

R.J. Peroutka, Jr. - Redirect

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1 you see that?

2 A. Yes.

3 Q. How many paid-in-full loans are on there?

4 A. Eight.

5 Q. So, you identified eight. Is this one of the paid-in-full
6 loans, this spreadsheet a record of that, one of the loans that
7 ends up in your analysis?

8 A. Yes.

9 Q. And do you remember, does this help you, does this refresh
10 your memory as to when it was that this loan became paid in full?

11 A. Yes.

12 Q. And when was that, just roughly?

13 A. May 7, 2008.

14 Q. And at what point does it appear as a loan in a pool in
15 Count 10?

16 A. May 13, 2009.

17 Q. So, does that mean it became a paid-in-full loan
18 approximately a year before it ended up in this pool?

19 A. That's correct.

20 Q. If you would take a look at the second spreadsheet.

21 Do you have that in front of you?

22 A. I do.

23 Q. The same sort of spreadsheet that you used to refresh your
24 memory for the other loan?

25 A. Yes.

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1 Q. If you would take a look at page 2, about eight to ten rows
2 up from the bottom?

3 A. Yes, I see it.

4 Q. Does that help refresh your memory as to whether this loan
5 was paid in full prior to May 19, May 13, 2009?

6 A. It does.

7 Q. And what does it-- Tell us what you recall.

8 A. It was paid in full November 8, 2007, a year-and-a-half prior
9 to this pool being formed.

10 Q. If you would take a look at the next spreadsheet, which is a
11 one-page document.

12 THE COURT: I think to move this along, are these the
13 type of documents you looked at to create these slides?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: I think that is sufficient.

16 BY MR. STOKES: (Continuing)

17 Q. Well, Mr. Peroutka, does that refresh your memory as to
18 whether all of the paid-in-fulls were paid-in-fulls prior to the
19 dates upon which they appeared on AOT?

20 A. Yes, this is exactly the information that we reviewed in
21 putting together this analysis.

22 Q. Mr. Peroutka, you were asked whether, with regard to
23 Count 10-- I am sorry, you were asked with regard to Count 10
24 whether there were any direction given by any-- I am sorry.

25 Who the direction for the purchase of loans by Ocala

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1 Funding would have come from.

2 A. Yes.

3 Q. Do you recall reviewing various transactional documents in
4 connection with each of these counts?

5 A. I do.

6 Q. Would you take a look at, these are already admitted into
7 evidence, Your Honor.

8 THE COURT: All right.

9 Q. Just briefly, Government's Exhibit 10-2.

10 THE COURT: We need 10-2.

11 Q. If you could focus in on the top e-mail. Mr. Peroutka, do
12 you see it on the screen there?

13 A. Yes.

14 Q. And do you see an e-mail from Desiree Brown to Teresa Kelly
15 on May 13, 2009?

16 A. Yes.

17 Q. And what does she ask Teresa Kelly to do?

18 A. To wire to Ocala Funding collateral \$46 million, letters to
19 follow.

20 Q. Is that the amount that is included in Count 10 of the
21 indictment?

22 A. It is.

23 Q. And if you would take a look at Exhibits 10-5, 6 and 7. If
24 we could start with 10-5. And looking at the e-mail there, is
25 that an e-mail from Sunita Bacchus to, among others, Desiree

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1 Brown?

2 A. Yes.

3 Q. And does that indicate that this is a C-wire or a paydown?

4 A. Yes, it is.

5 Q. And have you reviewed those C-wires prior to coming into
6 court?

7 A. Yes, I have.

8 Q. And what do those C-wires relate to?

9 A. They relate to paydowns on the AOT.

10 Q. And are they from paydowns from the Ocala Funding facility?

11 A. Yes.

12 Q. And if we could look at the second page of that document.

13 And what kind of pools do they relate to? Do you see
14 the 7 series numbers?

15 A. Yes, Ginnie Mae pools.

16 Q. And who is that request coming from? Is that coming from
17 anybody at LaSalle Bank or is that coming from TBW?

18 A. TBW.

19 Q. And, Mr. Peroutka, you were also asked whether any of the
20 documents related to Counts 2 through 7 and 10 and 11-- I am
21 sorry, we can take that down.

22 Mr. Peroutka, you were asked whether any of the Counts 2
23 through 7 and 10 and 11, whether any of the transactional
24 documents were sent by Lee Farkas. Do you recall that question by
25 the defense?

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1 A. I do.

2 Q. And do you recall, sir-- The Court's indulgence.

3 Sir, do you recall in connection with your analysis that
4 you also looked at Count 1 of the indictment?

5 A. Yes.

6 Q. And what was Count 1?

7 A. Without having my recollection refreshed, I can't tell you
8 exactly.

9 THE COURT: Well, this witness is not a lawyer.

10 MR. STOKES: Understood, Your Honor.

11 THE COURT: Although he has a law degree, but he is not
12 here as a legal expert. And, therefore, I think that's not an
13 appropriate question.

14 MR. STOKES: Your Honor, if I may, in other words,
15 defense asked him about Counts 2 through 11. I just want to ask
16 him if he knows what Count 1 relates to.

17 THE COURT: No.

18 BY MR. STOKES: (Continuing)

19 Q. Well, Mr. Peroutka, do you know if there was, if I may ask,
20 whether there was a conspiracy count in the case?

21 THE COURT: It is beyond the scope of what was raised on
22 cross, no.

23 Q. Well, did you have--

24 THE COURT: I've ruled.

25 MR. STOKES: I understand. If I may have ask this

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1 question, or I can approach the Bench if you have want to vet the
2 questions in advance.

3 THE COURT: All right.

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

6 AT SIDE BAR

7 THE COURT: Mr. Stokes.

8 MR. STOKES: Your Honor, defense counsel on cross
9 argued, pointed out that Mr. Farkas is not part of any of the
10 counts. And what we would like to point out is that he is all
11 over the e-mails related to one of the counts, and that is Count
12 1.

13 And so, we certainly think--

14 MR. KUGLAR: Your Honor--

15 MR. STOKES: If I have may. We think that by asking
16 that question he is implying that Mr. Farkas is not part of these
17 transactions. We think we ought to be able to remind the jury--

18 THE COURT: That is argument for the jury.

19 MR. STOKES: Okay.

20 THE COURT: It is addressed in your jury instructions on
21 vicarious liability. And we will get to it at that point. This
22 is not the right witness to be doing that.

23 No, I will sustain the objection.

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

1 BEFORE THE JURY

2 MR. STOKES: The Court's indulgence.

3 No further questions at this time, Your Honor.

4 THE COURT: Is there any cross?

5 MR. KUGLAR: No, Your Honor.

6 THE COURT: The witness may step down.

7 Is anybody going to call this witness again?

8 MR. STOKES: No, Your Honor.

9 THE COURT: What about the--

10 MR. STOKES: Actually, Your Honor, I should say we were
11 going to keep him under subpoena until after--

12 THE COURT: Mr. Peroutka, then we can't let you to come
13 into court to watch the proceedings. You will need to leave. And
14 you may want to stay around the courthouse in case you are
15 recalled.

16 You are not to discuss your testimony or anything you
17 see or hear in the courtroom with any witness who has not yet
18 testified. Thank you.

19 THE WITNESS: Thank you, Your Honor.

20 NOTE: The witness stood down.

21 THE COURT: Anything further from the United States?

22 MR. STOKES: I am sorry, Your Honor?

23 THE COURT: Is there anything further?

24 MR. STOKES: There is not, Your Honor, just-- The
25 Government rests.

1 THE COURT: All right. Who is here for the defense?
2 Mr. Cummings?

3 MR. CUMMINGS: There is a matter we would like to take
4 up outside the presence of the jury.

5 THE COURT: Ladies and gentlemen, I am going to give you
6 an early short stretch break. I will ask that you not leave the
7 jury room so that we can get you back in here quickly, but we have
8 some logistical matters to address. This shouldn't take very
9 long.

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

12 JURY OUT

13 THE COURT: Is there a motion?

14 MR. ROGOW: There is, Your Honor.

15 MR. STOKES: And, Your Honor, if I may, I want to put on
16 the record that from the Government's perspective at least we want
17 to be clear that Mr. Peroutka was testifying as a summary witness
18 for the Government.

19 THE COURT: Correct.

20 MR. STOKES: Defense objected to him as an expert. The
21 defense did ask questions that may have veered into the expert
22 area. But I want to be clear that, for the record, the Government
23 was not seeking that testimony.

24 THE COURT: And he never converted to an expert witness.
25 Just for the record, however, there was initially an objection to

1 the exhibits that were used during his testimony, the argument
2 being that there was an insufficient foundation for the summary
3 exhibits.

4 I listened carefully to the witness' testimony and I am
5 totally satisfied that there is more than enough evidence to
6 support each of those exhibits going in.

7 And, therefore, I believe I have all the right numbers,
8 but let me just tell you, I would put into evidence over the
9 defense objection Exhibits 20-30, 10-18, 11-9--

10 MR. STOKES: I am sorry, it is 11-19.

11 THE COURT: I am sorry, 11-19, I did have that. 2-21,
12 3-18, 4-23, 5-18, 6-23, 7-19, 14-15, 16-9. I think I got them
13 all.

14 MR. STOKES: And I don't know if I heard Your Honor say
15 this, but 1-700.

16 THE COURT: That's the historical hole?

17 MR. STOKES: That's correct. That is that series of
18 slides.

19 THE COURT: Yes, that should also be in. All right.

20 And I'm assuming that all the Government's exhibits that
21 we have talked about for which there was not an objection
22 sustained are in.

23 (Government's Exhibit Nos. 1-700, 2-21, 3-18, 4-23, 5-18,
24 6-23, 7-19, 10-18, 11-19, 14-15, 16-9 and 20-30 were received in
25 evidence)

1 THE COURT: I am assuming, at some point before the case
2 goes to the jury they will have to be reviewed to make absolutely
3 sure because there is so much. All right.

4 Now, is there a defense motion?

5 MR. ROGOW: There is. Pursuant to Rule 29, we move for
6 judgment of acquittal, Your Honor.

7 THE COURT: All right. I don't need to hear much
8 argument on that.

9 MR. ROGOW: I didn't think so.

10 THE COURT: At this point, drawing all inferences in
11 favor of the Government, I find that there is more than enough
12 evidence for each count to go forward. And, therefore, they will.

13 Now, just for planning purposes, Mr. Rogow, how many
14 witnesses did you advise the Government you were calling today?

15 MR. ROGOW: I advised them we were calling two today.
16 We have a third that is possible, possibly ready to go, but quite
17 honestly I would prefer that to be tomorrow, and then we have one
18 other witness tomorrow after that.

19 So, we have four witnesses is the short answer.

20 THE COURT: The defense case has four witnesses?

21 MR. ROGOW: Yes.

22 THE COURT: So, it sounds as though we will definitely
23 finish all the evidence tomorrow?

24 MR. ROGOW: Yes.

25 THE COURT: Does the Government at this point, do you

1 anticipate a rebuttal case, or don't you know yet?

2 MR. STOKES: We just don't know, Your Honor.

3 THE COURT: All right.

4 MR. STOKES: We would ask, if the defense, they have
5 identified two of their witnesses to us for today, that they
6 identified their witnesses. Of course, if the defendant is
7 testifying, we are not asking that. But simply to the extent they
8 have witnesses, if they would identify those witnesses and provide
9 us, as required in the discovery order, Jencks, any notes they
10 have of their interviews of those witnesses, which we have not
11 received.

12 MR. ROGOW: The other witness is Karen Fortune, Your
13 Honor, the expert. That would be the third witness for today if
14 we get to Ms. Fortune.

15 Quite honestly, I would prefer, what I would like to ask
16 the Court to do is put on the two witnesses we have today, which
17 probably will take no more than an hour, and then perhaps we can
18 talk about the jury instructions and the verdict form, let the
19 jury go home early.

20 THE COURT: I don't do it that way. The jury is going
21 to, we are going to finish with the jury. And if we get done
22 early tomorrow, which is a much better time to do the charging
23 conference, it will assist the charging conference if there are
24 any genuinely substantive disputes about proposed instructions,
25 that that get to the Court in writing. I don't want to be hearing

1 all these issues new.

2 I have looked at them preliminarily. I see only one
3 instruction that I think is legally problematic. The others I
4 think are all, almost everything is coming out of O'Malley, so it
5 is perfectly appropriate.

6 But I don't want to be having a significant argument
7 about specific instructions without having a heads-up about that.
8 I don't think either side has filed any specific objections to
9 either side's proposed instructions.

10 So, that's your assignment for this evening. And I
11 would want those tomorrow morning.

12 Since we are talking, since we have bothered the jury
13 with a break, let me just finish with some of the logistics.

14 I have a docket at 9 o'clock tomorrow morning. I am
15 optimistic it will be done by 10:15. So not to hold up the jury,
16 you should all plan to be here about 10:20 to put your stuff back
17 on the tables, all right, because you are going to have to clear
18 the courtroom again today to get ready for tomorrow morning's
19 docket.

20 MR. ROGOW: Your Honor, may I ask, which one is the
21 problematic instruction so we can be ready for that?

22 THE COURT: I don't have the number. It's the
23 instruction-- I have never seen this instruction before, and I
24 think it would create a fatal variance with the indictment where
25 the Government, basically it's if the specific, I am paraphrasing,

1 if the specific conspiracy as charged is not established, the jury
2 could still find the defendant guilty of some other conspiracy.

3 MR. ROGOW: That must be this Government's instruction.

4 THE COURT: It's the Government's instruction. I find
5 that one very problematic legally, and you will have a long battle
6 if that is even going to be an issue in this case.

7 But the vicarious liability instruction, we have just
8 checked it out, the Fourth Circuit may not have ruled on it, but
9 every other circuit has approved it. And so, that instruction is
10 going to go forward. And that's, I think the wording of it is
11 right out of O'Malley, if I am not mistaken. I would expect there
12 might be a fight about using it, but the law supports it.

13 So, that's where I thought the two major issues were
14 going to be. There certainly would be a good faith instruction I
15 think given the tenor of the defendant's case so far. But you
16 can't make a final decision about instructions until you have seen
17 the whole case. I haven't seen the whole case yet.

18 All right.

19 MR. ROGOW: Yes.

20 THE COURT: Mr. Stokes.

21 MR. STOKES: Your Honor, to the extent, since counsel
22 has not told us who the fourth witness is, we don't know who it is
23 going to be, the Government may need to put on a rebuttal case.
24 And these witnesses, frankly, all live in Florida and Georgia and
25 elsewhere.

1 And so, it may be that we need to fly in a witness
2 depending upon, whoever this fourth witness is.

3 So, without knowing that, we may not be able to put on a
4 rebuttal case tomorrow.

5 THE COURT: All right, then we need to know who the
6 witness is. Who is your fourth witness?

7 MR. ROGOW: Mr. Farkas.

8 THE COURT: Oh. And that may or may not happen. So,
9 that's fine. Then you know.

10 All right.

11 MR. STOKES: Yes.

12 THE COURT: All right. Let's get the jury back in.

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

15 JURY IN

16 THE COURT: All right. Ladies and gentlemen, as I
17 mentioned to you at the very beginning of this case, in our legal
18 system there is absolutely no burden or obligation on a defendant
19 to put any evidence into the record because the burden of proof is
20 on the Government.

21 In this case the defense has chosen to present evidence,
22 so now they are going to begin. Again, remember there will be
23 sort of reversal of order. So, the first of line of questioning
24 will be done by defense counsel. The Government gets to cross the
25 witness. Defense counsel gets to do the redirect. And the

M.A. Potter - Direct

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1 Government gets to recross.

2 All right, call your first witness.

3 MS. KARINSHAK: Your Honor, we call Ms. Margaret Potter
4 to the stand.

5 THE COURT: All right.

6 NOTE: The witness duly affirmed.

7 MARGARET A. POTTER, called by counsel for the defendant,
8 first being duly affirmed, testifies and states:

9 DIRECT EXAMINATION

10 BY MS. KARINSHAK:

11 Q. Good afternoon, Ms. Potter.

12 A. Oh, I am sorry.

13 Q. Ms. Potter, could you please state your name for the record.

14 A. Margaret A. Potter.

15 Q. And where are you from, Ms. Potter?

16 A. Jacksonville, Florida.

17 Q. Is that where you were born?

18 A. That is where I was born. I live in Ocala, Florida now.

19 Q. Okay. And how long have you lived in Ocala, Florida?

20 A. 25 years.

21 Q. And what do you currently do for a living?

22 A. Oh, I have a construction company now.

23 Q. And how long have you had a construction company?

24 A. Since October 19, 2009.

25 Q. And are you also a real estate broker?

M.A. Potter - Direct

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1 A. I am, I have been a real estate broker since 1979.

2 Q. What does a real estate broker do?

3 A. Well, there is two parts to real estate. One is a real
4 estate state broker and then a real estate salesperson. And a
5 real estate broker can do any, you know, buy sell, auction. Just
6 the real estate activities.

7 Q. And what did you do previously to your construction business
8 that you just told the jury about?

9 A. I worked for Taylor Bean & Whitaker.

10 Q. And how long did you work for Taylor Bean & Whitaker?

11 A. I started May 19, 1976. And I was there until October 19,
12 2009.

13 Q. Roughly how many years is that?

14 A. 13.

15 Q. Sorry?

16 A. 13.

17 Q. And--

18 A. A little over 13.

19 Q. And I notice you are a little bit good with numbers there.
20 So, how is it that you are so good with numbers?

21 A. I guess just a gift God gave me. I just remember numbers
22 real well.

23 Q. What was your job duties-- And you had quite a number of
24 years there, so let's start with the beginning of Taylor Bean &
25 Whitaker. What were your job duties there?

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1 A. Oh, when I first started out I was light like bookkeeping. I
2 printed the funding checks. I did the accounts payable. There
3 was very few people there at that time. And the payroll was
4 outsourced.

5 And then over time as we began to grow, I took over the
6 payroll, and I was the payroll manager.

7 And with my real estate background, I took care of the
8 leases of our offices. I took care of the property casualty
9 insurance. And the mortgage banker's bond. And I took care of
10 licensing once it grew into licensing as we would go into
11 different states.

12 Q. And what about compliance?

13 A. Well, that is compliance. When you go into a different
14 state, it's just like selling real estate or practicing law, you
15 have to become licensed within that state and go by their
16 guidelines.

17 Q. Now, you mentioned a couple different things that you did.
18 And I would just like you tell the jury a little bit about what
19 that means. You mentioned property casualty insurance that you
20 managed.

21 A. Right. Because when you have an office, you have to cover
22 the-- And general liability. You have to have general liability
23 on the property. You have to have the property, and the casualty
24 insurance is fire and hazard. And then the casualty is your
25 furnishings.

M.A. Potter - Direct

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1 Q. So like if I were to slip and fall, that would be kind of
2 what is within that insurance?

3 A. Yes. And also automobile insurance was within that same
4 realm.

5 Q. And then you mentioned bonding insurance?

6 A. Right. We had to have a mortgage banker's bond.

7 Q. What does that mean?

8 A. Well, a mortgage banker's bond is required by each state that
9 you are in. Also, a mortgage banker's bond, it covers the
10 servicing if you do servicing. It covers any wrongdoings that
11 maybe somebody might do within the company accidentally.

12 It's insurance, it is just the same thing as insurance.
13 Another name for it is fidelity insurance.

14 Q. And you mentioned you worked at TBW for 13 years, but how
15 long have you known Mr. Lee Farkas?

16 A. Since 1987.

17 Q. And how did you originally meet Mr. Farkas?

18 A. I was working in a real estate office and he came to Ocala
19 looking for properties. And the broker that he was-- He knew the
20 broker that I worked for. I didn't have my own office, so I had
21 to work in an associate broker capacity.

22 So, he worked for-- He knew the broker and I was
23 introduced to him.

24 Q. Okay. And do you recognize Mr. Farkas here today in court?

25 A. I do.

M.A. Potter - Direct

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1 Q. Would you please point him out to the jury by what he is
2 wearing or where he is sitting.

3 A. He has on a gray suit and a blue shirt.

4 THE COURT: Any objection to the identification?

5 THE WITNESS: I beg your pardon?

6 MR. CONNOLLY: No, Your Honor.

7 THE COURT: All right, identification is established.

8 BY MS. KARINSHAK: (Continuing)

9 Q. Now, what you just testified to is when you went to work at
10 TBW first you did light bookkeeping and helped with the payroll?

11 A. Yes.

12 Q. And at what point did you become the payroll manager?
13 Roughly what time was that?

14 A. Well, that was 1996, and I became the payroll manager in the
15 year 2000.

16 Q. So, in 1996 you were doing the light bookkeeping?

17 A. Yeah, and then, you know, all those things.

18 Q. All those things?

19 A. The bookkeeping, the mortgage banker's bond, the compliance,
20 getting us licensed when we would go into different states,
21 assisting getting the payroll put together. But as far as me
22 taking it over and having people working under me and actually
23 processing it, that started in the year 2000.

24 Q. And when you become payroll manager, would you give the jury
25 a feel as to how many people worked for you.

M.A. Potter - Direct

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1 A. Well, we started growing. We-- Oh, for me personally, that
2 worked for me?

3 Q. Right.

4 A. I had two girls that worked with me to begin with. And at
5 the end I had five, six girls at the end.

6 Q. Okay. Now, tell the jury what it was like to work at TBW in
7 the beginning back in 1996, roughly May 1996.

8 A. Well, there was only about 11 people there, and we were all
9 in the same office. It was like a room like this and there was a
10 partition, a glass partition between me and Mr. Farkas. We were
11 sitting around at cubicles. It was like a little family there. I
12 mean, we were all working to accomplish something for the future
13 for all of us.

14 But it was a family setting where you didn't feel like
15 you worked for a corporation that stands over your shoulder. I
16 mean, it was a friendly, nice place to work.

17 Q. And what was the address of that facility?

18 A. Oh, 14th Street? That was 2233 Southeast 14th Street.

19 Q. And you said that was like a small office?

20 A. Yes, ma'am. We had like, one part of it was when we first
21 started out, there was like 2,000 square feet in the one part. We
22 started growing, we got up to about 35 people, so we got an
23 additional 15,000, yeah, 1,500 square feet. And it was like
24 3,500 square feet altogether.

25 And then when we moved from there--

M.A. Potter - Direct

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1 Q. Let's hold on for just a second, please. Just to stay within
2 the context of around the May 1996 time frame. You were aware of
3 payroll at that time, right?

4 A. Yes, ma'am.

5 Q. What was Mr. Farkas' salary roughly during that time frame
6 back in May 1996?

7 A. We got paid biweekly. And he made \$850 every two weeks.

8 Q. And how is it that you know that?

9 A. Because I used to go and get his check cashed for him.

10 Q. And what kind of hours were you all working in that small
11 working environment?

12 A. Well, usually Lee and I got there, or Mr. Farkas you might
13 say, at 7 o'clock in the morning. And since I was making funding
14 checks, we would go on during the day, I usually left about 6,
15 6:30, something like, and he would still be there.

16 We would get there in the morning, we go in and clean up
17 our little break room area and get things ready for the girls to
18 come in around 8 o'clock.

19 Q. Okay. Now, you mentioned the growth. Now I would like you
20 to tell the jury a little bit about how Taylor Bean & Whitaker
21 started to grow. You said something about towards the end of 1996
22 and 1997.

23 A. Okay. 1996 when I first started there, there was about 11
24 people in the office. I mean, like we could talk with one
25 another, it is like talking with you or we was all there together.

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1 And then it seemed like that we started picking up more
2 and more in loans. And the way that we did this is we, the real
3 estate offices, we had people out in the real estate offices that
4 when they would, they would have a homeowner sale, we had closers
5 in the RE/MAX offices, and we would get that. And it started
6 growing and growing and growing.

7 And then we, in '96, we didn't have-- We started the
8 Atlanta office I believe in early of 1997. And that really grew.
9 We had people in real estate state offices up in the Georgia area.
10 We had the main office in Atlanta, and then we had a small office
11 in a real estate office in Dunwoody, Georgia, Roswell, Georgia,
12 and then we picked up some branch offices up there, and things
13 began to grow.

14 Then we had outgrown this office that we were in and
15 Taylor Bean & Whitaker, we bought the Moses Auto Parts building,
16 which is a landmark in the Ocala area. The building was like 1948
17 and it was like a real landmark.

18 So, Taylor Bean & Whitaker bought that building, did a
19 complete renovation. And then by the time that we got in there,
20 we moved in there September 26, 1998. By the time we got in
21 there, we had already really outgrown that building. We had about
22 150 people at that time. And the building itself was like
23 15,000 square feet.

24 And then some of that is break room area, restrooms and
25 storage. So, you can't utilize all 15,000 square feet.

M.A. Potter - Direct

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1 And from there--

2 Q. Hold on just one second before we go into the next place. At
3 that time roughly when you moved into the Moses building, what was
4 Mr. Farkas' salary at that time, if you recall?

5 A. In about 2003 he went to a thousand dollars every two weeks,
6 he was making 26,000.

7 Q. I am talking about back in 1998 still.

8 A. Oh, he was still at the 850.

9 Q. And how much is that again, please?

10 A. \$850 every two weeks.

11 Q. Okay. All right. So, then after you are in the Moses
12 building, what do you-all, where do you next move as you all are
13 continuing to grow?

14 A. Where we started having our growth again? We bought an
15 abandoned Winn-Dixie store out on Magnolia Avenue, which is what
16 they call now the Miracle Mile because we were trying to help to
17 revitalize the Ocala area. Ocala is an old town and it is a city.

18 And so, they bought the Winn-Dixie building and they
19 renovated it. We started moving people over there in February of
20 1999.

21 Q. And who all, which employees did you all move into this
22 Winn-Dixie building?

23 A. We had--

24 Q. I am sorry, let me finish the question, please.

25 A. Oh, sorry.

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1 Q. Who all did you move into this Winn-Dixie building that you
2 just told us about?

