

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

JAN 10 2012

Clifton B. Newman, Circuit Court Judge

S.C. Supreme Court

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 II

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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

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Kelley, and his natural and legal guardian Elizabeth
Powell, ...

Respondents,

v.

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Defendants.

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

Appellant.

RECORD ON APPEAL - VOLUME II

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SC Court of Appeals

**RECORD ON APPEAL
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- 1 YOUR PERSONAL BANKER LOOKED AT?
- 2 A I THINK IT IS THE FIRST CHECK THAT WAS ON TOP, YES,
- 3 SIR.
- 4 Q ALL RIGHT. SHE'S LOOKING AT IT. SHE SAW THAT CHECK
- 5 THAT'S LAYING RIGHT ON TOP, \$99,000, IT'S GOT TRAVIS
- 6 POWELL'S NAME ON THAT CHECK, DOESN'T IT?
- 7 A YES, SIR, IT DOES.
- 8 Q AND TRAVIS POWELL WASN'T STANDING IN FRONT OF HER, WAS
- 9 HE?
- 10 A I DON'T -- I DON'T KNOW IF HE WAS OR NOT, NO, SIR.
- 11 Q BASED ON WHAT WE KNOW, HE WASN'T?
- 12 A RIGHT.
- 13 Q AND YOU HAVE NO REASON TO THINK OTHERWISE, DO YOU?
- 14 A I DON'T THINK THAT HE WAS THERE. I DON'T.
- 15 Q TRAVIS POWELL'S NAME APPEARS ON THE BACK OF THAT CHECK
- 16 AND HE WASN'T THERE TO ENDORSE IT, WAS HE?
- 17 A HIS NAME IS -- THE ENDORSEMENT IS ON THE BACK, BUT ---
- 18 Q AND THE ENDORSEMENT ON THE BACK OF THAT CHECK IS IT
- 19 NOT IN CONFORMITY WITH THE FRONT OF THE CHECK EITHER, IS
- 20 IT?
- 21 A DO YOU MEAN ---
- 22 Q THE ENDORSEMENT DOES NOT APPEAR AS THE SAME AS ON THE
- 23 BACK OF THE CHECK? IT DOESN'T SAY AS CO-CN FOR CODY
- 24 P██████, A MINOR?
- 25 A IT DOESN'T HAVE THE CO-CN, NO.

CODY P██████ VS. BANK OF AMERICA

ROA 0498

APPENDIX 508

- 1 Q AND SO JUST LOOKING AT THE CHECK, THAT'S ABOUT FOUR
2 DIFFERENT THINGS THE BANKER, MS. YOURKO, DID WRONG JUST
3 LOOKING AT THAT CHECK, ISN'T IT?
- 4 A THE ---
- 5 Q FOUR THINGS?
- 6 A NO. IT -- IT HAS BOTH SIGNATURES ON THE BACK, AND IT
7 DOES NOT HAVE A TITLE. AND IN THIS PARTICULAR CASE THERE
8 ISN'T ONE THAT IS EASILY UNDERSTANDABLE.
- 9 Q OKAY. BUT UNDERSTAND THAT. THAT'S JUST A COPY OF A
10 CHECK. THE ORIGINAL CHECK WAS A CLEAN, NICE, GOOD CHECK,
11 WASN'T IT ISSUED BY MET LIFE INSURANCE, METROPOLITAN LIFE
12 INSURANCE?
- 13 A I DON'T KNOW. I SEE CASUALTY COMPANY.
- 14 Q WELL, IN ANY EVENT, THERE WERE TWO NAMES ON THE CHECK
15 AND THERE WEREN'T TWO PEOPLE STANDING THERE; THAT'S ERROR
16 NUMBER ONE?
- 17 A TWO NAMES WERE ON THE CHECK.
- 18 Q ALL RIGHT. NUMBER TWO, CODY P [REDACTED] IS NOT STANDING
19 THERE?
- 20 A CODY P [REDACTED] WOULD NOT HAVE ---
- 21 Q I'M SORRY. TRAVIS POWELL IS NOT STANDING THERE?
- 22 A OH, OKAY. IT IS UNDERSTOOD THAT HE WAS NOT PART OF
23 IT.
- 24 Q NO I.D. WAS PRESENTED?
- 25 A DON'T KNOW THAT. I.D. GETS PUT INTO THE COMPUTER

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0499

APPENDIX 509

- 1 SYSTEM.
- 2 Q AND IT CERTAINLY WASN'T -- THE BACK OF THE CHECK WAS
- 3 ENDORSED BASED ON YOUR REGULATIONS?
- 4 A WELL, IT IS ENDORSED ---
- 5 Q I'M SORRY, YOUR POLICIES AND PROCEDURES?
- 6 A IT IS ENDORSED -- I APOLOGIZE -- BY BOTH PARTIES THE
- 7 WAY IT IS ON THE FRONT.
- 8 Q JUST LOOKING AT THAT ONE CHECK ALONE, FOUR DIFFERENT
- 9 ERRORS SO FAR?
- 10 A I DON'T SEE FOUR DIFFERENT ERRORS IN THAT.
- 11 Q OKAY. NOW, LET'S TAKE IT ONE STEP FURTHER. SHE
- 12 DIDN'T -- MEANING, MS. YOURKO, DID NOT OPEN THAT ACCOUNT
- 13 TRAVIS POWELL AND KAREN POWELL AS CO-CN FOR TRAVIS -- FOR
- 14 CODY, DID SHE?
- 15 A NO, SHE DID NOT.
- 16 Q AND THAT WOULD HAVE BEEN THE CORRECT WAY BASED UPON
- 17 YOUR POLICIES AND PROCEDURES?
- 18 A TRAVIS' NAME WAS LISTED ON THE FRONT OF THAT CHECK,
- 19 YES, SIR.
- 20 Q AND IF SHE DIDN'T UNDERSTAND WHAT CO-CN -- ALL SHE HAD
- 21 TO DO WAS PICK UP A PHONE AND CALL SOMEBODY?
- 22 A SHE -- YES, WE HAVE A HELP LINE AND SHE COULD HAVE
- 23 CALLED. YES, SIR.
- 24 Q NOW, I WOULD SAY ABOUT 10 THINGS THAT THIS BANKER DID
- 25 WRONG WITH ONE CHECK.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0500

APPENDIX 510

- 1 A AGAIN, IT WASN'T -- IT WAS NOT READILY APPARENT ON
2 THIS CHECK AND IT DOES HAVE BOTH SIGNATURES.
- 3 Q I HAVEN'T EVEN ASKED ABOUT COURT ORDER YET. I'M JUST
4 SAYING SHE DIDN'T SET IT UP WITH CO-CN, DID SHE?
- 5 A THERE IS NOT AN ACCOUNT TITLE WITH A CO-CN IN OUR
6 COMPANY.
- 7 Q AND THAT SHOULD HAVE SAID, WAIT A MINUTE. I NEED TO
8 CALL SOMEBODY AND FIND OUT WHAT'S GOING ON HERE. THAT'S
9 EXACTLY WHAT IT MEANS, DOESN'T IT?
- 10 A IT -- IT ---
- 11 Q WHEN YOU DON'T UNDERSTAND, YOU ASK FOR HELP?
- 12 A YES, SIR, YOU DO.
- 13 Q NOW, IF MS. YOURKO WOULD HAVE JUST TAKEN THE TIME TO
14 GO THROUGH AND ASK THE QUESTIONS TO GET IT RIGHT, IT WOULD
15 HAVE TAKEN ABOUT 30 MINUTES FOR HER TO GET THIS ACCOUNT SET
16 UP CORRECT, WOULDN'T IT?
- 17 A IT WOULD TAKE A LITTLE MORE PROBABLY BECAUSE OF THE
18 DOCUMENTS BEING REVIEWED. BUT IT WOULD NOT HAVE BEEN
19 SOMETHING THAT COULD HAVE BEEN DONE QUICKLY.
- 20 Q AND THEN WE GO FAST FORWARD A WEEK, THE BANK -- THE
21 BRANCH MANAGER WITH CONSERVATOR WRITTEN ON THE CHECK, SHE
22 GETS IT ALL WRONG TOO?
- 23 A SHE DID NOT SET UP A CONSERVATORSHIP.
- 24 Q AND IF SHE'D HAVE DONE IT CORRECTLY, IT WOULD HAVE
25 TAKEN ABOUT 30 MINUTES TO GET THAT ACCOUNT SET UP

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0501

APPENDIX 511

1 CORRECTLY?

2 A YES, SIR.

3 Q NOW, MR. DAVIS ASKED YOU ABOUT DEFENSE EXHIBIT NO. 1.

4 DO YOU STILL HAVE IT?

5 (PAUSE.)

6 Q I'M GOING TO SHOW YOU DEFENDANT'S EXHIBIT ---

7 MR. JENKINSON: YOUR HONOR, PLEASE. FOR THE RECORD, I
8 HAVE SEEN DEFENDANT'S EXHIBIT NO. 1, AND THERE'S SOMETHING
9 MISSING OFF OF THE FIRST PAGE. IT MAY BE COVERED UP. DO
10 YOU HAVE ANOTHER COPY OF IT WITH THE 2004 DESIGNATION ON
11 THE BOTTOM?

12 (PAUSE.)

13 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO BREAK
14 FOR LUNCH NOW. WE'LL TAKE AN HOUR FOR LUNCH. PLEASE GO TO
15 THE JURY ROOM. PLEASE DO NOT DISCUSS THE CASE.

16 (THE JURY RETIRES TO THE JURY ROOM AT 12:52 P.M.)

17 THE COURT: ALL RIGHT. THERE IS SOME QUESTION RAISED
18 ABOUT AN EXHIBIT. WHAT IS THE QUESTION?

19 MR. JENKINSON: YOUR HONOR, I LOOKED AT THIS EXHIBIT
20 IN MR. HUBBS' FILE THIS MORNING. AND IN THE CORNER OF IT,
21 IT HAD 2004 AS TO WHEN THE BIRTH DATE OF THIS DOCUMENT WAS.
22 AND THE ONE THAT I'M LOOKING AT NOW -- AND I JUST -- I HAVE
23 TO LOOK AT MY FILE TO MAKE SURE I'M CORRECT.

24 THE COURT: WELL, YOU'RE TALKING ABOUT -- YOU GOT THE
25 EXHIBIT FROM THE COURT REPORTER ---

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0502

APPENDIX 512

1 MR. JENKINSON: YES, SIR.

2 THE COURT: --- AND ---

3 REPORTER: THE STICKER WAS PUT ON THERE BY THEM, AND I
4 DON'T KNOW ABOUT ANYTHING UNDER THE STICKER.

5 THE COURT: THE EXHIBIT IS WHAT'S IN EVIDENCE AND
6 WHAT'S IN POSSESSION OF THE COURT REPORTER. ANYTHING ELSE
7 -- ANY OTHER PAPERS ANYWHERE ELSE IS NOT AN EXHIBIT. AN
8 EXHIBIT IS WHAT YOU HAVE IN YOUR HAND.

9 MR. JENKINSON: YOUR HONOR, PLEASE. THE STICKER
10 THAT'S ON THIS EXHIBIT APPEARS EXACTLY WHERE THE
11 INFORMATION I'M LOOKING. THE QUESTION IS, I CAN'T TELL IF
12 IT'S BEEN COVERED UP OR NOT, AND I'D LIKE TO COMPARE IT TO
13 THE ORIGINAL THAT WAS PROVIDED THEM TO SEE IF IT MAYBE
14 STUCK UNDER THE STICKER WHERE I CAN'T READ IT; THAT'S ALL.
15 AND I'D LIKE TO DO THAT DURING LUNCH TO MAKE THAT
16 DETERMINATION.

17 THE COURT: MR. DAVIS.

18 MR. DAVIS: YOUR HONOR, THIS IS HIS DOCUMENT. THIS IS
19 A DOCUMENT THEY PRODUCED TO US LATE, THAT WAS PART OF A
20 SUPPLEMENTAL REPORT THAT WE JUST GOT LAST WEEK -- I THINK
21 LAST THURSDAY. AND WE USED IT. HE'S GOT HIS OWN
22 DOCUMENTS. IT'S AN EXHIBIT. I'M SORRY.

23 THE COURT: THE PARTIES HAVE STIPULATED THE
24 ADMISSIBILITY OF THE DOCUMENT IN THE POSSESSION OF THE
25 COURT REPORTER. THAT IS THE EXHIBIT THAT IS IN EVIDENCE.

CODY ██████ VS. BANK OF AMERICA

ROA 0503

APPENDIX 513

1 IF THERE IS SOME OTHER DOCUMENT OR PAPERS OR ANYTHING ELSE,
2 IT IS NOT THE EXHIBIT. SO I'M NOT SUGGESTING THAT THERE
3 CANNOT BE A DIFFERENT COPY OF THE SAME THING OR SOME OTHER
4 PAPERS SOME PLACE ELSE. BUT TO QUESTION COUNSEL IN THE
5 PRESENCE OF THE JURY ABOUT SOMETHING MISSING FROM AN
6 EXHIBIT WHICH IS IN THE POSSESSION OF THE COURT REPORTER,
7 WOULD ONLY BE PERTINENT IF MR. DAVIS REMOVED IT WHILE
8 QUESTIONING THE WITNESS.

9 MR. JENKINSON: NO, SIR. IT'S UNDER THE STICKER;
10 THAT'S WHAT I'M SAYING. WHEN I LOOK AT THE STICKER, I
11 CAN'T TELL BY LOOKING AT IT. IT MAY BE UNDER THE STICKER.

12 THE COURT: ALL RIGHT. WHILE EVERYONE IS HAVING LUNCH
13 THEN, YOU ALL CAN LOOK THROUGH THE STICKERS AND ALL THAT.
14 BUT THE ---

15 MR. JENKINSON: WE'LL UN-STICK IT.

16 THE COURT: WELL, THAT'S THAT. WE'LL TAKE ONE HOUR
17 FOR -- MR. WILSON.

18 MR. WILSON: YOUR HONOR ---

19 MR. JENKINSON: I'M NOT THROUGH WITH THIS WITNESS. I
20 HAVE SOME ADDITIONAL QUESTIONS.

21 THE COURT: I UNDERSTAND. BUT WE'RE NOT GOING TO HAVE
22 THE JURY WAIT WHILE YOU ALL LOOK THROUGH BOXES AND PAPERS
23 AND ALL THAT.

24 MR. DAVIS: YOUR HONOR, IT WAS HIM, IT'S NOT ME.

25 THE COURT: YES, SIR, MR. WILSON.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0504

APPENDIX 514

1 MR. WILSON: WELL, I DON'T KNOW ABOUT THE REST OF
2 THESE ATTORNEYS, BUT I HAVE SOME OTHER ISSUES. AND I'M
3 TRYING JUST TO FIND OUT IF YOU'RE GOING TO RUN LATE INTO
4 THE NIGHT OR WHETHER OR NOT WE'RE GOING TO FINISH. I KNOW
5 THIS IS A PRIORITY, AND I'M COUNTING ON SOME OTHER THINGS.
6 BUT IT JUST APPEARS TO ME THAT WE WILL NOT FINISH TODAY.

7 THE COURT: I HAVE NO CLUE. THE PLAINTIFF IS STILL
8 PRESENTING ITS CASE. AND THIS LADY HAS BEEN ON THE STAND
9 ALL MORNING. SO YOU ALL -- GENERALLY, WHEN LAWYERS TELL ME
10 A CASE IS GOING TO LAST TWO AND A HALF DAYS, I USUALLY ADD
11 A DAY AND A HALF TO IT. SO I HAVE NO CLUE.

12 MR. WILSON: IT'S FOUR DAYS; THAT'S FINE. I'LL ACCEPT
13 THAT.

14 (PAUSE.)

15 THE COURT: ALL RIGHT. YOU MAY STEP DOWN. REMEMBER,
16 YOU'RE UNDER OATH AND YOU CANNOT DISCUSS YOUR TESTIMONY
17 WITH ANYONE.

18 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

19 THE COURT: ALL RIGHT. WE'LL RECONVENE AT 2:00
20 O'CLOCK.

21 (COURT IS IN RECESS FOR LUNCH.)

22 (THE WITNESS RETURNS TO THE WITNESS STAND.)

23 THE COURT: YES, SIR.

24 MR. JENKINSON: SO YOU WILL UNDERSTAND MY QUESTION
25 EARLIER ABOUT THE STICKER. I'LL SHOW YOU WHERE THIS IS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0505

APPENDIX 515

1 MARKED, IT IS MARKED AS DEFENDANT'S EXHIBIT NO. 7. THIS
2 WAS THE SAME FORM THAT WAS USED WITH MR. HUBBS' DEPOSITION,
3 BUT APPARENTLY THAT IS ANOTHER FORM I HAD NOT SEEN, AND IT
4 DOES HAVE SOME INFORMATION CONTAINED IN THE CORNER. I
5 THOUGHT THIS WAS THE DOCUMENT AND IT IS NOT EVIDENCE. AND
6 SO MY CONFUSION ABOUT IT WAS BASED UPON MR. HUBBS'
7 DEPOSITION DOCUMENT.

8 THE COURT: ALL RIGHT.

9 MR. JENKINSON: AND I HAD NOT SEEN THAT OTHER
10 DOCUMENT. NOT A PROBLEM.

11 THE COURT: ALL RIGHT.

12 MR. JENKINSON: AND I'M NOT GOING TO GO BACK IN TO THE
13 STICKER CONFUSION. BUT I'LL BE GLAD TO SAY WHATEVER THE
14 COURT WANTS ME TO SAY.

15 THE COURT: I'M FINE IF YOU ALL ARE FINE.

16 MR. DAVIS: I'M SORRY, YOUR HONOR?

17 THE COURT: I SAID, I'M FINE IF YOU ALL ARE FINE.

18 MR. JENKINSON: ARE YOU FINE WITH THIS STICKER
19 BUSINESS? I'M NOT GOING BACK INTO IT.

20 MR. DAVIS: I'M FINE, JUDGE.

21 THE COURT: ALL RIGHT. BRING THEM BACK.

22 (THE JURY RETURNS TO THE COURTROOM AT 2:10 P.M.)

23 THE COURT: ALL RIGHT. THE JURY IS BACK. MR.
24 JENKINSON, YOU MAY PROCEED.

25 MR. JENKINSON: THANK YOU. MAY IT PLEASE THE COURT.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0506

APPENDIX 516

- 1 THE COURT: YES, SIR.
- 2 REDIRECT EXAMINATION CONTINUED BY MR. JENKINSON:
- 3 Q MS. REEVES, I WAS ASKING YOU ABOUT DEFENSE EXHIBIT NO.
- 4 1 BEFORE LUNCH.
- 5 A YES, SIR.
- 6 Q I'D LIKE TO CALL YOUR ATTENTION TO PLAINTIFFS' EXHIBIT
- 7 NO. 31, AND I WILL SHOW YOU PAGE 4 OF THAT EXHIBIT.
- 8 A OKAY.
- 9 Q NOW, THIS DOCUMENT TELLS YOUR BANKING REPRESENTATIVES
- 10 WHEN OPENING A CONSERVATOR ACCOUNT WHAT PROBATE COURT
- 11 RECORD YOU MUST ASK FOR. OKAY?
- 12 A OKAY.
- 13 Q NOW, I CALL YOUR ATTENTION TO THE BOTTOM OF IT. IT
- 14 SAYS AT THE BOTTOM OF IT, REQUIRED -- I'M SORRY, REQUIRED
- 15 DOCUMENTATION. OKAY?
- 16 A YES, SIR.
- 17 Q NOW, THAT SAYS ORIGINAL OR CERTIFIED COPY OF THE COURT
- 18 ORDER APPOINTING THE GUARDIAN OR CONSERVATOR CONTAINING THE
- 19 FOLLOWING: AND IT SAYS, NAME OF THE GUARDIAN, CONSERVATOR,
- 20 NAME OF THE WARD, THAT'S THE CHILD, SIGNATURE OF THE COURT
- 21 OFFICIAL, CERTIFIED SEAL, FILING STAMP, STATEMENT
- 22 DELINEATING THE GUARDIAN, CONSERVATOR OVER THE ESTATE OF
- 23 THE PROPERTY OF THE WARD. DO YOU UNDERSTAND THAT?
- 24 A YES, SIR.
- 25 Q THAT'S WHAT YOU'RE REQUIRED TO HAVE?

