	\$50.25	Visa Gold
03/30/92	4257	Grecian Gardens	618	\$11.28	Visa Gold
04/08/92	4257	Grecian Gardens	618	\$12.08	Visa Gold
04/11/92	4257	Francisco's	618	\$14.60	Visa Gold
04/13/92	4257	Green Parrot	618	\$64.44	Visa Gold
05/01/92	4300	Batters Up	618	\$12.94	Visa Gold
05/04/92	4300	Grecian Gardens	618	\$12.83	Visa Gold
07/01/92	4321	Utah Jazz	618	\$949.20	Jazz Tickets
08/07/92	4388	Utah Jazz	618	\$1,651.20	Jazz Tickets
08/16/92	4458	Village Inn	618	\$14.41	Visa Gold
08/30/92	4458	Batters Up	618	\$14.25	Visa Gold
08/31/92	4458	Marie Callendars	618	\$42.03	Visa Gold
09/03/92	4494	Village Inn	618	\$12.30	Visa Gold
09/07/92	4494	Dees Restaurant	618	\$12.80	Visa Gold
09/08/92	4445	Casa Del Sol	618	\$31.42	Visa Gold
09/12/92	4494	Diamond Lilis	618	\$1,651.20	Jazz Tickets
09/24/92	4494	Village Inn	618	\$33.14	Visa Gold
10/23/92	4535	Pancho Villa	618	\$12.86	Visa Gold
10/23/92	4535	Casa Del Sol	618	\$13.68	Visa Gold
12/11/92	4627	Batters Up	618	\$17.27	Visa Gold
				\$17.46	Visa Gold
10/16/92	4535	Weinstocks	634	\$145.38	Visa Gold / Dawn Siddoway
11/25/92	4629	Pacific Linen	634	\$42.42	Discover / Dawn Siddoway
11/28/92	4629	Pacific Linen	634	\$90.72	Discover / Dawn Siddoway
11/30/92	4629	Pacific Linen	634	\$36.06	Discover / Dawn Siddoway
11/30/92	4629	Pacific Linen	634	\$4.24	Discover / Dawn Siddoway
12/21/92	4629	Fred Meyer	634	\$28.74	Discover / Dawn Siddoway
12/21/92	4629	Kmart	634	\$131.75	Discover / Dawn Siddoway
12/21/92	4629	Shopko	634	\$121.65	Discover / Dawn Siddoway
12/21/92	4629	Shopko	634	\$344.31	Discover / Dawn Siddoway
12/21/92	4629	Fred Meyer	634	\$61.10	Discover / Dawn Siddoway
12/21/92	4629	Harmons	634	\$19.99	Discover / Dawn Siddoway

Date	CK#	Payee	Acct	Amount	Comments
12/08/92	4578	Shopko	637	\$203.94	Visa Gold / Dawn Siddoway
05/08/92	4241	Tioga Motor Home	640	\$159.00	Coverage 05/28/92 - 11/28/92
05/08/92	4241	Chevy Corsica	640	\$273.00	Coverage 05/28/92 - 11/28/92
11/23/92	4557	American Concept Insurn	640	\$312.00	Total Check Amount
11/23/92	4557	Chevy Corsica	640	\$312.00	Coverage 11/28/92 - 05/28/93
04/02/92	4257	Bufs & Puffs	690	\$10.41	Visa Gold / Dawn Siddoway
05/12/92	4195	Texaco	690	\$9.96	Purchases by Dawn Siddoway
05/12/92	4283	Texaco	690	\$10.96	Purchases by Dawn Siddoway
05/11/92	4250	Waste Management	693	\$155.60	Waste Pick Siddoway Residence
03/19/92	4178	Waste Management	693	\$53.13	Waste Pick Siddoway Residence
04/20/92	4211	Waste Management	693	\$154.00	Waste Pick Siddoway Residence
05/15/92	4258	Bringard Co	755	\$2,586.70	No documentation
TOTAL:				\$26,186.46	

