

1 be continued until the assets of Evergreen Development
2 were sold?

3 A I have that agreement with every one of them. I turn
4 these into notes because it's better for them. But all
5 of them approved me entering into the bank debt that
6 said we could not pay shareholders before the bank debt
7 was paid.

8 So I can't just skirt this, turn it into a note,
9 and now pay the note because, I mean, you can't do
10 that. It would be against the covenants with the
11 banks. I mean, I can't pay equity-- I can't pay
12 equity before I pay the bank debt. It's just in the
13 bank note.

14 Q You referred to sort of an understanding among the
15 members of Evergreen to renew these notes until the
16 assets are sold. Is there anything in writing that
17 evidenced this understanding you had with either
18 Hilliard Limited Partnership or any other member of
19 Evergreen Development, LLC, at any time?

20 A The only thing that's in writing is the same thing
21 that's in Tissue Products Technology and in Eco-Fibre,
22 and that is that I had shareholders' approval and board
23 of directors' approval when they were members of
24 Eco-Fibre and when they were members of TPTC to enter
25 into the bank debt that is still in place. And very

1 clearly everyone understands they cannot get any money
2 out of any of the companies directly or indirectly
3 until the assets are sold.

4 Q Okay. That was actually a yes or no question,
5 Mr. Van Den Heuvel, so I'm trying to make this go
6 faster.

7 A Okay.

8 Q So I'll ask the question one more time. You referred
9 to an understanding that you had with the members of
10 Evergreen Development, LLC, to renew various promissory
11 notes until the assets of Evergreen Development were
12 sold. Is that understanding reduced to writing?

13 A I don't believe so, but I'm not sure.

14 Q Okay. What would you need to do to verify your
15 understanding?

16 A I'd have to go through five years of e-mails.

17 Q Okay. I'll just request that you do that to verify
18 your understanding.

19 So we understand, as you sit here today, you don't
20 know of any writing evidencing the understanding we've
21 been referring to, and you're going to let me know if
22 your understanding is incorrect by reviewing e-mails so
23 that the next time we meet, you can deny your
24 understanding if it turns out you're mistaken, correct?

25 A Incorrect. The bank documents and the two resolutions

1 from the shareholders and the board of directors
2 definitely says I cannot buy anybody out without paying
3 them in full.

4 Q The shareholders and board of directors of what entity?

5 A Eco-Fibre and TPTC.

6 Q Okay. I'll request copies of those documents.

7 A Okay.

8 Q Is there anything--any board of directors or members
9 vote or writing evidencing an understanding between you
10 and the members of Evergreen Development, LLC, to renew
11 the promissory notes until the assets of Evergreen are
12 sold?

13 A Other than the fact it just keeps happening. They
14 understand. But no, I don't think anything's in
15 writing.

16 Q Okay. Did you ever have any conversations with any
17 member of Hilliard Limited Partnership regarding this
18 understanding that-- Strike that. Let me lay the
19 foundation.

20 Is it your testimony then that you believe that
21 you had an understanding with the Hilliard Limited
22 Partnership that it would agree to renew the promissory
23 note represented in Exhibit 1 until such time as the
24 assets of Evergreen Development, LLC, were sold?

25 A Yes.

1 Q Okay. Was that ever put in writing?

2 A I'm not sure.

3 Q When was that understanding reached with Hilliard

4 Limited Partnership?

5 A I talked to the guys many a time. And when we turned

6 it from stock to a note, that was the understanding. I

7 mean, they wanted on their balance sheet a note instead

8 of stock so that they could value it, and I agreed to

9 do it through an arm's length transaction with full

10 awareness that there was no way to pay it until the

11 assets were sold and that I would work very diligently

12 to sell the assets and not receive a wage from either

13 one of the companies. I agreed to it.

14 Q With whom on behalf of Hilliard Limited Partnership did

15 you reach this understanding to renew the promissory

16 note represented by Exhibit 1?

