

**Deposition  
of  
John J. Ellerton**

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*Dillabaugh v. Ellerton*

*District Court, Denver County  
State of Colorado  
Case No. 08CV2877*

*Taken by Plaintiff  
November 25, 2008*

Reported by:  
Wendy Evangelista  
Registered Professional Reporter

Transcript provided by:

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1 DISTRICT COURT, DENVER COUNTY  
STATE OF COLORADO

2 1437 Bannock Street  
3 Denver, Colorado 80202

4 Plaintiff:  
5 GARY DILLABAUGH

6 Defendant:  
7 JOHN J. ELLERTON

^ COURT USE ONLY ^

8 For the Plaintiff:

Case No. 08CV2877

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15 DEPOSITION OF JOHN J. ELLERTON  
16 November 25, 2008

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23 Also Present:

24 Gary Dillabaugh  
25

1                   Deposition of JOHN J. ELLERTON, the Defendant,  
 2 called by the Plaintiff in the above-entitled matter on  
 3 Tuesday, the 25th day of November, 2008, commencing at  
 4 the hour of 9:03 a.m., at 1600 Stout Street, Suite 1600,  
 5 Denver, Colorado, before Wendy Evangelista, Registered  
 6 Professional Reporter and Notary Public within and for  
 7 the State of Colorado, said deposition being taken  
 8 pursuant to Notice and the Colorado Rules of Civil  
 9 Procedure.

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12 Examination by Mr. Davenport                   4

13                   E X H I B I T S

14 Exhibit Number                                   Initial Reference

15           1 Responses to Plaintiff's First Set of           20  
 16           Interrogatories and First Request for  
 17           Production of Documents to Defendant,  
            John J. Ellerton

18           2 Letter to Dillabaugh from Ellerton RE:           22  
 19           Further Addendum to 12/31/00, 4/2/01, and  
            5/21/01 Agreements, 12/31/01

20           3 Letter to Dillabaugh from Ellerton RE:           41  
 21           Follow-up to 12/31/00 Letter, 4/2/01

22           4 Promissory Note for \$123,500, 12/31/02           42

23           5 Promissory Note for \$5,000, 2/10/03           53

24           6 Letter to Dillabaugh from Ellerton RE:           55  
            Stock/Option and Loan Agreement, 12/31/00

25

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| 4 | <p>1 PROCEEDINGS</p> <p>2 JOHN J. ELLERTON,</p> <p>3 the Defendant herein, having been first duly sworn, was</p> <p>4 examined and testified on his oath as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. DAVENPORT:</p> <p>7 Q Would you state your full name and spell your</p> <p>8 last name for the record.</p> <p>9 A John James Ellerton, E-L-L-E-R-T-O-N.</p> <p>10 Q All right. Mr. Ellerton, what is your home</p> <p>11 address?</p> <p>12 A 790 Washington Street, Apartment 1001, Denver,</p> <p>13 Colorado 80203.</p> <p>14 Q And what is your business address?</p> <p>15 A 2050 South Oneida Street, Unit 102, Denver,</p> <p>16 Colorado 80224.</p> <p>17 Q Okay. How old are you, Mr. Ellerton?</p> <p>18 A Sixty-four.</p> <p>19 Q Mr. Ellerton, we met a few minutes ago. My</p> <p>20 name is Gary Davenport, and I represent Dillabaugh in</p> <p>21 this proceeding. If at any time you don't understand my</p> <p>22 question or it's confusing to you, would you please let</p> <p>23 me know? And I'll try to rephrase it so we're on the</p> <p>24 same page, in essence.</p> <p>25 My goal here today is to find out what you</p>                                                                                      | 6 |
| 5 | <p>1 know, what your position is. I'm not here to attempt to</p> <p>2 trick you in any way. I want you to understand my</p> <p>3 question and respond to what I'm asking. And if there's</p> <p>4 any confusion about that whatsoever, let me know and I'll</p> <p>5 try to make it clear. Fair enough?</p> <p>6 A Fair enough.</p> <p>7 Q Okay. If you need a break at some point, just</p> <p>8 let us know. We're happy to accommodate you in that</p> <p>9 regard.</p> <p>10 So at this point, do you generally have an</p> <p>11 understanding of what a deposition is about?</p> <p>12 A Yes, sir.</p> <p>13 Q You understand you're under oath --</p> <p>14 A Yes, sir.</p> <p>15 Q -- just as if we were in a court of law before</p> <p>16 a judge or jury?</p> <p>17 A Yes, sir.</p> <p>18 Q All right. Have you had your deposition taken</p> <p>19 before?</p> <p>20 A Yes, sir.</p> <p>21 Q How many times?</p> <p>22 A Can't remember.</p> <p>23 Q A number?</p> <p>24 A Yes.</p> <p>25 Q All right. Mr. Ellerton, I'd like to get some</p>                                                                                                                                                                                           | 7 |
| 4 | <p>1 background information from you before we get into the</p> <p>2 facts of the case. What is your educational background?</p> <p>3 A High school in the United Kingdom, university</p> <p>4 in Canada.</p> <p>5 Q What type of degree?</p> <p>6 A I have an honors Bachelor of Science degree</p> <p>7 from University of Toronto.</p> <p>8 Q And where -- what's your Bachelor of Science</p> <p>9 in?</p> <p>10 A Geology and -- with a math and physics minor.</p> <p>11 Q And since getting your B.S., just generally,</p> <p>12 if you could, go through what your employment history has</p> <p>13 been for me.</p> <p>14 A I've basically been in the oil business the</p> <p>15 entire time. I graduated in '69 and worked for a major</p> <p>16 oil company, Texaco, for a number of years. And since</p> <p>17 then, I've basically been running my own companies.</p> <p>18 Q And what companies are those?</p> <p>19 A J. Ellerton Consultants, Inc., COM-TEK</p> <p>20 Resources, Inc.</p> <p>21 Q I'm sorry. What was that last one?</p> <p>22 A COM-TEK, C-O-M, hyphen, T-E-K, Resources,</p> <p>23 Inc.; Sefton Resources, Inc., which was formally TEG</p> <p>24 Resources, Inc.</p> <p>25 Q What is your present position?</p> | 6 |
| 5 | <p>1 A CEO of Sefton Resources, Inc.</p> <p>2 Q And how long have you been CEO of Sefton?</p> <p>3 A Approximately 15 years.</p> <p>4 Q How long has Sefton been in existence?</p> <p>5 A Approximately 15 years.</p> <p>6 Q So you started it?</p> <p>7 A Correct. I was one of the cofounders.</p> <p>8 Q It's a publicly traded company; is that</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q How many shareholders does it have? Do you</p> <p>12 have any idea?</p> <p>13 A Several thousand.</p> <p>14 Q Where is it incorporated?</p> <p>15 A The British Virgin Islands.</p> <p>16 Q And is its headquarters here in Denver?</p> <p>17 A Yes.</p> <p>18 Q All right. How many employees does Sefton</p> <p>19 have?</p> <p>20 A Sefton and its subsidiaries have</p> <p>21 approximately -- about seven or eight employees full</p> <p>22 time.</p> <p>23 Q And how would you characterize -- I know you</p> <p>24 said it's the oil and gas business. But is it</p> <p>25 production? Is it -- what area does Sefton primarily --</p>                                                                                                                                                                                                | 7 |

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| 8 | <p>1 A Exploration and production.</p> <p>2 Q All right. And primarily what geographic</p> <p>3 areas?</p> <p>4 A California and Kansas.</p> <p>5 Q Would you tell me, please, Mr. Ellerton, who</p> <p>6 the officers and directors are of Sefton?</p> <p>7 A The directors of Sefton are myself; Bruce</p> <p>8 Mackay, M-A-C-K-A-Y; Harry Barnum, B-A-R-N --</p> <p>9 B-A-R-N-H-U-M (sic); Jeremy Delmar-Morgan; and Tony</p> <p>10 Ashton, A-S-H-T-O-N.</p> <p>11 Q Where are these gentlemen located?</p> <p>12 A Jeremy Delmar-Morgan is in the United Kingdom,</p> <p>13 Tony Ashton is in Canada, Harry Barnum is in California,</p> <p>14 Bruce Mackay and myself are in Colorado.</p> <p>15 Q So those are the directors, correct?</p> <p>16 A Correct.</p> <p>17 Q Who are the officers?</p> <p>18 A The officers of Sefton Resources, Inc., are</p> <p>19 myself as CEO; Harry Barnum is the executive vice</p> <p>20 president; Bruce Mackay is the executive vice president;</p> <p>21 and Kris Short is the assistant secretary.</p> <p>22 Q What's the present status of the business? Is</p> <p>23 it ongoing?</p> <p>24 A Yes.</p> <p>25 Q Okay. And Sefton commenced doing business</p>                                                                                                         | 10 |
| 9 | <p>1 approximately, you said, 15 years ago?</p> <p>2 A Correct.</p> <p>3 Q All right. And been in business continually</p> <p>4 since then?</p> <p>5 A Correct.</p> <p>6 Q Has the number of employees of Sefton over</p> <p>7 that time changed dramatically or has it been primarily</p> <p>8 in the seven to eight area?</p> <p>9 A It started originally with just myself.</p> <p>10 Q Okay. So from one to eight has been sort of</p> <p>11 the lay of the land, if you will, on the number of</p> <p>12 employees?</p> <p>13 A Correct.</p> <p>14 Q All right. Now, you are familiar with Gary</p> <p>15 Dillabaugh, are you not?</p> <p>16 A Yes.</p> <p>17 Q When did you first meet Mr. Dillabaugh?</p> <p>18 A Twenty plus years ago.</p> <p>19 Q Twenty plus? I'm sorry.</p> <p>20 A Yeah.</p> <p>21 Q Okay. And how did that occur?</p> <p>22 A I coached his son's soccer in Littleton,</p> <p>23 Colorado.</p> <p>24 Q And just tell me how the relationship went</p> <p>25 from there. Obviously, Mr. Dillabaugh became an employee</p>                                                                                                                                                                                                                                                             | 11 |
| 8 | <p>1 of Sefton at some point; we know that. If you will, just</p> <p>2 characterize for me how the relationship went from the</p> <p>3 time you met him in a social arrangement of coaching his</p> <p>4 son in soccer.</p> <p>5 A The previous company I had formed or co-formed</p> <p>6 merged with a company that Gary had an interest in, and</p> <p>7 Gary was associated with that company for a while. And I</p> <p>8 believe we've stayed in touch over the years. And then</p> <p>9 we, in terms of professionally, were reacquainted again</p> <p>10 in the -- about -- in the early days of Sefton forming</p> <p>11 and developing.</p> <p>12 Q Mr. Dillabaugh eventually became an employee</p> <p>13 of Sefton?</p> <p>14 A Correct.</p> <p>15 Q Tell me how that happened. How did that</p> <p>16 occur?</p> <p>17 A Basically, Gary had provided some funding for</p> <p>18 myself, and basically I lobbied the directors to bring</p> <p>19 him in as a -- originally as a consultant and eventually</p> <p>20 as a full-time employee.</p> <p>21 Q All right. And to consult on what?</p> <p>22 A Helping in whatever manner we needed help.</p> <p>23 Q I mean, when you were --</p> <p>24 A Primarily shareholder relations</p> <p>25 and/or involved in invoicing and -- I mean, invoice</p> | 10 |
| 9 | <p>1 management, if that's a term that you understand.</p> <p>2 Q I think I do.</p> <p>3 A Yeah.</p> <p>4 Q So let me make sure I understand this,</p> <p>5 Mr. Ellerton. You went to the board -- I don't know if</p> <p>6 you used the word "lobby"; I thought you did -- lobbied</p> <p>7 the board to bring Mr. Dillabaugh into the company?</p> <p>8 A Correct.</p> <p>9 Q And I take it when you did that, you felt that</p> <p>10 he would be a valuable asset or contributor to the</p> <p>11 company; is that correct?</p> <p>12 A Partially correct, yeah.</p> <p>13 Q Why do you say "partially"?</p> <p>14 A Well, part of it was for assistance in helping</p> <p>15 me and it was kind of a reward phenomena.</p> <p>16 Q Can you be any more specific as to how he was</p> <p>17 helping you?</p> <p>18 A The board knew that he had helped me during a</p> <p>19 time when the company was unable to pay me, and basically</p> <p>20 they recognized that and rewarded him to some extent by</p> <p>21 involvement in the company.</p> <p>22 Q So I'm a little confused by this. Let me be</p> <p>23 sure. The board rewarded Mr. Dillabaugh as a result of</p> <p>24 helping you personally?</p> <p>25 A Correct.</p>                                                                             | 11 |

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| 12 | <p>1 Q Okay. Did you have conversations with the<br/>2 board members about the -- about that fact?</p> <p>3 A Yes.</p> <p>4 Q And what board members did you discuss that<br/>5 with?</p> <p>6 A That was the existing board and any prior<br/>7 board members.</p> <p>8 Q Okay. Would it be different board members<br/>9 than the names you've already given me?</p> <p>10 A Yes.</p> <p>11 Q Who would they be?</p> <p>12 A Alan Thomas, John Killer, Karl Arleth, Norm<br/>13 Thachuk. For the moment that's --</p> <p>14 Q And where are these gentleman located?</p> <p>15 A Norm Thachuk is in Canada; Alan Thomas, John<br/>16 Killer in the United Kingdom; and Karl Arleth is here in<br/>17 Colorado.</p> <p>18 Q So do you recall approximately when<br/>19 Mr. Dillabaugh went to work for Sefton?</p> <p>20 A In an official capacity?</p> <p>21 Q Yes.</p> <p>22 A I believe it was in -- about '02, thereabouts.</p> <p>23 Q Okay. Now when you say "an official<br/>24 capacity," are you differentiating between a consultant<br/>25 and an employee?</p> | 14 | <p>1 that he was paid but there was withholding taken out for<br/>2 taxes and --</p> <p>3 A I'm assuming so, yes.</p> <p>4 Q And when he was paid as a consultant, you<br/>5 probably didn't do the withholding. He was probably just<br/>6 given a gross check; is that right?</p> <p>7 A I can't remember.</p> <p>8 Q Okay. Now, would you describe for me, when<br/>9 Mr. Dillabaugh became an employee, exactly what his<br/>10 duties and responsibilities were. And then take me<br/>11 forward until the time he was no longer associated with<br/>12 Sefton, and tell me if they changed over time or they<br/>13 remained the same.</p> <p>14 A I believe he was made corporate secretary.<br/>15 And his function, job description -- I don't know if I<br/>16 can give you a precise job description -- was that of<br/>17 helping with the administration side of it and with the<br/>18 shareholder relations side.</p> <p>19 Q Okay. That was commencing in '02?</p> <p>20 A Pretty well what he was doing as a consultant,<br/>21 and then it became more official.</p> <p>22 Q All right. So in '02, he's helping with<br/>23 administration and shareholder relations?</p> <p>24 A Correct.</p> <p>25 Q Did he work full time at Sefton, then,</p> |
| 13 | <p>1 A Correct.</p> <p>2 Q All right. So that he was a consultant for a<br/>3 while, then became an employee; is that correct?</p> <p>4 A Correct.</p> <p>5 Q So how long was he a consultant before<br/>6 approximately '02 when he became an employee?</p> <p>7 A A year or so. I'm not completely clear on<br/>8 that.</p> <p>9 Q How was he compensated as a consultant?</p> <p>10 A As a consultant, cash. And I'm not sure --<br/>11 I'd have to check the records regarding stock<br/>12 opportunities or options.</p> <p>13 Q In Sefton?</p> <p>14 A Correct.</p> <p>15 Q Okay. And then he came on board as an<br/>16 employee?</p> <p>17 A Correct.</p> <p>18 Q And how was he compensated then?</p> <p>19 A In the normal manner of employees: cash,<br/>20 medical benefits, stock options -- stock opportunities,<br/>21 options, things of a normal nature for a company.</p> <p>22 Q Just like any other employee of Sefton at that<br/>23 time?</p> <p>24 A Correct.</p> <p>25 Q Now, when you say "cash," I assume you mean</p>                            | 15 | <p>1 starting in '02?</p> <p>2 A Well, we know Gary had a dental practice, so I<br/>3 believe it was not full time, no.</p> <p>4 Q Okay. And through the period of time or<br/>5 through the time where he was no longer an employee of<br/>6 Sefton, did his duties and responsibilities change at<br/>7 all?</p> <p>8 A Not really.</p> <p>9 Q Now, how do you assess Mr. Dillabaugh's<br/>10 performance on behalf of Sefton when he was an employee?<br/>11 Was he a good employee, bad employee, mediocre employee?<br/>12 What's your view of that?</p> <p>13 A My personal view?</p> <p>14 Q Uh-huh.</p> <p>15 A I would say mediocre.</p> <p>16 Q Okay. Was he ever reprimanded in any way for<br/>17 nonperformance or not fulfilling his obligations or<br/>18 duties?</p> <p>19 A No, other than dialogue that things weren't<br/>20 getting done or -- or things of that nature.</p> <p>21 Q Okay. Was he ever put on any probationary<br/>22 status --</p> <p>23 A No.</p> <p>24 Q -- in any way?</p> <p>25 A No.</p>                                                                                                                                                                                                                                  |

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| <p style="text-align: right;">16</p> <p>1 Q Was his salary ever docked in any way for<br/>2 nonperformance?<br/>3 A No.<br/>4 Q So the bottom line is: You view him as a<br/>5 mediocre employee, and he was never reprimanded or any<br/>6 official action taken against him for anything he did<br/>7 while he was an employee; is that correct?<br/>8 A Other than us verbally talking to him about<br/>9 any shortcomings.<br/>10 Q Would that be similar to what you'd say with<br/>11 any employee?<br/>12 A Yes.<br/>13 Q All right. Now, at what point in time did<br/>14 Mr. Dillabaugh cease to be an employee of Sefton?<br/>15 A I believe it was this year, 2008.<br/>16 Q How and why did that occur?<br/>17 A Mr. Dillabaugh moved to Canada, and I believe<br/>18 we were attempting to negotiate a relationship with<br/>19 Mr. Dillabaugh as to what his capacity could be with him<br/>20 being in -- living in that location and our company being<br/>21 here. And an attempt was made to have an agreement -- an<br/>22 agreement with him more in the consulting capacity. And<br/>23 that basically was never agreed to. And as a result of<br/>24 it, the association ended.<br/>25 Q Was he fired?</p>                                             | <p style="text-align: right;">18</p> <p>1 believe there have been certain amounts of forgiveness of<br/>2 some of that. So what the net is, I don't think we have<br/>3 an accounting.<br/>4 Q Well, you've done some work on that in<br/>5 responding to written answers, and we'll get to that.<br/>6 But I just wanted to know if you've done any more work or<br/>7 anything to come up with a definitive number in terms of<br/>8 what you think you owe him exclusive of offsets?<br/>9 A No, sir. Once Mr. Dillabaugh filed the<br/>10 lawsuit, I've been too busy, and there seemed to be no<br/>11 point in that.<br/>12 Q Do you have any intention of doing that?<br/>13 A Of doing what?<br/>14 Q Of coming up with a number that you think you<br/>15 owe him.<br/>16 A At this point, I believe it's a legal matter,<br/>17 and that will come about from that.<br/>18 Q Okay. So the answer is: You don't have any<br/>19 intention of coming up with a number that you think you<br/>20 owe him?<br/>21 A Not at this point in time.<br/>22 Q All right. Now, you readily admit, do you<br/>23 not, Mr. Ellerton, that over a period of time,<br/>24 Mr. Dillabaugh loaned you, personally, substantial sums<br/>25 of money?</p>                                                                                                                                 |
| <p style="text-align: right;">17</p> <p>1 A No, I don't think. It just never came to an<br/>2 accommodation.<br/>3 Q All right. So mutual parting of the ways, if<br/>4 you will; would that be fair?<br/>5 A I guess that would be a fair way of assessing<br/>6 it.<br/>7 Q All right. Okay. Mr. Ellerton, do you owe<br/>8 Mr. Dillabaugh any money as we sit here today?<br/>9 A I believe that's a possibility.<br/>10 Q Why do you say "a possibility"?<br/>11 A Well, Mr. Dillabaugh has advanced funds to<br/>12 myself over time, and I believe that I'm entitled to some<br/>13 offsets against those funds. And we've never come to an<br/>14 agreement on what that net amount is.<br/>15 Q All right. Exclusive of the offsets -- let's<br/>16 set that aside for a moment. I know that's your<br/>17 position, that you're entitled some offsets. But<br/>18 exclusive of the offsets, what do you owe Mr. Dillabaugh<br/>19 as we sit here today?<br/>20 A I really don't know, sir, to be honest.<br/>21 Q You haven't taken the time to sit down and<br/>22 figure that out?<br/>23 A We talked about it and gone through it. But,<br/>24 I mean, there have been various amounts of monies<br/>25 advanced by Mr. Dillabaugh, and there have been -- I</p> | <p style="text-align: right;">19</p> <p>1 A If you mean by the term "loan" advances in the<br/>2 form of loan or cash advances, then, yes, he has; and<br/>3 substantial amounts of money, yes.<br/>4 Q Okay. Well, let me make sure I understand.<br/>5 Is it your position that he did not loan you money?<br/>6 A There was either loan or advances made and --<br/>7 that weren't necessarily a loan.<br/>8 Q All right. What's the difference, tell me,<br/>9 between when he loaned you money and he advanced you<br/>10 money?<br/>11 A When he loaned money, that was itemized as a<br/>12 loan. When he advanced monies, then that might have been<br/>13 eventually put in the form of a loan and/or offset<br/>14 against benefits Mr. Dillabaugh received.<br/>15 Q Okay. So I'm just trying to get exactly where<br/>16 you're at on this today. We've spent some time in<br/>17 sending back written questions. Are you telling me there<br/>18 were two types of situations here: one where<br/>19 Mr. Dillabaugh would loan you money that was not subject<br/>20 to an offset, and another was he would advance you money<br/>21 that was subject to an offset?<br/>22 A No.<br/>23 Q Okay. Then I'm confused. I've got to work<br/>24 back through this. What would be the difference -- how<br/>25 would one have known, during your relationship, whether</p> |

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| 20 | <p>1 money that he put in your possession was a loan or an<br/>2 advance?</p> <p>3 A Periodically, money that had been -- that had<br/>4 been money advanced, and periodically that would be put<br/>5 in a written document that would be in the form of a<br/>6 loan.</p> <p>7 Q Uh-huh.</p> <p>8 A And some of those loans might have been<br/>9 reduced against what offset and/or any outstanding monies<br/>10 advanced were anticipated being an offset against<br/>11 benefits received.</p> <p>12 Q Let's take a look at -- do you have any idea<br/>13 about what the total amount of money was that was lent to<br/>14 you, the gross amount, not -- exclusive of interest, lent<br/>15 to you by Mr. Dillabaugh over time?</p> <p>16 A I believe the amount of funds that were<br/>17 advanced to me by Mr. Dillabaugh were, to the best of our<br/>18 ability, were reflected in Exhibit A of my -- what do<br/>19 they call it -- interrogatories.</p> <p>20 Q Okay. Let's get those out.<br/>21 (Exhibit Number 1 was marked for<br/>22 identification.)</p> <p>23 Q (By Mr. Davenport) Would you take a look at<br/>24 Exhibit I for me, please, Mr. Dillabaugh (sic)?</p> <p>25 A Mr. Ellerton.</p> | 22 | <p>1 just for clarification -- I think he inadvertently said<br/>2 Exhibit E.</p> <p>3 MR. DAVENPORT: Exhibit A.<br/>4 THE WITNESS: Exhibit A.<br/>5 MR. DAVENPORT: Right.</p> <p>6 Q (By Mr. Davenport) And the number you<br/>7 eventually arrive at is \$367,751.70; is that correct?</p> <p>8 A Correct.</p> <p>9 Q All right. Now, I'd like to work through<br/>10 this. And we need to look at another exhibit to make<br/>11 sure we can understand what's going on here.<br/>12 (Exhibit Number 2 was marked for<br/>13 identification.)</p> <p>14 Q (By Mr. Davenport) Now, I'll tell you what my<br/>15 understanding is, Mr. Dillabaugh (sic), so maybe we can<br/>16 shortcut this a little bit.</p> <p>17 A Mr. Ellerton.</p> <p>18 Q I'm sorry. Mr. Ellerton.<br/>19 And maybe we can shortcut this a little bit in<br/>20 terms of having to work through all this laboriously.<br/>21 Would you look at Exhibit Number 2 now for me. See that?</p> <p>22 A Yes.</p> <p>23 Q Can you identify what is it?</p> <p>24 A It's a letter from myself to Gary dated<br/>25 December the 31, 2001, outlining, at that point in time,</p> |
| 21 | <p>1 Q I mean, Mr. Ellerton. Sorry.</p> <p>2 A I'll look at it too.</p> <p>3 MR. LUELLEN: At least I won't feel bad when I<br/>4 do that this afternoon; I undoubtedly will.</p> <p>5 MR. DAVENPORT: It's easily done.</p> <p>6 THE WITNESS: That's all right. I know who I<br/>7 am.</p> <p>8 MR. DAVENPORT: Just so long as I don't call<br/>9 myself the wrong name, I guess we'll be fine.</p> <p>10 Q (By Mr. Davenport) Do you have that in front<br/>11 of you?</p> <p>12 A Yes, sir.</p> <p>13 Q Those are your answers that you provided and<br/>14 signed under oath in this case, is that right, to<br/>15 interrogatories that were submitted to you?</p> <p>16 A Correct.</p> <p>17 Q Now, you had mentioned an Exhibit A. Does it<br/>18 help refresh your recollection as to how much money was<br/>19 loaned to you by Mr. Dillabaugh to look at that?</p> <p>20 A As I said, monies that were advanced by<br/>21 Mr. Dillabaugh were reflected in Exhibit E (sic), to the<br/>22 best of my records and my attorney's review of those<br/>23 records.</p> <p>24 Q All right. So the number --<br/>25 MR. LUELLEN: Yeah, I'm sorry. But I think --</p>                                               | 23 | <p>1 what our various dealings were and the status of our<br/>2 understanding of them was.</p> <p>3 Q All right. And you sent that to<br/>4 Mr. Dillabaugh?</p> <p>5 A Yes, sir.</p> <p>6 Q And you signed it?</p> <p>7 A Yes, sir.</p> <p>8 Q Now, as I understand it, what this was is a<br/>9 total recapitulation, if you will, of all of your<br/>10 dealings coming to exactly where you stood as of December<br/>11 31, 2001; is that correct?</p> <p>12 A "Recapitulation." I don't understand that<br/>13 word.</p> <p>14 Q Just a setting forth, if you would. You were<br/>15 setting forth exactly what your relationship was in terms<br/>16 of stock, advances, loans, et cetera, as of December 31,<br/>17 2001?</p> <p>18 A My understanding of that, yes.</p> <p>19 Q All right. And what you came up with was<br/>20 principal and interest at 12/31/01 of \$65,661.88,<br/>21 correct?</p> <p>22 A Yes.</p> <p>23 Q And you also -- and I'll try to direct your<br/>24 attention to this a little bit -- applied an interest<br/>25 rate to money that had been loaned to you by</p>                                          |

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| 24 | <p>1 Mr. Dillabaugh of 12.5 percent, is that correct?</p> <p>2 A Correct.</p> <p>3 Q All right. Now, let's now lay side-by-side</p> <p>4 Exhibit A -- I just want to make sure we're on the same</p> <p>5 page here. It would be my understanding, then,</p> <p>6 Mr. Ellerton, that as of December 31, 2001, this was</p> <p>7 exactly where you and Mr. Dillabaugh stood.</p> <p>8 A Yes.</p> <p>9 Q So when you -- and if I may, when you have set</p> <p>10 forth at the top of this a number of items of -- the</p> <p>11 first page of Exhibit A -- down to 6/22/01, really</p> <p>12 everything before 6/22/01 would be embodied in your</p> <p>13 letter of December 31, 2001?</p> <p>14 A Correct.</p> <p>15 Q Okay. So really when -- we don't really need</p> <p>16 to worry about, then, if you will, what the status was</p> <p>17 between you and Mr. Dillabaugh until after December 31,</p> <p>18 '01. We know what it was from this letter, correct?</p> <p>19 A Well, that's my understanding of it, yes.</p> <p>20 Q Okay. Very good. And I will suggest to you</p> <p>21 that's Mr. -- you'll be able to talk to Mr. Dillabaugh</p> <p>22 about that as well, but that's his understanding as well.</p> <p>23 So we now move forward, then, starting at</p> <p>24 3/18/02. And you have, then, listed a variety of</p> <p>25 things -- variety of numbers coming up with amounts that</p> | 26 | <p>1 short break, I might be able to shorten this a little</p> <p>2 bit.</p> <p>3 MR. DAVENPORT: Well, I'm happy to do it</p> <p>4 anytime. Sure.</p> <p>5 MR. LUELLEN: Okay.</p> <p>6 MR. DAVENPORT: That's fine.</p> <p>7 MR. DAVENPORT: Go ahead. Yeah.</p> <p>8 MR. LUELLEN: Can we take a break?</p> <p>9 MR. DAVENPORT: Yeah. Sure.</p> <p>10 (A recess was taken from 9:30 a.m. until</p> <p>11 9:33 a.m.)</p> <p>12 MR. DAVENPORT: Are we back on the record?</p> <p>13 MR. LUELLEN: We are.</p> <p>14 Q (By Mr. Davenport) Okay. We took a break,</p> <p>15 and you've had an opportunity to consult with counsel.</p> <p>16 Is there anything you wish to add to your testimony after</p> <p>17 consulting with counsel?</p> <p>18 A Could you repeat what the question was to</p> <p>19 start with?</p> <p>20 Q Well, I can work back through it. But the</p> <p>21 point is this: I'm trying to get to a number, based upon</p> <p>22 your numbers, as to what the loans were. We're going to</p> <p>23 get in a little bit, fully, Mr. Ellerton, to the issue of</p> <p>24 offsets. All I'm trying to do now is see if we can get</p> <p>25 to a number that is the number of money that was loaned</p>                                                                                                                                                                                                                                                                                                                                                                               |
| 25 | <p>1 I have run, that I have put together, and they don't</p> <p>2 necessarily jive exactly with your 367,751.70. And I'll</p> <p>3 tell you: What we have done is run the numbers at the</p> <p>4 bottom of page -- from 3/18/02 down, that's \$190,441.</p> <p>5 And then on the next page, it is 135,750. You then get</p> <p>6 to 326,191. And it would be my understanding, if those</p> <p>7 numbers are correct, you would add back this 65,000 to</p> <p>8 those two numbers. Would you agree with that?</p> <p>9 A No.</p> <p>10 Q Why?</p> <p>11 A This Exhibit A is a reflection of monies that</p> <p>12 have been advanced to me. And this document, Exhibit 2,</p> <p>13 reflects other items that have either been offset against</p> <p>14 some of those or otherwise. So there's two different</p> <p>15 animals, in my opinion.</p> <p>16 Q All right. So are you telling me that some of</p> <p>17 the 65,000 has been offset against some of the loans on</p> <p>18 Exhibit A?</p> <p>19 A Yeah. Without going into a great amount of</p> <p>20 detail, yes. I mean --</p> <p>21 Q Can you identify any for me?</p> <p>22 A Let's see. Let me look at it.</p> <p>23 Q Okay. Sure. Take your time.</p> <p>24 MR. LUELLEN: Gary, I don't want to interrupt</p> <p>25 your flow. But when you get to a point -- if we had a</p>                                                              | 27 | <p>1 by Mr. Dillabaugh to you.</p> <p>2 And what I had done with you previously was</p> <p>3 show you Exhibit Number 2, and we got to a number of</p> <p>4 65,000. We then, I think, agreed that that would chop</p> <p>5 everything off above this entry of 6/22/01, and we would</p> <p>6 start with then numbers after that. And what I indicated</p> <p>7 to you is when I ran the numbers, the number at the</p> <p>8 bottom from 3/18/02 was \$190,441. And then when we get</p> <p>9 to the next page, if you run down this column of numbers</p> <p>10 starting at 500 down to 200, the number you get is</p> <p>11 140,750 less a credit of 5000 for 135,750. When you add</p> <p>12 135,750 and 190,441, you get 326,191. I added back in</p> <p>13 the 65,661 and got to a number then of 391,852.</p> <p>14 And I'm simply trying to see if you agree with</p> <p>15 that analysis as to the amount of money that was lent.</p> <p>16 A Well, basically, again, my original comment</p> <p>17 about using the term "loan" or "lent," this is money</p> <p>18 advanced. This document here, Exhibit A, was put</p> <p>19 together recently based on information I had to put this</p> <p>20 together. And this one, obviously, was put together in</p> <p>21 December 31, 2001, which was about seven years ago. And</p> <p>22 that was, obviously, put together based on information I</p> <p>23 had then. And basically those are the two documents.</p> <p>24 And I stand by both of them since this one was sent by me</p> <p>25 and this one was put together with myself with</p> |

