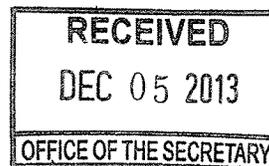


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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ADMINISTRATIVE PROCEEDING
File No. 3-15519



In the Matter of

**Timbervest, LLC,
Joel Barth Shapiro,
Walter William Anthony Boden, III,
Donald David Zell, Jr.,
and Gordon Jones II,**

Respondents.

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

The Division of Enforcement ("Division") hereby opposes the Respondents' Motion for Summary Disposition, stating as follows:¹

I. Preliminary Statement

Timbervest, LLC, a registered investment adviser, aided and abetted by its four principals, violated the Investment Advisers Act of 1940 ("Advisers Act") by arranging the indirect sale of timberland from one client to another. Timbervest parked the property with a middleman and failed to disclose the conflicts of interest inherent in the transactions to the affected clients. Timbervest further violated the Advisers Act by paying more than \$1.15 million in commissions to one of its owners, who immediately split the money with the other co-owners. Rather than disclose these payments to the client, Timbervest concealed them because they were strictly prohibited by the Employment Retirement Security Income Act. The Respondents now

¹ The parties have agreed that the motion and response thereto are *in lieu* of prehearing briefs. Accordingly, in this response, the Division goes beyond the minimum discussion necessary to defeat the motion to provide a fuller picture of its factual and legal contentions.

seek to avoid a trial on the merits, contending that there are no disputed issues of material fact and that the pertinent five-year statute of limitations on penalties bars the Division from all of the equitable relief that it seeks. Respondents' claims are without merit, because, as demonstrated below, there are substantial issues of disputed fact. In addition, the hearing officer cannot reasonably determine whether the equitable relief sought by the Division is appropriate without the development of a factual record. The characterization of traditional equitable relief as punitive turns on whether respondents pose a threat of future violations. The Division knows of no finding by a hearing officer or a court that equitable relief is punitive, as applied, without the development of a factual record. Common sense dictates that a determination about the likelihood of future violations depends on the facts adduced at trial. Accordingly, Respondents' motion for summary disposition should be denied.

II. Standard for Summary Disposition

Rule 250 of the Commission's Rules of Practice provides for summary disposition in the absence of a genuine issue of material fact. Under Rule 250, a motion for summary disposition may be granted when there is "no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b).

The Rule also provides that "[t]he 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 noted." *Id.* § 201.250(a). Further, the hearing officer "shall deny or defer the motion" if "it appears that a party, for good cause, cannot present by affidavit prior to hearing facts essential to justify opposition to the motion." *Id.*

§ 201.250(b). The Commission modeled Rule 250 on Rule 56 of the Federal Rules of Civil Procedure. *See Jeffrey L. Gibson*, Rel. No. 57266, 92 SEC Docket 2104, at 2112, 2008 SEC LEXIS 236, *22 n. 26 (Feb. 4, 2008).

The Comment and Revision Comment to Rule 250 indicate that summary disposition is disfavored. The Commission states, “[t]ypically Commission proceedings that reach litigation involve basic disagreement as to material facts The circumstances when summary disposition could be appropriately sought or granted will be comparatively rare.” *Rule 250, Revision Comment*, 60 Fed. Reg. 32738, 32767-68 (June 23, 1995).

III. The Facts Alleged in the OIP Must Be Taken As True

Because the facts of the Order Instituting Proceedings (“OIP”) must be taken a true for purposes of the motion for summary disposition, and there are no uncontested affidavits which modify the factual allegations, summary disposition is not appropriate. The facts alleged in the OIP support the charged violations of Section 206 of the Advisers Act.

With respect to the prohibited cross trade involving the sale by Respondents of the property of one client to a third party with a promise to repurchase it on behalf of another client, the OIP alleges that the Respondents never “sought approval for, or otherwise disclosed the affiliated nature of the Alabama property sale and the ‘parking’ arrangement with [Chen Timber], to either [New Forestry] or to [Timbervest Partners LP].” (OIP ¶ 11). The OIP alleges that before New Forestry closed on the sale of the Alabama timberland to Chen Timber for \$13.45 million, “Boden had agreed to a repurchase price of \$14.5 million.” (OIP ¶ 14). The OIP further charges:

By structuring the sale of the Alabama property to another Timbervest-managed fund through the use of a middleman, Timbervest concealed the unauthorized nature of the transaction, while imposing an undisclosed \$1.05 million

parking fee on a deal between [New Forestry] and [Timbervest Partners, LP]. The unauthorized sale of the Alabama property therefore constituted a prohibited use of the assets of both funds.

(OIP ¶ 15). Regarding the improper fees taken by the Respondents, the OIP alleges: “The Principals did not disclose the commission payments to the Client” (OIP ¶ 21); and “[t]he payments to Boden were structured in a manner that concealed the identities of the recipients.” (OIP ¶ 22).

There are no uncontested affidavits which modify the factual allegations. (*See* declaration of Matthew F. McNamara, attached as Exhibit A hereto). Because the allegations in the OIP, taken as true, support the Section 206 violations with which the Respondents have been charged, Respondents’ argument that there are no material facts at issue should be rejected.

IV. There Are Disputed Issues of Material Fact

Respondents’ claim that there are no disputed issues of material fact should be rejected for the further reason that the investigative record contains testimony sufficient to establish the violations, and this testimony is uncontradicted by Respondents’ affidavits. For example, Lee Wooddall testified directly about Respondent William Boden’s use of him to achieve a cross trade, and Edward Schwartz testified that the payment of broker fees to Boden or the other principals was never disclosed to him. Summary disposition for Respondents is not appropriate under these circumstances.

A. Background

BellSouth formed New Forestry, LLC (“New Forestry”) in 1997 to invest its employees’ pension plan funds with Timbervest. BellSouth appointed Timbervest (by its predecessor in interest, Timberland Investment Services, LLC) as New Forestry’s general manager. (*See* Investment Manager Agreement, attached hereto as Exhibit B at 8 ¶ 6; Limited Liability

Company Agreement of New Forestry, LLC, attached hereto as Exhibit C at 28 § 6.3(a)). New Forestry's investors consist of the former BellSouth Master Pension Trust (now part of the SBC Master Pension Trust), BellSouth Corporation Representable Employee Healthcare Trust-Retirees (now part of the AT&T Union Welfare Benefit Trust), and BellSouth Corporation RFA VEBA Trust. (See Letter of Robert A. Ferencz to Carolyn Seabolt, dated 11/29/12, attached hereto as Exhibit D at 1).

Timbervest is a registered investment adviser. Timbervest ran the day-to-day investment activities of New Forestry, consisting of the acquisition, sale, and management of timberland. New Forestry was Timbervest's largest client and was, for many years, its only client. Starting in 2005, Timbervest launched a series of "co-mingled" timberland funds, whose investors included public pension funds, universities, other institutional investors, and individuals.

The pertinent agreements between BellSouth and Timbervest made it clear that the latter was a fiduciary under ERISA. Timbervest pledged "not to engage in any transaction with respect to the assets of an Investment Account which would constitute either a transaction prohibited under Section 406 of ERISA or a transaction which is a 'prohibited transaction' as defined in Section 4975(c) of the Internal Revenue Code of 1986, as amended."² (Ex. B at 8 ¶ 6); *see also* Ex. C at 28 § 6.3(a)).

² The OIP alleges violations of Section 206 of the Advisers Act. The Advisers Act, like ERISA, imposes a fiduciary duty on the adviser. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-194 (1963). Both the Advisers Act and ERISA are designed, in part, to prevent conflicts of interest by individuals responsible for investing assets, and the fiduciary duties imposed by the statutes are substantially overlapping. Timbervest pledged in its investment manager agreement with BellSouth to act as a good fiduciary to New Forestry and to refrain from engaging in prohibited transactions (*see* Ex. B at 8 ¶ 6; Ex. C at 28 § 6.3(a)), but then Timbervest did so on multiple occasions.

In 2005, ORG Portfolio Management (“ORG”) was engaged by BellSouth (which completed a merger with AT&T in late 2006) to help oversee certain investments of BellSouth’s pension plan assets, including the investments with Timbervest.

B. The Prohibited Cross Trade

The charges in the OIP concern two main fact patterns. The first concerns a prohibited cross trade executed by means of a deliberate concealment plan (the “parking” arrangement).³ To conceal Timbervest’s cross trade, William Boden struck a deal with Lee Wooddall of Chen Timber LLC (“Chen”), in which Chen purchased timberland in Alabama from New Forestry’s portfolio, held it for a few months, then sold it back to a Timbervest-affiliated fund at a \$1 million mark-up. The sale to Chen and repurchase by Timbervest were prearranged by Boden and Wooddall at the outset. (*See* Wooddall Tr. at 14-19, attached hereto as Ex. E).

Timbervest had been directed by ORG to complete some sales of entire parcels of New Forestry timberland as they had been purchased, as opposed to selling only smaller acreages. (*See* Schwartz Tr. at 27-29, 41-48, attached hereto as Ex. F). Since taking over the management of Timbervest, the Respondents had sold off no entire New Forestry parcels. *Id.* In order to assess whether the land values that Timbervest was reporting for the New Forestry portfolio were realizable, ORG wanted Timbervest to complete such sales. *Id.*

Timbervest had raised a \$300+ million comingled timberland fund known as Timbervest Partners, L.P. (“TVP”), which was fully subscribed by mid-2006. Selling New Forestry’s Alabama property to TVP would be an expedient way for Timbervest to satisfy ORG’s directive

³ Respondents’ discussion of cases involving the “parking” of securities is inapposite. (*See* motion at 6-7). The Division uses the term “parking” to describe the sale and buy-back to which Boden and Wooddall orally agreed, then executed. The Division does not contend that the economic risk remained with the seller, nor need the Division so demonstrate in order to establish the Respondents’ breach of fiduciary duty.

(although it would obviously undermine ORG's need for independent validation of Timbervest's land valuations). In addition, such a fund-to-fund sale would be profitable for the Respondents because Timbervest would earn a three percent contractual disposition fee⁴ and the Respondents could pay themselves additional broker fees. (See discussion at pp. 12-19 below).

There was, however, a problem: Under ERISA, selling the Alabama property to another Timbervest-managed fund was a forbidden "cross trade," in that Timbervest would be exercising its discretion on both sides of the transaction. Cross trades were strictly prohibited under ERISA § 406(b)(2) (prohibiting a fiduciary from acting in any transaction on behalf of a party whose interests are adverse to the interests of the plan).

Unlike the Advisers Act, under which cross trades may be permissible if the advisor obtains the consent of both parties, ERISA strictly prohibits cross trades. Consequently, seeking the consent of BellSouth (or ORG) for the cross trade was not a meaningful option.

Instead, Timbervest attempted to circumvent the restriction imposed by ERISA. Boden arranged to meet fellow Atlanta businessman Lee Wooddall of Chen Timber LLC ("Chen Timber") at a local restaurant. Over lunch, Boden offered to sell Wooddall the New Forestry property in Alabama, and to repurchase it a short time later on behalf of a Timbervest-affiliated fund for \$1 million more than Wooddall paid for it. (Ex. E at 14-19).

Wooddall testified: "[Boden] said that, you know, we'll sell you the land. We'll buy it back, but we can't put it in writing." (Ex. E at 17:10-11). Wooddall described Boden's offer to repurchase the land more than once, describing Boden's proposition as follows: "[Y]ou know, we've got 13,000 acres of land over here. We want you to buy it. We'll buy it back from you." (Ex. E at 16:16-17). Wooddall testified that Boden agreed to repurchase the land "within a six

⁴ See Shapiro Tr. at 37:20-38:3, attached hereto as Ex. G.

month time frame.” (Ex. E at 19:4-5). Boden assured Wooddall that the repurchase price would exceed what Chen Timber paid. (Ex. E at 17:25-18:6). The specific repurchase premium (\$1.05 million) was agreed upon by Wooddall and Boden before Chen Timber bought the land. (Ex. E at 39:21-22).

According to Wooddall, Boden said that another Timbervest-affiliated fund would be buying the timberland back. (Wooddall Tr. at 16:24-25). Wooddall asked Boden to put the agreement in writing, but Boden refused: “He said that they could not do it. They hadn't raised the money for the fund, that they couldn't commit to purchase something back without having raised the funds.” (Wooddall Tr. at 19:6-17).

Boden’s reported statement to Wooddall regarding a lack of funds for the repurchase was demonstrably false. In fact, the TVP fund that repurchased the Alabama timberland from Chen was a \$300+ million fund that was fully subscribed by the middle of 2006. TVP had been actively acquiring timberland since July of 2004, and the Alabama property was the 27th acquisition for TVP’s portfolio.⁵ The real reason for parking the land with Wooddall was ERISA’s prohibition on cross trades, but Boden did not share this information with Wooddall.

Following their lunch meeting, Boden and Wooddall agreed that New Forestry would sell Chen Timber the Alabama property for \$13.45 million, and that the TVP fund would, shortly thereafter, purchase the property from Chen Timber for \$14.5 million.

Wooddall testified that he and Boden agreed from the start on the amount that TVP would pay to repurchase the Alabama property: “We agreed on that number [\$14.5 million] before I closed on it the first time.” (Ex. E at 39:21-22).

⁵ Respondents appear to concede that if Boden actually made the comment reflected in Wooddall’s testimony, he was not being truthful: “In 2006, Timbervest Partners, L.P. (“Fund #2”) was in its investment period, analyzing timberland properties for potential acquisitions and closing on select timberland properties fitting within its investment parameters.” (Motion at 9).

Respondents attempt to show that Boden never agreed to repurchase the property by selectively quoting from Wooddall's testimony. (*See* motion at 4-6). It is apparent, however, that the quotes relate to Wooddall's inability to enforce the agreement if Boden failed to keep his promise, not to the lack of an agreement. Taking the testimony in its entirety, there can be no doubt that Boden promised to repurchase the land.⁶

The sale of the Alabama timberland by New Forestry to Chen Timber for \$13.45 million closed on October 17, 2006. On November 30, 2006, Boden sent a draft contract for the sale of the Alabama timberland by Chen Timber to Timbervest Partners Alabama, LLC (a subsidiary of TVP) for \$14.5 million.⁷ (Ex. E at 31:12-21). Even if Wooddall had not offered direct testimony to the contrary, the claim that the draft contract was the result of a decision made after the closing would still be unbelievable. The suggestion that Timbervest happened to gain a new appreciation of the property's value a few weeks after selling it is farfetched. Rather, the claim is one of a series of falsehoods advanced by the Respondents to avoid the consequences of their conduct.

It is noteworthy that the several pages of explanation provided by the Respondents concerning the repurchase (*see* motion at 4-5, 9-12) are offered not as TVP's actual *reasons* for repurchasing the Alabama property at a premium exceeding \$1 million, but, instead, as rationalizations for why it might not be economically irrational for TVP to do so. The

⁶ Respondents also claim, in effect, that the lack of a written buy-back agreement means that there was no agreement. (*See* motion at 4). This claim is without merit. Boden declined to put the agreement in writing precisely because doing so would defeat the purpose of the parking arrangement—concealment of the prohibited cross trade. Wooddall and Boden agreed in advance on the initial sale price, the repurchase price, and the time frame. They then followed through. Neither the risk that Boden might break his promise (*see* motion at 6), nor the steps taken by Wooddall to protect himself if Boden did so (*see* motion at 6, 8-9), changes the fact that the two men made an agreement.

⁷ The sale by Chen Timber closed on February 1, 2007.

Respondents' rationalizations beg the question, however, of how and why TVP *actually* came to repurchase the Alabama property for a \$1 million premium on the heels of the sale by New Forestry.