17 A Mostly with Dan Hilliard, but I did talk to Neal

18 Maccoux several times on it also.

19 Q And what role does Dan Hilliard play with Hilliard

20 Limited Partnership?

21 A I don't know.

22 Q Okay.

23 A He works for me though.

24 Q Okay. Do you know if Dan Hilliard's a member of

25 Hilliard Limited Partnership?

1 Q Who made the \$10,000 payment?
2 A I don't remember.
3 Q What form did that payment take? Was that cash,
4 cashier's check, wire transfer?
5 A I don't remember.
6 Q What was the \$10,000 for?
7 A I want to say it was maybe some legal costs, maybe
8 some other outside-the-group costs; and we started
9 to talk about a mortgage at that time.
10 Q Why would you cause to be paid \$10,000 for the
11 Hilliard Limited Partnership's legal costs?
12 A Because it's a deal we made going forward and the
13 rest of the shareholders had certain amounts of
14 their legal bills paid also.
15 Q And what did you or the Evergreen Development, LLC,
16 receive in return for making the \$10,000 payment to
17 cover Hilliard Limited Partnership's legal costs?
18 A Well, switching them from a stock to a note had no
19 gain to us. It was -- There's absolutely nothing we
20 received. All we did is helped out our shareholders
21 by allowing the asset purchase agreement that was
22 going forward to give people notes that we could
23 then turn into mortgages and that everybody would
24 ride along together and be paid when these mortgages
25 were satisfied upon the sale of the assets. There



1 Now, there were combined shareholders in
2 this meeting, TPTC and Eco-Fibre; and the TPTC
3 shareholders have received their monies per the
4 agreement. That asset was sold.

5 Q Is there anything in writing that states that the
6 Hilliard Limited Partnership agreed to hold off
7 collecting on its promissory note until such time as
8 a mortgage had been paid off?

9 A Other than the fact that the promissory notes each
10 one received had paragraph 5 in that says they
11 cannot violate any covenants or any mortgages that
12 are on the property, and everyone seen this and
13 understood it.

14 Q Okay. Just so I am clear, other than paragraph 5 of
15 Exhibit No. 1 you know of no document, no letter, no
16 notes, no memo, no e-mail which states that Hilliard
17 Limited Partnership agreed to hold off collecting on
18 its promissory note or receiving payoff under the
19 promissory note until a mortgage had been satisfied?

20 A I have not reviewed the minutes of those meetings.
21 I will review the minutes of those meetings before I
22 could answer that.

23 Q Who took the minutes of these meetings?

24 A It would be Steve Peters or Debra Stary. Possibly
25 it might have been someone else, but I'm not sure.

1 Q Okay. In fact, the promissory note represented by
2 Exhibit No. 8 was not repaid by October 15, 2007; is
3 that correct?

4 A The terms and conditions were not satisfied.

5 Q If we turn to the second page of Exhibit No. 8,
6 paragraph No. 5 defines an event of default. Well,
7 it states an event of default by maker shall mean
8 maker's failure, refusal, inability, or other
9 nonpayment or nonperformance for any reason
10 whatsoever, (1), in the payment of any installment
11 of principal and/or interest due hereunder when due.
12 Did I read that correctly?

13 A Yes.

14 Q And the payment of principal and interest was not
15 made by October 15 of 2007. We already agree on
16 that, correct?

17 A Yes.

18 Q That constitutes an event of default under this
19 promissory note, Exhibit No. 8, correct?

20 A One of them, yes.

21 Q Okay. If we turn to paragraph No. 6 of
22 Exhibit No. 8, it allows for the maker -- in this
23 case you individually -- and Evergreen Development,
24 LLC, to cure the event of default within five
25 calendar days, correct?

1 A It does allow me to pay it within five calendar
2 days.

3 Q Okay. After the event of default, correct?

4 A Correct.

5 Q And that did not occur? The note --

6 A There has been no default.

7 Q Okay. Because of the repayment being conditioned on
8 the satisfaction of the Eco-Fibre mortgage, correct?

9 A Correct.

10 Q Okay. And nothing else, correct?

11 A Correct.

12 Q Approximately halfway down paragraph 6 on the right
13 side a sentence begins, In addition to the
14 foregoing, upon the occurrence of an event of
15 default, unless such default -- event of default is
16 subsequently waived in writing by Hilliard, Hilliard
17 shall be entitled, at its option, to exercise any or
18 all of the following rights and remedies. Do you
19 see where I am reading?

20 A Yes.

21 Q Did you ever receive a writing from Hilliard Limited
22 Partnership waiving an event of default under this
23 promissory note, Exhibit No. 8?

