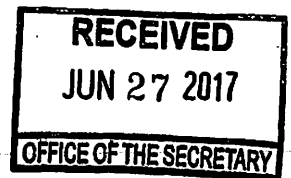


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17902

In the Matter of

JOHN T. LYNCH, JR.,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”), by counsel, pursuant to Rules 154 and 250 of the Commission’s Rules of Practice, respectfully moves for an order of summary disposition against respondent John T. Lynch, Jr. (“Lynch” or “Respondent”). This motion addresses whether, as a result of Lynch’s willful violation of Sections 17(a)(2) and (3) of the Securities Act of 1933 (the “Securities Act”) and Section 10(b) of the Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5(b) thereunder, and Lynch’s willful aiding and abetting and causing of his former employer’s violation of Section 15(c) of the Exchange Act and Rule 15c2-12 thereunder, it is appropriate in the public interest to bar Lynch from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (a “collateral bar”), and to prohibit Lynch from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter (an “Investment Company Act prohibition”). For the reasons stated below, a permanent collateral bar and Investment Company Act prohibition should be imposed against Lynch.

I. PROCEDURAL AND FACTUAL HISTORY

A. Procedural History

On April 5, 2017, the Securities and Exchange Commission (the “Commission”), having accepted Lynch’s Offer of Settlement executed on February 14, 2017, issued its Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, Sections 4C, 15(b), 15B(c)(4), and 21C of the Exchange Act, Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”), and Rule 102(e) of the Commission’s Rules

of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, and Notice of Hearing against Respondent (the “Order” or “OIP”).¹

In the Order, the Commission: (a) found that Lynch willfully violated Sections 17(a)(2) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder; (b) found that Lynch willfully aided and abetted and caused LFC’s violation of Section 15(c) of the Exchange Act and Rule 15c2-12 thereunder; (c) ordered that Lynch cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and (3) of the Securities Act and Sections 10(b) and 15(c) of the Exchange Act and Rules 10b-5 and 15c2-12 thereunder; (d) ordered that Lynch be denied the privilege of appearing or practicing before the Commission as an attorney; (e) ordered that Lynch pay disgorgement of \$20,000, prejudgment interest of \$2,338, and a civil money penalty of \$22,338 pursuant to a 12-month payment plan; and (f) ordered that the hearing officer hold additional proceedings to determine whether, pursuant to Sections 15(b) and 15B(c) of the Exchange Act and Section 9(b) of the Investment Company Act, it is appropriate in the public interest to bar Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and to prohibit Respondent from serving or acting as an

¹ Also on April 5, 2017, the Commission issued a settled order against Lawson Financial Corporation (“LFC”), Respondent’s former employer, and Robert Lawson (“Lawson”), LFC’s founder and CEO, also in connection with the same offerings at issue in the Order as well as one additional offering (the “Lawson Order”). *See In re Lawson Financial Corporation and Robert Lawson*, A.P. File No. 3-17901, 2017 WL 1245083 (Apr. 5, 2017). In the Lawson Order, the Commission found that LFC willfully violated Sections 17(a)(2) and (3) of the Securities Act and Section 15(c)(2) of the Exchange Act and Rule 15c2-12 thereunder. The Lawson Order also found that Lawson willfully violated Sections 17(a)(2) and (3) of the Securities Act and willfully aided and abetted and caused LFC’s violations of Section 15(c)(2) of the Exchange Act and Rule 15c2-12 thereunder. Pursuant to Offers of Settlement, LFC and Lawson agreed, among other things, to pay disgorgement plus prejudgment interest and a civil money penalty, and Lawson received a collateral bar and Investment Company Act prohibition with a right to apply for reentry after three years.

employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

In connection with such additional proceedings, the Order provides, and Lynch agrees, that:

(a) Lynch will be precluded from arguing that he did not violate the federal securities laws described in the Order;

(b) Lynch may not challenge the validity of the Order; and

(c) Solely for the purposes of such additional proceedings, the allegations of the Order shall be accepted as and deemed true by the hearing officer.

On April 10, 2017, the Division produced its investigative file to Lynch pursuant to Rule 230 of the Commission's Rule of Practice.² In response to Lynch's subsequent requests, the Division has also: (1) provided Lynch with an index of the documents contained in its April 10 production; and (2) reproduced to Lynch copies of certain investigative testimony transcripts as well as the exhibits used during those testimonies.

Lynch's first payment of disgorgement, prejudgment interest thereon, and the civil money penalty pursuant to the 12-month payment plan contained in the Order was due on April 20, 2017. Lynch's second payment was due on May 20, 2017, and Lynch's third payment was due on June 20, 2017. As of June 23, 2017, Lynch has made no payments to the Commission as required by the Order.

B. Allegations in the Order

From at least June 2010 to December 2013, Lynch served as LFC's investment banker and

² The Division previously provided Lynch with a copy of the transcript of his April 15, 2016, investigative testimony on August 19, 2016. A copy of Lynch's April 15, 2016, investigative testimony transcript is attached as Exhibit 1 to the Declaration of David H. Tutor, dated June 26, 2017 ("Tutor Decl.").

counsel in connection with the underwriting of 12 fraudulent conduit municipal bond offerings for the benefit of Christopher Brogdon (“Brogdon”), which raised millions of dollars for Brogdon’s healthcare-related projects throughout the Southeastern and Midwestern United States (collectively, the “Brogdon Bond Offerings”).³ (OIP at ¶ 1.) Lynch and Lawson, LFC’s founder and CEO, were responsible for underwriting due diligence at LFC for the Brogdon Bond Offerings. (*Id.* at ¶ 11.) Lynch knew that Brogdon was behind each borrowing entity and was the borrower-in-fact for each offering. (*Id.* at ¶ 12.)

The Order alleges three principal areas of willful misconduct by Lynch: (1) Lynch misrepresented to investors that he was qualified and permitted to serve as LFC’s underwriter’s counsel in the bond offering documents he helped prepare; (2) Lynch failed to conduct reasonable due diligence on the Brogdon Bond Offerings; and (3) Lynch aided and abetted and caused LFC to fail to obtain a continuing disclosure agreement as required by Exchange Act Rule 15c2-12 for an April 2013 offering. According to the Order, these allegations are to be accepted as true for the purposes of these proceedings. (*Id.* at § IV.)

1. Lynch Misrepresented to Investors that He Was Qualified and Permitted to Serve as LFC’s Underwriter’s Counsel.

An official statement is a disclosure document for municipal bond offerings that, like a prospectus, contains information about the key terms of an offering. (*See* Tutor Decl. Ex. 3.) Official statements are publicly available on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website (“EMMA”). (*Id.* at 3)

For each Brogdon Bond Offering, an official statement was prepared, provided to investors

³ Pursuant to his settlement with the Commission and the judgment entered in *SEC v. Christopher Freeman Brogdon, et al.*, No. 15 Civ. 8173 (KM) (D.N.J.), Brogdon is in the process of repaying more than \$86 million to investors, including the investors in the Brogdon Bond Offerings that remain outstanding.

in connection with their purchases of the bonds, and posted on EMMA. (OIP at ¶ 38.) As LFC's underwriter's counsel, Lynch was responsible for helping to draft the official statements. (*Id.* at ¶ 37.) For this work as underwriter's counsel, Lynch received a total of \$290,000 in underwriter's counsel fees from the proceeds of the Brogdon Bond Offerings, in addition to his salary from LFC. (*Id.* at ¶ 36.) Accordingly, the official statements list, "John T. Lynch, Jr., Esquire, Phoenix, Arizona," as underwriter's counsel for LFC. (*Id.* at ¶ 38.) The official statements further represent that "[c]ertain legal matters will be passed upon . . . [for LFC] by its counsel, John T. Lynch, Jr., Esquire, Phoenix, Arizona." (*Id.*)

This representation was materially misleading to investors in the Brogdon Bond Offerings. Lynch was not permitted to serve as LFC's underwriter's counsel because he was not authorized to practice law in any state. (*Id.* at ¶ 6.) Lynch has been an inactive member of the Pennsylvania state bar since 1983. (*Id.* at ¶¶ 7, 40.) According to Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement, an inactive attorney is prohibited from, among other things, "representing himself or herself as a lawyer or person of similar status." (*Id.* at ¶ 41.) Lynch has never been a member of the Arizona state bar.⁴ (*Id.* at ¶ 39.)

Lynch was also not qualified to serve as LFC's underwriter's counsel. (*Id.* at ¶ 6.) Lynch left the practice of law in approximately 1980. (*Id.* at ¶ 39.) Though he had experience as an investment banker, Lynch did not practice as an attorney in any capacity in the intervening period before serving as underwriter's counsel to LFC. (*Id.*)

Lynch testified that the reason he became LFC's underwriter's counsel, while also serving as LFC's investment banker, was so that he could receive a raise for his work at LFC without LFC having to pay him directly—as underwriter's counsel, Lynch received an additional fee of \$20,000

⁴ Lynch also testified that he was an inactive member of the Pennsylvania state bar and never sought admission to the Arizona state bar. (Tutor Decl. Ex. 1 at 51:17-52-23.)

to \$30,000 per transaction directly from the proceeds of the Brogdon Bond Offerings in addition to his salary from LFC of approximately \$100,000. (Tutor Decl. Ex. 1 at 45:15-48:01; 60:01-07; 106:15-107:12; 118:03-119:25.) Lynch testified that he approached Lawson and told him that, “I wasn’t satisfied with the amount of income that I was receiving for the amount of work I was doing.” (*Id.* at 48:07-24.) Lynch understood from Lawson that serving as underwriter’s counsel was the “only way” that Lynch would be able to receive additional compensation in connection with his work at LFC on the Brogdon Bond Offerings. (*Id.* at 118:03-119:06.) Accordingly, Lynch testified that he took on the role of underwriter’s counsel “somewhat reluctantly,” and Lynch testified that he told Lawson that he “felt generally uncomfortable with the situation.” (*Id.* at 45:15-46:10; 50:20-51:11.)

2. Lynch Failed to Conduct Reasonable Due Diligence in Connection with the Brogdon Bond Offerings.

Lynch failed to conduct reasonable due diligence in connection with his role as LFC’s underwriter’s counsel and investment banker in underwriting the 12 fraudulent Brogdon Bond Offerings. (OIP at ¶¶ 1, 4.) The fraudulent nature of these offerings could and should have been detected by Lynch in the underwriting due diligence process. For example, after each offering closed, Brogdon rarely caused the borrowers to provide the required annual financial information to EMMA as required by the continuing disclosure undertakings that Brogdon entered into on behalf of those borrowers. (*Id.* at ¶¶ 3, 26.) Despite serving in his dual role as LFC’s underwriter’s counsel and investment banker,⁵ Lynch did not detect Brogdon’s repeated failure to comply with his prior continuing disclosure undertakings. (*Id.* at ¶¶ 15, 18, 23.)

Lynch’s inadequate due diligence consisted of only a cursory inquiry into the information

⁵ Lynch also did not disclose these dual roles in the official statements. (OIP at ¶ 36.)

provided by Brogdon, his representatives, and other parties to the Brogdon Bond Offerings. (*Id.* at ¶ 4.) Though LFC’s written supervisory procedures required that LFC’s Underwriting Department “[r]eview the public record of filings with EMMA,” Lynch conducted no such review of any of the prior Brogdon-controlled borrowers in connection with subsequent underwritings. (*Id.* at ¶¶ 24-25.) Lynch testified that he “did not personally” check the EMMA filings of prior Brogdon Bond Offerings to determine whether they were complying with their continuing disclosure obligations and did not know if anyone at LFC performed EMMA checks. (Tutor Decl. Ex. 1 at 84:01-23; 91:03-91:11, 161:25-162:24.) Rather, Lynch testified that he “verbally checked [EMMA] in the sense of asking questions of . . . either Brogdon himself or counsel to Brogdon as to whether or not all the filings had been made.” (*Id.* at 89:21-90:14.)

As a result of Lynch’s failure to conduct reasonable due diligence, Brogdon was able to falsely and misleadingly represent in the official statements for the Brogdon Bond Offerings that the borrowers he controlled had not failed to comply with any prior continuing disclosure undertakings, when, in fact, his borrowers were not in compliance. (*Id.* at ¶¶ 3, 18, 23.) For example, when LFC underwrote five Brogdon Bond Offerings in 2012, Brogdon had not filed on EMMA all of the required annual financial information for the two 2010 Brogdon Bond Offerings that Lynch had previously worked on. (*Id.* at ¶ 18.) Similarly, when LFC underwrote an additional five Brogdon Bond Offerings in 2013, Brogdon had not filed on EMMA all of the required annual financial information for certain of the 2010 and 2012 Brogdon Bond Offerings. (*Id.* at ¶ 23.) Accordingly, a simple check of the EMMA website would have revealed that the Brogdon-controlled borrowers were not in compliance because they had failed to provide to EMMA all of the required annual financial information for these Brogdon Bond Offerings. (*See id.* at ¶¶ 18, 23, 26.)

Lynch also continued to serve as the investment banker and underwriter's counsel for LFC on new Brogdon Bond Offerings in 2013 even after becoming aware of red flags from multiple sources that indicated Brogdon was causing his borrowers to fail to comply with their continuing disclosure undertakings. (*Id.* at ¶ 25.) For example, in July 2013, Lynch received an email from the issuer's counsel from a prior Brogdon Bond Offering that indicated Brogdon was not in compliance with his continuing disclosure obligations for that offering. (*Id.* at ¶ 19.) In October 2013, Lynch received two additional emails from LFC's Trading Department, which similarly indicated that Brogdon was not in compliance with his continuing disclosure obligations for other Brogdon Bond Offerings that Lynch had worked on at LFC. (*Id.*) Nevertheless, Lynch did not conduct or cause to be conducted a review of EMMA of any of the Brogdon-controlled borrowers, and Lynch continued to serve as LFC's investment banker and underwriter's counsel for subsequent Brogdon Bond Offerings through December 2013. (*Id.* at ¶¶ 1, 21, 25.)

During his investigative testimony, Lynch admitted that “[i]t was not that unusual with Chris Brogdon that things were . . . produced late but on an untimely basis.” (Tutor Decl. Ex. 1 at 215:10-14.) Lynch testified that when he became alerted to Brogdon's failure to file continuing disclosure materials, Lynch did not “get[] overly excited or agitated about it” or even “look into it” because Brogdon “almost always, to my knowledge, when prompted would deliver information or documentation.” (*Id.* at 187:21-188:19.) According to Lynch, “it was not unusual to have to prompt Chris Brogdon to produce documents that were needed,” and “[t]he attitude of everybody that I was exposed to was that . . . Brogdon was a client that didn't produce everything on a timely basis. But it seemed that everything always came in when we asked for it. It may take a little bit longer than it should have and that the notices were not filed, but that he always seemed to produce in the end what was needed.” (*Id.* at 218:22-219:23.) Lynch further acknowledged that Brogdon

was “[s]loppy” and “didn’t file things on a timely basis,” but, according to Lynch, he “never had a conversation” with other members of the financing team where these issues “rose to the level of concern that there was something fraudulent or inappropriate with Brogdon in terms of his business practices.” (*Id.* at 219:24-221:01.)

Rather than look into Brogdon’s failure to file timely continuing disclosure information, as was Lynch’s duty as LFC’s underwriter’s counsel and investment banker, Lynch testified that he relied on other members of the Brogdon deal team to raise any disclosure issues with him. (*Id.* at 222:22-225:06.) By late 2013, Lynch testified that he still did not feel the need to conduct EMMA checks for all of the prior Brogdon Bond Offerings because “Brogdon always came through with the documents that we asked for.” (*Id.* at 221:21-222:08.) However, when reviewing certain red flag emails during his investigative testimony, Lynch admitted that it was “disturbing” that the failure to file financials in connection with prior offerings had not been resolved or disclosed to investors in subsequent Brogdon Bond Offerings. (*Id.* at 183:20-186:08; *see* OIP at ¶ 19.)

This lack of due diligence by Lynch in connection with LFC’s underwriting of the Brogdon Bond Offerings deprived both initial purchasers and buyers and sellers in secondary market transactions of material information related to the offerings, namely, Brogdon’s failure to comply with his prior continuing disclosure agreement obligations, and allowed Brogdon to perpetuate his fraud. (OIP at ¶ 4.)

3. Lynch Willfully Aided and Abetted and Caused LFC’s Violation of Section 15(c) of the Exchange Act and Rule 15c2-12 in Connection with an April 2013 Offering.

In April 2013, LFC underwrote a Brogdon Bond Offering that consisted of \$2,750,000 of certificates of participation in previously issued revenue bonds by Clayton County, Georgia, and the Savannah Economic Development Authority (the “Clayton V Offering”). (OIP at ¶ 27.)

Lynch again served as investment banker and as underwriter’s counsel for LFC in connection with

the Clayton V Offering. (*Id.* at ¶ 28.) During the drafting process of the official statement for the Clayton V Offering, the parties to the transaction provided written comments and the draft was discussed with Brogdon and other members of the financing team on numerous conference calls in which Lynch participated.⁶ (*Id.*)

According to the official statement for the Clayton V Offering, the two Brogdon-controlled entities that served as the obligated parties for the Clayton V Offering had “covenanted in the Continuing Disclosure Agreement to provide certain financial information and other operating data” to EMMA.⁷ (*Id.* at ¶ 31.)

The representation that a Continuing Disclosure Agreement had been executed for the Clayton V Offering was false. (*Id.* at ¶ 32.) In fact, no such agreement was executed. (*Id.*) Lynch failed to detect that neither Brogdon-controlled entity had covenanted to file annual financial information and other operating data on EMMA or to file material event notices on EMMA upon the occurrence of a material event in connection with the Clayton V Offering. (*Id.*)

The official statement for the Clayton V Offering also contains a section that describes the Brogdon-controlled National Assistance Bureau, Inc. (“NAB”), one of the two obligated parties for

⁶ Though the official statement for the Clayton V Offering represents that “[c]ertain legal matters will be passed upon” for LFC by Lynch in his capacity as underwriter’s counsel, Lynch did not prepare or deliver an underwriter’s counsel legal opinion letter for the Clayton V Offering like he had done for the other Brogdon Bond Offerings. (OIP at ¶ 29.)

⁷ Exchange Act Rule 15c2-12 provides that, before purchasing or selling municipal securities in connection with an underwriting, an underwriter is required to reasonably determine that an issuer or obligated person has undertaken in a written agreement for the benefit of the holders of the securities to provide continuing disclosure of certain annual financial information and event notices to the Municipal Securities Rulemaking Board. *See* 17 C.F.R. § 240.15c2-12(b)(5)(i). Exchange Act Rule 15c2-12 and subsequent amendments were adopted in an effort to improve the quality and timeliness of disclosures to investors in municipal securities, and this requirement of the underwriter reflects the fact that the disclosure of sound financial information is critical to the integrity of not just the primary market, but also the secondary markets for municipal securities. *See* Municipal Securities Disclosure, Exchange Act Release No. 34961 (Nov. 10, 1994), 59 Fed. Reg. 59590 (Nov. 17, 1994).

the offering. (*Id.* at ¶ 33.) The official statement provides information about NAB's operations and represents that NAB "currently owns nursing homes of 82 beds and 68 beds in Sumner, Illinois." (*Id.*) This representation was also false. (*Id.* at ¶ 34.) Lynch failed to detect that, in fact, the 82-bed and 68-bed nursing home facilities in Sumner, Illinois, which had served as collateral for another fraudulent bond offering from 2002 involving Brogdon, had closed and were no longer generating revenue to pay bondholders by 2006, and were sold at a tax sale in December 2008. (*Id.*) Had Lynch actually conducted due diligence on the material representations contained in the official statement for the Clayton V Offering, including by conducting EMMA checks, Lynch would have detected that no required annual financial information had been filed for the facilities in Sumner, Illinois, since the inception of EMMA in 2009. (*Id.* at ¶ 35.)

II. LEGAL ARGUMENT

A. **Applicable Legal Standard**

Section 15(b)(6) and Section 15(B)(c) of the Exchange Act authorize the Court to impose a collateral bar against a respondent who willfully violated the federal securities laws and who at the time of the misconduct was associated with a broker-dealer or a municipal securities dealer, if the Court finds such a bar in the public interest. *See* 15 U.S.C. §§ 78o(b)(6), 78o-4(c). Section 9(b) of the Investment Company Act further authorizes the Court to permanently prohibit a respondent from association with an investment adviser or investment company if the Court finds that the respondent willfully violated the Securities Act or the Exchange Act and such a bar is in the public interest. *See* 15 U.S.C. § 80a-9(b).

Pursuant to Lynch's Offer of Settlement and the Order, there is no dispute that Lynch willfully violated Sections 17(a)(2) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder, and that Lynch willfully aided and abetted and caused LFC's

violation of Section 15(c) of the Exchange Act and Rule 15c2-12 thereunder. (*See* OIP at ¶ 43.)

There is also no dispute that Lynch was associated with LFC, a broker-dealer and a former municipal securities dealer, at the time of his misconduct. (*See id.* at ¶¶ 7-8.) Accordingly, as set forth in the Order, these proceedings concern only whether it is appropriate in the public interest to impose a collateral bar and Investment Company Act prohibition against Lynch. (*See id.* at § IV.)

To determine whether the imposition of a collateral bar or Investment Company Act prohibition is in the public interest, the Court must consider the *Steadman* factors, which are: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). No single factor is dispositive, and the Commission must also consider "the extent to which sanctions will have a deterrent effect." *See In re Scammell*, A.P. File No. 3-15271, 2014 WL 5493265, at *5 (Oct. 29, 2014) (Commission Opinion) (imposing permanent collateral bar based on *Steadman* factors).

B. Legal Analysis

The *Steadman* factors strongly favor the imposition of a permanent collateral bar and Investment Company Act prohibition against Lynch. As described in the Order, the allegations of which shall be accepted as true for the purposes of these proceedings, Lynch's conduct was egregious, recurrent, and involved a high degree of scienter. Lynch has provided little assurance against future violations, continues to minimize the wrongfulness of his conduct, and desires to remain in the securities industry despite admitting to antifraud violations in connection with

Brogdon's scheme. The Commission has "long treated antifraud violations as being particularly serious and subject to the severest of sanctions." *In re Tagliaferri*, A.P. File No. 3-15215, 2017 WL 632134, at *6 (Feb. 15, 2017) (Commission Opinion). That is because "[t]he proper functioning of the securities industry and markets depends on the integrity of industry participants and their commitment to transparent disclosure," and "[s]ecurities industry participation by persons with a history of fraudulent conduct is antithetical to the protection of investors." *In re Lawton*, A.P. File No. 3-14162, 2012 WL 6208750, at *11 (Dec. 13, 2012) (Commission Opinion). Accordingly, a permanent collateral bar and Investment Company Act prohibition of Lynch is warranted.

Lynch's conduct was egregious. Lynch violated the antifraud provisions of the securities laws—Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder and Sections 17(a)(2) and (3) of the Securities Act. He did so by falsely representing to investors on the cover page of each official statement that he was an attorney who was authorized to practice law in Arizona and capable to serve as LFC's underwriter's counsel in connection with the Brogdon Bond Offerings.

Lynch also violated the antifraud provisions of the federal securities laws by failing to conduct reasonable due diligence in connection with the Brogdon Bond Offerings. An underwriter must have a reasonable basis for believing the truthfulness of material statements in the official statements used in an offering. *See Dolphin & Bradbury, Inc. v. SEC*, 512 F.3d 634, 641 (D.C. Cir. 2008) ("By participating in an offering, an underwriter makes an implied recommendation about the securities [that it] . . . has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings." (quoting Municipal Securities Disclosure, Exchange Act Release No. 26100, 53 Fed. Reg. 37778, 37787 (Sept. 22, 1988) ("1988 Proposing Release"))). As LFC's investment banker and

underwriter's counsel, Lynch was a key gatekeeper, who was uniquely situated to detect and put a stop to Brogdon's ongoing fraud. *See Dolphin*, 512 F.3d at 641 ("An underwriter 'occupies a vital position' in a securities offering because investors rely on its reputation, integrity, independence, and expertise." (quoting 1988 Proposing Release, 53 Fed. Reg. at 37787)). Nevertheless, Lynch conducted little, if any, due diligence on Brogdon's fraudulent bond offerings, including entirely failing to check EMMA in connection with underwriting the Brogdon Bond Offerings and entirely failing to cause LFC to obtain a continuing disclosure agreement for the Clayton V Offering.

Lynch's conduct was recurrent. Lynch served as LFC's underwriter's counsel and investment banker on the 12 Brogdon Bond Offerings over a span of more than three years, beginning in June 2010 and lasting through December 2013. From the first to the last offering, Lynch misrepresented his qualifications as an attorney and failed to conduct reasonable due diligence on prior offerings involving Brogdon.⁸

Lynch acted with scienter. Lynch willfully violated the federal securities laws, including Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder. (*See* OIP at ¶ 43.) Scienter is a required element of a violation of Section 10(b) of the Exchange Act and Rule 10b-5. *See Aaron v. SEC*, 446 U.S. 680, 695 (1980). Lynch knew that he had not practiced law in approximately 30 years, Lynch knew that he was an inactive member of the Pennsylvania bar, and Lynch knew that he had not sought admission to any other state bar. Nevertheless, Lynch represented to Lawson, to

⁸ Lynch's conduct that post-dates the July 2010 effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which principally involves his work on the ten Brogdon Bond Offerings that closed in 2012 and 2013, including the Clayton V Offering, by itself warrants the permanent collateral bar and Investment Company Act prohibition. *Cf. Bartko v. SEC*, 845 F.3d 1217, 1222-24 (D.C. Cir. 2017) (finding collateral bar based exclusively on violative conduct that pre-dated Dodd-Frank to be impermissibly retroactive); *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015) (finding municipal advisor and NRSRO bar based exclusively on violative conduct that pre-dated Dodd-Frank impermissibly retroactive).

other members of the financing team, and to investors that he was a qualified attorney in order to receive additional compensation (\$20,000 to \$30,000 per offering) directly from the proceeds of the offerings. Further, despite his experience in the industry, Lynch conducted minimal due diligence on Brogdon's compliance with continuing disclosure agreement undertakings in prior offerings, at most only obtaining oral representations from the other parties to the transaction that nothing was amiss. Moreover, Lynch continued to work as LFC's investment banker and underwriter's counsel for Brogdon Bond Offerings even though he was alerted to red flags by at least July 2013. Had Lynch simply checked the EMMA website for the prior Brogdon Bond Offerings, which only requires entering a bond's CUSIP or name into a publicly accessible website, he would have known that these entities were not filing their required annual financial information and that further inquiry into the viability of Brogdon's projects was required.

Lynch has not provided assurances against future violations or acknowledged his wrongful conduct; therefore, the likelihood of future violations is high. During his investigative testimony and even during the prehearing conference in this matter, Lynch continued to minimize his wrongdoing while attempting to shift blame to other members of the financing team, all despite his key gatekeeping role at LFC. For example, Lynch acknowledged during his investigative testimony that Brogdon was "[s]loppy" and "didn't file things on a timely basis," but claimed that "Brogdon always came through with the documents that we asked for." (Tutor Decl. Ex. 1 at 219:24-222:08.) Lynch further testified that none of the other members of the financing team "expressed privately, or in any other way, that they had concerns about Chris Brogdon as either an operator or as somebody that was not coming through with what was needed," which Lynch claimed to have "relied on." (*Id.* at 222:22-225:06.) During the pre-hearing conference, Lynch continued to minimize his wrongdoing and place blame on the other members of the financing

team, stating “[t]here were many parties involved in this. This is a much bigger situation than just me. I know there were two, I would call significant settlements, that have been reached with other parties in this. I don’t think my situation in any way compares to those two gentlemen”

(Tutor Decl. Ex. 2 at 8:08-18.) These attempts to minimize his wrongdoing and shift responsibility to other members of the financing team demonstrate that Lynch continues to refuse to recognize the wrongful nature of his conduct. *See In re Mandell*, A.P. File No. 3-14981, 2014 WL 907416, at *5 (Mar. 7, 2014) (Commission Summary Order) (finding that respondent’s “attempts to deflect responsibility . . . reveal a serious risk he would commit further misconduct if permitted in any area of the industry” (internal quotation marks and citation omitted)).

Moreover, during the pre-hearing conference, Lynch indicated he wants to continue to work as an investment banker in the municipal bond underwriting industry, stating, “my ability at 68 years old to continue practicing in the securities field is of paramount importance to me at this point.” (Tutor Decl. Ex. 2 at 8:13-18.) Lynch’s apparent failure to appreciate the seriousness of his misconduct and his stated intent to remain in the industry indicates that there is a significant risk that, given the opportunity, he would commit misconduct in the future. *See, e.g., In re Gonnella*, A.P. File No. 3-15737, 2016 WL 4233837, at *12 (Aug. 10, 2016) (Commission Opinion) (finding respondent’s “cavalier attitude raises serious concerns about the likelihood of future misconduct,” and noting respondent’s “occupation presents opportunities for future violations”).

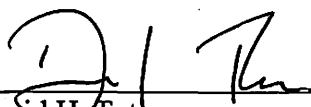
Accordingly, this Court should impose a permanent collateral bar and Investment Company Act prohibition against Lynch to protect the public, deter him from further misconduct, and deter others from engaging in similar misconduct. *See Tagliaferri*, 2017 WL 632134, at *6 (imposing permanent collateral bar and Investment Company Act prohibition in connection with violations of

Section 10(b) and Rule 10b-5); *In re Korem*, A.P. File No. 3-14208, 2013 WL 3864511, at *4-10 (July 26, 2013) (Commission Opinion) (imposing permanent collateral bar in connection with violations of Section 10(b) and Rule 10b-5); *In re Bugarski, et al.*, A.P. File No. 3-14496, 2012 WL 1377357, at *3-6 (Apr. 20, 2012) (Commission Opinion) (imposing permanent collateral bar in connection with violations of Section 10(b) and Rule 10b-5); *see also In re Fang*, A.P. File No. 3-16486, 2015 WL 1599668 (Apr. 10, 2015) (settled order imposing collateral bar with right to apply for reentry after five years on underwriting investment banker for violations of Sections 17(a)(2) and (3) of the Securities Act in connection with a single offering).

III. CONCLUSION

The Division respectfully requests that the Court grant the Division's Motion for Summary Disposition and impose a permanent collateral bar and Investment Company Act prohibition against Respondent.

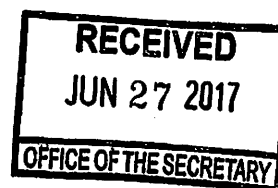
Date: June 26, 2017
New York, New York



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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17902

In the Matter of

JOHN T. LYNCH, JR.,

Respondent.

**DECLARATION OF DAVID H. TUTOR IN SUPPORT OF
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**

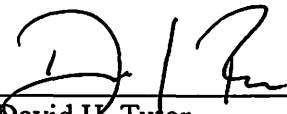
DAVID H. TUTOR, pursuant to 28 U.S.C. § 1746, declares:

1. I am a Counsel with the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission"), and co-counsel for the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Division's Motion for Summary Disposition.
2. Attached hereto as Exhibit 1 is a true copy of the April 15, 2016, investigative testimony transcript of John T. Lynch, Jr.
3. Attached hereto as Exhibit 2 is a true copy of the transcript from the May 1, 2017, prehearing conference in this matter.

4. Attached hereto as Exhibit 3 is a true copy of an Investor Bulletin issued by the Commission's Office of Investor Education and Advocacy on December 1, 2012, entitled *Municipal Bonds: Understanding Credit Risk*, and which is available at <https://www.sec.gov/investor/alerts/municipalbondsbulletin.pdf>.

I declare under penalty of perjury that the foregoing is true and correct.

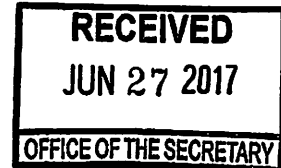
Executed on June 26, 2017.



David H. Tutor

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. NY-09158-A
CANTONE RESEARCH, INC.)



WITNESS: John Thomas Lynch, Jr.

PAGES: 1 through 303

PLACE: Securities and Exchange Commission
200 Vesey Street, Suite 400, Room 423
New York, New York

DATE: Friday, April 15, 2016

The above-entitled matter came on for hearing,
pursuant to notice, at 10:01 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:
 2
 3 On behalf of the Securities and Exchange Commission:
 4 DAVID TUTOR, ESQ.
 5 LEE GREENWOOD, ESQ.
 6 RANAH ESMALI, ESQ.
 7 SANDEEP SATWALEKAR,
 8 Assistant Regional Director
 9 JOSEPH CHIMENTI,
 10 Senior Specialized Examiner
 11 Securities and Exchange Commission
 12 200 Vesey Street, Suite 400
 13 New York, New York
 14 (212) 336-0024
 15
 16 On behalf of the Witness:
 17 JOHN LYNCH, PRO SE
 18
 19
 20
 21
 22
 23
 24
 25

1 PROCEEDINGS
 2 MR. TUTOR: Okay. We are on the record at
 3 10:01 a.m., on Friday, April 15th, 2016.
 4 Mr. Lynch, before we get started, I will need
 5 to swear you in. Please raise your right hand.
 6 Whereupon,
 7 JOHN THOMAS LYNCH, JR.
 8 was called as a witness and, having been first duly
 9 sworn, was examined and testified as follows:
 10 EXAMINATION
 11 BY MR. TUTOR:
 12 Q Will you state your full name and spell your
 13 name for the record?
 14 A John Thomas Lynch, L-y-n-c-h, Jr.
 15 Q And could you spell your name for the record,
 16 please?
 17 A J-o-h-n. Thomas is T-h-o-m-a-s. Junior is J-
 18 r, and Lynch is L-y-n-c-h.
 19 Q And are you known by any other names?
 20 A No, I am not.
 21 Q Mr. Lynch, my name is David Tutor, and with me
 22 is Lee Greenwood, counsel, and Ranah Esmali, counsel.
 23 Joining us will be Sandeep Satwalekar, an Assistant
 24 Regional Director, and on the phone is Joe Chimienti,
 25 Senior Specialized Examiner.

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1 We are officers of the United States Securities
 2 and Exchange Commission for the purposes of this
 3 proceeding.
 4 This is an investigation by the U.S. Securities
 5 and Exchange Commission in the matter of Cantone
 6 Research, Inc., File No. NY-9158, to determine whether
 7 there have been violations of certain provisions of the
 8 federal securities laws. However, the facts developed in
 9 this investigation might constitute a violation of other
 10 federal or state civil or criminal laws.
 11 Now, prior to the opening of the record, you
 12 were provided with a copy of the formal Order of
 13 Investigation, as supplemented in this matter. It will
 14 be available for your examination during the course of
 15 this proceeding.
 16 Have you had an opportunity to review the
 17 formal order?
 18 A Yes, I have.
 19 Q Prior to the opening of the record, you were
 20 also provided with a copy of the Commission's
 21 Supplemental Form 1662, which was previously marked as
 22 Exhibit 1.
 23 Have you had the opportunity to read Exhibit 1?
 24 A I looked it over generally, yes.
 25 Q And do you have any questions regarding Exhibit

1 1?
 2 A Not at this time.
 3 MR. TUTOR: I'd note Sandeep Satwalekar, our
 4 Assistant Regional Director, has joined.
 5 MR. SATWALEKAR: Good morning.
 6 THE WITNESS: Good morning.
 7 BY MR. TUTOR:
 8 Q Mr. Lynch, are you represented by counsel?
 9 A I am not.
 10 Q You have the right to be accompanied,
 11 represented and advised by counsel. This means that you
 12 may have an attorney present and that your attorney can
 13 advise you before, during and after your examination
 14 today.
 15 Do you understand this?
 16 A I do.
 17 Q And since you are not represented by counsel,
 18 there are certain matters discussed in Exhibit 1 that I
 19 want to highlight for you.
 20 Do you understand that upon your request, these
 21 proceedings will be adjourned so that you may obtain
 22 counsel?
 23 A Yes.
 24 Q And do you understand that the statutes set
 25 forth in Exhibit 1 provide criminal penalties for

1 knowingly providing false testimony or knowingly using
 2 false documents in connection with this investigation?
 3 A Yes.
 4 Q And do you understand that you may assert your
 5 rights under the Fifth Amendment of the Constitution and
 6 refuse to answer any questions which may tend to
 7 incriminate you?
 8 A I do.
 9 Q Please read the first paragraph of Section H,
 10 Routine Uses. Section H; it's on page 3, Routine Uses of
 11 Information.
 12 It states, quote, "The Commission often makes
 13 its files available to other governmental agencies,
 14 particularly United States and state prosecutors. There
 15 is a likelihood that information supplied by you will be
 16 made available to such agencies where appropriate.
 17 "Whether or not the Commission makes its files
 18 available to other governmental agencies is, in general,
 19 a confidential matter between the Commission and such
 20 other governmental agencies," period, close quote.
 21 Do you understand that provision, Mr. Lynch?
 22 A Yes, I do.
 23 Q Okay. So if at any time you do not understand
 24 the question during the course of this testimony or need
 25 clarification, please inform me. Otherwise I will assume

1 that you understand each question was asked. Agreed?
 2 A Fair enough.
 3 Q And there's a court reporter here who's taking
 4 down everything we say. So it's important that you give
 5 verbal responses to my questions and that we both speak
 6 loudly and clearly. If you nod your head, I'll ask you
 7 to give me a verbal response. Okay?
 8 A Yes.
 9 Q The Commission staff controls when we go on the
 10 record and when we go off. If you want to go off the
 11 record, please let me know and we'll take the next
 12 opportunity to go off the record. Agreed?
 13 A Okay. Agreed.
 14 Q And whenever we go off the record, all
 15 conversations which occur off the record will be
 16 summarized by the staff when the record is reopened. At
 17 that time the staff will request that you confirm the
 18 accuracy of our summary of the conversations. Agreed?
 19 A Understood, yeah.
 20 Q And do you understand that you're under oath
 21 here today?
 22 A I do.
 23 Q And are you taking any medications or do you
 24 have any medical condition that might impair your ability
 25 to give truthful answers to the questions asked of you

1 today?
 2 A No.
 3 Q Is there --
 4 A No. Sorry.
 5 Q Is there anything at all preventing you from
 6 giving full, complete, and truthful answers to the
 7 questions today?
 8 A No.
 9 (SEC Exhibit No. 214 was marked for
 10 identification.)
 11 MR. TUTOR: We have marked as Exhibit 214 the
 12 subpoena issued to you on March 10, 2016, pursuant to
 13 which you are appearing for testimony here today.
 14 BY MR. TUTOR:
 15 Q Do you recognize this document?
 16 A Yes.
 17 Q And is this the subpoena pursuant to which you
 18 are appearing for testimony today?
 19 A Yes, it is.
 20 Q Directing your attention to the subpoena
 21 attachment, do you recognize the request for documents?
 22 A Yes.
 23 Q And did you conduct a search for any of the
 24 documents requested?
 25 A I did.

1 Q Can you describe that search?

2 A I looked into all of my paper and digital files
3 that I had during the time that I was working with Lawson
4 Financial Corporation, and I furnished those to you in a
5 drop box a number of weeks ago.

6 BY MR. GREENWOOD:

7 Q So how did you know only to look at the
8 documents related to your Lawson Financial work?

9 A Well, I looked at all my files, but I mean, the
10 documents that you were asking for in the attachment all
11 pertained to the time that I was at Lawson Financial or
12 had worked with Lawson Financial in some capacity.

13 Q And why is that the case? Did you -- is there
14 a reason why you just focused on the time at Lawson
15 Financial?

16 A Well, I looked in all my files, but the only
17 things that were pertaining to these -- this
18 investigation was during the time that I had been at
19 Lawson Financial, and there were a number of bond
20 transactions that were conducted with a Mr. Brogdon, who
21 was a client of Lawson Financial for some 20 or 25 years.
22 I was only there for approximately five, maybe five and
23 a half years. So that was the appropriate time, and I
24 checked all of my records that I had available.

25 BY MR. TUTOR:

1 A Yes, he was.

2 Q So if I refer to these collectively as the
3 Brogdon offerings, you'll understand what I mean by that?

4 A Absolutely, yes.

5 MR. TUTOR: Okay.

6 BY MR. GREENWOOD:

7 Q Coming back to your search for documents, can
8 you describe what actual files you looked at, whether
9 it's electronic, hard copy or otherwise?

10 A Well, I didn't have much in the way of hard
11 copy because most of where I kept -- if I had hard copy
12 at one point during a transaction or even subsequently, I
13 may have had some original signed documents which I kept
14 in a hard copy or paper files. Everything else was
15 usually scanned and reduced to a PDF, and I -- and I just
16 stored them in the -- in the appropriate folders on each
17 deal that was being done.

18 Q Okay.

19 A So --

20 Q Did you have any hard copy documents or not
21 related to the --

22 A Well, a lot of them, the hard copy doc --

23 Q -- 214.

24 A I'm sorry.

25 Q Let me just finish the question before you give

1 Q And regarding the offerings listed in the
2 subpoena attachment --

3 A Right.

4 Q Was Mr. Brogdon affiliated in some way with all
5 of these offerings?

6 A I was not involved in all of these offerings.
7 I would have probably come into the relationship sometime
8 around late 2009 or 2010. So from 2009 or '10 till 2014
9 would have been the time frame that I would have dealt
10 with Chris Brogdon or any of these particular bond issues
11 that are listed here.

12 Some I -- some I definitely was involved in.
13 Others I was not.

14 Q Which offerings of this list were you not
15 involved with?

16 A Well, I certainly want' involved in A, which
17 was in 1992. I don't think I was involved in, I don't
18 believe, B. I was involved in the items probably C
19 through J on that page, and on the following page 2, I
20 think all but P, as in "Peter." I do not believe I was
21 involved in the Tulsa County Industrial Development
22 Authority, in that one. I was not involved in that. The
23 others I was.

24 Q And for the ones that you were involved with,
25 was Mr. Brogdon also involved in some way?

1 me the answer.

2 A Okay.

3 Q I know you see where I'm going.

4 A Yeah.

5 Q Did you have any hard copy documents responsive
6 to the request contained in Exhibit 214?

7 A If I had a hard copy, it was probably scanned
8 in when I said I had an original. Oftentimes I would
9 almost always scan it into the digital file, too. It is
10 just easier to store things that way, and the firm Lawson
11 maintained all of the paper files that I had at that
12 point.

13 Q Okay. So is it fair to say that you didn't
14 have any hard copy files responsive to the subpoena,
15 Exhibit 214?

16 A No. What I'm saying is the digital copies
17 reflected everything including the hard copies that I
18 had.

19 Q Okay. And how did you satisfy yourself that
20 that was the case?

21 A I looked at the digital files and compared them
22 to the paper documents, and as long as it was a copy, a
23 digital copy, I provided you with the digital copy.

24 Q Okay. You mentioned that sort of some of the
25 digital copies of the responsive files --

1 A Right.
2 Q -- were contained in sort of separate folders;
3 is that right?

4 A Right.

5 Q Describe that storage process.

6 A Well, files -- files are a digital copy of
7 something that you would then put into a folder. The
8 folder would represent the -- say, the transaction where
9 the files in that folder would be the documents
10 pertaining to that particular transaction that were then
11 stored individually until you got the full folder, is
12 what you're looking at there.

13 Q And where do you maintain the electronic
14 folders you're describing?

15 A On a system which is, I think, fairly common
16 called Box, dot, com, and it's a digital third party
17 storage mechanism that I've used for years.

18 Q Okay. And describe the electronic folder
19 system you have on Box, dot, com.

20 A Well, it's -- Box, dot, com and Dropbox are
21 similar in many, many ways. It's -- I think the company
22 is called Box -- I think it's called Box, dot, com. In
23 any event what they provide is an ability to store and
24 transmit documents of substantial size, small or large,
25 but mostly large, which is the reason for using it, and

1 counsel, which is the one giving the final bond opinion,
2 would often, in almost all cases, provide you with either
3 a transcript or a CD of the transaction.

4 So what I have in the folders is a number of
5 those documents and then anything else that was not in
6 the official record, things like appraisals or phase one
7 environmental reports, some of the due diligence
8 documents that we used to reach the conclusion that we
9 could finance the transaction.

10 Q Okay. Did you store electronic documents
11 related to any of these Brogdon offerings anywhere else
12 beside the Box, dot, com system?

13 A No, the only other -- well, you mentioned the
14 distinction was Box does not -- I don't load into that
15 emails. So I had to search my emails as well for you.

16 Q Putting aside the emails though, did you store
17 any other -- strike that.

18 Putting aside emails, did you maintain
19 electronic documents related to the Brogdon offerings
20 anywhere else besides Box, dot, com?

21 A No.

22 Q Okay. You mentioned emails. How do you
23 maintain your emails?

24 A Something similar to that, the description of
25 the folders and things I maintain on my computer laptop.

1 it just avoided the clutter of maintaining, as I used to,
2 files that were ten inches thick, and you know, you
3 couldn't find the papers when you wanted them anyway. So
4 this was an easier and more efficient way of dealing with
5 the storage.

6 Q For how long have you used this Box, dot, com
7 electronic storage system?

8 A I'm thinking probably back to 2005 or 2006. So
9 it would have contained everything in my time frame with
10 Lawson or with the Brogdon offerings that would have been
11 involved.

12 Q Okay. What types of documents do you or have
13 you stored on this Box, dot, com system?

14 I guess what I'm getting at is are they just
15 scans of documents or do you maintain emails on that
16 server as well?

17 A I don't generally. It's documents. It's
18 documentation. The other -- the other aspect of the
19 documentation in every one of these transaction at the
20 end of the transaction you either -- they used to be
21 referred to as "Bibles," but it was a transcript of all
22 the documents that were needed, presently conducted the
23 offering or after the fact that used to be kept in bound
24 volumes over the last five, eight years, maybe more.
25 They've been maintained on discs, just CDs, and the bond

1 I always used a OneApple laptop, and I transferred
2 everything from a prior Apple laptop to the one I'm
3 currently using. So I maintained all of my -- my email
4 records, and I would take emails as I was having them
5 transmitting back and forth, would move those into
6 folders to -- on transactions so that at least I could
7 refer back to them at some point if need be.

8 Q Do you have a practice of deleting your emails
9 after a certain period of time?

10 A Well, I delete certain emails, but that are
11 really more of a personal nature or junk mail, spam,
12 things of that nature. I don't -- I don't typically
13 delete emails pertaining to the transaction. Just
14 conversations that I've had in a transaction.

15 Q So to the best of your knowledge you maintained
16 emails that you send and receive related to transactions,
17 particularly the Brogdon offer?

18 A Yes. I mean, I may have deleted occasionally
19 an email that said, "Thanks," or something, Mr. Chairman,
20 in response to something I received, but other than that,
21 nothing would be deleted by me intentionally to do -- to
22 -- to -- you know, to -- I tried to keep the records as
23 comprehensive as I could.