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02/27/93	4745	Dees Restaurant	610	\$23.10	Visa Gold
02/28/93	4745	TGI Fridays	610	\$35.91	Visa Gold
08/16/93	4987	Chili's Restaurant	610	\$14.76	Visa Gold
08/17/93	4987	Dees Restaurant	610	\$11.76	Visa Gold
08/19/93	4987	Fong Ling Restaurant	610	\$100.16	Visa Gold
10/02/93	5070	Olive Garden	610	\$49.54	Visa Gold
10/16/93	5070	Mulboons	610	\$197.71	Visa Gold
10/19/93	5070	Green Parrot	610	\$26.00	Visa Gold
11/26/93	5129	Red Lobster	610	\$42.21	Visa Gold
12/02/93	5164	Marine Products Pro	610	\$7.00	Visa Gold
12/06/93	5164	Green Street	610	\$29.96	Visa Gold
02/12/93	4707	Denim Depot	618	\$48.85	Visa Gold
02/01/93	4707	Red Lion	618	\$22.75	Visa Gold
03/16/93	4745	Red Lion	618	\$41.25	Visa Gold
04/02/93	4796	Grecian Gardens	618	\$15.50	Visa Gold
04/07/93	4796	Deer Valley Resort	618	\$43.30	Visa Gold
04/19/93	4796	Grecian Gardens	618	\$8.20	Visa Gold
06/10/93	4839	Utah Jazz	618	\$2,631.60	Jazz Tickets
07/22/93	4936	Tony Romas	618	\$40.22	Visa Gold
12/01/93	5175	JC Penny	634	\$505.03	Discover / Dawn Siddoway
12/01/93	5175	Mervyns	634	Included in 505.03	Discover / Dawn Siddoway
12/01/93	5175	Shopko	634	Included in 505.03	Discover / Dawn Siddoway
12/01/93	5175	Shopko	634	Included in 505.03	Discover / Dawn Siddoway
12/01/93	5175	Toys R Us	634	Included in 505.03	Discover / Dawn Siddoway
12/01/93	5175	Kids R Us	634	Included in 505.03	Discover / Dawn Siddoway
03/31/93	4796	Advanced Home Prescrip	637	\$50.00	Personal Medical / Siddoway

Date	CK#	Payee	Acct	Amount	Comments
03/31/93	4796	Advanced Home Prescrip	637	\$10.00	Personal Medical / Siddoway
04/12/93	4740	Dr. David Lusty	637	\$153.00	Personal Medical / Siddoway
08/18/93	4439	Holy Cross Jordan Valley	637	\$214.08	Personal Medical / Siddoway
08/18/93	4438	Jordan Valley Fam Health	637	\$35.00	Personal Medical / Siddoway
05/10/93	4790	Chevy Corsica	640	\$312.00	Coverage 05/28/93 - 11/28/93
05/10/93	4790	Tioga Motor Home	640	\$159.00	Coverage 05/28/93 - 11/28/93
11/10/93	5065	Tioga Motor Home	640	\$177.00	Coverage 11/28/93 - 05/28/94
11/10/93	5065	Chevy Corsica	640	\$304.00	Coverage 11/28/93 - 05/28/94
01/11/93	4614	Val Paulson	670	\$755.00	No documentation
04/03/93	4796	Motel 6	674	\$32.20	No documentation
04/04/93	4796	State Line Casino	674	\$16.83	No documentation
07/27/93	4936	Morris Air	683	\$222.00	No documentation
02/19/93	4707	Supersonic Car Wash	690	\$13.76	Visa Gold / Dawn Siddoway
03/07/93	4742	Texaco	690	\$10.87	Purchases by Dawn Siddoway
03/31/93	4799	Texaco	690	\$10.81	Purchases by Dawn Siddoway
04/06/93	4799	Texaco	690	\$10.04	Purchases by Dawn Siddoway
05/21/93	4841	Hanksville UT	690	\$33.00	Personal Travel / Siddoway
05/22/93	4841	Bullfrog Marina	690	\$35.69	Personal Travel / Siddoway
05/23/93	4841	Bullfrog Marina	690	\$39.15	Personal Travel / Siddoway
05/24/93	4841	Bullfrog Marina	690	\$42.03	Personal Travel / Siddoway
05/30/93	4878	Texaco	690	\$10.27	Purchases by Dawn Siddoway
07/12/93	4936	Conoco	690	\$13.71	Visa Gold / Dawn Siddoway
08/21/93	4984	Supersonic Car Wash	690	\$15.35	Visa Gold / Dawn Siddoway
09/12/93	5016	Bullfrog Resort	690	\$62.00	Personal Travel / Siddoway
09/17/93	5016	Bufs & Puffs	690	\$14.81	Visa Gold / Dawn Siddoway
10/26/93	5103	Texaco	690	\$11.87	Purchases by Dawn Siddoway
04/28/93	4771	Robert Munson Masonry	757	\$6,460.00	No documentation
06/12/93	4879	Marriott Florida	874	\$102.72	No documentation
03/05/93	4745	Motel 6	883	\$64.40	Visa Gold / No documentation
06/09/93	4879	Morris Air	883	\$40.00	No documentation
05/26/93	4936	Morris Air	883	\$202.00	No documentation
TOTAL:				\$13,527.40	

