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1 always John F. Welch, and this simply says "John Welch," and then  
2 it's not signed where you usually sign on the bottom. It's bogus.  
3 It's phony.

4 It has my address of the farm place, and it has the date  
5 of the transaction, October 31, 2003, but in addition, it's got  
6 the first payment on this alleged -- I recognize it as a  
7 promissory note from my practice, as a blank promissory note, but  
8 it's got the first payment due on January 1, 1900, and the last  
9 payment due, I guess it was supposed to be a 30-year note, on  
10 December 31, 1929.

11 I had never seen it before, and it was a total shock to  
12 me to see this document.

13 MR. NATHANSON: Ms. Gindin, if you could pull up page 3  
14 of the note, please?

15 Q. Mr. Welch, I believe you already identified this, but whose  
16 name is listed as the borrower on page 3 of this document?

17 A. Mine.

18 Q. And is this your signature under your name?

19 A. No.

20 Q. And looking toward the bottom of the page, who is listed as  
21 the lender?

22 A. Well, it's indicated that, that it's paid to the order of  
23 Taylor, Bean & Whitaker Mortgage Company.

24 Q. Thank you, sir.

25 And, Your Honor, I believe we addressed this at the

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1 bench, but the government moves 19-74 into evidence.

2 THE COURT: Over the objection of counsel, it's in.

3 (Government's Exhibit No. 19-74 was received in  
4 evidence.)

5 BY MR. NATHANSON:

6 Q. Mr. Welch, I'd next like to talk to you about Property No. 2,  
7 which is 916 SE Fort King Street, in Ocala, Florida. Are you  
8 familiar with that address, sir?

9 A. Yes, that's my law office address.

10 Q. I'd like to pass you now what we've marked as Government  
11 Exhibits 19-104A and 19-104B.

12 A. Yes.

13 THE COURT: All right, now does defense counsel have  
14 these?

15 MS. KARINSHAK: No, ma'am.

16 THE COURT: I don't know why your witness notebooks are  
17 not complete. They're not in the Court's copy, and they ought to  
18 be. If you're going to put these books together, both the Court  
19 and defense counsel ought to have them.

20 MR. NATHANSON: Yes, Your Honor, I apologize. We will  
21 deal with this right now.

22 MS. KARINSHAK: No objection, Your Honor, to 104A or B.

23 THE COURT: All right, they're in.

24 (Government's Exhibit Nos. 19-104A and 19-104B were  
25 received in evidence.)

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1 BY MR. NATHANSON:

2 Q. Now, if we could first put up A, please?

3 Mr. Welch, what is this?

4 A. Well, 104A is a picture of my sign on 916 SE Fort King  
5 Street, with my name on it and indicating law offices.

6 Q. And if we could put up 104B, what is 19-104B?

7 A. And that's a picture of the front of my law office, which was  
8 a reconverted residence in the historical district.

9 Q. Mr. Welch, back at the time of the sale of the farm property  
10 to Mr. Farkas, did you have a mortgage on your law office?

11 A. I believe it was, it was paid off in 2002.

12 Q. And -- I'm sorry, go ahead, sir.

13 A. That's all right. I had to take out a loan to buy it and  
14 refurbish it and so forth, and that was approximately 20 years  
15 from when I bought it in 1982. I believe that's when I paid it  
16 off.

17 Q. And who was the lender on that mortgage?

18 A. It would have been SunTrust Bank.

19 Q. Now, Mr. Welch, did there come a time when you received a  
20 notice about a loan on this property from Colonial Bank?

21 A. Yes.

22 Q. And what did you do when you received that notice?

23 A. Well, this notice came, I believe, in 2009. Some seven years  
24 or so after I sold the property for cash, I got a notice from  
25 Colonial Bank that they, they were assigning my mortgage to

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1 someone and that that someone was going to handle the mortgage  
2 payments. The only problem was I didn't have any mortgage, so I  
3 was furious at the time.

4 Q. Now, Mr. Welch, I'd like to have passed to you now what we've  
5 marked as Government's Exhibit 19-86A.

6 THE COURT SECURITY OFFICER: 19-dash what?

7 MR. NATHANSON: 86A as in apple, please.

8 THE COURT SECURITY OFFICER: I don't have an A.

9 MR. NATHANSON: 86A, please.

10 THE WITNESS: Yes, sir.

11 BY MR. NATHANSON:

12 Q. Do you recognize this document, sir?

13 A. Yes. This is, this is a letter I wrote on August 24, 2009,  
14 in response to the notice I got to the, various people. I sent  
15 copies to everyone I could think of.

16 Q. And, Mr. Welch, is the second page of that exhibit the notice  
17 you received?

18 A. Yes, it is.

19 Q. And is that your handwriting on that?

20 A. Yes. I immediately started calling people, taking notes, and  
21 wrote them right on the, the so-called mortgage loan transfer  
22 notice I received from Colonial Bank.

23 MR. NATHANSON: Your Honor, we move into evidence  
24 Government's Exhibit 19-86A.

25 THE COURT: Any objection?

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1 MS. KARINSHAK: No objection, Your Honor.

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

3 (Government's Exhibit No. 19-86A was received in  
4 evidence.)

5 MR. NATHANSON: And if we could put up page 2 of the  
6 exhibit, please?

7 Q. What is the mortgaged property that is listed on this notice?

8 A. This notice actually refers to my law office property at 916  
9 SE Fort King Street, Ocala, Florida.

10 Q. And what is the amount of the loan that's reflected on that  
11 notice?

12 A. It reflects a loan of, I believe that says \$280,000.

13 Q. And what did you believe, sir, when you received this notice?

14 A. I thought there was a terrible mistake or something was  
15 wrong. It was obviously an error. So that's when I started  
16 calling and writing letters and so forth, including to the FBI.

17 Q. I'd next like you to look at, sir, what we've marked as  
18 Government's Exhibit 19-84.

19 Your Honor, this is analogous to 19-74.

20 MS. KARINSHAK: Your Honor, same objection.

21 THE COURT: All right. And the Court's ruling is the  
22 same. Overruled. So it's in evidence.

23 (Government's Exhibit No. 19-84 was received in  
24 evidence.)

25 MR. NATHANSON: Thank you, Your Honor.

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1 Q. Mr. Welch, this appears to be a note on the law office  
2 property that we've just been discussing. Have you seen this  
3 document before?

4 A. Only when it was shown to me by the -- by your office, the  
5 Office of the U.S. Attorney. I recognize it as a form for a  
6 promissory note, but I'd not seen it before until it was shown to  
7 me a month or so ago, and again, it is -- it purports to be on my  
8 law office as the address, not the legal address but the street  
9 address of 916 SE Fort King Street, which is correct.

10 It purports to be in the amount of \$280,000 and once  
11 again has these dates about when payment is to start in 1900 and  
12 be over with in 1929. At the end, it has a signature, but it's  
13 not my signature. It has -- someone has signed "John Welch," but  
14 it is not my signature.

15 Q. And, Mr. Welch, on page 3 of that document again, who is this  
16 note payable to?

17 A. Taylor, Bean & Whitaker. It says it's paid to the order of.

18 Q. And, Mr. Welch, on page 1, what is the date of this  
19 promissory note?

20 A. This one is dated November 3, 2003.

21 Q. And that's three days after your sale of the farm property,  
22 correct?

23 A. Correct.

24 Q. Thank you.

25 Lastly, Mr. Welch, I'd like to ask you about an address,

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1 4500 SW 7th Avenue, in Ocala, Florida. Are you familiar with that  
2 address, sir?

3 A. No, I'm not.

4 Q. Have you ever owned property at 4500?

5 A. No, I have not.

6 Q. Ever taken a loan out on a property at 4500 SW 7th?

7 A. I don't even know who -- where it is or who owns it.

8 Q. I'd like you to look at, Mr. Welch, what we've marked as  
9 Government Exhibit 19-74.

10 MS. KARINSHAK: Your Honor, same objection to 19-9- --

11 THE COURT: I need to see it again. It's not in the  
12 notebook.

13 Is it another note?

14 MR. NATHANSON: It's analogous, Your Honor, for the  
15 third property, the same exhibit.

16 THE COURT: Then it's the same argument from counsel,  
17 and I'll overrule it, and it's in evidence.

18 (Government's Exhibit No. 19-94 was received in  
19 evidence.)

20 BY MR. NATHANSON:

21 Q. Mr. Welch, this appears to be a note dated October 31, 2003,  
22 on 4500 SW 7th Avenue. Have you seen this document before?

23 A. Only when it was shown to me by someone from your office.

24 Q. And again, were you surprised when you saw this document?

25 A. Absolutely. I mean, this, this was the farm property that I

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1 sold on the -- for cash on the very date that this note has on it,  
2 October 31, 2003.

3 Q. I'm sorry, Mr. Welch, which exhibit are you looking at right  
4 now?

5 A. Well, I'm looking at 19-74.

6 MR. NATHANSON: I apologize, it should be 19-94.

7 THE COURT: And just for the record then, 19-74 is not  
8 in evidence.

9 MR. NATHANSON: Your Honor, 19-74 had previously been  
10 admitted.

11 THE COURT: That was the other one?

12 MR. NATHANSON: Yes. I apologize; I misspoke.

13 THE WITNESS: All right, I have that one.

14 BY MR. NATHANSON:

15 Q. So with the exhibit corrected, this appears to be a note on  
16 4500 SW 7th Avenue in Ocala. Were you surprised when you saw this  
17 document?

18 A. Absolutely. This again, I -- I don't know who owns 4500 SW  
19 7th Avenue. It's dated the same day that I sold the farm to  
20 Mr. Farkas, and the, the signature on page 3 is not my signature.  
21 I always sign my name "John F." And plus, I recognize it's just  
22 not my signature. And again, it has those crazy dates of  
23 beginning payment of January 1, 1900.

24 Q. And, Mr. Welch, on page 1 of the document, who is the lender?

25 A. Taylor, Bean & Whitaker Mortgage Company -- or Corporation,

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1 excuse me.

2 Q. And, Mr. Welch, what is the amount of this note?

3 A. This one totals \$170,000.

4 Q. Now, Mr. Welch, we've looked at three notes in your name  
5 during the course of your testimony. Does the total value of  
6 those loans mean anything to you?

7 A. Well, they're practically the same amount as the purchase of  
8 the farm. I think it totals 745,000, but, of course, there was a  
9 \$10,000 deposit, so it's practically equal to the amount paid for  
10 the farm.

11 MR. NATHANSON: Thank you, Mr. Welch. No further  
12 questions.

13 THE COURT: All right, cross-examination?

14 MS. KARINSHAK: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. KARINSHAK:

17 Q. Good afternoon, Mr. Welch.

18 A. Good afternoon.

19 Q. My name is Zahra Karinshak, and I represent Mr. Farkas here  
20 today, and we haven't met before, have we?

21 A. No.

22 Q. And we haven't spoken?

23 A. No.

24 Q. And we haven't talked about these documents at all before you  
25 came into court today, right?

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1 A. No, ma'am.

2 Q. Now, I ask you to look at Government's Exhibit 19-95, please,  
3 sir, and the second page of that document, you said you had signed  
4 that document, is that right, dated August 12, 2003?

5 A. Hold on just a minute. 19-95?

6 Q. Yes, sir.

7 A. Yes.

8 Q. And you signed that document?

9 A. Yes, I did.

10 Q. And was that document -- you testified it was signed by  
11 Mr. Farkas; is that right?

12 A. Well, it was presented to me by his agent.

13 Q. And who was his agent?

14 A. A real estate agent that -- as I recall, it was dropped off  
15 by either his real estate agent or his attorney, and it was -- it  
16 had a signature on it that appeared to be "Lee B. Farkas," but I  
17 didn't see him sign it.

18 Q. Okay. That was what I was going to ask you, sir.

19 A. All right.

20 Q. You didn't see him sign it?

21 A. No, I did not.

22 Q. And can you actually read that signature?

23 A. It's difficult.

24 Q. We don't know if it really says "Lee B. Farkas" at all, do  
25 we?

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1 A. It says it under the buyer section where it's printed.

2 Q. Well, I understand that, sir, but I'm talking about the  
3 actual signature.

4 A. Well, I couldn't swear that it says "Lee B. Farkas," no.

5 Q. Okay.

6 A. I haven't seen any other of his signatures.

7 Q. All right, sir. So you don't know if that's his signature or  
8 not, correct?

9 A. All I know, it was presented to me by his agents as his  
10 signature. He also signed the --

11 Q. Sir, if you can just bear with me?

12 A. Sure.

13 Q. I'm going to go one question at a time.

14 A. Sure.

15 Q. Thank you.

16 You mentioned these agents who dropped it off. Did they  
17 drop it off to you in person, or did they drop it off at your law  
18 office?

19 A. I think it was dropped off at my law office.

20 Q. Okay. So they didn't actually have a conversation with you  
21 and say this is Mr. Farkas's signature then, did they?

22 A. No, but --

23 Q. Okay. So they just dropped it off at your law office, and  
24 you assumed that it was Mr. Farkas's signature, correct?

25 A. Well, sure, I assumed it.

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1 Q. Okay.

2 A. I mean, it's got his name on it, and it's got two signatures  
3 allegedly his, and it's got an attorney's name who I know very  
4 well in Ocala, and --

5 Q. Okay.

6 A. -- I had no reason to doubt that the attorney didn't have the  
7 deposit or that these aren't his signatures.

8 Q. Okay, sir, but I'm focusing on this signature.

9 A. I don't know -- I'm not a signature person. I don't know the  
10 signature.

11 Q. Right. I'm just trying to be clear as to what you understood  
12 by what someone told you versus just having them delivered at your  
13 office. Now, looking at the front page, do you know who filled  
14 out this paperwork on the front page, whose handwriting that is,  
15 the "John F. Welch, Seller," and "Lee B. Farkas" at the top there?

16 A. No, counselor, I don't.

17 Q. Okay. And do you know who filled out these numbers, 750,000  
18 and the 10,000 and the 740,000?

19 A. No, I don't.

20 Q. Okay. And that last page of this document as well, do you  
21 know the handwriting on the last page of this document?

22 A. The page you're referring to is the one with the initials  
23 along the left-hand side?

24 Q. Yes, sir.

25 A. Yes. Yeah, I don't know who printed the portion above. It

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1 appears to be the same person who printed the contract. But I  
2 actually printed the last paragraph.

3 Q. So just to be clear for the record, you printed in "The above  
4 test to be completed" --

5 A. -- "within 30 days of contract date."

6 Q. Yes?

7 A. And I put it in there to make sure that there was no real  
8 estate commission that I would owe, because somehow I believe this  
9 was presented through Sunburst Property or some real estate  
10 person, but it was dropped off at my office, so I don't know  
11 exactly.

12 Q. Okay, sir. And -- but you filled that part out because you  
13 as a lawyer, you're protecting your interest in, in selling this  
14 property, right?

15 A. Yes.

16 Q. And again, the signature, that first signature of the buyer,  
17 that was not done in your presence, was it, sir?

18 A. The one above my signature? No.

19 Q. Okay. Thank you, sir.

20 Now, looking, looking at 19-71A, that's the warranty  
21 deed for this same property, right?

22 A. Let me see if I have it.

23 Q. 19-71A.

24 A. Yes.

25 Q. And that's your warranty deed to Mr. Farkas, where you're

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1 basically giving him deed to -- is this the farm? Right, sir?

2 A. Yes, it is.

3 Q. Okay. This is the farm. And you gave him a warranty deed to  
4 the farm, correct?

5 A. Correct, correct.

6 Q. And you said there -- I believe you said on direct there was  
7 a mortgage. Is that right?

8 A. On the farm, there was with SunTrust Bank, yes.

9 Q. Okay. And you said it was paid off, right?

10 A. I paid it off in connection with this closing. I had to in  
11 order to give him a good title, warranty title, and to fill out  
12 the, the approved HUD statement.

13 Q. Okay, sir. So what I'm trying to get at is that Mr. Farkas  
14 actually paid you in full, right?

15 A. Well, his attorney did, sure.

16 Q. His attorney did.

17 A. Right.

18 Q. His attorney gave you a check in full for the full amount,  
19 right?

20 A. Correct.

21 Q. And then you turned around and paid off the mortgage, right?

22 A. I paid off the mortgage, and I recorded the deed, yes.

23 Q. And so you don't owe Mr. Farkas any money at all, do you?

24 A. No.

25 Q. Okay. And he doesn't owe you any money at all as far as you

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1 know, right?

2 A. No, he doesn't.

3 Q. Okay.

4 A. Right.

5 Q. With respect to this farm.

6 A. Correct.

7 Q. Okay. And what is the address of that farm again, sir?

8 A. It was [REDACTED].

9 Q. And you had mentioned that Mr. Farkas walked through the  
10 property, and we saw the picture of the house. Isn't, isn't it  
11 true that Mr. Farkas had plans to tear down that house and build a  
12 newer house?

13 A. He didn't tell me what his plans were. Our conversation was  
14 very short.

15 Q. Okay.

16 A. I asked if I could show him the property. He somewhat  
17 declined and said, "No, I'd just like to walk it myself."

18 And I said, "Well, the house is open. We never locked  
19 it in 33 years. So have at it."

20 Q. And you didn't have locks on the doors, right?

21 A. I, I had locks, but I didn't actually have a lock to the one,  
22 the front dining room door. No, it was open.

23 Q. Yeah.

24 A. It was unlocked.

25 Q. So if I came along, I could access the property and walk

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1 through that house as well, correct?

2 A. At that time? Yes.

3 Q. And I believe you said it was about 20 acres, right?

4 A. Approximately, yes. 20-21 acres.

5 Q. And isn't it common for someone if you're thinking about  
6 buying 20 acres of property, that you might want to just walk  
7 through the property by yourself to get a feel for that property,  
8 right?

9 A. Well, I don't think it's common, no, but who can say? I  
10 don't know what --

11 Q. You're not sure then?

12 A. I -- if it were me, I would want somebody to show me the  
13 boundaries.

14 Q. But it's also -- isn't it also possible, sir, to get those  
15 boundaries and to have it surveyed yourself?

16 A. Sure.

17 Q. Okay. And you can get those boundaries from the courthouse,  
18 right? Aren't they recorded?

19 A. You can get the written --

20 Q. The description in the deed that says: Go to this stone and  
21 turn here and turn right, you can get that --

22 A. Yeah, but you couldn't follow that very well. I did present  
23 him with a little survey map.

24 Q. Okay.

25 A. So if he was following that, he could, could follow that, I

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1 think.

2 Q. Okay. So you provided that to him, so he could have done it  
3 by himself, right?

4 A. Yes.

5 Q. Okay. Now, looking at Government's Exhibit 19-74 --

6 A. Yes.

7 Q. -- isn't it true, sir, that there is no lender listed on this  
8 document?

9 A. That part is, where it says "The Lender is" is left blank.

10 Q. That's right, sir.

11 A. But it is --

12 Q. I'm sorry.

13 A. -- stamped at the end "Paid to the Order of Taylor, Bean &  
14 Whitaker."

15 Q. All right. And that's a different question. That's who  
16 you're supposed to make payments to, right, sir?

17 A. I don't know. I've never seen this before. This is seven  
18 years after the closing this pops up, so --

19 Q. Well, and you even said it's obviously bogus, right?

20 A. Yeah.

21 Q. So if I were trying to do a good job defrauding you or making  
22 this look real, I would have done a better job than picking these  
23 bad dates, right? 1900, right?

24 MR. NATHANSON: Objection, Your Honor. Calls for  
25 speculation.

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1 THE COURT: Sustained. You don't need to answer that  
2 question, Mr. Welch.

3 THE WITNESS: Okay.

4 BY MS. KARINSHAK:

5 Q. But, but, Mr. Kelly, you did -- I'm sorry, Mr. Welch -- I'm  
6 sorry about that, sir -- Mr. Welch, you did indicate that you were  
7 surprised by those dates, right?

8 A. By the internal dates in this document?

9 Q. Yes, sir.

10 A. To have the first payment start on January 1, 1900? Yes,  
11 that was a surprise. No more than a surprise of the existence of  
12 this thing.

13 Q. Okay. And let's move to the second property that you talked  
14 about, and could you please tell me that address?

15 A. This is my law office?

16 Q. Yes.

17 A. 916 SE Fort King Street.

18 Q. Fort King Street?

19 A. Fort King Street, like Fort Ticonderoga.

20 Q. Okay. And again, you, you testified on direct this was --  
21 you had already paid this off, right? Your office is full and  
22 paid for?

23 A. I believe, I believe it was, yes.

24 Q. Like I think you had said since 1983, isn't that right?

25 A. No, no, no. That's when I took out -- I bought the property

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1 in, in 1982.

2 Q. Okay.

3 A. And I believe it was paid off in 2002.

4 Q. 2002?

5 A. 2002.

6 Q. Okay. So you didn't owe Mr. Farkas any money with respect to  
7 this property, right?

8 A. No.

9 Q. Okay. And he didn't owe you any money with respect to this  
10 property, either, right?

11 A. No.

12 Q. And you said it was obviously an error, so you contacted the  
13 FBI, right? That's what you testified to?

14 A. The Florida Financial Division, anybody in securities I could  
15 find I contacted, because I'm looking at a note at that time that  
16 I knew was phony.

