

1 and sold more dummy pools of loans to Colonial Bank, ultimately  
2 leaving Colonial Bank out \$500 million, and then he turned to  
3 Ocala Funding and stole -- and stripped out another \$1.5 billion  
4 from a facility that was supposed to have commercial paper backed  
5 by that money, and ultimately tried to steal more money, up to  
6 \$500 million, from the government.

7           This fraud scheme, as you'll hear at trial, is  
8 complicated at times. It is complex. After all, this is a  
9 technical industry that you're going to hear about, but reduced to  
10 its essence, this story is simple, and it's a very old story: TBW  
11 needed money, and the defendant and his coconspirators went out  
12 and stole it.

13           You're going to learn about these different, these five  
14 phases through a series of witnesses, many of whom I've already  
15 told you about here, these coconspirators of the defendant.  
16 They're going to tell you how throughout, the defendant was the  
17 leader, he's the common denominator for each of these schemes.  
18 Each of those coconspirators has pleaded guilty and is going to  
19 testify at trial pursuant to a plea agreement.

20           You're going to hear from Cathie Kissick and Teresa  
21 Kelly how they tried to get the defendant over time to pay back  
22 Colonial Bank, to pay back Plan B, and had some success, obviously  
23 not enough because there was \$500 million missing still in August  
24 2009, but regardless, even if paid back, that doesn't change the  
25 fact that Plan B was a scheme over a series of years in which the

1 defendant and his coconspirators sold fake assets to Colonial  
2 Bank.

3           You're going to hear from Ray Bowman, the president,  
4 who's going to tell you how the defendant himself said that Cathie  
5 Kissick can't stop giving us money, because if she does, TBW is  
6 going to go out of business, and if TBW goes out of business, the  
7 hole is going to be found, and if the hole is found, Cathie  
8 Kissick is going to jail.

9           You're going to hear from other witnesses who worked at  
10 Taylor Bean and worked at Colonial Bank, and they're going to --  
11 who did not participate in the fraud, and they're going to tell  
12 you about how Colonial Bank operated and TBW operated.

13           You're going to hear from some of the victims of the  
14 fraud. You're going to hear witnesses from Deutsche Bank and BNP  
15 tell you about Ocala Funding and their commercial paper. You're  
16 going to hear from shareholders of Colonial Bank, or Colonial  
17 Bank's parent, and how they lost money. You're also going to hear  
18 from some of the owners of those loans that the defendant sold  
19 twice.

20           You're also going to hear the defendant's own words in  
21 recordings made by some of these coconspirators -- Cathie Kissick,  
22 Desiree Brown, and Teresa Kelly -- after they started cooperating  
23 with the government. They made recorded calls to the defendant,  
24 and you'll hear him discussing the hole that was at Colonial Bank.

25           You're also going to see e-mails in which the defendant

1 and his coconspirators talked about Plan B and the defendant  
2 instructed others to engage in Plan B and send Plan B loans to  
3 Colonial Bank, and you're going to hear about something called  
4 Blackberry PINs. These are like, these are like text messages  
5 that disappear, there's no trace, they're not kept on company  
6 servers, and you're going to hear from witnesses that the  
7 defendant and others switched to using these untraceable PINs,  
8 these untraceable text messages, so that they could hide their  
9 communications about Plan B, and you're also going to see  
10 documents that document the transactions, these fake Plan B  
11 transactions, some of which are charged in the indictment.

12           In the end, this boils down to a simple and sordid tale.  
13 Over eight years, the defendant orchestrated a massive fraud  
14 scheme in which he and his coconspirators stole well north of a  
15 billion dollars from Colonial Bank, Deutsche Bank, and BNP. As  
16 I've said before, TBW needed cash. The defendant and his  
17 coconspirators, they went out and stole it. It's really as  
18 straightforward as that.

19           At the end of this case, we're going to come back up  
20 here, and we're going to ask you to convict the defendant for his  
21 participation and his role in this fraud scheme.

22           THE COURT: All right, now we'll have the defense  
23 opening statement.

24

25

1                                   OPENING STATEMENT

2                                   BY MR. KUGLAR:

3                    May it please the Court, Your Honor, ladies and  
4 gentlemen of the jury. The government thinks that they found a  
5 hole at Taylor, Bean & Whitaker, a hole that caused a lot of  
6 damage that Mr. Farkas should be held responsible for, but the  
7 evidence that you see and hear in this case will demonstrate two  
8 things: first, that there is no hole; and second, that the  
9 government didn't do their homework.

10                   The government did not understand the complex,  
11 contractual agreements that dictated how Colonial Bank and Taylor,  
12 Bean & Whitaker operated, and they didn't take the time to  
13 understand how those complex agreements worked before they shut  
14 down Mr. Farkas's company and put 2,500 jobs -- 2,500 people out  
15 of jobs.

16                   The evidence that we are going to put in over the next  
17 few weeks will demonstrate how it worked. We are going to do our  
18 homework, and we are going to understand how it works, and the  
19 evidence that you see and hear will demonstrate that there was no  
20 hole, but rather a diamond ring.

21                   I'm Craig Kuglar, and along with Bruce Rogow and Bill  
22 Cummings and Zahra Karinshak, we represent Lee Farkas. Over the  
23 next few weeks, we're going to put in evidence that demonstrates  
24 that Mr. Farkas didn't steal anything.

25                   Now, Mr. Farkas was the chairman and main stockholder of

1 the largest independent mortgage company in America, named Taylor,  
2 Bean & Whitaker. Now, to understand the evidence that we're going  
3 to put in and look at it over the next few weeks, you have to  
4 understand what the heck a monoline independent mortgage company  
5 is. I drew the short straw, so I get to try to explain it.

6           Actually, I think it's pretty simple. Traditionally,  
7 when people needed a mortgage, they would go to the bank, and the  
8 bank would say, "Yes, we have money, and yes, you can have a  
9 mortgage." Taylor, Bean & Whitaker, two things you need to know  
10 about Taylor, Bean & Whitaker: One, they're not a bank; and two,  
11 they're not particularly interested in getting mortgages. So what  
12 do they do?

13           They are a, they are a -- they actually -- their  
14 relationship is with the community banks and the mortgage brokers.  
15 Over the years, they had made relationships with thousands of  
16 these lenders across the country, and when someone came to a bank  
17 and said, "We need a mortgage," the bank would say, "Okay." And  
18 they would contact TBW, and thousands of banks around the country  
19 would contact TBW, and TBW would determine whether or not the  
20 people were eligible for a mortgage. If so, they would wire the  
21 money to the closing attorney in the glasses there, the closing  
22 attorney would do the documents, the home owners would get the  
23 money, and they would sign the deed. That's the security, the  
24 security deed that you sign.

25           This is happening all over the country thousands of

1 times a day, and these deeds come in from around the country, and  
2 Taylor, Bean & Whitaker takes these deeds, and they put them in a  
3 stack of, say, 50, and they wrap them in a bow, and that's called  
4 a bond, and then they sell that bond off, and they sell the bond  
5 to investors and people on Wall Street.

6           So what do they get out of it? Well, a couple things.  
7 They get some administrative fees along the way for doing this  
8 work, but more importantly, they get what's called a mortgage  
9 servicing right.

10           Now, you'll hear that when Taylor, Bean & Whitaker  
11 originated these mortgages and created these mortgages and  
12 processed these mortgages, along with -- when the deal was done,  
13 there was something left called a mortgage servicing right, and  
14 the mortgage servicing right, quite simply, is the right to take  
15 in the money and to administer the loan. The people buying the  
16 bonds are not interested in doing that. They leave it to TBW,  
17 because TBW, you will hear, had a fine servicing department, and  
18 they were very good at it.

19           Now, like I said, not too interested in having the  
20 mortgages. They're not a bank. So to get the money to go out and  
21 do the mortgages, they have to have relationship with banks, what  
22 we call funding sources, and you've already heard that Colonial  
23 Bank was indeed the main funding source of Taylor, Bean &  
24 Whitaker, and you will hear that over the years, the relationship  
25 started small, and as Taylor, Bean & Whitaker succeeded and as

1 Colonial succeeded, the relationship got ever more complex.

2           And you're going to hear a lot about something called  
3 facilities, lots of facilities, and what you will hear is that  
4 over the years, the lawyers and people at Colonial Bank had come  
5 up with new and complicated ways to get money from Colonial Bank  
6 to Taylor, Bean & Whitaker, and you will hear that the documents  
7 they drafted, some of them are this tall (indicating), and they  
8 were drafted by some of the most sophisticated attorneys in the  
9 country, and each one of those documents was very complex, and to  
10 understand how the funding source worked, you have to understand  
11 that precise document.

12           And you will hear about a lot of these various funding  
13 sources, I like to think of them as buckets, and you're going to  
14 hear these names like COLB - wet, COLB - dry, construction COLB,  
15 AOT agency, AOT private label, overline, working capital.

16           All of these agreements again were drafted by attorneys,  
17 and each one of those was designed to do a different thing. You  
18 can use this bucket to initially fund the loans until the deed  
19 comes in, and when the deed comes in, you've got to put it over  
20 here in this bucket, and then once you get enough mortgages in  
21 this bucket, you can bundle them up and put them in this bucket,  
22 and again, each of those buckets, each of those funding sources  
23 had its own very complex rules.

24           Now, when you read these documents, which we are going  
25 to do, and when you hear what these documents do, you will hear

1 that the banker at Colonial Bank, Cathie Kissick, is not unlike a  
2 lot of bankers. You go to the banker and you say, "Banker Cathie,  
3 I'd like to buy this Chevy. I've got my eye on this Chevy. It's  
4 \$10,000."

5 And Banker Cathie says, "Well, I'd love to give you this  
6 Chevy, but we don't do too well with Chevies. If you don't pay  
7 us, we're not going to get our money out of this Chevy, so I tell  
8 you what: We're going to give you the \$10,000, but we want a note  
9 on the Chevy, and do you have -- that diamond ring? Is that  
10 yours?"

11 "Yes."

12 Well, you will hear that Cathie Kissick said the same  
13 thing. She said, "Mr. Farkas, we'd like to give you money, and  
14 we'd like to loan you this money, and as set out in the documents,  
15 we are going to get a menu of collateral to back up this loan,  
16 starting with the mortgage note but also your diamond ring, the  
17 mortgage servicing rights, and the income from the mortgage  
18 servicing rights and any and all revenue," and you're going to  
19 hear if you actually read these documents, there are provisions  
20 for what happens if the wrong paper gets in one of these buckets,  
21 and you'll see if you read that, it provides if there are any  
22 nonconforming notes in there, you can take out -- you can put in  
23 what's called a qualified replacement note, and when you read each  
24 of these documents, you see that there is a menu of collateral  
25 behind the note, and the note's just the tip of the iceberg.

1           So that was how the relationship worked. Taylor Bean is  
2 going out and it's lending money to people, and it's getting money  
3 from Colonial Bank to do that using all of these various funding  
4 sources. And you will hear that Taylor, Bean & Whitaker did very  
5 well. Their motto was Perfecting the Art of Mortgage Lending.

6           You will hear that Mr. Farkas does not have a college  
7 degree, but he's a visionary and an inventor. And Taylor, Bean &  
8 Whitaker was competing with a lot of these monoline independent  
9 mortgage companies out there. There were a lot of these companies  
10 competing for business, and they did two things better than  
11 anybody else. They used technology better than anyone else, and  
12 they had better customer service.

13           When you called Taylor, Bean & Whitaker, unlike a big  
14 bank, on the second ring a live person would answer in Ocala,  
15 Florida, and say, "It's a great day at Taylor, Bean & Whitaker.  
16 How may we help you?"

17           And people loved doing business with Taylor, Bean &  
18 Whitaker, and you will hear that from 2000 to 2008, before Taylor,  
19 Bean & Whitaker was shut down, Taylor, Bean & Whitaker grew  
20 substantially. It grew in assets, and the diamond ring, which was  
21 worth, which was worth \$37 million in 2002, in 2008 had been  
22 valued at \$700 million. It was the diamond ring on the Taylor,  
23 Bean & Whitaker balance sheet.

24           Along with that exponential growth came exponential  
25 complexity, and Mr. Farkas again didn't have a college degree, but

1 he's smart enough to know when to hire people, and he hired, you  
2 will hear, a very experienced mortgage team, starting with a CEO.  
3 You will hear that in 2003, he stepped aside, and he brought in a  
4 long-time mortgage veteran named Paul Allen to be his chief  
5 executive officer, and he hired a chief financial officer named  
6 Delton DeArmas, and he hired a president and a head of trading,  
7 and he hired, as you will hear, whenever Mr. Farkas was doing one  
8 of these deals, you will hear that he relied on some of the most  
9 sophisticated law firms in America.

10           Now, that's not to say that Mr. Farkas wasn't involved  
11 in his business. He very much was. But you will hear that he  
12 asked two questions almost every day of his people: One, "Are we  
13 making money?"

14           Why is that important? Well, you'll hear that they're  
15 working 15 hours a day. If you're not making money, it ain't  
16 worth it. And he was told yes.

17           And you will hear that he was also asking: "Do we have  
18 money? Do we have the collateral?"

19           Yes and yes.

20           And you will hear that what that meant when he was  
21 asking about the collateral was that all of those funding sources  
22 at Colonial Bank, no one -- first of all, the notes for all of  
23 those obligations were kept in a vault at Colonial Bank.  
24 Nevertheless, as the, as the volume of the business grew, it  
25 became very difficult for Colonial Bank to keep track of what

1 obligations were in what buckets, and you will hear that  
2 Mr. Farkas and his team essentially looked at the relationship  
3 with Colonial Bank as one big loan, and Mr. Farkas was asking,  
4 "How much do we owe, and do we have the collateral?"

5           And you will hear he was told yes. Until the very end,  
6 he was told, "We have the collateral."

7           And you will hear that Taylor, Bean & Whitaker was  
8 subjected to oversight by a host, a host of people. You will see  
9 some pictures of the Taylor, Bean & Whitaker headquarters. They  
10 had office conference rooms built for the people who were coming  
11 through. That included their outside auditors, Deloitte & Touche.  
12 Mr. Farkas hired one of the best accounting firms in the world to  
13 come in and make sure that his financial statements were correct.

14           In addition, because they were in a highly regulated  
15 industry, they regularly had people from Fannie and Ginnie and HUD  
16 coming down to Ocala to make sure everything was all right.