24 Q Okay.

25 A Just about all of those ways.

1 Q Sitting here today, can you recall any emails
2 you've deleted related to the Brogdon offerings --
3 A No.
4 Q -- other than these "thanks" emails you just
5 mentioned?
6 A No, not really.
7 Q So you talked about your email archives --
8 A Un-huh.
9 Q -- and your Box, dot, com archives --
10 A Un-huh.
11 Q -- right?
12 A Yes.
13 Q Did you search those two sources of documents
14 for documents responsive to Exhibit 214?
15 A I did, and probably you received more than less
16 information because prior to the SEC contacting me, I
17 received I think it's referred to as an 80 -- 8210 order
18 from FINRA, who had Lawson Financial under an audit
19 and/or investigation. I'm not sure how far it's gone,
20 but -- and in that context they asked me for both. They
21 had divided things between Brogdon transactions and other
22 transactions that Lawson had conducted that they wanted
23 to look at as well.
24 Q Okay. So you mentioned the 8210 request from
25 FINRA.

1 A Right.
2 Q How did that play into your document production
3 in response to the staff's subpoena?
4 A Well, that occurred prior to the SEC contacting
5 me. So I -- I had searched and I mean searched
6 diligently because I had to give two or three days of
7 testimony in regards to the FINRA investigation. So I
8 provided you everything that I had with regard to
9 Brogdon, Lawson, and so there's probably a little bit
10 more information in there because it pertained to both
11 lists, the Brogdon and the non-Brogdon transactions.
12 Q I see. So what you're saying is that you were
13 able to use the searches you conducted previously in
14 response to the FINRA 8210 request --
15 A Un-huh.
16 Q -- in order to help respond to the SEC's
17 subpoena?
18 A Yes, that's correct.
19 Q Did you --
20 A I was -- that was -- the preparation and filing
21 of these documents was above my level of expertise in
22 terms of being able to produce some of this
23 documentation. So we went through with the assistance of
24 FINRA a fairly tedious process of trying to pull that
25 stuff together. So when I had it once, rather than

1 recreate it again I thought I would offer you more than I
2 had as opposed to giving you less. So --
3 Q Did you conduct any searches in response to the
4 staff's subpoena in addition to these searches you
5 previously conducted in response to the FINRA 8210
6 request?
7 A Yes, I went back through and looked at each one
8 of the deals that I thought -- each one of the listed
9 transactions, and see if it was anything missing or, you
10 know, not originally produced, but I believe I accurately
11 got everything into the FINRA information, and so I just
12 provided that to you again, but I did check.
13 Q So once you checked both your prior FINRA
14 production and these supplemental searches, did you
15 produce all responsive documents to that staff?
16 A Yes. I haven't been asked for anything else at
17 this point, but if I am, I'll be happy to produce that,
18 too, but I think I've produced everything that I have.
19 Q Did you withhold any documents for privilege or
20 --
21 A No.
22 Q -- any other protection?
23 A No.
24 Q Okay. Any other reason why you didn't produce
25 any responsive documents?

1 A No.
2 Q To your knowledge --
3 A I had consulted counsel about the FINRA
4 investigation, into a brief amount here, too, and I
5 didn't have any privileges that I could claim. I believe
6 Mr. Lawson claimed some privileges vis-a-vis some of the
7 conversations that we had, he and I, but I don't know how
8 those were dealt with at FINRA. They may or may not have
9 redacted certain information that I gave them, but I gave
10 them everything that I had. So --
11 Q I think we'll come back to that --
12 A Okay.
13 Q -- in a little bit, but just to confirm, you
14 didn't withhold any -- any documents --
15 A No. No, I didn't.
16 Q -- based on privilege with respect to the
17 staff subpoena?
18 A No, I did not.
19 Q Okay.
20 A In either case, FINRA or SEC. I did not
21 withhold anything.
22 Q Okay. Any documents you're aware of that
23 existed at a prior time, but were subsequently destroyed
24 that were responsive to the staff subpoena?
25 A There -- there may have been, but those would

1 have been documents that Lawson would have had possession
 2 of. I, when I left, I took some of my docu -- I resigned
 3 in terms of our relationship or terminated it in I think
 4 it was August of 2014. I was officed at Lawson
 5 Financial, although I was an independent contractor, and
 6 I took some of my materials at that time to relocate to
 7 my new office, and when I came back thinking that I was
 8 going to continue to have access to my files, I
 9 discovered that everything had been boxed, taped, and
 10 delivered out to the lobby of the office.

11 So I only received what Mr. Lawson or Lawson
 12 Financial provided me. I can't go back and tell you that
 13 -- if there's something missing, I wouldn't really be
 14 able to point specifically to it.

15 Q I see. So you're saying that there were some -
 16 - some of your files were boxed up and taken by Lawson
 17 Financial after you left that you weren't able to take
 18 with you?

19 A Right. Well, I thought I -- I thought it was
 20 an amicable and a -- the resignation and termination was
 21 -- at the time I believed on good terms, and -- but when
 22 I came back to get my other documents and gain access to
 23 my office, I was told that that wasn't necessary, that
 24 they had already done the cleaning of the office and the
 25 review of files, and anything that I was able to take

1 with me were contained in storage boxes similar to I
 2 don't know what you would call the -- they're like file
 3 boxes, banker's boxes. They have a couple of other
 4 names, I guess, but they were those types of boxes that
 5 were for the purpose of storing, carrying files, and they
 6 were taped shut, and so I took those that were made
 7 available to me.

8 Q Okay. Putting aside the files that Lawson --
 9 A Un-huh.

10 Q -- Financial retained, were there any other
 11 documents you had in your possession that were
 12 subsequently lost or destroyed?

13 A No.

14 Q -- responsive to staff's subpoena?

15 A Absolutely not. No, I had nothing that I
 16 didn't offer up, or I didn't lose or destroy anything.

17 MR. GREENWOOD: Okay.

18 BY MR. TUTOR:

19 Q Mr. Lynch, did you provide additional documents
 20 to the staff last night in anticipation of testimony?

21 A I did.

22 Q Actually look at the exhibit.

23 A Oh, okay.

24 Q And what documents were those?

25 A One was an SEC questionnaire that was attached

1 to the subpoena, and the other two were documents that I
 2 thought were somewhat responsive to the questions that
 3 had been asked inside the questionnaire.

4 I honestly didn't make a great attempt at
 5 trying to give you every job that I've had since high
 6 school, but anything within the reasonably near future, I
 7 guess, ten or 20 years I think I have.

8 (SEC Exhibit No. 215 was marked for
 9 identification.)

10 MR. TUTOR: I'm handing you what's been marked
 11 as Exhibit 215.

12 BY MR. TUTOR:

13 Q And what do you recognize Exhibit 215 to be?

14 A Taking three documents I'm assuming as one; is
 15 that what you're --

16 Q Yes, it's one exhibit.

17 A First is the background questionnaire, and the
 18 other two are attachments that were meant to supplement
 19 the questionnaire. One is my professional profile, and
 20 the other was my CRS broker check record from FINRA, all
 21 contained as 215, I guess, Exhibit 215.

22 Q And is the background questionnaire as
 23 supplemented by these documents complete and accurate?

24 A I mean, there may be more detail that you can
 25 ask for that I'll be happy to provide, but, yes, I think

1 this -- this pretty much presents a complete and accurate
 2 picture.

3 Q Okay. I'd like to go through some of the
 4 background information now.

5 A Sure.

6 Q When did you prepare this questionnaire?

7 A It's dated 4/15.

8 Q And --

9 A Wednesday of this week.

10 Q And is that when you prepared it?

11 A Yes.

12 Q And has anything changed from Wednesday of this
 13 week to today, the 15th?

14 A It's two days. No, not much has changed.

15 Q What is your date and place of birth?

16 A Albuquerque, New Mexico, [REDACTED].

17 Q And how old are you now?

18 A I'll admit to 67. I'll be 68 very soon.

19 Q And what is your current address?

20 A [REDACTED], Scottsdale,
 21 Arizona, zip code [REDACTED]

22 Q And how long have you lived there?

23 A Approximately ten years.

24 Q What telephone number have you regularly used
 25 during the last five years?

1 A We did away with land lines at the home because
2 they were mostly nothing but solicitations. So I have
3 only used my cell phone, which is the number I provided
4 to you under the AT&T service, and the other possible --
5 and I use that as my business main phone now today. So
6 that would be the largest and most frequently used
7 number. The other number was the number at Lawson
8 Financial where I received calls and dialed out on
9 various things, and I believe they kept a record of
10 everything. As a broker-dealer, they're not required to
11 give a record of everything, but I think they taped every
12 call.

13 So I would have either used the cell phone or
14 the -- or that office number.

15 BY MR. GREENWOOD:

16 Q It's your understanding that Lawson Financial
17 actually recorded every call that was made?

18 A That's what I was told. I never actually saw
19 the record, and I can't believe anybody listened to every
20 one of the phone calls that went on in that office, but
21 they said they did. So --

22 Q And who told you that?

23 A Mrs. Lawson in administration. Whether they
24 actually did or that was just meant to intimidate people,
25 I'm not really sure, but --

1 approached me about a call that I made or anything like
2 that. So I had no proof one way or the other.

3 Q And do you recall when this conversation took
4 place?

5 A It was probably just an off-handed conversation
6 during one of the compliance meetings, I think, but it
7 was an annual compliance meeting as a broker-dealer that
8 they were required to hold, and you had to come and make
9 yourself available for the day to do that, and I think it
10 came up in one of those conversations, but it was meant
11 for all of the brokers and everybody here at the same
12 time.

13 So I had my suspicions, but I never really had
14 to deal with it directly one way or the other.

15 BY MR. GREENWOOD:

16 Q And when you said you had your suspicions, are
17 you indicating you were skeptical as to whether the lines
18 were actually recorded?

19 A Well, I -- I didn't see the point in recording
20 every phone call because I don't think anybody was --
21 there had the energy and diligence to be able to actually
22 listen to them all, but it was possible that they were
23 recording them, but I would think that it would have
24 looped over at some point. I mean, they weren't storing
25 all these things. I just couldn't believe that they were

1 Q Are you referring to Pamela Lawson?

2 A Pamela Lawson, yes.

3 BY MR. TUTOR:

4 Q And what was her title?

5 A She is, I believe, the 90 percent holder of the
6 equity interest in Lawson Financial Corporation. There
7 are others that had less than five percent, including
8 Robert Lawson. Robert Lawson runs the firm, but Pam
9 Lawson is the equity holder of record, and she was also
10 the chief administrative officer as well.

11 Q Regarding this conversation with Pam Lawson --

12 A Un-huh.

13 Q -- about your recorded line --

14 A Un-huh.

15 Q -- did she convey to you that it was your
16 specific line that was recorded or everyone?

17 A No, all -- all of them. It was not directed at
18 me. She just simply said that all -- all calls were --
19 were recorded. Of course, I've worked at Morgan Stanley
20 and Merrill Lynch and other firms, and they can access
21 some of your records, but they certainly don't record
22 every call.

23 So I took that with some degree of suspicion
24 that they were actually doing that, but I don't know,
25 have no way of knowing one way or the other. Nobody ever

1 doing that.

2 Q Did Mrs. Lawson say at any point for how
3 long --

4 A No.

5 Q -- Lawson Financial was -- was keeping
6 recordings of phone calls?

7 A No, she didn't. It was not that specific. She
8 was just mentioning it.

9 BY MR. TUTOR:

10 Q While you were employed at Lawson Financial,
11 what email addresses did you use?

12 A I used an address at [REDACTED]. I think it was
13 [REDACTED], [REDACTED] at [REDACTED], but it's been a
14 couple of years. So I can't absolutely be certain of
15 that, and the other was my personal email that I really
16 use predominantly as a business email. I don't generally
17 -- well, I used it for both. I used it both for business
18 and for -- for some social, personal reasons, too.

19 Q And what is that email address?

20 A [REDACTED]. [REDACTED] for
21 [REDACTED] dot, com, which is an Apple address.

22 Q And did you use that personal email for your
23 work at [REDACTED]?

24 A Yes, I did sometimes.

25 Q Do you recall what the firm's policy was

1 regarding personal email addresses?
 2 A I'm not sure that they had -- they were aware
 3 of what I was using. I was not an employee. I was an
 4 independent contractor, and so they seemed to treat it as
 5 if that was the case. I mean, no one ever asked me for
 6 all my emails with respect to that, but no one ever
 7 indicated that I was using them improperly either. So
 8 and there was nothing in the way of confidential or non-
 9 confidential information on there, on either of those
 10 emails that I used.
 11 BY MR. GREENWOOD:
 12 Q Did you provide copies of emails -- strike
 13 that.
 14 Did you testify earlier that you used your ME
 15 address for business communications while you were at
 16 Lawson?
 17 A Un-huh. Yes, I did.
 18 Q Okay. And did you maintain those, the copies
 19 of those communications in your files?
 20 A Yeah, they're still there. I still have them,
 21 yes.
 22 Q Okay. To your knowledge --
 23 A I think a lot of the ones that you may have
 24 reviewed will indicate that some of the them may have
 25 been in the -- some Lawson and some ME, I'm not sure that

1 I can honestly tell you the distinction between because
 2 some people, lawyers and other attorneys and other people
 3 in transactions communicated with me on the ME address
 4 and sometimes they communicated with me on Lawson. So if
 5 I received an email, I usually just responded in the same
 6 way. Whichever email they sent it to me, I would return
 7 a response on that email.
 8 I wasn't in the habit of switching in and out
 9 of those two.
 10 Q Did you correspond with others at Lawson
 11 Financial using your ME address?
 12 A Probably.
 13 Q Okay.
 14 A Yeah, almost certainly I did.
 15 Q Okay. Did Lawson Financial archive your ME
 16 address emails related to your work at Lawson Financial?
 17 A I don't know. I don't think that they -- I
 18 don't think they could have. I'm not sure how they would
 19 have been able to. I mean, they could have if they
 20 received them from me, yes. Maybe they had some ability
 21 to do that, but I don't -- I don't know that for a fact.
 22 Q Well, did Lawson Financial have access to sort
 23 of your ME account to archive the emails you sent and
 24 received through that account?
 25 A No, I would say not. They wouldn't have had

1 direct access to that. They never asked for it, but they
 2 wouldn't have had it I don't think.
 3 BY MR. TUTOR:
 4 Q Have you ever testified in a prior proceeding
 5 conducted by the staff of the Securities and Exchange
 6 Commission?
 7 A The SEC, no, I have not.
 8 Q And have you ever testified in proceedings
 9 conducted by any other U.S. or foreign federal or state
 10 agency?
 11 A The only other one was -- was the FINRA
 12 investigation that was being conducted about Lawson
 13 Financial Corporation, and that started -- I think there
 14 -- it started as an audit, a routine audit, in 20 -- I
 15 think the period they were routinely audited every two
 16 years, and this was the audit of 2012 to 2014, and I had
 17 been there prior to that and had never been asked any
 18 questions because I was not a general counsel or
 19 anything. I just worked specifically on transactions.
 20 So I was never brought into any of the earlier audits.
 21 But apparently the auditors asked questions of
 22 me or of the company and they weren't satisfied with the
 23 answers they were getting from Lawson, and so they asked
 24 to speak to me, and that was the first time I had ever
 25 had any interchange with them, and as a result of that,

1 it was the FINRA investigation that continues, I think
 2 continues. I don't know if it's over or not.
 3 Q How did you come to understand that the FINRA
 4 auditors weren't satisfied with the answers given by
 5 Lawson Financial?
 6 A One of the auditors who was an attorney left
 7 the offices of Mr. Lawson and came to my office and said,
 8 "He talks in circles. I don't know what he's saying, and
 9 I have specific questions that I would like answered."
 10 So I tried to do that to the best of my ability
 11 in terms of giving him due diligence information and
 12 other -- and explaining or trying to explain what Mr.
 13 Lawson may have said or meant in his answers.
 14 Q And what was the subject matter of your
 15 testimony before FINRA?
 16 A It was my knowledge of the transactions, what
 17 due diligence materials we knew of, some questions about
 18 the character of Mr. Brogdon and was one in particular I
 19 do recall, them saying that he had -- was I aware that he
 20 had been indicted, and I said actually, no, I wasn't. I
 21 was somewhat shocked at the -- and I said what was the
 22 outcome of the indictment, and the gentleman, the
 23 attorney said that he didn't know.
 24 And I said, "Well, when -- when did it occur?"
 25 And it was some 15 or 20 years prior to my getting

1 involved with Mr. Brogdon, and I said, "I'll look into
2 it," but we weren't making a disclosure of that nature
3 because I didn't know about it and no one had ever
4 brought it up to me.

5 So I then approached Mr. Brogdon and asked him
6 about it. He referred me to his attorneys who -- it was
7 a large law firm. I can't remember the name of the firm
8 right now. It might have been King & Spalding, but I
9 can't absolutely say that for a fact, but -- and it
10 turned out that there was documentation of it that --
11 that he along with many others was indicted by a district
12 attorney in Florida a number of years ago on abuse of the
13 elderly charges. It apparently stemmed from a nursing
14 home that he either owned or operated or both, and the
15 end result was after two years the indictment -- he was
16 indicted, but after two years it was dropped, the
17 indictment. He was not charged or prosecuted, and the
18 law firm that had represented him came out with a public
19 statement to that effect, and I was able to track that
20 down.

21 And also it had been disclosed in some filings
22 that Mr. Brogdon had with other public companies. So I
23 provided that to FINRA and said, "I was not aware of this
24 beforehand, but it appears that the indictment went away
25 and was not prosecuted after approximately two years."

1 But it was questions really about Mr. Brogdon,
2 questions about disclosure items in general on some of
3 the transactions or documents that, you know, that they
4 were looking at. So I tried to provide them, you know,
5 as best I could what information they wanted.

6 **Q** Directing your attention to Item 25 on page 7,
7 you list that you were deposed in U.S. bankruptcy court.

8 A Yes.

9 **Q** Chapter 7 in June 2014 regarding a personal
10 bankruptcy.

11 A Yes. Do you want details on that?

12 **Q** If you could give us a little background on
13 that, was that related to your time at Lawson Financial
14 in any way?

15 A No, no. It had nothing to do with it. It
16 happened -- this happened about 1978 or 1979, and I
17 thought this was kind of an abuse of the legal process,
18 but nonetheless, I was approached. People in the
19 securities industry knew me to be a bond lawyer at the
20 time, and I had done quite a bit of work in Pennsylvania
21 particularly, and so there was -- there was a gentleman
22 in Philadelphia by the name of Phillip Meriano, M-e-r-i-
23 a-n-o, who was an Italian grocer, somewhat of a recluse,
24 and nobody really knew that much about him, but about
25 1976, I think -- the date could be wrong -- but around

1 1976 or '77, his house was the subject of a large fire.
2 He kept his office at the house with a large safe, and it
3 was determined by the Philadelphia fire department and
4 the FBI that it was arson, and Mr. Meriano survived the
5 fire, but was then put into a nursing home. He was
6 elderly, about -- he might have been in his 80s as that
7 point.

8 He claimed that all on his records were in his
9 safe, but the safe was opened, and there were no records
10 in the safe. All records and securities that he had
11 built up over a period of time, including real estate
12 documents and such, were missing.

13 So it was determined to be arson. The FBI and
14 the U.S. Attorney's Office looked into it for about a
15 year and a half. They were mostly bearer bonds, not
16 registered bonds, and as a result of that, the FBI had
17 been unsuccessful in locating the bonds and told his
18 relatives. So he with all of the real estate documents,
19 the security documents and his will and everything, he
20 was -- he had nothing there. So he died intestate about
21 six months later, somewhat I think as frustration with
22 this investigation, and this -- this is kind of part of
23 the story, but that's how we get to the bankruptcy.

24 That -- so I was then contacted by Merrill
25 Lynch and asked if I could locate the bonds for him

1 because he was a client. The sister and brother-in-law
2 of Mr. Meriano were clients of Merrill Lynch and had
3 their accounts there. So Merrill Lynch referred them to
4 me, asked me if I could locate the bonds.

5 I said it was possible, but there were a number
6 of impediments that could prevent them from being
7 discovered, but if they could be discovered, I would find
8 them.

9 And so I was retained to find the bonds for the
10 estate, and about a year and a half later, after quite a
11 bit of work and diligence, I ended up locating the bonds
12 being negotiated in the Bank of America in San Diego,
13 California, and with Freedom of Information Act, a lot of
14 other information, I then contacted all of the brokerage
15 houses in Philadelphia who may have done business with
16 him, and then from there we went to trustee banks and so
17 forth.

18 **BY MR. GREENWOOD:**

19 **Q** And I apologize.

20 A Too long an answer?

21 **Q** Just trying to --

22 A Well, all right.

23 **Q** -- understand the subject matter of your
24 testimony. Was it in June of 2014?

25 A No. All right. So that -- what ended up

1 happening, I'll try to cut this as quickly as I can to
2 the

3 Q Yeah.

4 A -- to the end. I found the bonds and located
5 the bonds, and under that arrangement we split. The
6 bonds returned -- 90-plus percent were returned to the
7 estate. My fees were taken out of it along with an
8 investigator that I had.

9 Six months after that, someone produced a
10 three-by-five index card claiming to be a will for the
11 Meriano estate. They then entered into -- that
12 individual, who eventually went missing years later, was
13 -- objected to my fees and entered into a series of
14 litigation with me that took -- it cost me hundreds of
15 thousands of dollars, and it lasted over 30 years, and it
16 was the culmination of them pursuing me and me being
17 unwilling to give in that caused the personal bankruptcy,
18 the only way I could wipe it out.

19 They wanted from me the interest for the 27
20 years that it had been, which amounted to about a million
21 dollars, and so on the basis of that after much fighting,
22 to'ing and fro'ing with lawyers and appeals in the state
23 courts and the bankruptcy courts, I filed for personal
24 bankruptcy to erase pretty much that -- that claim, and I
25 did give testimony in that, and in the end I was

1 Q And when did you graduate from business school?

2 A '72.

3 Q And what business school did you attend?

4 A Wharton.

5 Q And when did you get your J.D.?

6 A '75.

7 Q And where did you go to get your J.D.?

8 A St. Louis University School of Law.

9 Q Since high school have you taken any
10 securities, accounting, or business related courses?

11 A Since high school?

12 Q In college.

13 A Yes, in college and professional schools, yes.

14 I took accounting, business related and corporate law and
15 tax law and a variety of other things.

16 Q So can you describe your work experience?

17 A I started practicing -- passed the Bar -- I'm
18 sorry -- in '74. I think I passed the Bar in '74, late
19 '74, and went to work for a law firm in Philadelphia and
20 worked mostly in corporate and municipal securities law,
21 did some in other related business affairs, but
22 predominantly I was working as a bond counsel for -- for
23 that firm, and --

24 Q What was the name of that firm?

25 A Curtin & Heefner, C-u-r-t-i-n and H-e-e-f-n-e-

1 discharged in bankruptcy, and I now have a judgment
2 against the people that pursued me in that for some
3 amount of money. It think it's 15, 20 -- 15 to 20,000, I
4 think, for -- that I'm now going after them for abuse of
5 the process that the courts approved.

6 So that's how we got to that, and the only
7 testimony that I gave in that was on this whole issue. I
8 mean, there were no other creditors that objected. It
9 was just this continued haranguing of this one, the
10 estate continuing to pursue me for that amount of money.

11 Q And which U.S. bankruptcy court did you file
12 the personal bankruptcy?

13 A Phoenix. I was -- I've been living out there
14 since 2000. So I filed in Phoenix. That's the -- I
15 think it's just the Arizona District Court. They don't
16 have two. They have one district court.

17 BY MR. TUTOR:

18 Q Okay. Directing your attention to Item 29, the
19 educational history, you reference your attached profile.

20 A Right.

21 Q And so could you please describe your
22 educational background?

23 A College, business school, law school.

24 Q And when did you graduate from college?

25 A '70.

1 r, Curtin & Heefner.

2 And in that capacity I also represented a
3 number of investment banks in transactions as
4 underwriter's counsel in those capacities, and eventually
5 I was made an offer by one of those firms to come to New
6 York and work. I had a couple of opportunities within
7 the firm, Lehman Brothers, and they said I could either
8 work as an in-house counsel or do investment banking, and
9 I eventually chose of the roles that they laid out for me
10 there.

11 Q And when was that? When did you leave the law
12 firm and go to Lehman Brothers?

13 A '78 or '79, I guess. Five, six -- about '79,
14 '80, I guess.

15 Q And at Lehman Brothers you said you could work
16 as in-house counsel or?

17 A Well, there were a couple of different ways
18 that they were -- they were looking at me in terms of
19 what I was doing, and so there were positions that they
20 were talking about in their public finance area
21 particularly, with industrial development bonds,
22 financing and since -- the reason I went to St. Louis
23 University Law School is because they were then and still
24 are ranked the number one school for health care law, and
25 I had a propensity to -- I wanted to lean in that area,

1 and one of the things that they wanted to create was a
2 health care finance group, and I said that had much more
3 interest to me than any of the other things.

4 And so we formed, myself and, I think, three or
5 four -- three bankers and one research analyst formed a
6 health care finance group, and we started to solicit and
7 finance hospitals, physicians' practices, out-patient
8 surgery centers, all -- but mostly medical services, some
9 medical technology, but predominantly medical services.
10 So I did that for a number of years.

11 Q And while at Lehman Brothers, were you working
12 as an attorney?

13 A No.

14 Q And when did you leave Lehman Brothers?

15 A I don't remember. I mean, I truly don't
16 remember. I went from Lehman Brothers to Dylan Reed, and
17 then from Dylan Reed -- and I don't remember when I left
18 Dylan Reed either, but it was -- then I went to I would
19 say probably from '79 with Lehman. I don't remember the
20 interim steps, but it would -- I left -- I left the Wall
21 Street community in terms of broker-dealers around 1990,
22 and that would have been with Dean Witter Reynolds, where
23 I was -- in both Dylan Reed and Dean Witter Reynolds I
24 was head -- ran the health care finance groups for them
25 for most of that time.

1 Q And so what did you do in 1990?

2 A I -- because I had three kids and I was
3 traveling incessantly, I decided to form something with a
4 couple of other business relationships, some of the
5 people that worked for me and others was a CPA. We
6 formed something called Trouver Capital Partners, and I
7 then relocated myself closer to my home in Princeton, New
8 Jersey, and worked out of there. My partners were in Los
9 Angeles, and we did venture placements, venture capital
10 placements for health care companies and financial
11 advisory work. We were not a broker-dealer, and I did
12 that for a number of years, well, actually for quite a
13 few years, until I moved to Arizona and was still working
14 out there in the same capacity from 1990 to about 2005.

15 And I came -- came into contact with a Mr.
16 Lawson.

17 Q So when you went to Arizona, were you still
18 working for Trouver Capital Partners?

19 A Yes, yes. Well, it was effectively self-
20 employed. We were a partnership.

21 Q And what were you doing when you met Mr.
22 Lawson?

23 A I don't exactly know how we got together, but
24 we ended up converging on the same project. It was a
25 medical device that was -- someone had approached us that

1 had patent protection, and they wanted to raise capital
2 around that. It was a wound healing device, and so we
3 put together the offering documents and such and through
4 some introduction or relationship Mr. Lawson came into my
5 -- I had known Mr. Lawson for some time because while I
6 was out, I did probably 75 or 80 percent of the hospital
7 finance in the State of Arizona for the -- from probably
8 '79, you know, through the mid-'80s. I was involved in
9 just about every hospital financing in the State of
10 Arizona in one way or another, and so that -- that's why
11 I gravitated out there, because of friendships.

12 I went through a divorce in 1997, and I stayed
13 in Pennsylvania until my son went to college, my youngest
14 son, and so I relocated around 2000. During the '80s and
15 '90s, I did know Mr. Lawson on a social basis, but we
16 never really had done any business. We just knew each
17 other on a social basis.

18 Q And when did you begin working with Mr. Lawson?

19 A Around 2000 -- I said '09 or '10. I think it
20 was somewhere in there. It was -- it was right around --
21 it was this particular financing that I was not working
22 with him at the time, and then as a result of that, we
23 were putting together this financing. He asked me if I
24 would come in and basically head up his investment
25 banking unit and see if I could generate some business

1 for him.

2 Q On that medical device financing that you were
3 with Mr. Lawson --

4 A Right.

5 Q -- what was your role in that offering?

6 A I guess more as a banker. I did do some
7 documentation for it, but predominantly we were trying to
8 raise equity capital for this. The device was called
9 Vomaris, V-o-m-a-r-i-s. And money was eventually raised
10 for that. I think it was a couple million, \$2.5 million,
11 something like that.

12 It was during that relationship and
13 conversations that he asked me to come over and work with
14 him on a more regular basis.

15 Q And when Mr. Lawson asked you to come work with
16 him, in what capacity did he ask you to join Lawson
17 Financial?

18 A Well, he asked me to join as -- as an
19 investment banker, but we kept the relationship on an
20 independent. I was not an employee of his, and that's
21 how it started. For his convenience, not mine, and
22 somewhat reluctantly, he asked me to begin to render --
23 act as his underwriter's counsel and render some legal
24 opinions with regard to Blue Sky and prepare bond
25 purchase agreements and things of that nature.

1 It was more for a convenience of him and his
2 compensation because he provided me with an annual amount
3 consulting fee, I guess we would call it, that he --
4 there was no formal arrangement, no formal written
5 agreement about the independent contractual relationship,
6 but he used this as a convenient way of paying me only
7 the consulting fee and then anything else that was
8 charged in the transaction, it could be paid out of the
9 project as a legal fee or the bond counsel, underwriter's
10 counsel, and so forth, as full counsel.

11 Q So how much was your consulting fee for Lawson
12 Financial?

13 A It was about 100,000 a year, paid monthly.

14 Q And that was paid by whom?

15 A Lawson.

16 Q And you indicated that Mr. Lawson asked you to
17 become underwriter's counsel in various offerings; is
18 that correct?

19 A Yes.

20 Q And how were you compensated as underwriter's
21 counsel?

22 A He pretty much dictated that fee, too, because
23 it was being paid -- it was being paid out of the
24 project, but it was for work that I was doing for Lawson
25 Financial.

1 Q When you say "being paid out of the project,"
2 who was paying that fee?

3 A Each one of the transactions there's something
4 known as a cost of issuance, and the attorneys that
5 render -- you know, there's going to be a -- in a -- in a
6 health care transaction or if it was an educational
7 facility, there would be somebody representing the school
8 or the health care facility. There would be somebody
9 representing the transaction, rendering bond opinions.
10 There would be a variety of attorneys involved in the
11 thing.

12 It's -- it was -- I mean, they are very
13 collaborative processes where you work as a -- pretty
14 much a financing team, and everybody is pulling together
15 to try to get the thing accomplished and closed, and so
16 there was really no adversarial relationship in any of
17 those situations, other than maybe issues, you know,
18 where you would talk about issues or agree or disagree on
19 something like that.

20 But it was meant to be a collaborative process
21 where you would get to a financial closing, and all of
22 those fees are usually recorded, not usually; all,
23 they're recorded and listed in the cost of issuance, and
24 they're paid out as part of the overall financing, along
25 with the project costs and construction or acquisition or

1 whatever else, reserve funds and things of that nature.

2 Q How long after you started working as a
3 consultant for Lawson Financial did Mr. Lawson ask you to
4 serve as underwriter's counsel?

5 A I'd say probably maybe six months into it or
6 something like that.

7 Q Do you recall a specific conversation with Mr.
8 Lawson regarding you serving as underwriter's counsel?

9 A Well, I remember saying for the work that I was
10 being asked to do that I was -- I was underpaid and
11 overworked, and so that we probably should reach a
12 different arrangement because I wasn't satisfied with the
13 amount of income that I was receiving for the amount of
14 work that I was doing.

15 And although I came in under a relationship
16 where I was supposed to be essentially heading up the
17 investment banking effort in his -- on his behalf, I was
18 not only doing that, but I seemed to be doing an awful
19 lot of document review and some preparation of documents
20 and things of that nature, and so I said it just seemed
21 like this -- it had to change. It had to work out
22 another way, and so this was his way of deflecting him
23 having to actually pay it out, but put it into the cost
24 of the issuance of the transactions we were doing.

25 Q And do you recall what Mr. Lawson said to you

1 about becoming underwriter's counsel?

2 A Do I recall about that aspect of it?

3 Q Well --

4 A Well, I worked on a couple of transactions
5 where somebody else was underwriter's counsel and he
6 said, "You're doing most of this work anyway. This would
7 -- this would be a way of alleviating his need."

8 We were having a discussion and this was, as I
9 said, more for his convenience than for mine.

10 Q Did Mr. Lawson tell you that?

11 A Yes.

12 Q And what did he tell you about his convenience?

13 A Well, it was just a matter of economics. It
14 was whether he was going to -- I mean, if you had to
15 double my income, it either had to come out of him or
16 come out of the specific transactions. This -- the
17 transactions were -- were -- really were the investment
18 banking effort at the firm. I mean, we didn't do
19 anything without -- we weren't doing any financial
20 advisory or consulting work. It was mostly project
21 financing specific. So that was the way he was paid in
22 terms of his compensation at the firm, would be when
23 every one of these things closed, and EDC, what's known
24 as an underwriter's discount, meaning that there's some
25 percentage that's taken off the gross amount of the bonds

1 and invested and ids disseminated for the project, and
2 his -- his fee was on a percentage basis and then he
3 thought that this would be a way that effectively he
4 could -- I could be compensated and more satisfied than
5 what I was, and he would not necessarily have to put out
6 any more money either.

7 Q And when you first started working with Mr.
8 Lawson, you weren't working in the legal capacity
9 elsewhere?

10 A No, I think for -- no. No, I was not. I was
11 purely doing investment banking, consulting, advisory
12 work.

13 Q And was Mr. Lawson aware that you hadn't worked
14 in a legal capacity since 1979?

15 A He was aware that I was involved in a lot of
16 securities transactions over that period of time because
17 that's how we came to know each other, but was I working
18 in a defined legal capacity? No, I was not. I was
19 working as an investment banker.

20 Q Do you know if Mr. Lawson was aware that you
21 weren't working as an attorney when he asked you to be --
22 become underwriter's counsel?

23 A Yes, yes.

24 Q And how do you know that?

25 A Because I said I felt generally uncomfortable

1 investment banking, I took inactive status.

2 Q From when you started working with Lawson
3 Financial

4 A Un-huh.

5 Q -- to the present, have you ever been active,
6 an active member of the Pennsylvania Bar?

7 A No, I wasn't doing anything in Pennsylvania at
8 all. So I didn't reapply. It wasn't that I didn't
9 reapply. I didn't take active status again. I never was
10 not a member of the Pennsylvania Bar. You either were
11 either active or inactive, and I was not practicing in
12 any of the courts in Pennsylvania. So I didn't -- I
13 didn't change my status.

14 Q And did you join the Arizona Bar or did you
15 seek admission to the Arizona Bar?

16 A No, I did not. I didn't have or want any
17 clients in Arizona either. So that was -- and I would
18 have been -- had to go back some 20 years later and
19 probably take the bar. I don't think that they have a
20 reciprocity.

21 Q Were you admitted to practice in any other
22 jurisdiction of the United States?

23 A No, no.

24 Q You mentioned you were on inactive status for
25 the Pennsylvania Bar at the time.

1 with the situation. I didn't have any outside legal
2 relationships or clients. I was working almost
3 completely as an investment banker, and he knew that. He
4 was well aware of that.

5 I mean, as I've said, I've known him for 20-
6 some years, 25 years probably, and the only capacity he
7 would have known me in is, you know, as the fellow that
8 was financing this or that hospital in town.

9 So I mean, he knew I was an attorney, but this
10 was, as I said, a way of -- this was not my proposal to
11 him. This was his proposal to me.

12 Q And when you say you were working almost
13 completely as an investment banker, were you doing any
14 legal work at that time?

15 A No, no.

16 BY MR. GREENWOOD:

17 Q And were you admitted to any state Bars?

18 A Pennsylvania. Pennsylvania, the Eastern
19 District of Pennsylvania, you know, which was somewhat --
20 Supreme Court, but I never argued anything in front of
21 the Supreme Court. So that's just a --

22 Q Were you an active member of the Pennsylvania
23 Bar at this time?

24 A No, I was not because I was not practicing on
25 an ongoing basis. When I left the law firm, went into

1 A Right.

2 Q Is that right?

3 A Right.

4 Q What does that mean?

5 A It means nothing more than, I guess, lack of
6 requirement to follow a CLE course.

7 Q So it means that you at the time you were an
8 inactive member of the Pennsylvania Bar, you weren't
9 fulfilling the CLE requirements of the Pennsylvania Bar?

10 A That would be the only requirement that I
11 probably was not doing, yes.

12 Q What about paying yearly dues? Were you paying
13 yearly --

14 A I paid --

15 Q -- dues to the Pennsylvania Bar?

16 A No. There's an active and inactive amount that
17 you pay, and I have been paying for I don't know how many
18 years into that, yes.

19 Q Is it your understanding that inactive members
20 of the Bar are permitted to practice law in Pennsylvania?

21 A I've actually talked to other lawyers. I mean,
22 the law that -- the work that we were doing in these
23 transactions, the municipal transactions -- I'm working
24 on one right now, and the counsel for that transaction is
25 -- is a Georgia lawyer, I believe. He's not admitted in

1 any other state other than Georgia.

2 Q My question was about active versus inactive

3 status.

4 A No, I don't -- I --

5 Q Do you have an understanding of whether an

6 active member of the Bar is permitted to practice law in

7 that jurisdiction?

8 A In which jurisdiction?

9 A In Pennsylvania, for instance?

10 A Well, I haven't done a Pennsylvania

11 transaction. I hadn't been in a court of Pennsylvania

12 court or any other court for that matter for any number

13 of years. So I was -- I didn't reapply on that basis. I

14 could have taken active status, and it would have been

15 nothing more I don't think than maybe some paperwork, but

16 there was no reason. There was no discipline against me.

17 There was no reason that I could not have

18 achieved active status again from the inactive that I was

19 under, and so the only client, I guess, that I had, if

20 any, would have been -- not if any, but a client I had

21 was Lawson Financial on these transactions that we're

22 talking about.

23 Q Is an inactive member of the Pennsylvania Bar

24 permitted to hold themselves out as an attorney?

25 A I believe so. I don't know. I've never asked

1 for an opinion on that.

2 Q Okay. You said you believe so. Do you have a

3 basis for believing that to be the case?

4 A I don't know. I don't have a basis one way or

5 the other to read that. I mean, I would think that --

6 well, my opinion doesn't really matter, I guess.

7 Q Well, I'm just trying to understand the basis

8 for your belief that you just mentioned.

9 A Well, as I said, if I was -- the other

10 attorneys that I was working with in a lot of these

11 financing transactions -- I mean, if you're doing a

12 financing for an institution in Arizona, as an example,

13 probably the counsel for that is part of a law firm that

14 is all licensed to practice in the State of Arizona.

15 But with respect to the bond attorneys that are

16 giving opinions in multiple states that are -- of which

17 they are not members of the bar, the underwriter's

18 counsels have been from any number of states, too. So it

19 was not a requirement that you had to be practicing in

20 each state that you did a transaction in because these --

21 that just isn't the case.

22 Q Yeah, my question is a little different though,

23 related to inactive status in any jurisdiction.

24 A I don't know. I really haven't looked into

25 other jurisdictions that I know of. I don't know of any

1 limitation or authorization, I guess, to represent

2 somebody in that capacity. I don't think -- I believe

3 that I was not in a situation where I was doing something

4 inappropriate, but I don't have -- I didn't seek a legal

5 opinion for that or approach the disciplinary board and

6 state Bar in Pennsylvania to ask.

7 Q Did you consider whether it was appropriate for

8 you to hold yourself out as underwriter's counsel for

9 Lawson Financial offerings when you were not an active

10 member of any Bar Association?

11 A Well, I was a member of the Bar Association.

12 Q Yeah.

13 A I understand your distinction.

14 Q But let me just make sure the record is clear

15 because I want to make sure that the question is clear.

16 Did you consider whether it was appropriate for you to

17 hold yourself out as underwriter's counsel for the Lawson

18 Financial offerings you worked on when you were not an

19 active member of any state Bar?

20 A Ask the question back again.

21 Q Yeah. Did you consider whether it was

22 appropriate to hold yourself out as underwriter's counsel

23 for the Lawson Financial offerings you worked on when you

24 were not an active member of any state Bar?

25 A I don't think it was inappropriate, but I

1 didn't want to be serving in both capacities, and I had

2 mentioned that on a number of occasions to Mr. Lawson,

3 and my reason for leaving Lawson was probably

4 predominantly that. I didn't -- I didn't want to

5 maintain that kind of a relationship going forward, and

6 he was unwilling to change the status.

7 So I felt that it was better for me just to

8 leave.

9 Q Were there any disclaimers or other indicia in

10 the opinions that you rendered for any of the

11 underwriter's counsel deals you worked on that indicated

12 you were not an active member of any state Bar?

13 A No. No, I didn't. There was no disclaimers.

14 BY MR. SATWALEKAR:

15 Q While you served as underwriter's counsel, was

16 Mr. Lawson aware that you were not an active member of

17 any Bar Association?

18 A Yes.

19 Q How do you know that? Did you inform him?

20 A Yes.

21 Q When did you do that?

22 A Well, when he offered this whole arrangement.

23 Q What do you mean by this "arrangement"?

24 A Of me working in both investment banking

25 capacity and somewhat in a legal capacity, too, for him.

1 Q So when you discussed you serving as
2 underwriter's counsel with Mr. Lawson before you started
3 doing so you informed him that you were not an active
4 member of any state Bar Association?

5 MR. GREENWOOD: State Bar as opposed to a Bar
6 Association?

7 MR. SATWALEKAR: Yeah. Oh, sure.

8 MR. GREENWOOD: Okay.

9 BY MR. SATWALEKAR:

10 Q So let me -- let me just ask these questions
11 again just so that the record is clear.

12 Before you served as underwriter's counsel for
13 any Lawson offerings, did you inform Mr. Lawson that you
14 were not an active member of a state Bar?

15 A Of a state Bar, yes, I did.

16 Q And any state Bar?

17 A I told him that I was licensed to practice in
18 Pennsylvania, but I was on an inactive status, and that I
19 had done that voluntarily, and that I didn't want to
20 represent anybody else. I didn't even want to represent
21 him in that capacity.

22 And he said, well, this was -- he was fine with
23 that. He just -- he wanted that to be the financial
24 arrangement between us.

25 Q Did Mr. Lawson suggest in any way to you that

1 Q And approximately how much did you receive per
2 offering as -- from serving as underwriter's counsel?

3 A It varied, but -- and a lot of that was
4 controlled by Mr. Lawson, too, but I would say general in
5 the range of 20 to 30,000.

6 Q And --

7 A Per transaction.

8 Q -- physically when you were rendering your
9 opinions as underwriter's counsel, where were you
10 located?

11 A Physically I was officed in the office of
12 Lawson Financial in Phoenix, Arizona.

13 Q And do you know if you listed an address on
14 your legal opinions?

15 A I don't recall to be honest with you. I may
16 have. I'm sure I have an address, and to be honest I
17 don't remember whether I was -- I don't know. I mean, I
18 don't know the address. I'd have to look at the
19 documents and I could tell you then.

20 Q Do you know what state that would have been?

21 A Well, it wouldn't have been Pennsylvania. It
22 would have been Arizona because that's where I was
23 located.

24 Q And how about on the cover of the official
25 statements?

1 you should become an active member of --

2 A No.

3 Q -- the Pennsylvania state Bar or any state
4 Bar?

5 A No. No, he did not. I don't think he was
6 really all that focused on it either, to be honest with
7 you.

8 Q Why do you say that?

9 A I just don't think he held -- he didn't seem to
10 indicate to me that he -- I had -- I had more trouble
11 with it than he did. He didn't seem to see it as an
12 issue.

13 He had known me for years in the investment
14 banking capacity, although he did know that I had
15 practiced and worked in the securities side of
16 transactions for many years, too.

17 BY MR. GREENWOOD:

18 Q And when you served as underwriter's counsel
19 for these offerings --

20 A Right.

21 Q -- for Lawson Financial Corporation, did you
22 receive separate compensation to serve as underwriter's
23 counsel from those offerings?

24 A Yes, I said that, and I did.

25 BY MR. TUTOR:

1 A Although I would say the underwriter's counsels
2 that represent me in an Arizona transaction or New Mexico
3 transaction list the state where they are located.

4 Q And so how about on the cover of an official
5 statement for one of these Brogdon offerings?

6 Your name is listed as underwriter's counsel,
7 correct?

8 A Yes, that's correct.

9 Q And do you recall if there's a location
10 associated with your name?

11 A It would be Phoenix, Arizona, I would think.
12 I'm almost certain it is, yeah.

13 Q I was wondering, switching topics, if you could
14 give us an overview of Lawson Financial Corporation
15 during the time that you worked there.

16 A In what context do you want that? I mean, I
17 don't understand.

18 Q Just how the firm was structured, whether it
19 had a niche focus. What type of work?

20 A It's a -- it's -- Lawson Financial is -- I
21 would describe them as a -- they were pretty much a
22 municipal bond house for -- they don't handle any
23 equities. They don't handle insurance. They're almost
24 specifically into municipal bond transactions.

25 Q And --

1 A They underwrite those, and they sell them
2 through a retail distribution system that they have with
3 their clients.

4 Q And what type of municipal bonds?

5 A From my experience it was mostly in what I
6 guess would be generally called health and education, and
7 that varied from senior housing, which would have been
8 assisted living and dementia care projects to charter
9 schools and other types of financings.

10 Q And what was the credit structure of these muni
11 offerings?

12 A Credit structure? To the extent they were
13 eligible for a credit rating from either Moody's, S&P or
14 Fitch, they were -- there would be a criteria that would
15 be established and you could seek to have a rating
16 established. I would say vast majority of the bonds were
17 what are known as high yield securities and were
18 nonrated.

19 Q And you mentioned that Lawson underwrote the
20 bonds. They also sold them; is that correct?

21 A Well, that is the underwriting. They would
22 take them in for a percentage of the total fee, and then
23 they would sell them off to retail investors.

24 Q And can you describe the Lawson Financial
25 sales, the brokerage arm?

1 A It was probably no different than any other
2 broker-dealer that I've ever been affiliated with. These
3 are all project financings, and in that context they
4 would all start out pretty much the same. You would be
5 looking for if it was available at that point in time
6 when you started a construction contract. If it was
7 construction or purchase and sale agreement, if it was an
8 acquisition, you'd be looking for a number of real estate
9 documents, such as appraisals, phase one environmental
10 studies, and a variety of those types of documents which
11 you'd be starting with to see if the project existed and
12 what the purpose of the financing was.