3 A. I am sorry, I didn't hear you.

4 Q. Which employees did you all move into the Winn-Dixie building
5 that you were just talking about?

6 A. Okay. We had closers who closed the loans. And we had
7 underwriters over there.

8 And then our servicing department started picking up,
9 and that's where the loans was, you know, we had the servicing
10 loans over there. To service a loan means to receive a payment in
11 and to send it off to whoever-- It is kind of like we take the
12 payment in, we keep a certain percent of it, and then we send the
13 money to the investor.

14 Q. Okay.

15 A. And that's to service a loan.

16 Q. And during this time that you all are in the Winn-Dixie
17 building, what is Mr. Farkas' salary roughly during that time, if
18 you recall?

19 A. Okay. Okay. He was never at the Winn-Dixie building, he was
20 always in the Moses building, unless I misunderstood you. But in
21 2003 he went to the \$1,000 every two weeks.

22 Q. And roughly in the 1999 to 2000 time frame, roughly how many
23 employees did Taylor Bean & Whitaker have?

24 A. Oh, my goodness, we started growing so quickly. It seemed
25 like we had 150, and the next time I did a payroll there would be

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1 350 on there. And then all of a sudden we had 550 employees.

2 And by this time we had opened up some of the offices, I
3 believe in 2000 is when we opened up the Tampa office, an office
4 down in Tampa, Florida. And then we had, we had this, we started
5 out west in the western region and we had offices out there.

6 Q. Where out west?

7 A. Okay, we had, a lady came to us that was very prominent in
8 the mortgage business in the origination, and she come to work for
9 Taylor Bean & Whitaker, and it seemed like we just really started
10 growing then. We went from like 850 employees, and all of a
11 sudden I am running a payroll I have got 1,000 employees.

12 And then as other offices would open up, we had an
13 office in California, and there we had to be licensed, and so then
14 I stepped in and started, you know, would do that part of it. We
15 had an office in Colorado. We had one in Salt Lake City. We had
16 one in Arizona. And then we opened up an office out in Bellevue,
17 Washington.

18 Q. And also what about Pennsylvania, did you all open an office?

19 A. We did have an office in Pennsylvania, yes. But it was not--
20 The office in Pennsylvania didn't do so much origination as what
21 they did of the closing of the loans there. And the underwriters.

22 So, we had to have people, as each place would go in
23 there, each state has different laws that we had to abide by, and
24 so we have to have people in those offices that knew the
25 underwriting.

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1 Q. Now, at some point in 2008 did you move into the address of
2 315 Northeast 14th Street?

3 A. Yes, we did. It was in about 2007, the building that
4 started, you know, the construction of the building. And it took
5 them the better part of a year to get it built. And we moved in
6 there on February 15, 2008.

7 Q. And would you please tell the jury a little bit about that
8 workplace.

9 A. Oh, it was a beautiful office. Well, all of our offices
10 were. Taylor Bean & Whitaker, I mean, it was always a pretty
11 setting.

12 But the Global Building, it was beautiful, it was
13 75,000 square feet. It had two floors. We had a very nice dining
14 room for the employees. We had a patio. We had umbrellas that we
15 could sit outside under the umbrellas if it was nice.

16 We had a full kitchen area in all of our offices that we
17 had other than the one on 14th Street, we had limited space there.
18 But after that we had full kitchens in all of them.

19 We had people that would come in and do lunches for us.
20 There was an executive dining room in the Global Building. And
21 whenever we would have people from Freddie Mac or Ginnie Mae or
22 from various banks or something like that, they would have lunch
23 in there.

24 And when this wasn't happening, Taylor Bean, there were
25 so many of us, it would only hold like 20 people, so we couldn't

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1 get everybody in there at once, but we would go through the
2 building and over to the CDF too, and we would invite five or six
3 to come in and have lunch. And then we would go to another the
4 department. Until we went around and gave everybody a turn to
5 come in and have lunch in the executive dining room.

6 Q. And you said CDF?

7 A. CDF means the central document facility.

8 Q. Where was that?

9 A. That was at 1417 North Magnolia Avenue, that was the
10 Winn-Dixie building.

11 Q. So, at this point when you are on 14th Street, you have two
12 different facilities that are being used by TBW?

13 A. That is correct.

14 Q. The document facility and then--

15 A. Right. And the document facility was like a half a block
16 from the Global Building.

17 Q. Now, while you were working there at TBW, how would you
18 describe Mr. Farkas' management style?

19 A. Well, I have been working for many years, and Taylor Bean &
20 Whitaker was the greatest place to ever work bar any. It was.
21 Because you were given a job to do. Nobody stood over your
22 shoulder. If you needed to a supervisor, if you needed direction,
23 you could certainly get it. If you needed schooling or if you
24 needed training or whatever you were given, you know, the job that
25 you had to do, you would be given ample training to do.

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1 But nobody stood over your shoulder to make sure you got
2 it done. But if it got back to upstairs where it wasn't being
3 done, then we would approach it at that point in time. But nobody
4 stood over your shoulder.

5 Q. Now, you briefly talked about that you were the compliance
6 person, I believe you told the jury that you had to make sure you
7 had the licenses in the different states, correct?

8 A. Absolutely, we had to make sure, yeah. Because each place
9 you go in, you can't go in there to do the business or conduct
10 mortgage lending or financial business without a proper license.
11 And before we could get an office, we had to be licensed.

12 Q. And you handled that?

13 A. Yes, I did. And then after awhile that got to be really big
14 and then because there is so much compliance involved in it, that
15 I couldn't keep doing the big payrolls I was doing, and the bonds
16 and all the leases and do that too. It was just too much. And
17 then we got a full-fledged compliance office.

18 Q. And at the time that you were working in this compliance
19 area, did Taylor Bean & Whitaker ever have problems with
20 maintaining compliance with these?

21 A. No, ma'am. We stayed on top of it.

22 Q. And also did the auditors who came in check out your
23 compliance areas?

24 A. They do, they did.

25 Q. Now, you said in your testimony that you were responsible for

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1 disbursing all checks to the employees, is that right?

2 A. For the payroll checks for the employees, yes, ma'am.

3 Q. And did that include Mr. Farkas?

4 A. It did.

5 Q. And you gave us a history somewhat of Mr. Farkas' pay, right?

6 A. Yes, I did. He did get, he did go up a little bit in pay, I
7 don't know if I missed that or not.

8 Q. No, we will go through that. In the beginning you testified
9 he was making \$850 every--

10 THE COURT: This is repetitive. Just get to your next
11 question.

12 Q. At some point was there a conversation that led to Mr. Farkas
13 increasing his pay?

14 A. Well, yes, there was. He was only making a thousand dollars
15 every two weeks, and we had started making more money. The
16 employees got paid first and then he got what was left over. I
17 mean, that's the way he kind of looked at it--

18 Q. Well, let's stay with the numbers.

19 A. So, I said, Lee, I think it's time you got a raise. And he
20 said okay. So, that to be like 2003, 2004, somewhere around in
21 there. And then he went to \$2,000 every two weeks.

22 Q. Are you sure about that, or is that when the commissions
23 started?

24 A. Well, that was about the same time. It was somewhere around
25 in there.

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1 Q. Okay. So, his salary went up, just to make sure that we are
2 clear for the record, his salary went up to \$2,000 every two
3 weeks?

4 A. Yes, ma'am.

5 Q. And then at some point was there a commission added?

6 A. Right, and that was about 2003, 2004, it was about then. I
7 could be a little bit off on those numbers because I haven't
8 thought about this since, you know, that time. And this is 2011.
9 But I could be off a year or so or maybe six months on any of
10 those dates that I am saying to you, but it was about that time.

11 Q. And roughly do you recall what the amount of commission was?

12 A. Well, it varied every month. It was like 1 percent off of
13 the loan volume. And then I would send him an e-mail-- You would
14 earn the commission first, and then you were paid on the following
15 month.

16 And we always paid commissions, whether it was the
17 regional managers or him, on the second payroll of the month
18 because we were paid biweekly. At the first of the month I would
19 send him an e-mail and ask him to send me his loan volume for, if
20 I was doing the payroll in February, Lee, please, send me your
21 loan volume for January.

22 Q. And then would you use that to figure out his pay?

23 A. Yes, ma'am.

24 Q. Could you please pass the witness Defendant's Exhibit 553.
25 And 553A. 553 and then 553A.

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1 A. All right, I have both of them.

2 MR. CONNOLLY: No objection, Your Honor.

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

4 (Defendant's Exhibit Nos. 553 and 553A were received in
5 evidence)

6 BY MS. KARINSHAK: (Continuing)

7 Q. Now, looking at Defendant's Exhibit 553, which is the thicker
8 one--

9 A. Yes, ma'am.

10 Q. Do you recognize these documents in 553?

11 A. I do.

12 Q. And how do you recognize those documents?

13 A. Well, it is my handwriting.

14 Q. Part of it is your handwriting?

15 A. Yes, ma'am, it is my handwriting for one. The printed out
16 part is my payroll that I would get from the ADP, the payroll
17 records?

18 Q. Okay. And who is ADP?

19 A. ADP is the processing, it is a nationwide payroll processing
20 company.

21 Q. Okay. And those are ADP records for which employees?

22 A. Yes, ma'am, they are.

23 Q. For which employees are these ADP records?

24 A. Well, these employees that are on this record here--

25 Q. Please pull the microphone over close to you so--

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1 A. Oh, sorry. The employees that are on these records in here?

2 Q. In the 553, which is the really thick one.

3 A. Yes, ma'am.

4 Q. Okay.

5 A. Okay. These payroll records are payroll records where the
6 people that worked at NADA Farm. We had different departments,
7 and this is NADA Farm payroll here.

8 Q. Okay. And I believe you have those starting from 2007,
9 right?

10 A. That is correct.

11 Q. Do we also have a section for 2008?

12 A. Yes, ma'am.

13 Q. And then moving further to the back of Defendant's
14 Exhibit 553, and we are going to use these little numbers at the
15 bottom, looking at the page that ends in 234--

16 A. Oh, okay. Okay, I have that.

17 Q. Have you got page 234? What is the document that is starting
18 at page 234 and goes through page 249?

19 A. This is a replica of my payroll back in 2003.

20 Q. That's a rough estimate?

21 A. It's a copy of that payroll, the payroll sheet. I kept a
22 spreadsheet and I would transit the spreadsheet.

23 Q. And this is a copy of one of the spreadsheets you would have
24 kept during the time you worked for Taylor Bean & Whitaker?

25 A. That is correct.

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1 Q. And if you could please highlight the top, we want to go over
2 the columns here for a moment so that the jury will understand
3 this form.

4 Going from the left, top left of page 234, it says,
5 Date. What is that date?

6 A. This is their employment date.

7 Q. The date they got hired?

8 A. Yes, ma'am.

9 Q. And then Employee, is that employee name?

10 A. That's the employee name.

11 Q. And then we see Social Security Number, but that has been
12 redacted, right?

13 A. Right.

14 Q. The Department?

15 A. That means which department they are in because with this
16 many people, that each department when the payroll would run, the
17 checks would be sorted by the department so that they were all
18 together.

19 Q. And then we have got the Location?

20 A. Yes, ma'am, that's where they were.

21 Q. That's where they were located, right?

22 THE COURT: You have to say yes or know. Uh-hmm doesn't
23 show up on the record.

24 A. Oh, I am so sorry. That is where they were located.

25 Q. Okay. Then move to the right of that you have got

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1 Subaccount?

2 A. That was for our bookkeeping.

3 Q. And then to the right of that is Annual Salary?

4 A. That's the annual salary.

5 Q. To the right of that was Biweekly. What does that column
6 represent?

7 A. Every two weeks, that's what they were paid every two weeks.

8 Q. And then to the right of that column, what does that column
9 say?

10 A. This is Basis Point and-- Well, back then our growth had
11 started, so we had what they called combat pay.

12 Q. Combat pay?

13 A. Yes, ma'am. If they were working long hours, they were maybe
14 entitled to more. Or if they closed so many loans, or if they did
15 extra work, then they were entitled to a little bit more money.

16 Q. And you had notes in that column as to what kind--

17 A. These notes in the column here, the annual salary is kind of
18 self-explanatory and the biweekly. But if a person worked in a
19 certain category or a department where they were paid a commission
20 or a bonus, then I had to keep myself a note here so that I would
21 find out what that commission or that bonus was. And it was kind
22 a note to myself, this is my spreadsheet where I would know to go
23 to look for it.

24 Q. And let's look to the page that has 238 at the bottom,
25 looking at the Bates numbers. DX-553-000238?

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1 A. Yes.

2 Q. Do you see Mr. Farkas' pay indicated on this spreadsheet that
3 you were keeping?

4 A. I do. It is the fourth one from the bottom.

5 Q. Fourth one from the bottom. And what does it show? Roughly
6 at this time I believe you testified about 2003, roughly what was
7 Mr. Farkas' annual salary?

8 A. 26,000.

9 Q. And what was his biweekly?

10 A. 1,000.

11 Q. Does he have any basis points or combat pay listed there?

12 A. No.

13 Q. And then going to page 241, and then again this is
14 Defendant's Exhibit 553-000241.

15 A. Okay.

16 Q. And you show the jury what you were getting paid during that
17 same time frame?

18 A. All right. I'm down towards about the three-quarters of the
19 page. You will see Margaret A. Potter, my employment date,
20 payroll, name, my department number, and I was making 42,000 a
21 year.

22 Q. What was your by biweekly pay?

23 A. 1, 615.38.

24 Q. Did you have any basis points or combat pay during that time?

25 A. No, ma'am.

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1 Q. Now, I ask you to please turn to Defendant's Exhibit 553A,
2 and we are going to look at that now. And I believe we can put
3 553 to the side, Mr Wood.

4 A. Okay. I am here.

5 Q. Now, looking at 553A, is this-- 553A, is this a subsection
6 of that bigger document that you just handed Mr Wood?

7 A. Yes.

8 Q. And what is shown, just give the jury a general feel for what
9 is within 553A, just an overview.

10 A. Okay. In 553A is where I kept up with the Nada Farm payroll
11 and with Lee's commissions that he would get each month.

12 Q. And this is in your handwriting?

13 A. Yes, ma'am, it is.

14 Q. Now, what was the NADA Farm?

15 A. It was his personal residence. In Ocala everybody has got a
16 farm and they name their farms, and the name of his farm was NADA
17 Farm.

18 Q. Do you know when Mr. Farkas bought that farm?

19 A. 1987.

20 Q. And how do you know that?

21 A. Well, I knew him and I knew, I was in the real estate, and I
22 knew that he had bought that farm out there.

23 Q. Okay. Now, let's flip to page, it has several zeros and a 9.
24 DX-553-000009.

25 A. The pages are kind of sticking together, so excuse me.

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1 Okay, I'm there.

2 Q. And do you recognize what's on page 9?

3 A. Yes. That's where I had written him an e-mail, if you will
4 look on the page behind that--

5 Q. That is page 10. So, on page 10 we are looking at the
6 e-mail?

7 A. Yes, that's where I sent him an e-mail and I asked him to
8 send me his October commission. And I explained to him there was
9 three payrolls in the month of November, and that I was going to
10 divide it up and pay him in three different, on each payroll some
11 rather than to pay it all at one time.

12 Q. Now, just so we are clear, does every month have payroll
13 three times or--

14 A. No, we got paid 26 times a year. So, there was always two
15 months out of the year where there was three payrolls.

16 Q. And which months were those?

17 A. October/November, sometimes it would fall like in November
18 and then sometimes it would fall, because as the payroll ended,
19 you know, how the dates ended, when you go in every two weeks.
20 And then usually in, say October/November.

21 And then usually around April, March or April it would
22 happen. In the spring time and in the fall, in different years it
23 would vary which month it would be, October or November.

24 Q. But in this instance that you are demonstrating for the jury
25 on page 10, this is a month where there is going to be three

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1 payroll periods in November, right?

2 A. That is correct.

3 Q. And so, at that e-mail you say, Lee, please send me your
4 October loan volume either today or tomorrow and I will divide it
5 by three since there are three payroll ending dates in November.
6 Right?

7 A. That's correct.

8 Q. And then above that, do you get a response from Mr. Farkas?

9 A. I did. And that's where the 305,530 is at.

10 Q. I am sorry, the 305,530?

11 A. Yes, ma'am.

12 Q. Is that an amount of money?

13 A. That is an amount of money, yes.

14 Q. So, it is \$303,530, right?

15 A. That is correct.

16 Q. And then flipping back the page 9, once you have the loan
17 volume amount, does this page show your calculations?

18 A. Yes, it does.

19 Q. Would you please walk the jury through those lines and tell
20 them what you are doing.

21 A. Okay. The 303,530 divided by three, in three equal payments,
22 is the way it comes out, would be 101,176.67. So, I wrote down
23 the payroll dates, the November 2, November 16 and November 30.
24 And I had the amount there. That was his gross amount.

25 And then I would make deductions.

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1 Q. Now, tell us moving further down the page, I see what says
2 October, and then it says salaries, taxes and some other
3 annotations. Please tell the jury what you are doing here?

4 A. Okay. You will find a corresponding page for this October
5 figure here in Exhibit 553.

6 Q. In the bigger document, right?

7 A. Yes. And these were people that worked for Lee personally at
8 NADA Farm. This money was calculated. Their taxes, their
9 insurance, and then the Admin fee, what it cost us to process the
10 check.

11 Q. So, this is their salaries at NADA Farm that are being paid
12 out of this payroll, is that correct?

13 A. Yes.

14 Q. And you get a number when you add all of that up, right?

15 A. Right. And I would add all of these up.

16 Q. And then what would you do with the number?

17 A. I would take and I would deduct that from Lee's commission
18 amount.

19 Q. So, that is deducted from the amount of pay that Mr. Farkas
20 is getting from TBW?

21 A. That is correct.

22 Q. So, looking back at the top of the page when you get, when we
23 are going from left to right, on November 2, you have got the
24 101,176.67-- Actually, let's go to the November 16 line.

25 101,176.67 and you have got a minus sign. What are you

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1 subtracting?

2 A. On the first line?

3 Q. The second line.

4 A. The second line. I took the total of the salaries, what it
5 cost, the gross amount for the farm, and I divided it by two. And
6 then it reduced it down to 13.

7 Q. I am sorry. So, you took, you divided by 2, which you came
8 up with this number 13,756.16, right?

9 A. Correct.

10 Q. And then you took that number out of or you subtracted it
11 from what would be Mr. Farkas' for November 16 and November 30,
12 right?

13 A. Yes.

14 Q. And that's where you got this \$87,420.51, right?

15 A. Yes.

16 Q. Now, I skipped the first line on purpose. I would like you
17 to go back to that top line and explain why there is a different
18 number being deducted.

19 A. Okay. This \$20,000, in our accounting department there was
20 an account that it was a due from Lee where he may have used
21 company, something personally for himself.

22 Well, when he did, we would charge it to him. And then
23 this is paying off-- This 20,000-- I put a K there. I would
24 deduct that from him because that is paid on a due from Lee
25 Farkas, and we deducted that from his pay.

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1 Q. So, you as the payroll manager were keeping track of this due
2 from account that Mr. Farkas owed money to TBW?

3 A. I didn't keep-- I kept an account of all of these things.
4 The accounting department had the actual figure. Sometimes I
5 would see what he may have charged for himself, sometimes I may
6 not have, but the accounting department would let me know.

7 But they actually in the accounting department kept the
8 actual record of how much he owed and how much he paid back.

9 Q. But you always made sure to subtract a due from amount from
10 the commissions that Mr. Farkas was receiving, right?

11 A. I did.

12 Q. Now, as payroll manager, were you aware or generally aware as
13 to who was making the most money at TBW?

14 A. Yes.

15 Q. And who as far as employees or categories of employees were
16 making the most money?

17 A. Well, the two that made the most money were the western
18 regional manager, Cheri Galvan and the southern regional manager,
19 which was Jack Lanemack, and they made, for every office they
20 would open up, they made like a basis point off of that, the loan
21 volume for that particular office.

22 So, those were the two that made the most money, and it
23 was in commission. If those office didn't have a good closing,
24 then they didn't make anything. It wasn't a base salary, it was a
25 commission amount.

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1 Q. Now, at headquarters there at TBW, who, or which employees do
2 you recall were making the most money towards the end of your time
3 at TBW?

4 A. The ones that made the most money were--

5 Q. As far as base salary?

6 A. I beg your pardon?

7 Q. As far as base salary.

8 A. Base salary. There was about three of them, Delton de Armas,
9 he was CFO over the accounting department. Ray Bowman. And Paul
10 Allen.

11 Q. And do you recall the amounts roughly that those three
12 gentlemen were making?

13 A. They were right all of them, I think maybe-- The base salary
14 for Delton was maybe 286, but then he got an override every month
15 on the financial when it would come out. So, he would make it up
16 in a bonus amount.

17 But Ray and Paul, they were all three of them around
18 400,000 a year.

19 Q. Now, Mr. Bowman was also making 400,000 in base pay?

20 A. Yes. It might not have been quite that much. You know, but
21 I know it was above the 250 mark.

22 Q. Mr. Bowman was making more than 250, is your recollection,
23 right?

24 A. My recollection, that is correct.

25 Q. And what about Mr. Sean Ragland, do you recall what he was

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1 roughly making?

2 A. Well, Sean Ragland came to work for us in about mid-2003. It
3 seemed like he was right about in his category, would have been
4 somewhere around 35 to 40,000.

5 And then by the time 2009 came around, I would say, now
6 this is just, you know, the calculation off the top of my head, he
7 was probably somewhere between 50 and 60,000 a year. Maybe a
8 little bit more.

9 I hadn't thought about that since, you know, for quite
10 awhile. So, I could be off a little bit on it.

11 Q. And what was your feel for the average salary for a TBW
12 employee in the 2009 time frame?

13 A. Well, there was approximately 2,800 people on the Taylor Bean
14 & Whitaker payroll or a little better. And so, we have people
15 that do imaging work, and those were our lowest paid people, which
16 was about \$9 an hour.

17 So, between \$9 an hour and 400,000, if you take all
18 those 2,800 people, a good average for an employee of Taylor Bean
19 & Whitaker was between 60 and \$70,000.

20 Q. And with respect--

21 A. A year.

22 Q. Okay. And with respect to the job market in Ocala, Florida,
23 was that considered a good paying job?

24 A. Oh, it was an excellent paying job. It was one of the top
25 six in the Marion county area for employment.

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1 Q. And just so we are complete, what was your salary in the 2009
2 time frame?

3 A. In 2009 I made \$110,000 a year.

4 Q. And did you get a commission?

5 A. No, ma'am.

6 Q. Did you get any bonuses from Mr. Farkas?

7 A. No. I got no bonuses other than like everyone else, we got a
8 Christmas bonus at the end of the year.

9 Q. And what was the Christmas bonus based on?

10 A. Well, all of it, we was always encouraged, years of service
11 is rewarded. And the longer there, the more you get.

12 But even a new hire that maybe had hired in on
13 December 12, and if I was paying the bonuses out on the 19th, they
14 at least got \$100 or \$50, you know, depending upon how much money
15 we had that year.

16 But it would go by years of service, and there was a
17 scale, like from zero to one year would either be \$50 or \$100.
18 From one year to three years was maybe \$250. It was based like
19 that.

20 Q. Based on years of service?

21 A. Years of service. And that was encouraged, the longer you
22 are here, the more you are going to make.

23 Q. And did you have a company car? Did Mr. Farkas provide you a
24 company car?

25 A. No.

M.A. Potter - Direct

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1 Q. And did Mr. Farkas provide you any free loans or mortgages or
2 homes or anything like that?

3 A. No.

4 Q. Now, what about Ms. Desiree Brown, did you work with her at
5 all?

6 A. We worked in the same building together, but I did not
7 personally work for her.

8 Q. You just worked in a department that she was in?

9 A. Right. She was in the treasury, I was in the payroll. It
10 was two different, two different departments.

11 Q. What was Ms. Brown like at TBW?

12 A. She wasn't liked. Maybe I shouldn't-- She enjoyed her
13 power.

14 Q. What do you mean by that?

15 A. Well, what was, what we were-- Taylor Bean & Whitaker, we
16 worked together, we worked with one another. If you was in
17 Desiree's department, you worked for Desiree.

18 Q. And what about Mr. Paul Allen, were you aware of what he was
19 in charge of at Taylor Bean & Whitaker?

20 A. Well, I didn't when he first came there, first year or so, I
21 wasn't sure what he did. But as I stated, I took care of the
22 mortgage banker's bond, the fidelity bond. And any company that
23 even touches Taylor Bean & Whitaker had to be listed on that bond
24 in order for it to be insured or to have coverage over that
25 company.

M.A. Potter - Direct

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1 And we had-- And the way I found out about it, you
2 know, or got delved into it, because at some point in time
3 something is going to come across my desk whether I am involved in
4 or not.

5 But in Florida you have an annual report that has to be
6 done every year. Well, that was part of my responsibility. I
7 would file the annual reports. Well, when I got to Ocala Funding,
8 I didn't know what that company was because every different
9 federal ID number, you can't interchange those.

10 So, I sent Lee an e-mail and I said, what is Ocala
11 Funding. And he wrote me back, I don't know, but Paul Allen can
12 help you.

13 Q. And so, did you go to Paul Allen then--

14 A. Then I sent Paul Allen an e-mail. Because if I am going to
15 insure it, if it is going to be covered under our mortgage
16 banker's bond, I have to know that it can be covered under our
17 bond or does it need its own bond. If it has employees, if it has
18 assets, if it has its own financial or is it filed with the
19 corporate financial.

20 And he answered me back, it has no employees, will never
21 have any employees--

22 Q. Hold on just one moment, please. So, you actually went to
23 Paul Allen to discuss Ocala Funding then, right?

24 A. That is correct.

25 Q. Now, let's talk about the corporate jet. Did you ever ride

M.A. Potter - Direct

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1 in the corporate jet?

