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1 So on the very first day of Ocala Funding, there are no assets and
2 no liabilities. It's just starting de novo. What, what Ocala
3 Funding probably did on that first day was to issue \$100 million
4 of commercial paper, which meant we went through one of the
5 brokers for Ocala Funding of commercial paper. We issued
6 commercial paper to investors of \$100 million. That would be a
7 new -- an example of a new issuance.

8 So we would have debt of 100 million -- I'm speaking
9 roughly now -- debt of 100 million, and then we would have cash of
10 100 million, and then that cash could in turn be used to fund or
11 close loans equal to 100 million.

12 Q. Let's stop there for just a moment. So on that first day,
13 Ocala Funding's assets equal its liabilities approximately?

14 A. Yes, yes.

15 Q. And the assets are the cash?

16 A. On that first day, yes, sir.

17 Q. And the liabilities are the commercial paper outstanding?

18 A. Yes, sir, um-hum.

19 Q. Now, I think you were distinguishing rolling commercial paper
20 versus issuing commercial paper.

21 A. Yes. That first example again is issuing commercial paper.
22 That would occur whenever the size of the facility is growing.
23 And then as I mentioned a little bit earlier, you know, the
24 commercial paper is short-term in nature, meaning that it matures
25 rather rapidly, let's say usually 30 days. So every 30 days, a

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1 decision has to be made around whether or not the investor wants
2 to continue to hold the commercial paper, that's, that's what's
3 known as rolling, or if the commercial paper needs to be
4 liquidated, which would, which would cause the facility to shrink.

5 So issuance of commercial papers is associated with the
6 facility rising or increasing in size, and rolling occurs whenever
7 the commercial paper comes due and then just simply, as the name
8 indicates, rolls into a new maturity the same size.

9 Q. So the investor comes back and says, "I've got a \$10 million
10 IOU from Ocala Funding. It's due today. I want to up for another
11 30 days."

12 A. Yes.

13 Q. Essentially, that's what happens?

14 A. That's essentially what happens, yes, sir.

15 Q. Now, Mr. Allen, could you take a moment and run through for
16 the jury the life of a loan on Ocala Funding, how they came into
17 the facility and what happened at that point?

18 A. Sure, sure. The facility itself was limited to a certain
19 type of collateral. It was collateral that could either be sold
20 to Freddie Mac or to Ginnie Mae, and the reason for that was we
21 wanted to keep the facility pristine in terms of the quality of
22 the assets that were in there.

23 The assets would stay normally for about 30 days from
24 the time that the loan entered the facility, which was usually at
25 the time that the loan was initially funded, to the time that it

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1 was sold, again, sold to either Freddie Mac or to Ginnie Mae.

2 Ocala Funding also carried another unique
3 characteristic, which was each of the loans that was in the
4 facility had to be presold to either Freddie Mac or, or Ginnie
5 Mae.

6 Q. Let's take a step back and go back to the example you were
7 just giving the jury. You issued 100 million of commercial paper.
8 You've got approximately \$100 million in cash. What does Ocala
9 Funding do with that \$100 million?

10 A. What, what Ocala Funding would do with the \$100 million is to
11 take that money and then buy loans for it, basically fund loans so
12 that loans could be closed and Taylor Bean could do business.

13 Q. And what was unique about Ocala Funding with respect to the
14 loans that it bought with that \$100 million?

15 A. It was unique -- again, they were limited to only loans that
16 could be purchased by Freddie Mac or Ginnie Mae.

17 Q. Were all those loans also forward sold?

18 A. Yes, sir. And all of those, all of those loans were forward
19 sold, meaning that we knew on the day that the loan was funded
20 what we would get for the loan when it was sold 30 days hence, so
21 there was no price risk in terms of the, of the facility.

22 Q. And who is that a benefit to?

23 A. That's a benefit -- actually, that's a benefit to everyone,
24 but it's a huge benefit to the commercial paper holders, because
25 now they know that the loans are going to be sold at a fixed

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1 price.

2 Q. So you take the 100 million, you buy \$100 million worth of
3 loans. What happens at that point to those loans?

4 A. Those loans are, will sit in the facility for about a month,
5 and then they'll be, they'll be bundled up and pooled and then
6 sold to Freddie Mac or Ginnie Mae.

7 Q. What happens at the point that they're sold to Freddie Mac or
8 Ginnie Mae?

9 A. The cash comes back into Ocala Funding equal to the amount of
10 the sale, and then the cycle just starts all over again. The
11 money that comes in from Ginnie or from Freddie, again, that
12 replenishes cash. Cash in turn can be used to close loans. Loans
13 in turn can be sold forward to Freddie and Ginnie. When they're
14 sold, cash comes back, and it creates a cycle.

15 Q. And during the time that those loans are sitting on the Ocala
16 Funding facility, are they considered one of the assets of Ocala
17 Funding?

18 A. Yes, sir.

19 Q. So the two possible assets were cash plus loans?

20 A. Yes, sir.

21 Q. Post-formation, what was your role with respect to Ocala
22 Funding?

23 A. You mean post-, post-April of '05?

24 Q. Yes.

25 A. Once it started running? I was primarily involved in making

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1 sure that everything was operating okay in Ocala Funding on a
2 day-to-day basis.

3 Q. What was the defendant's role post-April of '05?

4 A. In terms of particularly in early, like, in early '05, in the
5 early life of Ocala Funding, not really a lot.

6 Q. Did that change over time?

7 A. It did. It did.

8 Q. We'll talk about that more a little bit later.

9 Was -- are you familiar with an entity known as LaSalle?

10 A. Yes.

11 Q. Did LaSalle have a role with respect to Ocala Funding?

12 A. Yes, it did.

13 Q. Let's start first, what was LaSalle?

14 A. LaSalle at the time that Ocala Funding was created, LaSalle
15 was a wholly owned subsidiary of a bank, a Dutch bank known as ABN
16 AMRO. LaSalle is a very large, very I won't say old, but
17 established bank in Chicago.

18 Q. What was LaSalle's role with respect to Ocala Funding?

19 A. LaSalle's role, LaSalle had two roles in Ocala Funding. They
20 served as the trustee for Ocala Funding, which meant that they
21 were, if you will, the guardians of the cash and making sure that
22 the cash was invested in loans, and then they were also the, what
23 we called the document custodian for the facility, meaning that
24 they, they were the, they were the entity that held the actual
25 mortgage notes from the time that the loans were closed until the

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1 time that they were sold.

2 Q. Where were Ocala Funding's bank accounts located?

3 A. The bank accounts for Ocala Funding were also located at, at
4 LaSalle.

5 Q. Were you aware of Ocala Funding having bank accounts anywhere
6 else?

7 A. No, sir.

8 Q. Now, did the defendant want LaSalle to be the trustee and
9 document custodian?

10 A. He did not.

11 Q. Who did he want to fill those roles?

12 A. He wanted Colonial to fill those roles.

13 Q. Why did LaSalle end up becoming the trustee and document
14 custodian then?

15 A. For two reasons. LaSalle wound up becoming the document
16 custodian, No. 1, because the, the structure was rated by rating
17 agencies, so in other words, the commercial paper was rated by
18 Moody's, S&P, and the like, and they insisted on a rated entity
19 with a good credit rating like LaSalle.

20 And the second reason was that one of the, one of the
21 banks backing Ocala Funding was ABN AMRO, and so one of the, one
22 of the conditions they put on being in the deal was they wanted
23 LaSalle to be the document custodian and the trustee.

24 Q. How large was Ocala Funding initially? What was its limit in
25 April of 2005?

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1 A. \$1 billion.

2 Q. Are you familiar with a, something known as a borrowing base
3 test?

4 A. I am.

5 Q. Can you explain to the jury what a borrowing base test is?

6 A. The borrowing base test was part of the Ocala Funding
7 structure. The -- it essentially was a test geared toward making
8 sure Ocala Funding's assets exceeded its liabilities. If that
9 condition was met, hence the name borrowing base test, if that
10 condition was met, then Ocala Funding could issue commercial paper
11 and move forward.

12 Q. Now, you testified a few moments ago about what constituted
13 the assets in Ocala Funding. What were the liabilities of Ocala
14 Funding?

15 A. The primary, almost exclusive liability of Ocala Funding was
16 its commercial paper. There was a small amount of longer-term
17 debt called subordinated debt. It was again a very, very small
18 amount. As I recall, it was maybe about 1 or 2 percent of the
19 facility. The overwhelming amount of the liabilities or the debt
20 was commercial paper.

21 Q. And is that long-term debt sometimes referred to as sub debt?

22 A. Yes, it's sometimes referred to as sub debt.

23 Q. What type of loans could initially be in the facility?

24 A. The, the loans that could initially be in the facility were
25 fixed rate, fixed rate loans that could be sold to either Freddie

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1 Mac or Ginnie Mae.

2 Q. Just explain briefly to the jury what you mean by fixed rate
3 loan.

4 A. A fixed rate loan is a, a loan that, you know, what I would
5 call standard, garden variety loan, 30-year fixed rate in terms of
6 the interest rate, fully amortizing. So, for example, no
7 adjustable rate mortgages could be in the facility, no subprime
8 loans could be in the facility, no reduced documentation loans
9 could be in the facility. So it was, it was geared again to being
10 what I would consider to be standard, garden variety loans.

11 Q. Was there a change at some point in time as to what types of
12 loans could be in the facility?

13 A. Yes, there was.

14 Q. And approximately when did that change occur?

15 A. I believe in the middle of, right in the middle of 2006.
16 Again, the timing, I may be off a little bit on the timing. We
17 were no longer allowed to keep loans eligible for Ginnie Mae sale
18 in the facility.

19 Q. Explain to the jury how that came about, that Ginnie Mae was
20 no longer allowed.

21 A. The, the reason why Ginnie Mae was no longer -- or, excuse
22 me, Ginnie Mae loans were no longer eligible for Ocala Funding was
23 that we were not able to get a separate issuer number -- this is
24 going to get kind of technical; I apologize -- for Ocala Funding.
25 One of the important parts of being bankruptcy remote for Ocala

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1 Funding was that in the event that Taylor Bean went away, that the
2 loans that were still in Ocala Funding could still be sold.

3 For Freddie Mac, that was not an issue. We had a
4 separate seller number for Ocala Funding completely separate from
5 Taylor Bean, meaning that if Taylor Bean went away, Ocala Funding
6 could still sell Freddie Mac loans to Freddie Mac and there would
7 not be a problem, but with Ginnie Mae, we could not get a
8 separate, a completely separate issuer number for Ocala Funding.

9 It had what was called a cross-default agreement
10 associated with it, meaning that while we were able to get a
11 separate number for Ocala Funding with regard to Ginnie Mae loans,
12 if Taylor Bean went bankrupt, then that issuer number for Ocala
13 Funding also went away. So in other words, it wasn't really
14 independent. It depended upon the health of Taylor, Bean &
15 Whitaker.

16 So consequently, the swappers, the CP holders, everyone
17 backing the facility said, look, we're just not comfortable with
18 having Ginnie Mae loans in that facility.

19 Q. Because that cross-default meant there was too close a tie to
20 Taylor, Bean & Whitaker?

21 A. Yes, sir. It basically meant that if the loans -- if Taylor
22 Bean went bankrupt, then there would not be an easy way to sell
23 the loans out of Ocala Funding to Ginnie Mae.

24 Q. And that might affect the bankruptcy remoteness?

25 A. More importantly, it would just make, it would just make it

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1 harder for the commercial paper holders to get paid back.

2 Q. And that was important to them?

3 A. That was very important to them.

4 Q. Now, after the middle of 2006, when Ginnie Mae loans are no
5 longer allowed to be on the facility, does that ever change
6 through the end of Ocala Funding?

7 A. No, it does not.

8 Q. Mr. Allen, based on your experience, to the extent that there
9 are documents showing Ginnie Mae pools being sold from Ocala
10 Funding to Colonial after mid-2006, could those be legitimate?

11 A. They would not be legitimate.

12 Q. And based on your experience, to the extent there were
13 documents showing Ginnie Mae pools being sold from Colonial to
14 Ocala Funding, could those be legitimate?

15 A. Those would not be legitimate.

16 Q. How quickly did Ocala Funding grow?

17 A. It grew, it grew very quickly.

18 Q. Let me direct your attention forward a little bit to
19 September of 2005. Does something happen in September of 2005
20 with respect to the collateral in Ocala Funding? Did you learn
21 something?

22 A. Yes. I learned something about it, yes.

23 Q. What do you learn in that time frame?

24 A. Right around September-October of 2005, I receive a phone
25 call or an e-mail, I can't remember which it was, Sean Ragland did

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1 as well, from Moody's investor service or Moody's rating agency.

2 Q. And what was the nature of that phone call?

3 A. We -- the nature of that phone call was we were -- every
4 month we submitted essentially a report card on Ocala Funding to
5 the rating agencies and to other players, and one part of that
6 report card showed or, in essence, summarized the assets and the
7 liabilities of Ocala Funding, and the concern that Moody's
8 expressed was that it appeared that the assets of Ocala Funding
9 were less than its liabilities, so in other words, there was an
10 imbalance.

11 Q. What was the name of that report card?

12 A. That report card was called the monthly facility contents
13 summary.

14 Q. And that was something that was done on a monthly basis?

15 A. It was done on a monthly basis.

16 Q. Now, what was your reaction to Moody's saying it appeared to
17 be an imbalance?

18 A. I was very surprised. You know, we're at this point five,
19 five-six months into the facility. I didn't think there would be
20 any way at all that that could be correct.

21 Q. So what did you do after you learned this information from
22 Moody's?

23 A. I went to, I went to Lee and Ray.

24 Q. Describe for the jury your conversation with the defendant
25 and Ray Bowman.

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1 A. We had, we had a series of regular meetings called executive
2 committee meetings, which were, the executive committee was
3 myself, Lee, and Ray, and I decided that this was a big enough
4 deal to alert them both as to what was going on. So I walked them
5 through where we were in terms of the Moody's communication, what
6 they found, and just wanted to let them know that this was -- that
7 this had come up.

8 Q. Now, did you describe this to them at that time as being an
9 emergency or urgent matter?

10 A. I did not. I did not think it was an urgent matter.

11 Q. Can you explain to the jury why?

12 A. The primary reason why is that it was not affecting -- the
13 situation on that monthly facility contents summary was not
14 directly affecting our ability to issue commercial paper through
15 the borrowing base test.

16 Q. Explain why that was.

17 A. There -- yes. There was, there was a bit of an inconsistency
18 between the way the borrowing base test was being administered and
19 the monthly facility contents summary in the way it was being
20 presented. In the case of the borrowing base test, a certain
21 amount of commercial paper was being exempted from the borrowing
22 base test.

23 Q. Did you describe that to the defendant and Mr. Bowman?

24 A. I did.

25 Q. And how did you describe that to them?

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1 A. I described that as a loophole.

2 Q. So a loophole in the borrowing base test?

3 A. Yes.

4 Q. Now, what was the defendant's reaction when you told him that
5 there appeared to be a shortage in the collateral at Ocala
6 Funding?

7 A. He, he fought me on it. He thought that I was, I was crazy,
8 I was wrong, I was, I was relying on a poor, you know, an analyst
9 that he thought was a, was, you know, incompetent. I was
10 surprised at the level of -- at the pushback on this.

11 Q. What analyst had you been relying on?

12 A. Sean Ragland.

13 Q. What was your view of Mr. Ragland's competence?

14 A. I thought, I thought Sean was a very conscious analyst.

15 Q. What would you have expected the defendant's reaction to be,
16 being told that there's a collateral shortfall of Ocala Funding
17 four or five months in?

18 MR. ROGOW: Your Honor, objection. Calls for
19 speculation.

20 THE COURT: Sustained.

21 BY MR. CONNOLLY:

22 Q. So what did you do in response to being told that you were
23 wrong, you were crazy, and you were relying on the wrong person?

24 A. I went out and conducted my own investigation as to what
25 might be going on.

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1 Q. What did you find out?

2 A. I found out that the, the loans that were in Ocala Funding
3 were not being credited interest properly into Ocala Funding.

4 Q. Explain that to the jury.

5 A. Sure. I mentioned a few minutes ago about the loans coming
6 into the facility and then being sold at a fixed price, and
7 that's, that's a terrific tool for managing the risk of the
8 facility. There's another part of Ocala Funding, which is the
9 commercial paper that's issued has a cost associated with it,
10 because the money is not free.

11 The loans, while they're in the facility, earn interest,
12 you know, mortgagors make their payments, and in almost every
13 case, the amount of interest earned on the loans is greater than
14 the interest cost, so in other words, that interest earned needs
15 to be there to pay the interest cost of the loans in the facility,
16 and that's what I found was not being credited properly into Ocala
17 Funding.

18 Q. Where was that money going?

19 A. It's staying in Taylor Bean.

20 Q. And at that point in that time, do you believe that explained
21 the size of the collateral shortfall that you were aware of?

22 A. Yes, sir. Yes, sir.

23 Q. What happened with respect to that collateral shortfall? Did
24 it go away?

25 A. It did not. It started out -- at the time of the first

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1 executive committee meeting, it was about 30 to 40 million
2 dollars, and it kept, it kept growing.

3 Q. What was your reaction to it continuing to grow?

4 A. Well, again, I was very concerned. You know, this was, this
5 was not what was expected. This is not the way the facility was
6 supposed to be run, but yet that deficit kept growing.

7 Q. Did you express your concerns about this to the defendant?

8 A. I did several times.

9 Q. Let me direct your attention to the fall of 2006. Did you
10 confront the defendant about the size of the growing collateral
11 shortfall?

12 A. I did.

13 Q. And explain to the jury that confrontation.

14 A. This, this meeting was in, in New York City. We -- there
15 were some meetings with investment banks. Again, I pulled Lee and
16 Ray aside, mentioned to them that now, less than a year later, the
17 deficit in the facility was up around 130 to 140 million dollars,
18 it was now at a level that could not be explained simply by
19 interest not being credited properly, and that I was, I was
20 getting very concerned as to what was going on.

21 Q. Where did this discussion take place?

22 A. It took place in the lobby of, of a Ritz Carlton hotel.

23 Q. Who was part of that discussion?

24 A. Lee and Ray.

25 Q. You said the size of the shortfall was about 130 to 140

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1 million dollars?

2 A. Um-hum.

3 Q. How did that compare to the approximate size of Taylor Bean's
4 net worth at that time?

5 A. At that time, that was probably a little bit greater, a
6 little bit larger than Taylor Bean's net worth.

7 Q. So the hole of Ocala Funding is greater than the net worth?

8 A. Yes.

9 Q. What did you -- what advice or recommendation did you give to
10 the defendant on this?

11 A. My advice and recommendation was we need to fix this. We
12 need to get this, you know, gap eliminated.

13 Q. What was Ray Bowman's reaction to your information?

14 A. Ray's reaction was the same. Ray said yes, this is too big a
15 facility, too visible of a facility for it to, you know, in
16 essence, crater.

17 Q. What was the defendant's reaction?

18 A. The defendant's reaction was we would fix it, and he said to
19 me that, you know, we needed to fix it because we at Taylor Bean
20 had a tendency to spend money like drunken sailors.

21 Q. What was your reaction to the defendant telling you that
22 Taylor Bean spent money like drunken sailors?

23 A. I was beginning to get the impression that that was a pretty
24 accurate summary.

25 Q. Who decided how the money was spent at Taylor Bean?

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1 A. Lee did.

2 Q. Did the defendant, in fact, fix the hole?

3 A. No, sir.

4 Q. Let me show you what's been marked as Government Exhibit
5 17-11.

6 MR. ROGOW: No objection.

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

8 (Government's Exhibit No. 17-11 was received in
9 evidence.)

10 BY MR. CONNOLLY:

11 Q. Do you have it, Mr. Allen?

12 A. I do.

13 Q. This is an e-mail exchange between you and Sean Ragland on
14 November 17 of 2006?

15 A. Yes, sir.

16 Q. First I want to ask you, this subject line is "Monday's
17 Exhibit C."

18 A. Um-hum.

19 Q. Are you familiar with the phrase "Exhibit C"?

20 A. Yes, sir, I am.

21 Q. What is that?

22 A. It's basically the borrowing base test. It was the, sort of
23 the shorthand for the borrowing base test.

24 Q. This is the borrowing base test you testified had a loophole
25 in it?

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1 A. This is the borrowing base test that had the loophole and
2 also the borrowing base test that had to be passed every time
3 commercial paper was rolled or issued.

4 Q. Let's look at the initial e-mail from Mr. Ragland to you. In
5 general terms, what is Mr. Ragland alerting you to?

6 A. Mr., Mr. Ragland's alerting me to the fact that even with the
7 loophole in the borrowing base test, that we might still wind up
8 not being able to pass the borrowing base test and that we could
9 be as much as \$6 million short.

10 Q. And if you look midway through the e-mail that he sends you,
11 he says, "I have discussed this with Desiree, and we have no way
12 of coming up with the difference."

13 What did you understand him to be saying to you there?

14 A. I understood him to say that Desiree did not have any cash
15 available that could be moved into Ocala Funding.

16 Q. Why don't you read, please, to the jury what your response is
17 to Mr. Ragland.

18 A. Sure. My response is, "Is \$6 million still your best
19 estimate of the shortfall? I am thinking of asking Lee if we can
20 get Cathie to fund the shortfall for one day, which is really all
21 we need."

22 Do you want me to finish it?

23 Q. Yes, please.

24 A. Yes. "Would it be better if I asked him for \$8 million just
25 to be certain?"

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1 Q. Mr. Allen, did you say, "I'm thinking of asking Lee if we can
2 get Cathie" or "if he can get Cathie"?

3 A. "If he can get Cathie."

4 Q. Who is "Cathie" referring to?

5 A. Cathie Kissick.

6 Q. Where was she employed?

7 A. At Colonial.

8 Q. Why would Taylor, Bean & Whitaker be going to Colonial Bank
9 to be getting money for Ocala Funding?

10 A. Well, whenever -- by that time, I was pretty much aware that
11 if we ever needed cash, meaning any spot at TBW needed cash, we
12 would get it from Cathie. We would get it from Colonial.

13 Q. Was Ocala Funding supposed to be getting money from Colonial
14 to pass its borrowing base test?

15 A. No.

16 Q. Why not go to Ms. Kissick yourself?

17 A. Because Lee had told me not to.

18 Q. Did you have an understanding for how the defendant could get
19 money from Colonial in a situation like this?

20 A. I did not.

21 Q. Now, what was the goal in getting this 6 or 8 million dollars
22 from Colonial Bank for just one day?

23 A. The goal would be to pass the borrowing base test, because
24 cash that would be put into an account at LaSalle would be counted
25 as, as an asset of Ocala Funding and, hence, go credited toward

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1 the borrowing base test.

2 Q. And was your understanding that this was going to be done
3 just for one day to pass the test or to permanently go back to
4 Ocala Funding?

5 A. That this was, this was going to only be put in for one day,
6 or a short period of time.

7 Q. Thank you.

8 Let me show you what's been marked as Government
9 Exhibit -- before I get to that, Mr. Allen, do you know if that
10 money was actually sent from Colonial to Ocala Funding so it could
11 pass the test?

12 A. I believe it was.

13 Q. Let me show you what's been marked as Government Exhibit
14 17-172.

15 THE COURT: Any objection?

16 MR. ROGOW: No objection.

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

18 (Government's Exhibit No. 17-172 was received in
19 evidence.)

20 BY MR. CONNOLLY:

21 Q. Do you have that exhibit, Mr. Allen?

22 A. Yes, I do.

23 Q. Is this approximately a two-page e-mail that's an exchange
24 between you and the defendant that you then forward to Mr. Ragland
25 at the very end?

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1 A. Yes.

2 Q. All right, let's start at the bottom of the second page.

3 A. Okay.

4 Q. And look at the, the initial exchange.

5 A. Um-hum.

6 Q. This is an e-mail on Monday, November 20, and the previous
7 e-mail was November 17, 2006; is that right?

8 A. Yes, sir.

9 Q. So this is just the next Monday?

10 A. It's the next Monday.

11 Q. Please read to the jury what you say to the defendant.

12 A. Yes. This is again at the bottom of page 2: "When the
13 wiring of the \$8 million is completed to LaSalle this morning,
14 could you please have Desiree" -- "Dez" is Desiree Brown -- "or
15 someone in her group notify Sean Ragland? The earlier the wire is
16 sent, the easier our case will be. I do not anticipate any
17 issues. LaSalle has been very flexible with us in the past. Once
18 again, thank you very much."

19 Q. What's the defendant's response to that?

20 A. Lee's response to me is, "Once again, you have dropped the
21 ball. This should have been done Friday. The only person who can
22 make this work is me. If we knew, why let this be a crisis? Do
23 you enjoy almost cratering us? I have a hard time understanding
24 this again."

25 Q. Let me stop you there.

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1 A. Um-hum.

2 Q. What do you understand the defendant to be saying when he
3 says, "Do you enjoy almost cratering us?"

4 A. He thinks that I've created a crisis that, you know, could
5 bring Taylor Bean -- bring down Taylor Bean.

6 Q. Explain what happens if the \$6 million doesn't show up in the
7 account on time.

8 A. If the \$6 million doesn't show up on time, then we won't be
9 able to roll or issue commercial paper on that day, on that
10 Monday.

11 Q. What's the problem with that?

12 A. The problem with that is -- the biggest problem is that the
13 facility then goes into wind-down, which means we have to start
14 liquidating the loans that are in the facility and start to pay
15 off the commercial paper holders.

16 Q. Can you finish off reading what the defendant's response is
17 to you there?

18 A. Yes. He says, "I will wire the dollars this a.m. as soon as
19 I can. Sean will know as soon as it has been sent."

20 Q. Now, to be clear, Mr. Allen, is it your understanding that
21 the defendant was doing this himself or the money was coming from
22 Colonial?

23 A. I interpreted it as being the money was coming from Colonial.

24 Q. Now, is this the first time that you discussed this with the
25 defendant?

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1 A. Discussed what? The, the requirement to move money?

2 Q. Yes.

3 A. No, sir, this was not the first time.

4 Q. All right, let me turn to the first page of the e-mail. And
5 why don't you look at the bottom one.

6 A. Um-hum.

7 Q. Just read the defendant's response to you there.

8 A. Sure. At the bottom of page 1?

9 Q. Yes, please.

10 A. The response is, "It is not fine. I said I would wire the
11 money. I did. I would like to have known about this on Thursday.
12 It is too short of notice. There isn't anything further than that
13 to discuss."

14 Q. Now, let's look at your response to defendant at that point.

15 A. Um-hum.

16 Q. What do you say to him at first?

17 A. The first I say is, "Actually, there is plenty more to
18 discuss." Do you want me to continue reading?

19 Q. Yeah. Why don't you skip to the third paragraph.

20 A. Third paragraph. The one that starts "What we did not
21 anticipate"?

22 Q. Yeah.

23 A. "What we did not anticipate was a continued deterioration in
24 the borrowing base calculation, especially toward the end of the
25 week. If OF" -- meaning Ocala Funding -- "is going to continue to

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1398

1 be short-funded, meaning not being reimbursed the entire OPP or
2 initial funding amount when the loan exits OF, that is critical
3 information for us to know."

4 Q. Let's stop there for a second. "Continued deterioration in
5 the borrowing base calculation," does that mean the hole is
6 growing?

7 A. Yes, that means the hole is growing.

8 Q. Now, you talk about the short-funded. What do you mean by
9 that?

10 A. "Short-funded" means that again, in the, in the example that
11 I've been giving of loans being funded at 100 and being sold at
12 100 and then when the loans are sold for 100, the money coming
13 back into Ocala Funding and being recycled, "short-funded" means
14 that \$100 is not coming back in, that something less than \$100 is
15 coming back in, say, \$90 or \$95.

16 Q. So in your example earlier of 100 million in the initial
17 commercial paper, Ocala Funding might only get 90 million or 85
18 million?

19 A. Yes.

20 Q. Where was the rest of the money going?

21 A. I don't know, but it wasn't going back into Ocala Funding.

22 Q. Was it supposed to go back to Ocala Funding?

23 A. Yes, yes.

24 Q. Now, can you read the next paragraph, "I have brought"?

25 A. Yes. "I have brought this matter to your attention at least

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1 twice since September. Each time you have said that the situation
2 will not get worse. Yet it has."

