

2012-205966

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

S.C. Supreme Court

Clifton B. Newman, Circuit Court Judge

Case No. 2003-CP-45-207

Cody P., by and through his Conservator Kelly H.  
Kelley, and his natural and legal guardian Elizabeth  
Powell, .....

Respondent,

v.

Bank of America, N.A., Karen P. Unrue, and Travis  
Powell, .....

Defendants,

Of Whom Bank of America, N.A. is, .....

Petitioner.

APPENDIX - VOLUME I

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas

Clifton B. Newman, Circuit Court Judge

Case No. 03-CP-45-207

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SC Court of Appeals

Cody P., by and through his Conservator Kelly H.  
Kelley, and his natural and legal guardian Elizabeth  
Powell, ..... Respondents,

v.

Bank of America, N.A. Karen P. Unrue, and Travis  
Powell, ..... Defendants.

Of Whom Bank of America, N.A. is, ..... Appellant.

RECORD ON APPEAL - VOLUME I

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Certificate of Counsel

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

03-CP-45-207

COUNTY OF WILLIAMSBURG )

CODY ██████████ P██████████, )

By and through his Conservator )

Kelly H. Kelley, and his natural )

and legal guardian Elizabeth Powell, )

PLAINTIFF, )

vs. )

BANK OF AMERICA, N.A., )

DEFENDANT. )

A CERTIFIED TRUE COPY  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

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CAROLYN F. WILLIAMS  
CLERK OF COURT  
KINGSTREE, S.C.

FILED

THIS MATTER comes before me upon Defendants' Post-Trial Motions made pursuant to Rules 50, 59, and all other applicable rules of the South Carolina Rules of Civil Procedure, for Judgment Notwithstanding the Verdict (JNOV), for a New Trial Absolute, and for a New Trial Nisi Remittitur. Post Trial Motions were argued before the undersigned at 10:00 am, on the 25<sup>th</sup> day of November, 2008, in the Williamsburg County Courthouse, at which time counsel for the Plaintiff W. E. Jenkinson, III, and Jennifer R. Kellahan, along with counsel for the Defendant, C. Mitchell Brown, Clarence Davis, and T. William McGee, III, appeared.

This matter was tried before the undersigned the week of October 6, 2008, and the jury returned a verdict imposing actual damages, stipulated by the parties, of \$205,735.37 and punitive damages of \$1,583,000.00.

Upon a careful post verdict review of this matter as articulated by our Supreme Court in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991),

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along with the constitutional review set forth in State Farm Mutual Insurance Co. v. Campbell, 538 U.S. 408 (2003), I have considered all of the facts in evidence, the applicable law, and the Defendant's arguments. Having conducted this review, I uphold the jury's verdict for the reasons set forth herein.

#### FACTUAL BACKGROUND

In this case, the evidence submitted at trial showed that one of the minor child's co-conservators took over a quarter of a million dollars in checks, representing life insurance proceeds from the minor's father's death, made payable to them as co-conservators to the Pawleys Island branch of Bank of America. These co-conservators had been appointed by the Probate Court to serve with restrictions that no withdrawals could be made without court order. This restricted authority was outlined on the certificate of appointment, fiduciary letters, and court order. Personal Banker who assisted the conservator allowed the checks to be negotiated and deposited in an unrestricted certificate of deposit in violation of a number of the bank's regulations. On a separate occasion the following week, the conservator returned to the same branch bank and dealt with the Branch Manager. The Branch Manager deposited another check made payable to a conservator in violation of a number of the bank's regulations and opened a different unrestricted savings account. The Probate Court had appointed the co-conservators with the condition that no withdrawals could be made without court order, and noted that language on the fiduciary letters and certificate of appointment. One of the co-conservators absconded with the child's money. Some of the money was recovered, and the

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remaining amount of unrecovered funds suffered by the child was the amount stipulated by the parties and found by the jury.

The evidence presented to the jury included testimony of both the Personal Banker and the Branch Manager who handled the two transactions, as well as two other designated corporate representatives of Bank of America. The Plaintiff's banking expert Robert Hubbs testified at length as to the multitude of gross errors committed by the Personal Banker and Branch Manager. At the conclusion of the Plaintiff's case, the Plaintiff offered testimony by Dr. Oliver Wood as to the financial ability to pay of the Defendant Bank of America. The Defendant argued that Dr. Wood's testimony was speculative; however, Dr. Wood testified as to the basis for his information and clarified it as being effective as of the end of the second quarter of 2008, which was the most current information available.

The case involved two separate transactions by two of the highest ranking employees at this particular Bank of America branch, and it was undisputed that both transactions were replete with a multitude of gross errors. Evidence was presented that had the transactions been handled properly the co-conservator would not have been able to access the funds in the manner in which she did and the child would have not sustained this loss. Uncontradicted evidence showed that had the transactions been done properly, they would have taken approximately 30 minutes each, or a total of one hour. Dr. Wood offered testimony regarding the income of the bank per hour calculated on a 24 hour day as of the most recent current financial information. This hourly income per Dr. Wood was \$1,538,250.00. The Plaintiff

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argued to the jury to award punitive damages in the amount of one hour of the Defendant's income for the one hour it could have and should have handled this child's money properly.

**I. The Defendant's Motions to Alter or Amend, for Judgment Notwithstanding the Verdict, and for a New Trial Absolute are Denied.**

The Defendant's motions to alter or amend, for judgment notwithstanding the verdict, and for a new trial absolute, are denied. The Defendant argues that the criminal conduct of the co-conservator absolves it from liability as a matter of law. In its argument, it cites case law regarding intervening criminal acts that break the causal chain between a negligent action and subsequent damages. Our courts have stated that as a general rule the negligent conduct of the original wrongdoer is to be insulated as a matter of law by an intervening criminal act not intended by him and not foreseeable by him due to the causal chain between the negligence and the accident being broken. Stone v. Bethea, 251 S.C. 157, 161 S.E.2d 171 (1968).

I find the present case to be distinguishable from Stone and its line of cases including Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978). Here, the Defendant is a bank, specifically charged with safekeeping the funds of millions of customers who have a reasonable expectation that their funds will be protected. The Defendant has a duty to safeguard those funds from thieves. Much testimony was elicited from the Plaintiff's banking expert Robert Hubbs on whether or not the Bank owed a duty to the minor Plaintiff, and whether or not the Bank does and, in fact, must foresee persons, customers and even employees seeking to abscond with

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the funds of others. He testified that the Bank does owe a duty to the minor child, and that the Bank anticipates the kind of criminal activity that occurred in the present case by enacting policies and procedures, safety measures, alarms, codes, bars, and other such methods that are specifically designed to protect its customers' funds from being taken by others. Here, the banking employees failed to follow a multitude of its own policies and procedures that enabled this account to be set up improperly and enabled the co-conservator to move the funds easily into her own account for her own unauthorized uses. The law on intervening criminal action was charged to the jury, and I find there was ample evidence in the record to support the jury's finding that the co-conservator's conduct was reasonably foreseeable in the normal exercise of due care by the Defendant Bank.

This Court may grant a new trial, sitting as the thirteenth juror, when it is convinced that a new trial is necessary on the basis of the facts when the Court finds that the verdict is unsupported or inconsistent with the evidence, or when the Court finds that "justice has not prevailed." Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 722 (Ct. App. 1996). However, in the present case, I decline to interfere with the jury's verdict. I have specifically considered each of the arguments outlined by the Defendant in its post trial motion and as articulated in oral argument before me. As these objections were raised by the Defendant during trial, I ruled upon them and incorporate those rulings made during trial in this Order. I find that there was evidence presented to the jury from which it could have reasonably found the Plaintiff to have met the higher burden of proof of clear and



convincing evidence of reckless, willful, wanton conduct evidencing a conscious disregard or reckless indifference to the rights of the minor Cody F. [REDACTED] I do not find that the verdict in this case is unsupported or inconsistent with the evidence presented to the jury.

## **II. Evaluation of the Punitive Damages Award.**

It then becomes incumbent upon this Court to determine if the punitive damage award is warranted under the facts of the case and to measure the amount of the award against the character of wrong committed, punishment to be applied, and ability of the Defendant to pay. McGee v. Bruce Hosp. Sys., 321 SC 340, 468 SE 2d 633 (1996). It is further incumbent upon this Court to review the award of \$1,583,000.00 dollars punitive damages to determine if it was reasonable and rational depending upon the factors that this Court may consider. Gamble v. Stevenson, 305 SC 104, 406 S.E.2d 350 (1991). The Gamble factors that the Court may consider include the following: the Defendant's degree of culpability, the duration of the conduct, the Defendant's awareness or concealment, the existence of similar past conduct, the likelihood the award will deter Defendant or others from like conduct, whether the award is reasonably related to harm likely to result from such conduct, the Defendant's ability to pay and "other factors" deemed appropriate.

In considering the arguments of counsel, the evidence and testimony presented during this trial, I make the following findings as to the Gamble factors.

1. The Defendant's Degree of Culpability. The Plaintiff is a minor child and as such is financially vulnerable. The evidence presented clearly showed that

the Defendant Bank had the sole responsibility for allowing the negotiation of checks and for opening of accounts at its bank according to its guidelines, policies and procedures. The evidence was also clear that 1) the Defendant Bank anticipates thieves and predators anxious to get at its customers' money and 2) the Bank must protect its customers' money against criminals to the greatest extent possible, and 3) the Bank's policies and procedures are intended to protect its customers. The evidence was clear that although the co-conservator was guilty of wrongdoing, the Bank had a duty to the minor plaintiff to handle his checks properly, the co-conservator's conduct was foreseeable, and the co-conservator could not have possibly absconded with the money in the manner in which she did had the transactions been handled properly by the Defendant Bank.

Evidence was presented which showed numerous errors committed by not only two of the highest ranking employees at the Pawleys Island branch of Bank of America but also other areas of the Bank that exist to review new accounts to make sure they are set up correctly and have the necessary documentation. Further, clear and convincing evidence was presented that these employees who handled these transactions and were responsible for setting up new accounts received compensation for new business. Clear and convincing evidence of the following specific errors was presented at trial:

- The Personal Banker failed to identify the term "conservator" or its abbreviation and its significance on the face of seven separate checks.
- The Branch Manager failed to identify the term "conservator" and its significance on the face of the check used to open the savings account for the minor plaintiff.

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- The Personal Banker failed to understand whose money the seven separate checks constituted.
- Personal Banker failed to verify endorsement of Travis Powell on three separate checks and allowed them to be deposited without seeing him sign the checks or acknowledging his signature.
- The Personal Banker failed to obtain appropriate documentation to allow seven checks made payable to a conservator to be deposited in a regular Certificate of Deposit.
- The Personal Banker and the Branch Manager failed to obtain a copy of conservatorship order on two separate occasions.
- The Personal Banker and the Branch Manager failed to obtain the certificate of appointment of conservators on two separate occasions.
- Bank of America failed to keep on record copies of any conservatorship papers on two separate occasions.
- Bank of America failed to keep on record copies of the signature card opening the CD account.
- Both employees failed to use correct tax identification number on both the initial CD account and the savings account on separate occasions.
- The Personal Banker failed to open an eligible product for conservatorship accounts per its bank manual.
- The Personal Banker failed to verify identification, authority and endorsements on the checks and relied on the teller to whom she took the checks.
- Bank of America failed to have safeguards in the review of new accounts opened to identify that additional information was needed on both of these accounts on two separate occasions.
- Bank of America failed to set both of these accounts up properly with the safeguards prescribed by its own regulations.

2. Duration of the Conduct. The evidence showed that the first transaction occurred on April 27, 2001, with the Personal Banker. The second transaction occurred on May 2, 2001, with the Branch Manager. These were separate transactions with two different high-ranking employees in the Pawleys Island branch bank.

3. Defendant's Awareness or Concealment. The evidence was clear that the words indicating a conservatorship were open and obvious on the checks and no

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doubt allowed a reasonable inference by the jury that the employees were "aware" of the fact that these checks were payable to a conservator. There was clear and convincing evidence from which the jury could have concluded that these employees recklessly or consciously chose to ignore their policies and procedures designed to protect not only minors but all customers.

4. Existence of similar past conduct. While one of the Gamble factors is the existence of similar past conduct, it is only one of the eight factors which a court may consider in evaluating punitive damages. There are numerous South Carolina cases which uphold single digit multiplier punitive damages award where the compensatory damages are all economic, and there is no evidence of past similar conduct. See e.g., GTR Rental, LLC v. DalCanton, 547 F. Supp. 2d 510 (D.S.C. 2008), James v. Horace Mann Ins. Co., 371 S.C. 187, 638 S.E.2d 667 (S.C. 2006), Jordan v. Holt, 362 S.C. 201, 608 S.E.2d 129 (S.C. 2005); Mackela v. Bentley, 365 S.C. 44, 614 S.E.2d 648 (S.C. Ct. App. 2005).

During the trial, there was conflicting evidence between the two designated corporate representatives regarding the number of conservatorship accounts held by Bank of America. The Defendant Bank's position was that these accounts were very rare, and the corporate representative present at trial, Elizabeth Reeves, testified that in all of her twenty years with the bank she had only seen "two or three" of these accounts. This testimony was in direct conflict with the testimony of the other corporate representative Floretta Denning whose testimony was that they see these accounts "a lot in South Carolina."

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Despite the conflicting testimony on whether or not the Bank of America had few or many of these restricted conservatorship accounts, the Plaintiff did not offer evidence of other conservatorship accounts being set up improperly as the one in this case. After Philip Morris USA v. Williams, 549 U.S. 346 (2007), the Supreme Court made it clear that prior incidents of similar conduct must be confined to a very limited role when this type of evidence is presented to the jury at all in a punitive damages case. The jury may consider prior similar conduct as one factor in the reprehensibility of a defendant's conduct, but if such evidence is presented to the jury, the jury must be carefully instructed to make sure the jury's punitive damage award is not based on punishing the defendant for past wrongs or wrongs to people not party to the litigation. When evidence of past similar conduct is not presented to the jury, as in the present case, it is much clearer that the jury's award is based solely on the legitimate goals of punishing the defendant for what was done to this child and deterring similar conduct in the future -- both legitimate goals of punitive damages.

5. Likelihood the award will deter the defendant or others from like conduct. South Carolina has an interest in having banks that hold funds from South Carolina conservatorships abide by the restrictions its courts endorse on letters of conservatorship to protect those South Carolina residents whom its courts have determined are in need of the protection of a conservatorship. It has an interest in punishing those banks who accept such funds for deposit without having and using procedures in place to assure that it complies with those restrictions at a

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level which will deter such banks from ignoring such restrictions.

In the present case, the testimony was clear that these two transactions done properly would have taken about thirty minutes each. The current conservator testified that it took her forty-five minutes to set up a new certificate of deposit for the child at another bank. Awarding punitive damages essentially equivalent to one hour of pretax income based on the first six months of 2008 is reasonably related to deterring precisely the kind of conduct that caused this loss.

In the present case, from a review of the evidence and argument propounded at trial by the minor Plaintiff, it appears that the jury conveyed a specific punitive damage "message" that Bank of America should pay attention and be careful in following specific bank policies and procedures when dealing with court-appointed conservators holding children's money. The evidence was clear that a multitude of policies and procedures had been violated that allowed the child's money to belong in an unrestricted manner to the conservator as of the date the checks were negotiated improperly and deposited. These violations allowed the precise conduct -- which the Defendant must anticipate -- to occur. I find that clear and convincing evidence was presented that these were the two highest ranking employees at this branch which had thousands of customers. They had weeks of training in Charlotte and other locations. They had manuals, computers, phone hot lines, constant legal support, and other individuals in their branch to ask questions. Clear and convincing evidence existed that the Bank's position that these employees were inexperienced or too new to "know better" could have reasonably been viewed by the

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jury as simply not credible or additional evidence of the Defendant's reckless disregard for the rights of this minor plaintiff in employing these persons at a high level.

6. Whether the award is reasonably related to the harm likely to result from such conduct. Here the award of punitive damages is reasonably related to the harm likely to result from this conduct. The financial loss to the Plaintiff was \$205,735.37. This economic harm was done to the Plaintiff over a span of a total of one hour of the Bank's time. The Plaintiff argued that the award should be reasonably related to the harm caused: One hour penalty for one hour which should have been spent by the Bank in protecting one of its youngest customers. Here, both the financial loss to the Plaintiff and the time it took the Defendant to act recklessly with regard to the minor Plaintiff's money are reasonably related to the punitive damages verdict. The ratio of punitive damages to actual damages of 7.69:1 is not grossly in excess of the actual financial loss and does not exceed a single digit multiplier. See e.g. BMW v. Gore, 517 U.S. 559 (1996) (overturning a 500 to 1 ratio); State Farm v. Campbell, 538 U.S. 408 (2003); (overturning a 145 to 1 ratio).

In this situation, the evidence was clear that the transactions done properly would have taken approximately thirty minutes each for a total of one hour. Dr. Wood testified that one hour of the Defendant's pretax income as of June 2008 was \$1,538,250.00.

7. The Defendant's ability to pay. Evidence of the Bank's ability to pay was

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submitted to the jury at the end of the Plaintiff's case after the Court considered whether or not punitive damages were to be submitted to the jury. This evidence showed the Bank to have the ability to pay as of the end of the second quarter of 2008 – the most recent available information. South Carolina has not limited proof of a corporation's ability to pay to evidence of net worth. Evidence of a party's financial situation beyond that of net worth may be relevant to the amount of punitive damages necessary to punish and deter a defendant. Bryant v. Waste Management, Inc., 342 S.C. 159, 536 S.E.2d 380 (Ct.App. 2000) (affirming testimony of a Defendant's financial ability beyond net worth given by expert witness Dr. Oliver Wood).

8. Other Factors. Two plus factors identified by BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) and State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003) as justifying higher punitive damages awards are also present in this case. Gore holds that where the injury is one that is difficult to detect and easy to conceal, higher punitive damages awards may be appropriate. The Defendant Bank's conflicting evidence on the number of conservatorship accounts that it has in South Carolina is evidence that it is difficult to detect and easy to conceal the kind of misconduct that led to this injury. Second, the relatively low size of compensatory damages that would exist in most Uniform Gifts to Minors Act and other beneficiary-type restrictive accounts is low enough that compensatory damages alone would often be insufficient to making suing for compensatory damages practical.

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Although each of the Gamble factors has been outlined herein, these factors are to be used for the Court's guidance in reviewing a verdict. The Court is not mandated to find each factor. Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587, 2004 (2004), held "As part of its holding in Gamble, this Court opined, 'the trial court shall conduct a post-trial review and may consider the following...' Id. (emphasis added). The word "may" signifies that the Gamble factors are to provide guidance, not "hard and fast" requirements. Neither personal injury nor past similar conduct are necessary factors for a finding of reprehensibility where other factors are present.

In the present case, after carefully reviewing the Gamble factors, I am satisfied that the punitive damage award by the jury in this case is based upon clear and convincing evidence as required by §15-33-135, SC Code Ann., 1976. The award is not so grossly disproportionate to the severity of the offense but, in fact, is proportionate to the harm caused to the minor plaintiff.

Additionally, the Defendant argued for the first time in its post-trial motion the doctrine of the "complicity rule" which it argues should render a punitive damages award improper because there was no showing of complicity by, with or between corporate officers with the actions of the employees in opening these accounts. This legal issue was not argued by the Defendant in its motion for directed verdict, and the Defendant's motion for JNOV is limited to the grounds asserted in the directed verdict motion. SCRCP 50, Glover v. North Carolina Mut. Life Ins. Co., 295 S.C. 251, 368 S.E.2d 68 (Ct.App. 1988). Although I do not find this issue to be preserved, nonetheless, I find this doctrine appears to be a minority

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view that our State has not acknowledged. South Carolina appears to hold the master/principal/employer liable for both compensatory and punitive damages based on the actions of a servant/agent/employee especially when conversion of property is at issue. See West v. Service Life & Health Ins. Co., 220 S.C. 198; 66 S.E.2d 816 (1951); Kirby v. Gulf Refining Co., 173 S.C. 224; 175 S.E. 535 (1934); Hooper v. Hutto, 160 S.C. 404; 158 S.E. 726 (1931); Williams v. Commercial Casualty Ins. Co., 159 S.C. 301; 156 S.E. 871 (1931).

I further find that the jury's verdict also withstands an application of the guideposts used to measure and review the constitutionality of a punitive damages award. State Farm Mutual Insurance Co. v. Campbell, 538 U.S. 408 (2003), provides constitutional guideposts to consider in the review of a jury verdict rendering punitive damages. These guideposts are 1) the degree of reprehensibility of the defendant's misconduct; 2) the disparity between the actual and potential harm suffered by the plaintiff and the amount of punitive damages; and 3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.

The first guidepost of review here is a consideration of the degree of reprehensibility of the defendant's misconduct. I find that clear and convincing evidence existed from which the jury could determine the Bank's conduct was reprehensible and incorporate into this finding the discussion on the Defendant's culpability outlined above herein. The Bank argues that there was no showing that there were actions it could have taken to prevent the actions that occurred because

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of the conservator's wrongful conduct. This position was interpreted by the jury to be without merit. The evidence clearly showed that the account should have been set up with restrictions that would have prevented any withdrawals from being made without a court order. The child's current conservator Kelly Kelley testified regarding the procedure she has to go through to make a withdrawal from the current restricted conservator account at the Exchange Bank of South Carolina and testified without question that if the account had been set up as a restricted account, there would be no way that the original co-conservator could have accessed this money in the way she did. The plaintiff is a minor child who is financially vulnerable. The Bank's designated corporate representative at trial Elizabeth Reeves was very emotional as a witness, admitted their employees made a mistake, and apologized to the Plaintiff from the stand; however, she never admitted liability. The Bank's position at trial could have been reasonably interpreted as disingenuous to the jury. The Personal Banker and Branch Manager's testimony that they didn't remember anything could have been reasonably interpreted as disingenuous by the jury. The Bank's argument at trial that the payee line on the check was confusing or misleading to its employees, or that the checks were presented in an order that would not have allowed the employees to see that the checks were made payable to the child's co-conservators could have been reasonably interpreted as disingenuous to the jury. Additionally, the sheer number of enumerated errors listed above in the consideration of the culpability of this Defendant, is a factor in considering the reprehensibility of this Defendant. In sum,

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I find there was sufficient evidence presented from which the jury could have reasonably determined the Defendant's conduct was reprehensible.

The second enumerated guidepost to consider is the disparity between the actual and potential harm suffered by the plaintiff and the punitive damages award. The actual harm suffered by the plaintiff was his stipulated damages of \$205,735.37. The punitive damages award sent a specific message to punish the wrongful conduct of the Bank. The ratio of punitive damages to actual damages was \$1,583,000.00 to \$205,735.37, or 7.69:1. I find that this single-digit ratio of actual damages to punitive damages is not unreasonable, particularly in light of the specific message intended by the jury to send to the Bank. Based upon uncontradicted evidence submitted, the jury reasonably calculated the time it would have taken to process this child's transaction correctly. The jury then took this information and penalized this Defendant with that amount of its pretax income per the testimony of Dr. Wood.<sup>1</sup> This "punishment" is reasonably related to the specific harm done to Cody R. Although the Supreme Court has not articulated a bright line test for determining whether or not a particular punitive damages award violates due process, it has stated that few awards exceeding a single digit ratio will satisfy due process. State Farm v. Campbell, 538 U.S. 408 (2003). The State Farm case went further to state that "the precise award in any case, of course, must be

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<sup>1</sup> The punitive damages verdict was for \$1,583,000.00 and Dr. Wood's testimony of one hour of pretax income was \$1,538,250.00. Due to the similarities between these two numbers, I find the jury considered Dr. Wood's testimony in computing the punitive damages award.

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based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff." Id. at 425.

The third guidepost discussed in the State Farm case is the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Here there are no specific civil penalties or fines comparable to the facts of this case.

I have reviewed the decisions of the South Carolina Supreme Court since the State Farm case for guidance in evaluating the punitive damages award in this case where the damages are economic and not personal injury. In James v. Horace Mann Ins. Co., 371 S.C. 187, 638 S.E.2d 667 (2006), the Court upheld a punitive award 6.82 times compensatory damages in an insurance bad faith case. In the James case, there was no mention of any prior similar conduct with different insureds. The Court found extreme culpability based on repeated misconduct within a single case which I find to be similar to the facts of this case showing repeated misconduct dealing with a single customer's money.

In Jordan v. Holt, 362 S.C. 201, 608 S.E.2d 129 (2005), the Court upheld punitive damages of an undisclosed amount based upon a degree of culpability or reprehensibility with no mention of past similar conduct and where all compensatory damages were economic as in the case at hand.

The case of Frazier v. Badger, 361 S.C. 94, 603 S.E.2d 587 (2004), addressed a \$400,000.00 compensatory and \$400,000.00 punitive damages award with no mention of past similar conduct. The Court evaluated the Gamble factors and

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addressed the Supreme Court's decision in State Farm stating that the most important indicator of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct.

Our Court of Appeals upheld a \$500,000.00 punitive damages award on \$75,000.00 in actual damages (6.66 times) for breach of contract accompanied by a fraudulent act, and \$60,000.00 punitive damages on \$4,781.00 compensatory damages on an unlawful communication charge (12.549 times). RRR, Inc. v. Toggas, 378 S.C. 174, 662 S.E.2d 438 (Ct. App. 2008). In the RRR, Inc. case as in the present case, all damages were economic, and there was no indication of similar conduct with other parties.

The Mackela v. Bentley case involved a conversion with no mention of the U.S. Supreme Court cases. In this case, the punitive damages award was over three times the actual damages. Mackela v. Bentley, 365 S.C. 44, 614 S.E.2d 648 (Ct. App. 2005).

In Holroyd v. Regua, 361 S.C. 43, 603 S.E.2d 417 (Ct.App. 2004), the Court of Appeals upheld an award of \$365,000.00 in compensatory damages and \$180,000.00 in punitive damages upon proof that the insurer failed to properly pay \$65,000.00 in medical bills.

Collins Entm't Corp. v. Coats & Coats Rental Amusement, 355 S.C. 125, 584 S.E.2d 120, (Ct.App. 2003) aff'd 368 S.C. 410, 629 S.E.2d 635 (2006), addressed a punitive damages award related to tortuous interference with contract and found the punitive damages were not excessive in view of the evidence. The actual

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damages (\$157,449.66) to punitive damages (\$1,569,013.00) in the Collins case comparison was 9.965:1. The Court of Appeals in the Collins case cited a number of additional South Carolina cases upholding punitive damages awards including Lister v. NationsBank of Delaware, 329 S.C. 133, 152-53, 494 S.E.2d 449, 460 (Ct. App. 1998), which applied the Gamble test and the guideposts enumerated by BMW v. Gore, 517 U.S. 559 (1996), to uphold punitive damages of \$200,000.00 (23.24 times the actual damages of \$8,605.08) in an action alleging unauthorized charges on a credit card by a rental car licensee by stating that the award was not unreasonable or grossly excessive so as to violate due process.

I have also reviewed cases of the United States Supreme Court since the State Farm case to obtain guidance in the review of this punitive damages award. Important cases addressing these issues are outlined herein as follows.

Philip Morris USA v. Williams, 549 U.S. 346 (2007) addressed evidence of similar past conduct and found while evidence of actual harm to nonparties can help to show that conduct that harmed the plaintiff also posed a substantial risk to the general public and was particularly reprehensible, a jury may not go further and use a punitive damages verdict to punish a defendant directly for harms to those nonparties. In the present case, there was no evidence of actual harm to nonparties or others submitted to this jury, and as discussed herein in the review of the Gamble factor related to past similar conduct, I find this punitive damages award does not attempt to punish this Defendant for harm to others.

The Supreme Court's recent decision in Exxon Shipping Co. v. Baker, \_\_\_\_\_

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U.S. \_\_\_, 128 S. Ct. 2605; 171 L. Ed. 2d 570; 2008 U.S. LEXIS 5263; 76 U.S.L.W. 4603 (June 25, 2008), is narrowly confined to federal maritime tort cases governed by federal common law where Congress has not passed any statutes on punitive damages. The Court in Exxon set aside a punitive damages award of \$2.5 billion dollars reducing it to roughly \$500 million as a result of the grounding of the *Exxon Valdez* on the coast of Alaska and the resulting environmental calamity. Its holding applies only in maritime cases, and set a maximum ratio of 1:1 compensatory to punitive damages. Although it is not binding, some of the language provides insight into this case. The Exxon case evaluated "reckless conduct" sufficient to sustain punitive damages consists of one of two different types of conduct. One the actor knows or has reason to know of facts which create a high degree of risk of . . . harm to another, and deliberately proceeds to act or to fail to act in conscious disregard of, or indifference to, that risk. The second is where the actor has such knowledge or reason to know of the facts but does not realize or appreciate the high degree of risk involved although a reasonable man in his position would. Id. The Exxon Court also stated that action taken or omitted in order to augment profit represents an enhanced degree of punishable culpability. It further states that injury that is difficult to detect and easy to conceal is a factor supporting higher punitive awards. It recites State Farm to again state that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." Id. Although I find the Exxon case is of no precedential value in the present case binding this court to a specific ratio of 1:1, I have considered the

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rationale of the Court.

Considering the evidence presented at trial, the applicable law, and the arguments of the parties, I decline to grant the Defendant's Motion for a New Trial Nisi Remittitur. In making this finding, I specifically have concluded that the verdict was not excessive, arbitrary or capricious. It was not based on emotion or sentiment and was clearly supported by the evidence in the record. I find the Defendant Bank's conduct was reprehensible and have considered the following factors in making such a determination. This plaintiff was a minor child, the harm caused was economic – the monies lost represented life insurance proceeds from the death of his father, the Bank's conduct evinced an indifference to or a reckless disregard of the child's money, two separate high ranking Bank employees dealt with the co-conservator on separate occasions and failed to handle the child's money properly, although there was no evidence that the Bank employees received bonus compensation for these particular transactions, the Bank had policies that provided financial incentives to its employees for gaining new business and opening new accounts, and that despite the Bank's attempt to characterize this case as a "simple mistake," the evidence presented showed such a multitude of error as to arise to a gross conscious disregard for the rights of this minor child.

As to all other issues raised by the Defendant's Post Trial Motions, this Court has ruled on them in the hearing, and I find that they should be denied.

**ACCORDINGLY, IT IS**

**ORDERED AND ADJUDGED** that the Defendant's Post Trial Motion for a

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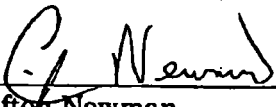
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APPENDIX 27

Judgement Notwithstanding the Verdict and New Trial Absolute, New Trial Nisi Remittitur, be and the same hereby are denied.

**AND IT IS SO ORDERED.**

February 12, 2008  
Beaufort, SC

  
\_\_\_\_\_  
Clifton Newman  
Presiding Judge

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG ) 03-CP-45-207

CODY [REDACTED] P. [REDACTED],  
By and through his Conservator  
Kelly H. Kelley, and his natural  
And legal guardian Elizabeth Powell

PLAINTIFF,

vs.

BANK OF AMERICA,  
DEFENDANT.

VERDICT FORM

200870030377  
Filed for Record in  
WILLIAMSBURG COUNTY SC  
CAROLYN WILLIAMS  
10-10-2008 At 10:55 am.  
JUDGEMENT .00

Book \_\_\_\_\_ Page \_\_\_\_\_

We the jury unanimously find:

\_\_\_\_\_  
For the Defendant Bank of America.  
(If you check this box, do not go any further.)

✓  
For the Plaintiff in the amount of \$205,735.37 in actual damages.  
(If you check this box, please complete the next section.)

Do you find that the Plaintiff has proven by clear and convincing evidence that  
Bank of America's acts or omissions were willful, wanton, or reckless as the  
Court has defined these terms?

NO \_\_\_\_\_

YES ✓

If you checked "NO" STOP and go no further. Sign the verdict form and notify  
the bailiff. If you checked "YES" provide the amount of punitive damages you  
award based upon the Bank of America's acts or omissions.

\$ 1,583,000

Oct 9, 2008 ~~158~~ one million five hundred eighty three thousand  
dollars &c. *[Signature]*

Kingstree, South Carolina

FOREPERSON .

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APPENDIX 29

A CERTIFIED TRUE COPY  
FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG  
IN THE COURT OF COMMON PLEAS  
JUDGMENT IN A CIVIL CASE  
CASE NO. 03-CP-45-207

CLERK OF COURT  
WILLIAMSBURG COUNTY

200870030377  
Filed for Record in  
WILLIAMSBURG COUNTY SC  
CAROLYN WILLIAMS  
10-10-2008 At 10:55 am.  
JUDGMENT .00

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Verdict for the plaintiff in the amount of \$205,735.37 in actual damages. Verdict in the amount of \$1,583,000 for punitive damages. The defendant is given 10 days to file post trial motions.

Dated at Kingstree, South Carolina, this

9<sup>th</sup> day of October, 2008 <sup>EW</sup>

C. New  
PRESIDING JUDGE

This judgment was entered on the 10<sup>th</sup> day of October, 2008, and a copy mailed first class this 14 day of October, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer Kellahan  
we Jenkins III  
Ronnie A. Sall  
ATTORNEY(S) FOR THE PLAINTIFF(S)

Harry C Wilson  
William McGee  
Clarence Davis  
ATTORNEY(S) FOR THE DEFENDANT(S)

Carolyn F. Williams  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

) IN THE COURT OF COMMON PLEAS  
) 03-CP- **DS - CP 45, 207**

CODY **[REDACTED]** P **[REDACTED]**,  
By and through his Conservator  
Kelly H. Kelley, and his natural  
and legal guardian Elizabeth Powell,

200345207  
RECORDED 05/02/2003 10:59:24AM  
Bk: Pg: Pages:1  
Williamsburg County, SC  
Clerk of Court  
Carolyn F. Williams

PLAINTIFF,

vs.

SUMMONS

BANK OF AMERICA, KAREN P.  
UNRUE, and TRAVIS POWELL,

(JURY TRIAL DEMANDED)

DEFENDANT.

CERTIFIED TRUE COPY  
Date:05/02/2003  
Clerk of Court  
Carolyn F. Williams  
Williamsburg County, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or her attorney, Jennifer R. Kellahan, Esquire, Jenkinson, Jarrett & Kellahan, P.A., 120 West Main Street, Kingstree, South Carolina, 29556, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for Judgment by default for the relief demanded in the Complaint.

DATED at Kingstree, South Carolina, on this 2 day of May, 2003.

  
W. E. Jenkinson, III, Esquire  
Jennifer R. Kellahan, Esquire  
JENKINSON, JARRETT & KELLAHAN, P. A.  
120 West Main Street  
Post Office Drawer 669  
Kingstree, SC 29556  
Ph. (843) 355-2000  
Attorney for Plaintiff

Kingstree, South Carolina  
May 2 2003

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APPENDIX 31

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

CODY [REDACTED] P [REDACTED],  
By and through his Conservator  
Kelly H. Kelley, and his natural  
and legal guardian Elizabeth Powell,

PLAINTIFF,

vs.

BANK OF AMERICA, KAREN P.  
UNRUE, and TRAVIS POWELL,

DEFENDANT.

) IN THE COURT OF COMMON PLEAS

) 03-CP-\_\_\_\_

**DS CP 45- 207**

200345207  
RECORDED 05/02/2003 10:59:24AM  
Bk: Pg: Pages:1  
Williamsburg County, SC  
Clerk of Court  
Carolyn F. Williams

COMPLAINT

(JURY TRIAL DEMANDED)

COMES NOW THE PLAINTIFF COMPLAINING OF THE DEFENDANT AS  
FOLLOWS:

**JURISDICTIONAL ALLEGATIONS**

1. The Plaintiff is a minor child, and he is a citizen and resident of Williamsburg County, State of South Carolina.
2. Upon information and belief, the Defendant Bank of America is a corporation organized and existing under the laws of a state other than South Carolina, but doing business in Georgetown County, South Carolina. Upon information and belief, the Defendant Karen P. Unrue and the Defendant Travis Powell are citizens and residents of Williamsburg County.

**BACKGROUND**

3. Upon information and belief, a certificate of deposit account numbered 2016 was opened at Bank of America on April 26, 2001, with seven checks payable to the Conservators for the minor Plaintiff by various insurance

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APPENDIX 32

companies in the combined total amount of Two hundred and fifty two, four hundred and forty-seven and 51/100 (\$252,447.51) Dollars.

4. Upon information and belief, this certificate of deposit in the amount of Two hundred and fifty two, four hundred and forty-seven and 51/100 (\$252,447.51) Dollars was opened by Karen M. Powell Unrue and Travis Powell as conservators for the minor Plaintiff, copies of said checks are attached hereto and incorporated herein by reference as Exhibit A.

5. The Co-Conservators Karen M. Powell Unrue and Travis Powell were duly appointed after a hearing for the minor Plaintiff by the Probate Judge for Williamsburg County, and an Order, Certificate of Appointment, and Fiduciary Letters were issued to the Co-Conservators as shown on the attached Exhibit B, which is incorporated herein by reference.

6. Upon information and belief, on June 25, 2001, a withdrawal was made from the Certificate of Deposit in the amount of Two hundred and fifty-three, nine hundred and ninety-one and 50/100 (\$253,991.50) Dollars, and deposited to another Bank of America account.

7. Upon information and belief, an unrestricted custodial account was established by the Conservators pursuant to the Uniform Gifts to Minors Act of South Carolina, and the amount of funds held on deposit with Bank of America prior to the account being closed by the new duly appointed conservator was approximately Ten thousand three hundred and ninety and 59/100 (\$10,390.59) Dollars.

8. The Co-Conservators Karen M. Powell Unrue and Travis M. Powell have been removed as Co-Conservators, and a new Conservator Kelly H. Kelley, has been appointed by the Probate Court for Williamsburg County to account for this minor Plaintiff's assets.

9. Demand has been made by the minor Plaintiff's natural and legal guardian for reimbursement of the funds to the minor Plaintiff to no avail.

10. The Defendant Karen M. Powell Unrue has filed an accounting with the Probate Court for Williamsburg County failing to account for the missing funds and purporting to supply the Probate Court with funds that upon information and belief are not the minor Plaintiff's funds, said accounting is attached hereto and incorporated herein by reference as Exhibit C.

**FOR A FIRST CAUSE OF ACTION**  
**As to Defendant Bank of America for Negligence**

11. Each and every allegation contained above in paragraphs one through ten is repeated as if set forth herein verbatim.

12. The Defendant Bank of America had a duty to the minor Plaintiff to honor the restrictions contained in the Order, Certificate of Appointment and Fiduciary Letters appointing the minor Plaintiff's conservators.

13. The Defendant Bank of America breached its duty in the following particulars:

a. By allowing the establishment of a Certificate of Deposit numbered 2016 with no restrictions on the conservator's ability to withdraw the minor Plaintiff's funds;



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b. By allowing the withdrawal of the funds contained in Certificate of Deposit numbered 2016 without Probate Court approval;

c. By allowing the establishment of an unrestricted savings account with these funds by the Conservator Karen P. Unrue;

d. By allowing the subsequent withdrawal of funds from the unrestricted savings account.

14. The breach of the duty of the Defendant Bank of America as outlined above was the proximate cause of the damage to the minor Plaintiff.

15. The minor Plaintiff has suffered substantial actual damages.

**FOR A SECOND CAUSE OF ACTION**  
**As to Defendant Bank of America for Violation of**  
**Section 62-5-423, S.C. Code of Laws**

16. Each and every allegation contained above in paragraphs one through fifteen is repeated as if set forth herein verbatim.

17. The Defendant Bank of America had a duty pursuant to S.C. Code Ann. Section 62-5-423 and Section 62-5-426 to the minor Plaintiff to honor the restrictions contained in the Order, Certificate of Appointment and Fiduciary Letters appointing the minor Plaintiff's conservators.

18. The Defendant Bank of America breached its duty in the following particulars:

a. By allowing the establishment of a Certificate of Deposit numbered 2016 with no restrictions on the conservator's ability to withdraw the minor Plaintiff's funds;

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b. By allowing the withdrawal of the funds contained in Certificate of Deposit numbered 2016 without Probate Court approval;

c. By allowing the establishment of an unrestricted savings account with these funds by the Conservator Karen P. Unrue;

d. By allowing the subsequent withdrawal of funds from the unrestricted savings account.

19. The breach of the duty of the Defendant Bank of America as outlined above was the proximate cause of the damage to the minor Plaintiff.

20. The minor Plaintiff has suffered substantial actual damages.

**FOR A THIRD CAUSE OF ACTION**

**As to Defendants Karen P. Unrue and Travis Powell for Negligence**

21. Each and every allegation contained above in paragraphs one through twenty is repeated as if set forth herein verbatim

22. The Defendants Unrue and Powell had a fiduciary duty to the minor Plaintiff to honor the restrictions contained in the Order, Certificate of Appointment and Fiduciary Letters appointing them as the minor Plaintiff's conservators.

23. The Defendants Unrue and Powell breached their fiduciary duty and were negligent in the management of the minor Plaintiff's funds in the following particulars:

a. By allowing the establishment of a Certificate of Deposit numbered 2016 with no restrictions on their ability to withdraw the minor Plaintiff's funds;

- 
- b. By withdrawing funds contained in Certificate of Deposit numbered 2016 without Probate Court approval;
  - c. By procuring the establishment of an unrestricted savings account with these funds in direct violation of the Probate Court Order;
  - d. By subsequently withdrawal of funds from the unrestricted savings account.

24. The breach of the fiduciary duty of the Defendants Unrue and Powell and their negligent actions as outlined above was the proximate cause of the damage to the minor Plaintiff.

25. The minor Plaintiff has suffered substantial actual damages.

**FOR A FOURTH CAUSE OF ACTION:**  
**For Constructive Trust**

26. Each and every allegation contained in paragraphs one through twenty-FIVE is repeated as if set forth herein verbatim.

27. The Defendant Bank of America has held the above-described money of the minor Plaintiff pursuant to a Court Order since April of 2001.

28. The Defendants Unrue and Powell wrongfully obtained possession to the above-described money of the minor Plaintiff through defrauding the minor Plaintiff.

29. All three Defendants have held the subject money since the date of delivery for the benefit of the minor Plaintiff, his Heirs and Assigns.

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**FOR A FIFTH CAUSE OF ACTION**  
**For an Accounting**

30. Each and every allegation contained in paragraphs one through twenty-nine is repeated as if set forth herein verbatim.

31. The money delivered to the Defendants on the minor Plaintiff's behalf has been held in the exclusive possession and control of the Defendants since the date of delivery for the benefit of the Plaintiff.

32. The minor Plaintiff is entitled to a full and fair accounting of the subject money from the date of delivery to the present.

**FOR A SIXTH CAUSE OF ACTION**  
**As to the Defendants Karen P. Unrue and Travis Powell**  
**Wrongful Conversion**

33. Each and every allegation contained in paragraphs one through thirty-two is repeated as if set forth herein verbatim

34. Upon information and belief, the procurement of the minor Plaintiff's money was done knowingly and purposefully and with intent to convert the property of the minor Plaintiff to the Defendants.

35. That since the date of the delivery of the money to the Defendants, the Defendants have held this money as their own to the exclusion of the minor Plaintiff.

36. That the Probate Court and minor Plaintiff have made request of the Defendants to obtain his money back and has been supplied information regarding funds that upon information and belief do not belong to the minor plaintiff and has been denied such request for an accounting of the missing funds.

37. Defendants have wrongfully converted the subject money to their own benefit and use to the exclusion of the rightful owner, the minor Plaintiff.

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**FOR A SEVENTH CAUSE OF ACTION**  
**As to the Defendants Karen P. Unrue and Travis Powell**  
**For Fraud**

38. Each and every allegation contained in paragraphs one through thirty-seven is repeated as if set forth herein verbatim.

39. The Defendants represented to the Probate Court that they were responsible individuals, understood the duties and obligations of acting as Conservators, and would manage the minor Plaintiff's money for the minor Plaintiff's benefit pursuant to the directions of the Probate Court Order.

40. Upon information and belief, the Defendants' representations were false.

41. The representations were material in the following particulars:

a. The Probate Court and minor child's natural and legal guardian would not have consented to the appointment of the Defendants or allowed the delivery of the minor child's money to the Defendant without such a representation; and

b. The subject money was the main asset of the minor Plaintiff, and represented all of the life insurance proceeds payable to the minor Plaintiff from the accidental death of his father.

42. Upon information and belief, the Defendants knew the representation was false.

43. The Defendants intended that the representation be relied upon by accepting delivery of the money and taking possession of it to the exclusion of the minor Plaintiff.

44. The minor Plaintiff did not have knowledge of the falsity of the representations made by Defendant.

---

45. The minor Plaintiff's natural and legal guardian and the Probate Court relied upon the truth of the representation by the Defendant in allowing the delivery of his money to the Defendant.

46. The minor Plaintiff had a right to rely on the representation in that the Defendants were his aunt and uncle and had close family ties giving rise to feelings of great trust. Furthermore, the minor Plaintiff had just suffered a tragic loss of his father, and the minor Plaintiff's natural and legal guardian had just suffered a tragic loss of her husband and the Defendants knew of their fragile emotional state.

47. Consequently, the minor Plaintiff has not been provided information as to the accounting of his money, and has been damaged in that the subject money is not currently available to the Plaintiff.

WHEREFORE, the Plaintiff prays to this Honorable Court as follows:

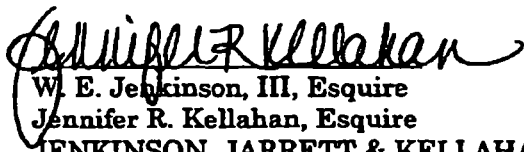
1. As to the First Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;
2. As to the Second Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;
3. As to the Third Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;
4. As to the Fourth Cause of Action for a constructive trust;
5. As to the Fifth Cause of Action for an accounting of the subject money from

the date of delivery to the present.

6. As to the Sixth Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;

7. As to the Seventh Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;

8. For such other and further relief as the court deems just and proper.

  
W. E. Jenkinson, III, Esquire  
Jennifer R. Kellahan, Esquire

JENKINSON, JARRETT & KELLAHAN, P. A.  
120 West Main Street  
Post Office Drawer 669  
Kingstree, SC 29556  
Ph. (843) 355-2000  
Attorney for Plaintiff

Kingstree, South Carolina  
May 2 2003

---

## **EXHIBIT A**

**ROA 0037**

**APPENDIX 42**



Request Number: CLT20021011000.51

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

Best Copy Available

**Marion Bank**  
CREDIT  
FD-12A (New Account/Deposit - SC)  
Date Prepared 9-24-01  
5050967  
KAREN M. PONTA  
2044  
\$ 252447.51  
Prepared By  
Signature  
843-237-1770  
1803  
66/0025244751

1618210029  
10/26/01  
252,447.51  
APR 26 11  
06966

**Item 1 of 1**

Account Number: 1803

Post Date: 04/26/2001

**Amount: \$ 252,447.51**

Sequence Number: 6200128191

**Best Copy Available**

DATE 04/13/2001 CHECK NO. 0000106863 62-26 311  
 INDUSTRIAL CASHUALTY COMPANY  
 1012-09  
 \$ 66699.00 DOLLARS  
 TO THE ORDER OF  
 TRAVIS POWELL, Co-Cn  
 CODY POWELL  
 AUTHORIZED SIGNATURE  
 V00 IF NOT CASHED IN 30 MONTHS FROM MONTH OF ISSUE  
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Request Number: CLT20021011000.51

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

Wausau Insurance Companies

Check No. 3113258413

DATE APR 12, 2001

FOUR THOUSAND, EIGHT HUNDRED NINETEEN AND 73/100 DOLLARS

KAREN POWELL, AS CONSERVATOR OF  
CODY EMMETT POWELL, A MINOR

\$ 252,447.51

*EJ Williams*

6200128191

6200128191

74707 04/26/01 12:12:15 CL 05521

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1552447.51

34026202

Request Number:- CLT20021011000751

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

Wausau Insurance Companies

Check No. 3113266011

Valid after 120 days  
Print date issued  
DATE: APR 13, 2001

Pay to the order of KAREN M. PONELL, AS CONSERVATOR FOR  
CODY PONELL A MINOR

Two hundred fifty-three and 67/100 DOLLARS  
\$ 253,670.00

*EJ Williams*

00000253670

6200128191

15 7-2 2524 13951

7-707 006 CD 13951

APR 26 11 52 AM

34048973

**Item 1 of 1**

**Account Number:** 1803

**Post Date: 04/26/2001**

**Amount: \$ 252,447.51**

Sequence Number: 6200128191

|                                                                                                               |  |                                                                                           |  |
|---------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------|--|
|                              |  | <p>THE BACK OF ORIGINAL CHECK STOCK HAS A REFLECTIVE WAYMARK TO VIEW HOLD AT AN ANGLE</p> |  |
| <p><b>Wausau Insurance Companies</b></p>                                                                      |  | <p>Check No. <b>3113298650</b></p>                                                        |  |
| <p>Order No. <b>314-022018</b><br/>Issued: <b>MECO CORPORATION</b></p>                                        |  | <p>Told after 100 days<br/>From date of issue</p>                                         |  |
| <p>DATE: <b>APR 20, 2001</b></p>                                                                              |  | <p><b>DOLLARS</b></p>                                                                     |  |
| <p><b>TWO THOUSAND FIFTY-THREE AND 67/100</b></p>                                                             |  | <p><b>\$ 0000000253.67</b></p>                                                            |  |
| <p><b>LAREN M. POWELL, AS CONSERVATOR FOR</b></p>                                                             |  | <p><i>EJ Williams</i></p>                                                                 |  |
| <p><b>CODY ELLIOTT POWELL A MINOR</b></p>                                                                     |  | <p>0000000253672</p>                                                                      |  |
| <p>ORIGINAL CHECK STOCK CONTAINS A LINE OF MICROSCOPIC PRINT ABOVE THE BACK AREA. USE A MAGNIFIER TO VIEW</p> |  |                                                                                           |  |

34158342

Request Number: CLT20021011000.1

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

Wausau Insurance Companies

Check No. 3115250316

DATE APR 11, 2001

Pay to the order of KAREN POMELL AS CONSERVATOR OF ESTATE FOR EDDY POMELL A MINOR

Amount \$ 252,447.51

Signature: E.J. Williams

ENDORSEMENT: EMPLOYER'S INSURANCE OF WAUSAU A FUTURE COMPANY

9618210029

34011274

Signature: Karen Pomell

Item 1 of 1

**Post Date: 04/26/2001**

**Amount: \$ 252,447.51**

**Sequence Number: 6200128191**

**Best Copy Available**

**CONTINENTAL CASUALTY COMPANY**

DATE **04/19/2001** CHECK NO. **0000106861** 62-74  
\$11

1012-09 \$ **000033,000.00** DOLLARS

**TOLSON AND MORTONTHS**

**Karen And Travis Powell, Co-Ch**  
**P.O. Box 1000 Cody, WY 82401**

**WELLS FARGO BANK**  
**AT NEW YORK, NY**

**New York Bank Delaware Wilmington De 19801**

VOLD IF NOT CASHED IN SIX MONTHS FROM MONTH OF ISSUE

[illegible]

**Item 1 of 1**

**Sequence Number: 6200128191**

*Tracy & Kaitie Powell*

9070 06966

IN 9176

6200128193

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LITHO IN U.S.A.  
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ALL RIGHTS RESERVED



To: Floretta Dening  
NC1-003-04-35  
704.388.2595

Research Performed Stacey Stutsman  
Research & Adjustments Rep III  
1.888.827.1812, x8260

Karen M Unrue (Powell)/POD Thomase Unrue, JR  
Social Security: [REDACTED] 8515

Research Request: SC 6183

| Certificate Number                                                          | Date Opened             | Opening Amount | Date Closed | Closing Amount | Comments                                                                                               |
|-----------------------------------------------------------------------------|-------------------------|----------------|-------------|----------------|--------------------------------------------------------------------------------------------------------|
| [REDACTED] 7197<br>KAREN M POWELL                                           | 03/02/01                | \$134,000.00   | [REDACTED]  | [REDACTED]     | Dep from DDA [REDACTED] 9281/Doc and DDA Statement Provided                                            |
| [REDACTED] 7197<br>KAREN M POWELL                                           | [REDACTED]              | [REDACTED]     | 03/15/01    | \$134,201.40   | Funded CD [REDACTED] 6900 Doc Provided                                                                 |
| [REDACTED] 6900<br>KAREN M UNRUE                                            | 03/15/01                | \$134,201.40   | [REDACTED]  | [REDACTED]     | Funded from CD [REDACTED] 7197 Doc Provided                                                            |
| [REDACTED] 7792<br>KAREN M UNRUE                                            | 03/16/01                | \$100,000.00   | [REDACTED]  | [REDACTED]     | Dep from DDA [REDACTED] 9281                                                                           |
| [REDACTED] 792<br>KAREN M UNRUE                                             | Withdrawal from account | [REDACTED]     | 04/13/01    | \$49,891.36    | Funds transferred to DDA [REDACTED] 9281 Doc Provided                                                  |
| [REDACTED] 016<br>KAREN M UNRUE<br>GUARDIAN<br>CODY [REDACTED] P [REDACTED] | 04/26/01                | \$252,447.51   | [REDACTED]  | [REDACTED]     | Funds received from 7 checks from various other institutes designated for Cody [REDACTED] P [REDACTED] |
| [REDACTED] 016<br>KAREN M UNRUE<br>GUARDIAN<br>CODY [REDACTED] P [REDACTED] | [REDACTED]              | [REDACTED]     | 06/25/01    | \$253,991.50   | Deposited to: DDA [REDACTED] 8085 No Closing Doc on-site.                                              |
| [REDACTED] 6900<br>KAREN M UNRUE                                            | [REDACTED]              | [REDACTED]     | 09/12/01    | \$137,034.28   | Both Certificate closed and deposited to: DDA [REDACTED] 9281 in the amount of \$188,055.01            |
| [REDACTED] 7792<br>KAREN M UNRUE                                            | [REDACTED]              | [REDACTED]     | 09/12/01    | \$51,020.73    |                                                                                                        |

APPENDIX 51

ROA 0046

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## **EXHIBIT B**

**ROA 0047**

**APPENDIX 52**

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

ELIZABETH POWELL,  
PETITIONER

IN RE: CODY P [REDACTED], A MINOR

IN THE PROBATE COURT

CASE NO. 2001GC03

ORDER APPOINTING  
CO-CONSERVATORS

RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSTREE, S.C.

01 MAR 29 PM 2:03

FILED

THIS MATTER came before this Court at a hearing on March 13, 2001, seeking the appointment of Travis Powell and Karen Powell, as Co-Conservators for their nephew, Cody P [REDACTED]. The Petitioner Elizabeth Powell (the minor child's mother), her attorney, the proposed Conservators, and the Guardian Ad Litem, Beatrice Whitten, were present at the hearing.

Venue was proper and the required notices were given.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

I find that there is clear and convincing evidence that the minor child will be the recipient of insurance proceeds as the result of the death of his father and is in need of the appointment of a Conservator to handle such funds. I further find that he has assets that will be wasted or dissipated without proper management.

I further find that he is a person for whom the appointment of a conservator is proper, and that the appointment of a conservator will be in his best interest.

I further find that the minor is disabled and may be in need of government assistance to provide medical care if he is uninsurable as a result of his disabilities and, therefore, the Conservators should be authorized and empowered to create a Special Needs Trust if they deem it to be in the minor child's best interest in the future.

I further find that the Petitioner's request that Karen Powell and Travis Powell be appointed as Co-Conservators is reasonable and proper and should be granted.

I further find that bond should be waived as long as the funds are held in a restricted account which prohibits withdrawals without Order of this Court.

WHEREFORE, it is hereby:

1. ORDERED that Karen Powell and Travis Powell, be, and they hereby are, appointed as Co-Conservators of the Estate of Cody P [REDACTED]
2. ORDERED that the funds of the minor child, Cody P [REDACTED], be deposited in

ROA 0048

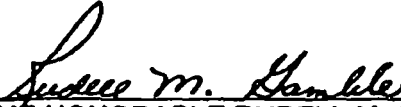
APPENDIX 53

CERTIFIED TRUE COPY  
*Rudell M. Gamble*  
Rudell M. Gamble, Probate Judge  
- County SC

restricted account and that no funds be withdrawn or transferred from such account without written Order of this Court;

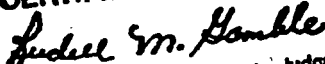
3. ORDERED that Bond is hereby waived;
4. ORDERED that the Conservators are authorized and empowered to create a Special Needs Trust with the minor's assets, if the Conservators determine that the child is otherwise uninsurable and his assets are insufficient to provide adequate medical care for the child without significantly depleting such assets, so that it would be in the child's best interest to create such a Trust.
5. ORDERED that the Co-Conservators shall not pay compensation to themselves from the assets of the estate of Cody P. [REDACTED] without authorization of this Court;
6. ORDERED that this Court shall have continuing jurisdiction over this matter;

AND IT IS SO ORDERED!

 (SEAL)  
THE HONORABLE RUDELL M. GAMBLE  
WILLIAMSBURG COUNTY PROBATE COURT JUDGE  
KINGSTREE, SOUTH CAROLINA

Dated: March 29, 2001

FILED  
01 MAR 29 PM 2:04  
RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSTREE, S.C.

CERTIFIED TRUE COPY  
  
Rudell M. Gamble, Probate Judge  
Williamsburg County SC

ROA 0049

APPENDIX 54

STATE OF SOUTH CAROLINA  
COUNTY OF Williamsburg

PROBATE COURT

IN THE MATTER OF Cody P. [REDACTED], Minor

CASE NUMBER 2001GC4500003

FILED

01 MAR 13 AM 10:57

RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSTREE, S.C.

FIDUCIARY LETTERS

- ☐ PERSONAL REPRESENTATIVE  
☐ GUARDIANSHIP  
☒ CONSERVATORSHIP  
☐ TRUSTEESHIP

On the 13th day of March 2001 Travis Powell and  
Karen Powell

was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduc by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the at fiduciary(ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS: No withdrawals without court order.

Executed this 13th day of March 2001

Betty J. Matthews, Assoc  
Probate Court.

CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble, Probate Judge  
Williamsburg County SC

STATE OF SOUTH CAROLINA  
COUNTY OF Williamsburg

FILED

PROBATE CL

IN THE MATTER OF Cody P. [REDACTED], Minor

01 MAR 13 AM 10:57

CASE NUMBER 2001GC4500003

RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSTREE, S.C.

COPY

CERTIFICATE OF APPOINTMENT

This is to certify that

Travis Powell and Karen Powell

is/are the duly qualified

- ☐ PERSONAL REPRESENTATIVE
- ☐ GUARDIAN
- ☒ CONSERVATORS
- ☐ TRUSTEE

in the above matter and that this appointment, having been executed on the 13th day of March 192001 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

No withdrawals without court order.

Executed this 13th day of March 2001

Do not accept a copy of this certificate without the raised seal of the Probate Court.

Betty A. Matthews, Clerk  
Probate Court Clerk

CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble, Probate Judge  
Williamsburg County SC

ROA 0051

APPENDIX 56

---

## **EXHIBIT C**

---

**ROA 0052**

**APPENDIX 57**

STATE OF SOUTH CAROLINA  
COUNTY OF Williamsburg

PROBATE COURT

IN THE MATTER OF The Estate of Cody P. [REDACTED]

CASE NUMBER 01-GC-45-0003

CONSERVATORSHIP ANNUAL ACCOUNTING

Conservator: KAREN M POWELL

FILED  
JUL 19 2019  
CLERK OF PROBATE  
WILLIAMSBURG, S.C.

FILED  
JUL 19 2019  
CLERK OF PROBATE  
WILLIAMSBURG, S.C.

1. a. This is a full and true statement of account in the above matter, which protected person resides at [REDACTED] Andrews, SC [REDACTED], covering the period from the 19 day of 19 to the 19 day of 19.

- b. ☐ I have on file a surety bond approved by the Court in the penal sum of \$ \_\_\_\_\_ with the \_\_\_\_\_ Company as surety.  
☐ I have on file a personal surety bond approved by the Court in the penal sum of \$ \_\_\_\_\_

The names and addresses of the personal sureties are:

To the best of my belief these sureties have property free of encumbrance and subject to execution in this State valued at not less than this penal sum.

2. MONEY RECEIVED

Date

RECEIVED FROM  
(List each source separately)

Amount

Wassau Insurance Co. 252,447.51  
NuCor Steel Berkeley

Wassau Insurance Co. 10,390.59  
NuCor Steel Berkeley

Bank of America 1429.55  
interest

Bank of America 1543.99  
interest

265,811.64

TOTAL AMOUNT RECEIVED

(also enter under recapitulation, item #4)

~~265,811.64~~



6. **CERTIFICATION OF INVESTMENTS** (to be executed by the Court or Clerk of the Court, a bank official, an authorized official of an insurance or investment company, or an authorized official or agent of the corporate surety on fiduciary bond:

| Kind of Bond or Security | Interest Rate | Date of Purchase | Face Value | Cost |
|--------------------------|---------------|------------------|------------|------|
|--------------------------|---------------|------------------|------------|------|

N/A

02 AUG 19 AM 11:52  
JUDGE OF PROBATE  
KIDDESTON, S.C.

TOTAL COST \$ \_\_\_\_\_

I CERTIFY that the securities listed herein were exhibited to me by the Fiduciary as being the property of the protected person and in the custody and control of the Fiduciary.

DATE

SIGNATURE AND TITLE OF CERTIFYING OFFICIAL

SWORN to before me this 8 day of AUGUST 2002

Signature: Karen L. Powell

Name: KAREN M POWELL

Address: Andrews, SC

Telephone (O): 843-221-7036

(H): \_\_\_\_\_

Helen Casselman

Notary Public for South Carolina

My Commission Expires: 7-10-06

ROA 0054

APPENDIX 59

## සූර්යයාගේ ජීවිතය

THIS STATEMENT REPORTS 1989-DIV (OMB No. 1545-0110), 1989-INT (OMB No. 1545-0112), 1989-COM (OMB No. 1545-0117), 1989 (OMB No. 1545-0807), 5488 (OMB No. 1545-0747), 1989-AMSC (OMB No. 1545-0115), 1029-S (OMB No. 1545-0715), 1029-S (OMB No. 1545-0097), 1029-A (OMB No. 1545-0377), 1029-C (OMB No. 1545-1229), 1989-E (OMB No. 1545-1570), DEPARTMENT OF THE TREASURY-INTERNAL REVENUE SERVICE.

**8515**

ALL 19 APR 11 52  
SARBLE  
ADJ. OF PROBATE  
SARBLE, S.C.

## APPENDIX 60

# Bank of America

Bank of America, N.A.  
P.O. Box 25118  
Tampa, FL 33622-5118



Page 1 of 1  
Statement Period  
06-21-02 through 07-23-02  
Number of checks enclosed: 0  
B-14 0 A 14 00205  
Account Number: 8085

00000577 1 SP 0.370 02 24005 001 SCH999

KAREN M UNRUE - CUST  
CODY P - UNGA  
SURFSIDE BEACH, SC

AM:52  
DATE  
S.C.

## Customer Service Information

For additional information or service, you may call:  
1-800-789-PEPS (1-800-789-7377) or visit our website at  
www.bankofamerica.com  
1-800-438-4408 TDD/VOIP (Voice Only)  
1-800-688-6046 BRF (Braille)

Or you may write to:  
Bank of America, N.A.  
P.O. Box 25118  
Tampa, FL 33622-5118

## Money Market Savings

KAREN M UNRUE - CUST CODY P - UNGA

### Your Account at a Glance

|                               |              |                                               |
|-------------------------------|--------------|-----------------------------------------------|
| Account Number                | 8085         | Annual Percentage Yield Earned this Statement |
| Beginning Balance on 06-21-02 | \$ 10,381.20 | Period: 1.01%                                 |
| Deposits and Other Additions  | + 9.39       | Interest Paid Year to Date: \$45.03           |
| Ending Balance on 07-23-02    | \$ 10,390.59 |                                               |

Paying your bills will cost you more this month. With the price of stamps increasing, now is the time to start paying your bills online. Enroll now in our free Online Banking service and pay your bills for free. You can also check account balances, view specific transactions, transfer funds and more. Just log on to [www.bankofamerica.com](http://www.bankofamerica.com).

## Money Market Savings Additions and Subtractions

| Date Posted | Amount(\$) | Resulting Balance(\$) | Transaction     |
|-------------|------------|-----------------------|-----------------|
| 7-23        | 9.39 +     | 10,390.59             | Interest Earned |

## Daily Balance Summary

| Date      | Balance   | Date  | Balance   |
|-----------|-----------|-------|-----------|
| Beginning | 10,381.20 | 07-23 | 10,390.59 |

ROA 0056

APPENDIX 61

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

LIMITED POWER OF ATTORNEY

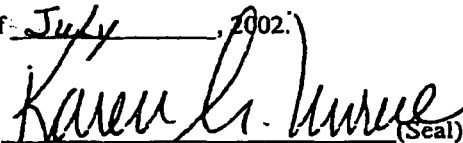
KNOW ALL MEN BY THESE PRESENTS, that I, KAREN UNRUE,, of the State of Colorado, being of sound mind and of legal age, have made, constituted and appointed, and by these presents, do make, constitute and appoint **LEGRAND CARRAWAY** of the County of Williamsburg, State of South Carolina, my true and lawful Attorney-in-Fact, for me and in my name and stead, to endorse my signature to Check No.: 736638103 from the Vectra Bank in the amount of \$194,637.97 to Jennifer Kellahan, Esquire, Attorney in the matter of Cody P, Case No.: 01-GC-45-00003.

This Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing her own estate.

It is the intent of this instrument to grant and give unto said Attorney-in-Fact full authority and complete power to do and perform any and all acts necessary to the performance of the powers herein granted.

This Power of Attorney shall remain in full force and effect until revoked by me in writing.

IN WITNESS WHEREOF, I, the said KAREN UNRUE, have to this instrument of writing set my Hand and Seal on this the 2nd day of July, 2002.

  
(Seal)  
KAREN UNRUE

Signed, sealed, published and declared by the said KAREN UNRUE as and for her Power of Attorney in the presence of us, who at her request, in her presence, and in the presence of one another, have subscribed our names as witnesses to the due execution of said Power of Attorney on the day and year above written.

NAME  
Brian D. Bony  
Jessie A. Bony

ADDRESS  
[Redacted]  
Fort Side Beach, SC. [Redacted]

ROA 0057

APPENDIX 62

STATE OF COLORADO

COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me #1 Barein D. Berry, and made oath that s/he saw the within named KAREN UNRUE seal and as her act and deed, deliver the within written Limited Power of Attorney, and that s/he with #2 Jonathan A. Berry witnessed the execution thereof.

SWORN to before me this

2nd day of July, 2002.

Jonathan A. Berry (Seal)

Notary Public for COLORADO

My Commission Expires \_\_\_\_\_

Barein D. Berry

JONATHAN A. BERRY  
My Commission Expires April 13, 2010

ROA 0058

APPENDIX 63

THE BACK OF THIS DOCUMENT IS AN INTEGRAL PART OF THE CHECK. HOLD THE DOCUMENT AT A SMALL ANGLE TO SEE THIS SECURITY FEATURE.

**OFFICIAL CHECK**

**VECTRA BANK** 1500 South Colorado Blvd. Denver, CO 80227

REMITTER: KAREN UNRUE

736638103

May 30, 2002

PAY TO THE ORDER OF: **\*\*KAREN UNRUE\*\***

\$ **194,637.92**

**\*\*ONE HUNDRED NINETY FOUR THOUSAND SIX HUNDRED THIRTY SEVEN and 97/100\*\*** US DOLLARS

DRAWER: VECTRA BANK COLORADO, N.A.

1409 1377

Issued by Integrated Payment Systems, Inc. Englewood, Colorado  
To Citibank (New York State) Buffalo, N.Y.

*[Signature]*

THE VARIABLE TONE BACKGROUND AREA OF THIS DOCUMENT CHANGES COLOR GRADUALLY AND SMOOTHLY FROM DARKER TONES AT BOTH TOP AND BOTTOM TO THE LIGHTEST TONE IN THE MIDDLE.

2 JUN 19 AM 11:52  
JULIE L. GAMBLE  
JULIE L. GAMBLE  
KINGSTREE, S.C.

SECURITY MARK UN BACK.  
HOLD AT ANGLE TO LIGHT  
TO VERIFY SECURITY MARK.

*Karen Unrue*

THE CHECK AND MICR NUMBER SHOULD APPEAR FROM THIS SIDE.

*by Julie L. Gamble, J. L. Gamble*

Pay to the Order of Legrand  
Carraway's Trust Account.

VOID WHEN USED FOR DEPOSIT

FOR INFORMATION CONCERNING THIS INSTRUMENT  
CONTACT:  
Integrated Payment Systems Inc.  
Englewood, CO 80111  
1-800-223-1520

ROA 0059

**LEGRAND CARRAWAY**  
**ATTORNEY AT LAW - ESCROW ACCOUNT**  
**15 COURTHOUSE SQ**  
**KINGSTREE, SC 29558**

DATE 7-29-02

DEPOSITS NOT BE AVAILABLE FOR WITHDRAWALS IMMEDIATELY  
ENDORSE & LIST CHECKS SEPARATELY OR  
ATTACH LIST

Journal of Management Education

CURRENCY

DATE \_\_\_\_\_

01/18/2019

ENDORSE & LIST CHECKS SEPARATELY ON  
ATTACH LIST

Journal of Management Education

CURRENCY

| CURRENCY   | DATE | AMOUNT | REMARKS |
|------------|------|--------|---------|
| COIN       |      |        |         |
| TOTAL CASH |      |        |         |
| CHECKS     |      |        |         |
| 1          |      |        |         |
| 2          |      |        |         |
| 3          |      |        |         |
| 4          |      |        |         |
| 5          |      |        |         |
| 6          |      |        |         |
| 7          |      |        |         |
| 8          |      |        |         |
| 9          |      |        |         |
| 10         |      |        |         |
| 11         |      |        |         |
| 12         |      |        |         |
| 13         |      |        |         |
| 14         |      |        |         |
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| 16         |      |        |         |
| 17         |      |        |         |
| 18         |      |        |         |
| 19         |      |        |         |
| 20         |      |        |         |
| 21         |      |        |         |
| 22         |      |        |         |
| 23         |      |        |         |

TOTAL FROM OTHER  
 SIDE OR ATTACHED LIST  
 1946 630 97

**WILLIAMSBURG FIRST NATIONAL BANK**TOTAL  
ITEMS

1

\$

194637.9:

Unruh, Karen

02 AUG 19 0011:52  
ALBANY, N. Y. GAMBLE  
JULIUS E. PRODATE  
KINGSTON, N. Y.

**New Home**



**a home loan makes it possible.**

DEPOSITED WITH:  
**WILLIAMSBURG FIRST NATIONAL BANK**

**THIS IS YOUR RECEIPT**

**WHEN MAKING A DEPOSIT AT A TELLERS WINDOW,  
ALWAYS OBTAIN AN OFFICIAL RECEIPT.**

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreement.

MAILED TR 27-1 0247133

0046F45 455 73002#0320 \$194657.97 0

Deposits may not be available for immediate withdrawal.  
Bank symbol, transaction number and amount of deposit are shown above.

**ROA 0060**

## APPENDIX 65

5100/01756

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF WILLIAMSBURG ) 03-CP-45-207

CODY [REDACTED] P [REDACTED],  
By and through his Conservator  
Kelly H. Kelley, and his natural  
and legal guardian Elizabeth Powell,  
PLAINTIFF,  
vs.  
BANK OF AMERICA, KAREN P.  
UNRUE, TRAVIS POWELL, and  
ELIZABETH POWELL,  
DEFENDANTS.

AMENDED  
SUMMONS

(JURY TRIAL DEMANDED)

FILED  
CE FEB-8 PM 3:24  
CLERK OF COURT  
KINGSTREE, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or her attorney, Jennifer R. Kellahan, Esquire, Jenkinson, Jarrett & Kellahan, P.A., 120 West Main Street, Kingstree, South Carolina, 29556, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for Judgment by default for the relief demanded in the Complaint.

DATED at Kingstree, South Carolina, on this 21<sup>st</sup> day of January 2005.

*Jennifer R. Kellahan*  
W. E. Jenkinson, III, Esquire  
Jennifer R. Kellahan, Esquire  
JENKINSON, JARRETT & KELLAHAN, P. A.  
120 West Main Street  
Post Office Drawer 669  
Kingstree, SC 29556  
Ph. (843) 355-2000  
Attorney for Plaintiff

Kingstree, South Carolina  
January 21<sup>st</sup>, 2005

1  
ROA 0061

APPENDIX 66

A CERTIFIED TRUE COPY  
*Carolyn F. Williams*  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG, S.C.



STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG )

03-CP-45-207

CODY [REDACTED] P [REDACTED] )

By and through his Conservator )

Kelly H. Kelley, and his natural )

and legal guardian Elizabeth Powell, )

PLAINTIFF, )

vs. )

BANK OF AMERICA, KAREN P. )

UNRUE, TRAVIS POWELL, and )

ELIZABETH POWELL, )

DEFENDANT )

AMENDED  
COMPLAINT

(JURY TRIAL DEMANDED)

FILED  
05 FEB -8 PM 3:24  
CLERK OF COURT  
WILLIAMSBURG  
S.C.

COMES NOW THE PLAINTIFF COMPLAINING OF THE DEFENDANTS AS  
FOLLOWS:

**JURISDICTIONAL ALLEGATIONS**

1. The Plaintiff is a minor child, and he is a citizen and resident of Williamsburg County, State of South Carolina.
2. Upon information and belief, the Defendant Bank of America is a corporation organized and existing under the laws of a state other than South Carolina, but doing business in Georgetown County, South Carolina. Upon information and belief, the Defendant Karen P. Unrue and the Defendant Travis Powell are citizens and residents of Williamsburg County. The Defendant Elizabeth Powell is a citizen and resident of Williamsburg County.

ROA 0062

APPENDIX 67

## **BACKGROUND**

3. Upon information and belief, a certificate of deposit account numbered 2016 was opened at Bank of America on April 26, 2001, with seven checks payable to the Conservators for the minor Plaintiff by various insurance companies in the combined total amount of Two hundred and fifty-two, four hundred and forty-seven and 51/100 (\$252,447.51) Dollars.

4. Upon information and belief, this certificate of deposit in the amount of Two hundred and fifty two, four hundred and forty-seven and 51/100 (\$252,447.51) Dollars was opened by Karen M. Powell Unrue and Travis Powell as conservators for the minor Plaintiff, copies of said checks are attached hereto and incorporated herein by reference as Exhibit A.

5. The Co-Conservators Karen M. Powell Unrue and Travis Powell were duly appointed after a hearing for the minor Plaintiff by the Probate Judge for Williamsburg County, and an Order, Certificate of Appointment, and Fiduciary Letters were issued to the Co-Conservators as shown on the attached Exhibit B, which is incorporated herein by reference.

6. Upon information and belief, on June 25, 2001, a withdrawal was made from the Certificate of Deposit in the amount of Two hundred and fifty-three, nine hundred and ninety-one and 50/100 (\$253,991.50) Dollars, and deposited to another Bank of America account.

7. Upon information and belief, an unrestricted custodial account was established by the Conservators pursuant to the Uniform Gifts to Minors Act of South Carolina, and the amount of funds held on deposit with Bank of America

prior to the account being closed by the new duly appointed conservator was approximately Ten thousand three hundred and ninety and 59/100 (\$10,390.59) Dollars.

8. The Co-Conservators Karen M. Powell Unrue and Travis M. Powell have been removed as Co-Conservators, and a new Conservator Kelly H. Kelley, has been appointed by the Probate Court for Williamsburg County to account for this minor Plaintiff's assets.

9. Demand has been made by the minor Plaintiff's natural and legal guardian for reimbursement of the funds to the minor Plaintiff to no avail.

10. The Defendant Karen M. Powell Unrue has filed an accounting with the Probate Court for Williamsburg County failing to account for the missing funds and purporting to supply the Probate Court with funds that upon information and belief are not the minor Plaintiff's funds, said accounting is attached hereto and incorporated herein by reference as Exhibit C.

**FOR A FIRST CAUSE OF ACTION**

**As to Defendant Bank of America for Negligence and Gross Negligence**

11. Each and every allegation contained above in paragraphs one through ten is repeated as if set forth herein verbatim.

12. At all times pertinent to this action, the Defendant Bank of America held itself out to the general public and particularly to its depositors, that it is a federally insured depository that will faithfully accept for deposit, manage and control its depositor's funds, particularly those belonging to minors, incompetents, and any other persons laboring under any disability.

13. The Defendant Bank of America had a duty to the minor Plaintiff to honor the restrictions contained in the Order, Certificate of Appointment and Fiduciary Letters appointing the minor Plaintiff's conservators.

14. As a result of the breach of duty by the Defendant, Bank of America, the Plaintiff suffered substantial financial injury which was sustained by the Plaintiff and was due to and caused by and was the direct and proximate result of the gross negligence, carelessness, recklessness, willfulness and wantonness on the part of the Defendant, Bank of America in the following particulars to-wit:

a. By allowing the establishment of a Certificate of Deposit numbered 2016 with no restrictions on the conservator's ability to withdraw the minor Plaintiff's funds;

b. By failing to monitor the establishment of the Certificate of Deposit numbered 2016 and to identify that it was established incorrectly with no restrictions on the conservator's ability to withdraw the minor Plaintiff's funds;

c. By allowing the withdrawal of the funds contained in Certificate of Deposit numbered 2016 without Probate Court approval;

d. By allowing the establishment of an unrestricted savings account with these funds by the Conservator Karen P. Unrue;

e. By allowing the subsequent withdrawal of funds from the unrestricted savings account; and

f. By breaching its duties and requirements as set forth in §62-5-423 and §62-5-426 of the South Carolina Code of Laws to the minor Plaintiff to honor the

restrictions contained in the Order, Certificate of Appointment and Fiduciary letters appointing the minor Plaintiff's conservators.

15. That as a result of the aforesaid acts of the Defendant, Bank of America, the minor Plaintiff suffered great financial harm and injury and is entitled to judgment against the Defendant, Bank of America for actual and punitive damages in an amount to be determined by the Court.

**FOR A SECOND CAUSE OF ACTION**  
**As to the Defendant Bank of America for Breach of Fiduciary Duty**

16. Each and every allegation contained above in paragraphs one through fifteen is repeated as if set forth herein verbatim.

17. At all times pertinent to this action, the Defendant Bank of America held itself out to the general public and particularly to its depositors, that it is a federally insured depository that will faithfully accept for deposit, manage and control its depositor's funds, particularly those belonging to minors, incompetents, and any other persons laboring under any disability.

18. The Defendant, Bank of America, as a banking depository for the restricted funds of the minor Plaintiff, had a fiduciary obligation to act only in the best interest of the minor Plaintiff, to conduct all affairs on his behalf in a fair and faithful manner and to protect money and assets belonging the minor Plaintiff.

19. During the times relevant hereto, the Defendant, Bank of America did not handle the restricted funds of the minor Plaintiff as required by the statutory law of the State of South Carolina and disbursed these funds for uses not in the best interest of the minor Plaintiff.

20. That as a result of the acts and breaches of duty of the Defendant Bank of America as set forth above, the Defendant, Bank of America also unfairly and unfaithfully disbursed the funds belonging to the minor Plaintiff, resulting in the loss of these funds while the Defendant Bank of America continued to receive the use of these funds on deposit.

21. That the acts of the Defendant, Bank of America as set forth in this cause of action as well as the negligence cause of action constitute a breach by the Defendant, Bank of America of its fiduciary duty to the minor Plaintiff, Cody Powell, which proximately resulted in the loss of substantial cash assets held for the benefit of the minor Plaintiff.

22. As a direct and proximate result of the Defendant, Bank of America's actions as set forth herein, the minor Plaintiff, Cody P. [REDACTED] has suffered actual damages in the form of lost funds held for the minor Plaintiff's benefit.

23. That a result of the conduct of the Defendant, Bank of America, the Plaintiff is informed and believes that he is entitled to judgment against the Defendant, Bank of America for actual and punitive damages in a sum to be determined by the Court.

**FOR A THIRD CAUSE OF ACTION**

**As to Defendants Karen P. Unrue and Travis Powell for Negligence**

24. Each and every allegation contained above in paragraphs one through twenty-three is repeated as if set forth herein verbatim.

25. The Defendants Unrue and Powell had a fiduciary duty to the minor Plaintiff to honor the restrictions contained in the Order, Certificate of Appointment and Fiduciary Letters appointing them as the minor Plaintiff's conservators.

26. The Defendants Unrue and Powell breached their fiduciary duty and were negligent in the management of the minor Plaintiff's funds in the following particulars:

a. By allowing the establishment of a Certificate of Deposit numbered 2016 with no restrictions on their ability to withdraw the minor Plaintiff's funds;

b. By withdrawing funds contained in Certificate of Deposit numbered 2016 without Probate Court approval;

c. By procuring the establishment of an unrestricted savings account with these funds in direct violation of the Probate Court Order;

d. By subsequently withdrawal of funds from the unrestricted savings account.

27. The breach of the fiduciary duty of the Defendants Unrue and Powell and their negligent actions as outlined above was the proximate cause of the damage to the minor Plaintiff.

28. The minor Plaintiff has suffered substantial actual damages.

**FOR A FOURTH CAUSE OF ACTION:**  
**For Constructive Trust**

29. Each and every allegation contained in paragraphs one through twenty-eight is repeated as if set forth herein verbatim.

30. The Defendant Bank of America has held the above-described money of the minor Plaintiff pursuant to a Court Order since April of 2001.

31. The Defendants Unrue and Powell wrongfully obtained possession to the above-described money of the minor Plaintiff through defrauding the minor Plaintiff.

32. All three Defendants have held the subject money since the date of delivery for the benefit of the minor Plaintiff, his Heirs and Assigns.

**FOR A FIFTH CAUSE OF ACTION**  
**For an Accounting**

33. Each and every allegation contained in paragraphs one through thirty-two is repeated as if set forth herein verbatim.

34. The money delivered to the Defendants on the minor Plaintiff's behalf has been held in the exclusive possession and control of the Defendants since the date of delivery for the benefit of the Plaintiff.

35. Based upon an Order she received against Karen Powell Unrue, the Defendant Elizabeth Powell claims some interest in funds that have been asserted by the Defendant Karen Powell Unrue to belong to the minor Plaintiff. The Defendant Bank of America claims an offset against these same funds. These funds are currently on deposit with the Clerk of Court for Williamsburg County.

36. The minor Plaintiff is entitled to a full and fair accounting of the subject money from the date of delivery to the present.

**FOR A SIXTH CAUSE OF ACTION**  
**As to the Defendants Karen P. Unrue and Travis Powell**  
**Wrongful Conversion**



37. Each and every allegation contained in paragraphs one through thirty-six is repeated as if set forth herein verbatim

38. Upon information and belief, the procurement of the minor Plaintiff's money was done knowingly and purposefully and with intent to convert the property of the minor Plaintiff to the Defendants.

39. That since the date of the delivery of the money to the Defendants, the Defendants have held this money as their own to the exclusion of the minor Plaintiff.

40. That the Probate Court and minor Plaintiff have made request of the Defendants to obtain his money back and has been supplied information regarding funds that upon information and belief do not belong to the minor plaintiff and has been denied such request for an accounting of the missing funds.

41. Defendants have wrongfully converted the subject money to their own benefit and use to the exclusion of the rightful owner, the minor Plaintiff.

**FOR A SEVENTH CAUSE OF ACTION**  
**As to the Defendants Karen P. Unrue and Travis Powell**  
**For Fraud**

42. Each and every allegation contained in paragraphs one through forty-one is repeated as if set forth herein verbatim.

43. The Defendants represented to the Probate Court that they were responsible individuals, understood the duties and obligations of acting as Conservators, and would manage the minor Plaintiff's money for the minor Plaintiff's benefit pursuant to the directions of the Probate Court Order.

44. Upon information and belief, the Defendants' representations were false.

45. The representations were material in the following particulars:

a. The Probate Court and minor child's natural and legal guardian would not have consented to the appointment of the Defendants or allowed the delivery of the minor child's money to the Defendant without such a representation; and

b. The subject money was the main asset of the minor Plaintiff, and represented all of the life insurance proceeds payable to the minor Plaintiff from the accidental death of his father.

46. Upon information and belief, the Defendants knew the representation was false.

47. The Defendants intended that the representation be relied upon by accepting delivery of the money and taking possession of it to the exclusion of the minor Plaintiff.

48. The minor Plaintiff did not have knowledge of the falsity of the representations made by Defendant.

49. The minor Plaintiff's natural and legal guardian and the Probate Court relied upon the truth of the representation by the Defendant in allowing the delivery of his money to the Defendant.

50. The minor Plaintiff had a right to rely on the representation in that the Defendants were his aunt and uncle and had close family ties giving rise to feelings of great trust. Furthermore, the minor Plaintiff had just suffered a tragic loss of his father, and the minor Plaintiff's natural and legal guardian had just suffered a tragic loss of her husband and the Defendants knew of their fragile emotional state.

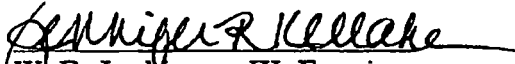
51. Consequently, the minor Plaintiff has not been provided information as to the accounting of his money, and has been damaged in that the subject money is not currently available to the Plaintiff.

WHEREFORE, the Plaintiff prays to this Honorable Court as follows:

1. As to the First Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;
2. As to the Second Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;
3. As to the Third Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;
4. As to the Fourth Cause of Action for a constructive trust;
5. As to the Fifth Cause of Action for an accounting of the subject money from the date of delivery to the present and a determination of the ownership of the funds on deposit with the Clerk of Court for Williamsburg County and a determination of any offset due Defendant Bank of America by virtue of the funds on deposit with the Clerk of Court for Williamsburg County.
6. As to the Sixth Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;

7. As to the Seventh Cause of Action for such actual damages and punitive damages as may be shown the court, together with pre-judgment and post-judgment interest;

8. For such other and further relief as the court deems just and proper.

  
W. E. Jenkinson, III, Esquire  
Jennifer R. Kellahan, Esquire  
JENKINSON, JARRETT & KELLAHAN, P. A.  
120 West Main Street  
Post Office Drawer 669  
Kingtree, SC 29556  
Ph. (843) 355-2000  
Attorney for Plaintiff

Kingtree, South Carolina  
January 31, 2005

# EXHIBIT A

ROA 0074

APPENDIX 79

Request Number: CLT20021011000751

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

Best Copy Available

**NationsBank** **CREDIT**

CD TRA New Account/Deposit - SC

Payable To: PAULETTE BLAND Total Prepared 9-26-01

Account Number: 5050967

Payable To Name: Kenneth A. Bland

Payable To Address: 2016 S 252447.51

Payable To City/State/Zip: 2016

Prepared By: St. Yanto 243-237-1110

Account Number: 1803 6200128191

1619210029

9070 06965

APR 26 01

MADE IN MICHIGAN

ROA 0075

Page 2 of 2

APPENDIX 80

Item 1 of 1

Post Date: 04/26/2001

A.     unt: S 252,447.51

Sequence Number: 6200128191

DATE 04/13/2001 CHECK NO. 0000106863 62-26 311  
 INDUSTRIAL CASUALTY COMPANY  
 1012-09  
 \$ 888,999.00  
 DOLLARS  
 AND NO/100THS  
 To the order of Travis Powell, Co-Ch  
 of Minor Cody Powell  
 W. Lee  
 AUTHORIZED SIGNATURE  
 VOO IF NOT CASHED IN SIX MONTHS FROM MONTH OF ISSUE  
 000099000000

[illegible]

Page 3 of 9

## APPENDIX 81

**Item 1 of 1**

Post Date: 04/26/2001

Amount: \$ 252,447.51

**Sequence Number: 6200128191**

THE BACK OF ORIGINAL CHECK STOCK HAS A REFLECTIVE WATER MARK, TO VIEW HOLD UP AN ANGLES

Wausau Insurance Companies

Check No. 3113258615

Check Date APR 12, 2001

Amount \$4,819.73

Pay to the order of KAREN POWELL, AS CONSERVATOR OF CODY POWELL, A MINOR

Signature: EJ Williams

00000481973

Karen Powell

34026202

6300128197

1973.01

3070 0.621

**ROA 0077**

Page 8 of 9

## APPENDIX 82



Request Number: CLT20021011000751

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

THE BACK OF ORIGINAL CHECK STOCK HAS A REFLECTIVE WATERMARK TO VIEW HOLD AT AN ANGLE

**Wausau Insurance Companies**

Check No. 3113266011

Valid after 180 days  
Post date issued  
DATE: APR 13, 2001

Pay to the order of **KAREN M. POWELL, AS CONSERVATOR FOR  
CODY POWELL, A MINOR**

**ONE HUNDRED FIFTY-THREE AND 67/100 DOLLARS**

**\$ 153,253.67**

*EJ Williams*

ORIGINAL CHECK STOCK CONTAINS A LINE OF MICROSCOPIC PRINT ABOVE THE CHECK DATA USE A MAGNIFIER TO VIEW

6200128191

153253.67

11 92 47

34048973

ROA 0078

Page 9 of 9

APPENDIX 83

Request Number: CLT20021011000751

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

THE BACK OF ORIGINAL CHECK STOCK HAS A REFLECTIVE WATERMARK. TO VIEW HOLD AT AN ANGLE.

**Wausau Insurance Companies**

Check No. 3113298658

Valid After 180 days  
From date issued  
DATE: APR 20, 2001

Check No. 616-022918  
Issued: MACOR CORPORATION

ONE HUNDRED FIFTY-THREE AND 67/100  
DOLLARS  
KAREN M. POWELL, AS CONSERVATOR FOR  
CODY POWELL, A MINOR

*EJ Williams*

000000253672

*Karen M. Powell*

6200128191

10/10/01 10:10:10 AM  
10/10/01 10:10:10 AM  
10/10/01 10:10:10 AM

34158342

ROA 0079

Page 6 of 9

APPENDIX 84

Request Number: CLT20021011000751

Item 1 of 1

Account Number: 1803

Post Date: 04/26/2001

Amount: \$ 252,447.51

Sequence Number: 6200128191

Wausau Insurance Companies

Check No. 3115250316

Valid after 180 days from date issued

DATE: APR 11, 2001

ONE HUNDRED FIFTY-THREE AND 67/100 DOLLARS

LAREN POWELL AS CONSERVATOR OF EDDY POWELL A MINOR

*EJ Williams*

ORIGINAL CHECK STOCK CONTAINS A LINE OF MICROSCOPIC PRINT ABOVE THE BACK AREA. USE A MAGNIFIER TO VIEW.

9618210029

34011274

*Laren Powell*

ROA 0080

Page 7 of 9

APPENDIX 85



**Item 1 of 1**

**Post Date: 04/26/2001**

Amount: \$ 252,447.51

**Sequence Number: 6200128191**

|                                                                                                    |                          |                     |                                    |                                     |                                                                                                 |
|----------------------------------------------------------------------------------------------------|--------------------------|---------------------|------------------------------------|-------------------------------------|-------------------------------------------------------------------------------------------------|
| <b>MetLife</b><br>LIFE INSURANCE                                                                   |                          | NUCOR STEEL-BEVERLY |                                    | 528                                 | 1-2/210                                                                                         |
| METROPOLITAN LIFE INS. CO.<br>NEW YORK, N.Y. 10001                                                 |                          |                     |                                    | 000975003                           |                                                                                                 |
| Date of Birth<br>10/23/59                                                                          | Group No.<br>1805912 020 | Sub.<br>0001        | License No. & Ex. No.<br>249437376 | Name of Insured<br>POWELL, STEVEN E | NOT VALID BEFORE<br>APR 16 2001                                                                 |
| Pay to the Order of<br>The Chase Manhattan Bank<br>One Chase Manhattan Place<br>New York, NY 10001 |                          |                     |                                    |                                     | Amount<br>Before Tax<br>\$8114866.77<br><i>W. Law</i><br>SENIOR VICE PRESIDENT OF AND TREASURER |

Powell-Kane-Pauls

9070 0696

lu 91.117

MEXICAN CONSUL  
NEW YORK CITY  
RECEIVED JULY 18 1962  
JUN 18 1962

62-0128193

Page 4 of 9

## APPENDIX 87

To: Floretta Dening  
NCI-003-04-35  
704.388.2595

Research Performed Stacey Stutsman  
Research & Adjustments Rep III  
1.888.827.1812, x8260

Karen M Unrue (Powell)/POD Thomas Unrue, JR  
Social Security: [REDACTED] 8515

Research Request: SC 6183

| Certificate Number               | Date Opened             | Opening Amount | Date Closed | Closing Amount | Comments                                                                                    |
|----------------------------------|-------------------------|----------------|-------------|----------------|---------------------------------------------------------------------------------------------|
| [REDACTED] 792<br>KAREN M POWELL | 03/02/01                | \$1,54,000.00  |             |                | Dep from DDA [REDACTED] 9281/Due and DDA Statement Provided                                 |
| [REDACTED] 792<br>KAREN M POWELL |                         |                | 03/15/01    | \$134,201.40   | Funded CD [REDACTED] 6900 Due Provided                                                      |
| [REDACTED] 900<br>KAREN M UNRUE  | 03/15/01                | \$134,201.40   |             |                | Funded from CD [REDACTED] 7197 Due Provided                                                 |
| [REDACTED] 792<br>KAREN M UNRUE  | 03/16/01                | \$100,000.00   |             |                | Dep from DDA [REDACTED] 9281                                                                |
| [REDACTED] 792<br>KAREN M UNRUE  | Withdrawal from account |                | 04/13/01    | \$49,891.36    | Funds transferred to DDA [REDACTED] 9281 Due Provided                                       |
| [REDACTED] 016<br>KAREN M UNRUE  | 05/26/01                | \$252,447.51   |             |                | Funds received from 7 checks from various other institutes designated for Cody [REDACTED]   |
| [REDACTED] 016<br>KAREN M UNRUE  |                         |                | 06/25/01    | \$253,991.50   | Deposited to: DDA [REDACTED] 8085 No Closing Due on-site.                                   |
| [REDACTED] 6900<br>KAREN M UNRUE |                         |                | 09/12/01    | \$137,034.28   | Both Certificate closed and deposited to: DDA [REDACTED] 9281 in the amount of \$188,055.01 |
| [REDACTED] 7792<br>KAREN M UNRUE |                         |                | 09/12/01    | \$51,020.73    |                                                                                             |

APPENDIX 88

ROA 0083

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## **EXHIBIT B**

**ROA 0084**

**APPENDIX 89**

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

ELIZABETH POWELL,  
PETITIONER

IN RE: CODY P [REDACTED], A MINOR

IN THE PROBATE COURT

CASE NO. 2001GC03

ORDER APPOINTING  
CO-CONSERVATORS

RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSLEE, S.C.

01 MAR 29 PM 2:03

FILED

THIS MATTER came before this Court at a hearing on March 13, 2001, seeking the appointment of Travis Powell and Karen Powell, as Co-Conservators for their nephew, Cody P [REDACTED]. The Petitioner Elizabeth Powell (the minor child's mother), her attorney, the proposed Conservators, and the Guardian Ad Litem, Beatrice Whitten, were present at the hearing.

Venue was proper and the required notices were given.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

I find that there is clear and convincing evidence that the minor child will be the recipient of insurance proceeds as the result of the death of his father and is in need of the appointment of a Conservator to handle such funds. I further find that he has assets that will be wasted or dissipated without proper management.

I further find that he is a person for whom the appointment of a conservator is proper, and that the appointment of a conservator will be in his best interest.

I further find that the minor is disabled and may be in need of government assistance to provide medical care if he is uninsurable as a result of his disabilities and, therefore, the Conservators should be authorized and empowered to create a Special Needs Trust if they deem it to be in the minor child's best interest in the future.

I further find that the Petitioner's request that Karen Powell and Travis Powell be appointed as Co-Conservators is reasonable and proper and should be granted.

I further find that bond should be waived as long as the funds are held in a restricted account which prohibits withdrawals without Order of this Court.

WHEREFORE, it is hereby:

1. ORDERED that Karen Powell and Travis Powell, be, and they hereby are, appointed as Co-Conservators of the Estate of Cody P [REDACTED].
2. ORDERED that the funds of the minor child, Cody P [REDACTED], be deposited in

ROA 0085

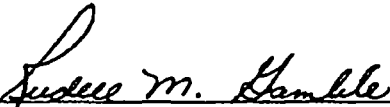
CERTIFIED TRUE COPY  
*Rudell M. Gamble*  
Probate Judge



restricted account and that no funds be withdrawn or transferred from such account without written Order of this Court;

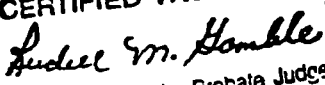
3. ORDERED that Bond is hereby waived;
4. ORDERED that the Conservators are authorized and empowered to create a Special Needs Trust with the minor's assets, if the Conservators determine that the child is otherwise uninsurable and his assets are insufficient to provide adequate medical care for the child without significantly depleting such assets, so that it would be in the child's best interest to create such a Trust.
5. ORDERED that the Co-Conservators shall not pay compensation to themselves from the assets of the estate of Cody P. [REDACTED] without authorization of this Court;
6. ORDERED that this Court shall have continuing jurisdiction over this matter;

AND IT IS SO ORDERED!

 (SEAL)  
THE HONORABLE RUDELL M. GAMBLE  
WILLIAMSBURG COUNTY PROBATE COURT JUDGE  
KINGSTREE, SOUTH CAROLINA

Dated: March 29, 2001

11 MAR 29 PM 2:04  
RUDELL M. GAMBLE  
JUDGE OF PROBATE  
WILLIAMSBURG, S.C.

CERTIFIED TRUE COPY  
  
Rudell M. Gamble, Probate Judge  
Williamsburg County SC

ROA 0086

STATE OF SOUTH CAROLINA  
COUNTY OF Williamsburg

PROBATE COURT

IN THE MATTER OF Cody P. [REDACTED], Minor

CASE NUMBER 2001GC4500003

FILED

01 MAR 13 AM 10:57

RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSTREE, S.C.

FIDUCIARY LETTERS

- ☐ PERSONAL REPRESENTATIVE
- ☐ GUARDIANSHIP
- ☒ CONSERVATORSHIP
- ☐ TRUSTEESHIP
- ☐ \_\_\_\_\_

On the 13th day of March 2001 Travis Powell and  
Karen Powell

was/were appointed and qualified as Fiduciary(ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the a fiduciary(ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS: No withdrawals without court order.

Executed this 13th day of March 2001

Betty J. Matthews, Assoc  
Probate Court

CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble, Probate Judge  
Williamsburg County SC

STATE OF SOUTH CAROLINA  
COUNTY OF Williamsburg

IN THE MATTER OF Cody P. [REDACTED], Minor

CASE NUMBER 2001GC4500003

FILED

PROBATE C

01 MAR 13 AM 10:57

RUDELL M. GAMBLE  
JUDGE OF PROBATE  
KINGSTREE, S.C.

COPY

CERTIFICATE OF APPOINTMENT

This is to certify that

Travis Powell and Karen Powell

is/are the duly qualified

- ☐ PERSONAL REPRESENTATIVE
- ☐ GUARDIAN
- ☒ CONSERVATORS
- ☐ TRUSTEE

in the above matter and that this appointment, having been executed on the 13th day of March 192001 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

No withdrawals without court order.

Executed this 13th day of March, 19 2001

Do not accept a copy of this certificate without the raised seal of the Probate Court.

Betty A. Matthews  
Probate Court

CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble, Probate Judge  
Williamsburg County SC

ROA 0088

APPENDIX 93

## **EXHIBIT C**

**ROA 0089**

**APPENDIX 94**

**PROBATE COURT**

CASE NUMBER 01-GC-45-0003

Conservator: KAREN M POWELL

- The names and addresses of the personal sureties are:**

## 2. MONEY RECEIVED

Amount

|                      |            |
|----------------------|------------|
| Wassau Insurance Co. | 252,447.51 |
| NuCor Steel Berkeley |            |
| Wassau Insurance Co. | 10,390.59  |
| Nucor Steel Berkeley |            |
| Bank of America      | 1429.55    |
| interest             |            |
| Bank of America      | 1543.99    |
| interest             |            |

265,811.64

(also enter under recapitulation, item #4)

6. **CERTIFICATION OF INVESTMENTS** (to be executed by the Court or Clerk of the Court, a bank official, an authorized official of an insurance or investment company, or an authorized official or agent of the corporate surety on fiduciary bond:

Kind of Bond or Security

Interest Rate

Date of Purchase

Face Value

Cost

N/A

TOTAL COST \$ \_\_\_\_\_

I CERTIFY that the securities listed herein were exhibited to me by the Fiduciary as being the property of the protected person and in the custody and control of the Fiduciary.

DATE

SIGNATURE AND TITLE OF CERTIFYING OFFICIAL

SWORN to before me this 8 day of  
AUGUST 2002

Signature:

Name:

Address:

Telephone (O):

(H):

Helen Casselman

Notary Public for South Carolina

My Commission Expires: 7-10-06

Karen L. Powell

KAREN M POWELL

ANDREWS, SC

843-221-7036

# Bank of America

Bank of America, N.A.  
P.O. Box 25118  
Tampa, FL 33622-5118



Page 1 of 1  
Statement Period  
06-21-02 through 07-23-02  
Number of checks enclosed: 0  
B 14 0 A 14 0020521

Account Number: [REDACTED] 8085

00008577 1 SP 0.270 02 24005 001 SCM999

KAREN M UNRUE - CUST  
CODY [REDACTED] - UMGA  
[REDACTED]  
SURFSIDE BEACH, SC [REDACTED]

## Customer Service Information

For additional information or service, you may call  
1-888-789-PLUS (7587) Priority Telephone Banking  
1-800-238-4408 TDD/TTY Users Only  
1-800-688-6086 En Español

Or you may write to  
Bank of America, N.A.  
P.O. Box 25118  
Tampa, FL 33622-5118

## Money Market Savings

KAREN M UNRUE - CUST CODY STEVEN POWELL - UMGA

### Your Account at a Glance

|                               |            |           |                                               |
|-------------------------------|------------|-----------|-----------------------------------------------|
| Account Number                | [REDACTED] | 8085      | Annual Percentage Yield Earned this Statement |
| Beginning Balance on 06-21-02 | \$         | 10,381.20 | Period: 1.01%                                 |
| Deposits and Other Additions  | +          | 9.39      | Interest Paid Year to Date: \$45.03           |
| Ending Balance on 07-23-02    | \$         | 10,390.59 |                                               |

Paying your bills will cost you more this month. With the price of stamps increasing, now is the time to start paying your bills online. Enroll now in our free Online Banking service and pay your bills for free. You can also check account balances, view specific transactions, transfer funds and more. Just log on to [www.bankofamerica.com](http://www.bankofamerica.com).

## Money Market Savings Additions and Subtractions

| Date  | Amount(\$) | Resulting Balance(\$) | Transaction     |
|-------|------------|-----------------------|-----------------|
| 07-23 | 9.39 +     | 10,390.59             | Interest Earned |

## Daily Balance Summary

| Date      | Balance   | Date  | Balance   |
|-----------|-----------|-------|-----------|
| Beginning | 10,381.20 | 07-23 | 10,390.59 |

ROA 0092

APPENDIX 97

BANK OF AMERICA, N.A.  
TEFRA CONTROL MOS-050-02-02  
PO BOX 411809  
KANSAS CITY, MO 64179-9832  
Bank of America

# COMBINED TAX STATEMENT FOR YEAR 2001

THIS STATEMENT REPORTS 1099-DIV (OMB No. 1545-0118), 1099-INT  
(OMB No. 1545-0112), 1099-ORD (OMB No. 1545-0117), 1099 (OMB No.  
1545-0001), 1099 (OMB No. 1545-0047), 1099-ABSC (OMB No. 1545-0115),  
1099-S (OMB No. 1545-0119), 1099-G (OMB No. 1545-0007), 1099-A (OMB  
No. 1545-0077), 1099-C (OMB No. 1545-1424), 1099-E (OMB No. 1545-1578),  
DEPARTMENT OF THE TREASURY-INTERNAL REVENUE SERVICE

0320030 AB \*\*AUTO TS 4 1599 00000-033 2108-  
KAREN M UNRUE - CUST  
CODY P - UMGA  
BOULDER CO

BANK# 0005

PAYERS E.I.N.

7665

CUST SERV PH #

1-888-520-6422

TAXPAYERS IDENTIFICATION NUMBER

-8515

For Forms 1099-B, 1099-INT, 1099-DIV and 1099-ORD: This is a summary of information provided to the Internal Revenue Service. If you are receiving this statement for the first time, please verify the information is correct. If you are receiving this statement for the second time, please verify the information is correct. If you are receiving this statement for the third time, please verify the information is correct. If you are receiving this statement for the fourth time, please verify the information is correct. If you are receiving this statement for the fifth time, please verify the information is correct. If you are receiving this statement for the sixth time, please verify the information is correct. If you are receiving this statement for the seventh time, please verify the information is correct. If you are receiving this statement for the eighth time, please verify the information is correct. If you are receiving this statement for the ninth time, please verify the information is correct. If you are receiving this statement for the tenth time, please verify the information is correct.

| ACCOUNT NUMBER       | ACCOUNT TYPE                     | IRS DESCRIPTION | IRS BOX # | AMOUNT  |
|----------------------|----------------------------------|-----------------|-----------|---------|
| -8085                | 2001 - 1099-INT, INTEREST INCOME |                 |           |         |
| KAREN M UNRUE - CUST | MONEY MKT SVGS                   | INTEREST INCOME | 1         | 1429.55 |
| ODY P - UMGA         |                                  |                 |           |         |

|                        |               |                 |   |         |
|------------------------|---------------|-----------------|---|---------|
| 2016                   | TIME DEPOSITS | INTEREST INCOME | 1 | 1543.99 |
| KAREN M UNRUE GUARDIAN |               |                 |   |         |
| ODY P                  |               |                 |   |         |

PLEASE NOTE: ADVISING REGARDING THESE ACCOUNTS SHOULD BE DIRECTED TO OUR CUSTOMER SERVICE PHON  
NUMBER ABOVE. PLEASE CHECK YOUR TAXPAYER IDENTIFICATION NUMBER AND CALL THE NUMBER  
LISTED ABOVE IF IT IS INCORRECT.

HEARING IMPAIRED PLEASE CALL 1-800-288-4408

FORM 1099 DIV: THIS MAY NOT BE THE CORRECT FORM TO REPORT ON YOUR INCOME TAX RETURN. SEE INSTRUCTIONS ON BACK.

ACCOUNT SUMMARY

TOTAL EARNINGS INT.  
ORD. DIV AND ORD'S

ROA 0093

APPENDIX 98



STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

LIMITED POWER OF ATTORNEY

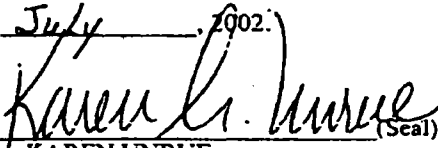
KNOW ALL MEN BY THESE PRESENTS, that I, KAREN UNRUE, of the State of Colorado, being of sound mind and of legal age, have made, constituted and appointed, and by these presents, do make, constitute and appoint LEGRAND CARRAWAY of the County of Williamsburg, State of South Carolina, my true and lawful Attorney-in-Fact, for me and in my name and stead, to endorse my signature to Check No.: 736638103 from the Vectra Bank in the amount of \$194,637.97 to Jennifer Kellahan, Esquire, Attorney in the matter of Cody [REDACTED] P. [REDACTED]. Case No.: 01-GC-45-00003.

This Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing her own estate.

It is the intent of this instrument to grant and give unto said Attorney-in-Fact full authority and complete power to do and perform any and all acts necessary to the performance of the powers herein granted.

This Power of Attorney shall remain in full force and effect until revoked by me in writing.

IN WITNESS WHEREOF, I, the said KAREN UNRUE, have to this instrument of writing set my Hand and Seal on this the 2nd day of July, 2002.

  
KAREN UNRUE (Seal)

Signed, sealed, published and declared by the said KAREN UNRUE as and for her Power of Attorney in the presence of us, who at her request, in her presence, and in the presence of one another, have subscribed our names as witnesses to the due execution of said Power of Attorney on the day and year above written.

NAME  
Brian D. Bony  
Joell A. Bony

ADDRESS  
[REDACTED]  
Just Side Beach, S.C. [REDACTED]

ROA 0094

APPENDIX 99

STATE OF COLORADO

COUNTY OF \_\_\_\_\_

PERSONALLY appeared before me #1 Barein D. Berry and made oath that s/he saw the within named KAREN UNRUE seal and as her act and deed, deliver the within written Limited Power of Attorney, and that s/he with #2 Jonathan A. Berry witnessed the execution thereof.

SWORN to before me this  
2nd day of July, 2002.