17 Q. And you were being very diligent about that, right, sir?

18 A. I was trying to be, yes.

19 Q. And again, looking at that note that is at Government's  
20 Exhibit 1984 -- 19-84?

21 A. 84?

22 Q. 19-84, yes, sir.

23 A. Yes.

24 Q. Again, you were never called upon to pay this note off, were  
25 you?

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1 A. No.

2 Q. Okay. And that's true for all these notes? You were not  
3 called upon to pay for any of these notes that had been presented  
4 to you by the government, right, sir?

5 A. That's correct.

6 Q. So that would be 19-84, 19-94, and 19-74, right, sir?

7 A. I guess those are the exhibit numbers. I don't recall, but  
8 those three notes, no one has actually -- other than that one note  
9 from Colonial saying they were assigning my obligation to someone  
10 else, no one has actually attempted to collect money from me,  
11 and --

12 Q. Right. And again, sir, on 19-84, is there a lender listed at  
13 the top of that section under "Borrower's Promise to Pay"?

14 A. Well, that part is left blank.

15 Q. Okay. And the dates again are the dates you've already  
16 talked about?

17 A. That's November 3, 2003.

18 Q. I'm sorry, sir, I'm talking about the dates in section 3.

19 A. Oh, excuse me.

20 Q. "Payments."

21 A. Oh, under the "Payments"?

22 Q. Yes, sir.

23 A. No, I'm looking at, I think my booklet has 19-94. Again, the  
24 payment under there says I'll make my first monthly payment the  
25 first of each month beginning January 1, 1900.

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1 Q. Yes, sir. And just to be clear, that's Government's Exhibit  
2 19-84, right? 19-84?

3 A. 94, isn't it? 19-94. This is the one that refers to [REDACTED]  
4 [REDACTED].

5 Q. Oh, okay. I'm sorry. I think you got a little ahead of me.  
6 19-84.

7 A. You want 19-84?

8 Q. Yes, sir.

9 A. Yes, counselor. Would you repeat your question?

10 Q. Yes, sir. On 19-84, that has the address of your law office,  
11 correct?

12 A. Correct.

13 Q. Which you said you've had paid off since 2003, correct?

14 A. That's my best recollection, yes.

15 Q. And there is no lender listed there, correct?

16 A. No. Not on the front page, no.

17 Q. And then again, those dates under "Payments" are January 1,  
18 1900, is when your first payment is due, correct?

19 A. Yes.

20 Q. All right. And then now moving to 19-94, Government's  
21 Exhibit 19-94, sir?

22 A. Yes.

23 Q. Now, this one you again testified that you were surprised  
24 about this.

25 A. I was surprised by all three.

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1 Q. And this one -- well, that's right, sir. You said all three.

2 A. Right.

3 Q. And this one you were surprised by the address because you  
4 have no association at all to this address, right, sir?

5 A. That's correct.

6 Q. And you've never been called upon to pay on this mortgage,  
7 either?

8 A. No.

9 Q. And so, sir, isn't it true you haven't been financially  
10 injured in any way by these three notes, because you haven't been  
11 called upon to pay for any of them, right?

12 A. Well, to my knowledge. Now, I did run a check with Equifax  
13 and some credit agencies to see if anything had been done, and to  
14 my knowledge, I have not been, but who knows? As far as I know, I  
15 wasn't called upon to pay them. I would have, you know, had to  
16 scrape me off the ceiling if that were the case.

17 Q. Yes, sir.

18 A. As far as I know, no one's followed up since my letter back  
19 to Colonial Bank, but -- and as far as I know, my credit came back  
20 without any, any taint on it, so --

21 Q. And Colonial Bank hasn't come looking for money from you,  
22 either, have they, sir?

23 A. No, no.

24 Q. Okay. And as far as you know, these properties haven't been  
25 recorded in the courthouse in your name, right, sir?

Welch - Cross

1247

1 A. Well, the 4500, I don't know who owns that.

2 Q. Right, sir. But I'm just saying as to these documents that  
3 we have in front of you today --

4 A. Law offices --

5 Q. Your law office is recorded in your name, right?

6 A. My name. And my farm, home place was recorded in my name and  
7 my wife's name.

8 Q. But it was transferred to Mr. Farkas when he paid you for  
9 that farm, right?

10 A. Exactly.

11 Q. So out of these three properties that we have in front of  
12 you, sir, only one of them is recorded in the courthouse in your  
13 name, and that is your law office, right, sir?

14 A. At the present time --

15 Q. At the present time, yes, sir.

16 A. -- that's correct.

17 MS. KARINSHAK: One moment, please, Judge.

18 Nothing further, Judge.

19 THE COURT: Any redirect?

20 MR. NATHANSON: No, Your Honor.

21 THE COURT: All right, does either side expect to call  
22 Mr. Welch again?

23 MR. NATHANSON: No, Judge.

24 MS. KARINSHAK: No, Your Honor.

25 THE COURT: Mr. Welch, thank you for your testimony.

Turner - Direct

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1 You're free now to stay in court and watch the proceedings or  
2 leave, but do not discuss your testimony or anything you hear in  
3 court with any witness who has not yet testified. Thank you.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness excused.)

6 THE COURT: Your next witness?

7 MR. NATHANSON: The United States calls Special Agent  
8 Scott Turner.

9 THE COURT: All right.

10 MR. NATHANSON: Your Honor, I'd like to resolve the  
11 binder issue. Mr. Wood, could we have that back? I just want to  
12 take a moment.

13 THE COURT: Are you using the same binder? Oh, yes,  
14 let's see.

15 SPECIAL AGENT SCOTT TURNER, GOVERNMENT'S WITNESS, AFFIRMED

16 THE COURT: All right, folks, we need to get moving.  
17 Come on.

18 MR. NATHANSON: I apologize, Your Honor. Based on our  
19 review of these binders, they actually did contain all of these  
20 exhibits. I'm not sure what the confusion was.

21 THE COURT: All right, let's just get the binders back  
22 where they belong, and let's continue now with Agent Turner.

23 MR. NATHANSON: Yes, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. NATHANSON:

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1 Q. Good afternoon, sir. Could you please introduce yourself to  
2 the jury and spell your last name for the court reporter.

3 A. My name is Scott Turner, T-u-r-n-e-r.

4 Q. And how are you currently employed, sir?

5 A. I'm a special agent with the FBI's Washington Field Office.

6 Q. How long have you been a special agent?

7 A. A little over eight years now.

8 Q. I'm sorry, how long?

9 A. A little over eight years.

10 Q. Eight years?

11 And what are your responsibilities as a special agent  
12 with the FBI?

13 A. As a whole, just conducting FBI investigations, collecting  
14 evidence, that sort.

15 Q. And are you currently assigned to a particular squad or unit?

16 A. I am. I'm assigned to Criminal Squad 13 out of the  
17 Washington Field Office.

18 Q. And what does that mean?

19 A. That's a corporate securities fraud squad.

20 Q. And as a special agent, have you been involved in the  
21 investigation of Lee Farkas?

22 A. I have.

23 Q. In particular, have you investigated something that's been  
24 referred to as Lee loans?

25 A. I have.

Turner - Direct

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1 Q. And what are Lee loans?

2 A. Lee loans are loans that we've identified being associated  
3 with Lee Farkas.

4 Q. And are they referred to by any other names?

5 A. Often referred to as Do Not Sell loans as well.

6 Q. What does "Do Not Sell" mean?

7 A. "Do Not Sell" means they're denoted in the TBW system as not  
8 to sell, do not sell.

9 Q. And what does it mean, briefly, for a loan not to be sold?

10 A. Not to sell to a third party.

11 Q. And based on your investigation, have you determined if the  
12 Lee loans share certain characteristics?

13 A. I have. Overall, as I said, they're associated with Lee  
14 Farkas. At times, the notes associated with the loans are to  
15 borrowers that are, in fact, not the borrowers. A lot of times,  
16 they're on pieces of property that don't even exist, and there are  
17 other characteristics.

18 Q. And were you able to determine how these loans are frequently  
19 funded?

20 A. Yes.

21 Q. And how was that?

22 A. The majority of the loans we saw were funded on the Colonial  
23 facilities.

24 Q. Now, with the assistance of the court security officer, I'd  
25 like to pass you what's been marked as Government's Exhibit

Turner - Direct

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1 19-124.

2 THE COURT: Any objection?

3 MR. CUMMINGS: No objection.

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

5 (Government's Exhibit No. 19-124 was received in  
6 evidence.)

7 MR. NATHANSON: And, Your Honor, with the Court's  
8 permission, we'd like to pass out copies of this exhibit to the  
9 jurors. It's somewhat difficult to see on the screen, and we'll  
10 be referring back to it as we go through a number of other  
11 exhibits.

12 THE COURT: Well, I thought I had it in my book. Hold  
13 on a second. Is it supposed to be in my book, too?

14 MR. NATHANSON: It should be, Your Honor.

15 THE COURT: All right. Mr. Wood, if you'd help?  
16 And there was no objection to 124, so it's in evidence.  
17 Is this a document you prepared, Agent?

18 THE WITNESS: It is, Your Honor.

19 THE COURT: All right.

20 MR. NATHANSON: And I'm happy to, to lay a little  
21 additional foundation, Your Honor.

22 THE COURT: All right, go ahead, sir.

23 BY MR. NATHANSON:

24 Q. Special Agent Turner, what is Government's Exhibit 19-124?

25 A. It's a spreadsheet I prepared for my testimony today.

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1 Q. And what is on this spreadsheet?

2 A. It's, it's a list of 18 loans that were part of my  
3 investigation.

4 Q. And are these the Lee loans that we've just been discussing?

5 A. These are some of them, yes.

6 Q. Some of the Lee loans?

7 And what did you rely on in preparing this document?

8 A. I relied on bank statements, the TBW loan servicing system,  
9 the notes themselves, e-mails, and that's about all I can remember  
10 off the top of my head.

11 Q. And, Special Agent Turner, did you physically visit any of  
12 these properties?

13 A. Some of them I did, yes.

14 Q. And does this exhibit accurately state the substance of these  
15 materials that you reviewed in preparing it?

16 A. It does.

17 Q. Now, as an initial matter, Special Agent Turner, if you could  
18 just describe for the jury, please, what the various column  
19 headers mean on your summary chart?

20 A. Sure.

21 Q. Starting on the left side, please.

22 A. Yes. Starting on the left side, the one that says "TBW  
23 Loan #," it's simply that. It's loan number that's from the TBW  
24 system. The next column is the "Property Address." That is the  
25 property address from the note. The "Loan Date" is also taken

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1 from the note. The "Borrower" is taken from the note, and, of  
2 course, the "Loan Amount" from the note.

3 Next is the "Lending Facility." That's where the loan  
4 was financed on. The "Loan Payments?" column indicates whether  
5 loan payments were made on that loan, and then the "Comments" are  
6 some of my comments associated with the individual loans.

7 Q. Now, Special Agent Turner, I want to walk you through these  
8 four groupings of loans on your, on your summary chart. Focusing  
9 first on loans 1, 2, and 3, what did your investigation determine  
10 about these three loans?

11 A. The investigation discovered that on October 31, 2003, Lee  
12 Farkas purchased a piece of property from John Welch for \$750,000.  
13 The address of that property was [REDACTED], in Ocala,  
14 Florida. Investigation showed that -- and then three separate  
15 loans were taken out in John Welch's name.

16 MR. CUMMINGS: Your Honor, I object. This is redundant  
17 of the testimony of the previous witness. It's asking him the  
18 same thing that was just testified to.

19 THE COURT: But this is a summary witness. I'm going to  
20 permit this testimony, and you can cross-examine about it,  
21 Mr. Cummings. Thank you.

22 THE WITNESS: As I was saying, and then the -- there  
23 were three loans taken out in the name of John Welch on three  
24 separate pieces of property: the one piece of property I already  
25 mentioned, an address on Fort King Street, and then an address at

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1 4500 SW 7th Avenue.

2 I discovered that the address on Fort King Street is, in  
3 fact, Mr. Welch's law office that he has not had a mortgage on  
4 since approximately 2002, and the address 4500 SW 7th Avenue, the  
5 third number loan on the sheet, does not exist.

6 Q. And what was the total proceeds from these three loans?

7 A. \$745,000.

8 Q. Now, what, if anything, were you able to determine about  
9 whether payments were ever made on any of these three loans?

10 A. They were not -- these three loans were not located in TBW's  
11 servicing system, and we were unable to find any records of any  
12 loan payments being made.

13 Q. And under "Lending Facility," you have "On Colonial AOT" next  
14 to each of these three loans. What does that indicate?

15 A. That means that at the end, in August 2009, that these three  
16 loans were located and financed on the Colonial AOT facility.

17 Q. Does that mean these three loans were sold by TBW to Colonial  
18 Bank?

19 A. As part of the participation agreement, Colonial owned 99  
20 percent of those loans.

21 Q. I'd like to pass to you now what's been marked as  
22 Government's Exhibit 19-78.

23 THE COURT: Any objection, Mr. Cummings?

24 MR. CUMMINGS: No objection.

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

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1 (Government's Exhibit No. 19-78 was received in  
2 evidence.)

3 MR. NATHANSON: Ms. Gindin, if you could pull up page 2  
4 of the exhibit, please?

5 Q. Special Agent Turner, do you recognize this document?

6 A. I do, yes.

7 Q. And if you could focus on page 2, please? What is page 2 of  
8 the exhibit?

9 A. This is a version of the Do Not Sell list that I discussed  
10 earlier.

11 Q. And is this list an internal TBW record?

12 A. It is.

13 Q. Now, are the Welch loans that we've just been discussing  
14 located on this list?

15 A. They are.

16 Q. And whose name is associated with the Welch loans on this  
17 record?

18 A. The allocation notes indicate "Do not sell per Lee Farkas."

19 Q. And while we're on this exhibit, Special Agent Turner, are  
20 any of the other loans on your summary sheet on 19-124 found on  
21 this Do Not Sell list?

22 A. Yes. Looking at the second group of loans, the Dragani  
23 loans, all four of those are on this Do Not Sell list. Then the  
24 next grouping, the Soundview Trail, all four of those loans as  
25 well are on this Do Not Sell list.

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1 Q. And whose name is associated with those eight loans?

2 A. Each of these loans individually indicate "Do not sell per  
3 Lee Farkas."

4 Q. Next, Special Agent Turner, I'd like for you to look at what  
5 we've marked as Government Exhibit 19-4.

6 THE COURT: Any objection?

7 MR. CUMMINGS: No.

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

9 (Government's Exhibit No. 19-4 was received in  
10 evidence.)

11 BY MR. NATHANSON:

12 Q. Special Agent Turner, this is a six-page e-mail. Do you  
13 recognize this document?

14 A. I do, yes.

15 Q. And who is the e-mail string between?

16 A. The e-mail string is between Desiree Brown and Lee Farkas.

17 Q. And if I could focus your attention, please, on the top  
18 e-mail on page 3 of the e-mail string, it's an e-mail dated June  
19 23 at 12:46:18.

20 A. I have it.

21 Q. What is Ms. Brown telling Mr. Farkas in this e-mail? You  
22 could just read it, please.

23 A. This is Desiree talking to Lee: "I apologize for bothering  
24 you again, but Cathie and Teresa are bugging the crap out of me  
25 about these loans. Melissa stated that these are three of 'your'

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1 loans. They are not in FICS, and we don't appear to have a  
2 mortgage for them.

3 "Do you happen to know where the mortgages for these  
4 loans could be? With payroll hitting today, they are being quite  
5 determined about this right now. Any chance you are available to  
6 give me some direction on this right now?"

7 There's a notation, "Chisholm - 2 loans; Welch - 1  
8 loan."

9 Q. Now, first, Special Agent Turner, it says these are not in  
10 FICS. What is FICS?

11 A. FICS is the servicing system at TBW.

12 Q. And there's a reference to "Welch - 1 loan." Are you able to  
13 determine from this e-mail string what Welch loan Ms. Brown is  
14 referring to?

15 A. Yes. If I look farther back in the e-mail, if you go back  
16 another page, it refers to Loan No. 477907, which is No. 3 on the  
17 summary sheet I had prepared.

18 Q. Now, Special Agent Turner, if you could just read up this  
19 e-mail, starting again, please, with the bottom of page 2. The  
20 e-mail from Mr. Farkas to Ms. Brown?

21 A. Okay. I'll continue here. This is now Lee talking to  
22 Desiree: "Ask them as a personal favor to me if they can wait  
23 until I get back. This is silly."

24 Desiree then responds to Lee: "Okay. But they are  
25 going to want to know why. They are being very suspicious today,

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1 wanting to know if they are 'real' loans."

2 Q. Lee then responding to Desiree: "I will call them if  
3 necessary. Tell them I am begging them to let this be until I get  
4 back. I am trying really hard to not deal with their crap the  
5 whole time I am here. If I don't come back with a renewed vigor,  
6 we will never get out of this mess."

7 Desiree responds to Lee --

8 MR. CUMMINGS: Wait, you didn't finish.

9 THE WITNESS: Oh, I didn't? Oh, yeah, you're right.

10 Thank you, Mr. Cummings. "A favor is what I want."

11 That is still continued, that's Lee talking to Desiree.

12 Now we're on to Desiree talking to Lee: "Okay. I  
13 tried. Cathie wants to know if they are real or not. If you can  
14 tell me yes, she will deal with it when you get back. Otherwise,  
15 she wants you to call her."

16 BY MR. NATHANSON:

17 Q. Let me stop you there, Special Agent Turner. So based on  
18 this e-mail from Desiree to Lee, in what instance is Cathie -- and  
19 is that Cathie Kissick as far as you understand?

20 A. Yes.

21 Q. In what instance does Cathie want Mr. Farkas to contact her?

22 A. If they're not real.

23 Q. And what does Mr. Farkas respond at the bottom of page 1?

24 A. "I will call her. Those bitches aren't happy unless they  
25 f\_\_k up every single day of my life. I have spoken to her about

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1 nothing every day since I left town. If I lose my mind, she can  
2 have the credit."

3 Q. And if we could just skip up to the middle of page 1, what  
4 does Mr. Farkas respond to Ms. Brown at 2 p.m.?

5 A. This is Lee responding to Desiree: "I spoke with Cathie.  
6 All is well."

7 Q. Special Agent, I want to turn your attention now to the loans  
8 you've identified as 4 through 7 on your summary chart.

9 A. Yes.

10 Q. Could you tell the jury, please, what you determined are  
11 about these four loans?

12 A. I discovered that -- in the investigation, we discovered that  
13 four loans were taken out in the name of Raymond Dragani for four  
14 pieces of property on NE 18th Street, in Fort Lauderdale, Florida.  
15 I also discovered that Thunderflower, which is a Farkas-owned  
16 entity, purchased these four properties and a business from  
17 Dragani for \$1,285,000 with cash on the same day these loans were  
18 originated in Dragani's name.

19 Q. And what were the total proceeds from these four loans?

20 A. \$1,260,000.

21 Q. Okay. And who is the purchaser of these four properties in  
22 the business?

23 A. The purchaser of the four properties?

24 Q. Yes, please.

25 A. The purchaser of the four properties was Thunderflower.

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1 Q. And can you explain for the jury, please, what exactly is  
2 Thunderflower?

3 A. I know Thunderflower to be an entity owned by Lee Farkas that  
4 invests in bars.

5 Q. Now, what, if anything, were you able to determine about  
6 whether any payments were made on these four loans?

7 A. These four loans were, in fact, in the FICS, in the servicing  
8 system, and there were no loan payments that were made in the  
9 servicing system.

10 Q. And again, your chart indicates that these four loans are on  
11 Colonial AOT. What does that mean?

12 A. Again, that means that in August 2009, these loans were  
13 listed on the Colonial AOT facility when everything collapsed in  
14 August 2009.

15 Q. Special Agent Turner, I'd like to pass you now what we've  
16 marked as Government's Exhibit 19-12, please.

17 THE COURT: Any objection?

18 MR. CUMMINGS: No objection.

19 THE COURT: All right, they're in.

20 (Government's Exhibit No. 19-12 was received in  
21 evidence.)

22 BY MR. NATHANSON:

23 Q. Special Agent Turner, do you recognize 19-12?

24 A. I do.

25 Q. This is an e-mail string. Who's the e-mail string between?

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1 A. Lee Farkas and Melissa Long.

2 Q. Who is Melissa Long?

3 A. Melissa Long was a post-closing manager for TBW.

4 Q. Now, going to the second page of this e-mail, sort of the  
5 second exchange from the top, an e-mail from Ms. Long to Lee  
6 Farkas at 17:00:01, do you see that?

7 A. I do.

8 Q. What does Ms. Long tell Mr. Farkas?

9 A. What does Ms. Long tell Mr. Farkas?

10 Q. Yes.

11 A. Ms. Long says, "I got the notes. Can they be sold, or should  
12 I mark the system for them not to be sold?"

13 Q. And what does Mr. Farkas respond?

14 A. "Not to sell."

15 Q. And from this e-mail, can you determine what notes Ms. Long  
16 and Mr. Farkas are referring to?

17 A. Yes. You look further back in the e-mail exchange, there's  
18 four -- well, there's eight loan numbers listed, four of which are  
19 the Dragani loans, which are Nos. 4 through 7 on the summary  
20 sheet.