Respondents purport to have no answers to these questions due to a failure of recollection: "No one at Timbervest recalls how or exactly when the discussions began regarding a potential purchase of the Alabama Property from the [Chen Timber] for [TVP]."⁸ (Boden decl. ¶ 7).

The sale and decision to repurchase the Alabama property in a matter of weeks was no routine event for Timbervest. The sale by New Forestry represented the first large disposition of property by Timbervest's new owners. Furthermore, TVP paid a \$1 million premium for the repurchase. Each of Timbervest's four owners had to sign-off on any purchase or sale of land, and other Timbervest employees would have been involved in the decision. Timbervest's purported collective failure of recollection strains credulity.

Although Respondents now purport to have forgotten the genesis of TVP's decision to repurchase the Alabama land, a contemporaneous explanation did make the rounds at Timbervest. This explanation, however, was a false one. As discussed below, it was memorialized in an email by Vice President and Director of Transactions, J. Barrett Carter.⁹ (See email dated 2/7/07 attached hereto as Ex. H; Carter Tr. 13:10, attached hereto as Ex. I).

⁸ In their motion, the Respondents state: "Sometime during the last quarter of 2006, however, Timbervest was presented with this opportunity." (Motion at 8-9). There is no evidence in the investigative record or elsewhere indicating that anyone "presented" the opportunity to Timbervest, or that Timbervest formed the intention to repurchase the property "sometime during the last quarter of 2006."

⁹ As Director of Transactions, Carter worked on aspects of the acquisition and disposition of property. (See Ex. I at 16:12-13).

On February 7, 2007, less than a week after TVP repurchased the Alabama property, Timbervest Finance Manager, Maria Horstmann, wrote in an email to a service provider for Timbervest: “[Timbervest] Partners purchased all the Tenneco Core Timberland tracts originally owned by New Forestry. Literally, it’s basically a fund swap transaction.” (Ex. H).

Carter, who had been copied on Horstmann’s email, responded as follows:

Let me take exception to it being a fund swap. It is not exactly a fund swap. It just happened to work out that one client sold it to another party and another client wound up buying it back from that party. The buyer was presented with a different opportunity elsewhere and approached us with the idea of buying the property back.

(Ex. H). The Division subpoenaed Carter to testify about his knowledge of the transaction and the basis for his statements.

Carter testified that he had no independent knowledge of the circumstances of the sale and buy-back. (Ex. I at 26:5-7). He stated that someone at Timbervest gave him the information that he relayed in his email, but he could not recall who that person was. (Ex. I at 16:12-13). Carter did recall, however, participating in discussions about the initial sale and the subsequent repurchase of the Alabama property with William Boden. (Ex. I at 29:1-8).

The claim that Wooddall “was presented with a different opportunity elsewhere and approached [Timbervest] with the idea of buying the property back” has no basis in fact. Wooddall testified that Chen’s purchase of the property from New Forestry and the resale to TVP were prearranged by Boden. It is a reasonable inference that someone at Timbervest circulated the false explanation to Timbervest’s Director of Transactions in order to conceal the circumstances of the unlawful cross trade.

C. The Prohibited Commission Payments

The second fact pattern that is the subject of the OIP concerns Boden's receipt of approximately \$1.15 million in unlawful commission payments and the sharing of these commissions with the other three principals of Timbervest. The Respondents failed to disclose these commission payments or the conflict of interest presented by them to their client, in violation of Section 206 of the Advisers Act. Actual disclosure of the commissions was not a viable option for the Respondents, because the payments were strictly forbidden under ERISA, and Timbervest was an ERISA fiduciary with respect to the assets of New Forestry.

Under ERISA, an investment adviser with discretion over plan assets may not pay commissions to anyone having a financial interest in the adviser. Such payments are prohibited transactions under ERISA Section 406 and Section 4975(c) of the Internal Revenue Code of 1986, as amended. Neither disclosure of, nor consent to, prohibited transactions can keep them from running afoul of ERISA. The use of plan assets to pay fees to an owner of the investment adviser is a serious violation of ERISA.

Timbervest's status as a fiduciary under ERISA (as well as under the Advisers Act) is well established. (See Ex. B, C, and D; see also letter of Stephen Council dated 12/6/12, attached hereto as Ex. J). Timbervest had pledged not to engage in prohibited transactions with New Forestry's assets.

The Respondents were well aware of this. One of Timbervest's owners, Respondent David Zell, came to Timbervest from BellSouth, Pension Arm, where he was Manager of Real Estate and Natural Resources. As such, Zell was actually responsible for the New Forestry investments managed by Timbervest. Another owner, Respondent Gordon Jones, was an attorney and Timbervest's Chief Compliance Officer. Jones had been a partner in an Atlanta law

firm before joining Timbervest. Although he was a transactional lawyer, his firm had an Employee Benefits/ERISA practice group that advised clients on plan fiduciary responsibility. Respondent Joel Shapiro, Timbervest's CEO, had an extensive background in the investment advisory field, and William Boden was a highly educated businessman. Each principal worked at Timbervest for a period when BellSouth was Timbervest's most significant client by a wide margin.

In 2006 and 2007, the Respondents obtained more than \$1.15 million of New Forestry's assets by charging their client prohibited fees. To obtain these funds, Boden formed companies having no employees, no business operations, and no offices. Their sole purpose was to serve as vehicles for the receipt of commissions from the sales of two New Forestry properties. The commissions were routed through the Interest on Lawyers Trust Account ("IOLTA") of Boden's friend, attorney Ralph Harrison, to a Boden holding corporation. Once Harrison sent the money to Boden, Boden split it up with Shapiro, Jones, and Zell.¹⁰

Because the receipt of the fees by Boden and his partners were prohibited transactions under ERISA, seeking consent from BellSouth for the payments would have been futile. The Respondents elected, instead, to conceal the payments by making it appear that they were going to legitimate third party service providers.¹¹ But for the Division's investigation, these unlawful payments almost certainly would not have come to light.

¹⁰ Respondents contend that, despite their collective experience, legal training, and ERISA fiduciary responsibilities, none of them questioned whether ERISA permitted Timbervest to pay Boden commissions from New Forestry assets, or permitted them to partake in these commissions. The totality of the evidence will show, however, that the Timbervest principals knowingly or recklessly took prohibited payments and never disclosed them to their client.

¹¹ Ralph Harrison, a close friend of Boden who helped him set up companies for the purpose of collecting commissions, contended that the neither the companies nor the routing of the commissions through his IOLTA account were designed to conceal anything. (See Harrison 11/19/12 Tr. at 55, 62-63, attached hereto as Ex. K). Instead, he claimed that their purpose was

In June 2006, Harrison helped Boden set up Fairfax Realty Advisors, LLC (“Fairfax Realty Advisors”). Harrison listed himself as the sole organizer of Fairfax Realty Advisors, kept Boden’s name off the organizational documents, and established a UPS post office box to serve as Fairfax Realty Partner’s address.

In October 2006, upon the completion of the sale of the Alabama property by New Forestry, the escrow agent issued a check to Fairfax Realty Advisors for \$470,075 in broker’s commissions. Harrison deposited the check in his IOLTA account and sent a check for 90 percent of the amount (\$423,675) to Boden. Boden had agreed to let Harrison to keep ten percent. Harrison issued a check to WAB, Inc., which Boden used for various business purposes. Boden then shared the \$423,675 equally with his partners.

In April 2007, Boden received another commission upon the sale of New Forestry timber properties in Kentucky. As a vehicle for receiving the fee, Boden, with assistance from Harrison, established Westfield Realty Partners, LLC (“Westfield Realty Partners”). Harrison again listed himself as sole organizer and kept Boden’s name off of the filings. For Westfield’s business address, Harrison rented a post office box at a location different than the one he had obtained for Fairfax Realty Advisors.

On April 3, 2007, the closing escrow agent for the Kentucky property issued a check for \$685,486.25 to Westfield Realty Partners. Again, the funds went from the closing to Harrison’s IOLTA account, to WAB, Inc., to Timbervest’s four principals. Harrison again retained a ten percent share (\$68,548).

to insulate the assets of the respective companies from potential third party claims. (Ex. K 11/19/12 tr. at 68-71; Ex. K 6/10/13 tr. at 35-38, 45). The Division contends that, viewing the evidence in its totality, Harrison’s testimony is not credible.

Respondents claim that Timbervest paid the \$1.15 million in fees to Boden pursuant to an oral agreement that he entered into with Shapiro in 2002. (Motion at 14, 16-17). The Division contends that this purported oral agreement—particularly its claimed five-year term—is a recent invention by the Respondents. Such an oral agreement could not, in any event, lawfully survive Boden’s becoming an owner of Timbervest in 2004, because the payment of commissions to him was prohibited once he gained a financial interest in Timbervest.

Respondents claim that Timbervest engaged Boden as a consultant in 2002 to assist with the disposition of New Forestry property. Shapiro claims that he agreed that Boden would work on selling eight properties in the Southeast. Shapiro further claims that they agreed that if any of the properties was sold by December 31, 2007 for at least \$5 million and no other broker was involved, Boden would receive from 2.5 to 4 percent of the sale price. According to Shapiro, the actual percentage would depend on a predetermined sliding scale, with the percentage decreasing by half-a-point as the sales price of the property increased. (Ex. G 12/7/12 tr. at 16-18, 20-30).

Respondents contend that the agreement was strictly oral, notwithstanding the sophistication of the parties involved, the detailed terms, and the millions in potential payouts. Respondents have been unable to produce any written evidence of such an agreement such as an email or a memo. Shapiro and Boden are the only two individuals who purport to be aware of the details.

After the Division uncovered the prohibited payments, Timbervest returned more than \$1.25 million in fees and interest to New Forestry, stating “it is not clear that there was no violation of ERISA.”¹² (Letter of Carolyn Seabolt dated 6/8/12 at 3). Upon the completion of its

¹² The Division intends to prove at the hearing that Timbervest’s ill-gotten gains exceeded \$1.25 million by a wide margin. The Division also takes issue with Respondents’ claim that they “voluntarily and promptly” returned the fees. (*See* motion at 19). Returning the fees after

own inquiry, AT&T terminated Timbervest as New Forestry's investment manager and transferred the assets to other advisers. (See letter of Stephen T. Burger dated 8/29/12, attached hereto as Exhibit M). In a letter to Timbervest, AT&T's attorneys stated: "As an ERISA fiduciary, Timbervest should have been aware of, and complied with, the fiduciary duty requirements and prohibited transaction restrictions of ERISA." (Ex. D).¹³

No disclosure was made to BellSouth, AT&T,¹⁴ or ORG of the payment of commissions to Boden or to any of the other principals of Timbervest. Such payments were unlawful under ERISA, and seeking consent would have been futile. An ERISA fiduciary who facilitated such payments would risk serious ramifications, including regulatory actions against them by the U.S. Department of Labor and the Internal Revenue Service. Timbervest's claim that it disclosed the prohibited payments, therefore, goes against not only the evidence, but also defies common sense.

Respondents contend that disclosure of the oral agreement with Boden was made to Zell in 2002, when he was managing the investment of pension funds at BellSouth, and to Schwartz in 2005. The Respondents' claims regarding disclosure, however, are unsupported by the evidence and are otherwise untenable.

having been caught—more than five years after misappropriating them—is not “prompt.” In addition, repaying the fees under the implicit threat of termination by AT&T and charges by the Division appears to have been more strategic than “voluntary.”

¹³ Respondents' claim that, “As to all of its clients and transactions, Timbervest has never even received a customer complaint,” (Motion at 19, citing Shapiro decl. at ¶15) is hard to reconcile with Timbervest's termination by AT&T. AT&T was Timbervest's first client and, for most of Timbervest's history, its biggest client.

¹⁴ The two pertinent commission payments, in October 2006 and April 2007, straddle BellSouth's year-end 2006 merger with AT&T.

No meaningful disclosure could have been made to Zell in 2002, because Boden was not yet an owner of Timbervest. Respondents' inclusion of this claim as part of its defense is therefore puzzling. The lawfulness of paying commissions to third-party brokers having no ownership interest in the investment adviser is not an issue in this proceeding.

As for Respondents' claimed disclosure to Schwartz in 2005, these claims are contradicted by the evidence in the record.¹⁵ Schwartz recalled the following 2005 conversation with Shapiro:

[H]e called me up and asked me a very theoretical question, and the theoretical question was, 'If we had somebody that was working on—on some—some—that we were thinking about bringing into Timbervest would it be acceptable to pay them a fee, a brokerage fee?'

And my comment was, "That would depend. We wouldn't want the client to be double charged, and we'd also have to run it by legal counsel to—to make sure it's a—it's a permitted transaction.

But never did—never was anything followed up or ever, you know, anything asked. It was a very theoretical question.

(Ex. F at 76:6-17).

Regarding his call with Shapiro, Schwartz further stated:

[I]t wasn't mentioned that it was Bill Boden, this was just a very theoretical question, it wasn't if Bill Boden was—it was just a theoretical person. And we said it would depend and if—if the—and I said we would consider it if it were that the—that the client wouldn't be disadvantaged by having to pay an extra brokerage fee. And then secondly, we would have to have legal review to make sure that it wasn't a prohibited transaction.

¹⁵ The references in Respondents' motion (*see* motion at 16 and n.101) to comments by Schwartz to the SEC staff during an interview being inconsistent with Schwartz's testimony warrant no response in view of the hearing officer's ruling on November 26, 2013 that Respondents' counsel made improper use of privileged attorney notes of the Division and that no further use of the notes shall be made. (*See* Doc. 22, Order on Several Pending Motions).

(Ex. F at 78:17-25).

Shapiro, by contrast, remembered no specifics of his supposed disclosure to Schwartz.

Shapiro has testified, in pertinent part, are as follows:

- Q: At what point did you tell Mr. Schwartz about this agreement?
A: I'm not really sure.
Q: And what do you remember telling Mr. Schwartz about Mr. Boden?
A: I just remember telling him the basic deal.
Q: And what was the basic deal?
A: He was hired to help maximize value on the core southeastern properties and he was being paid a fee, an advisory fee. He has been instrumental in getting us to the point we were. And he was getting a fee as long as there was not a second fee or a commission paid by New Forestry.
Q: What was Mr. Schwartz's response to that fee arrangement?
A: Whatever.
Q: I'm sorry.
A: Whatever. It's fine. I mean, whatever.
Q: Like he saw no problem with it?
A: Other managers do this.
Q: Okay. But I'm asking about what --
A: No.
Q: -- Mr. Schwartz's response.
A: Once again, it was a non-event. It was nothing.
Q: So you're saying Mr. Schwartz had no response or said it was fine?
A: I don't recall.
Q: I'm just confused about what you're saying Mr. Schwartz's response was?
A: I don't think his response was anything. I also don't recall. This is such a non anything.¹⁶ So—
Q: Did Mr. Schwartz tell you that any such fee arrangement would have to be reviewed by legal counsel?
A: I don't recall.

¹⁶ Thus, by his own admission, Shapiro never obtained consent from Schwartz for the payment of commissions to Boden. Under the Advisers Act, both disclosure and consent to a payment to the advisor involving an actual or apparent conflict of interest are required for the advisor to avoid a breach of his fiduciary duty to the client. Respondents' claim that Shapiro made an effective disclosure of the fee arrangement is therefore without merit.

(Ex. G 12/7/12 Tr. at 40:5-42:1). AT&T, which terminated Timbervest for its actions notwithstanding Timbervest legacy with New Forestry, clearly does not regard the payment of undisclosed fees to an owner of Timbervest as “a non-event” or “nothing.” (*See* Ex. D; Ex. M).