13 And so we would accumulate those things. They
14 would not be in what I was describing earlier as the
15 final transcript. Oftentimes there would be a -- as the
16 transaction developed, there would be a feasibility study
17 with projections in it as to what was anticipated in the
18 financing once it was built or acquired, and what the
19 stabilization, if any, period of time took and so forth.

20 So those were the -- those were the typical
21 type of documents that didn't find their way into the
22 final transcripts of the proceeding, but were collected
23 and reviewed beforehand.

24 Q And what was your role in the due diligence
25 process, specifically in the Brogdon offer?

1 A I think they had 25 or 30 brokers located in
2 Phoenix, Florida, Tampa-St. Pete area, some in Sun City,
3 and I think a couple in Prescott, Arizona.

4 Q And who would they sell these bonds to?

5 A Individuals, families and individuals and
6 trusts, I guess, too, that would be managed by -- you
7 know, for a family estate purpose.

8 As we did other offerings that were larger, I
9 reached out to other broker-dealers to establish partner
10 relationships with them. Those firms also had some
11 retail, but more often the reason for us working with
12 them was that they had institutional support.

13 MR. TUTOR: Okay. Let's take a break.

14 We're off the record at 11:17 a.m.

15 (A brief recess was taken.)

16 MR. TUTOR: Okay. We're back on the record at
17 11:34 a.m.

18 BY MR. TUTOR:

19 Q Mr. Lynch, I confirm there were no substantive
20 conversations between you and the staff of the SEC during
21 the break?

22 A There were no conversations of any substance.

23 Q Okay. Mr. Lynch, can you describe the due
24 diligence process on the municipal bond offerings at
25 Lawson Financial during the time that you worked there?

1 A Well, I think it was pretty much as in any
2 other offering that we did. I mean mostly -- I mean,
3 it's a -- I was reviewing them both from an investment
4 banking and, I guess, to some degree a legal aspect, too,
5 but I would read the various things that came in to see
6 if they met a general underwriting requirement that was
7 something that we would want to finance.

8 Q What sort of things would you review?

9 A Documents I was just telling you. I mean, if
10 there were issues related to the environment; if there
11 were, you know, underground storage tanks that needed to
12 be remediated; if there were leaks of any type on the
13 property.

14 If you were building a hospital, you know, you
15 couldn't be near a gas line or some other type of hazard,
16 things of that nature, and then we looked at the
17 appraised values, the appraisals, to see if they were in
18 line.

19 We would talk to the managers or the operators
20 of the facility to indicate what they were looking at and
21 anticipating and how -- were they buying it and rehabbing
22 the facility or were they building a new facility and it
23 was a start-up venture in some way, shape or form, those
24 types of things?

25 Q And when you say "we," who are you referring

1 to?

2 A Well, it would usually be me, but Mr. Lawson
3 and a couple of other people at the firm would also look
4 at them, too, look at those documents.

5 Q Who else at the firm was involved in the due
6 diligence processes, besides you and Mr. Lawson?

7 A It's a very closely held company, and I --
8 somebody had asked me the question earlier about -- I
9 think it might have been you -- that said what was the
10 overall makeup of the firm. There is, as I said, Pam
11 Lawson is ostensibly the majority shareholder of the firm
12 and owns about 90 percent, but in reality the actual day-
13 to-day operations and decision making is made far more by
14 Robert Lawson, as president.

15 He has three sons. Nick Lawson was in the
16 investment banking area with us, Lawson -- Rob Lawson and
17 myself, and he has another son named Ryan who is in the
18 sales capacity, and the third son and the oldest is
19 Aaron, and Aaron is -- was in the trading area where the
20 bonds were resold.

21 Q And just focusing on the due diligence for
22 Brogdon related offerings --

23 A Right.

24 Q -- who was involved in that?

25 A I would say it would be myself, Robert Lawson,

1 A Well, they're always done by a third party
2 source. So it's not -- these are the operation --
3 operator's numbers telling us and us telling the
4 investors what the anticipated project -- what the
5 earnings are or the profit and loss would be over a
6 period of time, what monies would be available for debt
7 service payments and such, and the way to verify that in
8 almost all situations is to get an outside third party
9 source to do that, and in the Brogdon transactions, it
10 was a gentleman by the name of Wink Laney, L-a-n-e-y.

11 And Wink was a CPA and a member of his -- he
12 sold his firm somewhere during that time frame, and it
13 started out with his -- he was a named partner in his
14 firm, and then they merged into another -- another CPA
15 firm. So he issued projections on that basis.

16 Q And what did you do, if anything to ensure that
17 those projections were reasonable?

18 A We would have -- he would put out drafts. We
19 would review the drafts and we would comment on them or
20 have -- we would have, you know, extensive conversations
21 through conference calls and such to verify the basis
22 that he was -- where he was receiving his information,
23 whether we believed it or didn't believe it, and either
24 inquired of some of the specifics in the transactions,
25 and we would go back and forth, and sometimes he would

1 and Nick Lawson primarily.

2 Q And what was Robert Lawson's role in the due
3 diligence --

4 A In the Brogdon facilities particularly? Well,
5 he was active. He was very active in it. He knew Chris
6 Brogdon. I was introduced to Chris Brogdon probably 2009
7 or '10, I guess, when I came to the firm, and -- but he
8 had -- there had been relationship -- I mean, I was
9 introduced into a relationship that had existed for what
10 I was told to be about 25 years, that the two of them had
11 transacted business over that period of time. So --

12 Q So who, if anyone, was in charge of the due
13 diligence on the Brogdon offerings?

14 A And I'm not having difficulty answering, but I
15 -- it would either be myself or Robert Lawson. If you
16 asked me, I tried to oversee that, but Rob Lawson was the
17 president of the firm and the CEO. So I guess ultimately
18 he was, but that would be my answer to that.

19 Q And previously you mentioned feasibility
20 studies or

21 A Right.

22 Q -- future projections?

23 A Right.

24 Q What sort of steps did you take to ensure the
25 accuracy of those projections?

1 ask the operator.

2 Brogdon at one time, my understanding was that
3 he was an owner-operator of most of his facilities, and
4 at some point, and it may have been this incident in
5 Florida that triggered a change in circumstance when he
6 was indicted, but he later -- when I knew him, he came to
7 be less of an operator, more of either an owner or some --
8 he controlled the transaction, but oftentimes brought
9 in another third party to be the manager of the facility.

10 So he wasn't really operating a lot of the
11 facilities on a day-to-day basis or his people weren't
12 with another exception. He had -- he had something
13 called Saint Simons Healthcare, which I think he owned
14 and controlled or his family did, and in that capacity
15 they -- they still had some operational -- he had
16 operational capability, but not in all -- he didn't use
17 it in all of the transactions that I worked on.

18 BY MR. GREENWOOD:

19 Q You mentioned that Wink Laney was the -- the
20 individual who helped prepare feasibility studies --

21 A Right.

22 Q -- for some of the Brogdon offerings you
23 worked on.

24 A Yes.

25 Q Is that right?

1 A I think almost all of them, but yes.

2 Q Okay. And you said it was typical that the

3 person who prepares a feasibility study between

4 independent third party; is that right?

5 A Yes.

6 Q Was it your understand that --

7 A Independent of us and independent of Brogdon,

8 yes, some --

9 Q Was it your understanding that Mr. Laney was an

10 independent third part of Mr. Brogdon?

11 A Well, they -- they had a long relationship, but

12 -- and had worked together as did the bond counsel and

13 everybody else in the financing team, but that in and of

14 itself is not unusual. I mean in transactions.

15 So, yes, I would consider him to be an

16 independent third party.

17 Q And what do you know about the relationship

18 between Mr. Laney and Mr. Brogdon historically?

19 A Only that they had been doing business together

20 for a period of time, and they -- I know -- I know that

21 Brogdon didn't do -- on all the transactions I worked on,

22 there was a fairly cohesive financing team that was

23 pulled together and had Sell & Melton and this gentleman

24 Chix Miller acting as bond counsel. Wink Laney did most

25 of the feasibility work. Chris Brogdon and I'm

1 forgetting his -- Greg Youra was his counsel in all the

2 ones that we were involved with, but when Lawson wasn't

3 doing the financial, I think some of those people also

4 worked on other financings with other brokerage houses,

5 and in other cases the third kind of different either

6 bank loans or government -- government subsidized

7 financings that were done.

8 So I -- we weren't in all of the deals that

9 Brogdon did, but of the ones that we were, there was a

10 fairly cohesive group that worked on those.

11 Q And this cohesive group that you're mentioning,

12 Mr. Miller, Mr. Youra, Mr. Lane --

13 A Right.

14 Q -- had this been a cohesive group for Brogdon

15 financings before you began working on them?

16 A Absolutely, yeah.

17 Q Do you know how long?

18 A I don't. I honestly don't. I mean, I -- I

19 would conjecture ten or more years at least, but at least

20 that long, maybe longer. I mean, I just don't know.

21 Q Does a ten-year or more relationship between

22 sort of this financing team give you as a banker sort of

23 concerns about the independent nature of some of the work

24 that's done?

25 A No, I don't think so. I never thought of

1 anyone of the team members there, and you know, I mean as

2 a financing team. They were -- we were just all brought

3 together in different capacities. I did the same thing

4 in other client relationships that I have. I use the

5 same attorneys, you know, not every, every transaction,

6 but to the -- to a large extent you get comfortable with

7 a group of people if you hold them out and have respect

8 for them, and you think you're doing a good job; you

9 would tend to work with somebody else as opposed to just

10 pulling somebody in new just for the sake of an outside,

11 you know, uninformed source.

12 I never -- I thought both Chix Miller and Wink

13 Laney and Greg Youra all worked diligently on these

14 things, and I had no reason to believe that anybody in

15 those transactions was doing anything that was out of --

16 other than the professional responsibility. I mean, I

17 just didn't see anything in those regards at all. So I

18 mean, there was nothing to raise my suspicions about any

19 one of those individuals.

20 BY MR. TUTOR:

21 Q What party to the transaction did Greg Youra

22 and Chris Brogdon represent?

23 A Greg Youra was with a firm and -- a law firm in

24 Atlanta, and represented -- I would say he either

25 represented Chris Brogdon individually or Chris Brogdon

1 entities. You know, that -- that would vary because

2 Brogdon had multiple entities.

3 Q And those entities were the borrowers in these

4 transactions?

5 A In most cases, yes, yeah, yeah. They get all

6 cases. I mean, they would have been.

7 Q Did you do any -- did you conduct any due

8 diligence on the estimated costs of the projects?

9 A Well, I mean, the cost -- you're talking about

10 the hard cost of a project itself?

11 Q Or the cost of the projects, the facilities

12 that are underlying these bond offerings.

13 A Well, I think you're -- what you'd be drawing

14 from would be -- would be receiving appraisals on the

15 properties, if it was an existing property. If it was

16 going to be a build the ground up type of thing, you're

17 looking at contractors and construction costs and things

18 of that nature. The land purchase and all of that would

19 be verified by appraisals, too.

20 So, I mean, there were a couple of different

21 entities and documentation that would support those types

22 of costs in a project, I would say, yes.

23 Q And so what due diligence would you or anyone

24 at Lawson Financial do regarding an appraisal?

25 A Well, we would read the appraisal if it was

1 something that was -- I mean, again, they'd -- the
2 Brogdon people used the same appraisal firm, but as far
3 as I know, and we had no reason to believe that they
4 weren't, they were reputable and they did their own
5 independent appraisal work and it was not something that
6 came from -- it didn't come from Brogdon. It came from
7 an independent source who were licensed and legitimately
8 held themselves out to be what they were.

9 And so we -- we would look at that information.
10 Sometimes we'd ask for changes, but in most cases you
11 would accept it at face value.

12 Q Did you ever visit the facilities?

13 A Yes.

14 Q Do you recall which facilities you visited?

15 A I didn't visit all facilities, but we -- we
16 would send out -- the ones that I did visit were in
17 Alabama, Cullman and Decatur, the Hoover facilities. The
18 ones around Birmingham I went to see, and those that I
19 didn't see we sent the branch manager of the office of
20 Lawson in Florida out to inspect the site, take pictures,
21 come back with a reading as to whether he -- you know,
22 what he saw, what kind of condition they were in and so
23 forth.

24 Q And what is his name?

25 A Oh, um.

1 private offerings?

2 A Differences. There wasn't necessarily a
3 division of labor. I mean, we were all supposed to read
4 them and, if we had comments, react to them, and although
5 Nick Lawson was involved, we would also prepare different
6 documents internally that would then be used to be
7 presented to the sales force in terms of what the project
8 was going to be and when it would be coming and that sort
9 of thing.

10 Those were sales materials, and that usually
11 came from Nick with me reviewing and rewriting them, and
12 in terms of commenting on the documents and commenting on
13 the due diligence materials, I would say that was
14 primarily Lawson and myself.

15 BY MS. ESMAILI:

16 Q And how would you decide as, you know, what's
17 the meaning of the due diligence period for a Brogdon
18 bond offering?

19 A Un-huh.

20 Q How would the decision be made as to who, as
21 between you and Mr. Lawson, would handle what aspects of
22 the due diligence?

23 A That's what I was saying. There really wasn't
24 a division of labor formally in that regard. There was
25 just we would both receive the same materials, and we

1 Q Is it Rutland Bussey?

2 A Rutland Bussey, yeah, that's it. Bussey.

3 Excuse me. He pronounces it Bussey, B-u-s-s-e-y.

4 Q And would he generate a report?

5 A A lot of it was verbal. I don't know that it
6 was necessarily a requirement at Lawson to document, you
7 know, what his findings were, but we would receive
8 pictures, emails. On occasion he came to Atlanta and was
9 part of some of the due diligence meetings and things of
10 that nature.

11 Q And turning back to the feasibility studies --

12 A Right.

13 Q -- who at Lawson Financial reviewed and
14 commented on the feasibility studies?

15 A Probably Rob Lawson and myself would be the
16 only two that did.

17 Q And do you know who engaged or retained Wink
18 Laney to conduct the feasibility studies?

19 A I would say it was Brogdon, I guess. They
20 would be -- I mean, the transactions with the -- whether
21 it was the attorney or the CPA firm or the appraisal
22 firm, most of that was pulled together by Mr. Brogdon.

23 Q And what was the general division of labor
24 between due diligence or between you and Rob Lawson and
25 Nick Lawson in terms of due diligence on one of these

1 would read them and then discuss them among ourselves,
2 and one or both of us might get on the phone and call
3 back to -- to Wick Laney or Chix Miller or somebody else
4 and see who was attending the meetings and what the
5 issues were we had, you know, with regard to the various
6 documentation that we received.

7 It wasn't you do this and then I'll do this
8 aspect of it. I mean, it was both of us probably going -
9 - both looking at it and then, you know, I wasn't
10 overseeing him and he wasn't overseeing me. We were just
11 contributing to the process to see if there was anything
12 that raised questions on my part or his part.

13 And then that would be communicated both to
14 bond counsel, to -- to Brogdon himself or -- I mean
15 Brogdon was very much involved in these documents, and he
16 read them, too. I mean, it was not -- he was not kind of
17 off in the distance. He was very much a part of these
18 things.

19 Q How did you and Robert Lawson ensure for any
20 given Brogdon bond offering that every element of due
21 diligence that you needed to do had been completed by one
22 or the other of you?

23 A Well, most of -- most of the due diligence is
24 in almost all cases -- I can't think of anything that
25 wouldn't -- would have been backed up by some form of

1 documentation. I mean, it wasn't just a feel good
2 process. It was -- it was presented to us.

3 I mean usually I -- I would find out about a
4 project because Brogdon called Mr. Lawson and said, "I
5 have a transaction and I want to conduct it, and this is
6 where it's located."

7 And we would say, "Well, you know the drill.
8 Send us the, you know, the usual documents that we need.
9 Send us the appraisal. Send us the environmental.
10 Give us some idea of what -- you know, when you want to
11 close it and what's going to be involved in the thing, in
12 the transaction and, you know, who's" -- we would ask
13 almost always if it was Wink Laney that was doing the --
14 the CPA work and the financial review for the
15 feasibility.

16 And that would begin the process. I mean, that
17 -- we would receive most of those documents at about the
18 same time. Some of them would come in a little bit
19 later.

20 Q But my question is a little bit different.

21 A Okay.

22 Q My question is how you and Robert Lawson
23 ensured that as between the two of you all of the due
24 diligence steps had been taken for a given Brogdon bond
25 offering.

1 He seemed to have a habit of removing, you know, getting
2 rid of a lot of the drafts and everything else that went
3 into the process, and documents get turned pretty
4 regularly in that kind of a financing process.

5 So, you know, you would be getting things from
6 different attorneys, mostly the bond counsel, but you'd
7 review those, too, and if there were two or three drafts,
8 he would just -- at the end of the process, he would just
9 clean his files and keep the most recent copy or the
10 final copy, and that would be about it.

11 So I would call that culling the file at that
12 point and --

13 Q Are you talking about electronic files or copy
14 files?

15 A In his case he -- I think many times he would
16 just get rid of the hard copies as well. I mean, you
17 know, he would -- it would come in over email. I mean,
18 these things were not sent to us in hard copy. They were
19 sent digitally. You'd download them. You're read them.
20 You'd mark them up. When it was done, they would just
21 discard them or shred them.

22 We -- I mean, a lot of documents were shredded
23 at the firm routinely, which is not unusual either I
24 don't think.

25 BY MR. GREENWOOD:

1 Was it, for example, that you communicated
2 throughout the course of the due diligence so that you
3 kind of made sure that as between the two of you somebody
4 had handled it or other mechanism?

5 I'm not understanding how --

6 A There was -- there were -- in almost all cases
7 we were -- and I was officed in the same building. We --
8 we talked all day long. I mean, there was no kind of
9 Chinese wall or anything of the nature that, you know,
10 one of us did one thing versus the other. We would read
11 these things together and separately.

12 We would in almost all cases be involved in the
13 conversations. When the phone was picked up to talk to
14 Wink Laney, yeah, maybe one of us or the other called in
15 something, but most of the time it meant sitting down and
16 looking at the information at least on a first or second
17 pass. Both of us probably would have been on the call
18 together.

19 In terms of -- so that would -- that would
20 generally be the process. I mean, but -- I mean, I would
21 try to have -- as I said, I would load these documents
22 into a file and, you know, keep them.

23 Lawson liked the idea, for whatever historical
24 reason, of culling the files when -- when a transaction
25 was closed and you had -- you had an offering transcript.

1 Q Why would it be not unusual?

2 A Well, it's -- at least at the broker-dealers
3 that I've worked at, either from the investment banking
4 side or the client side, you're not going to let
5 documents hang around, put them into a bag and, you know,
6 throw them out at the curb. So there was a group that we
7 used that was called "Shred-It," and it circulated among
8 law firms and investment banking firms, and they would
9 come by and pick up your banker boxes and things of that
10 sort and shred documentation so that it was not going to
11 fall into somebody else's hands inappropriately.

12 So if -- if it was sent out for shredding, it
13 wasn't necessarily that anybody was trying to destroy
14 documentation. It was just that it was volumes of
15 material that were deemed not necessary, and they were
16 shredded at that point when they thought it was
17 appropriate to do so so that it didn't fall into somebody
18 else's hands.

19 BY MR. TUTOR:

20 Q Were the due diligence processes that you've
21 been discussing memorialized in any way?

22 A Memorialized in the sense of writing memos or
23 something about what the findings were or are you looking
24 at

25 Q Well, yes. Were any memos generated regarding

1 the results of the due diligence --

2 A Well, I'd say typically not because we were
3 pretty used to -- I didn't mean to cut you off.

4 It was not -- that was not the practice of the
5 firm on a regular basis. We all participated in it, but
6 I don't know that it was -- it was not the practice of
7 the firm to formalize it in terms of writing a memo on
8 what your findings were in the feasibility or anything
9 else.

10 We typically just marked them up, made the
11 comments to the person that was responsible for changing
12 the documents. We would get a redraft, and we would look
13 at that, and if the input was provided and accepted or
14 changed or we got something back that was different
15 because another source had provided information, that was
16 usually the process that we followed.

17 I mean, it wasn't -- it wasn't documented in
18 that sense, no.

19 Q Were there any check lists that you were
20 required to follow in terms of conducting due diligence
21 on these offerings?

22 A No. I don't know that I could say that there
23 was a check list that we were required to follow, but I
24 would say that almost every one of these has the same
25 elements in it. So, I mean, the one that I've been

1 Q So do you recall conducting EMMA checks on
2 prior offerings to make sure that they complied with
3 their continuing disclosure agreement obligations?

4 A EMMA checks on offerings after they were out?

5 Q Yes.

6 A I -- I did not do that on a routine basis. I
7 suggested to the firm that somebody should do it in terms
8 of the broker-dealer. I mean, I wasn't directly part of
9 the broker-dealer, but I did recommend to Lawson on a
10 number of occasions that -- and/or other partners or
11 firms that, you know, I had been involved in or worked
12 with not on Brogdon transactions, but on other
13 transactions that we had done with another firm -- that
14 there are oftentimes a research credit watch type of
15 position inside the firm, and that it's their
16 responsibility to continue and check on those things.

17 I thought that as a broker-dealer there was an
18 obligation to do that. It was not my requirement that I
19 was going to be spending, you know, my days and time
20 looking at those things, but I did mention that to Lawson
21 on more than one occasion that I thought that that would
22 be something that they -- should be done, but I can't say
23 that that was a regular occurrence at the firm.

24 Q So who at Lawson Financial was responsible for
25 conducting these EMMA checks?

1 referring to were typically -- I can't think of a
2 financing. There may be one or two, but not very many
3 that did not follow pretty much the same process in
4 formatting, and there were not unusual documents that
5 bubbled up very often.

6 I mean, the transactions had the same
7 components almost always in terms of it's either, you
8 know, an acquisition and a rehab of a facility or it's a
9 brand new facility. Those would change, but outside of
10 that, I would say the documentation to decide whether it
11 was a financeable project or not would not change from
12 transaction to transaction.

13 Q How did you conduct due diligence on compliance
14 with continuing disclosure obligations?

15 A Well, there -- there -- in these documents are
16 -- there is a document known as a continuing disclosure
17 agreement. That usually provides what is going to be
18 disclosed and posted on EMMA, the municipal posting board
19 for -- for municipal offerings, and in that, there are
20 about 15 or 16 items that anything that happens in a
21 transaction has to be disclosed, and so in that regard we
22 would look at and ask for any information pertaining to
23 most of those items.

24 Q So --

25 A Historically and going forward.

1 A I don't know that there was anybody responsible
2 for it. I mean, if anybody was responsible -- well, I
3 can't -- I can't speak to anybody that had a specific
4 charge and responsibility to do that. There -- as part
5 of that hierarchy that we were talking about, I named
6 most of the family members, and that pretty much made up
7 the hierarchy of the firm.

8 The only one that I didn't mention I can think
9 of is -- forgetting her name -- Lona Nana, L-o -- I don't
10 even know how many Ns are in that. Lona Nana was the
11 CFO, had been with Lawson for 25 or 30 years. She was
12 the one that handled all financial transactions in and
13 out of the firm, and she and Rob Lawson were very close
14 in terms of their discussions of which I was -- that was
15 one of the one places that I would speak to both of them,
16 but not collectively very often together. And so she
17 would have been the only other person in the process.

18 I don't know that the trading function did
19 this, which is where I suggested maybe it should be, but
20 the trading function, Lawson himself, would be two of the
21 people that I would have thought either had the
22 responsibility or should have delegated it to somebody
23 else. I don't know that that was ever done.

24 Q And you mentioned some conversations with
25 Robert Lawson on this point.

1 A Yes.
2 Q Would you describe those conversations? When
3 do you recall the first one happening?

4 A I don't have an independent recollection of
5 when the first conversation was. It wasn't -- I'm trying
6 to think back. I reached out to a couple of different
7 other firms to affiliate with us in the sense of being
8 co-managers on transactions.

9 Q Un-huh.

10 A And in that process of co-managing
11 transactions, the -- I know and notices that there were
12 this kind of a function in other firms, and so partially
13 from that and partially just know that we had an obli --
14 "we," I shouldn't say "we" -- that the firm had an
15 obligation to follow up on those aspects and are supposed
16 to monitor them.

17 I had made the suggestion to Rob that I thought
18 he needed to do that.

19 Q What do you mean by the firms had an obligation
20 to follow up on?

21 A I think broker-dealers can be held responsible
22 from a liability standpoint if you're not following up
23 and monitoring some of the financings that you've done.
24 It seems that otherwise you're -- of course, Lawson
25 didn't feel the same way as I did in that regard, but his

1 these other firms came into practice with us was because
2 he was not able to do financings of a larger size than
3 about ten to 12 million, was his limit, and that was
4 because he couldn't distribute it to his network, his
5 retail network, beyond that. It would just tax the
6 network so -- and the individuals couldn't take -- you
7 know, they can only take so much of the paper and the
8 securities.

9 So I said, well, we had two choices in another
10 conversation I had with Lawson. I said we -- you know,
11 we're running into a situation where we have
12 opportunities in the, you know, 20, 30, 50, \$70 million
13 size. You can't handle them on your own. You have two
14 choices. One is to create an institutional sales
15 department who will be able to call on the institutions,
16 in which case larger financings could be obtained, or --
17 or we're going to have to get a partner. It's one or the
18 other.

19 I mean, I don't know of any other solution to
20 the problem, and so we had those discussions, and he
21 said, "I don't want to put the money out to create an
22 institutional sales department. You know, let's go find
23 a partner or two."

24 So we started -- I -- I primarily reached out
25 to other firms that I knew or had relationships in and

1 -- he felt that the continuing disclosure agreements
2 required the borrower to submit that documentation, and
3 if they didn't do it, it was their liability.

4 But I'm not so sure that the -- that the
5 process and the regulatory process necessarily absolves
6 the broker-dealer entirely from not doing it either. So
7 I suggested that I thought that was something that he
8 really should do and should monitor, and it was an
9 expense that I don't think he wanted to take on.

10 Q So I guess I'd like to break this down a
11 little. Do you recall what you said to Robert Lawson
12 regarding this EMMA check issue?

13 A Well, as I said, I think it stemmed out of a
14 conver -- either observations that I had from other firms
15 that, you know, we came in practice with and did some
16 work with, and -- and I'm talking about Ziegler
17 Securities. I'm talking about Herbert J. Sims & Company,
18 which is another firm that we did transactions with.

19 And I was -- I was aware of this from other --
20 my dealings when I was back here in New York, that there
21 was somebody that was overseeing. There was, you know,
22 an analytical function that continued to monitor
23 offerings as they came out.

24 And so I -- I mentioned that to Rob very early
25 on. I mean, I -- probably in 2010 or so. The reason

1 asked them to come in as partners for us.

2 So in the Brogdon offerings we never had a
3 partner in any of the offerings, but in other financings
4 that we did, which were larger we routinely had a -- had,
5 at least in the time that I was there, we had -- we had a
6 co-manager or a co-senior manager that would work with us
7 in the transactions.

8 Q Mr. Lynch, I'd like to focus on Robert Lawson's
9 response to your suggestion that the firm conduct EMMA
10 checks on prior offerings. Do you recall what his
11 response was regarding that?

12 A It was pretty I wouldn't say surprising. It
13 was he didn't find that to be particularly cost
14 effective, and so he felt that the obligation was on the
15 -- primary, primary obligation was on the -- on the
16 borrower, and he acknowledged some responsibility. You
17 know, he knew that there was a responsibility at the
18 broker-dealer level, but I never got a -- you know, a
19 response that indicated that he was taking an active role
20 in looking at those things.

21 Q And what about conducting EMMA checks as part
22 of the due diligence in the underwriting a new offering?

23 A Well, I think that that was verbally checked in
24 the sense of asking questions of either the -- of either
25 Brogdon himself or counsel to Brogdon as to whether or

1 not all the filings had been made. I think in some cases
2 we -- I mean, there may have been emails to that effect,
3 too, that just said, you know, is there anything
4 outstanding, because you'd have to go through that
5 process, too, a little bit from the due diligence
6 standpoint.

7 So I don't know that we occasionally came
8 across something that something on occasion had not been
9 filed on a timely basis, but they were usually caught up
10 by the time of the -- of the closing. And going forward
11 into the -- after the closing, I -- I -- I didn't -- I
12 mentioned this, but I don't know that there was any
13 active -- I am not aware of any active pursuit at the
14 firm that continued to do that on a regular basis.

15 Q And so did you personally conduct any EMMA
16 checks on the prior offerings, on the underwriting new
17 offerings?

18 A I think I did, yes. Yeah.

19 Q You did conduct EMMA checks?

20 A Yeah.

21 Q Do you recall which offerings those were for?

22 A No, not -- not at this point. I mean, I -- we
23 would go back. I mean you can just look them up on EMMA
24 and see what was available and what wasn't available at
25 that time. So it wasn't a documented process or anything

1 don't know that I ever got a "somebody is handling that
2 in trading" or "somebody is trading it here" or "Nick's
3 going to do that."

4 There was never any sense from me that there
5 was any delegation within the firm to be doing that.
6 Somebody may have been doing it, but I -- I am not aware
7 of it.

8 Q You were the one serving as underwriter's
9 counsel in these offerings though, right?

10 A And I made those suggestions to him and
11 suggested that very much that we should set up a process
12 like that.

13 Q So let's -- let's step back.

14 A I couldn't force him to do it. I advised him
15 that he should do it, but that was --

16 Q Let's take a step back for a second. You said
17 earlier that when you came to Lawson Financial that Mr.
18 Brogdon and Mr. Lawson already had a relationship; is
19 that right?

20 A Very strong relationship, yeah.

21 Q In fact, you were aware that there were sort of
22 a -- I think you described it as a cohesive financing
23 team in place for some of these types of offerings,
24 right?

25 A Yes, I would -- I would describe it as such,

1 of that. You just go back in and check the electronic
2 submissions that had been made.

3 Q And do you know if anyone else conducted EMMA
4 checks on the prior offerings of underwriting?

5 A No, I do not know.

6 Q And whose responsibility would that be to
7 conduct EMMA checks at Lawson financial?

8 A As I said, I suggested that the firm designate
9 somebody and I cannot tell you that there was anybody
10 ever formally designated to do that, and I don't know of
11 anybody that did it on a regular basis.

12 BY MR. GREENWOOD:

13 Q You mentioned earlier that -- was it accurate
14 that Mr. Lawson raised a concern about EMMA checks being
15 sort of not cost effective? Was that -- was that your
16 testimony or

17 A Well, a lot of -- I would say that's kind of a
18 general statement. It was if he didn't -- if he didn't
19 need to expend money on it, he would rather not, but he
20 acknowledged a responsibility, but felt that it was
21 primarily the obligation of the borrower, and it was
22 discussed on -- on a I would say frequent basis. I would
23 -- I mean I wouldn't say every -- every financing I
24 didn't ask the question, but it came up in conversation
25 on more than one occasion, a number of occasions, and I

1 yeah.

2 Q This cohesive financing team I think you
3 testified had been in place for at least ten years,
4 right?

5 A They had done a number of transactions
6 together. I never specifically asked how long and how
7 many, but, yes, they were -- they were very familiar with
8 each other, had done a number of financings together, and
9 I don't know when that group came together in terms of
10 that, but I think it was -- it was a long time.

11 Q You were aware that there were prior offerings
12 in which these individuals had been involved, right?

13 A Yes.

14 Q And those individuals include Mr. Brogdon, Mr.
15 Youra, Mr. Miller and Mr. Laney, right?

16 A Yes, and probably others. I think the
17 appraisal firm was the same in many of those cases, too.
18 I don't know that they were always the same appraisal
19 firm, but it was one out of -- I think out of Atlanta
20 that was being used, yeah.

21 Q You mentioned that in connection with these
22 offerings involving Mr. Brogdon, Mr. Brogdon typically
23 owned or controlled in some way the borrowing entity; is
24 that right?

25 A Yes.

1 Q And what types --

2 A Or -- or he designated who was going to be the
3 manager of the project. I mean, if somebody was -- if
4 another party was coming in to be the manager of the
5 project, it was he who decided that, not anybody else
6 that I'm aware of.

7 Q What were some of the borrowing entities that
8 you were aware Mr. Brogdon was affiliated with?

9 A You've taken the documents away. So I can't
10 specifically -- the -- the one that I know he owned was -
11 - or had control of -- was Saint Simons Healthcare.
12 There were a couple of other entities that repeated
13 themselves in some of the offerings, but I -- off the top
14 of my head it has been a couple of years and I'm out of
15 focus on those, but I think if I saw the -- maybe it's in
16 this one, the subpoena --

17 Q Yeah.

18 A -- or the list of them, I might be able to
19 tell you.

20 Q Yeah. What about National Assistance Bureau?
21 Is that an FTD or do you understand --

22 A That -- that --

23 Q -- it's affiliated with Mr. Brogdon in some
24 way?

25 A Yes. Yes, that's -- that's -- that's an entity

1 that I think it -- well, I know it had gone through some
2 sort of bankruptcy process and so forth, yes, but he had
3 -- seemingly had control over that, too.

4 Q Okay. Gordon Jenson Healthcare?

5 A That also, yes.

6 Q Other entities that were set up specifically
7 for the purpose of serving as borrower in a given
8 offering?

9 A Yes, yes.

10 Q Okay.

11 A Not unusual, but I mean --

12 Q Right. So did you conduct any EMMA checks
13 personally on any of the prior Brogdon offerings
14 involving, for instance, National Assistance Bureau when
15 you were

16 A Yes.

17 Q -- conducting the due diligence for --

18 A Yeah, we did --

19 Q -- one of these offerings?

20 Let me just try to finish the question --

21 A I'm sorry.

22 Q -- so that it's clear.

23 Did you conduct any EMMA checks on prior
24 National Assistance Bureau offerings in connection with
25 your due diligence for new Brogdon bond offerings?

1 A Yes, because we were aware of some bankruptcy
2 issues and some difficulties that that group had been
3 through. So there were checks and questions and things
4 asked and answered by either Greg Youra or Chris Brogdon.

5 Q So did you conduct EMMA checks on prior NAB
6 bond offerings?

7 A I did, and I think Lawson did, too.

8 Q Okay. Which offerings?

9 A Well, the ones involving the National
10 Assistance Bureau.

11 Q Okay. What was the result of those EMMA
12 checks?

13 A I believe we thought they were in order, and
14 they were -- they had been through, you know, a
15 bankruptcy process and Brogdon -- questions that were
16 asking seemed to be satisfied by Brogdon at that time.
17 There was nothing that -- that --

18 Q Well --

19 A -- they seemed --

20 Q -- my question is a little different. It's
21 not focused on Mr. Brogdon's response. I am focused on
22 the EMMA check piece.

23 A Un-huh.

24 Q What did you learn from the EMMA checks of
25 prior NAB bond offerings?

1 A I don't have a specific recollection of what
2 the issues were that came up, but I know that we did
3 check on them and we did ask questions about why this or
4 that was filed or not filed at the appropriate time and
5 whether they had been resolved, and we were given
6 assurances or evidence that they had been, and so that
7 was what was going on in that aspect of it.

8 I don't know that -- I don't know that I ever
9 found anything out of order in Gordon Jenson or any of
10 those, but the National -- National entity had some --
11 had some history, and so we did look into some of that
12 and seemed -- we were satisfied that it was okay.

13 Q When you conducted EMMA check, what types of
14 information are you looking for?

15 A Well, again, it's disclosure requirements.
16 You'd have to go back to the CDA document and see if they
17 had missed filings, missed payments, if the payments had
18 been made up. It's usually principal, interest;
19 bankruptcy filings; timely filing of financial
20 information and such.

21 Q You mentioned timely filing of financial
22 information. Did you understand that it was a
23 requirement to file annual financial statements in
24 connection with these NAB offerings?

25 A Yes.

1 Q Do you see annual financial statements for
2 these NAB offerings where you conducted EMMA checks?

3 A Well, I think we called into question that they
4 hadn't filed some of them, and then they said that they
5 would make it -- they had made it up and that they were
6 satisfied. So as of closing I would say that they -- we
7 thought they were current on anything that we did going
8 forward at that time, that they were -- there wasn't
9 things outstanding at that point.

10 Q What was the basis for that? How did you know
11 that NAB had filed financial statements?

12 A It would either have been posted or they
13 produced them for us at a later date, and then they would
14 have posted on EMMA at that point.

15 Q So you recall going back to EMMA and seeing
16 that NAB financials --

17 A Yes.

18 Q -- were filed for some of these --

19 A I think that's --

20 Q -- offerings?

21 A -- correct, yes. I think that is correct.

22 Q Do you have a specific recollection of going
23 back

24 A No, I don't.

25 Q -- and seeing those NAB filings?

1 A I don't have a specific recollection. I know
2 that we had issues with NAB. I know that we asked
3 questions about it, and both Miller and his firm and ours
4 talked about those things being filed timely before we
5 went off and closed the offering. So I would say, yes,
6 we did look into those kinds of matters.

7 But I wouldn't say a lot of his entities -- I
8 didn't -- I don't remember seeing a lot of issues related
9 to any of those documents, other than just maybe NAB was
10 the one that probably stood out the most.

11 Q Okay. And on the EMMA check issue you
12 mentioned that you may have conducted an EMMA check
13 related to NAB at one point; is that right?

14 A At one or more points in the process. I think
15 they were in one or two financings that we did. I don't
16 have the list in front of me right now.

17 Q Right.

18 A But I think they were. Maybe two; maybe two of
19 the financings that we did or the maybe 12 that I was
20 involved in. There might have been two that had them in
21 it.

22 Q Did you ever ask anyone else at Lawson
23 Financial to conduct an EMMA check so that you could
24 fulfill your due diligence obligations?

25 A I don't -- no. Did I ask somebody else to do

1 an EMMA check for me? No. I didn't delegate to anybody
2 else. I talked to Rob Lawson about it. That would have
3 been the extent of it. I don't think that anybody else
4 would have been involved in any of those discussions.

5 Q Were you aware of a prior -- prior continuing
6 disclosure issues with respect to Mr. Brogdon's offerings
7 when you first started working on Brogdon offerings?

8 A Not that I'm -- no, I wouldn't say there was a
9 heightened concern about him at the time when I started.
10 He seemed to be held in high regard in some circles and
11 in others not so much. I mean, people that I knew in
12 Atlanta had some questions about his past dealings, but
13 nothing specific. So --

14 Q What kinds of questions did these people in
15 Atlanta raise?

16 A Just other attorneys that felt that, you know,
17 he and his prior partner, who I never met or knew,
18 somebody named Gene, who I don't remember Gene's last
19 name --

20 Q Gene Lane?

21 A Could be, yeah. I never met him, and I'm not
22 even sure he was alive when I came into the relationship.
23 So there was just a general feeling of uncomfortableness
24 with their reputation apparently from some other outside,
25 unrelated firms, but I didn't really -- when we started

1 the relationship I don't -- wouldn't say that I got into
2 it with a feeling of uncomfortableness with -- with Chris
3 Lawson or with Greg Youra or any of these people. I
4 mean, they all seemed to be pretty straight shooters.

5 Q Did you ever read or become aware of an article
6 in Fortune Magazine concerning Mr. Brogdon?

7 A I -- I think I -- at some point, I can't tell
8 you when I read it. I think I'm aware of -- I was aware
9 of some things that at one point he had paid a fine at
10 FINRA, I think, of about 50,000, and we had some
11 discussions about that, too.

12 So I mean -- but that was a capital -- said it
13 was a capital requirement that he had failed to keep on
14 an administrative basis, and he was fined for that, and
15 we had discussions on that, and we disclosed it in a
16 number of the earlier offerings, and it seemed to be I
17 wouldn't say irrelevant, but it didn't seem to be that
18 germane to -- when we got to a certain point, that it
19 didn't seem to be a disclosure that anybody seemed to
20 think was of any particular consequence. It was -- while
21 he was in a securities and a broker-dealer status, and
22 that he had been fined and paid the fine, and that was
23 pretty much the end of that.

24 As an example, I did not know about the
25 indictment

1 Q Un-huh.

2 A -- until I was -- until I was informed of it,
3 and that was somewhat of a surprise, but other than that.

4 Q Did you learn Mr. Brogdon was barred from the
5 securities industry?

6 A Well, at some point along the line I was, yeah,
7 but he had gotten into a completely different business at
8 that point. He had been a broker, had the securities
9 fine that was rendered, and that must have been 20 years-
10 plus ago.

11 He was not in the securities business any
12 longer.

13 Q Focusing on the Fortune article, do you recall
14 when you read that article? Was it --

15 A I do not.

16 Q -- during the course of the time you were at
17 Lawson Financial?

18 A Yes, I think it was.

19 Q Was it near the beginning or near the end?

20 A I -- I think probably beginning to the midpoint
21 or something along those lines, I guess.

22 Q Okay. Did you work on due diligence for new
23 Brogdon offerings after reading this Fortune article?

24 A Un-huh, yes.

25 Q Is that a yes?

1 A Yes.

2 Q Okay. And we can look at the Fortune article
3 maybe later, but did that -- that article give you any
4 concerns about Mr. Brogdon and his compliance with prior
5 continuing disclosure obligations?

6 A Well, I would say it raised an antenna, but I
7 don't know that I -- I mean, we did try to keep a close
8 eye on some of the things that we did in the offerings,
9 but I don't know that -- I never really saw anything from
10 the time -- any time that I was involved with him, other
11 -- I mean, I was aware of post was the indictment; pre
12 that was the capital fine. I knew he had issues in the
13 securities business, but I did not find much else in any
14 of the offerings that we did that he was doing anything
15 that was inappropriate, but it was of some concern, yes.

16 MR. TUTOR: Okay. Should we --

17 MR. GREENWOOD: Up to you.

18 BY MR. TUTOR:

19 Q Okay. We were discussing conversations with
20 Mr. Lawson, what you said to him and what you recall him
21 saying to you. I would just like to circle back now on
22 your conversations with Mr. Lawson regarding you serving
23 as underwriter's counsel, and if you could kind of take
24 us through what you -- what Mr. Lawson said to you when
25 he first proposed this.

1 A Well, I think it was in -- as I said, it was in
2 conjunction with the amount of time and work I was doing
3 and the compensation I was receiving, and I think in the
4 early going, there were -- there were other people
5 serving as underwriter's counsel for him, and his comment
6 was that he wasn't getting that much out of them anyway;
7 could I take over some of that responsibility and be paid
8 in that context as opposed to, you know, him coming out
9 of pocket for more on a consulting fee basis, and --

10 Q And approximately when did this conversation
11 occur?

12 A I don't -- I mean, I don't. It started fairly
13 early on because it was -- I don't know if we did two or
14 three transaction and then maybe after that it became
15 fairly evident to me that I was, you know, way into these
16 things both in time and energy, and so it was mentioned
17 in that context, and that was the way it came about

18 Q And do you recall --

19 A I wasn't brought over specifically to be his
20 counsel.

21 BY MR. GREENWOOD:

22 Q Did you have this conversation with Mr. Lawson
23 prior to the first Brogdon offering for which you served
24 as underwriter's counsel?

25 A I don't remember when the first Brogdon

1 offering was. I mean, in the context of when I joined
2 him and everything I -- I mean, it's -- it's five or six
3 years ago. I honestly can't tell you that.

4 Q I guess I'm just trying to understand whether
5 you had the conversation with Mr. Lawson about serving as
6 underwriter's counsel prior to the first offering, the
7 first Brogdon offering for which you actually served as
8 underwriter's counsel.

9 A I don't know is the honest -- I just don't
10 know. I know I don't know -- I mean I couldn't tell you.
11 When I came over it was in an investment banking
12 capacity. After a brief while it became obvious to me
13 and to him, I think, but to me more so because of my
14 ability to earn at the firm, he wanted exclusive use of
15 my time, and I said that, you know, that that -- we'd
16 have to work out something else because this was not
17 going -- this wasn't working for me.

18 Whether -- I don't know that any of that came
19 up directly in the context of a Brogdon offering. So I
20 don't know whether we were doing another offering or we
21 were doing a Brogdon offering, but at some point in the
22 fairly early going process he suggested not using
23 somebody and maybe replacing me with -- and would that --
24 would what satisfy my ability to earn and stay on on a
25 full-time basis.

1 And so I said, yes, it would certainly -- but
2 then he controlled that, too. So --
3 **Q** Right, and if I represented to you that the
4 first Brogdon offering for which you're listed as
5 underwriter's counsel is the Hoover Riverchase offering
6 in June of 2010. Does that refresh your memory at all as
7 to the timing of this conversation with Mr. Lawson about
8 serving as underwriter's counsel?

9 **A** It doesn't really refresh my memory, but I
10 mean, it would -- it would be -- it would probably have
11 been before that or around that time, yeah. I don't
12 know.

13 **MR. GREENWOOD:** Okay.

14 **BY MR. TUTOR:**

15 **Q** And so when Mr. Lawson proposed this set-up
16 with you serving as underwriter's counsel, do you recall
17 what your response was to him?

18 **A** It wasn't immediate joy and acceptance. I said
19 I'd think about it a little bit. It was -- it wasn't
20 really what I wanted to do again. I mean, he said, "You
21 have all this experience. You've been in" --

22 I said, "Yeah, admittedly I do. I've been
23 involved in many, many transactions and I've had to go
24 through the documentation and I understand the processes
25 and the procedures. So could I do it? Yes. Do I want

1 **A** Where you would -- nothing terribly exotic, but
2 there would be where you might have a debt service -- in
3 just about every financing that we do -- "we," I mean the
4 general investment banking-public finance community -- if
5 you're doing reserve funds, you set those up in -- in
6 context of either a debt service reserve fund would be an
7 average -- it would be one year's average annual debt
8 service payment. You would look at -- these are
9 structures of pretty much level debt throughout the whole
10 offering.

11 And so as you're going through a level debt
12 offering, you would either ask that the debt service
13 reserve funds be posted on the basis of one year's
14 average annual debt service or sometimes they solve, and
15 it's -- the preferred way is maximum annual debt
16 services. You look at the whole run, and although it's
17 approximately level, there is one year that is going to
18 be a little bit higher than the others. It's just the
19 function of the numbers.

20 And so then you would structure the deal to
21 have maximum annual debt service, what they call MADS, M-
22 A-D-S, and I found it odd, but he was able to underwrite
23 to the standard of providing Brogdon with six months'
24 debt service as opposed to a year.

25 And he -- he made the case that he knew him

1 to do it? Not necessarily."

2 But he felt and said that this was -- this was
3 really his offer, and so I thought about it in that
4 context because I wasn't willing to stay on at 100,000
5 and be his investment banker with no -- we had no bonus
6 structure. We discussed that a little bit. He didn't
7 seem to be inclined to be specific about any of that.

8 This was more specific than that, and I felt
9 that this would be at least some satisfactory way to
10 continue on in the process. So I accepted it, but I
11 would say somewhat reluctantly. It really wasn't my
12 favorite way of doing this by any means.

13 **Q** So it was your understanding that if you were
14 to continue working with Lawson Financial on the Brogdon
15 offerings and other offerings, it would be in the
16 capacity as underwriter's counsel; is that correct?