17           In addition, to package up all of those bonds and sell  
18 them off, they had to be rated, so you hear that Standard & Poor  
19 and Moody's and Fitch also came down to Ocala, and there were  
20 other third-party oversight as well.

21           Again, all is going well until the bank crisis, and  
22 banks are failing one by one, and everyone wants to know what's  
23 the next one to go? And you will hear that Colonial Bank was  
24 failing, not because of Taylor, Bean & Whitaker. Indeed, the  
25 money that Taylor, Bean & Whitaker was paying in interest on all

1 those loans was the one bright spot at Colonial Bank.

2           Rather, you will hear that Colonial Bank had got itself  
3 in its own mess by investing in \$28 billion worth of commercial  
4 real estate all across the country, and their stock is down at 50  
5 cents, and everyone's asking is Colonial Bank going to survive?  
6 Are they going to be next?

7           And then one day, a press release. Colonial says,  
8 "Hooray. We're getting \$550 million from the TARP program,  
9 subject to some conditions," and the stock market says, "Hooray,"  
10 and the stock goes up.

11           You'll hear that a few weeks later, Colonial sends out  
12 another press release and says, "Oh, yeah, about those conditions?  
13 One of them is that we raise \$300 million ourselves."

14           It was then that Mr. Farkas got involved, because  
15 Colonial Bank, to get the TARP money, to get the TARP money,  
16 needed investors to invest alongside TARP, and Colonial Bank went  
17 to its customers. Mr. Farkas and the other people who ran the  
18 monoline independent mortgage companies needed Colonial Bank to  
19 survive, and Colonial Bank went to Mr. Farkas and other people and  
20 said, "Help us raise this money."

21           And you're going to hear that Mr. Farkas didn't just  
22 say, "Okay." No. Mr. Farkas did what he always did: He hired  
23 the best of the best of advisors and lawyers to consult with him  
24 on this.

25           His first call was to Deutsche Bank in New York. He

1 said, "Get me an investment banker to help me understand this deal  
2 and whether it's a good deal." And he hired Locke Lord, one of  
3 the biggest law firms in America, out of Washington, to be his  
4 deal counsel.

5 And more importantly, as was his nature, Mr. Farkas went  
6 and looked at every single piece of dirt in that commercial real  
7 estate portfolio that the regulators were saying was worth nothing  
8 and you have to write down, and he looked at every hotel along  
9 I-75, and he could see that hotel is full. They're saying that's  
10 a bad loan. That hotel's doing fine.

11 And after looking at all that dirt, he thought, This is  
12 a great deal. This is a spectacular deal.

13 And you will hear that over a year's time, he convinced  
14 other people that it was a great deal, and they got commitments to  
15 raise the \$300 million, and they put 10 percent in an escrow  
16 account.

17 A press release was sent out by Colonial Bank and  
18 Taylor, Bean & Whitaker that said, "Taylor Bean and others have  
19 agreed to do this deal. Of course, it's subject to the government  
20 approving it."

21 Well, you will hear the government didn't approve it.  
22 The government said no to this deal. Colonial Bank then failed,  
23 and the taxpayers then picked up the bill.

24 Now, we think the evidence is going to show that we're  
25 here because of a book report and a confused accountant. The book

1 report has to do with SIGTARP. When Congress was giving out all  
2 the TARP money, you will hear that they put \$50 million aside, and  
3 they created something called SIGTARP. They said, "We're going to  
4 call it the special inspector general of the TARP, and you,  
5 SIGTARP, and the head of SIGTARP, Mr. Barofsky, you go out there  
6 and you find bad people doing bad things with TARP money, and you  
7 report back to us, and you tell us what you've done."

8           Now, at the same time, there was a guy in Ocala,  
9 Florida, named Ed Corristan, and you're going to hear that  
10 Mr. Corristan worked with Deloitte & Touche and was auditing  
11 Mr. Farkas's company, and you're going to hear that he was new to  
12 the account and that he didn't have particularly good experience  
13 auditing monoline mortgage companies, and you're going to hear  
14 that from the day he set foot in Ocala, he was confused. He  
15 didn't understand how this worked. He didn't understand how that  
16 worked. He didn't understand a lot of things. He was confused.

17           Now, as you've heard, there was this continual desire to  
18 get money. The reason is business is booming. The way these  
19 companies work, the more people that come to you and want  
20 mortgages, the more money you need to get. That's because  
21 business is good, not because business is bad, but it also means  
22 that as business grows, money is tight, and you will hear that  
23 when Mr. Corristan heard that Taylor, Bean & Whitaker was going to  
24 invest money in the Colonial deal, Mr. Corristan said, "I'm  
25 confused. I don't know where that money is coming from."

1           And at the same time, the people in Washington at the  
2 TARP, who had gone in and looked at Taylor, Bean & Whitaker's  
3 books all these years, were also confused, because they said, "We  
4 know that company, and we don't know where that money is coming  
5 from, either."

6           Now, you will hear that Mr. Farkas was told where the  
7 money was coming from from his CEO, Paul Allen, who's a professor  
8 of finance, who studied at the London School of Economics, and  
9 explained exactly where the money was coming from.

10           But the evidence will be that the government didn't do  
11 their homework because of the confused accountant and the book  
12 report. And you will hear that SIGTARP issued a subpoena and  
13 essentially put TBW in a death spiral. We refer to a death spiral  
14 as the end of a business that happens very quickly. In this case,  
15 the FBI raids Taylor, Bean & Whitaker, it's on newspapers around  
16 the country, and just like that, all those relationships  
17 Mr. Farkas had forged with all those community bankers and  
18 mortgage brokers across the country was worthless, because no one  
19 would do business with Taylor, Bean & Whitaker.

20           And you will hear that several days after that, Ginnie  
21 and Freddie sent a letter to TBW and said, "You can't be a  
22 mortgage servicer anymore." The \$700 million diamond ring was  
23 taken and given to Bank of America for nothing.

24           The, the crimes at issue here are very specific. They  
25 say, "On this day, you took \$70 million out of this bucket, and

1 you only put \$50 million worth of notes in there." Now -- and  
2 that's wire fraud; that's bank fraud.

3           What we will show is that when the government came in  
4 after they'd issued -- after they'd done their raid, they come in  
5 and they look at the various buckets at Colonial Bank and they  
6 look at this bucket and they say, "Wait a minute. This is the AOT  
7 bucket. This is supposed to have \$1.6 billion of notes in it, and  
8 it only has 900 million in notes. There must be fraud."

9           But you will hear that when you do your homework and  
10 when you see the documents, you'll understand that the government  
11 has not done their work, because, in fact, if you read the, read  
12 the agreements and give Taylor, Bean & Whitaker the credit for all  
13 the menu of collateral that existed, there is no hole.

14           Each of the counts address specific transactions that  
15 took place, most of them starting, I think, in 2008, and they  
16 say, "In 2008, you took \$70 million from this AOT bucket, and you  
17 only put \$50 million."

18           Now, you will hear that Mr. Farkas was not involved  
19 personally in any of these transactions. None of these  
20 transactions that you will see will there be evidence to show that  
21 Mr. Farkas was doing it himself.

22           You will see lots of evidence comprised of e-mails going  
23 back to 2002, 2003, 2004, long before these actual transactions  
24 took place, and the reason those are being put in is to try to  
25 allege some conspiracy, and this evidence will try to show that

1 Mr. Farkas engaged in all these bad things, and you'll see  
2 cherry-picked e-mails talking about sweeping and Plan B and Plan P  
3 and crap loans and dummy loans, and the government is going to  
4 allege and will try to prove that all of this, all of this going  
5 way back all these years is Mr. Farkas starting this conspiracy,  
6 so that when we get to 2008 and 2009, even though he's not  
7 personally directing these transactions, that was the result of  
8 something that he put in motion.

9           You will see a number of people sit in that witness  
10 chair, people that were close to Mr. Farkas, and say that they  
11 were engaged in a conspiracy and that they've pled guilty to  
12 crimes in this case, and we refer to them as friends and family,  
13 and you're going to understand that we refer to them as that  
14 because they were.

15           You will hear that they were Mr. Farkas's friends.  
16 Mr. Farkas's parents died young, and he doesn't have children, and  
17 you will hear that the people that he worked with were his family,  
18 and these people who are going to get up and say bad things were  
19 his friends and were his family, and we're not going to heap any  
20 more anguish on them than they have already been through. You're  
21 not going to hear us doing that, but we do ask that you listen  
22 closely to their story, because it's changed.

23           The two questions Mr. Farkas asked all along: Are we  
24 making money, do we have the collateral, you'll hear that until  
25 the very end, Cathie Kissick, our banker at Colonial Bank, even

1 when the FBI came and knocked on her door and said, "We're the  
2 FBI; you tell us what's going on," she's telling them there is  
3 collateral.

4 Now, Mr. Farkas is told, "No, you weren't making money.  
5 Your company was never making money. Deloitte must have been  
6 wrong. You weren't making money, and there wasn't collateral."

7 You will hear that Mr. Farkas did this because he's a  
8 greedy man, that he wasn't making enough money so he had to steal  
9 it because he liked expensive things. He liked nice cars, and he  
10 liked airplanes.

11 Of all the numbers and all the evidence that you see and  
12 hear over the next few weeks, I want to point out one. It's the  
13 number at the bottom: 500 million. You will hear that in 2005,  
14 Capital One, one of the largest financial companies in America,  
15 approached Mr. Farkas and his people and said, "We like what  
16 you've done. We want that diamond ring. We want your mortgage  
17 servicing rights, and we're willing to give you \$500 million for  
18 your company."

19 And you're going to hear that when Mr. Farkas was told  
20 what they were going to do, fire all of his employees and move the  
21 operations, he said no. You're going to hear that he said no.  
22 "No amount of money can make me do that."

23 Now, Mr. Farkas being the head of the largest monoline  
24 mortgage company in America on trial, we would expect to see  
25 homeowners who have been foreclosed on, people who were given

1 houses that they didn't deserve. No. In this case, your victims  
2 are BNP Paribas. I don't know what Paribas is, but I know it's  
3 the biggest bank in the world.

4 Our other victim? Deutsche Bank, the largest bank in  
5 Germany. Another victim? Bank of America, the biggest bank in  
6 America.

7 When we do the homework and look at the evidence, we  
8 will see that it's not BNP Paribas, it's not Deutsche Bank, it's  
9 not Bank of America who are the victims here. It's the people  
10 that are going to sit in that chair, and it's the man sitting in  
11 this chair, and it's the 2,500 people who worked in this building  
12 in Ocala, Florida, who used to process mortgages in those cubicles  
13 and trade bonds on that floor and eat together in that dining  
14 room.

15 The evidence will show that Mr. Farkas did not steal  
16 anything.

17 THE COURT: All right, call your first witness.

18 MR. STOKES: Your Honor, the government calls Sarah  
19 Moore. Your Honor, we have a series of binders for the jurors  
20 with the witnesses -- with the exhibits. Would you prefer that we  
21 hand that out once we move into the exhibits or at this time?

22 THE COURT: Let's wait.

23 MR. STOKES: Okay.

24 THE COURT: Are all the jurors -- if any of you cannot  
25 see the witness because of the way the courtroom is set up, let us

Moore - Direct

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1 know. Just raise your hand, all right?

2 SARAH MOORE, GOVERNMENT'S WITNESS, AFFIRMED

3 THE COURT: All right, Mr. Stokes, let's go.

4 MR. STOKES: Thank you.

5 DIRECT EXAMINATION

6 BY MR. STOKES:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. Please introduce yourself to the jury.

10 A. Hello. I'm Sarah Moore.

11 Q. Ms. Moore, where are you from?

12 A. Montgomery, Alabama.

13 Q. Currently living there?

14 A. Yes.

15 Q. Now, Ms. Moore, where did you go to college?

16 A. Auburn University.

17 Q. And you have a B.A. from Auburn?

18 A. A B.S. Degree in Accounting.

19 Q. Did you used to work at Colonial Bank?

20 A. I did.

21 Q. And can you just give us a brief rundown of your professional  
22 history both at Colonial Bank and just before?

23 A. Upon graduating from Auburn University in 1987, I joined  
24 Coopers & Lybrand, a CPA firm, which eventually became Price  
25 Waterhouse Coopers. I joined Colonial Bank as senior vice

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1 president of strategic planning in September of 1996. I was  
2 promoted to treasurer in 1999, chief operations officer in April  
3 of 2000, and CFO in August of 2003.

4 Q. And CFO, is that a --

5 A. Chief financial officer.

6 Q. And in November of 2009, did you leave Colonial Bank?

7 A. Colonial Bank was placed in receivership in August of 2009,  
8 so I was with BB&T through November of 2009.

9 Q. And BB&T bought some of the assets from Colonial Bank?

10 A. They did.

11 Q. And where did you go to work for -- who did you go to work  
12 for after Colonial Bank?

13 A. The Renaissance Companies.

14 Q. And what does Renaissance Companies do?

15 A. It's a financial advisory firm.

16 Q. Now, Ms. Moore, your job with Colonial Bank, what city were  
17 you based out of?

18 A. Montgomery, Alabama.

19 Q. Can you describe for the jury what Colonial Bank was?

20 A. Colonial Bank had approximately 26 billion of assets. It was  
21 a retail and commercial bank. It had operations, about 350  
22 branches in five states: Alabama, Georgia, Florida, Texas, and  
23 Nevada.

24 Q. And what's a retail bank, and what's a commercial bank?

25 A. Retail refers to individual customers like you and me.

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1 Commercial banking refers to business customers.

2 Q. Now, was one of its divisions a Mortgage Lending Division?

3 A. Yes.

4 Q. And where was that business based?

5 A. Orlando, Florida.

6 Q. And where was Colonial Bank itself headquartered?

7 A. Montgomery, Alabama.

8 Q. How large was Colonial Bank as compared to other banks in the  
9 United States?

10 A. During 2008, we were around the 22nd largest U.S. domestic  
11 bank.

12 Q. Was Colonial Bank regulated by government regulators?

13 A. Yes.

14 Q. Who were its regulators?

15 A. Its primary federal regulator was the FDIC, the Federal  
16 Deposit Insurance Corporation, and its state banking regulator was  
17 the State of Alabama.

18 Q. And over time, had it had different federal regulators?

19 A. It did.

20 Q. Previous to that, did it have -- who was its regulator?

21 A. The OCC, the Office of the Comptroller of the Currency.

22 Q. What did these regulators do for Colonial Bank or with  
23 Colonial Bank? Why were they -- what were they regulating, and  
24 what were they looking at?