Moreover, neither Shapiro, Zell, nor Schwartz testified about disclosure of a five-year oral agreement between Boden and Timbervest involving specified Southeastern properties and a sliding scale of commission payments. If such an oral agreement ever existed, it likely would have been mentioned by Shapiro in his conversations with Zell and Schwartz to disclose Boden’s fee arrangement.

V. The Equitable Remedies Sought Cannot Be Deemed Punitive Absent a Hearing Record; Moreover, Section 2462 Is Inapplicable to Certain Remedies as a Matter of Law

Respondents argue that all relief in this matter, including equitable relief,¹⁷ is punitive and therefore time-barred under 28 U.S.C. § 2462. (*See* motion at 2). This argument lacks merit. While equitable remedies have been held to be punitive as applied (*i.e.*, where there is no discernable risk of future misconduct), the courts have been unwilling to make that determination without development of the factual record. *See, e.g., SEC v. Radius Capital Corp.* 2013 WL 3716394 (M.D.Fla., July 15, 2013)(refusing to dismiss equitable claims under § 2462 because of potentially “fact intensive nature of the determination”). The Division is aware of no decision in which traditional equitable relief has been determined to be punitive as applied without the development of a factual record. Nor have Respondents cited any such cases. Because the Division has shown that there are facts in the record which would support the imposition of equitable relief, and because additional facts demonstrating the appropriateness of equitable

¹⁷ Equitable relief in SEC enforcement actions may include orders of disgorgement, injunctions against future violations, imposition of associational bars, or other remedies.

relief will be developed at the hearing, summary disposition on the statute of limitation issue is inappropriate.

The five-year statute of limitations in 28 U.S.C. § 2462 applies only to claims seeking punitive relief from the proposed respondents.¹⁸ Civil monetary penalties are punitive and barred by Section 2462 absent some conduct that tolls the statute. *See Gabelli v. SEC*, 133 S.Ct. 1216 (2013).¹⁹ Accordingly, no civil monetary penalties are being sought in this proceeding. Courts are divided over whether and how Section 2462 applies to equitable remedies—once a factual record has been established for consideration of that issue.²⁰

Courts have held that Section 2462 *does not* apply to some or all equitable remedies as a matter of law. *See SEC v. Kelly*, 663 F.Supp.2d 276, 286 (S.D.N.Y. 2009) (“[S]ection 2462’s statute of limitations applies to the SEC’s request for civil penalties but not to its request for permanent injunctive relief, disgorgement, or an officer and director bar”); *see also SEC v. Alexander*, 248 F.R.D. 108, 115-16 (E.D.N.Y. 2007) (“[some courts] have held that at least some of the forms of relief at issue here are equitable as a matter of law”); *Zacharias v. SEC*, 569 F.3d 458, 473 (D.C. Cir. 2009) (disgorgement not punitive as a matter of law); *Riorden v. SEC*, 627 F.3d 1230, 1234 (D.C. Cir. 2010) (“[A] cease-and-desist order is ‘purely remedial and preventative’ and not a ‘penalty’ or ‘forfeiture.’”) (internal citations omitted).

¹⁸ Section 2462 states, “Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued”

¹⁹ The *Gabelli* Court explicitly declined to address whether fraudulent concealment or other equitable tolling doctrines are still available. 133 S.Ct. 1220 at n.2.

²⁰ The *Gabelli* Court did not address the application of Section 2462 to equitable remedies. *See* 133 S.Ct. 1220 at n.1.

Courts have held that a fact-intensive inquiry is required to determine the appropriateness of equitable relief when punishment is barred by Section 2462. *See SEC v. Jones*, 476 F.Supp.2d 374, 381 (S.D.N.Y. 2007) (Section 2462 inapplicable to “equitable relief which seeks to remedy a past wrong or protect the public from future harm”); *SEC v. Fisher*, 2008 WL 206269 *2 n.5 (N.D.Ill. May 13, 2008); *See also Alexander*, 248 F.R.D. at 115–16.

Those courts that have found certain equitable remedies to be punitive as applied have done so on the particular facts presented, and have not branded entire categories of equitable relief as intrinsically punitive. *Johnson v. SEC*, 87 F.3d 484, 489 (D.C. Cir. 1996) (censure and six-month suspension “would less resemble punishment if the SEC had focused on Johnson's current competence or the degree of risk she posed to the public”). In *Johnson*, the Court determined that the sanctions were punitive, but it did so only after reviewing the record and determining that they were based solely on the respondent’s past misconduct. *Id.* at 490 (“Although the ALJ held two days of hearings, with three witnesses and 22 exhibits, the SEC cites not a single piece of evidence in the record explicitly supporting its finding that suspension of Johnson was necessary due to Johnson's current unfitness to be a supervisor”).

Likewise, while the Fifth Circuit in *SEC v. Bartek*, 484 F. App’x 949 (5th Cir. 2012), affirmed the district’s finding that permanent injunctions and officer and director bars were time-barred, it did so only after the development of a record.²¹ Based on that record, the district court concluded that the sanctions did not seek to remedy past harm caused by the defendants and were not based on any reasonable belief that the defendants posed a continuing risk to the investing

²¹ The district court granted summary judgment on the issue of whether certain equitable remedies were barred by Section 2462. *See SEC v. Microtune, Inc.*, 783 F.Supp.2d 867 (N.D.Tex. 2011), *aff’d sub nom SEC v. Bartek*. Importantly, however, for purposes of the Respondents’ motion, the district court insisted on the development of a full factual record before deciding the issue. *Id.* at 870 (noting that the court invited additional briefing by the parties before determining that the “issues [were] ripe for review”).

public. *SEC v. Bartek*, 484 F. App'x 949 956 (5th Cir. 2012) (“Neither remedy addresses past harm allegedly caused by the Defendants. Nor does either remedy address the prevention of future harm in light of the minimal likelihood of similar conduct in the future”).

Because there are facts in the investigative record which are sufficient to support the imposition of equitable relief, and because development of a hearing record is needed in order to meaningfully assess the risk of future misconduct and the scope of disgorgement, summary disposition on statute of limitation grounds is inappropriate.

VI. The Allegations in the Pleadings and the Evidence to be Presented at the Hearing Support the Imposition of Equitable Remedies

Respondents attempt to show that each form of equitable relief sought by the Division in this proceeding, including disgorgement, is inappropriate on these facts. (*See* Motion at 2, 28-36). As detailed above, the Commission has pleaded sufficient facts to show that the Respondents willfully violated Section 206 of the Advisers Act and that equitable remedies would be appropriate.²² The Division intends to demonstrate at the hearing not only that significant additional disgorgement should be imposed, but also that other equitable remedies, including cease-and-desist orders and associational bars, are appropriate and in the public interest because there is a significant risk that Respondents will commit future violations of the federal securities laws.

²² The allegations against Respondents, taken as true, show that Timbervest willfully violated Section 206 of the Advisers Act and Shapiro, Boden, Zell, and Jones aided and abetted the firm's violations. The Respondents collected undisclosed fees from their fiduciary client in violation of the law and in violation of the terms of their management agreements. Respondents also arranged the illegal and undisclosed cross-trade of a client asset to another Timbervest-managed fund in which they owned a partial interest. Respondents sought to conceal their misconduct through shell companies, a circuitous payment structure, and an unnecessary middleman. Shapiro, Boden, Zell and Jones then fabricated implausible explanations to try to avoid the consequences of their misdeeds. Respondents' claim that there is no violation of Section 206 is therefore meritless.

A. Disgorgement is Appropriate

Respondents can be required to disgorge all ill-gotten gains they received as a result of their fraudulent acts. *See SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). The amount of disgorgement sought need only be a reasonable approximation of profits causally connected to their violations of the securities laws. *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). While Respondents claim that their returning the commissions moots any disgorgement remedy, this is incorrect. Substantial additional disgorgement is required:

Timbervest collected a disposition fee of approximately \$403,500 on the improper cross-trade of the Alabama timberland property. (*See* Ex. G 12/7/12 Tr. at 37:20-38:3). But for their fraud, Timbervest would have been contractually entitled to this fee, which Timbervest received above and beyond the unlawful brokerage commissions. The disposition fee, too, however, was an ill-gotten gain because it was obtained by engaging in an unlawful cross trade. The disposition fee, with prejudgment interest of \$131,094.45, for a total of \$534,594.45, has not been returned to AT&T.

Timbervest also collected a disposition fee of \$822,583.50 on the sale of the Kentucky property, which was inappropriate given that Respondents defrauded New Forestry in that transaction through the collection of illegal and undisclosed commissions. Principles of equity should prevent Timbervest from profiting from the very transaction in which it breached its fiduciary duty to New Forestry. Accordingly, the disposition fee from the sale of the Kentucky property may properly be viewed as an ill-gotten gain subject to disgorgement. That fee, along with \$227,833.82 in prejudgment interest (for a total of \$1,050,417.32), has not been returned to AT&T.

Moreover, disgorgement could potentially far exceed the amount that Timbervest should pay in improperly obtained disposition fees and interest. If the hearing officer finds, as the Division alleges, the Respondents engaged in a deliberate scheme to divert client assets for their benefit, and that they took sophisticated measures to avoid detection, the hearing officer may determine that all profits obtained by the Respondents from New Forestry after the commission of the fraud must be returned to the pension trusts. (See Ex. D at 2-3, stating that Section 409 of ERISA provides that a fiduciary who has breached its duties must restore to the plan any profits that fiduciary has made through the use of the plan's assets). As noted, AT&T terminated Timbervest as the fund manager shortly after discovery of its participation in the prohibited transactions; it is reasonable to assume that AT&T would have done so in 2007 had it known of Respondents' conduct. Accordingly, there may be millions of dollars in additional profits obtained by the Respondents that represent ill-gotten gains subject to disgorgement. To permit the Respondents to retain such profits would allow them to benefit from their elaborate efforts to avoid detection.²³

B. Other Equitable Remedies are Appropriate

In determining whether other forms of equitable relief are warranted, including the imposition of cease-and-desist orders and associational bars, the Commission considers the following factors, among others: (1) the egregiousness of the Respondents' actions, (2) the

²³ Finally, Respondents paid insufficient interest when they returned the unlawful commissions. On June 8, 2012, Respondents returned \$1,156,236.25 in principal and \$96,315.27 in interest. However, according to the Division's standard prejudgment interest calculator (using the same date range employed by the Respondents), Respondents owe an additional \$244,353.21 in interest. Furthermore, in the context of prohibited transactions, the Department of Labor calculates lost earnings more aggressively. According to the Department's Voluntary Fiduciary Correction Program Online Calculator (<http://www.dol.gov/ebsa/calculator/>), the Respondents owe the client an additional \$426,046.75 in lost earnings (on top of the money already returned to the client).

isolated or recurrent nature of the infractions, (3) the degree of scienter involved, (4) the sincerity of the Respondents' assurances against future violations, (5) the Respondents' recognition of the wrongful nature of their conduct, and (6) the likelihood that the Respondents' occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); see also *SEC v. Bankosky*, 716 F.3d 45, 49 (2d Cir. 2013) (upholding the imposition of an officer and director bar and stating, “[W]e also read the *Steadman* factors, which closely resemble the *Patel* factors [see *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir.1995)], as suggestive and non-exclusive indicators of unfitness to serve as a fiduciary”).

Respondents' contention that the allegations, if taken as true, were not egregious is meritless. The misappropriation of pension funds by the investment manager appointed to be the watchdog of such funds is undeniably a serious matter.²⁴ Moreover, the misconduct by the Respondents that was established in the investigative record is not the full story. A hearing is necessary in order for the Division to develop further evidence relating to the charges that show the full egregiousness of Respondents' conduct.

Respondents also claim that these violative transactions were isolated events that resulted in no harm to investors.²⁵ (*See* motion at 35). A deliberate, or even reckless, breach of fiduciary

²⁴ The fallout from Respondents' conduct, which is not confined to this proceeding, is an indication of its egregiousness. The cross-trading of property and the unlawful collection of brokerage commissions were explicitly prohibited by ERISA, and either act alone would have subjected Timbervest to (1) termination by AT&T, (2) regulatory action by the Department of Labor, (3) regulatory action by the Internal Revenue Service, (4) liability from AT&T, and (5) liability from the limited partners of TVP. Finally, Respondents' prohibited transactions have created uncertainty for AT&T, which, itself, owes a fiduciary duty to New Forestry.

²⁵ Respondents note that several years have passed between the time of the alleged misconduct and the filing of the current action. (*See, e.g.*, motion at 31-32). What they do not say, however, is that the SEC began examining Timbervest in May 2009, and that Timbervest has been under SEC scrutiny since that time. That Timbervest may have refrained from further violations during

to a client, however, is itself harmful. Moreover, the Respondents' breaches resulted in the misappropriation of at least \$1.15 million in plan assets, and the Respondents were enriched by ill-gotten gains far exceeding this sum. That the Respondents made a strategic decision (undoubtedly with advice of counsel) to repay the unlawful commissions after getting caught—five years later—does not erase the harm done by the Respondents. Nor does it address the transition costs imposed on New Forestry as a result of having to obtain new investment managers who take their fiduciary obligations seriously, or the cost and disruption to AT&T as a result of investigating Timbervest's violative conduct.

As noted above, the Respondents acted with full knowledge of the unlawfulness of their conduct. Their experience and training, as well as the operative organization documents, demonstrate this. Respondents' claim that their failure to recognize the wrongfulness of their conduct should not be held against them is also without merit. In fact, the Respondents' have demonstrated a singularly cavalier attitude toward their fiduciary responsibilities. For example, Zell, who was responsible for managing New Forestry on behalf of BellSouth before he joined Timbervest, claimed that he did not know whether the BellSouth/AT&T management agreements prohibited Timbervest from engaging in ERISA-prohibited transactions. (See Zell Tr. at 22:10-22, attached hereto as Ex. N). Jones testified similarly. (See Jones Tr. at 17:23-18:15, attached hereto as Ex. O). Jones also claimed that he did not think it was his job, as Chief Compliance Officer, to see that Timbervest was meeting its fiduciary obligations to AT&T as outlined in Timbervest's management agreements. (Ex. O at 36:1-39:1). Shapiro, even after being subjected to scrutiny by AT&T and the SEC, continued to maintain that the payment of commissions to Boden as a principal of Timbervest, although strictly prohibited by ERISA, was

this period would be a good development, but, under the circumstances, the other *Steadman* factors would merit more weight.

business as usual and not improper. (Ex. G 12/7/12 Tr. at 40:22-41:16). Finally, Boden, who took elaborate measures to conceal his receipt of the fees and the cross trade, maintains that every step that he took was above board. (See Boden 6/7/13 Tr. at 115:22-118:7, attached hereto as Ex. P). Respondents' reckless attitude toward their fiduciary duties, and their refusal to acknowledge the seriousness of their conduct, translate into a substantial risk of future violations.

Respondents represent a continuing risk to their clients and to the investing public because they continue to be a registered investment adviser with discretion over approximately \$1.2 billion in assets. Taking the allegations in the OIP as true, no reasonable investor would wish to have Timbervest continuing to exercise discretion over their assets.

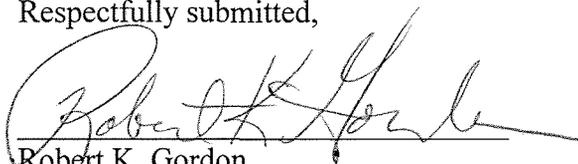
Clearly, as demonstrated above, there are disputed issues of material fact that go to the egregiousness of Respondents' conduct and to each of the other relevant *Steadman* factors. Timbervest manages substantial investor assets, and, if the anticipated testimony of the Division's witnesses is credited, the Respondents have engaged in fraudulent acts involving sophisticated planning and concealment. Moreover, the record will support a finding that they have invented facts from whole cloth to try to avoid the consequences of their conduct.