21 Q. Special Agent Turner, I want to turn your attention now to  
22 the third group of loans, what you numbered 8 through 11 on your  
23 summary chart. What did your investigation determine about these  
24 four loans?

25 A. The investigation determined that four loans were taken out,

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1 three in the name of Lee Farkas, one in the name of Benjamin  
2 Charles, on or about -- excuse me, on August 16, 2004. The first  
3 piece of property, Loan No. 8 denoted on the sheet, 1123 Soundview  
4 Trail, was purchased by Charles N. Farkas for \$1,300,000 on August  
5 16, 2004. The second piece of property, 1124 Soundview Trail,  
6 neither Farkas or Charles ever had any ownership in that piece of  
7 property. The third loan was for 1125 Soundview Trail, and again,  
8 neither Farkas nor Charles had ever had any ownership in that  
9 property. The last piece of property, which was 1126 Soundview  
10 Trail, does not exist.

11 Q. And what were the total proceeds from these four loans?

12 A. \$1,333,333.

13 Q. Special Agent Turner, who is Ben Charles?

14 A. Ben Charles is a personal associate of Lee Farkas.

15 Q. And what, if anything, were you able to determine about  
16 whether payments were made on any of these four loans?

17 A. The piece of property I discussed, 1123 Soundview Trail,  
18 there were regular loan payments being made on that loan. The  
19 other three, 9, 10, and 11 denoted on the sheet, they were in the  
20 servicing system, there were no loan payments recorded in the  
21 servicing system.

22 Q. And again, for these loans, you designated these "On Colonial  
23 AOT." What does that mean?

24 A. Again, in 2009, when everything collapsed, these four loans  
25 were on the Colonial AOT facility.

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1 Q. I'd like to turn your attention next to what we've marked as  
2 Government Exhibit 19-34, please.

3 THE COURT: Any objection?

4 MR. CUMMINGS: One moment, Your Honor.

5 No objection.

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

7 (Government's Exhibit No. 19-34 was received in  
8 evidence.)

9 BY MR. NATHANSON:

10 Q. Do you recognize this document, sir?

11 A. I do, yes.

12 Q. And what is it?

13 A. It's a series of e-mail exchange that ends between Desiree  
14 and Lee Farkas.

15 Q. And the beginning of the e-mail -- or, I'm sorry, the first  
16 e-mail is sent by Michelle Roscoe. Who is Ms. Roscoe?

17 A. She is in the Funding Department, in the Wire Department at  
18 TBW.

19 Q. And in her first e-mail, what does she e-mail Desiree Brown?

20 A. She's sending Desiree Brown over Fed Wire numbers.

21 Q. What are Fed Wire numbers?

22 A. That's like a receipt that a wire had been sent in the Fed  
23 Wire system.

24 Q. And according to this e-mail, what are the Fed Wires  
25 associated with?

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1 A. They are associated with -- to Lee Farkas, and the date is  
2 August 16, 2004, and they match up on the summary sheet to the  
3 loans I have denoted Nos. 9, 10, and 11.

4 Q. Now, looking at page 1 of this e-mail, what additional  
5 information does Ms. Roscoe send Desiree Brown at 5:31 p.m.?

6 A. She says, "I need the Fed number for 612304, too, when it  
7 comes in."

8 Q. And does Ms. Roscoe send her that information as well?

9 A. She does, yes.

10 Q. And what, what does that information pertain to?

11 A. That pertains to Loan No. 8 on the spreadsheet for 1123  
12 Soundview Trail, and this one indicates in the e-mail that it was  
13 to Benjamin Charles.

14 Q. And who does Ms. Brown forward all of this information to?

15 A. Lee Farkas.

16 Q. Special Agent Turner, I'd like you to next look at what we've  
17 marked as Government's Exhibit 19-33.

18 THE COURT: Any objection?

19 MR. CUMMINGS: No objection, Your Honor.

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

21 (Government's Exhibit No. 19-33 was received in  
22 evidence.)

23 BY MR. NATHANSON:

24 Q. Do you recognize this document, Special Agent Turner?

25 A. I do, yes.

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1 Q. Okay. And what is it?

2 A. That's an e-mail exchange between Lee Farkas and Nathan  
3 Sands.

4 Q. Who is Nathan Sands?

5 A. Nathan Sands was a manager in the Servicing Department at  
6 TBW.

7 Q. And what does Mr. Farkas e-mail Mr. Sands on 9:08 on the 19th  
8 of August, 2004?

9 A. It says, "Nathan, add the following loans to the list of 'not  
10 servicing.'" And the three loan numbers are "623426, 623420,  
11 623425. Thanks."

12 Q. Do you recognize these loan numbers?

13 A. I do, yes.

14 Q. And what are they?

15 A. They are the same loan numbers as Loan Nos. 9, 10, and 11 on  
16 the summary sheet.

17 Q. What does it mean for a loan to be added to the list of "not  
18 servicing"?

19 A. If the loans are not serviced, they're not in the TBW  
20 servicing system, and nobody's going to be looking for a monthly  
21 check.

22 Q. Lastly, Special Agent Turner, I'd like to turn your attention  
23 to your final grouping of loans, what you've numbered 12 through  
24 18 on your summary chart. Could you tell us, please, what your  
25 investigation determined about these loans?

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1 A. Yes. The investigation determined that seven loans were  
2 taken out in the amount of \$382,000 for each on properties that  
3 didn't exist, and then the proceeds from those loans were used to  
4 make a payment for the Farkas jet.

5 Q. And what was the total amount of the proceeds?

6 A. \$2,674,000.

7 Q. And you said the property didn't exist. Does something  
8 actually -- is there anything at 4870 SW 63rd Loop, in Ocala,  
9 Florida?

10 A. Yes. At 4870 SW 63rd Loop, there is a small clubhouse for,  
11 like, a homeowners association. When I said they don't exist,  
12 Units -- Unit A, Unit B, Unit C and D through Unit G, the units do  
13 not exist.

14 Q. Did Mr. Farkas have any ownership of this community  
15 clubhouse?

16 A. He does not.

17 Q. What, if anything, were you able to determine about whether  
18 payments were ever made on any of these loans?

19 A. These loans were not in the servicing system, and there was  
20 no records of any payments.

21 Q. And were you able to determine how these loans were funded?

22 A. These loans were be initially fund on the Washington Mutual  
23 flex line, and then they were eventually paid off with a Colonial  
24 working capital draw.

25 Q. Special Agent Turner, I'd like you to look next at what we've

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1 marked as Government Exhibit 19-19.

2 THE COURT: Any objection, Mr. Cummings?

3 MR. CUMMINGS: No objection, Your Honor.

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

5 (Government's Exhibit No. 19-19 was received in  
6 evidence.)

7 BY MR. NATHANSON:

8 Q. Special Agent Turner, do you recognize this document?

9 A. I do, yes.

10 Q. And if we could focus first on the second page of the  
11 exhibit, it appears to be an e-mail from Desiree Brown to Lee  
12 Farkas on December 4, 2006. What is Ms. Brown telling Mr. Farkas?

13 A. The subject is "BTW," and Desiree says to Lee, "We have some  
14 other items to clear up this week as well, condos and jets."

15 Q. And focusing next on the bottom of the first page of that  
16 exhibit, what does Mr. Farkas respond to Ms. Brown?

17 A. "Condos and jets need notes. We will do them Wednesday when  
18 I am in the Atlanta office. Do they have loan numbers?"

19 Q. And what does Ms. Brown respond?

20 A. "Yes, they have loan numbers and addresses, etc."

21 Q. And what does Mr. Farkas respond to that?

22 A. "Send. I will do docs on Wednesday."

23 Q. And then finally at the top, what does Ms. Brown send to Lee  
24 Farkas?

25 A. "This should be what you need for the WAMU loans."

Turner - Direct

1268

1 Q. And is Ms. Brown referring to an attachment to that e-mail?

2 A. She is.

3 Q. If we could turn to page 3 of the exhibit, is this the  
4 attachment that accompanied that e-mail?

5 A. It is.

6 Q. And what do we find on that attachment?

7 A. On the attachment, there are, there are eight loans listed on  
8 the attachment, seven of which are Loans No. 12 through 18 that  
9 are listed on the summary sheet I prepared.

10 Q. And does this spreadsheet include the loan numbers for these  
11 loans?

12 A. It does, yes. The first column is the loan numbers.

13 Q. Next, Special Agent Turner, we'd like you to look at what's  
14 been marked as Government's Exhibit 19-51.

15 THE COURT: Is there an objection to this?

16 MR. CUMMINGS: I need a moment, Your Honor.

17 No objection.

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

19 (Government's Exhibit No. 19-51 was received in  
20 evidence.)

21 BY MR. NATHANSON:

22 Q. Special Agent Turner, do you recognize page 1 of this  
23 exhibit?

24 A. I do.

25 Q. And what is it?

Turner - Direct

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1 A. This is an e-mail exchange that begins between Lee Farkas and  
2 Heather Abernathy, and then it becomes an exchange between Lee  
3 Farkas and Scott Proctor.

4 Q. Who is Scott Proctor?

5 A. He was an administrative assistant for Lee Farkas.

6 Q. And this e-mail is dated December 11, 2006, correct?

7 A. Yes, it is.

8 Q. This is one week after the e-mail we just looked at?

9 A. It is.

10 Q. What does Mr. Farkas tell Mr. Proctor?

11 A. He says, "We need to print these out ASAP."

12 Q. And are there attachments that came along with this e-mail?

13 A. There are. There are eight attachments.

14 Q. I'd like to turn your attention to I believe what's page 8 of  
15 this exhibit. It's the first page of a note for 4870 SW 63rd  
16 Loop, Unit A.

17 A. I have it.

18 Q. And what is this document?

19 A. This is a promissory note for 4870 SW 63rd Loop, Unit A,  
20 Ocala, Florida, dated November 30, 2006.

21 Q. And what's the amount of this note?

22 A. \$382,000.

23 Q. And if you could please turn to page 3 of the note? Whose  
24 name appears as the borrower?

25 A. Lee Farkas.

Turner - Direct

1270

1 Q. Now, Special Agent Turner, are the other attachments to this  
2 e-mail identical notes for Units B through G?

3 A. Yes. There are for the different units as well, but, of  
4 course, there's an additional document as well.

5 Q. Okay. So there are seven notes for the seven properties that  
6 you've identified, 12 through 18, correct?

7 A. Plus an additional document, yes.

8 Q. Next, Special Agent Turner, I'd like you to look at what  
9 we've marked as Government Exhibit 19-53.

10 THE COURT: Any objection?

11 MR. CUMMINGS: No, Your Honor.

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

13 (Government's Exhibit No. 19-53 was received in  
14 evidence.)

15 BY MR. NATHANSON:

16 Q. Do you recognize this document, sir?

17 A. I do, yes.

18 Q. What is it?

19 A. It's an e-mail exchange with various people, ultimately  
20 ending in an exchange between Desiree Brown and Delton de Armas.

21 Q. And on page 1, in the middle of the e-mail, what does Mr. --  
22 well, first of all, who is Delton de Armas?

23 A. Delton de Armas was the chief financial officer for TBW.

24 Q. And what does he e-mail Ms. Brown in the middle of that  
25 e-mail?

Turner - Direct

1271

1 A. This is Delton talking to Desiree: "Do we have a plan for  
2 these? Do you need me to do anything?"

3 Q. And based on the rest of this e-mail, what is Mr. de Armas  
4 referring to?

5 A. He's referring to the seven notes that I have denoted on my  
6 summary sheet as Loan Nos. 12 through 18.

7 Q. And that's seven loans for \$382,000 each, correct?

8 A. It is.

9 Q. What does Ms. Brown respond to Mr. de Armas at the top of the  
10 first page of that exhibit?

11 A. Desiree talking to Delton: "I already discussed with Lee  
12 first thing this morning. We have a plan!"

13 Q. And what ultimately happened with these loans that were on  
14 the WAMU line? How were they funded?

15 A. They were funded by money from a Colonial working capital  
16 draw.

17 Q. Special Agent Turner, I'd like you to next look at what we've  
18 marked as Government Exhibit 19-55.

19 MR. CUMMINGS: No objection, Your Honor.

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

21 (Government's Exhibit No. 19-55 was received in  
22 evidence.)

23 BY MR. NATHANSON:

24 Q. Do you recognize this document, Special Agent Turner?

25 A. I do, yes.

Turner - Direct

1272

1 Q. What is this?

2 A. This is an e-mail exchange that begins between between Lee  
3 Farkas and Desiree Brown and eventually is forwarded on to Barbara  
4 Sconzo at Falcon Jet.

5 Q. What is the date of this e-mail?

6 A. November 30, 2006.

7 Q. And that's the same date as the seven loans that we've been  
8 discussing, correct?

9 A. It is.

10 Q. What is Mr. Farkas -- well, first of all, who is Barbara  
11 Sconzo?

12 A. Barbara Sconzo is someone who works with Falcon Jet.

13 Q. Do you know what Falcon Jet is?

14 A. Falcon Jet is the manufacturer of the Dassault Falcon Jet.

15 Q. And what does Mr. Farkas tell Ms. Sconzo at the top of the  
16 e-mail?

17 A. The subject is "Wire Confirmations."

18 "Barbara, below are the Fed reference numbers for the  
19 wires we sent today. This is for Contract No. 2000-06-06261 DFJ.  
20 Thanks."

21 Q. And what is the wire information that Mr. Farkas is  
22 forwarding to Ms. Sconzo at Falcon Jet?

23 A. It's seven wires, each for \$382,000.

24 Q. Next, Special Agent, I'd like you to take a look at what  
25 we've marked as Government Exhibit 19-57.

Turner - Direct

1273

1 THE COURT: Any objection?

2 MR. NATHANSON: And, Your Honor, we'll be focusing on  
3 page 8 of this exhibit.

4 THE COURT: Hold on a second. We have to see if there's  
5 an objection.

6 MR. NATHANSON: Just to direct Mr. Cummings' attention.

7 MR. CUMMINGS: No objection.

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

9 (Government's Exhibit No. 19-57 was received in  
10 evidence.)

11 MR. NATHANSON: And if we could pull up page 8, please?

12 Q. Special Agent Turner, do you recognize page 8 of this  
13 exhibit?

14 A. I do, yes.

15 Q. What is page 8?

16 A. Excuse me, this is an excerpt from TBW's check register.

17 Q. And are the seven loans that we've been discussing, the seven  
18 loans on Units A through G of this pool house address, do they  
19 appear on this page?

20 A. They do, yes.

21 Q. Okay. What information is provided for the seven loans?

22 A. The check register shows seven disbursements for 382,000 each  
23 on November 30, 2006; the vendor named is listed as Dassault; and  
24 under the invoice number for those transactions, the invoice  
25 number lists the loan numbers associated with Loan Nos. 12 through

Turner - Direct

1274

1 18 on the summary spreadsheet.

2 Q. And lastly, Special Agent Turner, I'd like you to take a look  
3 at what we've marked Government Exhibit 19-105.

4 THE COURT: Any objection?

5 Mr. Cummings, any objection?

6 MR. CUMMINGS: I'm reviewing the document, Your Honor,  
7 for the first time.

8 No objection.

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

10 (Government's Exhibit No. 19-105 was received in  
11 evidence.)

12 BY MR. NATHANSON:

13 Q. Special Agent Turner, I'd like you to focus on page 1 of this  
14 exhibit, please. Do you recognize this document?

15 A. I do, yes.

16 Q. What is it?

17 A. This is a Dassault Falcon invoice.

18 Q. Who is this invoice sent to?

19 A. The invoice is sent to Nada Airlines, in Ocala, Florida,  
20 Attention: Mr. Lee Farkas.

21 Q. What is Nada Airlines?

22 A. Nada Airlines is the airline that was owned by Lee that also  
23 owned the jet.

24 Q. And is there an invoice number or purchase agreement number  
25 that's referenced at the top of this document?

Turner - Direct

1275

1 A. There is, yes. Purchase Agreement No. 2000-06-06261.

2 Q. And is this the same invoice number that was on the e-mail  
3 that Mr. Farkas sent to Ms. Sconzo at Falcon Jet?

4 A. Yes.

5 Q. What kind of jet is Mr. Farkas buying according to this  
6 document?

7 A. One new Falcon 2000DX aircraft.

8 Q. And what is the total purchase price of this aircraft?

9 A. \$28,097,800.

10 Q. Does this invoice show a payment on November 30, 2006?

11 A. It does.

12 Q. How much is that payment?

13 A. \$2,674,000.

14 Q. And what significance, if any, is there to that figure?

15 A. That date -- the figure? The figure is the same amount if  
16 you total up the 382,000 -- the seven 382,000 loans, that comes  
17 out to \$2,674.

18 Q. And that payment --

19 A. I'm sorry, \$2,674,000.

20 Q. And that figure matches the check register that you've  
21 reviewed as well as the e-mail that Mr. Farkas sent to Ms. Sconzo,  
22 correct?

23 A. It all matches.

24 MR. NATHANSON: One moment, Your Honor.

25 THE COURT: All right.

Turner - Direct

1276

1 BY MR. NATHANSON:

2 Q. And just to be clear, Special Agent Turner, these seven loans  
3 that we are discussing that, that lead to the \$2.674 million in  
4 proceeds, these are the seven loans on the seven units of the pool  
5 house property as well, correct?

6 A. The purported seven units, yes.

7 MR. NATHANSON: Thank you, Your Honor. No further  
8 questions.

9 THE COURT: Just so I'm clear, there are no units at  
10 all?

11 THE WITNESS: I've actually been there, Your Honor.  
12 There are no units. It's a pool house for a home owners  
13 association, and there are no units there.

14 THE COURT: What is the association made up of? Houses  
15 or --

16 THE WITNESS: Houses, yes.

17 THE COURT: And none of them correspond to those  
18 addresses?

19 THE WITNESS: The actual address that's on the face of  
20 the, of the homeowners association, the kind of clubhouse/  
21 community house, that's where it says, sorry, 4870 on there. The  
22 other houses have other addresses near to 4870.

23 THE COURT: All right. Since you're finished with the  
24 direct examination of the agent, it's a good time to take the  
25 afternoon break.

Turner - Direct

1277

1           And, ladies and gentlemen, we did tell them to fix the  
2 air. I don't think they've done much. I'd suggest tomorrow  
3 everybody bring a sweater. We'll do the best we can, but between  
4 it being too hot and too cold, it's better for it to be too cold,  
5 all right?

6           We'll recess court until 10 after.

7           (Recess from 3:55 p.m., until 4:10 p.m.)

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Turner - Direct

1278

1           NOTE: The case continues in the absence of the jury but  
2 in the presence of the defendant at 4:15 p.m. as follows:

3 JURY OUT

4           THE COURT: Mr. Stokes, there is an issue before the  
5 jury comes in?

6           MR. STOKES: Yes, just briefly, Your Honor.

7           THE COURT: Yes.

8           MR. STOKES: On Government's Exhibits 19-74, 19-84 and  
9 19-94, the issue we approached the bench on, those notes, I think  
10 there was some confusion, Your Honor, and it is certainly  
11 understandable, there is a lot of documents in the case.

12           Mr. Cummings, we have talked to defense about this, Mr.  
13 Cummings had previously indicated that the defense was going to  
14 stipulate on March 31, at 9:05 in the morning in an e-mail, to all  
15 of our business record certifications. We actually have a copy of  
16 the certifications here, Your Honor, and we are happy to pass them  
17 up and have them made part of the record.

18           I don't know that there is actually any dispute about  
19 the fact that we had 902(11) certifications for these, for those  
20 three as well as almost all of the other documents we have  
21 introduced.

22           THE COURT: All right. Mr. Cummings, do you agree that  
23 such certifications are in the record, or at least the Government  
24 has them?

25           MR. CUMMINGS: We do.

S. Turner - Cross

1279

1 THE COURT: So, based on that then, the objections to  
2 those three exhibits are withdrawn?

3 MR. CUMMINGS: They are withdrawn, that's correct, Your  
4 Honor. Part of the problem, Your Honor, was again just seeing  
5 documents for the first time, it may have been pulled together,  
6 but there are thousand documents we have gotten.

7 THE COURT: I totally understand that. So, that's fine.  
8 Just so the record is clear then--

9 MR. CUMMINGS: Down from 61 million, Your Honor, but it  
10 is still a lot.

11 THE COURT: Very good. All right, that's it then.

12 All right. Let's have the jury come back in and we will  
13 start the cross-examination.

14 NOTE: At this point the jury returns to the courtroom;  
15 whereupon the case continues as follows:

16 JURY IN

17 THE COURT: I see you all are pretty much staying in the  
18 same seat. Remember, you really can change. Nobody owns a  
19 particular chair.

20 All right, we are ready to start the cross-examination.  
21 Mr. Cummings.

22 MR. CUMMINGS: Thank you, Your Honor. If it please the  
23 Court.

24 CROSS-EXAMINATION

25 BY MR. CUMMINGS:

S. Turner - Cross

1280

1 Q. Good afternoon, Agent Turner.

2 A. Mr. Cummings, how are you doing?

3 Q. I am doing well, sir. You are the lead agent in this case,  
4 is that correct?

5 A. I would say that, yes.

6 Q. The FBI is basically the lead agency in the case?

7 A. I think all the agencies would see that differently. But we  
8 have all worked, we have all worked together on it, yes, sir.