25 A. The regulator's primary job, of course, is to protect deposit

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1 customers, so regulators perform reviews, they perform targeted  
2 exams to ensure that Colonial Bank was complying with laws and  
3 regulations.

4 Q. Now, you mentioned that you were the CFO, or the chief  
5 financial officer, for Colonial Bank. Did you also have a  
6 position with a company called Colonial BancGroup?

7 A. I did.

8 Q. And first, what is Colonial BancGroup?

9 A. Colonial BancGroup was the holding company which was the  
10 parent of Colonial Bank, and it was a publicly traded company. We  
11 were on the New York Stock Exchange.

12 Q. And what was your position with Colonial BancGroup?

13 A. Senior executive vice president and chief financial officer.

14 Q. So in other words, you were the CFO for both the parent  
15 company and the bank?

16 A. Yes.

17 Q. And was the parent company, Colonial BancGroup, was it  
18 registered with the United States Securities and Exchange  
19 Commission?

20 A. It was.

21 Q. Let's talk about for a moment the Mortgage Lending Division  
22 that you mentioned. Where was that based?

23 A. Orlando, Florida.

24 Q. How big was that division in 2008?

25 A. Around 4 billion of assets at the end of 2008.

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1 Q. How many people worked at the Mortgage Warehouse Lending  
2 Division?

3 A. Between 115 and 120 employees.

4 Q. Who was in charge of the Mortgage Warehouse Lending Division  
5 for Colonial Bank?

6 A. Cathie Kissick.

7 Q. Do you know what her, what her title was, what her position  
8 was?

9 A. Senior vice president and director of the Mortgage Warehouse  
10 Lending Division.

11 Q. And where was she based out of?

12 A. Orlando, Florida.

13 Q. Who did she report to?

14 A. Kamal Hosein.

15 Q. And who was Kamal Hosein?

16 A. A senior vice president and treasurer of Colonial Bank.

17 Q. Where was he located?

18 A. Montgomery, Alabama.

19 Q. And so she, Cathie Kissick, was based in Orlando and reported  
20 to somebody in Montgomery?

21 A. Yes.

22 Q. And who did Kamal Hosein report to?

23 A. Me.

24 Q. What did this Mortgage Warehouse Lending Division do?

25 A. Provided short-term funding to mortgage companies.

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1 Q. And by short-term funding, why did it provide the short-term  
2 funding to mortgage companies?

3 A. It was a profitable way for Colonial Bank to make money on  
4 the interest income.

5 Q. And what was that money used for by those mortgage lending  
6 companies?

7 A. To loan money to home buyers.

8 Q. Now, you mentioned earlier that the Mortgage Warehouse  
9 Lending Division had about \$4 billion in outstanding assets at any  
10 given time in 2008. How many loans -- how much did Colonial Bank,  
11 its Mortgage Warehouse Lending Division, loan out in any given  
12 year?

13 A. Approximately \$70 billion.

14 Q. And in the 2008 year for Colonial Bank, what was Colonial  
15 Bank's most profitable division?

16 A. The Mortgage Warehouse Lending Division.

17 Q. Have you heard of a company by the name of Taylor, Bean &  
18 Whitaker?

19 A. Yes.

20 Q. What is that?

21 A. It was a very large, independent mortgage company.

22 Q. Do you know where it was based?

23 A. Ocala, Florida.

24 Q. Who was the owner and chairman of Taylor, Bean & Whitaker?

25 A. Mr. Lee Farkas.

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1 Q. Do you see that individual in the courtroom?

2 A. I do.

3 Q. Do you know him?

4 A. Yes.

5 Q. Would you please point him out and identify him by where he's  
6 sitting and an article of clothing?

7 A. He's the gentleman in the light gray suit with the light  
8 gray-silver tie.

9 MR. STOKES: Let the record reflect the witness has  
10 identified the defendant.

11 THE COURT: Any objection, counsel?

12 MR. ROGOW: No, ma'am.

13 THE COURT: All right, identity established.

14 BY MR. STOKES:

15 Q. Now, Ms. Moore, did TBW have any business with Colonial Bank?

16 A. Yes.

17 Q. What type of business?

18 A. Colonial Bank purchased participation interest in loans,  
19 residential mortgage loans from Taylor, Bean & Whitaker, and  
20 Colonial Bank also purchased interest in securities that were in  
21 the process of being sold to permanent investors.

22 Q. Why did Colonial Bank buy those interests in loans and the  
23 securities that were being created?

24 A. In order to generate interest income for Colonial Bank.

25 Q. So it's making money for Colonial Bank. How about what does

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1 it -- why does it give this money to -- why does it buy these  
2 loans from TBW's perspective? What is the purpose for TBW of  
3 selling these loans and securities to Colonial Bank?

4 A. It would provide liquidity to Taylor, Bean & Whitaker,  
5 bridge -- financing to bridge the time they made the loan,  
6 originated the residential mortgage loan for the home buyer,  
7 between the time they originated that loan and sold the loan to a  
8 permanent investor.

9 Q. See if I can break that down a little bit to make that  
10 simpler for folks. What was TBW doing? What was its business?

11 A. They were a mortgage company that loaned money to home  
12 buyers.

13 Q. And when they got money from Colonial Bank and Colonial Bank  
14 purchased loans from them, what was the purpose of Taylor Bean  
15 getting that money from Colonial Bank in exchange for the sale --

16 A. In order to originate mortgage loans.

17 Q. Now, what was Taylor Bean's -- approximately what size or  
18 percentage of Colonial Bank's warehouse business was Taylor Bean?

19 A. Between 70 and 75 percent of our total business.

20 Q. And that's the Orlando division's business?

21 A. Yes.

22 Q. And was that the -- over time, was Taylor Bean one of the  
23 largest mortgage lending companies that Colonial Bank worked with?

24 A. It was the largest, yes.

25 Q. Now, you mentioned that Taylor Bean would originate loans and

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1 then sell those loans to Colonial Bank, and you mentioned that  
2 Colonial Bank would take a -- would purchase a part of the loan.  
3 What would you call that part of the loan that the bank would  
4 purchase?

5 A. A participation interest.

6 Q. Okay. So what is a participation interest?

7 A. It's just an ownership percentage.

8 Q. And when Colonial Bank took a participation interest in that  
9 loan, first, approximately how large was that participation  
10 interest?

11 A. It was about 99 percent of the loan.

12 Q. And when Colonial Bank took a participation interest in a  
13 loan, was it doing so because it was buying that loan for a  
14 long-term investment?

15 A. No.

16 Q. Why was it taking this, this participation interest?

17 A. It was a short-term investment for Colonial Bank to make  
18 interest income.

19 Q. What was supposed to happen with that loan after Colonial  
20 Bank purchased it?

21 A. It would be sold to permanent investors, and Colonial Bank  
22 would be repaid.

23 Q. Who would do the selling?

24 A. Taylor, Bean & Whitaker would have had a forward sales  
25 commitment or a commitment for that mortgage to be sold prior to

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1 the time Colonial Bank purchased the ownership interest in that  
2 loan.

3 Q. So at the time that Colonial Bank takes an interest or  
4 purchases a part of a loan from Taylor Bean, would Taylor Bean  
5 already have lined up an end investor for that loan?

6 A. Yes.

7 Q. Now, what are the different financing arrangements that  
8 Taylor Bean had with Colonial Bank as it relates to mortgage  
9 loans?

10 A. There was a facility called a COLB facility where Colonial  
11 Bank would buy participation interest in individual residential  
12 mortgage loans. A second facility was called the AOT facility,  
13 where Colonial Bank would buy participation interest in securities  
14 that were in process of being sold.

15 Q. So let's go back to this COLB facility. This facility, is  
16 this a -- this, this facility, was this also known as a purchase  
17 facility?

18 A. Yes.

19 Q. And explain how that facility worked as it relates to the  
20 business that Colonial Bank transacted with TBW.

21 A. Colonial Bank would buy an ownership interest in a  
22 residential mortgage loan that already had been committed to be  
23 sold to a permanent investor. Colonial Bank would hold that  
24 participation interest for 30 to 45 days until the permanent  
25 investor took possession of that mortgage note and paid Colonial

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1 Bank back for its ownership interest.

2 Q. And during that interim period, did Colonial Bank earn  
3 interest?

4 A. Yes.

5 Q. Now, Ms. Moore, prior to coming into court, did you have an  
6 opportunity to review some charts with the government?

7 A. Yes.

8 Q. And did you review some charts as to how the COLB facility  
9 operated?

10 A. Yes.

11 Q. And would those charts be helpful for you in explaining how  
12 the facility operated?

13 A. Yes.

14 MR. STOKES: Your Honor, I have some demonstratives I  
15 would like to show the witness.

16 THE COURT: Have they been shown to defense counsel?

17 MR. STOKES: They have. They've been shown.

18 THE COURT: Is there any objection to the  
19 demonstratives?

20 MR. ROGOW: No, Your Honor.

21 THE COURT: All right, that's fine. Go ahead.

22 And again, ladies and gentlemen, in case you can't  
23 see -- I'm hoping the back row can usually see reasonably  
24 comfortably the screens right in front; if not, we have this  
25 larger one -- just let me know. Especially on the far end, I'm a

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1 bit concerned in the back row, okay?

2 BY MR. STOKES:

3 Q. Okay. Ms. Moore, does this graphic represent a, a simplified  
4 version of a -- of how a loan is funded, originated by Taylor Bean  
5 through Colonial Bank's COLB facility?

6 A. Well, it has Taylor, Bean & Whitaker, Colonial Bank, and the  
7 home buyer, so those are the parties that would be involved.

8 Q. And so explain again how Taylor Bean -- how a home buyer  
9 obtains a loan through Taylor Bean and how Taylor Bean relies upon  
10 Colonial Bank's COLB facility to do that.

11 A. Well, the home buyer, of course, would apply for a loan with  
12 the mortgage company. The mortgage company would underwrite that  
13 home buyer's loan, mortgage loan, and then Taylor, Bean & Whitaker  
14 would send the documents to Colonial Bank along with the forward  
15 sales commitment from the permanent investor. Colonial Bank would  
16 say: Okay, this meets the criteria. It's been sold to the  
17 permanent investor. We'll buy an ownership interest in that  
18 residential mortgage loan, and so cash would go from Colonial Bank  
19 to TBW or a closing agent, and then TBW would advance the money to  
20 the home buyer for the purchase of the home, and then in exchange,  
21 Colonial Bank would get a note agreement as evidence of the  
22 ownership plus would have documentation of that forward sales  
23 commitment.

24 Q. Okay. This graphic is a little simpler. Let's -- so the  
25 home buyer needing to take out a home loan, does that money start

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1 from Colonial Bank, from the COLB facility?

2 A. It could. In some instances, Colonial Bank would go ahead  
3 and loan Taylor, Bean & Whitaker the money in advance and then  
4 send it directly to the closing agents. In other instances,  
5 Taylor, Bean & Whitaker would have already funded the loan, and we  
6 would buy -- Colonial Bank would buy the participation interest.

7 Q. Okay. And so money comes from in this instance the COLB  
8 facility through Taylor Bean to help a home buyer purchase a loan,  
9 and then you mentioned that Colonial Bank gets something in  
10 return, and that is what?

11 A. The note agreements.

12 Q. And you mentioned earlier a participation interest. Does  
13 Colonial Bank take a participation interest in that, that note,  
14 that mortgage loan?

15 A. Yes.

16 Q. And on the COLB facility, what is that participation  
17 interest? How much of a percentage does Colonial Bank buy in that  
18 note?

19 A. Up to 99 percent of the loan.

20 Q. Who owns that other 1 percent or so of that note?

21 A. Taylor, Bean & Whitaker.

22 Q. Now, after Colonial Bank takes that note, again, is Colonial  
23 Bank holding that note for the long term?

24 A. No.

25 Q. What happens to that note?

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1 A. The note has been committed to be sold to a permanent  
2 investor, so when the investor buys 100 percent of the note, then  
3 Colonial Bank receives money from the investor and pays Taylor,  
4 Bean & Whitaker its 1 percent, and we get -- and then Colonial  
5 Bank would get the 99 percent.

6 Q. And when is that agreement reached with that investor?

7 A. Prior to the time Colonial filed its participation interest.

8 Q. And so once Colonial Bank has that note, how is that note  
9 then delivered to the investor?

10 A. The note would be delivered to the investor through the  
11 custody group, I presume.

12 Q. And so Taylor Bean arranges for the sale of that note to that  
13 investor?

14 A. Yes.

15 Q. And you mentioned that's how Colonial Bank gets paid back for  
16 the money that it used to purchase that, that note through the  
17 COLB facility?

18 A. Yes.

19 Q. Now, you mentioned another facility called AOT, or assignment  
20 of trade. What is that facility?

21 A. That was an agreement whereby Colonial Bank would purchase  
22 participation interest in securities that Taylor, Bean & Whitaker  
23 were putting together a pool of mortgage loans to be packaged into  
24 a mortgage-backed security.

25 Q. And was Colonial Bank purchasing this pool of loans to the

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1 AOT facility as part of the process of creating this  
2 mortgage-backed security?

3 A. I'm sorry, could you repeat the question?

4 Q. Sure. Was Taylor Bean -- I'm sorry, was Colonial Bank  
5 purchasing that pool of loans from Taylor, Bean & Whitaker as part  
6 of a process of creating a mortgage-backed security?

7 A. Colonial Bank was purchasing a participation interest in the  
8 pool of loans that were in process of being securitized.

9 Q. In other words, they're buying part of that pool of loans?

10 A. Yes.

11 Q. And how much of that pool of loans were they buying?

12 A. 99 percent.

13 Q. And who owned that other 1 percent?

14 A. Taylor, Bean & Whitaker.

15 Q. Okay. Now, would you explain how one of these AOT  
16 transactions worked for Colonial Bank and Taylor, Bean & Whitaker?

17 A. Sure. Taylor, Bean & Whitaker would identify a pool of  
18 mortgage loans that were going to be packaged and securitized and  
19 sold to a permanent investor. The Colonial Bank custody group  
20 would certify that pool of loans, and "certification" means they  
21 would ensure that list of mortgage loans met the criteria for the  
22 particular agency that was going to insure the security, and then  
23 Colonial Bank would buy a participation interest in that security  
24 or that pool of mortgage loans after seeing that it had been  
25 committed to be sold to a permanent investor.