3 Q. What's your reference to bringing it to his attention? What
4 does that relate to?

5 A. This being the gap, the hole in Ocala Funding.

6 Q. And the reference to September, was that the meeting in New
7 York City at the Ritz Carlton?

8 A. Yes, sir.

9 Q. And could you read just the last sentence in that e-mail?

10 A. "I am frustrated with continually advising you on the
11 borrowing base situation and then having that advice and
12 consideration ignored."

13 Q. Now, that's an exchange between you and the defendant, but
14 the top portion of this e-mail is between you and Sean Ragland.
15 Why are you forwarding this exchange to Sean Ragland?

16 A. I'm forwarding it to Sean so he knows that I'm trying to make
17 things better, that I'm trying to get that deficit reduced and
18 ultimately eliminated.

19 Q. Could you please just read what your exchange with
20 Mr. Ragland is?

21 A. Yes. At the top, the very first entry is, "Strangely enough,
22 my BB" -- means BlackBerry -- "my BlackBerry said I sent this
23 yesterday at 4:19 p.m., but I could find no record of it in my
24 sent items. I just re-sent this to Lee."

25 Q. Why did you re-send to Lee a message that you thought you had

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1400

1 already sent?

2 A. I wanted to make sure he got it.

3 Q. Thank you.

4 Let me ask you to look next at what's been marked as
5 Government Exhibit 17-179.

6 And while Mr. Allen is pulling that -- excuse me, while
7 Mr. Wood is pulling that exhibit, Mr. Allen, is that the only time
8 that you e-mailed the defendant about Ocala Funding issues?

9 A. No, sir.

10 MR. ROGOW: No objection, Your Honor.

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

12 (Government's Exhibit No. 17-179 was received in
13 evidence.)

14 BY MR. CONNOLLY:

15 Q. This is an e-mail sent approximately two weeks later from you
16 to the defendant, and the subject is "Ocala Funding." Let's walk
17 through this e-mail. Why don't you read the first two sentences.

18 A. Sure. "Just to summarize our discussion from last night:
19 Here are the three things we can do right now to stabilize the
20 Ocala Funding borrowing base." Again, "OF" means Ocala Funding.
21 "No. 1, no more transfers from the collection account."

22 Q. Let's stop there. What is the collection account?

23 A. The collection account is again an Ocala Funding account that
24 existed at, at LaSalle.

25 Q. And what money goes into the collection account?

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1401

1 A. The collection account, I believe, was the -- was where again
2 the interest payments that would come in on the loans that were
3 sitting in Ocala Funding went.

4 Q. What was happening to the money in the collection account?

5 A. It was, it was being transferred out of Ocala Funding to
6 Taylor Bean.

7 Q. For what purpose?

8 A. I don't know.

9 Q. Was it for Ocala Funding purposes?

10 A. Oh, no, sir. It was not for Ocala Funding purposes.

11 Q. Was that money supposed to be transferred out of the Ocala
12 Funding collection account for non-Ocala purposes?

13 A. No, sir.

14 Q. What's the next thing that you recommend?

15 A. "Fund all new closings at the OPP, which is the forward trade
16 price, not the amount required to fund the loan."

17 Q. And let's go to the third one.

18 A. And third, "When paydowns occur, reimburse Ocala Funding for
19 the full OPP or amount used to fund the loan if it is an old
20 loan."

21 Q. What are you referring to in the third situation there?

22 A. That, that was similar to what I referred to a little bit
23 earlier that, that we -- that whenever a loan was sold from Ocala
24 Funding, that whatever amount was received on that sale, all of it
25 comes back to Ocala Funding. It doesn't -- none of it gets

Allen - Direct

1402

1 diverted by Taylor Bean.

2 Q. At this point in time in December of 2006, does the defendant
3 understand that the Ocala Funding money is supposed to go to Ocala
4 Funding?

5 A. Yes.

6 Q. You've had conversations with him about that?

7 A. Yes.

8 Q. Now, just jump ahead to the paragraph that says, "I am
9 continuing." Would you read that, please?

10 A. Yes. "I am continuing to work with Sean on a full recon of
11 the daily movement in the borrowing base during November. I will
12 be reviewing something this evening."

13 Q. What are you referring to there with respect to Sean? Is
14 that Sean Ragland?

15 A. Yes, that is Sean Ragland, and what we were attempting to do
16 is to figure out at least what the drivers were in terms of the
17 growing hole in Ocala Funding.

18 Q. Thank you.

19 Let me show you next what's been marked as Government
20 Exhibit 17-177.

21 MR. ROGOW: No objection.

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

23 (Government's Exhibit No. 17-177 was received in
24 evidence.)

25 BY MR. CONNOLLY:

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1 Q. Mr. Allen, this is another exchange between you and the
2 defendant. The subject is "Re: Monday's wrap." What's a wrap?

3 A. Well, that's just what I referred to as my daily updates that
4 I was providing Lee that I mentioned a little bit earlier.

5 Q. This is an example of the e-mails at the end of the day you
6 testified to earlier?

7 A. Yes, sir.

8 Q. Let's look at the first one between you and Mr. Farkas, and
9 if I could direct you to the fourth paragraph, if you could read
10 that, please, the BB one?

11 A. Yes. "The BB" -- this BB references not the BlackBerry; it's
12 to borrowing base. "The borrowing base took another hit. We are
13 down almost \$6.5 million since the end of November. Primary
14 drivers on 12/15" -- December 15 -- "were haircuts on new fundings
15 and a transfer from the collection account."

16 Q. And again, is that money not going back into Ocala Funding
17 that's supposed to?

18 A. Yes, sir.

19 Q. It's stopping at Taylor Bean?

20 A. And it's stopping at Taylor Bean.

21 Q. And it's also money being pulled out of Ocala Funding's
22 accounts?

23 A. Yes, sir.

24 Q. Again, by Taylor Bean?

25 A. Yes, sir.

Allen - Direct

1404

1 Q. Now, what is the defendant's response to you?

2 A. At the very top, "Regarding OF, at least we have slowed it
3 down. We will stop the drain."

4 Q. Mr. Allen, was slowing down the drain enough?

5 A. No, sir.

6 Q. What needed to be done?

7 A. The drain needed to be reversed.

8 Q. Did the drain, in fact, stop?

9 A. It did not.

10 Q. Let me show you what's been marked next as Government Exhibit
11 17-178.

12 MR. ROGOW: No objection.

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

14 (Government's Exhibit No. 17-178 was received in
15 evidence.)

16 BY MR. CONNOLLY:

17 Q. Mr. Allen, is this an example of another one of your daily
18 wrap e-mails?

19 A. Yes, it is.

20 MR. CONNOLLY: For our court reporter, that's w-r-a-p.

21 Q. Now, this one is in early January 2007. Let me direct your
22 attention to the second page of the e-mail, if I can, and look at
23 the last two paragraphs. The one that says, "I understand," could
24 you please read that one?

25 A. Okay. Yes. So I'm on page 2 now of the e-mail, the very

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1405

1 last entry: "I understand that another \$1 million moved out of
2 the OF collection account last week. (Does the name Seaside Bank
3 mean anything to you? I heard we opened an account there for OF,
4 but I do not understand more than that.) I'll have the borrowing
5 base tally for December for you tomorrow. All told, I think the
6 drain due to the funding discrepancies was fairly low, especially
7 compared to November."

8 Q. Let's jump to the first page and the defendant's response to
9 you. First, were you aware of any Ocala Funding accounts being
10 opened up at other banks?

11 A. No, sir.

12 Q. Please read the second paragraph of the defendant's response.

13 A. Yeah, in the middle of the first page, the response is, "The
14 \$1 million" -- this is from Lee to me. "The \$1 million did not
15 disappear. I moved it to another account. It is still an asset
16 of Ocala Funding. Countable or not, it is there. It is in a
17 demand account in OF's name."

18 Q. And if you could read your response to the defendant at the
19 top of the e-mail?

20 A. At the top of the e-mail, "As for O F" -- and this is my
21 response to Lee. "As for OF, I did not say \$1 million
22 disappeared. You asked me to give you frequent updates on the OF
23 borrowing base. The movement of the \$1 million out of the
24 collection account at LaSalle still hurts the borrowing base by \$1
25 million, because we can't count it when we want to issue new

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1406

1 commercial paper.

2 Q. Please finish off.

3 A. Oh, "It doesn't matter for the borrowing base that the
4 account is titled to OF. If the account is not with the trustee,
5 it can't be counted."

6 Q. Explain for the jury what you're explaining there.

7 A. What I'm explaining there is again, the rules are pretty
8 clear in the borrowing base about what can and what cannot be
9 counted as assets for Ocala Funding. The cash accounts that can
10 be counted for Ocala Funding needed to reside at LaSalle. In
11 fact, there were some small accounts at LaSalle that could not be
12 counted for the borrowing base, but for anything to be counted for
13 the borrowing base, it had to be at LaSalle.

14 Q. So the fact that it was at some other bank in some other name
15 wouldn't matter from a bankruptcy remote standpoint; is that
16 correct?

17 A. Yes, sir, that is correct.

18 Q. Now, did you learn, you know, later on in 2007 why the money
19 went to Seaside?

20 A. Yes. I can't say that I learned later in 2007, but I do
21 learn later that, in essence, we opened a warehouse banking
22 relationship with Seaside and that this money was used in part as
23 earnest money or equity money to help found that, that warehouse
24 line.

25 Q. Did that warehouse line have anything to do with Ocala

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1407

1 Funding?

2 A. No, sir, it did not.

3 Q. Let me show you what's been marked as Government Exhibit
4 17-19.

5 MR. ROGOW: No objection.

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

7 (Government's Exhibit No. 17-19 was received in
8 evidence.)

9 BY MR. CONNOLLY:

10 Q. Mr. Allen, could you just please read -- what is Mr. Ragland
11 doing in this e-mail?

12 A. Excuse me, Mr. Ragland is giving me an update on what's going
13 on with the, with the hole, with the borrowing base deficit.

14 Q. This is in December of 2006?

15 A. Yes, sir.

16 Q. How big is the hole in Ocala Funding at this point in time?

17 A. It looks like the hole is roughly \$226 million.

18 Q. Could that be explained by mere interest not being passed
19 through?

20 A. No, sir.

21 Q. What would you do when you received this information from
22 Mr. Ragland about the size of the hole?

23 A. I would pass this information along to Lee.

24 Q. And how often would Mr. Ragland update you on the growing
25 size of the hole?

Allen - Direct

1408

1 A. I would -- I can't say it was on a daily basis, but certainly
2 it was on a frequent basis. Certainly, you know, several times a
3 month.

4 Q. Now, was Mr. Ragland tracking the size of the hole in some
5 detailed way?

6 A. He is.

7 Q. How is he doing that?

8 A. He has a spreadsheet that is looking at various accounts off
9 the, off the general ledger and, and various accounts that we have
10 created at LaSalle for OF.

11 Q. On occasion, did he provide that spreadsheet to you?

12 A. Yes, sir, he did.

13 Q. Let me show you what's been marked as Government Exhibit
14 17-55.

15 MR. ROGOW: No objection.

16 THE COURT: It's in.

17 (Government's Exhibit No. 17-55 was received in
18 evidence.)

19 BY MR. CONNOLLY:

20 Q. Let's just start with the, excuse me, the cover e-mail,
21 Mr. Allen. Who's that from, and who's that to?

22 A. The cover e-mail is from Sean. It is sent to me, with a copy
23 to Delton.

24 Q. Could you please read the short message that Mr. Ragland
25 sends to you?

Allen - Direct

1409

1 A. Sure. "Our current borrowing base" -- meaning the borrowing
2 base deficit -- "is roughly (\$681 million) as of 4/30/2008."

3 Q. Let me stop you there for a moment.

4 A. Um-hum.

5 Q. The "\$681 million" is in parentheses. What does that mean
6 from an accounting or money perspective?

7 A. That means that's the deficit. It means that assets are less
8 than liabilities by \$681 million.

9 Q. When is that as of?

10 A. April 30, 2008.

11 Q. What was important about the date April 30, 2008, for
12 purposes of Taylor, Bean & Whitaker?

13 A. That was the end of our fiscal year at Taylor Bean. Our
14 fiscal years ended on April 30 of each year.

15 Q. Just as an aside for a moment, did that change in 2009?

16 A. Yes, sir, it did in 2009. It changed to March 31 in 2009.

17 Q. So up until 2009, the end of the fiscal year was April 30?

18 A. Yes, sir.

19 Q. And then it became March 31 that last year?

20 A. Yes, sir, um-hum.

21 Q. Now, what does Mr. Ragland say about how much money Ocala
22 Funding, the hole grew during the 2008 year, that fiscal year?

23 A. Yes. During, during fiscal year -- and there's a little bit
24 of a typo here. What he really means to say is we've lost almost
25 \$400 million from 5/1/07 to 4/30/08. So in other words, in the

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1 fiscal year that started May 1 of '07 through April 30 of '08, we
2 gave up almost \$400 million in the, in the borrowing base.

3 Q. Now, is there a spreadsheet attached to this e-mail?

4 A. Yes, sir, there is.

5 Q. And that's the spreadsheet entitled "Ocala Funding Position
6 Report" in the attachment line of the e-mail?

7 A. Yes, sir.

8 Q. Let me ask you to turn toward the first page of the
9 spreadsheet.

10 A. Um-hum.

11 Q. Mr. Allen, you've seen this spreadsheet before?

12 A. Yes, sir, I have.

13 Q. This spreadsheet has been brought down to one page. How big
14 was the actual spreadsheet?

15 A. It was very long. It was several, several columns, several
16 pages.

17 Q. So it's an Excel spreadsheet?

18 A. Yes. It's an Excel spreadsheet, yes, sir.

19 Q. And if you printed it out and laid it out side by side, would
20 it go multiple pages?

21 A. Yes, sir.

22 Q. And so have only some of the pages been represented on this
23 exhibit?

24 A. Yes, sir.

25 Q. But they're some of the summary information?

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1411

1 A. Yes, sir, um-hum.

2 Q. Let's take a moment and walk through what these columns are
3 and what they indicate.

4 A. Um-hum.

5 Q. So why don't we start with the first, the first column. It's
6 "Date."

7 A. The date.

8 Q. What does that indicate?

9 A. That's the calendar date, that day of the year.

10 Q. Now, the next column is called "OPP."

11 A. Um-hum.

12 Q. What does "OPP" stand for?

13 A. "OPP" stands for either outstanding purchase price or
14 original purchase price. It's essentially the amount of cash that
15 was, that was used to fund loans. So in other words, that's an
16 asset of Ocala Funding.

17 Q. And in this report, is the OPP the approximate amount of the
18 loans, of the value of the loans?

19 A. Yes, sir.

20 Q. The next column is titled "Eligible Cash." What's that?

21 A. Eligible cash would be cash held in any of those accounts at,
22 at LaSalle that were, that were eligible to be counted in the
23 borrowing base. Those -- primarily, I think it was the collection
24 account and something called the collateral account.

25 Q. Now, I think you testified earlier that there were some

Allen - Direct

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1 smaller accounts that were ineligible?

2 A. Yes, sir.

3 Q. Were those much, much smaller?

4 A. Much, much smaller, yes, sir.

5 Q. The next column is "Total Assets." What does that represent?

6 A. The total assets are essentially the sum of column 2 and
7 column 3. So, you know, again, the, the balance sheet at Ocala
8 Funding was meant to be very, very simple. Assets were loans and
9 cash.

10 Q. There's something called "CP Event" next. Do you see that?

11 A. Yes, sir.

12 Q. What does that indicate?

13 A. That's just a flag that Sean put in there to, whether or not
14 we either issued or rolled CP on a particular date or if we did
15 not.

16 Q. So, for example, on this first page, it appears that
17 commercial paper was rolled on October 31 of 2006 but not on
18 November 1.

19 A. That is correct.

20 Q. Now, the next column is "Discounted CP."

21 A. Um-hum.

22 Q. Can you explain what that represents?

23 A. Sure. That's essentially the amount of commercial paper that
24 was outstanding. Again, the liabilities of Ocala Funding are
25 commercial paper and what's called here the BBB's in the next

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1413

1 column, which is subordinated debt.

2 Q. Mr. Allen, without getting too technical, let's take a moment
3 on the discounted CP.

4 A. Um-hum.

5 Q. Let's go back to the hypothetical you testified earlier, that
6 100 million that goes out that initial day.

7 A. Um-hum.

8 Q. Does Ocala Funding, does that commercial paper carry interest
9 with it?

10 A. It does.

11 Q. So the people who buy it are going to get back an interest
12 component when they exchange it in 30 days?

13 A. Yes, sir.

14 Q. Now, does Ocala Funding receive generally \$100 million?

15 A. No, sir.

16 Q. How much just in approximation would they receive?

17 A. The commercial paper is issued at, it's called a discount,
18 which means that on a, on a given day, let's say if \$100 million
19 of commercial paper is issued, we may only receive \$99, and then
20 on a day --

21 Q. 999,000?

22 A. I'm sorry. What did I say?

23 Q. You said 99.

24 A. 99 -- yes, yeah.

25 Q. And so the idea is I pay you \$99 for a \$100 IOU?

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1414

1 A. Yes.

2 Q. And in 30 days, if I exchange it, you give me 100 bucks?

3 A. Yes, sir. Yes, sir, um-hum.

4 Q. And so that discounted CP represents the money received?

5 A. Yes.

6 Q. Next there's a column called "BBB's." What's that?

7 A. That's, that's the subordinated debt that we had in the
8 facility. That's longer-term debt. I believe, I believe it
9 carried maturity of five years. So again, we didn't have to worry
10 about that paper maturing or having to be refinanced. That was a
11 more permanent part of the financing of Ocala Funding.

12 Q. And so just by way of comparison, as of October 31 is
13 approximately 2.6 billion, is that right, outstanding of
14 commercial paper?

15 A. Yes, sir.

16 Q. And the sub debt is only 52-1/2 million?

17 A. Yes, sir.

18 Q. Okay. The next column is "Total Debt." What does that
19 comprise?

20 A. That's the sum of the "Discounted CP" and the "BBB's"
21 columns.

22 Q. The next column is the "Borrowing Base Position." What is
23 that, Mr. Allen?

24 A. The borrowing base position is the difference between the
25 "Total Asset" column, which is the fourth column on this

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1 spreadsheet, and the "Total Debt" column, which is the eighth
2 column on this spreadsheet. So if you took just, for example, on
3 10/30/06, I'll round just a little bit here, assets of 2.43
4 billion and then total debt of 2.61 billion, take that difference,
5 and you would wind up with a gap of about \$177 million.

6 Q. Mr. Allen, in simple terms, is that the size of the hole on
7 Ocala Funding?

8 A. Yes.

9 Q. And there's the last column there, which is "Change."

10 A. Yes.

11 Q. What's that?

12 A. It's simply the change on a daily basis, so the change from
13 day to day. We wanted to keep track of it on a daily basis.

14 Q. And at the bottom, there's a total. Is that just a total for
15 the month?

16 A. Yes, um-hum.

17 Q. Now, this spreadsheet is broken up month by month
18 essentially?

19 A. Yes, um-hum.

20 Q. Starting in October of 2006 and running through April 30 of
21 2008?

22 A. Yes, um-hum.

23 Q. And if we can just turn to the last page of the spreadsheet,
24 please?

25 A. Um-hum.

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1416

1 Q. And if we look at the very last row?

2 A. Um-hum. Yes.

3 Q. And the borrowing base position on that day? Does that match
4 up as to what Mr. Ragland told you the existing hole on Ocala
5 Funding was as of April 30, 2008?

6 A. Well, that's the change in the hole.

7 Q. I'm sorry the borrowing base position?

8 A. Yes. That's the -- I'm sorry, if we're reading -- I want to
9 make sure we're reading the same. You're asking me about the
10 last, the last row on the last page, right?

11 Q. I'm asking you about as of April 30, 2008, on the last
12 page --

13 A. Um-hum.

14 Q. -- the borrowing base position is 681 million, a little over
15 681 million?

16 A. I'm trying to find that. I see one that says 398 million
17 since 5/1/07.

18 THE COURT: Are you on page 18 of 18?

19 THE WITNESS: Yes, ma'am, I am.

20 BY MR. CONNOLLY:

21 Q. Let me ask you to look at the --

22 A. Oh, I'm sorry. Excuse me. When you said the last row, I'm
23 sorry, my mistake. I am now at the 4/30/08 row. That was my bad.
24 I was at the very bottom, very, very bottom of the page.

25 Q. Understand.

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1417

1 A. So yes, the 681 -- yes, the 681,188,420.46. Yes.

2 Q. And that was the actual size of the hole as of the close of
3 the fiscal year on April 30, 2008?

4 A. Yes, sir.

5 Q. Mr. Allen, let me ask you to just keep that exhibit to the
6 side.

7 A. Um-hum.

8 Q. Mr. Allen, where was this nearly \$700 million going?

9 A. I don't know.

10 Q. Was it going for Ocala Funding purposes?

11 A. No, sir.

12 Q. Let me show you what's been marked as Government Exhibit
13 17-181.

14 MR. ROGOW: No objection.

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

16 (Government's Exhibit No. 17-181 was received in
17 evidence.)

18 BY MR. CONNOLLY:

19 Q. This is an e-mail exchange between you and the defendant
20 on -- around December 2 of 2007. Let me ask you to look at the
21 initial e-mail first. From what e-mail address do you send this?

22 A. I'm sending this from my personal account, allenp@att.net.

23 Q. And where are you sending it to?

24 A. I'm sending it to Lee's personal e-mail account.

25 Q. Is that the bentley4343@yahoo.com?

Allen - Direct

1418

1 A. Yes, sir.

2 Q. Mr. Allen, why are you using personal e-mail addresses for
3 this e-mail?

4 A. Lee had asked me to correspond with him on matters involving
5 Ocala Funding via personal e-mail, not on Taylor Bean.

6 Q. Did he say why?

7 A. He did, he did not say explicitly why.

8 Q. What did you understand as to why?

9 A. I understood why to be that he wanted no record of this on
10 the TBW servers.

11 Q. The subject of this e-mail is "AOT." What was AOT?

12 A. AOT was a, another essentially warehouse line that we had
13 with Colonial Bank, and "AOT" stands for assignment of trade.

14 Q. Now, this is as of December 2, 2007. If you could look back
15 at Government Exhibit 17-55, Mr. Ragland's spreadsheet, what is
16 the approximate size of the hole as of December 2, 2007?

17 A. Roughly \$565 million.

18 Q. What is the approximate size of the Ocala Funding facility at
19 this time in December of 2007?

20 A. In December of 2007, the facility is probably right around
21 \$1.2 billion, maybe 1.1, 1.2 billion.

22 Q. So approximately half the assets are missing?

23 A. Yes, sir.

24 Q. What question do you ask the defendant in that first part of
25 that e-mail?

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1 A. "Lee, is there any value in looking into where the borrowing
2 base money has gone, or would it just be a distraction right now
3 with everything else going on? My somewhat educated guess is that
4 it's gone two places. Early in the program, we never paid CP
5 interest. We just rolled it into a new (higher) CP balance when
6 the paper matured. That stopped well over a year ago, though.
7 Since then, I think it's mostly gone to fund haircuts on our other
8 lines."

9 Q. Let me stop you there for a moment.

10 A. Um-hum.

11 Q. When you say "other lines," do you mean Ocala Funding's other
12 lines?

13 A. No, sir.

14 Q. Whose other lines are you referring to?

15 A. I'm sorry, when I say "on our other lines," I mean Taylor,
16 Bean & Whitaker's other lines.

17 Q. Why don't you finish off that paragraph, please.

18 A. Sure. "I know Delton and Sean think Colonial AOT is the cash
19 eater. They're probably right."

20 Q. At this point, why do you believe AOT is the cash eater?

21 A. The AOT line, the Colonial, again, assignment of trade line,
22 was used primarily to fund older loans, loans that we had trouble
23 selling. As -- very common with warehouse lines is that the older
24 or the more aged a loan becomes, the more money that the, that the
25 originator has to put up, because the general feeling is if the

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1 loan ages, it's probably not worth as much as it was if it could
2 be sold immediately.

3 So as we had loans that were aging, getting older on
4 the, on the lines, it would be natural for Colonial or any
5 warehouse lender to expect Taylor Bean to put more, in essence,
6 put more equity into those loans.

7 Q. Give them more money?

8 A. Give them more money.

9 Q. Where should that money have come from?

10 A. From Taylor Bean.

11 Q. Was it appropriate to use Ocala Funding money for that?

12 A. It was not appropriate.

13 Q. What is the defendant's response to you up top? And just
14 before I get to that, did he respond to you from his personal
15 e-mail account to your personal e-mail account?

16 A. Yes, sir.

17 Q. And what was his response?

18 A. His response was, "I will find out. I don't want Delton or
19 anyone else involved in this, but we will figure it out. I want
20 it stopped. I will keep you posted on what we find."

21 Q. Now, what was your reaction to the defendant telling you that
22 he didn't want the CFO or anyone else involved in finding out
23 where the money was going?

24 A. I was very surprised.

25 Q. Why was that?

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1 A. Well, first of all, this was something that, again that we
2 had been talking about openly for a long time, and for now
3 suddenly for Lee to say, "Hey, look, I'm going to figure this out;
4 I don't want you guys involved in it," was a surprise.

5 Q. And if it involved money going to AOT, what would it be
6 involved in finding out? Who would you have to make inquiries of?

7 A. Well, I would have to talk with treasury at a minimum and
8 then possibly as well with, with Colonial.

9 Q. Treasury and Colonial?

10 A. Yes, sir.

11 Q. And who would you understand was the person who you were
12 directed -- who was the person who you understood was the only
13 person who could have those conversations?

14 A. Lee.

15 Q. Now, you said just a moment ago, Mr. Allen, that you talked
16 about this openly. Did you talk about this with investors?

17 A. I did not.

18 Q. When you said "openly," who are you talking about talked
19 about it openly?

20 A. Oh, I'm sorry, internally at TBW.

21 Q. At this point in time, Mr. Allen, were there reports that had
22 to go out to the investors or the backers of Ocala Funding?

23 A. Yes, sir.

24 Q. I think you testified earlier today to something known as a
25 monthly report card, or MFCS. Is that correct?

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1 A. That's correct.

2 Q. And approximately how often would that monthly facility
3 content report go out?

4 A. Monthly.

5 Q. And who would prepare those reports?

6 A. Sean would, would prepare the reports.

7 Q. Did those reports show the investors the hole in Ocala
8 Funding?

9 A. It did not.

10 Q. Let me ask you to look at what's been marked as Government
11 Exhibit 17-60.

12 MR. ROGOW: No objection.

13 THE COURT: It's in.

14 (Government's Exhibit No. 17-60 was received in
15 evidence.)

16 BY MR. CONNOLLY:

17 Q. Please hold on to Mr. Ragland's spreadsheet.

18 Let's start with the e-mail. There's a whole bunch of
19 names on that e-mail that Mr. Ragland sends out in the "To"
20 column. Just in general, who are those individuals or people?

21 A. Those individuals are a combination of several people. The
22 first are, would be -- I guess maybe I'd put them in three
23 categories. The first would be the swap banks, the banks that
24 were backing Ocala Funding, such as BNP Paribas, at this point ABN
25 AMRO, Wachovia.

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1 The second would be, for lack of a better term, and I'm
2 going to use this term very broadly, regulators of Ocala Funding.
3 That would be people like Freddie Mac, who had a, you know, an
4 interest in Ocala Funding and how it was going. I notice Standard
5 & Poor's is on here. Again, they're a rating agency just like
6 Moody's, so they're interested in the health of the overall
7 facility.

8 And then the third category, I'd almost just call it
9 miscellaneous. Some, you know, some traders wanted to see this
10 information. It wasn't really, you know, I think, germane to what
11 they were doing every day, but they still wanted it, and we were,
12 we were fine putting people on the list if they wanted to see the
13 reports.

14 Q. Who's cc'd on this e-mail?

15 A. Lee is cc'd on this, I am, and Delton is.

16 Q. What's the date this e-mail is being sent out?

17 A. This is being sent out on April 30 of '08.

18 Q. No, I'm sorry, what date is the e-mail actually sent?

19 A. Oh, I'm sorry. I'm sorry, excuse me, the e-mail is sent out
20 on May 15 of 2008.

21 Q. And what's attached to that e-mail?

22 A. It's the monthly facility contents summary for Ocala Funding
23 as of the 15th of April, so as of 4/30/08.

24 Q. Let's take a look at that monthly facility contents summary
25 report.

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1 A. Um-hum.