9 Q. You had SIG TARP, right?

10 A. Yes.

11 Q. FDIC?

12 A. Yes.

13 Q. Did you have the IRS?

14 A. For some of it, yes.

15 Q. Did you have HUD OIG?

16 A. We did.

17 Q. Office of Inspector General?

18 A. Yes, we did, sir.

19 Q. In fact, you were in charge of the arrest of Mr. Farkas in,  
20 on June 15, 2010, were you?

21 A. Yes.

22 Q. Showed up with 14 of your best, closest friends, did you?

23 MR. NATHANSON: Objection, Your Honor, this is far  
24 beyond the scope of direct.

25 THE COURT: Well, it may be, but it is cross. So, I am

S. Turner - Cross

1281

1 going to give a little leeway on this.

2           Go ahead, Mr. Cummings. Overruled.

3 A. I was there, I was in charge of it. And, yes, there was  
4 quite a few of us there.

5 BY MR. CUMMINGS: (Continuing)

6 Q. Was Mr. Farkas known to be a dangerous person?

7 A. Not really, no.

8 Q. It took 14 people with guns open, out to arrest one person in  
9 Ocala, Florida?

10 A. As I remember, there was only one gun that was out.

11 Q. Only one gun?

12 A. Correct.

13 Q. But you had backup?

14 A. We had some backup, yes.

15 Q. Did you need that much backup for Mr. Farkas?

16 A. As far as--

17 Q. Arresting him, sir, in open daylight there just outside his  
18 health club?

19 A. Well, the way we have always done things at the FBI is you  
20 overwhelm so there is no issues.

21 Q. A show of force?

22 A. I don't know if it is a show of force, but it's a, you know,  
23 make sure that, hey, if you are going to take a second to decide,  
24 hey, am I going to do something here, and you look around and you  
25 see ten people, the answer is probably no.

S. Turner - Cross

1282

1 Q. If you see 14 people, it is even hell no, right?

2 A. Maybe, yeah.

3 Q. Did Mr. Farkas offer any resistance to you and your other 14  
4 or--

5 A. He did not. He was very cooperative.

6 Q. You had been following Mr. Farkas for some time, you knew  
7 exactly what his daily routine was, did you not?

8 A. No, not really. As far as the arrest day went? The prior  
9 day we had followed him.

10 Q. You knew he went to that health club on a regular basis?

11 A. We had heard that from some sources, yes.

12 Q. And the day before you checked and that is exactly what he  
13 was doing, correct?

14 A. No, we didn't check the health club the day before.

15 Q. Okay. You watched him go in the health club and then waited  
16 until he came out, is that right?

17 A. We did, yes.

18 Q. Now, on some of these exhibits that you talked about today on  
19 what you describe as the Lee loans, is that your--

20 A. I did, yes.

21 Q. Is that what you call them?

22 A. Yes.

23 Q. Okay. You suggested that they showed up, on your summary  
24 sheet you suggested these showed up on AOT, correct?

25 A. Numbers 1 through 11 did show up on AOT, yes.

S. Turner - Cross

1283

1 Q. Was AOT in existence in October of 2003?

2 A. No, I believe it was '04, but I am not exactly positive.

3 Q. Do you know how those loans would have gotten on AOT?

4 A. When they first went over to AOT?

5 Q. Did you follow the progression? Do you know how they went  
6 over there?

7 A. The initial move to AOT? I don't think I ever saw that.

8 Q. Okay. Did you just see these notes on some kind of, these  
9 loans on some kind of a list with regard to AOT?

10 A. Well, as far as connecting them to AOT, there is that list  
11 that goes out every night. There was the loan level export that  
12 says, hey, these are the loans that are AOT.

13 So, of course, what I am saying is on the final list,  
14 they were in fact on there.

15 Q. The final list on what date?

16 A. Well, we had the source of that loan level export, we could  
17 run it from the database. So, really we had the database, we  
18 could run it at any time.

19 But I think the last loan level export was, and I am  
20 going to be off by a few days here, was roughly the 30th of July.  
21 But that's an estimate though.

22 Q. Did you yourself look at that list before you prepared this  
23 summary sheet?

24 A. I did, yes.

25 Q. And those loans were still showing up there at 1 through 3,

S. Turner - Cross

1284

1 still showing up on the AOT?

2 A. They were, yes.

3 Q. Now, did you also see that these loans had a notation on some  
4 of them of do not sell, being some similar annotation?

5 A. Correct.

6 Q. Did you know what that meant?

7 A. Yes, I do.

8 Q. What does that mean?

9 A. It means do not sell them to a third party.

10 Q. Right. And did you know why that moniker was adopted for  
11 some of these personal loans of Mr. Farkas?

12 A. I am not exactly sure how it was adopted, but I know the  
13 different types of loans it was applied to.

14 Q. But did you know that when he was doing, when TBW was doing  
15 business with Fannie Mae, some of Mr. Farkas' loans, personal  
16 loans did get sold to Fannie Mae by mistake and that caused Fannie  
17 Mae to withdraw their privileges to TBW?

18 A. I have heard that, yes.

19 Q. And so, the do not sell moniker was adopted to make sure that  
20 nobody made that mistake again, is that not correct?

21 A. Again, I don't know how it was adopted.

22 Q. Okay. Well, you talked to a lot of people in this  
23 investigation, and no one ever told you that?

24 A. I don't think I ever asked that question, how it came about.

25 Q. Okay. You weren't curious about that?

S. Turner - Cross

1285

1 A. I am now.

2 Q. You are now. I am glad we piqued your curiosity.

3 All right. Now, these loans that were taken off the  
4 working capital draw, do you remember those?

5 A. I do, yes, loans 12 through 18.

6 Q. Those were, that was TBW's cash to do with it as it pleased,  
7 correct?

8 A. The working capital cash?

9 Q. Yes.

10 A. It is, yes.

11 Q. And this was a company Mr. Farkas owned all or most of the  
12 stock, correct?

13 A. I am sorry, say that one more time.

14 Q. Mr. Farkas owned all or most of the stock in this  
15 corporation, correct?

16 A. TBW, yes, he did.

17 Q. And do you know that on the financial sheets-- You reviewed  
18 the financial statements of TBW, have you not?

19 A. I did.

20 Q. And they show that there are loans to shareholders, correct?

21 A. Yes.

22 Q. So, these loans show up as loans due from shareholders?

23 A. These individual loans here?

24 Q. Yes.

25 A. They do not.

S. Turner - Cross

1286

1 Q. Did you check to see?

2 A. Yes.

3 Q. Well, did you look at the financial statement to see how they  
4 designate the loans that are out there due to shareholders, due  
5 from shareholders, excuse me?

6 A. The loans to due from shareholders?

7 Q. Loans due from shareholders.

8 A. Loans due--

9 Q. Money spent on one or another items at the expense of the  
10 shareholder, Mr. Farkas.

11 A. Right, money going out from Mr. Farkas was cash--

12 Q. Money going out from TBW and charged to him as a debt to him,  
13 by him to the corporation that he owned.

14 A. Right, that would be the due from shareholder account.

15 Q. Right.

16 A. Correct.

17 Q. And did you see whether or not they did or did not itemize  
18 all the loans that made up the summary number that shows up on the  
19 financial statement?

20 A. Every single line item, every single loan associated with Mr.  
21 Farkas, did I check every one? No.

22 Q. No. Do you know if on the financial statement if they  
23 itemized the loans in the column called Loans Due From  
24 Shareholder?

25 A. I am not exactly sure I understand the question. You are

S. Turner - Cross

1287

1 asking-- Are you asking if loans 12 through 18 were captured in  
2 the due from shareholder account?

3 Q. Captured in the totals shown on the financial statement as  
4 being Loans Due From Shareholder?

5 A. Well, I guess I don't know whether the due from shareholder  
6 account rolls up individually to that line item you are talking  
7 about in the financial statements. I would assume it does, but  
8 you are right, I do not know if it does.

9 Q. Okay. And in the exhibit, I don't remember exactly which one  
10 it was-- Well, here it is, 19-105, you identified one of the  
11 advanced payments for the jet, the November 30, 2006 advance, the  
12 2,674,000 as being the ones that made up, that came from those  
13 seven loans of \$382,000, correct?

14 A. I did, correct.

15 Q. There are several other payments, almost \$15 million, that  
16 are shown as being paid prior to the actual purchase date. Do you  
17 know where they came from?

18 A. The ones prior to the 2.6 million?

19 Q. No, the ones prior to the balance due upon delivery of  
20 \$10,715,000. Do you know-- There is shown a purchase price of  
21 \$28,000,097, total cost of the aircraft in 2008, correct?

22 A. Correct, yes.

23 Q. And there are credits against that for \$17,382,000, showing a  
24 balance now due when he picks up the plane of \$10 million,  
25 correct?

S. Turner - Cross

1288

1 A. I see it, correct.

2 Q. My question is, do you know about where the other 15, or not  
3 quite \$15 million of prior payments came from?

4 A. I did, I was able to locate the two smaller ones, the 500,000  
5 and the 837,000.

6 Q. Right.

7 A. We did see them. And I don't remember what statement it was,  
8 but it was money going out of TBW.

9 The other two, the larger ones, the 5.3 million and the  
10 eight million, I did not find.

11 Q. Okay. Now, and this plane was a plane that was leased to  
12 TBW, wasn't it?

13 A. I believe it was NADA Airlines.

14 Q. NADA Airlines owned the plane and leased it to TBW, correct?

15 A. I guess I am not sure of that fact.

16 Q. Okay. Did there come a time when NADA ever sold the airline  
17 and leased it back from a finance company?

18 A. I am aware of that, yes.

19 Q. So, TBW then got some of that cash back to use for other  
20 purposes?

21 A. I would imagine so.

22 MR. CUMMINGS: Okay. I have no further questions.

23 Thank you.

24 THE COURT: Any redirect?

25 MR. NATHANSON: Nothing, Your Honor.

1 THE COURT: All right. Agent, you may go back to your  
2 seat.

3 NOTE: The witness stood down.

4 THE COURT: Your next witness.

5 MR. CONNOLLY: The United States calls Sam Herren Jr.,  
6 Your Honor.

7 THE COURT: All right.

8 MS. KARINSHAK: Mr. Connolly, can we--

9 NOTE: A side-bar discussion is had between the Court  
10 and counsel out of the hearing of the jury as follows:

11 AT SIDE BAR

12 MS. KARINSHAK: I am sorry, Judge, apparently I didn't  
13 say it loud enough.

14 Your Honor, it is my understanding that this next  
15 witness, Mr. Samuel Wesley Herren, is going to talk about units,  
16 that there were no units A through G at 4870 Southwest 63rd Loop,  
17 Ocala, Florida.

18 Your Honor, we just heard from Agent Turner the summary  
19 chart with respect to those same units. So--

20 THE COURT: Well, if you will stipulate that there were  
21 no units, I don't think we need the witness.

22 Is that all he is testifying to.

23 MR. CONNOLLY: He is a five-minute witness, Your Honor.  
24 I am going to show him the pictures, see if he manages that, and  
25 no one else has ever owned them. I don't want there to be an

S.W. Herren, Jr. - Direct

1290

1 argument in closing that, you know, at some point previously there  
2 might have--

3 THE COURT: This is not worth the fuss. Let's just get  
4 the witness on and off.

5 MS. KARINSHAK: Thank you, Your Honor.

6 NOTE: The side-bar discussion is concluded; whereupon  
7 the case continues before the jury as follows:

8 BEFORE THE JURY

9 NOTE: The witness is duly affirmed.

10 SAMUEL W. HERREN, JR., called by counsel for the United  
11 States, first duly affirming, testifies and states:

12 DIRECT EXAMINATION

13 BY MR. CONNOLLY:

14 Q. Good afternoon, Mr. Herren. Would you please introduce  
15 yourself to the jury, and spell your name for the court reporter.

16 A. Samuel Wesley Herren, Jr. S-a-m-u-e-l W-e-s-l-e-y  
17 H-e-r-r-e-n, Jr.

18 Q. Mr. Herren, where do you live?

19 A. Ocala, Florida.

20 Q. Where do you work?

21 A. Property Management Consultants, that's my business.

22 Q. How long have you worked there?

23 A. Well, I started doing this in '87. Since about '91 we  
24 founded the business.

25 THE COURT: Go ahead, counsel, next question.

S.W. Herren, Jr. - Direct

1291

1 Q. I am sorry, I didn't know if he was still speaking.

2 A. No, I'm done. I think that was it.

3 Q. Sorry. So, about 20 years you have owned this company?

4 A. Yes, sir.

5 Q. Have you ever met the defendant, Lee Farkas?

6 A. I don't think so.

7 Q. Do you believe you have ever spoken to him?

8 A. No, sir.

9 Q. Are you familiar with a townhome community association known  
10 as Heathbrook Hills?

11 A. Yes, sir, we manage that.

12 Q. And that's your company manages that?

13 A. Yes, sir.

14 Q. Let me show you what has been marked as Government's  
15 Exhibit 19-58E, as in Edward.

16 A. Okay.

17 Q. Do you recognize that document, Mr. Herren?

18 A. Yes, sir.

19 Q. Is that a document that you provided to the Government?

20 A. Yes, sir. This is the Marion County Property Appraiser  
21 report that we use when we send out annual notices to the owners.

22 MR. CONNOLLY: Your Honor, at this time we would move  
23 into evidence 19-58E.

24 THE COURT: Any objection?

25 MS. KARINSHAK: Your Honor, there are a good deal of

S.W. Herren, Jr. - Direct

1292

1 marks on these. I am not sure where they came from.

2 BY MR. CONNOLLY: (Continuing)

3 Q. Mr. Herren, did you provide the markings on this document?

4 A. Yes, I did, yes, sir.

5 Q. Did you do that prior to coming into court?

6 A. Yes, sir. I gave it to the agent when they visited. The  
7 reason, being this is a multiuse development, there is a hotel  
8 there, and I just delineated the difference between what is the  
9 homeowners association and what the other properties are.

10 MS. KARINSHAK: No objection, Your Honor.

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

12 (Government's Exhibit No. 19-58E was received in evidence)

13 BY MR. CONNOLLY: (Continuing)

14 Q. Does that document list the property addresses the property  
15 addresses that are within the Heathbrook Hills community?

16 A. Yes, sir.

17 Q. Is the address 4870 Southwest 63rd Loop, Ocala, Florida,  
18 within that community?

19 A. Yes, sir.

20 Q. And is that a property address that you have been to and are  
21 familiar with?

22 A. Yes, sir.

23 Q. Let me show you next what has been marked as Government's  
24 Exhibit 19-58A, B and C.

25 THE COURT: A, B and C.

S.W. Herren, Jr. - Direct

1293

1 MS. KARINSHAK: No objection, Your Honor.

2 THE COURT: All right, all three are in.

3 (Government's Exhibit Nos. 19-58A, 19-58B and 19-58C were  
4 received in evidence)

5 BY MR. CONNOLLY: (Continuing)

6 Q. Mr. Herren, let's start with Government's Exhibit 19-58A.  
7 What is that a picture of?

8 A. That's a picture of the clubhouse.

9 Q. And what is the address of that clubhouse? I direct your  
10 attention to 19-58B.

11 A. Yes. 4870 Southwest 63rd Loop.

12 Q. And explain to the jurors what that clubhouse is.

13 A. To the left is a meeting room in this picture that I am  
14 looking at, and to the right is a gym, a small workout area.  
15 There is a small kitchen just inside those doors. And then there  
16 is a men's room and a women's room on the back and it overlooks  
17 the swimming pool.

18 Q. You have been to that property?

19 A. Yes, sir.

20 Q. It's property you manage?

21 A. Yes, sir.

22 Q. Who owns that building?

23 A. The Heathbrook Hills Homeowners Association.

24 Q. Approximately how long have they owned that building?

25 A. Since approximately 2006. The developer developed and handed

S.W. Herren, Jr. - Direct

1294

1 it over, and I signed those transmittal documents.

2 Q. So, you were at the signing over of this property?

3 A. Yes, sir.

4 Q. And who owned it prior to the homeowners association owning  
5 it?

6 A. The developer, I believe his name is Mr. Stern. He is out of  
7 Fort Lauderdale, I believe.

8 Q. And do you know if Mr. Stern has any affiliation with the  
9 defendant, Lee Farkas?

10 A. No, sir.

11 Q. Prior to this property being developed, what was it?

12 A. It was just open land.

13 Q. Were there any buildings or condos on this land prior to it  
14 being developed?

15 A. No, sir.

16 Q. Other than the builder and the association, have there been  
17 any other owners of this?

18 A. No, sir.

19 Q. Would you know that?

20 A. Yes.

21 Q. Why would you know that?

22 A. I sign all the estoppels.

23 Q. Are there any condo units in that building?

24 A. No, sir.

25 Q. Is that building subdivided in any way in units A, B, C, D,

S.W. Herren, Jr. - Cross

1295

1 E, F and G?

2 A. No, sir. It is just what you see there.

3 Q. Are you aware of anyone living in that building?

4 A. No, sir.

5 Q. Have you looked over the property records for the other homes  
6 in the Heathbrook Hills Homeowners Association?

7 A. Yes, sir.

8 Q. Does the defendant, Lee Farkas, own any properties within  
9 Heathbrook Hills?

10 A. No, sir.

11 MR. CONNOLLY: The Court's indulgence.

12 No further questions, Your Honor.

13 THE COURT: All right. Cross-examination.

14 CROSS-EXAMINATION

15 BY MS. KARINSHAK:

16 Q. Good afternoon, Mr. Herren.

17 A. Hi.

18 Q. My name is Zahra Karinshak, and I represent Mr. Farkas here  
19 today.

20 And I haven't talked to you or ever met with you before,  
21 have I?

22 A. No, ma'am.

23 Q. And I just want to make sure I am clear. Government's  
24 Exhibit 19-58E.

25 A. Yes, ma'am.

S.W. Herren, Jr. - Cross

1296

1 Q. You said you put those brackets on there before coming to  
2 court, is that right?

3 A. Yes, ma'am.

4 Q. And what was the purpose of the brackets?

5 A. I made it easier for the agents to identify where the  
6 homeowners association ownership was. Obviously the very top ones  
7 are not, but I wanted to give them a stopping point because this  
8 is a, the overall development has many different uses. It has a,  
9 as I said, a hotel, a restaurant, business frontage. There is a  
10 public shopping center in the front.

11 But the homeowners association itself within the gates,  
12 I just made a cutoff mark where that ends.

13 Q. So, basically your brackets are a whole big group, but you  
14 really are only talking about these three at the bottom, right?  
15 On page 2?

16 A. Well, the three at the bottom would be the ones that are  
17 pertinent to what I was requested to mark off, the clubhouse.

18 Q. Okay. Just to be clear, those last three listed on page 2 of  
19 Government's Exhibit 19-58 that are listed as 1-2389-201-000, and  
20 then the one underneath that, and the one underneath all say  
21 Heathbrook Hills Owners Association, correct?

22 A. Yes, ma'am.

23 Q. 4870 Southwest 63rd Loop, correct?

24 A. Yes, ma'am.

25 Q. And that's what we're talking about, right?

S.W. Herren, Jr. - Cross

1297

1 A. Right. There is one entry for 63rd Loop.

2 Q. Okay. And all these other ones are not relevant to what we  
3 are talking about today then, right?

4 A. No, ma'am.

5 Q. And that is a Marion County Property Appraisal document,  
6 correct?

7 A. Right. When the agents came by, I printed it off that day.  
8 We do updates every month.

9 Q. So, you printed this off?

10 A. Yes, ma'am.

11 Q. Okay. Now, I think what you were telling us on direct is  
12 that you manage Heathbrook Hills, correct?

13 A. Yes, ma'am.

14 Q. And these units are paid off, isn't that right?

15 A. The homes have been sold by the developer, and they are  
16 handed off to individual owners, yes. So, they have been  
17 transmitted to these owners.

18 Q. So, the owners may owe something on these individual units,  
19 correct?

20 A. I am sure they do. There is many mortgages.

21 Q. Okay. And the loans on these properties, they weren't due to  
22 Washington Mutual, were they?

23 A. Not that I am aware of, ma'am. I could certainly pull our  
24 files back at the office.

25 Q. Okay. But at this moment you are not aware of that?

S.W. Herren, Jr. - Cross

1298

1 A. No, ma'am.

2 Q. And you representing Heathbrook Hills Community Association,  
3 you've never gotten anything in the mail or heard from a bank  
4 representative indicating that your property was being used as  
5 collateral for a loan at Colonial?

6 A. No, ma'am.

7 Q. And no one has ever come to you and demanded payments from  
8 you for these loans, correct?

9 A. No, ma'am.

10 Q. And to the extent you are saying you own the property free  
11 and clear with no mortgage, you don't owe Mr. Farkas any money,  
12 right?