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| <p style="text-align: right;">28</p> <p>1 consultation with counsel. So how you view it and<br/>2 analyze it, really, I'll stand by both documents.<br/>3 Q All right. So your position -- whether we're<br/>4 going to call it a loan or advance, whatever -- let's<br/>5 call it funds that were transferred to you by<br/>6 Mr. Dillabaugh. Your position is that it was<br/>7 \$367,751.70?<br/>8 A Correct.<br/>9 Q All right. Now, do you have any recollection<br/>10 of an Oatley loan?<br/>11 A Don Oatley?<br/>12 Q Oatley?<br/>13 A Oakley. I think it's Oatley, yes.<br/>14 Q And Mr. Dillabaugh taking over that note?<br/>15 A I believe so, yes.<br/>16 Q All right. Would you think he would be<br/>17 entitled to anything in addition to the 367- for that<br/>18 event?<br/>19 A I can't remember if that was a deal with the<br/>20 company or with me.<br/>21 Q Okay. So as you sit here today -- and, again,<br/>22 exclusive of credits that we're going to talk about, et<br/>23 cetera -- this is the amount that you believe was<br/>24 advanced to you by Mr. Dillabaugh, the 367,751.70?<br/>25 A Correct.</p>                                                                                    | <p style="text-align: right;">30</p> <p>1 document like this, no.<br/>2 Q Did you think you were getting it interest<br/>3 free?<br/>4 A No.<br/>5 Q Did you have any notion, in your own mind, as<br/>6 to what interest rate should apply?<br/>7 A No.<br/>8 Q Do you have any idea today what interest rate<br/>9 should apply?<br/>10 A No.<br/>11 Q Do you think some interest rate should apply?<br/>12 A Depending on the offsets.<br/>13 Q But, I mean, in terms of just the money, the<br/>14 money that was advanced by him before you apply the<br/>15 offsets, is it your position that interest should or<br/>16 should not apply to that money before applying any<br/>17 offsets?<br/>18 A No.<br/>19 Q You don't have any opinion?<br/>20 A No.<br/>21 Q Okay.<br/>22 A Well, my opinion is that there shouldn't be<br/>23 interest.<br/>24 Q Why not?<br/>25 A Well, what happens if the offsets are in</p>                                                                                                                                                                                                                                                                                                                     |
| <p style="text-align: right;">29</p> <p>1 Q All right. Now, what about interest? Does<br/>2 this document include any interest whatsoever?<br/>3 A It doesn't appear so.<br/>4 Q All right. What was your agreement with<br/>5 Mr. Dillabaugh in terms of what interest rate would apply<br/>6 to monies advanced by him to you?<br/>7 A There wasn't any.<br/>8 Q Let's look at Exhibit Number 2 again.<br/>9 A Right.<br/>10 Q It seemed to me in looking at that that you<br/>11 were saying that interest was earned at 12.5 percent.<br/>12 And you applied that, in fact, to get to a number of<br/>13 65,661.88, did you not?<br/>14 A Correct.<br/>15 Q Okay. So are you telling me that there was no<br/>16 agreement, at least in December 31 of '01, on interest?<br/>17 A Well, there's obviously an agreement, December<br/>18 31, with interest on that particular occasion.<br/>19 Q At 12.5 percent?<br/>20 A Correct.<br/>21 Q All right. Now, what about after December 31,<br/>22 '01; did you have any understanding or agreement with<br/>23 Mr. Dillabaugh on what interest rate would apply to funds<br/>24 that were advanced by him to you?<br/>25 A No. Unless it was rendered in the form of a</p> | <p style="text-align: right;">31</p> <p>1 excess of the money owed? Then the interest doesn't<br/>2 apply.<br/>3 Q Well, are you telling me that if you had<br/>4 interest applied on the amount that was advanced and then<br/>5 the offsets discounted all of that, applied to all of<br/>6 that, that wouldn't be appropriate?<br/>7 A I don't understand what you're saying.<br/>8 Q All right. So you're telling me that today,<br/>9 it's your position that no interest should apply on any<br/>10 advance made by you -- made by Mr. Dillabaugh to you<br/>11 since December 31 of '01?<br/>12 A No.<br/>13 Q You're not saying that?<br/>14 A No.<br/>15 Q Then are you saying some interest should<br/>16 apply?<br/>17 A If there's an agreement to how much money I<br/>18 owe Mr. Dillabaugh, then it seems reasonable that<br/>19 interest would apply to that money on some occasion, and<br/>20 that is what was never agreed to.<br/>21 Q Do you ever recall having any discussions<br/>22 whatsoever, at any time, with Mr. Dillabaugh as to what<br/>23 interest rate should apply on monies that were advanced<br/>24 by him to you over the period from 2001 to today?<br/>25 A I believe Mr. Dillabaugh discussed 12.5</p> |

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1 percent, and I believe the records will show that I  
 2 disagreed with that.  
 3 Q Okay. Can you tell me what records you're  
 4 talking about?  
 5 A Various correspondence between us, as well as  
 6 oral communications.  
 7 Q All right. Let's talk about, first of all,  
 8 oral communications. I want to know everything you  
 9 recall of any conversations you had with Mr. Dillabaugh  
 10 after December 31, 2001, about what interest rate would  
 11 or would not apply to any monies he advanced to you.  
 12 A I don't recall all the conversations.  
 13 Q I'm asking you for any, I'm not asking you --  
 14 I'm asking you for -- understand, what I want is what you  
 15 do remember. Obviously, I don't want what you don't  
 16 remember. So if there's anything you remember about any  
 17 conversation you had during this entire time period with  
 18 Mr. Dillabaugh about what interest rate would or would  
 19 not apply, I'd like to know about it, please.  
 20 A I had conversations with Mr. Dillabaugh --  
 21 obviously, I believe the records will show there are  
 22 subsequent documents that have interest on them, and so  
 23 that would have been agreed to. I also know more  
 24 recently Mr. Dillabaugh has indicated that -- that he  
 25 desired a 12.5 to reflect something to do with his credit

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1 cards. And my recollection is that my argument against  
 2 that was the interest rate's been coming down since  
 3 December 31, 2001. And so it's not -- it's not in my  
 4 mind -- what's the term -- it should certainly not be  
 5 going up if the interest rate -- if the prime interest  
 6 rate is coming down.  
 7 Q Well, we know that you applied 12.5 percent up  
 8 to December 31, '01, correct?  
 9 A Correct.  
 10 Q How did you get to 12.5 percent at that point  
 11 in time?  
 12 A It was something we agreed to, and it's  
 13 probably related to what, you know, some degree, what  
 14 prime was at that point in time.  
 15 Q All right. Now, I want to -- I want to really  
 16 get specific with you. And if you don't recall, you  
 17 don't recall, Mr. Ellerton. That's fair enough.  
 18 A Okay. All right.  
 19 Q But I simply want to know your recollection of  
 20 any conversations you had with Mr. Dillabaugh after you  
 21 agreed on 12.5 percent interest in December 31 of '01 as  
 22 reflected on Exhibit 2; anything whatsoever you recall  
 23 where you talked about: it was going to go up, it was  
 24 going to go down, there wasn't going to be any interest  
 25 at all. Anything you recall, I'd like you to tell me

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1 about.  
 2 A Well, there's a document subsequent to this  
 3 that is for 123-and-some-odd-thousand with an interest  
 4 rate of 10 percent, so there was obviously more than just  
 5 a verbal communication; that was written.  
 6 Q And we'll get to that.  
 7 A You asked the question -- you asked anything  
 8 after this. Okay?  
 9 Q And remember what -- and maybe that time I  
 10 didn't ask it as specific as I should have.  
 11 A Okay.  
 12 Q But I'm separating now very clearly documents  
 13 which we're going to look at --  
 14 A Okay.  
 15 Q -- or conversations that you recall having  
 16 with Mr. Dillabaugh. We're now strictly in the  
 17 conversational area. What conversations, if any, do you  
 18 remember with Mr. Dillabaugh after this date,  
 19 December 31, 2001, to date, about interest?  
 20 A Basically the best of my recollection would be  
 21 the most recent ones where Mr. Dillabaugh requested, in  
 22 his conversations and communications with me, 12.5  
 23 percent. And I said no, because that was not reflective  
 24 of the current interest regime, and we hadn't decided on  
 25 offsets.

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1 Q Any other conversations that you recall at  
 2 all?  
 3 A I can't remember.  
 4 Q Okay. Fair enough. Now, when you  
 5 used twelve -- or agreed upon, as you put it -- 12.5  
 6 percent in December of '01, in your mind, when further  
 7 funds were advanced by Mr. Dillabaugh as you went along,  
 8 did that interest rate of 12.5 percent apply to them?  
 9 A I believe subsequent documents will show, no.  
 10 Q All right. I'm asking just for your  
 11 understanding. Do you recall having an understanding?  
 12 In other words, when additional funds are advanced  
 13 in '02, in '03, in -- in '02, '03, '05, '06, do you  
 14 recall having the thought process of, Well, 12.5 percent  
 15 is going to apply to this, or it's not going to apply to  
 16 it, or it's going to be something different?  
 17 A Obviously, it won't apply to this since  
 18 there's been subsequent loans with a 10 percent, as an  
 19 example.  
 20 Q Well, let me ask you that. Was it your  
 21 understanding that loans -- and let's look back at  
 22 Exhibit Number (sic) A again, the first page of it.  
 23 Starting with loans or advances that were made after  
 24 3/18/02 up until '06, was it your understanding that on  
 25 those advances, that a 10 percent interest rate would

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| <p style="text-align: right;">36</p> <p>1 apply?</p> <p>2 A No.</p> <p>3 Q Was it your understanding that any interest</p> <p>4 rate would apply?</p> <p>5 A My understanding was that it was never really</p> <p>6 discussed because of -- it was never -- the only time it</p> <p>7 was ever discussed was when something was rendered to in</p> <p>8 writing as to what we both agreed at that point in time.</p> <p>9 Q So what your testimony is that there -- as far</p> <p>10 as you're concerned, there was no interest to be applied?</p> <p>11 A If there was interest to be applied, it needed</p> <p>12 to be discussed and put in writing.</p> <p>13 Q And what you're saying is, that never</p> <p>14 occurred?</p> <p>15 A No. Other than what I've indicated --</p> <p>16 Q That's the promissory note of</p> <p>17 120-something-dollars?</p> <p>18 A And anything else that reflected numbers.</p> <p>19 Q Let me talk to you about how these loans</p> <p>20 happened -- advances, whatever we want to call them.</p> <p>21 A Yeah. I'm content with you using the term</p> <p>22 "loan," if, indeed, you understand that my response will</p> <p>23 be, you know, "advances" as opposed to the word "loan".</p> <p>24 Q Whichever. We can call it transfer of funds.</p> <p>25 A Okay. There you go.</p>                                                                                                           | <p style="text-align: right;">38</p> <p>1 A That would be one -- that would be one way.</p> <p>2 And then the other way would be he would ask me,</p> <p>3 occasionally, if I needed anything.</p> <p>4 Q And what would you respond? If you did or</p> <p>5 didn't --</p> <p>6 A If I did or didn't. And if I did, Gary would</p> <p>7 or would not advance money.</p> <p>8 Q All right. What would be the more typical</p> <p>9 situation: You coming to him or him coming to you and --</p> <p>10 A In the early days, it would be me going to</p> <p>11 Gary.</p> <p>12 Q All right. And why were you doing that? Why</p> <p>13 were you coming to him for these sums of money? I mean,</p> <p>14 these were fairly substantial amounts of money. We've</p> <p>15 got one in 9/27/02 for \$40,000. I mean, why were you</p> <p>16 coming to him for money at that point?</p> <p>17 A Well, the company had -- I was not paid any</p> <p>18 salary for a 5-year period. They wrote it off, the</p> <p>19 salary, for 3 years, and I took stock for 2 years. So</p> <p>20 for a 5-year period, I took no salary from the company.</p> <p>21 And if -- sometimes it might have been that the company</p> <p>22 needed the money, and it was done through my borrowing</p> <p>23 money from Gary, and then money going into the company</p> <p>24 that way. I mean, I can't recollect every one of these</p> <p>25 at this point in time sitting here. I'd have to go back</p> |
| <p style="text-align: right;">37</p> <p>1 Q All right. Transfer of funds. Let's start</p> <p>2 with the first page of Exhibit A. Now, we've got -- and</p> <p>3 you prepared this, did you not?</p> <p>4 A I believe I did, yes.</p> <p>5 Q And we've got a variety of transfers that were</p> <p>6 made. It starts with 4,000 in 4/22/02; 4,500 in 4/15/02;</p> <p>7 5,000, et cetera, et cetera.</p> <p>8 A Right.</p> <p>9 Q Tell me how this would happen. In other</p> <p>10 words, when a loan or -- pardon me -- a transfer of funds</p> <p>11 was made, would it be at your request?</p> <p>12 A Not always, no. Gary would sometimes say, Do</p> <p>13 you need money, or, Can you use any money?</p> <p>14 Q Okay.</p> <p>15 A And sometimes it was cash. Gary carries a lot</p> <p>16 of hundred-dollar bills. And he would go into the room</p> <p>17 and come out with sometimes several thousand dollars of</p> <p>18 cash, or it would be a check or maybe electronic</p> <p>19 transfer. I can't remember all the mechanisms.</p> <p>20 Q And I'm not really talking about the</p> <p>21 mechanisms. I'm trying to figure out now how these</p> <p>22 occur. And was it a situation where, you know, you would</p> <p>23 typically come to him, and say, Hey, I need some money</p> <p>24 for this, that, or the other; and he would say okay or</p> <p>25 not okay and transfer the funds? Would that be typical?</p> | <p style="text-align: right;">39</p> <p>1 and check through it.</p> <p>2 Q But clearly, every time this occurred, it was</p> <p>3 a situation where you needed money and Gary was willing</p> <p>4 to transfer it to you?</p> <p>5 A Not every one, but certainly it looked like</p> <p>6 the majority of these would be. \$300, obviously, is one</p> <p>7 where maybe -- I don't know, maybe -- in the past, I</p> <p>8 remember being on a business trip and Gary would, you</p> <p>9 know, have \$300. I don't know what it was. But, you</p> <p>10 know, \$50, I mean, that's not the sort of request I would</p> <p>11 make. It must come about from another different --</p> <p>12 another circumstance.</p> <p>13 Q Well, you obviously put this together from</p> <p>14 some documentations that --</p> <p>15 A Yeah, I had -- either I or, I believe -- and</p> <p>16 we had some indication that money was advanced, yeah.</p> <p>17 Q All right. Did you consider these funds that</p> <p>18 were advanced to you by Mr. Dillabaugh as gifts?</p> <p>19 A No.</p> <p>20 Q What did you consider them to be?</p> <p>21 A An advance of funds that had the possibility</p> <p>22 of being offset against opportunities that Mr. Dillabaugh</p> <p>23 realized through association with myself and also with</p> <p>24 Sefton.</p> <p>25 Q Let's go to Exhibit -- this exhibit again --</p>                                                                           |

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| 40 | <p>1 Exhibit Number 1. Would you turn to page number 3. Do<br/>2 you have that in front of you?</p> <p>3 A Yes.</p> <p>4 Q And these are your answers to interrogatories,<br/>5 correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. And you reference seven promissory<br/>8 notes or other written agreements that pertain or may<br/>9 pertain to payments made by Dillabaugh to Ellerton. And<br/>10 then you have a series of numbers, which I'll tell you<br/>11 are Bates-stamped numbers on documents you produced.<br/>12 Okay?</p> <p>13 A Okay.</p> <p>14 Q And I want you to look at those now so I can<br/>15 make sure --</p> <p>16 MR. DAVENPORT: If we could go off for just a<br/>17 second, it's going to take me a minute to get these<br/>18 organized.</p> <p>19 (A recess was taken from 9:50 a.m. until<br/>20 9:53 a.m.)</p> <p>21 (Exhibit Numbers 3 through 8 were marked for<br/>22 identification.)</p> <p>23 Q (By Mr. Davenport) Okay. You've got a series<br/>24 of exhibits in front of you that range from 3 through 8<br/>25 now, which I will tell you correspond with the answers in</p>                                                                                                                                                                              | 42 | <p>1 Sefton, leaving a number at 12/31 outstanding, and that<br/>2 we agreed to discuss the payment terms at some point in<br/>3 time thereafter, and that there wasn't any options that I<br/>4 may have assigned to Mr. Dillabaugh reflective of what<br/>5 they were.</p> <p>6 Q Okay. And, in fact, if you could look back at<br/>7 Exhibit Number 2, the \$57,500, et cetera, is referenced<br/>8 in Exhibit Number 2, which came some months later after<br/>9 Exhibit Number 3, didn't it?</p> <p>10 A This one appears to be later.</p> <p>11 Q Right.</p> <p>12 A Yeah.</p> <p>13 Q But this would be sort of restating what was<br/>14 said in your letter of the third -- I mean, the Exhibit<br/>15 Number 3.</p> <p>16 A Exhibit Number 3 is -- obviously follows this<br/>17 one and discusses the situation in April versus the<br/>18 situation in December.</p> <p>19 Q But they both make reference to the 57,500, do<br/>20 they not?</p> <p>21 A Yes, there's a -- the 57,500 is referenced in<br/>22 it.</p> <p>23 Q Okay. Let's look at Exhibit Number 4 now.<br/>24 What is Exhibit Number 4?</p> <p>25 A It's a promissory note in the amount of</p> |
| 41 | <p>1 the interrogatory we're just -- the interrogatory answer<br/>2 we're looking at.</p> <p>3 And what you say is, "Ellerton has identified<br/>4 7 promissory notes or other written agreements that<br/>5 pertain, or may pertain, to any payments made by<br/>6 Dillabaugh to Ellerton. Those agreements are<br/>7 reflected" -- et cetera. "The first three documents<br/>8 identified are promissory notes and are described further<br/>9 as follows."</p> <p>10 I want to walk you through these, and ask you<br/>11 what you recall of these documents and what your<br/>12 understanding is of what they are. Look at Exhibit 3 for<br/>13 me, will you, please?</p> <p>14 A Uh-huh.</p> <p>15 Q What is Exhibit 3?</p> <p>16 A It's a letter from me to Mr. Dillabaugh,<br/>17 signed by myself and signed by Mr. Dillabaugh, that<br/>18 appears to be a follow-up to a 12/31/00 letter.</p> <p>19 Q Do you recall anything about this?</p> <p>20 A Well, yes. I see that I signed it and<br/>21 Mr. Dillabaugh signed it. So, yes, that must have been<br/>22 reflective of a situation at that time.</p> <p>23 Q And what was the purpose of this document?</p> <p>24 A That -- basically, that Mr. Dillabaugh was<br/>25 converting 57,500 of any outstanding debt in shares of</p> | 43 | <p>1 123,500 dated December 31, 2002, and it is signed by<br/>2 myself.</p> <p>3 Q Do you recall the circumstances under which<br/>4 you signed this promissory note?</p> <p>5 A Yes.</p> <p>6 Q Tell me, if you would, please.</p> <p>7 A Well, Mr. Dillabaugh, was undergoing a divorce<br/>8 settlement and needed a -- kind of a status of our<br/>9 situation. And Mr. Dillabaugh presented this to me as<br/>10 what he would require. And I felt that was reflective<br/>11 of -- I was happy with that number and those terms, and,<br/>12 therefore, executed it.</p> <p>13 Q Now, what was your understanding of what this<br/>14 \$123,500 represented at the time?</p> <p>15 A That represented, basically, the number which<br/>16 Gary felt was reflective of what I owed him at the time.</p> <p>17 Q So at this point in time, you signed a<br/>18 promissory note saying you would pay him \$123,500,<br/>19 correct?</p> <p>20 A Correct.</p> <p>21 Q All right. Did you say anything about offsets<br/>22 in here?</p> <p>23 A That reflected, I believe, offsets at the<br/>24 time.</p> <p>25 Q Oh, so you're saying this was the net number?</p>       |

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| 44 | <p>1 A Correct.</p> <p>2 Q You took the number -- so at that time in</p> <p>3 December of 2002, after taking the offsets, this was the</p> <p>4 number you came up with?</p> <p>5 A Correct.</p> <p>6 Q What were the offsets?</p> <p>7 A I can't remember, sir.</p> <p>8 Q Do you remember how the number was arrived at?</p> <p>9 A No. I just remember that Gary felt that he</p> <p>10 was -- this was a number he was happy with. And I</p> <p>11 remember, at the time, looking at my numbers and being</p> <p>12 happy with that number as well.</p> <p>13 Q So, in essence, what you're telling us then is</p> <p>14 in 2002, there were some offsets applied to advances that</p> <p>15 had been made by Mr. Dillabaugh to you?</p> <p>16 A Correct.</p> <p>17 Q And you arrived at this number?</p> <p>18 A Correct.</p> <p>19 Q Okay. Where did those offsets come from?</p> <p>20 What were they?</p> <p>21 A They were probably a combination of things:</p> <p>22 dealings with Sefton, opportunities for stock,</p> <p>23 opportunities for options. You know, I can't remember</p> <p>24 individually, but they were likely to come from all of</p> <p>25 those.</p> | 46 | <p>1 MR. LUELLEN: I'm going to object to that at</p> <p>2 this point.</p> <p>3 MR. DAVENPORT: Okay. Well, we're being told</p> <p>4 here today, now, that things that Sefton did vis-a-vis</p> <p>5 Mr. Dillabaugh benefited this man by reducing the amount</p> <p>6 of money he owed him, and that's income. And I'm going</p> <p>7 to be making a request for tax returns, I can tell you</p> <p>8 that, from a credibility standpoint.</p> <p>9 MR. LUELLEN: And, Mr. Davenport, you're more</p> <p>10 than happy to make -- feel free to make the request. We</p> <p>11 will either produce or not produce in accordance with the</p> <p>12 applicable rules and -- but I'm not going to make a</p> <p>13 representation as to how we'll deal with a request at a</p> <p>14 future point in time.</p> <p>15 MR. DAVENPORT: Fair enough. We'll be making</p> <p>16 the request.</p> <p>17 Q (By Mr. Davenport) Where do you file your tax</p> <p>18 returns?</p> <p>19 A How do you mean?</p> <p>20 Q Well, what -- do you file them in the United</p> <p>21 States? Do you file --</p> <p>22 A Oh, yeah, yeah, yeah.</p> <p>23 Q Okay. Where else?</p> <p>24 A I'm a resident of the US, so I file in the US.</p> <p>25 Q Okay. Do you file anywhere else?</p> |
| 45 | <p>1 Q They would -- I mean, it would have all been</p> <p>2 from Sefton: options and Sefton --</p> <p>3 A Sefton and/or stock or options that I had. I</p> <p>4 can't remember the specific ones, but it would be either</p> <p>5 myself and/or Sefton.</p> <p>6 Q Some came from Sefton?</p> <p>7 A I believe they might have now. I can't</p> <p>8 remember.</p> <p>9 Q So was -- I just want to be clear about this.</p> <p>10 A Uh-huh.</p> <p>11 Q So the situation is that benefits that</p> <p>12 Mr. Dillabaugh got from Sefton were used to offset</p> <p>13 advances of money that he made to you?</p> <p>14 A Correct.</p> <p>15 Q All right. Did you ever report that as</p> <p>16 income?</p> <p>17 A I can't remember, sir.</p> <p>18 Q Well, stop and think about it. Do you think</p> <p>19 it should have been reported as income?</p> <p>20 A I don't know. My -- I have accountants do my</p> <p>21 books and they might have done that. I don't know.</p> <p>22 Q Okay.</p> <p>23 A They said --</p> <p>24 Q Would you be willing to provide your tax</p> <p>25 returns to us to show if you did it or not?</p>                                                 | 47 | <p>1 A No.</p> <p>2 Q Have you filed tax returns for the years 2002</p> <p>3 and afterward?</p> <p>4 A Yes.</p> <p>5 Q All right. Now, is that consistently what</p> <p>6 your position is, is that Sefton provided opportunities</p> <p>7 or benefits, including salary, to Mr. Dillabaugh that</p> <p>8 operate as offsets to money that had been advanced to you</p> <p>9 by Mr. Dillabaugh?</p> <p>10 A No.</p> <p>11 Q That's not your position?</p> <p>12 A No.</p> <p>13 Q Where did these benefits come from?</p> <p>14 A Benefits can come from myself and/or Sefton</p> <p>15 and then negotiated with Mr. Dillabaugh as the situation</p> <p>16 arises.</p> <p>17 Q Well, is it your position, or is it not, that</p> <p>18 some of these offsets that you believe you're entitled to</p> <p>19 were the result of benefits that Mr. Dillabaugh got from</p> <p>20 Sefton?</p> <p>21 A Correct, yes.</p> <p>22 Q Okay. So again, do you recognize that that</p> <p>23 would be income to you? In other words, if the</p> <p>24 corporation -- let's say it's an offset for salary. And</p> <p>25 I know you've said that you get an offset for salary. Do</p>                                                                                            |

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| 48 | <p>1 you recognize that if, in fact, there was an offset for<br/>2 his salary, the corporation, in essence, had paid some of<br/>3 your obligation to Mr. Dillabaugh? Do you recognize<br/>4 that's income to you?<br/>5 MR. LUELLEN: I'm going to object both as<br/>6 being irrelevant, as calling for a legal conclusion, that<br/>7 he's not a tax attorney.<br/>8 MR. DAVENPORT: I understand he's not a tax<br/>9 attorney. I just want to know as a taxpayer, does he<br/>10 recognize that that's income to him?<br/>11 MR. LUELLEN: Again, that assumes facts not in<br/>12 evidence. That assumes that your evaluation is correct.<br/>13 If you want to ask him whether it may constitute income,<br/>14 that's fine.<br/>15 MR. DAVENPORT: And I -- you know, Jack, I<br/>16 appreciate your objection. But I'd just assume that --<br/>17 just assume that you just object as to form and let me<br/>18 ask my questions of Mr. Ellerton.<br/>19 MR. LUELLEN: Sure.<br/>20 Q (By Mr. Davenport) Now, do you recognize that<br/>21 that may or may not be income to you?<br/>22 A If my tax -- my accountant deems that to be<br/>23 income, then -- then, yes.<br/>24 Q Well, if somebody else pays your debts, do you<br/>25 view that as being income to you?</p> | 50 | <p>1 Q Did you ever pay it?<br/>2 A No.<br/>3 Q Why not?<br/>4 A Well, at that point, Mr. Dillabaugh, I<br/>5 believe -- subsequent to December 31, '02, there was<br/>6 additional money advanced, and Mr. Dillabaugh never<br/>7 really pressed for it because he was receiving<br/>8 opportunities and benefits from Sefton and/or myself.<br/>9 Q Okay. Well, let's get real specific about<br/>10 this. It calls for a date. It says, "Shall be paid to<br/>11 holder," which is Mr. Dillabaugh, "on December 31, 2003,"<br/>12 a year later.<br/>13 A Correct.<br/>14 Q And you're telling me you didn't pay it?<br/>15 A No.<br/>16 Q Did you talk to Mr. Dillabaugh about whether<br/>17 you were going to pay it?<br/>18 A No.<br/>19 Q You just didn't pay it?<br/>20 A Well, Mr. Dillabaugh didn't request it.<br/>21 Q And you're saying he had to request it before<br/>22 it was to be paid?<br/>23 A If Mr. Dillabaugh requested it, I would have<br/>24 probably found a way to pay it, yes.<br/>25 Q And you're just saying he simply didn't</p> |
| 49 | <p>1 MR. LUELLEN: Object as irrelevant.<br/>2 THE WITNESS: If my accountant -- if my<br/>3 accountant deems that's it, then, yes.<br/>4 Q (By Mr. Davenport) You don't have any<br/>5 personal opinion on whether that would constitute income<br/>6 to you or not; is that right?<br/>7 A If, you know -- it's like anything. It would<br/>8 depend on the circumstances on what's -- what -- if<br/>9 there's any offsets against it or situations like that.<br/>10 That's why I just refer to -- I would refer it to my<br/>11 accountant.<br/>12 Q I think we've -- now, is it your testimony<br/>13 that Mr. Dillabaugh put together Exhibit Number 4?<br/>14 A Yes.<br/>15 Q Had it prepared?<br/>16 A Had it prepared, yes.<br/>17 Q And presented it to you?<br/>18 A Yes.<br/>19 Q And that it was net of all offsets and credits<br/>20 that you were entitled to at the time?<br/>21 A Yes.<br/>22 Q So when we got to December 31, 2002, what<br/>23 you're saying is that: That's the number at that point<br/>24 that I owed Mr. Dillabaugh net of credits?<br/>25 A Correct.</p>                                                                                                                                                                                 | 51 | <p>1 request it --<br/>2 A No.<br/>3 Q -- and you didn't pay it?<br/>4 Now, has that amount continued to run at<br/>5 interest -- 10 percent to date?<br/>6 A I have no idea, sir.<br/>7 Q All right. Well, this note's never been paid,<br/>8 has it?<br/>9 A No.<br/>10 Q All right. And it says it runs at 10 percent<br/>11 interest, doesn't it?<br/>12 A Correct.<br/>13 Q All right. So would it be your position that<br/>14 you still owe this to Mr. Dillabaugh at 10 percent<br/>15 interest from December two thousand -- or December 31,<br/>16 2003?<br/>17 A No.<br/>18 Q Why not?<br/>19 A Well, maybe those offsets that he was<br/>20 receiving or offsets that I was entitled to from benefits<br/>21 he was receiving from myself or whatever might have --<br/>22 Q Well, let's talk about --<br/>23 A -- offset it.<br/>24 Q Well, this is a real clear document.<br/>25 A Yes.</p>                                                                                                                                                         |

