

Great Florida  
Burgers p. 10



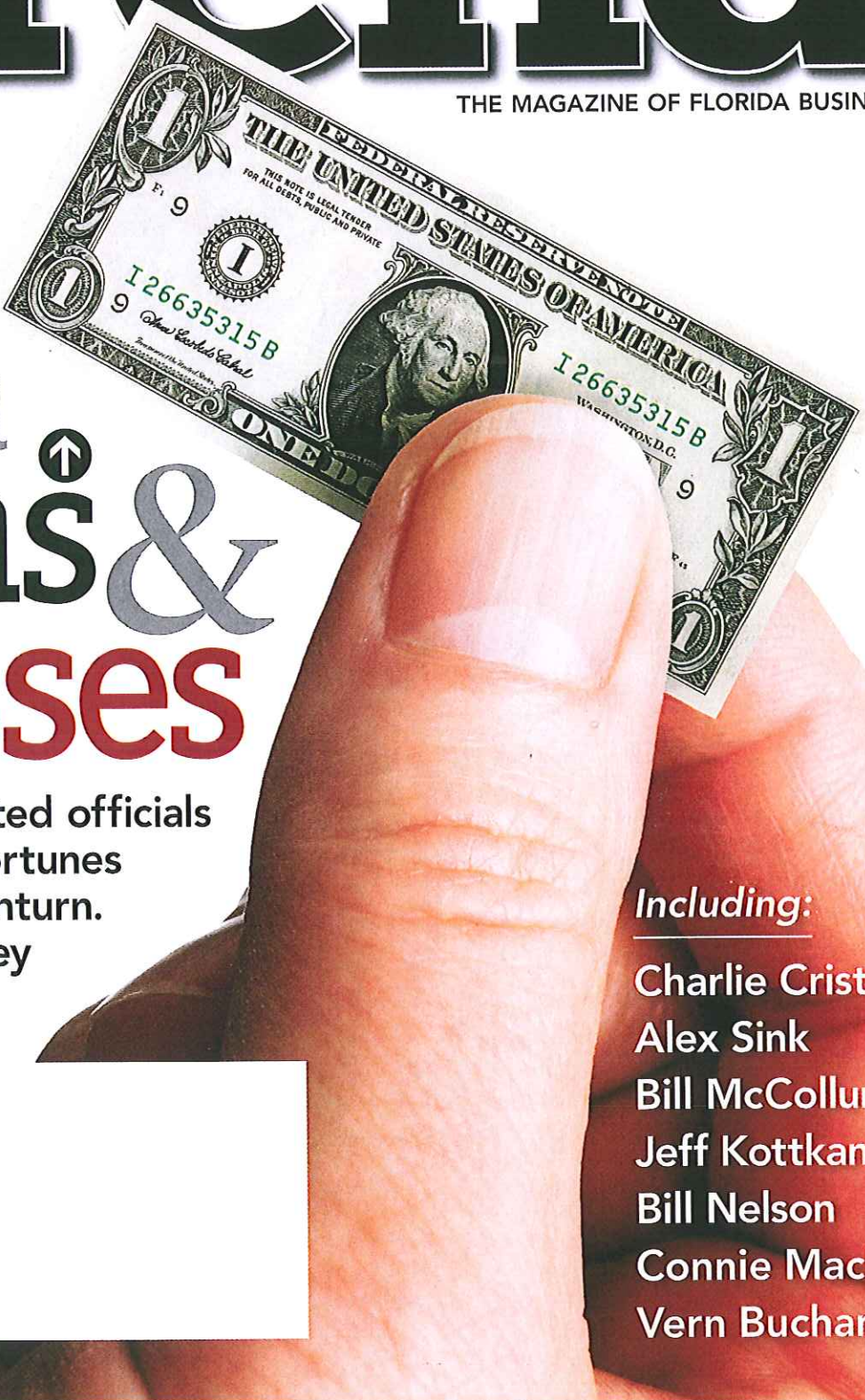
Icon: Astronaut  
Edgar Mitchell p. 18



# Florida Trend

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THE MAGAZINE OF FLORIDA BUSINESS