CODY R. [REDACTED] VS. BANK OF AMERICA

ROA 0507

APPENDIX 517

- 1 A YES, SIR.
- 2 Q NOW, I SHOW YOU PLAINTIFFS' EXHIBIT 3 AND 4, WHICH ARE
- 3 THE FIDUCIARY LETTERS, AND CERTIFICATE OF APPOINTMENT, AND
- 4 THOSE ARE TWO OF THE REQUIRED DOCUMENTS, AREN'T THEY?
- 5 A YES, SIR.
- 6 Q NOW, WHAT ---
- 7 A IT DOESN'T REALLY SPELL OUT FIDUCIARY LETTERS OR --
- 8 BUT THAT'S WHY I WAS LOOKING AT IT.
- 9 Q THAT'S REQUIRED?
- 10 A YES, SIR.
- 11 Q NO WHERE IN THE BANK'S POLICIES AND PROCEDURES IS
- 12 DEFENDANT'S EXHIBIT NO. 1, WHICH IS THIS COURT ORDER THAT
- 13 YOU SEE BLANK, IT'S NOT ANYWHERE REQUIRED IN THE DOCUMENT
- 14 IN YOUR POLICIES AND PROCEDURES, IS IT?
- 15 A NO, SIR. NO, SIR, NOT ON THIS PAGE.
- 16 Q SO THIS IS AN UNNECESSARY DOCUMENT AS FAR AS THE BANK
- 17 IS CONCERNED, DEFENDANT'S EXHIBIT NO. 1?
- 18 A TO -- YOU MEAN TO OPEN AN ACCOUNT?
- 19 Q YES.
- 20 A IT'S NOT PART OF IT, NO, SIR.
- 21 Q IT'S UNNECESSARY. USELESS INFORMATION, AND ALREADY IS
- 22 CONTAINED IN WHAT YOU REQUIRE?
- 23 A RIGHT, WHAT WE REQUIRE IS ON THERE.
- 24 Q NOW, ASKING ABOUT THESE CONSERVATOR ACCOUNTS IN SOUTH
- 25 CAROLINA. YOU HAVEN'T OPENED AN ACCOUNT PROBABLY IN HOW

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0508

APPENDIX 518

1 MANY YEARS?

2 A I THINK I DID ONE BACK IN THE EARLY '90'S WHEN I WAS
3 AT ANOTHER BANKING CENTER.

4 Q 15 YEARS AGO?

5 A THAT WOULD BE ABOUT RIGHT, YES, SIR.

6 Q NOW, MS. DENNING ALSO PERHAPS IS MORE FAMILIAR WITH
7 OPENING CONSERVATOR ACCOUNTS IN SOUTH CAROLINA?

8 A I DON'T KNOW THAT SHE WOULD BE FAMILIAR WITH OPENING
9 THEM, BUT SHE -- I WOULD THINK WOULD KNOW WHAT DOCUMENTS TO
10 LOOK FOR, YES, SIR.

11 Q WERE YOU AWARE AND DID YOU LISTEN YESTERDAY WHEN SHE
12 TESTIFIED IN HER DEPOSITION, WE DO THEM IN SOUTH CAROLINA A
13 LOT?

14 MR. DAVIS: YOUR HONOR, HER DEPOSITION -- HER
15 DEPOSITION SPEAKS FOR ITSELF. THEY PRESENTED IT TO THE
16 JURY.

17 THE COURT: OBJECTION IS OVERRULED.

18 A I DO REMEMBER HER SAYING THAT, YES, SIR.

19 Q SO THAT WOULD BE BASED ON THAT STATEMENT SOMETHING
20 THAT THE BANK DOES REGULARLY IN SOUTH CAROLINA?

21 A PERHAPS IN SOUTH CAROLINA. IT'S -- BUT WE DON'T SEE
22 -- I HAVE NOT SEEN VERY MANY.

23 Q NOW, IN YOUR STATEMENT TO CODY P██████, YOU SAID, YOU
24 KNOW, YOU WANTED TO SAY TO THEM ON BEHALF OF THE BANK YOU
25 WERE SORRY. DO YOU REMEMBER IN YOUR DEPOSITION I ASKED YOU

CODY P██████ VS. BANK OF AMERICA

ROA 0509

APPENDIX 519

1 ABOUT THE ANSWER TO THE SUMMONS AND COMPLAINT OF CODY
2 POWELL'S LAWYERS ABOUT WHAT THE BANK HAD DONE WRONG.
3 REMEMBER, I ASKED YOU ABOUT THE ANSWER AND WENT PARAGRAPH
4 BY PARAGRAPH IN YOUR DEPOSITION?

5 A NOT SPECIFICALLY.

6 Q WELL, LET ME ASK YOU THIS AND I SHOW YOU THE ANSWER,
7 PARTICULARLY, TO THE NEGLIGENCE. IN EVERY SINGLE INSTANCE
8 -- THIS IS THE ORIGINAL AND A COPY. EVERY SINGLE INSTANCE
9 THE BANK HAS DENIED, DENIED, DENIED THAT THEY'VE DONE
10 ANYTHING WRONG WITH RESPECT TO THIS ACCOUNT, HAVE THEY NOT?

11 A (PAUSE.) THE -- WHAT NUMBERS? ASK ME AGAIN THE
12 NUMBERS PLEASE.

13 Q EVERY PART OF THE ALLEGATIONS OF WRONGDOING BY THE
14 BANK THAT YOU WERE LOOKING AT, THE BANK HAS DENIED, DENIED,
15 DENIED ALL THE WAY DOWN, HAVE THEY NOT?

16 A IT SAYS -- WELL, IT JUST SAYS BANK OF AMERICA DENIES
17 THE ALLEGATIONS, AND THEN IT KEEPS REFERRING BACK TO
18 DIFFERENT PARAGRAPHS. SO THAT'S WHY ---

19 Q AND THAT'S FROM THE COMPLAINT OF THE PLAINTIFF, IS IT
20 NOT? CODY P [REDACTED] LAWYERS?

21 A YES, SIR.

22 Q THANK YOU. AND THAT'S WHERE CODY P [REDACTED] THROUGH HIS
23 LAWYERS SAY THIS IS WHAT THE BANK DID WRONG, THIS IS WHAT
24 THE BANK DID WRONG. AND ALL WE SEE THERE IS DENIED,
25 DENIED. WE DIDN'T DO A THING WRONG. ISN'T THAT WHAT THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0510

APPENDIX 520

1 BANK'S POSITION WAS?

2 A IT SAYS THAT THE BANK IS WITHOUT SUFFICIENT KNOWLEDGE
3 OR INFORMATION, THEN IT GOES ON TO -- FROM 1 -- WELL, I'M
4 SORRY, FROM 2 THROUGH -- AND IT RESPONDS TO VARIOUS -- TO
5 THE ALLEGATIONS.

6 Q I SHOW YOU THE ALLEGATIONS. AND I'M PARTICULARLY
7 REFERRING TO PARAGRAPH 14. YOUR ANSWER -- LOOK AT
8 PARAGRAPH 14.

9 A HAVE I GOT WHAT YOU'VE GOT? IS THAT WHAT YOU'VE GOT?

10 Q LOOK AT YOUR PARAGRAPH 14 AND LOOK AT THE COMPLAINT.
11 AS A RESULT OF A BREACH OF DUTY THE BANK OF AMERICA, THE
12 PLAINTIFF HAS SUFFERED SUBSTANTIAL FINANCIAL INJURY AS A
13 RESULT OF THE NEGLIGENCE, CARELESSNESS OF THE BANK OF
14 AMERICA IN THE FOLLOWING PARTICULARS: IN ALLOWING THIS
15 ACCOUNT TO BE OPENED WITHOUT RESTRICTIONS, IN FAILING TO
16 MONITOR THE ESTABLISHMENT, IN FAILING TO -- ALLOWING THE
17 WITHDRAWAL OF FUNDS FROM THE CERTIFICATE OF DEPOSIT, BY
18 ALLOWING THE ESTABLISHMENT OF AN UNRESTRICTED ACCOUNT, BY
19 ALLOWING THE WITHDRAWAL OF FUNDS, BY BREACHING ITS DUTIES
20 TO CODY POWELL. ALL OF THAT HAS BEEN DENIED; AND THAT HAS
21 BEEN THE OFFICIAL POSITION OF THE BANK EVER SINCE WE
22 STARTED UP UNTIL THIS VERY MINUTE, HASN'T IT?

23 A IT SAYS BANK OF AMERICA DENIES THE ALLEGATIONS IN
24 PARAGRAPH 14, WHICH IS WHAT YOU JUST READ.

25 Q RIGHT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0511

APPENDIX 521

- 1 A YES, SIR.
- 2 Q AND THAT IS THE POSITION OF THE BANK OF AMERICA, WE
3 DIDN'T DO ANYTHING WRONG. WE DENY; AND THAT'S WHAT IT SAYS
4 RIGHT IN THEIR OWN DOCUMENT, DOESN'T IT?
- 5 A I THINK IT ALSO SAID THAT MORE INFORMATION WAS NEEDED.
- 6 Q WELL, LET ME ASK THIS WAY. THESE WERE DONE IN 2005.
7 DO YOU KNOW OF ANY OTHER INFORMATION TO CHANGE THAT TODAY?
8 IT HASN'T CHANGED, HAS IT?
- 9 A I DON'T KNOW.
- 10 Q YOU'RE THE OFFICIAL REPRESENTATIVE OF THE BANK, AND
11 I'M JUST TRYING TO FIND OUT WHAT THE BANK'S POSITION IS.
12 IS IT STILL IN DENIAL?
- 13 A TO MY KNOWLEDGE, THIS HASN'T BEEN CHANGED. THIS
14 DOCUMENT HAS NOT BEEN CHANGED.
- 15 Q WELL, MS. REEVES ---
- 16 A YES, SIR.
- 17 Q --- YOU'VE EXPRESSED YOUR PERSONAL FEELINGS AS A
18 LONG-TIME EMPLOYEE TO CODY P [REDACTED] AND TO ELIZABETH,
19 CORRECT?
- 20 A YES, SIR.
- 21 Q BUT YOU DIDN'T PERSONALLY DO ANY WRONG. YOU WEREN'T
22 EVEN CLOSE TO THIS BANK ANY WAY, SHAPE, OR FORM IN 2001,
23 WERE YOU?
- 24 A NOT AFFILIATED WITH WHAT HAPPENED, NO, SIR.
- 25 Q YOU WEREN'T THERE AT ALL?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0512

APPENDIX 522

- 1 A NO.
- 2 Q YOU ARE AN EXPERIENCED AND LOYAL EMPLOYEE OF THE BANK,
- 3 AREN'T YOU?
- 4 A YES, SIR.
- 5 Q THE TWO EMPLOYEES WHO DID ALL OF THIS HARM TO CODY
- 6 P [REDACTED] AREN'T HERE, THEY'RE ---
- 7 MR. DAVIS: OBJECTION, YOUR HONOR.
- 8 Q --- NOT EVEN IN SOUTH CAROLINA.
- 9 MR. DAVIS: OBJECTION.
- 10 Q ARE THEY?
- 11 THE COURT: THE OBJECTION IS SUSTAINED.
- 12 Q WELL, IN THEIR DEPOSITIONS, IN THEIR OFFICIAL
- 13 STATEMENTS TO US, WE HAVE NOT SEEN ONE BIT OF REMORSE
- 14 COMING OUT OF MS. YOURKO OR MS. LAWRENCE FOR WHAT OCCURRED
- 15 TO CODY POWELL, HAVE WE?
- 16 MR. DAVIS: OBJECTION, YOUR HONOR.
- 17 THE COURT: THE BASIS FOR THE OBJECTION.
- 18 MR. DAVIS: THESE ARE DEPOSITIONS THAT WERE TAKEN
- 19 YEARS -- AM I ALLOWED TO ARGUE. THESE ARE DEPOSITIONS THAT
- 20 WERE TAKEN YEARS AFTER THE EVENT TOOK PLACE, AND THEY WERE
- 21 JUST ASKING THEM QUESTIONS AND THEY WERE ANSWERING
- 22 QUESTIONS. THESE ARE EX-EMPLOYEES. THEY HAVEN'T BEEN
- 23 EMPLOYEES OF THE BANK IN YEARS.
- 24 MR. JENKINSON: THIS IS CROSS EXAMINATION, YOUR HONOR.
- 25 THE COURT: THE OBJECTION IS SUSTAINED. THIS IS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0513

APPENDIX 523

1 BEYOND THE SCOPE OF REDIRECT EXAMINATION.
2 MR. JENKINSON: THANK YOU. I HAVE NO FURTHER
3 QUESTIONS.
4 THE COURT: MR. DAVIS.
5 RECROSS EXAMINATION BY MR. DAVIS:
6 Q YOU DIDN'T HAVE ANYTHING TO DO WITH DRAFTING UP THAT
7 ANSWER TO THE COMPLAINT, DID YOU?
8 A NO, SIR.
9 Q THAT'S LAWYERS TALKING, ISN'T IT?
10 A YES, SIR.
11 MR. DAVIS: NOTHING FURTHER, YOUR HONOR.
12 THE COURT: MR. WILSON.
13 MR. WILSON: NOTHING FURTHER, YOUR HONOR.
14 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.
15 (THE WITNESS LEAVES THE WITNESS STAND.)
16 THE COURT: PLAINTIFF, NEXT.
17 MR. JENKINSON: WE CALL ROBERT HUBBS, YOUR HONOR.
18 ROBERT M. HUBBS, BEING FIRST
19 DULY SWORN, TESTIFIED AS FOLLOWS:
20 CLERK: PLEASE STATE YOUR FULL NAME FOR THE RECORD
21 PLEASE.
22 WITNESS: MY NAME IS ROBERT M. HUBBS.
23 THE COURT: COUNSEL APPROACH.
24 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
25 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0514

APPENDIX 524

- 1 DIRECT EXAMINATION BY MR. JENKINSON:
- 2 Q TELL US YOUR FULL NAME AGAIN PLEASE, SIR?
- 3 A MY NAME IS ROBERT BOB HUBBS.
- 4 Q MR. HUBBS, WHERE DO YOU LIVE?
- 5 A I LIVE AT 234 KITTIWAKE DRIVE, WEST COLUMBIA, SOUTH
- 6 CAROLINA.
- 7 Q HOW LONG HAVE YOU LIVED THERE?
- 8 A ABOUT 35 YEARS.
- 9 Q LIVE THERE WITH ANYBODY?
- 10 A MY WIFE.
- 11 Q HOW LONG HAVE YOU AND MRS. HUBBS BEEN MARRIED?
- 12 A WE'VE BEEN MARRIED 51 YEARS.
- 13 Q DO YOU ALL HAVE CHILDREN?
- 14 A FOUR CHILDREN.
- 15 Q IMAGINE SOME GRAND CHILDREN?
- 16 A ONLY TWO. I'M DISAPPOINTED IN THAT.
- 17 Q TIME MAY FIX THAT. MR. HUBBS, WHAT KIND OF BUSINESS
- 18 ARE YOU IN TODAY?
- 19 A I'M A RETIRED BANKER. AND I HAVE SOME HOBBIES THAT I
- 20 ENJOY.
- 21 Q DO YOU UNDERSTAND WHY YOU'RE HERE TODAY TO TESTIFY AND
- 22 WE PROPOSE TO OFFER YOU AS AN EXPERT IN BANKING STANDARDS
- 23 AND PROCEDURE AS RELATE TO THE CODY POWELL CASE?
- 24 A YES, SIR, I AM.
- 25 Q TELL THE JURY A LITTLE BIT ABOUT YOUR EDUCATIONAL

CODY ██████ VS. BANK OF AMERICA

ROA 0515

APPENDIX 525

1 BACKGROUND THAT QUALIFIES YOU TO KNOW ABOUT BANKING AND
2 PROCEDURES?

3 A OKAY. I'VE ATTENDED SEVERAL UNIVERSITIES. BUT AS I
4 WENT INTO THE BANKING -- I WANTED TO GET SPECIALIZED. SO I
5 STUDIED BANKING AT LSU'S SCHOOL OF BANKING AND GRADUATED
6 FROM THERE. I ALSO FINISHED THE SOUTH CAROLINA BANKING
7 SCHOOL. I FINISHED CANNON TRUST SCHOOL. AND I'VE TAKEN
8 NUMEROUS BANK-RELATED COURSES SINCE THEN.

9 Q IN THAT, WHEN DID YOU FIRST GO TO WORK AS A BANKER?

10 A I WENT TO WORK AS A BANKER IN 1958.

11 Q TELL THE JURY A LITTLE BIT ABOUT YOUR WORK EXPERIENCE
12 AS A BANKER, WHAT YOU DID, WHO YOU WORKED FOR? JUST TELL
13 THEM A LITTLE BIT ABOUT THAT PLEASE, SIR?

14 A SURE. I STARTED TO WORK IN 1958 WITH A SMALL
15 INDEPENDENT BANK. TWO YEARS LATER THEY MERGED WITH ANOTHER
16 BANK. AND BUT DURING THAT TIME, I WAS A TELLER, I ALSO
17 SERVED AS A BRANCH MANAGER, AND THEN IN THE LATTER YEARS,
18 UNTIL 1968, I WAS A REGIONAL VICE PRESIDENT WITH STATE BANK
19 AND TRUST COMPANY.

20 FROM THERE I WAS OFFERED A JOB WITH THE LEXINGTON
21 STATE BANK, AND I WENT TO WORK WITH A SMALL, INDEPENDENT
22 BANK IN LEXINGTON COUNTY. WHEN I WENT WITH THE BANK IN
23 1968, IT WAS 4 MILLION IN ASSET SIZE.

24 I OPENED THE FIRST BRANCH THAT THIS BANK HAD. AND
25 THERE -- FROM THERE I BECAME -- WE OPENED ANOTHER BRANCH,

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0516

APPENDIX 526

1 AND I BECAME BRANCH ADMINISTRATOR, LOOKING AFTER ALL THE
2 OPERATION SIDES OF THE BANK.

3 THEN FORTUNATELY, I WENT UP THROUGH THE RANKS AND WENT
4 TO THE HOME OFFICE, AND THERE I ENGAGED IN ALL BANK
5 ACTIVITIES, ALL THE WAY THROUGH -- YOU NAME IT. IN A SMALL
6 BANK AS YOU'RE GROWING, YOU DO A LITTLE BIT OF EVERY JOB
7 THAT THE BANK HAS. SO YOU GET A LITTLE BACKGROUND IN EVERY
8 JOB IN THE SITUATION.

9 THEN AS I WENT UP THROUGH THE RANKS, I BECAME THE
10 EXECUTIVE VICE PRESIDENT OF THE BANK, IN CHARGE OF
11 OPERATIONS. ANYTHING THAT HAD TO DO WITH OPERATION,
12 LENDING, SECURITIES -- EVERYTHING THAT THE BANK DOES IN THE
13 BANKING BUSINESS, I WAS IN CHARGE OF THAT SIDE.