13 A. No, ma'am.

14 Q. And he doesn't owe you any money either, right?

15 A. No, ma'am.

16 Q. And you mentioned a Mr. Stern, correct?

17 A. Yes, ma'am, he was the developer, or he is the lead person in  
18 that development.

19 Q. And as far as you know, he is not associated with Mr. Farkas  
20 at all, correct?

21 A. Not that I am aware of, no, ma'am.

22 Q. And he doesn't owe Mr. Farkas any money on a mortgage,  
23 correct?

24 A. I would not be able to attest to that. I don't know.

25 Q. Okay. And likewise you wouldn't know if Mr. Farkas owned him

S.W. Herren, Jr. - Cross

1299

1 any money as well, correct?

2 A. No, ma'am.

3 MS. KARINSHAK: One moment please, Judge.

4 Nothing further, Judge.

5 THE COURT: All right. Does anybody expect to call Mr.  
6 Herren-- I assume there is no redirect?

7 MR. CONNOLLY: No redirect, Your Honor.

8 THE COURT: All right. He can be excused?

9 MS. KARINSHAK: Yes, Your Honor.

10 MR. CONNOLLY: Yes, Judge.

11 THE COURT: All right, Mr. Herren, that means you may  
12 now stay in court and watch the proceedings or you may leave, but  
13 you are not to discuss your testimony or anything you see or hear  
14 in the courtroom with any witness who has not yet testified.

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: Thank you. You are free to go.

17 NOTE: The witness stood down.

18 THE COURT: Your next witness.

19 MR. NATHANSON: Your Honor, before we call our next  
20 witness, we would ask if Mr. Wood could collect the summary charts  
21 back from the jurors.

22 THE COURT: Let's see get the witness in first.

23 MR. NATHANSON: Yes, Your Honor.

24 THE COURT: I will ask the jurors to pass the summaries  
25 down to the end.

M. Emig - Direct

1300

1 MR. NATHANSON: Yes, Your Honor. The United States  
2 calls Maureen Emig to the stand.

3 NOTE: The witness is duly affirmed.

4 MAUREEN EMIG, called by counsel for the United States,  
5 first duly affirming, testifies and states:

6 DIRECT EXAMINATION

7 BY MR. NATHANSON:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Would you please tell us your full name, and spell your last  
11 name for the court reporter.

12 A. Maureen Emig. E-m-i-g.

13 Q. And, ma'am, where do you currently reside?

14 A. Ocala, Florida.

15 Q. Could you please briefly describe your educational  
16 background.

17 A. I have a Bachelor's degree in economics and business from the  
18 College of St. Elizabeth in New Jersey. And I have an MBA from  
19 Virginia Tech, with a concentration in accounting and information  
20 systems.

21 Q. And how are you currently employed?

22 A. I am still employed by Taylor Bean & Whitaker.

23 Q. What is your title?

24 A. It is technically assistant controller at the moment.

25 Q. And how many employees does TBW currently have?

M. Emig - Direct

1301

1 A. Fewer than 20.

2 Q. Is TBW still in business?

3 A. It's in bankruptcy.

4 Q. What are you and the other TBW employees currently doing on a  
5 day-to-day basis?

6 A. We are working through the bankruptcy process. Typically I'm  
7 working on the monthly operating report to the bankruptcy court.  
8 We have been working on asset recovery. And we are looking into  
9 claims research.

10 Q. Now, prior to your current position, when did you first begin  
11 working for TBW?

12 A. December of 2004.

13 Q. And from December of 2004 up until let's say August of 2009,  
14 what was your job at TBW?

15 A. I worked in the accounting department in a variety of  
16 functions. I started out as a senior accountant doing financial  
17 reporting. Then I assumed some supervisory responsibilities for  
18 general accounting. And then I moved into more of an operations  
19 function handling staffing issues, system issues, system support  
20 and that type of thing.

21 Q. Now, and just briefly, Ms. Emig, how were you employed before  
22 you went to work for TBW?

23 A. My previous career was with Verizon Communications, and I  
24 worked there for 26 years in a number of locations in New Jersey  
25 and in Arlington and Falls Church, Virginia.

M. Emig - Direct

1302

1 Q. And was that in accounting as well?

2 A. Yes, it was primarily an accounting function.

3 Q. Now, Ms. Emig, as part of your accounting responsibilities at  
4 TBW, did you become familiar with something called the due from  
5 shareholder account?

6 A. Yes.

7 Q. Could you please describe for the jury what is the due from  
8 shareholder account?

9 A. These were expenditures that were made using TBW funds, but  
10 not necessarily for TBW's expenditures by the shareholder of the  
11 company.

12 Q. Who is the shareholder in the due from shareholder account?

13 A. Lee Farkas.

14 Q. Now, how many due from shareholder accounts are there or were  
15 there at TBW?

16 A. There was just one due from shareholder account, but there  
17 were other due from accounts that were various affiliates.

18 Q. And you say there were other due from accounts, or there were  
19 other due from accounts for other affiliates. Could you please  
20 describe those for the jury, please. Just generally what were  
21 those other affiliates?

22 A. There were some bars. There were some title companies.  
23 There were some restaurants, that type of thing.

24 Q. Okay. And were these other entities associated with Mr.  
25 Farkas?

M. Emig - Direct

1303

1 A. Yes, they were.

2 Q. Were these businesses that Mr. Farkas owned?

3 A. Yes, either in whole or in part.

4 Q. Now, looking back at the due from shareholder account, just  
5 putting aside these other due from accounts for a moment, what  
6 would cause the balance in the due from shareholder account to  
7 increase?

8 A. There would be additional expenditures.

9 Q. Would those be expenditures by TBW for non-TBW purposes?

10 A. Yes. It was TBW money used for non-TBW purchases, yes.

11 Q. What would cause the balance in the due from shareholder  
12 account to decrease?

13 A. Whenever payments were made to pay down the balance.

14 Q. Was this essentially a line of credit for Mr. Farkas?

15 A. Yes.

16 Q. Now, from an accounting perspective, is there anything wrong  
17 with having a due from shareholder account?

18 A. No.

19 Q. Is this something you would normally find in a private  
20 company?

21 A. It's entirely possible, yes.

22 Q. Now, did there come a time when the balance of Mr. Farkas'  
23 due from shareholder account became a source of concern for the  
24 accounting department?

25 A. Yes.

M. Emig - Direct

1304

1 Q. When was that?

2 A. It was in 2006.

3 Q. And why did it become a source of concern?

4 A. It was creating problems with meeting our debt covenants and  
5 our various warehouse lines of credit had certain financial  
6 performance requirements. And these were called debt covenants.

7 Q. And these are requirements that are placed on Taylor Bean &  
8 Whitaker by its lenders, is that correct?

9 A. Yes.

10 Q. What was the approximate balance of these due from accounts  
11 when they started to become a source of concern?

12 A. I believe it was somewhere in the, about the \$35 million  
13 range.

14 Q. Is that the balance just for the due from shareholder account  
15 or for all of them, all of Mr. Farkas'--

16 A. That was for all of them.

17 Q. Okay. Now, when this problem came up, did you discuss it  
18 with anyone?

19 A. Yes, I discussed it with the CFO.

20 Q. And what is his name?

21 A. Delton de Armas.

22 Q. What, if anything, did you and Mr. de Armas determine that  
23 you would do about Mr. Farkas' due from shareholder account?

24 A. Well, ideally a payment would be made to pay down the balance  
25 so it would not cause a problem with the covenant calculations.

M. Emig - Direct

1305

1 Q. And was there a particular amount of a paydown that you and  
2 Mr. de Armas discussed?

3 A. The minimum that would make a significant difference in, you  
4 know, make the problem go away was \$15 million. Ideally thirty  
5 million would take care of it for the foreseeable future.

6 Q. And what if there hadn't been a payment, been a paydown to  
7 Mr. Farkas' due from shareholder account, would that have been a  
8 source of ongoing concern for the committee?

9 A. Yes, it would. We were already having problems meeting the  
10 covenants of one of our lenders, but we were also getting closer  
11 to having problems with others as well.

12 Q. And what would have been the implications for TBW if the  
13 company had been noncompliant with its debt covenants?

14 A. The warehouse lender could have cut us off and we would have  
15 lost the financing opportunity.

16 Q. And if TBW's financing sources were cut off, would that have  
17 been problematic for Taylor Bean & Whitaker?

18 A. Yes, it would have cut off the ability to fund loans.

19 Q. Would that have been problematic for TBW's ongoing existence?

20 A. Yes, it certainly could be.

21 Q. Now, did there come a time when Mr. Farkas' due from  
22 shareholder account was in fact paid down?

23 A. Yes.

24 Q. And when was that, do you recall?

25 A. That was in April of 2007.

M. Emig - Direct

1306

1 Q. What was the amount of that paydown?

2 A. \$15 million.

3 Q. Now, how, if at all, were you involved in accounting for that  
4 paydown?

5 A. When the money came in, it was initially booked to the due  
6 from shareholder account, which put it into a negative balance  
7 situation because that particular account didn't have a  
8 \$15 million outstanding balance.

9 Q. Okay. Let me stop you there if I could, Ms. Emig. We would  
10 like to show you now what we have marked as Government's  
11 Exhibit 20-1.

12 THE COURT: Any objection?

13 MR. CUMMINGS: No objection, Your Honor.

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

15 (Government's Exhibit No. 20-1 was received in evidence)

16 MR. NATHANSON: If you could put up page 23, please.

17 BY MR. NATHANSON: (Continuing)

18 Q. Do you recognize this document, ma'am?

19 A. Yes, I do.

20 Q. What is it?

21 A. It is the detailed general ledger for the due from  
22 shareholder account.

23 Q. Does this document show the increases and decreases in Mr.  
24 Farkas' account over a period of time?

25 A. Yes, it does.

M. Emig - Direct

1307

1 Q. Okay. I would like to turn your attention to page 23 of 54,  
2 please.

3 A. Yes.

4 Q. Does page 23 show the \$15 million paydown that we have just  
5 discussed?

6 A. Yes, it does.

7 Q. And is that on the first line?

8 A. Yes, it's on the first line.

9 Q. Now, if you could explain for the jury, please, what the  
10 balance of the account was at this time and how you as an  
11 accountant applied the \$15 million to the various accounts,  
12 please.

13 A. Okay. The account balance was \$3.5 million. When the 15  
14 million came in, it was initially booked to this account. And  
15 then the three-and-a-half million was applied specifically to due  
16 from shareholder, and the remainder was transferred to several of  
17 the other affiliate accounts.

18 Q. So, at this time the due from shareholder account was only  
19 three-and-a-half million dollars, but there were other due from  
20 accounts well in excess of 15 million, is that correct?

21 A. Yes.

22 Q. Okay. Now, from this document can you tell or do you recall  
23 how exactly the \$15 million was allocated?

24 A. Let's see. \$6.1 million went to Thunderflower.

25 Q. If I could just stop you right there. Do you know what

M. Emig - Direct

1308

1 Thunderflower is?

2 A. It was a company that had apartments in Fort Lauderdale, and  
3 it was also the parent company of a couple of bars.

4 Q. Okay. Please continue.

5 A. Okay. CPMG, which is one of the bars, received \$178,000.  
6 Chisholm, which is another of the bars, received \$220,000. Citrus  
7 Land Title received \$828,000. Clear Title received \$93,000.

8 Let's see.

9 Q. How about NADA Airlines, did that receive any of that  
10 allocation?

11 A. Yes, NADA Airlines received \$1.6 million.

12 Q. Okay. Do you know what NADA Airlines is?

13 A. It was the company that owned the corporate jet.

14 Q. Now, who owned Thunderflower, CPMG, Chisholm and NADA  
15 Airlines?

16 A. Lee Farkas.

17 Q. Now, how did you know how to allocate these funds among the  
18 different accounts?

19 A. My boss Delton de Armas discussed it with Mr. Farkas, and a  
20 determination was made how the \$15 million should be divided up.

21 Q. And who benefitted from this \$15 million paydown of the due  
22 from shareholder account?

23 A. Lee Farkas.

24 Q. And that's because he owed \$15 million less to TBW afterward,  
25 is that correct?

M. Emig - Direct

1309

1 A. Right.

2 Q. Now, at the time that you booked this and you allocated these  
3 funds, did you know where the \$15 million came from?

4 A. No, I didn't.

5 Q. Did you ever ask anyone?

6 A. I asked Delton.

7 Q. What did he tell you?

8 MR. CUMMINGS: Objection, hearsay, Your Honor.

9 THE COURT: If it is being offered for the truth of its  
10 contents, it's hearsay.

11 MR. NATHANSON: It is not being offered for the truth,  
12 Your Honor. It also will be a defendant's admission.

13 THE COURT: I don't know how that happens through a  
14 third party. At this point I am going to sustain the objection.

15 Unless, did you take any action as a result of the  
16 information you received as to the source of the money?

17 THE WITNESS: No.

18 THE COURT: Then it doesn't go in.

19 MR. NATHANSON: Your Honor, we would also offer it as  
20 the statement of an unindicted co-conspirator.

21 THE COURT: Just move on. I am not letting it in at  
22 this point.

23 MR. NATHANSON: Yes, Your Honor.

24 BY MR. NATHANSON: (Continuing)

25 Q. Ms. Emig, did you there come a time when you ever learned

M. Emig - Direct

1310

1 where the \$15 million actually came from?

2 A. Yes, I did.

3 Q. I would like to pass you now what has been marked as  
4 Government's Exhibit 20-7 and 20-7A. And both of these documents,  
5 Your Honor, are already in evidence.

6 THE COURT: All right.

7 Q. Now, looking first at 20-7, do you recognize this document?

8 A. Yes, I do.

9 Q. What is it?

10 A. It is the TBW operating account bank statement from Colonial  
11 Bank for April of 2007.

12 Q. And what was TBW's operating account?

13 A. That was the account that was used to pay things like payroll  
14 and general expenses. You know, accounts payable type outgoes.

15 Q. Now, if I could turn your attention to page 2 of the account  
16 statement. What, if anything, does this page reflect about the  
17 \$15 million paydown that we have been discussing?

18 A. It shows a deposit of \$15 million.

19 Q. And it says credit memo next to that, is that correct?

20 A. That's correct.

21 Q. Is the credit memo actually included as part of this exhibit?

22 A. Yes, on the last page of the statement.

23 Q. And if I could have you look at 20-7A. Is that a  
24 reproduction of the same credit memo?

25 A. Yes.

M. Emig - Direct

1311

1 Q. What is a credit memo?

2 A. It's basically like a transfer statement from one account to  
3 another.

4 Q. And does this credit memo provide details about the  
5 \$15 million transfer into the operating account?

6 A. Yes, it does.

7 Q. If we could just walk through this. What is the date of this  
8 credit memo?

9 A. April 17, 2007.

10 Q. What is the amount?

11 A. \$15 million.

12 Q. Who is it prepared by?

13 A. Teresa Kelly.

14 Q. Do you know who Teresa Kelly is?

15 A. She worked at Colonial Bank.

16 Q. And can you make out what it says in the description line,  
17 please, above Ms. Kelly's signature?

18 A. Yes. It says AOT and a date.

19 Q. What is AOT?

20 A. AOT is one of the funding sources that we had. It was called  
21 assignment of trade.

22 Q. Are you familiar with AOT from your time in the accounting  
23 department at TBW?

24 A. Yes.

25 Q. Now, what, if anything, did this description AOT indicate to

M. Emig - Direct

1312

1 you about the source of the \$15 million?

2 A. The source of the \$15 million came from the assignment of  
3 trade account, which is used for the purchase of loans, for trades  
4 actually, made up of loans.

5 Q. Would that be a proper use of AOT?

6 A. No.

7 Q. And why is that?

8 A. Because the expenses that were being paid were not loan  
9 related.

10 Q. As far as you know, were there any purchases of loans that  
11 were involved in this \$15 million transfer to TBW?

12 A. No.

13 Q. Thank you. You can take that down, please.

14 Shifting gears a little bit, Ms. Emig. Are you familiar  
15 with the term Lee loans?

16 A. I have heard the phrase. I am not particularly familiar with  
17 them.

18 Q. As an accountant at TBW, did you become familiar with seven  
19 loans that were made to Lee Farkas in the amount of \$382,000 each?

20 A. Yes.

21 Q. Could you describe the circumstances when you first became  
22 familiar with these loans?

23 A. I first saw an e-mail regarding them I believe it was in the  
24 January 2007 time frame.

25 Q. And do you remember why these loans came to your attention at

M. Emig - Direct

1313

1 that time?

2 A. They were on the WAMU flex line. And WAMU had a problem with  
3 them being there. So, they either had to be moved off of the WAMU  
4 line or they, the value of them had to be removed from one of the  
5 debt covenant calculations.

6 Q. Now, did there come a time later that you learned more about  
7 these loans?

8 A. Yes.

9 Q. When was that?

10 A. That was after the company shut down, it was about a year  
11 ago.

12 Q. And why did you come to learn more about these loans?

13 A. We were working on asset recovery, and we were given a list  
14 of loans to investigate and--

15 Q. I am sorry, please continue.

16 A. And these were included in the list.

17 Q. And at that time what did you determine about these loans?

18 A. The loans were all for the same address, just different  
19 units. And the address when you look it up in the Marion County,  
20 Florida property appraiser's listing, it's is for the homeowners  
21 association of Heathbrook, which is a housing development that was  
22 being built.

23 Q. Now, did you determine as part of your-- When you were  
24 looking into these loans later in your time at TBW, did you  
25 determine what, if anything, happened to the proceeds from these

M. Emig - Direct

1314

1 loans?

2 A. Yes. The money itself was actually sent to a company called  
3 Dassault.

4 Q. What is Dassault?

5 A. They billed airplanes.

6 Q. And do you know what the purpose of this payment was that  
7 went to Dassault?

8 A. Well, at the time the new corporate jet was being built by  
9 Dassault.

10 Q. Now, when these loans were taken out-- Let me take a step  
11 back.

12 Ms. Emig, do you know whose name these loans were taken  
13 out in?

14 A. Yes, Lee Farkas.

15 Q. And at the time that these seven loans were taken out, was  
16 the due from shareholder account affected at all?

17 A. No.

18 Q. So, there was no increase in the due from shareholder  
19 account?

20 A. No.

21 Q. Now, did there come a time when jet financing came through  
22 with respect to this yet?

23 A. Yes.

24 Q. What did you determine about what happened at that point?

25 A. When the money came in, it was initially booked as a

M. Emig - Direct

1315

1 reduction to due from shareholder pending further investigation.

2 So, I asked my boss Delton if he knew anything about what this

3 money was for. And he came back and said--

4 MR. CUMMINGS: Objection, Your Honor, hearsay.

5 MR. NATHANSON: Your Honor, this explains Ms. Emig's

6 actions as an accountant. It is not offered for the truth.

7 THE COURT: Did you take any actions as a result of what

8 he told you?

9 THE WITNESS: Yes.

10 THE COURT: All right. Then it is not coming in to

11 prove anything other than to explain why this witness did what she

12 did. Overruled.

13 A. Okay. I was told that Mr. Farkas had borrowed money from the

14 company and this was repaying that money.

15 BY MR. NATHANSON: (Continuing)

16 Q. Was that money used to pay off the seven loans that he had

17 taken out?

18 A. No, I did not know about the seven loans.

19 Q. And was this money used as a paydown to the due from

20 shareholder account?

21 A. Yes.

22 Q. Now, what was the effect of using this money as a paydown to

23 Mr. Farkas' due from shareholder account?

24 A. It reduced the amount that he owed the company.

25 MR. NATHANSON: Okay. One moment, Your Honor.

M. Emig - Cross

1316

1           Nothing further, Your Honor.

2           THE COURT: All right. Mr. Cummings.

3           CROSS-EXAMINATION

4 BY MR. CUMMINGS:

5 Q. Good afternoon, Ms. Emig.

6 A. Good afternoon.

7 Q. I am Mr. Cummings, I represent Mr. Farkas. We have never  
8 met, have we?

9 A. No.

10 Q. Did you get your degree from Virginia Tech while you were  
11 living here in Northern Virginia?

12 A. Yes, I did.

13 Q. So, you consider yourself a Hokie, do you?

14 A. Yes, I do.

15 Q. Once a Hokie, always a Hokie?

16           THE COURT: All right, Mr. Cummings, it's late in the  
17 day, let's move on. We don't want to inject politics into this  
18 trial.

19           MR. CUMMINGS: I didn't think that was political. I  
20 will move on, Your Honor.

21 BY MR. CUMMINGS: (Continuing)

22 Q. Now, one of the things that you said that Mr. Farkas  
23 benefitted from the \$15 million reduction in due from shareholder  
24 was that he benefitted, correct?

25 A. Yes.

M. Emig - Cross

1317

1 Q. All right. But also TBW benefitted, did they not, in the  
2 sense that they were able to get closer to the loan ratio that the  
3 one of the lenders was concerned about?

4 A. Yes, that's correct.

5 Q. In fact, that's why the pressure was on to try and get a  
6 payment made against that account, correct?

7 A. Yes.

8 Q. Okay. And it was WAMU that was concerned, correct?

9 A. Yes.

10 Q. And their standards were a little more stringent than some of  
11 the other lenders, correct?

12 A. That's correct.

13 Q. But certainly any wholesale lender that would cut off TBW's  
14 source of funding to originate new loans would cause a problem for  
15 the company, correct?