17 **A** Well, I was also doing the banking work, too.
18 I mean, you know, I was the one that was putting together
19 the numbers and reviewing the structures and things of
20 that nature. Brogdon had a very special structure which
21 was -- I came to accept in terms of some of the things
22 that Rob Lawson offered him in his transactions that we
23 didn't typically do in others.

24 **BY MR. GREENWOOD:**

25 **Q** What do you mean by that?

1 well. He had never had a problem with any of his --
2 although later I found out that there were -- there had
3 been some defaults in the background here that I was not
4 aware of when we initially started, and that -- that I
5 thought the debt service -- we had some discussions about
6 some of those types of things. It was his -- his
7 offering and structure to Brogdon was more lenient than
8 what we did in almost any other deal. If we were doing a
9 charter school, if we were doing financings for somebody
10 else, almost always we structured to a slightly higher
11 standard of underwriting as opposed to the Brogdon deals.

12 But he said it was on the basis of his feeling,
13 very strong feeling, is that he had a long productive
14 relationship with Brogdon, and this was a negotiated -- I
15 mean, there's not a requirement that it has to be the
16 other, but it was his feeling and it was something that
17 he was unwilling to bend on, because we did have
18 discussions about that, that this was the standard that
19 they had been operating under for some time and he saw no
20 reason to change it.

21 **Q** Other than the debt service reserve fund lien
22 as you described, are there any other types of
23 structuring benefits that Mr. Lawson provided the Brogdon
24 offerings?

25 **A** No, I don't -- I don't think there were corners

1 cut in many other ways, but there was -- there may have
2 been a couple of other things. It just doesn't --
3 nothing is jumping to mind right now, though, but that
4 was one of the items that came up early on. I had
5 discussions with him, and he just was unbending on that.

6 **Q** Did sort of this leniency with respect to the
7 debt service reserve fund level at the initial issuance,
8 did that give you cause for concern about how Mr. Brogdon
9 had used debt service reserve funds in prior offerings?

10 **A** No. I mean, there was no -- there was no --
11 there was no knowledge on my part that he had misused any
12 debt service reserve funds in prior offerings, or any of
13 these offerings either for that matter.

14 **Q** And I guess my question is whether the -- this
15 different treatment of the debt service reserve fund
16 level in new issuances, whether that raised a red flag to
17 you in terms of how Mr. Brogdon may have used debt
18 service reserve funds in prior offerings.

19 **A** No. It wasn't meant in that sense. I just
20 thought I -- I raised the question with Lawson that, why
21 were we doing it for Chris and not for others. And the
22 argument that Lawson offered was that he had had a long
23 relationship with Chris, this was something they had
24 worked out, he didn't feel that there was a need to go
25 any further than that, and he was comfortable with that

1 being the standard and he was offering that to his
2 clients.

3 And I said I would -- it just seemed odd to me
4 and that -- "odd" maybe is not the right word, but I said
5 I could -- I mean, I can understand if you have been
6 dealing with somebody for a long period of time and
7 you've gotten comfortable with that person, and you
8 continue -- you know, want to do their business, I don't
9 know -- I was not party to the negotiation of that or
10 whether it was offered and accepted, but it was -- it was
11 there when I got there, and we discussed it.

12 I -- he never asked for anybody else to be
13 given that standard, which always struck me as a little
14 odd. Sorry. But it was just -- it was a courtesy that --
15 - maybe that's not the right word, but a courtesy that he
16 seemed to have agreed to and extended to Brogdon, and I
17 just didn't see it in any of the other transactions. So

18 --

19 **Q** In the transactions you worked on, though, at
20 Lawson Financial, was that trend continued with respect
21 to the debt service reserve funds for new issuances of
22 Brogdon offerings?

23 **A** Yes.

24 **Q** I think earlier you mentioned that you were
25 reluctant, with respect to the underwriter counsel kind

1 of set up that Mr. Lawson had proposed, is that right?

2 **A** Yes.

3 **Q** Why were you reluctant?

4 **A** Well, it wasn't because of my capabilities or
5 my -- I didn't want to take on the responsibility
6 necessarily of serving as counsel. I didn't think that --
7 - I thought I was up to the task of doing it, but -- and
8 I certainly have experience from, you know, working in
9 past -- many, many transactions and reviewing the
10 documents and commenting on them and such.

11 So I -- I just didn't -- I would -- I liked
12 where I was as an investment banker. I would have
13 preferred to stay in that capacity. I came into the firm
14 with the understanding that that was going to be my
15 capacity, and I was just a little frustrated, maybe more
16 than frustrated, that it kind of got switched. It was --
17 I'm not sure if -- I don't know -- I wouldn't say that he
18 intentionally thought of it as a bait and switch, but we
19 started in one set of understandings with talking about a
20 monthly consulting fee with maybe a bonus, and then it
21 just kind of morphed into this other arrangement.

22 And that was not the direction I saw it going,
23 and I -- I didn't see that coming, is the phrase I guess
24 you hear a lot. I didn't see it coming, and then it was
25 presented pretty much as a de factor. You know, that was

1 kind of his suggestion as to how he would like to handle
2 it.

3 And there didn't seem to be -- you know, we
4 talked about building a larger investment banking staff.
5 Everything was family run and family owned at the time.
6 I brought a couple of people into the firm in different
7 capacities. Ultimately, some of them left, too, out of
8 frustrations of dealing with the family. And I had built
9 up quite a bit of frustration myself in dealing with the
10 family, too, so it was just a matter of time before we
11 just parted company. I mean, it wasn't anything
12 specific.

13 **Q** Did the reluctance that you had in any way
14 relate to the fact that you weren't an active member of
15 any state bar?

16 **A** I know where you're going with that but, I
17 mean, I -- I considered myself a member in good standing
18 of the bar in Pennsylvania. I didn't think of it as
19 operating, really, outside the lines because I was -- if
20 I felt I was going to go back and practice law in
21 Pennsylvania, I have applied again for reactivation of my
22 status. And I don't think -- there was no reason to
23 believe that I wouldn't have received it, I mean, because
24 it was -- I had had no disciplines ever in the time that
25 I served on an ongoing basis there.

1 But I was in Arizona, I was dealing with more
2 federal issues in terms of the financings or the
3 exemptions from it. So for that reason, I -- I mean, I
4 didn't take on other clients, I didn't hold myself out,
5 with the exception that I didn't hold myself out -- well,
6 I guess I did hold myself out but, I mean, in terms of
7 the financings that we worked on, that is the only time
8 that I worked on anything in a legal capacity from the
9 time that I went inactive still 'til today.

10 I mean, since I've left, I've continued to just
11 go back to the investment banking side of the deal, and I
12 don't hold myself out or want to be in that capacity. I
13 don't want to go back and reapply, only because it's not
14 what I want to do from a career standpoint or for the
15 rest of my time. So

16 Q And so when working as underwriter's counsel,
17 who was your client?

18 A Lawson Financial Corporation.

19 Q And Mr. Lawson was aware, as we have discussed,
20 that you hadn't practiced law since 1979?

21 A He had known me for 20-some years. He knew me
22 in the capacity of an investment banker, and he knew that
23 I was an attorney as well and that I had worked in the
24 securities-related fields of what I was doing now as a
25 banker. So, yes, he -- but he also knew that I wasn't

1 representing other people or other entities or holding
2 myself out as bond counsel or underwriter's counsel or
3 securities counsel to anybody else. Yes, he knew that.

4 Q And when you were working as underwriter's
5 counsel, were you also conducting investment banking
6 activities on behalf of Lawson Financial on these Brogdon
7 offerings?

8 A Absolutely. Yeah, in every one of them.

9 Q And did you ever have a conversation with Mr.
10 Lawson about the fact that you hadn't been conducting
11 legal work in the past 20 years when he asked you to
12 become underwriter's counsel?

13 A Well, conducting the legal work, I mean, in
14 terms of me having the individual responsibility for
15 either acting as underwriter's counsel or bond counsel,
16 which I had done in both situations prior to that, yes,
17 he was aware of that. He knew that I had been doing the
18 investment banking side, not the -- not the legal side.
19 He viewed them as, again, this kind of financing team
20 concept that he couldn't tell honestly, or maybe didn't
21 care, who did what in terms of the deals.

22 He wanted them to be put through and processed,
23 and whether I was wearing one hat or two he didn't seem
24 to much care. He didn't seem to have any -- any feeling
25 of uncomfortableness at all. I don't think it was

1 anything that I did or didn't do or I didn't have any
2 deficiencies, I don't think, in terms of what I did in
3 terms of representation of him to -- I provided him with
4 a numerous number of what I thought was advice and
5 insights that I thought should be implemented to improve
6 the firm, and almost routinely they were rejected.

7 So I became frustrated in that aspect, and then
8 I got frustrated because of the -- then very quickly it
9 was the compensation relationship. And then when -- at
10 various underwritings, something would happen, I'd say,
11 "I think that needs to be disclosed," and he didn't seem
12 to feel it was -- it was not my job, he'd take care of
13 it, and I don't need to know. I got answers like that
14 after a while, and I became, you know, exceedingly
15 frustrated with working with him on a day-to-day basis.

16 So --

17 Q Is there anything in particular in the course
18 of an underwriting that you recall where you told him
19 something needed to be disclosed and he disagreed with
20 you?

21 A Yes. There were a couple of offerings that --
22 there were probably more than a couple. You know, at
23 some point, I don't know where my -- whether I had an
24 obligation to -- I don't know that I formally had an
25 obligation to make a disclosure. I thought my obligation

1 was to advise him that he, as the broker-dealer, which I
2 was not party -- I hang my licenses there for securities
3 purposes, but he -- I had an independent relationship
4 with him.

5 And, as I said, there were times when I thought
6 he needed to have the -- the EMMA check or the credit,
7 you know, reviewed on a consistent basis. That was
8 rejected. I suggested either for his own sake and the
9 opportunity to do business to either increase -- go to
10 institutional accounts or form a partnership with
11 somebody.

12 There were a couple of financings where I -- a
13 couple that are in here that are really not Brogdon deals
14 but they sort of are and they aren't. I know that sounds
15 like a fuzzy answer, but the Cullman and Decatur deals
16 were unusual. The reserve funds were drawn down. I
17 thought disclosures needed to be made in those contexts.

18 I can point to other ones outside of the
19 Brogdon deals. I don't think -- those two are two of the
20 ones that come to mind. I don't know that I remember
21 seeing a whole lot of -- in some of the other Brogdon
22 deals, but there were other deals on the other side of
23 the ledger that we were talking about with FINRA that I
24 thought disclosures needed to be made in, and he did not
25 agree with me on those things. And that was very

1 concerning to me.
 2 So do you want specifics as to that or --
 3 Q Why don't we come back to that, some of those
 4 offerings, after lunch maybe? But in terms of just to
 5 finish up on the subject that we were -- I think talked
 6 about a couple of times now related to your conversations
 7 with Mr. Lawson about your prior legal work and your bar
 8 status. Do you recall a conversation with Mr. Lawson in
 9 which you told him that you were not an active member of
 10 any bar prior to serving as underwriter's counsel for any
 11 offerings?
 12 A It would have been almost immediately in the
 13 beginning. I mean, I said, you know, "Rob, as you know,
 14 I have been doing the investment banking side. I have my
 15 licenses with -- with Pennsylvania and the federal courts
 16 back east. I haven't practiced, actively practiced,
 17 rendering opinions. I have obviously been knee-deep in
 18 the documents for many, many years, but I'm on an
 19 inactive status, and I'd like to keep it that way. I
 20 don't necessarily want to practice or represent other
 21 clients." So, yes, I would have said I -- that was a
 22 discussion that we had fairly early on.
 23 And there was no -- there shouldn't have been
 24 any surprise or I didn't expect a reaction out of him,
 25 nor did I get one. It was just, okay, and that was, you

1 know, "Can you -- can you still perform this function?"
 2 I said, "Yeah, I think I can, but I'd prefer, you know,
 3 just to work out the -- you know, the financial
 4 arrangements beyond that. But if this is the only way
 5 that we can work it out, then, you know, I can take on
 6 some of that responsibility, too."
 7 Q And did you -- after that first conversation
 8 you had with Mr. Lawson about the issue with you serving
 9 as underwriter's counsel, did you ever subsequently raise
 10 with him concerns about you serving in that role as
 11 underwriter's counsel for subsequent offerings?
 12 A Not in a -- yes, in subsequent conversations,
 13 but not in specific -- well, this is the fourth or fifth
 14 or seventh one that we've done now, you know, I'd like to
 15 get out of this. I did have conversations in a general
 16 context of saying I would much rather slant this towards
 17 a consulting/bonus arrangement than a consulting/legal
 18 fee arrangement. It functionally probably would have
 19 worked the same way. He kept going back to the fact that
 20 then he would then have to -- you know, he would then
 21 have to reach out, maybe retain somebody else. He wasn't
 22 working with anybody else as closely. I knew the
 23 documents. I knew the -- you know, I knew the
 24 transactions, and I knew the clients. So just leave it -
 25 - you know, leave it the way it was.

1 Q Right. You mentioned earlier that you didn't
 2 assert privilege over any of the documents that you
 3 produced in connection with the staff's subpoena, is that
 4 right?
 5 A Yes. Yes, that's right, I didn't.
 6 Q Can you describe whether that decision related
 7 in any way to your inactive status as --
 8 A No. No, I -- that wasn't even a thought in
 9 that regard. I was -- what I was talking about was did -
 10 - was there any attorney-client privilege between Lawson
 11 and myself that I felt I had to keep confidential and
 12 away from disclosing anything to FINRA or the SEC. That
 13 was not -- that never came into the thought process,
 14 really.
 15 What I was talking about, was there anything
 16 that I was -- that I talked -- I mean, we're talking now
 17 about -- you know, you're asking me questions and I'm
 18 trying to answer truthfully about what I said or what I
 19 recommended to him as legal advice. But that was not --
 20 there was nothing in the way of documents or emails or
 21 anything there that I felt that I -- I hadn't said in
 22 previous times and talked to him about. So I -- I didn't
 23 -- I didn't -- first of all, I didn't think it was my
 24 privilege to exert anyway. I thought if he -- if he --
 25 he was the -- I think the client has the privilege, not

1 the attorney necessarily, so --
 2 Q And that was going to be my question. Did you
 3 consider yourself to have an attorney-client relationship
 4 with Mr. Lawson and Lawson Financial when you served as
 5 underwriter's counsel?
 6 A With Lawson Financial, I -- I would have -- I
 7 certainly considered it, but there was nothing that I did
 8 in any of those underwritings that I would have
 9 considered to be confidential in the sense of, I mean,
 10 maybe -- and even that, I thought those were more
 11 business judgment standpoints when we got back to saying,
 12 you know, you really ought to have a credit committee or
 13 you really ought to have a process.
 14 You know, but those -- I viewed those, to a
 15 large extent, very large extent, being a business
 16 suggestion to him and a regular -- I mean, whether it was
 17 legal or business, I said, "You know, this is what
 18 everybody else has. I think you should -- you know you
 19 have an obligation. I can't force you into doing it.
 20 I'm not even a member of the firm here at Lawson
 21 Financial. But if -- if I were you, this is what I would
 22 do." And he said, "Okay. Duly noted." And that would
 23 be the end of it.
 24 Now, I think he did exert some attorney-client
 25 privilege in the FINRA process, but I -- I don't know

1 what that was or what the claim was, so --
 2 Q -- Okay.
 3 A -- I had given them everything I had.
 4 MR. TUTOR: Okay. Let's take our lunch break.
 5 We are off the record at 12:52 p.m.
 6 (Whereupon, at 12:52 p.m., a lunch recess was
 7 taken.)
 8 AFTERNOON SESSION
 9 MR. TUTOR: Okay. We are back on the record at
 10 1:36 p.m.
 11 Mr. Lynch, I'd like to confirm that you and the
 12 staff have had no substantive conversations during the
 13 lunch break.
 14 THE WITNESS: That's correct.
 15 (SEC Exhibit No. 216 was marked
 16 for identification.)
 17 BY MR. TUTOR:
 18 Q Okay. Mr. Lynch, I'm handing you what has been
 19 marked as Exhibit 216, is the Lawson Financial Corp
 20 policies and procedures dated December 7, 2011, Bates
 21 Number Lawson-SEC-000188. I'll note for the record that
 22 this was produced by Lawson Financial Corporation. It is
 23 excerpts of the policies and procedures. It does not
 24 appear that we have a complete version.
 25 A All right.

1 Q Mr. Lynch, could you take a look at this
 2 document?
 3 A I'm looking at it, yes.
 4 Q Have you seen this before?
 5 A Yes, in its entirety. I'm not sure about the
 6 selected pages that we're going to be talking about. Due
 7 diligence, yes.
 8 Q And what do you recognize this to be?
 9 A Policies and procedure manual that the firm
 10 issues.
 11 Q And was this in effect during your time at
 12 Lawson Financial when you were underwriting deals related
 13 to Chris Brogdon?
 14 A Yes. I believe it was. It was 2011, so, yes,
 15 the answer would be yes.
 16 Q And do you recall receiving any training
 17 regarding these policies and procedures?
 18 A No.
 19 Q How did these come into your possession?
 20 A The entire document was probably handed to me
 21 at a compliance meeting, almost certainly was handed to
 22 me at some compliance meeting early on.
 23 Q Do you know who was in charge of the compliance
 24 meetings?
 25 A Pamela Lawson.

1 Q And would she have been the person who provided
 2 you with this document?
 3 A Probably, yes.
 4 Q Would this document have been discussed at a
 5 compliance meeting?
 6 A Not with any degree of specificity. The
 7 compliance meetings most often centered on sales issues,
 8 sales-related issues. There were occasionally
 9 administrative matters but not -- not to the extent of
 10 sales.
 11 Q Do you recall any discussions at compliance
 12 meetings regarding the underwriting of municipal
 13 securities?
 14 A No.
 15 BY MR. GREENWOOD:
 16 Q Were you required to review the written
 17 supervisory procedures of Lawson Financial?
 18 A Yes, I'm sure I said that I -- you know, I
 19 signed something that said that I received it, reviewed
 20 it, and signed it.
 21 Q And did you sign that document because you did
 22 in fact review and receive --
 23 A Yes, I would have --
 24 Q -- the policy --
 25 A I would have --

1 Q Let me just finish the question before you
 2 answer.
 3 A Sure.
 4 Q Did you sign the document related to the
 5 policies and procedures because you did review and
 6 receive them?
 7 A I did receive them. I reviewed them in --
 8 probably in a general context and not much more than that
 9 and would have signed the document to that effect. Had
 10 there been any discussion of the -- at least of the
 11 pertinent items that you're talking about here, I would
 12 say probably not. I don't have any independent
 13 recollection that we spent much time talking about them.
 14 Q And before we focus on the specific items, as a
 15 general matter, were you required to certify on a
 16 periodic basis that you had reviewed and received the
 17 policies and procedures of Lawson Financial?
 18 A Yes.
 19 Q And how often was that?
 20 A I believe it was annually at a compliance
 21 meeting.
 22 Q Okay.
 23 A Which lasted about an hour or so or two mostly.
 24 Q And did you sign the document -- did you
 25 provide your signature at the compliance meeting or

1 subsequent to the compliance meeting?
 2 A Probably depended on the year. I don't think
 3 this particular document was reissued every year. I
 4 don't know that we got a new one yearly, but the
 5 signature was predominantly that you had attended the
 6 meeting and you were subject to the compliance
 7 discussions that were held that year, that you had met
 8 the obligation, the regulatory obligation, had been
 9 involved in the compliance meeting, that you were there
 10 and present.
 11 Q And putting aside your attendance at the
 12 compliance meeting, I guess I'm trying to understand
 13 whether you annually certified that you had reviewed and
 14 received the written supervisory procedures themselves.
 15 Did you provide that kind of annual certification or not?
 16 A There was only one signature that was required,
 17 and I -- I'd have to go back and review it to be able to
 18 say specifically what it said. But the -- when you say
 19 it's an excerpt, I think this thing was about "this"
 20 thick. I mean, it was multiple inches thick and I don't
 21 -- I don't think it was updated on a regular basis. This
 22 could be the most recent copy for all I know. So I -- if
 23 I saw it, I probably received a copy of it once or twice
 24 in five years maybe.
 25 Q During the course of the five years you were at

1 Lawson Financial, did you receive multiple versions of
 2 the written supervisory procedures?
 3 A I probably -- if it had changed, and I don't
 4 know that it had changed very much from one year to the
 5 next, so I -- I mean, I can't tell you that I received
 6 five copies of it because I didn't. I didn't receive
 7 five copies of it for the years that I was there, but I
 8 received one when I went to the first annual compliance
 9 meeting.
 10 I believe we got another one somewhere during
 11 that process, but I couldn't be absolutely certain of
 12 that. There was handouts at all of these meetings. I
 13 know that I did receive the -- at least once, and maybe
 14 twice, but probably no more than that in terms of the
 15 compliance manual.
 16 BY MR. TUTOR:
 17 Q And so did you follow these policies and
 18 procedures when conducting due diligence on municipal
 19 securities underwritings?
 20 A I'd have to review this a little bit more in
 21 detail, then, to be able to just say yes or no.
 22 Q Okay.
 23 A Did we use this as the checklist or something?
 24 I would say no, that that was not the case. But --
 25 Q Well, directing your attention to the table of

1 contents, it's Bates Number Lawson-SEC-000203.
 2 And for the record, the Bates range of the
 3 entire document is Lawson-SEC-000188 to Lawson-SEC-
 4 000221.
 5 A I'm looking at the table of contents. If you
 6 can refer me to the section that you're looking. Your --
 7 Q Sure.
 8 A Yours and mine doesn't seem to match up, to be
 9 honest.
 10 Q So I'm on the -- it's page Roman numeral
 11 fifteen. And looking at Section 18, it appears --
 12 A Okay.
 13 Q -- numbered Section 18 applies to municipal
 14 securities.
 15 A I'm almost there. Okay. Yeah.
 16 Q Okay. So, now, turning to the contents of the
 17 document, to the excerpt, we have 18.6, it's
 18 underwriting.
 19 A Right.
 20 Q So were these the policies and procedures that
 21 related to the underwriting of municipal securities?
 22 (Witness reviewing document.)
 23 A Yes.
 24 Q So, Mr. Lynch, in 18.6, there is no separately
 25 enumerated section for due diligence, correct?

1 A No, there isn't.
 2 Q 18.6.1 does list disclosure requirements, and
 3 it references SEC Rule 15c2-12 --
 4 A Right.
 5 Q -- correct?
 6 A Yes.
 7 Q And did you understand that that rule applied
 8 to Lawson Financial in its due diligence regarding the
 9 Brogdon offerings?
 10 A Yes.
 11 Q And that states in the second full paragraph,
 12 quote, "The SEC has issued interpretive guidance that
 13 states that the final official statement must disclose
 14 instances of noncompliance" --
 15 A Wait a minute. Okay. Are you down here at the
 16 bottom of the paragraph? Okay.
 17 Q Yes.
 18 A Okay.
 19 Q "Over the past five years, when material, an
 20 underwriter may not be able to reasonably rely on the
 21 issuer's certifications of compliance if that issuer has
 22 a history of noncompliance; in those circumstances, the
 23 underwriter must independently determine compliance. A
 24 finding of continued noncompliance can preclude the
 25 underwriter from relying on an issuer's future continuing

1 disclosure undertakings." Do you see that, Mr. Lynch?

2 A I do. I do see that.

3 Q And is that something that you followed while

4 at Lawson Financial?

5 A I would say yes.

6 Q And does that -- is your understanding that

7 that provision just provides to issuers or does it also

8 provide to borrowers or other obligated persons?

9 A The requirement to perform disclosure

10 requirements?

11 Q The requirement to disclose instances of

12 noncompliance over the past five years.

13 A I'm trying to think of an instance that -- that

14 that came up where -- well, I'm uncertain about the

15 question you're asking. Are you asking, is there a

16 responsibility on the underwriter to do that? Is that

17 what you're asking, or are you saying --

18 Q I'm asking about the responsibility of the

19 borrower. We -- we can move on.

20 A Well, I -- I think there is a responsibility to

21 the borrower. This was my point earlier about the

22 underwriter also having a responsibility in that context.

23 Q That the underwriter may be required to

24 independently determine -- to determine compliance with

25 prior continuing disclosure obligations.

1 A Right. But you're -- specifically, you were

2 talking about language of repeated noncompliance and how

3 you cannot -- the underwriter could then not

4 independently rely on that issuer. And I would agree

5 with that and say that this was my point that I was

6 discussing earlier about the firm having a responsibility

7 to do that.

8 Q And when conducting due diligence in any

9 subsequent offering, is it your understanding that the

10 firm has to make an independent determination regarding

11 the borrower?

12 A Yes. I would say the answer is yes to that.

13 Q Okay. Directing your attention to 18.6.1.1,

14 obligations when the firm acts as a senior syndicate

15 manager or sole underwriter, and then what follows is a

16 list of bullets of Lawson Financial Corporation's

17 requirements. Do you see those?

18 A Yes, I do.

19 Q Did you follow these requirements when

20 conducting due diligence on Brogdon-related offerings?

21 A Let me read them again.

22 (Witness reviewing document.)

23 Yes, I would say that we -- we did comply with

24 this. I would say on some issues, if we found that

25 something was outstanding and had not been disclosed, or

1 at least disclosed on a timely basis, we required that

2 the disclosure be made before going to a subsequent

3 offering.

4 Q And directing your attention to the final

5 bullet, which appears on page 379, that requirement is,

6 quote, "Review the public record of filings with EMMA."

7 A Um-hmm, yes.

8 Q Is that something that you did on every issue?

9 A Do you mean me personally or Lawson Financial?

10 Q Oh, you personally. Did you review the record

11 -- the public record of filings with EMMA for every --

12 A No. I don't think I --

13 Q -- offering?

14 A -- did personally review filings on every

15 offering when we went to closing, no.

16 Q Do you know if anyone at Lawson Financial did?

17 A I -- I know that when we found something that

18 was missing or that had not been complied with or that

19 they owed financial information or some other related

20 matter, we asked that they produce it before closing.

21 And they -- they did I think, I mean as far as I -- I

22 know. I can't think of an instance, at least personally,

23 that I can say they -- we went to closing and closed it

24 without having the filings made.

25 But going back and checking the record to see

1 if those were filed, I can't say that I did that. I

2 didn't do that.

3 Q My question is: whose responsibility at Lawson

4 Financial was it to review the public record of filings

5 with EMMA?

6 A As I said to you at the beginning here with

7 18.6, it says the designated supervisor, and I don't know

8 who that would have been at Lawson Financial. I would

9 put that in the hands of Robert Lawson, I would think,

10 more so than anybody else, because if it wasn't him he

11 would have to have delegated it, and I don't know that he

12 made that delegation to anybody else.

13 Q And in the course of conducting due diligence

14 on an underwriting, would you discuss these obligations

15 that are listed in 18.6.1 with Mr. Lawson?

16 A Yes. As I said, sometimes things would come to

17 our attention that something had not been filed. I can't

18 -- I don't have as much of a recollection of that

19 happening with any regularity in the Brogdon deals, but I

20 do -- I can think of a couple of other situations that a

21 filing had not been made and it was -- it was brought to

22 our attention and we asked for that to be done before the

23 closing would occur.

24 And so it was -- I don't know that -- I'm

25 assuming that it -- I'm making a little bit of an

1 assumption here that it would have been posted on EMMA,
2 but we would receive the document. If it was a financial
3 statement or a quarterly statement or some disclosure, we
4 would have seen evidence that it had been prepared, and
5 then various people might have filed it. We didn't
6 personally file, at least I didn't and the Lawson firm
7 didn't file those types of documents. It would probably
8 would have been counsel for one of them.

9 Q And you wouldn't check after the fact to see if
10 those documents had been filed on EMMA, is that correct?

11 A I did not make that check, no. I would have --
12 well, certainly the bond counsel would have been the one
13 that would have probably been most likely to have made
14 that check, so that he was comfortable giving an opinion
15 on it.

16 BY MR. GREENWOOD:

17 Q But I think we're -- Mr. Lynch, we're looking
18 at policies and procedures related to --

19 A Right.

20 Q -- the underwriters' responsibilities in
21 connection with the underwriting, right?

22 A Right.

23 Q Sounds like there was no such check, to the
24 best of your recollection, with respect to --

25 A No.

1 prior continuing disclosure undertakings?

2 A I think on a couple of occasions there were
3 situations. The NAB was one of them. But I think in all
4 instances I believe we got the updated information from
5 him or an explanation as to -- it was usually an
6 explanation as to why it hadn't been filed.

7 I didn't -- I don't have any independent
8 recollection of something saying that they -- they
9 couldn't produce it or that they didn't produce it. It
10 was usually financials that -- in most -- most of these
11 cases, and I may be generalizing here too much, but in
12 non-Brogdon or Brogdon deals when things bubbled up to
13 the point of something being missing before the -- a new
14 offering being done, it was usually the case of oversight
15 more than an intentional failure to file or anything like
16 that. It was usually that the financials or some
17 disclosure item should have been made, and they just
18 didn't make it in a timely way. So it was corrected
19 usually at that point.

20 Q And for the Brogdon offerings for which there
21 was an issue of prior noncompliance, it's your
22 recollection that Mr. Brogdon or one of his attorneys
23 provided an explanation for that prior noncompliance?

24 A Yes. That would be correct. I don't -- I
25 don't remember them being in a repetitive noncompliance.

1 Q -- the Brogdon offer?

2 A I would say that that was correct.

3 Q Okay.

4 A I mean, I'd like to say that I knew exactly who
5 that was and that there was an area that somebody had
6 that responsibility, but, as I said earlier, I can't
7 point to anybody in specifics. I don't -- I don't
8 believe Lawson did it himself personally, Mr. Lawson, and
9 I don't know that, although it was suggested, no one ever
10 came to me.

11 Although I had these conversations with Lawson,
12 Mr. Lawson, he never said, "Well, that's -- we're
13 handling that in trading" or "we're handling -- Nick is
14 doing that" or whoever was designated. So I would say it
15 was discussed. I don't think we left things unaccounted
16 for, but I -- I do not know who, if anybody, reviewed the
17 public record of filings with EMMA after the fact.

18 Q Okay. And how many Brogdon offerings did you
19 work on the due diligence for?

20 A I'm guessing, but, I mean, it's an educated
21 guess, I would say probably 10 to 12, something like
22 that.

23 Q Okay. In connection with your due diligence on
24 any of those 10 to 12 offerings, did you ever have an
25 indication that Mr. Brogdon had failed to comply with

1 I mean, it wasn't -- I didn't ever have the feeling that
2 -- that there was something, you know, systematically
3 wrong with Brogdon or his financings that they weren't
4 disclosing things.

5 Q But you yourself never checked EMMA to confirm
6 that compliance, right?

7 A Yeah, I did not -- I did not check EMMA to -- I
8 didn't -- I did not check EMMA to do those things, no.

9 Q And you're not aware of other people at Lawson
10 financial performing those checks either?

11 A I am personally not aware of that either. We
12 have had that. I mean, not we, but I had that discussion
13 about having a department to do that, but -- and I told
14 Lawson that I was not taking on the responsibility for
15 the firm to do it, but I thought it really should be done
16 and needed to be done.

17 MR. GREENWOOD: Okay.

18 BY MR. TUTOR:

19 Q Okay. Mr. Lynch, we'd like to -- I'm handing
20 you what has previously been marked as Exhibit 73.

21 A Um-hmm.

22 Q Do you recognize this document? Sorry. For
23 the record, this is the Medical Clinic Board of the City
24 of Hoover Official Statement dated June 22, 2010. The
25 Bates range is F000035 to F000174. Mr. Lynch, do you

1 recognize this document?
 2 A Yes.
 3 Q And what do you recognize it to be?
 4 A The official statement of an offering for a
 5 facility called Riverchase Village.
 6 Q And did you work on this official statement?
 7 A Yes, I did.
 8 Q And what was your role?
 9 A Investment banker and counsel to Lawson
 10 Financial Corporation.
 11 Q And was this the first -- well, was this the
 12 first Brogdon-related offering that you worked on?
 13 A I don't know. I mean, I'd have to go back to
 14 the list again and see. But probably one of them. It
 15 looks like 2010, so I'm willing -- willing to say it
 16 probably was one of the first.
 17 Q Directing your attention to the page Bates
 18 numbered F000038, the parties associated with this
 19 financing --
 20 A Right.
 21 Q -- the lessee on this issuance is Riverchase
 22 Village ADK, LLC, correct?
 23 A Right. ADK is a public health care company.
 24 Q And was Brogdon affiliated with Riverchase
 25 Village ADK?

1 A Yes.
 2 Q In fact, he was the manager and the sole member
 3 of the lessee, correct?
 4 A I would say that's -- yeah, I didn't make -- I
 5 mean, I can't independently confirm that, but I -- I
 6 believe so, yes.
 7 Q Yeah. Direct your attention to page 3 and the
 8 section Ownership and Management of the Lessee. It
 9 states, quote, "Christopher F. Brogdon is currently the
 10 manager and sole member of the lessee."
 11 A Yes. Okay. My hesitation was that Brogdon
 12 moved around in various capacities in different deals,
 13 so, I mean, to just say yes would have -- I had to look
 14 at it a little bit here. He was also on the board of
 15 ADK Health Systems, Inc., which appears at the bottom of
 16 page 3 and was I believe the guarantor of this particular
 17 financing.
 18 Q Okay. Turning back to the list of parties
 19 associated with the financing --
 20 A Yes.
 21 Q -- we were discussing these parties earlier,
 22 but I was hoping we could go through them here. So what
 23 was the bond counsel's role in this transaction?
 24 A Well, as in almost all -- or all transactions,
 25 ultimately you're doing a tax-exempt financing and you're

1 being -- the bond counsel is preparing the most basic of
 2 the documents that are involved in it, and whether that's
 3 the trust indenture and the loan agreements, leases, and
 4 things of that nature, that provide the credit support
 5 for the transaction.
 6 And then, at the end of that process when they
 7 are satisfied that all items have been accounted for and
 8 met, they deliver an opinion, speaking to the tax-exempt
 9 nature of the instrument, the securities being sold. And
 10 that would have been Sell & Melton in this case, and Chix
 11 Miller in particular.
 12 Q Going down, how about the -- the trustee is
 13 listed as Bank of Oklahoma.
 14 A Yes.
 15 Q What was Bank of Oklahoma's role?
 16 A Corporate trust or trustee, bond trustee.
 17 Q And who did you work with at Bank of Oklahoma?
 18 A At this particular time, it would have been --
 19 there were a group of people, but the primary person was
 20 Marrien -- senior moments, Marrien Neilson. Marrien
 21 Nielson. She was a senior vice president in the corporate
 22 trust area and --
 23 Q Did Ms. Neilson's involvement change over time?
 24 A Yes. Yes, she was -- she was a corporate trust
 25 officer when I first met her. They then opened an office

1 in Phoenix. She worked as a senior vice president for a
 2 period of time. I think she was up for the head of the
 3 department at one stage, and at that time she did not get
 4 it and another -- I think a gentleman got it. I can't
 5 remember his name. And so she was asked to -- she had
 6 been with the bank for 30 years I think, and she was then
 7 asked to basically write her own job description, and she
 8 did.
 9 And it was a senior vice president, but instead
 10 of just doing the direct corporate trust or bond trust
 11 work, she was then -- she designated or they designated
 12 her, after she requested it, to be more of a sales
 13 originator and salesperson for the -- for the department.
 14
 15 So she became more active in I guess soliciting
 16 the business, and I had submitted to play with her
 17 because they decided during that time to open a Phoenix
 18 office and they asked for me to make suggestions about
 19 who they might hire in that capacity, which I did help
 20 work on for them.
 21 Q But throughout your time at Lawson Financial,
 22 would you continue to have interactions with Ms. Neilson
 23 regarding the Brogdon-related offerings?
 24 A Yes. She was very much the point person for --
 25 I mean, I've done a number of offerings at Bank of

1 Oklahoma and charter schools and other areas, and she is
 2 not involved in those. She has attended association --
 3 like chart school associations and other meetings of a
 4 general nature, but she was coming in that case in a
 5 sales capacity. But in terms of the Brogdon
 6 relationship, she was the point person and lead trustee
 7 that -- that handled his -- his accounts.

8 Q And going down the list, the independent
 9 accountants are listed as Laney, Boteler, and Killinger?

10 A Yes. And that was Wink Laney that I was
 11 referring to earlier.

12 Q And that's who we were discussing previously,
 13 correct?

14 A Yes, correct.

15 Q And Lawson Financial Corporation is listed as
 16 the underwriter.

17 A Um-hmm.

18 Q Correct? And you're listed as the
 19 underwriter's counsel.

20 A Right.

21 Q And so what do you recall doing in terms of due
 22 diligence on this offering?

23 A Again, back to very much what I was talking
 24 about before, I -- I mean, I don't remember. I think I
 25 physically went to this building, at least I -- I believe

1 it's the one. This is in Birmingham, I believe. No, this
 2 is in Hoover. Well, I went to the building and reviewed
 3 the documents that I was referring to before about the --
 4 the appraisals, and the financials would have come much
 5 later from Wink Laney.

6 But in the initial going, it would have -- it
 7 would have really been documents specifically related to
 8 the real estate, the environmental aspects of it, and
 9 then, as we would get into the transaction, we would
 10 start looking at the -- the operational aspects of it as
 11 to who was -- who was physically going to own the
 12 property, who was going to manage it, the relationships
 13 between those parties, things of that nature.

14 We usually, in the Brogdon deals, did not have
 15 very much relationship -- I didn't personally have very
 16 much relationship with the issuer's counsel or the
 17 issuers. Those were usually selected by Mr. Miller, and
 18 he, on behalf of the project, would attend those meetings
 19 with Mr. Brogdon and they would get the issuers'
 20 approvals. We wouldn't physically be at those things.
 21 But I think in this particular case and a number of
 22 others, I did go to see the building and -- and, you
 23 know, walk the property and things of that nature.

24 Q And what other due diligence do you recall
 25 performing on this offering, if any?

1 A Well, I think we looked at -- I would have
 2 looked into ADK, what his relationship was with it.

3 Q When you say "his," who are you referring to?

4 A Mr. Brogdon. I'm sorry.

5 Q Would you have conducted due diligence on Mr.
 6 Brogdon?

7 A Yes. I mean, we would have -- well, to a --
 8 yes, but, again, as I -- I was introduced into this
 9 grouping as them being together for quite some time, and
 10 that there was, to some degree, a -- I guess I may have
 11 been the only person that had not been involved in prior
 12 financings in that regard.

13 So I was given assurances by everybody about,
 14 you know, Mr. Brogdon and some of the successes that he
 15 had had, and that this was a regular occurrence that I
 16 would probably see. I did ask questions about ADK and
 17 what his relationship was with those, and then we got
 18 into the competitive aspects of the facility and such,
 19 things of that nature.

20 BY MR. GREENWOOD:

21 Q Yes, sir. You mentioned earlier that Mr.
 22 Brogdon was involved with National Assistance Bureau, is
 23 that right?

24 A Yes.

25 Q Did you know that at the time of this offering?

1 A No. I don't think so.

2 Q Okay. When did you learn about that?

3 A I think just when one of the offerings came up
 4 with National Assistance Bureau. I don't think it was --
 5 it was not something -- I would be surprised if there's
 6 anything in here that discusses National Assistance
 7 Bureau, unless it was

8 Q Right. And turning to page 3 or Bates Number
 9 F000047, which is the section on the lessee, right?

10 A Yes.

11 Q And that section doesn't describe National
 12 Assistance Bureau or Mr. Brogdon's affiliation or Mr.
 13 Brogdon's affiliation with National Assistance Bureau?

14 A No. But it -- you know, it doesn't say
 15 anything about Gordon Jensen and Saint Simons Healthcare
 16 and any number of other entities that he had. These were
 17 are all project financing, so you were generally focused
 18 on those entities that were involved in the deal.

19 Q You became aware of issues related to
 20 noncompliance with continuing disclosure undertakings for
 21 National Assistance Bureau, right?

22 A That was later. Yeah, that -- that was
 23 definitely later.

24 Q Was the noncompliance later, or you just found
 25 out about the noncompliance later?

1 A No. I -- I didn't even know about National
2 Assistance Bureau at the time that we would have done
3 this offering at all.

4 Q Okay. When you learned about National
5 Assistance Bureau, did you learn about prior
6 noncompliance with continuing disclosure undertakings at
7 a point prior to the Riverchase issuance?

8 A No. I don't -- I don't think so, no. When --
9 I mean, I would have had no way of knowing, I don't
10 think, to have made the connection between Brogdon,
11 National Assistance Bureau, until they surfaced in a deal
12 that he brought them to the table, and it was at that
13 point that we looked into some of the -- the entity and
14 the issues of bankruptcy, and so forth, and so that --
15 that's when I became aware of it, not -- not at this
16 time.

17 Q Would you have wanted to know about that prior
18 relationship with other entities that had been in
19 bankruptcy at the time of this offering, the Riverchase
20 offering?

21 A It would typically not come up. I mean, you
22 could ask a general question, but, I mean, it would --
23 there was no reason for me to believe that there even was
24 an entity known as National Assistance Bureau or that --
25 that Chris had any involvement with it, and so on. So --

1 Q -- fines and --

2 A Yes.

3 Q -- bar?

4 A I don't think -- at that time, I was not aware
5 that he had been barred. He -- there was an admission
6 that he had missed the capital -- let me see if I can --
7 well, I -- let's go back in here and see. Do you have a
8 table of contents in this one? We do.

9 This is one of the earlier ones, and I believe
10 that it was -- there should be something in here with
11 relationships to other parties. And in that context, I
12 think there was a disclosure made, and there was a
13 representation, at least by Chris and his counsel, that
14 there was nothing that was ever said until much later
15 that he had been barred from the industry. There was a
16 fine that was paid, and that disclosure was made in here.

17 Q So it's your belief that there is some sort of
18 disclosure related to Mr. Brogdon's prior fine in this
19 disclosure document?

20 A I think -- I think that there is. Let me see
21 if I can get back to it. There is usually -- if there is
22 something to be discussed in terms of a -- either a
23 conflict or something that needs to be --

24 Q There's like a certain relationship section on
25 page 28, but I don't think I see a reference to Mr.

1 Q I understand. I guess I'm just trying to get
2 at whether that's information you would have wanted to
3 know as someone who is conducting the underwriting for an
4 offering.

5 A Oh, sure. I mean, I probably would have done -
6 - I think -- I think, and I would admit to that to some
7 degree, that there was -- probably Chris got more of a
8 pass in some of these areas because when you start into
9 any financing, or any relationship with somebody, I was
10 told, you know, Marrien spoke highly of him, Rob Lawson
11 spoke highly of him, Wink Laney, the bond counsel,
12 everybody had been working with him and held him in high
13 regard, and there was no mention of any failures to
14 disclose anything or issues with regard to Chris.

15 The only thing that I think came out at -- I'd
16 have to go back and see in this thing. I -- this may
17 have been one of the earlier deals. There was a
18 disclosure, as I said, about the -- the capital
19 compliance issue, and that he had been fined, and that
20 was -- and I did ask if there was anything else that was,
21 you know, hanging around in the history. And I was told
22 by Chris that there really wasn't, that this was just
23 something that -- so --

24 Q You're referring to Mr. Brogdon's prior NASD --

25 A Yes.

1 Brogdon's fine there.

2 A No, I don't either. I'm just looking at that,
3 too. Well, I know in some of the earlier financings --
4 and if this is the earliest, I'm a little surprised that
5 there isn't something -- but there was some discussion of
6 this disclosure of the fine and the fact that he had paid
7 it and it was a capital requirement.

8 I am not seeing it here, and I'm a little
9 surprised at that, so there must have been earlier ones
10 that we must have done that dealt with that issue. But -
11 -

12 Q I think you testified that you recall some sort
13 of discussion or determination by Mr. Brogdon's counsel
14 not to include that information in subsequent offerings?

15 A No. We had a discussion about it, about how
16 relevant it was, and so at some point -- and I didn't
17 think it was the earliest one for sure, because I think
18 we made that disclosure in a couple of -- of the
19 offerings, and then the question came up about whether
20 that was really germane to anything anymore because it
21 had been so far removed in time, and that it was more of
22 an administrative assessment. He paid -- you know, he
23 was fined and paid the fine, was what the disclosure was,
24 and that it was in another -- you know, in another
25 business, so it was passed on at that point because of

1 that.

2 BY MR. TUTOR:

3 Q Directing your attention to page 12, the

4 estimated sources and uses of funds, who prepared the

5 sources and uses of funds for Brogdon-related offerings?

6 A Probably me.

7 Q And so what sort of due diligence would you do

8 on it if you hadn't -- well, do you recall preparing this

9 estimated sources and uses of funds?

10 A What page are you on, 12?

11 Q On page 12.

12 A Yes. What's the question? I probably did

13 prepare this.

14 Q Do you recall preparing this?

15 A Yes.

16 Q And so how are the amounts determined, such as

17 the project rehabilitation amount?

18 A Well, that would have been a construction-

19 related item. This was the purchase of an existing

20 facility, and they were going to rehab it, so there would

21 have been contracts I guess let -- let on that, and so

22 the estimates -- the early estimates would probably have

23 been provided by Brogdon as the operator, but there would

24 have been contracts let for that.

25 Q And what sort of due diligence would you have

1 done on those estimates?

2 A We would have looked for the -- you know,

3 probably looked to a contract or something to see what --

4 what was there.

5 Q What about --

6 A A lot of times those are -- I wouldn't say

7 they're ballparked, but, I mean, they're -- that when

8 you're typically doing a financing like this, if

9 anything, you're going to overestimate as opposed to

10 underestimate, because you -- if that isn't sufficient

11 financing to accomplish what you're looking for, you

12 often can't go back to the market to do it again.

13 So the value of the purchase would have been

14 discussed in the acquisition of the facility, and it

15 would have been a purchase and sale agreement. And the

16 renovations, I would have assumed we would have had

17 something on a construction basis on that.

18 Q What about the debt service reserve, what is

19 that?

20 A That was something that we discussed earlier.

21 That's an amount of money that is set aside for -- for --

22 it's to protect the bondholders in the event that there

23 is a shortfall in the operation of the facility, and

24 there is an inability from the project to pay the -- to

25 pay the debt service.

1 So if you -- if need be, you can draw on that

2 debt service amount to pay the -- the outstanding debt

3 service that is coming due, and that fund usually has to

4 be replenished at some point.

5 The cost of issuance I just -- those I would

6 check with each one of the professionals that was working

7 on the deal and put an amount money in for that, too.

8 Q Do you recall who drafted the continuing

9 disclosure agreement for this offering?

10 A I don't. I mean, it could have been -- it

11 could have been me and it could have been Miller. I'm

12 not sure.