24 A No.

25 Q So other than this alleged condition regarding the

1 THE WITNESS: I really don't know when I
2 received it; and, you know, I've answered that. I'm
3 going to say it was somewhere between the closing of
4 Phase 1 April 15 and when this was signed July 18 or
5 19th or 20th by the parties, somewhere in that time
6 period. I think it came altogether on the same
7 time. It sure looks like it. I was, again, trying
8 to accommodate my shareholders, my original
9 shareholders of Eco-Fibre, in which I have worked
10 very diligently to sell their assets and distribute
11 the money.

12 BY MR. NOVA:

13 Q You had an opportunity to read Exhibit No. 8 before
14 you signed it, correct?

15 A I'm not sure.

16 Q Did you take the draft version of Exhibit No. 8 to
17 your attorneys for them to review?

18 A No.

19 Q Did you understand Exhibit No. 8 at the time you
20 signed it?

21 A It says amended and restated promissory note. I
22 just assumed it was one like the 28 others I have
23 signed.

24 Q Okay. So nothing the Hilliards did prevented you
25 from reading Exhibit No. 8 before you signed it or

1 Hilliards on many occasions and told them the
2 mortgage won't be satisfied until we have an asset
3 purchase agreement, a financial closing; and to
4 satisfy their concern, we gave them the mortgage and
5 we had an agreement where they were going to draft a
6 new amended and restated note.

7 Q The compromise and settlement referred to in
8 paragraph 12 -- Was that ever reduced to writing?

9 A No. You'll see the trend before. The April 15 note
10 was signed in July. The December 31 note was signed
11 at the end of February. This is the way the
12 Hilliard group moves forward each time. The other
13 shareholders when the note is due total up the
14 interest, bring it in. It's resigned. They
15 understand that the mortgage ain't paid, and they
16 understand that their liens or mortgages have not
17 been satisfied. It's a very simple thing. With
18 this it usually takes Neal a few more days or a few
19 more weeks depending on how he wants to go through
20 things.

21 Q Just to make sure that we cover all of the bases,
22 the compromise part, the compromise and settlement
23 referred to in paragraph 12 of your answer, was
24 never reduced to writing in any form? There's no
25 document, no letter, no notes, no e-mail, nothing in

1 writing referring to the allegations contained in
2 paragraph 12 regarding a compromise and settlement;
3 is that correct?

4 A Other than the mortgage.

5 Q The -- Other than the mortgage?

6 A Because the settlement is the mortgage.

7 Q Where in the mortgage does it state that the
8 plaintiff agreed to refrain from legal action and
9 postpone the due date of the promissory note?

10 A Why would I give them the mortgage?

11 Q That's not my question.

12 A My question is -- I'm saying it very clearly. Other
13 than the mortgage, you have nothing in writing.

14 Q Okay.

15 A The mortgage was given to them as settlement.
16 Otherwise I wouldn't give it to them.

17 Q So other than the amended and restated note itself
18 and the mortgage itself, there's no other
19 documentation regarding any understanding between
20 you, Evergreen Development, and Hilliard Limited
21 Partnership; is that correct?

22 A Four documents -- Baylake mortgage, stock purchase
23 agreement, note, and mortgage. Those four documents
24 understand the settlement that we came apart.

25 Q Show me in writing. Show me in writing,

1 Mr. Van Den Heuvel, where Hilliard Limited
2 Partnership agreed to, quote, refrain from any legal
3 action and postpone the due date of the promissory
4 note until Eco-Fibre, Inc., completed the sale and
5 expansion of their facility in De Pere, Wisconsin,
6 closed quote?

7 A In writing they signed a stock purchase agreement.
8 In writing there's an Eco-Fibre mortgage from
9 Baylake Bank, which they understand. In writing
10 Note 1 clearly states that they cannot be repaid
11 until that mortgage is satisfied, and I gave them a
12 mortgage here to make sure that I cannot sell the
13 asset without them being paid. So to me those are
14 the four documents that bring the commencement of
15 settlement to agreement.

16 Q Okay. Your lawyer wrote this document and stated
17 that the compromise and settlement agreement --
18 Strike that. Your lawyer wrote that on July 20,
19 2007, after executing the promissory note as alleged
20 in the complaint and before commencement of this
21 action plaintiffs and defendants entered into a
22 compromise and settlement. So your attorney wrote
23 that this compromise and settlement happened
24 sometime after July 20, 2007, correct?