14 THEN IN 1992 I WAS ELECTED PRESIDENT OF THE LEXINGTON
15 STATE BANK. AND THEN IN 1994 WE MERGED WITH BB&T OR BRANCH
16 BANK AND TRUST.

17 Q NOW, DURING THOSE BANKS THAT YOU DESCRIBED TO US IN
18 THE '50'S, '60'S, '70'S, RIGHT UP TO THE '90'S, WERE ALL
19 THOSE BANKS RIGHT HERE IN SOUTH CAROLINA?

20 A SIR, I DIDN'T ---

21 Q WERE ALL THOSE BANKS RIGHT HERE IN SOUTH CAROLINA THAT
22 YOU WERE WORKING FOR?

23 A YES, SIR.

24 Q NOW, WHEN YOU RETIRED, DID YOU RETIRE FROM THE ACTIVE
25 BANKING GOING INTO WORK EVERY DAY IN 1994?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0517

APPENDIX 527

- 1 A YES, SIR, I DID.
- 2 Q DID YOU HAVE ANY CONNECTION WITH THE BANK AFTER THAT
- 3 TIME?
- 4 A YES, SIR, FROM 1994 UNTIL LAST YEAR I SERVED ON THE
- 5 BOARD OF DIRECTORS OF BB&T OF SOUTH CAROLINA. AND AM PROUD
- 6 TO SAY DURING THAT TIME I NEVER MISSED ONE BOARD MEETING.
- 7 Q SO YOU SAT ON THE STATE BOARD FOR BB&T?
- 8 A YES, SIR, I DID.
- 9 Q SERVE ON ANY COMMITTEES ON THAT BOARD?
- 10 A YES, I SERVED ON SEVERAL COMMITTEES. THE BANK HAS --
- 11 THE BOARD OF DIRECTORS HAS AN AUDIT COMMITTEE THAT LOOKS AT
- 12 THE INTERNAL AFFAIRS OF THE BANK. THEY ALSO HAVE A TRUST
- 13 COMMITTEE. I SERVED -- THEY LIKE TO ALTERNATE. THEY HAVE
- 14 OTHER COMMITTEES, BUT THOSE ARE MY EXPERTISE. SO THEY
- 15 ALTERNATED ME BACK BETWEEN THE AUDIT COMMITTEE AND THE
- 16 TRUST COMMITTEE. AND I SERVED AS CHAIRMAN OF BOTH OF THOSE
- 17 COMMITTEES DURING MY TENURE AS A DIRECTOR.
- 18 Q AND ARE YOU STILL A DIRECTOR OF BB&T?
- 19 A NO, SIR. WHEN YOU GET THE RIPE OLD AGE OF 70, YOU'RE
- 20 NO LONGER ELIGIBLE TO BE ONE OF THEIR DIRECTORS.
- 21 Q AND YOU'RE STILL 70 TODAY, SO THAT MUST HAVE BEEN
- 22 RIGHT RECENTLY?
- 23 A WELL, IT WAS LAST YEAR.
- 24 Q ALL RIGHT, SIR.
- 25 A I'LL BE 71 IN 12 MORE DAYS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0518

APPENDIX 528

1 Q MR. HUBBS, ARE YOU FAMILIAR WITH BANK PROCEDURES AND
2 POLICIES DEALING WITH OPENING ACCOUNTS, SETTING UP VARIOUS
3 ACCOUNTS, AND THE LIKE?

4 A YES, SIR, I AM.

5 Q DESCRIBE A LITTLE BIT OF YOUR EXPERIENCE IN DEALING
6 WITH THE BANK PROCEDURES AND POLICIES, ESPECIALLY OPENING
7 ACCOUNTS LIKE CONSERVATORSHIP ACCOUNTS, BUSINESS ACCOUNTS,
8 PERSONAL ACCOUNTS, AND SO FORTH?

9 A WELL, THERE AGAIN, IF YOU GO BACK TO WHEN I FIRST
10 STARTED THE BANK, THE FIRST FOURTEEN OF MY CAREER YEARS, I
11 OPENED ACCOUNTS. I WAS THERE. I WAS INVOLVED IN IT ON A
12 DAY-TO-DAY BASIS.

13 NOW, TO OPEN ACCOUNTS, IT ALL DEPENDS ON WHAT TYPE OF
14 ACCOUNT YOU HAD. IF YOU HAVE A BUSINESS ACCOUNT, YOU'VE
15 GOT TO HAVE A CERTAIN TYPE OF DOCUMENTS. IF YOU HAVE A
16 CHURCH ACCOUNT, YOU HAVE TO HAVE A CHURCH. IF YOU HAVE A
17 SOLE PROPRIETORSHIP, YOU HAVE TO HAVE A CERTAIN TYPE OF
18 ACCOUNT.

19 IF YOU HAVE A CONSERVATORSHIP ACCOUNT, AS YOU ALL HAVE
20 HEARD, YOU HAVE TO HAVE A CERTAIN TYPE OF DOCUMENTATION FOR
21 THAT. SO -- AND -- AND, REALLY, ONCE I MOVED THROUGH THE
22 RANKS, THEN I WAS INVOLVED IN WRITING DOCUMENTATION, IN
23 REVIEWING POLICY AND PROCEDURE, AND ALL THE OTHER THINGS
24 THAT PERTAIN TO THE OPERATIONAL SIDE OF THE BANK.

25 MR. JENKINSON: YOUR HONOR, WE WOULD OFFER MR. ROBERT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0519

APPENDIX 529

1 M. HUBBS AS AN EXPERT IN BANKING AND BANKING OPERATIONS AND
2 PROCEDURES.

3 MR. DAVIS: NO OBJECTION, YOUR HONOR.

4 MR. WILSON: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, HE IS AN
6 EXPERT WITNESS. AN EXPERT WITNESS CAN OFFER OPINIONS IN
7 AREAS OF THEIR EXPERTISE, PROVIDING IT OTHERWISE COMPLIES
8 WITH THE RULES OF EVIDENCE.

9 YOU MAY PROCEED.

10 Q MR. HUBBS, BY WHOM WERE YOU ASKED TO BE AN EXPERT
11 WITNESS IN THIS CASE?

12 A I WAS ASKED BY THE -- ACTUALLY, IT WAS JENNIFER
13 KELLAHAN WHO FIRST CONTACTED ME. BUT IT WAS THE FIRM OF
14 JENKINSON AND KELLAHAN.

15 Q JENKINSON, JAROD, AND KELLAHAN?

16 A I LEFT JAROD OUT. SORRY.

17 Q WHEN WAS THAT?

18 A THAT WAS IN I BELIEVE JUNE OF '04.

19 Q NOW, WHAT DID YOU -- HOW DID YOU BECOME ENGAGED?
20 EXPLAIN THAT TO THE JURY, WHAT YOU ASKED FOR AND WHAT YOU
21 DID?

22 A OKAY. MS. KELLAHAN CALLED ME AND SAID WE'D LIKE FOR
23 YOU TO SERVE AS AN EXPERT WITNESS.

24 AND I SAID, WELL, I DON'T DO THIS ON A REGULAR BASIS.
25 BUT I WILL CONSIDER IT PROVIDED THAT YOU SEND ME CERTAIN

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0520

APPENDIX 530

1 DOCUMENTS THAT I CAN LOOK AT. AND THEY PROVIDED ME WITH
2 ALL THOSE DOCUMENTS THAT I HAD ASKED FOR. AND THEN FROM
3 THAT I MADE A DECISION THAT IT FIT MY BACKGROUND, MY
4 OPERATIONAL BACKGROUND, THAT I COULD RENDER OPINIONS BASED
5 ON MY BACKGROUND AS TO WHAT IT PERTAINED IN THIS CASE.

6 Q HAVE YOU BEEN AN EXPERT, PROVIDING SERVICES TO OTHER
7 LAWYERS IN OTHER CASES?

8 A I'VE BEEN AN EXPERT, BUT I HAD NEVER BEEN AT TRIAL.

9 Q YOU'VE NEVER ACTUALLY BEEN IN A TRIAL LIKE YOU ARE
10 TODAY?

11 A NOT LIKE WE HAVE RIGHT HERE TODAY.

12 Q TESTIFIED IN DEPOSITIONS?

13 A OH, YES, MANY TIMES.

14 Q NOW, SO THE JURY WILL UNDERSTAND ABOUT AN EXPERT
15 WITNESS, ARE YOU PAID FOR WHAT YOU DO IN BEING HERE TODAY
16 AND FOR YOUR RESEARCH AND FOR YOUR DEPOSITION TESTIMONY?

17 A YES, SIR, I AM PAID.

18 Q HOW MUCH ARE YOU BEING PAID?

19 A I'M PAID \$200 AN HOUR.

20 Q NOW, HAVE YOU BEEN PAID ANY AMOUNT SO FAR IN THIS
21 CASE?

22 A YES, SIR, I'VE BEEN PAID \$750 BY YOUR FIRM AND \$700 BY
23 BANK OF AMERICA'S ATTORNEYS.

24 Q THAT WAS FOR YOUR DEPOSITION?

25 A THAT WAS FOR MY DEPOSITION; THAT IS CORRECT.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0521

APPENDIX 531

- 1 Q THAT'S USUAL AND CUSTOMARY FOR EXPERTS TO BE PAID?
- 2 A YES, SIR, IT IS.
- 3 Q WE HAVEN'T GOTTEN -- YOU'RE NOT THROUGH WITH WHAT YOU
- 4 HAVE BEEN WORKING ON. HOW MANY HOURS TO NOW HAVE YOU BEEN
- 5 ENGAGED TO WORK ON THIS CASE TOTAL?
- 6 A UP TO THIS POINT ABOUT 25 HOURS.
- 7 Q AND SO YOU WILL BE SENDING A BILL FOR ABOUT 5,000 LESS
- 8 THE TWO CHECKS YOU'VE ALREADY GOTTEN?
- 9 A THAT IS CORRECT.
- 10 Q ALL RIGHT. PLUS ANY EXPENSES YOU'VE HAD IN TRAVEL?
- 11 A THAT IS CORRECT.
- 12 Q NOW, AFTER REVIEWING THE FIRST MATERIAL THAT YOU WERE
- 13 PROVIDED BY MS. KELLAHAN IN 2004, YOUR DEPOSITION WAS TAKEN
- 14 BY THE ATTORNEYS FOR NELSON MULLINS?
- 15 A YES, SIR, THEY WERE ON DECEMBER THE 28TH OF THAT YEAR.
- 16 Q I DON'T BELIEVE THESE GENTLEMEN WHO ARE HERE TODAY --
- 17 THERE WERE OTHER ATTORNEYS FROM THAT FIRM INVOLVED IN THAT
- 18 CASE AS WELL?
- 19 A YES, THERE WERE TWO OTHER ATTORNEYS, BUT NOT THE
- 20 PRESENT ATTORNEYS.
- 21 Q NOW, WHAT DAY DID THEY TAKE YOUR DEPOSITION?
- 22 A DECEMBER THE 28TH, '04.
- 23 Q PRIOR TO THE DECEMBER 28, '04 DEPOSITION, WHAT
- 24 MATERIAL HAD YOU REVIEWED?
- 25 A WELL, I HAD REVIEWED THE SEVEN CHECKS THAT WE'VE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0522

APPENDIX 532

1 DISCUSSED HERE TODAY. I REVIEWED THE COPY OF THE PROBATE
2 ORDER, THE ORDER OF FIDUCIARY LETTERS, AND THE CERTIFICATE
3 OF APPOINTMENT FOR KAREN AND TRAVIS POWELL, A COPY OF THE
4 BANK DOCUMENTS FROM BANK OF AMERICA. I ASKED THEM TO
5 PROVIDE ME INFORMATION CONCERNING INDIVIDUALS OR BANKS
6 DEALING WITH CONSERVATORY ACCOUNTS, AND THAT BASICALLY WAS
7 THE INFORMATION I GOT.

8 Q YOU ARE READING FROM A PAPER IN FRONT OF YOU. IS THAT
9 A REPORT THAT YOU PREPARED FOR THE ATTORNEYS IN THIS CASE
10 BACK IN 2004?

11 A YES, SIR, THIS IS THE PAPER THAT I USED -- THEY ASKED
12 ME TO BRING AT THE DEPOSITION THAT I GAVE TO THEM.

13 Q AND THAT WAS ALSO PROVIDED TO THE ATTORNEYS FOR THE
14 BANK OF AMERICA?

15 A YES, SIR, THEY HAVE THIS.

16 Q ALL RIGHT. NOW, AFTER THE 2004 DEPOSITION UP UNTIL
17 TODAY, HAVE YOU GIVEN ANY OTHER DEPOSITIONS IN THIS CASE?

18 A NO, SIR, I HAVE NOT.

19 Q HAVE YOU HAD AN OPPORTUNITY TO LOOK AT ADDITIONAL
20 INFORMATION SINCE 2004 IN PREPARATION FOR YOUR TESTIMONY
21 TODAY?

22 A YES, SIR, I HAVE.

23 Q WHAT WAS THAT?

24 A I WAS FURNISHED WITH THE DEPOSITION OF MS. YOURKO. I
25 WAS FURNISHED WITH THE DEPOSITION OF MS. LAWRENCE, MS.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0523

APPENDIX 533

1 DENNING, AND MS. REEVES -- THEIR DEPOSITIONS. AND OTHER
2 INFORMATION CONCERNING THIS WHICH I HAVE FURNISHED TO BANK
3 OF AMERICA AND THEIR ATTORNEYS.

4 Q ARE THESE MATERIALS YOU JUST DESCRIBED TYPICALLY THE
5 TYPE MATERIALS RELIED UPON BY EXPERTS IN THE FIELD OF
6 BANKING TO FORM EXPERT OPINION?

7 A YES, SIR. YOU MUST HAVE THESE DOCUMENTS TO FORM
8 OPINION.

9 Q NOW, MR. HUBBS, IN THE COURSE OF YOUR TESTIMONY, I MAY
10 BE ASKING YOU SOME QUESTIONS CALLING FOR YOU TO GIVE EXPERT
11 OPINIONS. DO YOU UNDERSTAND THAT IN EVERY INSTANCE YOUR
12 OPINION MUST BE BASED ON THE MATERIALS YOU HAVE READ AND
13 REVIEWED, THE INFORMATION WHICH HAS BEEN SUPPLIED TO YOU,
14 AND REASONABLY RELIED UPON EXPERTS AS WELL AS YOUR PERSONAL
15 EXPERIENCE IN FORMING THESE OPINIONS?

16 A YES, SIR, I UNDERSTAND.

17 Q NOW, DO YOU UNDERSTAND THAT YOUR OPINIONS MUST BE
18 LIKEWISE BASED ON YOUR EXPERIENCE IN THE FIELD OF BANKING?

19 A YES, SIR.

20 Q AND YOU UNDERSTAND THAT YOUR OPINIONS MUST BE GIVEN TO
21 A REASONABLE DEGREE OF BANKING CERTAINTY?

22 A YES, SIR.

23 Q NOW, BASED UPON YOUR REVIEW OF THESE MATERIALS, HAVE
24 YOU ARRIVED AT SOME OPINIONS THAT YOU'RE GOING TO SHARE
25 WITH US TODAY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0524

APPENDIX 534

1 A I HAVE INDEED.

2 Q AS A BANKER, TELL US BRIEFLY WHY BANKS ARE IN BUSINESS
3 AND THE BANKS DO FOR PEOPLE?

4 A ONE OF THE THINGS WE HAVE TO REMEMBER, A BANK IS THERE
5 TO PROTECT THE DEPOSITOR'S MONEY, TO PROTECT THE PEOPLE'S
6 MONEY WHO PUT -- THAT ARE IN THE BANK. IF YOU LOOK AROUND
7 THE BANK, IT'S BEEN SAID YOU HAVE VAULTS, YOU HAVE TELLERS,
8 YOU HAVE OTHER PEOPLE THAT TRY TO PROTECT THE PEOPLE'S
9 MONEY. THEY -- AND THAT'S TO PROVIDE THAT SECURITY, THAT
10 COMFORT LEVEL.

11 BY DOING THAT, THOSE INDIVIDUALS -- ALL OF US -- PUT
12 MONEY IN THE BANK. AND THEN WHAT WE DO AS A BANKER IS LOAN
13 THAT MONEY OUT. WE INVEST IT IN SECURITIES AND LOANS AND
14 OTHER THINGS TO MAKE A PROFIT. SO ALL BUSINESSES -- IF
15 YOU'RE GOING TO BE IN BUSINESS, YOU HAVE TO MAKE A PROFIT.
16 SO BANKS MAKE A PROFIT.

17 BUT THE PRIMARY THING TO BEGIN WITH IS TO PROVIDE
18 PROTECTION FOR THAT CUSTOMER, SECURITY THAT THE CUSTOMER
19 NEEDS TO BE ASSURED THAT THEIR MONEY IS SAFE.

20 Q WHAT KIND OF PROTECTION?

21 A WELL, AS I MENTIONED BEFORE, THERE'S ALL KINDS OF
22 PROTECTION. THERE'S POLICIES AND PROCEDURES.

23 Q YOU'RE TALKING ABOUT -- REFERRING TO THIS BOX OF --
24 DOES EVERY BANK HAVE THIS KIND OF MATERIAL?

25 A EVERY BANK HAS A POLICY AND PROCEDURE MANUALS. NOW,

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0525

APPENDIX 535

1 THERE ARE POLICY AND PROCEDURE MANUALS FOR TELLERS -- WHICH
2 I'M SURE YOU HAVE THERE. THERE'S POLICY AND PROCEDURE
3 MANUALS FOR PLATFORM OFFICERS OR PLATFORM CUSTOMER SERVICES
4 REPRESENTATIVE. THERE'S A POLICY FOR EVERY AREA IN THE
5 BANK.

6 Q ARE THESE TYPE POLICIES AND PROCEDURES YOU DESCRIBE
7 FOR BANK OF AMERICA -- ARE THEY THE SAME KIND YOU HAD AT
8 THE LEXINGTON STATE BANK?

9 A YES, THE POLICIES AND PROCEDURES WORDING MAY BE JUST A
10 LITTLE BIT DIFFERENT HERE AND THERE. BUT THE BASIC
11 PRINCIPLES ARE THE SAME THERE -- LEXINGTON STATE BANK,
12 OTHER BANKS, IT'S A BANKING STANDARD THAT WE HAVE.

13 Q WHERE ALL DOES THAT BANKING STANDARD APPLY?

14 A IT APPLIES TO EVERY BANK.

15 Q EVERYWHERE IN AMERICA?

16 A EVERYWHERE IN AMERICA. THOSE BANKING STANDARDS ARE
17 PRETTY MUCH THE SAME. POLICIES MAY BE A LITTLE BIT
18 DIFFERENT. BUT IF YOU LOOK AT THOSE REQUIREMENTS THAT THEY
19 REQUIRE, THOSE SAME REQUIREMENTS ARE GOING TO BE IN EVERY
20 BANK.

21 Q WHAT ARE THOSE REQUIREMENTS -- WHAT ARE THEY IN PLACE
22 FOR?

23 A THERE AGAIN, IT GOES BACK FOR THAT PROTECTION OF THE
24 CUSTOMER. HE'S THE PRIMARY PERSON IN ANY BANK. YOU'VE GOT
25 TO PROTECT THAT INDIVIDUAL THAT COMES IN THE BANK; AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0526

APPENDIX 536

1 THAT'S PART OF THE PROTECTION PROCEDURES THAT A BANK HAS IN
2 PLACE. WE'VE MENTIONED VAULTS AND TIMERS AND ALL SORTS OF
3 PROTECTION. TELLERS' TRAINING -- ALL THAT IS PART ON THAT
4 STANDARD THAT A BANK HAS TO HAVE IN ORDER TO PROVIDE THE
5 SERVICE OR PROTECTION TO THAT INDIVIDUAL.

