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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

**RESPONDENT'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION
FOR SUMMARY DISPOSITION**

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RESPONDENT'S OPPOSITION
TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION

Respondent John T. Lynch, Jr. ("Respondent" or "Lynch") respectfully submits this memorandum of law in opposition to the Division of Enforcement's ("Division's") Motion for Summary Disposition (the "Motion") and requests that the lifetime associational bar sought by the Division be denied. In addition, Respondent submits that this matter is not appropriate for summary disposition, as there are material issues of disputed fact regarding mitigating factors, including but not limited to the conduct of other individuals who participated in the subject "Brogdon Bond Offerings" and their interaction with Respondent, which bear on the appropriateness of an associational bar and which require a hearing before the Administrative Law Judge.¹

PRELIMINARY STATEMENT

First and foremost, Mr. Lynch accepts responsibility for his errors in judgment and understands that a penalty is justified. For purposes of this proceeding, Mr. Lynch accepts as true the allegations set forth in the April 5, 2017 Order Instituting Proceedings ("OIP"), and regrets that his mistakes constituted violations of the federal securities laws. Although we discuss in this memorandum Mr. Lynch's actions in connection with the Brogdon Bond Offerings, and refer to the testimony of other witnesses who appeared as part of the Division's investigation into those bond offerings, we present this information not to re-litigate the

¹ Consistent with the Tenth Circuit's ruling in Bandimere v. SEC, 844 F.3d 1168 (10th Cir. 2016), and in order to properly preserve this issue, Respondent submits that the Commission's appointment of Administrative Law Judges runs afoul of the Constitution's Appointments Clause. Respondent's decision to settle the alleged violations and to participate in this follow-on proceeding does not foreclose his raising this objection on such a fundamental Constitutional issue.

underlying issues but to demonstrate why a permanent lifetime bar is not warranted and would be extremely inequitable.

Apart from these proceedings, Mr. Lynch has an unblemished forty-year career in the municipal securities industry. This record is a testament to his professionalism and integrity. Before now, Mr. Lynch has never been the subject of any disciplinary action or client complaints and he continues to enjoy the full support and confidence of his current employer, John W. Loofbourrow Associates, Inc., and its President and CEO, John W. Loofbourrow who with full knowledge of these proceedings has agreed to directly supervise Mr. Lynch to comply with FINRA obligations.

Unfortunately, the Brogdon Bond Offerings represent a significant and uncharacteristic stain on Mr. Lynch's career. With respect to these Offerings, Mr. Lynch was a member of a large financing team consisting of attorneys and securities industry professionals, all of whom—with the exception of Mr. Lynch, who was new to the team—had experience working on prior Brogdon-related offerings. Though Mr. Lynch admits that he was mistaken in doing so, he honestly and in good faith relied on the representations of these experienced professionals and never had any intention of misleading—let alone defrauding—any of his clients or colleagues. With an investigative file comprising thousands of pages, the Division does not allege otherwise.

To understand the degree of scienter involved, and the challenges that Mr. Lynch faced in working on these offerings, Mr. Lynch should be afforded the opportunity to cross-examine these other individuals at a hearing in this matter. Only then can this Tribunal fully understand Mr. Lynch's role in relation to the other longtime players in these offerings including bond counsel (Richard "Chix" Miller) and special disclosure counsel (Michael Gardner). Mr.

Lynch relied on and accepted assistance from these experienced lawyers, both of whom (unlike Mr. Lynch) were aware in 2011 of significant defaults on Brogdon-related projects, were pointedly questioned by the Division on these issues, but nonetheless are conspicuously absent from the OIP. The relevance is not to “point fingers,” but rather to show that when viewed in context Mr. Lynch’s actions evince a very low level of scienter, and although he accepts that sanctions are in order, a permanent associational bar would be unfair and disproportionate to his admitted misconduct.

Further, while Mr. Lynch concedes that he had an obligation to re-activate his Pennsylvania Bar membership before proceeding as underwriter’s counsel, he has always maintained his law license and remained a member in good standing of the Pennsylvania Bar. Having never surrendered his law license, and with the benefit of decades of experience working on financial and securities transactions including healthcare facility financings, Mr. Lynch held an honest, good faith belief that he was both qualified and competent to act as underwriter’s counsel.

And, it was Robert Lawson (“Lawson”)—Mr. Lynch’s employer²—who despite being told of Mr. Lynch’s “inactive” Bar status demanded that Mr. Lynch act as counsel to Lawson’s firm for the Brogdon Bond Offerings if Mr. Lynch wanted to be paid. Mr. Lawson insisted on this arrangement so he could avoid paying Mr. Lynch out of his own pocket for the full value of the services Mr. Lynch provided to the company. Further, although Mr. Lynch repeatedly advised Mr. Lawson—the company’s Founder and CEO—to assign required due diligence duties to members of the company’s underwriting department or to an outside firm, Mr.

² As noted below, Mr. Lynch was actually an independent consultant rather than an employee of Mr. Lawson’s company, with no power to impose his will on Mr. Lawson or the company, Lawson Financial Corporation.

Lawson consistently rejected Mr. Lynch's exhortations, often saying he would handle the diligence himself. Over time, it became clear that Mr. Lynch had a choice: accede to his employer's demands or resign. Mr. Lynch now concedes he made the wrong choice, but at the time he took comfort in the fact that he was working with a team of experienced professionals who approved each of the bond offerings and the actions of Brogdon, whom they knew well.³

Mr. Lynch fully appreciates the important function that transparent disclosure provides to the investing public, and he takes those disclosure obligations seriously. As evidenced by his settlement with the Securities and Exchange Commission ("Commission" or "SEC"), Mr. Lynch has unequivocally acknowledged his wrongdoing and made assurances against future violations. Indeed, he is permanently barred from appearing or practicing as an attorney before the Commission. For these and the reasons set forth herein, a hearing to assess the appropriate sanction is warranted. Mr. Lynch respectfully submits that a temporary suspension or a bar with the right to reapply in one year would be fair and equitable.

I. FACTS

a) Respondent's Professional History

Mr. Lynch has been active in the financial services and securities industries since the 1970s, holding a business degree from the prestigious Wharton School of Business as well as a law degree from St. Louis University School of Law. (Englander Declaration, dated July 28, 2017 (hereinafter "Englander Decl.") Ex. 1, Investigative Hearing Transcript of John T. Lynch, Jr. dated April 15, 2016, 39:20 – 42:25; see also Declaration of John T. Lynch, Jr. dated July 27, 2017 (hereinafter "Lynch Decl."), ¶ 2). He began his career with the law firm Curtin & Heefner, a distinguished Pennsylvania firm, which specialized in municipal financing. (Englander Decl.,

³ Mr. Lynch was the only member of the team who did not know Brogdon well.

Ex. 1, 40:16 – 41:10; Lynch Decl., ¶ 3). He transitioned thereafter to investment banking, and for forty years has successfully worked as a banker and advisor for various financial services and investment firms, including Lehman Brothers Kuhn Loeb, Dillon, Read & Co., Dean Witter Reynolds, Morgan Stanley, Merrill Lynch, and Herbert J. Sims & Co., as well as co-founding his own firm, Trouver Capital Partners. (Englander Decl., Ex. 1, 41:11 – 43:14; Lynch Decl., ¶ 4). Mr. Lynch has particular experience in the area of healthcare facility and education financing, and since 2002 has held Series 7, 31, 66, and 79 Securities Licenses. (Englander Decl., Ex. 1, 44:6 – 10; Lynch Decl., ¶ 5).

Prior to these proceedings, Mr. Lynch has never been the subject of any disciplinary proceedings or client complaints, and the Division does not allege that he has engaged in any wrongful conduct except with respect to these bond offerings. (Englander Decl., Ex. 1, 54:16, 113:24 - 25; Lynch Decl., ¶ 6, see also generally, OIP). Mr. Lynch is currently employed as Managing Director at John W. Loofbourrow and Associates, a firm that provides a full range of investment banking services to institutional investors in the private placement market. (See Declaration of John W. Loofbourrow, dated July 28, 2017 (hereinafter, “Loofbourrow Decl.”), ¶¶ 1-2). Mr. Loofbourrow has known Mr. Lynch for approximately four years and has been fully apprised of the OIP. (Loofbourrow Decl., ¶¶ 3-5). As a testament to Mr. Lynch’s good character, Mr. Loofbourrow stands by him and has agreed to provide heightened supervision of Mr. Lynch and sponsor his continued membership in FINRA, putting his own reputation and business on the line. (Loofbourrow Decl., ¶¶ 6-8).

b) Lawson Financial Corporation and Respondent’s Role

Mr. Lynch began working with Lawson Financial Corporation (“LFC”) as an independent investment banking consultant in 2009. (Englander Decl., Ex. 1, 45:15-20; Lynch

Decl., ¶ 7). LFC was a closely held, family-run company, whose CEO was Robert Lawson. The company was co-owned by Lawson's wife, and it employed three of the Lawsons' sons. (Englander Decl., Ex. 1, 66:7 – 20, 85:4 – 7, 113:5 – 8; Lynch Decl., ¶ 7). Mr. Lynch had no written agreement with LFC or Mr. Lawson and instead, received a verbal commitment that he would be paid a monthly consulting fee of \$10,000 for providing investment banking services. (Englander Decl., Ex. 1, 46:11-13; Lynch Decl., ¶ 8). The balance of Mr. Lynch's compensation was to be paid by LFC in the form of bonus payments based on the project financings that Mr. Lynch helped the company to close in any given year. (Lynch Decl., ¶ 8)

Shortly after Mr. Lynch began working with LFC, Lawson reneged on his verbal commitment and unilaterally reduced Mr. Lynch's monthly consulting fee by 30%, down to just \$7,000 per month. (Lynch Decl., ¶ 9). Despite having his compensation significantly reduced, Mr. Lynch, who remained an independent consultant, continued to demonstrate his ability to generate revenue for the firm. (Id., ¶ 10). As a result, Mr. Lawson made clear to Mr. Lynch that he wanted exclusive use of his time and expertise to work on LFC matters. (Englander Decl., Ex. 1, 105:13 – 15; Lynch Decl., ¶ 10) Further, Mr. Lawson insisted that Mr. Lynch—who had experience working as legal counsel on financings—act as underwriter's counsel for LFC in connection with the Brogdon Bond Offerings, and be compensated through the proceeds of each individual transaction rather than through LFC company funds. (Englander Decl., Ex. 1, 46:16 – 19; 48:22 - 24; Lynch Decl., ¶ 10). In this way, Mr. Lawson avoided the need to pay Mr. Lynch directly for his investment banking bonus, compensating him instead from the deal proceeds as underwriter's counsel. (Englander Decl., Ex. 1, 48:22-24, 104:1 – 9; Lynch Decl., ¶¶ 10-11).

Mr. Lynch advised Lawson that he was maintaining his Pennsylvania Bar membership in "inactive" status and that he strongly preferred to concentrate only on his

investment banking function for LFC. (Englander Decl., Ex. 1, 57:15 – 20, 58:17 – 24; 112:11 – 21, 118:12 – 22; Lynch Decl., ¶ 11). But Lawson was adamant, and Mr. Lynch believed that because he maintained his law license in good standing and was experienced in the types of financial transactions LFC was underwriting, that he was both competent and permitted to act as underwriter’s counsel on behalf of LFC. (Englander Decl., Ex. 1, 56:7 – 57:6; 106:20 – 107:1; 113:13 – 114:18; Lynch Decl., ¶¶ 11-12). Although his actions were not designed to mislead, and Mr. Lynch felt competent to carry out his responsibility as underwriter’s counsel, he now understands he was wrong and, accordingly, he has entered into a settlement with the Commission that both acknowledges his fault in acting as underwriter’s counsel and accepts a permanent bar from practicing or appearing as an attorney before the Commission. (Englander Decl., Ex. 1, 176:4 – 19; Lynch Decl., ¶ 13; OIP, § 4).⁴

c) The “Usual Suspects”: The Financing Team on the Brogdon Bond Offerings

As set forth in the Order Instituting Proceedings, Mr. Lynch recognizes that his mistakes constituted violations of the securities laws. (See OIP; Lynch Decl., ¶ 1). But context is important. Indeed it is critical when taking the measure of a man and determining whether a lifetime bar is required to protect the public. And here, Mr. Lynch’s actions and failures must be viewed in context, as he unwittingly relied too heavily on others in a much larger financing team that worked collaboratively on each of the Brogdon Bond Offerings.

That he was part of a larger team does not absolve Mr. Lynch of responsibility, but it is relevant to help explain his frame of mind, and supports the fact that he did not act with the intent to deceive or defraud investors. Rather, he unwittingly relied on the experienced team

⁴ Although he did not seek this role, neither did he reject it, and for that he is profoundly sorry. (Lynch Decl., ¶ 13).

of lawyers working on the Brogdon deals to raise the alarm if something was amiss. He took the crutch that the financing team offered knowing that they had worked on many Brogdon deals and were familiar with Brogdon and his businesses. (Lynch Decl., ¶¶ 14-20.)

In particular, Bond Counsel for all of the Brogdon Bond Offerings⁵ was an attorney named Richard “Chix” Miller (“Miller”). Miller was the Managing Partner at Sell & Melton LLP, a well-respected Georgia-based firm specializing in municipal offerings. Miller was questioned by the Division during its investigation into the subject bond offerings. (Englander Decl., Ex. 2, Investigative Hearing Transcript of Richard “Chix” Miller, dated June 15, 2016; see also Chix Miller Attorney Page, available at: <http://www.sell-melton.com/r-chix-miller/>). During his testimony, Mr. Miller confirmed that he had worked on at least 40 Brogdon bond offerings over the years, and upwards of 250 bond issues throughout his career. (Englander Decl., Ex. 2, 20:17 – 21:8). Among other things, Mr. Miller acknowledged that as Bond Counsel, he was viewed as the “quarterback” of the transaction, and would often provide opinions on the accuracy of official statements. (Id., 141:14 – 15, 145:1 – 6).

Indeed, Mr. Miller was so familiar with the team of professionals that routinely worked on Brogdon-related Bond Issues that he referred to them as “the Usual Suspects.” (Englander Decl. Ex. 2, 59:11 – 60:6; see also Englander Decl., Ex. 1, 71:9-10 (referencing the

⁵ Chris Brogdon resides in Atlanta, and has been active in nursing home, assisted living, and the retirement community business for more than 25 years. (OIP, ¶ 9). In 1986, Mr. Brogdon was censured, fined, and barred from association by NASD, FINRA’s pre-cursor agency, after he was found to have effected transactions in securities while failing to maintain adequate net capital and, while in net capital deficiency, withdrawing cash and securities investments from the broker-dealer’s accounts. (Id.) With regard to the subject Brogdon Bond Offerings, Mr. Brogdon set up several different entities to act as borrowers for each offering, and was behind each borrowing entity on each of the Brogdon Bond Offerings. (Id. at ¶ 12). Following a settlement with the SEC, Mr. Brogdon is in the process of repaying more than \$86 million to investors, including investors on Brogdon Bond Offerings that remain outstanding. (Id. at ¶ 9).

“fairly cohesive” group of professionals that worked on the Brogdon Offerings)). Of note, Mr. Miller had known Chris Brogdon and Mr. Lawson (Mr. Lynch’s superior) for decades, and had closed many deals with them over the years, long before Mr. Lynch’s involvement with LFC or Brogdon. (Englander Decl., Ex. 2, 23:11 – 12; 51:24 – 52:15).

Mr. Lynch respected Mr. Miller, and Miller’s vast experience with Brogdon and the rest of the financing team gave Mr. Lynch confidence that all was in order. (Lynch Decl., ¶ 19.) Mr. Miller also had a very close working relationship with an attorney named Michael Gardner, whom Miller identified as “disclosure counsel” on the Brogdon deals. (Englander Decl, Ex. 2, 53:13 – 54:3, 145:19 - 21). According to Mr. Miller, Mr. Gardner “would do the heavy lifting as disclosure counsel” by preparing the official statements for Mr. Lynch’s review. (Englander Decl, Ex. 2, 56:16 – 21). This was welcome relief to an over-extended Mr. Lynch. (Lynch Decl., ¶ 19).

Mr. Gardner likewise was questioned by the Division during their investigation and confirmed Mr. Lynch’s testimony that on many of the Brogdon Bond Offerings at issue, Gardner contributed his expertise as disclosure counsel by preparing one or more drafts of the official statements for Mr. Lynch. (Englander Decl., Ex. 3, Investigative Hearing Transcript of Michael Gardner, dated October 11, 2016, 39:11 – 17; 122:12 - 20; 129:1 – 130:3, 131:9 - 17). In addition, Mr. Gardner acted as underwriter’s counsel on at least one of the subject Brogdon Bond Offerings and like Mr. Lynch, provided written representations that the borrower had not failed to comply with any prior disclosure obligation. (Englander Decl., Ex. 3, 138:24 – 139:23).⁶ Also like Mr. Lynch, Gardner testified that in conducting due diligence as disclosure counsel and

⁶ With respect to Mr. Lynch, the OIP asserts that reasonable diligence would have shown this same representation to be false. (OIP, ¶¶ 17-18). No action has been brought against Mr. Gardner for these same representations. (See Englander Decl., Ex. 3, 139:2 – 141:8.)

underwriter's counsel on Brogdon Bond Offerings, he would rely on information provided by bond counsel (Chix Miller), borrower's counsel (Greg Youra), independent accountants (including Wink Laney), and environmental consultants, in addition to the underwriter's firm. (Id., 34:1 – 21, 140:14 – 141:8, 162:2 - 11). Mr. Gardner also testified (like Mr. Lynch) that Mr. Lawson represented that he (Mr. Lawson) had “checked EMMA filings . . . virtually daily on any transactions that were in process,” which representations Mr. Gardner relied upon. (Id., 162:4 – 7).

Indicative of and consistent with the collaborative nature of these offerings, the Index of Closing Documents on a typical Brogdon Bond Issue listed five separate legal opinions, including opinions from Bond Counsel, Issuer's Counsel, Lessee's Counsel, and Trustee's Counsel, in addition to Underwriter's Counsel. (See Englander Decl., Ex. 4, City of Mobile, First Mortgage Healthcare Facility Revenue Bonds, dated September 28, 2012: Index of Closing Documents, p. 2). Accordingly, Mr. Lynch's opinion letter as Underwriter's Counsel referenced his “participation in meetings, telephone conferences and other methods of communication with . . . representatives of the Issuer and its counsel, the Lessee and its counsel, [and] the Financial Forecast consultant and Bond Counsel, at which meetings and telephone conferences, . . . the Official Statement and the Budget Projections contained therein and the other legal documents and related matters were discussed.” (Englander Decl. Ex. 5, City of Mobile, First Mortgage Healthcare Facility Revenue Bonds, dated September 28, 2012: Underwriter's Counsel Opinion Letter, p. 3, ¶ 1). Mr. Lynch and the other professionals on the offerings were working together to optimize the flow of information and share their expertise. (Lynch Decl., ¶ 17).

Mr. Lynch relied on this collaborative effort. (See Englander Decl., Ex. 1, 204:3 – 9; Lynch Decl., ¶¶ 16-19). As his opinion letter states:

I have not undertaken to verify independently, am not expressing any view upon, and do not assume responsibility for the accuracy, completeness or fairness of the contents of the Official Statement. Based solely on my knowledge derived from my activities described in the preceding paragraph, I have no reason to believe that the Official Statement (except for the financial statements, forecasts, estimates, assumptions and expression of opinion, as to which I express no opinion) contains any untrue statement of a material fact, or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(Englander Decl., Ex 5., p. 3, ¶ 2).

In executing his duties as Underwriter’s Counsel, and as outlined in his opinion letter quoted above, Mr. Lynch—like Mr. Gardner—relied upon the representations and statements of myriad other professionals with direct knowledge and longtime involvement with all aspects of the Brogdon Bond Offerings. As stated during his testimony before the Division, Mr. Lynch felt assured by this group of individuals because they “had dealt with [Brogdon] much longer than I had, [] were continuing to do business with him,” and none of them “expressed privately, or in any other way, that they had concerns about Chris Brogdon” (Englander Decl, Ex. 1, 224:9 – 15). In short, Mr. Lynch never felt as if “any of us were intentionally going forward and closing deals knowing that there were outstanding issues” (Id. at 225:3 – 6). Though he honestly and in good faith relied on the financing team’s collaborative efforts and the assurances of those with whom he worked—particularly attorneys—Mr. Lynch does not flinch at accepting responsibility for his failures. (Lynch Decl., ¶¶ 20, 22, 26.) He acknowledges his error in doing so and flatly accepts that he “should not have relied on [their representations].” (See Englander Decl., Ex. 1, 225:1 – 3; 232:12 – 17; Lynch Decl., ¶ 20.)

Making a mistake in judgment is not, however, automatic grounds for a lifetime bar from the industry. Mr. Lynch’s honestly held belief that the team’s collaboration reasonably

supported his opinions and safeguarded investors may have been misguided, but it is not worthy of a penalty imposed on the most blatant, malicious wrongdoer. Mr. Lynch respectfully submits that while a suspension may be appropriate, the circumstances described herein do not warrant a permanent lifetime bar.

d) Mr. Lynch Made Efforts to Have a Dedicated Due Diligence Position Created at Lawson Financial Corporation

Despite his participation as one member of a larger financing team, Mr. Lynch does not dispute that he retained an obligation to ensure that underwriter's due diligence was conducted in connection with the Brogdon Bond Offerings. (Lynch Decl., ¶ 22.) In that vein, he advised Mr. Lawson on more than one occasion that someone at LFC should be designated to conduct routine checks of the Electronic Municipal Market Access website ("EMMA") to monitor continuing disclosures, but Mr. Lawson, LFC's CEO, never designated anyone for that task. (Englander Decl., Ex. 1, 91:6 – 11; Lynch Decl., ¶ 21). At other firms where Mr. Lynch worked there was a dedicated due diligence department, responsible for regularly checking for required disclosures. (Englander Decl., Ex. 1, 84:13 – 16; Lynch Decl., ¶ 21). Mr. Lynch "did mention [] to Lawson on more than one occasion that [he] thought that [a due diligence department] would be something that [] – should be done" (Englander Decl., Ex. 1, 84:20 – 23; 86:17-18; 92:9 - 12). Mr. Lynch was already stretched thin (Id., 107:17-20), and made it clear to that he could not personally take on the additional "full-time job" of conducting regular EMMA checks. (See Englander Decl., Ex. 1, 158:5 – 12; Lynch Decl., ¶ 21).

It was Mr. Lawson's decision, as head of LFC, to delegate and fund that due diligence responsibility. (Englander Decl., Ex.1, 133:6 – 12, 137:13 – 16; Lynch Decl., ¶ 21). Mr. Lawson, however, "didn't find that [suggestion] to be particularly cost effective," frustrating

Mr. Lynch's attempts to create a dedicated due diligence function at LFC. (Englander Decl., Ex.1, 89:8 – 14.) Because Mr. Lynch was an independent consultant, he lacked the authority to dictate how Mr. Lawson staffed his company (Id., 92:14 – 15, 121:14 – 23; Lynch Decl., ¶ 21), and felt as if he was “being summarily dismissed [by Mr. Lawson] in terms of [his] input.” (Englander Decl., Ex. 1, 286:16 – 19; Lynch Decl., ¶ 21). Thus, Mr. Lynch was frustrated in his efforts to strengthen LFC's due diligence capabilities and was unable to shoulder that burden himself. Unfortunately, Mr. Lynch nonetheless went forward with the Offerings on the misguided belief that that collaborative process among several professionals was sufficient. (Lynch Decl., ¶¶ 17-20.)

But Mr. Lynch was by no means willing to condone—let alone facilitate—wrongdoing. There are no allegations whatsoever that Mr. Lynch knew of Brogdon's schemes. And, when Mr. Lynch later discovered that his employer, Mr. Lawson, had improperly transferred millions of dollars from a deceased customer's trust account to cover losses on a subsequent deal, he voluntarily provided that information to FINRA's Denver regional office, and cooperated fully in FINRA's investigation that led to LFC's expulsion and associational bars against Mr. Lawson and his wife for misappropriating client funds. (Englander Decl., Ex. 1, 19:2 – 11, 246:8, 249:8 – 250:11; Lynch Decl., ¶ 23; see also Englander Decl. Ex. 6, FINRA News Release, dated February 2, 2017: “FINRA Expels Lawson Financial and Bars CEO Robert Lawson for Fraudulent Municipal Bond Sales.”). In addition, for their role as underwriters of the Brogdon Bond Offerings, LFC and Mr. Lawson settled with the Commission and agreed to disgorgement and a civil penalty. Mr. Lawson—who was Brogdon's crony and Mr. Lynch's boss—received an associational bar with a *right to reapply after three years*. (Division's Motion, at p. 2, n.1).

e) The Nature of the Missed “Red Flags”: Mr. Lynch, Mr. Miller, and Mr. Gardner

Mr. Lynch does not dispute that certain emails in July and October 2013 could have alerted him to Mr. Brogdon’s disclosure failures. (OIP, ¶ 19). Those emails were variously addressed to Mr. Lawson, Mr. Brogdon, Ms. Neilson, Mr. Miller, and Mr. Gardner, in addition to Mr. Lynch. (See Englander Decl., Ex. 1, 181:5 – 12; 196:9 – 16, 212:5 – 10). As a matter of course, when Mr. Lynch was copied on emails regarding missing financial statements, it was Mr. Lawson who would follow up on those missing documents, telling Mr. Lynch that he would “deal with it.” (Englander Decl., Ex. 1, 230:20 – 25; 182:7 – 12; Lynch Decl., ¶ 21). In essence, it appears Mr. Lawson chose to protect his crony, Mr. Brogdon, and acted to prevent Mr. Lynch from uncovering disclosure deficiencies on bonds they were underwriting.

Moreover—and in stark contrast to the nature of the red flags that Mr. Lynch is charged with missing—both Chix Miller and Michael Gardner were presented with glaring issues of default and alleged wrongdoing as early as 2011. As just one example, in September 2011, Mr. Gardner emailed Mr. Miller—but not Mr. Lynch—regarding, as he put it, a “potential catastrophe” regarding “a number of transactions in which Chris [Brogdon] is involved [that] are in default.” (Englander Decl, Ex. 3, 88:1 – 89:12; Englander Decl., Ex. 2, 104:13 – 105:7). The email went on to state that a “lawyer / Bibb County Bondholder [] believes Chris is running a Ponzi scheme.” (Englander Decl, Ex. 3, 92:8-22; Englander Decl., Ex. 2, 107:2-13). Of course, it turned out that Mr. Brogdon was engaged in an illegal scheme, (Division’s Motion, at p. 4, n.3), and attorneys Miller and Gardner had that information long before Mr. Lynch is alleged to have received any “red flag” emails himself. And while the Division is aggressively pursuing a permanent bar against Mr. Lynch, Messrs. Miller and Gardner have avoided *any* culpability.

Here, too, Mr. Lynch raises this inequitable, selective prosecution not to disavow his own mistakes, but to demonstrate that the penalty sought is vastly disproportionate to his admittedly wrongful conduct. Given this background, further examination into the actions, or inactions, of Mr. Miller and Mr. Gardner require a hearing, particularly as to the information they shared with (or hid from) Mr. Lynch. Only then can the appropriate remedy for Mr. Lynch's actions be fully and fairly determined.⁷

II. ARGUMENT

a) Summary Disposition Standard and Why a Hearing is Warranted

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the movant is entitled to summary disposition as a matter of law. See e.g. Eagle Eye Asset Management LLC, A.P. File No. 3-15156, 2013 SEC LEXIS 2113, at *6 (July 24, 2013) (Elliot A.L.J.) (citing 17 C.F.R. § 201.250(b)). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to Rule 323 of the Commission's Rules of Practice. Id. (citing 17 C.F.R. § 201.250(a)).

⁷ The Bank of Oklahoma ("BOKF") has also settled with the Commission, and agreed to pay a \$1.6 million fine for its failure to exercise proper oversight as trustee in connection with these Brogdon Bond Offerings. (Englander Decl., Ex. 7, SEC Order Instituting Cease & Desist Proceedings against Bank of Oklahoma, File No. 3-17533, dated September 9, 2016; see also OIP, ¶ 10). Additionally, Marrien Neilson, who was BOKF's Senior Vice President and was close with Mr. Lawson, was separately charged in federal court for her role in the Brogdon Bond Offerings, and has been permanently barred from engaging in corporate trustee work related to municipal bonds, and also agreed to pay a fine. (Englander Decl., Ex. 8, Final Judgment as to Defendant Marrien Neilson, 16-cv-5475 (KM) (D.N.J. Mar. 3, 2017); see also Englander Decl., Ex. 1, 272:1 – 274:1). Her testimony is also highly relevant to understanding Mr. Lynch's role in these events.

Although summary disposition is often appropriate in follow-on proceedings after a criminal conviction or injunction, and the need for a hearing in those cases “will be rare,” a “Respondent may present genuine issues with respect to facts that could mitigate his or her misconduct” John S. Brownson, 55 S.E.C. 1023, 1028, n.12 (2002), petition for review denied, 66 F. App’x 687 (9th Cir. 2003). Indeed, the Commission must carefully consider mitigating factors, especially when a lifetime associational bar is sought, which is “the securities industry equivalent of capital punishment.” Saad v. SEC, 718 F.3d 904, 906-07 (D.C. Cir. 2013) (citing Paz Secs., Inc. v. SEC, 566 F.3d 1172, 1175 (D.C. Cir. 2009)). This is one of those rare cases where a hearing is essential to the full and fair disposition of Mr. Lynch’s follow-on penalty.

As noted above, two other attorneys who played central roles in all of the subject Brogdon Bond Offerings—bond counsel Chix Miller and special disclosure counsel Michael Gardner—not only had direct information regarding prior Brogdon-related defaults in 2011, but also ignored allegations that Mr. Brogdon was engaged in a Ponzi scheme, all of which they failed to disclose to Mr. Lynch. (Englander Decl, Ex. 3, 88:1 – 89:12, 92:8-22; Englander Decl., Ex. 2, 104:13 – 105:7, 107:2-13). Moreover, Mr. Miller learned from the trustee (Marrien Neilson at Bank of Oklahoma), that the “Sumner [facility]⁸ was in serious trouble and [that] Chris Brogdon had been making [] payments to bondholders from his own sources” (Englander Decl, Ex. 2, 80:20 – 81:13). And yet, Mr. Miller did not view this as an alarming issue, or, even if he did, chose not to raise it with Mr. Lynch. (Id., 86:1 – 6). Mr. Lynch should

⁸ As alleged in the OIP, the Sumner facilities were used as collateral for one of the Brogdon Bond Offerings, but had actually been sold at a tax sale in 2006. (OIP, ¶ 34). Although Mr. Miller claims to have been ignorant of the fact that the Sumner facilities were sold prior to the bond offerings in which they were listed as collateral, his testimony makes clear that he had known for a long time that they were in “serious trouble” and never alerted Mr. Lynch to this fact.

be permitted to cross-examine Mr. Miller and Mr. Gardner at a hearing to determine the full extent of the information they knew, when they knew it, and most critically, why they chose to keep Mr. Lynch in the dark. Details of Mr. Miller and Mr. Gardner's actions will, we believe, show that they purposely misled Mr. Lynch about the diligence that was being done so that the deals could proceed. Mr. Lynch was too willing to trust his colleagues, and now he alone is facing the "capital punishment" of a lifetime bar for his mistake. Mr. Lynch's mindset in relying on representations by Miller and Gardner to inform his due diligence is highly relevant to fashioning an equitable penalty.

Likewise, cross-examination of Marrien Neilson is essential to provide context for Mr. Lynch's actions. As noted, she formerly held the position of Senior Vice President with the trustee, Bank of Oklahoma, and following a final judgment against her in the District of New Jersey, has been fined and permanently enjoined from working as a corporate trustee on municipal bonds. See Englander Decl., Ex. 8; see also Section I.e, n.7, supra. Mr. Lawson had a close and longstanding business relationship with Neilson, and spoke with her frequently to the exclusion of Mr. Lynch, including with regard to the illegal transfer of trust funds that led to Mr. Lawson's FINRA expulsion. (Englander Decl., Ex. 1, 277:3 - 17). Ms. Neilson's knowledge of Brogdon-related defaults and the extent to which she and Lawson hid from Mr. Lynch, or actively misrepresented that information is also relevant to assessing the reasonableness—or egregiousness—of Mr. Lynch's actions, and determining an appropriate penalty.⁹

It is also axiomatic that a respondent's honesty and integrity are critical in determining whether they should remain in the securities industry. See, e.g. Alexander Smith,

⁹ So too is the testimony of Greg Youra (borrower's counsel) relevant here. Upon information and belief, he was never even questioned by the Division as part of their investigation into the Brogdon Bond offerings.

Exch. Act. Rel. No. 3785, 1946 SEC LEXIS 228, at *18 (S.E.C. 1946). Mr. Lynch should be afforded the opportunity to testify before this Court to fully explain the circumstances surrounding his violations and allow this Hearing Officer to gauge his credibility. This is especially so in light of the fact that Mr. Lynch appeared at the April 15, 2016 investigative hearing without the assistance of counsel, and under the mistaken understanding that he was appearing as a cooperating witness. (Englander Decl., Ex. 1, 296:25 – 297:2).¹⁰

Accordingly, the Division has not and cannot meet its burden of demonstrating that summary disposition is appropriate in this case. Their motion should be denied and the matter set down for a hearing after all relevant witnesses have been duly subpoenaed to appear.

b) The Standard for Imposing a Collateral Bar: The Steadman Factors

A permanent associational bar is the “most drastic remed[y]” available to the Commission because it effectively results in the “deprivation of livelihood.” Steadman v. SEC, 603 F.2d 1126, 1137, 1139 (5th Cir. 1979) aff’d on other grounds, 450 U.S. 91 (1981). The Commission, however, possesses “flexible enforcement powers.” Steadman, 603 F.2d at 1139 (quoting Ernst & Ernst v. Hochfelder, 425 U.S. 185, 195 (1976)); see also Butz v. Glover Livestock Comm’n Co., 411 U.S. 182, 188-89 (1973) (noting the Commission’s broad discretion to fashion remedies). As such, there are cases where a permanent bar can be “unduly harsh” and “draconian.” SEC v. Jasper, 883 F. Supp. 2d 915, 930 (N.D. Cal. 2010) (internal citations and quotations omitted); see also Arthur Lipper Corp. v. SEC, 547 F.2d 171, 184 (2d Cir. 1976) (describing permanent bar as “severe”). Because of the severity of a permanent associational bar, the Commission has the burden to articulate compelling reasons for the bar, as well as an

¹⁰ Though Mr. Lynch does not dispute the allegations in the OIP, it also bears noting that he entered into it without the assistance of counsel.

obligation to explain why a lesser sanction would not suffice. Steadman, 603 F.2d at 1139-40 (internal citations and quotations omitted).

In determining an appropriate administrative sanction, the Commission must consider the following factors:

- (1) The egregiousness of the respondent's actions,
- (2) The isolated or recurrent nature of the infraction,
- (3) The degree of scienter involved,
- (4) The sincerity of defendant's assurance against future violations,
- (5) The defendant's recognitions of the wrongful nature of his conduct, and
- (6) The likelihood that the respondent's occupation will present opportunities for future violations.

Steadman, 603 F.2d at 1140 (citing SEC v. Blatt, 583 F.2d 1325, 1334, n. 29 (5th Cir. 1978)). No one factor is dispositive, and they must be considered "in light of the entire record." Gordon Brent Pierce, et al., A.P. File No. 3-13927 (July 27, 2011) (Elliot A.L.J.). Additionally, the Commission has the burden to show that a permanent bar would be in the public interest. See Exchange Act § 21B(c); Investment Company Act § 9(d)(3).

Importantly, sanctions are meant to remedy misconduct and deter future wrongdoing, not to punish. See, e.g. Leo Glassman, A.P. File No. 3-3758, 46 S.E.C. 209, 211-12 (SEC 1975). In appropriate circumstances, sanctions should achieve a deterrent effect without foreclosing a second chance. See Lawrence E. Labine, A.P. File No. 3-15967, 2016 SEC LEXIS 295, at *115 (Mar. 2, 2016). Such is the case here, as the Division cannot meet its high burden to establish that a permanent associational bar is warranted or in the public interest.

i. **Respondent's Actions Evince a Low Degree of Scienter and Did Not Rise to the Level of Egregiousness Necessary to Support a Permanent Lifetime Bar**

Although Mr. Lynch does not now dispute that there was some culpable mens rea—recklessness—in connection with the alleged violations, the circumstances demonstrate that his mindset was far from the intentional misconduct often associated with the highest sanction available. A respondent's *degree* of scienter should be considered when determining an appropriate sanction. See SEC v. Spectrum, Ltd., 489 F.2d 535, 542 (2d Cir. 1973) (suggesting that the degree of scienter is “highly relevant” to a determination of whether a defendant has the propensity to commit future violations, which is a prerequisite for an injunction or a permanent bar).

Circumstances in which a defendant's conduct have been found to exhibit a high degree of scienter include, for example, the use of altered documents and forged signatures in furtherance of a multi-year scheme aimed at defrauding clients. See Eagle Eye Asset Management LLC, A.P. File No. 3-15156, 2013 SEC LEXIS 2113, at *15 (July 24, 2013) (Elliot A.L.J.). That kind of intentional, deliberately fraudulent conduct is entirely absent here. Indeed, there are no allegations that Mr. Lynch purposely *intended* to defraud any member of the public. See generally OIP. In fact, Mr. Lynch was clear during his testimony that he never felt that he, or anyone with whom he worked, were intentionally closing deals for which there was missing or improper documentation. (Englander Decl., Ex. 1, 225:3 – 6). His reliance on the representations of the larger financing team, though inappropriate and misplaced, was indisputably *not* part of a scheme by Mr. Lynch to defraud the public.

Moreover, and as underscored by many of the cases to which the Division cites, Mr. Lynch's actions were not so egregious to warrant a permanent bar. For example, in Dolphin v. Bradbury, the respondent was found to have affirmatively manipulated information so as to

render his financial projections “so deeply flawed that [he] must have been aware they would mislead investors.” 512 F.3d 634, 641 (D.C. Cir. 2008) (Division’s Motion, at p. 13). By contrast, Mr. Lynch may have been negligent, or even reckless, in *failing to uncover* certain deficiencies in the Brogdon Bond Offerings, but there are no allegations that he purposefully manipulated any financial information in order to defraud investors.

The Division also cites to In re Korem, in which the respondent “devised a classic pump and dump scheme” for the express purpose of manipulating the market and “induc[ing] the unsuspecting public to invest at ever increasing prices” In re Korem, A.P. File No. 3-14208 (SEC July 26, 2013) (Division’s Motion, at p. 17). The allegations against Mr. Lynch do not remotely approach those set forth in Korem, nor do they resemble the facts of Bugarski, also cited by the Division, in which respondents were found to have established a “boiler-room” operation by creating a dedicated sales force and using high pressure closing tactics to sell obscure stocks and collect heightened commissions. In re Bugarski, et al., A.P. File No. 3-14496 (SEC Apr. 20, 2012) (Division’s Motion, at p. 17).

Here, Mr. Lynch relied on the bond financing team precisely because he felt they provided additional layers of security to protect the investing public. (Lynch Decl., ¶ 17). The allegations in the OIP are silent as to any purposeful intent to harm the public. On *these* facts and given *this* Respondent’s previously unblemished career, the Division’s desire to send a message to the underwriting industry that diligence cannot be short changed does not remotely justify the draconian penalty of a permanent associational bar.

ii. Mitigating Factors Include Respondent's Good Faith Belief That He Was Acting in His Client's Interests, and The Extreme Stress He Endured at LFC

Where a respondent has shown an honest and good faith belief that he was acting for the benefit of his clients that has been found to be a mitigating factor against a permanent collateral bar. See e.g. Lawrence E. Labine, A.P. File No. 3-15967, 2016 SEC LEXIS 295, at *112 (Mar. 2, 2016) (“Certain factors, however, are mitigating. I do not believe LaBine sought to harm clients; there is no allegation or evidence the he mishandled client assets; and I find that he had a good faith belief that Domin-8 would succeed.”) So too has a respondent's reliance on “senior officers' assurances as to the legitimacy of a transaction,” been found to be a mitigating factor against a permanent collateral bar. See Ran H. Furman, A.P. File No. 3-14532, 2012 SEC LEXIS 1893, at *15 (June 20, 2012) (Elliot, A.L.J.).

Again, the allegations in the OIP do not set forth a scenario in which Mr. Lynch created a scheme for the purpose of defrauding the public or harming investors. Mr. Lynch has been clear that although he was mistaken for relying on the representations of his colleagues on the financing team, he relied on them *precisely because* he believed their collaboration assisted the flow of information, and their collective expertise created an even stronger safety net to ensure that all requirements were met, and the public faithfully served, on each bond offering. (Lynch Decl, ¶ 17). Had he any inkling that Mr. Brogdon had misappropriated funds from any of the projects on which he worked, or that investors were being ill-served, he would have taken prompt action. (Id., ¶ 19.) Indeed, when he later learned that Mr. Lawson was engaged in misappropriating client funds, Mr. Lynch did take action to protect the public by voluntarily providing information to FINRA, which aided their investigation and led to LFC and Mr. Lawson's expulsion. (Lynch Decl., ¶ 23; Englander Decl., Ex. 6).