13 Q Directing your attention to page 30, which

14 contains the continuing disclosure obligation, on the

15 first full paragraph on page 31 it states, quote, "While

16 any Series 2010 bonds are outstanding, the lessee will

17 provide the annual financial information not more than

18 180 days after the end of the fiscal year (the 'report

19 date'), beginning in 2011, to each then-existing NRMSIR

20 and the SID, if any." Is that a general -- is that a

21 typical provision for one of the Brogdon offerings?

22 A Yes. And probably many others as well.

23 Q Going down, it states, quote -- well, it lists

24 a number of material events which, if they occur, the

25 lessee is required to provide the material event notice

1 in a timely manner. Do you see that paragraph?

2 A Yes, I do.

3 Q And it lists, among other things, under Roman

4 numeral three, a draw on any debt service reserve fund.

5 A Right.

6 Q Is it your understanding that a material event

7 occurs that requires a notice any time there is a draw on

8 a debt service reserve fund for the Hoover Riverchase

9 offering?

10 A Yes. I would imagine it would, yeah, that

11 would be true. I think it would be one of the first

12 signs of trouble that -- that the project was not --

13 either not doing well or that the -- that the project

14 wasn't able to pay for the current debt service and was

15 asking for a draw on that, and then the only one that

16 would ask for that would be the operator. And they would

17 make that request of -- of the trustee.

18 Q Is information about a debt service reserve

19 fund information that you would want to know in

20 conducting future underwritings for the same borrower?

21 A That they had drawn on the debt service

22 reserve, yes.

23 Q Yes.

24 A You would want to know that, yes.

25 Q And why is that?

1 A Well, it would raise the concern that, as we
2 just said, that there may be a shortfall. And it could
3 be a shortfall just in a project, and I think there were
4 some -- well, I'm not speaking to this -- there could be
5 a draw on a debt service reserve if it's replenished,
6 which is not that uncommon. I mean, it's not common,
7 but, I mean, it does happen on occasion.

8 As long as it has been refunded and
9 replenished, it is not a -- I mean, you'd have to
10 disclose it as a continuing -- "continuing" means
11 continuing from the time of the financing occurring. But
12 once that has been disclosed, you wouldn't necessarily
13 continue to make that disclosure over and over and over
14 again, saying that, you know, a project had -- had a
15 shortfall, and it had a shortfall in 2010 and you're
16 doing a transaction in 2015.

17 You go, oh, by the way, there was a shortfall
18 in another project that he related. I haven't -- I have
19 almost never seen that in a document, to be honest with
20 you, that once it's disclosed it doesn't usually get
21 continually disclosed unless there is a pattern of
22 activity like that.

23 Q I'm not sure I'm following. You're saying that
24 material event notices are not typically filed in your
25 experience multiple times after a debt service reserve

1 is an event of default unless you've cured it and within
2 some period of time.

3 Sometimes they -- a draw on that needs to be
4 disclosed. But if -- there may be -- dealing with issues
5 right now, sometimes you give somebody 12 months to
6 replenish it, 6 months to replenish it, it just depends
7 on the project itself. There is no hard-and-fast rule on
8 that, but it -- it always -- debt service reserves always
9 need to be replenished. Other reserves, like an
10 operating reserve or something like that, it can be drawn
11 down and not necessarily replenished again.

12 So -- so I'd say yes, if -- if it was -- if it
13 was hit for purposes of paying debt service, that would
14 be a disclosure.

15 Q And were you aware of any failures to replenish
16 debt service reserve funds for any of the Brogdon
17 offerings that you worked on?

18 A That he hit the debt service reserve fund for a
19 -- for a draw on it?

20 Q Either that Mr. Brogdon drew on a debt service
21 reserve fund or that he drew on a debt service reserve
22 fund and then did not replenish.

23 A I don't -- I don't --

24 Q Why don't we take them one by one.

25 A Yeah. Okay.

1 fund has been drawn down that --

2 A No. If -- well, maybe by way of example, if --
3 if some -- if a project had the debt service reserve
4 drawn on, that disclosure should and needs to be made.
5 And if -- if there's a second draw, another disclosure I
6 would think would have to be made. A disclosure that the
7 debt service reserve fund is depleted would have to be
8 made. But I don't know that once that disclosure is made
9 that you continue to disclose that in future years unless
10 there was some really repetitive behavior that went on
11 that would lead you to believe that that was a pattern of
12 activity, that project after project after project had
13 problems in it.

14 BY MR. GREENWOOD:

15 Q For the Brogdon offerings, was the failure to
16 replenish the debt service reserve fund an event of
17 default?

18 A I would say yes. I would say yes on that.

19 Q And why would you say that?

20 A Well, I mean, any document can be written
21 differently, but typically a -- a draw on the debt
22 service reserve fund -- I mean, sometimes they will call
23 it a technical default and other times it's capital, you
24 know, event of default, which means it's -- it's a major
25 default, but usually drawing on the debt service reserve

1 Q So were you aware that Mr. Brogdon ever drew
2 down on a debt service reserve fund?

3 A I wouldn't call him sloppy, but there were a
4 couple of instances where a payment was missed, and I
5 mean by a matter of days, and it was -- it was due on the
6 1st, and we got it on the 3rd and sometimes -- so he did
7 miss a payment occasionally, but not on various projects.

8 I don't recall him -- I honestly don't recall
9 him dipping into the debt service reserve. But if he
10 did, I don't know if you have the -- the Cullman and
11 Decatur deals, that one was -- there were some -- he was
12 not directly involved in that in the beginning, but those
13 were situations that he was asked to get himself involved
14 later, and they did have one -- one of those two
15 facilities, the Cullman facility I believe, was -- was
16 running operating deficits, and that one not only hit the
17 debt service reserve but depleted it.

18 Q Let's put aside the Cullman and Decatur offers
19 for a minute.

20 A Right.

21 Q Do you recall Mr. Brogdon drawing down on debt
22 service reserve funds for any other offerings in which
23 you knew him to be involved?

24 A Not -- nothing is coming to mind that I can
25 say, "Oh, yeah, I remember Riverchase" or it was, you

1 know, one in particular, no --

2 Q Okay.

3 A -I don't. He may have, but I -- I don't

4 remember.

5 Q And why do you say he may have?

6 A Well, I'm saying he -- well, first of all, once

7 the offering is done -- this goes back to the EMMA

8 disclosures and things people should be checking on those

9 I think, but I -- that's a full-time job if you did 15 to

10 20 offerings a year and you were going back and checking

11 on each one of those things, which is my argument for

12 making it a specific delegated responsibility.

13 It was -- so I -- I don't know of anybody that,

14 at least on a legal basis, goes back and is checking on

15 these disclosures of deals that they have done on a go-

16 forward basis on a regular -- I mean, lawyers at least,

17 the attorneys. So it falls on the borrower to make the

18 disclosures, or they fail to make the disclosure and I

19 think that there is a responsibility for the broker-

20 dealer to be doing that as well.

21 BY MR. TUTOR:

22 Q You mentioned you are aware that Brogdon-

23 affiliated entities would sometimes make late payments,

24 is that correct?

25 A They did miss payments on occasion. I mean, I

1 -- and I only would find that out almost -- almost by

2 accident in conversation that something had been -- you

3 know, they didn't make it on a timely basis.

4 Q Do you recall who you found that out from?

5 A Probably Lawson. It may have come up in

6 conversation with Marrien Neilson to, but, you know, I --

7 I would only see Marrien -- I didn't call Marrien on a

8 regular basis, but we talked fairly frequently if

9 something was missing, a payment was missing, or she got

10 a payment and didn't know where it came from, she would

11 call me and say, you know, "Something came in on a

12 particular matter, what is this, and what do I do with

13 it," something like that.

14 In most cases, I didn't have the answer. I

15 have to go to -- to Lawson and say -- Mr. Lawson, Rob,

16 you know, "A payment was received. Where did this come

17 from? And can you explain it?" Because I wasn't -- I

18 wasn't in the line of cash flow after the closings

19 occurred. That kind of day-to-day thing was usually

20 between the operator and the trustee, and the only time

21 that we would get drawn into it is if either the trustee

22 or the borrower were coming to us and saying there was a

23 shortfall or we're having problems at the facility or

24 anything -- something along those lines. So --

25 Q When Mr. Lawson told you that there had been an

1 instance of a late payment, did he express it as a

2 concern?

3 A No.

4 Q How did he express it?

5 A Matter-of-factly. I mean, just that something

6 was missed and -- but it was made up almost immediately.

7 I mean, I heard that a couple of times. Not -- not with

8 such regularity that it was concerning, but it was

9 usually somebody at Brogdon's shop just hadn't focused on

10 -- that they needed it in on the 1st or the 15th.

11 And it was a Friday, and we got it -- we got it

12 Monday or Tuesday. And "we," I mean the trustee got it

13 Monday or Tuesday, the money didn't come to -- it

14 certainly didn't come to me and it didn't go to the -- to

15 the underwriter. It was just -- it was really between

16 the project and the trustee who was holding funds and

17 disbursing funds.

18 Q And was that a red flag to you? Do you think

19 that they were having some trouble in making these

20 payments on time?

21 A No. I wouldn't -- honestly, I never would say

22 that I -- I came away -- Brogdon had multiple entities,

23 and there was never a feeling that this was a distressed

24 group of an operation or anything, that they were moving

25 monies or robbing Peter to pay Paul or anything. I mean,

1 there was no sense of that. I mean, each one of these

2 were individual projects, and occasionally -- now, see,

3 he would assign -- you know, if it was -- this particular

4 entity he controlled, okay, the ADK manager here and the

5 lessee. But -- and Saint Simons Healthcare he

6 controlled, but I don't think he had any control -- he

7 must have had some control, but I -- it was very informal

8 with Gordon Jensen or NAB and some of those.

9 So there were other people that were making the

10 project payments because he had pretty much removed

11 himself a lot from those transactions to the point that

12 if there was a shortfall, they may have made him aware of

13 it, but I don't honestly think that he would have known

14 about it until after the fact. At least that would be my

15 impression of the times that we dealt with him.

16 Q Okay. When underwriting subsequent Brogdon-

17 related offerings, did you do any due diligence on the

18 Hoover offering to determine whether Riverchase Village

19 ADK had drawn down on the debt service reserve?

20 A After the fact?

21 Q After the fact.

22 A No. I don't think we did. And I don't think -

23 -

24 BY MR. GREENWOOD:

25 Q Did you ever look back -- did you ever look

1 back at a prior Brogdon offering to see how it was doing
2 in order to conduct your due diligence for a new Brogdon
3 offering?

4 A I don't think, as we went forward, I had --
5 with the exception of these -- as I said, these
6 occasional lapses that were recovered almost immediately,
7 I do not recall ever hearing from Chris Brogdon, or Rob
8 Lawson for that matter, that there was trouble in -- you
9 know, the facility was troubled in some way. That didn't
10 come up in conversation, so I --

11 Q I'm guess I'm just -- putting aside whether Mr.
12 Brogdon or Mr. Lawson raised any issues with you, did you
13 go back and conduct --

14 A No.

15 Q -- due diligence on how these prior offerings
16 that you had helped to underwrite --

17 A Were performing?

18 Q -- were performing?

19 A No, I did not go back and check them on -- on
20 that basis.

21 Q And did you go back and check on how they --
22 how Mr. Brogdon was complying with the continuing
23 disclosure obligations in those prior offerings?

24 A I did not personally. No, I did not.

25 BY MR. TUTOR:

1 Village ADK had filed its annual financials on EMMA?

2 A No, I did not. Typically, that was done by
3 bond counsel, and I shouldn't necessarily just rely on
4 bond counsel, but in most -- my experience had been that
5 in giving an opinion bond counsel typically did some of
6 that checking, and almost always did that checking.

7 Q Do you know if Lawson Financial was required to
8 receive annual reports and financial statements from the
9 lessee for this bond offering pursuant to the terms of
10 the lease agreement?

11 A Required? I don't -- unless it's in the
12 continuing disclosure agreement, I'd have to read it
13 again, but I don't -- I don't think -- that would come if
14 -- if there had been a default or anything of that kind
15 of concern, the -- it's usually the dissemination agent
16 that receives that, and that would have been the Bank of
17 Oklahoma. There may have been a copy to the underwriter.

18 But if that came in, I didn't see those. I would not
19 have been the person that would have received those.

20 Q Okay. Well, directing your attention to the
21 lease agreement, it's page A43, that's where it starts I
22 believe. And specifically within there page A51.

23 A Okay.

24 Q And Section 5.4. I understand it's small
25 print, but this is the annual audit provision of reports

1 Q So in the Hoover Riverchase offering, as we
2 have discussed, the debt service reserve fund was
3 supposed to contain \$300,000, correct?

4 A If that's what is in the source and uses. I
5 thought it was higher than that, but --

6 Q That's on page 12.

7 A Well, whatever the number is, yes, it should
8 have contained that. Yeah, 300,000. I'm sorry.

9 Q Are you aware that in 2013 the lessee drew down
10 the debt service reserve to \$50,000 -- \$50,728 and did
11 not replenish it?

12 A I was not aware of that.

13 Q And by the end of '14, 2014, the lessee had
14 drawn down the debt service reserve to less than \$1
15 without replenishing it?

16 A No. I was not aware of that.

17 Q And so you were not aware of this when Lawson
18 Financial underwrote --

19 A No.

20 Q -- multiple bonds in 2013?

21 A I was personally not aware of it, no. Whether
22 Mr. Lawson was, I do not know.

23 Q When underwriting subsequent offerings,
24 Brogdon-related offerings, did you take any steps to
25 determine whether Hoover Riverchase -- or Riverchase

1 on financial information. Do you see that?

2 A No. What are you -- which page?

3 Q A51.

4 A 51, yes, okay. Article --

5 Q Section 5.4.

6 A Yes.

7 Q And so this provides, among other things, that
8 Section 5.4(b)(i), "Within 25 days after the end of each
9 calendar month, unaudited monthly statements of the
10 lessee's operations, its balance sheet, the calculation
11 of compliance with the financial covenants hereinafter
12 set forth, payoff mix -- payor mix, occupancy rate, and
13 statement of cash flows."

14 And Section 5.4(ii), "Within 90 days after the
15 end of each fiscal year, the lessee's audited financial
16 statements prepared in accordance with generally accepted
17 accounting principles, and a calculation of compliance
18 with the financial covenants herein above." These are
19 required to be submitted -- or required to be provided to
20 the issuer and the trustee, correct?

21 A I -- I'm trying to follow and I -- I lost you
22 there, but, I mean, it -- yes, the trustee and the
23 issuer, that would make perfect sense to me, but --

24 Q So 5.4(b) lists a number of -- provides that --

25 A 5.4(b), yes.

1 Q -- that the lessee shall provide the issuer,
2 if requested by the issuer.
3 A Okay.
4 Q And the trustee with copies of various
5 documents, including --
6 A Yes.
7 Q -- this financial information.
8 A Well, that would make sense, because the
9 trustee is holding all of the funds and would be the
10 first one that would probably know if there was a
11 problem, and the issuer, which is -- really bears no
12 responsibility, but their name on the document, typically
13 would get contacted, too. So I'm -- okay. What's --
14 Q So directing your attention to 5.4(g), which is
15 on the following page, that states --
16 A G.
17 Q So it's on page 30. We're still on A51.
18 A Okay. 28, 29, 30. Yes, okay. I don't -- (g),
19 okay, yes.
20 Q Section 5.4(g) provides, quote, "The lessee
21 shall send to the underwriter, to each holder of not less
22 than one million in aggregate principal amount of Series
23 2010 bonds, and upon request by any bondholder at such
24 bondholder's expense, a copy of any budget, statement,
25 certificate, or report referred to in this Section 5.4."

1 A Um-hmm. Yes.
2 Q So what do you understand that provision to
3 require?
4 A Well, as you just stated, it's each holder of
5 not -- of not less than, so it would be a million or more
6 of bonds receive a copy of this budget, statement,
7 certificate, at the bondholder's expense. The lessee
8 shall send to the underwriter.
9 I never saw one of those come in. If they had
10 come into the office, I would not have been the one that
11 would have been receiving them or copied on those. And I
12 also was not -- that was not disclosed to me either.
13 Q Well, were you aware of this provision, 5.4(g)?
14 A No. I don't remember 5.4(g), if you're asking
15 me specifically. But of the obligation to make
16 disclosures or if we were receiving information, I
17 believe that there was an obligation to -- you know, that
18 we would become aware of that, yes.
19 BY MR. GREENWOOD:
20 Q Were you aware of an obligation of the lessee
21 to provide the underwriter with all of the statements,
22 reports, and certificates, that are described in this
23 section?
24 A Yes.
25 Q And did you receive any of those reports?

1 A No, I did not.
2 Q Okay. Did that give you cause for concern as
3 you were continuing to serve as the underwriter for new -
4 -
5 A No.
6 Q -- Brogdon offerings?
7 A No. I -- no. I would not -- I can't even
8 imagine even other -- other firms that I'm dealing with
9 as underwriter's counsel. Most underwriter's counsel are
10 not officed, as I was, in the building where this
11 information might be sent to. They are offsite
12 independent law firms and such, and I do not expect that
13 they are receiving that kind of information, nor are they
14 keeping track of it.
15 So I -- the answer -- if you're asking me, is
16 did I see it, did I know that there was an obligation
17 that disclosures had to be made to the underwriter, yes.
18 But whether I was being copied or receiving that
19 information, the answer is no, I was not.
20 Q Right. And I guess, you know, I'm trying to
21 understand --
22 A And did that raise a concern?
23 Q Well, why did that raise a concern? I mean,
24 you're someone who has worked on 10 to 12 Brogdon
25 offerings --

1 A Right
2 Q -- and you're not receiving these types of
3 disclosure documents and financial statements from Mr.
4 Brogdon from prior offerings that you worked on. I'm
5 trying to understand why that didn't raise a red flag to
6 you when you continued to work on more offerings
7 involving Mr. Brogdon.
8 A Because I was not expecting -- if the firm was
9 going to get them, that was one thing. But I was not
10 expecting in the mail, or by way of any communication, to
11 be receiving the financial information on each one of
12 these offerings. It would typically not have been
13 something that I personally would have been reviewing,
14 and I wouldn't -- which goes back to this thing about me
15 wanting to have somebody that was doing that.
16 But in a role as an investment banker, or as
17 underwriter's counsel, I didn't expect to see that stuff
18 on a regular and ongoing basis, nor do I -- I would be
19 surprised if I called one of my underwriter's counsels
20 that we have worked with in the past and said, "Are you
21 getting all of the financial statements that are coming
22 through on project X, Y, or Z?" The answer would be no.
23 They don't -- I don't think they see them. I really
24 don't expect that they would see them on a regular basis.
25 Whether the underwriter should see them, and they should

1 come into the office, that may be another matter
2 entirely.
3 So, no, it did not raise a concern because I
4 wasn't expecting to see them either, so -- but I would
5 have expected, if there was a default or a shortfall or a
6 disclosable item, that that should have been brought to -
7 - you know, to our attention and should have been
8 discussed inside the firm. And if it was discussed, it
9 certainly wasn't discussed with me. Ever.

10 The only ones that I -- as I said, I pointed to
11 a couple of deals that Brogdon was tangentially involved
12 in, and I couldn't -- I couldn't even figure out those in
13 terms of money as to what his involved was or wasn't.
14 But those were not -- the operational issues in that
15 particular matter were not of his making. It was
16 somebody else; he was brought in to work out some of the
17 situations and it didn't work out.

18 So -- but that -- those I became aware of for
19 other reasons, not necessarily because I was
20 underwriter's counsel or the investment banker. I became
21 aware of them probably more as the investment banker than
22 any other way.

23 BY MR. TUTOR:

24 Q Just focusing on the Hoover offering though --
25 A Right.

1 Lawson coming into me to say Chris missed a payment, you
2 know, and there was an expression of concern in that
3 regard. I didn't see that, and it didn't happen.

4 We had maybe general conversations where Chris
5 missed a payment, but he made it up a day or two later
6 was what I heard on occasion, but not that the debt
7 service reserve fund was depleted or drawn down to a
8 point that it was -- I think you said down to \$1 or just
9 -- at one stage. I think this building has been sold,
10 because I recently got a -- not that that matters at this
11 point, but that Mr. Brogdon called me and I was at
12 another firm at that point, and he said, "This is being
13 sold and you're raising the money for it. Is there -- is
14 it going to close?"

15 BY MR. GREENWOOD:

16 Q Did you help with the close -- with the sale of
17 the Riverchase facility?

18 A No. No, I did not. It was just -- somebody
19 else was buying it, and the purchaser was at a firm that
20 I was at. And he called me because he knew me and said,
21 "Is this thing going to close, and, if so, when?" He was
22 anticipating the money because he was selling the
23 facility and getting out of it. So I said, "I'll try --
24 I'm not working on that deal. I'll try to find out and
25 let you know" and got back to him. That's probably the

1 Q -- Lawson Financial was the underwriter,
2 correct?

3 A Correct. Yeah.

4 Q And, you know, directing your attention to A56

5 --

6 A Yes.

7 Q -- it lists to the underwriter, and it lists
8 Lawson Financial Corporation at 3352 East Camelback Road
9 in Phoenix, Arizona 85018, with attention to Robert W.
10 Lawson. Was that the address of Lawson Financial
11 Corporation?

12 A Yes.

13 Q And so sitting here today, now that you know
14 that there is -- you have heard that -- we have looked at
15 this requirement that the lessee sends these reports and
16 financial statements to the underwriter --

17 A Right.

18 Q -- does it raise concerns to you that you
19 never saw these reports come in from Hoover or
20 Riverchase?

21 A Well, I wasn't Lawson Financial Corporation,
22 but -- so an obligation for them to delivery those
23 documents, I don't ever remember -- I don't remember
24 because it doesn't -- it didn't happen, but I don't
25 remember ever having a conversation with Lawson -- Mr.

1 last conversation I've had with Brogdon, which was eight,
2 nine months ago, something like that maybe.

3 BY MR. TUTOR:

4 Q And in your capacity as underwriter's counsel,
5 did you review this lease agreement?

6 A Yes.

7 Q And so did you make Robert Lawson aware of this
8 Section 5.4(g) or Lawson Financial aware of this Section
9 5.4(g) requirement for the lessee to submit these
10 statements and reports?

11 A Well, I -- if -- yes. And the firm did receive
12 financial information. I was not in the line of
13 communication where if information came in, it was then
14 handed to me to look at one way or the other. The
15 obligation was to send it to -- to the broker-dealer, the
16 underwriter, and that would have been either Rob Lawson
17 would have seen it, Pam Lawson would have seen it, or
18 Lona Nanna would have seen it, because they were the only
19 three that I can even imagine would have had
20 communication in that regard, and none of them ever
21 communicated to me that there was a shortfall or this
22 didn't happen, as I said, other than other than
23 conversationally. I mean, it was not an item of
24 disclosure or anything.

25 Q But just regarding the --

1 A He was aware of that. Mr. Lawson was aware
 2 that, you know, information was coming in, and I think he
 3 should have looked at it, but I don't know that he did or
 4 he didn't.

5 Q Just regarding the provision of Hoover's annual
 6 audited financial statements, when underwriting
 7 subsequent Brogdon-related offerings, did you go back and
 8 check to see if either Lawson Financial had received them
 9 directly from Riverchase ADK or if they had been posted
 10 online?

11 A No. I think I have answered that before, but I
 12 -- I do not -- I did not do that as a matter of course.

13 BY MR. GREENWOOD:

14 Q Turning back to page 28 in Exhibit 73, there's
 15 a section on legal matters.

16 A Um-hmm.

17 Q Are you on that page?

18 A I am.

19 Q And that section notes that certain legal
 20 matters will be passed upon for various parties by
 21 various different individuals.

22 A Um-hmm.

23 Q And you're listed as counsel to the
 24 underwriter.

25 A Right.

1 Q John T. Lynch, Jr., Esquire, Phoenix, Arizona.
 2 Do you see that?

3 A I do.

4 Q Who drafted that -- this portion of the
 5 official statement?

6 A Probably I did.

7 Q Okay. And why do you say that?

8 A Well, because this was one of the earlier
 9 financings that we did. As time marched on with other
 10 subsequent financings, we brought in -- because I was
 11 doing a number of other things, mostly investment
 12 banking-related. We brought into the Brogdon deals
 13 another gentleman who was -- I can't remember his name
 14 right now, Mike, Michael -- in any event, this gentleman
 15 was retained to prepare the disclosure documents that
 16 were pertaining to the Brogdon transactions, and namely
 17 the official statements and things of that nature. I
 18 would review them, but he was preparing them.

19 Q Okay.

20 A And so at some point, maybe not this case but
 21 in later cases, those would have been prepared by someone
 22 else and reviewed by me.

23 Q In this section, and in some other sections in
 24 the document, there is references to you as underwriter's
 25 counsel in Phoenix, Arizona. Are those references

1 accurate?

2 A In what sense? I don't -- I mean, it is my
 3 name and I was officed in Phoenix, Arizona.

4 Q Right. Do you think there should have been
 5 disclosure of the fact that you weren't an active member
 6 of any bar at the time that you were serving as
 7 underwriter's counsel?

8 A Well, there was no disclosure like that made.
 9 I didn't see it then as maybe I picture it now. When
 10 you're asking the question, it appears as if there should
 11 have been further disclosure in that regard. But as I
 12 said, I had experience in securities matters. I thought
 13 I was a member of the bar, and I had not been -- I was
 14 not practicing in the courts, but this was the only
 15 client that I had in that regard, and I did disclose that
 16 to the bar association and say that I was employed by
 17 Lawson Financial. But other than that, no, there was no
 18 disclosure made, this or any other document, to that
 19 effect.

20 BY MR. SATWALEKAR:

21 Q Just to be clear, did you -- withdrawn. Did
 22 you disclose to the bar association that you were
 23 employed by Lawson Financial or that you had represented
 24 Lawson Financial as an attorney?

25 A I--

1 Q Or something else?

2 A I was willing out a form for the inactive
 3 status, and I think I provided -- I don't know -- I don't
 4 know if I nuanced -- the nuances -- it's a fair question,
 5 but I don't know that I can answer it without looking at
 6 the document. At this point, I know I provided that I
 7 was working with -- I was never -- I never said that I
 8 was employed by Lawson because I wasn't.

9 I mean, I was -- I was independent of Lawson as
 10 an independent contractor but never an employee, received
 11 no benefits or anything like that. And I would have
 12 provided my business office contact information, phone
 13 number, but that was really much -- it was no more than
 14 that. I mean, it wasn't a request for anything more
 15 than, where are you, where are you located, and, you
 16 know, what's your status. And I would pay my inactive
 17 bar fees and indicated that I was only working for -- I
 18 was working with Lawson.

19 I mean, they would ask, you know, do you have
 20 trust accounts? No. Do you have, you know, any other
 21 monies being held by or for clients? Things like that
 22 that were very traditional in the form, and I would
 23 answer those and that would -- you know, do you carry
 24 liability insurance? Don't you carry liability
 25 insurance? Things of that nature. And so I would answer

1 those honestly, and I provided that to them and that was
 2 all there was to it.

3 Q So as part of that, you didn't state that you
 4 were representing Lawson as --

5 A I don't think the -- I'm sorry. I'm sorry.

6 Q It's okay.

7 A No, no, no.

8 Q You can anticipate the questions. I
 9 understand. But so as part of that form or disclosure to
 10 the bar association, you didn't disclose that you were
 11 representing Lawson in an attorney-client relationship
 12 where you were the attorney and Lawson -- where Lawson
 13 Financial was the client, is that right?

14 A Well, the answer would be no, but it's only
 15 because I don't think that was the purpose of the form.
 16 I mean, it was -- it was an annual report, if you will,
 17 that just said, where are you, where are you located,
 18 what is your status, do you have accounts of clients, do
 19 you maintain trust accounts, things of that nature. And
 20 the answers were John Lynch, I'm at such-and-such
 21 address, I think I would have -- I didn't ask me was I
 22 working with, was I representing anybody.

23 There was no -- I mean, there really wasn't
 24 that level of question that was asked, so I wasn't -- I
 25 wasn't being -- I was being direct but not -- I was

1 answering whatever was on the form. I wasn't
 2 misrepresenting or representing something that wasn't
 3 true, and that was really -- it was that purpose and for
 4 no other reason that they were -- I mean, it wasn't a
 5 detailed questioning of, you know, in what status you're
 6 in. They were predominantly concerned about, as the --
 7 you know, you would expect them, would be if you were
 8 representing clients that you hold trust accounts more
 9 than anything else.

10 And so the rest of it was really just name --
 11 name, address, and phone number, more than anything else
 12 that -- I don't think there really was much more
 13 information that was required than that. So --

14 MR. TUTOR: Let's go off the record at 2:57
 15 p.m.
 16 (A brief recess was taken.)
 17 BY MR. TUTOR:
 18 Q We're back on the record at 3:10 p.m. Mr.
 19 Lynch, I'd like to confirm that there were no substantive
 20 conversations between you and the staff during the break.

21 A Yes, no substantive conversations.

22 Q I'm handing you what's been marked as Exhibit
 23 217. This is a letter from John T. Lynch, Jr. dated June
 24 25th, 2010. The bates number is
 25 Lawson(20140389708)_000484 through

1 Lawson(20140389708)_000486.
 2 (SEC Exhibit No. 217 was marked
 3 for identification.)

4 A Yes.

5 Q Mr. Lynch, do you recognize this letter?

6 A Yes.

7 Q And what do you recognize it to be?

8 A The opinion that I rendered at the closing of
 9 the Riverchase Village financing. It was directed to
 10 Robert, or excuse me to Lawson Financial Corporation.

11 Q So under your name, so did you prepare this
 12 letter?

13 A Yes.

14 Q And under your name you wrote attorney at law.
 15 Is that correct?

16 A That's right.

17 Q Directing your attention to the final page of
 18 the letter, isn't that your signature?

19 A That is my signature, yes.

20 Q I don't have anything else on that.
 21 BY MR. GREENWOOD:
 22 Q Did you draft opinion letters like Exhibit 217
 23 for other Brogdon offerings?

24 A Yes, something similar to this, yes.
 25 BY MR. TUTOR:

1 Q Now, were you ultimately made aware of the
 2 Cooper Riverchase facility having difficulty preparing
 3 financial statements?

4 A Preparing them? No, I do not believe I was.

5 Q I'm handing the witness what's been marked as
 6 Exhibit 218. It is an e-mail dated October 16th, 2013,
 7 from Robert Lawson to Chris Brogdon; the subject: Forward
 8 Hoover Riverchase. The Bates is SEC-LAWSON-E0000236
 9 through SEC-LAWSON-E0000237. Now, Mr. Lynch, I
 10 understand you are not on the top e-mail. But directing
 11 your attention to the second e-mail in the chain, do you
 12 recognize this e-mail?

13 (SEC Exhibit No. 218 was marked
 14 for identification.)

15 A No, I don't have any independent recollection
 16 of it, but --

17 Q For the record, it's an e-mail from Aaron
 18 Lawson, e-mail address aaron.lawson@lawsonfinancial to
 19 Robert Lawson, e-mail address
 20 robert.lawson@lawsonfinancial and John T. Lynch, e-mail
 21 address john.lynych@lawsonfinancial.com. The e-mail
 22 states "Can either of you get the updated financials from
 23 Brogdon on the Hoover AL Riverchase Village 80K deal we
 24 did in 2010? The only financials on record are from
 25 2010, and I cannot bid this without updated financials.

1 The street is bidding 25 flat on the bonds at the moment.

2 A Yes.

3 Q Mr. Lynch, what do you understand Aaron Lawson
4 to be asking here?

5 A He's asking for updated financials that he
6 hasn't anything since 2010.

7 Q Aaron Lawson writes I cannot bid this without
8 updated financials. What do you understand him to mean
9 by that?

10 A Well, he was aware. I don't recall this
11 particular e-mail, but obviously the follow-up to it was
12 Rob Lawson contacting Chris for the information.

13 Q My question was do you have an understanding of
14 what Aaron Lawson means when he says "I cannot bid this
15 without updated financials?"

16 A Yes he's, I mean, he's basically trying to sell
17 a bond off of the desk, and he can't do that without
18 current financial statements being posted.

19 Q And what do you mean by sell a bond off of the
20 desk?

21 A Well, the trading desk at Lawson really was an
22 individual wanting to selling something out of their
23 holdings to somebody else, or the firm having held it for
24 some period of time then wanting to sell it. And I
25 understand that he's, basically, saying that there's, the

1 street is bidding 25, 25, assuming that would be 25 out
2 of 100.

3 You know, it's an underwater deal, but he, if
4 he has financials for it, he could then sell it and be
5 current on all the disclosure information. And that was
6 in 2013, which surprises me a little bit. I don't, I
7 don't, I don't have independent recollection of this
8 exchange.

9 Q Why does it surprise you there have been no
10 financials from the Riverchase Village 80K posted in 2013
11 that hadn't been posted since 2010?

12 A Why does it surprise me? Well, I didn't know
13 that there weren't financials that were being posted on a
14 regular basis for that. So I was a little, this was not
15 typical that Aaron would reach out to me for information.
16 I, I'm not sure that it was anything other than we were
17 the only two names that he might think would be able to
18 access Chris and get the information on a current basis.

19 Q Were you surprised that this wasn't uncovered
20 during the due diligence for subsequent Brogdon-related
21 offerings?

22 A Yes, yeah, I am. I mean, I didn't realize that
23 this particular facility was that far under water in the
24 sense of either where it was trading, or the fact that

1 there hadn't been information filed for three years on
2 the thing.

3 Q And what was Aaron Lawson's role at Lawson
4 Financial?

5 A He was in the trading department of the firm.
6 So he would have been selling, as I said, if the firm
7 held bonds in its inventory, he was selling them off,
8 probably not to the street I don't think, but I honestly
9 don't know what his, what his capacity was to sell. He
10 could have, if somebody contacted him and another firm
11 wanted to buy the bonds, he could, he would be the one
12 that would trade those bonds from one account to another.

13 But I would say the vast, vast majority of his
14 work would have been bonds would come in on an
15 underwriting, and they would be distributed to retail
16 clients. Or the firm would hold something and then,
17 eventually, sell it to a retail client at a later date.

18 Q And once you received this e-mail from him, did
19 you run any EMMA checks to see if there had been failure
20 to file notices related to --

21 A I didn't, but I'm sure I would have called Rob
22 and said, you know, something about it. But I didn't, I
23 don't, I mean, I really don't remember this at all. I'd
24 completely forgotten. If I, if I was really concerned at
25 the time, we probably had a conversation about it. But I

1 don't have any recollection of it, to be honest with you.

2 Q And did you continue to underwrite Brogdon-
3 related offerings after October 16, 2013?

4 A Well, Lawson Financial continued to underwrite
5 offerings after --

6 Q And did you serve as underwriter's counsel?

7 A And I would have served as underwriter's
8 counsel, yes.

9 Q Do you know if this failure to file financials
10 was disclosed in subsequent offerings that were
11 underwritten
12 by --

13 A No, but I, and I --

14 Q If I can finish, I'm sorry.

15 A Go ahead.

16 Q I know you know where I'm going. Do you know
17 if this failure to file financials was disclosed in
18 subsequent offerings that were underwritten by Lawson
19 Financial that occurred after October 16th, 2013?

20 A No, I don't think that it was. I don't think
21 that it was, and, but I also don't know whether they
22 brought these financials up to date by then, either. So,
23 I mean, Brogdon had a habit of being able to, when asked
24 for something, he would produce it. So if Rob asked for
25 this and this was, well it was the same day, yeah.

1 So the second, the reach-out to Brogdon was by
2 Lawson the very day, it almost, well it wasn't right
3 away, but it looks like it was about a couple hours
4 later, after the thing came, the issue came up. And I
5 believe it was probably resolved. I can't imagine that
6 it was left unresolved for any length of time at that
7 point. But the fact that it wasn't resolved or it wasn't
8 disclosed before that is disturbing.

9 BY MR. GREENWOOD:

10 Q You mentioned, strike that. When you were
11 Lawson Financial, did the trading desk at Lawson
12 Financial regularly sell Brogdon offering bonds either
13 out of inventory or on behalf of retail clients on the
14 secondary market?

15 A I don't know. I mean, I would say yes, but I
16 mean I can't tell you that I was up there and had any
17 specific knowledge of when trades were going on or not
18 going on.

19 Q Do you have an understanding that such trades
20 were taking place?

21 A Well, the bonds were being brought in for
22 purposes of providing money to the project, and they,
23 there's only two places they, three places I guess they
24 can go. The logical place would be sold into retail
25 client accounts. The second would be they're held in

1 my memory that, yeah, that they were trying to sell
2 something. What really I don't remember, and this is,
3 well it's not that long ago, but it's you know three
4 years ago at least that this came up as an issue. And I
5 would imagine, as Rob often did with, with Chris is that
6 he would handle it, and it would be taken care of, and it
7 would not be an issue later on.

8 So, it was something that crossed my e-mail and
9 moved on without me getting overly excited or agitated
10 about it, and was not, I didn't look into it as a result
11 of this. I don't remember any follow-up conversations or
12 anything about it. Chris almost always, to my knowledge,
13 when prompted would deliver information or documentation.

14 I never saw him withhold anything or, filing
15 them on a timely basis was maybe not his strong suit.
16 But it always seemed that he could, when you asked for
17 something, it was produced almost immediately, if not
18 within a very short period of time.

19 BY MR. TUTOR:

20 Q Does this failure to file financials constitute
21 a violation of the Hoover Riverchase continuing
22 disclosure agreement we were discussing earlier?

23 A It would say yes. Yes, I mean, and it's, it
24 looks like it's multiple years, too, which is even more
25

1 inventory, and then sold at a later date because there's
2 just not an appetite for them at the time that he would
3 like to sell them.

4 And the third would be somebody calling from
5 the outside; another broker dealer or firm saying that
6 way Riverchase Village, you know, at a certain price. So
7 there may be a bid or something that was out there, and
8 he would then sell those off, off the trading desk. But
9 they're really the only three logical things that could
10 happen.

11 Q I guess I'm just trying to understand whether
12 you have knowledge of such trades actually occurring.
13 Did Lawson Financial actually trade Brogdon bonds on the
14 secondary market?

15 A I don't really have any, I don't have any
16 specific information. I would not have known Riverchase,
17 any other deal, you know, where they were trading and
18 what was going on. I was never in that loop of
19 information. I mean, this is an anomaly, I think, more
20 than anything else.

21 Q Does Exhibit 218 refresh recollection that --

22 A Well --

23 Q -- bonds, that the trading desk sought to sell
24 Brogdon offering bonds on the secondary market?

25 A Oh, you know, this almost feels, it refreshes

1 shocking. But yes.

2 Q And so, on subsequent offerings, specifically
3 Thomaston-Upson, which was December 12th of 2013, did you
4 ask questions about the statement in that official
5 statement that the borrower had not failed to comply with
6 any prior undertaking?

7 A I don't think that I did. And, sadly, I don't
8 know whether they had cured this by that point or not. I
9 just don't know.

10 BY MR. GREENWOOD:

11 Q And that would be public knowledge, right? I
12 mean, to the extent that this was cured, those financials
13 would be on EMMA right now?

14 A Yes. They should be. I mean, if, and there
15 should have been a disclosure made by either the
16 underwriter, the issuer or the borrower that something
17 needed to be disclosed in that regard, yes.

18 BY MR. TUTOR:

19 Q So moving on to another topic, did you become
20 aware of forbearance agreements on prior Brogdon-related
21 offerings at the time you were serving as underwriter's
22 counsel on underwriting Brogdon offerings?

23 A Yes.

24 Q In 2013?

25 A Yes. Yeah, there were a couple.

1 Q Are you familiar with the 2005 City of
2 Scottsburg, Indiana Healthcare Facility revenue bonds?

3 A In a general way, I would say yes.

4 Q Do you recall on the forbearance agreement on
5 the Scottsburg, Indiana bond offering?

6 A Do I recall what?

7 Q The issuance of a forbearance agreement?

8 A I'm aware that there were forbearance
9 agreements in some transactions that he had. But as to
10 Scottsburg, Indiana, I can't say with specificity that
11 that was one of the ones that I remember now.

12 Q Are you familiar with the Scottsburg offering?

13 A No. At least not off the top of my head, no, I
14 don't think that there is. I mean, I was aware of some
15 forbearance agreements that had been signed.

16 Q I'm handing you what's been marked as Exhibit
17 219, previously been marked as Exhibit, or that is, that
18 we've had marked as Exhibit 219.

19 (SEC Exhibit No. 219 was marked
20 for identification.)

21 A All right.

22 Q It's an e-mail from John T. Lynch to Chix
23 Miller with Robert Lawson and Chris Brogdon cc'd. The
24 date is July 17th, 2012. There is not Bates number.
25 This was produced to us natively. Directing your

1 attention to the first e-mail in the chain, which was
2 sent from Chris, or cfbrogdon@winterhavinghomesinc.com to
3 gardnerforlaw@aol.com.

4 A Are you starting from the back here?

5 Q Yes, starting from the back, sorry.

6 A All right.

7 Q Sent on July 16th, 2012, with the subject
8 Scottsburg, Indiana. Does this refresh --

9 A No to get too far afield here, but the name of
10 the attorney that I said took over the responsibility for
11 doing the official statements is Michael, his name is
12 Michael Gardner.

13 Q Michael Gardner.

14 A He's listed here.

15 Q Okay. Does this refresh your recollection, or
16 reading this e-mail, does this refresh your recollection
17 on whether Lawson Financial participated in the
18 Scottsburg, Indiana, the extension of the Scottsburg,
19 Indiana forbearance agreement?

20 A Oh, I, well, I'd have to read these to some
21 detail. But I, I was aware of a Scottsburg deal. I was,
22 generally, aware of the forbearance agreement. I don't
23 think I had anything to do with the offering itself, and
24 if I did, I don't remember it. But if you wouldn't mind
25 giving me a second; let me read through some of these.

1 Yeah, sometimes I got thrown onto e-mail chains. I don't
2 believe I had any direct involvement in this particular
3 deal.

4 Q So in this first e-mail, Chris Brogdon writes
5 that he has enclosed an OS on the City of Scottsburg,
6 Indiana. Was it typical for Mr. Brogdon to draft the
7 first copy of the official statement for a new offering?

8 A Not after I got there. But before that, and
9 maybe in the very, very early going, yes, you would
10 receive things from Chris that he had prepared or marked
11 up.

12 Q And so, this e-mail from Mr. Brogdon was sent
13 on July 16th, 2012. In it, he notes that this bond issue
14 came due 6/1/2012. "We are going to enter into a
15 forbearance agreement to extend the bonds for three
16 years. (Check with Chix for the language.)"

17 A Uh-huh, yes.

18 Q Does that raise any concerns for you; the fact
19 that the bond issue came due a month previously, and a
20 month later he's trying to enter into a forbearance
21 agreement to extend the bonds?

22 A Well, Mr. Brogdon had a habit of at least being
23 able to work himself out of situations that he got
24 himself into. So there were probably more than one
25 forbearance in some financings that he had done. But my

1 belief was that he was that he was keeping relatively
2 current on these types of things.

3 The maturity was 2012. I don't know when the
4 offering was issued, but it must have been substantially
5 before my time there. And so I never, I don't, I'm just
6 reading the document saying Lawson will sell them on a
7 three-year taxable bond at eight percent. I don't recall
8 him ever doing a three-year taxable bond, regardless of
9 the price of the thing. So that, that's a little odd.

10 Q Brogdon also writes "Wink will do a pro forma
11 based on the lease we have in place." What do you
12 understand him to mean by that?

13 A Wink will do a pro forma based on the lease we
14 have in place. Well, I guess what he's saying, you know,
15 he's trying to forbear and extend the maturity. I mean,
16 most of these deals are done on a long, long-term basis.
17 I mean, typically, they're 25 to 30 years; sometimes 35
18 years.

19 So I don't know when he came into this deal,
20 but the maturity being 2012, he's trying to push it out
21 three years. He's saying that Lawson will sell the
22 three-year taxable bond and that Wink Laney, the CPA,
23 will do a pro forma that will demonstrate that those
24 bonds can be paid during that three-year period that he's
25 asking for the forbearance.

1 Q And are you aware if a forbearance agreement
2 was ever entered into regarding the Scottsburg, Indiana
3 offering?

4 A I don't remember, but I would, I would just
5 take it from the conversation there probably something
6 got worked out. I don't remember the taxable bond at
7 all. And I don't remember the taxable bond being done,
8 and I don't remember, I do, I remember something about a
9 couple of forbearance agreements that Brogdon had
10 participated in some of his transactions.

11 BY MR. GREENWOOD:

12 Q Did those forbearance agreements that you heard
13 about give you, raise concerns with you in connection
14 with the new Brogdon offerings that you were
15 underwriting?

16 A No, not really because, as I said, most, Chris
17 was, Brogdon was, I don't know, creative. He seemed to
18 have solutions for the problems that he got himself into
19 in most cases. And so if, in a case like this, if he was
20 unable to settle the matter up and pay the bonds off, and
21 he believed that he could extend the offering for a few
22 years to pay it off, that would not have surprised me, I
23 guess.

24 Q So the problems you're referring to in your
25 answer, are those the forbearance agreements?

1 Q Was Mr. Brogdon the representative of the
2 borrower on that transaction?

3 A Who is the borrower?

4 Q Was this a Brogdon-related offering?

5 A Oh, it was very much a Brogdon-related
6 offering, but I don't know what entities, without looking
7 at the documents again, I can't tell you which entity it
8 was that was involved in that.

9 Q Okay, I'm handing the witness what's previously
10 been marked as Exhibit 56. This is an e-mail from Chris
11 Brogdon to gardnerforlaw@aol.com, Wink Laney, Chix
12 Miller, kingandbrannigan@aol.com, gyouura@hinz.com,
13 Marrien Nielson, jorbison@riggsabney.com, Robert Lawson,
14 John Lynch, and Nick Lawson, regarding Clayton V, sent on
15 March 18th, 2013. The Bates range is SEC-CANTONE-
16 ESI0002546 through SEC-CANTONE-ESI0002550.

17 Mr. Lynch, do you recognize Exhibit 56?

18 A I don't have any immediate recollection. I
19 mean I see some of the e-mails, but yes, I see that I'm
20 on it. I know there was financing related to some of
21 this information, so, I'd have to read it to be able to
22 say, oh, yes, I remember it right now.

23 Q Well, was it Chris Brogdon's practice to review
24 an OS and provide comments to the group?

25 A Yes. I wouldn't say they were detailed

1 A Well, you're not entering into forbearance
2 agreements unless you can't pay, pay currently. So
3 forbearance agreements are, by no means, unheard of in
4 the business. And, you know, occasionally they do come
5 up, occasionally, not on a regular basis.