2 Q. There's two portions of that?

3 A. Yeah.

4 Q. Essentially, a top and a bottom?

5 A. Yes, sir.

6 Q. Let's walk through the top first.

7 A. Sure. The top part is essentially a mini balance sheet for
8 Ocala Funding, and again, when I say mini balance sheet, I mean a
9 summary of the assets and the liabilities of Ocala Funding.

10 Q. Now, before we walk through those --

11 A. Um-hum.

12 Q. -- take a moment to look at Mr. Ragland's spreadsheet in
13 Government Exhibit 17-55, and as of April 30, 2008, what's the
14 approximate size of the hole in Ocala Funding?

15 A. The approximate size of the hole as of April 30, '08, is
16 again roughly \$680 million.

17 Q. Is that hole shown on this report that goes to regulators,
18 Moody's, and the investors?

19 A. No, sir, it is not.

20 Q. Let's walk through some of the rows. The first row, "Current
21 Program Size," explain what that is.

22 A. Sure. At the time, as of April 30 of '08, the program size,
23 we could issue up to four-and-a-half billion dollars of commercial
24 paper in that facility.

25 Q. And if you look a couple rows down, approximately how much

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1 commercial paper is outstanding as of that -- as of April 30,
2 2008?

3 A. Roughly 1.1 billion.

4 Q. Is that the "Commercial Paper Outstanding" row?

5 A. Yes, sir.

6 Q. Now, the next row under the "Program Size" is the "Aggregate
7 Outstanding Purchase Price of Loans in Facility." In simple
8 terms, what does that represent?

9 A. Those are the loans in the facility.

10 Q. And has that number been falsified?

11 A. Yes, sir.

12 Q. It's been increased approximately \$700 million or so?

13 A. It looks to be about \$690 million or so, but yes, um-hum.

14 Q. Has it been increased to cover the hole?

15 A. Yes, sir.

16 Q. Below that, you have "Eligible Cash." Again, what's that?

17 A. Eligible cash is by definition cash that's held at LaSalle
18 for Ocala Funding in the approved accounts that we discussed a
19 little bit earlier.

20 Q. And the next -- and that has the sum of those two things?

21 A. Yes, um-hum.

22 Q. And the sum of those two things has to be greater than what?

23 A. The total amount of the liabilities of Ocala Funding, which
24 are the commercial paper outstanding and the, the, what are called
25 again the BBB's, or the subordinated debt.

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1 Q. And according to this monthly facility contents summary, was
2 Ocala Funding, did it meet its test?

3 A. Yes.

4 Q. It was balanced at this point?

5 A. Yes.

6 Q. Mr. Allen, how did the falsification of these monthly report
7 cards come about? When did that begin?

8 A. It began in late '05, late 2005, right around the time that
9 we first knew about the, the shortfall, the asset shortfall.

10 Q. And just briefly describe to the jurors how that came about.

11 A. The -- I'm sorry, how we --

12 Q. Sorry, not the shortfall but the falsification of these
13 reports.

14 A. Sure. Well, we wanted to have -- we wanted to show a report
15 as being in balance, and at the time, I didn't think really there
16 was anything going on more than simply the accounting or
17 bookkeeping of where the interest was supposed to go. So the
18 decision was made to, to create that account, to create, in
19 essence, a receivable due by Taylor Bean or from Taylor Bean to
20 Ocala Funding.

21 Q. And who was the decision made by? You said the decision was
22 made.

23 A. Yeah, the decision was made by myself and Delton and Sean.

24 Q. And what were you hoping to do when you first created that,
25 that account?

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1 A. What I wanted to do simply was buy us enough -- some time to
2 get everything squared away and to get the facility back into
3 balance.

4 Q. And you've testified this morning and we've seen through
5 documents how this hole grows from 30 million up to about \$680
6 million. Were these reports falsified as that continued to grow?

7 A. Yes, sir.

8 Q. And what did that, I think you called it receivable account,
9 what did that become?

10 A. You mean what was it, or how big did it get?

11 Q. Yeah, what was that number? What did it represent?

12 A. That number, that number, in essence, represented the
13 borrowing base hole or the deficit.

14 Q. And did it become a plug number?

15 A. Yes, sir, it became a plug number.

16 Q. And how would it be calculated?

17 A. It would be calculated primarily as simply taking the, the
18 numbers that were in Sean's spreadsheet, meaning the assets, the
19 cash, and the loans, and then just filling, filling that hole with
20 however much was needed to balance the assets and the liabilities.

21 Q. So this accounts receivable simply became whatever you needed
22 it to be?

23 A. Yes, sir.

24 Q. And was an accounts receivable an appropriate asset in Ocala
25 Funding?

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1 A. It was not.

2 Q. Would that allow Ocala Funding to be bankruptcy remote?

3 A. It would not.

4 Q. And where did this account receivable allegedly reside? Was
5 that Taylor, Bean & Whitaker?

6 A. Yes, yes, yes.

7 Q. Approximately how large did Ocala Funding get?

8 A. At its height?

9 Q. Yes.

10 A. At its height was right at about four-and-a-half billion
11 dollars.

12 MR. CONNOLLY: The Court's indulgence just a moment,
13 Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. CONNOLLY:

16 Q. Mr. Allen, let me go back just a moment.

17 A. Um-hum.

18 Q. Were the investors told that, for example, on this Government
19 Exhibit 17-60, that approximately 680 million of the loans and
20 assets was in AR?

21 A. No, sir, they were not told.

22 Q. Would the investors have approved of an AR?

23 A. No, sir.

24 THE COURT: And again, AR, account receivable?

25 THE WITNESS: Yes, Your Honor.

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1 MR. CONNOLLY: Thank you, Your Honor.

2 Q. Mr. Allen, what happened to the asset-backed commercial paper
3 market in the summer of 2007?

4 A. In the summer of 2007, the asset-backed commercial paper
5 market shrank considerably.

6 Q. Was there some event that triggered the shrinking of this
7 market?

8 A. Yes, sir. There actually were a couple of events. The first
9 event was in late July of 2007, Countrywide Financial, which was
10 the biggest mortgage bank, announced that it was going to be, you
11 know, suffering not only reduced earnings but much higher credit
12 losses than it had previously expected on loans that it had
13 originated. That sent a, a tremendous chill through the mortgage
14 market.

15 And then right after that, another asset-backed
16 commercial paper facility, not Ocala Funding but another one, in
17 essence defaulted on its commercial paper obligations, and that
18 was, I think, the second and the far more crippling blow to the
19 commercial paper market.

20 Q. And did this, did this concern you, this slowing of the
21 commercial paper market?

22 A. Yes. Yes, it concerned me in several different ways.

23 Q. Explain what those ways were.

24 A. Gosh. The first one was the market itself was shrinking, so
25 that meant that our ability to continue to roll commercial paper

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1 was in serious danger. During this time, Taylor Bean is still
2 growing as a company in terms of, of loan funding, so the need for
3 liquidity, the need to close those loans is very important to
4 Taylor Bean, so now to not be able to count on Ocala Funding to,
5 to fund those loans in the same share that it had done before was
6 going to be problematic for us. So that was, that was the big,
7 big issue on the, just on the business side.

8 And then on the, just in terms of Ocala Funding in and
9 of itself, the bigger issue was now we were, you know, faced with
10 a tremendous strain to pay off those commercial paper holders
11 with, with cash at a time when the, you know, the hole in the
12 facility was probably, again, we can go back and check, but it's
13 probably around 400 to 500 million dollars.

14 Q. So at the time that the market starts to freeze up, if all of
15 the investors or holders of commercial paper came back to Ocala
16 Funding and said, "I want to collect on my IOU," could Ocala
17 Funding have paid them?

18 A. The only way it could pay them would be by drawing on that
19 AR.

20 Q. Could it have paid them, though, based on what was in Ocala
21 Funding?

22 A. No, sir.

23 THE COURT: I think this is a good time for the morning
24 break, and I'll give the jury this morning until 11:30, and we'll
25 reconvene at 11:30. Thank you.

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1 NOTE: A recess is taken from 11:12 a.m. to 11:30 a.m.;
2 whereupon the case continues in the absence of the jury but in the
3 presence of the defendant as follows:

4 JURY OUT

5 THE COURT: Yes, Mr. Connolly.

6 MR. CONNOLLY: Your Honor, it is my understanding that
7 Mr. Allen's private counsel has provided to defense this morning,
8 and a copy to us, the notebooks that were the subject of the
9 subpoena that Mr. Rogow had served on them.

10 MR. ROGOW: That is so.

11 THE COURT: All right, That's fine.

12 Let's bring the jury in, Mr Wood, please.

13 Where is Mr. Allen?

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

16 JURY IN

17 THE COURT: All right, Mr. Allen is back on the witness
18 stand. Let's continue.

19 BY MR. CONNOLLY: (Continuing)

20 Q. Mr. Allen, before the break you were testifying about the
21 slowing of the asset-backed commercial paper market in the summer
22 of 2007?

23 A. Yes, sir.

24 Q. I think you testified that prior to that Ocala Funding had
25 approximately 4, 4.5 billion of commercial paper outstanding?

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1 A. Yes, sir.

2 Q. How much did it run down in the 2007 time frame?

3 A. Well, from the peak at the end of July, which is again
4 4.5 billion, it got down to about a billion dollars by the end of
5 the year.

6 Q. So, it never shrank below the size of the hole?

7 A. Never shrank below the size of hole, correct.

8 Q. Let's me direct your attention to what has been marked
9 Government's Exhibit 17-1, excuse me, -32, 17-32.

10 THE COURT: Any objection?

11 MR. ROGOW: No objection.

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

13 (Government's Exhibit No. 17-32 was received in evidence)

14 BY MR. CONNOLLY: (Continuing)

15 Q. Mr. Allen, this is an exchange between you and the defendant
16 in August of 2007. What's the subject?

17 A. The subject is OF numbers.

18 Q. Just read the first sentence, please.

19 A. Given the rapid run-down in OF, we need to be very careful in
20 what we distribute outside the company.

21 Q. Why are you cautioning the defendant that you need to be
22 careful about what you distribute outside the company?

23 A. Because I don't want people to become aware of the deficit or
24 the hole.

25 Q. Let me ask you to look at the last two sentences in that

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1 second paragraph. Could you just read those, please.

2 A. Yes. It showed-- The last two sentences, I am sorry, did
3 you say?

4 Q. Yes, please.

5 A. It showed 1.6 billion in trades. And we have 2.4 billion in
6 CP outstanding.

7 Q. Now, the 1.6 billion in trades, is that essentially the
8 assets?

9 A. Yes.

10 Q. The loans?

11 A. Yes, sir. All loans have to be forward sold, so the trades
12 means the forward sales.

13 Q. And the 2.4 billion in commercial paper outstanding, that's
14 essentially the liabilities?

15 A. Yes, sir.

16 Q. So, is that the approximate size of the hole minus some cash
17 and things like that?

18 A. Yes, sir.

19 Q. Now, please read the next paragraph that you say to the
20 defendant.

21 A. I think we can explain the difference due to timing of trades
22 settling and turning into cash. Everyone knew that we had
23 .9 billion in cash coming in today. So, 1.6 and 0.9 is 2.5, and
24 that's greater than the CP outstanding, so we are okay.

25 Q. Mr. Allen, what are you doing in this paragraph?

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1 A. That's a made-up explanation.

2 Q. Is that essentially a cover story for the hole?

3 A. That would be another way of putting it.

4 Q. Now, do you give this made-up explanation or cover story a
5 shorthand name later in this e-mail?

6 A. Yes.

7 Q. And please read that to the jury and explain what that is.

8 A. Yes. It's in the last paragraph. Yes, last paragraph.

9 Would you like for me to read that or just the term?

10 Q. Yes, please.

11 A. By the way, you will hear me use the loans in transit term a
12 lot when I talk with swappers or dealers. It's just the same
13 thing as saying timing, and we've given them a great intro to it
14 this week when we had class A settlement. I think they all get
15 the concept now.

16 Q. And is that loans in transit the shorthand for the made-up
17 story?

18 A. Yes, yes, it is another rationalization for the story.

19 Q. Mr. Allen, at some point were there changes made to the Ocala
20 Funding structure?

21 A. Yes, sir.

22 Q. When did discussions with respect to these changes begin?

23 A. I would say the fall of '07.

24 Q. And why is there, why are there going to be changes to the
25 facility?

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1 A. There are going to be changes to the facility because when
2 Ocala Funding first began in 2005, the term of the facility was to
3 be for three years. So, that meant in April of '08, in essence,
4 the entire facility would come back up for renewal. And judging
5 upon how long it took us to get the first version of Ocala Funding
6 done, I figured we had to start pretty early for the '08 version
7 of Ocala Funding.

8 And so, hence we started in '07.

9 Q. And who from Taylor Bean & Whitaker are participating in
10 those negotiations and discussions?

11 A. In that situation it's almost exclusively myself and Lee.

12 Q. Who is on the other side of those negotiations? Is there a
13 limited number of parties?

14 A. There are a limited number of parties. Of course, Cadwalader
15 Wickersham & Taft was our counsel, our outside counsel on the
16 transaction, as they had before. Credit Suisse was our, if you
17 will, our underwriter or advisor on this.

18 And then the two primary players were banks, that would
19 be, if you will, the backers, we called them the swappers, but
20 they were essentially the backers or the guarantors of Ocala
21 Funding, and those institutions were Deutsche Bank and BNP
22 Paribas.

23 Q. In the new facility were they actually also going to be the
24 investors?

25 A. Yes. In the new facility they were going to, it was going to

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1 sort of be one-stop shopping for them. They were going to be the
2 investors as well as the forward trade counterparties as well as
3 the swappers.

4 Q. And as the investors, they would be the ones holding the
5 commercial paper?

6 A. Yes, sir.

7 Q. Now, BNP Paribas, who was the primary person you and the
8 defendant dealt with from BNP Paribas?

9 A. Avi Pemper.

10 Q. Deutsche Bank, who was the primary person that you and the
11 defendant dealt with from Deutsche Bank?

12 A. Sumeet Wadhera.

13 Q. What was the, what was the new structure? What size was it
14 going to be?

15 A. Well, the new structure ultimately settled down to
16 \$1.75 billion.

17 Q. And again, that was going to be a cap?

18 A. Yes, that was going to be a cap, yes, sir.

19 Q. Was there a division between Deutsche Bank and BNP as to how
20 much each could hold of that 1.75 billion in commercial paper?

21 A. Yes, sir, there was.

22 Q. What was that division?

23 A. The division was a half billion dollars, or \$500 million to
24 BNP and then 1.25 billion to Deutsche Bank.

25 Q. When did the new facility begin issuing commercial paper?

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1 A. The new facility began issuing commercial paper on June 30 of
2 2008.

3 Q. What type of loans would be allowed in the new facility?

4 A. Only Freddie Mac, loans eligible to be sold to Freddie Mac,
5 and only what were referred to as dry loans.

6 Q. Explain to the jury what you mean by dry loans.

7 A. Sure. The first version of Ocala Funding was eligible to
8 hold what are called wet loans. And a wet loan is simply a
9 terminology that basically says when the loan is just funded up
10 front at the closing table, hence the signatures are wet, the
11 documents are wet, they are brand new. There is a little bit of
12 risk associated with that because, well, what if the documents
13 don't make it back to the facility, what if the documents in some
14 way get lost.

15 So, a second way of lending money is on what are called
16 dry loans. And a dry loan, as the name sort of indicates, means
17 that all of the documents have been received by the document
18 custodian and there is no chance whatsoever for the documents to
19 get lost in transit. So, dry loans are inherently less risky than
20 wet loans.

21 And that was another, if you will, element of the new
22 facility.

23 Q. So, Freddie Mac only, dry loans only?

24 A. Yes.

25 Q. No Ginnie Mae?

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1 A. No Ginnie Mae.

2 Q. Did the transition from the old facility to the new facility
3 occur on one day?

4 A. Yes, it did.

5 Q. Now, Mr. Allen, as of June 30, 2008, approximately how large
6 is the size of the hole in Ocala Funding?

7 A. I would guess around \$700 million.

8 Q. If there is a \$700 million hole, how are the old investors
9 that hold that CP, how did they get paid off?

10 A. They get paid off by the new investors in the commercial
11 paper.

12 Q. So, you simply took the money from Deutsche Bank and BNP and
13 used that to pay off old investors?

14 A. Yes, sir.

15 Q. Is that what you were supposed to use the money for?

16 A. No, sir.

17 Q. Were there going to be new reporting requirements for the new
18 facility?

19 A. Yes, sir, there were.

20 Q. And what did you expect those to be?

21 A. I expected those reporting requirements to be more stringent
22 than we had had before. In the first version of Ocala Funding we
23 signed up for a lot of additional reporting. I thought that was
24 very important to create, ironically to create more transparency
25 because I thought the facility was a good facility.

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1 Again, given the nature of what was going on in the
2 market in 2008, people were a lot more risk averse. A lot, you
3 know, people wanted to know that their money would be safe. And
4 so, I was gearing up for more reporting particularly around the
5 collateral in the facility than we had to do before.

6 Q. Did this concern you?

7 A. Yes, yes, it concerned me.

8 Q. Explain why it concerned you.

9 A. Well, it concerned me because we didn't have \$1.75 billion
10 worth of collateral in the facility.

11 Q. Did you also view it as an opportunity?

12 A. I viewed it as a tremendous opportunity, yes.

13 Q. Explain to the jury why you viewed this potential new
14 reporting as an opportunity?

15 A. I had, I had wanted, as I expressed to Lee several times,
16 dozens of times in my tenure with Ocala Funding, that I wanted the
17 hole fixed. I thought this was a fantastic opportunity to get it
18 fixed because the additional reporting that would be required
19 would be around the loans in the facility. And so, that new loans
20 would have to enter the facility and ultimately fill the hole and
21 make Ocala Funding completely self-sufficient.

22 Q. Did you have conversations with the defendant about this?

23 A. I did.

24 Q. What did he say?

25 A. He said, collateral, we got plenty of collateral.

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1 Q. Did he explain to you where this plenty of collateral was?

2 A. He did not.

3 Q. Did you ask him where it was?

4 A. I assumed at that point that it was from Colonial.

5 Q. Were you aware of any bank accounts that Taylor Bean &
6 Whitaker had sitting around with \$700 million in it?

7 A. No, sir.

8 Q. What did you understand was the cash position of Taylor Bean
9 & Whitaker at that point in time?

10 A. Cash was pretty tight.

11 Q. Did the defendant explain to you where this \$700 million in
12 collateral was?

13 A. He did not.

14 Q. Now, were you worried that the new investors might find out
15 about this hole in Ocala Funding?

16 A. Yes, sir, I was worried that old investors would find out
17 where the hole was, that the hole was there. So, yes, sir.

18 Q. But at this point in time the old investors had been paid
19 off, is that right?

20 A. Yes, sir, the old investors were paid off at that point, yes,
21 sir.

22 Q. So, were you expecting to maybe get a call from someone
23 saying, what's going on?

24 A. Yes, sir.

25 Q. Did you get that call?

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1 A. I did not get that call.

2 Q. Did you talk to the defendant about the fact that you didn't
3 get that call?

4 A. I did. I did.

5 Q. Approximately when was that?

6 A. That would have been in the third, probably in the third
7 quarter of '08, maybe early in the fourth quarter of '08. After
8 the new facility had been running for about 30, about 90 days,
9 about three months.

10 Q. Taylor Bean & Whitaker used a noncalendar year reporting
11 year, is that correct?

12 A. Correct.

13 Q. When you say third quarter, are you talking about the fall?

14 A. I'm sorry, I meant the third calendar quarter. 90 days
15 after, the new facility comes on at June 30 of '08, so this is
16 September 30, maybe early October of '08.

17 Q. What do you say to the defendant?

18 A. I'm thoroughly impressed. I go in and I say, I go to Lee, I
19 say, how did you do it.

20 Q. What did you mean by how did you do what?

21 A. I am sorry, how did the collateral makes its way over into
22 Ocala Funding. This is, you know, the culmination of years of
23 trying to get this fixed and now it's fixed.

24 Q. What did the defendant say as to how he did it?

25 A. He said he moved the hole from Ocala Funding to Colonial.

Allen - Direct

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1 Q. Did he actually use the word "hole"?

2 A. Yes.

3 Q. Did he provide any further explanation for how he moved the
4 hole to Colonial?

5 A. He did not.

6 Q. Did you have an understanding as to what he meant?

7 A. No, no.

8 Q. Did you try to find out, Mr. Allen?

9 A. I was told, I had been told several times to stay away from
10 Colonial and to stay away from treasury. So, I was happy that
11 Ocala Funding was square.

12 Q. But you didn't do any further investigation to figure out how
13 that hole was moved?

14 A. No, sir.

15 Q. Now, at the time that the defendant says he moved the hole to
16 Colonial Bank, what was the approximate net worth of Taylor Bean &
17 Whitaker?

18 A. I would say at that point probably around 180 to
19 \$200 million.

20 Q. Mr. Allen, did you come to learn what happened-- Were there
21 loans actually placed on Ocala Funding?

22 A. During--

23 Q. After you had this conversation with the defendant when he
24 said he moved the hole. Did you learn that there were loans
25 placed on Ocala Funding?

Allen - Direct

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1 A. I knew that there were loans placed into a pipeline report,
2 yes.

3 Q. What did you learn about those loans?

4 A. What I learned about those loans were while they were on a
5 pipeline report showing up as part of Ocala Funding, that there
6 had been no money advanced against those loans.

7 Q. Is that referred to as advanced at zero?

8 A. That's referred to as advanced at zero.

9 Q. Is that how Ocala Funding was supposed to work?

10 A. No, no, that was not how Ocala Funding was supposed to work.

11 Q. Explain to the jury, what's the problem with advancing loans
12 at zero?

13 A. Well, it's such, it would be such a rare situation in
14 mortgage banking because by nature mortgage banking is getting
15 money, borrowing money for loans. The money that you receive for
16 the loans is collateralized by the loan itself.

17 To basically then say that you did not need money for
18 loans essentially meant that you were flush with cash, that you
19 did not need to borrow loans. And that was a very unique
20 situation.

21 It would also mean that if the loan ever paid down, so
22 if there was a refinancing of the loan, or, you know, if the
23 borrower ever had to move and the loan had to be paid off, there
24 wouldn't, being as Ocala Funding never advanced money against it,
25 there is no money to pay back in that situation.

Allen - Direct

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1 And so, it creates just a very strange situation as to
2 when the money comes back in, where does it go.

3 Q. Were the loans that had to be in Ocala Funding supposed to be
4 lien free?

5 A. Yes.

6 Q. What does that mean?

7 A. Lien free means that when the loans entered Ocala Funding,
8 they could not have also been pledged to another warehouse line.

9 Q. Did Taylor Bean & Whitaker have the cash to pay for
10 \$700 million in loans without getting the funding from some other
11 line?

12 A. I don't believe so.

13 Q. Did the defendant understand that the loans on Ocala Funding
14 had to be lien free?

15 A. Yes.

16 Q. How do you know that he understood that?

17 A. We, as part of the several meetings that we had prior to the
18 restructuring of Ocala Funding in the spring of '08, you know, we
19 had a large meeting with Deutsche Bank and with BNP Paribas. And
20 the whole concept of making sure that the loans were lien free was
21 brought up several times in that meeting.

22 Q. Is that a concept that is unusual in the mortgage lending,
23 mortgage warehouse world?

24 A. No, sir, it is very common.

25 Q. Is that true of most warehouse lines?

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1 A. Every warehouse line that I have ever been affiliated with
2 has that, has that rep and warrant in it.

3 Q. Now, if someone else has funded the loan and then it's moved
4 to Ocala Funding at zero, what happens when Ocala Funding forward
5 sells that loan down the road?

6 A. It makes it very difficult to determine where the money goes
7 because if the money comes back into Ocala Funding, then it still
8 has, there is still money that needs to be paid out to the other
9 warehouse lender.

10 Q. And if the other warehouse lender has funded it, it means it
11 is not lien free?

12 A. Yes, sir.

13 Q. And does that mean it is not a true asset of Ocala Funding?

14 A. That means it is not a true asset of Ocala Funding, yes, sir.

15 Q. Mr. Allen, did you have any understanding as to how the
16 defendant could get \$700 million out of Colonial?

17 A. I did not.

18 Q. Were you aware of any new assets placed on Colonial?

19 A. No, sir.

20 Q. Were you aware of any reworking of collateral ratios or
21 agreements with Colonial?

22 A. No, sir.

23 Q. Now, what was going on with Colonial Bank in the fall of
24 2008?

25 A. Colonial was having its own concerns and its own troubles.

Allen - Direct

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1 Q. What did you understand Colonial Bank was doing at that point
2 in time?

3 A. At that point Colonial had been hit rather hard by the real
4 estate market, both commercial and residential, particularly in
5 Florida where they had a lot of their branches. They were seeking
6 additional capital, private capital, as well as money through a
7 Government program called TARP.

8 Q. So, they were having some issues with their debt and things
9 of that nature as well?

10 A. Yeah. I mean, their stock price took a big hit. I believe
11 again there was, I believe there was a memorandum of
12 understanding, a regulatory action being taken against Colonial.
13 So, there was, you know, they were, they were not at the top of
14 their game.

15 Q. Based on your experience, Mr. Allen, would it be reasonable
16 for a bank in that situation just to give a customer another
17 \$700 million?

18 MR. ROGOW: Objection, calls for speculation.

19 THE COURT: I am going to sustain the objection.

20 BY MR. CONNOLLY: (Continuing)

21 Q. Approximately when were these loans moved over, Mr. Allen?

22 A. In the third and fourth calendar quarters of 2008.

23 Q. Now, at some point did you have any conversations with the
24 defendant about slowing paydowns of loans?

25 A. Yes.

Allen - Direct

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1 Q. First could you explain to the jury what a paydown is.

2 A. Sure. A paydown occurs, again as the name indicates, a
3 paydown of a loan occurs usually when a loan is refinanced or for
4 whatever reason is paid back by the borrower. Refinancing is
5 obviously a big event.

6 Another occurs when the loan, when a family moves, they
7 have to sell their house, they have to pay the loan off before
8 they move on.

9 So, it's a rather large cash event in terms of money
10 in-flowing to Taylor Bean as a servicer. Then that money needs to
11 be remitted through by Taylor Bean as a servicer to the ultimate
12 investor, who would either be, again in most cases would be
13 Freddie Mac or Ginnie Mae.

14 Q. Was there an allowed time lack between when Taylor Bean would
15 receive the payment and have to pass it through to the investor?

16 A. Yes, sir.

17 Q. How long was that? Was it hours, weeks, months?

18 A. It's days. It's days.

19 Q. So, what was your conversation with the defendant with
20 respect to that?

21 A. Well, my first reaction was that, you know, we were just
22 going to be a little more aggressive within those guidelines in
23 terms of holding onto the money during those allowable periods so
24 we could earn more float income. In essence, take advantage of
25 that money that was with us for the short period of time.

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1 Q. Mr. Allen, based on your experience at Taylor Bean & Whitaker
2 at that point in time, did you think that TBW had not been as
3 being aggressive as it can with respect to those paydowns?

4 A. I would have believed that. Again, I was not allowed in
5 treasury, so I didn't know. But I would have assumed that we
6 would have been. I would have assumed that we would have been
7 taking, you know, we would have been taking advantage of the
8 guidelines that were there.

9 Q. What would be the effect of slowing paydowns beyond the
10 couple days allowed?

11 A. You mean-- I'm sorry.

12 Q. What would be the effect of slowing paydowns beyond the
13 couple days that were allowed?

14 A. Oh, you mean if the money was held on for a longer period of
15 time?

16 Q. Yes.

17 A. Oh, it would be, it would be potential chaos for everyone
18 involved, particularly the borrower, the consumer, who thinks--
19 For example, let's say that I want to refinance my home. I know
20 that I paid that loan down at the end of the month. I now, if it
21 is refinancing, I have a new loan, but I think I only have one
22 loan.

23 If that first payment isn't remitted through to Freddie
24 Mac, Freddie Mac is going to see that I now have two loans
25 outstanding because the old one has not been paid down, and they

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1 are going to be expecting to see interest payments on that first
2 loan if it is not paid down.

3 So, it's pure chaos.

4 Q. Now, did you follow-up after the defendant told you that
5 there was going to be a, they were going to slow paydowns?