In addition, extreme stress at the time of an alleged violation has been found to be a mitigating factor that should be considered in fashioning remedial sanctions. See Saad v. SEC, 718 F.3d 904, 907 (D.C. Cir. 2013) (reversing Commission’s lifetime bar and remanding for consideration of, among other things, the “extreme personal and professional stress that [respondent] was under at the time of his transgressions”). Here, Mr. Lynch testified that he was under “quite a bit of stress and frustration” due to the fact that Mr. Lawson had forced him into the dual role of investment banker and underwriter’s counsel in order to be paid, while ignoring his exhortations regarding the due diligence function. (Englander Decl. Ex. 1, 286:14 – 19; Lynch Decl., ¶¶ 21, 24). In fact, his relationship with Mr. Lawson had deteriorated to such a degree that Mr. Lynch was actively negotiating with another firm, H.J. Sims (which he would later join) in order to extricate himself from Mr. Lawson’s grip. (Lynch Decl., ¶ 24).

Taken together—and when additional context can be provided at a further hearing in this matter—these factors create mitigating circumstances that render a permanent associational bar unwarranted.

iii. **The OIP’s Allegations Principally Concern Respondent’s Violations as an Attorney, Which Renders an Additional Associational Bar Unwarranted, Especially in Light of His Assurances against Future Violations and Recognition of Wrongdoing**

Here, the overwhelming majority of the allegations in the OIP concern violations committed by Mr. Lynch in his capacity as underwriter’s counsel. As such, any follow-on penalty must account for the fact that he has already been permanently barred from appearing or practicing as an attorney before the Commission. (OIP, § IV). See John A Carley, et al., A.P. File No. 3-11626, 2005 SEC LEXIS 1745, *173-74 (July 18, 2015) (finding that where the evidence “was confined to [respondent’s] shortcomings as a supervisor,” a permanent associational bar in a non-supervisory capacity was unwarranted, especially where respondent

“has not received any customer complaints for his work as a registered representative over a thirty-five-year career”). Mr. Lynch has never been the subject of disciplinary action prior to the instant proceedings, nor has he ever received any client complaints during his long career in the industry. (See generally OIP; Lynch Decl., ¶ 6). The allegations here concern his activities relative to a single borrower, Mr. Brogdon. The Division cannot simply rely on the violations to which Mr. Lynch has admitted here in order to suggest that future misconduct is likely. See Steadman 603 F.2d at 1140 (“To say that past misconduct gives rise to an inference of future misconduct is not enough.”) Mr. Lynch’s previously unblemished track record shows that his mistakes in the Brogdon Offerings were an aberration, and not likely to be repeated.

Finally, and notwithstanding the Division’s contentions otherwise, Mr. Lynch has admitted his wrongdoing, both through his prior testimony and since. (See Englander Decl. Ex. 1, 299:11 – 15 (“I feel a little bit more – a lot more, I would say, as if I was somehow contributory to . . . the problem here, particularly with the Brogdon matters.”); see also Lynch Decl., ¶¶ 1, 13, 20, 22.) In defending himself in these proceedings, Mr. Lynch does not deserve rebuke. It is a basic tenet of the securities laws that they “do not require defendants to behave like Uriah Heep in order to avoid [penalties,] [nor are they] to be punished because they vigorously contest the government’s accusations.” SEC v. First City Fin. Corp., 890 F.2d 1215, 1229 (D.C. Cir. 1989).

That Mr. Lynch has highlighted the conduct of others during his prior testimony and in this opposition in no way suggests an attempt to minimize or deflect blame for his transgressions. To the contrary, Mr. Lynch has plainly and repeatedly accepted responsibility for his actions. (See Englander Decl. Ex. 1, 299:11 – 15; Lynch Decl., ¶¶ 1, 13, 20, 22). But as he confronts the awesome power of the Government as it seeks the most aggressive, punitive

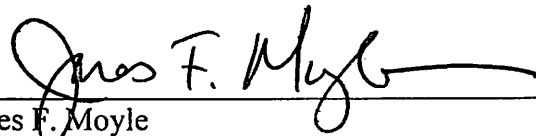
sanction available—the same obtained against Brogdon himself—Mr. Lynch must put his actions in context. That context demonstrates flaws, to be sure, but not the malicious intent, disdain for the laws, and propensity for future wrongdoing that mandates anything close to a permanent associational bar in order to protect the public from harm.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that (i) a permanent associational bar is not warranted, respectfully requests that the Division’s motion for summary disposition be denied and this matter set down for a hearing; or, (ii) in the alternative, that a penalty of a temporary suspension or an associational bar with the right to reapply within one year be imposed.

Dated: New York, New York
 July 28, 2017

LAZARE POTTER GIACOVAS & MOYLE LLP

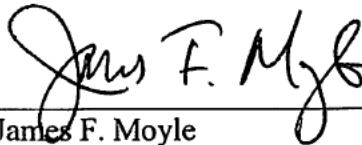


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Attorneys for Respondent
John T. Lynch, Jr.

CERTIFICATE OF LENGTH LIMITATION

I hereby certify that Respondent's Opposition to the Division of Enforcement's Motion for Summary Disposition, filed on this 28th day of July, 2017, contains 7,801 words and complies with the length limitation set forth in Rule 250(f)(1) of the Commission's Rules of Practice.

Dated: July 28, 2017


James F. Moyle

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2017, I caused to be served true copies of (i) Respondent's Opposition to the Division of Enforcement's Motion for Summary Disposition; (ii) the Declaration of Jacob A. Englander, dated July 28, 2017; (iii) the Declaration of John T. Lynch, Jr., dated July 27, 2017; (iv) the Declaration of John W. Loofbourrow, dated July 28, 2017; and (v) Certification of Length Limitation by the following methods:

By facsimile and Fedex overnight

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3628
Washington, D.C. 20549
Fax: (202) 772-9324


By email and Fedex overnight

David H. Tutor, Esq.
Lee A. Greenwood, Esq.
U.S. Securities and Exchange Commission
Division of Enforcement
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Counsel for Division of Enforcement

By email only

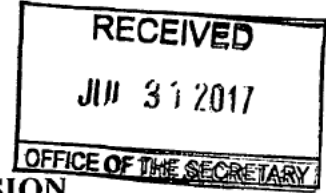
The Honorable Cameron Elliot
Administrative Law Judge
Email: alj@sec.gov

Dated: July 28, 2017


James F. Moyle

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17902

In the Matter of

JOHN T. LYNCH, JR.

**DECLARATION OF JOHN
T. LYNCH, JR.**

Respondent

John T. Lynch, Jr., declares that the following is true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I accept as true the allegations set forth in the Order Instituting Proceedings ("OIP"), dated April 5, 2017, and regret that my mistakes constituted violations of the federal securities laws. I submit this declaration in support of my opposition to the Division of Enforcement's Motion for Summary Disposition and a permanent collateral bar and Investment Company Act prohibition.

2. I have been active in the financial services and securities industries since the late 1970s. I hold a bachelors degree from LaSalle University, a business degree from the Wharton School of Business at the University of Pennsylvania, and a law degree from St. Louis University School of Law.

3. After law school I worked at the Philadelphia law firm of Curtin & Heefner, and specialized in municipal financing, among other financial and securities-related practice areas for five years.

4. In the late 1970s I decided to transition from law to investment banking, where I have made my career ever since. Among the many financial services and investment firms I have worked for are Lehman Brothers Kuhn Loeb, Dillon, Read & Co., Dean Witter Reynolds, Morgan Stanley, Merrill Lynch, and Herbert J. Sims & Co. Inc., as well as co-founding my own firm, Trouver Capital Partners.

5. Early in my investment banking career I helped to create and manage the health care finance groups at Lehman Brothers, Dillon Read and Dean Witter, and have continued to be active in the field of healthcare facility and education financing to the present. Since 2002, I have held Series 7, 31, 66, and 79 securities licenses.

6. While a practicing attorney and in my nearly forty year career in investment banking, I have never received any client complaints and prior to these proceedings have never been the subject of any disciplinary action. Currently, I am a Managing Director at John W. Loofbourrow Associates, Inc.

7. In 2009, I began working for Robert Lawson, who was the president and CEO of his own company, Lawson Financial Corporation ("LFC"). Mr. Lawson's wife co-owned LFC, and the company employed three of the Lawsons' sons.

8. I was never an employee of LFC. Rather, I was an independent investment banking consultant. When I began working with LFC in late 2009 I did not have a formal consulting agreement or contract with either Mr. Lawson or LFC. Instead, I entered into a verbal agreement whereby Mr. Lawson promised to pay me a monthly consulting fee of \$10,000 to act as a senior investment banking consultant. The balance of my compensation was to be paid in the form of bonus payments based on the project financings that I helped the company to close in any given year. I understood and expected that these additional bonus payments were to comprise a significant portion of my overall annual compensation with LFC.

9. Shortly after I began working with LFC, Mr. Lawson reneged on his verbal commitment and unilaterally reduced my monthly consulting fee by 30%, down to just \$7,000 per month. He also never paid me any of the promised bonus payments described above.

10. Mr. Lawson then insisted that, with my legal background, I act as underwriter's counsel for LFC, and be compensated instead from the proceeds of each transaction that closed. Even though I remained an independent consultant for LFC, because of my ability to generate revenue, it became clear to me that Mr. Lawson wanted exclusive use of my time and expertise, and required that I dedicate my time exclusively to LFC. By insisting that I work as LFC's counsel in connection with the underwriting of the Brogdon Bond Offerings, and be compensated through the proceeds of each individual transaction, Mr. Lawson avoided the need to pay me directly for my investment banking bonus, which would have had to come out of his compensation as underwriter of the bond financings.

11. I advised Mr. Lawson that I had been maintaining my Pennsylvania Bar membership in "inactive" status for many years, and that I strongly preferred to concentrate only on investment banking as I had done for many years. Nevertheless, Mr. Lawson insisted that I act as underwriter's counsel for LFC so that he could avoid paying me an investment banking bonus directly, compensating me instead from the deal proceeds as Underwriter's Counsel.

12. Because I maintained my law license in good standing, and was very experienced in the types of financial transactions LFC was underwriting, I honestly believed that I was both competent and permitted to act as underwriter's counsel for LFC, despite my "inactive" status. During the time that I acted as underwriter's counsel for LFC, the company was my only client, and I did not maintain any client trust accounts, nor did I appear before any court or tribunal.

13. In acting as underwriter's counsel for LFC, I had no intention whatsoever of misleading anybody as to my qualifications as an attorney. I now understand, however, that I was incorrect in doing so, and I should have requested the Pennsylvania Bar to change my existing Bar membership to "active" status. In order to acknowledge my error, I have entered into a settlement with the Securities and Exchange Commission ("SEC" or "Commission"), and I have accepted a permanent bar from practicing or appearing as an attorney before the SEC. Although I did not actively seek out this role as underwriter's counsel, I also failed to reject it, and am profoundly sorry and remorseful for this mistake of judgment.

14. Throughout the course of time that I worked for LFC underwriting the Brogdon Bond Offerings, I worked collaboratively with a financing team that consisted of several securities industry professionals and attorneys. The attorneys, in particular, appeared extremely knowledgeable and capable.

15. In addition to Mr. Lawson, this financing team consisted of Richard "Chix" Miller, Esq., the managing partner of Sell & Melton LLP, who acted as bond counsel; Greg Youra, Esq., a partner in the firm of Holt Ney Zatcoff & Wasserman, LLP, who was counsel to Mr. Brogdon and his related entities; Michael Gardner, Esq., who acted as special disclosure counsel; Wink Laney, a CPA who provided independent accounting services for the bond offerings; Marrien Neilson, Senior Vice President at the Bank of Oklahoma, which acted as trustee on all of the Brogdon Bond Offerings; and James C. Orbison, Esq., a senior partner at Riggs, Abney, Neal, Turpen, Orbison & Lewis, who acted as trustee's counsel.

16. Based on their interactions with me, and the years of experience in the industry they collectively possessed, I viewed each of these individuals as highly-experienced, consummate professionals. Moreover, when I joined this financing team I learned that these individuals had, in large part, done business together for many years and had closed numerous bond transactions together. In particular, it was my understanding that they had all done business, and were very familiar with, Mr. Brogdon and his related entities. In my experience, it was quite common in corporate or municipal transactions of this type for financial teams such as this to form over time around a particular borrower or business-related entity that accesses the capital markets on a regular basis. The financing team draws on this history and experience in undertaking new offerings.

17. In my view, at least as events were unfolding, our efforts on these bond offerings were purposefully collaborative in order to optimize the flow of information and benefit from each other's expertise, thereby creating what I perceived to be a strong safety net to ensure that all requirements were met on each of the bond offerings. Whenever issues arose involving the structuring of the financing itself, or the disclosure of financial or other material information, these issues were addressed directly by members of the financing team with an eye towards being fully transparent and presenting information accurately to the investing public.

18. At no time did any member of this financing team express to me, either publicly or privately, that they had any reservations about doing business with Mr. Brogdon or his borrowing entities. To the contrary, I was consistently re-assured by everyone on the team that Mr. Brogdon and his borrowing entities were reliable and legitimate business partners. In

that vein, I did not view Mr. Brogdon's intermittent, dilatory financial filings as an alarm bell or red flag and to my knowledge neither did others on the financing team. At the time, I consistently observed that when he or his attorneys were asked for updated financial statements, he consistently provided them. In my experience, it is not unusual for financial statements to be filed late from time to time, and at the time of these transactions I had no reason to believe that Mr. Brogdon had misappropriated funds from any of the projects on which we collaborated or otherwise engaged in illegal conduct.

19. In particular, for most of the transactions that I worked on, I was encouraged that Michael Gardner was brought in at my request to act as special disclosure counsel, and he prepared drafts of the official statements. Prior to closing each of the Brogdon Offerings, at no time did Mr. Miller (bond counsel), Mr. Youra, or Mr. Gardner express to me any dissatisfaction or concern that any required disclosures had not been made. I honestly and in good faith relied on the representations of these attorneys and the other members of the financing team, which I believed supported the opinions and information contained in the documents that I assisted in producing. At the time that I was working on these bond offerings—with full-time responsibility as the investment banker and also as underwriter's counsel—I did not feel that anyone was working to close the deals while believing, much less knowing, that there were any outstanding material issues that had not been disclosed. Had I any inkling that Mr. Brogdon had misappropriated funds or was engaged in misconduct, I would have taken prompt action.

20. Although it seemed reasonable at the time to rely on the representations of other team members whom I respected, with the benefit of hindsight, and outside the press of doing the deals, I understand and appreciate that I was wrong to have relied on the representations of other team members. Although I never had any intent to mislead anyone or cause harm to investors, I know that the securities industry benefits from and relies on independent checks and that nothing excuses my failure to independently confirm what I was being told. For that, I am truly sorry, and I can whole-heartedly assure the Commission that I will not repeat those mistakes.

21. I understand the importance of due diligence in a transaction, and over the years had grown accustomed to having a dedicated due diligence department responsible for regularly checking for required disclosures. At LFC, I repeatedly advised Mr. Lawson that a dedicated due diligence function should be delegated either within LFC or to an outside firm. I also advised Mr. Lawson that because my time was already consumed with analyzing and preparing financial documents in my capacity as an investment banking consultant, that I could not assume the additional responsibility of conducting regular EMMA checks, which would have amounted to an additional full time job if done correctly. Mr. Lawson indicated to me on numerous occasions that, in fact, he was personally performing this function as it pertained to the Brogdon Bond Offerings and that he would take care of delayed financial filings directly with Mr. Brogdon. Because I was an independent consultant, I did not have the authority to dictate to Mr. Lawson how to staff, or fund, his company. Increasingly throughout my time at LFC, Mr. Lawson dismissed my advice and input.

22. Nevertheless, I fully understand that I failed in my responsibility to ensure that full and complete due diligence was conducted in connection with the underwriting of each of the Brogdon Bond Offerings.

23. Although not apparent from my failings on these Brogdon Bond Offerings, I take disclosure obligations very seriously and do not condone any actions that may harm investors. In fact, when it later appeared that Mr. Lawson had improperly misappropriated funds from a deceased client's trust fund to cover losses on other subsequent deals, I took action. In particular, I voluntarily provided information to FINRA's Denver regional office during an audit and cooperated fully in FINRA's investigation, which ultimately led to LFC's expulsion and an associational bar against Mr. Lawson and his wife. My actions in this regard more accurately represent how I have always endeavored to comport myself – with honesty and integrity.

24. While working with Mr. Lawson and LFC, I faced an increasingly stressful situation, in which I was over-extended, not fairly treated and felt that if I did not accede to Mr. Lawson's demands regarding my role, I would be out of a job. At the time, I thought I could with perseverance effectively juggle it all and still comply with my professional obligations. However, because of this situation, I ultimately determined to leave LFC, but it took me a considerable amount of time to negotiate a position with my subsequent employer, Herbert J. Sims & Co. Inc. In fact, I was keenly aware that there were very few job opportunities in the Phoenix/Scottsdale area in my line of work. Ultimately, by ensuring that I had another employment opportunity available before leaving LFC, I was able to continue supporting my family.

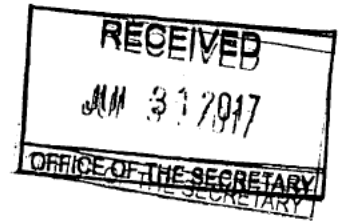
25. As I continue to do everything in my power to support my family financially, I also remain committed to paying the disgorgement and civil penalty to which I agreed in the OIP. Regrettably, I have not yet been able to afford to begin making installment payments. However, I intend to pay off the entire amount that I owe in the very near term.

26. I would also like to state unequivocally that I recognize and take seriously that my actions as outlined in the OIP have constituted violations of the securities laws. I am fully committed to ensuring that I never, ever repeat these mistakes. I am prepared to accept a penalty for my mistakes. I submit this Declaration and oppose the SEC's motion only because I believe a permanent ban is, under the circumstances, unjustified and would prohibit me from supporting my family. I respectfully request a temporary suspension or, alternatively, a ban with the right to re-apply after one year.

[Signature on Next Page]

HARD COPY

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 JOHN W.
LOOFBOURROW

John W. Loofbourrow, declares that the following is true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the founder and president of John W. Loofbourrow Associates, Inc., ("JLA"), which is a private investment banking firm that provides a full range of investment banking for the private placement market. JLA has been registered as a broker/dealer since its inception in 1980. I have been the president of JLA since the firm's founding.

2. JLA specializes in privately placed debt and equity transactions but only with institutional investors. In over 35 years of continuous operation, the firm has placed in excess of 150 financing transactions ranging from \$5 million to over \$600 million. The firm has no retail customers with no secondary market trading. It specializes in new issues only.

3. I have known John Lynch for approximately four years when we worked on a transaction together while he was at the H.J. Sims firm. I hired him on November 10, 2015 and he currently holds the title of Managing Director for JLA.

4. Mr. Lynch is an exceptional member of my team at JLA, and I have always known him to comport himself with the utmost in honesty and integrity in all of his professional endeavors.

5. Mr. Lynch advised me of the April 5, 2017 Order Instituting Proceedings ("OIP"), which forms the basis of these proceedings. I am fully aware of the issues addressed in the OIP.

6. On or about May 3, 2017, I submitted a MC-400 Application request to the Financial Industry Regulatory Authority ("FINRA") in support of Mr. Lynch's request for association as a registered representative and for continuing membership in FINRA. I also submitted a letter of sponsorship along with the MC-400 Application, indicating that I would

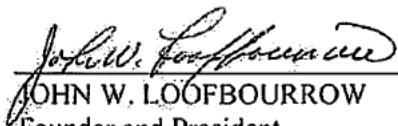
personally supervise Mr. Lynch in connection with his application for continuing FINRA membership.

7. I continue to support Mr. Lynch's request to remain a member of FINRA with full associational privileges. I have full confidence that Mr. Lynch will continue to execute his duties and responsibilities as an investment banker with the same honesty, integrity, and seriousness that I have always observed in him.

8. I do not believe that Mr. Lynch's full and continued participation in the industry poses any danger to the investing public whatsoever.

[Signature on Next page]

Executed On: Oshkosh, Wisconsin
July 28, 2017

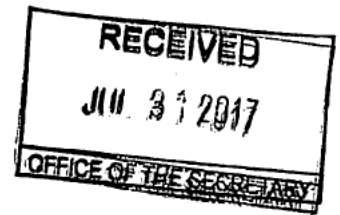
By: 

JOHN W. LOOFBOURROW
Founder and President
John W. Loofbourrow Associates, Inc.

Executed On: Scottsdale, Arizona
July 27, 2017

By: *J. Lynch, Jr.*
JOHN T. LYNCH, JR.

HARD COPY



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 JACOB A.
ENGLANDER**

Jacob A. Englander, declares that the following is true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am an Associate in the office of Lazare Potter Giacobas & Moyle LLP, attorneys for Respondent John T. Lynch, Jr. in the above captioned administrative proceeding.

2. I submit this declaration in support of Respondent's Opposition to the Division of Enforcement's Motion for Summary Disposition, in order to place before the Court certain documents to which Respondent cites in support of its Opposition.

3. Annexed hereto is a true and accurate copy of the following:

Exhibit 1: The investigative hearing transcript of John T. Lynch, Jr., dated April 15, 2016.

Exhibit 2: The investigative hearing transcript of Richard "Chix" Miller, dated June 15, 2016.

Exhibit 3: The investigative hearing transcript of Michael Gardner, dated October 11, 2016.

Exhibit 4: City of Mobile, First Mortgage Healthcare Facility Revenue Bonds, dated September 28, 2012: Index of Closing Documents.

Exhibit 5: City of Mobile, First Mortgage Healthcare Facility Revenue Bonds, dated September 28, 2012: Underwriter's Counsel Opinion Letter.

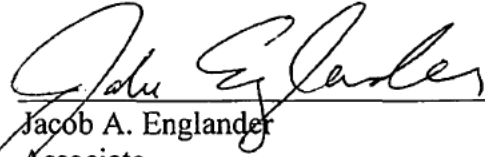
Exhibit 6: FINRA News Release, dated February 2, 2017: "FINRA Expels Lawson Financial and Bars CEO Robert Lawson for Fraudulent Municipal Bond Sales."

Exhibit 7: SEC Order Instituting Cease & Desist Proceedings against Bank of Oklahoma, File No. 3-17533, dated September 9, 2016.

Exhibit 8: Final Judgment as to Defendant Marrien Neilson, 16-cv-5475 (KM) (D.N.J. Mar. 3, 2017).

Executed On: July 28, 2017
New York, New York

By:



Jacob A. Englander
Associate

Lazare Potter Giacobvas & Moyle LLP
Attorneys for Respondent
John T. Lynch, Jr.

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 ESMAILI, ESQ.
 7 SANDEEP SATWALEKAR,
 8 Assistant Regional Director
 9 JOSEPH CHIMIANTI,
 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 Esmaili, 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 I?

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 Lawson. I think it was
13 [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] for
21 [REDACTED] at ME, dot, com, which is an Apple address.

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

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 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 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 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 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 **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 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 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 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 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 **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 **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 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 **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 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 **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 A F T E R N O O N S E S S I O N
 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 So she became more active in I guess soliciting
 15 the business, and I had submitted to play with her
 16 because they decided during that time to open a Phoenix
 17 office and they asked for me to make suggestions about
 18 who they might hire in that capacity, which I did help
 19 work on for them.
 20 **Q But throughout your time at Lawson Financial,**
 21 **would you continue to have interactions with Ms. Neilson**
 22 **regarding the Brogdon-related offerings?**
 23 A Yes. She was very much the point person for --
 24 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 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 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 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 -

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.lynch@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
 20 Q Were you surprised that this wasn't uncovered
 21 during the due diligence for subsequent Brogdon-related
 22 offerings?
 23 A Yes, yeah, I am. I mean, I didn't realize that
 24 this particular facility was that far under water in the
 25 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 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 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 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 we 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, gyourea@hmv.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 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 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 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 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 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 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 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 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 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 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 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 **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 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 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 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 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 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 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 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 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 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 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 \$210 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 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 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 -- or on April 15, 2016.

2 (Whereupon, at 6:28 p.m., the examination was
3 concluded.)

4 * * * * *

1 PROOFREADER'S CERTIFICATE

2

3 In The Matter of: CANTONE RESEARCH, INC.

4 Witness: John Lynch

5 File Number: NY-09158-A

6 Date: April 15, 2016

7 Location: New York, NY

8

9 This is to certify that I, Nicholas Wagner,
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.

16

17

18 _____
(Proofreader's Name) (Date)

19

20

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 LEE GREENWOOD, ESQ.

5 DAVID H. TUTOR, ESQ.

6 JOSEPH CHIMIENTI, EXAMINER (Via Telephone)

7 SANDEEP SATWALEKAR, ESQ. (Via Telephone)

8 Securities and Exchange Commission

9 Division of Enforcement

10 200 Vesey Street, Suite 400

11 New York, New York 10281

12 (212) 336-1100

13

14 On behalf of the Witness:

15 RICHARD BRUCE MILLER, PRO SE

16

17 Also Present:

18 Alexandra Chelesnik, SEC Intern (Via Telephone)

19

20

21

22

23

24

25

1 PROCEEDINGS

2 MR. GREENWOOD: Okay. We are on the record at

3 9:49 a.m. on June 15, 2016.

4 Mr. Miller, please raise your right hand.

5 Do you swear or affirm to tell the truth, the

6 whole truth, and nothing but the truth?

7 MR. MILLER: I do.

8 Whereupon,

9 RICHARD BRUCE MILLER

10 was called as a witness and, having been first duly

11 sworn, was examined and testified as follows:

12 MR. GREENWOOD: Please state and spell your

13 full name for the record.

14 THE WITNESS: My birth certificate name is

15 Richard Bruce Miller.

16 MR. GREENWOOD: Okay. And how do you spell

17 your last name?

18 THE WITNESS: M-I-L-L-E-R.

19 MR. GREENWOOD: Okay. Do you go by any other

20 name?

21 THE WITNESS: I have had a nickname Chix,

22 C-H-I-X since the fifth grade.

23 MR. GREENWOOD: Okay. Mr. Miller, my name is

24 Lee Greenwood and with me is David Tutor, counsel. On

25 the phone we have Sandeep Satwalekar, Assistant Regional

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1 Director, Joseph Chimienti, a Senior Specialized

2 Examiner, both in the New York Regional Office. We are

3 officers of the United States Securities and Exchange

4 Commission for the purposes of this proceeding. We are

5 also joined on the phone by Alex Chelesnik who is an

6 intern in our New York office.

7 Your testimony as been requested by the staff

8 as part of an investigation by the SEC in the matter of

9 Cantone Research, Incorporated, File Number NY-9158.

10 The purpose of this investigation is to determine

11 whether there have been violations of certain provisions

12 of the Federal Securities Laws. However, the facts

13 developed in this investigation might constitute

14 violations of other federal or state civil or criminal

15 laws.

16 Prior to the opening of the record, you were

17 provided with a copy of the formal order of

18 investigation in this matter as supplemented, and it

19 will be available for your review during the course of

20 your examination today. Mr. Miller, have you had an

21 opportunity to review the formal order of investigation?

22 THE WITNESS: Yes.

23 MR. GREENWOOD: Prior to the opening of the

24 record, you were also provided with a copy of the

25 Commission's Supplemental Information Form 1662. A copy

1 of that form is also in front of you and has been
2 previously marked as Exhibit 1. Mr. Miller have you had
3 an opportunity to review Exhibit 1?

4 THE WITNESS: Yes.

5 MR. GREENWOOD: Do you have any questions
6 about Exhibit 1?

7 THE WITNESS: No. Let me ask you this. This
8 has been a little confusing to me. The name of this is
9 in the matter of Cantone Research, Inc., and yet the
10 bulk of the bond issues that you asked about were not
11 underwritten by Cantone Research, Inc.

12 MR. GREENWOOD: And so just to stop you there,
13 we're actually not able to answer questions about the
14 formal order of investigation. I will note that there
15 are a number of other entities that are listed on the
16 formal order. The name of the SEC investigation is
17 arrived at in a number of different ways and we would
18 just ask you not to draw any inferences about the
19 investigation by virtue of the name.

20 MR. MILLER: Those other that you're talking
21 about are GVC Capital?

22 THE WITNESS: So that's right. The others
23 listed there are GVC Capital and Lawson Financial. But,
24 again, I want to emphasize that you should not draw any
25 inferences based on the name of the investigation and

1 please, let me know and we will make sure the court
2 reporter goes off the record as soon as possible and at
3 an appropriate time. Do you understand that?

4 THE WITNESS: Yes.

5 MR. GREENWOOD: Now, if the staff has any
6 substantive questions with you while we are off the
7 record, I will summarize those questions when we go back
8 on the record. Do you understand that?

9 THE WITNESS: Now, when you say "staff," what
10 do you mean, exactly?

11 MR. GREENWOOD: I'm referring to the staff of
12 the SEC, so that involves Mr. Tutor, myself, and the
13 individuals on the phone. So do you understand that?

14 THE WITNESS: Yes.

15 MR. GREENWOOD: Okay. Mr. Miller, are you
16 represented by counsel?

17 THE WITNESS: No.

18 MR. GREENWOOD: Mr. Miller, you have the right
19 to be accompanied, represented, and advised by counsel.
20 This means that you have the right to have an attorney
21 present and that attorney can advise you before, during,
22 and after your examination today. Do you understand
23 that?

24 THE WITNESS: Yes.

25 MR. GREENWOOD: Now, since you are not

1 the other parties there as to any limitations on the
2 focus of our questions.

3 THE WITNESS: I don't know about GVC Capital.

4 MR. GREENWOOD: And we will get to some of the
5 questions substantive about the offerings at issue, but
6 my question was about Exhibit 1 and the Form 1662. Do
7 you have any questions about the document?

8 THE WITNESS: No.

9 MR. GREENWOOD: Okay. If at any time you do
10 not understand a question or need clarification, please
11 let me know. If you don't let me know, I will assume
12 you understood the question as asked. Do you understand
13 that?

14 THE WITNESS: I do.

15 MR. GREENWOOD: Now, there is a court report
16 here who is taking down everything we say, so it's
17 important that you give verbal responses to my questions
18 and that we both speak loudly and clearly. If you nod
19 your head, I will ask you to give a verbal response. Do
20 you understand?

21 THE WITNESS: Yes.

22 MR. GREENWOOD: The staff, the SEC staff
23 controls the record which means that the court reporter
24 will only go off the record at our direction. We will
25 take regular breaks. If you would like to take a break.

1 represented by counsel, there are just a few matters in
2 Exhibit 1 in front of you that I want to go over with
3 you. On the first page of Exhibit 1, do you understand
4 that upon your request these proceedings will be
5 adjourned so that you can obtain counsel?

6 THE WITNESS: Yes.

7 MR. GREENWOOD: Okay. Do you understand that
8 some of the statutes set forth on the first page of
9 Exhibit 1 provide criminal penalties for knowingly
10 providing false information?

11 THE WITNESS: Yes.

12 MR. GREENWOOD: Okay. If you turn to page
13 three of Exhibit 1, the section entitled, Routine Uses
14 of Information, do you see that section?

15 THE WITNESS: Yes.

16 MR. GREENWOOD: The first paragraph in that
17 section reads, "The Commission often makes its files
18 available to other governmental agencies, particularly,
19 United States attorneys and State prosecutors. There's
20 a likelihood the information supplied by you will be
21 made available to such agencies where appropriate.
22 Whether or not the Commission makes its files available
23 to other governmental agencies is, in general, a
24 confidential matter between the Commission and such
25 other governmental agencies." Mr. Miller --

1 THE WITNESS: I have a question about --
 2 MR. GREENWOOD: Let me just ask the question
 3 and you can indicate what the question is. Do you
 4 understand the provision I just read?
 5 THE WITNESS: I do, but I have a question.
 6 MR. GREENWOOD: Okay.
 7 THE WITNESS: The second sentence says there
 8 is a "likelihood." Now, is that boilerplate or is that
 9 customized to this situation?
 10 MR. GREENWOOD: The document you're looking at
 11 is a copy of our Exhibit 1662 -- or, Form 1662 that is
 12 printed off the SEC's website and is used in all
 13 investigations.
 14 THE WITNESS: Which translated means to me
 15 that it's boilerplate.
 16 MR. GREENWOOD: Exhibit 1 is not -- this is
 17 not customized to this particular investigation, that's
 18 true.
 19 THE WITNESS: All right. So that could have
 20 said there's a likelihood or unlikelihood, but it says
 21 "likelihood" which means to me, you correct me if I'm
 22 wrong, but it looks to me as if you do this on a normal
 23 basis, send this to all these other people --
 24 MR. GREENWOOD: Mr. Miller, I guess
 25 respectfully we're not here to answer questions, but I

1 just want to note that the copy of the form in front of
 2 you is the form that is printed off the SEC's website
 3 and used and attached to all subpoenas the SEC issues.
 4 THE WITNESS: You asked me if I understand,
 5 and in response to your question, do I understand, I
 6 asked for clarification for the word "likelihood." It
 7 seems to me that is fair game.
 8 MR. GREENWOOD: There's no further
 9 clarification I can provide other than the fact that the
 10 copy of the form that you have is a form that the SEC
 11 uses in connection with all the subpoenas it issues.
 12 THE WITNESS: All right. So that means to me
 13 likelihood or not likelihood, this is the standard form.
 14 MR. GREENWOOD: This is a copy of the standard
 15 form the SEC uses.
 16 THE WITNESS: Right.
 17 MR. GREENWOOD: Okay. So do you understand
 18 the question I just read into the record?
 19 THE WITNESS: Yes.
 20 MR. GREENWOOD: Mr. Miller, do you understand
 21 you're under oath today?
 22 THE WITNESS: Yes.
 23 MR. GREENWOOD: Are you taking any medications
 24 or do you have any medical condition that might impair
 25 your ability to give truthful answers to the questions

1 asked of you?
 2 THE WITNESS: Well, I had chemotherapy for a
 3 good long time and that chemotherapy, I think, led to my
 4 back being fractured in two different places. You all
 5 are so young you've never had chemotherapy, but it's
 6 kind of a terrible thing in that it messes up your mind,
 7 it messes up your balance, it hurts your immune system,
 8 it caused my back to fail even though I've had a strong
 9 back all my life.
 10 So with that qualification, I think my mind is
 11 getting more and more acute with each passing day but I
 12 had serious regular chemotherapy treatments through late
 13 December and my fingers and toes and feet are still numb
 14 from it. I am told that that will last a while. I
 15 don't think my mental faculties are now affected by it.
 16 And then I had all of this painkiller, morphine,
 17 Fentanyl, Dilaudid. I haven't taken any painkiller for
 18 about two months, any painkiller.
 19 MR. GREENWOOD: Okay. Well, we're certainly
 20 glad to hear you're feeling better and that you've
 21 received treatment and we appreciate those
 22 qualifications. And, I guess, my question is, really,
 23 whether you are on any medications today that could
 24 impact your ability to testify truthfully?
 25 THE WITNESS: I don't think so, but let me

1 just tell you what medications I am on and you can make
 2 your decision, assessment. I take blood pressure pills,
 3 20 milligrams to control my blood pressure, and I take
 4 Eliquis for blood clot purposes. And that is basically
 5 it now, but in this last year I have been on all kinds
 6 of serious painkillers.
 7 MR. GREENWOOD: Understood. And we appreciate
 8 that information and we're glad to hear that you're
 9 feeling better today. Just to confirm, you're not aware
 10 of any medications you're on currently that could impact
 11 your ability to testify truthfully today?
 12 THE WITNESS: No, I am not.
 13 MR. GREENWOOD: Okay. Is there anything at
 14 all preventing you from giving full and complete and
 15 truthful answers to the questions asked of you today?
 16 THE WITNESS: No.
 17 MR. GREENWOOD: Okay. Your answers should all
 18 be based on your best recollection or knowledge.
 19 However, to the extent you have a recollection but are
 20 not certain of the accuracy of that recollection, that
 21 is not a guess and your oath requires you to provide
 22 that information. Do you understand?
 23 THE WITNESS: I don't quite follow that.
 24 MR. GREENWOOD: I'm just trying to explain
 25 that if you're not fully certain of a recollection but

1 you believe you have some recollection, then your oath
2 requires you provide that recollection with that
3 qualification. Do you understand that?

4 THE WITNESS: Yes, I do.

5 MR. GREENWOOD: Okay.

6 (SEC Exhibit No. 259 was marked for
7 identification.)

8 MR. GREENWOOD: I am showing the witness what
9 has been marked as Exhibit 259. It's a letter dated
10 September 4, 2015 to Sell and Melton, L.L.P. care of R.
11 Chix Miller, Esquire.

12 EXAMINATION

13 BY MR. GREENWOOD:

14 Q Mr. Miller, do you recognize Exhibit 259?

15 A I think I do. I remember receiving something
16 like this. I haven't looked at it.

17 Q And that was going to be my question. Do you
18 recall receiving Exhibit 259 on or about September 4th,
19 2015?

20 A Yes.

21 Q Okay. And you said you didn't review Exhibit
22 259 when you received it?

23 A No, I did when I received it, I just haven't
24 looked at it since then.

25 Q Okay. Well, you are welcome to review it now.

1 The question will be whether you and Sell and Melton
2 have complied with the request contained in Exhibit 259.

3 A Well, I can say this, we certainly haven't
4 taken any action dissimilar from what we normally do as
5 to files and, generally speaking, we keep our bond
6 issues and files related to those bond issues for a good
7 long time.

8 Q Okay. Do you understand that Exhibit 259 is a
9 copy of a document preservation letter?

10 A Yes.

11 Q Okay. And has Sell and Melton taken steps to
12 comply with the document retention request in Exhibit
13 259?

14 A "Taken steps," do you mean affirmative steps?

15 Q Yes. Is there anything specifically that Sell
16 and Melton has done to comply with the document
17 retention and preservation request, in particular, on
18 the second page of Exhibit 259?

19 A No, provided that it seems to me what we
20 already did preserved it.

21 Q Okay. So it's your understanding that Sell
22 and Melton's prior document retention practices
23 preserved the documents requested by Exhibit 259?

24 A Yes.

25 Q And what are those document retention

1 practices?

2 A That we basically keep everything as long as
3 we can and wills are always troublesome for any number
4 reason. We're not here to talk about wills, and I was
5 sorry to see that we couldn't recover all 40 of these
6 bond issues. I frankly thought we had all that. We
7 made a good effort to try to find them but, generally,
8 we just don't destroy bond documents for 20 some years.

9 Q Understood. When you said you keep everything
10 related to a bond offering, what is the "everything"
11 that you are referring to? And I guess I'm focused on
12 whether it's paper documents, electronic documents, or
13 both.

14 A Both.

15 Q Okay. Does that include emails as well?

16 A They are on our computers. You know,
17 sometimes I'll copy them when they're important and a
18 lot of times I don't.

19 Q Okay. Does Sell and Melton or do you have
20 sort of an automatic email deletion protocol?

21 A You'd have to ask my -- our IT guy about that.

22 Q Okay. Are you aware of any automatic deletion
23 of emails at Sell and Melton?

24 A I think we have some automation there, but I
25 try to keep as much as I can. I will give you a perfect

1 example. A lawyer, whose name I won't mention, tried to
2 tell some people in Florida about two weeks ago that he
3 had never spoken to me about getting a declaratory
4 judgment order from a judge in Pensacola, said that he
5 had never spoken with me and I knew he had spoken with
6 me because I just remember it. And so I was able to go
7 back and get an email in 2012 that said, Dear so-and-so,
8 I won't mention his name, he doesn't have anything to do
9 with this, but it said, Per our telephone conversation
10 of April 16, 2012, thus and so. So I was able to send
11 that to him and ask for his reply acknowledging receipt,
12 which demonstrate at a minimum that he was in error and,
13 I would say, dishonest.

14 Q Understood. So, Mr. Miller, is it fair to say
15 it is your practice to retain emails that you sort of
16 view to be important at the time?

17 A Yes, important and unimportant. I mean, for
18 example, in this case, I wouldn't think somebody would
19 lie about that and so I didn't specifically think that
20 that email was more important than others but it sure
21 came in handy when he tried to tell us that he had never
22 spoken to me.

23 Q I see. When you're referencing the lying
24 about that, you're referring to the case in Florida that
25 you were talking about just a minute ago?

1 A Right.
 2 MR. GREENWOOD: I will take the Exhibit 259
 3 back.
 4 (SEC Exhibit No. 260 was marked for
 5 identification.)
 6 MR. GREENWOOD: I'm showing the witness what
 7 has just been marked as Exhibit 260. It's a letter and
 8 subpoena dated May 17th, 2016, issued by the SEC to Sell
 9 and Melton, LLC, care of R. Chix Miller, Esquire.
 10 BY MR. GREENWOOD:
 11 Q Mr. Miller, do you recognize Exhibit 260?
 12 A Yes.
 13 Q Is this a copy of the subpoena for documents
 14 that Sell and Melton received on or about May 17th,
 15 2016?
 16 A It appears to be. To say categorically that
 17 it is, I would have to compare -- no telling how many
 18 words there are in this -- versus what I've got. It
 19 appears to be.
 20 Q Any reason to believe Exhibit 260 is not --
 21 A No.
 22 Q -- the subpoena that Sell and Melton
 23 received --
 24 A No.
 25 Q -- on or about May 17th, 2016?