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1 Q. And just as we had a chart for COLB, have you reviewed a  
2 chart for AOT?

3 A. Yes.

4 Q. And would that chart help you in describing this process?

5 A. Yes.

6 MR. STOKES: If there's no objection, Your Honor, we'll  
7 go ahead and run through the chart with the jury.

8 THE COURT: Any objection?

9 MR. ROGOW: No objection.

10 THE COURT: All right.

11 BY MR. STOKES:

12 Q. Ms. Moore, so would you describe what we have on the screen  
13 here?

14 A. You have a representation of Taylor, Bean & Whitaker pooling  
15 residential mortgage notes and gathering several residential  
16 mortgage notes into a pool, and you have the permanent investor.

17 Q. Who are these permanent investors?

18 A. They're Wall Street companies or Freddie Mac, Ginnie Mae,  
19 Fannie Mae.

20 Q. By Wall Street companies, can you give an example?

21 A. You know, I don't know -- I don't remember who all purchased,  
22 but an example of a Wall Street company would be somebody like  
23 Goldman.

24 Q. Goldman Sachs?

25 A. Goldman Sachs or, you know, Bank of America, the big money

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1 center financial institutions.

2 Q. Okay. Now, in the process of creating this, a  
3 mortgage-backed security, would TBW reach an agreement with an  
4 investor as it related to that mortgage-backed security before the  
5 security was actually created?

6 A. Yes.

7 Q. And what was the purpose of that agreement?

8 A. To purchase the security once it was formed.

9 Q. Would it take some period of time to actually create that  
10 security?

11 A. Yes.

12 Q. And so in the process of creating that security, what would  
13 Taylor, Bean & Whitaker do with -- you mentioned that they had a  
14 set of loans, a pool of loans. What would they do with that pool  
15 of loans?

16 A. They would send it to the Colonial Bank custody group, and  
17 the custody group would certify the pool.

18 Q. Okay. And so you mentioned they would first reach an  
19 agreement?

20 A. Yes.

21 Q. And then they would send that pool of loans to the document  
22 custody group at Colonial Bank?

23 A. Yes.

24 Q. And what is it, this process called certification that you  
25 mentioned?

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1 A. The custody group would just ensure that the residential  
2 mortgage loans met the underwriting criteria for Ginnie Mae for  
3 example.

4 Q. That the loans in the pools met the criteria for these, for  
5 these agencies such as Ginnie Mac and Freddie Mac -- Ginnie Mae  
6 and Freddie Mac, sorry.

7 A. Yes.

8 Q. And after Colonial Bank's document custody group had  
9 certified that a pool of loans was eligible to be in a Freddie Mac  
10 or Ginnie Mae security, what would happen?

11 A. Then Colonial Bank would purchase a 99 percent interest in  
12 that security and process.

13 Q. And so would that pool of loans be delivered to Colonial  
14 Bank?

15 A. Yes.

16 Q. And what would TBW get in return?

17 A. Cash.

18 Q. And why is Taylor Bean going through this process and selling  
19 this pool of loans to Colonial Bank on the AOT facility instead of  
20 just delivering it directly to the investor?

21 A. Because of the timeline it takes between origination,  
22 pooling, and the permanent investor consummating the sale. There  
23 is a process, a timeline, 30 to 45 days.

24 Q. And so it takes 30 to 45 days to actually create the  
25 security?

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1 A. Yes.

2 Q. Now, while that pool of loans is held by Colonial Bank during  
3 that 30- to 45-day period, is there an agreement that's reached  
4 between Taylor Bean and Colonial Bank?

5 A. Yes.

6 Q. And what is that agreement called?

7 A. Assignment of trade.

8 Q. Okay. And so is that a trade assignment agreement  
9 representing -- what does that assignment of trade or trade  
10 agreement represent?

11 A. It represents that Colonial Bank will sell its 99 percent  
12 ownership interest to the permanent investor.

13 Q. And how does the transaction then end?

14 A. The transaction ends when the permanent investor buys the  
15 security from Taylor, Bean & Whitaker and pays Colonial Bank its  
16 99 percent ownership interest.

17 Q. And at that point, is Colonial Bank made whole?

18 A. Yes.

19 Q. Now, have you reviewed previously agreements for the AOT  
20 facility?

21 A. Yes.

22 Q. And do you remember when it was that you reviewed that  
23 agreement?

24 A. This morning.

25 Q. And in the past while you worked at Colonial Bank, have you

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1 reviewed facility agreements for Colonial Bank?

2 A. Briefly, yes.

3 Q. And are you generally from your experience at Colonial Bank  
4 aware of the types of loans that can be part of an AOT security,  
5 or a pool of loans that's sold to Colonial Bank on AOT?

6 A. Yes.

7 Q. Do you know whether on the AOT facility there, whether there  
8 should be any loans that have been foreclosed on?

9 A. There should not be.

10 Q. What does, what does Taylor Bean or the bank call loans that  
11 have been foreclosed on?

12 A. It's real estate owned or other real estate.

13 Q. Real estate owned, is that -- is it also known as REO?

14 A. Yes.

15 Q. Now, if a loan has been foreclosed, does that loan have any  
16 value anymore?

17 A. Not the loan.

18 Q. What has the value at that point?

19 A. The real estate has the value at that point.

20 Q. In other words, the property?

21 A. The property, the home.

22 Q. Okay. And so the AOT facility, what is your understanding as  
23 to what was supposed to be in these pools of loans?

24 A. It should have been performing residential mortgage loans  
25 that met agency requirements.

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1 Q. And so by residential mortgage loans, is REO a loan?

2 A. No.

3 Q. It's real estate?

4 A. Yes.

5 Q. And now let me ask you about some other types of loans. What  
6 is a loan that -- what is the name for a loan that has been paid  
7 off by a home buyer or home borrower?

8 A. It's just referred to as paid in full.

9 Q. So if a loan has been paid off, it's called a paid in full?

10 A. Yes.

11 Q. Does a paid-in-full loan have any value left in it?

12 A. No.

13 Q. Why not?

14 A. Because it's zero. It's paid off.

15 Q. How about a loan that's been charged off by a bank? Do those  
16 have any value left in them?

17 A. It depends on the guarantor, but typically no.

18 Q. Why not?

19 A. Because they wouldn't have -- they charged them down to zero.

20 Q. How about on -- do you know whether on AOT, whether loans  
21 that have been paid off by home borrowers, paid-in-full loans, or  
22 whether loans that have been charged off by banks, whether those  
23 could be part of an AOT pool of loans that Colonial Bank  
24 purchased?

25 A. They were not supposed to be.

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1 Q. Why not?

2 A. Because they were supposed to be performing residential  
3 mortgage loans, performing mortgage-backed security.

4 Q. Now, could Colonial Bank purchase pools of loans that  
5 contained loans that somebody else already owned?

6 A. No.

7 Q. Why not?

8 A. Because somebody else already owned them.

9 Q. If somebody else owns them, would they have any value for  
10 Colonial Bank?

11 A. No.

12 Q. If somebody else owns them, can they be put into, into a  
13 security and sold to an investor?

14 A. No.

15 Q. You mentioned that this pool of loans on the AOT facility,  
16 you called it a security in process. What is behind, what is  
17 backing or collateralizing these securities?

18 A. Residential mortgage loans.

19 Q. Can you have a security, a mortgage-backed security that  
20 doesn't actually have any mortgage loans behind it?

21 A. No.

22 Q. Would, would a security, a mortgage-backed security with no  
23 mortgage loans behind it have any value?

24 A. No.

25 Q. Why not?

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1 A. Because it would not be a mortgage-backed security.

2 Q. Would there be any assets behind the security?

3 A. No.

4 Q. Now, as the chief financial officer, were you familiar with  
5 the accounting systems and -- in general at Colonial Bank?

6 A. Yes.

7 Q. And did Colonial Bank have in place, as most banks do,  
8 accounting systems to keep track of all of its transactions?

9 A. Yes.

10 Q. Did it have accounting systems to keep track of its  
11 transactions in the Mortgage Warehouse Lending Division?

12 A. Yes.

13 Q. And the -- what was the purpose of Colonial Bank keeping  
14 track of its transactions in a division like the Mortgage  
15 Warehouse Lending Division?

16 A. Well, as a publicly traded company, it was important to have  
17 accurate financial statements, and so every transaction in a bank  
18 ends up going, eventually becoming part of the financial  
19 statements of the entity, so it's very important because we have  
20 to file publicly available financial statements with the SEC.

21 Q. And are those financial statements made available to  
22 investors in Colonial BancGroup?

23 A. Yes.

24 Q. In other words, people who own its stock?

25 A. Yes.

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1 Q. For the two facilities we just discussed, the COLB and AOT  
2 facilities, were those included in Colonial Bank's accounting  
3 records?

4 A. Yes.

5 Q. And how were they listed on Colonial's balance sheet? In  
6 other words, were they assets? liabilities? equity?

7 A. Both were included in the assets of Colonial BancGroup.

8 Q. And why is that?

9 A. Because they were assets.

10 Q. Well, in other words --

11 A. They were -- there was value for Colonial BancGroup.

12 Q. Had Colonial Bank purchased mortgage loans or percentage  
13 interest in a mortgage loan or in a security?

14 A. Yes.

15 Q. And how were those assets listed on Colonial Bank's books?  
16 How were they valued, I'm sorry, on Colonial Bank's books?

17 A. The COLB facility was listed, included in loans held for  
18 sale, and it was valued at its fair market value of the price that  
19 could be obtained by selling those mortgage loans. The AOT  
20 facility was in about, in a financial statement category called  
21 securities purchased under agreements to resell, and it was also  
22 valued at fair market value.

23 Q. Okay. So the loans on the COLB facility are, you said,  
24 carried at fair market value. What does that mean?

25 A. It means the price you could obtain to sell them, that if

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1 they were sold today, that was the price you could receive.

2 Q. And that's the same for those pools of loans held on AOT?

3 A. Yes.

4 Q. Were there reports produced by Colonial Bank about the age of  
5 loans that were held on COLB and AOT?

6 A. Yes.

7 Q. Why is that?

8 A. If a loan was not paid off within 30 or 45 days, then you  
9 would need to perform further analysis on that loan to determine  
10 whether the permanent investor decided not to buy it, what  
11 happened, why is it still on the facility, because these  
12 facilities were short-term funding arrangements.

13 Q. Is that sort of information in those reports something that  
14 would make its way to you?

15 A. I would inquire about the aging on the facilities on a very  
16 frequent basis and, you know, ask if it was operating  
17 appropriately, if the assets were being paid back every 30 to 45  
18 days, yes.

19 Q. And so why did you care about that?

20 A. Because they were a significant part of the balance sheet and  
21 part of the financial statements, and we wanted to ensure the  
22 accuracy of our financial statements, so to make sure that  
23 internal controls were operating over those areas.

24 Q. Who would you go to get this information?

25 A. Kamal Hosein.

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1 Q. And who is he again?

2 A. The treasurer.

3 Q. And would he receive reports about the aging of the loans on  
4 COLB and AOT?

5 A. Yes.

6 Q. Now, you say that these loans should typically stay on AOT or  
7 COLB for 30 to 45 days. What happens to the value of a loan if it  
8 stays on one of these facilities for significantly longer?

9 A. We would have to evaluate the value, and it would depend  
10 upon -- it would certainly change, and it would depend upon the  
11 current interest rate environment and what's going on in the  
12 marketplace. It would impact the fair market value, but it's  
13 certainly something you would have to analyze very carefully.

14 Q. As a general matter, would the value go up or down if it's  
15 held on a line for a significant amount of time?

16 A. If it's a significant amount of time, then you would  
17 probably, you know, say that the value would go down because there  
18 was a problem with the loan. It could be a documentation  
19 exception. You'd ask the question why hasn't that residential  
20 mortgage loan been sold or why couldn't it be included in a pool.

21 Q. For you, with your aging reports or the information that you  
22 would obtain about aging, if loans were held for a significant  
23 period of time, what would that signal to you?

24 A. There could be a problem.

25 Q. A problem with the loans?

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1 A. A problem with that loan, yes.

2 Q. And if there was a problem with the loan, what would you do?

3 A. We'd put people on it and analyze it and find out what the  
4 problem was and consider the impact on the financial statements,  
5 being evaluation issues.

6 Q. Now, what are you looking at --

7 THE COURT: Mr. Stokes, I promised the jury, I mean,  
8 this morning we really went long without breaks. It's a good time  
9 to take our mid-afternoon break, all right? I'll give the jury, I  
10 think today we only need about 15 minutes. We'll reconvene at 10  
11 of. Thank you.

12 (Recess at 4:37 p.m., until 4:50 p.m.)

13 NOTE: The case continues in the absence of the jury as  
14 follows:

15 JURY OUT

16 THE COURT: Mr. Stokes, is there an issue?

17 MR. STOKES: It is not a big issue. We just want to  
18 alert the Court that there actually is a defense witness in the  
19 courtroom, David Dantzler from the Troutman law firm, but as I  
20 understand it he wasn't aware that he was a witness. He, I  
21 believe, may have sat through openings and much of this witness,  
22 but he hasn't been subpoenaed and hadn't been told he was a  
23 defense witness. So, he wasn't-- He was announced by the defense  
24 in, during the jury selection that he was a potential defense  
25 witness.

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1 THE COURT: Well, I am not going to hold the witness in  
2 contempt, but there may an issue-- Are you going to object to  
3 this witness testifying down the road?

4 MR. STOKES: Absolutely not, Judge.

5 THE COURT: All right. But the witness has to-- At  
6 this point, sir, you have to wait outside.

7 But I don't expect all the defense witnesses to be  
8 sitting around here all day. Are any of your other witnesses  
9 here?

10 MR. ROGOW: No, the defense witnesses, they are not.

11 THE COURT: All right.

12 MR. ROGOW: Mr. Dantzler came because I think Troutman  
13 Sanders interested.

14 THE COURT: But if he is potentially a defense witness  
15 and you have notified him-- I see, but you didn't subpoena him.  
16 So, I mean, you have no control over him at this point.

17 Are you going to call him or not?

18 MR. ROGOW: No, we are going to call his partner.

19 THE COURT: All right. Well, then you can stay. Your  
20 partner should not be here and you can't discuss anything you hear  
21 about this case with him. All right?