6 A. I did, but not until long after.

7 Q. Why didn't you follow-up at the time?

8 A. Why did I not follow-up at the time? Because I was told to
9 stay away from treasury.

10 Q. Mr. Allen, what happened at TBW on August 3 of 2009?

11 A. On August 3 of 2009 federal agents entered the headquarters
12 of Taylor Bean & Whitaker in Ocala.

13 Q. Were you in Ocala at that point in time?

14 A. No, sir, I was not.

15 Q. Where were you?

16 A. I was flying with my family from Atlanta, Georgia to Dulles.

17 Q. How did you learn about the search by federal agents?

18 A. When I landed that morning I got a, I received an e-mail from
19 our counsel, our general counsel that the headquarters had been
20 raided and I should expect that there might be agents waiting for
21 me at my house when I got home.

22 Q. What was your reaction?

23 A. I was scared to death.

24 Q. Did you undertake any actions?

25 A. I did. I-- Well, yes, I hired personal counsel as a result

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1 of that upon advice of general counsel. And I went home. There
2 was nobody, no one there.

3 Q. No agents waiting?

4 A. No, no agents waiting.

5 Q. What happened after the search by federal agents with respect
6 to the, Freddie Mac and Ginnie Mae with respect to Taylor Bean &
7 Whitaker?

8 A. Well, that was, the search occurred on Monday, the 3rd. On
9 Tuesday, the 4th, both Freddie and Ginnie terminated Taylor Bean
10 as eligible, for Freddie-- Again, there is different terminology.
11 Freddie terminated us as a seller servicer. Ginnie terminated us
12 as an issuer. It essentially put Taylor Bean out of business.

13 Q. Did they do anything else with respect to mortgage servicing
14 rights or the servicing portfolios?

15 A. Yes, sir. Part of that action was to seize the servicing
16 portfolios that we had, the Freddie and the Ginnie servicing
17 portfolios, and transfer them to other entities. That was, again,
18 a part of the standard contract with Freddie and Ginnie.

19 Q. You had worked at Freddie Mac before, is that correct?

20 A. Yes, sir.

21 Q. Did they have the contractual right to seize those servicing
22 portfolios?

23 A. They, yes, they believe they have that, yes.

24 Q. At the time that Ginnie and Freddie seized the portfolios,
25 what value, if any, did they have for Taylor Bean & Whitaker?

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1 A. Zero.

2 Q. Now, just before those portfolios, those servicing rights
3 portfolios were seized, had Taylor Bean & Whitaker pledged those
4 somewhere?

5 A. We had, yes.

6 Q. Where were they pledged?

7 A. The Freddie Mac rights, or if you will-- The servicing
8 rights generate cash flows that can be used to collateralize
9 loans. And for Freddie Mac, we had-- Well, let me take a step
10 back.

11 For Taylor Bean we had two lines. We had one line that
12 was with a syndicated bank group led been Colonial. And then
13 there was a second line that was devoted to only Freddie Mac
14 servicing rights that was run by Natixis, which is a
15 French/English New York bank.

16 Q. And at the time that those servicing rights had been pledged
17 to the Colonial syndicate group and Natixis, had Taylor Bean &
18 Whitaker received money for those MSRs?

19 A. Yes, sir.

20 Q. Approximately how much had it received?

21 A. Well, you mean at the time of around August of '09?

22 Q. Yes, approximately.

23 A. I'd say probably 200 to \$250 million, total.

24 Q. So, what happened to Taylor Bean & Whitaker after Freddie and
25 Ginnie seized the portfolios and terminated them?

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1 A. Well, again, we were essentially out of business. We filed
2 for bankruptcy.

3 Q. Was this the precise type of event that Ocala Funding was
4 designed to be protected from?

5 A. Yes, sir.

6 Q. Now, when did you return-- You said you learned about the
7 search back in Virginia, essentially?

8 A. Yes.

9 Q. When did you return back down to Ocala?

10 A. I returned back, I returned to Ocala early that following
11 week. So, it would have been the week of the 10th. So, I was
12 probably in Ocala either the 10th or the 11th.

13 Q. Besides Taylor Bean & Whitaker employees, were there other
14 third parties at the Taylor Bean & Whitaker headquarters?

15 A. Yes, sir.

16 Q. Who was there?

17 A. Well, representatives of Deutsche Bank were there, as well as
18 representatives of BNP Paribas.

19 Q. The investors in Ocala Funding?

20 A. The investors in Ocala Funding.

21 Q. What are they trying to do?

22 A. They want their collateral. They want their collateral so
23 they can liquidate it and get their money back and, and basically
24 get their money out of the, out of the facility.

25 Q. When you went back down, what did you learn about the assets

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1 in Ocala Funding?

2 A. What I initially learned was that there was a tremendous
3 shortfall in the loans that were in the facility versus what was
4 expected.

5 Q. Let's talk for a minute about what was expected. At that
6 point in time, approximately how much commercial paper is
7 outstanding?

8 A. Approximately \$1.7 billion.

9 Q. And what do you learn is the approximate value of the loans
10 that are in the facility?

11 A. About 200 million.

12 Q. So, a shortage of \$1.5 billion?

13 A. Yes, sir.

14 Q. Now, when you learned that, did you confront the defendant?

15 A. I did not.

16 Q. Explain to the jury why you didn't confront the defendant.

17 A. I did not because again at that time I had engaged, I had
18 engaged my own personal counsel. And they had, and upon their
19 advice, they had strongly advised that I not talk with anybody at
20 Taylor Bean about what might have happened in the past, and
21 instead to focus only on helping the people going forward in terms
22 of getting their collateral, getting them information and the
23 like.

24 Q. Mr. Allen, what was your reaction to discovering there was a
25 \$1.5 billion hole in Ocala Funding?

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1 A. I was sick to my stomach.

2 Q. Had you thought that that had been fixed?

3 A. Yes.

4 Q. Had it?

5 A. It had not.

6 Q. Now, did you subsequently learn additional information about
7 what had happened to those loans?

8 A. Yes, yes.

9 Q. Walk through what you learned.

10 A. Well, primarily what I learned about the loans was this more
11 information on the slowing of paydowns. That, you know, as I
12 described to you before, the Allen loan would paydown. The money
13 would come into Taylor Bean as the servicer. But the Allen loan
14 would not be paid down in the Freddie Mac pool that it was, that
15 it was in. And those delays were not occurring days. Those
16 delays were now becoming weeks and in some cases months.

17 So, that was, that was very disconcerting and very
18 surprising.

19 Q. And so, what did, how did you learn about that?

20 A. I learned about that from a conversation with Donna Skurovic.

21 Q. Did you also, did she have a document that she found with
22 respect to this?

23 A. I never saw the document, but she said she had found a
24 document, yes.

25 Q. What did that document show?

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1 A. That document had showed over a billion dollars of loans
2 from, again that we had received paydowns on that we did not pass
3 through the payments. We again here meaning TBW.

4 Q. Now, at some point when you first went back down to Ocala and
5 learn about this \$1.5 billion hole, is there some discussion about
6 whether or not there is some computer or data issues?

7 A. Yes, yes. That was the, that was-- My initial thought when
8 I got down there was, well, there must be some explanation for
9 this. There is no way possible a hole like this could exist.

10 And the initial theory or reaction was, well, you know,
11 all of the loans started out on Colonial lines, and then they got
12 moved over to Ocala Funding, and so maybe the system didn't keep
13 up with that movement of the loans.

14 And so, in essence, again it was a clerical error or a
15 systems error.

16 Q. Mr. Allen, what was the system that would be tracing this?

17 A. It was a system called FICS, which is a fairly common
18 servicing system, particularly among smaller servicers.

19 Q. Had TBW been recognized as being a good servicer?

20 A. Yes, sir.

21 Q. Had there been evaluations of TBW and it's servicing by third
22 parties?

23 A. Yes, sir.

24 Q. Had there been any serious issues raised about the FICS
25 system or its integrity or anything of that nature?

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1 A. Not that I was aware of.

2 Q. Mr. Allen, did the computer system explain the \$1.5 billion
3 hole?

4 A. Yes.

5 Q. Did the computer system explain the 1.5--

6 A. Well, I mean, I am sorry, there was no-- Let me clarify.

7 There was, once everyone looked into it, there was no
8 reason to believe that the system was inaccurate.

9 Q. The hole was explained by slowing paydowns and other things?

10 A. Yes, yes.

11 Q. Now, during the time that you are back down there in Ocala
12 that second week of August, what's the defendant doing?

13 A. Lee is in his office.

14 Q. Is he trying to help people find the assets?

15 A. No.

16 Q. Is he coming out and explaining to you where things are and
17 where they can be located?

18 A. No, he is not.

19 Q. Did you have conversations with folks from Deutsche Bank and
20 BNP?

21 A. I did, yes.

22 Q. And did they confirm that they also viewed the hole?

23 A. Yes, yes.

24 Q. What did Mr. Pemper tell you about that?

25 A. He was very upset. You know, I think-- When I first got

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1 down there, the nature of the task was more around fact finding,
2 could I give them historical information around reports so they
3 could start I think developing their own forensics and history.

4 And I think as that picture emerged, the picture that
5 emerged was the facility was undercollateralized significantly.

6 Q. Mr. Allen, you testified a little bit earlier about mortgage
7 servicing rights.

8 A. Yes.

9 Q. Did you ever become aware of efforts at TBW to falsely
10 inflate those mortgage servicing rights?

11 A. I did.

12 Q. How did you become aware of that?

13 A. I became aware of it on a couple of occasions, mostly being
14 notified by Ray Bowman.

15 Q. Did you also learn from a third party at some point in time?

16 A. Yes, at one point a party had come to me and had remarked,
17 and this was in early 2009, that our, the delinquency rate on our
18 portfolio had dropped dramatically. And this was at a time, of
19 course, when delinquency rates were rising across the country, and
20 remarked to me that that was very unique in our situation. And in
21 essence, hey, what a good job you guys are doing at Taylor Bean.

22 Q. Just high level, what would be the effect of the delinquency
23 rate dropping with respect to the value of the mortgage servicing
24 rights?

25 A. Mortgage servicing rights only-- As arcane as they may

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1 sound, are pretty straightforward. A Taylor Bean receives money
2 every month from Ginnie Mae or Freddie Mac for servicing mortgage
3 loans. And largely when a loan performs, it's largely a
4 ministerial position, it's a very low cost transaction, low cost
5 activity.

6 When a loan becomes delinquent, it flips very quickly
7 because, first of all, there is no, by definition there is no
8 money coming in from those mortgages. So, there is no money to
9 fund, you know, the mortgage servicer.

10 And then on top of it, when a loan goes delinquent,
11 there is tremendous, there is just an exponential increase in the
12 cost of servicing a delinquent loan. There are filings that need
13 to be made, records that need to be kept and the like.

14 So, if suddenly you reduce the amount of delinquent
15 loans in a portfolio, you are really lopping off a large element
16 of cost. And what's left over has higher value.

17 Q. What did you learn as to why these delinquencies were
18 decreasing at a time when they are increasing in the market?

19 A. Because we, we had sent a tape to a third party, at least one
20 third party valuation agent that had, in essence, eliminated all
21 of our serious delinquencies, that is those loans great than 90
22 days delinquent.

23 Q. After learning about this, what did you do?

24 A. I confronted both Ray and Lee and told them that I did not
25 want to be a part of that again.

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1 Q. Did you confront them with the fact that you learned about
2 the inflation, the false inflation of these MSR's?

3 A. Yes.

4 Q. What was their reaction? Let's talk about the defendant's.

5 A. Well, the defendant's was we had to do it because we were
6 facing a margin call on our lines.

7 Q. What happened after that?

8 A. Well, what happened-- I told them I didn't want to be a part
9 of that anymore.

10 Q. Mr. Allen, I would like to turn to another topic, if I can.

11 A. Sure.

12 Q. And talk to you about a capital raise. Are you familiar with
13 something called the Colonial Bank capital raise?

14 A. Yes, sir.

15 Q. What do you understand that to be?

16 A. I understand that to be our attempt in early 2009 to lead a
17 group of investors to put, to raise \$300 million of capital to put
18 into Colonial.

19 Q. Why did you understand that there was this effort to raise
20 \$300 million for Colonial? What was Colonial going through at
21 that time?

22 A. Again, in late '08 Colonial was facing some hard times.
23 Their capital base was eroding. They needed to raise new capital
24 not only to improve their ratios, but also then to trigger TARP
25 funding of roughly, I think it was \$540 million.

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1 Q. Did you understand that those two things were tied together?

2 A. Yes, sir.

3 Q. Do you get involved in the capital raise?

4 A. Yes, sir, I did. Probably starting around the, in the middle
5 to the end of February in 2009 I start to get involved in it at
6 Lee's request.

7 Q. The defendant asked to you get involved?

8 A. Yes.

9 Q. What did the defendant tell you that Taylor Bean & Whitaker
10 was going to do?

11 A. He said we're going to buy Colonial Bank.

12 Q. What was your reaction to that plan?

13 A. Oh, my gosh.

14 Q. Explain to the jury why your reaction was, oh, my gosh.

15 A. Well, it was-- We had, Taylor Bean in late '07 had bought a
16 very small bank in Chicago called Platinum Community Bank. And
17 it's again a very small bank, \$100 million of assets.

18 But what we had decided during the course of 2008, that
19 with warehouse lines other than Colonial shrinking, that to
20 migrate Taylor Bean's mortgage banking operations into Platinum
21 Bank was a good strategy. It was a small bank. We could put
22 capital into it, grow it organically. You know, since it was a
23 small bank, it had very few delinquent assets, with very little
24 overhang in that regard. And in fact, we embarked upon that path
25 in November, December of '08, I would say.

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1 And then in February to get the news that we were in
2 essence abandoning that for the investment in Colonial was a big
3 surprise.

4 Q. Did you express your surprise to the defendant?

5 A. I did. I did.

6 Q. What was his response?

7 A. His response was Taylor Bean was his company, it was his
8 money, and if he wanted to invest now in Colonial rather than put
9 the money in Platinum, that was his business.

10 Q. Did he explain to you any other reasons why he wanted to buy
11 Colonial Bank?

12 A. Yes, he did, yes. He said to me and to others that Colonial
13 had been very good to Taylor Bean over the years, and that he
14 wanted to in essence reciprocate that.

15 And he also mentioned that, you know, Colonial was one
16 of the biggest warehouse lenders in this country. They had
17 customers that went far beyond Taylor Bean's. I can't remember
18 the exact number, but it was several dozen warehouse customers.
19 And that if Colonial left, what was going to happen to all of
20 those other smaller lenders.

21 Q. So, in early 2009 when you get involved in this, are there
22 different-- How much money is Taylor Bean & Whitaker leading the
23 capital raise for? How much are you trying to raise?

24 A. Again, the total capital raise was \$300 million. One of the
25 first things that I was asked to be involved in by the, by Lee was

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1 what could our maximum portion of that \$300 million be.

2 Again, to make a long story short, we determined
3 \$150 million was the amount that we could, we could do. So,
4 roughly half of 300 million.

5 Q. Let's talk about that for a moment. Why was there a limit at
6 that point on how much Taylor Bean & Whitaker itself could invest
7 in the capital raise?

8 A. There were requirements-- Not requirements, but-- Well, I
9 guess requirements. If the investment was too large by Taylor
10 Bean, then all of Colonial's assets would consolidate onto Taylor
11 Bean's balance sheet.

12 And again, just to give you an idea at the time, Taylor
13 Bean was maybe \$3 billion in total assets, and Colonial was
14 probably around \$25 billion of total assets.

15 So, much, much bigger by multiples, much bigger a
16 balance sheet.

17 So, if you were to suddenly put the 25 billion on top of
18 the three, we would have, we would be out of compliance with every
19 financial covenant that we had. And it would be a disaster for
20 Taylor Bean. So, we couldn't, we could not fund more than that
21 amount.

22 Q. Approximately fifty percent?

23 A. Approximately 50 percent, correct.

24 Q. And there were different rules and regulations that sort of
25 set that 50 percent limit?

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1 A. Yes, sir.

2 Q. And did that include Taylor Bean itself or any affiliates of
3 Taylor Bean as well?

4 A. It would have included all of Taylor Bean, including its
5 affiliates, in other words.

6 Q. So, that's 150 million of the 300. Where is the other 150
7 million supposed to be coming from?

8 A. The other 150 million would be coming from other investors.

9 Q. Were there different buckets of those investors?

10 A. There were. There was one bucket of investors of
11 approximately \$50 million that were somewhat euphemistically
12 called friends and family of Colonial. These were the other
13 warehouse customers of Colonial's.

14 Q. Who was leading that \$50 million friends and family?

15 A. My understanding, Cathie Kissick was my understanding, she
16 was leading that effort.

17 Q. That is 200 million of the 300. Where is the last 100
18 million supposed to come from?

19 A. Provisionally it was coming from two investors. And at the
20 time that I joined the raise, we did not know who those two
21 investors were going to be. We were out talking with people. And
22 in fact, Colonial had been talking to potential investors for a
23 long period of time.

24 Q. And Taylor Bean was leading the effort for those two
25 additional investors?

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1 A. We were certainly very active. I don't know if we were
2 leading it, but we were certainly very active to try to find, to
3 try to find those investors.

4 Q. Was there a deadline or a cutoff for when this \$300 million
5 was supposed to be raised?

6 A. Yes, sir. A deadline of March 31, 2009.

7 Q. Now, Mr. Allen, are you familiar with someone known as
8 Emanuel Friedman?

9 A. I am.

10 Q. Manny Friedman?

11 A. Yes.

12 Q. Who is Manny Friedman?

13 A. Well, Manny-- You mean in terms-- Well, he is, he is an
14 investment banker, private, you know, an investor as well.

15 Q. Had you known him for a number of years?

16 A. I have. I knew Manny back in the late 1980s when I was at
17 Freddie Mac.

18 Q. At some point in 2009 did you have conversations with the
19 defendant about speaking with Manny about being a potential
20 investor?

21 A. Yes, sir.

22 Q. Approximately when did those occur?

23 A. Those occurred late in March, probably around March 25 or so.
24 I mean, it is getting close to the deadline.

25 Q. What does the defendant tell you?

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1 A. Lee says, Manny is interested in being an investor. And
2 would I call him, talk to Manny since I am, since I knew him.

3 Q. Did you call Mr. Friedman?

4 A. I did, yes.

5 Q. Tell the jury about those initial conversations.

6 A. Manny was a-- Manny had been-- Well, I didn't know that at
7 the time. Manny was already an investor in Colonial, not in their
8 equity, but he owned parts of Colonial's debt.

9 Q. Can I stop you there for a moment. By equity, do you mean
10 like stock?

11 A. I am sorry, common stock, yes.

12 Q. By debt, what do you mean?

13 A. Bonds, bonds issued by-- And these bonds were a particular
14 kind of bond that could be converted into equity. So, they could
15 be converted into Colonial common stock.

16 Manny in particular was interested in seeing whether or
17 not we could get that conversion counted as part of the 300
18 million. His rationale, which I thought was a good one, was,
19 well, you know, from a regulatory perspective, capital is capital.
20 And converting debt into common stock actually makes Colonial Bank
21 safer.

22 And so, therefore, the regulators should be willing to
23 do something like that.

24 Q. Did you have some back and forth with Mr. Friedman around
25 this time about that issue?

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1 A. Yes, absolutely. I think we had several conversations.
2 Again, in the latter part of, that last week of March, largely
3 because whereas I understood theoretically and even economically
4 where he was coming from, my interpretation as well as our outside
5 counsel's was that 300 million had to be 300 million cash. It
6 could not simply be a conversion of debt to equity.

7 And so, I had conversations with Mr. Friedman about
8 whether or not he could actually come up with fifty million in
9 cash.

10 Q. Could he?

11 A. He could not.

12 Q. So, what was the conclusion reached about whether or not Mr.
13 Friedman could participate as an investor in the capital raise?

14 A. The conclusion was reached on about the 30th that he was not
15 going to be able to participate.

16 Q. So, about March 30 you and Mr. Friedman reached that
17 decision?

18 A. Yes.

19 Q. And what do you do after that decision is reached?

20 A. I notify Lee because that's bad news.

21 Q. Why is it bad news?

22 A. Oh, it's bad news because we are losing a potential investor
23 who is not now going to be in the deal, which means we have to
24 find another investor.

25 Q. What was the size of the investment that Mr. Friedman was

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1 being approached about?

2 A. \$50 million.

3 Q. So, when you tell the defendant that Mr. Friedman can't be an
4 investor, what's his response?

5 A. His response is he doesn't care, he is going to list Manny as
6 an investor anyway.

7 Q. Let me show you what has been marked as Government's
8 Exhibit 18-49.

9 THE COURT: Any objection?

10 MR. ROGOW: No objection.

11 BY MR. CONNOLLY: (Continuing)

12 Q. Do you have that e-mail, Mr. Allen?

13 A. Yes, sir, I do.

14 Q. Let's first talk about some of the names at the top of that
15 e-mail. Who is that e-mail from?

16 A. That e-mail from is John Bruno.

17 Q. Who is Mr. Bruno?

18 A. Mr. Bruno was our outside counsel from Locke Lord. He was
19 helping us on all regulatory matters, and in particular the
20 capital raise.

21 Q. He sends it to Mr. Friedman?

22 A. Yes.

23 Q. And it is at an address ejfcap.com.

24 A. Yes.

25 Q. What does that stand for?

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1 A. That stands for Manny's private equity firm. EJF I assume is
2 Emanuel J. Friedman, and cap is for capital. So, it is EJF
3 Capital is the name of this company.

4 Q. And it is copied to you, the defendant and Doug Faucette.
5 Who is Mr. Faucette?

6 A. Mr. Faucette is Mr. Bruno's partner.

7 Q. Now, this e-mail is sent on March 30 at approximately
8 8:30 p.m.?

9 A. Yes.

10 Q. At that time had you already told the defendant that Manny
11 couldn't be an investor?

12 A. Yes, sir.

13 Q. Could you please read the message that Mr. Bruno says in his
14 e-mail.

15 A. Yes. At the request of Lee Farkas, I am forwarding you a
16 copy of the escrow agreement relating to an investment in Colonial
17 BancGroup, Incorporated. Please feel free to contact me with any
18 comments or questions you might have, or may have. Very truly
19 yours, John Bruno.

20 Q. What was the purpose of an escrow agreement?

21 A. The escrow agreement was a requirement, in essence, to ask
22 the potential investors to put some money, a down payment toward
23 the investment in an account.

24 Q. Where was that account going to be held?

25 A. I believe the account was going to be held at Platinum Bank,

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1 which was the bank that Taylor Bean & Whitaker owned in suburban
2 Chicago.

3 Q. What was the percentage that these investors were being asked
4 to put into the escrow account?

5 A. 10 percent.

6 Q. When was that 10 percent money supposed to be deposited?

7 A. It was supposed to be deposited by I believe midnight
8 March 31.

9 Q. The deadline.

10 A. Yes, sir, the deadline. Thank you.

11 Q. Now, the attachment is entitled Project Patriot. What does
12 that refer to?

13 A. That's the code name. Investment bankers love giving code
14 names to acquisitions, largely because, you know, any leakage or
15 dissemination of information about a pending deal can have huge
16 impacts on stock prices.

17 Q. There is nothing wrong with that, is there?

18 A. No, not at all.

19 Q. Project Patriot was referred to, was talking about the
20 capital raise effort?

21 A. Yes.

22 Q. Let me ask you to look at what has been marked as
23 Government's Exhibit 18-46.

24 THE COURT: Any objection?

25 MR. ROGOW: No objection.

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1 THE COURT: All right. And 18-49 was also admitted.

2 MR. CONNOLLY: Thank you, Your Honor.

3 (Government's Exhibit Nos. 18-46 and 18-49 were received in
4 evidence)

5 BY MR. CONNOLLY: (Continuing)

6 Q. Mr. Allen, this is an e-mail trail, ultimately it gets
7 forwarded from you to the defendant. Let's look at the initial
8 e-mail first. It's from a Will Leaming on March 31 at
9 approximately 1 in the afternoon.

10 Who is Mr. Leaming?

11 A. Will was the CEO of Platinum Community Bank.

12 Q. And Mr. Leaming is sending an e-mail to the defendant, you
13 and Mr. Bowman. Please read what Leaming says.

14 A. He says, Will says, please find an attached spreadsheet with
15 the transactions for the PCB agent account. The total balance is
16 \$30,075,000.

17 Q. What was the PCB agent account?

18 A. I believe that was the escrow account.

19 Q. What does that balance of 30,075,000 represent?

20 A. It's roughly the 10 percent escrow, or 10 percent down
21 payment that the equity investors were supposed to make on the
22 \$300 million investment.

23 Q. Let's take a moment before we come to the top e-mail and look
24 at the attachment that Mr. Leaming attaches. What I would like to
25 do is direct your attention to the second row from the bottom.

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1 How much money-- What do you understand this
2 spreadsheet is showing?

3 A. You mean the entire spreadsheet?

4 Q. Yes, sir.

5 A. The entire spreadsheet is showing the composition of the
6 money flowing into the escrow account at Platinum.

7 Q. And there is a whole bunch of names listed there. What are
8 those names?

9 A. Those names under the Description column would be the names
10 of the investors.

11 Q. The entities that made the deposit?

12 A. Yes, yes.

13 Q. Let me direct your attention to the second row from the
14 bottom. How much is that deposit for?

15 A. \$25 million.

16 Q. When does it indicate that deposit was made?

17 A. On the 30th of March.

18 Q. Where does it indicate that wire came from?

19 A. It says wire from LBNA as collateral, and the next word would
20 be agent, which the last letter got chopped off.

21 Q. What does LBNA stand for?

22 A. LBNA was LaSalle.

23 Q. What were they collateral agent for?

24 A. Ocala Funding.

25 Q. Where did this \$25 million come from?

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1 A. From Ocala Funding.

2 Q. Was Ocala Funding supposed to have anything to do with the
3 capital raise?

4 A. It was supposed to have nothing to do with the capital raise.

5 Q. Is there any reason why money should have been coming out of
6 Ocala Funding to be deposited for this escrow account?

7 A. No, sir.

8 Q. Now, who did you understand that 25 million was supposed to
9 be a 10 percent deposit for, what entities?

10 A. It would be for Taylor Bean & Whitaker, that would be 15
11 million of the 25. Again, 10 percent of 150 million.

12 Q. Let me stop you there. Was there any legitimate reason why
13 Ocala Funding should have been making Taylor Bean & Whitaker's 10
14 percent deposit?

15 A. No, sir.

16 Q. Who were the other entities that that 25 million encompassed?

17 A. I assume that one of the other entities would be, would have
18 been EJP Capital. And that's even more bizarre because not only
19 is, you know, is-- Now Ocala Funding money is being used for a
20 third-party investor.

21 Q. Was he actually a third-party investor?

22 A. And a third-party investor who told me in no way, shape or
23 form he was going to be an investor.

24 Q. And what about the last 5 million?

25 A. The last 5 million was coming from an entity called South

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1 Towne Capital.

2 Q. We will talk about them more in a moment.

3 Did you at any time direct anyone to send money from
4 Ocala Funding to Platinum for this capital raise?

5 A. I did not.

6 Q. And who would have been involved in getting that money from
7 Ocala Funding to be deposited at Platinum?

8 A. It would have been the defendant and/or Desiree, the
9 treasurer.

10 Q. Let's go back up to the top portion of that e-mail?

11 You forward this e-mail and the attachment back to the
12 defendant. Please read what you said.

13 A. Yes. I spoke with Will-- So, this is an e-mail from me to
14 Lee. I spoke with will. This is entirely inappropriate to send
15 out. I have asked him to simply put together a VOF, and VOF means
16 verification of funds, on bank letterhead. It is all that is
17 needed.

18 Q. Mr. Allen, why did you speak to Mr. Leaming?

19 A. Lee asked me to.

20 Q. What did he ask you to do?

21 A. He asked me to talk to Lee-- Excuse me, to talk to Will and
22 to make sure that this spreadsheet did not go out, and instead
23 just have a general letter sent, that verification of funds
24 letter.

25 Q. And why was it inappropriate or what was the danger about

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1 sending out this spreadsheet?

2 A. The showing of 25-- Excuse me. Yes, \$25 million going out
3 of LaSalle to fund this escrow account.

4 Q. And did-- Thank you. Let me show you what has next been
5 marked as Government's Exhibit 18-61.

6 MR. ROGOW: No objection.

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

8 (Government's Exhibit No. 18-61 was received in evidence)

9 BY MR. CONNOLLY: (Continuing)

10 Q. Mr. Allen, this is another e-mail trail on April 1 of 2009.
11 Let me ask you to look at the bottom part of the first page.