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| <p style="text-align: right;">52</p> <p>1 Q This is very crystal clear: You owe it; you<br/>2 didn't pay it --</p> <p>3 A Right.</p> <p>4 Q -- ran at 10 percent. Now you're saying. But<br/>5 I was entitled to some offsets to this 123,000 plus<br/>6 interest?</p> <p>7 A No, sir, I didn't say that. I said there<br/>8 might have been offsets or benefits that Mr. Dillabaugh<br/>9 was receiving -- there might have been benefits that<br/>10 Mr. Dillabaugh was receiving from myself or Sefton that<br/>11 he was content with so that he wouldn't call the note.</p> <p>12 Q Well, you know there's been a demand made for<br/>13 payment of what you owe him, right?</p> <p>14 A Yes.</p> <p>15 Q All right. So a demand has been made, and you<br/>16 still haven't paid?</p> <p>17 A No.</p> <p>18 Q All right. Why?</p> <p>19 A Well, because this is just part and parcel of<br/>20 a more larger situation that -- I believe that what<br/>21 Mr. Dillabaugh has demanded is not payment of this.<br/>22 Mr. Dillabaugh has demanded a number that's excessive in<br/>23 what I believe I'm -- he's owed by me.</p> <p>24 Q Well, you -- would you agree that you at least<br/>25 owe this amount, the 123,000 with interest?</p> | <p style="text-align: right;">54</p> <p>1 which usually is a copy I keep. So I believe it is<br/>2 likely to be one, yes.</p> <p>3 Q All right. Did you ever pay Ms. Dillabaugh on<br/>4 this note?</p> <p>5 MR. LUELLEN: Object as irrelevant.</p> <p>6 MR. DAVENPORT: Well, he's referenced it in<br/>7 his answers to interrogatories. I'm trying to get a<br/>8 sense of why.</p> <p>9 Q (By Mr. Davenport) Did you ever pay her on<br/>10 this?</p> <p>11 A I have no idea, sir.</p> <p>12 Q Well, it says it had a due date of<br/>13 May 31, 2002. You have no recollection of whether you<br/>14 paid her or not?</p> <p>15 MR. LUELLEN: Same objection.</p> <p>16 THE WITNESS: I probably did or she was paid,<br/>17 but I have no idea. I can't recollect at this point.</p> <p>18 Q (By Mr. Davenport) And it calls for 10<br/>19 percent interest, doesn't it?</p> <p>20 A Correct.</p> <p>21 Q Do you have any documentation that would show<br/>22 if you paid it or not?</p> <p>23 A I'm sure I might have, yeah.</p> <p>24 Q Would you mind providing that to us?</p> <p>25 A If I can find it, yes.</p>                                    |
| <p style="text-align: right;">53</p> <p>1 A Unless there's an offset in excess of it, no.</p> <p>2 Q Okay. And that's what I'd like to know. What<br/>3 are the offsets you think you're entitled to as a result<br/>4 of this note?</p> <p>5 A It's really not been negotiated with<br/>6 Mr. Dillabaugh and myself. At this point, it's in the<br/>7 hands of the courts.</p> <p>8 Q So you say the offsets need to be negotiated<br/>9 to arrive at a number that you owe him?</p> <p>10 A Correct.</p> <p>11 Q Okay. All right. Let's go to Exhibit Number<br/>12 5. This is another one -- just to keep you sort of<br/>13 referenced here, if you will, I'm using your answers to<br/>14 interrogatories with these documents.</p> <p>15 A Okay.</p> <p>16 Q Okay. So we're now up to Number 5. What was<br/>17 number 5?</p> <p>18 A It appears to be a copy of a promissory note<br/>19 for \$5,000 dated February 2003 between Lisa Dillabaugh<br/>20 and myself.</p> <p>21 Q Who prepared this?</p> <p>22 A I'm assuming Mr. Dillabaugh prepared it.</p> <p>23 Q And it was -- it's something that you<br/>24 individually promised to pay to Lisa Dillabaugh, right?</p> <p>25 A My -- the copy I have here is just an initial,</p>      | <p style="text-align: right;">55</p> <p>1 Q Okay.</p> <p>2 MR. LUELLEN: I'm going to object as<br/>3 irrelevant again.</p> <p>4 MR. DAVENPORT: Okay. Your objection is<br/>5 noted.</p> <p>6 Q (By Mr. Davenport) Do you have any idea how<br/>7 this came about that you signed a promissory note to Lisa<br/>8 Dillabaugh for \$5,000?</p> <p>9 A I can estimate that it was money that was put<br/>10 into Sefton, and I assumed the obligation.</p> <p>11 Q Who was Lisa Dillabaugh?</p> <p>12 A Gary's daughter.</p> <p>13 Q Let's look at Exhibit 6. What is Exhibit<br/>14 Number 6?</p> <p>15 A Well, it looks like it's a draft of an<br/>16 agreement -- or a letter from myself to Mr. Dillabaugh<br/>17 dated December the 31st, 2000, regarding stock options<br/>18 and loan agreements: Sefton Resources, Inc.; TEG<br/>19 Resources; and J. Ellerton.</p> <p>20 Q Do you have any recollection of preparing this<br/>21 document?</p> <p>22 A Well, it looks like I did -- signed it and<br/>23 prepared it, yes.</p> <p>24 Q Now, if you look at the second page, paragraph<br/>25 3, it says under A, "Repayment of cash advances (and</p> |

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| <p style="text-align: right;">56</p> <p>1 aforementioned \$5,000 premium) in form of loan (see<br/>2 12/31/00 statement of principal and interest) bearing 12<br/>3 percent per annum."<br/>4       So were you saying at that point on money he<br/>5 advanced to you, it would run at 12 percent interest?<br/>6       A Correct.<br/>7       Q Now, this was dated before Exhibit Number 2.<br/>8 This is dated 2000. Exhibit Number 2, you then go to an<br/>9 interest rate of 12.5?<br/>10       A Correct.<br/>11       Q All right. So it was 12 and then it went to<br/>12 12.5?<br/>13       A Correct.<br/>14       Q Let's go to Exhibit Number 7. Do you see<br/>15 that?<br/>16       A Yes.<br/>17       Q What is Exhibit Number 7?<br/>18       A It's copy of a letter that I prepared, between<br/>19 myself and Mr. Dillabaugh, regarding an addendum to a<br/>20 12/31/00 agreement and a 4/2/01 addendum to that<br/>21 agreement.<br/>22       Q Now, in paragraph C, this references that you<br/>23 say, "It is my understanding that you wish to purchase<br/>24 these shares for the above-indicated price by applying<br/>25 said money from outstanding amount owed by myself." Do</p> | <p style="text-align: right;">58</p> <p>1 dealt with in Exhibit Number 2 when you came to the<br/>2 bottom line analysis that you were at on December 31<br/>3 of '01?<br/>4       A If this is one that was executed and enforced,<br/>5 yes.<br/>6       Q All right. Let's go to now your supplemental<br/>7 answers to discovery, and that is Exhibit Number -- I<br/>8 don't think we've marked that one yet.<br/>9       MR. LUELLEN: I don't believe so.<br/>10       (Exhibit Number 9 was marked for<br/>11 identification.)<br/>12       Q (By Mr. Davenport) Okay. I would like you to<br/>13 take a look at Exhibit Number 9. And I will represent to<br/>14 you that these are the supplemental answers to discovery<br/>15 that were provided to me after I made requests of you and<br/>16 Mr. Luellen, your counsel, that there be further answers<br/>17 put together.<br/>18       A There's two copies of it here.<br/>19       Q Let's ignore that second copy; just take it<br/>20 off. These are your supplemental answers to<br/>21 interrogatories that were, in fact, signed by -- well,<br/>22 they're signed by your counsel, but I assume that they're<br/>23 your answers as well.<br/>24       A Correct.<br/>25       Q Let's go to the second page. And you state in</p>                                                                                                       |
| <p style="text-align: right;">57</p> <p>1 you see that?<br/>2       A Yep.<br/>3       Q And that's what you did, then, I assume?<br/>4       A I assume, yes.<br/>5       Q All right. And that would be -- that would<br/>6 all have been set forth, then, in Exhibit Number 2 when<br/>7 you come to a culmination of what the situation is. As<br/>8 of December 31, '01, this letter would have been taken<br/>9 into account, correct?<br/>10       A I would assume so, yes.<br/>11       Q All right. Let's go to Exhibit Number 8, and<br/>12 that is right there. What is Exhibit Number 8?<br/>13       A It appears to be an unsigned promissory note<br/>14 between myself and Mr. Dillabaugh.<br/>15       Q Do you recall the circumstance under which<br/>16 this was done?<br/>17       A No.<br/>18       Q Whose handwriting is it in?<br/>19       A It's my handwriting.<br/>20       Q Okay. It's a promissory note dated November<br/>21 30, 1999?<br/>22       A An unsigned promissory note dated November<br/>23 30th, 1999.<br/>24       Q Would it be your understanding, Mr. Ellerton,<br/>25 that this promissory note, as well, would be embodied or</p>                             | <p style="text-align: right;">59</p> <p>1 your response to number 3, "With respect to offsets and<br/>2 other consideration due to Ellerton, please see Exhibit B<br/>3 attached to the initial responses. Despite a good-faith<br/>4 effort, it is impossible for Ellerton to quantify the<br/>5 value of each specific item of benefit conferred upon or<br/>6 received by Dillabaugh for which Ellerton is entitled to<br/>7 credit, offset or other consideration. Nevertheless,<br/>8 Ellerton has been able to estimate that the value of the<br/>9 benefits for which credit, offset or other consideration<br/>10 is due is to Ellerton to be not less than \$2,028,668,<br/>11 which is calculated as follows."<br/>12       You start with compensation from Sefton<br/>13 Resources, \$285,000. Do you see that?<br/>14       A Correct.<br/>15       Q Is that the entire amount of compensation that<br/>16 was paid by Sefton to Gary Dillabaugh for the entire time<br/>17 he worked there?<br/>18       A That would be the cash that he received, is my<br/>19 understanding, yeah.<br/>20       Q Now, when you say "cash" -- maybe we're not on<br/>21 the same -- that was his salary; that was his<br/>22 compensation from Sefton, right?<br/>23       A It might have been bonus prior to him being --<br/>24 I'd have to look at the -- that number was provided by<br/>25 Sefton.</p> |

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| 60 | <p>1 Q All right. But it would be everything he was<br/>2 paid by Sefton during the time he worked there, correct?<br/>3 A Outside of expenses and other things, I assume<br/>4 so, yes.<br/>5 Q All right. So what you're saying is that all<br/>6 of the salary, every bit of the salary that Gary<br/>7 Dillabaugh made while he was at Sefton, his compensation,<br/>8 you were entitled personally to an offset against amounts<br/>9 that you otherwise would owe Mr. Dillabaugh, correct?<br/>10 A No.<br/>11 Q Well, that's what it looks like to me.<br/>12 A I think if you read it, "With respect to<br/>13 offsets and other consideration due to Ellerton, please<br/>14 see Exhibit B attached" -- "Despite a good-faith effort,<br/>15 it is impossible for Ellerton to quantify the value of<br/>16 each specific item of benefit conferred upon or received<br/>17 by Dillabaugh for which Ellerton is entitled to credit,<br/>18 offset or other consideration."<br/>19 It's part of the negotiation of what the<br/>20 possible offsets against money advanced are.<br/>21 Q Well, I guess I don't understand it then.<br/>22 Because in the next paragraph, you say, "Nevertheless,<br/>23 Ellerton has been able to estimate the value of the<br/>24 benefits for which credit, offset or other consideration<br/>25 is due to Ellerton to be not less than \$2,028,668, which</p> | 62 | <p>1 A Okay.<br/>2 Q And the issue is: I want to know what you're<br/>3 claiming and in what amount.<br/>4 A Basically -- and I think I've already answered<br/>5 that by saying that's something that would need to be<br/>6 negotiated or --<br/>7 Q Well, assume you can't --<br/>8 A -- or what the courts deem.<br/>9 Q Well, assume you can't negotiate it and assume<br/>10 we go to court and assume we have a trial. What is your<br/>11 position going to be as to what offsets you're entitled<br/>12 to from Mr. Dillabaugh against funds he advanced you?<br/>13 It's a really simple question.<br/>14 MR. LUELLEN: Asked and answered.<br/>15 THE WITNESS: Basically I think I've just<br/>16 answered that. Basically I'll leave that to the<br/>17 courts --<br/>18 Q (By Mr. Davenport) So you --<br/>19 A -- to determine what amount I should be<br/>20 entitled to.<br/>21 Q Well, let's get more basic. Let's talk about<br/>22 agreements that you had with Mr. Dillabaugh about<br/>23 offsets. Tell me every agreement you ever recall<br/>24 reaching with Mr. Dillabaugh about offsets that you were<br/>25 entitled to, given money that he lent to you.</p>                                                                                                                                                |
| 61 | <p>1 amount was calculated as follows: \$285,000." I assume<br/>2 that what you're saying is, I'm entitled to a credit of<br/>3 \$285,000 as a result of compensation Mr. Dillabaugh<br/>4 received from Sefton. Am I missing something?<br/>5 A No.<br/>6 Q So you get -- what you're telling us is your<br/>7 deal with Mr. Dillabaugh was: For every bit of<br/>8 compensation he received from Sefton, you got an absolute<br/>9 total credit against amounts you otherwise would owe him?<br/>10 A No.<br/>11 Q You're not?<br/>12 A I realize what you're saying. But<br/>13 nevertheless, offset is due to Ellerton -- this number<br/>14 was basically my estimate of the benefit -- the value of<br/>15 the benefits Mr. Dillabaugh had received from Sefton<br/>16 through myself. And I guess maybe my response maybe<br/>17 needed to be modified where it says this was the number<br/>18 that we would negotiate from which -- what the offset<br/>19 against monies advanced would be.<br/>20 Q Well, are you claiming any compensation that<br/>21 Mr. Dillabaugh got from Sefton as an offset?<br/>22 A I'm basically saying these are the numbers<br/>23 that need to be negotiated from.<br/>24 Q Okay. We're going to have to get to the<br/>25 bottom of this.</p>                                                                                                                 | 63 | <p>1 A Actually -- let's see. That \$123,000 is one<br/>2 example of an -- that would be net of offsets, other --<br/>3 Q And let me be real clear with you. What I'm<br/>4 talking about is something you can identify as a verbal<br/>5 agreement, and then we'll get to written agreements.<br/>6 A Okay. Let's start with written agreements.<br/>7 Q Let's -- I want to go to verbal.<br/>8 A Verbal?<br/>9 Q Yeah. I want to know every time you ever<br/>10 recall sitting down with Mr. Dillabaugh and saying to<br/>11 him, Now, recognize when you're -- something to this<br/>12 effect -- when you're loaning me these monies or<br/>13 transferring these, I'm going to get a benefit back for<br/>14 your compensation, stock options you get, et cetera; and<br/>15 he agreed to that. That's the kind of thing I want to<br/>16 know about.<br/>17 A All right. Well, one verbal agreement would<br/>18 be prior to me executing that promissory note that I just<br/>19 referred to.<br/>20 Q Okay. Tell me about that verbal agreement.<br/>21 A It was a discussion after Mr. Dillabaugh<br/>22 presented that promissory note to me, his desire for<br/>23 something so that he could use it in the settlement in<br/>24 his divorce. So that -- we would have chatted about that<br/>25 before I executed it.</p> |

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| <p style="text-align: right;">64</p> <p>1 Q Do you recall sitting down and going through<br/>2 what credits you were going to get and offsets you were<br/>3 going to get and how much the money was?<br/>4 A No. It was that Mr. Dillabaugh presented that<br/>5 to me. And then I, at some point, must have gone and<br/>6 checked my records and been happy with a number<br/>7 representing an offset of some sort or a discount, yes.<br/>8 Q All right. But you don't have any specifics<br/>9 about --<br/>10 A No.<br/>11 Q -- what you agreed to --<br/>12 A No.<br/>13 Q -- how you agreed to it, et cetera?<br/>14 A No.<br/>15 Q All right. Any other situation you can tell<br/>16 me about where you had an agreement -- in your mind, you<br/>17 had an agreement with Mr. Dillabaugh that you were going<br/>18 to get offsets or credits against the amounts that he had<br/>19 transferred to you?<br/>20 A Not very specific, other than at some point,<br/>21 we would sit down and discuss what they were. And it<br/>22 was -- Mr. Dillabaugh seemed quite happy just to leave<br/>23 things as they are until a point in time when we would<br/>24 sit down and do that.<br/>25 Q Well --</p>                                                                                                                                                          | <p style="text-align: right;">66</p> <p>1 you for things he got from Sefton, et cetera; you never<br/>2 had that agreement, did you?<br/>3 A It was a verbal understanding, yes, that that<br/>4 would occur.<br/>5 Q When did that verbal understanding occur?<br/>6 A Over time. Over all of those times.<br/>7 Q I want you to tell me about any time you<br/>8 recall Mr. Dillabaugh agreeing with you and saying, I<br/>9 agree that for money I've transferred to you over time,<br/>10 you're going to get a credit against paying me back based<br/>11 upon the salary I get from Sefton or stock options I've<br/>12 gotten, et cetera.<br/>13 A That was an ongoing understanding. In my<br/>14 mind, that was ongoing, and that's why there were never<br/>15 any demands made on the notes or any -- or monies<br/>16 advanced to him.<br/>17 Q You said it was an ongoing understanding in<br/>18 your mind?<br/>19 A Yes.<br/>20 Q Did ever have -- did Mr. Dillabaugh ever tell<br/>21 you at any time in history that, I agree that for money<br/>22 I'm advancing to you or transferring to you or lending<br/>23 you, that you're going to get a credit for my salary I'm<br/>24 getting from Sefton, stock options I'm getting from<br/>25 Sefton, stock I'm buying from Sefton? Did he ever say</p> |
| <p style="text-align: right;">65</p> <p>1 A And that would be recent correspondence<br/>2 in '08.<br/>3 Q Recent correspondence in '08 is what you're<br/>4 talking about now?<br/>5 A Right.<br/>6 Q I'm talking prior to '08 when you all were<br/>7 trying to settle this and talking about settling, et<br/>8 cetera. I'm talking about, like, from 2001 to 2007. Can<br/>9 you identify for me and tell me about any agreement that<br/>10 you sat down with and had with Mr. Dillabaugh about the<br/>11 fact that you were going to get credits against amounts<br/>12 that he was transferring to you?<br/>13 A No, I can't specifically remember specific<br/>14 ones.<br/>15 Q But are you saying there were such agreements?<br/>16 A It was just an understanding that we had that<br/>17 Mr. Dillabaugh was happy with the way things were between<br/>18 myself, Sefton, and himself in terms of what he was<br/>19 getting, opportunities he was receiving. And so we never<br/>20 really sat down and negotiated, although there was always<br/>21 an understanding that we would at some point in time.<br/>22 Q Okay. The fact is, is it not, Mr. Ellerton,<br/>23 that you never had any agreement with Mr. Dillabaugh in<br/>24 which you two specifically agreed that he was going to<br/>25 have credits taken against the amounts that he'd loaned</p> | <p style="text-align: right;">67</p> <p>1 anything like that to you in any way, shape, or form?<br/>2 A Yes.<br/>3 Q When?<br/>4 A The 123,000 note.<br/>5 Q We're talking about verbal conversations.<br/>6 A There was a verbal one prior to that or at<br/>7 that time that was delivered to me. I've already<br/>8 answered that.<br/>9 Q What did he say?<br/>10 A He basically said, This is a number that I<br/>11 would be happy with, if you're happy with it, to offset<br/>12 the benefits that I'm receiving.<br/>13 Q All right.<br/>14 A And I agreed to it.<br/>15 Q Now, for all of the time period after the<br/>16 promissory note, were there ever any agreements in any<br/>17 statements by Mr. Dillabaugh where he agreed to the<br/>18 offsets?<br/>19 A Yes. He basically indicated that he was happy<br/>20 with the way things were going and there was no need to<br/>21 negotiate what those offsets were until the point in time<br/>22 that we needed to sit down and determine what they were.<br/>23 Q When did those conversations take place?<br/>24 A Over time, off and on, certainly at least once<br/>25 a year.</p>                                                                                                                                                              |

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| 68 | <p>1 Q Where would they take place?</p> <p>2 A Wherever we were together, whether it be in</p> <p>3 London, whether it be here, or wherever.</p> <p>4 Q Can you recall a specific conversation?</p> <p>5 A No.</p> <p>6 Q Can you recall anybody else that overheard</p> <p>7 these conversations?</p> <p>8 A No.</p> <p>9 Q Is there anybody else we could talk to that</p> <p>10 could say -- we could talk to and ask, Can you verify</p> <p>11 that this occurred or did not occur?</p> <p>12 A I wouldn't know. I -- not from my mind, no.</p> <p>13 Q Did you ever have any conversations about,</p> <p>14 specifically, how these, you know, offsets would be</p> <p>15 arrived at?</p> <p>16 A We would negotiate them.</p> <p>17 Q Did you ever have any conversations about</p> <p>18 whether or not the fact that his salary that was being</p> <p>19 paid by Sefton would be used as an offset?</p> <p>20 A Again, it would be negotiated.</p> <p>21 Q And, again, did you or did you not ever have a</p> <p>22 conversation about whether you would use his salary as an</p> <p>23 offset?</p> <p>24 A No.</p> <p>25 Q Okay. Did you ever have any conversations</p>                                                                                             | 70 | <p>1 They were all discussed as one, basically, you know,</p> <p>2 overall aspect of benefits that Mr. Dillabaugh would</p> <p>3 receive.</p> <p>4 Q Okay. I want --</p> <p>5 A We don't talk about specifics. We would talk</p> <p>6 about benefits, plural, and those benefits would be</p> <p>7 anything that you've referred to so far.</p> <p>8 Q So if I understand your testimony. What</p> <p>9 you're saying is that occasionally, maybe once a year,</p> <p>10 you had a conversation with Mr. Dillabaugh where you said</p> <p>11 something to this effect: There's money that you have</p> <p>12 lent me that I owe you, but we're going to talk at some</p> <p>13 point about offsets to that. Is that how it went?</p> <p>14 A No. It would probably say, you know -- my</p> <p>15 recollection would be where we would somehow talk about</p> <p>16 it, and Mr. Dillabaugh would indicate he was quite happy</p> <p>17 with just letting things go the way they are at the</p> <p>18 moment, and we would get to it at some future point in</p> <p>19 time when we were both -- we would both sit down and</p> <p>20 negotiate it.</p> <p>21 Q Okay. And I understand that that's what you</p> <p>22 recall.</p> <p>23 A Right.</p> <p>24 Q What I'm trying to get to is: Did</p> <p>25 Mr. Dillabaugh ever say to you in conjunction with that,</p> |
| 69 | <p>1 about whether you'd use stock that he had purchased as an</p> <p>2 offset?</p> <p>3 A Yes.</p> <p>4 Q When?</p> <p>5 A Over that time that I've indicated.</p> <p>6 Q So what you're saying is that stock that he</p> <p>7 purchased, that he actually paid money for, you were</p> <p>8 going to get an offset against monies he'd advanced you?</p> <p>9 A As part of an overall offset, yes.</p> <p>10 Q How were you going to determine that?</p> <p>11 A Through negotiations.</p> <p>12 Q Were there any ideas that were thrown out</p> <p>13 about how these negotiations would go, what you would</p> <p>14 use, what percentages you would use, anything?</p> <p>15 A No.</p> <p>16 Q How about stock options? Were there ever any</p> <p>17 conversations where you talked about that, as a result of</p> <p>18 him getting stock options just like the rest of the</p> <p>19 employees of the corporation, that there would be an</p> <p>20 offset against amounts he'd advanced to you?</p> <p>21 A If you -- the rest of the employees didn't</p> <p>22 always get stock options.</p> <p>23 Q Well, take that out of the question.</p> <p>24 A Okay. Well, with that, then, yes. It was</p> <p>25 like my aforementioned response to the stock options.</p> | 71 | <p>1 You're going to get offsets against the amounts I've</p> <p>2 loaned you from my salary, my stock I've gotten, my stock</p> <p>3 options; did he ever say that?</p> <p>4 A That was my understanding.</p> <p>5 Q Did he ever say it?</p> <p>6 A Yes.</p> <p>7 Q What did he say?</p> <p>8 A He basically said the benefits that he was</p> <p>9 receiving would be used in the negotiations of what the</p> <p>10 final number was that I would owe him.</p> <p>11 Q Okay. And you recall him specifically saying</p> <p>12 that?</p> <p>13 A Yes.</p> <p>14 Q Do you ever recall him saying, My salary will</p> <p>15 be used for that?</p> <p>16 A No. It was all benefits in plural, not just</p> <p>17 salary.</p> <p>18 Q Fair enough. Was it ever specific enough to</p> <p>19 say, We'll do it based upon the stock I bought?</p> <p>20 A As I mentioned, it would be all-encompassing.</p> <p>21 Q Did he ever mention in regard to stock</p> <p>22 options?</p> <p>23 A In the sense it was all-encompassing, yes.</p> <p>24 Q So the -- he did mention stock options?</p> <p>25 A The benefits that he was receiving.</p>                                                                                                                                                                                                                            |

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| 72 | <p>1 Q All right. In your mind, when he was saying<br/>2 that, what benefits did you think he was talking about?<br/>3 A Salary, stocks, opportunity -- stock<br/>4 opportunities, other opportunities that were not<br/>5 necessarily Sefton but from myself and/or Sefton, stock<br/>6 options. I can recall one other one or two other ones in<br/>7 examples where Sefton sold -- was going to take one of<br/>8 its subsidiaries public, and Mr. Dillabaugh was offered<br/>9 an opportunity there. So that would be stock in another<br/>10 company. There was an opportunity I provided to acquire<br/>11 some shares in a non-Sefton entity through some<br/>12 associates of mine. It was all -- benefits were all<br/>13 these opportunities: salaries, stocks, stock options,<br/>14 opportunities in other entities.<br/>15 Q Is it your position today that as a result of<br/>16 these benefits, that you don't owe him anything?<br/>17 A I really haven't thought about it.<br/>18 Q Don't you think you should?<br/>19 A No, because it's now reduced to a legal<br/>20 matter. And so what's the point?<br/>21 Q Well, you know you're going to have to testify<br/>22 as to what your position is. We know that he advanced to<br/>23 you in the neighborhood of \$400,000, correct?<br/>24 A Right.<br/>25 Q Okay. So now, what's your position going to</p> | 74 | <p>1 haven't even figured out what they are?<br/>2 MR. LUELLEN: Object to the form.<br/>3 THE WITNESS: No. I've been specific about<br/>4 what potential offsets there are and that I've indicated<br/>5 have yet to be negotiated.<br/>6 Q (By Mr. Davenport) Well, let's go back to<br/>7 what you -- tell you what: let's take -- it's about<br/>8 10:30. Let's take a break.<br/>9 THE WITNESS: Okay.<br/>10 MR. LUELLEN: Thank you very much.<br/>11 (A recess was taken from 10:30 a.m. until<br/>12 10:41 a.m.)<br/>13 Q (By Mr. Davenport) I want to go back again to<br/>14 the supplemental answers to interrogatories, see if we<br/>15 can get a little -- I can make sure I understand what<br/>16 you've done here.<br/>17 You say that -- right before you start listing<br/>18 the amounts -- "offset or other consideration is due to<br/>19 Ellerton to be not less than 2,028,668," we talked a<br/>20 little bit about this \$285,000. And I just need to know<br/>21 your position.<br/>22 Mr. Ellerton, are you saying that you should<br/>23 get a \$285,000 credit against the amount loaned?<br/>24 A No.<br/>25 Q What are you saying?</p>                                                                                                                                                                                                             |
| 73 | <p>1 be at trial in terms of, Okay, yes, he advanced me around<br/>2 \$400,000, and I get credits against that of some amount?<br/>3 You're going to have to testify to that, aren't you?<br/>4 A Uh-huh.<br/>5 MR. LUELLEN: I object to the hypothetical<br/>6 question.<br/>7 MR. DAVENPORT: Okay.<br/>8 THE WITNESS: It'll be -- I think I've<br/>9 indicated that my estimate of benefits he's received, the<br/>10 value at this point in time, is approximately \$2 million.<br/>11 So, you know, as I say, we haven't negotiated -- I really<br/>12 haven't thought about it, to be quite honest with you.<br/>13 Q (By Mr. Davenport) Do you have a position<br/>14 today as to whether or not, thinking about the benefits,<br/>15 et cetera, that there's any net amount that's owed to<br/>16 Mr. Dillabaugh?<br/>17 A No.<br/>18 Q You don't even know?<br/>19 A No.<br/>20 Q Do you care?<br/>21 A Yes.<br/>22 Q Do you think this is fair to Mr. Dillabaugh<br/>23 that he advanced you over \$400,000 and now you're saying<br/>24 there's some -- what I'm understanding -- some fairly<br/>25 vague credits out there you're entitled to and you</p>                                                                                                                                                                                                            | 75 | <p>1 A What I'm basically saying -- and I apologize<br/>2 for that language -- but basically what I'm saying is<br/>3 from these benefits, I should get some sort of offset.<br/>4 And the benefits that Mr. Dillabaugh has received at this<br/>5 point just from Sefton is in the amount of, my estimate,<br/>6 \$2 million -- approximately \$2 million. And at least<br/>7 some of that should be offset against what I -- money<br/>8 that he's advanced.<br/>9 Q Okay. And how much?<br/>10 A As I say, I don't know. We were attempting to<br/>11 negotiate that and Mr. Dillabaugh filed suit. And since<br/>12 then, I have really not spent time or effort. I've been<br/>13 extremely busy. And that's something that, basically, I<br/>14 kind of left at some point to talk to counsel about when<br/>15 the appropriate time arises.<br/>16 Q Was there ever any agreement with<br/>17 Mr. Dillabaugh as to -- from these various benefits, how<br/>18 much the credit would be?<br/>19 A No.<br/>20 Q Now, you -- so let's go to the next number,<br/>21 "Settlement Agreement with Sefton: \$15,000." What is<br/>22 that about? Why are you claiming that as a credit?<br/>23 A I've just said I'm not claiming any of this as<br/>24 credit. I'm basically saying from all of these benefits<br/>25 received from -- by Mr. Dillabaugh from Sefton, that I</p> |

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| <p style="text-align: right;">76</p> <p>1 should receive some offset against the monies that<br/>2 Mr. Dillabaugh has advanced me. And that applies to any<br/>3 and all of them.<br/>4 Q And why is that? Why do you take that<br/>5 position?<br/>6 A Well, that was the position that Gary and I<br/>7 basically agreed to, and that these benefits were<br/>8 basically granted Gary for assistance to myself.<br/>9 Q So you say you and Gary agreed that there<br/>10 would be a deduction from the amount he advanced to you<br/>11 from the benefits he got from Sefton?<br/>12 A Correct.<br/>13 Q Okay. Do you ever recall Mr. Dillabaugh<br/>14 saying that to you?<br/>15 A Yes.<br/>16 Q What did he say?<br/>17 A My recollection was that we would come to an<br/>18 understanding as to offsets against money he'd advanced<br/>19 at some point in time.<br/>20 Q When did he say that?<br/>21 A Over the -- as I've said before, over the<br/>22 course of -- over the course of time.<br/>23 Q But you never had any discussions whatsoever<br/>24 about how much?<br/>25 A No.</p> | <p style="text-align: right;">78</p> <p>1 Well, you know, the better the deal I get, the more the<br/>2 offset.<br/>3 Q When was that conversation?<br/>4 A I can't remember.<br/>5 Q Let's talk about how you came up with these<br/>6 numbers. First of all, the \$15,000 settlement agreement<br/>7 with Sefton, what's that?<br/>8 A Well, that's a signed agreement between Gary<br/>9 and Sefton in which he's paid a severance of \$15,000.<br/>10 Q And are you saying that you should get some<br/>11 credit against the amount he lent you from that amount?<br/>12 A Again, I go back to my response saying these<br/>13 are the kind of basket of benefits received by<br/>14 Mr. Dillabaugh that need to be put into consideration and<br/>15 negotiated.<br/>16 Q I appreciate that. But understand, my<br/>17 obligation is to try to figure this out for my client.<br/>18 And I -- if there's some in here that you think should be<br/>19 in the basket or some that should not be in the basket,<br/>20 that's what I'm trying to get to. Is this 15,000 that he<br/>21 got in the severance to be put in the basket?<br/>22 A Yes.<br/>23 Q Why?<br/>24 A It's just a benefit he received for --<br/>25 basically because of the association with me.</p> |
| <p style="text-align: right;">77</p> <p>1 Q You never had any discussions about when?<br/>2 A No.<br/>3 Q Was Mr. Dillabaugh specific as to what<br/>4 benefits would apply to achieve this credit?<br/>5 A No.<br/>6 Q Were you?<br/>7 A No.<br/>8 Q Mr. Dillabaugh ever agree, in your mind, that<br/>9 his salary and bonus could be used as an offset?<br/>10 A Yes.<br/>11 Q He did -- did he say that specifically to you?<br/>12 A You said, in my mind. And I said, yes.<br/>13 Q And did you ever hear Mr. Dillabaugh say, I<br/>14 agree --<br/>15 A No.<br/>16 Q Did you ever hear Mr. Dillabaugh say, Shares I<br/>17 received in Sefton can be used as an offset?<br/>18 A No.<br/>19 Q Did you ever hear him say, Options I received<br/>20 in Sefton can be used as an offset?<br/>21 A Yes.<br/>22 Q When?<br/>23 A I remember options because we discussed who<br/>24 would get what when, and Mr. Dillabaugh had input in<br/>25 that. And I remember a conversation that was recent,</p>                                                                                            | <p style="text-align: right;">79</p> <p>1 Q Did it say anything about that in the<br/>2 settlement agreement?<br/>3 A No.<br/>4 Q How about the shares of Sefton? How did you<br/>5 arrive at the amount of 1,349,261?<br/>6 A There's a third-party report put out by<br/>7 Hardman &amp; Company that basically said the value of this<br/>8 company is between 11P and 33P. And I basically took the<br/>9 mid-value of those two, their ranges.<br/>10 Q What's the stock trading at today?<br/>11 A I don't know, sir.<br/>12 Q It's not between 11 and 33, is it?<br/>13 A No.<br/>14 Q It's much less than 11, isn't it?<br/>15 A Yes.<br/>16 Q So, I mean, why would this -- why would you<br/>17 use this number if the stock is trading at much less than<br/>18 11?<br/>19 A I basically took a valuation of what the<br/>20 company's worth, say -- let's say, for the break-up, as<br/>21 an example. You can probably get that mid-range value if<br/>22 someone acquired the assets and the money was distributed<br/>23 or we acquired the company. That might be a very<br/>24 conservative estimate of what it might be sold for.<br/>25 Q What's the stock trading at today?</p>                                                                           |