6 Q NOW, PROTECTION FROM WHO?

7 A REALLY, PROTECTION FROM INDIVIDUALS WHO ARE OUT TO
8 STEAL OR IF THEY'RE GIVEN AN OPPORTUNITY, THEY MIGHT NOT
9 STEAL, BUT IF THEY'RE GIVEN AN OPPORTUNITY, IT CHANGES
10 THEIR CHARACTER AND THEY WILL STEAL.

11 Q AND THESE POLICIES PROTECT YOUR CUSTOMERS?

12 A YES, SIR, THAT'S WHAT THEY'RE FOR.

13 Q DO BANKS FORESEE AND EXPECT PEOPLE TO TRY TO TAKE
14 OTHER PEOPLE'S MONEY?

15 A EXACTLY.

16 Q NOW, I WANT TO GO FORWARD. YOU'VE HAD AN OPPORTUNITY
17 TO REVIEW WHAT OCCURRED WITH THE BANK OF AMERICA ON PAWLEYS
18 ISLAND WITH RESPECT TO A TRANSACTION ON APRIL 26, 2001 WHEN
19 KAREN POWELL UNRUE TOOK SEVEN CHECKS TO THE BANK TO OPEN A
20 CERTIFICATE OF DEPOSIT WITH LEE ANN YOURKO?

21 A YES, SIR, I HAD REVIEWED THOSE CHECKS.

22 Q I'M GOING TO HAND YOU THOSE CHECKS, EXHIBIT 5 THROUGH
23 11. YOU'VE SEEN THOSE CHECKS ON A NUMBER OF OCCASIONS,
24 HAVE YOU NOT?

25 A YES, SIR, I HAVE.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0527

APPENDIX 537

- 1 Q NOW, LET'S JUST LOOK AT CHECK NUMBER -- EXHIBIT NO. 11
2 FIRST.
3 A OKAY.
4 Q AND LOOK AT ALL THESE CHECKS A MINUTE. IS THERE ANY
5 WAY THAT YOU CAN LOOK AT THOSE CHECKS, NUMBERS ON THE BACK
6 OR FRONT, AND TELL WHAT ORDER THEY WERE HANDED TO MS.
7 YOURKO BY KAREN POWELL UNRUE?
8 A ABSOLUTELY NOT.
9 Q WHY?
10 A WELL, WHEN YOU GO IN, THE INDIVIDUAL GIVES THE CHECKS
11 AND THE CUSTOMER SERVICE OR THE BRANCH MANAGER LOOKS AT
12 THESE CHECKS AND PERHAPS CHANGES THEM AROUND OR MOVES THEM
13 AROUND. AND THEN SHE IS GOING TO HAVE A DIFFERENT WAY OF
14 PUTTING DOWN, MIGHT LOOK AT ONE AND TURN IT OVER, LOOK AT
15 ANOTHER. AND I MIGHT GO BACK -- WELL, LOOK AT THAT. YOU
16 KNOW, IT'S JUST THERE'S NO WAY THAT THEY'RE GOING TO BE IN
17 SEQUENCE OF ANY KIND.
18 Q ON THE BACK OF THEM THEY'RE SEQUENCED IN THE NUMBERS
19 -- THESE NUMBERS.. WHERE ARE THESE NUMBERS PLACED ON THE
20 CHECK?
21 A WHICH NUMBERS ARE YOU ---
22 Q ON THE BACK OF THE CHECK THERE'S A SERIES OF NUMBERS.
23 IT'S UPSIDE HERE.
24 A RIGHT.
25 Q BUT ON THIS CHECK IT'S 8493 UPSIDE DOWN WE'RE LOOKING

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0528

APPENDIX 538

1 AT IT.

2 A OKAY. LET ME KIND OF ---

3 Q 8194, I GUESS.

4 A LET ME KIND OF EXPLAIN WHAT HAPPENS WHEN A CHECK GOES

5 THROUGH A BANK, SO THAT THE JURY CAN PERHAPS UNDERSTAND.

6 THOSE CHECKS COME IN AND THEY'RE -- OF COURSE, WE TALKED

7 ABOUT REVIEWING THE FRONT OF THE CHECK. WE TALKED ABOUT

8 ENDORSEMENT. BUT THEN THOSE CHECKS ARE SORTED AROUND OR

9 LOOKED AROUND. AND THEN THOSE CHECKS ARE GIVEN TO THE

10 TELLER. AND THE TELLER KIND OF LOOKS AROUND AND SWITCH

11 THOSE AND SEES ABOUT THE ENDORSEMENTS. THEN THEY GO TO

12 ANOTHER SECTION OF THE BANK, THE PROOF DEPARTMENT. AND THE

13 PROOF DEPARTMENT HAS TO ENCODE THE AMOUNT OF THAT CHECK

14 DOWN AT THE BOTTOM RIGHT-HAND CORNER. IF YOU LOOK DOWN AT

15 THE BOTTOM RIGHT-HAND CORNER, YOU SEE THAT NUMBER DOWN

16 THERE ON EXHIBIT, \$114,866.71.

17 Q CORRECT.

18 A ALL RIGHT. THAT NUMBER IS ENCODED BY THE BANK. THAT

19 NUMBER IS THE SAME NUMBER THAT YOU HAVE IN THE AMOUNT CODE.

20 DO YOU SEE THAT NUMBER?

21 Q YES, SIR.

22 A OKAY. THAT'S THE NUMBER AND THAT HAS TO BE ENCODED BY

23 THE BANK. THAT HAS TO GO THROUGH THE BANKING SYSTEM. AND

24 SO IT JUST DOES NOT STAND TO REASON THAT WITH THAT MANY

25 CHECKS AND THE WAY THEY'RE HANDLED THAT YOU CAN HAVE A

CODY R [REDACTED] VS. BANK OF AMERICA

ROA 0529

APPENDIX 539

- 1 SEQUENCE. AS IT GOES THROUGH, IT IS THEN PHOTOGRAPHED.
2 AND THESE ARE JUST PHOTOGRAPH SEQUENCE. THERE'S NO WAY
3 ANYBODY CAN GUARANTEE THAT CHECK NUMBER SO AND SO WENT
4 FIRST OR SECOND OR LAST. THOSE ARE THE PHOTOGRAPH AS IT
5 GOES THROUGH THE PROOF MACHINE.
- 6 Q THE WAY THESE CHECKS WERE LOOKED AT, WHETHER THEY BE
7 FIRST, SECOND, THIRD, OR FOURTH, DOES THAT HAVE ANYTHING TO
8 DO WITH YOUR OPINION?
- 9 A IT REALLY DOESN'T HAVE ANYTHING TO DO WITH IT.
- 10 Q NOW, THESE CHECKS WERE PRESENTED FOR DEPOSIT. AND
11 HAVE YOU HAD A CHANCE TO EXAMINE THE POLICIES AND
12 PROCEDURES FOR THE BANK OF AMERICA WITH RESPECT TO HOW THE
13 BANK EMPLOYEES SHOULD HANDLE THESE CHECKS IN OPENING A NEW
14 ACCOUNT?
- 15 A YES, SIR, I HAVE REVIEWED THAT.
- 16 Q IS IT ANYTHING UNUSUAL ABOUT THE WAY THEY DO BUSINESS
17 WITH OPENING AN ACCOUNT WITH THESE CHECKS?
- 18 A I'M AMAZED AT THE WAY THEY OPENED THE ACCOUNT WITH
19 THESE CHECKS. IT'S JUST ---
- 20 Q I WILL COME BACK TO THAT AMAZEEMENT IN A MINUTE.
21 FIRST ---
- 22 A OH, OKAY.
- 23 Q --- CAN YOU TELL US BASED ON YOUR EXAMINATION OF THESE
24 POLICIES IF THEY WERE -- IF KAREN UNRUE WALKED IN AND
25 HANDED THEM TO MS. YOURKO, WHAT SHOULD HAVE HAPPENED?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0530

APPENDIX 540

1 THOSE CHECKS ARE JUST HANDED TO MS. YOURKO, WHAT SHOULD MS.
2 YOURKO HAVE DONE BASED UPON WHAT THE BANK OF AMERICA'S
3 POLICIES AND PROCEDURES ARE?

4 A OKAY. WITH THIS DOCUMENT -- AND AS YOU SEE UP THERE,
5 IT'S VERY PLAIN T. POWELL OR K. POWELL AS CO-CONSERVATORS.
6 THERE SHOULD BE NO DOUBT AS TO WHAT THE PERSON SHOULD BE
7 DOING.

8 FIRST OF ALL, YOU'VE GOT TO REMEMBER A CUSTOMER
9 SERVICE REPRESENTATIVE IS THE PERSON WHO'S TRAINED IN
10 OPENING ACCOUNTS. YOU'VE ALREADY HEARD THAT.

11 BUT, THERE AGAIN, THE FIRST THING SHE WOULD HAVE
12 LOOKED AT IS THAT CHECK AND SAY, WHERE IS T. POWELL? THIS
13 IS MADE PAYABLE TO A CO-CONSERVATOR. I NEED YOUR PROBATE
14 JUDGE PAPERS TO OPEN AN ACCOUNT LIKE THAT -- AS SIMPLE AS
15 THAT. IT'S JUST LIKE A BUSINESS ACCOUNT.

16 Q LOOKING AT THE TWO NAMES ON THAT EXHIBIT 11, WHAT
17 WOULD YOU ALSO HAVE ASKED?

18 A YOU ALSO HAVE TO SAY -- ASK THE QUESTION: WHERE IS T.
19 POWELL? WHO IS T. POWELL? IS HE HERE? WHO IS HE?

20 Q WHAT SHOULD MS. YOURKO HAVE DONE AT THAT PARTICULAR
21 POINT IN TIME IF MR. T. POWELL WAS NOT PRESENT?

22 A SHE WOULD HAVE TO SAY, NOW, I CAN DO ONE OF TWO
23 THINGS. I CAN HOLD THESE CHECKS HERE FOR YOU TO KEEP THEM
24 SAFE. YOU KNOW, THAT'S WHAT WE'RE HERE FOR. THEN IF YOU
25 WILL GO TO THE PROBATE JUDGE AND YOU GET THE PROBATE JUDGE

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0531

APPENDIX 541

1 ORDERS AND THEN BRING THEM BACK WITH T. POWELL, THEN WE CAN
2 OPEN AN ACCOUNT FOR YOUR BANK -- WITH THIS BANK.
3 Q IS THAT PROCEDURE AND POLICY YOU JUST DESCRIBED
4 SOMETHING THAT'S UNIVERSAL AND DONE IN EVERY SINGLE BANK IN
5 THIS KIND OF SITUATION?
6 A ABSOLUTELY. A BANK CUSTOMER SERVICE REPRESENTATIVE
7 HAS TO KNOW WHAT THIS IS AND HOW TO OPEN THAT ACCOUNT.
8 Q WELL, LET'S SUPPOSE NEXT WE LOOK AT THESE -- ALL SEVEN
9 CHECKS, AND I CALL YOUR ATTENTION, MS. UNRUE HAS HANDED
10 YOU PARTICULARLY LOOK AT EXHIBIT NO. 6, 7, 8, 9 AND COMPARE
11 THAT WITH 11, THOSE FOUR CHECKS. IS THERE ANY DIFFERENCE
12 THERE?
13 A LET'S START WITH ---
14 Q AS TO THE PAGE YOU'VE GOT.
15 A LET'S START WITH 5. DO YOU HAVE 5?
16 Q FIRST I WANT TO GO TO 6 -- TO 6, 7, 8, AND 9.
17 A OKAY. ALL RIGHT. 6. WITH 6 WE HAVE KAREN POWELL AS
18 CONSERVATOR FOR CODY [REDACTED] P [REDACTED], A MINOR.
19 Q HOW ABOUT 7?
20 A 7 IS KAREN POWELL AS CONSERVATOR FOR CODY [REDACTED]
21 P [REDACTED].
22 Q ALL RIGHT. HOW ABOUT 8?
23 A KAREN AND TRAVIS POWELL CO-CN FOR MINOR CODY P [REDACTED].
24 Q NOW, WHEN YOU SEE DIFFERENT PAYEES ON THE CHECK AS
25 CONSERVATOR, WHAT DOES THAT TELL YOU AS A PERSONAL BANKER?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0532

APPENDIX 542

1 A AS A PERSONAL BANKER, THIS SAYS THAT I HAVE TO HAVE
2 CERTAIN DOCUMENTS TO NEGOTIATE THESE CHECKS.

3 Q SOME OF THESE CHECKS HAVE TWO PEOPLE ON THEM, SOME
4 PEOPLE (SIC) HAVE ONE?

5 A THAT'S TRUE.

6 Q HOW DO YOU DETERMINE WHICH CHECK YOU CAN TAKE AND
7 WHICH YOU CAN'T?

8 A UNFORTUNATELY, YOU CAN'T DO IT. YOU -- YOU -- YOU
9 CAN'T DECIDE AS A BANKER, WELL, I'M GOING TO LET THIS
10 PERSON HAVE THAT ACCOUNT OR I'M GOING TO LET THE OTHER
11 PERSON THE ACCOUNT. YOU HAVE TO ASK FOR THE PROBATE JUDGE
12 PAPERS SO THAT YOU CAN MAKE A DETERMINATION AS TO WHO IS
13 THE PROPER ENDORSER OF THIS PAPER -- OF THIS NOTE, CHECK.

14 Q SUPPOSE WE GO GET THE PROBATE COURT RECORDS AND IT
15 SAYS TRAVIS POWELL AND KAREN POWELL. WHAT ARE YOU GOING TO
16 DO WITH THIS CHECK WITH ONLY ONE NAME ON IT?

17 A WE'RE GOING TO PROBABLY OPEN THE ACCOUNT WITH THE
18 OTHERS, BUT WE'RE GOING TO SEND THAT CHECK BACK TO EITHER
19 THE PROBATE COURT OR THE INSURANCE COMPANY AND GET THEM TO
20 REMAKE IT JUST AS THE -- AS THE FIDUCIARY PAPERS SAY.

21 Q OKAY. NOW, THAT'S HOW YOU FIX THE PROBLEM?

22 A THAT'S HOW YOU FIX THE PROBLEM.

23 Q IF THIS ACCOUNT WAS OPENED WITH THESE SEVEN CHECKS
24 THAT YOU HAVE TOTALING OVER \$252,000 IN KAREN POWELL'S NAME
25 ALONE, COULD YOU TELL US WHETHER OR NOT TO A REASONABLE

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0533

APPENDIX 543

1 DEGREE OF BANKING CERTAINTY THAT WOULD HAVE VIOLATED
2 NUMEROUS POLICIES AND PROCEDURES OF THE BANK OF AMERICA?
3 A ABSOLUTELY. THE POLICY PLAINLY STATES, BE SURE AND
4 GET THE ACCOUNT SET UP JUST LIKE IT IS ON THE FRONT OF THE
5 CHECK.
6 Q AND HOW ABOUT THE ENDORSEMENTS ON THE BACK, ON THE
7 BACK OF THESE CHECKS DO YOU SEE ANY PROPER ENDORSEMENTS BY
8 THE PROPER PARTY SIGNING THE BACK OF THE CHECK ON ANY OF
9 THEM?
10 A WELL, I REVIEWED THESE BEFORE. I JUST WANT TO MAKE
11 SURE BEFORE -- BEFORE I SAY AGAIN. THERE IS -- EVERY CHECK
12 IS ENDORSED WRONG.
13 Q IS THAT TO A REASONABLE DEGREE OF BANKING CERTAINTY?
14 A THAT IS ORIGINAL (SIC).
15 Q NOW, WHAT NEXT IS THE PERSONAL BANKER -- LET'S ASSUME
16 -- I WANT YOU TO LOOK AT A COUPLE OF THOSE CHECKS. TWO OUT
17 OF THE SEVEN CHECKS -- AND I PARTICULARLY CALL YOUR
18 ATTENTION TO CHECK EXHIBIT NO. 5.
19 A 5.
20 Q AND I CALL YOUR ATTENTION TO EXHIBIT NO. 10 -- 5 AND
21 10.
22 A OKAY.
23 Q AND I CALL YOUR ATTENTION PARTICULARLY TO THE PAYEE
24 LINE, AND IT'S GOT KAREN AND TRAVIS POWELL CO DASH CN FOR
25 MINOR CODY P [REDACTED].

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0534

APPENDIX 544

- 1 A I SEE IT, YES.
- 2 Q YES, SIR. AMONG THOSE CHECKS -- THOSE TWO CHECKS,
3 WHAT AS A PERSONAL BANKER DOES THAT TELL YOU?
- 4 A WELL, I'M SURE A LOT OF PERSONAL BANKERS MIGHT NOT
5 KNOW WHAT CO-CN STANDS FOR. BUT IF I DIDN'T KNOW, I'D GO
6 TO MY MANUAL. IF I DIDN'T FIND IT THERE, I'D GET ON THE
7 HOT LINE AND I'D SAY, WHAT DOES CO-CN MEAN? AND I WOULD
8 FIND OUT IF I -- IF THERE WAS A PAYEE LINE AND I DIDN'T
9 UNDERSTAND WHAT IT WAS, I WOULD FIND OUT WHAT THAT MEANT.
- 10 Q YOU'VE GOT CHECKS FOR 99,000 AND 33,000, WOULD IT BE
11 WORTH A CALL?
- 12 A THAT'S A LOT OF MONEY TO ME.
- 13 Q NOW, SO THE BANK HAS POLICIES AND PROCEDURES WITH ITS
14 HOT LINE?
- 15 A YES, SIR, IT DOES.
- 16 Q NOW, IF THEY DIDN'T UNDERSTAND, IS THERE ANY DOUBT IN
17 LOOKING AT THESE TWO CHECKS, THAT THESE ARE MINOR ACCOUNT
18 CHECKS?
- 19 A NO, SIR, THEY'RE NOT. ALL THOSE CHECKS HAVE THE WORD
20 MINOR IN THE PAYEE TITLE. SO YOU KNOW YOU'RE DEALING WITH
21 AN INDIVIDUAL UNDER 18.
- 22 Q IN LOOKING AT THESE SEVEN CHECKS, THIS \$252,000, WHOSE
23 MONEY IS IT?
- 24 A IT'S CODY P [REDACTED] MONEY, THE MINOR.
- 25 Q WOULD YOU BASED ON THE BANK OF AMERICA'S REGULATIONS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0535

APPENDIX 545

1 ASK FOR A PICTURE I.D. OR SOME IDENTIFICATION OF THESE
2 PARTIES IN FRONT OF YOU CLAIMING TO BE PERSONAL
3 REPRESENTATIVES?

4 A ABSOLUTELY. I HAVE REVIEWED THEIR POLICIES AND
5 PROCEDURES, THERE ARE PROCEDURES WHICH GIVE YOU WHAT TYPE
6 OF IDENTIFICATION TO USE, TO GET IDENTIFICATION, TO KNOW
7 YOUR CUSTOMER. IT ALSO SAYS THAT IF WE DON'T GET PROPER
8 IDENTIFICATION, THE BANK MAY LOSE.

9 Q SHOULD -- CAN YOU TELL US WHETHER OR NOT TO A
10 REASONABLE DEGREE OF BANKING CERTAINTY SHOULD MS. YOURKO
11 HAVE OPENED UP THESE ACCOUNTS THE WAY SHE DID ON THE 26TH
12 OF APRIL 2001?