12 A. Yes, sir.

13 Q. Do you see that e-mail from a Tamara Stidham?

14 A. Yes, ma'am. I mean, yes, sir.

15 Q. To Mr. Bruno, Phillip Cooper and you?

16 A. Yes.

17 Q. Who did you understand Ms. Stidham was?

18 A. I believe she was in-house counsel for Colonial Bank.

19 Q. What's the subject of Ms. Stidham's e-mail?

20 A. Information needed.

21 Q. What does she ask you in bold and underline?

22 A. Bold and underlined, please, I just need a letter from the
23 bank that the money is there. It should be addressed to the FDIC.
24 I am not sure why this is taking hours.

25 Q. What is your response to Ms. Stidham?

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1 A. My response is, which FDIC office do you want it addressed
2 to.

3 Q. What does she tell you about that?

4 A. She says that she wants it addressed to a
5 gsimmons-poole@fdic.com.

6 Q. And at the top, what do you say back to her?

7 A. Well, at the very top I am sending the information back to
8 Sarah Moore, who is the CFO at Colonial, Tamara, John Bruno and
9 Phil Cooper, who are both at Locke Lord. Just basically letting
10 them know that the information is out there.

11 Q. Did you also copy additional people on this?

12 A. I did. Yes, I copied Lee and Will Leaming.

13 Q. What do you say?

14 A. I just basically say, here is the information that was sent
15 to the FDIC.

16 Q. Is there an attachment to this e-mail?

17 A. There is an attachment, yes.

18 Q. Let's take a look at that attachment.

19 First let me ask you to look at the e-mail that is
20 attached to the e-mail. It's an e-mail from Mr. Leaming to Ms.
21 Simmons-Poole with a copy to you and the defendant?

22 A. Yes.

23 Q. And there is an attachment to that e-mail?

24 A. Yes, there is.

25 Q. What's Mr. Leaming's message to Ms. Simmons-Poole?

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1 A. Please find attached confirmation of balances in the account
2 held by Platinum Community Bank for the escrow agreements dated
3 March 31, 2009. Taylor Bean & Whitaker has requested this
4 confirmation be sent directly to your attention. If I can be of
5 any assistance, please let me know. Will Leaming.

6 Q. Let's look at the letter that is attached to that e-mail that
7 goes to the FDIC. Just blow up the text.

8 What is this letter in general terms, Mr. Allen?

9 A. This is a verification of funds letter or a VOF.

10 Q. Indicates that there was approximately \$30,300,000 deposited
11 as of March 31, 2009?

12 A. Yes, sir.

13 Q. Did that include the \$25 million from Ocala?

14 A. Yes, sir, it did.

15 Q. Did that include the \$5 million on behalf of Mr. Friedman?

16 A. It did.

17 Q. And on behalf of South Towne Capital?

18 A. Yes, sir.

19 Q. Let me show you next what's been marked as Government's
20 Exhibit 18-57.

21 THE COURT: Any objection?

22 MR. ROGOW: One minute, Your Honor.

23 No objection.

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

25 (Government's Exhibit No. 18-57 was received in evidence)

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1 BY MR. CONNOLLY: (Continuing)

2 Q. Mr. Allen, let me ask you to look at the bottom half of that
3 for just a moment.

4 That is an e-mail from Mr. Leaming to you and the defendant.
5 Is that later that day on April 1?

6 A. Yes, sir, it is.

7 Q. And is there an attachment to this e-mail?

8 A. Yes, there is. It says, attached is the updated list of
9 wires received. Those verify, agree and balance to the data
10 Cathie sent me.

11 Q. Let's look at the attachment. If we look about halfway down,
12 do you see an entry for Emanuel Friedman?

13 A. Yes, sir, I do.

14 Q. Does this spreadsheet indicate that there was a deposit made
15 by Mr. Friedman?

16 A. Yes.

17 Q. For how much?

18 A. \$5 million.

19 Q. On what day?

20 A. On the 30th.

21 Q. That was prior to the escrow agreement even being sent to him
22 as we saw earlier, is that correct?

23 A. Correct.

24 Q. And where does it indicate that that \$5 million deposit came
25 from?

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1 A. It came from LaSalle.

2 Q. Ocala Funding?

3 A. Ocala Funding, yes.

4 Q. If you look towards the bottom portion of this spreadsheet,
5 do you see an entry for South Towne Capital?

6 A. I do.

7 Q. How much of a deposit is indicated for South Towne Capital?

8 A. Another 500-- Excuse me, \$5 million.

9 Q. Where did that deposit come from?

10 A. The same place, Ocala Funding or LaSalle.

11 Q. And finally, if you look for the next entry, there is an
12 entry for Taylor Bean & Whitaker.

13 How much is that deposit?

14 A. \$15 million.

15 Q. And where does it indicate that deposit came from?

16 A. From LaSalle.

17 Q. Let's go back to the e-mail. Does Mr. Farkas just forward
18 that e-mail on to Ms. Kissick?

19 A. It appears so.

20 Q. But you are not on that top part, correct?

21 A. I am not on that top one.

22 Q. Now, do you receive a call from Mr. Friedman at some point in
23 early April?

24 A. Yes.

25 Q. What happens?

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1 A. Well, he is very upset. He calls me because he has gotten
2 word that he is an investor in the capital raise, and he told me
3 very clearly that he did not want to be an investor.

4 Q. What did you do after you received that call from Mr.
5 Friedman?

6 A. I called Lee and told him that Manny was calling me, he was
7 very upset.

8 Q. What was Lee's response?

9 A. Lee's response was go back to him and see if he'll get in the
10 deal if we do, if we give him, and there are various options that
11 Lee asked me to present to Manny in terms of ways that we could
12 get Manny to get in, to stay in the deal.

13 Q. Was he ever in the deal?

14 A. He was never in the deal.

15 Q. So, to get him in the deal?

16 A. To get him actually into the deal after misrepresenting that
17 he had been in the deal.

18 Q. Now, did you follow-up with Mr. Friedman with those options?

19 A. I did several times.

20 Q. And explain to the jury, just give them a sense of what some
21 of these options were for getting Mr. Friedman into the deal in
22 April of 2009.

23 A. Well, some of them were, for example, to, for Lee to invest
24 money in EJF Capital. So, in essence, to put \$5 million into EJF
25 Capital, and then have EJF Capital in turn put that money into the

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1 deal, into the Colonial deal.

2 So, in essence, route money from Taylor Bean through EJF
3 and then into the deal. That was one option.

4 Another option was to loan EJF the money, loan them the
5 \$5 million and then have them pay it back at some point in the
6 future because Manny had indicated he didn't have the money to put
7 in.

8 A third was just to give him the money, just to give
9 Manny the money Lee said.

10 Q. What was Mr. Friedman's response to these options about how
11 TBW could give the money to EJF?

12 A. Well, he was totally unimpressed. I mean, he was mad, he was
13 getting agitated at my coming back to him and wanting to talk to
14 him about other, you know, Other potential options.

15 Q. And what did he say to you?

16 A. Well, I finally said to him, I said, well, Lee is going to be
17 very disappointed that you are not going to be in the deal. And
18 he said, I don't give a fuck about what Lee thinks.

19 Q. Now, what did you do after Mr. Friedman told you he didn't
20 care what the defendant thinks?

21 A. I relayed that to Lee.

22 Q. What was his response?

23 A. His response was, well, we'll just have to go out and find
24 another investor.

25 Q. What was your reaction to that?

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1 A. Well, my reaction to that was that that was all well and
2 good, but there had been, again, an event, a disclosable event
3 that had occurred in the interim, which was that Manny was going
4 to be part of the deal.

5 Q. Now, let me show you what is in evidence as Government's
6 Exhibit 15-1A.

7 MR. ROGOW: No objection.

8 THE COURT: It's already in, I believe.

9 MR. CONNOLLY: Yes, Your Honor.

10 BY MR. CONNOLLY: (Continuing)

11 Q. Mr. Allen, do you recognize what this document is?

12 A. Yes, it is an SEC, Securities and Exchange Commission, Form
13 8-K.

14 Q. You were at one point head of investor relations for Freddie
15 Mac. Simply could you explain to the jury what the 8-K is and
16 what it is for.

17 A. Well, at the time Freddie Mac was exempt from SEC reporting
18 requirements, but this is a form that goes out for basically any
19 publicly traded company whenever there is news that is determined
20 to be material and could affect investor interest.

21 That's, in essence, what this 8-K is.

22 Q. Is there an attachment to the 8-K?

23 A. Yes, sir, there is.

24 Q. What is that attachment?

25 A. That attachment is a, in essence, the summary of a material

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1 agreement, definitive agreement for a group of investors led by
2 Taylor Bean to invest in Colonial Bank.

3 Q. Is that an example of a press release?

4 A. Yes.

5 Q. Is this a press release that went out on March 31, 2009?

6 A. Yes.

7 Q. Let me ask you--

8 A. Oh, I am, I am sorry. I was looking at not those. Yes, the
9 back is clearly a press release. Sorry.

10 Q. Let me ask you to read what the title of this press release
11 is.

12 A. Sure. Colonial BancGroup Signs Definitive Agreement-- I
13 should sometimes look over my shoulder, shouldn't I. Colonial
14 BancGroup Signs Definitive Agreement With Investors led By Taylor
15 Bean & Whitaker For 300 Million, For a \$300 Million Investment.

16 Q. Mr. Allen, what's your understanding of the word
17 "definitive"?

18 A. Means definite. Means solid.

19 Q. At this point in time is there a discussion of investors
20 being mere place holders?

21 A. No, sir.

22 Q. Is the public being told that some of these investors may not
23 be investors?

24 A. No, sir.

25 Q. And based on the information you had with respect to where

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1 the deposit, the escrow deposits came from, is this a false press
2 release?

3 A. Yes, sir.

4 Q. And how so?

5 A. Well, it again says that we have a definitive agreement with
6 investors. And we definitely had no agreement with at least
7 \$50 million of that \$300 million at that time, at the time.

8 Q. And as part of the reference to stock purchase agreement, I
9 think a moment ago-- Is that yes?

10 A. Yes. Excuse me, yes.

11 Q. As part of that stock purchase agreement, were the investors
12 supposed to put 10 percent into the escrow accounts?

13 A. Yes, sir.

14 Q. And in fact, had Taylor Bean & Whitaker itself put 10 percent
15 in the escrow account?

16 A. Yes, sir.

17 Q. Had it come from Taylor Bean or from Ocala Funding?

18 A. Well, it had come from Ocala Funding. It had not come from
19 the investors.

20 Q. Were you concerned about this false press release?

21 A. Very much.

22 Q. Now, a few moments ago we looked at a spreadsheet that listed
23 South Towne Capital.

24 Do you know who South Towne Capital was?

25 A. Yes, sir. I was aware of South Towne Capital.

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1 Q. Do you have some involvement with South Towne in late March
2 of 2009 with respect to this capital raise?

3 A. I do. I can't recall if it was in late March or early April,
4 but yes.

5 Q. Does the defendant talk to you at some point in time about
6 South Towne potentially being an investor?

7 A. Yes.

8 Q. What does he say?

9 A. In late March he says to me, Lee says to me, I've got a great
10 idea, we're going to make South Towne one of the investors in
11 Colonial.

12 Q. What was your response to that?

13 A. Well, my response was, first of all, I didn't think it was
14 kosher because it was, South Towne was owned by three officers of
15 Taylor Bean.

16 Q. Who were those three officers?

17 A. Lee, Ray Bowman and Jeremy Collett.

18 Q. You talked a little bit about this earlier. What was the
19 problem with a company owned by Taylor Bean & Whitaker executives
20 with respect to this capital raise?

21 A. From a regulatory perspective, the problem would be that that
22 entity, South Towne, would be considered part of Taylor Bean. So,
23 if Taylor Bean is already in for \$150 million, and that was the
24 maximum we thought we could do, you add another 50 million on, now
25 suddenly it is \$200 million. And all of these consolidation

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1 concerns are tripped.

2 And all of a sudden now all of Colonial is consolidating
3 onto our balance sheet, and it would be a very bad situation for
4 Taylor Bean.

5 Q. You indicated there were a few reasons why it wasn't kosher.
6 What were some others?

7 A. Well, the other was that South Towne wasn't geared to be an
8 investor. South Towne was a, was basically a sales unit to help
9 place or broker loans to new investors. It was not a money
10 management firm. It was not a private equity firm.

11 Q. Now, did you raise these concerns with the defendant?

12 A. Yes.

13 Q. What was his response to that?

14 A. His response was these are place holder investors and, you
15 know, again, we'll find other investors.

16 Q. Now, at some point were you actually asked to reach out to
17 South Towne?

18 A. I was.

19 Q. When did that occur?

20 A. I believe that occurred in early April, maybe April 1 or
21 April 2. It was right after the press release.

22 Q. What were you asked and by whom?

23 A. Lee asked me to contact South Towne. That he had already,
24 he, Lee, had already spoken to South Towne about the investment,
25 but that he, Lee, was busy on other things and asked if I could

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1 give South Towne a call just to make sure everything was fine.

2 Q. How many employees did you understand South Towne had at this
3 point in time?

4 A. I understood that South Towne had two employees at the time.

5 Q. Were you asked to call a specific person?

6 A. I was.

7 Q. Who was that?

8 A. I was asked to call Jesse Elhai or Elhai, I don't remember
9 how to pronounce his last name.

10 Q. Did you call Mr. Elhai?

11 A. I did.

12 Q. Describe that conversation.

13 A. It was, for me it was a very surprising conversation. Jesse
14 said that he knew nothing about this, South Towne's involvement in
15 the capital raise.

16 Q. This is on April 1 or 2nd?

17 A. April 1 or 2nd, yes.

18 Q. After the press release has gone out?

19 A. After the press release has gone out.

20 Q. So, what was your internal reaction when Mr. Elhai expressed
21 his surprise about this call?

22 A. Well, my first reaction was, well, Lee didn't tell me the
23 truth. And that Jesse was very concerned.

24 Q. And did you say anything to Mr. Elhai at that point in time?

25 A. Yes, I asked Jesse to just sit tight and that I would talk to

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1 Lee, and that Lee would get back in touch with him.

2 Q. Did you have further conversations with Mr. Elhai?

3 A. I recall having an e-mail conversation with him afterwards.
4 That was it.

5 Q. Did you have further conversations with him later in April?

6 A. With Jesse?

7 Q. Yes, or with someone at South Towne Capital.

8 A. I don't know. I don't remember.

9 Q. Now, at one point did the issue about Lee Farkas' and Rob
10 Bowman's and other officers' ownership of South Towne Capital come
11 up at a meeting with regulators?

12 A. Yes, sir, it did.

13 Q. Approximately when was that?

14 A. In the middle of April we were meeting with OTS, the Office
15 of Thrift Supervision-- Do you want me to talk a little bit more
16 about that?

17 Q. Yes, just explain why were you meeting with OTS and what was
18 their role?

19 A. We were meeting with OTS in Chicago. OTS-- Chicago was our
20 region of regulation with OTS. Even though Taylor Bean was in
21 Florida, because Platinum Community Bank was a thrift and was
22 regulated out of Chicago. So, that was our, if you will, our home
23 base.

24 We also had made as part of the Colonial transaction a
25 requirement that Colonial convert over to thrift status.

Allen - Direct

1488

1 So, OTS, the Office of Thrift Supervision, was going to
2 be heavily involved in the capital raise and the successful
3 completion of this. And so, we wanted to make sure that they were
4 briefed on what we were doing. And if they had any questions,
5 that we could, you know, we could answer them.

6 Q. What came up with respect to South Towne?

7 A. They, I forget who it was at OTS, zeroed right in on South
8 Towne as a potential--

9 MR. ROGOW: Objection, Your Honor, hearsay.

10 THE COURT: Is this being offered to explain an action
11 taken by Mr. Allen?

12 MR. CONNOLLY: I think it is being offered to explain an
13 action taken by Mr. Allen and/or the defendant, Your Honor, in
14 response to questions. Questions are not hearsay, Your Honor,
15 they are not statements.

16 THE COURT: Well, I didn't hear this coming in as a--
17 All right. If you are just recounting a question and you are not
18 offering anything that was said to prove something, but to rather
19 explain why you did something, then it is not hearsay and I will
20 overrule the objection.

21 MR. CONNOLLY: Yes, Your Honor. That's fine, Your
22 Honor.

23 THE COURT: Ladies and gentlemen, I think I have done
24 this a couple of times, let me just explain that to you in more
25 detail.

Allen - Direct

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1 The rules of evidence normally do not permit a statement
2 that was made outside of the courtroom by somebody to come in as
3 evidence to prove a fact.

4 And the reason for that is that person who made the
5 statement is not in court to be cross-examined. So, we can't test
6 the accuracy of that statement.

7 But sometimes people rely on the statement to do
8 something. For example, a police officer testifies that his
9 dispatcher told him that there had been a robbery at 101 Elm
10 Street.

11 Now, we don't know whether there was in fact a robbery
12 at 101 Elm Street. And that statement by the dispatcher cannot be
13 used to prove that the robbery occurred. But we allow it to come
14 into evidence to explain why the officer goes to 101 Elm Street.
15 All right. So, that's the difference.

16 So, if it is something that is allowed in for a limited
17 purpose, only to explain the actions of the witness, then it can
18 come in that way. And that is how this OTS statement will now
19 come in.

20 MR. CONNOLLY: Thank you, Your Honor.

21 BY MR. CONNOLLY: (Continuing)

22 Q. Mr. Allen.

23 A. There was concern by OTS about South Towne being an affiliate
24 of Taylor Bean & Whitaker, and in particular specifically the
25 ownership of Lee, Ray and Jeremy essentially violating that rule,

Allen - Direct

1490

1 and now suddenly creating a \$200 million investment by Taylor Bean
2 & Whitaker in Colonial and not 150 million.

3 Q. So, what, if anything, did they ask about that?

4 A. Well, first of all, they thought it was, that we had been
5 hiding it. That, you know, that South Towne was becoming a
6 vehicle for Taylor Bean & Whitaker and hiding another \$50 million
7 investment. Which was an awful outcome.

8 Because as I mentioned, OTS, we needed OTS' approval to
9 get the Colonial investment approved. And for them to think that
10 we were not being straight up with them, not being honest with
11 them, was a big deal, was a big concern.

12 Q. What, if anything, did the defendant say about TBW's
13 ownership of South Towne?

14 A. I think he was surprised by the request at first, but he
15 disclosed that he, Lee and Ray-- He and Ray and Jeremy were the
16 owners.

17 Q. Now, what ultimately happened with respect to the capital
18 raise?

19 A. Ultimately?

20 Q. Yes.

21 A. The capital raise failed.

22 Q. And why did it fail?

23 A. It failed because we were not able to get \$300 million of
24 investment, and we were not able to get thrift, OTS approval to
25 convert to a thrift. And I am sure there were a few other reasons

Allen - Direct

1491

1 as well.

2 Q. At the time of the March 31 deadline for the initial phase of
3 that capital raise, Mr. Allen, did you understand that the
4 investors couldn't be place holder?

5 A. Did I understand that the investors--

6 Q. Couldn't be place holders.

7 A. Could not be place holders, that's correct.

8 Q. Now, did you have meetings with Freddie Mac in early April of
9 2009?

10 A. I am sure I did.

11 Q. Let me show you what has been marked as Government's
12 Exhibit 18-53.

13 THE COURT: Any objection?

14 MR. ROGOW: No objection.

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

16 (Government's Exhibit No. 18-53 was received in evidence)

17 BY MR. CONNOLLY: (Continuing)

18 Q. Mr. Allen, let me ask you to first focus on the bottom
19 portion of the e-mail. It's an e-mail from someone named Raymond
20 White to you and to a Chip Caldwell.

21 A. I'm sorry, excuse me, I think I got the wrong exhibit. I
22 have got 17-53.

23 Yes, sir.

24 Q. Who is Mr. White?

25 A. Mr. White is the director of sales for Freddie Mac in the

Allen - Direct

1492

1 Atlanta region, which was the region that governed Taylor Bean &
2 Whitaker.

3 Q. Who is Mr. Caldwell?

4 A. Mr. Caldwell is, Ray is Chip's boss. Chip is our account rep
5 at Freddie Mac.

6 Q. What's the purpose of this e-mail?

7 A. The purpose of this e-mail is for, Freddie Mac has an
8 interest, obviously Freddie Mac has heard about the definitive
9 agreement with Colonial. They want to talk with us about it,
10 among other topics.

11 Q. Please read what Mr. White says.

12 A. Sure. Paul, we have confirmed Friday from 12 noon to 1 p.m.
13 in Don's office.

14 Q. Stop for a moment. Who is Don?

15 A. Don is probably Don Bisenius, who is the chief credit officer
16 at Freddie Mac, or was the chief credit officer at Freddie Mac.

17 Q. Where would Mr. Bisenius' office be located?

18 A. In McLean.

19 Q. Please continue.

20 A. Lunch will be provided, and the discussion will be about the
21 Ocala Funding line, Colonial Bank investment and possible
22 collateral pledge to offset some of our repurchase risk.

23 Q. Let's talk about those topics for just a minute.

24 A. Sure.

25 Q. What was Freddie Mac's interest in the Ocala Funding line at

Allen - Direct

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1 this point in time in April of 2009?

2 A. At that time we had been speaking with Freddie Mac about
3 potentially becoming an investor in Ocala Funding, that is buying
4 the commercial and holding the commercial paper of Ocala Funding.

5 Q. What does the Colonial Bank investment refer to?

6 A. The capital raise.

7 Q. And then it talks about a possible collateral pledge to
8 offset some of our repurchase risk. Let's start at the end.

9 What is repurchase risk?

10 A. Okay. It's-- This is another part of dealing with Freddie
11 Mac from a mortgage banker's perspective. When loans are sold to
12 Freddie Mac by a mortgage originator like Taylor Bean, they are
13 sold with certain what are call reps and warrants. Reps and
14 warrants.

15 What that means is, in essence, the originator sells to
16 Freddie Mac what it considers to be a good loan, a well
17 underwritten good loan. At times after the loan is sold to
18 Freddie Mac, Freddie Mac will review these loans and look at them.
19 And if Freddie Mac looks at those loans and says, you know, this
20 really wasn't a well underwritten loan, didn't comply with all of
21 our underwriting guidelines, they have the right to come back to
22 the mortgage originator and say, buy this loan back or repurchase
23 this loan.

24 It's a big deal for Freddie. It's a big deal for a
25 mortgage bank.

Allen - Direct

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1 So, when they talk about their repurchase risk, it's
2 essentially Freddie Mac's view of loans that they are thinking may
3 not be of investment quality. That is, may be ultimately asked by
4 Taylor Bean to be repurchased.

5 Q. And the risk to Freddie Mac is Taylor Bean & Whitaker can't
6 come up with the cash?

7 A. The risk is by and large as you might expect. These loans
8 that are repurchase candidates are loans that are not performing.
9 So, they are delinquent. Again, borrowers are not making their
10 payments.

11 So, the risk to Freddie Mac is that if Taylor Bean is
12 not there, that Freddie Mac then has the risk exposure on those
13 loans.

14 Q. So, what was the issue with the collateral pledge? What does
15 that relate to?

16 A. I don't know the specifics of it, but a collateral pledge
17 would be an account, this is how collateral pledges usually work,
18 an account of a certain amount of cash or like Treasury
19 securities, something very high quality, that would sit in the
20 account, sit in escrow and could be drawn upon by Freddie Mac if
21 the level of repurchased loans got above a certain level or got
22 aged to a certain level. There would be various triggers that
23 could be hit.

24 Q. Additional protection for Freddie Mac?

25 A. Absolutely additional protection for Freddie Mac, yes.

Allen - Direct

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1 Q. Let me show what you has been marked as Government's
2 Exhibit 18-64.

3 MR. ROGOW: No objection.

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

5 (Government's Exhibit No. 18-64 was received in evidence)

6 BY MR. CONNOLLY: (Continuing)

7 Q. Mr. Allen, this is an e-mail you send on April 2 to the
8 defendant and to Ray Bowman regarding Freddie Q and A. And you
9 attach something to that e-mail, is that correct?

10 A. I do.

11 Q. Just read what you said to Mr. Bowman and the defendant.

12 A. I threw together some proposed answers to the Qs Chip said we
13 were likely to get asked tomorrow. I tried to keep the tone
14 civil. I hope you find them helpful. See you tomorrow. Happy to
15 discuss ahead of time if you want.

16 Q. And is there in fact an attachment with your proposed Q and A
17 responses?

18 A. There is.

19 Q. If we could turn to the first page. And I would like to
20 focus on the top third of that, if we could.

21 What's the first question that you are drafting
22 responses to?

23 A. Where did the \$150 million come from to finance the Colonial
24 acquisition.

25 Q. How many proposed responses do you provide?

Allen - Direct

1496

1 A. I propose four.

2 Q. Let's walk through those. What's the first one that you are,
3 the first proposed response?

4 A. The first proposed response are from some hedge gains that we
5 got over the previous six-month period.

6 Q. Approximately how much were those hedge gains?

7 A. Approximately 80 to \$100 million.

8 Q. And based on your understanding, Mr. Allen, did those hedge
9 gains actually exist?

10 A. Yes, sir.

11 Q. That was real?

12 A. Yes, sir.

13 Q. What's the next proposed response to that?

14 A. 30 to \$35 million from increased gain on sale over the last
15 six months.

16 Q. Is that the sale of the loans?

17 A. Yeah. Gain on sale is, again that's just a kind of internal
18 term for profit margin or profitability of the business. During
19 this period, the profitability of our business was increasing
20 largely because so many other mortgage originators had gone out of
21 business.

22 So, we were able to make more money in our corp business
23 than we had been previously.

24 Q. Just to be clear, Mr. Allen, at this point when you are
25 talking about we, is this Taylor Bean & Whitaker or Ocala Funding?

Allen - Direct

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1 A. This is Taylor Bean & Whitaker, yes.

2 Q. Now, what's the next, why don't you read the next two
3 bullets.

4 A. The next two bullets, 20 to 25 million from financing
5 selected REO properties. And a 10 to 15 million from higher
6 advance rates on existing MSR lines.

7 Q. And you include a parenthetical with respect to those two
8 bullets, is that correct?

9 A. Yes, sir.

10 Q. Could you read to the jury what your parenthetical states.

11 A. Okay. I am not particularly proud of this parenthetical.
12 Note, the last two items are fabrications. I added them to make
13 the funding sources sound more robust. We can drop it if you want
14 and just go back to the old line of cash from operations.

15 Q. What about those last two bullets are fabrications, Mr.
16 Allen?

17 A. Well, the numbers are.

18 Q. Did you--

19 A. Obviously just about everything about them is.

20 Q. Did you get any response from the defendant about these, the
21 inclusion of these fabrications?

22 A. No, sir.

23 Q. Did he ever say to you, we are not going to discuss those or
24 include those?

25 A. No, sir.

Allen - Direct

1498

1 Q. Now, to be clear, we have seen some documents, where did the
2 \$150 million actually come from?

3 A. Where did it actually come from?

4 Q. Yes. Did it come from Ocala Funding?

5 A. Well, we know the down payment did. Right. So, yes, the
6 down payment did, yes.

7 Q. There is no discussion of the down payment coming from Ocala
8 Funding in there, is there?

9 A. That is correct.

10 Q. Mr. Allen, did this meeting with Freddie Mac occur?

11 A. I believe it did occur.

12 Q. And where did it occur?

13 A. In McLean, Virginia.

14 Q. And what is your recollection as to whether or not these
15 items were discussed?

16 A. Certainly I know the first two were discussed. I believe all
17 four were.

18 Q. And were there other items discussed at this meeting other
19 than the \$150 million for the capital raise?

20 A. Yes.

21 MR. CONNOLLY: The Court's indulgence, Your Honor.

22 THE COURT: Yes, sir.

23 MR. CONNOLLY: No further questions, Your Honor.

24 THE COURT: All right. You certainly are timing that
25 perfectly.

Allen - Direct

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1 All right. So, ladies and gentlemen, we are close
2 enough to lunch that it makes sense to take the lunch break before
3 we start the cross-examination.