16 A. Yes.

17 Q. And Mr. Farkas was well aware of that, was he not?

18 A. I believe so.

19 Q. He was the chairman of the company and responsible for its  
20 growth, was he not?

21 A. Yes.

22 Q. Now, Mr. de Armas was the chief financial officer, correct?

23 A. Yes.

24 Q. The man had been there long before you got there, correct?

25 A. Yes.

M. Emig - Cross

1318

1 Q. A lot of experience?

2 A. Yes.

3 Q. And I think you told us that he met with Mr. Farkas and then  
4 at that meeting is when he came back and told you what was going  
5 on, correct?

6 A. Yes.

7 Q. Okay. Now, you said in your testimony that these companies  
8 that you checked off were where the credits were going --

9 A. Yes.

10 Q. -- on that internal accounting system, that they were owned  
11 by Mr. Farkas?

12 A. Yes.

13 Q. Did you know that for a fact, that he owned 100 percent of  
14 the companies?

15 A. That was the documentation that we had on file.

16 Q. Some of these companies were not owned by Mr. Farkas and  
17 others, or was it 100 percent owned by Mr. Farkas, every one of  
18 those companies?

19 A. I believe one of the title companies had another owner.

20 Q. Okay. And did you know that the title company was being, had  
21 been set up to further diversify TBW's business?

22 A. I was not specifically aware of that.

23 Q. You ere not aware that. Okay. Now, some of the other due  
24 from accounts you said that were affiliated with Mr. Farkas,  
25 correct?

M. Emig - Cross

1319

1 A. Yes.

2 Q. Okay. And some of these were restaurants and partnerships  
3 and things of that nature?

4 A. There were other affiliates of that nature, but they did not  
5 receive any of the \$15 million.

6 Q. No, no. But some of these due from accounts that got this up  
7 to, I think you said 35 million altogether, right?

8 A. It was over 40 finally, yes.

9 Q. Well, I think you said that at the time this 15 million came  
10 in, only 3.5 million was due from Mr. Farkas, correct?

11 A. That's correct.

12 Q. So, the bulk of the money was due from other affiliates?

13 A. Yes.

14 Q. Okay. And many of those or some of those at least were  
15 businesses in which other TBW executives were partners, correct?

16 A. Yes.

17 Q. Now, you answered Mr. Nathanson's question, you said that  
18 from a private company there would be nothing wrong with doing,  
19 having these loans to shareholders, correct?

20 A. Yes, on the presumption they can be repaid, yes.

21 Q. But you had never worked for a private company where this was  
22 done, had you?

23 A. No.

24 Q. So, you were just sort of using what, speculative knowledge  
25 or general knowledge about this, or what?

M. Emig - Redirect

1320

1 A. General knowledge.

2 Q. But were you trained as an accountant?

3 A. Yes.

4 Q. Where were you trained as an accountant? Is that the MBA you  
5 got?

6 A. I had a number of accounting courses both in college and  
7 afterwards.

8 Q. You were never certified as a public accountant, were you?

9 A. Yes.

10 Q. You were or were not?

11 A. Yes, I was.

12 Q. You were a CPA?

13 A. Yes, I am.

14 Q. Okay. When did you get that?

15 A. When?

16 Q. Yes.

17 A. 1998.

18 Q. Okay. I didn't hear that in your resumé.

19 A. It wasn't asked.

20 MR. CUMMINGS: All right, thank you.

21 That's all the questions I have. Thank you.

22 THE COURT: Any redirect.

23 MR. NATHANSON: Very briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. NATHANSON:

M. Emig - Redirect

1321

1 Q. Ms. Emig, after the \$15 million paydown, did there continue  
2 to be balances in Mr. Farkas' due from shareholder account?

3 A. Yes.

4 Q. Do you know what the balance was as of August 2009 when the  
5 company went out of business?

6 A. I don't recall specifically, no.

7 Q. Do you know if there continued to be balances in the other  
8 due from accounts?

9 A. Yes.

10 Q. Ms. Emig, would reviewing Government's Exhibit 20-1 help you  
11 recall what-- Well, let me do it this way. I apologize, Your  
12 Honor.

13 If we could pass the witness Government's Exhibit 20-1  
14 please.

15 Ms. Emig, if you could look at page 43 of 54.

16 A. Pardon? I didn't hear you.

17 Q. Page 43 of 54, please. If I could focus your attention sort  
18 of at the top third of the page.

19 Does this provide information about the due from  
20 shareholder balance as of August of '09?

21 A. Yes, it does.

22 Q. What is the balance of that account?

23 A. \$8.4 million.

24 Q. Have any payments to this account been made since August of  
25 2009?

M. Emig - Recross

1322

1 A. No.

2 MR. NATHANSON: Thank you, Your Honor. No further  
3 questions.

4 THE COURT: Any recross?

5 MR. CUMMINGS: Just one question, Your Honor.

6 THE COURT: Let's see if you can do it with just one,  
7 Mr. Cummings. Lawyers say that and invariably there is a  
8 follow-up question. One.

9 MR. CUMMINGS: You hold me to a very tight standard,  
10 Your Honor.

11 RECCROSS-EXAMINATION

12 BY MR. CUMMINGS:

13 Q. Do you have in front of you 27, 20-7?

14 THE COURT: That was question number one.

15 Q. No, that was just a preliminary question to the question.

16 Mr. Wood, would you please put in front her 20-7.

17 How is that, Your Honor?

18 Do you have that?

19 A. Yes, I do.

20 Q. That was not a question. On page 12.

21 A. Yes.

22 Q. Forth line down.

23 A. Yes.

24 Q. Does that show that the \$15 million was returned to Colonial  
25 Bank the very next day?

M. Emig - Recross

1323

1 A. It was paid out, yes. I don't recognize the account  
2 specifically.

3 MR. CUMMINGS: Thank you.

4 THE COURT: That was pretty good. Pretty close.

5 MR. CUMMINGS: It was pretty close.

6 THE COURT: Does anybody anticipate calling Ms. Emig  
7 again?

8 MR. NATHANSON: No, Your Honor, the Government does not.

9 THE COURT: Mr. Cummings, do you plan to call this  
10 witness?

11 MR. CUMMINGS: No, ma'am.

12 THE COURT: All right. Then, ma'am, you are excused as  
13 a witness. That means you can stay in the courtroom and watch the  
14 trial or you may leave, but you are not to discuss your testimony  
15 or anything you see or hear in court with any person who has not  
16 yet testified as a witness. Thank you.

17 THE WITNESS: Thank you.

18 NOTE: The witness stood down.

19 THE COURT: Your next witness.

20 MR. CONNOLLY: Yes, Your Honor. The United States calls  
21 Paul Allen.

22 THE COURT: All right.

23 MR. CONNOLLY: Your Honor, if I may hand up the books.

24 THE COURT: Yes.

25 MR. CONNOLLY: Defense counsel has a copy as well.

P. Allen - Direct

1324

1           NOTE: The witness is duly affirmed.

2           PAUL ALLEN, called by counsel for the plaintiff, first  
3 duly affirming, testifies and states:

4           DIRECT EXAMINATION

5 BY MR. CONNOLLY:

6 Q. Good afternoon, Mr. Allen. Would you please introduce  
7 yourself to the jury, and spell your name for the court reporter.

8 A. My name is Paul Allen. P-a-u-l A-l-l-e-n.

9 Q. Mr. Allen, how old are you?

10 A. I am 55 years old.

11 Q. Where do you live?

12 A. I live in Oakton, Virginia.

13 Q. How long have you lived in Oakton, Virginia?

14 A. I have lived in Oakton, Virginia since October of 2001.

15           MR. CONNOLLY: Your Honor, at this point we would ask  
16 the Court to take judicial notice that Oakton, Virginia was, is in  
17 the Eastern District of Virginia.

18           THE COURT: It was and still is. Yes, we will take that  
19 notice.

20           MR. CONNOLLY: Thank you, Your Honor.

21 BY MR. CONNOLLY: (Continuing)

22 Q. Mr. Allen, could you briefly describe your educational  
23 background for the jury.

24 A. I have a Bachelor's and a Master's degree from Tulane  
25 University in New Orleans, Louisiana. I also have completed my

P. Allen - Direct

1325

1 doctoral course work in finance at the University of Washington in  
2 Seattle. I did not complete my dissertation. And I also studied  
3 for a year at the London School of Economics.

4 Q. Are you familiar with a company known as Taylor Bean &  
5 Whitaker?

6 A. I am.

7 Q. How do you know Taylor Bean & Whitaker?

8 A. I was the chief executive officer at Taylor Bean & Whitaker  
9 from August of 2003 until August of 2009.

10 Q. Did you work at Taylor Bean & Whitaker for a period after  
11 August of 2009?

12 A. I did.

13 Q. Until approximately when?

14 A. Until early November of 2009 I stayed on at Taylor Bean &  
15 Whitaker.

16 Q. What was your general capacity during that time frame?

17 A. I am sorry, during which time frame?

18 Q. Between August of 2009 and November when you finally left the  
19 company?

20 A. I was, at that point I was pretty much a consultant for the  
21 people at Taylor Bean & Whitaker.

22 Q. Now, prior to joining Taylor Bean in August of 2003, did you  
23 have experience in the mortgage industry?

24 A. Yes, sir.

25 Q. Approximately how much?

P. Allen - Direct

1326

1 A. I started working in the mortgage business in 1986.

2 Q. Would you describe for the jurors at a high level what  
3 positions you held and in what companies.

4 A. I started in 1986 at Freddie Mac at the time in Washington,  
5 D.C. Worked there for eight years in a variety of roles.

6 Then went to Fannie Mae in 1994. Stayed there for four  
7 years.

8 So, combined I was at Fannie and Freddie for 12 years.  
9 Mostly as an officer, mostly as an executive.

10 Then in 1998 I left Fannie Mae to become the chief  
11 financial officer at North American Mortgage Corporation which was  
12 a wholly owned subsidiary of the Dime, Dime Bancorp. I stayed  
13 there until 2000 when the Dime was bought by another bank,  
14 Washington Mutual.

15 And then at that point I was a co-founder of a  
16 technology start-up company. I sold that in 2003 and then started  
17 my own consulting company in 2003.

18 Q. What was the name of your consulting company?

19 A. The name of my consulting company is Oakmont Advisors.

20 Q. Now, what positions did you hold at Freddie Mac when you  
21 worked there?

22 A. I held several positions. I started out as a senior research  
23 economist. I built, I built capital adequacy models for Freddie  
24 Mac in terms of helping them analyze their risks and understand  
25 their risks. I did that for approximately three years.

P. Allen - Direct

1327

1 I was then Freddie Mac's first head of shareholder  
2 relations when the company went public in 1989. And then after  
3 that I became an officer. I worked in operational planning for a  
4 period of about two years. And my last two years was their head  
5 of pricing. So, I was involved in terms of helping them set their  
6 guarantee fees.

7 Q. As director of shareholder relations, were you responsible  
8 with dealing with investors and the public with respect to Freddie  
9 Mac's public filings and things of that nature?

10 A. Yes, sir, I was.

11 Q. Now, you said in 1998 you joined North American Mortgage.  
12 What was your position there?

13 A. I was Chief Financial Officer at North American Mortgage.

14 Q. What did North American Mortgage do?

15 A. North American Mortgage originated mortgages. So, they dealt  
16 with consumers, they dealt with brokers. And they also serviced  
17 loans as well.

18 Q. Was North American Mortgage a depository or nondepository  
19 mortgage lending company?

20 A. North American was wholly owned by Dime Bancorp, which was at  
21 the time a thrift. So, it was a wholly owned subsidiary of a  
22 depository.

23 Q. Now, when you joined Taylor Bean & Whitaker, what was your  
24 title?

25 A. I joined-- Well, you mean as a full-time employee?

P. Allen - Direct

1328

1 Q. Yes.

2 A. I joined Taylor Bean & Whitaker as the chief executive  
3 officer.

4 Q. What were your, what did you understand to be your  
5 responsibilities when you joined as CEO?

6 A. When I joined as CEO my responsibilities were to be, having  
7 full operational control of Taylor Bean & Whitaker.

8 Q. Who did you report to?

9 A. I reported to Lee Farkas.

10 Q. Who reported to you?

11 A. You mean who actually reported to me, or who did I think was  
12 reporting to me.

13 Q. Let's start with who you thought would be reporting to you  
14 when you signed on to be CEO?

15 A. When I signed on to be CEO as having full operational  
16 control, I expected to have all of the principal operating areas  
17 of the company reporting to me. So, that would be in mortgage  
18 banking, it would be the credit operation, the production  
19 operation, the secondary marketing operation, the servicing  
20 operation, and technology, so on and so forth.

21 Q. And did you maintain your position as CEO through when Taylor  
22 Bean essentially ceased operations in August of 2009?

23 A. I did.

24 Q. Mr. Allen, have you pled guilty to a crime related to your  
25 time at Taylor Bean & Whitaker?

P. Allen - Direct

1329

1 A. I have.

2 Q. And have you signed a plea agreement with the Government?

3 A. Yes, I have.

4 Q. Let me show you what has been marked as Government's  
5 Exhibit 22-125.

6 THE COURT: I assume there is no objection?

7 MR. CUMMINGS: No objection.

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

9 (Government's Exhibit No. 22-125 was received in evidence)

10 BY MR. CONNOLLY: (Continuing)

11 Q. What is that document?

12 A. You are asking me? I am sorry.

13 Q. Yes, sir, what is that document?

14 A. This looks to be a copy of the plea agreement that I signed.

15 Q. Let me direct your attention to page number 14 of that  
16 document.

17 Is that your signature on the plea agreement?

18 A. Yes, sir.

19 Q. Let me direct you back to the beginning of the document.  
20 Paragraph 1, which starts on page 1 and continues into page 2.

21 How many counts did you plead guilty to?

22 A. I pled to two counts.

23 Q. What was the first count that you pled guilty to?

24 A. The first count I pled guilty to was a combination conspiracy  
25 and fraud charge with regard to misleading investors in Ocala

P. Allen - Direct

1330

1 Funding.

2 Q. Was that a conspiracy to commit bank fraud, securities fraud  
3 and wire fraud?

4 A. Yes, sir.

5 Q. What was the second count to which you pled guilty?

6 A. I pled guilty to a second count of supplying a false  
7 statement to a division of HUD, specifically Ginnie Mae.

8 Q. And what did that relate to?

9 A. That related to an investigation that was going on at Taylor  
10 Bean & Whitaker and my omission of material information.

11 Q. As part of your plea agreement, did you promise to cooperate  
12 with the Government?

13 A. I did.

14 Q. Let me direct your attention to page 7, paragraph 11.

15 As part of your cooperation, what are you obligated to  
16 do with respect to the Government?

17 A. I am, I'm asked to testify truthfully and completely. To  
18 make myself available for debriefings. To provide documents,  
19 records and writings, et cetera, that could help. To be, agrees  
20 to a statement of facts. And I am just, I am just reading along  
21 here, and of course while I am under this I cannot violate any  
22 other law.

23 Q. And what do you understand could happen if you intentionally  
24 give materially false or misleading testimony here today?

25 A. It will render this deal null and void.

P. Allen - Direct

1331

1 Q. Would you be prosecuted for additional crimes?

2 A. And I could be prosecuted for additional crimes.

3 Q. Where did you plead guilty, Mr. Allen?

4 A. I pled guilty in this courtroom.

5 Q. Before Judge Brinkema?

6 A. I did.

7 Q. Let me direct your attention to page 9, paragraph 14.

8 Is your plea agreement conditioned on charges being  
9 brought against anyone else?

10 A. It is not.

11 Q. Have you been sentenced yet, Mr. Allen?

12 A. I have not.

13 Q. What is your understanding as to the maximum amount of time  
14 you are facing under this plea agreement?

15 A. It is ten years.

16 Q. Does your plea agreement allow for a potential reduction in  
17 sentence?

18 A. It does.

19 Q. And do you understand that any potential reduction in  
20 sentence is based on a motion by the United States?

21 A. Yes, sir.

22 Q. And who do you understand makes the final decision though as  
23 to whether to grant any such motion for reduction in sentence?

24 A. Judge Brinkema.

25 Q. Is any potential reduction in sentence tied in any way to the

P. Allen - Direct

1332

1 results in this case?

2 A. It is not.

3 Q. Mr. Allen, I would like to ask you when you first met the  
4 defendant? Approximately when did you first meet Lee Farkas?

5 A. I first met Lee Farkas in early June of 2003.

6 Q. What were the circumstances under which you met the  
7 defendant?

8 A. A mortgage insurance company that I had known for a while was  
9 also a customer of Taylor Bean, had indicated that Taylor Bean  
10 might be interested in hiring me, that I might have some expertise  
11 that Taylor Bean could use.

12 Q. Where did this meeting occur?

13 A. This meeting occurred in Virginia out at Dulles Airport.

14 Q. And how did the defendant get there?

15 A. He flew up on his jet.

16 Q. Was he alone or was he with someone?

17 A. He was with someone.

18 Q. Who was he with?

19 A. He was with Ray Bowman.

20 Q. Who did you understand Mr. Bowman was?

21 A. I understood Ray Bowman to be the president of Taylor Bean &  
22 Whitaker.

23 Q. So, after the defendant and Mr. Bowman arrived, you all had a  
24 meeting?

25 A. Yes, we had a dinner meeting.

P. Allen - Direct

1333

1 Q. And explain to the jury the nature, just the general nature  
2 of that meeting.

3 A. The general nature of that meeting was very open. Lee spent  
4 most of the time talking with me about the status of Taylor Bean,  
5 where Taylor Bean was in its development as a company, and a lot  
6 of the past, a lot of the growing pains that the company had had.

7 Q. Was there any specific growing pain that the defendant  
8 referred to?

9 A. There were a few, yes. I mean, one was in particular some  
10 mistaken sale of loans that had occurred about a year earlier to  
11 Fannie Mae that had ultimately led to Taylor Bean being terminated  
12 by Fannie Mae as a potential seller. That those loans had been  
13 sold inadvertently, had been sold accidentally. And Lee took full  
14 accountability for that, said it should not have happened, it was  
15 a mistake, and that he wanted to do, you know, make things better.

16 Q. Approximately how long did this dinner meeting last?

17 A. My recollection is it probably, about maybe an  
18 hour-and-a-half, maybe two hours.

19 Q. And between Mr. Bowman and the defendant, who did most of the  
20 speaking?

21 A. Lee did.

22 Q. How did you leave it at the end of this dinner meeting?

23 A. At the end of the dinner meeting I let him know that I was  
24 interested in talking further with Taylor Bean and to perhaps  
25 bring them on as a consulting client of mine.

P. Allen - Direct

1334

1 Q. And so, what happened next?

2 A. What happened next was my beginning to work with Taylor Bean  
3 later in the month of June as a consultant. And that continued  
4 pretty much from I'd say the third week of June through the month  
5 of July of 2003.

6 Q. Let's talk for a few minutes about your time at Taylor Bean  
7 as a consultant.

8 What was, what tasks did you perform as a consultant to  
9 Taylor Bean in that June/July 2003 time frame?

10 A. One of the first things I worked on at Taylor Bean was  
11 something called a pitch book. Which is a document that is put  
12 together for a company that might be seeking to either be sold or  
13 seeking some new capital investment.

14 The purpose of the pitch book is to essentially describe  
15 the company and its strengths in the marketplace.

16 Q. You said you stayed on as a consultant for approximately how  
17 long?

18 A. For about six weeks.

19 Q. What happened at that point?

20 A. At that point Lee approached me about coming on board  
21 full-time. I had had other consulting clients as well during this  
22 period, I wasn't just, I didn't just have Taylor Bean as a  
23 consulting client.

24 And so, I think Lee was interested in having me come on  
25 board full-time.

P. Allen - Direct

1335

1 Q. Let's talk about that, that approach from Lee Farkas. How  
2 did that occur?

3 A. We had, as I recall, we had lunch together at a restaurant  
4 over in Tysons Corner.

5 Q. Did he fly up again for that meeting?

6 A. I believe he did.

7 Q. And what happened at that lunch?

8 A. He offered me the position of chief executive officer at  
9 Taylor Bean & Whitaker.

10 Q. Did he ask you what your sort of requirements would be to be  
11 CEO?

12 A. I asked him, I told him I wanted operational control of the  
13 company, that that's an area that I thought I could actually excel  
14 at and help the company.

15 Q. What was his response to that?

16 A. His response was yes, that I could have full operational  
17 control.

18 Q. What other request did you make of the defendant?

19 A. I asked that I, that I not, that I not have to relocate to  
20 Ocala, that I could work from Virginia.

21 Q. What was the defendant's response to that?

22 A. He agreed to that.

23 Q. And did Taylor Bean have any offices in Virginia?

24 A. No, sir.

25 Q. Okay.

P. Allen - Direct

1336

1 A. And then I asked for a salary, a salary and bonus package.

2 Q. Let's talk about that for a moment. What salary did you  
3 request of the defendant?

4 A. I requested a base salary of \$400,000 and a targeted bonus of  
5 \$200,000.

6 Q. How did you come up with that number?

7 A. That was essentially the amount of money that I was making as  
8 a consultant.

9 Q. What was the defendant's response to that?

10 A. He agreed to that.

11 Q. Did you begin working as the CEO?

12 A. I did, I began working as the CEO in August of 2003.

13 Q. Now, what did the defendant say when you said, I don't want  
14 to move down to Ocala, Florida, I want to stay here in Virginia?  
15 What was his response?