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| <p style="text-align: right;">80</p> <p>1 A I have no idea.</p> <p>2 Q Three -- about three.</p> <p>3 A I would imagine, so, yeah.</p> <p>4 Q Okay. Let's look at options in Sefton Resources, 379,407. How did you arrive at that number?</p> <p>5 A I -- the same principle. I took that</p> <p>6 mid-value of 11P or so and deducted the option price, and</p> <p>7 that's how the number came about.</p> <p>8 Q The options are all out of the money right</p> <p>9 now, aren't they?</p> <p>10 A Yeah.</p> <p>11 Q Okay. So they're really worthless right now,</p> <p>12 aren't they?</p> <p>13 A No. There's a way of calculating what options</p> <p>14 are worth in the very least because our profit and loss,</p> <p>15 basically, statement is hit.</p> <p>16 Q But as we sit here today, they're not worth</p> <p>17 anything. You can't execute them and achieve anything,</p> <p>18 can you?</p> <p>19 A Well, yeah, you can. You can execute them if</p> <p>20 you want. I've executed them at 6P. I mean, there</p> <p>21 are -- long term, these things have ten years of life to</p> <p>22 them. If you want to, if you believe in the value of</p> <p>23 them, you can exercise them.</p> <p>24 Q In any event, they're out of the money right</p> <p>25</p>                                                   | <p style="text-align: right;">82</p> <p>1 \$5,000 credit; would that be enough?</p> <p>2 A I don't think so, no.</p> <p>3 Q What if he said 10?</p> <p>4 A I doubt it.</p> <p>5 Q What if he said 200?</p> <p>6 A I mean, I don't know, sir. I really don't</p> <p>7 know. At this point, you're asking me something that I</p> <p>8 haven't had a chance to think about. So, you know, it</p> <p>9 behooves me to give you a response to it at this point</p> <p>10 without thinking about it and discussing it with</p> <p>11 associates.</p> <p>12 Q At some point, are you going to come up with</p> <p>13 what that number is that you think you're entitled to for</p> <p>14 a credit against the 400,000?</p> <p>15 A If I'm required to, yeah.</p> <p>16 Q But you're telling us you simply have not done</p> <p>17 that to date?</p> <p>18 A No.</p> <p>19 Q Are you asking for any money back from Gary</p> <p>20 Dillabaugh?</p> <p>21 A I haven't thought about it, sir.</p> <p>22 Q But today, are you?</p> <p>23 A I'm sorry?</p> <p>24 Q Today, is it your position that Mr. Dillabaugh</p> <p>25 owes you any money?</p>                                                                                |
| <p style="text-align: right;">81</p> <p>1 now?</p> <p>2 A They're out of the money, yeah. But you said</p> <p>3 "worth." I said they're out of the money, I agree.</p> <p>4 Q So there's not any specific one of these items</p> <p>5 that you're relying upon for these basket of benefits to</p> <p>6 figure out the amount of deduction or credit you're</p> <p>7 entitled to, correct?</p> <p>8 A Correct.</p> <p>9 Q You're looking at this in sum total and saying</p> <p>10 these are all the things, these are all the benefits, and</p> <p>11 I think I'm entitled to some credit against the money</p> <p>12 that was lent to me by Gary Dillabaugh.</p> <p>13 A Correct.</p> <p>14 Q And, again, do you have any idea how much that</p> <p>15 is?</p> <p>16 A I don't.</p> <p>17 Q How would you figure it?</p> <p>18 A I would sit down with my counsel and say, At</p> <p>19 this point, since we're in a legal entanglement, what are</p> <p>20 the legal -- side of this thing. And then I would</p> <p>21 probably -- well, we would -- you know, I'd probably get</p> <p>22 together with, you know, some -- probably the friends and</p> <p>23 associates or whatever and kind of discuss it with</p> <p>24 someone and kind of come up with that.</p> <p>25 Q What if Gary Dillabaugh said, I'll agree to a</p> | <p style="text-align: right;">83</p> <p>1 A I don't know.</p> <p>2 Q You don't know?</p> <p>3 A I haven't thought -- as I say, I haven't</p> <p>4 thought about what this offset would be.</p> <p>5 Q Can you tell me how you'd go about it,</p> <p>6 figuring that out?</p> <p>7 A Yeah, I think I just did. I consulted my</p> <p>8 legal counsel as to what his position was on the advances</p> <p>9 and the legalities of those; and then, basically, sit</p> <p>10 down with some friends and associates who, you know --</p> <p>11 and talk to them as to what they think and what my</p> <p>12 thoughts were, and, you know, get some third-party input</p> <p>13 into it.</p> <p>14 Q Did you ever have any understanding or any</p> <p>15 agreement with Mr. Dillabaugh at any time as to how you'd</p> <p>16 go about calculating the benefits?</p> <p>17 A No.</p> <p>18 Q Never even discussed it?</p> <p>19 A No.</p> <p>20 Q So you don't have any idea -- maybe</p> <p>21 Mr. Dillabaugh was thinking about, Well, I'll give him</p> <p>22 that \$10,000 credit. He may have been thinking</p> <p>23 about that and you were thinking about something else,</p> <p>24 correct?</p> <p>25 A Correct.</p> |

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1 (Exhibit Number 10 was marked for  
2 identification.)  
3 Q (By Mr. Davenport) Take a look at Exhibit 10  
4 for me, please. Do you recognize that?  
5 A Yes.  
6 Q What is it?  
7 A These are some notes and my writing as to --  
8 from where I went through my records to see what monies  
9 had been advanced, and if Mr. Dillabaugh had sat down and  
10 decided what money and interest might be -- he might be  
11 entitled to so I could see what his total number was  
12 before determining what a potential offset might be.  
13 Q When did you put this together?  
14 A Oh, God. I -- obviously it was sometime this  
15 year when Gary and I -- well, actually, no. This was  
16 probably as -- yeah, it was probably when we were sitting  
17 down and talking about what the final number might be.  
18 Q Do you remember, I mean, just a general time  
19 of year that you did this?  
20 A It was this year. When was that? I mean, I  
21 can't remember.  
22 Q 2007?  
23 A No. It would be 2008, I believe.  
24 Q All right.  
25 A When our e-mails were going back and forth,

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1 whatever that time period was.  
2 Q And you gave a copy of this to Mr. Dillabaugh?  
3 A No, I don't think so.  
4 Q All right. Well, let's look at -- did you do  
5 this in his presence -- put this document together in his  
6 presence or by yourself?  
7 A By myself.  
8 Q And what did you use to put the document  
9 together? What was your backup information?  
10 A Well, like, the notes you've used in exhibits  
11 before and then other items that I probably have a record  
12 of.  
13 Q All right. Let's go -- I just want to -- I  
14 don't want to, obviously, go through --  
15 A It's a summary.  
16 Q I understand. And I don't want to go through  
17 every number on it, but I want to make sure I understand  
18 what you did.  
19 A Yes.  
20 Q All right. You started off with principal and  
21 interest of 129,233.98. Where did you get that; do you  
22 know?  
23 A Probably from some document.  
24 Q You don't know where, though?  
25 MR. LUELLEN: Yeah, it's Number 3 or 4 there.

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1 THE WITNESS: Sir, I think it's Exhibit 3.  
2 Q (By Mr. Davenport) Then how about the  
3 sixty -- right down the right-hand column, if you will:  
4 65,661.88. I assume you got that from Exhibit Number 2,  
5 the letter.  
6 A Could very well be, yeah.  
7 Q All right. Then in '02, what -- does that  
8 say -- there's a number of 169,791.17. Do you know where  
9 that number comes from?  
10 A Extra loans, increased -- I mean, I presume  
11 that's from monies advanced by Gary.  
12 Q All right. And you called them "loans",  
13 didn't you?  
14 A Yes.  
15 Q Because that's what they were, weren't they?  
16 A No, they were advances. But, you know --  
17 Q Loan, advance?  
18 A Right, yeah. To the best of my knowledge,  
19 yeah.  
20 Q The bottom line is: If it's a loan or  
21 advance, unless there's a credit that applies to it, you  
22 owe it back, don't you?  
23 A Unless there's a credit applied, yeah.  
24 Q So we then got -- we go down the line a little  
25 bit and say -- you say principal now is 227,325. And

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1 then you've got out at the right-hand side "8,127.90" in  
2 parens, 12.5 percent interest. So you applied in 2002  
3 for 2002 an interest factor of 12.5, correct?  
4 A No.  
5 Q Well, what's the 12.5?  
6 A As I said in my first statement regarding  
7 this, I'm sitting here trying to assume what  
8 Mr. Dillabaugh believes he's owed, and he's asking for  
9 12.5. So I'm looking at all of the numbers and applying  
10 12.5 percent to them so I can get an understanding of  
11 what -- if he just made a straight loan, what he would be  
12 looking at. And that would then be used, in my  
13 calculations, as to what I think might be a reasonable  
14 offset against that.  
15 Q And I'm just asking you, did you use 12.5?  
16 A Well, no, obviously, because there's blanks  
17 here. In some cases I did; in other cases, I didn't.  
18 Q Okay. Let's go on down to 12/31/02. You've  
19 got principal again of 227,325. And then you go -- let's  
20 go over to the next page. You've got principal and  
21 interest then of 9,298.56. Do you know what interest  
22 rate you used for that?  
23 A I have no idea, sir.  
24 Q Okay. Then you've got additional principal --  
25 what was that -- of 58,300?

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| 88 | <p>1 A Correct.</p> <p>2 Q And that was additional loans?</p> <p>3 A I assume advances, yeah.</p> <p>4 Q Okay. Okay. So that gets us then to</p> <p>5 12/31/03, an amount of 325,625, correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. Then you run down, but you don't add</p> <p>8 the interest in for '01, '02, or '03 down below; is that</p> <p>9 correct?</p> <p>10 A Well --</p> <p>11 Q You have --</p> <p>12 A Yeah, yeah. There's blanks, uh-huh.</p> <p>13 Q Okay. Up above the 12/31/03, there's some</p> <p>14 entry that I can't quite make out. It looks like "D."</p> <p>15 A D. Oatley.</p> <p>16 Q What was that?</p> <p>17 A That's, I believe, a reference has been made</p> <p>18 before about a Don Oatley loan. I believe it's Sefton or</p> <p>19 between Gary -- I think between Gary -- it's related to</p> <p>20 Sefton, myself, and Gary. And I can't remember the exact</p> <p>21 association.</p> <p>22 Q Was it the one that Gary took over?</p> <p>23 A Yes.</p> <p>24 Q And paid?</p> <p>25 A I believe he paid it, yeah.</p>                                                     | 90 | <p>1 Q An advance by Gary Dillabaugh to you?</p> <p>2 A I believe so.</p> <p>3 Q And that get's us to 385,625, right?</p> <p>4 A I believe so.</p> <p>5 Q Then you add back in the 17,081 for the bank</p> <p>6 principal and interest and the Oatley note, correct?</p> <p>7 A Yes.</p> <p>8 Q You'd add that to the 385-, wouldn't you?</p> <p>9 A I'm sorry, yeah?</p> <p>10 Q Wouldn't you? You'd add those to the 385-, so</p> <p>11 you're now getting over \$400,000, correct?</p> <p>12 A Correct.</p> <p>13 Q All right. But you haven't done any of the</p> <p>14 interest on that; you're just doing the principal now?</p> <p>15 A Correct.</p> <p>16 Q And then in '06 and '07, no additional</p> <p>17 principal. I take it that means you didn't get any</p> <p>18 further advances from Mr. Dillabaugh?</p> <p>19 A Correct.</p> <p>20 Q All right. Then 12/31/07, the principal is</p> <p>21 then 385- plus these other two items, which would get you</p> <p>22 up to well over -- it'd be around \$405,000, per my rough</p> <p>23 math.</p> <p>24 A Correct.</p> <p>25 Q And then you'd have interest for -- that</p> |
| 89 | <p>1 Q All right. And was that at your request?</p> <p>2 A What?</p> <p>3 Q That he take over the Oatley loan and pay it.</p> <p>4 A I don't -- I can't remember, sir.</p> <p>5 Q Well, why would he have done it, then, in your</p> <p>6 mind? Why would he take over a loan?</p> <p>7 A Well, he was happy and that was a benefit. He</p> <p>8 took over another one as well to Norwest Bank.</p> <p>9 Q And you didn't ask him to do that?</p> <p>10 A I can't remember.</p> <p>11 Q Let's go on down below 2004. You've got</p> <p>12 principal and interest, and you've got principal of</p> <p>13 325,625. And then you've got a bank principal and</p> <p>14 interest of 17,081.48. What's that?</p> <p>15 A I think that's that Norwest situation I</p> <p>16 referred to.</p> <p>17 Q Okay. And then D. Oatley interest, that's</p> <p>18 \$3,000?</p> <p>19 A Correct.</p> <p>20 Q That's from the Oatley note.</p> <p>21 A Correct.</p> <p>22 Q Then we go to '05. There's an additional</p> <p>23 \$60,000. What is that?</p> <p>24 A Additional principal. That would be an</p> <p>25 advance.</p> | 91 | <p>1 wasn't computed at all in that amount?</p> <p>2 A Correct.</p> <p>3 Q Right. So you were doing this in an</p> <p>4 attempt -- I mean, you were doing this from your own</p> <p>5 records; this wasn't from input from Gary Dillabaugh, was</p> <p>6 it?</p> <p>7 A I can't remember if Gary had given me some</p> <p>8 stuff, what he was using. I can't remember.</p> <p>9 Q Okay.</p> <p>10 A I mean, but . . .</p> <p>11 Q But you were sitting down doing this, not in</p> <p>12 his presence, but by yourself?</p> <p>13 A Correct.</p> <p>14 Q And you were doing this in '08 sometime to try</p> <p>15 to figure out the amount that was due -- or the amount</p> <p>16 that had been loaned by Mr. Dillabaugh exclusive of</p> <p>17 interest?</p> <p>18 A No.</p> <p>19 Q What were you trying to do?</p> <p>20 A As I said before, I was trying to determine,</p> <p>21 if I was Gary --</p> <p>22 Q Yeah.</p> <p>23 A -- what number do I think I was owed? And</p> <p>24 this is an attempt to come up with that. And he's, you</p> <p>25 know, using in -- obviously something like 12.5 percent</p>                    |

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| <p style="text-align: right;">92</p> <p>1 interest. And I never completed these because we never<br/>2 got that far. And if I could understand where Gary<br/>3 thought what he was owed, and then I could take a look at<br/>4 what I think I may feel is owed to me as an offset and I<br/>5 have a negotiating position with Mr. Dillabaugh.<br/>6 Q I just want to make sure I understand. These<br/>7 three numbers -- 385,625, 17,081.48, and 3,000 -- there<br/>8 wasn't any question in your mind, at that time, that<br/>9 those were amounts that were advances that had been made<br/>10 either in the form of taking over promissory notes,<br/>11 paying interest on bank loans, or giving money directly<br/>12 to you, that would be, in essence, in Mr. Dillabaugh's<br/>13 column before any offsets were applied?<br/>14 A These notes here, as I've said before, were me<br/>15 trying to determine what I think Gary -- where Gary might<br/>16 be coming from in determining what he thinks he's owed.<br/>17 Q Okay. And exclusive of interest and<br/>18 offsets --<br/>19 A Correct.<br/>20 Q -- did you have any disagreement with these<br/>21 numbers that you thought were the numbers Gary would be<br/>22 happy with?<br/>23 A I never got that far, sir. I never got to<br/>24 compare them or anything. I never got to compare them.<br/>25 Q Have you ever gone back and looked at this</p> | <p style="text-align: right;">94</p> <p>1 Gary returned using this heading to me.<br/>2 Q Do you recall sending -- read the text of<br/>3 that, if you would.<br/>4 A Yeah, I did. Yeah, I recognize that, yeah.<br/>5 Q Okay. What you say is, "After viewing all the<br/>6 data, my proposal is as follows: At 12/31/08 the number<br/>7 owing is \$350,000." You then go on and say, "This is the<br/>8 rough number we agreed to." What are you talking about<br/>9 when you say "we agreed to"?<br/>10 A I have no idea.<br/>11 Q Okay. "But reflecting a final number taking<br/>12 into account that you received money from the company<br/>13 (approx., \$285,000) travel expenses (plus other<br/>14 expenses), non-promoted business opportunities, and of<br/>15 course 'stock options' (which were an additional expense<br/>16 to the company). I have not broken it down into<br/>17 categories such as principal, interest and/or any credit<br/>18 of either of the aforementioned 'perks'. As far as a<br/>19 proposed payment plan, I suggest the following: \$50,000<br/>20 before end of 2008 and \$100,000 on or before end of<br/>21 2009," et cetera, et cetera. "If payments are not made,<br/>22 interest will accrue at 8 percent."<br/>23 When you were coming up with 350,000, were you<br/>24 proposing to pay 350,000?<br/>25 A It appears that way, yes.</p> |
| <p style="text-align: right;">93</p> <p>1 from the standpoint of, you know, What do I think<br/>2 actually exclusive of interest and credits?<br/>3 A No.<br/>4 Q No. So you just don't know if this is<br/>5 accurate or not?<br/>6 A No.<br/>7 MR. LUELLEN: If I could, Mr. Ellerton, please<br/>8 make sure that you let him finish his question before you<br/>9 answer.<br/>10 THE WITNESS: Oh, I'm sorry. Yeah. Okay.<br/>11 MR. LUELLEN: It makes her job a lot easier.<br/>12 (Exhibit Numbers 11 and 12 were marked for<br/>13 identification.)<br/>14 Q (By Mr. Davenport) Let's go to Exhibit Number<br/>15 11 now. Can you identify Exhibit Number 11 for me?<br/>16 A It appears to be an email from Gary<br/>17 Dillabaugh.<br/>18 Q If you would, go down to the middle of the<br/>19 page. The one that says, "From: Jim Ellerton."<br/>20 A Right.<br/>21 Q Okay. That would be an e-mail from you to<br/>22 Mr. Dillabaugh, right?<br/>23 A Yeah, although I don't recognize the heading<br/>24 on this page as anything I've ever seen before other<br/>25 than -- this must have been something I sent and then</p>                                                                                                                                                                                                                                                                                      | <p style="text-align: right;">95</p> <p>1 Q And this was the methodology by which you were<br/>2 going to pay it? Do you know how you got to that<br/>3 proposal that you were willing to pay 350,000?<br/>4 A Yeah, I think I just, you know, basically took<br/>5 what I was, you know, looking at, I think -- prior<br/>6 exhibits possibly -- and just basically made an offer of<br/>7 that.<br/>8 Q So in coming up with this offer of 350,000,<br/>9 was that after taking offsets?<br/>10 A It looks like it, yes.<br/>11 Q And do you have any recollection of what you<br/>12 went through, how you computed the offset you felt you<br/>13 were entitled to at all?<br/>14 A No. I just -- you know, it was just one of<br/>15 those kind of, you know, How about this?<br/>16 Q Do you have any documentation that would show<br/>17 how you came up with this?<br/>18 A No.<br/>19 Q Did you ever discuss with Gary how you came up<br/>20 with it?<br/>21 A No.<br/>22 Q Did you get a response to this?<br/>23 A I believe I did, yeah.<br/>24 Q What was the response?<br/>25 A I believe it was, you know, No, you owe me</p>                                                                                                                                                                                                                                               |

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| <p style="text-align: right;">96</p> <p>1 something in the vicinity of 700-and-some-odd-thousand<br/>2 dollars.</p> <p>3 Q Let's take a look at Exhibit Number 12 now.<br/>4 Now, this is dated two days later, February 13th. This<br/>5 is an e-mail from you to Mr. Dillabaugh, right?</p> <p>6 A Yes.</p> <p>7 Q And you were, at this point, negotiating back<br/>8 and forth to try to solve how much he was going to be<br/>9 paid, right?</p> <p>10 A I believe so, yeah.</p> <p>11 Q All right. You say, "Gary: The numbers I<br/>12 started from approx. \$400,000 before any interest and<br/>13 credit for money (via Sefton), opportunities for stock,<br/>14 (ground floor pricing), stock options (granted), expense<br/>15 paid trips, ongoing opportunities to work with very good<br/>16 group (same sort of situations as before)".</p> <p>17 So when you say, The numbers I started from<br/>18 were 400,000 before any interest and credit for money,<br/>19 was that just -- a \$400,000 number was the gross amount<br/>20 that had been advanced by him?</p> <p>21 A I believe this is -- the term is it's<br/>22 approximately 400,000. I think that's pretty well --<br/>23 Exhibit A in our interrogatories is in the vicinity of<br/>24 400,000.</p> <p>25 Q Now, am I correct that you started with a</p> | <p style="text-align: right;">98</p> <p>1 part of this -- of this trial proceeding or this<br/>2 litigation, I've taken a stronger look at the benefits<br/>3 Mr. Dillabaugh had received and in consultation with<br/>4 counsel as to some of the legalities of his position. At<br/>5 this point, I'm kind of stepping back and seeing where we<br/>6 go with it.</p> <p>7 Q All right. Are you aware of anything<br/>8 whatsoever that is in writing -- I'm not talking about<br/>9 conversations; we've already been down that road -- are<br/>10 you aware of anything that's in writing, whatsoever, that<br/>11 reflects the fact that you and Mr. Dillabaugh agreed that<br/>12 you were going to get credits, offsets, et cetera, as<br/>13 you've described them, against the amount that he was<br/>14 lending you?</p> <p>15 A I believe that 123,000 note reflected that.</p> <p>16 Q All right. Let's take a look at that.</p> <p>17 MR. LUELLEN: Exhibit 4, I believe.</p> <p>18 THE WITNESS: Exhibit 4.</p> <p>19 MR. DAVENPORT: Yes.</p> <p>20 Q (By Mr. Davenport) Do you see anything,<br/>21 whatsoever, in that promissory note that talks about<br/>22 credits, offsets at all?</p> <p>23 A Other than the number reflects such.</p> <p>24 Q And do you have idea how much the credits or<br/>25 offsets were?</p> |
| <p style="text-align: right;">97</p> <p>1 \$400,000 figure and you say it's before interest, credit,<br/>2 et cetera. And you -- eventually, then, you had offered<br/>3 350, and this was an explanation to him of how you had<br/>4 gotten to it?</p> <p>5 A A partial one, yes.</p> <p>6 Q Okay. So what you had done was started with<br/>7 400 and then made deductions of \$50,000, and made an<br/>8 offer of 350-?</p> <p>9 A Correct.</p> <p>10 Q All right. And at that time, did you think<br/>11 that was fair?</p> <p>12 A Obviously. Otherwise, I wouldn't have written<br/>13 it.</p> <p>14 Q So what you were asking for at that time was,<br/>15 Don't apply any interest to this whatsoever, the money<br/>16 that's been lent, and I should get a \$50,000 credit for<br/>17 benefits? That's what you were saying --</p> <p>18 A I guess, in essence, that's what I was saying,<br/>19 yes.</p> <p>20 Q All right. Are you still willing to do that<br/>21 today?</p> <p>22 A No.</p> <p>23 Q Why not?</p> <p>24 A Well, I mean, basically when you look at<br/>25 subsequent events, and on further analysis of looking as</p>                                                                                                                                                                                    | <p style="text-align: right;">99</p> <p>1 A Other than using Exhibit 10, 12/31/02.</p> <p>2 Q Go ahead.</p> <p>3 A Well, if you look at just some of those notes,<br/>4 12/31/02 principal of 227,325.</p> <p>5 Q Okay. Is that your answer?</p> <p>6 A Yeah.</p> <p>7 Q You think there was a credit that was given?</p> <p>8 A Yes.</p> <p>9 Q For over \$100,000 to get to that number?</p> <p>10 A Yes.</p> <p>11 Q And you think that was done by Mr. Dillabaugh?</p> <p>12 A Well, this was presented by Mr. Dillabaugh, so<br/>13 yes.</p> <p>14 Q Do you have any other thing you could identify<br/>15 for me that's -- you've produced a lot of documents, and<br/>16 I've looked through them. I haven't seen anything. But<br/>17 is there anything else you could identify for me that<br/>18 represents an agreement between you and Mr. Dillabaugh<br/>19 that you would be entitled to credits or offsets against<br/>20 the amount he advanced to you?</p> <p>21 A No.</p> <p>22 Q Why didn't you do anything in writing?</p> <p>23 A It seemed that we put things in writing when<br/>24 we both agreed to something. And as I said before,<br/>25 Mr. Dillabaugh indicated he was quite happy to let things</p>                                                                                                       |

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| 100 | <p>1 just keep going. He was happy with what he was<br/> 2 receiving, benefits from me and/or Sefton. So he felt<br/> 3 there was no need to -- there was always an understanding<br/> 4 at some point we would put it in writing. But if<br/> 5 Mr. Dillabaugh had asked for it, we probably would have<br/> 6 sat down and come to an agreement and put something in<br/> 7 writing.</p> <p>8 Q So you're saying there was an understanding at<br/> 9 some point you would put in writing what credits or<br/> 10 benefits you were entitled to?</p> <p>11 A Correct.</p> <p>12 Q And you never did it?</p> <p>13 A Correct.</p> <p>14 Q And you have no idea what Mr. Dillabaugh's<br/> 15 thought processes were about what he thought you'd get as<br/> 16 credits or benefits; and likewise, he had no ability to<br/> 17 know what you were thinking about, did he?</p> <p>18 A No.</p> <p>19 Q So would you sort of describe it as an<br/> 20 agreement to agree?</p> <p>21 A Yeah.</p> <p>22 Q Okay.</p> <p>23 A Or disagree, as the case may be.</p> <p>24 Q We do know that at one point, you thought the<br/> 25 benefit or credit should be \$50,000; that's clear. At</p>                         | 102 | <p>1 stock from Sefton Resources, Inc., and from Ellerton<br/> 2 personally." Now, he paid for those shares of stock,<br/> 3 didn't he?</p> <p>4 A I believe so.</p> <p>5 Q So why was that a benefit to him?</p> <p>6 A Well, it wasn't offered to a lot of people;<br/> 7 just some close associates.</p> <p>8 Q Well, the stock was publicly traded, wasn't<br/> 9 it?</p> <p>10 A No.</p> <p>11 Q It wasn't? Not in '99?</p> <p>12 A No.</p> <p>13 Q So what you're saying is that by the ability<br/> 14 to buy before it became publicly traded, that was a<br/> 15 benefit that you should get some offset from the amounts<br/> 16 he lent you?</p> <p>17 A That's one way of saying it, yes.</p> <p>18 Q All right. Do you know much?</p> <p>19 A No.</p> <p>20 Q Okay. Let's go to as of October 2000.<br/> 21 "Dillabaugh participated in IPO of Sefton Resources,<br/> 22 Inc., and received 36,114," et cetera, et cetera. Did he<br/> 23 pay for those?</p> <p>24 A Yeah, I believe he did.</p> <p>25 Q All right. So what you're saying, again, is</p>                                                                                                                                                                                |
| 101 | <p>1 one point, you were willing to accept that?</p> <p>2 A Correct.</p> <p>3 Q All right. I want to go back to your answers<br/> 4 to interrogatories now on this credit issue again. And<br/> 5 it's Exhibit B.</p> <p>6 A Exhibit B of Exhibit A?</p> <p>7 Q Yes.</p> <p>8 A Of Exhibit 1?</p> <p>9 Q Yes. All right. Let's look at this exhibit.<br/> 10 Can you tell me: Did you put this together?</p> <p>11 A In conjunction with my counsel, yes.</p> <p>12 Q All right. And this is to represent credits<br/> 13 that you were entitled to; is that right? You can go<br/> 14 back and look at your answer, of course. If you look<br/> 15 at -- to help you out a little bit here -- if you look at<br/> 16 Interrogatory Number 5, it's the bottom of page 4 and top<br/> 17 of page 5. And that's where you reference Exhibit B.</p> <p>18 A Okay.</p> <p>19 Q So these are the benefits that you believe --<br/> 20 I guess to put it in your term -- are in the basket of<br/> 21 things that you think that you're entitled to a credit<br/> 22 for?</p> <p>23 A Correct.</p> <p>24 Q Let's go through these. In 1999, you say,<br/> 25 "Dillabaugh was able to purchase preferred shares of</p> | 103 | <p>1 even though he paid for these shares, that was a benefit<br/> 2 that you ought to get some credit for?</p> <p>3 A Yeah. The price of those shares was obviously<br/> 4 less than the market or the offering of the IPO. So they<br/> 5 weren't offered to anyone; just people that basically<br/> 6 were associates.</p> <p>7 Q Do you know what the price was?</p> <p>8 A Not off the top of my head, no.</p> <p>9 Q Was it more than three pence?</p> <p>10 A Yeah, the IPO was at five pence, I believe.</p> <p>11 Q Okay. So it's now worth less than -- on the<br/> 12 market than it was when it came out?</p> <p>13 A It's trading for less.</p> <p>14 Q All right. Let's go to May 31, 2001.<br/> 15 "Dillabaugh purchased additional share options." Again,<br/> 16 he purchased these options, correct; they weren't given<br/> 17 to him?</p> <p>18 A I don't know what these -- I mean, I'd have to<br/> 19 see the reference to May 31 to know what they were.</p> <p>20 Q Well, let's see -- actually, I think we have<br/> 21 that. Does that refresh your recollection if he<br/> 22 purchased them?</p> <p>23 A Is this --</p> <p>24 Q It's 23. It's one of them, yes.</p> <p>25 A Then, yes, it appears that he -- that I</p> |

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| 104 | <p>1 provided him an opportunity to buy some options that<br/>2 other people had before, as I explained.<br/>3 Q Okay. And he purchased them?<br/>4 A I believe so.<br/>5 Q All right. Thank you. Let's go to the next<br/>6 one, April 2, 2001. "Dillabaugh converted outstanding<br/>7 amount due from Ellerton into shares of Sefton,<br/>8 Resources, Inc.," et cetera, et cetera. Was this<br/>9 something that was given to him?<br/>10 A I'd have to see what it pertained to. Number<br/>11 73?<br/>12 MR. LUELLEN: Ask and you shall receive.<br/>13 THE WITNESS: Then, yes, he's paying for them<br/>14 by offsetting advances against those.<br/>15 Q (By Mr. Davenport) Right. Let's go March 5,<br/>16 2003. "Ellerton allots 3,000 [sic] shares of Sefton<br/>17 Resources, Inc., to Dillabaugh." Did he pay for those?<br/>18 MR. LUELLEN: Mr. Davenport, I apologize.<br/>19 THE WITNESS: Three million.<br/>20 MR. LUELLEN: It was 3 million.<br/>21 Q (By Mr. Davenport) I mean 3 million. I'm<br/>22 sorry. Three million shares of Sefton to Dillabaugh.<br/>23 Did he pay for those?<br/>24 A I can't remember, sir.<br/>25 Q Let's go to the next one, July 14, 2004.</p> | 106 | <p>1 A Basically, the board of directors recognized<br/>2 that Gary -- because, as I say, I discussed this with<br/>3 them -- that Gary had helped me and that this was<br/>4 something they could do to reward Gary, and that's what<br/>5 they did.<br/>6 Q Is the board of directors today -- of Sefton<br/>7 today aware of the position you're taking that benefits<br/>8 that Mr. Sefton got from Sefton -- benefits that<br/>9 Mr. Dillabaugh got from Sefton should be offset against<br/>10 monies he personally lent you?<br/>11 A Yes.<br/>12 Q And what's their position on that?<br/>13 A There isn't, other than aware of it.<br/>14 Q Have they told you they agree with that or<br/>15 disagree with it?<br/>16 A Not in so many terms, no.<br/>17 Q Have they taken any position with you on it?<br/>18 A No. They understand what it is, and they<br/>19 understand that that may be okay.<br/>20 Q Who has told you that they think that may be<br/>21 okay?<br/>22 A Let's see. It would be -- the old directors<br/>23 would be Karl Arleth.<br/>24 Q What's the name again?<br/>25 A Karl Arleth.</p> |
| 105 | <p>1 "Dillabaugh receives 15,000 [sic] shares of Sefton<br/>2 Resources, Inc.," Those are options, aren't they?<br/>3 I mean 15 million. I'm sorry.<br/>4 A I don't -- it doesn't say options. It says,<br/>5 "Dillabaugh received 15,000,000 shares of Sefton<br/>6 Resources, Inc."<br/>7 Q You don't recall that those were options?<br/>8 A I don't think they were options, no.<br/>9 Q September 9, "Board of Directors of Sefton<br/>10 Resources, Inc., approves additional stock options and<br/>11 consultant compensation to Dillabaugh." Do you see that?<br/>12 A Yes.<br/>13 Q You're saying that was a benefit that he got<br/>14 that you're entitled to something for?<br/>15 A Correct.<br/>16 Q Even though the board of directors in total<br/>17 did this?<br/>18 A Correct.<br/>19 Q Now, the board of directors in total granted<br/>20 him stock options and consultant compensation. And<br/>21 you're saying, I should get a credit of some sort from<br/>22 that against what he loaned me?<br/>23 MR. LUELLEN: Asked and answered.<br/>24 THE WITNESS: Yes.<br/>25 Q (By Mr. Davenport) Why?</p>                                                                    | 107 | <p>1 Q How do you spell that?<br/>2 A A-R-L-E-T-H. K-A-R-L is his first name.<br/>3 Q He's told you that he thinks this position<br/>4 you're taking is okay?<br/>5 A Well, Karl said that before, yes. Karl is no<br/>6 longer a director, but he's a shareholder.<br/>7 Q Where is he located?<br/>8 A Denver, Colorado. Jeremy Delmar-Morgan.<br/>9 Q Delmar?<br/>10 A Morgan. D-E-L-M-A-R, hyphen, M-O-R-G-A-N,<br/>11 United Kingdom. Tony Ashton.<br/>12 Q Has Mr. Delmar-Morgan told you that he thinks<br/>13 this is acceptable that you are taking the position that<br/>14 things, including compensation, that Mr. Dillabaugh got<br/>15 from Sefton can be offset against personal obligations<br/>16 you have to him?<br/>17 A Yes.<br/>18 Q Anybody else told you that?<br/>19 A Tony Ashton.<br/>20 Q Where is he located?<br/>21 A Canada.<br/>22 Q He's told you the same thing?<br/>23 A Yes.<br/>24 Q Okay. Now, these are not current directors,<br/>25 right?</p>                                                                                                                                     |