22 MR. DANTZLER: Sure.

23 THE COURT: All right, you are welcome to stay.

24 Let's bring the jury in.

25 NOTE: At this point the jury returns to the courtroom;

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1 whereupon the case continues as follows:

2 JURY IN

3 THE COURT: All right, ladies and gentlemen, we are  
4 ready to continue with the direct examination of Ms. Moore.

5 Go ahead.

6 BY MR. STOKES: (Continuing)

7 Q. Okay, Ms. Moore, we were talking about aging of loans on COLB  
8 and AOT before we broke. Let's go back to that.

9 Were you aware of any loans sitting on the COLB facility  
10 for upwards of, a significant number of loans sitting on the COLB  
11 facility for more than a year?

12 A. No.

13 Q. Is that something that was brought to your attention?

14 A. No.

15 Q. If it had been brought to your attention, what would you have  
16 done with that information?

17 A. I would have asked for a thorough analysis of why the loans  
18 were on the line for over a year and asked for an evaluation of  
19 those loans.

20 Q. And did the reports that were produced indicate that loans  
21 were sitting on COLB for more than a year?

22 A. No.

23 Q. How about on AOT, did you receive any information as to  
24 whether or not loans were sitting on AOT for more than two to  
25 three years?

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1 A. No.

2 Q. Is that, would that information have been important to you as  
3 a CFO to have known about at Colonial Bank?

4 A. Yes.

5 Q. Why?

6 A. Because it would indicate that the facilities were not  
7 operating as agreed.

8 Q. Did you get information to suggest that the facilities were  
9 operating as agreed?

10 A. Yes.

11 Q. What sort of information would you get to tell you that the  
12 facilities were operating as agreed?

13 A. I would inquire of the treasury group, specifically Kamal  
14 Hosein, whether the AOT was turning every 30 to 45 days, meaning  
15 we were getting paid for those securities as agreed. To which he  
16 would respond yes.

17 And loans held for sale, I would ask about the aging of  
18 those loans. And from time to time there would be loans, you  
19 know, on the line, but there were always a reason for it and they  
20 were quickly, you know, resolved.

21 So, those facilities as far as my knowledge is, they  
22 were operating as they were supposed to be.

23 Q. You said that you would obtain information that the AOT  
24 facility was turning every 30 to 45 days.

25 What do you mean by AOT was turning?

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1 A. Colonial Bank was getting paid back for the participation  
2 interests that it purchased in the securities and were buying,  
3 Colonial Bank was buying new securities on a continuous basis, and  
4 Colonial Bank was being paid back for those purchases.

5 Q. In other words, was that the information you were getting?

6 A. Yes.

7 Q. At the time did you know whether that was actually true?

8 A. I thought it was.

9 Q. And did the reports that Mr. Hosein received indicate that  
10 that was in fact what was happening on AOT, that these securities  
11 were being sold and new securities were being purchased?

12 A. That's what he told me.

13 Q. Now, if a security sells off of AOT, the loans that are  
14 associated with those securities, do they remain on AOT?

15 A. No.

16 Q. What happens with those loans?

17 A. Those loans should go with the security to the permanent  
18 investor, the ownership of those loans. And then the custody  
19 group at Colonial Bank would maintain the inventory.

20 Q. So, should those loans once that security is sold, should  
21 those loans remain assets on Colonial Bank's books in the AOT  
22 facility?

23 A. No.

24 Q. Were you aware of any loans that were left on the AOT  
25 facility for years on end but reported as having been sold?

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1 A. No.

2 Q. And were you aware of whether there was more than  
3 \$100 million in REO sitting on the AOT facility in the summer of  
4 2009?

5 A. No.

6 Q. Were you aware of whether or not there was hundreds of  
7 millions of dollars of loans that had been paid in full or paid  
8 off by investors by the summer of 2009 on the AOT facility?

9 A. No.

10 Q. Were you aware of whether there were significant millions,  
11 tens of millions of dollars of loans that been charged off sitting  
12 on the AOT facility?

13 A. No.

14 Q. And can those loans sit on AOT?

15 A. No.

16 Q. Do they have any value to Colonial Bank?

17 A. No.

18 Q. And the information you're getting, what was that suggesting  
19 about the quality of the assets on AOT?

20 A. The information I received, that it was a very high quality  
21 asset. That it was an investment in a security which would be  
22 considered a very high quality, very liquid asset.

23 Q. And, Ms. Moore, did you obtain any information during that  
24 time before August 3, 2009, before the bank, the search warrant at  
25 the bank, did you obtain any information that there were

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1 securities on AOT that actually had no loans backing them?

2 A. No.

3 Q. Would that be a problem on AOT?

4 A. Yes.

5 Q. Now, you mentioned that Colonial BancGroup, the parent  
6 company, was a public company?

7 A. Yes.

8 Q. And that it produced, it produced financial statements?

9 A. Yes.

10 Q. Now, did those financial statements include balances for the  
11 facilities on the mortgage, located at the Mortgage Warehouse  
12 Lending Division?

13 A. Yes.

14 Q. And what is a balance sheet?

15 A. A balance sheet is a statement of your assets, liabilities  
16 and shareholders equity.

17 Q. And the asset class, the COLB assets for this COLB facility,  
18 how were they reflected in the balance sheet? What was the name  
19 of those assets?

20 A. They were reflected in loans held for sale.

21 Q. And how about the assets in the AOT facility?

22 A. It was reflected in a financial statement line item,  
23 securities purchased under agreements to resell.

24 Q. Now, let's talk about those names for a second. Loans held  
25 for sale on the COLB facility. What does that part of the name,

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1 held for sale, mean?

2 A. It means that it was a short term investment or a short term  
3 asset of the bank and that it was going to be sold. It was only  
4 there to be sold. It was not there to be held for an investment.

5 Q. At the time that Colonial Bank took its participation  
6 interest, its 99 percent stake in one of these loans, was there  
7 supposed to be a sales agreement for that loan in place?

8 A. Yes.

9 Q. Is that what the loans held for sale is referencing?

10 A. Yes.

11 Q. How about securities purchased, the AOT assets, the  
12 securities purchased under agreements to resell. What does that  
13 phrase mean, purchased under agreements to resell?

14 A. Colonial Bank purchased the participation interest in the  
15 security with the intent to sell it.

16 Q. Was there supposed to be an agreement in place at the time  
17 Colonial Bank purchased that pool of loans?

18 A. Yes.

19 Q. For that pool of loans to be sold to an end investor?

20 A. Yes.

21 Q. And if there were no actual agreements for an AOT pool when  
22 it was purchased by AOT, by Colonial Bank, could that pool of  
23 loans actually be put on the AOT facility?

24 A. It was not supposed to be. That would be a violation of the  
25 agreement.

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1 Q. What is a, have you heard of the term 10-K?

2 A. Yes.

3 Q. What is a 10-K?

4 A. A 10-K is an annual report filed with the Securities and  
5 Exchange Commission that contains the audited financial statements  
6 of a registrant, along with management's discussion and analysis  
7 of the registrant's financial condition.

8 Q. Okay. Is this a report that Colonial BancGroup would have to  
9 file with the SEC?

10 A. Yes.

11 Q. Is it a once-a-year report?

12 A. Yes.

13 Q. So, in other words, was this an annual report that Colonial  
14 BancGroup would have to file with the SEC?

15 A. Yes.

16 Q. And what sort of information would this 10-K include?

17 A. It would include the financial statements, notes to the  
18 financial statements, as well as management's discussion and  
19 analysis of those financial statements.

20 Q. And what is a Form 10-Q?

21 A. A 10-Q is a quarterly report filed with the SEC that contains  
22 financial statements, notes and discussion and analysis of those  
23 financial statements.

24 Q. And the Forms 10-Q were prepared how frequently?

25 A. Each quarter.

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1 Q. So, every three months?

2 A. Yes.

3 Q. And the process for preparing these reports, the 10-Q and the  
4 10-K, would you describe what that process was like at Colonial  
5 BancGroup.

6 A. It was a very lengthy process. And, of course, we had an  
7 entire accounting department. Every transaction that happened in  
8 the bank ends up being incorporated into the financial statements  
9 of a bank.

10 So, we spent thousands and thousands and tens of  
11 thousands of hours ensuring that the internal control environment  
12 over the financial statement preparation was operating  
13 appropriately. We tested that environment. We have people daily  
14 reconciling the books and closing the books out every day as part  
15 of the bank.

16 Q. Did Colonial BancGroup hire accounting firms to assist it in  
17 the preparation of these reports?

18 A. In the testing of the internal controls over the financial  
19 statements, the audit committee of Colonial Bank back hired Crowe  
20 Horwath, which is a national accounting firm, was our internal  
21 audit firm. Crowe spent thousands of hours testing the internal  
22 controls over financial statements.

23 And then, of course, the audit committee of the  
24 BancGroup hired PricewaterhouseCoopers to be the external  
25 accounting firm that tested the financial statements and issued a

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1 once-a-year opinion on those financial statements.

2 Q. And in order for Colonial BancGroup to be able to issue its  
3 annual report, its 10-K, did Pricewaterhouse have to sign off on  
4 those annual reports?

5 A. Yes.

6 Q. And would, in addition to those accountants looking at these  
7 documents, would you participate in this process?

8 A. Yes.

9 Q. What was your role in the process?

10 A. As the Chief Financial Officer I have the ultimate  
11 responsibility for the preparation of the financial statements of  
12 the company.

13 Q. Did you have a team of people that assisted you in preparing  
14 and reviewing those reports?

15 A. Yes.

16 Q. Could you just give some, an idea of what different  
17 departments at the bank assisted you in that?

18 A. Sure. The accounting department had between, you know, 140,  
19 150 people in it. There was an SEC reporting group within the  
20 accounting department that worked specifically on financial  
21 statement preparation.

22 The reporting group would, of course, work with credit  
23 administration because as a financial institution many of the  
24 disclosures related to and financial statements accounts relating  
25 to a bank relate to loans.

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1           So, the credit administration department was responsible  
2 for the loan portfolio. The treasury department was responsible  
3 for securities, investments and debt.

4           And so, there were many different areas of the bank that  
5 were involved in the preparation of the financial statements,  
6 including the legal department, there were always legal  
7 disclosures that would need to be addressed as well.

8 Q.   And prior to the filing of those, those reports, would you  
9 have to certify them as accurate?

10 A.   Yes.

11 Q.   And would the CEO of Colonial BancGroup also have to certify  
12 them as accurate?

13 A.   Yes.

14 Q.   And when you certified Colonial BancGroup's annual reports  
15 and its quarterly reports as being accurate, did you believe them  
16 to be accurate?

17 A.   Yes.

18 Q.   Now, after-- I just want to jump ahead for a moment. Can  
19 you tell us what happened at Colonial Bank on August 3, 2009?

20 A.   On August 3, 2009, federal agents I guess issued a search  
21 warrant in the Mortgage Warehouse Lending Unit in Orlando, Florida  
22 and did a search.

23 Q.   And at that time did you know of any problems with any  
24 banking transactions involving the Mortgage Warehouse Lending  
25 Division?

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1 A. No.

2 Q. And after that time, did you continue to work with Colonial  
3 Bank for a short period of time?

4 A. For a short period of time. Colonial Bank was seized on  
5 August 14 by the State of Alabama and the FDIC and placed in  
6 receivership, and most of the assets were sold to BB&T on that  
7 day.

8 Q. Did you then work for BB&T until November of 2009?

9 A. I did.

10 Q. And during that time and afterwards, did you become aware of  
11 allegations about problems in the Mortgage Warehouse Lending  
12 Division?

13 A. Yes.

14 Q. Now, going back to the time periods when you are filing the  
15 financial statements, the annual and the quarterly reports, were  
16 you aware of any of the issues that you later learned in these  
17 allegations?

18 A. No.

19 Q. Were you aware at the time of the filing of those reports of  
20 those issues that you later learned through these allegations?

21 A. No.

22 Q. And what do you understand to be the consequences for the  
23 bank for filing false financial statements?

24 A. Well, there are significant consequences. And, of course, we  
25 always try to file accurate and complete financial statements.

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1 And if anything had come to our attention, we certainly would have  
2 corrected it in the financial statements before they were filed.

3 If they had already been filed, we would have certainly  
4 gone back and restated the financial statements to correct any  
5 errors that we would have found.

6 Q. Now, you've talked about a lot of testing that was done by  
7 auditors, a lot of review by your accounting department, your  
8 group, and treasury and others.

9 If there are problems in the financial statements, would  
10 you expect to find those in your review?

11 A. Yes.

12 Q. And if you don't find those-- Well, let me ask you this.  
13 You mentioned that you had worked for Coopers Lybrand in the past?

14 A. Yes.

15 Q. Had you been an auditor in the past?

16 A. Yes.

17 Q. Have you had experiences where you haven't been able to find  
18 problems in the books?

19 A. Yes.

20 Q. And can you explain how it is that at a bank such as Colonial  
21 Bank where it has auditors and employees working thousands of  
22 hours looking at its books, how it might be that Colonial Bank  
23 wouldn't discover that it actually had problems in its financial  
24 statements?

25 A. You know, with a financial institution one of the key

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1 controls with a bank is a bank sends out customer statements. The  
2 biggest asset on a bank's book are loans. You send out statements  
3 to your customers. The customer views the statements. Deposit  
4 accounts, the largest liability, you send out bank statements to  
5 your customers. The customers look at their balances. That's a  
6 key control really in a financial institution.

7 And if some, if a bank employee and a bank customer are  
8 working together, it's very difficult to find errors or omissions  
9 or things going on because it's a vertically integrated effort.

10 So, a customer is typically a check on bank employees  
11 and bank employees are a check on the customer. But if those two  
12 are working together, it makes it very difficult to find any  
13 issues.

14 Q. Now, if you would please take a look at-- The Court's  
15 indulgence. Government's Exhibit 14-1.

16 THE COURT: Is there any objection to 14-1?

17 MR. ROGOW: No, Your Honor.

18 THE COURT: All right. Are those in the juror notebooks  
19 at this point or not?

20 MR. STOKES: 14-1 is not. I have an excerpt which is at  
21 14-2. If we could also take a look at 14-2.

22 THE COURT: I assume there is also no objection to 14-2?

23 MR. ROGOW: No objection.

24 BY MR. STOKES: (Continuing)

25 Q. Just for the record, what is Government's Exhibit 14-1?

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1 A. 14-1 is the 2008 Form 10-K filed with the Securities and  
2 Exchange Commission.

