

Luria - Cross

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1 right?

2 A. The numbers on the page you're referring to are estimated
3 numbers.

4 Q. Okay.

5 A. And the numbers that I have quoted in various places are
6 numbers that, that have been developed over time and are based on
7 the reconciliation process.

8 Q. And, and your best estimates, in fact, you gave a range on
9 this first page, right?

10 A. I gave a -- again, I'm happy to answer questions on the first
11 page, but the numbers that I've been quoting aren't off of this
12 first page.

13 Q. Okay. Sir, how many bankruptcies have you been involved in?

14 A. I haven't counted. It's a significant number.

15 Q. How many years?

16 A. Since 1998.

17 Q. Since 1998.

18 A. Um-hum.

19 Q. So would it be fair to say hundreds?

20 A. I don't think it would be hundreds. Fifty maybe. I haven't
21 counted.

22 Q. Okay. And in how many of these bankruptcies has there been
23 100 percent recovery to the creditors at the end of the bankruptcy
24 process?

25 A. I'd have to go back and find out. Some there have; some

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1 there haven't.

2 Q. Would it be fair to say --

3 A. It's a, it's a factual specific question based on the
4 bankruptcy.

5 Q. Would it be fair to say it's more common to not get 100
6 percent value back on all of your assets? Would that be fair?

7 A. It is common not to get 100 percent back.

8 Q. And it would be -- would it be fair to say it would be rare
9 to get 100 percent recovery? Wouldn't that be fair to say?

10 A. It all depends on the bankruptcy.

11 Q. And, in fact, how many times do the creditors receive
12 substantially less than they're owed?

13 A. Again, typically in bankruptcy, creditors -- and there's
14 different creditors.

15 Q. Right.

16 A. Some creditors, like secured lenders, for instance, in many
17 cases get 100 cents on the dollar back.

18 Q. Let's talk about the unsecured creditors.

19 A. Okay.

20 Q. Do they typically get 100 percent back?

21 A. Again, it depends on the bankruptcy. Typically I'd say they
22 don't.

23 Q. Typically they don't?

24 A. That's correct.

25 Q. And typically it would be rare for them to get 100 percent

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1 back, right?

2 A. As a function of companies that file for bankruptcy?

3 Typically companies won't file for bankruptcy if they are in a
4 position to pay all of their creditors back.

5 Q. Now, isn't it true that Mr. Farkas agreed to bankruptcy on
6 the condition that TBW would pursue claims against Ginnie Mae and
7 Freddie Mac for the servicing rights that were worth approximately
8 a billion dollars?

9 A. I can't speak to that issue.

10 Q. Did you get that understanding from your conversations from
11 Mr. Farkas or from the law firm that was involved with the
12 bankruptcy?

13 A. I had very limited discussions with Mr. Farkas. That wasn't
14 in my conversations.

15 Q. What about with Mr. Levine? Wasn't he the lawyer that was
16 working the bankruptcy aspect of this?

17 MR. ZINK: I object. This calls for privileged
18 communications.

19 THE COURT: This would be TBW's lawyer?

20 MR. ZINK: Yes, Your Honor.

21 MS. KARINSHAK: Yes, Your Honor.

22 THE COURT: Well, a communication between that attorney
23 and the man who's basically stepped in the shoes of TBW would be
24 an attorney-client communication. It's not been waived as I
25 understand it, so that can't come in.

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1 MS. KARINSHAK: All right, Your Honor. I'll move on
2 from that.

3 THE COURT: Sustained.

4 BY MS. KARINSHAK:

5 Q. Isn't it true that in the course of your work in the
6 bankruptcy proceedings that you've been handling the asset
7 liquidation, that you-all found approximately \$400 million in
8 loans? Isn't that right?

9 A. I'm sorry, when you say we found --

10 Q. There had been \$400 million loans that were lost that were
11 recently found in, like, the last few months; isn't that right?

12 A. I'm not familiar with in the last few months. There, there
13 were different loan pools that through the asset reconciliation we
14 were able to identify were owned by TBW.

15 Q. And is it your position today that all the loans have been
16 found at this point and are shown in your work? Is that your
17 contention here today?

18 A. Today we are comfortable that we've identified the loans that
19 exist that were available to be allocated amongst the various
20 stakeholders in the bankruptcy.

21 Q. Now, I want to look at your scope of work for TBW for a
22 moment, please, sir. Isn't it fair to say that since August of
23 2009, your firm has been working to identify all the assets of
24 TBW?

25 A. We have been attempting to, to do that.

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1 Q. And so that's been since August of 2009 to present, correct?

2 A. That's correct.

3 Q. And you haven't completed that yet, have you?

4 A. We believe we have at this point identified what assets are
5 out there. There are assets to be pursued. There may be small
6 things that we come across, but there are not major assets that
7 we're going to identify at this point.

8 Q. And what's your definition of a major asset for the purposes
9 of this calculation you've been working on for over two years?

10 A. You know, there may be individual loans that we may find that
11 weren't properly put in the servicing system. There may be --
12 there's loans out to various enterprises related to affiliates
13 that we're still reviewing that may have value, but when I say
14 that, you know, order of magnitude, you know, 5 million, 10
15 million dollars. Just order of magnitude.

16 Q. But seeing as it's taken this long, it is a difficult
17 process, correct?

18 A. We at this point feel comfortable we've identified the assets
19 at this point.

20 Q. Or at least you're saying substantially identified, correct?

21 A. Substantially identified. We'd be surprised if there was
22 anything -- I would be very surprised if we found anything at this
23 point that would change the recoveries.

24 Q. And how much money has your firm been paid -- or I should say
25 how much money has your firm billed for these efforts?

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1 MR. ZINK: Objection, Your Honor. Relevance.

2 THE COURT: I don't see any relevance to that.

3 Sustained.

4 BY MS. KARINSHAK:

5 Q. Isn't it true that there are administrative costs like
6 administrative priorities, tax, unsecured claims, to include
7 paying for the costs of the bankruptcy that would come out of the
8 assets that TBW has when, when it's in bankruptcy?

9 A. That is correct.

10 Q. And so the amount of money paid to the lawyers and the
11 accountants and all of that would come away from whatever value
12 the company still has; isn't that right?

13 A. It would decrease the amount that's available to pay its
14 creditors.

15 Q. And in this case, you gave an estimate as to the amounts of
16 money that would come out of whatever value TBW had, which
17 includes several different types of fees, correct?

18 A. So far, the testimony that I've given today hasn't touched on
19 any reduction for recoveries based on costs. If I were to factor
20 that in, the numbers that I gave earlier would have to be further
21 reduced.

22 Q. That's right. So it would be significant for the hole,
23 wouldn't it?

24 A. In terms of the size of the hole, it wouldn't be significant.

25 Q. Well, about \$167 million wouldn't be significant to the size

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1 of the hole?

2 A. Well, it's not 167 million. The sheet that you're looking
3 at, the bottom two lines are payments to secured creditors, so
4 that's 92 million payments to Sovereign --

5 Q. I'm sorry, sir, where are you looking?

6 A. I'm looking at the first page, second column.

7 Q. Um-hum.

8 A. You've referenced -- and I think what you're saying is that
9 somehow a \$92 million payment to a secured lender is a payment to,
10 is a payment to a professional or something like that associated
11 with the bankruptcy.

12 Q. Okay. And then --

13 A. But it's not.

14 Q. Okay.

15 A. So you'd have to back out of the 168 the 92 million and the
16 46 million dollar payment.

17 Q. Okay. So let's back that out now.

18 A. Okay.

19 THE COURT: Counsel, approach the bench.

20 MS. KARINSHAK: Yes, ma'am.

21 (Bench conference on the record.)

22 THE COURT: I realize the government put this evidence
23 on, and why they did I'm not quite sure, because they have
24 overwhelming evidence from witnesses about holes, all right? But
25 it's completely irrelevant to this case as to whether there's a

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1 \$50 million or a \$5 billion hole. It could affect the forfeiture
2 issue, which is for down the road, but I don't want to waste this
3 jury's time -- it's the afternoon, which is always the bewitching
4 hour in a trial -- with a lot of detail.

5 There's confusion between these notes that are not
6 before the jury or in evidence and the report that was in
7 evidence, and it's not going anywhere. So I want this examination
8 to get reduced. This witness doesn't help you that much.

9 MS. KARINSHAK: Well, Your Honor, to the extent he's
10 given these large numbers for these amount of holes that are
11 supposed to be --

12 THE COURT: I can tell the jury in a jury instruction
13 that the amount of loss is not the critical fact, all right? It's
14 a fraud case, and quite frankly, you can have a fraud without a
15 big loss.

16 MS. KARINSHAK: I'm sorry?

17 THE COURT: You can have a fraud without a big loss.

18 MS. KARINSHAK: Oh, that's right, Your Honor.

19 THE COURT: You can have fraud statements to a
20 regulatory agency even if there's no actual loss that occurs as
21 long as it was material.

22 Let's move along, all right?

23 MS. KARINSHAK: Yes, ma'am. I was just concerned about
24 the prejudice with those big numbers.

25 THE COURT: There is no prejudice.

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1 (End of bench conference.)

2 BY MS. KARINSHAK:

3 Q. Sir, you mentioned something about an FDIC waiving blanket
4 lien, correct?

5 A. Yes.

6 Q. Do you remember talking about that?

7 A. Yes.

8 Q. What is a blanket lien?

9 A. It's a lien across all of, what would have been a lien
10 against all of Taylor Bean's assets.

11 Q. So FDIC had a lien against all of Taylor, Bean & Whitaker's
12 assets?

13 A. That's what they alleged.

14 Q. Okay. And they've waived that lien now?

15 A. We entered into a settlement agreement that provided for what
16 the FDIC would receive from the, from the Taylor Bean bankruptcy.
17 It did not include any payment or anything for assets beyond what
18 we agreed to give them.

19 Q. And that's something that Colonial had negotiated for,
20 correct?

21 A. That's correct. It's my understanding, by the way, I'm
22 not -- we didn't agree that there was or wasn't a lien.

23 Q. I'm sorry, I'm having a hard time hearing.

24 A. In -- the bankruptcy estate did not agree that there was a
25 blanket lien. We --

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1 Q. But there was a negotiation?

2 A. We negotiated a settlement.

3 Q. And that was the result of the settlement, right?

4 A. Yes.

5 Q. And the FDIC gave that away when they settled with you,
6 right, this blanket lien?

7 A. To the extent the settlement agreement becomes effective,
8 they will have. The settlement agreement has not become effective
9 yet.

10 Q. Okay. And if the FDIC waiving that blanket lien results in
11 Colonial having a shortfall, then that wouldn't be Mr. Farkas's
12 fault, would it?

13 A. I can't speak to that.

14 Q. Well, Mr. Farkas wasn't the one who gave away the blanket
15 lien, was he?

16 A. I don't know whether he did or not.

17 Q. Well, he's no longer at the company, right?

18 A. I don't -- in terms of --

19 MR. ZINK: Objection, your Honor.

20 THE COURT: Go ahead, you can answer that question.

21 THE WITNESS: I'm sorry, I misunderstood the question.

22 The estate agreed --

23 BY MS. KARINSHAK:

24 Q. Right.

25 A. -- to settle to maximize value back into the bankruptcy

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1 estate.

2 Q. And my point is that Mr. Farkas isn't there representing the
3 estate anymore, because he's left, right?

4 A. That's correct.

5 Q. And so to the extent they agreed to waive these liens, that
6 wasn't Mr. Farkas, because he's already left, correct?

7 A. That's correct. Although the waiver of the blanket lien
8 doesn't have to do with the shortfall on the COLB and the AOT.

9 Q. Okay. But it does have an impact as to the assets and the
10 values of the assets for this company, right?

11 A. It doesn't have to do with the value of the assets of the
12 company. It has to do with the value available to pay general
13 unsecured creditors.

14 THE COURT: To minimize these long gaps, why don't we
15 take our afternoon break. We'll reconvene at 5 after.

16 (Recess from 3:50 p.m., until 4:05 p.m.)

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1 NOTE: The case continues at 4:11 p.m. in the presence
2 of the defendant and the jury as follows:

3 JURY IN

4 THE COURT: All right, counsel, let's go.

5 BY MS. KARINSHAK: (Continuing)

6 Q. Now, sir, you had mentioned UPB, isn't that right?

7 A. Yes.

8 Q. Is that outstanding principal balance?

9 A. Unpaid principal balance.

10 Q. Unpaid principal balance. The unpaid principal balance, is
11 that a number that you would have negotiated with the FDIC as part
12 of the bankruptcy for TBW?

13 A. Unpaid principal balance of what?

14 Q. I believe that's of the loans, right?

15 A. You're talking about of the loans-- Which loans?

16 Q. Well, when you testified earlier you were talking about, for
17 example, on the AOT balance, and then you mentioned the collateral
18 had 464 million unpaid principal balance, is that right?

19 A. Yeah, that wouldn't have been a negotiated number. What
20 was-- By virtue of the reconciliation, we determined how many
21 loans there were, there were on part of the AOT as of that date.

22 The number of the unpaid principal balance would have
23 come out of the system, the servicing system. That is not a
24 negotiated number.

25 Q. And you did find that the overline was actually

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1 overcollateralized, correct?

2 A. Yes.

3 Q. And what was that amount again of the overcollateralization
4 of the overline?

5 A. It was 89 million of unpaid principal balance, and there was
6 16 million outstanding.

7 Q. So, then the amount of overcollateralization is about
8 \$70 million?

9 A. That's correct, 70.

10 Q. In round numbers?

11 A. Round numbers, 70 million, correct.

12 Q. You had also talked about some REO. And I believe you had
13 said you sold the REO, or the best case you could hope for was
14 \$200 million, isn't that right?