Jonathan A. Berry (Seal)  
S.C.  
Notary Public for COLORADO  
My Commission Expires \_\_\_\_\_

Barein D. Berry

JONATHAN A. BERRY  
My Commission Expires April 13, 2010

ROA 0095

APPENDIX 100

THE BACK OF THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED IN A SPECIAL PATTERN. HOLD THE DOCUMENT AT A SMALL ANGLE TO SEE THIS SECURITY FEATURE.

OFFICIAL CHECK

VECTRA BANK  
COLORADO

1650 South Colorado Blvd.  
Denver, CO 80222

736638103

10-88/228

REMITTER  
KAREN UNRUE

MAY 30, 2002

PAY TO THE ORDER OF \*\*\*KAREN UNRUE\*\*\*

\$ \*194,637.97\*

\*\*\*ONE HUNDRED NINETY FOUR THOUSAND SIX HUNDRED THIRTY SEVEN and 97/100\*\*\* US DOLLARS

DRAWER: VECTRA BANK COLORADO, N.A.

1409 2 1377

Issued by Integrated Payment Systems Inc., Englewood, Colorado  
To Clearing: New York State, Buffalo, N.Y.

*[Handwritten Signature]*

ABLE TONE BACKGROUND AREA OF THIS DOCUMENT CHANGES COLOR GRADUALLY AND SMOOTHLY FROM DARKER TONES AT BOTH TOP AND BOTTOM TO THE LIGHTEST TONE IN THE MIDDLE.

19 MAY 31 11:52  
FBI  
S.C.

SECURITY MARK ON BACK  
HOLD AT ANGLE TO LIGHT  
TO VERIFY SECURITY MARK  
*Karen Unrue*  
ONE CHECK AND OTHER ENDORSEMENTS SHOULD BE ATTACHED FROM THIS DATE  
*for A.J. Kelley - for attorney's fee*  
Pay to the Order of Legrand  
Caraway's Trust Account

FOR INFORMATION CONCERNING THIS INSTRUMENT  
CONTACT  
Integrated Payment Systems Inc.  
1490 Central Expressway  
1000 200/1500

ROA 0096

APPENDIX 101

**LEGRAND CARRAWAY**  
**ATTORNEY AT LAW - ESCROW ACCOUNT**  
**15 COURTHOUSE SQ**  
**KINGSTREE, SC 29558**

DATE 7-29-02 -----  
DEPOSITORS MAY NOT AVOID BILLION DOLLAR INCREASE  
ENDUOUS & LIST CHECKS SEPARATELY ON  
ATTACHMENT

... ..

---

| CURRENCY | COIN | TOTAL CASH                                  | CHECKS |
|----------|------|---------------------------------------------|--------|
| 1        |      |                                             |        |
| 2        |      |                                             |        |
| 3        |      |                                             |        |
| 4        |      |                                             |        |
| 5        |      |                                             |        |
| 6        |      |                                             |        |
| 7        |      |                                             |        |
| 8        |      |                                             |        |
| 9        |      |                                             |        |
| 10       |      |                                             |        |
| 11       |      |                                             |        |
| 12       |      |                                             |        |
| 13       |      |                                             |        |
| 14       |      |                                             |        |
| 15       |      |                                             |        |
| 16       |      |                                             |        |
| 17       |      |                                             |        |
| 18       |      |                                             |        |
| 19       |      |                                             |        |
| 20       |      |                                             |        |
| 21       |      |                                             |        |
| 22       |      |                                             |        |
| 23       |      |                                             |        |
|          |      | TOTAL \$ FROM OTHER<br>SIDE OF ATTACHED IS! |        |
|          |      | 194 639 97                                  |        |
|          |      | DOLLARS                                     |        |
|          |      | CENTS                                       |        |

**WILLIAMSBURG FIRST NATIONAL BANK**

TOTAL  
ITEMS

5

194637.97

Unruh, Karen

100

10:11:52



DEPOSITED WITH:

**WILLIAMSBURG FIRST NATIONAL BANK**

**THIS IS YOUR RECEIPT**

**WHEN MAKING A DEPOSIT AT A TELLERS WINDOW,  
ALWAYS OBTAIN AN OFFICIAL RECEIPT**

Checks and other items are received for deposit subject to the provisions of the Uniform Commercial Code or any applicable collection agreements.

**MAZLAND** TR 2014 02127132

004WFB 455 73002#0520 \$174637.97 0

Deposits may not be available for immediate withdrawal.  
Bank symbol, transaction number and amount of deposit are shown above.

**ROA 0097**

## APPENDIX 102

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG )

03-CP-45-207

CODY [REDACTED] F [REDACTED], )  
By and through his Conservator )  
Kelly H. Kelley, and his natural )  
and legal guardian Elizabeth Powell, )

PLAINTIFF, )

vs. )

BANK OF AMERICA, KAREN P. )  
UNRUE, TRAVIS POWELL, and )  
ELIZABETH POWELL )

DEFENDANTS )

ACCEPTANCE OF SERVICE

The undersigned hereby accepts and acknowledges the due personal service of the Amended Summons and Complaint on behalf of Defendant Bank of America in the above captioned action at \_\_\_\_\_, South Carolina this \_\_\_\_\_ day of February 2005; and the receipt of a true copy is hereby acknowledged.

SWORN to before me this \_\_\_\_\_  
day of February 2005.

\_\_\_\_\_(L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: \_\_\_\_\_

5100/01756

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

IN THE COURT OF COMMON PLEAS

05 MAR - 1 PM 3:08  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

FILED

Cody P. [REDACTED] by and through his  
Conservator Kelly H. Kelley, and his  
natural and legal guardian Elizabeth  
Powell,

Plaintiff,

vs.

Bank of America, Karen P. Unrue, Travis  
Powell and Elizabeth Powell,

Defendants.

Civil Action No. 03-CP-45-207

AMENDED ANSWER OF DEFENDANT  
BANK OF AMERICA, N.A. TO THE  
AMENDED SUMMONS AND  
COMPLAINT

A CERTIFIED TRUE COPY

Jury Trial Requested

*Carolyn F. Williams*  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

The Defendant Bank of America, N.A. (hereafter "Bank of America"), in responding to the Amended Complaint in the above matter would respectfully state that, except as admitted below, Bank of America denies all allegations of the Amended Complaint, and would show unto the Court as follows:

1. Upon information and belief, Bank of America admits the allegations of paragraph 1.
2. Bank of America admits the allegations of paragraph 2 as they pertain to Bank of America. Upon information and belief, Bank of America admits the remaining allegations of paragraph 2.
3. Bank of America admits paragraph 3.
4. As to the allegations in paragraph 4, Bank of America admits, upon information and belief, that the certificate of deposit account was opened by Karen P. Unrue as

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APPENDIX 104

Guardian of Cody ██████ P█████ in the amount of \$252,447.51. Bank of America denies the remaining allegations of paragraph 4 and demands strict proof thereof.

5. Upon information and belief, Bank of America admits the allegations of paragraph 5.

6. Bank of America admits paragraph 6.

7. Bank of America admits paragraph 7.

8. Upon information and belief, Bank of America admits the allegations of paragraph 8.

9. Upon information and belief, Bank of America admits the allegations of paragraph 9.

10. In response to the allegations of paragraph 10 and upon information and belief, Bank of America admits that Karen P. Unrue filed an accounting with the Probate Court for Williamsburg County referencing the funds held by her attorney Legrand Carroway and attesting that said funds belonged to Cody ██████ P█████. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 10 and denies the same.

**FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION**  
**(Bank of America – Negligence)**

11. In response to paragraph 11, Bank of America reincorporates its prior responses to paragraphs 1 through 10.

12. In response to the allegations of paragraph 12, Bank of America would admit that it is a banking institution and that all eligible accounts are federally insured. Bank of America would further admit that it holds itself out to the public as an institution that will accept funds for deposit and manage accounts as required by all applicable laws and

regulations, and pursuant to the applicable policies and procedures set forth by Bank of America. Bank of America denies the remaining allegations of paragraph 12.

13. Bank of America denies the allegations of paragraph 13, because it was never presented with the referenced order or documents and had no notice of same until this litigation, and therefore demands strict proof thereof.

14. Bank of America denies the allegations of paragraph 14, and all sub-parts thereof, and would demand strict proof thereof.

15. Bank of America denies the allegations of paragraph 15, and would demand strict proof thereof.

**FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION**  
**(Bank of America – Breach of Fiduciary Duty)**

16. In response to paragraph 16, Bank of America reincorporates its prior responses to Paragraphs 1 through 15.

17. In response to the allegations of paragraph 17, Bank of America would admit that it is a banking institution and that all eligible accounts are federally insured. Bank of America would further admit that it holds itself out to the public as an institution that will accept funds for deposit and manage accounts as required by all applicable laws and regulations, and pursuant to the applicable policies and procedures set forth by Bank of America. Bank of America denies the remaining allegations of paragraph 17.

18. Bank of America denies the allegations of paragraph 18 and would demand strict proof thereof.

19. Bank of America denies the allegations of paragraph 19 and would demand strict proof thereof.



20. Bank of America denies the allegations of paragraph 20 and would demand strict proof thereof.

21. Bank of America denies the allegations of paragraph 21 and would demand strict proof thereof.

22. Bank of America denies the allegations of paragraph 22 and would demand strict proof thereof.

23. Bank of America denies the allegations of paragraph 23 and would demand strict proof thereof.

**FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION**  
**(Karen P. Unrue and Travis Powell – Negligence)**

24. In response to paragraph 24, Bank of America reincorporates its prior responses to paragraphs 1 through 23.

25. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 25.

26. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 26.

27. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 27.

28. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 28.

**FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION**  
**(Constructive Trust)**

29. In response to paragraph 29, Bank of America reincorporates its prior responses to paragraphs 1 through 28.

30. As to the allegations of paragraph 30, Bank of America would admit that a certificate of deposit account number 2016 was opened by the defendant Karen P. Unrue in the amount of \$252,447.51 on April 26, 2001. A withdrawal from said account in the amount of \$253,991.50 was made on or about June 25, 2001. As of May, 2003, all accounts owned by defendant Karen P. Unrue had been closed with Bank of America. Bank of America denies the remaining allegations of paragraph 30 and would demand strict proof thereof.

31. As to the allegations of paragraph 31, Bank of America admits so much of the allegations that state that Karen Unrue wrongfully obtained possession to the money of the Plaintiff through defrauding the Plaintiff. Bank of America is without knowledge or information sufficient to respond to the remaining allegations and would deny the same.

32. As to the allegations of paragraph 32, Bank of America reincorporates its prior response to paragraph 30 of the Amended Complaint.

**FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION**  
(Accounting)

33. In response to paragraph 33, Bank of America reincorporates its prior responses to paragraphs 1 through 32.

34. In response to the allegations of paragraph 34, Bank of America admits that the money delivered to Defendant Karen Unrue was held in Ms. Unrue's control from the date of delivery until said funds were delivered to the Clerk of Court for Williamsburg County, and that said funds are currently on deposit with the Clerk of Court for Williamsburg County. Bank of America denies all other allegations of paragraph 34.

35. Bank of America admits the allegations of paragraph 35.

36. Bank of America admits the allegations of paragraph 36.

**FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION**  
**(Karen P. Unrue and Travis Powell – Wrongful Conversion)**

37. In response to paragraph 37, Bank of America reincorporates its prior responses to paragraphs 1 through 36.

38. Upon information and belief, Bank of America admits the allegations of paragraph 38 as they pertain to Defendant Karen P. Unrue. Bank of America is without knowledge or information sufficient to respond to the remaining allegations and would deny the same.

39. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 39.

40. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 40.

41. Upon information and belief, Bank of America admits the allegations of paragraph 41 as they pertain to Defendant Karen P. Unrue. Bank of America is without knowledge or information sufficient to respond to the remaining allegations and would deny the same.

**FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION**  
**(Karen P. Unrue & Travis Powell – Fraud)**

42. In response to paragraph 42, Bank of America reincorporates its prior responses to paragraphs 1 through 41.

43. Upon information and belief, Bank of America admits the allegations of paragraph 43.

44. Upon information and belief, Bank of America admits the allegations of paragraph 44.

45. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 45.

46. Upon information and belief, Bank of America admits the allegations of paragraph 46.

47. Bank of America is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 47.

48. Upon information and belief, Bank of America admits the allegations of paragraph 48.

49. Upon information and belief, Bank of America admits the allegations of paragraph 49.

50. Upon information and belief, Bank of America admits the allegations of paragraph 50.

51. Upon information and belief, Bank of America admits the allegations of paragraph 51.

**FOR A FIRST DEFENSE TO THE PRAYER FOR RELIEF**

52. Bank of America denies the paragraph starting with the word "WHEREFORE" in all capital letters and demands strict proof thereof.

**FOR A SECOND DEFENSE**  
**(Failure to State a Claim)**

53. The Complaint fails to state facts sufficient to constitute a cause of action against Bank of America.

**FOR A THIRD DEFENSE**

54. An award of punitive damages to the Plaintiff would violate the Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States on grounds that include the following:

- (a) It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendments of the United States Constitution to impose punitive damages that are penal in nature against a civil defendant upon the plaintiff's satisfying a burden of proof that is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- (b) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against a defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (c) The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages, which violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- (d) The procedures pursuant to which punitive damages are awarded result in the imposition of differing penalties for the same or similar acts and, thus, violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

- (e) The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringe the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- (f) The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which violates the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution; and
- (g) An award of punitive damages is not subject to judicial review on the basis of objective standards, which thereby infringes the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

**FOR A FOURTH DEFENSE**

55. An award of punitive damages is not warranted in this matter because the Plaintiff cannot show that any actions by the Defendant Bank of America were willful, reckless, or wanton.

**FOR A FIFTH DEFENSE**

56. Defendants reserve the right to assert any additional affirmative defenses as may be disclosed during additional investigation and discovery.

WHEREFORE, having fully answered the Amended Complaint of the plaintiff, Bank of America prays that the Amended Complaint be dismissed, with prejudice and for such other and further relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 

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William H. Latham  
Betsy Johnson Burn  
Meridian, Suite 1700  
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Post Office Box 11070 (29211)  
Columbia, SC 29201  
(803) 799-2000

Attorneys for Bank of America, N.A.

Columbia, South Carolina  
February 28, 2005.

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Bank of America, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same via United States Mail, postage prepaid, to the following address(es):

Pleadings:

**AMENDED ANSWER OF DEFENDANT BANK OF AMERICA, N.A., TO THE AMENDED SUMMONS AND COMPLAINT**

Counsel Served:

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Attorney for Defendant/Intervenor Elizabeth Powell

Karen R. Unrue  
812 Powell Loop Road  
Andrews, SC 29510  
(Pro Se Defendant)

FILED  
05 MAR - 1 PM 3:08  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
KINGSTREE, S.C.

A CERTIFIED TRUE COPY

*Carolyn F. Williams*  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

*Renee M. Harrison*  
Renee M. Harrison

*February 28*, 2005

ROA 0109

APPENDIX 114



ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF WILLIAMSBURG

COURT OF COMMON PLEAS  
03-CP-45-207

CODY [REDACTED] P [REDACTED], ET AL :

-vs-

BANK OF AMERICA, ET AL :

:  
:  
TRANSCRIPT OF RECORD  
:  
:

OCTOBER 6, 7, 8, AND 9, 2008  
KINGSTREE, SOUTH CAROLINA

B E F O R E:

HONORABLE CLIFTON NEWMAN, JUDGE, AND A JURY

A P P E A R A N C E S:

W. E. JENKINSON, III, ESQUIRE  
ATTORNEY FOR THE PLAINTIFFS

RONNIE A. SABB, ESQUIRE  
ATTORNEY FOR THE PLAINTIFFS

JENNIFER KELLAHAN, ESQUIRE  
ATTORNEY FOR THE PLAINTIFFS

CLARENCE DAVIS, ESQUIRE  
ATTORNEY FOR DEFENDANT BANK OF AMERICA

WILLIAM MCGEE, ESQUIRE  
ATTORNEY FOR DEFENDANT BANK OF AMERICA

HARRY C. WILSON, ESQUIRE  
ATTORNEY FOR DEFENDANT TRAVIS POWELL

DIANNE A. RUTLEDGE  
CIRCUIT COURT REPORTER

ROA 0110

APPENDIX 115

|    |                    |        |       |                  |
|----|--------------------|--------|-------|------------------|
| 1  | <u>I N D E X</u>   |        |       |                  |
| 2  | OPENING STATEMENTS |        |       |                  |
| 3  | MR. SABB           | 53     |       |                  |
| 4  | MR. DAVIS          | 71     |       |                  |
| 5  | MR. WILSON         | 82     |       |                  |
| 6  | WITNESS            | DIRECT | CROSS | REDIRECT RECROSS |
| 7  | TRAVIS POWELL      |        |       |                  |
| 8  | MR. SABB           | 93     |       | 142              |
| 9  | MR. DAVIS          |        | 111   | 145              |
| 10 | MR. WILSON         |        | 127   |                  |
| 11 | KELLY KELLEY       |        |       |                  |
| 12 | MS. KELLAHAN       | 147    |       | 180              |
| 13 | MR. DAVIS          |        | 167   |                  |
| 14 | MR. WILSON         |        | 176   |                  |
| 15 | FLORETTA DENNING   |        |       |                  |
| 16 | MS. KELLAHAN       | 183    |       |                  |
| 17 | LEE ANN YOURKO     |        |       |                  |
| 18 | MS. KELLAHAN       | 212    |       | 277              |
| 19 | MR. LATHAM         |        | 272   |                  |
| 20 | MEREDITH LAWRENCE  |        |       |                  |
| 21 | MR. JENKINSON      | 281    |       |                  |
| 22 | ELIZABETH REEVES   |        |       |                  |
| 23 | MR. JENKINSON      | 343    |       | 449              |
| 24 | MR. DAVIS          |        | 419   | 466              |
| 25 | MR. WILSON         |        | 447   |                  |

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APPENDIX 116

|                                  | DIRECT | CROSS | REDIRECT | RECROSS |
|----------------------------------|--------|-------|----------|---------|
| 1 WITNESS                        |        |       |          |         |
| 2 ROBERT M. HUBBS                |        |       |          |         |
| 3 MR. JENKINSON                  | 467    |       |          |         |
| 4 MR. DAVIS                      |        | 509   |          |         |
| 5 OLIVER G. WOOD, JR.            |        |       |          |         |
| 6 MR. SABB                       | 547    |       | 562      |         |
| 7 MR. DAVIS                      |        | 558   |          |         |
| 8 CLOSING ARGUMENTS              |        |       |          |         |
| 9 MR. JENKINSON                  |        | 620   |          |         |
| 10 MR. DAVIS                     |        | 659   |          |         |
| 11 MR. SABB                      |        | 673   |          |         |
| 12 CHARGE OF THE COURT           |        | 692   |          |         |
| 13 VERDICT OF THE JURY           |        | 716   |          |         |
| 14 CERTIFICATE OF COURT REPORTER |        | 720   |          |         |
| 15                               |        |       |          |         |
| 16                               |        |       |          |         |
| 17                               |        |       |          |         |
| 18                               |        |       |          |         |
| 19                               |        |       |          |         |
| 20                               |        |       |          |         |
| 21                               |        |       |          |         |
| 22                               |        |       |          |         |
| 23                               |        |       |          |         |
| 24                               |        |       |          |         |
| 25                               |        |       |          |         |

CODY P. [REDACTED] VS. BANK OF AMERICA

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APPENDIX 117

1

EXHIBITS

2 NO.

ID EV

3 P-1

PETITION FOR APPOINTMENT OF CONSERVATOR,

4

MARCH 13, 2001 ..... 45 50

5 P-2

ORDER, CO-CONSERVATORS, MARCH 13, 2001 .. 45 50

6 P-3

CERTIFICATE OF APPOINTMENT FILED

7

MARCH 13, 2001 ..... 45 50

8 P-4

FIDUCIARY LETTERS, MARCH 13, 2001 ..... 45 50

9 P-5

CHECK FOR \$99,000 DATED APRIL 13, 2001 .. 45 50

10 P-6

CHECK FOR \$4,819.73 DATED APRIL 12, 2001. 46 50

11 P-7

CHECK FOR \$253.67 DATED APRIL 13, 2001 .. 46 50

12 P-8

CHECK FOR \$253.67 DATED APRIL 20, 2001 .. 46 50

13 P-9

CHECK FOR \$253.67 DATED APRIL 11, 2001 .. 46 50

14 P-10

CHECK FOR \$33,000 DATED APRIL 13, 2001 .. 46 50

15 P-11

CHECK FOR \$114,866.77 DATED

16

APRIL 16, 2001 ..... 46 50

17 P-12

CD DEPOSIT, \$252,447.51, APRIL 26, 2001 . 46 50

18 P-13

CD DEBIT, 253,991.50 JUNE 25, 2001 ..... 46 50

19 P-14

SIGNATURE CARD ..... 46 50

20 P-15

CHECK TO KAREN UNRUE, \$253.67, MAY 2 .... 46 50

21 P-16

MONTHLY BANK STATEMENT, MAY 2 - 22, 2001. 46 50

22 P-17

MONTHLY BANK STATEMENT, JUNE 22 -

23

JULY 23, 2001 ..... 46 50

24 P-18

MONTHLY BANK STATEMENT, JULY 24 -

25

AUGUST 23, 2001 ..... 47 50

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APPENDIX 118

| 1  | NO.    |                                            | ID | EV |
|----|--------|--------------------------------------------|----|----|
| 2  | P-19   | MONTHLY BANK STATEMENT, AUGUST 24 -        |    |    |
| 3  |        | SEPTEMBER 20, 2001 .....                   | 47 | 50 |
| 4  | P-20   | MONTHLY BANK STATEMENT, OCTOBER 24 -       |    |    |
| 5  |        | NOVEMBER 21, 2001 .....                    | 47 | 50 |
| 6  | P-21   | MONTHLY BANK STATEMENT, NOVEMBER 22 -      |    |    |
| 7  |        | DECEMBER 20, 2001 .....                    | 47 | 50 |
| 8  | P-22   | ACCOUNT 8085, 4/23/02 - 5/22/02 .....      | 47 | 50 |
| 9  | P-23   | ACCOUNT 8085, 1/24/03 - 2/20/03 .....      | 47 | 50 |
| 10 | P-24   | ACCOUNT 8085, 2/21/03 - 3/21/03 .....      | 47 | 50 |
| 11 | P-25   | SIGNATURE CARD .....                       | 47 | 50 |
| 12 | P-26   | MONTHLY BANK STATEMENT, JULY 25 -          |    |    |
| 13 |        | AUGUST 24, 2001 .....                      | 47 | 50 |
| 14 | P-27   | MONTHLY BANK STATEMENT, OCTOBER 25 -       |    |    |
| 15 |        | NOVEMBER 23, 2001 .....                    | 47 | 50 |
| 16 | P-28   | MONTHLY BANK STATEMENT, NOVEMBER 24 -      |    |    |
| 17 |        | DECEMBER 21, 2001 .....                    | 47 | 50 |
| 18 | P-29   | CHECK 5715, \$200,000, NOVEMBER 26, 2001 . | 48 | 50 |
| 19 | P-30   | ORDER FREEZING ACCOUNTS OF CODY [REDACTED] |    |    |
| 20 |        | P[REDACTED], 4/24/02 .....                 | 48 | 50 |
| 21 | P-31   | BANK OF AMERICA PLATFORM MANUAL PAGES      |    |    |
| 22 |        | BOA 001 - 005 .....                        | 48 | 50 |
| 23 | P-31-B | BANK OF AMERICA PLATFORM MANUAL COMPUTER   |    |    |
| 24 |        | PRINTOFF .....                             | 48 | 50 |
| 25 | P-31-C | BANK OF AMERICA PLATFORM MANUAL PAGES ...  | 48 | 50 |

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APPENDIX 119

| 1  | NO.    |                                           | ID  | EV  |
|----|--------|-------------------------------------------|-----|-----|
| 2  | P-31-D | BANK OF AMERICA TELLER OPERATIONS MANUAL. | 48  | 50  |
| 3  | P-32   | CHART OF RESEARCH .....                   | 48  | 50  |
| 4  | P-33   | CERTIFICATE OF APPOINTMENT AND FIDUCIARY  |     |     |
| 5  |        | LETTERS FOR KELLY KELLEY, JULY 23, 2002 . | 48  | 50  |
| 6  | P-34   | COLOR PHOTO OF BANK OF AMERICA .....      |     | 345 |
| 7  | D-1    | STATE OF SOUTH CAROLINA, COUNTY OF        |     |     |
| 8  |        | LEXINGTON, IN THE PROBATE COURT FORM,     |     |     |
| 9  |        | 2 PAGES .....                             |     | 50  |
| 10 | C-1    | CD OF YOURKO DEPOSITION .....             | 280 |     |
| 11 | C-2    | CD OF LAWRENCE DEPOSITION .....           | 280 |     |
| 12 | C-3    | MOTION FOR DIRECTED VERDICT: PUNITIVE     |     |     |
| 13 |        | DAMAGES .....                             | 539 |     |
| 14 | C-4    | MOTIONS FOR DIRECTED VERDICT: BREACH OF   |     |     |
| 15 |        | FIDUCIARY DUTY CLAIM .....                | 567 |     |
| 16 | C-5    | MOTION FOR DIRECTED VERDICT: INTERVENING  |     |     |
| 17 |        | ACT .....                                 | 579 |     |
| 18 | C-6    | PROPOSED VERDICT FORM, HANDWRITTEN .....  | 692 |     |
| 19 | C-7    | ONE PAGE ENTITLED, "NEGLIGENCE" .....     | 692 |     |
| 20 |        |                                           |     |     |
| 21 |        |                                           |     |     |
| 22 |        |                                           |     |     |
| 23 |        |                                           |     |     |
| 24 |        |                                           |     |     |
| 25 |        |                                           |     |     |

CODY P. [REDACTED] VS. BANK OF AMERICA

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APPENDIX 120

1 JURY, PLEASE DO NOT COME THROUGH THE COURTROOM BUT COME  
2 THROUGH THE BACK WAY THAT REVEREND BROWN WILL REMIND YOU  
3 ABOUT.

4 PLEASE REMEMBER NOW THAT YOU HAVE BEEN SELECTED TO BE  
5 ON THE JURY, YOU'RE NOT ALLOWED TO DISCUSS THE CASE IN ANY  
6 FORM OR FASHION; AND THAT WILL APPLY THROUGHOUT THE TRIAL.  
7 I'LL GIVE YOU A MORE DETAILED INSTRUCTION ABOUT THAT AFTER  
8 YOU COME BACK.

9 (THE LAST JUROR ENTERS COURTROOM.)

10 THE COURT: MA'AM, YOU CAN STAY RIGHT THERE.

11 WE'RE GOING TO TAKE A BREAK UNTIL 3:30. I MENTIONED  
12 TO THE JURORS TO HAVE ALL JURORS TOGETHER BEFORE YOU COME  
13 INTO THE COURTROOM, SO THAT WE KNOW THAT EVERYONE IS READY  
14 TO COME BEFORE YOU COME INTO COURTROOM. I'LL GIVE YOU A  
15 BREAK UNTIL 3:30.

16 DO NOT DISCUSS THE CASE. WE'LL SEE YOU AT 3:30 IN THE  
17 JURY ROOM. IF YOU WILL COME THERE AT 3:30.

18 (THE JURY EXITS THE COURTROOM AT 1:38 P.M.)

19 THE COURT: WE'LL BE IN RECESS UNTIL 2:35.

20 (COURT IS IN RECESS FOR LUNCH.)

21 THE COURT: ALL RIGHT. MR. MCGEE.

22 MR. MCGEE: YOUR HONOR. MAY IT PLEASE THE COURT.  
23 YOUR HONOR, I JUST HAVE THREE VERY SHORT THINGS, THEN I  
24 WILL GET OUT OF YOUR WAY.

25 FIRST OF ALL, YOUR HONOR, COUNSEL HAS AGREED TO A

CODY P [REDACTED] VS. BANK OF AMERICA

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APPENDIX 121

1 STIPULATION OF ACTUAL DAMAGES IN THIS CASE. AND WE ARE  
2 GOING TO GET THIS PRINTED OUT AND SIGNED, BUT WE WANTED TO  
3 GO AHEAD AND READ IT INTO THE RECORD IF THAT WAS OKAY.

4 THE COURT: OKAY. WHAT IS IT?

5 MR. MCGEE: PLAINTIFF CODY P [REDACTED] RECEIVED CHECKS IN  
6 2001 WHICH TOTAL 252,447.51. THESE CHECKS WERE DEPOSITED  
7 BY KAREN UNRUE AT THE PAWLEYS ISLAND BRANCH OF BANK OF  
8 AMERICA. THAT AMOUNT PLUS INTEREST ADDED TO DATE IS  
9 323,424.82.

10 HOWEVER, CODY P [REDACTED] HAS ALREADY RECOVERED 116,994.77  
11 OF THESE FUNDS. THEREFORE, ALL PARTIES AGREE THAT CODY  
12 P [REDACTED] ACTUAL DAMAGES IN THIS CASE ARE 205,735.37 AS OF  
13 THE DATE OF TRIAL.

14 PLAINTIFF, BANK OF AMERICA, AND TRAVIS POWELL  
15 STIPULATE THAT PLAINTIFF HAS SUFFERED ACTUAL DAMAGES IN THE  
16 AMOUNT OF 205,735.37. THE QUESTION OF WHO IS RESPONSIBLE  
17 FOR THESE DAMAGES IS AN ISSUE TO BE DETERMINED AT TRIAL.

18 BANK OF AMERICA STIPULATES.

19 THE COURT: MR. WILSON?

20 MR. WILSON: YES.

21 (PAUSE.)

22 MS. KELLAHAN: MR. MCGEE, ON THAT LAST LINE WHERE YOU  
23 SAID FOR THESE DAMAGES, I DIDN'T -- CAN WE JUST INSERT THE  
24 WORD ACTUAL THERE?

25 MR. MCGEE: YES, YOUR HONOR. WE HAVE NO OBJECTION TO

CODY P [REDACTED] VS. BANK OF AMERICA

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APPENDIX 122



1 THAT. SO IF YOU WOULD READ THAT LAST SENTENCE.

2 MS. KELLAHAN: THE LAST SENTENCE WOULD BE STATED, THE  
3 QUESTION OF WHO IS RESPONSIBLE FOR THESE ACTUAL DAMAGES IS  
4 AN ISSUE TO BE DETERMINED AT TRIAL, AND WE SO STIPULATE.

5 MR. MCGEE: BANK OF AMERICA STIPULATES TO THAT CHANGE  
6 AS WELL.

7 THE COURT: VERY WELL. IT'S MADE A PART OF THE RECORD.

8 MR. MCGEE: AND WE'LL SIGN THAT AND SUBMIT THAT TO THE  
9 COURT LATER, YOUR HONOR.

10 JUDGE, THERE WERE FOUR REMAINING OBJECTIONS TO BE  
11 RULED ON IN THE DENNING TRANSCRIPT. BANK OF AMERICA WILL  
12 WITHDRAW THREE OF THEM, SO WE ONLY HAVE ONE POINT TO  
13 ADDRESS.

14 AND THE QUESTION THAT WE'RE OBJECTING TO STATES: I  
15 GUESS GOING BACK TO WHAT I WAS JUST ASKING YOU A MOMENT  
16 AGO, IF THE CHECKS WERE MADE PAYABLE TO A CONSERVATOR, THE  
17 BANK HAD A DUTY TO INVESTIGATE THE AUTHORITY OF THE PERSON  
18 THAT NEGOTIATED THE CHECKS, CORRECT?

19 OBJECTION.

20 ANSWER. YES.

21 YOUR HONOR, WE OBJECT THAT FIRST OF ALL, MS. DENNING  
22 IS A RECORDS CUSTODIAN THAT WAS OFFERED AT THAT TIME. IT  
23 WOULD BE BEYOND THE SCOPE. BUT THIS IS ONE WHERE THERE WAS  
24 NO SCOPE DEFINED.

25 WE WOULD ALSO OBJECT AS TO CALLING FOR A LEGAL

CODY P [REDACTED] VS. BANK OF AMERICA

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APPENDIX 123

1 WAS THE FIRST PERSON THAT WAS DEPOSED BY THEM ON BEHALF OF  
2 THE BANK. WE DID NOT KNOW THAT SHE WAS THE RECORDS  
3 CUSTODIAN UNTIL AT THAT TIME. SHE HAD SOME PARALEGAL  
4 BACKGROUND. SHE HAS A BACKGROUND ON THE TELLER LINE, IN  
5 THE OPERATIONS, IN THE BACK ROOM OF THE BANK. SHE WAS JUST  
6 MOST RECENTLY CUSTODIAN OF THE RECORDS. SHE REALLY HAD  
7 WORKED WITH THE BANK FOR A PERIOD OF TIME AND KNEW A LOT  
8 ABOUT THE WHOLE SCOPE, ALL THE WAY TO WHAT SHE WAS DOING AS  
9 CUSTODIAN OF THE RECORDS.

10 THE COURT: ALL RIGHT.

11 MR. MCGEE: AND, YOUR HONOR, AS FAR AS THE OBJECTIONS  
12 CONCERN -- THERE WAS AN OBJECTION THAT IT WAS BEYOND THE  
13 SCOPE HERE -- ONE OF THE VERY FIRST QUESTIONS IS, WHAT DO  
14 YOU DO FOR THE BANK OF AMERICA?

15 I'M A RECORDS CUSTODIAN.

16 WE TIMELY OBJECTED AT THAT TIME. THIS WAS GOING FAR  
17 AFIELD OF HER SCOPE. THE OBJECTION WAS MADE. AND WE WOULD  
18 RESPECTFULLY ASK THAT IT BE SUSTAINED.

19 THE COURT: ALL RIGHT. I SUSTAIN THIS OBJECTION. I  
20 THINK IT GOES PROBABLY TOO CLOSE TO THE ULTIMATE ISSUE IN  
21 THE CASE.

22 MS. KELLAHAN: THANK YOU.

23 MR. MCGEE: THANK YOU, YOUR HONOR. AND ONE LAST  
24 ISSUE, JUDGE. AND THAT DEALS WITH YOUR HONOR ISSUED  
25 SEVERAL RULINGS AS TO OBJECTIONS TO MS. REEVES' DEPOSITION

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0119

APPENDIX 124

1 TRANSCRIPT. WE WANTED IT READ IN AND WE DID NOT HAVE A  
2 COURT REPORTER THAT DAY. AND I JUST WANTED TO -- IF I  
3 COULD -- NOTE OUR OBJECTION FOR THE RECORD TODAY, JUST TO  
4 HAVE IT ON THE RECORD.

5 THE COURT: ALL RIGHT.

6 MR. MCGEE: AND THAT IS PAGE 88 LINE 23. THE  
7 QUESTION, CAN YOU TELL ME WHETHER OR NOT YOU CHARACTERIZE  
8 THE TRANSACTION THAT TOOK PLACE IN THE BANK OF AMERICA WITH  
9 YOUR PERSONAL BANKER IN 2001 WITH CODY POWELL'S FUNDS THAT  
10 DAY TO BE TERMED A FRAUDULENT TRANSACTION? AND THEN IT  
11 GOES ON FROM -- ESSENTIALLY IT'S PAGE 88 LINE 23 THROUGH  
12 PAGE 89 LINE 10. WE OBJECTED AND YOUR HONOR OVERRULED THE  
13 OBJECTION. I JUST WANTED TO NOTE OUR OBJECTION TO THAT,  
14 THAT WE BELIEVE THAT'S CALLING FOR A LEGAL CONCLUSION,  
15 FOUNDATION, AND THIS WITNESS WAS NOT QUALIFIED TO ANSWER  
16 THAT QUESTION. IT'S A LEGAL ISSUE.

17 BUT WE UNDERSTAND YOUR HONOR'S RULING. I JUST WANTED  
18 TO PUT THAT ON THE RECORD.

19 THE COURT: MS. KELLAHAN.

20 MS. KELLAHAN: WE WOULD JUST ARGUE THAT YOUR HONOR WAS  
21 ABSOLUTELY CORRECT.

22 THE COURT: ALL RIGHT. DO YOU AGREE THAT THAT WAS THE  
23 RULING ON THAT PARTICULAR ISSUE?

24 MS. KELLAHAN: YES. YOU OVERRULED THE OBJECTION.

25 THE COURT: ALL RIGHT. IT'S A MATTER OF THE RECORD.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0120

APPENDIX 125

1 ANYTHING ELSE?

2 MR. DAVIS: YES, YOUR HONOR. WE HAVE A NUMBER OF IN  
3 LIMINE MOTIONS WHICH WE FILED WHICH THE COURT INSTRUCTED ON  
4 THURSDAY.

5 THE FIRST MOTION WE WOULD LIKE TO TAKE UP HAS TO DO  
6 WITH THE UTILIZATION OF THE TERM RECKLESSNESS, WHICH WE  
7 ANTICIPATE BEING TESTIFIED TO BY THE PLAINTIFFS' EXPERT IN  
8 HIS REPORT AND IN DEPOSITION HE USES THAT TERM. WE BELIEVE  
9 THAT GOES INTO THE PROVENCE OF THE JURY AND AS IT RELATES  
10 TO THE LAW IN THIS CASE. FOR HIM TO COME TO THAT LEGAL  
11 CONCLUSION, THAT IS ARGUMENT FOR COUNSEL TO MAKE.

12 THE COURT: WHICH WITNESS AGAIN?

13 MR. DAVIS: THIS IS THE EXPERT. THIS IS A MR. HUBBS.  
14 HE IS THE BANKING EXPERT OF THE PLAINTIFF. HE WAS  
15 ATTEMPTING TO DO -- WHAT THEY WANT TO DO -- THEY WANT HIM  
16 TO COME TO THAT ULTIMATE LEGAL CONCLUSION FOR ONE REASON,  
17 AND THAT'S TO ASSIST THEM IN SUPPORTING THE COURT ALLOWING  
18 PUNITIVE DAMAGES TO GO TO THE JURY. THAT REACHES -- IT IS  
19 OUR -- WE SUBMIT TO THE COURT IS THAT GOES BEYOND  
20 ALLOWABLE. HE SHOULD NOT BE ABLE TO OPINE THAT IT WAS  
21 RECKLESS. HE SHOULD BE ABLE TO OPINE AS TO ANY DUTIES,  
22 WHAT HE FOUND, AND COME TO AN OPINION. FOR HIM TO MAKE A  
23 LEGAL CONCLUSION LIKE THAT ---

24 THE COURT: WHICH LEGAL CONCLUSION DO THEY WANT HIM TO  
25 MAKE?

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0121

APPENDIX 126

1           MR. DAVIS: THEY WANT HIM TO MAKE THE LEGAL CONCLUSION  
2 THAT WE WERE RECKLESS IN WHAT WE DID OR DID NOT DO; THAT WE  
3 WERE WANTON, THAT WE WERE WILFUL, WHICH ALL MEANS THE SAME  
4 THING UNDER THE LAW IN SOUTH CAROLINA, THAT WE DID SOME  
5 INTENTIONAL -- THAT WE NEGLECTED OUR DUTIES TO THE POINT  
6 WHERE WE BASICALLY ENGAGED IN AN INTENTIONAL ACT. AND HE  
7 SHOULD NOT BE ABLE TO COME TO THAT CONCLUSION. THAT'S  
8 ARGUMENT FOR COUNSEL, AND THAT WOULD CONSTITUTE AN IMPROPER  
9 LEGAL CONCLUSION.

10          THE COURT: ALL RIGHT.

11          MS. KELLAHAN: YOUR HONOR, THIS IS THE PLAINTIFFS'  
12 EXPERT WITNESS REGARDING BANKING DUTIES. IT WAS HIS TERM  
13 RECKLESS THAT HE USED IN HIS INITIAL REPORT WITH THE BANK.  
14 HE TESTIFIED IN HIS DEPOSITION THAT HE USED THAT TERM AS IT  
15 IS JUST FOUND IN ORDINARY VOCABULARY, WEBSTER'S DICTIONARY.  
16 HE DID NOT CHOOSE THAT SPECIFIC TERM FOR ANY PARTICULAR  
17 REASON OTHER THAN HE FELT THAT THE CONDUCT OF THE BANK IN  
18 THIS SITUATION WAS RECKLESS.

19          THE CASES CITED BY THE DEFENDANT IN THEIR MOTION DEAL  
20 WITH DIFFERENT TYPES OF ULTIMATE ISSUES. LIKE ONE OF THE  
21 CASES THAT THEY CITED, DAWKINS (PHONETIC), DEALT WITH AN  
22 AFFIDAVIT THAT WAS GIVEN BY PROFESSOR FREEMAN IN SUPPORT OF  
23 A SUMMARY JUDGMENT MOTION ON THE LAW.

24          WELL, THIS IS CLEARLY NOT WHAT WE HAVE HERE. WE HAVE  
25 A VOCABULARY WORD, A WORD RECKLESS THAT'S PART OF EVERYDAY

CODY ██████ VS. BANK OF AMERICA

ROA 0122

APPENDIX 127

1 COURSE, EVERYDAY CONVERSATION.

2 THERE WAS ANOTHER CASE CITED BY THE DEFENDANT, STATE  
3 VERSUS PARKER, WHICH WAS A CAPITAL CASE AND IT DEALT WITH  
4 AN EXPERT USING THE WORD HOMICIDE TO DESCRIBE WHAT HE HAD  
5 NOTED ON A DEATH CERTIFICATE, THAT IT WASN'T NATURAL CAUSES  
6 OR IT WASN'T AN ACCIDENT.

7 WE WOULD ARGUE, YOUR HONOR, THAT OUR EXPERT SHOULD BE  
8 ALLOWED TO USE THE TERM RECKLESS. HE HAS NOT SAID WANTON  
9 OR WILFUL. HE JUST SAID HE FELT THE CONDUCT OF THE BANK ON  
10 THIS PARTICULAR INSTANCE WAS RECKLESS. AND WE BELIEVE THAT  
11 IT IS COMPLETELY ADMISSIBLE.

12 MR. DAVIS: YOUR HONOR, IF I MAY MAKE THREE ADDITIONAL  
13 POINTS. HIS INITIAL DRAFT OF THE REPORT HE SAID OUR ACTS  
14 WERE NEGLIGENT. HE CHANGED HIS DRAFT LATER AFTER TALKING  
15 WITH COUNSEL, THEN HE CHANGED IT TO RECKLESS IN TRYING TO  
16 FIND A JUSTIFICATION FOR PUNITIVES.

17 IT'S A LEGAL TERM OF ART, AND HE SHOULD NOT BE ALLOWED  
18 TO FURTHER THAT. THAT -- THAT TESTIMONY DOES NOT ASSIST  
19 THE FACT-FINDERS AS AN EXPERT IS SUPPOSED TO DO WHEN IT  
20 DEALS WITH COMPLICATED SITUATIONS SUCH AS POLICIES AND  
21 RULES OF THE BANK. IT DOES NOTHING TO HELP THE TRIER OF  
22 FACT -- THE TRIER OF FACT AS FAR AS MAKING THAT  
23 DETERMINATION IN AND OF ITSELF; THAT IS ARGUMENT OF COUNSEL  
24 TO MAKE AND/OR FOR THE COURT TO RULE UPON ONCE THE EVIDENCE  
25 IS PRESENTED.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0123

APPENDIX 128

1 MS. KELLAHAN: YOUR HONOR, I BELIEVE MR. HUBBS STATED  
2 IN HIS DEPOSITION THAT WAS HIS INSERT OF THAT WORD.  
3 COUNSEL DID NOT INSTRUCT HIM TO INSERT ANY SORT OF WORD  
4 RECKLESS. AND I BELIEVE THAT COULD MOST PROPERLY BE  
5 COVERED ON CROSS EXAMINATION.

6 THE COURT: ALL RIGHT. IS HE TESTIFYING TODAY?

7 MS. KELLAHAN: NO, SIR.

8 THE COURT: I'LL RULE ON THAT TOMORROW THEN, TOMORROW  
9 MORNING. GIVES US AN OPPORTUNITY TO THINK ABOUT IT.

10 MR. DAVIS: THE NEXT MOTION IN LIMINE THAT WE FILED  
11 WITH THE COURT WAS TO EXCLUDE ANY EVIDENCE OF -- ANY  
12 EVIDENCE OF THE CHILD'S SPECIAL NEEDS. THERE ARE DOCUMENTS  
13 THAT WILL BE SUBMITTED TO THE JURY PARTICULARLY AS IT  
14 RELATES TO THE PROBATE COURT THAT REFERENCES -- IT'S THE  
15 BACK PAGE IN PARTICULAR THAT REFERENCES THE CHILD HAVING  
16 SPECIAL NEEDS EVEN TO INCLUDE POSSIBLE BRAIN SURGERY.

17 WE WOULD LIKE ANY DOCUMENTS THAT RELATE TO THAT  
18 EXCLUDED FROM THIS CASE, AS WELL AS ANY TESTIMONY TO THAT  
19 EFFECT.

20 MS. KELLAHAN: YOUR HONOR, CODY P [REDACTED] IS HERE TODAY.  
21 WHEN HE WAS INITIALLY -- WHEN THE ORIGINAL CONSERVATORS  
22 PETITIONED THE PROBATE COURT WITH ANOTHER ATTORNEY, IT IS A  
23 PART OF THE PETITION IN THE PROBATE COURT FILE. IT IS A  
24 PUBLIC DOCUMENT THAT THEY ATTACHED, THAT THEY MAY NEED AT  
25 SOME POINT IN TIME TO ESTABLISH A SPECIAL NEEDS TRUST,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0124

APPENDIX 129

1 BECAUSE IT'S ANTICIPATED THE CHILD MAY HAVE SOME  
2 EXTRAORDINARY MEDICAL EXPENSES. THAT DOCUMENT -- IT IS A  
3 COURT DOCUMENT. IT IS PART OF HIS PROBATE COURT FILE. IT  
4 WAS PART OF THE PETITION THAT BRINGS US IN TO WHAT WE'RE  
5 DOING HERE TODAY.

6 YOU KNOW, I DON'T KNOW IF COUNSEL THINKS THAT WE'RE  
7 GOING TO BE JUST PAINTING HIM OUT TO BE THIS JUST TERRIBLY  
8 PHYSICALLY AND MENTALLY CHALLENGED CHILD, WHICH HE'S NOT.  
9 HE'S BACK HERE ON THE BENCH. BUT ANYWAY, WE WOULD LIKE TO  
10 BE ABLE TO ADMIT PLAINTIFFS' EXHIBIT 1, WHICH IS THE ACTUAL  
11 PETITION IN ITS FULL, ORIGINAL FORM, WHICH DOES HAVE  
12 LANGUAGE ON THE LAST PAGE ABOUT THE POSSIBILITY OF NEEDING  
13 A SPECIAL NEEDS TRUST FOR THIS CHILD DUE TO MEDICAL  
14 CONDITIONS.

15 THE COURT: ALL RIGHT. MR. DAVIS.

16 MR. DAVIS: YOUR HONOR, THIS CASE DEALS WITH ACTUAL  
17 DAMAGES. IT'S NOT -- THE ACTUAL DAMAGES AT ISSUE IN THIS  
18 CASE HAVE NOTHING TO DO WITH SPECIAL NEEDS OF THIS CHILD.  
19 THE ACTUAL DAMAGES AT ISSUE IN THIS CASE DEAL WITH  
20 INSURANCE PROCEEDS FROM LIFE INSURANCE; AT LEAST THAT'S MY  
21 UNDERSTANDING, UNLESS YOU TELL ME DIFFERENTLY. THE SPECIAL  
22 NEEDS OF THIS CHILD HAS NO -- HAS NO PLACE IN THIS  
23 COURTROOM BASED ON THE ISSUES THAT WILL BE HEARD BY THIS  
24 COURT AND THIS JURY AS TO WHETHER OR NOT THE ACTS OR THE  
25 INACTIONS OR OMISSIONS BY THE BANK OF AMERICA CONSTITUTE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0125

APPENDIX 130



1 NEGLIGENCE AND/OR MAY CONSTITUTE RECKLESSNESS AS THEY'RE  
2 TRYING TO GET THEIR CONCLUSION OF LAW IN THROUGH THEIR  
3 EXPERT.

4 THE SPECIAL NEEDS OF THE CHILD, EVEN THOUGH THEY ARE  
5 IN THE COURT DOCUMENTS, JUST HAVE NO PLACE IN THIS  
6 PARTICULAR PLACE. THERE'S NO PROBATIVE VALUE. THEY'D BE  
7 HIGHLY PREJUDICIAL. AND, YOUR HONOR, THERE IS -- I WILL  
8 TELL YOU, THERE IS OTHER MONEYS -- OTHER FUNDS THAT ARE OUT  
9 THERE THAT ARE TAKING CARE OF THE SPECIAL NEEDS OF THIS  
10 CHILD THROUGH OTHER LAWSUITS AND OTHER INSURANCE POLICIES.  
11 AND IT HAS NOTHING TO DO WITH THE ACTUAL DAMAGES AT ISSUE  
12 IN THIS CASE, WHICH WE MAY OR MAY NOT BE LIABLE FOR.

13 THE COURT: MS. KELLAHAN.

14 MS. KELLAHAN: YOUR HONOR, I CAN HAND UP WHAT WE ARE  
15 PROPOSING TO ADMIT AS PLAINTIFFS' EXHIBIT 1, WHICH IS THE  
16 ORIGINAL PETITION WHICH BRINGS US INTO COURT.

17 THE COURT: ALL RIGHT.

18 (PAUSE.)

19 MR. MCGEE: I THINK IT'S THE LAST PAGE OF EXHIBIT 2.

20 MR. DAVIS: IT'S THE LAST PAGE.

21 MS. KELLAHAN: IT'S THE LAST PAGE, YOUR HONOR. AS YOU  
22 CAN SEE, IT DEALS A LOT ABOUT WHY THE CHILD NEEDED A  
23 CONSERVATOR TO BE APPOINTED ANYWAY, BECAUSE FUNDS ARE GOING  
24 TO BE PAID TO HIM. THE FUNDS WILL HAVE TO BE MANAGED. THE  
25 INSURANCE COMPANIES MANDATED THAT. THAT'S WHAT THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0126

APPENDIX 131

1 CONSERVATOR DOES NOW, IS PAY HIS BILLS. AND HIS BILLS ARE  
2 MAINLY MEDICAL EXPENSES.

3 THE COURT: WHAT'S THE AGE OF THE CHILD NOW?

4 MS. KELLAHAN: HE'S 13 YEARS OLD. YOUR HONOR, THE  
5 DOCUMENT ITSELF SAYS SEE ATTACHED ON THE BOTTOM OF THE  
6 FIRST PAGE, PAGE 7, WHICH IS THE ATTACHMENT, AND IT  
7 EXPLAINED WHY THE CHILD NEEDED A CONSERVATOR TO BE  
8 APPOINTED. AND I JUST DON'T THINK IT'S APPROPRIATE TO  
9 REDACT ANY PORTION OF THAT. OF COURSE, YOU KNOW, THIS WAS  
10 IN 2001. THEY DIDN'T KNOW WHAT ALL HE WAS GOING TO NEED  
11 BECAUSE HE WAS AGE 5 AT THAT TIME AND IT'S BEEN 8 YEARS.

12 SO WE WOULD ARGUE THAT THIS EXHIBIT SHOULD BE ALLOWED  
13 TO BE ADMITTED INTO EVIDENCE WITH ALL OF THE PAGES  
14 ATTACHED.

15 THE COURT: ALL RIGHT. I OVERRULE THAT OBJECTION.

16 MR. DAVIS: YOUR HONOR, THE NEXT MOTION IN LIMINE  
17 DEALS WITH REFERENCES TO THE DEFENDANT'S -- BANK OF AMERICA  
18 SIZE AND/OR STATUS AS A CORPORATION IN PARTICULAR. AND  
19 SPECIFICALLY I'M FOCUSING ON IT IS BASED ON -- BASED ON OUR  
20 HEARING RELATING TO DEPOSITION DESIGNATIONS A FEW DAYS AGO,  
21 SPECIFICALLY, THEY ARE WANTING TO READ INTO THE RECORD AT  
22 THE ONSET OF THIS CASE -- IF NOT TODAY, THEN TOMORROW --  
23 THAT WE ARE THE THIRD LARGEST BANK IN THE WORLD, THAT WE'VE  
24 GOT BILLIONS OF DOLLARS OF ASSETS.

25 AND ALL OF THAT IS TRUE. BUT IT HAS NO PLACE IN THIS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0127

APPENDIX 132

1 PARTICULAR -- AT THIS PARTICULAR TIME UNLESS THERE'S SOME  
2 DETERMINATION LATER ON AS TO WHETHER OR NOT PUNITIVES  
3 SHOULD GO TO -- THAT THIS IS MORE THAN A NEGLIGENCE CASE  
4 AND PUNITIVES SHOULD GO TO THE JURY.

5 AND SO WHAT WE WOULD REQUEST THE COURT IS AT THE ONSET  
6 OF THIS CASE, THAT THERE BE NO REFERENCE TO BANK OF  
7 AMERICA'S ASSETS AND/OR ITS SIZE.

8 THE COURT: OKAY. PRIOR TO THE DETERMINATION OF THE  
9 ISSUES OF PUNITIVE DAMAGES GOING FORWARD?

10 MR. DAVIS: YES, SIR.

11 THE COURT: ALL RIGHT. WHAT SAYS THE PLAINTIFF?

12 MS. KELLAHAN: TO CLARIFY WHAT COUNSEL IS ARGUING, ARE  
13 YOU SAYING THERE'S SPECIFIC SECTIONS OF DEPOSITION EXCERPTS  
14 WHERE WE ARE PUBLISHING THAT?

15 MR. DAVIS: THAT'S CORRECT.

16 MS. KELLAHAN: DO YOU KNOW WHICH ONE OF THEM?

17 MR. DAVIS: I BELIEVE IT'S ON THE FIRST PAGE OF MS.  
18 DENNING ON YOUR DESIGNATION.

19 (PAUSE.)

20 MS. KELLAHAN: JUST TO CLARIFY THIS, WHAT I WANT TO  
21 KNOW IS MORE SPECIFICALLY, ARE WE NOT ALLOWED TO REFER TO  
22 THE BANK AS A CORPORATION, THE BANK OF AMERICA? IT IS A  
23 LARGE BANK.

24 THE COURT: YES.

25 MS. KELLAHAN: I DON'T THINK THERE'S ANY QUESTION

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ROA 0128

APPENDIX 133

1 ABOUT THAT.

2 THE COURT: HE DOESN'T WANT YOU TO SAY IT'S THE  
3 LARGEST IN THE WORLD OR THE SECOND OR -- SECOND LARGEST?  
4 THIRD LARGEST?

5 MR. DAVIS: THIRD LARGEST IN THE WORLD.

6 THE COURT: THIRD LARGEST IN THE WORLD.

7 MR. DAVIS: BILLIONS OF DOLLARS OF ASSETS.

8 THE COURT: BILLIONS OF DOLLARS OF ASSETS.

9 MS. KELLAHAN: WELL, THEY HAD ANOTHER MOTION IN LIMINE  
10 ON THE FINANCIAL STATUS. I'M SURE WE'LL COVER THAT THERE.  
11 BUT AS FAR AS THEIR STATUS AS THE THIRD LARGEST BANK OF THE  
12 WORLD, IF IT'S ONE OF THEIR WITNESSES TESTIFIED TO, YOUR  
13 HONOR, WE WOULD LIKE TO PUT IN WHAT WE'VE PREVIOUSLY  
14 DESIGNATED. AND I APOLOGIZE BECAUSE I DON'T HAVE THAT  
15 PRECISE -- THE LOCATION WHERE THAT IS, BUT I DO THINK IT  
16 HELPS THE JURY EDUCATE WHO IS THE DEFENDANT IN THIS CASE  
17 AND IT HELPS THEM KNOW WHO IS BANK OF AMERICA AND WHAT IS  
18 BANK OF AMERICA AND WHAT DO THEY DO. AND I THINK IT'S  
19 EXTREMELY RELEVANT.

20 MR. DAVIS: THAT IS PUT IN TO DO ONE THING, AND THAT  
21 IS TO INFLAME THE PASSIONS OF THE JURY AS IT RELATES TO  
22 WHAT DID OR DID NOT HAPPEN AT THE BANK WHEN IT DEALT WITH  
23 EITHER OPENING OR NOT OPENING PROPERLY AN ACCOUNT. IT IS  
24 SIMPLY TO INFLAME THE PASSIONS OF THAT JURY AT THE ONSET OF  
25 THIS CASE. IT WOULD BE HIGHLY PREJUDICIAL TO OUR CAUSE IN

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ROA 0129

APPENDIX 134

1 DEFENDING THAT CASE, PARTICULARLY WHEN WE HAVE EGREGIOUS  
2 CONDUCT, THERE MAY BE AN INTERVENING CAUSE TO OUR LIABILITY  
3 AND/OR RESPONSIBILITY.

4 MS. KELLAHAN: AND, YOUR HONOR, IF I MAY RESPOND TO  
5 THAT. IT IS EXTREMELY RELEVANT THAT THE THIRD LARGEST BANK  
6 IN THE WORLD HAS THIS KIND OF FAILURE THAT WE'RE TALKING  
7 ABOUT HERE TODAY, AND WHAT THE WHOLE CASE IS ABOUT. THEIR  
8 VERY LOGO, WHICH I'M SURE WE'RE GOING TO GET TO IN A MINUTE  
9 IS THE HIGHER STANDARD, WHICH WE ARGUED BEFORE YOUR HONOR  
10 LAST TUESDAY. AND IF THEY ARE GOING TO HOLD THEMSELVES OUT  
11 AS THIS, YOU KNOW, THIS IS THE BANK, THIS IS THE BANK OF  
12 AMERICA. IT IS JUST A VERY RELEVANT TO THIS JURY THAT THIS  
13 CHILD'S MONEY AND THIS PERSON HERE IN ANDREWS, SOUTH  
14 CAROLINA TRUSTED THE BANK OF AMERICA. AND I DO THINK IT IS  
15 VERY RELEVANT.

16 THE COURT: I GRANT THE MOTION TO THE EXTENT OF  
17 ORDERING IN LIMINE THAT NO MENTION BE MADE OF THE ASSETS OF  
18 THE BANK PRIOR TO THE DETERMINATION TO BE MADE ON THE ISSUE  
19 OF PUNITIVE DAMAGES.

20 SO I'M DENYING IT AS FAR AS A LARGE BANK, BIG BANK,  
21 BUT I'M GRANTING THE MOTION AS IT RELATES TO THE DISCUSSION  
22 OF THE EXTENT OF THE BANK'S ASSETS.

23 MS. KELLAHAN: WELL, YOUR HONOR, THERE IS ANOTHER  
24 MOTION THAT THEY'VE FILED ABOUT THEIR FINANCIAL STATUS.  
25 AND I DON'T KNOW IF THAT'S WHAT YOU -- WE'D ARGUE THAT WE

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ROA 0130

APPENDIX 135

1 HAVE EVERY RIGHT TO PUT IN EVIDENCE THAT GOES TO THE  
2 DEFENDANT'S ABILITY TO PAY. AND I THINK SOUTH CAROLINA LAW  
3 IS VERY CLEAR ON THAT, THAT WE CAN GET IN EVIDENCE OF THIS  
4 DEFENDANT'S NET WORTH AND THEIR INCOME.

5 THE COURT: TO PAY ACTUAL DAMAGES?

6 MS. KELLAHAN: NO, SIR.

7 THE COURT: OR PUNITIVE DAMAGES?

8 MS. KELLAHAN: TO PAY PUNITIVE DAMAGES.

9 THE COURT: I THINK AT THIS POINT, THE MOTION AS I  
10 UNDERSTOOD HIS MOTION RELATES TO PRIOR TO THERE BEING ANY  
11 DETERMINATION OF THE ISSUE OF PUNITIVE DAMAGES AS A VIABLE  
12 ISSUE IN THE CASE OR IT SHOULD GO TO THE JURY.

13 MS. KELLAHAN: THAT WOULD BE IN OUR CASE IN CHIEF,  
14 YOUR HONOR, THAT WE HAVE EVERY RIGHT -- I WOULD ARGUE THAT  
15 WE HAVE EVERY RIGHT TO GET ALL OF THE EVIDENCE IN OUR CASE  
16 IN CHIEF TO SHOW THAT WE'VE MET ALL OF THESE GAMBLE FACTORS  
17 TO SUSTAIN A VERDICT FOR PUNITIVE DAMAGES IF IN FACT YOUR  
18 HONOR ALLOWS THAT.

19 THE COURT: MR. DAVIS, WHAT KIND OF MECHANISM -- WHEN  
20 -- ASSUMING THAT I AGREE THAT IT'S A PUNITIVE CASE BASED ON  
21 THE EVIDENCE, THEN WHEN DO THEY GET IN THIS EVIDENCE? WHEN  
22 DO THEY GET AN OPPORTUNITY TO GET IN THIS EVIDENCE?

23 MR. DAVIS: IT WOULD BE AT THAT PARTICULAR TIME, YOUR  
24 HONOR. THAT WOULD BE BEFORE -- THAT WOULD BE BEFORE ---

25 THE COURT: YOUR MOTION FOR DIRECTED VERDICT IS AT THE

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ROA 0131

APPENDIX 136

1 END OF THE PLAINTIFFS' CASE AND THEY HAVEN'T PUT IT IN BY  
2 THE TIME THEY END THEIR CASE, THEN WHEN WOULD THEY HAVE A  
3 CHANCE TO PUT IT IN?

4 MR. DAVIS: ONCE THE COURT MAKES A DETERMINATION THAT  
5 THE MATTER SHOULD GO BEFORE THE JURY AS IT RELATES TO  
6 PUNITIVE DAMAGES.

7 THE COURT: THEN THEY CAN REOPEN THEIR CASE AND  
8 PRESENT ADDITIONAL EVIDENCE ON THAT ISSUE?

9 MR. DAVIS: IF I COULD HAVE A MOMENT.

10 (PAUSE.)

11 MS. KELLAHAN: YOUR HONOR. GO AHEAD.

12 MR. DAVIS: WE'RE NOT LOOKING -- THERE ARE A NUMBER --  
13 WHAT WE'RE TRYING TO DO IS MAKE A RECOMMENDATION ON A  
14 MECHANISM IN WHICH TO DO IT. AFTER WE PUT UP OUR CASE IF  
15 THE COURT DETERMINES THAT THE MATTER SHOULD GO -- THAT THE  
16 CONDUCT MAY CONSTITUTE WANTON, RECKLESS, OR WHATEVER -- OR  
17 SHOULD BE CONSIDERED TO CONSTITUTE THAT BY THE JURY, THEN  
18 THERE ARE A NUMBER OF WAYS TO DO IT.

19 WE COULD STIPULATE AS TO ASSETS AND/OR AT THAT  
20 PARTICULAR TIME THEY CAN PUT UP -- THEY CAN PUT UP EVIDENCE  
21 AS TO THE BANK'S WORTH AND/OR ABILITY TO PAY. THERE IS  
22 EVEN -- YOU CAN EVEN STIPULATE WHERE IT GOES BACK TO THE  
23 JURY AS FAR AS ON A SHEET OF PAPER. I MEAN, THERE ARE A  
24 NUMBER OF DIFFERENT MECHANISMS IN WHICH TO DO IT. BUT TO  
25 ALLOW IT TO HAPPEN IN THEIR CASE IN CHIEF WHEN THEY HAVE

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ROA 0132

APPENDIX 137

1 NOT YET -- I KNOW WHAT THEY ARE GOING TO SAY IN OPENING  
2 STATEMENT, AND I KNOW THE ARGUMENTS AND I KNOW WHAT THEY  
3 ARE GOING TO TRY AND INFER FROM THE WITNESSES. BUT THEY'RE  
4 NOT THERE YET.

5 AND WHAT WE WANT IS A FAIR TRIAL, TO GET TO THAT -- TO  
6 GET TO THAT POINT. AND IF THEY ARE ALLOWED TO INTRODUCE --  
7 PARTICULARLY BECAUSE OF THE SIZE OF THE BANK OF AMERICA, IF  
8 THEY'RE ALLOWED TO DO THAT IN THE CASE IN CHIEF, WE  
9 ENDANGER OUR ABILITY TO GET A FAIR TRIAL WITHOUT THAT  
10 INFORMATION OF EMOTIONS AS IT RELATES TO OUR SIZE AND/OR  
11 OUR NET WORTH. ALL OF A SUDDEN A FEW HUNDRED THOUSAND  
12 DOLLARS LOOKS LIKE A PITTANCE TO A BANK THIS SIZE WHEN IT  
13 IS, BECAUSE THAT BANK'S ASSETS ARE -- THAT'S PEOPLE'S  
14 MONEY. IT'S NOT THE BANK'S MONEY.

15 MR. JENKINSON: YOUR HONOR, PLEASE. THERE ARE A  
16 NUMBER OF CASES UNDER THE GAMBLE FACTORS. BUT  
17 PARTICULARLY, FINANCIAL WORTH IS A FACT PROPERLY BEFORE THE  
18 JURY TO DETERMINE THE AMOUNT OF DAMAGES BEING AWARDED.

19 THERE'S A RECENT CASE OF WELCH VERSUS EPSTEIN  
20 (PHONETIC), 242 SC 279, A 2000 CASE OF THE COURT OF  
21 APPEALS.

22 ANOTHER ONE, EVIDENCE OF FINANCIAL CONDITION BEYOND  
23 NET WORTH IS ADMISSIBLE ON PUNITIVE DAMAGES, 342 SC 159,  
24 THAT'S A 2000 COURT OF APPEALS CASE.

25 BRYANT (PHONETIC) VERSUS WASTE MANAGEMENT, NET INCOME

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ROA 0133

APPENDIX 138



1 AND TESTIMONY AGAINST THIS BANK IN THIS COURTROOM. I MEAN,  
2 IT'S ELEMENTAL CASE LAW.

3 MR. MCGEE: YOUR HONOR, I APOLOGIZE. BUT I TRIED A  
4 CASE WITH BANK OF AMERICA IN FLORENCE WHERE JUDGE TOMMY  
5 COOPER DEALT WITH THIS ISSUE BY WRITING DOWN -- THE PARTIES  
6 STIPULATED TO THE BANK'S NET WORTH, PUT IT IN AN ENVELOPE,  
7 SEALED IT, SENT IT BACK TO THE JURY ROOM, AND SAID IF YOU  
8 FIND THAT PUNITIVE DAMAGES SHOULD BE AWARDED IN THIS CASE,  
9 OPEN IT UP TO LOOK AT THE ABILITY TO PAY, THE NET WORTH OF  
10 THE BANK.

11 IF YOU DON'T GET PUNITIVE DAMAGES, DON'T OPEN IT.

12 AND, AGAIN, LIABILITY IS SEPARATE FROM THE ABILITY TO  
13 PAY. I'M SURE WE COULD STIPULATE AS TO THE BANK'S NET  
14 WORTH. IT'S PROBABLY ON A FILING STATEMENT SOMEWHERE.

15 BUT TO OPEN THIS UP IN THE CASE IN CHIEF TOTALLY  
16 PREJUDICES THE BANK OF AMERICA.

17 MR. DAVIS: WE'RE NOT SAYING WE DENY THEM THE  
18 OPPORTUNITY TO PUT UP THAT EVIDENCE. BUT UNTIL THEY PROVE  
19 IT -- I HEAR WHAT YOU'RE SAYING. AND, OF COURSE, WE ARE  
20 GOING TO VIGOROUSLY OPPOSE ALL THAT. HE HADN'T PROVED IT  
21 YET, OR MAKE IT WHERE IT AT LEAST IS A JURY QUESTION. YOU  
22 HAVEN'T DONE THAT YET.

23 WE'RE SAYING, GIVE US THAT OPPORTUNITY BEFORE TIME.  
24 YOU START IN PUTTING IN THE BANK'S ASSETS, HOW MUCH THIS  
25 BANK IS WORTH RIGHT NOW, BEING THE FIGURES IN THE WORLD --

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APPENDIX 139

1 ESPECIALLY IN THIS ECONOMIC SITUATION WE'RE IN IN THIS  
2 COUNTRY, WE MAY NOT GET A FAIR TRIAL.

3 WHAT I WOULD SUGGEST TO THE COURT OR RECOMMEND OR  
4 REQUESTING IS THAT IF YOU LIMITED IT AT THIS PARTICULAR  
5 POINT IN TIME, AND IF THERE'S A DETERMINATION, IF THERE'S  
6 SUFFICIENT EVIDENCE TO GO TO THE JURY ON THAT ISSUE, THEN  
7 WE TAKE IT UP AT THAT PARTICULAR TIME. IT IS NOT TO DENY  
8 ANY RIGHT TO A FAIR TRIAL IN ANY FORM OR FASHION.

9 THE COURT: ALL RIGHT. ANYTHING FURTHER ON THAT  
10 POINT?

11 MR. JENKINSON: YOUR HONOR, PLEASE. I GO BACK TO THIS  
12 ISSUE. WE'RE THEN PRECLUDED FROM EVEN ARGUING TO THE JURY  
13 A GAMBLE FACTOR UNDER THAT SCENARIO PRESENTED ABOUT SENDING  
14 AN ENVELOPE BACK TO THE JURY ROOM.

15 THE COURT: YOU DON'T ARGUE TO THE JURY UNTIL CLOSING  
16 ARGUMENTS, AND YOU HAVE AN OPPORTUNITY PRIOR TO CLOSING  
17 ARGUMENTS TO PRESENT THIS EVIDENCE.

18 MR. JENKINSON: YES, SIR. AND I CAN'T ARGUE WHAT --  
19 AND I CAN'T EVEN ARGUE PUNITIVE DAMAGES FACTORS BEFORE A  
20 JURY BECAUSE IT'S NOT IN EVIDENCE, IT'S TO BE SENT TO THE  
21 JURY ROOM WHERE THE COURT IS GOING TO BE SAYING, YOU ARE  
22 ONLY TO CONSIDER WHAT YOU'VE HEARD IN THE COURSE OF THE  
23 TRIAL. AN ENVELOPE BEING SENT BACK TO THE JURY ROOM WHILE  
24 THEY'RE DELIBERATING IS NOT EVEN EVIDENCE OF ANYTHING ---

25 THE COURT: HE SAID WHAT JUDGE TOMMY COOPER DID.

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ROA 0135

APPENDIX 140

1 MR. DAVIS: YES, THAT'S SIMPLY A MECHANISM.

2 MR. JENKINSON: THAT MAY HAVE BEEN SOME STIPULATION  
3 BETWEEN THOSE PARTIES, YOUR HONOR. BUT I WOULD SAY HERE IN  
4 THIS PARTICULAR INSTANCE, IT'S NOT EVEN A PART OF THE  
5 RECORD AND WALK IN THE JURY ROOM WITH A SEALED ENVELOPE --  
6 I MEAN, IT'S SOMETHING LIKE OUT OF JOHNNY CARSON WHERE HE  
7 USED TO TAP IT UP ON HIS HEAD AND OPEN IT UP AND PULL IT  
8 OUT. I MEAN, THAT'S NOT EVIDENCE AND TESTIMONY IN THE  
9 TRIAL. IT SHOULD NOT EVEN BE PROPERLY BEFORE A JURY  
10 BECAUSE IT'S NOT BEEN IN SWORN TESTIMONY TO THAT EFFECT.  
11 THE JURY'S BEEN TOLD YOU DECIDE THE CASE ON WHAT YOU HEARD  
12 IN THE COURTROOM.

13 HOW IN THE WORLD CAN THEY DECIDE IT ON SOME ENVELOPE  
14 BEING SLIPPED INTO THE JURY ROOM? I MEAN, THAT'S THE  
15 WILDEST THING I'VE EVER HEARD IF YOU WANT TO KNOW THE  
16 TRUTH, YOUR HONOR. I'M NOT SAYING THAT HASN'T BEEN DONE.  
17 BUT IF YOU READ IN THE BOOK OF GENESIS, THERE'S A LOT OF  
18 THINGS HAVE BEEN DONE.

19 THE COURT: WELL, I'VE HEARD ENOUGH ARGUMENT ON THIS  
20 POINT. THE MOTION IS GRANTED AT THIS STAGE OF THE  
21 PROCEEDING THAT THE NET WORTH AND ASSETS OF THE BANK ARE  
22 NOT RELEVANT UNTIL THE ISSUE OF PUNITIVE DAMAGES HAS BEEN  
23 ESTABLISHED. UNDERSTANDING, THAT IF IT'S ESTABLISHED, THE  
24 PLAINTIFF WILL BE GIVEN AN OPPORTUNITY TO PRESENT THAT  
25 EVIDENCE TO THE JURY BEFORE THE CLOSE OF THE CASE, BEFORE

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APPENDIX 141

1 CLOSING ARGUMENTS, ETCETERA.

2 MR. JENKINSON: EXACTLY HOW ARE WE GOING TO DO THAT,  
3 YOUR HONOR? ARE YOU JUST GOING TO RULE ON OUR DIRECTED  
4 VERDICT MOTION AND REOPEN THE PLAINTIFFS' CASE IN CHIEF?

5 THE COURT: WE'LL HAVE TO CROSS THAT BRIDGE WHEN WE  
6 GET TO IT, UNLESS YOU WANT TO FIGURE OUT SOME AGREED-TO  
7 MECHANISM.

8 MR. SABB: I THINK -- AS I WAS LISTENING TO EVERYBODY  
9 ARGUING. ONE WAY TO DO IT MIGHT BE THAT TESTIMONY WILL  
10 PRIMARILY BE COMING IN THROUGH DR. OLIVER WOOD. AND I  
11 THINK AT THAT TIME THE LIKELIHOOD IS THAT MOST OF THE OTHER  
12 EVIDENCE WILL BE IN, SO WE MIGHT BE ABLE TO REVISIT THE  
13 ISSUE PRIOR TO DR. WOOD TESTIFYING. FOR PURPOSES OF THE  
14 OPENING STATEMENT, I'LL JUST LEAVE IT OUT AS THE COURT HAS  
15 RULED.

16 THE COURT: ALL RIGHT. THAT'S ONE POSSIBILITY.  
17 ALL RIGHT. YOU ALL WILL HAVE A CHANCE TO THRASH ON  
18 THAT AS LONG AS YOU ARE STILL FRIENDLY WITH EACH OTHER.

19 MR. DAVIS: WE WILL BE. WE MAY HOLLER AT EACH OTHER,  
20 BUT I GUESS THIS IS REALLY ANTICIPATORY. THIS IS MAKING  
21 SURE THAT THE CAT DIDN'T GET OUT OF THE BAG BEFOREHAND.

22 WE ALSO HAVE A MOTION IN LIMINE THAT THERE WILL BE NO  
23 REFERENCE TO THE ECONOMIC BAILOUT PLAN GOING ON RIGHT NOW  
24 IN THIS COUNTRY, BANKS GETTING IN TROUBLE, AND THAT TYPE  
25 THING.

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APPENDIX 142

1 WE REQUEST THAT THE COURT LIMIT ANY TYPE OF POTENTIAL  
2 TESTIMONY THAT MAY COME IN. I'M ASSUMING IT'S NOT GOING TO  
3 BE ---

4 MR. JENKINSON: YOUR HONOR, I WOULD BET MY LAW LICENSE  
5 THIS BANK ISN'T IN TROUBLE. I BET MY LAW LICENSE IN THIS  
6 LAST HOUR THIS BANK'S MADE MORE MONEY THAN I MADE IN THE  
7 LAST TWO YEARS.

8 MR. DAVIS: THAT'S NOT ---

9 MR. JENKINSON: I MEAN, THAT BANK IS IN ANY MORE  
10 TROUBLE -- TO SAY THEY'RE IN TROUBLE JUST BECAUSE WACHOVIA  
11 DOESN'T KNOW HOW TO RUN A BANK, THEY DO BECAUSE THEY MADE  
12 MONEY. THEIR FINANCIAL STATEMENT JUST IN THE LAST SIX  
13 MONTHS SHOWS THAT THEY ARE MAKING BILLIONS OF DOLLARS RIGHT  
14 NOW, IN THE LAST SIX MONTHS.

15 MR. DAVIS: HE'S MADE MY POINT.

16 MR. JENKINSON: THEY AREN'T IN TROUBLE. AND THAT  
17 INFERENCE SHOULD NOT BE BROUGHT BEFORE THE JURY THAT THEY  
18 ARE EITHER, WHEN IN FACT THEY ARE DOING VERY WELL. YOU CAN  
19 OPEN UP THE STOCK PAGES AND THEY CAN SEE THAT STOCK CLOSED  
20 ABOUT \$39 A SHARE, DOUBLE WHAT IT WAS SIX MONTHS AGO.

21 MR. SABB: I THINK THEY BOTH AGREE, JUDGE.

22 THE COURT: THEY AGREE ON THAT POINT.

23 MR. DAVIS: YES.

24 THE COURT: ALL RIGHT.

25 MR. DAVIS: THE NEXT MOTION IN LIMINE DEALT WITH ANY

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APPENDIX 143

1 POST-INCIDENT ACTIONS BY BANK OF AMERICA AS IT RELATES TO  
2 ANY INVESTIGATION AS THE COURT INDICATED IN ARGUING ABOUT  
3 DESIGNATIONS -- WAS IT LAST WEEK? LAST WEEK.

4 THE COURT: THE OBJECTION AS TO REFERENCES TO  
5 SUBSEQUENT ACTS, POST-EVENT REMEDIAL ACT, ETCETERA, WHAT  
6 THEY DID AFTER THE FACT.

7 MR. JENKINSON: YES, SIR. THE REMEDIAL CASE --  
8 ACTUALLY IT DELETES IT OUT -- IS A CASE REILAND,  
9 R-E-I-L-A-N-D VERSUS SOUTH EQUIPMENT COMPANY. THE  
10 EXCLUSION REQUIREMENTS TO BE EXCLUDED AS SUBSEQUENT  
11 REMEDIAL MEASURE, THE EVIDENCE MUST SHOW, ONE, AN AFTER  
12 EVENT. ALL RIGHT. SO THAT IS MET, IT'S AN AFTER EVENT.

13 NUMBER TWO, THE MEASURES TAKEN WHICH IF TAKEN  
14 PREVIOUSLY WOULD HAVE MADE THE EVENT LESS LIKELY TO OCCUR.

15 ALL WE'RE ASKING HERE -- AND THIS IS WHY REQUIREMENT  
16 NUMBER TWO CANNOT BE MET. IF THE BANK WOULD HAVE GONE AND  
17 PUT A BUNCH OF FIREWALLS IN PLACE SUBSEQUENT TO THE EVENT,  
18 WE COULD NOT GO IN THE BANK.

19 ALL WE'RE ASKING THE BANK OFFICERS ARE: DID YOU DO  
20 ANY KIND OF INVESTIGATION DOWN AT PAWLEYS ISLAND TO FIND  
21 OUT WHAT WENT WRONG? THAT'S ALL WE'RE ASKING.

22 THAT IS NOT A REMEDIAL EVENT. THAT'S JUST ASKING IF  
23 THEY INVESTIGATED IT, BECAUSE THIS IS NOT A MEASURE THAT  
24 WAS TAKEN WHICH TAKEN PREVIOUSLY WOULD HAVE MADE THE EVENT  
25 LESS LIKELY TO OCCUR. HOW DO YOU INVESTIGATE SOMETHING

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APPENDIX 144

1 THAT HAS NOT HAPPENED? AND WE'RE ASKING IF THEY  
2 INVESTIGATED WHAT HAPPENED TO DETERMINE WHAT WENT WRONG;  
3 THAT'S ALL WE'RE ASKING. THAT IS NOT A REMEDIAL ISSUE.  
4 IT'S JUST, WHAT DID YOU DO AFTER THE WRECK WHEN YOU GOT OUT  
5 OF THE CAR? YOU KNOW, THAT'S NOT REMEDIAL.

6 NOW, IF YOU SAY, WELL, I WENT AND BOUGHT A STOP SIGN  
7 AND PUT IT UP, THAT WOULD BE. BUT TO SAY, WHAT DID YOU DO  
8 AFTER THE WRECK TO FIGURE OUT WHAT HAPPENED, THAT DOES NOT  
9 CONSTITUTE ELEMENT NUMBER TWO, AND IT'S NOT REMEDIAL.

10 THE COURT: ALL RIGHT.

11 MR. DAVIS: THIS CASE IS ABOUT THE FINANCIAL SERVICE  
12 INDUSTRY. AND HERE ARGUABLY A MISTAKE MAY HAVE BEEN MADE  
13 OR A BREAKDOWN IN PROVIDING THAT FINANCIAL SERVICE. TO  
14 ALLOW THEM TO GO INTO WHAT HAPPENED DURING THE COURSE OF  
15 INVESTIGATION AS TO SOME BREAKDOWN IS ONLY FOR ONE REASON,  
16 TO FIND OUT WHAT HAPPENED, WHY IT HAPPENED, HOW IT  
17 HAPPENED, AND IF THERE'S A PROBLEM TO FIX IT. AND THAT IS  
18 NOTHING MORE -- IT'S NOT A CAR ACCIDENT. IT'S NOT A  
19 PRODUCTS CASE.

20 BUT IN THIS PARTICULAR INSTANCE, THAT IS NOTHING MORE  
21 THAN TRYING TO PUT IN FRONT OF THE JURY REMEDIAL ACTIONS OF  
22 WHAT BANK OF AMERICA MAY HAVE DONE TO TRY TO FIGURE OUT  
23 WHERE THE BREAKDOWN AND HOW TO FIX IT. IT'S THE SAME  
24 THING, EXCEPT IN A DIFFERENT INDUSTRY.

25 AND, YOUR HONOR, THIS GOES TO EXACTLY WHAT THE COURT

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APPENDIX 145

1 RULED UPON AS IT RELATES TO THE DEPOSITION EXCERPTS LAST  
2 WEEK AS RELATED TO THAT. IT'S A REMEDIAL MEASURE.

3 MR. JENKINSON: YOUR HONOR, THE ANSWER TO THE QUESTION  
4 WHEN THEY WERE ASKED THAT QUESTION, HAVE YOU DONE ANYTHING  
5 TO FIND OUT WHAT WENT WRONG AT PAWLEYS ISLAND WAS, NO.  
6 THAT'S WHAT WE WANT. THAT'S SIMPLY THE RESPONSE WE'RE  
7 LOOKING FOR. HAVE YOU DONE ANYTHING DOWN AT PAWLEYS ISLAND  
8 TO FIGURE OUT WHAT'S GOING ON DOWN THERE AND WAS EVERYBODY  
9 AT THE BANK MESSING UP? NO.

10 DID YOU DO AN INVESTIGATION? NO.

11 HOW IS THAT REMEDIAL? I MEAN, IT GOES TO A CARE  
12 FACTOR, WHICH IS WHAT THIS CASE IS ABOUT AS WELL. THE BANK  
13 DOESN'T CARE.

14 THE COURT: ALL RIGHT. ANYTHING ELSE ON THIS POINT?

15 MR. DAVIS: NO, YOUR HONOR.

16 THE COURT: WELL, IT'S A VERY THIN LINE BETWEEN ASKING  
17 QUESTIONS REGARDING WHAT HAPPENED IN THIS CASE VERSUS WHAT  
18 WENT WRONG IN THIS CASE AS FAR AS ANY REMEDIAL REPAIRS.

19 THE PLAINTIFF SHOULD BE ABLE TO GET TO THE BOTTOM OF  
20 WHAT OCCURRED. AND THEY CAN ONLY DO THAT BY ASKING  
21 WITNESSES WHO WERE NOT THERE -- I IMAGINE, OR PEOPLE WHO  
22 MAY HAVE DONE SOME FACT INVESTIGATION INTO WHAT OCCURRED.  
23 AND I BELIEVE THAT THAT IS SEPARATE AND DISTINCT FROM WHAT  
24 REMEDIAL ACTION THE BANK MIGHT HAVE TAKEN TO PREVENT ANY  
25 FUTURE TYPE EVENT FROM OCCURRING OR RECURRING.

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APPENDIX 146



1 MR. DAVIS: THE IMPLICATION, YOUR HONOR, IS THAT THE  
2 BANK HAS DONE NOTHING AT ALL IN REGARDS TO THAT SITUATION;  
3 THAT'S THE IMPLICATION. THERE WAS A QUESTION AT A  
4 DEPOSITION HE ASKED -- I THINK IT WAS MS. REEVES, HAS  
5 ANYBODY AT THE BANK OF AMERICA GONE DOWN TO PAWLEYS ISLAND  
6 AND TRIED TO FIGURE OUT WHAT'S GOING ON DOWN THERE WITH THE  
7 FOLKS AT THIS BANK?

8 HER ANSWER WAS, I MEAN, CLEARLY THIS IS SOMETHING THAT  
9 GOES SEVERAL YEARS BACK, SO I DON'T KNOW.

10 THE COURT: AND I SUSTAINED THAT OBJECTION ---

11 MR. DAVIS: YES, SIR.

12 THE COURT: --- PREVIOUSLY. AND I WILL SUSTAIN ANY  
13 SIMILAR OBJECTION. BUT IT IS HARD FOR ME TO GET A READING  
14 AS TO WHAT YOU ALL ARE TALKING ABOUT, BECAUSE WHAT YOU'RE  
15 CONSIDERING -- WHAT YOU CALL REMEDIAL, THE PLAINTIFF IS  
16 DISPUTING AS BEING REMEDIAL. SO I HAVE TO LISTEN TO THE  
17 TESTIMONY AND RULE AS IT COMES ON THIS ISSUE.

18 MR. DAVIS: THAT'S IT FOR THE MOTION.

19 (PAUSE.)

20 MR. DAVIS: THERE WAS A MOTION IN LIMINE TO EXCLUDE  
21 ANY REFERENCES TO THE BANK'S CITIZENSHIP AND RESIDENCY. AS  
22 THE COURT MAY BE AWARE, BANK OF AMERICA HAS NO -- WE HAVE  
23 NO BRANCHES HERE IN WILLIAMSBURG COUNTY. AND WE BELIEVE IT  
24 WOULD BE HIGHLY INFLAMMATORY AND PREJUDICIAL FOR ANY  
25 REFERENCES IN THAT REGARD TO BE MADE. THEN YOU HAVE PEOPLE

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APPENDIX 147

1 JUST BASICALLY SAYING, WELL, THEY'RE NOT EVEN HERE SO THEY  
2 DON'T CARE ENOUGH ABOUT US. THAT'S NOT THE CASE. IT'S NOT  
3 THE CASE. A LOT OF PEOPLE FROM HERE BANK WITH US IN OUR  
4 PAWLEYS ISLAND OFFICE. THAT INDICATION WOULD JUST BE --  
5 AND IT'S NOT RELEVANT. THIS HAS NOTHING TO DO WITH THIS  
6 CASE.

7 THE COURT: DO YOU WANT ME TO EXCLUDE WHAT, THEM  
8 SAYING WHERE THE OFFICE IS LOCATED OR ----

9 MR. DAVIS: OR CRITICIZING US IN ANY PARTICULAR  
10 WHETHER IT BE ARGUMENT, OPENING STATEMENT IN MAKING A  
11 COMMENT, THE BANK OF AMERICA DOESN'T EVEN HAVE ANY BRANCHES  
12 HERE OR DOESN'T HAVE AN INTEREST HERE. THEM NOT HAVING AN  
13 INTEREST HERE IS NOT APPLICABLE, BECAUSE WE BANK A LOT OF  
14 PEOPLE IN WILLIAMSBURG COUNTY. I MEAN, YOU HEARD THAT IN  
15 THE JURY POOL ITSELF.

16 THE COURT: THERE WERE THREE IN THE JURY POOL WITH  
17 ACCOUNTS IN BANK OF AMERICA.

18 MR. DAVIS: YES, SIR.

19 THE COURT: MR. JENKINSON.

20 MR. JENKINSON: I'M SORT OF GLAD THEY DON'T, BECAUSE I  
21 WOULDN'T BE BANKING WITH THEM. SO I REALLY DON'T SEE THAT  
22 AS A PROBLEM. YOU KNOW, THE FACT THAT THEY ARE NOT HERE  
23 I'M GLAD OF IT. YOU KNOW, THAT REALLY IS NOT AN ISSUE FOR  
24 US.

25 THE COURT: ALL RIGHT. SO THERE IS NO OBJECTION TO

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APPENDIX 148

1 THAT MOTION.

2 MR. JENKINSON: YES, SIR. WE'RE NOT PLANNING ON GOING  
3 THERE.

4 THE COURT: ALL RIGHT. THEY'RE NOT GOING THERE.

5 MR. DAVIS: JUDGE, JUST ONE MOMENT. WE HAVE ONE MORE  
6 MOTION.

7 (PAUSE.)

8 MR. MCGEE: YOUR HONOR, I THINK THE LAST ONE THAT WAS  
9 FILED WAS THE MOTION IN LIMINE THAT CODY P [REDACTED] NOT OFFER  
10 ANY TESTIMONY.

11 THE COURT: YOU OBJECT TO CODY P [REDACTED] TESTIFYING.

12 MR. JENKINSON: THEY OBJECT TO THE PLAINTIFF  
13 TESTIFYING IN THIS PARTICULAR CASE? I JUST NEVER QUITE  
14 HEARD OF A PARTY BEING BARRED FROM TESTIFYING.

15 THE COURT: THEIR OBJECTION, HE WASN'T LISTED AS A  
16 WITNESS.

17 MR. MCGEE: HE'S NOT LISTED AS AN EXPECTED TRIAL  
18 WITNESS, WAS NOT LISTED AS ONE OF THE PARTIES THAT HAD  
19 KNOWLEDGE ABOUT THE FACTS OF THE CASE IN INTERROGATORY  
20 ANSWERS, AND HAS NEVER INDICATED THAT HE HAS. HE SIMPLY  
21 DOESN'T KNOW. THERE'S NEVER BEEN AN ALLEGATION THAT CODY  
22 P [REDACTED] HAS ANYTHING WHATSOEVER -- ANY KNOWLEDGE ABOUT THIS  
23 CASE.

24 SINCE WE DON'T KNOW WHAT THE SUBJECT OF HIS TESTIMONY  
25 -- SINCE THEY'VE NEVER IDENTIFIED WHAT IT IS THAT HE KNOWS,

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APPENDIX 149

1 WE HAD NO IDEA WHETHER TO TAKE HIS DEPOSITION OR NOT AND  
2 HAVE NO IDEA -- HE JUST FRANKLY DOESN'T KNOW ANYTHING.

3 THE COURT: HAS HE BEEN LISTED AS A PLAINTIFFS'  
4 WITNESS?

5 MR. MCGEE: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MR. JENKINSON: DO YOU HAVE TO LIST A PARTY AS A  
8 WITNESS? I'VE NEVER HEARD OF THAT.

9 THE COURT: DO YOU HAVE TO LIST A PARTY AS A WITNESS?

10 MR. MCGEE: HE'S NOT IDENTIFIED AS HAVING ANY  
11 KNOWLEDGE TO ANY DISCOVERY IN THIS CASE, ANY KNOWLEDGE  
12 WHATSOEVER ABOUT THE FACTS OF THIS CASE. HAD HE BEEN  
13 LISTED AS HAVING ANY KNOWLEDGE -- HE WAS 8 OR 9 YEARS OLD  
14 WHEN THIS HAPPENED. OBVIOUSLY, WE WOULD HAVE ATTEMPTED TO  
15 FIGURE OUT IF WE NEEDED TO TAKE HIS DEPOSITION OR HAVE HIS  
16 CONSERVATOR WITH HIM TO TAKE HIS DEPOSITION. WE DEPOSED  
17 THE CONSERVATOR WHO WAS A PARTY TO THIS ACTION AND HIS  
18 MOTHER, BUT NEVER HIM. HE WAS NEVER IDENTIFIED AS HAVING  
19 ANY KNOWLEDGE AND FACTS OF THIS CASE.

20 MR. JENKINSON: WE WEREN'T PLANNING ON CALLING HIM.  
21 I'M JUST CURIOUS WHAT THEY WOULD SAY. I GOT A LITTLE  
22 AMUSED WITH THE FACT THEY WON'T LET HIM TESTIFY. WE  
23 WEREN'T PLANNING ON CALLING HIM. I'M NOT GOING TO BELABOR  
24 THE POINT. I JUST THOUGHT I WAS A LITTLE AMUSED BY IT.

25 MR. DAVIS: HE'S TRYING TO GIVE US A HARD TIME FOR NO

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ROA 0145

APPENDIX 150

1 REASON.

2 THE COURT: ALL RIGHT. SO HE'S NOT GOING TO TESTIFY  
3 IN THE CASE IN CHIEF.

4 MR. JENKINSON: DO YOU HAVE ANY OTHER MOTIONS?

5 MR. MCGEE: I THINK THAT'S ALL THE MOTIONS IN LIMINE.  
6 I BELIEVE THERE ARE A FEW CONTESTED EXHIBITS.

7 MR. JENKINSON: ALL RIGHT. WE STILL HAVE ONE ABOUT  
8 REFERENCE HIS PRIOR MOTION, ORDERS APPEALING PROCEEDINGS.

9 MR. DAVIS: YES. THERE IS A MOTION. WE DON'T THINK  
10 IT'S PROPER IN THIS COURT. THERE HAVE BEEN A NUMBER OF  
11 DIFFERENT APPEALS IN THIS CASE TO THE CIRCUIT COURT ITSELF  
12 AND EVEN TO THE SOUTH CAROLINA SUPREME COURT AND I THINK TO  
13 -- AND WE WOULD MOVE THAT THERE BE NO REFERENCE TO ANY OF  
14 THOSE PRIOR MOTIONS OR ITS APPEALS OR PROCEEDINGS AT ALL IN  
15 THIS PARTICULAR MATTER.

16 THE COURT: ALL RIGHT. MR. JENKINSON, MS. KELLAHAN?

17 MS. KELLAHAN: YOUR HONOR, WE DON'T HAVE A PROBLEM  
18 WITH THAT AS LONG AS THEY'RE NOT GOING TO REFER TO ANY OF  
19 THE PRIOR ACTIONS AS WELL.

20 THE COURT: ALL RIGHT. VERY GOOD. YOU ALL READY FOR  
21 THE JURY?

22 MR. JENKINSON: ONE OTHER ITEM CAME UP, AND I'D LIKE  
23 TO TAKE UP JUST BRIEFLY.

24 THE COURT: ALL RIGHT.

25 MR. JENKINSON: ELIZABETH REEVES TESTIFIES AS A 30

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APPENDIX 151

1 (PLAINTIFFS' EXHIBIT NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9,  
2 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,  
3 25, 26, 27, 28, 29, 30, 31, 31-B, 31-C, 31-D, 32, AND 33  
4 RECEIVED IN EVIDENCE.)

5 MR. MCGEE: YOUR HONOR, WE HAVE JUST ONE EXHIBIT FOR  
6 DEFENDANTS THAT HAS BEEN AGREED TO.

7 THE COURT: DEFENDANT'S NUMBER?

8 REPORTER: DEFENDANT'S 1.

9 (STATE OF SOUTH CAROLINA, COUNTY OF LEXINGTON, IN THE  
10 PROBATE COURT FORM, 2 PAGES MARKED IN EVIDENCE AS BANK OF  
11 AMERICA DEFENDANT'S EXHIBIT NO. 1.)

12 THE COURT: DO YOU AGREE THAT THAT EXHIBIT,  
13 DEFENDANT'S NO. 1, MS. KELLAHAN?

14 MS. KELLAHAN: YES, SIR, I DO.

15 THE COURT: AND, MR. WILSON? DEFENDANT B.O.A. NO. 1?

16 MR. WILSON: YES.

17 THE COURT: ALL RIGHT. ANYTHING ELSE BEFORE WE BRING  
18 THE JURY?

19 (PAUSE.)

20 THE COURT: ALL RIGHT. BRING THE JURY.

21 (THE JURY RETURNS TO THE COURTROOM AT 4:02 P.M.)

22 THE COURT: LADIES AND GENTLEMEN, WELCOME BACK. IF  
23 YOU ALL WILL STAND AT THIS TIME TO BE SWORN.

24 (THE JURY WAS DULY SWORN AT 4:03 P.M.)

25 THE COURT: LADIES AND GENTLEMEN, YOU HAVE NOW BEEN

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APPENDIX 152

1 THEY ARE TOO LIABLE, AND THEREFORE THEY SHOULD BE REQUIRED  
2 TO PAY THE AMOUNT OF ACTUAL DAMAGES THAT WILL BE STIPULATED  
3 TO IN THIS CASE.

4 NOW, YOU HADN'T HEARD ME TALK ABOUT TRAVIS POWELL VERY  
5 MUCH. LET ME JUST BRIEFLY TELL YOU WHAT WE THINK WE KNOW  
6 BASED UPON THE EVIDENCE.

7 BASED UPON WHAT WE'VE FOUND -- WE HAVEN'T FOUND ANY  
8 EVIDENCE THAT SUGGESTED THAT HE WAS THERE AT THE TIME THIS  
9 ACCOUNT WAS OPENED UP.

10 WE HAVE SOME TESTIMONY FROM HIM UNDER OATH -- BECAUSE  
11 THE LAW ALLOWS US TO TAKE HIS DEPOSITION UNDER OATH. WE  
12 HAVE SOME TESTIMONY UNDER OATH WHERE HE SWEARS THAT HE DID  
13 NOT SIGN THE BACK OF ANY OF THOSE CHECKS, NEVER PRESENTED  
14 ANY IDENTIFICATION TO THE BANK AS A PART OF THIS -- I CALL  
15 IT A CHARADE -- THIS CRIMINAL ACT THAT HIS SISTER, KAREN,  
16 PERPETRATED ON CODY AND IN ESSENCE ON THE BANK.

17 WE KNOW THAT ANY TIME YOU HAVE A BANK, AS BIG AS THE  
18 BANK OF AMERICA IS, AS LONG-STANDING AS THEY HAVE BEEN,  
19 WHAT THEY REQUIRE OF THEIR EMPLOYEES, FOLKS, IS DESIGNED TO  
20 PREVENT THIS KIND OF THING FROM HAPPENING. THEY HAD A  
21 LEGAL OBLIGATION TO THAT YOUNG MAN.

22 NOW, WHAT'S ALSO DISTURBING IN THIS CASE IS FROM WHAT  
23 WE UNDERSTAND THE SETTING UP OF THESE ACCOUNTS -- THERE ARE  
24 ACTUALLY TWO, AND WE'LL TALK SPECIFICALLY ABOUT THEM LATER  
25 ON. THEY TAKE ABOUT 30 MINUTES. OKAY.

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ROA 0148

APPENDIX 153

1 NOT BE HERE -- WE WOULD NOT BE HERE IF IT WERE NOT FOR THE  
2 OUTRAGEOUS, DESPICABLE, AND EVIL CONDUCT OF KAREN UNRUE.  
3 KAREN POWELL UNRUE. WE WOULD NOT BE HERE.

4 AND YOU NEED TO ASK: WHERE IS SHE? THAT'S HOW  
5 DISHONORABLE SHE IS. SHE DOESN'T EVEN HAVE THE DECENCY TO  
6 SHOW UP HERE IN THIS COURTROOM. AND SHE WAS SUED ALSO.  
7 SHE'S IN WHAT'S CALLED DEFAULT. SHE DIDN'T EVEN ANSWER THE  
8 COMPLAINT, BECAUSE SHE IS THE ROOT OF THIS ENTIRE SCENARIO.

9 EVEN SO -- EVEN SO, THIS CHILD SHOULD BE MADE WHOLE.  
10 AND IF YOU DEEM THAT BANK OF AMERICA SHOULD MAKE THE CHILD  
11 WHOLE, SO BE IT. WE'VE BEEN WILLING TO DO IT FROM DAY-ONE.  
12 THE BANK OF AMERICA, THE PEOPLE IN THAT BANK, THE CUSTOMER  
13 SERVICE REPS, THE PERSONAL BANKERS, THE FORMER BANKING  
14 CENTER -- THE MANAGERS, THEY MADE A MISTAKE. THEY SHOULD  
15 NOT BE PUNISHED FOR IT.

16 THEY SAY BANK OF AMERICA SHOULD BE PUNISHED; THAT'S  
17 WHO YOU WOULD BE PUNISHING. AND THAT'S REALLY THE REASON  
18 WE'RE HERE. IT'S NOT ABOUT MAKING THAT CHILD WHOLE. WE  
19 CAN MAKE -- AND WILL MAKE THE CHILD WHOLE FOR \$205-  
20 SOMETHING-ODD. WHAT THE CASE IS ABOUT IS WHETHER OR NOT  
21 THERE SHOULD BE A PAYDAY OR WHETHER THE BANK SHOULD BE  
22 PUNISHED FOR MAKING A SINGLE MISTAKE, WHICH CAUSED SOME  
23 OTHER THINGS TO GO INTO PLACE, ALL THE SAFEGUARDS THAT THE  
24 BANK PUT IN PLACE, IF YOU DON'T ENTER THE ACCOUNT RIGHT THE  
25 FIRST TIME, IF YOU DON'T HAVE THE COURT ORDER, IF YOU DON'T

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0149

APPENDIX 154



1 THE COURT: WELCOME BACK. LADIES AND GENTLEMEN, WE  
2 ARE READY TO PROCEED NOW IN THE TRIAL OF THIS CASE. THE  
3 PLAINTIFF WILL BE PRESENTING ITS CASE.

4 YOU MAY CALL YOUR FIRST WITNESS.

5 MR. SABB: THANK YOU, YOUR HONOR. IF IT PLEASE THE  
6 COURT. UNDER THE ADVERSE PARTY RULE, WE WOULD CALL TRAVIS  
7 POWELL.

8 TRAVIS POWELL, BEING FIRST  
9 DULY SWORN, TESTIFIED AS FOLLOWS:

10 MR. SABB: PLEASE THE COURT, YOUR HONOR.

11 THE COURT: YES, SIR.

12 DIRECT EXAMINATION BY MR. SABB:

13 Q YOU ARE TRAVIS POWELL?

14 A YES, SIR.

15 Q AND YOU ARE CODY P [REDACTED] UNCLE?

16 A YES, SIR.

17 Q STEVEN WAS, OF COURSE, YOUR BROTHER?

18 A YES, SIR.

19 Q OBVIOUSLY, THAT'S A TOUCHY SUBJECT MATTER ABOUT WHICH  
20 WE DON'T EVEN INTEND TO GO IN TO. SORRY FOR THIS FAMILY  
21 ABOUT THAT LOSS.

22 NOW, YOU WERE ONE OF TWO PERSONS THAT WERE ASKED BY  
23 YOUR SISTER-IN-LAW, ELIZABETH, TO BE THE CO-PERSON --  
24 STRIKE THAT. TO BE CO-CONSERVATORS FOR CODY; IS THAT  
25 RIGHT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0150

APPENDIX 155

1 A YES, SIR.

2 Q YOU WENT TO A HEARING BEFORE JUDGE RUDEL GAMBLE  
3 DOWNSTAIRS TO BE APPOINTED CO-PERSON -- STRIKE THAT. I  
4 KEEP SAYING CO-PERSONAL REPRESENTATIVE. CO-CONSERVATORS,  
5 DIDN'T YOU?

6 A YES, SIR.

7 MR. SABB: I WANT TO HAVE THE PETITION FLASHED UP ON  
8 THE BOARD PLEASE.

9 Q NOW, WE HAVE -- I GUESS WHAT I WILL DO. I WILL GIVE  
10 YOU THESE DOCUMENTS. WE'VE GOT THE SAME DOCUMENTS THAT  
11 WILL FLASH ON THE SCREEN. DO YOU RECOGNIZE THAT PETITION  
12 FOR THE APPOINTMENT OF CONSERVATOR? DO YOU RECOGNIZE THAT  
13 DOCUMENT?

14 A YES, SIR.

15 Q AND THAT DOCUMENT ACTUALLY BEARS YOUR SIGNATURE ALONG  
16 WITH YOUR SISTER, KAREN'S SIGNATURE, SAYING THAT YOU WOULD  
17 ACCEPT THE APPOINTMENT, DOESN'T IT?

18 A (PAUSE.)

19 Q I BELIEVE IT'S ON PAGE 4.

20 A YES, SIR.

21 Q AND THAT IS YOUR SIGNATURE?

22 A YES, SIR.

23 Q WHERE YOU SIGNED IN FRONT OF A NOTARY PUBLIC FOR THE  
24 STATE OF SOUTH CAROLINA?

25 A YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0151

APPENDIX 156

1 Q YOUR SISTER SIGNED SEPARATELY IN FRONT OF THE SAME  
2 NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA?  
3 A YES, SIR.  
4 Q YOU WERE PRESENT AT THE HEARING, ALONG WITH YOUR  
5 SISTER?  
6 A YES, SIR.  
7 Q ALL RIGHT. THERE WERE TWO LAWYERS THERE, WAS THERE  
8 NOT?  
9 A I DON'T REMEMBER THAT. AT THIS PRESENT TIME, I DO NOT  
10 REMEMBER.  
11 Q CERTAINLY, YOU REMEMBER THE ONE LAWYER THAT WAS THERE  
12 THAT PRESENTED THE PETITION AND THE EVIDENCE TO THE JUDGE?  
13 A YES, SIR.  
14 Q AND AS A PART OF THAT PROCESS, THE JUDGE APPOINTED THE  
15 TWO OF YOU CO-CONSERVATORS FOR CODY?  
16 A YES, SIR.  
17 MR. SABB: THE ORDER PLEASE.  
18 Q AND THERE WAS AN ORDER APPOINTING CO-CONSERVATOR. THE  
19 NEXT EXHIBIT WHICH YOU HAVE, WHICH I BELIEVE WILL BE  
20 PLAINTIFFS' EXHIBIT NO. 2, THAT SHOULD BE THE ORDER  
21 APPOINTING CO-CONSERVATORS. DO YOU SEE IT?  
22 A YES, SIR.  
23 Q OKAY. AND AS A PART, THIS IS THE ORDER. I MEAN, THIS  
24 IS THE OFFICIAL RULING FROM THE JUDGE THAT GIVES YOU ALONG  
25 WITH YOUR SISTER THE POWER TO BE CO-CONSERVATORS TO MANAGE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0152

APPENDIX 157

- 1 THE ASSETS OF CODY POWELL, DOESN'T IT?
- 2 A YES, SIR.
- 3 Q NOW, CODY IS ACTUALLY A SPECIAL NEEDS CHILD, ISN'T HE?
- 4 A YES, SIR.
- 5 Q AND ONE OF THE THINGS THAT YOU WANTED TO DO -- AND I
- 6 APOLOGIZE FOR SOME OF THE SUBJECT MATTER THAT I'VE GOT TO
- 7 TOUCH ON JUST A LITTLE BIT. BUT AS YOUR LAWYER INDICATED
- 8 ON YESTERDAY, IT'S SOMEWHAT IRONIC YET UNFORTUNATE THAT YOU
- 9 WERE 5 YEARS OLD WHEN YOU LOST YOUR DAD?
- 10 A YES, SIR.
- 11 Q AND STEVEN TOOK OVER THE ROLE OF BOTH BROTHER AND DAD?
- 12 A YES, SIR.
- 13 Q CODY WAS 5 YEARS OLD WHEN HE LOSES YOUR BROTHER AND
- 14 HIS FATHER?
- 15 A YES, SIR.
- 16 Q AND SO THERE YOU ARE, WANTING TO STEP IN THE SHOES AND
- 17 DO WHAT YOU CAN, THE SAME WAY THAT YOUR BROTHER DID IT FOR
- 18 YOU?
- 19 A YES, SIR.
- 20 Q AND UNFORTUNATELY FOR YOU, YOU DIDN'T HAVE ANY -- OR
- 21 WERE YOU CONSIDERED TO BE SPECIAL NEEDS, BUT CODY DID AND
- 22 DOES?
- 23 A YES, SIR.
- 24 Q IN FACT, HE HAS SEIZURES FROM TIME TO TIME, DOESN'T
- 25 HE?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0153

APPENDIX 158

- 1 A YES, SIR.
- 2 Q OKAY. BUT YOU WERE BOTH WILLING TO SERVE AS CO-
- 3 CONSERVATOR FOR YOUR NEPHEW AND TAKE ON THE ROLE OF BEING A
- 4 FATHER FIGURE TO THE EXTENT THAT YOU COULD FOR YOUR NEPHEW?
- 5 A YES, SIR.
- 6 Q YOU UNDERSTOOD THAT A PART OF THIS PROCESS WAS THAT
- 7 YOU WOULD HAVE WHAT THE LAW CALLS A FIDUCIARY DUTY TOWARDS
- 8 CODY WITH RESPECT TO THE MANAGING OF ANY FUNDS OR ASSETS
- 9 THAT CODY WOULD HAVE; IS THAT RIGHT?
- 10 A YES, SIR.
- 11 Q AND YOU UNDERSTOOD THAT A PART OF JUDGE GAMBLE'S ORDER
- 12 -- AND I BELIEVE THIS WOULD BE THE NEXT PAGE OF THIS
- 13 PARTICULAR EXHIBIT. YOU UNDERSTOOD THAT THE MONEY THAT
- 14 CODY WOULD GET WOULD BE PLACED OR REQUIRED TO BE PLACED IN
- 15 WHAT WE WOULD CALL A RESTRICTED ACCOUNT?
- 16 A YES, SIR.
- 17 Q RESTRICTED ACCOUNT MEANING THAT THE ONLY WAY THAT ANY
- 18 ACCESS COULD BE GAINED TO THOSE FUNDS WOULD BE BY WHAT?
- 19 COURT ORDER FROM THE JUDGE?
- 20 A YES, SIR.
- 21 Q THE JUDGE MADE THAT ABSOLUTELY CLEAR, DIDN'T SHE?
- 22 A YES, SIR.
- 23 Q NO QUESTION ABOUT THAT?
- 24 A NO, SIR.
- 25 MR. SABB: NEXT EXHIBIT PLEASE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0154

APPENDIX 159

1 Q THERE WERE CERTIFICATE OF APPOINTMENTS ISSUED -- AND,  
2 OH, BY THE WAY. I'M SORRY, TRAVIS. YOU SAW THE LINE IN  
3 THAT ORDER THAT INDICATED THAT, DIDN'T YOU?