25 A I -- I don't know how the words are explained. I do

1 weeds and 54 acres. The retaining ponds, permits,
2 storm sewer, improvements are approximately
3 \$17 million. So altogether it's approximately
4 \$39 million.

5 Q And what currently is the debt owed by Eco-Fibre?

6 A I want to say it is somewhere in the low 30s
7 including some of the debt is on improvements, not
8 on Eco-Fibre. I take that back too. The State has
9 about a million and a half of grants that will be
10 paid. So in addition to the asset purchase
11 agreement there's about a million and a half of
12 grants, so it would exceed \$41 million, 41, three
13 approximately.

14 Q When did you reach the compromise and settlement
15 referred to in paragraph 12 of your answer?

16 A Sometime in July is my best guess.

17 Q You can't identify the date?

18 A Not the exact date. I signed the mortgage 18th,
19 19th, or 20th. It's -- It's probably real close to
20 that time period.

21 Q Was the compromise settlement -- Strike that. Was
22 the compromise and settlement agreed to in one
23 meeting or a series?

24 A There were a series of meetings.

25 Q When was the first meeting regarding the compromise

1 A My office.

2 Q Who was present?

3 A I wouldn't know, but at one of these meetings Steve
4 Peters was there. One of them I remember Andy
5 couldn't make it because he was traveling somewhere.
6 I don't remember what meeting that was; but he maybe
7 went to Africa, South Africa maybe. I shouldn't say
8 that, but that's where my memory says he was at.

9 Q It was South Africa.

10 A It was, okay.

11 Q At any of the meetings regarding the alleged
12 compromise and settlement referred to in 12 of your
13 answer was anyone else present other than you, Steve
14 Peters, Dan Hilliard, Andy Hilliard, and Neal
15 Maccoux?

16 A No. It would be a combination of that group.

17 Q What date was this compromise and settlement
18 reached?

19 A Right after the 4th of July, I want to say, sometime
20 in that time period.

21 Q Before or after you signed the amended and restated
22 promissory note?

23 A At or around that time. I can't remember right when
24 it was there. I know they wanted to review the
25 mortgage, and we had given it to him a couple of

1 That's kind of the way it went.

2 Q Did you discuss the compromise and settlement with
3 Andy -- Andy Hilliard's father at all?

4 A Well, I didn't. I said -- I told him we had a tough
5 situation going forward and financing was tough in
6 this market; but I do believe that I used the term
7 your boys are comfortable now that no assets will be
8 sold underneath them without them being paid in full
9 and/or that I'm diligently working hard and it's a
10 real project? And I showed him the off-take
11 agreement signed by the Kraft family and Wausau
12 Paper. They were fairly -- I think everybody is
13 very comfortable that this deal is progressing as
14 fast as possible.

15 Q Did you have a conversation with the senior Hilliard
16 regarding the compromise and settlement referred to
17 in paragraph 12 of your answer?

18 A The only thing I said to them is we came apart with
19 a mortgage that should satisfy any issues that they
20 had. I didn't get into any specifics. Wally and I
21 were friends for a long time. I used to do all of
22 his work, built all of his buildings as an
23 architect, and did electrical work for him for
24 years.

25 Q Did the Hilliard Limited Partnership agreement sign

1 anything in writing documenting the compromise and
2 settlement referred to in paragraph 12 of your
3 answer?

4 A The only evidence I have that they did is they
5 recorded the mortgage. So I don't really have
6 anything signed by them back because they always
7 bring things for me to sign back to them and then
8 they accepted it because they took the mortgage and
9 filed it. So the mortgage went to them a couple
10 times back and forth, and they wanted to talk a
11 little more to see this or that. Finally, they
12 agreed; and then shortly after they agreed they
13 filed the mortgage.

14 Q When you say they agreed, who communicated to you
15 that the Hilliard Limited Partnership agreed to the
16 compromise and settlement contained in paragraph 12
17 of the answer?

18 A Well, Dan negotiated or I shouldn't say negotiated.
19 Dan is the one who told me that they agreed, and
20 basically a couple different times he said the
21 mortgage was a good idea, and I know Dan is inside
22 of our group working as hard as anybody to get this
23 closed.

24 Q Do you know what role Dan Hilliard has within
25 Hilliard Limited Partnership?