CONCLUSION

For the reasons stated herein, and for such further reasons as the hearing officer may deem appropriate, the Division respectfully requests that the hearing officer deny the Respondents' motion for summary disposition.

This 4th day of December, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert K. Gordon", written over a horizontal line.

Robert K. Gordon

Anthony J. Winter

Attorneys for Division of Enforcement
Securities and Exchange Commission
950 E. Paces Ferry Road NE
Atlanta, Georgia 30326-1232
(404)842-7652

EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of	:
	:
	:
Timbervest, LLC,	:
Joel Barth Shapiro,	:
Walter William Anthony Boden, III,	:
Donald David Zell, Jr.,	:
and Gordon Jones II,	:
	:
Respondents.	:

DECLARATION OF MATTHEW F. MCNAMARA

1. My name is Matthew F. McNamara. I am over the age of eighteen and have personal knowledge of the facts set forth herein.

2. I am an Assistant Regional Director in the Division of Enforcement of the Securities and Exchange Commission in its Atlanta Regional Office, and I have held this position during the investigation from which this proceeding arises.

3. I make this declaration in support of the Division of Enforcement's Opposition to the Respondents' Motion for Summary Disposition.

4. I supervised the investigation from which this proceeding arises, and I am fully familiar with the evidence obtained during the investigation, and with the charges pending against the Respondents in the Order Instituting Proceedings in this matter.

5. I have reviewed the Respondents' Motion for Summary Disposition and all of the attachments thereto. I have also reviewed the Division of Enforcement's Opposition to Respondents' motion and all of the attachments thereto.

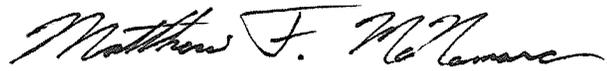
6. Based on my review of the attachments to the motion and the opposition thereto, including excerpts of transcripts of investigative testimony, declarations, and other documents, there are clearly disputed issues of material fact concerning relating to at least the following major areas:

- a. Was the sale of certain timberland in Alabama by New Forestry, LP to Chen Timber, LLC and the subsequent sale of the same timberland by Chen Timber, LLC to Timbervest Partners Alabama, LLC (a wholly owned subsidiary of Timbervest Partners, LP), part of a prearranged cross trade agreed to by William Boden and Lee Wooddall?
- b. Did each of the four individual Respondents, or some of them, knowingly agree to complete a prearranged prohibited indirect cross trade of the New Forestry property in Alabama by arranging to sell it to Chen Timber, LLC and agreeing to repurchase it on behalf of another Timbervest affiliated fund?
- c. Were approximately \$1.15 million in commissions paid to limited liability companies beneficially owned by William Boden, and the subsequent sharing of these commissions among the Timbervest principals, disclosed to BellSouth, AT&T, or ORG Portfolio Management?

- d. Did the individual Respondents, or some of them, have knowledge that the payment of certain commissions to William Boden or to companies beneficially owned by him in 2006 and 2007 were prohibited by ERISA?
- e. Was a purpose of Fairfax Realty Advisors, LLC and Westfield Realty Partners, LLC the concealment of the payment of prohibited commissions to William Boden and his Timbervest partners?
- f. Was a purpose of running the commission payments obtained by Fairfax Realty Advisors, LLC and Westfield Realty Partners, LLC through the Interest on Lawyers Trust Account of Ralph Harrison the concealment of the payment of prohibited commissions to William Boden and the other owners of Timbervest?

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on December 4, 2013.



Matthew F. McNamara

w/permission
APW

EXHIBIT B

INVESTMENT MANAGER AGREEMENT

THIS AGREEMENT, made this 31 day of July, 1996, and effective as of the 25th day of July, 1996, by and between BellSouth Corporation (the "Company") and Timberland Investment Services, LLC. (the "Investment Manager").

W I T N E S S E T H :

WHEREAS, the Company and State Street Bank and Trust Company (herein referred to as the "Trustee") entered into a Master Pension Trust Agreement effective as of September 1, 1994 (said agreement and the trust created thereby, as amended from time to time, being herein referred to as the "Trust"), the provisions of which are hereby incorporated by reference herein, for the purpose of establishing a master trust for the assets of the BellSouth Personal Retirement Account Pension Plans, the BellSouth Pension Plan and any other defined benefit pension plan maintained by the Company (or a subsidiary or affiliate of the Company) which, with the consent of the Company's Treasurer, has designated the Trust as part of such plan (said plans, as amended from time to time, being herein referred to individually as a "Plan" and collectively as the "Plans");

WHEREAS, pursuant to Section 6 of the Trust, the Company may appoint an investment manager, within the meaning of Sections 3(38) and 402(c)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") with respect to all or a portion of the assets of the Trust;

WHEREAS, the Investment Manager is qualified to act as an investment manager pursuant to ERISA and the Trust;

Trustee shall be responsible for all custodial arrangements with respect thereto. All payments, distributions and other transactions in cash or otherwise, whether in respect of the Investment Account or the assets thereof, including, without limitation, any dividends, rents or mortgage payments or receipts, shall be made directly to or from the Trustee, unless otherwise directed by the Company. Notwithstanding the foregoing, with the written consent of the Trustee and subject to the provisions of ERISA and other applicable laws, the Investment Manager or its agent may receive on behalf of the Trustee any dividend, rent, mortgage or other payment normally incident to the day-to-day management of the assets held in the Investment Account and pay expenses normally incident to the day-to-day management of the assets thereof. The Trustee shall furnish to the Investment Manager and the Investment Manager shall furnish to the Trustee from time to time such reports concerning assets, receipts and disbursements with respect to the Investment Account as the other shall reasonably request.

6. Fiduciary Responsibility: Prohibited Transactions. The Investment Manager shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, the Investment Manager will not engage in any transaction with respect to the assets of an Investment Account which would constitute either a transaction prohibited under Section 406 of ERISA or a transaction which is a "prohibited transaction" as defined in Section 4975(c) of the Internal Revenue Code of 1986, as amended ("Code"). The Investment Manager shall undertake such action as may be required by ERISA or other applicable law to protect the assets of the Investment Account and may, with the prior written consent of the Company, file with the United States Department of Labor, the United States Department of Treasury, or other appropriate agency, an application for exemptive or other appropriate relief from the provisions of ERISA and the Code.

EXHIBIT C

LIMITED LIABILITY COMPANY AGREEMENT

OF

NEW FORESTRY, LLC

(b) TIS is hereby appointed the General Manager of the Company. At any time during the term of this Agreement, upon 30 days written notice, the General Manager may be removed by the affirmative vote of the Members holding a majority of the Units outstanding.

SECTION 6.2 Right of Other Persons to Rely on the General Manager.

(a) Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate about any one or more of the following matters signed by the General Manager:

(i) The identity of the General Manager and the Members;

(ii) The existence or nonexistence of any fact that constitutes a condition precedent to acts by the General Manager or that is otherwise germane to the affairs of the Company;

(iii) The identity of Persons authorized to execute and deliver any instrument, agreement, or document of the Company; and

(iv) Any act or failure to act by the Company or any other matter whatsoever involving the Company.

(b) The signature of the General Manager shall be necessary and sufficient to convey title to Company Assets. The General Manager may disclose a copy of this Agreement to any Person to confirm the General Manager's authority; provided, however, that the Person to whom such copy is disclosed shall first agree in writing to maintain the confidentiality of the terms of this Agreement. The General Manager may execute any "statement of limited liability company" or other documents needed to effectuate this or any other provision of this Agreement.

SECTION 6.3 Restrictions on the Authority of the General Manager.

Without the consent of all the Members (which consent, except as otherwise provided below, may be withheld in the sole discretion of a Member for any reason or for no reason), the General Manager shall not:

(a) Transfer any Company Assets for other than a Company purpose or in a manner that would give rise to a "prohibited transaction" described in Section 4975 of the Code or Section 406 of the Employee Retirement Income Security Act of 1974, as amended;

(b) Knowingly do any act in contravention of this Agreement, engage in activities inconsistent with the purposes of the Company or permit the Company to take any action that would violate any of the Management Agreements;

EXHIBIT D

EXHIBIT E

1:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2
3 In the Matter of:)
4 TIMBERVEST, LLC) File No. A-03245-A
5)
6
7 WITNESS: CHARLES LEE WOODDALL
8 PAGES: 1 through 41.
9
10 PLACE: Securities and Exchange Commission
11 950 East Paces Ferry Road
12 Suite 900
13 Atlanta, Georgia 30326
14 DATE: Wednesday, June 27, 2012
15 The above-entitled matter came on for
16 investigative interview, at 10:17 a.m.
17
18
19
20
21
22
23
24 Diversified Reporting Services, Inc.
25 (202) 467-9200

14:1 Shep Bickley.

2 Q Do you recall when that was approximately?

3 A No.

4 MR. WINTER: Do you know -- for the record spell

5 Mr. Bickley's name.

6 THE WITNESS: B-i-c-k-l-e-y.

7 MR. WINTER: First name was?

8 THE WITNESS: Shep, S-h-e-p.

9 MR. WINTER: Thank you.

10 BY MR. GORDON:

11 Q Did you meet Mr. Jones in the same time frame that

12 you would have met Mr. Boden or Mr. Shapiro or would it have

13 been after?

14 A After.

15 Q Are you personally acquainted with any other

16 Timbervest principals or employees? And by that, I'm

17 referring --

18 A I don't know who they all hire. But I don't know

19 who all works there. I don't know.

20 Q Okay. Now is it correct Mr. Wooddall, that in or

21 around the fall of 2006, Chen Timber purchased from

22 Timbervest a timberland property in Alabama consisting of

23 approximately 13,000 acres. And then a short time after

24 that, resold the same timberland to Timbervest?

25 A Yes.

15:1 Q And is it correct that Chen Timber resold the land
2 back to Timbervest for a little more than one million dollars
3 more than Chen Timber paid for it?

4 A Yes.

5 Q And specifically, is it correct that Chen Timber
6 purchased the Alabama property from Timbervest for \$13.45
7 million and sold it back to Timbervest for \$14.5 million?

8 A I don't know the exact numbers but that sounds --

9 Q Okay.

10 A -- sort of correct.

11 Q We'll review the documents in a moment.

12 A Okay.

13 Q Were you the person at Chen Timber that was
14 primarily responsible for the purchase and resale of the
15 Timbervest land in Alabama?

16 A Yes.

17 Q Who was the person at Timbervest that you dealt
18 with primarily in connection with the purchase and resale of
19 the Alabama land to Timbervest?

20 A Bill Boden.

21 Q Did Bill Boden handle all the negotiations with
22 you relating to this transaction?

23 A The business part of the deal, he did. But then
24 the attorneys negotiated the contract.

25 Q Okay. But were all your dealings with Timbervest

16:1 in connection with this transaction through Bill Boden to the
2 best of your recollection?

3 A Mine personally, yes.

4 Q What is the first event that you can recall
5 resulting in Chen Timber's ultimate purchase of the
6 timberland tract in Alabama from Timbervest?

7 A I think Bill called and asked me if I would be
8 interested in buying some land over in Alabama. And we had
9 lunch together at Houston's one day and talked about it.

10 Q Which Houston's? If you could --

11 A West Paces Ferry and Northside.

12 Q Okay. And when you -- when you met with Bill
13 Boden at Houston's, did he make any specific proposal to you
14 with respect to the Alabama timberland?

15 A I don't think we talked specifics. I think the
16 first meeting was just general, you know, we've got 13,000
17 acres of land over here. We want you to buy it. We'll buy
18 it back from you. We can't do -- it's just we verbally can
19 agree to buy it back, but we can't guarantee we'll buy it
20 back.

21 Q Okay. What specifically do recall William Boden
22 saying in connection with Timbervest intention to repurchase
23 the land.

24 A He said they were raising another fund and that
25 the other fund would be buying the timberland back.

17:1 Q Okay. Did he provide you with any reason why one
2 fund couldn't simply sell to the other fund?

3 A He said -- I think he said it was they just --
4 they just couldn't do it.

5 Q Okay. Did you -- do you have any understanding as
6 to why not?

7 A No.

8 Q Okay. And so tell me again what you recall him
9 saying about repurchasing the land?

10 A He said that, you know, we'll sell you the land.
11 We'll buy it back, but we can't put it in writing. And I
12 said I need to go look at it, make sure if you don't buy it
13 back that I'm getting a half decent, you know, getting a good
14 deal.

15 Q Okay. Was there any discussion of the terms under
16 which Timbervest would buy back the land?

17 A At the first meeting?

18 Q Yes.

19 A I don't think so.

20 Q Okay. Why would you be interested in buying land
21 and then selling it back to Timbervest a few months later?
22 Why would that be an attractive proposition for you?

23 A Well, I mean, I buy land. That's what Chen Timber
24 does, buys land and resells it.

25 Q Did Mr. Boden indicate to you in any way that he

18:1 would -- that you would make a profit from selling the land
2 back to Timbervest?

3 A Yes.

4 Q What did he say in that regard?

5 A He said that they would buy it make and we'd make
6 a profit.

7 Q Okay. Was there any discussion of what type of
8 profit you could expect from the buy back?

9 A I don't think there was at that first meeting.

10 Q Okay. Were there later discussions with you and
11 Mr. Boden about how much Timbervest would be willing to
12 repurchase the land for?

13 A Yes.

14 Q What discussion do you recall?

15 A I think we negotiated, you know, we buy it for x
16 amount and they'd buy it back for x amount.

17 Q X amount being --

18 A Whatever we -- whatever we set.

19 Q Okay. So if the -- if the transaction documents
20 represent that Chen resold the land to Timbervest for a
21 little more than a million dollar profit, then would that --
22 would those have been the terms that you and Mr. Boden
23 negotiated?

24 A Yes.

25 Q And in terms of your expectations about the timing

19:1 of the repurchase, what -- what if anything did Mr. Boden say
2 about --

3 A I think he said -- I don't know exactly because it
4 was long time ago. I think it was within a six month time
5 frame.

6 Q You mentioned earlier that Mr. Boden said
7 something to you about not being able to put the agreement to
8 repurchase the land in writing?

9 A Right.

10 Q Is that a request that you made of him one time or
11 more than one time?

12 A Probably more than once.

13 Q Okay. And what specifically do you remember in
14 terms of either his response or --

15 A He said that they could not do it. They hadn't
16 raised the money for the fund, that they couldn't commit to
17 purchase something back without having raised the funds.

18 Q Okay. Did -- did Mr. Boden orally commit to you
19 that Timbervest would repurchase the land?

20 A I mean, that -- that was the intention, yes.

21 Q We're going to have a look in a few minutes at
22 some documents. But just for purposes of my next few
23 questions, let me just -- let me represent to you that the
24 documents reflect that the selling party for the Alabama land
25 was New Forestry, LLC. And that the repurchasing party, on

31:1 you recall receiving this document?

2 A I don't recall.

3 Q Okay. Do you have any reason to doubt that you
4 did in fact receive it?

5 A No.

6 Q The -- the e-mail states, as I said a moment ago,
7 "Lee, as per our discussion, please see the attached." Do
8 you recall any discussion that you had with Bill Boden
9 immediately preceding your receipt of this e-mail and
10 attachment?

11 A No.

12 Q Okay. And if you look at the draft, and -- I
13 guess for the record, would it be accurate to state that the
14 document that Bill Boden sent you on November 30, 2006 was a
15 draft of the agreement for Timbervest to repurchase the
16 Alabama timberland from Chen Timber?