4 MR. SABB: MIGHT WE GO BACK TO THE BACK SCREEN PLEASE.

5 Q THE LANGUAGE IN THIS PARTICULAR COURT ORDER -- AND IT  
6 STARTS UP TOP WHERE IT SAYS, THE RESTRICTED ACCOUNT -- DO  
7 YOU SEE ON PAGE 2?

8 A YES, SIR.

9 Q IT SAYS, RESTRICTED ACCOUNT. AND NO FUNDS BE  
10 WITHDRAWN OR TRANSFERRED FROM SUCH ACCOUNT WITHOUT WHAT?

11 A WRITTEN ORDER OF THIS COURT.

12 Q WRITTEN ORDER OF THIS COURT.

13 MR. SABB: OKAY. NOW THE NEXT SCREEN PLEASE, WHICH  
14 WOULD BE PLAINTIFFS' EXHIBIT NO. 3.

15 Q NOW, IN ADDITION TO THE ORDER, THE JUDGE ISSUED WHAT  
16 IS CALLED A CERTIFICATE OF APPOINTMENT, DIDN'T SHE?

17 A YES, SIR.

18 Q AND THAT CERTIFICATE INDICATES THIS IS TO CERTIFY THAT  
19 WHO ARE APPOINTED CONSERVATORS?

20 A TRAVIS POWELL AND KAREN POWELL.

21 Q AND THIS WAS DONE ON MARCH THE 13TH OF 2001?

22 A YES, SIR.

23 Q YOU SEE THE AREA IN THAT DOCUMENT THAT'S CALLED  
24 RESTRICTIONS?

25 A YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0155

APPENDIX 160

- 1 Q TELL THE JURY WHAT THAT SAYS?
- 2 A NO WITHDRAWALS WITHOUT COURT ORDER.
- 3 Q SO THAT DOCUMENT NUMBER TWO, WHERE THE COURT HAS MADE
- 4 IT CLEAR THAT THERE WILL BE NO WITHDRAWALS WITHOUT WHAT?
- 5 A COURT ORDER.
- 6 Q COURT ORDER.
- 7 MR. SABB: THE NEXT DOCUMENT PLEASE.
- 8 Q NOW, THESE ARE WHAT ARE DEEMED FIDUCIARY LETTERS. DO
- 9 YOU SEE THAT AT THE TOP, TRAVIS?
- 10 A YES, SIR.
- 11 Q AND WHICH BLOCK IS CHECKED ON THE FIDUCIARY LETTER?
- 12 A CONSERVATORSHIP.
- 13 Q CONSERVATORSHIP. AND THIS IS AGAIN ISSUED ON MARCH
- 14 THE 13TH OF 2001, ISN'T IT?
- 15 A YES, SIR.
- 16 Q THERE, AGAIN, INDICATING WHOSE NAMES AS BEING CO-
- 17 CONSERVATORS?
- 18 A TRAVIS POWELL AND KAREN POWELL.
- 19 Q AND WHAT SPECIFIC RESTRICTION HAS THE JUDGE INDICATED
- 20 ON THIS PARTICULAR DOCUMENT?
- 21 A NO WITHDRAWALS WITHOUT COURT ORDER.
- 22 Q NO WITHDRAWALS WITHOUT COURT ORDER. NOW, ARE YOU
- 23 AWARE OF WHETHER ANY OF THE INSURANCE COMPANIES THAT WERE
- 24 SUPPOSED TO BE SENDING CHECKS TO CODY, WHERE YOUR BROTHER
- 25 HAD PROVIDED FOR HIS SON IN THE EVENT ANYTHING HAPPENED TO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0156

APPENDIX 161

1 HIM -- ARE YOU AWARE OF ANY OF THOSE CHECKS COMING IN PRIOR  
2 TO -- THAT IS BEFORE THAT HEARING?

3 A NO, SIR.

4 MR. SABB: ALL RIGHT. NEXT DOCUMENT PLEASE.

5 Q NOW, TRAVIS, THESE ARE A SERIES OF CHECKS THAT I WANT  
6 TO TALK WITH YOU ABOUT JUST FOR A SECOND. BUT BEFORE I DO,  
7 LET'S SHIFT GEARS ONE MOMENT PLEASE. IS THERE ANY QUESTION  
8 BEFORE THIS JURY AS TO WHETHER OR NOT YOU TRUSTED YOUR  
9 SISTER TO DO THE RIGHT THING?

10 A YES, SIR. I TRUSTED HER.

11 Q YOU TRUSTED HER TO DO THE RIGHT THING?

12 A YES, SIR.

13 Q BUT, NOW, I HEARD YOUR LAWYER WHEN HE INDICATED IN HIS  
14 OPENING STATEMENT THAT WE'RE HERE BECAUSE OF WHAT I DEEM TO  
15 BE A BETRAYAL OF TRUST BESIDE -- STRIKE THAT -- BY YOUR  
16 SISTER. DID YOU HEAR HIM WHEN HE SAID THAT?

17 A YES, SIR.

18 Q BUT NOW, ISN'T THERE ANOTHER BETRAYAL OF TRUST IN THIS  
19 CASE? IS THERE?

20 A MAYBE.

21 Q MAYBE. I APPRECIATE THAT ANSWER. LET'S TALK ABOUT  
22 THAT FOR A SECOND. DID YOU TRUST A BANKING INSTITUTION?

23 A YES, SIR.

24 Q TO MAKE SURE THAT IF IT'S A CHECK THAT'S ISSUED TO  
25 YOU, THAT YOU'RE THE ONE THAT SIGNED IT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0157

APPENDIX 162



- 1 MR. DAVIS: OBJECTION, YOUR HONOR.
- 2 MR. WILSON: YOUR HONOR, I OBJECT ALSO. THE CHECK
- 3 ISSUED TO HIM AND HE SIGNED IT. I OBJECT TO THAT.
- 4 THE COURT: THE OBJECTION IS OVERRULED.
- 5 Q DID YOU UNDERSTAND MY QUESTION, YOUNG MAN?
- 6 A CAN YOU REPEAT IT PLEASE?
- 7 Q YES, SIR. DID YOU TRUST A BANKING INSTITUTION TO MAKE
- 8 SURE THAT IF A CHECK IS ISSUED IN YOUR NAME, THAT IT BEARS
- 9 YOUR SIGNATURE?
- 10 A YES, SIR.
- 11 Q WOULD YOU EXPECT A BANKING INSTITUTION WHERE A CHECK
- 12 IS PRESENTED IN YOUR NAME TO MAKE SURE THAT YOU'RE THERE
- 13 AND A PART OF THE TRANSACTION?
- 14 A YES, SIR.
- 15 Q WOULD YOU EXPECT THAT THEY WOULD OPEN UP AN ACCOUNT
- 16 THAT REQUIRES YOUR IDENTIFICATION AS WELL?
- 17 A I WOULD ASSUME SO, YES. PART OF MY DUTY WAS -- WAS
- 18 NOT TO HAVE ANY DEALINGS WITH ANY OF THE MONEY AT ALL. SO
- 19 I WAS -- AT THE POINT IN TIME I WAS ASSUMING I WOULD NEVER
- 20 EVEN SEE THE CHECKS.
- 21 Q I UNDERSTAND. BUT THE FACT OF THE LAW IS THAT IT
- 22 REQUIRES THAT CERTAIN THINGS BE DONE A CERTAIN WAY, A
- 23 CERTAIN REASON. HAVE YOU GROWN TO APPRECIATE THAT EVEN
- 24 MORE NOW THAT WE'RE HERE?
- 25 MR. DAVIS: OBJECTION, YOUR HONOR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0158

APPENDIX 163

1 MR. WILSON: OBJECTION.

2 MR. DAVIS: I OBJECT, YOUR HONOR.

3 MR. WILSON: HIS UNDERSTANDING OF THE LAW -- HE HAS  
4 TESTIFIED THAT HIS UNDERSTANDING AND HIS RESPONSIBILITY --  
5 I DON'T THINK IT IS UP TO TRAVIS POWELL TO TESTIFY ABOUT  
6 THE LAW. HE SAID WHAT HE WAS TO DO AND WHAT HE DID.  
7 FURTHER, THERE'S NO INDICATION AT THIS POINT IN THE  
8 QUESTIONING THAT HE HAD ANYTHING TO DO WITH THE CHECKS OR  
9 THE BANK.

10 THE COURT: THE OBJECTION IS SUSTAINED.

11 Q YOU UNDERSTAND RULES AND REGULATIONS?

12 A YES, SIR.

13 MR. WILSON: HE'S NOT AN EXPERT WITNESS. HE IS A CO-  
14 CONSERVATOR. HE IS CODY'S UNCLE. HIS UNDERSTANDING OF  
15 RULES AND REGULATIONS IS NOT BEFORE THE COURT.

16 THE COURT: OBJECTION IS OVERRULED. NO SPEAKING  
17 OBJECTIONS. OBJECT AND ONLY ARGUE IF THE COURT REQUESTS.  
18 YOU MAY ANSWER THE QUESTION.

19 Q DO YOU UNDERSTAND RULES AND REGULATIONS?

20 A YES, SIR.

21 Q AND GENERALLY SPEAKING, A LOT OF THEM ARE IN PLACE TO  
22 MAKE SURE THAT THINGS GO A CERTAIN WAY?

23 A YES, SIR.

24 Q NOW, THERE'S NOTHING FOREIGN ABOUT THIS NOTION OF  
25 BEING ISSUED A CHECK AND YOUR SIGNATURE BEING REQUIRED ON A

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0159

APPENDIX 164

1 CHECK BEFORE IT CAN BE CASHED. I MEAN, YOU GET A PAYCHECK,  
2 DON'T YOU?

3 A YES, SIR.

4 Q YOU SIGN THE BACK OF IT, RIGHT?

5 A IT'S DIRECT DEPOSIT. WE DON'T HAVE TO SIGN THEM ANY  
6 MORE, BUT THE SAME PRINCIPLE.

7 Q WE'VE GOTTEN ALL FANCY IN THIS DAY AND AGE. BUT, I  
8 MEAN, BACK IN THE DAY BEFORE ALL THIS DIRECT DEPOSIT  
9 BUSINESS CAME, IT WAS THE SAME NOTION OF GETTING A CHECK  
10 AND SIGNING IT AND CASHING IT OR DEPOSITING IT, RIGHT?

11 A YES, SIR.

12 Q AND, REALLY, THE ONLY REASON WHY YOUR CHECK IS BEING  
13 DIRECTLY DEPOSITED IS BECAUSE WHO AUTHORIZED THE DIRECT  
14 DEPOSIT?

15 A I DID.

16 Q YOU WOULDN'T EXPECT FOR ANYBODY ELSE TO BE ABLE TO  
17 DIRECT A DEPOSIT OF YOUR MONEY, WOULD YOU?

18 A NO, SIR.

19 Q AND YOU WOULD EXPECT ANY INSTITUTION THAT'S ASSOCIATED  
20 WITH YOU AND WHERE YOUR MONEY GO TO GET PERMISSION FROM  
21 WHO?

22 A ME.

23 Q THAT'S RIGHT. NOW, HERE IS A CHECK. AND I BELIEVE  
24 THIS WOULD BE PLAINTIFFS' EXHIBIT NO. 4. THE CHECK IN THE  
25 AMOUNT OF \$99,000.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0160

APPENDIX 165

- 1 A YES.
- 2 Q I KNOW IT'S HARD TO SEE ON THAT.
- 3 A EXHIBIT NUMBER ---
- 4 Q CAN YOU MAKE IT OUT?
- 5 A YES, SIR, IT'S EXHIBIT NO. 5.
- 6 Q NO. 5. THANK YOU. AND THAT PARTICULAR EXHIBIT, IT'S
- 7 MADE PAYABLE TO KAREN AND TRAVIS POWELL, RIGHT?
- 8 A I GUESS.
- 9 Q CAN YOU MAKE OUT THE NAME KAREN IN THERE? CAN YOU SEE
- 10 IT?
- 11 A YES.
- 12 Q I KNOW IT'S A LITTLE MUDDY OVER THERE.
- 13 A BARELY, BUT, YES.
- 14 Q OKAY. YOU CAN SEE YOUR NAME EVEN CLEARER THAN YOU CAN
- 15 SEE KAREN'S NAME, CAN'T YOU?
- 16 A YES, SIR.
- 17 Q AND IT'S CO DASH CN FOR THE MINOR CODY P█████, RIGHT?
- 18 A YES, SIR.
- 19 Q DO YOU KNOW WHAT THE CN STANDS FOR?
- 20 A NO.
- 21 Q WHAT DO YOU THINK IT STANDS FOR?
- 22 A CONSERVATORSHIP.
- 23 Q CONSERVATORSHIP. NOW, DID YOU EVER SEE THAT CHECK?
- 24 A NO, SIR.
- 25 Q DID YOU EVER SIGN THE BACK OF THAT CHECK?

CODY P█████ VS. BANK OF AMERICA

ROA 0161

APPENDIX 166

- 1 A NO, SIR.
- 2 Q WERE YOU SHOCKED AND SURPRISED WHEN YOU FOUND OUT THAT
- 3 THE BANK OF AMERICA HAD ACCEPTED THAT CHECK?
- 4 A YES, SIR, AFTER-THE-FACT, YES, SIR.
- 5 Q WOULD YOU TRUST THE BANK OF AMERICA IF A CHECK FOR
- 6 \$99,000 IS ISSUED IN YOUR NAME AS A PART OF IT, TO MAKE
- 7 SURE THAT PROPER SIGNATURES ARE ON IT?
- 8 A YEAH.
- 9 Q SIR?
- 10 A YES, SIR.
- 11 MR. SABB: NEXT EXHIBIT PLEASE.
- 12 THE COURT: PLEASE REFER TO EVERYTHING PUBLISHED TO
- 13 THE JURY BY THE EXHIBIT NUMBERS DURING THE COURSE OF YOUR
- 14 QUESTIONING.
- 15 MR. SABB: YES, YOUR HONOR.
- 16 Q THIS IS PLAINTIFFS' EXHIBIT NO. 6, RIGHT?
- 17 A YES, SIR.
- 18 Q AND THAT'S A CHECK ISSUED TO KAREN POWELL AS
- 19 CONSERVATOR OF CODY [REDACTED] P [REDACTED] A MINOR; IS THAT RIGHT?
- 20 A YES, SIR.
- 21 Q AND THE AMOUNT ON THE CHECK IS \$4,819.73?
- 22 A YES, SIR.
- 23 Q NOW, TRAVIS, DO YOU KNOW OF ANY COURT ORDER -- ANY
- 24 COURT ORDER WHERE JUDGE GAMBLE APPOINTED JUST KAREN, ONLY
- 25 YOUR SISTER, AS CONSERVATOR FOR CODY?

CODY [REDACTED] VS. BANK OF AMERICA

ROA 0162

APPENDIX 167

- 1 A NO, SIR.
- 2 Q THE ONLY COURT ORDER THAT EXISTS AS RELATED TO THIS AT
- 3 THIS TIME WAS WHERE YOU AND KAREN WERE APPOINTED AS CO-
- 4 CONSERVATORS; ISN'T THAT RIGHT?
- 5 A YES, SIR.
- 6 Q ALL THE FIDUCIARY LETTERS, THE CERTIFICATE OF
- 7 APPOINTMENT HAVE HOW MANY NAMES ON THEM?
- 8 A TWO.
- 9 Q TWO. AND SO IF THE BANK HAD GOTTEN EITHER THE
- 10 CERTIFICATES OF APPOINTMENT, THE FIDUCIARY LETTERS, OR THE
- 11 ORDER, THEY WOULD KNOW THAT THIS CHECK WAS ISSUED
- 12 IMPROPERLY, WOULDN'T THEY?
- 13 A YES, SIR.
- 14 Q BECAUSE IT DOESN'T HAVE YOUR NAME ON IT, RIGHT?
- 15 A YES, SIR.
- 16 MR. SABB: OKAY. NEXT ONE PLEASE.
- 17 Q NO. 7. THERE, AGAIN, KAREN M. POWELL, AS CONSERVATOR,
- 18 THAT CHECK WAS ISSUED WRONGLY, WASN'T IT?
- 19 A YES, SIR.
- 20 MR. SABB: NEXT PLEASE.
- 21 Q NO. 8, SAME THING. KAREN. THAT CHECK WAS ISSUED
- 22 WRONG, WASN'T IT?
- 23 A YES, SIR.
- 24 MR. SABB: NEXT PLEASE.
- 25 Q NO. 9, SAME THING. KAREN POWELL, \$253.47?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0163

APPENDIX 168

- 1 A 67 CENTS.
- 2 Q 67 CENTS. THANK YOU, SIR.
- 3 MR. SABB: NEXT PLEASE. THANK YOU FOR BLOWING THAT UP
- 4 FOR ME.
- 5 Q NOW, THIS IS NO. 10. AND IT IS A CHECK MADE PAYABLE
- 6 TO KAREN AND TRAVIS POWELL, CO-CN FOR THE MINOR CODY P [REDACTED]
- 7 IN THE AMOUNT OF \$33,000?
- 8 A YES, SIR.
- 9 Q DID YOU SIGN THE BACK OF THAT CHECK?
- 10 A NO, SIR.
- 11 Q HAD YOU SEEN THAT CHECK BEFORE YOU FOUND OUT SOMETHING
- 12 WAS WRONG IN THIS SITUATION?
- 13 A NO, SIR.
- 14 MR. SABB: NO. 11 PLEASE.
- 15 Q THIS IS ANOTHER CHECK FOR T. POWELL AND K. POWELL, CO-
- 16 CONSERVATORS -- AND FOR THE RECORD, THIS IS PLAINTIFFS'
- 17 EXHIBIT NO. 11. T. POWELL AND K. POWELL CO-CONSERVATORS
- 18 FOR CODY P [REDACTED]. \$114,866.77; ISN'T THAT RIGHT?
- 19 A YES, SIR.
- 20 Q DID YOU SIGN THE BACK OF THAT CHECK?
- 21 A NO, SIR.
- 22 MR. SABB: NEXT SLIDE PLEASE. MAY I HAVE NO. 12
- 23 PLEASE.
- 24 Q NOW, NO. 12 IS A CERTIFICATE OF DEPOSIT RECEIPT. DO
- 25 YOU SEE THAT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0164

APPENDIX 169

- 1 A YES, SIR.
- 2 Q AND IT INDICATES A TOTAL CD AMOUNT BEING TAKEN OUT IN
- 3 THE AMOUNT OF \$252,447.51?
- 4 A YES, SIR.
- 5 Q WERE YOU PRESENT AT THE BANK AT ALL WHEN THIS CD WAS
- 6 CREATED?
- 7 A NO, SIR.
- 8 Q HAD YOU HAD ANY CORRESPONDENCE OR ANY COMMUNICATIONS
- 9 WITH THE BANK AT ALL AS A PART OF THIS PROCESS?
- 10 A NO, SIR.
- 11 Q WHO IS THE ONLY PERSON'S NAME THAT THE BANK ALLOWED TO
- 12 BE OVER THIS ACCOUNT?
- 13 A KAREN M. POWELL.
- 14 Q DO YOU SEE ANY RESTRICTIONS THAT WAS ORDERED BY THE
- 15 COURT WITH RESPECT TO THIS PARTICULAR ACCOUNT?
- 16 A NO, SIR.
- 17 Q TRAVIS, IF YOU WERE AT THE BANK, WOULD YOU HAVE LET
- 18 THEM KNOW THAT YOU WERE A CONSERVATOR?
- 19 A YES, SIR.
- 20 Q WOULD YOU HAVE LET THEM KNOW IN NO UNCERTAIN TERMS
- 21 THAT THIS WAS NOT YOUR MONEY?
- 22 A YES, SIR.
- 23 Q WOULD YOU HAVE LET THEM KNOW THAT THIS WAS NOT KAREN'S
- 24 MONEY?
- 25 A YES, SIR.

CODY R. [REDACTED] VS. BANK OF AMERICA

ROA 0165

APPENDIX 170



- 1 Q WHOSE MONEY WOULD YOU HAVE MADE CLEAR WAS THIS?
- 2 A MY NEPHEW, CODY P[REDACTED].
- 3 Q YOUR NEPHEW, CODY P[REDACTED].
- 4 MR. SABB: NOW, NEXT SLIDE PLEASE.
- 5 Q THIS IS NO. 13. THE CD HAD MATURED, HAD ACCUMULATED
- 6 SOME INTEREST, HADN'T IT?
- 7 A YES, SIR.
- 8 Q NOW, THE NUMBER IS \$253,991.50?
- 9 A YES, SIR.
- 10 Q TAKEN OUT APPROXIMATELY 60 DAYS AFTER THE CD WAS
- 11 CREATED? SIR?
- 12 A YES, SIR.
- 13 Q AND I APOLOGIZE. WE HAVE A COURT REPORTER. AND IF
- 14 YOU NOD YOUR HEAD, SHE WON'T PICK IT UP.
- 15 A I'M SORRY.
- 16 Q THAT'S OKAY. YOU'RE DOING FINE. SO THAT'S WHY THEY
- 17 ASK THAT WE HAVE VERBAL RESPONSES.
- 18 MR. SABB: AND SO THERE IS A WITHDRAWAL. NEXT SLIDE
- 19 PLEASE.
- 20 Q NOW, THERE WAS ANOTHER ACCOUNT CREATED AS IS INDICATED
- 21 ON PLAINTIFFS' EXHIBIT NO. 14. CAN YOU SEE THE TOP OF THAT
- 22 ACCOUNT, WHERE IT TALKS ABOUT ACCOUNT TITLE? CAN YOU SEE
- 23 THE TOP OF THAT?
- 24 A WHERE IT SAYS PERSONAL SIGNATURE CARD?
- 25 Q GO DOWN JUST A WEE BIT. YOU'LL SEE ACCOUNT NUMBER TO

CODY P[REDACTED] VS. BANK OF AMERICA

ROA 0166

APPENDIX 171

- 1 THE LEFT OF YOUR DOCUMENT.
- 2 A YES, SIR. CUSTOMS SAVINGS?
- 3 Q YES, SIR. AND THEN YOU'LL SEE WHERE IT SAYS ACCOUNT
- 4 TITLE?
- 5 A YES, SIR.
- 6 Q AND IT SAYS KAREN M. UNRUE?
- 7 A RIGHT.
- 8 Q NOW, HAVE YOU SEEN ANY COURT ORDER, ANY CERTIFICATE OF
- 9 APPOINTMENT, OR ANY FIDUCIARY LETTER THAT HAS ON IT KAREN
- 10 UNRUE?
- 11 A NO, SIR.
- 12 Q ALL OF THEM HAVE KAREN WHO?
- 13 A POWELL.
- 14 Q NOW, UNRUE IS HER MARRIED NAME?
- 15 A YES, SIR.
- 16 Q WOULD IT SURPRISE YOU TO FIND OUT THAT WHEN THE MONEY
- 17 STARTS GOING OUT OF THIS ACCOUNT SOMEPLACE ELSE, IT GOES TO
- 18 KAREN UNRUE AND HER HUSBAND. WHAT'S HIS NAME?
- 19 A JAY.
- 20 Q JAY UNRUE. ALL OF A SUDDEN THE POWELLS ARE OUT OF THE
- 21 LOOP AND THE UNRUES HAVE TAKEN OVER?
- 22 A YES, SIR.
- 23 MR. WILSON: YOUR HONOR, I'M GOING TO OBJECT. HE
- 24 CERTAINLY CAN ASK THE QUESTION, BUT I THINK HE'S
- 25 TESTIFYING.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0167

APPENDIX 172

1 THE COURT: IS THERE A QUESTION AT THE END OF THAT,  
2 MR. SABB?  
3 MR. SABB: I NEEDED TO ADD IT, JUDGE.  
4 Q ISN'T THAT TRUE, YOUNG MAN?  
5 A YES.  
6 MR. SABB: THANK YOU, YOUR HONOR.  
7 Q SO THEN, TRAVIS, YOUR SISTER BETRAYED YOUR TRUST?  
8 A YES, SIR.  
9 Q DO YOU AGREE WITH ME, YOUNG MAN ---  
10 A YES, SIR.  
11 Q --- THAT BANK OF AMERICA ALSO BETRAYED YOUR TRUST?  
12 A YES, SIR.  
13 MR. SABB: THANK YOU, TRAVIS.  
14 THE COURT: ALL RIGHT. MR. DAVIS.  
15 CROSS EXAMINATION BY MR. DAVIS:  
16 Q KAREN POWELL UNRUE, THAT'S YOUR SISTER, RIGHT?  
17 A YES, SIR.  
18 Q SHE'S HOW MANY YEARS OLDER THAN YOU?  
19 A I THINK SHE'S 5 YEARS OLDER THAN ME.  
20 Q AND SHE'S HOW MANY YEARS OLDER THAN YOUR DECEASED  
21 BROTHER, STEVEN?  
22 A SHE WAS YOUNGER.  
23 Q PARDON ME?  
24 A SHE WAS YOUNGER THAN MY DECEASED BROTHER.  
25 Q OKAY. SO HE WAS THE OLDEST CHILD?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0168

APPENDIX 173

- 1 A YES, SIR.
- 2 Q NOW, SHE HAD HELPED THE FAMILY -- SHE HAD HELPED HIS
- 3 FAMILY BEFORE FROM A FINANCIAL STANDPOINT, CORRECT?
- 4 A YES, SIR.
- 5 Q IN WHAT WAY HAD SHE HELPED -- HELPED ELIZABETH AND
- 6 STEVEN POWELL?
- 7 A YOU KNOW, FROM TIME TO TIME, YOU KNOW, HELP THEM --
- 8 YOU KNOW, MAYBE WRITE CHECKS OUT OR PAY PARTICULAR BILLS.
- 9 I'M NOT REALLY SURE IN A PARTICULAR MATTER HOW.
- 10 Q ALL RIGHT. THIS WAS PRIOR TO HIS DEATH?
- 11 A YES, SIR.
- 12 Q AND THIS WAS PRIOR TO WHEN ALL THIS MONEY STARTED
- 13 COMING DOWN THROUGH THE PIKE?
- 14 A YES, SIR.
- 15 Q SO IT WAS FAIR TO SAY BASED ON YOUR PERCEPTION THAT
- 16 ELIZABETH POWELL TRUSTED YOUR SISTER?
- 17 A YES, SIR.
- 18 Q ELIZABETH POWELL TRUSTED YOUR SISTER WITH HER CHECKING
- 19 ACCOUNT?
- 20 A YES, SIR.
- 21 Q YOUR BROTHER, STEVEN POWELL, TRUSTED YOUR SISTER WITH
- 22 HIS CHECKING ACCOUNT?
- 23 A YES, SIR.
- 24 Q AND YOUR BROTHER, STEVEN POWELL, HE WAS EMPLOYED BY
- 25 NUCOR, CORRECT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0169

APPENDIX 174

- 1 A YES, SIR.
- 2 Q HAD A GOOD JOB, CORRECT?
- 3 A YES, SIR.
- 4 Q AND HE WAS YOUR OLDER BROTHER, RIGHT?
- 5 A YES, SIR.
- 6 Q BUT EVEN HE STILL TURNED TO YOUR SISTER AS IT RELATED
- 7 TO FINANCES, CORRECT?
- 8 A YES, SIR.
- 9 Q AND YOUR FAMILY WAS PRETTY CLOSE, WASN'T IT?
- 10 A YES, SIR.
- 11 Q OR AT LEAST IT LOOKED THAT WAY, RIGHT?
- 12 A YES, SIR.
- 13 Q AND BECAUSE YOU SPENT A LOT OF TIME EVEN BEFORE YOUR
- 14 -- EVEN BEFORE YOUR BROTHER'S DEATH, YOU SPENT A LOT OF
- 15 TIME WITH YOUNG CODY P[REDACTED]?
- 16 A YES, SIR.
- 17 Q YOU EVEN SPEND TIME WITH HIM NOW, DON'T YOU?
- 18 A OH, YES, SIR.
- 19 Q I MEAN, HE EVEN ASKED YOU YESTERDAY TO GO DEER HUNTING
- 20 WITH HIM?
- 21 A YES, SIR.
- 22 Q ALL RIGHT. AND YOUR SISTER, KAREN, WAS ALSO CLOSE TO
- 23 HIM?
- 24 A YES, SIR.
- 25 Q AND SHE WAS ALSO CLOSE TO CODY P[REDACTED] WHEN HE WAS A

CODY P[REDACTED] VS. BANK OF AMERICA

ROA 0170

APPENDIX 175

- 1 CHILD?
- 2 A YES, SIR.
- 3 Q PRIOR TO THE DEATH, WAS THERE ANY REASON WHATSOEVER
- 4 WHY YOU COULD NOT TRUST YOUR OLDER SISTER?
- 5 A NO, SIR.
- 6 Q PRIOR TO STEVEN'S DEATH, WAS THERE ANY REASON
- 7 WHATSOEVER THAT THE WIFE OF STEVEN COULD NOT TRUST YOUR
- 8 SISTER?
- 9 A NO, SIR, NOT TO MY KNOWLEDGE.
- 10 Q YOUR SISTER, AMONG THE THREE OF YOU ALL, WAS SHE THE
- 11 MOST EDUCATED?
- 12 A YES, SIR.
- 13 Q NOT THAT ALWAYS MAKES A DIFFERENCE.
- 14 A YES.
- 15 Q AND HER EDUCATION WAS WHAT?
- 16 A SHE WENT TO SEVERAL DIFFERENT COLLEGES, TECH SCHOOLS.
- 17 AND SHE'D WORKED FOR SEVERAL DIFFERENT LAWYERS. SHE ALSO
- 18 HAD AN ACCOUNTING BUSINESS ON PAWLEYS ISLAND.
- 19 Q ALL RIGHT. SO SHE STUDIED BUSINESS IN SCHOOL, RIGHT?
- 20 A YES, SIR.
- 21 Q YOU KNEW THAT, CORRECT?
- 22 A YES, SIR.
- 23 Q YOUR BROTHER KNEW THAT, CORRECT?
- 24 A YES, SIR.
- 25 Q HIS WIFE KNEW THAT, CORRECT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0171

APPENDIX 176

- 1 A YES, SIR.
- 2 Q ALL RIGHT. SHE'D GONE TO A NUMBER OF DIFFERENT
- 3 SCHOOLS?
- 4 A YES, SIR.
- 5 Q EVERYBODY IN YOUR FAMILY KNEW THAT, CORRECT?
- 6 A YES, SIR.
- 7 Q SO SHE WAS THE ONE THAT KNEW HOW TO HANDLE THE MONEY?
- 8 A YES, SIR.
- 9 Q SO YOU HAD COMPLETE TRUST IN HER?
- 10 A YES, SIR.
- 11 Q WASN'T IT YOUR SISTER, KAREN -- WASN'T SHE THE ONE
- 12 THAT APPROACHED ELIZABETH POWELL ABOUT HANDLING THE MONEY?
- 13 A YES, SIR.
- 14 Q IS THAT RIGHT?
- 15 A YES, SIR.
- 16 Q THAT WAS HER IDEA, WASN'T IT?
- 17 A YES, SIR.
- 18 Q AND WASN'T IT KAREN POWELL WHO SUGGESTED THAT SHE BE
- 19 THE SOLE ONE IN CHARGE OF ALL THAT MONEY?
- 20 A YES, SIR.
- 21 Q AND WASN'T IT KAREN POWELL WHO SAID THAT I WILL TAKE
- 22 CARE OF YOUR SON -- BY TAKING CARE OF CODY THROUGH MANAGING
- 23 THOSE FUNDS?
- 24 A YES, SIR.
- 25 Q AND SHE MADE THAT SUGGESTION TO ELIZABETH POWELL,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0172

APPENDIX 177

- 1 DIDN'T SHE?
- 2 A YES, SIR.
- 3 Q IT WASN'T ELIZABETH POWELL THAT APPROACHED HER, WAS
- 4 IT?
- 5 A NO, SIR.
- 6 Q DID YOUR BROTHER -- I KIND OF HESITATE TO ASK, BUT
- 7 I'VE GOT TO ASK. DID YOUR BROTHER EVER TALK TO YOU ABOUT
- 8 WHO SHOULD HANDLE THE FINANCES BEFORE?
- 9 A NO, SIR.
- 10 Q OKAY. AND SHE'D GONE TO COLLEGE, STUDIED BUSINESS.
- 11 SHE EVEN HAD -- SHE'D WORKED WITH SOME LAWYERS, RIGHT?
- 12 A YES, SIR.
- 13 Q WHAT DID SHE DO FOR LAWYERS? BOOKKEEPING?
- 14 A PARALEGAL.
- 15 Q PARALEGAL. OKAY. SO SHE KNEW WHAT WAS RIGHT OR
- 16 WRONG?
- 17 A YES, SIR.
- 18 Q FROM A LEGAL STANDPOINT. DID SHE WORK -- WHEN SHE
- 19 WORKED FOR THOSE LAWYERS, SHE EVEN WORKED SOME WITH LAWYERS
- 20 AS IT RELATED TO PROBATE COURT MATTERS, DIDN'T SHE?
- 21 A I WOULD ASSUME SO, YES, SIR.
- 22 Q ALL RIGHT. SHE EVEN WORKED WITH LAWYERS AS IT RELATED
- 23 TO WILLS ON OCCASION, DIDN'T SHE?
- 24 A POSSIBLY SO, YES, SIR.
- 25 Q ALL RIGHT. SHE EVEN WORKED WITH LAWYERS AS IT RELATED

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0173

APPENDIX 178



1 TO SOMEBODY BEING IN CHARGE OF SOMEBODY'S FINANCES WHEN  
2 THEY ARE DECEASED OR WHEN THEY DIE. SHE HAD KNOWLEDGE OF  
3 THAT, DIDN'T SHE?

4 A YES, SIR.

5 Q AND IN FACT WHEN SHE APPROACHED ELIZABETH POWELL ABOUT  
6 TAKING CHARGE OF THE FINANCES, SHE ALSO TOLD HER THAT SHE  
7 KNEW WHAT TO DO AS WHEN IT CAME TO DEALING WITH THE PROBATE  
8 COURT, DIDN'T SHE?

9 A YES, SIR.

10 Q AND BASED ON YOUR PERCEPTION, THAT HELPED PERSUADE  
11 ELIZABETH POWELL TO TURN EVERYTHING OVER TO HER?

12 A YES, SIR.

13 Q IT WAS EVEN HER IDEA THAT YOU DIDN'T NEED AN INSURANCE  
14 POLICY OR A BOND TO COVER IF THE MONEY WAS LOST OR STOLEN,  
15 WAS IT?

16 A YES, SIR.

17 Q THAT WASN'T ELIZABETH POWELL'S IDEA, WAS IT?

18 A NO, SIR.

19 Q THAT WASN'T YOUR IDEA, WAS IT?

20 A NO, SIR.

21 Q AND IT WAS HER IDEA THAT SHE WOULD BRING THAT TO THE  
22 ATTENTION OF THE COURT, RIGHT?

23 A YES, SIR.

24 Q AND IT WAS ALSO HER IDEA -- LET ME BACK UP. SHE EVEN  
25 PERSUADED YOUR SISTER-IN-LAW, EX-SISTER-IN-LAW, ELIZABETH

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0174

APPENDIX 179

- 1 POWELL, TO STAND UP IN FRONT OF THAT COURT AND SAY, WE
- 2 WAIVE ANY BOND REQUIREMENT FOR HER TO BE A CONSERVATOR,
- 3 DIDN'T SHE?
- 4 A YES, SIR.
- 5 Q THAT WAS HER IDEA. AND DO YOU KNOW WHY SHE CAME UP
- 6 WITH THAT IDEA?
- 7 A NO, SIR.
- 8 Q WAS HER BUSINESS IN FINANCIAL TROUBLE AT ALL AT THAT
- 9 TIME? YOU DON'T KNOW?
- 10 A NOT TO MY KNOWLEDGE, NO, SIR.
- 11 Q OKAY. HAD SHE TALKED ABOUT MOVING TO COLORADO AT ALL
- 12 AT THAT TIME?
- 13 A NO, SIR.
- 14 Q BUT SHE CAME UP WITH ALL THESE IDEAS HERSELF AND
- 15 APPROACHED ELIZABETH POWELL ABOUT IT?
- 16 A YES, SIR.
- 17 Q AND THEN SHE APPROACHED YOU ABOUT IT ALL?
- 18 A YES, SIR.
- 19 Q WHOSE IDEA WAS IT FOR YOU TO BE THE CO-CONSERVATOR?
- 20 A ELIZABETH.
- 21 Q AND THE REASON ELIZABETH POWELL WANTED YOU TO BE THE
- 22 CO-CONSERVATOR WAS BECAUSE SHE KNEW YOU SPENT A LOT OF TIME
- 23 WITH HER SON?
- 24 A YES, SIR.
- 25 Q SHE KNEW THAT YOU -- YOU WOULD GO HUNTING WITH HIM.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0175

APPENDIX 180

- 1 WELL, HE WAS YOUNG THEN. WOULDNT YOU ALL TAKE HIM HUNTING
- 2 SOME TIMES WITH YOU?
- 3 A YES.
- 4 Q EVEN AT THAT AGE?
- 5 A YES, SIR.
- 6 Q WOULD YOU SPEND TIME WITH HIM WHEN HE WAS TRYING TO
- 7 RIDE A BICYCLE?
- 8 A YES, SIR.
- 9 Q DID YOU HELP -- DIDNT YOU HELP TEACH HIM HOW TO RIDE
- 10 A BICYCLE?
- 11 A YES, SIR.
- 12 Q SO YOU'D BEEN SPENDING TIME WITH THIS YOUNG CHILD
- 13 SINCE HE WAS JUST A TODDLER?
- 14 A SINCE HE WAS BORN.
- 15 Q SINCE HE WAS BORN. AND HER UNDERSTANDING OF YOUR
- 16 BEING A CO-CONSERVATOR WAS TO STAND IN THE SHOES IF YOU
- 17 COULD -- TO THE EXTENT YOU CAN, OF HER HUSBAND?
- 18 A YES, SIR.
- 19 Q BECAUSE YOU WERE BLOOD?
- 20 A YES, SIR.
- 21 Q AND SHE THOUGHT SHE COULD TRUST KAREN UNRUE -- KAREN
- 22 POWELL, YOUR SISTER, THE ONE WHO HAD THE EXPERTISE IN
- 23 FINANCE BECAUSE SHE WAS BLOOD?
- 24 A YES, SIR.
- 25 Q THEY TALKED ABOUT BANK OF AMERICA. YOU DIDNT EVEN

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0176

APPENDIX 181

- 1 KNOW WHERE THE MONEY WAS BEING PUT, DID YOU?
- 2 A NO, SIR.
- 3 Q THAT WAS ON KAREN UNRUE?
- 4 A YES, SIR.
- 5 Q ON YOUR SISTER, KAREN, CORRECT?
- 6 A YES, SIR.
- 7 Q OKAY. SO YOU DIDN'T EVEN KNOW IT WAS GOING TO BE BANK
- 8 OF AMERICA BEING UTILIZED, DID YOU?
- 9 A NO, SIR.
- 10 Q YOU DIDN'T EVEN KNOW WHERE SHE INTENDED ON -- LET'S
- 11 SEE. SHE DIDN'T EVEN DISCUSS WITH YOU SHE WAS GOING TO SET
- 12 UP A CD, DID SHE?
- 13 A NO, SIR.
- 14 Q SHE DIDN'T EVEN DISCUSS WITH YOU THAT SHE WAS GOING TO
- 15 RECEIVE THE CHECKS FROM THE INSURANCE COMPANIES, DID SHE?
- 16 A NO, SIR.
- 17 Q SHE DIDN'T EVEN TELL YOU THAT SHE HAD RECEIVED THOSE
- 18 CHECKS FROM THOSE INSURANCE COMPANIES, DID SHE?
- 19 A NO, SIR.
- 20 Q ALL RIGHT. AND YOU MENTIONED SOMETHING ABOUT -- I
- 21 JUST WANTED TO CLEAR THIS UP, THAT C-CN (SIC) WHO SIGNED
- 22 THOSE CHECKS, YOU SAID THAT STOOD FOR CO-CONSERVATOR, YOU
- 23 DIDN'T KNOW THAT BEFORE THIS LITIGATION STARTED, DID YOU?
- 24 A NO, SIR.
- 25 Q YOU LEARNED THAT DURING THE COURSE OF THE LITIGATION,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0177

APPENDIX 182

- 1 RIGHT?
- 2 A YES, SIR.
- 3 Q YOU WOULDN'T HAVE KNOWN WHAT THAT MEANT AT FIRST?
- 4 A NO, SIR.
- 5 Q IT WOULD HAVE BEEN SOME GIBBERISH BY THE INSURANCE
- 6 COMPANY?
- 7 A YES, SIR.
- 8 Q YOU'D AGREE THAT THOSE CHECKS ARE MADE OUT DIFFERENTLY
- 9 BY THE DIFFERENT INSURANCE COMPANIES, RIGHT?
- 10 A YES, SIR.
- 11 Q SO NONE OF THOSE CHECKS -- YOU DIDN'T EVEN KNOW THAT
- 12 NONE OF THOSE CHECKS HAD BEEN RECEIVED AT ALL?
- 13 A YES, SIR.
- 14 Q YOU HAD?
- 15 A NO, SIR. NO, SIR, I DID NOT KNOW.
- 16 Q SO YOU WEREN'T RELYING ON BANK OF AMERICA TO HANDLE
- 17 YOUR MONEY, WERE YOU?
- 18 A NO, SIR.
- 19 Q YOU WERE RELYING ON YOUR SISTER, KAREN, YOUR BLOOD TO
- 20 HANDLE THAT MONEY?
- 21 A CORRECT.
- 22 Q AND THAT'S BASED ON -- YOU WENT TO THE HEARING AT THE
- 23 PROBATE COURT HEARING, RIGHT?
- 24 A YES, SIR.
- 25 Q AND THAT'S WHO ELIZABETH POWELL WAS RELYING ON?

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0178

APPENDIX 183

- 1 A YES, SIR.
- 2 Q ALL RIGHT. AND EVEN ELIZABETH POWELL DID NOT KNOW
- 3 WHAT BANK YOUR SISTER, KAREN, WAS GOING TO GO TO, DID SHE?
- 4 A NO, SIR.
- 5 Q THAT WASN'T EVEN IN THE DISCUSSION, THAT'S HOW MUCH
- 6 SHE TRUSTED HER?
- 7 A YES, SIR.
- 8 Q ARE YOU EVEN AWARE THAT YOUR SISTER WROTE A LETTER TO
- 9 THE COURT -- ANY TYPE OF LETTER TO THE COURT? YOU DON'T
- 10 EVEN KNOW ABOUT THAT, DO YOU?
- 11 A NO, SIR.
- 12 Q BECAUSE THE UNDERSTANDING WAS EVERYTHING FINANCIAL --
- 13 EVERYTHING WAS GOING TO COME THROUGH HER; IS THAT RIGHT?
- 14 A FROM WHAT YOU'RE SAYING, YES, SIR. I DID NOT KNOW
- 15 ANYTHING ABOUT A LETTER.
- 16 Q AND YOU DIDN'T KNOW ANYTHING ABOUT ANY OF THESE CHECKS
- 17 THAT CAME THROUGH UNTIL YOU GOT SUED, RIGHT?
- 18 A CORRECT.
- 19 Q NOW, YOU WOULD HAVE TAKEN -- IF YOU WOULD HAVE GONE TO
- 20 THE BANK -- FIRST OF ALL, LET'S TALK ABOUT THE BANK. LET'S
- 21 TALK ABOUT THE BANK. SHE DIDN'T ASK YOU TO GO TO THE BANK,
- 22 DID SHE?
- 23 A NO, SIR.
- 24 Q AND THERE WAS SIGNATURES -- YOU SAW THE SIGNATURES ON
- 25 THE BACK OF THOSE CHECKS, RIGHT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0179

APPENDIX 184

1 A YES, SIR.

2 Q YOU SAW THE SIGNATURES WHEN THEY SAID, TRAVIS POWELL,

3 RIGHT?

4 A YES, SIR.

5 Q THOSE AREN'T YOUR SIGNATURES, ARE THEY?

6 A NO, SIR.

7 Q ALL RIGHT. SO YOUR SISTER FORGED -- YOUR BLOOD SIGNED

8 FOR YOU?

9 A YES, SIR.

10 Q NOW, I KNOW WHAT'S HAPPENED NOW. BUT GOING BACK AT

11 THE POINT IN TIME, AT THAT TIME THAT WAS OKAY, WASN'T IT?

12 A YES, SIR.

13 Q BECAUSE SHE WAS HANDLING THE FINANCES?

14 A YES, SIR.

15 Q YOU DIDN'T HAVE A PROBLEM WITH HER SIGNING YOUR NAME,

16 DID YOU?

17 A I DIDN'T -- I DIDN'T KNOW SHE DID IT.

18 Q BUT YOU DIDN'T HAVE A PROBLEM WITH HER GOING ---

19 MR. SABB: YOUR HONOR, PLEASE. THAT'S OKAY, JUDGE.

20 Q SO YOU WERE OKAY WITH HER SIGNING YOUR NAME?

21 A OBVIOUSLY.

22 Q BECAUSE YOU TRUSTED HER?

23 MR. SABB: I COULDN'T HEAR THAT RESPONSE.

24 A I SAID, YES.

25 MR. WILSON: YOUR HONOR, I'M GOING TO OBJECT TO THAT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0180

APPENDIX 185

1 AS THE QUESTION AWARE OF IT. I OBJECT TO WHAT HE WAS AWARE  
2 AND WASN'T AWARE OF. THE QUESTIONS HAVE BEEN HE DIDN'T  
3 KNOW THE CHECKS CAME IN, HE DIDN'T SIGN HIS SIGNATURE.  
4 THERE'S NO INDICATION THERE WAS ANY DISCUSSION WITH HER. I  
5 OBJECT TO IT.

6 MR. DAVIS: I AGREE WITH THAT, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 MR. DAVIS: I'LL MOVE ON.

9 Q SO TO YOUR KNOWLEDGE, YOU DON'T KNOW IF SHE TOOK ANY  
10 TYPE OF COURT ORDER TO THE BANK AT ALL, DO YOU?

11 A NO, SIR.

12 Q AND YOU NEVER KNEW ANYTHING ABOUT HER SETTING UP A  
13 CERTIFICATE OF DEPOSIT, DO YOU?

14 A NO, SIR.

15 Q AND YOU NEVER KNEW -- YOU DIDN'T EVEN KNOW THAT SHE  
16 HAD A PREEXISTING BUSINESS RELATIONSHIP WITH BANK OF  
17 AMERICA, DID YOU?

18 A NO, SIR.

19 Q AND YOUR SISTER DID HAVE HER OWN BUSINESS, DIDN'T SHE?

20 A YES, SIR.

21 Q AND SHE WORKED IN THE -- SHE HAD A BUSINESS IN THE  
22 GEORGETOWN PAWLEYS ISLAND AREA?

23 A YES, SIR.

24 Q WHICH IS NOT FAR FROM THIS BRANCH IN PAWLEYS ISLAND,  
25 BANK OF AMERICA BRANCH, RIGHT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0181

APPENDIX 186



- 1 A YES, SIR.
- 2 Q OKAY. AND THE TYPE OF BUSINESS SHE HAD IS WHAT'S
- 3 CALLED A BOOKKEEPING BUSINESS?
- 4 A YES, SIR.
- 5 Q AND IN HER BOOKKEEPING BUSINESS, TO YOUR KNOWLEDGE
- 6 WHAT SHE DID IS SHE HANDLED MONEY FOR OTHER PEOPLE?
- 7 A YES, SIR.
- 8 Q SO SHE KNEW WHAT SHE WAS DOING WHEN IT CAME TO
- 9 DEPOSITS AND THAT TYPE OF THING?
- 10 A YES, SIR.
- 11 Q OKAY. AND YOU KNEW SHE HAD SOME TYPE OF BUSINESS
- 12 RELATIONSHIPS WITH BANKS, RIGHT?
- 13 A YES, SIR.
- 14 Q YOU JUST DIDN'T KNOW WHO?
- 15 A RIGHT.
- 16 Q DO YOU KNOW WHERE YOUR SISTER IS RIGHT NOW?
- 17 A NO, SIR.
- 18 Q YOU WOULD AGREE THAT YOUR SISTER JUST CUT THROUGH --
- 19 SHE STOLE THAT MONEY, DIDN'T SHE?
- 20 A YES, SIR.
- 21 Q YOU NEVER EVEN HAD ANY KNOWLEDGE THAT SHE SET UP A CD
- 22 AND THEN SET UP ANOTHER ACCOUNT SO SHE COULD CASH THAT CD,
- 23 SO THE MONEY WOULD RUN THROUGH IT. YOU DIDN'T KNOW
- 24 ANYTHING ABOUT THAT EITHER, DID YOU?
- 25 A NO, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0182

APPENDIX 187

1 Q ALL RIGHT. BECAUSE SHE DID ALL THAT?

2 A YES, SIR.

3 Q ARE YOU AWARE THAT SHE TRIED TO STEAL SOME OTHER MONEY

4 FROM YOUR SISTER-IN-LAW?

5 A NO, SIR.

6 Q YOU DON'T KNOW ANYTHING ABOUT THAT?

7 A NO, SIR.

8 Q OKAY. AND AS YOU SIT IN THIS COURTROOM TODAY, THE

9 REASON FOR -- THE PRIMARY REASON FOR YOUR NEPHEW, CODY,

10 LOSING ANY MONEY IS BECAUSE YOUR SISTER, YOUR BLOOD STOLE

11 THE MONEY?

12 MR. SABB: YOUR HONOR, PLEASE. I OBJECT TO THE NOTION

13 OF PRIMARY REASON.

14 THE COURT: MR. DAVIS?

15 MR. DAVIS: YOUR HONOR, I'M SORRY.

16 THE COURT: ANY RESPONSE TO THE OBJECTION?

17 MR. DAVIS: YOUR HONOR, I'M JUST ASKING IS SHE THE

18 PRIMARY REASON FOR THAT MONEY BEING MISSING? SHE STOLE IT.

19 IT'S HIS PERCEPTION.

20 THE COURT: THE OBJECTION IS OVERRULED.

21 Q THE PRIMARY REASON THAT MONEY IS MISSING IS BECAUSE

22 YOUR SISTER STOLE IT; ISN'T THAT TRUE?

23 A YES.

24 MR. SABB: WHAT WAS HIS RESPONSE?

25 MR. POWELL: YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0183

APPENDIX 188

1 MR. SABB: OKAY.

2 Q AND THE REASON THAT YOU'RE HERE IN THIS COURTROOM, I'M  
3 HERE IN THIS COURTROOM, THE BANK OF AMERICA, IS BECAUSE OF  
4 YOUR SISTER, ISN'T IT?

5 A YES, SIR.

6 Q IF SHE HAD LIVED UP TO HER DUTY AND OBLIGATION AS A  
7 SISTER, AS BLOOD, I MEAN, WE WOULDN'T BE HERE, WOULD WE?

8 A NO, SIR.

9 MR. DAVIS: YOUR HONOR, IF I COULD HAVE A MOMENT?

10 THE COURT: YES, SIR.

11 (PAUSE.)

12 MR. DAVIS: NO MORE QUESTIONS AT THIS TIME.

13 MR. WILSON: MAY IT PLEASE THE COURT.

14 THE COURT: YES, SIR.

15 CROSS EXAMINATION BY MR. WILSON:

16 Q TRAVIS, YOU'VE BEEN ASKED A LOT OF QUESTIONS THIS  
17 MORNING. LET'S GET A LITTLE BIT OF BACKGROUND. HOW OLD  
18 ARE YOU, SON?

19 A 31 YEARS OLD.

20 Q AND YOUR EDUCATIONAL BACKGROUND, HOW FAR DID YOU GO IN  
21 SCHOOL?

22 A I GRADUATED HIGH SCHOOL IN 1995.

23 Q NOW, THERE WAS SOME STATEMENTS MADE YESTERDAY ABOUT  
24 FACTS AND CIRCUMSTANCES. GO BACK IN TIME WITH US A LITTLE  
25 BIT. STEVEN, YOUR BROTHER?

CODY ~~REDACTED~~ VS. BANK OF AMERICA

ROA 0184

APPENDIX 189

- 1 A YES, SIR.
- 2 Q NOW, YOUR DAD DIED WHEN YOU WERE HOW OLD?
- 3 A 5.
- 4 Q NOW, STEVEN IS ABOUT 13 YEARS OLDER THAN YOU?
- 5 A YES, SIR.
- 6 Q DID HE RAISE YOU?
- 7 A PRETTY MUCH SO, YES, SIR.
- 8 Q AND WAS HE MORE THAN A BROTHER TO YOU?
- 9 A YES, SIR, HE WAS A FATHER FIGURE AND A BEST FRIEND OF
- 10 MINE.
- 11 Q DID YOU LOVE STEVEN POWELL A GREAT DEAL?
- 12 A YES, SIR.
- 13 Q WHEN HE GOT MARRIED, HE HAD A SON, CODY?
- 14 A YES, SIR.
- 15 Q DID YOU LOVE THIS BOY?
- 16 A YES, SIR, I LOVED HIM LIKE HE WAS MY OWN.
- 17 Q DO YOU LOVE HIM NOW?
- 18 A YES, SIR, I STILL DO.
- 19 Q DID YOU LOVE HIM WHEN YOUR BROTHER DIED?
- 20 A YES, SIR.
- 21 Q WHEN YOUR BROTHER DIED TRAGICALLY AT NUCOR STEEL, WERE
- 22 YOU WORKING THERE?
- 23 A YES, SIR.
- 24 Q WHERE DID THEY FIND YOUR BROTHER, SON?
- 25 A DOWN IN THE STEEL PIT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0185

APPENDIX 190

- 1 Q AND WHEN YOU SAY DOWN IN THE STEEL PIT, AS I  
2 UNDERSTAND HE FELL THROUGH A GRATE AND WAS WASHED AWAY?  
3 A YES, SIR.  
4 Q NOW, AT THAT POINT AND FROM THAT POINT FORWARD, DID  
5 YOU REALIZE THAT ONCE AGAIN LIFE IN THE POWELL FAMILY PUT A  
6 BROTHER IN A POSITION TO HELP A CHILD?  
7 A YES, SIR.  
8 Q NOW, I WANT YOU TO LOOK AT EVERY SINGLE PERSON IN THIS  
9 JURY BOX. I WANT YOU TO LOOK AT THEM, AND TELL THEM: DID  
10 YOU AT ANY TIME, SON, TAKE A DIME, A QUARTER, A DOLLAR, A  
11 THOUSAND DOLLARS, \$200,000? DID YOU TAKE ANY OF THIS BOY'S  
12 MONEY?  
13 A NO, SIR.  
14 Q WOULD YOU HAVE EVER IN YOUR RELATIONSHIP WITH HIM  
15 TAKEN THIS CHILD'S MONEY?  
16 A NO, SIR.  
17 Q NOW, LET ME ASK YOU SOMETHING. THEY TALKED ABOUT A  
18 HEARING BEFORE JUDGE GAMBLE RIGHT HERE IN KINGSTREE; THAT'S  
19 THE PROBATE JUDGE. NOW, WHEN YOU WENT THERE, WAS YOUR  
20 SISTER-IN-LAW, STEVEN'S -- WAS SHE THERE?  
21 A YES, SIR.  
22 Q AND WAS IT CLEAR FROM EVEN BEFORE THE JUDGE WHAT YOU  
23 WERE SUPPOSED TO DO?  
24 A YES, SIR.  
25 Q AND WHAT WAS THAT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0186

APPENDIX 191

1 A TO BE A FATHER FIGURE AND A BIG BROTHER FOR CODY  
 2 P [REDACTED].  
 3 Q ALL RIGHT. WAS THAT DISCUSSED IN THE ROOM?  
 4 A YES, SIR.  
 5 Q WAS IT DISCUSSED BEFORE THE JUDGE?  
 6 A YES, SIR.  
 7 Q WAS IT DISCUSSED BEFORE ELIZABETH?  
 8 A YES, SIR.  
 9 Q NOW, AS A RESULT OF THAT -- OF THAT RESPONSIBILITY,  
 10 HAVE YOU DONE THAT?  
 11 A YES, SIR.  
 12 Q NOW, NOT ONLY IF HE WAS 5 AT THE TIME, THAT WAS 2001,  
 13 7 YEARS AGO. HE'S 12, 13 YEARS OLD NOW?  
 14 A YES, SIR.  
 15 Q TRAVIS, HAVE YOU DONE THOSE THINGS?  
 16 A YES, SIR, AND I STILL DO.  
 17 Q WHAT KIND OF THINGS DO YOU DO WITH THIS BOY?  
 18 A I TAKE HIM HUNTING AND FISHING AND CAMPING. I DO  
 19 CHURCH FUNCTIONS WITH HIM. I INVITE HIM TO MY HOUSE TO  
 20 SPEND THE NIGHT FOR THE WEEKEND. BIRTHDAY PARTIES. TAKE  
 21 HIM ON VACATION WITH US FROM TIME TO TIME. MANY OTHER  
 22 THINGS THAT I CAN'T THINK OF AT THIS MOMENT. HE'S  
 23 DEFINITELY PART OF MY LIFE.  
 24 Q ALL RIGHT. AND IF YOU SEE HIM NOW -- IF THESE FOLKS  
 25 ARE NOT HERE, IF YOU'RE JUST OUT ON THE STREET, IF YOU'RE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0187

APPENDIX 192

- 1 JUST OUT IN THE COMMUNITY AND HE SEES YOU, WHAT DOES HE DO?
- 2 A HE COMES UP TO ME AND HUGS MY NECK AND TELLS ME HE
- 3 LOVES ME.
- 4 Q NOW, HAVE YOU SEEN YOUR SISTER-IN-LAW SINCE THIS
- 5 ACTION WAS FILED, ELIZABETH?
- 6 A YES, SIR.
- 7 Q ALL RIGHT. AND HAS SHE TRUSTED TRAVIS (SIC) WITH YOU?
- 8 A YES, SIR, SHE'S TRUSTED ---
- 9 Q NOT TRAVIS.
- 10 A --- CODY WITH ME.
- 11 Q TRUSTED CODY WITH YOU?
- 12 A YES, SIR.
- 13 Q AND DOES HE RIDE IN THE CAR WITH YOU?
- 14 A YES, SIR.
- 15 Q DOES HE GET IN A DEER STAND WITH YOU?
- 16 A YES, SIR.
- 17 Q DOES SHE LET HIM GO OUT AND DO BICYCLES AND THINGS
- 18 LIKE THAT WITH YOU?
- 19 A YES, SIR.
- 20 Q STAY IN YOUR HOME?
- 21 A YES, SIR.
- 22 Q OKAY. NOW, SHE KNOWS AND STATED UNDER OATH, SHE
- 23 DOESN'T BELIEVE YOU HAD ANYTHING TO DO WITH THIS MONEY?
- 24 A THAT IS CORRECT.
- 25 Q SHE ALSO KNOWS AND BELIEVES THAT IF YOU KNEW KAREN

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0188

APPENDIX 193

- 1 POWELL UNRUE HAD DONE ANYTHING, YOU WOULD HAVE TOLD HER?
- 2 A YES, SIR.
- 3 Q NOW, YOU TELL THESE FOLKS: IS THAT TRUE?
- 4 A YES, SIR, THAT IS TRUE. IF I WOULD HAVE KNOWN
- 5 ANYTHING WAS GOING ON, I WOULD HAVE COME TO LIZ OR SOMEONE
- 6 AND MADE A POINT THAT THEY KNEW ABOUT IT.
- 7 Q OKAY. NOW, WHEN YOU WENT BEFORE THAT COURT AND YOU
- 8 WALKED OUT OF THAT COURTROOM, YOUR DUTY AS YOU UNDERSTAND
- 9 IT WAS TO DO WHAT?
- 10 A TO BE A FATHER FIGURE AND A BIG BROTHER FOR CODY.
- 11 Q HAS ANYTHING ELSE BEEN REQUESTED OF ELIZABETH OR
- 12 ANYONE ELSE SINCE THAT TIME FOR YOU TO DO?
- 13 A NO, SIR.
- 14 Q WERE YOU AWARE THAT THINGS HAD GONE WRONG? WERE YOU
- 15 AWARE ABOUT THE ACCOUNTS THAT WERE SET UP OR DID YOU HAVE
- 16 ANYTHING TO DO WITH THEM?
- 17 A NO, SIR.
- 18 Q WHO WAS TO DO THAT?
- 19 A KAREN POWELL.
- 20 Q NOW, EVERY FAMILY HAS FOLKS IN THE FAMILY THAT DO
- 21 DIFFERENT THINGS. IN MY FAMILY YOU MIGHT HAVE A FARMER.
- 22 YOU MIGHT HAVE A PLUMBER. IN DIFFERENT FAMILIES PEOPLE DO
- 23 DIFFERENT -- WHO WAS THE BEST PERSON THAT YOU KNEW IN YOU
- 24 ALL'S FAMILY TO HANDLE MONEY?
- 25 A MY SISTER, KAREN POWELL.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0189

APPENDIX 194



- 1 Q HAD YOU BEEN ASKED SEVERAL TIMES ABOUT HER BACKGROUND.
- 2 SHE WENT TO COLLEGE FOR A WHILE?
- 3 A YES, SIR.
- 4 Q SHE WORKED WITH SOME LAWYERS?
- 5 A YES, SIR.
- 6 Q SHE DID A LITTLE ACCOUNTING BUSINESS?
- 7 A YES, SIR.
- 8 Q WAS THERE ANYBODY ELSE THAT YOU KNEW OF IN THE FAMILY
- 9 BETTER SUITED TO HANDLE THE MONEY?
- 10 A NO, SIR.
- 11 Q NOW, PRIOR TO HER APPOINTMENT, SON, DID YOU HAVE ANY
- 12 INDICATION AND TO YOUR KNOWLEDGE DID ELIZABETH, THAT THERE
- 13 WAS ANY TENDENCY -- THERE WAS ANY CHANCE THAT KAREN WOULD
- 14 TAKE THE MONEY?
- 15 A NO, SIR.
- 16 Q NOW, WHAT WAS HER RELATIONSHIP WITH YOUR BROTHER?
- 17 A IT WAS A GOOD RELATIONSHIP.
- 18 Q AND WITH LITTLE CODY?
- 19 A YES, SIR.
- 20 Q DID YOU BELIEVE SHE WOULD DO SOMETHING LIKE THIS?
- 21 A NO, SIR.
- 22 Q ALL RIGHT. NOW, AS A RESULT OF THAT AND THE FINANCES,
- 23 THESE CHECKS HAVE BEEN PUT UP HERE. WERE YOU PRESENTED
- 24 THOSE CHECKS?
- 25 A NO, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0190

APPENDIX 195

1 Q DID YOU SEE THOSE CHECKS?  
 2 A NO, SIR.  
 3 Q DID YOU SIGN THOSE CHECKS?  
 4 A NO, SIR.  
 5 Q NOW, THAT CAME AS NO SURPRISE TO YOU BECAUSE AS FAR AS  
 6 YOU KNEW AND AS FAR AS ELIZABETH KNEW AND AS FAR AS YOU  
 7 KNEW, THE PROBATE COURT KNEW, YOU WEREN'T GOING TO HANDLE  
 8 ANY OF THE FINANCES?  
 9 A CORRECT.  
 10 MR. SABB: I WOULD OBJECT TO THAT, YOUR HONOR, PLEASE.  
 11 Q WERE YOU ---  
 12 THE COURT: ALL RIGHT. THE BASIS FOR THE OBJECTION?  
 13 MR. SABB: HE ASKED THIS WITNESS, YOUR HONOR, ABOUT  
 14 WHAT THE PROBATE JUDGE KNEW AS IT RELATES TO THE REST OF  
 15 THE QUESTION THAT HE ASKED. WE TAKE THE POSITION THAT'S  
 16 IMPROPER.  
 17 MR. WILSON: I'LL BE GLAD TO REPHRASE IT.  
 18 THE COURT: ALL RIGHT.  
 19 Q WAS THE PROBATE COURT AWARE IN YOUR PRESENCE AND  
 20 ELIZABETH'S PRESENCE OF YOUR RESPONSIBILITY?  
 21 A YES, SIR.  
 22 Q ALL RIGHT. NOW, THE SAME QUESTION. WAS THAT YOUR  
 23 RESPONSIBILITY AS FAR AS YOU KNOW ---  
 24 A NO, SIR.  
 25 Q --- TO HANDLE THE MONEY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0191

APPENDIX 196

- 1 A NO, SIR.
- 2 Q HOW ABOUT TO TAKE CARE OF CODY?
- 3 A TAKE CARE OF CODY.
- 4 Q NOW, DID YOU HAVE ANY SKILLS -- NOW, YOU'RE A HIGH
- 5 SCHOOL GRADUATE. WHERE DO YOU WORK?
- 6 A I WORK AT NUCOR STEEL.
- 7 Q AND HOW LONG HAVE YOU WORKED THERE?
- 8 A BEEN THERE 12 YEARS.
- 9 Q NOW, WHEN YOU WERE IN HIGH SCHOOL, DID YOU PLAY
- 10 SPORTS?
- 11 A NO, SIR.
- 12 Q YOUR DAD DIED WHEN YOU WERE 5?
- 13 A YES, SIR.
- 14 Q DID YOU GO TO WORK?
- 15 A YES, SIR.
- 16 Q WHERE DID YOU GO TO WORK?
- 17 A I STARTED AT A WELDING SHOP WHEN I WAS 16 YEARS OLD.
- 18 Q AND HAVE YOU WORKED PRETTY MUCH THE REST OF YOUR LIFE?
- 19 A EVERY DAY.
- 20 Q AND WHY DID YOU GO TO WORK AT 16?
- 21 A BECAUSE I WANTED TO PROVIDE FOR MYSELF AND BE ABLE TO
- 22 HAVE THINGS -- HAVE MONEY TO BE ABLE TO DO THINGS.
- 23 Q AND DID THAT TAKE SOME OF THE FINANCIAL STRESS OFF OF
- 24 YOUR FAMILY?
- 25 A YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0192

APPENDIX 197

- 1 Q SON, DID YOU HAVE ANY SKILLS OTHER THAN -- OTHER THAN  
2 THAT KIND OF WORK? WERE YOU EVER AN ACCOUNTANT?  
3 A NO, SIR.  
4 Q DID YOU EVER HANDLE ANYBODY ELSE'S MONEY?  
5 A NO, SIR.  
6 Q DID YOU EVER REPRESENT THAT YOU COULD?  
7 A NO, SIR.  
8 Q YOUR BACKGROUND AND YOUR WORK AND WHAT YOU COULD DO,  
9 WAS THAT KNOWN TO YOUR SISTER-IN-LAW?  
10 A YES, SIR.  
11 Q AND TO YOUR BROTHER?  
12 A YES, SIR.  
13 Q NOW, DID YOU MAKE ANY REPRESENTATIONS TO THE COURT  
14 THAT YOU HAD ANY SKILLS IN THAT AREA?  
15 A NO, SIR.  
16 Q IN PROBATE -- AND DO YOU HAVE ANY?  
17 A NO, SIR.  
18 Q NOW, YOU'RE MARRIED?  
19 A YES, SIR.  
20 Q AND WHO'S YOUR WIFE?  
21 A CASEY POWELL.  
22 Q AND DOES SHE WORK?  
23 A YES, SIR.  
24 Q DO YOU HAVE CHILDREN?  
25 A YES, SIR, I HAVE TWO CHILDREN.

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ROA 0193

APPENDIX 198

- 1 Q IN FACT, YOU HAD A LITTLE GIRL ABOUT ALL THE TIME ALL  
2 THIS WAS COMING APART; IS THAT RIGHT?
- 3 A YES, SIR.
- 4 Q AND WHAT'S HER NAME?
- 5 A HAILEY.
- 6 Q AND HOW OLD IS SHE?
- 7 A SHE'S 6.
- 8 Q AND YOU'VE HAD A SON SINCE THEN?
- 9 A YES, SIR.
- 10 Q AND HOW OLD IS HE?
- 11 A HE'S 3.
- 12 Q AND OWEN IS 3?
- 13 A YES, SIR.
- 14 Q NOW, WITH THOSE TWO CHILDREN THAT YOU'VE HAD, A 6 YEAR  
15 OLD AND A 3 YEAR OLD -- YOU KNOW IT'S 2008. THAT GOES BACK  
16 TO 2002. EVEN WITH YOUR OWN TWO CHILDREN AND A WIFE AND A  
17 JOB, HAVE YOU CONTINUED TO SPEND TIME AND ENERGY AND GIVE  
18 LOVE TO LITTLE CODY?
- 19 A YES, SIR.
- 20 Q AND HAVE YOU INCLUDED HIM IN THINGS WITH YOUR OWN  
21 CHILDREN?
- 22 A YES, SIR.
- 23 Q NOW, WHEN THE SITUATION FIRST DEVELOPED THAT SOMETHING  
24 HAD GONE WRONG WITH THE ACCOUNTING, DID YOU TRY AND FIND  
25 OUT ABOUT IT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0194

APPENDIX 199

- 1 A YES, SIR.
- 2 Q AS FAR AS WHERE THE MONEY WAS? WHAT WAS YOUR
- 3 UNDERSTANDING FROM YOUR SISTER, WHAT DID SHE DO WITH THE
- 4 MONEY?
- 5 A I DON'T KNOW WHAT SHE DONE WITH IT.
- 6 Q COULD YOU FIND IT?
- 7 A NO, SIR.
- 8 Q AND HAVE YOU BEEN HERE EVER SINCE, SINCE ALL THIS
- 9 BEGAN?
- 10 A YES, SIR.
- 11 Q HAVE YOU GIVEN A DEPOSITION?
- 12 A YES, SIR.
- 13 Q HAVE YOU COME TO COURT?
- 14 A YES, SIR.
- 15 Q HAVE YOU ANSWERED THE QUESTIONS?
- 16 A YES, SIR.
- 17 Q THESE CHECKS THAT THE ATTORNEYS ASK YOU ABOUT TODAY,
- 18 YOU WERE ASKED ABOUT THOSE PREVIOUSLY?
- 19 A YES, SIR.
- 20 Q YOU ACKNOWLEDGE THAT WASN'T YOUR SIGNATURE?
- 21 A CORRECT.
- 22 Q IS IT YOUR SIGNATURE?
- 23 A NO, SIR.
- 24 Q HAS ANYBODY TO YOUR KNOWLEDGE PROVIDED ANY INFORMATION
- 25 OTHER THAN THAT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0195

APPENDIX 200

- 1 A NO, SIR.
- 2 Q ANY EXPERT, ANYBODY COME IN AND SAY, OH, THAT'S
- 3 TRAVIS' SIGNATURE?
- 4 A NO, SIR.
- 5 Q DID YOU EVER GO TO THE BANK? DID YOU EVER GO TO THE
- 6 BANK WITH ANY OF THESE?
- 7 A NO, SIR.
- 8 Q DID YOU EVER SET UP ANY ACCOUNT?
- 9 A NO, SIR.
- 10 Q TO YOUR KNOWLEDGE AND FROM DISCUSSIONS WITH ELIZABETH,
- 11 DID SHE UNDERSTAND TO YOUR KNOWLEDGE THAT YOU WEREN'T TO DO
- 12 THAT?
- 13 A YES, SIR.
- 14 Q NOW, HOW DOES IT MAKE YOU FEEL THAT SOME MONEY IS
- 15 MISSING THAT COULD HAVE GONE TO CODY?
- 16 A MAKES ME FEEL VERY HURT.
- 17 Q AND WHEN DID YOU -- I TAKE IT YOU FIRST REALIZED THAT
- 18 SOMETHING WAS WRONG WHEN THIS MATTER BEGAN IN COURT; IS
- 19 THAT CORRECT?
- 20 A YES, SIR.
- 21 Q AND EVEN THOUGH YOU'VE BEEN NAMED IN THIS ACTION AS A
- 22 CO-CONSERVATOR, UNDER OATH AS YOU SIT IN THIS COURTROOM
- 23 TODAY, DO YOU BELIEVE THAT YOU DID WHAT YOU SHOULD HAVE
- 24 DONE TO TAKE CARE OF CODY?
- 25 A YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0196

APPENDIX 201

- 1 Q DO YOU BELIEVE YOU'VE HONORED YOUR APPOINTMENT?
- 2 A YES, SIR.
- 3 Q IF YOU HAD KNOWN ANYTHING WAS GOING WRONG, WOULD YOU
- 4 HAVE RESPONDED?
- 5 A YES, SIR.
- 6 Q DID YOU KNOW ANYTHING WAS GOING WRONG UNTIL AFTER THE
- 7 FACT?
- 8 A NO, SIR.
- 9 Q AND SINCE THAT TIME HAVE YOU RESPONDED AND BEEN HERE?
- 10 A YES, SIR.
- 11 Q THE WHOLE TIME?
- 12 A YES, SIR.
- 13 Q NOW, BESIDES THAT, THE JUDGE, THE JURY WILL JUDGE YOUR
- 14 CREDIBILITY. YOU GO TO CHURCH?
- 15 A YES, SIR.
- 16 Q WHERE DO YOU GO TO CHURCH?
- 17 A EARL'S (PHONETIC) PENTECOSTAL HOLINESS CHURCH.
- 18 Q EARL'S. THERE'S A PRESBYTERIAN CHURCH. WHAT IS
- 19 EARL'S PENTECOSTAL CHURCH? IS THAT A COMMUNITY?
- 20 A YES, SIR, IT'S A REAL SMALL COMMUNITY.
- 21 Q AND WHAT DO YOU DO? ARE YOU INVOLVED IN CHURCH?
- 22 A YES, SIR.
- 23 Q WHAT DO YOU DO THERE?
- 24 A I'M A DEACON THERE AND I ALSO WORK WITH THE TEENAGE
- 25 YOUTH GROUP.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0197

APPENDIX 202



- 1 Q AND HOW LONG HAVE YOU WORKED WITH THE YOUTH GROUP  
2 THERE?  
3 A ABOUT 5 YEARS.  
4 Q AND YOU'RE HOW OLD NOW?  
5 A 31.  
6 Q DID YOU BELIEVE ON WHAT YOU KNEW FROM YOUR FAMILY  
7 EXPERIENCE THAT YOU HAD A RIGHT TO TRUST THAT THINGS WOULD  
8 BE HANDLED APPROPRIATELY FOR CODY?  
9 A YES, SIR.  
10 Q AND IT WAS ONLY AFTER THE FACT THAT YOU REALIZED  
11 SOMETHING HAD HAPPENED?  
12 A YES, SIR.  
13 MR. WILSON: YOUR HONOR, BEG THE COURT'S INDULGENCE  
14 JUST ONE MOMENT.  
15 THE COURT: YES, SIR.  
16 (PAUSE.)  
17 MR. WILSON: JUST A FEW.  
18 Q DID YOU AT ANY TIME THAT KAREN WAS DEALING WITH THIS  
19 -- AS I TAKE IT, YOU DIDN'T HAVE ANY OF THESE CHECKS IN  
20 YOUR POSSESSION, RIGHT?  
21 A YES, SIR.  
22 Q IT WASN'T GIVEN TO YOU?  
23 A NO, SIR.  
24 Q YOU DIDN'T GO TO THE BANK?  
25 A NO, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0198

APPENDIX 203

1 Q YOU DIDN'T HAVE ANY OF THE MONEY?

2 A NO, SIR.

3 MR. WILSON: THANK YOU VERY MUCH.

4 THE COURT: REDIRECT, MR. SABB.

5 MR. SABB: THANK YOU, YOUR HONOR. IF THE COURT  
6 PLEASE.

7 REDIRECT EXAMINATION BY MR. SABB:

8 Q TRAVIS, WHAT SPECIALIZED TRAINING DO YOU NEED IN ORDER  
9 TO GO TO THE BANK AND OPEN UP AN ACCOUNT THAT SAYS NO  
10 WITHDRAWAL WITHOUT COURT ORDER?

11 A I DON'T THINK YOU NEED ANY SPECIAL TRAINING.

12 Q I MEAN, YOU DON'T NEED ANY SPECIAL TRAINING TO GO OPEN  
13 UP AN ACCOUNT THAT SAYS NO WITHDRAWAL WITHOUT COURT ORDER,  
14 DO YOU?

15 A NO, SIR.

16 Q NOW, THE LAWYER THAT WAS THERE DURING THAT COURT  
17 PROCEEDING, IT WASN'T MS. KELLAHAN, WAS IT?

18 A NO, SIR.

19 Q WASN'T MR. JENKINSON?

20 A NO, SIR.

21 Q AND NOR WAS IT RONNIE SABB?

22 A NO, SIR.

23 Q AND AS FAR AS THE IDEA OF A BOND IS CONCERNED, DO YOU  
24 KNOW WHETHER OR NOT IT IS COMMON OR WHETHER IT'S UNCOMMON  
25 FOR THE COURT TO WAIVE A BOND?

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0199

APPENDIX 204

- 1 A I DON'T KNOW, SIR.
- 2 Q WOULD IT SURPRISE YOU TO KNOW THAT KELLY KELLEY IS NOT
- 3 BONDED?
- 4 A NO.
- 5 Q SIR?
- 6 A I DON'T KNOW IF SHE'S BONDED OR NOT.
- 7 Q THE ONLY POINT I'M MAKING, TRAVIS, IS THAT IF IT'S A
- 8 COMMON PRACTICE, THERE'S NOTHING UNUSUAL ABOUT IT. ARE YOU
- 9 WITH ME?
- 10 A YES, SIR.
- 11 Q AND, OF COURSE, WHEN ONE GETS INSURANCE, HOW DO YOU
- 12 GET IT? WHAT IS IT THAT IS REQUIRED TO DO THAT KIND OF
- 13 STUFF?
- 14 A MONEY.
- 15 Q MONEY. AND WERE YOU GOING TO GO IN YOUR POCKET AND
- 16 START DIPPING OUT SOME MONEY?
- 17 A NO, SIR.
- 18 Q WOULD YOU WANT TRAVIS' MONEY TO GO IN THAT DIRECTION
- 19 IF IT DIDN'T HAVE TO? STRIKE THAT. WOULD YOU WANT CODY'S
- 20 MONEY TO GO IN THAT DIRECTION IF IT DIDN'T HAVE TO?
- 21 A NO, SIR.
- 22 Q NOW, WE KNOW, DO WE NOT, THAT CO MEANS TWO, RIGHT?
- 23 A YES, SIR.
- 24 Q AND WERE YOU TRAINED TO DO YOUR JOB AT NUCOR STEEL?
- 25 A YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0200

APPENDIX 205

- 1 Q WOULD YOU EXPECT THAT A BANK EMPLOYEE WOULD BE TRAINED  
2 TO DO THEIR JOB?
- 3 A YES, SIR.
- 4 Q ARE YOU FAMILIAR WITH THE NOTION -- STRIKE THAT. YOU  
5 KNOW, THE QUESTION THAT MR. DAVIS ASKED YOU ---  
6 MR. DAVIS: YOU'RE BEHIND THAT ---  
7 MR. SABB: NO. NO PROBLEM. I'LL PUT THEM FOR YOU  
8 OVER THERE.  
9 MR. DAVIS: I WAS HIDING FROM YOU.  
10 MR. SABB: THERE'S NO REASON TO DO THAT.
- 11 Q ALL RIGHT. I'LL GET BACK TO MY THOUGHT PROCESS IN  
12 JUST A MINUTE. OH, YES. THE QUESTION THAT MR. DAVIS ASKED  
13 ABOUT THE PRIMARY REASON THAT WE'RE HERE -- OKAY. DO YOU  
14 REMEMBER HIM ASKING YOU THAT QUESTION?
- 15 A YES, SIR.
- 16 Q DO YOU REMEMBER YOUR ANSWER BEING YOUR SISTER?
- 17 A YES, SIR.
- 18 Q ALL RIGHT. IS THERE SUCH A THING IN YOUR MIND THAT A  
19 CO-PRIMARY REASON -- LET ME TELL YOU WHAT I'M GETTING AT.  
20 IF THE ACCOUNT WAS SET UP BY THE BANK AS A RESTRICTED  
21 ACCOUNT NOT PERMITTING ANY WITHDRAWAL, WOULD WE BE HERE?
- 22 A NO, SIR.
- 23 Q IF THE BANK HAD COMPLIED WITH THE COURT ORDER, WOULD  
24 WE BE HERE?
- 25 A NO, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0201

APPENDIX 206

1 Q CAN WE AGREE?

2 A YES, SIR.

3 Q CAN WE AGREE, TRAVIS, THAT ALTHOUGH YOUR SISTER IS  
4 RESPONSIBLE AND ALTHOUGH HER ACTIVITIES WERE CRIMINAL,  
5 WHAT WE HAVE HERE IS MORE THAN ONE KIND OF FAILURE, DON'T  
6 WE?

7 A YES, SIR.

8 Q AND WHEN WE THINK IN TERMS OF PRIMARY, REALLY WE HAVE  
9 TWO PRIMARY REASONS FOR BEING HERE, DON'T WE?

10 A YES, SIR.

11 MR. SABB: THANK YOU.

12 RECROSS EXAMINATION BY MR. DAVIS:

13 Q MR. POWELL, YOU DON'T KNOW WHETHER YOUR SISTER EVER  
14 TOOK THAT COURT ORDER TO THE BANK, DO YOU?

15 A NO, SIR.

16 Q SO THE POSSIBILITY EXISTS SHE MAY NOT EVEN HAVE SHOWN  
17 IT TO THE BANK AT ALL?

18 A CORRECT.

19 Q AND YOUR SISTER WAS SUPPOSED TO PROVIDE MONTHLY  
20 STATEMENTS TO YOUR SISTER-IN-LAW, WASN'T SHE?

21 A YES, SIR.

22 Q AND THOSE MONTHLY STATEMENTS WERE SUPPOSED TO SHOW  
23 WHAT WAS HAPPENING WITH THE MONEY, CORRECT?

24 A YES, SIR.

25 Q AND EVEN YOU WERE SUPPOSED TO BE RECEIVING MONTHLY

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0202

APPENDIX 207

1 STATEMENTS FROM HER, RIGHT?  
2 A YES, SIR.  
3 Q BUT SHE NEVER GAVE EITHER YOU OR ELIZABETH POWELL ANY  
4 MONTHLY STATEMENTS AT ANY POINT IN TIME, DID SHE?  
5 A NO, SIR.  
6 MR. DAVIS: NOTHING FURTHER.  
7 THE COURT: ANYTHING FURTHER?  
8 MR. WILSON: I DON'T HAVE ANYTHING ADDITIONAL ON  
9 RECROSS.  
10 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.  
11 (THE WITNESS LEAVES THE WITNESS STAND.)  
12 THE COURT: LADIES AND GENTLEMEN, WE'LL TAKE A SHORT  
13 BREAK AT THIS TIME. PLEASE GO TO THE JURY ROOM. PLEASE DO  
14 NOT DISCUSS THE CASE. WE'LL TAKE A SHORT BREAK AT THIS  
15 TIME. A SHORT BREAK.  
16 (THE JURY RETIRES TO THE JURY ROOM AT 10:55 A.M.)  
17 THE COURT: WE'LL TAKE A 5-MINUTE BREAK.  
18 (A RECESS WAS TAKEN.)  
19 THE COURT: EVERYBODY IS IN PLACE. LET'S BRING THEM  
20 ON IN.  
21 (THE JURY RETURNS TO THE COURTROOM AT 11:15 A.M.)  
22 THE COURT: ALL RIGHT. THE JURY IS BACK. YOUR NEXT  
23 WITNESS.  
24 MS. KELLAHAN: THANK YOU, YOUR HONOR. THE PLAINTIFF  
25 CALLS KELLY KELLEY.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0203

APPENDIX 208

1 KELLY KELLEY, BEING FIRST  
2 DULY SWORN, TESTIFIED AS FOLLOWS:  
3 DIRECT EXAMINATION BY MS. KELLAHAN:  
4 Q KELLY, IF YOU WILL, PLEASE INTRODUCE YOURSELF TO THE  
5 JURY?  
6 A MY NAME IS KELLY KELLEY. AND THAT IS MY REAL NAME.  
7 I'M FROM ANDREWS, SOUTH CAROLINA, AND AM CURRENTLY LIVING  
8 IN GEORGETOWN.  
9 Q ALL RIGHT. TELL THEM WHAT KIND OF EDUCATIONAL  
10 BACKGROUND YOU HAVE?  
11 A I GRADUATED FROM ANDREWS HIGH SCHOOL, AND WENT ON TO  
12 CLEMSON UNIVERSITY AND GOT MY ACCOUNTING DEGREE IN 1999.  
13 AND STAYED UNTIL 2000, RECEIVED A MASTERS IN ACCOUNTANCY  
14 AND TAX.  
15 Q ALL RIGHT. ARE YOU EMPLOYED NOW?  
16 A I AM. I'M EMPLOYED WITH GEORGETOWN COUNTY SCHOOL  
17 DISTRICT.  
18 Q HOW LONG HAVE YOU BEEN WITH THE SCHOOL DISTRICT?  
19 A 5 YEARS.  
20 Q WHAT DO YOU DO THERE?  
21 A I'M THE RISK AND PROPERTY MANAGER, SO I AM IN CHARGE  
22 OF ALL THE ASSETS OF THE SCHOOL DISTRICT, PURCHASES, AND  
23 PROVIDING INSURANCE OR OBTAINING INSURANCE FOR THOSE  
24 ASSETS, AND ALSO WITH THE BOARD, SETTING POLICIES AND  
25 PROCEDURES TO HELP KEEP OUR STUDENTS AND OUR EMPLOYEES

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0204

APPENDIX 209

- 1 SAFE.
- 2 Q OKAY. NOW, YOU'RE HERE TODAY AS THE CURRENT
- 3 CONSERVATOR FOR CODY P [REDACTED], RIGHT?
- 4 A YES.
- 5 Q TELL THE JURY WHAT YOU UNDERSTAND A CONSERVATOR IS?
- 6 A A PERSON WHO'S APPOINTED BY THE COURT TO MANAGE THE
- 7 ASSETS OF A MINOR OR AN INCOMPETENT PERSON.
- 8 THE COURT: MS. KELLAHAN, WOULD YOU PULL UP. OKAY.
- 9 MS. KELLEY: IS THAT BETTER?
- 10 THE COURT: YES.
- 11 Q ALL RIGHT. KELLY, I'M GOING TO SHOW YOU WHAT'S BEEN
- 12 MARKED AS PLAINTIFFS' EXHIBIT 33, AND I WANT YOU TO
- 13 IDENTIFY THESE DOCUMENTS FOR THE COURT, FOR THE JURY?
- 14 A OKAY. THE FIRST ONE IS CERTIFICATE OF APPOINTMENT.
- 15 AND THE SECOND ONE IS FIDUCIARY LETTERS.
- 16 Q OKAY. TELL THE JURY, WHAT ARE THOSE DOCUMENTS IN YOUR
- 17 UNDERSTANDING?
- 18 THE COURT: ARE THOSE EXHIBIT NUMBERS?
- 19 MS. KELLAHAN: 33, YOUR HONOR.
- 20 THE COURT: ALL RIGHT.
- 21 A THE CERTIFICATE -- WELL, MY -- MY UNDERSTANDING IS
- 22 THAT THESE DOCUMENTS APPOINT ME -- HAS MY NAME ON IT.
- 23 APPOINTS ME TO ACT FOR CODY P [REDACTED] WITH HIS MONEY -- IN
- 24 MANAGING HIS MONEY.
- 25 Q OKAY. SO THEY GIVE YOU THE AUTHORITY TO DO THINGS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0205

APPENDIX 210



- 1 WITH CODY'S MONEY; IS THAT CORRECT?
- 2 A YES.
- 3 Q ARE THOSE DOCUMENTS FILED WITH THE COURT DOWNSTAIRS?
- 4 A YES.
- 5 Q WHEN WERE YOU FIRST APPOINTED?
- 6 A BACK IN JULY OF 2002.
- 7 Q OKAY. NOW, THESE AREN'T THE FIRST DOCUMENTS THAT
- 8 APPOINT YOU AS CONSERVATOR FOR CODY, ARE THEY?
- 9 A NO.
- 10 Q WHAT HAPPENED WITH THE FIRST ONES?
- 11 A THE FIRST -- THE FIRST DOCUMENTS HAD CPA AFTER MY
- 12 NAME. AND I'M NOT A CPA. AND I BROUGHT THAT TO THE
- 13 COURT'S ATTENTION.
- 14 Q ALL RIGHT. SO YOU BROUGHT THAT TO THE COURT'S
- 15 ATTENTION WHEN YOU SAW IT ON THE DOCUMENT?
- 16 A YES.
- 17 Q AND SHE CORRECTED IT?
- 18 A YES.
- 19 Q NOW, DO YOUR DOCUMENTS HAVE ANY RESTRICTIONS ON THEM?
- 20 A YES, THEY DO. UNDER THE RESTRICTIONS PORTION OF THE
- 21 CERTIFICATE OF APPOINTMENT IT STATES THAT CERTIFICATE OF
- 22 APPOINTMENT FOR COLLECTING FUNDS BELONGING TO MINOR AND
- 23 INITIATING LEGAL ACTION TO PURSUE FUNDS BELONGING TO THE
- 24 SAID MINOR. AND NO DISBURSEMENT WILL BE RELEASED WITHOUT
- 25 COURT'S APPROVAL.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0206

APPENDIX 211

- 1 Q ALL RIGHT. AND DISBURSEMENT IS?
- 2 A ANY KIND OF EXPENSE OR CHECK THAT'S WRITTEN FROM THE
- 3 ACCOUNT.
- 4 Q OKAY. DO YOU KNOW WHY THE PROBATE JUDGE PUT THOSE
- 5 RESTRICTIONS ON YOUR AUTHORITY DOCUMENT?
- 6 A WELL, FIRST OF ALL, FROM MY UNDERSTANDING, THE
- 7 INSURANCE COMPANY HAD A STIPULATION THAT IT HAD TO BE
- 8 SOMEBODY APPOINTED BY COURT TO MANAGE THIS -- THIS CHILD'S
- 9 MONEY, AND ALSO SO FUNDS COULD BE RECOVERED FOR THIS.
- 10 Q DID THE PROBATE JUDGE REQUIRE YOU TO POST A BOND?
- 11 A NO.
- 12 Q IS THAT ANOTHER REASON WHY SHE RESTRICTED THE
- 13 WITHDRAWAL?
- 14 A YES, ALONG WITH THE FACT THAT I WAS WORKING CLOSELY
- 15 WITH ATTORNEYS.
- 16 Q OKAY. WE'VE HEARD THIS WORD ABOUT BOND BEING
- 17 MENTIONED A COUPLE OF TIMES. WHO DECIDES WHETHER OR NOT A
- 18 BOND IS REQUIRED FOR A CONSERVATOR?
- 19 A THE PROBATE JUDGE.
- 20 Q OKAY. AND, AGAIN, WHAT IS YOUR UNDERSTANDING OF IF
- 21 SHE REQUIRED A BOND, WHO WOULD PAY FOR THAT?
- 22 A IT WOULD COME OUT OF CODY'S MONEY.
- 23 Q AT THE TIME YOU WERE INITIALLY APPOINTED, HAD CODY
- 24 ALREADY LOST A LOT OF MONEY?
- 25 A YES, HE HAD.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0207

APPENDIX 212

1 Q NOW, HOW DID YOU GET INVOLVED WITH THIS CASE AND THIS  
2 FAMILY?

3 A I WAS LIVING IN COLUMBIA AND RECEIVED A PHONE CALL  
4 FROM FAMILY FRIEND ASSOCIATED WITH THE FAMILY THAT ASKED IF  
5 -- HE -- JEFF WILES (PHONETIC) WAS HIS NAME. HE IS AN  
6 EMPLOYEE OF EDWARD JONES IN GEORGETOWN. AND HE CALLED AND  
7 ASKED IF I WAS WILLING TO SERVE AS A CONSERVATOR.

8 Q DID YOU KNOW ANY OF THE PARTIES?

9 A WELL, ANDREWS IS A SMALL TOWN, SO I DID -- I DID KNOW  
10 TRAVIS POWELL AND HIS SISTER KAREN POWELL, BUT I DIDN'T  
11 KNOW CODY NOR STEVEN OR ELIZABETH.

12 Q ALL RIGHT. DID YOU KNOW KAREN LIKE YOU WERE FRIENDS  
13 AND YOU TALKED WITH EACH OTHER?

14 A NO. SHE WAS MUCH OLDER THAN ME. I JUST KNEW OF HER.

15 Q NOW, WHAT IS YOUR UNDERSTANDING ABOUT WHY CODY NEEDS A  
16 CONSERVATOR NOW?

17 A WELL, I THINK THE SAME REASON HE NEEDED ONE TO BEGIN  
18 WITH, TO MANAGE THIS MONEY AND HIS ASSETS. BUT ALSO NOW TO  
19 HELP HIM RECOVER THE FUNDS THAT ARE MISSING.

20 Q OKAY. DID CODY'S MOTHER, ELIZABETH, CONSENT TO YOU  
21 SERVING AS CONSERVATOR?

22 A YES, SHE DID.

23 Q NOW, IS CODY'S MOTHER, ELIZABETH, UNABLE TO SERVE?

24 A WELL, I BELIEVE -- I BELIEVE AT THE BEGINNING FROM  
25 TALKING WITH HER, YES, SHE NEVER DEALT WITH ANY KIND OF

CODY ██████ VS. BANK OF AMERICA

ROA 0208

APPENDIX 213

1 FINANCIAL MATTERS IN THE HOUSEHOLD. AND WHEN HER HUSBAND  
2 PASSED AWAY, AS ANYBODY WOULD BE, SHE WAS EMOTIONALLY  
3 DISTRAUGHT AND COULDN'T HANDLE THE FINANCIAL PART OF IT.

4 Q OKAY. NOW, CURRENTLY AS CONSERVATOR, WHAT ALL DO YOU  
5 HAVE TO DO FOR CODY?

6 A I HAVE -- WHAT I DO IS RECEIVE HIS CHECKS. HE GETS  
7 CHECKS ONCE A WEEK. DEPOSIT THOSE CHECKS. PAY ANY KIND OF  
8 MEDICAL BILLS THAT ARE ABOVE AND BEYOND WHAT THE MOM CAN  
9 PAY. AND ALSO DO AN ANNUAL ACCOUNTING OF THE  
10 CONSERVATORSHIP, THE BANK ACCOUNT, AND PROVIDE THAT TO THE  
11 COURT.

12 Q OKAY. DO YOU GET PAID FOR WHAT YOU DO FOR CODY?

13 A I DO.

14 Q AND WAS THAT APPROVED BY THE COURT?

15 A YES, IT WAS.

16 Q TELL THE JURY HOW MUCH YOU GET PAID?

17 A I GET \$30 AN HOUR, WHICH IS BASICALLY \$30 A MONTH  
18 BECAUSE I WORK ON IT ABOUT AN HOUR A MONTH, UNLESS THERE'S  
19 -- UNLESS THERE'S SOMETHING LIKE THIS WITH PREPARATION FOR  
20 A HEARING OR COURT.

21 Q OKAY. NOW, AGAIN, WHO DO YOU HAVE TO DEAL WITH AT  
22 THIS COURTHOUSE REGARDING CODY'S MONEY?

23 A JUDGE GAMBLE, THE PROBATE JUDGE.

24 Q OKAY. WAS JUDGE GAMBLE ALSO THE PROBATE JUDGE IN 2001  
25 WHEN ALL OF THIS CAME ABOUT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0209

APPENDIX 214

- 1 A YES.
- 2 Q SO SHE'S VERY FAMILIAR WITH THIS CASE, TO YOUR
- 3 KNOWLEDGE?
- 4 A YES.
- 5 Q NOW, YOU WERE TALKING ABOUT COLLECTING HIS MONEY AND
- 6 YOU MENTIONED CHECKS THAT HE WAS RECEIVING. WHAT KIND OF
- 7 WEEKLY CHECK IS IT HE RECEIVES?
- 8 A HE RECEIVES A WEEKLY CHECK FOR ROUGHLY \$250 FROM THE
- 9 WORKER'S COMP COMPANY.
- 10 Q ALL RIGHT. AND THEN HOW DO YOU PAY HIS BILLS? AND I
- 11 WANT YOU TO WALK THE JURY THROUGH HOW YOU ACTUALLY GET HIS
- 12 BILLS PAID?
- 13 A OKAY. I AM SENT A BILL BY HIS MOTHER, AND IF IT'S
- 14 MEDICAL BILLS OR WHATEVER. I SEND THEM -- I MEAN, I CREATE
- 15 A PETITION FOR DISBURSEMENT FOR THE COURT, PUT ON THERE
- 16 WHAT THE BILL IS FOR, HOW MUCH IT IS, AND ATTACH THAT
- 17 INVOICE TO THAT PETITION. SEND IT TO THE COURT. AND THEN
- 18 JUDGE GAMBLE EITHER APPROVES IT OR SHE WILL DENY IT. AND
- 19 SHE WROTE SOME THINGS -- BUT SHE'LL SEND ME A LETTER
- 20 REGARDING THOSE. IF SHE DENIES IT, IT'S IN A LETTER FORM.
- 21 IF SHE APPROVES IT, IT'S IN AN ORDER OF DISBURSEMENT FORM,
- 22 WHICH IS A FORM THAT STATES ORDER OF DISBURSEMENT AND TELLS
- 23 WHAT I CAN WRITE THE CHECK FOR AND TO WHOM.
- 24 Q AND THEN WHAT DO YOU HAVE TO DO?
- 25 A THEN WRITE THE CHECK. I SEND THE ORDER OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0210

APPENDIX 215

1 DISBURSEMENT TO EXCHANGE BANK. AND WRITE THE CHECK AND  
2 MAIL IT. AND THAT'S IT.  
3 Q OKAY. EVERY SINGLE DOLLAR THAT YOU SPEND FOR CODY, DO  
4 YOU HAVE TO DO A PETITION FOR?  
5 A YES.  
6 Q OR YOU'VE ALREADY DONE A PETITION FOR?  
7 A YES.  
8 Q IN EVERY INCIDENT? WHAT KINDS OF BILLS ARE YOU PAYING  
9 FOR HIM?  
10 A MEDICAL BILLS, SCHOOL SUPPLIES, NECESSITIES.  
11 Q OKAY. CAN YOU USE HIS MONEY FOR ANY KIND OF THING?  
12 A NO.  
13 Q IS THE JUDGE VERY STRICT ABOUT WHAT IS APPROVED AND  
14 WHAT'S NOT APPROVED?  
15 A THE JUDGE IS VERY STRICT.  
16 Q IS IT VERY DIFFICULT TO GET AUTHORIZATION TO SPEND HIS  
17 MONEY?  
18 A YES.  
19 Q NOW, WHAT HAPPENS IF YOU PAY A BILL AND YOU DON'T HAVE  
20 AUTHORIZATION FROM THE COURT?  
21 A THAT'S A PROBLEM. AND ACTUALLY, I'LL GIVE YOU AN  
22 EXAMPLE. I RECEIVED AN ORDER OF DISBURSEMENT. EVERYTHING  
23 WAS GOOD. GOT THIS ORDER FOR A BILL TO A MEDICAL --  
24 MEDICAL BUILDING -- MEDICAL COMPANY, AND SENT THE ORDER OF  
25 DISBURSEMENT TO THE ANDREWS BRANCH OF THE EXCHANGE BANK

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0211

APPENDIX 216

1 THINKING THAT THAT -- YOU KNOW, I WOULD SEND IT TO THE  
2 EXCHANGE BANK. I WROTE THE CHECK, MAILED IT, SENT IT TO  
3 THE MEDICAL OFFICE, AND THE MEDICAL OFFICE CALLED ME A FEW  
4 WEEKS LATER AND SAID, WE TRIED TO CASH THIS CHECK AND IT  
5 WOULDN'T GO THROUGH.

6 SO I WAS LIKE, OH, MY GOSH. I CALLED THE BANK, AND  
7 THE BANK SAID, WE DIDN'T HAVE AN ORDER. WE STOPPED IT.

8 I SAID, WELL, THE ANDREWS BRANCH DID. SO I WAS  
9 SHOCKED AT FIRST AND KIND OF NERVOUS. BUT THEN I WAS GLAD  
10 TO SEE THAT THEY WOULDN'T JUST LET MONEY COME OUT OF HIS  
11 ACCOUNT BECAUSE THEY HAD STOPPED IT.

12 I HAD DONE THE RIGHT THING, IT WAS JUST WRITTEN THE  
13 WRONG BRANCH. SO NOW I KNOW TO SEND IT TO BOTH.

14 Q SO DO YOU KNOW FOR CERTAIN THAT THE EXCHANGE BANK OF  
15 SOUTH CAROLINA LOOKS AT EVERY SINGLE CHECK THAT GOES  
16 THROUGH CODY P [REDACTED] ACCOUNT?

17 A YEAH.

18 Q YOU KNOW THAT?

19 A I DO BECAUSE THIS LADY IN KINGSTREE IS STRICT.

20 Q ALL RIGHT. NOW, CODY CURRENTLY HAS ANOTHER ACCOUNT  
21 ALSO THAT YOU MANAGE, RIGHT?

22 A HE DOES. HE HAS A CD WITH CAROLINA FIRST.

23 Q IS THAT CD -- IS IT ALSO SET UP WITH RESTRICTIONS?

24 A IT IS.

25 Q AND DID YOU SET THAT ACCOUNT UP YOURSELF?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0212

APPENDIX 217

- 1 A I DID.
- 2 Q ARE THOSE -- BOTH OF THOSE BANKS, THE EXCHANGE BANK  
3 AND THE CAROLINA FIRST BANK, VERY FAMILIAR WITH RESTRICTED  
4 ACCOUNTS?
- 5 A YES, THEY ARE.
- 6 Q NOW, I'M GOING TO SHOW YOU A DOCUMENT THAT'S BEEN  
7 MARKED AS DEFENDANT'S EXHIBIT 1. WE DON'T HAVE A PICTURE  
8 OF IT FOR THE COMPUTER SCREEN. BUT I WANT YOU TO JUST TAKE  
9 A GLANCE AT THAT DOCUMENT. CAN YOU TELL THE COURT WHAT THE  
10 TITLE ON THE TOP OF THAT DOCUMENT IS? DOES IT HAVE ANY  
11 KIND OF TITLE?
- 12 A NO.
- 13 Q HAVE YOU EVER SEEN THAT DOCUMENT BEFORE?
- 14 A NO.
- 15 Q DOES IT APPEAR TO BE A PROBATE COURT FORM?
- 16 A IT DOES, IT SAYS IN THE PROBATE COURT AT THE TOP.
- 17 Q ALL RIGHT. HAS THE PROBATE JUDGE EVER GIVEN YOU A  
18 DOCUMENT LIKE THAT?
- 19 A NO.
- 20 Q FOR EITHER BANK?
- 21 A NO.
- 22 Q AND HOW LONG HAVE YOU BEEN HIS CONSERVATOR AT THIS  
23 TIME?
- 24 A 6 YEARS.
- 25 Q AND AT NO TIME DURING THAT TIME HAS SHE ASKED YOU TO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0213

APPENDIX 218



- 1 COMPLETE ANY KIND OF DOCUMENT LIKE THAT?
- 2 A NO.
- 3 Q AS CONSERVATOR, DO YOU HAVE TO DO EXACTLY WHAT THE
- 4 PROBATE JUDGE TELLS YOU TO DO?
- 5 A YES, MA'AM.
- 6 Q NOW, I WANT TO GO BACK AND ASK YOU ABOUT WHAT HAPPENED
- 7 BEFORE YOU BECAME CONSERVATOR. WERE THERE OTHER
- 8 CONSERVATORS APPOINTED FOR CODY?
- 9 A YES.
- 10 Q AND WHO WERE THOSE PERSONS?
- 11 A KAREN POWELL AND TRAVIS POWELL.
- 12 Q AND THEY WERE CO-CONSERVATORS SERVING TOGETHER?
- 13 A YES.
- 14 Q SO THEY BOTH HAD AUTHORITY TO MANAGE CODY'S ASSETS?
- 15 A YES.
- 16 Q IS IT YOUR UNDERSTANDING THAT THEY HAD TO ACT TOGETHER
- 17 AND THEY COULDN'T ACT SEPARATELY?
- 18 A YES.
- 19 MR. WILSON: OBJECTION. YOUR HONOR, HOW WOULD SHE
- 20 HAVE AN UNDERSTANDING OF WHAT OCCURRED BACK AT THE TIME?
- 21 THE COURT: THE QUESTION IS RELATING TO THE
- 22 CONSERVATORSHIP OF TRAVIS POWELL AND MS. UNRUE. ALL RIGHT.
- 23 THE OBJECTION IS SUSTAINED.
- 24 Q KELLY, IF YOU WILL, YOU'VE REVIEWED THE ORDERS, YOU'VE
- 25 REVIEWED THE WHOLE PROBATE COURT FILE FOR CODY P[REDACTED]; IS

CODY P[REDACTED] VS. BANK OF AMERICA

ROA 0214

APPENDIX 219

- 1 THAT CORRECT?
- 2 A YES.
- 3 Q YOU'VE SEEN COPIES OF THE ORDERS IN THE COURT'S FILE
- 4 FROM BEFORE YOU WERE APPOINTED?
- 5 A YES.
- 6 Q ISN'T THAT CORRECT?
- 7 A THAT'S CORRECT.
- 8 Q AND HAVE YOU SEEN HOW THE ORDER WAS WORDED IN THE
- 9 PROBATE COURT FILE FOR THE PRIOR CONSERVATORS?
- 10 A YES.
- 11 Q DID IT APPEAR THAT THEY HAD TO SERVE TOGETHER?
- 12 A YEAH, THAT'S WHAT CO MEANS, TWO.
- 13 Q DID THEY -- DID IT IDENTIFY WHICH DUTIES BELONGED TO
- 14 WHICH CONSERVATOR IN THE PRIOR COURT ORDERS?
- 15 A NO. NO, IT DIDN'T.
- 16 Q DID THE JUDGE REMOVE KAREN AND TRAVIS AS CONSERVATORS
- 17 WHEN SHE PUT YOU ON?
- 18 A YES.
- 19 Q ARE YOU APPOINTED WITH THE SAME EXACT RESTRICTIONS
- 20 THAT THEY WERE APPOINTED WITH?
- 21 A YES, I AM.
- 22 Q SO THE STEPS THAT YOU'VE DESCRIBED THAT YOU HAD TO GO
- 23 THROUGH TO GET CODY'S MONEY TO SPEND IT WOULD HAVE BEEN THE
- 24 SAME EXACT STEPS THAT THEY SHOULD HAVE GONE THROUGH?
- 25 A YES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0215

APPENDIX 220

- 1 Q WITHOUT QUESTION?
- 2 A THAT'S WITHOUT QUESTION.
- 3 Q ALL RIGHT. EARLIER WHEN I ASKED YOU ABOUT WHAT YOU
- 4 HAD TO DO FOR CODY NOW, YOU MENTIONED TWO SEPARATE THINGS.
- 5 ONE WAS DEALING WITH HIS MONEY NOW. WHAT WAS THE OTHER
- 6 THING?
- 7 A RECOVERING THE FUNDS THAT HE -- THAT CODY HAD LOST
- 8 BEFORE.
- 9 Q SO YOU'RE ACTUALLY THE PERSON WHO BROUGHT THIS LAWSUIT
- 10 FOR CODY?
- 11 A I DID.
- 12 Q AND WHEN DID YOU BRING THIS LAWSUIT?
- 13 A IN 2003, MAY 2003. SO IT WAS OVER 5 YEARS AGO.
- 14 Q CAN YOU EXPLAIN TO THE JURY WHY YOU BROUGHT THIS
- 15 LAWSUIT IN A NUTSHELL?
- 16 A TO OBTAIN -- TO RECOVER HIS MONEY, MAKE HIM WHOLE, TO
- 17 GET THE MONEY BACK THAT WAS STOLEN FROM HIM.
- 18 Q OKAY. NOW, WHAT DO YOU UNDERSTAND HAPPENED WITH CODY
- 19 BASED ON YOUR INVESTIGATION?
- 20 A WELL, MONEY WAS TAKEN FROM HIS ACCOUNT.
- 21 Q WALK THEM THROUGH WHAT HAPPENED FIRST AND THEN WHERE
- 22 IT WENT?
- 23 A OH, YEAH. WHEN HE -- THE SEVEN CHECKS THAT YOU ALL
- 24 SAW WERE TAKEN TO BANK OF AMERICA IN THEIR BRANCH AT
- 25 PAWLEYS ISLAND BY KAREN POWELL. AND A CD -- CERTIFICATE OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0216

APPENDIX 221

1 DEPOSIT WAS SET UP BY KAREN. AND THIS ACCOUNT WAS AN  
2 UNRESTRICTED ACCOUNT. THERE WERE NO RESTRICTIONS PLACED ON  
3 THE ACCOUNT, NO MATTER WHAT SHE TOOK TO THEM. I MEAN, THE  
4 CHECKS SAID CONSERVATOR ON THEM.