15 A. That's correct.

16 Q. And isn't it true that at least one person, a Mr. Ellis, had
17 a \$550 million for those same REOs already negotiated?

18 A. Well, they weren't the same REOs. There was a deal that was
19 negotiated prior to the bankruptcy filing that related to a much
20 larger pool of REOs. At the time the company filed, there was
21 roughly 4,500 REOs, there was 4,481 I believe was the number to be
22 exact. Of those, 2,152 were actually owned by Wells Fargo and
23 Bayview. And so, they weren't owned by TBW. They were part of
24 the servicing agreements with those two entities.

25 So, they could not have been sold without the consent of

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1 those entities, who had alleged that they terminated their
2 servicing contracts prepetition and would not consent to have
3 those sold.

4 In addition, the agreement was signed with an entity
5 that we attempted to negotiate with to consummate that deal, and
6 they were unable to get the deal done.

7 Q. Okay. But wouldn't you agree that the difference between the
8 200 million, which you said is your best case, and the deal that
9 had been negotiated of 550 million, that \$350 million would be a
10 big difference, correct?

11 A. No, because that 350 wouldn't have been available, is the
12 issue.

13 Q. That's from your perspective, right?

14 A. From the documents that we were dealing with in terms of the
15 servicing, the properties, 2,152 of them, which were included in
16 the deal you are referring to, we couldn't sell.

17 And if we could sell them, we wouldn't have gotten, we
18 the estate would not have gotten the proceeds.

19 Q. Okay. Now, you gave us the values of the MSR's as of today,
20 correct? In your conversations with the Government, you were
21 talking about the values of the MSR's?

22 A. Yes.

23 Q. And the values as of today would be different than the values
24 before the FBI raid and before TBW was shut down, correct?

25 A. I can't speak to the values before the raid other than to say

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1 that they would have been impacted by the repurchase claims.

2 Q. But my point being, they would have had a greater value than
3 now that the company is in bankruptcy, correct?

4 A. They would be the same underlying loans in terms of the
5 servicing. And so, the issues impacting them in bankruptcy would
6 be the same issues impacting them whether the company was inside
7 of bankruptcy or not.

8 Q. But if Ginnie Mae and Freddie Mac had not come in and seized
9 those rights, they would have stayed with the loans and there
10 would have been a value to the MSR, right?

11 A. There is, if there is value to the MSR, there is still value
12 today. Not necessarily for TBW because of the termination, but
13 the servicing portfolio still exists today. It may be a little
14 smaller because the loans have paid off that were in the servicing
15 portfolio, but it still exists and could still be sold if somebody
16 were willing to pay money for them, for the servicing portfolio.

17 Q. But isn't it true that the MSR portfolio before the FBI raid
18 was approximately \$800 million, isn't that right?

19 A. The number I am familiar with was 700, but that's what was on
20 the books. That's a value for accounting purposes. That's not
21 what, necessarily what they would sell for.

22 Q. And isn't it true that this asset, the MSRs, was
23 independently valued by third parties on a monthly basis at TBW,
24 isn't that right?

25 A. They were valued, but the values specifically do not take

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1 into account repurchase claims.

2 Q. But what I am saying is they were valued, when TBW was a
3 company, they were valued on a monthly basis, right?

4 A. They were valued, they were-- I don't know if they were on a
5 monthly or a quarterly basis. They were regularly valued, but the
6 valuation state on them, on the face of them they don't take into
7 account reps and warranties. So, they don't take into account the
8 repurchase claims that would adversely affect the value on a
9 third-party sale.

10 MS. KARINSHAK: One moment please, Judge.

11 Nothing further, Judge.

12 THE COURT: Any redirect?

13 MR. ZINK: No, Your Honor.

14 THE COURT: Does anybody anticipate calling this witness
15 again?

16 MR. ZINK: The Government does not.

17 THE COURT: How about the defense? No. All right, the
18 witness is excused then.

19 Sir, you are free at this time to stay in court and
20 watch the proceedings, or you may leave, but you are not to
21 discuss your testimony or anything you see or hear with any other
22 witness who has not yet testified.

23 Thank you.

24 THE WITNESS: Thank you.

25 NOTE: The witness stood down.

G. Simons-Poole - Direct

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1 THE COURT: Your next witness.

2 MR. ZINK: Your Honor, the United States calls Gale
3 Simons-Poole.

4 MS. KARINSHAK: I am sorry, Judge, one moment, please.

5 THE COURT: Are you going to recall this witness?

6 MS. KARINSHAK: Your Honor, that's what we are
7 discussing now. I had a different understanding.

8 MR. ROGOW: I would like to leave him under subpoena.

9 THE COURT: All right. Then, sir, I am sorry, you
10 cannot stay in the courtroom to watch the proceedings. You might
11 be called again. You can certainly leave for today, just make
12 sure your contact information is accurate.

13 You are not to follow anything about the case, read any
14 of the transcripts, or again talk to any witness until you know
15 whether you are excused. You may go.

16 All right, who is next witness?

17 MR. ZINK: Gale Simons-Poole, Your Honor.

18 NOTE: The witness is duly affirmed.

19 GALE SIMONS-POOLE, called by counsel for the United
20 States, first being duly affirmed, testifies and states:

21 DIRECT EXAMINATION

22 BY MR. ZINK:

23 Q. Ms. Simons-Poole, can you please introduce yourself to the
24 jury.

25 A. My name is Gale Simons-Poole.

G. Simons-Poole - Direct

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1 Q. Are you currently employed?

2 A. I am. I currently work for Promontory Financial Group.

3 Q. And what is Promontory Financial Group?

4 A. Promontory is an international financial services consulting
5 company that is based out of Washington, D.C.

6 Q. Prior to your time at Promontory, were you employed somewhere
7 else?

8 A. I was.

9 Q. And where is that?

10 A. For over 23 years I worked for the Federal Deposit Insurance
11 Corporation.

12 Q. Is that the FDIC?

13 A. It is.

14 Q. Can you briefly explain what the FDIC does.

15 A. The FDIC has several different missions. One of which is to
16 ensure deposits in banks. Also to liquidate failed banks, and as
17 well supervise banks.

18 Q. And what was your job title, your most recent job title at
19 the FDIC?

20 A. My last job before leaving the FDIC was deputy regional
21 director for risk management in the Atlanta region.

22 Q. It's a fairly senior position?

23 A. It is.

24 Q. And from when to when were you deputy regional director?

25 A. From 2005 to 2010.

G. Simons-Poole - Direct

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1 Q. In your job as deputy regional director, do you know if FDIC
2 had oversight responsibilities for Colonial Bank?

3 A. It did.

4 MR. ZINK: Your Honor, at this time I would like to read
5 a stipulation into evidence. It is Exhibit 21-3B.

6 THE COURT: 3B in boy?

7 MR. ZINK: Correct.

8 THE COURT: All right.

9 MR. ZINK: The United States of America, by and through
10 its undersigned attorneys, and the defendant, by and through his
11 undersigned attorneys, hereby stipulate that from in or about
12 January 2002 through in or about August 2009 Colonial Bank, now
13 known as Branch Banking & Trust Company, was a financial
14 institution the accounts of which were ensured by the Federal
15 Deposit Insurance Corporation.

16 THE COURT: All right. That's in evidence.

17 (Government's Exhibit No. 21-3B was received in evidence)

18 BY MR. ZINK: (Continuing)

19 Q. Ms. Simons-Poole, as deputy regional director what did you do
20 on a day-to-day basis?

21 A. I had responsibility to oversee examinations of banks as well
22 as other specialty areas in a seven state region in the southeast
23 United States.

24 Q. And as deputy region director, did you come to know about
25 Colonial Bank?

G. Simons-Poole - Direct

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1 A. I did.

2 Q. And what did you come to learn about Colonial Bank?

3 A. Colonial Bank was one of the larger banks that FDIC
4 supervised. It converted, it changed regulators in 2008 from the,
5 from a national bank and supervised by the OCC, and became a state
6 bank, which the FDIC was its primary supervisor.

7 Q. Did you have any concerns about Colonial Bank?

8 A. At the time it was converted Colonial Bank had a number of
9 issues going on. And, yes, we were concerned about it.

10 Q. And what were the issues you were concerned about?

11 A. There was a number of issues, but primarily Colonial had a
12 huge commercial real estate portfolio in a number of very troubled
13 markets like Nevada, Florida and Georgia, and their loan quality
14 was deteriorating rapidly.

15 Q. Ms. Simons-Poole, are you familiar with TARP?

16 A. I am.

17 Q. Is that the Troubled Asset Relief Program?

18 A. It is.

19 Q. And how are you familiar with TARP?

20 A. One of my responsibilities when I worked for the FDIC was to
21 coordinate the TARP applications that came in from the banks in
22 the Southeast.

23 Q. So, a bank in your region, if they applied for TARP money,
24 would have to apply through your office?

25 A. If a bank was supervised primarily by the FDIC and wanted

G. Simons-Poole - Direct

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1 TARP money, their application came to us at the FDIC first in the
2 region.

3 Q. At a general level, what's the purpose of TARP?

4 A. The purpose of TARP was to help banks by injecting additional
5 capital into their organizations to get them through the financial
6 crisis.

7 Q. Can you briefly describe the FDIC and your role in the TARP
8 application process.

9 A. My role was to oversee the group of employees, FDIC employees
10 that were actually accepting the applications. Our role in the
11 regional office was to take those applications, give them their
12 preliminary review, analyze the financial information that came
13 with the applications, formulate a recommendation, and then
14 forward it on to the Washington office of FDIC for a second level
15 review.

16 Q. And who ultimately made the decision about whether an
17 institution received or did not receive TARP money?

18 A. The actual entity that funded TARP was the U.S. Treasury, but
19 the U.S. Treasury had the help of all the federal banking
20 agencies. There was a decision, a recommendation made and then
21 the agencies either are agreed or disagreed with it. And if the
22 agencies agreed, then the U.S. Treasury would fund TARP.

23 Q. So, the FDIC had a role in the process?

24 A. They did.

25 Q. What was your specific role in the process?

G. Simons-Poole - Direct

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1 A. My role was to make sure that the initial application was
2 thoroughly reviewed and analyzed and that a recommendation was
3 created and it was in accurate format to go up to Washington.

4 Q. Did you rely on the accuracy of the information you received
5 from applicant institutions?

6 A. We did rely on the information that was submitted.

7 Q. Do you know if Colonial Bank submitted a TARP application?

8 A. Colonial did submit for TARP, did apply.

9 Q. I would like to show you what is marked as Government's
10 Exhibit 18-2, which I believe is already in evidence, Your Honor.

11 THE COURT: All right.

12 Q. Can you please take a moment to look at the document.

13 Do you recognize it?

14 A. I do.

15 Q. What is it?

16 A. This is Colonial Bank's TARP application.

17 Q. What's the date on the upper left-hand corner?

18 A. October 20, 2008.

19 Q. Now, Ms. Simons-Poole, when institutions applied for TARP
20 money, would they attach financial statements to their
21 applications?

22 A. They did.

23 Q. And why is this?

24 A. In order to make an informed recommendation and to make a
25 decision whether or not this bank was eligible for TARP, we asked

G. Simons-Poole - Direct

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1 that they submit certain financial information as part of the
2 decision process.

3 Q. Do you know if Colonial Bank submitted financial information
4 related to their TARP application?

5 A. They did.

6 Q. Would you please turn to page 8 of that document.

7 A. Okay.

8 Q. Can you briefly describe what this page represents.

9 A. Page 8 is a compilation of financial information that gives
10 average balances of certain major accounts on the bank's balance
11 sheet. As well as giving some other financial information, ratios
12 and different types of value per share information.

13 Q. Look on the left-hand side. Line item Securities Purchased
14 Under Agreements To Resell. Do you see that?

15 A. Yes, I do.

16 Q. Can you please read for the jury the number under the year
17 2008.

18 A. For securities purchased under agreement to resell, 2008, the
19 number 2,116,299,000.

20 Q. So, what does this tell you when you see it?

21 A. That tells me that Colonial Bank had on its books securities
22 that it had repurchased in the amount of over \$2 billion. And
23 these were bankable assets.

24 Q. If this number was misstated by \$5 million, would it be a
25 problem?

G. Simons-Poole - Direct

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1 A. That would be an issue, yes.

2 Q. How about \$100 million?

3 A. Even more.

4 Q. How about a billion dollars?

5 A. Even more.

6 Q. Do you know what happened after Colonial Bank applied for
7 TARP moneys? Were they approved?

8 A. There was several weeks of analysis and discussion about
9 Colonial's TARP application, but ultimately, yes, they were
10 provisionally approved.

11 Q. Talk about what provisionally approved means. What was the
12 condition?

13 A. The U.S. Treasury agreed to fund TARP to Colonial Bank if
14 there was a matching private investment to accompany the TARP
15 moneys.

16 Q. So, does that mean that the federal government would give
17 Colonial Bank money if Colonial Bank also came up with some
18 private money?

19 A. Essentially, yes, that's correct.

20 Q. And how much private money did they need to come up with?

21 A. Colonial was asked to raise 300 million in private capital to
22 match the TARP funds.

23 Q. And if they received, if they were able to obtain the 300
24 million, how much in TARP money would they receive?

25 A. I believe it was a similar amount to it or slightly less.

G. Simons-Poole - Direct

1917

1 So, around 600 million.

2 Q. Do you know the deadline by which they needed to come up with
3 this private capital or private money?

4 A. Their approval came towards the end of the year and the first
5 of the next year, and I believe that Colonial was given until the
6 end of March to raise their private capital that would match the
7 TARP funds.