17 A Yes.

18 Q Okay. And would it be further correct that on
19 page two of the draft purchase agreement, it reflects that
20 the purchase price would be \$14,500,000?

21 A Correct.

22 Q Okay. And what would you -- had you received this
23 document on November 30th as it indicates, what would you
24 have done with it?

25 A I'd have sent it to one of my attorneys.

EXHIBIT F

1:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4 TIMBERVEST, LLC) FILE NO. A-3245

5

6 WITNESS: ED SCHWARTZ

7 PAGES: 1 through 117

8

9 PLACE: U.S. Securities and Exchange Commission

10 950 E. Paces Ferry Road, Suite 900

11 Atlanta, Georgia 30326

12

13 DATE: Friday, November 30, 2012

14

15 The above-entitled matter came on for
16 investigative interview pursuant to subpoena at 10:02 a.m.

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24 DIVERSIFIED REPORTING SERVICES, INC.

25 (202) 467-9200

27:1 Q Okay. And so what was ORG then -- what was ORG's
2 role in relation to New Forestry?

3 A Again, it was -- it was similar to what I had
4 said, you know, about what we do with our clients, you know,
5 first we sit down with our clients and ask them what -- what
6 their objective is for what -- what they're looking for us to
7 do. And in this case it was an orderly liquidation of -- of
8 -- I should say an orderly reduction, liquidation, but a
9 reduction, not an elimination -- but of their -- of their
10 portfolio, both in timber and in agriculture. So we were
11 charged with working with the various managers that were in
12 place to help facilitate that orderly reduction of the
13 portfolios.

14 Q Okay. So was there a mandate or a plan to reduce
15 the portfolio's size that New Forestry had already come up
16 with when you arrived or was there a plan that pre-existed
17 ORG's arrival?

18 A I don't know when the plan was put in place, but
19 we were given instructions to help facilitate a plan to
20 reduce the New Forestry down to 250 million. I can't
21 remember if it was over three years or five years, but it was
22 -- it was not a -- it was not a fire sell situation, it was
23 just something that they wanted to reduce in an orderly
24 liquidation, is what I remember, over a period of time.

25 Q Do you know if New Forestry communicated with

28:1 Timbervest their desire to reduce the portfolio size before
2 you got there, before you -- before ORG was hired?

3 A I'm sorry, I don't want to be difficult. If you
4 could just rephrase.

5 Q Sure. Are you aware of whether or not New
6 Forestry communicated with Timbervest their desire to reduce
7 the portfolio size prior to your arrival as the investment
8 manager?

9 A I don't mean to -- I look at -- I look at New
10 Forestry and Timbervest sort of the same. Did you mean
11 BellSouth or --

12 Q Yeah. Yeah.

13 A Okay. So did New Forestry -- I'm sorry, could you
14 just repeat it one more time?

15 Q Sure. Okay. So let me ask you this then, because
16 you're -- you're drawing a distinction here. Did you see
17 ORG's role as essentially stepping into the shoes of
18 BellSouth in managing the New Forestry portfolio?

19 A In a -- in a sense, yes, but we also were -- were
20 working with BellSouth on strategic direction. So I would
21 say we were -- I would say stepping in would not be the --
22 the best description, but really working alongside them,
23 assisting them, and working with them on -- on -- on
24 developing and then implementing their strategic goals.

25 Q Did BellSouth turn over discretion of the

37:1 that evolved, how was that decision made that that was going
2 to be the way it worked?

3 A Well, it was -- it was sort of natural since he
4 was, you know, newer to the company and -- and, you know, had
5 brought this -- this client into the -- into the company and,
6 you know, he hadn't had that many existing client
7 responsibilities, so it was sort of a natural thing for him
8 to take the lead on.

9 Q How was ORG compensated in regards to its
10 management of New Forestry?

11 A We were paid a fee of 20 basis points. I'm trying
12 to remember, I think it was of the value of the -- of the
13 portfolio, which was not just -- it was -- it was all of the
14 -- the agriculture and the timber. And then in addition
15 there was a -- well, I don't know what the best term is, but
16 there was a -- a sort of an incentive in there where, if we
17 were able to liquidate one of the two agricultural
18 investments we were then able to have a -- a guarantee of
19 that two years, which is I think why, you know, we were -- we
20 were kept on for the -- for the two years.

21 Q So was this kind of a disposition fee then
22 associated with liquidating certain agricultural investments?

23 A I don't remember exactly how it was characterized.
24 It may have been, but it was -- it was characterized a little
25 bit differently in the investment management agreement.

38:1 Q It was contingent though, right, it was contingent
2 upon your ability to sell certain --

3 A It was, but it also reduced the rest of our fee,
4 so it really -- essentially it was a -- it was a way where,
5 if we were successful in this, we would get two years of this
6 20 basis points.

7 Q Okay.

8 MR. RESNIK: Could I just ask Mr. Winter just to
9 sort of clarify, you said disposition fee, because that's a
10 -- that term has some specific meaning in the industry, and
11 just to make sure that you're both talking about the same
12 types of fee, so when you talk about disposition fee are you
13 talking about a fee that is paid every time a piece of
14 property is sold off? And -- and is the question -- because
15 I think, the way it was -- if after the two-year period an
16 entire grouping was sold, if you're characterizing that as a
17 disposition fee or kind of -- I just want to kind of get some
18 clarity how that's being viewed and used as we talk about it.

19 MR. WINTER: I was asking whether or not he
20 understood this -- what his understanding of how this fee
21 operated.

22 BY MR. WINTER:

23 Q And my understanding of your response, Mr.
24 Schwartz, was that it was not technically -- but you're not
25 sure because you don't have the documents in front of you --

EXHIBIT G

1:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4 TIMBERVEST, LLC) File No. A-03245-A

5)

6

7 WITNESS: JOEL BARTH SHAPIRO

8 PAGES: 1 through 69

9

10 PLACE: Securities and Exchange Commission

11 950 East Paces Ferry Road

12 Suite 900

13 Atlanta, Georgia 30326

14 DATE: Friday, December 7, 2012

15 The above-entitled matter came on for investigative

16 interview, at 9:05 a.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

16:1 A We have multiple lawyers.

2 Q In-house lawyers, you mean?

3 A We use both in-house and external.

4 Q And are all transactions reviewed, at least by in-

5 house lawyers?

6 A They should be, yes.

7 Q Are all transactions reviewed by outside counsel?

8 A I don't know.

9 Q A few minutes ago, I asked you if, as you sit here

10 today, if you believe that ERISA allows a fiduciary to use

11 plan assets for its own interest and I believe you said, you

12 think that it does not, is that correct?

13 A Correct.

14 Q Okay. Did you know that in 2006 and 2007?

15 A I'm sure I did, yes.

16 Q So, take me through the formation of your

17 management team at Timbervest, you came on in 2002. And at

18 some point, the four principals that are currently there,

19 decided to buy the company, so how did each of them come on

20 board?

21 A I came on board in 2002. David Zell came on

22 board, sometime early summerish 2003. Gordon came on board

23 sometime in 2004, as did Bill.

24 (Brief pause.)

25 Q And do you recall who came on board first, Mr.

17:1 Boden or Mr. Jones?

2 A No. You have to redefine "on board," as well.

3 Q Sure. So I'm not -- my understanding is, that at
4 some point prior to joining Timbervest and/or Ironwood, Mr.
5 Boden operated as an independent contractor or consultant or
6 something.

7 A Correct.

8 Q So I'm excluding that.

9 A Okay.

10 Q So given that description, then you're saying, I
11 guess -- are you saying Mr. Boden stopped being an
12 independent consultant or contractor and joined
13 Timbevest/Ironwood?

14 A I'm not sure.

15 Q Somewhere around 2004?

16 A Probably the middle of 2004, I believe.

17 Q Was there a time, between Mr. Boden's joining
18 Timbervest as a partner and his time as an independent
19 consultant, where he worked as an employee of Timbervest?

20 A He would not have been an employee. So, no.

21 Q Did he ever fill out a W-4 or I-9 or anything like
22 that, during that time period?

23 A I don't recall.

24 Q At what point did you decide to engage Mr. Boden
25 as an independent contractor?

18:1 A Probably within a couple of weeks of me joining
2 Timbervest, if not before then.

3 Q So, you were at Timbervest as CEO for a very short
4 time before you engaged Mr. Boden?

5 A Correct.

6 Q What services did you -- what services did Mr.
7 Boden provide to Timbervest at that time?

8 A He was going to position or reposition certain
9 properties, to maximize value for sale. Figure out for me
10 what we had, help dispose of certain assets in a non-fire-
11 sale way. I'm trying to think of what else. And generally
12 be the guy who knew, for me, what was going on in the kind of
13 regional timber space.

14 Q So just quickly, tell me what you mean by
15 reposition the portfolio?

16 A When I first came on, Timbervest -- let's go back,
17 our client, BellSouth, was in the midst -- this was dotcom,
18 whatever recession. I believe correctly, they were having
19 layoffs. And they needed cash desperately from all their
20 managers. Prior to me getting there, Timbervest had worked
21 for nine months to sell, what in my opinion, was the best
22 assets in the portfolio, New Forestry's portfolio, which is
23 BellSouth.

24 They worked for nine months. They used an
25 absolute auction. The auction, I believe, was the second

20:1 assets that were chosen for disposition chosen or was
2 everything in the portfolio open for sale?

3 A Everything is always for sale. So, you have to
4 figure out what it is you have. And you have to figure out
5 what buyers are out there, willing to buy what.

6 Q Are some properties desirable to keep in the
7 portfolio?

8 A Everything is for sale.

9 Q So Mr. Boden -- the properties Mr. Boden was being
10 retained to help sell were not properties that needed to be
11 disposed of strategically; they were just the largest --

12 A No, strategic --

13 Q -- southeastern properties. So, I'm just trying
14 to understand what you're saying. Were they the largest
15 southeastern properties? All of those the largest
16 southeastern properties or were they a subset of the
17 southeastern properties that were strategic for sale or
18 something other than that?

19 A I don't recall.

20 Q Now, when you said that these were the only
21 properties Mr. Boden knew or cared to be involved with, was
22 there a possibility that he might be more involved with
23 properties and the sale of properties outside of the
24 southeast, if he had wanted to be?

25 A Probably not.

21:1 Q And why not?

2 A He had no expertise in the northeast or in the
3 west coast.

4 Q And how was Mr. Boden to be compensated for his
5 services?

6 A He was going to get an advisory fee, based on
7 certain properties sold. They had to be a minimum of \$5
8 million. And there could not be another broker representing
9 New Forestry. And once again, it came to a certain specific
10 core property group.

11 Once again, BellSouth needed cash at that time.
12 But our --we were told do not forcibly sell anything.

13 Q And that specific core property group, is that the
14 same as the eight properties -- eight southeastern properties
15 you just mentioned?

16 A Yeah, it's either eight or nine. I'm not really
17 sure.

18 Q And why was the \$5 million minimum put on that
19 agreement?

20 A At the time, BellSouth needed significant cash and
21 for anybody to go out and sell little parcels, I don't think
22 it would have been in the best interest of the client for
23 Bill to go sell little 40 acre pieces.

24 Q So was it an incentive to sell larger --

25 A Yes.

22:1 Q -- pieces?

2 A As well as help with the smaller pieces.

3 Q How would it help with the smaller ones?

4 A No he was -- that was -- Timbervest could not
5 afford to compensate him. The only way I could get him to
6 come on -- he could come and go as he pleased, was to -- I
7 needed help and he was willing to come on board. As were
8 others.

9 Q What does that mean, as were others?

10 A I interviewed others.

11 Q Interviewed others for -- for what, just so that
12 we're clear? To do services similar to what Mr. Boden was
13 doing?

14 A Exactly.

15 Q And who else did you interview?

16 A There was a Hank Eubanks. Probably talked to one
17 or two others but I'm not really sure. I don't recall.

18 Q Okay. And who is Mr. Eubanks?

19 A He had a land brokerage firm at the time.

20 Q Based where?

21 A In Atlanta.

22 Q And what was the -- what were the terms of Mr.
23 Boden's fee arrangement? How much was he going to get paid?

24 A It was a sliding scale, starting I believe at 4
25 percent, going to 2 percent.

23:1 Q How was that determined?

2 A By the size of the property.

3 Q How were those percentages arrived at?

4 A I believe me and Mr. Boden discussed that at some
5 point.

6 Q Do you recall having a discussion about it?

7 A I just remember discussing something about the
8 other -- Mr. Eubanks wanted significantly more. And we
9 needed something that was in the best interest of the client.

10 (Brief pause.)

11 Q I don't want to skip ahead too much because we'll
12 talk later about the transactions in 2006 and 2007. Did Mr.
13 Boden ever collect a fee for the sale of properties, under
14 this fee arrangement, prior to the sale of the Alabama
15 timberlands in 2006?

16 A No, not that I'm aware of.

17 MR. GORDON: Do you recall the particulars of the
18 sliding scale, what percentage corresponded to what size sale
19 of property?

20 THE WITNESS: I believe it started around 4
21 percent of five million, probably -- I don't really recall
22 but I could guess. I don't want to guess. It's ten years
23 ago. I'm not really -- I believe it was three, two and half
24 and two.

25 Q Was there a time limit on how long this agreement

24:1 would last?

2 A It was roughly five years. But we discussed it
3 and I believe we came up with the end of 2007.

4 Q And how was that decision arrived at?

5 A We discussed how much time it had taken, if I
6 believe correctly, for Timbervest to put that auction
7 together. And I said, well, how long does it really take.
8 And he said, it could take a year, it could take ten years.
9 I said, well, let's come up with something fair.

10 Q Now, this agreement that you devised with Mr.
11 Boden, did you share the existence of this agreement with
12 anyone at BellSouth?

13 A Yes.

14 Q Who?

15 A David Zell.

16 Q And what was Mr. Zell's role at the time?

17 A He was the director of real estate and natural
18 resources I believe.

19 Q And what did you tell Mr. Zell?

20 A I told Mr. Zell that I wanted him to meet Mr.
21 Boden, who I thought would really add value to the portfolio.

22 Q Anything else?

23 A I told him generally what the commission -- there
24 would be a commission structure or fee structure. And that I
25 believed it was in the best interest of the client.

25:1 Q And did Mr. Zell meet with Mr. Boden?

2 A He did.

3 Q Did you outline the specifics of your agreement
4 with Mr. Boden to Mr. Zell?

5 A No.

6 Q And what did Mr. Zell say about the agreement,
7 when you told him?

8 A I didn't tell him specifically. He said, fine.
9 He's like any other service person. I introduced him to
10 Troutman Sanders, other accountants, it's just like any other
11 service provider at the time.

12 Q At the time -- so when did you have this
13 conversation with Mr. Zell?

14 A It had to be probably, October-November of 2002.

15 Q And during that time, is it your belief that as
16 the investment manager for New Forestry, that you could
17 engage independent contractors with your own discretion?

18 A Absolutely.

19 Q Do you know if Mr. Zell shared anything about this
20 arrangement with anyone else at BellSouth?

21 A I have no idea.

22 Q Did you have any other contacts at BellSouth,
23 besides Mr. Zell, at that time?

24 A I don't believe so.

25 Q Did you share any information about this agreement

26:1 with anyone, besides Mr. Boden and Mr. Zell, at that time?

2 A I don't recall.

3 (Brief pause.)

4 MR. GORDON: May I?

5 MR. WINTER: Sure, yeah.

6 MR. GORDON: Was there an amount of liquidation
7 that you were trying to achieve in the New Forestry portfolio
8 in 2002?

9 THE WITNESS: I don't really recall. If I believe
10 right, they had wanted either 60 or \$90 million back, over a
11 period of couple of years. But that's just -- it was
12 something along those lines. I vaguely remember.