3 Q. And when was that filed?

4 A. It would have been filed in March of 2009.

5 Q. When was the end of the year for Colonial BancGroup?

6 A. Yes.

7 Q. When?

8 A. Oh, I'm sorry, 12/31, 2008. December 31.

9 Q. So, Colonial BancGroup was on what is called a calendar year?

10 A. Yes.

11 Q. But it would take several months in order to actually be able  
12 to file its financial statement?

13 A. Yes.

14 Q. And what is 14-2?

15 A. 14-2 is an excerpt from the December 31, 2008 Form 10-K.

16 Q. Now, does the-- Let's take a look, stay with 14-2. Does  
17 that include the balances for the COLB and AOT facilities in the  
18 financial statements in the 10-K?

19 A. It does.

20 Q. If you would take a look at in the excerpt page 49 and 50 of  
21 the 10-K.

22 Judge, just to be clear, those have been admitted,  
23 correct?

24 THE COURT: 14-1 and 14-2, there was no objection, yes,  
25 they are both in.

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1 Q. Okay. Do you see the paragraph starting at the bottom of  
2 page 49 that begins: Mortgage Warehouse Assets?

3 A. I do.

4 Q. Would you please begin reading that paragraph.

5 A. The Mortgage Warehouse Lending Division provides short term  
6 secured funding to mortgage companies. Colonial's fundings to the  
7 mortgage companies are reflected in loans, loans held for sale,  
8 and securities purchased under agreements to resell.

9 Q. If I can stop you there. Loans held for sale. What is the  
10 other, what is the facility that relates to?

11 A. COLB.

12 Q. And securities purchased under agreements to resell?

13 A. AOT.

14 Q. Okay. If you would please continue reading.

15 A. The Mortgage Warehouse assets are secured by mortgage loans  
16 that are sold to investors such as Fannie Mae, Freddie Mac, Ginnie  
17 Mae and money center financial institutions who have committed to  
18 purchase the mortgage loans collateralizing the Mortgage Warehouse  
19 assets. The mortgage loans are generally delivered to investors  
20 within one month.

21 Q. If I could stop you there. If you would, please, going back  
22 to that last sentence, the mortgage loans are generally delivered  
23 to investors within months, within one month, is that a reference  
24 to the agreement that you had mentioned earlier that TBW has with  
25 an investor?

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1 A. That is a reference to the forward sales commitment. The  
2 commitment that TBW obtained to sell the mortgage loans and the  
3 securities to permanent investors prior to Colonial Bank's  
4 purchase.

5 Q. Okay. If you would go down to the bottom of the page, the  
6 very last sentence on that page, and read the sentence beginning  
7 with: Short-term participations.

8 A. Short-term participations in loans held for sale are another  
9 source of funding provided to these companies whereby Colonial  
10 purchases participations in certain mortgage loans which have  
11 commitments to be sold to third-party investor institutions.  
12 Securities purchased under--

13 Q. If I can get you to hold on. We are trying to catch up to  
14 you. A moment here with the screen.

15 I'm sorry, if you would continue then.

16 A. Securities purchased under agreements to resell represent  
17 mortgage backed securities which have been securitized by these  
18 companies and are under agreements to be sold to third-party  
19 investors. Colonial purchases these securities prior to their  
20 initial settlements with those investors.

21 Q. And what is that a reference to in terms of the process for  
22 the creation of these mortgage backed securities with TBW?

23 A. That is a reference to the AOT facility.

24 Q. And the sentence that you just read, that Colonial purchases  
25 these securities prior to their initial settlements with those

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1 investors, would you explain what that means?

2 A. That's the gap in time from the time that the mortgage loan  
3 is originated, pooled and the time it is sold to investors to get  
4 the paperwork done, to get it certified to be sold to the  
5 permanent investors.

6 Q. Okay. Do you see what the balance was in the AOT facility as  
7 reported in your financial statements as of December 31, 2008, on  
8 that page, on page 50?

9 A. \$1.5 billion, approximately.

10 Q. Okay. And with the assistance of the Court Security Officer,  
11 Your Honor, I would like to hand the witness a highlighter so she  
12 can highlight this line in the document where this balance is  
13 located.

14 THE COURT: I think the touch screen is working.

15 THE WITNESS: So, what do I, do I touch it?

16 THE COURT: Not with a pen. With your finger.

17 MR. STOKES: It does, Your Honor. I'm just for purposes  
18 of the jury, these are long and complicated documents, we would  
19 like to have the document that is admitted into evidence  
20 highlighted to identify the particular line item, if that's okay.

21 THE COURT: We are going to have to make absolutely sure  
22 then that is the right exhibit that goes to the jury if that's  
23 done that way. All right. So, we either take it out of the book  
24 and give it to her that way.

25 MR. STOKES: She has it there in front of her.

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1 THE COURT: All right. Go ahead and use the highlighter  
2 on the document itself.

3 BY MR. STOKES: (Continuing)

4 Q. And, Ms. Moore, what are you highlighting?

5 A. I highlighted securities purchased under agreements to  
6 resell, and the dollar amount of 1,556,157,000.

7 Q. And so, what does that balance actually represent? How much  
8 money?

9 A. Over \$1.5 billion.

10 Q. In other words, in the financial statements are those numbers  
11 written missing three zeros?

12 A. They are. They are in thousands.

13 Q. And do you see the COLB balance just below that?

14 A. I do.

15 Q. And what is that amount?

16 A. Over \$1.9 billion.

17 Q. Would you highlight that amount, please.

18 And then on the very next page, do you see one of the,  
19 another version of the balance sheet contained in the Form 10-K?

20 A. I do.

21 Q. And does that also identify the AOT and the COLB balances  
22 that were held by Colonial Bank as of December 31, 2008?

23 A. It identifies separately the AOT balances. And the COLB  
24 balances are included in that, in a financial statement category,  
25 loans held for sale, as Colonial Bank had other loans in addition

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1 to the COLB facility.

2 Q. Would you please highlight those numbers as well.

3 Okay. If you would please take a look at Exhibits 16-8  
4 and 16-8A, please.

5 THE COURT: Any objection to either of these exhibits?

6 MR. ROGOW: No objection, Your Honor.

7 THE COURT: Okay. They are both in.

8 BY MR. STOKES: (Continuing)

9 Q. Turning to 16-8A. What is 16-8A?

10 A. 16-8A is an excerpt of the first quarter 2009 10-Q.

11 Q. And what is the time period for that? What is the date of  
12 that report?

13 A. It's dated March 31, 2009, but it's for the quarter ended  
14 March 31, 2009. So, January 1, '09 through March 31, '09.

15 Q. And if you would turn to page 3 of the excerpt, the final  
16 page.

17 Do you see that in front of you?

18 A. Yes. The page on the screen?

19 Q. The page that is marked page 3 of the 10-Q.

20 A. Yes.

21 Q. Okay. And do you see there the balances identified for AOT  
22 and COLB?

23 A. The AOT amount is in securities purchased under agreements to  
24 resell.

25 Q. What is that balance of as March 31, 2009?

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1 A. Over 1.6 billion.

2 Q. And what is the balance for the loans held for sale or the  
3 COLB facility as of March 31, 2009?

4 A. 2.6 billion, approximately.

5 Q. Would you please highlight those amounts.

6 A. Again, the held for sale is included in a broader financial  
7 statement category on the balance sheet.

8 Q. In other words, does that balance include the assets in the  
9 COLB facility as well as other assets?

10 A. It does. And it is primarily, the 2.8 billion on the balance  
11 sheet is primarily the assets from the COLB facility.

12 Q. Now, those balances that you have just seen in the 10-K and  
13 the 10-Q, in the annual report from December 31, 2008, and from  
14 March 31, 2009, at the time that those were filed, again, did you  
15 certify those documents?

16 A. Yes.

17 Q. And at the time did you believe those balances were accurate?

18 A. Yes.

19 Q. At the time did you have any information to suggest that the  
20 assets in those asset categories, that a significant amount of  
21 those assets didn't exist?

22 A. No.

23 Q. To the extent that the bank discovered that some asset class  
24 or some line item on a balance sheet was inaccurate, what would it  
25 do if a financial statement had already been filed?

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1 A. We would have to do an analysis. We would report it to the  
2 audit committee. If that amount was deemed material, meaning for  
3 a balance sheet if it exceeded maybe 1 percent of the financial  
4 statement line item, we would certainly report it to the audit  
5 committee.

6 And we would likely, we would consult with legal  
7 counsel, and we would likely put out a press release and file  
8 what's known as an 8-K with the SEC alerting users of the  
9 financial statements not to rely on those financial statements  
10 until we could calculate what the correct balance should be and we  
11 could restate those financial statements.

12 Q. And so, by restating, would you have to refile your financial  
13 statements with the SEC?

14 A. Yes.

15 Q. And is that a significant issue for a company to have to  
16 restate its financials?

17 A. It is.

18 Q. Now, Ms. Moore, the 10-K we looked at listed a balance of  
19 roughly \$1.5 billion on AOT as of, I'm sorry, December 31, 2008.

20 A. Yes.

21 Q. What would be 1 percent of that balance?

22 A. 15 million.

23 Q. In other words, if you found a discrepancy of more than  
24 \$15 million, what would you have done as the CFO of Colonial Bank?

25 A. It would have likely resulted in a restatement of the

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1 financial statements.

2 Q. What if you had found a difference in the balance of hundreds  
3 of millions of dollars?

4 A. Certainly we would have restated the financial statements.

5 Q. What about for loans held for sale at the time you-- The  
6 balance as of December 31, 2008, for the COLB facility was  
7 approximately \$2 billion. What is 1 percent of that amount?

8 A. Almost twenty million.

9 Q. And if you had found a discrepancy in that balance of more  
10 than \$20 million, what would you have done?

11 A. We would have likely had to restate the financial statements.

12 Q. How about if you found a balance of hundreds of millions of  
13 dollars, a discrepancy of hundreds of millions of dollars?

14 A. Then we certainly would have restated the financial  
15 statements.

16 Q. Now, Ms. Moore, have you heard of something called the TARP  
17 program?

18 A. Yes.

19 Q. What is the TARP program?

20 A. The Troubled Asset Relief Program started by the U.S.  
21 Treasury Department to assist financial institutions in getting  
22 through the economic crisis. And there was a capital purchase  
23 program as part of that TARP program.

24 Q. Did Colonial BancGroup attempt to secure funds from the  
25 government through the TARP program?

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1 A. Yes.

2 Q. When was that?

3 A. In October of 2008.

4 Q. Was when the bank first applied?

5 A. Yes.

6 Q. And why was Colonial BancGroup seeking this assistance from  
7 the TARP program?

8 A. Because we were at the very beginning of an economic  
9 uncertainty. Our forecasts were indicating elevated loan losses  
10 in our commercial real estate lending portfolio. And so, the  
11 Board and management certainly thought it would be prudent to  
12 apply for the government assistance to be able to weather the  
13 economic uncertainty.

14 Q. And so, did Colonial BancGroup file an application with the  
15 TARP program?

16 A. We filed an application with TARP.

17 Q. And who was that application filed with?

18 A. It was filed with the FDIC. The primary, your banking, your  
19 primary federal banking regulator was who you applied to.

20 Q. If you would take a look at Government's Exhibit 18-16.

21 THE COURT: Any objection to this exhibit?

22 MR. ROGOW: No objection.

23 THE COURT: All right, it's in.

24 BY MR. STOKES: (Continuing)

25 Q. Okay. What is, what document is contained in Government's

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1 Exhibit 18-16?

2 A. It is a letter from the Department of Treasury granting  
3 Colonial Bank and BancGroup preliminary approval to participate in  
4 the TARP program.

5 Q. I'm sorry, just a moment. Okay.

6 So, first, is this a fax from the Treasury Department to  
7 Colonial Bank?

8 A. It is.

9 Q. And it contains-- I'm sorry, what did you say it contains, a  
10 letter for what purpose?

11 A. It is a letter to Colonial BancGroup and Colonial Bank giving  
12 Colonial BancGroup and Bank preliminary approval to participate in  
13 the Troubled Asset Relief Program.

14 Q. And how much money is Colonial BancGroup approved to receive  
15 from the TARP program?

16 A. \$553,730,000.

17 Q. Was there any, were there any conditions or strings put on  
18 obtaining, put on that money, the \$553 million?

19 A. There were.

20 Q. And can you describe some of those conditions.

21 A. One of the conditions, it says in the letter, with the  
22 express condition that \$300 million in unaffiliated third-party  
23 capital is obtained prior to closing.

24 Q. Okay. So, what did Colonial Bank have to do before it could  
25 get the money from the government, the \$553 million?

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1 A. It had to raise \$300 million of equity or sell common stock  
2 to investors in the amount of \$300 million.

3 Q. And at the back of that document, does it include the  
4 company's application to the TARP program, the capital purchase  
5 program?

6 A. Yes.

7 Q. Is that an application that you submitted under your  
8 signature?

9 A. Yes.

10 Q. Now, prior to getting that approval from the Treasury  
11 Department on December 3 as we just saw in that letter, had you  
12 had any meetings with any government regulators about Colonial  
13 Bank's application to obtain these funds?

14 A. Yes.

15 Q. And in particular, did you meet with the FDIC?

16 A. Yes.

17 Q. If you would please take a look at Government's Exhibit 18-2  
18 and 18-2A.

19 MR. ROGOW: No objection, Judge.

20 THE COURT: All right, they are both in.

21 BY MR. STOKES: (Continuing)

22 Q. And so, what is Government's Exhibit 18-2?

23 A. It is a letter from me on behalf of the company to the  
24 Federal Reserve Bank of Atlanta, the FDIC, and the Alabama State  
25 Banking Department asking or making a business case of why

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1 Colonial BancGroup and Colonial Bank should receive, be able to  
2 participate in the TARP program.

3 Q. What's the date of that letter?

4 A. October 20, 2008.

5 Q. And accompanying that letter did you have an appendix  
6 including various financial information about the bank?

7 A. Yes.

8 Q. If you would turn to page 7 of the appendix to that letter.

9 Do you have that before you?

10 A. I do.

11 Q. Do you see-- What do you see at the bottom of that document?  
12 What type of information there?

13 A. It's a summary statement of condition or a summary balance  
14 sheet as of September 30, 2008.

15 Q. And does that summary balance sheet that you are providing to  
16 the Federal Reserve, the FDIC and the State of Alabama, does it  
17 include balances for AOT and COLB at that time?