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| 108 | <p>1 A Yes, they are.</p> <p>2 Q Which two are current?</p> <p>3 A Jeremy Delmar-Morgan and Tony Ashton.</p> <p>4 Q Has there been any disclosure to shareholders,</p> <p>5 public shareholders, that you're taking this position?</p> <p>6 A No.</p> <p>7 Q Why not?</p> <p>8 A Well, it's not -- it's a situation between</p> <p>9 Mr. Dillabaugh and myself individually.</p> <p>10 Q Well, you understand, I assume, Mr. Ellerton,</p> <p>11 that if, in fact, things that the corporation</p> <p>12 gave/transferred/paid to Mr. Dillabaugh are used to</p> <p>13 offset a personal obligation of yours, that that's income</p> <p>14 to you?</p> <p>15 MR. LUELLEN: Objection again.</p> <p>16 THE WITNESS: Again, that -- you know, we've</p> <p>17 responded to that one before. If my accountant feels</p> <p>18 that that is indeed the case, then so be it.</p> <p>19 Q (By Mr. Davenport) Have you talked -- and</p> <p>20 you're talking about your personal accountant?</p> <p>21 A Yes.</p> <p>22 Q Have you talked to the accountant for the</p> <p>23 company about this?</p> <p>24 A The auditors for the company were -- know of</p> <p>25 the litigation between myself and Mr. Dillabaugh, and I</p>                                                           | 110 | <p>1 A I can't remember.</p> <p>2 Q But you're saying that's a benefit that you</p> <p>3 should get something for?</p> <p>4 A Correct.</p> <p>5 Q And why is that?</p> <p>6 A Well, again, this was an opportunity that was</p> <p>7 offered to very, very few people, and Mr. Dillabaugh was</p> <p>8 one we extended this offer to.</p> <p>9 Q Who extended the offer to Mr. Dillabaugh?</p> <p>10 A Sefton.</p> <p>11 Q The board?</p> <p>12 A The board, but at my recommendation.</p> <p>13 Q When you extended this, at your</p> <p>14 recommendation -- when this was extended, were you doing</p> <p>15 this because Gary Dillabaugh was a good employee too?</p> <p>16 A No. It was because Gary was, you know --</p> <p>17 basically, as I said before, from Gary assisting. I</p> <p>18 mean, these were offered to employees and nonemployees,</p> <p>19 but people that we knew, close associates and so forth.</p> <p>20 Q What you're telling me, Mr. Ellerton, is that</p> <p>21 you recommended to the board of Sefton that Gary</p> <p>22 Dillabaugh be able to exchange these shares because of</p> <p>23 something personally he'd done with you?</p> <p>24 A No. The shares were -- this came about as a</p> <p>25 result of us offering shares, a private placement of</p> |
| 109 | <p>1 just informed them that our litigation relates to a</p> <p>2 dispute between the two of us in which -- litigating is</p> <p>3 to what I may or may not owe Mr. Dillabaugh.</p> <p>4 Q Have you told the auditors that your position</p> <p>5 is that for salaries, stocks, stock options that</p> <p>6 Mr. Dillabaugh got from Sefton, that you are claiming</p> <p>7 that you get a benefit or a deduction, if you will,</p> <p>8 against amounts that you otherwise might owe</p> <p>9 Mr. Dillabaugh?</p> <p>10 MR. LUELLEN: Objection, irrelevant.</p> <p>11 THE WITNESS: No.</p> <p>12 Q (By Mr. Davenport) The answer is no?</p> <p>13 A Correct.</p> <p>14 Q Why not?</p> <p>15 A I don't see the need at this point. How would</p> <p>16 that affect the accounts of the company?</p> <p>17 Q I'm just asking you. It's your --</p> <p>18 A Yeah. And my question is -- I don't see it</p> <p>19 because it won't affect the accounts of the company.</p> <p>20 Q Let's go to January 26 through March 31, '06.</p> <p>21 "Dillabaugh was able to exchange shares of TEG Oil &amp; Gas</p> <p>22 Canada, Inc., for shares in Sefton Resources, Inc." Are</p> <p>23 you aware if he paid for that or not?</p> <p>24 A Yes, he did.</p> <p>25 Q How much did he pay?</p> | 111 | <p>1 shares in one of the company's subsidiaries. That was</p> <p>2 the offer to close associates. And then later on, Sefton</p> <p>3 decided not to take the subsidiary public and offered</p> <p>4 shares or cash to those new subsidiary shareholders other</p> <p>5 than Sefton for shares in Sefton or cash.</p> <p>6 Q Okay. And my question is: You said you made</p> <p>7 a recommendation to the board that Gary Dillabaugh be</p> <p>8 able to participate in this?</p> <p>9 A In the initial offering of the shares to the</p> <p>10 subsidiary.</p> <p>11 Q Right. And I asked you if that was because he</p> <p>12 was a good employee, and I believe your answer was, No,</p> <p>13 it was because he'd provided me with some personal</p> <p>14 advances.</p> <p>15 A Correct.</p> <p>16 Q Is that right?</p> <p>17 A Correct.</p> <p>18 Q All right. So, again -- well, let me ask you</p> <p>19 this way: Do you see any conflict of interest in making</p> <p>20 that recommendation to the board?</p> <p>21 A No, because we offered the same thing to</p> <p>22 others that had helped me and/or the company as well.</p> <p>23 Q All right. So everybody got it offered to</p> <p>24 them?</p> <p>25 A Not everybody; but certain select people, yes.</p>                   |

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| 112 | <p>1 Q Anybody who had helped the company or helped<br/>2 you?</p> <p>3 A Correct. In other words, there was some<br/>4 outside of that. But, yeah.</p> <p>5 Q All right. Let's go to as of March 31, 2006.<br/>6 "Dillabaugh had been granted 15,000,000 stock options in<br/>7 Sefton Resources, Inc., of which 5,000,000 had vested and<br/>8 had received a total of 44,962,345 shares of Sefton<br/>9 Resources, Inc., which include the shares received in<br/>10 exchange of TEG Oil &amp; Gas Canada, Inc.," Mr. Dillabaugh<br/>11 paid for all of these, didn't he?</p> <p>12 A Well, if you got options, you don't pay for<br/>13 them; they're granted to you. Then the company has --<br/>14 that's billed against the profit and loss, so it's a cost<br/>15 of the company. But Mr. Dillabaugh hadn't paid at that<br/>16 time.</p> <p>17 Q And any shares he got, he paid for; they were<br/>18 not given to him?</p> <p>19 A No, unless they were exchanged for expenses<br/>20 accrued or whatever. I don't think any were given, no.</p> <p>21 Q November 1, 2007, "Dillabaugh enters into a<br/>22 consulting agreement with Sefton Resources, Inc." Did<br/>23 that actually ever happen?</p> <p>24 A I can't remember.</p> <p>25 Q Why did you put it down?</p> | 114 | <p>1 at prevailing market rates."</p> <p>2 Now, what is that about in terms of getting a<br/>3 credit back?</p> <p>4 A I don't know. I mean, I have to -- I'm just<br/>5 assuming that -- I'd have to see what documentation I was<br/>6 looking at at the time I provided this. But basically<br/>7 Mr. Dillabaugh provided dental service to the employees.<br/>8 I believe it was at a discount, and then Sefton covered<br/>9 those expenses on behalf of the employees.</p> <p>10 Q Looking -- are there any other benefits that<br/>11 you think fall into the basket that you're entitled to<br/>12 some credit in this situation, any others you can think<br/>13 of?</p> <p>14 A Yeah. There were opportunities such as<br/>15 purchasing stock in General Mining, which is a company<br/>16 myself and some associates had that we offered to<br/>17 Mr. Dillabaugh. And Mr. Dillabaugh received medical<br/>18 benefits, insurance benefits, travel opportunities,<br/>19 things of that nature as well.</p> <p>20 Q What were the travel opportunities?</p> <p>21 A Well, I basically -- we had an annual meeting<br/>22 in London every year, and Gary would come to that<br/>23 meeting. It was not necessarily to come, but we would go<br/>24 and -- actually, we went several times to London and<br/>25 other opportunities: Canada; Ventura, California. It</p> |
| 113 | <p>1 A I can't remember. I'm assuming I had<br/>2 something that related to that.</p> <p>3 Q Then in December -- June 27, '08, "Dillabaugh<br/>4 enters into a settlement agreement with Sefton Resources,<br/>5 Inc." That's the one we previously --</p> <p>6 A November the 1st. Dillabaugh was offered a<br/>7 consulting agreement with Sefton Resources, Inc.</p> <p>8 Q And that's a benefit that you're saying, even<br/>9 though it wasn't signed, you should get some recompense<br/>10 for --</p> <p>11 A Again, it's the basket thing, yeah.</p> <p>12 Q Okay. The next one is June 27th, '08,<br/>13 "Dillabaugh enters into a settlement agreement with<br/>14 Sefton Resources, Inc." That's the one we talked about<br/>15 where he got the \$15,000?</p> <p>16 A Correct.</p> <p>17 Q That made no mention of offsets or anything in<br/>18 it?</p> <p>19 A No.</p> <p>20 Q No, it did not?</p> <p>21 A No, it did not.</p> <p>22 Q Right. Okay. "Various times including during<br/>23 2008, Dillabaugh provides dental services to employees of<br/>24 Sefton Resources, Inc., which services were paid for by<br/>25 Sefton. It is uncertain if such services were rendered</p>                                                                                  | 115 | <p>1 was not necessary that Gary attend, but we offered those<br/>2 opportunities for him to come at the company's expense.</p> <p>3 Q And when you would do that, you'd say, Gary,<br/>4 why don't you come along on this? Was the reason for<br/>5 that that you thought, Well, I'll give him that benefit<br/>6 and later get a credit against what I owe him?</p> <p>7 A I mean, not that specifically but as part of<br/>8 the overall thought process, yes.</p> <p>9 Q Can you identify for me any benefits that Gary<br/>10 Dillabaugh got in this whole basket of benefits that<br/>11 other employees of Sefton did not get?</p> <p>12 A Some employees got none of those things, no<br/>13 stock options, the --</p> <p>14 Q And who were those employees who got no stock<br/>15 options?</p> <p>16 A Off the top of my head -- I'd have to go back<br/>17 and check.</p> <p>18 Q Can you identify anything specifically for me?</p> <p>19 A Oh, the field personnel in California, as an<br/>20 example.</p> <p>21 Q No, I'm not talking about field. I'm talking<br/>22 about people that were --</p> <p>23 A They were employed, yeah.</p> <p>24 Q The seven or eight people you've talked about?</p> <p>25 A Right, yeah. A couple of those would be field</p>                                                                                                      |

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| 116 | <p>1 employees in California.</p> <p>2 Q All right. So the field employees did not get</p> <p>3 the same kind of benefits Gary Dillabaugh got?</p> <p>4 A Right, or they would not get as many shares as</p> <p>5 Gary.</p> <p>6 Q Right. Did anybody else not get the same kind</p> <p>7 of benefits Gary got?</p> <p>8 A You know, in some cases, Gary and I were the</p> <p>9 only ones that went to London as opposed to Harry or</p> <p>10 Bruce or Tony or even other directors.</p> <p>11 Q Let's drop off travel expenses and the trips</p> <p>12 for a minute. The other benefits that you've gone</p> <p>13 through, were there any other employees, exclusive of</p> <p>14 field personnel, that did not get the same benefits that</p> <p>15 Gary Dillabaugh got?</p> <p>16 A The opportunities in TEG Canada to purchase</p> <p>17 shares of that nature, not all of them would get that,</p> <p>18 no.</p> <p>19 Q Anything else you can identify?</p> <p>20 A Pretty well all of that, as I was saying --</p> <p>21 aside from that or did not get as many shares as Gary</p> <p>22 got.</p> <p>23 Q Can you be any more specific about things that</p> <p>24 Gary got that you can say, Hey, he got that because I was</p> <p>25 going to get a credit back for it and other people didn't</p>             | 118 | <p>1 Q Anything else he got?</p> <p>2 A I think we've outlined those in the basket of</p> <p>3 things and the opportunities listed here.</p> <p>4 Q And now that we've gone through all of this,</p> <p>5 does this help you at all in terms of saying, Hey, I</p> <p>6 think the credit or offset I ought to get is X, Y, or Z</p> <p>7 dollars; help you at all in ability to further analyze</p> <p>8 this?</p> <p>9 A No.</p> <p>10 Q What would you have to do to analyze what you</p> <p>11 think you're entitled to as a credit? What process would</p> <p>12 you go through?</p> <p>13 A I believe I've answered that. I would consult</p> <p>14 with my attorney as to the legalities of some of these</p> <p>15 issues, and I would consult with some close friends and</p> <p>16 associates as to what I -- what they think their counsel</p> <p>17 would be as to what -- you know, how I might arrive at</p> <p>18 some number.</p> <p>19 Q Nothing else you can tell me today?</p> <p>20 A Or that what the courts might deem</p> <p>21 appropriate.</p> <p>22 Q And you have no idea what position you may</p> <p>23 take before the Court, at this time, as to what credit or</p> <p>24 benefit dollar amount you're entitled to?</p> <p>25 A I have -- I've answered that. At this point,</p> |
| 117 | <p>1 get it?</p> <p>2 A No. I think your -- no. As I said, the</p> <p>3 general thought process was opportunities that Gary got</p> <p>4 for the possibility of offsetting this -- or provided</p> <p>5 because of helping me out. The position with the</p> <p>6 company, Gary got that. Others would not have gotten</p> <p>7 that, that are employed with the company.</p> <p>8 Q What position?</p> <p>9 A This corporate secretary and the opportunities</p> <p>10 to travel and have coverage of medical, not everybody</p> <p>11 would have gotten that. They were hired for a specific</p> <p>12 job, but they certainly -- we would not have hired Gary</p> <p>13 as a corporate secretary and/or as a consultant if it</p> <p>14 wasn't for helping me.</p> <p>15 Q What did he get from a benefit standpoint as a</p> <p>16 corporate secretary?</p> <p>17 A Privileged information regarding the</p> <p>18 opportunities the company had and the value of the</p> <p>19 company and the situations of the company was -- how it</p> <p>20 was -- basically inside information; and from that, the</p> <p>21 shares that he could buy, the ground floor opportunity,</p> <p>22 options that he could get.</p> <p>23 Q So he got inside information as a corporate</p> <p>24 secretary?</p> <p>25 A Correct.</p> | 119 | <p>1 no.</p> <p>2 Q Now, let's talk -- let's think about the</p> <p>3 compensation that was paid to Mr. Dillabaugh, the</p> <p>4 \$285,000 that you put, you know, on the exhibit -- or on</p> <p>5 the answers to interrogatories. Do you remember that?</p> <p>6 A Yes.</p> <p>7 Q Now, you're saying that should be in the</p> <p>8 basket, the compensation he got?</p> <p>9 A Yes.</p> <p>10 Q All right. When you throw it in the basket,</p> <p>11 is it the gross amount that he was paid or is it after</p> <p>12 tax dollars he was paid that go into the basket, dollars</p> <p>13 that he's paid taxes on?</p> <p>14 A I can't remember.</p> <p>15 Q What do you mean you can't remember? Was</p> <p>16 there ever any agreement on that?</p> <p>17 A No, I just can't remember if that 285- was</p> <p>18 gross or net after taxes.</p> <p>19 Q But as you sit here, which way do you think</p> <p>20 the benefit ought to work? Would it be that if you were</p> <p>21 claiming a full -- he got paid \$285,000 gross before</p> <p>22 taxes.</p> <p>23 A Uh-huh.</p> <p>24 Q And you were claiming some portion of that?</p> <p>25 Would you do it on the net that he got after taxes or</p>                                                                                                    |

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| 120 | <p>1 would you do it on the gross that he got?</p> <p>2 A Oh, I don't know what his tax position is, so</p> <p>3 I really don't know.</p> <p>4 Q Well, would you want to do it on the basis of</p> <p>5 dollars he received that he paid taxes on or before he</p> <p>6 paid taxes on it?</p> <p>7 A I'd probably deal with gross since I know what</p> <p>8 that number was.</p> <p>9 Q So you would be claiming a benefit on his</p> <p>10 gross salary or some portion of it and he'd then have to</p> <p>11 pay taxes on it?</p> <p>12 A Not necessarily.</p> <p>13 Q Well, I thought that's what you just said.</p> <p>14 A No, I just -- as I said before, I mean, I'm</p> <p>15 looking at a basket. Whether that contributes anything</p> <p>16 or a lot at this point in time, I don't know. I'm just</p> <p>17 looking at a basket that I would consult with my counsel</p> <p>18 and my associates as to what number might reflect a</p> <p>19 reasonable offset.</p> <p>20 Q Did you ever discuss this basket concept with</p> <p>21 Mr. Dillabaugh?</p> <p>22 A I don't believe so.</p> <p>23 Q When -- let's go back and take a look at the</p> <p>24 dollar amounts that you got that's in Exhibit A.</p> <p>25 A Okay.</p> | 122 | <p>1 12:36 p.m.)</p> <p>2 Q (By Mr. Davenport) Mr. Ellerton, you realize</p> <p>3 you're still under oath?</p> <p>4 A Yes.</p> <p>5 Q Okay. Why don't we take a look back at your</p> <p>6 Exhibit A again.</p> <p>7 A Exhibit A -- Tab A on Exhibit 1?</p> <p>8 Q Yes. And to my understanding, the last</p> <p>9 advances or loans -- whatever we want to call them for</p> <p>10 today's purposes -- made by Mr. Dillabaugh to you</p> <p>11 occurred -- well, the lion's share of it is sort of at</p> <p>12 the end of -- middle of '05. There's two other</p> <p>13 entries -- I'm just using your numbers now -- two other</p> <p>14 entries: one, a negative 5,000; and another, 5,000</p> <p>15 in '06.</p> <p>16 A Yeah.</p> <p>17 Q My question is: Looking back through all of</p> <p>18 these advances that were made by Mr. Dillabaugh to you,</p> <p>19 what was your understanding as to when they were due,</p> <p>20 they were to be paid?</p> <p>21 A I don't think there ever was an understanding.</p> <p>22 Q Okay. So to your knowledge, there was no due</p> <p>23 date?</p> <p>24 A Other than the 123- on that December one, all</p> <p>25 of these didn't -- and all the written documents didn't</p>                                                |
| 121 | <p>1 MR. DAVENPORT: By the way, I'm happy to take</p> <p>2 a break now, go to lunch, come back; whatever you guys</p> <p>3 want to do.</p> <p>4 MR. LUELLEN: What are you thinking?</p> <p>5 MR. DAVENPORT: Oh, it would probably be best</p> <p>6 maybe to grab lunch. It'll go faster if you let me just</p> <p>7 have a little time to review everything that I've got to</p> <p>8 do and wrap it up, and then you can go.</p> <p>9 MR. LUELLEN: Sure. That's fine.</p> <p>10 MR. DAVENPORT: So it's 20 to 12:00. You can</p> <p>11 get something now -- a little quicker if you go now.</p> <p>12 MR. LUELLEN: Yeah.</p> <p>13 MR. DAVENPORT: So let's go now and come back</p> <p>14 at -- your pleasure. What time would you guys like to</p> <p>15 come back?</p> <p>16 MR. LUELLEN: You know, we can be reasonably</p> <p>17 prompt, so . . .</p> <p>18 MR. DAVENPORT: Back in an hour?</p> <p>19 MR. LUELLEN: Oh, yeah. No more than an hour.</p> <p>20 MR. DAVENPORT: Yeah. Let's say back in an</p> <p>21 hour.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MR. LUELLEN: Okay.</p> <p>24 MR. DAVENPORT: Okay. Very good.</p> <p>25 (A lunch break was taken from 11:39 a.m. until</p>                                                | 123 | <p>1 have a time framework other than just, you know, what --</p> <p>2 a statement of what was owed and when, other than that</p> <p>3 Exhibit 4.</p> <p>4 Q And that Exhibit 4 is the promissory note for</p> <p>5 123,000?</p> <p>6 A Right. That was the other one that actually</p> <p>7 had, you know, a term on it, yeah.</p> <p>8 Q And it was due upon demand, when the demand</p> <p>9 was made?</p> <p>10 A No. It was outlined that it was due on</p> <p>11 December the 31st, 2003.</p> <p>12 Q Look in the body of that further, if you will.</p> <p>13 Let me pull my copy out. And if you'll see -- I've got</p> <p>14 the wrong notes here. What's the exhibit number on it?</p> <p>15 MR. LUELLEN: 4 (sic).</p> <p>16 THE WITNESS: 4 (sic).</p> <p>17 Q (By Mr. Davenport) If you'll note in the</p> <p>18 middle of the second paragraph, it says that, under 1,</p> <p>19 "The total unpaid principal balance hereof together with</p> <p>20 all accrued but unpaid interest hereunder may, at the</p> <p>21 option of holder, and without demand or notice of any</p> <p>22 kind, be declared, and thereupon immediately shall</p> <p>23 become, in default and due and payable." Do you see</p> <p>24 that?</p> <p>25 MR. LUELLEN: Object to the form.</p> |

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| 124 | <p>1 Q (By Mr. Davenport) And you can read all the<br/>2 language if you want to.</p> <p>3 A Right. It starts out by saying: "In the<br/>4 event of nonpayment when due," so that would occur<br/>5 after -- you know, after December the 31st, 2003.</p> <p>6 Q And it further goes on and says, "At the<br/>7 option of the holder" --</p> <p>8 A Right.</p> <p>9 Q -- "and without demand or notice of any kind,<br/>10 be declared, and thereupon immediately shall become, in<br/>11 default and due and payable." Does that mean to you that<br/>12 even though you have a due date of December 31, 2003,<br/>13 that there had to be a demand made by Mr. Dillabaugh for<br/>14 it to be payable?</p> <p>15 A I really don't know. I don't -- I really<br/>16 don't know.</p> <p>17 Q Okay. Fair enough. Exclusive of the \$123,500<br/>18 promissory note, you're saying there was no due date for<br/>19 the rest of these loans made, that you're aware of?</p> <p>20 A Not that I'm aware of, no.</p> <p>21 Q Would you think that based upon that, then<br/>22 they would be due when Mr. Dillabaugh made demand?</p> <p>23 A No. They would be -- we always planned to<br/>24 have a negotiation whereby that, you know, this would be<br/>25 the amount this -- that would be due, and this is when it</p> | 126 | <p>1 A Well, it's an addendum to a promissory note.</p> <p>2 Q Correct. The one that Mr. Dillabaugh took<br/>3 over?</p> <p>4 A It appears so, yeah.</p> <p>5 Q And who was responsible on the promissory note<br/>6 before you took it over?</p> <p>7 A I believe it was Sefton.</p> <p>8 Q Okay. And would you agree that this is<br/>9 additional amounts that Mr. Dillabaugh, in fact, advanced<br/>10 you by taking over this note -- or advanced Sefton?</p> <p>11 A Well, I don't know because he's paying it to<br/>12 Sefton, not me. If he was paying it to me, and then I<br/>13 pay Sefton, then that would be -- but I can't remember.<br/>14 It looks -- this note seems to be between Gary and<br/>15 Sefton.</p> <p>16 Q All right. You just don't remember?</p> <p>17 A No.</p> <p>18 (Exhibit Numbers 14 through 16 were marked for<br/>19 identification.)</p> <p>20 Q (By Mr. Davenport) All right. Let's start<br/>21 with Exhibit Number 14. And the reason I've pulled this<br/>22 exhibit is because in your answers to interrogatories, on<br/>23 page 6 --</p> <p>24 A Of Exhibit 1?</p> <p>25 Q Yes. The question was, "Please identify any</p>                                                                                                      |
| 125 | <p>1 would be due and/or how it would be paid.</p> <p>2 Q So you're saying that before any amount is<br/>3 due, you have to have this negotiation?</p> <p>4 A Yeah.</p> <p>5 Q All right. And that negotiation hasn't<br/>6 occurred?</p> <p>7 A Well, an attempt was made this year, but never<br/>8 materialized.</p> <p>9 Q So given the fact that you've had that, you<br/>10 know, that negotiation that never worked out, if you<br/>11 will --</p> <p>12 A Right.</p> <p>13 Q -- what's your view of whether or not the<br/>14 money is now due and owing, aside from your setoffs and<br/>15 everything else? Is it now due and subject, in your<br/>16 view, to some setoffs?</p> <p>17 A Yeah.</p> <p>18 Q All right. And that occurred after your<br/>19 negotiations failed in 2008?</p> <p>20 A Correct.</p> <p>21 (Exhibit Number 13 was marked for<br/>22 identification.)</p> <p>23 Q (By Mr. Davenport) Can you take a look at<br/>24 Exhibit Number 13 for me, please. Is that the Oatley<br/>25 promissory note we've previously heard testimony about?</p>                                                                                                                                                                                                                                           | 127 | <p>1 and all written or oral agreements between you and<br/>2 Mr. Dillabaugh that are relevant to your contention that<br/>3 the loans Mr. Dillabaugh made to you were forgiven or<br/>4 subject to offset." And then you reference a number of<br/>5 Bates stamp numbers, some of which we've already looked<br/>6 at, some of which we haven't. And here's a couple we<br/>7 haven't looked at. ELL00033, can you identify what that<br/>8 is?</p> <p>9 A No.</p> <p>10 Q Is it in your handwriting?</p> <p>11 A No.</p> <p>12 Q Okay. Have you ever seen it before?</p> <p>13 A I might have done it, but I don't recollect<br/>14 it.</p> <p>15 Q Do you have any idea what it is?</p> <p>16 A Well, it appears to be -- it looks like Gary's<br/>17 writing where he's outlining some numbers. I don't know<br/>18 if it's to me or Sefton or what it is.</p> <p>19 Q Okay. Well, the reason I'm asking you about<br/>20 it is in your answer to the interrogatory, you name this<br/>21 document as something that has some relevance to the<br/>22 right to offsets against loans made by Mr. Dillabaugh.<br/>23 Does this appear to you to relate to that in any way?</p> <p>24 A I said that this document --</p> <p>25 Q Yeah. Read your answer to interrogatory.</p> |

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| 128 | <p>1 That may help.</p> <p>2 A Which answer now?</p> <p>3 Q Eleven.</p> <p>4 A Number 11?</p> <p>5 Q Uh-huh. You should probably read the question</p> <p>6 too.</p> <p>7 A Yeah. (Reviewed document.) Okay.</p> <p>8 Q And then you reference this document, ELL0033.</p> <p>9 I'm just trying to find out why.</p> <p>10 A I don't know.</p> <p>11 Q Okay. You just don't have any idea why it was</p> <p>12 listed?</p> <p>13 A No.</p> <p>14 Q Okay. Let's go to 15, and the question is</p> <p>15 exactly the same. Again, this document is referenced in</p> <p>16 response to Interrogatory Number 11, and I'm just trying</p> <p>17 to find out why, if, in fact, you do, think it has any</p> <p>18 relevance to this arrangement about offsets?</p> <p>19 A I don't think it has any relevance to the</p> <p>20 arrangement of offsets.</p> <p>21 Q Okay. That was easy. 16 --</p> <p>22 MR. DAVENPORT: And, Jack, let me tell you: I</p> <p>23 don't believe you've seen this yet. Gary brought this in</p> <p>24 to me. It does not have a Bates stamp number on it, but</p> <p>25 I just saw it for the first time yesterday as well. It</p>                                                                                                                    | 130 | <p>1 Q This is in your handwriting?</p> <p>2 A Yeah.</p> <p>3 Q All right.</p> <p>4 A I don't see how that pertains to</p> <p>5 Mr. Dillabaugh's complaint.</p> <p>6 Q All right. What's in the left-hand column; do</p> <p>7 you know?</p> <p>8 A I suspect they reflect shares. It looks like</p> <p>9 they reflect shares.</p> <p>10 Q Do you have any idea why you would have</p> <p>11 prepared this?</p> <p>12 A Maybe I bought them from Gary. I don't know.</p> <p>13 As I say, I don't have any recollection of any written</p> <p>14 documents pertaining to this.</p> <p>15 Q You have no idea -- I mean, you have no</p> <p>16 recollection of Mr. Dillabaugh transferring 45,000 shares</p> <p>17 of Sefton into your children's IRAs?</p> <p>18 A My children don't have IRAs.</p> <p>19 Q Have they ever?</p> <p>20 A I think one of them has.</p> <p>21 Q You just have no recollection of this</p> <p>22 transaction at all.</p> <p>23 A No. Well, other than I saw some</p> <p>24 correspondence with Computershare, who's a registrar,</p> <p>25 saying shares were, I think, from Mr. Dillabaugh into</p>                                                                                                                                                                                                                      |
| 129 | <p>1 relates to some -- you know, some things about this stock</p> <p>2 that was transferred by Gary to the kids. So I want to</p> <p>3 ask --</p> <p>4 MR. LUELLEN: Allegedly.</p> <p>5 MR. DAVENPORT: Allegedly, fine. We'll find</p> <p>6 out, I guess, if it's allegedly.</p> <p>7 Q (By Mr. Davenport) Would you look at Exhibit</p> <p>8 Number 16 --</p> <p>9 A Yeah.</p> <p>10 Q -- for me, please. What is that?</p> <p>11 A I mean, it -- as you say, it looks like --</p> <p>12 it's in my writing relating to -- obviously those look</p> <p>13 like shares to my son, Bret; his wife, Sonya; my son,</p> <p>14 David; and Molly McCue is David's girlfriend at the time;</p> <p>15 and my daughter, Stephanie.</p> <p>16 Q Okay. Well, are you aware that it is</p> <p>17 Mr. Dillabaugh's position -- and it's obviously set forth</p> <p>18 in the complaint -- that you promised to tender 45,000</p> <p>19 shares of Sefton Resources to him as repayment for him</p> <p>20 providing 45,000 shares for your children's IRAs? Are</p> <p>21 you aware that he's contended that?</p> <p>22 A Yes.</p> <p>23 Q What's your position on that?</p> <p>24 A I disagree. I have no written documents or</p> <p>25 communications relating to that whatsoever.</p> | 131 | <p>1 some of these names.</p> <p>2 Q Do you have any idea why that happened?</p> <p>3 A No. Maybe I bought them on behalf of my kids.</p> <p>4 I don't know. I don't have any documentation that says</p> <p>5 how those came about, whether they were gifted by</p> <p>6 Mr. Dillabaugh, whether they were sold by Mr. Dillabaugh.</p> <p>7 I have no idea.</p> <p>8 Q Well, who would? Who could verify?</p> <p>9 A Mr. Dillabaugh or, I would imagine,</p> <p>10 Computershare. I actually asked Computershare after</p> <p>11 seeing that for -- because when you change shares from</p> <p>12 one person to another, you have to fill out a form that</p> <p>13 basically said what's the -- what is the gift or the --</p> <p>14 what was the cash consideration. And they didn't have a</p> <p>15 copy, so I'm assuming Mr. Dillabaugh has a copy.</p> <p>16 Q Do you have something on the corporate records</p> <p>17 in-house about this?</p> <p>18 A No. This is not a corporate matter, no.</p> <p>19 Q All right. You're aware further that</p> <p>20 Mr. Dillabaugh has contended that you promised to provide</p> <p>21 1.4 million stock options in Sefton to him; and despite</p> <p>22 demands, you haven't done so. What's your position on</p> <p>23 that?</p> <p>24 A Politely, horse manure.</p> <p>25 Q Never occurred?</p> |