5 MR. DAVIS: OBJECTION, YOUR HONOR. THEY HAVE HER  
6 ATTEMPTING TO STEP IN TO THE BRANCH BANK -- THE BANK OF  
7 AMERICA, SHE HAS ABSOLUTELY NO KNOWLEDGE OF WHAT HAPPENED  
8 IN THAT BANK OR DID NOT HAPPEN. SHE HAS NO FIRST-HAND  
9 KNOWLEDGE.

10 THE COURT: ALL RIGHT. MS. KELLAHAN.

11 Q KELLY, HAVE YOU RESEARCHED THE BANK RECORDS ---

12 A I HAVE.

13 Q --- IN YOUR ACTION TO BRING THIS ACTION?

14 A I HAVE.

15 Q YOU'VE ALSO REVIEWED ALL THE DEPOSITIONS AND  
16 INFORMATION OBTAINED FROM THE BANK EMPLOYEES?

17 A I HAVE.

18 Q ALL RIGHT. BASED ON THAT INFORMATION, WHAT DO YOU  
19 UNDERSTAND ---

20 MR. DAVIS: YOUR HONOR, I RENEW MY OBJECTION.

21 THE COURT: SHE'S THE PLAINTIFF. SHE CAN ANSWER THE  
22 QUESTION.

23 A SO SHE OPENED A CERTIFICATE OF DEPOSIT. AND LIKE I  
24 SAID, THERE WERE NO RESTRICTIONS PLACED ON THE CERTIFICATE  
25 OF DEPOSIT. SO ONCE THE CERTIFICATE OF DEPOSIT MATURED AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0217

APPENDIX 222

1 THERE WAS -- YOU KNOW, THE INTEREST HAD BEEN PAID ON THIS  
 2 MONEY, SHE TRANSFERRED THE MONEY TO A SAVINGS ACCOUNT AT  
 3 BANK OF AMERICA. WHICH, AGAIN, SHE OPENED THE SAVINGS  
 4 ACCOUNT AND THERE WEREN'T RESTRICTIONS ON IT AND SHE WAS  
 5 ABLE TO MOVE IT ONCE AGAIN A FEW MONTHS LATER TO HER OWN  
 6 PERSONAL CHECKING ACCOUNT AT BANK OF AMERICA.

7 AND THEN AFTER THAT IT -- FROM RESEARCH, IT SHOWS THAT  
 8 SHE'S MOVED IT TO A BANK IN COLORADO AFTER CLOSING HER  
 9 ACCOUNT.

10 Q OKAY. WE HAD MARKED PLAINTIFFS' EXHIBITS 1 THROUGH  
 11 30, WHICH ARE EARLIER CONSERVATOR DOCUMENTS AND BANK  
 12 RECORDS. THERE'S A BIG STACK. I THINK THIS IS THE  
 13 ENTIRE STACK RIGHT HERE. ARE THESE A SAMPLE OF THE  
 14 DOCUMENTS THAT YOU REVIEWED IN YOUR JOB AS THE PLAINTIFF  
 15 CONSERVATOR HERE?

16 A YES.

17 Q SO THOSE ARE BANK STATEMENTS AND OTHER DOCUMENTS,  
 18 THE CHECKS THAT ARE WHAT YOU'VE LOOKED AT TO BE ABLE TO  
 19 EXPLAIN TO THE JURY WHAT YOU'VE JUST TOLD THEM; IS THAT  
 20 CORRECT?

21 A THAT'S RIGHT.

22 Q NOW, WERE YOU ABLE TO RECOVER SOME OF CODY'S MONEY  
 23 THAT HAD BEEN TAKEN?

24 A YEAH, I HAVE. YES, MA'AM.

25 Q AND DID YOU IN FACT RECOVER THAT MONEY FROM KAREN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0218

APPENDIX 223

1 UNRUE?

2 A I DID.

3 Q IS CODY STILL SHORT THOUGH?

4 A HE IS. HE'S STILL SHORT APPROXIMATELY \$205,000.

5 Q OKAY. WILL THAT AMOUNT, THAT \$205,000 MAKE CODY  
6 WHOLE?

7 A NO.

8 Q YESTERDAY YOU HEARD COUNSEL ARGUE IN HIS OPENING  
9 STATEMENT THAT THE BANK HAD WANTED TO MAKE CODY WHOLE  
10 FROM THE BEGINNING. WHAT WAS YOUR REACTION TO THAT  
11 STATEMENT?

12 A I WAS -- I WAS STUNNED, I MEAN.

13 Q ALL RIGHT. WHY DID YOU HAVE TO INCLUDE TRAVIS  
14 POWELL IN THIS LAWSUIT?

15 A BECAUSE HE WAS NAMED AS A CO-CONSERVATOR ON THE  
16 ACCOUNT -- I MEAN, THE APPOINTMENT.

17 Q HAS TRAVIS POWELL BEEN ABLE TO HELP YOU RECOVER ANY  
18 OF CODY'S MONEY?

19 A NO.

20 Q HAS TRAVIS POWELL BEEN ABLE TO HELP YOU FIND HIS  
21 SISTER?

22 A NO.

23 Q NOW, HAVE YOU BEEN ABLE TO LOCATE KAREN UNRUE?

24 A NO.

25 Q WHEN WE TALKED ABOUT MONEY BEING RECOVERED A MOMENT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0219

APPENDIX 224

- 1 AGO, DID SHE COME IN PERSON AND BRING THAT MONEY?
- 2 A NO.
- 3 Q HOW DID ---
- 4 A SHE MAILED IT TO HER ATTORNEY.
- 5 Q OKAY. HAVE YOU EVER SPOKEN WITH HER?
- 6 A NO.
- 7 Q DO YOU KNOW WHERE SHE IS?
- 8 A NO.
- 9 Q DO YOU BELIEVE YOU WILL EVER RECOVER ANY MORE MONEY
- 10 FROM KAREN UNRUE?
- 11 A NO.
- 12 MR. DAVIS: OBJECTION, YOUR HONOR. THAT'S ANOTHER
- 13 SUIT, ANOTHER DAY.
- 14 THE COURT: MS. KELLAHAN?
- 15 MS. KELLAHAN: YOUR HONOR, I THINK THIS IS PART OF HER
- 16 INVESTIGATION.
- 17 THE COURT: I SUSTAIN THE OBJECTION.
- 18 Q HAVE YOU REPORTED WHAT KAREN UNRUE DID TO THE
- 19 SHERIFF'S DEPARTMENT?
- 20 A I HAVE.
- 21 Q DO YOU KNOW WHETHER OTHERS HAVE REPORTED HER ACTIONS
- 22 TO THE SHERIFF'S DEPARTMENT?
- 23 A YEAH, THEY HAVE. WHEN I WENT IN TO REPORT, I SAW
- 24 DOCUMENTS WHERE THE MOTHER HAD COME IN TO REPORT.
- 25 Q WAS THAT ACTUALLY BACK IN 2002?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0220

APPENDIX 225

- 1 A WHEN SHE CAME IN, YES.
- 2 Q SO THE SHERIFF'S DEPARTMENT ASKED YOU FOR MORE
- 3 INFORMATION?
- 4 A THEY HAVE.
- 5 Q HAVE YOU COOPERATED FULLY AND GIVEN THEM ALL THE
- 6 INFORMATION THAT YOU HAD?
- 7 A YES.
- 8 Q YOU REPORTED ANY RUMORS YOU'VE HEARD ABOUT HER TO THE
- 9 SHERIFF'S DEPARTMENT?
- 10 A I HAVE.
- 11 Q DO YOU KNOW IF THERE'S AN OUTSTANDING WARRANT FOR HER
- 12 ARREST?
- 13 A THERE IS.
- 14 Q WOULD YOU LIKE TO SEE HER PROSECUTED?
- 15 A I WOULD. SHE NEEDS TO TAKE RESPONSIBILITY FOR WHAT
- 16 SHE'S DONE TO HER NEPHEW.
- 17 Q DO YOU BELIEVE THAT PROSECUTING HER WILL HELP GET ANY
- 18 OF CODY'S MONEY BACK?
- 19 MR. DAVIS: OBJECTION, YOUR HONOR. ONCE AGAIN,
- 20 SPECULATING. THERE ARE ALL SORTS OF DIFFERENT REMEDIES AS
- 21 IT RELATES TO CRIMINAL PROSECUTION OTHER THAN JUST PUTTING
- 22 SOMEBODY IN JAIL, SUCH AS RESTITUTION, FINES, AND
- 23 OTHERWISE.
- 24 THE COURT: MS. KELLAHAN.
- 25 MS. KELLAHAN: YOUR HONOR ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0221

APPENDIX 226



1 THE COURT: WHEN THE LAWYERS GIVE A TALKING OBJECTION,  
2 I ALLOW A TALKING RESPONSE IF YOU CARE TO GIVE ME ONE.

3 MS. KELLAHAN: YOUR HONOR, I, AGAIN, BELIEVE THAT THIS  
4 IS PART OF MS. KELLEY'S DUTY TO TRY TO OBTAIN -- THE WHOLE  
5 PURPOSE SHE'S HERE IS TRYING TO GET CODY POWELL'S MONEY  
6 BACK, AND I THINK THAT THE JURY NEEDS TO KNOW WHAT HE'S  
7 LOOKING AT.

8 THE COURT: I SUSTAIN THE OBJECTION.

9 Q ALL RIGHT. KELLY, IN THIS LAWSUIT YOU HAVE ALLEGED  
10 THAT BANK OF AMERICA WAS GROSSLY NEGLIGENT. WHAT IS IT  
11 EXACTLY THAT YOU BELIEVE BANK OF AMERICA DID WRONG?

12 A WELL, FROM EVERYTHING I'VE RESEARCHED, NOT MANY THINGS  
13 THAT I THINK THEY'VE DONE RIGHT COMPARED TO WHAT I'VE --  
14 WHAT I'VE DONE AND WHAT MY BANK HAS DONE. I THINK FROM  
15 SETTING UP THE ACCOUNT FIRST OF ALL ---

16 MR. DAVIS: OBJECTION, YOUR HONOR. I MEAN, SHE'S NOW  
17 GOING INTO THE PURVIEW OF WHAT THE JURY IS TO DECIDE.

18 MS. KELLAHAN: YOUR HONOR, I BELIEVE THAT SHE'S  
19 ENTITLED TO STATE WHY SHE'S PLED WHAT SHE'S PLED IN THE  
20 COMPLAINT.

21 THE COURT: SHE'S THE PLAINTIFF. I OVERRULE THE  
22 OBJECTION.

23 MR. DAVIS: YES, SIR.

24 A I FELT THAT IF THIS ACCOUNT HAD BEEN SET UP AS A  
25 RESTRICTED ACCOUNT, THAT NONE OF THIS WOULD HAVE EVER

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0222

APPENDIX 227

1 HAPPENED. AND I KNOW FOR A FACT THAT IT WOULDN'T HAPPEN AT  
2 THE BANK IT'S AT NOW, BECAUSE IT WAS SET UP PROPERLY.

3 Q WHAT EVIDENCE HAVE YOU SEEN IN ALL OF THE THINGS THAT  
4 YOU'VE LOOKED AT AS A CONSERVATOR THAT BANK OF AMERICA  
5 CARED ABOUT CODY P [REDACTED] MONEY?

6 A NOTHING.

7 Q ARE YOU ALSO ASKING THIS JURY TO AWARD PUNITIVE  
8 DAMAGES AGAINST BANK OF AMERICA FOR CODY?

9 A YES.

10 Q WHAT IS YOUR UNDERSTANDING OF PUNITIVE DAMAGES?

11 A A MEANS TO PUNISH SOMEONE OR SET AN EXAMPLE OF SOMEONE  
12 OR A PARTY WHO DID SOMETHING WRONG AND THEY SHOULD HAVE  
13 KNOWN BETTER.

14 Q I WANT TO MAKE SURE THE JURY UNDERSTANDS THIS. ANY  
15 MONEY THAT CODY RECOVERS HERE WILL BE SUPERVISED BY THE  
16 COURT; IS THAT CORRECT?

17 A YES, MA'AM.

18 Q AND, AGAIN, DO YOU BELIEVE THAT IF THE BANK HAD SET  
19 THIS ACCOUNT UP PROPERLY, KAREN UNRUE WOULD HAVE BEEN ABLE  
20 TO DO WHAT SHE DID?

21 A NO, I DON'T THINK SHE WOULD HAVE BEEN.

22 Q DO YOU HAVE ANY QUESTION ABOUT THAT?

23 A NO.

24 MS. KELLAHAN: BEG THE COURT'S INDULGENCE.

25 (PAUSE.)

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0223

APPENDIX 228

- 1 MS. KELLAHAN: NOTHING FURTHER. THANK YOU.
- 2 THE COURT: MR. DAVIS.
- 3 CROSS EXAMINATION BY MR. DAVIS:
- 4 Q YOU KNEW OF MS. UNRUE?
- 5 A I DID.
- 6 Q SHE HAD A GOOD REPUTATION?
- 7 A I DON'T KNOW.
- 8 Q DID YOU KNOW SHE WAS A BUSINESS WOMAN?
- 9 A NO, SIR, NOT UNTIL I GOT INVOLVED WITH THIS.
- 10 Q ALL RIGHT. AND SO YOU HAD NO INVOLVEMENT WITH MS.
- 11 UNRUE PRIOR TO GETTING INVOLVED WITH THIS?
- 12 A NO, SIR.
- 13 Q SO YOU HAVE HAD NO INVOLVEMENT IN SETTING UP ANY CD'S
- 14 WITH BANK OF AMERICA WITH MS. UNRUE?
- 15 A NO, SIR.
- 16 Q ALL RIGHT. SO YOU HAVE NO KNOWLEDGE AS TO WHAT SHE
- 17 MAY HAVE TOLD THOSE BANK EMPLOYEES THAT SHE HAD A
- 18 PREEXISTING RELATIONSHIP WITH?
- 19 A I DON'T KNOW IF SHE HAD A PREEXISTING RELATIONSHIP
- 20 WITH THEM.
- 21 Q ALL RIGHT. SO BASED ON YOUR INVESTIGATION, YOU DON'T
- 22 EVEN KNOW THAT SHE HAD A PREEXISTING RELATIONSHIP?
- 23 A NO.
- 24 Q THIS IS YOUR LAWSUIT, RIGHT?
- 25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0224

APPENDIX 229

1 Q AND YOU DON'T KNOW THAT?

2 A I KNOW WHAT I'VE INVESTIGATED ABOUT THIS -- ABOUT

3 THIS ---

4 Q BUT YOU DON'T ---

5 A --- MONEY.

6 Q BUT YOU DON'T HAVE ANY KNOWLEDGE AS TO WHETHER SHE HAD

7 A PREEXISTING RELATIONSHIP WITH THE INDIVIDUALS IN THAT

8 BANK, DO YOU?

9 A NO, SIR.

10 Q ALL RIGHT. SO YOU DON'T HAVE ANY KNOWLEDGE AS TO

11 WHETHER OR NOT JUST LIKE ELIZABETH POWELL, JUST LIKE STEVEN

12 POWELL, AND JUST LIKE TRAVIS POWELL, WHETHER OR NOT THEY

13 HAD COME TO TRUST HER, DO YOU?

14 A NO, SIR. BUT ---

15 Q YOU DON'T HAVE ANY OF THAT KNOWLEDGE, DO YOU?

16 A IF I MAY -- IF -- I'VE LIVED IN ANDREWS ALL MY LIFE.

17 AND I KNOW EVERYBODY THAT WORKS AT THE EXCHANGE BANK. AND

18 JUST BECAUSE I GO IN THERE, THEY WOULDN'T TRUST ME TO OPEN

19 UP AN ACCOUNT WITH \$250,000 WITHOUT SHOWING THEM AN I.D.

20 Q YOU DON'T HAVE ANY ---

21 A OR COURT ---

22 Q --- KNOWLEDGE ---

23 A --- PAPERS.

24 Q YOU DON'T HAVE ANY KNOWLEDGE AS TO WHETHER AN I.D. WAS

25 SHOWN OR NOT SHOWN IN BANK OF AMERICA, DO YOU?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0225

APPENDIX 230

- 1 A NO, I DON'T.
- 2 Q ALL RIGHT. YOU DON'T HAVE ANY KNOWLEDGE AS TO THE  
3 EXPERIENCE OR THE INEXPERIENCE OF ANY OF THE EMPLOYEES AT  
4 BANK OF AMERICA, DO YOU?
- 5 A NO, I DON'T.
- 6 Q ALL RIGHT. BUT THE YOUNG LADY AT EXCHANGE BANK IN  
7 ANDREWS -- AND I USED TO SPEND A LOT OF TIME IN ANDREWS. I  
8 USED TO REPRESENT ONITA INDUSTRY BEFORE THEY WENT UNDER.  
9 SHE'S GOT A LOT OF EXPERIENCE?
- 10 A DEPENDS ON WHO YOU'RE SPEAKING OF.
- 11 Q ALL RIGHT. THE WOMAN THAT YOU'RE DEALING WITH HAS A  
12 LOT OF EXPERIENCE, DOESN'T SHE? SHE'S BEEN THERE A WHILE?
- 13 A YES.
- 14 Q THAT BANK'S BEEN THERE A WHILE?
- 15 A IT HAS.
- 16 Q THOSE OFFICERS AND EMPLOYEES HAVE BEEN THERE FOR A  
17 WHILE?
- 18 A IT HAS, BUT BANK OF AMERICA ON PAWLEYS ISLAND HAS BEEN  
19 THERE A WHILE TOO.
- 20 Q BUT YOU DON'T HAVE ANY KNOWLEDGE AS TO THE EXPERIENCE  
21 OR THE INEXPERIENCE -- RIGHT OR WRONG -- OF THE EMPLOYEES  
22 WHICH MS. UNRUE DEALT WITH? YOU DON'T, DO YOU?
- 23 A NO, SIR.
- 24 Q ALL RIGHT. YOU ALSO DON'T KNOW WHAT SHE MAY HAVE  
25 SHOWN OR NOT SHOWN THE BANK OF AMERICA BRANCH AT PAWLEYS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0226

APPENDIX 231

- 1 ISLAND; ISN'T THAT RIGHT?
- 2 A NO. I ONLY KNOW WHAT SHE SHOULD HAVE SHOWN THEM.
- 3 Q ALL RIGHT. AND WHAT SHE SHOULD HAVE SHOWN THEM WAS
- 4 THAT COURT ORDER, CORRECT?
- 5 A THAT'S RIGHT.
- 6 Q BECAUSE THAT'S WHAT YOU WOULD HAVE DONE AS A
- 7 CONSERVATOR?
- 8 A THAT'S RIGHT.
- 9 Q THAT'S RIGHT. BUT SHE DIDN'T DO THAT?
- 10 A I DON'T KNOW IF SHE DID THAT.
- 11 Q ALL RIGHT. BASED ON YOUR INVESTIGATION THOUGH IT
- 12 DOESN'T APPEAR THAT SHE DID THAT, DOES IT?
- 13 A I -- I -- I DON'T KNOW IF SHE SHOWED THEM THAT.
- 14 Q ALL RIGHT. WELL, SHE -- AS A CONSERVATOR, SHE HAD THE
- 15 DUTY AND THE OBLIGATION TO SHOW THAT BANK THAT COURT ORDER;
- 16 ISN'T THAT TRUE?
- 17 A YES, IT IS. BUT ON THE CHECKS IT SAYS CONSERVATOR.
- 18 AND JUST LIKE ON MY CHECKS, IT SAYS CONSERVATOR.
- 19 Q YOU AS A CONSERVATOR IF YOU WENT TO THAT BANK,
- 20 EXCHANGE BANK, AND THOSE LAWYERS HAD NOT BEEN INVOLVED,
- 21 YOU WOULD HAVE HAD THE DUTY AND OBLIGATION TO TAKE THAT
- 22 COURT ORDER?
- 23 A WELL ---
- 24 Q YES OR NO?
- 25 A YES, SIR. AND THIS MIGHT BE A GREAT OPPORTUNITY FOR

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0227

APPENDIX 232

1 ME TO TELL YOU ---

2 Q HOLD ON. ARE YOU OKAY?

3 A I'M SORRY.

4 THE COURT: LET'S JUST STAND FOR A MOMENT, LADIES AND  
5 GENTLEMEN.

6 (PAUSE.)

7 THE COURT: ALL RIGHT.

8 Q IS THIS THE FIRST TIME YOU'VE TESTIFIED IN COURT?

9 A YEAH, I'M VERY NERVOUS. BUT I WILL TELL YOU JUST  
10 ABOUT A MONTH AGO I WENT TO CAROLINA FIRST TO OPEN UP THAT  
11 CD THAT I STATED ABOUT EARLIER. AND IN THE CD WHEN I WENT  
12 IN, I HAD THE COURT ORDER WITH ME. AND I THOUGHT, THIS  
13 MIGHT BE A PERFECT OPPORTUNITY TO FIND OUT WHAT A BANK  
14 WOULD DO.

15 SO I SAT DOWN WITH THE PERSONAL BANKER AND I SAID, I  
16 NEED TO OPEN UP A CD, A CONSERVATORSHIP.

17 AND HE SAID -- HE WAS LIKE, I HAVEN'T BEEN HERE VERY  
18 LONG. THIS IS THE FIRST TIME I'VE EVER DONE THIS. HE  
19 PULLS OUT A MANUAL OUT OF HIS TOP DESK DRAWER AND STARTS  
20 GOING DOWN THE MANUAL -- DOWN THE MANUAL.

21 Q BUT THAT'S BECAUSE YOU SHOWED HIM A COURT ORDER?

22 A NO, SIR. I SAID, I NEED TO SET UP A CONSERVATORSHIP  
23 ACCOUNT.

24 Q BUT YOU DON'T KNOW -- YOU DON'T KNOW WHETHER OR NOT  
25 MS. UNRUE EVEN IDENTIFIED TO THE BANK OF AMERICA THAT SHE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0228

APPENDIX 233

1 NEEDED TO SET UP A CONSERVATOR ACCOUNT? YOU DON'T KNOW  
2 THAT?

3 A NO, SIR. BUT CAN I FINISH PLEASE?

4 Q OKAY.

5 A SO I DID SAY THAT. AND I WANTED TO SEE IF HE WOULD  
6 ASK FOR ANYTHING. AND HE DID. HE WENT STEP BY STEP. AND  
7 I WILL TELL YOU IT TOOK MY WHOLE LUNCH BREAK. IT TOOK AN  
8 HOUR TO SET THAT UP. I THOUGHT I WOULD GO CRAZY, BUT --  
9 BUT HE SET IT UP. HE ASKED ME FOR A COURT -- HE SAID IF  
10 THIS IS A RESTRICTED -- I MEAN, EXCUSE ME. HE DID NOT SAY  
11 THAT. HE SAID, IS THIS MONEY MANDATED BY THE COURT, IS IT  
12 -- IS IT TO BE MANAGED BY THE COURT?

13 AND I SAID, YES, IT IS. AND THAT'S WHEN I -- HE ASKED  
14 ME FOR THE COURT ORDER. AND I HANDED IT TO HIM.

15 Q SO YOU AS THE CONSERVATOR, YOU DO NEED TO -- IF THAT  
16 ORDER ISN'T ALREADY GIVEN TO THE BANK, YOU DO NEED TO TAKE  
17 IT TO THEM?

18 A YES, SIR.

19 Q ALL RIGHT. AND ARE YOU AWARE THAT THERE ARE -- THAT  
20 THE COURT CAN ORDER YOU TO VERIFY THAT YOU'VE SET UP A  
21 CONSERVATOR ACCOUNT? ARE YOU AWARE OF THAT?

22 A I'VE NEVER BEEN ASKED TO DO THAT.

23 Q NEVER HAD BEEN ASKED FOR THAT. YOU'VE NEVER BEEN  
24 ASKED TO VERIFY THAT A CONSERVATOR ACCOUNT HAS IN FACT BEEN  
25 SET UP WHEN EVEN THE BANK HAS TO SIGN OFF ON THE DOCUMENT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0229

APPENDIX 234



- 1 A NO, SIR.
- 2 Q NO. NOW, YOU RECEIVE CHECKS ONCE A WEEK FOR CODY?
- 3 A YES, SIR.
- 4 Q YOU RECEIVE CHECKS IN THE AMOUNT OF \$250 A WEEK FOR
- 5 CODY?
- 6 A YES, SIR.
- 7 Q AND YOU'VE BEEN RECEIVING THOSE CHECKS FOR \$250 A WEEK
- 8 FOR CODY FOR HOW MANY YEARS?
- 9 A 6 YEARS, SINCE I BEGAN.
- 10 Q SO WE'RE TALKING ABOUT HOW MUCH MONEY?
- 11 A A THOUSAND A MONTH, 12,000 TIMES 6.
- 12 Q AND FROM THAT THOUSAND DOLLARS A MONTH, YOU HAVE BEEN
- 13 ABLE TO TAKE CARE OF THE SPECIAL NEEDS -- ANY SPECIAL NEEDS
- 14 OF CODY?
- 15 A YES, SIR.
- 16 Q THAT YOU'RE AWARE OF, CORRECT?
- 17 A YES, SIR.
- 18 Q AND THERE IS EVEN SOME ADDITIONAL FUNDS OUT THERE THAT
- 19 ARE PAID TO CODY TO HELP TAKE CARE OF HIM ALSO, AREN'T
- 20 THERE?
- 21 A YES, SIR. I BELIEVE SOCIAL SECURITY.
- 22 Q ALL RIGHT. SOCIAL SECURITY. AND THERE'S ALSO MONEY
- 23 COMING OUT OF A BANK CALLED BB&T?
- 24 A NO, SIR.
- 25 Q YOU DON'T KNOW THAT? THERE'S NOT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0230

APPENDIX 235

1 A NO, THERE'S NOT.

2 Q ARE THERE ANY OTHER FUNDS THAT HE'S RECEIVING TO YOUR  
3 KNOWLEDGE?

4 A THE SOCIAL SECURITY, AND HE DOES RECEIVE \$500 -- WELL,  
5 THE MOTHER RECEIVES \$500 FROM THIS ACCOUNT A MONTH.

6 Q FROM THIS ACCOUNT BEING?

7 A FROM THE CONSERVATORSHIP.

8 Q WHICH IS THE \$116-SOMETHING ODD THOUSAND THAT YOU  
9 RECOVERED?

10 A YES.

11 Q AND IN ORDER TO MAKE CODY WHOLE, IT WOULD TAKE AN  
12 ADDITIONAL APPROXIMATELY \$205,000 AND SOME CHANGE?

13 A NO, SIR.

14 Q TO MAKE HIM WHOLE WOULD NOT BE \$205,000?

15 A NO, SIR. THIS -- WE'VE BEEN DOING THIS FOR 5 -- WE  
16 HAVE BEEN GOING THROUGH THIS LAWSUIT FOR 5 YEARS, AND THERE  
17 ARE SUBSTANTIAL EXPENSES THAT WOULD HAVE TO BE -- THAT HAVE  
18 BEEN INCURRED THAT NEED TO BE TAKEN CARE OF TOO. WE'VE  
19 HIRED ---

20 Q HAVE YOU SEEN A STIPULATION OF DAMAGES THAT'S BEEN  
21 AGREED UPON BY THE PARTIES? WHEN I SAY PARTIES, I MEAN,  
22 THE PLAINTIFFS AND THE DEFENDANT?

23 A YES, SIR.

24 Q AND DOESN'T THAT STIPULATION OF DAMAGES STATE THAT TO  
25 MAKE HIM WHOLE, THAT HIS ACTUAL DAMAGES ARE \$205-SOMETHING-

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ROA 0231

APPENDIX 236

1 ODD-THOUSAND?

2 MS. KELLAHAN: YOUR HONOR, I'D OBJECT TO THAT. IT

3 DOES NOT SAY ANYTHING ABOUT MAKING HIM WHOLE.

4 THE COURT: RESTATE THE QUESTION PLEASE?

5 Q DOESN'T THAT STIPULATION, THAT AGREEMENT BY COUNSEL OF

6 THE PARTIES -- WHICH I'M ASSUMING YOU SAW ---

7 A I DID.

8 Q --- AND HAD TO APPROVE STATES THAT HIS ACTUAL DAMAGES

9 IS APPROXIMATELY -- IS AROUND \$205,000?

10 A HIS ACTUAL DAMAGES ARE 205,000, BUT THAT WILL NOT MAKE

11 HIM WHOLE.

12 Q OKAY. BUT THOSE ARE HIS ACTUAL DAMAGES?

13 A YES, SIR.

14 Q AND YOU APPROVED THAT?

15 A YES, SIR.

16 MR. DAVIS: BEAR WITH ME JUST FOR A MINUTE.

17 (PAUSE.)

18 MR. DAVIS: NOTHING FURTHER, YOUR HONOR.

19 THE COURT: MR. WILSON.

20 MR. WILSON: MAY IT PLEASE THE COURT.

21 THE COURT: YES, SIR.

22 MS. KELLEY: I'VE GOT HORMONES GOING, AND THIS IS THE

23 FIRST TIME.

24 MR. WILSON: ARE YOU ALL RIGHT?

25 MS. KELLEY: UH-HUH.

1 MR. WILSON: COULD I GET YOU SOME WATER?

2 MS. KELLEY: I'M GOOD.

3 MR. WILSON: THIS WILL BE SHORT. OKAY?

4 MS. KELLEY: OKAY.

5 CROSS EXAMINATION BY MR. WILSON:

6 Q MS. KELLEY, SINCE YOU WERE APPOINTED AS THE NEW  
7 CONSERVATOR, I TAKE IT FOR THE BENEFIT OF THE FOLKS ON THE  
8 JURY, IT'S PROBABLY OBVIOUS YOU'VE HAD THE OPPORTUNITY TO  
9 MEET WITH LIZ; IS THAT CORRECT? ELIZABETH?

10 A ELIZABETH, YES, SIR.

11 Q AND CODY?

12 A YES, SIR.

13 Q YOUR WARD?

14 A YES, SIR.

15 Q AND IN THAT ROLE THAT YOU SAID YOU'VE HAD NOW SINCE  
16 THIS THING GOES BACK TO AT LEAST '03, I THINK IT IS, RIGHT?

17 A UH-HUH.

18 Q YOU'VE UNDERSTOOD THAT THIS YOUNG MAN OVER HERE THAT'S  
19 SITTING BY ME, TRAVIS, HE HAS BEEN A VERY IMPORTANT PART OF  
20 YOUR WARD'S LIFE?

21 A HE HAS.

22 Q AND HE HAS DONE THOSE THINGS THAT YOU HAVE OBSERVED,  
23 SUCH AS HUNTING AND COMING TO CALL ON HIM AND BEING A BIG  
24 BROTHER AND A FATHER FIGURE TO THIS BOY?

25 A YES, SIR.

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ROA 0233

APPENDIX 238

- 1 Q WHEN STEVEN DIED, LIZ'S HUSBAND, CODY'S DADDY -- HIS  
2 GRANDFATHER ERNEST WAS ALREADY GONE, RIGHT?  
3 A YES, SIR.  
4 Q SO THE MAN LEFT IN THE FAMILY WAS TRAVIS, RIGHT?  
5 A YES, SIR.  
6 Q AND FROM YOUR OBSERVATION, HE HAS DONE THOSE THINGS  
7 THAT AS FAR AS YOU KNEW TO DO TO TAKE CARE AND BE A PART OF  
8 THIS BOY'S LIFE TO YOUR KNOWLEDGE?  
9 A TO MY KNOWLEDGE, YES, SIR.  
10 Q ALL RIGHT. NOW, WHILE YOU SAID YOU DIDN'T KNOW KAREN.  
11 I UNDERSTAND THAT YOU DID KNOW TRAVIS?  
12 A I DID. WE WERE IN SCHOOL TOGETHER.  
13 Q IN SCHOOL?  
14 A UH-HUH.  
15 Q I UNDERSTAND FROM THE THIRD TO THE SIXTH GRADE?  
16 A HIGH SCHOOL TOO.  
17 Q AND THE NINTH TO THE TWELFTH?  
18 A UH-HUH.  
19 Q ALL RIGHT. NOW, BEFORE THERE WERE LAWSUITS, BEFORE  
20 THERE WERE JURIES, BEFORE THERE WERE JUDGES, YOU SAW HIM  
21 BACK THEN. HE WAS A DECENT KID THEN, WASN'T HE?  
22 A YES, SIR. EVEN WITH THE LAWSUIT, I STILL THINK HE'S A  
23 DECENT PERSON.  
24 Q BUT A NICE BOY?  
25 A UH-HUH.

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ROA 0234

APPENDIX 239

- 1 Q AND HE WAS CERTAINLY UNDER THE CIRCUMSTANCES WHEN YOU  
2 PUT TOGETHER THE FACT THAT HE WAS LOOKING OUT FOR LITTLE  
3 CODY, YOU FELT LITTLE CODY WAS IN GOOD HANDS?  
4 A YES, SIR.  
5 Q YOU HAVE NEVER TRIED TO SAY, TRAVIS, DON'T TAKE HIM  
6 OUT OR DON'T TAKE HIM HUNTING ---  
7 A NO.  
8 Q --- OR ANYTHING LIKE THAT?  
9 A NO, SIR.  
10 Q NOW, WHEN YOU TOLD THESE FOLKS THE MONEY THAT YOU  
11 HELPED GET BACK, YOU DID THIS INVESTIGATION. TRAVIS DIDN'T  
12 HAVE ANY OF THAT MONEY THAT WAS TAKEN. KAREN DID; IS THAT  
13 CORRECT?  
14 A THAT'S RIGHT.  
15 Q AND YOU LOOKED INTO ALL THAT?  
16 A I HAVE.  
17 Q YOU HAD THE OPPORTUNITY TO LOOK INTO THE CHECKS AND  
18 CHECK THE SIGNATURES IF THERE WAS ANY QUESTION WHETHER  
19 TRAVIS HAD SIGNED ONE OF THOSE CHECKS OR NOT?  
20 A YES, SIR.  
21 Q THERE'S NO INFORMATION THAT HE SIGNED THAT CHECK?  
22 A NO.  
23 Q AND AS FAR AS YOU KNOW, THE INFORMATION IS, HE DIDN'T  
24 SIGN THAT CHECK?  
25 A AS FAR AS I KNOW, HE DIDN'T.

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ROA 0235

APPENDIX 240

1 Q ALL RIGHT. NOW, YOU TALKED ABOUT LAW ENFORCEMENT AND  
2 TRAVIS' HELP. DID YOU KNOW THAT TRAVIS FROM YOUR  
3 INVESTIGATION DOESN'T KNOW WHERE SHE IS?  
4 A YEAH, I'VE BEEN TOLD HE DOESN'T KNOW WHERE SHE IS.  
5 Q AND DO YOU KNOW WHERE SHE IS?  
6 A I DON'T.  
7 Q THE LAST YOU HEARD, SHE WAS SOMEWHERE IN COLORADO?  
8 A I'VE -- I'VE HEARD SEVERAL THINGS. I DON'T KNOW WHERE  
9 SHE IS THOUGH.  
10 Q TRAVIS, DO YOU KNOW, PROVIDED THE ONLY INFORMATION HE  
11 HAD, WHICH WAS A CELL PHONE? DID YOU KNOW THAT?  
12 A NO, I DIDN'T.  
13 Q ALL RIGHT. BUT NOW LAW ENFORCEMENT HADN'T BEEN ABLE  
14 TO FIND HER?  
15 A NO, SIR.  
16 Q AND THAT'S POLICE, AND, OF COURSE, POLICE AND  
17 SHERIFF'S DEPUTIES, THERE WOULD BE SLED IN SOUTH CAROLINA,  
18 THERE WOULD BE THE FBI, THERE WOULD BE ALL KIND OF POLICE  
19 EVERY WHICH WAY, RIGHT, AS FAR AS YOU KNOW, POLICE IN  
20 COLORADO?  
21 A AS FAR AS I KNOW.  
22 Q THEY HAVEN'T FOUND HER?  
23 A NO, SIR.  
24 Q OKAY. ALL RIGHT. NOW, AS FAR AS THE ACCOUNTS THAT  
25 YOU LOOKED AT, TO YOUR KNOWLEDGE BASED ON YOUR

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ROA 0236

APPENDIX 241

1 INVESTIGATION, THOSE ACCOUNTS WERE SET UP BY KAREN POWELL  
2 UNRUE TO YOUR KNOWLEDGE?  
3 A YES, SIR, TO MY KNOWLEDGE.  
4 Q ALL RIGHT. ALL RIGHT. YOU OBVIOUSLY WEREN'T THERE --  
5 YOU WERE THERE WHEN YOU WERE APPOINTED. BUT AS FAR AS THE  
6 DISCUSSIONS BEFORE JUDGE GAMBLE WHEN TRAVIS WAS THERE, YOU  
7 WEREN'T THERE FOR THAT?  
8 A NO, SIR.  
9 Q AND SO WHATEVER WENT ON BETWEEN THEM, YOU WEREN'T A  
10 PART OF THAT?  
11 A THAT'S RIGHT.  
12 Q OKAY. DID YOU EVER GO TO TRAVIS SINCE THIS AND ASK  
13 HIM TO DO ANYTHING THAT HE HASN'T DONE?  
14 A NO, SIR.  
15 MR. WILSON: ONE SECOND PLEASE, YOUR HONOR.  
16 (PAUSE.)  
17 MR. WILSON: THANK YOU VERY MUCH.  
18 MS. KELLAHAN: YOUR HONOR ---  
19 THE COURT: REDIRECT?  
20 MS. KELLAHAN: I HAVE TWO POINTS I JUST WANTED TO  
21 CLARIFY.  
22 REDIRECT EXAMINATION BY MS. KELLAHAN:  
23 Q MS. KELLEY, COUNSEL ASKED YOU IF YOU KNEW BASED ON  
24 YOUR INVESTIGATION WHETHER KAREN HAD A PREEXISTING  
25 RELATIONSHIP WITH THE BANK OF AMERICA. DO YOU KNOW WHETHER

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0237

APPENDIX 242



- 1 OR NOT SHE ALREADY HAD A PERSONAL CHECKING ACCOUNT THERE?
- 2 A SHE DID.
- 3 Q ALL RIGHT. AND ONE OTHER THING I WANTED TO CLARIFY.
- 4 HE ASKED YOU IF YOU KNEW WHETHER OR NOT THOSE BANK
- 5 EMPLOYEES SHE DEALT WITH WERE EXPERIENCED OR HAD BEEN THERE
- 6 A LONG TIME. DO YOU KNOW WHAT THEIR POSITIONS WERE AT THE
- 7 BANK THAT SHE DEALT WITH?
- 8 A I BELIEVE WITH THE ONES SHE DEALT WITH TO SET UP THE
- 9 CD WAS A PERSONAL BANKER.
- 10 Q ALL RIGHT. DO YOU KNOW WHETHER OR NOT SHE DEALT WITH
- 11 THE ACTUAL BRANCH MANAGER ON ANOTHER OCCASION?
- 12 A I DON'T KNOW.
- 13 Q DO YOU KNOW WHETHER -- WOULD YOU SAY THE PERSONAL
- 14 BANKER AND BRANCH MANAGER ARE IMPORTANT POSITIONS ---
- 15 MR. DAVIS: OBJECTION, YOUR HONOR.
- 16 Q --- AT THE BANK OF AMERICA?
- 17 THE COURT: JUST A MOMENT.
- 18 MR. DAVIS: OBJECTION, YOUR HONOR. THIS IS HER
- 19 WITNESS. SHE'S TRYING TO PUT WORDS IN HER MOUTH. NOW SHE
- 20 SAYS SHE DIDN'T KNOW.
- 21 THE COURT: MS. KELLAHAN?
- 22 MS. KELLAHAN: YOUR HONOR, I'M JUST -- THIS IS JUST
- 23 REDIRECT ON HIS QUESTIONS REGARDING WHETHER OR NOT THE BANK
- 24 EMPLOYEES ---
- 25 THE COURT: RESTATE THIS QUESTION, SEE IF THERE IS AN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0238

APPENDIX 243

1 OBJECTION.

2 Q WOULD YOU AGREE THAT A PERSONAL BANKER AND A BRANCH  
3 MANAGER WOULD BE IMPORTANT POSITIONS AT BANK OF AMERICA?

4 MR. DAVIS: SAME OBJECTION.

5 THE COURT: I SUSTAIN THE OBJECTION. IMPROPER

6 REDIRECT.

7 MS. KELLAHAN: I DON'T HAVE ANYTHING FURTHER. THANK  
8 YOU.

9 MR. DAVIS: NOTHING ON REDIRECT.

10 MR. WILSON: NO QUESTIONS, YOUR HONOR.

11 THE COURT: THANK YOU.

12 (THE WITNESS LEAVES THE WITNESS STAND.)

13 THE COURT: NEXT WITNESS.

14 MR. JENKINSON: YOUR HONOR, THE PLAINTIFF NEXT WISHES  
15 TO PUBLISH PORTIONS OF THE DEPOSITION OF FLORETTA DENNING,  
16 AN EMPLOYEE OF THE BANK OF AMERICA, AND ALSO ONE OF THE  
17 DESIGNATED 30 (B) (6) UNDER OUR RULES OF WITNESSES. I  
18 PUBLISH FROM THEIR SWORN DEPOSITION OF NOVEMBER 2ND OF  
19 2004. I'LL PASS UP THE ORIGINAL TO THE COURT.

20 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, A  
21 DEPOSITION IS A SWORN STATEMENT THAT IS TAKEN OUTSIDE OF  
22 COURT USUALLY IN ONE OF THE LAWYERS' OFFICES OR SOME OTHER  
23 LOCATION. THE PERSON IS PUT UNDER OATH AND THEY'RE ASKED  
24 QUESTIONS. AND THE RESPONSES AND THE QUESTIONS CAN BE READ  
25 IN COURT TO THE JURY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0239

APPENDIX 244

1 LET'S STAND JUST FOR A MOMENT.

2 (PAUSE.)

3 MR. JENKINSON: YOUR HONOR, I WOULD ASK THAT MS.

4 KELLAHAN READ THE PORTIONS WHERE MS. DENNING SPEAKS, AND I

5 WILL ACTUALLY SPEAK WHERE MS. KELLAHAN WAS SPEAKING.

6 THE COURT: ALL RIGHT. LET'S HAVE OUR SEATS.

7 MR. JENKINSON: THIS IS FROM THE SWORN DEPOSITION OF

8 FLORETTA DENNING, AN EMPLOYEE OF THE BANK OF AMERICA, 30

9 (B) (6) DESIGNATED REPRESENTATIVE OF THE BANK ON NOVEMBER  
10 2ND, 2004.

11 THE FIRST IS ON PAGE 3. MS. DENNING WAS SWORN AS A  
12 WITNESS WHO TESTIFIED.

13 FLORETTA DENNING, BEING FIRST  
14 DULY SWORN, TESTIFIED AS FOLLOWS VIA DEPOSITION:

15 DIRECT EXAMINATION BY MS. KELLAHAN:

16 Q MS. DENNING, GOOD MORNING. MY NAME IS JENNIFER  
17 KELLAHAN AND I'M HERE ON BEHALF OF CODY P [REDACTED] TODAY AND I  
18 UNDERSTAND YOU'RE HERE ON BEHALF OF BANK OF AMERICA,  
19 CORRECT?

20 A THAT'S CORRECT.

21 MR. JENKINSON: ON PAGE 4.

22 Q AND YOU'RE EMPLOYED WITH BANK OF AMERICA?

23 A YES.

24 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THEM?

25 A 15 YEARS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0240

APPENDIX 245

1 Q IN WHAT POSITION?  
2 A CUSTODIAN OF RECORDS.  
3 MR. JENKINSON: ON PAGE 8.  
4 Q HOW ABOUT DO YOU HAVE ANY INFORMATION AS TO THE BANK'S  
5 FINANCIAL STATUS?  
6 MR. DAVIS: OBJECTION.  
7 Q CAN YOU GIVE ANY TESTIMONY TODAY ABOUT THE BANK'S  
8 ASSETS?  
9 MR. DAVIS: OBJECTION, JUDGE.  
10 THE COURT: JUST A MOMENT. IT'S PAGE 8 LINE ---  
11 MR. JENKINSON: I WAS GOING TO GO DOWN TO LINE 14 AND  
12 STOP.  
13 MR. DAVIS: YOUR HONOR, WE MAY NEED TO APPROACH THE  
14 BENCH.  
15 THE COURT: ALL RIGHT.  
16 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE  
17 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)  
18 MR. JENKINSON: BEGINNING ON LINE 4.  
19 Q HOW ABOUT, DO YOU HAVE ANY INFORMATION AS TO THE  
20 BANK'S FINANCIAL STATUS? CAN YOU GIVE ANY TESTIMONY TODAY  
21 ABOUT THE BANK'S ASSETS?  
22 A AS FAR AS I CAN ONLY TELL YOU THAT THE BANK IS THE  
23 THIRD LARGEST BANK IN THE WORLD, BUT AS FAR AS THE  
24 FINANCES, I CAN'T TELL YOU THAT. I WOULDN'T HAVE THAT  
25 INFORMATION.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0241

APPENDIX 246

1 MR. JENKINSON: PAGE 9.

2 Q LET ME ASK YOU ABOUT CONSERVATORSHIP ACCOUNTS, ARE YOU  
3 FAMILIAR WITH THE TERM CONSERVATORSHIP?

4 A YES, I AM.

5 Q DOES THE BANK HAVE ANOTHER TERM FOR A CONSERVATORSHIP  
6 ACCOUNT?

7 A NO. WE JUST HAVE CONSERVATOR OR GUARDIANSHIP  
8 ACCOUNTS.

9 Q WHAT IS YOUR UNDERSTANDING OF A CONSERVATORSHIP OR  
10 GUARDIANSHIP ACCOUNT?

11 A THESE ACCOUNTS, GUARDIANSHIPS OR CONSERVATORSHIPS, ARE  
12 USUALLY APPOINTED BY AND THROUGH THE COURTS, ASSIGNING  
13 SOMEONE TO BE CONSERVATOR FOR AN INDIVIDUAL THAT IS EITHER  
14 A MINOR OR INCAPABLE OF MAINTAINING THEMSELVES FINANCIALLY.

15 Q SO YOU UNDERSTAND A CONSERVATOR OR GUARDIAN IS A  
16 COURT-APPOINTED INDIVIDUAL?

17 A THAT'S CORRECT.

18 Q DOES THE BANK HAVE SPECIFIC GUIDELINES FOR SETTING UP  
19 CONSERVATORSHIP ACCOUNTS OR GUARDIANSHIP ACCOUNTS?

20 A YES, THEY DO.

21 MR. JENKINSON: PLAINTIFFS' EXHIBIT 31 IS A 5-PAGE  
22 DOCUMENT ENTITLED GUARDIANSHIP CONSERVATORSHIP COURT-  
23 APPOINTED AND WAS MARKED AS AN EXHIBIT.

24 Q I'M GOING TO SHOW YOU WHAT HAS BEEN PROVIDED TO ME BY  
25 YOUR ATTORNEY, SOME INFORMATION. THIS IS MARKED AS

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ROA 0242

APPENDIX 247

1 PLAINTIFFS' EXHIBIT NO. 31. I'LL LET YOU TAKE A LOOK AT  
2 THAT. HAVE YOU EVER SEEN THOSE EXCERPTS THAT I'M SHOWING  
3 YOU, PLAINTIFFS' EXHIBIT NO. 31 BEFORE?

4 A YES, I HAVE.

5 Q CAN YOU TELL ME WHAT DOES THE P-A-M MEAN DOWN AT THE  
6 BOTTOM, DO YOU KNOW?

7 A YES. THIS IS A MANUAL, PLATFORM MANUAL, THAT THE BANK  
8 USES, FRONT LINE USES WHENEVER THEY ARE EITHER OPENING AN  
9 ACCOUNT OR HAVE QUESTIONS ABOUT THE PROCEDURES. SO THESE  
10 ARE PROCEDURES RIGHT THERE AT THEIR FINGERTIPS WHERE THEY  
11 CAN GET THEM.

12 MR. JENKINSON: DOWN AT LINE 24.

13 Q ARE THOSE PLATFORM ASSISTANCE MANUALS IN EVERY BRANCH  
14 LOCATION?

15 A YES.

16 Q WOULD EVERY BANK HAVE A MANUAL?

17 A ABSOLUTELY.

18 Q WOULD EACH INDIVIDUAL TELLER HAVE A MANUAL?

19 A YES.

20 Q SO EVERY EMPLOYEE HAS ACCESS TO IT?

21 A ABSOLUTELY.

22 MR. JENKINSON: NOW PAGE 12.

23 Q IS THERE ANY PARTICULAR -- YOU MENTIONED PLATFORM. IS  
24 THAT LIKE A SPECIAL ---

25 A I'M SORRY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0243

APPENDIX 248

1 Q THAT'S OKAY. I'M JUST CURIOUS.

2 A PLATFORM IS WHEN YOU WALK IN THE DOOR AND THERE'S  
3 PEOPLE THERE TO HELP ASSIST YOU, WHETHER OPENING AN  
4 ACCOUNT, GETTING A LOAN. THESE ARE PEOPLE THAT ARE RIGHT  
5 ON THE FLOOR. THE TELLERS ARE BEHIND THE LINE. SO WHEN I  
6 SAY PLATFORM, THESE ARE THE ONES THAT GREET YOU TO ASSIST  
7 YOU.

8 Q SO IF SOMEONE CAME IN TO OPEN A NEW ACCOUNT AND THEY  
9 WOULD BE GREETED BY A PLATFORM WORKER TO OPEN A NEW  
10 ACCOUNT; IS THAT CORRECT?

11 A RIGHT.

12 Q IF YOU WILL, I WANT YOU TO EXPLAIN TO ME A LITTLE BIT  
13 ABOUT WHAT THE MANUAL SAYS REGARDING GUARDIANSHIP AND  
14 CONSERVATORSHIP ACCOUNTS. UP AT THE TOP WHERE IT SAYS  
15 ACCOUNT TITLE, DO YOU HAVE TO USE THE NAME GUARDIAN OR  
16 CONSERVATOR ON THE ACCOUNT TITLE?

17 A YES.

18 Q IF IT'S TO BE SET UP THAT WAY, IT'S SUPPOSED TO BE IN  
19 THE CORRECT ACCOUNT TITLE?

20 A RIGHT. IF IT CAME -- IT'S A COURT ORDER. THE COURT  
21 ORDER IS TELLING YOU HOW IT SHOULD BE TITLED. IT'S ON THE  
22 COURT ORDER.

23 Q WHAT TELLS THE PLATFORM WORKER WHO IS ESTABLISHING THE  
24 ACCOUNT HOW TO SET IT UP? WHERE DO THEY GET THE  
25 INFORMATION FROM?

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0244

APPENDIX 249

1 A THEY WOULD HAVE TO PRESENT SOMETHING TO THEM FOR THAT  
2 INFORMATION. SO THEY'D EITHER HAVE THE COURT ORDER OR THE  
3 INSTRUMENT THEY'RE USING TO OPEN THE ACCOUNT.

4 Q BACK UP EVEN A STEP BEFORE THAT. THEY JUST COME INTO  
5 THE BANK AND THEY WANT TO OPEN A NEW ACCOUNT. DOES THE  
6 PLATFORM WORKER LOOK AT THE DEPOSIT OR WHAT THEY'RE USING  
7 TO OPEN THE ACCOUNT?

8 A YES, AN I.D.

9 Q I MEAN THE ACTUAL CHECK ITSELF?

10 A OF COURSE. THAT WOULD BE THE INSTRUMENT THEY'RE  
11 USING. IF IT'S A CONSERVATOR OR GUARDIAN, IF IT'S A COURT  
12 ORDER, THE CHECK WOULD SAY THAT ON THE CHECK.

13 Q LOOKING BACK AT PLAINTIFFS' EXHIBIT NO. 31, IT STATES  
14 AT THE TOP: IF A COURT ORDER IS REQUIRED FOR WITHDRAWALS,  
15 INCLUDE COURT RESTRICTED ACCOUNT IN THE TITLE. ARE YOU  
16 FAMILIAR WITH ACCOUNTS SET UP WHERE YOU HAVE A COURT ORDER  
17 THAT'S REQUIRED FOR A WITHDRAWAL?

18 A YES.

19 Q DO YOU SEE THEM FREQUENTLY?

20 A WE DO THEM IN SOUTH CAROLINA A LOT.

21 Q DO YOU HAVE ANY IDEA HOW MANY ACCOUNTS THE BANK NOW  
22 HAS THAT ARE RESTRICTED ACCOUNTS?

23 A WE HAVE SOME VERY, VERY OLD ACCOUNTS THAT ARE STILL  
24 SET UP AS RESTRICTED, SO I COULDN'T TELL YOU HOW MANY  
25 ACCOUNTS ARE RESTRICTED BECAUSE THOSE ACCOUNTS THAT ARE

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0245

APPENDIX 250



- 1 RESTRICTED WE KEEP THOSE SEPARATE. BUT WHEN THEY ARE GOING  
2 TO BE TOUCHED, OF COURSE, THAT'S WHEN A COURT ORDER COMES  
3 IN TO TELL US TO RELEASE A CERTAIN DOLLAR AMOUNT.  
4 MR. JENKINSON: ON PAGE 16 BEGINNING AT LINE 8.  
5 Q IS THE CD INCLUDED IN THE LIST OF ELIGIBLE PRODUCTS ON  
6 PLAINTIFFS' EXHIBIT NO. 31?  
7 A NO, IT'S NOT.  
8 Q BUT IT IS A PRODUCT THAT THE BANK MARKETS FOR  
9 CONSERVATORSHIP ACCOUNTS?  
10 A RIGHT. IT WOULD BE UNDER SAVINGS.  
11 Q WHEN IT SAYS IDENTIFICATION RIGHT BELOW THAT, WHEN IT  
12 SAYS REFER TO THE IDENTIFICATION CHAPTER OF THE PLATFORM  
13 ASSISTANCE MANUAL, CAN YOU TELL ME WHAT YOU BELIEVE THAT IS  
14 REFERRING TO?  
15 A HOW THAT PERSON, THE I.D. OF THE CONSERVATOR OR THE  
16 GUARDIAN, AND IT WILL TELL THEM WHAT THEY'RE GOING TO USE  
17 TO, WHAT NUMBERS THEY'RE GOING TO USE TO IDENTIFY THE  
18 PERSON THAT'S SETTING IT UP, THAT'S OPENING THE ACCOUNT.  
19 Q LIKE YOU MEAN SOCIAL SECURITY NUMBER, DRIVER'S  
20 LICENSE, SOMETHING LIKE THAT?  
21 A YES. TAX I.D. NUMBER, A SOCIAL, SOMETHING PERSONAL.  
22 Q IN A CONSERVATORSHIP ACCOUNT ARE YOU SUPPOSED TO USE  
23 THE PROTECTED PERSON'S SOCIAL SECURITY NUMBER OR TAX I.D.  
24 NUMBER?  
25 A YES.

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ROA 0246

APPENDIX 251

1 MR. JENKINSON: PAGE 18.

2 Q OKAY. LET ME FLIP YOU BACK TO PAGE 2 OF PLAINTIFFS'

3 EXHIBIT 31-A, WHICH IS PAGE 4, REQUIRED DOCUMENTATION.

4 THAT OTHER DOCUMENT ON THE TOP OF THE SECOND PAGE, CAN YOU

5 READ IT TO ME, THE REQUIRED DOCUMENTATION FOR SETTING UP

6 THE CONSERVATORSHIP ACCOUNT?

7 A ORIGINAL CERTIFIED COPY OF THE COURT ORDER APPOINTING

8 THE GUARDIAN/CONSERVATOR/CURATOR CONTAINING THE FOLLOWING:

9 NAME OF THE GUARDIAN, NAME OF THE CONSERVATOR/CURATOR, NAME

10 OF WARD, SIGNATURE OF COURT OFFICIAL, CERTIFIED SEAL AND/OR

11 FILING STAMP, STATEMENT INDICATING THE

12 GUARDIAN/CONSERVATOR/CURATOR IS GUARDIAN OVER THE ESTATE

13 AND/OR PROPERTY OF THE WARD.

14 Q WITH THAT REQUIRED DOCUMENTATION WHERE IT SAYS ON THE

15 RIGHT-HAND SIDE FORWARD TO THE ACCOUNT RECORDS, WOULD

16 COPIES OF ALL OF THAT BE SUBMITTED AND EVENTUALLY END UP AT

17 THE LOCATION WHERE YOU WORK?

18 A JUST A COPY IF IT'S RESTRICTED. ONLY IF IT'S

19 RESTRICTED. BUT, YES, THERE'S A SEPARATE AREA WHERE ALL

20 THIS OTHER INFORMATION GOES. RESTRICTED ACCOUNTS WOULD

21 COME TO THE AREA WHERE I AM.

22 MR. JENKINSON: PAGE 19.

23 Q SO RESTRICTED ACCOUNTS WOULD GO WHERE YOU WORK; JUST

24 REGULAR INFORMATION NECESSARY TO SET UP NEW ACCOUNTS WOULD

25 GO TO THE ACCOUNT RECORDS?

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ROA 0247

APPENDIX 252

- 1 A CORRECT.
- 2 Q HOW ABOUT THE INFORMATION THAT YOU'RE SUPPOSED TO
- 3 COMPLETE. CAN YOU TELL ME WHAT YOU WOULD HAVE TO HAVE
- 4 AFTER YOU'VE SEEN THE REQUIRED DOCUMENTATION, THEN WHAT
- 5 DOES THE BANK EMPLOYEE HAVE TO DO?
- 6 A YOU WANT ME TO READ THIS?
- 7 Q YES, MA'AM.
- 8 A PERSONAL SIGNATURE CARD (APPLICABLE VERSIONS) SIGNED
- 9 ONLY BY THE PERSONAL REPRESENTATIVE, GUARDIAN/CONSERVATOR
- 10 OR CURATOR. DO YOU WANT ME TO ELABORATE ON THAT?
- 11 Q YES, MA'AM, IF YOU CAN.
- 12 A SO WHEN THIS PERSON IS OPENING THAT ACCOUNT, WE'VE
- 13 ALREADY SET THE TITLE LINE ON THAT ACCOUNT, GOT THE TAX
- 14 I.D. NUMBER, AND IT'S PROMPTING HER TO CONTINUE. SO IT
- 15 ASKS -- SHE'S ALREADY SEEN THEIR I.D., AND THEN THE SYSTEMS
- 16 WILL SEND OUT A FORM THAT SHE HAS TO SIGN NOW AND THAT'S
- 17 IDENTIFYING THE WAY THAT THE TITLE OF THAT ACCOUNT IS SET
- 18 UP AND THEN THAT'S WHERE SHE SIGNS IT. THEN IT RE-VERIFIES
- 19 TO THAT PERSON THAT'S OPENING THE ACCOUNT HER ACTUAL FORM
- 20 OF PICTURE I.D.
- 21 Q SO THE COMPUTER SYSTEM PROMPTS YOU THROUGH A LOT OF
- 22 THIS INFORMATION; IS THAT CORRECT?
- 23 A RIGHT. SO THAT FORM IS WHAT SHE'S GOING TO SEND DOWN
- 24 TO ACCOUNT RECORDS.
- 25 Q THE SIGNATURE CARD?

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ROA 0248

APPENDIX 253

- 1 A THE SIGNATURE CARD.
- 2 MR. JENKINSON: NOW ON PAGE 21.
- 3 Q IF I HAVE THE PLAINTIFFS' 31 -- EXHIBIT 31-A AND
- 4 EXHIBIT 31-B, THESE DOCUMENTS THAT WE WERE JUST LOOKING AT,
- 5 IS THAT ALL THAT YOU THINK AS FAR AS THE BANK HAS REGARDING
- 6 PROCEDURES AND POLICIES ON ESTABLISHING CONSERVATORSHIP
- 7 ACCOUNTS?
- 8 A JUST THESE RIGHT HERE?
- 9 Q THOSE PAGES THERE AND ---
- 10 A YOU'RE REFERRING BACK TO 2003 WITH THIS AND THIS RIGHT
- 11 HERE; IS THAT WHAT YOU'RE REFERRING TO?
- 12 Q WELL, I'M REFERRING TO IT IF YOU HAVE EXHIBIT 31,
- 13 WHICH IS THE FOUR PAGES THAT WE WERE JUST TALKING ABOUT OUT
- 14 OF THE PLATFORM ASSISTANCE MANUAL, AND I HAVE EXHIBIT 2,
- 15 WHICH LOOKS LIKE IT WAS PRINTED OFF OF A COMPUTER, IS THAT
- 16 ALL OF THE MANUAL INSTRUCTIONS THAT THE BANK HAS REGARDING
- 17 ESTABLISHMENT OF CONSERVATORSHIP ACCOUNTS?
- 18 A YES. I WOULD SAY, YES. IT'S NOT MUCH INFORMATION,
- 19 BUT IT'S A LOT OF INFORMATION THAT'S REQUIRED.
- 20 MR. JENKINSON: PAGE 23.
- 21 Q WHEN AN EMPLOYEE CONTACTS BANKING GROUP SUPPORT OR
- 22 LEGAL SUPPORT, HOW DO THEY DO THAT?
- 23 A THEY HAVE A PHONE NUMBER, DIRECT PHONE NUMBER.
- 24 Q IS THERE ALWAYS SOMEONE AVAILABLE?
- 25 A ALWAYS SOMEONE AVAILABLE.

CODY R. [REDACTED] VS. BANK OF AMERICA

ROA 0249

APPENDIX 254

- 1 Q IS THAT SOMETHING THAT'S DONE COMMONLY?
- 2 A COMMONLY.
- 3 Q DOES EVERY EMPLOYEE HAVE ACCESS TO THESE TELEPHONE
- 4 NUMBERS?
- 5 A EVERYONE.
- 6 Q LET ME ASK YOU ONE LAST QUESTION BEFORE WE LEAVE THESE
- 7 DOCUMENTS. IS THERE ANYTHING ON PLAINTIFFS' EXHIBIT 31,
- 8 THE COMPUTER PRINTOUT INFORMATION THAT SEEMS TO CHANGE OR
- 9 MODIFY THE REQUIREMENTS THAT WE JUST WENT OVER IN SETTING
- 10 UP AN ACCOUNT?
- 11 A IN SETTING THE ACCOUNT UP, NO. USUALLY IT ASKS YOU
- 12 FOR MORE INFORMATION THAN LESS, BUT, NO.
- 13 MR. JENKINSON: AND NOW PLAINTIFFS' EXHIBIT NO. 12,
- 14 NEW ACCOUNT SLIP.
- 15 Q LET ME SHOW YOU THIS DOCUMENT. IT'S MARKED AS
- 16 PLAINTIFFS' EXHIBIT 12 AND IT LOOKS LIKE A NEW ACCOUNT
- 17 SLIP. CAN YOU IDENTIFY THIS DOCUMENT?
- 18 A THIS IS A NEW ACCOUNT FOR A CD.
- 19 Q WHO SET THAT CD UP, CAN YOU TELL?
- 20 A L. Y-O-U-K-O, SOMETHING LIKE THAT.
- 21 Q THAT WOULD BE THE BANK EMPLOYEE?
- 22 A THAT'S CORRECT.
- 23 Q DO YOU KNOW WHAT POSITION SHE HELD WITH THE BANK?
- 24 A WELL, SHE COULD HAVE BEEN A PERSON THAT OPENS
- 25 ACCOUNTS, SALES. WHAT WE CALL THEM IS SO MANY DIFFERENT

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ROA 0250

APPENDIX 255

1 TITLES. SHE COULD HAVE BEEN PLATFORM PERSONNEL, BUT SHE  
2 COULD OPEN ACCOUNTS. SHE PROBABLY SELLS BANK PRODUCTS..  
3 COULD BE DIFFERENT TITLES. SHE SOLD BANK PRODUCTS.

4 Q AND THAT INDIVIDUAL WOULD HAVE TO HAVE ACCESS TO THE  
5 DOCUMENTS -- HAVE HAD ACCESS TO DOCUMENTS WE WERE JUST  
6 GOING OVER, PLAINTIFFS' EXHIBITS -- THAT WOULD BE 31; IS  
7 THAT CORRECT? IS THAT HOW YOU SET UP AN ACCOUNT?

8 A THAT'S CORRECT.

9 Q FROM YOUR REVIEW FOR TODAY, DO YOU HAVE ANY KNOWLEDGE  
10 OF WHERE THAT CD WAS ESTABLISHED?

11 A PAWLEYS ISLAND. AS A MATTER OF FACT, IT SAYS IT RIGHT  
12 THERE. SORRY.

13 Q WHAT IS THE DATE ON THAT CD?

14 A 4/26 2001.

15 MR. JENKINSON: NOW, LET'S GO TO PLAINTIFFS' EXHIBIT  
16 -- 7 CHECKS WHICH ARE EXHIBITS 5 THROUGH 11.

17 Q I'M GOING TO SHOW YOU THESE DOCUMENTS THAT ARE  
18 PLAINTIFFS' 5 THROUGH 11, WHICH I BELIEVE TO BE THE  
19 DEPOSITS THAT MAKE UP THAT CREDIT. MY QUESTION IS: IS  
20 THERE ANY OTHER BANK PAPERWORK REGARDING THE ESTABLISHMENT  
21 OF THIS CERTIFICATE OF DEPOSIT OTHER THAN THE DOCUMENT THAT  
22 IS ENTITLED PLAINTIFFS' EXHIBIT 12?

23 A ARE THERE OTHER REQUIRED DOCUMENTS, IS THAT WHAT  
24 YOU'RE ASKING ME?

25 Q YES, MA'AM.

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ROA 0251

APPENDIX 256

- 1 A THERE SHOULD HAVE BEEN.
- 2 Q DO YOU HAVE A SIGNATURE CARD ON THAT CERTIFICATE OF
- 3 DEPOSIT?
- 4 A AM I SUPPOSED TO LOOK FOR SOMETHING SOMEWHERE?
- 5 Q DO YOU HAVE KNOWLEDGE IF THERE'S A SIGNATURE CARD THAT
- 6 GOES ALONG WITH THAT CERTIFICATE OF DEPOSIT?
- 7 A REMEMBER WHEN YOU OPEN UP AN ACCOUNT, YOU'VE GOT THE
- 8 SIGNATURE FROM THE VERY BEGINNING OF THE ACCOUNT WHEN IT
- 9 WAS OPENED. SO THERE SHOULD BE A SIGNATURE CARD FOR THE CD
- 10 WHEN IT WAS FIRST OPENED.
- 11 Q COULD A BANK EMPLOYEE ESTABLISH A CD WITHOUT A
- 12 SIGNATURE CARD?
- 13 A NO. THE COMPUTER IS GOING TO AUTOMATICALLY DO THAT.
- 14 Q SO THERE SHOULD BE A SIGNATURE CARD?
- 15 A THERE SHOULD BE A SIGNATURE CARD.
- 16 Q HAVE YOU EVER SEEN A SIGNATURE CARD FOR THAT CD? I
- 17 DON'T HAVE ONE AND I'M JUST CURIOUS IF THERE IS ONE.
- 18 A THERE SHOULD BE A SIGNATURE CARD FOR THIS CD. THERE
- 19 SHOULD BE A SIGNATURE CARD KAREN M. POWELL UNRUE. THERE
- 20 SHOULD BE A SIGNATURE CARD. ANY TIME YOU OPEN A CD,
- 21 THERE'S A SIGNATURE CARD.
- 22 Q IS IT POSSIBLE TO ESTABLISH ONE WITHOUT ONE?
- 23 A NO. THE SYSTEM IS GOING TO AUTOMATICALLY GIVE YOU A
- 24 SIGNATURE CARD WHETHER OR NOT THE PERSON GIVES IT TO THEM
- 25 TO SIGN, BUT YOU WILL HAVE AN OPENING DOCUMENT FOR THE CD.

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ROA 0252

APPENDIX 257

- 1 Q SO THERE SHOULD BE ONE IN ACCOUNT RECORDS SOMEWHERE?
- 2 A YES, WITH CD'S. THIS IS A DIFFERENT AREA, BUT YOU
- 3 HAVE TO HAVE A SIGNATURE CARD BECAUSE THE SYSTEM GENERATES
- 4 IT AUTOMATICALLY.
- 5 Q LET ME ASK YOU ONE MORE TIME. HAVE YOU SEEN A
- 6 SIGNATURE CARD FOR THAT CD?
- 7 A HAVE I SEEN A SIGNATURE CARD FOR THIS CD? WE MUST
- 8 HAVE A SIGNATURE CARD FOR THIS CD, BUT IF IT WAS CLOSED,
- 9 YOU HAD A CLOSING CD SO YOU HAD TO HAVE -- I DON'T KNOW IF
- 10 I'VE SEEN ONE OR NOT.
- 11 Q OKAY. PLAINTIFFS' EXHIBITS 5 THROUGH 11, THESE 7
- 12 CHECKS. IF YOU LOOK THROUGH THEM REAL QUICK. IT'S A XEROX
- 13 OF 7 CHECKS. ARE EACH OF THOSE CHECKS MADE OUT TO
- 14 CONSERVATORS? I THINK ONE OR TWO OF THEM MAY BE MADE OUT
- 15 TO KAREN AS CONSERVATOR AND THE OTHERS ARE MADE OUT TO
- 16 KAREN POWELL AND TRAVIS POWELL AS CO-CONSERVATORS.
- 17 A THEY'RE MADE OUT TO KAREN POWELL AS CONSERVATOR.
- 18 Q IS THERE ANYTHING ON THOSE CHECKS THAT YOU BELIEVE
- 19 THAT WOULD NOT INDICATE TO THE PLATFORM WORKER THAT THEY
- 20 WERE MADE OUT TO CONSERVATORS?
- 21 A THEY WERE MADE OUT TO CONSERVATORS. THERE'S NOTHING
- 22 THAT WAS MISCONSTRUED HERE. IT'S OBVIOUS WHO THEY WERE
- 23 MADE OUT TO.
- 24 MR. JENKINSON: PLAINTIFFS' EXHIBIT NO. 32, THE FLOW
- 25 CHART.

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ROA 0253

APPENDIX 258



- 1 Q LET ME SHOW YOU THIS. I BELIEVE YOU ACTUALLY COMPILED  
2 THIS FOR US. THIS IS PLAINTIFFS' EXHIBIT 32. IT'S A  
3 CHART. ARE YOU FAMILIAR WITH THAT DOCUMENT?  
4 A YES, I AM.  
5 Q ARE YOU THE ONE WHO COMPILED IT?  
6 A I HAD SOMEONE ELSE TO DO THIS.  
7 Q ARE YOU THE ONE THAT GOT THE INFORMATION TO COMPILE  
8 THE CHART?  
9 A YES.  
10 Q LET ME ASK YOU A QUESTION ABOUT THIS. ON THIS CHART,  
11 WHICH IS PLAINTIFFS' EXHIBIT 32, WHEN IS THE FIRST TIME YOU  
12 SEE ANY INDICATION OF THIS CD?  
13 A ON 4/26/01.  
14 Q IS THAT WHERE IT'S LISTED WITH CD NUMBER  
15 2016?  
16 A THAT'S CORRECT.  
17 Q AND THAT ACCOUNT OR THAT CD IS TITLED TO KAREN M.  
18 UNRUE, GUARDIAN CODY [REDACTED] P [REDACTED]  
19 A THAT'S CORRECT.  
20 Q DO YOU KNOW IF THAT WAS THE TITLE ON THE CD?  
21 A THAT'S HOW THEY TITLED THAT CD.  
22 Q WOULD THAT HAVE BEEN THE TITLE THAT SHOULD HAVE BEEN  
23 ON THE SIGNATURE CARD?  
24 A NO.  
25 Q LET ME ASK YOU THIS. DO YOU HAVE ANY IDEA WHOSE TAX

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0254

APPENDIX 259

- 1 I.D. NUMBER WAS USED FOR THAT CD THAT I JUST READ THE  
2 NUMBER FOR?  
3 A KAREN UNRUE.  
4 Q HER TAX NUMBER WAS USED?  
5 A YES.  
6 Q ON THE CHART, PLAINTIFFS' EXHIBIT 32, WHAT HAPPENED TO  
7 THE CD THAT WAS ESTABLISHED ON 4/26 OF '01?  
8 A WHAT HAPPENED TO IT?  
9 Q YES, MA'AM.  
10 A THEY ESTABLISHED A CD ON 4/26.  
11 Q AFTER THAT IT WAS ESTABLISHED, THEN WHERE DID IT GO,  
12 WHERE DID THE FUNDS GO?  
13 A ON JUNE 25, '01 IT WAS -- ANOTHER ACCOUNT WAS OPENED  
14 AND THEY DEPOSITED OR SHE DEPOSITED IT INTO ANOTHER  
15 ACCOUNT.  
16 Q DO YOU HAVE ANY IDEA IF THAT LEFT MONEY IN THE CD OR  
17 DID IT CLOSE OUT THE BALANCE OF THE CD?  
18 A WELL, ACTUALLY IT HAD TO HAVE CLOSED THE CD.  
19 Q WHAT WAS THE AMOUNT OF THE CD WHEN IT WAS CLOSED?  
20 A 253,991.50.  
21 Q IN THE COMMENTS SECTION IT SAYS DEPOSITED TO A DDA  
22 ACCOUNT. WHAT KIND OF ACCOUNT IS THAT?  
23 A THAT IS A CHECKING ACCOUNT FOR KAREN M. UNRUE AND A  
24 CUSTODIAN ACCOUNT FOR CODY [REDACTED] P [REDACTED], A UGMA ACCOUNT.  
25 Q WHEN IT SAYS IN YOUR COMMENTS NO CLOSING DOCUMENT ON

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ROA 0255

APPENDIX 260

1 SITE, DO YOU HAVE ANY OTHER EVIDENCE OF WHEN THAT CD WAS  
2 CLOSED AND TRANSFERRED INTO THAT UGMA ACCOUNT?

3 A THIS INFORMATION WAS TRANSFERRED. SHE CLOSED THE CD  
4 AND TRANSFERRED -- AFTER SHE CLOSED THE CD SHE TRANSFERRED  
5 MONEY INTO THE CHECKING ACCOUNT TO OPEN THE CHECKING  
6 ACCOUNT.

7 Q WHAT WOULD SHE HAVE HAD TO DO TO CLOSE THE CD? AND  
8 WHEN I SAY WHAT WOULD SHE, KAREN POWELL?

9 A ALL YOU NEED IS I.D. NOW. YOU WOULD NEED I.D. NOW  
10 BECAUSE THE CD WASN'T SET UP AS A GUARDIAN OR -- WASN'T SET  
11 UP AS A CONSERVATOR WITH RESTRICTIONS ON THERE.

12 Q WOULD SHE HAVE HAD TO DO IT IN PERSON OR COULD SHE  
13 HAVE DONE IT OVER THE PHONE, DO YOU KNOW?

14 A YES, SHE COULD DO IT OVER THE PHONE. YOU CAN CLOSE A  
15 CD OVER THE PHONE.

16 Q DO YOU HAVE ANY DOCUMENTS THAT SHOW HOW THAT CD WAS  
17 ACTUALLY CLOSED?

18 A WELL, LET ME ASK YOU SOMETHING. DID WE PRODUCE THE  
19 DOCUMENTS TO CLOSE THE CD? DID WE EVER PRODUCE THEM?

20 Q I DON'T HAVE ANYTHING OTHER THAN WHAT I'VE GOT FOR YOU  
21 HERE. I DO NOT HAVE A DOCUMENT CLOSING THE CD.

22 MR. JENKINSON: NOW, EXHIBIT NO. 13 IS A WITHDRAWAL OF  
23 A CD.

24 Q LET ME SHOW YOU PLAINTIFFS' EXHIBIT NO. 13. CAN YOU  
25 IDENTIFY THAT DOCUMENT?

1 A YES, THIS IS A WITHDRAWAL OF A CD YOU ASKED ME ABOUT.

2 Q WHO COMPLETED THE WITHDRAWAL?

3 A MARK MCHORNEY CLOSED IT OUT.

4 Q DO YOU HAVE ANY IDEA OF WHAT HIS POSITION WAS AT THE  
5 BANK?

6 A HE WOULD BE THE PLATFORM PERSONNEL THAT CLOSED SALES,  
7 SET UP SALES.

8 MR. JENKINSON: NOW ON PAGE 33.

9 Q BASED ON YOUR EXPERIENCE AS A BANK EMPLOYEE IN YOUR  
10 TRAINING HOW SHOULD THIS CD HAVE BEEN ESTABLISHED?

11 A WELL, FROM THE BEGINNING SHE HAD THE CHECKS AND ON THE  
12 CHECKS IT TOLD HER WHO THE CONSERVATOR WAS AND THE MINOR.  
13 IT STATED THAT ON THE CHECKS. WHEN SHE GOT READY TO OPEN  
14 THE ACCOUNT, THESE WERE COURT ORDERED. THERE WERE OTHER  
15 DOCUMENTS THAT SHE NEEDED TO SEE. ONCE SHE OPENED THAT  
16 ACCOUNT WITH THOSE DOCUMENTS, IT WOULD HAVE SAID JUST LIKE  
17 IT WAS ON THE CHECKS, KAREN UNRUE CONSERVATOR, CODY R [REDACTED],  
18 MINOR, AND THEN IN THE ACCOUNT IT WOULD HAVE TOLD HER THAT  
19 IT WAS RESTRICTED SOMEWHERE IN THAT COURT ORDER.

20 Q SO THE TITLE WOULD HAVE BEEN DIFFERENT?

21 A YES.

22 Q AND THE RESTRICTIONS WOULD HAVE BEEN NOTED IN THE  
23 REMARKS?

24 A YES.

25 Q THE TAX I.D. NUMBER WOULD HAVE BEEN THE CHILD'S?

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0257

APPENDIX 262

- 1 A SHE WOULD HAVE HAD THAT INFORMATION.
- 2 MR. JENKINSON: AND ON PAGE 38.
- 3 Q WHAT WAS THE DATE OF THE CD CLOSING?
- 4 A 6/26 2001.
- 5 MR. JENKINSON: PLAINTIFFS' EXHIBIT NO. 14, THE
- 6 SIGNATURE CARD.
- 7 Q LET ME SHOW YOU PLAINTIFFS' EXHIBIT 14. THAT'S THE
- 8 SIGNATURE CARD FOR THE 8085 ACCOUNT. WHAT'S THE DATE OF
- 9 THAT OPENING?
- 10 A MAY 4, 2001.
- 11 Q SO IT WAS ALMOST TWO MONTHS AHEAD OF TIME THAT THE
- 12 ACCOUNT HAD ALREADY BEEN OPENED?
- 13 A YES.
- 14 Q WHO ESTABLISHED THAT ACCOUNT, CAN YOU TELL WHICH BANK
- 15 EMPLOYEE ESTABLISHED THAT ACCOUNT?
- 16 A A MEREDITH LAWRENCE ON PAWLEYS ISLAND.
- 17 Q AND THE AMOUNT -- I DON'T THINK I'VE GIVEN YOU THAT.
- 18 THE AMOUNT OF THE CD I THINK WAS YOUR EARLIER TESTIMONY BY
- 19 YOUR CHART DEPOSITED INTO THAT ACCOUNT, YOU'RE HOLDING THE
- 20 SIGNATURE CARD FOR RIGHT NOW; IS THAT CORRECT?
- 21 A RIGHT.
- 22 Q WHAT DO YOU UNDERSTAND ABOUT A UNIFORM GIFT TO MINORS
- 23 ACCOUNT LIKE THAT?
- 24 A WELL, THE OWNER CAN SET UP THIS TYPE OF ACCOUNT, AND
- 25 IT'S FOR THE MINOR, BUT THE MONEY BELONGS TO HER. AT THE

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ROA 0258

APPENDIX 263

1 MAJORITY SHE COULD GIVE IT TO HIM OR HER.

2 Q IS A COURT ORDER NECESSARY TO ESTABLISH A UNIFORM GIFT  
3 TO MINORS ACCOUNT?

4 A NO.

5 Q DO YOU KNOW IF THERE ARE ANY RESTRICTIONS PLACED ON  
6 UNIFORM GIFTS TO MINORS ACCOUNTS?

7 A NO.

8 Q IT'S MOST DEFINITELY NOT A CONSERVATORSHIP ACCOUNT,  
9 RIGHT?

10 A MOST DEFINITELY. THE MINOR CAN'T COME IN THERE AND  
11 GET THE MONEY.

12 MR. JENKINSON: NOW PAGE 41.

13 Q LET ME GIVE YOU PLAINTIFFS' EXHIBIT 25, A SIGNATURE  
14 CARD. CAN YOU IDENTIFY THAT DOCUMENT?

15 A THIS IS A REGULAR CHECKING AND IT HAS KAREN'S NAME AND  
16 THOMAS J. UNRUE. IT USES HER TAX I.D. NUMBER.

17 Q DO YOU KNOW IF THAT ACCOUNT, LAST FOUR DIGITS, 9281,  
18 IS THE SAME ACCOUNT AS THE CAROLINA BOOKKEEPING ACCOUNT?

19 A YES, IT IS.

20 Q LET ME ASK YOU ABOUT THAT 9281 ACCOUNT, THAT CAROLINA  
21 BOOKKEEPING ACCOUNT, EXHIBIT NO. 25, THAT ACCOUNT HAD NO  
22 RESTRICTIONS ON IT, DID IT?

23 A NO.

24 Q REGULAR CHECKING?

25 A REGULAR CHECKING.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0259

APPENDIX 264

- 1 Q NO MINOR'S NAME ON IT?
- 2 A NO.
- 3 Q HAVE YOU PULLED THE BANK'S RECORDS ON THAT ACCOUNT?
- 4 MR. JENKINSON: NOW, TURNING TO PAGE 45. EXHIBIT NO.
- 5 17, THE BANK STATEMENT.
- 6 Q LET ME SHOW YOU THIS. DOES THAT BANK STATEMENT
- 7 REFLECT A DEPOSIT FROM THE CD THAT WAS CLOSED?
- 8 A YES, IT DOES.
- 9 Q WHAT'S THE DATE ON THAT?
- 10 A 6/26/01.
- 11 Q THAT MATCHES UP WITH THE DATE OF THE CD WITHDRAWAL
- 12 CERTIFICATE THAT WE'VE ALREADY BEEN REFERRING TO, CORRECT?
- 13 A THAT'S CORRECT.
- 14 MR. JENKINSON: NOW PLAINTIFFS' EXHIBIT NO. 18, WHICH
- 15 IS A BANK STATEMENT FROM JULY 24, '01 TO AUGUST 23RD, '01.
- 16 Q SHOW YOU THE NEXT MONTH'S BANK STATEMENT FOR ACCOUNT
- 17 8085. ON THIS DOCUMENT THERE'S A NOTE THAT IS THAT WEB
- 18 XFER -- A TRANSFER THAT WE WERE TALKING ABOUT EARLIER. CAN
- 19 YOU LOOK AT THAT AND TELL ME IF THAT INDICATES A TRANSFER
- 20 THAT WAS MADE UNDER THE SPECIAL SERVICE THE BANK PROVIDED
- 21 FOR MS. UNRUE?
- 22 A YES. TRANSFERRED \$3500.
- 23 Q WERE THERE ANY OTHER TRANSFERS MADE ON THAT BANK
- 24 STATEMENT FROM THE ACCOUNT?
- 25 A WE HAVE 7/30/01 AND WE HAVE 8/27/01, THOSE TWO.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0260

APPENDIX 265

1 Q THE ONE ON 7/3, WHICH ACCOUNT DID THAT TRANSFER TO?

2 A THE ACCOUNT THAT ENDS IN 9281.

3 MR. JENKINSON: NOW, EXHIBIT 20.

4 Q THE NEXT BANK STATEMENT IS OCTOBER OF '01 THROUGH

5 NOVEMBER OF '01. ON THIS BANK STATEMENT THERE ARE ALSO

6 SOME TRANSFERS SHOW ON NOVEMBER 15 AND IF YOU'LL TAKE A

7 LOOK AT THAT AND EXPLAIN THOSE TRANSFERS?

8 A SHE DID ON-LINE BANKING SO SHE MADE TRANSFERS FROM THE

9 ACCOUNT 8085 TO THE ACCOUNT NUMBER 9281.

10 Q WHAT ARE THE AMOUNTS OF THE TRANSFERS?

11 A SHE HAS ONE FOR 99,000, 75,000, AND 26,000.

12 Q NOW, LET ME SHOW YOU ONE MORE BANK STATEMENT, NOVEMBER

13 '01 THROUGH DECEMBER '01 FOR 8085. THAT'S PLAINTIFFS'

14 EXHIBIT 21 AND IF YOU COULD IDENTIFY THE WITHDRAWAL THAT

15 WAS MADE ON THAT BANK STATEMENT?

16 A THERE WAS A WITHDRAWAL FOR 50,000 TO ACCOUNT NUMBER

17 9281.

18 Q NOW, LET ME SHOW YOU THIS CHECK THAT WE'VE MARKED

19 EXHIBIT 29 AT THE TOP OF THE PAGE THAT IS MARKED VECTRA

20 BANK. CAN YOU IDENTIFY THE CHECK THAT'S THE DEPOSIT ON

21 THAT VECTRA BANK STATEMENT?

22 A YES. THIS IS THE FIRST TIME I'VE SEEN THIS. IT'S A

23 200,000 CHECK DRAWN ON 9281 GOING TO A VECTRA ACCOUNT THAT

24 SHE HAS IN COLORADO FOR 200,000.

25 Q WHAT'S THE DATE ON THAT CHECK?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0261

APPENDIX 266



- 1 A 11/26/01.
- 2 Q I'M GOING TO SHOW YOU HER BANK STATEMENT THAT'S DATED
- 3 NOVEMBER 24TH OF '01 THROUGH DECEMBER OF '01 -- EXHIBIT NO.
- 4 28 -- ON THE 9281 ACCOUNT. CAN YOU IDENTIFY THAT CHECK OFF
- 5 OF THE BANK STATEMENT?
- 6 A YES.
- 7 Q CAN YOU TELL ME WHERE YOU FIND IT ON THE BANK'S
- 8 STATEMENT BANK OF AMERICA?
- 9 A 11/28 2001 CHECK NO. 5715.
- 10 Q SO ON THE 9281 BANK STATEMENT WHEN IT REFERS TO THAT
- 11 CHECK NUMBER YOU WOULD BELIEVE THAT TO BE THE CHECK?
- 12 A YES.
- 13 MR. JENKINSON: NOW PAGE 59.
- 14 Q LET ME SHOW YOU A REPORT THAT STATES UP AT THE TOP,
- 15 REPORT OF ROBERT HUBBS. HAVE YOU EVER REVIEWED THAT
- 16 DOCUMENT?
- 17 A NO.
- 18 Q IF YOU WILL, TAKE A MOMENT TO LOOK OVER THAT FOR ME.
- 19 BASED ON YOUR REVIEW OF THAT REPORT, DO YOU HAVE ANY
- 20 KNOWLEDGE OF THOSE FACTS CONTAINED IN THAT REPORT?
- 21 A FROM THE VERY BEGINNING WE DIDN'T HAVE THOSE
- 22 DOCUMENTS. WE DID NOT HAVE THE NECESSARY DOCUMENTS THAT
- 23 WENT WITH THOSE CHECKS FROM THE VERY BEGINNING.
- 24 Q DO YOU HAVE ANY INFORMATION THAT IS RELEVANT THAT IS
- 25 NOT INCLUDED IN THIS REPORT?

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0262

APPENDIX 267

1 A THIS PERSON HERE IS BASING ALL OF THIS INFORMATION AND  
2 EXPERIENCE BASED ON THE DOCUMENTS AND THE OPENING OF THESE  
3 ACCOUNTS. I AGREE BUT WE DIDN'T HAVE THOSE DOCUMENTS. THE  
4 NECESSARY INSTRUMENTS TO USE FROM THE VERY BEGINNING WE DID  
5 NOT HAVE. WE DID NOT HAVE THE COURT ORDER. WE DID NOT  
6 HAVE ANYTHING. THAT ASSOCIATE DID NOT GET THE PROPER  
7 DOCUMENTATION FROM THE VERY BEGINNING.

8 Q SO ARE THERE ANY FACTS CONTAINED IN THAT DOCUMENT THAT  
9 YOU DISAGREE WITH?

10 A I DO NOT DISAGREE.

11 MR. JENKINSON: PAGE 61.

12 Q DO YOU BELIEVE THAT THE BANK HAS A DUTY TO SET UP  
13 ACCOUNTS PROPERLY?

14 A YES, OF COURSE.

15 MR. JENKINSON: PAGE 62.

16 Q BUT YOU DON'T DISPUTE THAT YOU DID HAVE A DUTY TO  
17 HONOR THE RESTRICTIONS IN THE COURT ORDER; IS THAT CORRECT?

18 A IF WE SAW THE ORDER.

19 Q DO YOU DISPUTE THAT YOU HAD A DUTY TO GET THE ORDER OR  
20 TO LOOK AT THE ORDER?

21 A SOMETHING HAPPENED THAT AN EMPLOYEE DID NOT FOLLOW ALL  
22 OF THE PROCEDURES HERE BUT THE BANK AS A WHOLE WILL HONOR  
23 ITS OBLIGATION. BUT WE'RE TALKING ABOUT A MISTAKE A  
24 PERSONNEL PERSON MADE. SOMEONE MADE A MISTAKE IN OPENING  
25 THAT ACCOUNT UP CORRECTLY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0263

APPENDIX 268

- 1 MR. JENKINSON: PAGE 63.
- 2 Q IN THE CROSS CLAIM AGAINST KAREN UNRUE, THE BANK
- 3 STATES THAT THEY RELIED ON THE REPRESENTATIONS OR THAT
- 4 KAREN UNRUE MADE REPRESENTATIONS TO THE BANK. DO YOU KNOW
- 5 WHAT THOSE MISREPRESENTATIONS WOULD HAVE BEEN?
- 6 A NO.
- 7 Q DO YOU HAVE ANY KNOWLEDGE AS TO WHETHER THE BANK HAS
- 8 UNDERTAKEN ANY INVESTIGATION AGAINST THE OTHER CONSERVATOR,
- 9 TRAVIS POWELL?
- 10 A NO, I DO NOT.
- 11 Q DO YOU HAVE ANY TESTIMONY OR KNOWLEDGE AS TO WHY THE
- 12 BANK ASSERTED A CROSS CLAIM AGAINST KAREN UNRUE AND NOT A
- 13 CROSS CLAIM AGAINST TRAVIS POWELL?
- 14 A ALL THE EVIDENCE, ALL THE DOCUMENTS THAT WE HAVE SHOWS
- 15 WHERE SHE MADE THE WITHDRAWALS.
- 16 MR. JENKINSON: PAGE 66. PLAINTIFFS' EXHIBIT 39.
- 17 Q I'M GOING TO SHOW YOU ONE LAST DOCUMENT. THESE ARE
- 18 THE BANK OF AMERICA'S REQUESTS TO ADMIT. HAVE YOU HAD AN
- 19 OPPORTUNITY TO REVIEW THAT DOCUMENT?
- 20 A YES.
- 21 Q ARE YOU AWARE THAT THESE REQUESTS TO ADMIT ARE
- 22 ADMITTED BY THE BANK?
- 23 A YES.
- 24 MR. JENKINSON: THEN ON PAGE 68.
- 25 Q YOU DON'T DISPUTE THE ACCOUNT WAS NOT SET UP PROPERLY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0264

APPENDIX 269

1 A I DON'T DISPUTE THAT.

2 MR. JENKINSON: AND ON PAGE 73.

3 Q AND BASED ON YOUR EXPERIENCE AND KNOWLEDGE OF THE BANK  
4 AND GUIDELINES SET UP, WOULD YOU TESTIFY THAT THE BANK HAS  
5 HAD SAFEGUARDS IN PLACE TO PREVENT AN ACCOUNT FROM BEING  
6 OPENED INCORRECTLY?

7 A YES, WE DO.

8 Q COULD YOU BRIEFLY RESTATE WHAT IS AVAILABLE TO A FRONT  
9 LINE EMPLOYEE IF THEY ARE PRESENTED WITH AN ACCOUNT THAT  
10 THEY ARE NOT SURE OF?

11 A YOU HAVE THE MANUALS THAT ARE RIGHT AT THEIR  
12 FINGERTIPS. YOU HAVE SOME PERSONNEL, A PERSON DIRECTLY IN  
13 THE BANK, AND YOU HAVE A DIRECT LINE TO THE LEGAL SUPPORT  
14 UNIT THAT CAN ASSIST THEM WITH ANY LEGAL DOCUMENT THEY HAVE  
15 RIGHT THEN.

16 Q BASED ON WHAT YOU'VE SEEN HERE TODAY, DID ANY OF THOSE  
17 SAFEGUARDS KICK IN ON THIS ACCOUNT?

18 A NO.

19 MR. JENKINSON: THAT IS THE END OF THE READING OF THIS  
20 WITNESS.

21 THE COURT: OKAY.

22 (MS. KELLAHAN LEAVES THE WITNESS STAND.)

23 MR. JENKINSON: MAY WE APPROACH ONE MINUTE, YOUR  
24 HONOR?

25 THE COURT: YES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0265

APPENDIX 270

1 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE  
2 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)  
3 THE COURT: I THINK WE'RE GOING TO BREAK FOR LUNCH  
4 NOW. WE'LL START BACK AT 2:00 O'CLOCK. SO I'LL LET YOU  
5 ALL GO. WE'RE GOING TO GET THE COUNTY TO PAY FOR LUNCH ONE  
6 OF THESE GOOD OLD DAYS, BUT WE DIDN'T ARRANGE IT TODAY, SO  
7 IT WON'T BE TODAY. WE'LL BREAK FOR LUNCH, START BACK AT  
8 2:00 O'CLOCK. PLEASE BE BACK ON TIME. PLEASE DO NOT COME  
9 THROUGH THE COURTROOM AND DO NOT HANG OUT IN THE HALLS.  
10 LEAVE AND COME BACK TO THE JURY ROOM. OKAY.  
11 (THE JURY EXITS THE COURTROOM AT 12:37 P.M.)  
12 (COURT IS IN RECESS FOR LUNCH.)  
13 THE COURT: READY? READY?  
14 MR. MCGEE: YOUR HONOR, I HAVE ONE.  
15 THE COURT: ALL RIGHT. SPEAK FAST.  
16 MR. MCGEE: YES, YOUR HONOR. YOUR HONOR MADE A RULING  
17 AS TO ONE OF OUR OBJECTIONS AT A SIDE BAR. I JUST WANTED  
18 TO QUICKLY PUT THAT ON THE RECORD.  
19 THE COURT: OKAY.  
20 MR. MCGEE: THE OBJECTION COMES AT PAGE 8 LINES 4 TO  
21 10 OF MS. DENNING'S DEPOSITION. AND WE OBJECTED AS TO IT  
22 BEING PREJUDICIAL, OUTWEIGHING THE PROBATIVE VALUE AND  
23 IRRELEVANT. AND YOUR HONOR OVERRULED OUR OBJECTION, BUT I  
24 JUST WANTED TO PUT THAT ON THE RECORD.  
25 THE COURT: ALL RIGHT. VERY GOOD. I ALLOWED IN LINES

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0266

APPENDIX 271

1 4 THROUGH -- WAS IT 4 THROUGH 10?

2 MR. MCGEE: YES, YOUR HONOR.

3 THE COURT: THEY WANTED TO READ 4 THROUGH 20?

4 MR. MCGEE: THAT'S CORRECT, JUDGE. AND YOU SUSTAINED  
5 OUR OBJECTION ON THOSE OTHER.

6 THE COURT: MENTIONING THAT THE BANK IS ONE OF THE  
7 THIRD -- IS THE THIRD LARGEST IN THE WORLD. I DIDN'T FIND  
8 TO BE PREJUDICIAL PARTICULARLY IN LIGHT OF THE QUESTIONING  
9 OF SOME OF THE EARLIER WITNESSES AS TO THE SIZE OF THE BANK  
10 THAT WAS MS. KELLY KELLEY IS NOW DEALING WITH AND THE  
11 TESTIMONY COMPARING AND CONTRASTING WHAT BANK OFFICIALS  
12 SHOULD KNOW AND THE SIZE OF THE BANK AND THE TYPE OF  
13 SERVICES BEING OFFERED, ETCETERA.

14 SO THAT WAS THE BASIS FOR THE COURT ALLOWING IN THAT  
15 TESTIMONY.

16 MR. MCGEE: THANK YOU, YOUR HONOR.

17 MR. JENKINSON: JUST TO MAKE SURE I UNDERSTAND YOUR  
18 RULING. WE DID NOT PUT UP ANY FINANCIALS, BUT WE CAN TALK  
19 ABOUT THE SIZE OF THE BANK AND ISSUES RELATED TO THE SIZE  
20 OF THE BANK, NOT IN TERMS OF MONEY AT THIS POINT.

21 THE COURT: WELL, I DON'T KNOW. I JUST RULED ON THAT  
22 ONE OBJECTION.

23 MR. JENKINSON: OKAY. I'M NOT ASKING YOU TO RULE ANY  
24 FURTHER, THAT WAS JUST TO UNDERSTAND YOUR RULING.

25 THE COURT: ALL RIGHT. VERY GOOD. SEE IF THEY WILL

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0267

APPENDIX 272

1 COME ON IN.

2 (THE JURY RETURNS TO THE COURTROOM AT 2:18 P.M.)

3 THE COURT: ALL RIGHT. THE JURY IS BACK. NEXT

4 WITNESS.

5 MR. JENKINSON: MAY IT PLEASE THE COURT, YOUR HONOR.

6 WE AT THIS TIME WOULD ASK THE COURT TO PUBLISH THE VIDEO

7 DEPOSITION OF LEE ANN YOURKO, A FORMER EMPLOYEE OF BANK OF

8 AMERICA, WHICH WAS TAKEN ON JANUARY 28, 2005 IN SANFORD,

9 NORTH CAROLINA.

10 THE COURT: ALL RIGHT.

11 MR. JENKINSON: EXPLAIN TO THE JURY IF YOU WOULD WHY

12 WE USE A VIDEO DEPOSITION.

13 THE COURT: ALL RIGHT.

14 MR. DAVIS: JUST SO THE COURT KNOWS, SHE HAS THREE

15 SMALL KIDS AT HOME AND HER HUSBAND JUST CAME FROM KUWAIT,

16 SO SHE WASN'T WILLING TO COME AND TESTIFY.

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, ONCE

18 AGAIN A DEPOSITION IS SWORN STATEMENT TAKEN OUT OF COURT.

19 IT CAN BE TAKEN BEFORE A COURT REPORTER LIKE THE COURT

20 REPORTER HERE AND TRANSCRIBED INTO WORDS, OR IT CAN BE

21 VIDEO TAPED. IN THIS INSTANCE THE PLAINTIFF IS OFFERING A

22 VIDEO TAPE DEPOSITION AS I UNDERSTAND IT.

23 YOU MAY PROCEED.

24 LEE ANN YOURKO, BEING FIRST

25 DULY SWORN, TESTIFIED AS FOLLOWS:

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0268

APPENDIX 273

1 DIRECT EXAMINATION BY MS. KELLAHAN:

2 Q GOOD MORNING, MS. YOURKO. MY NAME IS JENNIFER  
3 KELLAHAN, AND I'M THE ATTORNEY FOR [REDACTED] CODY P [REDACTED], HE'S  
4 THE PLAINTIFF IN THIS ACTION. THIS IS A VIDEO DEPOSITION  
5 TODAY TO BE USED AT A TRIAL THAT WE MAY HAVE IN  
6 WILLIAMSBURG COUNTY, SOUTH CAROLINA. THE PURPOSE OF THIS  
7 IS FOR YOU TO BE ABLE TO GIVE YOUR TESTIMONY JUST AS IF YOU  
8 WERE PRESENT AT A TRIAL. DO YOU UNDERSTAND?

9 A YES.

10 Q IF YOU HAVE ANY QUESTIONS ABOUT ANYTHING THAT I ASK  
11 YOU TODAY, I WOULD ASK YOU TO DIRECT YOUR QUESTIONS TO ME  
12 AND I'LL CLARIFY THEM SO THAT YOU CAN ANSWER. IS THAT  
13 OKAY?