2 A. Yes.

3 Q. What was your occasion to ride in the corporate jet?

4 A. Since I took care of the leased offices, at times with a
5 lease you have to-- The tenant takes care of its repairs or
6 renovations, or if you are moving an office around, if you are
7 hiring more people, maybe you need to take a wall out.

8 And in order for me to, me in Ocala, Florida to be able
9 to properly help the manager at that office to see how they can
10 get more people in there, I needed to see, you know, how big the
11 space was, or was it a demising wall, was it a bearing wall, about
12 how much would it cost, could we actually do that.

13 And that's why I needed to look at, I needed to see it.

14 Q. So, would you fly on the corporate jet to see--

15 A. Maybe about three times I did. I went to the Atlanta office.
16 And then when we were opening the office in Cincinnati.

17 Q. And when you went on these trips, did you travel with Mr.
18 Farkas?

19 A. I did.

20 Q. And did Mr. Farkas fly on the corporate jet at times?

21 A. Yes, yes, he--

22 Q. What was the purpose--

23 A. If he came to Washington, or if he had to go to Atlanta, or
24 maybe he may have to go out to an office, you know, I don't know
25 if he ever went as far as Salt Lake City, but when he would go

M.A. Potter - Direct

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1 from one office to another.

2 Q. So, he would use the corporate jet at least for that purpose?

3 A. Yes, ma'am. Yes.

4 Q. However away from Ocala is the closest major airport?

5 A. Orlando and Tampa, or equally, one of them is straight down
6 south of us and one of them is a little southeast of us, but
7 Orlando and Tampa.

8 Q. How long does it take to get from Ocala to Orlando?

9 A. Well, in an ideal situation with no traffic on I75, the best
10 you could probably do is an hour-and-a-half to two hours.

11 But if there is an accident on I75, you may there for
12 three to five hours getting there. And also when you get into
13 Orlando, all roads to Disney. And you could be in traffic there
14 trying to get to the airport for several hours also.

15 Q. Now, was there also a smaller airport in Gainesville?

16 A. There was, but there is only one airline that goes out of
17 there, and it's a commuter, Delta Commuter from Gainesville to
18 Atlanta, and they only have like a couple of flights a day. And
19 very small planes, you know, that sort of thing.

20 Q. Now, let's move on to a new topic and that would be the TBW
21 Foundation. Were you involved with writing checks and doing
22 payroll for the TBW Foundation?

23 A. Yes.

24 Q. And what was the TBW Foundation for?

25 A. It was to help others. That was, that was a lot of what

M.A. Potter - Direct

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1 Taylor Bean & Whitaker did, it was a good place. We did a lot of
2 charity work around town, around in the city and outside the city
3 and in our outer offices.

4 And the foundation was set up so that we would have a
5 fund, if we had an emergency, that we would have some money that
6 we would, you know, we would be able to give.

7 Q. Was this also to help TBW employees as well as people--

8 A. Oh, yes, it did. We helped, we helped.

9 Q. Okay. And give, for example, some of the associations and
10 groups that TBW Foundation gave money to?

11 A. Salvation Army, Battered Women, Humane Society. We did
12 United Way. Also we would let United Way come in and commission
13 for themselves. If the people wanted to give right directly to
14 United Way, then we would do that also.

15 Q. And was TBW also involved with the revitalization of the
16 theater in downtown Ocala?

17 A. Yes, the Marion Theatre.

18 MR. CONNOLLY: Objection to this on relevance grounds.

19 THE COURT: I think now you are getting far afield. You
20 need to focus this on the issues in the case.

21 MS. KARINSHAK: Your Honor, I will move on.

22 BY MS. KARINSHAK: (Continuing)

23 Q. Now, I want to move you forward, Ms. Potter, to August of
24 2009. And what I want to specifically talk about is the days
25 after the FBI raid of the TBW offices.

M.A. Potter - Direct

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1 In the days after that raid, did Mr. Farkas call you to
2 his office?

3 A. On Wednesday morning he called me up to his office and he
4 says, Margaret--

5 MR. CONNOLLY: Your Honor, I am going to object. This
6 is hearsay.

7 MS. KARINSHAK: Your Honor, both witnesses are here.

8 THE COURT: It doesn't work that way. Approach the
9 bench.

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

12 AT SIDE BAR

13 MS. KARINSHAK: Your Honor, there is a couple different
14 grounds. First, it's a statement from which she takes an action.
15 And it's also a defendant's--

16 THE COURT: What do you think she is going to say?

17 MS. KARINSHAK: Your Honor, she is going to say that
18 because of his statements, she went to make sure to get the
19 paychecks to the employees to get the employees paid one last
20 time.

21 THE COURT: What's the statement she is going to say he
22 said?

23 MS. KARINSHAK: Basically, is there a way to pay, Ms.
24 Potter, is there a way to pay the employees one last time. And
25 she says yes. And then she goes and sends one last paycheck out

M.A. Potter - Direct

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1 to all the employees to wrap up the business.

2 THE COURT: It's harmless. If that's all it is. But
3 you don't want to walk yourself into trick box. Your client has a
4 right to decide at the very last minute whether he is going to
5 testify or not, so don't tell me the witnesses are here, it is not
6 hearsay, that is not good form.

7 All right, I have been very generous and the Government
8 hasn't objected, but this stuff is way, way irrelevant. So, we
9 need to keep this witness under control. All right.

10 We need to get to the expert today. Don't do delaying
11 tactics.

12 MS. KARINSHAK: Your Honor, I am not delaying. I am
13 trying to keep her--

14 THE COURT: All right.

15 MS. KARINSHAK: I understand. And I am almost complete
16 with this witness.

17 THE COURT: All right.

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

20 BEFORE THE JURY

21 THE COURT: Ma'am, do you need some Kleenex?

22 BY MS. KARINSHAK: (Continuing)

23 Q. Ms. Potter, if you could please tell the jury what happened
24 during that conversation on that Wednesday morning that you were
25 just talking about.

M.A. Potter - Direct

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1 A. I went up there. And Lee looked at me, he says, Margaret,
2 it's over. He said, I've done all I can. He said, how can we pay
3 the employees if I have to let them go today.

4 And I said, well, I can't pay them today, but I can run
5 live checks. I can't do direct deposits or wire transfers or
6 anything. But I said, if they go today, which was on a Wednesday,
7 I said I can have a check here on Friday and have them to the
8 various offices, and we will give them a live check.

9 Q. So, were you able to send a paycheck?

10 A. I did.

11 Q. And to how many employees did you send that paycheck?

12 A. I know there was at least a minimum of 2,800 people. They
13 weren't all in Ocala, there was about a thousand or better in
14 Ocala. And each office had, you know, several hundred people.
15 But we got them paid.

16 Q. Now, moving forward, at some point did the FBI around June of
17 2010 come to your house to speak to you about Mr. Farkas?

18 A. Yes, they did. Two gentlemen came to my house, it was like
19 dusk, dark, I had finished up for the day--

20 THE COURT: Ma'am, the answer is simply yes, two people
21 came.

22 THE WITNESS: I'm sorry.

23 THE COURT: Next question.

24 THE WITNESS: Yes.

25 BY MS. KARINSHAK: (Continuing)

M.A. Potter - Direct

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1 Q. What were the agents asking you specifically about as to Mr.
2 Farkas' accounts?

3 A. They came to the door. I went to the door and they
4 introduced themselves, showed me their identification. And they
5 asked me was Mr. Farkas there. And I said no. They said, do you
6 know where he is at? And I said no.

7 And then they asked me about did I know if he had an
8 offshore bank account. And I said no. Not that I didn't know,
9 but I know that he doesn't have one. And then they asked me more
10 questions--

11 Q. Let's not go into all that. But basically you said, your
12 testimony is that you told them he did not have offshore bank
13 accounts and you knew that, is that right?

14 A. That is correct.

15 Q. And how was it that you know that?

16 A. Well, all the money that Lee got out of the company would, I
17 would say over the 13 years I was there, 99 percent of it went
18 through my hands where I would make a check and give to him. And
19 other than his paycheck, he never took any money out of the
20 company other than if he had expenses that he would turn in.

21 Q. Now, did you have occasion to actually tell Mr. Farkas about
22 the FBI coming to your house?

23 A. I did.

24 Q. Please tell us briefly about that conversation.

25 MR. CONNOLLY: Your Honor, I am going to object on

M.A. Potter - Cross

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1 relevance grounds for this.

2 THE COURT: I don't know why this is relevant. I will
3 sustain the objection.

4 BY MS. KARINSHAK: (Continuing)

5 Q. Ms. Potter, while you were employed at Taylor Bean &
6 Whitaker, were you proud of the accomplishments of your company?

7 A. Absolutely I was. I was very proud of Taylor Bean &
8 Whitaker. And so was the majority of other people.

9 MS. KARINSHAK: One moment please, Judge.

10 Nothing further, Judge.

11 THE COURT: All right. Any cross?

12 CROSS EXAMINATION

13 BY MR. CONNOLLY:

14 Q. Good afternoon, Ms. Potter.

15 A. Good afternoon.

16 Q. Before I begin, I just want to clarify one thing. I thought
17 I heard you say on direct, and I want to make sure I heard that
18 correctly.

19 Did you testify that Lee Farkas told you he couldn't
20 tell you about Ocala Funding?

21 A. He said-- Well, he said, ask Paul. He said, I don't know
22 anything about it.

23 Q. He said he didn't know anything about it?

24 A. Well, yeah, yes, kind of like that. Yeah, he didn't know
25 what, you know, what it's function or-- Yeah.

M.A. Potter - Cross

2172

1 Q. Thank you. Now, you and I have never spoke before, have we?

2 A. I have a hearing disability, please speak louder for me.

3 Q. Certainly, I will try to speak as loud as Ms. Kissick did.

4 You and I have not spoken before, have we?

5 A. No, I do not think so.

6 Q. You were an assistant to Mr. Farkas for a number of years, is
7 that correct?

8 A. That's correct.

9 Q. Now, just to clarify, did you start in 1976 or in 1996?

10 A. 1996, May 17, 1996.

11 Q. And Lee Farkas was good to you, wasn't he?

12 A. Yes.

13 Q. He gave you a job?

14 A. Yes.

15 Q. Treated you well?

16 A. Yes.

17 Q. In fact, I think you testified that you said TBW was like a
18 family, is that right?

19 A. That is correct.

20 Q. And it remained like a family throughout your 13 years at
21 TBW, didn't it?

22 A. It did.

23 Q. Lee Farkas was the head of that family, wasn't he?

24 A. Yes.

25 Q. He was the leader of TBW, wasn't he?

M.A. Potter - Cross

2173

1 A. Yes, he was.

2 Q. He made the decisions about what happened at TBW, didn't he?

3 A. Well now, I can't, I can't attest to that.

4 Q. You can't attest to all decisions, but did he make decisions
5 about who got paid what?

6 A. In the beginning, about who got paid what, he did. But then
7 we got, we had a full human resources department.

8 Q. And who told the human resources department how much to pay
9 people, Ms. Potter?

10 MS. KARINSHAK: Objection, Your Honor, to the extent--

11 THE COURT: To the extent you know, Ms. Potter. Do you
12 know who told them?

13 THE WITNESS: Who told the human resources-- We had,
14 she had a Master's in human resources. And there was a guideline
15 that she would go by, what was it in the nation, what would go by
16 that--

17 BY MR. CONNOLLY: (Continuing)

18 Q. Ms. Potter, let me ask you a different question.

19 A. Okay.

20 Q. Lee Farkas decided how much to pay Paul Allen, didn't he?

21 A. You know, that's not a good question for me because--

22 Q. Ms. Potter, it is a yes or no question, or you don't know.

23 A. I do not know.

24 MS. KARINSHAK: Your Honor, that is being argumentative.

25 THE COURT: No, that is not argumentative. And the

M.A. Potter - Cross

2174

1 answer was the witness does not know.

2 A. Because Paul and Lee and I guess Ray and others, when Paul
3 came to get the job, I wasn't in that room. I can't say who made
4 the decision.

5 BY MR. CONNOLLY: (Continuing)

6 Q. And who told you how much, when you were doing your payrolls
7 as the payroll manager, to pay them?

8 A. When he filled out his application, when he went through
9 human resources, and then it came to me.

10 Q. So, Paul Allen filled out an application?

11 A. Yes.

12 Q. It went through human resources?

13 A. Yes.

14 Q. And that's how you knew to pay him \$400,000?

15 A. Right.

16 Q. Ms. Karinshak asked you about when the agents showed up at
17 your house in June of 2010, do you recall that?

18 A. Yes.

19 Q. You spoke with them for a few minutes, isn't that right?

20 A. That is correct.

21 Q. And then you said you didn't want to speak to them anymore?

22 A. Right.

23 Q. At that point in time did you know that Lee Farkas was being
24 investigated?

25 A. At that time I knew about-- We closed on, in August. I

M.A. Potter - Cross

2175

1 didn't hear anymore, the only thing that I knew was the Navigant
2 Group was doing a restructuring. And then on June 15 the two
3 gentlemen showed up at my front door.

4 Q. Now, Ms. Potter, I believe you testified on direct that you
5 became the payroll person in about 2000?

6 A. Correct.

7 Q. And you handled Lee Farkas's bonuses, correct?

8 A. Yes.

9 Q. Now, did you have an understanding or did you know that Lee
10 Farkas was under a \$100,000 a year salary restriction?

11 A. No.

12 Q. Did he ever tell you that?

13 A. No.

14 Q. When did those bonuses-- Those are based on all loan
15 originations, correct?

16 A. Yes.

17 Q. And they were a basis point per-- A basis point, is that
18 right?

19 A. Yes.

20 Q. When did those begin?

21 A. When did those commissions begin for him?

22 Q. For Lee Farkas, yes.

23 A. I would say 2004, 2005, somewhere in there.

24 Q. And those bonuses amounted to hundreds of thousands a month,
25 didn't they?

M.A. Potter - Cross

2176

1 A. Yes.

2 Q. Didn't Lee Farkas make \$3 million a year, approximately, in
3 2007?

4 A. Well, let's see. You know, I have got to remember. I mean,
5 if it's say 200,000 a month for 12 months, that would be, what, a
6 million dollars.

7 Q. We showed, Ms. Karinshak showed you one example where it was
8 about \$300,000 a month. Do you remember that?

9 A. Well, yes, in 2007-- Well, it could have been that big.

10 Q. Could it have been \$3 million in 2008?

11 A. His total salary for 2008?

12 Q. With bonus, ma'am, yes.

13 A. For the bonuses? Well, it could have been, yes. I have them
14 all here.

15 Q. That's okay. And was he still getting these bonuses in 2009?

16 A. Yes.

17 Q. Let me ask you to take a look for a moment at Defendant's
18 Exhibit 553A. And I want to ask you a question about the page
19 that Ms. Karinshak showed you. So, page 009.

20 A. Okay.

21 Q. Do you have that?

22 A. I do.

23 Q. Now, if I understood your direct testimony correctly, I think
24 you indicated that the salaries that are listed there, the
25 approximately \$22,000--

M.A. Potter - Cross

2177

1 A. Yes.

2 Q. Those are salaries for employees of NADA Farm?

3 A. Yes, for the month.

4 Q. For the month.

5 A. Yes.

6 Q. And you testified on direct that Mr. Farkas bought NADA Farm
7 back in the mid '80s, correct?

8 A. Yes.

9 Q. Did he have employees throughout at NADA Farm?

10 A. No, no.

11 Q. When did the employees start?

12 A. When did his employees start?

13 Q. Yes, when did he start paying people \$20,000 a month to work
14 on his farm?

15 A. Well, that is probably five, six people. And this is a
16 month's salary.

17 Q. Ms. Potter, my question is, when did those people start
18 working at the farm? Approximately what year?

19 A. It's on that other record where I have the payroll dates
20 ending. I mean, the employment dates that would be better.

21 So, I guess-- Let me see. I guess Tom started, that
22 was the older one-- I can't remember really. I never thought
23 about, you know, his employment date. Maybe he started about
24 2003.

25 Q. You testified on direct that the defendant was making \$26,000

M.A. Potter - Cross

2178

1 in 2003. How is he paying for employees' salaries at NADA Farm if
2 he is only making \$26,000 a year?

3 A. I could be wrong about my date there. It's on, it's in that
4 other record.

5 Q. Ms. Potter, didn't TBW pay for those employees for a long
6 time?

7 A. No.

8 Q. Wasn't money taken out from TBW for that?

9 A. It was taken out of Lee's pay. I would have to go back to
10 look to see when Tom went on the payroll. He was the first one
11 there.

12 Q. Other than Tom, weren't there a number of friends or
13 associates of Lee Farkas on the payroll of Taylor.

14 Bean & Whitaker?

15 A. That didn't, that did not work there?

16 Q. Codie Roberson on the payroll?

17 A. Who?

18 Q. Codie Roberson?

19 A. Yes.

20 Q. What did Mr. Roberson do?

21 A. He did the design work for our offices.

22 Q. What about Sean Murla, was he on the payroll?

23 A. He was on the payroll.

24 Q. What did Sean Murla do?

25 A. I beg your pardon?

M.A. Potter - Cross

2179

1 Q. What did Sean Murla?

2 A. When did he come on?

3 Q. What did he do?

4 A. What did he do? Well, he started the Foundation, but he also
5 helped with, with the offices, the outside offices of it.

6 Q. So, he did some decorating or designing too?

7 A. Well, Codie is more of a draftsman type person.

8 Q. What about Ben Charles, was he on the payroll?

9 A. He was an originator.

10 Q. And was he a friend of the defendant's as well?

11 A. Well, yes.

12 Q. All three of those men were friends of the defendant, is that
13 correct?

14 A. Yes.

15 Q. Were there other employees on the payroll who were friends of
16 the defendant?

17 A. Well, actually we were all friends of his. But, yeah--
18 Well, nobody else, unless you call-- If you call the name, I can
19 tell you if he was on the payroll or not.

20 Q. Ms. Potter, I think you testified on direct that you flew on
21 the corporate jet a few times for some office openings?

22 A. Right.

23 Q. Did you ever fly on the defendant seaplane?

24 A. No.

25 Q. You understood he owned a seaplane?

M.A. Potter - Cross

2180

1 A. Yes.

2 Q. Do you know how the defendant paid for his jet?

3 A. Do I know how he paid for the jet?

4 Q. Yes, ma'am.

5 A. No.

6 Q. Do you know how much the jet cost?

7 A. No.

8 Q. Would it surprise you to learn that it cost about
9 \$28 million?

10 A. Was it paid for?

11 Q. I am just asking you if you know the price of the jet, ma'am?

12 A. No, I didn't, no.

13 Q. Do you ever transfer \$28 million from the defendant's salary
14 over to that due from account that you talked about?

15 A. The due from account was handled by the accounting
16 department. I think I stated that.

17 Q. Correct. And you didn't see what happened to the money when
18 it went over there, did you?

19 A. No, that was handled by the accounting department.

20 Q. And you didn't know what the size of that due from
21 shareholder account was, did you?

22 A. No. But the due from shareholder account was set up all
23 along.

24 Q. I understand, ma'am. My question is, did you know what the
25 size of that was?

M.A. Potter - Cross

2181

1 A. No, I did not.

2 Q. Did you know how many due from accounts there were related to
3 Lee Farkas' other businesses?

4 A. No, I do not.

5 Q. Do you know if there were due from accounts for restaurants?

6 A. For the restaurants?

7 Q. Yes. Do you know whether there were due from accounts for
8 the restaurants?

9 A. Yeah, there probably was when the restaurants was being
10 built, yes.

11 Q. Do you have any idea how big those accounts got?

12 A. No, sir, I did not work in the accounting department.

13 Q. Did you have any idea when Taylor Bean & Whitaker closed in
14 August of 2009 how much money was outstanding on those accounts?

15 A. No, I do not.

16 Q. Who decided how much of this bonus money would go, be sent
17 over to the due from, you or Lee Farkas?

18 A. Lee told me to take \$20,000 every month out of there.

19 Q. And you don't know if that was enough to cover what was due?

20 A. Well, it came out every month.

21 Q. Understood.

22 A. Okay.

23 Q. Now, I think you also testified on direct that if money came
24 out of Taylor Bean & Whitaker for the defendant, you would know
25 about it, is that right?

M.A. Potter - Cross

2182

1 A. 98 percent of it. I think I might have said 99 percent of it
2 at the time. If he got money, I would write the check.

3 Q. Are you aware of all the loans that Lee Farkas took out from
4 Taylor Bean & Whitaker?

5 A. No. I did not work in that department.

6 Q. Okay. Do you know if he got money for those loans?

7 A. No, I do not.

8 MS. KARINSHAK: Your Honor, objection. She said she
9 doesn't know.

10 A. That's not--

11 THE COURT: Ma'am, there is no question pending right
12 now.

13 This is cross-examination and there is leeway with
14 cross-examination. The objection is overruled.

15 BY MR. CONNOLLY: (Continuing)

16 Q. Do you know how much money the defendant got for those loans
17 he took out?

18 A. No, I do not.

19 Q. So, just to clarify your testimony, when you said money that
20 the defendant got from Taylor Bean & Whitaker, you are talking
21 about his salary?

22 A. His salary, yes.

23 Q. And the hundreds of thousands of dollars of bonuses each
24 month?

25 A. Yes. I think there was commissions, yeah.

M.A. Potter - Cross

2183

1 Q. It was commissions?

2 A. Right.

3 Q. The Court's indulgence, Your Honor.

4 Ms. Potter, were you upset when TBW closed?

5 A. I was-- Well, I don't know, you describe upset. Of course,
6 I had been there 13 years. It hurt my heart that the company had,
7 that it was gone. There was a lot of people that I felt for.

8 It personally did not affect me so much financially
9 because 2007 I married and my husband takes care of me. But there
10 was a lot of people that it was going to hurt pretty badly. And
11 certainly I was going to feel bad.

12 Q. Yeah. You said that working at TBW was one of the best jobs
13 in Ocala, didn't you?

14 A. It was.

15 Q. It was like working like a family?

16 A. Correct.

17 Q. And it was very hard on the community, wasn't it?

18 A. It was, it was a great impact on Ocala.

19 Q. So, Ms. Potter, who do you blame for Taylor Bean & Whitaker
20 closing?

21 A. I never casted any blame.

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

23 THE COURT: Any redirect?

24 MS. KARINSHAK: No further questions, Your Honor.

25 THE COURT: All right. I assume no one is going to call

M.A. Potter - Cross

2184

1 Ms. Potter again as a witness?

2 MR. CONNOLLY: The Government is not, Your Honor.

3 MS. KARINSHAK: Your Honor, might she be released?

4 THE COURT: Yes. Ms. Potter, you are released as a
5 witness. That means you can stay in court and watch the
6 proceedings or you may leave, but you are not to discuss your
7 testimony with any witness who has not yet testified.

8 THE WITNESS: Yes, Your Honor.

9 NOTE: The witness stood down.

10 THE COURT: Your next witness?

11 MS. KARINSHAK: Your Honor, we call Mr. Joe Ellis to the
12 stand.

13 NOTE: The witness duly affirms.

14 JOE ELLIS, called by counsel for the defendant, first
15 duly affirming, testifies and states:

16 DIRECT EXAMINATION

17 BY MS. KARINSHAK:

18 Q. Good afternoon, Mr. Ellis.

19 A. Good afternoon.

20 Q. Would you please state your name, and spell your last name
21 for the record.

22 A. Joe Ellis, E-l-l-i-s.

23 Q. And, Mr. Ellis, where do you live?

24 A. Ocala, Florida.

25 Q. How long have you lived there in Ocala, Florida?

M.A. Potter - Cross

2185

1 A. Since 1982.

2 Q. And how are you currently employed, Mr. Ellis?

3 A. I am not.

4 Q. Are you a real estate broker?

5 A. Yeah, I have a real estate company. I just started, but real
6 estate is not real active right now.

7 Q. And you say the state is not real active right now because of
8 the real estate market?

9 A. Yeah.

10 Q. What did you do prior to your unemployment?

11 A. I handled sales of REOs, bank foreclosures for Taylor Bean &
12 Whitaker.

13 Q. An REO is reposed--

14 A. Real estate owned bank. It's properties that they have
15 foreclosed on and the bank now owns them, it is real estate owned
16 property.

17 Q. And how long did you work at Taylor Bean & Whitaker in that
18 REO department?

19 A. Probably since about 2000, but I was not on the payroll until
20 about 2007.

21 Q. Why do you say you weren't on the payroll until about 2007?

22 A. Because we sold the properties through Realtors around the
23 country, and I got them to pay me a referral fee rather than
24 Taylor Bean paying them.

25 Q. So, you were working on a commission?

M.A. Potter - Cross

2186

1 A. Yeah.

2 Q. And then in 2007 you officially joined Taylor Bean &
3 Whitaker?

4 A. Yeah.

5 Q. And was that in the REO department?

6 A. Yes. Yes, ma'am.

7 Q. Now, when did you first meet Mr. Lee Farkas?

8 A. Like 1990, 1991, he was in the process of considering buying
9 Taylor Bean, and I knew the manager of the Taylor Bean office, and
10 we got together on that.

11 Q. So, since about 1990 or '91 you have been working with Mr.
12 Farkas in one capacity or another?

13 A. Yes.

14 Q. Either as a consultant or back-- Down to 2007 when you
15 officially joined TBW, is that right?

16 A. That's right.

17 Q. And how long did you work at Taylor Bean & Whitaker?

18 A. Until the end of October last year.

19 Q. Okay. And did your daughter also work there in the REO
20 department with you at some point?

21 A. Yes.

22 Q. Okay. Just wait until I finish the question before you start
23 answering. Okay.

24 Now, you said something about lining up deals around the
25 country. Explain what that means to us that don't work in your

M.A. Potter - Cross

2187

1 business.