1 A No.
 2 Q And let me just ask you just to wait until I
 3 finish asking the question until you provide your
 4 answer. I know you can so where I'm going, but just so
 5 we have a clear record that will be helpful.
 6 A All right.
 7 Q So I'll just ask again, any reason to believe
 8 that Exhibit 260 is not the subpoena that Sell and
 9 Melton received on or about May 17th, 2016?
 10 A No.
 11 Q Okay. If you will, turn to the subpoena
 12 attachment which is about four pages into the document,
 13 the subpoena attachment has a section on definitions.
 14 Do you see that?
 15 A I do.
 16 Q The first definition is the defined term
 17 "Brogdon bond offerings." Do you see that?
 18 A Yes.
 19 Q And that definition references into appendix
 20 A. Do you see that?
 21 A Yes.
 22 Q You can turn to appendix A, which is a few
 23 pages later. Are you on appendix A?
 24 A Yes.
 25 Q Do you understand the 40 bond offerings to be

1 listed -- that are listed in appendix A to be offerings
 2 that involved Christopher Brogdon in some way?
 3 A I just need to go through here.
 4 Q Absolutely. Take your time.
 5 A I've done some deals, I think, with Cantone
 6 that did not involve Chris Brogdon is the reason I
 7 hesitate a little bit.
 8 Q I'm sorry. Which is the one you believe did
 9 not involve Christopher Brogdon?
 10 A No, I'm saying in general I have. I'm sorry,
 11 what was the question?
 12 Q I'm just trying to decide if all of the
 13 offerings that are listed in appendix A are offerings
 14 that you understand involved Christopher Brogdon in some
 15 way?
 16 A Yes.
 17 Q Okay. And did you work as bond counsel on all
 18 the offerings listed in appendix A?
 19 A I think so, but let me go over it. Yes.
 20 Q Okay. If I refer to the 40 offerings listed
 21 in appendix A as the Brogdon offerings, will you
 22 understand what I mean?
 23 A Yes.
 24 Q Have you worked on any other securities
 25 offerings involving Mr. Brogdon other than the 40 listed

1 on appendix A?
 2 A I just don't know the answer to that question.
 3 This all seems clinical and cut and dry to you, but it's
 4 not.
 5 Q Understood. And why is it not cut and dry for
 6 you?
 7 A Well, I have closed roughly 270 bond issues in
 8 the last 30-some years and 30 years is a long time. And
 9 each deal is different. And so to say that these are
 10 the only 40 that I have closed with Chris Brogdon
 11 involved in some way directly or indirectly is hard for
 12 me to say just because my recollection is not perfect.
 13 Q Understood. Sitting here today, are there any
 14 particular bond offerings you can recall working on
 15 involving Christopher Brogdon that are not in appendix
 16 A?
 17 A Yes. I mean, there have been some projects
 18 that we started out with that didn't close. I think
 19 these all closed.
 20 Q That's helpful. With respect to closed bond
 21 offerings, are there any others besides the ones listed
 22 on appendix A involving Christopher Brogdon that sitting
 23 here today you're aware of?
 24 A I would be surprised if there were, but those
 25 that we started and did not close, I can take something

1 of a wild but somewhat educated guess and say it might
2 have been 15 or 20 transactions that we started that did
3 not close. There are lots of moving pieces in these
4 bond issues. You know, you've got all kinds of players,
5 all kinds of business considerations, and when we start
6 out with one, virtually everyone expects and hopes that
7 we close the issue but there are no assurances.

8 **Q** Understood, and that's helpful. If during the
9 course of the testimony today there's another offering
10 that is not listed on appendix A that comes to mind that
11 did close, will you let me know?

12 **A** Yes.

13 **Q** Okay. Let's turn to the prior page that lists
14 a series of documents to be produced in Exhibit 260.
15 Mr. Miller, do you see the Documents to be Produced
16 section in Exhibit 260?

17 **A** Yes.

18 **Q** Have you produced documents pursuant to these
19 document requests to the SEC?

20 **A** Yes.

21 **Q** Okay. I just want to go through each request.
22 I understand, you know, the process of searching for
23 documents. The first request asks for, "All retainer
24 agreements and engagement letters concerning the work
25 performed by Sell and Melton and/or Miller on the

1 on the following January 1st.

2 **Q** So when are you recalling was the first bond
3 offering you worked on involving Mr. Brogdon?

4 **A** Bond issues in which Gary Hargis and Hargis
5 Enterprises --

6 **Q** And how do you spell "Hargis"?

7 **A** H-A-R-G-I-S. -- in the mid 80s having to do
8 with rail manufacturing projects in Wilkinson County,
9 Georgia.

10 **Q** Okay. And what was Mr. Brogdon's role in
11 those transactions?

12 **A** He knew Gary Hargis and I've forgotten who
13 introduced who to whom whether it was Gary Hargis who
14 introduced me to Chris Brogdon whether it was Chris
15 Brogdon -- I think it was the former because I knew Gary
16 Hargis and then somehow he knew Chris Brogdon and so it
17 was probably Gary Hargis who probably introduced me to
18 Chris Brogdon sometime around 1984.

19 **Q** Okay. And did you began -- and so then you
20 begun working on bond offerings with Mr. Brogdon shortly
21 thereafter?

22 **A** Yes, after a fashion. He was, I think, what
23 you would call a financial advisor at the time. He
24 wasn't an underwriter, and I frankly forget who the
25 underwriters were, or underwriter was.

1 Brogdon bond offerings."

2 **A** And I think there are none there.

3 **Q** And, Mr. Miller, we'll get there. Did you
4 produce any documents responsive to this request?

5 **A** No, because none exist, as far as I know.

6 **Q** And as -- so as far as you know, there are no
7 retainer agreements or engagement letters concerning
8 your work on the Brogdon bond offerings?

9 **A** No. Let me explain that answer. These go
10 back to 1992 and I closed some -- and maybe now that my
11 memory is refreshed, I first met Chris Brogdon in about
12 1984, eight years before this list which starts in 1992
13 and I remember June of 1990 was a very busy month and I
14 closed a host of deals with Chris Brogdon in that June
15 of 1990. That may be the busiest month of my entire law
16 practice because the law changed on July 1st. And that
17 situation has a good effect on everyone's focus because
18 we all knew if we didn't close those issues by July 1,
19 they wouldn't ever close for some reason. I forgot what
20 the law change was, but that makes me recall '85 and '86
21 were similar in that the law changed on January 1st of
22 the following years of those years and I did a good
23 amount of work with Chris Brogdon in '89 and '90, not so
24 much in '88, but I did a lot of work with other people
25 particularly in '85 and '86 because of those law changes

1 **Q** So these prior bond issues from the 1980s,
2 those were issues that involved Mr. Brogdon serving as a
3 financial advisor?

4 **A** That's my best recollection.

5 **Q** Okay. Were those bond offerings related to
6 healthcare and nursing home markets or were they related
7 to a different kind of market?

8 **A** No, they were a different kind of market.

9 Those Hargis bond issues were manufacturing in nature,
10 small issue manufacturing.

11 **Q** Okay. When you first met Mr. Brogdon in 1984,
12 what did you know about him?

13 **A** I just knew that Gary Hargis introduced him to
14 me. I didn't know him from Adam before then.

15 **Q** Okay. What did you know about him and his
16 background as you began to work together?

17 **A** At the time, I didn't know anything about his
18 background.

19 **Q** Okay. Did you come to learn information
20 related to his background in the securities industry?

21 **A** Yes.

22 **Q** And when was that?

23 **A** Well, there was a terrible Forbes article
24 about a deal in Seleca, I guess it was. It was a long
25 time ago. And that article basically excoriated Chris

1 Brogdon.

2 **Q Okay. Prior to that Forbes article coming**

3 **out, did you have an understanding of Mr. Brogdon's**

4 **background in the securities industry?**

5 A Well, I knew something of it just because we

6 talk at closings about any number of things, politics

7 and securities and backgrounds.

8 **Q So did you come to learn about that**

9 **information at a closing prior to the issuance of this**

10 **Forbes article?**

11 A I don't remember. All I know is the Forbes

12 article really brought it to light.

13 **Q Okay. Since you began working with Mr.**

14 **Brogdon in the 1980s, have you worked with him fairly**

15 **continuously up until the present or have there been**

16 **gaps in your business relationship?**

17 A We've gotten along famously, I would say. I

18 have lots of friends, and I count Chris Brogdon as a

19 good friend. He, for example, called my office many

20 times during this cancer episode obviously concerned,

21 didn't have anything to do with business. He is just a

22 thoughtful, kind -- in my experience. I know you all

23 think he's a terrible person, probably, but in my

24 experience, and I have known him since 1984, for 32

25 years, he is a very kind, thoughtful, generous person.

1 And I cite here recently all the times he called me and

2 my secretary in my year-and-a-half in dealing with

3 rectal cancer. But, it's not just that. Before then, I

4 mean, I can tell about friends. You've got fair weather

5 and not so fair weather friends. He is a foul weather

6 friend and I mean that in the best meaning of the term.

7 **Q And have the two of you been friends since**

8 **1984 or the 80s?**

9 A Yes.

10 **Q Have you vacationed together?**

11 A Yes. I started to take him on golf trips

12 every year somewhere around 1995, '97, every other year,

13 every odd year.

14 **Q And you said you would take him on golf trips**

15 **every other year?**

16 A Well, we started at places that weren't very

17 expensive at that time. The firm, because he's been

18 such a great source of business, paid for virtually

19 everything. But he has very -- his taste, because he is

20 so wealthy, are beyond the mine, generally speaking.

21 And so as we went to better and nicer places over the

22 years, he wound up footing roughly half of the bill just

23 because of what I just said.

24 **Q Okay. And so putting aside these -- well,**

25 **strike that. Where were these sorts of golf trips that**

1 **you went to with Mr. Brogdon?**

2 A I might miss some of these. In 1995 we went

3 to Great Waters here in Georgia.

4 **Q And I'm just trying to understand sort of**

5 **generally where in the country they were.**

6 A Well, they were in a lot of places. Great

7 Waters in Georgia, the Greenbriar in West Virginia,

8 Pebble Beach, Carmel, Half Moon Bay south of San

9 Francisco, the Broadmoor, the Homestead, a place in

10 North Carolina. Then we went to Stein Erickson's Lodge

11 in Utah because there's a guy in our golf group who has

12 a home there. So you get the flavor.

13 **Q Okay. Thanks. So coming back to your**

14 **professional relationship with Mr. Brogdon, have you**

15 **worked with him on a continuous basis since you were**

16 **introduced to him in 1984?**

17 A It depends on what you mean by "continuous."

18 **Q Okay. How would you describe it?**

19 A I would say regular.

20 **Q Okay. And what do you mean by regular?**

21 A I would say in almost all of those years we

22 had at least one closing a year. I would have to look

23 at (indicating) this but this demonstrates the

24 regularity from 1992 forward. In 1989 and '90 we had

25 very busy years. By "we," I mean Chris Brogdon and me.

1 **Q Okay. So let's come back to the Documents to**

2 **be Produced section in Exhibit 260. Just to confirm,**

3 **the reason that you didn't produce any documents**

4 **responsive to the first request is there are no retainer**

5 **agreements or engagement letters that you're aware of?**

6 A That's right, because I know him, certainly

7 knew him in '92 and we had already closed a host of

8 deals in '89 and '90 and so I don't have any engagement

9 letters. We know each other.

10 **Q Okay. Was it -- with respect to the offering**

11 **listed on appendix A, was it typically Mr. Brogdon who**

12 **brought you into the deal or were you brought in by some**

13 **other party?**

14 A Well, for example, the Development Authority

15 of Bibb County in March of 2000, our firm and I

16 represented the Development Authority of Bibb County and

17 have long before I ever met Chris Brogdon. And so in

18 that case, I don't know who contacted whom, but that is

19 a pre-existing relationship and client.

20 **Q Understand. Putting aside the Development**

21 **Authority of Bibb County, was it typically Mr. Brogdon**

22 **who brought you into the offerings listed on appendix A?**

23 A Yes. I can say "typically" is a good word for

24 it.

25 **Q Let's go to document request two of the**

1 Documents to be Produced section which asks for "All
2 opinions and opinion letters rendered by Sell and Melton
3 and/or Miller in connection with the Brogdon bond
4 offerings including but not limited to all opinions or
5 opinion letters issued in connection with the initial
6 issuance of the bonds and any subsequent opinions or
7 opinion letters." Mr. Miller, can you describe your
8 search for documents in response to that request?

9 A My secretary, I guided my secretary to these
10 opinions and she found as many as she could and I have
11 sent those to you. But, you know, reading it here,
12 "subsequent opinions," I haven't given many subsequent
13 opinions but I didn't ask her specifically to look for
14 subsequent opinions. If I had to guess in these 40
15 issues how many times I gave a subsequent opinion, and
16 this is kind of a wild but somewhat educated guess, I
17 would say maybe four or five times. And I don't know
18 that you have those and I can't guarantee that we would
19 be able to find them necessarily, but that is a rare,
20 rare thing.

21 Q Understood. On what topics would you provide
22 one of these sorts of supplemental opinions?

23 A I'm trying to remember. The reason why it's
24 difficult to remember is that if there's one thing I've
25 learned in these 30-some years in this kind of practice

1 is every one of these issues is different. Every one of
2 them has its own trappings and it may -- they may look
3 routine and in some instances and in some aspects they
4 are routine. But everyone has its own quirks, different
5 personalities, different projects, different issues, and
6 so it's very difficult for me to remember what the
7 subsequent opinions, what drove those and why I gave and
8 so forth.

9 Q Sitting here today, are you aware of any
10 subsequent opinions you provided in connection with the
11 Brogdon bond offerings?

12 A I would be guessing.

13 Q Okay. Okay. So understanding the caveat you
14 provided about not being sure about being able to locate
15 subsequent opinions, we're going to ask that you and
16 your firm conduct a search for those subsequent
17 opinions, if you have copies of that, and we will
18 confirm that at the end of the testimony today.

19 A Okay.

20 Q Request three asks for "Documents sufficient
21 to identify all compensation paid to Sell and Melton
22 and/or Miller for or in connection with the Brogdon bond
23 offerings." Mr. Miller, describe your search for
24 documents in response to request three.

25 Q Well, in each transcript we have what we call

1 disbursement schedules. And I asked my secretary to get
2 all of those out for these 40 issues and we couldn't
3 find all 40, but I think we -- wasn't there
4 thirty-something? Those are good records of what I was
5 paid at closing by wired good money.

6 Q Okay. Putting aside the disbursement sheets
7 which reflect disbursements at closing, has Sell and
8 Melton or you received compensation for any of the
9 Brogdon bond offerings separate from that?

10 A I would say "yes" but that kind of thing is
11 rare.

12 Q And on what occasions would you or Sell and
13 Melton receive additional compensation for one of the
14 Brogdon bond offerings after the initial issuance?

15 A Well, that's not the way it works exactly.
16 For example, if in a given year we had three or four
17 false starts in which I spent a lot of time, I would let
18 Chris Brogdon know about how much time I had in those
19 and then we would reach some kind of agreement either by
20 rolling that time into what I was paid at future
21 closings. He, like a lot of clients, would rather pay
22 at closing than pay on an hourly basis. So those false
23 starts that caused me to work a good amount of time
24 without being compensated I would bring up to Chris
25 Brogdon at the end of the year so that he would have an

1 idea and then he would either pay that amount that we
2 would agree to or we would roll in that time to the next
3 closing and have a higher fee at the closing in
4 recognition of that time that appeared to be
5 non-compensated at the time.

6 Q And when you say your "work on false starts,"
7 is that a reference to your work on bond offerings that
8 didn't actually close?

9 A Yes.

10 Q Were there occasions when, you know, you or
11 Sell and Melton received compensation for your work on
12 prior bond offerings in unrelated bond offerings?

13 A I don't follow the question.

14 Q Okay. I guess I'm just trying to understand
15 whether you received compensation from the proceeds of
16 one bond offering from your work on both that offering
17 and prior offerings that were unrelated?

18 A Yes, to the extent that I just explained. For
19 example, let's just say that we have closing C in
20 November in a given year, and I just use this to
21 illustrate the point, closing C, but back in May I spent
22 over \$4,000 in time on an unrelated bond issue that
23 Chris Brogdon may have referred to me but that didn't
24 close. Then in recognition of that time spent, that fee
25 at closing in November, closing C, might have been

1 bumped up a little bit. That's an example.

2 Q Okay. So in your example, the closing of
3 offering C and your fee for that closing reflected your
4 work that you had done on false start offering A and B?
5 Is that how you're describing it?

6 A It might have been, A and B.

7 Q Okay. Was the fact that your fee in offering
8 C was being bumped up because of your work on offerings
9 A and B disclosed in offering C?

10 A No.

11 Q And why not?

12 A Because as bond counsel, I can tell people
13 what my fee is all things considered, all facts and
14 circumstances considered. So when I say what my fee is
15 in November, that's all facts and circumstances
16 considered.

17 Q On how many occasions can you recall your fee
18 for the closing of a Brogdon bond offering being bumped
19 up because of your work on prior offerings that didn't
20 close?

21 A Oh, maybe -- this is a guess, maybe five or
22 six over the 30 years.

23 Q Okay. Let's go to document request four in
24 front of you which asks for external email
25 communications concerning the Brogdon bond offerings

1 A Yes.

2 Q Okay. So I will just note for the record that
3 some of the emails you produced didn't contain the
4 attachments that came with those documents. The SEC is
5 not currently asking for you to produce those, we will
6 just reserve our right to request any of those
7 attachments should we need them. Additionally, for the
8 general files you produced, we have reviewed those
9 general files. We don't --

10 A I bet that was exciting.

11 Q We're not seeking any additional general files
12 at this time but, again, we will reserve our right to
13 request that you conduct further searches if necessary.
14 Do you understand that?

15 A Yes, I do.

16 MR. GREENWOOD: Okay. I will take back
17 Exhibit 260.

18 (SEC Exhibit No. 261 was marked for
19 identification.)

20 MR. GREENWOOD: I'm showing the witness what
21 has just been marked as Exhibit 261. It is a subpoena
22 issued to R. Chix Miller, Esquire, a letter and
23 subpoena, sent to R. Chix Miller, Esquire, on May 17th,
24 2016.

25 BY MR. GREENWOOD:

1 including communications with a few listed individuals.
2 Do you see that request?

3 A Yes.

4 Q And can you describe your search for documents
5 in response to that request?

6 A Well, our computer system isn't perfect, but
7 we did a search for all correspondence with all of these
8 A through F people and what we came up with is what we
9 sent to you. Now, there is something that says
10 "including but not limited to." What exactly do you
11 mean by that?

12 Q So the request seeks documents concerning the
13 Brogdon bond offerings including but not limited to
14 communications with a few listed individuals. Is it
15 fair to say that the search that you and your secretary
16 conducted for response of documents was focused solely
17 on the items A through F?

18 A No, we went beyond that when we talked about
19 the files, the general files that we discussed on the
20 phone. And in those general files, there's a lot of
21 chaff, there isn't a whole lot of wheat. but I have
22 notes in my handwriting and all kinds of drafts.

23 Q All right. So the general files that you keep
24 for each bond offering include in some cases printed out
25 emails from that offering?

1 Q Mr. Miller, do you recognize Exhibit 261?

2 A Yes.

3 Q Turning to the subpoena which is the back of
4 the third page, is the subpoena in Exhibit 261 the
5 subpoena pursuant to which you are appearing here today?

6 A It appears to be, yes.

7 Q The subpoena also contains a series of
8 document requests which are, I would represent,
9 identical to the document request we just looked at in
10 Exhibit 260. And my question is just whether you
11 conducted any additional searches in response to Exhibit
12 261 or whether your searches for response to documents
13 were conducted pursuant to both of the subpoenas we're
14 looking at?

15 A The latter.

16 Q Okay. Do you maintain any responsive
17 documents at your home or somewhere else other than your
18 office?

19 A We have an off-site storage place for our
20 oldest documents and I don't know that any of our bond
21 documents are there, but it's possible, not probable.

22 Q When you say "we" are you referring to Sell
23 and Melton?

24 A Yes.

25 Q Okay. And I guess I'm asking whether you

1 personally have documents that are responsive to Exhibit
 2 261 at your home, for instance?
 3 A No.
 4 Q Okay. Or any other place, to your knowledge?
 5 A No.
 6 (SEC Exhibit No. 262 was marked for
 7 identification.)
 8 MR. GREENWOOD: I am showing the witness what
 9 has just been marked as Exhibit 262. It is a background
 10 questionnaire for Richard B. Miller.
 11 BY MR. GREENWOOD:
 12 Q Mr. Miller, is Exhibit 262 a copy of the
 13 background questionnaire you filled out in connection
 14 with the subpoena in this investigation?
 15 A It appears to be, yes.
 16 Q Okay. The background questionnaire is dated
 17 May 24th, 2016. To your knowledge, have any of your
 18 answers in Exhibit 262 changed since then?
 19 A No.
 20 Q To the best of your knowledge, are your
 21 answers in Exhibit 262 accurate?
 22 A Yes.
 23 Q Okay. On the first page of Exhibit 262,
 24 question three, can you just provide your date of birth
 25 for the record?

1 A [REDACTED]
 2 Q Let's go to question ten on page two. That
 3 question ten asks for a list of email addresses or other
 4 types of accounts. Do you see that?
 5 A Yes.
 6 Q And you listed the email address
 7 rcmiller@sell-melton.com. Do you see that?
 8 A Yes.
 9 Q Do you have any other emails addresses
 10 personal or otherwise that you have used in the last
 11 five years?
 12 A From time to time people without my permission
 13 have shortened rcmiller to rcm.
 14 Q Okay. And that's also at Sell-melton.com?
 15 A Correct.
 16 Q Do you have a Gmail account or a personal
 17 email account?
 18 A I do not.
 19 Q A minute ago when we were talking about your
 20 production of documents with the caveats that we
 21 discussed about the general files in the attachments to
 22 emails. Have you produced all documents responsive to
 23 the subpoenas?
 24 A I have produced all the documents that we
 25 discussed on the phone. Now, let me just say this. To

1 respond precisely with every "i" dotted and "t" crossed
 2 to this May 17th letter from you all is a huge
 3 undertaking.
 4 Q Understood, and we have done our best to limit
 5 and be reasonable with those document requests. I'm
 6 just trying to understand whether there are responsive
 7 documents you're aware of sitting here today that have
 8 not been produced subject to our prior discussions as
 9 well as the prior clarifications you made already on the
 10 record.
 11 A And those discussions are phone calls, right?
 12 Q That's correct.
 13 A Yeah, I think we have -- and you have been
 14 reasonable. I will say that. I think we have provided
 15 everything that we have discussed. These subsequent
 16 opinions, I think, those will be hard to find, but they
 17 don't -- I don't think they were -- such as they are,
 18 were provided.
 19 Q Okay. Have you withheld any documents called
 20 for by the subpoenas based on any claim of privilege?
 21 A No.
 22 Q Okay. Were any documents called for by the
 23 subpoenas not produced for reason other than privilege?
 24 A No.
 25 Q Okay. Do you know of any documents responsive

1 to the subpoenas but not provided that were in your
 2 possession at a prior time but were lost, destroyed, or
 3 otherwise disposed of? And, again, this is a question
 4 subject to the clarifications you've made about the
 5 retention policy and your searches, your diligent
 6 searches for documents.
 7 A I don't remember whether my response is "yes"
 8 or "no" to this.
 9 Q I'm just trying to understand whether you're
 10 aware of responsive documents that weren't produced
 11 because they were destroyed for some reason.
 12 A No. There is no active destruction at all.
 13 MR. GREENWOOD: Okay. Let's go off the record
 14 at 10:50 a.m.
 15 (A brief recess was taken.)
 16 MR. GREENWOOD: We are back on the record at
 17 10:57 a.m.
 18 Mr. Miller, there were no substantive
 19 communications between you and the SEC staff during the
 20 break, is that correct?
 21 THE WITNESS: That's correct.
 22 BY MR. GREENWOOD:
 23 Q Returning to the Brogdon bond offerings, can
 24 you just describe your work generally on those
 25 offerings, what kind of tasks and responsibilities did

1 you have?

2 A Well, do you want a long answer, a short
3 answer, or a medium answer?

4 Q Whatever the answer is. The answer is what
5 you would like to provide.

6 A Well, you have all the transcripts and you
7 know what documents go into the making of a bond issue.
8 The first step is to be contacted about a potential bond
9 issue. Then I like to come up with a pretty good size
10 distribution list and I'm even more insistent on that as
11 technology has tried to take over common sense. But in
12 these distribution lists, I like to have street
13 addresses.

14 Q And when you say "distribution lists," you're
15 referring to sort of the parties or, you know, relevant
16 participants in the transaction?

17 A Right. Because I don't know about you, but in
18 the last ten years or so people will send you a string
19 of 20 email addresses and you have no idea where these
20 people hang their hats and what positions they hold.
21 And when you add to that the number of crooks and scam
22 artists who are not excited about giving you a street
23 address, I'm even more insistent on getting that
24 original distribution list down so that everyone knows
25 with whom we are working and where that person goes to

1 reimbursement.

2 A Okay. Well, who selects the issuer, for
3 instance, on the Brogdon bond offerings?

4 A I usually do.

5 Q Okay. And how do you make that selection?

6 A Well, every state is different. Alabama is
7 particularly crazy in that Alabama has these medical
8 clinical boards and no one knows how many there are, no
9 one in Montgomery. I will give you an example. The
10 lawyer who represents the county in which Hoover,
11 Alabama, is situated, been there for 40 years, and I
12 asked him is there a medical clinic board that covers
13 this particular project in Hoover, and he didn't know.
14 And there isn't a repository at the state level that
15 will tell you what medical clinic boards exist. So in
16 Alabama, for example, it's kind of catch as catch can.

17 Finally, unbeknownst to that 40-year lawyer,
18 one did exist for Hoover and we found that one. And I
19 do that undertaking to find out what issuers exist and
20 what their powers are because each one has -- well,
21 there isn't a simple answer to your question because, as
22 I say, every state is different. Every category of
23 issuer has different powers. And in Alabama, for
24 example, the ownership of the project has to be in the
25 issuer itself with a lease rather than ownership in the

1 work. You can touch and feel where his or her office
2 is. And then the correct phone numbers and the
3 positions and the name of the body that that person
4 represents. I do that distribution list so that as we
5 go through the process, I can say to those listed on the
6 task distribution list and we all know with whom we're
7 dealing.

8 Q Okay. So the compiling of a distribution
9 list, is that a process that you take responsibility for
10 and conduct on the Brogdon offerings?

11 A Yes.

12 Q Okay. So once you have the distribution list
13 put together, what are the documents that you as a bond
14 counsel draft?

15 A Well, a critical document to start out with is
16 an inducement resolution because that indicates that the
17 issuer is serious about issuing the bonds, and it also
18 pinpoints the 60-day window prior to that inducement
19 resolution during which reimbursement is permitted. In
20 other words, if money is spent on a project 61 days
21 prior to that inducement resolution, it probably cannot
22 be reimbursed with bond proceeds at closing so it serves
23 those two important purposes, to demonstrate the
24 seriousness on the part of the issuer and to identify
25 when that 60-day period window is for purposes of

1 borrower with a loan agreement. And that in turn leads
2 to the question whether there are any ad valorem taxes
3 due because if the issuer, which is a non-profit entity
4 that owns it, a case can be made that there are no taxes
5 due. And if you go over to Alabama now and ask lawyers
6 are there taxes due on these deals, you get all kinds of
7 different answers. Anyway, so the short answer to your
8 question is I'm usually the guy tasked with determining
9 what the best issuer is for that particular kind of
10 project.

11 Q I see. So your task is to selective an issuer
12 that covers or otherwise has jurisdiction over the area
13 in which the project is located?

14 A And that has the powers necessary to issue
15 that kind of bond issue.

16 Q Okay. Other than the inducement resolution,
17 what are other documents you as bond counsel draft?

18 A Well, typically there are 40-some documents in
19 a transcript.

20 Q Okay. What are the primary documents that you
21 as bond counsel are responsible for drafting?

22 A What I call the basic documents are the trust
23 indenture; the loan agreement or lease agreement,
24 depending on the state; the deed to secure debt or the
25 mortgage, depending on the state; land use restriction

1 agreement if it's a 142-D deal, all kinds of closing
2 certificates, in my opinion, and various certificates
3 that need to be customized to that particular
4 transaction.

5 **Q Okay. Have you had on the Brogdon bond**
6 **offerings any responsibility for drafting the official**
7 **statements?**

8 **A No.** That is done by underwriter's counsel.

9 **Q Okay. And we will get to that in a minute,**
10 **but have you had any responsibility for drafting the**
11 **disbursement schedules related to the offering?**

12 **A Yes.**

13 **Q Okay. Before we talk about kind of the**
14 **parties to the transaction, as bond counsel who do you**
15 **consider your client to be on the Brogdon offerings?**

16 **A Well,** you know, I've been to workshops in
17 Chicago maybe 21 times, and recently I have been going
18 to other places because I've been to that workshop in
19 Chicago so many times. I've been going to the tax and
20 securities seminars that have been in Boston and New
21 Orleans and Washington the last three years. But back
22 to those workshops in Chicago for the National
23 Association of Bond Lawyers, when I first started going
24 in the late 80s, there was a good amount of discussion
25 and differing opinions about who exactly bond counsel

1 represented. Because when this whole profession
2 started, bond counsel was looked to represent the
3 transaction.

4 But as the years have unfolded, that situation
5 has obviously, particularly to the malpractice insurance
6 carriers, been frowned upon. And so now if you had to
7 say generally who bond counsel represents, it would be
8 the issuer. The trouble is that most issuer's counsel,
9 local issuer's counsel, are not also bond lawyers. They
10 know about the issuer and its members but don't engage
11 in the practice of bond law as bond counsel and so there
12 is a certain amount of overlap between the local lawyer
13 who represents the issuer and bond counsel who also
14 represents the issuer. I would say all things
15 considered, generally, that is the de facto client.

16 **Q Okay. On the Brogdon bond offerings, have you**
17 **ever had an attorney-client relationship with any of the**
18 **parties to the transaction?**

19 **A Do you mean other than the issuer?**

20 **Q Well,** the issuer could be such a party. I'm
21 just trying to understand sort of in connection with
22 your representation and your work who you consider your
23 client to be and whether you had an attorney-client
24 relationship with respect to communications with that
25 client?

1 **A Well,** bond counsel's interest are most closely
2 allied to those of the issuer.

3 **Q Okay. Have you had -- do you consider your**
4 **communications with the issuer in connection with the**
5 **Brogdon bond offerings to be privileged communications?**

6 **A Not really,** because the issuers are public
7 entities and I don't think they think in those terms and
8 I don't. And in all of these 270 bond issues in 16
9 states, I don't remember that ever being an issue. I
10 mean, it's not as if, oh, no we're not going to give you
11 this information because it's protected by the attorney-
12 client privilege.

13 **Q No,** understood, and we're just trying to
14 understand the relationships for purposes of both
15 documents and just asking questions about your
16 conversations. We want to be sort of respectful of any
17 privilege to the extent it exists, so that's the purpose
18 of the question but I think we understand your answer.
19 With respect to the work of Sell and Melton as bond
20 counsel on the bond offerings, have you been the primary
21 attorney at Sell and Melton serving as bond counsel?

22 **A Yes.**

23 **Q I have any other attorneys at Sell and Melton**
24 **assisted you in that work?**

25 **A Yes.**

1 **Q And who are those attorneys?**

2 **A Well,** Buck Melton, the "Melton" in Sell and
3 Melton was the one who really introduced me to this kind
4 of work. And he was kind of a broad-brush guy. He ran
5 for the governor of Georgia and was endorsed by the
6 Constitution, the Atlanta Constitution, but he just
7 didn't have enough money to compete.

8 So he introduced me generally to bond practice
9 and he introduced me particularly to representing three
10 issuers in Macon and Bibb County. But as to bond law
11 practice as to bond counsel, I picked that up pretty
12 much on my own. And we're relatively small firm, you
13 know. People have from time to time helped me with
14 isolated issues, but other than Buck Melton, maybe Kevin
15 Brown. I don't think anyone else has signed any
16 opinions.

17 **Q Okay. In terms of the other parties to a**
18 **Brogdon bond offering transaction, you mentioned the**
19 **issuer already, right? There is also the borrower or**
20 **obligor, is that correct?**

21 **A Yes.**

22 **Q And the obligor could be the lessee, could be**
23 **the borrower, but there's always an obligor that is not**
24 **the issuer; right?**

25 **A Correct.** Well, we represent the Macon-Bibb

1 County Hospital Authority.

2 **Q Right. And I guess I'm focusing on Brogdon**

3 **bond offerings.**

4 A Okay.

5 **Q There's typically an obligor of some sort**

6 **whether a borrower or a lessee, is that right?**

7 A There is typically, but there are lots of

8 issues that are issued by the issuers themselves who are

9 the parties at risk, for lack of a better term. In

10 other words, the Macon-Bibb County Urban Development

11 Authority can issue some bonds guaranteed by the County

12 of Bibb in which there aren't any private borrowers

13 involved.

14 **Q With respect to the Brogdon bond offerings,**

15 **those offerings all involved private borrowers, right?**

16 A I would have to look at those 40 again.

17 **Q Okay. Well, is it fair to say that Mr.**

18 **Brogdon was involved with the obligor in those bond**

19 **offerings in some way?**

20 A Yes.

21 **Q Okay. So we talked about the obligor and the**

22 **issuer. There's also an underwriter to the**

23 **transaction --**

24 A Yes.

25 **Q -- right? I'm sorry, is that right?**

1 A Yes.

2 **Q Okay. And who were the underwriters that you**

3 **have worked on the Brogdon bond offerings with?**

4 A Bergen Capital with Charlie Gilbride and Jim

5 Swan being my primary contacts. Bergen was acquired by

6 BB&T several years ago and, as I understand it, they're

7 parted ways. That was certainly one underwriter.

8 Lawson Financial with Robert Lawson being the principal.

9 Bergen is -- was situated in New Jersey and Lawson

10 Financial has offices in Florida and in Phoenix.

11 Phoenix is its main office. To a lesser extent, Cantone

12 Research. I think they are in New Jersey. And my

13 primary contact with Cantone Research and some of its

14 predecessors was a man named Jim Friar, who died. I

15 really liked Jim Friar. He knew what he was doing and

16 he was good to work with and he should have seen a

17 doctor earlier, but he died. And, he was a Vietnam

18 veteran. But after he died, Ray DeRobbio has been my

19 contact.

20 **Q Was Mr. DeRobbio and Mr. Friar, were they at**

21 **JP Turner prior to being at Cantone Research?**

22 A Yeah, they bounced around a little bit. I

23 think we closed maybe one or two issues with JP Turner.

24 **Q Okay. Coming back to Lawson Financial and**

25 **Robert Lawson, how did you meet Mr. Lawson?**

1 A Boy, a long time ago. I think Chris Brogdon

2 introduced me to him.

3 **Q Okay. And do you remember if you were**

4 **introduced to Mr. Lawson in connection with a particular**

5 **bond issuance or was it just socially?**

6 A No, I think in connection with a particular

7 bond issuance.

8 **Q Okay. Was that the Liberty bond issuance back**

9 **in 1992 or was it a prior issuance?**

10 A I just don't remember. That sounds a little

11 long -- that's a long time ago.

12 **Q Is -- do you have a personal relationship with**

13 **Robert Lawson?**

14 A I wouldn't say we're that close, but I like

15 him. We close a lot of deals together, but it's not as

16 if we play golf together. I say that, but one time I

17 went out to Phoenix and we played golf but maybe one or

18 two times I've played golf with Rob Lawson.

19 **Q Okay. And on the times you played golf with**

20 **Robert Lawson, has that also been with Christopher**

21 **Brogdon or was that separate from Mr. Brogdon?**

22 A I really don't remember who was in our

23 foursome.

24 **Q All right. So we talked about the**

25 **underwriter. Is there also typically an indenture**

1 **trustee on the Brogdon bond offerings?**

2 A Yes.

3 **Q And who has generally been the indenture**

4 **trustee on the Brogdon bond offerings since, at least,**

5 **2000?**

6 A Generally, it has been Bank of Oklahoma.

7 **Q Okay. And who have been your contacts at Bank**

8 **of Oklahoma over the years in connection with their**

9 **trustee work on the Brogdon bond offerings?**

10 A Primarily, Marrien Neilson and then Cindy

11 Wilkinson and Mary Campbell and their lawyer Jim

12 Orbison.

13 **Q Okay. Has there ever been disclosure counsel**

14 **on the Brogdon bond offerings?**

15 A Yes.

16 **Q And who has served as disclosure counsel on**

17 **the Brogdon bond offerings?**

18 A Well, generally, Michael Gardner. But I would

19 have to go through all these 40 to see you know,

20 sometimes he's been underwriter's counsel. Sometimes

21 he's been disclosure counsel. But he is the guy who

22 gives the securities opinion, for lack of a better term.

23 **Q And when you say "securities opinion," are you**

24 **referring to a Rule 10b-5 of the Securities Exchange Act**

25 **type of opinion?**

1 A That, plus when he's either underwriter's
2 counsel or disclosure counsel, he gives an opinion as to
3 the '33 Act, '34 Act, and maybe 10b-5 as well.

4 Q Okay. Does -- when -- on the times that Mr.
5 Gardner has served as disclosure counsel and not
6 underwriter's counsel, has he provided a separate
7 opinion?

8 A No, not that I remember. The reason why he
9 got involved in these -- and I don't want to cast
10 aspersions on anybody --

11 Q No, just your best recollection and knowledge
12 we're looking for.

13 A John Lynch is kind of slow. He was slow.
14 Michael Gardner is very thorough and very prompt and
15 very reliable. He is a Marine and I have learned some
16 time back you don't refer to a Marine as an ex-Marine;
17 you are either a Marine or you're not. And he was a
18 company commander of a Marine company in Vietnam in 1968
19 during the Tet Offensive, and for that I have great
20 respect for him. But beyond his military sacrifices, he
21 is good at what he does and he prepares official
22 statements and preliminary official statements very
23 efficiently and with a good amount of promptness that
24 others don't.

25 Q Okay. And so how was Mr. Gardner kind of

1 brought into the group to serve as either underwriter's
2 counsel or disclosure counsel, if you know?

3 A My recollection is just what I discussed is
4 John Lynch who normally had represented Lawson Financial
5 was just pretty slow in coming up with preliminary
6 official statements and official statements and Chris
7 Brogdon somehow knew Michael Gardner and said, listen --
8 my recollection is he said to Rob Lawson he said, your
9 man Lynch is too slow and I know a guy who is not slow
10 and who is thorough and his name is Michael Gardner.

11 Q Okay. So to your knowledge, Mr. Brogdon
12 recommended bringing in Mr. Gardner to help work on some
13 of the official statements?

14 A I think that is correct.

15 Q Okay. So I think earlier you said that it was
16 typically underwriter's counsel's responsibility to
17 draft the official statement for the Brogdon bond
18 offerings.

19 A Yes.

20 Q Was there times where disclosure counsel
21 drafted the official statement and not underwriter's
22 counsel?

23 A Yes.

24 Q Okay. And was that a situation where Michael
25 Gardner was serving as disclosure counsel and John Lynch

1 was serving as underwriter's counsel?

2 A That sounds right, yes.

3 Q Okay. To your knowledge, who is the client of
4 disclosure counsel? Was there sort of an
5 attorney-client relationship with anyone that was part
6 of the transaction?

7 A Well, that's one reason why I like to put
8 positions down in the distribution list. And I try to
9 get those right. And in answering your question, I
10 think in the distribution list in which you have this
11 bifurcation between underwriter's counsel on the one
12 hand and disclosure counsel on the other hand, I would
13 say, disclosure counsel to so-and-so. I wouldn't say
14 we're perfect in that regard. It might just say,
15 disclosure counsel.

16 But in the more recent deals, Michael Gardner
17 would do the heavy lifting as disclosure counsel and
18 John Lynch would come in and sign an opinion as
19 underwriter's counsel even though Michael Gardner did,
20 as I say, the heavy lifting in getting the POS ready and
21 so forth.

22 Q On the deals that John Lynch served as
23 underwriter's counsel, did you help him draft his
24 opinions?

25 A I may have from time to time.

1 Q Okay. And why was that?

2 A Because I had some forms that I was familiar
3 with. I mean, I don't want to get too far off field on
4 that because that's a long time ago, too. I don't
5 remember precisely which deal it was or which form I
6 suggested, but I wouldn't be surprised if I helped him
7 by way of getting him some typical forms of underwriter
8 counsel opinions.

9 Q Okay. Did he ask you for that kind of form
10 when you provided it to him?

11 A I don't remember.

12 Q Okay. Have you ever served as disclosure
13 counsel for any of the Brogdon bond offerings?

14 A No.

15 Q Okay. So in terms of the process of drafting,
16 let's take first the official statement. Did you have a
17 role in providing comments or edits on the official
18 statement?

19 A Yes.

20 Q And what was that role?

21 A Well, I looked them over for accuracy and
22 omissions, things that I think needed to be added or,
23 primarily, corrections because I started out doing this
24 distribution list and so I have a flavor for all the
25 players and dates and documents. And so I look at those

1 POSs for accuracy and to see whether disclosures are
2 made and risks are itemized and that kind of thing.

3 **Q And if you did see something that needed to be
4 corrected, who would you tell about that edit?**

5 A Typically, Michael Gardner.

6 **Q Okay. On the -- when you reviewed the
7 official statement or the preliminary official
8 statement, were there particular sections that you
9 focused on in terms of your comments?**

10 A Well, the tax section because that tax section
11 needs to be consistent with my opinion, that's one
12 focus, and those other things I just mentioned a minute
13 ago.