8 Q. And what would happen if they didn't raise the private
9 capital by March 31?

10 A. If they were unable to raise the private capital, then TARP
11 would not be funded.

12 Q. And based on your knowledge of Colonial Bank, what would it
13 mean for Colonial if Colonial did not receive TARP money?

14 A. Based upon Colonial's condition at the time, if there was not
15 additional capital injected into the bank, it was in serious
16 danger of failure.

17 Q. As the March 31 deadline approached, were you in
18 communications with individuals from Colonial Bank?

19 A. We were in almost daily communication with Colonial in the
20 weeks leading up to the deadline.

21 Q. And what were you talking about?

22 A. We were speaking to the, to Colonial's management about a
23 number of issues, but primarily to get update on the capital
24 raise. We knew that the bank was trying its best to try to raise
25 capital from a number of different sources, and they were

G. Simons-Poole - Direct

1918

1 providing us updates on a regular basis.

2 Q. Fast forward to March 31. What happens, does Colonial come
3 up with the money?

4 A. Colonial issued a press release that day that announced that
5 it had raised its 300 million in private capital.

6 Q. Did you have additional questions for Colonial Bank?

7 A. I did.

8 Q. I would like to show you what has been marked as Government's
9 Exhibit 18-59.

10 MR. CUMMINGS: No objection, Your Honor.

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

12 (Government's Exhibit No. 18-59 was received in evidence)

13 BY MR. ZINK: (Continuing)

14 Q. Ms. Simons-Poole, do you recognize this document?

15 A. I do.

16 Q. Would you please turn to page 2, an e-mail from you to Lisa
17 Free.

18 At a general level, what is happening in this e-mail.

19 A. This is the day after Colonial issues its public press
20 release announcing the \$300 million capital raise. This e-mail is
21 my request back to Colonial's management asking them to please
22 clarify a number of issues that we still have about the capital
23 raise.

24 Q. Please read for the jury what you write to Lisa.

25 A. It says, Lisa, could you please ensure that Bobby Lowder and

G. Simons-Poole - Direct

1919

1 Jack Miller receive this communication. I don't have either one
2 of their personal e-mail addresses.

3 Q. Would you please look at line item 2. Can you read that for
4 the jury.

5 A. Item 2 says, please provide a final investor list with
6 ownership percentages and provide a listing of investor due
7 diligence reviews conducted during April and their estimated
8 completion dates.

9 Q. And so, what were you asking for?

10 A. I am asking Colonial to please give me a list of who exactly
11 is going to be investing, who are participants in this
12 \$300 million investment in Colonial.

13 Q. And why is that important?

14 A. Because we wanted to know who or what organizations were
15 agreeing to provide moneys into Colonial at a time when they were
16 in serious trouble.

17 Q. And you say, please provide a final investor list. Why do
18 you say final investor list?

19 A. Because it was already announced by Colonial that this group,
20 this group has already made their investment, and we wanted to
21 know who exactly they were because we didn't.

22 Q. Please take a look at item 7. Would you please read it for
23 the jury.

24 A. Item number 7 says, please provide verification of the
25 \$30 million in escrow from the TBW investor group, including the

G. Simons-Poole - Direct

1920

1 pro rata escrow share from each investor.

2 Q. So, what are you asking here?

3 A. Along with the \$300 million capital raise, one of the
4 requirements was to have 10 percent of that capital in escrow.
5 And what I am asking in this, in number 7 is to please provide us
6 verification that money is indeed in escrow on deposit somewhere.

7 Q. Is this important information?

8 A. It is very important.

9 Q. What happens if the \$30 million isn't in escrow?

10 A. If the 30 million isn't in escrow, then that demonstrates to
11 us that this is not an actual investment in the bank.

12 Q. And what does that mean for Colonial's TARP application?

13 A. If the money is not in escrow, then the capital raise
14 probably isn't any good, which means that they are not going to
15 get TARP money.

16 Q. Ms. Simons-Poole, I would like to show you what has been
17 marked as Government's Exhibit 18-66.

18 THE COURT: Any objection?

19 MR. CUMMINGS: No objection, Your Honor.

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

21 (Government's Exhibit No. 18-66 was received in evidence)

22 BY MR. ZINK: (Continuing)

23 Q. Do you recognize this document?

24 A. I do.

25 Q. And what is it?

G. Simons-Poole - Direct

1921

1 A. This is an e-mail communication from me to Sarah Moore.

2 Q. How about the bottom part of the e-mail chain, who is
3 e-mailing whom?

4 A. The second e-mail in this is from Phillip Cooper at a law
5 firm in Atlanta to me.

6 Q. What does he say to you?

7 A. At the request of Sarah Moore and Tamara Stidham of Colonial
8 Bank, I have attached the list of investors and commitment
9 amounts.

10 Q. So, this is the investor list you were asking for before?

11 A. This is the final investor list, yes.

12 Q. Please take a look at the last page of that document.

13 Please take a look at the second-to-last two line items.

14 And please read their names to the jury.

15 A. Those two lines say EJF Capital, LLC, \$50 million. And South
16 Towne Capital, LLC, \$50 million.

17 Q. So, what did this mean to you?

18 A. That was telling me that these two organizations were
19 investors for, each for \$50 million to Colonial.

20 Q. I would like you to look at the list. How big is \$50 million
21 in relation to other investors?

22 A. It is significantly larger.

23 Q. Would it have mattered to you if these entities were in fact
24 not investors?

25 A. It would have meant a great deal, yes.

G. Simons-Poole - Direct

1922

1 Q. What would have happened?

2 A. It would have, it would have negated this investment because
3 they required 10 percent.

4 Q. And what would have happened to Colonial's TARP application?

5 A. It would have not been funded in all likelihood.

6 Q. So, Ms. Simons-Poole, finally, I would like to show you what
7 has been marked as Government's Exhibit 9-1.

8 THE COURT: Any objection?

9 MR. CUMMINGS: No, Your Honor, no objection.

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

11 (Government's Exhibit No. 9-1 was received in evidence)

12 BY MR. ZINK: (Continuing)

13 Q. Can you please describe what is happening in this e-mail.

14 A. This is an e-mail dated April 1 that is responding to my
15 request for verification of the escrow moneys.

16 Q. And whom is e-mailing you?

17 A. The person sending the e-mail is William Leaming.

18 Q. Who is cc'd on that e-mail?

19 A. The cc is to Paul Allen and Lee Farkas.

20 Q. Can you please read for the jury what Mr. Leaming writes to
21 you.

22 A. Ms. Simons-Poole, please find attached confirmation of
23 balances in the account held by Platinum Community Bank for the
24 escrow agreements dated March 31, 2009. Taylor Bean & Whitaker
25 has requested this information be sent directly to your attention.

G. Simons-Poole - Direct

1923

1 Q. Is this in reference to the escrow, the confirmation of
2 escrow payments that you had asked about earlier?

3 A. Yes, it is.

4 Q. Can you please turn to the next page.

5 Please read it to the jury.

6 A. Ms. Simons-Poole, in regard to the account ending 0065, which
7 is in the name of Platinum Community Bank as escrow agent for the
8 purchase of shares in Colonial Bank, Inc., the account has a
9 balance as of March 31 of \$30,300,000. Platinum Community Bank is
10 holding these funds as agreed to in the escrow agreements dated
11 March 31, 2009.

12 Q. So, what does this document tell you?

13 A. This is the actual confirmation from Platinum Community Bank
14 that there is over \$30 million in escrow being held for these, for
15 this capital injection.

16 Q. So, the \$30 million represents escrowed deposits by
17 investors, correct?

18 A. Yes.

19 Q. What if two of the investors had in fact not sent these
20 escrow payments and in fact TBW had sent them, would that have
21 mattered?

22 A. Yes, it would have mattered.

23 Q. Why would that have mattered?

24 A. Because it would not, it would mean that these investors were
25 not actually legitimate.

G. Simons-Poole - Direct

1924

1 Q. And what would have happened to Colonial Bank's TARP
2 application?

3 A. It would not have been funded had that information been
4 known.

5 MR. ZINK: Your Honor, at this time I would like to read
6 a stipulation into the record. It is Government's Exhibit 21-4.

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

8 (Government's Exhibit No. 21-4 was received in evidence)

9 MR. ZINK: The undersigned parties agree that if called
10 to testify in this case, a representative of the Federal Deposit
11 Insurance Corporation, or FDIC, would testify that an e-mail sent
12 to an e-mail address ending in fdic.gov from an e-mail address not
13 ending in fdic.gov are routed to computer servers located at FDIC
14 facilities located in Arlington, Virginia.

15 And would further testify that on April 1, 2009, an
16 e-mail from the CEO of Platinum Community Bank in Florida to the
17 deputy regional director of the FDIC, a copy of which has been
18 attached to this exhibit, was routed through FDIC servers located
19 in Arlington, Virginia.

20 THE COURT: All right.

21 MR. ZINK: And we would also like the Court to take
22 judicial notice that the Arlington is in the Eastern District of
23 Virginia.

24 THE COURT: I will do that.

25 MR. ZINK: We will pass the witness, Your Honor.

G. Simons-Poole - Cross

1925

1 THE COURT: All right, cross-examination.

2 MR. CUMMINGS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. CUMMINGS:

5 Q. Good afternoon, Ms. Simons-Poole. I am Mr. Cummings, I
6 represent Mr. Farkas. I hope you are well today.

7 A. I am, thank you.

8 Q. Good. The e-mail that you just looked at moments ago, the
9 one that was 9-1, do you have that in front of you still?

10 The time that was sent on April 1 was 1:30 p.m.,
11 correct?

12 A. Yes.

13 Q. And if you would look at 18-66, please.

14 THE COURT: Government's Exhibit 18-66?

15 MR. CUMMINGS: 18-66, yes, Your Honor.

16 THE COURT: That's already in evidence, isn't it?

17 MR. CUMMINGS: Yes, they are in evidence, Your Honor.

18 BY MR. CUMMINGS: (Continuing)

19 Q. Is that the e-mail that came to you from Mr. Cooper on
20 April 1, do you see that?

21 A. Yes.

22 Q. That came at 5:27, correct?

23 A. 5:27 p.m.

24 Q. So, by the time you got Mr. Cooper's list of the investors,
25 you had already received the confirmation from Mr. Leaming at

G. Simons-Poole - Cross

1926

1 Platinum Bank that the thirty-million plus dollars had been
2 deposited and on escrow, right?

3 A. The escrow confirmation came first.

4 Q. Came first. Okay. Now, looking again at 18-66, your
5 response to Sarah Moore, who had been the person who prompted Mr.
6 Cooper to send you the list of investors, went out April 3, two
7 days later, correct?

8 THE COURT: You have to say yes or no.

9 Q. You have to say yes or no.

10 A. Yes.

11 Q. And you were asking her a question of how many of these
12 investors currently have a mortgage warehouse relationship with
13 Colonial, correct?

14 A. That is correct.

15 Q. Did you ever get a response?

16 A. I did.

17 Q. Okay. Now, that is because you were concerned that there may
18 be too many organizations that had such a relationship with
19 Colonial for this deal, correct?

20 A. The FDIC in order to have a full understanding of the
21 investor group, we wanted to know how many of them also had a
22 borrowing relationship at Colonial.

23 Q. Now, prior to receiving this application from Colonial, which
24 by the way was signed by Sarah Moore, was it not?

25 A. I believe it was.

G. Simons-Poole - Cross

1927

1 Q. I will direct your attention to that in a minute. 18-2. If
2 you would look at 18-2. 18-2, I am sorry.

3 A. Yes, Colonial's TARP application was submitted or signed by
4 Sarah Moore.

5 Q. Okay. Now, prior to coming here today, you had met with
6 agents of the federal government, had you not?

7 A. Yes, I have.

8 Q. Do you remember having a meeting with them back in May of
9 last year?

10 A. I believe there was a meeting, yes.

11 Q. Okay. And subsequent to that have you had other meetings
12 with the Government and the prosecutors or the attorneys here?

13 A. I have had a meeting with the U.S. Attorney, yes.

14 Q. Right, to review the questions that might be asked and that
15 sort of thing?

16 A. Yes.

17 Q. So, some of these things you have seen fairly recently,
18 correct?

19 A. Some I have seen fairly recently, yes.

20 Q. Now, in 18-2 on page 2, would you look at page 2 of the
21 letter from Sarah Moore. And the second paragraph up from the
22 bottom, the last sentence, would you read that. It starts with:
23 Executive management.

24 A. Executive management of Colonial, that sentence?

25 Q. Yes, ma'am, please.

G. Simons-Poole - Cross

1928

1 A. Executive management of Colonial has met with a few private
2 equity firms that have expressed interest in investing capital--

3 Q. I am sorry, it is the second paragraph at the bottom, but
4 it's the last sentence, also begins, I apologize, it also begins
5 with: Executive management. It is the very last sentence.

6 A. All right. Sorry about that.

7 Q. That's all right.

8 A. Executive management believes that obtaining 550 million, the
9 maximum amount of capital available to Colonial through the TARP
10 program, will enhance Colonial's ability to secure at least 300
11 million of capital from private equity firms.

12 Q. Right. So, Colonial was suggesting to FDIC that if the money
13 was approved, the 550 million, that they would be raising an
14 additional 300 million on their own, correct?

15 A. That's what this suggests.

16 Q. Do you know if you had any discussions with Colonial in
17 advance to tell them that that's what they might need to offer in
18 order to apply for this?

19 A. When TARP was initially introduced in mid-October of 2008,
20 there were any number of discussions with numerous banks about
21 what they could do to improve their chances of being approved.

