

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

CRAIG H. & NATALIA I. WELCH,)	
)	
Appellant,)	APPEALS COURT
)	DKT#2024-P-0109
v.)	
)	
COMMISSIONER OF REVENUE,)	
)	
Appellee.)	
_____)	

APPLICATION FOR DIRECT APPELLATE REVIEW

ON BEHALF OF CRAIG H. & NATALIA I. WELCH

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REQUEST FOR DIRECT APPELLATE REVIEW

Appellants, Craig H. & Natalia I. Welch,¹ respectfully request that this Court grant direct appellate review of this case pursuant to Rule 11 of the Massachusetts Rules of Appellate Procedure. This case presents a significant case of first impression and of substantial public interest: Is the sale of C corporation stock, held for investment, by a nonresident individual subject to personal income tax in Massachusetts under G.L. c. 62, § 5A?

In 2003, Mr. Welch, then a Massachusetts resident, started a new business to develop and market derivatives and collateral management solutions for institutional investors. The business was inadvertently incorporated as AcadiaSoft, Inc. by his counsel without authority. The corporation was quickly dissolved.

In 2005, the business was again incorporated as AcadiaSoft, Inc. ("AcadiaSoft"). AcadiaSoft was formed in Massachusetts initially as an S Corporation and once institutional investors were brought in, then as a C corporation for federal and state tax purposes. Mr.

¹ Natalia Welch is a party to this appeal solely as a result of filing a joint Massachusetts part-year return for the tax year in dispute.

Danny Moyse joined the business at the time of the 2005 incorporation. Mr. Welch and Mr. Moyse each received 750 shares of AcadiaSoft stock at the time the company was formed representing 100% of the ownership interests in the company.

AcadiaSoft sought and received several rounds of loans as well as capital investment over the next several years. In return for the infusion of private and institutional investment capital, Mr. Welch's ownership interest in AcadiaSoft decreased from 50% in 2005 to 11.86% in 2013.

It is undisputed that Mr. Welch was very involved in the business of AcadiaSoft. Mr. Welch, being the founder of the company, was determined to make AcadiaSoft a success. For his efforts, Mr. Welch received monetary compensation in the form of wages. This compensation was reported to Massachusetts as employment income in each of the years received by Mr. Welch. Mr. Welch never received stock options or stock awards of any kind during his tenure at AcadiaSoft.

For family reasons unrelated to his role at AcadiaSoft, Mr. Welch began looking for homes in New Hampshire in January of 2015 and became a resident of New Hampshire in April 2015. Six months after looking

to leave Massachusetts and three months after moving to New Hampshire, in June 2015, the Board of AcadiaSoft offered to purchase 100% the shares of AcadiaSoft owned by Mr. Welch. Mr. Welch thereafter sold 100% of his shares back to AcadiaSoft generating long-term capital gain for federal income tax purposes. Although Mr. Welch reported the stock sale on a timely filed Massachusetts part-year nonresident personal income tax return for 2015, none of the gain from the sale of AcadiaSoft stock was reported as taxable to Massachusetts.

Following an audit of Mr. Welch's 2015 personal income tax return, the Commissioner determined that 100% of the gain realized by Mr. Welch on the sale of AcadiaSoft stock, a C corporation since 2009, was subject to Massachusetts personal income tax under G.L. c. 62, § 5A. According to the Commissioner, Mr. Welch actively participated in the growth of AcadiaSoft rendering the gain on the stock sale taxable by the Commonwealth.

Mr. Welch agrees with the Commissioner that if he had received AcadiaSoft stock as compensation for his services, the income earned on the sale of the stock would be taxable under the laws of the Commonwealth. However, in this case, Mr. Welch received stock of

AcadiaSoft on the day the business was incorporated making no promise of services to the corporation. Thus, the shares of AcadiaSoft owned by Mr. Welch were held for investment. Because the shares were held for investment, the gain on the sale of the AcadiaSoft stock is sourced to New Hampshire, Mr. Welch's state of residence at the time of sale, and not Massachusetts.

G.L. c. 62, § 5A, and the Commissioner's regulations promulgated thereunder, clearly distinguish between the taxability of income tied to compensation and that earned through investment. Caselaw from the Appellate Tax Board and the courts of the Commonwealth dutifully acknowledge this distinction. The Commissioner's position in this case, however, confoundingly ignores decades of well-settled Massachusetts law and his own regulation.

The stock issued to Mr. Welch by AcadiaSoft was not compensation for services performed, directly or indirectly. Mr. Welch held the shares for investment on day one. The Commissioner's legal argument is a sobering wake-up call for all nonresident employees, officers, directors, and owners of Massachusetts' businesses formed as C corporations.

According to the Commissioner, gain from the sale of an investment in C corporation stock is taxable under G.L. c. 62, § 5A where the nonresident owner participated in the growth of the Massachusetts' business. Suffice it to say, all employees, officers, directors, and owners of such businesses meaningfully participate in the growth of the company for which they work. Wake-up call indeed.

STATEMENT OF PRIOR PROCEEDINGS IN CASE²

On April 16, 2016, the Appellant's timely filed a 2015 Massachusetts Non-Resident/Part-Year Personal Income Tax Return. The filed return represented that April 30, 2015 was the last date of the Appellants' residency in Massachusetts.

On November 14, 2018, the Commissioner notified the Appellants that their 2015 Massachusetts Non-Resident/Part-Year Personal Income Tax Return was selected for audit. At the conclusion of the audit, the Commissioner issued a Notice of Intent to Assess to the Appellants for the 2015 tax year. On February 26, 2019, the Commissioner issued a Revised Notice of Intent to Assess to the Appellants for the 2015 tax year.

² A certified copy of the docket entries is appended hereto. See Addendum ("Add.") 34-37.

On March 5, 2019, the Commissioner issued a Notice of Assessment to the Appellants reflecting a tax liability of \$335,968.62 comprised of \$244,182.00 in tax, \$48,836.00 in interest, and \$42,950.62 in penalties. The Commissioner's position was that the gain realized by Mr. Welch in 2015 from the sale of his AcadiaSoft stock was income taxable in Massachusetts.

The Appellants appealed the assessment on or about April 25, 2019, by filing a Form ABT-Application for Abatement. Through correspondence dated October 23, 2019, the Appellants notified the Commissioner that they were withdrawing their consent to permit the Commissioner to act on the application beyond six months from the date of filing. As a result, the application was deemed denied by the Commissioner on October 25, 2019.

On November 7, 2019, the Appellants filed a Petition with the Appellate Tax Board challenging the assessment for the 2015 tax year. The appeal was assigned Docket No. C339531. The parties entered into a comprehensive Statement of Agreed Facts and the case was decided by the Board without oral argument.

On June 17, 2020, the Commissioner issued a Notice of Determination upholding the assessment for the 2015

tax year. Pursuant to the requests of the parties, the Board issued its Findings of Fact and Report on November 29, 2023. The Board concluded that the gain from Mr. Welch's sale of AcadiaSoft stock was taxable by the Commonwealth because it "was of a compensatory nature" tied to his employment with the company. This appeal followed.

STATEMENT OF FACTS RELEVANT TO THE APPEAL

A. Business Operations of AcadiaSoft from 2003-2005

AcadiaSoft was formed on November 17, 2003 as a Massachusetts corporation. Ad. 43. Mr. Welch, a resident of Massachusetts, was listed as the sole shareholder, the President, Treasurer, Clerk, and sole director of the company. *Id.* The business was voluntarily dissolved by his counsel just three months later on February 24, 2004. *Id.*

AcadiaSoft was again incorporated on February 11, 2005 as a Massachusetts corporation. Ad. 43. For federal and Massachusetts tax purposes, AcadiaSoft was an S corporation until 2009 when it became a C corporation. Ad. 43, 101. In conjunction with the incorporation of the business in 2005, Mr. Welch and Mr. Moyse, became 50/50 owners, each receiving 750 shares of

stock in AcadiaSoft. Ad. 44. There were no other shareholders at this time.

Mr. Moyse was the President, Secretary, and co-director of AcadiaSoft. Ad. 44. Mr. Welch was the Treasurer, CEO, and co-director. *Id.* Mr. Moyse, a software engineer, was involved with product development while Mr. Welch primarily directed his efforts toward sales and marketing. Ad. 42, 44. Mr. Welch worked long hours for the company often working weekends to help assure the success of the business. Ad. 44.

There was no formal board of directors. Ad. 44. The business of AcadiaSoft was run solely by Mr. Welch and Mr. Moyse out of their respective homes in Massachusetts. Ad. 51. During this period, AcadiaSoft elected to be treated as an S corporation for federal and state tax purposes. Ad. 101.

B. Business Operations of AcadiaSoft from 2006-2009

In 2006, AcadiaSoft received an investment from certain individual parties totaling \$1 million (the "2006 Angel Investors"). Ad. 45. In 2007, Acadia Soft received a second round of investment from individual investors in the amount of \$1.5 million (the "2007 Angel Investors"). *Id.* The 2006 Angel Investors and the 2007

Angel Investors are collectively referred to as the "Angel Investors." None of the individual Angel Investors worked for AcadiaSoft. *Id.*

Pursuant to a recapitalization of the company to permit stock ownership by the Angel Investors, Mr. Welch and Mr. Moyse each received an additional 99,250 share of stock in AcadiaSoft. Ad. 45. Following the investment by the Angel Investors, the stock ownership of Mr. Welch and Mr. Moyse fell from 50% to 35.9% each. *Id.* Mr. Welch and Mr. Moyse remained the sole directors and officers of AcadiaSoft. *Id.*

On December 16, 2009, AcadiaSoft reincorporated in Delaware and elected to be treated as a C corporation for federal and state tax purposes. Ad. 43, 45.

On December 24, 2009, AcadiaSoft received a \$4 million investment from four financial institutions (the "Series B Transaction"). Ad. 46. In the Series B Transaction, the investors received newly created convertible preferred stock thereby reducing the stock ownership of Mr. Welch and Mr. Moyse to approximately 13% each. Ad. 46-47. Following the Series B Transaction, Mr. Moyse became the President and CEO of the company. *Id.*

In 2009, AcadiaSoft rented office space in Pembroke, Massachusetts. Ad. 51. Later that same year, the company rented another office location in Norwell, Massachusetts. *Id.*

Despite the funding from the Angel Investors, the Series B Transaction, and the continued efforts of Mr. Welch and Mr. Moyse, AcadiaSoft did not make any sales of products to customers during this period. Ad. 95.

C. Business Operations of AcadiaSoft from 2010-2013

In 2010, Mr. Moyse became incapacitated. Ad. 46-47. As a result, Mr. Welch's role expanded at AcadiaSoft. *Id.* In addition to sales, Mr. Welch also became responsible for operations and management. Ad. 46-47. Mr. Welch also took on the role of CEO. *Id.*

In 2012, certain members of the AcadiaSoft Board of Directors discussed replacing Mr. Welch as CEO. Ad. 48. On April 12, 2012, Mr. Chris Walsh was hired as the COO with the expectation that he would be CEO in the future. Ad. 47. In 2013, AcadiaSoft hired a sales executive responsible for North American sales. Ad. 48. Mr. Welch's role turned to closing key accounts. *Id.*

On July 30, 2013, AcadiaSoft received a second round of funding from the same investors of the Series

B Transaction (the "Series C Transaction"). Ad. 48. Following the Series C Transaction, the stock ownership of Mr. Welch was further reduced to 11.86%. *Id.*

D. Business Operations of AcadiaSoft from 2014-2015

In early 2014, AcadiaSoft matured from a startup to a more stable company. Ad. 49. Mr. Walsh, the COO, took on increasingly more responsibility for managing the business. *Id.*

In October 2014, the Board of Directors of AcadiaSoft instructed Mr. Welch to step aside and allow Mr. Walsh to run all operational affairs of the company, including managing personnel, product development, and interaction with the Board. Ad. 49. The Board formed a special committee to discuss the repurchase of AcadiaSoft stock owned by Mr. Welch and Mr. Moyse. *Id.*

In December 2014, the Board asked Mr. Welch to shift his responsibilities as CEO to Mr. Walsh. Ad. 49. Mr. Welch was directed to focus on "big sales" for the company leveraging his personal reputation and network for the benefit of AcadiaSoft. *Id.*

On June 29, 2015, AcadiaSoft received its third round of funding from the same institutional investors (the "Series D Transaction"). Ad. 50. The Series D

Transaction was contingent upon 100% of all common shareholders agreeing to sell their stock back to AcadiaSoft. Ad. 254-255. As a result of the Series D Transaction, the stock ownership of AcadiaSoft was recapitalized. Ad. 50. The AcadiaSoft stock owned by Mr. Welch and Mr. Moyse was repurchased through the recapitalization. *Id.*

E. Mr. Welch's Compensation and Stock Ownership

Mr. Welch never ever had an employment agreement with AcadiaSoft during any of the years he was involved with the company. However, Mr. Welch did receive wage income from AcadiaSoft for his services. Ad. 61-62. This wage income was reported to Massachusetts for state tax purposes. *Id.* Mr. Welch received wage income in the following amounts: \$5,533.77 in 2006, \$7,235.42 in 2007, \$80,415.00 in 2008, \$185,274.00 in 2009, \$192,708.00 in 2010, \$185,000.00 in 2011, \$279,692.00 in 2012, \$245,600.00 in 2013, \$339,664.00 in 2014, and \$556,916.00 in 2015. *Id.*

Mr. Welch was issued 750 shares in AcadiaSoft at the time of the company's formation in 2005. Ad. 43-44. This stock was recapitalized to 100,000 shares after the funding by the individual Angel Investors in 2006. Ad. 45. From 2006 to 2015, Mr. Welch was not issued any

additional shares of stock in AcadiaSoft. Ad. 61. Mr. Welch was not granted stock options or stock awards of any kind. *Id.*

Mr. Welch held his stock in AcadiaSoft from the moment he received it in 2005 until 2015 when he was no longer a resident of Massachusetts. Ad. 41, 44, 50.

F. Facts Relating to Appellants' Residency

For all periods relevant to this appeal until April 30, 2015, the Appellants resided in Lynnfield, Massachusetts. Ad. 40. Beginning in the fall of 2014, the Appellants considered moving out of Massachusetts due to community abuse directed toward Mrs. Welch, an immigrant, and their daughter in school. *Id.* This abuse had occurred for several years. *Id.*

The Appellants began looking for homes in New Hampshire in January 2015. Ad. 41. The Appellants purchased a home in New Hampshire on April 28, 2015. *Id.* The Appellants moved into the new home in Windham, New Hampshire the following day. *Id.* The Appellants sold their home in Lynnfield, Massachusetts on June 24, 2015. *Id.*

As a result of the move to New Hampshire, the Appellants became nonresidents of Massachusetts as of April 29, 2015. Ad. 41. The Commissioner has conceded

the Welch's change in domicile from Massachusetts to New Hampshire effective April 29, 2015. Ad. 257.

G. Facts Relating to Appellant's Tax Reporting

For the tax years 2003 through 2014, the Appellants' filed joint Massachusetts Resident Income Tax Returns. Ad. 40. For the 2015 tax year, the Appellants filed a joint Massachusetts Part-Year Resident Income Tax Return. Ad. 41. On the 2015 return, the capital gain from Mr. Welch's sale of AcadiaSoft stock was reported as not taxable in Massachusetts because the Appellants were residents of New Hampshire at the time of sale. *Id.*

STATEMENT OF ISSUES OF LAW RAISED BY APPEAL

This appeal raises the following issue of law, which was raised and properly preserved before the Board.

1. Is long-term capital gain recognized by a nonresident on the sale of stock in a Massachusetts C corporation subject to tax under G.L. c. 62, § 5A where the nonresident performed services for the corporation in Massachusetts, but did not receive the stock as compensation for any services performed?

BRIEF STATEMENT OF ARGUMENT

I. THE LONG-TERM CAPITAL GAIN RECOGNIZED BY MR. WELCH WAS DERIVED FROM STOCK HELD FOR INVESTMENT UNRELATED TO HIS COMPENSATION FROM EMPLOYMENT IN MASSACHUSETTS AND THEREFORE OUTSIDE THE SCOPE OF G.L. c. 62, § 5A

The undisputed facts of this case are that Mr. Welch received stock in AcadiaSoft at the time the company was formed in 2005 and he never received additional stock in the company. Ad. 43-44, 61. Mr. Welch held this stock until June 29, 2015 when it was sold as part of the recapitalization of AcadiaSoft. Ad. 41, 44, 50. Although Mr. Welch was a Massachusetts resident when he received the stock, he was a domiciliary and resident of New Hampshire at the time of the sale. Ad. 41.

In its Findings of Fact and Report, the Board devotes great effort to explaining Mr. Welch's level of involvement in every aspect of the business of AcadiaSoft. As recounted by the Board, Mr. Welch was the founder of the company, its "chief evangelist," its lead salesman, an officer, a director, and the public face of the business. Ad. 275. Mr. Welch does not - and cannot - dispute these statements of fact. Under Massachusetts law, however, these facts are insufficient to classify the long-term capital gain recognized by Mr.

Welch for federal tax purposes as Massachusetts source income subject to tax under G.L. c. 62, § 5A.

Applicable to the period at issue, G.L. c. 62, § 5A explains when income of a nonresident is subject personal income tax in Massachusetts and provides:

[i]tems of gross income from sources within the commonwealth are items of gross income derived from or effectively connected with: (1) any trade or business, including any employment carried on by the taxpayer in the commonwealth, whether or not the nonresident is actively engaged in a trade or business or employment in the commonwealth in the year in which the income is received.

The phrase "gross income derived from or effectively connected with [] any trade or business" is defined by the statute as follows:

For purposes of this section, gross income derived from or effectively connected with any trade or business, including any employment, carried on by the taxpayer in the commonwealth shall mean the income that results from, is earned by, is credited to, accumulated for or otherwise attributable to either the taxpayer's trade or business in the commonwealth in any year or part thereof, regardless of the year in which that income is actually received by the taxpayer and regardless of the taxpayer's residence or domicile in the year it is received. It shall include, but not be limited to, gain from the sale of a business or of an interest in a business[.]

The import of G.L. c. 62, § 5A is self-evident. In order for income of a nonresident to be subject to personal income tax in Massachusetts, the income must be "attributable to ... the taxpayer's trade or business in the commonwealth." Neither the timing of receipt of the income nor the residency of the taxpayer at the time of receipt determine taxability under the statute. See *McTygue v. Commissioner*, 2010 Mass. Tax LEXIS 29 (2010), *aff'd* 2011 Mass. App. Unpub. LEXIS 952 (2011) (summarizing the effects of the 2003 amendments to G.L. c. 62, § 5A).

Massachusetts caselaw is clear that the trade or business of a partnership, S corporation, and especially a C corporation are separate and distinct from those of its shareholders. For example, in *VAS Holdings & Investments, LLC v. Commissioner*, this Court made unambiguous that under G.L. c. 62, § 5A the activities of a Massachusetts limited liability company could not be attributed to its owners. 489 Mass. 669, 687-688 (2022). See also *Commissioner v. Dupee*, 423 Mass. 617, 619 (refusing to attribute the trade or business of a Massachusetts S corporation to one of its shareholders).

In this case, the trade or business "carried on by the taxpayer" were the employment services provided by Mr. Welch to AcadiaSoft. The trade or business of AcadiaSoft in Massachusetts is not imputed to Mr. Welch.

In order for the long-term capital gain recognized by Mr. Welch to be taxable under G.L. c. 62, § 5A, the AcadiaSoft stock must have been "attributable to ... [Mr. Welch's] trade or business in the commonwealth." In other words, the AcadiaSoft stock must have been issued to Mr. Welch in return for his employment in the company. The undisputed facts in this case, however, are that the stock Mr. Welch received in 2005 was not issued as compensation for employment services provided by Mr. Welch.

What the Board and the Commissioner have ignored is the stipulated fact that Mr. Welch was compensated for the many services he performed in Massachusetts for AcadiaSoft. Despite the fact that the company had no sales activity in the first several years of its existence, Mr. Welch did take a salary from AcadiaSoft for each of the years 2006 through 2015. Ad. 61-62, 95. Mr. Welch reported this salary income to Massachusetts on filed Massachusetts Resident Income Tax Returns for each of these years. Ad. 95.

There is no evidence - and neither the Board nor the Commissioner have claimed otherwise - to support the conclusion that the stock received by Mr. Welch in 2005 was compensation for services performed in 2005, or for any other year. Mr. Welch did not have an employment agreement for any of the years at issue and it is undisputed that Mr. Welch did not receive any stock options or stock awards during his tenure with AcadiaSoft. Ad. 61.

The stock issued to Mr. Welch at the time AcadiaSoft was incorporated in 2005 was held for investment until it was sold in 2015.

II. THE COMMISSIONER'S OWN RULE SUPPORTS MR. WELCH'S POSITION THAT A NONRESIDENT'S CAPITAL GAIN FROM THE SALE OF STOCK IS ONLY TAXABLE UNDER G.L. c. 62, § 5A IN CASES WHERE THE STOCK IS ISSUED AS COMPENSATION FOR EMPLOYMENT SERVICES PROVIDED TO THE MASSACHUSETTS BUSINESS

The Commissioner has promulgated detailed rules interpreting G.L. c. 62, § 5A. The clear language of the Commissioner's rules support Mr. Welch's position in this case.

830 CMR 62.5A.1(3)(c)(8) explains when the income earned by a nonresident from the sale of a business or an interest in a business is considered income from a trade or business carried on in the Commonwealth. The

rule states that income from the sale of an interest "in a sole proprietorship, general partnership, limited partnership, ... or an interest in a limited liability company" is generally considered taxable under G.L. c. 62, § 5A. However, the rule goes on to explain that income from the "sale of shares of stock in a C or S corporation" is generally not subject to tax in Massachusetts "to the extent that the income from such gain is characterized for federal income tax purposes as capital gains."

This statement by the Commissioner relating to the sale of stock in an S or C corporation is entirely consistent with the guidance from this Court that the business of an S or C corporation is separate and distinct from that of its nonresident shareholders. See *VAS Holdings*, 489 Mass. at 687-688

The Department's rule next provides several helpful examples explaining the application of the concepts of G.L. c. 62, § 5A. Of particular relevance is the following example:

Example (3)(c)(8.4). Investor is an out-of-state employee of NationalCorp, a C corporation doing business in Massachusetts. Investor works in NationalCorp's Massachusetts offices. Investor purchases stock of NationalCorp as an ordinary investment

unrelated in any way to his compensation. The gain on Investor's sale of the stock is not Massachusetts source income.

The facts of this example are substantively identical to those in this appeal. The result in the example is not dependent on whether the "Investor" is a blue collar laborer, the CEO, or a board member. Moreover, taxability is not dependent on the "Investor's" level of involvement in the business. If the Commissioner had wanted the characterization of the stock sale gain to turn on how many hours the employee worked, the role of the employee in the company, or the uniqueness of the services performed by the employee, he surely knew how to do so.

According to the Commissioner, what does matter to the result in the cited example is the fact that the "Investor" purchased the stock as an "ordinary investment unrelated in any way to his compensation." In other words, the gain from the sale of stock was not attributable to the "Investor's" trade or business conducted in the Commonwealth - *i.e.*, as an employee. The Commissioner's rule is entirely consistent with Mr. Welch's argument in this case.

There is no ambiguity in 830 CMR 62.5A.1 and, therefore, the Commissioner is bound by its clear language. 830 CMR 62C.3.1(2); *Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.*, 454 Mass. 174, 190 (2009). To the extent this Court concludes that the rule is in any way ambiguous, Mr. Welch must still prevail. See *Cabot v. Commissioner of Corps. & Taxation*, 267 Mass. 338, 340 (1929) (instructing that "tax laws are to be strictly construed" and any "doubts are resolved in favor of the taxpayer").

III. THE COMMISSIONER'S POSITION IS PREMISED ON A MISREADING OF THE HOLDING IN *MCTYGUE*

In his briefing to the Board, the Commissioner primarily relied on the Board's prior ruling in *McTygue*. The dispute in *McTygue* was whether interest income paid on a promissory note and received by a nonresident was taxable under G.L. c. 62, § 5A. The taxpayer, like Mr. Welch in this case, argued that the income he received was not taxable in Massachusetts based on Example (3)(c)(8.4) in 830 CMR 62.5A.1.

The Board in *McTygue* "inferred that [in Example (3)(c)(8.4)] the Commissioner intended to exclude from Massachusetts source income which were essentially passive in nature and unrelated to an individual's

employment by or participation in the entity that was the source of that income." This interpretation of the Commissioner's example, however, actually supports Mr. Welch's position.

Like the "Investor" in the example, Mr. Welch held stock in - and was employed by - a Massachusetts-based corporation. Also, like the "Investor," Mr. Welch acquired the stock in a transaction unrelated to his receipt of compensation for services performed for the corporation. The nonresident taxpayer in *McTygue* fell outside the scope of the Example (3)(c)(8.4) in 830 CMR 62.5A.1 because the interest income he received was linked by a written agreement to his continued employment by the Massachusetts corporation. Such is not the case in this appeal.

IV. THE FUNDAMENTAL FLAW IN THE COMMISSIONER'S ARGUMENT IS THAT IT IGNORES THE ORIGIN OF THE ACADIASOFT STOCK ISSUED TO MR. WELCH

The only transaction in which Mr. Welch acquired stock in AcadiaSoft relates to the incorporation of the company in 2005. On February 11, 2005, Mr. Welch and Mr. Moyse incorporated AcadiaSoft each receiving 750 shares of stock. The receipt of stock by Mr. Welch was a direct result and natural consequence of forming the company in Massachusetts. In no sense could the receipt

of AcadiaSoft shares by Mr. Welch on February 11, 2005 be deemed compensatory in nature. At that time, AcadiaSoft had not conducted any business.

As stated by the Board in this case, "Massachusetts has a right to tax [the income] based on the income's provenance." Ad. 273. In this case, however, the "provenance" or "origin" of the income was the issuance of stock to Mr. Welch upon incorporation of AcadiaSoft on February 11, 2005. The Department has cited no documentary evidence to suggest that this stock was issued in the form of compensation for future services to be performed by Mr. Welch for AcadiaSoft.

The Commissioner's argument effectively transmutes what is clearly stock received in return for forming a legal entity in 2005 into compensation earned by Mr. Welch in return for an undocumented agreement to perform services at some future undetermined time. This is true despite the fact that (1) Mr. Welch did receive wage income for the services he performed for AcadiaSoft in each of the years at issue and (2) there exists no documentary evidence reflecting an agreement between Mr. Welch and AcadiaSoft that the stock he received in 2005 was part of the compensation he was to receive for performing services for the company.

WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate where an appeal presents (1) questions of first impression or novel questions of law; (2) state or federal constitutional questions; or (3) questions of substantial public interest. See Mass. R. App. P. 11(a). Direct appeal review is warranted in this case because it presents a novel question of law that is of substantial public interest.

First, this appeal raises a novel question of law. Although there have been several decided cases addressing the scope of G.L. c. 62, § 5A, none of these rulings address the unique issues raised in this appeal. Specifically, can a key employee of a Massachusetts S or C corporation ever own stock for investment purposes? Under the Board's ruling, if a nonresident key employee spends any time in Commonwealth working for a Massachusetts S or C corporation, the gain from the sale of the stock is at risk of being subject to tax under G.L. c. 62, § 5A.

This appeal also raises questions of substantial public interest. Nonresident owners of stock in a Massachusetts S or C corporation are entitled to clarity regarding the circumstances under which capital gain on

the sale of stock is taxable by the Commonwealth. The Board's decision in this case brings into question: (1) when a Massachusetts S or C corporation will be respected as a separate entity apart from its shareholders and (2) the level of involvement a nonresident shareholder can have in the activities of a Massachusetts S or C corporation before stock held for investment becomes compensatory in nature under G.L. c. 62, § 5A.

The facts of this case are not exceptional. In any given year, there are innumerable S and C corporations doing business in the Commonwealth. Substantial numbers of these businesses have nonresident employees, officers, or directors that travel to work - even if on rare occasion - in offices located in Massachusetts. As a result, the Massachusetts tax treatment of the gain realized on the sale of stock owned by these individuals is indisputably a question of substantial public interest.

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Dated: February 22, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify, under penalties of perjury, that this brief complies with Massachusetts Rules of Appellate Procedure that pertain to the filing of briefs and appendices, including, but not limited to:

Rule 11(b) (applications for direct appellate review);
Rule 16(a)(13) (addendum);
Rule 16(e) (references to record);
Rule 18 (appendix to briefs); and
Rule 20 (form and length of briefs, appendices, and other documents).

Specifically, this brief was written in Courier New, 12 point font, and created on Microsoft Word (v. 2010). Not including the non-exclusionary pages, the Brief contains 33 pages.

I further attest that this brief is being filed and service via electronic filing.

/s/ Michael J. Bowen
Michael J. Bowen

February 22, 2024

CERTIFICATE OF SERVICE

Pursuant to Massachusetts Rule of Appellate Procedure 13(e), I hereby certify under penalties of perjury, that on February 22, 2024, I have made service of this Application for Direct Appellate Review filed in the matter entitled Craig H. & Natalia I. Welch v. Commissioner of Revenue, 2024-P-0109, currently pending in the Appeals Court via the Court's Electronic Filing System upon counsel for the Commissioner of Revenue:

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/s/ Michael J. Bowen
Michael J. Bowen

February 22, 2024

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COURT Appellate Tax Board

CLERK'S OFFICE

Date: January 25, 2024

RE: Craig H. & Natalia I. Welch
v.
Commissioner of Revenue

Docket No. C339531

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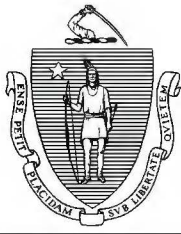
NOTICE OF ASSEMBLY OF RECORD ON APPEAL

In accordance with rules of Appellate Procedure, Rule 9, subsection (d), notice this day has been sent to the clerk of the Appeals Court for the Commonwealth along with two certified copies of docket entries. Record has been fully assembled in the office of the clerk of the

Appellate Tax Board
(Name of Court)

In accordance with Rules of Appellate Procedure, Rule 10, subsection (a) and (b), the appealing party must enter the case in the Appeals Court for the Commonwealth within ten (10) days of receipt of this notice. This notice does not constitute entry in the Appeals court for the Commonwealth.


Clerk
APPELLATE TAX BOARD
A TRUE COPY
ATTEST  **CLERK**



The Commonwealth of Massachusetts
Appellate Tax Board
100 Cambridge Street
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Craig H. & Natalia I. Welch v. COR

Docket# : **C339531--DOR**

Status : **Findings Promulgated**

Appellant(s)	Representative(s)
Craig H. & Natalia I. Welch	Michael J. Bowen, Esq. Ackerman, LLP 50 N. Laura Street, Suite 3100 Jacksonville, FL 32202 ph: (904) 598-8625

Appellee(s)	Representative(s)
Commissioner of Revenue DEPARTMENT OF REVENUE County	Julie A. Flynn, Esq. Department of Revenue, Litigation Bureau 100 Cambridge Street, 7th Floor Boston, MA 02114 ph: 6176263314

Subject Property	Property Assessment
, MA DEPARTMENT OF REVENUE County	\$0.00

Schedule
11/22/2021 10:00AM Hearing

Board Members / Stenographers / Clerks		
Board Member :	Stenographer :	Clerk :
None Assigned	None Assigned	None Assigned

View Chronology	
Date	Action
11/07/2019	Docket Number Assigned; Clerk Notifies
11/07/2019	Entry Fee Paid
11/07/2019	Petition Filed
11/15/2019	Notice to Commissioner of Revenue

11/26/2019	Appellee Appearance of Julie A. Flynn, Esq. filed.
06/22/2020	Appellees Answers Filed
06/22/2020	First Request for Production of Documents by Appellee
06/22/2020	First Set Interrogatories Filed by Appellee
03/08/2021	Hearing Scheduled - 05/17/2021
04/01/2021	Hearing Scheduled Cont. from 5/17/2021 to 9/22/21
04/01/2021	Parties request a discovery deadline of 8/23/21 & an exchange of witness dealine by 7/23/21
05/11/2021	Appellee's Unopposed Motion for Depositions
05/17/2021	Hearing
05/20/2021	Order Issued; Appellee's Unopposed Motion for Depositions is Allowed.
05/24/2021	Motion Session
09/08/2021	Attorney Appearance filed for the Appellant - Richard M. Stone, Esq.
09/08/2021	Hearing continued to 11/10/2021
09/13/2021	Appellant's Memorandum of Undisputed Facts and Memorandum of Law
09/13/2021	Appellant's Motion to Decide Case without Oral Testimony or Arguments Under Rule 1.31
09/22/2021	Hearing
10/15/2021	Order Issued; Appellant's Motion to Decide the Case Without Oral Testimony or Arguments is denied.
11/02/2021	Case to be submitted on Agreed Statement of Facts
11/08/2021	Hearing Scheduled - cont to 11/22/2021 - Rule 1.31 Agreed Statement of Facts - No hearing
11/10/2021	Hearing
11/23/2021	Statement of Agreed Facts - with Stipulated Exhibits 1 - 73
01/04/2022	Order Issued; Post-trial briefs due 01/24/2022 & Reply briefs due by 02/24/2022
01/24/2022	Post Trial Brief - filed by appellant
01/24/2022	Post Trial Brief - filed by appellee
02/24/2022	Appellants' Reply brief filed.
02/24/2022	Reply Brief - by appellee
07/26/2022	Order Issued; See memo Having considered concerns expressed by the parties, the Board allows each party to submit an additional brief addressing the effect, if any, of the Supreme Judicial Court's decision in VAS Holdings & Investments LLC v. Commissioner of Revenue, 489 Mass. 669 (2022), on the disposition of this appeal. Such brief shall be submitted to the Board within thirty (30) days of this Order. A party that chooses not to submit an additional brief shall notify the Board within fourteen (14) days of this Order.
08/25/2022	Supplemental Brief - filed by appellant
08/25/2022	Supplemental Brief - filed by appellee
09/21/2022	Decision for Appellee
09/23/2022	Request for Findings of Fact and Report filed - Appellee
09/27/2022	Request for Findings of Fact and Report filed - Appellant
11/29/2023	Findings of Fact & Report promulgated.
12/21/2023	Attorney Appearance filed by Appellant - Michael J. Bowen, Esq.