14 **Q Have you ever provided a rule 10b-5 or a 33 or
15 '34 Act opinion in connection with any of the Brogdon
16 bond offerings?**

17 A I don't think so.

18 **Q Okay. Is there a reason why not or is it just
19 not something you viewed as part of your role as bond
20 counsel?**

21 A It's something I didn't view as my role.

22 BY MR. TUTOR:

23 **Q Mr. Miller, you mentioned the distribution
24 list a few times. How did you know whom to include on
25 the distribution list?**

1 he is very good at preparing feasibility studies that
2 support the debt service coverage ratios in these bond
3 issues, so count Wink Laney as a usual suspect. And
4 then we have a phase one environmental that is due, but
5 phase one environmental providers change from time to
6 time as does the appraiser. So that's the flavor of it.

7 BY MR. GREENWOOD:

8 **Q We talked about some of the documents that you
9 typically draft at the time of the issuance of the
10 bonds. Are there other documents that you have drafted
11 sort of after the initial issuance of a Brogdon bond
12 offering?**

13 A Very seldom. Very seldom.

14 **Q Okay. We talked about the subsequent legal
15 opinions issue earlier. Putting those aside, have you
16 ever drafted forbearance agreements in connection with a
17 Brogdon bond offering?**

18 A Yes.

19 **Q And how many offerings -- strike that. For
20 how many offerings have you drafted forbearance
21 agreements?**

22 A Just guessing, I would say five or six issues
23 and multiple forbearance agreements with those. Often
24 times if an issue starts to go downhill, it stays
25 downhill. And typically forbearance agreements are done

1 A Well, I had what I call "usual suspects." You
2 have seen the movie Casablanca, right?

3 **Q Yes.**

4 A And at the end there -- and I think this is
5 where it started -- Claude Rains, a French police person
6 is standing there at the airport and the Nazi Colonel
7 pulls a revolver and Humphrey Bogart shoots and kills
8 the Nazi colonel. Claude Rains says to his lieutenant,
9 says, Lieutenant, there has been a shooting. Round up
10 the usual suspects. That was funny.

11 **Q So who are the usual suspects for these
12 offerings?**

13 A We're just talking about Brogdon issues, now.
14 I have closed lots of other deals that don't have
15 anything to do with Brogdon, but Chris Brogdon don't
16 have usual suspects. The usual suspects as I call them
17 in Brogdon issues would be Marrien Neilson, Jim Orbison,
18 Michael Gardner, whoever the underwriter is, and we've
19 closed deals with other trustees and their counsel, and
20 Greg Youra who represents a lot of Chris Brogdon's
21 entities, those would be the core of usual suspects.
22 Then two of those are added, the issuer, the issuer's
23 counsel. Sometimes, we will have an architect involved.

24 Sometimes -- oh, Wink Laney is a CPA with a
25 big firm here in Atlanta. He is a usual suspect. And

1 for a two-year period. Liberty County, for instance,
2 has been a troubled project for a long time.

3 **Q And just so the record is clear, what is a
4 forbearance agreement?**

5 A It's a document in which the trustee agrees to
6 forbear, meaning that the trustee agrees to -- agrees
7 not to foreclose or take extraordinary steps provided
8 that the obligations in the forbearance agreement on
9 part of the obligor are satisfied. And one of the
10 provisions of a forbearance agreement is it does not
11 purport to change the terms of documents because those
12 documents, the basic documents, trust indenture, loan
13 agreement, lease agreement, mortgage, they generally
14 cannot be amended unless you go through very formal and
15 difficult steps. And so the forbearance agreement, as I
16 say, does not purport to amend those basic documents
17 because the formalities cannot or for one reason or
18 another are not available, cannot be available.

19 **Q You mentioned a minute ago that when an
20 offering starts to go downhill it typically stays
21 downhill. Is --**

22 A There are exceptions.

23 **Q Okay. Is a forbearance agreement an
24 indication that an offering is going downhill?**

25 A Yes, I would say.

1 Q And why is that?

2 A Well, there are a multitude of reasons. You
3 know, it might be occupancy rate or weather or
4 contractors not doing what they're supposed to do and
5 the subcontractors not doing what they are supposed to
6 do or the economy in that particular area, an
7 administrator might leave one project and go across the
8 street.

9 Q I guess whatever the issue is with the
10 project, is a forbearance agreement an indication that a
11 project isn't generating sufficient revenue to meet its
12 debt service obligations?

13 A Yes.

14 Q You know, we talked about subsequent legal
15 opinions that you may have rendered in connection with
16 the Brogdon bond offerings earlier, and I think you
17 testified that you couldn't recall any of the specific
18 topics of those opinions, is that correct?

19 A Yes.

20 Q Have you ever provided an opinion as to the
21 continuing disclosure obligations of any of the parties
22 to one of the transactions involving Mr. Brogdon?

23 A Post-closing?

24 Q Correct.

25 A I don't think so. The continuing closing

1 A Well, the first draft usually comes -- those
2 numbers floating around as a typical bond issue will
3 take two-and-a-half to three months. Sometimes it will
4 take five years. But those numbers dance around as
5 you're getting closer and closer to closing. And then
6 when you get closer to closing, then I go around and ask
7 the various parties what their fees are and ask them to
8 provide invoices. Because what you don't want to have
9 happen is to have a closing and then have somebody call
10 you ten days later and say, how come I wasn't paid.
11 That has happened to me maybe twice and it was two times
12 too many.

13 And so I spend a lot of time going around to
14 the various people on the distribution list asking for
15 invoices to support their payments at closing. And
16 those invoices typically are attached to the requisition
17 forms.

18 Q Okay. So your role was to sort of compile
19 invoices that you received from other parties related
20 to, for instance, the cost of issuance?

21 A Right. Now, some underwriters get deeply
22 involved in that. Stiffel Nicholas, for example, with
23 Jim Swan. You mentioned Jim Swan earlier --

24 Q I think you mentioned Jim Swan earlier.

25 A Yeah. He's with Stiffel Nicholas now and his

1 agreement speaks for itself and that's part of the
2 transcript.

3 Q Okay. So to your knowledge, you have never
4 provided an opinion as to the continuing disclosure
5 obligations, for instance, Mr. Brogdon or the borrower?

6 A Not that I remember.

7 Q Okay. To your knowledge, you have never
8 provided an opinion as to the continuing disclosure
9 obligations of an underwriter for a Brogdon offer?

10 A No.

11 Q To your knowledge, have you ever provided an
12 opinion as to the continuing disclosure obligations for
13 the trustee on a Brogdon bond offering?

14 A No. I mean, that's my best recollection. As
15 I say, that document speaks for itself. The four
16 corners of that document tell those people that you're
17 talking about or those entities that you're talking
18 about what obligations they have and what obligations
19 they don't have.

20 Q Okay. You mentioned earlier that one of the
21 documents you prepared in connection with the Brogdon
22 bond offerings is the disbursement schedule.

23 A Yes.

24 Q Who determines the use of proceeds in
25 connection with a Brogdon bond offering?

1 man in -- he is in New York. And his go-to person for
2 numbers is a person named Earnest who works here in
3 Atlanta. And he gets deeply involved in numbers. And
4 with him, I don't have to do as much work because he
5 does the work that I normally do and he keeps track of
6 any number of aspects of those numbers.

7 Q I see. So let's focus on the project costs
8 related to, for instance, the acquisition or
9 rehabilitation of a facility on a Brogdon bond offering.
10 Who provides you with that information?

11 A Oh, what the acquisition cost is?

12 Q Yes.

13 A The borrower, obligor.

14 Q Okay. What about any rehabilitation costs
15 that are part of the acquisition or the project?

16 A The obligor.

17 Q Okay. What about the working capital that is
18 part of the transaction, if any?

19 A The borrower, the obligor.

20 Q And when you say "the borrower" or "the
21 obligor" for the Brogdon bond offerings, would that be
22 Mr. Brogdon himself or would that be his counsel?

23 A Or a combination of the two.

24 Q Okay. Did the Brogdon bond offerings have a
25 working capital component?

1 A Yes, usually.

2 Q Okay. And who provided that working capital
3 information for those offerings?

4 A Greg Youra or Chris Brogdon or whoever the
5 obligor is. Chris Brogdon's roles in these deals has
6 varied significantly from one to the other. You know,
7 he's got all these entities and on occasion he's been a
8 guarantor and sometimes he's been a shareholder and
9 sometimes he's been just an advisor with no skin in the
10 game, so to speak, at all.

11 So you really have to look at each issue to
12 see what involvement, if any, legally he had. But he
13 has an uncanny ability to put things together and he is
14 very bright and knows the landscape and knows what needs
15 to be done to get to a closing and knows structures that
16 work and structures that don't work and people who work
17 and people who don't work and so forth.

18 Q Right. So we talked about kind of the process
19 of closing a Brogdon bond offering. Where were the
20 closings typically located?

21 A Usually in Atlanta.

22 Q Okay. Were they at Mr. Brogdon's offices in
23 Atlanta?

24 A Yes. But, now, on occasion we have gone to
25 Wink Lancy's office recently.

1 Atlanta for that night and I have found that it is a
2 good idea to have a pre-closing and at least one day
3 between the pre-closing and the closing so that any
4 loose ends can be wrapped up in the meantime. When you
5 have all baking on premises and just one closing date. I
6 think you're asking for trouble because there are so
7 many details that have to be tied together. And,
8 typically, what we would do is to nail down documents
9 and disbursement lists and invoices during the
10 pre-closing so that on the closing date, you don't have
11 problems.

12 Q Okay. The closing dinners that you mentioned,
13 where were those closing dinners, typically?

14 A Various restaurants around Atlanta.

15 Q Okay. Who paid for those dinners?

16 A It really depends. Chris Brogdon has paid for
17 a number of them. Rob Lawson has paid for a number of
18 them. Bergen Capital paid for some. Sell and Melton
19 paid for some lunches. These closing dinners are pretty
20 expensive and I don't drink and alcohol is a big element
21 of those closing dinners. That's an aside, but various
22 people pay for these closing dinners depending on a
23 number of variables.

24 Q Okay. When you say alcohol is a big part of
25 the closing dinners, what did you mean by that?

1 Q Okay. When you say "recently," what offering
2 are you referring to?

3 A The Duane Edwards projects.

4 Q I see. And I'm actually -- we're focusing on
5 sort of the prior to Duane Edwards projects here. I
6 don't think the Duane Edwards projects are listed on the
7 appendix A we looked at --

8 A No.

9 Q -- so just focusing on the Brogdon bond
10 offerings, were the closings typically at Mr. Brogdon's
11 offices?

12 A Yes. Now, we had a closing at Lawson in
13 Phoenix once, but typically at Chris Brogdon's offices.
14 He has moved around a little bit and so it might have
15 been three or four different locations where he has hung
16 his hat, so to speak.

17 Q Okay. Did you attend the closings?

18 A Oh, yes.

19 Q Did you stay overnight in Atlanta for the
20 closings?

21 A Yes. Usually. Not so much when I was
22 younger, but in the last ten years or so after the
23 closing dinners, that's a long day, you know, to get up
24 at four or five in the morning and closing dinners are
25 typically over at nine, 9:30. I've been staying in

1 A Wine at dinner.

2 Q Okay. Were there sort of celebrations after
3 the closing dinner?

4 A From time to time, people would repair to the
5 bar after a dinner. I'm not one of those just because I
6 just don't enjoy the bar scene and there's nothing --
7 there wasn't anything particularly planned, it's just
8 some people enjoy going to cocktail places. But there
9 is no rhyme and reason to it.

10 Q Okay. When you stayed overnight in Atlanta
11 for the Brogdon bond offering closings, where did you
12 typically stay?

13 A Well, recently at the Saint Regis just because
14 Chris Brogdon gets a discount there. He lives in the
15 Saint Regis. He lives in a condominium above the Saint
16 Regis Hotel. But before then, I've stayed in various
17 places.

18 Q Okay. The times that you stayed in the Saint
19 Regis for the Brogdon bond offering closings, who has
20 paid for your room?

21 A Usually, one of Chris Brogdon's entities.
22 From time to time, I have paid for myself. I say
23 myself, my firm, Sell and Melton.

24 MR. GREENWOOD: Right. Okay.
25 I'm showing the witness what has been

1 previously marked as Exhibit 230. It is an article in
2 Forbes magazine titled, Hello, Sucker. The Bates range
3 is F-00301 through 304.

4 THE WITNESS: Bates range?

5 MR. GREENWOOD: The Bates number is the number
6 at the bottom right-hand corner.

7 THE WITNESS: What does "Bates" mean?

8 MR. GREENWOOD: It's a reference to the
9 production number by the producing party.

10 THE WITNESS: Okay.

11 BY MR. GREENWOOD:

12 Q Mr. Miller, do you recognize Exhibit 230?

13 A Yes.

14 Q Is Exhibit 230 a copy of the Forbes article
15 you were mentioning earlier?

16 A It appears to be, yes.

17 Q Okay. When did you first see this article
18 that is marked as Exhibit 230?

19 A On or about the time it came out in Forbes.

20 Q Okay. What was your reaction to it?

21 A As is often the case, I think the writer
22 painted the picture that was worse than the facts would
23 lend themselves to painting.

24 Q Okay. Were there particular facts in the
25 article that you disagreed with?

1 Q Were you at that meeting?

2 A No, I don't think so. I know Terry Henderson
3 and I know Richard Matthews, but I don't remember. I
4 think I met this person Matthew Shiffon once someplace.
5 I don't remember where. He is a pretty diminutive --
6 he's probably 5'6."

7 Q Did you meet Mr. Shiffon in connection with
8 his work on this article?

9 A I don't remember whether I met him before this
10 article or after the article but I think I met him at a
11 time that I had not read this article which leads me to
12 believe it was before then and it was a pretty short
13 meeting, whatever meeting it was.

14 Q On the second page of the article beginning in
15 the first column going into the second column, the
16 article reads, "So far at least ten Brogdon-Lane deals
17 have defaulted or have been refinanced at lower rates."

18 A I don't see where you're reading.

19 Q So we're starting at the bottom of this first
20 column and going into the second column.

21 A Okay. I got it.

22 Q It says, "So far at least ten Brogdon-Lane
23 deals have defaulted or have been refinanced at lower
24 rates. At present, at least nine have drained their debt
25 service reserve funds." Now, Mr. Miller, do you have

1 A Yes.

2 Q Okay. And what were those facts?

3 A Oh, I don't remember.

4 Q Okay. We'll, we'll take a look at Exhibit 230
5 but before we look at the article itself, on the second
6 page going to the third page, there is a discussion of a
7 meeting between Mr. Brogdon, some other individuals, and
8 the author of the article.

9 A Gene Lane.

10 Q So not referring to Mr. Lane, if you look at
11 the third column on the second page, the paragraph
12 beginning, "A nervous Brogdon agreed to talk with Forbes
13 at the pairs north Atlanta offices flanked by seven
14 advisors --

15 A Let me stop you there a minute.

16 Q Okay.

17 A Nervous, nervous. That trouble -- you want to
18 know what troubled me about this? That adjective
19 troubles me because I don't know I have ever seen Chris
20 Brogdon nervous.

21 Q Okay. So my focus is on the meeting described
22 in that sentence which appears to be a meeting at Mr.
23 Brogdon's north Atlanta offices with a series of
24 advisors. Do you see that?

25 A Yes.

1 any basis to dispute the facts as described in the
2 sentences I just read?

3 A No. I would say here again this author, and
4 this is what the press oftentimes does, uses the word
5 "drained" in a negative sense just as he used "nervous"
6 in a negative sense.

7 Q Do you believe that -- well, what do you
8 understand draining a debt reserve fund to mean?

9 A Drawing down on the debt service reserve fund
10 to a significant extent.

11 Q Okay. Do you have an understanding of whether
12 that was an issue for Brogdon bond offerings that you
13 worked on?

14 A Yes.

15 Q And when did you come to that understanding?

16 A Probably about the time this article was
17 written.

18 Q Okay. Did you have any concerns as a result
19 of that information?

20 A Yes.

21 Q And what steps did you take in connection with
22 those concerns?

23 A I don't know that I took any particular steps.
24 I just became aware of it. See, these debt service
25 reserve funds if I can expound a little bit on it so

1 that you understand because I don't think you all have
2 ever closed a bond issue, right?

3 **Q** I'm just trying to understand your knowledge,
4 **Mr. Miller.**

5 **A** Okay. Debt service reserve funds are designed
6 as a rainy day source of money in the event that any
7 number of things happen to drive down the revenues and
8 raise the expenses. And often times a drawdown is
9 viewed as the end of the world by various players
10 nowadays. EMMA and sometimes trustees, and once drawdown
11 start, often times one drawdown leads to another. And
12 each debt service reserve fund has a replenishment
13 provision which is typically 12 months. And we have
14 found that that 12 months is too short because if you
15 have a problem of such a serious nature that you have to
16 resort to the debt service reserve fund, your chances of
17 paying it back and replenishing it are not very good.
18 It happens, but your chances are not very good. And I
19 would say that in a few deals more recently there
20 haven't been debt service reserve funds because they are
21 often times more trouble than they are worth.

22 **A** And I would say in some cases, not in all
23 cases but in some cases, too much importance is attached
24 to a drawdown from a debt service reserve fund. Because
25 a lot of times there is a drawdown and the bondholders

1 continue to be paid in full and everybody is -- not
2 everybody, but typically people are satisfied with being
3 paid. But sometimes when you completely exhaust the
4 debt service reserve fund, then you're in such a state
5 that forbearance agreements need to be entered into.
6 That would be the next line of defense to keep a deal
7 afloat.

8 **Q** The trust indentures that you drafted for the
9 Brogdon bond offerings, those had, as you mentioned,
10 replenishment provisions concerning the debt service
11 reserve funds?

12 **A** Right.

13 **Q** Do you have an understanding of -- strike
14 that. You also mentioned in your earlier answer that
15 debt service reserve fund draws are an issue for EMMA, I
16 think you said. Do you recall that?

17 **A** Yes.

18 **Q** And the issue is that a debt service reserve
19 fund draw that is not replenished is required to be
20 disclosed on Emma, right?

21 **A** I think so, yes.

22 **Q** Okay. Do you have an understanding of whether
23 debt service reserve fund draws that were not
24 replenished on the Brogdon bond offerings were disclosed
25 on EMMA after it became an available website?

1 **A** I don't know.

2 **Q** Okay. In connection with your work on the
3 Brogdon bond offerings, did you have any concerns about
4 the viability of future offerings involving Mr. Brogdon
5 by virtue of some of these debt service reserve fund
6 draws that are mentioned in Exhibit 230?

7 **A** Yes.

8 **Q** Okay. What was that concern?

9 **A** Well, obviously, I don't like to see the debt
10 service reserve fund drawn upon because that's a sign of
11 the deal not being as healthy as everyone expected it to
12 be.

13 **Q** Okay. Did you ever have discussions with any
14 of the usual suspects that you mentioned concerning debt
15 service reserve fund draws for the Brogdon bond
16 offerings?

17 **A** From time to time.

18 **Q** Okay. And let's -- so describe some of those
19 conversations if you can. Which of those usual suspects
20 have you had those conversations with?

21 **A** I would say I haven't had many, but, typically
22 Marrien Neilson might have told me or I might have asked
23 Marrien Neilson for one reason or another had there been
24 serious withdraws from the debt service reserve funds.

25 **Q** And have there been times when Ms. Neilson

1 told you that there were?

2 **A** Yes.

3 **Q** And how many times did Ms. Neilson make those
4 types of statements to you?

5 **A** This is just a guess, maybe ten times.

6 **Q** Okay. And that is during what period of time?

7 **A** From the time that I was first introduced to
8 the Bank of Oklahoma until she was fired last summer.

9 **Q** Okay. Do you recall whether Ms. Neilson
10 described the problems with debt service reserve funds
11 for particular offerings?

12 **A** Oh, yes. Liberty, for one.

13 **Q** Okay. And let's take Liberty first. Do you
14 recall when Ms. Neilson told you about the debt service
15 reserve fund for the Liberty offering?

16 **A** Probably back to the forbearance agreements
17 that started.

18 **Q** Okay. Did you -- did the forbearance
19 agreement that you drew for the Liberty offering discuss
20 the fact that debt service reserve fund had been drawn
21 down on?

22 **A** No.

23 **Q** And why not?

24 **A** Just because those drawdowns spoke for
25 themselves.

1 Q Okay. Well, how did they speak for
2 themselves.

3 A I mean, the trustee had a record of them.

4 Q Okay. Do you have an understanding of whether
5 the trustee ever disclosed that information to
6 bondholders?

7 A I do not.

8 Q Did you ever ask Ms. Neilson whether it had
9 been disclosed to bondholders?

10 A No, not that I recall.

11 Q Okay. Was the conversation with Ms. Neilson
12 about the Liberty debt service reserve fund the first
13 conversation you recall having with her about debt
14 service reserve funds for the Brogdon offerings?

15 A I just -- that's a long time ago.

16 Q I know. I'm just trying to place your
17 memories in time. I'm trying to understand whether the
18 Liberty offering was the first conversation you had with
19 Ms. Neilson about this issue concerning debt service
20 reserve funds?

21 A I really could not say.

22 Q Okay. Putting aside the Liberty offering, are
23 there other offerings you remember Ms. Neilson telling
24 you had drawn on debt service reserve funds?

25 A Well, the worst bond issue in these 40, I

1 at such a low amount.

2 Q Right. Did you learn about the sale of the
3 Sumner facility in conjunction with some title work that
4 you did related to the Sumner facility?

5 A Yes. I asked Melissa in our office if she
6 could do a little investigation from Macon, Georgia, to
7 Sumner, Illinois, to find out what had happened and she
8 told me that there had been a tax sale.

9 Q Okay. And was that the time in which you
10 learned the Sumner facility had been sold in a tax sale
11 or did you learn about it previously?

12 A I think that's the time when it came home to
13 roost with me how much that whole situation had
14 deteriorated.

15 Q Okay. You're aware that the Bank of Oklahoma
16 put out a series of EMMA notices concerning the Brogdon
17 bond offerings in late August of 2015?

18 A I guess I know generally but, specifically,
19 they don't send me those kinds of things.

20 Q Okay. Again, I'm just trying to place sort of
21 the timing of your memory here. Did you learn of the
22 Sumner tax sale before or after those EMMA notices came
23 out from the Bank of Oklahoma?

24 A Oh, I learned some of the specifics about the
25 tax sale after. I knew prior to that that Sumner was in

1 would say, is Sumner in Illinois. I really don't know
2 what happened there, but that's the worst of those 40, I
3 would say.

4 Q And why would you say that?

5 A Well, because I had heard over the years that
6 Chris Brogdon had been making payments to those
7 bondholders even though there were no revenues from the
8 project, and I think he was just doing that to help the
9 bondholders. And when I say the worst, the worst in
10 that I had learned here in the last year or so with
11 specificity that someone had bought that project in
12 foreclosure.

13 Q At a tax sale?

14 A Yeah. That's really bad because that tax sale
15 was for a pittance. It might have been \$50,000 when a
16 bond issue was two or three million. That project just
17 didn't do well.

18 Q Let's talk about that while we're on this
19 topic. When did you come to learn the facilities
20 securing the Sumner offering were sold at a tax sale?

21 A I would say in the last two years.

22 Q Okay. Was it before or after Ms. Neilson was
23 terminated by the Bank of Oklahoma?

24 A Hard to say. I knew it was in trouble, but
25 what really hit me was this business of foreclosure sale

1 serious trouble and I had heard that Chris Brogdon had
2 been making these payments to bondholders from his own
3 sources, whatever those sources were.

4 Q And when did you learn that information?

5 A About Chris Brogdon making payments?

6 Q Yes.

7 A Oh, that goes back maybe three or four years.

8 Q And how did you learn that information?

9 A Probably from the trustee.

10 Q And when you say "the trustee," are you
11 referring to Marrien Neilson?

12 A Right. And maybe also from Greg Youra or
13 Chris Brogdon himself.

14 Q And when you say maybe also Greg Youra and
15 Chris Brogdon, is that because you recall a conversation
16 with those individuals about the payment issue on the
17 Sumner offering?

18 A Yes.

19 Q Okay. Let's -- do you recall separate
20 conversations or one conversation?

21 A Oh, I don't remember.

22 Q Okay. I just want to understand kind of what
23 you recall about the conversations with Mr. Youra and
24 Mr. Brogdon about the payments on the Sumner offering.

25 A From time to time over the last three or four

1 years, roughly, I had just heard that from anyone of
2 those three sources.

3 Q Okay. Did they tell you why Mr. Brogdon was
4 making payments out of his own money to bond holders for
5 that offering?

6 A Not specifically, but I assumed that he was
7 just trying to keep the project alive in some fashion
8 and to look after the bondholders.

9 Q Did either Ms. Nelson, Mr. Youra, Mr. Brogdon,
10 tell you that the Sumner facility was closed?

11 A More recently I had heard that, yes.

12 Q Okay. And when did you learn that recently?

13 A I would say a couple of years ago.

14 Q Okay. Who did you learn that information
15 from?

16 A Well, the timing is fuzzy with me on this
17 subject. I have known for some time that I had heard
18 Chris was making payments to these bond holders. Now,
19 as to when I found out that the project had closed, it's
20 very difficult to pinpoint that.

21 Q Okay. Was that in the last couple of years or
22 was it longer than that?

23 A I think that's in the last year-and-a-half,
24 maybe. That's more recent.

25 Q Okay. Anyone else you can recall having

1 conversations with about the Sumner facility and its
2 status?

3 A Maybe Jim Orbison.

4 Q Okay. Counsel of the trustee?

5 A Right. Right.

6 Q And when was that?

7 A And that's maybe just because he represents
8 the bank and, you know, we might have discussed that in
9 a closing dinner or at another closing.

10 Q So can you pinpoint when you first learned
11 that either there was a problem with the Sumner facility
12 or that the facility had been sold at a tax sale?

13 A The first time I learned about the -- this is
14 very difficult because that project had closed many
15 moons ago. I don't know. What's the year of that
16 closing?

17 Q 2002.

18 A 2002? All right. So it's been 14 years since
19 the closing and my best recollection is that maybe eight
20 or nine years after it closed I found out that it was --
21 or, I heard from people that it was in serious trouble.

22 Q Okay. After you heard that information, did
23 you continue to work as bond counsel on additional
24 Brogdon bond offerings?

25 A Yes.

1 Q Did the fact that the facility was in trouble
2 and Mr. Brogdon was making his own payments give you
3 cause for concern when you were working on those
4 subsequent offers?

5 A Somewhat. But I have to say in Chris
6 Brogdon's -- on his behalf, who else would be paying
7 those bondholders out of his own pocket, so -- I don't
8 know what sources he used. That's the only instance
9 that I know of in my 30-some years as bond counsel of
10 somebody digging into his own resources to pay
11 bondholders.

12 Q Do you know why he was doing that?

13 A I think he was doing it for the benefit of the
14 bondholders.

15 Q Was he closing additional offerings or raising
16 new money from new bondholders?

17 A Oh, yes. You need to understand each project
18 has its own pluses and minuses, its own warts, and its
19 own benefits. That project, for whatever reason, was a
20 failure.

21 Q Do you know whether the information about
22 either the closure or the tax sale of the Sumner
23 facility were disclosed to bondholders in any way prior
24 to these EMMA notices by the Bank of Oklahoma last
25 August?

1 A I do not.

2 Q Okay. Did you ever ask anyone whether it'd
3 been disclosed or not?

4 A No.

5 Q Never asked Ms. Neilson whether it had been
6 disclosed?

7 A Oh. Well, I might have asked Marrion about
8 Sumner but not with great specificity.

9 Q Okay. You can't recall whether you asked her
10 about whether the information about the facility had
11 been disclosed to investors?

12 A I do not.

13 Q Okay. Do you know what the issues related to
14 the Sumner facility were disclosed in subsequent
15 offerings involving National Assistance Bureau?

16 A Was National Assistance Bureau the borrower in
17 Sumner?

18 Q I will represent to you that it was.

19 A Okay. I think so, but I wouldn't -- can't
20 swear to it.

21 MR. GREENWOOD: If -- okay. We'll come back
22 to that a little later.

23 BY MR. TUTOR:

24 Q Mr. Miller, do you recall discussing the
25 Sumner offering with any of the other usual suspects?

1 A I might have discussed it with Wink Laney or
2 Michael Gardner. But it doesn't pop out at me as a big
3 thing going on.

4 Q Do you recall discussing it with any of the
5 underwriters?

6 A No.

7 MR. GREENWOOD: So I think when we started on
8 this discussion we were talking about your discussions
9 about debt service reserve fund issues for Brogdon bond
10 offerings and we talked about the Liberty offering and
11 the Sumner offering.

12 BY MR. GREENWOOD:

13 Q And just so I'm clear, what was the
14 conversation you had with Ms. Neilson about the debt
15 service reserve fund for the Sumner offering?

16 A My memory is very hazy on that subject. I
17 assumed that there wasn't any money in a debt service
18 reserve fund if Chris Brogdon was digging into his
19 pocket somehow and paying bondholders. It just makes
20 sense.

21 Q Right. Do you know whether that draw on the
22 debt service reserve fund for the Sumner offering was
23 disclosed to investors on EMMA or any other source?

24 A I think it was, but I would have to go back
25 and look at the documents.

1 Q And when you say you think it was, what type
2 of document are you referring to?

3 A The POS, OS.

4 Q And you believe which POS or OS would have
5 disclosed that debt service reserve fund draw?

6 A I don't know. I just don't know.

7 Q Okay. Putting aside Liberty and Sumner, do
8 you recall having discussions about debt service reserve
9 fund draws for any other Brogdon offerings?

10 A I'm sure I did. To tick off precise ones,
11 that would be very difficult.

12 Q Okay. Sitting here today, are the Liberty and
13 Sumner ones the only debt service reserve funds you can
14 specifically recall discussing?

15 A No, there were others. It's just those were
16 foremost as being troubled projects.

17 Q Understood. Are you able to recall the names
18 of any of the other offerings that you discussed debt
19 service reserve funds with?

20 A If you can show me that list of 40. There was
21 a project in Dublin, Georgia, that might have been
22 before '92 that was in trouble.

23 Q Was the project in Dublin, Georgia, a project
24 involving Christopher Brogdon?

25 A Yes, in some capacity. Toombs County I don't

1 think did very well.

2 Q And when you say you don't think it did very
3 well, do you recall discussing a debt service reserve
4 fund issue for the Toombs County offering?

5 A I do not.

6 Q Okay. So if there are any other offerings on
7 appendix A that you can recall having discussion about
8 the status of the debt service reserve fund for, we
9 would appreciate it if you would just note that
10 offering.

11 A I'm sure there were some but as to the precise
12 ones, I can't tell you.

13 MR. GREENWOOD: Okay. I will take that back.
14 (SEC Exhibit No. 263 was marked for
15 identification.)

16 MR. GREENWOOD: I'm showing the witness what
17 has just been marked as Exhibit 263. It's an email, the
18 top of which is from R. Chix Miller to Jim Orbison and
19 Marrien Neilson dated July 1st, 2010. The Bates range
20 is SEC-CANTONE-ESI-0087276 through 87288.

21 BY MR. GREENWOOD:

22 Q Mr. Miller, do you recognize Exhibit 263?

23 A Yes.

24 Q Is Exhibit 263 a draft of a forbearance
25 agreement for the Bayberry Trace Clayton issuance?

1 A Yes.

2 Q And is that a Brogdon bond offering?

3 A Yes. Understand when you say "Brogdon bond
4 offering," he had different roles that he played from
5 issue to issue.

6 Q Okay. I think we discussed earlier a list of
7 offerings that we referred to as the Brogdon bond
8 offerings. I will represent to you that this is one of
9 those offerings, but I understand the point you're
10 making about the different roles. Attached to the email
11 appears to be a draft forbearance agreement. Do you see
12 that?

13 A Yes.

14 Q And at the top right-hand corner it says, S
15 and M draft 07/01/10. Do you see that?

16 A Yes.

17 Q Does this indicate that you drafted this
18 forbearance agreement?

19 A Yes.

20 Q The forbearance agreement describes an
21 offering in the first sentence involving National
22 Assistance Bureau. Do you see that?

23 A Yes.

24 Q Was National Assistance Bureau a borrower for
25 a number of Brogdon offerings?

1 A Yes.
 2 Q This particular offering is described among
 3 other places as a Series 2005 certificates of
 4 participation in S2,125,000 Development Authority of
 5 Clayton County first mortgage revenue bonds. Do you
 6 have an understanding of what that offering is?

7 A Yes.

8 Q Is that an offering that was the first of the
 9 Clayton certificates of participation issuances?

10 A Well, there were five in all and whether this
 11 was the first one, I don't recall.

12 Q Okay. I will represent to you that this is
 13 the first of those certificates of participation
 14 issuances of the Clayton I offering. Will you
 15 understand what I mean by that?

16 A Yes.

17 Q Okay. If you go to the second page of the
 18 forbearance agreement page ending 87279, paragraph seven
 19 reads beginning in the second sentence, "Borrower
 20 acknowledges and agrees that subject to the terms
 21 hereof, nothing contained herein is intended to waive
 22 any default which may hereafter exist under the loan
 23 agreement, indenture, or other certificate documents and
 24 subject to the terms hereof nothing herein contained
 25 shall be construed as an amendment to any of the

1 aforementioned documents."

2 A Right. That's what I explained to you, maybe,
 3 a half hour ago.

4 Q Right. You were just noting that the
 5 forbearance agreement didn't change the underlying
 6 obligation of the bond documents?

7 A Could not formally amend those documents,
 8 right.

9 Q Do you have an understanding of whether the
 10 Clayton I offering had a debt service reserve fund?

11 A I would have to look at the disbursement list.

12 Q Okay. Do you recall asking whether that
 13 offering had drawn down on its debt service reserve fund
 14 when you drafted this forbearance agreement?

15 A No, but usually you don't get to forbearance
 16 agreements unless a debt service reserve fund has been
 17 withdrawn from.

18 Q Okay. So why didn't you include that
 19 information in the forbearance agreement?

20 A Because as I answered before, that debt
 21 service reserve fund and the details of it from a
 22 trustee's numbers perspective spoke for themselves.

23 Q Okay. When you say it "spoke for themselves,"
 24 who is doing the speaking in your statement?

25 A The trust indenture is doing the speaking and

1 then the trustee is speaking in that the trustee has a
 2 financial record for what the balance started out as and
 3 how many withdrawals have been made and that kind of
 4 thing.

5 MR. GREENWOOD: I'm showing the witness what
 6 has previously been marked as Exhibit 72. The top email
 7 is from R. Chix Miller to Gregory Youra, Chris Brogdon,
 8 John T. Lynch, Robert Lawson, Jim Orbison, and Marrien
 9 Neilson. The subject line, Forbearance Agreement-
 10 Midway/Liberty County dated July 18th, 2011. The Bates
 11 range is SEC-CANTONE-ESI-0006163 through 6169.

12 THE WITNESS: Okay.

13 BY MR. GREENWOOD:

14 Q Mr. Miller, do you recognize Exhibit 72?

15 A Yes.

16 Q Is Exhibit 72 a copy of a draft of a
 17 forbearance agreement that you drafted for the Liberty
 18 offering?

19 A Yes.

20 Q The date of the email in which you transmit
 21 the draft is July 18th, 2011. Earlier you testified
 22 that you learned of the draw on the Liberty debt service
 23 reserve fund around the time of the Liberty forbearance
 24 agreement. Does Exhibit 72 refresh your recollection as
 25 to the timing of that prior testimony?

1 A Not really.

2 Q Okay. Let's look at the attachment, which is
 3 a forbearance agreement. Do you see that?

4 A Yes.

5 Q Again, there is an S and M draft notation on
 6 the top right-hand corner. Do you see that?

7 A Yes.

8 Q Is that an indication that you drafted this
 9 forbearance agreement?

10 A Yes.

11 Q The Liberty offering is the offering being
 12 described in this forbearance agreement, is that
 13 correct?

14 A Yes.

15 Q And the borrower in that offering was Gordon
 16 Jensen Healthcare Association, is that right?

17 A That's correct.

18 Q Turn to the second page of the forbearance
 19 agreement, paragraph eight. In the middle of that
 20 paragraph there is the following sentence, "The borrower
 21 acknowledges that it has not made payments as required
 22 pursuant to section 4.2 of the loan agreement, nor has
 23 it required the financial statements required by 5.4 of
 24 the loan agreement." Mr. Miller, what does that
 25 sentence indicate?

1 A That the borrower is behind in its payments.
 2 Q Which payments, specifically?
 3 A Those set forth in the loan agreement.
 4 Q And I know we don't have a copy of the loan
 5 agreement in front of you, but do you have an
 6 understanding of what types of payments are described in
 7 section 4.2?
 8 A Well, the way this works is payments are made
 9 by the borrower to the trustee under the terms of the
 10 loan agreement and then the trustee makes payments to
 11 the bondholders under the terms of the trust indenture,
 12 so it's a two-step process.
 13 Q So focusing on section 4.2 of the loan
 14 agreement, though, do you have an understanding of what
 15 payments are included in that section related to the
 16 borrower?
 17 A Whatever that section spells out.
 18 Q Okay. I guess I'm just trying to understand
 19 what this is indicating. Is it indicating that the
 20 borrower has missed an interest payment?
 21 A Well, that's just my point. It's a two-step
 22 process, first, from the borrower to the trustee in
 23 terms of the loan agreement and then from the trustee to
 24 the bondholders under the trust indenture. And so the
 25 way these documents are set up, those payments from the

1 borrower under the provisions of the loan agreement are
 2 designed to allow the trustee to pay principal and
 3 interest on the bonds to the bondholders.
 4 Q Right. Does section 4.2 of the loan agreement
 5 provide for the replenishment of any debt service
 6 reserve fund by the borrower?
 7 A No. Well, not specifically. In more recent
 8 times, let's say in the last 15 years or so, there has
 9 been a waterfall provision and these waterfall
 10 provisions have gotten more and more complex. In the
 11 80s, I don't know that we had these waterfall
 12 provisions. But it might be A through J, for example,
 13 and one might have to do with arbitrage.
 14 But none of these deals had to do with
 15 arbitrage because the interest rate on the bond is much
 16 higher than the rates at which funds with the trustee
 17 have been invested. So I think typically, section 4.2
 18 of the loan agreement contains that waterfall that I'm
 19 talking about. And the more I think about it, in that
 20 waterfall there might be a particular section for a debt
 21 service reserve fund.
 22 Q The replenishment of a debt service reserve
 23 fund?
 24 A Yes.
 25 Q Okay. At the time you drafted this Liberty

1 forbearance agreement, did you have an understanding
 2 that the Liberty offering had drawn down on its debt
 3 service reserve fund previously?
 4 A I would think so, yes, because I think the
 5 first line of defense in paying the bondholders would be
 6 the debt service reserve fund. The second line of
 7 defense would be this forbearance agreement, so it just
 8 makes sense.
 9 Q Do you know why you didn't reference that debt
 10 service reserve fund draw in the forbearance agreement
 11 you drafted?
 12 A This is the third time you've asked this
 13 question, I think.
 14 Q Well, it's a different forbearance agreement
 15 now.
 16 A Same answer.
 17 Q Okay. And what's that answer?
 18 A The debt service reserve fund in the -- the
 19 trust indenture speaks for itself. The actions of the
 20 trustees speak for themselves.
 21 Q All right. And it was your understanding the
 22 trustee was responsible for disclosing information about
 23 a debt service reserve fund draw?
 24 A Disclosing to whom?
 25 Q To bondholders.

1 A Yes, I think so. Yes.
 2 Q Okay. Did the borrower or Mr. Brogdon also
 3 have responsibility for that disclosure?
 4 A You would have to look at particularly the
 5 continuing agreement in the transcript for that answer
 6 because that's been kind of a fluid document over the
 7 years. In the 80s, I don't think we had a continuing
 8 disclosure agreement and I think it was in the 90s that
 9 that document came upon the scene.
 10 Q Okay. After July 18th, 2011, the date of this
 11 email in Exhibit 72, did you work as bond counsel for
 12 subsequent offerings involving Gordon Jensen Healthcare
 13 as the borrower?
 14 A I would have to check but Gordon Jensen was
 15 active, not very active at all in new issues after this
 16 and I would say in part because some of its issues were
 17 in trouble.
 18 Q Okay. What about the Bleckley-Cochran
 19 Development Authority offering in April of 2013, was
 20 that a Gordon Jensen Healthcare offering?
 21 A I would have to look at it.
 22 Q Okay. Chris Dooley, was that a Gordon Jensen
 23 Healthcare offering?
 24 A It might have been.
 25 Q Okay. The Medical Clinic Board of the City of

1 Mobile or Mobile III, was that a Gordon Jensen offering?

2 A You have all my opinions and those opinions
3 would say that very specifically.

4 Q Understood. I'm just trying to see if any of
5 these names refresh your recollection as to a subsequent
6 Gordon Jensen Healthcare offering.