1994

01/15/94	5195	Five Alls Restaurant	610	\$214.47	Visa Gold
01/27/94	5195	Village Inn	610	\$13.17	Visa Gold
02/02/94	5256	Sizzler	610	\$31.01	Visa Gold
02/23/94	5256	The Stew Pot	610	\$25.93	Visa Gold
04/14/94	5323	Green Street	610	\$71.30	Visa Gold
05/06/94	5368	Pussers Restaurant	610	\$67.68	Visa Gold

Date	CK#	Payee	Acct	Amount	Comments
05/24/94	5368	Grecian Gardens	610	\$9.12	Visa Gold
06/10/94	5417	Recreation Outlet	610	\$84.99	Visa Gold
06/28/94	5417	Jans At Park Meadows	610	\$90.09	Visa Gold
09/05/94	5563	Sizzler	610	\$27.51	Visa Gold
08/01/94	5613	Red Lobster	610	\$69.52	Visa Gold
08/17/94	5613	Bennetts Barbacue	610	\$39.96	Visa Gold
10/17/94	5601	La Caille Restaurant	610	\$256.90	Visa Gold
11/03/94	5662	Million Dollar Saloon	610	\$74.35	Visa Gold
11/16/94	5662	Million Dollar Saloon	610	\$86.00	Visa Gold
12/22/94	5803	Sizzler	610	\$27.65	Visa Gold
02/20/94	5812	Delta Center	618	\$198.00	Visa Gold
03/08/94	5285	TGI Fridays	618	\$28.50	Visa Gold
03/17/94	5285	Chili's Restaurant	618	\$6.38	Visa Gold
03/17/94	5285	Chilli's Restaurant	618	\$26.11	Visa Gold
11/10/94	5763	Leprechaun Inn	618	\$27.25	Visa Gold
11/12/94	5763	Village Inn	618	\$57.28	Visa Gold
11/24/94	5763	Olive Garden	618	\$99.59	Visa Gold
02/21/94	5812	JC Penny	634	\$200.00	Visa Gold
03/01/94	5812	Flower Patch	634	\$44.82	Visa Gold
08/29/94	5613	Sports Warehouse	634	\$107.27	Visa Gold
11/05/94	5662	ZCMI	634	\$50.00	Visa Gold
11/24/94	5662	Kmart	634	\$15.91	Visa Gold
11/24/94	5662	Kmart	634	\$78.49	Visa Gold
11/25/94	5662	Shopko	634	\$50.18	Visa Gold
11/26/94	5662	Shopko	634	\$17.77	Visa Gold
11/26/94	5662	Kmart	634	\$59.92	Visa Gold
11/26/94	5662	Shopko	634	\$88.10	Visa Gold
11/26/94	5662	Shopko	634	\$42.44	Visa Gold
11/15/94	5763	Media Play	634	\$91.19	Visa Gold
11/18/94	5763	Shopko	634	\$107.05	Visa Gold / No documentation
12/02/94	5712	Red Lobster	634	\$34.26	Visa Gold
12/10/94	5803	Mervyns	634	\$64.88	Visa Gold
12/10/94	5803	JC Penny	634	\$55.14	Visa Gold
12/10/94	5803	Kmart	634	\$25.45	Visa Gold
12/11/94	5712	Fred Meyer	634	\$53.10	Visa Gold
12/11/94	5712	Shopko	634	\$8.20	Visa Gold
12/11/94	5712	Toys R Us	634	\$131.76	Visa Gold
12/15/94	5712	Pardners Restaurant	634	\$231.85	Visa Gold
12/16/94	5712	Grecian Gardens	634	\$20.00	Visa Gold
12/16/94	5803	Recreation Outlet	634	\$69.40	Visa Gold
12/17/94	5803	Kmart	634	\$98.06	Visa Gold
02/08/94	5141	Craig Wilenson MD	637	\$130.00	Personal Medical / Siddoway / No Gen Ledger
02/15/94	5202	Sun West Cottonwood H	637	\$1,200.00	Personal Medical / Siddoway / Spa
02/15/94	5203	Cottonwood Hospital	637	\$1,446.12	Personal Medical / Siddoway / No Gen Ledger
02/15/94	5204	Anthony Diaz MD	637	\$318.00	Personal Medical / Siddoway / No Gen Ledger
03/08/94	5225	Sun West Cottonwood H	637	\$1,338.53	Personal Medical / Siddoway / Spa