2 A. Okay. There were bank foreclosures all over the country.
3 And what I would do, I would find a Realtor in that area to take
4 the property, do a market evaluation. And we would put it on the
5 market and we would sell it. And when they got paid, they would
6 pay me a referral fee.

7 Q. Now, I direct your attention to August of 2009. Had you been
8 working on one of these REO deals at the time?

9 A. Yes.

10 Q. Could you please hand Mr. Ellis Defendant's Exhibit 777,
11 please.

12 THE COURT: Is there any objection?

13 MR. ZINK: No objection, Your Honor.

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

15 (Defendant's Exhibit No. 777 was received in evidence)

16 BY MS. KARINSHAK: (Continuing)

17 Q. Mr. Ellis, do you recognize Defendant's Exhibit 777?

18 A. Yes, ma'am.

19 Q. How are you able to recognize Exhibit 777?

20 A. I was involved in putting the deal together. And then I see
21 the signatures on the third page I guess it is.

22 Q. Okay, let's look at the first page.

23 A. Okay.

24 Q. It says page 1 of 3. What is the title of this document?

25 A. REO Bulk Package Sale.

M.A. Potter - Cross

2188

1 Q. Escrow Instructions?

2 A. Yes, ma'am.

3 Q. And what is the purpose of this contract?

4 A. It shows that Taylor Bean & Whitaker was entering into an
5 agreement with Centurion Asset Partners for the sale of all the
6 REOs we had at that point in time.

7 Q. Which is approximately how many REOs?

8 A. A little less than 4,000.

9 Q. What is the effective date of that? Was that August of 2009?

10 A. Yes.

11 Q. What was the purchase price that Taylor Bean & Whitaker was
12 going to be paid for those REOs you just talked about?

13 A. That Centurion was going to pay?

14 Q. Yes. Is that shown on this page?

15 A. Yes. It is \$548,482,106.60.

16 Q. And then it says in that same sentence in the contract, which
17 is the agreed rate of 68 percent of list price?

18 A. Yes, ma'am.

19 Q. What does that mean?

20 A. On most REOs, to get a group to buy, they were offering
21 somewhere between 30 to \$0.50 on the dollar. And we had been, I
22 had been working with different groups for about six months and
23 finally got up to 68 percent. If you get \$0.50 on the dollar with
24 REOs, you are in pretty good shape normally.

25 Q. So, you got 68 percent, so you thought you were doing pretty

M.A. Potter - Cross

2189

1 good then?

2 A. Yes.

3 Q. Just so we are clear on the record, on the next page, page 2
4 of 3, is the list price on that page?

5 A. \$806,591,333.35.

6 Q. Okay. Moving to the next page. Is that the signature page
7 for this escrow agreement?

8 A. Yes, ma'am.

9 Q. And whose signatures are on this document?

10 A. The president of Centurion Asset Partners, Tara Bonelli, and
11 Paul Allen, CEO.

12 Q. And did you get, did you bring these documents to Mr. Allen
13 for his signature?

14 A. Yes.

15 Q. And he signed them on behalf of Taylor Bean & Whitaker?

16 A. Yes.

17 Q. All right, moving to the next page. I note at the bottom of
18 that page it says 1 of 107. What's the title of this agreement?

19 A. This is the real estate purchase and sale agreement between
20 Taylor Bean and Centurion.

21 Q. And it again has the same effective date of August 21, 2009?

22 A. Correct.

23 Q. And I notice here that it says of 107 pages, but we have only
24 got 15 pages. Why is that?

25 A. The pages that are missing was a list of all the properties

M.A. Potter - Cross

2190

1 that were for sale at that time. And, of course, that changes
2 daily, but--

3 Q. At that moment in time?

4 A. At that moment in time, that's the amount.

5 Q. So, those pages that are missing are the descriptions of all
6 the properties?

7 A. Right, yes.

8 Q. But you have given us, in essence, the agreements, the
9 contracts, right?

10 A. Yes, ma'am.

11 Q. And going to page 4 of 107 of this real estate purchase and
12 sale agreement, again that shows that total purchase price as well
13 as the list price, correct?

14 A. Correct.

15 Q. And you have already told those numbers to us, right?

16 A. Right.

17 Q. And then moving to page 15 of this document, that's the
18 signature page, correct. Page 15 of 107?

19 A. Yes.

20 Q. And then moving to the next document, what's the title of the
21 next document?

22 A. It is the master fee agreement.

23 Q. And what is a master fee agreement?

24 A. That's how all the parties that are involved in it would be
25 compensated.

M.A. Potter - Cross

2191

1 Q. And again, this has the same effective date of August 21,
2 2009?

3 A. Yes.

4 Q. And the same parties, Taylor Bean & Whitaker and Centurion
5 Asset Partners?

6 A. Yes, ma'am.

7 Q. And again, looking on page 7 of 7 of this master fee
8 agreement, if you could turn over to that, please, sir. Is that
9 the signature major again?

10 A. Yes.

11 Q. And who is this signed by?

12 A. It is signed basically by Paul Allen for Taylor Bean and
13 myself, and Tara Bonelli and a couple of her representatives.

14 Q. Okay. So, at this point is this agreement fully executed?

15 A. Yes.

16 Q. Why did this sale not happen?

17 A. Navigant took over, that's the, I guess the consulting firm
18 that took over when Taylor Bean was changed, and they told me that
19 the deal was not going to go through.

20 Q. Did they give you any explanation as to why this deal wasn't
21 to go through?

22 A. They just told me it wasn't going to go through.

23 Q. Were you told to cancel the deal?

24 A. Yeah.

25 Q. And did you do so?

M.A. Potter - Cross

2192

1 A. Yeah, because they were, they said if I didn't, they would go
2 to the bankruptcy court and get it cancelled anyway.

3 Q. How much commission would you have made on this daily?

4 A. About two-and-a-half million. And on that one also, I had
5 gotten Centurion Group to pay me the commission and not come out
6 of Taylor Bean's proceeds.

7 Q. Now, were these properties that are subject to the agreements
8 that you just talked about, were they actually available or
9 eligible to be sold?

10 A. Yes, I had been selling properties, they gave me a list
11 regularly.

12 Q. Who is they? They gave you a list?

13 A. The people at Taylor Bean & Whitaker out of the foreclosure.
14 And they gave me a list of properties that were available and how
15 much we had in them. And I would sell, was selling those.

16 Q. And had this been your standard practice over the course of
17 years working with Taylor Bean & Whitaker?

18 A. Not this big of a package, but it's the practice I had been
19 doing on one, two, three or four, or whatever.

20 Q. Had you ever been told that some of the buyers that you are
21 selling these REO properties to were ineligible or not able to be
22 sold to?

23 A. No.

24 Q. Had you ever had that happen to you before?

25 A. No. Only if they didn't, if they failed to qualify, a single

M.A. Potter - Cross

2193

1 buyer, for example.

2 Q. I am sorry, say that again, please.

3 A. If a buyer was buying just one unit and they failed to
4 qualify with the bank, that would--

5 Q. That's the only example of agreements that would fail to
6 happen.

7 A. Right, yes.

8 Q. And did you consider it odd to stop this sale?

9 A. I did, but I knew that everything had changed. So, I mean,
10 like I said, they told me the bankruptcy court would cancel it if
11 I didn't, so--

12 Q. Now, since the shutdown of Taylor Bean & Whitaker and
13 Navigant taking over operations, are there more properties to be
14 sold?

15 A. I was advised right before I left that there were going to be
16 like 15 to 1,700 properties that would be coming up to be
17 foreclosed on, and they wanted to know if I wanted an opportunity
18 to handle those. And I said yes.

19 Q. Are you going to get to handle those or is it--

20 A. I doubt it, now that I have testified on this.

21 Q. So, given your hypothesis that you doubt it, how much is it
22 going to cost you in your mind that you came to testify here about
23 this REO deal?

24 A. Probably in excess of a million dollars, I would be guessing.

25 Q. Now, while working at Taylor Bean & Whitaker, did you have

M.A. Potter - Cross

2194

1 occasion to observe Mr. Farkas and his management style?

2 A. Yes. The observations I had with him was on a new project or
3 new people, he would work with them initially to make sure that he
4 trusted them and knew what they were doing. And then it was hands
5 off after that, he turned it over to them, at least that's been my
6 experience.

7 Q. That was your experience. And how much did you actually make
8 in salary at Taylor Bean & Whitaker?

9 A. \$1,000 a week.

10 Q. So, that's roughly \$52,000 a year?

11 A. Yes, ma'am.

12 Q. And did you get a commission?

13 A. Yes, I got a half a percent of anything that I sold, sold and
14 closed.

15 Q. So, for 2009 how much would you have made in total pay if you
16 recall, a rough estimate?

17 A. Somewhere around 500,000.

18 Q. What about 2010?

19 A. About 300,000.

20 Q. And did you consider this a good job for your area where you
21 lived?

22 A. Oh, yes, definitely considered.

23 Q. Why do you say that, sir?

24 A. Because the market in the Ocala area is not a high-paying
25 market.

M.A. Potter - Cross

2195

1 Q. And did Mr. Farkas ever pay for anything on your behalf?

2 A. One time a few years ago I had to go for cataract surgery.
3 And I knew he had had cataract surgery, so I called him about the
4 doctor. He referred the doctor to me. And he said I should go
5 for the upgrade because Medicare and my insurance would pay for
6 the cataract, but the upgrade would cost more. I talked to the
7 doctor, and it was like \$5,400.

8 So, I told him I wasn't in a position at that time to do
9 anything. But he said he would pay for it and it would count as
10 my bonus for the year. And so, I did.

11 Q. So, it was paid for, and then did you actually receive a
12 bonus?

13 MR. ZINK: Your Honor, relevance.

14 THE COURT: I am going to overrule the objection, it is
15 cross, or direct.

16 BY MS. KARINSHAK: (Continuing)

17 Q. I am sorry, did you receive a bonus that year that Mr. Farkas
18 paid for the upgrade on the cataract?

19 A. No.

20 Q. And, Mr. Ellis, when you worked with TBW, did you enjoy
21 working, at that company?

22 A. Yes, ma'am.

23 Q. Were you proud of the accomplishments of that company?

24 A. Yes, I was.

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

Ellis - Cross

2196

1 THE COURT: Yes, ma'am.

2 MS. KARINSHAK: Nothing further, Judge.

3 THE COURT: All right. We will take our afternoon
4 break, and reconvene at 20 after.

5 NOTE: At this point, 4:09 to 4:20 p.m., a recess is
6 taken; whereupon the case continues in the presence of the
7 defendant and the jury as follows:

8 JURY IN

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Ellis - Cross

2197

1 CROSS-EXAMINATION

2 BY MR. ZINK:

3 Q. Mr. Ellis, I'm just going to ask you a few questions.

4 A. All right.

5 Q. You testified about an agreement, sale agreement between TBW
6 and Centurion, correct?

7 A. Yes.

8 Q. I'd like to show you what's been marked as Government -- or
9 Defense Exhibit 777.

10 THE COURT: I think, I think, Mr. Ellis, you still have
11 that exhibit, don't you?

12 THE WITNESS: Yes.

13 BY MR. ZINK:

14 Q. Would you do me a favor and look at page 15 of 107? I think
15 it's the middle document, sir.

16 A. Okay.

17 Q. And can you read me the signatories there?

18 A. Tara Bonelli and Paul Allen.

19 Q. Mr. Ellis, do you know who Tara Bonelli is?

20 A. Yeah.

21 Q. And who is Tara Bonelli?

22 A. Is what?

23 Q. Who is she?

24 A. She's president of that Centurion Asset.

25 Q. And was the idea that Centurion and TBW enter into a deal

Ellis - Cross

2198

1 where Centurion would buy REO from TBW?

2 A. Right.

3 Q. And would TBW get money from that?

4 A. Yeah.

5 Q. And how much money?

6 A. It was \$546 million -- 548 million.

7 Q. And in order to sell REO, do you have to own REO?

8 A. Or be responsible for it.

9 Q. So what if you're not responsible for it and you sell it? Do
10 you have to pay somebody else?

11 A. I would assume that, yeah.

12 Q. Mr. Ellis, I'd like to show you what's been marked as
13 Government's Exhibit 1001.

14 It's already in evidence, Your Honor.

15 THE COURT: All right.

16 BY MR. ZINK:

17 Q. I'd like you to look at page 7, sir.

18 A. 7?

19 Q. Pardon me, before you do that, can you take a look at the
20 first page and just read the title to the jury?

21 A. "TBW Recovery Analysis."

22 Q. Okay. "Chapter 11 - Proposed Plan of Liquidation," do you
23 see that?

24 A. Yes.

25 Q. And what does that mean to you, sir?

Ellis - Cross

2199

1 A. Apparently, it's a plan for them to liquidate properties.

2 Q. Are you aware that --

3 THE COURT: Just a second. Is that part of the
4 bankruptcy proceeding? Is that part of the bankruptcy?

5 THE WITNESS: I don't know. I haven't seen this before.

6 THE COURT: But what does the word "liquidate" mean to
7 you?

8 THE WITNESS: Hmm?

9 THE COURT: The word "liquidate," when you look at a
10 liquidation plan, what is that normally in connection with?

11 THE WITNESS: It means that, to get rid of.

12 THE COURT: Go ahead.

13 MS. KARINSHAK: Your Honor, I object to the point he
14 doesn't know this document.

15 MR. ZINK: It's in evidence, Your Honor. I'm just going
16 to direct him to a certain page.

17 THE COURT: Let me hear what the question is before the
18 objection.

19 BY MR. ZINK:

20 Q. Are you aware that TBW is in bankruptcy, sir?

21 A. It is now, yeah.

22 Q. I'd like you to look at page 7 of that document.

23 A. Okay.

24 Q. Bottom of the page. Right next to the column "Investor," can
25 you please read what the next column says?

Ellis - Cross

2200

- 1 A. Which one there?
- 2 Q. "Beg.," sir?
- 3 A. BB&T?
- 4 Q. The second column, beginning "Beg. Inventory."
- 5 A. Okay.
- 6 Q. Will you please read that to the jury?
- 7 A. You want me to --
- 8 Q. Just read it.
- 9 A. What, the numbers?
- 10 Q. "Beg. Inventory REO Properties as of 8/4/2009," is that what
- 11 it says?
- 12 A. Yes.
- 13 Q. And it says TBW owns 772, correct?
- 14 A. Right.
- 15 Q. It says "Colonial, 1," correct?
- 16 A. Right.
- 17 Q. It says "Mercantile, 1," correct?
- 18 A. Right.
- 19 Q. It says "Wells Fargo, 2,038," correct?
- 20 A. Correct.
- 21 Q. It says "Bayview, 176," correct?
- 22 A. Right.
- 23 Q. It says "BB&T, 5," correct?
- 24 A. Right.
- 25 Q. It says "AOT/Overline, 1,488," correct?

Ellis - Cross

2201

1 A. Right.

2 Q. What does that mean to you, if you know, when it says "Wells
3 Fargo, 2,038"?

4 A. Right.

5 Q. What does that mean to you, sir?

6 A. It means they were owned by Wells Fargo and we were managing
7 it.

8 Q. And if you sell REO owned by Wells Fargo, who gets the money?

9 A. Wells Fargo would after a fee to Taylor Bean, I'm sure. I'm
10 not in that side of it.

11 Q. Just a couple of other questions, sir.

12 A. Okay.

13 Q. If you'd take a look at Defense Exhibit 777? It's the
14 agreement we referenced previously.

15 A. Okay.

16 Q. Go back to that signature page.

17 THE COURT: Which one? There are a couple.

18 MR. ZINK: Middle document, page 15, Your Honor.

19 THE WITNESS: Okay.

20 BY MR. ZINK:

21 Q. Is this the signature page for that REO sale agreement, sir?

22 A. Um-hum.

23 Q. And that's the agreement signed by Tara Bonelli and Paul
24 Allen, correct?

25 A. Yes, sir.

Fortune - Direct

2202

1 Q. Sir, are you aware that on March 17, 2011, Tara Bonelli was
2 arrested for one count of mail fraud and thirteen counts of wire
3 fraud?

4 A. No, I was not.

5 MR. ZINK: No further questions.

6 THE COURT: Any further recross -- redirect?

7 MS. KARINSHAK: No further questions, Your Honor.

8 THE COURT: All right. I assume Mr. Ellis is not going
9 to be called again as a witness?

10 MS. KARINSHAK: That's correct, Your Honor. May he be
11 released?

12 THE COURT: Yes. Mr. Ellis, we're going to release you
13 as a witness. That means you can stay in the courtroom and watch
14 the trial, or you may leave, but you're not to discuss your
15 testimony or anything you hear in the courtroom with any witness
16 who has not yet testified. Thank you.

17 THE WITNESS: All right.

18 (Witness excused.)

19 THE COURT: All right, your next witness, Mr. Rogow?

20 MR. ROGOW: Karen Fortune.

21 THE COURT: All right, Ms. Fortune.

22 KAREN FORTUNE , DEFENDANT'S WITNESS, AFFIRMED

23 DIRECT EXAMINATION

24 BY MR. ROGOW:

25 Q. Please state your name.

Fortune - Direct

2203

1 A. Karen Fortune.

2 Q. May I call you Mrs. Fortune instead of Ms. Fortune?

3 A. Yes, you may.

4 Q. Thank you.

5 Mrs. Fortune, what is your educational background?

6 A. I hold a Bachelor of Science in Accountancy and a Master's in
7 Accountancy from the University of Florida.

8 Q. And when did you receive those degrees?

9 A. I received the bachelor's in 1990 and the master's in 1992.

10 Q. Are you employed presently?

11 A. Yes, I am.

12 Q. And in what capacity are you employed?

13 A. I am a partner in the forensic department at a firm in
14 Atlanta, Georgia, called Habif, Arogeti & Wynne, otherwise known
15 as HAW.

16 Q. What kind of a firm is that?

17 A. It's a CPA firm.

18 Q. And in the context of that employment, what kind of work do
19 you do for that firm or their clients?

20 A. In the forensic department, I am responsible for assisting
21 attorneys and clients with any matters that might result in a
22 court action, so that would include investigations or damage
23 disputes.

24 Q. Are you a CPA?

25 A. Yes, sir.

Fortune - Direct

2204

1 Q. And how long have you been a CPA?

2 A. I've been a CPA since 1994. I took the exam and passed it in
3 1992, but there's a two-year requirement of work.

4 Q. And who, who is the one that gives that exam and accredits
5 you as a certified public accountant?

6 A. The American Institute of CPAs administers the exam. I hold
7 my license with the Georgia Society of CPAs, but I'm also a member
8 of the AICPA.

9 Q. And what is the AI -- whatever it is, what is the name of it?

10 A. The AICPA is the American Institute of Certified Public
11 Accountants.

12 Q. And are you certified in another subcategory by that
13 organization?

14 A. I have a certificate of financial forensics. I'm certified
15 in financial forensics as well.

16 Q. And what does that mean? What are financial forensics?

17 A. Well, financial forensics are, it's just another
18 accreditation that CPAs can have that specialize in, in forensic
19 accounting.

20 Q. How long have you held that certification?

21 A. I believe it's about four years.

22 Q. Are you involved in any special kind of organizations within
23 the State of Georgia with regard to public accountancy?

24 A. Yes, ma'am. I'm a member of the Georgia Society of CPAs, and
25 I am currently serving on a Leadership Committee for the Forensic

Fortune - Direct

2205

1 Evaluation Services Leadership Team as well as I'm the chair of
2 the Fraud Prevention and Detection Division with the Georgia
3 Society.

4 MR. ROGOW: Your Honor, I tender the witness as an
5 expert in accountancy and financial forensics.

6 THE COURT: Any objection?

7 MR. CONNOLLY: No, Your Honor.

8 THE COURT: All right.

9 MR. CONNOLLY: I just renew our objection in our filing
10 as to scope, but no objection as to the qualifications.

11 THE COURT: All right. And, ladies and gentlemen, this
12 is the first expert witness we've had testify in this case. Let
13 me just very briefly alert you we normally do not let witnesses
14 testify to conclusions. Witnesses are supposed to present facts.
15 However, if somebody through either training or experience has
16 developed a special expertise that might help the jury in
17 understanding some of the facts in the case, we allow that witness
18 to express a, a conclusion. The conclusion has to be within that
19 expert's area of expertise. If it's outside of that area, it's
20 not permitted.

21 It's up to the jury to accept or reject any or all of
22 any expert's testimony, and I'll give you a bit more details about
23 the law on experts, but this is our first expert witness in the
24 case, so I wanted you to understand why we've gone through that,
25 and that's why counsel asked the Court to find this witness to be

Fortune - Direct

2206

1 an expert in those two areas, and I do find her so qualified.

2 All right, go ahead.

3 BY MR. ROGOW:

4 Q. Mrs. Fortune, were you retained by the defense in this case?

5 A. Yes, I was.

6 Q. And when were you retained by the defense?

7 A. I believe it was about two weeks prior to this trial.

8 Q. Was there an agreement between yourself and the defense with
9 regard to compensation?

10 A. Yes, sir.

11 Q. And is that compensation with you or with your firm?

12 A. It's with my firm. My firm -- I was engaged as the expert,
13 but the agreement is between my firm and myself as the expert and
14 defense counsel.

15 Q. And what are the terms of that agreement with regard to your
16 compensation? When I say "you," I mean your firm's compensation.

17 A. The compensation is, is based on an hourly billing rate, so
18 for whatever amount of time we have dedicated to the matter and
19 worked, we have charged and have billed that to counsel.

20 Q. And what is your hourly rate?

21 A. My hourly rate is 410, \$410 an hour, and the other staff
22 working with me range between 95 and 525 dollars an hour.

23 Q. How many other people have been working with you with regard
24 to this case?

25 A. Approximately five or six besides myself.

Fortune - Direct

2207

1 Q. And, and have they also been working with you for the two
2 weeks, since the two weeks before the trial?

3 A. That's correct.

4 Q. Was there a time when you had to provide an expert report of
5 your findings and conclusions?

6 A. Yes, there was.

7 Q. And when, when was that?

8 A. I was required to submit an expert report by, I believe it
9 was the 5th, so that was the second day of trial.

10 Q. Do you, do you have an idea or any idea of how much time
11 you've spent in these two-plus weeks in preparing?

12 A. I can say "a lot," but I do not have specifics, no.

13 Q. Were you asked to or did you ask for documents to be shared
14 with you so that you could take a look at it and give your
15 opinions?

16 A. Yes. I requested documents, and we were provided with access
17 to a database, but most of the documents that I had requested were
18 financial statements of TBW as well as I had been provided with
19 the trial charts of the summary witness of the government. I also
20 asked for a number of agreements, and we were given access to
21 that.

22 Q. Can you tell us some of the agreements that you looked at?

23 A. Well, there are a number of agreements. Those that come to
24 mind, there were -- the AOT program had mortgage loan
25 participation agreements. There were warehouse loan agreements.

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1 There were security agreements, pledge agreements. There were a
2 number of, of agreements related to this.

3 Q. And were these agreements between Colonial Bank and TBW?

4 A. Yes, that's correct.

5 Q. Were there numerous versions of these agreements, for
6 example, amendments to the agreements?

7 A. Certainly. There were a number of, of amendments.

8 Q. Would it be -- approximately how many agreements do you think
9 you looked at? Over 25 or 30?

10 A. I believe that would be accurate.

11 Q. Did you look at UCC financing statements, also?

12 A. Yes, I did.

13 Q. And what are UCC financing statements?

14 A. UCC stands for Uniform Commercial Code, and those are filed
15 by a creditor with a given state for claims that they may have
16 against a debtor based on certain agreements that they have.

17 Q. Were the UCC, UCC filings that you saw in this situation
18 filed in Florida?

19 A. Yes, they were.

20 Q. And who were they between?

21 A. They were between TBW and Colonial Bank.

22 Q. Were there numerous statements of that sort?

23 A. Yes, there were.

24 Q. Were there attachments to those statements listing the, the
25 various kinds of things that were within the statements?

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1 A. Yes.

2 Q. And what kinds of attachments would, would be within those
3 statements and be part of them?

4 A. Those would have attachments that would not only have defined
5 terms, but they would also include a number of collateral items
6 that were subject to the UCC filing.

7 Q. And are these filings with the collateral items that are
8 listed something that would be available for anybody in the public
9 to take a look at if they were going to do business with one of
10 the parties?

11 A. Typically you can do a search with a state or the counties,
12 and you can find if there are any liens or UCC filings.

13 Q. Now, you also said that you looked at the charts done by the
14 government's summary witness.

15 A. That's correct.

16 Q. Was that Mr. Petruka?

17 A. I believe it's "Peroutka."

18 Q. "Peroutka."

19 A. I'm not sure of his name.

20 Q. Okay. Is that the person, though?

21 A. Yes, it is.

22 Q. Okay. And when did you first see his charts?

23 A. I believe I first saw his charts just before, the week before
24 the trial started. We, we were invited -- actually, I believe we
25 had requested an opportunity and counsel made the request and the

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1 government was gracious enough to meet with us the week before
2 trial and go through these schedules and provide to us the
3 basically road map to explain where the backup information was to
4 Mr. Peroutka's numbers.

5 Q. Where, where did you have that meeting where this was shared
6 with you?

7 A. We had it here in D.C.

8 Q. And do you remember approximately when that was?

9 A. I believe it was the, either the 28th or the 29th of March,
10 but I'm not exactly sure of the date.

11 Q. So that was just the week before trial?

12 A. That's right.

13 Q. Were you asked to review the indictment, also, in this case?

14 A. Yes, I was.

15 Q. And you said you reviewed the summary charts and various
16 documents as you have described, correct?

17 A. That's correct.

18 Q. And were you asked to provide an opinion as to the financial
19 impact of the transactions set forth in the indictment with regard
20 to TBW and Colonial Bank?

21 A. Yes, I was.

22 Q. And do you have an opinion with regard to the effect on
23 Colonial Bank of the transactions that took place that were listed
24 in Mr. Petruska's -- tell me again what the name is.