22 Colonial was large. Colonial was in trouble. And there
23 were discussions that if they could raise private capital, it
24 would demonstrate the market's confidence in the bank, and that
25 would certainly help their chances.

G. Simons-Poole - Cross

1929

1 Q. So, were those discussions conducted by you, carried on by
2 you?

3 A. They were discussed by other officials at the FDIC, some of
4 which I participated in.

5 Q. You participated in them. Okay. Now, prior to October, how
6 long prior to October had it been that FDIC became the chief
7 regulator of Colonial Bank?

8 A. Colonial switched its charter and made FDIC its primary
9 federal regulator in June of 2008.

10 Q. So, this was not a bank that you had had a whole lot of
11 experience with prior to that October letter coming to you,
12 correct?

13 A. Well, Colonial had been supervised by the FDIC in the decade
14 prior to this. We were familiar with Colonial, but not as
15 familiar as the primarily federal regulator.

16 Q. Which was the Office of the Controller of the Currency?

17 A. For the last five years prior to their conversion, yes.

18 Q. So, is FDIC's responsibility then sort of secondary to the
19 primary regulator?

20 A. In a normal circumstance, yes. The OCC has the lead in
21 regulating Colonial.

22 Q. Right. And were there other reasons why the FDIC had gotten
23 involved in regulation of Colonial prior to actually taking over
24 as the primary in June of 2008?

25 A. Our involvement in Colonial during their OCC supervision was

G. Simons-Poole - Cross

1930

1 limited.

2 Q. Okay.

3 A. Because they were well, they were, they were not in trouble
4 at the time.

5 Q. Now, you remember describing when you met with the officials
6 last year, in May of last year, do you remember describing
7 Colonial as being "opaque" in nature? Do you remember that word?

8 A. I don't exactly recall that.

9 Q. Well, it's in quotes here in the memorandum. So, I am not
10 saying it is your words, but do you recall that phrase?

11 A. I think it accurately describes Colonial.

12 Q. Does that mean that there was nothing transparent, that you
13 had to dig behind the numbers usually?

14 A. Information was difficult to ascertain from Colonial.

15 Q. Okay. Now, did you also consider it to be an autocratic
16 organization?

17 A. Its CEO was very involved in most aspects of the bank.

18 Q. A micromanager would you say?

19 A. I would say he was very involved. I am not sure I would use
20 those terms.

21 Q. Now, after Colonial had sent in this investor list, did they
22 ask you for additional time to complete the deal?

23 A. Once they submitted this investor list, which was in early
24 April, I was detailed out of the region for 90 days, so I really
25 cannot speak to subsequent conversations after about the first

G. Simons-Poole - Cross

1931

1 week of April.

2 So, I really don't know what their response was after,
3 to the FDIC after the investor list was received because I--

4 Q. I am sorry, I didn't mean to cut you off.

5 A. Because I was no longer in the regional office in Atlanta. I
6 was temporarily running the Kansas City region.

7 Q. Oh, I see. Okay. So, you don't know if there was an
8 amendment to the purchase and sale agreement made?

9 A. At the time I was out of the region, so I was not involved in
10 subsequent events.

11 Q. And you don't know if there was a revised investor list?

12 A. I really don't know.

13 Q. And the-- Do you know if Mr. Lowder had come to Washington
14 or New York to try and press to get the TARP money approved?

15 A. Mr. Lowder made several visits to our Washington headquarters
16 throughout the time that the TARP application was in play.

17 Q. Now, would that be sort of going around your office's
18 responsibilities as the regional office?

19 A. Banks have every right to go talk to senior officials if
20 that's what they want to do.

21 Q. Okay. Did you later have concerns about the Mortgage
22 Warehouse Lending Division at Colonial?

23 A. At the time that Colonial switched from the OCC as a
24 regulator to the FDIC, we had what the regulators called a
25 pass-off meeting where we met with the OCC to talk to them about

G. Simons-Poole - Cross

1932

1 what their concerns were with Colonial. And they expressed
2 concern about the mortgage warehouse operation. And one of the
3 first targeted exams that the FDIC did after it took over Colonial
4 was in the Mortgage Warehouse Division.

5 Q. And did you have any reason to believe that Mr. Lowder was
6 involved or knew about the activities in the Mortgage Warehouse
7 Lending Division?

8 A. Well, Mr. Lowder was involved in virtually every aspect of
9 the bank, so it would not be-- Our examination showed that the
10 appearance was that the mortgage warehouse operation was operating
11 according to accepted accounting principles, it was reporting,
12 financial reports were accurate.

13 So, we did not find any obvious errors or obvious
14 problems with the mortgage warehouse operation other than the fact
15 that it was very large and was doing a lot of volume.

16 Q. Now, you say that the Treasury eventually had to approve this
17 deal. Was that something that was still contingent after they had
18 made the preliminary approval back in December of '08?

19 A. Their approval was conditional upon the private capital
20 raise.

21 Q. And had that been completed and with no problems, do you
22 think it would have been approved? Or were there other hoops they
23 had to jump through in order to get the final receipt of the
24 money?

25 A. The primary hoop was to raise the private capital.

G. Simons-Poole - Cross

1933

1 Q. Were they trying to change their status from a bank to a
2 thrift in this process?

3 A. Was Colonial trying to change?

4 Q. Yes.

5 A. From a bank to a thrift?

6 Q. Yes.

7 A. Not that I am aware of.

8 Q. You were not aware of that? Okay. And did you come to find
9 that they did or did not ever receive their TARP funds?

10 A. They were not ever, they never received their TARP money.

11 Q. And do you know why that was?

12 A. I believe there was subsequent events that gave issue to some
13 of the validity of the mortgage warehouse operation.

14 Q. Well, I think you said when you met with the investigators
15 that they had withdrawn their application, is that correct?

16 A. That Colonial had withdrawn their application?

17 Q. Yes.

18 A. I don't believe that's correct.

19 Q. You didn't say that in May of last year that Colonial
20 withdrew their application because they were missing deadlines,
21 was in free fall and none of their plans were working?

22 A. The bank was in free fall, but I don't remember saying that.

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

24 Thank you.

25 THE COURT: Any redirect?

G. Simons-Poole - Redirect

1934

1 MR. ZINK: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. ZINK:

4 Q. Ms. Simons-Poole, Mr. Cummings asked you questions about the
5 final shareholder list you received.

6 Did you believe it to be the final shareholder list?

7 A. I did.

8 Q. Even if it wasn't the final shareholder list, would it have
9 mattered to you if there were misstatements about who two major
10 investors were?

11 A. That would have been a material fact, yes.

12 Q. Would it have mattered to you that certain moneys that went
13 into escrow were in fact not sent from certain investors?

14 A. That would be a very adverse fact, yes.

15 MR. ZINK: Nothing further.

16 THE COURT: Any recross, Mr. Cummings?

17 MR. CUMMINGS: No, Your Honor.

18 THE COURT: Does anybody plan to call this witness
19 again?

20 MR. CUMMINGS: We do not.

21 MR. STOKES: The Government does not.

22 THE COURT: All right. Then, ma'am, you are excused a
23 witness, you can stay in court and watch the proceedings or you
24 may leave, but you are not to discuss your testimony or anything
25 you see or hear in court with any witness who has not yet

J. Bruno - Direct

1935

1 testified. Thank you.

2 THE WITNESS: Thank you.

3 NOTE: The witness stood down.

4 THE COURT: Your next witness.

5 MR. CONNOLLY: The United States calls John Bruno, Your
6 Honor.

7 THE COURT: All right.

8 NOTE: The witness is duly affirmed.

9 MR. CONNOLLY: Mr. Wood, I have some exhibits for the
10 Court.

11 JOHN BRUNO, called by counsel for the United States,
12 first being duly affirmed, testifies and states:

13 DIRECT EXAMINATION

14 BY MR. CONNOLLY:

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

17 A. My name is John Bruno, J-o-h-n B-r-u-n-o.

18 Q. Mr. Bruno, where do you work?

19 A. I work for the law firm Locke Lord Bissell & Liddell.

20 Q. What is your position?

21 A. I am an attorney.

22 Q. What is the focus of your practice?

23 A. It's primarily banking, financial institutions transactions.

24 Q. Do you have a regulatory focus to your work as well?

25 A. Yes.

J. Bruno - Direct

1936

1 Q. Now, in early 2009 did you get involved in a project with
2 Taylor Bean & Whitaker and Colonial Bank?

3 A. Yes.

4 Q. What was the name of that project?

5 A. It was called Project Patriot.

6 Q. Was Project Patriot a code name?

7 A. Yes.

8 Q. Was there anything wrong with it having a code name?

9 A. No, that is fairly common.

10 Q. And what was Project Patriot?

11 A. It was related to Taylor Bean & Whitaker's investment into
12 Colonial Bank.

13 Q. Why was Taylor Bean & Whitaker trying to make an investment
14 into Colonial Bank?

15 A. Colonial Bank was financially, it was having financial
16 difficulties that were fairly well known. It needed to raise
17 additional capital. And this investment was part of the effort to
18 raise the additional capital.

19 Q. Was it tied to any potential moneys from the TARP program?

20 A. That's correct.

21 Q. And what was your understanding as to the proximate
22 relationship between those two items?

23 A. Colonial had been approved to receive \$550 million of money
24 from the TARP program if they were able to raise an additional
25 \$300 million.

J. Bruno - Direct

1937

1 And from Taylor Bean's side, the \$300 million investment
2 was conditioned on their ability to get the TARP money.

3 Q. Now, was that effort to raise the \$300 million also known as
4 the capital raise?

5 A. Yes.

6 Q. How did you get involved in this?

7 A. I had represented Taylor Bean in connection with their
8 acquisition of Platinum Community Bank. And then afterwards I had
9 continued to represent them on just regulatory matters until the
10 Project Patriot transaction came up.

11 Q. Approximately when did you get involved?

12 A. I would have gotten involved, initially with Taylor Bean it
13 would have been May 2008. It was at the very, very tail end of
14 the acquisition of Platinum.

15 Q. When did you get involved in the capital raise as part of
16 Project Patriot?

17 A. That was really part of the entire project. It was, the
18 Project Patriot was the capital raise. It was raising
19 \$300 million to invest into Colonial.

20 Q. When did you get involved in that aspect?

21 A. That would have been late January, early February 2009.

22 Q. As part of your involvement in that effort, who did you
23 interact with, if anybody, from Colonial Bank?

24 A. The primary person at Colonial Bank would have been their
25 in-house counsel, Tamara Stidham was the primary person at

J. Bruno - Direct

1938

1 Colonial.

2 Q. Lawyer for Colonial?

3 A. A lawyer, that's correct.

4 Q. Who did you primarily interact with from Taylor Bean &
5 Whitaker?

6 A. It would have been Lee Farkas, Paul Allen and Jeff Cavender.

7 Q. Had you met Lee Farkas before?

8 A. Yes.

9 Q. Do you see him in the courtroom today?

10 A. Yes, I do.

11 Q. Would you please identify him by where he is sitting and what
12 he is wearing.

13 A. He is sitting in the middle seat in the bench wearing a gray
14 suit.

15 THE COURT: Any objection?

16 MR. ROGOW: None.

17 THE COURT: All right, identity is established.

18 MR. CONNOLLY: Thank you, Your Honor.

19 BY MR. CONNOLLY: (Continuing)

20 Q. Mr. Bruno, were there time lines, excuse me, were there
21 deadlines for the capital raise?

22 A. Yes. Initially we needed to complete it by March 31, 2009.

23 Q. And what did you understand, who did you understand had set
24 those deadlines?

25 A. The State of Alabama, which was the primary regulator for

J. Bruno - Direct

1939

1 Colonial Bank, had initially stated that they wanted them to raise
2 additional capital by the end of February. And then the state and
3 the FDIC gave them additional time to the end of March.

4 So, our drop dead date was that March 31 to raise the
5 capital.

6 Q. What did you understand had to be done by March 31?

7 A. Well, technically Alabama and the FDIC wanted them to
8 actually raise the capital. And we felt it would be virtually
9 impossible to actually have the capital completed, so what we
10 wanted to do was to have a signed agreement for the capital raise.

11 Q. And was that what was known as the stock purchase agreement?

12 A. Yes.

13 Q. Now, you said that you thought that raising all the capital
14 might be impossible. Was that the full 300 million?

15 A. Yes. In that time frame it would have just been virtually
16 impossible, very, very difficult to have the capital completely
17 raised by March 31.

18 Q. Given those difficulties, was something done to make a good
19 faith showing with respect to money being raised?

20 A. Yes. We entered into, Taylor Bean entered into a definitive
21 agreement, the stock purchase agreement, with Colonial showing
22 good faith effort that they were going to raise the capital.

23 Q. What about with respect to any money, was there any money
24 that was being required to be deposited by that deadline?

25 A. Yes. In order to show good faith that the purchasers were

J. Bruno - Direct

1940

1 committed, they were required to deposit 10 percent of their
2 commitment amount into an escrow account.

3 Q. And did that also have to be done by March 31?

4 A. Yes.

5 Q. Mr. Bruno, was everyone who worked on this project aware of
6 that March 31 deadline?

7 A. Yes.

8 Q. Was the defendant aware of it?

9 A. Yes.

10 Q. Now, were there different sort of buckets to the 300 million
11 capital raise?

12 A. The understanding always was that Taylor Bean would put in
13 \$150 million; two private equity funds would put in \$50 million
14 each; and then another group that we called the friends and
15 family, which was really companies that did business with Taylor
16 Bean and/or Colonial, they would put in that last 50 million.

17 Q. With respect to the two \$50 million private equity investors,
18 who was tasked or responsible for finding and locating them?