13 A ABSOLUTELY NOT.

14 Q NOW, LET'S GO FURTHER DOWN THIS TRAIL WITH MS. YOURKO
15 AFTER SHE'S DONE THESE THINGS. AND I WOULD LIKE TO CALL
16 YOUR ATTENTION TO A COUPLE OTHER THINGS. SHE WAS
17 PURCHASING A CERTIFICATE OF DEPOSIT?

18 A THAT IS CORRECT.

19 Q IN THE BANK OF AMERICA'S POLICIES AND PROCEDURES THERE
20 ARE ALLOWABLE PRODUCTS THAT CAN BE PURCHASED FOR A MINOR?

21 A THAT IS CORRECT.

22 Q CAN YOU TELL US WHETHER OR NOT A CERTIFICATE OF
23 DEPOSIT IS AN ALLOWABLE PRODUCT CAN BE PURCHASED?

24 A ACCORDING TO THE POLICIES AND PROCEDURES OF BANK OF
25 AMERICA, THAT IS ONE OF THE PRODUCTS YOU DO NOT USE WITH A

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0536

APPENDIX 546

1 CONSERVATOR ACCOUNT.

2 Q IS THAT UNUSUAL?

3 A DIFFERENT BANKS HAVE DIFFERENT RULES ON THAT. IT ALL
4 DEPENDS ON THE BANK. BUT WE'RE TALKING ABOUT BANK OF
5 AMERICA PROCEDURES. THEIR PROCEDURES SAY DO NOT USE --
6 THESE -- THESE ARE ACCEPTED ACCOUNTS YOU CAN USE FOR A
7 MINOR WITH A CUSTODIAN ACCOUNT.

8 Q IN THE BANK OF AMERICA?

9 A IN THE BANK OF AMERICA.

10 Q BUT IT MAY BE DIFFERENT WITH ANOTHER BANK?

11 A THAT IS CORRECT.

12 Q LIKE THE ONE ACROSS THE STREET HERE IN KINGSTREE?

13 A EXACTLY.

14 Q OR IT MAY BE DIFFERENT AND THE PROBATE JUDGE COULD
15 ALSO CHANGE THAT IF SHE WANTED TO?

16 A IF SHE WANTED.

17 Q NOW, THESE PROBATE DOCUMENTS THAT YOU ASKED FOR, WHAT
18 DO THEY TELL A BANKER WHO'S OPENING AN ACCOUNT?

19 A WELL, THE PAPERS TELL THE BANKER WHO IS AUTHORIZED TO
20 SERVE AND ARE THERE RESTRICTIONS ON THAT ACCOUNT THAT THE
21 PROBATE JUDGE WANTS.

22 Q IS THE BANKER -- IF THAT PERSON COMES INTO THE BANK,
23 SAY, WANTING TO DEFRAUD SOMEBODY AND HIDES THOSE PROBATE
24 COURT RECORDS IN THEIR POCKET OR IN THEIR POCKETBOOK AND
25 THEY DON'T HAND THEM TO THE BANKER, WHAT'S THE BANKER

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0537

APPENDIX 547

- 1 SUPPOSED TO DO?
- 2 A THE BANKER IS SUPPOSED TO LOOK AT THESE SEVEN CHECKS,
3 HOW THESE CHECKS ARE MADE OUT. KAREN POWELL AS
4 CONSERVATOR. HERE'S ONE KAREN POWELL. HERE'S ANOTHER --
5 SHE -- SHE HAS TO LOOK AT THESE CHECKS. T. POWELL AND K.
6 POWELL AS CO-CONSERVATORS. SHE HAS TO LOOK AT THESE
7 CHECKS.
- 8 AND, THERE AGAIN, SHE'S AN EMPLOYEE WHO'S TRAINED FOR
9 THIS. I IMAGINE THIS JURY AFTER THREE DAYS CAN PROBABLY
10 TELL YOU ALL ABOUT A CO-CONSERVATOR ACCOUNT.
- 11 Q NOW, IS IT -- CAN YOU TELL US WHETHER OR NOT TO A
12 REASONABLE DEGREE OF BANKING CERTAINTY IT IS A DUTY OF THAT
13 BANK EMPLOYEE TO ASK FOR THOSE RECORDS IF THEY'RE STUCK IN
14 A POCKETBOOK SOMEWHERE?
- 15 A ABSOLUTELY. SHE -- SHE CANNOT OPEN AN ACCOUNT WITHOUT
16 THE PROBATE ORDERS.
- 17 Q WHERE -- NOT A SIGNATURE CARD, BUT A DOCUMENT WHERE
18 YOU HAVE TO HAVE A CUSTOMER SIGN TO OPEN AN ACCOUNT ---
- 19 A RIGHT.
- 20 Q --- SOME TIMES A SIGNATURE CARD, SOME TIMES A
21 CERTIFICATE OF DEPOSIT, A TYPED SIGNATURE CARD TO SIGN OFF
22 ON?
- 23 A THAT IS CORRECT.
- 24 Q WHOSE NAME APPEARS ON THAT SIGNATURE CARD DOCUMENT?
- 25 A I DON'T HAVE -- HAVE ANY INFORMATION ABOUT THAT. I

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0538

APPENDIX 548

1 ASKED FOR IT, BUT IT WAS NOT FURNISHED TO ME.
2 Q BANK OF AMERICA CAN'T FIND IT?
3 A I DON'T -- THEY HAVEN'T BEEN ABLE TO FURNISH IT TO ME.
4 Q DO YOU FIND THAT SURPRISING?
5 A THAT'S VERY SURPRISING.
6 Q DOES THAT SIGNATURE CARD SUPPOSED TO HAVE THE CORRECT
7 ACCOUNT SET UP ON IT?
8 A ABSOLUTELY. AND WHY THEY DON'T HAVE IT, I DON'T KNOW.
9 BUT THERE, AGAIN, THAT'S JUST ANOTHER LEVEL OF PROBLEM WE
10 HAVE WITH THIS ACCOUNT.
11 Q NOW, APPARENTLY THESE DOCUMENTS WERE THEN TAKEN TO A
12 TELLER?
13 A THAT IS CORRECT.
14 Q WHAT IS THE TELLER'S JOB -- I THINK THE CHECKS WERE
15 TAKEN TO THE TELLER, THE DEPOSIT SLIP WAS TAKEN TO THE
16 TELLER?
17 A THAT IS CORRECT.
18 Q OKAY. NOW, THE DEPOSIT SLIP FOR THESE CHECKS IS
19 PLAINTIFFS' NO. 12. DO YOU SEE IT?
20 A I SEE IT, YES.
21 Q WHAT DOES THE TELLER DO WITH PLAINTIFFS' NO. 12 AND
22 THESE SEVEN CHECKS BASED ON WHAT THE BANK OF AMERICA'S
23 PROCEDURES AND POLICIES ARE CONCERNED?
24 A AS YOU CAN SEE, THIS ACCOUNT WAS OPENED IN KAREN
25 POWELL'S NAME RATHER THAN CODY'S. IT'S -- AND -- AND THERE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0539

APPENDIX 549

- 1 AGAIN, IF YOU LOOK AT THIS, IT SAYS ---
- 2 Q WHAT IS IT, IT SAYS, CUSTOMER OR POLICY -- IT SAYS
- 3 KAREN UNRUE?
- 4 A RIGHT. AND WE TALK ABOUT -- ACTUALLY THE ACCOUNT
- 5 SHOULD BE HEADED UP JUST LIKE THESE CHECKS THAT WE TALKED
- 6 ABOUT. YOU SEE, THERE'S PLENTY OF ROOM ON THAT DEPOSIT
- 7 SLIP TO PUT THAT INFORMATION ON. AND ACCOUNT NUMBERS AND
- 8 ALL THAT -- THERE'S PLENTY OF INFORMATION. THAT WOULD HAVE
- 9 BEEN ANOTHER KEY SIGNAL THAT THIS IS A CONSERVATOR ACCOUNT.
- 10 Q WOULD THE TELLER HAVE LOOKED AT THE DEPOSIT SLIP AND
- 11 THE CHECKS WHEN SHE VERIFIES THEY'RE PRESENTED CORRECTLY?
- 12 A SHE WOULD LOOK AT -- AT THE DEPOSIT SLIP AND THEN
- 13 SUPPOSEDLY SHE WOULD LOOK AT THE PAYEE. THEIR INSTRUCTIONS
- 14 SAY, LOOK THROUGH, FAN, MAKE SURE THE ENDORSEMENTS ARE LIKE
- 15 -- ARE RIGHT. AND, THERE AGAIN, THE TELLER DIDN'T DO IT.
- 16 Q IS THE TELLER ANOTHER LINE OF PROTECTION FOR CODY
- 17 P [REDACTED] IN THAT BANK?
- 18 A ABSOLUTELY. THE FIRST LINE IS THE CUSTOMER SERVICE
- 19 REPRESENTATIVE, SECOND LINE IS THE TELLER.
- 20 Q IS THERE A THIRD LINE?
- 21 A YES, THE THIRD LINE IS THE BACK ROOM OPERATIONS AREA
- 22 THAT REVIEW ACCOUNTS AS THEY COME IN.
- 23 Q BASED ON YOUR INVESTIGATION AND REVIEW OF THESE
- 24 DOCUMENTS, DID THE BACK ROOM CHECK THIS ERROR -- CATCH THIS
- 25 ERROR?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0540

APPENDIX 550

1 A NO, THEY DID NOT. THEY DID NOT CATCH IT.

2 Q DO YOU FIND IT SURPRISING THAT ALL THREE LEVELS OF
3 PROTECTION FAILED?

4 A IT'S ALMOST SHOCKINGLY -- SHOCKING THAT ALL THIS COULD
5 HAPPEN ON THIS ACCOUNT THE WAY IT DID.

6 Q CAN YOU TELL US WHETHER OR NOT TO A REASONABLE DEGREE
7 OF BANKING CERTAINTY IN PUTTING \$252,447.51 OF CODY'S MONEY
8 IN KAREN'S NAME ALLOWED KAREN POWELL TO DO WHATEVER SHE
9 WANTED TO DO WITH THIS MONEY?

10 A IT WAS JUST THE SAME AS GIVING HER THE MONEY. SHE HAD
11 ACCESS. SHE COULD DO ANYTHING WITH IT AT THAT POINT.

12 Q IS IT IN HER NAME?

13 A YES.

14 Q CAN YOU TELL US WHETHER OR NOT KAREN POWELL'S TAX I.D.
15 NUMBER OR SOCIAL SECURITY NUMBER IS THERE?

16 A AGAIN, THAT'S ANOTHER PROBLEM WE HAVE. WHEN YOU OPEN
17 AN ACCOUNT LIKE THIS BANK OF AMERICA POLICIES AND
18 PROCEDURES SAY GET THAT MINOR'S TAX NUMBER, P.I.N., SOCIAL
19 SECURITY NUMBER, WHATEVER YOU WANT TO CALL IT. GET THAT
20 NUMBER.

21 AND THERE AGAIN, WHAT THEY USED WAS KAREN'S NUMBER.

22 WHEN YOU GO IN ON THAT SCREEN THAT WAS TALKED ABOUT
23 EARLIER, ONE OF THE FIRST THINGS YOU ASK FOR AS A C.S.R. OR
24 BRANCH MANAGER, COULD YOU GIVE ME YOUR SOCIAL SECURITY
25 NUMBER? SHE'S CHECKING ON KAREN POWELL OR KAREN UNRUE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0541

APPENDIX 551

1 GIVE ME YOUR SOCIAL SECURITY NUMBER.

2 THE REASON YOU GET IT IS TO GO IN AND FIND THE HISTORY

3 ON THEIR ACCOUNT. AND SO WHEN YOU GET THAT HISTORY, YOU'VE

4 GOT HER SOCIAL SECURITY NUMBER. THAT EMPLOYEE, THE C.S.R.,

5 SAID, OH, THAT'S YOUR SOCIAL SECURITY. WE NEED CODY'S

6 SOCIAL SECURITY NUMBER. THAT WAS JUST ANOTHER AREA THAT

7 THEY NEEDED TO GET.

8 Q LET'S GO FORWARD A WEEK.

9 A YES.

10 Q IT IS MAY 2.

11 (PAUSE.)

12 THE COURT: LET'S STAND FOR A WHILE.

13 MR. HUBBS: JUDGE, DO I GET TO STAND TOO?

14 THE COURT: YES, SIR.

15 (PAUSE.)

16 THE COURT: LET'S TAKE 5 MINUTES. PLEASE DO NOT

17 DISCUSS THE CASE.

18 (THE JURY RETIRES TO THE JURY ROOM AT 3:00 P.M.)

19 THE COURT: ALL RIGHT.

20 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

21 (A RECESS WAS TAKEN.)

22 THE COURT: ALL RIGHT.

23 MR. JENKINSON: YOUR HONOR, MR. HUBBS WILL BE OUR LAST

24 WITNESS SAVE AND EXCEPT DR. WOOD. WE HAVE DR. WOOD HERE.

25 WE COULD AFTER THE TESTIMONY OF MR. HUBBS DISPOSE OF THAT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0542

APPENDIX 552

1 ONE ISSUE OF PUNITIVE DAMAGES DEALING WITH DR. WOOD'S
2 TESTIMONY. I'M GOING TO TRY TO GET HIM UP THIS AFTERNOON
3 IF THAT'S GOING TO BE PERMISSIBLE. HE'S GOT TWO
4 DEPOSITIONS TOMORROW HE NEEDS TO BE INVOLVED IN. I TOLD
5 HIM I WOULD AT LEAST SEE IF WE COULD WORK THAT OUT.

6 THE COURT: ALL RIGHT.

7 MR. JENKINSON: TO GET HIM UP AND DOWN TODAY IF
8 POSSIBLE.

9 THE COURT: ALL RIGHT. IT'S UP TO YOU ALL.

10 MR. JENKINSON: I'LL DO MY BEST.

11 THE COURT: ALL RIGHT. MR. DAVIS?

12 MR. DAVIS: YOUR HONOR, BEFORE YOU BEGIN, IN REGARDS
13 TO DR. WOOD, ONE OF THE THINGS I KNOW THE COURT HAS NOT
14 MADE A DECISION YET AS TO WHETHER WE GO IN TO HIS EVIDENCE
15 ON PUNITIVES.

16 HERE'S THE PROBLEM WE HAVE WITH DR. WOOD. AND WE HAVE
17 TO OBJECT TO HIS TESTIMONY. WE RECEIVED A REPORT, AN
18 UPDATED REPORT JUST LAST THURSDAY FROM HIM. AND THE REPORT
19 IS DATED SOME TIME IN SEPTEMBER.

20 WHAT HE DOES IS HE PROVIDES FINANCIALS ON BANK OF
21 AMERICA AS OF LIKE THE END OF JUNE. WELL, A WHOLE LOT HAS
22 HAPPENED TO BANK OF AMERICA AND EVERY OTHER BANKING
23 INSTITUTION IN THIS COUNTRY OVER THE PAST FEW WEEKS. IT
24 DOES NOT REFLECT THE AMOUNT OF MONEY BANK OF AMERICA HAS
25 HAD TO SPEND TO -- SPEND FOR MERRILL LYNCH OR SPEND FOR

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ROA 0543

APPENDIX 553

1 COUNTRYWIDE, WHICH IS \$4 MILLION. IT DOESN'T REFLECT ANY
2 OF THAT. IT DOESN'T REFLECT THE STOCK LOSS THAT JUST
3 OCCURRED EITHER SOME TIME LAST WEEK TAKING IT FROM 28 TO
4 22, AND THE FACT THAT IT IS NOW TRYING TO RAISE CAPITAL OF
5 \$10 BILLION. IT DOESN'T RAISE ANY OF THAT.

6 AND THE PROBLEM -- THE PROBLEM WE HAVE IS IT WOULD BE
7 MISLEADING TO PUT THOSE TYPE OF FINANCIALS UP IN FRONT OF
8 THIS JURY RIGHT NOW WHEN WE DON'T ARGUE -- AND WE WOULD
9 STIPULATE THAT WE HAVE THE ABILITY TO PAY ANY TYPE OF
10 PUNITIVE DAMAGE AWARD.

11 IN ADDITION, THEY'VE PUT IN THIS REPORT -- WHICH LEADS
12 ME TO BELIEVE -- HAS LEAD ME TO BELIEVE OTHERWISE IT
13 WOULDN'T BE IN THE REPORT THAT THEY'VE PUT IN THERE WHAT
14 THE C.E.O. MAKES AND WHAT OTHER -- I THINK SENIOR LEVEL
15 EXECUTIVES MAY MAKE.

16 WHAT IN THE WORLD DOES THAT HAVE TO DO WITH THIS CASE?
17 BUT THAT'S WHAT APPARENTLY THEY INTEND ON PRESENTING THAT
18 BECAUSE THEY GAVE US THE REPORT. AND THEY JUST GAVE IT TO
19 US LAST THURSDAY. WE HAD NO TIME TO DO ANYTHING.

20 THE COURT: ALL RIGHT. MR. JENKINSON.

21 MR. JENKINSON: GAVE IT TO THEM TWO WEEKS AGO, YOUR
22 HONOR, MAYBE THREE WEEKS AGO. AS A MATTER OF FACT, WE GOT
23 IT ON LIKE A WEDNESDAY, AND I THINK WE SENT IT ON ---

24 MR. MCGEE: YES, YOUR HONOR, I THINK HIS REPORT IS
25 DATED SEPTEMBER 30, WE RECEIVED IT LAST THURSDAY. WE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0544

APPENDIX 554

1 RECEIVED A SUBPOENA FROM DR. WOOD LAST THURSDAY. WE MAY
2 HAVE GOT IT THROUGH EMAIL.

3 MR. JENKINSON: THEY GOT IT FROM US.

4 MR. MCGEE: RIGHT. WE GOT IT ---

5 MR. JENKINSON: THEY GOT IT FROM US NOT FROM DR. WOOD.

6 MR. MCGEE: IT'S BEEN LESS -- IT'S BEEN LESS THAN A
7 MONTH THAT WE RECEIVED THE REPORT.

8 MR. JENKINSON: THIS IS THE VERY MOST CURRENT
9 FINANCIALS PUBLISHED BY BANK OF AMERICA, IT'S ON THEIR
10 WEBSITE. THIS IS NOT WHAT -- ALL WE CAN DO IS RELY UPON
11 WHAT BANK OF AMERICA GENERATES. WHAT THEY DID YESTERDAY IN
12 THE STOCK MARKET OR WHAT THEY DO TOMORROW, YOU KNOW, THAT'S
13 JUST SPECULATIVE. WE DON'T KNOW WHAT EFFECT IT'S GOING TO
14 HAVE HAPPEN BY THE END OF YEAR. BUT WE KNOW THE FIRST SIX
15 MONTHS THROUGH THE 30TH OF JUNE; AND THAT'S FAIR GAME. IT
16 IS WHAT IT IS.

17 THE COURT: AND THE OBJECTION IS WHAT?

18 MR. DAVIS: YOUR HONOR, THEY'VE GOT TESTIMONY WE'RE A
19 BIG BANK. THEY'VE GOT TESTIMONY OUT THERE THAT WE'RE ONE
20 OF THE LARGEST IN THE COUNTRY -- IF NOT THE LARGEST IN THE
21 COUNTRY RIGHT NOW. THAT'S JUST HIGHLY PREJUDICIAL. IT'S
22 IN -- WELL, EVERYTHING IS PREJUDICIAL. BUT IT'S HIGHLY
23 INFLAMMATORY AND IT'S GOING TO SEND THE JURY OFF ON INTO A
24 ROUND WHERE IT JUST DOESN'T NEED.