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| <p style="text-align: right;">132</p> <p>1 A Never occurred.<br/>2 (Exhibit Number 17 was marked for<br/>3 identification.)<br/>4 Q (By Mr. Davenport) Would you look at Exhibit<br/>5 Number 17 for me, please. This is, I'll represent to<br/>6 you, the 26(a)(1) initial disclosures, which counsel are<br/>7 required to do in this case and which both parties have<br/>8 done, listing people who have knowledge, may have<br/>9 relevant testimony, et cetera, about the case, including<br/>10 exhibits. And I'm not going to look at the exhibits, but<br/>11 what I want to look at is the people that you've listed.<br/>12 And with the understanding that the reason for listing<br/>13 these, again to refresh you, is you need to disclose who<br/>14 may have relevant information about the case. And you've<br/>15 listed yourself, Gary Dillabaugh, and then Jeremy<br/>16 Delmar-Morgan.<br/>17 MR. LUELLEN: I object to the form because<br/>18 counsel prepares this, not Mr. Ellerton.<br/>19 MR. DAVENPORT: I understand. I understand,<br/>20 but he's the only one I can take the deposition of, so<br/>21 that's why I'm doing it. I can't take Jack's deposition;<br/>22 I can just take yours, Mr. Ellerton.<br/>23 THE WITNESS: Which you're doing.<br/>24 Q (By Mr. Davenport) Do you have any idea why<br/>25 Jeremy Delmar-Morgan was listed as somebody with likely</p> | <p style="text-align: right;">134</p> <p>1 knew of the association I had with Gary and of my<br/>2 position with Gary. So to what extent, details, and<br/>3 whatever he knew at this -- you know, I have no clear<br/>4 opinion at this point other than he was aware of the<br/>5 relationship and Mr. Dillabaugh's employment and how it<br/>6 came about.<br/>7 MR. DAVENPORT: Let me just, Jack, say<br/>8 something that I don't think needs to be said, but I'm<br/>9 going to do it in fairness anyway. Sefton's not a party<br/>10 to this litigation, and, therefore, I'm going to call<br/>11 these people and talk to them. I think I'm perfectly<br/>12 fine to do that, but I just wanted let you know that was<br/>13 going to occur.<br/>14 MR. LUELLEN: I appreciate that. No problem.<br/>15 MR. DAVENPORT: I just think it's a matter of<br/>16 courtesy.<br/>17 Q (By Mr. Davenport) So just to see if I need<br/>18 to, quite frankly, Mr. Ellerton, take their deposition or<br/>19 not -- all these depositions cost us money, and I'm not<br/>20 in the business of taking unnecessary depositions. So<br/>21 I'm going to give them a call. But I would like to know<br/>22 from you what you think they may know.<br/>23 A That's a toughie. I can't remember off-hand<br/>24 other than they would be familiar with Gary's association<br/>25 with the company, how it came to be, and the fact that</p> |
| <p style="text-align: right;">133</p> <p>1 having discoverable information about this case?<br/>2 A Well, we've already discussed that when you<br/>3 asked me what directors of Sefton or officers knew of the<br/>4 relationship I had with Mr. Dillabaugh with respect to<br/>5 the dealings with him. And I quoted Mr. Delmar-Morgan,<br/>6 Mr. Harry Barnum --<br/>7 Q Okay. But what I want to do is go through<br/>8 each one of them.<br/>9 A Okay.<br/>10 Q Let me be very --<br/>11 A All right.<br/>12 Q -- candid with you about this.<br/>13 A Okay.<br/>14 Q I want to see if I need to take these people's<br/>15 depositions. Okay?<br/>16 A That's fine.<br/>17 Q If they don't know anything, I don't want to<br/>18 waste my time, your time, your money or anybody else's<br/>19 time or money.<br/>20 A Right.<br/>21 Q So do you have any idea what this gentleman,<br/>22 Mr. Delmar-Morgan, may know about this case -- about the<br/>23 issues in this case?<br/>24 A Well, Mr. Delmar-Morgan was the one that<br/>25 negotiated the settlement with Gary. Mr. Delmar-Morgan</p>                                                                                                                                                                                                                                                                                                 | <p style="text-align: right;">135</p> <p>1 they knew of my position regarding offsets and so on.<br/>2 Beyond that, you know, it's whatever they determined<br/>3 themselves or might have had a conversation with me or<br/>4 even Gary. And I have no clue as to what their<br/>5 conversations with Gary might have been.<br/>6 Q And your information may be that some of these<br/>7 individuals may know of your position that you're<br/>8 entitled to an offset for some of the monies, or all of<br/>9 the monies potentially, that Gary Dillabaugh loaned you?<br/>10 A Yes, I believe so.<br/>11 Q All right. And that would go for all of these<br/>12 people. Now, do you have any knowledge that any of these<br/>13 people have contended that they were party to any<br/>14 conversations where they heard the two of you talking<br/>15 about that?<br/>16 A Gary and I?<br/>17 Q Yes.<br/>18 A I don't think any of them were party to Gary<br/>19 and I's particular conversations. In other words, they<br/>20 weren't part of anything with that.<br/>21 Q Is there anybody you can think of whatsoever,<br/>22 Mr. Ellerton, that may have been a party, may have<br/>23 overheard, been involved in any way, with the agreement<br/>24 you've testified about offsets that you and<br/>25 Mr. Dillabaugh allegedly had?</p>                                                                                  |

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| 136 | <p>1 A I -- you know, again, off the top of my head,<br/>2 I don't know. These people may be -- they may not --<br/>3 they would not have heard -- Gary -- the conversations<br/>4 Gary and I had were between Gary and I.<br/>5 Q Okay.<br/>6 A So, I mean, the -- so there were no other<br/>7 parties associated with that.<br/>8 Q When you --<br/>9 A I have informed them --<br/>10 Q Sorry.<br/>11 A -- and I don't know what Gary has done about<br/>12 them. So, you know, beyond that, I don't know.<br/>13 Q Fair enough. How am I going to ask this?<br/>14 When you were borrowing money or getting money from Gary<br/>15 Dillabaugh, were you advising the Sefton board of that?<br/>16 A You know, I can't remember. I know they knew<br/>17 of it because Gary wasn't the only one that was providing<br/>18 me money. And certainly they must have known of it<br/>19 because when we did the IPO, some of my shares were<br/>20 transferred in lieu of money to them or other people. So<br/>21 they must have been aware of it, yes.<br/>22 Q And I assume what they were aware of was it in<br/>23 general terms, not the specifics.<br/>24 A In general terms, correct.<br/>25 Q Who else did you have similar transactions as</p> | 138 | <p>1 Q And where is Ms. Schneider located?<br/>2 A Seattle, Washington.<br/>3 Q How do you spell Schneider? S-C-H --<br/>4 A S-C-H-N-E-I-D-E-R.<br/>5 Q -- D-E-R?<br/>6 A Yeah, something like that.<br/>7 Q Do you have an address or phone number?<br/>8 A I do, but not off the top of my head.<br/>9 Q Okay. Is she -- was she associated with<br/>10 Sefton at all?<br/>11 A No. She's just a personal friend.<br/>12 Q All right. And did you borrow money from her?<br/>13 A Yes, I did.<br/>14 Q And how much?<br/>15 A Several hundred thousand dollars.<br/>16 Q Have you paid it back?<br/>17 A The portion that she loaned me was converted<br/>18 into stock.<br/>19 Q Stock in Sefton?<br/>20 A In Sefton. And the money that she loaned the<br/>21 company has been bought back from her.<br/>22 Q Has been -- I'm sorry. What?<br/>23 A Has been purchased back from her.<br/>24 Q Okay.<br/>25 A They had an -- individually they had an</p>                                                                                                                                                                                                                                    |
| 137 | <p>1 you had with Mr. Dillabaugh with?<br/>2 A Well, Mr. Dillabaugh is unique in the sense<br/>3 that he's -- you know, this particular situation arose.<br/>4 But there were other parties that loaned me money that<br/>5 had, you know, options to convert or opportunities.<br/>6 Let's see. There would be -- again, this is not a<br/>7 complete list. Off the top of my head, there would be<br/>8 John Kelly.<br/>9 Q And where is Mr. Kelly located?<br/>10 A Denver, Colorado.<br/>11 Q Is he -- do you know his phone number?<br/>12 A No. Off the top of my head, no, sir.<br/>13 Q Do you know how much Mr. Kelly advanced you?<br/>14 A I'd have to look it up, yeah. I think it was<br/>15 probably in the vicinity of 27,500, thereabouts.<br/>16 Q And over what period of time?<br/>17 A Again, I'd have to look at my records.<br/>18 Q Was he an employee of Sefton?<br/>19 A No. He's a personal friend.<br/>20 Q All right. And have you claimed any offsets<br/>21 against that amount?<br/>22 A No. Mr. Kelly converted all of his into<br/>23 stock, which was an offset he had, an option he had.<br/>24 Q Okay. Who else?<br/>25 A Nelly Schneider.</p>                                                                       | 139 | <p>1 understanding with me that if they invested in the<br/>2 company, I would -- I would buy it back from them at that<br/>3 cost at any point in time, and I was -- she chose to do<br/>4 that. So I was paying and then the company took over<br/>5 that obligation.<br/>6 Q And has she been paid back in full?<br/>7 A I think it'll be -- almost, yes.<br/>8 Q All right. Anybody else?<br/>9 A Oh, yeah. Let's see. There would be Len<br/>10 Schmidt.<br/>11 Q Where's Mr. Schmidt located?<br/>12 A Denver, Colorado.<br/>13 Q Okay. How much did you borrow from him?<br/>14 A I borrowed from Len probably in the vicinity<br/>15 of 50- or \$60,000. And Len put into the company maybe,<br/>16 in various ways, about half a million dollars.<br/>17 Q Has he been paid back?<br/>18 A With mine, he converted his to stock. With<br/>19 respect to the company, he bought stock from an overhang<br/>20 in the open market, and he has a loan -- an outstanding<br/>21 loan with the company for approximately 200,000.<br/>22 Q Who else?<br/>23 A Bob Schmidt was Len's brother.<br/>24 Q How much did you borrow from him?<br/>25 A I can't remember the number, but Bob is</p> |

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| <p style="text-align: right;">140</p> <p>1 deceased and his wife, Sylvia Schmidt, now has taken<br/>2 over. Again, he converted some of it for stock -- I<br/>3 think he converted all of his for stock, and he bought<br/>4 stock on the overhang from -- in the London market, and<br/>5 he's bought shares in Sefton over time.<br/>6 Q Is there anybody --<br/>7 A I haven't finished the list.<br/>8 Q I know, and I'm going to maybe shorten the<br/>9 list a little bit.<br/>10 A Right, right.<br/>11 Q Is there anybody that you borrowed from that<br/>12 you've claimed the similar types of credits that you've<br/>13 claimed for Mr. Dillabaugh?<br/>14 A No. Mr. Dillabaugh is unique in his<br/>15 particular association with the company. None of these<br/>16 people basically became employed or received any benefits<br/>17 in the nature that Mr. Dillabaugh did.<br/>18 Q Okay. All right. Who else have you borrowed<br/>19 from?<br/>20 A Susan Rupp, R-U-P-P.<br/>21 Q How much?<br/>22 A I can't remember. Again, it was converted<br/>23 into stock.<br/>24 Q Okay. I'm really not interested in anybody<br/>25 that you borrowed money from that you converted into</p>                                                                                                                                                                                                                                                                                                                         | <p style="text-align: right;">142</p> <p>1 positions in the company.<br/>2 MR. DAVENPORT: Give me a couple of minutes<br/>3 with Mr. Dillabaugh. I think we're about done.<br/>4 MR. LUELLEN: Okay.<br/>5 (A recess was taken from 1:04 p.m. until<br/>6 1:12 p.m.)<br/>7 (Exhibit Number 18 was marked for<br/>8 identification.)<br/>9 Q (By Mr. Davenport) Mr. Ellerton, I've placed<br/>10 in front of you -- rather, the court reporter has placed<br/>11 in front of you -- what's been marked as Exhibit 18.<br/>12 This relates to this issue of transfer of shares to your<br/>13 children. And if you will look at the bottom, there is<br/>14 an e-mail from Gary Dillabaugh to Lucie Heath. Who is<br/>15 Lucie Heath?<br/>16 A I believe she's involved with Computershare,<br/>17 who is Sefton's registrar.<br/>18 Q And do you see where he says, "Hi, Lucie.<br/>19 Hope you were playing for the long weekend and not off on<br/>20 some boring business conference. I expect there is the<br/>21 possibility that you were scrutinizing an AGM in some<br/>22 exotic locale," et cetera?<br/>23 A Right.<br/>24 Q Then at the top, "A year ago, I transferred<br/>25 some shares and was wondering if you might be able to</p>                                                           |
| <p style="text-align: right;">141</p> <p>1 stock that didn't have this offset arrangement as was<br/>2 done with Mr. Dillabaugh. So if there are no -- none<br/>3 like that, I don't need to go through this whole -- are<br/>4 there many more?<br/>5 A No. I mean, but, as I say, the offset can be<br/>6 considered something like that for Nelly Schneider where,<br/>7 you know, she was -- had the opportunity. But, you know,<br/>8 if she wanted to sell the stock back at the price she<br/>9 purchased it, that's a type of offset that I took on<br/>10 personally; there was that. Canada Southern basically<br/>11 bought stock in the company which I guaranteed that they<br/>12 could put to the company for their -- I think the<br/>13 vicinity of the amount of that was about \$250,000. And<br/>14 Magellan, the amount of that was about \$200,000. These<br/>15 are both corporations. One is in New York, and one is in<br/>16 Canada.<br/>17 Let's see. I'm sure there are others, but --<br/>18 because there was quite a few. But, at this point,<br/>19 you're asking me sitting here. I'd have to go back and<br/>20 check my records, yeah. But Gary's was unique in the<br/>21 sense that he was the only one that was employed by the<br/>22 company or got stock options and/or opportunities --<br/>23 well, not opportunities. Some of those people got<br/>24 opportunities: Mr. Schmidt and others of that nature got<br/>25 opportunities for getting ground floor and shareholding</p> | <p style="text-align: right;">143</p> <p>1 confirm that the original transfer was from me.<br/>2 Currently the shareholders are," and it lists Bret<br/>3 Ellerton, Sonya Shaw, Stephanie Ellerton, and Molly<br/>4 McCue, who I think we went through before.<br/>5 A Right. Only the shares seem to be different<br/>6 on this one.<br/>7 Q It lists a number of shares.<br/>8 A Right.<br/>9 Q And then at the top -- going back to the first<br/>10 page again -- the e-mail comes back to Gary saying, "Hi,<br/>11 Gary. I was in Luxembourg," et cetera, et cetera. "I<br/>12 can confirm that the transfers as below were processed<br/>13 from your holding to the individuals on 21 March 2003."<br/>14 Do you see that?<br/>15 A Correct.<br/>16 Q Do you have any reason to deny that -- the<br/>17 fact that Mr. Dillabaugh transferred these shares, after<br/>18 having looked at this, to your children and their<br/>19 spouses, et cetera?<br/>20 A No. And that's what I said. I then followed<br/>21 this up with an e-mail to Lucie saying, What was the<br/>22 compensation received for it or what? And they had no<br/>23 record of it, so it might have been a gift. I might have<br/>24 bought them on behalf of my kids. My kids might have<br/>25 bought them. I don't know.</p> |

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1 Q All right.

2 A Mr. Dillabaugh would have the record of that.

3 Q And if Mr. Dillabaugh says that he did it at

4 your request and you were going to pay him back --

5 A I would deny it. Otherwise there would be

6 correspondence that you've seen. And we seemed to put a

7 lot of things down in and around that time as to what

8 transpired. And there was no mention of that, so I have

9 no record of that.

10 Q Was Mr. Dillabaugh in the habit of making

11 gifts to your children?

12 A I doubt it.

13 Q Do you think he ever made any gifts to your

14 children?

15 A No. I think they may have purchased them from

16 him. I'm just giving you a range of possibilities. On

17 those forms, they say, Is it a gift or what remuneration

18 you are -- did you receive for these transfers of shares?

19 Q Okay. How would I get ahold of your children?

20 I mean, if that's what I'm going to have to do to see

21 what their position on this is?

22 A I could give you the phone numbers. I don't

23 know them off the top of my head. I could --

24 Q Yeah. Would you mind doing that? I just -- I

25 mean, we've got to get to the bottom of this.

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1 A Yeah, that's fine.

2 Q So would you --

3 MR. DAVENPORT: Is that agreeable, Jack, if he

4 e-mails me the phone numbers or you e-mail me the phone

5 numbers?

6 MR. LUELLEN: Yeah. I'll pass them on to you.

7 MR. DAVENPORT: Okay. That would be great.

8 THE WITNESS: I mean, the easiest way is the

9 transfer form that Mr. --

10 MR. DAVENPORT: Okay. Yeah, but that'd be

11 great. I just --

12 THE WITNESS: All right. Okay. Yeah.

13 MR. DAVENPORT: You know, we just need to get

14 to the bottom of it.

15 THE WITNESS: Okay. No problem. Yeah.

16 MR. DAVENPORT: Just facts -- getting facts.

17 THE WITNESS: Yeah.

18 MR. DAVENPORT: Okay. That's all I have for

19 today. I do want to say that I may, at some point, have

20 to redepose Mr. Ellerton if he comes up with some idea of

21 what he thinks that this offset should be, because I

22 still don't know what the offset should be. So I guess

23 what I'm asking, Jack, for is if there is a -- I mean,

24 obviously there's a duty to supplement, as we all know,

25 in discovery. And if at any time Mr. Ellerton comes up

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1 with what he thinks the amount of his offset is, please

2 let me know, and I would like to redepose him on it.

3 MR. LUELLEN: A, we will supplement in

4 accordance with the rules as required. And B, we can

5 talk about whether or not a second deposition is

6 appropriate at such time.

7 MR. DAVENPORT: Okay. And I understand. I

8 knew that would be your position. I just wanted to make

9 sure that I'm not saying this deposition is over for that

10 purpose. I'm saying the deposition is still over, and

11 with that -- I'm still open -- and with that, I'm done

12 for today.

13 MR. LUELLEN: Fine.

14 MR. DAVENPORT: Thank you, Mr. Ellerton.

15 THE WITNESS: Oh, you're welcome.

16 (The deposition was concluded at 1:16 p.m., on

17 Tuesday, November 25, 2008.)

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1 I, JOHN J. ELLERTON, do hereby certify that I

2 have read the above and foregoing deposition, and that

3 the above and foregoing transcript and accompanying

4 Amendment sheet(s), if any, constitute a true and

5 complete record of my testimony.

6

7 Amendment sheet(s) attached [ ]

8 No changes, therefore no Amendment sheet(s) attached [ ]

9

10 \_\_\_\_\_

11 JOHN J. ELLERTON

12

13 Subscribed and sworn to before me this

14 day of \_\_\_\_\_, 2008.

15 My commission expires: \_\_\_\_\_.

16

17 \_\_\_\_\_

18 Notary Public

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1 DEPOSITION OF  
2 JOHN J. ELLERTON

3 REPORTER'S CERTIFICATE

4 I, Wendy Evangelista, Registered Professional  
5 Reporter and Notary Public in and for the State of  
6 Colorado, do hereby certify that prior to the  
7 commencement of the examination the Witness was by me  
8 first duly sworn to testify the truth; that said  
9 deposition was taken in shorthand by me at the time and  
10 place hereinabove set forth and was thereafter reduced to  
11 typewritten form under my supervision, as per the  
12 foregoing transcript; that the same is a full, true, and  
13 correct transcription of my shorthand notes then and  
14 there taken.

15 I further certify that I am not related to,  
16 employed by, nor counsel for any of the parties or  
17 attorneys herein, nor otherwise interested in the event  
18 of the within action.

19 My commission expires August 12, 2012; and I  
20 have hereunto set my hand December 8, 2008.

21  
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23 \_\_\_\_\_  
24 Registered Professional Reporter  
25 and  
Notary Public

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DISTRICT COURT, CITY AND COUNTY OF  
DENVER, COLORADO

Court address: 1437 Bannock Street, Room 256  
Denver, Colorado 80202  
Phone Number: 720-865-8301

**Plaintiff:** GARY DILLABAUGH

v.

**Defendant:** JOHN J. ELLERTON

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Case Number: 08CV2877

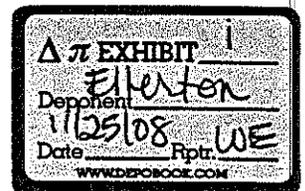
Div.: 3

**RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES  
AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS  
TO DEFENDANT, JOHN J. ELLERTON**

Defendant, John J. Ellerton ("Ellerton"), by and through his counsel, Beatty & Wozniak, P.C., hereby responds to Plaintiff's First Set of Interrogatories and First Request for Production of Documents as follows:

**PRELIMINARY STATEMENT**

Discovery is ongoing in this matter and Ellerton has not completed his discovery, his investigation of the facts or his preparation for trial. The responses set forth herein are based on Ellerton's knowledge and information as of the date of these responses and Ellerton specifically and expressly reserves the right to supplement and/or amend these responses.



## GENERAL OBJECTIONS

1. Ellerton objects to the Interrogatories and the Requests to the extent they seek disclosure of information protected by the attorney-client privilege, the attorney work-product doctrine or any other applicable privilege or protection from discovery.

2. Ellerton objects to the Interrogatories to the extent they seek disclosure of trade secrets, confidential commercial or business information, or any other non-public private information. Ellerton will not disclose such information unless and until the Court enters a protective order limiting access to and disclosure of confidential, proprietary and trade secret information.

3. Ellerton objects to Plaintiff's "Definitions and "Instructions" to the extent they seek to impose any burden or obligation upon Ellerton beyond the requirements of the Colorado Rules of Civil Procedure. Ellerton will respond in accordance with the Rules.

4. Ellerton objects to each Interrogatory and Request to the extent that it uses the term "Loan" to mean and refer to a specific legal transaction with certain attendant legal terms and obligations. Ellerton responds to the following Requests and Interrogatories by considering the term "Loan" to mean the providing of any funds by Dillabaugh to Ellerton, including, but not limited to, exchanges more accurately referred to as cash advances.

## INTERROGATORIES

**INTERROGATORY NO. 1:** Please describe in detail each loan of money, shares of Sefton Resources, Inc., or any other property that was made by Mr. Dillabaugh to you. Your description should include, but may not be limited to, the dates of the loan, the amounts of the loan, and the terms of the loan.

**RESPONSE:** Objection. Ellerton objects to this Interrogatory to the extent it assumes that there were loans of the type described in the Interrogatory made by Dillabaugh to Ellerton. Furthermore, Ellerton objects to the phrase "but may not be limited to" as vague and ambiguous. In responding to this Interrogatory, Ellerton assumes that the phrase is intended to mean the equivalent of "but is not necessarily limited to."

Subject to and without waiving the foregoing objections and the General Objections, Ellerton responds to Interrogatory No. 1 as follows:

As of the time of these Responses, following a diligent search, Ellerton has been able to locate and identify records that indicate that Dillabaugh made payments to Ellerton of the sums and on the dates identified on the attached Exhibit "A", which is incorporated herein by this reference.

Ellerton has identified 7 promissory notes or other written agreements that pertain, or may pertain, to any payments made by Dillabaugh to Ellerton. Those agreements are reflected in documents bates numbered ELL00233, ELL00061, ELL00051, ELL00128, ELL00063 and ELL00073. The first three documents identified are promissory notes and are described further as follows:

| <u>Document Number</u> | <u>Date</u> | <u>Principal</u> | <u>Interest Rate</u> | <u>Term</u>     |
|------------------------|-------------|------------------|----------------------|-----------------|
| ELL00233               | 11/30/1999  | \$62,361.41      | 10%                  | Due 05/31/2000  |
| ELL00061               | 12/31/2002  | \$123,500.00     | 10%                  | Due 12/31/2003  |
| ELL00051               | 02/10/2003  | \$5,000.00       | 10%                  | Due 05/31/2002* |

ELL00128 is a letter agreement dated December 31, 2000, which outlines the common stock that had been or was being assigned, transferred or sold to Dillabaugh through the efforts of Ellerton and sets forth a schedule of amounts owed by Ellerton with a proposal to create a loan bearing 12% interest to repay such amounts, with an amortization schedule to be agreed upon prior to March 31, 2001. The only copy of this letter agreement currently known to Ellerton does not appear to have been executed by Dillabaugh.

The remaining two documents, ELL00063 and ELL00073, each relate to agreements pursuant to which Dillabaugh has to purchase certain share options. In ELL00063, dated May 31, 2001, it is stated that Dillabaugh wished to purchase the options (or "shares") by applying money from outstanding amount owed by "Ellerton, though there are no terms."

In ELL00073, dated April 2, 2001, Dillabaugh converted \$57,500 of the outstanding debt from Ellerton into 6,325,000 shares of Sefton Resources, Inc. which left "an outstanding debt of \$71,733.98 (as of 12/31/2000) which [Ellerton and Dillabaugh] agree to discuss payment terms shortly." The letter was signed and agreed to by Dillabaugh on April 13, 2001.

\* This note is payable to Lisa L. Dillabaugh, bears a "Draft" stamp and on its face is due prior to the date of its making. Ellerton makes no representation as to the validity of this note, nor does Ellerton know if this note relates to the issues raised by Dillabaugh in his Complaint herein.

**INTERROGATORY NO. 2:** Please describe the current payoff status of every loan made by you by Mr. Dillabaugh.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 2 as follows:

Without regard to any offsets or other consideration due to Ellerton as a credit for any amounts due to Dillabaugh, including the credit of \$57,500 reflected in the April 2, 2001 letter agreement described in Response to Interrogatory No. 1, with the exception of the payments identified on Exhibit A, and without regard to any legal defenses, the balances reflected on Exhibit A remain outstanding.

**INTERROGATORY NO. 3:** Please state the amount of money you presently owe Mr. Dillabaugh and describe in detail how you computed the amount owed.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 3 as follows:

Without regard to any offsets or other consideration due to Ellerton as a credit for any amounts due to Dillabaugh, including the credit of \$57,500 reflected in the April 2, 2001 letter agreement described in Response to Interrogatory No. 1, with the exception of the payments identified on Exhibit A, and without regard to any legal defenses, the balances reflected on Exhibit A remain outstanding.

**INTERROGATORY NO. 4:** In paragraph 4 of your Answer to Amended Complaint you admit that Mr. Dillabaugh made "at least one loan" to you, and you admit that you agreed to pay interest on that loan. Please explain which loan you are referring to in paragraph 4 of your Answer, and state the interest rate that you agreed to.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 2 as follows:

Without foreclosing to the possibility of additional loans or similar transactions between Ellerton and Dillabaugh, in paragraph 4 of Ellerton's Answer to Amended Complaint (the "Answer"), Ellerton referred to that certain loan of \$123,500 represented by a promissory note dated December 31, 2002, as evidenced in the document numbered GD 0018. That promissory note speaks for itself and references an interest rate of 10% per annum.

**INTERROGATORY NO. 5:** In paragraphs 20 and 24 of your Answer to the Amended Complaint, you state that the loans made to you by Mr. Dillabaugh were forgiven as a result of benefits conferred upon Mr. Dillabaugh. Please explain what benefits were conferred upon Mr. Dillabaugh that resulted in the forgiveness of the loans that Mr. Dillabaugh made to you. As part of your description, please include the date the benefit was conferred, the exact nature of the benefit, and the amount of any loan that was forgiven as a result of the benefit.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 5 as follows:

As consideration for the amounts paid or advanced by Dillabaugh to Ellerton, Ellerton provided certain benefits to and opportunities for Dillabaugh that Dillabaugh otherwise would not have been able to receive. These benefits and opportunities were conferred upon Dillabaugh solely as a result of the amounts paid or advanced by Dillabaugh and with the express understanding that there would be offsets or other consideration against any amounts due from Ellerton to Dillabaugh, though such agreement and understanding was not formalized in a written agreement. The benefits conferred upon Dillabaugh include those identified and described on Exhibit "B" hereto, which is incorporated herein by this reference.

Furthermore, Dillabaugh's employment and other services with and for Sefton Resources, Inc. were primarily as a result of the efforts of Ellerton. As a result, Dillabaugh received significant opportunities, including, but not limited to, compensation above prevailing rates, bonuses, stock options, benefits of employment including insurance, travel, options in TEG Oil & Gas Canada, Inc., Sefton Resources, Inc., and General Mining, including opportunities to participate in stock or options acquisitions in advance of others.

As set forth by Ellerton in several documents, including those identified in the Response to Interrogatory No. 11, Ellerton and Dillabaugh did not agree on, or substantively discuss, the valuation of the offsets to be accorded to Ellerton as a result of the opportunities afforded, and benefits derived by, Dillabaugh, and Ellerton has made no such calculations.

**INTERROGATORY NO. 6:** In paragraphs 20 and 24 of your Answer to the Amended Complaint, you state that the loans made to you by Mr. Dillabaugh were subject to offset as a result of benefits conferred upon Mr. Dillabaugh. Please explain what benefits were conferred upon Mr. Dillabaugh that resulted in the offset of the loans that Mr. Dillabaugh made to you. As part of your description, please include the date the benefit was conferred, the exact nature of the benefit, and the amount of any loan that was forgiven as a result of the benefit.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 6 as follows:

Please see the above response to Interrogatory No. 5 which is responsive to this Interrogatory and is incorporated herein by this reference.

**INTERROGATORY NO. 7:** Please describe how you used the money Mr. Dillabaugh loaned to you.

**RESPONSE:** Objection. This Interrogatory seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence.

Subject to and without waiver of the foregoing objections and the General Objections, Ellerton responds to Interrogatory No. 7 as follows: Monies received from Dillabaugh were used to pay expenses related to the business of Sefton Resources, Inc., and/or its affiliates, and for personal expenses incurred by Ellerton.

**INTERROGATORY NO. 8:** Please describe any and all communications between you and Mr. Dillabaugh concerning the loans that you described in your response to Interrogatory No. 1.

**RESPONSE:** Objection. This Interrogatory is overly broad and unduly burdensome. Dillabaugh and Ellerton have had a larger number of written and verbal communications over a several year period relating to the subject matter of this Interrogatory. It is impossible for Ellerton to describe all such communications. Further, many of the communications between Ellerton and Dillabaugh relating to the subject matter here have been in the form of written communications, including email communications, which have been or are being produced by Ellerton.

**INTERROGATORY NO. 9:** Please describe any and all written or oral communications between you and Mr. Dillabaugh related to the 45,000 shares of Sefton Resources, Inc. which Mr. Dillabaugh transferred to you and/or your promise to provide stock options in Sefton Resources, Inc. to Mr. Dillabaugh.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 9 as follows:

To the best knowledge, information and belief of Ellerton, there was no transfer of shares as described in this Interrogatory.

**INTERROGATORY NO. 10:** Please identify any and all written or oral agreements between you and Mr. Dillabaugh concerning either the loans you identified in your response to Interrogatory No. 1, and state the terms of those agreements.

**RESPONSE:** Please see the identification of the promissory notes and other agreements identified in Response to Interrogatory No. 1 above, which is responsive to this Interrogatory, and the reference to the agreement between Ellerton and Dillabaugh with respect to offsets or other consideration resulting from the benefits conferred upon Dillabaugh by Ellerton in Response to Interrogatory No. 5, which is responsive to this Interrogatory, each of which are incorporated herein by this reference.