7 A They don't.

8 Q Okay. Thomaston-Upson, does that refresh your
9 recollection as a subsequent Gordon Jensen Healthcare
10 offering?

11 A Well, I know all those bond issues. I just
12 don't recall who the borrowers were.

13 Q Okay. Okay. With respect to the offerings I
14 just read, do you have an understanding of whether
15 information about the Liberty forbearance was disclosed
16 in those official statements?

17 A I would have to look at them.

18 Q Okay. Just sitting here today you're not sure
19 one way or the other?

20 A No.

21 BY MR. TUTOR:

22 Q Mr. Miller, why didn't you send this draft
23 forbearance agreement to John Lynch and Robert Lawson?

24 A Well, because Lawson Financial was the
25 underwriter. Lawson Financial has an interest in

1 expected to be, and we have already drawn some down on
2 the debt service reserve fund and sorry, but those are
3 just the facts in life.

4 Q Do you recall any discussions with Mr. Lynch
5 or Mr. Lawson regarding the status of the Liberty
6 offering?

7 A Well, in the context of these forbearance
8 agreements, I had some contact with them maybe on the
9 phone beyond this email that I sent, this draft that I
10 sent.

11 MR. GREENWOOD: Let's go off the record at
12 12:36 p.m.

13 (Whereupon, at 12:36 p.m., a luncheon recess
14 was taken.)

15 AFTERNOON SESSION

16 MR. GREENWOOD: We're back on the record at
17 1:16 p.m.

18 There were no substantive conversations
19 between the SEC staff and Mr. Miller other than a
20 general discussion about the rates of return on the
21 Brogdon bond offerings. Mr. Miller, is that correct?

22 THE WITNESS: Rates of return and I would say
23 payments on those rates of return.

24 MR. GREENWOOD: Okay. Mr. Miller, I just want
25 to highlight an advisory I gave to you the beginning of

1 protecting its bondholders. Lawson has an ability to
2 sell un-rated bonds, which these are, and their business
3 is only as good as there satisfied customers. And so it
4 just seemed to me -- and Lawson is a party to this
5 document. For those reasons plus the fact that -- well,
6 those are the primary reasons. Lawson is looking out
7 for the interest of its -- of the bondholders to whom he
8 normally sells bonds.

9 Q Did you discuss this draft forbearance
10 agreement with anyone at Lawson Financial?

11 A I may have in telephone calls. I sent this to
12 them, right?

13 Q How would John Lynch or Robert Lawson be aware
14 of Liberty's debt service reserve fund draws?

15 A I'm just speculating, but they might get irate
16 phone calls from their bondholders.

17 Q How would bondholders be aware of debt service
18 reserve fund draws?

19 A Well, it would depend on whether those
20 bondholders are getting their normal payments. If they
21 are not getting their normal payments, then they call
22 the person who sold them their bonds and, what gives
23 here? Why aren't I being paid? At that point, the
24 underwriter would probably say, well, this project is
25 doing very well, the revenues aren't what they were

1 the testimony today which is you have the right to be
2 accompanied, represented, and advised by counsel. This
3 means you may have an attorney present so that your
4 attorney can advise you before, during, and after your
5 examination today. Do you understand that?

6 THE WITNESS: Yes.

7 (SEC Exhibit No. 264 was marked for
8 identification.)

9 MR. GREENWOOD: I'm showing the witness what
10 has just been marked as Exhibit 264. It's an email
11 chain with the subject line Liberty-response from Chris.
12 The last email of the chain is from Marrien Neilson to
13 Catherine Brannigan, Christopher Brogdon, and a Cc to
14 Chix Miller and Robert Lawson, and the last email in the
15 chain is dated October 19th, 2011. The document has no
16 Bates range but it's printed out on the letterhead or
17 with the header of Patricia Cooper.

18 BY MR. GREENWOOD:

19 Q Mr. Miller, is Ms. Cooper your assist?

20 A Yes.

21 Q Okay. And so does Exhibit 264 appear to be a
22 document that you produced to the SEC in connection with
23 this investigation?

24 A I think so.

25 Q Okay. Do you recognize Exhibit 264?

1 A Yes.

2 Q Is Exhibit 264 further discussion related to
3 the terms of the Liberty forbearance agreement?

4 A It appears to be, yes.

5 Q Okay. The top email in the chain is from
6 Marrien Neilson and she writes, "Rob is going to call
7 Chris and work this all out. Chris and/or Catherine,
8 can I get updated financials on the deals that are still
9 outstanding as of 9/30." Mr. Miller, do you have an
10 understanding of what Ms. Neilson is saying in this
11 email?

12 A I believe so, yes.

13 Q And what is that?

14 A That she wants to get an idea of the overall
15 landscape for the Brogdon deals.

16 Q And when you say "landscape," what are you
17 referring to?

18 A The financial condition that she refers to.

19 Q Updated financials in her email, do you see
20 that?

21 A Yes.

22 Q Did you have an understanding that a number
23 of the Brogdon offerings were missing financial
24 statements?

25 A Yes, I've heard that. Yes.

1 Q Okay. And for how long have you known that to
2 be an issue related to the Brogdon offerings?

3 A I think more so in the last several years than
4 prior.

5 Q And when you say the last several years, what
6 years are you referring to?

7 A Three or four or five years.

8 Q Okay. So would this email in October of 2011
9 be part of that period of time?

10 A Yes.

11 Q Okay. Did the lack of financial statements
12 affect a number of different Brogdon offerings?

13 A As far as I know, yes.

14 Q Okay. Did that raise any concerns to you
15 about the viability of these projects?

16 A Yes. It's not necessarily good news, but you
17 can have a ragingly successful project whose financial
18 statements have not been provided just because they
19 haven't gotten around to it.

20 Q Okay. Did you have an understanding that the
21 projects that were lacking financials were successful
22 projects involving Mr. Brogdon?

23 A Oh, I think, there are degrees of success and
24 failure and I'm sure there were some good ones and some
25 not so good and so forth.

1 (SEC Exhibit No. 265 was marked for
2 identification.)

3 MR. GREENWOOD: I'm showing the witness what
4 has just been marked as Exhibit 265. It's an email from
5 Gardnerforlaw@aol.com to Chix Miller and Greg Youra with
6 a Cc to AJcantone@cantone.com, subject line, Brogdon
7 transactions. The email is dated March 7th, 2012, and
8 has a Bates number of SEC-CANTONE-E-0019008.

9 Mr. Miller, just take a moment to review the
10 exhibit and let you know when you have.

11 THE WITNESS: Yes, I have read it.

12 BY MR. GREENWOOD:

13 Q Okay. Do you recognize Exhibit 265?

14 A Yes. It came from Michael Gardner.

15 Q Michael Gardner has the email address
16 Gardnerforlaw@aol.com.

17 A Yes. He is a usual suspect.

18 Q Okay. Do you remember receiving this email
19 back in March of 2012?

20 A I have a hazy recollection, yes.

21 Q Okay. Let's go through the email first and
22 let's talk about the recollection. The first paragraph
23 reads, "A potential catastrophe looms (no exaggeration).
24 A number of transactions in which Chris is involved are
25 in default – Columbia, South Carolina, with Cantone and

1 Dunwoody, Georgia, with JP Turner, both of which were
2 due on February 1. There may be others in which I am
3 not involved or about which I have no knowledge." Do
4 you understand what the catastrophe is that Mr. Gardner
5 is referring to in that first sentence?

6 A That there are a number of defaults that will
7 cause harm to the bondholders.

8 Q A number of defaults in Brogdon offerings?

9 A Yes. Although, I must say Columbia, South
10 Carolina, I don't think I had anything to do with.

11 Q Okay. So you're not recalling that as a
12 Brogdon offering you worked on?

13 A I have bad experiences with the state of South
14 Carolina. They have kind of a closed shop over there
15 and they have this control board that meets every
16 quarter. And on this control board are the Governor of
17 the state of Alabama -- or, South Carolina, and a lot of
18 other high ranking officials in the state. And in order
19 to get an allocation from them, you have to catch this
20 control board at the right time. And at that time, they
21 had this governor who lied about his mistress and the
22 hike he went on with her.

23 She's from South Carolina and so forth and so
24 on. And then the law firms there are very protective of
25 their turf so the end result is it's very hard to get an

1 allocation because you have to get this control board,
2 budget and control board. So the long and short of it
3 is I don't recall closing a Columbia, South Carolina,
4 deal nor a Dunwoody, Georgia, deal.

5 Q Okay. Do you have an understanding of why Mr.
6 Gardner was sending you this email about those two
7 transactions?

8 A Well, because I do know about Bibb County in
9 the second paragraph.

10 Q Okay. And we will get to that in a minute,
11 but as of March, 2012, do you recall whether you were in
12 the process of working on another Brogdon offering?

13 A Probably was.

14 Q Okay. Would it have been the City of
15 Springfield Ohio Eaglewood offering that closed in March
16 of that year?

17 A I wouldn't doubt that.

18 Q I apologize, the City of Springfield Eaglewood
19 offering that closed in April of that year?

20 A That's in Ohio, right?

21 Q Right.

22 A Yes.

23 Q Okay. So the two transactions that Mr.
24 Gardner refers to in the first two paragraphs, those are
25 not ones that you're familiar with?

1 right?

2 A Correct.

3 Q Okay. And so you believe the reference to
4 Bibb County in Exhibit 265 is a reference to the 2000
5 issue related to Bibb County?

6 A Yes, except that the underwriters there were
7 not Cantone -- or, the underwriter was not Cantone. I
8 think it was Bergen Capital. So, you see, up here he is
9 talking about Cantone, but with Bibb County I think he
10 should've been talking about Bergen Capital. But
11 Michael Gardner is very precise and I would be surprised
12 if he made a mistake because he makes mistakes very
13 infrequently.

14 Q Do you know whether Mr. Canton or any of his
15 clients were bondholders of the Bibb County offering
16 that was issued in 2000?

17 A Oh, that could be. Even though the
18 underwriter I think was Bergen, these underwriters --
19 there are very few underwriters of non-rated bonds and
20 they sometimes share, you know, they will be one million
21 dollars short and they need some help in selling some
22 bonds, and so I'm just speculating here but this kind of
23 thing happens. Bergen could have called Cantone and said
24 can you help out in which case a Cantone bondholder
25 could have purchased something underwritten by Bergen.

1 A Correct.

2 Q Okay. The next paragraph reads, "However, the
3 big one is Bibb County, Georgia. I have just been
4 advised by Cantone that the most recent interest payment
5 that was made has been or will be reversed and that
6 Cantone has been advised by a lawyer/Bibb County
7 bondholder that he believes Chris is running a Ponzi
8 scheme and that he intends to take the matter to FINRA
9 and the SEC." Let's take that paragraph in pieces. The
10 first sort of half of the paragraph relates to Bibb
11 County and an interest payment that is about to be
12 reversed. Do you see that?

13 A Yes.

14 Q Do you have a recollection of that issue
15 related to the bond offering?

16 A I'm trying to remember the name of that. Do
17 you have that list of 40 issues? There is a common
18 name. One of the problems with these bond issues can be
19 called by five or six particular bond issue can be
20 called by five or 6 different names and it's hard to
21 keep them straight because of that. Thank you. I think
22 he's talking about this 2000 issue which was a nursing
23 home in south Bibb County.

24 Q Okay. And to be clear, Mr. Miller, you are
25 referring to the appendix A in Exhibit 260, is that

1 That's possible.

2 Q Okay. Mr. Miller, do you recall an issue
3 related to the Bibb County offering from 2000 involving
4 a reversed interest payment in 2012?

5 A Well, I know there have been problems all
6 along with that issue and so I am not surprised.

7 Q Well, putting aside whether you're surprised
8 or not, do you recall an issue related to reverse
9 interest payments for that offering?

10 A This phraseology "reverse" is kind of
11 extraordinary because once it's been paid, it's paid.
12 You usually rely on good funds so reversing a payment, I
13 think, is very difficult to do. Where does he say --
14 where do you see "reversed"?

15 Q It is in the second paragraph on the second
16 line. And I'm just trying to see whether that refreshes
17 your recollection as to that issue.

18 A "That issue" meaning a reverse payment? Yes.

19 Q Okay. The second part of that paragraph
20 references the fact that a bondholder for Bibb County
21 believes that Chris or Mr. Brogdon is running a Ponzi
22 scheme and he intends to take that matter to FINRA and
23 the SEC. Do you see that?

24 A Yes.

25 Q Have you heard those types of allegations

1 before about Mr. Brogdon or his offerings?

2 A I have in the context of the Bond Buyer
3 article that was run about Chris Brogdon and here, but
4 very seldom other than those two places.

5 Q Okay. The Bond Buyer article that you're
6 referring to, was that a more recent article in the last
7 year or so?

8 A No. This is the one that came out about
9 September of last year.

10 Q Okay. So the -- so putting aside Exhibit 265
11 and the Bond Buyer article, you don't recall hearing
12 allegations about Mr. Brogdon running a Ponzi scheme
13 previously?

14 A No. I recall comments about using one bond
15 issue to help pay another, but not specifically the
16 phraseology "Ponzi scheme."

17 Q Okay. What is your understanding of a Ponzi
18 scheme?

19 A In my definition, a Ponzi scheme is named
20 after a person named Ponzi who had a business going. I
21 have forgotten what country, I don't think it's the
22 United States, in which he had a series of transactions,
23 the latest depending on former transactions so that
24 there's kind of a cross-pollination among the various
25 transactions in that some were used to prop up others.

1 It's a situation in which each transaction is not
2 allowed to succeed or fail on its own merits. And the
3 idea is that sooner or later, the string is going to run
4 out and those in the first sense of transactions are
5 going to be left holding the bag whereas those in the
6 later, not so much.

7 Q And have you -- based on the definition of a
8 Ponzi scheme you just provided, have you ever had
9 concerns that Mr. Brogdon was running a Ponzi scheme?

10 A No.

11 Q Okay. Have you ever heard -- putting aside
12 the phrase "Ponzi scheme," have you ever heard anyone
13 else refer to Mr. Brogdon's offerings as a house of
14 cards?

15 A Yes.

16 Q And who have you heard refer to his offerings
17 as a house of cards?

18 A I don't remember.

19 Q Okay. But you do have a recollection of
20 somebody using that phrase?

21 A It might have been a phrase similar to that
22 but the idea is the same.

23 Q Do you agree that Mr. Brogdon's offerings were
24 a house of cards?

25 A No, I do not.

1 Q What about the phrase robbing Peter to pay
2 Paul, have you heard that phrase before?

3 A I have heard that generally, not in this
4 context, though.

5 Q Okay. Do you have an understanding of what
6 that phrase means, generally?

7 A Yes.

8 Q Do you believe Mr. Brogdon's offerings were
9 robbing from Peter to pay Paul?

10 A From what I know, I think there was some of
11 that going on.

12 Q And why do you believe that?

13 A Well, I just heard that from a time on
14 occasion because no matter what business you're in,
15 you're going to have a good amount of transactions.
16 There are going to be good ones and bad ones and medium
17 ones and you want to try to keep everybody happy and
18 sometimes you succeed and sometimes you don't. And the
19 temptation is to rob Peter to pay Paul, but I would say
20 from what I know of Chris Brogdon's situation he wasn't
21 robbing Peter to pay Paul in the Ponzi scheme
22 vernacular.

23 I think he was using funds -- from what I'm
24 told. I really haven't gone in and drilled down to
25 specific deals. But from what I'm told, he might have

1 used a debt service reserve fund in one issue to pay
2 current principal and interest payments on another issue
3 expecting to replenish and that kind of thing. I have
4 heard that that kind of thing went on.

5 Q And when did you hear that?

6 A I don't know of a particular --

7 Q Is it within the last year or is it prior to
8 that?

9 A I would say some prior to that and in the last
10 year.

11 Q Okay. Focusing on the period prior to that,
12 prior to last year, who did you hear those types of
13 allegations from?

14 A I might have heard that from Ray DeRobbio, for
15 example. And bear in mind, Cantone is a competitor of
16 Lawson, was a competitor of Bergen Capital, and all
17 three of those, basically, wanted Chris Brogdon's
18 business and benefited from his business and so there's
19 a certain amount of striving among competitors and
20 puffing that went on among those and it's hard to tell
21 from time to time who was trying to do what to whom as
22 far as competitors go.

23 Q Did Mr. DeRobbio, was he consistent in his
24 allegations about Mr. Brogdon's use of debt service
25 reserve funds from one issue to pay principal on another

1 issue?

2 A I don't remember. He talked generally about

3 funds.

4 Q Okay. And so the record is clear, was Mr.

5 DeRobbio specific about the use of debt service reserve

6 funds or just funds from what offering, more generally?

7 A I think when you get into the phraseology

8 "general funds," it gets more serious because the other

9 funds, the bond fund, for example, I would be surprised

10 if a bond fund were invaded in one issue to pay another.

11 So I think if he used the term "funds," he was probably

12 thinking in his own mind debt service reserve fund.

13 Q Would it be appropriate to use debt service

14 reserve funds from offering A to pay principal to an

15 offering B?

16 A No.

17 Q Okay. Did you believe Mr. DeRobbio when he

18 made these allegations?

19 A Somewhat. Somewhat. But you have to take

20 into consideration the competition involved.

21 Q Understood. But what did you believe - I

22 guess I'm just trying to understand what you did believe

23 about those allegations.

24 A I believe in my mind I believed that Chris

25 Brogdon was trying to keep all of his bondholders as

1 current as he could.

2 Q Okay. Did you raise concerns about Mr.

3 DeRobbio's allegations with Mr. Brogdon or with anyone

4 else?

5 A I think I mentioned that to Chris Brogdon and

6 Greg Youra his lawyer.

7 Q Right. And was that in one conversations or a

8 separate - or in two conversations?

9 A If I had to guess, I would say five or six

10 over the years.

11 Q And five or six conversations during what

12 period of time?

13 A I don't know.

14 Q Are we talking about within the last five

15 years or prior to that?

16 A Certainly, within this last five years.

17 Probably not prior to that.

18 Q Okay. Do you recall any of those

19 conversations with specificity?

20 A I do not.

21 Q Okay. Do you recall generally what either Mr.

22 Brogdon's or Mr. Youra's reaction was when you raised

23 those concerns?

24 A I think generally, and this is just -- this is

25 pretty subjective, but Chris Brogdon would say something

1 along the lines of. Well, consider the source. And Greg

2 Youra, being his lawyer, might have said something

3 similar to that only not quite so accusative.

4 Q Okay. And so was it your impression that both

5 Mr. Brogdon and Mr. Youra were indicating to you that

6 those allegations were not true?

7 A Not as true as Ray DeRobbio might paint them.

8 Q Well, I guess I'm trying to understand whether

9 there was any - either Mr. Brogdon or Mr. Youra

10 acknowledged any sort of kernel of truth to those

11 allegations?

12 A I really don't remember.

13 Q Okay. Did you have a conversation with Mr.

14 Gardner after he wrote this email to you in Exhibit 265?

15 A I probably did.

16 Q Okay. Do you have a recollection of that

17 conversation?

18 A I do not.

19 Q Okay. Did you - did this email from Mr.

20 Gardner - well, strike that. You said Mr. Gardner is a

21 very detail oriented person during your testimony today,

22 right?

23 A Yes, especially with the English language. He

24 is very particular, as I am, with writing correctly,

25 verbs agreeing with subjects, predicates agreeing with

1 subjects, even more so than he is with numbers. Not

2 that he's not precise with numbers. All I know is that

3 he wields the English language better than the vast

4 majority of lawyers and people.

5 Q Did your receipt of Exhibit 265 cause you to

6 question whether it makes sense for you to continue to

7 do business with Chris Brogdon as bond counsel?

8 A Well, it's not a happy situation at all, but

9 I've learned as probably you all have that there are two

10 sides to every story. And when I see Ponzi scheme, then

11 I question the source because I don't believe that as

12 I've testified.

13 Q Did you recall speaking to Mr. Brogdon after

14 receiving this email from Mr. Gardner?

15 A No. Something this serious I probably would

16 have called Greg Youra instead of Chris Brogdon.

17 Q So do you have a recollection of speaking to

18 Mr. Youra after receiving Exhibit 265?

19 A I probably did. I don't have a specific

20 recollection.

21 Q But it sounds like regardless of the

22 conversations you had after receiving this email, you

23 were comfortable continuing to serve as bond counsel on

24 additional issues with Mr. Brogdon?

25 A Well, I wasn't entirely comfortable looking at

1 this, but this is not the gospel truth, is what I'm
2 saying. I think the allegation of the Ponzi scheme is
3 false.

4 Q And I'm just trying to understand what steps
5 you took to sort of kind of run that to ground and
6 understand that allegation.

7 Q Well, I probably called Greg Youra and asked,
8 what gives here, Greg. This looks pretty serious. So I
9 suspect we had a discussion about it.

10 BY MR. TUTOR:

11 Q Did you discuss this issue with anyone else
12 besides Mr. Brogdon or Mr. Youra?

13 A I don't remember.

14 Q You mentioned the impact of competition on Mr.
15 DeRobbio. Can you explain what you meant by that?

16 A Yes. Bergen Capital is an underwriter,
17 Cantone Research is an underwriter, Lawson Financial is
18 an underwriter. And they form a nucleus of underwriters
19 who sell un-rated bonds. And as I say, there aren't
20 many underwriters who do in the United States, as far as
21 I know. I would like to know some others, frankly,
22 because Jim Friar died and working capital was sold --

23 Q And so --

24 A Let me finish. They are all competing for a
25 limited number of bondholders and a limited number of

1 you saw in the formal order of investigation, this is
2 testimony that's being taken in connection with a
3 confidential non-public investigation by the SEC.
4 Obviously, you are aware of some of the action the SEC
5 has taken in this investigation already, but I think
6 that's all the information we can give you,
7 unfortunately. And I will note that the routine uses of
8 information that we went over in Exhibit 1, they do list
9 sort of the ways in which the SEC will use the
10 information provided to us.

11 THE WITNESS: Let me ask another question.
12 What are the chances that Ray DeRobbio will read this
13 deposition?

14 MR. GREENWOOD: Mr. Miller, I guess I really
15 can't comment on that.

16 THE WITNESS: Okay. I understand.

17 MR. GREENWOOD: I am showing the witness
18 what's been previously marked as Exhibit 163. It's a
19 document entitled Informational Notice to Bond Holders
20 Regarding Forbearance Agreement Regarding the City of
21 Scottsburg Indiana Health Care Facility revenue bonds
22 dated October 5th, 2012. I will represent this is
23 printed off of the EMMA website.

24 BY MR. GREENWOOD:

25 Q Mr. Miller, do you recognize Exhibit 163?

1 projects that lend themselves to unrated tax exempt bond
2 financing. And so from time to time each underwriter
3 wants to get the upper hand over the other; therein lies
4 the competition I'm talking about.

5 Q And how would this allegation give Mr.
6 DeRobbio the upper hand?

7 A Well, that's a good question. I don't know
8 that it necessarily gave him the upper hand. Ray
9 DeRobbio is just the reverse of Michael Gardner, the
10 absolute reverse. He is not precise. He is a
11 broad-brush person. He is a bond salesman. He doesn't
12 get involved in the details. I mean, I like Ray
13 DeRobbio, but he is cast in an entirely different mold
14 from the mold of Michael Gardner. And he sometimes
15 speaks before he thinks. And he just -- Jim Friar used
16 to control Ray DeRobbio to a great extent, calm down
17 Ray, oh, that's not right, Ray. Ray is a good bond
18 salesman, but he's not attune to precision.

19 MR. GREENWOOD: Okay. I will take that back.

20 THE WITNESS: Now, you ask me these questions
21 and where will my deposition go? I don't want to hurt
22 anybody here. I don't want them -- I mean, for example,
23 will Ray DeRobbio read this?

24 MR. GREENWOOD: You know, we can't really
25 represent to you how the transcript will be used. As

1 A I recognize the forbearance agreement beyond
2 the first page, but I don't necessarily recognize the
3 first page.

4 Q So let's look at the forbearance agreement
5 itself. Did you draft the forbearance agreement
6 attached to the first page?

7 A Yes, because that "three" is in my
8 handwriting.

9 Q Okay. And is this a forbearance agreement
10 regarding the City of Scottsburg Brogdon bond offering?

11 A Yes.

12 Q So this is another Brogdon bond offering for
13 which you drafted a forbearance agreement?

14 A Yes.

15 Q To your knowledge, was the debt service
16 reserve fund for the City of Scottsburg offering
17 depleted at the time that you drafted this forbearance
18 agreement?

19 A I don't know, but I suspect that it was
20 because as I said before, the sequence is use of the
21 debt service reserve fund and if that doesn't stop the
22 bleeding, then we have to resort to a forbearance
23 agreement.

24 BY MR. TUTOR:

25 Q Would there ever be an instance where you

1 would enter into -- where someone would enter into a
2 forbearance agreement without first depleting the debt
3 service reserve fund?

4 A Probably not, but let's just say you have a
5 debt service reserve fund with \$75,000 in it and it's
6 been invaded for \$60,000, \$15,000 being left as a
7 remainder. I could see how in that example that it would
8 go to a forbearance agreement because in than \$60,000 in
9 my example has not been replenished, then the
10 forbearance agreement would be probably the next step.

(SEC Exhibit No. 266 was marked for
12 identification.)

13 MR. GREENWOOD: I am showing the witness what
14 has been marked as Exhibit 266. It's an email from Pam
15 Lawson to R. Chix Miller with a Cc to Robert Lawson and
16 Launa Nanna. The subject line is Bleckley-Cochran and
17 Clayton Savannah. There is no Bates number but it
18 appears on the header of Patricia Cooper and I will
19 represent that this is a document produced by Mr. Miller
20 in connection with this investigation.

21 BY MR. GREENWOOD:

22 Q Mr. Miller, do you recognize Exhibit 266?

23 A Yes.

24 Q It's an email from Pam Lawson of Lawson
25 Financial, is that right?

1 A I think at least one of the Clayton issues.

2 Q Okay. Did he say anything else about the
3 nature of FINRA's investigation?

4 A Oh, I'm sure he did, but we didn't get down to
5 details.

6 Q Have you had any other discussion with Mr.
7 Lawson about a FINRA review or investigation of Lawson
8 Financial?

9 A Well, I read the Bond Buyer every day or I try
10 to read it every day, and an article came out in it
11 about three or four weeks ago that was not favorable to
12 him.

13 Q That was related to the Coleman indicator
14 offerings among others?

15 A Right.

16 Q Okay. Did you have a conversation with Mr.
17 Lawson about that?

18 A Yes. And I know all about those. I can go
19 into excruciating detail about those.

20 Q My question is really just what conversation
21 you had about that Bond Buyer article.

22 A Oh, I have not spoken to Rob about it. I'm
23 sure he's not happy about it. But I have spoken to
24 Scott Crowe, his lawyer, and I don't know that Scott
25 Crowe is representing him before FINRA, but generally

1 A Yes.

2 Q And Ms. Lawson is asking for copies of the
3 physical Bibles for two Brogdon bond offerings, is that
4 right?

5 A She means transcripts.

6 Q Those are the closing transcripts that you
7 were referring to earlier?

8 A Yes.

9 Q And she's asking you to send copies of those
10 to her, is that right?

11 A Yes.

12 Q The last two sentences of the email read, "We
13 have FINRA coming in next week and they want to see this
14 information. We can copy the Bible but it would be
15 easier if we could just copy a disk for them." Mr.
16 Miller, have you had discussions with Pam Lawson or
17 anyone else at Lawson Financial about a FINRA review of
18 Lawson Financial?

19 A Yes, particularly in the last year-and-a-half.

20 Q And what have those conversations been about?

21 A Rob Lawson said that he had to go up to, I
22 think, Denver -- does FINRA have an office in Denver? I
23 suspect they do -- to give information about various
24 bond issues.

25 Q And which bond issues were those?

1 speaking, I got the impression from Scott Crowe that
2 there were a lot of allegations in there that just
3 aren't correct, factual, accurate.

4 Q Okay. Have you had any discussions with Mr.
5 Lawson or anyone else at Lawson Financial about a FINRA
6 investigation putting aside the conversations you just
7 spoke about?

8 A No. I think that would be it.

(SEC Exhibit No. 267 was marked for
10 identification.)

11 MR. GREENWOOD: Mr. Miller, I'm showing you
12 what has just been marked as Exhibit 267. It is a
13 document with no Bates number entitled, Forbearance
14 Agreement, and references the Toombs offering. Do you
15 recognize Exhibit 267?

16 A Yes.

17 Q Is Exhibit 267 a copy of a forbearance
18 agreement that you drafted with respect to the Toombs
19 Brogdon bond offering?

20 A Yes.

21 Q At the time you drafted this agreement, which
22 appears to have been executed on or about May 30th,
23 2014, did you have an understanding as to the status of
24 the debt service reserve fund for the Toombs offering?

25 A I didn't ask specifically for the reasons I've

1 stated earlier.

2 **Q Right. So this is, again, another example of**
3 **a forbearance agreement that you would assume had drawn**
4 **down on a debt service reserve fund because, otherwise,**
5 **no such agreement would be needed?**

6 **A** It isn't quite that simple, but that's the
7 gist of it.

8 **Q And I think I understand your explanation of**
9 **the sequence of events. I'm just trying to understand**
10 **whether you recall anything about the debt service**
11 **reserve fund specifically for the Toombs offering at**
12 **this time?**

13 **A** I do not.

14 MR. GREENWOOD: Okay.

15 (SEC Exhibit No. 268 was marked for
16 identification.)

17 MR. GREENWOOD: I'm showing the witness what
18 has just been marked as Exhibit 268. It's an email the
19 last of which is from Robert Lawson to Chix Miller with
20 the subject line, FWD: BOK Notices, dated August 28th,
21 2015. Bates range is SEC-LAWSON-E-0000864 through 868.

22 BY MR. GREENWOOD:

23 **Q Mr. Miller, do you recognize Exhibit 268?**

24 **A** Yes.

25 **Q Is this an email that attaches to EMMA notices**

1 projects succeed and sometimes they don't. So I hate to
2 see this kind of thing because I like to see the bond
3 holders happy.

4 **Q Did you have an understanding about whether**
5 **this EMMA notice regarding the debt service reserve fund**
6 **deficiency for the Bleckley-Cochran offering was the**
7 **first disclosure of that information publicly?**

8 **A** I do not.

9 **Q Did you have any discussions with Mr. Brogdon**
10 **about these notices that were published with the Bank of**
11 **Oklahoma?**

12 **A** Oh, I might have along the lines of, Chris,
13 can you straighten this out, do you have plans that can
14 shore up Bleckley Cochran, that kind of thing.

15 **Q Do you recall what his response was?**

16 **A** It was probably we're working on it, we will
17 do the best we can, so forth.

18 **Q Okay. The next notice relates to the Crisp-**
19 **Dooley offering, is that right?**

20 **A** Yes.

21 **Q And this notice also references a debt service**
22 **reserve deficiency of more than \$270,000. Do you see**
23 **that?**

24 **A** Yes.

25 **Q Did you have any knowledge of that debt**

1 filed by the Bank of Oklahoma regarding Brogdon bond
2 offerings?

3 **A** Yes.

4 **Q The first EMMA notice which is on page SEC-**
5 **LAWSON-E-0000866 is for the Bleckley offering. Do you**
6 **see that?**

7 **A** Yes.

8 **Q The middle paragraph of that notice states,**
9 **"One or more defaults have occurred under the trust**
10 **indenture dated as of April 1, 2013, in connection with**
11 **the bonds particularly: A, monthly payments toward the**
12 **debt service reserve deficiency of \$240,535.62 and the**
13 **ad valorem taxes have not been made to the trustee."**
14 **Mr. Miller, was that information about the debt service**
15 **reserve deficiency new information to you as of the day**
16 **of these notices?**

17 **A** I think so, yes.

18 **Q Okay. And why do you think so?**

19 **A** Well, I just don't recall having spoken with
20 anybody about it or having gotten any notice from anyone
21 about it earlier.

22 **Q Okay. Is that information you would have**
23 **liked to have known earlier?**

24 **A** Well, once I close a bond issue and send out
25 the transcripts, I move on to other things and sometimes

1 service reserve funds deficiency prior to receiving
2 these notices?

3 **A** I don't think so, no.

4 **Q Okay. But it looks like both the Crisp-Dooley**
5 **and the Bleckley-Cochran offerings related to Gordon**
6 **Jensen Healthcare, do you see that?**

7 **A** Yes.

8 **Q Okay. Were those also offerings that you**
9 **worked on as bond counsel?**

10 **A** Yes.

11 **Q The next notice relates to Liberty, do you see**
12 **that?**

13 **A** Yes.

14 **Q And there's a reference here in the Liberty**
15 **notice to a debt service reserve deficiency of \$200,000,**
16 **do you see that?**

17 **A** Yes.

18 **Q Were you aware of that debt service reserve**
19 **deficiency prior to these notices?**

20 **A** Well, Liberty is one that we had several
21 forbearance agreements for so this comes as no surprise
22 to me for Liberty. As I recall, it came as a surprise
23 to me for the first two because they had just closed
24 fairly recently, 2013. But Liberty is a really old bond
25 issue, 1992.

1 Q Right. I think you testified earlier that you
2 recall conversations with Ms. Neilson about the debt
3 service reserve fund for the Liberty offering?

4 A Probably.

5 Q Okay. Do you know whether this notice
6 regarding the Liberty offering was the first time that
7 the debt service reserve fund deficiency of \$200,000 was
8 specifically referenced?

9 A I do not.

10 MR. GREENWOOD: Okay.

11 BY MR. TUTOR:

12 Q Do you recall any conversations with Robert
13 Lawson regarding these notices from the Bank of
14 Oklahoma?

15 A Maybe in the context of the forbearance
16 agreement for Liberty. I don't recall doing a
17 forbearance agreement for either Bleckley or Dooley, but
18 for Liberty we have had a series of forbearance
19 agreements because they really shouldn't run longer than
20 two years.

21 Q Right. I guess the Liberty forbearance
22 agreement I think we looked at was several years
23 earlier. Do you recall having conversations with Robert
24 Lawson about these notices issued by the Bank of
25 Oklahoma?

1 that accurate?

2 A Yes. The years fly by. I had forgotten Leah
3 Davis. She was not my secretary very often -- or, very
4 long. Lisa Meeks I had for ten years and Angie Rawlins
5 for 15 years and my current secretary for four or five
6 years, which is the norm, really, and not the exception.
7 She was a short-term person.

8 Q Okay. I was just trying to understand why you
9 had that reaction, whether it was something of substance
10 or --

11 A No. It had to do with seeing the name Leah
12 Davis.

13 Q Does Exhibit 269 refresh your recollection
14 about -- well, strike that. Do you know why you sent
15 that or had Ms. Davis send a copy of an underwriter's
16 counsel opinion to John Lynch?

17 A Well, probably the way it worked was I called
18 John Lynch and said, John, I need an opinion from you as
19 underwriter's counsel. And he might have said, well,
20 what in particular kind of opinion do you need? And so
21 I probably sent him this one as a guide.

22 Q Okay. Was this the first -- well, strike
23 that. Were you sending Exhibit 269 to John Lynch in
24 connection with a Brogdon bond offering?

25 A Yes.

1 A I do not.

2 (SEC Exhibit No. 269 was marked for
3 identification.)

4 MR. GREENWOOD: I'm showing the witness what
5 has just been marked as Exhibit 269. It's an email from
6 Leah Davis or Lee Davis to John T. Lynch, subject line,
7 Opinion, dated June 22nd, 2010. Bates range
8 LAWSON(20140389708)_006422 through 6373.

9 BY MR. GREENWOOD:

10 Q Mr. Miller, do you recognize Exhibit Number
11 269?

12 A Yes.

13 Q And what is it?

14 A It's an email from Leah Davis who used to be
15 in our firm to John Lynch dated June 22nd, 2010. to John
16 Lynch with an opinion attached.

17 Q Okay. And what kind of opinion is attached?

18 A I would call this an underwriter's counsel
19 opinion.

20 Q Okay. And was this an opinion that you asked
21 Ms. Davis to transmit to Mr. Lynch?

22 A I believe so. What she said is probably
23 accurate.

24 Q Okay. When I handed Exhibit 269 to you and
25 you reviewed it, I think you chuckled a little bit. Was

1 Q And which offering is that?

2 A Whoever issue, that's the one I mentioned.
3 The 40-year county attorney didn't know about the
4 Medical Clinic Board in the City of Hoover which is
5 where the SEC holds its press conferences which was
6 really -- I spent a lot of time and effort finding that
7 Medical Clinic Board, no help from the county attorney.

8 Q Okay. Do you know whether this was the first
9 offering the John Lynch worked on related to Christopher
10 Brogdon?

11 A I do not. I wouldn't be surprised, but 2010,
12 six years ago, I suspect that he worked on -- he was Rob
13 Lawson's lawyer for a good long time, I think, so I
14 would say prior to this he also represented him.

15 Q Okay. Are there particular issuances prior to
16 this issuance you can recall John Lynch working on?

17 A I don't remember.

18 Q Okay. Taking a look at the opinion itself and
19 in particularly the second page of the opinion, would
20 you characterize this underwriter's counsel opinion as a
21 '33 and '34 Act or Rule 10b-5 opinion?

22 A I would say '33 Act. You have to look at it
23 carefully to see if there is any 10b-5 language in it.

24 Q So referring to page two, the fifth line from
25 the top, two thirds of the way across the page the

1 statement starts, "On the basis of the information made
2 available to me in the course of the foregoing (but
3 without having undertaken to determine or verify
4 independently or assuming any responsibility for the
5 accuracy and completeness or fairness of any of the
6 statements contained in the official statement) nothing
7 has come to my attention that causes me to believe the
8 official statement as of its date contained any untrue
9 statement of a material fact or admitted to stated
10 material fact necessary to make the statements therein
11 in light of the circumstances under which they were
12 made, not misleading, it being understood by you that I
13 express no view herein with respect to any financial and
14 statistical data, forecast, projections, estimate,
15 assumptions, expressions of opinions set forth in the
16 official statement or with respect to the appendixes
17 thereto."

18 **Mr. Miller, is this an example of sort of Rule
19 10b-5 type language in underwriter's counsel opinion?**

20 **A Yes.**

21 **Q Okay. And at the bottom it has a signature
22 line for John T. Lynch, Jr., Esquire. Do you see that?**

23 **A Yes.**

24 **Q At the time that you provided Mr. Lynch this
25 opinion, what did you know about Mr. Lynch's legal**

1 **background?**

2 **A Well, I can't say in 2010 but in various
3 closing dinners, I had conversations and I think he
4 graduated from a Philadelphia school. LaSalle, maybe,
5 and I think he has good credentials, to be sure.**

6 **Q And what do you mean by "good credentials"?**

7 **A Well, I mean, he went to good schools and as
8 far as I knew at that time, he was okay as far as
9 reliability.**

10 **Q Okay. Did you know whether or not Mr. Lynch
11 had done any legal work after law school?**

12 **A Oh, no, I don't. I just assumed he did.**

13 **Q Okay. Did he tell you he had?**

14 **A I guess I inferred from Rob Lawson relying on
15 him that Rob Lawson checked all of those things out
16 because I trusted and trust Rob Lawson's judgment and I
17 wouldn't think that Rob Lawson would hire someone he
18 didn't have confidence in. But Rob Lawson can tell you
19 to this day that in the last two or three years he lost
20 confidence to a great extent in John Lynch and remember
21 I testified earlier that the reason -- the primary
22 reason why Michael Gardner was brought on was because
23 John Lynch had become too slow in generating POSs,
24 particularly, the first draft which is the hardest thing
25 to produce whereas Michael Gardner is very adept at it.**

1 **Q Okay. So did Robert Lawson convey to you that
2 Mr. Lynch was going be serving as an attorney on this
3 particular offering?**

4 **A Yes. That's part and parcel of developing a
5 distribution list.**

6 **Q Okay. Have you ever -- have you subsequently
7 come to learn any more information about John Lynch's
8 legal credentials?**

9 **A No.**

10 **Q Okay. Did Mr. Lynch ever tell you that he was
11 an active member of any state bar?**

12 **A No. I guess I just assumed he was. Are you
13 telling me he wasn't?**

14 **Q Just asking what you -- what Mr. Lynch told
15 you.**

16 **A Boy, I would be very surprised if he weren't.**

17 **Q And why would you be surprised?**

18 **A Well, people who practice in this area are
19 pretty high-level people, as a general rule. I wouldn't
20 think a self-respecting lawyer would be giving opinions
21 if he weren't a member of a state bar.**

22 **Q It sounds like that's not a topic you
23 discussed with Mr. Lynch, is that right?**

24 **A No. That's something that would be a given.**

25 **Q Okay. And I take it you didn't have that**

1 **conversation with Mr. Lawson either?**

2 **A No. That's a little bit disturbing to me what
3 you are angling at there.**

4 **BY MR. TUTOR:**

5 **Q What did you understand Mr. Lynch's
6 affiliation to be?**

7 **A Well, I thought for most of the time we closed
8 deals with him that it was the lawyer that represented
9 Lawson Financial as underwriter's counsel. But then I
10 think Chris Brogdon told me that or he thought he was
11 some kind of a relative. And I never really dived into
12 that.**

13 **BY MR. GREENWOOD:**

14 **Q A relative of whom?**

15 **A Somehow affiliated with Rob Lawson. So I
16 don't know, is the short answer.**

17 **BY MR. TUTOR:**

18 **Q Did you understand him to be an independent
19 practitioner or in-house with Mr. Lawson?**

20 **A He was kind of a hybrid, I would say, from
21 what I knew.**

22 **MR. GREENWOOD: Let's go off the record at
23 2:16 p.m.**

24 **(A brief recess was taken.)**

25 **MR. GREENWOOD: We are back on the record at**

1 2:21 p.m.