25 A. I believe it's "Peroutka."

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1 Q. "Peroutka." I keep saying Petruska, but Peroutka.

2 Mr. Peroutka's charts?

3 A. Yes.

4 Q. All right. And what was the opinion that you came to?

5 A. Well, as to Counts 4 through 7 and 10 and 11 -- we had
6 actually looked at 12 as well but then were told it had been
7 dropped -- assuming that Mr. Peroutka's figures are accurate, my
8 conclusion was that Colonial Bank received more money back than
9 they had advanced to TBW in those transactions.

10 Q. You said Counts 4 to 7 and 10 to 11, I think you said,
11 correct?

12 A. That's correct.

13 Q. You didn't mention Counts 2 and 3.

14 A. That's right.

15 Q. Is there some reason for that?

16 A. Well, the reason is based on the very limited amount of time
17 that we had, I wanted to make sure that we were able to address as
18 many items as we could prior to having to file an expert report,
19 and so because 4 through 7 and 10 and 11 were very similar in
20 nature in terms of their format and the flow of money, I focused
21 on those.

22 Q. I'm going to ask Mr. Woods to give you some exhibits that
23 we've given the government. It would be Defendant's Exhibits 778,
24 779, 780, 781, 782, 783, and 784.

25 Do you have all of those in front of you?

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1 A. I believe so.

2 THE COURT: Are there objections from the government to
3 any of these exhibits?

4 MR. CONNOLLY: Your Honor, he needs to lay a foundation
5 first.

6 THE COURT: These were not, these were not produced by
7 the --

8 MR. CONNOLLY: These are produced by Mrs. Fortune is our
9 understanding, Your Honor. We make the same objection that we had
10 earlier with defense.

11 THE COURT: All right, lay a foundation.

12 MR. ROGOW: All right.

13 Q. Did you prepare these reports?

14 A. Yes, I did.

15 Q. And on what did you base the reports?

16 A. These schedules were my summary of the slides or the trial
17 charts prepared by Mr. Peroutka.

18 Q. And did you also compare those -- the schedule with the
19 different counts in the complaint?

20 A. Yes, I did.

21 Q. And did you prepare this by yourself or with help from people
22 in your firm?

23 A. I prepared these by myself.

24 Q. All right. And the figures that you've put on and the layout
25 of this, was that all done by you pursuant to your -- to the

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1 retention agreement that we have with you?

2 A. That's correct.

3 THE COURT: I think that's enough foundation. I mean,
4 these are reports which were prepared by the expert.

5 MR. CONNOLLY: Yes, Your Honor, I'm sorry. My objection
6 was the flip side of the one the defense earlier had with respect
7 to accuracy.

8 THE COURT: Oh, oh. Well, I'm allowing them in right
9 now, and we'll see what happens with cross-examination, but
10 they're in.

11 MR. CONNOLLY: Thank you, Your Honor.

12 (Defendant's Exhibit Nos. 778 through 784 were received
13 in evidence.)

14 BY MR. ROGOW:

15 Q. Mrs. Fortune, I'm going to ask that certain government
16 exhibits be put up on the screen that have already been introduced
17 in the case, and as I call them out, they will, they will be put
18 on the screen, and then I'd like you to look at those exhibits,
19 and then we'll put your exhibit up on the screen so you can do the
20 comparison between the government exhibit and your schedule.

21 A. Okay.

22 Q. Do you understand?

23 A. Um-hum.

24 Q. Okay. This is Government Exhibit 4-23, the last page of
25 4-23. Have you seen that before, Mrs. Fortune?

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1 A. Yes, I have.

2 Q. All right. And would you describe what you see in there in
3 terms of the different entities that are shown?

4 A. Sure. First of all, in terms of the flow of cash, which is
5 what I focused on for my analysis, we see that the money is
6 departing Colonial Bank's AOT and being transmitted to TBW or
7 Ocala Funding. It is then being transferred from Ocala Funding to
8 the investor funding account. It is denoted as Colonial on the
9 schedule, but it is actually, the investor funding account was a
10 TBW account.

11 And then we see a little bit more money being
12 transmitted from the AOT to the investor funding and then finally
13 a larger sum being transmitted back from the investor funding
14 account of TBW to the AOT.

15 Q. Did you prepare a Schedule 1 which reflected your conception
16 of how this money moved?

17 A. Yes, I did.

18 MR. ROGOW: Could we put that up, please? This is 778.

19 Q. Would you explain your Schedule 1 in relation to what we had
20 just seen before, the Government's Exhibit 423, last page?

21 A. Certainly. If you note, the first transaction up at the top,
22 we'll see two wires or an entire wired amount from Colonial Bank,
23 and that's from the AOT, which is transmitted to Ocala Funding in
24 the amount of 638,000, and then we see a wire from Ocala Funding
25 to the investor funding account. So what I am depicting here is

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1 the pluses and minuses from each of these accounts.

2 So we have initially a negative, or money leaving
3 Colonial Bank and arriving at the Ocala Funding entity, and then
4 we see the money leaving Ocala Funding and arriving at the
5 investor -- TBW investor funding account.

6 We then see a transfer from Colonial Bank's AOT, denoted
7 by the negative 182,000, and arriving at the investor funding
8 account.

9 Q. Excuse me, I think you're making a mistake everyone has made.
10 It's 182 million, is it not?

11 A. Excuse me, you're correct. 182 million.

12 Arriving at the investor funding account. And then we
13 see finally the money being transferred from the investor funding
14 account of TBW in the amount of 822 million back to Colonial Bank.

15 Q. And is there a net gain and loss involved in this?

16 A. Yes, there is. So what you'll note at the bottom of the page
17 is the net effect of this particular transaction was that 1.79
18 million was returned to Colonial Bank in excess of monies that
19 left Colonial Bank. Similarly, Ocala Funding received \$26,509 in
20 excess of amounts that were transferred out, and the investor
21 funding account of TBW was actually, lost 1.8 million.

22 Q. And Colonial Bank gained \$1.792 million?

23 A. That's correct.

24 Q. These numbers, you have a formula here, $e = a+b+c+d$, that is
25 using the numerals that you have given or the letters you have

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1 given to the various transfers?

2 A. That's correct. Right.

3 Q. 9-18, the last page.

4 And by the way, that last discussion we had dealt with
5 Count 4 of the indictment, did it not?

6 A. That's correct.

7 Q. All right. And, and this one, Schedule 2, relates to the
8 summary that had been given before by the government. Do you see
9 that?

10 A. This Count 5?

11 Q. Yes, right. And is that the same kind of sending of money in
12 and out that you discussed with regard to the previous exhibit of
13 the government?

14 A. It is. The only difference with the remaining counts are
15 that there were no monies that were transferred directly from
16 Colonial Bank to the investor funding account. That was only in
17 Count 4. So the rest of them travel from Colonial Bank to Ocala
18 Funding to the investor funding account of TBW, back to Colonial
19 Bank.

20 Q. And so now if you would look at Defense Exhibit 779? And
21 walk us through that, please.

22 A. Sure. So in this one, very similar to the slide you just
23 saw, my schedule demonstrates the ins and outs. So you see the
24 money, 46 million being wired from Colonial Bank's AOT to Ocala
25 Funding and arriving at Ocala Funding. You then see that same

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1 amount departing Ocala Funding and going to the investor funding
2 account of TBW, and then you see 66 million leaving the investor
3 funding account and going to Colonial Bank.

4 Q. And the net gain for Colonial Bank?

5 A. Colonial Bank benefited in this transaction to the amount of
6 \$20 million.

7 Q. Mrs. Fortune, let me ask you, is it important that the
8 entities on the right side of your chart all be described as TBW
9 entities and accounts?

10 A. It is to me.

11 Q. Why is that?

12 A. Well, the reason that it's important is that the investor
13 funding account is a TBW account.

14 Q. And on, on the charts that have been prepared by the
15 government, was there some confusion with regard to that?

16 A. It was labeled as Colonial Bank. It was certainly housed at
17 Colonial Bank, but it was a TBW account.

18 Q. Let me turn next to 6-23. I don't want to be repetitive,
19 Mrs. Fortune. Is this the same process that we saw in the former
20 two?

21 A. It is.

22 Q. All right. And now if we put on 780, which is Defense
23 Exhibit 780? And this relates to Count 6, correct?

24 A. It does.

25 Q. And now walk us through your schedule with regard to Count

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1 7 -- I'm sorry, to Count 6.

2 A. Similarly to the others, you see the money departing Colonial
3 Bank's AOT and arriving in the TBW Ocala Funding, leaving Ocala
4 Funding, going to the investor funding account, and then the
5 amount of two hundred forty-six million eight hundred thirty-nine
6 being sent from the investor funding count to Colonial Bank.

7 Q. And the net gain again for Colonial Bank?

8 A. Was 54,000.

9 Q. 7-19. The same thing as we've seen before, just different
10 figures?

11 A. That's correct.

12 Q. All right. Let's go to Defense Exhibit 781, please. This is
13 Count 7. And walk us through this one, too, please.

14 A. Certainly. The same transaction flow occurs in this one as
15 well, with the wire from Colonial Bank to Ocala Funding, from
16 Ocala Funding to the investor funding account, and then an amount
17 being transferred from the investor funding account back to
18 Colonial Bank. The net effect of this is that Colonial Bank
19 benefited in this transaction in the amount of \$684,000.

20 Q. Thank you.

21 And now Government's Exhibit 10-18. And this one, is
22 this similar to the other ones that you've looked at?

23 A. Yes.

24 Q. When were all of these transactions we've looked at so far?

25 A. I believe these counts took place between May 13, 2009, and

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1 July 6, 2009.

2 Q. Now, tell us -- walk us through this, too. This is Count 10
3 on, this would be our Exhibit 782.

4 A. Again, similarly, you see the wire that is leaving Colonial
5 Bank to Ocala Funding, then leaving Ocala Funding to the investor
6 funding account, and then leaving the investor funding account
7 back to Colonial Bank, and in this instance, Colonial Bank lost
8 \$69,000.

9 Q. And the last one in this group is 11-19.

10 Once again, same summary, same kind of chart, correct?

11 A. Yes, sir.

12 Q. Same flow from the government's chart?

13 A. Yes, sir.

14 Q. Okay. And now let's look at 783, which is a defense exhibit,
15 and walk us through that, please.

16 A. Certainly. Again, we see the flow of the money, the ins and
17 outs, with the wire leaving Colonial Bank, arriving at Ocala
18 Funding, and then leaving Ocala Funding to the investor funding
19 account, and then an amount of 49 million leaving the investor
20 funding account back to Colonial Bank.

21 Q. And the net gain to Colonial Bank?

22 A. Colonial Bank netted 2.4 million in this transaction.

23 Q. Now, Mrs. Fortune, you mentioned before the dates when all of
24 these transactions took place, correct?

25 A. Yes.

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1 Q. Was there something, something significant to you about these
2 date in relation to the indictment?

3 A. Well, they were of interest to me because these, these
4 transactions occurred May 13, 2009, and beyond, and there were no
5 securities fraud claims for --

6 MR. CONNOLLY: Objection, Your Honor.

7 THE COURT: That's starting to become a legal comment,
8 which this witness is not qualified to make, so I'm sustaining the
9 objection.

10 THE WITNESS: May I rephrase my answer?

11 THE COURT: No, ma'am.

12 MR. ROGOW: No, no.

13 THE WITNESS: Sorry.

14 BY MR. ROGOW:

15 Q. Now, Mrs. Fortune, did you do a summary, also, of all of
16 these transactions?

17 A. Yes, I did.

18 Q. And, and is -- that's Defense Exhibit 784, correct?

19 A. That's correct.

20 Q. All right. So if we'd put that up?

21 So what is your summary of all these transactions with
22 relation to Counts 4 - 7 and 10 and 11?

23 A. For these transactions, Colonial Bank received over \$20
24 million more in cash than they received -- or than they advanced.

25 Q. Did, did you also look at Mr. Petruka's chart with regard to

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1 Counts 14 and 16 and the AOT, quote, holes that he described?

2 A. Yes, I did.

3 Q. By the way, would you, would you call these in accounting, is
4 that a usual term that you'd use, a hole?

5 A. No, not necessarily.

6 Q. What, what would be the more neutral term to use to describe
7 a deficiency?

8 A. Well, we might use "deficit," or we might use the term
9 "shortfall."

10 Q. And what would one need to know in order to determine if
11 there is a deficit or a shortfall?

12 A. Well, as a CPA, to determine whether or not there's a deficit
13 or a shortfall with regard to any transactions, you would need to
14 know what amounts had been advanced and what amounts were
15 available to offset those amounts.

16 Q. And would that -- would you need to know what the collateral
17 might be?

18 A. That would be the amounts to offset, so collateral that would
19 be available to offset.

20 Q. And what kind of collateral can be used to offset deficits or
21 shortfalls generally?

22 MR. CONNOLLY: Objection, Your Honor.

23 THE COURT: Oh, I think a CPA can certainly testify to
24 that.

25 MR. CONNOLLY: Just in general terms or with respect to

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1 this case?

2 MR. ROGOW: In general terms first.

3 THE COURT: I'm allowing it with general terms. Then it
4 can be specific to the case. It's not relevant until it's made
5 specific to the case, but it's background. Overruled.

6 BY MR. ROGOW:

7 Q. So in general terms?

8 A. In general terms, when you have a debt or amounts outstanding
9 and you have collateral that's to be applied, those would be any
10 assets. They could be receivables, they could be cash accounts,
11 they could be intangibles, any of those types of things.

12 Q. And based upon your examination of the UCC forms and the
13 agreements, all of those things that you talked about before, did
14 you find that there are other kinds of collateral that was out
15 there in this relationship between Colonial and TBW?

16 MR. CONNOLLY: I object, Your Honor. I think that's a
17 misleading question.

18 THE COURT: That question now is too broad. I'm going
19 to, I'm going to sustain that objection.

20 MR. ROGOW: Can I try to rephrase it to narrow it down?

21 THE COURT: Yes, you may do that.

22 MR. ROGOW: All right.

23 Q. So what kind of collateral did you see in any of the
24 agreements that you looked at in preparation for your testimony?

25 A. The collateral --

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1 MR. CONNOLLY: Objection. Again, Your Honor, seen as
2 allowed? Seen as existing?

3 THE COURT: That's too vague a question. We might even
4 let you lead a little bit if it will get this moving, assuming
5 it's a fair lead.

6 MR. ROGOW: Thank you.

7 Q. Mrs. Fortune, did you see the AOT agreement between Colonial
8 and TBW?

9 A. Yes, I did.

10 Q. And did you see that various sorts of collateral was listed
11 in that agreement?

12 A. Yes, I did.

13 Q. All right. Were MSR servicing rights in that agreement?

14 MR. CONNOLLY: Objection, Your Honor.

15 THE COURT: No, the CPA can read the agreement, cannot
16 give a legal opinion but can explain that she sees certain things
17 in the agreement that were used to inform her decision or her
18 conclusion, all right, without giving an opinion about the
19 agreement itself, and you can cross-examine. So overruled.

20 BY MR. ROGOW:

21 Q. So tell us, tell us what kind of things you saw in that
22 agreement with regard to collateral.

23 A. In the agreements that were related to these loans, I saw
24 servicing rights. I saw assets of the company itself of TBW,
25 meaning equipment, any of those types of things. I saw the

Fortune - Cross

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1 mortgage loans. I saw service receivables. There were a number
2 of assets listed.

3 MR. ROGOW: Nothing further, Your Honor.

4 THE COURT: All right. Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. CONNOLLY:

7 Q. Good afternoon, Ms. Fortune -- Mrs. Fortune.

8 A. I'm sorry, what is your name?

9 Q. Excuse me?

10 A. What's your name?

11 Q. My name is Charles Connolly. I represent the United States.
12 We haven't had a chance to meet before, have we?

13 A. No, sir.

14 THE COURT: We're not going to have, though, any more
15 reversal with the witness asking counsel questions, all right?

16 THE WITNESS: Sorry.

17 THE COURT: Let's just keep it the regular way.

18 BY MR. CONNOLLY:

19 Q. You've never testified before in a federal criminal trial,
20 have you?

21 A. No, sir, I have not.

22 Q. In fact, you've never even testified in a state criminal
23 trial before, have you?

24 A. No, sir, I have not.

25 Q. You've testified in two civil cases; is that right?

Fortune - Cross

2225

1 A. That's correct.

2 Q. One federal, one state?

3 A. That's correct.

4 Q. Is it fair to say that most of your testimony has been civil
5 in nature?

6 A. Yes, that's correct.

7 Q. Working on civil money damages?

8 A. In terms of testimony, that's correct.

9 Q. Disputes between companies to a contract?

10 A. In terms of testimony, that's correct.

11 Q. And some of your other work has been in that regard, too; is
12 that right?

13 A. That is correct, but I --

14 Q. In fact, you understand that --

15 A. Sir, may I finish? But I have also done investigative work
16 on criminal trials as well.

17 Q. I understand. You never testified in those before, correct?

18 A. That's correct.

19 Q. And you understand that civil cases can grow out of criminal
20 cases; isn't that right?

21 A. That's true.

22 Q. And just because there's civil aspects to a case doesn't mean
23 there isn't an underlying crime, does it?

24 A. That is probably true. That's a legal opinion, but that's
25 true, I'm sure.

Fortune - Cross

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1 Q. Well, I'm not sure it is. You have experience in that
2 regard, don't you?

3 A. Well, then repeat the question, please.

4 Q. Isn't it true that because there are civil aspects to a case
5 doesn't mean there isn't an underlying crime?

6 A. I'm not sure I understand your question. Just because
7 there's civil aspects doesn't mean there's not a criminal?

8 Q. Correct.

9 A. Okay. I can see that.

10 Q. In fact, you've worked on cases like that before, haven't
11 you?

12 A. That's true.

13 Q. Now, you testified on direct that you got retained just two
14 weeks ago; is that right?

15 A. No, I said approximately two weeks before the trial.

16 Q. Fair enough. And you met with the government shortly after
17 that?

18 A. I believe we met either the 28th or the 29th.

19 Q. Were you informed, Mrs. Fortune, that the government invited
20 the defense to have someone meet with them as long ago as December
21 2010?

22 A. No, sir.

23 Q. Would that have been helpful, do you think, maybe to your
24 analysis to have more time?

25 A. Oh, certainly.

Fortune - Cross

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1 Q. There's lots of documents in this case; isn't that right?

2 A. There's lots of documents.

3 Q. Thousands upon thousands?

4 A. That's correct.

5 Q. Lots of information out there?

6 A. That's correct.

7 Q. You didn't have time to review all of those documents and
8 information in these three or four weeks you've been on the case,
9 have you?

10 A. No, I have not.

11 Q. Even with the five or six people working with you?

12 A. That's correct.

13 Q. And do you understand that there have been professionals
14 looking into the status of the assets at Taylor, Bean & Whitaker
15 and Colonial for years?

16 A. I don't know that.

17 Q. Spending thousands and thousands of man-hours on it?

18 A. I don't know that.

19 Q. Did you understand that TBW was in bankruptcy?

20 A. I had heard that.

21 Q. Based on your experience, do you know what normally happens
22 in a bankruptcy?

23 A. Yes, I do.

24 Q. Someone comes in and tries to figure out what the assets are?

25 A. That's right.

Fortune - Cross

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1 Q. Would it surprise you to learn that their analysis shows
2 there to be billions of dollars missing from Colonial Bank?

3 A. I am not familiar with Colonial Bank's bankruptcy.

4 Q. This is Taylor, Bean & Whitaker's bankruptcy.

5 A. Oh, I thought you said Colonial Bank. I'm sorry.

6 Q. As part of that, would it surprise you to learn that their
7 analysis has shown based on their interactions with Taylor, Bean &
8 Whitaker billions of dollars of assets are missing?

9 A. I don't have any knowledge.

10 Q. Now, what have you looked at in coming to your opinions
11 today?

12 A. I've looked at the summary witness trial charts. I've looked
13 at the underlying data that they shared built up to those numbers.
14 I've looked at a number of agreements, UCC filings. I've looked
15 at financial statements from Taylor, Bean & Whitaker. I've looked
16 at a number of e-mails, a lot of data.

17 Q. Let's talk more about the underlying data. What types of
18 things did you look at? What types of underlying data did you
19 look at?

20 A. The summary witness pointed us to a number of databases that
21 had lots and lots of numbers, pool numbers for loans. They had
22 principal balances to them and dates -- databases essentially that
23 built up to the numbers that were included in Mr. Peroutka's
24 schedules.

25 Q. Did you look at Colonial pipeline reports?

Fortune - Cross

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1 A. Yes, I did.

2 Q. When did you look at those?

3 A. We looked at those -- we have been continuing to look at
4 those but looked at those last, last week and the week before.

5 Q. And did you look at those for each of the counts in the
6 indictment?

7 A. Oh, no, sir.

8 Q. Did you look at the pipelines to support every single of the
9 charts for which you did your own summary chart?

10 A. No, sir. I based that assuming that Mr. Peroutka's schedules
11 were accurate.

12 Q. In fact, your charts are really just summaries of the math in
13 Mr. Peroutka's charts; is that fair?

14 A. That is correct. However, since then, we've been working, my
15 team and I have been working to validate the numbers.

16 Q. And have you determined that those numbers are accurate as
17 you sit here today?

18 A. I can tell you that we see the basis for those numbers. I
19 can't tell you if the databases are complete. I can't tell you
20 all of that, but I can tell you that the numbers, I can see where
21 the numbers are coming from.

22 Q. But the charts that Mr. Rogow ran through with you and you
23 testified to are based on the summary charts that Mr. Peroutka
24 did?

25 A. That's correct.

Fortune - Cross

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1 Q. I think your testimony is they showed the same information in
2 a slightly different format. Is that fair?

3 A. That's fair.

4 Q. Now, you testified that you relied on financial statements
5 from Taylor, Bean & Whitaker.

6 A. I said that I reviewed them.

7 Q. You reviewed them.

8 A. Yes.

9 Q. Okay. Did you assume that those were accurate as part of
10 your review?

11 A. I didn't make an assumption as to the accuracy. I simply
12 reviewed them to, to see trends and to understand the growth
13 pattern at the company.

14 Q. So it wouldn't matter to you if those are false or not?

15 A. Well, it certainly would matter to me. I haven't read and
16 I've researched to see, I haven't heard that the auditors have
17 retracted those financial statements.

18 Q. You were asked to make certain assumptions as part of your
19 review; is that correct?

20 A. No, sir.

21 Q. So you haven't been asked to make any assumptions based on
22 your testimony here today?

23 A. If I have, I'm not remembering them at this point.

24 Q. Have you made certain assumptions?

25 A. Well, I certainly assumed that Mr. Peroutka's schedules were

Fortune - Cross

2231

1 accurate and the underlying data was, was complete.

2 Q. What about the nature of the underlying transactions?

3 A. I'm not sure I follow.

4 Q. We'll walk through those in a few minutes.

5 A. Okay.

6 Q. Let me just clarify to make sure we have an understanding as
7 to what you're not offering an expert opinion on. You're not
8 offering an expert opinion on Ocala Funding or things related to
9 Ocala Funding, are you?

10 A. No, sir.

11 Q. You're not offering an expert opinion on Plan B?

12 A. Only to the extent that Plan B involved the AOT in those
13 schedules and in the whole, whether or not there had been
14 sufficient collateral considered in Mr. Peroutka's schedules for
15 his charts for Counts 14 and 16.

16 Q. Are you making assumptions as to whether or not Plan B data
17 in return for money affects the analysis you did?

18 A. Am I making an assumption?

19 Q. Do you know what Plan B is?

20 A. Yes.

21 Q. What do you understand Plan B to be?

22 A. I understand Plan B was an alternative methodology that
23 Colonial Bank and TBW reached to advance funds for the purpose of
24 origination of mortgages.

25 Q. Mrs. Fortune, you're a CPA; is that correct?

Fortune - Cross

2232

1 A. Yes, I am.

2 Q. Are you allowed to sell fake assets to someone in return for
3 millions of dollars?

4 A. That's not good business, but I will say --

5 Q. Excuse me, it's not good business?

6 A. No, sir, it is not.

7 Q. Okay. Is it --

8 A. It is not right, and -- but I can tell you that these
9 agreements that I have reviewed, please, these agreements that I
10 have reviewed --

11 Q. My question calls for a simple answer.

12 THE COURT: Wait, you can't give a speech. You have to
13 answer the question. Your counsel, Mr. Rogow, can on redirect --

14 THE WITNESS: Okay.

15 THE COURT: -- if he thinks you need to go back over
16 something.

17 BY MR. CONNOLLY:

18 Q. So I want to go back over, your understanding -- is it
19 appropriate to sell fake assets in return for tens if not hundreds
20 of millions of dollars?

21 A. No, sir.

22 Q. Do you understand that that was what Plan B was?

23 A. That is not my understanding that that was Plan B.

24 Q. Now, you're not offering any expert opinion today with
25 respect to the 10-Ks, Colonial's 10-K?

Fortune - Cross

2233

1 A. No, sir.

2 Q. Or Colonial's 10-Qs?

3 A. No.

4 Q. And you understand that there are other counts in the
5 indictment besides the ones that you testified to on direct?

6 A. Yes, sir.

7 Q. Let's take a look for a moment, if we can, at Count, Count 5
8 and Mr. Peroutka's chart.

9 Let me ask you instead, I'm sorry, to look at Count 7.
10 And if I could ask you first to look at the -- sorry, Your Honor,
11 7-19.

12 THE COURT: All right.

13 BY MR. CONNOLLY:

14 Q. Let me ask you to look at page 5, please. Do you have it,
15 Mrs. Fortune?

16 Do you understand that the pool data that's being sold
17 from TBW to AOT in that transaction is based on fake and
18 fraudulent documents?

19 A. That is my understanding of the allegation, yes.

20 Q. Okay. Is that a problem?

21 A. That would be a problem. My analysis, however, showed, and
22 as did Mr. Peroutka's, that the monies that were advanced against
23 these was returned to Colonial Bank in excess.