18 A. It does.

19 Q. And what is the balance that it contains for the AOT or  
20 securities purchased under agreements to resell?

21 A. 1,493,585,000.

22 Q. If you would please mark that with a highlighter.

23 And what is the balance for COLB or loans held for sale?

24 A. COLB would have been included in the financial statement  
25 category loans held for sale of 2,060,709,000.

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1 Q. If you would please mark that with a highlighter as well.

2 And at the time that you submitted those documents,  
3 those balances to the FDIC, the Federal Reserve and the State of  
4 Alabama, did you believe those balances to be accurate?

5 A. I did.

6 Q. And why were you providing this financial information to  
7 those regulators?

8 A. We were, Colonial Bank was making a business case to be able  
9 to apply for TARP.

10 Q. Did you in fact end up, in addition to sending this letter,  
11 did you end up meeting with these regulators to discuss Colonial  
12 BancGroup and its business case?

13 A. Yes.

14 Q. And would you take a look at 18-2A which you have in front of  
15 you.

16 And what is this document?

17 A. This is a PowerPoint presentation to the Federal Reserve  
18 back, the FDIC and the State of Alabama Banking Department  
19 providing some overview information regarding the company and some  
20 more detailed financial information.

21 Q. And did you present this PowerPoint presentation to those  
22 regulators?

23 A. I did.

24 Q. Was it you who presented this information?

25 A. Kamal Hosein, our vice-chairman of Colonial Bank Jack Miller,

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1 and I met with the regulators and presented the information.

2 Q. And when was that meeting?

3 A. On October 21, 2008.

4 Q. So, the next day after the letter?

5 A. Yes.

6 Q. And during that meeting, did you discuss with those  
7 regulators the Mortgage Warehouse Lending Division?

8 A. Yes.

9 Q. And did the balances in COLB and AOT, would that have been  
10 information that was discussed?

11 A. We discussed the assets of the Mortgage Warehouse Lending  
12 Division which were primarily the COLB and AOT balances.

13 Q. And in the PowerPoint presentation, did you focus at all on  
14 more Mortgage Warehouse Lending?

15 A. No.

16 Q. Well, if you would take a look at pages 11 and 12 of the  
17 PowerPoint presentation.

18 A. Yes.

19 Q. These pages of the presentation, what do they relate to?

20 A. Mortgage Warehouse Lending.

21 Q. Did you cover these pages with the regulators during your  
22 meeting with them on October 21?

23 A. Yes.

24 Q. Okay. And if you would please read the first three lines of  
25 page 11.

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1 A. A niche business providing interim financing to independent  
2 mortgage companies for conforming residential mortgage lending,  
3 thereby promoting home ownership. Colonial finances only  
4 conforming agency products--

5 Q. Let me stop you there. What does that mean, Colonial  
6 finances only conforming agency products?

7 A. Those would be residential mortgage loans that met the  
8 requirements of Ginnie Mae, Freddie Mac and Fannie Mae.

9 Q. Did REO qualify as conforming agency products?

10 A. No.

11 Q. Did loans that investors had already paid off qualify as  
12 conforming agency products?

13 A. No.

14 Q. Did loans that had been written off by banks qualify as  
15 conforming agency products?

16 A. No.

17 Q. Did loans that already been sold to another investor on AOT  
18 qualify as conforming agency products?

19 A. No.

20 THE COURT: All right, Mr. Stokes, it is 5:30 and I told  
21 the jury we would finish at 5:30 today.

22 Again, ladies and gentlemen, we will try to keep on as  
23 tight a schedule as possible. Tomorrow, which is Tuesday, we  
24 start at 9:30. And I will again give you a morning break around  
25 11 o'clock, and lunch will be in the 12:30 to 1 o'clock time

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1 frame. All right. And then we will have the afternoon broken up  
2 as well.

3 Please leave your notebooks on your chair, we will get  
4 them back to you tomorrow. Make sure that you follow my  
5 instructions about not conducting any investigation about the case  
6 or any of the issues that have been raised. Stay away from any  
7 media, Internet or other kind of coverage about the case.

8 And get a good night's sleep, maybe a walk, I hear it is  
9 still pretty nice out there, and we will see you back here  
10 promptly at 9:30.

11 We will stay in session just in case there are any  
12 matters I have to take up with counsel, but you all are free to go  
13 at this time.

14 Thank you.

15 NOTE: At this point the jury leaves the courtroom;  
16 whereupon the case continues as follows:

17 JURY OUT

18 THE COURT: All right, counsel, are there any matters we  
19 need to take up now so we don't waste any of the jury's time  
20 tomorrow?

21 MR. ROGOW: Nothing on our front, Your Honor.

22 MR. STOKES: I don't think so, Your Honor.

23 THE COURT: Now, again, I want-- The Government needs  
24 to have a witness list for the witnesses tomorrow.

25 MR. STOKES: Yes.

1 THE COURT: That should be definitely given to defense  
2 counsel, have a seat, defense counsel this evening so there are no  
3 surprises.

4 Mr. Stokes, where are we in terms of your estimated  
5 schedule?

6 And, Ms. Moore, you are free to go at this time. We  
7 will see you back here tomorrow morning promptly at 9:30.

8 NOTE: The witness stood down.

9 MR. STOKES: We are certainly still shooting for May 1,  
10 Your Honor. And I think we are, I think we are basically where we  
11 thought we would be. We thought we would get through part of the  
12 first witness on the first day.

13 THE COURT: All right. And how much more time do you  
14 have on your direct examination with Ms. Moore?

15 MR. STOKES: Probably another half hour. Half an hour  
16 to 45 minutes.

17 THE COURT: Well, I am being generous. You have  
18 repeated a lot of things. It's your first witness, I have allowed  
19 you to do that, but I hear it. And we are not going to have a lot  
20 of repetition with subsequent witnesses.

21 So, you need to tighten it up a little bit.

22 MR. STOKES: Yes, Your Honor. And because of the  
23 complicated nature of some of this testimony and the facilities  
24 that we are dealing with, we are asking for a little leeway--

25 THE COURT: Well, you got it today. This jury now knows

1 what COLB means and AOT. And again, we can move this along. The  
2 jury is paying attention, and you don't want to put them to sleep.

3 So, repetition in a case like this is more likely to  
4 deaden the jury than to keep them awake. So, as I said, I have  
5 left you alone today, but you have tried cases in front of me, you  
6 know how I get. So, keep this case moving.

7 MR. STOKES: We will.

8 THE COURT: But you all did a good job today. And so,  
9 there are no matters other than-- The only other thing is when  
10 are you going to call MS. Kissick? Because we had that issue  
11 about the documents with the FDIC and the attorney/client  
12 business.

13 MR. STOKES: Your Honor, I would anticipate, assuming  
14 that issue is dealt with, I would anticipate that she would take  
15 the stand on Wednesday.

16 THE COURT: All right. Are you getting any feedback yet  
17 from the FDIC?

18 MR. STOKES: I don't know whether anything has been  
19 filed with the Court, we have been in here, but as I understand it  
20 they had intended to provide the Court today some sort of proposed  
21 order. Apparently it was filed.

22 THE COURT: All right. We didn't pick it up at the last  
23 break, but I don't know if we've had enough time to look for it.  
24 We will look at that tonight in chambers. All right.

25 MR. STOKES: They have identified some of the documents

1 that they are not asserting a privilege over, and we have turned  
2 those over to the defense. We did so yesterday, I think about  
3 5 p.m. And there is apparently another set of documents that  
4 apparently they do have a privilege issue with that they have  
5 submitted a proposed order to the Court in how to deal with those.

6 THE COURT: All right. But you haven't yet seen it?

7 MR. STOKES: We have not seen those, no.

8 THE COURT: And I assume defense counsel hasn't seen it?

9 MR. ROGOW: Correct.

10 THE COURT: All right. Well, we will all go back and  
11 check our computers.

12 All right. Just to play safe, why don't you all plan to  
13 be certainly in the courtroom by 9:20 in case there is anything we  
14 need to address. Again, I want to minimize the amount of the  
15 jury's time that we take up on these types of matters. All right?

16 MR. STOKES: Yes.

17 THE COURT: Very good. We will recess court then for  
18 the day.

19 NOTE: The April 4, 2011 portion of the case is  
20 concluded at 5:40 p.m.

21 -----

22 We certify that the foregoing is a true and  
23 accurate transcription of our stenographic notes.

24 /s/ Anneliese J. Thomson  
Anneliese J. Thomson, RDR, CRR

25 /s/ Norman B. Linnell  
Norman B. Linnell, RPM, FCRR

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:10cr200  
 .  
 vs. . Alexandria, Virginia  
 . April 5, 2011  
 LEE BENTLEY FARKAS, . 1:53 p.m.  
 .  
 Defendant. .  
 .  
 . . . . .

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

VOLUME 2 - P.M.

APPEARANCES:

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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 260 - 420)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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11 ALSO PRESENT:

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LISA PORTER  
SA SCOTT TURNER  
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I N D E X

DIRECT      CROSS      REDIRECT      RECROSS

WITNESSES ON BEHALF OF  
THE GOVERNMENT:

Raymond E. Bowman (Resumed)	264	299	333	337
Teresa Kelly	341			

EXHIBITS

MARKED      RECEIVED

GOVERNMENT'S:

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1 A F T E R N O O N S E S S I O N

2 (Defendant present, Jury out.)

3 THE COURT: Mr. Stokes, you had an issue?

4 MR. STOKES: Just briefly, I had spoken to Mr. Rogow  
5 about this. I just wanted to make sure it was put on the record,  
6 the defense yesterday had asked to have experts sitting in during  
7 trial, testifying experts, and we object, and the Court excluded  
8 them.

9 THE COURT: Right.

10 MR. STOKES: They have had an individual, one of their  
11 experts but who is going to be non-testifying, sitting in the  
12 court monitoring the proceedings, and the government doesn't have  
13 any objection to that. I just want to make sure --

14 THE COURT: As long as he's not communicating what's  
15 going on in the courtroom with any witness who is yet to be  
16 called.

17 MR. STOKES: Sure. I just want to make it clear for the  
18 record they do have the ability to have an expert in the courtroom  
19 to advise them.

20 THE COURT: That's fine. All right, let's see if the  
21 jury is ready, Mr. Wood, so we can get this case going.

22 (Jury present.)

23 THE COURT: Ladies and gentlemen, I want you to feel  
24 free to sit anywhere. Good, I think you are mixing up your seats  
25 in the jury box. I don't want the folks in the back row to feel a

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1 little disadvantaged or to get neck aches from having to peer over  
2 at the screens.

3 In the back row, are you able to see sufficiently from  
4 these little screens in front of you?

5 (Jurors nodding heads.)

6 THE COURT: Yeah? All right.

7 All right, we've had a request from the jury, they're  
8 having trouble hearing both counsel and the witness. You-all have  
9 to get those microphones closer to your mouths and speak up, all  
10 right?

11 MR. CONNOLLY: Yes, Your Honor.

12 THE COURT: All right, go ahead.

13 MR. CONNOLLY: May we proceed, Your Honor?

14 THE COURT: Yes, sir.

15 RAYMOND E. BOWMAN, GOVERNMENT'S WITNESS,

16 PREVIOUSLY AFFIRMED, RESUMED

17 DIRECT EXAMINATION (Cont'd.)

18 BY MR. CONNOLLY:

19 Q. Mr. Bowman, are you familiar with an entity known as Ocala  
20 Funding?

21 A. I am.

22 Q. What is Ocala Funding?

23 A. Ocala Funding was a warehouse facility that we had.

24 Q. What type of warehouse facility was it?

25 A. It was a single seller, asset-backed commercial paper

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1 facility.

2 Q. There's a lot of words there, so let's break them down. What  
3 does "single seller" mean?

4 A. It means that Taylor Bean was the only entity that was  
5 allowed to sell loans into that facility.

6 Q. And I think you used the term "asset-backed commercial  
7 paper."

8 A. That's correct.

9 Q. First, what is commercial paper?

10 A. Commercial paper is an instrument that I believe banks issue,  
11 trades at a very low interest rate because it's backed by the, by  
12 the bank.

13 Q. Is it similar to an IOU?

14 A. It is.

15 Q. And what is asset-backed commercial paper?

16 A. It means it has an asset behind it.

17 Q. In the case of Ocala Funding, what was the asset behind the  
18 commercial paper?

19 A. It would either be cash or mortgages.

20 Q. Now, are you familiar with the term "bankruptcy remote"?

21 A. I am.

22 Q. What does "bankruptcy remote" mean?

23 A. "Bankruptcy remote" means that the entity would stand on its  
24 own. In this case, Ocala Funding was bankruptcy remote, so that  
25 in the event that Taylor Bean went bankrupt, the entity would wind

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1 down on its own, and it would own the assets that it had. They  
2 couldn't be clawed back to Taylor Bean.

3 Q. So it would be able to pay back the commercial paper holders  
4 with the assets it had in its own facility?

5 A. Exactly.

6 Q. Who formed Ocala Funding?

7 A. It was, it was formed by Lehman Brothers, Taylor Bean.

8 Q. Did Ocala Funding have any office space of its own?

9 A. It did not.

10 Q. Who staffed it?

11 A. Taylor Bean employees.

12 Q. Did it have any employees of its own?

13 A. No, it did not.

14 Q. And who are the primary people from TBW who worked on Ocala  
15 Funding?

16 A. That would be Lee and Paul Allen were the primary people.

17 Q. Approximately when was Ocala Funding formed?

18 A. I want to say maybe '05.

19 Q. And what, if anything, did you learn about the collateral or  
20 the assets in Ocala Funding shortly after its formation?

21 A. I learned that we had a deficit, that we had a shortfall in  
22 Ocala Funding.

23 Q. Approximately how large was that shortfall?

24 A. I want to say maybe \$60 million.

25 Q. Do you have a sense approximately of how large Ocala Funding

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1 was at that time in '05-ish?