13 MR. GORDON: Would David Zell have been the one to
14 communicate --

15 THE WITNESS: Yes.

16 MR. GORDON: -- that mandate to you?

17 THE WITNESS: Yes.

18 MR. GORDON: So given that they -- and your best
19 recollection, is they wanted to achieve this liquidation in a
20 couple of years. How do reconcile that with engaging Mr.
21 Boden for a five year time frame?

22 THE WITNESS: I don't really recall.

23 MR. GORDON: So, if BellSouth had come to you
24 after two years, and said, okay, our investment objectives
25 have changed. We don't want to liquidate the portfolio. We

27:1 want to increase our natural resources portfolio, how would
2 you have dealt with the agreement you had with Mr. Boden?

3 THE WITNESS: As far as I'm concerned, at that
4 point, he had worked two years for nothing. He had worked --
5 he had already performed his services. This was a very
6 simple agreement, like any other service agreement, legal,
7 accounting. You know, this was a non-event.

8 MR. GORDON: So do I understand that Mr. Boden
9 started -- you said at that point, he worked for couple of
10 years for nothing. I believed you testified that he started
11 working as an independent consultant for Timbervest, in late
12 2002?

13 THE WITNESS: Beginning of fall, fall 2002.

14 MR. GORDON: So, had he been working for
15 Timbervest since 2000?

16 THE WITNESS: Since 2000?

17 MR. GORDON: What do you mean, that he --

18 THE WITNESS: I thought you said 2004.

19 MR. GORDON: Well, you said --

20 THE WITNESS: You said, after a couple of years.

21 MR. ANDERSON: He misunderstood your earlier
22 question.

23 MR. GORDON: Okay.

24 MR. ANDERSON: So start --

25 MR. GORDON: So --

28:1 MR. ANDERSON: -- start --

2 MR. GORDON: So, BellSouth told you, around the
3 time you began with Timbervest, that it wanted to achieve
4 somewhere around 60 to \$90 million of liquidity in the New
5 Forestry's portfolio, over a couple of years, correct?

6 THE WITNESS: (Nods head.)

7 MR. GORDON: Okay. And then I think it's your
8 further testimony that you went to Mr. Boden and said -- and
9 you made an arrangement, a fee arrangement with him involving
10 the disposition of New Forestry lands for a period of five
11 years --

12 THE WITNESS: Correct.

13 MR. GORDON: -- approximately, correct? So the
14 question is, if, after two years, if BellSouth had come to
15 you and said, okay, we don't want to liquidate any more, in
16 fact, we want to grow our portfolio. How would you have
17 handled the five-year agreement that you made with Mr. Boden?

18 THE WITNESS: That's hypothetical. I just don't
19 know.

20 MR. GORDON: Yes.

21 THE WITNESS: I can't -- it didn't happen so I
22 don't know how to respond to that.

23 MR. GORDON: Okay. You were comfortable making a
24 five year fee arrangement, based on disposition of New
25 Forestry assets, despite the fact BellSouth had not told you

29:1 they wanted to dispose of lands for five years.

2 THE WITNESS: Five-year term -- during that
3 period, I spoke with Mr. Zell daily.

4 MR. GORDON: Yes.

5 THE WITNESS: He wanted what was best for the
6 portfolio. He wanted no fire sales. In 2002, we didn't even
7 have good maps of Timbervest. Business takes a long time.
8 Land sales can take five/ten years. And so I thought five
9 years or whatever it was, it was probably five years and two
10 or three months, was a decent time frame.

11 BY MR. WINTER:

12 Q Was your fee arrangement with Mr. Boden ever
13 memorialized in writing?

14 A No.

15 Q Was it ever memorialized in any other way? E-
16 mails, did you discuss it through letters, memos, any other
17 way?

18 A Not that I recall.

19 Q Did you ever make notes for yourself about the fee
20 arrangement so that you could remember it?

21 A No.

22 Q Did you discuss memorializing it with Mr. Boden?

23 A I don't really recall.

24 Q Did Mr. Boden ever ask you to put it in writing?

25 A I don't recall.

30:1 (Brief pause.)

2 Q Now, this agreement, as you've described it,
3 potentially commits New Forestry to pay millions of dollars
4 in commissions, to Mr. Boden, potentially, is that correct?

5 A Fees, yes.

6 Q And neither you or Mr. Boden ever thought or
7 discussed whether or not to put in writing?

8 A No. This is not atypical in this business.

9 Q So it's typical for people to enter into
10 agreements that could result in payments of millions of
11 dollars to individuals without those agreements being put in
12 writing?

13 A Yes, it is.

14 MR. GORDON: What other similar agreements did you
15 have when you were at Timbervest with individuals --

16 THE WITNESS: When I came to Timbervest --

17 MR. GORDON: Let me finish the question.

18 THE WITNESS: Okay.

19 MR. GORDON: -- to pay fees to individuals, that
20 were not in writing?

21 THE WITNESS: When I came to Timbervest, within
22 probably six months of being there, a gentleman approached
23 and said I was promised a fee at the sale of this -- of a
24 certain property and you guys are -- potentially have it for
25 sale. And I said, show me where. He said, it wasn't in

40:1 time?

2 A Ed Schwartz, Steve Gruber. To a lesser extent,
3 Jonathan Burns and a guy named Howard Kaplan.

4 Q Okay. When I asked you earlier who else knew
5 about this agreement and you said, Ed Schwartz. At what
6 point did you tell Mr. Schwartz about this agreement?

7 A I'm not really sure.

8 Q Was it after ORG was engaged by BellSouth?

9 A Yeah, that's the only time I knew him.

10 Q Okay. So you met Ed Schwartz --

11 A Correct.

12 Q -- through that?

13 A Correct.

14 Q Okay. You did not know him prior to ORG taking
15 over the BellSouth account?

16 A No.

17 Q Okay. Was it -- would it have been early or soon
18 after ORG took over the account, that you told him about
19 this?

20 A My guess, and to the best of my recollection, it
21 was when he was asking how everybody came to Timbervest.

22 Q And what do you remember telling Mr. Schwartz
23 about Mr. Boden?

24 A I just remember telling him the basic deal.

25 Q And what was the basic deal?

41:1 A He was hired to help maximize value on the core
2 southeastern properties and he was being paid a fee, an
3 advisory fee. He has been instrumental in getting us to the
4 point we were. And he was getting a fee as long as there was
5 not a second fee or a commission paid by New Forestry.

6 Q What was Mr. Schwartz's response to that fee
7 arrangement?

8 A Whatever.

9 Q I'm sorry.

10 A Whatever. It's fine. I mean, whatever.

11 Q Like he saw no problem with it?

12 A Other managers do this.

13 Q Okay. But I'm asking about what --

14 A No.

15 Q -- Mr. Schwartz's response.

16 A Once again, it was a non-event. It was nothing.

17 Q So you're saying Mr. Schwartz had no response or
18 said it was fine?

19 A I don't recall.

20 Q I'm just confused about what you're saying Mr.
21 Schwartz's response was?

22 A I don't think his response was anything. I also
23 don't recall. This is such a non anything. So --

24 Q Did Mr. Schwartz tell you that any such fee
25 arrangement would have to be reviewed by legal counsel?

EXHIBIT H

From: Barrett Carter [REDACTED]
Sent: Wednesday, February 07, 2007 8:47 PM
To: Maria Horstmann; Amy Donaldson; Terrie Bera
Cc: Jami Bryant; Eva Gentile; Brian Burdette
Subject: RE: New Acquisition of Old Tenneco Property

Let me take exception to it being a fund swap. It is not exactly a fund swap. It just happened to work out that one client sold it to another party and another client wound up buying it back from that party. The buyer was presented with a different opportunity elsewhere and approached us with the idea of buying the property back. We were able to handle such a purchase, we were familiar with the property and the closing would be relatively simple since we were so familiar with the property. This happened several months after the original closing. Yes, what New Forestry, LLC sold to Chen Timber is exactly what Timbervest Partners Alabama, LLC purchased from Chen Timber, acre for acre.

J. Barrett Carter

From: Maria Horstmann
Sent: Wednesday, February 07, 2007 6:29 PM
To: Amy Donaldson; Terrie Bera
Cc: Barrett Carter; Jami Bryant; Eva Gentile; Brian Burdette
Subject: RE: New Acquisition of Old Tenneco Property

Partners purchased all the Tenneco Core Timberland tracts originally owned by New Forestry. Literally, it's basically a fund swap transaction.

Maria

Maria Horstmann
Finance Manager
(404) 848-7504 - direct line

From: Amy Donaldson [REDACTED]
Sent: Wednesday, February 07, 2007 3:00 PM
To: Terrie Bera; Maria Horstmann
Cc: Barrett Carter; Jami Bryant; Eva Gentile; Brian Burdette
Subject: RE: New Acquisition of Old Tenneco Property

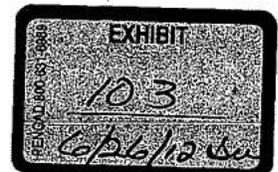
Terrie,

This spreadsheet contains the land sales for the Tenneco Core Timberland tracts only. The acres as of 4Q06 are in the volume column.

I am unsure if Timbervest Partners purchased all of the Core Timberland tracts.

Thanks,

Amy B. Donaldson
F&W Forestry Services
1310 West Oakridge
Albany, Georgia 31707



Phone: 229-883-0505 Ext. 131
Fax: 229-883-0515
[REDACTED]

From: Terrie Bera
Sent: Wednesday, February 07, 2007 2:24 PM
To: Amy Donaldson; 'Maria Horstmann'
Cc: 'Barrett Carter'
Subject: New Acquisition of Old Tenneco Property
Importance: High

Amy,
I need the booked acres as well as a tract list for the repurchase of some of the Tenneco tracts now owned by Timbervest Partners. I also the new purchase unit number and name. Thanks

Terrie

Terrie Bera
Mapping & Inventory Dept.
F&W Forestry Services, Inc.
172 Clairmont Rd.
Sterrett, AL 35147
Phone: 205-678-2855
Fax: 205-678-9929
[REDACTED]

EXHIBIT I

1:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2
3 In the Matter of:)
4 TIMBERVEST, LLC) File No. A-03245-A
5)
6
7 WITNESS: JOHN BARRETT CARTER
8 PAGES: 1 through 77
9
10 PLACE: Securities and Exchange Commission
11 950 East Paces Ferry Road
12 Suite 900
13 Atlanta, Georgia 30326
14 DATE: Tuesday, June 26, 2012
15 The above-entitled matter came on for
16 investigative interview, at 9:33 a.m.
17
18
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22
23
24 Diversified Reporting Services, Inc.
25 (202) 467-9200

16:1 transfer of funds?

2 A Our accounting department.

3 Q Okay. Do you have any responsibility for wiring
4 money or making sure that, you know, parties are getting paid
5 accordingly?

6 A I do not.

7 Q And is there someone in the accounting department,
8 specifically, who is in charge of that?

9 A I don't know.

10 Q And what is the difference then, now -- between
11 your former position and your current position?

12 A My former position, I worked more on transactions
13 of acquisition and disposition of property. Now I work more
14 on management of property that we currently own.

15 Q Okay. And just so I'm clear, what does management
16 of property entail?

17 A If we own a piece of property that needs better
18 tax treatment or more favorable tax treatment, better access,
19 we need to fill in gaps in property, I work with members of
20 the team at Timbervest to try to do that.

21 Q Okay. And when you say gaps in access, this is
22 similar to what you were talking about with buying five acres
23 to --

24 A If we own large --

25 Q -- on a large property -- go ahead.

26:1 October of 2006?

2 A I believe that it was.

3 Q Okay. Do you recall the purchase price?

4 A I do not.

5 Q How did that repurchase deal come about, do you
6 know?

7 A I do not know.

8 Q When did Timbervest agree to repurchase that
9 property?

10 A I do not know.

11 Q Were you involved in negotiating for the
12 repurchase of the property from Chen Timber?

13 A I was not.

14 Q Do you recall when the decision was made to
15 purchase the property back from Chen Timber?

16 A I do not.

17 Q Did you think it was strange for Timbervest to buy
18 the property back?

19 A No.

20 Q Has Timbervest ever bought property back that it
21 once sold to the same client?

22 A I'm not aware of a specific time that that
23 occurred.

24 Q Can you recall any other time when that occurred?

25 MR. GORDON: Just so the record is clear. When we

29:1 Q At the time that Timbervest was selling and
2 repurchasing this land, did you ever speak to Bill Boden
3 about these two transactions?

4 A I'm sure that I did. He's one of the partners.

5 Q Do you recall any specifics about your
6 conversations?

7 A It was about a little over five years ago I think.
8 I don't recall specifics of the communications. No.

9 Q Do you recall if he explained to you the reason
10 that Timbervest was repurchasing the land that it had just
11 sold?

12 A No.

13 Q Has Mr. Boden ever talked to you subsequently
14 about the sale and repurchase of this property by Timbervest?

15 A Not that I can recall.

16 Q Did Mr. Boden ever tell you that Timbervest sold
17 Tenneco to Chen Timber under an agreement that Timbervest
18 would agree to buy the land back from Chen Timber less than
19 two months later for one million dollars more than what they
20 originally sold it for?

21 A No.

22 Q If Timbervest had wanted to, could it have sold
23 the Tenneco property straight from New Forestry to the
24 Timbervest Partners Fund?

25 A I don't know.

30:1 Q Mr. Carter, I've handed you what has been marked
2 as Exhibit 103.

3 (SEC Exhibit Number 103 was
4 marked for identification.)

5 Q Do you recognize this document?

6 A I don't recognize it. It appears to be an e-mail
7 from me -- or a chain of e-mails that I'm copied on.

8 Q Okay. The e-mail at the top of the first page
9 states that it was sent by you to Maria Horstmann, Amy
10 Donaldson, Terrie Bera -- is that how her name is pronounced?

11 A I believe so, yes.

12 Q With a copy to Jami Bryant, Eva Gentile and Brian
13 Burdette, is that correct?

14 A That's correct.

15 Q Do you recall sending this e-mail?

16 A I do not.

17 Q Okay. And the date on all of these e-mails in the
18 entire chain, I believe, is February 7, 2007, is that
19 correct?

20 A That is correct.

21 Q Is there any reason to believe that you did not
22 send this e-mail?

23 A It's from my e-mail account, with my signature, so
24 I would say, no.

25 Q Okay. Do you know when the repurchase of the

EXHIBIT K

1:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4 TIMBERVEST, LLC) FILE NO. A-3245-A

5

6 WITNESS: RALPH HARRISON

7 PAGES: 1 through 104

8

9 PLACE: U.S. Securities and Exchange Commission

10 950 E. Paces Ferry Road, Suite 900

11 Atlanta, Georgia 30326

12

13 DATE: Monday, November 19, 2012

14

15 The above-entitled matter came on for
16 investigative interview pursuant to subpoena at 1:40 p.m.

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24 DIVERSIFIED REPORTING SERVICES, INC.

25 (202) 467-9200

55:1 and you turned around and you sent them to Mr. Boden,

2 correct?

3 A That's correct.

4 Q So why couldn't they just go directly from the

5 closing table to Mr. Boden?

6 A Theoretically they could have.

7 Q Okay. So what was the purpose, in your

8 understanding, of passing these funds through your attorney

9 trust account?

10 A Well, any -- again, you're getting into areas that

11 Mr. Boden and I discussed and, you know, the structure was

12 determined based on my discussions with him.

13 Q Uh-huh (affirmative). Does the purpose of passing

14 it through your attorney trust account relate in any way to a

15 desire to conceal the true beneficial owner of Fairfax and

16 Westfield?

17 A No, it was run through my attorney escrow account

18 for expediency. I didn't see the reason to set up separate

19 bank accounts for there to be, you know, two checks cut.