Date	CK#	Payee	Acct	Amount	Comments
06/05/94	5359	Cottonwood Hospital	637	\$62.43	Personal Medical / Siddoway
06/05/94	5360	Dr. Rodney Davis	637	\$40.00	Personal Medical / Siddoway
06/05/94	5363	Holy Cross Jordan Valley	637	\$229.63	Personal Medical / Siddoway
06/05/94	5352	Alta View Hosp	637	\$192.04	Personal Medical / Siddoway
06/05/94	5364	Linda Cordell MD	637	\$471.60	Personal Medical / Siddoway
05/09/94	5317	Tioga Motor Home	640	\$177.00	Coverage 05/28/94 - 11/28/94
05/09/94	5317	Lincoln Town Car	640	\$373.00	Coverage 05/28/94 - 11/28/94
08/17/94	5471	Tioga Motor Home	640	\$264.00	Coverage 05/28/94 - 11/28/94
11/10/94	5595	Lincoln Town Car	640	\$323.00	Coverage 11/28/94 - 05/28/95
12/20/94	5657	Tioga Motor Home	640	\$132.00	Coverage 11/28/94 - 05/28/95
03/23/94	5253	Bowells Plumbing	665	\$.	No documentation
01/25/94	5256	Delta Air	683	\$3,197.70	Personal Travel / Siddoway
04/03/94	5323	Delta Air	683	\$249.00	No documentation
04/03/94	5323	Delta Air	683	\$249.00	No documentation
05/18/94	4260	Griffith Auto	690	\$516.55	Siddoway Personal Vehicle / Corsica Repairs
07/19/94	5459	Norda's Texaco	690	\$12.30	Purchases by Dawn Siddoway
08/12/94	5511	Norda's Texaco	690	\$29.65	Purchases by Dawn Siddoway
08/17/94	5503	Tire World	690	\$127.46	Siddoway Personal Vehicle / Tires Corsica
09/15/94	5563	Hanksville UT	690	\$37.02	Personal Travel / Siddoway
09/17/94	5563	Bullfrog Resort	690	\$44.32	Personal Travel / Siddoway
09/17/94	5563	Bullfrog Resort	690	\$26.38	Personal Travel / Siddoway
09/18/94	5563	Bullfrog Resort	690	\$136.96	Personal Travel / Siddoway
09/18/94	5656	Supersonic Car Wash	690	\$11.61	Purchases by Dawn Siddoway
09/18/94	5563	Bullfrog Resort	690	\$36.23	Personal Travel / Siddoway
09/19/94	5563	Hollow Mountain Gasoli	690	\$51.76	Visa Gold
09/28/94	5536	Noorda's Texaco	690	\$26.74	Purchases by Dawn Siddoway
10/19/94	5600	Noorda's Texaco	690	\$16.08	Purchases by Dawn Siddoway
11/04/94	5640	Tire World	690	\$186.45	Siddoway Personal Vehicle / Tires Lincoln
11/10/94	5662	MiddleKauf Lincoln	690	\$66.49	Siddoway Personal Vehicle / Lincoln- repairs
12/16/94	5689	Noorda's Texaco	690	\$19.22	Purchases by Dawn Siddoway
08/17/94	5535	Pizza & Pasta	695	\$22.46	Visa Gold
02/08/94	5140	Jeff Russell	?	\$180.00	No documentation
TOTAL:				\$15,318.73	