25 WE HAVE THE ABILITY TO PAY, I HOPE. AND WE CAN DO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0545

APPENDIX 555

1 THAT. YOU DON'T NEED TO PUT THOSE DOLLAR FIGURES UP THERE.
2 YOU ESPECIALLY DON'T NEED TO BE PUTTING WHAT THE CHIEF
3 EXECUTIVE MAKES FOR BANK OF AMERICA IN FRONT OF THIS JURY.

4 THE COURT: ALL RIGHT.

5 MR. JENKINSON: YOUR HONOR, THERE IS ABUNDANT CASE LAW
6 WHICH SAYS THE FINANCIAL CONDITION OF THE DEFENDANT IN A
7 PUNITIVE DAMAGES CASE TO SHOW THEIR ABILITY TO PAY IS
8 ADMISSIBLE. AND THIS IS THE FINANCIAL CONDITION -- AND IT
9 HAS TO BE EXPRESSED IN TERMS OF DOLLARS. YOU CAN'T SAY
10 IT'S GOOD, BAD, OR INDIFFERENT. THAT MAY BE 50 CENTS, 50
11 MILLION, WHO KNOWS. WE JUST WANT TO -- THIS IS BANK OF
12 AMERICA'S OWN RECORDS ON FILE. I CAN'T CHANGE THAT UP OR
13 DOWN. IF THEY WOULD HAVE BEEN HIGHER, WE'D HAVE BEEN STUCK
14 WITH IT. BUT MY GOODNESS, WE WANT BANK OF AMERICA'S
15 FINANCIAL IN OTHERWISE.

16 MR. DAVIS: HE CAN MAKE A PROFFER SO WE CAN SEE WHAT
17 THEY'RE GOING TO TESTIFY. BUT I STILL HAVEN'T HEARD ANY
18 JUSTIFICATION FOR PUTTING IN THE -- I DON'T -- THERE'S NO
19 JUSTIFICATION FOR PUTTING IN THE C.E.O.'S INCOME IN;
20 THERE'S JUST NONE. THAT DOESN'T HAVE ANYTHING TO DO WITH
21 THE FINANCIAL CONDITION.

22 MR. JENKINSON: IT DOES TO THE EXTENT IF THEY CAN PAY
23 ONE PERSON, THEY CAN CERTAINLY PAY PUNITIVE DAMAGES. THERE
24 IS A REASONABLE RELATION FOR THEIR ABILITY TO PAY AND
25 THEY'RE PAYING THEIR MOST HIGH PAID EMPLOYEE.

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ROA 0546

APPENDIX 556

1 MR. DAVIS: THAT BEARS NO RELATIONSHIP -- THAT BEARS
2 NO RELATIONSHIP WHATSOEVER WHEN YOU HAVE \$205,000 ACTUAL.
3 YOU HAVE A STATE FARM CASE, YOU HAVE -- YOU HAVE RULINGS BY
4 OUR STATE SUPREME COURT REGARDING PUNITIVE DAMAGES, THAT
5 HAS NO CORRELATION WHATSOEVER.

6 MR. JENKINSON: YOUR HONOR, PLEASE, YOU MAY WANT TO
7 REVISIT THAT. YOU KNOW, WE'D BE GLAD TO -- MR. SABB IS
8 GOING TO BE ADDRESSING THAT ISSUE. HE MAY ---

9 MR. SABB: I DON'T KNOW THAT I CAN DO IT ANY BETTER.
10 BUT, CERTAINLY, WHEN IT COMES TO HOW THE BANK USES ITS
11 MONEY AND ONE OF THE THINGS WE WOULD LOVE TO HAVE SEEN IN
12 THIS CASE AND THE JURY MIGHT BE INTERESTED IN IS THE FACT
13 THAT THEY'VE GOT \$24 MILLION IN PAY TO ONE EMPLOYEE. BUT
14 APPARENTLY, THEY DON'T DO ANYTHING WITH REGARD TO TRAINING
15 THEIR EMPLOYEES AS IT RELATES TO ANYBODY ELSE'S MONEY. AND
16 SO, JUDGE, IT BEARS IN OUR VIEW ON A NUMBER OF ISSUES.

17 THE OTHER THING WORTH NOTING IS WHEN WE WERE ARGUING
18 EARLIER, YOU KNOW, AND THEY HAD THIS INFORMATION THEN, THE
19 WHOLE THING WAS, YOU KNOW, IF THE ISSUE OF PUNITIVE DAMAGES
20 WERE BEFORE THE COURT, THEN CERTAINLY THOSE MATTERS WOULD
21 BE RELEVANT AND ADMISSIBLE.

22 AND SO NOW ALL OF A SUDDEN WHEN THEY SEE THE PROOF IS
23 IN THE PUDDING, THEN -- AND THEY KNOW THAT'S NOT CONSISTENT
24 WITH THE ARGUMENT -- THEN ALL OF A SUDDEN, WELL, WAIT A
25 MINUTE, LET'S TAKE ALL THE FIGURES OUT BECAUSE WE NOW SEE

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0547

APPENDIX 557

1 WHERE THE PROOF IS.

2 AND SO, JUDGE, WE THINK THAT IT'S CLEAR THAT THE LAW
3 PERMITS IT. WE RECOGNIZE THE DISCRETION OF THIS COURT WITH
4 RESPECT TO THESE ISSUES. BUT, JUDGE, AS MR. JENKINSON
5 INDICATED, IT SIMPLY IS WHAT IT IS.

6 THE COURT: ALL RIGHT.

7 MR. DAVIS: YOUR HONOR, WE HAVEN'T EVEN RECEIVED THE
8 DIRECTED VERDICT. I RAISE -- I AM RAISING THIS AHEAD OF
9 TIME. WE HAVEN'T REACHED THE DIRECTED VERDICT STAGE.
10 THERE'S BEEN NO DECISION ON WHETHER OR NOT PUNITIVES ARE
11 GOING TO BE IN. BUT I JUST THINK -- I JUST DON'T SEE THE
12 RELEVANCE OF THIS TYPE OF TESTIMONY GOING IN FRONT OF THIS
13 JURY BASED ON THE DOLLAR AMOUNTS SUSTAINED.

14 THE COURT: ALL RIGHT. WELL, I'M GOING TO RULE ON ALL
15 ISSUES IN PROPER SEQUENCE.

16 MR. SABB: JUDGE, I MIGHT SHARE WITH YOU A CASE THAT
17 MIGHT BE WORTHY OF THE COURT'S CONSIDERATION.

18 THE COURT: ALL RIGHT.

19 MR. SABB: THAT WOULD BE BRYANT VERSUS WASTE
20 MANAGEMENT, INCORPORATED. 342 SOUTH CAROLINA 159.

21 THE COURT: B-R-Y?

22 MR. SABB: YES, YOUR HONOR, B-R-Y-A-N-T.

23 THE COURT: ALL RIGHT. OKAY. I'LL RULE ON THIS ISSUE
24 IN THE CONTEXT OF THE PUNITIVE ISSUE AS WELL.

25 MR. SABB: YES, SIR.

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ROA 0548

APPENDIX 558

1 THE COURT: ALL RIGHT. LET'S BRING THEM ON.

2 (THE WITNESS RETURNS TO THE WITNESS STAND.)

3 (THE JURY RETURNS TO THE COURTROOM AT 3:38 P.M.)

4 THE COURT: THE JURY IS BACK. YOU MAY PROCEED.

5 MR. JENKINSON: MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT: YES, SIR.

7 DIRECT EXAMINATION CONTINUED BY MR. JENKINSON:

8 Q MR. HUBBS, TAKE ME FORWARD TO MAY 2, 2001, ABOUT A
9 WEEK AFTER THE YOURKO TRANSACTION, KAREN POWELL UNRUE
10 WALKED INTO THE PAWLEYS ISLAND'S BRANCH MET WITH MEREDITH
11 LAWRENCE, BRANCH MANAGER, AND OPENED AN ACCOUNT WITH MS.
12 POWELL UNRUE ON BEHALF OF CODY POWELL ON THIS DATE?

13 A YES, SIR, SHE DID.

14 Q NOW, I SHOW YOU FIRST, PLAINTIFFS' EXHIBIT NO. 15 AND
15 ASK YOU IF THIS IS THE CHECK PRESENTED BY KAREN M. POWELL?

16 A YES, SIR, IT IS, FOR \$253.67.

17 Q NOW, THE PAYEE ON THE LINE ON THE CHECK IS WHO?

18 A KAREN -- KAREN M. POWELL AS CONSERVATOR FOR CODY
19 [REDACTED] P [REDACTED], A MINOR.

20 Q IS IT CLEAR AND PLAINLY STATED ON THE CHECK THAT THIS
21 IS A CONSERVATOR-TYPE ACCOUNT?

22 A CLEAR AND PLAIN. IT'S THE CLEAREST ONE WE HAVE.

23 Q ALL RIGHT. CAN YOU TELL US BASED UPON YOUR
24 INVESTIGATION AND YOUR ANALYSIS WHETHER OR NOT A
25 CONSERVATORSHIP ACCOUNT WAS SET UP ON MAY 2, '01?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0549

APPENDIX 559

- 1 A NO, SIR, IT WAS NOT.
- 2 Q WAS THAT -- CAN YOU TELL US WHETHER OR NOT TO A
- 3 REASONABLE DEGREE OF BANKING CERTAINTY THAT WAS IN
- 4 VIOLATION OF THE BANK OF AMERICA'S POLICIES AND PROCEDURES?
- 5 A YES, SIR, IT IS.
- 6 Q CAN YOU TELL US WHETHER OR NOT ANY COURT -- PROBATE
- 7 COURT RECORDS ON A CONSERVATOR ACCOUNT WERE ASKED FOR ON
- 8 THAT OCCASION?
- 9 A I DO NOT KNOW OF ANY. I DO NOT KNOW.
- 10 Q DID ANY APPEAR IN THE BANK FILE?
- 11 A NO, SIR, THERE DID NOT.
- 12 Q WAS THE ACCOUNT OPENED AS AN CONSERVATOR ACCOUNT?
- 13 A NO, SIR, IT WAS NOT.
- 14 Q DOES THE ENDORSEMENT ON THE BACK OF THE CHECK COMPLY
- 15 WITH BANK OF AMERICA'S POLICIES AND PROCEDURES?
- 16 A NO, SIR, IT DOES NOT.
- 17 Q WHY?
- 18 A WELL, THE CHECK SHOULD HAVE BEEN ENDORSED EXACTLY LIKE
- 19 ON THE FRONT. [REDACTED] CODY P [REDACTED] (SIC), A MINOR, BY KAREN
- 20 M. POWELL AS CONSERVATOR.
- 21 Q I DRAW YOUR ATTENTION TO EXHIBIT NO. 14 AND ASK YOU
- 22 WHAT THAT EXHIBIT IS?
- 23 A THIS IS A SIGNATURE CARD FOR A CUSTOM SAVINGS ACCOUNT.
- 24 Q HOW IS THE ACCOUNT SET UP?
- 25 A THE ACCOUNT IS SET UP KAREN M. UNRUE CUSTODIAN, CODY

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0550

APPENDIX 560

- 1 [REDACTED] P [REDACTED] UMGA.
- 2 Q WHAT DO THOSE INITIALS STAND FOR?
- 3 A IT STANDS FOR UNIFORM GIFT TO MINOR.
- 4 Q IS THIS A RESTRICTED ACCOUNT?
- 5 A NO, SIR, IT'S NOT.
- 6 Q CAN YOU TELL US WHETHER OR NOT TO A REASONABLE DEGREE
- 7 OF BANKING CERTAINTY KAREN UNRUE HAS UNFETTERED ACCESS TO
- 8 THIS ACCOUNT, TO USE THE MONEY AS SHE PLEASES?
- 9 A SHE CAN WITHDRAW THIS MONEY AT ANY TIME.
- 10 Q DOES THE NAME KAREN UNRUE APPEAR ON THE ORIGINAL
- 11 CHECK?
- 12 A NO, IT DOES NOT.
- 13 Q DOES THE SIGNATURE CARD, WHICH IS EXHIBIT NO. 14, IS
- 14 IT MADE IN VIOLATION OF THE BANK OF AMERICA'S POLICIES AND
- 15 PROCEDURES?
- 16 A YES, SIR, IT IS. IT SAYS KAREN UNRUE.
- 17 Q NOW, I CALL YOUR ATTENTION TO PLAINTIFFS' EXHIBIT NO.
- 18 16 BEFORE YOU AND ASK YOU WHAT THIS DOCUMENT IS?
- 19 A I DON'T BELIEVE I HAVE THAT.
- 20 Q IT'S PAGE 2.
- 21 A OH, OKAY. ALL RIGHT. I HAVE THAT HERE.
- 22 Q NOW, THE SAVINGS DEPOSIT SLIP, DO YOU SEE THAT, WHICH
- 23 WOULD BE ATTACHED TO THE BANK STATEMENT. WHAT'S THE DATE
- 24 ON THAT DEPOSIT SLIP?
- 25 A 5/2/01.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0551

APPENDIX 561

- 1 Q IS THERE A NAME SHOWN ON THAT SAVINGS DEPOSIT SLIP?
- 2 A NO, SIR, THERE ISN'T.
- 3 Q ARE THOSE ALL THE RECORDS THAT WOULD BE CUSTOMARILY
- 4 GENERATED IN OPENING AN ACCOUNT IN THE BANK, JUST IN A
- 5 GENERAL CHECKING ACCOUNT? UMGA ACCOUNT?
- 6 A THAT'S -- THAT'S ALL THAT WOULD BE NEEDED, JUST TO
- 7 OPEN AN ACCOUNT LIKE THAT.
- 8 Q NOW, WHAT WOULD THE BRANCH MANAGER HAVE DONE WITH
- 9 THESE RECORDS ONCE THEY WERE ASSEMBLED, THE CHECK, THE
- 10 SIGNATURE CARD, AND THE DEPOSIT SLIP?
- 11 A WELL, THE DEPOSIT SLIP AND THE CHECK WOULD BE CARRIED
- 12 TO THE TELLER. THE SIGNATURE CARD WOULD BE SENT TO A
- 13 DIFFERENT AREA, OPERATIONS.
- 14 Q CAN YOU TELL US WHETHER OR NOT THE TELLER CAUGHT THE
- 15 ERROR ON THE ENDORSEMENT ON THE BACK OF THE CHECK AND THE
- 16 WAY THE ACCOUNT WAS SET UP ON THE SIGNATURE CARD --
- 17 SIGNATURE CARD?
- 18 A NO, SHE DID NOT BECAUSE THE CHECK AND DEPOSIT SLIP
- 19 WENT THROUGH THE BANK.
- 20 Q NOW, CAN YOU TELL US WHETHER OR NOT TO A REASONABLE
- 21 DEGREE OF BANKING CERTAINTY THE BACK ROOM OPERATIONS
- 22 DISCOVERED THIS ERROR?
- 23 A NO, SIR, THEY DID NOT.
- 24 Q ON BOTH OF THESE TRANSACTIONS THAT WE HAVE DESCRIBED
- 25 HERE WITH KAREN POWELL UNRUE WITH CODY'S MONEY IN VIOLATION

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0552

APPENDIX 562

- 1 OF NUMEROUS POLICIES AND PROCEDURES OF THE BANK OF AMERICA?
2 A ABSOLUTELY, MANY, MANY DIFFERENT ---
3 Q WAS THE ---
4 A --- PROCEDURES ---
5 Q --- MONEY ON THE SECOND TRANSACTION, WHO WHOM DID THAT
6 BELONG?
7 A AGAIN ---
8 Q MAY 2?
9 A --- THAT MONEY BELONGED TO CODY [REDACTED] P [REDACTED]
10 Q IN OPENING THESE ACCOUNTS THE WAY THEY WERE CAN YOU
11 TELL US WHETHER OR NOT TO A REASONABLE DEGREE OF BANKING
12 CERTAINTY OF BANKING CERTAINTY -- ALMOST \$253,000 -- WAS IT
13 THE SAME AS JUST GIVING KAREN POWELL UNRUE THE MONEY?
14 A UNFORTUNATELY, IT IS. SHE HAD SOLE ACCESS TO GET TO
15 THE MONEY TO TAKE IT AND DO WHATEVER SHE WANTED.
16 Q AND IS THAT IN FACT WHAT OCCURRED?
17 A THAT DID OCCUR.
18 Q CAN YOU TELL US WHOSE SOCIAL SECURITY NUMBER WAS USED
19 ON THE SECOND TRANSACTION?
20 A IT'S MY UNDERSTANDING THAT AGAIN KAREN UNRUE'S SOCIAL
21 SECURITY NUMBER WAS USED.
22 Q BASED UPON YOUR EXAMINATION OF THESE RECORDS AND THE
23 WAY THESE TWO ACCOUNTS WERE SET UP, WAS IT -- SHOULD THE
24 BANK OF AMERICA'S TWO EMPLOYEES -- THE PERSONAL BANKER, THE
25 BRANCH MANAGER, THE TELLER, AND THE BACK ROOM -- ALL SHOULD

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0553

APPENDIX 563

1 BE CONSCIOUS AND AWARE OF HOW THIS ACCOUNT SHOULD HAVE BEEN
2 PROPERLY SET UP?

3 A ABSOLUTELY. WE HAVE A CHECK RIGHT HERE PAYABLE TO
4 CONSERVATOR FOR CODY [REDACTED] P [REDACTED]. I DON'T KNOW WHAT ELSE
5 -- IT JUST -- IT'S JUST ALMOST UNREASONABLE THAT A PERSON
6 COULD WALK IN THE BANK, PRESENT THIS, AND WALK OUT WITH
7 THIS MONEY THAT SHE HAS ACCESS TO.

8 Q MR. HUBBS, DO YOU HAVE AN OPINION TO A REASONABLE
9 DEGREE OF BANKING CERTAINTY WHETHER OR NOT THE BANK OF
10 AMERICA HAD A DUTY TO CODY P [REDACTED] TO HONOR THE RESTRICTIONS
11 OF THE COURT CONTAINED IN THE FIDUCIARY LETTERS AND COURT
12 ORDER?

13 A ABSOLUTELY. THESE CHECKS PLAINLY DEFINE THAT IT'S
14 CODY P [REDACTED] MONEY. THEY HAD A DUTY.

15 Q CAN YOU TELL US WHETHER OR NOT TO A REASONABLE DEGREE
16 OF BANKING CERTAINTY MOST PROBABLY THE BANK OF AMERICA
17 BREACHED ITS DUTY IN ESTABLISHING BOTH OF THESE ACCOUNTS TO
18 CODY POWELL?

19 A YES, THEY DID.

20 Q MR. HUBBS, BASED ON YOUR TRAINING -- BASED UPON YOUR
21 UNDERSTANDING ABOUT THE TRAINING THE BANK OF AMERICA
22 PROVIDED ITS MANAGER, PERSONAL BANKER, AND THESE PERSONNEL,
23 WERE THEY ADEQUATELY TRAINED?

24 A I AM NOT SO SURE. LET ME TELL YOU WHY. FIRST OF ALL,
25 IF YOU LOOK AT THE CUSTOMER SERVICE REPRESENTATIVE, THEY'VE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0554

APPENDIX 564

1 HAD OVER SIX MONTHS -- THREE MONTHS OF TRAINING AND THREE
2 MONTHS ON-THE-JOB TRAINING.

3 THE BRANCH MANAGER HAS OVER SIX MONTHS TRAINING.
4 SHE'S THE MOST EXPERIENCED PERSON IN THAT BANK. SHE'S IN
5 CHARGE OF ALL TELLERS. SHE'S IN CHARGE OF PEOPLE. ALL THE
6 OPERATING PEOPLE, SHE'S IN CHARGE OF. SO SHE IS THE MOST
7 EXPERIENCED, THE HIGHEST PAID. AND THE SECOND HIGHEST PAID
8 PERSON IN THE BRANCH IS THE CUSTOMER SERVICE
9 REPRESENTATIVE.