**INTERROGATORY NO. 11:** Please identify any and all written or oral agreements between you and Mr. Dillabaugh that are relevant to your contention that the loans Mr. Dillabaugh made to you were forgiven or subject to offset.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 11 as follows:

Reference is made to the following documents, which constitute written documentation of such agreement and understandings: ELL00128, ELL00073, ELL00063, ELL00033, and ELL00028, the email correspondence between Ellerton and Dillabaugh around the days of February 13-18, 2008, as reflected in documents ELL0008, ELL00012, and ELL00013, and the correspondence from Dillabaugh to Ellerton dated September 20, 2009 at GD0025.

**INTERROGATORY NO. 12:** Please explain your reasoning that led to the terms of the proposal you made to Mr. Dillabaugh in an e-mail dated February 9, 2008 and which is shown on document marked GD0013.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 12 as follows:

Ellerton's email dated February 9, 2008 was an effort by Ellerton to reach an accommodation fair to both Ellerton and Dillabaugh. The "proposal" took into account both monies provided by Dillabaugh as well as the benefit and opportunities received by Dillabaugh as a result of the efforts of Ellerton.

**INTERROGATORY NO. 13:** Please state whether you still maintain the position that you took in an e-mail to Mr. Dillabaugh dated February 13, 2008 wherein you stated that the amount loaned to you by Mr. Dillabaugh was approximately \$400,000 before any interest or credit for money, opportunities for stock, or stock options, and explain why you took that position.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 13 as follows:

Ellerton does not contest the validity of the February 13, 2008 email, which speaks for itself, or the statements made therein and has not changed his position with respect to such positions.

**INTERROGATORY NO. 14:** Please explain why you denied the allegations contained in paragraph 5 of Mr. Dillabaugh's Amended Complaint.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 14 as follows:

Except as specifically stated in the response to Paragraph 5 contained in the Answer, Ellerton disputed the interest calculations contained in paragraph 5 of the Amended Complaint and therefore denied such allegations.

**INTERROGATORY NO. 15:** Please explain why you denied the allegations contained in paragraph 8 of Mr. Dillabaugh's Amended Complaint.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 15 as follows: Dillabaugh neither earned nor was entitled to the stock options referenced in paragraph 8 of the Amended Complaint and Ellerton further denied the allegation that there is a continuing obligation with respect to any such stock options.

**INTERROGATORY NO. 16:** Please explain why you denied the allegations contained in paragraph 9 of Mr. Dillabaugh's Amended Complaint.

**RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 16 as follows:

Ellerton does not believe that Dillabaugh ever provided shares of Sefton Resources to Ellerton for IRAs for any of Ellerton's children.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Please produce any documents supporting your answers to the above interrogatories.

**RESPONSE:** Subject to and without waiver of the General Objections, all documents responsive to this Request in the possession, custody or control of Ellerton which have been located as of the date of these responses, following a diligent search for the same, either are being produced or previously have been produced.

**REQUEST FOR PRODUCTION NO. 2:** Please produce all documentation related to the loans made to you by Mr. Dillabaugh.

**RESPONSE:** Subject to and without waiver of the General Objections, all documents responsive to this Request in the possession, custody or control of Ellerton which have been located as of the date of these responses, following a diligent search for the same, either are being produced or previously have been produced.

**REQUEST FOR PRODUCTION NO. 3:** Please produce all documentation showing or supporting your position that the loans made to you by Mr. Dillabaugh were forgiven or offset due to benefits conferred upon Mr. Dillabaugh.

**RESPONSE:** Subject to and without waiver of the General Objections, all documents responsive to this Request in the possession, custody or control of Ellerton which have been located as of the date of these responses, following a diligent search for the same, either are being produced or previously have been produced.

**REQUEST FOR PRODUCTION NO. 4:** Please provide all documentation supporting your calculation of the amount still due and owing to Mr. Dillabaugh as a result of the loans he made to you.

**RESPONSE:** Subject to and without waiver of the General Objections, all documents responsive to this Request in the possession, custody or control of Ellerton which have been located as of the date of these responses, following a diligent search for the same, either are being produced or previously have been produced.

**REQUEST FOR PRODUCTION NO. 5:** Please produce all documentation related to the 45,000 shares of Sefton Resources, Inc. which Mr. Dillabaugh provided to you.

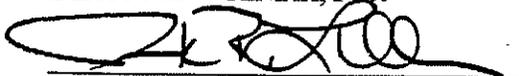
**RESPONSE:** Objection. This Request incorrectly assumes that such shares were provided to Ellerton. As such, Ellerton cannot respond to this Request.

**REQUEST FOR PRODUCTION NO. 6:** Please produce all documentation supporting or related to the proposal you made in the e-mail in Interrogatory No. 10 and the position you took in the e-mail referenced in Interrogatory No. 11.

**RESPONSE:** Objection. This Request is vague and unintelligible because the interrogatories referenced therein are inconsistent with the Request. As a result, it is impossible for Ellerton reasonably to understand or determine what documents are being requested in this Request. If, and only to the extent that, Dillabaugh intended to reference Interrogatories 12 and 13, then, subject to and without waiver of the General Objections, all documents responsive to this Request in the possession, custody or control of Ellerton which have been located as of the date of these responses, following a diligent search for the same, either are being produced or previously have been produced.

Dated this 1<sup>st</sup> day of August, 2008.

BEATTY & WOZNAK, P.C.



Jack R. Luellen, #29017

BEATTY & WOZNAK, P.C.

216 Sixteenth Street, Suite 1100

Denver, CO 80202-5115

Phone Number: 303-407-4499

Fax Number: 303-407-4494

[jluellen@bwenergylaw.com](mailto:jluellen@bwenergylaw.com)

**ATTORNEYS FOR DEFENDANT  
JOHN J. ELLERTON**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1<sup>st</sup> day of August, 2008, a true and correct copy of the foregoing **RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, JOHN J. ELLERTON** was served via U.S. Mail, properly directed as follows:

Gary C. Davenport  
Krista L. Tushar  
McGloin, Davenport, Severson and Snow  
1600 Stout Street, Suite 1600  
Denver, Colorado 80202-3103  
garyd@mdsslaw.com  
kristat@mdsslaw.com

Gabrielle Shahan

102832

**Exhibit A**  
**Responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents**

| Date       | Bates No. | Description                                                                                                                           | Amount    |
|------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 3/5/1999   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 6,000.00  |
| 4/16/1999  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 2,550.00  |
| 5/19/1999  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 7,000.00  |
| 6/18/1999  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 10,000.00 |
| 6/30/1999  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 5,000.00  |
| 7/11/1999  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 6,000.00  |
| 8/3/1999   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 3,000.00  |
| 11/30/1999 | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 3,000.00  |
| 1/16/2000  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 2,000.00  |
| 2/5/2000   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 4,000.00  |
| 2/18/2000  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 10,000.00 |
| 4/3/2000   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 2,000.00  |
| 4/13/2000  | ELL00227  | Gary Dillabaugh Check 4524                                                                                                            | 10,000.00 |
| 4/28/2000  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 5,000.00  |
| 6/2/2000   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 5,000.00  |
| 6/20/2000  | ELL00226  | Gary Dillabaugh Check 7450                                                                                                            | 10,000.00 |
| 6/21/2000  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 15,000.00 |
| 7/6/2000   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | -9,500.00 |
| 7/10/2000  | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | -5,500.00 |
| 8/3/2000   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 2,000.00  |
| 9/8/2000   | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 2,000.00  |
| 10/9/2000  | ELL00226  | \$5000 cash from Gary                                                                                                                 | 5,000.00  |
| 11/27/2000 | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 18,060.00 |
| 11/30/2000 | ELL00230  | Summary page                                                                                                                          | 3,000.00  |
| 12/18/2000 | ELL00220  | Exhibit 1 - Cash advances, etc.                                                                                                       | 3,000.00  |
| 6/22/2001  | ELL00070  | \$12500 from G. Dillabaugh                                                                                                            | 12,500.00 |
| 3/18/2002  | ELL00074  | Gary \$58500 (Also see ELL00075 for check 8411)                                                                                       | 58,500.00 |
| 3/25/2002  | ELL00074  | Gary \$25000                                                                                                                          | 25,000.00 |
| 4/14/2002  | ELL00076  | Gary \$200 cash                                                                                                                       | 200.00    |
| 4/22/2002  | ELL00077  | Deposit slip for \$4000 identifying from Gary Dillabaugh - Check drawn on account of Neal Freeman payable to Gary Dillabaugh attached | 4,000.00  |
| 5/15/2002  | ELL00079  | Gary \$4500                                                                                                                           | 4,500.00  |
| 5/20/2002  | ELL00108  | Check 9645 from Gary for \$5000                                                                                                       | 5,000.00  |
| 5/20/2002  | ELL00108  | Check 8339 from Gary for \$15000                                                                                                      | 15,000.00 |
| 6/5/2002   | ELL00078  | Gary \$3500                                                                                                                           | 3,500.00  |
| 6/14/2002  | ELL00080  | Cashier's Check from RM Coin to Ellerton                                                                                              | 16,891.70 |
| 6/21/2002  | ELL00082  | Gary \$1500                                                                                                                           | 1,500.00  |
| 6/29/2002  | ELL00082  | Gary \$2000                                                                                                                           | 2,000.00  |
| 8/12/2002  | ELL00084  | Gary \$50                                                                                                                             | 50.00     |
| 8/12/2002  | ELL00084  | Dillabaugh check 9702                                                                                                                 | 6,000.00  |
| 9/10/2002  | ELL00085  | Gary \$300                                                                                                                            | 300.00    |
| 9/25/2002  | ELL00086  | Dillabaugh check 9762                                                                                                                 | 3,000.00  |
| 9/27/2002  | ELL00087  | Dillabaugh check stub 9759                                                                                                            | 40,000.00 |
| 11/6/2002  | ELL00088  | Gary \$2500 cash                                                                                                                      | 2,500.00  |
| 12/13/2002 | ELL00090  | Gary \$2500                                                                                                                           | 2,500.00  |

Exhibit A

Responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents

|            |          |                                               |              |
|------------|----------|-----------------------------------------------|--------------|
| 1/4/2003   | ELL00047 | Gary \$500                                    | 500.00       |
| 1/13/2003  | ELL00047 | Gary \$200                                    | 200.00       |
| 1/15/2003  | ELL00049 | Gary \$1600                                   | 1,600.00     |
| 1/17/2003  | ELL00047 | Gary \$500                                    | 500.00       |
| 2/5/2003   | ELL00050 | Gary \$2000                                   | 2,000.00     |
| 2/10/2003  | ELL00032 | Lisa                                          | 5,000.00     |
| 2/19/2003  | ELL00050 | Gary \$1500                                   | 1,500.00     |
| 3/3/2003   | ELL00052 | Gary \$2000                                   | 2,000.00     |
| 3/10/2003  | ELL00052 | Gary \$1700                                   | 1,700.00     |
| 4/1/2003   | ELL00053 | \$7500 from Gary                              | 7,500.00     |
| 4/1/2003   | ELL00053 | 30,000 from Gary on behalf of JJE into Sefton | 30,000.00    |
| 4/11/2003  | ELL00054 | Gary \$500                                    | 500.00       |
| 4/16/2003  | ELL00054 | Gary \$1500                                   | 1,500.00     |
| 4/23/2003  | ELL00057 | Gary \$500                                    | 500.00       |
| 4/24/2003  | ELL00055 | Gary \$300                                    | 300.00       |
| 4/29/2003  | ELL00055 | Gary \$500                                    | 500.00       |
| 5/5/2003   | ELL00056 | Gary \$200                                    | 200.00       |
| 5/11/2003  | ELL00056 | Gary \$600                                    | 600.00       |
| 5/19/2003  | ELL00057 | Gary \$500                                    | 500.00       |
| 5/30/2003  | ELL00057 | Gary \$500                                    | 500.00       |
| 06/00/2003 | ELL00032 | Brent                                         | 20,000.00    |
| 8/27/2003  | ELL00058 | Gary \$400 cash                               | 400.00       |
| 9/26/2008  | ELL00032 | EFT TEG                                       | 3,000.00     |
| 10/1/2003  | ELL00032 | Sefton EFT                                    | 1,500.00     |
| 10/3/2003  | ELL00032 | Sefton EFT                                    | 750.00       |
| 10/3/2003  | ELL00032 | Sefton EFT                                    | 600.00       |
| 10/8/2003  | ELL00032 | Sefton EFT                                    | 400.00       |
| 10/15/2003 | ELL00032 | Sefton EFT                                    | 1,000.00     |
| 10/15/2003 | ELL00058 | Gary \$300                                    | 300.00       |
| 6/30/2005  | ELL00043 | Gary \$50,000 for Canada Paper                | 50,000.00    |
| 12/31/2005 | ELL00045 | Ellerton check 8742 to Dillabaugh             | -5,000.00    |
| 12/14/2006 | ELL00044 | Dillabaugh check 12625                        | 5,000.00     |
| 00/00/0000 | ELL00083 | Gary \$200 US Winton Manbour                  | 200.00       |
|            |          |                                               |              |
|            |          |                                               |              |
|            |          | Total                                         | \$367,751.70 |

**Exhibit B**  
**Responses to Plaintiff's First Set of Interrogatories and Requests for Production**

| <b>Date</b>                         | <b>Event and Benefit</b>                                                                                                                                                                                                                                                                              |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1999                                | Dillabaugh was able to purchase preferred shares of stock from Sefton Resources, Inc. and from Ellerton personally                                                                                                                                                                                    |
| As of October 2000                  | Dillabaugh participated in IPO of Sefton Resources, Inc. and received 36,114 pre-split shares and 3,972,540 post-split shares                                                                                                                                                                         |
| May 31, 2001                        | Dillabaugh purchased additional share options ( <i>See</i> ELL00063]. Options were subject to restrictions.                                                                                                                                                                                           |
| April 2, 2001                       | Dillabaugh converted outstanding amounts due from Ellerton into shares of Sefton Resources, Inc., which shares had been obtained by Ellerton in connection with the IPO of Sefton Resources, Inc. ( <i>See</i> ELL00073). Shares were subject to same restrictions as had been imposed upon Ellerton. |
| March 5, 2003                       | Ellerton allots 3,000,000 shares of Sefton Resources, Inc. to Dillabaugh.                                                                                                                                                                                                                             |
| July 14, 2004.                      | Dillabaugh receives 15,000,000 shares of Sefton Resources, Inc.                                                                                                                                                                                                                                       |
| September 9, 2004                   | Board of Directors of Sefton Resources, Inc. approves additional stock options and consultant compensation to Dillabaugh                                                                                                                                                                              |
| January 26-March 31, 2006           | Dillabaugh was able to exchange shares of TEG Oil & Gas Canada, Inc. for shares in Sefton Resources, Inc.                                                                                                                                                                                             |
| As of March 31, 2006                | Dillabaugh had been granted 15,000,000 stock option in Sefton Resources, Inc. of which 5,000,000 had vested ands had received a total of 44,962,345 shares of Sefton Resources, Inc., which include the shares received in exchange for shares of TEG Oil & Gas Canada, Inc.                          |
| November 1, 2007                    | Dillabaugh enters into a consulting agreement with Sefton Resources, Inc.                                                                                                                                                                                                                             |
| June 27, 2008                       | Dillabaugh enters into a Settlement Agreement with Sefton Resources, Inc.                                                                                                                                                                                                                             |
| Various times including during 2008 | Dillabaugh provides dental services to employees of Sefton Resources, Inc., which services were paid for by Sefton. It is uncertain if such services were rendered at prevailing market rates.                                                                                                        |

**JOHN J. ELLERTON**  
 790 Washington Street, #1001  
 Denver, Colorado 80203  
 (T)/(F) 303/860-0027



Gary Dillabaugh  
 9868 West Girton Drive  
 Lakewood, Colorado 80227

December 31, 2001

Reference: Further Addendum to 12/31/00,  
 04/02/01 and 05/31/01 Agreements:

Dear Gary;

Summarizing the current status of the aforementioned agreements and recent events:

At 12/31/00 balance outstanding (principal and interest) was \$129,233.98 from which \$57,500 was paid for 6,325,000 new Sefton shares (\$7,500 old T&G Resources Inc. shares). This left a balance owing of \$71,733.98 (at 12/31/01)

At May 31, 2001 interest of \$3,709.53 was earned (on 71,733.98 @ 12.5% per annum) and \$26,700. - was converted into 2,200,000 new Sefton shares leaving a balance of \$48,743.51 ( $71,733.98 + 3709.53 - 26,700.00$ ).

At June 22, 2001 interest earned on \$48,743.51 was \$367.25 and an additional loan of \$12,500. was made giving a balance owing of \$61,610.76 (at 06/22/01).

At 12/31/01 additional interest of \$4,051.12 was earned (12.5% on \$61,610.76 for 199 days) giving a balance of principal and interest of \$65,661.88 (at 12/31/01).

In addition to above (conversion of \$84,200 into 8,525,000 shares of Sefton Resources leaving a balance of \$65,661.88) :-

Remaining options (at £ 0.01 per share of Sefton Resources Inc.) are 21,000,000 (after 500,000 to M. Walker and 500,000 to K. Arleth - from original 22,000,000)

For J. Ellerton assuming \$10,000 owed to Sefton by yourself, 243,174 Sefton shares purchased by yourself through Seymour Pierce Lewis (October 2001) will be deducted from the aforementioned total (8,525,000) resulting in:

|                                   |                    |
|-----------------------------------|--------------------|
| Shares owed at 12/31/01           | <u>8,281,826</u>   |
| Principal & Interest at 12/31/01  | <u>\$65,661.88</u> |
| And Options available at 12/31/01 | <u>21,000,000</u>  |

Regards,

J. M. WALKER

NOTE: OPTIONS ASSIGNED TO K. ARLETH REFLECTED ABOVE  
 RECORDED  
 2/17/02 \$ 4,000. - WASH FROM GAM.  
 9/15/02 \$ 6,000 CASH RECEIVED

JOHN J. ELLERTON  
790 Washington Street, #1001  
Denver, Colorado USA 80203  
(T): 303-860-0027 (Home)  
303-773-7141 (Business)

April 2, 2001

G. Dillabaugh  
9868 West Girton Dr.  
Lakewood, CO 80227

RE: Follow-up to 12/31/00 Letter

Gary:

As a follow-up to our 12/31/00 letter (copy enclosed) it is my understanding that:

a. As of 12/31/00 you are converting \$57,500 of the outstanding debt (<sup>129,233.98</sup> ~~\$127,020.94~~ *fe*) into 6,325,000 shares of Sefton Resources, Inc. held by myself - subject to rules imposed on me as part of the 12/08/00 IPO of Sefton (1 year hold & 1 year trading through Seymour Pierce Ellis...).

B. This will leave an outstanding debt of <sup>71,733.98</sup> ~~\$65,520.94~~ (as of 12/31/00) which we agree to discuss payment terms shortly. *fe*

And c. Remaining options of 21,500,000 Sefton shares for \$326,409.

If you agree, kindly execute both copies of this letter, returning one to myself.

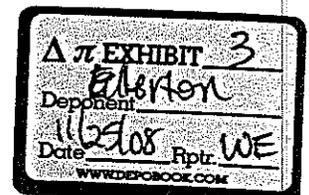
Regards,

  
J. Ellerton

AGREED TO THIS 13 DAY OF April, 2001.

BY:

  
G. Dillabaugh



ELL00073

PROMISSORY NOTE

\$123,500

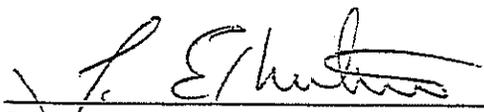
Date: December 31, 2002  
Denver, Colorado

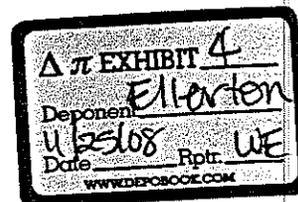
FOR VALUE RECEIVED, the undersigned (the "Maker") promises to pay to the order of Gary Dillabaugh (hereafter called "Holder"), at Denver, Colorado (or at such other place as the Maker may designate and notify the Holder) the principal amount of One Hundred Twenty Three Thousand and Five Hundred Dollars (\$123,500.00) with interest from the date hereof of 10% per annum, which principal amount and interest thereon shall be paid to Holder on December 31, 2003.

In the event of nonpayment when due of any amount payable hereunder, or upon the occurrence of any event of default or if the Maker should become insolvent (as defined in the Uniform Commercial Code as in effect at that time), or a petition in bankruptcy be filed by or against the Maker, (1) the total unpaid principal balance hereof together with all accrued but unpaid interest hereunder may, at the option of the Holder, and without demand or notice of any kind, be declared, and thereupon immediately shall become, in default and due and payable, (2) the Maker will pay all expenses of the Holder in the collection of this Note, including reasonable attorney's fees.

The Maker shall be privileged to prepay this Note in whole or in part without penalty with or without the consent of the Holder.

This Note is to be construed in all respects and enforced according to the laws of the State of Colorado.

By:   
John J. Ellerton,





JOHN J. ELLERTON  
6001 So. Yosemite St., #E-205  
Greenwood Village  
Colorado, USA 80111  
(T)/(F): 303-770-9572

December 31, 2000

G. Dillabaugh  
9868 West Girton Dr.  
Lakewood, CO 80227

RE: Stock/Options and Loan Agreement:  
Sefton Resources, Inc. (TEG Resources, Inc.)  
& J. Ellerton

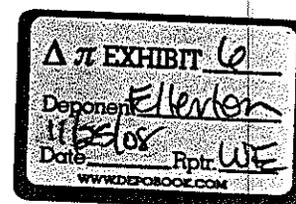
Dear Gary:

Enclosed are the following:

- a. Exhibit A: Statement of money loaned by yourself and interest earned etc., through 12/31/00
- b. Exhibit B: Copy of previous correspondence dated 11/12/99 - relating to above matter
- and c. Exhibit C: Prospectus dated 12/8/00 in which Sefton Resources, Inc. (formerly TEG Resources, Inc.) Went public, which includes the current status of stock and options held by J. Ellerton & G. Dillabaugh - as to numbers (including stock/option splits) etc.

This letter outlines the current situation and agreement between ourselves:

1. Current situation with respect to common stock for G. Dillabaugh:
  - (i) 550,000 Sefton shares (5,000 pre-split shares in TEG) from J. Ellerton Consultants.
    - in process of being issued by transfer agents.
  - (ii) Conversion of 25 preferred shares (and accumulated dividends through 4/1/00) into common stock of TEG Resources, Inc. issued to G. Dillabaugh by TEG.
    - in process of being issued Sefton stock in exchange.
  - (iii) Purchase of 10,000 shares of TEG common stock by G. Dillabaugh. Issued to G. Dillabaugh by TEG Resources, Inc.
    - in process of being issued Sefton stock in exchange.



ELL00128

2. Current situation with respect to loans etc., by G. Dillabaugh to J. Ellerton:
- a. See Exhibit A - which includes \$5,000 premium owed by J. Ellerton for G. Dillabaugh investing in TEG's preferred shares.
  - b. Guarantee by G. Dillabaugh of \$27,500 loan to J. Ellerton by Wells Fargo (currently being amortized).
3. For assistance by yourself in the above matters, I, (J. Ellerton) agree to compensate you as follows:
- a. Repayment of cash advances (and aforementioned \$5,000 premium) in form of loan (see 12/31/00 statement of principal and interest) bearing 12% per annum, amortization schedule to be determined prior to 3/31/2001 - accumulate interest until such date.
  - b. Options to convert portion or all principal and interest to Sefton common stock held by J. Ellerton (number of shares and pricing listed below).
    - time of conversion to be determined by March 31, 2001.
  - c. Options to acquire Sefton common stock from J. Ellerton as follows:
    - (i) 6,325,000 Sefton shares for \$57,5000 (57,500 TEG shares of \$1.00/share forward split 110 to 1 into Sefton shares).
    - (ii) 21,500,000 Sefton shares for \$326,409 (prior to 1/9/04 - 195,455 TEG shares at \$1.67/share).

This is in addition to assurances by J. Ellerton of the repayment of the aforementioned Wells Fargo loan and any other items yet to be determined.

If this is your understanding at this time, kindly indicate such by executing both copies of this letter and returning one copy to me.

Regards,



J. Ellerton

AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

BY: \_\_\_\_\_

G. Dillabaugh

EXHIBIT A

Cash Advances/Preferred Share Premium and Interest Through 12/31/00

|                            | <u>Amount</u><br>(Principal) | <u>Date Recv'd</u><br>(or Owed) | <u># of Days</u><br>(for interest) | <u>Interest</u><br>(at 12%) | <u>Total</u>      |
|----------------------------|------------------------------|---------------------------------|------------------------------------|-----------------------------|-------------------|
| A. Through 7/6/00          |                              |                                 |                                    |                             |                   |
| 1.                         | 6,000                        | 3/3/99                          | 491                                | 968.55                      | 6,968.55          |
| 2.                         | 2,500                        | 4/16/99                         | 447                                | 374.75                      | 2,924.75          |
| 3.                         | 7,000                        | 5/19/99                         | 414                                | 952.77                      | 7,952.77          |
| 4.                         | 10,000                       | 6/18/99                         | 384                                | 1,262.47                    | 11,262.47         |
| 5. Premium                 | 5,000                        | 6/30/99                         | 372                                | 611.51                      | 5,611.51          |
| 6.                         | 6,000                        | 7/11/99                         | 361                                | 712.11                      | 6,712.11          |
| 7.                         | 3,000                        | 8/3/99                          | 338                                | 333.37                      | 3,333.37          |
| 8.                         | 3,000                        | 11/30/99                        | 219                                | 216.00                      | 3,216.00          |
| 9.                         | 2,000                        | 1/16/00                         | 172                                | 113.10                      | 2,113.10          |
| 10.                        | 4,000                        | 2/5/00                          | 152                                | 199.89                      | 4,199.89          |
| 11.                        | 10,000                       | 2/18/00                         | 142                                | 466.85                      | 10,466.85         |
| 12.                        | 2,000                        | 4/3/00                          | 94                                 | 61.81                       | 2,061.81          |
| 13.                        | 10,000                       | 4/13/00                         | 84                                 | 276.16                      | 10,276.16         |
| 14.                        | 5,000                        | 4/28/00                         | 69                                 | 113.42                      | 5,113.42          |
| 15.                        | 5,000                        | 6/2/00                          | 34                                 | 55.89                       | 5,055.89          |
| 16.                        | <u>15,000</u>                | 6/21/00                         | 15                                 | <u>73.97</u>                | <u>15,073.97</u>  |
| Sub-Total                  | 95,550                       |                                 |                                    | 6,792.62                    | 102,342.62        |
| Payments                   | (8,207.38)                   |                                 |                                    | (6,792.62)                  | (15,000)          |
| Net                        | 87,342.62                    |                                 |                                    | 0                           | 87,342.62         |
| E. From 7/7/00 to 12/31/00 |                              |                                 |                                    |                             |                   |
| Net a.                     | 87,342.62                    | 7/6/00                          | 178                                | 5,111.34                    | 92,453.96         |
| b.                         | 2,000                        | 8/30/00                         | 123                                | 80.88                       | 2,080.88          |
| c.                         | 2,000                        | 9/8/00                          | 114                                | 74.96                       | 2,074.96          |
| d.                         | 5,000                        | 10/9/00                         | 83                                 | 136.44                      | 5,136.44          |
| e.                         | 18,060                       | 11/27/00                        | 34                                 | 201.88                      | 18,261.88         |
| f.                         | 3,000                        | 12/18/00                        | 13                                 | 12.82                       | <u>3,012.82</u>   |
| Total                      | <u>117,402.62</u>            |                                 |                                    | <u>5,618.32</u>             | <u>123,020.94</u> |

J. Ellerton

(A) 12/3/00 CONVERT \$ 57,500 INTO 6,325,000 PRT SPLIT SHRS

(B) OWB \$ 65,520.94

(C) OPENING BALANCE 2,500,000 SHRS @ \$ 326,409.

123,020.94  
57,500  
65,520.94

JOHN J. ELLERTON  
790 Washington Street, #1001  
Denver, Colorado USA 80203  
(T): 303-860-0027 (Home)  
303-773-7141 (Business)

---

May 31, 2001

Gary Dillabaugh  
9868 West Girton Drive  
Lakewood, CO 80227

RE: Addendum to 12/31/00 Agreement and  
4/2/01 Addendum

Dear Gary:

As a follow-up to the above mentioned agreement (copy enclosed), the following additions have been agreed to:

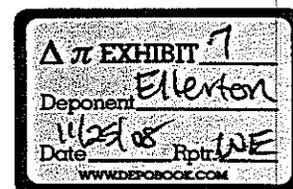
- a. As a result of Mendes & Associates not exercising his 20,000 old share options (at \$1.00/share) with J. Ellerton (as of end of Feb '01) then 50% of those pass onto yourself.  
i.e., 1,100,000 new shares for a consideration of \$10,000 (US).
- b. As a result of M. Schlueter not exercising 20,000 old share options (at \$.167/share) with J. Ellerton (as of end of Feb '01) then 50% of these pass onto yourself.  
i.e., 1,100,000 new shares for a consideration of \$16,700 (US).
- c. It is my understanding that you wish to purchase these shares for the above indicated price by applying said money from outstanding amount owed by myself (see enclosure - in addition to that outlined in April 2, '01 addendum to 12/31/00 agreement).

These above mentioned items do not alter the options as per Item 3 [in particular 3c (i) & (ii)] of the 12/31/00 agreement other than 3 (a) is to be extended to 6/30/01 from 3/31/01.

If this is your understanding at this time, kindly indicate such by executing both copies of this letter and returning one copy to me.

Regards,

  
J. Ellerton



ELL00063

PROMISSORY NOTE

Date: NOV 30 1999

\$ 62,361.61 ON OR ABOUT THE DATE SAID PROMISSORY NOTE was received, I, MARVIN or order

MARVIN promises to pay to G. DILL-ABRAHAM Dollars with interest from

NOVEMBER 30 1999 at the rate of 7 1/2 per cent, per ANNUUM payable

MONTHLY ~~ANNUALLY~~. Principal payable and interest payable at 2828 N. GARDEN DR. LORENA, CO

IT IS AGREED that if this note is not paid when due or declared due hereunder, the entire principal and accrued interest thereon shall draw interest at the rate of 7 1/2 per cent per annum, and that failure to make any payment of principal or interest when due or any default under any encumbrance or agreement securing this note shall cause the whole note to become due at once, or the interest to be counted as principal, at the option of the holder of the note. The makers and endorsers hereto severally waive presentment for payment, protest, notice of non-payment and of protest, and agree to any extension of time of payment and partial payments before, at or after maturity, and if this note or interest thereon is not paid when due, or suit is brought, agree to pay all reasonable costs of collection, including attorney's fees.

Due Date MAY 31 2000 G. DILL-ABRAHAM

No. \_\_\_\_\_

This Note is Secured by  
 COMPANY STOCK #  
 PROTECTED STOCK #  
 PROPERTY #  
 PROPERTY #

No. 1028, Rev. 2-85. Blundford Publishing, 1743 Wazee St., Denver, CO 80202 -- (303) 292-2500 -- G-99

Δ π EXHIBIT 8  
 Deponent Ellerton  
 Date 11/25/08 Rpt. WE  
 WWW.DEFOBOOK.COM

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Court address: 1437 Bannock Street, Room 256  
Denver, Colorado 80202  
Phone Number: 720-865-8301

**Plaintiff:** GARY DILLABAUGH

v.

**Defendant:** JOHN J. ELLERTON

Jack R. Luellen, #29017  
BEATTY & WOZNIAK, P.C.  
216 Sixteenth Street, Suite 1100  
Denver, CO 80202-5115  
Phone Number: 303-407-4499  
Fax Number: 303-407-4494  
jluellen@bwenergylaw.com

Attorneys for Defendant John J. Ellerton

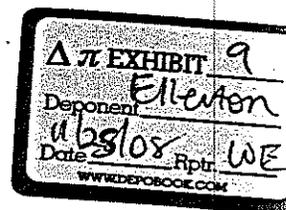
**▲ COURT USE ONLY ▲**

Case Number: 08CV2877

Div.: 3

**DEFENDANT'S FIRST SUPPLEMENTAL RESPONSES  
TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Defendant, John J. Ellerton ("Ellerton"), by and through his counsel, Beatty & Wozniak, P.C., hereby provides his First Supplemental Response to Plaintiff's First Set of Interrogatories as follows, with the understanding that the Preliminary Statement and General Objections set forth in Ellerton's Responses to Plaintiff's First Set of Interrogatories and First Request for Production of Documents to Defendant, John J. Ellerton (the "Initial Responses") apply to the supplemental responses set forth herein:



## INTERROGATORIES

**INTERROGATORY NO. 3:** Please state the amount of money you presently owe Mr. Dillabaugh and describe in detail how you computed the amount owed.