1995

01/14/95	5733	Ariake	610	\$74.83	Visa Gold
03/04/95	5862	Olive Garden	610	\$117.39	Visa Gold
03/18/95	5862	Wok King	610	\$14.25	Visa Gold
03/18/95	5862	Delta Center	610	\$98.71	Visa Gold / Disney on Ice
04/05/95	5896	Dees Restaurant	610	\$20.03	Visa Gold
04/13/95	5896	Wok King	610	\$15.91	Visa Gold
04/15/95	5896	Lonestar Restaurant	610	\$77.97	Visa Gold
04/29/95	5896	Green Street	610	\$85.79	Visa Gold

Date	CK#	Payee	Acct	Amount	Comments
05/02/95	5945	Smiths Tix	610	\$181.00	Visa Gold
05/15/95	5945	Excalibur Hotel	610	\$36.78	No documentation
01/03/95	5812	Sizzler	618	\$12.81	Visa Gold
02/03/95	5812	Club 90	618	\$55.40	Visa Gold
02/08/95	5812	Green Street	618	\$32.40	Visa Gold
02/18/95	5812	Toucan Cantina	618	\$47.97	Visa Gold
02/19/95	5812	Green Street	618	\$73.34	Visa Gold
02/23/95	5812	Training Table	618	\$35.03	Visa Gold
03/03/95	5770	Utah Jazz	618	\$2,160.00	Jazz Tickets
06/26/95	5994	Bullfrog Resort	618	\$176.74	No documentation
06/28/95	5962	Utah Jazz	618	\$336.00	Jazz Tickets
08/08/95	6034	Utah Jazz	618	\$2,064.00	Jazz Tickets
09/27/95	5627	Utah Jazz	618	\$2,064.00	Jazz Tickets
05/16/95	5946	Satellex TV	634	\$89.95	Visa Gold
06/09/95	5994	ZCMI	634	\$42.45	Visa Gold
06/09/95	5995	ZCMI	634	\$40.75	Visa Gold
06/06/95	5929	Dr. Rodney Davis	637	\$105.00	Personal Medical / Siddoway
07/28/95	6018	Salt Lake Family Clinic	637	\$180.00	Personal Medical / Siddoway
08/04/95	6022	Salt Lake Family Clinic	637	\$180.00	Personal Medical / Siddoway
09/08/95	6100	Salt Lake Family Clinic	637	\$90.00	Personal Medical / Siddoway
05/12/95	5895	Lincoln Town Car	640	\$323.00	Coverage 05/28/95 - 11/28/95
05/12/95	5895	Tioga Motor Home	640	\$139.00	Coverage 05/28/95 - 11/28/95
11/14/95	5701	Lincoln Town Car	640	\$323.00	Coverage 11/28/96 - 05/28/96
11/14/95	5701	Tioga Motor Home	640	\$143.00	Coverage 11/25/95 - 05/28/96
01/10/95	5750	Tire World	690	\$22.23	Siddoway Personal Vehicle / Lincoln-repairs
03/18/95	5862	Eagle Hardware	690	\$24.04	Visa Gold / bathroom scale
04/05/95	5888	Tire World	690	\$27.54	Siddoway Personal Vehicle / Lincoln-repairs
04/14/95	5886	Noorda's Texaco	690	\$15.85	Purchases by Dawn Siddoway
05/16/95	5945	Bufs & Puffs	690	\$8.11	Purchases by Dawn Siddoway
06/16/95	5979	Noorda's Texaco	690	\$23.50	Purchases by Dawn Siddoway
07/25/95	6037	Noorda's Texaco	690	\$18.80	Purchases by Dawn Siddoway
09/13/95	5651	Noorda's Texaco	690	\$11.02	Purchases by Dawn Siddoway
TOTAL:				\$9,587.59	
1996					
02/28/96	5938	Lone Star Restaurant	610	\$25.00	Visa Gold
03/14/96	5938	Bennetts Barbecue	610	\$43.76	Visa Gold
04/20/96	5979	Chart House Restaurant	610	\$166.50	Visa Gold
05/01/96	5994	Training Table	610	\$25.07	Visa Gold
05/11/96	6035	Bennetts Barbecue	610	\$76.64	Visa Gold
05/12/96	6035	Chart House Restaurant	610	\$223.39	Visa Gold
02/03/96	5899	Host International Rest	618	\$82.90	Visa Gold
03/23/96	5914	Utah Jazz	618	\$2,430.00	Jazz Tickets