10 SO, YOU KNOW, HERE YOU HAVE TWO PEOPLE THAT ARE
11 SUPPOSEDLY THE BEST PEOPLE IN THE BRANCH. AND SO WHEN YOU
12 ASK ME THE QUESTION WERE THEY TRAINED, AND THEY DID THESE
13 THINGS AND THEY OPENED ACCOUNTS AND ALL THE THINGS THAT
14 HAPPENED, WAS IT IGNORANCE OR WHATEVER? BUT AT THAT
15 PARTICULAR TIME IN THIS BRANCH THERE WAS SOMETHING WRONG
16 WITH THE OPERATION AND PROCEDURES THAT A BANK FOLLOWS.
17 THEY DID NOT MEET THE STANDARD THAT WE HAVE IN THE INDUSTRY
18 FOR OPENING AND CONTROLLING AND PROTECTING HIS MONEY. THEY
19 DID NOT MEET THOSE STANDARDS.

20 Q ARE YOU SURPRISED BY WHAT THE BANK OF AMERICA HAS DONE
21 HERE?

22 MR. DAVIS: OBJECTION. OBJECTION, YOUR HONOR.

23 THE COURT: REASONS FOR THE OBJECTION?

24 MR. DAVIS: WAS HE SURPRISED? IS THAT AN OPINION?
25 THAT'S NOT BASED UPON OPINION.

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0555

APPENDIX 565

1 THE COURT: ALL RIGHT. OBJECTION SUSTAINED.

2 Q DO YOU HAVE ANY OPINION TO A REASONABLE DEGREE OF
3 BANKING CERTAINTY AS TO WHY THE BANK OF AMERICA ALLOWED
4 THESE EMPLOYEES TO CLOSE THIS TRANSACTION THE WAY THEY
5 DID?

6 A LOOKING BACK IN HINDSIGHT YOU CAN SEE THAT THERE WAS
7 NOTHING SET UP RIGHT THAT WOULD STOP MS. POWELL FROM TAKING
8 THE MONEY. SO THERE JUST WAS NO -- THERE WERE SO MANY
9 MISTAKES, SO MANY THINGS HAPPENED, THAT I TELL YOU AS A
10 BANKER I'M A LITTLE BIT EMBARRASSED TO HAVE TO GO THROUGH
11 SOMETHING LIKE THIS THAT THE BANK OF AMERICA HAS DONE TO
12 THIS YOUNG MAN.

13 Q WHY IS THAT?

14 A SIR?

15 Q WHY IS THAT? WHY DO YOU FEEL THAT WAY?

16 A WELL, IT'S JUST DISAPPOINTING THAT TRAINED BANK PEOPLE
17 WOULD OPEN ACCOUNTS WITH UTTER DISREGARD. A PERSON WALKS
18 IN AND SAYS, I WANT TO OPEN AN ACCOUNT, AND THEY TAKE
19 CHECKS BELONGING TO SOMEONE ELSE, AND OPENS AN ACCOUNT THAT
20 ALLOWS OTHER PEOPLE TO TAKE THEIR MONEY. YOU KNOW, IT'S --
21 IT'S DISAPPOINTING TO ME.

22 MR. JENKINSON: ANSWER ANY QUESTIONS THE DEFENSE MAY
23 HAVE.

24 THE COURT: CROSS EXAMINATION.

25 MR. DAVIS: YES, YOUR HONOR.

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ROA 0556

APPENDIX 566

1 CROSS EXAMINATION BY MR. DAVIS:

2 Q YOU CHARGE \$200 AN HOUR, RIGHT?

3 A YES, SIR.

4 Q YOU'VE SPENT OVER 25 HOURS NOW IN THIS MATTER?

5 A YES, SIR.

6 Q SO YOU HAVE EARNED APPROXIMATELY \$5,000 TO GIVE YOUR
7 TESTIMONY?

8 A YES, SIR, I HAVE.

9 Q ALL RIGHT. AND YET YOU'VE NOT BEEN TO BANK OF
10 AMERICA'S OPERATION CENTER, HAVE YOU?

11 A NO, SIR, I HAVE NOT.

12 Q YOU DON'T KNOW HOW IT WORKS, DO YOU?

13 A NO, SIR, NOT THEIRS.

14 Q YOU'VE NOT BEEN TO THE PAWLEYS ISLAND BRANCH, HAVE
15 YOU?

16 A NO, SIR, I HAVE NOT.

17 Q YOU'VE NOT SEEN HOW IT WORKS, HAVE YOU?

18 A NO, I HAVE NOT.

19 Q YOU'VE NOT SEEN A COMPUTER SCREEN OF BANK OF AMERICA
20 WHEN IT COMES TO OPENING UP ACCOUNTS, HAVE YOU?

21 A NO, SIR, I HAVE NOT.

22 Q SO YOU'VE NOT SEEN HOW IT WORKS?

23 A NO, SIR, I HAVEN'T.

24 Q YOU DON'T KNOW THE ORDER OF THE CHECKS IN WHICH THEY
25 WERE HANDED TO THE TELLER EITHER, DO YOU?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0557

APPENDIX 567

- 1 A NO, SIR. BUT ---
- 2 Q ALL RIGHT. YOU'VE BEEN ON A BOARD OF DIRECTORS SINCE
- 3 1994, RIGHT?
- 4 A YES, SIR. NO ---
- 5 Q SO YOU'VE BEEN ---
- 6 A --- I'VE BEEN ON A -- EXCUSE ME. LET ME CORRECT.
- 7 I'VE BEEN ON A BOARD OF DIRECTORS SINCE 1968.
- 8 Q ALL RIGHT. SO IN THE BANK, YOU'RE ONE OF THE BIG
- 9 DOGS? YOU'RE THE MAN THEN?
- 10 A OVER A PERIOD OF 50 YEARS YOU HOPE TO BE SOMEWHERE.
- 11 Q SO WHEN YOU WERE IN LEXINGTON STATE BANK, YOU RAN THAT
- 12 BANK? YOU'RE THE GUY IN CHARGE IN THE OFFICE, RIGHT?
- 13 A I WAS IN CHARGE OF OPERATIONS.
- 14 Q THAT'S RIGHT ---
- 15 A IT ---
- 16 MR. JENKINSON: MR. DAVIS IS NOT ALLOWING THE WITNESS
- 17 TO RESPOND. IF HE WOULD JUST BE PATIENT AND LET THE
- 18 WITNESS SPEAK, YOUR HONOR.
- 19 THE COURT: ALL RIGHT. YOU MAY PROCEED.
- 20 Q YOU WEREN'T OUT THERE ON THE TELLER LINE, WERE YOU?
- 21 A NO, SIR, I WASN'T.
- 22 Q ALL RIGHT. YOU WEREN'T OUT THERE IN THE PERSONAL
- 23 BANKING OFFICE, WERE YOU?
- 24 A NO, SIR, I WAS NOT.
- 25 Q ALL RIGHT. IN FACT, YOU HAVEN'T OPENED UP A

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ROA 0558

APPENDIX 568

- 1 CONSERVATORSHIP ACCOUNT SINCE I WAS ON THE STREETS IN
2 TUSKEEGEE, ALABAMA -- SINCE 1970 -- 1973?
- 3 A YES AND NO. I HAVE OPENED CONSERVATORSHIP ACCOUNTS IN
4 THE TRUST DEPARTMENT.
- 5 Q YOU HAVEN'T OPENED UP A CONSERVATORSHIP ACCOUNT IN A
6 BRANCH OF A BANK IN OVER 30 YEARS?
- 7 A THAT'S TRUE, EXCEPT I'VE BEEN IN THE BANKING BUSINESS
8 FOR 50 YEARS. 50 YEARS AGO WE USED SIGNATURE CARDS JUST
9 LIKE THEY USE TODAY. THE ONLY DIFFERENCE IS THEY'RE
10 PRINTED BY A PRINTING PRESS AND WHAT THEY USE TODAY IS
11 PRINTED BY A COMPUTER.
- 12 Q YOU'VE NOT OPENED AN ACCOUNT IN OVER 30 YEARS?
- 13 A I THINK MY TESTIMONY I SAID IT WAS 20 YEARS.
- 14 Q BUT IT'S BEEN OVER 30 YEARS, HASN'T IT?
- 15 A PROBABLY SO, IN THERE.
- 16 Q ALL RIGHT. YOU'VE NOT REVIEWED ANY PROCEDURES OTHER
17 THAN FOR THIS CASE? I MEAN, YOU'VE NOT REVIEWED THE
18 DEVELOPMENT OF ANY PROCEDURES SINCE IN OVER 30 YEARS
19 EITHER?
- 20 A THAT IS NOT RIGHT.
- 21 Q THAT'S NOT RIGHT?
- 22 A NO. AS MANAGING OFFICER, ALL OPERATING PROCEDURES
23 WOULD BE APPROVED IN THE FINAL FORM BY ME.
- 24 Q RIGHT.
- 25 A I HAD ---

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0559

APPENDIX 569

- 1 Q YOU ---
- 2 A I HAD ---
- 3 MR. JENKINSON: LET HIM ANSWER.
- 4 A I HAD INPUT INTO PROCEDURES. I EVEN HAD MY OWN BOOK,
- 5 WHICH YOU HAVE A COPY THAT I USED, THAT I BROUGHT FROM THE
- 6 BANK WHEN I LEFT THE BANK.
- 7 Q AND WHEN YOU WERE ONE OF THE BIG DOGS IN THAT BANK,
- 8 EVEN THOUGH YOU HAD THOSE PROCEDURES, YOUR PERSONNEL STILL
- 9 MADE MISTAKES IN OPENING UP ACCOUNTS, DIDN'T THEY?
- 10 A THERE MAY HAVE BEEN MISTAKES, YES.
- 11 Q ALL RIGHT. THEY WERE HONEST MISTAKES EVEN IN OPENING
- 12 UP ACCOUNTS?
- 13 A BUT NEVER IN THE MAGNITUDE OF THIS.
- 14 Q ALL RIGHT. BUT THEY WERE HONEST MISTAKES IN OPENING
- 15 UP ACCOUNTS?
- 16 A SURE THERE WERE.
- 17 Q AND WHAT WE HAVE HERE IS A MISTAKE IN OPENING UP AN
- 18 ACCOUNT?
- 19 A IT GOES BEYOND THAT.
- 20 Q BUT THERE IS A MISTAKE IN OPENING UP THE ACCOUNT?
- 21 A IN YOUR MIND, YES. IN MY MIND, IT'S MORE THAN A
- 22 MISTAKE.
- 23 Q THERE IS A MISTAKE?
- 24 A IT GOES TO A STANDARD OF BANKING.
- 25 Q ALL RIGHT. THERE IS A MISTAKE IN NOT OPENING UP A

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0560

APPENDIX 570

- 1 CONSERVATORSHIP ACCOUNT?
- 2 A OKAY.
- 3 Q CORRECT?
- 4 A YES, SIR.
- 5 Q ALL RIGHT. AND THAT MISTAKE WAS MADE AT THE INCEPTION
- 6 WHEN THERE WAS \$250,000 PUT INTO A CERTIFICATE OF DEPOSIT,
- 7 RIGHT?
- 8 A WHICH WAS NOT A QUALIFIED PRODUCT FOR THIS ACCOUNT
- 9 ACCORDING TO THEIR PROCEDURES.
- 10 Q IT'S NOT A QUALIFIED PRODUCT FOR A CONSERVATORSHIP
- 11 ACCOUNT?
- 12 A THAT IS CORRECT.
- 13 Q BUT IT IS A QUALIFIED PRODUCT FOR A GUARDIAN ACCOUNT
- 14 OR A CUSTODIAN ACCOUNT FOR A CHILD; ISN'T THAT TRUE?
- 15 A BUT YOU DON'T HAVE THAT. YOU HAVE A CHECK PAYABLE TO
- 16 THE CUSTODIAN.
- 17 Q I UNDERSTAND.
- 18 A THAT THEY SHOULD HAVE HAD -- THAT THEY SHOULD HAVE
- 19 KNOWN, THAT'S WHAT THAT ACCOUNT IS.
- 20 Q BUT IT IS A QUALIFIED PRODUCT FOR A CUSTODIAN ACCOUNT
- 21 FOR A MINOR, ISN'T IT?
- 22 A WAIT A MINUTE. WHAT ARE YOU SAYING IS A QUALIFIED
- 23 ACCOUNT?
- 24 Q I'M NOT ANSWERING THE QUESTION, SIR.
- 25 A MAYBE I DON'T UNDERSTAND THE QUESTION THEN.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0561

APPENDIX 571

1 Q YOU'VE REVIEWED THE BANK'S POLICIES AND -- YOU'VE
2 REVIEWED ALL THESE, RIGHT?

3 A I REVIEWED THE SECTIONS CONTAINING FRAUD, THE SECTIONS
4 CONTAINING THIS TYPE ACCOUNT, THE SECTIONS ON TELLER
5 OPERATIONS, RED FLAGS, ALL THOSE THINGS THAT DEALT WITH
6 THIS PARTICULAR CASE I REVIEWED THEM.

7 Q SO YOU HAVEN'T REVIEWED ALL THESE PROCEDURES?

8 A I HAVE NOT. THERE WASN'T ANY NEED FOR ME TO READ ---

9 Q SO YOU DON'T -- YOU DON'T KNOW WHETHER OR NOT A CD IS

10 A -- IS SOMETHING THAT CAN BE OPENED UP FOR A GUARDIAN?

11 A SURE IT CAN.

12 Q ALL RIGHT.

13 A OKAY.

14 Q AND IT CAN BE OPENED UP AS YOU'RE A CUSTODIAN FOR A
15 MINOR?

16 A SURE.

17 Q OKAY. AND THAT'S WHAT HAPPENED IN THIS CASE? I'M NOT
18 SAYING IT'S RIGHT, BUT THAT'S WHAT HAPPENED IN THIS CASE?

19 A OKAY.

20 Q CORRECT?

21 A THAT'S WHAT HAPPENED IN THIS CASE.

22 Q OKAY. AND YOU DON'T HAVE ANY PROOF OR ANY EVIDENCE
23 WHATSOEVER THAT THAT COURT ORDER WAS PRESENTED TO ANYBODY,
24 RIGHT?

25 A I DO NOT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0562

APPENDIX 572

- 1 Q OKAY. AND YOU'RE NOT IN HERE TRYING TO SAY THAT MS.
2 YOURKO DID SOMETHING ON PURPOSE TO HURT THIS CHILD? YOU'RE
3 NOT SAYING THAT, ARE YOU?
4 A I'M NOT SAYING THAT.
5 Q OKAY. YOU'RE NOT SAYING THAT MS. LAWRENCE DID
6 ANYTHING ON PURPOSE TO TRY TO HURT THIS CHILD, ARE YOU?
7 A NO, NOT ON PURPOSE.
8 Q YOU'RE JUST POINTING OUT A MISTAKE -- A MISTAKE AND/OR
9 MISTAKES THAT MAY HAVE BEEN MADE, RIGHT?
10 A OR LACK OF TRAINING OR FAILURE TO FOLLOW THE CHECKS OR
11 FAILURE TO FOLLOW BANK PROCEDURES; THAT'S WHAT I'M DOING.
12 AND ALSO FAILURE TO MEET THE STANDARDS OF BANKING IN THE
13 INDUSTRY.
14 Q YOU HAVE EARNED \$5,000 FOR 25 HOURS OF WORK. YOU HAVE
15 NOT REVIEWED THE TRAINING OF BANK OF AMERICA AS IT RELATES
16 TO ITS PERSONAL BANKERS; ISN'T THAT TRUE?
17 A THAT IS TRUE.
18 Q OKAY.
19 A BUT I CAN RELATE TO WHAT THESE PEOPLE DID IN THESE --
20 IN TWO INSTANCES IN THIS BANK.
21 Q BUT YOU ARE NOT HERE TO CRITICIZE THE TRAINING,
22 BECAUSE YOU DON'T KNOW ANYTHING ABOUT IT?
23 A YES, SIR, YOU'RE RIGHT. BUT I DO KNOW THAT FOR SOME
24 REASON IN THIS BRANCH TWO PEOPLE -- THE HIGHEST PAID PEOPLE
25 IN THIS BRANCH FAILED TO FOLLOW THE GUIDELINES THAT BANK OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0563

APPENDIX 573

- 1 AMERICA SAYS IF YOU DON'T FOLLOW, WE'RE GOING TO LOSE
2 MONEY.
- 3 Q NOW ---
- 4 A THAT SHOWS A LACK OF TRAINING ---
- 5 Q --- THERE WAS ---
- 6 A --- OR SOMETHING.
- 7 Q THERE WAS A VOID IN WHAT YOU COULD INVESTIGATE FROM A
8 FACTUAL STANDPOINT, RIGHT? DO YOU REMEMBER SAYING THAT IN
9 YOUR DEPOSITION?
- 10 A I CAN'T GO -- I DID NOT GO INTO PAWLEYS ISLAND BRANCH
11 AND LOOK.
- 12 Q ALL RIGHT. BUT THERE WAS A VOID BECAUSE YOU DON'T
13 REALLY KNOW WHAT MS. YOURKO DID OR DID NOT DO, RIGHT?
- 14 A I CAN TELL WHAT SHE DID. WHEN YOU SAY DID NOT OR -- I
15 CAN TELL BY THIS WHAT SHE DID.
- 16 Q YOU WERE HIRED AS AN EXPERT WHEN?
- 17 A IN JUNE OF '04.
- 18 Q IN JUNE OF '04. YOUR LAWYERS WHO SUPPOSEDLY HAVE THE
19 BEST INTEREST OF THIS CHILD IN HEART DID NOT DEPOSE MS.
20 YOURKO -- THAT IS TAKE HER TESTIMONY UNTIL FOUR OR FIVE
21 YEARS AFTER THIS INCIDENT, DID THEY?
- 22 A WELL, THERE AGAIN YOU HAVE TO REMEMBER ---
- 23 Q I JUST ASKED YOU A SIMPLE QUESTION. DID THEY?
- 24 A ASK ME A TOUGH QUESTION? NOT REALLY.
- 25 Q I DIDN'T ASK YOU A TOUGH QUESTION. I ASKED YOU A

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0564

APPENDIX 574

1 SIMPLE ONE.

2 A OH.

3 Q I ASKED YOU, YOUR LAWYERS WHO SUPPOSEDLY HAD THE BEST
4 INTEREST OF THIS CHILD AT HEART DID NOT TAKE THE DEPOSITION
5 OF MS. YOURKO UNTIL FOUR, ALMOST FIVE YEARS AFTER THE
6 INCIDENT, DID THEY?

7 A THAT IS CORRECT. BUT WHY DIDN'T THEY? THERE WAS
8 A PERIOD OF TIME WHEN THEY HAD TO FIND WHAT HAPPENED.
9 THEY HAD TO GET INFORMATION FROM YOU OR FROM THE BANK OF
10 AMERICA ---

11 Q YOU ---

12 A --- THAT SAID, LOOK, WE NEED TO LOOK INTO THIS. AND
13 IT TOOK THEM TWO TO THREE YEARS BEFORE THEY GOT ALL THE
14 INFORMATION TO MAKE A DECISION.