2 There were no substance conversations between
3 the SEC staff and Mr. Miller.

4 Mr. Miller, is that correct?

5 THE WITNESS: Yes.

6 (SEC Exhibit No. 270 was marked for
7 identification.

8 MR. GREENWOOD: I'm showing the witness what
9 has just been marked as Exhibit 270. It is a letter
10 dated April 30, 2013, on Sell and Melton stationery.
11 Bates range is SEC-CANTONE-029455 through 29460.

12 BY MR. GREENWOOD:

13 Q Mr. Miller, do you recognize Exhibit 270?

14 A Yes.

15 Q Is Exhibit 270 a copy of a bond reference
16 opinion that you rendered in the Bleckley-Cochran
17 Brogdon bond offering?

18 A Yes.

19 Q Is that your signature on the last page?

20 A Yes.

21 Q Can you describe sort of your process when it
22 comes to drafting a bond counsel opinion? I am focused
23 specifically on the Brogdon offerings.

24 A Well, the process remains the same whether
25 they are Brogdon or non-Brogdon.

1 opinions?

2 A Not -- no, I don't think so.

3 Q Okay. Looking at the first page of Exhibit
4 270, the very last line on that page says, "We have
5 reviewed and examined the following documents," and then
6 there's a long list of documents on the next page. Do
7 you see that?

8 A Yes.

9 Q Subsection F refers to bond purchase
10 agreement. Do you see that?

11 A Yes.

12 Q Who drafts the bond purchase agreement, in
13 particular, in a Brogdon offering?

14 A Usually, underwriter's counsel or disclosure
15 counsel. And, here again, Michael Gardner is generally
16 more adept at that than John Lynch was, for example, and
17 Lawson is the underwriter.

18 Q Okay. Have you ever drafted a bond purchase
19 agreement for a Brogdon offering?

20 A Well, we go back to 1984 and 1985 and I
21 suspect maybe in the 80s I might have. Bond purchase
22 agreements have become more and more complex over the
23 years and more and more important. And as they have, I
24 have relied upon underwriter's counsel or disclosure
25 counsel to draw them because I think generally speaking

1 Q I understand.

2 A At first I look at the general nature of the
3 deal, is it manufacturing or 501c-3 or low-income
4 housing or airports in nature because different sections
5 of the internal revenue code apply depending on what
6 kind of issue it is. And then I go to the most recent
7 opinion I have rendered for that kind of project and
8 update it and put in the right parties and look at the
9 tax section so that it mirrors what is in the OS and POS
10 so that somebody reading either my opinion or the OS
11 well get the same phraseology.

12 Q And what's the opinion of a bond counsel
13 opinion in a conduit municipal financing like this one,
14 for instance?

15 A Well, the bondholders can rely on my opinion
16 that the interest they receive on the bond is tax
17 exempt. Now, usually, we have a taxable tale as we do
18 here which indicates that the main series, \$5,060,000 in
19 this case, was a tax-exempt series. The series B, that
20 was taxable and series C was taxable. So this is
21 something that the bondholders can rely on if the IRS
22 were to challenge the interest they received as not
23 being tax-exempt.

24 Q Okay. And as a general matter, do you include
25 Rule 10b-5 type language in your bond counsel's

1 in the profession, that's a document that's an
2 underwriter document. It's one that the underwriter
3 signs, for example.

4 Q Okay. Is the bond purchase agreement a
5 document that you nevertheless review and comment on as
6 appropriate in a Brogdon offering?

7 A Yes.

8 Q The next listed document is the official
9 statement. Do you see that?

10 A Yes.

11 Q And for what purpose are you reviewing and
12 examining the official statement in connection with the
13 bond counsel opinion?

14 A Well, so often a bond counsel is looked at as
15 the quarterback of a transaction, and I don't want to be
16 put in the position of having to tell somebody I didn't
17 look at the official statement. I mean, it's just good
18 practice. I don't want to have any surprises. And I
19 look for things in the official statement that maybe
20 cannot be supported or can be supported, the idea being
21 that bondholders need to be given reasonable notice of
22 what it is they are buying including the risk of loss,
23 which are substantial particularly with un-rated bonds.

24 Then I also look for the dates and the players
25 and the right naming of the parties. So often people

1 want to take shorthands and not use the correct name and
2 punctuation of an entity and it doesn't match up with
3 Secretary of State's records and that kind of thing.

4 MR. GREENWOOD: Okay.

5 (SEC Exhibit No. 271 was marked for
6 identification.)

7 MR. GREENWOOD: I am showing the witness what
8 has just been marked as Exhibit 271 which is a bond
9 purchase agreement for the Bleckley-Cochran offering
10 dated April 23rd, 2013, Bates range SEC-CANTONE-028960
11 through 28980.

12 BY MR. GREENWOOD:

13 Q Mr. Miller, do you recognize Exhibit 271?

14 A Yes.

15 Q Does this appear to be the bond purchase
16 agreement for the Bleckley-Cochran offering?

17 A Yes. And I will say again the underwriter
18 here is Lawson Financial and yet all of this is dubbed
19 "Cantone." If someone was looking at this, he would
20 think, well, Cantone Research must have been the
21 underwriter. Cantone Research was not.

22 Q The reference to Cantone that you are
23 referring to is in the Bates numbering at the end of the
24 document?

25 A Right.

1 Q The third line of the document itself
2 references Lawson Financial, right?

3 A Right.

4 Q Okay. Turn to page seven of Exhibit 271.
5 It's a section entitled, Conditions of Purchase.

6 A Yes.

7 Q Do you have an understanding of what this
8 section describes?

9 A Yes. The purchase of these bonds is
10 conditioned upon these various conditions preceding.

11 Q Okay. Subsection C on that page says, "At or
12 prior to the closing date, the underwriter shall have
13 received the following documents," and then the first
14 two documents appear to be references to opinions of
15 bond counsel, do you see that?

16 A Yes.

17 Q The first is the approving opinion of Sell and
18 Melton, LLP; do you see that?

19 A Yes.

20 Q And is that the opinion that we just looked at
21 in the prior exhibit?

22 A I think so, yes.

23 Q Okay. The next subsection refers to the
24 supplemental opinion of bond counsel addressed to the
25 issuer and bond counsel. Do you see that?

1 A Yes.

2 Q Do you have an understanding of what that
3 refers to?

4 A Yes. I think it has to do with accuracy of
5 the OS at the time of closing, but I'm not sure about
6 that.

7 Q So is that -- do you recall providing a
8 supplemental opinion related to the Bleckley-Cochran
9 offering related to the accuracy of the official
10 statement at the time of closing?

11 A Well, I remember doing a few supplemental
12 opinions and we discussed that earlier. But as to which
13 particular issues I actually gave on, I'm fuzzy on.

14 Q Do you believe this to be a reference to such
15 a supplemental opinion?

16 A Yes, I think so.

17 Q Okay. Are supplemental opinions such as these
18 typically included as part of the closing transcript?

19 A Sometimes.

20 Q Okay. Do you have reason to believe it wasn't
21 included as part of the closing transcript for this
22 offering?

23 A You would have to look at the transcript. The
24 supplemental opinion is much shorter and much less
25 comprehensive than the basic opinion.

1 Q Okay. We will look at the listing from the
2 transcript in a minute, but is this refreshing your
3 recollection that you may have provided some opinions on
4 the accuracy of official statements for Brogdon
5 offerings?

6 A Yes.

7 Q Okay. Do you remember how many offerings you
8 provided that opinion for?

9 A If I had to guess, I would say five or six.

10 Q Okay. And why did you provide that type of
11 opinion? Was it an opinion that someone requested of
12 you?

13 A Someone on the distribution list must have
14 insisted upon it.

15 Q With respect to the Bleckley offering, do you
16 have a recollection of who requested that you provide
17 the supplemental opinion?

18 A It might have been Michael Gardner.

19 Q And why do you say Michael Gardner?

20 A Well, just because he and I usually work
21 pretty closely together and we -- he and I get into the
22 details of things including documents. And if I'm right
23 in saying it has -- the supplemental opinion has to do
24 with the final accuracy, then that would be something
25 that he would be interested in having.

1 Q Do you have an understanding of why Michael
 2 Gardner did not provide that opinion?
 3 A Well, because it is supplemental to my
 4 opinion, so he wouldn't supplement my opinion.
 5 Q But he didn't provide any opinion, right?
 6 A It depends on whether he was underwriter
 7 counsel or disclosure counsel. If he's underwriter's
 8 counseling, he does provide an opinion.
 9 Q Okay. If he was last disclosure counsel,
 10 though, he would not --
 11 A Probably not.
 12 Q -- he providing an opinion, right?
 13 A Probably not. But let me just say on his
 14 behalf it didn't matter to him. He would produce the
 15 same quality work regardless of whether he gave an
 16 opinion or not.
 17 Q Right. I'm just trying to understand why for
 18 this offering you provided this type of opinion.
 19 A I don't know the answer to that.
 20 MR. GREENWOOD: Okay. Okay.
 21 I am showing the witness what has previously
 22 been marked as Exhibit 37 which is the official
 23 statement for the Bleckley-Cochran offering dated April
 24 30th, 2013. I will represent that this document was
 25 printed off of EMMA.

1 BY MR. GREENWOOD:
 2 Q Mr. Miller, does this appear to be the
 3 official statement of the Bleckley-Cochran offering?
 4 A Yes.
 5 Q Did you review this official statement in your
 6 connection with the preparation of your bond counsel
 7 opinion?
 8 A Yes.
 9 Q Sitting here today, do you have any concerns
 10 about the accuracy of the official statement?
 11 A Well, I always have a concern. You know, it's
 12 something we all strive to have as a good document.
 13 Q Let's go to page three.
 14 A Is this Roman numeral three?
 15 Q Page three. The borrower is listed as Gordon
 16 Jensen Healthcare. Do you see that?
 17 A All right. I am on page three.
 18 Q And do you see that the borrower is listed as
 19 Gordon Jensen Healthcare?
 20 A Yes.
 21 Q Is that an entity that's affiliation with Mr.
 22 Brogdon in some way?
 23 A Yes. I'm not exactly sure in what way. That
 24 entity goes back a long time and I remember the first or
 25 second issue we did when it was called Gordon Jensen

1 Evangelistic Association. There were three principals
 2 involved and the luminary of the three was a person
 3 named Jim Sylvester. He was easily the best one of the
 4 bunch of the three and he died at age 38. I remember
 5 that because it was such a shocking thing that the best
 6 of the three pillars that the company was built on died
 7 at age of 38 and they depended on him for all kinds of
 8 things. And the business went south as soon as he died
 9 and it's instructive as to how much one person can mean
 10 to an organization.
 11 Q Do you know who controlled the bank accounts
 12 of Gordon Jensen Healthcare?
 13 A I do not.
 14 Q Okay. Was it Chris Brogdon?
 15 A Well, it might have been Rob Lancaster.
 16 Q Okay. Rob Lancaster is an accountant who
 17 works for Chris Brogdon?
 18 A Yes. I'm just guessing, but I think that's
 19 probably right.
 20 Q Okay. On the next page, there's a section
 21 entitled The Management Company. Do you see that?
 22 A Page four?
 23 Q Yes.
 24 A Yes.
 25 Q And the management company is listed as Beacon

1 Health Management, LLC. Do you see that?
 2 A Yes.
 3 Q And what do you know about Beacon Health
 4 Management?
 5 A Well, I don't think they were a manager of
 6 many of these projects because that entity is not a
 7 usual suspect.
 8 Q Okay. That's not a Brogdon entity, to your
 9 knowledge?
 10 A Not that I know of. It's a Florida limited
 11 liability company which leads me to believe that it's
 12 someone that's basically unrelated to Chris Brogdon.
 13 Q Right. Are you familiar with Saint Simons
 14 Healthcare?
 15 A Yes.
 16 Q And Saint Simons Healthcare, is that a
 17 management company affiliated with Mr. Brogdon?
 18 A Yes. And they are, after a fashion, a usual
 19 suspect.
 20 Q Okay. Let's turn to page 13 to the Plan of
 21 Financing. The Plan of Financing lists several uses of
 22 funds. Do you see that?
 23 A Yes.
 24 Q The third line item down is for working
 25 capital.

1 A Yes.

2 Q It's for approximately \$300,000?

3 A Yes.

4 Q Such as – does Plan of Financing refresh your
5 recollection that there was a working capital piece of
6 this Bleckley-Cochran offering?

7 A Yes, and there generally is. I don't have a
8 business degree, but I have read more than once that
9 maybe the number one reason why companies fail is for
10 lack of working capital.

11 Q So where is that working capital supposed to
12 go, in particular, in an offering like this?

13 A To help operate the business in fair weather
14 and foul and pay the employees operation expenses
15 especially during the start up.

16 Q Okay. Is it supposed to go to the management
17 company that is running the facility?

18 A I would say generally speaking, yes, because
19 management company's responsible for those things I just
20 mentioned.

21 MR. GREENWOOD: Okay. Just put that to the
22 side but hold onto it.

23 (SEC Exhibit No. 272 was marked for
24 identification.)

25 MR. GREENWOOD: I'm showing the witness what

1 has just been marked as Exhibit 272. It's an excerpt
2 from the closing transcript for the Bleckley-Cochran
3 offering which contains the closing documents index
4 which is Bates number SEC-CANTONE-028956 through 28958,
5 and then followed by tab 28 which is the requisition
6 number one and associated documents which is Bates
7 numbers SEC- CANTONE-029473 through 029499.

8 THE WITNESS: Okay.

9 BY MR. GREENWOOD:

10 Q Mr. Miller, do you recognize Exhibit 272?

11 A Yes.

12 Q Is this a copy of the closing index that you
13 prepared in connection with the Bleckley-Cochran
14 offering?

15 A It appears to be, yes.

16 Q It is followed by the requisition and
17 certification for the requisition number one?

18 A Yes.

19 Q Looking first at the index in the section on
20 illegal opinions, it appears that there is an opinion, a
21 single opinion by bond counsel listed. Do you see that?

22 A Yes.

23 Q Does it appear that the supplemental opinion
24 that you rendered in connection with the
25 Bleckley-Cochran offering is listed on the closing

1 index?

2 A No, except that it doesn't give a date and I
3 don't have the transcript in front of me. It's possible
4 that a supplemental opinion is right there with the
5 basic opinion.

6 Q Okay. I'm going to ask that --

7 A But let me just say the date of my bond
8 opinion is always the date of issuance of the bonds.

9 Q Okay. And so what's the date of your
10 supplemental opinion related to the official statement?

11 A It's probably the date of issuance also except
12 that the basic bond opinion is drafted ahead of time and
13 even though, for example, the pre-closing might have
14 been April 22nd, for example, and the closing April
15 24th, my opinion would have been provided on the 22nd
16 but dated the 24th. And then the supplemental opinion
17 would be prepared and signed later and that would be
18 probably the date of issuance, again, the 24th. It's
19 just the basic opinion is prepared and signed first.

20 Q Understood. I guess I'm just trying to
21 understand whether there's any notation in the closing
22 index that refers to your supplemental opinion. I will
23 represent that I didn't see your supplemental opinion
24 in, you know, tab 24 related to the bond counsel's
25 opinion.

1 A So in the transcript itself you saw one
2 opinion and that's the basic opinion?

3 Q That's correct. That's the one we just looked
4 at.

5 A Okay. Then it might be in the file. It might
6 never have been done.

7 Q It's possible you never issued the
8 supplemental opinion referenced in the bond purchase
9 agreement?

10 A It's possible.

11 Q And how is that possible?

12 A Oversight. It's not generally thought of as
13 something critical. The basic opinion is because it's
14 that basic opinion that the bondholders can rely on for
15 their tax-exempt interest.

16 Q Okay. Let's go to the following page, the
17 requisition number one. Is that your handwriting on
18 requisition number one?

19 A Yes.

20 Q And is it the case that requisition number one
21 is the requisition that relates to the disbursement of
22 funds at closing?

23 A Yes. There is a requisition for the Series A
24 bonds and then one for the Series B bonds.

25 Q So let's look first at the Series A bonds on

1 the page ending in 24976.
 2 A Yes.
 3 Q And there's a section on working capital, a
 4 little more than \$220,000.
 5 A Yes.
 6 Q And that's -- below the working capital line
 7 item, there's a reference to Gordon Jensen Healthcare
 8 Association. Do you see that?
 9 A Yes.
 10 Q And why is that included there?
 11 A Because that money is sent to Gordon Jensen
 12 for working capital purposes.
 13 Q So it's your understanding the money should be
 14 going to Gordon Jensen for working capital?
 15 A Yes. In some cases, it's deposited with the
 16 trustee and requisition from the trustee. But in this
 17 case it looks to me as if it were wired directly to
 18 Gordon Jensen.
 19 Q Was it the practice for the Brogdon offerings
 20 that working capital be wired directly to an entity at
 21 the time of closing?
 22 A Yes, especially in later bond issues. From
 23 time to time, the working capital is deposited with the
 24 trustee and requisition from the trustee, but especially
 25 in later bond issues it was sent straight to the

1 borrower. I think it is fair to say for practicality
 2 purposes, you know, you don't know what needs -- you
 3 know, sometimes needs arise on the spur of the moment
 4 and the trustee is out and you have to make payroll.
 5 And when you have to go through a cumbersome requisition
 6 process, that can really cause problems.
 7 Q Whose idea was it to ensure that working
 8 capital is wired directly to or sent directly to the
 9 borrower for the Brogdon offerings?
 10 A Well, I think that was an understanding
 11 between the borrower and the trustee.
 12 Q And I'm just trying to understand how you knew
 13 that the money was going directly to the borrower when
 14 you prepared your disbursement schedule?
 15 A Well, I asked the trustee and I got wiring
 16 instructions from the borrower and so I expect -- aren't
 17 there wiring instructions here?
 18 Q Yeah. We'll look at them in a second. So the
 19 \$202,850, that's part of the working capital
 20 distribution, is that right?
 21 A Well, there is an art in allocating monies
 22 there in that there are lots of internal revenue code
 23 requirements and bond lawyers know about these. For
 24 example, the two percent limit on cost of issuance is
 25 something that we are always cognizant of if for no

1 other reason than that that's an easy thing for the IRS
 2 to find as a fault. Even a first-year rookie can do
 3 that. But the difficulties come in knowing what's a
 4 cost of issuance and what's -- what's a cost of issuance
 5 and what is not.
 6 For example, title insurance is not a cost of
 7 issuance, and the rationale is that even if this weren't
 8 a bond issue involving tax-exempt bonds, the borrower
 9 would still need to get title insurance, usually,
 10 especially nowadays. There was a period where title
 11 insurance wasn't naturally required. Now, virtually
 12 everyone asks for it and gets it. So, for example,
 13 title insurance premium is not a cost of issuance and so
 14 I am always cognizant and sensitive to making sure that
 15 the cost of issuance don't exceed two percent.
 16 Q Understood. Let's turn to page 29493 which is
 17 near the end.
 18 A All right.
 19 Q This appears to be the disbursement list for
 20 the 2013 Series B bonds. Do you see that?
 21 A Yes.
 22 Q There's another line-item entry of working
 23 capital of almost \$151,000?
 24 A Right.
 25 Q Okay. That's also money that was supposed to

1 be used to make payroll and other sort of costs
 2 associated with getting a project up to speed?
 3 A Right. And the reason these are funny looking
 4 numbers is it's so often that working capital is used as
 5 a sop-up number. And as long as it's close to what is
 6 in the official statement, it comes down to adding up
 7 all the other invoices and then finally arriving at the
 8 working capital numbers so that the numbers all balance.
 9 Q Right. So the total working capital between
 10 the Series A and the Series B bonds is a little more
 11 than \$353,000 or so?
 12 A Whatever the sum of those two is.
 13 Q Okay. Let's look at the invoice for working
 14 capital which is 29489. Do you see that invoice?
 15 A Yes.
 16 Q And this invoice purports to provide wire
 17 instructions for working capital for the
 18 Bleckley-Cochran offering. Do you see that?
 19 A Yes.
 20 Q At the bottom of the page it looks like it has
 21 a law firm footer, the bottom left, that begins with
 22 HNZW. Do you see that?
 23 A Yeah. I think that's Greg Youra's law firm.
 24 Q Okay. So do you recall receiving the working
 25 capital instructions from Greg Youra?

1 A Yes, because I am kind of a stickler to have
2 invoices support the numbers so that I don't get a call
3 after the closing. And also there are -- in my earlier
4 years, I witnessed some shenanigans with law firms
5 finding at the last minute that there was more money
6 than anyone expected and all of the sudden their fees go
7 up significantly. So I think you'll see that there's an
8 invoice backing up all these numbers.

9 Q Right. So looking at the next page which
10 appears to be the second page of the invoice for working
11 capital, there are wiring instructions. Do you see
12 that?

13 A Yes.

14 Q And there are wiring instructions that are
15 provided for Saint Simons Healthcare, LLC. Do you see
16 that?

17 A Yes.

18 Q And why is that?

19 A Well, because as the management company, it is
20 they who are responsible for the smooth running of the
21 project.

22 Q Okay. Was the Saint Simons Healthcare the
23 management company for the Bleckley-Cochran facility?

24 A I would have to see here. It's probably in
25 the OS. It will say --

1 didn't recognize that "Beacon" is Beacon people, and I
2 don't know the relationship between the two whether
3 there is a relationship.

4 Q Do you believe there is?

5 A I don't know.

6 Q Okay. Did you -- when you received this
7 invoice for the working capital instructions from Mr.
8 Youra, did you ask him why he was asking you to send --
9 asking that money be sent to Saint Simons Healthcare?

10 A No, because it's pretty normal.

11 Q Right, because Saint Simons Healthcare is a
12 Brogdon company; right?

13 A I don't know the inner workings or ownership
14 of it. I just know they were a go-to management company
15 who had a pretty good track record.

16 Q Right. Do you have reason to believe they
17 were the management company on this deal?

18 A That's why I would like to look at the
19 distribution list. If they were on that distribution
20 list, then they obviously were. But the surprise in all
21 of this to me is this Beacon outfit. I don't know the
22 relationship between them and Saint Simons, if any. I
23 don't recognize the Beacon people.

24 Q Do you believe that the working capital funds
25 that were sent as part of the Bleckley-Cochran offering

1 Q Yeah. So let's look at page four of Exhibit
2 37.

3 A That's Arabic four?

4 Q No, it's -- right, Arabic four.

5 A I'm sorry?

6 Q Just regular number four, yes.

7 A That's what I mean by Arabic.

8 Q Okay. Arabic is great. Okay.

9 A Oh, yeah. That is strange because Beacon is
10 mentioned there and the wiring instructions are to
11 Gordon Jensen -- excuse me, or, Saint Simons, and I
12 don't know why that is, frankly.

13 Q Did Saint Simons healthcare have any
14 involvement with the Bleckley-Cochran offering as far as
15 you're aware of?

16 A Well, I'd like to see my distribution list
17 because if you -- do you have that handy?

18 Q Your distribution list related to the
19 transaction generally?

20 A Right, that has all the players in it.

21 Q We don't have it right now. Do you have a
22 reason to believe that Saint Simons Healthcare was
23 somehow the management company in the Bleckley offering?

24 A Well, yes. They are and have been the
25 managing company for a lot of these bond issues and I

1 were used as working capital for the Bleckley facility?

2 A I certainly would hope so.

3 Q Okay. If they weren't, what types of
4 reactions would you have to that?

5 A Well, I would be upset, frankly.

6 Q Why is that?

7 A Because those monies are supposed be dedicated
8 to this project.

9 Q They're not supposed to be used for other
10 projects unrelated to the offering?

11 A No.

12 Q Okay. Did you rely on the wiring instructions
13 that Mr. Youra provided you for the working capital in
14 preparing your disbursement sheet?

15 A Yes. Is it possible that that was a
16 typographical error? I don't know about Beacon.

17 Q Do have any reason to believe it was a
18 typographical error?

19 A My only reason is that I don't recognize them.

20 Q Okay. Do you remember a series of Mobile,
21 Alabama, offerings that you worked on involving Mr.
22 Brogdon?

23 A Yes.

24 Q Do you remember the Mobile III offering that
25 closed in or about late September, 2013?

1 A Yes.

2 Q Was Mobile III another Gordon Jensen offering?

3 A Well, the documents speak for themselves. If

4 they are in the parenthetical, then they were.

5 (SEC Exhibit No. 273 was marked for

6 identification.)

7 MR. GREENWOOD: I'm showing the witness what

8 has just been marked as Exhibit 273. It's an email from

9 Chix Miller to Robert Lawson with a Cc to Christopher

10 Brogdon dated September 20th, 2013, subject line, Mobile

11 III preclosing, Bates number SEC-LAWSON-E-0000919

12 through 920.

13 BY MR. GREENWOOD:

14 Q Mr. Miller, do you recognize Exhibit 273?

15 A Yes.

16 Q And what do you recognize it as?

17 A An email to Rob Lawson from me with a courtesy

18 copy to Chris Brogdon about the Mobile III project.

19 Q And why were you copying Chris Brogdon on this

20 email?

21 A Well, generally in emails if I mention

22 someone's name, as a courtesy, I like to provide that

23 person with what I'm sending.

24 Q Right. Why were you referencing Chris Brogdon

25 in connection with the Mobile III preclosing?

1 A It appears because these salespeople of Lawson

2 Financial were involved with selling some of the Mobile

3 bonds.

4 Q Okay. And I guess I'm just trying to focus on

5 why you were referencing Chris Brogdon in that email

6 about Mobile III.

7 A Well, because I had just spoken with Chris

8 Brogdon.

9 Q Right. And I guess I'm -- was Chris Brogdon

10 involved in the Mobile III offering and project?

11 A Yes.

12 Q Okay. The email from you says, "Rob, I just

13 spoke with Chris a minute ago and relayed to him what

14 you mentioned about his meeting with the broker/salesman

15 who have been selling his bonds over the years. Chris

16 is now planning to be at your place in Phoenix for the

17 preclosing." Taking the first sentence first, do you

18 have a recollection of a conversation with Mr. Brogdon

19 about a meeting with Lawson Financial's brokers?

20 A I must have because I say I did.

21 Q Okay. Does the email refresh your

22 recollection about the conversation?

23 A It does not, I'm sorry to say.

24 Q There is a reference in the second sentence to

25 a pre-closing in Phoenix, Arizona. Do you see that?

1 A Yes.

2 Q I think earlier you testified that at least

3 one of the closings for the Brogdon offerings was in

4 Phoenix; is that right?

5 A Yes, but it was not this one.

6 Q Okay. And how do you know that?

7 A Well, because it's such a drill to go out to

8 Phoenix and I only remember one closing and it was a

9 good many years before 2013.

10 Q Okay. So you believe this closing took place

11 in Atlanta like the others?

12 A Well, preclosing can take place in more than

13 one locale.

14 Q Understood. Understood.

15 A So I suspect we had the preclosing in Atlanta

16 supported by various people including Rob and Chris

17 Brogdon in Phoenix.

18 MR. GREENWOOD: Okay. Okay.

19 (SEC Exhibit No. 274 was marked for

20 identification.)

21 MR. GREENWOOD: I'm showing the witness what

22 has just been marked as Exhibit 274. It's a letter on

23 Sell and Melton letterhead dated September 26th, 2013.

24 The Bates range is SEC-CANTONE-034013 through 034018.

25 BY MR. GREENWOOD:

1 Q Mr. Miller, do you recognize Exhibit 274?

2 A Yes.

3 Q Is this a copy of the bond counsel opinion

4 that you rendered for the Mobile III offering?

5 A Yes.

6 Q Is that your signature on the last page?

7 A Yes.

8 Q Again, the first and second pages of the

9 opinion note that you have reviewed and examined both

10 the bond purchase agreement and the official statement

11 for the offering, is that right?

12 A Yes.

13 (SEC Exhibit No. 275 was marked for

14 identification.)

15 MR. GREENWOOD: I'm showing the witness what

16 has just been marked as Exhibit 275 which is a bond

17 purchase agreement for the Mobile III offering dated

18 September 23rd, 2013, Bates range SEC-CANTONE-033616

19 through 033638.

20 THE WITNESS: Are you sure this is Mobile III

21 and not II, for example?

22 MR. GREENWOOD: Yes. I will represent to you

23 that based on the date as well as the fact that we got

24 this from transcript that this is from the Mobile III

25 offering.

1 THE WITNESS: Okay.
 2 BY MR. GREENWOOD:
 3 Q Do you recognize this bond purchase agreement
 4 as the bond purchase agreement for the Mobile III
 5 offering?
 6 A Yes.
 7 Q If you will, turn to page 11, section eight,
 8 Conditions of Underwriter's Obligations. Do you see
 9 that?
 10 A Yes.
 11 Q Is that a similar section to the section
 12 previously that we looked at to the Bleckley-Cochran
 13 agreement?
 14 A Yes.
 15 Q And, again, is that a similar section to the
 16 section we looked at previously for the Bleckley-Cochran
 17 bond purchase agreement?
 18 A Yes.
 19 Q And, again, the — one of the conditions at or
 20 prior to closing are listed as a bond counsel opinion as
 21 set forth in exhibit B. Do you see that?
 22 A Yes.
 23 Q And turn to Exhibit B, which is Bates number
 24 SEC-CANTONE-033634. Do you recognize exhibit B?
 25 A Yes.

1 Q Is exhibit B the form of opinion that you
 2 provided to the underwriter for the Mobile III offering?
 3 A As far as I know, yes. I would have to
 4 compare what I finally signed versus this exhibit.
 5 Q And I will hand back to you Exhibit 274 which
 6 is that opinion. If you could, turn to the page which
 7 is B-3 in the new exhibit. B-3 has a subsection 18, do
 8 you see that?
 9 A Yes.
 10 Q That section reads, "Based upon our
 11 participation in the preparation of the primary official
 12 statement and the official statement and without having
 13 undertaken to determine independently the accuracy or
 14 completeness of the statements contained therein,
 15 nothing has come to our attention that has caused us to
 16 believe that either of the preliminary official
 17 statement or the official statement as of their
 18 respected dates contains any untrue statement of
 19 material fact or omitted to state a material fact
 20 necessary to make the statements therein in light of the
 21 circumstances under which they were made, not
 22 misleading. It being understood that we express no view
 23 herein with respect to any financial and statistical
 24 data forecast projections, estimates, assumptions, and
 25 expressions of opinion set forth in the preliminary

1 official statement or the official statement or the
 2 statements and other information contained therein under
 3 the captions Plan of Financing, Underwriting, or
 4 Appendix B Forecasted Financial Statements."
 5 Mr. Miller, is that a — is that language sort
 6 of some of the Rule 10b-5 language that we looked at
 7 previously?
 8 A Yes.
 9 Q And so is this a supplemental opinion that you
 10 provided in connection with the Mobile III offering?
 11 A No, I don't think so because here is my
 12 opinion, my base opinion.
 13 Q If you look at Exhibit 274, do you see that
 14 same Rule 10b-5 language in it?
 15 A No, I don't.
 16 Q Okay. So did you render this Rule 10b-5
 17 opinion in connection with the Mobile III offering as
 18 part of a supplemental opinion?
 19 A It appears that I did not.
 20 Q Okay. Well, it appears that the bond purchase
 21 agreement, at least, represent — reflect such a
 22 representation, right?
 23 A Right.
 24 Q Do you believe the bond purchase agreement is
 25 inaccurate or that there's a supplemental opinion that

1 you rendered on this issue?
 2 A I think it's something, frankly, that may have
 3 fallen through the cracks.
 4 Q And why do you say that?
 5 A Because I don't remember giving a supplemental
 6 opinion and, yet, I see it here as an exhibit. Because
 7 I haven't really given that many supplemental opinions,
 8 that's why say it.
 9 Q Do you understand — do you have an
 10 understanding as to how this language can end up as an
 11 exhibit in the bond purchase agreement? I'm just trying
 12 to understand who would include that in the bond
 13 purchase agreement.
 14 A This probably was Michael Gardner.
 15 Q Okay. So you believe Michael Gardner prepared
 16 Exhibit 275?
 17 A I think so. Because he — once again, he was
 18 faster and more accurate than was John Lynch. John
 19 Lynch may have produced it at preclosing, but the real
 20 work behind it came, I think, from Michael Gardner.
 21 Q Okay. So just to be clear, you have no
 22 recollection of rendering this kind of Rule 10b-5
 23 opinion in connection with the Mobile III offering, do
 24 you?
 25 A I do not.

1 Q Okay. I will take those back up. Now, do you
2 recall anything about the acquisition of the facility in
3 connection with the Mobile III offering?

4 A In what respect?

5 Q Yeah, like who the parties were to the
6 transaction, who the seller was, who the buyer was.

7 A An indication of those parties would be in the
8 disbursement schedules and in the invoices attached.
9 Usually, we have a real estate closing statement.

10 Q Okay. Would that information also be in the
11 official statement, too?

12 A Probably.

13 MR. GREENWOOD: Okay. (Whereupon, Exhibit
14 Number 247 was previously marked
15 and identified for the record)

16 MR. GREENWOOD: I'm showing the witness what
17 has previously been marked as Exhibit 247. It's the
18 official statement dated September 26th, 2013, for the
19 Medical Clinical Board of the City of Mobile offering,
20 the Mobile III offering we've been talking about. I
21 will represent this document was printed off of EMMA.

22 BY MR. GREENWOOD:

23 Q Mr. Miller, do you recognize Exhibit 247?

24 A Yes.

25 Q Is this the official statement for the Mobile

1 statement.

2 THE WITNESS: Beacon Health Management, Tampa,
3 Florida.

4 BY MR. GREENWOOD:

5 Q That's the same management company we're
6 talking about earlier?

7 A It just didn't ring a bell with me.

8 Q So continuing on with the Mobile III offering,
9 please turn to page six, Arabic six. The section
10 entitled "Facility," do you see that?

11 A Yes.

12 Q In the second paragraph, Acquisition of the
13 Facility, it says, "The facility will be acquired from
14 Mobama Nursing, LLC, an unaffiliated entity for a
15 purchase price of \$6,900,000." What do you know about
16 Mobama Nursing, LLC?

17 A I don't recall.

18 Q Okay. So the acquirer of the facility,
19 though, in this offering is what entity?

20 A Well, it would be the borrower or the lessee
21 and that is Gordon Jensen. And the way to get down to
22 the details there would be the closing statement
23 attached to the disbursement list corresponds to the
24 acquisition of project.

25 Q Okay. We'll look at that in just one minute

1 III offering?

2 A Yes.

3 Q Looking first at the parties associated with
4 the financing, it's on the back of the second page, are
5 you on that page?

6 A Yes.

7 Q Okay. You see that Gordon Jensen Healthcare
8 is listed as the lessee?

9 A Yes.

10 Q And that's essentially the obligor in this
11 transaction?

12 A Yes. That's because of peculiarities of
13 Alabama law.

14 Q The management company is listed as Medical
15 Management Associates, LLC. Do you see that?

16 A Yes.

17 Q And what do you know about that company?

18 A I really don't remember who the principals
19 were behind that but this means to me that in that
20 Bleckley issue when we're talking about Beacon, if you
21 look at this corresponding page, I would be interested
22 to see what it is in that Bleckley OS.

23 MR. GREENWOOD: Okay. Let's just do that
24 before we continue on. I'm showing the witness, again,
25 Exhibit 37 which is the Bleckley-Cochran official

1 but if you could, turn to page 15, the Plan of
2 Financing. Does the Plan of Financing indicate that
3 there's, again, a working capital component to this
4 issuance?

5 A Yes.

6 Q Okay. And so in the acquisition of this
7 facility in the Mobile III offering, what entity should
8 receive the working capital?

9 A Well, either the lessee or the management
10 company.

11 Q Okay. And can you describe Mr. Brogdon's
12 involvement -- well, strike that. Did you have
13 conversations with Mr. Brogdon about the Mobile III
14 offering?

15 A Yes.

16 Q And why was that?

17 A Well, when we start an issue, particularly,
18 when the inducement resolution is being considered by
19 the issuer, for a good number of these Brogdon issues he
20 and I would go to see first of all the lawyer who
21 represents the issuer and then on to the meeting at
22 which his client, the Medical Clinic Board in this case,
23 discussed whether to adopt the inducement resolution.
24 And so we went to Jim Rosler's office in Mobile, and I
25 have forgotten the setting of the meeting but I think we

1 went on to the meeting where the inducement resolution
 2 was adopted.
 3 Q I see. So Mr. Brogdon attended that meeting
 4 with you?
 5 A Usually, we would together. We have a very
 6 good track record of getting approving resolutions.
 7 Q Right. And I guess maybe my question was a
 8 little simpler, which was the reason you were speaking
 9 to Mr. Brogdon and attending meetings with Mr. Brogdon
 10 is because he had some affiliation with the borrower,
 11 Gordon Jensen Healthcare; right?
 12 A Yeah. And when you say "some affiliation,"
 13 that's accurate because I don't think he was an owner,
 14 for example. I think he just knows how to put
 15 transactions together.
 16 Q Did he control the bank accounts of Gordon
 17 Jensen Healthcare, to your knowledge?
 18 A I don't know, but it was probably Rob
 19 Lancaster.
 20 Q Mr. Lancaster, you understand, is an
 21 accountant that works for Mr. Brogdon?
 22 A Yeah. I'm not sure in what specific
 23 relationship that has to do with Gordon Jensen.
 24 Q Right. You don't understand Rob Lancaster to
 25 be a principal or board member of Gordon Jensen, do you?

1 A I don't think so, no, but neither do I think
 2 Chris Brogdon is.
 3 Q Right. In fact, he's no where -- he's not
 4 listed anywhere in the official statement, right?
 5 A Rhode Hill is, is he not?
 6 Q Right. Did Rhode Hill go with you to the
 7 inducement resolution meeting?
 8 A No.
 9 Q Okay. Did you have conversations with Rhode
 10 Hill about the Mobile III offering?
 11 A Yes.
 12 Q What kinds of conversations?
 13 A Well, he signed closing documents and from
 14 time to time we have conference calls.
 15 Q Was he involved in structuring the deal in any
 16 way?
 17 A Maybe in a general way, but Chris Brogdon is
 18 the one who really is the architect of a lot of these.
 19 He just has so much more experience than Greg Hill does.
 20 MR. GREENWOOD: I'm showing the witness what
 21 has been previously marked as Exhibit 248. It's a
 22 closing documents index and other excerpts from the
 23 closing transcript for the Mobile III offering. The
 24 Bates number -- Bates ranges are
 25 LAWSON(20140389708)_002055 through 20572320 through

1 2329 -- strike that. through 2332. And the last range
 2 is 2524 through 2559. And I will represent that this is
 3 tabs 15 and 29 on the closing documents index which is
 4 first the lessee's tax and non-arbitrage certification
 5 and requisition number one and the following invoices.
 6 BY MR. GREENWOOD:
 7 Q Mr. Miller, do you recognize the excerpts
 8 contained in Exhibit 248?
 9 A Those documents you just mentioned?
 10 Q That's right.
 11 A Yes.
 12 Q Okay. Did you prepare the closing documents
 13 index and transcript for the Mobile III offering?
 14 A Yes.
 15 Q Let's look first at the tax and non-arbitrage
 16 certification. Do you see that?
 17 A Yes.
 18 Q The first sentence reads, "I, the undersigned,
 19 Christopher F. Brogdon, do hereby certify that I am the
 20 president of Gordon Jensen Healthcare Association,
 21 Incorporated, a Michigan nonprofit corporation," and
 22 then it goes on.
 23 A I think that's wrong.
 24 Q Okay. That was going to be my question. Who
 25 drafts the tax and non-arbitrage certification?

1 A I do, and that's my error because it's Rhode
 2 Hill.
 3 Q Right. Rhode Hill is the president of Gordon
 4 Jensen?
 5 A And Rhode Hill signed it.
 6 Q But as you mentioned, Mr. Brogdon was the
 7 architect of a number of the transactions involving
 8 Gordon Jensen, right?
 9 A Correct.
 10 Q Okay. Let's go to the requisition and
 11 certification number one which is on page 2524. Do you
 12 recognize exhibit -- page 2524 as the requisition and
 13 certification number one related to the disbursements of
 14 the Mobile III offering?
 15 A Yes.
 16 Q And is that your handwriting?
 17 A Yes.
 18 Q And, Mr. Hill, it looks like, signed that
 19 disbursement as well?
 20 A Yes.
 21 Q The purchase price of the facility is listed
 22 as almost seven million dollars as part of the
 23 disbursements for the 2013 -- the Series 2013 A bonds.
 24 Do you see that?
 25 A Yes.

1 Q And where was that money to go as part of this
2 transaction?

3 A Probably to the seller.

4 Q Okay. And as we saw in the official
5 statement, the seller is Mobama Nursing, do you see
6 that?

7 A Yeah. If you go to the closing statement, you
8 see all of that.

9 Q Okay. If you look at the closing statement,
10 it appears that the distribution of balance to the
11 seller on page 2527 goes to First Citizens Bank to pay
12 off a loan, Miami Capital Holdings to pay off a loan,
13 and an additional amount going to the seller. Do you
14 see that?