19 A. That would have been Lee and Paul.

20 Q. And Paul is Paul Allen?

21 A. Paul Allen.

22 Q. How involved was the defendant in this transaction?

23 A. Very involved.

24 Q. Would you give the jury a sense for how often you would talk
25 to the defendant?

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1941

1 A. Daily. We would have nightly phone calls at 5 o'clock with
2 the group that was involved in the project to go over any number
3 of issues.

4 Q. Would that include updates on the efforts to find the private
5 equity investors?

6 A. Yes.

7 Q. Mr. Bruno, let me show you what's in evidence as Government's
8 Exhibit 18-49.

9 A. Thank you.

10 Q. Do you recognize that e-mail?

11 A. Yes.

12 Q. You send an e-mail to somebody by the name of M. Friedman.
13 Who is that?

14 A. That is Emanuel Friedman.

15 Q. And you copy the defendant, Paul Allen and someone name Doug
16 Faucette.

17 A. Doug is my partner at the firm.

18 Q. And there is an attachment there, Project Patriot form of
19 escrow agreement. What were you sending to Mr. Friedman?

20 A. It was the escrow agreement that was required to be completed
21 and submitted along with 10 percent of the moneys, of the
22 commitment to the escrow agent.

23 Q. And what was the general purpose of an escrow agreement? If
24 you could explain for the jury what an escrow agreement is.

25 A. The escrow agreement was the agreement typically between the

J. Bruno - Direct

1942

1 escrow agent and the investor where the escrow agent would hold
2 that money until the transaction was either terminated, in which
3 case it would be returned; or the transaction was completed, in
4 which case it would be used to fund the purchase of the shares.

5 Q. At whose request did you send out this e-mail?

6 A. It was Lee Farkas.

7 Q. Had you sent other escrow agreements to other investors
8 during this time?

9 A. Yes.

10 Q. And how-- Did you send them all at once, or did you send
11 them as the investors came on board?

12 A. As we were told to send an escrow agreement out to a party,
13 then I would send them.

14 Q. And on Monday, March 30, as you are approaching the March 31
15 deadline, would you have sent this shortly after learning they are
16 an investor?

17 A. Yes.

18 Q. Mr. Bruno, let me ask you to look at what is in evidence as
19 Government's Exhibit 18-26A, as in apple.

20 A. Okay.

21 Q. Do you recognize what this is?

22 A. Yes. This is the stock purchase agreement.

23 Q. Now, is this just an excerpt of that?

24 A. Yes.

25 Q. Mr. Bruno, the full one is in evidence, so if at any point

J. Bruno - Direct

1943

1 you want to see that, please just let me know. Okay?

2 A. Okay.

3 Q. What's the date of this stock purchase agreement?

4 A. March 31, 2009.

5 Q. Who is it between?

6 A. It is between the Colonial BancGroup and the purchasers
7 listed on the signature pages.

8 Q. Is this a draft agreement?

9 A. No.

10 Q. Is this an executed agreement?

11 A. Yes.

12 Q. Who executes this agreement on behalf of Taylor Bean &
13 Whitaker?

14 A. Lee Farkas.

15 Q. Now, was there an attachment to this executed stock purchase
16 agreement?

17 A. Yes.

18 Q. What is the attachment?

19 A. It is the Schedule 1, and it is the list of investors.

20 Q. Now, at the time this investor list is attached to this
21 executed agreement, are these final investors? What is your
22 understanding?

23 A. It is my understanding that these are the people that are
24 going to be putting the \$300 million in.

25 Q. Were these investors in way at that point in time place

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1944

1 holders?

2 A. No.

3 Q. Did the defendant ever tell you that he viewed these
4 investors a place holders?

5 A. No.

6 Q. Did you ever advise the defendant that they could just be
7 place holders?

8 A. No.

9 Q. How, let's look at the last page, the bottom three entries on
10 this attached list. I know it is a little difficult to read.

11 A. I have got it.

12 Q. Could you read the one that is three up from the bottom?

13 A. EJF Capital, LLC.

14 Q. Who is the principal for that?

15 A. That would be Emanuel Friedman.

16 Q. What does it indicate is the amount of Mr. Friedman's
17 commitment?

18 A. \$50 million.

19 Q. Does it indicate whether there was an escrow deposit made?

20 A. It says 5 million.

21 Q. What about the next entry?

22 A. South Towne Capital, LLC.

23 Q. And who was the principal listed for that?

24 A. Mr. Jesse Elhai.

25 Q. What was the amount that South Towne Capital was supposedly

J. Bruno - Direct

1945

1 committed to investing?

2 A. \$50 million.

3 Q. What was the amount of the escrow deposit?

4 A. 5 million.

5 Q. And then finally what's the amount listed for Taylor Bean &
6 Whitaker?

7 A. \$148,500,000.

8 Q. Mr. Bruno, whose responsibility was it to come up with these
9 names of investors?

10 A. Well, the two names were, the two private equities would have
11 been Lee and Paul Allen.

12 Q. Did the signed stock, executed stock purchase agreement meet
13 the March 31 deadline that you had discussed?

14 A. Yes.

15 Q. If there had not been a signed and executed stock purchase
16 agreement, what was the worry that might happen?

17 A. We were concerned that the State of Alabama and the FDIC
18 would have come in and seized Colonial Bank.

19 Q. What would the ramifications have been for Taylor Bean &
20 Whitaker if that occurred?

21 A. Because they did a lot of business with Colonial, you know,
22 back and forth, that if Colonial would have been placed in
23 receivership, it would have been very harmful to Taylor Bean's
24 business.

25 Q. Now, at the time that this stock purchase agreement is

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1946

1 executed and this investor list is attached, where did you
2 understand that those escrow deposits actually had come from?

3 A. From the investors.

4 Q. And who did you understand that from?

5 A. I understood it from Lee.

6 Q. Let me ask you to look at what is in evidence as Government's
7 Exhibit 15-1.

8 A. Okay.

9 Q. Do you recognize what that is, Mr. Bruno?

10 A. Yes.

11 Q. What is it?

12 A. It is a current report on Form 8-K that was filed with the
13 Securities and Exchange Commission by Colonial BancGroup.

14 Q. What is attached to that 8-K filing?

15 A. It is the press release as well as the executed agreement.

16 Q. What's the date of the press release?

17 A. I believe it was March 31.

18 Q. When would these press releases typically be issued?

19 A. After the close of business.

20 Q. What would the 8-Ks typically be filed attaching those?

21 A. As soon thereafter, the next day, April 1.

22 Q. So, this 8-K is filed the next morning?

23 A. Yes.

24 Q. And that's typical practice?

25 A. Yes.

J. Bruno - Direct

1947

1 Q. And what is press release telling the world?

2 A. That Taylor Bean and Colonial have executed an agreement to
3 invest \$300 million into Colonial.

4 Q. What kind of agreement have they executed?

5 A. Definitive agreement.

6 Q. What does definitive mean, Mr. Bruno?

7 A. That it has been executed and it is a final agreement.

8 Q. Let me show you what has been marked as Government's Exhibit,
9 and this maybe in evidence, Your Honor, I just don't recall,
10 18-56.

11 MR. ROGOW: If it is in evidence, that's fine. If it is
12 not, I have no objection.

13 THE COURT: Just to be careful and safe, we will say
14 it's in at this time.

15 (Government's Exhibit No. 18-56 was received in evidence)

16 MR. CONNOLLY: Thank you, Your Honor.

17 BY MR. CONNOLLY: (Continuing)

18 Q. Mr. Bruno, this is an e-mail from Cathie Kissick. Did you
19 know who Ms. Kissick was?

20 A. Yes, she was an officer at Colonial Bank who ran their
21 Mortgage Warehouse Division.

22 Q. She is sending it to the defendant, to you and to William
23 Leaming. Did you know who Mr. Leaming was?

24 A. Yes, he was the CEO at Platinum Bank.

25 Q. And this is an e-mail that comes on Wednesday, April 1, about

J. Bruno - Direct

1948

1 6 p.m. in the evening?

2 A. Correct.

3 Q. So, this is after the stock purchase agreement has been
4 executed?

5 A. That's correct.

6 Q. And it's after the press release has been issued?

7 A. That's correct.

8 Q. Let me ask you to look at the attachment to this exhibit, the
9 first page. Specifically I'd ask you to look about halfway down
10 and focus on the entry for Emanuel Friedman.

11 First, Mr. Bruno, what is this spreadsheet representing?
12 What information is on here in general.

13 A. One second, I am trying to find Manny Friedman.

14 MR. ROGOW: There is not a spreadsheet attached to ours.

15 THE COURT: Is that the wrong exhibit number?

16 MR. CONNOLLY: No, Your Honor.

17 MR. ROGOW: Okay.

18 BY MR. CONNOLLY: (Continuing)

19 Q. Sorry, Mr. Bruno, what information is this spreadsheet
20 representing? What does it relate to?

21 A. This spreadsheet?

22 Q. Yes, sir.

23 A. Okay. I just want to make sure I have the right thing. This
24 is the list of investors, and it looks like the wire amounts.

25 Q. Does that represent the escrow deposits?

J. Bruno - Direct

1949

1 A. Yes.

2 Q. Now, upon getting this e-mail about 6 p.m. on April 1, does
3 the defendant tell you at any point in time that Manny Friedman
4 isn't an investor?

5 A. No.

6 Q. Does he tell you at any point in time that South Towne
7 Capital isn't an investor?

8 A. No.

9 Q. Look at the entry for Emanuel Friedman. Where does it
10 indicate that the money, the escrow deposit money came from?

11 A. It says wire from LBNA as collateral agent.

12 Q. Do you know what that relates to?

13 A. No.

14 Q. Mr. Bruno, at any point in time did you have an understanding
15 that the money for Emanuel Friedman was put in from Ocala Funding?

16 A. No.

17 Q. Would that have been a problem?

18 A. Yes.

19 Q. Why was that?

20 A. Because Ocala Funding was an affiliate of Taylor Bean.

21 Q. Was the money being put in on behalf of these investors
22 supposed to be put in by someone else?

23 A. It was supposed to be put in by the investors.

24 Q. And with respect to South Towne Capital, where does it
25 indicate that money came from?

J. Bruno - Direct

1950

1 A. Wire from LBNA as collateral agent.

2 Q. Again, at the time of this, Mr. Bruno, did you have any
3 understanding that the money, the escrow deposit for South Towne
4 Capital had come from Ocala Funding?

5 A. No.

6 Q. Just in general terms, did you know what Ocala Funding was?

7 A. I understood it to be an affiliate that would--

8 Q. An affiliate of TBW?

9 A. Of Taylor Bean, yes.

10 Q. Was there any discussion as you are working through this
11 capital raise that Ocala Funding itself would somehow be an
12 investor in the capital raise?

13 A. No.

14 Q. If you look, three from the bottom, did you have any
15 understanding that the money for TBW's escrow deposit came from
16 Ocala Funding?

17 A. No.

18 Q. Let me show you what has been marked as Government's
19 Exhibit 18-62.

20 THE COURT: Any objection?

21 MR. ROGOW: No objection.

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

23 (Government's Exhibit No. 18-62 was received in evidence)

24 A. Okay.

25 BY MR. CONNOLLY: (Continuing)

J. Bruno - Direct

1951

1 Q. Mr. Bruno, this is an e-mail exchange between you and the
2 defendant. And on the initial one Paul Allen is there as well.
3 So, let's focus on the bottom one first.

4 You send this to the defendant and Paul Allen on April
5 2. Just read the first two sentences of your e-mail to them.

6 A. We need signed escrow disagreements from TBW, South Towne and
7 EJF Capital. I have attached the escrow to this e-mail.

8 Q. At this point in time do you still believe that EJF Capital
9 and South Towne are investors in the capital raise?

10 A. Yes.

11 Q. Is that why you are still looking for the escrow agreements?

12 A. Yes.

13 Q. Let's look at the reply. Do you get a reply from someone?

14 A. Yes.

15 Q. Who replies to your e-mail?

16 A. Lee Farkas.

17 Q. What does he tell you?

18 A. He says, heck, yes, that works. We can fly into Hartsfield
19 and I will give you directions to the FBO.

20 Q. Does that relate to your question down below about meeting in
21 Atlanta on Monday?

22 A. Yes.

23 Q. At any point in time did the defendant tell at this stage
24 that, no, EJF Capital is not an investor?

25 A. No.

J. Bruno - Direct

1952

1 Q. Or that South Towne was not an investor?

2 A. No.

3 Q. And then you reply back to the defendant, sounds good?

4 A. Sounds good.

5 Q. Mr. Bruno, did you ever advise the defendant that TBW could
6 put money in on behalf of some of the alleged investors?

7 A. No.

8 Q. Did you ever advise that Ocala Funding could put money in on
9 behalf of Taylor Bean & Whitaker?

10 A. No.

11 Q. Now, as of the signing of the stock purchase agreement on
12 March 31 of 2009, did you have any understanding as to whether or
13 not South Towne Capital was related in any way to Taylor Bean &
14 Whitaker or the defendant?

15 A. Not at that time.

16 Q. Was that important information for you?

17 A. Yes.

18 Q. Please explain in general terms to the jury why.

19 A. In structuring the transaction, we needed to ensure that, at
20 that time we needed to ensure that Taylor Bean's voting control of
21 Colonial Bank was less than 25 percent.

22 So, if South Towne was an affiliate of Taylor Bean and
23 their ownership would be added to Taylor Bean's, then they would,
24 their voting control would be more than the 25 percent that we
25 were trying to keep below.