20 Q So, as far as you know, there were no -- there

21 were no separate bank accounts ever established for Fairfax

22 or Westfield?

23 A There were not.

24 Q And is there any particular reason for that, that

25 you're aware of?

62:1 MR. WINTER: How much was the sunk cost?
2 THE WITNESS: A few thousand dollars, give or
3 take.
4 MR. McNAMARA: How much time in total, again, did
5 you spend on --
6 THE WITNESS: I didn't keep --
7 MR. McNAMARA: -- all of -- let me just finish --
8 MR. ANDERSON: Hold it. Let him finish his
9 question.
10 MR. McNAMARA: -- just for a clean question. How
11 much time in aggregate did you spend on any advisor services
12 with respect to those two LLCs?
13 THE WITNESS: I didn't keep any time records.
14 MR. McNAMARA: I know we may have covered this
15 earlier, but was it less than 25 hours?
16 THE WITNESS: Probably.
17 MR. McNAMARA: Okay. Sorry for interrupting.
18 BY MR. GORDON:
19 Q Other than Mr. Boden, have you ever been paid by
20 any other client for setting up an LLC in the form of a
21 percentage of the revenues earned by the LLC?
22 A No.
23 Q To your knowledge, were Fairfax and Westfield set
24 up in the manner that they were set up, including routing
25 their fees through your attorney trust account, in part at

63:1 least to prevent anyone from knowing that the fees were going
2 to William Boden?

3 A Not to my knowledge.

4 Q Did you and Mr. Boden ever discuss setting up
5 Fairfax and Westfield in a manner to prevent anyone from
6 knowing that William Boden was the beneficial owner of those
7 companies?

8 A No.

9 Q So the fees that you paid to Business Filings in
10 connection with setting up these four LLCs, were these --
11 were you reimbursed for those out-of-pocket expenses?

12 A No.

13 Q And did you get paid for your work in establishing
14 Woodson and Loudoun as LLCs?

15 A No.

16 Q And why not?

17 A Our arrangement was if these deals closed I would
18 get a percentage for the work that was done. If they didn't
19 close, it was at my risk.

20 Q Uh-huh (affirmative). Did it -- did the -- the
21 amount that you were getting paid seem unusually high to you
22 for the -- the number of hours and simplicity of the work
23 that you were doing?

24 A Well, until I received the checks I had no idea
25 what the magnitude of the fees would be.

68:1 convenient at the time.

2 Q Wouldn't it have been convenient for them to all
3 be in the same place?

4 A It might have been.

5 Q So I guess, so why did you do it, if it would have
6 been convenient to set them up in the same place?

7 A You know, one of them was close to the office I
8 was working at at the time, one of them was close to my gym.
9 It was kind of, I need to set up a private mailbox, they were
10 separate entities, separate -- separate businesses, so to
11 speak.

12 Q So are you saying that the reason you used
13 different --

14 A I mean, I could have --

15 Q -- let me finish my question -- are you saying
16 that the reason that you used different private mailbox
17 stores was because these were separate entities and that they
18 somehow needed to have a different private mailbox location?
19 Because I'm not following that.

20 A They didn't have to. They -- they didn't have to
21 have a separate one but --

22 Q Okay.

23 A -- that's what I chose to do.

24 Q What does their being separate entities have to do
25 with your choosing different private mailbox locations? I'm

69:1 not following that.

2 A Look, the whole purpose of having separate SBEs is
3 to limit liability, and I chose to have them at separate
4 places.

5 Q And how did that limit liability? Is that what
6 you're saying, that it limited liability?

7 A Well, I mean, anything that could create the --
8 the separate corporate structure I think helps prevent
9 someone from trying to pierce the corporate veil and saying
10 these are all -- all the same business.

11 Q I'm sorry, I'm not following that. Explain to me
12 how having different private mailbox addresses for each of
13 the companies limited their liability, because I'm not
14 getting that.

15 A If someone was to argue that this was all the same
16 entity, and because I was -- there weren't separate bank
17 accounts, it seemed to me that anything that could separate
18 the oneness of these separate entities helps create a
19 separate structure that would make it more difficult for
20 someone, if they wanted to claim that this was one and the
21 same entity and pierce the corporate veil, that they could
22 make that claim.

23 Q So it was your -- it was your testimony, I
24 believe, that Fairfax and Westfield were essentially formed
25 and had as their purpose the receipt of an advisory fee --

70:1 A Sure.

2 Q -- from -- from separate real estate transactions,
3 right? Correct?

4 A Yes.

5 Q So who -- what liability were you concerned about,
6 who -- who were the --

7 A Well, now I think you're getting into my legal
8 analysis as to why I would structure it this way.

9 Q Well, I'm following up on an answer that you gave.
10 You've testified that you did it in this fashion --

11 A Uh-huh (affirmative).

12 Q -- in order to limit legal liability and --

13 A Sure, as --

14 Q -- I'm pursuing --

15 A -- a general practice.

16 Q -- that line of questioning.

17 A As a general practice, I would always attempt to
18 try and create separate entities and create as much
19 separateness as possible.

20 Q So that it -- so that it would be difficult for
21 anyone to detect that these three different companies had
22 common ownership, is that -- is that your testimony?

23 A So that if anyone were to attempt to try and claw
24 back a fee on the basis that there was a commonness of
25 ownership and essentially that it was -- this was one entity,

71:1 one common entity, that they could make claims on the assets
2 of the other.

3 Q Why -- I don't understand what you're saying. Why
4 would -- why would anybody want to claw back a fee based on
5 these things --

6 A Who knows?

7 Q -- having common ownership?

8 A Who knows?

9 Q Well, can you give me one for example? Because I
10 have no idea what you're talking about.

11 A Well, if -- if after the closing someone were to
12 assert a fee and say they weren't happy with the services
13 provided by Mr. Boden, and they wanted to try and claw back
14 whatever assets they could and try and make the case that
15 this was, in essence, one business -- I mean, the whole point
16 is try and insulate one fee -- claims against one fee from
17 claims against another fee.

18 Q Are you talking about insulating claims against
19 Mr. Boden by the LLCs?

20 A No, claims by any third party against -- related
21 to the services Mr. Boden provided. Again, now you're
22 getting into my legal analysis in representing Mr. Boden --

23 Q Well --

24 A -- which is all privileged.

25 Q -- I submit that you opened the door to this. You

105:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. A-03245-A

5 TIMBERVEST, LLC)

6

7 WITNESS: Ralph H. Harrison, Volume II

8 PAGES: 105 through 152

9 PLACE: Securities and Exchange Commission

10 950 East Paces Ferry Road - Suite 906

11 Atlanta, Georgia

12 DATE: Monday, June 10, 2013

13

14 The above-entitled matter came on for hearing,

15 pursuant to notice, at 9:43 a.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

139:1 some potential -- does that not provide him to some
2 exposure then if he can't actually control the funds
3 that were paid as a result of his advisory fee
4 agreement?

5 A That exposure are you referring to?

6 Q Well, I mean, if he has no legal interest to
7 the entity to which those funds were paid, if there is a
8 dispute about those funds, how could he press his claim
9 against you?

10 A Well, there wasn't ever going to be a claim.
11 I was not going to pay Bill the money he was entitled
12 to. I was acting as an attorney so the great
13 ramifications if I were to skim off that money, I'm not
14 going to jeopardize my law license for that, besides the
15 fact I've known Bill for 30 years and he trusts me and I
16 trust him, and there is not going to be any malfeasance.
17 You know, I was engaged to go do a certain thing and I
18 did it, and I did it along the lines of what was
19 discussed and that was to set up the entity, receive the
20 fee, pay the fee out, do to tax accounting and that's
21 what happened.

22 MR. GORDON: So the LLCs that you set up on
23 behalf of Mr. Boden, is it correct that the intention
24 was that a fee would come in and then it would basically
25 go into your account and you would pay those monies out

140:1 to Mr. Boden in fairly short order?

2 THE WITNESS: Yes.

3 MR. GORDON: And I think you mentioned earlier
4 that the LLCs didn't have an interest in the fees beyond
5 receiving the paid amount or something to that effect?
6 Does that ring a bell?

7 THE WITNESS: Yes.

8 MR. GORDON: Okay. So in connection with your
9 decision to set up multiple entities, in view of what
10 you have said, help me understand how multiple entities
11 would afford Mr. Boden some greater level of protection,
12 given that the purpose of these LLCs were just
13 pass-throughs fees? Do you understand what I'm asking?

14 THE WITNESS: Well, you know --

15 MR. GORDON: Do you understand what I'm
16 asking?

17 THE WITNESS: Yes, I understand what you are
18 saying. And I think the intent was -- was it a
19 bullet-proof strategy? Maybe not, but certainly it
20 helps bolster the idea that these were separate
21 transactions. I don't know if they were for the same
22 client, different clients or whatever, but Bill
23 operating kind of in the name of this entity or through
24 this entity to provide whatever advisory services he is
25 for these particular transactions, you know, it seemed

141:1 to me at least you try to put up as many barriers as
2 somebody wants to as possible.

3 MR. GORDON: I thought you said the purpose of
4 the setting up multiple entities to prevent a claimant
5 against -- a potential claimant against from one fee
6 from having access to the assets of the other companies?

7 THE WITNESS: Well, that's one reason, yeah.

8 MR. GORDON: What are the other reasons?

9 THE WITNESS: I don't know what potential
10 claim might be out there. Bill could be sued for
11 something else. But, you know, again I was operating
12 with pretty limited information about what these
13 transactions were. So, you know, again the simplest
14 thing to me seemed to be let's set up separate LLCs,
15 let's try to keep them as separated as possible and, you
16 know, if somebody wants to sue Bill they've got to, kind
17 of, fight that battle.

18 MR. GORDON: So just to try to clarify this.
19 You acknowledge that one purpose of setting up multiple
20 LLCs was to prevent a claimant against one LLC from
21 getting access to the assets of another LLCs?

22 THE WITNESS: Yes.

23 MR. GORDON: And that's true even though you
24 acknowledge that those LLCs were just pass-throughs
25 that earn fees and then disburse them?

142:1 THE WITNESS: Yes.

2 MR. GORDON: What assets of the LLCs would be
3 at risk?

4 THE WITNESS: Well, the assets were the fee,
5 but there is always seem to be the risk because once
6 those fees were paid out then the capital of the company
7 is zero and, you know, essentially insolvent; correct?

8 MR. GORDON: Exactly.

9 THE WITNESS: So you are still at a risk for
10 some sort of fraudulent transfer argument; correct?

11 MR. GORDON: I don't understand your answer.

12 THE WITNESS: All right. Six months later
13 somebody sues the LLC, so you screwed up this deal, we
14 want the money back. The money is gone, right. So they
15 made a fraudulent transfer argument that says, well,
16 that business is insolvent, the money went to Bill. So
17 all right. Bill has got to disgorge it, pay it back
18 into the LLC, but why put all of the monies at risk so
19 that he would have to disgorge all of them rather than
20 just from an individual deal.

21 MR. GORDON: Okay. Aside from the purpose of
22 insulating the assets of one LLC from the other, what
23 other purposes were there in sitting up multiple LLCs?

24 THE WITNESS: Did there need to be another
25 purpose? I didn't have any -- that was the --

149:1 one of which didn't close, and then the Loudoun deal
2 apparently never closed either.

3 MR. GORDON: Was there ever a time that he
4 told you that the time for him to potentially earn fees
5 in connection with transactions was over and closed and
6 there wouldn't be anymore going forward?

7 THE WITNESS: No.

8 BY MR. WINTER:

9 Q And at some point I want to clarify. You have
10 testified today that you established these companies in
11 order to limit Mr. Boden's personal liability, but also
12 to limit each company's liability from the liabilities
13 of the other companies?

14 A Yes.

15 Q Is that correct?

16 A Yes.

17 Q Okay. And just so I'm clear: The decision to
18 structure it this way in order to limit liability was
19 your decision; is that correct?

20 A Yes.

21 Q Okay. And you don't recall having
22 conversations with Mr. Boden about his desire to limit
23 his liability?

24 A Not specifically. I know how Bill thinks and
25 I know Bill is very conservative, so, you know, when he

EXHIBIT L



TIMBERVEST

3715 NORTHSIDE PARKWAY BUILDING 200 SUITE 500 ATLANTA GA 30327
PHONE 404 848 7500 FACSIMILE 404 848 7501

June 8, 2012

VIA E-MAIL

Mr. Monty Hill
AT&T Legal Department

Re: SBC Master Pension Trust Accounts

Dear Monty:

This letter is a follow-up to our letter to Frank Ranlett of June 4, 2012. Under Paragraph 4 of that letter, we indicated that we would provide Frank with a written response to his ERISA question after consulting with our outside legal counsel. We have now had an opportunity to do that and have set forth our response below.

As we have previously explained, William Boden's relationship with Timbervest started in an advisory/consulting capacity in 2002 for the purpose of overseeing and managing the sale of portions of New Forestry's timberland holdings. We set forth the specific terms of his advisory/consulting compensation in our June 4th letter to Frank. This consulting agreement was discussed with David Zell who was, at that time, Director-Real Estate & Natural Resources for BellSouth. While no properties were sold during this time period that qualified him for payment under his agreement, Mr. Boden focused his attention on this task for approximately a year and half without receiving compensation from New Forestry or Timbervest. Again, his compensation in connection with his sale efforts was to come only upon the successful sale of any of the identified properties under the previously described terms.

Effective March 31, 2004, and in connection with the potential formation of a timberland REIT, Mr. Boden became a part of the proposed management team for the REIT and a 20% owner of Ironwood Capital Partners, LLC ("ICP"). At the time, ICP was a 20% owner of Timbervest, so Mr. Boden indirectly owned 4% of Timbervest. When the plans to form a REIT fell through in the summer of 2004, Mr. Shapiro, Mr. Boden, Mr. Zell, and Mr. Jones entered discussions with Timbervest's then 80% owner regarding a buy-out. They completed the buy-out effective January 1, 2005.

From the summer of 2004 through late summer of 2005, the directive for the New Forestry portfolio was somewhat unclear, with both portfolio growth and reduction at times the focus. In correspondence dated September 12, 2005 from BellSouth, Timbervest received notice that BellSouth had retained ORG Portfolio Management LLC ("ORG") to manage its natural resources portfolio. BellSouth informed Timbervest that



WWW.TIMBERVEST.NET

Mr. Monty Hill
June 8, 2012
Page 2

ORG was a fiduciary for these investments and would be responsible for all investment and reporting activities.

ORG's mandate to Timbervest was to refocus on portfolio reduction and divesting the portfolio of certain targeted timberland assets. Mr. Boden continued to work on this task, as he had in the past. Timbervest made ORG aware of the advisory/consulting success fee agreement with Mr. Boden. In the principals' minds, this agreement continued in effect because the ultimate objective of that agreement, to liquidate certain properties while maximizing value, was again the client's clear direction to them. ORG consented to the continuation of the fee agreement after clarifying that no such fee would be paid to Mr. Boden if a third party broker was being paid. As previously discussed, Mr. Boden was paid a 3.5% fee and a 2.5% fee, respectively, on the sale of the Tenneco core timberlands in the fall of 2006 and the Kentucky portfolio properties in the spring of 2007 which he later shared equally with his business partners.

At the time of these events, Timbervest did not recognize that ERISA would impact the agreement or the subsequent payments under the agreement. After recently learning about the potential for an ERISA issue, we reviewed these facts under ERISA's regulations, and based on our review, our present understanding of how the agreement and payments would be analyzed under ERISA is as follows.