2 A. Maybe four to four-and-a-half billion dollars.

3 Q. So what did you do after learning about this asset deficit in  
4 Ocala Funding?

5 A. I went and talked to Lee.

6 Q. Tell us about that conversation.

7 A. I told Lee, I said, "I heard we have a problem with Ocala  
8 Funding."

9 And he said, "Yep." He said, "Paul, Paul F'd it up."

10 Q. And that's Paul, Paul Allen?

11 A. That's correct.

12 Q. And again, did he use the expletive?

13 A. No, I don't think so.

14 Q. Did you follow up with Paul Allen?

15 A. I did.

16 Q. What did Paul Allen say?

17 A. He said that Desiree messed it up.

18 Q. Did he confirm there was a collateral deficit in Ocala  
19 Funding?

20 A. He did.

21 Q. And what did you understand the collateral deficit to be?

22 A. I understood it to mean that, that we had a shortfall, that  
23 we -- we didn't have enough collateral to meet the amount of CP  
24 that we had outstanding.

25 Q. And what's the problem with that?

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1 A. That means it's out of balance. That means in the event of a  
2 wind down, all of the people that had bought CP wouldn't get paid  
3 back.

4 Q. Did it concern you that shortly after its formation, there  
5 was this deficit in Ocala Funding?

6 A. It did.

7 Q. Why is that?

8 A. I just -- it just concerned me that we had something else  
9 that we had another problem with.

10 Q. Let's jump ahead to the second half of 2007. Are you  
11 familiar with a company known as American Home?

12 A. I am.

13 Q. What was American Home?

14 A. They were another mortgage banking competitor of ours.

15 Q. Did they also have a commercial paper facility?

16 A. They did.

17 Q. What happened with respect to American Home's commercial  
18 paper in the summer of 2007?

19 A. They extended their commercial paper.

20 Q. Explain to the jury what that means.

21 A. That means -- you issue commercial paper every couple, well,  
22 I think maybe every six months. It has different terms on it,  
23 but when they came to roll their paper, nobody would want --  
24 nobody wanted to buy it, so they had to extend it, and that causes  
25 a wind down in their facility.

Bowman - Direct

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1 Q. And what was the effect on the asset-backed commercial paper  
2 market when American Home did this in December of 2007?

3 A. It froze the entire market.

4 Q. Did you discuss this with the defendant?

5 A. I did.

6 Q. What did he say about Ocala Funding?

7 A. Well, I, you know, we had issues, you know, placing our paper  
8 as well, and I was like, you know, what are we going to do? I  
9 guess we're going to have to wind down Ocala Funding? And he said  
10 that it would not wind down correctly.

11 Q. What did you understand that to mean?

12 A. That it wouldn't -- that it wasn't balanced, that if we wound  
13 it down, there would not be enough cash there.

14 Q. Did Ocala Funding restructure at some point in 2008?

15 A. It did.

16 Q. And how many investors were there after its restructuring?

17 A. There were two.

18 Q. Who were the two investors?

19 A. Deutsche Bank and --

20 Q. Was it BNP?

21 A. BNP Paribas.

22 Q. Now, were there limitations on the type of loans after  
23 restructuring that could be held in Ocala Funding?

24 A. There were.

25 Q. And what are those limitations in general?

Bowman - Direct

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1 A. They could only hold Freddie Mac fixed rate mortgages.

2 Q. Approximately how big was Ocala Funding after restructuring?

3 A. Maybe a billion-two, a billion and a half.

4 Q. And after restructuring, was the hole still a problem?

5 A. I believe so, yes.

6 Q. Now, wasn't there a trustee for the facility?

7 A. There was.

8 Q. Who was the trustee?

9 A. That would be LaSalle.

10 Q. What did you understand LaSalle's -- is that LaSalle Bank?

11 A. LaSalle Bank, yes.

12 Q. What did you understand LaSalle's role was supposed to be as  
13 the trustee for the Ocala Funding facility?

14 A. They were to make sure that we were in compliance with all  
15 the documents for the Ocala Funding facility.

16 Q. Did you have any discussions with the defendant about whether  
17 LaSalle would catch the collateral shortfall, or the hole?

18 A. I did.

19 Q. What did he say?

20 A. He said that the documents allowed for there to be a  
21 shortfall between, between reporting periods.

22 Q. Did you have any discussions with Paul Allen about this?

23 A. No, I did not.

24 Q. Do you know if Paul Allen was aware of the collateral  
25 shortfall in Ocala Funding?

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1 A. Yes, he was.

2 Q. And what was his reaction to that?

3 A. He was upset about it.

4 Q. Are you familiar with a company known as South Towne Capital?

5 A. I am.

6 Q. What is South Towne Capital?

7 A. It was a broker-dealer that we were creating: Lee, myself,  
8 Jeremy Collette, and two ex-Bear Stearns employees that we hired.

9 Q. Who are those two employees?

10 A. Jesse Gravelle and -- Gravelle and I can't remember the first  
11 guy's name, Jesse something. I don't know.

12 Q. Elhai?

13 A. Yeah.

14 Q. What was -- approximately when was this being created?

15 A. Maybe early 2008, late 2008, somewhere in there.

16 Q. What was the purpose of South Towne Capital supposed to be?

17 A. We had a lot of Community Bank customers, and they had a lot  
18 of loans, in essence, on their books. The idea was for South  
19 Towne to look at those and try to just sell the assets off those  
20 Community Bank balance sheets and try to make, you know, fee  
21 income.

22 Q. And I think you said that South Towne was supposed to be a  
23 broker-dealer.

24 A. Correct.

25 Q. What is a broker-dealer in simplest terms?

Bowman - Direct

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1 A. It's somebody that buys and sells financial instruments, I  
2 guess.

3 Q. And they were to be focused on these?

4 A. They were going to be focused on mortgages.

5 Q. How did you get involved with South Towne Capital?

6 A. I walked in Lee's office when Jeremy and him were discussing  
7 creating it, and they asked if I wanted to join.

8 Q. And did you join?

9 A. I did.

10 Q. And what did it mean to join?

11 A. I was a partner.

12 Q. Let me show you what's been marked as Government Exhibits  
13 18-6, 18-7, and 18-8.

14 THE COURT: Any objection?

15 MR. ROGOW: No objection.

16 THE COURT: All right, they're all in.

17 (Government's Exhibit Nos. 18-6, 18-7, and 18-8 were  
18 received in evidence.)

19 BY MR. CONNOLLY:

20 Q. Let's look at 18-7, if we could.

21 A. 18-7?

22 Q. Yes, please. Mr. Bowman, are those documents the same but  
23 for the names and signatures on them --

24 A. Yes, they are.

25 Q. -- at the bottom?

Bowman - Direct

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1           Okay. Do you recognize the signature on Government  
2 Exhibit 18-7?

3 A. Yeah. I think it's Lee Farkas's.

4 Q. And can you explain, do you know what FINRA is?

5 A. A little bit.

6 Q. In general terms, what is it?

7 A. Yeah. I believe it's the regulating agency over  
8 broker-dealers.

9 Q. And so was there a process where South Towne Capital would  
10 have to get approval to be a broker-dealer?

11 A. That is correct.

12 Q. And is this document part of the process?

13 A. That is correct.

14 Q. Now, just leave that one up, but who are the signatures on  
15 the other two versions of this document?

16 A. That would be my signature and Jeremy Collette's signature.

17 Q. Would you please read the first paragraph to the jury?

18 A. Sure. "I hereby acknowledge that I will not actively engage  
19 in the management of South Towne Capital's securities business,  
20 including the supervision, conduct of business, or the training of  
21 persons associated with the firm."

22 Q. Did you understand essentially that you'd have to be a  
23 passive owner of South Towne Capital?

24 A. I did.

25 Q. Now, did South Towne Capital ever get off the ground?

Bowman - Direct

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1 A. Well, it had employees, and --

2 Q. How many employees did it have?

3 A. I think it had three or four.

4 Q. Mr. Gravelle, Mr. Elhai, and one or two others?

5 A. Yeah, one or two others.

6 Q. Did it have any money of its own?

7 A. Nothing other than what we gave it.

8 Q. Did you have an understanding as to whether or not it was  
9 going to be able to buy these mortgages for its own accounts or  
10 just broker them between a buyer and a seller?

11 A. My understanding was they were going to broker them between a  
12 buyer and a seller.

13 Q. Are you familiar with the capital raise as it relates to  
14 Colonial Bank's efforts?

15 A. I am.

16 Q. Did you have involvement, did you have involvement at Taylor,  
17 Bean & Whitaker with respect to that capital raise?

18 A. I attended one phone call with attorneys and investment  
19 bankers in regard to it, and I also attended a meeting in Peoria  
20 with RLI Insurance Company with regards to it.

21 Q. When was the meeting that you attended the phone call with  
22 the attorneys you just referenced approximately?

23 THE COURT: Just so the jury has context, you're  
24 referring to the attempt to get TARP funding when you talk about  
25 capital raise? Is that what your question is?

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1 MR. CONNOLLY: Yes, Your Honor.

2 THE COURT: All right.

3 BY MR. CONNOLLY:

4 Q. Mr. Bowman, is that your understanding?

5 A. That is my understanding, correct.

6 Q. So the fall of 2008 into 2009?

7 A. Right.

8 Q. When was that meeting or that phone conference you were on  
9 approximately?

10 A. I don't recall. I mean, I don't know what month it was. It  
11 was in that time period, though.

12 Q. Was it early in the process or towards the end?

13 A. I believe it was probably in the middle of the process.

14 Q. You mentioned you had a meeting with RLI?

15 A. Yeah. They're an insurance company.

16 Q. And what was the purpose of your meeting with RLI?

17 A. To see if they wanted to participate in the capital raise.

18 Q. As an investor?

19 A. As an investor, correct.

20 Can I get some water?

21 MR. CONNOLLY: Mr. Wood, could we get some water for the  
22 witness, please? Thank you.

23 Q. What was RLI's response in your efforts to get them to be an  
24 investor in the capital raise?

25 A. They declined.

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1 Q. And after that meeting with RLI, did you have any other  
2 involvement in recruiting potential investors into the capital  
3 raise?

4 A. Not that I'm aware of, no.

5 Q. Who from TBW was, was primarily involved in those efforts to  
6 recruit investors into the capital raise?

7 A. That would be Lee and Paul Allen.

8 Q. Did you ever, ever have any conversations with anyone, with  
9 Mr. Elhai or Mr. Gravelle, about being -- South Towne being an  
10 investor in the capital raise?

11 A. I did not.

12 Q. Do you know whether South Towne had the capability of being  
13 an investor in the capital raise?

14 A. I do not.

15 Q. Do you know whether they were ever represented as being an  
16 investor in the capital raise?

17 A. I saw a sheet where they were represented being one, yes.

18 Q. Were you ever consulted as to whether or not they should or  
19 could be an investor in the capital raise?

20 A. I was not.

21 Q. Mr. Bowman, earlier this morning, you testified about  
22 mortgage servicing rights, or MSRs.

23 A. Okay.

24 Q. Let's talk about those for a minutes. What did TBW do with  
25 its MSRs?

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1 A. We borrowed money against them. We pledged them as an asset  
2 to a bank to borrow against them.

3 Q. And explain to the jury how that process works.

4 A. An MSR has value because of the monthly cash flow that it  
5 generates. It's kind of like an account receivable or something  
6 like that. They all have value, so we pledged these assets to two  
7 different groups: Colonial BancGroup and to Natixis.

8 Q. Who was Natixis?

9 A. Natixis was a Wall Street investor of ours. I'm not sure if  
10 they're a bank or not but --

11 THE COURT: Can you spell that?

12 THE WITNESS: Probably not. I'm not a good speller.  
13 N-a-t-i-x-i-s.

14 THE COURT: All right, go ahead.

15 BY MR. CONNOLLY:

16 Q. Mr. Bowman, we'll talk about the process in a moment. Could  
17 Taylor, Bean & Whitaker pledge the same MSRs to Natixis and  
18 Colonial Bank?

19 A. No, it could not.

20 Q. Why not?

21 A. That would be a double pledge.

22 Q. Now, how did the pledging process work? What's the first  
23 step in that process?

24 A. You'd have to divide, you know, divide up what assets you're  
25 pledging, and then you'd have some kind of documentation around

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1 that pledge.

2 Q. And would you have to get an evaluation for that?

3 A. That would come, you know, in the borrowing, in the facility.  
4 They would have -- each one had different, you know, Natixis did  
5 their own evaluations, Colonial, we got a third-party evaluation.

6 Q. We'll talk about that in a minute. When they were pledged to  
7 either Natixis or to Colonial, did Taylor, Bean & Whitaker get 100  
8 percent of the value of those MSR's?

9 A. No, we did not. They had a borrowing base. They only lent  
10 us, you know, a percentage of the value.

11 Q. Did that percentage change over time?

12 A. It did.

13 Q. How did it change over time?

14 A. At one point, they were lending us maybe 80 percent, and then  
15 towards the end, they were lending us maybe 50 percent.

16 Q. And why was there such a decline in the percentages that they  
17 would loan against the MSR's?

18 A. Well, several things. Due to the financial collapse that  
19 happened, everybody was pulling away from mortgage bank --  
20 mortgage banks, specifically independent mortgage banks, but  
21 nobody wanted to do warehouse lending. There was a whole, you  
22 know, kind of a dry-up of the funding, and MSR's were probably the  
23 worst asset to try to finance. Nobody wanted to finance these at  
24 all.

25 Q. And what's the danger in financing MSR's?

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1 A. Well, there are several. They're not as liquid. They're not  
2 very liquid, and sometimes and definitely during this time period,  
3 they weren't very liquid at all. The agencies can pull the MSRs,  
4 and that's indeed what happened with us, but they can pull, you  
5 know, it's not they allow you to own the MSR asset. It's not like  
6 it's yours.

7 Q. And so when the agencies -- you're talking about Freddie and  
8 Fannie and Ginnie?

9 A. Yes.

10 Q. And what happens if Freddie or Fannie or Ginnie pulls the  
11 MSRs?

12 A. You're left with, with nothing. You're holding the bag.

13 Q. Let's talk about, you said the Colonial process was slightly  
14 different than the Natixis one because Natixis did it itself.  
15 Let's talk about how the Colonial process worked. What did  
16 Taylor, Bean & Whitaker have to do as part of that process?

17 A. As part of their process, we would have to do a monthly,  
18 well, towards the end, it was a monthly evaluation.

19 Q. And what would that evaluation -- how did that work in  
20 general terms?

21 A. We would take a data tape of all the loans that we were  
22 servicing that, that belonged to Colonial, and we would -- and it  
23 had loan characteristics like interest rate, loan type, you know,  
24 whether it was a 30-year or 15-year or 20-year or an ARM. It  
25 would have delinquency data.