16 A. His response was that was fine with him, that the technology  
17 had evolved enough that I could keep in touch with what was going  
18 on through e-mail and at the time the very radical device called a  
19 BlackBerry.

20 Q. Was the idea that you would never be in Ocala?

21 A. No, it was not, just that I would not have to relocate down  
22 there.

23 Q. What was the, can you give the jury a sense of how you split  
24 your time between Northern Virginia and Ocala?

25 A. In the very early days?

P. Allen - Direct

1337

1 Q. Sure?

2 A. In TV early days I was probably in Ocala two to three days a  
3 week pretty much every week.

4 Q. How did that change over time?

5 A. Over time the visits to Ocala become fewer. And when I was  
6 there, they were shorter in duration.

7 Q. Now, you mentioned a minute ago that you discussed getting a  
8 \$400,000 base salary with the potential for \$200,000 bonuses. Did  
9 you receive some bonuses during your time at Taylor Bean &  
10 Whitaker?

11 A. I did.

12 Q. And approximately how much?

13 A. I would say that with regard to the six years I was there, I  
14 probably received bonuses below what was expected.

15 Q. Did you get them every year?

16 A. I don't think I received them every year.

17 Q. And would the defendant use a term to describe these bonuses?

18 A. Yes, he would call them bounties.

19 Q. How often or when would you get bounties?

20 A. I would get bounties usually at the conclusion of a  
21 significant event. For example, the closing of a new financing  
22 facility or something like that.

23 Q. At any point during your tenure at Taylor Bean & Whitaker did  
24 you ever ask the defendant for a bonus?

25 A. Yes, I did one time.

P. Allen - Direct

1338

1 Q. And explain to the jury how that came about.

2 A. This was in 2009 when we were working on the Colonial capital  
3 raise. And I had suggested to the, to Lee that I receive a bonus  
4 in Colonial stock as opposed to, as opposed to cash.

5 Q. And what was the defendant's response to that request?

6 A. He was, he agreed to that.

7 Q. Now, when you requested receiving it in stock, did you have a  
8 number in mind as to what size you were thinking about?

9 A. The typical bonus that I had received from Lee was around  
10 \$100,000. So, I was expecting a similar sized bonus in terms of  
11 Colonial stock.

12 Q. What did the defendant say the bonus that he would give you  
13 in this regard?

14 A. He offered a \$5 million bonus.

15 Q. And what did you learn about this \$5 million bonus? Was it  
16 going to be in Colonial stock?

17 A. No, it was going to be in an equity investment that would in  
18 turn would be put into Colonial. It would not be in terms of  
19 Colonial stock.

20 Q. So, the structure was you would get \$5 million in cash and  
21 then use that to buy Colonial stock?

22 A. Correct.

23 Q. And how did you learn about that, Mr. Allen?

24 A. I learned about that in the stock purchase agreement.

25 Q. And approximately when did you learn about that?

P. Allen - Direct

1339

1 A. That would have been in May of, I think mid to late May of  
2 2009.

3 Q. Did you actually ever receive any cash from this proposed  
4 \$5 million bonus?

5 A. I did not.

6 Q. Now, did the defendant ever give you anything else of value  
7 besides these bounty bonuses?

8 A. He did.

9 Q. And what was that?

10 A. He one time gave me a BMW.

11 Q. Would you explain to the jury how that came about.

12 A. In, I believe it was around Christmas of 2007 I was looking  
13 to surprise my wife with a car for Christmas. I had asked, I had  
14 asked Lee because I knew Lee knew a lot about cars what would be a  
15 good car in a 30 to \$40,000 range. And he responded an Infinity  
16 would be a good car to buy.

17 So, I was out shopping for Infinities. And then he said  
18 to me, well, we actually have a BMW, Taylor Bean has a BMW that we  
19 had, that had been owned by a salesperson, a sales rep in Texas.  
20 That person had been let go from Taylor Bean, so in essence it was  
21 free. And so, he offered that to me.

22 Q. Did you accept that?

23 A. I did.

24 Q. And what did you and your wife end up doing with that BMW?

25 A. We sold it.

P. Allen - Direct

1340

1 Q. For approximately how much?

2 A. For approximately 25, \$26,000.

3 Q. Why did you sell the free car?

4 A. Well, it was, it just wasn't, it was just not the kind of car  
5 that we wanted, so--

6 Q. Did you declare that \$25,000 on your taxes?

7 A. Yes, sir, we did.

8 Q. Now, on occasion did you also get to use the plane for some  
9 family trips?

10 A. I did.

11 Q. How would that come about?

12 A. I would always ask Lee ahead of time for permission.

13 Q. Did he always say yes?

14 A. Not always.

15 Q. But just explain what you would do when you got permission to  
16 use it.

17 A. Just those few times that my family--

18 Q. Yes, sir.

19 A. Yes. I would ask Lee if it would be possible to take the  
20 family to, usually it was Hew Hampshire, that's where my wife's  
21 family is from. And I would ask for particular dates. I would  
22 usually give a window of time, just because I didn't know what  
23 else the jet would be used for.

24 Q. Did that happen on a couple of occasions?

25 A. Yes.

P. Allen - Direct

1341

1 Q. Now, when you first started down at Taylor Bean & Whitaker,  
2 did you make an effort to install any weekly meetings or things of  
3 that nature?

4 A. I did.

5 Q. And what were they called?

6 A. They were called the weekly product management meetings.

7 Q. What was the idea of the weekly product management meetings?

8 A. The idea of the meetings was to create a forum where the  
9 senior managers or the senior executives at Taylor Bean could get  
10 together once a week, share information about what was going on in  
11 their areas.

12           You know, I was a big believer in that in terms when I  
13 worked at Fannie, Freddie and North American about sharing  
14 information and making sure that everybody knew what was going on  
15 in the company at the senior management level.

16 Q. Would everyone at these meetings attend in person?

17 A. They would not.

18 Q. How would they attend?

19 A. Well, most of the people, again I tried to arrange those  
20 meetings when I was in Ocala so I could be there in person. So,  
21 they normally were on Wednesdays. So, everyone from Ocala who was  
22 down there would be there, but then there would be several people  
23 on via phone. We had significant operations in Atlanta, Georgia.  
24 Most of our production people were remote, so they would be on by  
25 phone.

P. Allen - Direct

1342

1           So, it would be a combination of people by phone and in  
2 person.

3 Q.   Did you approach the defendant about participating in those  
4 meetings when you first started those?

5 A.   I did.

6 Q.   What was his response?

7 A.   Lee's response was these were my meetings, he didn't want to  
8 interfere with them, that he thought that this important that I be  
9 in essence, that this be my meeting and not his meeting.

10 Q.   Did you learn at some point in time the defendant was in fact  
11 attending those meetings?

12 A.   Yes.

13 Q.   Explain how that came about.

14 A.   I recall one of the meetings that we were having, we were  
15 talking specifically about production volume, about our loan  
16 closing volume, and about the business being very good in a  
17 particular month.

18           And I had commented to the group that we were nearing  
19 our capacity in our warehouse lines, that is our ability to fund  
20 loans. And so, I wanted to get word out to our production people  
21 that, you know, we may not be able to close all the loans that we  
22 were committing to buy.

23           The last thing that I wanted was to have customers who  
24 didn't have their loans funded at the end of the month. It is a  
25 very bad situation for a mortgage bank.

P. Allen - Direct

1343

1 Q. Explain to the jury for a moment why it is a bad situation.

2 A. It is a bad situation for a mortgage bank because if any of  
3 us, if I am expecting to close a loan at the end of the month, say  
4 a refinancing or I am buying a home, and I go to the attorney's  
5 office or I go to the closing agent and there is no money there, I  
6 can't close on that day. It means I can't move into the house, I  
7 can't get the house refinanced, and I have to reschedule that  
8 date.

9 So, at a minimum it is a hassle. And at a maximum, it  
10 can create quite a bit of havoc.

11 Q. So, what happened after you expressed concern about running  
12 out of warehouse space?

13 A. Unannounced Lee got, Lee got on the phone. I didn't even  
14 know he was on the phone. And he screamed at me. He said,  
15 goddamn it. He said, this is my company and my job, it's my job  
16 to make sure the loans are funded, and I want the sales people to  
17 go out and sell. And you should not be talking to them about  
18 coming back on or cutting back on their sales efforts. They  
19 should just go out and sell and I will take care of the funding of  
20 these loans.

21 Q. What was your reaction to the defendant's outburst?

22 A. I was devastated. I felt like I had been cut off at the  
23 knees.

24 Q. And up until that point in time had you been aware that he  
25 was participating on these calls or these meetings?

P. Allen - Direct

1344

1 A. No.

2 THE COURT: All right, I think since you mentioned the  
3 magic word time, it is 5:30, and we are going to try to keep to a  
4 good schedule.

5 Again, ladies and gentlemen, remember my earlier  
6 cautions about not consuming any media at all about this case, not  
7 discussing it with anyone. Stay away from any Twitter or that  
8 sort of thing. And again, leave your notebooks here, have a good  
9 night sleep, we will see you promptly at 9:30 tomorrow morning.

10 We are going to stay in session for a couple minutes.

11 NOTE: At this point the jury leaves the courtroom;  
12 whereupon the case continues as follows:

13 JURY OUT

14 THE COURT: Mr. Allen, you may leave. You are due back  
15 here before 9:30 so that you can be back on the stand on time.

16 Thank you.

17 THE WITNESS: Thank you.

18 NOTE: The witness stood down.

19 THE COURT: Counsel have a seat.

20 I just want you to know, I have a plea in an unrelated  
21 case at 9 o'clock tomorrow morning. So, you are going to need to  
22 at least clean off, I don't want you to have to get out of the  
23 courtroom, but make space because there will be an in-custody  
24 defendant at your table, Mr. Cummings.

25 And there will be a different prosecution team at your

1 table.

2           So, just take a few minutes, maybe work with Mr. Wood to  
3 make sure wherever you put things, it will be acceptable for  
4 tomorrow morning.

5           And I wanted to ask the Government, since we moved quite  
6 a few witnesses through today, when do you think you will be  
7 closing this week?

8           MR. STOKES: I am sorry, Your Honor?

9           THE COURT: When do you think you will be closing this  
10 week?

11           MR. STOKES: Your Honor, we anticipate that we may close  
12 by the end of the week.

13           THE COURT: I can't imagine that you won't close before  
14 the end of the week the way we are going.

15           MR. STOKES: We think that is probable.

16           THE COURT: All right.

17           MR. STOKES: We are certainly-- I mean, we have trimmed  
18 a lot from our case. And so, that is what we anticipate, is by  
19 the end of this week we should close, perhaps by the beginning of  
20 the following week. We just don't know how long cross is going to  
21 take.

22           THE COURT: I am putting both sides-- I mean, I am now  
23 keeping time, just so you know, we are keeping track of how long  
24 the direct goes and how long the cross is going.

25           The cross is taking too long with these long speaking

1 questions. So, that has to stop. And that will shorten the  
2 amount of time dramatically.

3 Are you still planning to call all the witnesses on your  
4 list?

5 MR. STOKES: No, Your Honor. There are a number that we  
6 may end up, as we go through and cross-examinations happen, we are  
7 cutting witnesses.

8 And so, there are a few that we anticipate we may be  
9 able to cut, but until we hear the cross-examinations, we are not  
10 sure, Your Honor.

11 THE COURT: All right, that's fine.

12 MR. STOKES: Your Honor, if I can--

13 THE COURT: Yes, go ahead.

14 MR. STOKES: I was also going to point out that based on  
15 some of the evidence and the cross-examination of the defense, we  
16 are thinking of dropping some witnesses and potentially replacing  
17 them with other witnesses that have, that can offer testimony  
18 relevant to some of the points that they have raised.

19 In other words, they have raised a lot of points about  
20 attorneys. So, we will work with the defense to make sure they  
21 are aware of that. And we don't have any Jencks, but to the  
22 extent that we have any, we will provide it to the defense.

23 THE COURT: Well, I have to tell you, most likely I am  
24 not going to let you put on that in your case in chief. You can  
25 use it possibly for rebuttal, but I don't think you need it at

1 this point. And I don't want to abuse the jury. Again, we do  
2 have some details deadlines with this jury, and I want to make  
3 sure that we get everything in that is necessary, but not more  
4 than what is necessary.

5 MR. STOKES: If I may, Your Honor, these would be very  
6 short witnesses.

7 THE COURT: There is no such thing as a short witness in  
8 this case. But anyway, I am just letting you know.

9 The reason we are going through this exercise is I do  
10 think the defense needs want to be prepared that they may calling  
11 witnesses this week. So, if you have put them off until next  
12 week, you ought not to do that.

13 Right now just for planning purposes, I think we can  
14 start Friday probably around 10:30. I have to clear a few  
15 unrelated matters off my docket. I have a plea at 9, but there is  
16 no other criminal docket. And then I have a patent case after  
17 that, but I am not going to let them talk very long.

18 So, I think by 10:30 we can get started. And because it  
19 is the end of the week, I am probably going to let the jury go  
20 home at 5. All right.

21 So, anyway that's what we are looking at this week. All  
22 right.

23 MR. STOKES: Yes. And, Your Honor, we anticipate filing  
24 a motion to, motion to exclude some of the testimony, proposed  
25 testimony of the defense expert from their notice that they

1 provided us. So, we will file that tonight. And just to give the  
2 Court a heads-up so that we can argue that in the near future.

3 THE COURT: That argument will again occur before or  
4 after trial some day this week.

5 MR. STOKES: Yes.

6 THE COURT: The other thing is you did file, the  
7 Government did file a motion about the forfeiture elements of the  
8 case, indicating that they don't believe that that is subject to  
9 trial by jury.

10 I don't think the defense has responded to that yet,  
11 have you all?

12 MR. ROGOW: I haven't even seen it, Your Honor.

13 MR. CUMMINGS: We got it.

14 THE COURT: Well, you need to look at that and let me  
15 know if there is any issue about that or not. All right. As I  
16 said, it's been my experience in almost every case, I think every  
17 case I have tried where there was a forfeiture provision in this  
18 indictment, that by the end of day where there was a conviction,  
19 the defense agreed to have it resolved by the bench.

20 And so-- But you are telling me as a matter of law from  
21 that memo that there is no right to trial by jury?

22 MR. STOKES: That's right, Your Honor. In other words,  
23 we are seeking a money judgment, and the only reason under the  
24 rules that we would need to have a trial, bench or jury, is to  
25 establish a nexus between substitute assets and the fraud. And

1 since we are not seeking to do that, but rather seeking a money  
2 judgment, the rules don't require a jury or a bench trial.

3 In other words, that is something the Court can decide  
4 on its own for purposes at sentencing.

5 THE COURT: All right. This is all, of course,  
6 contingent upon there being convictions.

7 MR. STOKES: Absolutely.

8 THE COURT: Again, I don't want this left to the last  
9 minute and then we have some long delay in the proceedings. So,  
10 the defense needs to look at that and get a position to us in the  
11 next day or so.

12 All right. Anything further before we recess? No?

13 MR. STOKES: Not from the Government, Your Honor.

14 THE COURT: All right, we are in recess.

15 NOTE: The April 11, 2011 portion of the case is  
16 concluded.

17

18 CERTIFICATE OF THE REPORTERS

19 We certify that the foregoing is a correct transcript of the  
20 record of proceedings in the above-entitled matter.

21

22

23

\_\_\_\_\_/s/  
Anneliese J. Thomson

24

25

\_\_\_\_\_/s/  
Norman B. Linnell

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

UNITED STATES OF AMERICA . Criminal No. 1:10cr200  
 .  
 vs. . Alexandria, Virginia  
 . April 12, 2011  
 LEE BENTLEY FARKAS, . 9:30 a.m.  
 .  
 Defendant. .  
 .  
 . . . . .

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

VOLUME 6 - A.M.

APPEARANCES:

FOR THE GOVERNMENT: CHARLES F. CONNOLLY, AUSA  
PAUL J. NATHANSON, AUSA  
United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, VA 22314  
and  
PATRICK F. STOKES, ESQ.  
ROBERT ZINK, ESQ.  
United States Department of Justice  
Criminal Division, Fraud Section  
1400 New York Avenue, N.W.  
Washington, D.C. 20005

FOR THE DEFENDANT: WILLIAM B. CUMMINGS, ESQ.  
William B. Cummings, P.C.  
P.O. Box 1177  
Alexandria, VA 22313

(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1350 - 1499 )

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANT:

BRUCE S. ROGOW, ESQ.  
Bruce S. Rogow, PA  
500 East Broward Boulevard  
Suite 1930  
Fort Lauderdale, FL 33394  
and  
CRAIG KUGLAR, ESQ.  
Law Office of Craig Kuglar, LLC  
1130 Piedmont Avenue, Suite 913  
Atlanta, GA 30309  
and  
ZAHRA S. KARINSHAK, ESQ.  
Krevolin & Horst  
1201 West Peachtree Street  
One Atlantic Center, Suite 3250  
Atlanta, GA 30309

11 ALSO PRESENT:

JENNIFER GINDIN  
LISA PORTER  
SA SCOTT TURNER  
JUDSON VAUGHN

14 OFFICIAL COURT REPORTERS:

ANNELIESE J. THOMSON, RDR, CRR  
NORMAN B. LINNELL, RMR, FCRR  
U.S. District Court, Fifth Floor  
401 Courthouse Square  
Alexandria, VA 22314  
(703)299-8595

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1 P R O C E E D I N G S

2 (Defendant present, Jury out.)

3 THE CLERK: Criminal Case 10-200, United States of  
4 America v. Lee Bentley Farkas. Would counsel please note their  
5 appearances for the record.

6 MR. CONNOLLY: Good morning, Your Honor. Charles  
7 Connolly, Patrick Stokes, Robert Zink, Paul Nathanson, Special  
8 Agent Turner, and Lisa Porter for the United States, Your Honor.

9 THE COURT: Good morning.

10 MR. ROGOW: And for the defendant, Your Honor, Bruce  
11 Rogow, Craig Kuglar, Zahra Karinshak, and William Cummings.

12 THE COURT: All right. I understand there are two quick  
13 matters we need to take care of before we get started this  
14 morning. What are they?

15 MR. ROGOW: Yes. One matter is mine. When Paul Allen  
16 pled guilty on April 1, after that, we subpoenaed any notes or  
17 materials that he might have. We found out that he does have  
18 notebooks in which he kept notes about his time at Taylor Bean.  
19 The subpoena, Aitan Goelman, who is his lawyer, I think they  
20 objected, the subpoena was too broad.

21 We narrowed it down, and now there are two notebooks  
22 that are sitting in Washington. The government hasn't seen them,  
23 and we haven't seen them, but I'd like to see them before  
24 cross-examination. So that's where we are with, with that.

25 Apparently, an effort is being made now to bring them

1 over. There is a privilege issue. The Troutman Sanders lawyers  
2 are here, and they're going to look at it for privilege, but that  
3 is important information to us for cross-examination.

4 THE COURT: How long have you known about these diaries?

5 MR. ROGOW: After the 1st of April, when he pled guilty.  
6 We subpoenaed them after that.

7 THE COURT: Well, this issue should have been raised  
8 before now. I'm not taking up the jury's time on this issue.  
9 We're going to get into the Allen testimony today. If and when  
10 they're produced -- these are diaries that he kept on his own  
11 while all this was going on?

12 MR. ROGOW: Yes, as we understand it.

13 THE COURT: They were not kept at the direction of  
14 counsel?

15 MR. ROGOW: Pardon me?

16 THE COURT: They were not something he produced at the  
17 direction of his counsel?

18 MR. ROGOW: Not that I'm aware of.

19 THE COURT: Without, without having to even look at  
20 them, if a person is keeping a personal diary, then obviously, he  
21 expects that to be his own private writings. If they had been  
22 ordered or if he had been directed to keep them, like if his  
23 lawyers had said, "We want you to chronicle what's going on,"  
24 that's one thing, but if, in fact, Mr. Allen's practice has been  
25 to keep a diary for some period of time and he was doing that, I

1 don't think that's appropriate, and if it gets into issues about  
2 when he started consulting with counsel, if he's reciting what he  
3 was saying to his lawyer and what his lawyer was saying to him,  
4 that was certainly never intended for public dissemination. So  
5 I'm concerned about that.

6           So you'll need to lay a foundation and see how these  
7 diaries were created, but if they were created, as I said, in  
8 the -- not at the direction of counsel or for some other reason  
9 that would make them potentially subject to public disclosure,  
10 you'll just have to confine your cross-examination to what he has  
11 said in this court. Let's move this along.

12           There was another issue?

13           MR. ROGOW: Your Honor, just with regard to that, what I  
14 would ask if when they are produced, because they are going to be  
15 produced, if there is material and the cross-examination is  
16 ongoing, then either we delay the cross-examination some so I can  
17 see it --

18           THE COURT: That's my point. You can't delay a trial in  
19 this court on that basis. This is not something that came to your  
20 attention yesterday or this morning. If you've known about it  
21 since April 1, then this clearly could have been raised in a  
22 motion to compel, or you could have put the Court on notice.  
23 That's the whole reason why this Court also provides Jencks  
24 material to counsel well before the witness testifies, because we  
25 will not countenance those long delays that sometimes happen.