In 2002 when the fee agreement was made and before Mr. Boden became a partner in Timbervest, he was a party in interest under ERISA. [29 U.S.C. §1002 (14)(B)]. Timbervest was and continues to be a fiduciary under ERISA. [29 U.S.C. § 1002 (21)(A)(ii)]. The fee agreement would likely meet the definition of a prohibited transaction under Section 406(a)(1)(D) [29 U.S.C. § 1106] of ERISA which prohibits transactions between a party in interest and an investment fund. However, there are possible exemptions available which may exempt the fee agreement from the Section 406 prohibition. These include (i) the exemption for making reasonable arrangements with a party in interest for services necessary to operate the plan [ERISA Section 408(b)(2)] and (ii) given the fact that ORG was a QPAM, the Prohibited Transaction Exemption 84-14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (the "QPAM" exemption). The applicability of these exemptions is fact intensive and we have not found a definitive interpretation of the facts and the law, but we believe the consulting fee agreement with Mr. Boden was permissible under ERISA at the time it was reached.

When Mr. Boden's status changed from that of outside advisor/consultant to part owner of Timbervest, he became a fiduciary rather than merely a party in interest. ERISA Section 406(b)(1) prohibits a fiduciary from "deal[ing] with the assets of the plan in his own interest or for his own account." [29 U.S.C. §1106(b)(1)]. Courts have held that a fiduciary violates this section of ERISA if he receives a commission or other benefit in connection with an investment of plan assets. Because Mr. Boden, as a fiduciary to BellSouth, received an advisory fee in connection with the investment of plan assets, the payment of his fees in 2006 and 2007 could be viewed as prohibited under

Mr. Monty Hill
June 8, 2012
Page 3

Section 406(b)(1) of ERISA. We have not found a definitive interpretation of facts and law, nor done an exhaustive evaluation of whether an exception to this prohibition might apply.

When Mr. Boden's status changed from that of consultant to owner, Timbervest did not recognize that the fee payments under his consulting agreement might not be permitted under ERISA. Knowing that Mr. Boden had worked for a year and a half unpaid on New Forestry's sales effort and continued to work on that effort all along, it only seemed fair that he would be entitled to the agreed upon advisory fee upon the sale of the Tenneco core timberlands and Kentucky portfolio properties.

As we are sure you are aware, ERISA is a very complex body of law. Because it is not clear that there was no violation of ERISA, we feel that it is appropriate for us to repay the fees that were paid to Mr. Boden, plus interest. The amounts and timing of the payments to Mr. Boden were as follows:

October 17, 2006: \$470,750.00

April 3, 2007: \$685,486.25

As of today, we have reimbursed New Forestry the total principal amount of \$1,156,236.25, plus interest of \$96,315.27 calculated using the average 90 day treasury rate since the date of receipt of the later fee (which yields a higher average rate than the date of receipt of the earlier fee). This rate was selected after considering other alternatives, including the average New Forestry return during this period which was basically flat. Should you want to discuss the interest component, we are happy to do so.

We very much value our relationship with AT&T. In light of our recent knowledge of the potential ERISA implications involving these fees, we are doing all that we can to correct any potential mistakes and to maintain your trust and confidence. We still would welcome the opportunity to discuss this matter with you and with Frank directly and in more detail. Please let us know a date that would work for you.

Sincerely,



Carolyn Seabolt
General Counsel

cc: Frank Ranlett
Joel Shapiro

EXHIBIT N

1:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4 TIMBERVEST, LLC) File No. A-03245-A

5)

6

7 WITNESS: DONALD DAVID ZELL, JR.

8 PAGES: 1 through 84

9

10 PLACE: Securities and Exchange Commission

11 950 East Paces Ferry Road

12 Suite 900

13 Atlanta, Georgia 30326

14 DATE: Thursday, December 6, 2012

15 The above-entitled matter came on for investigative
16 interview, at 9:09 a.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

22:1 violations of Section 406 of ERISA?

2 A I can't recall any.

3 Q Have you ever received training on the
4 requirements of ERISA?

5 A No.

6 Q And when I say, training, I mean, in-house
7 training at BellSouth or any other type of informational type
8 of delivery. No training whatsoever on ERISA?

9 A No.

10 Q Do you know if the investment management agreement
11 between BellSouth and Timbervest allows Timbervest to engage
12 in transactions that are prohibited by ERISA?

13 MR. ANDERSON: Have you established that he's
14 familiar with it?

15 MR. WINTER: I'm just asking, if he knows whether
16 it does.

17 THE WITNESS: I am not certain I've read it.

18 BY MR. WINTER:

19 Q Just to be clear, you're saying that you're not
20 certain that you read the investment management agreement
21 between Timbervest and BellSouth at any point?

22 A Correct.

23 Q On two separate occasions in 2006 and 2007, Bill
24 Boden received fees in connection with the sale of certain
25 New Forestry properties in Alabama and Kentucky, is that

EXHIBIT O

17:1 Q Okay. And you were also chief compliance officer?

2 A Yes.

3 Q What did -- what were those duties?

4 A I think I told you earlier my recollection of what
5 I was doing, what those duties were, were to work with our
6 outside compliance officer, to oversee our compliance program
7 and to otherwise ensure that Timbervest was -- was acting in
8 accordance with its duties as a registered investment
9 advisor.

10 Q Did you provide legal counsel for questions that
11 came up inside the organization?

12 A Sometimes.

13 Q Do you ever recall discussing ERISA compliance
14 with your four -- or with your three partners?

15 A No.

16 Q Never?

17 A I don't recall. No.

18 Q Have you personally ever received training on
19 requirements of ERISA?

20 A No.

21 Q No CLEs?

22 A Not that I recall.

23 Q In 2006 and 2007, did Timbervest have an
24 investment management agreement with BellSouth or New
25 Forestry?

18:1 A Yes.

2 Q Have you ever read that agreement?

3 A I'm certain I have.

4 Q Do you know when you would have read it?

5 A Sometime in the past.

6 Q Do you know if the investment management agreement
7 or the LLC agreement, between BellSouth and Timbervest,
8 allows Timbervest to engage in transactions that are
9 prohibited by ERISA?

10 A I don't recall.

11 Q So, as you sit here today, you don't know if that
12 agreement allows Timbervest to engage in transactions that
13 are prohibited by ERISA?

14 A I don't know if that agreement specifically states
15 that. No.

16 Q In 2006 and 2007, what measures, if any, would
17 Timbervest have taken, to ensure that it was not engaging in
18 ERISA prohibited transactions?

19 A I think, that had we had any questions about ERISA
20 issues, we would have discussed them with outside counsel.

21 Q Was there any mechanism or framework to ensure
22 that you were not -- not you, but Timbervest was not engaging
23 in ERISA prohibited transactions?

24 MR. ANDERSON: Can I just have that question
25 again? It sounded like it was double negative.

36:1 Q Under Sections 6.3, it says, "restrictions of the
2 authority of the general manager." To your knowledge, who is
3 the general manager in this agreement?

4 A I believe it's Timbervest, LLC.

5 Q Okay. I'll just direct you to the first page of
6 the agreement. It says, that the general manager is
7 Timberland Investment Services, LLC, TIS. Who is Timberland
8 Investment Services, LLC?

9 A It's a predecessor name to Timbervest, LLC.

10 Q Okay. Back to page 28, restrictions on the
11 authority of the general manager. And I will just read the
12 first paragraph and Subsection A. It says, "Without the
13 consent of all members, which consent, except as otherwise
14 provided below, may be withheld in the sole discretion of a
15 member for any reason or no reason, the general manager shall
16 not: A, transfer any company assets for any, for other than a
17 company purpose or in manner that would give rise to a
18 prohibited transaction described in Section 497 -- 4975 of
19 the Code of Section 406 or Section 406 of the Employee
20 Retirement Income Security Act of 1974 as amended." Did I
21 read that mostly correctly?

22 A Sure.

23 Q And at the time, in 2006 and 2007, I believe you
24 testified that you were the chief compliance officer at
25 Timbervest?

37:1 A Correct.

2 Q Okay. What did Timbervest do, at that time, to
3 ensure that this provision specifically was not going to be
4 violated?

5 A I don't recall.

6 Q Did Timbervest do anything?

7 A I don't recall.

8 Q Who would recall, besides you?

9 MR. ANDERSON: How can he answer that question?

10 BY MR. WINTER:

11 Q Who else at Timbervest had responsibility for
12 ensuring that Timbervest would comply with the provisions of
13 this agreement?

14 A This agreement? I didn't think anybody was in
15 charge of ensuring that we, in accordance with every
16 provision of this document, followed it on a daily basis.
17 This wasn't the defining document that defined how Timbervest
18 operated. So, I'm not sure what exactly your question was.

19 Q It's not the defining document that defines how
20 Timbervest operated. What does that mean?

21 A I mean, we are parties to hundreds and thousands
22 of documents. If you're going to point to one provision, to
23 say who was responsible for ensuring that this provision was
24 complied with, I don't know how to answer.

25 Q How many clients did Timbervest have in 2006 and

38:1 2007? And by clients, I mean funds or single client
2 accounts.

3 A Three.

4 Q And how many documents outline the
5 responsibilities for each of those funds?

6 A Several.

7 Q At that time, in 2006 and 2007, what percentage of
8 Timbervest's revenue came from its relationship with New
9 Forestry?

10 A I don't recall.

11 Q Was it large?

12 A It was certainly the majority.

13 Q And this agreement outlines the responsibilities
14 that Timbervest has in regard to managing that account, is
15 that correct?

16 A Correct.

17 Q And your testimony is that this does not define
18 Timbervest responsibilities?

19 A It does with respect to this client, yes.

20 Q Which happens to be the majority of Timbervest's
21 revenues at the time?

22 A Correct.

23 Q So my question was, who is responsible for making
24 certain that these provisions are not being violated?

25 A Again, I don't -- I don't recall if there was any

39:1 one person who was responsible for ensuring that they weren't
2 violated.

3 MR. GORDON: A few questions. So, the provision
4 that Mr. Winter read, in Section 6.3A, so in 2006 and 2007,
5 did you have a good understanding of what -- what type of
6 transfer of company assets would give rise to a prohibited
7 transaction described in Section 4975 of the Code or Section
8 406 of the ERISA Act?

9 THE WITNESS: I don't recall.

10 MR. GORDON: You don't recall if you had an
11 understanding of that?

12 THE WITNESS: I don't recall whether I had an
13 understanding of that, a good understanding of what that
14 language is.

15 MR. GORDON: Okay. Do you have a good
16 understanding of what that means now?

17 THE WITNESS: I wouldn't say a good understanding,
18 no.

19 MR. GORDON: Okay. And -- but Timbervest was
20 committed to this agreement in 2006 and 2007, correct?

21 THE WITNESS: Correct.

22 MR. GORDON: Who at Timbervest, if anyone, to your
23 knowledge, had a good understanding of what the language in
24 Section 6.3A meant?

25 THE WITNESS: I don't recall.

EXHIBIT P

109:1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

2

3 In the Matter of:)

4) File No. A-03245-A

5 TIMBERVEST, LLC)

6

7 WITNESS: William A. Boden, III - Volume II

8 PAGES: 109 through 171

9 PLACE: Securities and Exchange Commission

10 Atlanta Regional Office

11 950 East Paces Ferry Road - Suite 912

12 Atlanta, Georgia

13 DATE: Friday, June 7, 2013

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15 The above-entitled matter came on for hearing,

16 pursuant to notice, at 1:08 p.m.

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24 Diversified Reporting Services, Inc.

25 (202) 467-9200

115:1 through the end of 2007; is that correct?

2 A Yes.

3 Q The list of designated properties included the
4 Tenneco Corp. tract in Alabama and the Kentucky
5 timberlands, which I believe you've referred to as the
6 Kentucky Land Package; is that correct?

7 A Yes.

8 Q And your fee under this agreement was
9 calculated on the sliding scale of two percent to four
10 percent based on the sale price of the property; is that
11 correct?

12 A Yes.

13 Q And you only collected a fee if one of these
14 designated made properties sold for more than \$5
15 million; is that correct?

16 A Yes.

17 Q And is it the case that you hired Ralph
18 Harrison as an attorney to provide you advice regarding
19 the collection of receipt of these fees under this oral
20 agreement?

21 A Yes.

22 Q Okay. When did you first determine to consult
23 with Mr. Harrison?

24 A My recollection would have been probably early
25 -- late 2005 or early 2006.

116:1 Q And what concerns did you have that made you
2 consult with Mr. Harrison?

3 A I wanted to talk to Mr. Harrison about the
4 matter of personal liability, exposure of my personal
5 assets and worth to any claims by a third-party person
6 or entity who may feel they had a claim on fees for the
7 successful sale of any properties that was in my
8 package.

9 Q Okay. Why were you concerned about that
10 third-party liability?

11 A I had no broker protecting me. I had nobody
12 above me. It was just myself. And in our business in
13 the timberland business and in the land business it's
14 not uncommon, nor it is common, but it's not uncommon
15 for parties to have disputes about fees on occasion.
16 They come up saying they had been involved in a
17 relationship on a property prior to that and surface.

18 In my instance I thought about I've been
19 working there for three -- on this package for three
20 maybe just shy of four years, and most of these
21 properties have been owned in this package for -- since
22 the mid '90s. Bob Chambers had acquired the bulk of
23 these properties when he started Timbervest.

24 I was not privy to any of the conversations or
25 relationships or vendors he had had working on any of

117:1 these deals during those years, only privy to what I
2 had done in the previous few years. So my concern that
3 I wanted to discuss, I wanted someone to opine on to
4 consider my interest and protect my personal assets from
5 any claims was that issue. Third-party outside brokers,
6 sales agents, consultants, land managers, forestry
7 firms, any of these people that spent time on any of the
8 Timbervest properties prior to my coming there that
9 worked on them that may have had agreements with Bob
10 Chambers.

11 That was it in a general since. In a specific
12 since there was the issue of what we call "Friends of
13 Bob." There were a couple of instances during my years
14 at Timbervest that I recall and my partners recall where
15 a broker had surfaced when caught wind of us trying to
16 sell a particular property for BellSouth. And I believe
17 there was a guy in Georgia, maybe one in California and
18 Arkansas. In fact, the one in Georgia may have actually
19 filed a les penance to support his claim of an agreement
20 he had with Bob Chambers. Basically sets that, if I
21 recall it correctly, it's been a number of years, but he
22 had sold the property to Timbervest to Bob Chambers and
23 taken a lower fee at the purchase but he had been
24 promised the sale -- a commission on the back end
25 whenever it sold. And we didn't know anything about

118:1 that. We didn't really test that. The property never
2 did sell under our watch. The point being is I had
3 experienced that. I had been informed of that and that
4 was a cause of concern for me as I started to work
5 towards hopefully, finally, after several years, some
6 successful conclusion of the sale of the property in the
7 package, that's why I went to Ralph Harrison.

8 Q I'm sorry. Which property did you say that
9 was on?

10 A Which one?

11 Q The gentleman filed the les penance.

12 A I believe it was one of the ones in Georgia.
13 Maybe the Higgle Prior maybe, Stanton. I can't recall.

14 Q Do you remember who -- you listed three
15 different instances of a gentleman in Georgia,
16 California and Arkansas, do you remember their names?

17 A No, I don't.

18 Q And you said that that property never sold,
19 how did you become aware that he had a claim or thought
20 he had a claim?

21 A He had heard that we were considering selling
22 some Georgia properties, and also -- I'm not sure if we
23 ever listed it for sale, but he had just heard and he
24 contacted us. Somebody in the company. It may have
25 been Joel. I don't remember. And said, hey, you know,