J. Bruno - Direct

1953

1 Q. And that would have created problems for you?

2 A. Yes.

3 Q. And did the people you work with, including the defendant,
4 understand that was an important issue?

5 A. Yes.

6 Q. Did you eventually learn something about South Towne
7 Capital's affiliation?

8 A. I learned later that Lee and some other people from Taylor
9 Bean were the principals at South Towne.

10 Q. Now, at some point in time, moving forward in April of 2009,
11 did there become some change to the actual investors?

12 A. Yes.

13 Q. And explain how that came about.

14 A. My, one of my roles was again to make sure that the
15 transaction was structured in a way that would address an issue
16 that came up, which was called Regulation W. And Regulation W
17 restricts the amount of transactions between a bank and its
18 affiliate. In this case it would be the holding company.

19 So, in order to comply with Regulation W, we wanted to
20 keep their ownership below 25 percent because of some research
21 that I had done which had found an opinion by the Government that
22 said, if you are below 25 percent, then you are not an affiliate.

23 As we were continuing to talk to the Government, the
24 Office of Thrift Supervision and the Federal Reserve, we learned
25 that they weren't going to follow that opinion anymore. And that,

J. Bruno - Direct

1954

1 therefore, we needed to find a different way to comply with
2 Regulation W, which we did. But at that point it didn't matter
3 that Taylor Bean's ownership was less than 25 percent.

4 So, at that point--

5 Q. What happened at that point?

6 A. Well, at that point then Taylor Bean said, well, we'll just
7 invest \$200 million and it can be all voting stock and it can be
8 more than 25 percent and at that point, you know, it didn't
9 matter.

10 Q. Now, who from Taylor Bean said this?

11 A. It would have been Lee.

12 Q. And what did he say about the fact that now that Taylor Bean
13 & Whitaker could be a larger investor, with respect to the private
14 equity investor?

15 A. That we didn't need the private equity investors.

16 Q. Up until that point in time did you still believe that the
17 private equity investors, EJP and South Towne, had in fact agreed
18 to be investors in this?

19 A. Yes.

20 Q. And so, going forward at that point in time, did you begin
21 working on a structure that did not include those private equity
22 investors?

23 A. Yes.

24 Q. And that was at the suggestion of the defendant?

25 A. Well, at the point that we came up with a structure that

J. Bruno - Cross

1955

1 didn't require Taylor Bean to be less than 25 percent, and I was
2 told, we won't use the private equity investors, we will just put
3 in 200 million ourselves, then we created a new structure.

4 Q. Did you call up Manny Friedman from EJF Capital and say, bad
5 news, Mr. Friedman, you are out?

6 A. No.

7 Q. Did you call him up and say, I have got \$5 million to give
8 back to you?

9 A. No.

10 MR. CONNOLLY: The Court's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 MR. CONNOLLY: No further questions.

13 THE COURT: All right, cross.

14 CROSS-EXAMINATION

15 BY MR. ROGOW:

16 Q. Mr. Bruno.

17 A. Yes.

18 Q. I am Bruce Rogow, and I represent Lee Farkas.

19 Was this a hectic time trying to get this March 31
20 deadline met?

21 A. Yes.

22 Q. And why was it hectic?

23 A. Well, we were trying to, from my standpoint we were trying to
24 negotiate this stock purchase agreement with Colonial and get
25 everything agreed and signed up by March 31.

J. Bruno - Cross

1956

1 Q. Were your contacts leading up to that deadline mostly with
2 Paul Allen on that last day, March 31?

3 A. I can't recall, you know, who I would have had more contacts
4 with on that day or not.

5 Q. Do you recall whether or not on March 31 you received an
6 e-mail from Paul Allen instructing you to add EJF to the list,
7 meaning EJF, Manny Friedman?

8 A. No, I don't know.

9 Q. Let me show you something then perhaps to refresh your
10 recollection.

11 Do you recall being interviewed by the Troubled Asset
12 Relief Program folks back in February 2010?

13 A. Yes.

14 Q. I marked it up, but I put an arrow to the sentence, Bruno
15 believes.

16 A. Bruno believes--

17 MR. CONNOLLY: Your Honor--

18 THE COURT: I am sorry, don't read it. Just look at it
19 to see if it refreshes your memory. In other words, reading that,
20 do you now remember a different response to that question?

21 THE WITNESS: Okay. Okay.

22 BY MR. ROGOW: (Continuing)

23 Q. Does that refresh your recollection?

24 A. Yes.

25 Q. And does it refresh your recollection that it was Mr. Allen

J. Bruno - Cross

1957

1 that was giving you that direction with regard to EJF?

2 A. Yes.

3 Q. I can take that back. And, of course, March 31 is that
4 deadline date?

5 A. Correct.

6 Q. You don't know what Mr. Allen told Mr. Farkas, do you?

7 A. No.

8 Q. With regard to EJF?

9 A. No.

10 Q. The stock purchase agreement that was provided dated
11 March 31, 2009, that is Government's Exhibit 18-26, would you
12 please give that to Mr. Bruno.

13 A. I have it right here.

14 Q. Good. I think what the Government showed you before in
15 18-26A was an excerpt.

16 A. Right.

17 Q. If you will take a look at that full stock purchase
18 agreement, and look at the cover page. Does it say stock purchase
19 agreement by and among the Colonial BancGroup, Inc. and the
20 purchasers listed on the signature pages hereto?

21 A. Yes.

22 Q. Are there purchasers listed on the signature pages thereto?

23 A. It would have been Taylor Bean.

24 Q. But that was only one purchaser?

25 A. I believe somewhere in here it said Taylor Bean on behalf of,

J. Bruno - Cross

1958

1 that they were signing on behalf of the other purchasers.

2 Q. Well, let me show you what has been, if you would, please, Mr
3 Wood, Defendant's Exhibit 655, which is the second amendment to
4 the stock purchase agreement.

5 THE COURT: I am not sure if that is in yet or not. But
6 is there any objection cause?

7 MR. ROGOW: I think it is in, Your Honor.

8 THE COURT: I think it is in.

9 MR. CONNOLLY: There is no objection, Your Honor.

10 THE COURT: All right.

11 BY MR. ROGOW: (Continuing)

12 Q. Do you see that one?

13 A. Yes.

14 Q. Let me ask you a couple questions about that. First of all,
15 it says the second amendment to the stock purchase agreement.

16 A. Correct.

17 Q. Was there a first amendment to the stock purchase agreement?

18 A. Yes.

19 Q. And what's the date of the second amendment?

20 A. May 22.

21 Q. 2009?

22 A. 2009.

23 Q. Do you recall the date of the first amendment?

24 A. No. April 30, I believe.

25 Q. Was there some understanding with regard to the March 31

J. Bruno - Cross

1959

1 agreement that really you would have until April 30 to try to get
2 everything in order?

3 A. There were certain due diligence outs for investors.

4 Q. And that was part of the March 31 agreement?

5 A. That's correct.

6 Q. That left a gate open for investors. And so, April 30 would
7 then have been the date for the First Amendment to the stock
8 purchase agreement?

9 A. Well, no, there was a first amendment. Oh, April 30,
10 correct.

11 Q. Yes.

12 A. The understanding being that if the investors could conduct
13 additional due diligence because there wasn't enough time for them
14 to complete their due diligence beforehand, and if there was
15 something in the due diligence process that they were not aware of
16 that they became aware of, then they would be able to get out.

17 Q. So, no one reading the March 31 agreement that is 18-26 could
18 come to the conclusion that this was all tied up, that this deal
19 was all settled and all taken care of?

20 MR. CONNOLLY: Objection, calls for speculation as to
21 what anyone might conclude.

22 MR. ROGOW: Well, just from the agreement.

23 THE COURT: Sustain the objection.

24 BY MR. ROGOW: (Continuing)

25 Q. Based on the agreement, it left the door open for there to be

J. Bruno - Cross

1960

1 another, or an amendment, correct, to the stock purchase
2 agreement?

3 A. You can always amend stock purchase agreements, that is
4 fairly common.

5 Q. And indeed it was?

6 A. Right.

7 Q. And then there was a second amendment?

8 A. That's correct.

9 Q. On May 22, 2009. Now, Defendant's Exhibit 655, if you would
10 look at that, please.

11 A. Okay.

12 Q. Does that one contain signature pages for all the parties to
13 the agreement?

14 A. That has a signature page by Colonial and by Taylor Bean.

15 Q. Aren't there other signature pages? Isn't Paul Allen's
16 signature on that and the other people who were named?

17 A. Oh, there is the joinders, yes, correct.

18 Q. So, if you go from the back, you see, I am looking at the
19 back page, which makes it easier to do, the very last page, you
20 see joint purchaser, AMA Advisors?

21 A. Right.

22 Q. And then you proceed on and it goes through each of the
23 purchasers?

24 A. That's correct.

25 Q. But the March 31 one did not have all of those signatures on

J. Bruno - Cross

1961

1 it?

2 A. That's correct.

3 Q. Didn't have any signature but Taylor Bean's signature on it?

4 A. That's correct.

5 Q. So, when this second amendment to the stock purchase
6 agreement was enacted, what role did you have in putting this
7 together?

8 A. In putting this second, the amendment to the purchase
9 agreement.

10 Q. The second amendment.

11 A. Yeah, I would have been involved in, I wasn't the primary
12 draftsman, but I would have been involved in the review of that
13 document.

14 Q. And who was or who were the draftspeople if there were more
15 than one?

16 A. It would have been probably Phil Cooper.

17 Q. Phil Cooper is in your office, he is a Locke Lord lawyer
18 also?

19 A. No longer, but he was at the time.

20 Q. And Mr. Cooper was involved too in the effort to try to get
21 the investor list identified?

22 A. Well, I don't know what you mean by involved.

23 Q. Well, you said that you were working with Mr. Farkas and you
24 were working with Mr. Allen with regard to this?

25 A. Right.

J. Bruno - Cross

1962

1 Q. And then on March 31 you saw the communication from Mr. Allen
2 to you with regard to EJF?

3 A. That's correct.

4 Q. Okay. And so, my question is, was Mr. Cooper also privy to
5 these things that were going on?

6 A. Oh, yes.

7 Q. In fact, didn't he in one of the exhibits the Government
8 showed you, wasn't he the one that responded to one of the
9 inquiries that was made by the FDIC?

10 A. What do you mean? I am not following you.

11 Q. Well, there was an exhibit in which a question was asked
12 about the investors and Mr. Cooper was the one who responded.

13 A. Yes, yes.

14 Q. Right?

15 A. Yes.

16 Q. When I asked you earlier whether this was hectic, tell me
17 what the hectic nature of it was?

18 A. Again, this was a large document with a number of pieces that
19 needed to be negotiated and approved by both parties. And we
20 needed to get it done by that March 31 date. So, there was just a
21 lot to be done.

22 Q. Was it your understanding that if it didn't get done by the
23 March 31 date, that everything was over, that nothing could be
24 amended?

25 A. No. I mean, the understanding was that if it wasn't

J. Bruno - Cross

1963

1 completed by the March 31 date, then there was a possibility that
2 Colonial would be put in receivership.

3 Q. But that didn't happen, did it, on that date?

4 A. No. Again, our thinking was, was that if we could show the
5 Government that we had an executed agreement with money in escrow,
6 that it would show our good faith commitment and that they would
7 give us time to raise the money and rescue Colonial.

8 Q. And indeed you continued to show the Government that with the
9 May 22 second amended purchase?

10 A. That's correct.

11 Q. The issue with regard to South Towne, were you the one that
12 was providing advice with regard to South Towne as to whether or
13 not they could be an investor?

14 A. When I found out that they were affiliated with principals of
15 Taylor Bean, then it raised a red flag with me, and I said this is
16 a problem because their ownership would be added with Taylor
17 Bean's, and it would create a problem for the limits that we were
18 trying to keep for Taylor Bean.

19 Q. Now, that was a sophisticated and subtle legal point that you
20 had to track down about whether they could do that, correct?

21 A. Correct.

22 Q. Was that Regulation W? I have forgotten.

23 A. That's correct.

24 Q. Where was Regulation W?

25 A. It's a regulation that's issued by the Federal Reserve Board.

J. Bruno - Cross

1964

1 Q. So, where do you find something like Regulation W?

2 A. It's pretty well known.

3 Q. Among?

4 A. Among banking lawyers.

5 Q. And you are a banking lawyer?

6 A. That's correct.

7 Q. And so, you were aware of it and then you realized that it
8 could be an issue?

9 A. That's correct.

10 Q. And then later on it was corrected because you found out that
11 the enforcers of Regulation W were not going to enforce Regulation
12 W?

13 A. No, no. What we had, what we had done was Taylor Bean had
14 hired a consulting group, Promontory, to help them work with what
15 we were calling a migration project where the operations of Taylor
16 Bean would be migrated from Taylor Bean to Platinum. And in doing
17 that, instead of Taylor Bean transacting business with Colonial,
18 it would be Platinum Bank who would be transacting business with
19 Colonial. And there is an exemption under Regulation W for sister
20 banks.

21 So, if we could fall under that exemption under Reg W,
22 then we didn't need to worry about keeping Taylor Bean's ownership
23 under 25 percent.

24 Q. And is that something that you came upon and finally
25 discovered?

J. Bruno - Redirect

1965

1 A. The exemption?

2 Q. And how to do this with regard to Platinum Bank instead of
3 TBW?

4 A. That was really with Promontory.

5 Q. You say Promontory?

6 A. Promontory was the consultant that was hired by TBW to help
7 them with this migration project.

8 Q. And you agreed then that it could work that way under
9 Regulation W?

10 A. Yes.

11 Q. And then you gave your final approval to the 200 million that
12 TBW could put in?

13 A. At that point, if we could qualify under that exemption under
14 Regulation W, then we were no longer limited by the 25 percent,
15 that's correct.