## Capitol Gains & Losses

Most Florida elected officials  
have seen their fortunes  
shrink in the downturn.  
How much are they  
worth now? p. 46

*Including:*

Charlie Crist  
Alex Sink  
Bill McCollum  
Jeff Kottkamp  
Bill Nelson  
Connie Mack  
Vern Buchanan



# A Matter of Chemistry

A once-promising biotech company was left teetering after a debacle involving a relatively unimportant subsidiary. Its pitfalls offer lessons for other executives.

The cell phone in Mark Emalfarb's pocket rang on a Saturday afternoon in 2007 as he stood in a parking lot in Palm Beach Gardens where he was condo shopping with his wife. On the phone were the directors and legal counsel for Dyadic International. As founder, chairman and CEO of the Jupiter-based company, Emalfarb was stunned to find out his board was meeting without him. More shocks lay ahead. The board members had unpleasant questions.

Within days, the company's outside legal counsel talked him into a leave of absence while the company conducted an investigation into troubling financial revelations about a Dyadic subsidiary called Puridet based in Hong Kong. Within months, the company released a 500-page report that suggested Emalfarb was a liar who covered up accounting mischief at the Chinese firm.

Emalfarb, however, did not fade quietly into the ranks of disgraced CEOs whose careers and companies foundered amid allegations of cooked books. Emalfarb didn't fade

at all, launching a court and shareholder fight that has put him back in control. Or, as he sums up his contest against those who ousted him, "F.U. I'm back."

A University of Iowa journalism major whose family was in the landscape stone business, Emalfarb founded Dyadic in 1979 and became a supplier of pumice for stonewashing to makers of jeans. When textile companies turned to enzymes — proteins that speed up other chemical reactions — to create stonewashed denim, Emalfarb knew his pumice-supplier days were numbered. He traveled to Russia, where scientific talent came cheap, to secure his own proprietary enzymes from a fungus. "Jeans to genes," he liked to say. He set up a research arm in The Netherlands, Jupiter and Greensboro, N.C., production in Poland, distribution in China and his home in Jupiter.

While breeding the fungus to be more productive, Dyadic's scientists lucked into a mutation that enables it to produce many more enzymes at a lower cost for sale to the textile, brewery, animal feed and paper industries. Dyadic's \$16 million in annual revenue made it only a bit player in the \$3-billion industrial enzyme industry. But Emalfarb wanted the company to be a star. He believed that Dyadic's fungus could save money in the development of everything from drugs to cellulosic ethanol, the Holy Grail of ethanol.

## Bad investment

When Gov. Jeb Bush in 2003 enticed the Scripps Research Institute to open a campus in Emalfarb's back yard, Emalfarb pounced. He

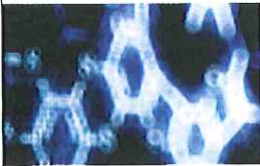


## ➔ From Blue Jeans to Biofuel

Dyadic got its start supplying pumice for stonewashing jeans. When enzymes began replacing pumice in the stonewashing process, company founder Mark Emalfarb set out to secure his own enzymes. He did. Now he's betting his enzyme-producing fungus can be used to make everything from drugs to cellulosic ethanol.



Things started to unravel for Dyadic founder Mark Emalfarb after his board got wind of mismanagement at a subsidiary in China.



**“The toll this has taken on my family, my business and myself is almost indescribable.”** — *Dyadic founder Mark Emalfarb*

convinced Scripps' chief, Richard Lerner, to chair Dyadic's scientific advisory board, a position Lerner still holds. Emalfarb, nothing if not a relentless booster, positioned his tiny company as the “poster child” of an emerging industry and himself as biotech advocate. “To my mind, he was the classic entrepreneur, the guy who lives, eats and sleeps his business,” says Stephen Warner, a co-founder and managing director of venture capital firm CrossBow Ventures in West Palm Beach.