Date	CK#	Payee	Acct	Amount	Comments
05/08/96	5972	Tioga Motor Home	640	\$143.00	Coverage 05/28/96 - 11/28/96
05/08/96	5972	Lincoln Town Car	640	\$323.00	Coverage 05/28/96 - 11/28/96
05/08/96	5972	American Concept Insurn	640	\$939.00	Total Check Amount
					Total includes personal vehicles only
06/17/96	6026	Robert Munson Masonry	665	\$2,126.00	Inv. shows repair at S&B/Why did Standard pa
04/08/96	5938	Supersonic Car Wash	690	\$16.17	Purchases by Dawn Siddoway
04/08/96	5979	ZCMI	690	\$18.03	Visa Gold / Dawn Siddoway
04/10/96	6028	Noorda's Texaco	690	\$110.71	Repairs / Lincoln
04/10/96	5938	Circle K	690	\$32.05	Purchases by Dawn Siddoway
05/23/96	5991	J Mac Radiator	690	\$273.82	Motor Home
06/17/96	6055	Tire World	690	\$219.33	Siddoway Boat
TOTAL:				\$7,274.37	
TOTAL ALL YEARS:				\$150,192.09	
1990	Inerest at 10%	(12-31-90 to 02-25-99)		\$45,681.60	
1991	Inerest at 10%	(12-31-91 to 02-25-99)		\$16,449.30	
1992	Inerest at 10%	(12-31-92 to 02-25-99)		\$16,036.44	
1993	Inerest at 10%	(12-31-93 to 02-25-99)		\$6,978.51	
1994	Inerest at 10%	(12-31-94 to 02-25-99)		\$6,367.20	
1995	Inerest at 10%	(12-31-95 to 02-25-99)		\$3,015.62	
1996	Inerest at 10%	(12-31-96 to 02-25-99)		\$1,564.14	
TOTAL INTEREST:				\$96,092.81	
TOTAL EXCESS BENEFITS & INTEREST				<u>\$247,004.90</u>	
LEE BARNEY SHARE (\$247,004.90 x .25)				\$61,751.23	