14 A YES.

15 Q CAN YOU PLEASE TELL US YOUR FULL NAME?

16 A LEE ANN BRADSHAW YOURKO.

17 Q IS BRADHSAW YOUR MAIDEN NAME?

18 A UH-HUH.

19 Q AND YOU'RE CURRENTLY A RESIDENT OF SANFORD, NORTH  
20 CAROLINA?

21 A CAMERON.

22 Q CAMERON?

23 A UH-HUH.

24 Q HOW OLD ARE YOU?

25 A 37.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0269

APPENDIX 274



- 1 Q WHAT'S YOUR BIRTH DAY?
- 2 A 3/9/67.
- 3 Q HOW FAR DID YOU GO IN SCHOOL?
- 4 A I HAVE AN ASSOCIATE'S DEGREE.
- 5 Q IN WHAT?
- 6 A FASHION MARKETING.
- 7 Q WHERE DID YOU GET THAT?
- 8 A HARDBARGER JUNIOR BUSINESS COLLEGE IN RALEIGH.
- 9 Q OKAY. ARE YOU CURRENTLY WORKING OUTSIDE OF THE HOME?
- 10 A NO, I'M NOT.
- 11 Q HAVE YOU HAD ANY JOBS SINCE YOU WORKED AT BANK OF
- 12 AMERICA?
- 13 A UH-HUH. I WORKED PART TIME FOR ANN TAYLOR LOFT IN
- 14 INDIANAPOLIS.
- 15 Q OKAY. HAVE YOU EVER HAD ANY OTHER JOBS WORKING AT A
- 16 BANK OR A FINANCE COMPANY OR ANYTHING LIKE THAT?
- 17 A NO.
- 18 Q WERE YOU WORKING AT BANK OF AMERICA IN 2001 IN PAWLEYS
- 19 ISLAND?
- 20 A YES.
- 21 Q OTHER THAN THE JOB AT THE ANN TAYLOR LOFT, HAVE YOU
- 22 EVER HAD ANY OTHER JOBS WHERE YOU WERE DEALING WITH MONEY,
- 23 HANDLING OTHER PEOPLE'S MONEY?
- 24 A YES.
- 25 Q RETAIL TYPE ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0270

APPENDIX 275

- 1 A UH-HUH.
- 2 Q --- JOBS?
- 3 A UH-HUH.
- 4 Q OKAY. DO YOU KNOW THE POWELLS, THE PLAINTIFF IN THIS
- 5 ACTION, CODY [REDACTED] P [REDACTED]?
- 6 A NO.
- 7 Q DID YOU KNOW ELIZABETH POWELL?
- 8 A NO.
- 9 Q DID YOU KNOW KAREN MICHELLE POWELL, NOW UNRUE?
- 10 A YES. I MEAN, I KNEW HER AS A CLIENT AT THE BANK.
- 11 Q OKAY. DID YOU HAVE ANY FRIENDSHIP RELATION WITH HER
- 12 OUTSIDE OF THE BANK?
- 13 A NO.
- 14 Q DID YOU KNOW HER HUSBAND, JAY UNRUE?
- 15 A NO. OKAY. THAT WAS HER CURRENT HUSBAND?
- 16 Q I BELIEVE SO. THOMAS JAY UNRUE. I THINK HE GOES BY
- 17 THE NAME OF JAY UNRUE?
- 18 A IF I RECALL CORRECTLY. I MEAN, I DIDN'T KNOW HIM
- 19 PERSONALLY. JUST COMING IN THE BANK WITH HER, YES.
- 20 Q OKAY. HOW ABOUT TRAVIS POWELL?
- 21 A NO.
- 22 Q WHEN DID YOU FIRST MEET KAREN UNRUE?
- 23 A I DO NOT KNOW. I MEAN ---
- 24 Q WOULD IT ---
- 25 A YOU MEAN COMING IN THE BANK?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0271

APPENDIX 276

- 1 Q OR JUST AT ANY TIME?
- 2 A I DON'T KNOW A SPECIFIC DATE.
- 3 Q WAS IT BEFORE SHE CAME IN THE DATE IN QUESTION
- 4 REGARDING THIS LAWSUIT?
- 5 A I DO NOT KNOW. I MEAN, SHE WAS A CLIENT OF THE BANK.
- 6 SO, I MEAN, SHE WAS MY CLIENT. YOU KNOW, WHEN SHE WOULD
- 7 COME IN, I OPENED ACCOUNTS FOR HER.
- 8 Q HAD YOU OPENED ACCOUNTS FOR HER BEFORE APRIL 26, 2001
- 9 WHEN SHE OPENED THIS ACCOUNT FOR CODY?
- 10 A I DON'T RECALL WHICH ACCOUNTS WERE OPENED ON WHAT
- 11 DATES.
- 12 Q OKAY.
- 13 A I DON'T REMEMBER THAT.
- 14 Q WHAT DID YOU REVIEW FOR YOUR DEPOSITION TODAY? HAVE
- 15 YOU REVIEWED ANY DOCUMENTS OR ANYTHING LIKE THAT FOR TODAY?
- 16 A YES.
- 17 Q CAN YOU TELL ME WHAT THEY WERE?
- 18 A I DON'T KNOW THE SPECIFIC NAMES OF THEM. I DON'T
- 19 REMEMBER THE NAMES OF THEM. THE -- WHAT'S THE NAME OF
- 20 THE ---
- 21 Q WERE THEY DOCUMENTS THAT YOU HAD OR WERE THEY PROVIDED
- 22 TO YOU BY THE BANK?
- 23 A WELL, ACTUALLY FROM THE ATTORNEY.
- 24 Q DID YOU BRING WITH YOU ANY OF THE DOCUMENTS THAT YOU
- 25 REVIEWED PRIOR TO THIS DEPOSITION?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0272

APPENDIX 277

- 1 A NO.
- 2 Q WHO DID YOU PREPARE WITH FOR THIS DEPOSITION TODAY?
- 3 A THE ATTORNEY.
- 4 Q AND YOU'RE NOT CURRENTLY EMPLOYED WITH BANK OF
- 5 AMERICA, ARE YOU?
- 6 A NO.
- 7 Q WHEN WERE YOU LAST EMPLOYED BY BANK OF AMERICA?
- 8 A OCTOBER OF 2001.
- 9 Q AND HOW LONG HAD YOU WORKED THERE BEFORE YOU LEFT?
- 10 A A LITTLE OVER A YEAR.
- 11 Q WHAT WAS YOUR JOB AT THE BANK OF AMERICA, PAWLEYS
- 12 ISLAND BRANCH?
- 13 A I WAS A PERSONAL BANKER.
- 14 Q CAN YOU TELL ME IN YOUR OWN WORDS WHAT HAPPENED ON
- 15 APRIL 26TH, 2001 WHEN MS. POWELL CAME INTO THE BANK TO OPEN
- 16 THIS ACCOUNT?
- 17 A FROM WHAT -- FROM WHAT I CAN REMEMBER, SHE CAME IN AND
- 18 ASKED TO OPEN AN ACCOUNT. FROM THE DOCUMENT I DID SEE, I
- 19 OPENED THE ACCOUNT THAT SHE ASKED FOR. I MEAN, AS FAR AS
- 20 DETAILS, THAT WAS SO LONG AGO. I DON'T HAVE DETAILS. I
- 21 CAN'T REMEMBER DETAILS.
- 22 Q SO SHE CAME INTO THE BANK, ASKED TO OPEN AN ACCOUNT,
- 23 AND YOU HANDLED BASICALLY WHAT SHE ASKED FOR.
- 24 A YES.
- 25 Q IS THAT CORRECT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0273

APPENDIX 278

- 1 A YES.
- 2 Q WHO DID YOU CONSIDER YOUR CUSTOMER ON THAT DATE WHEN
- 3 SHE CAME INTO THE BANK?
- 4 A MS. POWELL -- KAREN UNRUE OR WHATEVER -- I DON'T KNOW
- 5 WHAT SHE'S GOING BY NOW.
- 6 Q DO YOU KNOW WHOSE MONEY IT WAS WHEN SHE CAME INTO THE
- 7 BANK?
- 8 A WHAT DO YOU MEAN, DO I KNOW WHOSE MONEY IT WAS?
- 9 Q WHOSE MONEY WAS IT THAT YOU WERE DEALING WITH WHEN YOU
- 10 OPENED THAT ACCOUNT?
- 11 A IT WOULD HAVE BEEN KAREN'S -- POWELL'S -- KAREN
- 12 POWELL'S. IF IT HAD THAT -- I MEAN, IF THE CLIENT CAME
- 13 INTO THE BANK AND ASKED TO OPEN AN ACCOUNT, THEN IF SHE
- 14 HANDS ME A CHECK WITH HER NAME ON IT, THEN, I MEAN, THAT'S
- 15 HER MONEY.
- 16 Q OKAY. SO YOU BELIEVE THE MONEY TO HAVE BEEN HERS?
- 17 A YES.
- 18 Q LET ME GO BACK TO YOUR JOB FOR A MINUTE. CAN YOU TELL
- 19 ME WHAT YOUR DUTIES WERE AS A PERSONAL BANKER?
- 20 A UH-HUH. I OPENED ACCOUNTS, LOANS. I MEAN, THAT WAS
- 21 PRETTY MUCH. THAT WAS ---
- 22 Q YOU OPENED UP ACCOUNTS?
- 23 A UH-HUH.
- 24 Q MADE LOANS?
- 25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0274

APPENDIX 279

- 1 Q DID YOU DO ANY TELLER WORK?
- 2 A NO.
- 3 Q ACCEPTING DEPOSITS, HELPING PEOPLE WITH WITHDRAWALS?
- 4 A NO.
- 5 Q DID YOU HAVE YOUR OWN OFFICE ---
- 6 A YES.
- 7 Q --- OR CUBICLE AREA?
- 8 A YES.
- 9 Q HOW LONG HAD YOU BEEN A PERSONAL BANKER WHEN YOU LEFT
- 10 IN OCTOBER OF 2001?
- 11 A WELL, I STARTED -- I WAS A PERSONAL BANKER MY WHOLE
- 12 TIME AT BANK OF AMERICA.
- 13 Q OKAY. SO THAT -- YOU DID THAT JOB THE ENTIRE YEAR?
- 14 A YES.
- 15 Q WHEN YOU WERE HIRED BY BANK OF AMERICA, WHERE DID THEY
- 16 TRAIN YOU?
- 17 A MOST OF MY TRAINING WAS IN THE BANK BY THE PRIOR
- 18 PERSONAL BANKER WHO I WAS REPLACING, AND ALSO IN CHARLOTTE.
- 19 WE DID A LOT OF TRAINING IN CHARLOTTE.
- 20 Q HOW MUCH TIME DID YOU SPEND IN CHARLOTTE TRAINING?
- 21 A IT WAS THREE SEPARATE OCCASIONS. THEY DIVIDED IT UP.
- 22 AND IT WOULD BE -- IF I CAN REMEMBER, IT WAS A WEEK AT A
- 23 TIME.
- 24 Q THREE SEPARATE WEEKS?
- 25 A YES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0275

APPENDIX 280

- 1 Q DID YOU -- WERE YOU TRAINED ONE-ON-ONE WITH SOMEONE,  
2 OR WAS IT IN A GROUP?  
3 A BOTH.  
4 Q OKAY. BOOKS OR MANUALS?  
5 A YES.  
6 Q VIDEOS? DID YOU HAVE TO WATCH ANY VIDEOS OR ANYTHING  
7 LIKE THAT?  
8 A I DON'T REMEMBER.  
9 Q OKAY. DID YOU CONSIDER YOUR JOB TO BE A VERY  
10 IMPORTANT JOB?  
11 A OH, YES.  
12 Q AND YOU WOULD AGREE THAT DEALING WITH PEOPLE'S MONEY  
13 CARRIES A LOT OF RESPONSIBILITY, WOULDN'T YOU?  
14 A YES.  
15 Q HAVE YOU EVER HEARD OF THE TERM FIDUCIARY, HAVING A  
16 FIDUCIARY DUTY?  
17 A NO.  
18 Q YOU NEVER HEARD OF THAT TERM BEFORE?  
19 A HUH-UH.  
20 Q WOULD YOU AGREE THAT YOUR JOB HAD A LOT OF TRUST AND  
21 RESPONSIBILITY INVOLVED WITH IT?  
22 A YES.  
23 Q AND WITH YOUR TRAINING, DID THEY TRAIN YOU TO BE VERY  
24 CAREFUL?  
25 A YES.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0276

APPENDIX 281

- 1 Q DID YOU GET ANY SPECIAL TRAINING DEALING WITH MINOR'S  
2 MONEY, CHILDREN'S MONEY?  
3 A SPECIAL TRAINING ---  
4 Q ANY OTHER TRAINING REGARDING DEALING WITH CHILDREN'S  
5 MONEY?  
6 A YOU MEAN LIKE SEPARATE CLASSES OR -- NO.  
7 Q WERE YOU TRAINED TO FOLLOW THE BANK MANUAL?  
8 A YES.  
9 Q TRAINED TO ASK QUESTIONS?  
10 A YES.  
11 Q TRAINED ON DEALING WITH FRAUD?  
12 A I MEAN, DO YOU MEAN SEPARATE CLASSES OR DURING MY  
13 TRAINING, THIS THREE-WEEK TRAINING?  
14 Q AT ANY TIME DURING YOUR TRAINING?  
15 A YES.  
16 Q HOW ABOUT TRAINING ON USING THE COMPUTER SYSTEM?  
17 A YES.  
18 Q DID YOU HAVE A COMPUTER SYSTEM AT THE BANK OF AMERICA,  
19 PAWLEYS ISLAND BRANCH IN 2001?  
20 A YES.  
21 Q IS THAT WHAT YOU USED TO OPEN UP THESE NEW ACCOUNTS?  
22 A YES.  
23 Q YOU ALSO RECEIVED TRAINING ON ACCEPTING CHECKS FOR  
24 DEPOSIT?  
25 A NO. NO, I DIDN'T DO ANY TYPE OF TELLER WORK OR

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0277

APPENDIX 282



- 1 DEALING WITH CASH OR CHECKS OR ANYTHING LIKE THAT.
- 2 Q OKAY. WHEN YOU OPENED UP A NEW ACCOUNT ---
- 3 A UH-HUH.
- 4 Q --- WHEN IT GOT TO THE DEPOSIT INTO THE NEW ACCOUNT,
- 5 WHAT DID YOU DO?
- 6 A I WOULD TAKE THE MONEY TO THE HEAD TELLER.
- 7 Q WOULD YOU SEND THE CLIENT OR CUSTOMER TO THE HEAD
- 8 TELLER OR WOULD YOU TAKE THE MONEY TO THE TELLER?
- 9 A NO, I WOULD TAKE THE MONEY TO THE TELLER.
- 10 Q DID YOU EVER HAVE THE CUSTOMER GO WITH YOU AND ENGAGE
- 11 IN ANY CONVERSATION BETWEEN YOU AND THE TELLER AND THE
- 12 CUSTOMER ON THE CHECK FOR DEPOSIT?
- 13 A NO.
- 14 Q HOW ABOUT TRAINING ON IDENTIFICATION, GETTING
- 15 IDENTIFICATION FROM CUSTOMERS? DID YOU HAVE THAT?
- 16 A WHAT DO YOU MEAN?
- 17 Q WHEN YOU OPENED UP A NEW ACCOUNT, YOU HAD TO GET
- 18 IDENTIFICATION FOR THE PERSON. IS THAT CORRECT?
- 19 A YES.
- 20 Q WERE YOU TRAINED ON THE TYPES OF IDENTIFICATION AND
- 21 WHAT TO LOOK FOR AND WHAT YOU HAD TO HAVE?
- 22 A YES.
- 23 Q WHO WAS YOUR SUPERVISOR AT THAT BRANCH?
- 24 A DURING THAT SPECIFIC TIME I CAN'T REMEMBER BECAUSE
- 25 THERE WAS MANAGEMENT CHANGEOVER. JIMMY FERRELL, I WORKED

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0278

APPENDIX 283

1 WITH IN THE BEGINNING. AND THEN MEREDITH LAWRENCE.

2 Q JIMMY FERRELL, WAS HE LOCATED AT THE PAWLEYS ISLAND  
3 BRANCH?

4 A UH-HUH.

5 Q DID YOU TRAIN AT ANY OTHER BRANCHES?

6 A NO.

7 Q HOW ABOUT MEREDITH LAWRENCE, WAS SHE THE SUPERVISOR ON  
8 SITE WHEN YOU LEFT?

9 A YES.

10 Q HOW ABOUT MARK MCHORNEY, HAVE YOU EVER HEARD THAT  
11 NAME?

12 A UH-HUH.

13 Q WAS HE ALSO LOCATED IN THE PAWLEYS ISLAND BRANCH?

14 A NO.

15 Q WHERE WAS HE LOCATED?

16 A I DON'T REMEMBER.

17 Q HOW ARE YOU FAMILIAR WITH HIS NAME?

18 A I TRAINED WITH HIM.

19 Q OKAY. DO YOU HAVE ANY IDEA WHICH BRANCH HE WORKED AT?

20 A NO. IT WAS IN THE AREA. I CAN'T REMEMBER IF IT WAS  
21 GARDEN CITY OR SURFSIDE, BUT IT WAS -- I MEAN, IT WAS ONE  
22 OF THE BRANCHES IN THE AREA WHERE I WORKED.

23 Q WHEN YOU SAY YOU TRAINED WITH HIM, IN CHARLOTTE?

24 A UH-HUH.

25 Q IN LIKE ONE OF THE WEEK CLASSES?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0279

APPENDIX 284

- 1 A UH-HUH.
- 2 Q HOW MANY EMPLOYEES WERE AT YOUR BRANCH?
- 3 A I DON'T REMEMBER.
- 4 Q TEN?
- 5 A I REALLY DON'T REMEMBER. I MEAN, THERE WERE TELLERS,
- 6 MYSELF AS A PERSONAL BANKER, THE MANAGER. ALSO IN THAT
- 7 BRANCH THEY HAD PREMIER BANKING, MORTGAGE. THAT'S ALL -- I
- 8 DON'T -- THAT'S ALL I REMEMBER. I MEAN, I CAN'T GIVE YOU A
- 9 SPECIFIC NUMBER, IF THAT'S WHAT YOU'RE ASKING FOR.
- 10 Q HOW MANY EMPLOYEES AT THAT BRANCH HAD THE SAME DUTIES
- 11 OR JOB AS YOU?
- 12 A MYSELF AND THE MANAGER.
- 13 Q AND WHO WAS THE MANAGER? IS THAT WHO YOU WERE TALKING
- 14 ABOUT A MINUTE AGO, MR. FERRELL OR MS. LAWRENCE?
- 15 A WELL, HE WAS THE MANAGER THE FIRST HALF OF THE YEAR
- 16 THAT I WORKED THERE, AND THEN MEREDITH LAWRENCE WAS AT THE
- 17 END.
- 18 Q WHAT WAS YOUR SALARY?
- 19 A WELL, I HAD JUST GOTTEN A RAISE WHEN I LEFT. SO, I
- 20 CAN'T EVEN GIVE YOU AN EXACT NUMBER. I DON'T KNOW, IT WAS
- 21 AROUND 28, I -- AROUND 28.
- 22 Q WERE YOU PAID HOURLY OR WAS IT JUST A SET SALARY?
- 23 A SALARY.
- 24 Q OF 28,000?
- 25 A UH-HUH.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0280

APPENDIX 285

- 1 Q DID YOU RECEIVE ANY COMMISSIONS OR BONUSES?
- 2 A YES.
- 3 Q HOW WERE THOSE FIGURED?
- 4 A WE WERE ON A POINT SYSTEM. EACH INDIVIDUAL PERSONAL
- 5 BANKER WAS ON A POINT SYSTEM, AND YOU HAD A SPECIFIC NUMBER
- 6 THAT YOU HAD TO REACH TO OBTAIN A SPECIFIC, YOU KNOW -- YOU
- 7 WOULD -- IN OTHER WORDS, LET'S SAY THAT YOUR POINTS WERE
- 8 TWENTY. YOU KNOW, ONCE YOU HIT TWENTY, THEN WHATEVER WAS
- 9 OVER THAT IS WHAT YOU WOULD MAKE A COMMISSION OFF OF.
- 10 Q HOW DID YOU GET POINTS?
- 11 A BY OPENING ACCOUNTS OR DOING LOANS OR ---
- 12 Q NEW BUSINESS?
- 13 A UH-HUH.
- 14 Q SO THE MORE ACCOUNTS YOU OPENED, THE MORE POINTS YOU
- 15 HAD?
- 16 A WELL, IT DEPENDED ON WHAT IT WAS. I MEAN, YOU DIDN'T
- 17 ALWAYS GET POINTS FOR EVERYTHING THAT YOU OPENED. IT WAS
- 18 JUST -- THERE WERE CERTAIN -- IF I REMEMBER CORRECTLY,
- 19 THERE WERE FOUR SEPARATE AREAS. IN OTHER WORDS, IF YOU
- 20 OPENED -- I MEAN, THERE WERE CERTAIN ACCOUNTS THAT YOU
- 21 OPENED THAT YOU DIDN'T GET POINTS FOR AND THERE WERE
- 22 CERTAIN ONES THAT YOU DID. AND THEN ALSO IT DEPENDED ON
- 23 THE AMOUNT OF MONEY, AS WELL.
- 24 Q DID YOU GET POINTS FOR OPENING CD'S VERSUS REGULAR
- 25 CHECKING OR SAVINGS ACCOUNTS?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0281

APPENDIX 286

- 1 A SAY THAT AGAIN, I'M SORRY.
- 2 Q DID YOU GET POINTS FOR OPENING A CD VERSUS OPENING A  
3 REGULAR CHECKING OR SAVINGS ACCOUNT OR DID YOU GET THE SAME  
4 AMOUNT OF POINTS FOR OPENING A CD OR A CHECKING ACCOUNT?
- 5 A I DON'T REMEMBER.
- 6 Q DO YOU REMEMBER IF YOU WOULD GET MORE POINTS FOR  
7 OPENING -- LET ME BACK UP. AT WHAT LEVEL OF MONEY  
8 DEPOSITED DID YOU GET MORE POINTS? DO YOU REMEMBER?
- 9 A NO.
- 10 Q WOULD IT BE FAIR TO SAY THAT \$250,000 DEPOSIT WOULD  
11 HAVE GOTTEN YOU SOME POINTS?
- 12 A IF IT WAS A NEW ACCOUNT. IT'S HARD -- I CAN'T  
13 REMEMBER NOW. IT WAS A LONG -- I MEAN, IT WAS SO LONG AGO.  
14 IF YOU'RE ASKING ME WOULD I GET MORE POINTS OPENING A NEW  
15 CD OR MORE POINTS OPENING A CHECKING ACCOUNT, NO. I MEAN,  
16 I CAN'T SAY -- I CAN'T SAY THAT I WOULD GET MORE POINTS  
17 BECAUSE THE SYSTEM -- I DON'T REMEMBER. I MEAN, I DON'T  
18 REMEMBER, YOU KNOW, IF YOU GOT TWO POINTS FOR THIS OR TWO  
19 POINTS FOR THAT. IF YOU'RE ASKING ME WOULD I GET, LIKE,  
20 TEN POINTS VERSUS TWO POINTS OR SOMETHING LIKE THAT, NO.
- 21 Q OKAY. DO YOU REMEMBER IF YOU GOT ANY POINTS FOR  
22 OPENING UP THIS ACCOUNT FOR KAREN UNRUE IN APRIL OF 2001?
- 23 A NO, BECAUSE I DON'T REMEMBER WHEN IT STARTED FOR ME.  
24 I MEAN, YOU -- THERE WAS -- I'M TRYING TO REMEMBER BECAUSE  
25 AS SOON -- THEY CONSIDER YOU IN TRAINING AT THE FIRST -- IN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0282

APPENDIX 287

1 YOUR FIRST HALF OF -- OF YOUR JOB THERE. SO I CAN'T  
2 REMEMBER WHEN IT ACTUALLY -- WHAT DATE IT WAS THAT THE  
3 POINT SYSTEM STARTED FOR MYSELF.

4 Q OKAY.

5 A IF THAT'S WHAT YOU'RE ASKING.

6 Q OKAY. DO YOU HAVE ANY INDEPENDENT RECOLLECTION OF  
7 THIS TRANSACTION ON APRIL 26, 2001? DO YOU REMEMBER IT?

8 A NO.

9 Q OKAY. DO YOU REMEMBER IF YOU HAD ANY SUSPICIONS OR  
10 FELT LIKE THERE WAS ANYTHING FRAUDULENT GOING ON WHEN THIS  
11 INCIDENT HAPPENED IN APRIL OF 2001?

12 A NO.

13 Q AND YOU'VE ALREADY -- IF YOU -- IF YOU'LL TELL ME ONE  
14 TIME OR TELL THE JURY, WHO YOU THOUGHT WAS YOUR CUSTOMER ON  
15 APRIL 26, 2001, WHEN YOU OPENED THIS ACCOUNT?

16 A KAREN UNRUE.

17 Q HOW MANY NEW ACCOUNTS DID YOU OPEN A DAY?

18 A WELL, IT VARIED.

19 Q WHAT'S AN AVERAGE?

20 A I DON'T REALLY REMEMBER. TWO, FIVE, I MEAN ---

21 Q MORE THAN ONE?

22 A THERE WERE SOME DAYS THAT THERE WERE NO NEW ACCOUNTS.

23 SO, I MEAN, I CAN'T GIVE YOU A SPECIFIC NUMBER.

24 Q OKAY. HAD YOU EVER OPENED A CONSERVATOR ACCOUNT

25 BEFORE?

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0283

APPENDIX 288

- 1 A I DON'T REMEMBER.
- 2 Q DO YOU REMEMBER AT ANY TIME OVER THAT YEAR PERIOD IF
- 3 YOU EVER OPENED A CONSERVATOR ACCOUNT?
- 4 A NO, I DON'T.
- 5 Q DO YOU BELIEVE THAT YOU HAD?
- 6 A I DON'T REMEMBER.
- 7 Q DO YOU KNOW WHAT A CONSERVATOR IS?
- 8 A UH-HUH.
- 9 Q CAN YOU -- CAN YOU TELL ME WHAT YOU BELIEVE A
- 10 CONSERVATOR TO BE?
- 11 A THEY TAKE CARE OF ANOTHER PERSON'S MONEY.
- 12 Q WHAT KIND OF PERSON'S MONEY?
- 13 A WHAT DO YOU MEAN, WHAT KIND OF ---
- 14 Q I MEAN, JUST ANYBODY'S MONEY OR IS IT FOR A PARTICULAR
- 15 CIRCUMSTANCE?
- 16 A I DON'T KNOW.
- 17 Q WERE YOU FAMILIAR WITH THAT TERM WHEN YOU WERE A BANK
- 18 EMPLOYEE?
- 19 A I WOULD SAY, YES.
- 20 Q HAD YOU EVER HAD A FRIEND OR FAMILY MEMBER EITHER NEED
- 21 A CONSERVATOR TO BE APPOINTED OR EITHER BE APPOINTED AS A
- 22 CONSERVATOR?
- 23 A NO.
- 24 Q DO YOU KNOW WHAT THE DEFINITION OF CONSERVATOR IS IN
- 25 THE BANK MANUAL, IN THE BANK OF AMERICA MANUAL THAT YOU

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0284

APPENDIX 289

- 1 HAD?
- 2 A I MEAN RIGHT NOW, NO, I DON'T.
- 3 Q DID YOU HAVE A BANK OF AMERICA MANUAL ---
- 4 A YES.
- 5 Q --- AS A PERSONAL BANKER?
- 6 A YES.
- 7 Q WAS IT JUST ONE IN A CENTRAL LOCATION IN THE BRANCH OR
- 8 DID YOU HAVE YOUR OWN PERSONAL COPY?
- 9 A I DON'T REMEMBER.
- 10 Q DID YOU HAVE TO REFER TO THE MANUAL AT ANY TIME ON A
- 11 REGULAR BASIS?
- 12 A WHAT DO YOU MEAN?
- 13 Q WOULD YOU OFTEN REFER TO THE BANK MANUAL IN YOUR JOB
- 14 AS A PERSONAL BANKER?
- 15 A OH, YES.
- 16 Q HOW OFTEN?
- 17 A WHENEVER I NEEDED IT.
- 18 Q DAILY OR WEEKLY?
- 19 A I MEAN, I DON'T -- I WOULDN'T SAY DAILY. I MEAN, WHEN
- 20 I NEEDED THE MANUAL, THEN I WOULD GET THE MANUAL.
- 21 Q WAS IT ALWAYS READILY ACCESSIBLE TO YOU?
- 22 A YES.
- 23 Q I'M GOING TO SHOW YOU WHAT I'VE MARKED AS EXHIBIT 1.
- 24 MS. YOURKO, I'M GOING TO SHOW YOU WHAT WE'VE MARKED AS
- 25 EXHIBIT 1 ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0285

APPENDIX 290



- 1 WHERE IT'S GOING TO START?
- 2 MR. DAVIS: YES, YOUR HONOR.
- 3 THE COURT: ALL RIGHT. LET'S BRING THEM IN.
- 4 (THE JURY RETURNS TO THE COURTROOM AT 2:48 P.M.)
- 5 THE COURT: ALL RIGHT. YOU MAY PROCEED.
- 6 (THE VIDEO DEPOSITION CONTINUED OF LEE ANN YOURKO.)
- 7 Q DO YOU KNOW WHAT THE DEFINITION OF CONSERVATOR IS IN
- 8 THE BANK MANUAL, IN THE BANK OF AMERICA MANUAL THAT YOU
- 9 HAD?
- 10 A I MEAN RIGHT NOW, NO, I DON'T.
- 11 Q DID YOU HAVE A BANK OF AMERICA MANUAL ---
- 12 A YES.
- 13 Q --- AS A PERSONAL BANKER?
- 14 A YES.
- 15 Q WAS IT JUST ONE IN A CENTRAL LOCATION IN THE BRANCH OR
- 16 DID YOU HAVE YOUR OWN PERSONAL COPY?
- 17 A I DON'T REMEMBER.
- 18 Q DID YOU HAVE TO REFER TO THE MANUAL AT ANY TIME ON A
- 19 REGULAR BASIS?
- 20 A WHAT DO YOU MEAN?
- 21 Q WOULD YOU OFTEN REFER TO THE BANK MANUAL IN YOUR JOB
- 22 AS A PERSONAL BANKER?
- 23 A OH, YES.
- 24 Q HOW OFTEN?
- 25 A WHENEVER I NEEDED IT.

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ROA 0286

APPENDIX 291

1 Q DAILY OR WEEKLY?

2 A I MEAN, I DON'T -- I WOULDN'T SAY DAILY. I MEAN, WHEN  
3 I NEEDED THE MANUAL, THEN I WOULD GET THE MANUAL.

4 Q WAS IT ALWAYS READILY ACCESSIBLE TO YOU?

5 A YES.

6 Q I'M GOING TO SHOW YOU WHAT I'VE MARKED AS EXHIBIT 1.

7 MS. YOURKO, I'M GOING TO SHOW YOU WHAT WE'VE MARKED AS  
8 EXHIBIT 1, WHICH IS ENTITLED GLOSSARY OF TERMS. I WOULD  
9 ASK YOU TO SEE IF YOU CAN LOCATE ON THAT OR IDENTIFY THAT  
10 DOCUMENT FOR ME IF YOU CAN?

11 A IT LOOKS LIKE PART OF THE MANUAL.

12 Q WOULD THAT LOOK LIKE PART OF THE MANUAL THAT YOU HAD  
13 IN 2001?

14 A SIMILAR. FROM WHAT I REMEMBER, YES.

15 Q CAN YOU TELL ME ON THIS DOCUMENT WHAT IT -- HOW IT  
16 DEFINES CONSERVATOR?

17 A COURT-APPOINTED INDIVIDUAL WHO CARES FOR AND MANAGES  
18 THE PROPERTY AND AFFAIRS OF A MINOR OR AN INCAPACITATED  
19 ADULT.

20 Q OKAY. AND KEEP ON GOING, PLEASE.

21 A MANAGES THE FUNDS OF AN INDIVIDUAL WHO IS MISSING IN  
22 ACTION OR HAS DISAPPEARED; IS ALSO REFERRED TO AS GUARDIAN  
23 OR CURATOR -- CURATOR.

24 Q OKAY. ALSO, IF YOU WILL, PLEASE READ THE SECTION  
25 THAT'S ENTITLED CONSERVATORSHIP ACCOUNT BELOW THAT?

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ROA 0287

APPENDIX 292

- 1 A OKAY. ESTABLISHED BY A COURT-APPOINTED GUARDIAN,  
2 CONSERVATOR, CURATOR TO MANAGE THE FUNDS OF A WARD.
- 3 Q BASED ON YOUR READING OF THAT DEFINITION, WOULD YOU  
4 UNDERSTAND A CONSERVATORSHIP ACCOUNT TO BE ESTABLISHED TO  
5 PROTECT A CHILD'S MONEY?
- 6 A YES.
- 7 Q ARE YOU FAMILIAR WITH THE TERM GUARDIAN?
- 8 A YES.
- 9 Q CAN YOU TELL ME IF THAT DEFINITION'S ALSO INCLUDED IN  
10 THAT GLOSSARY OF TERMS?
- 11 A RIGHT HERE DO YOU MEAN? IT SAYS CONSERVATOR IS ALSO  
12 REFERRED TO AS A GUARDIAN.
- 13 Q RIGHT. I'M GOING TO SHOW YOU THE SECOND PAGE OF THAT  
14 DOCUMENT THAT'S ENTITLED GLOSSARY OF TERMS AND ASK YOU TO  
15 TAKE A LOOK AT THE GUARDIANSHIP DEFINITION AND READ THAT  
16 FOR ME ALSO?
- 17 A COURT-APPOINTED INDIVIDUAL WHO CARES FOR AND/OR  
18 MANAGES THE PROPERTY AND AFFAIRS OF A MINOR OR AN  
19 INCAPACITATED ADULT; MANAGES THE FUNDS OF AN INDIVIDUAL WHO  
20 IS MISSING IN ACTION OR HAS DISAPPEARED; AND IS ALSO  
21 REFERRED TO AS COMMITTEE, CURATOR OR CONSERVATOR.
- 22 Q ALL RIGHT. AND THEN READ RIGHT BELOW THAT THE LITTLE  
23 BLURB THAT'S ENTITLED GUARDIANSHIP ACCOUNT.
- 24 A ESTABLISHED BY A COURT-APPOINTED GUARDIAN,  
25 CONSERVATOR, CURATOR TO MANAGE THE FUNDS OF A WARD.

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ROA 0288

APPENDIX 293

- 1 Q HAD YOU EVER OPENED A GUARDIANSHIP ACCOUNT AT BANK OF  
2 AMERICA?
- 3 A I CAN'T SAY YES OR NO. I MEAN, I'VE OPENED MINOR  
4 ACCOUNTS BEFORE. I MEAN, THERE ARE DIFFERENT TYPES.
- 5 Q WHAT TYPES OF MINOR ACCOUNTS HAD YOU OPENED?
- 6 A I DON'T REMEMBER.
- 7 Q DO -- I THINK YOU ANSWERED EARLIER YOU DO NOT REMEMBER  
8 SPECIFICALLY OPENING A CONSERVATOR ACCOUNT BEFORE?
- 9 A NO.
- 10 Q IS THAT CORRECT?
- 11 A I DON'T REMEMBER. NO, I DON'T REMEMBER.
- 12 Q SO YOU DON'T REMEMBER IF YOU DID OR YOU DIDN'T? I'M  
13 JUST TRYING TO MAKE SURE I UNDERSTAND YOU CORRECTLY.
- 14 Q IF I HAD OPENED UP A CONSERVATORSHIP ACCOUNT BEFORE, I  
15 DO NOT REMEMBER.
- 16 Q OKAY. AND DO YOU REMEMBER IF YOU'VE EVER OPENED A  
17 GUARDIANSHIP ACCOUNT?
- 18 A IF THAT'S A MINOR ACCOUNT, YES. I MEAN, IF IT  
19 SPECIFICALLY SAID GUARDIAN ON IT, I CAN'T TELL YOU YES OR  
20 NO.
- 21 Q IF THAT SPECIFICALLY SAID GUARDIAN ON IT?  
22 A THE ACCOUNT.
- 23 Q WHAT TYPES OF ACCOUNTS WOULD YOU COMMONLY OPEN FOR  
24 MINORS?
- 25 A I DON'T REMEMBER A SPECIFIC ACCOUNT. I MEAN, I DON'T

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ROA 0289

APPENDIX 294

- 1 REMEMBER. I DON'T REMEMBER, YOU KNOW -- IT SAYS CUSTODIAN  
2 ACCOUNT, THAT'S -- I MEAN, THAT'S ALSO A MINOR ACCOUNT,  
3 GUARDIAN ACCOUNT. I MEAN, I DON'T -- I DON'T EVEN REMEMBER  
4 OPENING ANYTHING THAT SAID GUARDIAN ON IT OR CUSTODIAN ON  
5 IT. I MEAN, THERE WERE SPECIFIC WAYS THAT YOU OPEN MINOR  
6 ACCOUNTS. I MEAN, I CAN'T GIVE YOU THOSE SPECIFICS TODAY  
7 BECAUSE I DON'T REMEMBER EXACT ACCOUNTS.
- 8 Q HOW DID YOU DETERMINE WHAT KIND OF ACCOUNT TO OPEN?  
9 A FOR A MINOR?
- 10 Q UH-HUH.
- 11 A I WOULD -- I WOULD GO, AGAIN, BACK TO -- WHEN IT CAME  
12 TO MINORS, WE OPENED THEM SELDOM, SO I WOULD ALWAYS NEED TO  
13 REFER TO THE MANUAL, GO TO MY MANAGER OR CALL ANOTHER  
14 PERSONAL BANKER AND SAY, HEY, I'VE GOT THIS ACCOUNT TO  
15 OPEN.
- 16 Q WOULD YOU HAVE DONE THAT PRETTY MUCH ANY TIME YOU  
17 DEALT WITH A MINOR'S MONEY?
- 18 A YES.
- 19 Q EITHER LOOKED IN THE MANUAL OR CALLED YOUR MANAGER OR  
20 CHECKED ON THE COMPUTER?
- 21 A YES.
- 22 Q DID YOUR COMPUTER SYSTEM ASSIST YOU IN OPENING  
23 DIFFERENT TYPES OF ACCOUNTS?
- 24 A YES.
- 25 Q WOULD IT PROMPT YOU THROUGH?

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ROA 0290

1 A YES.

2 Q WOULD IT TELL YOU THE INFORMATION YOU NEEDED AND THEN  
3 -- AND THE REASON I ASK THIS IS BECAUSE WE HAD ALREADY  
4 TAKEN A DEPOSITION OF ANOTHER BANK OF AMERICA EMPLOYEE AND  
5 HER TERMS WERE BASICALLY IT WOULDN'T LET YOU GO FORWARD  
6 UNTIL YOU ENTERED THE INFORMATION THAT IT NEEDED. IS THAT  
7 CORRECT?

8 A YES.

9 Q WHAT -- COULD YOU PUNCH BUTTONS ON YOUR COMPUTER IF  
10 YOU WERE OPENING A CHILD'S ACCOUNT AND IT WOULD GUIDE YOU  
11 THROUGH QUESTIONS TO ASK? IS THAT CORRECT?

12 A I MEAN, WHAT YOU JUST ASKED ME PRIOR TO THAT? I MEAN,  
13 IT'S ---

14 Q WOULD THE COMPUTER SYSTEM GUIDE YOU THROUGH? SAY, FOR  
15 EXAMPLE, YOU WANTED TO OPEN A MINOR'S ACCOUNT. WOULD THERE  
16 BE A SCREEN THAT YOU WOULD SELECT SOMETHING DEALING WITH A  
17 MINOR AND IT WOULD GUIDE YOU THROUGH THE INFORMATION THAT  
18 IT NEEDED?

19 A YES.

20 Q LET ME BACK UP FOR A SECOND. AND YOU SAID YOU DID NOT  
21 HAVE YOUR OWN OFFICE BUT YOU HAD LIKE A SEPARATE AREA IN  
22 THE BANK. IS THAT CORRECT?

23 A I DID HAVE AN OFFICE.

24 Q YOU DID HAVE YOUR OWN OFFICE?

25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0291

APPENDIX 296

- 1 Q DO YOU REMEMBER -- DID YOU NORMALLY SET UP NEW  
2 ACCOUNTS IN YOUR OFFICE?  
3 A YES.  
4 Q WHAT INFORMATION WOULD YOU NORMALLY GET RIGHT OFF THE  
5 BAT FROM A NEW CUSTOMER, OR FROM A CUSTOMER WHEN THEY CAME  
6 IN TO ESTABLISH A NEW ACCOUNT?  
7 A WE ALWAYS NEEDED IDENTIFICATION.  
8 Q WHAT KIND OF IDENTIFICATION?  
9 A I MEAN, I DON'T REMEMBER EXACTLY WHAT WE WERE SUPPOSED  
10 TO ASK FOR. I REMEMBER THAT THEY WOULD HAVE TO HAVE TWO  
11 DIFFERENT TYPES OF IDENTIFICATION, ONE BEING THEIR DRIVER'S  
12 LICENSE, THEY HAD A SOCIAL SECURITY CARD, PREFERABLY TWO  
13 PICTURE I.D.'S.  
14 Q WOULD YOU ALWAYS HAVE TO HAVE A SOCIAL SECURITY  
15 NUMBER?  
16 A TO OPEN AN ACCOUNT, YES.  
17 Q WOULD THE COMPUTER SYSTEM GENERATE THE FORMS THAT YOU  
18 NEEDED AUTOMATICALLY?  
19 A WELL, WHAT DO YOU MEAN?  
20 Q DID THE COMPUTER SYSTEM GENERATE NEW FORMS WHEN YOU  
21 WOULD ESTABLISH A NEW ACCOUNT?  
22 A FORMS WOULD PRINT AT THE END OF OPENING AN ACCOUNT ON  
23 THE COMPUTER, IF THAT'S WHAT YOU'RE ASKING.  
24 Q OKAY. DO YOU REMEMBER WHAT KIND OF FORMS THEY WERE?  
25 A NO.

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ROA 0292

APPENDIX 297

- 1 Q WAS IT A SIGNATURE CARD?
- 2 A YES, WE WOULD GET A SIGNATURE CARD.
- 3 Q DO YOU REMEMBER WITH A MINOR'S ACCOUNT WHOSE SOCIAL
- 4 SECURITY NUMBER YOU WOULD USE?
- 5 A NO, I DON'T REMEMBER.
- 6 Q WOULD THAT HAVE BEEN SOMETHING YOU WOULD HAVE HAD TO
- 7 CHECK THE MANUAL OR ASK SOMEONE?
- 8 A YES.
- 9 Q ON A NEW CONSERVATORSHIP ACCOUNT, I'M GOING TO SHOW
- 10 YOU WHAT HAS BEEN MARKED AS EXHIBIT 2, WHICH IS ALSO AN
- 11 EXCERPT FROM THE BANK'S PLATFORM ASSISTANCE MANUAL, AND
- 12 IT'S ENTITLED UP AT THE TOP
- 13 GUARDIANSHIP/CONSERVATOR/CURATORSHIP -- COURT-APPOINTED AND
- 14 LET YOU TAKE A LOOK AT THAT AND TELL ME WHAT YOU WOULD HAVE
- 15 TO DO TO ESTABLISH ONE OF THESE ACCOUNTS THAT WOULD BE
- 16 DIFFERENT FROM JUST A REGULAR ACCOUNT?
- 17 A WELL, THIS IS -- WHAT DOES THIS TELL ME? I MEAN, THIS
- 18 -- WHAT WAS THE QUESTION AGAIN? I'M SORRY.
- 19 Q NO PROBLEM. IN WHAT WAY IS ESTABLISHING AN ACCOUNT,
- 20 ACCORDING TO THIS SECTION OF THE MANUAL, DIFFERENT FROM
- 21 JUST A REGULAR GENERAL NEW ACCOUNT?
- 22 A I MEAN, YOU WOULD HAVE TO HAVE -- IF SOMEONE CAME IN
- 23 AND WANTED TO OPEN -- YOU KNOW, THIS SAYS ACCOUNT TITLE
- 24 EXAMPLE, I MEAN, I NEED TO KNOW -- I MEAN, SOMEONE JUST
- 25 CAN'T COME IN AND -- WELL, I DON'T EVEN KNOW HOW TO EXPLAIN

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ROA 0293

APPENDIX 298



- 1 IT TO YOU. A NAME GOING ON AN ACCOUNT, IF IT'S FOR A  
2 MINOR, I HAVE TO HAVE SOMETHING TO TELL ME THAT.  
3 Q OKAY. LET ME BACK UP AND ASK YOU THIS.  
4 A IF IT'S FOR A MINOR.  
5 Q DO YOU REMEMBER EVER LOOKING AT THIS SECTION OF YOUR  
6 MANUAL?  
7 A DURING MY TIME AT THE BANK, YES.  
8 Q OKAY. DOES THIS LOOK SUBSTANTIALLY LIKE THE SECTION  
9 IN YOUR MANUAL AT THE TIME YOU WERE AT THE BANK DEALING  
10 WITH THESE TYPES OF ACCOUNTS?  
11 A I MEAN, I CAN'T TELL YOU THIS IS THE EXACT PAGE THAT  
12 WE HAD, BUT SOMETHING SIMILAR, YES.  
13 Q SO YOU WOULD HAVE LOOKED AT THIS AT SOME POINT IN TIME  
14 DURING YOUR WORK AT THE BANK, SOMETHING LIKE THIS?  
15 A YES.  
16 Q WOULD THE SYSTEM PROMPT YOU THROUGH ESTABLISHING A  
17 CONSERVATORSHIP ACCOUNT?  
18 A WELL, IT DOES ANY ACCOUNT THAT YOU OPEN, YES.  
19 Q WOULD THERE BE ANY DIFFERENT FORMS TO FILL OUT FOR A  
20 CONSERVATORSHIP ACCOUNT VERSUS A REGULAR ACCOUNT?  
21 A YOU MEAN THE DOCUMENTS THAT PRINT? IS THAT WHAT  
22 YOU'RE ASKING?  
23 Q LET ME ASK YOU THIS QUESTION. LOOKING AT THIS -- THIS  
24 EXCERPT FROM THE MANUAL, HOW DID YOU TITLE A  
25 CONSERVATORSHIP ACCOUNT?

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ROA 0294

APPENDIX 299

- 1 A WELL, YOU MEAN HOW WOULD I LIST THE NAMES ON THE  
2 ACCOUNT? IS THAT WHAT YOU'RE ASKING?
- 3 Q EXACTLY.
- 4 A OKAY.
- 5 Q IN THIS FIRST SPOT RIGHT HERE WHERE IT SAYS ACCOUNT  
6 TITLE EXAMPLE.
- 7 A RIGHT. WELL, IT WOULD BE THE MINOR AND THEN THE  
8 GUARDIAN, THE NAME OF THE GUARDIAN.
- 9 Q COULD YOU USE THE WORD CONSERVATOR IF IT WAS A  
10 CONSERVATOR THAT HAD BEEN APPOINTED FOR THEM?
- 11 A WELL, THEN, THAT'S WHEN I WOULD PULL -- THAT'S WHEN I  
12 WOULD, I MEAN, GO BACK TO THE MANUAL OF WHERE IT SAYS  
13 CONSERVATORSHIP.
- 14 Q OKAY.
- 15 A I ALWAYS LOOKED -- IF SOMEONE CAME IN AND SAID THEY  
16 WANTED TO OPEN THAT SPECIFIC ACCOUNT, THEN THAT'S THE  
17 SPECIFIC PAGE THAT I GO TO IN THE MANUAL ---
- 18 Q ALL RIGHT. SO THIS IS THE PAGE ---
- 19 A --- TO TELL ME HOW TO OPEN IT.
- 20 Q EXCUSE ME. IF THIS IS THE PAGE FROM THE MANUAL THAT  
21 DEALT WITH ESTABLISHING CONSERVATORSHIP ACCOUNTS, AND RIGHT  
22 UP HERE AT THE TOP IT TELLS YOU HOW TO TITLE THE ACCOUNT,  
23 AND IT SAYS OVER HERE, CURATOR/CONSERVATOR MAY ALSO BE  
24 USED, DEPENDING ON THE TERM USED IN THE COURT DOCUMENTS  
25 PRESENTED, WOULD THAT BE HOW YOU WOULD TITLE AN ACCOUNT FOR

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0295

APPENDIX 300

1 A MINOR WHEN YOU'RE ESTABLISHING IT AS A CONSERVATORSHIP  
2 ACCOUNT?

3 A YES. INSTEAD OF GUARDIAN, I WOULD JUST PUT  
4 CONSERVATOR.

5 Q ALL RIGHT. HOW ABOUT READ RIGHT BELOW WHERE IT SAYS,  
6 IF A COURT ORDER IS REQUIRED?

7 A IF A COURT ORDER IS REQUIRED FOR WITHDRAWALS, INCLUDE  
8 COURT RESTRICTED ACCOUNT IN THE TITLE.

9 Q RIGHT. WHAT DOCUMENTS WOULD YOU HAVE TO HAVE TO  
10 ESTABLISH A CONSERVATORSHIP ACCOUNT?

11 A WHAT DOCUMENTS?

12 Q UH-HUH.

13 A I WOULD NEED SOMETHING SAY THAT THAT'S WHAT THEY WERE.

14 Q CAN YOU FIND IN THIS MANUAL WHAT DOCUMENTS YOU WOULD  
15 NEED TO ESTABLISH THAT TYPE OF ACCOUNT? I'M GOING TO POINT  
16 YOU TO PAGE 2 OF THIS MANUAL SECTION OF EXHIBIT. CAN YOU  
17 TELL ME THE REQUIRED DOCUMENTS FOR ESTABLISHING A  
18 CONSERVATORSHIP ACCOUNT?

19 A WELL, IT SAYS REQUIRED DOCUMENTATION. THE ORIGINAL  
20 CERTIFIED COPY OF A COURT ORDER APPOINTING THE  
21 GUARDIAN/CONSERVATOR/CURATOR CONTAINING THE FOLLOWING: THE  
22 NAME OF THE GUARDIAN OR CONSERVATOR, THE NAME OF THE WARD,  
23 SIGNATURE OF THE COURT OFFICIAL, CERTIFIED SEAL OR STAMP,  
24 AND STATEMENT INDICATING THE GUARDIAN IS THE GUARDIAN OVER  
25 THE ESTATE OF PROPERTY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0296

APPENDIX 301

1 Q OKAY. LET ME SHOW YOU THIS -- THE THING THAT'S GOT A  
2 BULLET RIGHT UP HERE IN THE TOP HERE WHERE IT SAYS OBTAIN A  
3 PHOTOCOPY ---

4 A UH-HUH.

5 Q --- OF THE FOLLOWING DOCUMENTATION OR THE FOLLOWING  
6 DOCUMENT FROM THE CUSTOMER. WHAT WOULD YOU DO WITH YOUR  
7 COPY OF THAT INFORMATION?

8 A COPY -- ANYTHING THAT WE COPIED, THERE WAS ALWAYS --  
9 IT WAS ALWAYS SENT TO THE HOME OFFICE.

10 Q WAS THAT SOMETHING THAT YOU WOULD DO ON A REGULAR  
11 BASIS?

12 A YES.

13 Q OBTAIN BETTER COPIES OF THE INFORMATION AND SEND IT TO  
14 THE HOME OFFICE?

15 A IF THAT'S WHAT I WAS TOLD TO DO. I MEAN, IF IT'S --  
16 WHEN I SAY THAT, I MEAN ON THIS PIECE OF PAPER. IF I HAD  
17 THIS TO OPEN AN ACCOUNT AND IT SAID I NEEDED A COPY, THEN I  
18 WOULD GET A COPY. A COPY HAS TO GO TO THE HOME OFFICE. I  
19 MEAN, WE CAN'T TAKE THE -- I MEAN, IF THE COURT GAVE THE  
20 CUSTOMER A COPY TO GIVE TO US, I MEAN, THEN WE WOULD FILE  
21 THAT IN OUR OFFICE. BUT IF THAT WAS NOT OURS TO KEEP,  
22 THEN, YES, WE HAVE TO MAKE A PHOTOCOPY.

23 Q WOULD YOU EXAMINE A CERTIFIED COPY WITH A SEAL OR  
24 ORIGINAL SIGNATURE AND THEN JUST MAKE A PHOTOCOPY OF THAT  
25 DOCUMENT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0297

APPENDIX 302

- 1 A YOU MEAN WOULD I LOOK AT IT AND ---
- 2 Q UH-HUH.
- 3 A YES.
- 4 Q THIS EXHIBIT THAT I'M SHOWING YOU THAT'S ENTITLED
- 5 GUARDIANSHIP/CONSERVATORSHIP/CURATORSHIP -- COURT-
- 6 APPOINTED, DID YOUR COMPUTER SCREEN LOOK ANYTHING LIKE
- 7 THIS?
- 8 A YOU MEAN WHEN I'M OPENING AN ACCOUNT?
- 9 Q RIGHT. IF YOU WERE ---
- 10 A NO.
- 11 Q --- OPENING THIS TYPE OF ACCOUNT? WOULD THIS
- 12 INFORMATION ON THESE THREE PAGES HAVE BEEN AVAILABLE ON THE
- 13 COMPUTER SCREEN WHEN YOU WERE OPENING A NEW ACCOUNT ---
- 14 A YES.
- 15 Q --- FOR A CONSERVATOR?
- 16 A YES. NOW, ON SOME ACCOUNTS, WHEN YOU OPEN THEM, IT
- 17 DOESN'T LOOK LIKE THIS, BUT IF YOU ARE IN THE MIDDLE OF
- 18 OPENING AN ACCOUNT AND YOU NEED SOME INFORMATION THAT YOU
- 19 HAVE NOT YET INPUTTED, IT'S GOING TO STOP YOU AND THEN
- 20 SOMETIMES, YES, A LITTLE POP-UP WOULD POP UP SIMILAR TO
- 21 THIS AND SAY YOU HAVE TO HAVE THIS BEFORE YOU CAN CONTINUE.
- 22 Q KIND OF TO PROMPT YOU TO REMEMBER TO GET ALL THE
- 23 INFORMATION YOU NEEDED. IS THAT CORRECT?
- 24 A WELL, YOU CAN'T GO FORWARD UNLESS YOU HAVE THE
- 25 INFORMATION. I DON'T REMEMBER THAT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0298

APPENDIX 303

1 Q WOULD IT PRINT A SIGNATURE CARD UNLESS YOU HAD ALL THE  
2 INFORMATION?

3 A I DON'T REMEMBER.

4 Q OKAY. I'M GOING TO FLIP YOU BACK TO PAGE 1. CAN YOU  
5 TELL ME WHAT SIGNATURES ARE REQUIRED, ACCORDING TO YOUR  
6 MANUAL, FOR A CONSERVATORSHIP ACCOUNT?

7 A WELL, IT SAYS SIGNATURES REQUIRED -- INDIVIDUALS  
8 AUTHORIZED IN THE COURT DOCUMENT APPOINTING THE  
9 GUARDIAN/CONSERVATOR/CURATOR.

10 Q HOW ABOUT THE IDENTIFICATION SECTION OF THIS MANUAL,  
11 CAN YOU READ THAT FOR ME?

12 A UH-HUH. OBTAIN ACCEPTABLE PRIMARY I.D. FROM THE  
13 GUARDIAN OR CONSERVATOR.

14 Q HOW ABOUT THE TAXPAYER IDENTIFICATION NUMBER SECTION?

15 A IT ASKS FOR THE WARD'S IDENTIFICATION NUMBER, DO NOT  
16 USE THE GUARDIAN'S.

17 Q OR THE CONSERVATOR'S? IS THAT CORRECT?

18 A UH-HUH.

19 Q IF YOU WILL, ON PAGE 2 OF THIS DOCUMENT, GO FURTHER TO  
20 THE SECOND BULLET OF INFORMATION DOWN HERE WHERE IT SAYS,  
21 COMPLETE THE FOLLOWING DOCUMENTS, AND TELL US WHAT ELSE IS  
22 REQUIRED TO BE COMPLETED WHEN YOU'RE ESTABLISHING A  
23 CONSERVATORSHIP ACCOUNT?

24 A REQUIRED DOCUMENT -- PERSONAL SIGNATURE CARD SIGNED  
25 ONLY BY THE PERSONAL REPRESENTATIVE OR GUARDIAN,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0299

APPENDIX 304

1 APPROPRIATE CERTIFICATE OF FOREIGN STATUS (FORM W-8), IF A  
2 W-8 SIGNATURE CARD IS COMPLETED FOR AN INTEREST-BEARING  
3 ACCOUNT, AND REVIEW DECISION DETAILS SCREEN PRINT.

4 Q LET ME ASK YOU ONE MORE THING ABOUT THIS FIRST PAGE.  
5 IS A CERTIFICATE OF DEPOSIT AN ELIGIBLE PRODUCT FOR A  
6 CONSERVATORSHIP ACCOUNT?

7 A ELIGIBLE PRODUCTS ARE CHECKING AND SAVINGS ACCOUNTS.

8 Q SO WOULD YOU THINK THAT A CERTIFICATE OF DEPOSIT IS AN  
9 ELIGIBLE PRODUCT FOR A CONSERVATORSHIP ACCOUNT?

10 A NO, IT SAYS CHECKING AND SAVINGS.

11 Q I'M GOING TO SHOW YOU PAGE 3 OF THIS EXHIBIT 2. IT'S  
12 ENTITLED SPECIAL CONDITIONS AND RESTRICTIONS, AND ASK YOU  
13 TO READ THAT SECTION FOR ME?

14 A THE WHOLE SECTION?

15 Q IF YOU DON'T MIND.

16 A DO NOT OPEN THE ACCOUNT IF COURT DOCUMENTS INDICATE  
17 GUARDIAN/CONSERVATOR/CURATOR IS A GUARDIAN OVER THE PERSON.  
18 ONLY THE GUARDIAN/CONSERVATOR/CURATOR MAY MAKE WITHDRAWALS.

19 CONTACT NATIONAL HELP LINE-LEGAL WHEN THE -- WHEN THE  
20 COURT DOCUMENTS NAME TWO OR MORE

21 GUARDIANS/CONSERVATORS/CURATORS AND INDICATE THEY MUST ACT  
22 JOINTLY, APPOINT A TEMPORARY OR LIMITED

23 GUARDIAN/CONSERVATOR/CURATOR, WERE ISSUED OUTSIDE THE STATE  
24 WHERE BEING PRESENTED.

25 ASSISTANCE IS NEEDED IN REVIEWING LEGAL DOCUMENTS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0300

APPENDIX 305

1 DO YOU WANT ME TO CONTINUE?

2 Q YOU CAN SKIP GEORGIA AND NEW MEXICO AND GO TO WHERE IT  
3 SAYS, CONTACT BANKING GROUP SUPPORT.

4 A CONTACT BANKING GROUP SUPPORT-LEGAL SUPPORT WHEN COURT  
5 DOCUMENTS CONTAIN RESTRICTIONS, A COURT ORDER IS REQUIRED  
6 FOR WITHDRAWAL.

7 Q CAN YOU TELL ME IN THE YEAR THAT YOU WERE EMPLOYED AT  
8 BANK OF AMERICA IF YOU EVER HAD TO CONTACT BANKING GROUP  
9 SUPPORT/LEGAL SUPPORT?

10 A I DON'T REMEMBER THAT EXACT NAME, BUT LEGAL SUPPORT,  
11 YES, AND OUR HELP LINES, YES.

12 Q DID YOU EVER CONTACT HELP LINE OR LEGAL SUPPORT  
13 REGARDING ANYTHING TO DO WITH ESTABLISHING THIS ACCOUNT FOR  
14 CODY P [REDACTED] IN APRIL OF 2001?

15 A NOT THAT I REMEMBER.

16 Q DOES THE ACCOUNT OWNER HAVE TO SIGN A SIGNATURE CARD  
17 IN YOUR PRESENCE?

18 A YES.

19 Q BASED ON THIS MANUAL, THIS EXHIBIT, IF -- IF TWO  
20 PEOPLE WERE APPOINTED CONSERVATORS, WOULD BOTH PERSONS HAVE  
21 TO BE ON THE ACCOUNT?

22 A ASK THAT AGAIN.

23 Q OKAY. BASED ON THIS MANUAL ---

24 A UH-HUH.

25 Q --- IF TWO PERSONS WERE APPOINTED AS CONSERVATORS FOR

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0301

APPENDIX 306



- 1 A CHILD, WOULD BOTH OF THEIR NAMES HAVE TO BE ON THE  
2 ACCOUNT?  
3 A YES.  
4 Q HOW WOULD YOU FIND THE -- THE ANSWER TO THAT QUESTION?  
5 HOW DO YOU KNOW IF THAT'S CORRECT?  
6 A SIGNATURES REQUIRED -- INDIVIDUALS AUTHORIZED IN THE  
7 COURT DOCUMENT APPOINTING THE GUARDIAN. I MEAN, IF IT'S IN  
8 THE COURT ORDER THAT BOTH NAMES ARE ON THERE AND THAT'S  
9 WHAT THEY WANT ON THE ACCOUNT, THEN THAT'S WHAT I WOULD  
10 LIST ON THE ACCOUNT.  
11 Q HOW ABOUT IF THE COURT ORDER SAYS TWO PEOPLE ARE ON  
12 THE ACCOUNT AND THEY DIDN'T TELL YOU WHAT THEY WANTED ON  
13 THE ACCOUNT, HOW WOULD YOU LIST IT ON THE ACCOUNT?  
14 A I MEAN, I CAN ONLY -- I MEAN, WHEN SOMEONE COMES IN TO  
15 OPEN AN ACCOUNT AND THEY TELL ME THE NAMES THEY WANT ON THE  
16 ACCOUNT, THEN I PUT THEIR NAMES ON THE ACCOUNT, BUT YOU  
17 ALSO HAVE TO HAVE IDENTIFICATION TO LIST THEM ON THE  
18 ACCOUNT, IF THAT'S WHAT YOU'RE ASKING.  
19 Q WELL, TO FOLLOW UP WITH THAT QUESTION, DO YOU TAKE  
20 YOUR INSTRUCTIONS FROM THE CUSTOMER ON THE TYPE OF ACCOUNT  
21 YOU SET UP?  
22 A YES.  
23 Q OKAY. DID THE PAWLEYS ISLAND BRANCH DO ANYTHING  
24 DIFFERENT FROM THIS MANUAL INFORMATION, THIS EXHIBIT, IN  
25 ESTABLISHING CONSERVATORSHIP ACCOUNTS?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0302

APPENDIX 307

1 A WHAT DO YOU MEAN DID THEY DO ANYTHING DIFFERENT?

2 Q DID THE PAWLEYS ISLAND BRANCH HAVE ITS OWN SPECIAL WAY  
3 OF SETTING UP CONSERVATORSHIP ACCOUNTS OR WOULD IT HAVE  
4 BEEN THE WAY THIS MANUAL SETS OUT?

5 A NO. I MEAN, WE HAVE TO FOLLOW GUIDELINES.

6 Q DID YOU EVER HAVE ANY EXCEPTIONS OR SPECIAL  
7 CIRCUMSTANCES WHERE YOU WOULD NOT FOLLOW SOME OF THE  
8 REQUIREMENTS?

9 A NO.

10 Q IN APRIL OF 2001 -- ON APRIL 26TH, 2001, DID YOU OPEN  
11 A CONSERVATORSHIP ACCOUNT FOR CODY [REDACTED] P [REDACTED]?

12 A I DON'T REMEMBER.

13 Q DO YOU REMEMBER OPENING ANY KIND OF ACCOUNT FOR CODY  
14 [REDACTED] P [REDACTED]? IN REVIEWING THE INFORMATION FOR TODAY, DO  
15 YOU HAVE ANY KNOWLEDGE OF THE ACCOUNT THAT YOU OPENED FOR  
16 CODY STEVEN POWELL?

17 A WITH WHAT HE SHOWED ME, WITH WHAT THE ATTORNEY SHOWED  
18 ME, I DON'T KNOW IF YOU CAN GO TO -- TO THAT SPECIFIC PAGE.  
19 THE ACCOUNT THAT WAS OPENED WAS A NEW CD THAT HAD KAREN  
20 POWELL'S NAME ON IT.

21 Q OKAY. YOU ACCEPTED THIS MONEY FOR DEPOSIT THAT MADE  
22 UP THE FUNDS, THE SOURCE OF THE CD. IS THAT CORRECT?

23 A UH-HUH. YES.

24 Q WHAT ARE YOUR DUTIES OR RESPONSIBILITIES IN ACCEPTING  
25 MONEY FOR DEPOSIT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0303

APPENDIX 308

1 A YOU MEAN WHAT DO I DO WITH THE MONEY ONCE IT'S GIVEN  
2 TO ME? AT THE END OF OPENING AN ACCOUNT, I TAKE THE MONEY  
3 STRAIGHT TO THE HEAD TELLER, ALONG WITH THE PAPERS THAT WE  
4 USE TO OPEN AN ACCOUNT.

5 Q DO YOU HAVE ANY CONVERSATION WITH THE TELLER ABOUT  
6 WHAT TO DO WITH IT OR ANY QUESTIONS THAT SHE MIGHT HAVE?

7 A I MEAN, IF SHE HAD A QUESTION, OBVIOUSLY I WOULD  
8 ANSWER HER QUESTIONS. BUT USUALLY IF YOU HANDED THE, YOU  
9 KNOW, WHAT YOU USE TO OPEN AN ACCOUNT, ALONG WITH THE  
10 MONEY, THEN THEY KNOW WHAT TO DO WITH IT.

11 Q DO YOU REMEMBER THE TELLER THAT -- THE HEAD TELLER IN  
12 APRIL OF 2001 THAT YOU WOULD HAVE HANDED THESE FUNDS TO?

13 A NO.

14 Q WHEN YOU HAND THE CHECKS AND THE PAPERWORK TO THE HEAD  
15 TELLER, WAS IT YOUR RESPONSIBILITY TO MAKE SURE THAT THEY  
16 WERE ENDORSED PROPERLY AND THEY HAD BEEN ENDORSED BY THE  
17 APPROPRIATE INDIVIDUALS?

18 A WAS THAT MY RESPONSIBILITY, NO.

19 Q WHO WOULD LOOK AT THE DRIVER'S LICENSE?

20 A WELL, I LOOK AT THE DRIVER'S LICENSE TO OPEN THE  
21 ACCOUNT. AS FAR AS MONEYS GIVEN TO ME TO OPEN AN ACCOUNT,  
22 THAT'S WHAT I TAKE STRAIGHT TO THE TELLER. SO, IF THERE'S  
23 SOMETHING THAT SHE NEEDS, THEN SHE ASKS ME FOR IT.

24 Q WHO EXAMINES THE CHECK TO MAKE SURE THAT IT'S ENDORSED  
25 PROPERLY, YOU OR THE HEAD TELLER?

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0304

APPENDIX 309

- 1 A THE TELLER.
- 2 Q DO YOU LOOK AT THE CHECK WHEN YOU GIVE IT TO THE HEAD  
3 TELLER OR WOULD YOU JUST HAND IT ALL TO THE HEAD TELLER?
- 4 A I MEAN, SOMETIMES -- I MEAN, I LOOK AT -- YOU KNOW, IF  
5 IT'S A CHECK, I LOOK AT IT TO SEE WHAT NAME IS ON IT, BUT I  
6 DON'T DO ANYTHING -- I NEVER DID ANYTHING WITH -- WITH  
7 MONEY AS FAR AS TAKING IT FROM MY DESK STRAIGHT TO A  
8 TELLER. AND I'LL SAY HEAD TELLER BECAUSE THAT'S USUALLY  
9 WHO I WOULD TAKE THE MONEY TO BECAUSE USUALLY, YOU KNOW,  
10 THERE WAS A LINE FOR BANK OF AMERICA CUSTOMERS, AND USUALLY  
11 IT WAS SHORTER, SO I WOULD STAND IN THAT LINE AND THE HEAD  
12 TELLER WOULD TAKE US FIRST, THE PERSONAL BANKER'S  
13 TRANSACTIONS FIRST. SO, NOW, DID OTHER TELLERS HELP WITH  
14 TRANSACTIONS, YES. YOU KNOW, WHEN I SAY HEAD TELLER,  
15 THAT'S WHO I USUALLY TOOK IT TO.
- 16 Q OKAY. SO, IF YOU WILL, GO BACK TO -- YOU'VE OPENED  
17 THE NEW ACCOUNT. AT WHAT POINT IN TIME DO THEY HAND YOU  
18 THE FUNDS TO DEPOSIT?
- 19 A AT THE END OF THE TRANSACTION.
- 20 Q AND THEN -- GO AHEAD.
- 21 A WELL, I MEAN, IN THE BEGINNING -- I MEAN, A CUSTOMER  
22 COULD COME IN AND SAY, I WANT TO OPEN A CD. OKAY. AND I  
23 WOULD SAY, WELL, HOW MUCH FOR? THEY COULD SAY, I WANT TO  
24 OPEN IT -- I HAVE A CHECK FOR \$25,000. AND I WOULD ASK, DO  
25 YOU WANT TO PUT THE WHOLE 25,000 IN A CD? IF THEY SAID,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0305

APPENDIX 310

- 1 YES, THEN I OPEN THE ACCOUNT, AND THEN THEY GIVE ME THE  
2 MONEY AT THE END OF THE TRANSACTION.
- 3 Q ALL RIGHT. WHEN THEY GIVE YOU THE MONEY, DO YOU  
4 USUALLY SEE THEM ENDORSE -- SAY, IT'S A CHECK, DO YOU  
5 USUALLY SEE THEM ENDORSE THE CHECK?
- 6 A I'M NOT GOING TO SAY ALL THE TIME.. IF THEY ENDORSED  
7 IT IN FRONT OF ME?
- 8 Q I GUESS THIS IS MY QUESTION. SEE IF YOU CAN HELP ME  
9 WITH THIS. IF YOU'RE ACCEPTING THE FUNDS HERE AND TAKING  
10 THEM TO THE HEAD TELLER, WHICH ONE OF YOU, YOU OR THE HEAD  
11 TELLER, ARE RESPONSIBLE TO MAKE SURE THE CHECK IS ENDORSED  
12 PROPERLY?
- 13 A THE TELLER.
- 14 Q HOW DOES SHE KNOW IF IT'S ENDORSED PROPERLY IF SHE  
15 DOESN'T SEE THE CLIENT OR THE CUSTOMER?
- 16 A WELL, SHE CAN SEE -- IN OUR OFFICE, SHE COULD SEE THE  
17 CUSTOMER.
- 18 Q DID SHE SEE THE CUSTOMER'S IDENTIFICATION?
- 19 A IF SHE NEEDS IT.
- 20 Q HOW DOES SHE KNOW THAT IT'S BEEN ENDORSED PROPERLY IF  
21 SHE DOESN'T SEE THE CUSTOMER'S IDENTIFICATION?
- 22 A I MEAN, IF SHE QUESTIONED IT SHE COULD, YOU KNOW, ASK  
23 ME FOR THE IDENTIFICATION. BUT ---
- 24 Q SO -- GO AHEAD. I'M SORRY.
- 25 A I MEAN, IF THERE'S SOMETHING THAT THE HEAD TELLER

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0306

APPENDIX 311

1 NEEDED AS FAR AS IF SHE NEEDED IDENTIFICATION -- THAT'S  
2 WHAT YOU'RE ASKING ME? THEN, I MEAN, WE HAD GLASS WINDOWS  
3 SO SHE COULD SAY, LOOK AT THE CHECK. IF IT SAYS MS.  
4 POWELL, LEE ANN, CAN YOU GO GET MS. POWELL'S  
5 IDENTIFICATION, I NEED TO SEE THAT.  
6 Q DID THE TELLERS USUALLY DO THAT OR DID THEY JUST COUNT  
7 ON YOU TO GET THAT INFORMATION, AND WHEN YOU BROUGHT IT TO  
8 THEM, EVERYTHING WAS IN ORDER?  
9 A I MEAN, IF THERE'S A QUESTION ON ANYTHING THAT I  
10 HANDED A TELLER, IF SHE ASKED FOR SOMETHING, I MEAN, I HAVE  
11 TO GET HER THAT INFORMATION.  
12 Q WERE YOU A SUPERVISORY PERSON OVER THE TELLERS?  
13 A NO.  
14 Q YOU HAD VERY DIFFERENT JOB DUTIES?  
15 A YES.  
16 Q IS THAT CORRECT?  
17 A YES.  
18 Q HOW DID YOU VERIFY IDENTIFICATION IN THIS TRANSACTION  
19 WITH KAREN POWELL? DID YOU GET A COPY OF HER DRIVER'S  
20 LICENSE?  
21 A I DON'T REMEMBER.  
22 Q WHAT WOULD YOU HAVE DONE AS A MATTER OF NORMAL COURSE  
23 IN OPENING A NEW ACCOUNT?  
24 A NOW, I DON'T REMEMBER HAVING HAD TO GET PHOTOCOPIES OF  
25 A DRIVER'S LICENSE. I MEAN, WITH THEIR IDENTIFICATION,

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0307

APPENDIX 312

- 1 THERE WERE PLACES THAT YOU WOULD HAVE TO WRITE THAT  
2 INFORMATION DOWN AND ENTER IT INTO THE COMPUTER.
- 3 Q WOULD YOU HAVE GOTTEN A PICTURE I.D. FROM KAREN POWELL  
4 ON THE DAY OF OPENING THE CD?
- 5 A YES. IF THAT'S WHAT I NEEDED, YES.
- 6 Q WELL, WOULD YOU HAVE NEEDED THAT IN OPENING A CD, TO  
7 SEE THE PICTURE I.D.?
- 8 A NOW, I DON'T REMEMBER WHAT YOU HAVE TO HAVE, BUT IF IT  
9 ASKS FOR HER DRIVER'S LICENSE NUMBER OR SOCIAL SECURITY  
10 NUMBER, YES, I HAVE TO ASK THAT FROM HER, YES.
- 11 Q WHAT DOES IT MEAN, BASED ON YOUR TRAINING AND  
12 EXPERIENCE AS A BANK EMPLOYEE, TO ENDORSE A CHECK PROPERLY?
- 13 A WELL, I MEAN, IT HAS TO BE SIGNED. WHATEVER NAME IS  
14 ON THE CHECK, THEN THAT'S HOW YOU WOULD SIGN IT.
- 15 Q OKAY. AND WHOSE RESPONSIBILITY WAS IT AT BANK OF  
16 AMERICA WHEN YOU OPEN NEW ACCOUNTS TO MAKE SURE CHECKS WERE  
17 ENDORSED PROPERLY?
- 18 A YOU MEAN IF I OPEN AN ACCOUNT?
- 19 Q UH-HUH.
- 20 A THEN THE TELLER.
- 21 Q SO THAT WAS NOT YOUR RESPONSIBILITY?
- 22 A NO.
- 23 Q AND YOU DON'T REMEMBER THE TELLER WHO HANDLED IT ON  
24 THIS PARTICULAR DAY?
- 25 A NO, I DON'T.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0308

1 Q IF IT'S NOT ENDORSED PROPERLY, CAN THE BANK ACCEPT  
2 THOSE FUNDS FOR DEPOSIT?

3 A I DON'T KNOW. I MEAN, I WOULD SAY, NO. I MEAN, IF IT  
4 -- IF THE CHECK'S NOT -- I MEAN, A TELLER'S NOT GOING TO --  
5 I MEAN, I WOULDN'T THINK A TELLER COULD ACCEPT SOMETHING IF  
6 IT WASN'T DONE PROPERLY. I MEAN, FROM WHAT YOU'RE ASKING  
7 ME, IF THERE WERE OTHER INFORMATION THAT THEY NEEDED FOR A  
8 CHECK, IF GIVEN, THEN I HAVE TO GET THE INFORMATION FOR  
9 THEM. THEY CAN'T JUST, I MEAN, TAKE IT. I MEAN, SOMEBODY  
10 -- I MEAN, THERE'S ALWAYS GOING TO BE SOMEBODY THAT'S GOING  
11 TO, YOU KNOW, SAY, WELL WE NEED THIS BEFORE YOU CAN PROCESS  
12 THIS OR ---

13 Q OKAY. AND YOU DON'T RECALL ON THIS PARTICULAR DAY,  
14 APRIL 26, 2001, IF THE TELLER THAT YOU TOOK THESE CHECKS TO  
15 ASKED YOU FOR ADDITIONAL DOCUMENTATION?

16 A NO, I DON'T REMEMBER.

17 Q AND I'M GOING TO ASK YOU THIS QUESTION AGAIN BECAUSE  
18 I'M NOT SURE YOU -- YOU ANSWERED IT. IF A CHECK IS NOT  
19 ENDORSED PROPERLY, CAN YOU DEPOSIT THE MONEY IN THE BANK?

20 A I MEAN, I CAN'T ANSWER THAT.

21 Q WOULD YOU DEPOSIT THAT MONEY IN THE BANK, BASED ON  
22 YOUR TRAINING AND EXPERIENCE AS A BANK EMPLOYEE?

23 A IF IT'S NOT DONE PROPERLY, NO.

24 Q AND TELL ME ONE MORE TIME HOW YOU WOULD MAKE SURE --  
25 BASED ON YOUR TRAINING AND EXPERIENCE, HOW WOULD YOU MAKE

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0309

APPENDIX 314



1 SURE A CHECK'S BEEN ENDORSED PROPERLY?

2 A WELL, SEE, I DIDN'T DO THAT. I MEAN, I DIDN'T HANDLE  
3 ANY MONEY AT THE BANK AS FAR AS, I MEAN, YOU KNOW, I TOOK  
4 IT FROM MY DESK TO, YOU KNOW, THE TELLER AT THE COUNTER BUT  
5 I DIDN'T PROCESS ANYTHING.

6 Q WERE YOU EVER TRAINED IN ANY OF THE TRAINING AS A BANK  
7 EMPLOYEE ON HOW TO -- TO MAKE SURE CHECKS ARE ENDORSED  
8 PROPERLY?

9 A I MEAN, NOT THAT I REMEMBER. I MEAN, OTHER THAN, YOU  
10 KNOW, THIS NAME'S ON THE CHECK.

11 Q BASICALLY WHATEVER'S ON THE FRONT OF THE CHECK NEEDS  
12 TO BE ON THE BACK OF THE CHECK?

13 A YES. I DIDN'T HAVE TELLER TRAINING, I MEAN, IF THAT'S  
14 -- I WAS TRAINED -- I MEAN, I DON'T KNOW WHAT TO -- I MEAN,  
15 YOU KEEP ASKING ME ABOUT ENDORSING THE CHECK. I MEAN,  
16 OTHER THAN THAT, I DIDN'T HANDLE ---

17 Q ALL RIGHT. LET'S GO BACK TO APRIL 26, 2001, AND I'M  
18 GOING TO SHOW YOU THESE CHECKS. IF THESE ARE THE CHECKS  
19 THAT HAVE BEEN PRODUCED BY THE BANK THAT WERE THE SOURCE OF  
20 THE CD THAT YOU OPENED AND ---

21 A UH-HUH.

22 Q THEY WERE EXHIBITS 3 THROUGH 9. I WANT YOU TO TAKE A  
23 LOOK AT THESE. OKAY. AND THIS FIRST CHECK IS EXHIBIT NO.

24 3. IF YOU WILL, TELL ME WHO THAT CHECK IS MADE PAYABLE TO?

25 A KAREN POWELL AS CONSERVATOR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0310

APPENDIX 315

- 1 Q KEEP GOING.
- 2 A OF CODY [REDACTED] P [REDACTED], A MINOR.
- 3 Q ALL RIGHT. LET ME ASK YOU THIS BEFORE YOU GET INTO
- 4 THAT ANY MORE. I'M GOING TO SHOW YOU EXHIBIT 10.
- 5 A UH-HUH.
- 6 Q CAN YOU IDENTIFY THAT DOCUMENT FOR ME?
- 7 A IT'S THE OPENING OF A NEW CD ACCOUNT.
- 8 Q WOULD THERE HAVE BEEN ANOTHER SIGNATURE CARD OR
- 9 SOMETHING THAT WENT ALONG WITH THIS?
- 10 A YES.
- 11 Q AND WOULD IT HAVE HAD MS. POWELL'S SIGNATURE ON IT?
- 12 A YES.
- 13 Q IS THIS YOUR SIGNATURE RIGHT HERE IN THE BOTTOM CORNER
- 14 OF IT?
- 15 A YES.
- 16 Q WHOSE NAME IS THE CD HOLDER OF THIS -- WHOSE NAME IS
- 17 THIS CD IN?
- 18 A KAREN POWELL.
- 19 Q IS CODY [REDACTED] P [REDACTED] ANYWHERE ON THE CD?
- 20 A ACCORDING TO THIS, NO.
- 21 Q HAVE YOU RECEIVED ANY OTHER INFORMATION THAT WOULD
- 22 TELL YOU CODY [REDACTED] P [REDACTED] NAME IS ON THIS CD?
- 23 A I MEAN, I SAW SOMETHING EARLIER THAT HAD HER NAME AND
- 24 HIS NAME AND HER AS THE GUARDIAN ON IT.
- 25 Q OKAY. BUT YOU DON'T SEE ANYTHING ON THIS DEPOSIT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0311

APPENDIX 316

- 1 TICKET?
- 2 A IT SAYS KAREN POWELL.
- 3 Q LET ME ASK YOU ABOUT EXHIBIT 3. YOU WERE READING TO
- 4 ME THE -- WHO THE CHECK WAS MADE PAYABLE TO. HOW MUCH IS
- 5 THIS CHECK FOR?
- 6 A \$253.67.
- 7 Q CAN YOU TELL ME, BASED ON YOUR REVIEW OF THIS EXHIBIT
- 8 3, WHO ENDORSED THAT CHECK?
- 9 A KAREN POWELL.
- 10 Q AND HOW DID YOU -- HOW DID YOU VERIFY THIS
- 11 ENDORSEMENT? WOULD SHE HAVE SIGNED THIS IN YOUR PRESENCE
- 12 OR WOULD SHE HAVE JUST HANDED IT TO YOU ALREADY SIGNED?
- 13 A SHE WOULD SIGN IT IN MY PRESENCE.
- 14 Q DID YOU HAVE THE DOCUMENTS IN YOUR POSSESSION AT THE
- 15 TIME YOU TOOK THESE CHECKS TO THE HEAD TELLER TO GIVE KAREN
- 16 POWELL THE AUTHORITY TO ENDORSE THIS CHECK?
- 17 A SAY THAT AGAIN.
- 18 Q DID YOU HAVE ANY DOCUMENTS IN YOUR POSSESSION AT THE
- 19 TIME YOU TOOK THIS CHECK TO THE HEAD TELLER THAT GAVE KAREN
- 20 POWELL THE AUTHORITY TO SIGN THIS CHECK?
- 21 A WHAT DO YOU MEAN DOCUMENTS TO SIGN THIS CHECK?
- 22 Q ALL RIGHT. LET ME BACK UP. THIS CHECK IS MADE
- 23 PAYABLE TO KAREN POWELL AS CONSERVATOR FOR CODY [REDACTED]
- 24 [REDACTED], A MINOR.
- 25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0312

APPENDIX 317

1 Q WHAT DOCUMENTS WOULD YOU HAVE FOUND IT NECESSARY TO  
2 GET TO ALLOW HER TO ENDORSE THAT CHECK?

3 A WELL, THE CHECK -- TO ME -- NOW, IF I OPENED A CD  
4 ACCOUNT, KAREN CAME IN AND WANTED TO OPEN A CD ACCOUNT,  
5 WHICH IS WHAT YOU JUST SHOWED ME, AND SHE GAVE ME THIS  
6 CHECK-- NOW, IS THIS ALL PART -- IS THIS ALL PART OF THE CD  
7 ACCOUNT? IS THAT WHAT THIS IS?

8 Q EXHIBIT 3 THROUGH 9 MAKE UP THIS CD.

9 A OKAY. AND THEY'RE ALL THE SAME. I MEAN, LOOKING AT  
10 THIS, I OPENED A NEW CD ACCOUNT FOR KAREN. THIS WOULD TELL  
11 ME THAT KAREN CAME IN AND WANTED TO OPEN A NEW CD ACCOUNT,  
12 WHICH IS WHAT I OPENED FOR HER. AND THEN THIS WOULD HAVE  
13 BEEN WHAT CAME AT THE END. SHE WOULD HAVE GIVEN ME THESE  
14 CHECKS AND THEN I'D TAKE THESE TO THE TELLER.

15 Q ALL RIGHT.

16 A AND THEN THE TELLER WOULD HAVE, YOU KNOW, THIS, ALONG  
17 WITH THE CHECKS.

18 Q WOULD YOU HAVE REVIEWED WHO THESE CHECKS WERE MADE  
19 PAYABLE TO?

20 A I'M -- IT SAYS KAREN POWELL ON THERE.

21 Q BUT WHAT ELSE DOES IT SAY?

22 A IT SAYS KAREN POWELL AS CONSERVATOR OF CODY [REDACTED]

23 P [REDACTED] A MINOR.

24 Q DID YOU KNOW WHAT CONSERVATOR MEANT IN APRIL OF 2001?

25 A I'M -- I'M SURE I DID.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0313

APPENDIX 318

1 Q DID YOU REVIEW THE MANUAL AT ANY TIME IN 2001 WHEN YOU  
2 ACCEPTED THIS CHECK?  
3 A I DON'T KNOW.  
4 Q TELL ME, FROM READING THAT PAYEE LINE AGAIN, WHOSE  
5 MONEY IS THIS?  
6 A IT'S -- KAREN POWELL HAS COME IN TO OPEN A CD ACCOUNT,  
7 AND THIS SAYS PAYABLE TO KAREN POWELL AS A CONSERVATOR.  
8 Q BUT WHOSE MONEY IS THIS \$253.67?  
9 A IT SAYS TO KAREN POWELL AS CONSERVATOR OF CODY [REDACTED]  
10 P [REDACTED]. SO, TO ME, THIS IS -- IT'S BOTH OF THEIR MONEY.  
11 Q A MINOR. SO THAT LET YOU KNOW IT WAS A CHILDREN'S  
12 ACCOUNT, CORRECT, OR IT WAS FOR A CHILD?  
13 A IF HIS NAME IS ON IT. I MEAN, ARE YOU REFERRING TO  
14 THIS CD ACCOUNT?  
15 Q YES.  
16 A OKAY. IF HE'S ON THE ACCOUNT, THEN IT WOULD BE IN  
17 BOTH OF THEIR NAMES, AND HER AS A CONSERVATOR, IF THAT'S  
18 WHAT SHE ASKS FOR. BUT LOOKING AT THIS, SHE DIDN'T ASK FOR  
19 A CONSERVATOR ACCOUNT, SHE ASKED FOR A CD ACCOUNT. AND  
20 THAT'S WHAT I OPENED.  
21 Q AND DID YOU LOOK AT THE PAYEE LINES ON THESE CHECKS  
22 WHEN YOU TOOK THEM FROM HER?  
23 A I MEAN, I CAN'T SAY, YES, I DID OR I DIDN'T.  
24 Q ALL RIGHT. LET ME SHOW YOU EXHIBIT 4. CAN YOU ALSO  
25 READ TO ME WHO THAT CHECK'S MADE PAYABLE TO?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0314

APPENDIX 319

- 1 A PAY TO THE ORDER OF KAREN M. POWELL, AS CONSERVATOR  
2 FOR CODY [REDACTED] P [REDACTED], A MINOR.  
3 Q AND HOW MUCH IS THAT CHECK FOR?  
4 A \$253.67.  
5 Q OKAY. DID YOU HAVE ANY DOCUMENTATION SHOWING THAT SHE  
6 HAD BEEN APPOINTED AS CONSERVATOR WHEN YOU ACCEPTED THIS  
7 CHECK?  
8 A I MEAN, NOT THAT I CAN REMEMBER.  
9 Q ALL RIGHT. LET ME SHOW YOU PLAINTIFFS' EXHIBIT 5.  
10 CAN YOU READ ME THE PAYEE LINE ON THIS CHECK?  
11 A PAY TO THE ORDER OF KAREN M. POWELL, AS CONSERVATOR  
12 FOR CODY [REDACTED] P [REDACTED], A MINOR.  
13 Q AND THE AMOUNT ON THAT CHECK?  
14 A \$253.67.  
15 Q LET ME SHOW YOU PLAINTIFFS' EXHIBIT 6. CAN YOU READ  
16 THE PAYEE LINE ON THIS CHECK?  
17 A UH-HUH. PAY TO THE ORDER OF KAREN POWELL, AS  
18 CONSERVATOR OF CODY [REDACTED] P [REDACTED], A MINOR.  
19 Q AND HOW MUCH IS THAT CHECK FOR?  
20 A \$4,819.73.  
21 Q LET ME SHOW YOU EXHIBIT 7. CAN YOU PLEASE READ THE  
22 PAYEE LINE ON THIS CHECK?  
23 A PAY TO THE ORDER KAREN AND TRAVIS POWELL, FOR MINOR  
24 CODY P [REDACTED].  
25 Q WHAT DOES THAT LITTLE ABBREVIATED WORD STAND FOR

CODY [REDACTED] VS. BANK OF AMERICA

ROA 0315

APPENDIX 320

- 1 BESIDE TRAVIS POWELL?
- 2 A I DON'T KNOW.
- 3 Q DID YOU HAVE -- DID YOU INQUIRE AS TO WHAT THAT MIGHT
- 4 MEAN WHEN YOU ACCEPTED THIS CHECK?
- 5 A I DON'T REMEMBER.
- 6 Q OKAY. AND HOW MUCH IS THIS CHECK FOR?
- 7 A 33,000.
- 8 Q ALL RIGHT. I'M GOING TO SHOW YOU THE ENDORSEMENT ON
- 9 THIS. WAS TRAVIS POWELL PRESENT IN YOUR OFFICE WHEN THE CD
- 10 WAS OPENED?
- 11 A NOT THAT I REMEMBER.
- 12 Q DO YOU REMEMBER EVER SEEING A COPY OF HIS DRIVER'S
- 13 LICENSE?
- 14 A NO.
- 15 Q COULD YOU -- DO YOU KNOW HIM AT ALL?
- 16 A NO.
- 17 Q COULD YOU DESCRIBE HIM?
- 18 A NO.
- 19 Q WAS HE -- DO YOU REMEMBER IF KAREN HAD A GENTLEMAN
- 20 WITH HER THAT DAY WHEN SHE CAME INTO YOUR -- INTO YOUR
- 21 OFFICE?
- 22 A I DON'T REMEMBER.
- 23 Q OKAY. AS A MATTER OF COURSE, BASED ON YOUR TRAINING
- 24 AND EXPERIENCE, WOULD YOU HAVE SEEN BOTH OF THE PEOPLE WHO
- 25 WERE THE PAYEES ON THIS CHECK ENDORSE THE CHECK WHEN YOU

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0316

APPENDIX 321

1 ACCEPTED IT?

2 A I MEAN, I WOULD -- EITHER MYSELF OR A TELLER, YES.

3 Q WOULD YOU HAVE ACCEPTED THIS CHECK IF KAREN HAD  
4 ALREADY CAME IN AND WRITTEN -- AND HIS NAME HAD BEEN ON IT  
5 WHEN SHE CAME IN?

6 A I MEAN, I -- I CAN'T SAY THAT I WOULD OR NOT. I MEAN,  
7 I ---

8 Q WHAT WOULD THE BANK MANUAL TELL YOU REGARDING WHETHER  
9 YOU WOULD ACCEPT THIS CHECK?

10 A AS FAR AS -- AGAIN, LIKE I SAID, WHEN -- AT THE END  
11 OF THE TRANSACTION THEY WOULD HAND ME THE CHECKS AND THEN I  
12 WOULD TAKE THEM TO THE TELLER. I MEAN, THAT -- THAT'S WHAT  
13 I REMEMBER.

14 Q AND LET ME MAKE SURE I'M CLEAR ON THIS. WHEN YOU  
15 ACCEPTED THE CHECKS BEFORE YOU TOOK THEM TO TELLER, WOULD  
16 YOU EXAMINE THEM YOURSELF?

17 A USUALLY? NO.

18 Q HOW WOULD YOU KNOW THE AMOUNT TO SET UP THE CD FOR?

19 A I MEAN, I WOULD LOOK AT THE AMOUNT ON THE CHECKS. I  
20 MEAN, I WOULD ADD UP THE CHECKS MYSELF. IF ALL OF THESE  
21 WERE HANDED TO ME AND SHE, YOU KNOW, WANTED TO OPEN THAT  
22 AMOUNT OF A CD, THEN I WOULD MAKE SURE THAT WAS THE AMOUNT.  
23 SO, I MEAN, THAT'S PRETTY MUCH WHAT I LOOK AT.

24 Q SO YOU WOULD HAVE EXAMINED THE CHECKS TO SEE THE  
25 AMOUNTS?

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0317

APPENDIX 322



- 1 A UH-HUH.
- 2 Q AND WHAT'S THE NUMBER OF THIS CHECK, EXHIBIT 7?
- 3 A 33,000.
- 4 Q WOULD YOU HAVE FLIPPED THEM OVER TO CHECK THAT THEY
- 5 WERE ENDORSED BEFORE YOU TOOK THEM TO THE TELLER?
- 6 A I'M NOT GOING TO SAY ALWAYS, NO.
- 7 Q WAS THAT SOMETHING THAT YOU HAD TO TAKE CARE OF BEFORE
- 8 YOU TOOK IT TO THE TELLER?
- 9 A NOT ALWAYS.
- 10 Q SO WOULD THE CUSTOMER GO WITH YOU THE TELLER LINE?
- 11 A SOMETIMES.
- 12 Q DO YOU RECALL IF THAT HAPPENED IN THIS INSTANCE?
- 13 A NO.
- 14 Q OKAY. LET ME SHOW YOU PLAINTIFFS' EXHIBIT 8. CAN YOU
- 15 READ THE PAYEE LINE ON THIS ONE? IT'S DIFFICULT.
- 16 A PAY TO THE ORDER OF KAREN AND TRAVIS POWELL FOR MINOR
- 17 CODY P [REDACTED].
- 18 Q AND WHAT'S THE ABBREVIATION AFTER TRAVIS POWELL'S
- 19 NAME?
- 20 A I DON'T KNOW.
- 21 Q CAN YOU READ IT?
- 22 A I DON'T HAVE MY GLASSES. CO-CN.
- 23 Q OKAY. AND WHAT'S THE AMOUNT OF THAT CHECK?
- 24 A 99,000.
- 25 Q AND IS THAT CHECK ENDORSED BY TRAVIS POWELL?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0318

APPENDIX 323

- 1 A YES.
- 2 Q AND DO YOU HAVE ANY RECOLLECTION WHETHER THAT WOULD
- 3 HAVE BEEN DONE IN YOUR PRESENCE OR NOT?
- 4 A I DON'T REMEMBER.
- 5 Q OKAY. LET ME SHOW YOU PLAINTIFFS' EXHIBIT 9. IF YOU
- 6 COULD READ TO ME THE PAYEE LINE ON THIS CHECK.
- 7 A T. POWELL AND K. POWELL, CO-CONSERVATORS FOR CODY
- 8 P██████, A MINOR.
- 9 Q AND WHAT'S THE AMOUNT ON THAT CHECK?
- 10 A \$114,866.77.
- 11 Q DO YOU -- LET ME SHOW YOU PLAINTIFFS' EXHIBIT 10, AND
- 12 TELL ME THE COMBINED TOTAL OF THESE CHECKS?
- 13 A \$252,447.51.
- 14 Q OKAY. DO YOU RECALL KNOWING AT THE TIME THAT THIS WAS
- 15 A CHILD'S MONEY?
- 16 A I DON'T REMEMBER.
- 17 Q DID YOU RECALL HAVING ANY CONVERSATIONS WITH KAREN
- 18 WHEN SHE WAS OPENING THIS ACCOUNT REGARDING HER NEPHEW,
- 19 CODY?
- 20 A I DON'T REMEMBER.
- 21 Q DID YOU KNOW WHY HE RECEIVED THIS MONEY?
- 22 A A PREVIOUS PERSONAL BANKER, THE ONE WHO TRAINED ME,
- 23 HAD ACTUALLY TOLD ME THAT HIS FATHER WAS KILLED IN SOME
- 24 TYPE OF ACCIDENT AND THAT KAREN WAS TAKING CARE OF HIS SON.
- 25 I MEAN, THAT'S -- THAT'S WHAT I KNEW OF KAREN.

CODY P██████ VS. BANK OF AMERICA

ROA 0319

APPENDIX 324

- 1 Q AND WHO WAS THE PERSON THAT GAVE YOU THAT INFORMATION?
- 2 A JOAN LYNCH.
- 3 Q WAS THAT BEFORE SHE CAME IN AND OPENED THE CD?
- 4 A I DON'T REMEMBER WHEN SHE TOLD ME THAT, BUT, I
- 5 MEAN ---
- 6 Q WAS IT YOUR RESPONSIBILITY FOR SETTING THIS ACCOUNT UP
- 7 OR WAS IT SOMEONE ELSE IN THE BANK'S RESPONSIBILITY FOR
- 8 SETTING THIS ACCOUNT UP?
- 9 A WELL, I SET THE ACCOUNT UP. LOOKING AT THIS, I SET
- 10 THE ACCOUNT UP. I MEAN, THAT'S MY SIGNATURE.
- 11 Q DID ANYONE ELSE AT THE BANK HELP YOU SET THIS ACCOUNT
- 12 UP?
- 13 A I DON'T REMEMBER.
- 14 Q COULD THEY?
- 15 A YES.
- 16 Q WHAT DID YOU DO REGARDING THE WORD CONSERVATOR ON
- 17 THESE CHECKS, EXHIBIT 3 THROUGH 9? HOW DID YOU RESOLVE
- 18 THAT ISSUE?
- 19 A WHAT DO YOU MEAN?
- 20 Q IN ACCEPTING THESE CHECKS, HOW DID YOU DETERMINE THAT
- 21 THEY WERE OKAY TO JUST TAKE TO THE TELLER AND THEM BE
- 22 DEPOSITED?
- 23 A WELL, IF THEY WEREN'T OKAY TO BE DEPOSITED INTO THAT
- 24 CD ACCOUNT, THEN THE HEAD TELLER WOULD HAVE TOLD ME SO.
- 25 Q DO YOU THINK THE HEAD TELLER RELIED ON YOU TO MAKE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0320

APPENDIX 325

1 SURE YOU HAD THAT INFORMATION?

2 A NO. I MEAN, IF THERE'S SOMETHING I NEEDED, I MEAN,  
3 SHE WOULD TELL ME, LEE ANN, YOU NEED THIS OR I NEED THIS TO  
4 PROCESS THESE CHECKS.

5 Q WHEN THE ACCOUNT WAS BEING SET UP AND THE COMPUTER  
6 SYSTEM WAS PROMPTING YOU THROUGH THE INFORMATION YOU  
7 NEEDED, WOULD THAT NOT HAVE PLACED A RESPONSIBILITY ON YOU  
8 TO MAKE SURE THAT YOU HAD THE INFORMATION?

9 A I MEAN, I WOULD GET WHATEVER IT WAS THAT I NEEDED. I  
10 MEAN, YOU CAN'T GO FORWARD -- I DO REMEMBER YOU CAN'T GO  
11 FORWARD OPENING AN ACCOUNT UNLESS YOU HAVE THE INFORMATION  
12 THAT WAS ASKED FOR.

13 Q DO YOU EVER REMEMBER SEEING THE WORD CONSERVATOR ON  
14 THESE CHECKS AND THINKING, I NEED MORE INFORMATION?

15 A I DON'T REMEMBER THESE CHECKS. I DON'T -- I DON'T  
16 REMEMBER THIS. I MEAN, BY LOOKING AT THAT IS HOW I KNOW I  
17 OPENED A CD ACCOUNT, BECAUSE I KNOW THAT'S MY SIGNATURE AND  
18 THAT'S WHAT IT SAYS THAT I OPENED.

19 Q WHEN YOU SEE A CHECK THAT'S PAYABLE TO A CONSERVATOR,  
20 WOULDN'T YOU HAVE TO HAVE ADDITIONAL DOCUMENTATION?

21 A I MEAN, IF THAT'S WHAT I NEEDED AT THE TIME. I DON'T  
22 -- I MEAN ---

23 Q BASED ON YOUR TRAINING AND EXPERIENCE AT BANK OF  
24 AMERICA, IF YOU WERE SETTING UP AN ACCOUNT WITH A CHECK  
25 THAT WAS MADE PAYABLE TO A CONSERVATOR, WOULDN'T YOU NEED

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0321

APPENDIX 326

1 ADDITIONAL INFORMATION?

2 A AGAIN, I MEAN, UNLESS TAKING THESE CHECKS BACK -- LIKE  
3 I SAID, TAKING THESE CHECKS BACK TO THE TELLER, IF THERE  
4 WERE SOMETHING ELSE THAT I NEEDED, SHE WOULD SAY, YOU CAN'T  
5 DO THIS UNLESS YOU HAVE THIS.

6 Q WHY WOULD SHE KNOW THAT YOU NEEDED SOMETHING ELSE? IF  
7 YOU TOOK HER A CHECK THAT WAS PAYABLE TO THESE TWO  
8 INDIVIDUALS AND THEIR SIGNATURES WERE ON IT, HOW WOULD THE  
9 HEAD TELLER KNOW THAT YOU NEEDED ADDITIONAL INFORMATION?

10 A I MEAN, I DON'T KNOW. THE TELLERS ARE THE ONES THAT  
11 ARE TRAINED TO TAKE CHECKS OR, YOU KNOW, WHATEVER, PROCESS  
12 THE CHECKS, WHATEVER IT IS THAT THEY DO WITH THEM. I MEAN,  
13 I DIDN'T -- I DIDN'T HANDLE MONEYS AT THE BANK.

14 Q YOU HANDLED THESE SEVEN CHECKS AND TOOK THEM TO THE  
15 TELLER FOR DEPOSIT, CORRECT?

16 A WELL, AS FAR AS PROCESSING, IS WHAT I MEAN.

17 Q RIGHT. AND YOU WERE FAMILIAR WITH THE ENDORSEMENT  
18 RULES, I GUESS, OF THE BANK AS FAR AS WHAT'S ON THE FRONT  
19 OF THE CHECK NEEDS TO BE ENDORSED ON THE BACK. IS THAT  
20 CORRECT?

21 A I MEAN, I WOULD SAY, YES. I MEAN, I DON'T REMEMBER.

22 Q YOU DID NOT SET UP A CONSERVATORSHIP ACCOUNT ON APRIL  
23 26, 2001. IS THAT CORRECT?

24 A BY LOOKING AT THAT, BECAUSE THAT SAYS I SET UP A CD  
25 ACCOUNT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0322

APPENDIX 327

1 Q DO YOU REMEMBER IF KAREN POWELL GAVE YOU ANY PAPERS AT  
2 ALL WHEN SHE CAME TO SET UP THIS ACCOUNT?

3 A NO, I DON'T REMEMBER.

4 Q DO YOU REMEMBER EVER SEEING ANY COURT DOCUMENTS, COURT  
5 ORDER, ANYTHING LIKE THAT?

6 A NO.

7 Q DO YOU HAVE ANY IDEA WHOSE SOCIAL SECURITY NUMBER WAS  
8 ON THIS CD, TAX IDENTIFICATION NUMBER?

9 A NO.

10 Q DO YOU REMEMBER GETTING CODY P [REDACTED] SOCIAL SECURITY  
11 NUMBER?

12 A NO.

13 Q BASED ON YOUR -- YOUR REVIEW OF THESE CHECKS NOW, DO  
14 YOU BELIEVE THE ACCOUNT WAS SET UP PROPERLY?

15 A I SET UP A CD ACCOUNT SO, I MEAN, THAT'S -- I MEAN, I  
16 WAS TRAINED TO OPEN A CD ACCOUNT. I MEAN, I OPENED THOSE  
17 MORE OFTEN THAN I DID, I MEAN, MINOR ACCOUNTS. I MEAN, I  
18 CAN'T -- WHEN YOU OPEN AN ACCOUNT, YOU HAVE TO DO WHAT THE  
19 COMPUTER SCREEN TELLS YOU TO DO, YOU HAVE TO GO STEP BY  
20 STEP. IF YOU DON'T HAVE WHAT IT ASKS FOR, YOU CAN'T  
21 CONTINUE WITH THAT SPECIFIC ACCOUNT.

22 Q BUT THE ORIGINAL INTO THE COMPUTER SCREEN THAT GETS  
23 YOU STARTED, WHERE DO YOU GET THAT INFORMATION FROM?

24 A WHAT ---

25 Q LIKE, DOES THE CUSTOMER TELL YOU THE PRODUCT THAT HE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0323

APPENDIX 328

- 1 OR SHE WANTS?
- 2 A YES.
- 3 Q SO WHEN KAREN POWELL CAME IN AND TOLD YOU SHE WANTED A
- 4 CD, THAT WAS IT, YOU JUST CONTINUED RIGHT ON BASED ON WHAT
- 5 SHE TOLD YOU?
- 6 A YES.
- 7 Q AND ONCE YOU REVIEWED THESE CHECKS, THERE WAS NOTHING
- 8 IN THESE CHECKS, IF THIS IS YOUR TESTIMONY, THAT MADE YOU
- 9 QUESTION THE TYPE OF ACCOUNT THAT YOU HAD SET UP?
- 10 A NO.
- 11 Q ARE YOU AWARE THAT -- LET ME BACK UP AND ASK YOU THIS
- 12 QUESTION. WHOSE \$252,447.51 DO YOU BELIEVE THIS WAS THAT
- 13 YOU DEPOSITED ON THAT DAY?
- 14 A WELL, IT'S GOT KAREN POWELL'S NAME ON IT. BY LOOKING
- 15 AT THIS SPECIFIC DOCUMENT, IT WAS KAREN POWELL'S NAME ON
- 16 IT. SO THE CD IS SET UP WITH HER NAME ON IT.
- 17 Q THE WAY THIS WAS SET UP, SHE HAD FULL ACCESS TO THAT
- 18 MONEY. IS THAT CORRECT?
- 19 A WELL, I CAN'T TELL YOU THAT. I MEAN, THIS IS JUST
- 20 SHOWING A CD ACCOUNT AND THE AMOUNT OF MONEY THAT WAS
- 21 DEPOSITED. I MEAN, I DON'T ---
- 22 Q LOOKING AT THIS DOCUMENT, DO YOU HAVE ANY REASON TO
- 23 BELIEVE SHE DIDN'T HAVE FULL ACCESS TO THE MONEY SHE
- 24 DEPOSITED IN THAT CD ON APRIL 26TH?
- 25 A I MEAN, THAT -- LOOKING AT THAT, THAT WOULD TELL ME

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0324

APPENDIX 329

1 THAT SHE HAD ACCESS TO THAT MONEY.

2 Q ALL RIGHT. LOOKING AT THE CHECKS, EXHIBIT 3 THROUGH  
3 9, WHOSE MONEY WAS THIS?

4 A I MEAN, I CAN'T TELL YOU WHOSE MONEY. I MEAN, IT SAYS  
5 PAY TO THE ORDER OF T. POWELL AND K. POWELL, CO-  
6 CONSERVATORS FOR CODY P [REDACTED], A MINOR.

7 Q WHO WAS THE MONEY FOR?

8 A CODY P [REDACTED].

9 Q OKAY. SO ISN'T IT TRUE THAT THIS \$252,447.51 WAS CODY  
10 P [REDACTED] MONEY?

11 A BY LOOKING AT THAT?

12 Q NO, BUT LOOKING AT THE CHECKS, THE SOURCE OF THE  
13 FUNDS.

14 A I MEAN, BY LOOKING AT THIS, I MEAN -- I DON'T REMEMBER  
15 THESE CHECKS. BUT LOOKING AT THIS, I MEAN, IT SAYS FOR  
16 CODY P [REDACTED], A MINOR. SO THIS IS TELLING ME THAT THEY CAN  
17 TAKE CARE OF HIS MONEY.

18 Q BUT WHOSE MONEY IS IT?

19 A IT WAS CODY P [REDACTED].

20 Q DO YOU UNDERSTAND THE PURPOSE OF A CONSERVATORSHIP  
21 ACCOUNT IS TO PROTECT A MINOR'S MONEY?

22 A YES.

23 Q DO YOU BELIEVE THAT HIS MONEY WAS PROTECTED BY SETTING  
24 IT UP IN A CD WITH JUST HER NAME ON IT?

25 A THIS DOESN'T TELL ME IT JUST HAD HER NAME ON IT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0325

APPENDIX 330



- 1 Q OKAY.
- 2 A I MEAN, DO YOU HAVE THE PAGE THAT SAYS HOW THAT
- 3 WAS SET UP? I MEAN, I DON'T -- THIS TELLS ME THAT JUST
- 4 KAREN POWELL'S NAME IS ON A CD ACCOUNT. I MEAN, IS
- 5 THAT WHOSE NAME IS -- I MEAN, WAS HIS NAME ON THIS CD
- 6 ACCOUNT?
- 7 Q DID YOU SET IT UP WITH HIS NAME ON THE ACCOUNT?
- 8 A I CAN'T TELL YOU THAT. I DON'T REMEMBER.
- 9 Q DID YOU SET IT UP AS A CONSERVATORSHIP ACCOUNT?
- 10 A LOOKING AT THIS, IT SAYS I SET UP A CD ACCOUNT.
- 11 THAT'S ALL I CAN TELL YOU WITHOUT SEEING -- I MEAN, THERE
- 12 IS -- YOU'RE ASKING ME ABOUT A SIGNATURE CARD PAGE THAT'S
- 13 AT THE END WHERE THE BEGINNING PAGE SHOWS YOU HOW YOU SET
- 14 -- WHOSE NAME IS UP ACTUALLY ON THAT ACCOUNT.
- 15 Q AND YOU DON'T RECALL?
- 16 A (SHAKES HEAD.)
- 17 Q ARE YOU AWARE THAT HE -- THAT KAREN POWELL USED CODY'S
- 18 MONEY FOR HER OWN PURPOSES?
- 19 A YES, I KNOW THAT NOW.
- 20 Q WERE YOU AWARE OF THAT AT ANY TIME BEFORE THIS
- 21 LITIGATION BEGAN?
- 22 A NO.
- 23 Q YOU NEVER RECEIVED ANY MONEY FROM KAREN POWELL, DID
- 24 YOU?
- 25 A NO.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0326

APPENDIX 331

1 Q ISN'T IT TRUE, ACCORDING TO THE BANK MANUAL, THAT THIS  
2 ACCOUNT, HAD IT BEEN SET UP AS A CONSERVATORSHIP ACCOUNT,  
3 YOU WOULD HAVE HAD TO SEE A COURT ORDER?

4 A CORRECT.

5 Q SO ISN'T IT TRUE THAT THE ACCOUNT WAS NOT SET UP  
6 PROPERLY?

7 A I MEAN, I CAN'T TELL YOU THAT IT WAS SET UP  
8 IMPROPERLY. I MEAN, LOOKING AT THIS -- LOOKING AT THIS  
9 TELLS ME THAT KAREN CAME IN AND WANTED TO OPEN A NEW CD  
10 ACCOUNT. THAT'S WHAT SHE ASKED FOR AND THAT'S WHAT I  
11 OPENED FOR HER. AND I MEAN ---

12 Q BUT LOOKING AT THE CHECKS, DO YOU BELIEVE THAT THAT  
13 WAS THE APPROPRIATE ACCOUNT TO OPEN FOR CODY [REDACTED]?

14 A I MEAN, I -- THERE -- THERE'S DIFFERENT KINDS OF  
15 ACCOUNTS THAT COULD HAVE BEEN OPENED ---

16 Q LET ME REPHRASE JUST SO WE'LL BE CLEAR. IF THE  
17 CUSTOMER TELLS YOU ONE THING AND THE CHECK IS MADE PAYABLE  
18 IN A DIFFERENT WAY, WHAT CONTROLS THE TYPE OF ACCOUNT YOU  
19 SET UP?

20 A AGAIN, IF A -- I LOOKED AT THE CHECKS, REALLY THE  
21 AMOUNT OF THE CHECKS. I MEAN, I DIDN'T DEAL WITH  
22 PROCESSING OF CHECKS. YOU KNOW, IF SHE CAME IN AND ASKED  
23 FOR A CONSERVATOR ACCOUNT, THAT'S WHAT I WOULD OPEN. IF  
24 SHE ASKED FOR A CD ACCOUNT, THAT'S WHAT I OPENED. AND  
25 THAT'S WHAT SHE ASKED ME TO DO AND THAT'S WHAT I OPENED.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0327

APPENDIX 332

1 AT THE END IS WHEN I TAKE THOSE MONEYS TO A TELLER TO  
2 PROCESS. AND IF THE TELLER SAID, YOU KNOW, YOU CAN'T OPEN  
3 THIS ACCOUNT FOR WHATEVER REASONS, THEN I WOULD, YOU KNOW,  
4 SAY, OKAY. WE CAN'T OPEN THE ACCOUNT FOR WHATEVER  
5 REASONS. I MEAN ---

6 Q AND YOU DON'T RECALL IF THE TELLER EVER TOLD YOU THAT  
7 DURING THIS PARTICULAR TRANSACTION?

8 A NO.

9 MS. KELLAHAN: I DON'T HAVE ANYTHING FURTHER. THANK  
10 YOU.

11 CROSS EXAMINATION BY MR. LATHAM:

12 Q MS. YOURKO, I HAVE JUST A FEW QUESTIONS. HOW DID YOU  
13 COME TO LEAVE BANK OF AMERICA?

14 A MY HUSBAND WAS TRANSFERRED TO INDIANAPOLIS. HE'S IN  
15 THE MILITARY.

16 Q ALL RIGHT. WHAT DOES HE DO IN THE MILITARY?

17 A WELL, HIS CURRENT POSITION IS HE'S COMMANDER.

18 Q OF WHAT TYPE OF UNIT?

19 A WELL, IT'S ARIGOR UNIT. IT'S THE 824TH.

20 Q IS THAT PARACHUTE-READY?

21 A YES.

22 Q ALL RIGHT. AND -- AND HE -- HE'S NOW STATIONED AT  
23 FORT BRAGG?

24 A YES.

25 Q OKAY. AND BEFORE YOU LEFT, YOU WERE AT THE BANK A

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0328

APPENDIX 333

- 1 LITTLE OVER A YEAR?
- 2 A CORRECT.
- 3 Q AND DID YOU RECEIVE ANY SORT OF MERIT PAY INCREASES?
- 4 A YES.
- 5 Q ALL RIGHT. AND YOU LEFT THE BANK ON GOOD TERMS?
- 6 A I DID.
- 7 Q ALL RIGHT. AND IF THE BANK -- NEVER. NOW, YOU
- 8 INDICATED WHEN WE RECEIVED EXHIBIT 10 THAT BASED ON THAT
- 9 DOCUMENT YOU OPENED UP A CD ACCOUNT FOR MS. POWELL. IS
- 10 THAT RIGHT?
- 11 A CORRECT.
- 12 Q DID MS. -- IF MS. POWELL HAD PROVIDED YOU WITH A COURT
- 13 ORDER INDICATING THAT SHE WAS TO OPEN A CONSERVATOR
- 14 ACCOUNT, WOULD YOU HAVE OPENED UP A CD ACCOUNT?
- 15 A NOT IF I -- NO.
- 16 Q ALL RIGHT. DO YOU HAVE ANY -- WOULD -- DURING THE
- 17 TIME THAT YOU WERE AT THE BANK AT PAWLEYS ISLAND, DID
- 18 ANYONE EVER PRODUCE TO YOU A COURT ORDER FOR OPENING AN
- 19 ACCOUNT? DO YOU EVER RECALL THAT?
- 20 A FOR ANY ACCOUNT OR ---
- 21 Q RIGHT.
- 22 A --- FOR KAREN POWELL?
- 23 Q FOR ANY ACCOUNTS.
- 24 A YES.
- 25 Q ALL RIGHT. SO PEOPLE DID PROVIDE YOU WITH COURT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0329

APPENDIX 334

1 ORDERS?

2 A YES.

3 Q ALL RIGHT. AND -- AND THEN WHAT WOULD YOU DO IN  
4 OPENING SUCH AN ACCOUNT?

5 A WELL, DEPENDING ON THE TYPE OF ACCOUNT, I HAVE TO TAKE  
6 THE COURT ORDER. THERE WAS ALWAYS A COPY THAT STAYED, YOU  
7 KNOW, WITHIN THE BANKING SYSTEM, WHEREVER IT -- DEPENDING  
8 ON WHAT ACCOUNT IT WAS, DEPENDING ON WHAT TYPE OF COURT  
9 ORDER IT WAS, THEN THERE WAS A SPECIFIC PLACE THAT IT WAS  
10 TO BE SENT.