12/21/2023

Notice of Appeal filed by the Appellant.

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CRAIG H. AND NATALIA I. WELCH,)	
)	
Appellants,)	
)	DOCKET NO. C339531
v.)	
)	
COMMISSIONER OF REVENUE,)	
)	
Appellee.)	
)	

STATEMENT OF AGREED FACTS

Pursuant to Rule 23 of the Appellate Tax Board Rules of Practice and Procedure, 831 C.M.R. 1.23, the parties to this appeal hereby stipulate and agree for the purposes of this appeal to the following matters. In so stipulating, the parties expressly reserve their rights to contest the materiality and relevance of any facts or documents herein, but waive all other objections to the admissibility of the stipulated facts and documents except as specifically set forth herein. The parties further stipulate and agree that the exhibits attached hereto are authentic and waive any objection to the admissibility of duplicates in lieu of originals of such exhibits. Finally, the parties stipulate and agree that for purposes of the reply briefs, the parties can rely on facts not specifically listed in this Statement of Agreed Facts as long as the facts are included in the Stipulated Exhibits attached hereto.

THE APPEAL

This is an appeal pursuant to G.L. c. 58A, § 6, and G.L. c. 62C, §§ 39(c) and 5A from the refusal of the Commissioner of Revenue (the “Commissioner”) to abate personal income tax, interest, and penalties assessed against Craig H. and Natalia I. Welch (collectively the “Appellants”) for the tax

year 2015. The only issue in this appeal is whether the long-term capital gain realized by Craig Welch on the sale of his shares of common stock in AcadiaSoft, Inc. (“AcadiaSoft”) was subject to tax in Massachusetts.¹The Commissioner is not contesting that the Appellants changed their domicile to New Hampshire on April 30, 2015.

PRIOR PROCEEDINGS

1. On April 16, 2016, the Appellants timely filed their 2015 Massachusetts Non-Resident/Part Year Personal Income Tax Return indicating April 30, 2015, as the Appellants’ last date of Massachusetts residency. *See Exhibit 1.*

2. On November 14, 2018, the Commissioner issued to the Appellants a Notice of Selection of Audit for the 2015 tax year. *See Exhibit 2.*

3. On January 18, 2019, the Commissioner issued a Notice of Intent to Assess to the Appellants for the 2015 tax year. *See Exhibit 3.*

4. On February 26, 2019, the Commissioner issued a Revised Notice of Intent to Assess to the Appellants for the 2015 tax year. *See Exhibit 4.*

5. On March 5, 2019, the Commissioner issued a Notice of Assessment as summarized below.

Year	Tax	Interest	Penalties	Total
2015	\$244,182.00	\$48,836.00	\$42,950.62	\$335,968.62

See Exhibit 5.

6. On or about April 25, 2019, the Appellants timely filed a Form ABT-Application for Abatement for the 2015 tax year (“2015 Abatement Application”). *See Exhibit 6.*

¹ Natalia Welch is a party to this appeal solely as a result of filing a joint Massachusetts part-year return for the year at issue.

7. By letter dated October 23, 2019, the Appellants informed the Commissioner that pursuant to Chapter 58A, Section 6, the Appellants were withdrawing their consent for the Commissioner to act upon their abatement application beyond six months from the date of filing. *See Exhibit 7.*

8. On or about November 4, 2019, the Appellants filed their Petition with the Appellate Tax Board. The appeal was assigned Docket No. C339531. *See Exhibit 8.*

9. On June 17, 2020, the Commissioner issued a Notice of Determination informing the Appellants that their 2015 Abatement Application was denied. *See Exhibit 9.*

10. As of November 9, 2021, the total assessed by the Commissioner, including, tax, interest, and penalty, is \$381,866.08.

11. Appellants filed a joint Interest and Dividend Tax return as residents in New Hampshire for the period April 30, 2015 to December 31, 2015 and reported all interest and dividend income earned for such eight-month period in New Hampshire and paid \$190.00 in New Hampshire taxes. *See Exhibit 72.*

THE APPELLANTS' RESIDENCE

12. Until April 30, 2015, the Appellants resided in Lynnfield, Massachusetts.

13. From 2003 through 2014, the Appellants filed Massachusetts Resident Income Tax Returns and did not claim any credits for taxes paid to other jurisdictions and did not file income tax returns in any other jurisdictions.

14. Craig Welch testified that beginning in the fall of 2014 and continuing through early 2015, the Appellants wanted to move out of Massachusetts due to the community abuse to Mrs. Welch, an immigrant, and their daughter in school. *See Exhibit 60, page 161 and Exhibit 64 page 1.*

15. The Appellants began looking for houses in New Hampshire in January of 2015. They did this because they were assured they could buy a house without the need to sell any of AcadiaSoft's shares. *See Exhibit 69.*

16. After several houses they were interested in fell through, they made an offer on the home they ultimately purchased on March 24, 2015, they purchased it on April 28, 2015 and on April 29, 2015, the Appellants moved to Windham, New Hampshire. *See Exhibits 65 and 70.*

17. After the sale of their Lynnfield residence, the Appellants owned no real property within the Commonwealth.

18. Appellants were part-year Massachusetts residents through April 30, 2015 and filed a Part Year income tax return for such period. The Appellants bought the house in New Hampshire and moved there April 29, 2015. *See Exhibit 65.* The vacant house they still owned in Massachusetts was then fully painted to ready it for sale. An open house was held May 23, 2015, where they received seven offers. They accepted one offer and the closing took place June 24, 2015.

19. Craig Welch testified that beginning in January of 2015, he decided that he and his family would move to New Hampshire. Craig Welch and family focused on Southern New Hampshire due to his son's day-student status at Phillips Academy in Andover. They had been unhappy living in Massachusetts for several years due to poor treatment of his wife and child due to Mrs. Welch's immigrant status. *See Exhibit 64, page 1 and Exhibit 60, pages 160-161.*

20. Craig Welch testified: "I was forced to voluntarily resign" from AcadiaSoft. *See Exhibit 60, Page 148.* He sold his shares back to the company that same day.

21. The Appellants filed a 2015 Massachusetts Part-Year Resident Income Tax Return. The return was prepared by their CPA who reported the capital gain as not taxable in Massachusetts. The CPA did not report on this return the \$4,744,759.96 of gain realized in the sale of Craig Welch's AcadiaSoft's common stock, as such stock was sold on June 29, 2015 while they were not resident of

the Commonwealth of Massachusetts. Such amount was reported on the federal income tax return for such year and was disclosed on the part year resident return to Massachusetts, but excluded from income taxable in Massachusetts. *See Exhibit 1.*

22. When Craig Welch was asked if there was a tax avoidance motive to his move out of Massachusetts, he testified “I didn't think I was -- originally? The answer is no. Originally, I thought we were selling for stock. I didn't know -- between the window and the beginning of October to June, whatever it was, I was under the impression I was getting ICAP stock.” *See Exhibit 60, pages 161-162.*

ACADIASOFT

I. General Overview of the business

23. AcadiaSoft is still an active business and develops and markets derivatives and collateral management solutions for institutional investors.

24. Craig Welch started AcadiaSoft by himself before it was incorporated. *See Exhibit 60, pages 17 and 18 and Exhibit 31.*

25. In founding AcadiaSoft, Craig Welch wanted to build an industry utility that essentially became the worldwide dominant player in derivatives collateral. *See Exhibit 60, page 24.*

26. Craig Welch refers himself as the AcadiaSoft's chief evangelist as he built up the support for AcadiaSoft's products and established those products as standard in the derivatives community. *See Exhibit 60, page 21.*

27. Danny Moyse, a software engineer, joined AcadiaSoft in 2005. AcadiaSoft was formed as a corporation on February 11, 2005. Danny Moyse and Craig Welch were each given a 50% interest in the company, and Danny Moyse was given a 50% interest in the company as Certificate # 1, and Craig Welch was given a 50% interest in the company as Certificate #2 at the same time. *See Exhibits 12 and 31.*

28. Starting in 2009, AcadiaSoft has been taxed as a C Corporation.
29. From 2003-2015, AcadiaSoft's headquarters were in Massachusetts.
30. The first product AcadiaSoft sold was Acadia Collateral Manager (ACM). *See Exhibit 60, page 18.*
31. Craig Welch was involved in the development of ACM. *See Exhibit 60, page 19.*
32. MarginSphere became a successful product around 2011-2012 once the Dodd-Frank Wall Street Reform and Consumer Protection Act became effective. *See Exhibit 60, page 35.*
33. By the end of 2009, four individuals worked at AcadiaSoft: Craig Welch, Danny Moyse and two programmers. *See Exhibit 60, page 21.*
34. By 2014, AcadiaSoft had 24 employees. *See Exhibit 6, page 68.*
35. From 2005 through 2015, AcadiaSoft filed Massachusetts Corporate Excise Returns apportioning 100% of its income to Massachusetts.
36. Craig Welch was an employee of AcadiaSoft starting in 2005 and held various titles and responsibilities.

II. Corporate Governance

37. AcadiaSoft was first organized in Massachusetts on November 17, 2003 and voluntarily dissolved on February 24, 2004. *See Exhibits 10, 11.*
38. Craig Welch was named the President, Treasurer, Clerk, and sole director of AcadiaSoft from November 17, 2003 to February 24, 2004. *See Exhibits 10, 11.*
39. AcadiaSoft was later organized in Massachusetts by Craig Welch on February 11, 2005. *See Exhibit 12.*
40. Danny Moyse joined AcadiaSoft in February 2005 as President, Chief Technology Officer and co-director. *See Exhibit 12 and Exhibit 60, page 25.*

41. On February 11, 2005, AcadiaSoft issued 750 shares of common stock to Craig Welch and 750 shares of common stock to Danny Moyse. Both are considered the founders of AcadiaSoft. *See Exhibits 31, 53.*

42. Craig Welch and Mark Stein, Esq. (outside counsel to AcadiaSoft) testified that Mr. Moyse was the Chief Technology Officer and Craig Welch focused on sales. *See Exhibit 60, page 25 and Exhibit 61, page 90.*

43. From February 11, 2005, through December 24, 2009, Craig Welch and Danny Moyse were the sole directors of AcadiaSoft. Craig Welch was Chief Executive Officer and Treasurer and Danny Moyse was President and Secretary during that time period. *See Exhibits 12-22 and Exhibit 30.*

44. From 2003 through 2009, there was no formal Board of Directors. The business was run by Craig Welch and Danny Moyse. *See Exhibit 62, Response No. 12.*

45. After the first institutional funding of 2009, AcadiaSoft hired a sales person to assist Craig Welch but he remained the chief evangelist. *See Exhibit 60, page 42.*

46. Craig Welch considered AcadiaSoft his creation and wanted to make it successful. *See Exhibit 60, pages 42-43.*

47. At the inception of the business, Craig Welch performed many roles in AcadiaSoft by creating the desire for AcadiaSoft's products with its potential customers, designing the products, selling them and financing them. *See Exhibit 60, page 21.*

48. From 2003 through 2009, Craig Welch worked 14 hours a day, 5 days a week. He also worked 5 to 6 hours on Saturdays and Sundays. *See Exhibit 60, page 22.*

49. After December of 2009, Craig Welch worked from 4:00 AM through 5:00 PM Monday through Friday and also worked on week-ends. *See Exhibit 60, pages 22-23.*

50. Craig Welch "worked and worked and worked because [he] believed in what [he] was doing." *See Exhibit 60, page 55.*

51. Craig Welch was looking forward to a payout from his hard work at some point in time. *See Exhibit 60, page 155.*

52. From 2003 through June of 2015, Craig Welch worked exclusively for AcadiaSoft. *See Exhibit 60, page 23.*

53. From 2009 through July 2014, Craig Welch was a member of the Board of Directors and a member of the management team. *See Exhibit 62, Response No. 12.*

54. From 2006 to 2007, AcadiaSoft raised funding from individuals (“Angel Investors”). In 2006, fifteen to twenty Angel Investors invested 1 million dollars into AcadiaSoft. In April and June 2007, the Angel Investors invested another \$1.5 million into AcadiaSoft. *See Exhibit 60, page 36.* The 2007 Angel Investors were for the most part the same 2006 Angel Investors plus a few additional ones. *See Exhibit 60, pages 29-30 and Exhibit 31.* Craig Welch, Danny Moyse and the Angel Investors held all of the common stock.

55. None of the Angel Investors worked at AcadiaSoft. *See Exhibit 60, page 31.*

56. Craig Welch committed to the Angel Investors in 2006 and in 2007 to do his best job, to get them their money back as well as a handsome return. *See Exhibit 60, pages 32 and 36.*

57. On April 30, 2006, Craig Welch and Danny Moyse were each issued 99,250 additional shares of AcadiaSoft’s common stock as part of a recapitalization to admit the Angel Investors. *See Exhibit 31.*

58. As of December 15, 2009, the Angel Investors owned a 28.2% of the company’s common stock. Craig Welch and Danny Moyse owned the remaining 71.8% of the common stock, each owning 35.9% of the common stock, being a dilution from 50% of common stock each had previously owned. Craig Welch and Danny Moyse were still sole directors and officers of AcadiaSoft at this time. *See Exhibit 31.*

59. On December 16, 2009, AcadiaSoft incorporated in Delaware. *See Exhibit 46.*

60. On December 18, 2009, AcadiaSoft, a Massachusetts corporation, merged into AcadiaSoft, a Delaware corporation. The merger was in anticipation of a four million dollar investment by four financial institutions. *See Exhibit 38.*

61. On December 24, 2009, AcadiaSoft entered into its first round of funding with four financial institutions (“Series B Transaction”). *See Exhibits 32-36.*

62. The Series B Transaction investors were financial services firms that were interested in the product created by AcadiaSoft and were using such product as customers of AcadiaSoft. These customers were JP Morgan, Credit Suisse, HSBC and ICAP. *See Exhibit 32*

63. In 2011, certain documents related to the Series B Transaction were amended. *See Exhibits 39-41.*

64. Contemporaneous to the Series B Transaction, a Right of First Refusal and Co-Sale Agreement stated “in the event within 18 months after the date of this Agreement, any Key Holder shall either voluntarily resign from full time employment within the Company (except a resignation for “good reason” or be terminated for cause”), such Key Holder irrevocably grants to the Company an option to repurchase all of the shares of the Key Holder’s Capital Stock.” *See Exhibit 35.*

65. The Key Holders were Craig Welch and Danny Moyse, and each held 100,000 shares of common stock. *See Exhibits 33 and 39.*

66. Key Holders are either the founders of a company or key members of the management team who hold a meaningful amount of stock and who are expected to subject themselves to certain limitations on the disposition of the stock. *See Exhibit 61, page 23.*

67. On December 24, 2009, Danny Moyse became CEO as part of the Series B Transaction until he became incapacitated due to illness, in 2010.

68. On December 24, 2009, Danny Moyse became President of AcadiaSoft as part of the Series B Transaction and Craig Welch became CEO in 2010 after Danny Moyse’ illness. Craig Welch

was elected President and Interim CEO at the meeting of the Board of Directors held on November 2, 2010. *See Exhibit 58, page DOR002631 and Exhibit 60, page 102.*

69. Due to Danny Moyse' illness, Craig Welch had to focus on operations and management, in addition to sales. *See Exhibit 60, page 51.*

70. Due to Danny Moyse' absence, an Operating Committee was established to review and address material issues. *See Exhibit 58, page DOR002631.* The Operating Committee met at least twice a week. *Id.* Craig Welch was a member of the Operating Committee, as well as the Risks Management Committee and the Product Committee. *Id. at pages DOR002662, DOR002701, DOR002723.*

71. Until the end of 2014, all personnel answered to Craig Welch. *See Exhibit 61, page 57.* Until the end of 2014, product development, operations, human resources, legal, compliance, finance, strategy, partnerships, sales answered to Craig Welch. *See Exhibit 61, page 57.*

72. As of December 15, 2009, Craig Welch's 100,000 shares represented 35.9% of the total shares. After the Series B Transaction financing, on December 24, 2009, AcadiaSoft issued 459,180 shares of Convertible Preferred Stock to the institutional investors diluting Mr. Welch's ownership percent to approximately 13%. No additional shares were issued to Craig Welch.

73. With the 2009 institutional funding, there was an expectation that Craig Welch would remain working for AcadiaSoft and that his full-time commitment would be to AcadiaSoft and to the success of AcadiaSoft. *See Exhibit 60, page 42.*

74. Mark Stein, a current law partner at Morgan Lewis, started representing AcadiaSoft as outside counsel in October 2009. *See Exhibit 61, page 41.*

75. On April 10, 2012, Chris Walsh was hired as the Chief Operating Officer with an expectation that he would become CEO at some point in the future. *See Exhibit 60, pages 51-52.*

76. On July 30, 2013, AcadiaSoft entered into its second round of funding with institutional investors (“Series C Transactions”). *See Exhibits 42-45.*

77. As a result of the Series C Transactions, Craig Welch’s ownership was diluted so that his 100,000 shares represented only 11.86% of all the outstanding stock of AcadiaSoft.

78. In 2013, AcadiaSoft hired a sales executive who was put in charge of the North American sales. *See Exhibit 58, page DOR002852.* Craig Welch’s focus was on the closing of key accounts. *Id.*

79. In 2013 and 2014, Craig Welch was trying to open-up the market in Asia-Pacific. *See Exhibit 60, page 64.*

80. Because Craig Welch was the business development representative, he was the one travelling to Tokyo, Singapore and Sydney. *See Exhibit 60, page 65.*

81. Craig Welch worked a lot in 2013 and 2014 but was also happy to see his hard work bear fruit. *See Exhibit 60, page 65.*

82. Beginning in 2012, some members of the Board of Directors discussed replacing Craig Welch as CEO but ultimately decided not to do so. *See Exhibit 60, pages 51-52 and See Exhibit 61, pages 59-61.*

83. From 2006 to 2015, Craig Welch maintained his 100,000 shares of stock and was never awarded any other shares. *See Exhibit 31.* In sum, Mr. Welch’s ownership percent was diluted during this time frame, from 50%, to 35.9%, to 13% to 11.86%.

84. Craig Welch testified that in 2014, while attending a Board of Directors meeting for AcadiaSoft, he felt something was amiss and felt he needed to find out what was going on. By September 2014, he understood that one of the Board members, appointed by one of the global banks, was trying to undermine the value of AcadiaSoft common stock. There was a secret project of that board member, which was designed to develop a product competitive with AcadiaSoft’s product, and

which would reduce AcadiaSoft's value to pennies on the dollar. *See Exhibit 60, pages 66-72 and Exhibit 61, page 83.*

85. On October 3, 2014, Craig Welch relayed an offer from one of the institutional investors, ICAP, to purchase AcadiaSoft's common stock to the Chairman of the Board of Directors, Shea Wallon, and to Mark Stein. Mr. Wallon and Mr. Stein informed Craig Welch that the Board's fiduciary duties required that it establish a formal process to determine the future direction of AcadiaSoft. *See Exhibit 64, pages DOR003545-DOR3546.*

86. In October 2014, the Board of Directors told Craig Welch to stand aside to allow the COO, Chris Walsh, to run all operational affairs for the company, including managing personnel, product development, interaction with the Board on operational matters, etc. *See Exhibit 61, pages 54-56 and Exhibit 62, response 11.* The Board of Directors formed a special committee called the "Founder-Repurchase Committee" to formulate a way to repurchase the shares of common stock held by Craig Welch and Danny Moyse. *See Exhibit 58, page DOR002882.*

87. The Founder-Repurchase Committee led by the Chairman of the Board engaged in negotiation with the Founders (on behalf of the common stockholders generally) regarding the terms (price and otherwise) on which stockholders interested in selling their shares would be willing to sell their shares to the company. The results of the repurchase discussion with the Founders determined the target size of the contemplated investment round. *See Exhibit 58, page DOR002882.*

88. By December 2014, Craig Welch was asked to shift his CEO responsibilities to Chris Walsh. *See Exhibit 61, page 57.* Craig Welch was to focus on big sales for the company, sales where his personal reputation, network and access would be helpful to the company. *See Exhibit 61, page 57.*

89. In early 2014, as the company became more of a stable company versus a startup, and the COO took increasingly more responsibility for managing the company, Craig Welch did what he liked, being the senior salesperson and founder. *See Exhibit 64, page DOR003545.*

90. Craig Welch was also asked to be cooperative in the process of trying to arrange for a recapitalization of the business that would allow AcadiaSoft to purchase the shares of the common stocks held by him, Danny Moyse, and the Angel Investors. *See Exhibit 61, page 55.*

91. Some of the Board of Directors were not satisfied with Craig Welch's leadership of the company for several years before the recapitalization of June 2015. *See Exhibit 61, page 59.*

92. Mark Stein testified "I don't remember the board or board leadership ever being disappointed with Craig's level of effort from December 2014 through the recapitalization in June of 2015". *See Exhibit 61, page 58.*

93. On June 29, 2015, AcadiaSoft entered into its third round of funding with institutional investors ("Series D Transactions"). *See Exhibits 51-52.*

94. The institutional investors owned the convertible preferred stock, convertible into common stock. *See Exhibits 32 and 42.*

95. Craig Welch along with all other common shareholders in AcadiaSoft were bought out of AcadiaSoft in a Series D round which closed June 29, 2015. The closing date of that transaction was not assured to AcadiaSoft until June 29, 2015. No preferred shareholders sold their shares nor did AcadiaSoft sell any assets of the business. AcadiaSoft continues to operate this day. As a result of the Series D financing Craig Welch, Danny Moyse and the Angel Investors were no longer shareholders of the company..

96. Craig Welch testified that "if there was some sort of transaction or there was not some sort of transaction, I would be done and that they were out of courteousness to me, giving me six months to essentially drift away from the company as well as it was to their benefit also because I was so high profile in the industry...". *See Exhibit 60, page 138.*

97. When questioned why Craig Welch was not asked to resign as CEO, Mark Stein testified "following the advice or the request of Craig that he step back from operational responsibility,

Craig would be bought out entirely at which time he would resign from the company, so there was no point engaging in an action which would be turbulent, probably create more buzz or notice in the marketplace than was necessary in order to achieve the managerial end that the board was seeking. *Exhibit 61, page 56.*

98. AcadiaSoft wanted Craig Welch to retain the title of CEO until his resignation because he was “so high profile in the industry and associated with AcadiaSoft.” *See Exhibit 60, pages 138-139.*

99. Craig Welch tied his resignation with the sale of his stock to maintain some leverage in case AcadiaSoft decided not to repurchase his stock. *See Exhibit 54, Exhibit 60, page 145.*

III. Location of AcadiaSoft’s Offices

100. Craig Welch and Danny Moyse started AcadiaSoft out of their respective homes in Massachusetts until renting an office in 2009. *See Exhibit 60, page 56-60.*

101. AcadiaSoft’s first office was located in Pembroke, Massachusetts. *See Exhibit 60, pages 56-60.*

102. Craig Welch did not have an office at the Pembroke location but used the conference room when he visited that location. *See Exhibit 60, page 57.*

103. In 2009, as the company grew, AcadiaSoft rented space in Norwell, Massachusetts, where Craig Welch maintained an office. *See Exhibit 60, page 58.*

104. Craig Welch generally went to the office on Mondays, during weeks that he was not traveling; otherwise, he would work from his home in Lynnfield, Massachusetts or where he had traveled to out of state. *See Exhibit 60, page 59.*

105. From 2005 through 2009, Craig Welch worked principally from Massachusetts, travelling in general to New York twice a month, but never staying overnight. *See Exhibit 63, Response No. 11, and Exhibit 60, page 28.* Mark Stein testified that from 2009 on, Craig Welch traveled often for

the company's business, on the road quite a bit but could not quantify the amount of travel. *See Exhibit 61, pages 40-41.* Craig Welch estimated that after 2009, he spent forty-five percent of his time working in Massachusetts, thirty percent in other states and twenty-five percent internationally. *See Exhibit 63, Response No. 11.* However, Mr. Welch does not have any documentation to substantiate his estimates. *Id.*

IV. Board of Directors

106. AcadiaSoft's Board of Directors generally met ten times a year. *See Exhibit 60, page 52 and Exhibit 61, page 13.*

107. Craig Welch attended every Board of Directors' meeting in person from 2009 through May 2015. *See Exhibit 58; Exhibit 60, pages 52 and 53.* The meetings were sometimes held in New York City and London. *See Exhibit 60, page 52.*

108. Craig Welch provided executive reports to the Board of Directors from 2010 through 2012. *See Exhibit 58, pages DOR002631, DOR002635, DOR002638, DOR002641, DOR002644, DOR002647, DOR002668, DOR002676, DOR002679, DOR002684, DOR002689, DOR2692.*

109. Craig Welch and Danny Moyse provided strategic plans to the Board of Directors. *See Exhibit 58, page DOR002625* (meeting of June 28, 2010). For instance, Craig Welch reported to the Board of Directors on AcadiaSoft's progress in its business continuity plans, including the transition from back-up tape to servers and the establishment of redundant servers. *See Exhibit 58, DOR002632* (meeting of November 2, 2010).

110. When the Board of Directors was seeking an independent director, Craig Welch and Danny Moyse were responsible for finalizing a mutually agreeable description of the candidate's responsibilities and setting a compensation package for his/her services as a board member. *See Exhibit 58, pages DOR002621, DOR002625* (meetings of May 6, 2010 and June 28, 2010).

111. Craig Welch was involved in recommending bonus and compensation for the management team. *See Exhibit 58, page DOR002723* (meeting of March 26, 2013).

112. Craig Welch briefed the Board of Directors on legal claims. *See Exhibit 58, pages DOR002621, and DOR002626* (meetings of May 6, 2010, June 28, 2010)

113. Craig Welch reported to the Board of Directors on Management's efforts to obtain patent protection for AcadiaSoft's intellectual property. *See Exhibit 58, pages DOR002632* (meeting of November 2, 2010).

114. Craig Welch briefed the Board of Directors on the establishment of depositary relationship with banks in the United Kingdom. *See Exhibit 58, page DOR002622* (meeting of May 6, 2010).

115. Craig Welch was involved in hiring personnel and briefed the Board of Directors with updates on AcadiaSoft's progress in identifying candidates for various positions. *See Exhibit 58, pages DOR002622, DOR002625, DOR002628; DOR002632; DOR002662* (meetings of May 6, 2010, June 28, 2010, September 22, 2010, November 2, 2010, August 23, 2011).

116. Craig Welch presented business plans and product roadmaps to the Board of Directors. *See Exhibit 58, pages DOR002632, DOR002659, DOR002668, DOR002672, DOR002674, DOR002685, DOR002691, DOR002698, DOR002702, DOR002710* (meetings of November 2, 2010, July 26, 2011, October 25, 2011, November 29, 2011, March 7, 2012, April 23, 2012, June 26, 2012, July 31, 2012, and November 27, 2012).

117. Craig Welch was involved in seeking equity financing. *See Exhibit 58, pages DOR002698, DOR002714, and DOR002717* (meetings of June 26, 2012, January 28, 2013, and February 26, 2013).

118. Craig Welch was involved in establishing corporate strategy and delivering reports to the Board of Directors on AcadiaSoft's status and near-term objectives. *See Exhibit 58, DOR002859 and DOR002863* (meetings of December 17, 2013 and February 11, 2014).

119. When the Board of Directors was informed by Craig Welch of a possible investment in the Series B round by another institutional investor, the Board authorized Craig Welch and Danny Moyse to investigate whether any existing shareholders would be interested in a repurchase transaction. *See Exhibit 58, pages DOR002620; DOR002622* (meetings of March 5, 200 and May 6, 2010).

120. Craig Welch provided the Board of Directors with updates on AcadiaSoft's marketing and strategic partnership efforts. *See Exhibit 58, pages DOR002619, DOR002623, DOR002625, DOR002629; DOR002632; DOR002633, DOR002639, DOR002643, DOR002645, DOR002648, DOR002656, DOR002660, DOR002665, DOR002667, DOR002669, DOR002690, DOR002699, DOR002704* (meetings of March 5, 2010, May 6, 2010, June 28, 2010, September 22, 2010, November 2, 2010, January 11, 2011, February 8, 2011, March 8, 2011, April 28, 2011, May 24, 2011, July 26, 2011, September 27, 2011, October 25, 2011, April 23, 2012, June 26, 2012, and September 25, 2012).

121. Craig Welch provided the Board of Directors with status on key sales prospects. *See Exhibit 58, page DOR002629* (meeting of September 22, 2010).

122. Craig Welch was involved with press releases. *See Exhibit 58, DOR002632* (meeting of November 2, 2010).

123. Craig Welch provided the Board of Directors with update on the status of AcadiaSoft's negotiation of AMP service agreements with certain prospective customers. *See Exhibit 58, page DOR002623* (meeting of May 6, 2010).

124. Craig Welch reported to the Board of Directors on AcadiaSoft's results of operations and cash flow. *See Exhibit 58, DOR002666* (meeting of September 27, 2011).

125. Craig Welch reported to the Board of Directors AcadiaSoft's financial results and development in AcadiaSoft's financial reporting systems. *See Exhibit 58, page DOR 002633* (meeting of November 2, 2010).

126. Craig Welch provided the Board of Directors with reports on management's proposals regarding pricing of AcadiaSoft's software applications. *See Exhibit 58, pages DOR002629, DOR002633, DOR002842, DOR002845, DOR002872, DOR002873, and DOR002886* (meetings of September 2, 2010, November 2, 2010, April 30, 2013, June 11, 2013, July 8, 2014, and November 18, 2014).

127. From September 22, 2010 through April 28, 2015, Craig Welch reviewed the Board's minutes, then Craig Welch and Mark Stein signed the minutes once they were finalized. *See Exhibit 58, and Exhibit 61, page 15.*

128. Craig Welch presided as chair of the Board of Directors' meetings from November 2, 2010 through August 27, 2013. *See Exhibit 58, pages DOR002631, DOR 002635, DOR002638, DOR002641, DOR002644, DOR002647, DOR002655, DOR002658, DOR002661, DOR002665, DOR002668, DOR002672, DOR002675, DOR002679, DOR002684, DOR2688, DOR2692, and DOR002851.*

129. Craig Welch provided the Board of Directors with an overview of the AcadiaSoft's results of operations and key developments. *See Exhibit 58, pages DOR002639, DOR002645, DOR002665* (meetings of January 11, 2011, March 8, 2011, and September 27, 2011).