4 Mr. Allen, you will need to be back here at five of 2.
5 Do not discuss your testimony with anyone.

6 And we will see the jury back here at the same time.

7 We are in recess for one hour.

8 NOTE: At this point, 12:56 p.m. a lunch recess is
9 taken.

10 CERTIFICATE OF THE REPORTERS

11 We certify that the foregoing is a correct transcript of the
12 record of proceedings in the above-entitled matter.

13

14

15

/s/

Anneliese J. Thomson

16

17

/s/

Norman B. Linnell

18

19

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

UNITED STATES OF AMERICA	.	Criminal No. 1:10cr200
	.	
vs.	.	Alexandria, Virginia
	.	April 13, 2011
LEE BENTLEY FARKAS,	.	2:00 p.m.
	.	
Defendant.	.	
	.	
.	

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

VOLUME 7 - P.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
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FOR THE DEFENDANT:	WILLIAM B. CUMMINGS, ESQ. William B. Cummings, P.C. P.O. Box 1177 Alexandria, VA 22313
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 1818 - 1977)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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11 ALSO PRESENT:

JENNIFER GINDIN
LISA PORTER
SA SCOTT TURNER
JUDSON VAUGHN

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I N D E X

DIRECT CROSS REDIRECT RECROSS

WITNESSES ON BEHALF OF
THE GOVERNMENT:

Avi Pemper (Resumed)		1822	1831	
Brendan Girardi	1833	1848		
David J. Gaynor	1852	1860		
Neil Luria	1872	1891		
Gale Simons-Poole	1909	1925	1934	
John Bruno	1935	1955	1965	1966

EXHIBITS

MARKED RECEIVED

GOVERNMENT'S:

No. 9-1				1922
18-56				1947
18-59				1918
18-62				1950
18-66				1920
21-3B				1911
21-4				1924
1001				1878

DEFENDANT'S:

No. 10				1822
12				1825
13				1825
14				1826
16				1827
17				1827

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

2 (Defendant present, Jury out.)

3 THE COURT: We're waiting on one juror, so we can use
4 this time. I understand that there was some witness, another
5 witness the government wanted to excuse?

6 MR. CONNOLLY: Yes, Your Honor. As we mentioned
7 yesterday after, after court, the United States had two witnesses
8 under subpoena that it held pending the cross-examination this
9 morning. At this point in time, we'd like to ask that they be
10 released from subpoena. My understanding from Mr. Cummings is I
11 don't believe there's an objection from the defense.

12 MR. CUMMINGS: That's correct.

13 THE COURT: All right, who are the witnesses?

14 MR. CONNOLLY: The two witnesses are Carla Washburn
15 Haskell, or Haskell Washburn.

16 THE COURT: Hold on a second. Was she even on your
17 list?

18 MR. CONNOLLY: Just under "Haskell," Your Honor.

19 THE COURT: Oh, Haskell, I'm sorry. Okay. So she can
20 be excused. All right?

21 MR. CONNOLLY: And the second is Haran Sundaresan.

22 THE COURT: No. 30, correct?

23 MR. CONNOLLY: Yes, Your Honor.

24 THE COURT: All right. So there's no objection from the
25 defense, correct?

Pemper - Cross

1822

1 MR. CUMMINGS: No objection.

2 MR. ROGOW: No objection, Your Honor.

3 THE COURT: All right, those two witnesses have been
4 excused.

5 MR. CONNOLLY: Thank you, Your Honor.

6 THE COURT: All right. We'll bring the jury in then.

7 (Jury present.)

8 THE COURT: All right, everybody is set, the witness is
9 back in the box, and we'll continue with the cross-examination.

10 AVI PEMPER, GOVERNMENT'S WITNESS, PREVIOUSLY AFFIRMED, RESUMED

11 CROSS-EXAMINATION (Cont'd.)

12 BY MR. KUGLAR:

13 Q. Mr. Pemper, would you look at what's been marked as DX-10,
14 please?

15 A. 10?

16 MR. CONNOLLY: No objection to foundation, Your Honor.

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

18 (Defendant's Exhibit No. 10 was received in evidence.)

19 BY MR. KUGLAR:

20 Q. Mr. Pemper, do you recognize this document?

21 A. Yeah.

22 Q. Okay. And what is this document?

23 A. This is the base indenture between Ocala and LaSalle Bank as
24 the indenture trustee.

25 Q. And is this another one of the operative documents for Ocala

Pemper - Cross

1823

1 Funding?

2 A. Yes.

3 Q. And what does the base indenture do?

4 A. Talks about the notes, the form of the notes, the
5 distribution of the payments to -- it really incorporates some of
6 the elements from some of the other operating documents, also. It
7 has reps and warranties, stuff like that.

8 Q. And why is this document important?

9 A. It's the, one of the underlying documents, one of the
10 operating documents in the facility and the one that talks about
11 the notes.

12 Q. If you would look at what's been marked as DX-15?

13 THE COURT: How many more of these documents do you
14 have? Just read them out in serial --

15 MR. KUGLAR: Nine, Your Honor.

16 THE COURT: -- so we can just have them, we don't have
17 to keep this back-and-forth.

18 How many more?

19 MR. KUGLAR: Nine, Your Honor.

20 THE COURT: Just, just read the numbers into the record.

21 MR. KUGLAR: DX-15, DX-13, DX-14, DX-12, DX-17, DX-16,
22 DX-18, DX-20, and DX-706.

23 THE COURT: That's nine by my count.

24 MR. KUGLAR: Yes, Your Honor. 12 through 20 and 706.

25 THE COURT: 12 through 20 and then 706.

Pemper - Cross

1824

1 Yes, Mr. Connolly?

2 MR. CONNOLLY: I didn't hear 19 mentioned, Your Honor.

3 THE COURT: 19 was not mentioned.

4 MR. CONNOLLY: Okay.

5 THE COURT: So, I'm sorry, it's 12, 13, 14, 15, 16, 17,
6 18, 20, and 706.

7 MR. CONNOLLY: With respect to the ones between 12 and
8 20, Your Honor, we don't object to foundation to the extent this
9 witness has seen these documents before.

10 THE COURT: All right.

11 MR. CONNOLLY: 706, I don't know what that is, Your
12 Honor.

13 MR. KUGLAR: We'll go with that for now, Your Honor.

14 THE COURT: All right, 706 is not in. And the others
15 are not in unless you've seen them, Mr. Pemper, so take a look at
16 each of these. Give us the document number, the exhibit number,
17 and tell us whether you've seen it or not. 706 is not relevant at
18 this point. It's just, just the teens.

19 MR. CUMMINGS: 12 through 20 but not 19.

20 THE COURT: Are you looking at -- which one are you
21 looking at, Mr. Pemper? What exhibit are you looking at? What
22 number?

23 THE WITNESS: I'm on DX-13.

24 THE COURT: Have you seen DX-13 before?

25 THE WITNESS: Yes.

Pemper - Cross

1825

1 THE COURT: And what is the title of it?

2 THE WITNESS: The title is 2005-1 Short-Term Note
3 Supplement to the Second Amended and Restated Base Indenture.

4 THE COURT: All right, then that one's in.

5 (Defendant's Exhibit No. 13 was received in evidence.)

6 THE COURT: Have you seen -- what else do you have in
7 front of you there?

8 THE WITNESS: I have -- okay. I'm looking at DX-12,
9 which is 2005-1 Amended and Restated Depositary Agreement.

10 THE COURT: Have you seen that one before?

11 THE WITNESS: Yes.

12 THE COURT: All right, then 12 is in.

13 (Defendant's Exhibit No. 12 was received in evidence.)

14 THE COURT: What about -- what else do you have there?

15 THE WITNESS: This is, this is DX-13, and it's the
16 2008-1 Depositary Agreement. That's the series that -- that was
17 Deutsche Bank's series. I'm not sure if I saw this or not.

18 THE COURT: The one you're looking at right now, that's
19 13?

20 THE WITNESS: That's 13, yes.

21 THE COURT: All right, then that's not in. If this
22 witness hasn't seen it, it's not proper.

23 All right. So you've talked about 12; and you've talked
24 about 15, correct?

25 THE WITNESS: Yes.

Pemper - Cross

1826

1 THE COURT: What about 14?

2 THE WITNESS: No, I've talked about 12, 13, and, oh,
3 wait, there's two, I'm sorry, they're both marked the same. DX-13
4 has both -- no. There's one DX-13 that says Short-Term Note
5 Supplement to the Amended Restated Base Indenture and another
6 DX-13 that says 2008-1 Depositary Agreement.

7 THE COURT: Put 13 aside, all right? Right now it's not
8 in, okay?

9 THE WITNESS: No, there's two 13s.

10 THE COURT: Put both of them aside.

11 THE WITNESS: Both of them aside, okay.

12 THE COURT: So far you've identified 12, correct?

13 THE WITNESS: Yes, that's correct.

14 THE COURT: That we've let in. Now, the other one you
15 said which came from 2005 as the note supplement was Exhibit 15?

16 THE WITNESS: Now I'm looking at 14. DX-14 is 2005-1
17 Short-Term Note Supplement, and that I do, I do recognize.

18 THE COURT: All right. So 12 is in; 14 is in.

19 (Defendant's Exhibit No. 14 was received in evidence.)

20 THE COURT: Now, have you looked at 15?

21 THE WITNESS: There's no 15 here.

22 THE COURT: All right. Move on then to -- it's not
23 going in right now. Look at 16.

24 THE WITNESS: 16 is the Amended and Restated
25 Confirmation Swap Transaction, and I recognize that.

Pemper - Cross

1827

1 THE COURT: All right, 16 is in.

2 (Defendant's Exhibit No. 16 was received in evidence.)

3 THE COURT: How about 17?

4 THE WITNESS: 17 is Amended Restated Schedule to the
5 Master Agreement, and I recognize that.

6 THE COURT: All right, 17 is in.

7 (Defendant's Exhibit No. 17 was received in evidence.)

8 THE COURT: Lastly, 18.

9 THE WITNESS: 18 is, this is a confirmation, it says,
10 between Deutsche Bank and Ocala Funding. I don't believe that I
11 know this one.

12 THE COURT: That's not in. So four of these exhibits
13 are in; the others are not. Let's move along. 12, 14, 16, and 17
14 are the only ones in, all right? Any questions about those?

15 BY MR. KUGLAR:

16 Q. Mr. Pemper, these series of documents that I've been showing
17 you, is it fair to say that these are the deal documents for the
18 Ocala Funding structure?

19 A. Yeah, they are. Yes.

20 Q. You've spoken with the government a number -- several times
21 before testifying here today, correct?

22 A. Yes.

23 Q. Did the government ever ask you to read these documents to
24 them or help them understand how these documents work?

25 A. Possibly we went over some of it the first time I met them,

Pemper - Cross

1828

1 but I don't recall.

2 Q. If you would look at Government's 17-187?

3 THE COURT: Government's 17?

4 MR. KUGLAR: Yes, Your Honor, which has been admitted.

5 THE COURT: All right, it's in evidence.

6 BY MR. KUGLAR:

7 Q. You saw that e-mail earlier, right, Mr. Pemper?

8 A. Yes.

9 Q. And this is the e-mail from June 2008 from -- Mr. Farkas says
10 that if your bank does not put 500 million in the Ocala Funding
11 deal, that his company will be ruined, right?

12 A. Um-hum.

13 Q. What was going on at this time period in the commercial paper
14 market?

15 A. At this time, I mean, the commercial paper market by this
16 time was pretty much settled down, and, you know, it was, it was
17 still difficult to find investors to buy asset-backed commercial
18 paper.

19 Q. Did there come a point in time prior to this e-mail where the
20 commercial paper market experienced difficulties?

21 A. Yeah.

22 Q. Explain what that was.

23 A. It was in August 2007.

24 Q. And as a result of that disruption, this restructuring of
25 Ocala Funding was at a smaller level, correct?

Pemper - Cross

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1 A. Smaller level compared to, compared to before as far as the
2 maximum program size, the maximum program size.

3 Q. So the maximum was less, correct?

4 A. The maximum program size but not the, not the actual amount
5 of CP outstanding.

6 Q. And in addition to the size of the facility, your bank asked
7 for additional credit enhancements in connection with the
8 restructuring, correct?

9 A. For additional credit enhancements, to some extent, I
10 believe.

11 Q. Is it fair to say that the 2008 Ocala Funding, which is
12 referred to as Ocala Funding 2, was different than the original
13 Ocala Funding?

14 A. Somewhat.

15 Q. Explain the differences.

16 A. Well, for example, one of the differences is that FHA loans
17 were not allowed. One of the other differences is that there were
18 only two CP holders after June 30, 2008, Deutsche Bank and BNP
19 Paribas. As we said, you know, the program size was different.
20 There were different, you know, details that had been, that had
21 been amended.

22 Q. And was it difficult in June 2008 for independent mortgage
23 companies to get funding from banks on their warehouse lines?

24 A. It was generally difficult.

25 Q. So is it fair to say that Mr. Farkas and Mr. Allen getting

Pemper - Cross

1830

1 this deal done, that it was a success?

2 A. In getting the deal done?

3 Q. Yeah.

4 A. Success you mean for, for them or --

5 Q. For them, yes.

6 A. For them? Yes.

7 Q. You were aware that Mr. Farkas was working on a transaction
8 whereby TBW would invest in Colonial Bank, correct?

9 A. Yes.

10 Q. And how did you come to be aware of that?

11 A. I believe that he and, you know, Paul Allen and my
12 counterpart at Deutsche Bank told me about it.

13 Q. And when was that?

14 A. Well, I can't tell you exactly when, but maybe towards the
15 latter part of '08-early '09.

16 Q. And was, was anyone asking you to personally invest in the
17 deal?

18 MR. CONNOLLY: Your Honor, I'm going to object to these
19 questions as beyond the scope of direct.

20 THE COURT: They are way beyond the scope of direct.
21 However, I don't want the witness to have to be recalled in the
22 defense case, so I'm going to permit it, and you can cross.

23 MR. CONNOLLY: Thank you, Your Honor.

24 MR. KUGLAR: We'll wrap it up, Your Honor.

25 Q. You indicated to Mr. Farkas that if TBW were to complete the

Pemper - Redirect

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1 transaction with Colonial, that you would be interested in serving
2 as a member of the new Colonial Board of Directors, correct?

3 A. That's correct.

4 Q. And you wouldn't be asking to serve on the Board of Directors
5 with someone that you didn't have trust in, would you?

6 A. No.

7 Q. In terms of Ocala Funding, is it fair to say that Paul Allen
8 was more involved in the deal details than Mr. Farkas?

9 A. In the deal detail and the day-to-day, that is correct.

10 MR. KUGLAR: No further questions, Your Honor.

11 THE COURT: All right. Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. CONNOLLY:

14 Q. Mr. Pemper, based on your six years of experience with Ocala
15 Funding and working with it, could loans that were already sold to
16 other investors be appropriate collateral for BNP's commercial
17 paper?

18 A. No way.

19 Q. When you confronted the defendant and said that the fact that
20 BNP's loans had already been sold to other investors and described
21 that as fraud, did the defendant say to you, "No, it's not. The
22 deal documents allow it"?

23 A. No.

24 Q. Did he pull deal documents off his bookcase and say, "Let me
25 show you how it works"?

Pemper - Redirect

1832

1 A. No.

2 Q. Mr. Kuglar asked you some questions about whether or not
3 Ocala Funding 2 was a success for TBW. Do you recall that?

4 A. Yes.

5 Q. Was it a success for BNP?

6 A. Yes, initially.

7 Q. Ultimately?

8 A. No.

9 MR. CONNOLLY: No further questions, Your Honor.

10 THE COURT: Any recross?

11 MR. KUGLAR: No, Your Honor.

12 THE COURT: Does anybody plan to call Mr. Pemper again
13 in the course of the trial?

14 MR. CONNOLLY: No, Your Honor.

15 THE COURT: What about the defense?

16 MR. KUGLAR: No, Your Honor.

17 THE COURT: All right, Mr. Pemper, you're excused as a
18 witness. That means you can now stay in court and watch the
19 proceedings, or you may leave, but you're not to discuss anything
20 you see or hear in the courtroom or your testimony with any
21 witness who has not yet testified. Thank you.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: All right, your next witness?

25 MR. STOKES: The government calls Brendan Girardi.

Girardi - Direct

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1 THE COURT: All right.

2 MR. STOKES: Your Honor, I have some potential exhibits
3 for the Court.

4 THE COURT: All right. Mr. Wood?

5 BRENDAN GIRARDI, GOVERNMENT'S WITNESS, AFFIRMED

6 DIRECT EXAMINATION

7 BY MR. STOKES:

8 Q. Good afternoon. Would you please introduce yourself to the
9 jury.

10 A. I am Brendan Girardi from Deutsche Bank.

11 Q. Sir, what is Deutsche Bank?

12 A. Deutsche Bank is an investment bank and a commercial bank in
13 Europe. They are a depository institution in Europe, doing
14 checking and savings, and they are a global development bank doing
15 sales trading and private wealth management.

16 Q. Where are you based?

17 A. I'm based in New York.

18 Q. How long have you worked at Deutsche Bank?

19 A. I've worked at Deutsche Bank since 2004.

20 Q. What are some of the groups within Deutsche Bank that you've
21 worked within?

22 A. From 2004 to 2008, I was in the whole loan trading group,
23 essentially buying individual and bulk mortgages, and from 2008
24 on, I'm in a group that lends money against mortgages and also
25 trades mortgage bonds.

Girardi - Direct

1834

1 Q. Have you also worked with mortgage-backed securities?

2 A. Yes.

3 Q. Have you heard of a business called Taylor, Bean & Whitaker?

4 A. I have.

5 Q. Do you know that it also is TBW?

6 A. Yes.

7 Q. How do you know TBW?

8 A. A few members of our group had purchased asset-backed
9 commercial paper from the Ocala facility, which is, you know,
10 associated with Taylor, Bean & Whitaker.

11 Q. In August 2009, did you learn of a search warrant that was
12 executed at Taylor, Bean & Whitaker?

13 A. I did.

14 Q. At that time, did you become involved with a Deutsche Bank
15 project involving Taylor Bean?

16 A. Yes.

17 Q. What was that project?

18 A. We were sent down in -- on August 3 of '09, we had heard
19 about the FBI raid, and on the 5th, they sent down myself and
20 three other members of our group to go and understand exactly
21 which mortgages Taylor Bean had provided to us in, on our
22 spreadsheets and --

23 Q. If I can stop you just for a second, sir?

24 A. Yeah.

25 Q. After August 3, did you and a group of folks travel to Ocala,

Girardi - Direct

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1 Florida?

2 A. Yes.

3 Q. To meet at TBW?

4 A. Correct.

5 Q. Now, let's back up a second. You've mentioned something
6 called Ocala Funding.

7 A. Yes.

8 Q. What was your understanding as to whether Ocala Funding was
9 associated with TBW?

10 A. My understanding was it was associated.

11 Q. How was it associated?

12 A. It was associated for the fact that it was a vehicle for
13 Taylor Bean to purchase mortgages.

14 Q. What did you understand Ocala Funding was?

15 A. Ocala Funding was a vehicle that acquired mortgages and
16 borrowed money against these mortgages through the sale of
17 commercial paper. What that essentially means is that as an
18 investor in the commercial paper, you are lending money to Ocala,
19 and your loan is a short-term loan that is collateralized by the
20 mortgages in a facility.

21 Q. When did -- was Deutsche Bank an investor in Ocala Funding?

22 A. Yes.

23 Q. Does that mean that it purchased commercial paper from Ocala
24 Funding?

25 A. Yes.

Girardi - Direct

1836

1 Q. And is commercial paper the equivalent of a, something like a
2 corporate IOU?

3 A. Yes.

4 Q. Approximately when was it that Deutsche Bank became an
5 investor in commercial paper in Ocala Funding?

6 A. I believe we began in 2006, and we made a, an investment of
7 750 million, and we made a subsequent investment of 450 million in
8 2008.

9 Q. For a total investment of approximately how much?

10 A. 1.2 billion.

11 Q. Now, Mr. Girardi, with regard to Ocala Funding and the
12 commercial paper, what was your understanding of how the -- of
13 whether the commercial paper was supposed to be collateralized?

14 A. It was supposed to be collateralized by mortgages --
15 over-collateralized by mortgages.

16 Q. Could that collateral also include cash?

17 A. Yes.

18 Q. Have you heard of the term "bankruptcy remote"?

19 A. Yes.

20 Q. Would you please describe for the jury what "bankruptcy
21 remote" means with regard to Ocala Funding?

22 A. So if -- at the end -- this was a short-term that was -- that
23 rolled every single month, so it basically means it matured every
24 month. At the end of the month, if you were not paid back, the
25 only recourse you had to this loan was against the assets in the

Girardi - Direct

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1 facility.

2 Q. And --

3 A. So including the mortgages and the cash.

4 Q. What was your understanding as to whether or not Deutsche
5 Bank would be able to recover the assets backing its commercial
6 paper from Ocala Funding if TBW went bankrupt?

7 A. The bankruptcy wouldn't have mattered. We should have been
8 able to recover our entire investment.

9 Q. Why is that?

10 A. Because, because it's bankruptcy remote and it's
11 over-collateralized by mortgages, the way it's set up is that the,
12 the only recourse that you have and the only -- the recourse you
13 have is against the assets in this facility, which had nothing to
14 do with TBW.

15 Q. Mr. Girardi, in connection with the Ocala Funding facility,
16 did Deutsche Bank receive periodic reports from Taylor, Bean &
17 Whitaker as to what collateral Deutsche Bank had backing its
18 commercial paper?

19 A. Yes. We received daily reports which showed a list of the
20 mortgages that were in the facility every single day.

21 Q. Near in time to August 3, 2009, did Deutsche Bank obtain such
22 a list of collateral from TBW?

23 A. Yes. I believe it was July 30th or 29th, we received a
24 spreadsheet that showed approximately 6,000 loans for \$1.2 billion
25 worth of mortgages.

Girardi - Direct

1838

1 Q. Was that -- what was that list of loans supposed to
2 represent?

3 A. The mortgages backing the Ocala facility of which we had our
4 own interest in.

5 Q. Now, you mentioned that on August 3, 2009, you learned of a
6 search warrant executed at TBW. Is that right?

7 A. Yes.

8 Q. And at that time, did you have any concerns with TBW going
9 bankrupt?

10 A. No.

11 Q. Did you have any concerns if TBW bankrupt -- went bankrupt
12 that that could affect Deutsche Bank's collateral in the Ocala
13 Funding facility?

14 A. No.

15 Q. Now, Mr. Girardi, you mentioned that you and a team traveled
16 to Ocala, Florida. How many trips did you take to Ocala, Florida?

17 A. I took two trips.

18 Q. Approximately when were those two trips?

19 A. The first trip was August 5th through the 7th of 2009, and
20 then the 10th through the 14th of August of 2009, two consecutive
21 weeks.

22 Q. Let's talk about your first trip. Who went with you to Ocala
23 Funding on your first trip?

24 A. Three of my colleagues, my manager and two colleagues: Nir
25 Vidra, Michael Zoccoli, and Frank Grausso.

Girardi - Direct

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1 Q. What was your title at the time?

2 A. Associate.

3 Q. What was your role on this team?

4 A. The role on the team, the purpose of us going there was to
5 provide any assistance to Taylor Bean that they had needed, and
6 the role was to get to, for Taylor Bean to tell us, to confirm the
7 mortgages that were on the spreadsheet that they provided to us
8 every day and to get them to facilitate the sale of our mortgages
9 to Freddie Mac so we can get paid back.

10 Q. When you went to Ocala Funding in that first trip on August
11 5, did you have that pipeline report or list of loans that you'd
12 received from TBW the end of July?

13 A. Yes.

14 Q. At that time, did you and your colleagues believe that
15 Deutsche Bank had those loans backing its commercial paper?

16 A. Yes, yes.

17 Q. Now, when you got to Ocala Funding, did you go to TBW?

18 A. Yes.

19 Q. What did you do when you got there?

20 A. We immediately went to Lee Farkas's office.

21 Q. Had you met Lee Farkas before?

22 A. No.

23 Q. Had you had any business dealings with him personally?

24 A. No.

25 Q. What did you do when you went to Mr. Farkas's office?

Girardi - Direct

1840

1 A. He, he was on the phone when we got there. He had told us he
2 was on the phone with the regulators, including HUD. After the
3 phone call, we asked him if he needed any help with anything,
4 we're there to provide assistance, and he had told us that the
5 regulators were trying to shut him down. He was trying to stop
6 them from doing that. That's pretty much it.

7 Q. And how long was that conversation?

8 A. Ten to 20 minutes.

9 Q. What did you do after that conversation?

10 A. He directed us to meet with a couple of his other colleagues
11 and to get some lunch after that.

12 Q. What, what day of the week was it when you arrived in Ocala?

13 A. That was a Wednesday.

14 Q. And what day of the week was it when you left?

15 A. Friday.

16 Q. So between Wednesday and Friday, can you just very generally
17 describe what you and your colleagues from Deutsche Bank were
18 doing when you were in -- at TBW?

19 A. Again, we, we confirmed with Taylor Bean that they understood
20 what the population of loans that was backing the Ocala facility
21 was, so we confirmed that with them. We were trying to get them
22 to facilitate the sale of those loans to Freddie Mac so we can get
23 paid back our loans. We spent that week doing that.

24 Q. Who did you confirm that with at Taylor Bean?

25 A. That would be Rishi Thakur.

Girardi - Direct

1841

1 Q. And did Mr. Thakur, what did he -- what did he use to confirm
2 that, your collateral?

3 A. The same spreadsheet that we had received in an e-mail a few
4 days prior to that.

5 Q. In other words, did he just point to the spreadsheet you had?

6 A. Correct. I was there. He verbally said, "Yes, I agree with
7 the population and the amount of loans."

8 Q. By referencing the spreadsheet --

9 A. By referencing the spreadsheet.

10 Q. Sir, if I can finish the question, by referencing the
11 spreadsheet that you had brought with you?

12 A. Correct.

13 Q. Now, when you left -- around the time that you left on
14 Friday, did you and others from Deutsche Bank receive an e-mail
15 from Freddie Mac?

16 A. We did.

17 Q. What was that in reference to?

18 A. We had e-mailed the population to Freddie Mac --

19 Q. When you say "population," what are you referring to?

20 A. We had e-mailed the list of loans that we had owned or that
21 we believed was backing the Ocala facility to Freddie Mac and had
22 told them that we were expecting to sell them these loans. They
23 received that information, and I think they did a query versus
24 their own, versus their own databases, and they had responded to
25 us that they had already purchased a large portion of those loans.

Girardi - Direct

1842

1 I believe it was 5,500 out of 6,000 loans.

2 Q. When they responded that they had already purchased 5,500 of
3 the 6,000 loans on your collateral spreadsheet, what was your
4 reaction?

5 A. We thought it was a mistake.

6 Q. A mistake by whom?

7 A. By Freddie Mac.

8 Q. Did you return to New York?

9 A. We returned to New York.

10 Q. Did you have meetings with other Deutsche Bank colleagues at
11 that time?

12 A. We did.

13 Q. Did you then return the following week to Ocala, Florida?

14 A. Yes.

15 Q. And who, who came with you to Ocala?

16 A. Nobody.

17 Q. What was your purpose in returning?

18 A. We wanted just to have someone on the ground there. Again,
19 at that point, there was really no need to have a lot of people
20 there, because, you know, it was all going to be electronic at
21 this point. We were just going to make sure that everyone
22 understood our population of loans and we were going to have
23 Taylor Bean sell those loans to Freddie Mac.

24 Q. At this point on Monday, Freddie Mac has told you that they
25 own a significant portion of those loans. You say that on Monday

Girardi - Direct

1843

1 two days, three days later, you returned to Ocala thinking that --
2 do you still think that Deutsche Bank has those loans?

3 A. When, when I initially got there, I still believed that
4 Deutsche Bank had those loans.

5 Q. Now, where did you understand those loan files were located?

6 A. At Bank of America, the trustee.

7 Q. Would that be LaSalle Bank?

8 A. LaSalle Bank, yes.

9 Q. And so when you mention that you thought the sale would be
10 electronic, can you just very briefly describe what you mean by
11 that?

12 A. Well, the documents were at Bank of America, but essentially
13 they would -- they were also a trustee for Freddie Mac, so it
14 would simply be moving the docs to whatever ownership population
15 Freddie Mac would have and transferring ownership of, of the
16 mortgages through a sale process.

17 Q. Now, when you returned to TBW on Monday, did you come to --
18 during that week, did you come to learn additional information
19 about Deutsche Bank's belief in its ownership of those loans?