**SUPPLEMENTAL RESPONSE:** Subject to and without waiver of the General Objections, Ellerton responds to Interrogatory No. 3 as follows:

With respect to offsets and other consideration due to Ellerton, please see Exhibit B attached to the Initial Responses. Despite a good-faith effort, it is impossible for Ellerton to quantify the value of each specific item of benefit conferred upon or received by Dillabaugh for which Ellerton is entitled to credit, offset or other consideration.

Nevertheless, Ellerton has been able to estimate that the value of the benefits for which credit, offset or other consideration is due to Ellerton to be not less than \$2,028,668, which amount was calculated as follows:

Compensation from Sefton Resources: \$285,000

Settlement Agreement with Sefton: \$15,000

Shares of Sefton Resources: \$1,349,261

- 3,846,721 shares
- Current mid-range valuation of £0.225 (based upon recent valuation of between 11.8 and 33.6 pence)
- Resulting value of £770,787 ( $3,425,721 * £0.225$ ) = \$1,349,261 (at exchange rate as of date of these Supplemental Responses)

Options in Sefton Resources: \$379,407

- 1,000,000 granted in September 2004 and fully vested at a price of £0.06
  - $1,000,000 * £0.225$  less option price of £0.06 = £165,000 = \$288,811
- 300,000 granted in 2007 for a price of £0.0525
  - $300,000 * £0.225$  less option price of £0.0525 = £51,750 = \$90,596

**INTERROGATORY NO. 5:** In paragraphs 20 and 24 of your Answer to the Amended Complaint, you state that the loans made to you by Mr. Dillabaugh were forgiven as a result of benefits conferred upon Mr. Dillabaugh. Please explain what benefits were conferred upon Mr. Dillabaugh that resulted in the forgiveness of the loans that Mr. Dillabaugh made to you. As part of your description, please include the date the benefit was conferred, the exact nature of the benefit, and the amount of any loan that was forgiven as a result of the benefit.

**SUPPLEMENTAL RESPONSE:** Please see the Supplemental Response to Interrogatory No. 3, which is responsive hereto and incorporated herein by this reference.

**INTERROGATORY NO. 6:** In paragraphs 20 and 24 of your Answer to the Amended Complaint, you state that the loans made to you by Mr. Dillabaugh were subject to offset as a result of benefits conferred upon Mr. Dillabaugh. Please explain what benefits were conferred upon Mr. Dillabaugh that resulted in the offset of the loans that Mr. Dillabaugh made to you. As part of your description, please include the date the benefit was conferred, the exact nature of the benefit, and the amount of any loan that was forgiven as a result of the benefit.

**SUPPLEMENTAL RESPONSE:** Please see the Supplemental Response to Interrogatory No. 3, which is responsive hereto and incorporated herein by this reference.

Dated this 12<sup>th</sup> day of September, 2008.

BEATTY & WOZNIAK, P.C.



---

Jack R. Luellen, #29017  
BEATTY & WOZNIAK, P.C.  
216 Sixteenth Street, Suite 1100  
Denver, CO 80202-5115  
Phone Number: 303-407-4499  
Fax Number: 303-407-4494  
jluellen@bwenergylaw.com

**ATTORNEYS FOR DEFENDANT  
JOHN J. ELLERTON**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 12<sup>th</sup> day of September, 2008, a true and correct copy of the foregoing **DEFENDANT'S FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** was served via U.S. Mail, properly directed as follows:

Gary C. Davenport  
Krista L. Tushar  
McGloin, Davenport, Severson and Snow  
1600 Stout Street, Suite 1600  
Denver, Colorado 80202-3103  
garyd@mdsslaw.com  
kristat@mdsslaw.com

Gabrielle Graham

107412

①

12/31/00

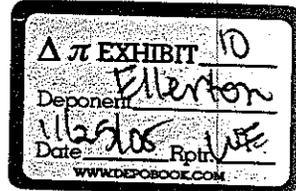
PRINCIPAL + INTEREST

\$ 129,233.28

2001

VARIOUS TRANSACTIONS OCCURRED + INTEREST (@ 12.5%) WAS ACCRUED:

|             |                    |
|-------------|--------------------|
| MAY 31 '01  | \$ 3,709.53        |
| JUNE 22 '01 | 367.25             |
| 12/31/01    | <u>4,051.12</u>    |
| TOTAL       | \$ <u>8,127.90</u> |



12/31/01

PRINCIPAL : 57,533.90  
 INTEREST : 8,127.90

\$ 65,661.88

2002

~~PRINCIPAL~~

EXTRA WANS 169,791.17  
 (INTEREST IN PRINCIPAL)

TO WANS PAID

PRINCIPAL + INTEREST 744.88 \$ 5,424.16

175,215

SO PRINCIPAL NOW

227,325.

INTEREST FOR 01

\$ 8127.90 (12.5%)

INTEREST FOR 02

PRINCIPAL + INTEREST TO BANK \$ 5,424.16 (7 x 774.88)

AT 12/31/02

PRINCIPAL \$ 227,325

INTEREST

(TO BE COMPLETED)

... .. \$ 5,424.16



3

2005

ADDITIONAL PRINCIPAL 60,000. —

AS 12/31/05

PRINCIPAL 385,625. —

BANK PRINCIPAL INT. 17,081.48

D. DAILY INTEREST 3,000. —

OTHER INTEREST:

01 \_\_\_\_\_

02 \_\_\_\_\_

03 \_\_\_\_\_

04 \_\_\_\_\_

05 \_\_\_\_\_

2006/07

NO ADDITIONAL PRINCIPAL.

SO @ 12/31/07

PRINCIPAL 385,625. —

BANK PRINCIPAL INT. 17,081.48

D. DAILY INTEREST 3,000. —

OTHER INTEREST.

01. \_\_\_\_\_

02 \_\_\_\_\_

03 \_\_\_\_\_

04 \_\_\_\_\_

05 \_\_\_\_\_

06 \_\_\_\_\_

07 \_\_\_\_\_

2002

GD 0034

|      |                                             |                                                             |           |
|------|---------------------------------------------|-------------------------------------------------------------|-----------|
| SA   | ?                                           |                                                             |           |
| SB   | ?                                           |                                                             |           |
| MAR  | 3/18<br>3/27                                | 58,500<br>4,000                                             | 62,500    |
| APR  | 4/22<br>4/12                                | 5000.-<br>+ 2000.-<br>200.-                                 | 7,200     |
| MAY  | 5/15                                        | 4500                                                        | 4500      |
| JUN  | 6/5                                         | 3,500                                                       | 3500      |
| JULY | 6/5<br>(FURNISH)<br>6/29/02<br>6/21<br>6/17 | <del>3,500</del><br>200<br>- 2,000.<br>1,500<br>- 16,991.70 | 20,591.17 |
| AUG  | 8/12/02                                     | 6,000                                                       | 6,000     |
| SEPT | 9/27/02<br>9/25/02<br>9/10/02               | 40,000<br>3,000                                             | 43,000    |
| OCT  |                                             |                                                             | ± 300.-   |
| NOV  | 11/27/02<br>11/6/02                         | (5500.)<br>2500                                             | (3000)    |
| DEC  | 12/13/02                                    | 2,500                                                       | 2500      |

BANK.  
(PAYMENTS + INTEREST PAYMENTS)  
7 x 774.88  
= 5,424.16

169,791.17

GD 0035

2003

|     |             |        |           |
|-----|-------------|--------|-----------|
| Jan | 1/31/03     | 200.   | ] 2,800.- |
|     | 1/17        | 500.   |           |
|     | 1/4         | 500    |           |
|     | 1/15        | 1600.  |           |
| Feb | 2/5         | 2000   | ] 8500.-  |
|     | 2/19        | 1,500. |           |
|     | 4/10 (cash) | 5000   |           |
| Mar | 3/5         | 2000.- | ] 3,700.- |
|     | 3/10        | 1700.  |           |
| Apr | 4/1         | 7500   | ] 40,300  |
|     | 4/11        | 30,000 |           |
|     | 4/16        | 500.   |           |
|     | 4/24        | 1,500  |           |
|     | 4/29        | 300.-  |           |
|     | 5/5         | 500.-  | ] 2,300.- |
|     | 5/11        | 200    |           |
|     | 5/18        | 500    |           |
|     | 5/30        | 500    |           |
| Jun | 5/25        | 500    |           |

BANK

PRINCIPAL & INTEREST  
12 X 744.88

= \$ 9,298.56 ✓

D. OATLEY (\$40,000)

PRINCIPAL. 40,000 (April '03)  
INTEREST @ 10%  
(9 MONTHS). 3,000 INTEREST.

|     |      |      |         |
|-----|------|------|---------|
| Jul |      |      |         |
| Jul | 8/27 | 400. | ] 400.- |

|     |       |     |         |
|-----|-------|-----|---------|
| Aug |       |     |         |
| Oct | 10/15 | 300 | ] 300.- |

Nov ✓

Dec.

58,300



Windows Live Home Search Spaces OneCare

Inbox New Reply Reply all Forward Delete Junk

Drafts Move to

Options

Sent Deleted FW: Sefton Resources, Inc.

Advanta From: Gary Dillabaugh (gdillabaugh@seftonresource)
Sent: Mon 2/11/08 9:07 AM
Reply-to: gdillabaugh@seftonresources.com
To: 'Gary Dillabaugh' (gdillabaugh@msn.com)

no punch

- Brent
Capital One
Chase
citicards
credit cards
Dictionary
discover
ebay
Ecuador
Family
Golf
Graduation
Greeting C...
Humor
Intuit
itunes
Jim loan
Land
Lisa-Africa
Lisa-Centr...
Lisa-UCSF
Miscellaneous
MSN
Office
olympus
Photos
Phrase a week
Pithy stat...
Practice Sale
Prather
Prostate S...

From: Jim Ellerton [mailto:jjellerton@seftonresources.com]
Sent: Saturday, February 09, 2008 11:06 AM
To: gdillabaugh@seftonresources.com
Subject: RE: Sefton Resources, Inc.

Gary: After reviewing all the data —my proposal is as follows: At 12/31/08 the number owing is \$350,000.- —This is the rough number we agreed to, but reflecting a final number taking into account that you received money from the company (approx.,\$285,000.-), travel expenses (plus other expenses) , non-promoted business opportunities and of course 'stock options' (which were an additional expense to the company) —I have not broken it down into categories such as principal, interest and/or any credit of either for aforementioned "perks". —As far as a proposed payment plan, I suggest the following —\$50,000.- before end of 2008 and \$100,000.- on or before end of 2009, 2010 and 2011. if such payments are not made, interest will accrue at 8% from day of being delinquent and at such time all remaining on note will be due. —Such a repayment schedule, I believe, is fair when you consider the opportunities being provided by the company (consulting, travel opportunities, stock options etc.) —jim

From: Gary Dillabaugh [mailto:gdillabaugh@seftonresources.com]
Sent: Wednesday, February 06, 2008 8:11 AM
To: jjellerton@seftonresources.com
Subject: FW: Sefton Resources, Inc.



GD 0013

- Purchases
- Renters
- Roy and Joy
- Running
- Sefton
- Soccer
- Travel
- Travel Doc...
- Trevor
- Verizon
- Manage folders
- Today
- Mail
- Contacts
- Calendar

Good morning Jim. How are we progressing on determining a final figure and how we can structure the repayment? Give me a call when you have a chance.

Gary

**From:** Steve Waterhouse [mailto:swaterhouse@dmicros.com]  
**Sent:** Wednesday, February 06, 2008 4:34 AM  
**To:** contact@seftonresources.com  
**Subject:** Sefton Resources, Inc.

Dear Sir/ Madam,



be ready



Could you please let me know when you are likely to release a trading update, I have been a shareholder for some time and am starting to get concerned about the lack of information being released about production and revenues. In addition to this I have watched the share price drop to new lows.

Thanks in advance.

Steven Waterhouse C.Eng B.Eng (hons)

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© 2008 Microsoft Privacy Legal

Help Central Account Feedback

GD 0014

\_0213120407\_001.pdf - Adobe Reader

From: **Jim Ellerton** (jjellerton@seftonresources.com)

Sent: Wed 2/13/08 12:13 PM

Reply-to: jjellerton@seftonresources.com

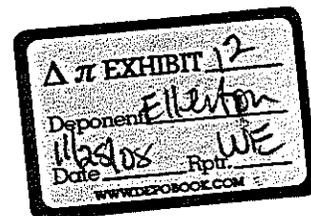
To: gdillabaugh@seftonresources.com

Cc: 'Gary Dillabaugh' (gdillabaugh@msn.com)

Security scan upon download  TREND

0

Gary: The numbers I started from were approx. \$ 400,000.- before any interest and credit for money( via SEFTON), opportunities for stock (ground floor pricing), stock options(granted), expense paid trips —ongoing opportunities to work with very good group (same sort of situations as before) —JIM



GD 0008

03/03/2003 19:37 3037956676

GARY DILLABAUGH

PAGE 01

GD 0019

### PROMISSORY NOTE

\$40,000

Date: December 01, 2002  
Greenwood Village, Colorado

This is an addendum to that specific promissory note dated May 31, 2002 (a copy herby attached) in the amount of \$50,000 between Sefton Resources and Mr. Don Oatley.

On November 30, 2002 Mr. Donald Oatley was paid the accrued interest of \$2,500 and \$10,000 of the principal leaving a balance of \$40,000 owing.

It is agreed that Dr. Gary Dillabaugh will assume the obligation of the maker as delineated in the original promissory note dated May 31, 2002 and that the maker Sefton Resources, Inc. and the guarantor John James Ellerton are released.

The principal amount of \$40,000 will accrue interest at the rate of 10% per annum beginning December 1, 2002, with the interest plus \$4,000 of principal payable every three months, specifically February 28, 2003, May 30, 2003 and the balance of principal and interest due August 30, 2003. All other provisions of the original promissory note shall remain in effect.

By: Gary Dillabaugh  
Dr. Gary Dillabaugh

Agreed: Donald F Oatley  
Donald F. Oatley

**COPY**



# GARY

Note Brent 2,475.88 (21373.05) ✓  
 Note GAD 7600 ✓  
 Sefton 9/30/03 1500 ✓ Candy Salary  
 10/8/03 5000 Cash chkd Jim  
 10/8/03 10,750 1100 ✓ Medicine Jim  
 10/13/03 750 ✓  
 10/13/03 ~1400 Computer:  
 5/03 1000 5/30 #10411

TEG 9/25/03 3000 ✓  
 10/3/03 600 ✓ 3600

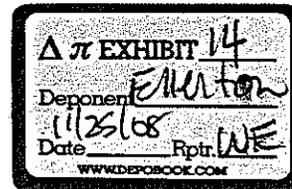
Seymour Pierce 872.49 ✓ 872.49

TICKETS TO NY JAN (not take) 500 + 282 = \$785 change tickets  
 LONDON MARCH ( " ) 1106.19 4512.67  
 ALGAMA JUL (Jim) 667.48  
 LONDON MAY (Jim) 1954

WEB SITE 164.83 ✓

MISC 140.98 1398.98  
 BOB MENDES 341.45  
 Lunch + Parking 751.72 ✓

GRAND TOTAL 50,210.02



September 20, 2007

Jim

Re INDEBTEDNESS

My calculations are as follows and a  
proposal and suggestions for repayment.

As of 6/30/07

① \$623,344.80 assuming \$587,219 figure for 12/31/06  
correct

② \$64,548 additional amount for loans ~~not~~  
in 2003 not accounted for previously  
( $\$42,500 \times 12\% \times 3.5 \text{ yr}$ ) per attached

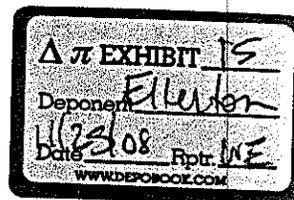
③ 46,333 shares ( $195,000/15$ )

④ General Mining (25% ownership)

I would propose a multiple level approach  
secured by your stock and life insurance.

A. An initial cash payment of \$200,000

B. A combination of  
a) partial salary to decrease loan



ELL00028

- b) options - new and or assignment of some of Jim's options
- c) direct transfer of shares
- d) monthly amount repayment schedule
- e) possibly some repaid directly by Sefton TEG USA
- f) assumption <sup>by Jim</sup> of any indebtedness of mine to Sefton
- g) sale of stock ~~and~~ at certain price
- h) generous expense allowance

C. Jim having a first right of refusal on my shares

D. Gary agreeing to waive the original provision for Gary to have 1/2 Jim's options

I.D. NOT INCLUDES NUMBER OF THINGS ON PAGE 2 (2003)

GATUM

150,000

BRET S. ELLETON

3039 SOUTH COURT ST

SEATTLE, WASHINGTON 98144

SOC SEC # 521-31-8023

150,000

SONYA SHAW

AS ABOVE (ADDRESS)

SOC SEC #

150,000

DAVID M. ELLETON

ADDRESS AS MOLLY MCQUEE

SOC SEC # 521-31-8166

1069 Pearl St Ste 7

Den 80203

75,000

MOLLY MCQUEE

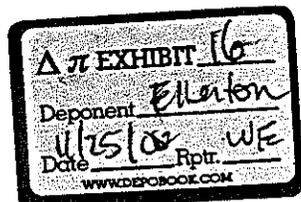
150,000

STEPHANIE A. ELLETON

1574 MARION ST, #16

DENVER, CO 80218

SOC SEC # 521-31-6999





Jun 9 2008  
12:13PM

DISTRICT COURT, CITY AND COUNTY OF  
DENVER, COLORADO

Court address: 1437 Bannock Street, Room 256  
Denver, Colorado 80202  
Phone Number: 720-865-8301

**Plaintiff:** GARY DILLABAUGH

v.

**Defendant:** JOHN J. ELLERTON

Jack R. Luellen, #29017  
BEATTY & WOZNIAK, P.C.  
216 Sixteenth Street, Suite 1100  
Denver, CO 80202-5115  
Phone Number: 303-407-4499  
Fax Number: 303-407-4494  
jluellen@bwenergyllaw.com

Attorneys for John J. Ellerton

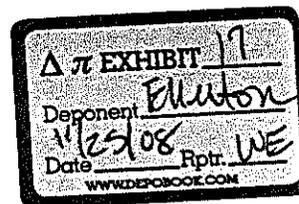
▲ COURT USE ONLY ▲

Case Number: 08CV2877

Div.: 3

**DEFENDANT JOHN J. ELLERTON'S  
C.R.C.P. 26(a)(1) INITIAL DISCLOSURES**

Pursuant to C.R.C.P. 26(a)(1), Defendant John J. Ellerton ("Ellerton") hereby makes his Initial Disclosures. Ellerton reserves the right to supplement these Disclosures as additional information becomes known or available and as discovery proceeds. Ellerton further reserves the right to assert any privileges or protections (including, but not limited to, the attorney-client and work product privileges) that are or may be applicable in connection with testimony from any witness or the production of any documents identified herein.



**I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION RELEVANT  
TO DISPUTED FACTS ALLEGED WITH PARTICULARITY IN THE PLEADINGS  
(C.R.C.P. 26(a)(1)(A))**

John J. Ellerton  
c/o Jack R. Luellen  
Beatty & Wozniak, P.C.  
216 16<sup>th</sup> Street, Suite 1100  
Denver, CO 80202

Mr. Ellerton is the Defendant in this matter and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein.

Gary Dillabaugh  
c/o Gary C. Davenport  
McGloin, Davenport, Severson and Snow  
1600 Stout Street, Suite 1600  
Denver, Colorado 80202-3103

Mr. Dillabaugh is the Plaintiff in this matter and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein

Jeremy Delmar-Morgan  
c/o Sefton Resources  
2050 S. Oneida Street, Suite 102  
Denver, Colorado 80224  
Telephone: 303-759-2700

Mr. Delmar-Morgan is the non-executive chairman of the Board of Directors of Sefton Resources and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein.

Harry Barnum  
c/o Sefton Resources  
2050 S. Oneida Street, Suite 102  
Denver, Colorado 80224  
Telephone: 303-759-2700

Mr. Barnum is an employee of Sefton Resources and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein.

Robert Mackay  
c/o Sefton Resources  
2050 S. Oneida Street, Suite 102  
Denver, Colorado 80224  
Telephone: 303-759-2700

Mr. Mackay is an employee of Sefton Resources and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein.

Tony Ashton  
c/o Sefton Resources  
2050 S. Oneida Street, Suite 102  
Denver, Colorado 80224  
Telephone: 303-759-2700

Mr. Ashton is an employee of Sefton Resources and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein.

W. Robert Mendes  
c/o Sefton Resources  
2050 S. Oneida Street, Suite 102  
Denver, Colorado 80224  
Telephone: 303-759-2700

Mr. Mendes is an employee of Sefton Resources and is likely to have discoverable information concerning the claims and defenses in this action, as well as other matters that may be identified more fully in documents being disclosed herein.

**II. DOCUMENTS, DATA, COMPILATIONS, AND TANGIBLE THINGS IN  
ELLERTON'S POSSESSION, CUSTODY OR CONTROL RELEVANT TO DISPUTED  
FACTS ALLEGED WITH PARTICULARITY IN THE PLEADINGS  
(C.R.C.P. 26(a)(1)(B))**

Ellerton describes the documents listed below either individually or by category and will make its initial disclosure documents available for inspection and copying at the offices of Beatty & Wozniak, P.C., or will make appropriate arrangements with counsel for Plaintiff for the copying and production of such documents.

Additional documents that may prove to be within the scope of Rule 26 may be subject to future production as supplemental disclosures or in response to Rule 34 requests.

- A. December 31, 2000 Letter to Gary Dillabaugh ("Dillabaugh") from Ellerton;
- B. April 2, 2001 Letter to Dillabaugh from Ellerton;
- C. May 31, 2001 Letter to Dillabaugh from Ellerton;
- D. December 31, 2001 Letter to Dillabaugh from Ellerton;
- E. March 12, 2002 Unsigned letter to Dillabaugh from Ellerton;
- F. June 20, 2002 Letter to Ellerton from Dillabaugh;
- G. June 24, 2002 Letter to Dillabaugh from Ellerton;
- H. December 31, 2002 Promissory Note;
- I. October 3, 2007 Email to Dillabaugh from Ellerton;

- J. October 17, 2007 Email to Dillabaugh from Ellerton;
- K. January 8, 2008 Email to Dillabaugh from Ellerton;
- L. January 10, 2008 Email to Ellerton from Dillabaugh;
- M. February 9, 2008 Email to Dillabaugh from Ellerton;
- N. February 12, 2008 Email to Dillabaugh from Ellerton;
- O. February 13, 2008 Email to Dillabaugh from Ellerton;
- P. February 14, 2008 Email to Dillabaugh from Ellerton;
- Q. February 18, 2008 Email to Dillabaugh from Ellerton;
- R. March 6, 2008 Email to Dillabaugh from Ellerton;
- S. March 19, 2008 Email to Dillabaugh from Ellerton;
- T. March 25, 2008 Letter to Ellerton from Gary C. Davenport;
- U. Handwritten notes authored by Dillabaugh and/or Ellerton;
- V. Receipts relating to payments allegedly made by Dillabaugh to Ellerton;
- W. Additional correspondence and other communications between Dillabaugh and Ellerton;
- X. Drafts of agreements, whether eventually executed or not, between Dillabaugh and Ellerton;
- Y. Agreements, including promissory notes, between Dillabaugh and Ellerton, and addenda or amendments thereto;
- Z. Banking and loan documents;
- AA. Any documents needed for impeachment, rebuttal or cross-examination; and
- BB. Any and all documents referred to in Plaintiff's Initial Disclosures herein.

**III. A DESCRIPTION OF THE CATEGORIES OF DAMAGES SOUGHT AND A COMPUTATION OF ANY CATEGORY OF ECONOMIC DAMAGES CLAIMED BY THE DISCLOSING PARTY (C.R.C.P. 26(a)(1)(C))**

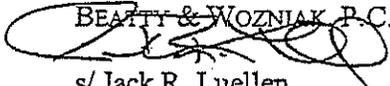
Ellerton is not presently claiming any damages in this proceeding.

**IV. INSURANCE AGREEMENT (C.R.C.P. 26(a)(1)(D)).**

There is no applicable insurance agreement.

Dated this 9<sup>th</sup> day of June, 2008.

Respectfully Submitted,

  
BEATTY & WOZNIAK, P.C.

s/ Jack R. Luellen

Jack R. Luellen, #29017

BEATTY & WOZNIAK, P.C.

216 Sixteenth Street, Suite 1100

Denver, CO 80202-5115

Phone Number: 303-407-4499

Fax Number: 303-407-4494

jluellen@bwenergyllaw.com

**ATTORNEYS FOR DEFENDANT  
JOHN J. ELLERTON**

*Original signature on file in the offices of  
Beatty & Wozniak, P.C.*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 9<sup>th</sup> day of June, 2008, a true and correct copy of the foregoing **DEFENDANT JOHN J. ELLERTON'S C.R.C.P. 26(a)(1) INITIAL DISCLOSURES** was e-served via LexisNexis File & Serve, properly directed as follows:

Gary C. Davenport  
Krista L. Tushar  
Kyle W. Davenport  
McGloin, Davenport, Severson and Snow  
1600 Stout Street, Suite 1600  
Denver, Colorado 80202-3103  
garyd@mdsslaw.com  
kristat@mdsslaw.com

*Original signature on file in the offices of  
Beatty & Wozniak, P.C.*

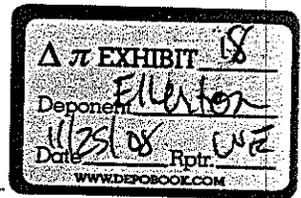
s/ Gabrielle Graham

100319

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Inbox</li> <li>Junk</li> <li>Drafts</li> <li>Sent</li> <li>Deleted</li> <li>Advanta</li> <li>Alaska Air...</li> <li>Bank of Am...</li> <li>Brent</li> <li>Capital One</li> <li>Chase</li> <li>citicards</li> <li>Coomer loan</li> <li>credit cards</li> <li>Dental</li> <li>Dental Con...</li> <li>Dictionary</li> <li>discover</li> <li>ebay</li> <li>Ecuador</li> <li>Family</li> <li>Golf</li> <li>Graduation</li> <li>Greeting C...</li> <li>Home Depot</li> <li>Humor</li> <li>Intuit</li> <li>itunes</li> <li>Jim loan</li> <li>Land</li> <li>Lisa-Africa</li> <li>Lisa-Centr...</li> <li>Lisa-UCSF</li> <li>Miscellaneous</li> <li>MSN</li> <li>Office</li> <li>olympus</li> <li>Paintings</li> </ul> | <p style="text-align: center;">New   Reply   Reply all   Forward   Delete   Junk</p> <p>Move to  Options </p> <p><b>RE: Share tracking</b></p> <p>From: <b>Lucie Heath</b> (Lucie.Heath@computershare.co.uk)<br/>Sent: Mon 4/28/08 12:17 PM<br/>To: Gary Dillabaugh (gdillabaugh@msn.com)</p> <p>Hi Gary</p> <p>It was a Luxembourg AGM that I had to attend so all abit different than the usual AGM's that I attend. Alot of travelling as no direct flight from Bristol so had many a stop off in duty free!</p> <p>I can confirm that the transfers as below were processed from your holding to the individuals on 21 March 2003.</p> <p>Kind regards</p> <p><b>Lucie Heath</b><br/>Computershare<br/>Relationship Manager &gt; Depository Interest Team<br/>Lucie.Heath@computershare.co.uk<br/>T +44 (0)870 703 6187 M +44 (0) 7766330529 F +44 (0)870 703 6116<br/>The Pavilions, Bridgwater Road, Bristol BS13 8AE, UK<br/>www.computershare.com</p> <p>  CERTAINTY   INGENUITY   ADVANTAGE  </p> <p><b>SAVE PAPER - THINK BEFORE YOU PRINT!</b></p> <hr/> <p><b>From:</b> Gary Dillabaugh [mailto:gdillabaugh@msn.com]<br/><b>Sent:</b> 25 April 2008 17:00<br/><b>To:</b> Lucie Heath<br/><b>Subject:</b> Share tracking</p> <p>Hi Lucie</p> <p>Hope you were playing for the long weekend and not off on some boring business conference. I expect there is the possiblility that you were scrutinizing an AGM in some exotic locale - that would be nice!</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



GD 0001

Photos

Phrase a week      A few years ago I transferred some shares and was wondering if you might  
Pithy stat...      be able to confirm that the original tranfer was from me. Currently the  
Practice Sale      shareholders are

Prather              1. Bret Ellerton              10,000 shares C7003829358  
Prostate S...       2. Sonya Shaw              10,000 shares C7003829359  
Purchases           3. Stephanie Ellerton      10,000 shares C7003829360  
Renters              4. David Ellerton          10,000 shares C7003829361  
Roy and Joy         5. Molly McCue              5,000 shares C7003829362

Running             The original transfer was for pre-consolidation shares ie 150,000 and  
Sefton               75,000 shares respectively and took place, I believe, 4 or 5 years ago. The  
Soccer               total at the time would have been 675,000 shares. If you need more  
Travel               information, please email or call me at 303 910-8439.

Travel Doc...      Thanks again for all your help.

Trevor

Verizon             With kindest regards,

Wells 8310         Gary

Wells Farg...  
Wills, Pow...  
Manage folders     Back to work after baby- how do you know when you're ready?

Today               Computershare Investor Services PLC is registered in England & Wales Company No. 3498808. Registered  
Mail                 Office: The Pavilions, Bridgwater Road, Bristol BS13 8AE. Computershare Investor Services PLC is  
                         authorised and regulated by the Financial Services Authority, Registered Office: 25 The North Colonnade,  
                         Canary Wharf, London E14 5HS.

Contacts

Calendar

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<http://www.computershare.com/disclaimer/emea>

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GD 0002

December 9, 2008

Jack R. Luellen, Esq.  
Beatty & Wozniak, P.C.  
216 16<sup>th</sup> Street  
Suite 1100  
Denver, Colorado 80202

RE: Gary Dillabaugh v. John J. Ellerton, District Court, Denver County, State of Colorado, Case No. 08CV2877

Dear Mr. Luellen:

We have enclosed a signature page and amendment sheet along with your ordered copy of the deposition of JOHN J. ELLERTON.

Please have the deponent sign the loose signature page and fill out any necessary amendment sheets before a notary public.

After the deponent has read and signed the appropriate documents, please keep copies for yourself and return the loose signature page and amendment sheets, if any, to our office by JANUARY 9, 2008.

If you fail to attend to this matter by the date indicated above, the deposition will be filed unsigned with the clerk of the appropriate court or counsel, pursuant to the Rules of Civil Procedure.

Thank you for your cooperation.

Sincerely,



Cynthia E. Coon

xc: original deposition  
Gary C. Davenport, Esq.



**J A V E R N I C K**  
& **S T E N S T R O M • L L C**  
*certified shorthand reporters*

3131 South Vaughn Way, Suite 224 • Aurora, Colorado 80014 • (720) 449-0329 • Fax (720) 449-0334

December 9, 2008

John J. Ellerton  
790 Washington Street  
Denver, Colorado 80203  
PERSONAL & CONFIDENTIAL

RE: Gary Dillabaugh v. John J. Ellerton, District Court, Denver County, State of Colorado, Case No. 08CV2877

Dear Mr. Ellerton:

Your deposition taken in the above-entitled case is ready for you to read and sign. Please contact JACK R. LUELLEN, ESQ., at 303-407-4499 regarding your signature. The deposition must be read and signed by JANUARY 9, 2008.

If you fail to attend to this matter by the date indicated above, your original deposition will be filed unsigned with the clerk of the appropriate court or counsel, pursuant to the Rules of Civil Procedure.

Thank you for your cooperation.

Sincerely,



Cynthia E. Coon

xc: original deposition  
Jack R. Luellen, Esq.  
Gary C. Davenport, Esq.



**J A V E R N I C K**  
**& S T E N S T R O M • L L C**  
*certified shorthand reporters*

3131 South Vaughn Way, Suite 224 • Aurora, Colorado 80014 • (720) 449-0329 • Fax (720) 449-0334