130. From 2010 through December 2014, Craig Welch reported on the status of sales efforts. *See Exhibit 58, pages DOR002619, DOr002633, DOR002636, DOR002639, DOR2648, DOR002656, DOR002662, DOR002666, DOR002669, DOR002673, DOR002676, DOR002681, DOR002690, DOR002697, DOR002701, DOR2705, DOR002711, DOR002712, DOR002715, DOR002719, DOR002722, DOR002840, DOR002844, DOR002845, DOR002849, DOR002852, DOR002856, DO002859, DOR002863, DOR002864, DOR002868, DOR002872, DOR002876, and DOR002890.*

131. Craig Welch's preparation for the Board of Directors' meetings was considerable. *See Exhibit 61, page 50.*

132. Until the end of 2014, Craig Welch was a senior member of the management team and attended executive committee meetings. *See Exhibit 61, page 47.*

V. 2015 Sale of Stock and Craig Welch Resignation

133. On June 19, 2015, AcadiaSoft issued a contingent offer to repurchase all of the company's common stock at a per-share Common Stock repurchase price of \$48.7472. The offer was contingent upon all common shareholders accepting the offer. *See Exhibit 73.*

134. The first that Craig Welch and other Common shareholders were formerly notified of the potential offer was June 22, 2015. *See Exhibit 71.*

135. As part of the Series D offer, all common shareholders were required to sell their shares back to the company. *See Exhibit 73.*

136. Until the last day or two before the closing in the Series D offer, Danny Moyse would not agree to sell his shares, which was a contingency for the investors of the Series D Transaction. *See Exhibit 64, pages DOR003547 and DOR003548.*

137. The repurchase offering was made in conjunction with the sale on or about June 29, 2015, by AcadiaSoft of approximately \$30 million of its newly authorized shares of Series D Preferred Stock to seven major banks and financial service institutions. On June 29, 2015, all the commons stockholders, including Craig Welch, sold their common stock in AcadiaSoft back to AcadiaSoft. *See Exhibit 49.*

138. With the close of the 2015 Series D transaction, Chris Walsh was promoted to Chief Executive Officer. *See Exhibit 58, page DOR002915.*

139. On June 29, 2015, Craig Welch signed a letter resigning from his position as Chief Executive Officer, Member of the Board of Directors and all other positions at AcadiaSoft as requested by the Board of Directors and agreed upon by Craig Welch. *See Exhibits 55, 56.*

140. AcadiaSoft issued to Craig Welch a 2015 Form 1099-B indicating the sale of 97,334 shares of AcadiaSoft's common stock acquired on February 18, 2005, and disposed of on June 29, 2015. The proceeds amount reported was \$4,744,759. 96. *See Exhibit 59.*

MISCELLANEOUS

141. Craig Welch thinks of himself as an entrepreneur at heart. *See Exhibit 60, page 16.*

142. Craig Welch prefers building companies rather than managing stable companies. *See Exhibit 64.*

143. Craig Welch considered AcadiaSoft "his baby" and wanted it to be a successful business venture. *See Exhibit 60, pages 42-43.*

144. Craig Welch testified that AcadiaSoft would not exist if it was not for him. *See Exhibit 60, page 154.*

145. Craig Welch is referred as a "Key Employee" in the Series B, C, and D Stock Purchase Agreements. *See Exhibits 32, 42, 51.*

146. The Series B Preferred Stock Purchase Agreement defines a "Key Employee" as "any executive-level employee (including division director and vice-president level positions) as well as any employee or consultant who either or in concert with others develops, invents, programs, or designs any Company Intellectual Property." *See Exhibit 32.*

147. A "Key Employee" is important to the company's business plan. *See Exhibit 61, page 23.*

148. In 2005, Craig Welch was AcadiaSoft's CEO, Director, and Treasurer. Craig Welch and Danny Moyse signed the Articles of Organization. *See Exhibit 12.*

149. Craig Welch signed AcadiaSoft's 2005 Annual Report. *See Exhibit 13.*

150. In 2006, Craig Welch was AcadiaSoft's CEO, Director, and Treasurer. He signed AcadiaSoft's 2006 Annual Report. *See Exhibit 15.*

151. In 2007, Craig Welch was AcadiaSoft's CEO, Director, and Treasurer. He signed AcadiaSoft's 2007 Annual Report. *See Exhibit 16.*

152. In 2008, Craig Welch was AcadiaSoft's CEO, Director, and Treasurer. He signed AcadiaSoft's 2008 Annual Report, as Chairman of the Board. *See Exhibit 17.*

153. In 2009, Craig Welch was AcadiaSoft's CEO, Director, and Treasurer. *See Exhibit 20.*

154. In 2010, 2011, 2012, 2013 and 2014, Craig Welch was AcadiaSoft's President, Treasurer, and Director. *See Exhibits 22, 23, 24, 25 and 26.*

155. Pursuant to AcadiaSoft's Bylaws, the President is the chief executive officer of the Corporation and shall preside at all meetings of stockholders. The President had the authority to appoint and remove agents and employees and to prescribe their powers and duties. *See Exhibit 37.*

156. Pursuant to 2009 AcadiaSoft's Bylaws, the Treasurer had the custody of the corporate funds and securities of the Corporation and had to send to the stockholders of the corporation the required financial statements and reports. *See Exhibit 37.* The Treasurer was required to disburse the funds of the corporation as ordered by the Board and rendered to the President and directors an account of all transactions and of the financial condition of the corporation. *Id.*

157. In 2013, AcadiaSoft's Bylaws were amended. *See Exhibit 47.* Pursuant to the 2013 Bylaws, the President had charge of the business and affairs of the corporation. *Id.* The Treasurer was responsible for the funds and securities of the corporation and was to exercise the powers and perform the duties incident to the office of Treasurer. *Id.*

158. On June 4, 2006, Craig Welch signed the Form D – Notice of Sale of Securities as AcadiaSoft's Chief Executive Officer. *See Exhibit 28.*

159. On April 3, 2007, Craig Welch signed the Form D – Notice of Sale of Securities as AcadiaSoft’s Chief Executive Officer. *See Exhibit 29.*

160. On May 25, 2007, Craig Welch signed the Form D – Notice of Sale of Securities as AcadiaSoft’s Chief Executive Officer. *See Exhibit 30.*

161. As one of the Key Holders, Craig Welch signed the Voting Agreement and the Amendment to the Voting Agreement pertaining to the Series B Transaction. *See Exhibits 33 and 34.* Craig Welch was the initial Key Holder Director. *See Exhibit 33.* He signed the Amended and Restated Voting Agreement dated May 24, 2011, as a President, CEO, and Key Holder. *See Exhibit 39.*

162. As a Key Holder, Craig Welch had a vote at the board meetings. *See Exhibit 60, page 151.*

163. Craig Welch signed the Right of First Refusal and Co-Sale Agreement pertaining to the Series B Transaction as a Key Holder. *See Exhibit 35.* He signed the Amended and Restated Right of First Refusal and Co-Sale Agreement dated May 24, 2011, as a Key Holder. *See Exhibit 40.*

164. Craig Welch signed the Investors’ Rights Agreement pertaining to the Series B Transaction as Key Holder. *See Exhibit 36.* He signed the Amended and Restated Investors’ Right Agreement as President, CEO, and Key Holder. *See Exhibit 41.*

165. On December 15, 2009, Craig Welch signed the Consent of Directors in Lieu of Meeting pertaining to the Agreement and Plan of Merger with the Delaware AcadiaSoft and the \$4,000,000 Series B Transaction. *See Exhibit 38.*

166. On July 9, 2013, as member of the Board of Directors, Craig Welch signed the Unanimous Written Consent of the Board of Directors in lieu of a Meeting pertaining to the Series C Financing. *See Exhibit 48.*

167. On July 30, 2013, Craig Welch signed the Series C Preferred Stock Purchase Agreement as Chief Executive Officer. *See Exhibit 42.*

168. On July 30, 2013, Craig Welch signed the Second Amended and Restated Voting Agreement, the Second Amended and Restated Right of First Refusal and Co-Sale Agreement, and the Second Amended and Restated Investors' Right Agreement pertaining to the Series C Transaction as Chief Executive Officer and Key Holder. *See Exhibits 43, 44 and 45.*

169. On July 30, 2013, Craig Welch as CEO, signed AcadiaSoft's Amended and Restated Certificate of Incorporation. *See Exhibit 46.*

170. On June 19, 2015, Craig Welch as CEO and Shea Wallon, AcadiaSoft's Executive Chair, emailed a letter to the Equity holders regarding the common stock repurchase offering ("Repurchase Offering) made in conjunction with the sale by AcadiaSoft of approximately \$30 million of it authorized shares of Series D Preferred Stock. *See Exhibit 49.*

171. On June 25, 2015, Craig Welch elected to participate in the Repurchase Offering. *See Exhibit 50.*

172. Craig Welch is referred to as a "Key Employee" in the Series D Preferred Stock Purchase Agreement dated June 29, 2015. *See Exhibit 51.*

173. The stock Craig Welch held were founder's stock. *See Exhibit 60, page 148.*

174. Craig Welch and Danny Moyse held founders' vetoes on AcadiaSoft until he resigned. *See Exhibit 54.*

175. Upon his resignation, Craig Welch wanted the Board of Directors to issue a glowing statement of what he had accomplished for AcadiaSoft in a press release. *See Exhibit 54.*

176. Mark Stein testified that Craig Welch contributed to the value of AcadiaSoft. *See Exhibit 61, page 97.* His contributions to the business were particularly crucial during the early growth stage of the business. *See Exhibit 61, page 98.*

177. The common stock repurchase offering dovetailed with Craig Welch's desire to step back from running AcadiaSoft. *See Exhibit 64.*

178. By the end of 2014, several Board members, that were supportive of Craig Welch, started telling Craig Welch, off the record that, if there was to be an investment/recapitalization of AcadiaSoft, a requirement from a number of the bank stockholders would be that Craig Welch separate from AcadiaSoft entirely. Craig Welch stated that that was fine, he had had enough. The Board had instructed him to stay out of operational and managerial decisions (hiring, firing, product development, pricing, strategy, etc.) and stick to sales. *See Exhibit 64, page DOR003546.*

179. Craig Welch was never awarded stock options or stock awards of any kind. *See Exhibit 60, pages 127-128.*

180. Craig Welch held all his shares even after he was no longer a resident of Massachusetts.

181. When Craig Welch sold his 11.86% interest in AcadiaSoft, it was a long-term capital gain for federal purposes. Craig Welch testified that he invested into the company over \$800,000 in cash between 2003 to 2009. *See Exhibit 60, pages 130-131 and Exhibit 62, Response No. 7.*

182. From 2003 through 2015, Craig Welch reported on his Massachusetts returns the following type and amount of income from AcadiaSoft.

Tax Year	Wage Income	Schedule E Income
2003	\$0	\$0
2004	\$0	\$0
2005	\$0	\$22,362
2006	\$5,533.77	\$39.00
2007	\$7,235.42	(\$2,887.00)
2008	\$80,415.00	\$0
2009	\$185,274.00	\$0

2010	\$192,708.00	\$0
2011	\$185,000.00	\$0
2012	\$279,692.00	\$0
2013	\$245,600.00	\$0
2014	\$339,664.00	\$0
2015	\$556,916.00	\$0

183. The larger wage in 2015, \$556,916.00 included forgiveness of a loan that AcadiaSoft previously granted to Craig Welch. Craig Welch paid Massachusetts income tax on the full amount on this compensation. *See Exhibit 60, page 133-135 and page 154 and See Exhibit 1.*

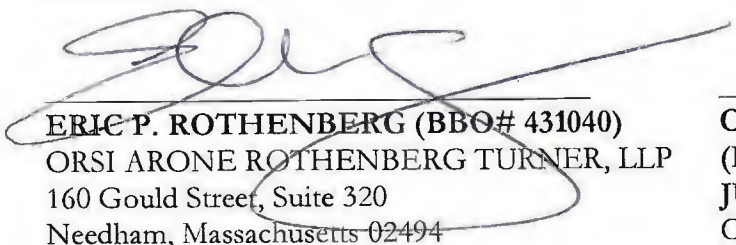
184. Craig Welch told the COO of AcadiaSoft after Thanksgiving 2014, that he was going to wind down his involvement with AcadiaSoft and he was just going to wait and see how long he got paid before he was fired. *See Exhibit 64, page DOR003548.* In 2015, Craig Welch reported the sale of AcadiaSoft Stock on Form 1, Schedule D but excluded the \$4,744,759.96 of gain from the sale of his AcadiaSoft shares from income to Massachusetts. *See Exhibit 1.*

185. Craig Welch was deposed by the Commissioner on July 21, 2021. *See Exhibit 60.*

186. Mark Stein was deposed by the Commissioner on August 4, 2021. *See Exhibit 61.*

CRAIG H. AND NATALIA I. WELCH
Appellants

By their attorneys,



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Date: November ____, 2021

GEOFFREY E. SNYDER
Commissioner of Revenue
Appellee

By his attorneys,

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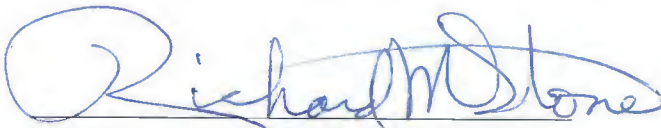
Date: November ____, 2021

186. Mark Stein was deposed by the Commissioner on August 4, 2021. *See Exhibit 61.*

CRAIG H. AND NATALIA I. WELCH
Appellants

By their attorneys,

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GEOFFREY E. SNYDER
Commissioner of Revenue
Appellee

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Date: November _____, 2021

186. Mark Stein was deposed by the Commissioner on August 4, 2021. *See Exhibit 61.*

CRAIG H. AND NATALIA I. WELCH
Appellants

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Date: November _____, 2021

GEOFFREY E. SNYDER
Commissioner of Revenue
Appellee

By his attorneys,

de la Foscade-Condon
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Date: November 22, 2021

LIST OF EXHIBITS

I. JURISDICTIONAL DOCUMENTS

Exhibit 1: 2015 Massachusetts Form 1 – NR/PY Resident Tax Return

Exhibit 2: Notice of Selection for Audit

Exhibit 3: Notice of Intent to Assess

Exhibit 4: Revised Notice of Intent to Assess

Exhibit 5: Notice of Assessment

Exhibit 6: ABT Form – Abatement Application

Exhibit 7: Letter Withdrawing Consent for the Commissioner to Act After Six Months

Exhibit 8: Appellants' Petition

Exhibit 9: Abatement Determination

II. CORPORATE DOCUMENTS

Exhibit 10: November 2003 Articles of Organization of AcadiaSoft

Exhibit 11: February 2004 Articles of Dissolution of AcadiaSoft

Exhibit 12: February 2005 Articles of Organization of AcadiaSoft

Exhibit 13: 2005 Annual Report AcadiaSoft

Exhibit 14: 2006 Restated Articles of Organization of AcadiaSoft

Exhibit 15: 2006 Annual Report of AcadiaSoft

Exhibit 16: 2007 Annual Report of AcadiaSoft

Exhibit 17: 2008 Annual Report of AcadiaSoft

Exhibit 18: 2009 AcadiaSoft (Delaware) Foreign Corporation Registration in MA

Exhibit 19: 2009 Articles of Merger of AcadiaSoft (MA) into AcadiaSoft (Delaware)

Exhibit 20: 2009 Annual Report AcadiaSoft

Exhibit 21: 2009 Annual Report AcadiaSoft (Second)

Exhibit 22: 2010 Annual Report AcadiaSoft

Exhibit 23: 2011 Annual Report AcadiaSoft

Exhibit 24: 2012 Annual Report AcadiaSoft

Exhibit 25: 2013 Annual Report AcadiaSoft

Exhibit 26: 2014 Annual Report AcadiaSoft

Exhibit 27: 2015 Annual Report Acadia Soft, Inc.

Exhibit 28: 2006 (June) Form D Notice of Sales of Securities

Exhibit 29: 2007 (April) Form D Notice of Sale of Securities

Exhibit 30: 2007 (June) Form D Notice of Sale of Securities

Exhibit 31: Ownership Ledger dated December 15, 2009

Exhibit 32: 2009 Series B Preferred Stock Purchase Agreement

Exhibit 33: 2009 Series B Preferred Voting Agreement

Exhibit 34: 2009 Series B Preferred Amendment to Voting Agreement

Exhibit 35: 2009 Series B Preferred Right of First Refusal and Co-Sale Agreement

Exhibit 36: 2009 Series B Preferred Investors Right Agreement

Exhibit 37: 2009 Series B Preferred Bylaws December 24, 2009

Exhibit 38: Series B Preferred – Corporate Authorizations

Exhibit 39: 2011 Series B Preferred Amended and Restated Voting Agreement

Exhibit 40: 2011 Series B Preferred Amended and Restated First Right of Refusal and Co-Sale Agreement

Exhibit 41: 2011 Series B Preferred Amended and Restated Investors Right Agreement

Exhibit 42: 2013 Series C Preferred Stock Purchase Agreement

Exhibit 43: 2013 Series C Preferred Second Amended and Restated Voting Agreement

Exhibit 44: 2013 Series C Preferred Second Amended and Restated Right of First Refusal and Co-Sale Agreement

Exhibit 45: 2013 Series C Preferred Second and Amended Investors Right Agreement

Exhibit 46: Amended and Restated Certificate of Incorporation July 2013

Exhibit 47: 2013 Bylaws of AcadiaSoft

Exhibit 48: 2013 Unanimous Written Consent of Board of Directors in lieu of a meeting

Exhibit 49: 2015 Common Stock Repurchase Offering Letter

Exhibit 50: 2015 Election to Participate in Repurchase Offering Craig Welch

Exhibit 51: 2015 Series D Preferred Stock Purchase Agreement

Exhibit 52: 2015 Series D Third Amended & Restated Voting Agreement

Exhibit 53: Capitalization Table

Exhibit 54: Emails with Repurchase Agreement

Exhibit 55: Notice of Resignation of AcadiaSoft – Craig Welch

Exhibit 56: Notice of Resignation AcadiaSoft (UK) Ltd.

Exhibit 57: Separation Agreement dated June 29, 2015;

Exhibit 58: Board Meeting Minutes 2003-2015

Exhibit 59: 2015 Form 1099-B

III. MISCELLANEOUS

Exhibit 60: Deposition of Craig Welch

Exhibit 61: Deposition of Mark Stein

Exhibit 62: Appellants Response to Interrogatories

Exhibit 63: Appellants Supplemental Responses to Interrogatories

Exhibit 64: 2020 Craig Welch letter to Eric Rothenberg

Exhibit 65: Isaacs Moving

Exhibit 66: Why Project Colin Fell Apart

Exhibit 67: Audit Narrative

Exhibit 68: Domicile Audit Fact Memo

Exhibit 69: Email re Buying NH house without sale of stock

Exhibit 70: P&S Agreement to Buy NH House

Exhibit 71: Email re Learning of the stock sale 6 22 2015

Exhibit 72: NH 2015 Tax Return

Exhibit 73: Confidential Memorandum

Volume I
Pages 1 - 165

COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board

Docket No: C339531

CRAIG and NATALIA WELCH,)
Plaintiffs,)
)
-vs.-)
)
COMMISSIONER OF REVENUE,)
Defendant.)

ZOOM CONFERENCE DEPOSITION OF CRAIG WELCH, a witness called on behalf of the Defendant, taken pursuant to the provisions of the Massachusetts Rules of Civil Procedure, before Julie B. Starr, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, on July 21, 2021, commencing at 9:31 a.m.

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MASSACHUSETTS DEPARTMENT OF REVENUE

7 LITIGATION BUREAU

8 BY: Julie Flynn, Esq.

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617-626-3314

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
CRAIG WELCH				
(By Ms. Flynn)	1			

E X H I B I T S

<u>No.</u>	<u>Page</u>	<u>Description</u>
1	104	Form D Filings
2	110	Investors Rights Agreement
3	111	Right of First Refusal
4	114	Voting Agreement
5	117	Second Amended/Restated Voting Agreement
6	123	2009 Preferred Stock Purchase Agreement
7	128	Answers to Interrogatories
8	137	Separation Agreement
9	144	Emails

P R O C E E D I N G S

Mr. Craig Welch, of lawful age, being first properly and satisfactorily identified by the production of driver's license, and duly sworn by a Notary Public to tell the truth, the whole truth, and nothing but the truth, deposes and says as follows in answer to direct interrogatories by Attorney Flynn:

08:31:50AM

Q. Mr. Welch, could you just identify yourself for the record.

A. Craig Welch.

Q. Thank you.

MS. FLYNN: And Eric, is anyone else with you in the room today?

08:32:00AM

MR. ROTHENBERG: No.

MS. FLYNN: Is anyone else in the room with you right now?

MR. ROTHENBERG: No. Are you not able to hear us?

08:32:11AM

MS. FLYNN: I mean, do you want -- Eric, do you want to identify yourself. You're in the room with Mr. Welch.

1 MR. ROTHENBERG: Eric Rothenberg,
2 Counsel for Mr. Welch.

3 MS. FLYNN: And you are in the room
4 with Mr. Welch?

5 MR. ROTHENBERG: I am. Who else is
6 on the call?

08:32:32AM

7 MS. FLYNN: So I will just identify
8 -- I will mention that for the record.

9 My name is Julie Flynn. I'm an attorney
10 for the Massachusetts Department of Revenue.
11 I'll be conducting this Zoom Deposition of Mr.
12 Craig Welch pursuant to an Order allowed by the
13 Appellate Tax Board regarding the personal income
14 tax assessment for the 2015 tax year of Craig and
15 Natalia Welch.

08:32:45AM

08:32:56AM

16 With me today is Celine de la
17 Foscade-Condon, a colleague of mine in the
18 Litigation Bureau.

19 We have agreed beforehand -- the parties
20 have agreed that all objections except objections
21 as to the form of the question are reserved and
22 may be raised at the time of any trial or hearing
23 in this matter for the first time.

08:33:14AM

24 And all motions to strike unresponsive

1 answers are reserved and may be raised for the
2 first time at trial.

3 Further, the parties have agreed that the
4 deposition will be read and signed by the
5 deponent, and if not signed within 30 days, it
6 will be used fully as if it were signed.

08:33:36AM

7 Anyone have any questions?

8 DIRECT EXAMINATION

9 BY MS. FLYNN:

10 Q. Mr. Welch, my questions and your answers
11 will be recorded by the stenographer. You need
12 to answer the questions verbally so the
13 stenographer can record your answers. You cannot
14 respond by nodding or shaking your head. Do you
15 understand?

08:33:46AM

08:34:01AM

16 A. I'm trying to fix my mic.

17 MR. ROTHENBERG: Can you hear him
18 now?

19 A. Hello? Can you hear me now?

20 MS. FLYNN: What I'd like to do is
21 I'll just re-ask that question and proceed.

08:34:38AM

22 Q. Mr. Welch, my questions and your answers
23 will be recorded by the stenographer. You need
24 to answer the questions verbally so the

1 stenographer can record your answers. You cannot
2 respond by nodding or shaking your head. Do you
3 understand?

4 I cannot hear. Can you sit in a
5 different spot?

08:35:06AM

6 (Pause.)

7 A. Understood. Can you -- I can -- this is
8 my normal voice. I can try to talk much louder,
9 but this is my normal voice.

10 Q. I do believe that the fact that you are
11 closer to the computer source is facilitating us
12 hearing you better. So if you could just please
13 stay near the computer source, I think that would
14 help things in this deposition.

08:35:29AM

15 Correct me if I'm wrong; you just said
16 you did understand what I had just stated to you?

08:35:46AM

17 A. That's correct.

18 Q. Thank you. Further, if you do not
19 understand one of my questions for any reason, do
20 not answer it. Let me know that you do not
21 understand it, and I will do my best to make the
22 question understandable. Is that okay?

08:36:01AM

23 A. Yeah.

24 Q. We can't hear you again.

1 A. Yes.

2 Q. We cannot hear you now. Are you going to

3 --

4 MR. ROTHENBERG: Can you hear me?

5 (Pause due to technical

08:38:21AM

6 difficulties.)

7 MS. FLYNN: There might be a little
8 bit of an echo, but why don't we go back on the
9 record and see if we're able to conduct this
10 deposition so that we can hear your answers. And
11 if not, then I think that -- well, we'll have to
12 talk about that if we can't hear you.

08:41:52AM

13 Q. So we are back on the record after having
14 just a little bit of technical difficulties and
15 I'm going to resume questioning.

08:42:21AM

16 Mr. Welch, if you do not understand one
17 of my questions for any reason, do not answer it.
18 Let me know that you do not understand the
19 question and I will do my best to make that
20 question understandable. Is that okay?

08:42:38AM

21 A. That's okay. Yes.

22 Q. If you need a break at any time or for
23 any reason, you should feel free to tell me or
24 your attorney. I only ask that you answer my

1 pending question before we take a break. Do you
2 understand?

3 A. I understand.

4 Q. Thank you. Sometimes it happens that
5 you'll give an answer as completely as you can
6 and later on you remember some additional
7 information in response to an earlier question.
8 If that happens to you, please just tell me that
9 you'd like to add something to the earlier answer
10 and we can go back to that question. Do you
11 understand?

12 A. Understood.

13 Q. Are you taking any medications or drugs
14 of any kind that might make it difficult for to
15 you understand and answer my questions today?

16 A. No.

17 Q. Have you had any alcoholic -- any
18 alcoholic beverage in the last 8 hours?

19 A. No.

20 Q. Are you sick at all today?

21 A. No.

22 Q. Apart -- do you have any other electronic
23 devices like a phone or tablet with you right you
24 now?

1 A. I've got my phone and I've got my iPad
2 which I'm taking notes on.

3 Q. Please -- we'd just request that you are
4 not talking with someone on your phone or tablet
5 during the deposition.

08:44:05AM

6 A. Understood.

7 Q. Could you please just state your full
8 name for the record.

9 A. Craig Henderson Welch.

10 Q. And please state your current home
11 address.

08:44:16AM

12 A. 577 Park Shore Drive, Naples, Florida
13 34103.

14 Q. And where were you born?

15 A. Waterville, Maine.

08:44:26AM

16 Q. And when did you move to Massachusetts?

17 A. Well, first time was in 1984. I was a
18 freshman at BC Flutie's senior year, so what's
19 that; '84. And then I'd say when I lived here
20 the longest, call it '91 or '92. I don't know
21 exactly when.

08:44:53AM

22 Q. Okay. And are you -- have you stayed
23 here ever since?

24 A. No.

1 Q. You stayed there until you moved to New
2 Hampshire?

3 A. That's correct.

4 Q. So where did you primarily grow up --

5 A. Waterville, Maine.

08:45:15AM

6 Q. -- before college?

7 A. Waterville, Maine.

8 Q. What's the highest level of education
9 you've completed?

10 A. I graduated from Colby in '88.

08:45:23AM

11 Q. And what kind of degree did you receive?

12 A. Liberal arts, um, B.S., B.A., I don't
13 really -- whatever Colby gives, that's what I
14 got.

15 Q. Did you prepare in any way for this
16 deposition today?

08:45:43AM

17 A. I re-read what I sent what's her name,
18 Kathleen Feeney, and what I've sent Eric.

19 Q. Okay. Did you speak with anyone today
20 about your testimony before coming here today?

08:46:02AM

21 A. Only Eric.

22 Q. And did you consult any other attorneys
23 before coming here today?

24 A. No.

1 Q. And do you have any of those documents
2 with you today that you prepared?

3 A. There's a stack here in front of us, but
4 no; other than that, no.

5 Q. And the stack there in front of you are
6 the potential exhibits that we might talk about
7 today; is that it?

08:46:30AM

8 MR. ROTHENBERG: Yes.

9 A. Yes.

10 Q. Can you briefly describe your work
11 history prior to the development of AcadiaSoft?

08:46:39AM

12 A. Sure. Graduated from Colby in '88. I
13 started my career at Solomon Brothers some time
14 again, '91, '92 -- I'm not positive.

15 But in that time frame, I switched and
16 went to work for Fidelity in Boston, and some
17 time -- I want to say '95, '96, in that area, I
18 started a company with somebody else and left
19 that probably 2003, give or take.

08:47:01AM

20 Q. And had you started -- when you started
21 working for Solomon Brothers where did you live?

08:47:32AM

22 A. Um, I started at first in New York and
23 then I quickly moved to Atlanta.

24 Q. Okay. And then you began working at

1 Fidelity, what year was that?

2 A. Again, '91, '92. If you want, I can pull
3 up -- but it's '91, '92-ish.

4 Q. Did you move to Boston in '91 or '92?

5 A. That's correct, for the job at Fidelity.

08:48:04AM

6 Q. And you stayed at Fidelity for
7 approximately three years?

8 A. Sounds about right, yes.

9 Q. What did you do for Fidelity?

10 A. I was a salesperson in Fidelity Capital
11 Markets, broker-dealer.

08:48:20AM

12 Q. Now, what was the company that you
13 started in '95 and '96?

14 A. Evare.

15 Q. And where did you start that company?

08:48:51AM

16 A. Um, I think our first office was in --
17 isn't there a place called Cochituate, like near
18 Framingham. It was above a very loud Porsche
19 garage.

20 Q. It was in Massachusetts?

08:49:15AM

21 A. Correct.

22 Q. And can you tell me a little bit about
23 this company that you formed.

24 A. It was a software company for -- it was a

1 subsidiary ledger portfolio software company
2 targeted for sales to state and local
3 governments.

4 Q. And was your primary role -- what was
5 your primary role in this company?

08:49:43AM

6 A. Um, I was a Co-Founder; not CEO, and I
7 was essentially the head of sales. I think my
8 title was President.

9 Q. And who did you form the company with?

10 A. Her name is Joan Perz.

08:50:01AM

11 MR. ROTHENBERG: Spell it.

12 A. P-E-R-Z.

13 Q. And can you describe how successful that
14 company was.

15 A. Um, what I tell people is we survived dot
16 come and made it through dot bomb. So we
17 survived but in the venture capital world, it's
18 called the living dead; you sort of exist but
19 you're not succeeding is the best description.
20 You are going sideways.

08:50:18AM

08:50:36AM

21 Q. Well -- I mean, how long was this company
22 in existence?

23 A. After I was fired it went longer. I
24 don't recall -- I actually don't even remember.

1 It was after my time. It was absorbed into -- I
2 don't even remember who -- it was after my time.

3 MR. ROTHENBERG: Only answer if you
4 know.

5 A. I don't know. I don't know.

08:51:04AM

6 MS. FLYNN: If I could just for the
7 record say if we can let the deponent answer the
8 questions.

9 MR. ROTHENBERG: I'm permitted to
10 tell him that he's only supposed to answer
11 questions if he knows.

08:51:18AM

12 MS. FLYNN: Correct. Okay. Sorry.
13 It appeared a little unclear to me who was
14 answering at the time.

15 Q. This -- you considered this your first
16 start-up company; is that correct?

08:51:37AM

17 A. That's correct.

18 Q. And what did you like about starting this
19 company?

20 MR. ROTHENBERG: Objection.

08:51:49AM

21 MS. FLYNN: We agreed -- Mr.
22 Rothenberg, we agreed that there would be --

23 MR. ROTHENBERG: I'm objecting to the
24 form.

1 MS. FLYNN: What did you like about
2 starting this company?

3 MR. ROTHENBERG: Yeah.

4 MS. FLYNN: Is Mr. Welch going to
5 answer the question?

08:52:20AM

6 MR. ROTHENBERG: You may answer the
7 question.

8 A. Um, I'm an entrepreneur at heart.

9 Q. Okay. And what does that mean when you
10 say you're an entrepreneur at heart?

08:52:31AM

11 A. I started my first lawn mowing business
12 when I was in middle school and I've always liked
13 building things.

14 Q. What kind of satisfaction does building
15 things provide you?

08:52:48AM

16 A. It's what I've done for 30 years, so
17 hopefully it's positive.

18 Q. Is it positive?

19 A. Yes.

20 Q. And how long did you work for this
21 company?

08:53:02AM

22 A. For Evare?

23 Q. Yes.

24 A. I'd have to look at Linked In, but '95,

1 '96 until my -- I'm guessing 2003.

2 Q. Okay. And then what happened after 2003?

3 A. I was fired.

4 Q. And what did you do next?

5 A. I started -- I started to basically say 08:53:34AM
6 what am I going to do next because I did not want
7 to go back to work for a financial services
8 company like Fidelity.

9 So I -- like many serial entrepreneurs, I
10 figured out what I needed to figure out and I 08:53:58AM
11 started AcadiaSoft by myself in 2004 or 2005.
12 Again, I'd have to look at Linked In. 2004,
13 2005, whatever the dates are.

14 Q. And what was -- what was the -- you know,
15 what was the company all about when you had this 08:54:17AM
16 idea to start AcadiaSoft?

17 A. The first idea was to create a subsidiary
18 ledger accounting system for Fidelity's
19 derivatives collateral.

20 Q. And did you create that? 08:54:37AM

21 A. Um, no, I had a partner Dan Moyse.

22 Q. When you say you had a partner, would it
23 be fair to say that in 2005 -- and that's based
24 on my reading of your AcadiaSoft returns, you and

1 Dan Moyse owned AcadiaSoft 50/50 in 2005?

2 A. He joined later so he didn't -- I owned a
3 hundred percent of it for quite a while and he
4 worked at, I believe, Deloitte and didn't leave
5 until I had had it further along.

08:55:24AM

6 Q. Okay.

7 A. And I don't know the date. You could
8 look on his Linked In if he has one. I don't
9 remember the exact dates that he joined.

10 Q. So how long did you have a hundred
11 percent of the company?

08:55:40AM

12 A. I -- I don't recall.

13 Q. Would it be fair to say that if you had
14 signed the corporate returns of AcadiaSoft in
15 2005 and the corporate returns indicated that you
16 both owned the company 50 percent each, that
17 those returns are accurate?

08:56:02AM

18 A. Yes.

19 Q. Okay. Now, this software program that
20 was developed, is this -- is the name for it
21 Acadia Collateral Management?

08:56:14AM

22 A. That was -- that was the first product
23 that we sold with Fidelity.

24 Q. So that product, did Daniel Moyse create?

1 A. Largely, yes. He was the -- he was the
2 software engineer that basically designed 1.0
3 before we had employees.

4 Q. So Daniel Moyse created a software
5 program and was that registered?

08:56:50AM

6 A. Registered how?

7 Q. I mean, was that the intellectual
8 property of AcadiaSoft?

9 A. That's correct.

10 Q. And Daniel Moyse developed it?

08:57:05AM

11 A. I developed it too. His fingers were the
12 ones on the access database making the code, but
13 we developed it together.

14 Q. So do you both have a patent for this
15 software program?

08:57:23AM

16 A. No, I -- if there's -- I don't know if
17 there's a patent or not. If there is, it's
18 likely owned by Acadia.

19 Q. Okay. And -- now, again, how did Daniel
20 Moyse become involved; if you could explain that
21 a little bit further?

08:57:49AM

22 A. Um, I needed a programmer to work for me
23 and he was disenfranchised with working in
24 corporate America and wanted to take a hand at

1 entrepreneurialism.

2 Q. Had you worked with him before?

3 A. We had -- I don't remember exactly what
4 it was, but there was some overlapping with when
5 I was at Evare and he was at Deloitte. I don't
6 remember exactly what it was but that's where we
7 met.

08:58:20AM

8 Q. So you never worked for the same company
9 at the same time?

10 A. That's correct.

08:58:32AM

11 Q. Is your testimony that from the very
12 beginning, AcadiaSoft owned the intellectual
13 property rights of Acadia Collateral Management?

14 A. Yes.

15 Q. Now, when you first started AcadiaSoft in
16 2003 or '04, did you believe that you had a
17 successful product?

08:58:46AM

18 A. I think every entrepreneur thinks they
19 have a successful product until they don't.

20 (Laughter.)

08:59:08AM

21 Q. Did you believe from the very beginning
22 that you thought, you know, this company would be
23 very successful one day?