11 Q AND GIVEN THE FACT THAT YOU OPENED UP A CD ACCOUNT,  
12 DID MS. POWELL PROVIDE YOU ANY COURT ORDERS?

13 A NOT THAT I RECALL.

14 Q ALL RIGHT. AND WOULD YOU HAVE OPENED -- IF SHE HAD  
15 PRESENTED YOU WITH A COURT ORDER THAT SAID THAT IT WAS --  
16 SHE WAS A CONSERVATOR FOR CODY POWELL AND THERE WAS NO  
17 MONEY TO BE WITHDRAWN EXCEPT FOR COURT ORDER, WOULD YOU  
18 HAVE OPENED UP A CD ACCOUNT SUCH AS OPENED HERE?

19 A NO.

20 Q ALL RIGHT. AND HAD MS. POWELL TOLD YOU THAT SHE WAS  
21 CONSERVATOR AND WAS TO OPEN A RESTRICTED ACCOUNT, WOULD YOU  
22 HAVE OPENED UP SUCH A CD AS WAS OPENED HERE?

23 A NO.

24 Q ALL RIGHT. AND YOU WERE GIVEN -- LET ME ASK YOU THIS.  
25 AS FAR AS BANK NORMAL PROCEDURE, WERE THE ACCOUNTS THAT YOU

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0330

APPENDIX 335

- 1 OPENED REVIEWED BY OTHERS?
- 2 A WELL, YES. YOU MEAN AFTER I OPENED THE ACCOUNT?
- 3 Q RIGHT.
- 4 A YES.
- 5 Q ALL RIGHT. WHO REVIEWED THOSE ACCOUNTS?
- 6 A THE HOME OFFICE.
- 7 Q AND I WANT TO DIRECT YOU BACK TO ---
- 8 A MEANING THERE WERE, YOU KNOW, HOW THE ACCOUNT WAS
- 9 OPENED AND THE SIGNATURE PAGES.
- 10 Q I WANT TO DIRECT YOU TO EXHIBIT 2. LET ME ASK YOU
- 11 THIS. WOULD YOU HAVE EVER OPENED UP A CONSERVATOR ACCOUNT
- 12 WITHOUT CONSULTING THE LEGAL FOLKS AT BANK OF AMERICA?
- 13 A NO.
- 14 Q ALL RIGHT. GO AHEAD.
- 15 A NOW, IF I HAD -- AGAIN, IF I HAD A COURT ORDER, THOSE
- 16 TYPES OF ACCOUNTS WERE VERY FEW, SO I ALWAYS CONTACTED
- 17 SOMEONE. I'M NOT GOING TO SAY I ALWAYS CONTACTED LEGAL.
- 18 IT COULD HAVE BEEN MY MANAGER, ANOTHER BANKING CENTER
- 19 MANAGER, OR SOMEONE.
- 20 Q MA'AM, DID YOU CARE ABOUT YOUR CUSTOMERS?
- 21 A YES.
- 22 Q ALL RIGHT. DO YOU KEEP IN TOUCH WITH ANY OF YOUR
- 23 CUSTOMERS TODAY?
- 24 A THERE IS ONE, YES.
- 25 Q ALL RIGHT. ONE OF THE CUSTOMERS YOU HAD AT THE BANK

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0331

APPENDIX 336

1 AT PAWLEYS ISLAND?

2 A YES.

3 Q ALL RIGHT. DID YOU DO YOUR BEST TO OPEN ACCOUNTS  
4 FOLLOWING BANK OF AMERICA PROCEDURES?

5 A YES.

6 Q ALL RIGHT. AND YOU IN FACT GOT A MERIT RAISE?

7 A YES.

8 Q THE PLAINTIFFS IN THIS CASE HAVE MADE AN ALLEGATION  
9 THAT BANK OF AMERICA, AND ESPECIALLY YOU, WERE WILFUL,  
10 WANTON, RECKLESS, NEGLIGENT IN OPENING THIS ACCOUNT. DO  
11 YOU -- DO YOU HAVE ANY RESPONSE TO THAT?

12 A DEFINITELY. I MEAN, ANY -- ANY CLIENT THAT CAME INTO  
13 THE BANK, I DID TO MY BEST TO HELP ANY OF MY CUSTOMERS. I  
14 MEAN, I CARED ABOUT MY CUSTOMERS. AND LIKE YOU SAID,  
15 THERE'S ONE CUSTOMER, MS. CAFUCLES, AN OLDER LADY, THAT I  
16 STILL KEEP IN CONTACT WITH. HER HUSBAND DIED AND SHE CAME  
17 TO ME AND SHE TRUSTED ME TO TAKE CARE OF ALL OF HER  
18 ACCOUNTS. AND, I MEAN, I TREATED ALL OF MY CUSTOMERS THE  
19 SAME.

20 Q ALL RIGHT. AND WERE YOU CAREFUL TO TRY AND AVOID  
21 MISTAKES?

22 A YES.

23 Q AND WERE YOU CAREFUL TO FOLLOW BANK OF AMERICA  
24 PROCEDURES?

25 A YES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0332

APPENDIX 337

- 1 MR. LATHAM: THAT'S ALL I HAVE. THANK YOU.
- 2 REDIRECT EXAMINATION BY MS. KELLAHAN:
- 3 Q JUST A FEW FOLLOW-UP QUESTIONS. REGARDING THE HOME
- 4 OFFICE REVIEW, DID YOU EVER HAVE ACCOUNTS THAT WERE SENT
- 5 BACK TO YOU FOR ADDITIONAL INFORMATION THAT WAS NEEDED?
- 6 A YES.
- 7 Q HOW OFTEN WOULD THAT HAPPEN?
- 8 A I DON'T KNOW. I MEAN ---
- 9 Q MORE THAN ONCE? DID IT HAPPEN MORE THAN ONE TIME?
- 10 A YES.
- 11 Q WHAT KINDS OF THINGS WOULD THEY ASK YOU FOR?
- 12 A THE SIGNATURE CARD. NOW, THIS IS FROM WHAT I
- 13 REMEMBER. I REMEMBER A SIGNATURE CARD -- PAGE EITHER
- 14 WASN'T FILLED OUT WITH MY NAME ON IT OR THE MANAGER'S NAME
- 15 ON IT. I MEAN, THE REASON I REMEMBER THAT IS THAT IT
- 16 NEEDED THE BANKING CENTER MANAGER'S NAME ON IT. FOR WHAT
- 17 REASON, I CAN'T REMEMBER. AND I KNOW SHE WASN'T THERE THAT
- 18 DAY, SO THEY SENT THAT BACK AND SHE HAD TO SIGN IT SO WE
- 19 COULD SEND IT BACK. I MEAN, THOSE TYPES OF THINGS.
- 20 Q WOULD THEY SEND STUFF BACK TO GET A CUSTOMER'S
- 21 SIGNATURE OR SOCIAL SECURITY NUMBER, THINGS LIKE THAT?
- 22 A NO, NOT THAT I REMEMBER. I MEAN, A SOCIAL SECURITY
- 23 NUMBER, USUALLY YOU CAN'T GO FORWARD WITH AN ACCOUNT UNLESS
- 24 YOU HAVE THEIR SOCIAL SECURITY NUMBER.
- 25 Q SO IF THEY SENT IT BACK IT WOULD BE MORE LIKE AN

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0333

APPENDIX 338



- 1 INTERNAL THING THAT SOMETHING NEEDED TO BE DONE BY YOU OR
- 2 THE MANAGER?
- 3 A IF IT'S FOR AN ACCOUNT. I MEAN, MEANING, YOU KNOW,
- 4 LIKE SAY A CD ACCOUNT. IF -- I CAN'T THINK OF WHAT I WOULD
- 5 NEED FOR THAT. I MEAN, I DON'T REALLY REMEMBER, I MEAN,
- 6 SPECIFICS.
- 7 Q CAN YOU BE -- BASED ON YOUR INFORMATION AND YOUR
- 8 TRAINING AND REVIEW OF THE MANUAL, CAN YOU BE A CONSERVATOR
- 9 WITHOUT A COURT ORDER?
- 10 A NO.
- 11 Q DID YOU ASK FOR A COURT ORDER IN THIS MATTER WITH
- 12 KAREN POWELL?
- 13 A I MEAN, WHEN YOU SAY YOU BE A CONSERVATOR WITHOUT A
- 14 COURT ORDER, I MEAN, I DON'T KNOW. I MEAN, BY LOOKING AT
- 15 -- AT THIS, I MEAN, IF YOU'RE GOING TO OPEN A CONSERVATOR
- 16 ACCOUNT YOU HAVE TO HAVE A COURT ORDER.
- 17 Q WELL, BY THE -- BY THE BANK'S OWN DEFINITION --- ISN'T
- 18 IT TRUE THE BANK'S OWN DEFINITION SAYS IT'S A COURT ORDERED
- 19 PERSON?
- 20 A A CONSERVATOR, YES.
- 21 Q AND DID YOU ASK FOR A COURT ORDER IN THIS CASE?
- 22 A I DON'T KNOW.
- 23 Q DID YOU RECEIVE A COURT ORDER IN THIS CASE?
- 24 A I DON'T REMEMBER.
- 25 Q IF YOU HAD A COURT ORDER, DID YOU BELIEVE THAT YOU

CODY REDACTED VS. BANK OF AMERICA

ROA 0334

APPENDIX 339

1 WOULD HAVE SET UP THE CD AS YOU DID?

2 A WITH THESE CHECKS, I MEAN, IF SHE WANTED A CONSERVATOR  
3 ACCOUNT, I WOULD HAVE SET UP A CONSERVATOR ACCOUNT AND I  
4 WOULD HAVE NEEDED A COURT ORDER FOR THAT. AND, YES, SHE  
5 WOULD HAVE HAD TO PROVIDED ME WITH A COURT ORDER TO OPEN A  
6 CONSERVATOR ACCOUNT.

7 Q SO BASED ON THE WAY YOU SET IT UP, YOU DO NOT BELIEVE  
8 THAT SHE PROVIDED YOU WITH ANY SUCH COURT ORDER?

9 A NO.

10 Q IF IT HAD BEEN SET UP AND YOU HAD BEEN PROVIDED WITH A  
11 COURT ORDER, WE WOULDN'T BE HERE TODAY. IS THAT CORRECT?

12 A I MEAN, IF SHE CAME IN AND ASKED FOR A CD ACCOUNT,  
13 THAT'S WHAT I OPENED -- I MEAN, IF SHE ASKED FOR A  
14 CONSERVATOR ACCOUNT, THEN I WOULD HAVE NEEDED A COURT ORDER  
15 TO OPEN THAT, AND THAT'S WHAT I WOULD HAVE OPENED.

16 Q IF THE ACCOUNT HAD BEEN SET UP ACCORDING TO THE COURT  
17 ORDER APPOINTING KAREN POWELL AND TRAVIS POWELL AS CO-  
18 CONSERVATORS, SHE WOULD NOT HAVE HAD ACCESS TO CODY'S MONEY  
19 WITHOUT COURT PERMISSION. ISN'T THAT CORRECT?

20 A I MEAN, IF IT'S A CONSERVATOR ACCOUNT, SHE WOULD NOT  
21 -- I MEAN, LOOKING AT THIS, SHE WOULD NOT HAVE ACCESS TO A  
22 CONSERVATOR ACCOUNT TO SPEND THAT MONEY.

23 MS. KELLAHAN: NOTHING FURTHER. THANK YOU.

24 MR. JENKINSON: THAT CONCLUDES THAT, YOUR HONOR.

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'LL

CODY ~~REDACTED~~ VS. BANK OF AMERICA.

ROA 0335

APPENDIX 340

1 MS. KELLAHAN: ABOUT AN HOUR.  
2 THE COURT: ABOUT AN HOUR?  
3 MR. JENKINSON: ABOUT AN HOUR.  
4 THE COURT: ALL RIGHT. BRING THEM ON IF THEY'RE  
5 READY.  
6 (THE JURY RETURNS TO THE COURTROOM AT 4:08 P.M.)  
7 THE COURT: THE JURY IS BACK REFRESHED. NEXT WITNESS.  
8 MR. JENKINSON: YOUR HONOR, PLEASE. WE HAVE OUR LAST  
9 VIDEO DEPOSITION. THIS IS ONE IS THE DEPOSITIONS OF  
10 MEREDITH LAWRENCE. SHE IS A FORMER EMPLOYEE OF THE BANK  
11 WHO LIVES, AGAIN, OUT OF STATE. THIS VIDEO DEPOSITION WAS  
12 TAKEN IN NEW BRUNSWICK, NEW JERSEY ON DECEMBER 23, 2005.  
13 THE COURT: ALL RIGHT. YOU MAY PROCEED.  
14 MR. JENKINSON: THANK YOU, YOUR HONOR.  
15 MEREDITH LAWRENCE, BEING  
16 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:  
17 DIRECT EXAMINATION BY MR. JENKINSON:  
18 Q MS. LAWRENCE, MY NAME IS BILLY JENKINSON, WE MET JUST  
19 A LITTLE WHILE AGO.  
20 A UH-HUH.  
21 Q YOU UNDERSTAND THAT THIS IS A VIDEO DEPOSITION AND IT  
22 POSSIBLY WILL BE SHOWN TO A JURY IN WILLIAMSBURG COUNTY IN  
23 THE COMING WEEKS OR MONTHS, IT IS YOUR SWORN TESTIMONY AS  
24 IF YOU WERE LIVE IN COURT?  
25 A YES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0336

APPENDIX 341

1 Q NOW, WHEN YOU SPEAK, I WOULD ASK THAT YOU GIVE AN  
2 AUDIBLE ANSWER AND NOT A NOD OF THE HEAD. THE JURY WILL BE  
3 ABLE TO SEE YOUR HEAD, BUT IN ORDER TO MAKE SURE WE  
4 UNDERSTAND WHAT YOUR ANSWER IS, SPEAK AUDIBLY, IF YOU WILL.

5 A OKAY.

6 Q YES OR NO, SO WE'LL UNDERSTAND YOUR ANSWER.

7 A OKAY.

8 Q WHAT IS YOUR PRESENT ADDRESS?

9 A 10 CHESTNUT STREET, MILLTOWN, NEW JERSEY 08850.

10 Q ARE YOU EMPLOYED TODAY?

11 A NO.

12 Q YOU WERE THE BRANCH MANAGER AT PAWLEYS ISLAND, SOUTH  
13 CAROLINA FOR BANK OF AMERICA FOR A CERTAIN PERIOD. WHAT  
14 TIME FRAME WERE YOU THERE AS AN EMPLOYEE FIRST?

15 A AS AN EMPLOYEE, IT WOULD HAVE BEEN SEPTEMBER OF 2000  
16 THROUGH THE END OF AUGUST 2001.

17 Q AND WHAT WAS YOUR JOB AT THE BANK OF AMERICA DURING  
18 THAT, WAS THAT A LITTLE OVER A YEAR?

19 A A LITTLE OVER A YEAR. THE FIRST SIX MONTHS I WAS IN  
20 THE MANAGEMENT TRAINING PROGRAM BEING TRAINED TO BECOME THE  
21 BANKING CENTER MANAGER. AND THE SECOND SIX MONTHS I WAS  
22 ACTUALLY THE BANKING CENTER MANAGER.

23 Q AND YOU LEFT THAT EMPLOYMENT IN 2001?

24 A YES.

25 Q HAVE YOU BEEN INVOLVED IN BANKING BEFORE THAT TIME OR

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0337

APPENDIX 342

1 SINCE THAT TIME?

2 A BEFORE THAT TIME, NOT SINCE.

3 Q WHERE WERE YOU INVOLVED PRIOR TO THAT TIME?

4 A I WAS ALSO WITH BANK OF AMERICA, I WAS IN THEIR  
5 PERSONNEL DEPARTMENT LOCATED IN CHARLOTTE, NORTH CAROLINA.

6 Q AND WHAT TIME FRAME ARE WE TALKING ABOUT THERE?

7 A I WAS THERE FROM SEPTEMBER OF 1997 UNTIL SEPTEMBER OF  
8 2000.

9 Q SO FROM SEPTEMBER OF '97 UNTIL 2001 YOU WERE EMPLOYED  
10 BY THE BANK OF AMERICA?

11 A RIGHT.

12 Q THROUGH AUGUST OF 2001?

13 A RIGHT.

14 Q AND IN THE CAPACITY AS A TRAINEE AND MANAGER FROM  
15 SEPTEMBER OF 2000 TO AUGUST OF 2001?

16 A UH-HUH.

17 Q NOW, DID YOU LIVE IN THE GEORGETOWN AREA AT THE TIME?

18 A I LIVED IN PAWLEYS ISLAND.

19 Q NOW, WHAT WERE YOUR RESPONSIBILITIES AND DUTIES AS  
20 MANAGER OF THE BANK?

21 A MY RESPONSIBILITIES INCLUDED EVERYTHING FROM OPENING  
22 AND CLOSING ACCOUNTS, CUSTOMER SERVICE, TO MANAGING OTHER  
23 ASSOCIATES AT THE BANK, INCLUDING THE TELLER LINE.

24 Q YOU WERE THE TOP RANKING EMPLOYEE OF BANK OF AMERICA  
25 AT THIS BRANCH?

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0338

APPENDIX 343

- 1 A I WAS ONE OF THEM, YES.
- 2 Q ALL RIGHT. WERE THERE OTHER MANAGERS?
- 3 A THERE WERE OTHER MANAGERS IN OTHER DEPARTMENTS. SO,
- 4 FOR INSTANCE, THERE WAS AN INVESTMENT BANKER, THERE WAS A
- 5 PRIVATE BANKER, AND THERE WAS A MORTGAGE BANKER ALSO THERE.
- 6 BUT I WAS RESPONSIBLE FOR THE PHYSICAL ASPECT OF WHAT YOU
- 7 WOULD THINK OF AS A BANKING CENTER.
- 8 Q THE ORGANIZATION AND OPERATION AND DAILY OPERATIONS
- 9 WAS THE AREA OF YOUR RESPONSIBILITY?
- 10 A YES.
- 11 Q HOW MANY EMPLOYEES DID YOU SUPERVISE AT THAT BRANCH?
- 12 A SEVEN.
- 13 Q NOW, THOSE INCLUDED AS GROUPS, I ASSUME, TELLERS, LOAN
- 14 OFFICERS, ANYONE ELSE OF THAT CATEGORY?
- 15 A IT INCLUDED THE TELLERS, A PERSONAL BANKER, AND A
- 16 CUSTOMER SERVICE REPRESENTATIVE.
- 17 Q OKAY. HOW MANY CUSTOMERS DID YOU HAVE AT THAT BANK?
- 18 A I DON'T REMEMBER.
- 19 Q WAS IT IN THE THOUSANDS OR HUNDREDS?
- 20 A I WOULD SAY -- I WOULD SAY THOUSANDS.
- 21 Q AND DO YOU HAVE ANY IDEA OF THE DEPOSIT VOLUME YOU
- 22 WORKED AT THE BANK, THE BRANCH?
- 23 A I DON'T REMEMBER.
- 24 Q OKAY. YOU HAVE NO RECOLLECTION?
- 25 A I HAVE NO RECOLLECTION.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0339

APPENDIX 344

- 1 Q OKAY. NOW, WAS THAT IN THE MILLIONS OR THOUSANDS?
- 2 A I -- I DON'T REMEMBER.
- 3 Q OKAY. NOW, DURING THE -- AND MOST OF MY QUESTIONS
- 4 WILL BE REFERENCED IN THE YEAR 2000 WHEN THE TRANSACTION
- 5 TOOK PLACE. YOU UNDERSTAND WHY YOU'RE HERE IN THIS
- 6 DEPOSITION?
- 7 A YES.
- 8 Q WHAT DO YOU UNDERSTAND THIS LAWSUIT TO BE ABOUT?
- 9 A FROM WHAT I UNDERSTAND, SOME MONEY WAS STOLEN FROM THE
- 10 BANK, A CASE OF FRAUD, AND THE LAWSUIT'S ABOUT GETTING THE
- 11 MONEY BACK TO THE RIGHT PEOPLE.
- 12 Q DO YOU REMEMBER LEE ANN YOURKO?
- 13 A YES.
- 14 Q WAS SHE AN EMPLOYEE UNDER YOUR SUPERVISION AND
- 15 CONTROL?
- 16 A YES.
- 17 Q NOW, AS THE BANK MANAGER WHAT KIND OF TRAINING DID YOU
- 18 GO THROUGH TO BE A BANK MANAGER?
- 19 A I WENT THROUGH SIX MONTHS OF TRAINING, IT ENCOMPASSED
- 20 EVERYTHING FROM ACTUALLY WORKING ON THE TELLER LINE FOR A
- 21 COUPLE WEEKS, TO BEING A PERSONAL BANKER FOR A COUPLE
- 22 MONTHS, THEN, YOU KNOW, TRAINING IN THE BANKING CENTER
- 23 ROLE, BANKING CENTER MANAGER ROLE.
- 24 Q OKAY. IN PREPARATION FOR YOUR DEPOSITION TODAY WHAT
- 25 ALL DID YOU DO TO PREPARE SO YOU COULD TRUTHFULLY TESTIFY

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0340

APPENDIX 345

- 1 AS TO THE QUESTIONS THAT I ASK YOU?
- 2 A I MET WITH MR. DAVIS YESTERDAY.
- 3 Q ALL RIGHT. AND HE IS REPRESENTING YOU IN THIS
- 4 DEPOSITION?
- 5 A YES.
- 6 Q ALL RIGHT. DID YOU REVIEW DOCUMENTS?
- 7 A NO.
- 8 Q YOU HAVE NOT -- I AM TALKING ABOUT THE DOCUMENTATION
- 9 THAT WE HAVE BEFORE US, YOU'VE LOOKED AT ANY OF THESE PRIOR
- 10 TO STARTING YOUR DEPOSITION?
- 11 A I SKIMMED, I THINK, IT WAS SOME OF THE MANUAL.
- 12 Q OKAY.
- 13 A AND THAT WAS IT.
- 14 Q OKAY. PRIOR TO TODAY AND YESTERDAY HAVE YOU REVIEWED
- 15 ANY MATERIALS IN PREPARATION FOR YOUR DEPOSITION?
- 16 A NO.
- 17 Q DO YOU HAVE ANY KIND OF FILE, ANY MATERIAL STILL IN
- 18 YOUR POSSESSION FROM THE BANK OF AMERICA RELATING TO THIS
- 19 CASE?
- 20 A NO.
- 21 Q OKAY. NOW, AS A BRANCH MANAGER AND AS AN EMPLOYEE OF
- 22 THE BANK PARTICULARLY DID YOU -- WERE YOU FAMILIAR WITH
- 23 STUDY AND RESPONSIBLE TO FOLLOW THE BANK REGULATIONS?
- 24 A YES.
- 25 Q NOW, THERE WAS A -- WE HAVE BEEN PROVIDED BY THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0341

APPENDIX 346



- 1 BANK'S ATTORNEYS WITH THREE VOLUMES OF REGULATIONS.
- 2 A UH-HUH.
- 3 Q DO YOU CALL THOSE VOLUMES?
- 4 A I DON'T REMEMBER THE ACTUAL NAME, I THINK THEY WERE
- 5 MANUALS ON POLICIES AND PROCEDURES.
- 6 Q OKAY. AND WHAT WAS THE SCOPE AS FAR AS BANKING AND
- 7 CHECKING AND DEPOSITING, WOULD THOSE REGULATIONS ENCOMPASS
- 8 THOSE AREAS?
- 9 A I BELIEVE SO. YOU KNOW, IT'S BEEN FIVE YEARS SINCE
- 10 I'VE LOOKED AT THEM. BUT, YES.
- 11 Q IN YOUR TRAINING I UNDERSTAND THAT WHENEVER A QUESTION
- 12 AROSE, YOU HAD THOSE MANUALS PHYSICALLY ---
- 13 A UH-HUH.
- 14 Q --- PRESENT IN THE OFFICE?
- 15 A YES.
- 16 Q YOU WERE PRESENT TO ASSIST ANY EMPLOYEE IN THE OFFICE?
- 17 A YES.
- 18 Q IN ADDITION, YOU HAD A COMPUTERIZED SCREEN THAT YOU
- 19 COULD PROMPT THROUGH AND IT WOULD EXPLAIN TO ANY EMPLOYEE,
- 20 YOU OR ANYONE OPENING AN ACCOUNT, JUST WHAT PROCEDURES HAD
- 21 TO BE FOLLOWED?
- 22 A YES.
- 23 Q THE EMPLOYEE COULD INQUIRE THROUGH THE SCREENING
- 24 PROCESS?
- 25 A TO A CERTAIN EXTENT.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0342

APPENDIX 347

- 1 Q OKAY.
- 2 A IT PROMPTED YOU TO A CERTAIN EXTENT. IT DIDN'T PROMPT
- 3 EVERYTHING.
- 4 Q OKAY. NOW YOU SAY PROMPT, IS THIS ONE OF THOSE
- 5 SCREENS LIKE YOU GO UP TO AN AUTO ATM MACHINE AND YOU TOUCH
- 6 THE SCREEN AND ASK QUESTIONS AND IT WALKS YOU THROUGH THE
- 7 VARIOUS ANSWER OF PROCEDURES?
- 8 A SIMILAR, YES.
- 9 Q OKAY. NOW, I THINK FINALLY YOU ALSO HAD A HOTLINE OR
- 10 ACCESS LINE ---
- 11 A UH-HUH.
- 12 Q --- WHERE YOU COULD PICK UP THE PHONE AND CALL AND ASK
- 13 BANK OFFICIALS IN CHARLOTTE OR WHEREVER THAT WERE CONNECTED
- 14 QUESTIONS THAT YOU NEEDED TO ASK THEM?
- 15 A RIGHT.
- 16 Q OKAY. ANY OTHER RESOURCES THAT YOU RECALL THAT WERE
- 17 AVAILABLE TO YOU AND EMPLOYEES OF THE BANK TO ASSIST YOU IN
- 18 DEALING WITH CUSTOMERS IN YOUR DAY-TO-DAY ACTIVITIES?
- 19 A SURE, I MEAN, YOU COULD ALWAYS CALL YOUR MANAGER. SO
- 20 I COULD CALL MY DIRECT MANAGER AND ASK HIM QUESTIONS AS
- 21 WELL.
- 22 Q NOW, IN CONNECTION WITH THE REGULATIONS, I WANT TO
- 23 SHOW YOU WHAT WE HAVE MARKED AS PLAINTIFFS' EXHIBIT NO. 1.
- 24 YOU'VE HAD A CHANCE TO SCREEN THROUGH THAT ---
- 25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0343

APPENDIX 348

- 1 Q --- TODAY?
- 2 A OKAY.
- 3 Q THOSE ARE SELECTED PAGES FROM THREE VOLUMES WHICH DEAL
- 4 WITH CHECKS, NEGOTIATING CHECKS, MAKING DEPOSITS, AND
- 5 OPENING DEPOSITS.
- 6 A OKAY.
- 7 Q OKAY. AND IT HAS BEEN REPRESENTED TO US THAT THOSE
- 8 WERE THE PAGES FROM THE MANUALS THAT EXISTED IN THE FIRST
- 9 HALF OF 2000, THE YEAR 2000 AT BANK OF AMERICA?
- 10 A WELL, I HAVE A QUESTION ABOUT THAT, BECAUSE I DID
- 11 NOTICE THAT SOME OF THEM SAY 2004, WHICH WOULDN'T HAVE BEEN
- 12 THERE IN 2000.
- 13 Q AGAIN, THAT'S WHAT HAS BEEN REPRESENTED TO US AND
- 14 PROVIDED TO US BY THE BANK IS, MAYBE IT HAS NOT CHANGED.
- 15 A OKAY.
- 16 Q OKAY. THAT'S ALL WE KNOW, THAT WAS PROVIDED TO US BY
- 17 BANK OF AMERICA. AND THOSE ARE ALL BANK OF AMERICA RECORDS
- 18 FROM BASICALLY LOOKING AT THEM, ARE THEY NOT?
- 19 A THEY -- THEY LOOK LIKE WHAT I WOULD HAVE HAD IN MY
- 20 MANUAL.
- 21 Q OKAY. NOW, THOSE MATERIALS THAT YOU HAVE REPRESENTED
- 22 BY PLAINTIFFS' EXHIBIT NO. 1, ARE THOSE THE MANUALS THAT
- 23 YOU STUDIED IN YOUR MONTHS TRAINING AS A MANAGER?
- 24 A I WOULD SAY THAT THEY ARE SIMILAR. I WOULD SAY THAT
- 25 THESE ARE PROBABLY NOT THE EXACT ONES. I HAVE NEVER SEEN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0344

APPENDIX 349

1 THIS FHA BRIDAL REGISTRY PROGRAM BEFORE, I HAVE NO IDEA  
2 WHAT THAT IS.  
3 Q OKAY.  
4 A SO I WOULD SAY, YOU KNOW, THEY'RE SIMILAR, BUT I CAN'T  
5 SAY THAT THESE ARE THE EXACT DOCUMENTS THAT I WORKED OFF  
6 OF.  
7 Q OKAY. BUT APPEAR TO BE WHAT YOU SAW?  
8 A YES.  
9 Q ALL RIGHT. NOW, IF IN THE COURSE OF THE DEPOSITION  
10 I REFER YOU TO A PARTICULAR PAGE AND IT'S NOT WHAT YOU  
11 RECALL ---  
12 A UH-HUH.  
13 Q --- AS BEING THE POLICY AND PROCEDURE, PLEASE STOP US  
14 AND TELL US.  
15 A OKAY.  
16 Q OTHERWISE, IS IT SAFE TO ASSUME THAT WE WILL -- IT'S  
17 AS YOU RECOLLECT?  
18 A YES.  
19 Q OKAY.  
20 A YOU KNOW, REMEMBERING THAT IT WAS FIVE YEARS AGO, AND  
21 IT'S BEEN A LONG TIME AND I'VE DONE A LOT OF THINGS IN THE  
22 LAST FIVE YEARS. SO I JUST, YOU KNOW, I'M HESITANT TO SAY  
23 THAT IT'S EXACTLY AS IT WAS HERE.  
24 Q WELL, MY INTENTION IS TO KEEP MY QUESTIONS VERY SIMPLE  
25 AND NOT GO INTO COMPLEX BANKING ISSUES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0345

APPENDIX 350

- 1 A OKAY.
- 2 Q I JUST TALK ABOUT NEGOTIATING CHECKS ---
- 3 A OKAY.
- 4 Q --- OPENING DEPOSITS ---
- 5 A OKAY.
- 6 Q --- AND THINGS YOU DO EVERY DAY IN THE BANK.
- 7 A RIGHT.
- 8 Q OKAY. AND THOSE ARE TASKS YOU WOULD DO EVERY DAY IN
- 9 THE BANK?
- 10 A RIGHT.
- 11 Q AND YOU DID THEM EVERY DAY FOR SEVERAL YEARS?
- 12 A FOR A YEAR, YEAH.
- 13 Q THEY ARE. AND YOU ALSO SUPERVISED OTHER EMPLOYEES
- 14 DOING THOSE TASKS?
- 15 A RIGHT.
- 16 Q DO YOU EVER RECALL A PERSON BY THE NAME OF KAREN
- 17 POWELL, A KAREN POWELL UNRUE?
- 18 A I REMEMBER THE NAME KAREN POWELL.
- 19 Q OKAY. DO YOU EVER RECALL MEETING HER?
- 20 A I REMEMBER MEETING HER ON ONE OCCASION.
- 21 Q AND DO YOU RECALL WHEN THAT WAS IN RELATION TO THE
- 22 CHECKS AND TRANSACTIONS THAT YOU'VE LOOKED AT IN APRIL AND
- 23 EARLY MAY OF 2001 BEFORE ---
- 24 A NO, I DON'T REMEMBER WHEN IT WAS.
- 25 Q OKAY. DO YOU -- WOULD YOU HAVE KNOWN HER OTHER THAN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0346

APPENDIX 351

- 1 KNOWN HER NAME AND FACE?
- 2 A NO.
- 3 Q DID YOU HAVE ANY SOCIAL CONTACTS WITH HER?
- 4 A NO.
- 5 Q ARE YOU AWARE OF ANYONE IN THE BANK WHO HAD SOCIAL
- 6 CONTACTS WITH HER OR KNEW HER PERSONALLY?
- 7 A I'M NOT AWARE OF ANYONE THAT DID.
- 8 Q OKAY. HAD YOU HAD ANY CONVERSATIONS WITH MS. YOURKO
- 9 ABOUT THIS CASE AT ALL?
- 10 A NO.
- 11 Q DO YOU KNOW WHERE SHE IS TODAY?
- 12 A I DON'T. I -- I KNOW SHE'S -- SHE'S EITHER IN NORTH
- 13 OR SOUTH CAROLINA. I CAN'T REMEMBER WHERE EXACTLY SHE
- 14 LIVES.
- 15 Q OKAY. NOW, I WANT TO ASK YOU ABOUT SOME TRANSACTIONS
- 16 THAT TOOK PLACE WHILE YOU WERE MANAGER. THE FIRST EXHIBIT
- 17 I WANT TO SHOW YOU, DO YOU UNDERSTAND FIRST THAT THERE WERE
- 18 A SERIES OF CHECKS WHICH WERE DEPOSITED ON APRIL 26, 2000
- 19 -- 26, 2001 AND IT WAS A TRANSACTION HANDLED BY LEE ANN
- 20 YOURKO, AN EMPLOYEE OF THE BANK?
- 21 A YES.
- 22 Q I'M GOING TO SHOW YOU WHAT IS PLAINTIFFS' EXHIBIT 13
- 23 AND ASK IF YOU'VE EVER SEEN THIS CHECK BEFORE?
- 24 A I HAVE NOT.
- 25 Q OKAY. NOW, AND I WILL REPRESENT TO YOU THIS IS ONE OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0347

APPENDIX 352

1 THE CHECKS THAT WERE DEPOSITED. IF KAREN UNRUE OR KAREN  
2 POWELL UNRUE APPEARED IN THE BANK TO OPEN AN ACCOUNT ---  
3 A UH-HUH.  
4 Q AND I THINK IN THIS PARTICULAR INSTANCE IT WAS A  
5 CERTIFICATE OF DEPOSIT.  
6 A OKAY.  
7 Q AND THIS CHECK WAS PRESENTED -- LET ME CHANGE  
8 EXHIBITS, BECAUSE I THINK THAT IS ACTUALLY ONE YOU MAY HAVE  
9 HANDLED FIRST. WELL, I WILL ASK YOU ABOUT YOUR CHECK,  
10 LET'S STAY WITH 13. YOU ACTUALLY SAW MS. POWELL, DID YOU  
11 NOT?  
12 A I REMEMBER -- I REMEMBER HER SITTING ACROSS FROM MY  
13 DESK ON ONE INSTANCE.  
14 Q OKAY.  
15 A I COULD NOT TELL YOU WHAT WE DID THAT DAY.  
16 Q I'M GOING TO SHOW YOU PLAINTIFFS' EXHIBIT 15 AND ASK  
17 YOU IF YOU RECALL IT AND PLAINTIFFS' EXHIBIT 15 HAS TWO  
18 PAGES. DO YOU RECOGNIZE THAT DOCUMENT THAT I'M SHOWING YOU  
19 NOW, PLAINTIFFS' 15?  
20 A I REMEMBER WHAT THESE DOCUMENTS WERE FOR. I DON'T  
21 REMEMBER SPECIFICALLY CREATING THIS DOCUMENT AND HAVING MS.  
22 POWELL SIGN IT.  
23 Q OKAY. AND TO HELP YOU ALSO PLAINTIFFS' 19 AND 20,  
24 WHICH IS ACTUALLY ONE EXHIBIT WHICH IS TWO PAGES AND WE  
25 WILL CALL THEM PLAINTIFFS' 19 AND 20 WHICH WILL SHOW YOU, I

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0348

APPENDIX 353

1 GUESS, THE CHAIN OF EVENTS WHICH TOOK PLACE ON MAY 2, '01,  
2 AND THE CHECK IS FOR \$253.67, WHICH ALSO TIES IN WITH THE  
3 AMOUNT SHOWN. DO THOSE -- DO THOSE DOCUMENTS ALL RELATE TO  
4 THE SAME TRANSACTION? AND I AM REFERRING TO PLAINTIFFS'  
5 15, 14, 13, AND 19?

6 A IT LOOKS LIKE THEY DO, THE AMOUNT IS THE SAME IN EACH  
7 OF THESE. I'M NOT -- THERE IS NO AMOUNT ON THIS DOCUMENT.

8 Q I UNDERSTAND.

9 A SO I'M JUST -- I'M NOT SURE THAT I CAN FOLLOW THIS ONE  
10 TO THESE.

11 Q OKAY.

12 MR. DAVIS: AND THIS ONE BEING?

13 A THE SIGNATURE CARD.

14 MR. DAVIS: PLAINTIFFS' 15.

15 Q ALL RIGHT. YOU DO RECALL KAREN UNRUE COMING IN TO  
16 OPEN AN ACCOUNT?

17 A I RECALL HER SITTING ACROSS FROM ME, I DON'T REMEMBER  
18 WHY.

19 Q OKAY.

20 A I DID EVERYTHING FROM CUSTOMER SERVICE, TO OPENING, TO  
21 CLOSING ACCOUNTS.

22 Q OKAY.

23 A I DON'T REMEMBER WHAT WE DID THAT DAY. I SAW HUNDREDS  
24 OF CUSTOMERS.

25 Q IN LOOKING AT PLAINTIFFS' 15 CAN YOU TELL WHAT YOU DID

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0349

APPENDIX 354



1 THAT DAY?

2 A I CAN TELL THAT THIS IS A SIGNATURE CARD. IT DOESN'T  
3 NECESSARILY MEAN THAT WE DID ANYTHING THAT DAY, IT JUST  
4 MEANS THAT THIS DOCUMENT WAS SIGNED THIS DAY.

5 Q OKAY. AND ON THE SAME DAY WAS AN ACCOUNT SET UP AT  
6 THE BANK OF AMERICA?

7 A WELL, THIS IS JUST HER CUSTOMER -- THIS IS HER  
8 STATEMENT, SO I DON'T KNOW THAT AN ACCOUNT WAS SET UP, IT  
9 DOESN'T SAY AN ACCOUNT OPENED OR ACCOUNT CLOSED, I HAVE  
10 NEVER SEEN THIS BEFORE. I MEAN, THIS IS HER PERSONAL  
11 RECORD, I WOULDN'T HAVE HAD ACCESS TO THIS AT THE BANK.

12 Q LET'S LOOK AT PLAINTIFFS' 15.

13 A UH-HUH.

14 Q AND THIS DOCUMENT SAYS ACCOUNT WAS OPENED. WHAT  
15 ACCOUNT NUMBER IS ON THAT?

16 A 000 -- DO YOU WANT ME TO READ IT?

17 Q GIVE ME THE LAST FOUR DIGITS.

18 A OKAY. 8085.

19 Q AND IS THIS 8085 SHOWN ON PLAINTIFFS' 15?

20 A YES.

21 Q ALL RIGHT. AND IS THAT -- THOSE TWO DOCUMENTS WOULD  
22 RELATE TO THE SAME TRANSACTION?

23 A YES, THAT DOES MATCH, YES.

24 Q OKAY. NOW, IS THE AMOUNT SHOWN ON THE TRANSACTION  
25 IDENTICAL TO PLAINTIFFS' 13 THE AMOUNT OF THE CHECK?

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0350

APPENDIX 355

- 1 A YES.
- 2 Q AND IS IT ALSO THE IDENTICAL AMOUNT SHOWN ON THE
- 3 DEPOSIT SLIP?
- 4 A YES.
- 5 Q AND CAN I ASK DOES THAT APPEAR TO BE YOUR HANDWRITING?
- 6 A THAT DOES APPEAR TO BE MY HANDWRITING, YES.
- 7 Q NOW, WE'RE NOW REFERRING TO PLAINTIFFS' 14?
- 8 A RIGHT.
- 9 Q NOW, LOOKING AT THE ACCOUNT NUMBERS AND THE FOUR
- 10 EXHIBITS, WHICH ARE 15, 14, 19, AND 13, CAN YOU TELL US
- 11 WHETHER OR NOT THOSE ARE RELATED TRANSACTIONS?
- 12 A YES. I MEAN, THROUGH THE -- THROUGH THE ACCOUNT
- 13 NUMBER I CAN TELL THAT THEY'RE RELATED.
- 14 Q OKAY.
- 15 A I COULDN'T TELL BECAUSE THERE WAS NO AMOUNT. BUT,
- 16 YEAH, NOW THAT WE'VE LOOKED AT THE ACCOUNT NUMBER.
- 17 Q AND THIS DOCUMENT APPEARS WITH YOUR NAME ON IT AS
- 18 BEING THE PERSON WHO HANDLED THIS TRANSACTION ---
- 19 A YES.
- 20 Q --- FROM THE BANK RECORDS?
- 21 A YES.
- 22 Q OKAY. NOW, OTHER THAN THE CHECK ---
- 23 A UH-HUH.
- 24 Q --- WHICH IS PLAINTIFFS' 13.
- 25 A UH-HUH.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0351

APPENDIX 356

1 Q NOT SPECULATING, AND LOOKING AT THE RECORDS ---  
2 A UH-HUH.  
3 Q --- IS THERE ANY OTHER DOCUMENT OTHER THAN THIS CHECK  
4 THAT COULD HAVE BEEN TRANSACTED THAT DAY ---  
5 A NOT ON ---  
6 Q --- BASED ON THESE RECORDS?  
7 A NOT ON THIS ACCOUNT, NO.  
8 Q AND I WANT TO LIMIT MY QUESTIONS TO THIS ACCOUNT SO IT  
9 WON'T BE CONFUSING.  
10 A OKAY.  
11 Q ALL RIGHT. SO ON THIS PARTICULAR DAY BASED ON THE  
12 CHECK, BASED ON THAT ACCOUNT, IT APPEARS FROM THE RECORDS  
13 THAT YOU TOOK THIS CHECK, WHICH IS PLAINTIFFS' 13, AND  
14 OPENED THIS ACCOUNT, WHICH IS ACCOUNT NUMBER LAST FOUR  
15 DIGITS IS WHAT?  
16 A 8085.  
17 Q OKAY. NOW, IF MS. UNRUE POWELL -- POWELL IN THIS  
18 INSTANCE, PRESENTED THIS CHECK AND I SAID I WANT TO OPEN AN  
19 ACCOUNT.  
20 A UH-HUH.  
21 Q FIRST, TELL ME FROM THE CHECK WHAT YOU WOULD HAVE HAD  
22 HER DO, LOOKING AT THE CHECK? FIRST, WHO IS THE CHECK  
23 PAYABLE TO?  
24 A IT JUST DOESN'T -- I MEAN, I CAN TELL YOU THE CHECK IS  
25 PAYABLE TO MS. POWELL, BUT I JUST DON'T REMEMBER. I MEAN,

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0352

APPENDIX 357

1 YOU KNOW, SHE WOULD HAVE TOLD ME WHAT KIND OF ACCOUNT SHE  
2 WANTED TO OPEN. AND, AGAIN, THIS IS I DON'T REMEMBER HER  
3 SAYING THIS TO ME. I'M JUST TELLING YOU WHAT I CAN  
4 REMEMBER OF OPENING ACCOUNTS.

5 Q ALL RIGHT. SHE BROUGHT IN THE CHECK, WHO -- WHO IS  
6 THE MAKER OF THIS CHECK, WHO IS THE PARTY WHO MADE THE  
7 CHECK OUT?

8 A IT LOOKS LIKE WAUSAU INSURANCE COMPANY.

9 Q ALL RIGHT. AND WHO IS THE PAYEE OR PERSON TO RECEIVE  
10 THE FUNDS ON THE CHECK, WHICH IS ALL ON PLAINTIFFS' 13?

11 A KAREN POWELL AND CODY P[REDACTED].

12 Q IS THERE ANYTHING FURTHER ON THE CHECK THAT YOU'RE  
13 LEAVING OFF ON THE PAYEE?

14 A DO YOU WANT ME TO READ THE ENTIRE ---

15 Q I WANT TO KNOW WHO THE PAYEE ON THE CHECK IS.

16 A KAREN M. POWELL AS CONSERVATOR FOR CODY [REDACTED] P[REDACTED],

17 A MINOR.

18 Q OKAY. AND THAT'S WHO THE CHECK BELONGS TO?

19 A RIGHT.

20 Q OKAY. NOW, WHAT DID IT TELL YOU KAREN POWELL -- WHAT  
21 WAS THE CAPACITY, HER LEGAL CAPACITY AS SHOWN ON THAT  
22 CHECK? IF YOU KNOW?

23 A I DON'T KNOW.

24 Q WELL, DOES IT SAY CONSERVATOR?

25 A IT DOES SAY CONSERVATOR.

CODY P[REDACTED] VS. BANK OF AMERICA

ROA 0353

APPENDIX 358

1 Q ALL RIGHT. AS A ---  
2 MR. DAVIS: I DON'T THINK SHE FINISHED HER ANSWER.  
3 A BUT, AT OUR CONVERSATION, YOU KNOW, WHEN A CUSTOMER  
4 COMES IN YOU LISTEN TO THE CUSTOMER. SO UNLESS SHE  
5 SPECIFICALLY TOLD ME THAT I AM CONSERVATOR FOR THIS ACCOUNT  
6 AND THAT MEANS SOMETHING SPECIAL, I WOULD HAVE PROCEEDED AS  
7 IF IT WAS A REGULAR CHECK.  
8 Q DO YOU UNDERSTAND OR DID YOU LEARN AS A BANK EMPLOYEE  
9 THAT AN ACCOUNT CAN ONLY BE OPENED IN THE NAME OF THE PAYEE  
10 ON THE CHECK?  
11 A YES.  
12 Q OKAY. I MEAN, THAT'S A BANK OF AMERICA RULE?  
13 A UH-HUH.  
14 Q ALL RIGHT. CAN A CUSTOMER COME IN AND OVERRIDE THAT  
15 RULE?  
16 A WE HAD A LOT OF CUSTOMERS THAT BECAUSE OF THEIR  
17 RELATIONSHIP WITH THE BANK EXPECTED -- SOME TIMES THEY  
18 DIDN'T -- THEY DIDN'T FEEL LIKE THEIR ACCOUNTS, THEY JUST  
19 WANTED TO BE TREATED SPECIALLY BECAUSE OF THE ACCOUNT THAT  
20 THEY HAD WITH THE BANK, BECAUSE THE AMOUNT OF MONEY THAT  
21 THEY HAD WITH THE BANK. SO I CAN'T THINK OF A SPECIFIC  
22 INSTANCE, BUT, YOU KNOW, THERE WERE TIMES WHEN A CUSTOMER  
23 MIGHT HAVE DEMANDED THAT A MIDDLE INITIAL BE LEFT OFF, OR A  
24 MIDDLE INITIAL BE ADDED, EVEN THOUGH THAT MIDDLE INITIAL  
25 MIGHT NOT BE RIGHT THERE, FOR INSTANCE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0354

- 1 Q I'M NOT TALKING ABOUT A MIDDLE INITIAL. I'M TALKING  
2 ABOUT CONSERVATOR.
- 3 A RIGHT. I'M ANSWERING YOUR QUESTION.
- 4 Q ARE YOU ALLOWED TO IGNORE THE FACT THAT THE PERSON IS  
5 CONSERVATOR FOR A MINOR CHILD AND PUT -- AND OPEN AN  
6 ACCOUNT DIFFERENT FROM THAT METHOD?
- 7 A I HONESTLY DON'T KNOW. I DON'T KNOW.
- 8 Q YOU HAD NO KNOWLEDGE WHETHER OR NOT YOU COULD OPEN AN  
9 ACCOUNT?
- 10 A I DON'T REMEMBER.
- 11 Q OKAY.
- 12 A IT'S BEEN -- IT'S BEEN A LONG TIME, I DON'T REMEMBER.
- 13 Q IT'S NOT WHAT YOU DID THAT DAY, IS IT?
- 14 A IT DOESN'T APPEAR TO BE, NO.
- 15 Q WELL, DID ---
- 16 A IT LOOKS LIKE I OPENED IT AS SHE WAS THE CUSTODIAN AND  
17 HE WAS THE MINOR ON THE ACCOUNT.
- 18 Q ALL RIGHT. NOW, WHEN A PERSON ENDORSES A CHECK ---
- 19 A UH-HUH.
- 20 Q CAN YOU TELL ME WHETHER OR NOT THE BANK REGULATION  
21 REQUIRE THE ENDORSEMENT TO APPEAR THE SAME ON THE BACK OF  
22 THE CHECK AS THE PAYEE NAMED ON THE FRONT OF THE CHECK?
- 23 A IT REQUIRES THEIR NAME. IT DOESN'T -- I DO NOT  
24 BELIEVE IT REQUIRES A TITLE.
- 25 Q OKAY. SO YOU'RE SAYING IT DOES NOT REQUIRE TO BE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0355

APPENDIX 360

- 1 SIGNED ON THE BACK OF THE CHECK, KAREN M. POWELL AS  
2 CONSERVATOR FOR CODY STEVEN POWELL, A MINOR?  
3 A I DON'T BELIEVE SO, BUT I'M NOT A HUNDRED PERCENT  
4 SURE. I JUST DON'T REMEMBER.  
5 Q ARE YOU AWARE OF ANY REGULATIONS IN YOUR BANK WHICH  
6 HAVE SPECIAL SAFEGUARDS FOR MINORS AND CONSERVATORSHIP  
7 ACCOUNTS?  
8 A I DON'T REMEMBER.  
9 Q OKAY. DOES IT APPEAR THAT YOU REMEMBERED ON THAT DAY  
10 WHETHER OR NOT YOU UNDERSTOOD WHETHER OR NOT THAT RULE  
11 EXISTED?  
12 A I DON'T REMEMBER. I CAN'T REMEMBER WHAT WE DID ON  
13 THAT DAY, I'VE SAID THAT.  
14 Q WE KNOW WHAT YOU DID THAT DAY FROM THE TRANSACTION.  
15 A RIGHT, BUT I CAN'T REMEMBER DOING IT. I CANNOT  
16 REMEMBER SITTING THERE COMPLETING THIS TRANSACTION.  
17 Q OKAY.  
18 A I HAVE TOLD YOU THAT.  
19 Q ALL RIGHT. AND YOU SET UP A DEPOSIT SLIP ---  
20 A UH-HUH.  
21 Q --- WHICH IS PLAINTIFFS' EXHIBIT NO. 14?  
22 A UH-HUH.  
23 Q DOES THAT APPEAR TO BE YOUR DEPOSIT SLIP?  
24 A YES.  
25 Q ALL RIGHT.

CODY ████████ VS. BANK OF AMERICA

ROA 0356

APPENDIX 361

- 1 A WE WENT THROUGH THIS, YES.
- 2 Q ALL RIGHT. AND DOES IT APPEAR TO BE THE -- DOES
- 3 PLAINTIFFS' 15 APPEAR TO BE YOUR DOCUMENT?
- 4 A YES.
- 5 Q AND DOES PLAINTIFFS' 19 APPEAR TO BE GENERATED BY THE
- 6 BANK AS A RESULT OF YOUR WORK DONE ON THAT DAY?
- 7 A YES, THIS WOULD HAVE BEEN HER PERSONAL STATEMENT.
- 8 Q ALL RIGHT.
- 9 A WHICH I WOULD NEVER HAVE SEEN.
- 10 Q ALL RIGHT. DID YOU OBTAIN THE -- OR IS IT REQUIRED,
- 11 CAN YOU TELL ME, WHEN YOU OPENED AN ACCOUNT FOR A MINOR ---
- 12 A UH-HUH.
- 13 Q --- CHILD, IS IT REQUIRED THAT YOU OBTAIN THE MINOR'S
- 14 SOCIAL SECURITY NUMBER OR TAX IDENTIFICATION NUMBER?
- 15 A I DON'T REMEMBER.
- 16 Q OKAY. I WANT TO SHOW YOU THE TAX I.D. NUMBER
- 17 8515.
- 18 A UH-HUH.
- 19 Q IF I TELL YOU THAT'S KAREN UNRUE'S TAX I.D. NUMBER.
- 20 A OKAY.
- 21 Q ALL RIGHT. DID YOU OBTAIN THAT AND PLACE IT ON THE
- 22 DOCUMENT THAT DAY?
- 23 A APPARENTLY.
- 24 Q ALL RIGHT. DID YOU REQUIRE ANY IDENTIFICATION OF HER
- 25 TO KNOW THIS PERSON WAS KAREN POWELL?

CODY ██████ VS. BANK OF AMERICA

ROA 0357

APPENDIX 362



1 A YES, I'M SURE I DID. AGAIN, I DON'T SPECIFICALLY  
2 REMEMBER, BUT WE ALWAYS OBTAIN IDENTIFICATION.

3 Q ALL RIGHT. WHEN YOU DO, ARE YOU REQUIRED TO NOTE THAT  
4 YOU OBTAINED IDENTIFICATION THAT DAY?

5 A I DON'T REMEMBER.

6 Q DID YOU ASK HER TO SHOW YOU HER CERTIFICATE WHERE SHE  
7 WAS AUTHORIZED TO ACT AS CONSERVATOR FOR THIS MINOR CHILD?

8 A I DON'T REMEMBER.

9 Q ARE YOU REQUIRED BY BANK REGULATIONS TO ASK FOR THAT  
10 DOCUMENT?

11 A I DON'T KNOW.

12 Q DO YOU KNOW OR CAN YOU TELL US TODAY WHETHER OR NOT  
13 KAREN POWELL UNRUE HAD A DEPOSIT RELATIONSHIP WITH THE BANK  
14 WHEN SHE CAME TO SEE YOU IN MAY OF 2001?

15 A I REMEMBER THAT SHE HAD A RELATIONSHIP WITH THE BANK.  
16 I DON'T REMEMBER WHAT IT WAS THAT SPECIFIC TIME FRAME.

17 Q NOW, I WANT TO CALL YOUR ATTENTION TO ANOTHER  
18 TRANSACTION THAT TOOK PLACE IN WHICH A SERIES OF CHECKS  
19 WERE PRESENTED TO LEE ANN YOURKO, WHO IS AN EMPLOYEE OF THE  
20 BANK UNDER YOUR SUPERVISION.

21 A OKAY.

22 Q THESE ARE PLAINTIFFS' 10, 9, 8, 7, 6, 5, AND 4.

23 A OKAY.

24 Q FIRST, JUST FAN THROUGH THOSE SO YOU'LL BE FAMILIAR  
25 WITH THEM AS I ASK YOU ABOUT THEM.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0358

APPENDIX 363

- 1 A OKAY.
- 2 Q NOW, I AM ALSO GOING TO SHOW YOU PLAINTIFFS' 11, WHICH
- 3 APPEARS TO BE THE DEPOSIT SLIP ACCOMPANYING THOSE CHECKS ON
- 4 THAT PARTICULAR DAY.
- 5 A OKAY.
- 6 Q DOES THAT APPEAR TO BE BANK RECORDS FROM THE BANK OF
- 7 AMERICA AS INDICATED AT THE TOP WHICH WERE PROVIDED IN THIS
- 8 LITIGATION?
- 9 A YOU KNOW, IT APPEARS TO BE.
- 10 Q OKAY.
- 11 A MY ONLY QUESTION WOULD BE THAT IT SAYS NATIONS BANK,
- 12 AND WE WOULD HAVE BEEN BANK OF AMERICA AT THE TIME.
- 13 Q WE HAVE TO ASK -- I GUESS WE WILL HAVE TO ASK BANK OF
- 14 AMERICA ABOUT THAT. NOW, WHAT WAS THE TOTAL DEPOSIT WHICH
- 15 TOOK PLACE ON -- ACTUALLY THIS TRANSACTION WAS THE 26TH OF
- 16 APRIL 2001 BY MS. YOURKO.
- 17 A I'M SORRY. CAN YOU ASK THE QUESTION AGAIN?
- 18 Q YES. THIS TRANSACTION ACTUALLY TOOK PLACE ON APRIL
- 19 26, 2001.
- 20 A OKAY.
- 21 Q AND I'M REFERRING TO PLAINTIFFS' EXHIBIT 11.
- 22 A OKAY.
- 23 Q WHAT WAS THE TOTAL AMOUNT DEPOSITED?
- 24 A \$252,447.51.
- 25 Q IS THAT A LARGE SUM OF MONEY?

CODY R. [REDACTED] VS. BANK OF AMERICA

ROA 0359

APPENDIX 364

- 1 A I'D SAY SO.
- 2 Q IS IT -- DO YOU TYPICALLY GET ACCOUNTS BEING OPENED
- 3 FOR A QUARTER OF A MILLION DOLLARS IN THE BANK ON A DAILY
- 4 BASIS?
- 5 A I WOULD NOT SAY ON A DAILY BASIS, BUT FAIRLY
- 6 FREQUENTLY, WE HAD A VERY AFFLUENT CLIENTELE.
- 7 Q I UNDERSTAND THAT. AND ON THIS -- WHEN AN EMPLOYEE OF
- 8 THE BANK TAKES IN A TRANSACTION OF THIS SIZE ---
- 9 A UH-HUH.
- 10 Q --- ARE THEY REQUIRED TO CONTACT MANAGEMENT OR A
- 11 SUPERVISOR IN CONNECTION WITH OPENING SUCH AN ACCOUNT?
- 12 A I DON'T REMEMBER SPECIFICALLY, BUT I DON'T THINK SO,
- 13 NO.
- 14 Q NOW, WHEN THIS TRANSACTION TOOK PLACE AND THESE CHECKS
- 15 WERE PRESENTED AND, AGAIN, I CALL YOUR ATTENTION TO WE'LL
- 16 JUST USE PLAINTIFFS' 10 AS AN EXAMPLE. HOW MUCH IS THE
- 17 CHECK MADE OUT TO IN PLAINTIFFS' EXHIBIT NO. 10?
- 18 A IN NO. 10 IT'S \$114,866.77.
- 19 Q THAT WOULD GET THE ATTENTION OF THE PERSON HANDLING
- 20 THIS TRANSACTION, WOULD IT NOT?
- 21 A I CAN'T ANSWER THAT.
- 22 Q IT WOULD JUST BE AN ORDINARY TRANSACTION?
- 23 A I CAN'T ANSWER TO WHAT SOMEONE ELSE WOULD HAVE BEEN
- 24 THINKING.
- 25 Q OKAY. THIS PARTICULAR CHECK IS, FROM -- WHO IS THE

CODY ██████ VS. BANK OF AMERICA

ROA 0360

- 1 MAKER OR PERSON WHO MADE THE CHECK OUT?
- 2 A WELL, IT LOOKS LIKE IT'S NUCOR STEEL THROUGH MET LIFE.
- 3 Q MET LIFE IS AN INSURANCE COMPANY?
- 4 A YES.
- 5 Q NOW, IF YOU WOULD, WHAT'S THE DATE OF THE CHECK?
- 6 A APRIL 16, 2001.
- 7 Q AND WHO IS THE PERSON WHO IS TO RECEIVE THE FUNDS, THE
- 8 PAYEE ON THE CHECK?
- 9 A T. POWELL AND K. POWELL CO-CONSERVATORS FOR CODY
- 10 P [REDACTED] A MINOR.
- 11 Q OKAY. MY QUESTION IS, IF YOU WOULD HAVE BEEN THE
- 12 PERSON WHEN YOU WALKED IN THE BANK ON THAT PARTICULAR DAY
- 13 WHICH WOULD HAVE BEEN APRIL 26, 2001 AND THIS PERSON WOULD
- 14 HAVE PRESENTED THESE CHECKS TOTALING \$254,447 TO YOU AND
- 15 YOU SAW THAT ON THE CHECK, WHAT WOULD YOU REQUIRE THE
- 16 PERSON PRESENTING THOSE CHECKS TO DO?
- 17 A I -- I HATE TO GUESS WHAT I WOULD HAVE DONE. I DON'T
- 18 KNOW WHAT I WOULD HAVE DONE.
- 19 Q OKAY.
- 20 A IT'S BEEN FIVE YEARS.
- 21 Q OKAY. MY QUESTION TO YOU, DO YOU KNOW WHETHER OR NOT
- 22 YOU MUST OPEN AN ACCOUNT AS APPEARS ON THE PAYEE OF THE
- 23 CHECK OR CERTIFICATE OF DEPOSIT MUST BE ISSUED AS SHOWN ON
- 24 THE PAYEE OF THE CHECK?
- 25 A I REMEMBER THE NAMES NEEDING TO BE THE SAME.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0361

APPENDIX 366

- 1 Q OKAY.
- 2 A THAT'S ALL I REMEMBER.
- 3 Q OKAY. IF ONE PERSON SHOWED UP NOT -- LET'S SUPPOSE
- 4 TRAVIS POWELL IS NOT PRESENT AND KAREN POWELL WAS PRESENT.
- 5 A UH-HUH.
- 6 Q AND TRAVIS POWELL'S NAME APPEARED ON THE BACK OF THE
- 7 CHECK BUT HE WAS NOT PRESENT, WOULD YOU ACCEPT THAT CHECK
- 8 FOR DEPOSIT?
- 9 A I DON'T KNOW. MY GUESS WOULD BE AS LONG AS WE OPENED
- 10 THE ACCOUNT IN BOTH OF THEIR NAMES.
- 11 Q OKAY. WOULD YOU ALSO OPEN A CONSERVATOR ACCOUNT OR
- 12 WHAT WOULD YOU OPEN?
- 13 A I DON'T KNOW. I'VE NEVER -- I DON'T KNOW WHAT A
- 14 CONSERVATOR ACCOUNT IS.
- 15 Q OKAY.
- 16 A SO I DON'T KNOW.
- 17 Q YOU DID NOT RECEIVE TRAINING AT THE BANK IN YOUR
- 18 MATERIALS OF HOW TO SET UP A CONSERVATOR ACCOUNT?
- 19 A I DON'T REMEMBER.
- 20 Q OKAY. HOW LONG DOES IT TAKE JUST TO SET UP AN
- 21 ACCOUNT, A NEW ACCOUNT, OR GO THROUGH THE PROCEDURE AND
- 22 PROCESS AND DO THE PAPERWORK TIME-WISE, MINUTES WISE?
- 23 A I WOULD SAY ABOUT 30 MINUTES.
- 24 Q OKAY. AND THIS TRANSACTION, IF YOU'RE COMING IN TO
- 25 OPEN IT AND GET A CERTIFICATE OF DEPOSIT THAT'S WHAT YOU

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0362

APPENDIX 367

- 1 WOULD HAVE DONE?
- 2 A SET UP A NEW ACCOUNT?
- 3 Q YEAH.
- 4 A IF THAT'S WHAT THE CUSTOMER ASKED ME TO DO, YES.
- 5 Q OKAY. WHOSE TAXPAYER IDENTIFICATION NUMBER OR SOCIAL
- 6 SECURITY NUMBER WOULD YOU USE TO SET UP AN ACCOUNT AS IT
- 7 APPEARS ON THESE CHECKS?
- 8 A I DON'T REMEMBER.
- 9 Q OKAY.
- 10 A I DON'T KNOW.
- 11 Q SO YOU DON'T?
- 12 A I DON'T KNOW.
- 13 Q OKAY. YOU DON'T KNOW WHETHER IT'S THE CHILD'S OR
- 14 ANYONE ELSE'S?
- 15 A I JUST -- I DON'T REMEMBER.
- 16 Q OKAY. NOW, IF THE PROPER PROCEDURES ARE NOT FOLLOWED
- 17 BY THE BANK AND YOU DON'T FOLLOW THE PROCEDURES AS SET
- 18 FORTH IN PLAINTIFFS' EXHIBIT NO. 1, WHICH ARE THESE
- 19 REGULATIONS.
- 20 A UH-HUH.
- 21 Q WHAT HAPPENS? OR WHAT CAN HAPPEN?
- 22 A WELL, I MEAN, FIRST OF ALL, THE PROCEDURES ARE ONLY AS
- 23 GOOD AS WHAT THE CUSTOMERS ASK YOU FOR IN THE FIRST PLACE.
- 24 SO DEPENDING ON WHAT THE CUSTOMER COMES IN AND WANTS TO DO.
- 25 WITH THEIR MONEY, YOU THEN PROCEED, YOU KNOW, THROUGH THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0363

APPENDIX 368

1 APPROPRIATE TASKS. I DON'T KNOW WHAT HAPPENS IF YOU DON'T  
2 DO IT CORRECTLY.

3 Q OKAY. YOU'RE NOT TRAINED THAT THERE CAN BE FRAUD AND  
4 MONEY TAKEN FROM MINOR'S ACCOUNTS IF THEY'RE NOT HANDLED  
5 PROPERLY?

6 A WE'RE TRAINED ON FRAUD.

7 Q OKAY. NOW, WHENEVER YOU OPEN NEW ACCOUNTS, I KNOW WE  
8 UNDERSTAND THAT BANK EMPLOYEES RECEIVE A SALARY.

9 A UH-HUH.

10 Q BUT IS THERE ANY KIND OF INCENTIVE PROGRAM FOR OPENING  
11 ACCOUNTS AND OBTAINING DEPOSITS?

12 A THERE WAS AN INCENTIVE PROGRAM, YES.

13 Q AND TELL ME JUST BASICALLY HOW THAT WORKED? IF I WAS  
14 A NEW EMPLOYEE COMING IN AND YOU WERE TELLING ME AN  
15 OVERVIEW OF I WAS GOING TO BE A PERSONAL BANKER.

16 A UH-HUH.

17 Q HOW WOULD THAT INCENTIVE PROGRAM WORK?

18 A AGAIN, I DON'T REMEMBER SPECIFICS. IT'S ALL VERY  
19 VAGUE NOW. IT -- I BELIEVE IT WAS ON A POINT SYSTEM WHERE  
20 YOU EARNED, YOU KNOW, SO MANY POINTS, YOU HAD TO EARN SO  
21 MANY POINTS TO BE COMPENSATED, YOU KNOW, AND YOU WERE GIVEN  
22 POINTS FOR OPENING ACCOUNTS, SERVICE -- SERVICING ACCOUNTS,  
23 OPENING DIFFERENT KINDS OF ACCOUNTS, OPENING MORTGAGES, WE  
24 ALSO DID PERSONAL LOANS. SO EACH TYPE OF PRODUCT WAS  
25 ASSIGNED A POINT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0364

APPENDIX 369

1 Q HAVE YOU LEARNED OR DO YOU KNOW BASED UPON WHAT YOU  
2 HAVE UNDERSTOOD ABOUT THIS LITIGATION THAT FUNDS FROM THE  
3 CERTIFICATE OF DEPOSIT WERE PLACED IN KAREN UNRUE'S NAME,  
4 \$254,000?

5 A I -- I CAN'T ANSWER THAT. I DON'T KNOW WHOSE NAME  
6 THEY WERE PLACED IN.

7 Q I AM GOING TO SHOW YOU PLAINTIFFS' 3 WHICH IS RESEARCH  
8 PERFORMED BY THE BANK OF AMERICA.

9 A OKAY.

10 Q AND BASED ON PLAINTIFFS' EXHIBIT 3 CAN YOU TELL US IF  
11 THE 254,000 WAS PUT IN KAREN UNRUE'S OR WAS IT PUT IN A  
12 CONSERVATORSHIP ACCOUNT PROTECTED FOR CODY POWELL?

13 A I SEE -- I SEE TWO DIFFERENT THINGS, I SEE IT LOOKS  
14 LIKE SOME -- IT LOOKS LIKE THERE WERE SEVERAL ACCOUNTS.

15 Q RIGHT.

16 A IT LOOKS LIKE SOME WERE PUT IN KAREN M. POWELL'S NAME.

17 Q RIGHT.

18 A THEN THERE WAS SOME IN KAREN M. UNRUE'S NAME. AND  
19 THEN THERE WAS SOME IN KAREN M. UNRUE GUARDIAN FOR CODY  
20 [REDACTED] P [REDACTED], IT LOOKS LIKE THERE'S TWO OF THOSE.

21 Q ALL RIGHT. I CALL YOUR ATTENTION TO THE TRANSACTION  
22 THAT YOU HANDLED EARLIER, THAT WAS SET UP AS THE  
23 GUARDIANSHIP ACCOUNT, WAS IT NOW?

24 A YES.

25 Q AND THE OTHER ACCOUNTS WERE SET UP IN THE SAME NAME OF

CODY [REDACTED] VS. BANK OF AMERICA

ROA 0365

APPENDIX 370



- 1 KAREN UNRUE OR KAREN POWELL?
- 2 A YES.
- 3 Q ALL RIGHT. FROM A BANKING PERSPECTIVE THE USE OF TWO
- 4 DIFFERENT LAST NAMES, DOES THAT CAUSE YOU ANY SUSPICION
- 5 OVER THAT SHORT PERIOD OF TIME?
- 6 A WELL, IT LOOKS LIKE IT WAS OVER A MONTH, YOU KNOW, I'M
- 7 ASSUMING ONE IS A MAIDEN NAME AND ONE IS A MARRIED NAME, SO
- 8 IT DEPENDS ON WHEN SHE GOT MARRIED, WOULD BE MY GUESS.
- 9 Q OKAY.
- 10 A YOU KNOW, YOU GET MARRIED ON ONE DAY, YOUR NAME
- 11 LITERALLY CHANGES IN A DAY'S TIME, MAYBE A WEEK TO DO THE
- 12 PAPERWORK. SO I WOULDN'T -- THAT WOULD NOT MAKE ME
- 13 SUSPICIOUS.
- 14 Q OKAY. DO YOU HAVE ANYTHING IN YOUR RECORDS TO
- 15 INDICATE SHE WAS MARRIED AND THAT'S THE REASON HER NAME WAS
- 16 CHANGED?
- 17 A OH, GOD, I HAVE NO IDEA. YEAH, I MEAN, THIS IS THE
- 18 FIRST TIME I'VE EVER SEEN A DOCUMENT LIKE THIS.
- 19 Q I UNDERSTAND.
- 20 A YOU SAID IT'S FROM THE RESEARCH DEPARTMENT.
- 21 Q YEAH.
- 22 A SO, YES, I PROBABLY WOULDN'T HAVE BEEN SUSPICIOUS. I
- 23 MEAN, IF SHE WAS A YOUNG WOMAN AND WOULD HAVE GOTTEN
- 24 MARRIED, THAT WOULDN'T HAVE RAISED ANY RED FLAGS.
- 25 Q BASED ON THE RESEARCH AND THE DOCUMENTS YOU LOOK AT IT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0366

APPENDIX 371

- 1 FROM THE BANK OF AMERICA ---
- 2 A UH-HUH.
- 3 Q --- DOES IT APPEAR THAT KAREN UNRUE POWELL HAD THE
- 4 UNFETTERED ABILITY TO GO IN AND REMOVE ALL OF THE FUNDS ON
- 5 DEPOSIT IN THE NAME OF CODY [REDACTED] P [REDACTED]?
- 6 A I JUST DON'T KNOW.
- 7 Q OKAY.
- 8 A I JUST DON'T KNOW.
- 9 Q OKAY. IF IT IS IN HER NAME PERSONALLY, SHE WOULD
- 10 CERTAINLY BE ABLE TO DO THAT, WOULD SHE NOT?
- 11 A YES.
- 12 Q AND THAT'S THE WAY THE BANK RECORDS SHOW IT WAS SET
- 13 UP?
- 14 A WELL, ON SEVERAL, BUT THERE ARE SEVERAL ACCOUNTS THAT
- 15 DO SAY GUARDIAN FOR CODY AND -- CODY [REDACTED] P [REDACTED].
- 16 Q ALL RIGHT.
- 17 A SO ON THOSE ACCOUNTS.
- 18 Q THAT'S THE ONE YOU SET UP WITH A \$253 CHECK OR \$256
- 19 CHECK.
- 20 A OKAY.
- 21 Q AND I'M TALKING ABOUT THE SIGNIFICANT OTHER DEPOSITS
- 22 WERE SET UP UNDER KAREN UNRUE OR KAREN M. POWELL, WERE THEY
- 23 NOT?
- 24 A YES.
- 25 Q NOW, I WANT TO CALL YOUR ATTENTION BACK TO THE PACKAGE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0367

APPENDIX 372

1 OF REGULATIONS WHICH APPEARS IN PLAINTIFFS' EXHIBIT NO. 1.

2 A UH-HUH.

3 Q NOW, I ASKED YOU EARLIER TO IDENTIFY THESE AS COPIES  
4 OF THE BANKING, THREE VOLUMES OF BANKING REGULATIONS THAT  
5 YOU STUDIED FOR HOW MANY MONTHS?

6 A SIX MONTHS.

7 Q YOU WENT TO CLASSES WHERE?

8 A OH, GOSH, CHARLOTTE, GREENVILLE, MOSTLY IN CHARLOTTE  
9 AND THEN WORK STUDY BACK AT THE MAIN BRANCH.

10 Q DO YOU FEEL LIKE YOU WERE ADEQUATELY TRAINED BY THE  
11 BANK FOR YOUR JOB?

12 A I DO, YES.

13 Q DO YOU THINK YOU UNDERSTOOD CLEARLY HOW TO SET UP  
14 VARIOUS TYPES OF ACCOUNTS THAT WOULD BE PRESENTED THROUGH  
15 NEGOTIABLE INSTRUMENTS SUCH AS CHECKS WHEN PEOPLE CAME IN?

16 A YES.

17 Q YOU WILL LET US KNOW IF YOU DON'T RECALL SOMETHING AS  
18 BEING A RULE OR SOMETHING YOU WEREN'T FAMILIAR WITH, OKAY?

19 A YES.

20 Q TURN TO PAGE 2 PLEASE. NOW, WHAT TYPE DOCUMENTS ARE  
21 WE TALKING ABOUT ON PAGE 2?

22 A ALL DIFFERENT KINDS OF CHECKING AND SAVINGS ACCOUNTS.

23 Q ACCOUNTS, OKAY. AND ARE THESE THE RULES OR THE  
24 REGULATIONS THAT WERE GOVERNING THE OPENING OF CHECKING  
25 ACCOUNTS OR SOME OF THEM?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0368

APPENDIX 373

1 A YEAH, IT LOOKS LIKE IT. I MEAN, IT'S -- I GUESS IT'S  
2 WHAT YOU WOULD NEED TO OPEN AN ACCOUNT, NOT HOW TO OPEN THE  
3 ACCOUNT.

4 Q ALL RIGHT. AND I'M PARTICULARLY INTERESTED, THESE ARE  
5 WHAT IS KNOWN AS CO-OWNER ACCOUNTS, ARE THEY NOT, UP AT THE  
6 TOP? WE WILL MOVE THIS SO YOU CAN SEE IT A LITTLE BETTER.  
7 CO-OWNER ACCOUNTS, THAT'S WHERE THERE'S TWO OR MORE PEOPLE  
8 ON AN ACCOUNT?

9 A YES. I MEAN, THEY COULD BE, BUT THEY COULD ALSO BE  
10 INDIVIDUAL ACCOUNTS.

11 Q I SEE.

12 A THEY COULD BE EITHER WAY.

13 Q ALL RIGHT.

14 A BUT ON THIS PAGE IT DOES SAY CO-OWNER.

15 Q CO-OWNER. AND HERE WITH A CONSERVATORSHIP ACCOUNT  
16 THERE WERE CERTAINLY YOU HAVE TRAVIS POWELL, YOU HAVE KAREN  
17 UNRUE POWELL OR KAREN POWELL UNRUE AND THAT WOULD INDICATE  
18 CO-OWNERSHIP TYPE RULES, WOULD IT NOT?

19 A I -- I JUST -- I JUST DON'T REMEMBER. AND FROM  
20 LOOKING AT THESE CHECKS, I MEAN, IT SEEMS LIKE SOME -- SOME  
21 HAD TWO NAMES, SOME HAD THREE NAMES, I JUST CAN'T ANSWER  
22 ACCURATELY.

23 Q WELL, I'LL ASK YOU TO GO UP TO THE TOP IT SAYS  
24 OVERVIEW ON PAGE 2.

25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0369

APPENDIX 374

- 1 Q AND IT SAYS ESTABLISHED BY TWO OR MORE INDIVIDUALS,  
2 DOES IT NOT?  
3 A RIGHT, IT CAN BE.  
4 Q YES?  
5 A YES.  
6 Q OKAY. AND UNDER IDENTIFICATION WHERE YOU HAVE  
7 ACCOUNTS ESTABLISHED BY TWO OR MORE INDIVIDUALS, WHAT ARE  
8 YOU REQUIRED TO DO?  
9 A YOU WOULD NEED THEIR IDENTIFICATION.  
10 Q OKAY. AND ---  
11 A AND SOCIAL SECURITY NUMBERS.  
12 Q ALL RIGHT. NOW, SOCIAL SECURITY NUMBERS, WHOSE SOCIAL  
13 SECURITY NUMBERS DO YOU NEED?  
14 A YOU WOULD NEED THE PERSON OPENING THE ACCOUNT.  
15 Q WHAT DOES IT SAY THAT YOU'RE REQUIRED TO HAVE?  
16 A THE TIN ASSIGNED TO THE ACCOUNT MUST BELONG TO THE  
17 PERSON LISTED ON THE FIRST OR SECOND TITLE LINE.  
18 Q OKAY. IT SAYS ALL OWNERS' TAX IDENTIFICATION NUMBERS?  
19 IS THAT WHAT IT SAYS?  
20 A YES, IT SAYS THAT.  
21 Q OKAY.  
22 A AND THEN IT SAYS THE TIN ASSIGNED TO THE ACCOUNT MUST  
23 BELONG TO THE PERSON LISTED ON THE FIRST OR SECOND LINE.  
24 Q IF YOU'RE OPENING AN ACCOUNT FOR A MINOR ---  
25 A UH-HUH.

CODY ██████ VS. BANK OF AMERICA

ROA 0370

APPENDIX 375

- 1 Q --- IS THE ACCOUNT OWNED BY THE MINOR OR IS IT OWNED  
2 BY THE CONSERVATOR?  
3 A I DON'T REMEMBER.  
4 Q ALL RIGHT. I WANT YOU TO TURN TO PAGE 3. FROM YOUR  
5 BANKING REGULATIONS IN 2001 DO YOU REMEMBER THE  
6 GUARDIANSHIP COURT-APPOINTED ACCOUNTS?  
7 A I REALLY DON'T.  
8 Q OKAY. BUT THIS IS SOMETHING YOU WOULD HAVE STUDIED IN  
9 YOUR SIX MONTHS TRAINING, WOULD YOU NOT?  
10 A IT'S SOMETHING WE WOULD HAVE GONE OVER, YES.  
11 Q ALL RIGHT. AND IT WAS SOMETHING THAT WOULD HAVE  
12 APPEARED IN YOUR TRAINING MANUALS IN THE BANK?  
13 A I BELIEVE SO, I DON'T SPECIFICALLY REMEMBER.  
14 Q OKAY. WELL, YOU HAD TRAINING MANUALS WHERE THESE  
15 PAGES CAME FROM IN YOUR BANK, DID YOU NOT?  
16 A WE HAD TRAINING MANUALS IN THE BANK, YES.  
17 Q OKAY. YOU ALSO HAD SCREENS SET UP, THESE TOUCH  
18 SCREENS WHERE IF IT WAS CONSERVATORY, YOU SIMPLY ANSWERED  
19 CONSERVATOR AND IT WOULD PROMPT YOU THROUGH OPENING A  
20 CONSERVATOR ACCOUNT?  
21 A NO, IT DIDN'T WORK THAT WAY.  
22 Q OKAY. HOW DID IT WORK?  
23 A YOU CHOSE -- FROM WHAT I CAN REMEMBER, AND AGAIN IT'S  
24 BEEN A LONG TIME. YOU CHOSE YOUR TYPE OF ACCOUNT, CHECKING  
25 OR SAVINGS, AND THEN YOU CHOSE, YOU KNOW, WHAT TYPE OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0371

APPENDIX 376

1 CHECKING, IF IT'S WHAT YOU WERE DOING, WHAT TYPE OF  
2 SAVINGS. YOU KNOW, AND THEN FROM THERE IT PROMPTED YOU TO  
3 ENTER INFORMATION. I CANNOT -- I CANNOT SAY I EVER  
4 REMEMBER CONSERVATOR BEING A CHOICE. I JUST DON'T  
5 REMEMBER.

6 Q OKAY. WELL, I WANT YOU TO LOOK UNDER OVERVIEW AND ASK  
7 YOU IF -- UNDER YOU HAVE A CONSERVATOR.

8 A UH-HUH.

9 Q DO YOU SEE THAT NAME, CONSERVATOR?

10 A UH-HUH.

11 Q ALL RIGHT. AND WHAT IS -- WHAT ARE THEY DEFINED AS?

12 A A COURT-APPOINTED INDIVIDUAL WHO CARES FOR AND/OR  
13 MANAGES THE PROPERTY AND AFFAIRS OF A MINOR OR AN  
14 INCAPACITATED PHYSICALLY OR MENTALLY ADULT.

15 Q YOU REMEMBER THAT BEING THE REASON THOSE TYPES OF  
16 ACCOUNTS WERE SET UP?

17 A YEAH, YOU KNOW, IT SOUNDS FAMILIAR. WE HAD A LOT OF  
18 -- YEAH, I MEAN, WE JUST -- WE HAD A LOT OF PARENTS WHO  
19 JUST CAME IN TO OPEN, YOU KNOW, THEIR CHILD'S FIRST SAVINGS  
20 ACCOUNT.

21 Q ALL RIGHT.

22 A YOU KNOW, IT WASN'T UNUSUAL TO HAVE AN ACCOUNT WITH A  
23 PARENT AND THE MINOR ON IT.

24 Q WELL, HOW OFTEN DO THOSE PARENTS COME IN AND DEPOSIT  
25 \$254,000 IN ONE DAY IN A CHILD'S ACCOUNT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0372

APPENDIX 377

- 1 A I CAN'T ANSWER THAT.
- 2 Q OKAY. NOW, I WANT YOU TO COME ON DOWN AND SETTING --
- 3 THIS IS THE REGULATIONS FOR SETTING UP A COURT-APPOINTED
- 4 GUARDIANSHIP CONSERVATOR ---
- 5 A UH-HUH.
- 6 Q --- TYPE ACCOUNT, ARE THEY NOT?
- 7 A YES.
- 8 Q ALL RIGHT. UNDER TAXPAYER IDENTIFICATION NUMBER,
- 9 WHOSE MUST YOU HAVE?
- 10 A THE CHILD'S, THE WORDS.
- 11 Q AND UNDER DOCUMENTATION REQUIRED TO OPEN THE ACCOUNT,
- 12 WHAT ARE YOU REQUIRED TO HAVE?
- 13 A PERSONAL SIGNATURE CARD, APPROPRIATE CERTIFICATE OF
- 14 FOREIGN STATUS, REVIEW DECISION DETAILS, SCREEN PRINT,
- 15 CERTIFIED COPY OF THE COURT ORDER APPOINTING THE GUARDIAN.
- 16 Q OKAY. WHEN YOU RECEIVE THAT CERTIFIED COPY OF THE
- 17 COURT ORDER, WHY IS THAT IMPORTANT?
- 18 A WELL, I GUESS IF -- IF THE CUSTOMER GIVES IT TO YOU.
- 19 Q OKAY.
- 20 A I MEAN, NUMBER ONE, THAT WOULD BE YOUR ONLY WAY OF
- 21 OBTAINING IT, RIGHT?
- 22 Q WELL, I WILL ASK MY QUESTION. IT SAYS REQUIRED
- 23 DOCUMENTS. IF YOU DON'T HAVE A REQUIRED DOCUMENT, CAN YOU
- 24 OPEN AN ACCOUNT?
- 25 A I MEAN, TECHNICALLY YOU COULD, BECAUSE IT'S NOT LIKE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0373

APPENDIX 378



1 THE COMPUTER SYSTEM KNOWS WHETHER YOU HAVE THAT DOCUMENT OR  
2 NOT. BUT YOU SHOULD NOT OPEN THE ACCOUNT WITHOUT ALL THE  
3 REQUIRED DOCUMENTS.

4 Q THAT WOULD BE A VIOLATION OF THE BANK'S POLICY?

5 A WELL, I MEAN, IT -- IT WOULD. BUT MY ONLY QUESTION  
6 AGAIN, IT JUST -- TO ME IT JUST COMES BACK TO WHAT THAT  
7 CUSTOMER ASKS FOR WHEN THEY WALK IN YOUR DOOR. IF YOU -- IF  
8 THEY DON'T WALK IN YOUR DOOR AND ASK FOR A SPECIFIC ACCOUNT  
9 AND THEY DON'T HAND YOU A CERTIFIED COPY OF THE COURT  
10 ORDER, I MEAN, HOW WOULD YOU KNOW THAT IT EXISTED?

11 Q MY QUESTION IS THIS. IF YOUR RULES REQUIRE IT, COULD  
12 YOU TURN TO YOUR CUSTOMER AND SAY, GO BACK AND BRING ME  
13 YOUR COPY OF YOUR COURT ORDER AND WE WILL BE HAPPY TO OPEN  
14 THE ACCOUNT?

15 A YOU COULD IF YOU KNEW TO ASK FOR IT.

16 Q OKAY.

17 A BUT IF YOUR CUSTOMER COMES IN AND ASKS FOR A CD, THEN  
18 YOU GO TO YOUR CD SECTION OF YOUR MANUAL WHERE IT WOULDN'T  
19 SAY THAT THIS WAS REQUIRED.

20 Q OKAY.

21 A DO YOU UNDERSTAND WHAT I'M SAYING?

22 Q I KNOW. AND IF YOU SEE THE SECTION IN YOUR MANUAL  
23 THAT SAYS YOU CAN'T OPEN A CD EXCEPT FOR EXACTLY HOW IT'S  
24 SHOWN ON THE CHECK, THEN HOW WOULD YOU OPEN IT?

25 A WELL, THEN -- YOU SHOULD OPEN IT, YOU KNOW, AS THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0374

APPENDIX 379

1 NAMES ARE PORTRAYED ON THE CHECK.

2 Q OKAY. IF THE COURT ORDER SAID THAT THIS WAS A  
3 RESTRICTED ACCOUNT AND THERE CANNOT BE ANY WITHDRAWALS FROM  
4 IT EXCEPT BY COURT ORDER TO PROTECT THE MINOR'S MONEY FROM  
5 SOMEBODY STEALING IT AND FRAUD, WOULD THAT BE IMPORTANT?

6 A I -- I DON'T FEEL LIKE I CAN ANSWER IT, I WOULD HAVE  
7 HAD TO HAVE SEEN THAT DOCUMENT. I HAVE NEVER -- I HAVE  
8 NEVER SEEN A CERTIFIED COPY OF A COURT ORDER APPOINTING A  
9 GUARDIAN, I HAVE NEVER SEEN ONE, SO I CAN'T ANSWER.

10 Q OKAY. IS THERE ANY QUESTION AS TO THE BANK  
11 REGULATIONS WHICH APPEAR ON PAGE 3 OF PLAINTIFFS' 1  
12 REQUIRING YOU TO OBTAIN ONE BEFORE OPENING AN ACCOUNT?

13 A I BELIEVE THAT IF THIS IS THE TYPE OF ACCOUNT THAT  
14 YOU'VE BEEN ASKED TO OPEN AND YOU TURN TO THIS PAGE IN YOUR  
15 MANUAL, IT'S CLEAR THAT THAT'S WHAT IT ASKS FOR. BUT,  
16 AGAIN, YOU'RE ONLY GOING TO TURN TO THIS PAGE IN YOUR  
17 MANUAL IF YOU'RE ASKED TO OPEN THAT ACCOUNT.

18 Q OKAY. SO THE CUSTOMER CONTROLS WHAT KIND OF ACCOUNT  
19 IS OPENED?

20 A YES.

21 Q OKAY.

22 A AND IT'S, YOU KNOW -- IT'S UP TO THE CUSTOMER TO DO  
23 THE RIGHT THING.

24 Q SO THE BANK DOES NOT IN ANY WAY ACT AS A -- CAN YOU  
25 TELL ME WHETHER OR NOT THE BANK ACTS IN ANY WAY TO PROTECT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0375

APPENDIX 380

1 THE MINOR'S MONEY WITH ITS REGULATIONS?

2 A IT DOES. I MEAN, THAT'S WHY YOU HAVE CO-OWNERS ON  
3 ACCOUNTS WITH GUARDIANS AND MINORS. BUT, AGAIN, YOU HAVE  
4 -- YOU HAVE TO KNOW THAT THAT'S WHAT THE PERSON IS ASKING  
5 FOR. YOU KNOW, IF SOMEONE COMES IN AND JUST SAYS I WANT TO  
6 OPEN AN ACCOUNT, YOU KNOW, THAT'S -- YOU OPEN THE ACCOUNT,  
7 IT'S THEIR MONEY. I MEAN, YOU KNOW, I CAN SAY THAT I  
8 ALWAYS LOOKED OUT FOR THE BEST INTEREST OF MY CUSTOMERS,  
9 AND, YOU KNOW, YOU'RE TRYING TO MEET YOUR CUSTOMER'S NEEDS.  
10 SO DEPENDING ON WHAT THEY STATE THEIR NEEDS TO BE, THAT'S  
11 THE ROAD YOU GO DOWN. IF YOUR CUSTOMER DOESN'T HAND YOU A  
12 DOCUMENT, I HAD NO WAY OF KNOWING, YOU KNOW, WHETHER A  
13 DOCUMENT EVEN EXISTED.

14 Q ARE YOU TRAINED IN LOSS PREVENTION AND FRAUD DETECTION  
15 AND PREVENTION?

16 A WE'RE TRAINED IN -- I WANT TO -- LOSS PREVENTION. I  
17 DON'T REMEMBER BEING TRAINED ON FRAUD ON I.D.ING PEOPLE ON  
18 THAT TYPE OF STUFF, I DON'T KNOW ABOUT LOSS PREVENTION.

19 Q I WANT YOU TO TURN TO PAGE 45 OF PLAINTIFFS' EXHIBIT  
20 NO. 1. YOU REMEMBER BEING TRAINED ON ENDORSEMENTS AND  
21 ENDORSING NEGOTIABLE INSTRUMENTS LIKE CHECKS?

22 A YES, I REMEMBER BEING TRAINED ON IT.

23 Q AND THESE CHECKS TOTALING \$254,000 ARE NEGOTIABLE  
24 INSTRUMENTS TO THE TUNE OF OVER A QUARTER OF A MILLION  
25 DOLLARS?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0376

APPENDIX 381

- 1 A YES.
- 2 Q LOOKING AT THIS PAGE, THAT'S SOMETHING VERY IMPORTANT
- 3 FOR A BANK PERSON TO KNOW, IS IT NOT?
- 4 A YES.
- 5 Q IS THERE ANY QUESTION THAT YOU DON'T RECALL RULES OF
- 6 ENDORSEMENT?
- 7 A I DON'T UNDERSTAND THE QUESTION.
- 8 Q DO YOU UNDERSTAND THE RULES OF ENDORSEMENT AS YOU SIT
- 9 HERE TODAY?
- 10 A OH, GOSH, YOU KNOW, I REMEMBER SOME OF THEM VAGUELY.
- 11 AGAIN, YOU HAVE TO UNDERSTAND, SINCE 2001 I HAVE -- I
- 12 WORKED ANOTHER JOB FOR ALMOST TWO YEARS. I HAD TWINS. WE
- 13 MOVED FROM SOUTH CAROLINA TO NEW JERSEY, YOU KNOW. WE'VE
- 14 MOVED INTO A NEW HOME. WE'VE STARTED A NEW LIFE. I'M
- 15 ACTUALLY EXPECTING AGAIN. I MEAN, A LOT HAS HAPPENED TO ME
- 16 IN THE LAST FIVE YEARS. I CAN'T SAY I SIT AROUND THINKING
- 17 ABOUT ENDORSEMENT RULES.
- 18 Q WELL, I'M ASKING YOU ---
- 19 A YOU KNOW.
- 20 Q --- YOU'RE TRAINED BY THE BANK, AND CERTAINLY YOU
- 21 WOULD HAVE KNOWN THEM WHEN YOU WERE THE BRANCH MANAGER IN
- 22 2001?
- 23 A YES, WHEN I WAS THE BRANCH MANAGER IN 2001 I WOULD
- 24 HAVE KNOWN THEM.
- 25 Q ALL RIGHT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0377

APPENDIX 382

- 1 A WHAT THEY WERE, I CANNOT TELL YOU TODAY.
- 2 Q ALL RIGHT. UP TO THE VERY TOP OF THE BOLD PRINT.
- 3 A YES.
- 4 Q WHAT DOES IT STATE?
- 5 A KNOW YOUR ENDORSER.
- 6 Q KNOW YOUR ENDORSER?
- 7 A YES.
- 8 Q WHEN NEGOTIATING TERMS THE BEST WAY TO AVOID FRAUD OR
- 9 A LOSS SITUATION IS TO KNOW YOUR ENDORSER?
- 10 A YES.
- 11 Q THAT'S VERY SIGNIFICANT, IS IT NOT?
- 12 A IT IS.
- 13 Q NOW, AN ENDORSEMENT ALLOWS A NEGOTIATION IN THIS
- 14 INSTANCE OF \$254,000 IN CHECKS AND A TRANSFER FROM ONE
- 15 PERSON TO ANOTHER, THIS WAY FROM MET LIFE TO CODY POWELL, A
- 16 MINOR.
- 17 A UH-HUH.
- 18 Q DOES IT NOT? I WANT YOU TO TURN TO THE MIDDLE OF THAT
- 19 PAGE, AND IN THE BULLETS ---
- 20 A UH-HUH.
- 21 Q --- WHERE IT SAYS THE INDIVIDUAL OR BUSINESS NAMED ON
- 22 THE PAYABLE TO LINE OF THE CHECK IS THE PAYEE AND MUST
- 23 ENDORSE CHECK EXACTLY AS IT IS PAYABLE. DO YOU REMEMBER
- 24 THAT RULE?
- 25 A I DO REMEMBER THAT RULE, BUT I REMEMBER -- AGAIN, IT'S

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0378

APPENDIX 383

1 JUST ALL VERY VAGUE. I REMEMBER THAT RULE PERTAINING TO  
2 THE PERSON'S NAME, NOT TO THEIR TITLE. AGAIN, THAT'S JUST  
3 HOW I REMEMBER IT. NOW, WHAT I -- WHETHER THAT'S HOW I  
4 REMEMBERED IT IN 2001, I COULDN'T TELL YOU. I'M JUST  
5 TELLING YOU THAT'S HOW I REMEMBER IT, YOU KNOW, DECEMBER  
6 23, 2005.

7 Q ON THIS -- THESE CHECKS THAT YOU HAVE SEEN, THE  
8 ENDORSEMENT ON THE BACK, IS NOT THE SAME AS THE PAYEE ON  
9 THE FRONT, IS IT?

10 A I THINK IT DEPENDS ON WHAT -- I MEAN, YOU SHOWED ME  
11 SEVERAL CHECKS.

12 Q I SHOWED ALL THE CHECKS. YOU KNOW, ON THIS ONE YOU DO  
13 HAVE -- YOU HAVE TRAVIS. AND YOU HAVE ---

14 MR. DAVIS: THIS ONE BEING PLAINTIFFS' EXHIBIT?

15 A 10.

16 MR. DAVIS: OKAY.

17 A P-10.

18 Q ARE ANY OF THE CHECKS SHOWN AS THE TWO NAMES AS  
19 CONSERVATOR AS FOR CODY P [REDACTED], A MINOR, ON THE BACK OF THE  
20 CHECK?

21 A NO. NO.

22 Q OKAY.

23 A NO. BUT, AGAIN, I CAN'T -- I DON'T REMEMBER WHETHER  
24 THAT'S RIGHT OR WRONG.

25 Q OKAY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0379

APPENDIX 384

- 1 A SO I JUST DON'T FEEL LIKE I CAN ANSWER THAT QUESTION  
2 FOR YOU.
- 3 Q LET'S TURN TO PAGE 48.
- 4 A OKAY.
- 5 Q WE WILL CONTINUE WITH ENDORSEMENTS. PAGE 48. ALL  
6 RIGHT. YOU SEE THE PROVISION WHICH IT SAYS ESTATES?
- 7 A UH-HUH.
- 8 Q AND UNDER IT SAYS CONSERVATORS BY EXAMPLE?
- 9 A OKAY.
- 10 Q AND THEN IT HAS ENDORSEMENT REQUIREMENTS OF THE BANK.
- 11 A OKAY.
- 12 Q WHAT ARE THE ENDORSEMENT REQUIREMENTS WHERE THERE'S A  
13 CONSERVATOR?
- 14 A OKAY. IT SAYS ESTATE NAME AND THEN IT DOES SAY  
15 CONSERVATOR SLASH EXECUTOR SLASH PERSONAL REPRESENTATIVE,  
16 AND THEN THAT PERSON'S SIGNATURE.
- 17 Q ALL RIGHT. AND I ASK YOU WHAT THE LAST ITEM IN THAT  
18 BLOCK IS REQUIRED, VERIFY WHAT?
- 19 A VERIFY THE PAYEE'S AUTHORITY INDICATED ON THE CHECK  
20 BEFORE CASHING. IT DOES SAY THAT THEY SHOULD PUT THAT  
21 MONEY -- I JUST -- I JUST KEEP GOING BACK TO THE FACT THAT  
22 THE CUSTOMER HAD TO ASK FOR THIS ACCOUNT THOUGH. BECAUSE  
23 IF THE CUSTOMER ASKED FOR JUST A REGULAR CD ACCOUNT, THEN,  
24 AGAIN, IF MY RECOLLECTION IS RIGHT, THE NAME WOULD HAVE  
25 BEEN OKAY. I MEAN, I JUST KEEP GOING BACK TO WHAT DID MS.

CODY ██████ VS. BANK OF AMERICA

ROA 0380

APPENDIX 385

1 POWELL ASK FOR THE DAY SHE WALKED INTO MY OFFICE OR LEE  
2 ANN'S OFFICE? I MEAN, THAT IS -- THAT'S ALWAYS THE  
3 STARTING POINT WITH A CUSTOMER.

4 Q OKAY.

5 A YOU WOULD HAVE HAD -- IF SHE HAD ASKED FOR, YOU KNOW,  
6 THIS ACCOUNT, THEN, YEAH, YOU WOULD HAVE TURNED TO YOUR  
7 PAGE IN YOUR MANUAL AND YOU WOULD HAVE SEEN THAT. BUT IF  
8 SHE DIDN'T ASK FOR THIS ACCOUNT, YOU WOULD HAVE TURNED TO  
9 ANOTHER PAGE IN YOUR MANUAL AND YOU WOULD HAVE SEEN MUST BE  
10 ENDORSED BY THE INDIVIDUAL PERIOD.

11 Q THAT'S FOR INDIVIDUAL ACCOUNTS?

12 A OKAY. UNDER CO-ACCOUNT, YOU KNOW, THIS HAS TRAVIS  
13 POWELL AND KAREN POWELL, THE TWO ---

14 Q THAT'S NOT WHAT THE PAGE BEFORE THAT SAYS, IS IT?

15 A WELL, WE HAVE TO FIND THE SECTION ON, I MEAN, YOU WANT  
16 ME ---

17 Q LET'S TURN THE PAGE, I WANT YOU TO GO BACK TO THE SAME  
18 PAGE, PAGE 48. I WANT YOU TO GO A LITTLE BIT FURTHER DOWN.

19 A RIGHT. BUT DO YOU UNDERSTAND WHAT MY POINT IS?

20 Q I WANT YOU TO UNDERSTAND IT, BECAUSE THIS SAYS, LET'S  
21 GO TO PAYEE -- I AM JUST ASKING ABOUT A REGULATION. PAYEE  
22 WITH TITLE, AREN'T THESE CHECKS MADE WITH PAYEE WITH TITLES  
23 AS GUARDIAN OR AS CONSERVATOR AS SHOWN ON PAGE 48 OF  
24 EXHIBIT 1?

25 A YES.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0381

APPENDIX 386



1 Q ALL RIGHT. THE EXAMPLE, I WANT YOU TO TELL ME WHAT IS  
2 REQUIRED WHEN YOU HAVE A PAYEE WITH TITLE LIKE KAREN UNRUE  
3 AS CONSERVATOR, WHAT IS REQUIRED BY THE ENDORSEMENT?

4 A ENDORSEMENT SHOULD INCLUDE THE TITLE, PAYEE'S  
5 AUTHORITY INDICATED ON THE CHECK MUST BE VERIFIED BEFORE  
6 CASHING.

7 Q OKAY. AND HOW DO YOU VERIFY THE PAYEE'S AUTHORITY  
8 BEFORE CASHING?

9 A I DON'T REMEMBER.

10 Q OKAY. IT WOULD BE REQUIRED TO ASK FOR THE COURT  
11 ORDER, WOULD IT NOT, AS -- SHOW ME YOUR AUTHORITY WHERE  
12 YOU'RE CONSERVATOR?

13 A AGAIN, IF YOU WERE ASKED TO OPEN A CONSERVATOR  
14 ACCOUNT. YOU AND I HAVE A -- WE'RE NOT MEETING HERE. I  
15 BELIEVE THAT YOU HAVE TO BE ASKED TO OPEN A CONSERVATOR  
16 ACCOUNT TO KNOW THAT, YOU KNOW, THEN TO LOOK IN THE  
17 CONSERVATOR ACCOUNT SECTION OF THE MANUAL. I -- I'VE NEVER  
18 OPENED A CONSERVATOR ACCOUNT, THEREFORE, I'VE NEVER BEEN  
19 ASKED TO OPEN A CONSERVATOR ACCOUNT.

20 Q ALL RIGHT. YOU SAY YOU ASKED KAREN UNRUE FOR  
21 IDENTIFICATION WHEN YOU OPEN THE TRANSACTION?

22 A I DON'T REMEMBER.

23 Q OKAY. SO YOU DON'T RECALL WHETHER YOU ASKED FOR  
24 IDENTIFICATION?

25 A NO, I DON'T REMEMBER. I TOLD YOU, I HAD HUNDREDS,

CODY ██████ VS. BANK OF AMERICA

ROA 0382

APPENDIX 387

- 1 HUNDREDS OF CUSTOMERS. I MEAN, I CANNOT REMEMBER THIS  
2 ENCOUNTER, OTHER THAN THE FACT THAT SHE SAT ACROSS FROM MY  
3 DESK ONE DAY.
- 4 Q IF SHE COMES BEFORE YOU AS KAREN UNRUE CONSERVATOR ---  
5 A UH-HUH.
- 6 Q --- WHAT KIND OF IDENTIFICATION AS CONSERVATOR WOULD  
7 YOU REQUIRE OF HER AS BRANCH MANAGER?  
8 A I DON'T REMEMBER.
- 9 Q WHAT DO YOUR REGULATIONS REQUIRE?  
10 A THE REGULATIONS, I GUESS THAT WOULD BE FOR AN ESTATE.
- 11 Q NO. IT GOES BACK JUST TO WHAT I TOLD YOU A MINUTE  
12 AGO, PAYEE WITH TITLE OR ESTATE, EITHER ONE.
- 13 A ENDORSEMENT -- THE BANK REGULATIONS REQUIRE THAT THE  
14 TITLE BE INCLUDED.
- 15 Q THE PAYEE'S AUTHORITY?  
16 A IF YOU'RE ASKED TO OPEN THAT ACCOUNT. I MEAN, I  
17 JUST ---
- 18 Q NO. I'M JUST ASKING YOU RIGHT HERE IT SAYS VERIFY THE  
19 PAYEE'S AUTHORITY, WHO IS THE PAYEE ON THE CHECK, KAREN  
20 UNRUE POWELL ---
- 21 A UH-HUH.
- 22 Q --- OR KAREN POWELL UNRUE ---  
23 A UH-HUH.
- 24 Q --- AS CONSERVATOR. NOW, SHE'S THE PAYEE, RIGHT?  
25 A UH-HUH.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0383

APPENDIX 388

1 Q WHAT IS HER AUTHORITY? IT SAYS AUTHORITY INDICATED ON  
2 THE CHECK. SO WHAT -- IF SHE'S KAREN UNRUE CONSERVATOR,  
3 ARE YOU GOING -- DID YOU ASK HER FOR HER AUTHORITY AS  
4 CONSERVATOR?

5 A I DON'T REMEMBER.

6 Q ALL RIGHT. IF YOU WOULD HAVE ASKED FOR THAT  
7 INFORMATION, WOULD IT HAVE HELPED YOU IN OPENING THIS  
8 ACCOUNT CORRECTLY?

9 A I DON'T KNOW. BECAUSE I DON'T KNOW WHAT INFORMATION  
10 SHE WOULD HAVE SHOWN ME. OBVIOUSLY, SHE DIDN'T SHOW ME ANY  
11 INFORMATION.

12 Q ALL RIGHT. I WANT YOU TO TURN TO PAGE 61. DO YOU  
13 KNOW WHAT A PERFORMANCE LOSS IS?

14 A I DON'T REMEMBER.

15 Q IN YOUR REGULATIONS WHAT IS A PERFORMANCE LOSS? ALL  
16 RIGHT. WHAT IS A PERFORMANCE LOSS?

17 A OCCUR BECAUSE ASSOCIATES DID NOT FOLLOW ESTABLISHED  
18 POLICIES AND PROCEDURES.

19 Q OCCUR BECAUSE ASSOCIATES DID NOT FOLLOW ESTABLISHED  
20 POLICIES AND PROCEDURES?

21 A I JUST GO BACK TO WE FOLLOW THE -- AS YOU'VE SEEN  
22 THROUGH READING THIS, EVERY ACCOUNT HAS A DIFFERENT POLICY  
23 AND PROCEDURE. SO BASED ON WHAT YOUR CUSTOMER IS ASKING  
24 YOU TO DO, YOU GO DOWN THAT TRACK.

25 Q I WANT YOU TO TURN TO PAGE 62 AT THE TOP. WHAT IS IN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0384

APPENDIX 389

1 BOLD AT THE TOP OF THE PAGE?

2 A FRAUD AWARENESS AND PREVENTION IS THE RESPONSIBILITY  
3 OF EVERY ASSOCIATE.

4 Q AND BELOW THAT ALL ASSOCIATES ARE REQUIRED TO DO WHAT?  
5 FOLLOW PRECAUTIONARY MEASURES WHEN DOING WHAT?

6 A NEGOTIATING CHECKS, HANDLING CASH, PROCESSING LARGE OR  
7 SUSPICIOUS TRANSACTIONS AND OVERRIDING SYSTEM WARNING  
8 MESSAGES.

9 Q AND PARTICULARLY NEGOTIATING CHECKS LIKE \$254,000?  
10 LET ME ASK IT THIS WAY. WHEN MS. YOURKO NEGOTIATED  
11 \$254,000 IN CHECKS, SHE WAS NEGOTIATING CHECKS, WAS SHE  
12 NOT?

13 A YES.

14 Q HAVE YOU BEEN CONTACTED BY THE BANK? ARE YOU AWARE OF  
15 ANY ATTEMPT BY THE BANK TO INVESTIGATE THESE TRANSACTIONS  
16 AND WHAT WENT WRONG?

17 A WHEN, IN 2001?

18 Q FROM 2001 UNTIL -- I'M TALKING ABOUT THE BANK, NOT THE  
19 LAW FIRM, BUT THE BANK, BANK OF AMERICA, HAVE THEY -- ARE  
20 YOU AWARE OF ANY INVESTIGATION ABOUT THIS TRANSACTION?