20 A. Yeah. We, we had found out that -- or we had reasons to
21 suspect, including Freddie Mac's -- Freddie Mac telling us that
22 our mortgages, they had owned certain amounts of our mortgages,
23 that we may not have owned the mortgages anymore.

24 Q. Did you speak to a Michael Wawrzyniak?

25 A. Right. So we e-mailed our population to Michael Wawrzyniak.

Girardi - Direct

1844

1 Michael Wawrzyniak was a Taylor Bean employee who manages their
2 databases. We had asked him to cross-check our population against
3 information in their own internal databases which would show if
4 our mortgages had been sold prior to August of 2009.

5 Q. And what did Mr. Wawrzyniak's -- what did he tell you?

6 A. He returned our information to us, and it showed us that most
7 of our mortgages had been sold prior to August of 2009.

8 Q. Sold to whom?

9 A. To Freddie Mac and certain other counterparties.

10 Q. Was that a surprise to you?

11 A. Big surprise, yes.

12 Q. Now, Mr. Girardi, with regard to -- did Mr. Wawrzyniak
13 provide you information?

14 A. Yes.

15 Q. Did he provide you data?

16 A. Yes.

17 Q. Were you able to determine at what point in time the loans
18 that Deutsche Bank thought it owned, at what point in time those
19 loans had been sold to Freddie?

20 A. Yes. He provided us with a date for every single loan that
21 it had been sold.

22 Q. What did that date from Mr. Wawrzyniak's records or TBW's
23 records show versus the pipeline report that you had for Deutsche
24 Bank?

25 A. It showed that the loans that were on our pipeline report had

Girardi - Direct

1845

1 been sold prior to that, so it would not have been possible for us
2 to own those loans.

3 Q. Prior to what?

4 A. Prior to July 30 of 2009.

5 Q. So in other words, these loans -- are you saying that the
6 loans, the list of loans that Mr. Wawrzyniak -- the list of
7 information Mr. Wawrzyniak provided identified that these loans
8 had been sold prior to them ending up on your pipeline report?

9 A. Correct.

10 Q. Mr. Girardi, what was your understanding as to whether or not
11 loans that had already been sold to Freddie Mac, whether those
12 could be put on a collateral report for -- to back up Deutsche
13 Bank's commercial paper?

14 A. They could not have been.

15 Q. Was that information that Deutsche Bank had previously been
16 aware of?

17 A. No.

18 Q. Now, Mr. Girardi, what did you, what did you do with that
19 information?

20 A. I reported that to my superiors.

21 Q. In New York?

22 A. In New York.

23 Q. While you were in Ocala, did you speak to the defendant, Lee
24 Farkas, on this second trip?

25 A. No, I did not.

Girardi - Direct

1846

1 Q. Did you return to New York after that week?

2 A. Yes.

3 Q. When you -- before returning to New York, did you obtain
4 records from Taylor Bean?

5 A. Yes.

6 Q. What types of records did you obtain from Taylor Bean?

7 A. We received bank account information, bank account numbers,
8 descriptions of bank accounts. We also received spreadsheets
9 which showed transactions that were moving the cash in and out of
10 our bank accounts.

11 Q. After returning to New York, did you analyze those TBW
12 records?

13 A. We did.

14 Q. With regard to cash in Ocala Funding bank accounts that
15 were -- that was associated with Deutsche Bank, how much --
16 approximately how much did you find in collateral, cash
17 collateral?

18 A. Less than \$50 million.

19 Q. And from the records you received relating to loans, what did
20 you find?

21 A. Very, very few loans. An immaterial amount of loans, less
22 than 100 loans.

23 Q. And at that time, what was the gap between the amount of
24 commercial paper Deutsche Bank had and thought was collateralized
25 and the actual collateral that Deutsche Bank had?

Girardi - Direct

1847

1 A. Very close to \$1.2 billion.

2 Q. Mr. Girardi, from your review of the records related to the
3 loans, were you -- and the bank accounts for Ocala Funding, were
4 you able to discern what money -- what was happening with money
5 and loans in the Ocala Funding facility?

6 A. Yes.

7 Q. What did you see?

8 A. We saw huge discrepancies. The way the facility works is if
9 you buy a certain amount of loans, that exact amount of cash
10 should leave the facility, and you should receive loan files in
11 its place. We found on certain days there was \$500 million
12 leaving the facility and only \$30 million coming on. So it didn't
13 make a lot of sense. There were huge discrepancies.

14 Q. And, Mr. Girardi, had you reviewed some of the Ocala Funding
15 facility agreements?

16 A. Yes.

17 Q. And was that done in connection with your, your search for
18 collateral?

19 A. Yes.

20 Q. Were you familiar with those documents, with what bank
21 accounts Ocala Funding money could be sent to?

22 A. Yes.

23 Q. What types of uses did the facility agreements provide for
24 Ocala Funding money?

25 A. There was only two, two reasons for money to leave the

Girardi - Cross

1848

1 accounts. One was to purchase new mortgages, and two was to pay
2 back the, the commercial paper to the original investor.

3 Q. In your review of the Ocala Funding accounts, did you find
4 uses of that money that went -- did you find disbursements of
5 money that went to something other than the purchase of mortgage
6 loans and paying back Deutsche Bank?

7 A. Yes.

8 Q. What types of uses?

9 A. We found money going directly to Taylor Bean accounts. There
10 was -- one account I remember is to a Fannie Mae servicer advance
11 facility line which is run by Taylor Bean. Other, other loans
12 were custodial accounts, Taylor Bean custodial accounts, and other
13 Taylor Bean accounts.

14 Q. Approximately how much money did you see going to these
15 custodial or principal and interest accounts for the agencies?

16 A. Around \$800 million.

17 MR. STOKES: The Court's indulgence?

18 THE COURT: Yes, sir.

19 MR. STOKES: No further questions at this time, Your
20 Honor.

21 THE COURT: All right. Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. KUGLAR:

24 Q. Mr. Girardi, my name is Craig Kuglar. I represent
25 Mr. Farkas.

Girardi - Cross

1849

1 A. Hello.

2 Q. You said that you got involved in Ocala Funding only after
3 the FBI raid on TBW, correct?

4 A. That's correct.

5 Q. Who was the primary person at Deutsche that made the decision
6 to purchase the commercial paper in two thousand --

7 A. Sumeet Wadhera.

8 Q. And where is Sumeet?

9 A. I don't know.

10 Q. Does he still work for Deutsche?

11 A. He does not.

12 Q. Do you know why?

13 A. I don't know the exact reason, no.

14 Q. And after you became involved on behalf of Deutsche Bank, in
15 looking into Ocala Funding, you looked at a number of reports that
16 had been provided to Deutsche Bank, correct?

17 A. Correct.

18 Q. Okay. Where did those reports come from?

19 A. I received them on Deutsche Bank's own internal databases.

20 Q. Who was preparing those reports?

21 A. I believe -- referencing the reports I received from Taylor
22 Bean?

23 Q. I'm referencing all the reports you relied on.

24 A. We received reports from Taylor Bean, I believe we got them
25 from Rishi Thakur, and we were also receiving reports from Bank of

Girardi - Cross

1850

1 America. I don't know where those came from.

2 Q. And that's because Bank of America was the trustee, correct?

3 A. That's right.

4 Q. And the custodial -- the custodian, correct?

5 A. Yes.

6 Q. Now, after the FBI raid, you and two other employees of
7 Deutsche flew to Ocala, right?

8 A. It was three others, yes.

9 Q. Three others, okay.

10 And one of the missions was to take possession of the
11 mortgages; is that correct?

12 A. It was -- the reason to go to Taylor Bean was to confirm the
13 population of mortgages that they had told us that we owned.

14 Q. Were you going to try to take possession of the mortgages?

15 A. The mortgages were at Bank of America, so I don't believe so.

16 Q. Which was in Chicago, correct?

17 A. It was in Chicago, yeah.

18 Q. So there would have been something terribly wrong if you had
19 gotten to Ocala and found a lot of notes, correct?

20 A. Yes.

21 Q. You testified that -- as to some of the documents pertaining
22 to the Ocala Funding facility. Have you read those documents?

23 A. I briefly went through certain sections of the documents
24 mainly to figure out where the cash was supposed to go and how the
25 facility worked.

Girardi - Cross

1851

1 Q. And let's talk about the first thing you just said, where the
2 cash was supposed to go. What was your understanding of how cash
3 was to be disbursed from Ocala Funding?

4 A. Only for two reasons. One is to purchase mortgages, and two
5 is to pay back the investors.

6 Q. And who made sure that the money was going to be taken from
7 Ocala Funding only for those two reasons?

8 A. The trustee was Bank of America.

9 Q. And you don't believe that they fulfilled that role, which is
10 why your bank has sued them, correct?

11 A. Correct.

12 Q. And what roles exactly were -- was Bank of America playing in
13 connection with Ocala Funding?

14 A. I know them as the trustee and custodian.

15 Q. They were the indenture trustee, correct?

16 A. Yes.

17 Q. And were they also the depositary agent?

18 A. I believe so, yes.

19 Q. And the collateral agent?

20 A. Yes.

21 Q. And the custodian?

22 A. Yes.

23 Q. And the paying agent?

24 A. Yes.

25 MR. KUGLAR: No further questions, Your Honor.

Gaynor - Direct

1852

1 THE COURT: All right. Redirect?

2 MR. STOKES: No redirect, Your Honor.

3 THE COURT: Does anybody anticipate calling this witness
4 again?

5 MR. STOKES: The government does not.

6 THE COURT: How about the defense?

7 MR. KUGLAR: No, Your Honor.

8 THE COURT: All right. Then, sir, thank you for your
9 testimony. You're excused as a witness. You may stay in the
10 courtroom and watch the proceedings, or you may leave, but you're
11 not to discuss your testimony or anything you hear in court with
12 any witness who has not yet testified. Thank you.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 THE COURT: All right, your next witness?

16 MR. NATHANSON: The United States calls David Gaynor.

17 THE COURT: All right.

18 DAVID J. GAYNOR, GOVERNMENT'S WITNESS, AFFIRMED

19 DIRECT EXAMINATION

20 BY MR. NATHANSON:

21 Q. Good afternoon, Mr. Gaynor. Could you please tell us your
22 full name and spell your last name for the court reporter.

23 A. David J. Gaynor, G-a-y-n-o-r.

24 Q. And, Mr. Gaynor, where do you currently reside?

25 A. [REDACTED] --

Gaynor - Direct

1853

1 THE COURT: We don't need the street address. Just the
2 town.

3 THE WITNESS: Miami Beach, Florida.

4 BY MR. NATHANSON:

5 Q. And, Mr. Gaynor, what do you do down in Florida?

6 A. I run an old family-owned property and casualty insurance
7 agency called Gaynor & Company.

8 Q. Now, Mr. Gaynor, are you familiar with a company called or
9 formerly known as Colonial BancGroup?

10 A. Yes.

11 Q. And how did you first become -- how did you first learn of
12 Colonial BancGroup?

13 A. My father was a founding stockholder of Jefferson Bank in
14 Miami Beach, and when Jefferson Bank merged into Colonial Bank, I
15 became aware of Colonial BancGroup.

16 Q. Now, when, when was that merger, do you know?

17 A. Approximately 1998, somewhere around there.

18 Q. And as a result of that merger, did you and your family
19 become owners of Colonial BancGroup's common stock?

20 A. Yes.

21 Q. Now, ultimately, about how many shares did you and your
22 family own of Colonial's stock?

23 A. Approximately 900,000.

24 Q. And --

25 A. Not at that time but recently.

Gaynor - Direct

1854

1 Q. So by the time Colonial BancGroup essentially -- by the time
2 Colonial Bank went out of business, your family owned about --

3 A. About 900,000. There was a series of, of splits, and our
4 family reinvested the dividends, and so it grew to approximately
5 that amount of shares.

6 Q. And, Mr. Gaynor, 900,000 shares sounds like a lot. Was that
7 worth quite a bit of money at some point?

8 A. It was worth quite a bit of money.

9 Q. Say back in '06-'07, do you know approximately how much you
10 and your family's 900,000 shares were worth?

11 A. Depending on the, the actual height of the stock price, but
12 in excess of \$18 million.

13 Q. And was your mother one of the individuals in your family
14 that owned Colonial BancGroup stock?

15 A. Yes.

16 Q. And were you involved in helping to manage her ownership of
17 those shares?

18 A. Yes.

19 Q. Now, Mr. Gaynor, over the years, what, if anything, did you
20 do to sort of monitor the strength of Colonial BancGroup and your
21 investment in the company?

22 A. Well, number one, I would read the annual reports and the
23 published information. In addition, I would follow press
24 releases, and I would speak about public information regarding
25 some of the founders of Jefferson Bank that continued on with

Gaynor - Direct

1855

1 Colonial Bank.

2 Q. And would that include a review of BancGroup's financial
3 statements from time to time?

4 A. Yes.

5 Q. Did you ever look at BancGroup's quarterly financial results?

6 A. Yes.

7 Q. Mr. Gaynor, did that include review of the balance sheet for
8 Colonial BancGroup during the period 2008 and 2009?

9 A. Yes.

10 Q. And to assess the financial strength of the company, did you
11 ever look at the assets that were reported on the balance sheet
12 for Colonial BancGroup?

13 A. Yes.

14 Q. Now, Mr. Gaynor, did there come a time in 2008 when you
15 became concerned about Colonial BancGroup's stock price?

16 A. Yes.

17 Q. What did you do?

18 A. Well, first off, our shares were with Smith Barney, and
19 discussed with the brokers there -- or broker in particular. They
20 would furnish me with published reports about the bank, I believe
21 Morningstar. I would read Bloomberg and others and *Wall Street*
22 *Journal* and published information on the Internet regarding the
23 bank.

24 Q. Now, at this time, did you sell any shares in Colonial
25 BancGroup?

Gaynor - Direct

1856

1 A. No.

2 Q. Do you know if your mother sold any shares at this time?

3 A. No.

4 Q. Why didn't you sell any shares?

5 A. Well, the reports were all quite optimistic. The old-line
6 people that were involved with Jefferson Bank, Mr. Barton
7 Goldberg, who is, I believe, the vice chairman of the South
8 Florida Region, and others would always speak about the quality of
9 the bank.

10 My father started with nothing, and it was very
11 important for us to be very conservative with our investments and
12 that it was a well-capitalized, solid institution. That's why we
13 reinvested our dividends.

14 The reports talked about the, the problems in the
15 financial market and also that there was a problem with investors
16 short-selling the securities and that reducing the market value,
17 but all reports said that they had no subprime loans, the real
18 estate loans that they had which were problems were in the prize
19 areas in Florida, and that ultimately once the recession would
20 pass, that the, the bank would have real estate that would be
21 worth quite a bit of money, and they would be able to actually
22 probably profit from it, so we held onto our shares.

23 Q. Mr. Gaynor, were you and your family proud of your ownership
24 of Colonial BancGroup shares?

25 A. Well, yeah. My dad, Milton Gaynor, he started with nothing.

Gaynor - Direct

1857

1 His father died early in his life. He supported his mom and
2 worked his way through the University of Florida. He --

3 MR. CUMMINGS: Objection, Your Honor. Nonresponsive.

4 THE WITNESS: I'm going to talk about pride --

5 THE COURT: Mr. Gaynor, when there's a question, you
6 need to stop.

7 MR. CUMMINGS: The question called for a yes-or-no
8 answer.

9 THE COURT: Mr. Gaynor, don't give a speech. Just
10 answer the question.

11 THE WITNESS: Yes, very proud.

12 BY MR. NATHANSON:

13 Q. Thank you, sir. Now, moving on a bit, are you familiar with
14 something called the Troubled Asset Relief Program, or TARP?

15 A. Yes.

16 Q. Were you aware that in 2009, Colonial BancGroup had applied
17 for TARP funds?

18 A. Yes.

19 Q. And did you learn in March 2009 that Colonial BancGroup had
20 obtained certain private investment that was a prerequisite to
21 obtaining TARP funds?

22 A. Yes.

23 Q. Now, what did this indicate to you about the future of
24 Colonial BancGroup?

25 A. Our family was relieved. We, we felt that with the TARP

Gaynor - Direct

1858

1 funds, the institution would get through this problem time and
2 would survive.

3 Q. And, Mr. Gaynor, did you or your, your mother sell any shares
4 at this time?

5 A. To the contrary. When that came out about the TARP approval,
6 we, we felt that the bank would survive, and we were going to, you
7 know, stick through the tough waters.

8 Q. Yes, sir. Now, what happened to Colonial Bank and Colonial
9 BancGroup in August of 2009?

10 A. It was taken over by the FDIC.

11 Q. And Colonial BancGroup ultimately filed for bankruptcy; is
12 that correct?

13 A. Correct.

14 Q. Now, prior to this time, were you aware of any fraud at
15 Colonial Bank or Colonial BancGroup?

16 A. Absolutely not.

17 Q. Were you aware of any fraud with respect to Colonial
18 BancGroup's annual or quarterly financial statements?

19 A. Absolutely not.

20 Q. And were you aware of any fraud with respect to the assets
21 listed on Colonial BancGroup's balance sheet?

22 A. Absolutely not.

23 Q. Now, Mr. Gaynor, prior to August 2009, if you had known of
24 any fraud at Colonial Bank or Colonial BancGroup, would your
25 decision to hold onto your Colonial BancGroup shares have been

Gaynor - Direct

1859

1 different?

2 A. I would have suggested to Mom that she sell her shares
3 immediately; I would have sold my shares; Gaynor & Company would
4 have sold their shares; and I would have suggested to my brother,
5 Robert, and my sister, Stephanie, to immediately sell their
6 shares.

7 Q. And, Mr. Gaynor, would your course of action that you just
8 described have been the same if you had known that Colonial
9 BancGroup's 10-Q for the first quarter of 2009 and 10-K for fiscal
10 year 2008 contained asset information on the financial statements
11 that were the source of fraud?

12 A. We would have -- I would have recommended to them to sell
13 theirs; and I certainly would have sold mine; and Gaynor &
14 Company, which I'm the president of, would have sold their shares.

15 Q. Now, Mr. Gaynor, you testified that your and your mother's
16 and your family shares were worth, I believe you said, maybe \$18
17 million at one point?

18 A. More.

19 Q. More.

20 Mr. Gaynor, what are those shares worth today?

21 A. Zero.

22 Q. And what has the effect of this loss been on you and your
23 family?

24 MR. CUMMINGS: Objection, Your Honor.

25 THE COURT: No, I'm going to allow that. Overruled.

Gaynor - Cross

1860

1 You may speak.

2 BY MR. NATHANSON:

3 Q. Go ahead, sir.

4 A. As I tried to explain, my father worked very hard. He
5 started with nothing. He taught me about the American Dream, and
6 financially, it's a lot of money, provided a nest egg for his
7 wife, who never remarried.

8 Q. That's your mother, sir?

9 A. My mother. And for his children. I continued to believe in
10 the American Dream, as I still do to this day, and --

11 MR. NATHANSON: Thank you, sir.

12 No further questions, Your Honor.

13 THE COURT: Is there any cross?

14 MR. CUMMINGS: Yes.

15 CROSS-EXAMINATION

16 BY MR. CUMMINGS:

17 Q. Good afternoon, Mr. Gaynor. My name is William Cummings. I
18 represent Mr. Farkas. Have you ever met Mr. Farkas?

19 A. No, sir.

20 Q. Do you know who he is?

21 A. I do now.

22 Q. And when did you first learn who Mr. Farkas was?

23 A. I guess when Colonial Bank announced that they received a
24 commitment of funds from Taylor, Bean & Whitaker or a group
25 they're involved with, and that was, I'm not sure exactly,

Gaynor - Cross

1861

1 February or March of 2009.

2 Q. And did you investigate Taylor, Bean & Whitaker at that time?

3 A. I -- being a property and casualty insurance agency, I've
4 dealt with lots of banks and mortgage companies over the years.
5 We do certificates of insurance all the time.

6 There were few, if any, that I had ever dealt with with
7 Taylor, Bean & Whitaker. I had no personal knowledge of them. I
8 became aware of them and started reading after the announcement
9 was made that they were going to provide this money in regards to
10 the TARP program.

11 Q. And so all you did was some reading? That's all you did
12 about Taylor Bean; is that right? Is that what you're saying?

13 A. I, I have no comment. I would read what I would find on it,
14 and the information was, I would think, optimistic that the bank
15 would survive, Colonial Bank would survive after that announcement
16 was made.

17 Q. Well, let me ask you this: In the fall of 2008, you learned
18 for the first time that Colonial Bank was seeking TARP funds,
19 correct?

20 A. I don't remember exactly the time, but in about when they,
21 they announced the, the federal government announced the TARP
22 program, Colonial Bank announced that they applied for it.

23 Q. All right. And did the terminology "Troubled Asset Relief
24 Program" give you any concern about the fact that, that Colonial
25 Bank now was seeking funds under a program for troubled asset

Gaynor - Cross

1862

1 relief people?

2 A. At the time, I believe virtually all of the institutions in
3 the country were applying for that money, and companies like
4 Goldman Sachs were changing their charters to become banks to
5 avail themselves of the money. It was -- we were in a bad
6 financial crisis.

7 Q. The financial crisis was that these institutions, including
8 Colonial Bank, had invested in real estate properties that were
9 going further south every day, correct?

10 A. I'm not a financial analyst, but the reports that I had
11 read -- you're talking about at a time at which the bank stock was
12 extremely low.

13 Q. Forty cents a share, correct, or lower?

14 A. Well, at different times, a dollar a share, but in 2009,
15 excuse me, 2008, many of the analysts that I read talked about the
16 bank surviving. There was no issue regarding it going out of
17 business, and its capital was very strong. Its published report
18 showed very strong capital, and, and we relied on that.

19 If, if -- and I must say something. This is truthful.
20 That's the way I was raised, you know; it was the way my father
21 would have -- if there would have been anything at all published
22 about fraud, of bleeding of capital as has been alleged in this
23 case, we would have sold our shares. I would have recommended to
24 my mom immediately. I would have sold my shares, because we were
25 always raised to be conservative, very conservative, and that's

Gaynor - Cross

1863

1 how most of our money has always been invested.

2 Q. But you bought some shares several years prior to the TARP
3 announcement, you bought some shares or your family did for \$15 a
4 share, correct?

5 A. We reinvested our dividends because we believed this company
6 was a fantastic company.

7 Q. At \$15 a share, correct?

8 A. 15, 18, 20, whatever the reinvestment was, whatever the
9 market was at the time.

10 Q. There was a time prior to the economic crisis that this
11 country faced when the stock in Colonial Bank was at a pretty good
12 rate, 18-15 dollars a share, correct?

13 A. 20, 25, 27.

14 Q. Right. And its share came down as a result of the economic
15 crisis that the bank industry and the entire country was going
16 through, correct?

17 MR. NATHANSON: Objection, Your Honor. There's no
18 relevant question.

19 THE COURT: I agree. I'm sustaining the objection.
20 There's no question, Mr. Gaynor.

21 BY MR. CUMMINGS:

22 Q. So when you saw in the fall of 2008 that Colonial Bank had
23 been approved for this TARP funds of some \$500 million, did you
24 also see that there was a contingency attached to that they had to
25 raise an additional \$300 million worth of capital?

Gaynor - Cross

1864

1 A. The, the Colonial BancGroup report, published report that
2 initially came out did not mention a contingency, sir. Did not.

3 Q. Did you see the press release that came out in December of
4 2008 that, where Colonial Bank announced that they had been
5 approved for TARP funds? Did you see that release?

6 A. I believe I read it, and what happened was about a month
7 later --

8 Q. Well, could you stay with the question, Mr. Gaynor? Did you
9 see the press release in December 2008 where Colonial Bank first
10 announced that they had been approved for TARP funding? Did you
11 see that?

12 A. I read many reports about it. I probably read that press
13 release, too.

14 Q. Okay. And did you see where Colonial Bank stated that in
15 order in obtain this approval, there were certain conditions
16 attached but were not defined? Did you see that statement?

17 A. I think that that kind of language would not be the emphasis.

18 THE COURT: Mr. Gaynor, I'm sorry, the question was
19 simply did you see it or didn't you? Not to explain about it. So
20 if you didn't see it, your answer is no, you didn't; if you did
21 see it, your answer is yes; or if you don't recall, you don't
22 recall.

23 THE WITNESS: I think, I think I would have seen, yes,
24 that there would be conditions. I would have thought that would
25 be like pro forma things, things that would have to be filed and

Gaynor - Cross

1865

1 worked out, yes.

2 BY MR. CUMMINGS:

3 Q. Okay. Now, at this time, you were watching that stock fairly
4 carefully, correct?

5 A. Correct.

6 Q. All right. And you were reading what you could about it,
7 right?

8 A. Right.

9 Q. And did you make any attempt to call Mr. Louder or the people
10 at the bank to find out what those conditions were at that time?

11 A. At that time, no. Also, I would be very concerned about
12 violating any insider trading rules, and I would never do anything
13 like that.

14 Q. Well, you didn't hesitate later on to call Mr. Louder
15 directly, did you?

16 A. That was way before that.

17 Q. When did you call Mr. Louder directly about the bank?

18 A. Okay. In press releases, it was announced that he's reaching
19 out to his shareholders, and I discussed it with my mom, and she
20 said, "You know what? It would be a good idea, he's reaching out
21 to shareholders, to talk to him."

22 So I called one of the Miami offices, and they gave me a
23 number, and I called, and I was quite surprised, he actually
24 returned my call.

25 Q. And did you talk to him about the status of the bank at the

Gaynor - Cross

1866

1 time?

2 A. First thing I said is, "Mr. Louder, I don't want to --
3 wouldn't be interested in any insider information, anything like
4 that. You mentioned in a press release you're reaching out to
5 investors. Is there anything that you could tell me about the
6 financial condition of the bank?"

7 And he told me that No. 1, it's well-capitalized; No. 2,
8 his family is invested in it heavily and that he wouldn't be
9 invested in it if he thought that there was a problem; No. 3, he
10 said that there was no subprime loans, which was hurting many of
11 the institutions.

12 No. 4, he talked about the commercial real estate, and
13 he, and he explained that once the recession, we'd get through the
14 recession, that the bank, if they had to take back properties,
15 they'd owned the properties, would be able to sell them, hold it
16 and sell it after the recession and actually make money on it, and
17 he also said that there was a very troubling situation with short
18 selling of security, and that was having a very bad price on the
19 stock.

20 Q. Well, you already knew that, because your broker told you
21 they were short selling and advised you that you ought to consider
22 short selling yourself, correct?

23 A. No. You've got the timing backwards. About ten,
24 approximately ten days after that, the manager, Nicole Rothenberg,
25 from Smith Barney in Boca Raton, called me and said, you know, "We

Gaynor - Cross

1867

1 have a great idea for you and your mom. You lend us the shares,
2 and we'll use it to facilitate short selling," and after having --
3 which I had read a bunch about that short selling problem, and
4 speaking to Mr. Louder, I was very upset, I told her such, and
5 Mr. Louder in that conversation about ten days before told me that
6 they were investigating it.

7 So I called Mr. Louder's office back to report what
8 Smith Barney had said, and he didn't speak to me, but he had his
9 general counsel speak to me, and I told him what happened, and I
10 thought it would end at that, but the very next day, I got a call
11 from the Alabama Securities Exchange Commission, and I was very
12 nervous to receive the call, but he explained that we're not --
13 you know, we're investigating this. It's nothing about you.

14 And he was very happy that I was forthright and told him
15 what happened.

16 Q. All right. Now, after you had seen the first announcement of
17 the TARP funds that talked about certain conditions, there was
18 another press release about a month later, correct?

19 A. Right.

20 Q. And that's the one that mentioned that the contingency that
21 had been vague in the first announcement was that the bank now
22 raise an additional \$300 million in capital, correct?

23 A. What happened after that, the stock price had gone up a
24 little bit to maybe, I think maybe \$3 a share, and it dropped way
25 back down again when that contingency was announced. It was very

Gaynor - Cross

1868

1 upsetting.

2 Q. Well, the answer is you did see that announcement, right?

3 A. Absolutely.

4 Q. Now, as a result of that, did you make an attempt to review
5 the other banks who had applied for TARP funds to see whether any
6 of those other banks that had applied for TARP funds were also
7 required to make such a substantial amount of a capital raise as a
8 condition of receiving the TARP funds?