24 A. Yes, but again --

1 Q. By successful, I mean --

2 A. -- I will say again, any entrepreneur
3 worth their salt will say the same thing.

4 Q. And by successful, I mean having, you
5 know, use and respect in the business community?

08:59:38AM

6 A. Sure.

7 Q. Did you expect that? By success, I mean,
8 did you think that in the future the company
9 would be worth a lot more money than it was when
10 you first started?

08:59:54AM

11 A. Yes.

12 Q. Now, what did you do for AcadiaSoft in
13 the earlier years, 2004 and 2005?

14 A. I was Chief cook and bottle washer; that
15 I went out, created the desire for the product
16 with the potential customers. I designed what
17 the product needed to do. I sold it. I financed
18 it. And Dan's responsibility was to -- at that
19 point we had hired -- I don't know exactly the
20 days -- but we had hired a programmer or two that
21 we were paying for out of our pockets, and we
22 also hired an outsource in Pune, India.

09:00:14AM

23 Q. So you hired two programmers; is that --

24 A. Well, it started out as one. I don't

09:00:44AM

1 know when the second one came on.

2 Q. Approximately like how many hours a week
3 did you work in the first couple of years?

4 A. I was probably going 14 hours a day
5 7 days a week -- I mean not 7 -- 5 days a week,
6 probably 5 or 6 hours on Saturday and 5 or 6 on
7 Sundays --

09:01:36AM

8 Q. And --

9 A. -- as a general average.

10 Q. And is that general average applicable to
11 the first 5 years at AcadiaSoft?

09:01:50AM

12 A. I would say it was generally until
13 December 24th 2009.

14 Q. And what changed about the time
15 commitment that you made to AcadiaSoft after
16 December 4th 2009 [sic]?

09:02:23AM

17 A. December 24th; we were funded.

18 Q. Okay. And how did that change the amount
19 of time that you spent working with AcadiaSoft?

20 A. You have more people to do more things
21 for you.

09:02:40AM

22 Q. So approximately how much time did you
23 spend working for the company from 2009 and 2010?

24 A. I would say my schedule was generally 4

1 am to 5:00 p.m. Monday through Friday. Um, and
2 I'd work some on weekends on average -- obviously
3 there are peaks and valleys -- until October of
4 2014.

5 Q. Okay. So you still worked a significant
6 amount for AcadiaSoft from 2009 until
7 October 2014, correct?

09:03:26AM

8 A. Correct.

9 Q. And you didn't work for any other company
10 from 2005 until 2015; isn't that correct?

09:03:45AM

11 A. Correct.

12 Q. And so your time was exclusively for the
13 benefit of AcadiaSoft from 2005 to 2015?

14 A. Correct.

15 Q. Now, you mentioned just a little bit
16 earlier that in 2005 and 2006 and maybe up until
17 2009, you really performed many, many functions
18 for the company; isn't that correct?

09:04:16AM

19 A. That's correct.

20 Q. And wouldn't it be fair to say that up
21 until 2009 AcadiaSoft had just a couple
22 employees?

09:04:32AM

23 A. From when to when? Sorry.

24 Q. 2005 until 2009.

1 A. Yeah, but by 2009 when we were funded, we
2 might have had two or three employees. I don't
3 remember exactly when, but two or three.

4 Q. Now -- so maybe you can explain a little
5 more like about the sales that you did for
6 AcadiaSoft in the early years.

09:05:13AM

7 A. The derivatives business was dominated by
8 the broker dealers, so I focussed primarily on
9 five or ten of the world's largest broker
10 dealers.

09:05:34AM

11 Q. And who was your first big customer?

12 A. Not sure. If I were to guess I would say
13 Credit Suisse.

14 Q. Now, when you first started out, what was
15 the kind of dream that you had for AcadiaSoft?

09:05:54AM

16 A. To build an industry utility that
17 essentially became the massively dominant player
18 in derivatives collateral, the worldwide one.

19 Q. And wouldn't it be fair to say that you
20 achieved that?

09:06:24AM

21 A. Yes, I did.

22 Q. So where was the company located in 2005
23 and 2006?

24 A. I'll answer the question differently

1 because I don't know the answer. When we -- at
2 some point around the time that we were funded,
3 we did everything out of our houses. So my house
4 in Lynnfield. Dan lived -- I don't know the
5 south shore very well -- Pembroke or Marshfield. 09:06:56AM
6 Marshfield; he lived in Marshfield, so we sort of
7 worked out of our houses. When we were funded we
8 got space in Pembroke.

9 Q. And what did Daniel Moyse do for the
10 company in 20 -- 09:07:20AM

11 A. I have a clarification of on earlier
12 statement. At some point -- when I say funding,
13 I mean institutional funding, so the banks.

14 Some point in there, there were angels
15 that invested also, and the dates on those 09:07:35AM
16 totally escape me. But there were angel
17 individuals who put in about a million dollars
18 total across 15 or 20 members. So when I say
19 funding, I mean the institutional funding which
20 was December 24th 2009. 09:07:53AM

21 Q. Okay. Thank you for that clarification.
22 So where did Daniel -- what did Daniel Moyse do
23 for the company in the earlier years?

24 A. Chief Technology Officer.

1 Q. Did he work as -- sorry. Can you explain
2 what he did as Chief Technology Officer?

3 A. He architected, designed what the product
4 should do in the first versions with either his
5 fingers on keys or instructed people that -- the 09:08:31AM
6 one or two people that I had mentioned,
7 instructed them.

8 Q. So was he working as hard as you were
9 working during those early years?

10 A. He would say yes. My wife would say no. 09:08:52AM

11 (Laughter.)

12 Q. What would you say?

13 A. I would probably plead the Fifth, but I'd
14 lean more towards what my wife said.

15 Q. Okay. Did he still work -- my 09:09:09AM
16 understanding is that you thought he worked less
17 hours than you, but tell me approximately how
18 many hours he put into the company in those early
19 years, you know, every week?

20 A. It would be idle speculation on my part. 09:09:29AM
21 He put a lot in. He worked hard. I just worked
22 insane hours.

23 Q. I mean -- okay. So you both worked
24 insane hours before the funding?

1 A. Correct.

2 Q. Would that be fair to say?

3 A. It would be, yes.

4 Q. Okay. And you were both a team, correct?

5 A. Correct.

09:09:56AM

6 Q. So in 2006 did AcadiaSoft need more
7 money?

8 A. I -- the years I don't really know. We
9 always needed money. We needed money until -- I
10 don't know -- 2012. We always needed money.

09:10:25AM

11 Q. And why did -- you know, what -- why did
12 you need money and -- why did you need money?

13 A. We were starting a company on shoe
14 strings and our own wallets.

15 Q. And how were you spending -- how did you
16 go through the money that you initially had in
17 the company?

09:10:43AM

18 A. Um, we -- for -- I would say for the one
19 or two programmers or the Pune team, we were
20 paying them cash out of our pockets and that was
21 -- and then airplanes here and there to New York
22 or London because the business was really New
23 York -- the business -- generally derivatives
24 collateral at that time was probably 70 percent

09:11:07AM

1 run out of London and 30 percent out of New York
2 even though it was -- even though it was the U.S.
3 banks that were dominant; it was their teams in
4 London.

5 Q. Okay. Now, from 2006 to 2009 did you 09:11:47AM
6 primarily work in Massachusetts?

7 A. I'd say yes if I wasn't traveling to New
8 York or London.

9 Q. So approximately during that time period
10 did you travel to New York? 09:12:11AM

11 A. In that time frame, I'd have no idea off
12 the top of my head. I have no idea.

13 Q. Would you have travelled more to New York
14 after the institutional funders -- after the
15 institutional companies got involved? 09:12:28AM

16 A. Absolutely.

17 Q. From 2005 to 2009 did AcadiaSoft have
18 enough -- did it have an office in New York?

19 A. Sorry. Say that again.

20 Q. Did it have an office in New York? 09:12:40AM

21 A. No, it actually didn't have an office in
22 New York until after I left.

23 Q. Okay. And from 2005 to 2009 did it have
24 an office in London, AcadiaSoft?

1 A. No.

2 Q. So if you had to give a percentage of the
3 -- like would you go to New York and spend a day
4 there and come back on the train or -- tell me --

5 A. Either drive same day round trip or take
6 the shuttle. Most of the times I'd drive because
7 I couldn't afford what at that point was about
8 \$588 round trip on the Delta shuttle, so I'd get
9 up before dawn and get home after sunset.

09:13:09AM

10 Q. And approximately how many times would
11 you do that in a month from 2005 to 2009?

09:13:39AM

12 A. I have no idea. I mean a lot -- not a
13 lot. I'd say often, quite often. I honestly
14 have no idea. I don't know.

15 Q. A couple times a month?

09:13:57AM

16 A. Probably, yes.

17 Q. Okay. So in 2006 you did raise some
18 money, \$200,000, in equity funding and another
19 \$800,000 in promissory notes in 2006. Do you
20 recall that effort and --

09:14:42AM

21 A. Those would be the angels that I
22 mentioned and --

23 Q. Yes.

24 A. -- it was give or take 15, 20 people and

1 it was give or take a million dollars.

2 Q. And can you name some of these
3 individuals?

4 A. Off the top of my head, um, Marshall
5 Sterman who lives in Beverly. Steve Shemulwinsky 09:15:07AM
6 -- and I can't spell it for you -- who lives, I
7 want to say here in Needham and -- there was a
8 guy by the name of John O'Donohue who lived in
9 New York. There was a doctor who lived in
10 Pennsylvania, and I don't remember their names 09:15:31AM
11 off the top of my head. I'd say, just
12 guesstimating, two thirds of them lived in
13 Massachusetts and one third of them lived in
14 other states.

15 Q. And would you characterize -- tell me -- 09:15:45AM
16 would you characterize these people as friends,
17 family members, business acquaintances?

18 A. I didn't know any of them until I met
19 through a friend of a friend. I met the first
20 one and he introduced me to other people. They 09:16:01AM
21 introduced me to other people and so on.

22 Q. And did any of these individuals ever
23 work for AcadiaSoft?

24 A. No they were all -- they were just

1 investors.

2 Q. And did all of these equity investors
3 sell their stock in the 2009 transaction or 2015
4 transaction or --

5 A. 2015. We all have to sell together.

09:16:31AM

6 Q. Now, in 2006 would these angel investors,
7 what kind of agreements did you sign with these
8 individuals?

9 A. Um -- sorry. Macs are really good but
10 they consume a lot of battery power.

09:17:01AM

11 (Pause.)

12 The documents were -- we were -- I don't
13 recall. The law firm that we had was down some
14 place near Milk Street Cafe. And the company at
15 that point was an S Corp and there was something
16 that the law firm messed up that they let one of
17 the investors, George Harrington, invest through
18 an IRA which was then going to blow-up our S
19 Corp. So then all sorts of things had to happen
20 to get it backed out so that he could invest as
21 an individual; not as an IRS. That's really the
22 extent of what I recall about that. Gessimer
23 Uptigrove; that was the lawfirm.

09:17:25AM

09:17:47AM

24 Q. What commitments did you make to these

1 angel investors?

2 A. That I would do my best job to get them;
3 A, their money back and B, a handsome return.

4 Q. And that -- was that in the agreements
5 themselves?

09:18:14AM

6 A. Sorry. What?

7 Q. You know, you had written agreements with
8 these angel investors, correct?

9 A. Absolutely.

10 Q. In these written agreements with the
11 angel investors did you say that you would be
12 staying and working for the company?

09:18:24AM

13 A. No, I never had an employment contract.

14 Q. Did you make a commitment to these angel
15 investors that you would be putting forth a
16 hundred percent of your effort to make this a
17 successful company and a successful investment
18 for these angel investors?

09:18:39AM

19 A. Absolutely.

20 Q. Was any of that commitment in an
21 agreement that you signed with these angel
22 investors?

09:18:51AM

23 A. Um, other than normal MVCA documents, no.

24 Q. You just -- you just indicated that you

1 didn't know these individuals and they didn't
2 know you; isn't that correct?

3 A. Well, I had to meet them before they
4 handed me money. I had to sell them.

5 Q. And I guess my only question is do you 09:19:19AM
6 remember anything in the agreements themselves
7 that reflected your commitment to make this a
8 successful investment for them?

9 MR. ROTHENBERG: If you recall.

10 A. I don't recall. What I -- there were 09:19:37AM
11 standard MVCA documents, so far as I recall.

12 Q. Now, in addition to raising some new
13 equity funding, there was also \$800,000 of
14 promissory notes. Do you recall what kind of
15 commitment you made to those individuals? 09:20:00AM

16 A. Well, they are the same individuals, so
17 -- I don't know -- I don't recall the -- I do not
18 recall exactly what the terms are, but if I were
19 to estimate, they were probably non-participating
20 preferred notes. 09:20:22AM

21 Q. Okay. --

22 A. But I -- it's a long time ago so I have
23 no idea.

24 Q. Yes. How often did you meet with these

1 investors in the early years?

2 A. Um, haphazardly. I'd give them updates,
3 but haphazardly. There was no set schedule.

4 Q. Okay. Now, in 2007 and 2008 did the
5 roles that you and Dan -- Mr. Moyse have, were
6 they the same that you had in 2005 and 2006?

09:21:05AM

7 A. Largely.

8 Q. So Dan remained --

9 A. Well, wait a minute. At that time frame,
10 they were, yeah.

09:21:23AM

11 Q. And you did the same things in 2007 and
12 2008 that you did in 2005 and 2006 for
13 AcadiaSoft?

14 A. Largely, yes.

15 Q. So you mainly were in charge of sales?

09:21:37AM

16 A. Correct.

17 Q. Mainly in charge of creating, figuring
18 out what the community needed in terms of
19 updating the software that you had?

20 A. That's correct.

09:21:50AM

21 Q. Okay. And were you successful in
22 figuring out what the business community needed
23 or the derivative community needed? Were you
24 successful in figuring it out?

1 A. In that time frame, no.

2 Q. And what do you mean?

3 A. We built a product that needed 2008 and
4 dot rank to make it desirable. We were ahead of
5 the curve.

09:22:31AM

6 Q. Maybe you can explain that a little bit
7 more.

8 A. We built a product that we thought the
9 market would like to have, but the market um,
10 told us by no sales that we were wrong. But then
11 when the crash -- the -- when the financial world
12 blew up and the regulations changed, the
13 regulations said essentially that they needed --
14 the market needed a product that did exactly what
15 we did, what we had built. And it was at that
16 time then that the first couple of banks said you
17 know what; we'll make a strategic investment in
18 you.

09:22:45AM

09:23:09AM

19 Q. Okay. And so -- so your product became
20 successful after 2008; is that correct?

09:23:36AM

21 A. That laid the seeds. It really didn't
22 become successful until '11 or '12 because that's
23 when the regulation started kicking in.

24 Q. Okay. Would you agree that your earlier

1 -- your early talking about and shopping around
2 your product was helpful?

3 A. Very much so. I was --

4 Q. So you made a lot of business connections
5 over the years?

09:24:10AM

6 A. I was the product and the product was me.

7 Q. And -- now, in April of -- in June of
8 2007, you sought additional funding;

9 approximately 1.5 million. Were these the same
10 angel investors or a different group?

09:24:57AM

11 A. It would either be the same group or the
12 same plus a few new. It would be some of the
13 same, yeah. I don't remember exactly who -- each
14 year I don't remember who was doing what, but --

15 Q. Okay. But for the June -- for the April
16 and June 2007 new equity financing, you made the
17 same commitments to the individuals who were
18 investing that you made before; that you had put
19 forth a hundred percent of your effort and would
20 make their investment worthwhile.

09:25:17AM

21 A. Verbally, yes. I gave them my word. I
22 worked my back side off.

23 Q. And how did the new money from the 2007
24 financing help you?

09:25:40AM

1 A. Just covered the -- covered additional
2 expenses and -- it just -- you have expenses.
3 Most all of the expenses are either personnel
4 related or travel to a lesser extent.

5 Q. Now, is it fair to say that the 2006 and
6 2007 financing that these angel investors had
7 about a 3 percent ownership of the company?

09:26:22AM

8 A. I have no recollection. I'll take your
9 word for it. I don't know.

10 Q. Okay. So in 2009 -- in the beginning of
11 2009 how was AcadiaSoft doing?

09:26:39AM

12 A. Um, we had a great product and we were on
13 absolute fumes.

14 Q. But were you also ready to take off?

15 A. We were on the one hand ready to take
16 off, but on the other hand we were discussing
17 shutting it down because we couldn't possibly go
18 anymore without any more money.

09:27:07AM

19 Q. Okay. So how were you feeling about
20 AcadiaSoft prospects at that time?

09:27:26AM

21 A. I thought the company had a great
22 opportunity, but my wife and I couldn't even
23 afford to pay the \$60 Lynnfield soccer thing at
24 about that time. We were so broke. We didn't

1 know where we were going to literally buy our
2 next meal from, and we were doing everything we
3 could.

4 And in hindsight, and I've said this a
5 number of times -- I've said it publicly at 09:27:58AM
6 speeches; in hindsight, I probably shouldn't have
7 done that.

8 Q. You probably shouldn't have done what?

9 A. Kept going.

10 Q. And why is that? 09:28:11AM

11 A. I couldn't pay for my children's well
12 being. We had no money.

13 Q. Now -- but things changed very
14 dramatically in 2009; isn't that correct?

15 A. We were able to convince the banks, um, a 09:28:31AM
16 small handful of them, plus one other company, to
17 make an institutional investment so yes, it did.

18 Q. So as you stated earlier, you were on
19 fumes and at the same time potentially ready to
20 take off. That's what you said earlier; is that 09:28:50AM
21 correct?

22 A. That's correct.

23 Q. You've also just testified that you -- in
24 the beginning of 2009 you, in retrospect, maybe

1 shouldn't have continued. That said, you did
2 continue in 2009; isn't that correct?

3 A. That is correct.

4 Q. And your financial situation changed in
5 2009, at the end of 2009; isn't that correct?

09:29:15AM

6 A. Yes, Christmas Eve.

7 Q. Christmas Eve. Okay. And how did you
8 and Dan go -- Mr. Moyse go about figuring out
9 AcadiaSoft's next steps in 200 -- in the
10 beginning of 2009?

09:29:39AM

11 A. Sorry. I don't understand the question.

12 Q. Thank you. I'll clarify. You indicated
13 that in the beginning of 2009 you were on fumes.
14 And my question is what -- what efforts did you
15 make to bring about that financing that you did
16 receive?

09:29:59AM

17 A. I just kept trying to sell the giant
18 banks to make an investment.

19 Q. And why did you keep on going?

20 A. Poor judgement.

09:30:17AM

21 (Laughter.)

22 Q. Did you also have a belief that you
23 really had a product that could be successful in
24 the marketplace?

1 A. Absolutely.

2 Q. Did you also believe at that time that it
3 would be worth your effort to keep going because
4 the return would be worth it; is that correct?

5 A. Yes.

09:30:38AM

6 Q. How hard -- what did you do to make that
7 happen by the end of 2009?

8 A. You could ask my wife. There were
9 multiple nights that I woke up thinking I was
10 having a heart attack, the stress was so
11 unbelievable.

09:30:58AM

12 Q. Yeah.

13 A. And I'm not exaggerating.

14 Q. I -- I do not -- I hear that. So in 2009
15 was this incredibly stressful time for you and
16 somehow or another, you made the right moves to
17 engage institutional investors to invest in
18 AcadiaSoft; is that correct?

09:31:19AM

19 A. That's correct.

20 Q. Is that accurate?

09:31:38AM

21 A. That's correct.

22 Q. Did anyone else besides Dan help move
23 that company forward to make that happen, like
24 who made that happen mostly?

1 A. In terms of the company or the
2 investment?

3 Q. Getting that -- getting those
4 investments.

5 A. I mean, I would answer that all of the
6 help would be our supporters inside of a couple
7 of banks.

09:31:57AM

8 Q. Okay. What particular banks?

9 A. Credit Suisse, HSBC, JP Morgan and a
10 non-bank but a financial company, ICAP, were the
11 ones that were the most helpful.

09:32:18AM

12 Q. And those four companies in the end
13 invested a million dollars each in AcadiaSoft in
14 2009; is that correct?

15 A. It sounds about right. I'll take your
16 word for it. I don't know -- it sounds right.

09:32:37AM

17 Q. Now, so after this investment of these
18 four financial institutions, can you describe the
19 different ways your role at AcadiaSoft changed,
20 if at all.

09:33:07AM

21 A. Um, I would say it changed to the extent
22 that um, we hired a salesperson, so I started
23 training the salesperson to take off some of the
24 load from me.

1 Excuse me. But it was just more the same
2 of being chief evangelist.

3 Q. Did somebody else become CEO?

4 A. Dan did. So when we did the 2009
5 investment he wanted to -- he really wanted to be
6 CEO and I didn't care because to me we were
7 partners, so I let him take the CEO role.

09:33:48AM

8 Q. Now -- so was there an expectation with
9 these four institutions that you would stay on
10 and be working for AcadiaSoft?

09:34:22AM

11 A. Definitely. At that time, yes.

12 Q. That would you be -- your full time
13 commitment would be to AcadiaSoft and the success
14 of AcadiaSoft; is that correct?

15 A. That's correct.

09:34:39AM

16 Q. And you were considered a key employee in
17 2009?

18 A. That's correct.

19 Q. Do you remember what that term meant or
20 what it meant to you in 2009?

09:34:54AM

21 A. What I do recall is it meant more to Dan
22 than it meant to me. I was in for a dime; in for
23 a dollar and I was in for way more dollars than I
24 should be, and I was going to work as hard as I

1 could. And it was -- AcadiaSoft was my baby and
2 I was going to make it work.

3 Q. You were also a key holder -- that term
4 is used in the 2009 Series B Preferred Stock
5 Sale. What did it mean that you were a key
6 holder?

09:35:43AM

7 A. I recall the phrase but I honestly don't
8 remember what the -- it was something that the
9 banks wanted in there. I do recall the term
10 though.

09:36:01AM

11 Q. Now, what did you want in these
12 agreements with the banks?

13 A. Sorry. What -- I don't understand.

14 Q. You had -- you got the investment of
15 these four banks, and my question is --

09:36:16AM

16 A. Yep --

17 Q. -- what did you want to make sure -- what
18 were the ways to make sure you were protected
19 from this new institutional investment in your
20 company?

09:36:35AM

21 A. I had no protection. I was an employee
22 at will.

23 (Phone ringing.)

24 Q. Did you --

1 A. Sorry.

2 Q. Did you make sure that you and Dan, as
3 original founders of the company, that you had
4 certain rights that other investors didn't have?

5 A. There was something in the -- in the
6 common -- that the key holder had something to do
7 with the common, and I honestly don't remember at
8 this point. I'd have to re-read it. It was
9 something to do with the common. I don't recall
10 what it was, but that was the only
11 differentiation that I recall.

09:36:59AM

09:37:19AM

12 Q. Do you recall --

13 A. Dan had --

14 Q. Sorry.

15 A. Dan had something that was somehow tied
16 to -- he had created a note when -- when he put
17 money into the company, being from Deloitte, he
18 did it more intelligently than I did.

09:37:30AM

19 So he created notes to the company
20 whenever he put his own cash in. And I was just
21 the dumb entrepreneur and I kept putting money in
22 out of my pocket, and later on he got those loans
23 paid off where I had put far more into it, but
24 that was the only difference that I really

09:37:50AM

1 recall.

2 Q. Do you recall the key holder having
3 certain veto rights?

4 A. I have no recollection of them right now.
5 And I just -- I don't have any recollection of
6 them, other than they existed.

09:38:23AM

7 Q. After the 2009 investment, what
8 percentage of stock ownership did you have in
9 AcadiaSoft?

10 A. I have no idea -- I had more than
11 10 percent, less than 50 percent. I don't know.
12 I'm not trying to save money. I don't know.
13 Even today if you asked me what I own in
14 Kingfield today, my new company, I'd just be
15 guessing. I focus on success.

09:38:43AM

09:39:01AM

16 Q. If I can ask a general question; if the
17 company began with you and Dan owning 50 percent
18 and then in the end you owned 12 percent -- so it
19 begins with 50 percent ownership in 2005 and it
20 ends with 12 percent ownership in 2015, were
21 there stock splits? How did that percentage
22 change or --

09:39:23AM

23 A. Additional investment. We just got
24 diluted each time there was additional

1 investment.

2 Q. Because I think in the beginning there
3 was 1500 shares of common stock and by 2009 you
4 had a hundred thousand shares of common stock.
5 Does that seem --

09:40:01AM

6 A. If that's the case, I'll take your word
7 for it. Each time there were, and I think you're
8 interviewing Mark Stein, the AcadiaSoft attorney
9 in the future, but each time a new bank would
10 come in, they would increase the overall number
11 of shares.

09:40:17AM

12 There would be something in the documents
13 that would -- I think a lot of it was based on as
14 the new investors came in, they did not want
15 fractional shares so they just kept making the
16 numbers much larger.

09:40:33AM

17 Q. Now, in 2010, Mr. Moyse, your partner,
18 unfortunately got sick. Can you describe what
19 happened to him and how did it affect his role in
20 the company and how did it affect you. Sorry.
21 That's too many questions.

09:41:04AM

22 A. I can answer it. I can answer it.

23 Q. I'll start. Let me rephrase it. Let me
24 -- I apologize. And I'm interrupting you. Let

1 me just rephrase or strike those ones. I'll
2 rephrase.

3 What happened in 2010 approximately with
4 Daniel Moyse?

5 A. We had a board meeting at Deutsche Bank 09:41:29AM
6 and we went -- after the board meeting we were
7 flying home on the shuttle, on the Delta shuttle.
8 He -- when we were getting on the plane, at that
9 time there were -- the shuttle didn't have
10 assigned seating so you just sit wherever you 09:41:53AM
11 sit.

12 So he sat up in the first seat up front.
13 He said I'm going to sit up here along. I'm
14 going to go to sleep because I don't feel well.
15 I'm like okay, fine, and I joked because I don't 09:42:07AM
16 eat sushi. He had sushi at the board meeting.
17 So I joked; enjoy the sushi, because he said his
18 stomach didn't feel well. I went back, sat.

19 By the time we got off the plane, he said
20 he felt significantly worse. And then either the 09:42:23AM
21 day -- it was probably two days, so I didn't
22 speak to him at all the following day, and I
23 think there was a day in there. But either
24 one day or two days, he didn't call me which was

1 unusual in the morning, so I called his cell
2 phone. Didn't get an answer, which was unusual.
3 Called it a couple more times. Didn't get any
4 response.

5 So then I called his wife and she said 09:42:56AM
6 that she had taken him to the hospital because he
7 had collapsed in the bathroom, and as it turns
8 out -- I think at the time he was 41 or 42 -- he
9 had had multiple heart attacks, multiple strokes,
10 all in the course of two, three days. 09:43:18AM

11 And what he ended up having was, I think
12 it's called, MRSA -- MRSA or MSRA, either one.
13 It was one of the super-viruses. And when I went
14 in to speak to the person -- the doctors at
15 Brigham & Women's -- to this day, I remember 09:43:43AM
16 almost fainting -- I said to the doctors --
17 because he was also arguably my closest friend at
18 that point -- I said how is he going to be. Is
19 he going to die.

20 And they said he's going to be fine. 09:43:55AM
21 He's not going to die. Oh, good. He'll probably
22 never speak again, but he's not going to die;
23 don't worry about it.

24 So I remember almost fainting in his room

1 at Brigham & Women's.

2 Q. Thank you. That's something hard to
3 recall and to share. And because of that
4 unfortunate event to Mr. Moyse, did he eventually
5 have to leave the services of AcadiaSoft?

09:44:23AM

6 A. So what -- the answer is yes. What we
7 did when he finally, um -- I don't know how to
8 describe it. When he was well enough to
9 periodically come into the office, we, as a -- me
10 as his partner and the bank, the bank directors,
11 wanted to be as accommodating and respectful of
12 him as possible. So we let him come into the
13 office even though there was some drug that he
14 was on -- I don't remember -- that caused him to
15 have periodic outbursts of rage to the extent that
16 we were concerned about -- he also had lots of
17 guns. But he would have this drug, whatever it
18 was, and we would have him come to board meetings
19 and we were trying to be good people.

09:44:49AM

09:45:07AM

20 And then eventually he -- he improved and
21 he did -- he improved, but not enough to be in
22 the super high stress thing like a start-up.

09:45:27AM

23 And so he -- I think he was still invited
24 to come to the board meetings throughout. And we

1 let him keep a -- we had to -- legally, we had to
2 make me CEO because I had to sign documents, but
3 we gave him some title and it's just that we
4 tried to be good people.

5 Q. Did he eventually resign?

09:46:05AM

6 A. He eventually left. I don't remember if
7 he resigned or I think there was an incident with
8 his anger that we finally said -- and actually,
9 we were working with his wife on it -- we finally
10 said he's got to go.

09:46:28AM

11 Q. Yeah. Approximately when did he leave?

12 A. I apologize. I have no idea. It was --
13 if I were to guess, it was a year. So we wanted
14 him to take six months off and we would pay for
15 everything. So we didn't have disability
16 insurance, so we just kept him on the payroll.
17 And my guess is -- so we wanted him to take a
18 year off, but he desperately wanted to be in the
19 office and so we let him for about a year. Then
20 it just became too untenable for other employees.

09:46:51AM

09:47:14AM

21 Q. Would it be fair to say that
22 approximately some time in 2011, a year after
23 that, him contracting that virus that you then
24 became CEO?

1 A. No. Well, I don't know the answer to
2 that. I would say I became CEO sooner because
3 people had to sign documents.

4 Q. Okay.

5 A. And he wasn't capable of signing
6 documents at that point.

09:47:40AM

7 Q. Did you have -- after that step up did
8 you do even more work for the company?

9 A. Yes.

10 Q. So you had a lot of -- previously you
11 were focussed a bit more on sales. Now, you were
12 focussed on operations and management and --

09:47:51AM

13 A. Yes.

14 Q. -- can you describe what you did as a
15 CEO?

09:48:07AM

16 A. I'd say again, Chief -- I went back to
17 chief cook and bottle washer, but we just had
18 more people. At some point along the way -- I
19 think it was some time in 2012 -- the Board
20 wanted me to backfill, and the Board found
21 somebody that I had never -- I actually didn't
22 know -- that was known to the Board and they
23 hired a guy by the name of Chris Walsh. So we
24 did what we could to confuse Craig Welch/Chris

09:48:25AM

1 Walsh.

2 So the Board hired him and unbeknownst to
3 me at the time, the people that knew him and
4 reached out had also essentially promised him
5 that in the future he would become CEO.

09:48:59AM

6 Q. And when you say the people that promised
7 to him, is this the members of the Board?

8 A. Yes, Board members.

9 Q. I guess that leads me to -- to the
10 discussion of the Board of Directors. What was
11 the set up of the Board of Directors in 2009?

09:49:21AM

12 A. I don't recall individual -- all the
13 individuals on it, but it was -- generally
14 speaking, what we would do is once a month -- not
15 always, but call it give or take 10 months a
16 year, we'd have board meetings.

09:49:44AM

17 So we'd have a video board meeting at
18 Morgan Lewis' office in New York and Morgan
19 Lewis' office in London. And whatever town you
20 were in, you'd come in and I'd try to alternate
21 every other month, that I'd either be in New York
22 or London so I could physically be around the
23 people.

09:50:00AM

24 Q. So there would be monthly board members,

1 correct [sic]?

2 A. Monthly board meetings, correct.

3 Q. Meetings, thank you. And those meetings
4 would occur by video, but sometimes you were in
5 the -- sometimes you were in a specific location
6 with certain of the institutions?

09:50:29AM

7 A. That's correct. Once a year we'd have an
8 in-person meeting where everyone had to be in the
9 same room, no video, no dial. But the other
10 meetings were split between New York and London
11 on video.

09:50:44AM

12 Q. And you typically went to them all,
13 correct?

14 A. Yeah. Oh, yeah.

15 Q. And the ones that were held in person --
16 sorry. Did you say that was in London every
17 year?

09:51:01AM

18 A. The ones in person, one year it would be
19 London, one year New York, London, New York.

20 Q. Thank you.

09:51:14AM

21 A. Then one of each of the banks would take
22 turns hosting them.

23 Q. Who was on the Board?

24 A. For the most part, the strategic

1 investment people at each of the banks.

2 Q. And you and Dan had how many votes on the
3 Board?

4 A. I believe, um, we each had one.

5 Q. Did you have the ability to nominate
6 someone else?

09:51:44AM

7 A. I believe we did for a while and then I
8 think in one of the financings, that was taken
9 away.

10 Q. And speaking of financing, we were just
11 talking about the 2009 financing. Would you
12 agree that there were some financings in 2011 and
13 2013 too?

09:51:58AM

14 A. 2013, I don't -- if you're saying that
15 there are, there are. Essentially, while I was
16 there, there was the first group that I mentioned
17 to you; the second group which would have been
18 Goldman, Deutsche -- probably those two. Then the
19 next group was B of A, Morgan Stanley, Barclays.
20 So they sort of came in chunks.

09:52:18AM

21 Q. I don't know the full answer to these
22 questions. I'm asking you these questions. So
23 to the best of your knowledge, you know that
24 there has been equity financing, but you're not

09:52:44AM

1 sure of the dates of all of them. Would that be
2 accurate?

3 A. Correct.

4 Q. You know, each time there was an equity
5 financing, including the 2009 one, were you --
6 was someone advising you about your rights and
7 you know, giving you advise about how to protect
8 yourself in each one of these equity financings?