Emalfarb readied the company to go public. Meanwhile, since 1998, he had been increasing Dyadic's investment in and control of Puridet, a Hong Kong-based enzyme company with a mainland China subsidiary. Puridet was run by Robert Smeaton, a hard-drinking Australian well-schooled in the way business is often done in China. Judging from an e-mail trail and letters written by subordinates, Smeaton saw Emalfarb as naive about Puridet's business practices and as someone best kept in the dark. Meanwhile, Puridet struggled. It accounted for 40% of Dyadic's revenue, but no profits.

In December 2003, roughly a year before Dyadic went public, Emalfarb received a long anonymous e-mail from an unhappy employee warning him that employees in China were ripping Dyadic off and making a passing reference to it boosting revenue by passing cash sales — from customers who wanted to avoid local taxes — through a dummy company.

Emalfarb insists he took appropriate action. He exchanged e-mails, copying his financial chief, with the anonymous source to get more information. He told Smeaton and also answered affirmatively when Ernst & Young asked a routine audit question about receiving any whistle-blower communications. He says he was ignorant of accounting intricacies and relied on underlings and outside professionals — including Ernst & Young

and another accounting firm — to handle things. He had two Dyadic employees in China as his eyes and ears. Emalfarb eventually ordered all transactions with the dummy company to cease.

That was that, he says he thought. Unbeknown to Emalfarb, Puridet allegedly just got involved with a new dummy company.



**Mark Emalfarb (right) convinced the president of Scripps, Richard Lerner (left), to chair Dyadic's scientific advisory board. Lerner still holds that position, five years later.**

In 2004, Emalfarb raised \$1 million from a fund that venture capitalist Warner assembled, including \$600,000 from Warner personally, and a total of \$26 million. He took Dyadic public late that year via a reverse merger. He says he saw great things ahead for Dyadic.

He didn't reckon on China. In 2007, shortly after Smeaton died of heart failure at age 44, Emalfarb received another anonymous whistle-blower e-mail. This time, Emalfarb immediately forwarded it to his chief financial officer, Wayne Moor,

who had joined Dyadic after it went public and was visiting the China operation at the time. Emalfarb also told Moor about the earlier whistle-blower contact.

What followed stemmed from a mistake in memory by Emalfarb and the increasing cultural pressure on financial reporting and those responsible for it.

Emalfarb, confused about when he had received the first anonymous whistle-blower e-mail, told Moor he thought he had sent it to Moor when he first got it. That was impossible because Moor wasn't with the company in 2003 when that first whistle-blower contact occurred. In the post-Enron era, however, Emalfarb's mistake amounted to accusing Moor of ignoring evidence of financial irregularities. “That was the end of Wayne's regard for Mark,” says Warner, who had become a Dyadic board member. “Wayne decided Mark was the devil incarnate who roped him into this situation that totally threatened his career. He said Mark was a liar and a sociopath.”

Emalfarb says he realized his mistake the next day and apologized, but he and Moor never spoke again. (Moor declined an interview for this article, as did former board Chairman Harry Rosengart.)

Moor, still in China, contacted Robert Schwimmer of Greenberg Traurig, Dyadic's outside legal counsel, and board members. The dominoes fell as lawyers gave the board their advice. The board audit committee hired Miami law firm Moscovitz & Moscovitz to investigate. With Emalfarb on leave, the Moscovitz firm concluded in a report, which the company made public, that Emalfarb had been derelict in his fiduciary duties concerning that first whistle-blower e-mail and “has not been candid with us or with the board.”

Bilzin Sumberg Baena Price & Axelrod, another Miami law firm hired by Dyadic's audit committee, recommended firing Emalfarb for cause. The board, except for Warner, agreed. Warner says the report drew conclusions that the evidence didn't support. “I don't think (Emalfarb) ever in the remotest part of his mind said ‘I have to cover this up’ because he didn't do anything to cover up,” Warner says.