6 And Brogdon had done so many deals over a
7 period of time that, you know, occasionally I would, some
8 things would fall into a state of not being currently and
9 on time. But, as I said, Chris seemed to have an
10 ability, both with bondholders and Rob and other people,
11 to be able to work through that and come up with a
12 solution, instead of just letting them all go into
13 default or anything like that.

14 Rutland Bussey was involved in it because he
15 had some knowledge of it in the past. Rob seemed to be
16 intimately, and Lawson intimately involved. I was
17 probably the least informed about it because I didn't
18 have the history of it with them. I think, as I recall,
19 this might have had some real estate involved with it,
20 too, where a parcel was being, there were some other
21 pieces of ground that might have been involved in that,
22 too, that they were going to develop I think with, that
23 Chris was involved in and a developer. I know there was
24 a lot of discussion, I mean there was quite a bit of
25 discussion about it.

1 comments, but sometimes he would weigh in. Not, I mean
2 sometimes, not always. But I mean it wasn't, where a lot
3 of people go over a document in excruciating detail, he
4 might provide global comments in some ways. But he did
5 look at documents, there is no question that he was, you
6 know, very familiar with the documents that were being
7 done and used. I don't know whose handwriting, I'm
8 looking at the very last piece here. No, that's Gardner
9 and Bob.

10 Q Looking at the first e-mail in the chain, it
11 appears to be from Chris Brogdon. It says see attached
12 for handwritten responses to the e-mail below,
13 referencing the e-mail from Gardner.

14 A From Gardner. Courtney Ringlein was Chris
15 Brogdon's assistant.

16 Q So, directing your attention to the page Bates
17 labeled SEC-CANTONE-ESI0002550, the last page, item 7 is
18 regarding, it's a request for "all of the information
19 concerning NAB that is in italics must be updated and
20 corrected. In addition, I need basic information on
21 outstanding judgments against NAB."

22 A Right.

23 Q Does that refresh your recollection as to
24 whether NAB was one of the obligated parties in this
25 transaction?

1 A Well, I wouldn't go as far as to say it
2 refreshes my recollection that that was the case, but
3 this was, what it looks like to me was Michael Gardner
4 who was preparing the POS or the preliminary official
5 statement was reaching out for information that Chris was
6 going to supply. I don't recognize the handwriting, so
7 I'm really not sure who supplied that.

8 Q It appears the name Greg is written next to
9 that request.

10 A Well, Greg is Greg Youra, and that would have
11 been counsel to Chris and I think he was involved in the
12 earlier deal. This was somewhat of a refinancing that
13 was done.

14 Q Earlier, we discussed NAB having some issues.
15 Do you recall if those issues were disclosed in this
16 official statement?

17 A I don't recall, I don't know off the top of my
18 head. I know there were some discussions with regard to
19 a bankruptcy that involved NAB. I thought they were
20 resolved, and knowing Michael Gardner, I would think he
21 would have made some disclosures with respect to that if
22 he thought it was appropriate.

23 Q I'm handing the witness what's been marked as
24 Exhibit 220. This is an e-mail and attachment sent from
25 gardnerforlaw@aol.com to a number of parties. The e-mail

1 is dated April 11th, 2013. The subject is Clayton V.
2 The Bates range is SEC-CANTONE-E0002257 through SEC-
3 CANTONE-E0002324.

4 Mr. Lynch, do you recognize Exhibit 220?
5 (SEC Exhibit No. 220 was marked
6 for identification.)

7 A I recognize the attachments, yes.

8 Q What do you recognize it to be?

9 A The preliminary official statement of the
10 transaction involving Clayton County and the Savannah
11 Economic Development Authority.

12 Q In the cover e-mail, Mr. Gardner writes,
13 "Changes from the previous draft are marked. In
14 addition, I have hand-marked the significant ones." What
15 do you understand him to mean by that?

16 A Well, I guess what I would take to mean from
17 that was that he was knowledgeable about the prior deal
18 and he was working through some of the changes in
19 forecasts that were going to go be involved in this
20 document. As I said, Michael Gardner was, okay, Michael
21 Gardner had also been involved with Chris Brogdon for a
22 substantial period of time. So, it would probably mean
23 that he had some, he had more familiarity with the
24 relationships and interrelationships of these entities at
25 that time.

1 Q Did you conduct due diligence on the Clayton V
2 OS?

3 A On the Clayton V OS? So, the POS and the OS?

4 Q Yes.

5 A Well, I certainly read it and we had questions
6 that was, as I said, it was a very strange or different
7 financing than what we had done in many other situations.

8 There was a developer in this thing by the name of Bruce
9 Alexander, and there was a new piece of property that was
10 coming into the situation. So, I reviewed it, I didn't
11 prepare it. As I said, it was somewhat of a
12 collaborative process anyway, so I think a lot of people
13 would have had input and insight into it.

14 Q Directing your attention to page five of the
15 draft official statement, it's Bates labeled SEC-CANTONE-
16 E0002273. Do you see that section?

17 A Yes, I see it.

18 Q It lists the obligors on the Series 1990 9A
19 revenue bonds. The first obligor is National Assistance
20 Bureau which is NAB, correct?

21 A Right. Right, yes.

22 Q Did you do, to what extent did you do due
23 diligence on this section?

24 A Well, I remember having conversations with both
25 Chris and Greg Youra at various times, and Michael

1 Gardner with respect to this disclosure that was being
2 made with regard to the bankruptcy and existing judgments
3 that were or had been placed against NAB.

4 Q What was Robert Lawson's involvement in those
5 discussions regarding the due diligence of this Clayton V
6 official statement?

7 A Well, he was much more aware of this deal on
8 the structure than I was. I don't know, you know, it
9 seemed as if he was almost aware of, well, he was more
10 aware of the transaction than I was because both he and
11 Rutland Bussey seemed to have quite a bit of familiarity
12 with the property, the location, kind of what had gone on
13 in the past. As did Michael Gardner and Chris Brogdon,
14 yes.

15 Q So, what were Rob Lawson and Rutland Bussey's
16 respective roles in conducting the due diligence on the
17 Clayton V official statement?

18 A Bussey would have gone up to see the property
19 and get a current state of where things were before the
20 offering would have been entered into.

21 BY MR. GREENWOOD:

22 Q Which property are you referring to?

23 A I think the, well, it's hard to tell here
24 because there's two issuers. Clayton County is in
25 Georgia and so is Savannah. So, I think that the, what's

1 it called, Bay Trace, Bayberry Trace? There were some
2 existing facilities here and then there was some
3 additional land that was acquired and the developer was
4 going to develop houses or cottages around what was
5 already there. So, I think he probably went up and saw
6 both properties.

7 I don't have an independent recollection, but I
8 believe that Rob, I mean as I remember the situation, it
9 seemed that Rob had a great deal of familiarity with
10 these other two small deals. Now, whether he actually
11 did them or he just became aware of them because Chris
12 Brogdon had done them, I'm not sure.

13 BY MR. TUTOR:

14 Q The official statement appears to disclose two
15 of NAB's prior bankruptcies, correct?

16 A Yes.

17 Q It also indicates that there's existing
18 judgments against NAB, correct?

19 A Yes.

20 Q On page six, it states, "These judgments, the
21 amounts of which aggregate in excess of \$13 million,
22 relate to professional liability claims arising out of
23 the operation of certain nursing homes in Tennessee of
24 which National Assistance Bureau was the legal owner and
25 license holder but which were operated by an unrelated

1 Gardner that said yes, it was.

2 BY MR. GREENWOOD:

3 Q You have a specific recollection of Mr. Gardner
4 telling you that that is accurate?

5 A No, I don't have a specific recollection, but I
6 do, I mean I know that, this area of the POS and the OS
7 did get a fair amount of discussion. At the end of it,
8 it seemed that everybody was satisfied with what had been
9 disclosed by Chris and then drafted by Michael.

10 BY MR. TUTOR:

11 Q Did you run an EMMA check on the Sumner
12 facility?

13 A I did not.

14 Q Do you know if anyone at Lawson Financial ran
15 an EMMA check on the Sumner facility?

16 A I do not.

17 Q Are you aware that in 2002, Bergen Capital
18 underwrote the City of Sumner Healthcare Illinois
19 healthcare facility revenue bonds?

20 A Was I aware of that?

21 Q That's correct.

22 A That's what I was just saying, I wasn't sure
23 whether Rob Lawson or somebody else did, Chris Brogdon
24 had other relationships, Cantone being one and Bergen
25 Capital, now that you mention it, comes to mind. But I

1 third party manager."

2 Did you do any due diligence on those claims?

3 A Well, in terms of looking into documentation, I
4 guess I had conversations with Michael Gardner, with Greg
5 Youra, and Robert Lawson and Chris Brogdon, and those
6 discussions I guess at that point at least satisfied that
7 the disclosure that was being made was at least
8 appropriate. Did I dig into it beyond that? I don't
9 know that I did.

10 Q Mr. Gardner's cover e-mail indicated that he
11 had marked those significant changes, correct?

12 A Right.

13 Q So, sticking with the NAB section, what due
14 diligence did you do on the underlined representation,
15 "In addition to the Bayberry Trace facility, National
16 Assistance Bureau currently owns nursing homes of," and
17 here is where the underline begins, "82 beds and 68 beds
18 in Sumner, Illinois."?

19 A What due diligence did I do to determine
20 whether they still owned those two facilities?

21 Q That is correct. Did you do any due diligence
22 on the 82-bed and 68-bed Sumner facilities?

23 A Well, as I said, there were conversations about
24 whether that information was accurate or not, and I
25 believe Michael, I think it might have been Michael

1 didn't know anybody at Bergen Capital or at Cantone, so I
2 wouldn't have spoken to them necessarily. I would have
3 probably only spoken to Greg Youra, Chris, and/or Michael
4 Gardner who seemed to have a fair amount of information
5 on that.

6 Q But you were aware that NAB was the borrower
7 for the Sumner facility, correct?

8 A Right. Right.

9 BY MR. GREENWOOD:

10 Q Well, let's step back. Were you aware of an
11 offering, a bond offering involving the Sumner facility
12 at the time of the closing of the Clayton offering?

13 A That there was an outstanding offering?

14 Q Yes.

15 A I don't know. I probably was but I don't know
16 that, I can't say, oh, yes, I remember that clearly that
17 that was the case.

18 Q Okay, sitting here today, are you aware of a
19 bond offering involving the Sumner facility?

20 A It doesn't come to, I mean it doesn't jump into
21 my frame of consciousness at all. I mean I can't say
22 yes, I do remember that at this point. The fact, that's
23 why I was saying I was unclear as to whether or not the
24 prior deal had been done by Lawson or had been
25 underwritten by somebody else. In retrospect and

1 thinking about it a little bit, yes, I do remember that
2 Rob Lawson and Lawson Financial knew of this thing and
3 knew of the situation. But I did not remember that it
4 was Bergen Capital that had done the outstanding
5 offering.

6 Q What situation are you referring to?

7 A You were asking or somebody was asking, one of
8 you was asking me earlier whether, well, I asked myself
9 maybe whether Rob Lawson and Lawson Financial had
10 actually done the first offering, and I wasn't sure about
11 that. He knew, the firm knew of the offering and Rutland
12 Bussey seemed that he was quite knowledgeable about it.
13 Rob seemed to be very familiar with it. As a result of
14 that, a little bit of me, without having an independent
15 recollection of it, I thought that maybe they had done
16 the original underwriting. But if you're telling me that
17 Bergen County or Bergen Capital had done their offering
18 for them, then I'll take that at face value.

19 Q I just want to make sure the record is clear
20 here. Are you, do you have reason to believe that Mr.
21 Lawson and Mr. Bussey were aware of a prior Sumner
22 offering? Or they were familiar with a prior Clayton
23 offering involving Mr. Brogdon?

24 A I don't know that I can answer that
25 specifically. I'm just saying that they were aware of

1 these two properties that were done previously, and they
2 seemed quite, now when we got into this, they seemed
3 quite aware of the situation that existed and the fact
4 that there was a prior financing. I took from that to
5 some, I was thinking and I'm just thinking through the
6 process now, I thought that maybe they had, because they
7 seemed so knowledgeable about it, that maybe they had
8 done the original underwriting. But if you're telling me
9 that, and when I say the original underwriting, meaning
10 the underwriting for Savannah and Clayton County, but if
11 they did not do the financing and Bergen did the prior
12 financing, I would take that at face value. I just, I
13 don't remember much more than that.

14 Q I think Mr. Tutor's comment earlier about
15 Bergen was a financing related to the Sumner, Illinois
16 facility?

17 A Sumner, right.

18 Q I guess I just want to make sure the record is
19 clear. Do you recall discussions with either Mr. Lawson
20 or Mr. Bussey about a financing involving the Sumner,
21 Illinois facility?

22 A No. I can't say that I can speak directly to
23 that, no.

24 Q Okay, so the testimony you provided earlier
25 about the prior financings that Mr. Lawson and Mr. Bussey

1 were involved in, did that relate to the Clayton,
2 Savannah, Georgia facility?

3 A Yes, it related to the POS that we're looking
4 at here, and I'm saying that as to that project or the
5 prior project, they seemed quite aware of that. I don't
6 have any idea whether Sumner was something they financed
7 or didn't finance.

8 BY MR. TUTOR:

9 Q So, I think we were asking about this
10 representation in the OS, that National Assistance Bureau
11 currently owns nursing homes of 82 beds and 68 beds in
12 Sumner, Illinois.

13 A Right.

14 Q Do you recall any discussions about the Sumner,
15 Illinois nursing homes?

16 A No, I don't have any independent recollection
17 of that. The fact that they were marked to include a
18 change, or maybe they were added at that point, led me to
19 believe or leads me to believe at least in this context
20 that Michael Gardner had made a change because he had
21 found out some factual circumstances that led, you know,
22 that would have made that correct. In almost any
23 financing at some of these things, you have to take some
24 independent verification of other people. If every fact
25 and circumstance has to be double checked by me to be

1 absolutely sure that the lawyer that just told me that is
2 correct in what he's saying, or for that matter even Mr.
3 Brogdon, you'd spend your day, you know, your waking days
4 just constantly double checking everybody's information.
5

6 But Michael Gardner seemed to be aware of all
7 the background, particularly with NAB. As was Lawson and
8 as was Mr. Brogdon. So, after discussing this and some
9 of the circumstances that surrounded the judgments and
10 the prior bankruptcy, at least I came away satisfied that
11 this was adequate disclosure for the purposes that we
12 were using it for. I didn't see or hear anybody raising
13 issues with respect to that disclosure being inadequate
14 or incorrect or something that needed more work on.

15 Q So, for the record, do you recall doing any
16 independent due diligence on NAB in relation to the
17 Clayton V offering?

18 A Other than, I may have seen some of the
19 documentation with regard to the bankruptcy, and I guess
20 my conversations in that regard were really with Michael
21 Gardner and Greg Youra. We had some conversations with
22 Chris, but I think the detail of it came from those two
23 in terms of my conversations with them or any due
24 diligence.

25 Q Are you aware that in 2008, this Sumner

1 facility was sold at a tax lien sale?
 2 A No.
 3 Q Are you aware that no notice of the sale was
 4 ever filed on EMMA?
 5 A I was not aware of that, no.
 6 Q And no financials for the Sumner facility were
 7 ever filed on EMMA?
 8 A No, I was not aware of that either.
 9 Q Does that cause you any concerns sitting here
 10 today?
 11 A Of course it does, but I'm both surprised and,
 12 you know, again I found Greg Your and Michael Gardner and
 13 for that matter Chris Brogdon to be pretty straight and
 14 forthright in terms of what questions were asked, they
 15 answered them, and we could found adequate support for
 16 that stuff. But I did not do independent work on Sumner,
 17 Illinois, I was not part of this transaction, and it was
 18 represented to us, to me, I shouldn't say us, but it was
 19 represented to me that the facts here were correctly
 20 stated. It didn't, failure to disclose tax sale, none of
 21 those things were brought up by anybody in the
 22 discussions. Wow.
 23 MR. TUTOR: All right, let's go off the record
 24 at 4:07 p.m.
 25 (Off the record.)

1 MR. TUTOR: Okay. We're back on the record at
 2 4:12 p.m.
 3 BY MR. TUTOR:
 4 Q Mr. Lynch, I'd like to confirm that there were
 5 no substantive conversations between you and the staff
 6 during the break.
 7 A There were no conversations of a substance.
 8 Q Mr. Lynch, do you recall the Springfield, Ohio,
 9 bond offering?
 10 A In general terms, yes.
 11 Q Did you serve as underwriter's counsel on that
 12 offering?
 13 A I believe so, yes.
 14 Q And was Lawson Financial the underwriter?
 15 A If I was representing the underwriter, it would
 16 have only been Lawson, yes.
 17 Q Do you recall any issues on that offering
 18 regarding the filing of audited financial statements?
 19 A Not without independent recollection or, I
 20 mean, I don't have any independent recollection. If you
 21 have documents that would demonstrate it, yes, but not
 22 off the top of my head, no.
 23 Q Do you remember the name of the facility, or
 24 can you give me the name of the facility?
 25 A Eaglewood Facility.

1 Q Eaglewood, okay.
 2 (SEC Exhibit No. 221 was marked
 3 for identification.)
 4 BY MR. TUTOR:
 5 Q I'm handing the witness what has been marked as
 6 Exhibit 221. It's an email from Marrien Neilson to
 7 Roberta Fisher, John T. Lynch, and R. Chix Miller, with a
 8 number of individuals cc'd. The email was sent on July
 9 10, 2013. The Bates range is SEC-LawsonE-0000238 through
 10 SEC-LawsonE-0000250.
 11 Mr. Lynch, do you recognize this email and
 12 attachment?
 13 A No, not without reading it again. Am I listed?
 14 Yeah, I am listed. Yeah, so --
 15 Q Well, directing your attention to the first
 16 email in the email chain, which appears on page Bates
 17 range SEC-LawsonE-0000240.
 18 A 240.
 19 Q It appears to be an email from you to Chix
 20 Miller dated April 4, 2012.
 21 A Right.
 22 Q With Roberta Fisher, Gregory Youra, James
 23 Orbison, Christopher Brogdon, Robert Lawson, and Marrien
 24 Neilson cc'd, with the subject line Springfield
 25 (Eaglewood) Bond Purchase Agreement and Continuing

1 Disclosure Undertaking.
 2 A Right.
 3 Q Do you recall sending this email?
 4 A No, I don't recall it, but I obviously sent it.
 5 Q Was this something you would normally send as
 6 part of a bond offering?
 7 A Yes. Typically, I would prepare a bond
 8 purchase agreement, yeah.
 9 Q And a continuing disclosure undertaking?
 10 A Oftentimes, yes.
 11 Q And would you send those out to the people who
 12 worked on the bond offering?
 13 A Yes.
 14 Q And do you recall who Roberta Fisher is?
 15 A She is a partner with a law firm in Ohio. I
 16 think it's Squire Sanders.
 17 Q And what was her role in this transaction?
 18 A Probably bond counsel or counsel to the city,
 19 the issuer, one or the other. There were a couple of law
 20 firms in Ohio that we worked with, and one of them was
 21 Squire Sanders, and that's where Roberta Fisher was. I
 22 believe she represented the issuer here.
 23 Q Okay.
 24 A I am not -- I don't see Chix Miller on here,
 25 and I don't see a bond counsel on here either.

1 Q I believe the email was sent to Chix Miller,
2 your

3 A Oh, okay. All right. Well, then, he was bond
4 counsel then. Okay.

5 Q So looking at Ms. Fisher's response to you, it
6 appears that was sent on July 9, 2013.

7 A Right.

8 Q So more than a year later. And Ms. Fisher
9 writes, quote, "According to the continuing disclosure
10 undertaking signed in connection with the issuance of the
11 city of Springfield, Ohio, bonds for the Eaglewood
12 Property Holdings, LLC, project, annual continuing
13 disclosure was due to be filed 120 days after 12/31/2012.
14 It does not appear to the city from a review of EMMA
15 that the filing has been made. Also searched under the
16 QSIP numbers and did not find it."

17 Do you remember Ms. Fisher raising this concern
18 to you?

19 A No, I don't -- I don't have, you know, a
20 recollection of that. I'm not saying that she didn't,
21 and I'm sure she did. But I'm just saying three, four
22 years later, I don't remember this particular exchange.

23 Q So does this raise any concerns to you, that
24 someone is now checking EMMA, in this case the issuer,
25 and no financials have been filed?

1 A Yes, it does.

2 Q And what did you do in response to those
3 concerns?

4 A Well, we went ahead and closed the transaction
5 at some point, I believe, so, once again, we would have
6 probably gone back to -- to Chris Brogdon and Greg Youra
7 and asked for a reason as to why something had not been
8 filed on a timely basis.

9 Q But to be clear --

10 A It is not that unusual -- it is unusual in a
11 general sense that documents are not filed on a timely
12 basis. It was not that unusual with Chris Brogdon that
13 things were -- were produced late but on an untimely
14 basis.

15 Q But to be clear here, you sent the continuing
16 disclosure agreement and the bond purchase agreement in
17 April of 2012, correct?

18 A Right.

19 Q And Ms. Fisher's email is in --

20 A 2013.

21 Q -- July of 2013, correct? So it appears that
22 she is indicating that it has been a year and 120 days
23 and still no financials have been filed for this bond
24 offering, is that correct?

25 A When was the closing of the -- of the

1 Springfield financing? Is she -- is she asking for --

2 Q I can represent to you that the Springfield --
3 the city of Springfield, Ohio, First Mortgage revenue
4 bonds closed on April 12, 2012.

5 A April 12th of 2012. Okay. So she was calling
6 about a second offering, then?

7 Q Well, let's look at what she wrote. She
8 writes, "According to the continuing disclosure
9 undertaking signed in connection with the issuance of the
10 Springfield, Ohio, bonds, annual continuing disclosure
11 was due to be filed 120 days after December 31, 2012."

12 A Right. I'm -- I'm honestly confused about --
13 not about the facts but about why she was asking for that
14 information. Were we doing another offering, or was she
15 -- I can't remember whether she was involved in the
16 Springfield original offering and was just going back and
17 checking. I think it seems like she was going back and
18 checking on a deal that had closed, as you said, in
19 April. I put the bond purchase agreement out in April of
20 2012.

21 Q Well, directing your attention to the first
22 email in the chain --

23 A Right.

24 Q -- Marrien Neilson writes, "Attached are
25 copies of the email requests requesting these financials.

1 We will post them as soon as we receive them." And it
2 appears that this was sent to Roberta Fisher, John T.
3 Lynch, R. Chix Miller, and cc'd are a number of
4 springfieldohio.us email addresses.

5 A Um-hmm.

6 Q So it appears that Ms. Neilson is repeatedly
7 requesting the financials and has not yet received them,
8 at least as of July 10 --

9 A Yeah.

10 Q -- 2013, correct?

11 A Yeah. That's what it appears to be, yes.

12 Q And if you turn to the attachment, as Ms.
13 Neilson indicated, she has attached some of her
14 correspondence related to the --

15 A Right.

16 Q -- obtaining the financials, that appears at
17 SEC-LawsonE-0000243. This appears to be an email chain
18 between Clinton Kane and Terry Pulley.

19 A Yeah. I know Terry Pulley. I don't know
20 Clinton Kane, but they were obviously reaching out to get
21 the financials.

22 Q So receiving this inquiry from Ms. Fisher, and
23 then receiving the response from Ms. Neilson indicating
24 they are having difficulty obtaining financials relating
25 to the Springfield Eaglewood offering, did that raise any

1 concerns to you at the time?

2 A No, not really, because, as I said, it was not
3 -- it was not unusual -- it may not have been habitual,
4 but it was not unusual to have to reach out to Brogdon to
5 follow up on a request that was being made for financial
6 information. It always seemed to be produced. It was
7 not necessarily produced on a timely basis, and I -- I
8 attribute that mostly to not deceit or fraud or anything
9 of that nature. His -- his office oftentimes didn't
10 respond until prompting, but he did respond.

11 Q This request for financials resulted apparently
12 from an EMMA check by the city of Ohio in July 2013.

13 A Right.

14 Q Correct?

15 A Or Squire Sanders, yes.

16 Q And earlier today we discussed a similar
17 circumstance where an EMMA check by Aaron Lawson in
18 October 2013 --

19 A Right.

20 Q -- revealed that there were no financials.

21 A Right.

22 Q Did the two of these, the Eaglewood check in
23 July of 2013 that showed no financials had been filed,
24 and then the Aaron Lawson's check and finding no
25 financials had been filed in October 2013, together did

1 finish the -- taking one or two of these instances of
2 putting them together and say, "Does that not, in and of
3 itself, rise to a level of great concern on your part?" I
4 would say the answer to that was no, because it never
5 seemed to rise to that level of concern with anybody. I
6 mean, I could have -- you could look around and say, "Am
7 I crazy, or are the rest of the people that are dealing
8 with this man -- you know, why are they not concerned?"

9 And there was some -- there was some questions
10 that Rob Lawson and I had, but -- I had with Rob Lawson
11 and, you know, asked that question on occasion, and it
12 was -- it was usually -- and I don't mean sloughed off.
13 It was just that he had been dealing with Chris for a
14 long time and that -- on the basis Chris always came
15 through in the end.

16 And so it didn't seem -- I never had a
17 conversation with any one of most of the principals, I
18 mean the third parties here. With Chix Miller, Greg
19 Youra, Wink Laney, and Michael Gardner, and any of the
20 others that -- that rose to the level of concern that
21 there was something fraudulent or inappropriate with
22 Brogdon in terms of his business practices. Sloppy,
23 maybe, but never to the point that anybody was concerned
24 that he was being devious or fraudulent in terms of any
25 of that information not coming out on a timely basis. He

1 those raise concerns to you that no financials were being
2 filed for any of these offerings?

3 A No. I mean, as you presented, it makes perfect
4 sense that you would reach that conclusion. But with
5 Brogdon and his office, as I've said a couple of times
6 before today -- in today's conversations or testimony, it
7 was not unusual to have to prompt Chris Brogdon to
8 produce documents that were needed. Now, whether that
9 rose to the level of, what are we doing with this
10 individual, or why are we representing him as a client,
11 or which was -- was not the approach that anybody was
12 taking. Anybody. And I mean Chix Miller, nobody walked
13 away from the table and said, you know, he's a bad guy or
14 we're concerned about this and we need to move in another
15 direction or created some issue that was insurmountable.

16 The attitude of everybody that I was exposed to
17 was that this was just somewhat -- I wouldn't call it a
18 business practice but his -- Brogdon was a client that
19 didn't produce everything on a timely basis. But it
20 seemed that everything always came in when we asked for
21 it. It may take a little bit longer than it should have
22 and that the notices were not filed, but that he always
23 seemed to produce in the end what was needed.

24 Q So in July of 2013 --

25 A So, no, if -- the fact that -- well, I mean, to

1 didn't file things on a timely basis. That much is true.

2 Q You reference expressing some concerns to
3 Robert Lawson about Chris Brogdon. Do you recall
4 specifically what those were?

5 A Well, in conversations like this, I mean, when
6 you -- you know, when an email would come in or something
7 saying, "Well, it didn't come in again," you kind of go,
8 "Rob, this is Chris again." You know, it -- "Does he
9 have it? Can we get it from him? What's going on?" And
10 he'd say, "Covered. Don't worry about it. I'll call.
11 I'll, you know, pick the phone up and talk to -- talk to
12 Chris about it."

13 Q And do you have a -- what do you specifically
14 recall Rob Lawson saying regarding those concerns?

15 A He would indicate to me that it was not a
16 concern, that he had been dealing with them for a long
17 time before I got there, and that the information was
18 obtainable; he would just get it. That was usually --
19 that was usually the response I got, and that happened on
20 more than one occasion.

21 Q So in July of 2013, an EMMA check disclosed
22 that the Eaglewood offering hadn't filed any financials.
23 And then in October 2013, Aaron Lawson's EMMA check
24 disclosed that Hoover hadn't filed any financials. After
25 that point, did you go back and check EMMA for all -- for

1 any or all of the previous offerings?

2 A No. But I think on -- I can't say specifically
3 on each one of those offerings but, as I said, Brogdon
4 always came through with the documents that we asked for.

5 I mean, we never -- I don't ever remember having a
6 conversation with Chris Brogdon or Rob Lawson to the
7 effect that we asked for documents, they're not being
8 produced, and we can't get them or he doesn't have them.

9 BY MR. GREENWOOD:

10 Q Mr. Lynch, you testified earlier that you never
11 ran any EMMA checks on these offerings. How do you know
12 that Mr. Brogdon always came through on the documents?

13 A Because when documents were asked for, Lawson
14 seemed satisfied that he had received them, because they
15 were being sent to him, not to me.

16 Q Okay. So you relied on Mr. Lawson for this
17 understanding that Mr. Brogdon was always sort of making
18 his financials public --

19 A Did I rely on Mr. Lawson for that? Well, as I
20 said, not to a -- I wasn't -- I had no reason to believe
21 that Rob Lawson was lying to me.

22 Q I understand. I guess you've now said a couple
23 of times now that Mr. Brogdon always came through, that
24 he always managed to file his financials at the last
25 minute, and I'm trying to understand what the basis for

1 basis in -- for your statements.

2 A Right.

3 Q And it sounds like what you're saying is that
4 the basis for the statement that Mr. Brogdon always
5 provided his financials eventually is statements from
6 other people, whether it was Mr. Lawson or Ms. Neilson,
7 is that fair?

8 A Well, that's fair, but I -- I would only say
9 further that these are people that had dealt with him
10 much longer than I had, they were continuing to do
11 business with him, and, honestly, none of them ever
12 expressed privately, or in any other way, that they had
13 concerns about Chris Brogdon as either an operator or as
14 somebody that was not coming through with what was
15 needed.

16 Now, whether he was sloppy and delayed in
17 receiving information, that -- that part was true. I
18 mean, that -- but it didn't seem to bother anybody. And
19 in terms of underwriting future deals and -- I don't
20 know. I mean, look -- I'm thinking back now about I
21 don't remember ever going to a closing with Chix Miller
22 or any of the other lawyers where there was a concern
23 that this might have been a problem that was still
24 outstanding.

25 I thought we were all -- I believed that we

1 that statement is, because you've told us today that you
2 didn't run EMMA checks on Mr. Brogdon's offerings and you
3 didn't direct anyone else to do it. So I'm just -- so
4 tell us sort of what the basis is for that statement.

5 A The basis of the statement that I said that he
6 came through --

7 Q Yeah.

8 A -- with the documentation? Because when
9 requested, whether I was talking to Rob Lawson or Marrien
10 Neilson, who oftentimes requested the documents, I am not
11 aware of any time that the documentation was not
12 satisfied.

13 Q What do you mean, what --

14 A And I'm getting that from other parties in the
15 transaction, yes. Did I go back and independently verify
16 that what I was told by Rob Lawson or Marrien Neilson --
17 I would -- just on a practical basis, if it never rose to
18 the level of a second request or a third request that
19 something was not being delivered, I believed it to have
20 been satisfied.

21 Q Okay.

22 A Now, that may not satisfy you as to my level
23 of, you know, requirement, but that's -- that's what I'm
24 saying.

25 Q I'm not -- I'm just trying to understand the

1 were always current on this, but some of the information
2 you are providing today leads me to believe that I
3 shouldn't have relied on that. But the fact was that I
4 don't think any of us were intentionally going forward
5 and closing deals knowing that there were outstanding
6 issues on something prior to that time.

7 BY MR. TUTOR:

8 Q So this email was sent on July 10, 2013, from
9 Ms. Neilson. Did that raise -- was that discussed,
10 whether this issue that Eaglewood had regarding filing
11 financials needed to be disclosed in subsequent Brogdon-
12 related offerings?

13 A That -- that conversation never took place
14 among the group. And I mean that -- I mean that to be
15 any of the lawyers, and maybe I -- I don't know whether -
16 - I mean, I'm not -- this isn't intended to point
17 fingers, but it didn't matter who was preparing which
18 document, I don't ever have -- there never was a
19 conversation leading to, should we be making additional
20 disclosures? I mean, the bond attorneys are always very
21 sensitive to that kind of information, if it was not
22 being filed on a timely basis. I found Chix to be rather
23 diligent in most of his practice and -- and dealings.
24 Greg Youra was I thought a very good attorney, and so --
25 so was Michael Gardner.

1 So maybe we all collectively should have been
2 concerned, but dealing with Brogdon on a regular basis it
3 did not ever seem to rise to that level.

4 **Q** Do you recall the 2013 Crisp-Dooly joint
5 development authority offering?

6 **A** Not off the top of my head, but, yeah – I
7 mean, yes, I know I was involved in it.

8 **Q** And Lawson Financial was the underwriter for
9 that offering, correct?

10 **A** Yes. Lawson Financial was the underwriter.

11 **Q** And Gordon Jensen was the borrower?

12 **A** Yes, I believe so.

13 **Q** And that was another Brogdon-related offering,
14 correct?

15 **A** Yes, it was. Yeah.

16 (SEC Exhibit No. 222 was marked
17 for identification.)

18 BY MR. TUTOR:

19 **Q** Okay. I'm showing the witness what has been
20 marked as Exhibit 222. This is an email with attachment
21 from Gregory Youra to John Lynch, Jr., R. Chix Miller,
22 Robert Lawson, C.F. Brogdon at WinterhavenHomesInc.com,
23 and Road Hill. The email was sent on July 11, 2013. The
24 subject is Gordon Jensen Healthcare Association, Inc.
25 The Bates range is SEC-LawsonE-0000001 to SEC-LawsonE-

1 experience? Or offerings where Gordon Jensen was the
2 borrower, who represented Gordon Jensen?

3 **A** I would – I mean, this is – the first name
4 that comes to mind is Greg Youra. And the reason that
5 would be was because he was affiliated with – this was a
6 not-for-profit that I believe Chris Brogdon had had some
7 longstanding relationships with and dealings with, and
8 because of that they were brought into various
9 financings. And so Greg, I guess either interchangeably
10 or at – not at the same time but probably – I think may
11 have represented both at one time or another.

12 BY MR. GREENWOOD:

13 **Q** Mr. Youra was, in your experience, Mr.
14 Brogdon's attorney in connection with bond offerings you
15 worked on?

16 **A** Yes. But, I mean, if somebody else came into
17 the picture at the direction of – I'm not the principal,
18 use Gordon Jensen, use NAB, use another entity, it was
19 usually Greg Youra that was the one that stepped into
20 that role.

21 **Q** And when you say – you were talking about use
22 NAB, use Gordon Jensen, what did you mean by that?

23 **A** Well, as either a manager or the borrower or
24 something of those –

25 **Q** What was your understanding of who was making

1 0000005.

2 **Mr. Lynch, do you recognize this email and**
3 **attachment?**

4 **A** I haven't seen it in years, but yes.

5 **Q** And what do you recognize this to be?

6 **A** I'm just going back and reading it.

7 Apparently, one of the attachments is to me and to Lawson
8 Financial about Gordon Jensen being – currently being a
9 borrower and is aware of its continuing disclosure
10 obligations and is in compliance with such continuing
11 disclosure obligations as set forth in the documents
12 evidencing the bond transaction. Signed by William Hill
13 who was president of Gordon Jensen, and Greg Youra I
14 guess sent it to us.

15 **Q** So did you have any interactions with Mr. Hill
16 regarding putting together Gordon Jensen-related
17 offerings?

18 **A** I had never met Mr. Hill.

19 **Q** Who was your understanding that represented
20 Gordon Jensen in putting together Gordon Jensen – or
21 offerings where Gordon Jensen was the borrower?

22 **A** Say that again. I didn't get the question that
23 you asked.

24 **Q** I apologize. In putting together Gordon Jensen
25 offerings, who represented Gordon Jensen in your

1 that determination of what entity to use?

2 **A** It would be Chris Brogdon.

3 BY MR. TUTOR:

4 **Q** Okay. Was Mr. Brogdon the business person you
5 dealt with in connection with Gordon Jensen offerings?

6 **A** Yes.

7 **Q** Directing your attention to the cover email, it
8 states, quote, "Attached is the letter that Rob requested
9 from Gordon Jensen regarding continuing disclosure
10 obligations." What do you understand Mr. Youra to be
11 writing there?

12 **A** Well, he is sending us the letter from Gordon
13 Jensen signed by William Hill that – that they are aware
14 of their continuing disclosure obligations and they're in
15 compliance.

16 **Q** And who is he referring to by "Rob"?

17 **A** Rob Lawson.

18 **Q** And why would Rob Lawson be requesting this
19 letter?

20 **A** I guess you'd refer to him as a bring-down or
21 something, just to add – prior to an offering he may
22 have wanted to know that Chris was current on his
23 filings.

24 **Q** Was this something that –

25 **A** Excuse me. Chris – not only Chris Brogdon,

1 but the entity that Chris Brogdon had directed to be
 2 used. In this case, it appears that we were using or
 3 they were using Gordon Jensen, and so he wanted to be
 4 brought current on that. He wanted to know that they
 5 were current with their filings.

6 Q And I would note this was sent the day after
 7 the Eaglewood-related emails we were just discussing.
 8 Does that refresh your recollection about any
 9 conversations related --

10 A To this?

11 Q -- to this letter?

12 A Not really. But, no, I mean, if you're telling
 13 me that factually, that's -- no, I don't have -- I wasn't
 14 making a connection from one to the other, no.

15 BY MR. GREENWOOD:

16 Q Do you have a specific recollection of Mr.
 17 Lawson asking for the letter that's attached to the
 18 exhibit we're looking at?

19 A No. I mean, I don't have a specific
 20 recollection of that conversation, but he was -- as I
 21 said, oftentimes when something didn't come in on a
 22 timely basis, if I was aware of it -- and sometimes I
 23 wasn't -- but if I was aware of it, I would ask Rob and
 24 he would say, "I'll deal with it. It's Chris, and I'll --
 25 you know, I'll get to him."

1 BY MR. TUTOR:

2 Q Did you obtain these continuing disclosure
 3 obligations letters from Gordon Jensen, in subsequent
 4 Gordon Jensen offerings?

5 A A letter such as this?

6 Q Yes.

7 A No, I don't -- I don't think we did on a
 8 regular ongoing basis, no. Unless prompted to or asked
 9 to -- if a request was made that -- but I don't think it
 10 was a routine matter. I don't recall seeing letters of
 11 that nature coming in on a regular basis at all.

12 Q And directing your attention to the Exhibit A
 13 of the letter listing: one, Cochran (Bleckley County,
 14 Georgia), and, two, Midway (Liberty County, Georgia) --

15 A Wait, wait. Wait a minute. You're way ahead
 16 of me there. I don't know where you are now.

17 Q Sorry.

18 A Where are you?

19 Q The last page of this --

20 A Oh, of the exhibit?

21 Q Did you conduct any due diligence on either of
 22 those offerings to determine whether they were --

23 A In compliance?

24 Q -- in compliance?

25 A I don't know that I independently did, no. I

1 remember Bleckley/Cochran. I -- I don't actually
 2 remember Midway/Liberty County. That doesn't come --
 3 that's not coming immediately to mind.

4 Q Are you aware that there was a forbearance
 5 agreement on the Liberty County bond offering in effect
 6 at this time?

7 A I am not -- well, if you tell me so, I would --
 8 but as I just said, I didn't remember Midway because I
 9 don't think I worked on that offering. And if there was
 10 a forbearance agreement, that was -- it was not
 11 disclosed, or at least disclosed in documents.

12 Q Well, do you think that letter was sufficient
 13 to satisfy the Gordon Jensen's continuing disclosure
 14 obligations with regard to Lawson Financial's due
 15 diligence responsibilities?

16 A In retrospect, no. But at the time, I think it
 17 was accepted at face value.

18 Q Okay. We're going to switch --

19 A I'm okay on time. It's up to you. Just plow
 20 right into it until you're done.

21 Q I appreciate it, Mr. Lynch. We're going to
 22 switch topics now. Earlier you mentioned the Cullman and
 23 Decatur offerings?

24 A Yes.

25 Q And Lawson Financial underwrote the Cullman and

1 Decatur offerings, correct?

2 A Yes. Yes.

3 Q And you served as underwriter's counsel on both
 4 of those, is that correct?

5 A Yes.

6 Q So you mentioned that there were some issues
 7 with the Cullman and Decatur offerings earlier, correct?

8 A Yes, there were. Yes.

9 Q Can you discuss some of those problems, for
 10 lack of a better word, regarding the Cullman and Decatur
 11 offerings?

12 A Yes. There were -- they were -- there were two
 13 facilities that were identical in their construction and
 14 configuration. One was in Cullman, Alabama, and the
 15 other was going to be -- I think it was approximately 20
 16 or 25 miles away, was Decatur. And the first one to
 17 occur was Cullman. The second one, I think about six
 18 months later, was Decatur. My timeframe may be off, but
 19 I think it was about that long.

20 And there was a common ownership group, by and
 21 large. I mean, there was one extra party in the Cullman
 22 deal, but it was -- that were owners.

23 Q Who was in the ownership group of Cullman at
 24 the time of the offering?

25 A I didn't know what specificity you wanted to go

1 into here. The ownership of Cullman was 50 percent --
2 I'm trying to think of the fellow's name. Richard --

3 **Q Was it Richard Norton?**

4 **A Norton.** Richard Norton owned 50 percent. The
5 -- boy, I'm having a hell of a time with names today.
6 Skip Deupree -- Skip Deupree and his wife, I think she
7 owned the -- the other -- she owned 35 percent, so we
8 have 50 percent, 35 percent, and 15 percent was in the
9 name of The Longbranch Group. That was Cullman.

10 Decatur was 50/50 between Deupree and Norton.
11 The manager of the entity was Skip Deupree in both cases.

12 The reason that there was a 15 percent interest in the
13 Cullman property by this group, it was an attorney, a
14 real estate agent, I think -- and other businessmen that
15 were in town that had been fraternity brothers of Skip
16 Deupree, and they showed an -- they indicated interest
17 and they made an investment and bought out some portion
18 of his interest before the projects even got started.

19 **Q And so just regarding the underwriting of the**
20 **bonds, how were the Cullman and Decatur bonds sold**
21 **through Lawson Financial?**

22 **A They were sold through offerings to retail**
23 **investors.**

24 **Q And are you aware of any secondary market**
25 **transactions in the Cullman and Decatur bonds?**

1 firms recognize that their book -- the book of business
2 is really pertaining to the broker and the broker-dealer
3 sort of services that.

4 The approach that was taken at Lawson was that
5 it was different in that regard. They were -- they were
6 viewed as -- Rob Lawson viewed those as his clients, and
7 they were only getting -- the brokers were only getting
8 the opportunity to service those clients. And if he
9 fired you, he didn't expect to lose not one of those
10 clients. If you tried to take a client from him, it was
11 -- you know, you would have hell to pay for that. So
12 that was -- it was a different style of operation than --
13 than what I was used to or that I have typically seen in
14 business.

15 **Q And who generally were the clients? Were they**
16 **individuals? Institutions?**

17 **A I would -- I would not classify them as high**
18 **net worth individuals. I would -- I would consider them**
19 **being older, fifties and older than that. Some of those**
20 **are trust accounts; others are -- I would say they were**
21 **retirees looking for income generation, you know,**
22 **consistent income coming in on a tax-exempt basis.**

23 So I would say they were somewhere between 50
24 and 85 in age. They were husbands and wives or a widow
25 or maybe a trust, you know, had been left behind through

1 **A No, I'm not.**

2 **Q Would that be a typical thing that would occur,**
3 **though, secondary transactions in those bonds?**

4 **A No.** I would think a lot of the offerings that
5 Lawson did were held closely by his retail clients and
6 that there wasn't a lot of subsequent trading. At least
7 that was my impression. I was never given access or
8 involvement, and I didn't have any direct involvement in
9 whether bonds were bought and sold or traded or anything
10 of that nature. So --

11 **Q Do you have an understanding of who his retail**
12 **clients typically were?**

13 **A Well,** as I said, he had about 25, maybe 30
14 brokers, various points along the way. And Lawson took
15 what was -- I thought was a somewhat unusual position
16 that all clients were his clients, not necessarily the
17 client of the broker that was servicing that client. A
18 lot of brokers at other firms would take great issue with
19 that and would take the position that that client is
20 their client, whether they're at Morgan Stanley or
21 Merrill Lynch.

22 So there's a lot of -- when a broker moves from
23 one firm to another, quite often they take their book of
24 business with them. Sometimes they lose some, but most
25 cases, even the firms -- I think the bigger national

1 inheritance. And those clients were serviced by, you
2 know, the 25 to 30 brokers that he had.

3 **Q And I think you earlier testified that**
4 **generally people would purchase these bonds and hold the**
5 **bonds. But is it your understanding that occasionally**
6 **they would also sell the bonds?**

7 **A Well,** I would assume that if somebody said, "I
8 don't want XYZ bond anymore; can you get -- can you sell
9 it for me?" I would assume that the firm would have made
10 a market in that bond and -- and eventually either taken
11 it in or found somebody to buy the bond in place of the
12 client that currently owned it, and they would cross the
13 trade that way. Instead of coming it right into the firm,
14 maybe you sold it from one person to another directly.
15 That would be -- that would be my impression or
16 understanding of it.

17 **Q Did Robert Lawson or entities that Robert**
18 **Lawson controlled come to own an equity interest in**
19 **either Cullman or Decatur?**

20 **A Yes.** I gave you the breakdown of the
21 ownership, and then -- and also, on top of that, there
22 was -- they were going to own -- those entities were
23 going to own the -- I think the -- that was the makeup of
24 Cullman ALF, Assisted Living Facility, LLC, and Decatur
25 ALF, Assisted Living, LLC. The manager was Skip Deupree,

1 and they entered into a -- a management agreement with a
2 company that was based in Orange Beach, Alabama. I think
3 the name changed during the course of the relationship
4 that we had with them, but in any event, that -- that
5 management company was going to -- was handling the
6 operations with both Decatur and with Cullman.

7 The problems resulted in -- we thought Cullman
8 was going to be a very successful entity. It got off to
9 a rough start. They incurred operating deficits, and I
10 don't think by the time -- I think we had already done
11 the second offering by the time a lot of this started to
12 bubble up. But what we didn't realize in the beginning,
13 when the offerings were done but we realized later, was
14 that the owners were fighting with each other, and the
15 manager, who was representing all -- he was fighting --
16 the manager was fighting with everybody in the ownership
17 group, except for his wife, and he was also fighting with
18 the manager of the facilities.

19 And it had -- it reached a point where the
20 operating deficits were mounting and the -- it was -- it
21 was a dysfunctional group of people all the way around.
22 There was nobody that was not at fault. There were cost
23 overruns. The Cullman facility did not do well. Decatur
24 opened up and was doing okay as far as I remember. But
25 Cullman ran into some reputational problems in the -- in

1 the town that it was in. It got off to a slow start.