09:53:12AM

9 A. No, that's not in -- the vast majority of
10 venture funded companies, the entrepreneurs are
11 employees at will and have -- at least when you
12 deal with banks' strategic investment groups, you
13 have no leverage.

09:53:38AM

14 Q. And that's how you felt?

15 A. I felt it, but it didn't -- it didn't
16 bother me until it did. So I just worked and
17 worked and worked because I believed in what I
18 was doing.

09:53:59AM

19 Q. Okay. Now, when you became CEO
20 approximately in 2011 again and before Mr. Walsh
21 was hired, did you spend more of your time in
22 Massachusetts because you now had these CEO
23 responsibilities?

09:54:22AM

24 A. No, because I had to -- we were just -- I

1 was -- we were still trying to build the market,
2 and so the bulk of my meetings would be in --
3 definitely be in London and to a lesser extent
4 New York and then here and there in other cities
5 around the world.

09:54:56AM

6 Q. Now, you had mentioned earlier that you
7 had -- AcadiaSoft had its first office in
8 Pembroke; is that correct?

9 A. I think that's what it was. It's where
10 -- there's a Christmas Tree Shop right off the
11 road down there.

09:55:10AM

12 Q. Was that -- was that in 2009 or before?

13 A. Um --

14 MR. ROTHENBERG: If you remember.

15 A. I don't recall. It was about that time
16 but I don't recall.

09:55:26AM

17 Q. And was -- did you have an office there?

18 A. We borrowed an office from -- from -- we
19 borrowed an office from a company that was a
20 friend of Dan's. And Dan at that point preferred
21 to work during the days in an office, so one of
22 his friends, um, shared -- let him sit in his
23 desk.

09:55:41AM

24 Later on, the guy that owned that

1 company, he sold it and became Acadia's CTO.

2 Q. Who is that person?

3 A. Scott Lorimer.

4 Q. This Pembroke office of AcadiaSoft, can
5 you describe -- did you have an office there?

09:56:17AM

6 A. No. Ah, I used the conference room.

7 Q. So in Pembroke -- did you rent out space
8 from --

9 A. Yeah, from whoever.

10 Q. Okay. From Dan's friend?

09:56:56AM

11 A. No, we didn't rent it from Dan's friend.
12 When we were funded then we rented -- we took
13 space down the hallway, and we rented it out from
14 whoever the landlord was.

15 Q. So in 2009 -- in 2008 or so, is that
16 correct, that you had some space in a Pembroke
17 office location; is that correct?

09:57:10AM

18 A. Dan had a desk.

19 Q. And you had access to a conference room;
20 is that correct?

09:57:32AM

21 A. No. Sorry. So when -- pre -- someplace
22 around pre- of the financing we may have done
23 something a month or two before. But for most of
24 the time up until 2009, Dan just had a desk in

1 this other company's space.

2 Then at some point we rented another -- I
3 think there was one open room for programmers.
4 Dan had an office. One of the programmers that
5 we had had an office, and we had a conference
6 room. Because I only went down there once a
7 month maybe; that I just would sit in the
8 conference room.

09:58:07AM

9 Q. And did you prefer to work out of your
10 house when you were in Massachusetts?

09:58:22AM

11 A. Yes.

12 Q. So in 2009 you get -- you rent space from
13 this Pembroke location, but you yourself don't
14 have an office there, correct?

15 A. Correct.

09:58:38AM

16 Q. And at some point did AcadiaSoft move to
17 Norwell?

18 A. Yes.

19 Q. And in -- why did it move to Norwell?

20 A. Because we grew.

09:58:50AM

21 Q. And did you have an office at the Norwell
22 location?

23 A. I did.

24 Q. And at that time you were the CEO; isn't

1 that correct?

2 A. I did but Chris Walsh was there and was
3 basically running the non-sales part of the
4 company by then.

5 Q. Now -- um, didn't Chris Walsh -- correct
6 me if I'm wrong -- I thought I heard you say he
7 got hired in 2012.

09:59:12AM

8 A. So I believe that -- and maybe you can
9 tell me I'm wrong -- but I believe we got the
10 office in Norwell after Chris was hired.

09:59:28AM

11 Q. I'm asking you. I don't know, so I'm
12 asking you do you --

13 A. It is my recollection that we got the
14 office space in Norwell after Chris was hired.

15 Q. And who had offices there?

09:59:49AM

16 A. Um, I did. The CFO did. The COO did.
17 And the CTO did. Other than that, we had
18 bullpen.

19 Q. And did you go to the office in Norwell?

20 A. Um, if I was in the country, I'd usually
21 go on Mondays.

10:00:11AM

22 Q. Okay. And other than that, you would
23 work from home?

24 A. Because I was doing sales. I was -- I

1 effectively other than -- I talked to Chris
2 regularly but Chris was running the day-to-day
3 company at that -- almost immediately.

4 Q. Okay. So I'll get back to that later.
5 You just -- if you were in Massachusetts for a
6 week and had no business trips, are you saying
7 that you would go into the office once a week and
8 work the rest of the time at home?

10:00:43AM

9 A. That's correct. I'd usually go in. I
10 get up early. I'm early to bed, early to rise.
11 I usually go down there, drive there from
12 Lynnfield at about 5:30 or 6 a.m., and then
13 because of the delightful south shore traffic,
14 I'd try to be out of there by -- I'd try to be
15 out of there by 2:00 p.m. which is when they'd
16 move that zipper thing down in Quincy, so I'd try
17 to get in front of them cutting the lanes down.

10:00:59AM

10:01:17AM

18 Q. And --

19 A. Again, most of my business, because I was
20 primarily sales and the front of the company, was
21 in London or New York.

10:01:34AM

22 Q. Yes. So I'm going to go back to that.
23 And you referenced where your time was spent in
24 the response to interrogatories so I'm going to

1 get back to that point.

2 Now, who was Mr. Elderstein and when did
3 he become involved in AcadiaSoft?

4 A. Who?

5 Q. Maybe I'm mispronouncing it. Is it
6 Howard Elderstein?

10:02:16AM

7 A. Howard. We had a -- I want to from I
8 want to say 2009 -- I'm not positive, but I
9 believe from the 2009 financing, there was a
10 space for an "independent" Board member.

10:02:39AM

11 Q. Yep.

12 A. And when Dan had been healthy, Dan had
13 been pushing for Howard -- and it's Edelstein, by
14 the way -- Dan had been pushing for Howard to be
15 the independent and after Dan got sick, the Board
16 told me I had to put him in as the independent.

10:02:59AM

17 And I frankly regretted it from about the
18 day after I did it because he and I -- he and I
19 met the -- I think we met -- the day that he
20 signed the commitment to be on the independent,
21 he was Dan's mentor and what I later found out
22 was he was Chris Walsh's mentor.

10:03:25AM

23 And he's the one that led Chris to
24 believe that if he joins as COO, he would get him

1 in as CEO very quickly. So you could imagine I'm
2 not a big fan.

3 Q. Okay. Thank you.

4 A. I will add that what I found out, and I
5 sort of knew this, Howard was basically from day
6 one running a campaign to replace me as CEO --

10:03:53AM

7 Q. Okay.

8 A. -- because I wasn't his vision of a CEO.

9 Q. Okay. Now, would it be fair to say that
10 you and Dan had the ability to appoint an
11 independent person -- that you two had to decide
12 that; not the rest of the Board. It was your
13 decision?

10:04:10AM

14 A. No, that's not correct.

15 Q. No?

10:04:23AM

16 A. We would nominate. The Board would
17 approve. And then what I also found out later
18 on; Howard was appointed by some of the bank's
19 strategic investment groups to be their
20 representative on other boards. Didn't know that
21 at the time. Nobody told me.

10:04:38AM

22 Q. Okay. Now, you had mentioned -- can you
23 tell me a little bit more about the July of 2014
24 Board of Directors meeting in London.

1 A. Things were -- at that point things were
2 -- yeah. Things were going well, and we had our
3 annual in-person meeting. It was hosted by State
4 Street at Canary Wharf, and at the time I had 24
5 employees and there were 30 people from the banks
6 that showed up for the Board meeting.

10:05:38AM

7 Q. And why did 30 people from the banks show
8 up?

9 A. I asked myself that same thing and
10 couldn't figure it out. All of a sudden there
11 was a lot of interest of coming to the AcadiaSoft
12 Board meeting. And what I found out -- what I
13 basically pieced together after that is that
14 behind the company's back, one of the investors
15 was trying to organize an effort to directly
16 compete with ourselves and another company in the
17 industry called Trioptima that was a hundred
18 percent owned by ICAP. It's based in Stockholm.

10:05:56AM

10:06:18AM

19 Q. Now, just at the beginning when I said
20 July of 2014, talking about the Board of
21 Directors meeting, you said things were going
22 well for Acadia. If we can go back a little bit.
23 Like what happened after 2012, 2013 to 2014; what
24 was happening with Acadia's business?

10:06:49AM

1 A. Dodd-Frank was kicking in and people
2 needed us.

3 Q. So sales was really up during that time
4 period?

5 A. Yeah, I mean, there were -- the model was
6 -- if you look at it, there were probably 25
7 firms in that time frame of the big -- of the
8 gigantic banks that were either customers or
9 again, in the pipeline.

10:07:19AM

10 And in 2013, '14, my cat of sales was
11 able to manage the existing stuff so I sort of
12 backed out of a lot of the normal sales like to
13 the Morgan Stanleys and HSBCs of the world,
14 whatever. What I was doing was I was trying to
15 open up the market in Asia-Pac.

10:07:55AM

16 Q. And were you successful?

17 A. Um, most of the Asia-Pac firms, they take
18 a long time. If you think selling to an American
19 bank takes a long time, try selling to a Japanese
20 bank.

10:08:21AM

10:08:44AM

21 The sales lead is so long, but we got it
22 and now some time after my departure and today,
23 essentially all of the banks around the world are
24 on it.

1 But I was sort of the business
2 development guy, so I was the one going to Tokyo,
3 Singapore, Sidney.

4 Q. So you really laid the ground work for
5 the future success of AcadiaSoft, correct?

10:09:11AM

6 A. That's correct.

7 Q. And it appears as though you had this
8 vision that was beyond the typical customers that
9 people thought about with this product; is that
10 correct?

10:09:23AM

11 A. That's correct, yep.

12 Q. And I'm assuming that you were working a
13 lot during these periods when you were broadening
14 the vision and goals of AcadiaSoft; is that
15 correct?

10:09:37AM

16 A. I was, but it's fun to work when the tide
17 is rising as opposed to when the tide is going
18 out.

19 (Laughter.)

20 Q. Were you happy to see that -- that your
21 hard work was paying off with the value of the
22 company?

10:09:45AM

23 A. It was awesome.

24 Q. And just curious; how much did you think

1 the company was worth in 2013 and '14 when things
2 were going high?

3 MR. ROTHENBERG: If you know.

4 A. Um, as an entrepreneur, much higher than
5 it was probably worth.

10:10:15AM

6 Q. Can you estimate it?

7 A. Not really because the banks had
8 participated in preferred, so the challenge for
9 the common was if you know how participating and
10 preferred investments work, their debt got paid
11 before any of the equity was divided up. And
12 then when the equity is divided up, they get
13 their full amount even though they took their
14 debt off the table before you start dividing up
15 the equity share. So there was always that
16 sitting up there.

10:10:38AM

17 Q. Okay. After all those mechanics that you
18 just mentioned, what did you think your common
19 stock was worth at that time?

10:10:56AM

20 MR. ROTHENBERG: If you know.

10:11:14AM

21 A. I have no idea. I mean, I'm -- I
22 honestly don't know at that time. Again, as an
23 entrepreneur, you have a much higher opinion than
24 what it's actually worth.

1 Q. Sure. Sure.

2 A. And to be clear, I had no control over
3 the sale because I was on minority and it's not
4 just that there were institutional investors;
5 bank strategic investments are very different
6 than venture capital investments. They control
7 the process. They control the process because
8 they do not want -- if they built this and we
9 become important infrastructure to them, they
10 don't want it being sold to just anybody. So
11 that negatively impacts the value.

10:11:39AM

10:12:02AM

12 Q. Just -- it limits certain things.

13 A. Right.

14 Q. So going back to that July 4th board
15 meeting in London where all those banks showed up
16 and you realized that something could happen to
17 AcadiaSoft; maybe you can explain this a little
18 further.

10:12:21AM

19 A. I looked around the table and realized
20 I'm not that interesting.

10:12:39AM

21 MS. FLYNN: Just one moment.

22 Q. And what was the finance institution that
23 you were most concerned about at that meeting in
24 July of 2014?

1 A. I didn't have any. At that point I
2 didn't have any -- I just knew there was
3 something odd going on because the way the
4 questions were, the volume of people, etc... I
5 had been doing this for what, like close to a
6 decade. It was just -- again, I'm not that
7 interesting of a person for 30 people from banks
8 to show up when the company has 24 people in it.

10:13:44AM

9 Q. How did you find out -- from whom did you
10 find out what was going on --

10:14:03AM

11 A. So --

12 Q. -- behind the scenes?

13 A. So from Credit Suisse -- no, not Credit
14 Suisse. So from State Street that is on one end
15 of Canary Wharf, we were having the post board
16 meeting dinner at an Italian restaurant in the
17 basement of Morgan Stanley, which is at clear the
18 other end, so -- I don't know -- maybe a 10,
19 15-minute walk.

10:14:17AM

20 The -- I was saying to Chris Walsh and my
21 CFO, Scott Peterson, there's something odd going
22 on. And they said no, we thought the meeting was
23 great.

10:14:40AM

24 I'm like no, there's something odd going

1 on. I can smell it. And so that was the first
2 half of the walk. Then I basically switched
3 conversations and went over -- started talking to
4 the Chairman of the Board of B of A and -- who I
5 personally trusted -- and I just said I got this
6 weird vibe. 10:15:15AM

7 And well, what do you mean. And then I
8 said no, I got a weird vibe. And I'm supposed to
9 have breakfast tomorrow with somebody from
10 Goldman, and the following day, Chris is having
11 breakfast with that person. What's going on? 10:15:36AM

12 He goes, well, actually I can't disclose
13 it to you. So then all of a sudden I'm like
14 okay, I know. I don't know what I know, but I
15 know something. 10:15:48AM

16 MR. ROTHENBERG: By B of A, you mean
17 Bank of America?

18 A. Yes, Bank of America.

19 Q. At that point did you ask Chris Walsh
20 what was going on? 10:15:59AM

21 A. Yeah, they had no -- he and Scott
22 Peterson, they just thought it was a happy
23 meeting, and I'm like nope. And lo and behold, I
24 was correct.

1 Q. Well, when did you figure out -- when did
2 you gather more information?

3 A. In the 15-minute walk from State Street
4 to Morgan Stanley, based on an entire days' board
5 meeting, I figured it out. I didn't know what
6 was going on but I knew something was going on.

10:16:27AM

7 Q. What did you figure out?

8 A. At that time or later?

9 Q. Um, or later.

10 A. Um, what I figured out later was there
11 was an individual at Goldman Sacks who had a
12 business idea to essentially create a new company
13 which would be the combination of AcadiaSoft and
14 Trioptima, which I mentioned earlier, and what I
15 also found out later is he had tried -- he had
16 made an offer to ICAP to buy Trioptima at what
17 was generally regarded as about 10 percent of the
18 market value at that time.

10:16:39AM

10:17:07AM

19 Q. Yep.

20 A. So for about \$150 million, and ICAP
21 turned them down flat, and there's a lot of
22 intrigue -- we could spend four, five days on
23 this --

10:17:21AM

24 Q. Okay.

1 A. But long story short, this individual at
2 Goldman was -- to forward his own personal
3 career, had this idea to come up with something
4 which looked identical to AcadiaSoft merged with
5 Trioptima.

10:17:54AM

6 Q. Okay. All right.

7 MS. FLYNN: Why don't we just leave
8 it there because we said we would take a break.

9 (A brief recess was taken at 10:18
10 a.m.)

10:17:59AM

11 (Resumed from recess at 10:30 a.m.)

12 MS. FLYNN: Back on the record.

13 CONTINUED DIRECT EXAMINATION

14 BY MS. FLYNN:

15 Q. Mr. Welch, did you speak to anyone
16 besides your attorney while we were away on
17 break?

10:30:52AM

18 A. No.

19 Q. Thank you. As you're telling me this
20 story that is your life story, but it -- in terms
21 of what's happening in July of 2014, can you just
22 describe a little bit further what you thought
23 Goldman Sacks was trying to do to the common
24 stockholders of Acadia stock?

10:32:44AM

1 A. I can but it would be speculation and
2 there's lots of different opinions of what was
3 going on, so it's just my personal --

4 Q. What is your personal opinion of what you
5 thought was happening or potentially could happen
6 to the common stockholders of AcadiaSoft?

10:33:22AM

7 A. I thought they were trying to create a --
8 whatever you want to call it -- a facade
9 organization, company, whatever you -- a product
10 whose purpose was to drive the value of Acadia's
11 common stock to a dollar.

10:33:42AM

12 Q. And who at this time held the common
13 stock of Acadia?

14 A. It would be myself, Dan and the angels.

15 Q. And that -- that thought terrified you;
16 is that correct?

10:34:01AM

17 A. In for a dime, in for a dollar. I had
18 saved -- because at that point I was making a
19 reasonable amount of money. I don't remember
20 what my salary was. So I had saved a little bit.
21 Those were my assets.

10:34:19AM

22 Q. And you thought that all of your kind of
23 -- would it be fair to say your equity sweat in
24 the company and its -- the fruits of it were at

1 jeopardy?

2 A. Yes.

3 Q. What did you do when you thought Goldman
4 Sacks could wipe out the equity value of the
5 common stockholders?

10:34:51AM

6 A. After I spoke to each of the Board
7 members and sized up what I had thought was where
8 the battle lines were drawn, then I called the
9 CEO of Trioptima and said -- the guy's name is
10 Pers, P-E-R-S, Chiobeijk. I'm not even going to
11 attempt the second name, but it's Swedish. It's
12 got a lot of funny letters.

10:35:18AM

13 So I called Pers. We didn't know each
14 other well, but through the industry we had
15 crossed paths. I said do you understand, Pers,
16 what Goldman is trying to do is put us both out
17 of business. And he -- each time I'd say that,
18 he would be like well, you know, maybe, maybe
19 not. But from July until the middle of September
20 of 2014, I could not convince him.

10:35:36AM

21 So I had Chris Walsh deal officially with
22 this other company that they were trying to set
23 up, and then I dealt with trying to protect the
24 shareholders of the common.

10:35:58AM

1 So I had my -- I had Chris be the -- the
2 product was called -- they called it Project
3 Colin, and they were doing all kinds of public
4 things, so I had Chris deal with them, and I was
5 dealing with basically the survival of the
6 common.

10:36:53AM

7 Q. Can you explain how the preferred
8 stockholders would not have been affected by
9 this. You said -- you had said what Goldman was
10 attempting to do would affect the common
11 stockholders, and I'm asking can you explain how
12 the other investors would not be affected by what
13 Goldman was attempting to do.

10:37:18AM

14 A. Um, this is speculation on my part, but
15 if either Project Colin or AcadiaSoft Trioptima,
16 if it solved the needs of the banks, it wasn't of
17 issue to them.

10:37:34AM

18 Q. Okay. Either one would be okay.

19 A. Right.

20 Q. What did you do next?

10:37:57AM

21 A. Got really angry. I just tried to talk
22 to as many people as I could, and what I had been
23 convinced of fairly quickly was that the way to
24 protect AcadiaSoft was to partner with Trioptima.

1 Q. Did you do something about that idea
2 about the future for AcadiaSoft?

3 A. As I said, I talked to Pers, the CEO, a
4 few times but he was always sort of politely
5 telling me I was over-reacting.

10:38:45AM

6 Q. Did you eventually go meet him?

7 A. I did.

8 Q. And when was that?

9 A. Towards the end of September there -- the
10 Project Colin put something out and it was very
11 technical, but it basically -- if you knew what
12 you were reading from the technical
13 documentation, basically they were saying that
14 Trioptima and AcadiaSoft, if they wanted to
15 survive by partnering with Project Colin, we
16 would have to turn over our source code to them
17 and we'd have no rights to it.

10:39:03AM

10:39:27AM

18 Q. Okay. So --

19 A. So I called Pers. Pers was in Singapore
20 with the CEO of ICAP who owned a hundred percent
21 of Trioptima, and I said Pers, do you believe me
22 now. And he goes -- after we saw this
23 documentation -- and he goes yup, you've been
24 right all along; what do you propose.

10:39:44AM

1 And I said the one way that we can shut
2 the whole Project Colin down, full stop, is if we
3 partner or merge.

4 Q. And that idea you would have to bring
5 back to the Board of Directors; is that fair to
6 say? 10:40:14AM

7 A. Eventually, yes, but I could have
8 conversations that I wanted to.

9 Q. Did you have conversations with others at
10 AcadiaSoft about this idea? 10:40:27AM

11 A. I did with Chris, yes.

12 Q. What did he have to say?

13 A. Um, Chris had nowhere near the stock in
14 AcadiaSoft that I did. And Chris is more of an
15 operating manager than a high-risk entrepreneur,
16 so he would have been dramatically less impacted
17 by it happening. So that's why I put him in
18 charge of dealing officially with the Project
19 Colin crap. 10:40:52AM

20 Q. At some point did ICAP put out the idea
21 that they would purchase the stock from you and
22 Dan? 10:41:17AM

23 A. Just one second. I have a question to
24 ask Eric.

1 (Pause.)

2 MR. ROTHENBERG: I'm going to object
3 to the form of the question. Can you rephrase
4 the question?

5 MS. FLYNN: Sure.

10:41:49AM

6 Q. You said you had spoken to --

7 A. Pers.

8 Q. Pers?

9 A. Think of it like a pear.

10 Q. Just to be correct, he's the ICAP CEO?

10:42:04AM

11 A. No, he's the Trioptima CEO.

12 Q. Did you eventually speak to the ICAP CEO?

13 A. I did. His name is Michael Spencer.

14 Q. Did Michael Spencer offer to purchase or
15 float the idea of purchasing your and Danny's --
16 Mr. Moyse's stock?

10:42:22AM

17 A. I floated the idea to them that the way
18 to protect AcadiaSoft and Trioptima was to merge
19 and he agreed and then said -- what do you
20 propose as a valuation of AcadiaSoft -- and I
21 don't remember the exact amount -- but Dan was
22 adamant that if we sold the common, that we had
23 to do it selling it for ICAP stock. He did not
24 want a cash buy-out.

10:42:43AM

1 Q. Would you have the ability to sell your
2 shares of common stock without the Board's
3 approval?

4 A. No.

5 Q. So this idea was -- was it just a fantasy
6 idea?

10:43:14AM

7 A. ICAP was an equal shareholder to the
8 banks in AcadiaSoft and a hundred percent owner
9 of Trioptima. And Michael Spencer is probably
10 one of the most successful men or women in
11 financial services and knew all the bank CEO's
12 very well.

10:43:33AM

13 Q. So this was not a fantasy idea; is that
14 correct?

15 A. Correct.

10:43:49AM

16 Q. You had the backing of someone very
17 powerful.

18 A. It was a long shot idea.

19 Q. Sorry. I didn't mean any offense at all.

20 A. None taken.

10:44:02AM

21 Q. Thank you. Did Mr. Spencer or did you
22 approach the Board?

23 A. I don't remember what day it was --
24 because I believe I met with Michael and Pers in

1 Singapore where they were on a Saturday. So I
2 don't know if I called the Chairman of the Board
3 and Mark Stein, the Corporate Counsel, that day,
4 Sunday or Monday. But as soon as it was
5 appropriate to bother them, I called the two of
6 them immediately. 10:44:48AM

7 Q. And when you called them, you expressed
8 this idea?

9 A. Yep. Yes.

10 Q. And what was their reaction? 10:45:00AM

11 A. It was along the lines of semi
12 "interesting idea; you need to shut up, sit down
13 and shut up".

14 Then the Board -- you've now notified the
15 Board. The Board is going to deal with this. 10:45:20AM
16 You can only -- at this point you should -- you
17 can only talk to the Chairman of the Board and
18 the Corporate Counsel; that I was not allowed to
19 talk to any other Board members about it until
20 they did, until they notified the Board. 10:45:38AM

21 Q. Were you surprised by this reaction?

22 A. Frankly, no.

23 Q. Sorry. They told you that you couldn't
24 talk to any other Board members and what else did

1 they tell you?

2 A. Basically I needed to let them contact
3 the Board, the rest of the Board, and inform the
4 Board what had transpired. That's -- that's what
5 was being communicated to me.

10:46:16AM

6 Q. And so did you not speak to any other
7 Board members regarding what transpired?

8 A. To the best of my recollection, I believe
9 that is the case. It is not something that I
10 would have gone off message on.

10:46:37AM

11 Q. And what -- besides your inability to
12 speak to other Board members, were there any
13 other ramifications of your informing Mr. Stein
14 and Mr. --

15 A. Wallon.

10:46:59AM

16 Q. -- Wallon about what you thought was
17 happening to Acadia common stock and the way you
18 thought the company should move forward?

19 A. I recognized I had just declared war on a
20 number of my shareholders and my Board members.

10:47:22AM

21 Q. And would it be fair to say that they
22 were not happy with you?

23 (Laughter.)

24 A. That's correct. Even the ones that liked

1 me were not happy with me.

2 Q. And what other things, you know, happened
3 to you in terms of your responsibilities at the
4 company?

5 MR. ROTHENBERG: If any.

10:47:57AM

6 MS. FLYNN: Repeat that? Rephrase?

7 MR. ROTHENBERG: I said "if any". I
8 mean, you're presuming there were other things,
9 so --

10 A. So at that point in time the -- how do I
11 say this? At that -- the day before that
12 conversation, Chris essentially ran the company.
13 He and I talked strategy at a high level and I
14 did sales.

10:48:09AM

15 So that was -- that was the way that --
16 and to be clear, Chris and I have -- I like Chris
17 tremendously. We worked really well together.
18 Even in my current company, I don't like doing
19 the day-to-day. So that's the status.

10:48:34AM

20 And then in a very short period of time,
21 after assumedly, after Mark and Shay had
22 conversations with the wider Board, I was
23 essentially told they were going to form a --
24 excuse me -- they were going to form a -- I don't

10:48:51AM

1 remember, but an investment committee or some
2 group, a subset of the Board to explore different
3 strategic options for Acadia.

4 Q. And now, did any of these Board members
5 own any common stock in the company?

10:49:38AM

6 A. Well, none of the banks would -- sorry.
7 Did you say common -- can you say the question
8 again? I think --

9 Q. Did any members of the Board own common
10 stock in Acadia?

10:49:55AM

11 MR. ROTHENBERG: You're asking that
12 individually, correct?

13 MS. FLYNN: Individually, yes, I am.
14 Individually.

15 A. If any of them did, and I don't recall if
16 he did or not, it would be Howard Edelstein. All
17 of the banks were prohibited.

10:50:02AM

18 Q. From owning common stock?

19 A. Oh, sorry. Were you saying the banks
20 owned common stock or the individual Board
21 members own common stock?

10:50:19AM

22 Q. Let me repeat that. My question is -- I
23 was just wondering if any of the individual Board
24 members owned common stock at the company.

1 A. Obviously Dan and I did.

2 Q. Yeah.

3 A. And then if Howard Edelstein did or did
4 not, because he was given some as part of
5 compensation for being the independent Board
6 member, I don't recall if he did or not.

10:50:46AM

7 Q. Okay. And all of the other
8 representatives -- well, all of the other -- many
9 of the other individual on the Board represented
10 financial institutions; isn't that correct?

10:51:03AM

11 A. That's correct.

12 Q. And the financial institutions that they
13 represented held preferred stock; is that
14 correct?

15 A. That's correct.

10:51:13AM

16 Q. So as far as you remember, it was you and
17 Dan who owned common stock on the Board and
18 possibly Howard; is that correct?

19 A. On the Board. Then there were also the
20 angels that were part of the common.

10:51:35AM

21 Q. Yes. Yes. All right. Thank you. So I
22 think you said somewhere that the Board created
23 this special committee to investigate where
24 AcadiaSoft was going. Did you have any

1 involvement in the special committee?

2 A. I -- until after the fact, I didn't even
3 know who was on the committee.

4 Q. And none of the formation of the special
5 committee was in violation related to anything in
6 the bylaws of the company or anything?

10:52:09AM

7 MR. ROTHENBERG: If you're able to
8 answer that.

9 A. I -- the answer is I have no idea. I'm
10 assuming it was all done squeaky clean.

10:52:21AM

11 Q. Sure. Sure. Well, is this all
12 approximately November, December of 2014. Is
13 that all when this is happening; would that be
14 accurate?

15 A. Yes.

10:52:40AM

16 Q. I mean, did you still -- was there
17 anything taken away from you regarding any other
18 responsibility -- sorry.

19 A. Yes.

20 Q. Strike that. Strike that. Sorry.

10:52:57AM

21 Did the Board tell you other things that
22 you could not do besides not speaking to other
23 Board members about what transpired in Singapore
24 and what your thoughts were about what Goldman

1 Sacks was doing to the company?

2 A. I don't know exactly when. Some time
3 before, let's call it Thanksgiving, I was told
4 that -- that I was -- the Board didn't know if
5 there was going to be a transaction. They didn't 10:53:39AM
6 have any idea what the transaction was going to
7 be, etc..., but regardless of if there was or was
8 not a transaction, by the summer of 2015 I would
9 no longer be part of the company and that I was
10 to whatever remaining responsibilities I had as 10:54:00AM
11 CEO, I was to transfer all of those to Chris
12 Walsh and I was to start a process to transfer
13 all of my sales contacts to the sales manager and
14 that was that.

15 Q. And did you do what was requested of you? 10:54:23AM

16 A. Yes, because by about Thanksgiving time,
17 I had gone back to feeling like I was having
18 heart attacks again.

19 Q. And so you proceeded doing what you
20 thought was in your best health's interest in 10:54:42AM
21 terms of relinquishing certain responsibilities
22 that you had in AcadiaSoft; is that correct?

23 A. Yes.

24 Q. Were you concerned about what could

1 happen to the common stock of AcadiaSoft?

2 A. Yes.

3 Q. -- or were you given any assurances that
4 -- that the common stock of a Acadia would still
5 be protected and be of value?

10:55:13AM

6 A. Quite the opposite. I was told they had
7 no idea what was going to happen, but I was not
8 part of the -- I basically was given a 6 or
9 7-month going away time.

10 Q. Okay. And you didn't -- did you seek the
11 advice of a mentor in terms of how you dealt with
12 these actions by AcadiaSoft?

10:55:33AM

13 MR. ROTHENBERG: If you did.

14 A. I'm trying to think. I would say other
15 than my wife, no.

10:55:59AM

16 Q. So you didn't seek any maybe legal advice
17 about where things were at with your role in
18 AcadiaSoft and what was happening?

19 A. No, because I knew I had no leverage
20 whatsoever. I knew I had no leverage.

10:56:13AM

21 Q. Okay. At some point did you lose access
22 to your e-mail, your AcadiaSoft e-mail account?

23 A. I mean, I did by the time I left. I
24 don't -- the answer is that I did at some point.

1 I have no idea when that was. But we didn't have
2 -- we -- it was not like today. We didn't have
3 like back-up out the wazoo.

4 Q. Now, why do you say you had no leverage?

5 A. Because I was an employee at will and
6 after the -- the ICAP conversation I was
7 basically radioactive.

10:57:02AM

8 Q. And would it be right to assume that you
9 still wanted to protect the value of AcadiaSoft;
10 is that correct?

10:57:30AM

11 A. Well, sure. It was my asset.

12 (Laughter.)

13 Q. And so did you during this time period
14 from, you know, October through, you know, spring
15 or early summer, did you make the transition
16 happen? Did you share your leads with the
17 appropriate people at AcadiaSoft?

10:57:47AM

18 A. Yes, and --

19 Q. And did you make the introductions that
20 they wanted you to make with your contacts with
21 the appropriate people at AcadiaSoft?

10:58:05AM

22 A. Absolutely.

23 Q. And did you do whatever you could to
24 still perform well for AcadiaSoft?

1 A. In the context that I had nothing to do
2 with the management of the company anymore and my
3 only role was to introduce the head of sales to
4 my Asia-Pac developmental customers, yes. I
5 didn't have anything else to do.

10:58:40AM

6 Q. And how much time did you spend
7 introducing others at AcadiaSoft to the contacts
8 that you had in Asia?

9 A. Um, I gave this to your auditor; the
10 credit card receipts, but I made one or two trips
11 to London, one trip to Tokyo, and I want to say
12 one trip to Sidney with the sales manager.

10:59:12AM

13 Q. And who was the sales manager?

14 A. His name is David Radley.

15 Q. And did you think he was going to carry
16 the torch well for you after you passed it onto
17 him?

10:59:39AM

18 A. I did. But a number of the important
19 Board members did not. But I had talked to them.
20 -- I said give him a chance and they ended up
21 being really happy with him.

10:59:56AM

22 Q. Would it be fair to say you were right
23 again?

24 (Laughter.)

1 Q. In terms of your gut feel about who
2 should be doing A, an important role for
3 AcadiaSoft sales?

4 A. If my grandmother was still alive, she
5 would take out the ruler and smack my knuckles
6 for saying that.

11:00:20AM

7 Q. Why?

8 A. It worked out well for the company
9 because David did and does a great job for them.

10 Q. Okay. And would you agree that you're
11 advocating for David's continued role in Asia,
12 was helpful to the company too?