15 A Yes.

16 Q And if you turn two pages, there's a signature
17 page for the seller. Do you see that?

18 A Yes.

19 Q And who is signing on behalf of the seller
20 Mobama Nursing, LLC?

21 A Chris Brogdon.

22 Q Okay. Was that your understanding of who was
23 the seller in this transaction?

24 A Yes.

25 Q Okay. You had an understanding that Chris

1 Knollwood NH, LLC. Do you see that?

2 A Yes.

3 Q And what is Knollwood NH, LLC?

4 A Well, I think the derivation of that has to do
5 with the address of the project because the street
6 address, I think, this Knollwood something.

7 Q Okay. So why are the working capital funds
8 going to Knollwood NH, LLC?

9 A Good question. If we could look at the OS
10 again.

11 Q Okay. It's right in front of you still.

12 A The only thing I can think of is maybe
13 Knollwood was an agent of Medical Management Associates,
14 LLC, for purposes of managing.

15 Q And are you — is that a guess you are making
16 or is that —

17 A That's a guess.

18 Q Okay. So I'm going to commit to the statement
19 we looked at in the official statement regarding the
20 acquisition from Mobama Nursing, LLC, an unaffiliated
21 third party. Do you remember we looked at that?

22 A Yes.

23 Q Is that statement accurate?

24 A It doesn't appear to be, does it?

25 Q And why doesn't it appear to be accurate?

1 Brogdon was affiliated with Mobama Nursing, LLC?

2 A Well, he signed it on the LLC's behalf, yes,
3 he did. That's his signature.

4 Q Right. And if you turn to the subsequent
5 pages, it looks like there's pages related to First
6 Citizens Bank loans and Miami Capital Holdings loans,
7 right?

8 A Yes.

9 Q Does appear to be loans related to Mr.
10 Brogdon?

11 A Well, the customer is shown as Mobama Nursing,
12 so I would assume so, yes.

13 Q Okay. And then the next page appears to be a
14 letter from Miami Capital Holdings to Mr. Brogdon. Do
15 you see that?

16 A Yes.

17 Q Okay. If you'll turn to page 2544, it is an
18 email from Greg Youra to Chix Miller and Marrien Neilson
19 with a Cc to Chris Brogdon, subject line, Mobile III
20 Wire Instructions for Working Capital. That email
21 provides wiring instructions for working capital, do you
22 see that?

23 A Yes.

24 Q So this is an email for Mr. Brogdon's attorney
25 providing wiring instructions for an entity called

1 A Well, if Chris Brogdon signed that prior
2 document, I've forgotten which one he signed —

3 Q The closing statement?

4 A Didn't he sign as the seller?

5 Q He signed as the seller.

6 A Right. So in that sense, it looks as if he —
7 it was unaffiliated. The seller takes his money and
8 goes on about his business. He isn't necessarily
9 involved moving forward.

10 Q So the seller has no affiliation with the
11 recipient at the working capital funds?

12 A It shouldn't. You know, I'm a little fuzzy on
13 this one. It bothers me some here.

14 Q And why does it bother you?

15 A Well, because usually it's straightforward.
16 Here's the borrower, here's your working capital or —
17 and here's the management company, here's the working
18 capital. But here there are more entities floating
19 about.

20 Q And it appears that Mr. Brogdon is on both
21 sides of the transaction, isn't it?

22 A I don't know that I would go that far without
23 really looking at it closely.

24 Q Okay. With respect to the wire instructions
25 for the working capital funds that we just looked at in

1 the closing transcript or the disbursement sheet, did
2 you rely Mr. Youra and Mr. Brogdon for that information?

3 A Yes.

4 Q Did you ever ask them, you know, why are we
5 sending these funds to Knollwood NH, LLC?

6 A No, I didn't. I probably should have.

7 Q Okay. Did you ever ask why Mr. Brogdon was
8 signing on behalf of the seller and receiving almost
9 seven million from this offering?

10 A No.

11 Q Did you rely on Mr. Youra and Mr. Brogdon for
12 that information related to the seller as well?

13 A Yes.

14 MR. GREENWOOD: Okay. Let's go off the record
15 at 3:33 p.m.

16 (A brief recess was taken.)

17 MR. GREENWOOD: We are back on the record at
18 3:42 p.m.

19 There were no substantive communications
20 between the SEC staff and Mr. Miller other than, I
21 guess, some clarifications or additional thoughts that
22 Mr. Miller wanted to share on the Mobile III offering
23 that we were just discussing.

24 THE WITNESS: And that point or those points
25 had to do with the various entities involved, the buyer

1 and seller and management agreement. I think Greg Youra
2 could provide a good amount of insight into that as
3 could the trustee because the trustee handles the funds
4 and I suspect the trustee was comfortable sending out
5 that working capital as was I, but it's hard to remember
6 with any procession who was doing what to whom three
7 years ago. A lot of water has gone over the dam since
8 then. That Knollwood triggered in me a relation, a
9 direct relation with the project because I think the
10 street address was Knollwood.

11 BY MR. GREENWOOD:

12 Q Is Knollwood, to your knowledge, a subsidiary
13 of Gordon Jensen Healthcare?

14 A I don't know.

15 Q Earlier we were talking about the Sumner
16 offering and the Sumner facility. Do you recall that?

17 A Yes.

18 (SEC Exhibit No. 276 was marked for
19 identification.)

20 MR. GREENWOOD: I am showing the witness was
21 has just been marked as Exhibit 276. It is a letter on
22 Sell and Melton, LLP, letterhead dated September 12th,
23 2011. There is no Bates number but I will represent
24 that this was produced by Mr. Miller in response to the
25 SEC's subpoena.

1 BY MR. GREENWOOD:

2 Q Mr. Miller, do you recognize Exhibit 276?

3 A Yes.

4 Q Is Exhibit 276 the bond counsel opinion you
5 rendered in connection with the Clayton IV certificates
6 of participation offering?

7 A Yes.

8 Q And is that your signature on the last page?

9 A Yes.

10 Q The first two pages indicate that in the
11 course of preparing your opinion you have reviewed and
12 examined among other documents the official statement,
13 right?

14 A Yes.

15 Q Turn to page four, subsection 14 reads, "The
16 information and statements in the official statement
17 under the headings, The Issuer of the Series 1999 A
18 Revenue Bonds, the new borrower, the facility, plan of
19 financing, the Series 2011 certificates of
20 participation, sources of payment of and security,
21 litigation, legal matters, tax matters, and
22 miscellaneous and information with respect to the above
23 on the cover page are to the best of our knowledge
24 correct in all material respects and nothing has come to
25 our attention which would lead us to believe that the

1 information under such headings in the official
2 statement contains an untrue statement of a material
3 fact or that such information taken collectively omits
4 the stated material fact necessary to make the
5 statements made therein in light of the circumstances
6 under which they were made not misleading, provided that
7 in rendering this opinion we are not expressing an
8 opinion with respect to any information contained or
9 omitted from the material under such headings regarding
10 the new borrower as to form and tenor corresponding to
11 the terms and provisions thereof as set out in the
12 official statement."

13 Mr. Miller, is the portion of the opinion that
14 I just read into the record a Rule 10b-5 type opinion?

15 A Yes.

16 Q And did you render that opinion for the
17 Clayton IV official statement?

18 A Yes.

19 Q At the —

20 A Now, are we talking about Clayton IV?

21 Q Yes?

22 A Okay.

23 Q How did you determine which sections of the
24 official statement to list in this portion of the
25 opinion?

1 A These are historically those that both counsel
2 focuses in on.

3 Q Okay. So that was – were you the person who
4 determined which headings to include in this portion of
5 the opinion?

6 A I am responsible for it, yes. Others had
7 input, I suspect.

8 Q Okay. Do you have a recollection of, for
9 instance, Mr. Gardner or someone else asking you to
10 include specific sections of the official statement in
11 this portion of the opinion?

12 A He could have because he prepared it, as I
13 recall.

14 Q He prepared the official statement?

15 A Right.

16 Q Okay. At the very end, there is an exception
17 that relates to material under such headings regarding
18 the new borrower as to form and tenor corresponding to
19 the terms and provisions thereof. What does that mean?

20 A I would like to see who the new borrower was.
21 Do you have the OS?

22 Q We will look at it in one minute. I will
23 represent to you it was National Assistance Bureau. I'm
24 just trying to understand "as to form and tenor"
25 language. What is that specific exception referring to?

1 276?

2 A Yes. Now, let me just say these dates don't
3 look right to me. My opinion is dated the day of
4 issuance of the bonds, and whereas the POS is usually
5 many days before the date of issuance and closing. The
6 official statement typically is the date of issuance and
7 so there is a 13-day gap here for reasons that are
8 unclear to me. I don't know why.

9 Q Okay. Any reason to believe that Exhibit 164
10 is not the Clayton IV official statement that's on those
11 CUSIPs on EMMA?

12 A No.

13 Q Okay. Let's turn to the section on the new
14 borrower which is on page two, Arabic page two.

15 A Yes.

16 Q Is this a section of the official statement
17 upon which your bond counsel opinion opines?

18 A I don't follow the question.

19 Q I'm trying to understand whether this section
20 on the new borrower is one of the sections that is part
21 of the Rule 10b-5 portion of your bond counsel opinion.

22 A That's what we just went over, isn't it?

23 Q I believe it is. I'm just trying to confirm
24 that's accurate.

25 A Yes, I think so.

1 A I'm really not sure. It's a little obtuse, I
2 want to say.

3 Q And that's why I was asking because I just
4 wanted to understand what the carve out was with respect
5 to the new borrower.

6 A I don't know why it's there, frankly.

7 MR. GREENWOOD: Just put that to the side but
8 hold onto it.

9 I am showing the witness what has been
10 previously marked as Exhibit 164 which is a copy of an
11 official statement for certificates of participation in
12 \$2,150,000 Development Authority of Clayton County
13 Georgia first mortgage revenue bonds. There is no Bates
14 number, but I will represent this was printed off EMMA.

15 BY MR. GREENWOOD:

16 Q Mr. Miller, do you recognize Exhibit 164 as
17 the official statement for the Clayton IV offering?

18 A Yes, it's Clayton. I'm not convinced it's IV.
19 It's hard to keep these five straight.

20 Q Let me just ask you to look at the appendix A
21 in front of you there.

22 A Yes, Clayton IV.

23 Q Okay. So the Clayton IV offering, just to be
24 clear, the official statement is Exhibit 164 and your
25 bond counselor opinion for that same offering as Exhibit

1 Q Okay. And how did you determine the accuracy
2 of the "new borrower" section?

3 A Well, I have closed a number of deals over the
4 years with National Assistance Bureau including when its
5 name was different dating back a long time. You see
6 that May 25th, 1981? That's a long time ago and its
7 name was a little bit different back then. I have
8 forgotten exactly how it was changed and it involved
9 Michael Jacobs out of Nashville who passed away. And so
10 I'm certainly familiar with National Assistance Bureau,
11 Inc.

12 Q Okay. Do you know who drafted this portion of
13 the official statement on the new borrower?

14 A Probably Michael Gardner.

15 Q Okay. And why do you say that?

16 A Well, I would have to look at the players.
17 (Reading) Underwriter counsel, Michael Gardner.

18 Q Okay. In connection with the new borrower,
19 who provides information on updates regarding the new
20 borrower in National Assistance Bureau?

21 A Rhode Hill and/or people involved with
22 National Assistance Bureau, Chris Brogdon and others.

23 Q Has Rhode Hill provided you with updated
24 information on National Assistance Bureau before?

25 A Yes.

CLOSING DOCUMENTS INDEX

*\$10,850,000 The Medical Clinic Board Of The City Of Mobile (Second)
First Mortgage Healthcare Facility Revenue Bonds
(Bama Oaks Retirement, LLC Project) Series 2012A
and
\$850,000 The Medical Clinic Board Of The City Of Mobile (Second)
First Mortgage Healthcare Facility Revenue Bonds
(Bama Oaks Retirement, LLC Project) Series 2012B (Taxable)*

TAB
NUMBER

BASIC DOCUMENTS

1. Bond Purchase Agreement, dated September 25, 2012, among The Medical Clinic Board of the Mobile (Second) (the "Issuer"), Lawson Financial Corporation (the "Underwriter"), and Bama Oaks Retirement, LLC, a Georgia limited liability company (the "Lessee").
2. Lease Agreement, dated as of September 1, 2012, between the Issuer and the Lessee.
3. Trust Indenture, dated as of September 1, 2012, between the Issuer and BOKF, NA dba Bank of Oklahoma, as trustee (the "Trustee").
4. Mortgage and Security Agreement, dated as of September 1, 2012, between the Issuer and the Trustee.
5. Land Use Restriction Agreement, dated as of September 1, 2012, between the Trustee and the Lessee.
6. UCC Financing Statement (Fixture Filing) naming the Lessee and Issuer as Debtors and the Trustee as Secured Party and filed in Mobile County, Alabama.
7. UCC Financing Statement naming the Lessee as Debtor and the Trustee as Secured Party and filed in Mobile County, Alabama.
8. Mortgagee's Title Insurance Policy naming the Issuer and Trustee as insured, as their interests appear, in the amount of \$11,700,000.
9. Specimen Bonds.

**DOCUMENTS FURNISHED BY
THE MEDICAL CLINIC BOARD OF THE CITY OF MOBILE (SECOND)**

10. Inducement Resolution.
11. TEFRA Notice.
12. General Certificate of the Issuer.
13. Bond Resolution.
14. IRS Form 8038.
15. Approval of Mayor of Mobile, Alabama.

**DOCUMENTS FURNISHED BY
BAMA OAKS RETIREMENT, LLC**

16. Lessee's Tax and Non-Arbitrage Certification.
17. Certificate Designating Authorized Lessee Representative.
18. Officer's Certificate of the Lessee.

**DOCUMENTS FURNISHED BY
BOKF, NA DBA BANK OF OKLAHOMA, TRUSTEE**

19. Certificate of the Trustee.
20. Memorandum of Trust Indenture.

**DOCUMENTS FURNISHED BY
LAWSON FINANCIAL CORPORATION (THE "UNDERWRITER")**

21. Official Statement.

LEGAL OPINIONS

22. Opinion of Holt Ney Zatcoff & Wasserman, LLP as Counsel to the Lessee, including opinion re corporate status of Bama Oaks Retirement, LLC.
23. Opinion of James B. Rossler, Esq. as Counsel to the Issuer.
24. Opinion of Sell & Melton, L.L.P. as Bond Counsel.
25. Opinion of Lawson Financial Corporation as Counsel to the Underwriter.
26. Opinion of Riggs, Abney, Neal, Turpen, Orbison & Lewis as Counsel to the Trustee.

MISCELLANEOUS

27. Requisition and Certification Forms.
28. Disbursement Schedules.
29. Requisition No. 1 - Series 2012A and Series 2012B.
30. Continuing Disclosure Agreement.
31. Alabama Office of Securities Commission Certificate of Notification.
32. Appraisal.
33. Alabama Allocation Documents.
34. Environmental Phase I Study.
35. Evidence of Property Insurance.
36. DTC Letter of Representations.
37. Blue Sky survey.
38. Mobile - Management Agreement.

John T. Lynch, Jr.
Attorney at Law
3352 E. Camelback Road
Phoenix, Arizona 85018
(602) 385-6222

September 28, 2012

\$10,850,000
THE MEDICAL CLINIC BOARD OF
THE CITY OF MOBILE (SECOND)
First Mortgage Healthcare Facility Revenue Bonds
(Bama Oaks Retirement, LLC Project)
Series 2012A

and

\$850,000
THE MEDICAL CLINIC BOARD OF
THE CITY OF MOBILE (SECOND)
First Mortgage Healthcare Facility Revenue Bonds
(Bama Oaks Retirement, LLC Project)
Series 2012B (Taxable)

Lawson Financial Corporation
3352 E. Camelback Road
Phoenix, Arizona 85018

Ladies and Gentlemen:

I have acted solely as counsel to and on behalf of Lawson Financial Corporation (the "Underwriter") in connection with the issuance by The Medical Clinic Board of the City of Mobile (Second) (the "Issuer"), of its \$10,850,000 First Mortgage Healthcare Facility Revenue Bonds (Bama Oaks Retirement, LLC Project) Series 2012A (the "Series 2012A Bonds"), and its \$850,000 First Mortgage Healthcare Facility Revenue Bonds (Bama Oaks Retirement, LLC Project) Series 2012B (Taxable) (the "Series 2012B (Taxable) Bonds" and, together with the Series 2012A Bonds, the "Series 2012 Bonds"). I deliver this letter under and pursuant to the Bond Purchase Agreement (as defined below).

John T. Lynch, Jr., Esquire
September 28, 2012

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The Series 2012 Bonds are being issued by the Issuer pursuant to the provisions of the Indenture of Trust dated as of September 1, 2012 (the "Indenture") between the Issuer and BOKF, NA doing business as Bank of Oklahoma, Tulsa, Oklahoma, as trustee (the "Trustee"); and a resolution duly adopted by the Issuer on September 21, 2012. The Issuer will use the proceeds from the sale of the Series 2012 Bonds to undertake a project (the "Project") for the benefit of the Lessee, consisting of: (i) repaying the temporary financing by means of which the Lessee acquired a 118-unit assisted living facility, which is situated on an approximate 3.686 acre site located at 3145 Knollwood Drive in the City of Mobile, Alabama (the "Facility"); (ii) renovating the Facility; (iii) providing certain initial deposits into the funds and accounts established under the Indenture, including a capitalized interest account and a debt service reserve fund for the Series 2012 Bonds; and (iv) paying certain costs of issuance of the Series 2012 Bonds, such Project to be financed through the Issuer for the Lessee. The Facilities, which will be leased to the Lessee pursuant to a Lease Agreement dated as of September 1, 2012 (the "Lease Agreement"), between the Issuer and the Lessee, are subject to the terms of the Tax Certificate as to Arbitrage and the Provisions of Sections 103 and 141-150 of the Internal Revenue Code of 1986 (the "Tax Certificate"). Capitalized terms used herein, which are not otherwise defined, shall have the meanings ascribed thereto in the Indenture.

The Series 2012 Bonds are issued only as fully registered bonds without coupons in denominations as provided in the Indenture. The Series 2012 Bonds are dated and mature as set forth in the Indenture and Official Statement dated September 28, 2012 (hereinafter the "Official Statement").

The Series 2012 Bonds and the payment of amounts owed thereon are secured by the Indenture, and upon recordation, by the Mortgage and Security Agreement (the "Security Agreement") on the Series 2012 Facilities, granted by the Lessee to the Issuer for the benefit of the Trustee, dated as of September 1, 2012.

In acting as your counsel and rendering my opinion, among other things, I have rendered certain legal advice and assistance to you in connection with the preparation of the Official Statement. I have reviewed certain records, documents, reports, certificates, opinions and proceedings and have made such investigations of law and fact, as I deemed necessary or appropriate for that purpose, including, but without limitation: (a) the approving legal opinion and supplemental bond counsel opinion of Sell & Melton, L.L.P., Bond Counsel, delivered as required by Section 8 (a) (i) of the Bond Purchase Agreement; (b) the opinion of Holt, Ney, Zatzoff & Wasserman, LLP, counsel for the Lessee, delivered as required by Section 8 (a) (ii) of the Bond Purchase Agreement.

Further, in acting as your counsel, I have rendered such legal advice and assistance and was involved in, among other things, discussions and inquiries concerning various legal matters,

John T. Lynch, Jr., Esquire
September 28, 2012

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and participation in meetings, telephone conferences and other methods of communication with, among others, yourself and your representatives, and representatives of the Issuer and its counsel, the Lessee and its counsel, the Financial Forecast consultant and Bond Counsel, at which meetings and telephone conferences, and by such other methods of communication, the Official Statement and the Budget Projections contained therein and the other legal documents and related matters were discussed.

I have not undertaken to verify independently, am not expressing any view upon, and do not assume responsibility for the accuracy, completeness or fairness of the contents of the Official Statement. Based solely on my knowledge derived from my activities described in the preceding paragraph, I have no reason to believe that the Official Statement (except for the financial statements, forecasts, estimates, assumptions and expressions of opinion, as to which I express no opinion) contains any untrue statement of a material fact, or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. References to "my knowledge" in this letter refers to the direct knowledge of me as an attorney who rendered legal services in connection with my representation of you in this matter.

In addition, in my role as your counsel, I have examined executed copies of:

- (a) The resolution dated September 21, 2012 adopted by the Board of Directors of the Issuer authorizing, among other things, issuance of the Series 2012 Bonds;
- (b) The Bond Purchase Agreement dated September 25, 2012, by and among the Underwriter, the Issuer, and the Lessee (the "Bond Purchase Agreement");
- (c) The Trust Indenture dated as of September 1, 2012, by and between the Issuer and BOKF, NA doing business as Bank of Oklahoma, Tulsa, Oklahoma, as Trustee;
- (d) The Lease Agreement, dated as September 1, 2012 between the Issuer and the Lessee;
- (e) The Mortgage and Security Agreement executed and granted by the Lessee to the Issuer in favor of the Trustee and dated as of September 1, 2012;
- (f) The Preliminary Official Statement dated September 22, 2012 and the Official Statement dated September 28, 2012; and
- (g) Other documents and papers related to the issuance of the Bonds, as I have deemed necessary, proper and appropriate to form the opinions herein expressed.

John T. Lynch, Jr., Esquire
September 28, 2012

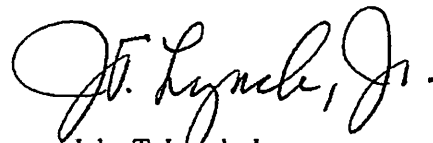
Page 4

I have made such investigations and have examined such corporate and other records, resolutions, certificates and documents, and have reviewed such questions of law as I have considered necessary or appropriate in connection with the opinions expressed below. In my examination, I have assumed the genuineness of signatures on all documents and instruments, the authenticity of documents submitted as originals and the conformity to originals of documents submitted as copies.

Based upon my examination, and relying upon the opinion of Sell & Melton, L.L.P., Bond Counsel, being delivered to you this date under Section 8 (a) (i) of the Bond Purchase Agreement, particularly their opinions as to the validity of the Series 2012 Bonds, and to the effect that interest on the Series 2012 Bonds is excludable from federal gross income under existing laws, regulations, rulings and judicial decisions (with certain exceptions not material for purposes of this opinion) and exempt from State of Alabama personal income taxes, I am of the opinion that (i) the Series 2012 Bonds are not required to be registered under the Securities Act of 1933, as amended, and (ii) in connection with the sale of the Series 2012 Bonds, it is not necessary to qualify the Indenture under the Trust Indenture Act of 1939, as amended. I draw to your attention that the foregoing opinion is limited to matters governed by federal securities laws of the United States of America and I assume no responsibility with respect to the applicability of effect of the laws of any other jurisdiction.

This letter is furnished solely for your benefit in connection with your purchase of the Series 2012 Bonds. Accordingly, the contents of this letter may not be used, circulated, quoted, or otherwise referred to (except in lists or sets of closing documents), or be relied upon by any other person, or referred to in any financial statement, report or related document, without, in each instance, my prior express written consent.

Sincerely,


John T. Lynch, Jr.



News Release

For Release: Thursday, February 2, 2017
Contact(s): Michelle Ong (202) 728-8464
Nancy Condon (202) 728-8379

FINRA Expels Lawson Financial and Bars CEO Robert Lawson for Fraudulent Municipal Bond Sales

Lawson Misused Customer Funds and Breached Fiduciary Duties as a Co-Trustee of a Customer Trust Account

WASHINGTON — The Financial Industry Regulatory Authority (FINRA) announced today that it has expelled Phoenix-based Lawson Financial Corporation, Inc. (LFC) from FINRA membership, and has barred LFC's CEO and President Robert Lawson from the securities industry for committing securities fraud when they sold millions of dollars of municipal revenue bonds to LFC customers.

The bonds at issue were underwritten by LFC and related to an Arizona charter school and two assisted living facilities in Alabama (which were the borrowers on the bonds). FINRA found that Robert Lawson and LFC were aware that each borrower faced financial difficulties, and Lawson transferred millions of dollars to the borrowers and associated parties from a deceased customer's trust account, in order to hide the borrowers' financial condition and to hide the risks associated with the bonds. FINRA determined that when LFC customers purchased the bonds, LFC and Lawson hid the material fact that Lawson was improperly transferring millions of dollars from the trust account to various parties when the borrowers were not able to pay their operating expenses or required interest payments on the bonds.

FINRA found that Lawson and his wife, Pamela Lawson (LFC's Chief Operating Officer), who were co-trustees of the trust account, violated FINRA rules by breaching their fiduciary duties as trustees and engaging in self-dealing with the trust account. FINRA also determined that Robert Lawson misused customer funds. In addition to expelling LFC and barring Robert Lawson, FINRA suspended Pamela Lawson from associating with any FINRA member firm for two years and fined her \$30,000 to be paid prior to her return to the securities industry. This disciplinary action settles a May 2016 complaint filed against LFC, Robert Lawson, and Pamela Lawson.

In settling this matter, LFC, Robert Lawson and Pamela Lawson neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Investors can obtain more information about, and the disciplinary record of, any FINRA-registered broker or brokerage firm by using FINRA's BrokerCheck. FINRA makes BrokerCheck available at no charge. In 2016, members of the public used this service to conduct 111 million reviews of broker or firm records. Investors can access BrokerCheck at <http://www.finra.org/brokercheck> or by calling (800) 289-9999. Investors may find copies of this disciplinary action as well as other disciplinary documents in FINRA's Disciplinary Actions Online database. Investors can also call FINRA's Securities Helpline for Seniors at (844) 57-HELPS for assistance or to raise concerns about issues they have with their brokerage accounts and investments.

FINRA, the Financial Industry Regulatory Authority, regulates securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services. FINRA touches virtually every aspect of the securities business – from registering and educating all industry participants to examining securities firms, writing rules, enforcing those rules and the federal securities laws, and informing and educating the investing public. In addition, FINRA provides surveillance and other regulatory services for equities and options markets, as well as trade reporting and other industry utilities. FINRA

7/26/2017

FINRA Expels Lawson Financial and Bars CEO Robert Lawson for Fraudulent Municipal Bond Sales | FINRA.org

also administers the largest dispute resolution forum for investors and firms. For more information, please visit www.finra.org.

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10204 / September 9, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 78794 / September 9, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17533

<p>In the Matter of</p> <p style="text-align:center">BOKF, NA,</p> <p>Respondent.</p>
--

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against BOKF, NA (“BOKF” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

These proceedings arise out of the assistance provided by BOKF to Christopher Brogdon ("Brogdon") in connection with a series of fraudulent bond offerings through which Brogdon raised millions of dollars from investors to build, purchase, and renovate nursing homes, assisted living facilities, and retirement communities throughout the Southeastern and Midwestern United States. As indenture trustee and dissemination agent for the majority of Brogdon's bond offerings since 2000 (the "Brogdon Bond Offerings"), BOKF, primarily through its former senior vice president, Marrien Neilson ("Neilson"), allowed Brogdon to perpetuate this fraud while failing to perform its disclosure and notice obligations to bondholders.

In connection with these offerings, Brogdon routinely drew down on the debt service reserve funds ("DSRFs") held at BOKF to make debt service payments to investors, without replenishing the funds as required by the offerings' trust indentures and without making required disclosures on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") website. Brogdon also routinely failed to file on EMMA, or provide to BOKF for filing, required annual financial statements for the offerings. By virtue of this and other conduct, Brogdon made material misrepresentations to investors about his prior compliance with municipal securities continuing disclosure requirements in subsequent offerings, and engaged in a scheme to defraud investors in subsequent offerings regarding the financial viability of his prior projects.²

Though Neilson and others in BOKF's Corporate Trust Department (the "Department") knew BOKF was required to make disclosures and notifications to bondholders regarding Brogdon's failures to replenish DSRFs and to file annual financial statements for the Brogdon Bond Offerings, BOKF's practice—directed by Neilson—was not to do so. Neilson knew, and told others in the Department, that such disclosures and notifications could impair the closings of future offerings, raise red flags with bondholders, and cause regulatory problems for Brogdon's underwriters. Instead of making these required disclosures and notifications, Neilson facilitated BOKF's continued work as trustee for new offerings involving Brogdon and his facilities. As a result, BOKF caused Brogdon's primary antifraud violations by ignoring its own contractual disclosure and notification obligations regarding these issues.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² The Commission previously filed an action against Brogdon in the United States District Court for the District of New Jersey concerning this and other conduct. *See SEC v. Christopher Freeman Brogdon, et al.*, 15 Civ. 8173 (KM) (D.N.J.) (filed Nov. 20, 2015). On December 28, 2015, the Court entered judgment against Brogdon as part of a bifurcated settlement.

Respondent

1. **BOKF**, doing business as Bank of Oklahoma, N.A., is a national banking association established in 1910 with its principal place of business in Tulsa, Oklahoma. BOKF is a registered municipal securities dealer and was a registered municipal advisor until September 2015. BOKF operates seven banking divisions in the Southwestern and Midwestern United States. As of December 31, 2015, BOKF held approximately \$31.5 billion in assets and \$21 billion in deposits. Since 2000, BOKF has served as indenture trustee for 39 Brogdon Bond Offerings, and as dissemination agent for 33 of these offerings.

Other Relevant Individuals

2. **Brogdon**, age 67, resides in Atlanta, Georgia. He has been in the nursing home, assisted living, and retirement community business for more than 25 years. In 1986, Brogdon was censured, fined, and barred from association by the National Association of Securities Dealers after he was found to have effected transactions in securities while failing to maintain adequate net capital and, while in net capital deficiency, withdrawing cash and securities investments from the broker-dealer's accounts. Prior to 1986, Brogdon held Series 1, 24, and 53 licenses.

3. **Neilson**, age 66, resides in Isla Mujeres, Mexico. She worked at BOKF from September 1996 until July 9, 2015, when she was terminated. Neilson served as the regional manager of the Tulsa office of the Department ("Tulsa Corporate Trust") from approximately 2000 until January 2013. In 2007, she became a senior vice president. From January 2013 until July 9, 2015, she served as the national sales manager in the Department.

Background

I. The Brogdon Bond Offerings

4. For over 25 years, Brogdon had been in the business of building, purchasing, renovating, leasing, managing, and selling nursing homes, assisted living facilities, and retirement housing ("Facilities") in the Southeastern and Midwestern United States. Brogdon financed these projects, in part, through conduit municipal bond offerings. In a conduit municipal bond offering, a municipal authority technically serves as the issuer but issues the bonds on behalf of a "conduit" borrower such as a college, hospital, or nursing home. The conduit borrower then agrees to make payments to bondholders from the revenues generated by the underlying facility.

5. In the typical Brogdon Bond Offering, which was unrated, the proceeds from the sale of the bonds were used to undertake a particular project—the construction, acquisition, or renovation of a Facility—for the benefit of a Brogdon-controlled borrower. The Brogdon-controlled borrower, not the issuer, was obligated to make debt service payments to bondholders. To do so, the Brogdon-controlled borrower pledged the Facility and its revenues as security. Certain Brogdon Bond Offerings also included a personal guarantee from Brogdon, his wife, or a family limited liability company.

6. Since 2000, BOKF has served as indenture trustee for 39 Brogdon Bond Offerings, through which Brogdon raised more than \$164 million. Seventeen of these offerings were issued between 2007 and 2015 (the “Relevant Period”). Fourteen of these offerings remain outstanding, with a remaining principal amount of more than \$65 million.

7. In exchange for its work on the Brogdon Bond Offerings, BOKF was paid more than \$1.4 million in fees during the Relevant Period.

II. BOKF Was Required to Act in the Best Interest of Bondholders in the Brogdon Bond Offerings

A. BOKF’s Duties as Indenture Trustee

8. The trust indentures for the Brogdon Bond Offerings typically mandate the creation of a DSRF of a specified amount, to be funded with the proceeds of the offering and to be maintained in an account by BOKF. BOKF was permitted to invest DSRF funds in certain low-risk investments, but was only permitted to use the funds to pay principal and interest on the bonds to the extent funds were not otherwise available to make a required payment.

9. If the DSRF was drawn down, the trust indentures typically required the Brogdon-controlled borrower to replenish the amount drawn down within 12 months, through 12 equal monthly payments of 1/12 of the withdrawal. A failure to replenish the DSRF in this manner constituted an “event of default” under the trust indenture.

10. Upon the occurrence of an event of default under the trust indenture, BOKF was required to act in the best interest of the bondholders. BOKF had “the power to proceed with any right or remedy granted by the Constitution and laws of the State, as it may deem best in its sole discretion, including any suit, action or special proceeding in equity or at law for the specific performance of any agreement contained herein or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect the rights aforesaid.”

11. The trust indentures for the Brogdon Bond Offerings also specify the rights of the bondholders upon the occurrence of an event of default. Upon the request of 51% of bondholders holding at least 35% of the principal amount of bonds outstanding, and in response to a poll by BOKF of all bondholders, BOKF is required to accelerate the maturity date for payment of principal and interest and to declare all remaining principal due and payable immediately. Such bondholders may also request that BOKF exercise its legal rights under the trust indenture, such as its right to bring suit to enforce the terms of the trust indenture.

12. Accordingly, bondholders may not exercise their rights to accelerate payments or to require BOKF to take legal action against the Brogdon-controlled borrower unless they are polled (and thus notified) by BOKF of the occurrence of an event of default under the trust indenture.

13. During the Relevant Period, Neilson and other members of Tulsa Corporate Trust interpreted the trust indentures for the Brogdon Bond Offerings to require disclosure and notification to bondholders by BOKF of a failure to replenish (as opposed to a draw on) the DSRF.

B. BOKF's Duties as Dissemination Agent

14. In addition to serving as indenture trustee, BOKF also served as dissemination agent for at least 33 Brogdon Bond Offerings, including 14 offerings during the Relevant Period. BOKF was named as dissemination agent in the continuing disclosure agreement ("CDA"), through which BOKF assumed additional responsibilities to bondholders.

15. The CDA is an agreement between BOKF and the Brogdon-controlled borrower for the benefit of the bondholders. The purpose of the CDA is to assist the underwriter in complying with its obligation under Exchange Act Rule 15c2-12 not to purchase or sell municipal securities in connection with an offering unless the underwriter has reasonably determined that an issuer of municipal securities or an obligated person for whom financial or operating data is presented in the final official statement has undertaken in a written agreement or contract for the benefit of the holders of such securities to provide continuing disclosure information regarding the security and the issuer or obligated person for the life of the municipal security.

16. The CDAs require BOKF to file certain documents on EMMA³ to the extent the documents are provided to BOKF and not otherwise filed by the borrower. The listed documents include: (a) annual financial statements of the borrower; (b) other annual or periodic financial information related to the borrower or the Facility; and (c) event notices related to the Facility or the offering, for a series of listed events drawn from those in Rule 15c2-12.

17. If the Brogdon-controlled borrower fails to provide BOKF with annual financial statements or the other required annual financial information by the date specified in the CDA, and the borrower has also not provided BOKF with notice that the documents have otherwise been filed, the CDAs require BOKF to file notice of the failure on EMMA "without further direction or instruction" from the borrower and "in a timely manner."

III. The BOKF Corporate Trust Department

18. During the Relevant Period, BOKF performed its bond trustee work through the Department, which was part of BOKF's Institutional Wealth Management unit and was made up of between six and ten regional offices.

³ Prior to July 1, 2009, municipal issuers made continuing disclosure filings within a decentralized system of private electronic repositories called the Nationally Recognized Municipal Securities Information Repository ("NRMSIR") system. In December 2008, Rule 15c2-12 was amended to designate the EMMA system as the central repository for continuing disclosures by municipal issuers and obligated persons.

19. The trustee work for the Brogdon Bond Offerings was performed exclusively by Tulsa Corporate Trust. Tulsa Corporate Trust had approximately eight employees during the Relevant Period, all of whom sat in close proximity to each other on the same floor in BOKF's offices in Tulsa, Oklahoma.

20. From approximately 2000 until January 2013, Neilson was the regional manager of Tulsa Corporate Trust. In January 2013, another individual took over as regional manager and Neilson became the national sales manager in the Department. Despite the change in title, however, Neilson remained part of the Department and continued to work out of the same location in the Tulsa office. During the Relevant Period, Neilson reported directly to the head of the Department.

21. Following the closing of a Brogdon Bond Offering, a trust administrator in Tulsa Corporate Trust was assigned to the corresponding accounts. Trust administrators received and paid debt service, requested and posted financial statements and other financial information, and tracked the receipt of other compliance items required by the bond documents. In order to do so, administrators used an electronic "tickler" system to remind them of upcoming due dates. During the Relevant Period, however, the tickler system did not permit administrators to track DSRF replenishment payments after a DSRF had been drawn down.

22. During the Relevant Period, the Administrative Investment Review Committee ("AIRCO") reviewed notable account activity within the Department on a monthly basis. AIRCO meetings were run by the head of the Department, to whom each of the regional managers reported, and typically included the Department head, the regional managers, and the trust administrators whose accounts were up for discussion.

23. Though spreadsheets of all past due ticklers were circulated in advance of AIRCO meetings, only those ticklers that lacked a recent "working date" or narrative describing the steps the administrator was taking were actually flagged for AIRCO review. As a result, as long as a trust administrator ensured that this information was complete, their ticklers and accounts would not be reviewed at AIRCO meetings.

24. Though a list of defaulted offerings was also circulated for review and discussion prior to AIRCO meetings, it was the trust administrators themselves who made the determination as to whether to include one of their offerings on the list.

IV. Neilson Was BOKF's Employee Responsible for Activities Related to the Brogdon Bond Offerings, Including Supervision of Other Responsible BOKF Employees

25. From start to finish, Neilson was the employee responsible for, or exercised supervision over, BOKF's involvement in the Brogdon Bond Offerings. As a senior vice president since 2007, Neilson was the most senior person in Tulsa Corporate Trust responsible for the activities related to the Brogdon Bond Offerings, including supervision of the employees who performed the day-to-day work on the accounts.

26. Prior to a closing, Neilson served as the primary point of contact at BOKF with Brogdon, his counsel, his accountants, bond counsel, and the underwriter concerning the terms, structure, and timing of the offering. Neilson's practice was then to attend the closing and to sign the required documents on behalf of BOKF, including the trust indenture and CDA.

27. After the closing, Neilson supervised and made all key decisions related to the administration of the Brogdon Bond Offering accounts. Neilson served as trust administrator for at least 24 Brogdon Bond Offerings. As trust administrator, she directed her assistants to set up relevant ticklers, and she corresponded with Brogdon and his assistants regarding debt service payments, trustee fees, financial statements, and other compliance items, or directed others to do so. Neilson also instructed others in Tulsa Corporate Trust to draft and file (or refrain from filing) notices on EMMA, subject to her review and approval.

28. Even for those Brogdon Bond Offerings for which Neilson never served as trust administrator, or which she assigned to another member of Tulsa Corporate Trust to serve as trust administrator, she served as the external point of contact and primary decisionmaker.

29. To the extent other members of Tulsa Corporate Trust were technically assigned as trust administrators for certain Brogdon Bond Offerings, they viewed these as assignments in name only. Neilson asked to be copied on all external email correspondence regarding the Brogdon Bond Offerings, and typically did not permit other members of Tulsa Corporate Trust to contact Brogdon directly. The other members of Tulsa Corporate Trust sought Neilson's approval for the filing of any EMMA notices regarding the Brogdon Bond Offerings. These practices were fundamentally different than those employed for accounts not involving Brogdon.

V. BOKF and Neilson Concealed Problems and Red Flags Related to the Brogdon Bond Offerings

30. During the Relevant Period, BOKF knew of at least four persistent red flags in connection with the Brogdon Bond Offerings: (a) Brogdon drew down on DSRFs and failed to replenish them in the manner prescribed by the trust indentures; (b) Brogdon failed to provide or file annual financial statements on EMMA; (c) Brogdon sent checks on the day debt service was due and, at times, several days after the due date; and (d) the Facility serving as collateral for one of the offerings, the Sumner Offering, had been closed since 2006.

31. Instead of disclosing or notifying bondholders of these problems, as required, BOKF and Neilson failed to disclose them while continuing to serve as trustee for new Brogdon Bond Offerings and other bond offerings through which Brogdon-owned Facilities were sold.

A. Failures to Replenish DSRFs

32. During the Relevant Period, the Brogdon Bond Offerings had a cumulative DSRF deficiency of between \$1.1 million (in early 2007) and nearly \$4.0 million (in August 2014). On July 9, 2015, the day Neilson was terminated by BOKF, the cumulative DSRF deficiency was nearly \$3.5 million.

33. When Brogdon or one of his assistants authorized a DSRF draw, a member of Tulsa Corporate Trust would then transfer the funds from the DSRF to make the debt service payment. Though Tulsa Corporate Trust periodically requested that Brogdon replenish the DSRFs as required—monthly payments of 1/12 the draw down for 12 months—Brogdon rarely sent such replenishment payments and never fully replenished the DSRFs.

34. Neither Neilson nor other members of Tulsa Corporate Trust filed material event notices on EMMA regarding Brogdon's failures to replenish the DSRFs for the Brogdon Bond Offerings. Members of Tulsa Corporate Trust understood from Neilson that it was her practice not to file such notices for the Brogdon Bond Offerings, as opposed to other offerings. Because they took direction from Neilson on all aspects of the administration of the Brogdon Bond Offering accounts, and Neilson did not instruct them to file such notices, they did not make these filings or otherwise notify bondholders of these failures.