16 Q. And TBW could put in \$200 million in the investment?

17 A. That's correct.

18 MR. ROGOW: Nothing further, Your Honor.

19 THE COURT: Any redirect? I know we are a minute or two
20 late, but I want to finish this witness so he doesn't have to come
21 back tomorrow.

22 THE WITNESS: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. CONNOLLY:

25 Q. Mr. Bruno, with respect to the initial stock purchase

J. Bruno - Recross

1966

1 agreement, were there discussions about having Taylor Bean &
2 Whitaker sign on behalf of all the investors?

3 A. Yes.

4 Q. Was that your understanding of what that signature of the
5 defendant meant?

6 A. Yes.

7 Q. Did the existence of amended stock purchase agreements down
8 the road in any way affect the final executed nature of the
9 initial one?

10 A. No.

11 Q. Or the fact that it was reported publicly?

12 A. No.

13 Q. Or the fact that it was in an 8-K filing by Colonial Bank?

14 A. No.

15 MR. CONNOLLY: No further questions, Your Honor.

16 THE COURT: Any recross?

17 RE-CROSS-EXAMINATION

18 BY MR. ROGOW:

19 Q. Mr. Farkas and Taylor Bean & Whitaker did not file that 8-K,
20 did they?

21 A. That's correct.

22 MR. ROGOW: Nothing further.

23 THE COURT: All right. Then I assume-- Does either
24 side expect to call Mr. Bruno again?

25 MR. CONNOLLY: No, Your Honor.

1 MR. ROGOW: No, Your Honor.

2 THE COURT: All right. Then, sir, you are excused as a
3 witness. That means if you want to come back tomorrow and watch
4 the trial, you may. But you are not to discuss your testimony or
5 anything you hear in court with any witness who has not yet
6 testified.

7 You are free to go. Thank you.

8 NOTE: The witness stood down.

9 THE COURT: All right, ladies and gentlemen, we are
10 finished for today. And I can tell you we have moved very, very
11 quickly through the Government's witness list.

12 I would think you are resting tomorrow?

13 MR. STOKES: Your Honor, if we may speak before the
14 Court breaks.

15 THE COURT: Yes. All right. So, that means that we are
16 making progress. And I just want you to know that.

17 At the present time we are still planning to hold court
18 on Friday. Let me just tell you so you can make plans, all right,
19 for this Friday. We would not start until 10:30 because I have
20 other matters that I can't reschedule. And I will get you out of
21 here no later than 5 o'clock. All right. We are pretty good
22 about keeping to schedules. So, I don't want to overwork you this
23 week.

24 But again, I appreciate how diligent you have been about
25 paying attention. You are an amazing jury, I've not seen anybody

1 nodding off. It is a fascinating case. And we have kept you cold
2 too, I know.

3 Just please keep remembering my cautions about, again,
4 not conducting any investigation. Don't discuss the case. Make
5 sure if anything happens that you think I need to know about such
6 as somebody trying to talk to you about the case, that you notify
7 Mr Wood accordingly.

8 And we will see you back here promptly at 9:30 tomorrow
9 morning. We are going to stay in session. Thank you.

10 NOTE: At this point the jury leaves the courtroom;
11 whereupon the case continues as follows:

12 JURY OUT

13 THE COURT: All right. Now, for planning purposes
14 tomorrow, who is going to be the spokesperson?

15 MR. STOKES: Your Honor, I believe we are just going to
16 have one additional witness, who is Ray Peroutka.

17 THE COURT: All right. Sort of the summary numbers
18 person.

19 MR. STOKES: That's right, Your Honor.

20 THE COURT: All right.

21 MR. STOKES: And-- I am sorry.

22 THE COURT: So, he is the last Government witness?

23 MR. STOKES: That's right, Your Honor.

24 THE COURT: All right. Then the defense needs to be
25 ready to move tomorrow. Have any witnesses you are planning to

1 call on deck because we are not going to waste the jury's time.

2 All right.

3 MR. ROGOW: I understand. We have a problem because--

4 THE COURT: Well, come up to the lectern, Mr. Rogow.

5 MR. ROGOW: We have a problem because some of the
6 witnesses that we expected to come in we are expecting to come in
7 either on Friday or on Monday.

8 So, I know the Court needs to move this case and wants
9 to move this case, and we are going to have to consult tonight and
10 figure out exactly what we are going to do.

11 THE COURT: I warned you earlier this week that we were
12 moving. And you have Mr. Cummings, as local counsel, who knows
13 the Court's schedule.

14 I am not going to take the jury's time up unnecessarily.
15 We have got a bunch of citizens, 14 folks who have been here
16 diligently on time. And I have put you on-- That's why we have
17 had these little after-court sessions so that there is no
18 surprises. You need to have your witnesses here.

19 MR. ROGOW: I understand. And Mr. Cummings certainly
20 has advised us.

21 We have the pending issue with the Government's motion
22 with regard to our expert.

23 THE COURT: Which we are going to address right now.
24 But I just wanted to get this other matter-- So, I mean, again,
25 make sure you have got your witnesses lined up for tomorrow. I

1 don't know how long-- And I hope not very long, frankly, this
2 fellow from Invotex-- I am not sure the numbers make all that
3 much difference in this case. I am going to look at what your
4 proposed jury instructions are, but, you know, in this case the
5 numbers are so large.

6 How long do you think he is going to take?

7 MR. STOKES: Your Honor, I anticipate a couple of hours.
8 And if the Court would like, I think we could, I could certainly
9 pass up to the Court the slides, the exhibits right now, the
10 defense has them, I could provide the Court, and we could, just so
11 the Court has an idea of what we are talking about tomorrow
12 because I understand that the Court did have some, expressed some
13 concern with the testimony about the hole.

14 We certainly show the Court what we are trying to do,
15 what the intended testimony is at this point if you would like to
16 see.

17 THE COURT: Is he your expert or your summary witness?

18 MR. STOKES: He is just a summary witness, Your Honor.

19 THE COURT: I have read the defendant's expert report
20 which appears to rebut his, and I suspect he is pulling the
21 evidence together count by count.

22 Is that what he is doing?

23 MR. STOKES: Yes, he is doing a couple of things, Your
24 Honor. What he has done is he has summarized transfers, sweeping
25 transfers, as well as Plan B, as well as AOT transfers. He has

1 looked at what was on AOT at various points in time.

2 So, in connection with Count 14, which is the securities
3 fraud count related to 12/31/2008 and the 10-Q which was filed on
4 3/31/09, as well as what was on AOT as of August 3, 2009. He has
5 looked at Ocala Funding and analyzed what was in fact on Ocala
6 Funding. And then he has gone through each of the counts.

7 THE COURT: All right. Now, that's what I assume from a
8 summary witness. All right. Well, that may take a bit of time.

9 MR. STOKES: That's right. I don't know, of course, how
10 long the cross-examination would take, but we have a number of
11 slides. And I think once we get into the counts, perhaps the
12 first one will take longer than the others, but once we, some of
13 the slides are very similar, so once we have gone through a slide
14 with one count or one period of time, I think the others will move
15 more quickly.

16 THE COURT: All right.

17 MR. STOKES: The reality is I think it will take a
18 little bit of time to get through them.

19 THE COURT: Well, you have done well, you have moved the
20 case, and certainly you will be finishing up tomorrow?

21 MR. STOKES: Unquestionably from the Government's
22 perspective.

23 THE COURT: All right. Then unless there are any other
24 housekeeping matters-- Well there are a couple because the case
25 is moving. The Government submitted a proposed verdict form. I

1 haven't had or seen any objection from defense counsel. But if
2 there is an objection to that form, you need to get that
3 registered with us first thing tomorrow morning so that we can
4 take a look at it.

5 Okay. Now, the Government's motion to exclude--

6 MR. STOKES: Your Honor, if I may, just one last
7 housekeeping matter. And I understand that defense may not have--
8 There is an issue with whether the defense are going to have their
9 witnesses for tomorrow.

10 But you had indicated that the defense was, should
11 provide the Government with at least an idea of how many witnesses
12 they anticipated having. And since we are likely to start
13 tomorrow, we would certainly like to have a sense of what sort of
14 defense case we are expecting if that's, if the Court wishes to
15 inquire.

16 THE COURT: I am going to let them wait until tomorrow
17 morning. So, just in case there has been any change of plans.
18 But there needs to be some communication along those lines.

19 So, I will leave it at that at this point. Okay.

20 MR. STOKES: Your Honor, should we anticipate, if there
21 is no defense case, it sounds like there may be, but if there is
22 no defense case, that tomorrow we will have a jury charging
23 conference? Or would that still be on Friday?

24 THE COURT: No, we will do that Friday. If the evidence
25 for the whole case finishes tomorrow, I am going to give the jury

1 Friday off, all right. And then we will go ahead, we will use
2 Friday, it may be a little later than 10:30, to do the charging
3 conference and make sure everything is set for Monday.

4 MR. STOKES: Okay. Thank you, Your Honor.

5 THE COURT: All right. Now, I have had a chance, and I
6 assume somebody on the Government team had a chance to look at the
7 opposition to your motion to exclude certain expert testimony.

8 And again, the only expert we are talking about here is
9 Ms. Fortune, correct?

10 MR. ROGOW: Correct.

11 THE COURT: All right. And as I thought I had said
12 yesterday, as I thought I understand the Government's motion, it
13 quotes five specific statements or conclusions from her report
14 which the Government was objecting to.

15 Are you objecting to any other aspect of the report?

16 MR. NATHANSON: No, Your Honor. To be clear, we are
17 objecting to her legal conclusions. And we believe they are,
18 based on what's in the report, they are captured by the particular
19 statements we have put in our motion.

20 But we would also object to any testimony she might
21 offer that would be in line with those legal conclusions, with the
22 understanding that her testimony may go beyond what was in the
23 report.

24 THE COURT: All right. Then let me hear, who is going
25 to respond for the defense?

1 MR. ROGOW: I am, Your Honor.

2 The cases that we brought to Your Honor's attention in
3 the motion, the two cases, one a bankruptcy case, the other a
4 Tenth Circuit case, deals with the fact that the mere fact that
5 the witness is an accountant does not preclude her from addressing
6 issues like this.

7 And I think that probably the better approach to this
8 might be if they think that a question is going to lead to
9 something objectionable, then they could object to the question as
10 calling for a legal conclusion.

11 But if we can tailor our questions so that we can
12 present her testimony, we recognize the concerns that the Court
13 has, but the mere fact that she is an accountant does not preclude
14 her from coming to some conclusions that are based on some
15 contractual or legal kinds of matters that she has looked at.

16 THE COURT: She can say, it is perfectly proper for her
17 to say, I based this number on my understanding that TBW could do
18 X, Y and Z, or that TBW was not precluded from doing X, Y and Z.
19 That is perfectly all right, that explains her understanding and
20 why she reaches the number she does.

21 But she cannot give an opinion that the document, some
22 of these contracts actually do A, B and C. All she can say is, I
23 used this understanding. It is her hypothesis. All right. She
24 can hypothecate. As can your person.

25 I don't think there is going to be a problem. And I do

1 agree that the better approach, because this is somewhat out of
2 context-- Obviously, her expert report is not going in as an
3 exhibit. Her evidence, just like your person's evidence, is
4 coming in through their testimony.

5 And so, we will handle it that way. All right.

6 MR. ROGOW: Thank you.

7 THE COURT: So, in that respect, I am denying the
8 Government's motion to exclude certain expert testimony without
9 prejudice to your ability to raise specific objections.

10 And I will obviously warn the defense that, I mean, if
11 they pose questions that are going to elicit an answer that is
12 going to get an objection sustained, then that doesn't look very
13 good for your witness. So, you want to make sure that you are
14 careful and skirt around those problems. All right.

15 MR. ROGOW: We recognize that.

16 THE COURT: All right.

17 MR. NATHANSON: All right. We have no problem with an
18 expert performing financial analysis and coming to conclusions on
19 that analysis based on assumptions.

20 THE COURT: Right.

21 MR. NATHANSON: So long as they are clearly expressed as
22 assumptions. And we can cross-examine as to the source of the
23 assumptions.

24 THE COURT: That's right, yes. That made it much even
25 clearer than what I said.

1 All right. Very good. Anything else before we recess
2 for the evening?

3 MR. ROGOW: No, ma'am.

4 THE COURT: And there is nothing going on before the
5 trial, so tomorrow you don't have to clear anything. In case I
6 forget to tell you tomorrow, however I do have court Friday
7 morning. And so, if we are still in trial on Friday, tomorrow
8 night you have to make sure you once again remove your things.

9 And Mr Wood will not be with me on Friday, we are going
10 to have a different CSO who will not know the case as well. So,
11 to the extent that there are going to be exhibits referenced on
12 Friday, you have got to be, it would be ideal to have a list of
13 those exhibits so that his replacement will not have difficulty
14 finding them.

15 All right.

16 MR. STOKES: Yes. And, Your Honor, just one last issue.
17 I just want to be sure that for the defense expert, that they have
18 provided us with all the exhibits they intend to use through their
19 expert.

20 I assume that's the case, but we haven't received
21 anything since their expert notice. And I believe their expert
22 has been continuing to do analysis since then. I just want to
23 make sure--

24 THE COURT: Those exhibits need to be in good shape,
25 especially if that comes in on Friday, so we don't have a lot of

1 confusion getting them back and forth.

2 All right, we will recess court for the day.

3 NOTE: The April 13, 2011 portion of the case concluded
4 at 5:46 p.m.

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CERTIFICATE OF THE REPORTERS

12

13

We certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

14

15

16

/s/

Anneliese J. Thomson

17

18

19

/s/

Norman B. Linnell

20

21

22

23

24

25

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

.	
UNITED STATES OF AMERICA	.	
	.	Criminal No. 1:10-cr-200
vs.	.	
	.	April 14, 2011
LEE BENTLEY FARKAS,	.	2:00 p.m.
	.	
Defendant.	.	
	.	
.	