11:00:35AM

13 A. Very much so, yes.

14 MS. FLYNN: You know, I'm wondering
15 if right now would be a good time. I could ask a
16 few more questions.

11:01:13AM

17 MR. ROTHENBERG: Whatever you want.

18 MS. FLYNN: I'll just ask a few more
19 questions and maybe we can take a break.

20 Q. How long have you known Mark Stein?

11:01:30AM

21 A. Um, so if you look at the documents, like
22 the company documents, it looks like you've got
23 them. He was the -- he was the Counsel to one of
24 the angels.

1 Q. Okay.

2 A. I met him then and so what would that be,
3 like maybe 2007 or '08.

4 Q. And did you --

5 A. Yeah, he was the Counsel to one of the
6 investors, Kip Oberton, and I thought he was a
7 really capable lawyer so I started using him more
8 and more.

11:02:11AM

9 Q. And when you say using him more and more,
10 can you explain what you mean by that?

11:02:31AM

11 A. I just started shifting more of the
12 corporate work over to him because I thought he
13 did a really good job.

14 Q. And this was when you were CEO of the
15 company in 2007, '08 or '09? Is that what you're
16 talking about, that time period?

11:02:44AM

17 A. Basically, yes.

18 Q. Was he -- when did he become Of Counsel
19 at AcadiaSoft?

20 MR. ROTHENBERG: Objection.

11:03:00AM

21 A. I don't know.

22 MR. ROTHENBERG: Did you mean Of
23 Counsel or Counsel?

24 MS. FLYNN: I meant -- I did mean Of

1 Counsel to AcadiaSoft.

2 A. We had an in-house attorney. They no
3 longer -- she's retired and I think she lives in
4 Russia now. We had an in-house attorney who
5 would do business contracts but Mark did a
6 hundred percent of the investment docs and if
7 something was needed by the Board of Directors.

11:03:34AM

8 Q. Okay. So he was working for AcadiaSoft
9 before 2009?

10 A. I want to say yes, but I'm not positive.

11:03:52AM

11 Q. When's the last time you spoke to Mark?

12 A. Um, probably three weeks ago.

13 Q. Okay.

14 A. Two or three weeks ago. I mean, it's
15 within a month.

11:04:15AM

16 Q. Within a month. And did you speak to him
17 about this case?

18 A. I have not spoken to him about this case
19 within the month, no.

20 Q. When's the last time he's e-mailed you?

11:04:27AM

21 MR. ROTHENBERG: If you know.

22 A. Off the top of my head I don't know.

23 Q. And is he a personal friend of yours?

24 A. I would consider him a personal friend,

1 yes.

2 Q. Has he ever been an attorney for you in a
3 personal matter?

4 A. Not to my recollection, no.

5 Q. And you haven't retained his services for
6 this particular matter?

11:04:59AM

7 A. Absolutely not.

8 Q. And what is Mr. Stein's knowledge of your
9 work schedule from 2009 through 2015?

10 MR. ROTHENBERG: If you know.

11:05:22AM

11 A. I'd see him every month and if there were
12 issues, legal issues, I'd speak to him.

13 MR. ROTHENBERG: She's asking about
14 your work schedule.

15 A. That's what I mean. If I'm going to
16 London, he would know because he would see me on
17 the video in London in his office.

11:05:32AM

18 Q. Okay.

19 A. And vice versa. But I didn't deal with
20 him as much on the legal front because I had my
21 in-house attorney do that at Acadia.

11:05:43AM

22 Q. Would he know like -- okay. You would
23 see him once a month. Is that at the Board of
24 Directors meeting?

1 A. Correct.

2 Q. Did you have any other regular meetings
3 with Mark Stein in 2009 to 2015?

4 A. Regular, no. As needed, yes.

5 Q. Okay. Like how would he know like your
6 personal schedule of where you spent your time
7 from 2009 to 2015?

11:06:16AM

8 A. Um, I would -- when I go -- when I have a
9 Board meeting I go through in detail what's going
10 on in the company, who is doing what, going
11 where, having the CEO go to London or go to Tokyo
12 or do this or that. So I would share it with the
13 entire Board which he was there.

11:06:48AM

14 Q. And why was he at the Board meetings?

15 A. Because the way that the banks wanted --
16 the way the banks wanted the Board managed is
17 they always wanted an outside attorney there.

11:07:13AM

18 Q. Oh, okay. So Mr. Stein was at all Board
19 meetings beginning in 2009 when institutional
20 investors got involved?

11:07:36AM

21 A. That's correct. Which would also mean
22 now that I -- he probably did the 2009 MVCA
23 documents also. Now that you say that, because
24 he was at the first Board meeting.

1 Q. Okay. Now, did you have any
2 conversations with him about your work schedule
3 outside of these Board of Directors meetings?

4 A. I don't -- I really don't recall. I
5 would say that -- I mean, I honestly don't
6 recall. I don't -- so --

11:08:11AM

7 Q. That's okay. And Mr. Stein wouldn't have
8 access to your expense reports from AcadiaSoft,
9 would he?

10 MR. ROTHENBERG: If you know.

11:08:27AM

11 A. Only if it was by going back to the CFO
12 as Corporate Counsel. I don't think -- we did
13 not -- I don't know what they've done now, but
14 stuff like that was not generally saved except
15 for an accounting. So it was saved in
16 Quickbooks, which is the accounting system we
17 used.

11:08:49AM

18 So it would be in Quickbooks that Craig
19 had this expense report that was approved, Craig
20 got paid and -- but the underlying -- so from an
21 accounting point of view, receipts would be saved
22 -- I don't know if they save them now but --

11:09:01AM

23 Q. Let me step back again. I guess my
24 question is Mr. -- Mr. Stein's responsibilities

1 would not have included reviewing or even seeing
2 your expense reports; would that be accurate?

3 A. Correct.

4 Q. And what you stated today is that he's
5 aware of your work schedule from the Board of
6 Directors meetings; is that accurate?

11:09:35AM

7 A. Correct.

8 Q. And outside of those Board of Directors
9 meetings, he wouldn't have any knowledge of where
10 you spent your time from 2009 through 2015; is
11 that accurate?

11:09:48AM

12 A. That he would not or would?

13 Q. That he wouldn't. Outside of those Board
14 of Directors meetings when you inform them of
15 what you were doing --

11:10:01AM

16 A. I mean, he represented AcadiaSoft. As
17 CEO I would talk to him periodically.

18 Q. So you had other conversations outside of
19 the Board of Directors meetings about what you
20 were doing?

11:10:14AM

21 A. Essentially, yes.

22 Q. Okay. And where you were doing it,
23 correct?

24 A. If it came up in chitchat, but --

1 Q. Correct. These conversations, would you
2 agree, were infrequent?

3 A. I would say they were unscheduled.

4 Q. Unscheduled. Okay. Would they be
5 infrequently unscheduled?

11:10:42AM

6 MR. ROTHENBERG:

7 (Laughter.)

8 A. I don't know how to answer that. He was
9 -- he was the Counsel to the company, so I had to
10 talk to him sometimes.

11:10:55AM

11 Q. Okay. Once a month regarding your work
12 schedule? Less than that? A few times a year?

13 A. At a thousand an hour, as infrequently as
14 possible.

15 (Laughter.)

11:11:17AM

16 Q. Now, did you ask Mr. Stein for any
17 documents related to this case?

18 A. I asked him if he had a copy of the -- my
19 departure agreement, and I do not recall if I got
20 it from him or from the company. I don't
21 remember if it was either Scott Peterson, the
22 CFO, that gave it to me or if it was Mark Stein.
23 I don't know. But I asked him because I didn't
24 have it.

11:11:40AM

1 Q. Did you ask him for any of the other
2 documents that we had requested in discovery
3 related to the 2009 financing or the 2007 or '08
4 financing?

5 A. No, absolutely not.

11:12:05AM

6 Q. And the 2015 financing, you didn't ask
7 him for those documents?

8 A. He didn't represent me. He did not
9 represent me. He represents the Company. I
10 asked the Company.

11:12:17AM

11 Q. Okay. So you asked the Company for the
12 documents that we had requested in discovery?

13 A. Yep.

14 Q. And they didn't give you any documents?

15 A. No.

11:12:32AM

16 Q. And did they just -- how did they
17 respond? What was their response to you when you
18 asked?

19 A. I think the first response was if they
20 even had them, they were often -- they were often
21 Iron Mountain or wherever they were. And then
22 when your auditor associate was adamant in trying
23 to get them, then I asked them again and they
24 said if the State wants them, then the State can

11:12:43AM

1 ask for them.

2 Q. Okay. Did you ever reach out to Daniel
3 Moyse for any agreements?

4 A. Dan doesn't know who I am.

5 Q. Oh. I'm sorry to hear that for your
6 friendship's sake.

11:13:22AM

7 A. Yep. Thank you.

8 Q. Did you contact Gregory Friar for any
9 information that would be --

10 A. Greg might be the one who gave me my
11 resignation document now that you said that. It
12 was probably Greg that gave me the resignation
13 document because he represented me at the very
14 end when I was leaving. He represented me.

11:13:41AM

15 Q. And who was the keeper of the records
16 for --

11:13:59AM

17 A. Morgan Lewis.

18 Q. Since 2009?

19 A. Correct.

20 Q. What about before?

11:14:10AM

21 A. Everything would have been moved over to
22 him. Well, actually just -- he worked for
23 McDermott, Will & Emery first, so technically --
24 I don't.

1 MR. ROTHENBERG: You don't know.

2 A. I have no idea.

3 Q. Okay.

4 MS. FLYNN: You know, I think we said

5 12:15. Can we take an hour break.

11:14:35AM

6 (A recess for lunch was taken at

7 12:14 p.m.)

8 (Resumed at 1:17 p.m.)

9 MS. FLYNN: Back on the record.

10 CONTINUED DIRECT EXAMINATION

12:17:37PM

11 BY MS. FLYNN:

12 Q. Mr. Welch, did you speak to anyone
13 outside of your attorney during this break?

14 A. No, other than the woman at the deli.

15 Q. Thank you. Just following up where we
16 were at before we took a break for lunch; in this
17 time period from October 2014 when you have
18 testified that the company asked you to step back
19 from some of your responsibilities and transfer
20 them to new people, my question is if you weren't
21 happy -- if you were not happy with AcadiaSoft,
22 why didn't you quit at that time?

12:17:52PM

12:18:17PM

23 A. It's very simple; because I had decided I
24 was going to start a new company, a third company

1 which is Kingfield Corporation, and I did not
2 have enough -- I was not going to do it in
3 Massachusetts. And to be able to buy a new home,
4 I had to get a mortgage, and to get a new
5 mortgage, I had to have a salary.

12:18:58PM

6 So I had a window from Q4 until whenever
7 the date was that I did not know of when they
8 were going to say your package is over, good-bye.
9 I needed to get a mortgage and you can't get a
10 mortgage without a salary.

12:19:15PM

11 Q. Okay. Thank you. And if you have -- if
12 you had happened to have voluntarily left
13 AcadiaSoft, what would have happened to your
14 common stock in AcadiaSoft?

15 A. It would just sit there.

12:19:33PM

16 Q. There wasn't any agreement in which you
17 left voluntarily that they could re-purchase that
18 common stock?

19 A. I don't know the answer to that but -- I
20 don't know if there was a clause in there if you
21 left the company that they could buy it back. I
22 don't know if I had that or not.

12:19:57PM

23 Q. Okay.

24 A. I know I have that in my new company. I

1 don't know if that was in Acadia.

2 Q. Okay. Are you still with the new
3 start-up that you did post AcadiaSoft?

4 A. Yes. We're doing very well.

5 Q. Congratulations.

12:20:22PM

6 A. Thank you.

7 Q. Now, to follow up on another thing, you
8 had mentioned that you had not spoken to Mr.
9 Stein in the last month about this case. When's
10 the last time you did speak to Mr. Stein about
11 this case?

12:20:35PM

12 A. I don't know. I mean, I don't want to
13 put in a date because I don't know.

14 Q. Well, what did you talk about with Mr.
15 Stein regarding this case?

12:20:51PM

16 A. I talked with him at a high level and how
17 frustrated I was that this has gone on this long.

18 Q. That would be understandable. Anything
19 else that you talked about.

20 A. I talked about golf and a couple -- I
21 talked about golf and his daughter's marriage.

12:21:19PM

22 Q. Nothing specific about the transaction
23 that we're discussing today or anything?

24 A. No, because Eric had advised me to keep

1 it to him.

2 Q. Now, again, going back to something
3 earlier; in 2009 when AcadiaSoft sought out this
4 new equity financing, I think you testified
5 earlier that was -- was that mainly you who did
6 the work to seek out that equity financing?

12:22:00PM

7 A. Yes.

8 Q. And can you describe the effort you made
9 to seek out that equity financing?

10 A. Herculean.

12:22:17PM

11 MR. ROTHENBERG: I think she wants
12 more.

13 A. As any entrepreneur -- if you know any
14 successful entrepreneur, the cash flow or venture
15 investment is the life blood of the company and
16 if you don't get it, you don't have a company.

12:22:36PM

17 Q. So did you -- did you have multiple
18 meeting -- multiple meetings with these new four
19 equity investors?

20 A. I -- I don't know what you mean by
21 multiple, but I met with them obviously a lot
22 because I was convincing them to invest and
23 change their business model.

12:22:53PM

24 Q. Okay. And did those efforts begin in

1 2008 or '09 and it just took about a year or how
2 long did it take to kind of seek those four out
3 and get them on board?

4 A. This is only a guess on my part. I would
5 say 2006 maybe, 2007.

12:23:26PM

6 Q. So you had been working trying to get
7 them on board for that length of time?

8 A. As a -- with bank strategic investments,
9 it's all sort of together, so as a customer
10 primarily.

12:23:44PM

11 Q. Okay. But as an investor, how long did
12 it take for you to get them on board?

13 A. Honestly, I have no idea.

14 Q. But it was a Herculean effort to get them
15 on board?

12:23:59PM

16 A. Yes.

17 Q. Now -- now, from 2005 to 2015 you filed
18 personal income tax returns in Massachusetts;
19 isn't that correct?

20 A. Yes.

12:24:15PM

21 Q. Did you ever file an amended personal
22 income tax return?

23 A. No idea.

24 MS. FLYNN: Now, if we could -- I

1 would like to mark as Exhibit 1, the Form D
2 Filings.

3 (Form D Filings were marked for
4 identification as Exhibit No. 1.)

5 Q. I should say in advance, I'm not asking
6 any questions about these. I just wanted to
7 authenticate that it was your signature on the
8 three Form D Filings that are part of Exhibit 1.

12:24:58PM

9 And so you can kindly take a look.

10 A. Yep. Eric is showing them to me.

12:25:19PM

11 Q. I -- I am interrupting you and I
12 apologize, but I do want to apologize to anyone
13 who has these in front of them. The bates stamp
14 is tiny in the top left corner, and the first
15 document is on bates stamp page 1 and that goes
16 through bates -- well --

12:25:38PM

17 MR. ROTHENBERG: Are you using --
18 these bates stamps are double stamped.

19 MS. FLYNN: Well, you know, I was
20 learning how to do this last night. The first
21 Form D Filing is from 2006 and it's bates stamp
22 page 1 to bates stamp page 8.

12:26:19PM

23 Q. And Mr. Welch, if you could just look at
24 this document and take your time and --

1 MR. ROTHENBERG: Here you go.

2 A. You're asking me to verify my signature?

3 Q. Yes.

4 A. On page 5 it appears to be my signature.

5 Q. And do you recognize this document?

12:26:46PM

6 A. No idea. No.

7 Q. Do you remember filing this with the
8 Security and Exchange Commission?

9 A. No recollection at all.

10 Q. Well, could you take a quick look. Does
11 this look -- um, do you normally review the
12 documents that you sign?

12:27:08PM

13 A. I think -- I take a quick read of them,
14 but this is ages ago. I don't -- I mean, it
15 looks like my signature.

12:27:37PM

16 Q. Okay. And you would -- you would have
17 reviewed something that you signed; isn't that
18 correct?

19 A. One would assume.

20 Q. And you did have an equity financing in
21 2006; isn't that correct?

12:27:46PM

22 A. 2006, 2006? It was -- it's possible. I
23 mean, I'm not being evasive. I don't remember
24 the exact date. If that ties out to the first

1 angels, yes.

2 MS. FLYNN: Can we go off the record
3 for one moment.

4 (A discussion was held off the
5 record.)

12:28:13PM

6 MS. FLYNN: Back on the record.
7 We'll just go through each of the documents.

8 MR. ROTHENBERG: Is his signature on
9 the Investor Rights Agreement? I didn't see it
10 quickly.

12:32:23PM

11 MS. FLYNN: Yes, it's on bates stamp
12 page 27.

13 MR. ROTHENBERG: That's not his
14 signature.

15 MS. FLYNN: Bates stamp page 27?

12:32:59PM

16 MR. ROTHENBERG: Yeah, you're on the
17 Series B Preferred Stock Purchase Agreement
18 Execution copy.

19 MS. FLYNN: Sorry. We do not have
20 his signature for the Series B Purchase
21 Agreement. That's the only one we don't because
22 he didn't sign that one. I did want to ask
23 questions about it and I still will, but I
24 thought you just asked about the Investors Rights

12:33:12PM

1 Agreement.

2 MR. ROTHENBERG: You're right on
3 page 27. Got it.

4 MS. FLYNN: Okay.

5 Q. Why don't we go back to what I would like
6 to mark as Exhibit 1 which is the Form D Filings.

12:33:36PM

7 Mark, what I'd like -- can you take a
8 look at bates stamp -- sorry.

9 Craig, can you take a look at bates stamp
10 pages 1 through 8 and just please take a look at
11 it and review it. And at the same time, let me
12 know if your signature -- if you recognize your
13 signature on page 5, bates stamp page 5.

12:34:48PM

14 A. Yes, that appears to be my signature.

15 Q. Could you then look at bates stamp 09
16 through 017 and review this document and -- do
17 you recognize this document?

12:35:26PM

18 A. I do not recognize it, but my signature
19 on page 13 appears to be mine --

20 Q. Okay.

12:36:07PM

21 A. -- at page 14.

22 Q. You stated earlier today that there were
23 angel investors in your company; is that correct?

24 A. Correct.

1 Q. And if -- you indicated today that they
2 were invested in your company in the early years
3 of the company 2006 and 2007; is that accurate?

4 A. Correct.

5 Q. And would this document represent what
6 you would need to file related to AcadiaSoft
7 issuance of new stock?

12:36:44PM

8 A. I do not know.

9 Q. Okay. If you could turn to bates stamp
10 18, and if you can review this document
11 through 26, bates stamp page 26, and let me know
12 if that's your signature on bates stamp page 22.

12:37:11PM

13 A. That appears to be my signature on 22 and
14 23.

15 Q. Okay. And you testified earlier that if
16 -- that you trusted people at AcadiaSoft and if
17 people at AcadiaSoft put documents before you
18 then you trusted, that those are the documents
19 that represent what they appear to represent when
20 you sign them?

12:37:45PM

12:38:10PM

21 MR. ROTHENBERG: Objection.

22 Q. Um, can you take a look at this document
23 and --

24 MR. ROTHENBERG: Which one?

1 Q. Tell me what company is filing this
2 document with the SEC, page 18, bates stamp
3 page 18.

4 MR. ROTHENBERG: If you know.

5 A. I don't know, but I'm reading it so -- it
6 doesn't say that it would have been one of my
7 lawyers at that time.

12:38:48PM

8 Q. If you could just look at bates stamp 18
9 on the front. It says basic identify data, name
10 of the issuer.

12:39:10PM

11 A. That's AcadiaSoft.

12 Q. AcadiaSoft. And --

13 MR. ROTHENBERG: That wasn't your
14 question. You asked if he knows that AcadiaSoft
15 filed this document, and he's already testified
16 he has no knowledge of what happened to the
17 document after it was signed. So you can't ask
18 him if he knows if AcadiaSoft filed this with the
19 SEC.

12:39:23PM

20 Q. Um, did you sign this document on behalf
21 of AcadiaSoft as CEO?

12:39:41PM

22 A. It appears to be my signature, so --

23 Q. Okay. That would be it.

24 MS. FLYNN: I'd like to -- I'd like

1 to mark as Exhibit 2, the Investors Rights
2 Agreement.

3 (Investors Rights Agreement was
4 marked for identification as Exhibit No. 2.)

5 MR. ROTHENBERG: That consists of
6 33 pages?

12:40:25PM

7 MS. FLYNN: It does.

8 MR. ROTHENBERG: Okay.

9 Q. Mark, do you recognize this document?

10 MR. ROTHENBERG: No, he's not Mark.
11 He's Craig.

12:40:41PM

12 Q. Chris -- sorry about that.

13 A. I'm not Chris either. We have e-mail to
14 Chris Welch and Craig Walsh.

15 MR. ROTHENBERG: That's the way you
16 get it right half the time.

12:40:57PM

17 (Laughter.)

18 Q. Craig, do you recognize this document?

19 A. I don't recognize the specific one but I
20 recognize the general form as something I've seen
21 periodically.

12:41:06PM

22 Q. Okay. Do you recognize your signature on
23 bates stamp 27?

24 A. Page 27? Yes, that's my signature.

1 Q. And you recognize at the top it says that
2 you -- you're a key holder.

3 A. It does.

4 Q. And you testified earlier you don't
5 remember what a key holder was.

12:41:33PM

6 A. That's correct.

7 Q. Can you just take a look at the first
8 paragraph and refresh your memory.

9 A. What page?

10 Q. The first paragraph of the agreement.

12:41:51PM

11 MR. ROTHENBERG: If it refreshes your
12 memory.

13 A. I -- I will say again I recognize the
14 phrase and I recognize that there was -- we were
15 -- Dan and I were referred to as key holders.
16 What the information behind it was, I don't
17 recall.

12:42:28PM

18 Q. And there weren't any other key holders
19 at AcadiaSoft; is that correct?

20 A. My best recollection is no, but --

12:42:39PM

21 MR. ROTHENBERG: Just your best
22 recollection.

23 MS. FLYNN: I'd like to mark as
24 Exhibit 3 the Right of First Refusal and Co-Sale

1 Agreement.

2 (Right of First of Refusal/Co-Sale
3 was marked for identification as Exhibit No. 3.)

4 Q. Do you recognize this document?

5 A. Just a second. Eric is getting it for
6 me.

7 MR. ROTHENBERG: 22 pages?

8 MS. FLYNN: 22 pages, correct.

9 MR. ROTHENBERG: He has the document.

10 Q. Do you recognize this document?

11 A. I would say I recognize the general form.
12 The specifics of it, I do not recall.

13 Q. Okay. Is that your signature on page
14 bates stamp page 16?

15 A. 16?

16 Q. Correct.

17 A. That appears to be it, yes.

18 Q. And do you remember that you signed a
19 series of agreements related to the 2009 equity
20 financing?

21 A. I have no idea. I signed what I was told
22 to sign.

23 Q. Now, can you go to bates stamp page 3 --

24 A. Got it.

12:43:17PM

12:43:45PM

12:44:01PM

12:44:18PM

1 Q. -- of this document. Are you on bates
2 stamp page 3?

3 A. I'm reading it.

4 Q. If you could just read the paragraph
5 related to key holders option of the company.

12:45:03PM

6 Tell me what you understand this to mean.

7 A. So Section 3?

8 Q. 3.1, please.

9 A. Okay. Got it.

10 Q. Can you tell me what you understand this
11 paragraph to mean?

12:45:48PM

12 A. If I was fired for cause, I'd have to
13 sell it back to them at a penny a share.

14 Q. What if you voluntarily resign?

15 A. I would read it that if I was terminated
16 for cause or if I resigned because of cause, so
17 that's how I would read it.

12:46:26PM

18 Q. Now, if you -- is this -- is this um --
19 do you recall if this clause was in future
20 agreements?

12:46:52PM

21 A. I have no idea.

22 Q. Can you go to exhibit -- I mean -- sorry.
23 Hold on one moment.

24 (Pause.)

1 Q. Can you go to -- sorry.

2 MS. FLYNN: I'd like to mark as
3 Exhibit 4 the Voting Agreement.

4 (Voting Agreement was marked for
5 identification as Exhibit No. 4.)

12:48:05PM

6 A. A different document?

7 Q. A different document.

8 A. So we're done with --

9 Q. For now, yes. For now.

10 MR. ROTHENBERG: This is 22 pages,
11 Julie?

12:48:12PM

12 MS. FLYNN: It is.

13 A. Okay.

14 Q. Do you recognize this Voting Agreement as
15 a document related to the 2009 equity financing?

12:48:34PM

16 A. No, I recognize it as a form that would
17 be associated with it. I don't recognize this
18 specific document.

19 Q. Okay. And do you recognize your
20 signature on page 15?

12:48:54PM

21 A. It appears to be mine, yes.

22 Q. And you would, on the advice of counsel
23 or a trusted employee of Acadia, would have
24 signed this document?

1 A. Correct.

2 Q. If that was what was needed to -- is that
3 one of the documents related to the 2009 equity
4 financing?

5 A. Correct. In this case, I know Dan spent
6 a lot of time on this document for both of us.

12:49:26PM

7 Q. Okay. Now, why was it particularly
8 important that Dan spend a lot of time on this
9 agreement?

10 A. He was interested in the documents and he
11 read them in detail on both of our behalves.

12:49:58PM

12 Q. Did he make suggestions --

13 A. I have no idea.

14 MR. ROTHENBERG: Wait until she asks
15 the question.

12:50:15PM

16 A. Sorry.

17 Q. Now --

18 A. Sorry.

19 Q. Now, did you and Dan have discussions
20 about this document?

12:50:51PM

21 A. I don't recall. It was a long time ago.

22 (Pause.)

23 Q. And what -- AcadiaSoft would be -- did
24 AcadiaSoft follow these agreements or enforce

1 these agreements -- strike that.

2 These agreements were enforced, correct?

3 A. I don't know if they were overwritten by
4 future agreements.

5 Q. Was there any agreement related to the
6 2009 equity financing that you were very
7 interested in the provisions of?

12:53:06PM

8 A. Only receiving the checks.

9 Q. Okay.

10 MS. FLYNN: If we can, I'd like to
11 mark as Exhibit 5 the Second Amended and Restated
12 Voting Agreement for July 30th, 2013.

12:53:26PM

13 MR. ROTHENBERG: Was that issued
14 today or yesterday?

15 MS. FLYNN: That was today. Sorry.

12:54:01PM

16 MR. ROTHENBERG: Are these unbates
17 stamped?

18 MS. FLYNN: This one is unbates
19 stamped. That's okay. I just have a few
20 questions.

12:54:25PM

21 MR. ROTHENBERG: I just want to
22 identify how many pages. I guess I can't. I
23 think I have -- is the last page Exhibit A,
24 Adoption Agreement?

1 MS. FLYNN: It is, yes.

2 MR. ROTHENBERG: Okay. You want this
3 as Exhibit 5?

4 MS. FLYNN: Exhibit 5.

5 MR. ROTHENBERG: Okay.

12:54:43PM

6 (Second Amended and Restated Voting
7 Agreement was marked for identification as
8 Exhibit No. 5.)

9 Q. Mr. Welch, do you recognize this document
10 --

12:54:57PM

11 A. What's the date on this?

12 Q. It's July 30th 2013.

13 A. Okay. Got it.

14 Q. Do you recognize this document at all?

15 A. I don't recognize this specific document.
16 I recognize the general form.

12:55:12PM

17 Q. Okay. And this document -- if this
18 document indicates that AcadiaSoft participated
19 in the issuance of -- a new issuance of stock in
20 2013, would you agree that that happened based on
21 this agreement?

12:55:33PM

22 MR. ROTHENBERG: Objection.

23 Q. Mr. Welch, do you recognize your
24 signature? It's near the end -- sorry.

1 A. Yeah, it's --

2 Q. It's like 10 pages in. Sorry.

3 A. No problem. So I recognize my signature
4 as being the first one and followed by Dan.

5 Q. Okay. And you would have signed this at
6 the advise of counsel at AcadiaSoft?

12:56:11PM

7 A. Um, if this is the document, correct.

8 Q. Okay. It would -- if I indicated to you
9 that these documents came from AcadiaSoft, would
10 you agree that this document represents what it
11 states it represents?

12:56:33PM

12 A. Yes.

13 Q. Now, if you look to page -- the recitals
14 -- I'm on the very first page.

15 A. Okay.

12:56:51PM

16 Q. It references the key holders and certain
17 of the investors entered into an amended and
18 restated voting agreement dated May 24th 2011.
19 Do you recall entering into that agreement?

20 A. No.

12:57:06PM

21 Q. Okay. If you turn to page 3, so the
22 agreement at the bottom of the page 3 -- this
23 particular agreement references you as CEO. Do
24 you see that?

1 A. Not yet.

2 Q. Okay.

3 A. Oh, yep.

4 Q. Did the 2011 agreement reference you as
5 CEO?

12:57:52PM

6 A. No idea.

7 Q. Now, if you -- if could you turn to
8 page 6 where it says key holder consent.

9 A. Okay.

10 Q. Can you read through these requirements.
11 Were any of these of importance to you, these
12 clauses?

12:58:27PM

13 A. They appear to be if we went out of
14 business, so --

15 Q. Was it beyond just going out of business?

12:59:25PM

16 MR. ROTHENBERG: He's already
17 testified he doesn't remember the document at
18 all. Now you're asking him to read a very long
19 set of paragraphs and items and tell you what he
20 remembers, but he's already told you he doesn't
21 remember the document at all.

12:59:38PM

22 Q. Well, okay. If we can go to -- just
23 3.2E.

24 A. Okay.

1 Q. Does it appear that if there was any kind
2 of financing that the key holders -- you know,
3 I'm all set. I'm all set with that. I do want
4 to -- if could you go to employee matters, 3.3.

5 A. Got it.

01:00:20PM

6 Q. C.

7 A. Yep.

8 Q. It says -- that's on page 8. It says
9 "the company shall not reduce the base
10 compensation of a key holder without the prior
11 consent of such key holder except in connection
12 with an across the board reduction in the
13 compensation of all senior employees of the
14 company".

01:00:29PM

15 Now, would that specifically and only
16 reference you?

01:00:43PM

17 MR. ROTHENBERG: If you know.

18 A. I mean, as I read it, it says key
19 holders.

20 Q. But was Dan -- was Mr. Moyse getting a
21 salary in 2013?

01:00:54PM

22 A. I'd -- at that -- I have no idea what the
23 timing was on it. I mean, I'd go back to my
24 previous answer -- not immediate -- but this

1 morning.

2 Q. What previous answer?

3 A. We -- after he was incapacitated for
4 probably more than a year, we paid his salary.

5 Q. Okay. So this is beyond that point.

01:01:27PM

6 This is in 2013. It says key holder; not
7 holders. But did you advocate that that -- that
8 the company could not reduce your salary?

9 MR. ROTHENBERG: Actually, it doesn't
10 say key holder. It says key holders in most
11 places.

01:01:45PM

12 MS. FLYNN: I'm just looking at C;
13 "the company shall not reduce the base
14 compensation of a key holder". Okay.

15 Q. Did you advocate for this clause?

01:01:56PM

16 A. No.

17 Q. Were you concerned that they could reduce
18 your salary, the company?

19 A. I knew -- when I signed the first
20 document I had no leverage.

01:02:09PM

21 Q. When you say you signed the first
22 document, what are you referring to?

23 A. To -- for the bank's investing.

24 Q. So did you try to increase your leverage

1 in future agreements?

2 A. No.

3 Q. Well, isn't this something that would
4 benefit you that isn't in the earlier agreement;
5 that "the company shall not reduce the base
6 compensation of a key holder without the prior
7 consent of such key holder except in the
8 connection with the across the board reduction
9 and the compensation of all senior employees."

01:02:34PM

10 Why would that clause be here?

01:02:49PM

11 A. If I were to speculate, because it was
12 put in in a boilerplate form.

13 Q. So they just put something that was
14 beneficial to you in the form and you weren't
15 aware of it?

01:03:02PM

16 A. It exists. I mean, if this is the
17 correct document, it exists. I did not advocate
18 for this.

19 Q. That's -- sorry. All I'm trying to get
20 at is did you advocate or did you have concerns
21 that they were going to reduce your salary at the
22 company?

01:03:17PM

23 A. At a certain point in time, and I can't
24 tell you when, I was concerned they were going to

1 fire me.

2 Q. Well, were you also concerned that they
3 could reduce your salary?

4 A. Not really.

5 MR. ROTHENBERG: Julie, just for the
6 record, you've said that it's important that it
7 was key holder versus holders, and you testified
8 in the question that Daniel was not a key holder,
9 but yet he signed it as a key holder on this
10 document at 13. And you tried to ask a question
11 earlier that he was not a part of the key holders
12 then or working for the company.

01:03:39PM

01:03:51PM

13 MS. FLYNN: Okay. Well then -- thank
14 you.

15 Q. Did either you or Daniel advocate for
16 this clause?

01:04:06PM

17 A. I have no recollection of this clause.

18 Q. Okay.

19 A. I genuinely have no recollection.

20 Q. Okay. Can we -- I think Exhibit 6 is the
21 2009 Preferred Stock Purchase Agreement?

01:04:18PM

22 MR. ROTHENBERG: 29 pages?

23 MS. FLYNN: Yes.

24 (2009 Preferred Stock Purchase

1 Agreement was marked for identification as
2 Exhibit No. 6.)

3 Q. There is no signature by you. I'm just
4 asking do you recognize this document?

5 A. I recognize the general form.

01:05:07PM

6 Q. Because you signed this kind of a form
7 with several equity financings; is that how you
8 recognize it?

9 A. Essentially, yes.

10 Q. If you could turn to page 2.8.

01:05:22PM

11 A. You mean point No. 2.8?

12 MR. ROTHENBERG: Section number.

13 Q. Intellectual property, sorry. Bates
14 stamp page 7, 2.8. And can you tell me a little
15 bit about the intellectual property that
16 AcadiaSoft owned at this point in time?