9 A. I didn't make any such inquiry. The, the people at Colonial
10 Bank told me that there are plenty of people kicking the tires,
11 and they were upbeat that the institution would survive, but at
12 that point, you know, the value of the stock, as you said, it
13 was -- I don't have the track record, but it was, you know, maybe
14 80 cents, 90 cents, down to 30 cents, 40 cents, something like
15 that a share. Virtually our investment at that point was wiped
16 out.

17 Q. So the announcement by the bank as a result of hearing from
18 the FDIC about the requirement to raise an additional \$300 million
19 had a dramatic negative impact on the price of stock; is that
20 correct?

21 A. Well, it went up when they announced they had the approval.

22 Q. The question was --

23 A. And then it went back down, correct.

24 Q. The second announcement had a dramatic negative effect on the
25 price?

Gaynor - Cross

1869

1 A. Right. Absolutely.

2 Q. And did that give you concern, that this bank may well have
3 been, have been considered by the Treasury Department as being a
4 very tentative candidate for the, for the TARP funds?

5 A. No, because they were kicking tires, and then there was an
6 announcement of this Taylor, Bean & Whitaker firm going to supply
7 the capital.

8 Q. And did you later learn after the Taylor Bean group had been
9 working on raising this \$300 million that the regulatory agencies
10 turned down the application for this deal to go through?

11 A. At some point, yes. We should have sold our stock even
12 though it was pennies a share. Absolutely.

13 Q. And that was all before the bankruptcy of Colonial Bank in
14 August of '09, correct?

15 A. I don't recall exactly the timing, but maybe in March of 2009
16 Taylor Bean and Colonial announced a deal, and then maybe early
17 summer it fell apart or was falling apart, and then the next thing
18 I knew was, and I couldn't believe it, but the FBI was in this
19 Tampa office, and it was all over the Miami news.

20 Q. Yeah, but prior to that, you had learned that the regulatory
21 authorities had turned down the application for this deal to go
22 through, correct?

23 MR. NATHANSON: Your Honor, I believe he's already
24 answered this question.

25 THE COURT: I'm going to allow it. It's

Gaynor - Cross

1870

1 cross-examination. Overruled.

2 MR. CUMMINGS: I didn't know that I got an answer, Your
3 Honor, so I was asking it again.

4 THE WITNESS: Can you ask the question again? I'm a
5 little confused.

6 BY MR. CUMMINGS:

7 Q. After you saw the announcement that Taylor Bean and Colonial
8 announced that they had raised the money, they still had to get
9 approval for this deal to go through, correct?

10 A. Correct.

11 Q. And then within a month or so after the announcement, it was
12 determined that the regulatory authorities were going to deny
13 Colonial's application to receive the TARP funds and go through,
14 so they'd no longer have the TARP funds, correct?

15 A. I, I don't recall the exact timing of that. I don't -- I
16 just don't recall the exact timing of that, but I'll take your
17 word for it they were turned down. They didn't have the, they
18 didn't have the, the approval.

19 Q. All right. And without the TARP funds, you knew that
20 Colonial Bank could not survive, did you not?

21 A. At that point, probably yes, but then like a week before that
22 FBI thing, Colonial Bank sent out a, it was some kind of like a
23 public recapitalization plan, so I guessed that there were people
24 that -- I had no idea. I don't know why they sent it out, but it
25 gave some optimism.

Gaynor - Cross

1871

1 But again, what I'm trying to say, sir, is if there
2 would have been anything mentioned in any of the published
3 documents regarding a bleeding of, of funds years back --

4 Q. I understand.

5 A. -- we would have been, had nothing to do with this.

6 Q. I understand you want to get that out, Mr. Gaynor, but it's
7 not my question to you.

8 A. All right.

9 Q. I appreciate your concerns here.

10 You had a very strong emotional attachment, did you not?

11 A. With Jefferson Bank and my father? Absolutely.

12 Q. So you say you do not quite recall, but you think that the,
13 that the bank's attempt to get the TARP funds had been cancelled
14 prior to the bankruptcy in early August of '09, correct?

15 A. I believe so.

16 MR. CUMMINGS: Thank you. No further questions, Your
17 Honor.

18 THE COURT: Any redirect?

19 MR. NATHANSON: No, Your Honor.

20 THE COURT: All right. Mr. Gaynor -- is anybody going
21 to call Mr. Gaynor again in the course of the trial?

22 MR. CUMMINGS: Not the defense.

23 MR. NATHANSON: No, Your Honor.

24 THE COURT: All right, Mr. Gaynor, thank you for your
25 testimony. You can now stay in court and watch the proceedings,

1 or you may leave, but you're not to discuss your testimony or
2 anything you hear in court with any witness who has not yet
3 testified. Thank you.

4 (Witness excused.)

5 THE COURT: Your next witness?

6 MR. ZINK: Your Honor, the United States calls Neil
7 Luria.

8 NEIL LURIA, GOVERNMENT'S WITNESS, AFFIRMED

9 MS. KARINSHAK: Your Honor, may we approach?

10 THE COURT: Yes.

11 (Bench conference on the record.)

12 THE COURT: Just for the record, the reason why I
13 allowed this witness to testify, all right, is because in your
14 opening statement, you-all opened the door in line with discussion
15 about the only victims in this case were the big, bad banks, so to
16 speak, all right? So that's perfectly permissible for the
17 government to bring in at least one person, victim, but hopefully,
18 we don't have too many more witnesses left.

19 MR. ZINK: We do not.

20 MS. KARINSHAK: Your Honor, this is as to the current
21 witness. Government's Exhibit 1002, I was just handed this a few
22 minutes ago, maybe ten minutes ago. We got this chart late last
23 night, which is the chart he's going to be testifying from, and
24 then I was handed these notes that Mr. Zink has told me he's going
25 to use to refresh the recollection of the witness, and he should

Luria - Direct

1873

1 be able to use his chart and not need to use these notes.

2 THE COURT: Let's see if it becomes a problem down the
3 road, all right? At this point, let's just get this done.

4 MR. ZINK: I'm not seeking to admit these notes, just to
5 refresh recollection, Your Honor.

6 THE COURT: Let's just see.

7 MS. KARINSHAK: Thank you, Judge.

8 (End of bench conference.)

9 THE COURT: Go ahead.

10 DIRECT EXAMINATION

11 BY MR. ZINK:

12 Q. Mr. Luria, would you please introduce yourself to the jury?

13 A. Yes. I'm Neil Luria.

14 THE COURT: Sir, you need to move closer to the
15 microphone.

16 THE WITNESS: Yeah. Neil Luria.

17 BY MR. ZINK:

18 Q. Mr. Luria, are you currently employed?

19 A. I am.

20 Q. And who are you employed by?

21 A. Navigant Consulting, Inc.

22 Q. And what's Navigant?

23 A. It's a professional services consulting firm.

24 Q. And what is your job at Navigant?

25 A. I'm a managing director.

Luria - Direct

1874

1 Q. And is that a senior position?

2 A. Yes, it is.

3 Q. And do you have any affiliation whatsoever with Taylor, Bean
4 & Whitaker, TBW?

5 A. Yes. I'm the chief restructuring officer.

6 Q. Could you explain briefly to the jury what the chief
7 restructuring officer is?

8 A. It's -- I oversight the restructuring process, the wind-down,
9 the continuing operations to the extent they exist, and the
10 disposition of assets, the overall bankruptcy process.

11 Q. And is TBW in bankruptcy?

12 A. Yes, it is.

13 Q. When did it file for bankruptcy?

14 A. August 24, 2009.

15 Q. And in connection with its filing for bankruptcy, did you
16 have to be approved by the Court to have your current position?

17 A. I did. I was approved by the -- retained in the bankruptcy
18 court and approved by the -- the retention was approved by the
19 bankruptcy court.

20 Q. Mr. Luria, just on a day-to-day basis, what is it that you
21 actually do?

22 A. Oversight of what remains of Taylor, Bean & Whitaker, deal
23 with negotiating with capital structure constituents, various
24 lenders, other creditors.

25 Q. Do you have any experience in the mortgage loan origination

Luria - Direct

1875

1 business?

2 A. I do. I've been involved with other wind-downs of mortgage
3 originators.

4 Q. When?

5 A. From the end of 2006 to the present.

6 Q. Can you give us a couple examples?

7 A. Yes. I'm currently liquidating trustee of Mortgage Lenders
8 Network, which was a large -- one of the larger subprime mortgage
9 originators; also on a liquidating trust committee of New Century
10 Financial, which was one of the largest subprime mortgage
11 originators as well; People's Choice, another subprime mortgage
12 originator; and several others.

13 Q. Have you ever been a chief restructuring officer before?

14 A. I have.

15 Q. When?

16 A. Back in, I think, '05-'06.

17 Q. And is it fair to say that on a daily basis, you're basically
18 the CEO of the company now that it's in bankruptcy?

19 A. Yes.

20 Q. In your job as chief restructuring officer of TBW, have you
21 and your team had the occasion to reconcile TBW's assets and
22 liabilities?

23 A. Yes.

24 Q. And have you reconciled TBW's assets and liabilities with
25 respect to Colonial Bank?

Luria - Direct

1876

1 A. Yes. We had a -- after the bankruptcy filing, we ended up
2 entering into an agreed -- agreement with the FDIC to enter, enter
3 into a large reconciliation of all of Taylor Bean's assets as they
4 related to Colonial Bank and certain of the other lenders at the
5 time.

6 Q. And how can you be sure that your reconciliation is accurate?

7 A. It was a very long, arduous process that the -- we worked in
8 tandem with the FDIC, and the FDIC blessed the reconciliation.

9 Q. And do you know what the FDIC does with respect to Colonial
10 Bank?

11 A. They are currently the receiver of Colonial Bank.

12 Q. And so the FDIC, Colonial Bank, and TBW are sharing
13 information?

14 A. Yes.

15 Q. Do you use that information to help reconcile liabilities and
16 assets?

17 A. Yes.

18 Q. Are you familiar with the AOT facility?

19 A. I am.

20 Q. What is the AOT facility?

21 MS. KARINSHAK: Objection, Your Honor. We know what
22 the --

23 THE COURT: Yeah, we all know what the AOT facility is
24 at this point.

25 BY MR. ZINK:

Luria - Direct

1877

1 Q. Mr. Luria, what was the balance on the AOT facility?

2 A. It was approximately \$1.5 billion.

3 Q. Were you able to determine how much collateral was there?

4 A. Through the reconciliation process and the subsequent
5 settlement agreement with the FDIC, we were able to agree that as
6 of last June, when we entered into the settlement agreement, there
7 was approximately \$464 million, it's my recollection, of the
8 unpaid principal balance that's remaining on that line.

9 Q. So what's the difference between the balance and the
10 collateral?

11 A. The unpaid principal balance is the amount outstanding on
12 each of the individual mortgages owed by the borrower to
13 Colonial --

14 Q. And so --

15 A. -- at that time.

16 Q. -- what's the difference between the balance and the UPBs on
17 those loans?

18 A. That's essentially the same thing.

19 Q. I'm sorry, the balance of 1.4 billion?

20 A. Oh, the balance of 1.4 billion is the amount -- or 1.5
21 billion. There's an exact number. I can --

22 Q. Is there a document that would help refresh your
23 recollection?

24 A. Yes.

25 Q. Is it --

Luria - Direct

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1 THE COURT: Folks, you realize we've heard such big
2 numbers, we're throwing tens and millions of dollars around like
3 it's cents, all right? But let's try to keep the numbers, you
4 know, as exact as we can so we don't have to go over it a million
5 times.

6 MR. ZINK: To that end, Your Honor, I'd like to show the
7 witness what's been marked as Government Exhibit 1001.

8 THE COURT: Is there any objection to that exhibit? Any
9 objection to 1001?

10 MS. KARINSHAK: Oh, no, Your Honor.

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

12 (Government's Exhibit No. 1001 was received in
13 evidence.)

14 BY MR. ZINK:

15 Q. Mr. Luria, once again, the balance on AOT?

16 A. Yeah, the balance at the time of the bankruptcy filing was
17 1,473,868,367.

18 Q. And the UPB you were able to determine based on your
19 reconciliation?

20 THE COURT: And "UPB" is unpaid balance? Is that what
21 that means?

22 THE WITNESS: Yeah, unpaid principal balance.

23 THE COURT: Let's try not to use too many abbreviations.

24 BY MR. ZINK:

25 Q. Loans?

Luria - Direct

1879

1 A. The amount of the loans that we identified and then per an
2 agreement with the FDIC agreed were the loans at issue at June 30
3 of 2010 was 3,165 loans, with a balance on those loans of \$464
4 million.

5 Q. So what's the difference between the total balance on the
6 line and the balance of the loans you identified?

7 A. Just -- I'm going to have to round it, because I don't have a
8 calculator.

9 Q. That's fine.

10 A. It's approximately a billion dollars.

11 Q. That's a billion with a "B," sir?

12 A. Yes.

13 Q. The COLB facility, can you identify the outstanding balance
14 on that facility?

15 A. Yes. It again at the time of the bankruptcy filing was
16 1,725,215,560.

17 Q. And how many loans were you able to identify that were
18 pledged to that facility?

19 A. Again, per the agreement with the FDIC was 3,839 loans, with
20 a balance as of the bankruptcy filing of 827,058,800.

21 Q. Mr. Luria, what's the difference there?

22 A. Again, just rounding, it's 900 million.

23 Q. Mr. Luria, how about the overline facility? What's the
24 balance on that facility?

25 A. The balance outstanding at the time of the bankruptcy filing

Luria - Direct

1880

1 was 16,129,897.

2 Q. And how many loans collateralized that facility?

3 A. In using the June 30 number, there was what was part of the
4 FDIC agreement, there were 579 loans, with an unpaid principal
5 balance of 89.1 million.

6 Q. So this facility was over-collateralized?

7 A. That's correct. There was, there was more loans backing it
8 than there was amounts outstanding.

9 Q. Adding up all of the outstanding balances on AOT and COLB and
10 then adding up all the loans that you identified on AOT and COLB
11 and giving full credit to every single loan on the overline
12 facility, is there a shortfall?

13 A. There would be a collateral shortfall based on that.

14 Q. What is the collateral shortfall, sir?

15 A. Again, I'm going to have to just round the numbers, but using
16 that, it would be \$1.8 billion.

17 Q. And that's billion with a "B"?

18 A. Yes.

19 Q. Mr. Luria, are there other assets at TBW?

20 A. Yes, there are other assets.

21 Q. And in your view, does Colonial Bank have a claim to these
22 assets?

23 A. Colonial Bank at the beginning of the bankruptcy case alleged
24 that they did have, they had a blanket lien across all of Taylor
25 Bean's assets.

Luria - Direct

1881

1 Q. Do they still maintain that position?

2 A. We've entered into a settlement agreement with them again
3 last summer. It's not effective yet. It will be effective when
4 we confirm our plan of liquidation. Per that settlement
5 agreement, they waived the blanket lien.

6 Q. So they're no longer claiming they have rights to any other
7 assets?

8 A. They are claiming they have a right to certain assets under
9 the settlement agreement, but they're not claiming they have a
10 blanket lien.

11 Q. With respect to these other assets, REO, is that one of them
12 they initially claimed they had rights to?

13 A. Yes, it is.

14 Q. When you first came into TBW and based on what you know now,
15 how much would you expect to get for the REO, best case scenario?

16 A. I have to, to look at it not from what was there when we came
17 in but what we have been able to sell and what remains at this
18 point. We've been able to realize \$173,998,810, so approximately
19 \$174 million through the end of March, and we still hold 203 REO
20 properties.

21 Q. What's the most you expect to get from those properties?

22 A. The unpaid principal balance of that remaining inventory is
23 27,857,956, so it's approximately \$28 million.

24 Q. So --

25 A. That would be the -- reasonably that would probably be the

Luria - Direct

1882

1 best case.

2 Q. So best case on the REO, how much could you get for it total?

3 A. Round numbers, \$200 million.

4 Q. How about whole loans? And first, what are whole loans?

5 MS. KARINSHAK: Objection, Your Honor. I think we've
6 heard that, too.

7 MR. ZINK: This is "whole" with a "W," Your Honor.

8 THE COURT: W-h-o-l-e.

9 MR. ZINK: Correct.

10 THE COURT: Why don't you explain what you understand a
11 whole loan to be.

12 THE WITNESS: A whole loan individually is a loan that's
13 owned by somebody that includes not only the rights to collect on
14 the mortgage but also the rights to the servicing fee, so it's the
15 right to service them. And there were -- when we transferred out
16 all of the loans that were still being serviced by Taylor Bean
17 when we initially got involved post-bankruptcy filing, we
18 identified by virtue of comparing the various ownership lists of
19 who owned what, we identified a pool of loans that were not owned
20 by anybody else, at least as best we could tell, and we have now
21 through the continuance of the bankruptcy process been able to
22 reach agreement, a bankruptcy court authorization to be able to
23 sell those and keep the proceeds.

24 Q. These are TBW's loans?

25 A. They'll be owned free and clear by TBW, not subject to any

Luria - Direct

1883

1 liens.

2 Q. And what's the most you could hope to get for the sale of
3 these loans?

4 A. It would be in the range of recovery probably mid-40s to the
5 mid-50s. We're still selling them. I'm just using a number, 50
6 million is probably the, you know, right number. It can go up
7 higher but not meaningfully higher.

8 Q. How about servicing advances that TBW sent out the door that
9 it expects to get back?

10 A. TBW serviced a series of portfolios that it advanced money.
11 The total amount that we identified through the servicing
12 reconciliation with the FDIC was unpaid advances and unpaid
13 servicing fees of \$263,993,800.

14 Q. And what's the most you hope to get back?

15 A. We would hope to get that all back.

16 Q. What's the most you reasonably expect to get back?

17 A. We're continuing to negotiate that. Thus far, we've reached
18 a settlement with one group, Wells Fargo, which was \$101 million
19 roughly of outstanding servicing fees that we expect to receive
20 back 91 million, although there's a challenge from one of the
21 working capital lenders in terms of who's entitled to keep that
22 money, whether it's Taylor Bean or whether it's the secured lender
23 who claims a lien.

24 Q. How about any other assets? Is there miscellaneous stuff
25 that TBW could sell?

Luria - Direct

1884

1 A. There is. There's miscellaneous assets that, that we can
2 still sell, and there are miscellaneous assets that we have, we
3 have sold as well.

4 Q. And what's the most you realize or can reasonably expect to
5 realize from the sale of these assets?

6 A. The miscellaneous actual whole loans, we've probably received
7 in the -- about 70 million. We may have another 20 million.
8 These are just various assets other than -- excluding litigation
9 recoveries.

10 Q. Can you give us an example?

11 A. Of the, the miscellaneous assets?

12 Q. Yes.

13 A. An example would be there was a loan for about 7 to 8 million
14 dollars to a gated community in Florida that had the longest
15 private runway in the United States or supposedly the longest
16 private runway. That would be an example. It was a first
17 mortgage. We ended up selling the first mortgage and realizing
18 some degree of value there.

19 Q. Okay. Mr. Luria, if you'd take your time, can you add up all
20 these different categories? I can go through them with you again.
21 The REO --

22 THE COURT: You don't need to. He can do it.

23 BY MR. ZINK:

24 Q. Can you add up all these different categories and give me a
25 number? And the categories I'm referring to are REO, home loans,

Luria - Direct

1885

1 servicing advances, and miscellaneous.

2 A. Okay. And you're interested in knowing the total?

3 Q. The total.

4 A. Okay. Just in round numbers while I'm doing my math right
5 here but kind of without the aid of a calculator, I come up with
6 590 million, if that's right. That's 200 million for REO, 50
7 million for whole loans. I used 250 million just again for round
8 number because I don't have a calculator for servicing advances,
9 and then 90 million for miscellaneous.

10 Q. And subtract that from the collateral shortfall you testified
11 about earlier. What does that leave you with?

12 A. One billion two hundred ten million.

13 Q. And that's over a billion dollars?

14 A. Yeah. I just point out that's -- these recoveries are not
15 all recoveries that would be applied against the Colonial line.
16 These are available for recovery of all of the amounts that are
17 owed to various creditors. There's a -- what is applicable to
18 Colonial is in terms of their lien rights, which got us to the
19 shortfall of the 1.2. They get that, but then the rest of these
20 dollars I just went through, the 590, doesn't necessarily enure to
21 the benefit of Colonial.

22 Q. What you're saying is Colonial might not actually receive any
23 of those monies to the extent TBW receives those monies?

24 A. If they do receive it, they'd receive their pro rata share
25 based on the total claims pool.

Luria - Direct

1886

1 Q. So it would be some amount less?

2 A. Yeah.

3 Q. So being very, very conservative, what's the whole, the whole
4 1.8 minus the other collateral or other assets we identified?

5 A. In this case, it would be one billion two hundred million
6 roughly.

7 Q. Do you know what MSRs are?

8 A. Mortgage servicing rights.

9 Q. Does -- sitting here today, is there any value from TBW's
10 perspective in MSRs?

11 A. Today sitting here, after having been in bankruptcy for more
12 than a year and a half and having reviewed what we've seen to
13 date, we do not believe there's value in the MSRs today for the
14 estate.

15 Q. And are -- why?

16 A. There are several reasons. One, there's -- alleged
17 terminations were delivered to the company on a pretty -- before
18 we filed for bankruptcy from all of the investors alleging that
19 the, that the -- that those rights no longer existed. We've
20 disputed that and continue in certain cases to dispute that.

21 Q. But Freddie and Ginnie claim that they now own the servicing
22 rights, correct?

23 A. That's correct.

24 Q. Is there another reason that you don't think the MSRs have
25 any value?

Luria - Direct

1887

1 A. Yes. There's, there's two reasons why they wouldn't impact
2 the value of the estate. One is repurchase claims that I'll come
3 back to in a second or lien rights of various parties. The first
4 repurchase claims are if you own the servicing rights to service a
5 mortgage, you receive a stream of income. In exchange for the
6 stream of income, you have to do certain -- you have rights and
7 responsibilities. You have to among other things honor the -- let
8 me back up.

9 When a mortgage originator originates a mortgage, they
10 provide the mortgage. They sell it to a buyer. The buyer of the
11 mortgage has a right to put the loan back to Taylor Bean or
12 whoever the originator is if it didn't fit certain parameters.

13 Q. By "put the loan back," you mean make TBW buy the loan back?

14 A. That's correct. And if you sell a mortgage servicing right,
15 the buyer assumes what's called reps and warranties, so they
16 assume the obligation to have to buy back the loan, and they can
17 look to the original originator to receive an indemnification
18 payment for that typically.

19 Q. So if TBW were to actually sell its MSRs, the buyer would buy
20 contingent upon the reps and warranties with Ginnie and Freddie?

21 A. Yes, if it could sell it in the first place based on the
22 termination, which again there are issues that are still open.

23 Q. And what's the problem with that in our case?

24 A. The termination or the ability to sell?

25 Q. The ability to sell, effect the buy-backs.

Luria - Direct

1888

1 A. So if we could sell it, the buyers are going to come in on
2 due diligence and have concern about the extent of the repurchase
3 claims. We know based on the proofs of claim that have been filed
4 in the bankruptcy that Ginnie and Freddie together have
5 approximately, approximately a billion and a half dollars of
6 repurchase claims that they filed in their proofs of claim.

7 Q. Based on information you know about, how much are MSRs worth
8 at TBW max?

9 A. Well, if I can -- there's another issue. If there were
10 value, they're also subject to lien rights of Sovereign and
11 Natixis.

12 Q. We'll get there in a second, sir.

13 A. Okay.

14 Q. What's the max value of the MSRs?

15 A. Today, given the repurchase issues, we don't believe there's
16 value.

17 Q. On TBW's books, what was the maximum value or the value it
18 was last listed at?

19 A. My understanding is it was last listed at \$700 million.

20 Q. And so if there are buy-back obligations of \$1.5 billion
21 dollars and the MSRs are only valued 700 million, what does that
22 mean?

23 A. It's likely that there would not be value for MSRs.

24 Q. And is that because if somebody bought the MSRs, they'd have
25 to buy back \$1.5 billion in loans potentially?

Luria - Direct

1889

1 A. That would be a concern of a buyer.

2 Q. You talked about secondary lien rights, or lien rights.

3 Could you please describe that briefly?

4 A. Yeah. The Freddie and the Ginnie servicing rights that was
5 the bulk of the servicing pools were Sovereign and Natixis, there
6 were two lenders, together had approximately \$200 million of loans
7 outstanding, a little more than that, had rights to proceeds on a
8 sale of those, those MSR rights.

9 Q. So even if, even if TBW sold MSRs, it would have to pay \$200
10 million back to Natixis and Sovereign; is that right?

11 A. That's correct. And then coming back to the beginning of the
12 case, Colonial had alleged that they had a blanket lien right as
13 well. I think they had a second on -- a second lien on one
14 portion of the MSRs.

15 Q. Mr. Luria, how about TBW stock? What's the value of TBW
16 stock sitting here today?

17 A. Today, based on the -- we filed a disclosure statement in the
18 bankruptcy court in which we disclosed what we believe the
19 distributions would be to various stakeholders, and the disclosure
20 statement showed that there would be no value to equity.

21 Q. So that's zero?

22 A. Yes.

23 Q. Are you familiar with Ocala Funding?

24 A. I am.

25 Q. Do you know what the balance in Ocala Funding was when you

Luria - Direct

1890

1 became chief restructuring officer?

2 A. Yeah. It was one billion seven hundred fifty million.

3 Q. Were you able to identify the assets under Ocala Funding?

4 A. We were.

5 Q. What are they?

6 A. There are today approximately \$140 million of assets
7 associated with Ocala Funding.

8 Q. And what's the shortfall between the outstanding balance and
9 assets?

10 A. So it would be 1.6 billion, 1.61 billion.

11 Q. Billion?

12 A. Billion.

13 Q. Mr. Luria, when you walked in the door at TBW and based on
14 your experience as a manager of mortgage loan origination
15 companies, was TBW a sustainable business?

16 A. When I walked in the door, the business had ceased operating
17 and was not able to take borrower funds, process them, provide
18 servicing, and continue operating, although we were able to -- it
19 also had limited funds. We were able to get things moving once we
20 got additional cash in the door so that we could stabilize it and
21 then wind down the operations.

22 Q. When you walked in, was there much cash?

23 A. Almost none.

24 Q. When you walked in --

25 A. In terms of operating funds, there was borrower funds we

Luria - Cross

1891

1 could not use.

2 Q. And was there massive debt?

3 A. There was.

4 MR. ZINK: The Court's indulgence?

5 Pass the witness, Your Honor.

6 THE COURT: All right. Cross-examination?

7 CROSS-EXAMINATION

8 BY MS. KARINSHAK:

9 Q. Good afternoon, Mr. Luria. My name is Zahra Karinshak, and I
10 represent Mr. Farkas.

11 Now, Mr. Luria, before coming to court today, you
12 provided to the government this document that I believe you've
13 been refreshing your recollection with, a TBW recovery analysis,
14 correct?

15 A. I did, yes.

16 Q. And I'm sorry, I'm having a hard time hearing you, so if you
17 could please move forward to the microphone?

18 A. Is that better?

19 Q. Yes, thank you.

20 A. Okay.

21 Q. And in looking at this document, all of these numbers here
22 that you've put on this document are an estimate, right?

23 A. They are all developed through our reconciliation process and
24 reviews.

25 Q. But I'm looking at your columns on this first page, and you

Luria - Cross

1892

1 have a low-end estimate and a high-end estimate, right?

2 A. That particular page by nature of what it is, which is not
3 the numbers that I've been quoting, this was a liquidation
4 analysis that was filed in December with the disclosure statement.

5 Q. But my question is on that page, you have a low-end estimate
6 and a high-end estimate, right?

7 A. Yes.

8 Q. And you've used those estimates to come up with your
9 estimated assets available for distribution, right?

10 A. Which is not what I've been discussing.

11 Q. Well, you've been, you've been using some numbers from this
12 document with your calculations today, right?

13 A. Not that page. I haven't referred to that page for any of
14 these answers.

15 Q. Okay. Well, I think you've referred to some of these assets
16 on this page for the purposes of getting your calculations, right,
17 as far as the number?

18 A. I actually referred to it on different pages to pull those
19 numbers.

20 Q. Okay. But aren't some of these numbers based on these
21 estimated assets available from the first page?

22 A. The numbers that I actually quoted came from other pages that
23 were used to go to develop the estimated recovery analysis for
24 unsecured creditors for the disclosure statement.

25 Q. Okay. So my point being these are still estimated numbers,