35. Brogdon's failures to replenish DSRFs constituted events of default under the trust indentures for the Brogdon Bond Offerings. Neilson and others in Tulsa Corporate Trust knew, or learned at some point during the Relevant Period, that the failure to replenish a DSRF was an event of default for the Brogdon Bond Offerings. For example, in a March 2010 email to one of Brogdon's assistants regarding late debt service payments for an offering, Neilson stated that this put her "in an extremely awkward position" because "the Reserve Fund has previously been used and not replenished and I did not call a default." Nevertheless, prior to Neilson's termination in July 2015, BOKF neither filed suit against Brogdon nor polled bondholders to determine their desired course of action, as required.

B. Failures to File Annual Financial Statements

36. Brogdon rarely provided to BOKF, or filed on EMMA himself, the required annual financial statements for the Brogdon Bond Offerings. When he did so, these financial statements were typically not audited and were provided after the dates required by the CDAs. As of July 9, 2015, the date of Neilson's termination, Brogdon had failed to file all required annual financial statements for each of the 20 Brogdon Bond Offerings that were either outstanding at the time, or that had been paid off since January 1, 2014. For many of these offerings, Brogdon failed to file annual financial statements for multiple years.

37. Prior to Neilson's termination, BOKF only filed EMMA notices regarding these failures on three occasions, two of which are discussed below in Paragraph 39. Though members of Tulsa Corporate Trust, including Neilson, reached out to Brogdon and his assistants to request these financial statements, they typically did not receive them.

38. Though the CDAs required BOKF to file an EMMA notice stating that the Brogdon-controlled borrower had failed to file annual financial statements, without further direction from the borrower, the practice within Tulsa Corporate Trust was not to file such notices. Members of Tulsa Corporate Trust understood from Neilson that this was the manner in which the Brogdon accounts, unlike the non-Brogdon accounts, were to be administered.

39. In early 2015, when a member of Tulsa Corporate Trust filed failure-to-file notices for two Brogdon Bond Offerings without Neilson's approval, Neilson told that individual, and others in Tulsa Corporate Trust, not to file any further notices for the Brogdon Bond Offerings. In particular, Neilson told members of Tulsa Corporate Trust that they were not to file such notices for those offerings underwritten by Brogdon's primary underwriter, Underwriter A, because Underwriter A was being investigated by the Financial Industry Regulatory Authority.

40. These instructions were contrary to Neilson's statements in AIRCO meetings and emails about the importance of promptly filing such notices because of the Commission's Municipalities Continuing Disclosure Cooperation Initiative announced on March 10, 2014 ("MCDC Initiative").

41. Additionally, in 2013 and 2014, Neilson signed waivers of the annual audited financial statement requirement for at least one Brogdon Bond Offering, in a manner that was not permitted by the terms of that offering's trust indenture or CDA.

C. Receipt of Late Checks

42. Tulsa Corporate Trust routinely received debt service checks for the Brogdon Bond Offerings on the day debt service was due. Because checks typically take at least a day to clear, however, these funds were not available to make a debt service payment the same day they were received. Nevertheless, Tulsa Corporate Trust often made seemingly timely debt service payments to bondholders because Neilson and others in Tulsa Corporate Trust (at Neilson's direction) temporarily overdrafted BOKF accounts to make the payment.

43. Brogdon's assistants asked members of Tulsa Corporate Trust to hold checks until the end of the day (or the following day) so that the checks did not clear Brogdon's bank account the same day. According to one member of Tulsa Corporate Trust, Brogdon debt service checks bounced on at least two occasions since 2013. Members of Tulsa Corporate Trust described this practice as fundamentally different from their experience with non-Brogdon accounts.

44. As the trust administrator responsible for many of the Brogdon accounts, Neilson participated in this practice and instructed others on it. In emails to Brogdon's assistants in 2010 and 2011, Neilson refers to multiple overdrafts by her in order to make debt service payments; in one such email, Neilson states: "I just know we can[t] do this every month. I won't be here, I will be fired and the next guy will just put it in default. We've got to have the money when the bondholders expect it."

45. In another email to Brogdon, in October 2014, Neilson asks Brogdon for "help" regarding a debt service payment due that day, warns of potential broker complaints about a late or missed payment, and notes that she is "not quite ready to retire."

D. The Sumner Offering

46. Neilson served as the administrator for Brogdon's Sumner Offering from the date of its issuance, in February 2002, until March 2013.

47. The DSRF for the Sumner Offering was drawn down in 2005 and never fully replenished. By 2006, the Facility serving as collateral for the offering was closed and no longer generating revenue to pay bondholders. Neilson knew of the Facility's closure; in fact, a tickler assigned to Neilson, with a due date of June 30, 2006, stated that "this facility is closed so no financials are done/paid by guarantor." This tickler was included in the materials circulated prior to numerous AIRCO meetings, and remained in the Tulsa Corporate Trust tickler system until at least 2013.

48. An account review for the Sumner Offering in April 2008, which Neilson signed, shows that there was a nearly \$170,000 DSRF deficiency and that the financial statements for the offering were not current.

49. None of these facts were disclosed to bondholders by BOKF.

50. As result, Neilson knew the importance of the Sumner Offering to Brogdon's reputation and the viability of future offerings. For example, in a February 2014 email to one of Brogdon's assistants, following a missed debt service payment for the Sumner Offering (which was ultimately made), Neilson stated: "Sumner didn't pay. It always pays . . . that's the glue holding him together. This is not good!!! When?"

VI. Escalation of Concerns Internally at BOKF

51. At times, members of Tulsa Corporate Trust raised concerns with Neilson about the Brogdon Bond Offerings. They described the offerings to her as a "house of cards" or that Brogdon was "robbing Peter to pay Paul," phrases they also heard used by brokers who called with questions about the status of the bonds.

52. In 2012, Neilson wrote an email to Brogdon requesting overdue financial statements for multiple Brogdon Bond Offerings in which she indicated that she had heard threats "from some mighty unhappy people, threatening GA Securities Dept, call[ing] these Ponzi schemes . . . the more ammunition [I] have the better off you all are." Nevertheless, Neilson never escalated these complaints internally at BOKF and did not express concerns to others in Tulsa Corporate Trust about the offerings.

53. While certain Brogdon Bond Offerings are listed on the materials circulated in advance of the AIRCO meetings prior to Neilson's departure, there is no evidence that AIRCO conducted any review of these accounts at its meetings.

54. In or about August 2013, the other members of Tulsa Corporate Trust who worked on the Brogdon Bond Offerings raised concerns about the administration of the accounts with the

individual who took over for Neilson as regional manager earlier that year. When this individual ultimately confronted Neilson about these concerns, Neilson told her not to worry about the offerings and assured the person that she had them under control.

55. Department management took no corrective action with respect to Neilson's administration of the Brogdon Bond Offerings until her termination in July 2015.

VII. Impact on Subsequent Offerings

56. Despite the persistent problems with the Brogdon Bond Offerings described above, BOKF, led by Neilson, continued to serve as indenture trustee and dissemination agent for new offerings involving Brogdon and his Facilities during the Relevant Period.

57. BOKF served as trustee for one new Brogdon Bond Offering in 2008, two new offerings in each of 2009 and 2010, one new offering in 2011, five new offerings in each of 2012 and 2013, and one new offering in 2014. For both BOKF and Neilson, Brogdon and the Brogdon Bond Offerings represented a consistent source of new business.

58. Brogdon stopped raising money through new bond offerings in March 2014, at which point he began selling his Facilities to third parties. Some of these sales were financed through new bond offerings whereby a third party served as the borrower and used the proceeds of the offering to purchase the Facility from Brogdon.

59. Between August 2014 and July 2015, BOKF, led by Neilson, served as trustee for six such offerings, which were underwritten by Underwriter A. The proceeds of five of these offerings were used to pay off prior Brogdon Bond Offerings secured by the same Facility. At the time these Brogdon Bond Offerings were paid off, the prior offerings had a cumulative DSRF deficiency of \$822,567.34. Prior to her termination, Neilson's practice was to attend these closings and sign documents on behalf of BOKF at them.

60. By at least 2014, in the wake of the announcement of the MCDC Initiative, Neilson and others in Tulsa Corporate Trust knew that disclosure of the issues regarding the Brogdon Bond Offerings could negatively impact Underwriter A's ability to underwrite new offerings involving Brogdon or his Facilities.

61. For example, in an October 2014 email to Brogdon regarding Brogdon's failure to replenish the DSRF for one of his outstanding offerings, which was to be paid off with the proceeds of a new offering, Neilson noted that "this could cause problems for the underwriter at this time" because "[t]here are a lot of eyes watching what happens here" such that "something like this could bring everything to a halt."

62. Similarly, in a January 2015 email from another member of Tulsa Corporate Trust to Brogdon, which described DSRF deficiencies for eight Brogdon Bond Offerings underwritten by Underwriter A, the member of Tulsa Corporate Trust stated that "[w]ith more strict guidelines regarding disclosure notification in place now, the draw notifications will raise red flags with

bondholders and will affect [Underwriter A's] ability to sell any future bonds." Neilson requested that the members of Tulsa Corporate Trust compile this DSRF deficiency information. Neilson also conveyed the concerns expressed in the email to the member of Tulsa Corporate Trust before that individual sent the email.

63. By 2014, Neilson also knew that Brogdon's prior failures to provide required annual financial statements could negatively impact Underwriter A's ability to continue to sell Brogdon bonds, or to underwrite new offerings involving Brogdon's Facilities.

64. Neilson routinely spoke with the CEO of Underwriter A, and copied that person on emails, regarding the need to collect and post updated annual financial information for the Brogdon Bond Offerings underwritten by Underwriter A.

65. In 2014, Neilson instructed other members of Tulsa Corporate Trust to seek the missing financials for the Brogdon Bond Offerings from Brogdon's assistants and accountants, and told them about the potential impact on Underwriter A if these documents were not received.

66. In emails to one of Brogdon's assistants in late 2014, Neilson asked whether "[i]f I put a notice up that you are not in compliance, nothing will close in the future?" and noted that the lack of financials was "not good for the Underwriter" such that Underwriter A "may be subject to fines any day!" Neilson instructed other members of Tulsa Corporate Trust to seek the missing financials for the Brogdon Bond Offerings from Brogdon's assistants and accountants, and told them about the potential impact on Underwriter A if these documents were not received.

VIII. Violation of the Federal Securities Laws

67. Brogdon violated the antifraud provisions of the federal securities laws by (a) making material misrepresentations to investors about his compliance with continuing disclosure obligations in prior Brogdon Bond Offerings; and (b) engaging in a scheme to defraud and fraudulent course of business by systematically failing to replenish the DSRFs and concealing that his Facilities were generating insufficient revenue to cover debt service obligations for prior offerings by not making required EMMA filings, while simultaneously raising new money through new offerings from unsuspecting bondholders.

68. As a result of the conduct described above, BOKF caused Brogdon's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

BOKF's Remedial Efforts

69. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

70. Respondent has undertaken to:
- a. Implement additional policies and procedures regarding the acceptance of new unrated conduit municipal financing business, including: (i) review and approval of the engagement by senior Department management, risk, legal, and compliance; and (ii) review of appropriate negative news searches on the proposed borrowers, obligated persons, and underwriters;
 - b. Enhance the tickler system used by the Department for unrated conduit municipal financings by providing a set of mandatory ticklers including, at least, ticklers for the receipt of required annual financial information, the receipt of payments to replenish a DSRF that has been drawn down, and appropriate EMMA filings or other bondholder notifications if such information or payments are not received;
 - c. Implement automated reporting on DSRF balances for all Department accounts, such that senior Department management, risk, legal, and compliance may run global or concentration reports on DSRFs that have been drawn down or are otherwise below their required levels;
 - d. Enhance AIRCO review, or review by another similar supervisory committee created by the Department, for unrated conduit municipal financings to include review of all outstanding and past-due ticklers, with a particular focus on high risk ticklers and the mandatory ticklers described above;
 - e. Provide training to all Department employees regarding relevant corporate trust administration subjects, including: (i) review of trust indentures and CDAs, and the corresponding duties and obligations of each transaction participant (including BOKF) under those documents; (ii) making required or appropriate EMMA filings or other bondholder notifications; (iii) use of the tickler system and other monitoring systems in order to ensure compliance items are appropriately cataloged; (iv) participation in the AIRCO review process and other supervisory review processes, to ensure that compliance issues and other red flags are escalated for review; and (v) the Department's whistleblower policies and the procedure by which to report complaints; and
 - f. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent

agrees to provide such evidence. The certification and supporting material shall be submitted to Sandeep Satwalekar, Assistant Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent BOKF's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent BOKF cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall comply with the undertakings enumerated in Section III above.

C. Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$984,200.73, prejudgment interest of \$83,520.63, and a civil money penalty of \$600,000.00 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely payment of the civil money penalty is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying BOKF as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara S. Mehraban, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York 10281.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

E. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$600,000.00 based upon its cooperation in a Commission investigation and related enforcement action. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary

1 Q Okay. What about Greg Youra? Has he helped
2 provide information that updates the status of National
3 Assistance Bureau?

4 A Yes.

5 Q Okay. With respect to the description of new
6 borrower in this official statement, the Clayton IV
7 official statement, did you have discussions with any of
8 those individuals about the content of this section?

9 A I could have. I just don't remember.

10 Q Okay. On the bottom of page two going to the
11 top of page three in the Statement of Purpose section,
12 the official statement reads, "In addition to the
13 facility, the new borrower currently owns a 46-bed
14 assisted living facility in Savannah Georgia, and
15 nursing homes of 82 beds and 68 beds in Sumner,
16 Illinois." To your knowledge, is that an accurate
17 statement?

18 A Well, looking at it as a Monday morning
19 quarterback as to Sumner, no.

20 Q And that is because why?

21 A I don't think you -- at least I didn't
22 recognize the severity of the problem in Sumner in 2011
23 or -- what year? Yeah, 2011.

24 Q Okay. So the fact that the Sumner facility
25 had been sold at a tax sale, that wasn't information

1 that you had in late 2011?

2 A I don't think so. Wasn't that tax sale a good
3 deal later than that?

4 Q Well, I'm just trying to understand when you
5 understand -- when you came to understand it.

6 A I didn't know in 2011 just how terrible that
7 Sumner project -- the condition we found it in.

8 Q Did you know in 2011 that the Sumner facility
9 had been closed?

10 A I don't think so. I think I knew and I had
11 heard that Chris Brogdon was making payments out of his
12 pocket, so to speak, and I assumed that that meant there
13 were shortfalls and that he was making up the shortfalls
14 to keep it afloat. But in retrospect, it appears that
15 things were much worse than that.

16 Q Okay. And did you -- that information about
17 Mr. Brogdon making up shortfalls on that bond offering,
18 that's not in this section on the new borrower, right?

19 A No.

20 Q Okay. With respect to the reference to
21 Sumner -- the facility in Sumner, Illinois here, I know
22 it was a long time ago but do you recall having any
23 discussions with Mr. Youra, Mr. Brogdon, or anyone else
24 about that particular information?

25 A No. I mean, we might have at other times but

1 I don't specifically remember in the context of Clayton
2 IV.

3 Q Do you remember discussing it with them in
4 connection with the Clayton V offering two years later?

5 A I do not. I know this, that these Clayton
6 deals are some of the most complex transactions I have
7 ever been associated with. If you read all these
8 documents, it will make your head spin. Maybe you all
9 are used to things this head spinning, but I am not.
10 This is unusually complex.

11 MR. GREENWOOD: I am showing the witness what
12 has been previously marked as Exhibit 220. It's an
13 email from Gardnerforlaw@aol.com to various individuals
14 with the subject line, Clayton V. The Bates range is
15 SEC- CANTONE-E-0003257 through 2324.

16 BY MR. GREENWOOD:

17 Q Mr. Miller, do you recognize Exhibit 220?

18 A Yes.

19 Q Is this an email containing some changes to
20 the POS for the Clayton V offering from Michael Gardner?

21 A Yes.

22 Q And you received this email?

23 A As far as I know, yes. This is a normal kind
24 of thing as you're building up to closing.

25 Q Right. Your email is listed on the "to" line?

1 A Yes.

2 Q Okay. In Mr. Gardner's email in the second
3 sentence he says, "Changes from the previous draft are
4 marked. In addition, I have hand marked the significant
5 ones." Was that --

6 A I don't -- oh, yeah. I see.

7 Q Okay. Was that Mr. Gardner's practice to hand
8 mark the most important changes in a POS?

9 A Not necessarily. You know, each deal is
10 different.

11 Q If you go to page five of the attachment in
12 the section on obligors on the Series 1999 A revenue
13 bonds.

14 A Page five? Arabic five?

15 Q Arabic five.

16 A Okay.

17 Q Okay. That's a section on National Assistance
18 Bureau, do you see that?

19 A Yes.

20 Q And the second paragraph in that section is
21 the statement of purpose.

22 A Yes.

23 Q And at the end of that section it reads, "In
24 addition to the Bayberry Trace facility, National
25 Assistance Bureau currently owns nursing homes of 82

1 beds and 68 beds in Sumner, Illinois." Is that
2 statement accurate?

3 A I didn't remember there being two nursing
4 homes in Sumner, but we all know -- I think we know that
5 it wasn't accurate.

6 Q Right, because the facility had been sold at a
7 tax sale?

8 A Well, I don't know the date of the tax sale.
9 As I understand it, the tax was fairly recently, wasn't
10 it?

11 Q Well, I will represent to you that the tax
12 sale was in 2008 and became final in early 2011.

13 A Geez. It took three years for it to become
14 final?

15 Q I think because of state law there was a
16 certain period of time during which the owner could buy
17 back but the sale was in late 2008, I will represent to
18 you, and the redemption period ended in early 2011. Is
19 that consistent with your recollection or is that not
20 your recollection?

21 A Well, the thing that was a shock to me here
22 when someone in our office -- when I asked Melissa to
23 look at the title records in Illinois, the shock to me
24 was how little was paid. Wasn't it \$50,000? I just
25 don't -- that's hard for me to wrap my mind around that

1 something to do with it, but I don't think either
2 Michael Gardner or I knew just how far that project had
3 sunk.

4 MR. GREENWOOD: Okay.

5 (SEC Exhibit No. 277 was marked for
6 identification.)

7 MR. GREENWOOD: I am showing the witness what
8 has been previously marked -- or, just been marked as
9 Exhibit 277. It's a letter dated April 29th, 2013, on
10 Sell and Melton, LLP letterhead. No Bates range, but I
11 will represent that it was produced by Mr. Miller in
12 response to the SEC subpoena.

13 BY MR. GREENWOOD:

14 Q Mr. Miller, do you recognize Exhibit 277?

15 A Yes.

16 Q Is this a copy of your bond counsel opinion
17 for the Clayton V offering?

18 A Yes.

19 Q Is that your signature on the last page?

20 A Yes.

21 Q On pages one and two, it shows that connection
22 with your opinion, you appear to have reviewed and
23 examined among other documents the official statement,
24 is that right?

25 A Yes.

1 a facility of these dimensions could be sold for
2 \$50,000. Maybe it has to do with the inner-workings of
3 the tax sale but whoever got the project for \$50,000
4 seems to me they got a colossal bargain, but I haven't
5 seen any photographs of it lately or ever, for that
6 matter.

7 Q Okay. So the portion of the statement from
8 the official statement I just read of the draft official
9 statement is marked in handwriting, do you see that?

10 A Yes.

11 Q It appears to be marked by Michael Gardner?

12 A Yes.

13 Q Did you have any discussions with Mr. Gardner
14 about the status of the Sumner facility in connection
15 with the Clayton V offering?

16 A No. I don't think either he or I knew the
17 gravity of what was going on in Sumner.

18 Q Who would have?

19 A Chris Brogdon.

20 Q Would Greg Youra also have known that?

21 A By derivative, yes, I would think. It's not
22 something I'm sure that Chris Brogdon was proud of, and
23 I really don't -- you all probably know a lot more about
24 why it wound up in that condition. I know there was
25 some friction among doctors up there that might have had

1 Q On page four going on to page five, subsection
2 14 reads, "The information and statements in the
3 official statement under the headings, the Issuer of the
4 Series 2013 Certificates of Participation, the
5 Guarantors of the Series 2013 Certificates of
6 Participation, the Developer, the Facilities, Plan of
7 Financing, the Series 2013 A Certificates of
8 Participation, Source of Payment and Security,
9 Litigation, Legal Matters, Tax Matters, and
10 Miscellaneous and information with respect to the above
11 on the cover page, are, to the best of our knowledge,
12 correct in all material respects and nothing has come to
13 our attention which would lead us to believe that the
14 information under such headings in the official
15 statement contained an untrue statement of material fact
16 or that such information taken collectively omits to
17 state a material fact necessary to make the statements
18 made therein in light of the circumstances under which
19 they were made not misleading providing that in
20 rendering this opinion we are not expressing an opinion
21 with respect to any information contained or omitted
22 from the material under such headings regarding the NAB
23 as to form and tenor corresponding to the terms and
24 provisions thereof as set out in the official
25 statement."

1 Mr. Miller, is the section that I just read
 2 again another sort of Rule 10b-5 opinion that you
 3 rendered in connection with the Clayton V offering?
 4 A Yes.
 5 Q Again, the carve out at the end relating to
 6 the NAB headings as to form and tenor, do you have an
 7 understanding as to what that means?
 8 A Not really.
 9 Q Okay. The particular sections that are listed
 10 at the beginning of this paragraph, how did you know to
 11 include those sections as part of the opinion?
 12 A That's basically what I customarily do. These
 13 change a little bit from deal to deal.
 14 Q Okay. So were you the person who selected
 15 these sections to include or was it somebody else?
 16 A I would say I was.
 17 MR. GREENWOOD: Okay. Just hold onto that for
 18 one second.
 19 I'm showing the witness what has been
 20 previously marked as Exhibit 55. It's an official
 21 statement dated April 29th, 2013, for certificates of
 22 participation in Development Authority of Clayton County
 23 Georgia and Savannah Economic Development Authority
 24 revenue bonds. There is no Bates number, but I will
 25 represent that these are -- this was printed off the

1 EMMA website.
 2 BY MR. GREENWOOD:
 3 Q Mr. Miller, do you recognize Exhibit 55 as the
 4 Clayton V official statement?
 5 A Yes.
 6 Q Turn to page four, the section on the obligors
 7 of the series 1999 A revenue bonds. Do you see that?
 8 A Yes.
 9 Q There's a section on National Assistance
 10 Bureau and its statement of purpose again?
 11 A Yes.
 12 Q And, there's, again, a reference to the fact
 13 that National Assistance Bureau currently owns nursing
 14 homes of 82 beds and 68 beds in Sumner, Illinois. Do
 15 you see that?
 16 A Yes.
 17 Q I think as we just discussed a moment ago,
 18 that's not accurate at of the time of the official
 19 statement?
 20 A It appears you are right, it's not accurate.
 21 Q Okay. Is this -- looking back to your bond
 22 counsel opinion that we just looked at, is the section
 23 that we are looking at now in the official statement
 24 covered by subsection 14 in Exhibit 277?
 25 A It may be, I just don't recall focusing in on

1 that. It's possible.
 2 Q Well, why don't we look at the headings that
 3 are listed in subsection 14. Is this particular heading
 4 listed?
 5 A Oh, you mean the obligors?
 6 Q Correct.
 7 A The guarantors are, but the obligors are not.
 8 Q Okay. Do you know why the obligors are not
 9 included as part of the subsection 14?
 10 A I do not.
 11 Q Okay. Was that a decision you made to not
 12 include that or is there some other reason why the
 13 obligors are not part of the opinion?
 14 A I just don't recall.
 15 Q Do you recall any discussions about whether or
 16 not to include the obligors as part of your bond counsel
 17 opinion for the Clayton V offering?
 18 A I do not. The focus in that -- in those
 19 Clayton issues, I think, was the guarantors because it
 20 is to the guarantors that the bondholders look.
 21 Q Right. So with respect to the Clayton V, can
 22 you recall any conversations at all about the status
 23 of the Sumner facility and the disclosure of that in the
 24 official statement?
 25 A No. Most of our efforts in these Clayton IV

1 and Clayton V had to do with just trying to understand
 2 the intricacies of the structure.
 3 Q For the Clayton V offering, who did you rely
 4 on for your information about the new borrower?
 5 A Rhode Hill and Chris Brogdon and Greg Youra
 6 and Michael Gardner.
 7 MR. GREENWOOD: Okay. Let's go off the record
 8 at 4:12 p.m.
 9 (A brief recess was taken.)
 10 MR. GREENWOOD: We are back on the record at
 11 4:16 p.m. There were no substantive communications
 12 between the SEC staff and the witness.
 13 Mr. Miller, is that correct?
 14 THE WITNESS: Yes.
 15 BY MR. GREENWOOD:
 16 Q Mr. Miller, have you spoken with anyone other
 17 than counsel, to the extent you have counsel, regarding
 18 this investigation?
 19 A I don't have counsel. I spoke with Michael
 20 Gardner yesterday and he was interested. I had not
 21 spoken with him about my testifying before and so I
 22 called him and asked him to give me some authority for
 23 taxable sales being exempt from registration because
 24 we've come to grips with that two or three or four times
 25 over the years. There isn't any iron clad basis for

1 that and he sent me something by somebody of the name
2 Friepinger.

3 **Q Okay. Did you have any other discussions with
4 Mr. Gardner about this investigation?**

5 A Well, I told him that -- well, since he
6 represents and has represented Cantone Research, Inc., I
7 told him that even though the overall subpoena and your
8 letter had Cantone mentioned, it didn't look to me as if
9 it was much about Cantone involved with it; the focus is
10 more on Chris Brogdon, certainly, than Cantone, Anthony
11 Cantone, and Ray DeRobbio affiliated with them. And
12 then --

13 **Q And what did he say in response to that?**

14 A Not much. But then later on in the day he
15 asked me if I would send him what was sent to me. And I
16 have read -- well, I reread the May 17th letter coming
17 up here to see whether I thought there was any
18 prohibition of my sending that to him and it didn't look
19 to me as if there was because those individuals
20 mentioned didn't include Ray DeRobbio and Anthony
21 Cantone. And I don't know whether my secretary has this
22 on our system or not but I asked him to call my
23 secretary -- they get along very well -- and asked her
24 to send him this because Cantone is his client. But now
25 I will be able to tell him correctly that here we spent

1 anything to my wife?

2 **Q Again, we ask that you not discuss the
3 substance of your testimony with others.**

4 A Well, if it means anything, I trust my wife
5 and I have 46 years to base that trust upon and it's not
6 as if she's a social person. She doesn't go out and
7 talk with people. We just like to have conversation.
8 you know, so I understand your request. But if I should
9 not abide by your request, what are the ramifications?

10 **Q So as I think you reviewed the May 17th
11 subpoena, there's no gag order. This is a confidential
12 non-public investigation but there's no --**

13 A Well, you know that document a whole lot
14 better than I do. And Michael Gardner knows the SEC a
15 whole lot more than I do. I know more about the
16 Internal Revenue Service than he knows but he knows more
17 about the SEC than I do. If I tell him that Lee
18 Greenwood asked me -- requested that I not discuss this
19 with anybody, do you think he'll understand?

20 A You know, I can't speak for him and we're
21 really not able to answer questions on this other than
22 convey that request. So we will leave it at that, but
23 we are trying to understand who else you have spoken to
24 about this investigation, and let's put your wife aside.
25 Any other conversations with Mr. Gardner that you

1 all day and I don't think you asked me anything about
2 Anthony Cantone or Ray DeRobbio his client.

3 **Q Do you expect to speak to Mr. Gardner about
4 the substance of your testimony today?**

5 A Yeah. Now, that was -- that's a question I
6 have for you. Is that okay if I do that?

7 **Q So our request that I will close with in a
8 minute is that we ask that you not discuss the substance
9 of your testimony with anyone else. That's a request.**

10 A So it's not something I'm not necessarily
11 bound by?

12 **Q We can't give you legal advice. All I will
13 say is that we ask that you not discuss the substance of
14 your testimony with anyone other than counsel.**

15 A "Counsel" meaning my counsel which doesn't
16 exist.

17 **Q To the extent you have counsel, yes.**

18 A So I can discuss it with myself but no one
19 else. I mean, what if my partners ask me about this?

20 **Q All right. So, again, I will just repeat our
21 standard advisement is that we ask that you not discuss
22 the substance of your testimony with anyone other than
23 counsel. It is a request.**

24 A My wife of 46 years? The first thing she will
25 ask me, well, how did it go today? So I can't say

1 haven't already described?

2 A No, just yesterday. And he sent me some good
3 information about taxable sales not being subject to
4 registration.

5 **Q Right. Have you discussed this investigation
6 with Christopher Brogdon?**

7 A I don't think so, no. He is too tied up
8 trying to sell all of his projects.

9 **Q Have you discussed this investigation with
10 Greg Youra?**

11 A No, I don't think so.

12 **Q Have you discussed this investigation with
13 Marrien Neilson?**

14 A No, I don't think so.

15 **Q Okay. Have you discussed this investigation
16 with Duane Edwards?**

17 A By "this investigation," you mean from May
18 17th on?

19 **Q I'm referring to the staff's investigation in
20 this matter generally.**

21 A Well, as to May 17th to present, no. But in
22 Duane Edwards' case, I have mentioned Chris Brogdon over
23 the last couple of years. Not in any excruciating
24 detail, but that he was having trouble with the SEC and
25 we really haven't gotten into the details of Sumner and

1 other things.

2 **Q** Okay. With the date clarification that we

3 just made with respect to the SEC's investigation as a

4 whole and not just since May 17th to the present, do

5 your answers with respect to Mr. Brogdon, Mr. Youn, and

6 Ms. Neilson change?

7 **A** I don't think they change. Well, now wait a

8 minute. I certainly have discussed this whole thing

9 with Chris Brogdon, not since May 17th but we went out

10 to the Broadmoor in September and I was on heavy

11 chemotherapy then and I remember in the golf cart

12 suggesting to him why don't you pay these off and be

13 done with it and clear up your name and so forth. And I

14 think he appreciated the advice.

15 You know, I'm not his lawyer, but I just

16 thought if I were in his shoes, I -- because I figured

17 he probably had the ability to pay off all these

18 bondholders, but he didn't take that advice to do that

19 voluntarily and then spent a huge amount of money on

20 lawyers to have a judge tell him to do just what I

21 suggested that he do in September.

22 **Q** Any other conversations with Mr. Brogdon about

23 this investigation that you can recall?

24 **A** Yes. You want to know them?

25 **Q** I do.

1 **A** You may not like this. Were you all involved

2 in his hearing or trial?

3 **Q** So I'm not going to answer questions. We just

4 want to understand the substance of your conversation

5 with Mr. Brogdon.

6 **A** Okay. He said that an SEC attorney -- I don't

7 know who that was. He didn't mention any names -- was

8 trying to tell the judge that there was -- that Mr.

9 Brogdon was -- had a Ponzi scheme here. And the judge

10 in his estimation corrected the lawyer and said there's

11 value in these projects. You are off base. There is no

12 Ponzi scheme here. There is value and there are serious

13 projects here operating, basically.

14 And the judge basically appointed a receiver.

15 I haven't seen any of these documents, but you asked me

16 what I discussed, that the receiver was appointed to

17 orchestrate the sale of these projects and Chris said he

18 was in the throes of doing just that and that he expects

19 that that will take probably some into next year to do

20 these in an orderly way that keeps the value up, and

21 that after those sales he will have a good deal of money

22 left over and that the bondholders will be paid all

23 their principal and all of their interest.

24 **Q** Okay. Any other conversations you can recall

25 about this investigation with Mr. Brogdon?

1 **A** Clobbering all these people (Indicating) down

2 here.

3 **Q** And, Mr. Miller, you're referring to a chart

4 that you drew related to the rates of return, is that

5 right?

6 **A** Right. And I will leave this with you, if you

7 want to take it.

8 **MR. GREENWOOD:** Okay. And maybe we will mark

9 this as an exhibit, just for the record.

10 (SEC Exhibit No. 278 was marked for

11 identification.)

12 **THE WITNESS:** But we didn't get into a whole

13 lot of detail.

14 **MR. GREENWOOD:** Okay. Understood.

15 **THE WITNESS:** But wait. This is the thing

16 that was very impressive to me and I say this on behalf

17 of the SEC. I might have mentioned to you on the phone.

18 I went to a seminar in Washington DC in March and a

19 pretty high up SEC person was there and she said that a

20 typical SEC investigation takes two or three years

21 before there is a final resolution.

22 Well, Chris Brogdon started this in September

23 and got an order from a judge, a definitive order, as I

24 understand it, in December, three months instead of two

25 or three years. Now, he paid a lot of money for that,

1 but to the SEC's credit, it brought resolution to the

2 situation and those bondholders, I think, will be

3 pleasantly surprised to get all their principal and

4 interest. Now, I haven't verified any of this

5 independently, but that's the gist.

6 **BY MR. GREENWOOD:**

7 **Q** Understood. Any other conversation with Mr.

8 Brogdon about this investigation that you can recall?

9 **A** That's the gist of it.

10 **Q** Okay. Any conversations with Marrien Neilson

11 about this investigation?

12 **A** Just last week I was in Destin. I don't know

13 if you know about the Destin projects. Do you know

14 about the Destin projects?

15 **Q** If you could, just describe your conversation

16 with Ms. Neilson, that would be helpful.

17 **A** She was on the phone from Mexico and I

18 submitted to one of her former colleagues that a lot of

19 the problems in Destin, and that started out with 11

20 bond issues, could be traced to Chris Brogdon. And one

21 of her former colleagues Tim Cook I asked -- I told him

22 it seemed to me 80 percent of the Destin problems could

23 be traced to Chris Brogdon.

24 **Q** How?

25 **A** Because Bank of Oklahoma used to be a helpful

1 cooperative player among the usual suspects. And now,
2 they are an adversary. It completely changed their view
3 of things. And those Destin projects we were able to
4 wrench away from Southtrust Bank in 2001 because
5 Southtrust Bank was, I would say, not properly trying to
6 make a good amount of money in default by throwing the
7 deals into default with affirmative action on their
8 part. And Bank of New York will tell you the same
9 thing. Some of the employees of Bank of New York have
10 told me, well, we have low original prices to get
11 involved with the expectation we're going to make our
12 real money when the deals are thrown into default.

13 **Q Right. Why was Ms. Neilson on the phone from**
14 **Mexico?**

15 **A** Because she knows the history of all those
16 Destin projects and I think she's going to move to UMB
17 with Tim Cook. And it is our hope that we can get those
18 projects changed from the trusteeship of Bank of
19 Oklahoma to UMB.

20 **Q And what is your basis for believing that Ms.**
21 **Neilson is going to be moving to UMB bank?**

22 **A** I've just heard that that was so. it's not a
23 fate de compile.

24 **Q And who did you hear that from?**

25 **A** Mike Kent and Tim Cook. Do you know them?

1 **Q Okay. Have you reviewed any transcripts or**
2 **summaries of transcripts of the investigative testimony**
3 **in this investigation?**

4 **A** I might have, but not in any -- I really
5 didn't focus on it because I haven't been hired to do
6 any work.

7 **Q And whose testimony transcript have you**
8 **reviewed?**

9 **A** I don't know that I have any testimony. I
10 might have seen parts of an order.

11 **Q Okay. Have you spoken with anyone other than**
12 **counsel, which you don't have, about your appearance**
13 **here today?**

14 **A** Michael Gardner and my secretary.

15 **Q Okay. Other than them as well as your wife?**

16 **A** No, I think that's it.

17 **MR. GREENWOOD:** Okay. Mr. Miller, do you wish
18 to clarify anything or add anything to the statements
19 you've made today?

20 **THE WITNESS:** I guess I just would like for
21 you to bear in mind this big picture.

22 **MR. GREENWOOD:** And that is the big picture
23 that we have marked now as 278?

24 **THE WITNESS:** Right.

25 **MR. GREENWOOD:** Understood.

1 **Q I am familiar with the names. And you heard**
2 **that from them recently?**

3 **A** Yes, last week.

4 **Q Okay. So it's your understanding Ms. Neilson**
5 **will be moving back from Mexico to the United States?**

6 **A** I think so. She is leasing someplace in
7 Mexico and I would speak very favorably about Marrion
8 Neilson. I have dealt with lots of trustees over the
9 years. She's very experienced. She's very practical.
10 She cares about the bondholders unlike Southtrust Bank
11 and Amsouth and I would say the current Bank of Oklahoma
12 people who are driving -- the climate has completely
13 changed 180 degrees. Jim Orbison has been marginalized.
14 The head of Bank of Oklahoma and the law firm now
15 involved are fraternity brothers, or Harvard graduates
16 and they're very close whereas Jim Orbison used to be
17 involved with all these now it's this other firm driving
18 things.

19 **Q Okay. Have you had any conversations with**
20 **Robert Lawson about this investigation?**

21 **A** When you say "this investigation," you go back
22 to last summer, right?

23 **Q** Yes.

24 **A** We may have had superficial references to it
25 but nothing with any substance.

1 **THE WITNESS:** I mean, if one of the purposes
2 of the SEC is to look out for the interest of investors,
3 just look at that and see how those investors came out
4 versus all other investors in the world in the last ten
5 years. If you keep that foremost in mind, Chris Brogdon
6 was no saint and I suspect you figure he did a lot of
7 things wrong, but the bottom line seems to me is that
8 the investors that you're charged with protecting are
9 doing very well in spite of all of those risks of loss
10 that you read about in the OS.

11 You have looked at those, right? I mean, you
12 don't say anything about those risks of loss. Those are
13 real. And the reason they are real, and bondholders
14 understand this, is why they get such a high return.
15 These un-rated bonds are not too far from stock because
16 there is risk. But there is a good amount of rewarded
17 and they have benefitted, "they" meaning the bondholders
18 from that reward.

19 **MR. GREENWOOD:** Okay. Earlier we discussed a
20 document request for any supplemental opinions that you
21 rendered so I just want to reiterate on the record that
22 the SEC asks that you conduct a search for any
23 supplemental opinions following the -- or, supplemental
24 to the actual bond counsel opinions in the Brogdon
25 offerings in Appendix A of the subpoena.

1 THE WITNESS: Right.
2 MR. GREENWOOD: Okay. And so we will ask that
3 you conduct that search and let us know the results of
4 that search within two weeks.

5 THE WITNESS: Okay. So two weeks from today
6 is the 29th, right?

7 MR. GREENWOOD: Okay. Mr. Miller, we have no
8 further questions at this time and are adjourning the
9 testimony. If it's necessary to call you again to
10 testify in this investigation, we will contact you.

11 As I said earlier, we ask that you not talk
12 about the substance of your testimony with anyone other
13 than counsel should you decide to retain counsel.
14 Although your testimony has been adjourned, you remain
15 under subpoena. We are off the record at 4:37 p.m. on
16 June 15th, 2016.

17 (Whereupon, at 4:37 p.m., the examination was
18 concluded.)

19 * * * * *

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1 PROOFREADER'S CERTIFICATE

2
3 In the Matter of: CANTONE RESEARCH, INC.
4 Witness: Richard "Chix" Bruce Miller
5 File Number: NY-09158-A
6 Date: Wednesday, June 15, 2016
7 Location: Atlanta, Georgia 30326
8

9 This is to certify that I, Donna S. Raya,
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
13 and that this is the original, complete, true and
14 accurate transcript that has been compared to the
15 reporting or recording accomplished at the hearing.
16

17 _____

18 (Proofreader's Name) (Date)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

MARRIEN NEILSON,

Defendant.

16. Civ. 5475 (KM)

~~RECEIVED~~ FINAL JUDGMENT AS TO DEFENDANT MARRIEN NEILSON

The Securities and Exchange Commission ("Plaintiff" or "SEC"), having filed a complaint on September 9, 2016 (the "Complaint"); Defendant Marrien Neilson ("Defendant") having entered a general appearance; the Court having personal jurisdiction over Defendant; the Court having subject matter jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]; venue in this District being proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because acts and transactions constituting violations alleged in the Complaint, including the offer and sale of securities, occurred within this District; venue in this District also being proper pursuant to 28 U.S.C. § 1391(c)(3) because Defendant resides in Mexico; Plaintiff and Defendant having reached an agreement on this proposed Final Judgment; Defendant having executed a consent, without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in Paragraph VII) (the "Consent");

Defendant having waived findings of fact and conclusions of law; and Defendant having waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], or Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from directly or indirectly performing work as, or on behalf of, an indenture trustee or dissemination agent for municipal securities or being employed by another party that serves as an indenture trustee or dissemination agent for municipal securities.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$29,624.03, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$4,208.92, and a civil money penalty in the amount of \$21,167.05 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy these obligations by paying \$55,000.00 to the SEC within 14

days after entry of this Final Judgment.

Defendant may transmit payment electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the SEC, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Marrien Neilson as Defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The SEC may enforce the Court's judgment for disgorgement, prejudgment interest, and civil money penalty by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The SEC shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The SEC may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the SEC staff determines that the Fund will not be distributed, the SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that she is entitled to, nor shall she further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the SEC's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the SEC directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil money penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

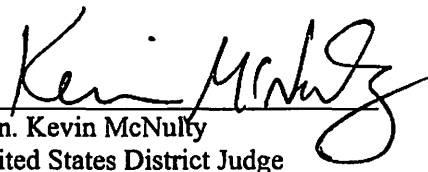
VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

SO ORDERED.

Dated: Newark, New Jersey

March 3, 2017


Hon. Kevin McNulty
United States District Judge