Researchers at Dyadic's Netherlands facility work on improving the efficiency and yield of enzyme mixtures to convert biomass into fermentable sugars for fuel.

## A business in tatters

Emalfarb calls the investigation and report a “witch-hunt and vendetta.” He has finger-pointing of his own to do, alleging the Moscowitz report is replete with errors, ignored evidence and focused only on him rather than other Dyadic employees and the outside professionals.

Emalfarb, who still technically held a board seat, sued. A Delaware court ordered a shareholder meeting for June 2008. Emalfarb and large shareholders who supported him held 52% of Dyadic stock, and by 1 p.m. on the day of the meeting, Emalfarb was back in his old office. Moor and other executives had already resigned.

A year earlier, when Emalfarb had taken that Saturday phone call on his condo-shopping trip, Dyadic had \$27 million in the bank, stock trading above \$5, a prime parcel next to Scripps for a new headquarters and a biotech incubator, a \$10-million investment in Dyadic stock by Spain's Abengoa Bioenergy New Technologies to fund research in ratcheting up the fungus' productivity and lots of interest from others.

When Emalfarb returned, Dyadic was in tatters. He and the company both were tainted. Dyadic had abandoned the troublesome China operation, but relationships and potential deals in the biosciences had fallen apart. With big legal bills — \$3.6 million alone to Bilzin Sumberg — the company had burned through \$24 million. Employment was down from 125 to 31. That prime parcel near Scripps' site had been sold to raise cash. Dyadic had sufficient money to stay open for only another couple of months. An investor class-

**“To my mind, he was the classic entrepreneur, the guy who lives, eats and sleeps his business.”**

— Venture capitalist Stephen Warner

action suit was pending. The company had no accounting firm, and financial reports hadn't been filed with the SEC since the 2006 fiscal year-end.

Under Emalfarb, Dyadic settled with the SEC and Abengoa, which had sued. Emalfarb brought in \$10 million — winning Dyadic some operating room — from Codexis, a Redwood City, Calif., company that licensed the company's fungus for making biofuels and other uses.

And Dyadic sued the law firms, lawyers and accounting firms he blames: Ernst & Young in the United States and in Hong Kong, Greenberg Traurig and Schwimmer, the Moscowitz firm and Bilzin Sumberg. He says the company overpaid for underperformance and that the lawyers “saw \$27 million in the bank and they went to grab it.” The suit alleges that Dyadic “was led to the brink of ruin by the very professionals it relied upon to protect it.”

“The toll this has taken on my family, my business and myself is almost indescribable,” Emalfarb says.

Spokesmen for Bilzin Sumberg and Ernst & Young declined comment. Efforts to obtain comment from the Moscowitz firm weren't successful. Gerald Richman, a West Palm Beach attorney representing Greenberg Traurig and Schwimmer, says the suit seeks to make the law firm responsible for accounting duties and liable for tactical legal advice that isn't actionable under the law. “The law firm did exactly what it was supposed to have done,” he says.

Warner, in hindsight, wonders how the affair would have played out had the principals met face to face rather than by cell phone and taken time to reflect and research before speaking and deciding. He says the board never met in person throughout the debacle, instead doing everything by conference call.

Warner also points out that all the fuss was over a subsidiary that was, at best, breaking even. Puridet was in any case far removed from the company's potential, he says. “You've heard the expression the tail wagging the dog? This is a flea on the tail wagging the dog. It meant nothing to the company, and yet it almost brought the company down.”

Emalfarb, meanwhile, is back in his accustomed role of visionary, describing a world shifting from reliance on petroleum to reliance on fermentable sugars — with Dyadic in a pivotal role. He talks grandly of the capabilities of his company's fungus and of consumers one day seeing “Dyadic Inside” on everything from bread to medications and fuel. “This is real. It's going to happen,” he says. “It's a matter of when.” **■**