2 Mr. Norton didn't -- you know, was fighting
3 with the Deuprees, both of them were fighting with the
4 manager, whose -- name of the company I can't remember at
5 this point, and so it just resulted in a very
6 dysfunctional, very difficult situation. The manager had
7 been, among other -- the manager had been picked by the
8 ownership group. It was not our choice.

9 Q And who was the manager?

10 A I don't remember the name of the group now.
11 I'd have to -- I don't even know if I could look it up
12 right now. But if you have a document, I could -- I could
13 verify it to you, but --

14 Q I think -- my question is, did Robert Lawson
15 come to own an equity interest in either, the Cullman or
16 Decatur facilities?

17 A Yes.

18 Q And how did that happen?

19 A With all of the dysfunction that was going on,
20 there didn't appear to be any way out of the -- nobody
21 was trying to get out of the financing, but we were
22 trying to fix it.

23 Q Okay.

24 A And I got assigned, at the request of -- what I
25 was getting at before was the -- the ownership group

1 picked the manager. When the manager was surfaced -- and
2 there were two or three managers they interviewed -- some
3 of the background checking that we did on that particular
4 manager, it just happened to be that we were aware that
5 Chris Brogdon had -- had actually used that manager in
6 prior dealings on some regulatory matters in Alabama, and
7 that he knew of them, spoke very highly of them, but
8 there was really no affiliation. I mean, they were
9 really independent of each other.

10 And so on the basis of that and some other
11 checking with the state regulatory people, they came off
12 with very high marks. So we endorsed or encouraged the
13 ownership group to hire, and so the management group was
14 hired.

15 As time went on, the manager wanted out, the
16 manager was running some delays in payment. The
17 ownership group was -- had deteriorated, they were all in
18 litigation with each other. Rob Lawson reached out to
19 Chris Brogdon and basically said, "I've got a mess on my
20 hands, and can you help me fix this thing?" And so
21 Brogdon personally and Lawson and I went to Cullman and
22 Decatur to see the facilities. And we had -- you know, I
23 had seen the buildings being built on the ground in the
24 early going, but we actually went and saw the properties
25 and everything.

1 And the determination was reached collectively
2 that these -- this group was so dysfunctional that there
3 really wasn't anybody that was going to survive, and that
4 the only way out of the mess was to get rid of the -- the
5 management company and also the owners, because they
6 weren't -- they didn't have any expertise to -- they
7 wanted -- they wanted to build a system of 10 or 20 of
8 these facilities. These were the first two that they
9 had, and they had made a disaster of it, basically.

10 So the thought was to -- to protect the
11 bondholders who were individual bondholders of Lawson,
12 that what needed to be done was that we had to -- we, I -
13 - I had to negotiate with various parties to get them to
14 sell their interests to somebody, and that a new manager
15 would need to come in to do a turnaround. And Mr.
16 Brogdon was offered that position, and he ultimately --
17 well, he ultimately -- I thought he declined it in terms
18 of he didn't want to be manager again, and he didn't want
19 to get into that situation.

20 But -- and I can't specifically tell you --
21 there were three groups -- I ended up negotiating with
22 the Deuprees, with Norton, with other people that had
23 sued those entities, the bond issue, there was a
24 financial advisor who left and he was disgruntled, and he
25 had claims in federal court, too. And there was a

1 contractor that was owed \$350,000, and it went on and on.
2 The place was just filled with litigation and messes.
3 So Rob asked me to step in and try to
4 negotiate, because I -- I had, of all of us, probably the
5 best relationship with the individuals. They were all
6 fighting with each other, but nobody was fighting with
7 me. So I -- they asked me to try to resolve it, just
8 from a personal standpoint.

9 **Q** So when did Lawson or entities Mr. Lawson
10 controlled first acquire an interest in either Cullman or
11 Decatur?

12 **A** I can't give you the date, but there was
13 document -- documentation to the effect that the first --
14 the first piece that was purchased was the 50 percent
15 interest in Decatur and the 35 percent interest in
16 Cullman. And that was purchased by an entity that Rob
17 Lawson controls.

18 **Q** And what entity was that?

19 **A** I don't remember the name of that, but -- geez.
20 He had entities on the shelf, so I -- I don't remember
21 which one he used. If you -- and I don't -- I mean, if
22 you tell me the name of the entity, I will tell you it
23 was yes or no as to that particular entity. But if you --
24 -- I don't remember the name of it offhand. I honestly
25 can't recall. In any event, it was -- it was an LLC that

1 with a lot of these offerings, so --

2 **Q** A lot of the Brogdon offerings?

3 **A** A lot of all the offerings. I mean, it was --
4 you know, I don't know how many -- I never really did --
5 I have asked, but I never really got an honest answer as
6 to how many clients the firm ever had. That was just
7 information that wasn't available, and I -- I was told
8 10,000, I was told 1,000 clients, I was told somewhere
9 around 4,000. I mean, I got different -- different
10 numbers from different people.

11 So I never really knew honestly how many
12 clients they had. But I -- my thought was, and my belief
13 was, that he was selling into a retail base that were
14 receiving one financing after another, and so, you know,
15 I -- I didn't think you were diversified, which was the
16 other reason I suggested we get institutions involved and
17 that we get partnered, because I said, you know, at some
18 point if we did 10 deals or 12 deals or 15 deals, and
19 people were buying every one of these, and they were all
20 senior housing, that's not diversification. That's just
21 -- you just have a lot of the very same thing. And so I
22 took some issue with that.

23 And so, as a result of so --

24 **Q** And I guess I was just trying to focus on sort
25 of the financing of the first piece of the acquisition.

1 was controlled by Robert Lawson. That was the first piece
2 of the -- trying to fix things. The second --

3 BY MR. GREENWOOD:

4 **Q** When did that first piece take place?

5 **A** I don't remember. I think -- I think these
6 were financed around 2012, if I'm not mistaken and --
7 late '11 or 2012. And this would have probably occurred
8 in I'm thinking 2013, but I -- I can't -- I really can't
9 be specific without looking at the documents. I just
10 don't remember the dates.

11 **Q** And what documents are you referring to?

12 **A** Well, I'm talking about the -- I don't remember
13 when the bonds closed, and I -- I know that sometime
14 subsequent to that they ran into serious operating
15 difficulties, and they depleted the debt service reserve
16 in Cullman and I thought that was a disclosable event.
17 Rob didn't want to disclose that, gave me all kinds of
18 concern, but I didn't feel I had the role of reporting it
19 myself.

20 In any event -- and the reason he didn't want
21 to report it, obviously, as it turns out, is that if he
22 had to start reporting disclosable -- disclosable items
23 with regard to concern over financings, it would affect
24 his retail sales base. And it was the same retail sales
25 base that we're sold repeatedly into over and over again

1 **A** Right.

2 **Q** To your knowledge, how was the first piece of
3 the acquisition of the Cullman and Decatur equity
4 financed by Mr. Lawson?

5 **A** I negotiated the pricing on his behalf. I
6 mean, everything was checked with him, but I was the one
7 that was -- had the responsibility. I ended up
8 negotiating talking to both sides saying we have a deal,
9 here is how much it is going to cost, and we go the
10 Deuprees to sell out their -- both interests in Lawson's
11 entity, which I do not remember the name of, ended up
12 acquiring that -- that, and so I worked with his --
13 Lawson's -- excuse me, I worked with Lona Nanna, who gave
14 me the entity, and the firm that had represented -- it's
15 a large firm in Birmingham that represented the Deuprees,
16 and we exchanged documentation to buy them out.

17 I never -- I know the amount, but I never saw
18 the money pass hands. But I know the money came from --
19 and I had suspicions and concerns about that later, too.
20 But, first, let's just get the money over, so the money
21 was --

22 **Q** Right. So how much -- how much was it?

23 **A** I don't remember that now. I don't have a
24 recollection of --

25 **Q** Do you have a recollection of the range within

1 which Mr. Lawson purchased that first piece?
2 A This is -- I mean, this is not -- it is not
3 even an educated guess, but I -- I think it's somewhere
4 between 50- and 100,000, I think it came out to be.

5 Q Okay.

6 A It may have been -- I mean, there's
7 documentation of it, I mean, that I had, he had, and
8 other people had. I provided it to FINRA, but that
9 amount of money -- and I don't know what the number was,
10 but if it was -- because I wasn't focused on that, but we
11 got -- we got that settled.

12 Money went over from -- well, this is where I -
13 - it gets fuzzy for me. Money went from Lawson or some
14 Lawson entity to the Deuprees, and the Deuprees were
15 purchased -- their interests were purchased out, 35 in
16 Cullman, 50 percent in -- in Decatur, which still left us
17 with Mr. Norton and with The Longbranch Group only in
18 Cullman.

19 We decided that we didn't really need The
20 Longbranch Group. We met -- we met with them and tried
21 to discuss a settlement with them. They were hard to
22 deal with at that time, frustrated, angry. Everybody was
23 pointing fingers at everybody else. Litigation had
24 started between the Deuprees and Nortons, and so these
25 gentlemen said, "You know, we're just going to sit on the

1 sidelines for right now. We'll see how this all -- the
2 whole thing works out."

3 So nobody ever bought The Longbranch Group out.
4 The feeling was that if we could get 100 percent in
5 Decatur and 85 percent in Cullman, we'd have the
6 authority to fix whatever the problems were going -- you
7 know, what was fixable could be fixed at that point.

8 So the next level of -- which I'm assuming is
9 where you're headed, the next level of purchase out of
10 the remaining Norton interests, once again, we went down
11 and -- well, I met Mr. Deupree, Mr. and Mrs. Deupree,
12 Chris Brogdon, and Lawson and I also went to one of the
13 facilities that was -- just happened to be one of the
14 facilities in Birmingham that was part of all these
15 financings that we did.

16 And we discussed the buyout of the Deuprees at
17 that time, and then I came back and just documented it,
18 and that -- that money -- Brogdon had a hand in it, and
19 Brogdon knew about what was going on, and he recommended
20 to Rob that it was a fair price, what was being paid.
21 And that settled that matter. And then when we came to
22 the Norton piece, I was then told by Lawson that Brogdon
23 was going to buy those pieces, the 50 percent and the 35
24 -- or the 50 -- well, the 50 percent in both of those,
25 and those were to be purchased by Brogdon.

1 Going back to the first transfer, I never --
2 some financial information came into my hands by mistake.
3 I was not in the line of where money was going,
4 generally speaking. I just negotiated the terms. And it
5 turned out that what I believed was money that was
6 coming, I thought Lawson was buying the interests into
7 the properties from capital that he had at the firm.

8 I later found out that it had come from a
9 trust, and that trust was -- it turns out, and I looked
10 it up -- I mean, I was given information because -- the
11 reason I was given the information was the trustee,
12 Marrien Neilson and Terry Pulley and some of the other
13 people at Bank of Oklahoma said, "We received some -- we
14 didn't receive some money or we did receive some money.
15 Where did this come from, and where do you put it? You
16 know, where do I put this money?"

17 And I said, "Where did it come from?" They
18 said, "Well, it came from you down there at Lawson. So
19 go find out." So I went to Lona Nanna and asked for the
20 information. I said, "You know, they need the wire
21 number. Money was -- went from here to there. This is
22 the purpose of it. It was the buyout of the thing. Can
23 you at least provide me with the wire information of it,
24 so I can at least confirm to them that -- where they can
25 go look for it?" Because sometimes things go into a

1 corporate trust department and they get misallocated once
2 in a while.

3 So she took a piece of paper like this, and
4 with a whole bunch of yellow stick-ems, sticky pieces,
5 covered up most of the information on the -- on the page,
6 copied it, and gave it to me, so that I could present the
7 fed fund wire that had paid for the -- for the thing. It
8 just turned out that not all of it was copied or covered,
9 and so I became aware that there was a trust involved in
10 that situation.

11 And then some other financings occurred that
12 also had that trust. There were bridge loans when
13 something couldn't close on time and a million dollars
14 was needed here and 500,000 there. This trust seemed to
15 be the trust that was supplying the dollars to make those
16 bridge loans, most of all of which were repaid because we
17 did them for charter schools and other things.

18 But in this particular case, I had a
19 conversation with him about that, too, at some point. He
20 was not happy that I even knew that information, but I
21 was kind of "Where did this come from?" "You don't need
22 to know" was the response that I got. And so, in any
23 event, there was this trust that -- the monies that he --
24 he owned the piece, but the money came from a trust that
25 he was the sole trustee on.

1 Q Did the trust have an ownership interest in the
2 Cullman and Decatur facilities at the time?

3 A No. It was an LLC that, you know, I received
4 from the CFO of the company, and that was the name that
5 we put on the exchange. And so I would say, no, the
6 trust didn't have an interest in it at all. But the
7 money came from the trust to pay for it.

8 Q Well, to your knowledge, did the trust have an
9 interest in the LLC that acquired the ownership interest
10 in Cullman and Decatur?

11 A I am pretty certain that it did not.

12 Q Okay. And why is that?

13 A Because I looked it up on the Arizona
14 Corporation Commission listings, and I think Rob Lawson
15 was the only owner of the -- of the entity that acquired
16 that interest.

17 Q Okay. So the basis for that belief is that you
18 -- you looked up at the actual LLC on the Arizona
19 Department of Corporations?

20 A Right. Yeah.

21 Q Okay. Okay.

22 A And it did not -- the trust was not mentioned
23 and is not -- to my knowledge, is not an entity and was
24 not an owner of that -- that particular piece.

25 So then we got to the second pieces, which was

1 after there were -- as I said, there was about a \$350,000
2 lien on the property from the contractor.

3 Q So I'm just tasking whether the debt service
4 reserve fund draws occurred before or after.

5 A I believe they occurred before anybody was
6 bought out of the transaction.

7 Q And so why was Robert Lawson in a position to
8 approve debt service reserve fund draws?

9 A I didn't say that, but -- I mean, I didn't say
10 he was -- he was approving them, but I believe he was
11 approving them. I mean, he really didn't have any right
12 to approve or disapprove, but I believe that Marrien
13 Neilson was contacting him and telling him that -- I
14 didn't know this was going on until later in the events,
15 but I was then brought in to try to fix the problems.

16 But at that point, the trustee was asking what
17 -- what was going on and whether -- was I -- at one point
18 I became aware that the debt service reserve had been
19 tapped. So the buyouts occurred after that, the final
20 documentation of that.

21 And the other reason was that the funding of
22 the manager's pay and some of the shortfalls that were
23 occurring I believe were being funded by Rob Lawson or
24 the trust. I don't know; I never saw the documentation
25 of that.

1 buying out the Nortons, and that --

2 BY MR. TUTOR:

3 Q Before we get to that --

4 A Sure.

5 Q -- if we can just cycle back a little bit.

6 A Sure.

7 Q You had mentioned debt service reserve draws

8 A Yeah.

9 Q -- previously. When did those occur relative
10 to the acquisition of the Deuprees' interest in Cullman
11 and Decatur?

12 A I think those -- I believe those draws --
13 because it was only a six-month -- remember we were
14 talking about the shortness of the debt service reserve
15 fund in -- in a lot of these situations, I don't remember
16 the size of those. They may have -- they may have had a
17 year in them; they may not have. I don't recall.

18 Q I'm specifically asking about the timing, if
19 you recall when --

20 A Right. I think the operating -- well, the
21 buildings were built, they didn't fill up on time, or at
22 least the Cullman one didn't fill up on a timely basis,
23 and there were operating deficits occurring as a result
24 of that, which caused the debt service to be tapped. I
25 would say that the buyout of everybody in this thing was

1 Q And when was -- when were the shortfalls being
2 funded by Rob Lawson? When did that occur?

3 A Whenever he became aware that there were
4 shortfalls that existed in the -- in the operation. We
5 were talking to the manager, we were talking to the
6 owners, and he -- he was -- he was aware of it very early
7 on.

8 Q Okay. I'm handing the witness what has
9 previously been marked as Exhibit 148. This is an email
10 from Marrien Neilson to Skip Deupree and Mary Campbell
11 with Joy Deupree, George Taylor, Chix Miller, and John T.
12 Lynch cc'd. The subject is Cullman AFL Group bonds --
13 use of DSR. The Bates range is F004641 through F004643.

14 Mr. Lynch, do you recognize this exhibit?

15 A Yeah. Again, I don't have independent -- I
16 mean, I don't recall seeing it, but if I read it, I'm
17 sure I'll have -- refresh my memory.

18 (Witness reading document.)

19 Okay. The first -- I don't recall -- oh, okay,
20 Janet Lang -- George Taylor was an attorney in Birmingham
21 that represented the Deuprees and the entities that were
22 the ownership group. And so it looks as if he put them
23 on notice that the construction delays were unexpected,
24 they were needing to invade the debt service reserve
25 fund, so that -- that disclosure was made.

1 Q Okay. Directing your attention to the first
2 email in the chain, or the top email from Marrien Neilson

3 -

4 A Right.

5 Q - it appears she is responding to Skip
6 Deupree's email regarding drawing debt service reserve
7 funds.

8 A Right.

9 Q She writes, quote, "That is our understanding
10 also. This will cause a notice to be given to bondholders
11 and posted on EMMA as an event under the continuing
12 disclosure agreement. John, will this have an effect on
13 funding of future bond issues? Although this can be
14 done, it is usually used as a last resort as it can have
15 some permanent effects, not only on this bond issue but
16 anything the borrower attempts in the future?"

17 A Yes.

18 Q Do you recall discussing this draw on the debt
19 service reserve in April 2012 with Robert Lawson?

20 A Oh, I'm sure that I did. There would be no
21 reason for -- I mean, nothing like this would have come
22 in that I would not have had a conversation with him
23 about.

24 Q And do you recall whether the Cullman debt
25 service reserve fund was drawn down at this time?

1 Q What about the impact on the underwriter, was
2 there any impact on the underwriter with respect to a
3 draw on a debt service reserve fund?

4 A Well, it would have been a disclosable event,
5 as Marrien is talking about. And we get back to the
6 conversation that David Tutor asked a little bit earlier,
7 and that was the question of the concern that I think
8 often came up in situations for Lawson was, if I have to
9 make these kinds of disclosures to my retail clients,
10 what effect is that going to have on future ability to do
11 business? I would think the obvious answer to that is if
12 -- I were your investor, I would be pretty seriously
13 concerned about that, and I might not be buying the next
14 issue or the one after that.

15 So there was a real reluctance on Mr. Lawson's
16 part to make disclosures. His preference oftentimes was
17 to fix the problem, not make the disclosure. And if you
18 could make it go away by fixing it, he viewed that as
19 being the better choice of the two. And we had
20 conversations that were unpleasant in that regard,
21 because I said, "You can fix it, but you've got to
22 disclose it, too." So --

23 Q Did Mr. Lawson convey that preference to you,
24 that preference in favor of fixing a problem rather than
25 disclosing it?

1 A I do not remember when it was drawn down, but I
2 would believe that it probably was right about this time
3 that this kind of chain of conversation was going on. I
4 mean, clearly, they were expecting it to happen.

5 Q And do you know why Ms. Neilson is directing
6 this question to you at this time?

7 A I -- I think it answers itself, but -- yeah, I
8 don't -- I mean, why it was directed to me as opposed to
9 Rob or somebody, I don't know. But, yes, she did ask me
10 the question. I don't remember having -- I don't
11 remember responding to the question, and I -- maybe you
12 have an email that does show that, but --

13 BY MR. GREENWOOD:

14 Q Do you understand what her question is? She is
15 asking you, "Will this have an effect on future bond
16 issues?" Do you see that?

17 A Yes.

18 Q And do you believe that such a draw on a debt
19 service reserve fund could have an effect on funding
20 future bond issues?

21 A Oh, it certainly could have an effect, yes.

22 Q And how would that have an effect?

23 A Well, with respect to this ownership group
24 wanting to do subsequent offerings, if that was drawn on,
25 it could very much have an impact on that.

1 A Yes. That's what I was saying, there were a
2 number of issues that were broadly related, and there
3 were other financings that were done subsequent that --
4 that said, "I think this is a disclosure item," and "I'll
5 take care of it" was the answer I would get. And so, I
6 mean, I was -- I spent an inordinate amount of time in
7 this Cullman and Decatur deal trying to -- I mean, it
8 wasn't a question of whether -- the question of whether
9 it was going to be disclosed was something that both the
10 trustee and I had put to Lawson. It was his call as to
11 whether it was going to be disclosed.

12 And I was left with the charge of trying to fix
13 it as quickly as I could, and so that started into a
14 chain of events that meant buyout the Deuprees, get rid
15 of the manager, find a new manager, buyout Mr. Norton,
16 and when that -- hopefully the thing gets turned around,
17 the intent was that within some reasonable period of time
18 we would bring somebody in to turn it around, and the --
19 we would try to sell the facility. We -- Lawson would
20 try to sell, or whoever was owning the thing, would sell
21 the facility at -- for enough money to pay off the bonds
22 and satisfy his clients.

23 Q I see. So, and correct me if I'm wrong here,
24 but are you saying that the -- sort of the fact that you
25 -- that Mr. Lawson directed you to go ahead and help

1 execute this buyout of the Deuprees and acquiring this
2 equity interest in the Cullman and Decatur offerings, was
3 that part of his concern about not wanting to disclose
4 issues related to the offerings?

5 A Well, putting the most altruistic spin on it, I
6 would say he was concerned about his client bondholders
7 and he wanted to make sure that their money got back to
8 them, and that the bonds were paid off, and that there
9 wouldn't be any, you know, fallout from the -- the whole
10 experience. But you could take a -- another view, and
11 that was disclosure would be very bad for business, and
12 so fixing it is -- you know, is the first line of defense
13 as opposed to disclosure. Disclosure gets you nowhere.
14 You're still going to have to fix it anyway.

15 The conversation was make the disclosure and
16 then we'll fix it, and if we -- you know, as you can
17 bring the bondholders along and something is happening
18 positively in, you know, this or that, the owners have
19 been replaced, the manager has been replaced, maybe they
20 will hang in there with you. And that -- that was
21 discussed.

22 Q You mentioned in your prior -- a couple of
23 answers prior that this preference for fixing over
24 disclosure by Mr. Lawson also came up in connection with
25 the Brogdon offerings, is that right?

1 Q Right. Putting aside the Cullman and Decatur
2 offerings.

3 A Yeah. In both -- in both cases, I'd say the
4 answer is yes.

5 Q Okay.

6 A I mean, it was -- it was really -- I always
7 viewed it as a protection of his interest to sell bonds
8 to the client base that he had, and that I think that was
9 -- I mean, he may couch it in different terms, but that
10 was my takeaway from conversations that I had had with
11 him, and they were numerous, that -- that was my clear
12 impression of what his intent was, and he said that in as
13 many words. So I took him at face value.

14 When I would say we needed to -- I think this
15 may -- this or that may require a disclosure, it was you,
16 whoa, wait a minute, you know, that can be fixed.

17 Q And what you're referring to, these sort of
18 conversations, I guess I'm just trying to remember
19 whether there's a specific conversation or conversations
20 that you can recall concerning the Brogdon offerings
21 where Mr. Lawson expressed this -- his preference for
22 fixing something over disclosure.

23 A Well, I would say in terms of the Brogdon
24 offerings, you know, as you -- you were both pointing
25 out, or all three of you were pointing out, or four of

1 A Well, I would -- when talking about disclosure,
2 with Lawson there wasn't -- that was not -- didn't seem
3 to be the first line of thought that he had. Disclosure
4 was not immediate. It was, is there some way of fixing
5 this before a disclosure had to be made?

6 I mean, if it was a timely filing, if there was
7 -- you know, as you were pointing out that the -- you
8 know, would you follow along with another financing for
9 Brogdon or for the clients, you know, the answer was
10 usually the -- you know, those things have been fixed or
11 they've been repaired, a disclosure really isn't
12 necessary. We know this man, we are confident that we're
13 dealing with a good -- good group and good people, and
14 we'll just move forward to the next -- the next
15 transaction.

16 So I don't know if I'm answering your question
17 directly or --

18 Q I guess I'm just trying to assess now whether
19 there's any specific recollections you have of Mr. Lawson
20 expressing to you sort of a preference for fixing
21 something over a disclosure in connection with --

22 A Oh.

23 Q -- a Brogdon offering.

24 A Oh. Well, Brogdon was in these. I mean, I
25 don't -- yes.

1 you when she was here, too, your other associate, that
2 this item, you know, occurred -- you didn't get the
3 financial information on time or that item didn't get --
4 you know, did not raise it to a level of concern.

5 And maybe in retrospect, certainly, when you
6 take the totality of the relationship, you would say,
7 yes, but at the time that we were doing the financings,
8 there was -- there was really not that feeling of a
9 heightened level of concern about Brogdon, and there was
10 a reluctance on Mr. Lawson's part to make disclosures.
11 And in almost all situations, the need for disclosure or
12 a continuing disclosure going forward in the next
13 financing, it got fixed by a forbearance agreement, the
14 payment was made, albeit, you know, three days late or
15 ten days late, or something like that, the financial
16 statements were produced.

17 Was it a pattern? Oh, yeah. There was
18 definitely a pattern, but there was not -- and my
19 concerns eventually got assuaged, maybe incorrectly, but
20 none of this stuff ever really blew up until we got to
21 the Cullman and Decatur things. And those weren't
22 Brogdon problems. I mean, that didn't come from Brogdon.
23 That came from a whole group of other people, so that
24 was an unrelated situation.

25 So I never saw or expected to see the wheels

1 come off of Mr. Brogdon's operation, really. I mean, I
2 honestly thought that he had done many deals before I got
3 there, and he was continuing to do transactions. And
4 even during our time, or my time in that -- in that
5 group, I didn't ever come away from -- with them, from
6 the different members of the financing team, with a sense
7 that this was -- this was shaky at best or it was -- you
8 know, the wheels were going to come off or there was some
9 concern on a regular basis that things would not get
10 solved.

11 So I don't -- I don't know how to convey that
12 in the sense of there was -- there had become a comfort
13 level with Chris Brogdon in this group that everything
14 would always work out, that there was always some --
15 there was a solution, whether it was a forbearance, a
16 refinancing, or something that -- that he wasn't -- not
17 able to deliver on the information that we were asking
18 for. He didn't do it on a timely basis, but he did do
19 it.

20 (SEC Exhibit No. 223 was marked
21 for identification.)

22 BY MR. TUTOR:

23 Q I'm handing the witness what has been marked as
24 Exhibit 223. This is an email from John T. Lynch to Mary
25 Campbell with Marrien Neilson cc'd, sent on April 30,

1 2012. The Bates range is SEC-LawsonE-0000816 to SEC-
2 LawsonE-0000817.

3 Mr. Lynch, do you recognize this email chain?

4 A Not yet, but I'll read it, but --
5 (Witness reading document.)

6 Yes, I do -- I -- yes, I --

7 Q Okay. Directing your attention to the first
8 email in the chain, it's sent by Mary Campbell on April
9 30, 2012, at 10:21 a.m.

10 A Yes.

11 Q She writes, quote, "John: Where do we stand
12 today on the 5/1 debt service payment for Cullman? Are
13 we going to take it from the reserve?" What do you
14 understand her to be asking there?

15 A Well, it was never my call, but Marrien quite
16 often relied -- once the financings -- the number of
17 financings that were done, she seemed to take direction
18 from Rob Lawson in terms of what to do next sometimes. I
19 mean, do we -- do we make an announcement? Do we call --
20 you know, where is the payment coming from? That kind of
21 thing. So I -- I was contacting -- Mary was somebody
22 that worked under Marrien Neilson, and there must have
23 been something that was prior to this that indicated that
24 there were -- there were issues in terms of meeting the
25 debt service. And so she was just reaching out to say,

1 you know, what do I do with the debt service payment?

2 Q Why would this be Rob Lawson's call?

3 A I'm -- I'm not sure that it should be Rob
4 Lawson's call. But at that time, as I said, there were
5 some operating deficits that had occurred, and I believe
6 that Rob -- some of this unbeknownst to me, but I think
7 in the early going, when the operating deficits did
8 start, he -- it was better for him to make payments than
9 to make disclosure again. So payments were -- were
10 coming. So --

11 Q So do you understand that Rob Lawson was making
12 payments for various things, be it --

13 A In these financing, these --

14 Q Related to the Cullman and Decatur directly --

15 A Yeah.

16 Q -- making payments related to Cullman and
17 Decatur?

18 A I believe so, yes.

19 Q And did you discuss whether to draw the debt
20 service reserve for this payment with Mr. Lawson?

21 A Yeah. I -- I didn't make any of these calls by
22 myself. I mean, there was never any -- I mean, if I was
23 contacted by them, I was probably in Rob Lawson's office
24 about 90 seconds later saying, "I just got an email from
25 such-and such, and what do you want to do about this?"

1 And how do you want to handle it?"

2 So, yes, I would have immediately had that
3 discussion. And in some cases -- I mean, in this case, I
4 -- I probably reached out to the Deuprees and said,
5 "What's going on? Where are we?" and it -- this was --
6 he -- Mr. Deupree had a -- we had a guaranteed maximum
7 price contract which was supposed to be adhered to, but
8 those contracts only work if you don't sign add-on orders
9 to them.

10 So the contractor was saying this and this
11 needs to be done, and the owner -- the representative of
12 the owner was Skip Deupree and he was signing those and
13 agreeing to them. So what a surprise at the end of the
14 project \$350,000 is a cost overrun to a guaranteed
15 maximum price contract.

16 We were not consulted, didn't know about it,
17 but, you know, you get the news one day that -- that they
18 are suing you and that they are going to arbitration
19 because they are not getting paid. And you say, "Well,
20 should they have been paid?" "Well, no, I don't -- I
21 don't think they did the work?" and yada, yada, yada.
22 But at the end of all of that, it was -- Mr. Deupree had
23 signed these things, they had a legitimate claim. There
24 really wasn't a defense to it, and it was just another of
25 the many problems that were involved in the deal.

1 Q Okay. Regarding your response to Ms.
2 Campbell's question, you appear to ask for the debt
3 service reserve to be drawn down.
4 A Right.
5 Q And then you write, quote, "I will call you and
6 Marrien later today or early tomorrow morning to
7 determine the exact amount of payments that will be
8 needed for replacing the amounts in the DSR and when."
9 A Um-hmm. Right.
10 Q What were you conveying there?
11 A Well, she said they needed money for the
12 payment, and I think in prior instances it turned out,
13 when I went to Rob Lawson and asked him, "This is what's
14 going on; what do you want to do?" he would then have
15 conversations with Marrien. I believe monies went to
16 Marrien from the trust or from Lawson Financial to keep
17 things afloat, but I think at some point the debt service
18 reserve was being asked to be drawn on, and I was just
19 conveying to her that -- what I had heard from -- I was
20 conveying to her the information that I got from Deupree.
21 I would have shared that with Rob Lawson, and Lawson
22 would have said, you know, go ahead and drawdown on the
23 debt service reserve. So I notified the trustee that
24 that's what he wanted to do.
25 Q And do you recall a conversation with Ms.

1 reserve?
2 A I don't recall. I believe that it wasn't, and
3 if it was, the dissemination agent for the disclosure for
4 that information was Bank of Oklahoma. I don't know
5 whether they made that disclosure or not. I think not,
6 at least that's my impression, because I believe we had
7 some conversations to the effect that I had with Lawson.
8 Lawson was directing traffic from Lawson
9 Financial to the -- to the trustee as to what was to be
10 done next or what money they needed. And he furnished
11 all the money that I -- that I'm aware of that was paid
12 into this project from the time it started occurring
13 losses. So --
14 Q At this time when Robert Lawson was furnishing
15 money and directing that the debt service reserve fund be
16 drawn down, did he have an equity interest in either of
17 these facilities?
18 A At that time?
19 Q At that time.
20 A No. I don't think so. I think that he started
21 paying first, and then realized that this was only going
22 deeper. And so at that point -- and it was the right
23 consensus that this group was dysfunctional, and they
24 weren't going to fix themselves, and they weren't going
25 to get better.

1 Campbell and Ms. Nielsen regarding the amount of payments
2 to replace the draw on the debt service reserve?
3 A I am sure that we had one to see what we -- I
4 mean, we would have had to go back to the documents to
5 see when they had to be replenished and such but, you
6 know, as to the specifics of that, I don't really recall
7 at this point.
8 Q Okay. And who was going to be making those
9 debt service reserve fund replenishment repayments?
10 A Well, since the facility, the project itself
11 was still running operating deficits, the only person
12 that seemed to be willing to make continued payments or
13 to refurbish -- and I don't think they were refurbished,
14 to be honest with you, but I -- would have been Lawson.
15 Q Okay.
16 A And the question -- I think at some points
17 there there was some question about the legal obligation
18 to -- that the project would have to repay those over a
19 timely basis, and at least my remembrance or recollection
20 of the conversations I had with Lawson at the time was
21 that he was -- his preference would have been to devote
22 money to keeping the facility afloat than refurbishing
23 the debt service reserve at that point.
24 Q Do you recall if an event notice was filed on
25 EMMA related to this drawdown of the debt service

1 And they were -- they were still in litigation
2 long after they were bought out, so I think the
3 assessment was correct that the -- this was not going to
4 get better on its own or by itself, and that somebody had
5 to take action and Lawson was protecting his own
6 interests by interjecting me and him and the underwriter
7 into the process, so that it could be fixed.
8 BY MR. SATWALEKAR:
9 Q Could I ask a question about this exhibit, Mr.
10 Lynch? You can keep it in front of you still. So
11 looking at your email to Ms. Neilson on SEC-LawsonE-816,
12 you make no reference of consulting with Mr. Lawson about
13 drawing down the DSR, do you?
14 A No. I make no reference to it on there, no.
15 Q Why not?
16 A Well, I think it probably really went without
17 being said that I was not doing this independently and on
18 my own, that if she was asking me for what should be
19 done, she -- she meaning Marrien Neilson, clearly knew
20 that I was going to have the conversation with Lawson and
21 that that direction would have been coming from him. It
22 was not my call, and I wasn't making the decision, and
23 she knew that.
24 I knew that, and so I didn't necessarily have
25 to say that Rob Lawson said that you should make the

1 payment on -- on May 1. But, I mean, that -- that in
2 fact would be the -- really, the only way you would draw
3 -- the only way I can draw a conclusion was that I -- I
4 would have immediately spoken to Lawson. This was his
5 call, and I would have told him, "Just put them on notice
6 that they wanted the payment -- you know, he wanted the
7 payment made."

8 **Q** So is it your understanding that Ms. Campbell
9 knew that it was Mr. Lawson who was making this decision?

10 **A** Oh, I think very much so.

11 **Q** Based on your --

12 **A** I was, in many ways, his alter ego. I mean, in
13 -- if they couldn't get to him, either by a direct phone
14 call or something, the next call came to me because they
15 knew I could -- I would have an answer for them as
16 quickly as possible.

17 **Q** Based on your experience interacting with Bank
18 of Oklahoma while you were at the Lawson Company, why do
19 you think Ms. Campbell emailed you instead of Mr. Lawson
20 about this question?

21 **A** I -- I don't know. I couldn't give you a
22 response to that. I mean, I -- I know that Marrien
23 Neilson and Rob Lawson had a lot of direct communication,
24 most of which I was not party to. Mary was really more
25 of a functionary in the trust department, "do I make the

1 **A** Yes. A number of times, I'm sure.

2 **Q** What can you tell us about the relationship
3 between Ms. Neilson and Mr. Lawson?

4 **A** Well, they -- they, like some of the other
5 people in that grouping of people that did financings for
6 -- for the Brogdon organization, did -- they had known
7 each other for a long time. They were, you know, close
8 friends, close business associates. But I think, you
9 know, they felt that they were friends, too, and saw each
10 other on a regular basis at closings over the years, and,
11 you know, I think they felt they had a long and
12 established relationship.

13 I mean, I -- I did become accepted in that
14 group, but, I mean, they also knew that I was extremely
15 close during the time I was with Rob Lawson, that they
16 could call me and I would get them the answer from Rob if
17 -- if they couldn't do it directly. But Marrien picked
18 up the phone and talked to Rob way more. You know, they
19 chatted each other up all the time when I wasn't -- if it
20 wasn't a business-related matter or an answer that they
21 needed, I was oftentimes not included in that
22 conversation. I mean, it wasn't -- wasn't for me to be
23 socially connected to the two of them in that sense.

24 I mean, Lawson and Marrien would pick up the
25 phone and talk about God knows what, you know, what was

1 payment, don't I make the payment, somebody tell me what
2 to do" kind of thing.

3 So she knew who I was. She knew that she --
4 you know, she could reach out to me and get an answer.
5 So I think that was the only reason to do it. I don't
6 think her first impression would be to call Rob Lawson
7 either, because he would just be irritated by the fact
8 that it wasn't Marrien. It was -- Marrien was the senior
9 person; that's who he talked to. And Mary would just be,
10 you know, one of the other people in the department.

11 **Q** And if you look at your email at the top, you
12 don't include Rob Lawson in your email to Ms. Campbell
13 and Ms. Neilson, do you?

14 **A** No, I don't.

15 **Q** Why did you do that?

16 **A** I don't know. That's unusual. I think in most
17 cases, I mean, if you look at the series of emails that I
18 do send, almost always he was copied. I don't -- there
19 is no particular reason for it. It's just -- I don't
20 know. I would have talked to him about it. I wouldn't
21 have even made this email without having a conversation
22 with him, so I --

23 **Q** I believe you testified a little earlier that
24 Ms. Neilson often had communications with Mr. Lawson in
25 which you did not participate, is that right?

1 going on. And he could spend 20 minutes killing time
2 with her, you know, anytime of the day if he wanted to,
3 and so --

4 **Q** Putting aside their business relationship, did
5 Ms. Neilson and Mr. Lawson have any personal
6 relationship?

7 **A** Well, I think they both considered each other
8 friends. I mean, it was friends in a business
9 environment, but they were friends. I mean, they were --
10 they had spent years together doing any number of
11 transactions. Rob Lawson always wanted to use the Bank
12 of Oklahoma for -- for any transactions that he was
13 doing. He was very loyal to, you know, whatever the
14 grouping was.

15 And Marrien -- I don't -- I don't know how that
16 relationship came together with Brogdon, Lawson, and
17 Marrien, but it preceded me by a lot in terms of years,
18 so I just want -- I liked, still do, the Bank of Oklahoma
19 and worked with them very, very early. Worked with
20 others, but worked with them most of the time.

21 They were -- they were business friends and
22 they were -- maybe business friends is a better way of --
23 I mean, they -- they didn't go on trips together or
24 anything like that, but, you know, there was -- there was
25 a close personal relationship and they treated each other

1 in that fashion, if that makes sense.
 2 BY MR. TUTOR:
 3 Q Mr. Lynch, do you know if the Lawson Financial
 4 broker-dealers who were buying and selling the Cullman
 5 and Decatur bonds on the secondary market were informed
 6 of the debt service reserve drawdown?
 7 A The brokers?
 8 Q Yes.
 9 A I can't say that they were definitely not told
 10 that, but I don't think they were. Nobody ever made that
 11 disclosure in writing or in my presence to them. Let's
 12 put it that way.
 13 Q And do you know if they were informed that
 14 Robert Lawson was individually, or through the use of a
 15 trust, making payments directly to the operators of the
 16 Cullman and Decatur facilities?
 17 A Oh, I am positive that they weren't informed of
 18 that.
 19 Q And did you receive financials from the Cullman
 20 and Decatur operators?
 21 A Yes, we did.
 22 Q And did you discuss those financials with Mr.
 23 Lawson?
 24 A Regularly.
 25 Q Did you ever cause those financials to be

1 Lynch, sent on August 20, 2013. Bates Number is SEC-
 2 LawsonE-11 through SEC-Lawson E-12.
 3 (Witness reviewing document.)
 4 Mr. Lynch, do you recognize this email chain?
 5 A Yeah, in a general sense.
 6 Q And does this reflect what you were discussing
 7 previously regarding Mr. Lawson's acquisition of the
 8 controlling interests in the Cullman and Decatur
 9 facilities?
 10 A Yes, it seems to be.
 11 (Witness reviewing document.)
 12 Yeah, I remember. Well, I have general
 13 recollection of it, yeah.
 14 Q Okay. So in or around August 2013, when Mr.
 15 Lawson or the entities he controlled acquired the
 16 controlling interests in Cullman and Decatur, were
 17 existing bondholders alerted to the fact that the
 18 ownership -- control of the ownership had changed?
 19 A No.
 20 Q And after this time, are you aware if the
 21 drawing down of the debt service reserve or if the
 22 failure to file financials, if any of that was posted to
 23 EMMA?
 24 A I don't believe so. Discussion was had about
 25 doing it, but I don't believe that Mr. Lawson ever made

1 posted to EMMA?
 2 A No.
 3 Q And why not?
 4 A Mr. Lawson didn't want to post them.
 5 Q Did you have conversations with Mr. Lawson
 6 regarding the --
 7 A Oh, yes.
 8 Q -- disclosure of financials?
 9 A I can -- I can read numbers, and so can he, and
 10 when they're in the red and they're deficits, you know,
 11 it gets back to the issue of disclose or fix again. And
 12 that was -- that was the -- everybody was aware of the
 13 numbers. I mean, both the manager, the -- the owner was
 14 concerned, too. I mean, the owners were fighting with
 15 each other, but they were also communicating with us that
 16 there were problems.
 17 Q Just a couple more.
 18 A Well, don't do it on my time. I mean, it's --
 19 if you're going to lose your court reporter, that's
 20 another matter I guess.
 21 (SEC Exhibit No. 224 was marked
 22 for identification.)
 23 BY MR. TUTOR:
 24 Q I'm handing the witness what has been marked as
 25 Exhibit 224. This is an email from Robert Lawson to John

1 that -- that would have been a conversation that -- well,
 2 he and I had that conversation, but then he and the
 3 trustee would have had the conversation as well. And I
 4 was not party to the conversations between Marrien, the
 5 trustee, and Lawson.
 6 Q And around this time -- what do you recall of
 7 those conversations?
 8 A I know this is going to sound repetitive, but,
 9 you know, I indicated that I thought these were
 10 disclosable events and that if he didn't do it, I thought
 11 the trustee might. And he said that, you know, he was --
 12 he was speaking to Marrien, so that was really the end of
 13 the conversation. But I -- I don't believe anything was
 14 -- I never saw anything. I was never asked to review
 15 anything, prepare something, making a disclosure,
 16 anything along those lines. So I would have to believe
 17 that they did not happen.
 18 Q And to your knowledge, once Mr. Lawson acquired
 19 control of both facilities, were financials ever posted
 20 to EMMA?
 21 A After Mr. Lawson and Mr. Brogdon acquired
 22 control of the entire -- well, all -- 100 percent of one
 23 and 85 percent of the other, not to my knowledge, no.
 24 BY MR. GREENWOOD:
 25 Q Did Mr. Brogdon attain a controlling interest

1 in Cullman and Decatur?
 2 A Not controlling interest. The two people that
 3 ended up buying out in -- in Decatur, it was two
 4 entities, one -- I take that back. In Decatur, there
 5 were two owners that -- two ultimate owners. One of
 6 those was an LLC controlled by Lawson, and the other one
 7 was an LLC controlled by Brogdon. In the Cullman
 8 financing -- and I may have these backwards -- but I
 9 believe that Deupree's 35 percent was bought out by
 10 Lawson.

11 And I think the other was -- I could have those
 12 reversed, but I think the 50 percent interest was bought
 13 out by the Brogdon entity, because I was sent information
 14 to, you know, put one in Tom Bigby, LLC, and put the
 15 other one in Covered Bridge, LLC, and those were both
 16 entities that I was given by Brogdon, which this may be
 17 gratuitous, but I was never convinced or sure that the
 18 money that was put up by the Brogdon interests -- I
 19 wasn't -- I wasn't sure whether that money was put up by
 20 Brogdon or put up by Lawson. I know which entities it
 21 went into, but I don't know -- I don't know who made the
 22 payments. I always had the feeling that maybe Lawson
 23 made those payments, too, but -- and then worked
 24 something out with Brogdon later. But never sure.

25 BY MR. TUTOR:

1 Q Did you ever become aware that the revenues for
 2 one of the facilities, be it Cullman or Decatur, were
 3 used to make payments on behalf of the other facility?

4 A I don't think so, although I -- I'm not -- I
 5 don't -- I don't have an independent recollection of
 6 that. I don't think monies were being used back and
 7 forth on a regular basis, but it's possible.

8 Q I'm handing --

9 A The interests were common.
 10 (SEC Exhibit No. 225 was marked
 11 for identification.)

12 BY MR. TUTOR:

13 Q I'm handing the witness what has been marked as
 14 Exhibit 225. It is an email from Robert Lawson using the
 15 email [redacted]@gmail.com. Or, withdrawn, it's an
 16 email from John Lynch, Jr., to Robert W. Lawson at
 17 [redacted]@gmail.com. The date is December 10, 2013.
 18 Bates range is Lawson-SEC-15444 to Lawson-SEC-15445.

19 A Okay.

20 Q Now, Mr. Lynch, you are sending this to Mr.
 21 Lawson's Gmail address.

22 A Right.

23 Q Why aren't you sending it to his Lawson
 24 Financial address?

25 A I had sent a couple of emails to him at the

1 Lawson Financial address, and I was chastised for it. He
 2 wanted all of this to be off the broker-dealer record or
 3 server. When this started to happen, he asked me to
 4 communicate with him through this personal address.

5 Q And when you say "this," are you referring to
 6 the Cullman and Decatur issues --

7 A Yes.

8 Q -- that we've been discussing?

9 A Yeah. Yes, I am referring to that.

10 Q Did you ever hear of Mr. Lawson saying that his
 11 Lawson email had been compromised?

12 A His Lawson email at Lawson Financial?

13 Q Yes. His email at Lawson Financial --

14 A No.

15 Q -- had been compromised.

16 A No.

17 Q Well, why wouldn't he want to use his Lawson
 18 Financial email? What did he tell you with regard to
 19 that?

20 A Well, he told me that this was something that
 21 he did not want on his broker-dealer record, and that he
 22 wanted to do this offline, if you will, or on -- on a
 23 private email.

24 Q And why?

25 A I think from an audit standpoint he was

1 probably concerned that I don't -- I don't know, I've
 2 never been audited by anybody, but certainly not by the --
 3 - by FINRA, he clearly told me that he did not want this
 4 kind of information on the broker-dealer server, and he
 5 wanted to just deal with it in -- in a private way and
 6 that -- occasionally, I would slip up and send him
 7 something on Lawson and he would go ballistic, that, you
 8 know, what -- what was I doing and why -- why did I do
 9 that. Didn't even see it, sorry. You know, screwed up.

10 Q And directing your attention to the first email
 11 in this chain, it appears to be from B. Tuckmantle at --

12 A Right.

13 Q Whose email address is that?

14 A Who is B. Tuckmantle?

15 Q Yes.

16 A Brian Tuckmantle was -- they recommended
 17 Amaranth, which was -- turned out to be two individuals
 18 that were working in Greensboro, North Carolina, that
 19 Chris Brogdon had used at an earlier time. They had set
 20 up their own management company. I don't think he had an
 21 interest in them or was controlling them in any way, but
 22 he recommended to Rob Lawson that that's who you should
 23 use to -- when you replace the manager; bring these
 24 people in.