01:05:46PM

17 A. So this was when, 2009?

18 Q. Yes.

19 A. It would have been definitely -- what did
20 we call it -- Acadia Collateral Manager, the
21 product that Fidelity bought, the subsidiary
22 ledger, and it would have been the early forms of
23 the transaction system, which is what Acadia is
24 today.

01:06:04PM

1 Q. Okay. So this collateral management
2 software and then an earlier version of the
3 current transaction software; is that what you
4 just said?

5 A. Yeah, I mean -- yes. That's as good a
6 way as any to describe it.

01:06:43PM

7 Q. Well, how much did you value that
8 software in 2009?

9 MR. ROTHENBERG: If you did. You're
10 making a presumption.

01:07:07PM

11 MS. FLYNN: If he did.

12 A. I don't know what -- whatever the
13 valuation was on this round. It would have been
14 in part the intellectual property and part the
15 opportunity value, and I don't know how it would
16 have been broken down.

01:07:26PM

17 Q. Okay. After 2009 and prior to the 2015
18 sale of stock can you tell me what other
19 proprietary software did AcadiaSoft develop.

20 A. Generally speaking, we started -- we no
21 longer supported the collateral management
22 software and at a certain point, I don't recall
23 when, but we put all our efforts into the
24 transaction software.

01:07:56PM

1 Q. And did you have many iterations of the
2 transaction software? Did it constantly change,
3 you know, every month or every year? How did
4 that happen?

5 A. It's a SAS service.

01:08:26PM

6 Q. Maybe you can explain that.

7 A. It's -- it's Cloud based, so they make
8 changes throughout. It's basically a living
9 piece of software. It's not like a piece of
10 software that you put on the disc and put on your
11 machine. It's Cloud. So that it's -- it's
12 changing all the time.

01:08:44PM

13 Q. It's changing all the time?

14 A. SAS is software as a service.

15 Q. Now, can you turn to page 13.

01:09:41PM

16 A. Okay.

17 Q. And if you could just take a look at D
18 and E for a minute.

19 A. Okay.

20 Q. Just referring to D, and I know you said
21 earlier you were an employee at will. This
22 paragraph also indicates to investors that at
23 this time the company assumed that you and Dan
24 and possibly a few other people would still be

01:10:31PM

1 working for the company; is that correct?

2 A. Correct.

3 Q. It says "the company has not made any
4 representations regarding equity incentives to
5 any officers, employees, director or consultant
6 that are inconsistent with the sheer amounts and
7 terms set forth in the minutes of the meetings of
8 the Company's Board of Directors".

01:11:06PM

9 And my question to you is is there
10 anything in the minutes of the meetings of the
11 Company's Board of Directors that relates to, you
12 know --

01:11:20PM

13 A. I don't have them.

14 Q. You don't have them. But is there
15 anything about those minutes that relates to your
16 common stock?

01:11:33PM

17 A. Just that I kept getting diluted every
18 time people put money in.

19 (Laughter.)

20 Q. Just for clarification sake, I think --
21 well, you never received any stock options; is
22 that correct?

01:11:43PM

23 A. That's correct.

24 Q. And you didn't receive any equity

1 incentives; is that correct?

2 A. That's correct.

3 MS. FLYNN: For Exhibit 7, if we can
4 just go to the Appellant's Answers to
5 Interrogatories, and I want to say that this is
6 the one that you gave me last -- or yesterday,
7 Eric, and I forwarded it to the stenographer and
8 you this morning.

01:12:33PM

9 We had two documents, Julie; one was sent
10 in an original e-mail, but then Eric sent me the
11 one with the original signature and I sent that,
12 I believe, this morning and that's the one I'm
13 referring to right now.

01:13:04PM

14 MR. ROTHENBERG: The one from
15 yesterday, which is identified as 4 pages by
16 bates stamp, is not being used. The one that
17 came from this morning, is Exhibit 7.

01:13:14PM

18 (Answers to Interrogatories were
19 marked for identification as Exhibit No. 7.)

20 MS. FLYNN: Yeah.

01:13:27PM

21 Q. And Eric, [sic] can you look at this
22 document and do you recognize it -- I mean,
23 Craig, do you recognize this document?

24 A. Who me? Craig?

1 Q. Craig.

2 A. Yep, this looks like what Eric created.

3 Q. And is that your signature?

4 A. It is.

5 Q. Okay. Now, um, can you just go to

01:14:11PM

6 interrogatory response No. 7.

7 A. Sure.

8 Q. And if you could just take your time and
9 read the question and the response and --

10 (Pause.)

01:14:56PM

11 A. Okay.

12 Q. So I'm just reading it into the record.

13 Interrogatory 7; "please identify all documents
14 relative to the funding of Acadia, including but
15 not limited to, any agreements between Craig
16 Welch and Daniel Moyse, any operating agreements
17 and amendments thereto, records of contribution
18 of capital, all equity issuance documents
19 including, but not limited to, common stock
20 certificates, proof of payment of stock, stock
21 ledgers, vesting schedules and shareholder
22 agreements relative to the issuance of Acadia
23 common stock in February of 2005."

01:15:06PM

01:16:06PM

24 Mr. Welch's answer was "Mr. Welch started

1 the company in 2003, maybe 2004, and Mr. Moyse
2 joined the company in approximately 2006. Mr.
3 Welch spent all his savings, home equity, 529
4 plan, and he had 459,000 of credit card debt by
5 about 2009 all related to his business, but
6 beyond his memory he cannot prove more. His best
7 recollection is that he had 800,000 of money
8 invested in AcadiaSoft, not including lost wages
9 by December of 2009."

01:16:55PM

10 My question, Mr. Welch, is do you have
11 any documents to support the statements that you
12 made here?

01:17:18PM

13 A. No, the -- I wrote that carefully.

14 Q. Okay. Did you try to obtain any
15 documents that would support this statement?

01:17:38PM

16 A. I've tried to do it long before this
17 event because I wanted to be able to basically --
18 basically I wanted -- when the company was
19 funded, the institutional round, I wanted to go
20 on record so that in the future if there were
21 bonuses, that I would have more of a case to make
22 to the Board of Directors from future profits so
23 I had tried to pull this together long before
24 this --

01:18:02PM

1 MR. ROTHENBERG: Lawsuit.

2 A. -- lawsuit.

3 Q. Okay. But you pulled it together from
4 something. What did you pull it together from?

5 A. My mind.

01:18:29PM

6 Q. Your mind. Okay.

7 A. If you put a dollar sign in front of
8 things, I'm pretty good.

9 Q. Okay. But you never spent the time
10 trying to document what you remembered, correct?

01:18:55PM

11 A. I absolutely spent the time.

12 MR. ROTHENBERG: He just testified
13 that he did.

14 Q. Sorry. I said not -- I meant not
15 finding the documentary evidence for what you
16 remembered.

01:19:05PM

17 MR. ROTHENBERG: He testified that as
18 well.

19 A. I tried to do it prior to the 2009
20 financing. When this lawsuit came about, I knew
21 I couldn't prove it because I couldn't prove it
22 back in 2009, but I remembered the numbers very
23 well.

01:19:13PM

24 Q. Well, what was -- why was it hard to

1 prove credit card debt or home equity loans or
2 money that you wrote from your checking account
3 for the company? Why -- I mean, why couldn't you
4 assemble something to verify what is stated here?

5 A. I did my best and I am not a detailed
6 record person. I -- I manage my checkbook that
7 there is more money in it than I believe I'm
8 spending. For better or worse, that's who I am.

01:19:46PM

9 Q. Did you ever present any of this to the
10 Board or anyone else to try to get additional
11 funds for yourself?

01:20:08PM

12 MR. ROTHENBERG: By "this" are you
13 meaning his words?

14 MS. FLYNN: Yes.

15 A. No, I didn't because I knew I couldn't
16 prove it.

01:20:17PM

17 Q. Okay. Um, did the company reimburse you
18 in some way for --

19 A. At one point?

20 MR. ROTHENBERG: She hasn't asked a
21 question.

01:20:44PM

22 Q. Did the company ever reimburse you
23 monetarily for your -- for your actions or for
24 what you've alleged here at any point in time?

1 MR. ROTHENBERG: Objection.

2 Q. Did the company ever reimburse you for
3 your contribution that you made to AcadiaSoft?

4 MS. FLYNN: Sorry.

5 MR. ROTHENBERG: That's outlined in
6 his answer? Is that what you're referring to?

01:21:21PM

7 MS. FLYNN: Yes, for -- yes.

8 MR. ROTHENBERG: She's asking did you
9 ever get money from AcadiaSoft for these things
10 you list here in the answer.

01:21:32PM

11 A. No.

12 Q. Now, is it true at one point that they
13 loaned you money and they might have forgiven the
14 loans?

15 A. That's -- so that's the difference
16 between Dan and me at 12 whatever percent and
17 14 percent. So they did loan me money because I
18 couldn't pay my bills.

01:21:50PM

19 Q. And did they forgive those loans?

20 A. No. They -- no. They took 2 percent of
21 the company from me.

01:22:06PM

22 Q. Did they ever forgive any loans for you?

23 MR. ROTHENBERG: If you remember.

24 A. I don't recall having loans from the

1 company, so I can't -- Dan had loans. I don't
2 recall ever having loans. I just remember the
3 2 percent when -- actually, the money that they
4 gave me -- now that you say it -- the money that
5 -- to pay my bills -- I don't know.

01:22:45PM

6 Q. Okay. Well, did you make payments on the
7 loans that the company made to you?

8 A. Sorry?

9 Q. Did you make payments on the loans that
10 the company made to you?

01:22:59PM

11 MR. ROTHENBERG: She's asking you did
12 you pay them back any money.

13 A. Whatever money they did, if they did,
14 that's the difference between the 12 and the 14
15 between Dan and myself, so I paid it back in
16 stock.

01:23:12PM

17 Q. Okay. Now, can you just take a look at
18 interrogatory No. 11, and I'm actually just going
19 to read it. I'm going to read the interrogatory
20 and your answer.

01:23:34PM

21 11 says "please identify all the tasks
22 you performed as Chief Executive Officer from
23 2003 to 2015 for Acadia and indicate where you
24 performed this work".

1 Now, it says "Mr. Welch was the Founder,
2 Primary Investor and Chief Evangelist until about
3 2008. Dan Moyse joined the company as CTO in
4 approximately 2006. In 2009, he recalls Mr.
5 Moyse became CEO, until his becoming gravely ill
6 some time in mid-2010, at which time
7 through 2014, Mr. Welch was CEO and performed
8 normal duties of a SynTec CEO.

01:24:14PM

9 By the end of 2014, Mr. Welch was told by
10 the Board members to stand aside and let the COO
11 run the company. At such time, his role was to
12 work on whatever sales he might have had in the
13 pipeline and/or transition them over to the head
14 of sales. His best estimate of his time working
15 in 2003 to 2009, 99 percent of his work was done
16 from Lynnfield, Mass. or New York City. From
17 2009 through 2014, he estimates that 45 percent
18 of his work was in Mass; 30 percent in the United
19 States and 25 percent international.

01:24:40PM

01:24:59PM

20 He does not have copies of any expense
21 reports. The business of AcadiaSoft is a global
22 collateral management between the largest
23 financial firms in the world. The majority of
24 management for these firms, relative to the

01:25:18PM

1 collateral management business was predominantly
2 in London, not the United States; hence Mr. Welch
3 spent a large portion of time here".

4 My question, and we've gone over this a
5 little bit; did you try to find any documents
6 outside of expense reports to support the
7 statements here?

01:25:51PM

8 A. In terms of in --

9 Q. Did you look -- did you have personal
10 calendars that you based these estimates off?

01:26:07PM

11 A. I based it off from memory. I did not
12 have access to my Acadia calendar or e-mail. It
13 was just my memory.

14 Q. Okay. So you don't keep a personal
15 calendar outside of an Outlook calendar?

01:26:26PM

16 A. I keep a personal calendar, but my -- I
17 -- my personal calendar is on an Apple as it is
18 today. My business is on Outlook as it is today.

19 So the Acadia Outlook was turned off and
20 as part of my separation agreement, which I think
21 I assume you're going to bring up in a minute, I
22 had to guarantee that I destroyed all documents
23 and everything, which I did.

01:26:50PM

24 Q. Okay. All right. And you didn't -- did

1 do you -- did you do any searching for credit
2 card statements that might have indicated where
3 you spent your time?

4 A. The only one -- yes, and I provided those
5 to, um, your auditor.

01:27:18PM

6 Q. But I mean for the time periods
7 referenced here.

8 A. It was a nightmare getting them just for
9 the -- whatever it was, 2014 for your auditor.

10 Q. Okay. All right. If we can -- um, I'd
11 like to mark as the next exhibit the Separation
12 Agreement.

01:27:33PM

13 (Separation Agreement was marked for
14 identification as Exhibit No. 8.)

15 MR. ROTHENBERG: 10 pages?

01:28:16PM

16 MS. FLYNN: Actually, I need to --
17 sorry. I need to pull it up myself. I think you
18 just asked the question how many pages. I have
19 10 pages.

20 MR. ROTHENBERG: Yes.

01:29:05PM

21 Q. Okay. Do you recognize this document,
22 Craig?

23 A. Yes.

24 Q. And is that your signature on page 10?

1 A. It is.

2 Q. Now, if we go to page 1A -- sorry -- to
3 the first bates stamp page 1.

4 A. Okay.

5 Q. In paragraph 1A.

01:29:42PM

6 A. Yep.

7 Q. You know, take a glance at it now, if you
8 don't mind.

9 (Pause.)

10 A. Okay.

01:30:03PM

11 Q. What's your understanding of why the
12 termination of your employment coincided with the
13 issuance and sale of the series D preferred
14 stock?

15 A. Because in Q4 2014 I was told by the
16 Board to turn over all of my responsibilities to
17 the COO and the head of sales, and that some time
18 in the summer of 2015, if there was some sort of
19 transaction or there was not some sort of
20 transaction, I would be done and that they were
21 out of courteousness to me, giving me six months
22 to essentially drift away from the company as
23 well as it was to their benefit also because I
24 was so high profile in the industry and

01:30:18PM

01:30:44PM

1 associated with AcadiaSoft.

2 Q. Okay. Were there any other reasons why
3 they had to be, you know, coincided at the exact
4 same time?

5 A. Well --

01:31:17PM

6 MR. ROTHENBERG: Well, it doesn't say
7 that it's at the exact same time.

8 Q. Okay.

9 A. The answer is no. The Board -- I was
10 told end of 2014 I was done as CEO in 2014, and
11 some time in the summer, without a specific time
12 frame, I would be done -- I would stop getting
13 paid.

01:31:33PM

14 So my -- essentially my severance package
15 was that time period.

01:31:56PM

16 Q. Okay. If we turn to paragraph C, why is
17 your severance --

18 MR. ROTHENBERG: C?

19 MS. FLYNN: No, sorry. Um, bates
20 stamp page 3.

01:32:20PM

21 A. I thought you said paragraph 3. I was
22 like wait --

23 Q. Nope. I did. I -- I did say 3, but --

24 A. Go ahead.

1 Q. I am turning to 3B which happens to be on
2 bates stamp page 3. My question is why is the
3 reference of common stock in your separation
4 agreement?

5 MR. ROTHENBERG: If you know.

01:32:52PM

6 A. I don't know. You'd have to ask Counsel.

7 Q. Well, do you remember talking to Greg
8 about this?

9 A. He couldn't -- Greg could not get Morgan
10 Lewis to return much of any of his
11 communications. We were in a black hole.

01:33:13PM

12 Q. And you're referring to Mark Stein?

13 A. Yes.

14 Q. So AcadiaSoft put this in here or did you
15 want this term in here?

01:33:33PM

16 A. Um, I can tell you exactly what happened
17 with this document. It showed up one day on
18 e-mail. Greg looked at it and I signed it. I
19 barely even read it. I just wanted out.

20 Q. Now, if you would go to -- if you go to
21 bates stamp page 4, it's section 7, entitled
22 Restrictive Covenants.

01:33:57PM

23 I guess, did you follow the
24 non-solicitation and non-competition parts of

1 this agreement?

2 A. Just a second. I don't really know what
3 this says. I'm sorry. Is there a restrictive
4 covenant in here?

5 Q. Well, hold on.

01:35:10PM

6 A. Sorry. You're not my lawyer. You can't
7 answer the question. I mean --

8 Q. Well, I mean, it says that you agree not
9 to solicit, induce, recruit, offer employment,
10 engage as a consultant, lure, entice away or in
11 any other manner persuade or attempt to persuade
12 to leave the employ of or reduce services to the
13 Company."

01:35:27PM

14 A. I did nothing to hurt the company.

15 Q. And you did nothing to compete against
16 the Company for three months following the
17 separation"?

01:35:47PM

18 A. Nope.

19 (Pause.)

20 Q. If you go to bates stamp page 8 and go to
21 -- hold on one second.

01:36:19PM

22 A. Okay.

23 Q. 13B.

24 A. Okay.

1 Q. I'll just read it for context sake; "this
2 Agreement constitutes the full understanding and
3 entire Agreement between you and the Company, and
4 supercedes any other Agreements of any kind,
5 whether oral or written, formal or informal,
6 except to the extent specifically referenced in
7 this Agreement as surviving. You represent and
8 acknowledge that in signing this Agreement, you
9 have not relied upon any representations or
10 statements not set forth in this Agreement."

01:36:57PM

01:37:11PM

11 And my question is related to the last
12 statement; "notwithstanding the foregoing, except
13 to the extent inconsistent with the express terms
14 of this Agreement, you hereby agree that that
15 certain Employee Proprietary Information and
16 Inventions Agreement, dated as of December 31st
17 2009 by and between you and the Company, shall
18 remain in full force and effect following the
19 separation date".

01:37:26PM

20 Do you remember that Agreement and what
21 you agreed to; that that Agreement was still in
22 full force after 2015?

01:37:45PM

23 A. So what -- I'm not sure, but what I
24 believe that Agreement was is that Dan had some

1 "inventions". He had an Agreement and they had
2 us both sign them and the document that I signed
3 said I've got no inventions.

4 (Laughter.)

5 A. Yay.

01:38:26PM

6 Q. Okay. Dan signed one that he had the
7 inventions?

8 A. Correct.

9 Q. I'm assuming that if we go back to bates
10 stamp page 7 and paragraph 10, Cooperation; if
11 you just -- take a glance at that.

01:38:47PM

12 A. Okay.

13 Q. That you kept your part of the bargain
14 here?

15 A. I didn't have to. I was never asked to
16 do anything.

01:39:12PM

17 Q. So after June 29th --

18 A. Like I said before, I was radioactive.

19 Q. Okay.

20 MS. FLYNN: So I think I just want to
21 take a quick break to grab a glass of water and I
22 have -- and then if we can just take a 10-minute
23 break and then I have some questions from the
24 e-mails and that's really -- I think I'm winding

01:39:33PM

1 down here. I am getting thirsty. Can we just
2 take a 10-minute break.

3 (A brief recess was taken.)

4 MS. FLYNN: Back on the record. I
5 believe we were at Exhibit 9.

01:53:55PM

6 (E-mails were marked for
7 identification as Exhibit No. 9.)

8 Q. I just wanted to ask you a few questions,
9 so Craig, if you can turn to bates stamp page 2.
10 This is something that you gave to us, and this
11 is an e-mail from your attorney to Mark Stein and
12 you were cc'd on it. Do you remember this e-mail
13 and I'm talking about the bottom of the page.
14 Sorry.

01:54:34PM

15 (Pause.)

01:55:00PM

16 A. Okay. Yep.

17 Q. And I guess I'll ask maybe again; what's
18 your understanding of why Craig saw this
19 Separation Agreement and the Repurchase Agreement
20 as -- as interrelated?

01:55:19PM

21 MR. ROTHENBERG: This is Craig. You
22 mean Greg?

23 Q. No. No. Sorry. Craig, what is your
24 understanding of why Greg viewed the Separation

1 Agreement and the Repurchase Agreement as
2 separate but inter-related.

3 A. Because at that point they had the
4 recapitalization done and Greg told me that if I
5 gave them my signed resignation before the --
6 before they agreed to buy the stock, that I'd
7 have to leverage if they said we're not going to
8 buy your stock.

01:55:56PM

9 Q. Okay. And I take it that you followed --
10 your attorney's advice was followed and that the
11 Separation Agreement and your resignations were
12 not either signed or delivered until you had
13 assurances that the money came in for the equity
14 purchase; is that correct?

01:56:19PM

15 A. It's generally how I recall it, yes.

01:56:36PM

16 (Pause.)

17 Q. If you turn to bates stamp 17 --

18 A. Okay.

19 Q. -- this is an e-mail from you to Greg
20 that you gave to us. Do you recognize this
21 e-mail?

01:57:46PM

22 A. Oh, yeah.

23 MR. ROTHENBERG: We're talking about
24 April 6th of 2015 on that page of which there are

1 two e-mails actually.

2 MS. FLYNN: Yes, thank you for that
3 clarification. That's the one that I am
4 referencing.

5 Q. And you recognize this, Craig.

01:58:27PM

6 A. Yep.

7 Q. Okay. Now did you -- did you receive,
8 you know, a glowing statement from the Board?

9 A. No.

10 (Laughter.)

01:58:43PM

11 MR. ROTHENBERG: Did you receive any
12 statement from the Board?

13 A. I was acknowledged that I walked on earth
14 for a while.

15 (Laughter.)

01:58:57PM

16 Q. What did you get from the Board that was
17 satisfactory to you in some way?

18 A. Um, about six months later a few of the
19 Board members that I got along with individually
20 invited me out to lunches.

01:59:16PM

21 Q. Okay. What -- what -- what glowing
22 recommendation did you want?

23 A. What I didn't want? Let me -- I'll say
24 it differently. I'll answer it different. What

1 I didn't want is anybody to bad mouth me.

2 Q. Did anyone bad mouth you?

3 A. Not to my knowledge. Not to my face.

4 (Laughter.)

5 Q. Did they -- it wasn't as though they --
6 they didn't write you some recommendation that
7 you then used to show to someone else; is that
8 correct?

01:59:50PM

9 A. That's correct.

10 Q. In any Press Release was there mention --
11 well, strike that a little bit.

02:00:03PM

12 I'd like to go back to my question. What
13 kind of glowing recommendation did you want? I
14 mean, you --

15 A. I think you clicked out. Sorry. What?

02:00:21PM

16 Q. I want to go back to the question that I
17 did ask. What were you looking for in a Press
18 Release regarding your accomplishments relative
19 to AcadiaSoft when you chose to voluntarily
20 resign with this Repurchase Agreement in 2015?

02:00:43PM

21 MR. ROTHENBERG: If you had something
22 in mind.

23 A. To me there's two different things in
24 there. What I wanted was to forest a couple of

1 the people who sort of did this to me to have to
2 put something out there glowing about me because
3 I knew it would torture them. That's one. The
4 other -- I mean, the -- I mean, I voluntarily
5 resigned because --

02:01:23PM

6 MR. ROTHENBERG: I was forced --

7 (Laughter.)

8 A. I was forced to voluntarily resign going
9 back to October, November.

10 Q. Okay. I mean, you would agree that you
11 were the Founder of this company, correct?

02:01:31PM

12 A. Absolutely.

13 Q. And the stock that you own was Founder's
14 stock, correct?

15 A. Absolutely.

02:01:45PM

16 Q. And in 2015 you walked away from this
17 company. Didn't you want something that said to
18 the public "I did all this" in a Press Release?

19 A. Would have been nice, but even today, my
20 -- it's easier for me to start my current company
21 because my reputation in the marketplace is
22 better than the one or two individuals that tried
23 to cause this whole thing.

02:02:12PM

24 One of -- one of -- I don't think he was

1 on the Board, but somebody in the know called me
2 up one day and said um, yeah, you got -- um, you
3 got the cash out, whatever he said, and he goes
4 and the other guy got fired. So the guy at
5 Goldman got fired.

02:02:49PM

6 Q. Oh.

7 A. And the Irish in me, that was good
8 enough.

9 (Laughter.)

10 MR. ROTHENBERG: You agree?

02:03:01PM

11 (Laughter.)

12 Q. You know, the next sentence said you
13 wanted 18 months full comp. and health care. Did
14 you get -- what did you get in the end?

15 A. I got nothing.

02:03:18PM

16 Q. Didn't you get three months?

17 A. Maybe. I -- maybe.

18 Q. But you didn't get the 18 months that you
19 wanted?

20 A. No. Couldn't hurt to ask though.

02:03:31PM

21 Q. Now -- sorry. You know, the other thing
22 that it says is -- what Mark is saying is you
23 know, I want a glowing statement from the Board
24 as to what I accomplished, and I'll only get that

1 while I hold the veto.

2 Can you explain to me what power you had
3 to hold a veto on anything.

4 A. If -- if at that point any one of the
5 individual common holders, of which I was one,
6 did not want agree to sell, then there would be
7 no deal. So that's what I was referencing to.
8 All I had to do was say I'm not selling.

02:04:19PM

9 Q. Okay. And so that's the only veto rights
10 that you had was with regards to the common
11 stockholders?

02:04:40PM

12 A. As far as I know, yeah.

13 Q. Okay. Is your accomplishment the
14 creation of a successful company?

15 A. Yes.

02:04:55PM

16 Q. Now, if you refer to bates stamp 20 and
17 I'm referring to the e-mail in the middle of the
18 page, and this is an e-mail that you gave to us
19 and it's from yourself to Greg, dated May 26,
20 2015.

02:05:32PM

21 It states "no clue. He is in the docs as
22 being the next CEO, which I said I won't approve
23 with my key holder veto unless my future is
24 documented".

1 A. Right, that goes back to the previous
2 e-mail we discussed about going back to having
3 something glowing said about me.

4 Q. Okay. So this -- was this something in
5 addition because couldn't they still name someone
6 as the next CEO even if the deal fell through?

02:06:10PM

7 A. Yes.

8 Q. So he is in the docs as being the next
9 CEO, which I said I won't approve with my key
10 holder vote [sic] --

02:06:28PM

11 MR. ROTHENBERG: Veto.

12 MS. FLYNN: Veto, thank you.

13 Q. Veto. Sorry about that. Maybe you can
14 explain that again and where does that power come
15 from?

02:06:40PM

16 A. I don't recall it now, but there must be
17 something back in the key holder documents that
18 would say that I'd have some sort of approval
19 over, over a CEO.

20 Q. Over a CEO, okay.

02:06:53PM

21 A. I mean, that's -- I truly -- I remember
22 this e-mail and I was -- I wanted them to not bad
23 mouth me.

24 Q. Now, your salary for -- from AcadiaSoft

1 in 2015 was more than a half a million, and I was
2 just wondering if you recall what that salary
3 figure or compensation entailed?

4 (Pause.)

5 A. I don't know. I'd have to go back and
6 look at it.

02:07:49PM

7 MR. ROTHENBERG: You can speculate.
8 It's okay. As long as you're --

9 A. Um, I speculate that when we were talking
10 before the break that they had loaned me money to
11 pay off some of my credit cards. In turn, they
12 took 2 percent of my stock but so that I could
13 pay income taxes, the amount that was income to
14 me was grossed up so that I could pay my taxes.

02:08:03PM

15 Q. Say that one more time. What do you
16 recall --

02:08:27PM

17 A. So to the previous conversation about I
18 had 12 and Dan had 14 --

19 Q. Yes.

20 A. -- so I couldn't pay all of those bills
21 that were -- the 800,000-ish, whatever portion I
22 was over my head much earlier, they loaned it to
23 me, and then my payment or I essentially sold it
24 at a later date, which it was this year, that

02:08:41PM

1 '15, and because I had income taxes on it, it was
2 grossed up, so the higher salary was the amount
3 grossed up so I could pay my taxes on selling the
4 2 percent for whatever it is I sold it at.

5 Q. Okay. Now, did they ever forgive any
6 loans a lot earlier than --

02:09:26PM

7 A. Not to my recollection.

8 Q. -- 2015?

9 A. Not to my recollection.

10 Q. Sorry. Was this all worked out, what
11 you're referring to -- post you know, September
12 of 2014 or --

02:10:03PM

13 A. No, if -- if I'm correct and that's what
14 that -- whenever the 2 percent was -- whenever
15 the 2 percent was forgiven as part of the
16 original Agreement, they gross it up so that's
17 what I believe that higher salary is, I think.

02:10:27PM

18 Q. Okay. Now, your salary did increase each
19 year from '11 to 2014. You know, it went from
20 184,000 in 2011 to 339,000 in 2014. And how was
21 your salary determined every year?

02:11:23PM

22 A. It was at a discount to whatever Chris
23 Walsh was getting paid.

24 Q. He got paid more?

1 A. He did.

2 Q. Did that bother you?

3 A. You think?

4 (Laughter.)

5 A. Bothered my wife more than me though.

02:12:03PM

6 Q. I know the company was growing and -- did
7 you review your salary with the Board of
8 Directors every year? I mean, you were the CEO.
9 How is the salary determined? I'm wondering.

10 A. So the way most salaries are determined
11 on Wall Street for senior people is you have no
12 insight into it. Whatever layer is above you,
13 goes off in a room, decides what they are going
14 to pay you, and they come back and tell you this
15 is what you have, congratulations. And my bosses
16 were all managing directors or higher on Wall
17 Street. That's how I found out what my salary
18 was too.

02:12:18PM

02:12:32PM

19 Q. Were you disappointed in these salary
20 figures?

02:12:48PM

21 A. I was happy with my salary. I was
22 frustrated that I wasn't the highest paid person
23 in the Company and there wouldn't be a company
24 there if it wasn't for me.

1 Q. And you were looking forward to the
2 payout from your hard work with the sale of your
3 stock; is that correct?

4 A. Whenever that came, at some point in
5 time.

02:13:12PM

6 Q. I'm close to being done if that helps at
7 all. Now, you know, at some point some of the --
8 the angel investors, they got wind of what could
9 happen to the Company and they got upset with
10 what could happen to their stock; is that
11 correct?

02:14:10PM

12 A. We were all upset about what could
13 happen.

14 Q. How did they find out about what could
15 happen?

02:14:21PM

16 A. I told them.

17 Q. You told them. And is that the only way
18 they knew?

19 MR. ROTHENBERG: If you know.

20 A. I -- my recollection -- I mean, generally
21 yes. I was the conduit to the angels. They were
22 nice people that trusted me with a lot of money.
23 And right -- I think it was the last week of
24 June, when they thought there was going to be a

02:14:34PM

1 deal, I believe Scott Peterson, the CFO, held a
2 meeting with the angels, and I don't think I was
3 invited to it, but --

4 Q. Okay. Did the angel investors normally
5 have a representative on the Board of Directors?

02:15:13PM

6 A. No.

7 Q. So in a sense, you were their
8 representative; would you agree?

9 A. The -- I wasn't legally their
10 representative, but angels generally are not on
11 Boards and generally do not have observancies.

02:15:26PM

12 Q. Okay.

13 A. So our interests were more aligned than
14 their interests with the banks, with the
15 preferred.

02:15:45PM

16 Q. Okay. So in really fighting to save the
17 Company you were fighting to save the common
18 stock for you, Dan and all these investors,
19 correct?

20 A. Yep, we were all the exact same and if
21 Dan and I got wiped out, they got wiped out too.

02:15:56PM

22 Q. Yeah. Okay. Give me one second.

23 (Pause.)

24 Q. And you know, I'm just curious, what --

1 what's your next company, Kingfield, that you
2 started?

3 A. We're financial technology, but we are
4 focussed on technology to solve problems for
5 custody banks; whereas AcadiaSoft was -- is very
6 specifically focussed on derivatives, collateral
7 management for the brokerage business, not the
8 custody banks.

02:16:51PM

9 Q. Are you enjoying this venture?

10 A. I like it a lot because I have no bank
11 investors.

02:17:08PM

12 (Laughter.)

13 Q. Say that again.

14 A. I have traditional venture capitalists as
15 my primary investors. They are much more
16 enjoyable than the banks.

02:17:17PM

17 Q. Okay.

18 A. And we're doing well.

19 Q. That's great. Now, regarding -- you
20 know, did you think the value of what AcadiaSoft
21 sold for represented the work that you did for
22 the Company?

02:17:32PM

23 MR. ROTHENBERG: Objection.

24 Q. Did you think, you know, what Acadia was

1 sold for in 2015 reflected the work that you put
2 into the company?

3 MR. ROTHENBERG: It's the same
4 question.

5 MS. FLYNN: It's not the same
6 question. Is he going --

02:18:03PM

7 MR. ROTHENBERG: They're not related
8 events. You're presuming there's a relationship
9 between the effort he put in and the sale price.

10 MS. FLYNN: Well, he still has to
11 answer the question.

02:18:16PM

12 MR. ROTHENBERG: Go ahead, if you
13 can.

14 A. I know of no entrepreneurs that think
15 that they get the value of the work that they
16 put in.

02:18:25PM

17 Q. Okay. So you -- you got less than you
18 would have liked to have gotten for the value
19 that you put in; is that correct?

20 A. Again, I think every entrepreneur wants
21 to get more. And I'm not trying to be -- it's
22 all relative. Instead of getting what I got, if
23 I got 400 million, I would be a hundred times
24 more happy.

02:18:40PM

1 MR. ROTHENBERG: But still unhappy.

2 A. But still unhappy.

3 (Laughter.)