24 Q. Do you know that those fake data sat on Colonial's books
25 after it was sent over? Do you have that understanding?

Fortune - Cross

2234

1 A. Oh, I would assume that it would have been.

2 Q. Okay. You're a CPA. Is it a problem to have fake assets on
3 your books?

4 A. It would be a problem, yes, sir. I would say this, however:
5 To the extent that the money was extended --

6 MR. CONNOLLY: Your Honor, please?

7 MR. ROGOW: It's the answer, Your Honor. She's
8 continuing her answer.

9 THE COURT: No, I think you on redirect can always
10 address follow-up, but the questions should be answered directly
11 and then nothing further.

12 BY MR. CONNOLLY:

13 Q. So, Mrs. Fortune, you would agree with me it's a problem for
14 Taylor, Bean & Whitaker to send fake data and assets to Colonial
15 in return for money?

16 A. Yes, I would agree with that.

17 Q. It might be a crime?

18 A. Might be.

19 Q. But your testimony is because at the end of the day more
20 money appears to have come back into the account, it's okay?

21 A. My testimony is to the extent that the money was returned to
22 Colonial Bank, they did not suffer a loss in, in those
23 transactions.

24 Q. Now, you haven't looked at the underlying documents of that
25 initial transaction to know whether it's fake or not; is that

Fortune - Cross

2235

1 correct?

2 A. That's correct.

3 Q. You didn't bother with that aspect of the transaction; is
4 that right?

5 A. It's not that I didn't bother, sir. It's that time was very
6 short, and in terms of being able to remit a report, this is what
7 I was able to conclude.

8 Q. Okay. But your assumption then, you didn't care -- look one
9 way or the other as to whether or not the underlying initial
10 transaction was fake or fraudulent?

11 A. No, sir, I did not. I, I simply evaluated the flow of the
12 money, and Colonial Bank benefited in that transaction.

13 Q. Mrs. Fortune, are you familiar with what a round trip
14 transaction is?

15 A. Yes, I am.

16 Q. In fact, I believe based on your experience that you've had
17 experience auditing before; is that correct?

18 A. That's correct.

19 Q. And isn't a round trip transaction a red flag to auditors?

20 A. It can be, yes.

21 Q. And it's a red flag because it may be hiring -- hiding,
22 excuse me, the true economic substance of what's going on?

23 A. That's correct.

24 Q. And a round trip transaction also -- often results in the
25 same or similar amount of money starting one place and coming back

Fortune - Cross

2236

1 to one place; is that correct?

2 A. That's correct.

3 Q. It can be a false transaction to cover up something else; is
4 that right?

5 A. It could be.

6 Q. And do you make any analysis as to whether or not these
7 transactions you're testifying to are round trip transactions
8 designed to cover up underlying fraudulent transactions?

9 A. I was not able to do that. What I would say is to the extent
10 that there was a misrepresented financial statement, that was not
11 part of the government's indictment, counts.

12 MR. CONNOLLY: Your Honor --

13 THE COURT: That should be stricken. That's a
14 nonresponsive answer to the question.

15 BY MR. CONNOLLY:

16 Q. So again, you didn't look at the effect of this on the
17 Colonial's filed financial statements?

18 A. No, sir.

19 Q. Did you make any assumptions as to why the money was sent the
20 places it was sent?

21 A. No, sir.

22 Q. Well, let's look at Count 7, the -- 7-19, the final page.
23 Now, Mrs. Fortune, I believe your testimony was that the money
24 started out at Colonial AOT?

25 A. Yes.

Fortune - Cross

2237

1 Q. And ends up at a Colonial-controlled account, the investor
2 funding account, and then gets credited back to AOT?

3 A. That's correct.

4 Q. Did you do any analysis as to why it just didn't go straight
5 from AOT to the investor funding account?

6 A. No, sir.

7 Q. Any analysis as to why they're sending it to some other bank
8 account at another bank?

9 A. No, sir.

10 Q. Would that matter to the propriety of the transaction?

11 A. It might; it might not.

12 Q. You'd have to have other testimony and evidence to know that;
13 is that correct?

14 A. That's correct.

15 Q. You'd have to know if someone was intentionally sending it
16 somewhere else to hide the fact that it was going back to
17 Colonial; is that right?

18 A. I would have to, I would have to have a much greater
19 understanding of the transaction; that's correct.

20 Q. In fact, that's true with the initial portions of the
21 transaction; is that right?

22 A. That's true? What part is true?

23 Q. That you'd have to have much more understanding of other
24 information or evidence to understand the nature of the
25 transaction.

Fortune - Cross

2238

1 A. That would be correct.

2 Q. So, for example, if you look at page 3 of Exhibit 7-19, for
3 example, Mrs. Fortune, it could be important that none of the
4 pools of loans sold from -- purportedly sold from Taylor Bean to
5 Colonial Bank's AOT on July 6 of 2009 had any loans behind them?

6 A. That's your question?

7 Q. Yes, ma'am.

8 A. It would be important to understand that from which
9 perspective?

10 Q. From the perspective of whether there's anything wrong going
11 on here.

12 A. It could be.

13 Q. From the perspective of are we trying to cover something up
14 with the round trip transaction that follows.

15 A. That very well could be.

16 Q. From the perspective of why are we doing this in the first
17 place.

18 A. It could.

19 Q. And again, that wasn't part of your analysis.

20 A. No, sir.

21 Q. You weren't asked to make any assumptions about whether or
22 not those are fake or fraudulent or not?

23 A. No, sir.

24 Q. Mrs. Fortune, is that true for each and every one of the
25 counts about which you've testified to here today?

Fortune - Redirect

2239

1 A. I did not make any evaluation as to the validity of the
2 transactions. I am simply commenting and testifying to the
3 amounts of money that Colonial Bank advanced and the amounts of
4 money that Colonial Bank received, and in each of these
5 transactions save one, they benefited.

6 Q. More money ended up back where it started than at the
7 initial, at the beginning of that day with respect to that
8 transaction?

9 A. That's correct.

10 Q. You can't comment overall if at the end of the day, having
11 hundreds of millions of dollars of assets on their accounts meant
12 that they benefited, can you?

13 A. No, sir.

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

15 THE COURT: Yes, sir.

16 BY MR. CONNOLLY:

17 Q. Mrs. Fortune, it's not your testimony here today that as long
18 as Colonial makes money, crime pays, is it?

19 A. No, sir.

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

21 THE COURT: All right. Mr. Rogow?

22 REDIRECT EXAMINATION

23 BY MR. ROGOW:

24 Q. Mrs. Fortune, did you read the AOT program mortgage loan
25 participation sale agreement between Colonial Bank and TBW?

Fortune - Redirect

2240

1 A. Yes, I did.

2 Q. Do you recall whether or not in that agreement there were
3 provisions made in case fraudulent, forged, fictitious, or
4 nonexistent loans happened to fall into the AOT program?

5 A. There were provisions.

6 Q. And was it unusual to have provisions like that in an
7 agreement like this?

8 A. They had them in those agreements.

9 Q. And was there a remedy if indeed some of these things
10 happened in the course of the AOT program loan movement?

11 A. Yes, there was a remedy.

12 Q. And what was the cure?

13 A. The cure was that if any of these loans made their way into
14 the pools, they were allowed to provide substitute loans.

15 Q. So if they had been brought to the attention, for example, of
16 Mr. Farkas, then he had an opportunity to cure it?

17 MR. CONNOLLY: Objection, Your Honor. Beyond the scope
18 of cross. I think it calls for --

19 THE COURT: Well, I don't think it's totally beyond the
20 scope of cross. I mean, it's close, but I think more than that, I
21 think it calls for speculation, so I'm going to sustain the
22 objection.

23 MR. ROGOW: Nothing further, Your Honor.

24 THE COURT: All right, is there any recross?

25 MR. CONNOLLY: No, Your Honor.

1 THE COURT: All right. Does anybody anticipate calling
2 this witness again?

3 MR. CONNOLLY: Not for the government, Your Honor.

4 MR. ROGOW: Not for the defense, Your Honor.

5 THE COURT: All right. Then, ma'am, you're excused.
6 That means you can stay in court and watch the proceedings, or you
7 may leave, but do not discuss your testimony or anything you hear
8 in court with any witness who has not yet testified.

9 THE WITNESS: Thank you, Your Honor.

10 (Witness excused.)

11 THE COURT: All right? Counsel, approach the bench.

12 (Bench conference on the record.)

13 THE COURT: Now, you're moving at lightning speed right
14 now. I need to know what's happening tomorrow. Are you calling
15 any more witnesses tomorrow?

16 MR. ROGOW: Yes.

17 THE COURT: So I'm assuming Mr. Farkas is testifying?

18 MR. ROGOW: Yes.

19 THE COURT: That's fine. Then I'm going to let the jury
20 go home early. If there were no more witnesses, I might have
21 given them the day off because we have to do a charging
22 conference, but that's fine, all right.

23 Then do you think you're going to have a rebuttal case?

24 MR. STOKES: We very well might, Your Honor.

25 THE COURT: You might.

1 MR. STOKES: Yes.

2 THE COURT: All right, that's fine. Then we'll let the
3 jury go.

4 (End of bench conference.)

5 THE COURT: Ladies and gentlemen, we have another
6 witness to be heard from, but I don't want to start this late in
7 the day, and I'd rather you just come back tomorrow fresh.
8 Remember now, tomorrow we're starting at 10:30. And I know jurors
9 like to know their schedule, so let me tell you how I plan to do
10 tomorrow.

11 Since we're starting late, we will not have a morning
12 break, but we'll break for lunch around 12:15-12:30, all right?
13 That will sort of be your mid-morning break. We'll have the same
14 one-hour lunch break, and then we'll start the afternoon session,
15 and we'll have a mid-afternoon break as we normally do, and I will
16 have you out of here by 5:00, all right?

17 I again want to caution you. We've made great progress
18 in this case, and we're starting to see the light at the end of
19 the tunnel, but the case is by no means over, so please remember
20 my cautions about not conducting any investigation. There's been
21 a little bit in the news about, it has nothing to do with this
22 case, but there's been some stuff about foreclosures and things,
23 and I just want you to stay away from any of that kind of media
24 coverage until this case is over, all right?

25 Leave your notebooks here. We'll see you tomorrow

1 morning at 10:30. Thank you.

2 (Jury out.)

3 THE COURT: All right. Now again, you'll need to clean
4 up, because we will have people at your tables for a while. As I
5 said, I think the docket should be clear by 10:15, I'm hoping,
6 tomorrow morning, so come in before 10:30 so that you get your
7 tables back in shape.

8 Be prepared -- I don't know how long the testimony will
9 take tomorrow. However, I want you to be prepared to do the
10 charging conference tomorrow as well. I mean, again, we may run
11 into Monday with testimony, I doubt it, but it could happen, but
12 in any case, be prepared for closing arguments on Monday, all
13 right?

14 MR. CONNOLLY: Yes, Your Honor.

15 THE COURT: And again, I congratulate both sides on
16 moving a complex case quickly.

17 All right, is there anything we need to address? If
18 not, we'll recess court for the day.

19 MR. ROGOW: Nothing more.

20 THE COURT: All right, we'll recess court then.

21 (Recess from 5:25 p.m., until 10:30 a.m., April 15, 2011.)

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CERTIFICATE OF THE REPORTERS

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

/s/
Anneliese J. Thomson

/s/
Norman B. Linnell

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

UNITED STATES OF AMERICA . Criminal No. 1:10cr200
 .
 vs. . Alexandria, Virginia
 . April 15, 2011
 LEE BENTLEY FARKAS, . 1:15 p.m.
 .
 Defendant. . EXCERPT
 .

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

VOLUME 9 - P.M.

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(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 2316 - 2434)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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I N D E X

DIRECT CROSS REDIRECT RECROSS

WITNESS ON BEHALF OF
THE DEFENDANT:

Lee Bentley Farkas (Cont'd.)	2319	2341
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EXHIBITS

MARKED RECEIVED

GOVERNMENT'S:

No. 1-144		2382
10-10		2406
50-1		2404
50-3		2404

Farkas - Direct

2319

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

2 (Defendant and Jury present.)

3 THE COURT: Where did Mr. Rogow go?

4 LEE BENTLEY FARKAS, DEFENDANT'S WITNESS,

5 PREVIOUSLY AFFIRMED, RESUMED

6 DIRECT EXAMINATION (Cont'd.)

7 BY MR. ROGOW:

8 Q. Mr. Farkas, let me ask you some questions about the Mesirow
9 assignments of trade. You heard the testimony with regard to
10 those during the trial, did you not?

11 A. I did.

12 Q. Who demanded that there be these assignments of trade?

13 A. I believe that the, the AOT documents asked for an assignment
14 of trade letter to be with each trade or pool that was financed.

15 Q. And, and who prepared them on the Taylor Bean side?

16 A. Generally, they were prepared by the Capital Markets Group.

17 Q. Did, did Desiree sign any of the Mesirow assignments of
18 trade?

19 A. Yes, sir, she did.

20 Q. Was there a template provided to use as a format for doing
21 that?

22 A. Yes, sir.

23 Q. And who provided that template to the TBW people?

24 A. As far as I know, it came from Teresa Kelly. That was my
25 recollection, but I'm not sure.

Farkas - Direct

2320

1 Q. Did Desiree have authority to sign your name?

2 A. She did.

3 Q. Did she have authority to sign your name in a broad area of
4 things?

5 A. She did.

6 Q. Did the Mesirow assignments on their face make any sense?

7 A. No.

8 Q. Why not?

9 A. Well, the AOT line was to emulate the lines that, the Wall
10 Street lines that we had used previously, and the Wall Street
11 lines and a true AOT line requires an assignment of trade, so that
12 Taylor Bean would assign the trade to the AOT facility and then
13 the AOT facility would deliver the loans into the trade.

14 In this case, Colonial had no trading relationships with
15 Mesirow or anybody else, and they had no facilities to deliver the
16 trades, so while the AOT letters were required to be in the file
17 for each trade, it was impossible for Colonial to deliver the
18 trades. All the, all the pools and trades that passed through AOT
19 were delivered from Taylor Bean directly to the, directly to
20 whoever was, whoever was going to buy the trade.

21 Q. Did the Mesirow trade letters that we've had introduced here
22 on their face, were they incomplete on their face?

23 A. They weren't signed by Mesirow. They weren't signed by
24 Colonial. They were only signed by Desiree for me.

25 Q. Let me ask you some questions about what's been called the

Farkas - Direct

2321

1 Lee loans. Two of them especially I want to talk about, the John
2 Welch, the purchase of Mr. Welch's property and the notes that
3 were formulated for that purchase. Do you recall those notes?

4 A. I do.

5 Q. And do you recall the dates that were on those notes in terms
6 of how the loans were to be paid off over a period of 30 years?

7 A. Well, the first payment was due in 1900, I think.

8 Q. Did that make any sense?

9 A. Well, I think it was past due.

10 (Laughter.)

11 Q. How did something like that come about?

12 A. Well, Taylor Bean utilized a very advanced but quirky loan
13 closing system called TBDocs.

14 Q. TB?

15 A. TBDocs.

16 Q. D-o-c-k-s?

17 A. D-o-c-s, TBDocs. And TBDocs would produce -- the idea, this
18 was one of my ideas, TBDocs could produce documents so that the
19 community banks, if everything was complete in their files, could
20 go in and create their own documents without asking us.

21 One of the things that people -- one of the things that
22 customers, community banks, mortgage brokers, and associated
23 lenders of ours disliked about their -- about our competition was
24 that -- I'm sorry, this is sort of a long answer, but I have to
25 explain it like this -- was that the, that it was hard to get the

Farkas - Direct

2322

1 docs out to the closing table, and it was a bad process, a lot of
2 phone calls, voice mails back and forth and all that stuff, so I
3 had this brilliant idea that if we could set up enough fail-safes
4 in the system to be able to let the customers create their own
5 documents, so they would go in and create their own documents, and
6 then those documents would be used to effect the closing, and then
7 Taylor Bean would wire the money.

8 So when, when the bank wanted notes on those loans,
9 those Welch loans, someone went in and tried to force -- and I
10 don't know who -- tried to force the system to create notes, and
11 it gave sort of garbled-up things. For example, Mr. Welch's law
12 office, his mailing address was used for one of them. It just
13 doesn't make any sense really, and the 1900 date shows that no
14 data was there. That was probably some default so that it would
15 show us that it wasn't, wasn't right, you know, the document
16 wasn't right.

17 And I think they were trying to sort of force those to
18 come out when the rest of the data wasn't there, because those
19 were not loans in the general sense. They were loans to me.

20 Q. And would that be something that would be in your due from
21 shareholder account?

22 A. I would assume so. I would assume so, yes. My name was on
23 the note.

24 Q. And how about the clubhouse with the four units, I think?
25 Can you explain that?

Farkas - Direct

2323

1 A. I have no idea where that data came from. I don't know
2 anything about that clubhouse, nor did I ever purport to have a
3 loan on the clubhouse or -- I just don't know anything about it.

4 Q. Were mistakes made in the TBW operation both in your favor
5 and, and against your favor?

6 A. Of course they were. When you create, you know, that many
7 loans every day, there's mistakes. There's natural mistakes.
8 There's small data entry mistakes, and there's large mistakes.
9 But when you're trying to do something out of the ordinary like
10 these and you're trying to force it to do something that it
11 doesn't want to do, that's when you get, that's when you get a
12 crazy-looking set of data like that.

13 Q. Were there ever mistakes made in your favor with huge amounts
14 of money being sent into your accounts improperly?

15 A. You know, I remember maybe three occasions. One of them I'll
16 never forget. JPMorgan Chase from Houston, one day -- we used to
17 have a gestation re-purchase line with them, which is similar to
18 an AOT line, it is an AOT line, and they would buy collateral, and
19 one day, one Thursday, they wired us 400 -- this was early on, and
20 it was a lot then -- \$400 million they wired into Taylor Bean's
21 account at Colonial Bank.

22 Q. And what happened?

23 A. Well, we didn't know what it was, and we didn't know why it
24 was there, but I was pretty happy.

25 (Laughter.)

Farkas - Direct

2324

1 A. So they started calling up screaming and hollering about it
2 and -- because they made an error, they pushed the wrong button,
3 and so they asked Colonial to wire it back, and Colonial wouldn't
4 because the risk of wiring it back was too high.

5 Q. So what did Colonial do?

6 A. We made them recall it, and they finally did recall it, and
7 it went back.

8 On three or four occasions, Fannie Mae, never Freddie
9 Mac, but Fannie Mae when we dealt with them wired us in excess of
10 \$30 million, and they would -- we would call them and tell them,
11 "We got a wire from you for 30 million, can't recognize it."

12 And then we would -- they'd say, "Well, just can you
13 send it back tomorrow or whatever?" You know, it's no big deal.

14 So mistakes are made. You're dealing with lots and lots
15 and lots and lots and lots of volume, and we made more than our
16 share of mistakes, I'm sure.

17 Q. Was buying the plane a mistake?

18 A. No.

19 Q. And what utility did the plane have for TBW?

20 A. Well, the, the plane was structured for, you know, Ocala has
21 no airport, no commercial air service, and we were trying to run a
22 business with 30-some offices all over the country and spending
23 time with the OTS in Chicago and Freddie Mac in Atlanta, Freddie
24 Mac in D.C. We had a CEO that lived remotely. We had other
25 people who were remote. We were flying back and forth. We

Farkas - Direct

2325

1 made -- we had people shuttling back and forth to Atlanta every
2 Wednesday, and so the airplane, I think, served great utility for
3 the company.

4 We, we had, we had a smaller plane, and then we bought a
5 big, fancy plane.

6 Q. The plane was owned by, I think it was Nada Airlines. Is
7 that correct?

8 A. That's correct.

9 Q. Why was it owned by Nada Airlines, not TBW?

10 A. Companies don't -- no companies put airplanes on their own
11 books.

12 Q. Why?

13 A. Because the liability -- what could happen to a plane is it
14 could crash, and the liability is far too great, so no major
15 corporation has an airplane on its own balance sheet.

16 Q. And is that the reason why TBW had it on Nada Airlines?

17 A. We, we created a company called Nada Airline, which was
18 wholly owned by me, as was Taylor Bean at the time, so I owned
19 Taylor Bean, and I owned Nada Airline, and Nada Airline leased the
20 plane to Taylor Bean. It said "Taylor, Bean & Whitaker" on the
21 tail, it said it on the door, it said it on the napkins, and it
22 said it on the cups and in the luggage. And then the pilots
23 worked for Taylor Bean. They were on Taylor Bean's payroll.

24 And the plane wasn't really owned by Nada Airline. It
25 was really owned by another LLC partnership that was set up by

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1 General Electric Credit, and really it was a lease. So the plane
2 was owned by a partnership by General Electric, leased to Nada
3 Air, and Nada Air leased it then, re-leased it, I guess, to Taylor
4 Bean.

5 Q. There was also another plane mentioned sometime during the
6 trial. Was there another plane that you had access to?

7 A. We did. We also had another LLC that I owned fully, and it
8 was called Air Nokomis, LLC.

9 Q. And what was in that LLC?

10 A. It owned a 1970-ish single engine seaplane, sort of little,
11 small plane.

12 Q. And was that available for use by you?

13 A. Well, yeah.

14 Q. The -- there was a \$15 million loan that we heard testimony
15 about, too. Was that in regard to some loan that was paying back
16 some other loan?

17 A. Well, the \$15 million loan was -- let's see, there were two
18 things going on at the time. One of them was RLI had put \$33
19 million worth of, worth of warrants back to Taylor Bean.

20 Q. This is the RLI we spoke about earlier this morning that was
21 involved with a SunTrust equity situation being finalized?

22 A. Yes, sir. And I know this is sort of complicated, but it's
23 the only way I could explain it.

24 Q. Make it simple.

25 A. So if Taylor Bean would have bought back its own stock from

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1 RLI, it would have eaten up the vast majority of Taylor Bean's
2 equity, because Taylor Bean was required under various lending
3 agreements to maintain certain amounts of equity, certain leverage
4 ratios and all this other compliance stuff that Delton took care
5 of. So Delton -- well, and RLI wanted out of their agreement.
6 They wanted, they wanted to sell the stock back to Taylor Bean,
7 and I told them if they did, it would put Taylor Bean under,
8 because they wouldn't have enough capital to, to maintain their
9 loan agreements, and they didn't care. They said, "Well, that's
10 fine then. You just give us the money, and we don't care."

11 So I said, "Okay."

12 So we talked about it and worked on it and decided a
13 solution would be for me personally to buy the stock back from RLI
14 so that it wouldn't go on Taylor Bean's balance sheet, I would buy
15 \$33 million worth of stock back, and so in order to do that,
16 Colonial Bank offered to lend me the money, the 33 million.

17 Q. And was the 33 million -- there was \$15 million also that
18 goes into this situation, correct, that you paid back Colonial
19 Bank right away?

20 A. Well, we -- okay. The 15 million was -- it was April, it was
21 April, and we needed to make sure that our year end figures were
22 right, and we were trying to get the RLI loan done with Colonial
23 in time, and it didn't get done, and so I borrowed -- I had to pay
24 RLI part of the payment, so I borrowed some of the money from
25 Taylor Bean, and that was throwing the ratios out of whack. I

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1 owed Taylor Bean too much money so that it was giving us a
2 problem.

3 So what I did was I talked to Cathie Kissick, and I told
4 her what to do. She said, "Well, advance some loans up, and then
5 pay that back, and then pay us down."

6 And I said, "Huh"?

7 And she said, "Just advance up the loans, take the
8 money, show it as a shareholder paydown," which is fine, I can do
9 that, "and just pay the money back to Colonial Bank."

10 So what we did was Day One, we advanced some loans and
11 took a \$15 million draw against it and then put the money in
12 Taylor Bean, and then Taylor Bean turned around and wrote a check
13 back or wired or whatever to Colonial and paid the \$15 million
14 back to Colonial Bank, and so Colonial Bank had lent the 15
15 million and then got the 15 million back the next day.

16 The purpose of that was not to trick the auditors, but
17 the purpose of that was to allow us the time to finalize the
18 transaction with Colonial so that they could lend me the money,
19 the 33 million. Well, they lent me the 33 million, I paid RLI
20 off, and then I refinanced that \$33 million loan with another
21 company called Plainfield, which is a hedge fund, paid Colonial
22 off, and we were done with all that.

23 Q. Did you have advice of lawyers and accountants and other
24 people in all of these transactions?

25 A. Mr. Rogow, there's no way I could have dreamt all this up by

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1 myself.

2 Q. All right. Let me -- you did have auditors for TBW, did you
3 not?

4 A. We, we started out, the very first year was with James Moore
5 & Company, which was a regional firm, and they audited the
6 business until Cathie demanded that we get a -- we'd grown too big
7 for James Moore, and she demanded that we get a larger firm, and
8 we got Deloitte & Touche, but we retained James Moore because I
9 felt loyal to them, they'd done a good job, and we retained them
10 to do the tax returns and to do some of the audit work.

11 So all the way through the end, James Moore was
12 involved, and Deloitte & Touche did, I think, six or seven years
13 of audit.

14 Q. And did you rely upon those audits in terms of seeing how
15 your company was doing?

16 A. Yes, I did. It's very comforting to know that you have a Big
17 Four audit firm, the top four in the country, that's saying that
18 your, that your books and records are in order.

19 Q. There, there were two telephone calls played during the
20 trial. One of them was with Teresa Kelly with regard to the thumb
21 drive, and the other was the call with Desiree Brown in August
22 2009. Let me ask you first about the thumb drive and the trip to
23 Orlando with the thumb drive. Do you recall the testimony with
24 regard to that?

25 A. Yes, sir.

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1 Q. Was there anything that you were trying to do to hide or
2 conceal anything by driving it to Orlando yourself?