25 And Rob -- Rob had a high regard for Brogdon's

1 operational abilities, and so he took that recommendation
2 as a matter of what he should do. And so he -- you know,
3 we were asked to contact Brian Tuckmantle and his
4 partner, and Brian was the one that -- they both went
5 down and saw the property and were working on an
6 operation to turn it around.

7 Q And at this time, Mr. Lawson, through entities
8 he controlled, was effectively the owner of the Cullman
9 ALF, LLC, and the Decatur ALF, LLC, is that correct?

10 A Yeah. I -- well, I don't have the timeframe
11 correct, but it would seem that that would be the case,
12 yes.

13 Q Okay.

14 A I don't have the closing documents on the
15 transfers, but it -- assuming that the transfers had
16 already been made, the answer would be yes.

17 Q So directing your attention to Mr. Tuckmantle's
18 email, the last sentence of the first paragraph he
19 writes, quote, "Keep in mind we did a decent amount of
20 'robbing Peter to pay Paul' between the two communities
21 to avoid wires last month." What do you understand him
22 to mean by that?

23 A Well, I mean, I -- I was trying to read the
24 prior sentences. It said they -- funds needed for both
25 Cullman and Decatur to cover both invoices and payroll.

1 have taken it up with him.

2 MR. TUTOR: We'll go off the record at 6:00.

3 (A brief recess was taken.)

4 MR. TUTOR: We're back on the record at 6:06

5 p.m.

6 Mr. Lynch, we've had no substantive
7 conversations between you and the staff during the break,
8 is that correct?

9 THE WITNESS: Yes. No substantive
10 conversations were had.

11 BY MR. TUTOR:

12 Q I'm handing the witness what has been marked as
13 Exhibit 225, which we have previously been discussing. I
14 just have a few follow-up questions regarding this
15 exhibit. In particular, this notation from Mr.
16 Tuckmantle that they did a decent amount of robbing Peter
17 to pay Paul.

18 A Um-hmm.

19 Q After reading this, Mr. Lynch, did you do any
20 follow up regarding Mr. Tuckmantle's statement?

21 A With Lawson or Tuckmantle?

22 Q Well, first with Mr. Tuckmantle.

23 A I would have probably -- I don't -- I don't
24 have an independent recollection of it at this time, but
25 I -- I would have believed that I would have had a

1 They did come in slightly under estimates I sent last
2 week. AR collections for both properties were better
3 than expected. Keep in mind that we did a decent amount
4 of -- well, apparently, he was -- the operator was
5 comingling the funds. That would be my impression of it,
6 yes.

7 Q And the Cullman offering and the Decatur
8 offering were separate offerings, correct?

9 A Yes. They were separate project financings,
10 but they were -- there was a common ownership group, as
11 we have discussed, and a common operator -- there was a
12 common management company that were running both. That
13 manager was fired or released. He was glad to go by the
14 time he left. And this Amaranth group had stepped in and
15 was handling both of those properties, so --

16 Q But sitting here now, does this statement raise
17 concerns for you?

18 A Yes. It was not something that I authorized or
19 said, you know, oh, just take money out of this pot and
20 put it in that, or anything like that, but he was just
21 being candid I think in regards to that.

22 Q And do you recall discussing this issue with
23 Mr. Lawson?

24 A Oh, yeah. I -- I definitely would have. I
25 mean, there was no -- no question in my mind that I would

1 conversation with -- with Lawson first. I wouldn't have
2 gone back to Tuckmantle and said anything to him without
3 checking with Lawson first. But I -- I don't really have
4 a recollection of anything being said.

5 Q And what would you have discussed with Mr.
6 Lawson regarding this statement?

7 A That they were separate projects and it looked
8 as if there was comingling of funds going on.

9 Q And is it inappropriate for the comingling of
10 funds between separate projects to occur?

11 A I would think so, yes. I mean --

12 BY MR. GREENWOOD:

13 Q Just to be clear, did you have a conversation
14 with Mr. Lawson about the comingling of funds between the
15 Cullman and Decatur projects?

16 A I said I don't remember having that
17 conversation. I don't -- I really don't remember having
18 it, but I believe that I probably would -- probably did,
19 but I can't -- I can't say that I independently remember
20 that conversation right now.

21 BY MR. TUTOR:

22 Q And do you recall what, if any, follow up there
23 was to Mr. Tuckmantle's statement that there was
24 comingling of funds?

25 A I do not. No, I don't. I don't remember any

1 follow up.

2 Q Are you aware if the comingled funds were
3 returned to the proper facilities?

4 A I do not know. This was still an ongoing
5 thing. I think Mr. Tuckmantle -- I'm not aware, I mean,
6 to answer your question directly. And I believe Mr.
7 Tuckmantle was replaced later with another management
8 company out of Ohio that we had also done financings for.

9 And he -- he -- I guess he felt that Tuckmantle was not
10 getting the job done, and so he replaced him with
11 somebody else.

12 Q Mr. Lynch, could you describe the circumstances
13 of your departure from Lawson Financial?

14 A Sure. I had undergone quite a bit of stress
15 and frustration being there over the time period that I
16 had, and my frustration -- I mean, it's one thing to
17 provide input and advice and somebody take it, but I felt
18 that I was almost always being summarily dismissed in
19 terms of my input.

20 We also had worked together on a business -- in
21 another business, a medical device, and I had contributed
22 capital to it, and it was not going to be a financing
23 that was being done under it. It was a personal thing.
24 It was something that started the relationship. When I
25 said we -- I started around 2009 or '10, this was what we

1 were working on, and then we continued on with that
2 medical device.

3 And both of us had contributed capital and
4 there was an assumption, a very valid assumption, that we
5 were equal partners in it and that we were going to
6 participate in the upside. And I worked on all of the
7 FDA, you know, submissions to get the FDA approval for
8 the medical device, and, long story short, there was
9 supposed to be an operating agreement. Once again, the
10 entity that we put it in was owned completely by Mr.
11 Lawson. And when we both started contributing capital, I
12 said we need to expand this to have an operating
13 agreement, so that we at least have an understanding
14 between us as to what we're doing and who has rights and
15 responsibilities in this thing.

16 And he put me off for a substantial period of
17 time, months, months dragged on into even more months,
18 and so it was a combination of working on the legal
19 matters, working on the investment banking transactions,
20 and at the end of the day, at one point, I submitted an
21 operating agreement to him on that -- that particular
22 business.

23 And he indicated -- he waited until I left the
24 office and I went to lunch, and he called me at lunch and
25 told me that he was not going to sign that document and

1 that he doesn't work well with partners, he doesn't like
2 to have partners, he wants to only be in control, and
3 that, you know, we have to come up with another solution.

4 And so the solution I proposed was I want all
5 my capital back, and I want 20 percent of the company.
6 If it ever goes forward, I would like 20 percent of the
7 company for all the work that I have put in on the
8 project. Call it sweat equity, whatever you wanted to
9 call it, but that was my solution to it. I said, or I
10 leave my money in, you leave your money in, and we
11 continue to go forward and continue to invest together.

12 He said, "I'll take Door Number 1, and I'll pay
13 you your money back, and, you know, we can work -- we'll
14 work out this arrangement." There were a couple of other
15 people in the -- in that company with us, one which was a
16 spinal surgeon that was in it, too. But long story
17 short, between -- and that -- that wasn't -- that wasn't
18 the final thing, but that, coupled with all of these
19 transactions and dictation of -- he didn't listen to my
20 input, I didn't know why I was there.

21 At some point, it was just -- it was -- I was
22 frustrated beyond belief. My wife and I talked about it
23 quite a bit. We had a partner, which was another
24 investment banking firm that I had brought in. I called
25 Herbert J. Simms and Company, which is based in

1 Connecticut. We did a number of non-Brogdon financings
2 with this group because we were doing much bigger
3 financings and that -- and they helped us because they
4 brought institutional power.

5 The CEO of that company, for about a year, had
6 asked -- a year and a half, maybe two, had -- during my
7 five-year stay there, asked me to -- to move over with
8 them.

9 Q So what was the precipitating event that led to
10 your departure from Lawson Financial?

11 A It really was a culmination of all these
12 things. I guess it was just -- I was just ultimately so
13 angry and frustrated, I didn't present myself in -- you
14 know, I didn't throw the table over and say, "I quit,"
15 but I said, "Look, it -- I'm going to go work with HJ
16 Simms, so I'm going to take up -- you know, they've asked
17 me to, and I -- I think this is the better place for me
18 to be," and, you know, submitted my letter of
19 resignation.

20 And for a week or two it seemed like it was
21 okay, and that's why I said I left with some of my things
22 and came back for some of my other things, thinking that
23 we had left on good terms, and that -- that ended pretty
24 quickly.

25 The FINRA investigation was still going on, the

1 audits – well, I don't know if – the audit I think has
2 turned into an investigation. I don't know what the
3 outcome of that is or was. And then this – this came –
4 later, much later, I got the SEC notice to protect, you
5 know, various documents and such. But I – I left in
6 August I guess of 2014 would be when I left.

7 And it was – it was long overdue, and I was
8 just frustrated. And the only way I could get out of
9 this thing was just to vote with my feet, so I left. I
10 mean, it just didn't seem to be – it wasn't productive
11 for me, it wasn't – it wasn't that the money wasn't
12 okay, it was just that I wasn't comfortable in my own
13 skin anymore.

14 In terms of what I had to give up, in terms of
15 integrity and everything else there, I just felt that I
16 was – I just – I wasn't serving myself. I was just
17 serving at his pleasure, and I thought I made things a
18 lot better for him, but I didn't feel that there was any
19 return – reciprocity in that, so it wasn't a good
20 relationship that I wanted to continue at that point. We
21 started out as close friends, but not – not at the end.

22 Q And you mentioned taking some of your files.
23 Did you take any unique Lawson Financial due diligence
24 files with you when you departed?

25 A No. That was a – I think that was a rouse on

1 that I was trying to use with you, and he had access to
2 that, too.

3 So, I mean, there wouldn't have been any –
4 there was nothing that I had that he didn't have, and
5 there was nothing that I – I could have taken that –
6 that would have – that I would have left with me having
7 more information than he did with just – there just
8 wasn't anything, and that's what we were – I mean, I had
9 personal files, tax returns, things like that that I had
10 in the office. And I – you know, I took those first,
11 because it was all my information.

12 But I intended to come back, and then take down
13 – I thought we would be probably – you know, do you
14 need this, I'll take that, and that kind of thing. Some
15 of the – some of the files he would come down and –
16 come down and we were upstairs/downstairs kind of thing,
17 but we were literally on top of each other from office to
18 office.

19 So there was nothing that – that I didn't
20 share with him that I would have had or kept.

21 Q Is it accurate to say that the non-personal
22 files that you took –

23 A Right.

24 Q – from your Apple computer that was issued by
25 Lawson Financial were also available on some shared space

1 his part. He mentioned that to FINRA, that when asked
2 about various files he said, "Well, John Lynch may have
3 those. You know, I don't have those. They must have –
4 you know, when he left, he took them with him." I was
5 very cognizant of what I was taking and what I wasn't
6 taking.

7 And most of what I left with – I worked off a
8 laptop with him. I was issued an Apple computer from the
9 firm. And when I was leaving, I downloaded all of that
10 information onto another Apple, and I turned in my – my
11 Apple computer to him. I downloaded it, erased it, I
12 mean, so he got – he got a blank computer.

13 But I kept all of that information, but I
14 didn't walk out with – with hard copy files or anything
15 that – anything that I have he would have had. But I
16 had nothing more than that. I didn't take anything else.
17 Had no reason to.

18 BY MR. SATWALEKAR:

19 Q Why are you so sure that the documents that you
20 took from your Apple computer are duplicative of what
21 Lawson Financial has in its records?

22 A Well, am I absolutely sure? I don't know what
23 they have, but I don't have – I don't believe I have
24 anything that he doesn't have. I mean, anything that I
25 took with me were in drop boxes or this box.com thing

1 that Mr. Lawson could access?

2 A Yes. Yeah. I don't – there's – I can't
3 think of a thing that he would not have had. We were
4 both issued our CDs, you know, the closing transcripts
5 and things like that, he had a copy and I had a copy,
6 that kind of thing. So –

7 BY MR. GREENWOOD:

8 Q And I think you testified earlier that your
9 salary at Lawson Financial Corporation was \$100,000, is
10 that right?

11 A Yeah. It was – it was – I was – I guess it
12 was a consulting fee, and nothing was deducted from it or
13 anything. They just simply paid me on a – I think it
14 was a monthly basis.

15 Q Okay. So you received \$100,000 a year as a
16 consulting fee for the years you worked at –

17 A Yeah.

18 Q – Lawson Financial Corporation?

19 A Yeah. And that never went up.

20 Q Okay. So now let's – in terms of the
21 compensation you received for serving as underwriter's
22 counsel –

23 A Right.

24 Q – on either the Brogdon offerings or the
25 Cullman and Decatur offerings, approximately how much per

1 offering did you receive?

2 A I thought I answered that, but I -- I would say
3 somewhere between 20- and 30,000 a transaction, something
4 like that, and I was I think far and away the lowest paid
5 --

6 Q Okay. So --

7 A -- of the attorneys that were working on
8 things, but -- and that was oftentimes dictated by Mr.
9 Lawson, too.

10 Q Okay. So you received between \$20- and \$30,000
11 per offering --

12 A Yeah, 20-, 25- in most cases. Maybe it was a
13 little bit more towards the end, but --

14 Q Okay. So you received between \$20- and \$30,000
15

16 A Right.

17 Q -- on the 10 to 12 Brogdon offerings you
18 worked on as well as the Cullman and Decatur offerings in
19 connection with your work as underwriter's counsel, is
20 that fair?

21 A Yes. I think that's correct.

22 Q Okay.

23 A I think that's right.

24 BY MR. TUTOR:

25 Q And did you receive any additional compensation

1 I'm working with is also aware of that.

2 Q And what did you tell the current firm that
3 you're working with?

4 A That there -- well, the current -- the former
5 firm, I told them that there was a -- you know, there was
6 an 8210 request. I shared that information, the letters
7 and such, that I received from FINRA with the firm, which
8 was HJ Simms. And now I'm with John Lufburrow and
9 Associates here in New York, and they are aware of the
10 fact that this was an ongoing thing before I came to --
11 you know, came to work with the firm and that there was --
12 -- that there was an SEC -- I said only two things, that I
13 had received a letter to retain all documents. They
14 said, "Okay." And the second thing was that I had -- you
15 know, I was -- I was involved with coming to give
16 testimony on this situation.

17 Q And so have you discussed the substance of what
18 testimony you would give today with anyone?

19 A Those two people. That would be pretty much
20 it, I think, those two.

21 Q Did you discuss the substance of what testimony
22 you would give here today?

23 A Substance, how to best put that, I -- the line
24 of questioning here, no. I mean, I -- I said that I was
25 coming to give testimony. I assumed I was coming in as a

1 related to Cullman and Decatur?

2 A What? For the work of negotiating and all --

3 Q For the ongoing --

4 A No. No.

5 Q -- negotiation and management?

6 A No. He viewed that as part and parcel of the
7 consulting fee, so no.

8 MR. TUTOR: Okay. Mr. Lynch, we have no
9 further questions at this time. We're going to run
10 through a few more additional procedural questions before
11 we go off the record.

12 THE WITNESS: Sure.

13 BY MR. TUTOR:

14 Q Have you discussed with anyone the fact that
15 you would be providing testimony to the SEC?

16 A Anyone?

17 Q Anyone.

18 A I don't think so. Not that I can recall. I
19 take that back. I have advised, in both situations, the
20 employer that I was working with at the time. When --
21 when the FINRA investigation started, and I was moving
22 from one firm to the other, I told the firm what the --
23 you know, what was going on, what the basis of it was,
24 and talked to the compliance officer there, so that they
25 were aware of the situation. And the current firm that

1 -- not subject to -- thought I was a cooperating witness
2 as opposed to being subject to an investigation.

3 I feel that the conversation went a little bit
4 differently today than that with regard to the active or
5 inactive status of my legal --

6 BY MR. GREENWOOD:

7 Q Mr. Lynch, just to be clear, though, the SEC
8 doesn't use the target subject type language in its
9 investigations. This is a confidential non-public
10 investigation.

11 A Okay.

12 Q It's a fact-finding investigation. So we sort
13 of don't use -- the types of terms that you just used,
14 I'm not sure whether you --

15 A Well --

16 Q -- understood them or not, but just wanted to
17 put that on the record.

18 A Well, I told -- I told both firms that I was
19 with the reason -- what the -- the whole investigation
20 stemmed from. And the group that I left, as I said, we
21 were working as co-managers on deals. So that group was
22 not entirely surprised, and so I did provide the
23 requests; they had the documentation. As to the SEC, the
24 only thing that they have is -- they really have nothing.
25

1 They have -- I don't -- I don't know if I
2 shared the subpoena yet or not, but I think I did. And I
3 sent them just the subpoena, and I sent -- and I don't
4 know who contacted me originally, but someone here at the
5 SEC asked me to retain the records and not to destroy
6 anything, and I acknowledged that and sent it back.

7 So those are the only two documents I would
8 have had, and I said I was coming to give testimony today
9 because I'm involved in a transaction that's trying to
10 close next week and everybody is going, "Where are you?
11 And what's going on?" And I said, "I can't -- I'm just
12 in an all-day meeting in New York, and I can't really
13 discuss it at this point." And the -- my firm knows, but
14 nobody else does.

15 BY MR. TUTOR:

16 Q And have you been asked by anyone to provide
17 you with information concerning the substance of your
18 testimony to the SEC?

19 A Been asked by anyone else to provide --

20 Q Have you been asked by anyone --

21 A No.

22 Q -- to --

23 A I think the answer is no. I mean, I don't
24 know. Want to ask it again and I'll answer it again, but
25 --

1 MR. GREENWOOD: Why don't you ask the question
2 again.

3 MR. TUTOR: Yeah.

4 BY MR. TUTOR:

5 Q Have you been asked by anyone to provide you
6 with information concerning the substance of your
7 testimony to the SEC?

8 A No.

9 Q Do you wish to clarify anything or add anything
10 to the statements you have made today?

11 A Well, I guess, in closing, I feel a little bit
12 more -- a lot more, I would say, as if I was somehow
13 contributory to the -- to the problem here, particularly
14 with the Brogdon matters. I don't know that I, at the
15 time, believed that.

16 As I said, I discussed with you here today, or
17 given testimony to the effect that I felt I was part of a
18 larger financing team, and that although certain things,
19 as you present them, seem to rise to a level of
20 heightened concern, and concern maybe that I should have
21 had, relying on the people and the relationships that we
22 had with each other and with Mr. Brogdon. I didn't take
23 it that way.

24 And the other -- the only other I guess
25 statement that I have is that I -- I was not -- with

1 respect to the active versus inactive status, which
2 clearly you've raised and heightened my awareness of it,
3 but as much as I was -- I didn't want to get back into
4 the practice of law. I have always -- I made a decision
5 to go into investment banking, wanted to stay there. I
6 deal with attorneys every day of my life, and in -- you
7 know, in regulatory and securities-related matters.

8 I like being where I am as opposed to getting
9 back into the practice on a full-time basis. That wasn't
10 where I -- why I went to -- to Lawson for that reason.
11 And I -- I felt I kind of got scuttled and shooed -- you
12 know, shooed into that against my wishes and better
13 judgment. But I didn't think I had -- I still don't know
14 that I violated any -- any particular code of ethics or
15 disclosures or some need to do that. But if -- if I did,
16 it was really unintentional in that regard, but -- I
17 don't think I have anything else. I'll just say that.

18 MR. TUTOR: Okay. We have no further questions
19 at this time. We may, however, call you again to testify
20 in this investigation. Should this be necessary, we will
21 contact you.

22 At this time, we are adjourning your testimony
23 to a later date. And although the testimony is
24 adjourned, you remain under subpoena.

25 We are off the record at 6:28 p.m., on October

1 -- or on April 15, 2016.

2 (Whereupon, at 6:28 p.m., the examination was
3 concluded.)

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PROOFREADER'S CERTIFICATE

In The Matter of: CANTONE RESEARCH, INC.
Witness: John Lynch
File Number: NY-09158-A
Date: April 15, 2016
Location: New York, NY

This is to certify that I, Nicholas Wagner,
(the undersigned), do hereby swear and affirm that the
attached proceedings before the U.S. Securities and
Exchange Commission were held according to the record and
that this is the original, complete, true and accurate
transcript that has been compared to the reporting or
recording accomplished at the hearing.

(Proofreader's Name) (Date)

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NY-09158

Thursday, May 11, 2017

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. 3-17902
JOHN T. LYNCH, JR.)

ADMINISTRATIVE PROCEEDING - PRE-HEARING CONFERENCE

PAGES: 1 through 18
PLACE: Securities and Exchange Commission
 200 Vesey Street, Suite 400
 New York, New York 10281
DATE: Monday, May 1, 2017

The above-entitled matter came on for hearing,
pursuant to notice, at 2:20 p.m.

BEFORE (via telephone):
CAMERON ELLIOT, ADMINISTRATIVE LAW JUDGE

Diversified Reporting Services, Inc.
(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 DAVID TUTOR, ESQ.

5 LEE GREENWOOD, ESQ.

6 Division of Enforcement

7 200 Vesey Street

8 New York, New York 10281

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11 On behalf of the Respondent:

12 JOHN T. LYNCH, PRO SE

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P R O C E E D I N G S

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2 JUDGE ELLIOT: Let's go on the record. We're
3 here in the matter of John T. Lynch, Jr., Securities and
4 Exchange Commission, Administrative Proceeding, file
5 number 3-17902. My name is Cameron Elliot,
6 administrative law judge. May I have appearances from
7 counsel, please?

8 MR. TUTOR: Yes, Your Honor, it's David Tutor
9 and Lee Greenwood on behalf the of Division of
10 Enforcement.

11 JUDGE ELLIOT: And, Mr. Lynch, I understand you
12 do not have an attorney.

13 MR. LYNCH: I do not, Your Honor. I intend to
14 get one, but I'm still in the process of trying to obtain
15 counsel.

16 JUDGE ELLIOT: All right, well, we'll talk
17 about that in a moment. All right, so we are here for
18 our first pre-hearing conference. Let me first of all
19 say that I am very sorry that I was late. Unfortunately,
20 I miscalendared this and it's my responsibility and I'm
21 sorry for wasting the parties' time, but let's just go
22 through my usual list of things to talk about.

23 First of all it appears to me like Mr. Lynch
24 waived service of the order instituting proceedings on
25 April 10th. Mr. Lynch, does that sound right?

1 MR. LYNCH: Yes, that sounds about right, yeah.

2 JUDGE ELLIOT: All right, so on April 10th is
3 when my clock starts ticking then for getting this case
4 done. And then the next issue is the Division, has the
5 Division made the investigator file available or is there
6 any investigator file beyond what was part of the, the
7 settled aspect of the proceeding?

8 MR. TUTOR: Yes, Your Honor, the Division made
9 our investigative file available to Mr. Lynch also on
10 April 10, 2017, all nonprivileged documents and
11 communications.

12 JUDGE ELLIOT: All right, very well. Now let
13 me just double check the O.I.P. here.

14 MR. LYNCH: Your Honor, can I speak to that?

15 JUDGE ELLIOT: Yes, go ahead, Mr. Lynch.

16 MR. LYNCH: I did receive a hard drive and it
17 was represented to me that it was, it contains something
18 like over 500,000 pages of an investigative file which
19 includes, I guess, a number of depositions and testimony
20 given by other parties.

21 This was a much larger matter than what just
22 pertained me, but I was unable to open that and I have to
23 secure some sort of a three-and-a-half inch IDE Sata USB
24 2.0 hard drive enclosure which apparently involves some
25 cables and an enclosure, some equipment to be able to

1 download this file. I have not been able to get that
2 yet, but I will in the next three days or so. It's been
3 ordered. So I have not seen anything in the way of the
4 file.

5 JUDGE ELLIOT: All right, well, I'm sorry, Mr.
6 Tutor, do you have any comments on that?

7 MR. TUTOR: Yes, Your Honor, you know we are
8 certainly, we'll try to work with Mr. Lynch to ensure
9 that he has access to the hard drive. We have also
10 volunteered to either point out where the documents are
11 on the hard drive or to provide Mr. Lynch with any
12 specific documents or transcripts that he would request.

13 JUDGE ELLIOT: All right, very well. Well, Mr.
14 Lynch, if you continue to have problems with this, you
15 can file a motion with me to ask me to do something for
16 you. I'm not sure I can help you with much, but I might
17 be able to do something. So why don't the parties keep
18 on working on that and if you, Mr. Lynch, again, if you
19 run into problems, just file a motion with me.

20 MR. LYNCH: All right.

21 JUDGE ELLIOT: So this is a case where there
22 is, essentially it's a bifurcated case as I sometimes
23 think of it, where there is a settlement of some aspects
24 of the case and not of others, and in this sort of case I
25 don't always require the filing of an answer and there is

1 no provision in the O.I.P. requiring the filing of an
2 answer, so I'm just going to propose that the parties,
3 that the Respondent not file an answer. Mr. Tutor, any
4 objection to that?

5 MR. TUTOR: No objection, Your Honor.

6 JUDGE ELLIOT: Very well. So the two main
7 things that we need to determine are, first of all, the
8 schedule for dispositive motions and on the other hand
9 any details we need to work out about a hearing, if one
10 becomes necessary. Let me address that second point
11 first. If we were to have a hearing in this case, where
12 would it be? Let me start with Mr. Lynch. Mr. Lynch,
13 where do you live?

14 MR. LYNCH: In Scottsdale, Arizona.

15 JUDGE ELLIOT: All right, so any, I will ask
16 the Division, any objection if we were to have a hearing,
17 if we have it in the Scottsdale-Phoenix area?

18 MR. TUTOR: No objection, Your Honor.

19 JUDGE ELLIOT: All right, now, Mr. Lynch, let
20 me get to the next point which is a schedule for
21 briefing. Let me give you my usual explanation of these
22 cases since you do not have an attorney. This is a case
23 where typically it gets resolved by motions. That is you
24 don't have a hearing.

25 Now we may have a hearing in this case. I have

1 done it that way before in cases like this, but we don't
2 necessarily have to have one and it depends upon what the
3 evidence is. I have not seen the evidence. I have no
4 idea what is in the investigative file and I'm going to
5 depend upon the parties to tell me that.

6 Generally speaking, Mr. Lynch, you have three
7 choices. You can fight the case, meaning we'll have
8 motions. I will take a look at the motions. If I
9 determine that I can resolve the case without a hearing,
10 then I will do that. If I determine I need a hearing,
11 then we'll have a live hearing.

12 You can try to settle the case. That's not
13 usually what happens in these kinds of cases because you
14 have already settled it, you just couldn't agree on
15 everything.

16 And then your third option is you can default.
17 Defaulting means you don't do anything, you basically
18 give up and then the Division simply sends me whatever
19 evidence they have and I make a decision on what to do
20 without your input.

21 Now I assume from the fact that you're
22 appearing here today and you have already had a
23 settlement that you want to fight the case. Does that
24 sound right, Mr. Lynch?

25 MR. LYNCH: Yes, that's very much correct. I'm

1 not, I regret entering into that offer and settlement the
2 minute I did it, but nonetheless, it is what it is right
3 now. I very much want to fight the industry set aside
4 and I realize that the Enforcement Division seems to want
5 to ratchet up the set aside or punishment if I pursue
6 that, but for a variety of reasons I simply can't afford
7 to let this go unanswered.

8 I think I want to have a hearing. I would like
9 to have some of the evidence, a chance to look at some of
10 the materials in the investigation that they held. There
11 were many parties involved in this. This is a much
12 bigger situation than just me.

13 I know there were two, I would call significant
14 settlements, that have been reached with other parties in
15 this. I don't think my situation in any way compares to
16 those two gentlemen, but my ability at 68 years old to
17 continue practicing in the securities field is of
18 paramount importance to me at this point.

19 And, so, another thing I've assumed, and maybe
20 apparently incorrectly, that I was going to have to come
21 back to Washington for the hearing and as a result of
22 that the attorney that I had been speaking with to seek
23 to retain them, one is in New York and the other one is
24 in Washington D.C., so now I will be put to the expense
25 of having them come out here as well. You hear the case

1 in either event, I assume?

2 JUDGE ELLIOT: Well, Mr. Lynch, look, I will
3 leave it up to you. It's technically, a matter for me to
4 decide where we hold the hearing. We can hold the
5 hearing in D.C. or we can hold the hearing in New York if
6 you'd prefer. Usually I do it wherever the evidence is.
7 Now in your case because of the nature of this type of
8 case, you will probably be the main witness at the
9 hearing. So if you are willing to travel to D.C. or New
10 York, then we can go there.

11 If you'd prefer, you can stay at home and have
12 your attorneys come to you in the Scottsdale-Phoenix area
13 and then I would travel and basically everyone would come
14 to you including your attorneys or we can just go
15 wherever your attorneys are. So do you want to
16 reconsider this? Do you want to reconsider doing it in
17 the Scottsdale area? Do you want to do it in D.C.?

18 MR. LYNCH: I think D.C. is probably a good
19 location.

20 JUDGE ELLIOT: All right, very well. So, Mr.
21 Tutor, any objection to holding the hearing in D.C. if we
22 have one?

23 MR. TUTOR: No, Your Honor, we have no
24 objection to holding the hearing in D.C. and it is the
25 position of the Division that a hearing isn't necessary

1 in this matter.

2 JUDGE ELLIOT: Well, I understand that and, you
3 know, I can't say whether we are going to need one or
4 not. I have had one before in a case like this where
5 there has already been a partial settlement and there's
6 only one issue that is left to be decided, in this case
7 the association bars, but it's also been my experience
8 that many times we don't need a hearing.

9 So in any event, if we have a hearing, then I
10 will change the location to D.C. and, of course, Mr.
11 Lynch, let me just say if it turns out in the event that
12 you cannot retain these attorneys that you have been
13 speaking to, then simply tell me and if you find someone
14 else who is not in New York or D.C., then we can change
15 the location if it turns out we need a hearing, but
16 before we even determine when the hearing is going to be
17 and all that let's just address the question of what we
18 need to do before that and the main thing we need to do
19 before that is have some motions because we may be able
20 to resolve all of this just on paper.

21 So let me start with the Division. Actually,
22 no, I changed my mind. Let me start with Mr. Lynch. Mr.
23 Lynch, how much more time do you think you will need to
24 find some attorneys?

25 MR. LYNCH: Well, I'm going to have to borrow

1 from family money to retain the attorneys. I have spoken
2 to them about the amounts. I don't have that sufficient
3 amount right now, so I'm going to be asking family
4 members to put up some money for me and since I haven't
5 seen the file and they haven't either, I don't have an
6 ability to be able to say.

7 Well, I think I want a hearing. I don't know
8 that it's within my decision making ability. It sounds
9 as if Your Honor, you're the sole determiner of whether
10 we have a hearing or not, but I would like to have a
11 hearing and I think I can produce facts from the file
12 that will help mitigate the set aside that the
13 Enforcement Division is asking of me.

14 JUDGE ELLIOT: All right, well, okay, let me
15 say two things in response to that. First of all, yes,
16 it is up to me whether we have a hearing. If the
17 parties, if the evidence presented to me shows that there
18 are no genuine disputes, then there would be no need for
19 a hearing.

20 On the other hand, if I conclude that there is
21 some sort of genuine dispute about the facts that needed
22 for me to make a decision about this case, then we would
23 have a hearing. The second thing is it sounds to me like
24 you're not really in a good position to say when you can
25 hire an attorney because you need to get some more money

1 and you need to review the file. Does that sound right,
2 Mr. Lynch?

3 MR. LYNCH: That's very correct, sir.

4 JUDGE ELLIOT: All right, very good. So I'll
5 tell you what, I will give the parties a little bit
6 longer than I normally would to prepare their motions and
7 then I will try to make a decision on those motions as
8 quickly as I can so that we can determine whether or not
9 we need to have a hearing. So let me then turn to the
10 Division and ask, do you have a proposed schedule for
11 summary disposition motions?

12 MR. TUTOR: Yes, Your Honor, we propose that
13 the Rule 250 Summary Disposition Motion be due two weeks
14 from today and then any opposition from Mr. Lynch then
15 due four weeks from the moving date and then any reply
16 due one week after that. So it would be May 15th for the
17 motion, June 12th for the reply and June 19th for the
18 reply and we'd also note that the O.I.P. does provide
19 that solely for the purposes of the additional
20 proceedings, the allegations of the order shall be
21 accepted as and deemed true by the hearing officer.

22 JUDGE ELLIOT: Yes, so, Mr. Lynch, do you
23 understand what that means, what Mr. Tutor just said
24 about the deeming certain things to be true?

25 MR. LYNCH: Yes, I believe so.

1 JUDGE ELLIOT: All right, so one particularly
2 important fact, let me just see if I can find it here, so
3 you are alleged in the O.I.P. to have violated Section
4 10B of the exchange act and Rule 10B5 thereunder which
5 means that necessarily you acted with scienter, that is
6 either recklessly or with an intent to defraud and I am
7 bound by that, okay? So, in fact, so are you. Also that
8 is a figuratively significant fact that is a recurring
9 issue in these kinds of cases. You can't backtrack from
10 that at this point. Do you have any questions about
11 that?

12 MR. LYNCH: Well, I believe that the offer was
13 prepared by the Enforcement Division and I was told to
14 reach the financial settlement I had to agree to those
15 terms. I don't honestly believe that I did act with
16 either reckless disregard or malice or any intent on my
17 part, but I understand where the record stands right now.

18 JUDGE ELLIOT: Very well. Okay, so we'll
19 address, you can address that when you file your motion.
20 Okay, so what this means, what Mr. Tutor has proposed,
21 Mr. Lynch, is a schedule that basically gives you about
22 six weeks from now before you have to file your papers.
23 So what will happen is the division will file their
24 motion on May 15th. That's about two weeks from now and
25 then you would have until June, I'm sorry, was it June

1 12th, Mr. Tutor, was that your proposal?

2 MR. TUTOR: Yes, Your Honor.

3 JUDGE ELLIOT: June 12th to file your
4 opposition and then, and, I'm sorry, Mr. Tutor, tell me
5 again when you're reply brief would be due.

6 MR. TUTOR: The reply brief would be due June
7 19th.

8 JUDGE ELLIOT: June 19th, that would be a week
9 later, a week after you file your opposition. Mr. Lynch,
10 do you have any objection to that schedule?

11 MR. LYNCH: I do, Your Honor, since I haven't
12 had a chance to even look at the file and I don't have an
13 attorney and I don't want to go into this without having
14 some Counsel. I made a big mistake already agreeing to
15 things that I don't think I did and that is where I am.
16 I would like to have at least an initial 30 days on that.

17 JUDGE ELLIOT: All right, here's another
18 possibility, so let me propose the following, let's make
19 the Division's motion due Friday, May 26th, the
20 Respondents opposition due Friday, June 23rd and the
21 Division's reply due Friday, June 30th. Mr. Tutor, any
22 objection to that schedule?

23 MR. TUTOR: No objection, Your Honor.

24 JUDGE ELLIOT: All right, Mr. Lynch, that will
25 give you almost two full months to prepare an opposition

1 and it should also give you an opportunity to take a look
2 at the record and find an attorney. Do you have any
3 objection to that schedule?

4 MR. LYNCH: No, I don't.

5 JUDGE ELLIOT: All right, very well, so we'll
6 adopt that one. So let me just repeat it. Friday, May
7 26th is the opening brief. Opposition is due Friday,
8 June 23rd, reply brief from the Division is due Friday,
9 June 30th. All right, I think that's all I have. Mr.
10 Tutor, is there anything else we need to talk about here
11 today?

12 MR. TUTOR: We have nothing further, Your
13 Honor.

14 JUDGE ELLIOT: Very well. Mr. Lynch, do you
15 have any questions or anything else you want to discuss?

16 MR. LYNCH: Well, I do have one question,
17 because I have been, we are talking here with the SEC
18 about an industry set aside and I have also been
19 contacted by FINRA. My licenses, I believe, are all with
20 FINRA. Is this what we are dealing with here? The set
21 aside from the SEC, is that different or the same as
22 dealing with FINRA?

23 JUDGE ELLIOT: So it's different. The FINRA
24 proceeding is, practically speaking, the FINRA
25 proceeding, it may have an outcome that is very similar

1 to the outcome here. If the FINRA decides to revoke your
2 licenses, from your point of view it may be the same
3 thing as having the SEC bar you from association with,
4 you know, various industry segments, securities industry
5 segments, but technically they're entirely independent of
6 each other.

7 So what FINRA does and what the SEC does are
8 technically entirely different, but obviously they may
9 rely upon similar kinds of evidence such as what someone
10 said in an on the record interview and what some other
11 person said and the various documents may all be the same
12 and so forth. Does that answer your question?

13 MR. LYNCH: Yes, to some degree, yes.

14 JUDGE ELLIOT: All right, anything else, Mr.
15 Lynch, any other questions?

16 MR. LYNCH: No, not at this time.

17 JUDGE ELLIOT: All right, very well. Thank you
18 very much. I will issue an order within the next few days
19 setting forth all the things that we talked about here
20 today. This matter is adjourned.

21 MR. TUTOR: Thank you, Your Honor.

22 (Whereupon, at 2:43 p.m., the pre-hearing
23 conference was concluded.)

24 * * * * *

25

1 PROOFREADER'S CERTIFICATE

2

3 In The Matter of: JOHN T. LYNCH, JR.

4 ADMINISTRATIVE PROCEEDING - PRE-HEARING CONFERENCE

5 File Number: 3-17902

6 Date: Monday, May 1, 2017

7 Location: New York, NY

8

9 This is to certify that I, Maria E. Paulsen,
10 (the undersigned), do hereby swear and affirm that the
11 attached proceedings before the U.S. Securities and
12 Exchange Commission were held according to the record and
13 that this is the original, complete, true and accurate
14 transcript that has been compared to the reporting or
15 recording accomplished at the hearing.

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Transcript Word Index

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SEC

OFFICE of INVESTOR
EDUCATION and ADVOCACY

INVESTOR BULLETIN

Municipal Bonds: Understanding Credit Risk

The SEC's Office of Investor Education and Advocacy is issuing this Investor Bulletin to help educate investors about assessing credit risks they face when purchasing municipal bonds, which may also be called notes or certificates of participation. Credit risk—or default risk—is the risk that interest and/or principal on the securities will not be paid on time and in full. Investors need to know who is responsible for repayment of the securities and the financial condition of that entity to assess the credit risk and decide whether to purchase the securities. It is important to look beyond the short-hand label given to a municipal bond, such as “general obligation bond” or “revenue bond,” or the bond’s credit rating. Investors should read the disclosure document, known as the “official statement,” which provides important details about the offering, including the factors described below.

What are Municipal Bonds?

Municipal bonds are debt securities issued by states, cities, counties and other governmental entities to fund day-to-day obligations and to finance capital projects such as building schools, highways or sewer systems. By purchasing municipal bonds, you are in effect lending money to the issuer in exchange for a promise of regular interest payments, usually semi-annually, and the return of the original investment—or principal. The entity responsible for repaying the principal and

interest on the bonds may be the issuer, or an underlying borrower, known as the obligor or “obligated person.” Obligors could be another governmental entity, a for-profit firm, or a non-profit entity. The date on which the principal is scheduled to be repaid, known as the security’s maturity date, may be years in the future.

Generally, the interest on municipal bonds is exempt from federal income tax. The interest may also be exempt from state and local taxes if you reside in the state where the bond is issued or if issued by a U.S. territory, such as Puerto Rico. Given the tax benefits, the interest on municipal bonds is usually lower than on taxable fixed-income securities such as corporate bonds.

Factors investors should consider when assessing the credit risk of municipal bonds:

1. Types of Municipal Bonds

The type of municipal bond issued affects both the risk of default and the value of the municipal bond. Repayment may come from the issuer, an obligor, or from a single tax or revenue source. There are two major types of municipal bonds: “general obligation bonds” and

“revenue bonds.” Because these types come in many varieties, you should look beyond the short-hand label when deciding whether to purchase.

- General obligation bonds are issued by governmental entities and are not backed by revenues from a specific project or source. Some general obligation bonds are backed by dedicated taxes on real property and, on occasion, other taxes. Other general obligation bonds are payable from general funds and are often referred to as backed by the “full faith and credit” of the governmental entity. While in many instances “general obligation” means that the issuer or other governmental entity responsible for repaying the bonds has the unlimited authority to tax residents to pay bondholders, in other cases, the issuer or other governmental entity may have limited or no taxing authority. *Investors should carefully read the official statement describing the general obligation bond before making an investment decision.*
- Revenue bonds are backed by revenues from a specific project or source. There is a wide diversity of types of revenue bonds, each with unique credit characteristics. For example, municipal entities frequently issue securities on behalf of other borrowers such as non-profit colleges or hospitals or certain for-profit entities. These underlying “conduit” borrowers typically agree to repay the issuer, who pays the interest and principal on the securities solely from the “revenue” provided by the conduit borrower. *Investors should carefully read the official statement describing the revenue bond, and understand both the identity of the conduit borrower, if any, and what revenues are actually pledged to back the bonds, before making an investment decision.*

2. Non-Recourse Financings

Some revenue bonds are “non-recourse,” meaning that if the revenue stream dries up, or if payments on the bonds are otherwise not paid, the bondholders do not have a claim on the underlying revenue source or against the conduit borrower. In instances where a conduit borrower fails to make a payment to the municipal issuer, the issuer is usually not required to pay the bondholders. *For these reasons, it is essential to understand the source of the revenues that will be used to repay the bonds.*

3. Purpose of the Financing

Municipal bond default rates vary considerably depending on a variety of factors, including the types of bonds issued and whether the ultimate obligor is a municipal entity or a non-municipal entity (i.e., a conduit borrower). For example, if you are considering purchasing municipal securities that finance speculative projects, including those involving for-profit businesses, pay close attention to the potential risks involved. The official statement for this kind of offering usually will include a feasibility study showing the key assumptions made in evaluating the project. Understanding those assumptions can help you evaluate the risks.

4. Financial Condition of the Issuer or Other Obligor

A key concern is whether the issuer or other obligor will be able to pay interest and principal in full. To evaluate the financial condition of the issuer or other obligor, consider (among other things):

- Debt and other longer-term liabilities payable from or impacting the same source of revenue as the bonds, including, if applicable, pension and other post-employment benefit obligations of the municipal bond issuer;

- The underlying local economy, including employment, income, wealth, and tax burden; and
- The audited financial statements of the issuer or obligor, including both revenues and expenses.

5. Other Sources of Funds to Pay Principal and Interest

While some municipal bonds are general obligation bonds, others are repaid not by an issuer or other obligor, but from a specific payment stream. You should evaluate the viability of the sources of revenue to be used to make these payments. In evaluating the source of payment for the bonds, you should consider (among other things):

- Economic or social trends that may limit demand for particular goods or services (such as gasoline or cigarettes) when those goods or services are being taxed to fund the repayment of the securities; and
- Statutory limits on raising revenues, such as the need for voter approval.

What are Credit Ratings?

While some investors find it helpful to consider credit ratings when making an investment decision, it is important that you not rely solely on credit ratings when deciding whether to purchase municipal bonds.

Investors need to undertake their own independent review of the municipal bonds' risk by reading the official statement and other relevant information described below.

Credit ratings are assessments of municipal bonds' credit risk at a particular point in time. You should be aware that because credit ratings may change over time, the credit rating found on the official statement may not be the credit rating of the municipal bonds if you purchase them on a subsequent date. Investors should

also be aware that, in general, credit rating agencies are paid by the issuer whose municipal bonds they are rating.

Credit ratings are only assessments by credit rating agencies of the credit risk associated with a municipal bond. Each credit rating agency evaluates credit risk based on its own standards, applies its own ratings methodology, and weighs the various factors in the methodology differently. Credit ratings are not investment advice, guarantees of credit quality or of future credit risk, or indications that an investment is suitable. They are designed to address only one aspect of an investment decision—credit risk. As an investor, you may or may not agree with the credit rating.

Where should I look for information regarding municipal securities?

In most cases, official statements as well as updated information regarding the issuer and the municipal bonds can be found on the Electronic Municipal Market Access (EMMA) website, www.emma.msrb.org. The issuer's financial information is often updated each year. In addition, many municipal bond issuers provide "material event notices" that contain information concerning, among other things, delinquent principal and interest payments, other types of defaults, rating changes, events impacting the tax status of the securities, and bond redemptions or calls. EMMA also has some credit ratings information.

Often, the official statement contains a section titled "investment risk factors" or "investment considerations," which provides information relevant to your investment decision. In addition, pertinent financial information regarding the issuer generally may be found in an appendix attached to the official statement. This publication focuses on credit risk. Investments in municipal bonds entail other risks, such as call risk, interest rate risk, inflation risk, and liquidity risk. Please refer to the material listed below for more information on these risks.

Related Information

Investor Bulletin: Municipal Bonds (available at <http://www.sec.gov/investor/alerts/municipal-bonds.htm>)

FINRA and MSRB Investor Alert: Municipal Bonds—Staying on the Safe Side of the Street in Rough Times (available at <http://www.finra.org/investors/protectyourself/investoralerts/bonds/p118923>)

The Office of Investor Education and Advocacy has provided this information as a service to investors. It is neither a legal interpretation nor a statement of SEC policy. If you have questions concerning the meaning or application of a particular law or rule, please consult with an attorney who specializes in securities law.



CERTIFICATE OF SERVICE

I hereby certify that, on this 26th day of June, 2017, I caused to be served true copies of (i) the Division of Enforcement's Motion for Summary Disposition; (ii) the Declaration of David H. Tutor, dated June 26, 2017; and (iii) a Certificate of Length Limitation by the following methods:

By facsimile and UPS overnight

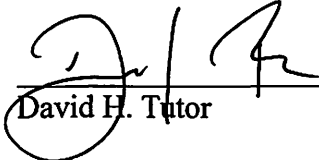
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Dated: June 26, 2017

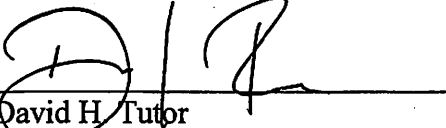


David H. Tutor

CERTIFICATE OF LENGTH LIMITATION

I hereby certify that the Division's Motion for Summary Disposition, filed on this 26th day of June, 2017, contains 5,634 words and complies with the length limitation set forth in Rule 154(c) of the Commission's Rules of Practice.

Dated: June 26, 2017


David H. Tutor