4 A. There's no real way to answer it.

5 Q. Just looking through one more thing and
6 I'm --

02:19:23PM

7 (Pause.)

8 Q. Will you be starting another start-up
9 company soon?

10 A. Hopefully, um, I'd like -- after this I'd
11 like to do something different. This is my third
12 start-up.

02:19:49PM

13 MR. ROTHENBERG: He wants to fly into
14 space.

15 A. No, I don't want to do that.

02:20:05PM

16 Q. It's must be exhausting, huh?

17 A. It is the quintessential of all or
18 nothing.

19 Q. One second. Sorry. Just one more
20 minute.

02:20:24PM

21 MS. FLYNN: Do you mind if we just
22 take a one-minute break and then I -- I just want
23 to -- I can't find --

24 MR. ROTHENBERG: We'll wait a minute

1 for you, Julie.

2 (A brief recess was taken.)

3 MS. FLYNN: Back on the record. I
4 don't have anymore questions. I'm all set.

5 A. Okay.

02:23:11PM

6 MR. ROTHENBERG: That's it.

7 (Pause.)

8 MS. FLYNN: Can I just ask one
9 question? It's a softball, so is that okay?

10 MR. ROTHENBERG: Sure.

02:24:09PM

11 Q. You know, obviously you left
12 Massachusetts some time in 2015 and I don't know
13 if you have anything more to share with us about
14 why you wanted to, you know, leave
15 Massachusetts --

02:24:28PM

16 MR. ROTHENBERG: That's not a
17 question.

18 Q. Craig, why did you want to move you and
19 your family from Massachusetts in 2015?

20 A. Evare in Acadia -- I wanted to start
21 Evare in Annapolis, and I wanted to start Acadia
22 in Portland, Maine. Did not want to be in Boston
23 -- in Massachusetts because in both companies
24 there was an individual that was like okay, well,

02:24:48PM

1 we've got to go here, and not put the company
2 where we wanted to. And we, as a family, were --
3 my wife is a highly educated immigrant, and had
4 felt bigotry for quite a while.

5 And if I was going to start a third 02:25:44PM
6 company, I was not going to start it here. My
7 wife had had enough of it, and frankly, I had too
8 of how she had been treated.

9 Q. Sorry to hear that. So you moved to a
10 state that you thought you and your wife would 02:25:59PM
11 like after leaving Massachusetts; is that
12 accurate.

13 A. Yeah, and it also is tied to -- my son
14 was a day student at Philips Andover, so it was
15 basically either going from a -- making the 02:26:12PM
16 commute reasonable; it was New Hampshire or
17 potentially Maine. But he was, I want to say a
18 junior, at Andover as a day student.

19 Q. And was tax avoidance any reason why you
20 wanted to move out of Massachusetts? 02:26:30PM

21 A. I didn't think I was -- originally? The
22 answer is no. Originally, I thought we were
23 selling for stock. I didn't know -- between the
24 window and the beginning of October to June,

1 whatever it was, I was under the impression I was
2 getting ICAP stock.

3 MR. ROTHENBERG: Which would be tax
4 free.

5 MS. FLYNN: Okay. I think that's it.
6 Thank you.

02:26:54PM

7 (Whereupon the deposition concluded
8 at 3:27 p.m.)
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1 COMMONWEALTH OF MASSACHUSETTS.)

2 SUFFOLK COUNTY, ss.)

3
4 I, Craig Welch, the witness herein,
5 having read the foregoing testimony of the pages
6 of this deposition, do hereby certify it to be a
7 true and correct transcript, subject to the
8 corrections, if any, shown on the attached page.

9 oOo

10
11
12 -----
13 Craig Welch

14
15
16
17 Subscribed and sworn to before me
18 this_____day of_____, 2021.

19 _____.

COMMONWEALTH OF MASSACHUSETTS)

SUFFOLK COUNTY, ss.)

I wish to make the following changes, for the
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COMMONWEALTH OF MASSACHUSETTS)
SUFFOLK COUNTY, ss.)

I, JULIE B. STARR, a Professional
Reporter and Notary Public within the
Commonwealth of Massachusetts, do hereby certify:

That Craig Welch, the witness whose
testimony is hereinbefore set forth, was properly
identified and duly sworn by me.

That the foregoing proceedings were taken
down by me stenographically via Zoom and
thereafter transcribed under my direction and
supervision, and that the within transcript is a
true record of such proceedings.

I further certify that I am not related
to any of the parties to this action by blood or
marriage, and that I am in no way interested in
the cause or outcome of this action.

IN WITNESS WHEREOF, I have hereunto set
my hand this 27th day of July, 2021.

JULIE B. STARR
Professional Reporter

My Commission Expires: March 29, 2024

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acadiasoft

VIA E-MAIL

CONFIDENTIAL

June 19, 2015

Re: Common Stock Repurchase Offering

Dear Equityholder:

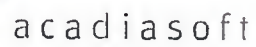
The Board of Directors of AcadiaSoft, Inc., a Delaware corporation (the "Company"), is pleased to advise you that in accordance with the terms and conditions detailed in the confidential information memorandum attached hereto as Exhibit A (the "Information Memorandum"), the Company is commencing an offer (the "Repurchase Offering") to repurchase all of Company's Common Stock and vested and unvested options or warrants to purchase Common Stock (collectively, the "Common Stock Equivalents") at a per-share Common Stock repurchase price of \$48.7472 (the "Common Stock Repurchase Price"). The details of the Repurchase Offering are set forth in the Information Memorandum, and the summary description in this letter is qualified in its entirety by reference to the Information Memorandum.

The Repurchase Offering is being made in conjunction with the sale on or about June 29, 2015 by the Company of approximately \$30 million of its newly authorized shares of Series D Preferred Stock to certain institutional investors (the "Equity Financing"). Concurrently with the initial closing of the Equity Financing, the Company also intends to conduct a mandatory redemption of the all outstanding shares of the Company's Series A Preferred Stock in accordance with the terms of the Company's Amended and Restated Certificate of Incorporation. The consummation of the Repurchase Offering is subject to and conditioned upon the consummation of sale of shares of the Corporation's Series D Preferred Stock in an aggregate amount of at least \$15.2 million at the initial closing of the Equity Financing.

Under the Repurchase Offering, each Equityholder will have the right to sell to the Company all but not part of the Common Stock Equivalents held by such Equityholder. In order to participate in the Repurchase Offering you must complete and return the Election to Participate (Sell Common Stock Equivalents) attached to the Information Memorandum. After review of the Information Memorandum, we ask that you **please complete and execute the Election to Participate and return it to Scott Petersen via email to scott.petersen@acadiasoft.com or via fax to (781) 871-4081**, in order to indicate whether or not you intend to participate in the Repurchase Offering.

If you elect to participate in the Repurchase Offering, the Company will provide a Common Stock Repurchase Agreement and/or an Option or Warrant Cancellation Agreement, with respect to the Common Stock, or options or warrants (whether vested or unvested) to purchase Common Stock held by you, as applicable, for you to execute and return to the Company, together with your stock certificate(s) and/or option or warrant agreement(s).

If you have any questions, please do not hesitate to contact Scott Petersen or me.




Craig Welch, Chief Executive Officer


Shea Wallon, Executive Chair

1. [Introduction](#)

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CRAIG H. AND NATALIA I. WELCH v. COMMISSIONER OF REVENUE

Docket No. C339531

Promulgated:
November 29, 2023

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 62C, § 39 from the refusal of the Commissioner of Revenue ("Commissioner" or "appellee") to abate personal income tax, interest, and penalties assessed to Craig H. Welch ("Mr. Welch") and Natalia I. Welch (Mr. Welch and Natalia I. Welch, collectively, "appellants") for the tax year ending December 31, 2015 ("tax year at issue").

This matter proceeded without oral argument pursuant to 831 CMR 1.31. Chairman DeFrancisco and Commissioners Good, Elliott, and Metzger joined in a decision for the appellee.

These findings of fact and report are made pursuant to requests by both the appellants and appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Eric P. Rothenberg, Esq., and Richard M. Stone, Esq., for the appellants.

Celine E. de la Foscade-Condon, Esq., and Julie A. Flynn, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

This matter concerns whether gain realized by Mr. Welch - a nonresident at the time he sold at a gain his shares of common stock in AcadiaSoft, Inc., a Delaware corporation that develops and markets derivatives and collateral management solutions for institutional investors - was subject to personal income tax in Massachusetts pursuant to G.L. c. 62, § 5A. The statute states in relevant part that the gross income of nonresidents includes "income derived from or effectively connected with . . . any trade or business, including any employment carried on by the taxpayer in the commonwealth, whether or not the nonresident is actively engaged in a trade or business or employment in the commonwealth in the year in which the income is received." G.L. c. 62, § 5A.

On the basis of a Statement of Agreed Facts, the exhibits thereto, including deposition testimony of Mr. Welch and Attorney Mark Stein ("Mr. Stein"), and briefs submitted by the parties, the Appellate Tax Board ("Board") made the following findings of fact.

On April 16, 2016, the appellants timely filed their 2015 Form 1 - Massachusetts Nonresident/Part-Year Resident Tax Return ("2015 Form 1"), which indicated April 30, 2015, as the appellants' last date of Massachusetts residency.¹ The appellants filed a joint

¹ The Commissioner does not contest that the appellants changed their domicile to New Hampshire on April 30, 2015.

Interest and Dividend Tax Return as residents of New Hampshire for the period April 30, 2015 to December 31, 2015, reporting all interest and dividend income earned for this eight-month period (but not the gain on the sale of Mr. Welch's AcadiaSoft stock) to New Hampshire, and paying \$190 in New Hampshire taxes.

The Commissioner issued a Notice of Intent to Assess to the appellants for the tax year at issue on January 18, 2019, followed by a Revised Notice of Intent to Assess on February 26, 2019. The Commissioner issued a Notice of Assessment to the appellants for the tax year at issue on March 5, 2019, assessing \$244,182 in tax, \$48,836 in interest, and \$42,950.62 in penalties, for a total of \$335,968.62, based upon the gain realized by Mr. Welch on his shares of common stock.

The appellants filed a Form ABT - Application for Abatement ("abatement application") for the tax year at issue on or about April 25, 2019. By letter dated October 23, 2019, the appellants informed the Commissioner that they were withdrawing their consent for the Commissioner to act upon their abatement application after six months from the date of filing. Pursuant to G.L. c. 58A, § 6, the abatement application was deemed denied on October 25, 2019, and the appellants timely filed a petition with the Board on November 7, 2019. Based upon this information, the Board found and ruled that it had jurisdiction over this matter.

The predecessor of AcadiaSoft, Inc. originated on November 17, 2003, when a corporation by the same name was formed by Mr. Welch and first organized in Massachusetts, with Mr. Welch holding the titles of President, Treasurer, Clerk, and sole Director. At the time, he was also the sole stockholder.

The original corporation was voluntarily dissolved on February 24, 2004, and a corporation with the same name was organized in Massachusetts on February 11, 2005, with Mr. Welch holding the titles of Treasurer and CEO, and Danny J. Moyse ("Mr. Moyse"), a software engineer, holding the titles of President, Secretary, and Chief Technology Officer. Mr. Welch and Mr. Moyse each held a 50 percent interest in AcadiaSoft common stock as of February 11, 2005 and were then the sole Directors. Mr. Welch and Mr. Moyse were both considered the founders of this company, which subsequently merged into a Delaware corporation of the same name, and their stock was considered to be founder's stock. The original AcadiaSoft, Inc., its successor Massachusetts corporation, and the Delaware corporation into which the successor Massachusetts corporation merged are herein collectively referred to as "AcadiaSoft."²

A self-proclaimed "chief evangelist" for AcadiaSoft, Mr. Welch also referred to himself as "chief cook and bottle washer"

² The successor Massachusetts corporation elected S corporation status for federal income tax purposes; the Delaware entity was a C corporation.

in the early years of the company. His main focus was sales. He testified that he "went out, created the desire for the product with the potential customers" and he "designed what the product needed to do" and "sold it" and "financed it." He stated that Mr. Moyse's "fingers were the ones on the access database making the code, but we developed it together." By the end of 2009, AcadiaSoft had four individuals working for the company - Mr. Welch, Mr. Moyse, and two programmers.

From 2003 through 2015, Mr. Welch worked exclusively for AcadiaSoft. He considered AcadiaSoft his creation and wanted to make it successful - "I was the product and the product was me." Until December 2009, he worked fourteen-hour days, five days per week, and five to six hours on Saturdays and Sundays. From December 2009 until October 2014, he generally worked from 4:00 a.m. to 5:00 p.m. Monday through Friday, as well as some weekends. AcadiaSoft "was [his] baby" and he "was going to make it work." Despite the long hours, Mr. Welch reported \$0 in wage income for 2003 through 2005. As the years passed, he reported increasing wages - \$5,533.77 in wage income for 2006; \$7,235.42 for 2007; \$80,415 for 2008; \$185,274 for 2009; \$192,708 for 2010; \$185,000 for 2011; \$279,692 for 2012; \$245,600 for 2013; \$339,664 for 2014; and \$556,916 for 2015.³ He expressed that he was "happy" with his

³ The 2015 wage income included forgiveness of loans that AcadiaSoft had granted to Mr. Welch. Mr. Welch paid income tax on the full amount of this compensation.

salary,⁴ but that he was "frustrated" that he wasn't the highest paid person in the company and that "there wouldn't be a company there if it wasn't for me." He was looking forward to the payout from his hard work "[w]henever that came, at some point in time."

From its inception through 2015, AcadiaSoft's headquarters were located in Massachusetts. Mr. Welch and Mr. Moyse initially ran AcadiaSoft out of their respective homes and then out of rented office space in Pembroke, Massachusetts. In 2009, as the company grew, AcadiaSoft rented office space in Norwell, Massachusetts. By 2014, AcadiaSoft had twenty-four employees.

Mr. Welch claimed to travel extensively for company business, but he provided no documentation to substantiate his estimates. Further, for years 2003 through 2014, the appellants filed Massachusetts resident income tax returns. They neither claimed any credits for taxes paid to other jurisdictions nor filed income tax returns in any other jurisdictions - and for all relevant time periods, AcadiaSoft filed Massachusetts corporate excise returns apportioning 100 percent of its income to Massachusetts.

Mr. Welch never repaid the loans monetarily but instead AcadiaSoft took 2 percent of his ownership interest.

⁴ When the Delaware corporation was formed in 2009, institutional investors acquired a controlling interest. See note 5, *infra*. Mr. Welch explained that "the way most salaries are determined on Wall Street for senior people is you have no insight into it. Whatever layer is above you, goes off in a room, decides what they are going to pay you, and they come back and tell you this is what you have . . . And my bosses were all managing directors or higher on Wall Street. That's how I found out what my salary was too."

Mr. Welch claimed to have invested more than \$800,000 in cash in AcadiaSoft between 2003 and 2009, but this also was not substantiated by any documentation. Mr. Welch expected in the future that AcadiaSoft would be worth a lot more than it was when he started it. Because they "were starting a company on shoestrings and our own wallets," Mr. Welch and Mr. Moyse early on realized the monetary needs of the company. From 2006 to 2007, AcadiaSoft raised funding from a group of angel investors ("Angel Investors") who became the holders of 28.2 percent of AcadiaSoft common stock. The Angel Investors did not work for AcadiaSoft and were "just investors" according to Mr. Welch, and he committed to them that he would do his best to get them "their money back" and "a handsome return." The common stock of Mr. Welch was diluted to a 35.9 percent share due to the recapitalization to admit the Angel Investors.

In 2009, the company was "on the one hand ready to take off, but on the other hand we were discussing shutting it down because we couldn't possibly go anymore without any more money," according to Mr. Welch. Mr. Welch "kept trying to sell the giant banks to make an investment" and he believed at that time it would be worth it to keep trying because the return would be worth it.

AcadiaSoft, the Massachusetts corporation, merged into AcadiaSoft, the Delaware corporation, on December 18, 2009. Subsequently, on December 24, 2009, AcadiaSoft entered into its

first round of funding with four financial institutions who acquired convertible preferred stock ("Series B Transaction"). The four financial institutions⁵ were financial services firms that were interested in the product created by AcadiaSoft and were each using the product as customers of AcadiaSoft. After the Series B Transaction, Mr. Welch's ownership interest diluted to approximately 13 percent. The number of Directors increased to nine, as indicated in AcadiaSoft's 2010 annual report, and the number of Directors eventually increased to eighteen, as indicated in AcadiaSoft's 2015 annual report.

Mr. Welch also became bound by certain terms of a Right of First Refusal and Co-Sale Agreement dated December 24, 2009, which identified him as a "Key Holder"⁶ of stock and provided that if at any time effective within eighteen months after the date of the Agreement, he (as a Key Holder) voluntarily resigned from full-time employment with the company (except a resignation for "good reason") or was terminated by the company for "cause," the company would have an option, exercisable by written notice within thirty days after the effective date of such resignation or termination, to purchase all of the shares of capital stock then held by him

⁵ The initial institutional investors were LabMorgan Investment Corporation; Credit Suisse NEXT Investors, L.P.; HSBC Bank plc; and ICAP Latin America Holdings B.V. They were joined by other institutional investors the following year and in the subsequent round of financing.

⁶ Mr. Welch and Mr. Moyse were the only individuals named in an exhibit to the Agreement as Key Holders.

for a cash purchase price equal to \$0.01 per share, "appropriately adjusted for stock splits, recapitalizations and similar transactions occurring after the date hereof."

On July 30, 2013, AcadiaSoft entered into its second round of funding with institutional investors ("Series C Transaction"). The Series C Transaction further diluted Mr. Welch's ownership interest to 11.86 percent. In sum, his ownership interest decreased from 50 percent, to 35.9 percent, to 13 percent, and ultimately to 11.86 percent, where it remained until his parting with AcadiaSoft in 2015.

In addition to being a Director at AcadiaSoft, through his resignation in 2015, Mr. Welch was considered an "employee of AcadiaSoft" holding numerous responsibilities and positions at times, including CEO, President, Vice President, and Treasurer. He focused on operations and management, as well as sales.⁷ These positions carried duties and responsibilities such as presiding at all meetings of stockholders, the authority to remove agents and employees and to prescribe their powers and duties, custody of corporate funds and securities of the corporation, and disbursement of the funds of the corporation as ordered by the Board. Until the end of 2014, all personnel answered to Mr. Welch - product development, operations, human resources, legal,

⁷ On December 24, 2009, Mr. Moyse became CEO and President but he subsequently became incapacitated by illness and Mr. Welch took over as CEO in 2010.

compliance, finance, strategy, partnerships, and sales. AcadiaSoft's Board of Directors generally met ten times a year, and Mr. Welch attended every meeting in person from 2009 through May 2015. Mr. Welch provided reports and/or briefings to the Board of Directors, including executive reports and strategic plans. He was involved in hiring personnel, briefing on legal claims, presenting business plans, seeking equity financing, providing updates on the company's marketing and strategic partnership efforts, reporting on the status of key sales prospects, press releases, and providing reports on the results of operations and cash flow.

In 2014, Mr. Welch felt something was amiss while attending a Board of Directors meeting, and by September 2014, he understood that one of the Board members - appointed by one of the bank stockholders - was trying to undermine the value of AcadiaSoft common stock by developing a product competitive with AcadiaSoft's product that would reduce AcadiaSoft's value to pennies on the dollar. "Those were my assets," he testified, acknowledging that he thought his sweat equity in AcadiaSoft was in jeopardy. In subsequent actions where he "was dealing with basically the survival of the common [stock]," he recognized that he "had just declared war on a number of my shareholders and my Board members."

By the end of 2014, several Board members noted to Mr. Welch that if there were to be an investment/recapitalization of

AcadiaSoft ("Series D Transaction") with institutional investors, a requirement from a number of bank stockholders would be that he separate from AcadiaSoft entirely. Mr. Welch indicated he was fine with that outcome and felt that his health had suffered from "all of the politics, backstabbing and nasty dealings with the Board." By December 2014, Mr. Welch was asked to shift his CEO responsibilities to the COO, Chris Walsh, and Mr. Welch was to focus on big sales for the company, where his personal reputation, network, and access would be helpful to the company. Mr. Welch testified that he was "forced to voluntarily resign." AcadiaSoft wanted Mr. Welch to retain the title of CEO until his resignation because he was so high profile in the industry and associated with AcadiaSoft. By January 2015 he was CEO in name only.

Mr. Stein, who was retained as outside counsel for AcadiaSoft in 2009 by Mr. Welch and Mr. Moyse, confirmed that Mr. Welch did "not much" in 2015 for AcadiaSoft, that Mr. Welch was responsible for "maybe a small handful of key sales targets" and "did not have any operational role in the company at that time." He noted that Mr. Welch contributed to the value of AcadiaSoft and that his contributions were particularly crucial during the early growth stage of the business.

On June 19, 2015, AcadiaSoft issued a contingent offer to repurchase all common stock at a per-share repurchase price of \$48.7472. Mr. Welch was formally notified of this offer on June

22, 2015. As part of the Series D Transaction, both Mr. Welch and Mr. Moyse elected to participate in the repurchase offering and sell all of their shares back to the company. On June 25, 2015, Mr. Welch elected to participate in the offering. On June 26, 2015, he signed a letter resigning as an Officer and Director of AcadiaSoft, effective the later of June 26, 2015 or the date of the repurchase of his stock. Mr. Welch tied his resignation with the sale of his stock to maintain some leverage in case AcadiaSoft decided not to repurchase his stock. Mr. Welch - as well as Mr. Moyse - held a founders' veto on AcadiaSoft until his resignation, and he indicated in an April 2015 email to his attorney that Mr. Stein had "encouraged me to ask you to work on my exit plan, while I still hold the founders' veto."

On June 29, 2015, AcadiaSoft entered into its third round of funding with the Series D Transaction. Mr. Welch and the other common stock shareholders were bought out by AcadiaSoft with part of the proceeds of the Series D Transaction. AcadiaSoft issued Mr. Welch a 2015 Form 1099-B indicating the sale of 97,334 shares of AcadiaSoft's common stock disposed of on June 29, 2015, with proceeds reported as \$4,744,759.96. The Form 1099-B reported no cost or other basis. Mr. Welch reported the sale of AcadiaSoft stock on Schedule D of the appellants' 2015 Form 1, but excluded the \$4,774,759.96 of gain from the sale of his AcadiaSoft shares as income not sourced to Massachusetts.

Based upon these facts, and as discussed further in the Opinion, the Board ruled that the gain on the sale of Mr. Welch's AcadiaSoft common stock - stock that he received as a founder of AcadiaSoft, with no indication in the record that he ever monetarily paid for the shares - was Massachusetts source income subject to taxation under G.L. c. 62, § 5A on the basis that the income was derived from or effectively connected with the trade or business of employment carried on by Mr. Welch in the Commonwealth.

The Board's ruling was based on numerous facts, in particular, that until late 2014, Mr. Welch was actively engaged in the affairs of AcadiaSoft, a company that - for all relevant time periods - was headquartered in Massachusetts and filed Massachusetts corporate excise returns apportioning 100 percent of its income to Massachusetts. Further, during this same time period the appellants were residents of Massachusetts and sought no credit for taxes paid to other jurisdictions when filing their tax returns for 2003 through 2014. It was not until late 2014 through June 2015 - inclusive of the time period when he moved to New Hampshire - that Mr. Welch's contributions to the company diminished.

Even after the infusion of institutional capital, Mr. Welch remained the company's "chief evangelist" and considered himself synonymous with the product, and his dedication and commitment to AcadiaSoft were steadfast because he believed the return would be worth his efforts. In later years he was not the highest paid

individual at AcadiaSoft, which frustrated him, and he expected a payout for his years of sweat equity, which came in the form of a stock gain, a compensatory amount under the unique circumstances presented in this matter - a remuneration that derived from and was effectively connected with his AcadiaSoft employment. Unlike the Angel Investors, Mr. Welch was not a passive investor in AcadiaSoft, but a founder whose continued employment with the company - in prominent, powerful, and crucial roles - contributed to its value to the degree that the company wanted him to retain the title of CEO until his resignation because of his status in the industry. Following the first round of institutional funding, his status as a Key Holder of stock was directly tied to his continued employment with the company, and he held a founders' veto until his resignation. Mr. Welch even correlated the timing of his resignation with his payout, further supporting the connection between his employment and the income from stock gain.

Accordingly, the Board found and ruled for the appellee in this appeal.

OPINION

"No method of determining tax liability is valid unless authorized by statute and assessed in conformity to its terms." **VAS Holdings & Investments LLC v. Commissioner of Revenue**, 489 Mass. 669, 685-86 (2022) (citing **Gillette Co. v. Commissioner of**

Revenue, 425 Mass. 670, 675 (1997)). The issue in this matter is whether G.L. c. 62, § 5A authorizes taxation of the gain from the sale of Mr. Welch's AcadiaSoft stock on June 29, 2015, when he was no longer a resident of Massachusetts. See **Gersh v. Commissioner of Revenue**, Mass. ATB Findings of Fact and Reports 1997-502, 527 ("If the income received by Gersh . . . is taxable to Gersh, a non-resident, it must be taxable under the provisions of § 5A.").

General Laws c. 62, § 5A was amended by St. 2003, c. 4, § 7 for tax years beginning on or after January 1, 2003, to expand the meaning of taxable Massachusetts source income for nonresidents. As amended, the statute provides that

[i]tems of gross income from sources within the commonwealth are items of gross income derived from or effectively connected with: (1) any trade or business, including any employment carried on by the taxpayer in the commonwealth, whether or not the nonresident is actively engaged in a trade or business or employment in the commonwealth in the year in which the income is received.

G.L. c. 62, § 5A (amended by St. 2003, c. 4, § 7); see also 830 CMR 62.5A.1(1)(a). While the amendment did not overturn the body of case law holding that a taxpayer personally must carry on the trade or business in Massachusetts that results in the income at issue, see, e.g., **Commissioner of Revenue v. Dupee**, 423 Mass. 617, 619 (1996),⁸ the carrying on of the trade or business is no longer

⁸ In **Dupee**, the Supreme Judicial Court held that "[w]e construe the relevant portion of the statute to mean that 'items of gross income from sources within the commonwealth are items of gross income derived from or effectively connected

limited to the year of the taxable event, thus broadening the timeframe during which the Board analyzes the connection between a taxpayer's trade or business and the income at issue. See **VAS Holdings & Investments LLC**, 489 Mass. at 688 n.23 ("As amended [in 2003], the statute now permits a tax on a nonresident who did business in the Commonwealth regardless of whether the business was conducted in that particular year."); see also 830 CMR 62.5A.1(3)(a)2. ("All items of income that derive from the conduct of a trade or business or employment in Massachusetts, as those terms are defined in 830 CMR 62.5A.1(3)(a)1., are Massachusetts source income, even if the taxpayer has not been present in Massachusetts during the year of receipt."); **McTygue v. Commissioner of Revenue**, Mass. ATB Findings of Fact and Reports 2010-329, 344 ("[A]mended § 5A removes the requirement, developed through case law, that a nonresident individual be actively engaged in a trade or business in Massachusetts in a year in which income is received for that income to be derived from or effectively connected with a trade or business."), *aff'd*, 80 Mass. App. Ct. 1102 (2011) (decision under Rule 1:28).

with (1) any trade or business . . . carried on by the taxpayer in the commonwealth.'" 423 Mass. at 619. See also **VAS Holdings & Investments LLC**, 489 Mass. at 688-89 ("As we held in **Commissioner of Revenue v. Dupee** . . . , the [statute] precludes the Commonwealth from taxing the capital gain realized by a nonresident shareholder on the sale of his or her interest in a Massachusetts entity where the shareholder himself or herself did not actively participate in the activities of the entity.").

The statute also was amended by St. 2003, c. 4, § 7, broadly to define the phrase "gross income derived from or effectively connected with any trade or business" as follows:

For purposes of this section, gross income derived from or effectively connected with any trade or business, including any employment, carried on by the taxpayer in the commonwealth shall mean the income that results from, is earned by, is credited to, accumulated for or otherwise attributable to either the taxpayer's trade or business in the commonwealth in any year or part thereof, regardless of the year in which that income is actually received by the taxpayer and regardless of the taxpayer's residence or domicile in the year it is received. It shall include, but not be limited to, gain from the sale of a business or of an interest in a business

G.L. c. 62, § 5A (amended by St. 2003, c. 4, § 7). As the Board stated in *McTygue*, Mass. ATB Findings of Fact and Reports at 2010-344-345:

[U]nlike the prior version of § 5A, which did not define 'derived from or effectively connected with any trade or business,' the amended statute incorporates an exceedingly broad definition of the phrase. This definition includes income 'that results from, is earned by, is credited to, accumulated for or otherwise attributable to' a trade or business in the Commonwealth and specifically enumerates sources of taxable income including 'gain from the sale of a business or of an interest in a business.

The amended language is patently inclusive in its reach. Of importance is not the tax character and timing of the income but rather whether Massachusetts has a right to tax it based on the income's provenance.

Consistent with the statute's expansive language, the Commissioner's regulation stresses that "[a]ll types of income, including investment income, derived from or effectively connected with the carrying on of a trade or business within Massachusetts are Massachusetts source income" (830 CMR 62.5A.1(1)(a)) and that "[i]ncome from a trade or business may include income that results from the sale of a business or an interest in a business" (830 CMR 62.5A.1(3)(c)8.). While the regulation states that this rule "generally does not apply . . . to the sale of shares of stock in a C or S corporation, to the extent that the income from such gain is characterized for federal income tax purposes as capital gains," it makes clear that "[s]uch gain may . . . give rise to Massachusetts source income if, for example, the gain is otherwise connected with the taxpayer's conduct of a trade or business, including employment (as in a case where the stock is related to the taxpayer's compensation for services)." 830 CMR 62.5A.1(3)(c)8.

In **McTygue**, Mass. ATB Findings of Fact and Reports at 2010-346, the Board construed 830 CMR 62.5A.1 as intending "to exclude from Massachusetts source income those items of income which were essentially passive in nature and unrelated to an individual's employment by or active participation in the entity that was the

source of the income.”⁹ As the Board found in **Gersh**, a determination of whether a taxpayer engages in a trade or business requires an examination of the facts of each case, involvement by the taxpayer in an activity with continuity and regularity, and engagement in the activity for purpose of income or profit. Mass. ATB Findings of Fact and Reports at 1997-522 (citing **Commissioner v. Groetzinger**, 480 U.S. 23 (1987)); see also Directive 03-12: Taxation of Income Earned by Non-Residents After St. 2003, c. 4, § 7 (Directive 2) (“The term ‘employment’ includes personal services performed for compensation in Massachusetts, regardless of where or when paid.”).

Turning to the matter at hand, Mr. Welch carried on the trade or business of employment in the Commonwealth. See G.L. c. 62, § 5A; 830 CMR 62.5A.1(3)(a)1.a.iii. (“All activities that are considered a ‘trade or business,’ including employment . . . are subject to taxation under [G.L. c. 62, § 5A.”). Mr. Welch shouldered myriad responsibilities as an employee of AcadiaSoft, from its inception until his resignation, and he considered himself the company’s “chief evangelist,” synonymous with the product. See

⁹ The Board construed the statute by way of citation to an example in the regulation, which “depicts a hypothetical investor who is an employee of ‘NationalCorp,’ a C corporation that does business in Massachusetts. The investor, who works in the corporation’s Massachusetts offices, purchased stock of the corporation ‘as an ordinary investment unrelated in any way to his compensation.’ The example concludes that the gain on the investor’s sale of stock is not Massachusetts source income.” **McTygue**, Mass. ATB Findings of Fact and Reports at 2010-346 (citing to Example (3)(c)(8.4) of 830 CMR 62.5A.1(3)(c)8.).

VAS Holdings & Investments LLC, 489 Mass. at 689 (where the LLC, as the holder of a 50 percent membership interest in a Massachusetts limited liability company, did not carry on a trade or business in Massachusetts); **Dupee**, 423 Mass. at 618 (where "Dupee . . . 'did not actively, regularly, or continuously participate in any capacity in the activities constituting the regular operations of [BCI]'").

Mr. Welch carried on his employment in Massachusetts with AcadiaSoft, a company that - for all relevant time periods - was headquartered in Massachusetts and filed Massachusetts corporate excise returns apportioning 100 percent of its income to Massachusetts. The appellants were residents of Massachusetts from the inception of AcadiaSoft in 2003 through April 30, 2015, and sought no credit for taxes paid to other jurisdictions when filing their tax returns for 2003 through 2014. It was not until late 2014 through June 2015 - inclusive of the time period after he moved to New Hampshire - that Mr. Welch's contributions to the company diminished.

Mr. Welch engaged in his AcadiaSoft employment with continuity and regularity, working long hours even when his shares were diluted due to numerous recapitalizations and even though he was not the highest paid individual at the company. He was a founder of AcadiaSoft and dedicated himself to its success, and he expected all his hard work would culminate with a payout at some

point in the future. This was not a passive venture for Mr. Welch, but one to which he exclusively devoted his life for more than a decade and to which he made crucial contributions that added to, and were critical to, the company's value. His payout - the stock gain - was of a compensatory nature that "result[ed] from, [was] earned by, [was] credited to . . . or otherwise attributable to" his employment and thus the gain here derived from and was effectively connected with the trade or business of employment carried on by Mr. Welch in the Commonwealth and taxable under G.L. c. 62, § 5A.

On the basis of the foregoing, the Board found and ruled for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco

Mark J. DeFrancisco, Chairman

A true copy,

Attest: /s/ William J. Doherty

Clerk of the Board