3 A. No. We were having all these troubles with Deloitte at the
4 time, and it was making me have hives, and I was so nervous
5 sitting around there, and I thought it would be nice to get out of
6 the office, take the thing and go have dinner in Orlando. Teresa
7 said she'd meet me at the bank, so I took it down there.

8 It was too big -- the file was too big to e-mail. There
9 were two files, and I don't remember which one that was. There
10 was one that contained three billion and some odd dollars' worth
11 of collateral, and there was one that contained a billion six
12 hundred million of collateral.

13 Q. Now, you didn't take it yourself in order to keep the courier
14 from taking it, did you?

15 A. No. I wanted to go to Capitol Grille.

16 Q. And later on, the second call was with Desiree Brown. Do you
17 recall that call?

18 A. Yes, I do.

19 Q. And when did that happen? August 2009?

20 A. It was after maybe the 5th or so of August or the 4th.

21 Q. Was Desiree upset as she portrayed herself in that call?

22 A. Yeah.

23 Q. Did she ever use the F word in her communications with you?

24 A. Not often.

25 Q. And so when you heard this, was it somewhat -- were you taken

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1 aback by it?

2 A. Well, yeah. I mean, she, she said that the FBI had been to
3 her house and that she didn't know what was going on and that she
4 was distraught as could be. I've never heard her so distraught.
5 I, you know, I don't see how much more upset you could get.

6 Q. And the advice you gave her was to call Jeff Cavender, was it
7 not?

8 A. Yes.

9 Q. And, and who was Jeff Cavender?

10 A. Jeff Cavender was our lawyer.

11 Q. How long had he been your lawyer?

12 A. Well, a long time. He, he represented me personally at, when
13 he was at his law firm, Aldridge, Long & Norman, in Atlanta for
14 years, and then he was doing so much work for me personally and
15 for Taylor, Bean & Whitaker that I offered him to come full time
16 and work for us, so he worked for us full time.

17 Q. And where were his offices? Were they in Ocala or somewhere
18 else?

19 A. No. He lived somewhere north of, like, Sandy Springs or
20 somewhere like that, north of Atlanta, and so instead -- and one
21 of the benefits, I thought, for him working for us, he worked so
22 hard, and he had to drive all the way downtown, and so I, you
23 know, we opened an office out there where he could just be a few
24 minutes from his house.

25 Q. Would you have regular contact with him?

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1 A. Yeah. Not every day, but, you know, regularly.

2 Q. Did you have other lawyers other than your in-house counsel
3 that were working for TBW?

4 A. Oh, my goodness. We had the Legal Full Employment Act going
5 on there.

6 Q. Who were some of the law firms, if you recall, that --

7 A. Well, we had -- just here we had Locke Lord, and we had
8 Troutman and Sanders, and we had all kinds of firms.

9 Q. Let me turn to the capital raise with regard to Colonial
10 Bank. Do you recall the year that was involved or the years that
11 were involved in the capital raise?

12 A. Yeah. Primarily the end of '08 and '09.

13 Q. And did you spend a lot of time working on that project and
14 some other bank project?

15 A. Well, in, in '09, I was consumed totally by this idea of
16 acquiring Colonial Bank or investing this large sum of money in
17 Colonial Bank. In '08, I was fairly consumed with the approval
18 process on the acquisition -- on our acquisition which we did of
19 Platinum Community Bank up in the suburbs of Chicago.

20 Q. So that was TBW's acquisition of Platinum Bank in '08?

21 A. Yeah. TBW acquired, I don't know, some 70 percent or some
22 interest in Platinum in '08.

23 Q. And of what benefit was that to TBW?

24 A. Well, it was several. First of all, mortgage banking and
25 commercial banking are best done together because of the

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1 elimination of the need for the Colonial Bank-type lenders,
2 because you use your own balance sheet; and secondly, the
3 licensing had become, was becoming a big problem and a big
4 expense. We had 40 people up there just doing nothing but state
5 compliance licensing, what have you, and banks are exempt from
6 that, so they don't have to be licensed to do mortgages. They're
7 already a bank.

8 Q. And they're regulated independently, correct?

9 A. Yeah. And this was regulated. It was not a bank; it was a
10 thrift; so it was regulated by the OTS; but it was a federal
11 institution; and a federal thrift can lend in any state without
12 getting a license in that state.

13 So I think Mr. Allen was testifying about this migration
14 project that he was involved in, trying to migrate Taylor Bean's
15 mortgage operation into Platinum Bank because we owned -- or
16 Taylor Bean owned Platinum Bank.

17 Q. Would it have, would it have benefited Taylor Bean also in
18 terms of the interest that one, that Taylor Bean would be paying?

19 A. Well, you know, Taylor Bean had over a billion dollars, way
20 over a billion dollars in deposits, not that it was its money. It
21 was mostly other people's money in Colonial Bank in the
22 hundred-and-some bank accounts. So we were providing liquidity to
23 Colonial Bank. So we gave them a billion dollars in checking
24 accounts, and they didn't pay any interest on that, and then they
25 lent us a billion dollars back or more and charged us plenty of

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1 interest, so they were making a good deal.

2 So Platinum eventually could have done that. Now,
3 there's no way that that tiny, little bank could have taken all
4 those deposits, not in the beginning, but eventually it could have
5 taken some of it, and it would have made a lot of money.

6 As a matter of fact, the last two months that we had
7 Platinum Community Bank, I believe, we were able to -- we got
8 approval to move, I think, \$300 million of escrows, Freddie Mac
9 and Ginnie Mae escrows into Platinum, and then we purchased \$300
10 million worth of loans, and it was making over \$2 million a month
11 in spread, and that was the first income that that bank had ever
12 made.

13 Q. And what was your interest then in Colonial Bank when that
14 opportunity arose with regard to the capital raise?

15 A. Well, you know, more is better, I guess. Colonial was a
16 fantastic depository franchise. They had almost 400 branches.
17 They were primarily a Florida bank. They were one of the best in
18 the country at accumulating deposits.

19 And even during the time of adverse publicity and the
20 stock went down from, you know, I don't know, \$40 to 40 cents and
21 everything seemed, you know, rough at Colonial, they were still
22 during that time, and I was monitoring it, they were still able to
23 maintain their deposit levels. So the customers, the branch
24 customers, deposit customers were loyal to Colonial, and Colonial
25 was limited by the FDIC as to how much interest they could pay on

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1 accounts, so they were, they were not overpaying for their
2 accounts, for the interest on their bank accounts, and it was
3 still an amazing deposit-gathering franchise.

4 So -- and Colonial, Colonial needed, it needed income.
5 It needed revenue. It was losing money. Its capital was eroding.
6 It had made \$25 billion worth of bad commercial loans, and it and
7 all the other banks in the area, I mean, they were all in the same
8 deals, and they were all losing money, and they were writing all
9 this stuff down, and I thought that with the TARP money and with
10 the \$300 million, that Colonial could survive and that Taylor Bean
11 could have sold Colonial Bank its MSR portfolio at face, at
12 appraised value, Taylor Bean would have been awash in cash,
13 Colonial would have had all the income, Taylor Bean would have
14 sub-serviced, and it would have been a happy world again.

15 Q. Would you have been interested in buying a bank if you
16 thought that it was built on phony financial statements?

17 A. No. I mean, we were -- Paul Allen did a thing called a white
18 paper that showed where Taylor Bean was going to get the money to
19 do the deal, and he gave that white paper to the FDIC through
20 Cathie, and the white paper said that, that Taylor Bean was going
21 to lift some of its hedges against, like I talked about earlier,
22 against the MSR portfolio. Well, that was perfect, because we
23 didn't need to hedge it anymore, because we were selling it to --
24 we were going to sell it to Colonial, so it didn't need to be
25 hedged.

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1 So we would take the almost \$200 million gain that came
2 out of the portfolio, and that would have bought Colonial for us,
3 but that was -- if Taylor Bean had a \$200 million net worth, then
4 that was all, that was it. It was Taylor Bean's -- that was it.
5 So we were essentially, you know, betting the farm from my
6 viewpoint on the deal.

7 Q. Would you bet the farm if you didn't think the deal had
8 something positive to it?

9 A. No.

10 Q. Did -- was Paul Allen the contact person with Manny Friedman?

11 A. The only investor that Paul Allen talked to was Manny
12 Friedman.

13 Q. And did Paul Allen relate to you that he thought that
14 Mr. Friedman -- or that Mr. Friedman was willing to be an
15 investor?

16 A. He sent me an e-mail the night before and said, "Manny's in."

17 Q. Did you rely upon that e-mail?

18 A. Well, Paul -- yes.

19 Q. The list that was provided, you've seen the March 31 list,
20 did you think that was the final list?

21 A. No, I knew that wasn't the final list.

22 Q. And how did you know that?

23 A. Because I wasn't sure whether South Towne was going to make
24 the investment or Taylor Bean was going to make the entire \$200
25 million investment.

Farkas - Direct

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1 Q. And, and who was South Towne?

2 A. There were two South Townes. There was South Towne Capital
3 and South Towne Holding. South Towne Holding was owned by myself,
4 Mr. Collett, Mr. Bowman, and two gentlemen who were ex-Bear
5 Stearns traders. It wholly owned South Towne Capital Investments.

6 South Towne Capital Investments had all kinds of
7 restrictions on it because it was applying for a broker-dealer
8 license. That means that it was going to be able to sell stocks
9 and bonds and things just like Merrill Lynch.

10 Q. And was John Bruno the person that your firm had hired, that
11 TBW had hired to advise it on how to handle these matters with
12 regard to the capital raise?

13 A. Well, John Bruno and Phil Cooper.

14 Q. And they were from a large law firm?

15 A. Locke Lord.

16 Q. And did you, did you rely upon their advice?

17 A. Yes.

18 Q. Did Paul Allen ever tell you that Cap One was interested in
19 paying \$500 million for TBW?

20 A. Capital One was a credit card company, and they were
21 interested in acquiring Taylor Bean when Paul first came to work
22 for us.

23 Q. And what did you respond when the inquiry was made of you as
24 to whether or not you were willing to sell, to sell for \$500
25 million?

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1 A. Well, it didn't quite go like that. It went like this.

2 Q. Tell me.

3 A. They wanted to buy the company, and they asked me how much I
4 would sell it for. So I thought for about three-and-a-half
5 seconds, and I said, "Okay. 500 million is a nice number." So I
6 said, "Tell them, Paul, 500 million for the company, lock, stock,
7 and barrel, with or without me; I don't care."

8 So he said, "Okay," and he went to them.

9 And they said, "Okay. That's not outside of the realm
10 of possibility. That's a good number."

11 They had already seen the financials, and they had
12 already done very, very preliminary due diligence.

13 Q. And then what happened? Did you change your mind?

14 A. Well, they -- the first group of people we met with from
15 Capital One were incredibly nice. It was this French guy, and he
16 was charming, and they were just wonderful, and we would go out to
17 fancy restaurants and have fun and talk about all the fun we were
18 going to have together, and -- but then when it came to really
19 talking about the deal, this other group came, and they started
20 saying, well, we'll let you do this, and we'll let you do that,
21 but we won't let you do this, we won't let you do that.

22 And I said, "Well, wait a minute, I thought I could just
23 go, you know. You guys take care of this place. I'm done."

24 And they said, "No, no, you have to stay here for so
25 long."

Farkas - Direct

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1 I said, "Okay. If I'm going to stay, then we have to do
2 certain things."

3 And anyway, the long and short of it was they really
4 didn't want Taylor, Bean & Whitaker. It was the wrong deal for
5 them. They wanted a different business. They wanted a company
6 that could, that could, like I was talking before, you know, that
7 could cross-sell their credit card -- they had tens of millions of
8 credit card people. They wanted to sell their mortgages. They
9 wanted to be able to provide mortgages to credit card companies.
10 We were a wholesale business.

11 I said, "Well, you're going to keep the wholesale
12 business, right?"

13 "No."

14 I said, "Well, you don't want the wholesale business,
15 but you'll keep the" -- okay. So now my account execs, they're
16 gone.

17 "Then you're going to keep the servicing business,
18 right?"

19 "No."

20 All the servicing people, they're gone.

21 So what the heck do they want with us? "Who do you
22 want?"

23 They want the platform.

24 I said, "Well, the platform, I mean, I don't know." So
25 it occurred to me that if they were going to get rid of all the

Farkas - Direct

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1 accounting execs and the salespeople and they were going to get
2 rid of all the servicing people and everybody in Ocala would be
3 out of a job, why should we sell the company? I mean, I'd have
4 500 million, but that's not going to help them any. So we didn't
5 do it.

6 I said, "No, we're not going to do it."

7 Q. What role did TBW play in your life?

8 A. Well, I mean, it was my life. That's all I did for 19 years.

9 Q. And when there were problems, were you always trying to fix
10 the problems if a problem needed fixing?

11 A. Yeah, there were problems. I mean, I talked to Cathie at
12 2:00 in the morning, 4:00 in the morning, 8:00 in the morning,
13 10:00 at night. There were problems. Every day was a new
14 challenge. I mean, growing, it was growing too fast, and it was
15 too, in retrospect too highly leveraged. It was, it was a
16 problem.

17 Q. Were you running a criminal enterprise for seven years with
18 Cathie Kissick and Teresa Kelly and Desiree Brown and Ray Bowman
19 and Paul Allen and Sean Ragland?

20 A. I was not.

21 Q. Did you think those people were criminals?

22 A. No.

23 Q. They've pled guilty, have they not?

24 A. Yes.

25 Q. Do you have any explanations why they would do that?

Farkas - Cross

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1 A. Well, I know that -- I know how scared I've been with all,
2 all that's happened to me, and I can only imagine how scared they
3 are. I'm sure they just tried to save themselves, and I don't
4 know what to say, but it's, this is the scariest thing that
5 anybody could ever go through.

6 MR. ROGOW: Nothing further, Your Honor.

7 THE COURT: All right. Cross-examination?

8 MR. STOKES: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. STOKES:

11 Q. Good afternoon, Mr. Farkas.

12 A. Good afternoon.

13 Q. So you didn't run a criminal enterprise for seven-plus years.
14 Is that what you're saying?

15 A. That's what I said, sir.

16 Q. Are you saying Cathie Kissick, Ray Bowman, Teresa Kelly,
17 Desiree Brown, Paul Allen, Sean Ragland ran a criminal enterprise
18 without you knowing that?

19 A. No, I didn't say that, either.

20 Q. So you're saying they were just scared into doing pleas?

21 A. They were scared into what?

22 Q. They were scared into pleading guilty?

23 A. Yes, sir, that's what I believe.

24 Q. So they were scared into, for Cathie Kissick and Desiree
25 Brown, into pleading guilty and facing upwards of 30 years in jail

Farkas - Cross

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1 even though you're saying they didn't do anything wrong?

2 A. That's my belief. I don't think that they did anything
3 wrong, and I don't think they thought they did anything wrong
4 really.

5 Q. And you've formed that thought that they don't think they did
6 anything wrong despite hearing their testimony in court?

7 A. Yes, sir, that's true.

8 Q. Now, sir, I want to return to some of the issues that were
9 raised in your testimony early on. You talked a lot about, at the
10 beginning about the source of financing for TBW when it first
11 started out. Do you recall that?

12 A. I do.

13 Q. And you talked about warehouse facilities?

14 A. Yes.

15 Q. And you then ended up talking about Colonial Bank and its
16 warehouse, how it was a warehouse bank and provided financing to
17 TBW?

18 A. Yes.

19 Q. And you referred repeatedly to warehouse banks, right?

20 A. Yes.

21 Q. And warehouse, there was a warehouse line at Colonial Bank
22 for TBW, right?

23 A. Yes.

24 Q. And the warehouse line was a loan facility. In other words,
25 it loaned money to Taylor Bean; isn't that right?

Farkas - Cross

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1 A. True.

2 Q. And in exchange, Taylor Bean would provide collateral for
3 that facility, that line of credit to Colonial Bank; isn't that
4 right?

5 A. That's true.

6 Q. And the collateral would be the loans that, that Taylor Bean
7 had taken money in exchange for?

8 A. That's true, too.

9 Q. And so those would be money that Taylor Bean would borrow
10 from Colonial Bank, and it would give collateral in exchange?

11 A. Correct.

12 Q. You didn't describe purchase facilities, did you?

13 A. No, I didn't.

14 Q. And COLB and AOT are not loan facilities, are they?

15 A. Well, if you, if you look at the Mortgage Warehouse Lending
16 Division of Colonial Bank did on and off balance sheet facilities,
17 and those, those operated exactly like warehouse lines. They
18 charged interest every month, and they had collateral, and whether
19 or not they were on balance sheet or on whose balance sheet, I
20 mean, it's still effectively the same thing.

21 Q. So that's important for your story, isn't it, that it seems
22 like those are the same thing?

23 A. I'm sorry, I don't understand that.

24 Q. Well, sir, you want the jury to believe that this is just
25 like a, a loan facility, the AOT and COLB line; isn't that right?

Farkas - Cross

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1 A. It acts that way, yes.

2 Q. And the reality of it is that they're not the same; isn't
3 that right?

4 A. No, that's not the reality.

5 Q. But isn't the reality that the COLB and AOT facility are
6 purchase facilities?

7 A. They are on -- those loans are on Colonial's balance sheet,
8 so they are an off balance sheet warehouse line for Taylor Bean,
9 and they're an on balance sheet facility for Colonial Bank.

10 Q. And what that means is that Taylor Bean sells loans to
11 Colonial Bank in a COLB or AOT transaction; isn't that right?

12 A. No. Actually, they sell participations in loans.

13 Q. They sell a 99 percent stake on the COLB facility in loans?

14 A. Right. It's a sale. It's a sale.

15 Q. And it's a true sale?

16 A. It has a true sale opinion, yes.

17 Q. That's right. Lawyers looked at it and said this is a
18 legitimate sale.

19 A. Yes.

20 Q. Taylor Bean is selling an asset to Colonial Bank.

21 A. That's, yes. Legally, yes.

22 Q. 99 percent of a real, honest-to-goodness asset, isn't that
23 right?

24 A. Well, yeah, sure.

25 Q. And AOT facility, same thing. Taylor Bean said it was

Farkas - Cross

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1 selling 99 percent in an actual real asset to Colonial Bank?

2 A. Yeah.

3 Q. Okay. Now, Mr. Farkas, you also mentioned that there were
4 MSRs on Taylor Bean's balance sheet. Do you recall?

5 A. I do.

6 Q. And you said they were properly capitalized. Do you recall
7 that?

8 A. Yes.

9 Q. And so that was one of the largest assets at Taylor Bean on
10 its balance sheet?

11 A. One of, yes.

12 Q. And it also appeared in the financial statements for Taylor
13 Bean; isn't that right?

14 A. It did.

15 Q. And your point that it was properly capitalized, part of what
16 you mean by that is that those MSRs were reported at their correct
17 value; isn't that right?

18 A. The MSRs -- I'm sorry, I don't understand.

19 Q. Their value is reported on the balance sheet and in the, and
20 in the financial statements at their correct value?

21 A. No, they were reported on the balance sheet at some
22 discounted value.

23 Q. And so when those MSRs were capitalized on the balance sheet,
24 were they inflated?

25 A. No.

Farkas - Cross

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1 Q. Were they inflated when those MSR's, the MSR values were
2 provided to Colonial Bank?

3 A. Were they inflated? I don't know.

4 Q. Well, sir, those MSR's were what were used to pledge or
5 collateralize the working capital line that TBW had at Colonial
6 Bank; isn't that right?

7 A. There were two working capital lines, one for Natixis and one
8 for Colonial Bank.

9 Q. And the Colonial Bank was a syndicate of up to nine banks;
10 isn't that right?

11 A. That's true.

12 Q. And so some of those MSR's were pledged to that Colonial Bank
13 syndicate?

14 A. Part of them were.

15 Q. And those MSR's that were pledged to Colonial Bank were
16 inflated; isn't that right?

17 A. No, sir, it's not.

18 Q. They were inflated by you, Ray Bowman, and Desiree Brown;
19 isn't that right?

20 A. No, sir, that's not true.

21 Q. And the reason they were inflated was because you would get
22 margin calls on the working capital lines; isn't that right?

23 A. There could be margin calls if the value of the MSR went down
24 according to the appraisal.

25 Q. And if the value of the MSR's went down according to the

Farkas - Cross

2347

1 appraisal, TBW could be hit with a 25- to 50-million-dollar margin
2 call?

3 A. They could, yes.

4 Q. And so one way to fix that would be to pay that margin call,
5 the 20 to 50 million dollars?

6 A. Well, the other way is to, is every month Taylor Bean added
7 another 3, 3-1/2 billion dollars' worth of MSRs to their balance
8 sheet, and so every month, new MSRs came in.

9 Q. And another way to do it is to inflate those MSRs by a
10 billion to 10 billion dollars a clip?

11 A. No, that's not a way.

12 Q. Now, Mr. Farkas, you've mentioned that TBW needed cash every
13 day to run its business; isn't that right?

14 A. That's true.

15 Q. And you had to keep going back to Colonial Bank and other
16 banks to get that cash to finance your business?

17 A. That's true.

18 Q. Because your business is cash intensive, isn't that right?

19 A. Cash intensive?

20 Q. You are, for example, selling service -- you're selling loans
21 and retaining the servicing rights?

22 A. Well, the product that we had to sell was cash.

23 Q. So you're selling mortgage loans?

24 A. We're not selling mortgage loans. We were buying mortgage
25 loans.

Farkas - Cross

2348

1 Q. Buying and then selling them, is that right?

2 A. Right, buying and selling sometimes.

3 Q. And so --

4 THE COURT: Mr. Farkas, can you just get back to the --

5 THE WITNESS: Sorry. Let me take a drink of water for
6 my voice.

7 BY MR. STOKES:

8 Q. And so in connection with that, you would have to go to banks
9 like Colonial Bank and borrow money?

10 A. We did. We borrowed constantly, yes.

11 Q. And in connection with that, banks like Colonial Bank would
12 require Taylor Bean to submit a lot of information about its
13 financials so that the bank could assess how much money they would
14 give to Taylor Bean?

15 A. Sure, lots.

16 Q. And so they would -- any requests to increase Taylor Bean's
17 borrowing abilities at Colonial Bank would need to go through
18 committees; isn't that right?

19 A. I suppose. I don't know.

20 Q. It would need to go through credit committees or warehouse
21 committees to determine how much money the bank would give Taylor
22 Bean?

23 A. No, that's not true. Cathie used to just do it on the fly.
24 I mean, she would give a hundred-million-dollar increase on a
25 Wednesday and another hundred on Thursday.

Farkas - Cross

2349

1 Q. Through Plan B.

2 A. No, not through, not through Plan B. I'm talking about for
3 funding loans. She would increase the overall size of the, of the
4 COLB or the AOT facility. Every week it increased.

5 Q. And so despite the repeated meetings that -- and conference
6 calls that you had with Cathie Kissick and Rodney Lewis to
7 evaluate Taylor Bean's credit status so that they could go to
8 credit committees and argue in your -- on your behalf for an
9 increase in the line, your testimony here is simply that Cathie
10 Kissick could just willy-nilly increase your lines at any time?

11 A. One day she was at the McDonald's drive-in, and I asked her
12 for a hundred -- which meant a hundred million -- more, and she
13 was in the middle of ordering a Happy Meal, and she said, "A
14 hundred?"

15 I said, "Yeah."

16 She said, "Okay, fine. Hold on."

17 She called Colonial, and we had a hundred million before
18 she paid for her Happy Meal.

19 Q. Let's be clear to what you're talking about. You're talking
20 about switching the limit from COLB to AOT, which was done as a
21 routine matter. In other words, you had a total ceiling of what
22 your credit was from Colonial Bank, and it could be shifted
23 between lines; isn't that right?

24 A. No, sir, that's not what I'm talking about at all. I'm
25 talking about raising the entire credit limit on the entire

Farkas - Cross

2350

1 facility.

2 Q. Sir, in order for Colonial Bank to give Taylor Bean money,
3 Colonial Bank, like any bank, needed to know who it was lending to
4 and what their creditworthiness was; isn't that right?

5 A. I mean, I don't know what their policy was, but I assume
6 that's correct, yes.

7 Q. And you went through with Cathie Kissick and Rodney Lewis and
8 others at the bank numerous times submitting information to the
9 bank in order to increase your credit limits?

10 A. I think that we did, yes, we did credit -- we provided
11 materials a lot of the times to them.

12 Q. In fact, in fact, you provided financials once a month; isn't
13 that right?

14 A. I think we did, yes.

15 Q. And that was all so Colonial Bank could make a rational
16 decision as to how much money it could lend to TBW?

17 A. Well, it was a requirement of theirs.

18 Q. Isn't that what banks do?

19 A. I am not sure, but I think that, you know, we were required
20 to provide monthly internal, unaudited financials, and we did.

21 Q. And, sir, one of the ways you got around Colonial Bank's
22 credit, credit requirements was that you ran overdrafts at
23 Colonial Bank in your master account to the tune of over \$100
24 million; isn't that right?

25 A. Well, you see, that's the problem. I can't run an overdraft,

Farkas - Cross

2351

1 because I have no access to the master account.

2 Q. That's TBW's money in the master account; isn't that right?

3 A. Yeah, but we had no access to that account either in or out,
4 so --

5 Q. That's because --

6 A. -- if there was a -- you want to talk?

7 MR. ROGOW: Can he finish his answer, Your Honor?

8 THE COURT: Yes. You have to stop cutting him off.

9 THE WITNESS: I forgot what -- will you ask me the
10 question again?

11 BY MR. STOKES:

12 Q. Well, you're saying that you had no access over the master
13 account. You didn't have the ability to send money in and out of
14 the master account, I believe you were saying.

15 A. That's right.

16 Q. And that's because Colonial Bank would have to send the money
17 out of the master account; isn't that right?

18 A. Well, there were two accounts that Colonial Bank had total
19 control over, and one was the investor funding account, and one
20 was the master account, and we -- if we needed money, we had to
21 write a check or request a wire from the operating account.