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

VOLUME 8 (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. U.S. Department of Justice Criminal Division, Fraud Section 1400 New York Avenue, N.W. Washington, D.C. 20005
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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 2103 - 2244)

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ALSO PRESENT:

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E X H I B I T S

Government's Exhibit Nos. 1-700, 2-21, 3-18, 4-23, 5-18, 6-23, 7-19, 10-18, 11-19, 14-15, 16-9 and 20-30 were received	2126
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R.J. Peroutka, Jr. - Redirect

2106

1 NOTE: The afternoon portion of the case on April 14,
2 2011 begins in the presence of the defendant and the jury as
3 follows:

4 JURY IN

5 THE COURT: All right, Mr. Stokes, redirect.

6 RAYMOND J PEROUTKA, JR., called by counsel for the
7 United States, having previously duly affirmed, continues to
8 testify and state as follows:

9 REDIRECT EXAMINATION

10 BY MR. STOKES:

11 Q. Good afternoon again, Mr. Peroutka.

12 A. Good afternoon.

13 Q. Do you recall on cross-examination when Ms. Kuglar asked you
14 about various changes to the slides that we presented in court
15 over time?

16 A. I do.

17 Q. Were there previous drafts of these documents?

18 A. Yes.

19 Q. Did the Government come up with perfect slides on the first
20 go-round?

21 A. No.

22 Q. Did the lawyers, namely me, request numerous changes?

23 A. Yes.

24 Q. Did you get tired of my asking for changes?

25 A. Yes, sir.

R.J. Peroutka, Jr. - Redirect

2107

1 Q. And would I ask for things, changes from, for example, in
2 Government's Exhibit 1-700-- If we could bring that up, page 6.

3 Do you see in the upper left-hand corner, what's the
4 title of that slide?

5 A. Colonial Pipeline versus Freddie and Ginnie Documents at
6 August 3, 2009.

7 Q. Did it previously say U601 versus Freddie and Ginnie
8 Documents?

9 A. Yes.

10 Q. Would I make changes like, well, I don't know if the jury is
11 going to know what a U601 is?

12 MR. KUGLAR: Objection, Your Honor.

13 THE COURT: What's the objection?

14 MR. KUGLAR: Leading.

15 MR. STOKES: I will rephrase, Your Honor.

16 THE COURT: There is a lot of leading going on.

17 Sustained.

18 MR. STOKES: Sure.

19 BY MR. STOKES: (Continuing)

20 Q. Mr. Peroutka, did I change Colonial pipeline from something
21 else?

22 A. Yes.

23 Q. What did I change it from?

24 A. It previously said U601.

25 Q. Did you agree that Colonial pipeline was perhaps an easier

R.J. Peroutka, Jr. - Redirect

2108

1 term to understand?

2 A. Yes.

3 Q. And did we change with those bucket analyses, did we change
4 the labels at times?

5 A. Several times.

6 Q. And was that-- Was that in part to make the slides more
7 neutral appearing?

8 A. Yes, it was.

9 Q. And, Mr. Peroutka, defense counsel repeatedly referred to
10 these changes as mistakes. Were those mistakes in the slides?

11 A. I don't believe any of those were, no.

12 Q. Mr. Peroutka, were there times transposition of numbers,
13 wrong numbers put in the wrong place?

14 A. Yes.

15 Q. And would people edit check these documents?

16 A. Yes.

17 Q. And when those were found, would they be changed?

18 A. Yes, they were.

19 Q. And are you aware of whether or not various drafts were
20 provided to the defense in discovery?

21 A. I think there were probably a dozen drafts that were provided
22 to defense.

23 Q. Are you generally familiar with criminal discovery rules?

24 A. Generally, yes.

25 Q. Do defense need to be provided drafts, provided discovery at

R.J. Peroutka, Jr. - Redirect

2109

1 certain times?

2 MR. KUGLAR: Objection, Your Honor.

3 THE COURT: You need to be on your feet when you object
4 in this court. All right.

5 The objection will be sustained. That is not
6 appropriate.

7 BY MR. STOKES: (Continuing)

8 Q. Mr. Peroutka, counsel asked you about the term "hole." Was
9 that a term the Government asked you to use?

10 A. Yes, it was.

11 Q. Plan B, was that a term the Government asked you to use?

12 A. Yes.

13 Q. Did the Government provide you a series of assumptions in
14 connection with your analysis?

15 A. It did.

16 Q. And would you then incorporate those assumptions into your
17 analysis?

18 A. Yes.

19 Q. Do you know if that's what a summary witness does?

20 A. That's my understanding, yes.

21 Q. And then based on those assumptions, did you categorize data
22 into these various buckets?

23 A. I did, yes.

24 Q. Those buckets defined by the Government?

25 A. Yes.

R.J. Peroutka, Jr. - Redirect

2110

1 Q. But did the data support those buckets?

2 A. It did, yes.

3 Q. Now, Mr. Peroutka, counsel indicated some confusion over one
4 of the slides in 1-700 on page 5. Do you recall that? It's on
5 the screen as well.

6 A. Yes, I do.

7 Q. Were you confused as to what those lines represented?

8 A. I was not confused with regard to what those lines
9 represented--

10 Q. My question was were you confused?

11 A. Yes.

12 Q. Were you confused?

13 A. I was confused somewhat by the answer.

14 Q. My question is, were you confused by the lines on the slide?

15 A. Not by the lines on the slide.

16 Q. Thank you. Now, Mr. Peroutka, with regard to this slide,
17 what does the top line represent?

18 A. It's the value of the Colonial pipeline.

19 Q. Is that reflected on certain documents?

20 A. Yes, it is.

21 Q. What documents?

22 A. The Colonial pipeline report.

23 Q. What does the Other line represent?

24 MR. KUGLAR: Objection, Your Honor, asked and answered.

25 THE COURT: Sustained.

R.J. Peroutka, Jr. - Redirect

2111

1 MR. STOKES: Your Honor, if I may, defense counsel has
2 gone through--

3 THE COURT: No, I think the jury heard it clearly on
4 direct.

5 BY MR. STOKES: (Continuing)

6 Q. Well then, Mr. Peroutka, would you please take a look at
7 Government's Exhibit 14-15 in conjunction with this exhibit.

8 A. Yes, sir.

9 Q. Look at the second page of that document. Would you compare
10 that to the slide you were just looking at the, the fifth page.

11 A. Yes, sir.

12 Q. Do you have those before you?

13 A. I do.

14 Q. Now, counsel suggested that the hole number identified in
15 Count 14 of \$861 million is different by more than \$200 million or
16 roughly \$200 million from the hole amount identified for that same
17 date on the historical AOT hole slide.

18 Do you see that?

19 A. I do.

20 Q. Sir, if you take from Count 14 the face amounts of the loans
21 identified on AOT on that date, does that number, the
22 1,086,000,000, is that number reflected on the data that's in the
23 historical AOT chart?

24 A. It is.

25 Q. Is that the data point for that particular date on the lower

R.J. Peroutka, Jr. - Redirect

2112

1 line?

2 A. It is.

3 Q. And so, what is the difference between the pipeline amount
4 and the, what is the very specific number, that is the difference
5 between the Colonial pipeline amount identifying the pools and the
6 face value of the loans in Colonial's records?

7 A. The difference between those two numbers on Count 14 is the
8 very same \$669,705,780 that's depicted in the historic AOT hole
9 that appears on that same date in the sweeping and Plan B
10 analysis, Exhibit 1-700.

11 Q. So, the document--

12 THE COURT: You keep saying the same date. I see 12/30
13 and 12/31.

14 MR. STOKES: I will clarify, Your Honor.

15 THE COURT: All right.

16 BY MR. STOKES: (Continuing)

17 Q. Is the data for 12/30 and 12/31 virtually the same?

18 A. It's virtually the same. There is not loan level detail
19 available on the 31st of December. And so, I have used the
20 corresponding data one day prior.

21 Q. So, there is not data available for New Year's Eve?

22 A. Correct.

23 Q. And, Mr. Peroutka, so the document we have on the screen now
24 from 1-700, page 5, does that gap reflect the difference between
25 the pool amount Colonial identifies and the face value of the

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1 loans Colonial identifies in its records?

2 A. Yes.

3 Q. Now, in your bucket analysis, if we can go back to the last
4 document in Count 14, page 2 of 14-15, your \$861 million number,
5 why is that different than the face amount number?

6 A. Because it excludes the categories and the values of loans
7 associated with the categories double sold, Lee loans, paid in
8 full, charge-off, and not in servicing.

9 Q. So, did you remove additional loans from the collateral
10 value?

11 A. Yes.

12 Q. And whether you use the number that you derived after
13 excluding loans or you use the face amount of the loans assigned
14 to those pools, is there still a hole?

15 A. Yes.

16 Q. Now, Mr. Peroutka, you testified that members of your team
17 met periodically with certain individuals, do you recall that?

18 A. Yes.

19 Q. I believe you mentioned Teresa Kelly and Mike Wawrzyniak?

20 A. Yes.

21 Q. Did members of your team ever meet with a witness in this
22 case without the Government prosecutors and agents being present?

23 A. No.

24 Q. And who would direct whether your people could meet with any
25 witness in this case?

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1 A. You would.

2 Q. In other words, the Government would?

3 A. Yes.

4 Q. And Mr. Peroutka, did your people meet with anybody from the
5 FDIC or Navigant without the Government directing those contacts?

6 A. No.

7 Q. Mr. Peroutka, would you describe those contacts as frequent
8 or very limited?

9 A. Very limited.

10 Q. Mr. Peroutka, there was some question with regard to Ginnie
11 Mae about the loans that were identified, if we can turn to
12 Count 10, 10-18, page 2.

13 Do you recall some discussion as to a term you used
14 whether Ginnie actually purchased loans?

15 A. I do.

16 Q. Do you recall that you said as a practical matter you
17 considered it a purchase?

18 A. Yes.

19 Q. Let's take practicality out of it. As a technical matter,
20 who owns the loans?

21 The loans, who owns the loans? Is it--

22 A. You were going to say?

23 THE COURT: No, go ahead, that was a leading question.

24 Q. Who owns the loans?

25 A. I believe the purchaser of the loans--

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1 Q. If I can ask my question, who owns the loans?

2 A. Ginnie owns the loans.

3 Q. Thank you. Is that technically a purchase? In other words,
4 is it a more complicated transaction than calling it a purchase?

5 A. It is a securitization, but it is in effect a purchase.

6 Q. At the end, that first pool on June 16, 2009, does Ginnie
7 have the right, title and interest to those loans?

8 A. Yes.

9 Q. Is that what you mean by ownership?

10 A. Yes.

11 Q. Mr. Peroutka, counsel asked you about some paid-in-full loans
12 in your bucket analysis on, sorry, page 6 of 10-18.

13 Do you have your bucket analysis in front of you?

14 A. I do.

15 Q. He asked you about those paid-in-full loans. Do you recall
16 that?

17 A. I do.

18 Q. Do you recall that he asked you when those paid-in-full loans
19 became paid in full?

20 A. Yes.

21 Q. Now, have you reviewed thousands of pages of records in this
22 case?

23 A. Certainly many thousands of records.

24 Q. Are you able to remember every data point related to every
25 slide, every piece of information on every slide we see here?

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1 A. No.

2 Q. If you had the records for when those loans became paid in
3 fulls, would that assist in recalling when they became paid in
4 full?

5 A. Certainly.

6 Q. With the assistance of the Court Security Officer, Your
7 Honor, I would like to show the witness a series of records that I
8 am providing to counsel as well, and a copy for the Court.

9 If you would unclip those and take the very first
10 document. If you could please keep them in order so we don't get
11 these mixed up.

12 Do you have that in front of you?

13 A. I do.

14 Q. And if you would take a look at the top left-hand portion of
15 this spreadsheet. Do you recognize this spreadsheet and what
16 count it relates to?

17 A. It relates to Count 10.

18 Q. And did your company, Invotex, prepare various spreadsheets
19 of your analyses?

20 A. Yes, we did, including this one.

21 Q. If you would look at the second page of that document.

22 Do you see on the-- I want you to take a look at the, I
23 believe it's the seventh column titled Transaction Type.

24 A. Yes.

25 MR. KUGLAR: Your Honor--

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1 THE COURT: Yes.

2 MR. KUGLAR: I would object to the use of this exhibit
3 unless and until it is demonstrated that Mr. Peroutka actually
4 looked at the data and created this spreadsheet and has some
5 personal knowledge of the transactions in here.

6 MR. STOKES: Your Honor, if I may have--

7 THE COURT: This is being offered to refresh his memory,
8 correct?

9 MR. STOKES: That's right, Your Honor. I am merely
10 trying to direct him into, there is a lot of data on the page, I
11 am simply trying to speed things up directing him into where we
12 are.

13 THE COURT: At this point that's all it is being used
14 for, so I am not going to sustain the objection on that basis.

15 BY MR. STOKES: (Continuing)

16 Q. Now, do you see, if you would look down at a transaction on
17 the May 7, 2008.

18 A. Yes.

19 Q. Without reading any of that data out loud, would you please
20 look at that and tell us if that helps you, if that refreshes your
21 memory as to whether this particular loan was paid in full prior
22 to the date it appears on the AOT facility in a pool?

23 A. It does.

24 Q. And let me, if I can, just direct your attention first,
25 before we go any further, back to the bucket analysis you did. Do