21 A I'M NOT AWARE, BUT NOR WOULD I BE. I MEAN, I'M NOT AN  
22 ASSOCIATE OF THE BANK ANY MORE.

23 Q HAS ANY ---

24 A YOU KNOW, IT'S A PRIVATE MATTER, YOU CAN'T CALL ME UP  
25 AND TALK ABOUT SOMEONE ELSE'S ACCOUNTS.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0385

APPENDIX 390

- 1 Q HAS ANYBODY FROM THE BANK OF AMERICA COME IN AND ASKED  
2 YOU ABOUT THIS TRANSACTION BEFORE?
- 3 A NO. THE FIRST I HEARD OF THIS WAS I THINK IT WAS LAST  
4 MARCH WHEN I RECEIVED A PHONE CALL FROM A LAW FIRM.
- 5 Q I WANT TO NOW AGAIN SHOW YOU PLAINTIFFS' EXHIBIT NO.  
6 2. DOES IT APPEAR TO BE THE SAME CHECK WHICH YOU TESTIFIED  
7 EARLIER AS PLAINTIFFS' EXHIBIT NO. 13, WHICH YOU TOOK FOR  
8 DEPOSIT IN EARLY MAY, 2001?
- 9 A YES, IT APPEARS TO BE.
- 10 Q OKAY. AND YOU HAVE BEEN GOING OVER THE VARIOUS  
11 REGULATIONS IN PLAINTIFFS' EXHIBIT NO. 1 WHICH APPLY TO  
12 NEGOTIATING CHECKS WITH ME A FEW MINUTES AGO? OKAY. YOU  
13 AND I HAVE BEEN REVIEWING IN YOUR TESTIMONY VARIOUS  
14 POLICIES AND PROCEDURES IN PLAINTIFFS' EXHIBIT NO. 1?
- 15 A YES.
- 16 Q OKAY. I'LL SHOW YOU A UMGA ACCOUNT REAL QUICK SO WE  
17 WILL BE AWARE OF THAT. YOU ACTUALLY SET UP A UMGA ACCOUNT,  
18 DID YOU NOT?
- 19 A I DON'T KNOW.
- 20 Q WELL, I WILL REFRESH YOUR MEMORY BY LOOKING AT  
21 PLAINTIFFS' EXHIBIT 15.
- 22 A IT SAYS CODY [REDACTED] P [REDACTED] UMGA.
- 23 Q THAT APPEARS ON PAGE 31 OF PLAINTIFFS' EXHIBIT NO. 1.  
24 THESE ARE YOUR REGULATIONS EMBODYING SETTING THAT ACCOUNT  
25 UP?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0386

APPENDIX 391

1 MR. DAVIS: POLICIES AND PROCEDURES INVOLVING SETTING  
2 THAT ACCOUNT UP.  
3 Q POLICIES AND PROCEDURE.  
4 A THIS IS THE PROCEDURE.  
5 Q OKAY.  
6 A YEAH.  
7 Q AND THAT'S THE PROCEDURE YOU FOLLOWED THAT DAY?  
8 A I DON'T KNOW.  
9 Q WELL, YOU SET THE ACCOUNT UP?  
10 A I DON'T -- I DON'T REMEMBER.  
11 Q AND YOU ---  
12 A AND I THINK IT'S INTERESTING HERE BECAUSE IF A COURT  
13 ORDER IS REQUIRED FOR WITHDRAWALS, THE TITLE ON THE ACCOUNT  
14 MUST INCLUDE THE WORDS COURT RESTRICTED. AGAIN, I'VE NEVER  
15 SEEN -- I CAN SAY I HAVE NEVER SEEN A COURT ORDER. SO,  
16 AGAIN, IF SOMEONE DIDN'T PRESENT ME WITH THE COURT ORDER, I  
17 DIDN'T KNOW THAT IT EXISTED.  
18 Q ALL RIGHT. DID YOU ASK THAT IT BE PRESENTED?  
19 A SO THIS IF IS A BIG OLD IF.  
20 Q OKAY. DID YOU ASK FOR IT TO BE PRESENTED AS REQUIRED  
21 BY YOUR POLICIES AND PROCEDURES?  
22 A I DON'T SEE WHERE IT WOULD HAVE ASKED ME TO ASK THAT  
23 QUESTION.  
24 Q OKAY.  
25 A DO YOU, CAN YOU POINT THAT OUT TO ME?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0387

APPENDIX 392

- 1 Q YES, I WILL CALL YOUR ATTENTION BACK TO PAGE 48 UNDER  
2 ESTATE, ALSO UNDER PAYEE, PAYEE'S AUTHORITY INDICATED ON  
3 THE CHECK MUST BE VERIFIED BEFORE CASHING. I ALSO CALL  
4 YOUR ATTENTION TO ---  
5 A BUT IT DOESN'T SAY THAT I SHOULD HAVE ASKED FOR A  
6 COURT ORDER. I DIDN'T KNOW THAT A COURT ORDER EXISTED.  
7 Q TURN TO PAGE 3.  
8 A PAGE 3?  
9 Q PAGE 3.  
10 A AGAIN, THIS IS ASSUMING YOU KNEW ONE EXISTED.  
11 Q REQUIRED DOCUMENTATION THAT YOU MUST ASK FOR AS AN  
12 EMPLOYEE, A CERTIFIED COPY OF THE COURT ORDER APPOINTING  
13 THE GUARDIAN, DOWN AT THE BOTTOM OF THE PAGE, IS THAT WHAT  
14 IT SAYS?  
15 A ON THIS SPECIFIC TYPE OF ACCOUNT. BUT THIS ISN'T THE  
16 ACCOUNT I OPENED, SO I DIDN'T KNOW THAT THE COURT ORDER  
17 EXISTED.  
18 Q OKAY. BUT WHEN YOU SAW CONSERVATOR AS A BANK  
19 EMPLOYEE, ARE YOU TELLING THIS COURT THAT YOU ARE NOT  
20 REQUIRED TO OPEN A SPECIFIC ACCOUNT AS REQUIRED BY THE  
21 PAYEE'S NAME ON THE CHECK?  
22 A NO. YEAH, THAT'S NOT WHAT I'M SAYING.  
23 Q TELL ME WHAT YOU'RE SAYING?  
24 A WHAT I'M SAYING IS IF A CUSTOMER WALKS IN AND SAYS  
25 THERE'S A COURT ORDER THAT I OPEN ACCOUNT ABC, THEN I KNOW

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0388

APPENDIX 393

1 TO ASK FOR THE COURT ORDER SHOWING ME THE REGULATIONS THAT  
2 THE COURT IS REQUIRING ON ACCOUNT ABC. IF A CUSTOMER  
3 DOESN'T TELL ME THAT THERE'S BEEN A HEARING AND THAT THERE  
4 IS A COURT ORDER AND IT EXISTS, THERE'S NO REASON FOR ME TO  
5 OPEN IT. IF A CUSTOMER COMES IN AND SAYS, I WANT TO OPEN  
6 THIS CD AND I WANT TO DO IT FOR THIS MINOR, THEN, YOU KNOW,  
7 I WENT DOWN THE ROAD THAT MY CUSTOMER ASKED ME TO GO DOWN.

8 Q OKAY.

9 A AND I DIDN'T KNOW THAT A COURT ORDER WOULD HAVE  
10 EXISTED.

11 Q OKAY.

12 A BECAUSE I HAVE NEVER SEEN A COURT ORDER.

13 Q IF THIS CUSTOMER CAME IN TO SET THESE ACCOUNTS UP  
14 INTENDING TO DEFRAUD THIS CHILD OF MONEY ---

15 A UH-HUH.

16 Q --- CODY P. [REDACTED] ---

17 A UH-HUH.

18 Q --- OF \$255,000 ---

19 A UH-HUH. AND I FEEL HORRIBLE, I MEAN, ABSOLUTELY  
20 HORRIBLE THAT THAT'S HAPPENED.

21 Q IF YOU WOULD HAVE FOLLOWED THESE REGULATIONS AND  
22 POLICIES AND PROCEDURES THAT YOU WERE TRAINED IN, THIS LOSS  
23 WOULD NOT HAVE OCCURRED, WOULD IT?

24 A I MEAN, I JUST DON'T KNOW. I MEAN, IF SHE CAME IN --  
25 IF SHE CAME IN WITH THE INTENT TO PERPETRATE A FRAUD, SHE

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0389

APPENDIX 394



1 DID A GOOD JOB. SHE DID IT. YOU KNOW, I DON'T KNOW, SHE  
2 -- YOU KNOW, LIKE I SAID, I CAN'T REMEMBER WHAT WE DID THAT  
3 DAY. BUT I CAN REMEMBER I'VE NEVER SEEN A COURT ORDER. SO  
4 I KNOW THAT I WAS NOT TOLD ABOUT A COURT ORDER. BECAUSE,  
5 LIKE YOU SAID, IF I HAD BEEN TOLD THEN THAT'S THE PATH WE  
6 WOULD HAVE GONE DOWN. BECAUSE I FOLLOWED POLICIES AND I  
7 FOLLOWED PROCEDURES. BUT YOU CAN ONLY FOLLOW THEM TO THE  
8 EXTENT OF WHAT YOUR CUSTOMER IS ASKING FOR. SO IF SHE CAME  
9 IN WITH THE INTENT TO COMMIT A FRAUD, YOU KNOW, THAT'S --  
10 UNFORTUNATELY, THAT'S WHAT HAPPENED.

11 Q YOU UNDERSTAND AS A BANK, YOU ARE CHARGED WITH THE  
12 RESPONSIBILITY OF PROTECTING A DEPOSITOR'S MONEY?

13 A YES. I DID. AND I TOOK THAT RESPONSIBILITY EXTREMELY  
14 CAREFULLY. I CAN TELL YOU, YOU KNOW, IF I COULDN'T FIND A  
15 PENNY IN SOMEONE'S ACCOUNT, I WOULD TOSS AND TURN FOR A  
16 WEEKEND UNTIL THAT PENNY WAS FOUND. I UNDERSTAND THAT.

17 Q BANK OF AMERICA'S LOGO IS WHAT?

18 A IT'S A DIAMOND IN THE SHAPE OF A FLAG.

19 Q ALL RIGHT. ALSO HIGHER STANDARDS, ARE YOU FAMILIAR  
20 WITH THAT?

21 A YES.

22 MR. JENKINSON: I HAVE NO FURTHER QUESTIONS.

23 THAT CONCLUDES THE DEPOSITION OF MS. LAWRENCE TAKEN IN  
24 NEW JERSEY.

25 AND WE WILL OFFER THE TRANSCRIPT BY CD.

CODY E [REDACTED] VS. BANK OF AMERICA

ROA 0390

APPENDIX 395

1 THE COURT: ALL RIGHT. BRING THEM ON.  
2 (THE JURY RETURNS TO THE COURTROOM AT 9:50 A.M.)  
3 THE COURT: HOW MANY DO YOU HAVE, REVEREND BROWN?  
4 REVEREND BROWN: 14.  
5 THE COURT: 14. ALL RIGHT. GOOD MORNING.  
6 JURORS: GOOD MORNING.  
7 THE COURT: WELCOME TO DAY NUMBER THREE. THE  
8 PLAINTIFF CONTINUES PRESENTING THEIR CASE.  
9 YOUR NEXT WITNESS.  
10 MR. JENKINSON: YOUR HONOR, MAY IT PLEASE THE COURT,  
11 YOUR HONOR.  
12 THE COURT: YES, SIR.  
13 MR. JENKINSON: AND GOOD MORNING, EVERYONE.  
14 JURORS: GOOD MORNING.  
15 MR. JENKINSON: WE CALL AS OUR NEXT WITNESS THE  
16 REPRESENTATIVE OF THE BANK OF AMERICA, MS. ELIZABETH  
17 REEVES. WE WOULD MOVE TO QUESTION HER AS AN ADVERSE PARTY.  
18 THE COURT: ALL RIGHT. MS. REEVES.  
19 ELIZABETH REEVES, BEING FIRST  
20 DULY SWORN, TESTIFIED AS FOLLOWS:  
21 DIRECT EXAMINATION BY MR. JENKINSON:  
22 Q GOOD MORNING, MS. REEVES.  
23 A GOOD MORNING.  
24 Q WE HAVE MET BEFORE, HAVE WE NOT?  
25 A YES. YES, WE HAVE.

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0391

APPENDIX 396

- 1 Q NOW, THERE MAY BE A PROBLEM.
- 2 (PAUSE.)
- 3 Q MS. REEVES, ARE YOU THE REPRESENTATIVE OF THE BANK OF
- 4 AMERICA IN THIS CASE?
- 5 A YES, SIR.
- 6 Q YOU HAVE BEEN DESIGNATED UNDER OUR COURT RULES AS THE
- 7 REPRESENTATIVE OF THE BANK TO SPEAK ON BEHALF OF THE BANK?
- 8 A YES, SIR.
- 9 Q SO WHEN YOU SPEAK, YOU'RE SPEAKING FOR THE BANK OF
- 10 AMERICA?
- 11 A YES, SIR.
- 12 Q WHERE IS THE BANK OF AMERICA'S HEADQUARTERS LOCATED?
- 13 A IT'S IN CHARLOTTE, NORTH CAROLINA.
- 14 Q AND YOU LIVE WHERE?
- 15 A I LIVE IN MT. PLEASANT, SOUTH CAROLINA.
- 16 Q HAVE YOU EVER WORKED OUT OF THE CHARLOTTE OFFICE?
- 17 A NO, SIR.
- 18 Q WHAT IS YOUR JOB WITH THE BANK OF AMERICA?
- 19 A I AM A BANKING CENTER MANAGER FOR ONE OF THE LOCAL
- 20 COMMUNITY BANKS.
- 21 Q IN CHARLESTON?
- 22 A YES, SIR.
- 23 Q YOU HAVE ANYTHING TO DO WITH THE PAWLEYS ISLAND
- 24 BRANCH?
- 25 A NO, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0392

APPENDIX 397

1 Q DID YOU HAVE ANYTHING TO DO WITH THE PAWLEYS ISLAND  
2 BRANCH IN 2001?

3 A NO, SIR.

4 Q YOU'VE BEEN IN THE PAWLEYS ISLAND BRANCH BEFORE?

5 A YES, SIR, I HAVE.

6 Q I'M GOING TO ASK YOU IF YOU CAN IDENTIFY THIS  
7 PHOTOGRAPH?

8 A OKAY. YES, SIR, THAT LOOKS LIKE THE PAWLEYS ISLAND  
9 BANKING CENTER.

10 MR. JENKINSON: WE WOULD MOVE TO INTRODUCE THE  
11 PHOTOGRAPH OF THE PAWLEYS ISLAND BRANCH.

12 MR. DAVIS: NO OBJECTION, JUDGE.

13 THE COURT: IT'S ADMITTED WITHOUT OBJECTION.

14 (COLOR PHOTO OF BANK OF AMERICA MARKED IN EVIDENCE AS  
15 PLAINTIFFS' EXHIBIT NO. 34.)

16 Q NOW, WE UNDERSTAND THAT PLAINTIFFS' 34, THE PHOTOGRAPH  
17 OF THE BANK, THAT JUST TELLS US WHAT THE BANK OF AMERICA'S  
18 OFFICE LOOKED LIKE IN 2001 AND LOOKS LIKE TODAY, DOES IT  
19 NOT?

20 A YES, SIR.

21 Q NOW, FLORETTA DENNING HAS ALSO BEEN DESIGNATED AS A  
22 SPOKESPERSON FOR THE BANK?

23 A YES.

24 Q IS THAT RIGHT?

25 A YES, SIR.

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0393

APPENDIX 398

1 Q MS. DENNING I HAVE NOT SEEN HER HERE, THIS IS THE  
2 THIRD DAY. IS SHE PRESENT?

3 MR. DAVIS: OBJECTION, YOUR HONOR. I DON'T SEE THE  
4 RELEVANCE OF THAT. THEY DEPOSED HER AS A 30 (B) -- AS A  
5 CUSTODIAN OF RECORDS. WHETHER SHE'S HERE OR NOT, I DON'T  
6 SEE THE RELEVANCE OF THAT.

7 THE COURT: MR. JENKINSON.

8 MR. JENKINSON: SHE'S BEEN A REPRESENTATIVE OF THE  
9 BANK WHO'S SWORN UNDER OATH, YOUR HONOR, AND I'M JUST -- AS  
10 A -- THERE WERE TWO CO-REPRESENTATIVES IN EFFECT HERE, AND  
11 I'M JUST INQUIRING AS TO WHY THE REPRESENTATIVE OF THE BANK  
12 IS NOT PRESENT.

13 MR. DAVIS: WELL, FIRST OF ALL, SHE IS PRESENT.

14 MR. JENKINSON: I'M GOING TO OBJECT TO A SPEAKING. I  
15 WOULD LIKE A SIDE BAR.

16 THE COURT: OKAY. WELL, YOU ALL ARE JUST SPEAKING  
17 BACK AND FORTH.

18 MR. DAVIS: YES, SIR. SORRY.

19 THE COURT: THE QUESTION IS: IS SHE HERE? THE  
20 OBJECTION IS OVERRULED.

21 A IS SHE HERE, MEANING HERE IN COURT?

22 Q YES, MA'AM. WE HAVE NOT SEEN HER IN THREE DAYS.

23 A DID YOU SUBPOENA HER TOO OR -- I MEAN, WHAT?

24 Q MY QUESTION TO YOU IS: HAS SHE BEEN HERE IN THE PAST  
25 THREE DAYS?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0394

APPENDIX 399

- 1 A I DON'T -- I DON'T KNOW.
- 2 Q YOU HAVE NOT SEEN HER?
- 3 A NOT HERE IN COURT, NO, SIR.
- 4 Q NO, I'M NOT TALKING IN COURT. HAVE YOU SEEN HER WARM
- 5 BODY IN THE LAST THREE DAYS?
- 6 A YES, SIR, I HAVE.
- 7 Q YOU'VE SEEN HER EVERY DAY, HAVEN'T YOU?
- 8 A YES, AS A MATTER OF FACT, I DID.
- 9 Q MONDAY, TUESDAY, AND WEDNESDAY -- TODAY, YOU'VE SEEN
- 10 HER, HAVEN'T YOU?
- 11 A I DID SEE HER MONDAY EVENING, YES, SIR.
- 12 Q SHE'S STAYING OVER IN A MOTEL OVER IN LAKE CITY, ISN'T
- 13 SHE?
- 14 A YES, SIR.
- 15 Q AND HAS NOT BEEN COMING TO COURT?
- 16 A NOT SINCE I'VE BEEN HERE, SIR.
- 17 Q ALL RIGHT. NOW, SO THE JURY WILL UNDERSTAND JUST WHAT
- 18 YOU KNOW, I BELIEVE YOU'VE BEEN A TELLER IN THE NATIONS
- 19 BANK?
- 20 A YES, SIR.
- 21 Q YOU HAVE BEEN A PERSONAL BANKER?
- 22 A I HAVE.
- 23 Q YOU'VE BEEN A BRANCH MANAGER?
- 24 A I HAVE.
- 25 Q SO YOU UNDERSTAND THE DUTIES AND RESPONSIBILITIES OF

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0395

APPENDIX 400

- 1 EACH ONE OF THOSE POSITIONS, DON'T YOU?
- 2 A YES, SIR.
- 3 Q YOU UNDERSTAND THE POLICIES AND PROCEDURES OF THE BANK
- 4 OF AMERICA THAT EACH ONE OF THESE EMPLOYEES HAVE TO FOLLOW
- 5 AS BANK EMPLOYEES?
- 6 A YES, SIR.
- 7 Q BANKS ARE SPREAD ALL ACROSS AMERICA, AREN'T THEY?
- 8 A YOU MEAN BANK OF AMERICA OR JUST BANKS IN GENERAL?
- 9 Q ANY BANK, JUST BANKS IN GENERAL. I'M JUST ---
- 10 A YES, SIR.
- 11 Q --- ASKING YOU ABOUT BANKS IN GENERAL. PRACTICALLY
- 12 EVERY MAIN STREET OF EVERY TOWN OF ANY SIZE IN EVERY CITY
- 13 HAS BANKS, DON'T THEY?
- 14 A I GUESS SO, YES, SIR.
- 15 Q AS A MATTER OF FACT, WE HAVE THREE RIGHT HERE ON MAIN
- 16 STREET IN KINGSTREE; THAT WOULDN'T SURPRISE YOU, WOULD IT?
- 17 A NO, SIR.
- 18 Q YOU UNDERSTAND WHY BANKS EXIST IN THESE PLACES?
- 19 A YES, SIR.
- 20 Q WHY?
- 21 A TO PROVIDE BANKING SERVICES TO OUR ACCOUNT HOLDERS.
- 22 Q AND THAT BANKING SERVICES IS TO PROTECT PEOPLE'S MONEY -
- 23 FOR THEM, IS IT NOT?
- 24 A THAT, YES, IT IS, IN ADDITION TO OTHER
- 25 RESPONSIBILITIES.

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0396

APPENDIX 401

1 Q PEOPLE WANT TO KNOW THAT THEIR MONEY IS SAFE? YOU  
 2 KEEP NODDING YOUR HEAD. WE HAVE TO SPEAK.  
 3 A OH, I'M SORRY. I'M SORRY. YES.  
 4 Q PEOPLE NEED TO KNOW THAT, DON'T THEY?  
 5 A YES, SIR.  
 6 Q BECAUSE THE WORLD IS FULL OF CRIMINALS, BAD PEOPLE  
 7 TRYING TO TAKE ADVANTAGE OF PEOPLE AND GET THEIR MONEY?  
 8 A YES, SIR.  
 9 Q UNFORTUNATELY, WE HAVE TO DEAL WITH GREED AND THEFT  
 10 AND FRAUD EVERY DAY WITH PEOPLE'S MONEY, DON'T WE?  
 11 A YES, SIR, WE DO.  
 12 Q AND WE GO TO BANKS TO PROTECT OUR MONEY SAFELY FROM  
 13 OTHER PEOPLE TRYING TO GET IT, DON'T WE?  
 14 A YES, I IMAGINE THAT'S ONE OF THE REASONS THAT -- THAT  
 15 CUSTOMERS COME TO THE BANK, YES, SIR.  
 16 Q AND IT'S FAIR TO SAY THAT PEOPLE EXPECT THAT THEIR  
 17 MONEY WILL BE PROTECTED AND TAKEN CARE OF IN A BANK, ISN'T  
 18 IT?  
 19 A YES, SIR, THAT'S A FAIR ASSESSMENT.  
 20 Q AS A MATTER OF FACT, IN A BANK YOU'VE GOT A VAULT,  
 21 DON'T YOU?  
 22 A YES, SIR.  
 23 Q SECURITY CAMERAS?  
 24 A YES, SIR.  
 25 Q YOU'VE GOT LOCKS AND WARNING -- SECURITY SYSTEMS,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0397

APPENDIX 402



1 DON'T YOU?  
2 A YES, SIR.  
3 Q YOU'VE EVEN GOT A TIMER ON THE VAULT TO KEEP EMPLOYEES  
4 FROM GOING IN A VAULT IN OFF-HOURS TO KEEP YOUR OWN  
5 EMPLOYEES FROM STEALING FROM A BANK?  
6 A WELL, WE HAVE -- IT'S TO KEEP EVERYBODY OUT, YES, SIR.  
7 Q THAT'S RIGHT. I MEAN, BANKS HAVE PROBLEMS WITH  
8 EMPLOYEES STEALING MONEY, DON'T THEY, EMBEZZLING MONEY?  
9 A I WOULD IMAGINE, YES, THEY DO, JUST LIKE MOST  
10 COMPANIES.  
11 Q AND YOU WANT TO PROTECT PEOPLE'S MONEY FROM BAD  
12 EMPLOYEES, DON'T YOU?  
13 A YES, SIR.  
14 Q AND YOU HAVE ALSO POLICIES AND PROCEDURES IN BANKS TO  
15 PROTECT PEOPLE'S MONEY AS IT COMES IN THE BANK FROM FRAUD  
16 AND PROTECT THEIR MONEY -- PARTICULAR MINOR -- CHILDREN'S  
17 MONEY, DON'T YOU?  
18 A YES, SIR, WE DO.  
19 Q PEOPLE ACTUALLY WHEN THEY DO BUSINESS WITH A BANK, PAY  
20 FOR THAT PROTECTION BECAUSE THE BANK MAKES MONEY OFF OF  
21 THEIR CUSTOMERS, DON'T THEY?  
22 A YES, SIR, WE MAKE MONEY.  
23 Q BANK SELLS SERVICES TO PEOPLE LIKE CHECKING ACCOUNTS  
24 AND SAVINGS ACCOUNTS AND CERTIFICATES OF DEPOSIT, AND  
25 VARIOUS KINDS OF ACCOUNTS TO KEEP THEIR MONEY IN SAFELY,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0398

APPENDIX 403

- 1 DON'T THEY?
- 2 A YES, SIR.
- 3 Q AND BANKS HAVE POLICIES AND PROCEDURES ON HOW THAT
- 4 MONEY COMES IN TO MAKE SURE IT'S ADEQUATELY PROTECTED,
- 5 DON'T THEY?
- 6 A YES, SIR.
- 7 Q AND YOUR CUSTOMERS PAY FOR THAT PROTECTION IN EFFECT
- 8 WHEN THE MONEY GOES IN, DON'T THEY?
- 9 A YES. YES, THEY DO.
- 10 Q IT'S PERFECTLY FORESEEABLE TO A BANK THAT PEOPLE OUT
- 11 THERE ARE GOING TO STEAL AND TAKE ADVANTAGE OF YOUR
- 12 DEPOSITORS IF THEY CAN, ISN'T IT?
- 13 A THAT IS CORRECT, YES, SIR.
- 14 Q AND YOU AS A BANK MAKE A LIVING AT PROTECTING PEOPLE
- 15 FROM THOSE BAD PEOPLE, GREEDY PEOPLE WHO ARE TRYING TO
- 16 POSSIBLY DEFRAUD YOUR CUSTOMERS?
- 17 A THAT'S ONE OF MANY ASPECTS, YES, SIR.
- 18 Q AND THAT'S THE DUTY AND OBLIGATION OF A BANK TO
- 19 PROTECT THEIR CUSTOMERS?
- 20 A IT IS ONE OF THE MANY OBLIGATIONS, YES, SIR.
- 21 Q AND WHEN YOU HAVE CHILDREN INVOLVED AND INCOMPETENT
- 22 PEOPLE, YOU REALLY HAVE A HIGHER LEVEL OF AWARENESS AND
- 23 PROTECTION BUILT IN FOR THOSE KINDS OF CLASSES OF PEOPLE,
- 24 CHILDREN AND MENTALLY INCOMPETENT PEOPLE, DON'T YOU?
- 25 A THERE IS A DIFFERENT WAY OF -- YES, SIR.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0399

APPENDIX 404

- 1 Q AND YOU HAVE PROCEDURES TO PROTECT THEM AS WELL?
- 2 A YES, SIR, WE DO HAVE POLICY AND PROCEDURES.
- 3 Q NOW, I'M GOING TO ASK YOU IF YOU RECOGNIZE WHAT I HAVE
- 4 IN MY HAND?
- 5 A YES. WELL, I ASSUME THAT IT'S THE POLICY AND
- 6 PROCEDURE MANUALS.
- 7 Q LOOK AT THEM. THIS WAS PROVIDED TO US BY BANK OF
- 8 AMERICA.
- 9 A RIGHT.
- 10 Q THESE ARE YOUR POLICIES AND PROCEDURES BY WHICH YOUR
- 11 EMPLOYEES ARE TRAINED, ARE THEY NOT?
- 12 A YES, SIR, BACK IN 2001, YES, SIR.
- 13 Q AND THAT'S WHAT WE'RE TALKING ABOUT ---
- 14 A YES, SIR.
- 15 Q --- THESE ARE THE 2001 DOCUMENTS THAT HAVE BEEN
- 16 PROVIDED SO WE'LL KNOW WHAT YOUR EMPLOYEES WERE DOING IN
- 17 2001, RIGHT?
- 18 A YES, SIR.
- 19 Q THAT'S EVERYTHING ABOUT RUNNING WHAT WE CALL THE FRONT
- 20 OF A BANK, WHERE YOU HAVE YOUR MANAGER AND YOUR PERSONAL
- 21 BANKER AND YOUR TELLERS AND THE PEOPLE WHO DEAL WITH
- 22 CUSTOMERS, RIGHT?
- 23 A YES, SIR.
- 24 Q ALSO, THE BANK HAS SOMETHING CALLED A BACK ROOM, DON'T
- 25 THEY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0400

APPENDIX 405

- 1 A AN OPERATIONS AREA, YES, SIR.
- 2 Q OPERATIONS AREA?
- 3 A YES, SIR.
- 4 Q AND THE NICKNAME FOR IT IS THE BACK ROOM?
- 5 A THAT MAY BE ONE OF THE NICKNAMES, YES, SIR.
- 6 Q THAT'S THE PART OF A BANK CUSTOMERS DON'T SEE?
- 7 A YES, SIR.
- 8 Q AND THERE ARE MULTIPLE LEVELS OF PROTECTION IN ANY
- 9 BANK TO PROTECT CUSTOMERS' MONEY, ARE THERE NOT?
- 10 A CAN YOU ASK THAT AGAIN? I CAN'T HEAR FOR THE -- SAY
- 11 THAT -- SAY THAT ONE MORE TIME. THERE ARE MULTIPLE LEVELS
- 12 OF ---
- 13 Q MULTIPLE LEVELS OF PROTECTION FOR YOUR CUSTOMERS BUILT
- 14 IN A BANK, AREN'T THERE?
- 15 A YES, SIR.
- 16 Q YOU HAVE A LEVEL OF PROTECTION FROM YOUR POLICIES AND
- 17 PROCEDURES THAT YOUR PERSONAL BANKER, YOUR BRANCH MANAGER,
- 18 AND YOUR TELLER MUST FOLLOW?
- 19 A YES, SIR.
- 20 Q DON'T YOU?
- 21 A YES, SIR.
- 22 Q THEN YOU HAVE A LEVEL OF PROTECTION THAT YOUR TELLERS
- 23 ALSO MUST FOLLOW?
- 24 A YES, SIR.
- 25 Q THEN YOU HAVE A LEVEL OF PROTECTION BUILT IN YOUR BACK

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0401

APPENDIX 406

- 1 ROOM, WHERE THE BACK ROOM CHECKS ON THE FRONT ROOM TO MAKE  
2 SURE THEY GOT IT RIGHT?
- 3 A YES, SIR.
- 4 Q NOW, IF SOMETHING IS NOT RIGHT, IT'S THE BACK ROOM'S  
5 JOB TO CHECK IT AND CATCH IT?
- 6 A IF -- IF THEY KNOW THAT SOMETHING'S NOT RIGHT, YES,  
7 SIR, IT IS.
- 8 Q AND YOU CAN LOOK AT DOCUMENTS AND THAT'S WHAT THEY DO.  
9 THEY LOOK AT DOCUMENTS AND SAY, THIS IS RIGHT OR WRONG.  
10 AND IF IT'S WRONG, THEY WILL NOT ALLOW THE TRANSACTION TO  
11 GO FORWARD, FREEZE IT, AND SEND IT BACK TO THE FRONT AND  
12 SAY, GET IT RIGHT?
- 13 A YES, IF THEY KNOW THAT THERE IS SOMETHING WRONG. YES,  
14 SIR.
- 15 Q AND IF THE BRANCH MANAGER OR THE PERSONAL BANKER MAKE  
16 A MISTAKE, THEY TAKE DOCUMENTS TO THE TELLER, AND THE  
17 TELLER LOOKS AT IT AND OFFERS A LEVEL OF PROTECTION AND  
18 SAY, THIS IS NOT RIGHT. THESE CHECKS ARE NOT PROPERLY  
19 ENDORSED, FOR EXAMPLE. ISN'T THAT WHAT A TELLER'S  
20 RESPONSIBILITY IS?
- 21 A A TELLER WOULD DO THAT IF IT WAS SOMETHING PRESENTED  
22 TO THEM INITIALLY, CORRECT.
- 23 Q IT'S A LEVEL OF PROTECTION?
- 24 A YES, SIR.
- 25 Q OKAY. NOW, WHAT I'VE BEEN ASKING YOU ABOUT, THOSE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0402

APPENDIX 407

1 TYPES OF PROTECTION, THEY APPLY TO ANY BANKS WHETHER THEY  
2 BE IN MAIN STREET KINGSTREE OR THE BANK OF AMERICA, WHICH  
3 IS THE LARGEST BANK IN THE UNITED STATES, DO THEY NOT?  
4 A YES, SIR, I WOULD IMAGINE SO. IT WOULD BE CONSISTENT.  
5 Q PRETTY MUCH ALL THE SAME, THOSE LEVELS OF PROTECTION  
6 ARE BASICALLY REQUIRED BY THE FEDERAL GOVERNMENT, ARE THEY  
7 NOT, THROUGH BANKING REGULATIONS?  
8 A I WOULD NOT BE ABLE TO ANSWER THAT, I DON'T KNOW THAT  
9 FOR A FACT.  
10 Q SO YOU DON'T KNOW THAT?  
11 A NO, SIR.  
12 Q BUT YOU UNDERSTAND THERE IS GREAT OVERSIGHT BY THE  
13 FEDERAL RESERVE AND BANKING SYSTEMS IN THE FEDERAL  
14 REGULATIONS? YOU UNDERSTAND THAT?  
15 A ABSOLUTELY, YES.  
16 Q AND THE BANK OF AMERICA IS EXPECTED TO FOLLOW THOSE  
17 BANKING REGULATIONS, ARE THEY NOT?  
18 A WE, LIKE ALL FINANCIAL INSTITUTIONS, WOULD FOLLOW BANK  
19 REGULATIONS, YES.  
20 Q NOW, LET'S TALK ABOUT THE BANK OF AMERICA. I SAID  
21 THEY ARE THE LARGEST BANK -- BANKING INSTITUTION IN THE  
22 UNITED STATES, ARE THEY NOT?  
23 A IT'S HARD TO SAY BASED ON TODAY WITH WHAT'S HAPPENED  
24 RECENTLY. BUT WE DO -- WE DO HAVE A PRESENCE. IT IS A  
25 LARGE COMPANY, BUT IT'S MADE UP OF A LOT OF SMALL BANKING

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0403

APPENDIX 408

- 1 CENTERS IN THE COMMUNITY.
- 2 Q ACTUALLY, I THINK YOU PROBABLY HAVE IN EXCESS OF 5900
- 3 BRANCHES IN 29 STATES?
- 4 A YOU MUST KNOW THAT. I AM NOT PRIVY TO THE EXACT
- 5 NUMBER. BUT I WOULD SAY THAT WE DO HAVE OUR PRESENCE,
- 6 YES, SIR.
- 7 Q WELL, YOU ARE PRIVY TO THE BANK'S WEBSITE, ARE YOU
- 8 NOT, AND ANYBODY CAN GO SIMPLY TO A COMPUTER ---
- 9 A YES, I AM ---
- 10 Q --- AND LOOK?
- 11 A --- BUT I HAVE NOT LOOKED AT THAT SPECIFICALLY, SO.
- 12 Q YOU WOULDN'T DENY THAT'S CORRECT?
- 13 A I DID NOT DENY IT, NO, SIR.
- 14 Q AND THE BANK OF AMERICA HAS A LOGO, DOES IT NOT?
- 15 A YES.
- 16 Q WHAT IS THAT?
- 17 A IT'S -- IT LOOKS LIKE A FLAG.
- 18 Q OKAY. AND BY THAT LOGO DO YOU HAVE SOME WORDS BY IT?
- 19 A IT'S BANK OF OPPORTUNITY.
- 20 Q OKAY. AND IN 2001 IT WAS?
- 21 A IT WAS HIGHER STANDARDS.
- 22 Q AND YOU'VE CHANGED THAT?
- 23 A YES, SIR, WE DID.
- 24 Q OKAY. BUT IT WAS HIGHER STANDARDS BACK IN 2001, 2002
- 25 -- AS A MATTER OF FACT, THAT LOGO JUST CHANGED, DID IT NOT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0404

APPENDIX 409

1 A IT DID. I DON'T REMEMBER WHEN, BUT IT HAS CHANGED.  
2 Q I THINK IT CHANGED IN THE LAST YEAR OR SO?  
3 A YES, SIR.  
4 Q BUT FOR YEARS THAT WAS WHAT YOU TOLD THE PUBLIC, THAT  
5 THE BANK HAD HIGHER STANDARDS?  
6 MR. DAVIS: OBJECTION, YOUR HONOR.  
7 THE COURT: THE BASIS FOR THE OBJECTION?  
8 MR. DAVIS: MAY WE APPROACH?  
9 THE COURT: YES, SIR.  
10 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE  
11 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)  
12 THE COURT: ALL RIGHT.  
13 Q ANY TIME YOU NEED A REFILL ON THAT WATER, JUST HOLD UP  
14 YOUR HAND AND WE'LL GET IT FOR YOU.  
15 A OKAY. THANK YOU.  
16 Q MS. REEVES, I WAS ASKING YOU ABOUT THIS HIGHER  
17 STANDARDS LOGO. WHAT DID THE BANK WANT THE PUBLIC TO THINK  
18 BY READING THIS LOGO?  
19 A THAT WE WOULD GO ABOVE AND BEYOND TO TRY TO DELIVER  
20 GOOD -- EXCELLENT, NOT GOOD -- EXCELLENT CUSTOMER SERVICE.  
21 IT WAS DEFINED AS TRYING TO DO MORE FOR THE CUSTOMER.  
22 Q THAT TYPE MESSAGE?  
23 A YES, SIR.  
24 Q ALL RIGHT. NOW, THE PAWLEYS ISLAND BRANCH WHICH IS  
25 SHOWN IN PLAINTIFFS' EXHIBIT NO. 34 WE LOOKED AT A MINUTE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0405

APPENDIX 410



- 1   AGO?
- 2   A     YES, SIR.
- 3   Q     NOW, BACK IN 2001 -- AND IF IT'S NOT DONE TODAY, TELL
- 4   US.
- 5   A     YES, SIR.
- 6   Q     BUT BANK EMPLOYEES WERE TRAINED AS WE'VE HEARD
- 7   DESCRIBED FROM MS. YOURKO AND MS. LAWRENCE?
- 8   A     RIGHT.
- 9   Q     AND THEY WERE TRAINED USING THE POLICIES AND
- 10  PROCEDURES TO PROTECT THEIR CUSTOMER'S MONEY?
- 11  A     YES, THAT IS ONE OF THE MANY THINGS THAT WE RECEIVE
- 12  TRAINING ON.
- 13  Q     NOW, EACH BRANCH, INCLUDING PAWLEYS ISLAND, HAD A SET
- 14  OF THESE MANUALS?
- 15  A     YES, SIR.
- 16  Q     MORE THAN ONE SET?
- 17  A     THEY MAY HAVE HAD MORE THAN ONE SET, DEPENDING ON THE
- 18  SIZE OF THE BANKING CENTER, YES, SIR.
- 19  Q     NOW ---
- 20  A     THE NUMBER OF EMPLOYEES.
- 21  Q     SO YOUR EMPLOYEES WOULD KNOW WHAT TO DO IF THEY HAD A
- 22  QUESTION, YOU HAD A NUMBER OF SYSTEMS BUILT IN AS AIDS TO
- 23  YOUR EMPLOYEES IF THEY DIDN'T UNDERSTAND A CHECK THAT WAS
- 24  PRESENTED TO THEM, WHAT TO DO OR HOW TO SET UP AN ACCOUNT,
- 25  DIDN'T THEY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0406

APPENDIX 411

ORIGINAL

ELIZABETH REEVES -- DIRECT BY MR. JENKINSON

359

- 1 A IF THEY DIDN'T UNDERSTAND, YES, SIR.
- 2 Q THEY HAD THESE TRAINING MANUALS?
- 3 A TRAINING MANUALS.
- 4 Q AND IN FRONT OF THEM THEY HAD A COMPUTER TERMINAL AND
- 5 ALL THEY HAD TO DO WAS TYPE IN, FOR EXAMPLE, CONSERVATOR
- 6 ACCOUNT AND IT WOULD COME UP AND TELL THEM BASICALLY WHAT
- 7 THEY HAD TO DO TO SET UP THAT ACCOUNT?
- 8 A NO, NOT -- IT WAS NOT LIKE A GOOGLE. IT WAS NOT
- 9 THAT ---
- 10 Q I'M NOT SUGGESTING A GOOGLE. BUT IT WAS ---
- 11 A YES, SIR.
- 12 Q IF I'M SAYING IT WRONG, EXPLAIN WHAT THEY HAD?
- 13 A WHAT THEY HAD AND WHAT WE HAVE TODAY, WHICH I DON'T
- 14 BELIEVE IS THE SAME THING THAT WE HAD THEN ---
- 15 Q LET'S TALK ABOUT THEN.
- 16 A THEN.
- 17 Q WE KNOW IT'S DIFFERENT TODAY.
- 18 A IF -- IF THEY USE THEIR COMPUTER, WHICH OBVIOUSLY THEY
- 19 WOULD TO OPEN AN ACCOUNT, THEY WOULD PUT ON THE ACCOUNT
- 20 TITLE SCREEN WITH THE SET-UP PROCESS, THEY WOULD PUT THE
- 21 NAME IN THERE.
- 22 Q THE NAME OFF OF THE CHECK?
- 23 A THE NAME OF THE ACCOUNT TITLE.
- 24 Q FOR EXAMPLE, WOULD THAT BE THE SAME AS THE CHECK IF A
- 25 CUSTOMER WALKED IN WITH A CHECK AND IT SAID, ELIZABETH

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0407

APPENDIX 412

ORIGINAL

ELIZABETH REEVES - DIRECT BY MR. JENKINSON

360

1 REEVES AS CONSERVATOR, WOULD YOU TYPE IN ELIZABETH REEVES,  
2 CONSERVATOR?

3 A NOT INITIALLY, NO. IT WOULD HAVE THE NAME AND THEN  
4 THERE WOULD BE A SEPARATE PLACE THAT YOU WOULD ADJUST THE  
5 TITLE. BUT IT'S AS GOOD AS WHAT YOU PUT INTO IT WHEN YOU  
6 FIRST START IT.

7 Q SO AN EMPLOYEE COULD BYPASS THAT COMPUTER AND DO WHAT  
8 THEY WANTED TO DO IF THEY WANTED TO?

9 A THEY WOULDN'T -- I DON'T THINK THAT ANYBODY WOULD EVER  
10 INTENTIONALLY BYPASS. YOU KEY IN THE INFORMATION. IF YOU  
11 DON'T KEY IT IN RIGHT, THEN THE COMPUTER SYSTEM AND THE  
12 PROGRAMS THAT WERE THERE MAY NOT HAVE PROMPTED YOU FOR  
13 SOMETHING ELSE.

14 Q LET ME ASK YOU, YOU USED THE WORD NO EMPLOYEE WOULD  
15 INTENTIONALLY DO SOMETHING. IF AN EMPLOYEE INTENTIONALLY  
16 AIDED A CRIMINAL, THAT WOULD BE A CRIMINAL ACT, WOULDN'T  
17 IT?

18 A IF THEY INTENTIONALLY AND THEY HAD AN INTENT TO  
19 DEFRAUD.

20 MR. DAVIS: THAT'S OKAY, YOUR HONOR. SORRY.

21 Q WE'RE NOT TALKING ABOUT -- I HOPE HELPING A CRIMINAL.  
22 BUT AN EMPLOYEE COULD DISREGARD THE COMPUTER AND DO WHAT  
23 THEY WANTED TO DO OR WHAT THEY MAY HAVE -- JUST TO, YOU  
24 KNOW, SAVE TIME, MAYBE, OKAY? THEY COULD DO THAT, COULDN'T  
25 THEY?

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0408

APPENDIX 413

- 1 A I DON'T -- I CAN'T ENVISION THAT, NO, SIR.
- 2 Q OKAY. AND YOU DIDN'T HEAR MS. LAWRENCE SAY THAT YOU
- 3 COULD DO THAT YESTERDAY?
- 4 A THAT SHE COULD?
- 5 Q DID YOU -- TECHNICALLY, YOU COULD GO BY THE SCREEN OR
- 6 YOU COULD SET UP THE ACCOUNT A DIFFERENT WAY AND NOT FOLLOW
- 7 THE SCREEN?
- 8 A I DON'T RECALL HER SAYING THAT, NO.
- 9 Q OKAY. AND MAYBE MY MEMORY IS WRONG. WHAT YOU RECALL,
- 10 OKAY? NOW, IN ADDITION TO THIS COMPUTER SCREEN, YOU'VE GOT
- 11 A HOT LINE ON THE TELEPHONE RIGHT THERE BY THE EMPLOYEE,
- 12 AND THEY COULD PICK UP AND CALL AND GET HELP. IT'S A HELP
- 13 LINE?
- 14 A YES, SIR, IT IS A HELP LINE.
- 15 Q TOLL-FREE LINE, AND YOU CALL THEM AND SAY, I'VE GOT
- 16 THIS CHECK AND I'M NOT SURE EXACTLY HOW TO SET UP THIS
- 17 ACCOUNT. I DON'T UNDERSTAND SOMETHING ON IT, WOULD YOU
- 18 HELP ME?
- 19 A YES, SIR, WE DO HAVE A HELP LINE.
- 20 Q ALL THEY'VE GOT TO DO IS CALL AND ASK IF THERE'S A
- 21 PROBLEM?
- 22 A YES, SIR.
- 23 Q AND IN ADDITION EMPLOYEES HAVE FOR A BETTER TERM, A
- 24 CHEAT SHEET?
- 25 A IT'S REALLY ---

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0409

APPENDIX 414

1 Q A CARD ---  
2 A --- A QUICK REFERENCE GUIDE.  
3 Q QUICK REFERENCE GUIDE?  
4 A YES, SIR.  
5 Q AND THEY CALL IT A CHEAT SHEET, I THINK IS THE TERM?  
6 A WELL, I THINK THAT ---  
7 Q OKAY.  
8 A BUT IT IS A QUICK REFERENCE GUIDE THAT IS -- IS  
9 GENERATED BY THE COMPANY.  
10 Q AND THAT'S AVAILABLE TO THEM TO HELP THEM OUT IN CASE  
11 THEY DON'T QUITE UNDERSTAND SOMETHING?  
12 A THERE ARE VARIOUS QUICK REFERENCE GUIDES, YES, SIR.  
13 Q AND FINALLY, THEY'VE GOT EACH OTHER. THEY'VE GOT A  
14 BRANCH MANAGER, THEY'VE GOT TELLERS, THEY'VE GOT OTHER  
15 EMPLOYEES SITTING RIGHT THERE IN THE BUILDING AND SAY, I  
16 DON'T QUITE UNDERSTAND WHAT TO DO -- THAT THEY CAN ASK?  
17 A UH-HUH.  
18 Q RIGHT?  
19 A THERE WOULD CERTAINLY BE A SUPPORT TEAM, YES, SIR.  
20 Q THIS IS IMPORTANT TO GET IT RIGHT THE FIRST TIME, IS  
21 IT NOT?  
22 A YES, SIR.  
23 Q IT'S IMPORTANT TO GET IT RIGHT TO AVOID FRAUD?  
24 A IT'S IMPORTANT TO GET IT RIGHT.  
25 Q IT'S IMPORTANT TO GET IT RIGHT, TO MAKE SURE PEOPLE'S

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0410

APPENDIX 415

1 MONEY IS ADEQUATELY PROTECTED?

2 A YES, IT IS IMPORTANT TO GET IT RIGHT.

3 Q AND THAT'S THE BANK'S OBLIGATION AND DUTY TO THEIR  
4 CUSTOMERS, IS IT NOT?

5 A IT'S OUR OBLIGATION AND DUTY TO OUR CUSTOMERS, TO OUR  
6 COMPANY AS WELL. IT IS.

7 Q NOW, IF A CUSTOMER WALKS IN ONE OF YOUR BRANCHES WITH  
8 A CHECK -- AND LET'S JUST SAY THIS CHECK IS FOR \$250,000,  
9 MADE PAYABLE TO THE CUSTOMER AS CONSERVATOR FOR A MINOR  
10 CHILD AND WALKS UP TO YOUR PERSONAL BANKER AND SAYS, HERE'S  
11 A CHECK FOR \$250,000, I WANT TO OPEN A CERTIFICATE OF  
12 DEPOSIT IN MY NAME. TELL US WHAT YOUR PERSONAL BANKER MUST  
13 DO?

14 A THE FIRST THING THAT SHE WOULD DO -- HE OR SHE WOULD  
15 DO IS KNOW THE CUSTOMER; AND THAT CAN COME IN MANY  
16 DIFFERENT WAYS. IT WOULD BE BY ASKING FOR IDENTIFICATION  
17 OR IF THEY ARE ALREADY FAMILIAR WITH THE CUSTOMER, THEN  
18 IT'S JUST ACCESSING THEIR RECORDS.

19 Q LET ME ASK THAT QUESTION RIGHT THERE. YOU SAY IF THEY  
20 KNOW THE CUSTOMER?

21 A YES, SIR.

22 Q YOU HAVE A PROCEDURE THAT'S CALLED WELL-KNOWN. AND IF  
23 IT'S NOT A WELL-KNOWN CUSTOMER, WHAT MUST YOU DO?

24 A IF IT'S NOT A WELL-KNOWN, YOU WOULD DOCUMENT THE  
25 INFORMATION IN OUR COMPUTER SYSTEM.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0411

APPENDIX 416

- 1 Q BY ASKING FOR AN I.D.?
- 2 A YES, SIR.
- 3 Q MEANING A PHOTOGRAPH I.D. LIKE A LICENSE?
- 4 A YES, SIR.
- 5 Q NOW, IF IT IS A WELL-KNOWN CUSTOMER, I BELIEVE YOU PUT
- 6 W.K. IN CAPITOL LETTERS TO SHOW THAT THAT PERSON KNEW THAT
- 7 THE CUSTOMER WAS WELL-KNOWN?
- 8 A YOU WOULD DO THAT IF YOU WERE CASHING THE CHECK, YES,
- 9 SIR.
- 10 Q AND IF W.K., WELL-KNOWN, DOES NOT APPEAR IN YOUR
- 11 RECORDS, THAT MEANS THAT THAT CUSTOMER WAS NOT WELL-KNOWN?
- 12 A IT WOULD APPEAR IN THE COMPUTER SYSTEM. WE KEY IT
- 13 INTO AN IDENTIFICATION SCREEN WHERE WE PUT A COUPLE OF
- 14 FORMS OF I.D. IN THE SYSTEM.
- 15 Q WHAT'S THE NEXT THING THAT'S DONE?
- 16 A HAVING A CONVERSATION, WHICH IS PRETTY TYPICAL FOR ANY
- 17 PERSONAL BANKER OR BANKING CENTER MANAGER. IT'S CONDUCIVE
- 18 FOR THAT. YOU'RE IN AN OFFICE. YOU GET TO KNOW THE
- 19 CUSTOMER, FIND OUT WHAT THE CUSTOMER'S GOALS ARE. AND
- 20 THROUGH THAT DISCOVERY PERIOD, THEN YOU MAKE A
- 21 DETERMINATION WHAT IS APPROPRIATE TO OPEN, WHETHER IT'S A
- 22 CHECKING, SAVING, CD, OR WHATEVER.
- 23 Q THIS CUSTOMER WALKS IN WITH THIS CONSERVATOR ACCOUNT
- 24 AND SAYS, I WANT TO OPEN UP A PERSONAL ACCOUNT IN MY NAME
- 25 ONLY AND HANDS YOU THE CHECK, WHAT HAPPENS NEXT?

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0412

APPENDIX 417

1 A YOU WOULD LOOK AT THE CHECK. YOU WOULD CERTAINLY  
2 SCRUTINIZE THE CHECK.  
3 Q LET ME STOP YOU RIGHT THERE.  
4 A YES, SIR.  
5 Q LOOK AT THE CHECK. IT REQUIRES YOUR RULES AND THESE  
6 POLICIES TELL YOUR EMPLOYEE TO LOOK AT THE CHECK AND SEE  
7 WHAT'S ON THE CHECK, DOES IT NOT?  
8 A WE DO. WE DO.  
9 Q THEY HAVE TO CLEARLY UNDERSTAND WHAT IS ON THAT CHECK?  
10 A YES, SIR, WE ---  
11 Q THAT'S THE DUTY OF YOUR EMPLOYEE?  
12 A WE ARE SUPPOSED TO LOOK AT THE CHECK.  
13 Q AND NOT ONLY THE \$250,000, BUT WHO IS THAT CHECK  
14 PAYABLE TO IS MORE IMPORTANT THAN THE AMOUNT OF MONEY, IS  
15 IT NOT?  
16 A IT IS JUST AS IMPORTANT, YES, SIR.  
17 Q BECAUSE YOU DON'T WANT TO PUT THAT \$250,000 IN THE  
18 WRONG ACCOUNT, DO YOU?  
19 A ABSOLUTELY NOT.  
20 Q ALL RIGHT. YOUR CUSTOMER REPRESENTATIVE LOOKS AT THAT  
21 CHECK AND SAYS, CUSTOMER AS CONSERVATOR FOR MINOR CHILD,  
22 BOY. WHAT IS YOUR ACCOUNT REPRESENTATIVE REQUIRED TO DO TO  
23 PROTECT YOUR CUSTOMER'S MONEY RIGHT THEN?  
24 A IF THE CONSERVATORSHIP IS CLEARLY ON THE CHECK AND THE  
25 PERSONAL BANKER OR THE BANKING CENTER MANAGER, THE ACCOUNT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0413

APPENDIX 418



1 PERSON REALIZES CONSERVATORSHIP IS ON THE CHECK, THEN IT'S  
2 VERY RARE. IT'S NOT SOMETHING THAT'S SEEN VERY OFTEN. IN  
3 FACT, KELLY KELLEY, I BELIEVE WAS TALKING ABOUT HER OTHER  
4 BANK. IT'S NOT SOMETHING YOU SEE VERY OFTEN, SO IT MAY NOT  
5 BE RECOGNIZED.

6 AND I KNOW WE'RE USING THIS AS AN EXAMPLE, THE 250,  
7 BUT THERE WAS NOT A 250, \$2,000 -- ARE YOU JUST USING THIS  
8 AS AN EXAMPLE RIGHT NOW?

9 Q I'LL COME BACK TO THAT. I JUST WANT TO UNDERSTAND  
10 THAT.

11 A OKAY. I JUST WANT TO MAKE SURE BECAUSE I KNOW THAT  
12 ALL THE CHECKS THAT ARE IN QUESTION DID NOT HAVE  
13 CONSERVATORSHIP ON THERE.

14 Q I KNOW THAT.

15 A OKAY.

16 Q ALL RIGHT. LET'S SUPPOSE THAT CHECK HAS CO DASH CN  
17 FOR MINOR CHILD BOY? IS IT APPROPRIATE FOR YOUR ACCOUNT  
18 REPRESENTATIVE TO SAY, I'M NOT QUITE SURE WHAT THESE  
19 INITIALS STAND FOR. SHOULD SHE OR HE ASK THE CUSTOMER WHAT  
20 THAT STANDS FOR?

21 A DON'T KNOW IF SHE DID.

22 Q I DIDN'T ASK YOU ---

23 A I CAN TELL YOU ---

24 Q THIS IS JUST HYPOTHETICAL RIGHT NOW.

25 A I CAN TELL YOU FROM MY EXPERIENCE ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0414

APPENDIX 419

- 1 Q I WANT TO KNOW THE RIGHT WAY OR RIGHT WAY TO DO IT.  
2 A LOOKING AT THE CHECK, IF IT'S NOT CLEAR, THERE MAY --  
3 IT MAY BRING A QUESTION. BUT I CAN TELL YOU HAVING BEEN  
4 WITH THE COMPANY FOR A NUMBER OF YEARS AND THE FEW CHECKS  
5 THAT I HAVE SEEN, IT WAS NOT CLEAR.
- 6 Q NOW ---  
7 A IT WAS NOT CLEAR.  
8 Q I UNDERSTAND THAT.  
9 A OKAY.
- 10 Q AND WHEN IT'S NOT CLEAR, DOESN'T THE BANK HAVE A DUTY  
11 TO CLARIFY IT AND GET IT STRAIGHT RIGHT THEN WITHOUT  
12 OPENING THE WRONG ACCOUNT?
- 13 A THE BANK REPRESENTATIVE WOULD LOOK AT THE CHECK. IF  
14 THEY LOOKED AT IT AND THEY DIDN'T REALIZE THERE WAS  
15 SOMETHING DIFFERENT ABOUT IT -- BUT IF SHE -- HE OR SHE  
16 RECOGNIZED THERE WAS SOMETHING -- AND WE'RE ASSUMING THAT  
17 SHE DID OR DIDN'T, WE DON'T KNOW SINCE SHE DIDN'T REMEMBER.  
18 SHE SAID SHE DIDN'T REMEMBER SINCE IT WAS BACK IN 2001. SO  
19 I DON'T KNOW IF SHE DID OR NOT.
- 20 Q I'M NOT TALKING ABOUT IT. I'M JUST ASKING YOU WHAT  
21 YOU'RE DOING NOW. YOU'RE THE PERSON. I'M ASKING YOU.  
22 A YES, SIR.
- 23 Q WOULD YOU PICK UP THAT PHONE AND CALL YOUR HOT LINE  
24 AND SAY, I DON'T QUITE UNDERSTAND WHAT IS ON THIS CHECK,  
25 IT'S MADE OUT FOR CO-CN, FOR A MINOR CHILD. WOULDN'T THAT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0415

APPENDIX 420

- 1 BE A FAIR THING TO DO, JUST PICK UP THAT PHONE REAL QUICK  
2 AND ASK THAT QUESTION?
- 3 A I THINK THAT'S A FAIR QUESTION. I CAN TELL YOU WHEN I  
4 FIRST LOOKED AT THE CHECK, I DIDN'T RECOGNIZE IT. I DIDN'T  
5 UNDERSTAND IT.
- 6 Q OKAY. BUT YOU UNDERSTAND ALSO THAT THERE WERE SEVEN  
7 CHECKS?
- 8 A I DO. BUT I ALSO KNOW THE FIRST CHECK THAT THIS  
9 ASSOCIATE LOOKED AT.
- 10 Q OUT OF THOSE SEVEN CHECKS, THE WORD CONSERVATOR WAS  
11 WRITTEN OUT ON FIVE OF THEM?
- 12 A YES, I DID SEE THAT. IT WAS CONSERVATORSHIP WAS  
13 WRITTEN ON THEM.
- 14 Q SO A CUSTOMER REPRESENTATIVE -- IF I HANDED YOU THOSE  
15 SEVEN CHECKS, YOU'D SEE THE WORD CONSERVATOR FIVE OUT OF  
16 SEVEN TIMES. THAT WOULD BE A PRETTY GOOD HINT AS TO WHAT'S  
17 GOING ON HERE, IS IT NOT?
- 18 A YES, SIR, ASSUMING THAT SHE DID LOOK AT THE CHECKS.
- 19 Q IT'S ALSO SUFFICIENT TO SAY IT WOULD BE VERY CLEAR AND  
20 OBVIOUS THAT THIS MUST BE CONSERVATOR MONEY BASED ON FIVE  
21 OUT OF SEVEN CHECKS?
- 22 A YES, SIR, IF SHE LOOKED AT THE CHECKS.
- 23 Q OKAY. NOW, ONCE YOU SEE THE WORD CONSERVATOR, WHAT  
24 DOES THE BANK DO NEXT? WHAT DO YOU -- IF IT WERE PUT IN  
25 YOUR HAND, WHAT DO YOU DO NEXT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0416

APPENDIX 421

- 1 A IF IT WAS PUT IN MY HAND -- AGAIN, I'VE ONLY HAD A  
2 COUPLE IN MY ENTIRE CAREER, SO THE FIRST THING I WOULD DO  
3 IS PICK UP THE PHONE AND CALL ---
- 4 Q IS WHAT?
- 5 A PICK UP THE PHONE AND CALL THE HELP LINE.
- 6 Q OKAY.
- 7 A OR LOOK SOMETHING UP, BECAUSE I WOULDN'T KNOW WHAT I  
8 WAS DOING AT THAT POINT.
- 9 Q OKAY. YOU COULD ALSO PUT IT ON YOUR SCREEN AND LOOK  
10 UP CONSERVATOR AND FIND OUT WHAT'S REQUIRED?
- 11 A IT WOULDN'T BE THAT SIMPLE. IT WOULD BE ACCOUNT  
12 TITLES, BUT YOU COULD DRILL DOWN AND EVENTUALLY GET TO IT.
- 13 Q YOU COULD TYPE IN THE WORDS CUSTOMER AS CONSERVATOR  
14 FOR MINOR CHILD, BOY, COULDN'T YOU?
- 15 A YOU CAN, BUT YOU MIGHT NOT EVER FIND IT. IT WOULD BE  
16 LIKE LOOKING SOMETHING UP ON THE INTERNET. YOU'VE GOT TO  
17 BE ---
- 18 Q CLEARLY, YOU'VE GOT FOUR OR FIVE ---
- 19 A WE HAVE RESOURCES TO BE ABLE TO.
- 20 Q ONCE YOU GOT HELP KNOWING WHAT YOU KNOW NOW, WHAT  
21 WOULD YOU DO NEXT?
- 22 A I WOULD ASK FOR THE APPROPRIATE COURT PAPERS.
- 23 Q YOU WOULD ASK FOR THE COURT PAPERS?
- 24 A YES.
- 25 Q NOW, YOU WOULDN'T WAIT -- YOU WOULDN'T WAIT FOR THIS

CODY ██████ VS. BANK OF AMERICA

ROA 0417

APPENDIX 422

1 CUSTOMER TO REACH IN THEIR POCKET AND PULL IT OUT. YOU  
2 HAVE A DUTY TO ASK FOR THOSE RECORDS, DON'T YOU?  
3 A THERE IS A RESPONSIBILITY TO ASK FOR IT IF YOU ARE  
4 AWARE THAT THERE IS A CONSERVATORSHIP, YES, SIR.  
5 Q YOU READ ON THAT CHECK AND YOU SEE THE WORD  
6 CONSERVATOR, THE BANK HAS A DUTY TO PROTECT ITS CUSTOMER'S  
7 -- THAT MINOR CHILD IN THIS CASE -- MONEY BY ASKING FOR IT,  
8 DON'T YOU?  
9 A WE ARE SUPPOSED TO HAVE OUR DOCUMENTATION IN ORDER,  
10 YES, SIR.  
11 Q AND THAT'S WRITTEN IN YOUR POLICIES AND PROCEDURES?  
12 A YES, SIR.  
13 Q TO PROTECT A MINOR CHILD IN THIS CASE, IS IT NOT?  
14 A IT'S WRITTEN IN THE POLICIES AND PROCEDURES TO GET THE  
15 COURT ORDERS.  
16 Q NOW THAT WE KNOW AND YOU ASK THE CUSTOMER TO PRODUCE  
17 THOSE RECORDS, THE CUSTOMER REACHES IN THEIR POCKET AND  
18 PULLS OUT A CERTIFICATE. AND YOU WOULD EXPECT SOMETHING TO  
19 LOOK LIKE AND BE PLAINTIFFS' EXHIBIT NOS. 3 AND 4, WOULD  
20 YOU NOT?  
21 A WE -- WE SEE CERTIFICATE OF APPOINTMENTS ALL THE TIME,  
22 SO THIS WOULD BE SOMETHING THAT -- YES, SIR.  
23 Q CERTIFICATES OF APPOINTMENT ARE NOT UNCOMMON, ARE  
24 THEY?  
25 A NOT CERTIFICATE OF APPOINTMENTS. WE SEE A LOT OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0418

APPENDIX 423

1 ESTATE ACCOUNTS THIS WAY, WHEN PEOPLE HAVE PASSED AWAY.

2 Q A CERTIFICATE OF APPOINTMENT WAS ISSUED BY THE PROBATE  
3 COURT IN ANY COUNTY TO SET UP ESTATES, GUARDIANSHIPS, AND  
4 CONSERVATORS, ARE THEY NOT?

5 A YES, SIR.

6 Q AND THAT IS A PERSON'S AUTHORITY -- THEIR LEGAL  
7 AUTHORITY AND THEIR TICKET SO TO SPEAK TO CONDUCT BUSINESS  
8 AS CONSERVATOR, PERSONAL REPRESENTATIVE, OR WHATEVER,  
9 RIGHT?

10 A YES, SIR.

11 Q NOW, GIVE YOU ANOTHER EXAMPLE. IF A PERSON WALKS IN  
12 WITH A CORPORATE CHECK TO SET UP A CORPORATE ACCOUNT AND  
13 THEY WANTED TO PUT THAT CHECK IN THEIR PERSONAL NAME, YOU  
14 WOULDN'T DO THAT, WOULD YOU?

15 A NO, WE WOULDN'T.

16 Q YOU'D HAVE TO HAVE A CORPORATE AUTHORIZATION FROM THAT  
17 PERSON -- A PIECE OF PAPER TO SET THAT UP, IT GOES ON YOUR  
18 BANK RECORD?

19 A THAT'S -- THAT'S RIGHT. WE WOULD ASK FOR THAT.

20 Q NOW, IT'S IMPORTANT TO LOOK AT THESE TWO RECORDS  
21 BECAUSE IT TELLS YOU AS A BANKER WHAT YOU CAN DO AND CAN'T  
22 DO, DOESN'T IT?

23 A WELL, ON THE FIDUCIARY LETTER IT DOES SAY NO  
24 WITHDRAWALS.

25 Q HOW ABOUT THE CERTIFICATE OF APPOINTMENT?

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0419

APPENDIX 424

1 A ACTUALLY, THIS ONE DOES SAY NO WITHDRAWALS TOO.  
2 Q HOW ABOUT THE FIDUCIARY LETTERS, DOESN'T IT SAY  
3 THERE'S RESTRICTIONS ON IT?  
4 A YES, SIR, IT DOES. I'M NOT -- I DON'T THINK WE EVER  
5 GOT THIS THOUGH.  
6 Q I KNOW THAT. I'M JUST SAYING THIS IS WHAT YOU ASK  
7 FOR, RIGHT?  
8 A YES, SIR.  
9 Q YOU HAVEN'T GOT IT BECAUSE NOBODY ASKED FOR IT; ISN'T  
10 THAT RIGHT?  
11 A FROM WHAT -- FROM WHAT I CAN SEE, WE -- WE DID NOT GET  
12 IT.  
13 Q THE EMPLOYEES DIDN'T ASK, VIOLATED A REGULATION. BUT  
14 LET'S GO BACK ---  
15 A REGULATION?  
16 Q I'M SORRY. A POLICY AND PROCEDURE.  
17 A OKAY.  
18 Q OKAY. NOW, LET'S LOOK BACK AT THAT. CLEARLY ON BOTH  
19 OF THESE DOCUMENTS IT HAS BOLD LETTERS, RESTRICTIONS. AND  
20 LET'S LOOK AT THAT PART OF IT. WHAT DOES IT TELL YOU, THE  
21 PERSONAL BANKER, OPENING THIS ACCOUNT ABOUT THE ACCOUNT,  
22 THE WAY IT'S SET UP?  
23 A IT SAYS NO WITHDRAWALS WITHOUT COURT ORDER. SO AS A  
24 BANKER, THAT WOULD MEAN THAT THIS WOULD BE AN ACCOUNT THAT  
25 SHOULD NOT HAVE WITHDRAWALS WITHOUT SOME KIND OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0420

APPENDIX 425

1 DOCUMENTATION.

2 Q NOW, THIS MINOR THEN KNOWS I SHOULD EXPECT MY MONEY IS  
3 SAFE, IT'S NOT GOING TO COME OUT OF MY ACCOUNT UNLESS THE  
4 JUDGE ORDERS IT TO COME OUT OF THE ACCOUNT?

5 A ASSUMING THAT THE RESTRICTIONS WERE RECEIVED, YES,  
6 SIR.

7 Q THAT MEANS THAT ONCE THAT MONEY IS PUT UP SAFELY AND  
8 PROTECTED IN THE BANK, THE ONLY WAY IT CAN COME OUT IN THIS  
9 PARTICULAR INSTANCE, WOULD BE JUDGE RUDEL GAMBLE  
10 DOWNSTAIRS, ISSUING AN ORDER TO THE BANK OF AMERICA SAYING,  
11 YOU CAN ALLOW \$250 TO PAY DR. ED JOHNSON FOR A NEW PAIR OF  
12 GLASSES FOR CODY, AND YOU WOULD ALLOW \$250 TO BE ISSUED TO  
13 THAT DOCTOR TO PAY FOR THOSE GLASSES?

14 A YES, SIR.

15 Q THAT'S THE ONLY WAY IT CAN COME OUT? LEGALLY?

16 A LEGALLY, YES, SIR.

17 Q AND THAT'S THE ONLY WAY THE BANK WOULD PERMIT THESE  
18 FUNDS TO COME OUT IS BY A COURT ORDER?

19 A YES, SIR.

20 Q ALL RIGHT. NOW, YOU'VE ASKED FOR THE COURT ORDER.  
21 YOU WOULD ASK FOR IT, WOULDN'T YOU?

22 A I WOULD BECAUSE I HAVE SOME EXPERIENCE, YES AND NO, TO  
23 ASK, BECAUSE I'VE HAD ONE OR TWO OF THEM.

24 Q EVERY ONE OF YOUR TELLERS, PERSONAL BANKERS, BRANCH  
25 MANAGERS ARE TRAINED TO KNOW THIS STUFF, AREN'T THEY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0421

APPENDIX 426



- 1 A I'M NOT SURE THAT THE TELLERS TO THIS DEGREE WOULD  
2 KNOW ABOUT THE COURT ORDER AND THINGS OF THAT NATURE. BUT  
3 THEY WOULD CERTAINLY SEE SOME KIND OF REMARK ON THE SYSTEM  
4 THAT WOULD NOT ALLOW WITHDRAWALS, AND THEN THEY WOULD BRING  
5 IT TO SOMEONE.
- 6 Q IN THEIR SIX MONTHS OF TRAINING, YOU'RE TELLING US --  
7 THIS COURT -- THAT BANK OF AMERICA DOES NOT TRAIN THESE  
8 IMPORTANT EMPLOYEES IN A BRANCH WHAT A CONSERVATOR IS AND  
9 WHAT IT MEANS?
- 10 A YOU ASKED ME ABOUT TELLERS, AND TELLERS DO NOT GET A  
11 SIX-MONTH TRAINING PROGRAM.
- 12 Q LET ME ASK THIS.
- 13 A OH, I'M SORRY.
- 14 Q THE PERSONAL BANKER IN THIS CASE ---
- 15 A THE PERSONAL BANKER HAD THREE MONTHS OF TRAINING.
- 16 Q OKAY.
- 17 A BANKING CENTER MANAGER GETS SIX MONTHS.
- 18 Q ARE YOU TELLING US THAT THAT THREE MONTH'S TRAINING IS  
19 INADEQUATE FOR THEM TO UNDERSTAND WHAT THE WORD CONSERVATOR  
20 MEANT?
- 21 A NO, I'M NOT. I'M JUST SIMPLY SAYING IT IS A RARITY.  
22 IT IS NOT SOMETHING THAT WOULD COME UP ON A REGULAR BASIS.  
23 SO IT COULD POTENTIALLY -- AND, OBVIOUSLY, IT DID CATCH  
24 THIS PERSONAL BANKER OFF GUARD. SHE DID NOT RECOGNIZE --  
25 WASN'T THERE, BUT SHE DID NOT RECOGNIZE THAT THIS WAS A

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0422

APPENDIX 427

1 CONSERVATORSHIP.

2 Q IT'S ABSOLUTELY INEXCUSABLE FOR ONE OF YOUR EMPLOYEES  
3 NOT TO FOLLOW THESE POLICIES AND PROCEDURES TO PROTECT  
4 PEOPLE'S MONEY, IS IT?

5 A WE EXPECT OUR EMPLOYEES TO FOLLOW OUR POLICIES AND  
6 PROCEDURES.

7 Q IT'S INEXCUSABLE WHEN THEY DO NOT?

8 A WE DON'T WANT THEM TO NOT FOLLOW POLICIES AND  
9 PROCEDURES.

10 Q IT'S AWFUL WHEN THEY DON'T?

11 A YOUR LANGUAGE, INEXCUSABLE AND AWFUL, IS SORT OF -- WE  
12 ASK THAT OUR ASSOCIATES FOLLOW POLICIES AND PROCEDURES.

13 Q AND IF THE FAILURE TO FOLLOW THESE PROCEDURES, A CHILD  
14 LOSES OVER \$200,000, THAT'S AWFUL, IS IT NOT?

15 A WE FEEL BADLY. WE WOULD NEVER WANT ANYBODY TO LOSE  
16 ANY MONEY AT ALL. WE DON'T WANT ANYBODY TO LOSE ANY MONEY.  
17 WE WANT TO DO THE RIGHT THING.

18 Q I'M GOING TO COME BACK TO THAT. NOW, IS YOUR CUSTOMER  
19 REPRESENTATIVE, PERSONAL BANKER, OR BRANCH MANAGER, OR  
20 TELLER AUTHORIZED TO CHANGE AND GO AROUND THESE SAFETY  
21 PROCEDURES THAT ARE PUT IN EFFECT TO PROTECT PEOPLE'S  
22 MONEY?

23 A NO. WE SHOULD BE FOLLOWING POLICY AND PROCEDURES.

24 Q IT WOULD BE A VIOLATION OF A DUTY OWED TO A CUSTOMER  
25 FOR THEM JUST TO IGNORE WHAT'S WRITTEN ON A CHECK AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0423

APPENDIX 428

- 1 IGNORE WHAT YOUR POLICIES AND PROCEDURES ARE?
- 2 A IT WOULD BE AN OVERSIGHT.
- 3 Q NOW, LET'S LOOK AT THAT CHECK AGAIN. IF IT'S MADE OUT
- 4 CORRECTLY, IF THEY HAVE THE RIGHT COURT RECORDS, WHAT MUST
- 5 BE DONE TO THE BACK OF THE CHECK? IS IT ENDORSED?
- 6 A YES, SIR, IT WOULD BE ENDORSED.
- 7 Q NOW, YOU UNDERSTAND THAT THIS IS A CHECK MADE OUT TO
- 8 CUSTOMER CONSERVATOR FOR A MINOR CHILD, BOY. HOW SHOULD IT
- 9 APPEAR ON THE BACK OF THE CHECK ON THE ENDORSEMENT?
- 10 A IT SHOULD -- IT SHOULD HAVE A SIMILAR ENDORSEMENT.
- 11 Q YOU SAY SIMILAR. IS THAT THE EXACT WORDS I JUST SAID
- 12 SHOULD BE ON THE BACK OF IT, CUSTOMER AS CONSERVATOR FOR
- 13 MINOR CHILD, BOY, ALL WRITTEN OUT?
- 14 A THE ENDORSEMENT SHOULD BE LIKE THAT.
- 15 Q AND IF THE ENDORSEMENT IS NOT CORRECT, THE CHECK IS
- 16 NOT CORRECT, IS IT?
- 17 A I DON'T KNOW IF THE CHECK IS NOT CORRECT. BUT THE
- 18 ENDORSEMENT DOES NEED TO BE ON THERE CORRECTLY.
- 19 Q AND FAILURE TO HAVE THAT ENDORSEMENT CORRECTLY IS
- 20 ANOTHER VIOLATION OF YOUR POLICIES AND PROCEDURES?
- 21 A WE ABSOLUTELY WANT TO MAKE SURE WE HAVE THE
- 22 ENDORSEMENTS ON THE BACK.
- 23 Q WHEN THIS ACCOUNT IS OPENED, A SIGNATURE CARD IS ALSO
- 24 REQUIRED, IS IT NOT?
- 25 A IT DEPENDS ON THE TYPE OF ACCOUNT, YES, SIR.

CODY ██████ VS. BANK OF AMERICA

ROA 0424

APPENDIX 429

- 1 Q OKAY. FOR A CHECKING ACCOUNT, A CERTIFICATE OF  
2 DEPOSIT ACCOUNT, OR A SAVINGS ACCOUNT, IS A SIGNATURE CARD  
3 REQUIRED?
- 4 A A SIGNATURE CARD IS REQUIRED FOR A CHECKING AND A  
5 SAVINGS ACCOUNT. THERE IS NOT A SIGNATURE CARD FOR A CD OR  
6 A CERTIFICATE. IT IS SOMETHING THAT IS GENERATED BY OUR --  
7 AT THE END OF THE PROCESS OF OPENING THE ACCOUNT. IT IS AN  
8 ACTUAL PAPER DOCUMENT. AND THERE IS A PLACE ON THE BOTTOM  
9 OF THAT DOCUMENT TO BE SIGNED. BUT IT IS NOT A SIGNATURE  
10 CARD.
- 11 Q OKAY. IT IS ---
- 12 A NOT LIKE WE SAW YESTERDAY.
- 13 Q IT IS A DOCUMENT?
- 14 A YES, SIR, THERE IS A DOCUMENT.
- 15 Q FOR THE CUSTOMER TO SIGN?
- 16 A YES, SIR.
- 17 Q EVEN FOR A CERTIFICATE OF DEPOSIT?
- 18 A RIGHT.
- 19 Q OKAY. SO WHAT DO YOU CALL THAT -- IT'S A CONTRACT  
20 WITH YOUR - WITH THE CUSTOMER, RIGHT?
- 21 A IT SAYS DEPOSIT RECEIPT ON IT, I BELIEVE.
- 22 Q AND YOU ALSO GET TO HAVE THE CUSTOMER SIGN THAT AS IT  
23 APPEARS ON THE CHECK AND ON THE ACCOUNT?
- 24 A WE WOULD HAVE THE PERSON THAT THE SOCIAL SECURITY  
25 NUMBER IS ASSIGNED, SO THERE'S ONLY ONE SIGNATURE IS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0425

APPENDIX 430

- 1   REQUIRED ON THAT DOCUMENT.
- 2   Q    THEN YOU ALSO GET THE SOCIAL SECURITY NUMBER OF THAT
- 3   PERSON?
- 4   A    YES, SIR.
- 5   Q    ALL RIGHT.  IN THE CASE OF A MINOR ACCOUNT, DO YOU GET
- 6   THE MINOR'S SOCIAL SECURITY NUMBER OR DO YOU GET THE
- 7   CONSERVATOR'S SOCIAL SECURITY NUMBER?
- 8   A    YES, SIR.
- 9   Q    WHICH ONE?
- 10  A    YOU GET THE MINOR'S.
- 11  Q    THE MINOR'S?
- 12  A    YES, SIR.
- 13  Q    YOU DON'T -- YOU WOULD NOT BE PUTTING THE
- 14  CONSERVATOR'S SOCIAL SECURITY, YOU HAVE THE MINOR'S ON IT?
- 15  A    WELL, YOU WOULD EVENTUALLY HAVE THAT.  BUT IT WOULD BE
- 16  -- THE PRIMARY WOULD BE THE MINOR.
- 17  Q    OKAY.  NOW, THERE'S ALSO A CREDIT SLIP OR MEMO -- IS
- 18  THAT WHAT YOU CALL IT -- MADE OUT NEXT?
- 19  A    THERE IS -- I'M SORRY.  THERE IS A CREDIT SLIP.  AND
- 20  THAT'S WHAT IS USED TO PUT YOUR FORM OF PAYMENT TO OFFSET
- 21  THE FORM OF PAYMENT, SO THAT WHEN YOU TAKE IT TO THE
- 22  TELLERS, THEY HAVE SOMETHING THAT BALANCES.
- 23  Q    THAT MUST ALSO BE SET UP EXACTLY AS IT IS ON THE
- 24  ACCOUNT AND EXACTLY AS IT IS ON THE CHECK, IS IT NOT?
- 25  A    THERE'S REALLY NOT QUITE ENOUGH ROOM ON THE TICKET.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0426

APPENDIX 431

- 1 BUT IT SHOULD HAVE SOME INFORMATION ON THERE.
- 2 Q SHOULD HAVE CONSERVATOR ON THERE? SHOULD HAVE MINOR
- 3 CHILD? RIGHT?
- 4 A IF THERE'S ENOUGH ROOM, YES, SIR.
- 5 Q OKAY. NOW, WHAT IS DONE WITH THAT SET OF DOCUMENTS
- 6 WITH THE PERSONAL BANKER ONCE IT'S ALL FILLED OUT AND THE
- 7 CHECKS ARE -- CHECK IS TAKEN CARE OF. WHERE DOES IT GO
- 8 NEXT?
- 9 A THE DOCUMENTS STAY WITH THE PERSONAL BANKER FOR A
- 10 WHILE. AND THEN SHE WILL TAKE THE -- HE OR SHE, I DON'T
- 11 MEAN TO BE -- THEY'LL TAKE THE TRANSACTION OVER TO THE
- 12 TELLER WINDOW, FOR THE TELLER TO VALIDATE THE CREDIT
- 13 PORTION. AND THEN THE TELLER PUTS THAT IN HER WORK -- HIS
- 14 OR HER WORK.
- 15 Q THE TELLER ALSO LOOKS AT THE CHECK AND MAKES SURE IT'S
- 16 PROPERLY ENDORSED, DOESN'T THAT PERSON DO THAT?
- 17 A THEY DO IF IT'S FIRST POINT OF ENTRY FROM A CUSTOMER.
- 18 I WOULD SAY FROM WHEN THEY'VE BEEN IN THE OFFICE WITH A
- 19 PERSONAL BANKER, GENERALLY IT'S ---
- 20 Q THAT'S ONE OF YOUR SAFETY PROTECTIONS FOR THE TELLER
- 21 TO DO THEIR JOB AND MAKE SURE THAT THE CHECK IS PROPERLY
- 22 ENDORSED ON A NEW ACCOUNT; ISN'T THAT CORRECT?
- 23 A NOT ON A NEW ACCOUNT, NO, SIR. ON -- ON CHECKS AND
- 24 DOCUMENTS THEY DO LOOK AT THAT.
- 25 Q THAT IS ANOTHER LEVEL OF PROTECTION FOR THE TELLER TO

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0427

APPENDIX 432

1 LOOK AT IT AND SEE WHAT'S GOING ON?

2 A IF THE TELLER IS PAYING OUT MONEY, ABSOLUTELY.

3 Q SOME OF THE PAPERWORK GOES DIRECTLY TO THE BACK ROOM,

4 SOME GOES BY THE TELLER?

5 A YES, SIR.

6 Q AND THEN THE NEXT LEVEL OF PROTECTION IS THE BACK

7 ROOM, WHERE THE BACK ROOM LOOKS AT ALL THESE DOCUMENTS TO

8 ENSURE THAT IT'S DONE CORRECTLY?

9 A WELL, CORRECT. THE BACK ROOM DOES LOOK AT THE

10 DOCUMENTS. BUT, ONCE AGAIN, IT GOES BACK TO IF IT WAS NOT

11 KEYED IN AS A CONSERVATORSHIP -- I DON'T WORK IN THE BACK

12 ROOM, BUT I WOULD TEND TO THINK THAT THEY WOULD BE LOOKING

13 FOR DOCUMENTS IF IT SAID CONSERVATORSHIP.

14 Q THE BACK ROOM HAS THE CHECKS WITH WHO THEY'RE PAYABLE

15 TO AND HOW IT'S ENDORSED, DON'T THEY?

16 A THAT IS A COMPLETELY DIFFERENT AREA. IT'S THE

17 OPERATIONS CENTER, AND THAT'S WHERE CHECKS GO.

18 Q THE OPERATION CENTER IS A PART OF THE BACK ROOM AS WE

19 CALL IT, ISN'T IT?

20 A YES, BUT I WANT -- I WANT IT TO BE CLEAR THAT

21 DOCUMENTS GO TO ONE PLACE, CHECKS AND DEPOSITS GO TO

22 ANOTHER PLACE. SO THEY DON'T GO TOGETHER.

23 Q OKAY. BUT BOTH OF THOSE TWO PLACES HAVE ACCESS TO

24 THESE DOCUMENTS TO MAKE SURE THAT THEY'RE CORRECT, MEANING

25 COMPUTER COPIES -- THEY ALL ARE IN THE COMPUTER AND THEY

CODY ████████ VS. BANK OF AMERICA

ROA 0428

APPENDIX 433

1 CAN CHECK AND LOOK AT ALL THE STUFF AND MAKE SURE IT'S  
2 CORRECT?  
3 A A PROCESSING CENTER -- THE CHECKS ARE SCANNED AND  
4 THEY'RE ENCODED WITH -- THEY'RE MICROFILMED, AND THEY HAVE  
5 A TRACE SOURCE CODE SPRAYED ON THEM. BUT THEY'RE NOT  
6 LOOKING AT DOCUMENTS INDIVIDUALLY. THE -- I'M TRYING TO  
7 THINK OF THE RIGHT NAME. A SUPPORT AREA OR ACCOUNT  
8 SERVICES WOULD LOOK AT ---  
9 Q IS ALL THAT ---  
10 A --- DOCUMENTS LIKE THIS, SIR.  
11 Q IS ALL THAT CALLED THE BACK ROOM, IS IT NOT? IS THAT  
12 A FAIR WAY OF SAYING IT?  
13 A IT'S A FAIR WAY OF SAYING IT, BUT THERE'S A LOT OF  
14 DIFFERENT AREAS FOR BACK ROOM, YES, SIR.  
15 Q I UNDERSTAND THAT. THE BACK ROOM HAS A LOT OF PARTS.  
16 BUT IF THE ERROR IS CAUGHT IN THE BACK ROOM, IT'S SENT BACK  
17 TO THE BRANCH AND THE ACCOUNT IS STOPPED. IT'S NOT EVEN  
18 OPENED. AND YOU TELL THE PERSON RESPONSIBLE HERE, THE  
19 PERSONAL BANKER, GET IT RIGHT, FIX IT, AND SEND IT BACK TO  
20 US?  
21 A DEPENDING ON THE ITEM, YES, SIR.  
22 Q AND THAT'S THE JOB OF THE BACK ROOM, THE OPERATIONS  
23 CENTER, AND ALL OF THESE PEOPLE WHO ARE CHECKING DOCUMENTS,  
24 RIGHT?  
25 A YES, SIR.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0429

APPENDIX 434



- 1 Q OKAY. NOW, BACK TO MY EXAMPLE. YOU'RE THE PERSONAL  
2 BANKER. IF YOU WALK IN WITH THAT CHECK AND THE PERSON --  
3 YOU ASK THEM FOR THE PROBATE COURT RECORDS AND THEY DON'T  
4 HAVE THEM, WHAT DO YOU DO?
- 5 A ASK THEM TO PROVIDE IT.
- 6 Q YOU DON'T OPEN THE ACCOUNT, DO YOU?
- 7 A RIGHT.
- 8 Q YOU SEND THEM OUT OF THE BANK?
- 9 A CORRECT.
- 10 Q AND IF THAT PERSON WAS COMING IN THE BANK TO DEFRAUD A  
11 MINOR CHILD, YOU'VE STOPPED THAT FRAUD, HAVEN'T YOU?
- 12 A IT WOULD CERTAINLY BE ONE -- ONE WAY TO PREVENT THAT  
13 PERSON FROM GETTING THE MONEY.
- 14 Q AND THERE ARE OTHER WAYS TO PREVENT IT AS WELL, AS  
15 LONG AS YOU FOLLOW EVERY ONE OF THESE POLICIES AND  
16 PROCEDURES, THEY'RE ALL BUILT IN MANY LEVELS TO STOP THE  
17 FRAUD IF YOUR BANKER DOES IT CORRECTLY, RIGHT?
- 18 A YES, SIR.
- 19 Q AND WHEN THE BANKER FAILS, THAT FRAUD CAN OCCUR AND  
20 MASSIVE LOSSES CAN OCCUR?
- 21 A IN THIS PARTICULAR CASE OUR PERSONAL BANKER DID NOT  
22 RECOGNIZE THAT IT WAS A CONSERVATORSHIP. AND I ALSO WANT  
23 TO MAKE IT CLEAR THAT IT WAS NOT A CHECK FOR 252,000.  
24 THERE WERE SEVERAL CHECKS. AND THE VERY FIRST CHECK DID  
25 NOT HAVE CONSERVATORSHIP ON THERE. THE VERY FIRST CHECK.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0430

APPENDIX 435

- 1 I -- I BELIEVE THAT SHE -- BASED ON HER TESTIMONY, SHE  
2 DIDN'T LOOK AT THE CHECK.
- 3 Q THAT'S JUST WHAT YOU BELIEVE. YOU WEREN'T THERE, WERE  
4 YOU?
- 5 A NO.
- 6 Q OKAY. NOW ---
- 7 A BUT I CAN BASE IT ON MY 30-PLUS YEARS OF EXPERIENCE.
- 8 Q THE BANKER -- THE PERSONAL BANKER IN THIS CASE WAS  
9 PRESENTED SEVEN CHECKS?
- 10 A YES.
- 11 Q AND LOOKED AT SEVEN CHECKS?
- 12 A DON'T KNOW THAT EITHER.
- 13 Q WELL, IF YOU'RE GOING TO ADD UP THE AMOUNT ---
- 14 A WELL ---
- 15 Q --- OF THE DEPOSIT ON SEVEN CHECKS, YOU'VE GOT TO LOOK  
16 AT SEVEN CHECKS, DON'T YOU?
- 17 A WELL, YOU PICK THE CHECKS UP AND YOU'RE LOOKING AT  
18 DOLLAR AMOUNTS, IF YOU'RE ADDING. YOU'RE NOT LOOKING AT  
19 ANYTHING ELSE.
- 20 Q THEY HAVE A DUTY TO LOOK AT THE PAYEE, DON'T THEY, NOT  
21 JUST THE AMOUNT?
- 22 A THEY -- THEY DO HAVE A DUTY TO LOOK AT THE ITEM.
- 23 Q AND YOUR POLICIES AND PROCEDURES REQUIRE THEM TO LOOK  
24 AT WHO THE PAYEE AND SEE IF CONSERVATOR IS ON THERE?
- 25 A SHE -- SHE ABSOLUTELY SHOULD HAVE LOOKED.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0431

APPENDIX 436

- 1 Q AND IF THEY DON'T, THEY ABSOLUTELY FAIL, DO THEY NOT?
- 2 A SHE DID NOT UNDERSTAND WHAT SHE HAD.
- 3 Q NOW, APRIL 22 (SIC), 2001 KAREN POWELL UNRUE WALKS
- 4 INTO THE BANK WITH A TOTAL OF SEVEN CHECKS AND GOES TO YOUR
- 5 PERSONAL BANKER LEE ANN YOURKO; IS THAT CORRECT?
- 6 A YES, SIR.
- 7 Q NOW, LET'S UNDERSTAND, I THINK THIS PERSON HAD A LAST
- 8 NAME OF UNRUE BY THAT TIME BASED ON HER ACCOUNT AT THE
- 9 BANK, DID SHE NOT?
- 10 A YES, SIR.
- 11 Q OKAY. NOW, SHE WALKS IN WITH SEVEN CHECKS MADE
- 12 PAYABLE TO KAREN POWELL AMONG OTHERS. THE LAST NAME UNRUE
- 13 WAS NOT EVEN ON THE CHECK, WAS IT?
- 14 A I DON'T RECALL SEEING UNRUE.
- 15 Q LET ME SHOW YOU IF I CAN PLAINTIFFS' EXHIBITS 5
- 16 THROUGH 11. YOU LOOKING AT THEM?
- 17 A YES, SIR.
- 18 Q THAT'S WHAT LEE ANN YOURKO WAS LOOKING AT ON THE 26TH
- 19 OF APRIL 2001, CORRECT?
- 20 A IF THESE MAKE UP THE TOTAL, YES, SIR.
- 21 Q OKAY. THESE CHECKS TOTAL \$252,447.51, RIGHT?
- 22 A YES, SIR.
- 23 Q WE HAVE NO WAY OF KNOWING IN WHAT ORDER THESE CHECKS
- 24 WERE PUT IN HER HAND, DO WE?
- 25 A WE HAVE A WAY OF KNOWING IN WHAT ORDER SHE TOOK THEM

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0432

APPENDIX 437

- 1 TO THE TELLER, YES.
- 2 Q WELL ---
- 3 A AND SO THAT WOULD TEND TO BE -- THE TOP CHECK ACTUALLY
- 4 WOULD BE THE VERY FIRST.
- 5 Q IS THAT BECAUSE OF THE NUMBER ON THE BACK OF THE
- 6 CHECK?
- 7 A THE SEQUENCE NUMBER ON THE BACK, YES, SIR, THE 192.
- 8 Q WHERE IS THAT PUT IN?
- 9 A I'M SORRY?
- 10 Q WHERE IS THAT CODE PUT IN?
- 11 A OUR OPERATIONS CENTER ENCODES THIS.
- 12 Q OKAY. IT'S NOT PUT IN BY MS. YOURKO?
- 13 A NO, SIR.
- 14 Q IT'S NOT PUT IN BY THE TELLER?
- 15 A NO.
- 16 Q IT'S JUST PUT IN IN CHARLOTTE SOMEWHERE AND THEY ARE
- 17 FED INTO A MACHINE THAT PUTS THAT NUMBER ON THEM IN
- 18 CHARLOTTE?
- 19 A IN THE ORDER IN WHICH THEY WERE IN THE TELLER WORK
- 20 TRAY, YES, SIR.
- 21 Q AND SO SHE IS LOOKING AT THOSE CHECKS IN ORDER, SHE
- 22 COULD TAKE THE FIRST CHECK AND PUT IT ON THE BOTTOM OF THE
- 23 CHECK, THE NEXT CHECK, NEXT TO THE BOTTOM, AND REVERSE THAT
- 24 ORDER, COULD SHE NOT?
- 25 A SHE SHOULD HAVE LOOKED AT THE CHECKS, YES, SIR.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0433

APPENDIX 438

- 1 Q AND SHE COULD HAVE MOVED THOSE CHECKS AROUND LOOKING  
2 AT THEM SAYING, YOU KNOW, THIS IS A LOT OF MONEY THAT I'M  
3 LOOKING AT. IT'S A LOT OF MONEY FOR A BANK FOR SOMEBODY TO  
4 WALK IN OFF THE STREET, ISN'T IT?
- 5 A IT IS FOR SOME PEOPLE, YES, SIR.
- 6 Q NOW, SO WE DON'T KNOW -- AND YOU CAN'T SIT HERE AND  
7 TODAY AND TESTIFY IN WHAT ORDER SHE NECESSARILY LOOKED AT  
8 THEM, CAN YOU?
- 9 A I CAN TESTIFY BASED ON MY EXPERIENCE THAT WHEN THE  
10 CHECKS COME IN, WE ARE SUPPOSED TO LOOK AT THE CHECKS. WE  
11 FLIP THE CHECKS. WE ADD THE CHECKS TO MAKE SURE, YES, SIR.
- 12 Q BUT YOU WEREN'T THERE WHEN SUZANNE -- WITH LEE ANN  
13 YOURKO THAT DAY, AND YOU DON'T KNOW HOW SHE DID IT, DO YOU?
- 14 A NO, SIR.
- 15 Q OKAY. BUT WE DO KNOW SHE LOOKED AT EVERY SINGLE ONE  
16 OF THESE CHECKS, DID SHE NOT?
- 17 A SHE HAD TO HAVE AT LEAST LOOKED AT THE DOLLAR AMOUNT  
18 IN ORDER TO GET A TOTAL, YES, SIR.
- 19 Q AND TO SET UP THE ACCOUNT, SHE HAS TO LOOK AT THE WAY  
20 THE CHECK IS MADE OUT, CORRECT?
- 21 A SHE -- SHE SHOULD, YES, SIR.
- 22 Q LET'S LOOK AT NO. 11.
- 23 A ARE THEY IN ORDER?
- 24 Q IT'S ON THE STICKER ON THE BOTTOM.
- 25 A OKAY. I'M SORRY. YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0434

APPENDIX 439

1 Q AND IF SHE LOOKED AT THAT NO. 11 FIRST, SHE COULD HAVE  
2 PUT IT DOWN LAST AND THEN PUT THE NEXT CHECK -- AND SHE WAS  
3 LOOKING AT THESE CHECKS BEFORE SHE ADDED THEM UP, COULDN'T  
4 SHE?

5 A IT'S HARD TO SAY.

6 Q OKAY. WELL, IT'S HARD TO SAY. BUT LET'S LOOK AT THIS  
7 CHECK. WHAT IS THE PAYEE OR PERSON IN HOW THIS ACCOUNT  
8 SHOULD BE SET UP. MS. YOURKO IS LOOKING AT IT. WHAT WOULD  
9 SHE SEE AS TO HOW THIS ACCOUNT SHOULD BE SET UP?

10 A WELL, THE CHECK IS PAYABLE TO T. POWELL AND K. POWELL,  
11 CO-CONSERVATORS FOR CODY P [REDACTED], A MINOR.

12 Q NOW, MS. YOURKO LOOKS AT IT AND SAYS, T. POWELL. THIS  
13 IS MS. UNRUE STANDING IN FRONT OF ME. WOULDN'T THAT BE  
14 SORT OF A RED FLAG TO HER TO START WITH AND SAY, WHAT'S  
15 GOING ON HERE?

16 A I DON'T KNOW THAT IT WOULD BE A RED FLAG.  
17 UNFORTUNATELY, WE WOMEN USUALLY CHANGE OUR NAMES WHEN -- I  
18 DON'T KNOW IF THAT'S UNFORTUNATE. BUT WE HAVE TO USUALLY  
19 LOSE OUR LAST NAME.

20 Q YOU'RE DEALING WITH A \$250,000 TRANSACTION, DON'T YOU  
21 THINK THE BANK HAS A DUTY TO ASK?

22 A WELL, WE DON'T KNOW IF SHE DID OR NOT, BECAUSE I  
23 WASN'T THERE. AND SO WE DON'T KNOW THAT.

24 Q NOW, DO YOU SEE THE WORD CLEARLY CONSERVATOR THERE?

25 A YES, IT DOES SAY CO-CONSERVATORS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0435

APPENDIX 440

- 1 Q LOOK AT EXHIBIT NO. 6. CAN YOU SEE THE WORDS  
2 CONSERVATOR ON THAT CHECK?  
3 A I DO.  
4 Q IS IT IN PLAIN ENGLISH?  
5 A IT IS.  
6 Q IS IT OPEN, OBVIOUS, AND CONSPICUOUS ON THIS CHECK?  
7 A IT DOES SAY CONSERVATOR. IT ALSO LEFT OFF THE OTHER  
8 PARTY'S NAME.  
9 Q THAT'S THE NEXT POINT. DO YOU -- MS. YOURKO NOW HAS  
10 LOOKED AT TWO CHECKS, ONE HAS TRAVIS POWELL ON IT, ONE HAS  
11 TRAVIS POWELL OFF OF IT.  
12 A AGAIN, YOU'RE MAKING THE ASSUMPTION THAT SHE LOOKED AT  
13 THE CHECKS.  
14 Q THAT'S HER DUTY TO DO THAT, ISN'T IT?  
15 A IT IS THE RESPONSIBILITY TO LOOK AT THE CHECKS.  
16 Q NOW, YOU SHUT YOUR EYES AND DON'T DO YOUR DUTY, THAT'S  
17 EXTREMELY INAPPROPRIATE AND SHOCKING TO YOU, ISN'T IT?  
18 A I DON'T THINK ANYTHING IS SHOCKING TO ME AS IT RELATES  
19 TO THINGS OF THAT NATURE. BUT IT IS A RESPONSIBILITY. IT  
20 SHOULD BE SOMETHING THAT SHE SHOULD HAVE DONE IS LOOKED AT  
21 THE CHECKS.  
22 Q IT'S JUST -- IT'S NOT -- IT'S NOT A BIG DEAL AS FAR AS  
23 THE BANK OF AMERICA IS CONCERNED?  
24 A WE HAVE POLICIES AND PROCEDURES. AND BASED ON OUR  
25 POLICIES AND PROCEDURES, SHE SHOULD HAVE LOOKED AT THE

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0436

APPENDIX 441

1 CHECKS.

2 Q BUT HERE YOUR EMPLOYEE, WHO'S PROTECTING A MINOR  
3 CHILD, SEES ONE NAME ON ONE CHECK AND ONE NAME ON ANOTHER,  
4 ISN'T THAT OPEN AND OBVIOUS THAT, WAIT A MINUTE, WHAT DOES  
5 THIS COURT ORDER SAY HERE? WHO'S IN CHARGE? ISN'T THAT  
6 JUST LOOKING AT THE CHECKS, IT'S A PROBLEM?

7 A IF SHE LOOKED AT THE CHECKS. AND I THINK THAT IS --  
8 THAT'S WHERE SHE DIDN'T -- SHE SAID SHE ADDED THE CHECKS  
9 UP. IT -- I DON'T -- I WASN'T THERE, BUT I HAVE -- I DON'T  
10 THINK SHE LOOKED AT THE CHECKS.

11 Q SHE DIDN'T. OR EITHER SHE JUST SAID, I'M GOING TO  
12 LISTEN TO MY CUSTOMER AND I'M GOING TO DO WHATEVER MS.  
13 UNRUE WANTS ME TO DO. SHE ASKED ME TO OPEN UP A  
14 CERTIFICATE OF DEPOSIT, I'M JUST GOING TO DO WHAT MS. UNRUE  
15 ASKED ME TO DO. I'M GOING TO DISREGARD WHAT'S ON THESE  
16 CHECKS?