22 Q. And so in order for you to run an overdraft at Colonial Bank,
23 you had to have Cathie Kissick on your side; isn't that right?

24 A. You know, I don't understand that question.

25 Q. Well --

Farkas - Cross

2352

1 A. I just said that, that I had no way to make an overdraft on
2 that master account, and so --

3 Q. Did you understand that you had an overdraft?

4 A. There were, there were overdrafts, yes. I understand that.

5 Q. Did you understand that you had overdrafts over a hundred
6 million dollars?

7 A. Yes, I do.

8 Q. And did you understand that -- did you have any overdrafts at
9 WAMU over a hundred million dollars?

10 A. I don't know.

11 Q. Did you have any overdrafts at any of your other banks,
12 Dresner, CSFB, of over a hundred million dollars?

13 A. Well, probably from time to time, but not generally, no.

14 Q. For two years?

15 A. No. Not generally, no.

16 Q. Did you ever have an overdraft of over a hundred million
17 dollars -- you say not generally -- over two years at any other
18 bank?

19 A. Yeah, we did.

20 Q. And how did you hide that?

21 A. Nobody hid it.

22 Q. Sir, so your testimony is -- what bank did you have this
23 overdraft in for two years of over a hundred million dollars?

24 A. No, no, you said did you ever.

25 Q. My question was did you ever have an overdraft in a bank for

Farkas - Cross

2353

1 two years, as you did at Colonial Bank, of over a hundred million
2 dollars?

3 A. The answer to that is no.

4 Q. Now -- and, sir, you were in near daily, if not multiple
5 times a day, communication with Cathie Kissick about the
6 overdraft; isn't that right?

7 A. No.

8 Q. And so was Ms. Kissick not repeatedly -- how frequently would
9 she call you about the overdraft?

10 A. Oh, she called me nine to ten times per day about something,
11 and it wasn't generally about the overdraft.

12 Q. And when she called you about the overdraft, she was very
13 upset about it; isn't that right?

14 A. She was upset about it, yes.

15 Q. Because Taylor Bean kept spending money and increasing the
16 overdraft?

17 A. No, Taylor Bean wasn't spending the money. That's what I'm
18 trying to make you understand is that the master account was a --
19 the master account was, was part of the mortgage banking process,
20 so that the master account would overdraw without Taylor Bean
21 knowing it was overdrawing until after it was overdrawn. It would
22 be the haircuts and it would be the negative paydowns and it would
23 be those sorts of things that would overdraw the master account,
24 and I just testified earlier that as the business grew, that piece
25 grew, that piece of, of -- that money grew in that, in that

Farkas - Cross

2354

1 overdraft.

2 Q. So let's be clear about what this master account is then,
3 sir. The master account was an account that was Taylor Bean
4 money; isn't that right?

5 A. It's Taylor Bean's money.

6 Q. And Taylor Bean had the ability to see its balances in that
7 master account simply by pulling it up on the Internet; isn't that
8 right?

9 A. The next day, right. They posted it at night, and it would
10 be the next day.

11 Q. You had realtime information into your master account; isn't
12 that right?

13 A. I don't know. I think it was the next day.

14 Q. And so Taylor Bean would decide it had to pay for haircuts or
15 paydowns or pairoffs or payroll; isn't that right?

16 A. No, it's not right. What happens is that at the end of the
17 day, all of the work-up -- all the work that the analysts had done
18 in the Warehouse Division would create some kind of net cash
19 number, and that would be posted to the master is my
20 understanding.

21 Now, I did not work with this on a daily basis, and I
22 didn't ever, ever look in the Internet for their bank account to
23 see if it was -- for our bank account in their bank, so I wouldn't
24 know, but I, I heard conversationally that the -- that we would
25 know about -- at the end of the day, we would know when all the

Farkas - Cross

2355

1 work posted together for all the transactions that day, the
2 thousands and thousands, that that would be the, that would be the
3 download of that day's work, and it would either be positive or
4 negative.

5 Q. And it just so turned out that for two years straight, it was
6 getting worse and worse in a negative direction; isn't that right?

7 A. It was. As the, as the amount of loans on the facility kept
8 growing and growing, so did the haircuts and the, and the
9 overdraft, and as we accumulated more and more servicing, so did
10 the, so did that piece of that overdraft grow.

11 Q. And one of the reasons that Colonial Bank controlled the
12 access to that account was to ensure that overdrafts didn't occur;
13 isn't that right?

14 A. I don't have any idea. No, that's not correct.

15 Q. And, sir, that's why you and Colonial Bank had to sweep that
16 account in order to hide that overdraft; isn't that right?

17 A. Well, I never swept the account, and I never even knew what
18 sweeping really was or understand what it really was until long
19 after. I don't know who made the decision to sweep it, I don't
20 know who swept it, and I don't really know the details of the
21 sweeping, I'm sorry.

22 Q. Are you saying you didn't know there was sweeping?

23 A. The sweeping is something that, that I learned about
24 really -- that I understood later on. I mean, there might have
25 been references to sweeping, but I'm not sure that I knew what

Farkas - Cross

2356

1 they were sweeping.

2 Q. So in other words, you may have seen the e-mails, but you
3 didn't understand what those e-mails meant until years later is
4 your testimony?

5 A. I didn't say that. You know I didn't say that.

6 Q. Now, Mr. Farkas, take a look at Government's Exhibit 1-13,
7 already admitted into evidence. Focus on the top third.

8 Mr. Farkas, you send Cathie Kissick an e-mail in
9 November of 2002 in which you say, "I really do appreciate the
10 spot I have you in, even if nobody else does."

11 Do you see that?

12 A. Where?

13 Q. Do you see the --

14 A. Oh, yeah, I see it.

15 Q. Second e-mail from the top?

16 A. I know, I know. I said I know.

17 Q. And she says to you, "I hope it's not from prison"; isn't
18 that right?

19 A. Yes.

20 Q. And, sir, you appreciate the spot you have her in, because
21 you are the one who's put her in the spot of having to continue to
22 sweep; isn't that right?

23 A. No, sir, that's not right.

24 Q. So if, if Ms. Kissick stops sweeping for you, Taylor Bean
25 suddenly has to pay \$140 million to Colonial Bank.

Farkas - Cross

2357

1 A. Okay.

2 Q. And Taylor Bean can't pay that money?

3 A. I'm not sure.

4 Q. And if Taylor Bean can't pay that money, it goes out of
5 business?

6 A. Well, I mean, okay.

7 Q. And if Taylor Bean goes out of business, that overdraft
8 that's been hidden for over -- for a year at this point suddenly
9 gets exposed; isn't that right?

10 A. If you say so.

11 Q. And if that gets exposed, Cathie Kissick gets into a lot of
12 trouble; isn't that right?

13 A. I suppose so.

14 Q. And you knew that, didn't you?

15 A. No, that's a lot of ifs. The only thing I'm saying that I
16 had at this point was she wanted to -- she wanted me to put this
17 FBR debt in place, and, and that's what she was talking about.

18 Q. And, sir, the reason you appreciated the spot you had her in
19 was because you knew that once she lent you that money, that much
20 money, without telling the bank and hiding it, letting you run
21 overdrafts of that amount, she couldn't stop?

22 A. That's not true at all, sir.

23 Q. And, sir, you periodically would have to call her up and
24 rattle her cage when you had to get more money out of her. Isn't
25 that what you did?

Farkas - Cross

2358

1 A. I had to get more money out of her every day to fund loans,
2 and so when I talk about rattling her cage, that means that we
3 need to get some money to fund these loans with, and that's what
4 you'll see in thousands of e-mails and thousands of phone calls
5 from me to Cathie.

6 Q. And the rattling that you did then caused her, is your
7 testimony, to on her own sweep without your knowledge?

8 A. I'm not testifying about sweeping and rattling. I mean, I --
9 it's not sweeping and rattling. Rattling her cage was just an
10 expression that I used to get, to get Cathie to increase the
11 amount of credit that she would give to us so we could fund loans.

12 Q. Okay. Well, let's talk about what you said about Plan B
13 during your direct testimony.

14 A. All right.

15 Q. You said that -- when you testified about Plan B, you said
16 that Plan B was first an idea that Cathie Kissick raised with you;
17 is that right?

18 A. That's correct.

19 Q. And she brought it to you as a way to deal with the
20 overdrafts?

21 A. Cathie, Cathie wanted to get rid of the overdraft.

22 Q. Right. Because at this time, of course, you know there's an
23 overdraft that Taylor Bean has at a federally insured, federally
24 regulated bank of over a hundred million dollars that isn't
25 disclosed to anybody?

Farkas - Cross

2359

1 A. I don't know if it's disclosed to anybody. They had -- I
2 didn't know if she disclosed it to anybody.

3 Q. And, sir, your testimony about what Plan B was is that Plan B
4 were just loans that had been sitting on other lines like -- what
5 other lines? You mentioned that Plan B loans were aged loans on
6 other lines.

7 A. They could be saying on no lines. They could be in, they
8 could be in Colonial. They could be on the overline. They could
9 be -- there could be a lot of places.

10 Q. So just on another line somewhere else?

11 A. Or no line.

12 Q. Or no line?

13 A. On no lines.

14 Q. And it's been haircutted if it's on another line?

15 A. It could be. That was one, one example, yes.

16 Q. Well, I think that's the only example you gave.

17 A. No, sir, I don't -- okay.

18 Q. I'm sorry?

19 A. If you say so.

20 Q. Well, sir, did you testify that what Plan B was are aged
21 loans that were sitting on another line that had been haircutted?

22 A. That was an example that I gave, I believe. What it was was
23 finding collateral for whatever reason that could be advanced back
24 up.

25 Q. So haircutting is that that loan had been -- the advance rate

Farkas - Cross

2360

1 at another bank had been reduced from, let's say, 99 percent down
2 to, for example, 80 percent?

3 A. Well, and at Colonial, too.

4 Q. This is before the loans at Colonial.

5 A. No, the loans could be at --

6 Q. Fair enough. If it's on the overline, whatever facility it's
7 on at whatever bank, it's been reduced in its advance rank?

8 A. No, it could be in COLB, also. It could already be in COLB,
9 or it could be partly paid down on COLB, too.

10 Q. Okay. So wherever that loan exists, you're saying it's been
11 paid down?

12 A. It's been paid down or it was never advanced.

13 Q. Or it was never advanced?

14 A. Right.

15 Q. Okay. And then that loan is then either given to Colonial
16 Bank or Colonial Bank itself agrees to re-advance it up to 99-97
17 percent, whichever one you want to pick?

18 A. That is absolutely my testimony, yes.

19 Q. Yes. And so that's what Plan B is?

20 A. That's what -- no, Plan B was just Cathie's way of saying, I
21 mean, saying that we're going to do something different. I mean,
22 she said, "Plan A is not working. We've got to go to Plan B."

23 We didn't sit down and say, "Here's Plan B, and here's
24 all the -- here's how it's going to work, and here's what it is."
25 It was just simply a way to say, "Okay. Plan A is not working."

Farkas - Cross

2361

1 They didn't want to do that sweeping anymore or whatever they were
2 doing, and so we're going to do something different, and that's
3 the way it went forward then, and I did testify on my direct
4 testimony today that the -- that we referred to a lot of things as
5 Plan B over time.

6 Q. And so what over time became the Plan B that we've been
7 talking about here in trial?

8 A. I don't understand what you're asking me.

9 Q. Well, you say that Plan B was a lot of different things, so
10 what was the Plan B that you were referencing in all the e-mails
11 that you've seen?

12 A. Well, what I was referencing?

13 Q. Yes.

14 A. Was exactly what we just said, was re-advancing loans on, on
15 the COLB line and later on the AOT line to advance them back up so
16 that we could get the economic out of it and, and, and continue
17 on.

18 Q. Good. Let's take a look at Government's Exhibit 1-143.

19 A. Okay.

20 Q. Do you have that in front of you?

21 A. Yes.

22 Q. Take a look at the bottom e-mail on the first page.

23 A. On the first page?

24 Q. Yes.

25 A. Okay.

Farkas - Cross

2362

1 Q. And this is an e-mail between you and Desiree Brown on April
2 22, 2004; is that right?

3 A. Yes.

4 Q. Is that correct, Mr. Farkas?

5 A. I'm sorry, what did you ask me?

6 Q. I'm sure you're reading ahead. If you could listen to my
7 question first?

8 A. Okay.

9 Q. Is this an e-mail between you and Desiree Brown on April 22,
10 2004?

11 A. April 22.

12 Q. And do you say to Desiree Brown that as opposed to doing more
13 Plan B, ask Teresa if they want to move the CSFB aged and cover
14 the overdraft with the advances?

15 A. Okay.

16 Q. Are those your words?

17 A. Yes.

18 Q. And, sir, what you're saying, ask Teresa, you say "is" but
19 we'll assume that's an "if" -- ask Teresa if they want to move the
20 CSFB aged and cover the OD with advances, that's exactly what
21 you're describing here in court, isn't it?

22 A. No, there's a difference here, because this transaction on
23 this page required us to pay off CSFB over there and then move the
24 loans over here.

25 Q. And that's what you described in your direct examination?

Farkas - Cross

2363

1 A. No, I -- no.

2 Q. Sir, you described in your direct examination and just a
3 moment ago that if you have a loan on another line advanced at,
4 let's say, 80 percent and you move it to Colonial Bank and
5 re-advance it to 99 percent, TBW gets more money that way; isn't
6 that right?

7 A. Okay.

8 Q. That's what you just described.

9 A. No, because that was -- what I said was there was a thing
10 called COLB Plus in my direct testimony, if you recall, and I said
11 you could re-advance these loans that were on COLB back up. Now,
12 these -- if you moved loans into Plan B or what would, what would
13 be Plan B over here, you would have loans that you could just
14 advance all the money into Colonial, but here you would have to
15 pay CSFB off.

16 Q. Sir, here you're actually distinguishing Plan B from what
17 you've just described in your testimony as the Plan B that you
18 claim you were doing back then.

19 A. I don't believe so.

20 Q. Plan B, sir, is not advancing on aged loans that you're
21 bringing over from other lines, is it?

22 A. It is.

23 Q. Here, sir, you're actually distinguishing between bringing
24 aged loans over from other lines and Plan B; isn't that right?

25 A. Well, I don't know, but it is.

Farkas - Cross

2364

1 Q. Now, sir, Plan B -- can we agree on this, that Plan -- that
2 you cannot sell fake loans to Colonial Bank?

3 A. I agree on that.

4 Q. You cannot sell loans that, intentionally sell loans that
5 somebody else already to Colonial Bank?

6 A. I agree.

7 Q. I'm sorry?

8 A. I agree with that.

9 Q. You cannot sell loans that don't exist to Colonial Bank;
10 isn't that right?

11 A. That's correct.

12 Q. And you can't sell pools of loans that don't exist to
13 Colonial Bank; isn't that right?

14 A. Yeah.

15 Q. You can't sell pools of loans that somebody else exists;
16 isn't that right?

17 A. That what?

18 Q. And you would agree that if somebody did --

19 THE COURT: Wait, I don't think he heard the question.
20 Slow down.

21 MR. STOKES: I'm sorry.

22 Q. You would agree that you can't sell pools of loans to
23 Colonial Bank that somebody else already owns?

24 A. Probably not.

25 Q. And you would agree that a pool of loans that has already

Farkas - Cross

2365

1 been sold in a Ginnie security can't then be resold by TBW to
2 Colonial Bank?

3 A. Well, that's not necessarily true.

4 Q. And, sir, how is it that TBW can sell a pool of loans that
5 has already been sold to Ginnie Mae after that, it can then turn
6 around and sell that same pool of loans to Colonial Bank?

7 A. Well, the reason it's not true is Ginnie Mae doesn't ever,
8 ever, ever buy loans, and so, you know, they don't buy them.

9 Q. Okay. Let me rephrase my question then. Can TBW sell a pool
10 of loans to Colonial Bank that have already been delivered into a
11 security that has been delivered to a final investor and is a
12 final sale?

13 A. Not if the security is sold, no.

14 Q. That would go the same for Freddie Mac; isn't that right?

15 A. Well, no, Freddie Mac is different.

16 Q. Well, if a pool of loans has already been delivered into a
17 Freddie security and delivered to an investor and it's a final
18 sale and complete, that same Freddie -- a Freddie pool of loans
19 with that same pool number cannot then be resold?

20 A. I don't know about the pool number, but the loans in the
21 Freddie Mac security cannot be resold, correct.

22 Q. And, sir, you would agree that if you or someone else was
23 selling fake loans to Colonial Bank, that that would be a big
24 problem?

25 A. It would be a problem, yes.

Farkas - Cross

2366

1 Q. And you would agree that that could be fraud?

2 A. I don't know. Yes, it could be.

3 Q. And, sir, you would agree that selling fake pools of loans to
4 Colonial Bank could be a big problem?

5 A. It could be.

6 Q. And selling fake pools of loans could be fraud?

7 A. It could be.

8 Q. And you would agree that the AOT agreement itself says TBW
9 cannot sell fraudulent, counterfeit, fictitious loans to Colonial
10 Bank?

11 A. I don't know that it says that.

12 Q. So you think the agreement between TBW and Colonial Bank
13 permits TBW to sell fraudulent, counterfeit, fictitious loans to
14 Colonial Bank?

15 A. Yeah, I believe it does.

16 Q. You believe it does permit that?

17 A. I believe it does. I think it makes provision for that,
18 yeah.

19 Q. Is that what permitted you to do it?

20 A. I didn't do it.

21 Q. Now, Mr. Farkas, you've just testified that you think it
22 would be a problem for TBW to sell fake loans to Colonial Bank,
23 but you think that there's a contractual provision that actually
24 permits you to get around that somehow or another?

25 A. I don't understand that, but I do -- what I said was I

Farkas - Cross

2367

1 believe there's a provision for the AOT agreement that if fake
2 loans or loans that don't exist or whatever description it is, I
3 don't know the exact wording, are there, that the remedy would be
4 that you would replace those loans with other loans or pay them
5 down.

6 Q. In the first instance, before those fake loans are discovered
7 on the AOT facility, for example, can TBW sell those loans in the
8 first instance, those fake loans to Colonial Bank?

9 A. Well, the problem is I don't know that they can. They do
10 because it's very common in our business to, to sell -- because
11 it's all data, there's really nothing but data -- to sell loans
12 that don't exist. It happens all the time.

13 The same thing with those big wires from those big
14 mortgage companies. Those mistakes are made, and they're big, but
15 if you look, you know, it does happen that -- it happens, and it
16 happens quite often. I think mortgage banking is more maybe of an
17 art than a science sometimes, and I think that that's why
18 provisions are made for that eventuality in those agreements.
19 That's my opinion.

20 Q. And so your view is that any fake loans at Colonial Bank are
21 just data mistakes?

22 A. I don't think that follows.

23 Q. Well, you're saying that loans that don't exist are, are sold
24 between mortgage lenders like TBW and banks periodically?

25 A. They are.

Farkas - Cross

2368

1 Q. And is that done intentionally?

2 A. No.

3 Q. Unintentionally?

4 A. Yes.

5 Q. And so those would be mistakes?

6 A. Yes.

7 Q. That's right.

8 And so, for example, when -- I think your testimony was
9 on direct, certainly you'll correct me if I'm wrong, was that you
10 testified that Desiree Brown would send lists of loans to Teresa
11 Kelly identifying loans to put on the COLB facility, for example?

12 A. You know, I actually sent some lists myself, too, yes.

13 Q. And those were the hole loans, h-o-l-e; isn't that right?

14 A. No, not hole. I don't know about hole loans, but I would
15 send massive lists every day or so. We were -- at one point, we
16 were searching very hard, because the whole time I was there --
17 the entire time, I should say, not whole -- the entire time I was
18 there, you know, we were trying to figure out what was remiss here
19 and why, you know, in the beginning, where the overdraft came
20 from. You know, Ray Bowman didn't think it was -- he thought it
21 was Colonial's fault.

22 Anyway, we were always trying to find out what the
23 collateral really was and what was possibly a mistake, not a
24 mistake, and where -- who had what collateral. So a big part of,
25 of -- from time to time of what we did was -- and Teresa was the

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1 only one who knew, we would send massive lists of loans to her
2 similar to those on that Zip drive.

3 Q. And so are you suggesting that what the government has
4 identified as Plan B loans that were intentionally put on the COLB
5 facility were actually just mistakes by Teresa Kelly, where she
6 put loans on the line that you or others sent over in a
7 well-meaning way to identify loans that you thought could be
8 advanced on?

9 A. I'm not suggesting that. I don't know what Teresa Kelly did
10 every day.

11 Q. And to the extent that there are loans on the COLB facility
12 that had already been sold to Freddie Mac prior to their being
13 delivered and sold to Colonial Bank, would that be a mistake?

14 A. Could be, sure.

15 Q. And to the extent there are hundreds of loans from WAMU that
16 were previously sold to WAMU that are sent to Colonial Bank, that
17 would be a mistake?

18 A. It could be, sure.

19 Q. And the mistake would be Mike Wawrzyniak's?

20 A. No, I don't think so. I don't know whose, whose fault it
21 could be, but it could be.

22 Q. Would it be -- it could be his?

23 A. It could be.

24 Q. Could it be Desiree Brown's?

25 A. Fault?

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1 Q. Yes.

2 A. I don't know.

3 Q. Is she one of the ones it could be?

4 A. I don't know.

5 Q. Could it be Teresa Kelly's?

6 A. Teresa made mistakes, sure.

7 Q. Could it be Cathie Kissick's?

8 A. No.

9 Q. Okay. So it could be Michael Wawrzyniak's mistake or Teresa
10 Kelly's mistake?

11 A. No, Mike didn't -- no. It wouldn't have been Mike.

12 THE COURT: I'm sorry, again you're trailing.

13 THE WITNESS: Sorry. My voice is fading.

14 THE COURT: I understand. Just drink some water. Get
15 closer to the microphone. That will help.

16 THE WITNESS: There's not much voice.

17 BY MR. STOKES:

18 Q. Sir, if you'd take a look at Government's Exhibit 1-41? Do
19 you have that in front of you?

20 A. I do.

21 Q. Sir, the bottom e-mail, do you see an e-mail from you to
22 Michael Wawrzyniak on December 22, 2003?

23 A. I do.

24 Q. And you say to him, "I don't know if I asked you about this.
25 We need to do the final Plan B funding of 6.5 million."

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1 A. Yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. So that's you directing Michael Wawrzyniak to do Plan B
5 funding; isn't that right?

6 A. I said, "Can you find that much more?"

7 Q. And then you say, "Can you find that much more?" That's
8 right.

9 A. Right.

10 Q. And he says to you in response to your question, "Can you
11 find that much more?" -- I'm sorry, then you continue on after you
12 say, "Can you find that much more?" you say, "Let me know when the
13 file is there for Teresa."

14 So are you directing him then to send that to Teresa?

15 A. It appears that way, yes.

16 Q. That's right. So you're actually the one here directing
17 Michael Wawrzyniak to send Teresa Kelly a Plan B file?

18 A. This file, yes. This file, yes.

19 Q. Yes. And he says, in fact, that he sent a Plan B file.

20 A. That's what it says.

21 Q. Take a look at Government's Exhibit 1-141, and here again, in
22 April of 2004, with the subject line of "Plan B," you're
23 directing -- you're telling Michael Wawrzyniak that we need 3.0
24 today of Plan B; isn't that right?

25 A. It looks like it.

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1 Q. And what does the 3.0 indicate?

2 A. It could be 3 billion.

3 Q. And previously in your prior e-mail, you had said, "This is
4 our final Plan B forever," on December 23, 2003; isn't that right?

5 A. I don't remember the date.

6 Q. In December, you recall -- the previous e-mail said that that
7 was going to be your final Plan B forever; isn't that right?

8 A. That's what it said, yes.

9 Q. And here you are requesting another Plan B; isn't that right?

10 A. I don't know what this -- yeah.

11 Q. And you would periodically go to Mike Wawrzyniak and request
12 him to get more Plan B data; isn't that right?

13 A. Yeah. I talked to Mike a lot, and Mike did data work for me
14 every week on something.

15 Q. Go ahead.

16 A. I said he did data work for me on something.

17 Q. And Mike Wawrzyniak, what was his position?

18 A. He was a data specialist I think was his title.

19 Q. He wasn't in Secondary Marketing, Capital Markets, was he?

20 A. You know, the reason that Mike did this stuff is that he was
21 the only one who could really compare all the systems across, and
22 then we could find out if the collateral was available or not.

23 One of the things you'd compare, as I said earlier, you'd want to
24 know if it was in the front end system, which he called Loan
25 Commander, which we had a different name for later, and if it was

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1 in the accounting system and if it was in the servicing system and
2 if it would be in secondary.

3 So Mike is the guy who could make -- who could do
4 queries and bring all those loans together to make sure. And then
5 you could see, you could tell whether or not loans were available
6 for collateral or weren't available for collateral.

7 Q. So your IT guy is the one person in TBW who could actually
8 determine if a loan was over at WAMU aged and could be re-advanced
9 on Colonial Bank?

10 A. He didn't determine it. What he did was he would run the
11 queries. He was the only one who could run the queries.

12 Q. And does that explain why you told Mike Wawrzyniak not to
13 tell anybody what you're doing -- what he was doing, because this
14 is sensitive?

15 A. I don't know what the, what the context of that is. You
16 know, I said that sometimes to people, yeah, that I don't want
17 them to tell.

18 Q. Take a look at Government's Exhibit 1-111. Take a look at
19 the bottom e-mail, if you would.

20 A. Right.

21 Q. And here the subject line, this is December 11 of 2003,
22 you're e-mailing Mike Wawrzyniak, and you're saying to Mike, "Just
23 checking to be sure you are doing the project Ray talked with you
24 about last night." Isn't that right?

25 A. Yes.