1           So unless you have clear case law from the Fourth  
2 Circuit indicating that a private diary kept by a person is  
3 subject to disclosure under the conditions I've indicated, and so  
4 we do have to get a foundation for that, simply how he created  
5 these diaries, etc., it's not coming in.

6           Let me hear from the government as to its motion. I  
7 thought you-all had an issue as well.

8           MR. CONNOLLY: Yes, we do.

9           MR. NATHANSON: Yes, Your Honor, very briefly.

10          THE COURT: And while this is going on, Mr. Wood, would  
11 you check and see if all the jurors are here? Again, this is a  
12 very conscientious jury. I don't want them waiting, and it's been  
13 almost ten minutes since we should have started.

14          Yes.

15          MR. NATHANSON: Your Honor, the government may call an  
16 individual named Carla Haskell in our case-in-chief. Because her  
17 testimony may be necessary for the public interest, the government  
18 moves for an order of compulsion and immunity with respect to  
19 Ms. Haskell, and I have a draft order and the authorization from  
20 the Department of Justice to pass up to the Court.

21          THE COURT: All right. And is counsel here for  
22 Ms. Haskell?

23          MR. NATHANSON: No, she is not, Your Honor. She is not  
24 present in court now, Your Honor.

25          THE COURT: No, I mean, does she have counsel? Does she

1 have counsel?

2 MR. NATHANSON: She does, Your Honor.

3 MR. CUMMINGS: Michael Nachmanoff is her counsel, Your  
4 Honor.

5 THE COURT: Oh, okay. And he knows that you have made  
6 this application?

7 MR. NATHANSON: Yes, Your Honor. He's requested it.

8 MR. CUMMINGS: Your Honor, with regard to Ms. Haskell,  
9 Your Honor, she worked for Ms. Brown. I've reviewed her MOIs, and  
10 it would seem to me that her testimony is bound to be redundant of  
11 Ms. Brown, who I think is going to testify --

12 THE COURT: If it is, it's not coming in. I mean,  
13 that's the real issue is whether -- I've said from the beginning  
14 we're not going to have cumulative, redundant testimony. We've  
15 had some, I'm allowing a little bit of it, but not, you know,  
16 three, four, or five times. You've got Paul Allen here right now  
17 in a minute from TBW, but we'll face that when we do, all right?  
18 I don't know when she's going to be called, but if you're  
19 getting -- you know, the government should be deciding who are the  
20 strongest witnesses.

21 You can always call these other people in rebuttal if  
22 there have been issues raised on cross that would require some  
23 further addressing by the government, all right? But, I mean,  
24 that doesn't mean I'm not going to enter this order. I'm just  
25 putting you on caution as to whether or not she should be called

1 as a witness if she's really cumulative.

2 MR. NATHANSON: Absolutely, Your Honor. We certainly  
3 understand that. This is merely a precaution.

4 THE COURT: All right, that's fine. All right.

5 MR. CUMMINGS: Thank you.

6 THE COURT: The jury is here. Let's bring them in.

7 (Jury present.)

8 THE COURT: Good morning, ladies and gentlemen. I've  
9 been in session for a while not just on this case but on unrelated  
10 matters. That's why we unfortunately had to hold you up a little  
11 bit. Again, I want to tell you I think you guys get the gold star  
12 for the most conscientious jury I've had in quite a while. You've  
13 been here on time every single day, and again, I want you to know  
14 we appreciate that.

15 Again, I just need to ask you-all have you had any  
16 problems overnight in terms of bumping into any information about  
17 the case? No?

18 (No response.)

19 THE COURT: Anybody tried to talk to you about it?

20 (No response.)

21 THE COURT: I'm sure at this point, your families and  
22 friends are starting to wonder what's going on, and I do  
23 appreciate the fact that you're keeping silent about that.

24 Very good, then we're ready to proceed, and Mr. Allen is  
25 on the stand.



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1 marketing, what later became capital markets area.

2 Q. So what did you do after you saw this organizational chart  
3 with just two areas reporting to you?

4 A. I went to Lee. I was, I was surprised to see this.

5 Q. Describe for the jury the conversation you had with the  
6 defendant at that point.

7 A. Well, the, the conversation I had was, was primarily about  
8 only having two areas was not full operational control of a  
9 company, and Lee's response was, "Well, this is a very informal  
10 organization. You can really have whatever influence you want  
11 even though there is only two formal areas reporting to you."

12 Q. Now, you indicated that one of the areas that reported to you  
13 was this CFO, or chief financial officer. Who was the chief  
14 financial officer at that time?

15 A. The chief financial officer was Delton de Armas.

16 Q. Did you ask Mr. de Armas to perform a certain task for you  
17 when you began?

18 A. I did. Early on, I wanted to get an idea of how cash moved  
19 within the company, because as an independent mortgage bank,  
20 meaning a bank that did not have a bank -- a mortgage bank that  
21 did not have a bank parent, so knowing the flows of cash were  
22 going to be very important in terms of paying bills as well as  
23 when cash was received from loan sales.

24 Q. Is there a term to describe what that sort of study is or  
25 what that is?

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1 A. It's called a cash forecast.

2 Q. And what happened when you asked Mr. de Armas to prepare a  
3 cash forecast for you?

4 A. He said he couldn't do it.

5 Q. What was your reaction to that?

6 A. I was very surprised.

7 Q. Did Mr. de Armas explain to you why he couldn't prepare a  
8 cash forecast?

9 A. He said he didn't get enough information from treasury to be  
10 able to do it.

11 Q. Who worked in treasury at that point in time? Who were the  
12 leads in that section?

13 A. I believe the treasurer at that time was a gentleman by the  
14 name of Dan Andrews.

15 Q. And who did it become after Mr. Andrews left?

16 A. Desiree Brown became the treasurer.

17 Q. Did you speak with the defendant about Mr. de Armas's  
18 inability to do a cash forecast and to get information from  
19 treasury?

20 A. I did. I had a lot of concerns about, about Delton's  
21 abilities.

22 Q. And describe for the jury the nature of that conversation.

23 A. The nature of the conversation was Lee, Lee said, "Well,  
24 Delton gets the, Delton gets the job done, gets the audits done,  
25 gets the audits done."

Allen - Direct

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1 Q. What about the fact that your CFO couldn't get information  
2 from treasury? Did you address that with the defendant?

3 A. He said -- yes, I did. I did, and Lee said that he  
4 controlled the conversations with treasury.

5 Q. "He" being the defendant, Lee Farkas, or "he" being Delton  
6 de Armas?

7 A. "He" meaning Lee.

8 Q. Now, you were CEO, Mr. Allen. Were you allowed to get  
9 information from treasury?

10 A. I was not.

11 Q. And based on whose direction?

12 A. Based on Lee's direction.

13 Q. You've worked for a number of companies and agencies. Was  
14 that usual for the CEO to be walled off from treasury?

15 A. It was very unusual.

16 Q. Now, the defendant told you that he dealt with treasury. Did  
17 you witness him interacting with Desiree Brown directly?

18 A. Several times when I was in Ocala.

19 Q. And how would you see -- what was the nature of that  
20 interaction?

21 A. Well, the nature, I would see Desiree in Lee's office, or I  
22 would see Lee in Desiree's office.

23 Q. Would you be invited to those meetings?

24 A. I would not be invited to those meetings.

25 Q. Now, you testified a moment ago that you made a

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1 recommendation to the defendant about Mr. de Armas. What was that  
2 recommendation you made?

3 A. Well, based upon my interactions with Delton when I first  
4 started at Taylor Bean, I suggested that we remove Delton as CFO  
5 and bring in another CFO.

6 Q. Did you believe you had the authority as CEO to hire and fire  
7 employees?

8 A. I did.

9 Q. In fact, did you?

10 A. I did not.

11 Q. In your tenure, your six years at TBW, did you ever hire  
12 anyone without consulting the defendant?

13 A. I did not.

14 Q. In fact, how many people did you end up hiring or recommend  
15 for hiring during your six years there?

16 A. One.

17 Q. Had you recommended more?

18 A. Yes.

19 Q. And why weren't those individuals hired?

20 A. Lee did not want to hire them.

21 Q. Did he give you a reason?

22 A. Usually it was around the fact that we didn't have enough  
23 money to hire additional people.

24 Q. Did you ever fire anyone without consulting the defendant?

25 A. I did not.

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1 Q. Now, did the defendant ever hire anyone without consulting  
2 you?

3 A. Yes.

4 Q. Who is that?

5 A. There were several. I certainly recall the hiring of our  
6 chief operating officer in late '07, Stuart Scott. That was done  
7 without my involvement.

8 Q. And was the chief operating officer one of the senior  
9 managers of the company?

10 A. Yes.

11 Q. How did you find out about that?

12 A. Lee e-mailed me in, I believe, again, I think it was late  
13 '07, it was either late '06 or late '07, and said, "Oh, I've just  
14 talked to this guy. I've hired him as a COO, and I want to tell  
15 you about him."

16 Q. Mr. Allen, were you involved in promoting individuals within  
17 TBW? For instance, you just testified about Desiree Brown getting  
18 promoted. Were you involved in that?

19 A. I was not.

20 Q. Now, given that you didn't have full operational control,  
21 what role, if any, did you undertake as CEO?

22 A. I -- at the time that it became clear that I did not have  
23 operational control, I, I morphed into a different role at Taylor  
24 Bean. I became more of a, more of a business development  
25 externally focused CEO than one internally focused.

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1 Q. We'll talk about some of those efforts in a bit. Let me ask  
2 you for a few moments about the defendant's leadership style.  
3 Could you describe that for the jury, please?

4 A. Lee was very involved, particularly in terms of matters  
5 involving cash and cash movement. He was a micromanager in the  
6 sense of, you know, reaching far down into the organization to  
7 have one-on-one discussions with people even though the org. chart  
8 wouldn't, would not suggest that kind of relationship.

9 Q. Given that management style, did you keep the defendant  
10 informed of important decisions or issues that related to TBW?

11 A. Yes, I did.

12 Q. Is that also true with respect to important decisions or  
13 issues or facts related to Ocala Funding?

14 A. Yes.

15 Q. Who at TBW was primarily responsible for the Colonial  
16 relationship?

17 A. Lee was.

18 Q. Did he ever convey that to you?

19 A. Several times.

20 Q. Let me show you what's been marked as Government Exhibit  
21 22-103.

22 MR. ROGOW: No objection, Your Honor.

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

24 (Government's Exhibit No. 22-103 was received in  
25 evidence.)

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1 MR. CONNOLLY: Will you show that to the jury, please?

2 Q. Mr. Allen, do you recall this e-mail?

3 A. I do.

4 Q. How did this e-mail come about?

5 A. This, this e-mail came about as a discussion I had with, with  
6 Colonial, with a representative of Colonial Bank around some  
7 potential hedging of operations at TBW at how that hedging could  
8 be done.

9 Q. Who were you speaking with at Colonial Bank?

10 A. I was speaking with, with Rodney Lewis.

11 Q. Who was Mr. Lewis?

12 A. Mr. Lewis was a vice president of the Warehouse Banking  
13 Division.

14 Q. Was there anything particularly contentious about that call?

15 A. No. No, sir.

16 Q. Would you describe it as a normal business call?

17 A. I would -- yes, I would. I would describe that as a normal  
18 business call around this particular area of, of business  
19 operations, yes.

20 Q. And in simple terms, what were you conveying to Mr. Lewis  
21 with respect to this issue?

22 A. I was conveying to him that we could, we could undertake a  
23 hedging, meaning that we could reduce the risk exposure of Taylor  
24 Bean without incurring a lot of cost, without Taylor Bean  
25 incurring a lot of cost, and that Colonial as a creditor to Taylor

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1 Bean would actually benefit from that because we would be reducing  
2 our risk exposure.

3 Q. What was your reaction to receiving this e-mail from the  
4 defendant?

5 A. I was very surprised.

6 Q. What did you do with the e-mail after you received it?

7 A. I saved it.

8 Q. Where did you save it?

9 A. I saved it in an, in an electronic folder in my Outlook box.

10 Q. Why did you save this particular e-mail from the defendant?

11 A. I saved it because I was concerned that I was possibly going  
12 to be terminated, that there might be some kind of action taken  
13 against me, and I wanted to have a record of the dialogue.

14 Q. Now, did you receive a follow-up e-mail from the defendant  
15 later that evening?

16 A. I did.

17 Q. Let me show you what's been marked as Government Exhibit  
18 22-104.

19 MR. ROGOW: No objection.

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

21 (Government's Exhibit No. 22-104 was received in  
22 evidence.)

23 BY MR. CONNOLLY:

24 Q. Is that the e-mail you received, Mr. Allen?

25 A. Yes, sir, it is.

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1 Q. Could you read the first sentence, please, the first  
2 paragraph to the jury?

3 A. Sure. The first sentence reads, "Because I am a very nice  
4 person, basically I prefer not to speak with you tonight. I might  
5 say something I will regret. I am very upset that you had the  
6 conversation with Rodney and Austin today. Basically, in my  
7 opinion, what you guys told Rodney is not the truth but a fantasy  
8 world that doesn't exist."

9 Q. Let's stop there. Was what you were discussing with  
10 Mr. Lewis the truth?

11 A. Yes.

12 Q. And is it something that may have actually benefited TBW?

13 A. Yes.

14 Q. So what did you understand as to why the defendant was upset  
15 about this communication with Colonial?

16 A. I, I interpreted that as being he was being upset because I  
17 had the conversation without him being on the phone.

18 Q. Conversation with Colonial?

19 A. With Colonial, yes, um-hum.

20 Q. And what is the -- just finish off the e-mail, please.

21 A. Sure. The remainder of the e-mail says, "I have other issues  
22 with you as well. I am at the gym and will enumerate my concerns.  
23 Have a pleasant evening."

24 Q. Now, did you have follow-up discussions with the defendant  
25 about those other issues that he referenced?

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1 A. Yes.

2 Q. And explain, tell us about those conversations.

3 A. Sure. We had several conversations. The first one that was  
4 immediately pursuant to this e-mail was for me never to have  
5 contact with Colonial again.

6 Q. And explain, explain that.

7 A. Sure. Lee asked me -- or told me to not have conversations  
8 with Colonial again either without his approval or with him being  
9 on the phone with me.

10 Q. Colonial was a major customer of Taylor Bean's?

11 A. Colonial was a major creditor.

12 Q. Creditor.

13 A. Yes, um-hum.

14 Q. And you were CEO?

15 A. Yes.

16 Q. In your experience before, had you ever been precluded from  
17 speaking with a major creditor of the company or agency you worked  
18 for?

19 A. I'd never been precluded from talking with anyone before.

20 Q. Did you follow that direction?

21 A. I did.

22 Q. What else did you discuss with the defendant following up on  
23 these e-mails?

24 A. We, we talked more generally about the need to get on the  
25 same page with each other because that, I did not feel like I was

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1 being kept informed as to what Lee was doing, and Lee was, Lee was  
2 obviously not thinking I was keeping him informed of what I was  
3 doing.

4 Q. What did you-all decide to do going forward?

5 A. We had, we had another meeting, a dinner meeting up here in  
6 the -- over in Reston, Virginia, and at that meeting, we decided  
7 to keep each other informed on a daily basis of each other's  
8 activities.

9 Q. How would that happen?

10 A. By -- we both agreed at the end of each business day to, to  
11 send e-mails to each other around what we had been working on that  
12 day.

13 Q. And approximately when did this daily e-mail process start?

14 A. My recollection is it started early December of 2006.

15 Q. And approximately how long did you send daily e-mail updates  
16 to the defendant?

17 A. I sent -- I believe I sent e-mail -- daily e-mails to him  
18 probably for at least two to three months. I would say probably  
19 into March of '07.

20 Q. Now, this was supposed to go both ways; is that correct?

21 A. Yes, sir.

22 Q. For approximately how long did the defendant send daily  
23 updates to you?

24 A. One day.

25 Q. I'd like to talk about an entity known as Ocala Funding for a

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1 few minutes. What was Ocala Funding?

2 A. Ocala Funding was a, a subsidiary of Taylor Bean. It was a  
3 bankruptcy remote subsidiary. It was also -- it's also known as  
4 an asset-backed commercial paper subsidiary. What that means is  
5 that the, the assets -- that Ocala Funding would issue commercial  
6 paper, would raise cash by doing so, and then use that cash to  
7 fund loans.

8 Q. Let's break that down just a little bit. The first term you  
9 used was "bankruptcy remote." Could you explain to the jury what  
10 "bankruptcy remote" meant with respect to Ocala Funding?

11 A. Sure. "Bankruptcy remote" meant that the subsidiary, which  
12 in this case is Ocala Funding, could stand separate from Taylor,  
13 Bean & Whitaker as an entity, meaning that if something bad  
14 happened to Taylor Bean, such as in the case of a bankruptcy, that  
15 Ocala Funding could still function on its own completely  
16 independent.

17 Q. What did it mean with respect to its assets versus  
18 liabilities vis-a-vis Taylor, Bean & Whitaker?

19 A. It meant vis-a-vis Taylor Bean that again, the, the assets of  
20 Ocala Funding had to stand on their own, and there were very  
21 strict limits as to the types of assets that, that Ocala Funding  
22 could, could have on its balance sheet.

23 Q. So if Taylor, Bean & Whitaker disappeared all at once, Ocala  
24 Funding would have enough assets to cover its liabilities?

25 A. Yes.

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1 Q. And that's what you understood "bankruptcy remote" to mean?

2 A. Yes.

3 Q. Now, was Ocala Funding a single seller conduit?

4 A. Yeah, that's the term that was used. What that meant, it was  
5 that Ocala Funding could only fund loans originated by Taylor  
6 Bean. There were other asset-backed commercial paper facilities  
7 that were out there that could fund loans from multiple  
8 originators, but this one was solely devoted to Taylor Bean.

9 Q. Now, briefly describe for the jury what commercial paper is.

10 A. Commercial, commercial paper is a form of debt. It's short  
11 term, meaning that it carries maturities, usually it carries  
12 maturities anywhere from 30 days to 60 or 90 days. Technically,  
13 it can be, I think, as short as one day and as long as 180 days,  
14 but I'm not exactly positive on that. But basically, it's a  
15 short-term debt instrument, an obligation of Taylor Bean gets  
16 money and in return pays that money back when the, when the  
17 commercial paper matures.

18 Q. Is it similar to a corporate IOU?

19 A. It is similar to the corporate IOU, but it's secured by the,  
20 by the assets of the facility.

21 Q. We'll talk more in a moment about the loan's life at Ocala  
22 Funding.

23 A. Um-hum.

24 Q. What was the official corporate structure of Ocala Funding?

25 A. Ocala Funding was an LLC.

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1 Q. What's an LLC?

2 A. A limited liability corporation or company.

3 Q. Were there certain members of that LLC?

4 A. There were, yes.

5 Q. Who were the members of the LLC?

6 A. The, the members of the LLC were Lee, Ray, and myself.

7 Q. Did Ocala Funding have its own employees?

8 A. It did not.

9 Q. Did it have its own office space?

10 A. It did not.

11 Q. Who were the employees who would staff Ocala Funding?

12 A. Primarily Ocala Funding was, was staffed by myself and Sean  
13 Ragland.

14 Q. Who is Mr. Ragland?

15 A. Mr. Ragland worked in the, worked in the CFO's office. He  
16 was, I believe his title was senior financial analyst.

17 Q. But it was staffed entirely by Taylor, Bean & Whitaker  
18 employees; is that correct?

19 A. Yes, sir.

20 Q. Now, approximately when was Ocala Funding formed?

21 A. The -- Ocala Funding was formed in April of 2005. Actually,  
22 the discussions started in, in late '03 and took quite a while in  
23 terms of the development of the structure.

24 Q. Were you one of the Taylor, Bean & Whitaker employees who led  
25 the negotiations to form Ocala Funding?

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1 A. Yes, sir.

2 Q. And who else was involved in that process from TBW?

3 A. Lee was and to a lesser extent Ray Bowman.

4 Q. Why was Ocala Funding formed?

5 A. Ocala Funding was formed as, to provide an additional source  
6 of funding for Taylor Bean to close or to fund mortgage loans. So  
7 it was a, it was, it was a move to diversify our funding sources,  
8 meaning to give us a more and a broader base of funding sources,  
9 and then also to give us a lower cost source of funding to close  
10 our loans.

11 Q. And at the time that Ocala Funding is formed, who is the  
12 primary source of funds for Taylor, Bean & Whitaker?

13 A. At that time, Colonial Bank.

14 Q. Now, you testified a few moments ago about commercial paper  
15 and that Ocala Funding had this commercial paper. How did that  
16 get to investors?

17 A. There was a, a broker network for commercial paper. We -- I  
18 believe when, when Ocala Funding began, there were two brokers who  
19 marketed the commercial paper to investors.

20 Q. Are you familiar with the phrase "issuing commercial paper"  
21 versus "rolling commercial paper"?

22 A. Yes. I became familiar with both those phrases, yes.

23 Q. Could you explain to the jury what those are and how they  
24 differ?

25 A. Sure. When -- let me start with issuing commercial paper.