17 A I DON'T THINK THAT SHE INTENTIONALLY MEANT TO  
18 DISREGARD. I THINK WHAT HAPPENED -- AND IT HAPPENS WHEN  
19 YOU GET INTO AN OFFICE AND YOU SIT DOWN, YOU GET YOUR QUES  
20 FROM THE CUSTOMER IN TERMS OF WHAT THEY'RE LOOKING FOR AND  
21 WHAT THEIR GOALS ARE. YOU HAVE CONVERSATION. WHILE YOU'RE  
22 HAVING CONVERSATION, YOU'RE KEYING SOMETHING INTO A  
23 COMPUTER, STILL TRYING TO TALK WITH THE CUSTOMER. AND --  
24 AND I THINK THIS IS SOMETHING THAT SHE JUST DIDN'T -- SHE  
25 DIDN'T DO.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0437

APPENDIX 442



- 1 Q SHE IS THE FRONT LINE OF DEFENSE FOR CODY P [REDACTED], IS  
2 SHE NOT?
- 3 A SHE IS THE -- SHE IS THE PERSON THAT OPENS THE  
4 ACCOUNTS FOR EVERYONE.
- 5 Q LET ME ASK YOU A QUESTION. THIS \$114,000, THIS \$489,  
6 THIS \$252,000 -- WHOSE MONEY IS IT?
- 7 A BASED ON WHAT I SEE IT BELONGS ULTIMATELY TO CODY.
- 8 Q CODY P [REDACTED], HE'S YOUR CUSTOMER, IS HE NOT?
- 9 A HE IS, YES, SIR. HE IS.
- 10 Q OKAY.
- 11 A BUT I DO -- I WANT TO MAKE IT CLEAR AS WELL THAT KAREN  
12 WAS ALSO A CUSTOMER. BUT IN THIS PARTICULAR CASE, YOU'RE  
13 ASKING ME IF THE FUNDS BELONGED TO CODY. YES, THE FUNDS  
14 BELONGED TO CODY.
- 15 Q CODY'S MONEY, CODY'S THE CUSTOMER. YOU OWE THE DUTY  
16 TO CODY, NOT TO KAREN UNRUE? RIGHT?
- 17 A THE MONEY BELONGED TO CODY.
- 18 Q KAREN UNRUE IS A THIEF, ISN'T SHE?
- 19 A WELL, OBVIOUSLY, SHE IS BASED ON WHAT SHE'S DONE.  
20 YES, SIR.
- 21 Q AND BANK OF AMERICA GETS PAID TO PROTECT PEOPLE LIKE  
22 CODY P [REDACTED] FROM THIEVES, DON'T THEY?
- 23 A BANK OF AMERICA GETS PAID TO PROTECT ALL CUSTOMERS,  
24 YES, SIR.
- 25 Q THE BANK OF AMERICA MAKES MONEY OFF OF THIS \$252,000

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0438

APPENDIX 443

- 1 DEPOSIT, DOES IT NOT?
- 2 A WE ARE ABLE TO USE OUR DEPOSITS TO HELP LEND MONEY TO
- 3 THE CUSTOMERS AT A LOWER RATE, YES, SIR.
- 4 Q YOU ALSO MAKE MONEY WHEN YOU DO THAT?
- 5 A WHAT DO YOU MEAN?
- 6 Q THAT'S WHAT BANK OF AMERICA IS IN BUSINESS, TO MAKE
- 7 MONEY, ISN'T IT?
- 8 A WELL, IT'S PART OF, THAT'S WHY WE TRY TO GENERATE
- 9 DEPOSITS.
- 10 Q TRY ---
- 11 A TO MAKE LOANS SO THAT WE DON'T HAVE TO BORROW FROM
- 12 FED, YES, SIR.
- 13 Q IT'S IMPORTANT FOR YOU TO GET THE MONEY IN THE BANK SO
- 14 YOU ALL CAN TAKE IT AND TURN AROUND AND LOAN IT AND MAKE
- 15 MONEY WITH IT? ISN'T THAT IMPORTANT?
- 16 A WE DO MAKE MONEY.
- 17 Q THAT'S RIGHT. AND THAT'S IMPORTANT THAT YOU GET THIS
- 18 MONEY IN, ISN'T IT?
- 19 A WELL, IT IS. WE HAVE AN OBLIGATION TO OUR
- 20 SHAREHOLDERS, YES.
- 21 Q YOU EVEN HAVE A REWARDS PROGRAM FOR PEOPLE LIKE MS.
- 22 YOURKO AND PEOPLE LIKE MS. LAWRENCE, TO REWARD THEM FOR
- 23 GETTING BIG DEPOSITS IN THE BANK AND GETTING THIS MONEY IN,
- 24 DON'T YOU?
- 25 A WE HAVE AN INCENTIVE PROGRAM LIKE MANY OTHER FINANCIAL

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0439

APPENDIX 444

1 INSTITUTIONS, YES, SIR.  
2 Q AND SO TO REWARD THE EMPLOYEE LIKE MS. YOURKO AND MS.  
3 LAWRENCE FOR GETTING THE MONEY IN THE BANK?  
4 A IT'S TO INCENT THE CUSTOMER SERVICE ASSOCIATE TO LOOK  
5 FOR DEPOSITS, YES, SIR, AND LOANS AND THINGS OF THAT  
6 NATURE.  
7 Q AND THEY GET BONUSES ON THEIR PAYCHECK FOR THIS, DON'T  
8 THEY?  
9 A OUR BANK DOES HAVE A QUARTERLY INCENTIVE PROGRAM.  
10 IT'S BASED ON CUSTOMER SATISFACTION, SCORES, AS WELL AS OUR  
11 SALES. YES, SIR.  
12 Q AND THEY GET A BONUS?  
13 A IN A SENSE.  
14 Q MORE MONEY ON THAT PAYCHECK?  
15 A IT IS AN INCENTIVE, YES, SIR.  
16 Q NOW ---  
17 A IF THEY MEET THEIR GOALS, THAT IS. I'M SORRY. I  
18 DIDN'T MEAN TO INTERRUPT YOU.  
19 Q ALL RIGHT. NOW, THE NEXT THING THAT SHE DOES AFTER  
20 SHE GETS THESE CHECKS, WHEN YOU LOOK AT THE FRONT OF THE  
21 CHECK -- I'M SORRY.  
22 A WHICH ONE ARE WE LOOKING AT?  
23 Q I'M TOUCHING MY SCREEN. HOW WAS MS. YOURKO SUPPOSED  
24 TO CHECK -- LET'S GO BACK TO NO. 11 A MINUTE. AGAIN, NO.  
25 11, THIS IS THE \$114,000 CHECK. THE NEXT LINE OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0440

APPENDIX 445

- 1 PROTECTION IS THE ENDORSEMENT ON THE CHECK, IS IT NOT?
- 2 A THERE SHOULD BE AN ENDORSEMENT ON THE CHECK, YES, SIR.
- 3 Q THAT'S THE NEXT LINE OF PROTECTION, CORRECT?
- 4 A SHOULD BE AN ENDORSEMENT, YES, SIR.
- 5 Q ALL RIGHT. NOW, HOW -- WHAT'S THE PROPER ENDORSEMENT
- 6 FOR EXHIBIT NO. 11 FOR \$114,866?
- 7 A WELL, THE CHECK IS MADE PAYABLE TO T. POWELL AND K.
- 8 POWELL, CO-CONSERVATORS FOR CODY P [REDACTED], A MINOR. AND ---
- 9 Q DOES THAT INFORMATION APPEAR ON THE ENDORSEMENT?
- 10 A IT SHOWS TRAVIS POWELL AND KAREN POWELL. SO THE TITLE
- 11 IS NOT ON THERE, NO, SIR.
- 12 Q IT'S A VIOLATION OF YOUR PROCEDURES AND POLICIES,
- 13 ISN'T IT?
- 14 A I DON'T KNOW THAT IT'S A VIOLATION OF OUR PROCEDURES
- 15 AND POLICY. BUT I DO KNOW WITH ENDORSEMENTS THAT THE
- 16 ENDORSEMENT SHOULD HAVE THE TITLES ON THERE, YES, SIR.
- 17 Q YOUR PROCEDURES AND POLICIES REQUIRE THAT THE NAME ON
- 18 THE FRONT OF THE CHECK APPEAR EXACTLY THE SAME WAY ON THE
- 19 BACK OF THE CHECK; ISN'T THAT EXACTLY WHAT YOUR PROCEDURES
- 20 AND POLICIES SAY?
- 21 A IT SHOULD, YES, SIR.
- 22 Q YOU DON'T KNOW?
- 23 A NO, I'M NOT SAYING I DON'T KNOW. I'M -- I'M AGREEING
- 24 THAT THE ENDORSEMENT SHOULD BE THE SAME. I WASN'T ---
- 25 Q MY QUESTION ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0441

APPENDIX 446

- 1 A --- SAYING I DIDN'T KNOW.
- 2 Q --- ISN'T THAT WHAT YOUR PROCEDURES AND POLICIES
- 3 REQUIRE?
- 4 A OUR PROCEDURES AND POLICIES DO REQUIRE THAT WE GET THE
- 5 APPROPRIATE ENDORSEMENT.
- 6 Q AND IT'S NOT APPROPRIATE IN THIS CASE?
- 7 A IT LOOKS -- AS I MENTIONED, THERE ARE NO TITLES ON
- 8 THERE.
- 9 Q YOU KNOW TODAY TRAVIS POWELL WASN'T EVEN PRESENT THAT
- 10 DAY?
- 11 A I DO, YES, SIR.
- 12 Q AND THAT IS A VIOLATION OF YOUR PROCEDURES AND
- 13 POLICIES?
- 14 A TRAVIS -- I DON'T THINK THAT SHE SAID THAT HE WAS
- 15 THERE. I'M NOT SURE SHE EVEN REMEMBERS WHETHER HE WAS
- 16 THERE. BUT HE SHOULD HAVE BEEN THERE.
- 17 Q YOUR PROCEDURES AND POLICIES REQUIRE HIS PRESENCE
- 18 STANDING BEFORE MS. YOURKO, DOESN'T IT?
- 19 A IT IS A JOINT CHECK WITH -- YES, SIR, BOTH PARTIES
- 20 SHOULD HAVE BEEN PRESENT.
- 21 Q THAT'S OPEN AND OBVIOUS THAT HE WAS NOT THERE, IN
- 22 VIOLATION OF YOUR PROCEDURES AND POLICIES; IS THAT CORRECT?
- 23 A HE WAS NOT THERE. HE SHOULD HAVE BEEN THERE. YES,
- 24 SIR.
- 25 Q NOW, LET'S GO TO THE WAY THIS ACCOUNT WAS SET UP. LET

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0442

APPENDIX 447

- 1 US GO TO A COUPLE OTHER CHECKS. LET'S LOOK NEXT -- LET'S  
2 LOOK AT NO. 7. IS THE WORD CONSERVATOR OPEN, OBVIOUS, AND  
3 CLEARLY STATED ON EXHIBIT NO. 7?  
4 A YES, SIR, IT IS.  
5 Q IS NO. 7 ENDORSED CORRECTLY?  
6 A IT JUST HAS KAREN'S SIGNATURE ON THERE.  
7 Q WAS 5 AND 6 ENDORSED CORRECTLY? EXHIBITS 5 AND 6.  
8 A OKAY. IT HAS KAREN AND TRAVIS. AND THEN ON 6 IT HAS  
9 KAREN.  
10 Q HOW ABOUT NO. 8, WAS IT ENDORSED CORRECTLY?  
11 A THAT TOO HAS KAREN'S SIGNATURE ON THERE.  
12 Q LOOK AT 8, 9, 10, 11. ALL SEVEN CHECKS, WERE ANY OF  
13 THEM DONE CORRECTLY?  
14 A THEY HAVE KAREN AND TRAVIS' SIGNATURE ON ONE OF THEM,  
15 BUT KAREN'S SIGNATURE ON THE OTHER.  
16 Q MY QUESTION IS: WERE ANY OF THEM DONE CORRECTLY?  
17 A THEY DID NOT HAVE THE TITLE IN THERE.  
18 Q ALL IN VIOLATION OF YOUR PROCEDURES AND POLICIES TO  
19 PROTECT CODY P█████?  
20 A IT IS RECOMMENDED THAT WE HAVE THE TITLE -- THAT THE  
21 SIGNATURE ON THE BACK OF THE CHECK AGREES WITH WHAT'S ON  
22 THE FRONT. OR THE ENDORSEMENT, RATHER, I APOLOGIZE.  
23 Q THERE'S NO EVIDENCE IN THIS FILE THAT YOU CAN SEE  
24 WHERE ANY IDENTIFICATION WAS ASKED?  
25 A IDENTIFICATION IS KEYED INTO THE COMPUTER, SO IT WOULD

CODY P█████ VS. BANK OF AMERICA

ROA 0443

APPENDIX 448

1 NOT NECESSARILY BE WRITTEN ON THE CHECKS. AS WE OPEN  
2 ACCOUNTS, WE KEY THAT INFORMATION INTO THE COMPUTER.  
3 Q THAT'S WELL-KNOWN, W.K. DESIGNATION WAS NOWHERE IN  
4 THIS ACCOUNT?  
5 A NOT ON THESE. BUT WE KEY IN OUR IDENTIFICATION ON THE  
6 COMPUTER.  
7 Q UNDERSTAND. BUT THERE'S NO DRIVER'S LICENSE OR  
8 ANYTHING TO SHOW THAT AN IDENTIFICATION WAS OBTAINED?  
9 A NOT ON THE CHECKS BECAUSE WE KEY THAT INFORMATION INTO  
10 A COMPUTER.  
11 Q NOW, LET'S GO TO THE NEXT DOCUMENT WOULD HAVE BEEN  
12 GENERATED. FOR LACK OF A BETTER WORD, THE SIGNATURE CARD  
13 -- YOU DON'T NECESSARILY HAVE TO HAVE A SIGNATURE CARD, BUT  
14 YOU'VE GOT TO HAVE KAREN UNRUE POWELL OR KAREN POWELL UNRUE  
15 AND TRAVIS POWELL SIGN A DOCUMENT TO OPEN THIS ACCOUNT, DO  
16 YOU NOT?  
17 A YOU ONLY HAVE TO HAVE ONE SIGNATURE ON THE -- ON THIS  
18 -- ON THE CD RECEIPT. WE ONLY REQUIRE ONE SIGNATURE ON THE  
19 CD RECEIPT.  
20 Q DO YOU WANT TO SHOW THIS COURT WHERE THAT RECEIPT'S  
21 LOCATED?  
22 A I DON'T. I NEVER SAW A COPY OF IT.  
23 Q YOU MEAN THE BANK OF AMERICA TOOK IN \$252,000 OF THIS  
24 CHILD'S MONEY AND THEY CAN'T EVEN PRODUCE THAT RECORD?  
25 A WELL, THE RECORD DOES LEAVE THE BANKING CENTER, AND IT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0444

APPENDIX 449

- 1 DOES GO UP TO CD'S. IN THIS PARTICULAR CASE IT WOULD GO TO  
2 THE CD DEPARTMENT.
- 3 Q THE BANK OF AMERICA SHOULD HAVE A COPY OF THAT RECORD,  
4 SHOULDN'T IT?
- 5 A THERE SHOULD BE A COPY ON FILE.
- 6 Q AND YOU DO NOT HAVE A COPY OF THAT RECORD?
- 7 A I DID NOT SEE ONE IN OUR INFORMATION.
- 8 Q IN THE LAST FIVE YEARS YOU HAVEN'T BEEN ABLE TO  
9 PRODUCE ONE, HAVE YOU?
- 10 A I GUESS NOT. NO, SIR.
- 11 Q ALL RIGHT. NOW, WHEN YOU LOOKED AT THESE RECORDS, DID  
12 YOU FIND ANY EVIDENCE THAT CODY P [REDACTED] TAX I.D. NUMBER OR  
13 SOCIAL SECURITY NUMBER WAS USED ON THIS ACCOUNT TO SHOW IT  
14 WAS HIS MONEY?
- 15 A I THINK IT WAS KAREN'S SOCIAL SECURITY NUMBER.
- 16 Q IS THAT IN VIOLATION OF YOUR POLICIES AND PROCEDURES?
- 17 A IT SHOULD HAVE BEEN CODY'S SOCIAL SECURITY NUMBER  
18 USED.
- 19 Q THAT VIOLATED YOUR POLICIES AND PROCEDURES, DID IT  
20 NOT?
- 21 A IT SHOULD HAVE BEEN CODY'S SOCIAL SECURITY NUMBER.
- 22 Q LET'S NOW LOOK AT THE CREDIT MEMO, WHICH IS EXHIBIT  
23 NO. 12. OKAY. I'LL SHOW THAT TO YOU.
- 24 A OKAY. THANK YOU.
- 25 THE COURT: LET'S TAKE A MOMENT BEFORE YOU PROCEED AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0445

APPENDIX 450



1 STAND FOR A MOMENT.  
2 (PAUSE.)  
3 THE COURT: GO TO THE JURY ROOM. PLEASE DO NOT  
4 DISCUSS THE CASE. ABOUT 5 MINUTES. THEN WE'LL COME BACK.  
5 (THE JURY RETIRES TO THE JURY ROOM AT 11:00 A.M.)  
6 MS. REEVES: IS IT OKAY IF I STEP DOWN FOR A MOMENT?  
7 THE COURT: YES, YOU MAY STEP DOWN. IT'S JUST YOU  
8 CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE. BUT YOU MAY  
9 STEP DOWN.  
10 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)  
11 (A RECESS WAS TAKEN.)  
12 THE COURT: ALL RIGHT. BRING THEM ON.  
13 (THE WITNESS RETURNS TO THE WITNESS STAND.)  
14 (THE JURY RETURNS TO THE COURTROOM AT 11:20 A.M.)  
15 THE COURT: YOU MAY PROCEED, MR. JENKINSON.  
16 MR. JENKINSON: MAY IT PLEASE THE COURT.  
17 THE COURT: YES, SIR.  
18 DIRECT EXAMINATION CONTINUED BY MR. JENKINSON:  
19 Q MS. REEVES, ON MAY 2ND, 2001 ABOUT A WEEK AFTER THE  
20 YOURKO TRANSACTION SUSAN - I MEAN, MS. KAREN POWELL UNRUE  
21 GOES BACK TO YOUR PAWLEYS ISLAND BANK, AND THIS TIME SHE  
22 MEETS WITH THE BRANCH MANAGER, MS. LAWRENCE, DOES SHE NOT?  
23 A YES, SIR.  
24 Q NOW, HERE SHE WALKS IN WITH ANOTHER CHECK, CORRECT?  
25 A YES, SIR.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0446

APPENDIX 451

- 1 Q AND THAT CHECK IS EXHIBIT NO. 13. EXHIBIT 15, I'M  
2 SORRY. I SHOW YOU EXHIBIT NO. 15. AND THIS TIME SHE GOES  
3 TO SEE A DIFFERENT EMPLOYEE, THE BRANCH MANAGER, AND WALKS  
4 IN AND PRESENTS EXHIBIT NO. 15 TO MS. LAWRENCE; IS THAT  
5 CORRECT?
- 6 A YES, SIR.
- 7 Q NOW, ON 15, HOW IS THE CHECK MADE PAYABLE?
- 8 A IN THIS CASE IT SAYS KAREN M. POWELL AS CONSERVATOR  
9 FOR CODY ██████ P█████, A MINOR.
- 10 Q THIS TIME THERE'S ONLY ONE CHECK?
- 11 A YES, SIR.
- 12 Q IT CLEAR AND OBVIOUS TO THE BRANCH MANAGER AND THIS IS  
13 ALSO WOULD HAVE BEEN A PERSONAL BANKER, THAT THE WORD  
14 CONSERVATOR APPEARS ON THE CHECK?
- 15 A IT'S CLEAR TO ME, YES, SIR.
- 16 Q OKAY. NOW, WHEN IT WAS ENDORSED, HOW WAS IT ENDORSED?
- 17 A IT HAS KAREN POWELL ON THERE.
- 18 Q POWELL?
- 19 A YES, SIR.
- 20 Q AND, AGAIN, THE ENDORSEMENT WHICH WAS TAKEN BY THE  
21 BRANCH MANAGER WAS IN VIOLATION OF YOUR POLICIES AND  
22 PROCEDURES?
- 23 A IT DID NOT HAVE CONSERVATOR ON THERE.
- 24 Q EVERY TIME I ASK YOU ABOUT THE VIOLATION OF POLICIES  
25 AND PROCEDURES, I JUST REALLY JUST WANT A YES OR NO, THEN

CODY P█████ VS. BANK OF AMERICA

ROA 0447

APPENDIX 452

1 YOU CAN EXPLAIN. IS IT OR IS IT NOT A VIOLATION ---  
2 MR. DAVIS: OBJECTION, YOUR HONOR.  
3 Q --- OF YOUR POLICIES AND PROCEDURES ---  
4 MR. DAVIS: SHE'S ANSWERED HIS QUESTIONS.  
5 THE COURT: PARDON ME?  
6 MR. DAVIS: HE'S UP HERE ARGUING BECAUSE HE DOESN'T  
7 GET AN ANSWER HE WANTS. SHE'S ANSWERED HIS QUESTIONS.  
8 MR. JENKINSON: I JUST WANT HER TO ANSWER IS IT OR IS  
9 IT NOT A VIOLATION OF YOUR PROCEDURES? SHE CAN ANSWER YES  
10 OR NO AND EXPLAIN ALL DAY LONG.  
11 THE COURT: ALL RIGHT. ASK HER ANOTHER QUESTION.  
12 MR. JENKINSON: THANK YOU.  
13 THE COURT: THE SAME QUESTION.  
14 Q IS IT OR IS IT NOT A VIOLATION OF BANK OF AMERICA'S  
15 POLICIES AND PROCEDURES THE WAY THE BRANCH MANAGER GOT THE  
16 ENDORSEMENT ON THE POWELL CHECK?  
17 A I -- SHE -- SHE SHOULD HAVE HAD A SIGNATURE OR AN  
18 ENDORSEMENT ON THERE THAT INCLUDED THE TITLE. I BELIEVE  
19 OUR POLICIES AND PROCEDURES DOES STATE THAT WE SHOULD HAVE  
20 THE TITLE INCLUDED, YES.  
21 Q AND THAT'S A VIOLATION OF THOSE POLICIES AND  
22 PROCEDURES?  
23 A IT WOULD NOT HAVE BEEN DONE CORRECTLY. NO.  
24 Q A VIOLATION?  
25 A I DON'T KNOW IF IT'S A VIOLATION, AND THAT'S -- I

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0448

APPENDIX 453

- 1 THINK THAT'S WHY I'M HAVING A HARD TIME ANSWERING YOU YES  
2 OR NO. I THINK IF I WERE TO LOOK IN THE BOOK, AND IF IT  
3 SAID THAT IT WAS A VIOLATION, I WOULD SAY YES. I'M NOT  
4 SURE THAT IT'S A VIOLATION. I THINK IT'S PART OF THE RULES  
5 OF NEGOTIABILITY THAT YOU SHOULD ENDORSE THE CHECK THE WAY  
6 THE CHECK IS MADE PAYABLE.
- 7 Q THE FRONT OF THE CHECK SHOULD APPEAR THE SAME WAY ON  
8 THE BACK OF THE CHECK?
- 9 A YES, SIR.
- 10 Q AND IT DOES NOT DO THAT?
- 11 A NO, SIR, IT DOES NOT.
- 12 Q OKAY. SO YOUR PERSONAL BANKER DID NOT GET CORRECT  
13 ENDORSEMENT?
- 14 A THE ENDORSEMENT SHOULD HAVE HAD THE TITLE ON THERE,  
15 YES, SIR.
- 16 Q NOW NOTWITHSTANDING AN INCORRECT ENDORSEMENT, THE NEXT  
17 PIECE OF PAPER THAT WAS GENERATED BY YOUR BANKER -- BY THE  
18 BRANCH MANAGER WOULD HAVE BEEN WHAT TO OPEN THIS ACCOUNT?
- 19 A A SIGNATURE CARD?
- 20 Q OKAY.
- 21 A IS THAT WHAT YOU MEAN -- WHAT YOU'RE ASKING?
- 22 Q NOW, I WANT TO SHOW YOU EXHIBIT NO. 14, AND ASK YOU IF  
23 THIS IS THE SIGNATURE CARD? YOU FOUND THIS ONE, DIDN'T  
24 YOU?
- 25 A YES, SIR.

CODY ██████ VS. BANK OF AMERICA

ROA 0449

APPENDIX 454

1 Q NOW, THE SIGNATURE CARD MUST BE THE SAME AS -- MADE  
2 OUT THE SAME WAY THE CHECK IS TO OPEN THIS ACCOUNT, RIGHT?  
3 A YES, SIR.  
4 Q ALL RIGHT. WHOSE NAME WAS -- WHOSE CHECK, EXHIBIT NO.  
5 15, THAT CHECK -- WHOSE MONEY WAS THAT?  
6 A AGAIN, THIS IS CODY -- CODY'S MONEY, SIR.  
7 Q AND WHO WAS THE CONSERVATOR NAMED?  
8 A IT WAS KAREN.  
9 Q NOW, WHAT WE'RE LOOKING AT THE SIGNATURE CARD, EXHIBIT  
10 NO. 14. AND WHO SIGNED EXHIBIT NO. 14 SETTING UP THIS  
11 ACCOUNT?  
12 A KAREN SIGNED.  
13 Q KAREN WHO?  
14 A KAREN UNRUE.  
15 Q WELL, KAREN UNRUE AND KAREN POWELL, DO WE HAVE  
16 ANYTHING IN THE BANK RECORDS IN THIS ACCOUNT THAT SHOW  
17 SHE'S THE SAME PERSON AS MS. KAREN POWELL?  
18 A I -- I DON'T -- I DON'T KNOW WHAT SHE PRODUCED OR IF  
19 HER NAME WAS CHANGED IN THE SYSTEM.  
20 Q THE SIGNATURE CARD IS NOT SET UP AS REQUIRED BY YOUR  
21 POLICIES AND PROCEDURES, IS IT NOT?  
22 A AS IT RELATES TO KAREN'S NAME, IS THAT WHAT YOU'RE  
23 ASKING ME, SIR?  
24 Q AS TO HOW THIS ACCOUNT SHOULD BE SET UP FOR CODY  
25 P [REDACTED]?

CODY [REDACTED] VS. BANK OF AMERICA

ROA 0450

APPENDIX 455

- 1 A THIS ACCOUNT SHOULD HAVE BEEN A CONSERVATORSHIP.
- 2 Q COULD HAVE WHAT?
- 3 A IT SHOULD HAVE BEEN SET UP AS A CONSERVATORSHIP. IS
- 4 THAT WHAT YOU'RE ASKING?
- 5 Q IT'S NOT IN ACCORDANCE IN YOUR POLICIES AND
- 6 PROCEDURES, IS IT?
- 7 A THAT CHECK SHOWS THAT IT'S CONSERVATORSHIP. SHE
- 8 SHOULD HAVE OPENED A CONSERVATORSHIP ACCOUNT.
- 9 Q IT SHOULD HAVE BEEN SET UP AS A CONSERVATORSHIP
- 10 ACCOUNT. IT WASN'T?
- 11 A THAT'S WHAT I JUST SAID, YES, SIR.
- 12 Q IT SHOULD -- DID YOU FIND ANY EVIDENCE THAT YOUR
- 13 BRANCH MANAGER ASKED FOR AND RECEIVED THE CONSERVATORSHIP
- 14 COURT ORDER?
- 15 A THERE, I HAVE NOT BEEN ABLE TO SEE ANY COURT ORDERS,
- 16 NO, SIR. I HAVE NOT SEEN ANY IN ANYTHING I'VE LOOKED AT.
- 17 Q WHAT WE FIND HERE IS TWO DIFFERENT PEOPLE ON TWO
- 18 DIFFERENT OCCASIONS IN THE BANK OF AMERICA MAKING THE SAME
- 19 MISTAKES?
- 20 A YES, SHE SET THIS UP AS A CUSTODIAN ACCOUNT. I CAN --
- 21 AND WITH MY EXPERIENCE, IT SHOULD HAVE BEEN A CONSERVATOR
- 22 BASED ON THE WAY THE CHECK WAS MADE PAYABLE.
- 23 Q NOW, THE BRANCH MANAGER IS IN CHARGE OF THIS OPERATION
- 24 AT PAWLEYS ISLAND?
- 25 A SHE IS THE -- YES, SIR, SHE IS THE BANKING CENTER

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0451

APPENDIX 456

1   MANAGER.  
2   Q     NOW, THE NEXT DOCUMENT SET UP IS A CREDIT MEMO OR SOME  
3   OTHER TYPE PIECE OF PAPER FOR THIS ACCOUNT?  
4   A     DO YOU MEAN A DEPOSIT SLIP, SIR?  
5   Q     YES, DEPOSIT SLIP.  
6   A     YES, SIR.  
7   Q     OKAY. NOW, DO YOUR REGULATIONS AND POLICIES REQUIRE  
8   THE DEPOSIT SLIP APPEAR THE SAME WAY AS IT APPEARS ON THE  
9   FRONT OF THE CHECK?  
10  A     WE SHOULD COMPLETE THE DEPOSIT TICKET.  
11  Q     OKAY. NOW, LET'S LOOK AT THE DEPOSIT SLIP FOR THIS  
12  CHECK.  
13       MR. JENKINSON: DO YOU HAVE THAT? OKAY.  
14  Q     THAT IS EXHIBIT NO. 16. DO YOU HAVE 16 WITH YOU?  
15  A     I DON'T THINK SO. NO, SIR.  
16       (PAUSE.)  
17  A     WOULD YOU LIKE ME JUST TO STEP DOWN AND LOOK AT IT?  
18  Q     WELL, WE NEED TO FIND THE EXHIBIT IF ONE IS MISSING.  
19  A     OKAY.  
20       (PAUSE.)  
21  Q     I SHOW YOU 16, THIS IS A COPY.  
22  A     OKAY. THANK YOU.  
23  Q     IT HAS NOBODY'S NAME ON IT, DOES IT?  
24  A     NO, SIR. THIS IS A NEW ACCOUNT DEPOSIT SLIP WHICH  
25  WOULD NOT HAVE A NAME ON THERE INITIALLY.

CODY ██████ VS. BANK OF AMERICA

ROA 0452

APPENDIX 457

- 1 Q NOW, THIS ACCOUNT WAS SET UP, AGAIN, NOT IN ACCORDANCE  
2 WITH THE POLICIES AND PROCEDURES TO PROTECT CODY POWELL, IS  
3 IT?
- 4 A IT WAS NOT SET UP AS A CONSERVATORSHIP, NO, SIR.
- 5 Q ON BOTH OCCASIONS WHEN IT WAS NOT SET UP WITH  
6 CONSERVATORSHIP ACCOUNT RESTRICTED, IT WOULD PERMIT KAREN  
7 POWELL UNRUE TO GO IN AND GET THIS MONEY AND DO AS SHE  
8 PLEASE?
- 9 A SHE WOULD HAVE HAD ACCESS, YES, SIR.
- 10 Q SHE HAD TOTAL ACCESS TO IT?
- 11 A YES, SIR.
- 12 Q AND YOU KNOW FROM LOOKING AT YOUR BANK RECORDS SHE IN  
13 FACT THROUGH VARIOUS ACCOUNTS, WITHDRAW THIS MONEY, AND  
14 LEFT FOR COLORADO?
- 15 A YES, SIR, I DID SEE THAT.
- 16 Q AND WE DON'T KNOW WHERE SHE IS TODAY?
- 17 A NO, SIR.
- 18 Q WHICH MAKES IT ALMOST IMPOSSIBLE FOR CODY POWELL EVER  
19 TO GET ANYTHING, DOESN'T IT?
- 20 MR. DAVIS: OBJECTION, YOUR HONOR.
- 21 THE COURT: THE OBJECTION IS SUSTAINED.
- 22 Q KAREN POWELL UNRUE CERTAINLY DOESN'T HAVE ANY MONEY IN  
23 THE BANK OF AMERICA ANY MORE, DOES SHE?
- 24 A I DON'T KNOW THAT, SIR.
- 25 Q NOBODY'S CHECKED THAT?

CODY POWELL VS. BANK OF AMERICA

ROA 0453

APPENDIX 458



1 A I DON'T -- I DON'T KNOW THAT.

2 Q NOW, SINCE 2001 TO DATE, DID THE BANK OF AMERICA  
3 INTERNALLY DO ANY INVESTIGATION TO DETERMINE ---

4 MR. DAVIS: OBJECTION, YOUR HONOR.

5 Q --- HOW THIS OCCURRED ---

6 MR. DAVIS: WE NEED TO APPROACH.

7 Q --- AT PAWLEYS ISLAND?

8 THE COURT: ALL RIGHT. YOU MAY APPROACH.

9 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE  
10 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

11 THE COURT: RESTATE YOUR QUESTION AND WAIT FOR ANY  
12 OBJECTION.

13 Q HAS ANYBODY GONE TO PAWLEYS ISLAND FROM BANK OF  
14 AMERICA TO DETERMINE WHAT HAPPENED IN THESE TRANSACTIONS?

15 A SIR, I WOULD -- I DON'T KNOW.

16 Q YOU ARE THE REPRESENTATIVE OF THE BANK?

17 A I AM THE REPRESENTATIVE FOR THE BANK, YES.

18 Q YOU UNDERSTAND BANK OF AMERICA UNDERSTANDS A CHILD HAS  
19 LOST HUNDREDS OF THOUSANDS OF DOLLARS BECAUSE THE  
20 PROCEDURES AND POLICIES AT THE BANK WERE NOT FOLLOWED IN  
21 2001?

22 A I UNDERSTAND THAT -- THAT CODY DID NOT RECEIVE THE  
23 MONEY, YES, SIR.

24 Q AND THE BANK OF AMERICA OPENS LOTS OF CONSERVATORSHIP  
25 ACCOUNTS, I THINK ACCORDING TO MS. DENNING IN SOUTH

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0454

APPENDIX 459

1 CAROLINA?

2 A I DON'T KNOW WHAT LOTS MEANS, BECAUSE I'VE BEEN WITH  
3 THE COMPANY FOR 30-PLUS YEARS AND I MAY HAVE SEEN TWO. SO  
4 I DON'T KNOW WHAT THAT MEANS.

5 Q WELL, I THINK SHE SAID IT WAS NOT UNCOMMON -- TO USE  
6 HER WORDS.

7 A I DON'T KNOW.

8 Q OKAY.

9 A I DON'T KNOW THAT.

10 Q SO YOU DON'T KNOW THAT?

11 A NO, SIR.

12 Q OKAY. WE'D HAVE TO RELY UPON HER STATEMENT?

13 A I -- I DON'T KNOW.

14 Q NOW, OTHER THAN THESE POLICIES AND PROCEDURES, DOES  
15 THE BANK OF AMERICA IN ITS 5900 BRANCHES HAVE ANYTHING ELSE  
16 TO PROTECT THESE MINORS FROM THIS HAPPENING AGAIN?

17 A I DON'T UNDERSTAND YOUR QUESTION.

18 Q WELL, IS THERE ANYTHING OTHER THAN THESE POLICIES AND  
19 PROCEDURES THAT YOU'VE DESCRIBED TO PROTECT MINORS FROM  
20 HAVING THEIR MONEY STOLEN LIKE THIS?

21 A OUR POLICIES AND PROCEDURES ARE THERE TO PROTECT  
22 ASSETS. THAT'S NOT TO SAY THAT MONEY COULD NOT BE STOLEN  
23 FROM ANYBODY, UNDER THE CIRCUMSTANCES, IF SOMEONE SETS  
24 THEIR MIND TO STEAL MONEY.

25 Q AND IN THIS INSTANCE, ON TWO SEPARATE OCCASIONS THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0455

APPENDIX 460

1 TOP PEOPLE IN YOUR BRANCH BANK INDEPENDENTLY OF THEMSELVES  
2 FAILED CODY POWELL BECAUSE THEY DIDN'T FOLLOW THESE  
3 POLICIES AND PROCEDURES; ISN'T THAT A FAIR STATEMENT?  
4 A THOSE TWO ASSOCIATES FAILED TO FOLLOW THE BANK  
5 POLICIES AND PROCEDURES.  
6 Q AND ---  
7 A YES, SIR.  
8 Q --- WHEN THEY FAILED, CODY P [REDACTED] PROTECTION WAS  
9 LOST AND HE LOST HIS MONEY TO THIS CRIMINAL?  
10 A THE BANK DID NOT -- THE TWO ASSOCIATES DID NOT FOLLOW  
11 THE SPECIFIC PROCEDURES. WHETHER THAT PERSON WOULD HAVE  
12 DONE SOMETHING ELSE AT A LATER DATE -- BUT WE DID NOT  
13 FOLLOW OUR POLICY AND PROCEDURES.  
14 Q AND IF THEY WOULD HAVE BEEN FOLLOWED, CODY P [REDACTED]  
15 WOULDN'T HAVE LOST THIS MONEY, WOULD HE?  
16 A I CANNOT SPEAK TO THAT. I CAN TELL YOU THAT WE DID  
17 NOT FOLLOW OUR POLICY AND PROCEDURES.  
18 Q NOW, AS I UNDERSTAND IT, BASED ON YOUR TESTIMONY WHAT  
19 WE'VE HEARD HERE TODAY, IT APPEARS THAT ABOUT 15 DIFFERENT  
20 THINGS WENT WRONG WHEN POLICIES AND PROCEDURES WERE NOT  
21 FOLLOWED IN THESE TRANSACTIONS BY THE BANK OF AMERICA?  
22 A I THINK ONE THING WENT WRONG, AND THAT WAS WITH KAREN  
23 WHEN SHE FIRST OPENED -- I'M SORRY, NOT KAREN, BUT OUR  
24 PERSONAL BANKER WHEN SHE FIRST OPENED THE ACCOUNT, SHE  
25 FAILED TO SCRUTINIZE THE CHECKS. SHE FAILED TO UNDERSTAND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0456

APPENDIX 461

1 THAT IT WAS A CONSERVATORSHIP; THAT MAY HAVE BEEN IN PART  
2 BECAUSE SHE WAS NEW AND HAD NEVER SEEN IT. AGAIN, IN MY  
3 EXPERIENCE, I'VE ONLY SEEN A COUPLE, MAYBE THREE IN MY  
4 ENTIRE CAREER WITH THE COMPANY. SO OUR PERSONAL BANKER  
5 WHEN SHE DID THIS FAILED TO SCRUTINIZE THE CHECKS. AND  
6 THAT IS THE FAILURE THAT RESULTED IN A CHAIN OF EVENTS THAT  
7 TOOK PLACE.

8 Q AND A WEEK LATER THE BRANCH MANAGER DOES THE SAME  
9 THING AND FAILS?

10 A THE BRANCH MANAGER -- I WASN'T THERE, SO I CAN ONLY  
11 SPEAK FROM HAVING BEEN WITH THE COMPANY AND OPENING  
12 ACCOUNTS -- WOULD HAVE SELECTED THE EXISTING PROFILE. THAT  
13 CUSTOMER DID HAVE A RELATIONSHIP WITH US. SHE WOULD HAVE  
14 SELECTED THAT PROFILE OFF OF AN EXISTING FILE, AND THEN  
15 OPENED THE ACCOUNT. SHE DID NOT ADJUST IT ACCORDINGLY,  
16 WHICH TELLS ME THAT EITHER SHE DID NOT RECOGNIZE THAT  
17 CONSERVATOR MEANS SOMETHING OTHER THAN CUSTODIAN. BUT  
18 CONSISTENTLY ON ALL OF THE CHECKS THAT WERE PRESENTED,  
19 MINOR WAS WRITTEN ON THE CHECKS; AND THAT IS A COMMON  
20 ACCOUNT THAT OUR BANK ASSOCIATES OPEN IS A CUSTODIAL  
21 ACCOUNT, WHICH DOES NOT REQUIRE ANY ADDITIONAL LEGAL  
22 DOCUMENTS.

23 Q AND CONSERVATOR WAS LISTED BEFORE MINOR AND BIG WORD  
24 THAT YOUR BANK -- THAT THE BRANCH MANAGER WAS CERTAINLY  
25 TRAINED TO DO, WASN'T SHE?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0457

APPENDIX 462

1 A CONSERVATORSHIPS, AGAIN IS NOT A COMMON ACCOUNT THAT  
2 IS OPENED. I CAN'T SPEAK FOR HER. I WASN'T THERE. SHE  
3 DOESN'T EVEN REMEMBER IT, WHICH -- BUT I JUST KNOW THAT  
4 MINOR SHOWED UP ON EVERY ONE OF THOSE, AND IT JUST IS  
5 SOMETHING THAT THEY DID NOT -- THEY DID NOT -- WERE ABLE TO  
6 TELL OR UNDERSTAND THE DIFFERENCE BETWEEN CONSERVATORSHIP  
7 AND CUSTODIAN.

8 Q AND WHEN YOU LEAVE THE VAULT DOOR OPEN AND THE SIDE  
9 DOOR OF THE BANK OPEN AND THE ALARM OFF AND SOMEBODY GOES  
10 IN AND STEALS THE MONEY, SOMEBODY FAILS THEN TOO, DON'T  
11 THEY?

12 A THAT -- WE DON'T LEAVE A VAULT OPEN.

13 Q IN THIS INSTANCE THE VAULT DOOR WAS LEFT OPEN, THE  
14 BANK WAS LEFT OPEN AS TO CODY P [REDACTED] MONEY BECAUSE THE  
15 PROCEDURES AND POLICIES WERE NOT FOLLOWED; THAT'S A FAIR  
16 STATEMENT, ISN'T IT?

17 A THE -- THE AUNT TOOK THE MONEY. AND WE DON'T KNOW IF  
18 SHE'D HAVE TAKEN IT TWO MONTHS DOWN THE ROAD WITH BOGUS  
19 RECEIPTS TRYING TO COME TO THE COURT WITH SOME IMPROPER WAY  
20 OF WITHDRAWING FUNDS. BUT THE FACT IS THAT OUR PERSONAL  
21 BANKER DID NOT OPEN THE ACCOUNT -- INITIALLY DID NOT  
22 SCRUTINIZE THE CHECKS. AND IT'S UNFORTUNATE. AND WE -- WE  
23 DON'T WANT TO SEE THINGS LIKE THAT HAPPEN TO ANYBODY. I'M  
24 SORRY. WE DON'T WANT THINGS LIKE THAT TO HAPPEN. BUT WE  
25 DON'T WANT ANYTHING GO WRONG FOR OUR CUSTOMERS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0458

APPENDIX 463

- 1 Q NOT ONLY DID THESE BANKERS FAIL TO RECOGNIZE IT WASN'T  
2 A CONSERVATOR ACCOUNT, BUT THEY FAILED TO RECOGNIZE THAT  
3 THERE WERE SUPPOSED TO BE TWO PEOPLE OPENING THAT ACCOUNT,  
4 AND THEY WEREN'T PRESENT?
- 5 A MAY I REFER BACK TO ONE OF THE EXHIBITS?
- 6 Q SURE.
- 7 A THANK YOU.
- 8 Q AND I REFER TO CODY -- I MEAN, I REFER TO TRAVIS  
9 POWELL AND KAREN POWELL. THEY FAILED TO RECOGNIZE THAT TWO  
10 PEOPLE WERE SUPPOSED TO BE STANDING THERE AS WELL?
- 11 A ON THE CHECK THAT I REFERENCED, IT DID HAVE TRAVIS'  
12 NAME ON IT, YES. AND IT -- AND IT APPEARS TO BE A  
13 SIGNATURE ON THE BACK. SO WE DON'T KNOW IF HE WAS THERE OR  
14 NOT, BUT.
- 15 Q HIS NAME APPEARS ON FIVE OF THE SEVEN CHECKS?
- 16 A I DON'T KNOW IF IT'S FIVE OR SEVEN, BUT I DO KNOW THAT  
17 I SAW HIS NAME ON SOME OF THE CHECKS, YES, SIR.
- 18 Q NO I.D. WAS REQUIRED?
- 19 A DIDN'T KNOW -- AGAIN, DON'T KNOW WHAT WAS KEYED INTO  
20 THE COMPUTER. THE I.D. GETS KEYED INTO THE COMPUTER.
- 21 Q THE ENDORSEMENTS WERE NOT THE SAME AS ON THE FRONT OF  
22 THE CHECK?
- 23 A THE ENDORSEMENTS LACKED THE TITLE OF THE PERSON, THE  
24 PARTY.
- 25 Q SIGNATURE CARD DIDN'T HAVE THE CORRECT TITLE AS IT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0459

APPENDIX 464

- 1 APPEARED ON THE FRONT OF THE CHECK?
- 2 A THERE WAS A CUSTODIAL ACCOUNT OPENED AS OPPOSED TO A
- 3 CONSERVATORSHIP.
- 4 Q ALL OF THESE THINGS WERE CONTRARY AND IN VIOLATION OF
- 5 YOUR POLICIES AND PROCEDURES, WERE THEY NOT?
- 6 A THEY DID NOT FOLLOW THE POLICY AND PROCEDURES.
- 7 Q THE TELLER DID NOT CATCH ANY OF THESE ERRORS ON TWO
- 8 OCCASIONS?
- 9 A THE -- THE -- I DON'T THINK SO.
- 10 Q BACK ROOM DID NOT CATCH ANY OF THESE ERRORS ON TWO
- 11 OCCASIONS?
- 12 A BACK ROOM WOULD HAVE NOT KNOWN TO -- THAT IT WAS A
- 13 CONSERVATORSHIP, AND SO THEREFORE, THEY WOULD NOT HAVE BEEN
- 14 LOOKING FOR THE DOCUMENTS BECAUSE THE ACCOUNT WAS SET UP
- 15 DIFFERENTLY.
- 16 Q THEY DIDN'T CATCH ANY OF THESE MULTIPLE ERRORS THAT
- 17 WE'RE TALKING ABOUT?
- 18 A THE BACK ROOM WOULD NOT KNOW ABOUT ANY OF THIS -- TO
- 19 MY KNOWLEDGE.
- 20 Q THESE ARE THE KIND OF ERRORS THE BACK ROOM IS SET UP
- 21 TO CATCH, AREN'T THEY?
- 22 A IF THE ACCOUNT HAD BEEN SET UP AS A CONSERVATORSHIP,
- 23 WE WOULD BE LOOKING FOR DOCUMENTS I BELIEVE.
- 24 Q THE BANK OF AMERICA EMPLOYEES UP AND DOWN THE CHAIN OF
- 25 COMMAND ON TWO SEPARATE OCCASIONS MADE HUGE MISTAKES, DID

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0460

APPENDIX 465

1 THEY NOT?

2 A THEY -- OUR PERSONAL BANKER IN THE VERY BEGINNING MADE  
3 A MISTAKE THAT ENDED UP RESULTING IN A NUMBER OF MIS-STEPS.

4 Q YOU TESTIFIED UNDER OATH IN YOUR DEPOSITION ON AUGUST  
5 22, TWO YEARS AGO THAT THESE WERE HUGE MISTAKES, DIDN'T  
6 YOU?

7 A I DON'T KNOW IF ALL OF THESE, BUT I DO BELIEVE THAT  
8 THE MISTAKE THAT OUR PERSONAL BANKER MADE LED TO AN  
9 UNFORTUNATE SITUATION, YES, SIR.

10 Q LET ME ASK THE QUESTION AGAIN, MAYBE YOU DIDN'T  
11 UNDERSTAND IT. YOU TESTIFIED IN A DEPOSITION UNDER OATH  
12 THAT THESE WERE HUGE MISTAKES BY THE BANK OF AMERICA?

13 A DID I SAY THESE WERE HUGE MISTAKES?

14 Q I'LL BE GLAD TO SHOW THAT TO YOU.

15 A BECAUSE IT CLEARLY IS A MISTAKE. AND IT'S AN HONEST  
16 MISTAKE.

17 Q YOU DON'T RECALL TAKING A DEPOSITION UNDER OATH?

18 A I DON'T RECALL SAYING THESE WERE.

19 Q HUGE MISTAKES. YOU DON'T RECALL THAT?

20 A I DON'T RECALL SAYING THESE WERE HUGE MISTAKES.

21 THE COURT: LADIES AND GENTLEMEN, THIS IS A DEPOSITION  
22 OF ELIZABETH REEVES TAKEN IN CHARLESTON, SOUTH CAROLINA ON  
23 AUGUST THE 22ND, 2005.

24 Q YOU'VE HAD AN OPPORTUNITY TO READ YOUR DEPOSITION IN  
25 PREPARATION FOR TRIAL TODAY, HAVEN'T YOU?

CODY ~~REDACTED~~ VS. BANK OF AMERICA

ROA 0461

APPENDIX 466



1 A YES, SIR, BUT I DON'T REMEMBER IT WORD FOR WORD.  
2 Q OKAY. I CALL YOUR ATTENTION TO PAGE 89. LOOK AT PAGE  
3 89. I WOULD LIKE TO INVITE YOUR ATTENTION TO LINES 4  
4 THROUGH 10.  
5 A DO YOU WANT ME TO READ IT, SIR?  
6 Q NO, MA'AM. I JUST WANT YOU TO LOOK AT IT.  
7 A OKAY.  
8 Q I CALL YOUR ATTENTION TO LINE 8. I ASKED YOU THE  
9 QUESTION: MADE WHAT KIND OF A MISTAKE AND WHAT WAS YOUR  
10 RESPONSE ON LINE 9?  
11 A IT SAYS -- MAY I READ 6 ---  
12 Q I'M ASKING YOU TO READ LINE 9 FOR ME.  
13 A OKAY.  
14 Q PLEASE, MA'AM.  
15 A IT SAYS ---  
16 Q THE QUESTION IS: MADE WHAT KIND OF A MISTAKE?  
17 A THAT WASN'T THE QUESTION YOU ASKED ME INITIALLY  
18 THOUGH, SIR, I DON'T BELIEVE.  
19 Q MA'AM, I'M ASKING YOU LINE 9.  
20 A OKAY.  
21 Q I ASKED YOU THE QUESTION: MADE WHAT KIND OF A  
22 MISTAKE? IS THAT MY QUESTION?  
23 A YOU'RE ASKING ME NOW THAT IT -- YES, IT DOES SAY A  
24 HUGE MISTAKE.  
25 Q WHAT WAS YOUR RESPONSE UNDER OATH ON AUGUST 22?

CODY R. [REDACTED] VS. BANK OF AMERICA

ROA 0462

APPENDIX 467

- 1 A I SAID, I THINK THE ASSOCIATE UNFORTUNATELY, I THINK  
2 MADE A HUGE MISTAKE.
- 3 Q NO, MA'AM. I'M ASKING ---
- 4 A THAT ASSOCIATE.
- 5 Q YOU DON'T WANT TO READ LINE 9?
- 6 A I DID -- I DID READ LINE 9.
- 7 Q READ LINE 9 FOR ME.
- 8 A LINE 9 SAYS, A HUGE MISTAKE BY NOT MAKING SURE THAT  
9 SHE KNEW THE PARTIES INVOLVED.
- 10 Q HUGE MISTAKE. NOW ---
- 11 A THAT OUR PERSONAL BANKER MADE A HUGE MISTAKE.
- 12 Q YES, MA'AM. AND THE SAME MISTAKE WAS MADE BY THE  
13 BRANCH MANAGER?
- 14 A THE BANKING CENTER MANAGER DID NOT RECOGNIZE THAT IT  
15 WAS A CONSERVATORSHIP.
- 16 Q THAT'S A HUGE MISTAKE?
- 17 A THAT WAS A MISTAKE.
- 18 Q NOW, YOU WOULD AGREE WITH ME THAT ON TWO OCCASIONS  
19 WITH ALL THESE FAILURES UP AND DOWN FROM CHARLOTTE ALL THE  
20 WAY DOWN TO PAWLEYS ISLAND, HUGE MISTAKES WERE COMMITTED BY  
21 THE BANK OF AMERICA?
- 22 A I WOULD NOT AGREE WITH THE WAY YOU JUST STATED IT, NO,  
23 SIR. I WOULD -- MAY I SAY. I DON'T WANT TO GET ATTACKED.  
24 MAY I FINISH? I SAID THAT I THINK THE PERSONAL BANKER MADE  
25 THE MISTAKE, AND IT HAS RESULTED IN A STEP -- SEVERAL STEPS

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0463

APPENDIX 468

- 1 THAT HAS CREATED THIS SITUATION.
- 2 Q AND THESE CHECKS ---
- 3 A AND WE -- WE DON'T WANT TO MAKE MISTAKES.
- 4 Q THESE CHECKS CLEARLY HAVE CONSERVATOR WRITTEN ON THEM?
- 5 A NOT ALL OF THE CHECKS, NO, SIR.
- 6 Q FIVE OUT OF SEVEN OF THEM?
- 7 A I DID SEE CONSERVATOR ON THE VAST MAJORITY, YES, SIR.
- 8 Q ON THE SECOND TRANSACTION WHERE THE BRANCH MANAGER WAS
- 9 INVOLVED, IT HAD CONSERVATOR WRITTEN ON IT?
- 10 A YES, IT DID.
- 11 Q AND ON BOTH OCCASIONS, BOTH OF THESE EMPLOYEES FAILED
- 12 TO GET AND ASK FOR THESE COURT RECORDS AS THEY WERE
- 13 REQUIRED TO DO?
- 14 A THEY DID NOT GET THE DOCUMENTS.
- 15 Q AND THAT HAS CAUSED CODY P[REDACTED] TO LOSE 205,000-ODD
- 16 DOLLARS AS OF TODAY?
- 17 A IT HAS -- HIS AUNT TOOK THE MONEY, YES, SIR.
- 18 Q CODY P[REDACTED] WAS ENTITLED TO HIGHER STANDARDS AND HE
- 19 DID NOT GET THAT FROM THE BANK OF AMERICA, DID HE?
- 20 A CODY P[REDACTED], AS WELL AS ALL CUSTOMERS, ARE ENTITLED TO
- 21 HIGHER STANDARDS.
- 22 Q HE DIDN'T GET THAT FROM THE BANK OF AMERICA AT PAWLEYS
- 23 ISLAND OR IN CHARLOTTE, DID HE?
- 24 A THERE WERE MISTAKES MADE.
- 25 Q HE DID NOT GET IT?

CODY P[REDACTED] VS. BANK OF AMERICA

ROA 0464

APPENDIX 469

1 A THERE WERE MISTAKES MADE BY OUR PERSONAL BANKER, YES,  
2 SIR.

3 Q HE DID NOT GET ANY OF THOSE HIGHER STANDARDS. THESE  
4 MISTAKES WERE CLEAR AND OBVIOUS MISTAKES THAT THESE  
5 EMPLOYEES COULD LOOK AT AND DID NOT DO THE RIGHT THING, DID  
6 THEY?

7 A THEY ARE CLEAR TO SOMEONE THAT HAS EXPERIENCE. THEY  
8 ARE CLEAR BECAUSE WE ARE NOW IN A SITUATION WHERE THE AUNT  
9 TOOK THE MONEY, CORRECT.

10 Q YOU'RE SAYING ALSO YOUR BRANCH MANAGER WAS  
11 INEXPERIENCED AS WELL?

12 A WELL, ACTUALLY, THE BANKING CENTER MANAGER HAD -- IF I  
13 REMEMBER CORRECTLY, HAD BEEN ON THE JOB FOR MAYBE SEVEN  
14 MONTHS. AND I THINK THE PERSONAL BANKER HAD BEEN ON THE  
15 JOB SIX MONTHS.

16 Q IT'S NOT FAIR FOR THE BANK OF AMERICA TO PUT  
17 INEXPERIENCED PEOPLE TO PROTECT PEOPLE'S MONEY, IS IT?

18 A WE'RE LIKE MANY OTHER COMPANIES. AT SOME POINT  
19 EVERYBODY STARTS OUT INEXPERIENCED.

20 Q SO THE BANK OF AMERICA -- IS YOUR TESTIMONY THAT  
21 INEXPERIENCED PEOPLE IN A SITUATION THAT CAUSED CODY  
22 P [REDACTED] FAILURE?

23 A MY TESTIMONY IS THAT OUR PERSONAL BANKER SPECIFICALLY  
24 UP FRONT FAILED TO SCRUTINIZE THE CHECKS. SHE FAILED TO  
25 UNDERSTAND THAT IT WAS A CONSERVATOR ACCOUNT, WHICH IS A

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0465

APPENDIX 470

1 DIFFERENT TYPE OF ACCOUNT.

2 Q HAS ANYBODY -- YOU'RE SPEAKING FOR BANK OF AMERICA --

3 GONE TO THIS SITUATION TO MAKE -- PAWLEYS ISLAND TO MAKE

4 SURE IT'S NOT HAPPENING ELSEWHERE?

5 MR. DAVIS: OBJECTION, YOUR HONOR.

6 A SIR, THAT WOULD BE BEYOND MY SCOPE. I WOULD NOT.

7 THE COURT: SHE'S ANSWERED THE QUESTION.

8 MR. DAVIS: SHE'S ANSWERED THE QUESTION.

9 THE COURT: ALL RIGHT.

10 Q YOU'RE NOT IN A POSITION TO TELL US WHETHER IT'S GOING

11 ON ELSEWHERE OR NOT IN THE BANK OF AMERICA BANKING SYSTEM?

12 A THAT WOULD BE ---

13 Q THESE MISTAKES?

14 A THAT WOULD BE BEYOND MY SCOPE, SIR.

15 Q YOU UNDERSTAND THAT YOU ARE SPEAKING FOR 5900-PLUS

16 BRANCHES IN THE BANK OF AMERICA AS THEIR REPRESENTATIVE IN

17 THE COURT TODAY?

18 A I AM THEIR REPRESENTATIVE IN THE COURT TODAY FOR

19 THIS ---

20 MR. DAVIS: YOUR HONOR, I RAISE AN OBJECTION. THERE

21 ARE FEDERAL REGULATIONS THAT GOVERN THIS TYPE OF THING.

22 WE'VE TALKED ABOUT THEM BEFORE.

23 MR. JENKINSON: YOUR HONOR, I OBJECT TO HIS SPEAKING

24 -- THIS HAS NOTHING TO DO WITH WHAT WE'RE DOING. THERE ARE

25 NO FEDERAL REGULATIONS THAT GOVERN THIS SITUATION.

CODY REDACTED VS. BANK OF AMERICA

ROA 0466

APPENDIX 471

1 THE COURT: NEXT QUESTION.  
2 MR. JENKINSON: THANK YOU, YOUR HONOR.  
3 (PAUSE.)  
4 MR. JENKINSON: THANK YOU, MS. REEVES.  
5 THE COURT: CROSS EXAMINATION.  
6 MR. DAVIS: YES, SIR. JUDGE, COULD I HAVE A MINUTE TO  
7 MOVE THAT BOARD OUT OF THE WAY.  
8 THE COURT: ALL RIGHT. LET'S STAND FOR A MOMENT,  
9 FOLKS.  
10 (PAUSE.)  
11 THE COURT: ALL RIGHT.  
12 CROSS EXAMINATION BY MR. DAVIS:  
13 Q MS. REEVES, BANK OF AMERICA DOESN'T BENEFIT FROM A  
14 SITUATION LIKE THIS, DOES IT?  
15 A NO, SIR, WE DO NOT.  
16 Q IN FACT, IT ACTUALLY HURTS THE REPUTATION OF THE  
17 BANK ---  
18 A YES.  
19 Q --- WITH A SITUATION LIKE THIS; IS THAT CORRECT?  
20 A YES, SIR.  
21 Q NOW, THESE BANKING CENTERS ARE LOCATED --  
22 STRATEGICALLY LOCATED IN COMMUNITIES, RIGHT?  
23 A YES, SIR.  
24 Q AND THEY ARE LIKE PART OF WHAT'S CALLED THE COMMUNITY  
25 BANKING SYSTEM?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0467

APPENDIX 472

- 1 A YES, SIR.
- 2 Q CORRECT? AND THAT'S WHERE THE EMPLOYEES LIVE, WORK,  
3 AND PLAY WITHIN THE COMMUNITIES THEY SERVE?
- 4 A YES, SIR.
- 5 Q AND THE PURPOSE OF THAT IS TO GET TO KNOW ITS  
6 CUSTOMERS?
- 7 A CORRECT.
- 8 Q AND WE'VE BEEN TALKING ABOUT UNRUE AND POWELL. I  
9 MEAN, ISN'T THAT AN INDICATION THAT THERE WAS SOME  
10 KNOWLEDGE AS TO WHO MS. UNRUE WAS?
- 11 A YES, SIR.
- 12 Q AND ISN'T THAT AN INDICATION THAT THE PERSONAL BANKER  
13 KNEW THAT MS. UNRUE WAS IN FACT KAREN POWELL?
- 14 A IT INDICATES THAT TO ME, YES, SIR.
- 15 Q NOW, MR. JENKINSON HAS STATED THAT YOU'RE ONE OF THE  
16 FACES OF BANK OF AMERICA HERE TODAY. SO LET ME MAKE SURE  
17 THE JURY UNDERSTANDS WHO YOU ARE. YOU'RE A BANKING CENTER  
18 MANAGER OR A BRANCH MANAGER?
- 19 A YES, SIR.
- 20 Q IN MT. PLEASANT, SOUTH CAROLINA, RIGHT?
- 21 A YES, SIR.
- 22 Q AND IN THAT BANKING CENTER YOU HAVE PERSONAL BANKERS?
- 23 A YES, SIR.
- 24 Q YOU HAVE TELLERS?
- 25 A CORRECT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0468

APPENDIX 473

- 1 Q OKAY. AND OTHER EMPLOYEES?
- 2 A IN MOST CASES IN THE BANKING CENTER IT'S TELLERS AND
- 3 PERSONAL BANKERS.
- 4 Q BUT MUCH LIKE -- MUCH LIKE WHAT WE SEE, I SEE THE FACE
- 5 OF PLAINTIFFS' EXHIBIT 34, YOU'VE SEEN THAT, CORRECT?
- 6 A YES, SIR.
- 7 Q YOUR BANK IS MUCH LIKE THIS ONE?
- 8 A YES, SIR.
- 9 Q OKAY. AND SO WE'RE TALKING ABOUT A VERY SMALL CENTER,
- 10 BANKING CENTER?
- 11 A YOU MEAN IN SIZE?
- 12 Q YES, MA'AM.
- 13 A YES, IT'S PROBABLY NOT EVEN AS BIG AS THIS ROOM HERE.
- 14 Q ALL RIGHT. AND WHEN YOU SAY NOT AS BIG AS THIS ROOM
- 15 HERE, WE'RE TALKING ABOUT JUST THIS PART RIGHT HERE?
- 16 A I WOULD SAY, YES, SIR, AROUND THIS AREA.
- 17 Q OKAY. SO IT'S VERY, VERY SMALL?
- 18 A RIGHT.
- 19 Q SO YOU GET TO KNOW YOUR CUSTOMERS?
- 20 A YES, SIR.
- 21 Q AND YOU GET TO KNOW THE NAMES OF YOUR CUSTOMERS?
- 22 A WE DO.
- 23 Q AND YOU GET TO KNOW THE BUSINESSES OF YOUR CUSTOMERS?
- 24 A WE DO.
- 25 Q AND YOU ALSO COME SOME TIMES TO TRUST YOUR CUSTOMERS?

CODY ██████ VS. BANK OF AMERICA

ROA 0469

APPENDIX 474



- 1 A YES, SIR.
- 2 Q AND YOU HAVE WORKED WITH THE BANK NOW FOR HOW MANY
- 3 YEARS?
- 4 A 32.
- 5 Q SO YOU'VE SPENT PRETTY MUCH YOUR ENTIRE CAREER THERE?
- 6 A YES, SIR.
- 7 Q CAN YOU TELL THE JURY JUST A LITTLE BIT ABOUT YOUR
- 8 BACKGROUND WITH THE BANK PLEASE?
- 9 A WELL, I STARTED WHEN -- I THINK IT WAS IN '76 OR '77.
- 10 IT'S BEEN A LONG TIME. AND I WAS FIRST HIRED AS A TELLER.
- 11 AND THEN I BECAME PERSONAL BANKER. AND VARIOUS AND SUNDRY
- 12 ROLES, THE DIFFERENT TITLES THAT THEY WERE BACK ALL
- 13 THROUGHOUT THOSE YEARS. AND WAS A BANKING CENTER MANAGER.
- 14 I'VE WORKED FOR -- I'VE DONE A NUMBER OF DIFFERENT ROLES
- 15 WITH THE COMPANY. BUT IT'S BEEN PREDOMINANTLY IN THE
- 16 CONSUMER BANK, WHICH IS RELATED TO THE BANKING CENTERS.
- 17 Q AND YOU HAVE NOW A COLLEGE EDUCATION?
- 18 A YEAH, I DO.
- 19 Q AND WHEN DID YOU GET YOUR COLLEGE EDUCATION?
- 20 A I GOT IT LATER IN LIFE. WHEN I -- WHEN I FIRST
- 21 STARTED -- I DON'T KNOW WHY I ALWAYS GET EMOTIONAL. I'M
- 22 SORRY.
- 23 Q LET ME STOP YOU. WHY ARE YOU SO EMOTIONAL ABOUT YOUR
- 24 EMPLOYMENT WITH THE BANK OF AMERICA?
- 25 A WELL, IT'S A GREAT COMPANY AND I JUST -- I REALLY HATE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0470

APPENDIX 475

1 HAVING TO BE IN THIS POSITION BECAUSE IT'S BEEN -- THE  
2 COMPANY'S BEEN GOOD TO ME. AS I SAID, I STARTED AS A  
3 TELLER AND I GREW UP IN A FAMILY THAT WAS KIND OF ---

4 Q YOU WERE RAISED BY A SINGLE MOTHER?

5 A YEAH. MY DAD -- I HAD MY FATHER, BUT HE WASN'T  
6 AROUND. SO MY MOM DID IT. AND SO I THINK THE POINT I'M  
7 TRYING TO MAKE IS I DIDN'T HAVE A -- I DIDN'T HAVE AN  
8 OPPORTUNITY INITIALLY TO GET OUT AND GO TO SCHOOL. AND IT  
9 WAS SOMETHING I ASPIRED TO DO, BUT I DIDN'T -- DIDN'T DO  
10 IT. SO I WORKED FULL TIME, AND THEN WAS ABLE TO GO TO  
11 SCHOOL LATER.

12 Q AND BANK OF AMERICA IS FILLED WITH EMPLOYEES LIKE  
13 YOURSELF, AREN'T THEY, CORRECT? AND BANK OF AMERICA EVEN  
14 PAID YOUR WAY THROUGH COLLEGE WHEN YOU WERE 40-SOMETHING-  
15 ODD YEARS OLD, WEREN'T YOU?

16 A YES, THAT'S RIGHT.

17 Q OKAY. AND TELL US A LITTLE BIT ABOUT WHY YOU'VE  
18 CHOSEN TO STAY AT BANK OF AMERICA ALL THESE THREE DECADES,  
19 30-PLUS YEARS?

20 A BECAUSE IT'S BEEN GOOD -- GOOD TO ME. AND IT'S GOOD  
21 TO WOMEN IN PARTICULAR, IN TERMS OF GROWTH AND DEVELOPMENT.  
22 IT'S GOOD TO -- WE HAVE A LOT OF PROGRAMS WHERE WE HELP  
23 SUBSIDIZE DAYCARE AND THINGS OF THAT NATURE.

24 OF COURSE, THE BENEFITS ARE GOOD. AND NOT TO MENTION  
25 PAYING FOR THE EDUCATION. AND IT'S A GOOD COMPANY. WE'RE

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0471

APPENDIX 476

1 -- WE'RE GOOD CORPORATE CITIZENS.

2 Q ALL RIGHT. MR. JENKINSON HAS TRIED TO PAINT US -- OR  
3 TRIED TO PAINT BANK OF AMERICA AS SOME BIG, BAD BANK. CAN  
4 YOU TELL THIS JURY WHAT IT DOES FOR THE COMMUNITIES,  
5 PARTICULARLY HERE IN SOUTH CAROLINA, SINCE HE PAINTED THAT  
6 PICTURE?

7 A WELL, I CAN. BESIDES THE STANDARD THINGS WE DO,  
8 WHICH, OF COURSE, WE HAVE A MARCH OF DIMES AND UNITED WAY  
9 AND THINGS OF THAT NATURE. BUT SPECIFICALLY IN THE SOUTH  
10 CAROLINA AREA WE CONTRIBUTE TO THE SOUTH CAROLINA C.D.C.,  
11 WHICH IS A COMMUNITY DEVELOPMENT CORPORATION WHICH FOCUSES  
12 PRIMARILY ON EDUCATION AND HOUSING AND SUPPLYING JOB  
13 CREATION.

14 Q SO THIS BIG, BAD BANK TRIES TO CONTRIBUTE TO THE  
15 COMMUNITY IN WHICH IT DOES BUSINESS, DOESN'T IT?

16 A YES, SIR.

17 Q AND IT DOES SO THROUGH ITS CONTRIBUTIONS TO WHAT'S  
18 CALLED THE FIRST STEPS PROGRAM?

19 A YES, SIR, WHICH IS -- IT HELPS -- IT'S LIKE PRESCHOOL.  
20 PRESCHOOL. IT HELPS YOU START OUT ON THE RIGHT FOOT, TO  
21 MAKE SURE THAT YOUR CHILDREN START OUT ON THE RIGHT FOOT IN  
22 TERMS OF EDUCATION.

23 Q IS ONE OF THE MAJOR SPONSORS OF WHAT'S CALLED -- I  
24 ALWAYS GET IT WRONG. WHAT IS IT CALLED? PEN?

25 A PEN CENTER.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0472

APPENDIX 477

- 1 Q PEN CENTER. AND PEN CENTER IS WHAT?
- 2 A PEN CENTER IS -- IT WAS ONE OF THE FIRST SCHOOLS WHERE
- 3 SLAVES WERE FIRST ABLE TO GO TO SCHOOL. AND WE CONTRIBUTE
- 4 TO THE OPERATION OF THAT.
- 5 Q AND IT'S ONE OF THE MOST SIGNIFICANT, HISTORICAL SITES
- 6 RIGHT NOW?
- 7 A YES, SIR.
- 8 Q IN RECENT YEARS IN THE STATE OF SOUTH CAROLINA, ISN'T
- 9 IT?
- 10 A YES, SIR.
- 11 Q NOW, YOU RECEIVED A -- WE WERE HAVING DINNER OR JUST
- 12 FINISHED DINNER WHEN YOU RECEIVED A SUBPOENA?
- 13 A YES, SIR.
- 14 Q FROM MR. JENKINSON, RIGHT?
- 15 A I DID.
- 16 Q THAT WOULD HAVE BEEN WHAT, MONDAY NIGHT?
- 17 A YES, SIR.
- 18 Q ALL RIGHT. SO YOU WERE ALREADY HERE TO TESTIFY ON
- 19 BEHALF OF THE BANK?
- 20 A YES, SIR.
- 21 Q ALL RIGHT. WHAT IS THE BANK'S POSITION IN THIS MATTER?
- 22 A THEIR POSITION?
- 23 Q WHAT IS THE BANK'S POSITION IN THIS CASE?
- 24 A YOU MEAN, WHERE DO WE STAND?
- 25 Q YES, MA'AM.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0473

APPENDIX 478

- 1 A I'M NOT SURE I UNDERSTAND THE QUESTION EXACTLY.
- 2 Q YES, MA'AM, WHAT HAPPENED IN THIS CASE?
- 3 A OH, ONE OF OUR PERSONAL BANKERS MADE A MISTAKE. IT
- 4 WASN'T INTENTIONAL. SHE -- SHE DIDN'T SCRUTINIZE THE
- 5 CHECKS. AND AS A RESULT THE ACCOUNT WAS NOT OPENED AS A
- 6 CONSERVATORSHIP.
- 7 Q AND WHY DOES THAT BOTHER YOU SO MUCH?
- 8 A IT -- IT -- I MEAN, IT UPSETS ME. I'VE BEEN WITH THE
- 9 COMPANY FOR A LONG TIME. I'M SORRY -- A LONG TIME. I'VE
- 10 BEEN WITH THE COMPANY FOR A LONG TIME. AND WE WORK REALLY
- 11 HARD AT TRYING TO DO WHAT WE'RE SUPPOSED TO DO. AND IT'S
- 12 -- IT'S A MISTAKE.
- 13 Q NOW, YOU WERE HANDED A NUMBER OF CHECKS. YOU HAVE
- 14 THOSE IN FRONT OF YOU?
- 15 A YES, SIR.
- 16 Q OKAY. I'M GOING TO ALSO -- IF I CAN HAVE THOSE
- 17 PLEASE. YOU HAVE BEEN WITH THE BANK 30 YEARS, RIGHT?
- 18 A 32.
- 19 Q YOU'VE BEEN A TELLER, CORRECT?
- 20 A YES, SIR.
- 21 Q YOU'VE BEEN A BRANCH MANAGER OR BANKING CENTER MANAGER
- 22 ON MORE THAN ONE OCCASION?
- 23 A YES, SIR.
- 24 Q YOU'VE HAD WHAT OTHER POSITIONS WITH THE BANK?
- 25 A I WAS MARKET MANAGER FOR ALMOST 4 YEARS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0474

APPENDIX 479

1 Q A MARKET MANAGER DOES WHAT?

2 A TRAVEL UP AND DOWN THE COAST OF SOUTH CAROLINA -- IN  
3 MY CASE, I TRAVELED UP AND DOWN THE COAST OF SOUTH CAROLINA  
4 AND HELPED OVERSEE THE ACTIVITIES OF THE BANKING CENTERS.

5 Q ALL RIGHT. AND IN YOUR 30-PLUS YEARS AS A TELLER, AS  
6 A BANK MANAGER MORE THAN ONE TIME -- BRANCH MANAGER MORE  
7 THAN ONE TIME, AND AS A MARKET REP TRAVELING UP AND DOWN  
8 THE ATLANTIC COAST OF SOUTH CAROLINA, YOU HAVE SEEN HOW  
9 MANY CONSERVATOR ACCOUNTS?

10 A AGAIN, I'VE PROBABLY ONLY SEEN TWO OR THREE MY ENTIRE  
11 CAREER.

12 Q SO ---

13 A IT IS NOT A REGULAR.

14 Q SO A CONSERVATOR ACCOUNT -- I'M CORRECT IN SAYING, IT  
15 IS EXTREMELY RARE, ISN'T IT?

16 A YES, SIR, IT IS.

17 Q AND A CONSERVATOR ACCOUNT IS NOT SOMETHING THAT YOUR  
18 PERSONAL BANKERS SEE VERY OFTEN?

19 A NO, SIR.

20 Q AND THAT'S BASED ON YOUR OWN EXPERIENCE?

21 A RIGHT.

22 Q AND YOU WERE A BANKING CENTER MANAGER HOW MANY YEARS  
23 BEFORE YOUR PRESENT POSITION?

24 A MAYBE 10 YEARS.

25 Q ALL RIGHT. AND YOU'VE BEEN A BANKING CENTER MANAGER.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0475

APPENDIX 480

- 1 NOW FOR HOW MANY YEARS?
- 2 A A LITTLE OVER A YEAR.
- 3 Q ALL RIGHT. SO IN THOSE 11 YEARS EVEN AS A BANKING
- 4 CENTER MANAGER, IT'S JUST BEEN EXTREMELY RARE?
- 5 A YES, SIR.
- 6 Q NOW, I'M GOING TO HAND YOU PLAINTIFFS' EXHIBIT 13.
- 7 TELL THE JURY WHAT I'VE HANDED YOU?
- 8 A IT'S THE -- IT SAYS CD SLASH IRA WITHDRAWAL SLIP.
- 9 Q AND IT IS FOR HOW MUCH MONEY?
- 10 A \$253,991.50.
- 11 Q ALL RIGHT. AND THAT SLIP WOULD HAVE BEEN FILLED OUT
- 12 -- AND IT'S HANDWRITTEN?
- 13 A YES, SIR.
- 14 Q AND IT WOULD HAVE BEEN FILLED OUT BY WHOM?
- 15 A IT WAS DONE BY MARK MCHORNEY.
- 16 Q OKAY. AND HE IS WHO?
- 17 A I DON'T KNOW MARK, BUT I BELIEVE THAT HE WAS ALSO A
- 18 PERSONAL BANKER.
- 19 Q ALL RIGHT. AND WOULD THAT HAVE BEEN THE FIRST
- 20 DOCUMENT ON TOP OF THE CHECKS?
- 21 A WELL, THIS IS ACTUALLY -- THIS ONE HERE IS A
- 22 WITHDRAWAL TICKET.
- 23 Q OKAY. ALL RIGHT. I HANDED YOU THE WRONG THING. I'M
- 24 SORRY.
- 25 MR. DAVIS: BEAR WITH ME A MINUTE PLEASE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0476

APPENDIX 481

- 1 (PAUSE.)
- 2 Q EVEN LAWYERS MAKE MISTAKES. NOW, LET ME MAKE SURE
- 3 I'VE GOT THIS MISTAKE RIGHT. LET ME SHOW YOU PLAINTIFFS'
- 4 EXHIBIT 12.
- 5 A OKAY.
- 6 Q WHAT IS THAT I'VE HANDED YOU?
- 7 A IT IS A CERTIFICATE OF -- IT'S A CD CREDIT, WHICH IS
- 8 WHAT YOU USE TO OFFSET THE PAYMENT.
- 9 Q RIGHT.
- 10 A OR IN THIS CASE, CHECKS.
- 11 Q ALL RIGHT. IS THAT AN ACCUMULATION, A TOTAL OF THE
- 12 CHECKS?
- 13 A YES, SIR, IT IS.
- 14 Q ALL RIGHT. WOULD THAT HAVE BEEN THE FIRST DOCUMENT ON
- 15 TOP OF THE STACK OF DOCUMENTS HANDED TO, SAY, A TELLER?
- 16 A YES, SIR.
- 17 Q ALL RIGHT. HOW DO YOU KNOW THAT?
- 18 A I JUST KNOW FROM MY EXPERIENCE THAT'S HOW IT'S PUT IN
- 19 THE TELLER WORK TRAY.
- 20 Q ALL RIGHT. SO THE TELLER WORK TRAY IS GIVEN CHECKS IN
- 21 A CERTAIN ORDER, RIGHT?
- 22 A YES, SIR.
- 23 Q AND THE TELLER BASED ON YOUR 30 YEARS OF EXPERIENCE
- 24 TAKES THOSE CHECKS OR THOSE DOCUMENTS IN THE ORDER THAT
- 25 IT'S RECEIVED, CORRECT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0477

APPENDIX 482



1 A YES, SIR.

2 Q ALL RIGHT. AND IS THERE A NUMBER ON THOSE DOCUMENTS  
3 THAT SHOW THAT, I GUESS, WOULD CORROBORATE OR BACK YOU UP  
4 IN THAT REGARD?

5 A YES, SIR. IT'S THE REFERENCE NUMBER THAT'S SPRAYED ON  
6 THE BAG. EVERY ---

7 MR. JENKINSON: YOUR HONOR, I'M GOING TO OBJECT ON THE  
8 BASIS SHE WAS NOT THERE AND SHE -- YOU KNOW, WHAT -- WHAT  
9 HAPPENED, SHE'S NOT THERE. SHE CAN'T POSSIBLY HAVE FIRST-  
10 HAND KNOWLEDGE OF IT, AND THAT'S HEARSAY TESTIMONY, AND WE  
11 OBJECT.

12 THE COURT: MR. DAVIS.

13 MR. DAVIS: YOUR HONOR, HE HAS CROSS EXAMINED HER FOR  
14 TWO TO THREE HOURS ON THIS VERY SUBJECT, AND I AM COMING  
15 BACK IN AND EXAMINING HER ON THE SAME TOPIC. AND RIGHT NOW  
16 SHE IS TESTIFYING WHAT SHE SEES FIRST-HAND, BASED ON HER  
17 EXPERIENCE AS TO WHAT WOULD HAVE HAPPENED.

18 THE COURT: YOUR OBJECTION IS OVERRULED.

19 Q ALL RIGHT. THERE'S A NUMBER. YOU ---

20 A IT SAYS REFERENCE CODE, WHICH IS FOUND RIGHT HERE, AND  
21 THE -- THAT'S -- EVERYTHING GETS MICROFILMED, SO IT WOULD  
22 HAVE AN ASSIGNMENT TO IT.

23 Q SO WHEN THE JURY TAKES THIS BACK IN THE JURY ROOM,  
24 PLAINTIFFS' EXHIBIT 12, THEY NEED TO LOOK AT WHAT'S FILLED  
25 OUT WHERE THE NUMBERS ARE?

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0478

APPENDIX 483

- 1 A YES, SIR.
- 2 Q AND THAT WAS DONE BY MS. YOURKO?
- 3 A YES, SIR.
- 4 Q BECAUSE HER NAME'S ON THERE?
- 5 A RIGHT.
- 6 Q AND THEN THEY WOULD NEED TO TAKE A LOOK AT -- THERE'S
- 7 A NUMBER THAT'S TYPEWRITTEN, STARTS OFF 6200; IS THAT
- 8 RIGHT?
- 9 A YES, SIR.
- 10 Q AND WHAT THEY WOULD LOOK AT IS THE END OF THOSE
- 11 NUMBERS AND IT WOULD INDICATE THE SEQUENCE?
- 12 A SEQUENCE NUMBER, YES, SIR.
- 13 Q IN WHICH THEY WERE GIVEN?
- 14 A YES, SIR.
- 15 Q BASED ON YOUR EXPERIENCE PRIOR TO THIS -- WHAT WE CALL
- 16 LITIGATION OR LAW SUIT -- DO YOU KNOW WHAT CO-CN MEANS?
- 17 A NOT PRIOR TO THIS, NO. IT WAS NOT EASILY
- 18 RECOGNIZABLE.
- 19 Q SO IF YOU SAW ON THE FIRST CHECK CO-CN, WHAT WOULD
- 20 THAT DO FOR YOU?
- 21 A IT -- IT WOULDN'T HAVE DONE ANYTHING FOR ME. IT MEANT
- 22 NOTHING TO ME.
- 23 Q SO IF THAT WAS THE ONLY THING THAT WAS LOOKED AT OTHER
- 24 THAN THE DOLLAR AMOUNT, WOULD THAT HAVE INDICATED TO YOU
- 25 THAT A CONSERVATOR ACCOUNT SHOULD HAVE BEEN OPENED?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0479

APPENDIX 484

- 1 A NO, SIR.
- 2 Q AND, MR. JENKINSON HAS WALKED IN FRONT OF THE JURY ALL
- 3 OF THESE MANUALS. AND YOU'VE REVIEWED ALL THESE, CORRECT?
- 4 A AT SOME POINT.
- 5 Q ALL RIGHT. YOU HAVE LOOKED AT ALL OF WHAT THEY'VE GOT
- 6 OF WHAT'S CALLED A GLOSSARY OF TERMS IN HERE, RIGHT?
- 7 A YES, SIR.
- 8 Q WHICH BASICALLY IS SUPPOSED TO TELL YOU IF YOU SEE
- 9 SOMETHING, THIS IS WHAT IT MEANS, RIGHT?
- 10 A YES, SIR.
- 11 Q IS THERE ANYTHING IN THIS BOX THAT I'M HOLDING UP --
- 12 AND MY ARM IS KILLING ME RIGHT NOW. BUT IS THERE ANYTHING
- 13 IN THIS BOX THAT I'M HOLDING UP THAT HAS CO-CN IN IT?
- 14 A NO, SIR.
- 15 Q SO THAT CO-CN MEANS ABSOLUTELY NOTHING, DOESN'T IT?
- 16 A BEING -- IT CERTAINLY WOULD HAVE BEEN HELPFUL IF THE
- 17 INSURANCE COMPANY HAD HAD THAT ONE ON THERE AS WELL, TOO.
- 18 Q ALL RIGHT. INSTEAD OF ME DOING IT, I'M GOING TO HAVE
- 19 YOU DO IT. IF YOU COULD PUT -- I'M GOING TO HAND YOU
- 20 PLAINTIFFS' EXHIBIT 15, 5, 6 -- EXCUSE ME. ANOTHER
- 21 MISTAKE. I'M GOING TO HAND YOU PLAINTIFFS' EXHIBIT 5, 6,
- 22 7, 8, 9, 10, AND 11. I THINK THAT'S ALL THE CHECKS. CAN
- 23 YOU PUT THESE IN -- BASED ON YOUR EXPERIENCE, CAN YOU PUT
- 24 THESE IN THE ORDER IN WHICH THEY WERE HANDED TO THAT
- 25 TELLER?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0480

APPENDIX 485

1 A YES, SIR.

2 MR. JENKINSON: OBJECTION. OBJECT ON THE BASIS OF  
3 HEARSAY. THESE NUMBERS WERE PLACED IN CHARLOTTE AFTER  
4 THREE PEOPLE AT LEAST HAD TOUCHED THEM. THEY WERE NOT EVEN  
5 PLACED IN A PARTICULAR ORDER UNTIL IT GOT TO CHARLOTTE.  
6 THERE'S NO WAY SHE COULD KNOW BASED ON HER EXPERIENCE, SHE  
7 WASN'T EVEN INVOLVED WITH THIS BANK IN 2001. DOESN'T EVEN  
8 KNOW THESE EMPLOYEES AND NEVER EVEN WALKED IN THE BANK.  
9 AND IT'S HEARSAY AND PURE SPECULATION ON HER PART.

10 THE COURT: MR. DAVIS.

11 MR. DAVIS: YOUR HONOR, IT'S EVIDENCE WHICH CAN BE  
12 CONSIDERED BY THE JURY AS TO THE SEQUENCE BASED ON HER  
13 EXPERIENCE IN WHICH THESE CHECKS WERE PRESENTED TO A TELLER  
14 OR WHICH WERE ENTERED INTO THE BANKING SYSTEM.

15 THE COURT: OBJECTION IS OVERRULED.

16 A (COMPLIED.) HERE YOU GO.

17 Q SO BASED ON WHAT YOU'VE JUST DONE, THE FIRST CHECK  
18 THAT WOULD HAVE BEEN SEEN WAS FOR \$99,000?

19 A YES, SIR.

20 Q AND THAT'S PLAINTIFFS' EXHIBIT 5?

21 A YES, SIR.

22 Q AND IS THERE ANYTHING ON THAT FIRST CHECK, FOR \$99,000  
23 -- ALMOST A HUNDRED THOUSAND DOLLARS THAT SAYS ANYTHING  
24 ABOUT CONSERVATOR?

25 A IT -- IT DOES NOT HAVE CONSERVATOR OR CONSERVATORSHIP

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0481

APPENDIX 486

- 1 ON HERE, NO, SIR.
- 2 Q BASED ON YOUR EXPERIENCE, YOU HAVE SEEN PERSONAL
- 3 BANKERS AND TELLERS ADD UP CHECKS, RIGHT?
- 4 A YES, SIR.
- 5 Q AND ---
- 6 A I'VE ADDED UP SEVERAL MYSELF.
- 7 Q OKAY. AND DO THEY SOME TIMES JUST FAN THROUGH THEM?
- 8 A THEY -- WHEN THEY'RE ADDING UP CHECKS?
- 9 Q YES, MA'AM.
- 10 A THEY JUST HOLD IT LIKE THIS AND GRAB IT ALMOST LIKE A
- 11 DECK OF CARDS, AND YOU USE YOUR FINGERS AND YOU JUST FLIP
- 12 IT AND YOU ADD IT JUST LIKE THAT.
- 13 Q ALL RIGHT. SO THE POSSIBILITY EXISTS YOU JUST COULD
- 14 HAVE LOOKED AT THE DOLLAR AMOUNTS?
- 15 A I'M SORRY. I WAS DISTRACTED. WHAT DID YOU SAY?
- 16 MR. JENKINSON: YOUR HONOR, I OBJECT TO WHAT
- 17 POSSIBILITIES. THAT'S AGAIN SPECULATION. HEARSAY AND
- 18 SPECULATION, YOUR HONOR.
- 19 THE COURT: WHAT DO YOU SAY, MR. DAVIS?
- 20 MR. DAVIS: BASED ON CUSTOM AND PRACTICE AND HER
- 21 EXPERIENCE. THIS TELLER COULD HAVE JUST LOOKED AT THE
- 22 DOLLAR AMOUNTS. SHE'S ALREADY TESTIFIED TO THAT.
- 23 MR. JENKINSON: TWO WITNESSES WHO HAVE TOUCHED THESE
- 24 CHECKS HAVE ALREADY TESTIFIED AND NEITHER ONE OF THEM --
- 25 WELL, EACH TESTIFIED ABOUT THIS. MR. DAVIS DID NOT ASK

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0482

APPENDIX 487

1 THEM -- BANK EMPLOYEES DID NOT ASK. SHE'S TRYING TO  
2 SPECULATE WHAT THE WITNESS HAS DONE THAT HAVE ALREADY  
3 TESTIFIED. THEY DIDN'T TESTIFY THEY DID IT THIS WAY.

4 THE COURT: MR. DAVIS, I'LL GIVE YOU YOUR FINAL SPEECH  
5 AND RESPONSE. THEN AFTER THAT, WE WON'T HAVE ANY MORE  
6 SPEAKING OBJECTIONS. GO AHEAD.

7 MR. DAVIS: YOUR HONOR, JUST BASED ON HER EXPERIENCE  
8 HOW THESE COULD WOULD HAVE BEEN VIEWED.

9 THE COURT: ALL RIGHT. OBJECTION IS OVERRULED. SHE  
10 CAN TESTIFY IF SHE KNOWS OR IF SHE HAS AN OPINION BASED ON  
11 HER YEARS OF EXPERIENCE.

12 A PLEASE ASK ME AGAIN, BECAUSE I DIDN'T -- I'M SORRY.

13 Q BASED ON YOUR EXPERIENCE HOW COULD THOSE CHECKS HAVE  
14 BEEN VIEWED ONCE YOU SAW THE TOP ONE WITHOUT THE NAME  
15 CONSERVATOR?

16 A HOW THEY WOULD HAVE BEEN VIEWED?

17 Q HOW COULD THEY ---

18 A OR COULD THEY?

19 Q --- BASED ON YOUR EXPERIENCE, YES.

20 A AGAIN, I BELIEVE IN THE PERSONAL BANKER'S TESTIMONY  
21 SHE SAID SHE JUST ADDED UP THE CHECKS. IF SHE DID THAT,  
22 THE DOLLAR AMOUNT IS ON THE RIGHT-HAND SIDE OF ALMOST EVERY  
23 -- EVERY CHECK THAT I'VE EVER SEEN. AND YOU WOULD JUST  
24 FLIP IT LIKE THIS AND ADD IT UP.

25 Q OKAY. NOW, MAKE SURE I'M CLEAR. THAT SHOULDN'T HAVE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0483

APPENDIX 488

- 1 BEEN DONE THOUGH?
- 2 A NO, SIR.
- 3 Q WHAT SHOULD HAVE BEEN DONE IS SHE LOOKED AT EACH AND
- 4 EVERY CHECK?
- 5 A SHE SHOULD HAVE LOOKED AT EVERY ONE OF THEM, YES, SIR.
- 6 Q AND WHAT SHOULD HAVE BEEN DONE IS SHE SHOULD HAVE
- 7 NOTED THAT THERE IS CONSERVATOR WRITTEN ON -- AS MR.
- 8 JENKINSON POINTED OUT -- FIVE OF THE CHECKS?
- 9 A YES, SIR.
- 10 Q OKAY. BUT ON THE TOP CHECK IT IS NOT CLEAR?
- 11 A NO, SIR, IT IS NOT.
- 12 Q AND YOU'VE TALKED ABOUT MS. MEREDITH LAWRENCE, AND YOU
- 13 TALKED ABOUT HOW THERE WAS A DEPOSIT MADE WITH HER. DO YOU
- 14 REMEMBER THAT?
- 15 A YES, SIR.
- 16 Q I THINK THE CHECK IS ABOUT \$256, RIGHT?
- 17 A YES.
- 18 Q YOU'VE TESTIFIED THAT IT ALL STARTED THOUGH WITH THIS
- 19 MISTAKE?
- 20 A YES, SIR.
- 21 Q TO MAKE SURE I UNDERSTAND. WHY WOULD IT HAVE STARTED
- 22 WITH THIS MISTAKE IF THAT CHECK HAD -- IF THAT \$256 CHECK
- 23 HAD CONSERVATOR WRITTEN ON IT?
- 24 A IF -- IF OUR PERSONAL BANKER HAD SCRUTINIZED THE
- 25 CHECKS AND NOTICED AND UNDERSTOOD WHAT CONSERVATOR WAS, SHE

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ROA 0484

APPENDIX 489

1 AT THAT POINT SHOULD HAVE ASKED FOR THE DOCUMENTS, AND THEN  
2 THAT WOULD HAVE CALLED FOR OPENING UP A DIFFERENT TYPE OF  
3 ACCOUNT.

4 Q AND SO YOU WOULD HAVE HAD A DIFFERENT TYPE OF ACCOUNT  
5 WITHIN YOUR COMPUTER SYSTEM?

6 A YES, SIR.

7 Q ALL RIGHT. AND THAT WOULD HAVE DONE -- TO HAVE A  
8 DIFFERENT TYPE OF ACCOUNT IN YOUR COMPUTER SYSTEM,  
9 PREFERABLY THE CONSERVATORSHIP ACCOUNT, RIGHT?

10 A YES, SIR.

11 Q THAT WOULD HAVE DONE WHAT FOR A BANKING MANAGER WHEN A  
12 CHECK IS BROUGHT TO HIM OR HER?

13 A SHE -- HE OR SHE WOULD HAVE SELECTED THE EXISTING  
14 PROFILE THAT'S ON THE SYSTEM, ESPECIALLY IF THE ACCOUNT IS  
15 ALREADY -- AN ACCOUNT IS ALREADY ESTABLISHED LIKE THAT.

16 Q AND SO IF YOU WOULD HAVE GONE TO THE EXISTING PROFILE  
17 WHICH IS ON THE COMPUTER SYSTEM ---

18 A YES, SIR.

19 Q --- THAT EXISTING PROFILE IN THIS INSTANCE BASED ON  
20 YOUR EXPERIENCE WOULD HAVE SHOWN WHAT?

21 A IT WOULD HAVE SHOWN -- IF IT -- ARE YOU ASKING ME IF  
22 IT HAD BEEN SAID CONSERVATORSHIP OR WHAT ---

23 Q NO ---

24 A --- OR WHAT I RECALL THAT IT SHOWED?

25 Q ALL RIGHT. LET'S DO IT BOTH WAYS. WE KNOW IT WASN'T

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ROA 0485

APPENDIX 490



- 1 SET UP CONSERVATORSHIP. SO LET'S GO THAT WAY FIRST. IT  
2 WAS NOT SET UP CONSERVATORSHIP.
- 3 A RIGHT.
- 4 Q WHEN THAT \$256 CHECK WITH CONSERVATOR WRITTEN ON IT  
5 WAS BROUGHT TO MEREDITH LAWRENCE, SHE WOULD HAVE GONE TO  
6 THE COMPUTER SYSTEM?
- 7 A YES, SIR.
- 8 Q SHE WOULD HAVE GONE TO THE COMPUTER SYSTEM TO LOOK UP  
9 EXISTING ACCOUNTS?
- 10 A YES, SIR.
- 11 Q AND ONE REASON SHE WOULD HAVE GONE IN TO LOOK UP  
12 EXISTING ACCOUNTS IS TO SEE HOW THEY WERE SET UP?
- 13 A RIGHT. IT'S JUST -- IT WOULD, OF COURSE, SPEED UP THE  
14 PROCESS INSTEAD OF SETTING UP A COMPLETELY NEW PROFILE. IF  
15 AN ACCOUNT HAD ALREADY BEEN ESTABLISHED, YOU JUST SELECT  
16 THE EXISTING PROFILE.
- 17 Q ALL RIGHT. AND WITHOUT THAT -- IF SHE -- WITHOUT THAT  
18 EXISTING PROFILE BEING SET UP PROPERLY, THAT'S WHERE THIS  
19 CHECK -- THAT \$256 CHECK THEN WOULD NOT BE SET UP PROPERLY?
- 20 A RIGHT.
- 21 Q SO IT GOES BACK TO THE FIRST MISTAKE?
- 22 A YES, SIR.
- 23 Q ALL RIGHT. NOW, BECAUSE A BANKING MANAGER -- IF THE  
24 PROFILE IS ALREADY THERE, ACCOUNT IS ALREADY SET UP IN  
25 SOMEBODY'S NAME BASED ON YOUR EXPERIENCE, THE BANKING

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ROA 0486

APPENDIX 491

1   MANAGER, YOU WOULD ASSUME WHAT?

2   A     I WOULD HAVE ASSUMED THAT IT WAS ALREADY -- THE  
3   PROFILE WAS ALREADY THERE, AND SO I WOULD HAVE SELECTED IT  
4   BASED ON MY PRIOR EXPERIENCE.

5   Q     AND SO THEN YOU WOULD HAVE SET UP AN ACCOUNT  
6   CONSISTENT WITH WHAT WAS SET UP PREVIOUSLY?

7   A     RIGHT. THAT PERSONAL BANKER -- THAT MANAGER, I'M  
8   SORRY, I DIDN'T MEAN -- THAT MANAGER WOULD HAVE DONE THAT.

9   Q     ALL RIGHT.

10  A     AND, AGAIN, I WASN'T THERE, SO.

11  Q     I UNDERSTAND. I UNDERSTAND. NOW, IF THE ACCOUNT  
12  WOULD HAVE BEEN SET UP PROPERLY WITH CONSERVATORSHIP, THE  
13  CHECK WOULD HAVE BEEN BROUGHT -- \$256 WOULD HAVE BEEN  
14  BROUGHT TO THE BRANCH MANAGER, SHE WOULD HAVE THEN GONE  
15  INTO THE SYSTEM, CORRECT?

16  A     UH-HUH.

17  Q     AND SHE WOULD HAVE LOOKED UP THE PROFILE OF THE  
18  CUSTOMER, CORRECT?

19  A     RIGHT.

20  Q     AND SHE WOULD HAVE SEEN WHAT?

21  A     SHE WOULD HAVE SEEN HOW THE OTHER ACCOUNT WAS SET UP.  
22  SHE MAY HAVE LIKELY FOLLOWED SUIT.

23  Q     OKAY. SO THEN SHE WOULD HAVE SEEN THAT A  
24  CONSERVATORSHIP WAS SET UP CORRECTLY?

25  A     I DON'T KNOW ABOUT CORRECTLY.

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ROA 0487

APPENDIX 492

- 1 Q OKAY.
- 2 A BUT SHE WOULD HAVE SEEN THAT IN THERE ON THE TITLE.
- 3 Q BUT BECAUSE IT WASN'T ON THE TITLE, THAT'S HOW --
- 4 THAT'S HOW THIS COULD HAVE BEEN OPENED -- A BANKING ACCOUNT
- 5 AROUND THIS COULD HAVE BEEN OPENED UP?
- 6 A YES, SIR. AGAIN, THAT HAS MINOR WRITTEN ON THERE,
- 7 TOO. EVERY -- I THINK EVERY ONE OF THEM HAD MINOR WRITTEN
- 8 ON THERE, WHICH AGAIN IS A VERY COMMON CUSTODIAL ACCOUNT
- 9 THAT IS OPENED.
- 10 Q OKAY.
- 11 A FOR LITTLE SCHOOL -- USUALLY SCHOOL AGE.
- 12 Q I'M GOING TO SHOW YOU THE CHECKS. YOU KEEP RAISING
- 13 THIS ISSUE -- I HAND THESE EXHIBITS. YOU KEEP RAISING THE
- 14 ISSUE ABOUT THE MINOR IS ON THERE.
- 15 A YES, SIR.
- 16 Q WHAT IS THE SIGNIFICANCE OF THAT? MINOR MEANING THE
- 17 WORD, M-I-N-O-R?
- 18 A RIGHT. IT MEANS IT'S A CHILD. AND WHEN WE SEE MINOR,
- 19 A LOT OF PARENTS WILL COME IN AND OPEN SAVINGS ACCOUNTS FOR
- 20 THEIR CHILDREN. AND USUALLY WHEN YOU OPEN THAT -- NOT
- 21 USUALLY, YOU'RE SUPPOSED TO OPEN IT WITH A UNIFORM GIFT TO
- 22 MINORS ACT. IT'S A LITTLE ---
- 23 Q SO IT'S BY STATUTE? THE UNIFORM GIFT TO MINORS ACT IS
- 24 A STATE STATUTE OR DO YOU KNOW?
- 25 A I DON'T -- I WOULD BE GUESSING IF I SAID THAT IT'S A

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ROA 0488

APPENDIX 493

- 1 STATE STATUTE.
- 2 Q ALL RIGHT. BUT YOU SET IT UP IN WHAT'S CALLED A
- 3 UNIFORM -- WHAT?
- 4 A GIFT TO MINORS. IT'S UGMA.
- 5 Q AND SO YOU PUT MINOR ON THE ACCOUNT?
- 6 A YES, SIR.
- 7 Q IS A CD A PROPER WAY TO INVEST A MINOR'S MONEY?
- 8 A YES, SIR.
- 9 Q AND ON THE CD, MINOR WAS STATED ON THAT ACCOUNT?
- 10 A I ---
- 11 Q DON'T KNOW?
- 12 A --- BELIEVE THAT IT WAS, BUT WITHOUT LOOKING AT IT, I
- 13 WOULD BE HESITANT TO ANSWER THAT.
- 14 Q OKAY. WHAT ABOUT ON THE ACCOUNT SET UP BY -- BY THE
- 15 BANKING CENTER MANAGER?
- 16 A YES, SIR.
- 17 Q IT WAS SET UP AS A MINOR ACCOUNT?
- 18 A I DO REMEMBER SEEING THAT, YES, SIR.
- 19 Q AND BASED ON YOUR UNDERSTANDING, IT IS THROUGH THAT
- 20 SECOND ACCOUNT THAT WAS SET UP THAT THE MONEY WAS -- THE CD
- 21 WAS CASHED THROUGH OR WHAT?
- 22 A YES, SIR. A LITTLE WHILE LATER THE CERTIFICATE WAS
- 23 REDEEMED AND IT WAS REDEEMED BY THE GENTLEMAN, WHICH WAS AT
- 24 ANOTHER BANKING CENTER ACTUALLY. I NOTICED ON THE TICKET.
- 25 Q REDEEMED -- IT WAS REDEEMED BY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0489

APPENDIX 494

- 1 A MARK -- MARK ---
- 2 Q PLAINTIFFS' EXHIBIT 13?
- 3 A MARK MCHORNEY OVER AT THE GARDEN CITY BANKING CENTER,
- 4 WHICH WAS A COMPLETELY DIFFERENT CENTER FROM WHERE THE
- 5 ACCOUNT HAD ORIGINATED.
- 6 Q SO MS. UNRUE WENT AND CASHED IN THIS \$250-SOMETHING-
- 7 THOUSAND AT EVEN ANOTHER BANKING CENTER?
- 8 A IT WAS PROCESSED AT ANOTHER BANKING CENTER.
- 9 Q SO SHE DIDN'T GO BACK TO THE BANK IN WHICH SHE STARTED
- 10 THIS PROCESS?
- 11 A I DON'T THINK SO, NO, BASED ON THIS TICKET WORK.
- 12 Q OKAY.
- 13 A EACH BANKING CENTER HAS A TITLE OR THEIR LOCATION
- 14 LISTED ON THE WITHDRAWAL TICKETS AND DEPOSIT TICKETS, I
- 15 THINK.
- 16 Q IF A COURT ORDER HAD BEEN -- IF A COURT ORDER HAD BEEN
- 17 SHOWN TO MS. YOURKO, WOULD IT BE IN YOUR FILES OR SHOULD IT
- 18 BE IN YOUR FILES?
- 19 A YES, SIR, WE SHOULD HAVE IT IN OUR FILES.
- 20 Q TO YOUR KNOWLEDGE HAS THE BANK FOUND THE COURT ORDER
- 21 IN ITS FILES?
- 22 A NOT TO MY KNOWLEDGE, NO, SIR.
- 23 Q AND BASED ON YOUR EXPERIENCE, THAT INDICATES WHAT?
- 24 A IT INDICATES THAT EITHER THEY DIDN'T GET IT -- THEY
- 25 DIDN'T RECEIVE IT, THEY DIDN'T KNOW TO ASK FOR IT, BECAUSE

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ROA 0490

APPENDIX 495

1 I KNOW WHEN A COURT ORDER IS PRESENTED OF ANY TYPE --  
2 UNLESS IT'S AN ESTATE ACCOUNT. BECAUSE, AGAIN, THAT'S  
3 SOMETHING THAT WE'RE FAMILIAR WITH OPENING. WE WOULD HAVE  
4 SENT THAT INFORMATION UP TO OUR LEGAL DEPARTMENT TO VIEW.

5 Q RIGHT. NOW, YOU SAID THAT YOU'VE DEALT WITH AT LEAST  
6 -- IN YOUR 30 YEARS YOU'VE ONLY DEALT WITH ABOUT TWO OF  
7 THESE TYPES OF ACCOUNTS?

8 A RIGHT. IT'S NOT A COMMON PRACTICE.

9 Q AND DID YOU DEAL WITH ANY COURT ORDERS FOR THOSE  
10 ACCOUNTS?

11 A I DID. IT WAS PROBABLY TEN -- I MEAN, IT'S A LONG,  
12 LONG TIME AGO..

13 Q DID YOU HAVE -- TO YOUR RECOLLECTION, HOW LONG AGO WAS  
14 IT?

15 A A LONG TIME AGO. MAYBE IN THE -- THE FIRST TIME I  
16 EVER REMEMBER SEEING ONE WAS PROBABLY IN CHARLESTON -- IN  
17 NORTH CHARLESTON, AND IT WAS IN THE '90'S.

18 Q ALL RIGHT. SO YOU'VE NOT SEEN ONE OF THESE TYPES OF  
19 ACCOUNTS IN ALMOST 20 YEARS?

20 A NOT TO MY RECOLLECTION, NO, SIR.

21 Q DO YOU EVER REMEMBER HAVING TO FILL OUT ANY COURT  
22 DOCUMENTS?

23 A VERY VAGUELY. SO I DON'T KNOW THAT I CAN TELL YOU  
24 PRECISELY EVERYTHING, BUT I DO -- I DO RECALL THE COURT  
25 REQUESTING INFORMATION AND STATEMENTS FOR ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0491

APPENDIX 496

1 Q OKAY.

2 A --- FOR THIS TYPE OF ACCOUNT.

3 Q DO YOU RECALL WHETHER YOU HAD TO FILL OUT ANY COURT

4 DOCUMENTS THAT WHERE THE BANK HAD TO VERIFY -- AS ANOTHER

5 SAFETY VALVE, HAD TO VERIFY THAT A CONSERVATORSHIP WAS

6 FILLED OUT OR WAS OPENED?

7 A I DON'T RECALL.

8 Q YOU DON'T RECALL?

9 A NO, SIR.

10 MR. DAVIS: BEAR WITH ME. LET ME FIND A DOCUMENT.

11 (PAUSE.)

12 MR. DAVIS: I SAW IT THIS MORNING.

13 (PAUSE.)

14 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS

15 DEFENDANT'S EXHIBIT 1. HAVE YOU -- CAN YOU TURN TO THE

16 SECOND PAGE.

17 A (COMPLIED.)

18 Q NOW, THAT'S A COURT DOCUMENT, CORRECT?

19 A YES, SIR, IT LOOKS LIKE ONE.

20 Q ALL RIGHT. AND GOING TO THE SECOND PAGE, AS A SAFETY

21 VALVE BY THE COURT, IT REQUIRES THE BANK TO VERIFY THAT IT

22 OPENED A CONSERVATOR ACCOUNT. DO YOU SEE THAT?

23 A IT DOES LOOK LIKE THAT'S ASKING ---

24 MR. JENKINSON: YOUR HONOR, I OBJECT. HE'S ASKING HER

25 FOR A LEGAL CONCLUSION IN A DOCUMENT. THE DOCUMENT SAYS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0492

APPENDIX 497

1 WHAT IT SAYS. AND I DON'T THINK SHE IS A LAWYER. SHE'S  
2 NOT A PERSON QUALIFIED TO TESTIFY AS TO WHAT LEGAL DOCUMENT  
3 IS OR ISN'T. IT SAYS WHAT IT SAYS.

4 THE COURT: MR. DAVIS.

5 MR. DAVIS: YOUR HONOR, THE DOCUMENT SAYS WHAT IT  
6 SAYS. I'M JUST ASKING HER TO VERIFY IT.

7 THE COURT: WHAT DID YOU ASK HER?

8 MR. DAVIS: I ASKED HER, DOES THAT DOCUMENT HAVE A  
9 LOCATION WHERE THE BANK HAS TO VERIFY THAT A  
10 CONSERVATORSHIP ---

11 THE COURT: LET ME SEE THE DOCUMENT.

12 (PAUSE.)

13 THE COURT: THE OBJECTION IS OVERRULED.

14 Q ISN'T THERE A LOCATION ON THAT DOCUMENT WHERE THE  
15 COURT REQUIRES THE BANK TO VERIFY THAT A CONSERVATORSHIP  
16 WAS OPENED UP?

17 A WELL, IT SAYS THE FINANCIAL INSTITUTION SHALL PROVIDE  
18 A DUPLICATE STATEMENT.

19 Q OKAY.

20 A THAT'S TO LEXINGTON COUNTY PROBATE, AT 205 EAST MAIN  
21 STREET, SUITE 134, LEXINGTON. ATTENTION CONSERVATORSHIP  
22 DIVISION UPON REQUEST.

23 Q AND IT ALSO REQUIRES THE CONSERVATOR TO THEN TAKE IT  
24 BACK TO THE COURT TO VERIFY?

25 A WELL, THERE'S A PLACE ON HERE FOR THE BANK TO SIGN

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0493

APPENDIX 498



- 1 AND ---
- 2 Q AND FOR THE CONSERVATOR TO SIGN?
- 3 A YES, SIR, THERE IS A PLACE ON THERE.
- 4 Q AND IN THIS CASE, YOU HAVEN'T SEEN ANY COURT DOCUMENTS
- 5 PROVIDING THIS TYPE OF SAFETY VALVE, HAVE YOU?
- 6 A NO, SIR.
- 7 MR. DAVIS: JUST A MOMENT, YOUR HONOR.
- 8 THE COURT: ALL RIGHT. LET'S STAND FOR A MOMENT.
- 9 (PAUSE.)
- 10 Q MA'AM, BANK OF AMERICA DID MAKE A MISTAKE, DIDN'T
- 11 THEY?
- 12 A YES, SIR.
- 13 Q WE SHOULD HAVE SET UP -- BANK OF AMERICA SHOULD HAVE
- 14 SET UP A CONSERVATORSHIP ACCOUNT, IT DIDN'T, RIGHT?
- 15 A YES, SIR.
- 16 Q CODY P█████ AND HIS MOTHER ARE HERE TODAY. AS A
- 17 CORPORATE REP OF BANK OF AMERICA, DO YOU HAVE ANYTHING YOU
- 18 WOULD LIKE TO SAY TO THEM?
- 19 A WE'RE SORRY. WE DIDN'T -- WE NEVER, EVER WOULD HAVE
- 20 WANTED ANYTHING TO HAPPEN. IT'S NOT WHAT WE DO; THAT'S NOT
- 21 -- IT'S NOT GOOD FOR BUSINESS. IT'S NOT -- WE WOULD NEVER
- 22 HAVE DONE THIS AND INTENTIONALLY DONE ANYTHING LIKE THIS.
- 23 I'M SORRY.
- 24 MR. DAVIS: ALL RIGHT. NO FURTHER QUESTIONS.
- 25 THE COURT: MR. WILSON.

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ROA 0494

APPENDIX 499

1 (PAUSE.)

2 THE COURT: MR. WILSON, HOW LONG DO YOU THINK YOU WILL  
3 HAVE WITH THIS WITNESS?

4 MR. WILSON: YOUR HONOR, JUST A VERY SHORT TIME.

5 THE COURT: OKAY.

6 CROSS EXAMINATION BY MR. WILSON:

7 Q MS. REEVES, I'M BUNT WILSON. I STARTED MY EXAMINATION  
8 WITH KELLY KELLEY A QUESTION. ARE YOU ALL RIGHT?

9 A YEAH, I'M FINE.

10 Q I'M TALKING ABOUT YOU. ARE YOU ALL RIGHT?

11 A YEAH, I'M FINE.

12 Q YOU'VE GOT SOME KLEENEX UP THERE?

13 A I'VE GOT PLENTY. THANK YOU.

14 Q YOU UNDERSTAND THAT YOU'VE BEEN HERE, THAT I REPRESENT  
15 TRAVIS OVER HERE, TRAVIS POWELL?

16 A YES, SIR.

17 Q AND TRAVIS, AS YOU KNOW, IS THE UNCLE OF CODY, RIGHT?

18 A YES, SIR.

19 Q BROTHER STEVEN?

20 A RIGHT.

21 Q OKAY. IT LOOKS LIKE THE PLAINTIFFS' POSITION IS THAT  
22 THE BANK SHOULD HAVE GOTTEN SOME MORE INFORMATION. IT  
23 LOOKS LIKE THE BANK'S POSITION IS THAT WE DIDN'T GET SOME  
24 INFORMATION, WHETHER WE SHOULD OR SHOULDN'T ASK FOR IT ---

25 A YES, SIR.

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ROA 0495

APPENDIX 500

1 Q --- THAT'S OUT THERE. LET ME ASK YOU THIS. YOU'VE  
2 SEEN -- THEY'VE SHOWN IT TO TRAVIS, AND NOW THEY'VE SHOWN  
3 IT TO YOU -- BOTH SIDES, THE ORDER THAT SAYS -- I BELIEVE  
4 IT SAYS SOMETHING TO THE EFFECT THAT ONCE THE ACCOUNT IS  
5 ESTABLISHED, NO FUNDS ARE TO BE WITHDRAWN WITHOUT COURT  
6 ORDER; IS THAT CORRECT?

7 A YES, SIR.

8 Q NOW, AS I TAKE IT, THE PLAINTIFFS' POSITION IS THEY'RE  
9 NOT SURE WHETHER YOU GOT THE ORDER OR NOT. I DON'T KNOW.  
10 YOU ALL'S POSITION IS YOU CAN'T FIND IT IF IT WAS  
11 PRESENTED?

12 A RIGHT.

13 Q BUT REASONABLY ANTICIPATE, AND GOING BACK IN TIME, IF  
14 THE COURT TOLD TRAVIS AND PUT IN THE ORDER OF HIS  
15 APPOINTMENT THAT THE MONEY COULDN'T BE WITHDRAWN WITHOUT  
16 COURT ORDER AND HE WAS AWARE OF THAT, IT WOULD BE  
17 REASONABLE TO CONCLUDE THAT HE WOULD FEEL THAT IT COULDN'T  
18 BE TAKEN OUT WITHOUT COURT ORDER, JUST LIKE IF YOU KNEW IT  
19 WAS ON THERE, YOU WOULDN'T LET IT GO WITHOUT COURT; IS THAT  
20 RIGHT?

21 A THAT'S RIGHT.

22 Q NOW, THE ORDER AND THE APPOINTMENT, AS I UNDERSTAND,  
23 THAT YOU'VE LOOKED AT NOW, DIRECTED THAT THE ACCOUNT WOULD  
24 BE SET UP, A CONSERVATOR ACCOUNT THAT YOU KNOW NOW ABOUT;  
25 IS THAT RIGHT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0496

APPENDIX 501

1 A YES, SIR.

2 Q BUT THE ORDER SAYS SET IT UP, THE ORDER DOESN'T  
3 SPECIFICALLY SAY -- AS I UNDERSTAND -- WHO'S TO BE ON IT.  
4 IT SIMPLY SAYS, SET IT UP? SET UP A CONSERVATOR ACCOUNT?

5 A I DON'T REMEMBER EXACTLY. I WOULD NEED TO SEE THE  
6 DOCUMENT.

7 Q THAT'S FINE. IT WOULD SPEAK FOR ITSELF.

8 A I'M SORRY.

9 Q ALL RIGHT. NOW, LET ME GO WITH THIS. BASED ON YOUR  
10 WORK ON THIS CASE, BASED ON WHAT YOU KNOW, ANY MONEY THAT  
11 LEFT THE BANK FOR WHATEVER REASON, WENT TO KAREN POWELL  
12 UNRUE?

13 A BASED ON THE STATEMENTS THAT I REVIEWED, THE MONEY  
14 TRANSFERRED OUT INTO HER ACCOUNTS.

15 Q NOT A DIME -- NOT A PENNY TO YOUR KNOWLEDGE ---

16 A RIGHT.

17 Q --- WENT TO TRAVIS?

18 A I DON'T -- IT DID NOT.

19 MR. WILSON: THANK YOU.

20 THE COURT: REDIRECT, MR. JENKINSON?

21 MR. JENKINSON: YES, SIR.

22 REDIRECT EXAMINATION BY MR. JENKINSON:

23 Q MS. REEVES, I SHOW YOU PLAINTIFFS' EXHIBIT NO. 5,  
24 WHICH IS A CHECK FOR \$99,000 WHICH YOU THINK EVEN THOUGH  
25 YOU WEREN'T PRESENT, YOU THINK WAS THE FIRST CHECK THAT

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ROA 0497

APPENDIX 502