15 Q YOU WOULD AGREE THAT MEMORIES FADE OVER TIME? YOU
16 WOULD AGREE TO THAT?

17 A I WOULD AGREE. BUT I CAN REMEMBER ACCOUNTS THAT I
18 OPENED 40 YEARS AGO.

19 Q I'M NOT ASKING WHAT YOU REMEMBER. YOU WOULD AGREE
20 THAT MEMORIES FADE OVER TIME?

21 A YES, SIR, THEY DO.

22 Q ALL RIGHT. AND YOU WOULD AGREE THAT 1,825 DAYS BEFORE
23 SOMEBODY IS DEPOSED IN DETAIL ABOUT WHAT DID OR DID NOT
24 HAPPEN IS A LONG TIME, ISN'T IT?

25 A WELL, IT ALL DEPENDS. IT'S A LONG TIME, BUT HOW DO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0565

APPENDIX 575

1 YOU GET FROM POINT A TO B -- WELL, A TIME FRAME. YOU'VE
2 GOT TO GET TO B TO GET THE INFORMATION SO THAT YOU CAN GET
3 THEIR DEPOSITION. UNLESS YOU GATHER ALL THAT INFORMATION
4 AND KNOW WHAT HAPPENED BY THESE CHECKS AND OTHER THINGS,
5 THEN YOU CAN'T -- YOU CAN'T MAKE A DECISION AS TO WHAT TO
6 DO UNTIL THAT TIME.

7 Q BUT THAT'S THE INFORMATION YOU WISH YOU WOULD HAVE
8 BEEN ABLE TO SEE, ISN'T IT?

9 A I WISH I WOULD HAVE BEEN ABLE TO HAVE BEEN IN THAT
10 BRANCH AND CORRECT THE WHOLE THING.

11 Q ALL RIGHT. YOU'D AGREE WITH ME -- YOU'RE ONE OF THE
12 BIG DOGS IN THE BANKING INDUSTRY, IN LEXINGTON BANK. I
13 MEAN, INDIVIDUALS WILL STEAL, RIGHT?

14 A YES, SIR.

15 Q THEY'LL STEAL FROM THE BANK, WON'T THEY?

16 A YES, THEY WILL.

17 Q DESPITE ALL YOUR POLICIES AND PROCEDURES, ALL YOUR
18 MANUALS, THEY'LL DO IT IN A HEARTBEAT, WON'T THEY?

19 A THEY WILL. BUT IF YOU FOLLOW THOSE PROCEDURES THAT
20 YOU SEE IN THE BOX THAT YOU REFERRED TO, IF THEY FOLLOW
21 THOSE DOWN THE LINE AND THEY'RE TRAINED, THIS WON'T HAPPEN.

22 Q PEOPLE COMMIT FRAUD AGAINST THE BANKS ALL THE TIME
23 DESPITE POLICIES AND PROCEDURES BEING IN PLACE, ISN'T THAT
24 TRUE?

25 A THAT'S TRUE.

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ROA 0566

APPENDIX 576

- 1 Q OKAY. PEOPLE WILL LIE TO BANK OFFICIALS ALL THE TIME,
2 WON'T THEY?
- 3 A THEY WILL. BUT IF YOU FOLLOW YOUR POLICIES AND
4 PROCEDURES, YOU'RE GOING TO BE ABLE TO STOP THINGS LIKE
5 THAT HAPPENED HERE.
- 6 Q PEOPLE WILL EVEN LIE WHEN IT COMES TO MONEY AND A
7 CONSERVATORSHIP TO A COURT, WON'T THEY?
- 8 A I DON'T HAVE ANY BASIS TO ANSWER THAT QUESTION. I
9 DON'T KNOW.
- 10 Q ALL RIGHT.
- 11 A I GUESS THEY WOULD.
- 12 Q ALL RIGHT. AND WHEN IT COMES TO MONEY, THEY'LL SURE
13 LIE TO FAMILY, WON'T THEY?
- 14 A IS THAT A QUESTION?
- 15 Q YES, SIR.
- 16 A THEY WILL.
- 17 Q NOW, YOU GAVE US A REPORT? DO YOU REMEMBER THAT, YOU
18 GAVE US A REPORT?
- 19 A DEPOSITION.
- 20 Q NO. YOU GAVE US AN EXPERT REPORT?
- 21 A THAT'S CORRECT. THAT'S RIGHT HERE.
- 22 Q AND YOU GAVE US -- FINALLY GAVE US SOME OF YOUR NOTES
23 THAT YOU MADE DURING THAT REPORT?
- 24 A YES, SIR.
- 25 Q AND YOU ATTACHED YOUR NOTES AND AN EXHIBIT TO THAT

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ROA 0567

APPENDIX 577

- 1 REPORT. DO YOU REMEMBER THAT -- OR SOME EXHIBITS?
- 2 A WELL, THERE WERE DIFFERENT -- I DON'T KNOW ---
- 3 Q LET ME DO THIS.
- 4 A LET ME SEE.
- 5 Q LET ME DO THIS, LET ME HAND YOU DEFENDANT'S EXHIBIT 1.
- 6 THAT WAS A DOCUMENT THAT YOU HAD CONTAINED IN YOUR REPORT
- 7 THAT YOU SENT TO US. DO YOU REMEMBER THAT?
- 8 A WAS THIS THE SECOND -- I WAS DEPOSED FIVE TIMES --
- 9 OVER FIVE TIMES BY YOUR FIRM FOR DEPOSITION. AND THERE'S
- 10 SOME DIFFERENT TIMES.
- 11 Q YOU MEAN IN DIFFERENT CASES?
- 12 A NO. IN THIS CASE.
- 13 Q ALL RIGHT.
- 14 A OVER FIVE TIMES.
- 15 Q I WASN'T INVOLVED IN THOSE. BUT YOU PROVIDED THAT TO
- 16 US NOT TOO LONG AGO, REMEMBER?
- 17 A YES, THAT WAS -- LET ME ---
- 18 Q AND ---
- 19 A CAN I TELL YOU ABOUT THIS FORM?
- 20 Q NO. I JUST WANTED TO ASK YOU A QUESTION FIRST.
- 21 A OH, OKAY.
- 22 Q THAT'S ONE OF THE DOCUMENTS THAT YOU GAVE TO US,
- 23 RIGHT?
- 24 A YES, SIR.
- 25 Q AND ONE OF THE REASONS YOU GAVE IT TO US IS BECAUSE

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ROA 0568

APPENDIX 578

1 YOU POINTED OUT THAT THE COURT COULD HAVE ALSO PROVIDED A
2 SAFEGUARD. OH, OH, YOU WROTE ON THE EXHIBIT.
3 A SORRY. I DIDN'T WRITE. I JUST CIRCLED.
4 Q OKAY. BUT YOU POINTED OUT ---
5 MR. HUBBS: SORRY, JUDGE.
6 Q --- THAT EVEN THE PROBATE COURT COULD HAVE PROVIDED
7 EVEN MORE OF A SAFEGUARD AND DIDN'T DO IT, DIDN'T YOU?
8 A THIS IS NOT -- WELL, THERE WERE TWO OF THESE FORMS.
9 IF YOU REMEMBER MY DEPOSITION -- YOU WEREN'T THERE. BUT IN
10 MY DEPOSITION I WAS GIVEN A FORM SIMILAR TO THIS BY YOU --
11 BY YOUR ATTORNEYS.
12 Q BUT YOU MADE NOTES THAT THE PROBATE COURT COULD HAVE
13 PROVIDED ALSO AN ADDITIONAL SAFEGUARD BY REQUIRING BOTH THE
14 BANK AND THE CONSERVATOR TO VERIFY THAT THE PROPER ACCOUNT
15 WAS OPENED, RIGHT?
16 A YOU HAVE TO REMEMBER THAT THE ORIGINAL ONE WAS DATED
17 2004. THAT IS THE ONE -- WHAT I DID, I WENT TO THE --
18 AFTER YOU ASKED -- AFTER I WAS ASKED THE QUESTION IN THE
19 DEPOSITION, I TOOK THAT FORM AND I WENT TO LEXINGTON COUNTY
20 PROBATE, AND I SAID TO THE SENIOR OFFICER, I SAID TO THE
21 JUDGE, WHAT ABOUT THIS FORM, AND WHAT ABOUT -- AND THEY
22 SAID, PROBATE JUDGES HAVE A WIDE LATITUDE ABOUT USING THIS
23 FORM. SOME PROBATE JUDGES DO AND SOME PROBATE JUDGES DO
24 NOT.
25 Q SO ONE OF THE THINGS THAT COULD HAVE BEEN DONE IS THE

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ROA 0569

APPENDIX 579

1 PROBATE COURT COULD HAVE ENSURED THROUGH VERIFICATION IN A
2 COURT DOCUMENT THAT THE RIGHT ACCOUNT WAS SET UP?
3 A THAT'S NOT REQUIRED. THAT'S NOT ---
4 Q THAT'S WHAT THIS DOCUMENT SAYS THOUGH, ISN'T IT?
5 A NO, IT DOESN'T. IT SAYS ---
6 Q VERIFICATION ---
7 A DO YOU SEE WHAT I SIGNED? DO YOU SEE WHERE I CIRCLED?
8 IT SAYS TO INDUCE THE COURT. INDUCE MEANS TO ME TO ENTICE,
9 TO -- TO -- IT'S NOT A MATTER OF LAW THAT THIS IS
10 NECESSARY.
11 Q YOU'VE GOT YOUR REPORT SITTING IN FRONT OF YOU, DON'T
12 YOU?
13 A YES, SIR, I DO.
14 Q YOU'VE GOT YOUR REPORT WITH YOUR NOTES SITTING IN
15 FRONT OF YOU?
16 A NO, I DON'T.
17 MR. DAVIS: MAY I APPROACH ---
18 MR. HUBBS: SURE.
19 MR. DAVIS: --- YOUR HONOR?
20 THE COURT: CERTAINLY.
21 MR. HUBBS: I'M SORRY.
22 THE COURT: THAT'S OKAY.
23 Q THIS IS YOUR HANDWRITING I'M LOOKING AT, ISN'T IT?
24 A WELL, YOU'VE GOT TO GET IT UP CLOSER SO I CAN SEE IT.
25 Q OH, OKAY. I'M SORRY.

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ROA 0570

APPENDIX 580

1 A I'M AN OLD MAN, YOU'VE GOT TO REMEMBER THAT. OKAY.
2 WHAT ARE YOU ASKING ME NOW?
3 Q READ THAT TO THE JURY.
4 A PROBATE JUDGE -- I CAN'T EVEN READ MY OWN WRITING --
5 SHOULD NOT HAVE ISSUED ORDER WITHOUT CONSERVATOR SIGNATURE
6 AND FINANCIAL -- NOW, BUT YOU'VE GOT TO ---
7 Q THANK YOU. THAT'S ALL I HAVE.
8 MR. JENKINSON: HE DIDN'T ANSWER HIS QUESTION.
9 MR. DAVIS: I DIDN'T ASK A QUESTION.
10 MR. JENKINSON: HE'S TRYING TO RESPOND. LET HIM
11 ANSWER.
12 Q AND YOU WOULD AGREE THAT DESPITE TRAINING, BANK
13 EMPLOYEES WILL MAKE MISTAKES?
14 A THEY WILL MAKE MISTAKES.
15 MR. DAVIS: NOTHING FURTHER.
16 THE COURT: MR. WILSON?
17 MR. WILSON: YOUR HONOR, I HAVE NO QUESTIONS OF THIS
18 WITNESS.
19 THE COURT: ALL RIGHT. MR. JENKINSON?
20 (PAUSE.)
21 THE COURT: ALL RIGHT, SIR. YOU MAY STEP DOWN.
22 MR. JENKINSON: I DON'T HAVE ANY OTHER QUESTIONS FOR
23 MR. HUBBS.
24 (THE WITNESS LEAVES THE WITNESS STAND.)
25 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO HAVE

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ROA 0571

APPENDIX 581

1 YOU GO TO THE JURY ROOM FOR ANOTHER BREAK. PLEASE DO NOT
2 DISCUSS THE CASE.

3 (THE JURY RETIRES TO THE JURY ROOM AT 4:10 P.M.)

4 THE COURT: LET'S TAKE A THREE-MINUTE STRETCH.

5 (A RECESS WAS TAKEN.)

6 THE COURT: ALL RIGHT. NEXT?

7 MR. SABB: YOUR HONOR, PLEASE. WE HAVE REACHED THE
8 POINT IN THE PLAINTIFFS' CASE WHERE OUR NEXT WITNESS WILL
9 BE DR. OLIVER WOOD. JUDGE, WE HAD RETAINED DR. WOOD
10 ESSENTIALLY FOR TWO PURPOSES.

11 ONE PURPOSE WAS TO ESTABLISH THE ECONOMIC LOSS THAT
12 CODY P [REDACTED] SUFFERED. AS YOUR HONOR IS AWARE, THERE HAS
13 BEEN A STIPULATION WITH REGARD TO THAT NUMBER. THAT NUMBER
14 IN FACT CAME AS A RESULT OF THE WORK OF DR. OLIVER WOOD.
15 SO WITH REGARD TO THAT PORTION OF HIS TESTIMONY, THERE IS A
16 STIPULATION RELATING TO THAT.

17 THE SECOND PART OF WHY HE WAS RETAINED ---

18 THE COURT: LET ME STOP YOU. WHAT IS THAT
19 STIPULATION?

20 MR. SABB: YOUR HONOR, PLEASE, THAT THE ACTUAL DAMAGES
21 IN THE CASE ARE I THINK \$205,734 -- AND SOME CHANGE.

22 (PAUSE.)

23 MR. SABB: ALL RIGHT. \$205,735 -- YOUR HONOR -- AND
24 37 CENTS.

25 THE COURT: ALL RIGHT. DOES THE DEFENSE STIPULATE TO

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ROA 0572

APPENDIX 582

1 THAT, MR. DAVIS?

2 MR. DAVIS: YES, SIR, WE DO.

3 THE COURT: AND, MR. WILSON?

4 MR. WILSON: YES, SIR.

5 THE COURT: ALL RIGHT. SO ORDERED.

6 MR. SABB: THE SECOND PART, YOUR HONOR, PLEASE -- I'LL

7 CIRCULATE THIS BECAUSE WE HAD SAID WE WERE GOING TO

8 CIRCULATE THIS, BUT I DON'T THINK WE EVER GOT AROUND TO IT.

9 THE SECOND PART, JUDGE, WOULD RELATE TO THE BANK OF
10 AMERICA AND HOW IT IS FINANCIALLY SITUATED RELATIVE TO THE
11 ISSUE OF PUNITIVE DAMAGES IF YOUR HONOR PLEASE. AND YOU
12 HAD ASKED US TO PUT YOU ON ALERT WHEN THAT ISSUE WOULD COME
13 BEFORE THE COURT.

14 THE COURT: ALL RIGHT. WHAT SAYS THE DEFENSE ABOUT
15 THE ISSUE OF PUNITIVE DAMAGES?

16 MR. DAVIS: YOUR HONOR, AT THIS TIME I SUPPOSE IF IT'S
17 APPROPRIATE, WE WOULD LIKE TO MAKE A DIRECTED VERDICT IF
18 YOU ALL HAVE FINISHED YOUR CASE IN CHIEF WITH EXCEPTION OF
19 DR. WOOD.

20 MR. SABB: YES, SIR.

21 MR. DAVIS: BASICALLY, YOUR HONOR, THERE HAS BEEN NO
22 EVIDENCE THAT BANK OF AMERICA KNOWINGLY -- THERE'S NO
23 EVIDENCE WHATSOEVER THAT BANK OF AMERICA DID ANYTHING IN A
24 WANTON, CONSCIOUS, OR DISREGARD OR IN A RECKLESS MANNER.
25 WHAT THE EVIDENCE HAS BEEN IS THAT THERE HAS -- THERE WAS A

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ROA 0573

APPENDIX 583

1 MISTAKE THAT WAS MADE ON THE INCEPTION OF OPENING THE
2 ACCOUNT, AND THEN A CHAIN OF EVENTS FOLLOWED THAT. THAT
3 DOES NOT CONSTITUTE -- THEY HAVE NOT PRESENTED ANY EVIDENCE
4 WHATSOEVER EITHER THROUGH DEPOSITION OR LIVE TESTIMONY THAT
5 WE'VE BEEN -- I GUESS WHAT THEY WERE TRYING TO DO WAS THAT
6 WE'VE BEEN RECKLESS IN ANY FORM OR FASHION AS IT IS DEFINED
7 WITHIN THE LAWS OF THE STATE OF SOUTH CAROLINA.

8 THERE'S NO EVIDENCE THAT WE'VE HAD ANY KNOWLEDGE OF
9 ANY WRONGDOING, THAT WE WERE TRYING TO ENGAGE IN ANY
10 WRONGDOING, THAT ANYONE WAS OUT TO HURT CODY POWELL, THAT
11 ANYONE WAS INVOLVED IN THE CONDUCT OF MS. UNRUE.

12 IN FACT, BASICALLY WE HAVE WHAT IS -- THERE'S A CASE
13 -- WHAT SHE HAS ENTERED INTO IS AN INTERVENING ACT WHERE
14 HER CONDUCT IS SO EGREGIOUS BY BEING CRIMINAL, STEALING,
15 BASICALLY GETTING THE TRUST OF A FAMILY -- GETTING THE
16 TRUST OF ELIZABETH POWELL, GETTING THE TRUST OF -- AND
17 SUGGESTING SHE TAKE OVER THE FINANCES, GAINING THE TRUST OF
18 HER BROTHER TRAVIS POWELL, GETTING THE MONEY, TAKING IT TO
19 THE BANK, NOT EVEN TELLING HER OWN BROTHER THAT SHE HAD THE
20 CHECKS, TAKING THE CHECKS TO THE BANK.

21 THERE'S NO EVIDENCE WHATSOEVER THAT SHE EVER SHOWED
22 ANY OF THE BANK EMPLOYEES THE CONSERVATOR ORDER WHICH WAS
23 RESTRICTED.

24 YES, THERE SHOULD HAVE BEEN A CONSERVATORSHIP ACCOUNT
25 OPENED UP. BUT WE DID NOT HAVE THAT ORDER. IT DOESN'T

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ROA 0574

APPENDIX 584

1 SHOW THAT WE HAD ANY KNOWLEDGE WHATSOEVER OR HAD ANY
2 CONSCIOUS DISREGARD EXCEPT FOR MAKING A MISTAKE.

3 THERE HAS BEEN EVIDENCE THAT THERE'S CONFUSION AS IT
4 RELATES TO THOSE CHECKS. THERE'S ALSO EVIDENCE THAT THERE
5 WAS CONSERVATOR ON THOSE CHECKS. BUT YOU ALSO HAVE
6 EVIDENCE THAT THERE WERE ACCOUNTS THAT WERE SET UP AS FOR A
7 MINOR, WHICH STATES A MINOR, STATES -- THE CD STATES CODY
8 POWELL'S NAME. THE OTHER ACCOUNT STATES CODY POWELL'S
9 NAME.

10 THERE'S JUST NO EVIDENCE WHATSOEVER THAT THE BANK OF
11 AMERICA IS ANYTHING BUT NEGLIGENT, NOTHING OVER AND ABOVE
12 THAT, WHICH MEANS PUNITIVES ARE NOT JUSTIFIED, AND THAT DR.
13 WOOD'S TESTIMONY DOESN'T EVEN NEED TO GO FORWARD IN THAT
14 REGARD.

15 THE COURT: ALL RIGHT. MR. WILSON?

16 MR. WILSON: WELL, THIS PARTICULAR SITUATION, IT'S MY
17 UNDERSTANDING HE'S BEING OFFERED TO PROVIDE INFORMATION
18 ABOUT THE BANK.

19 MY CLIENT -- YOUR HONOR, I HAVE ANOTHER MOTION FOR A
20 DIRECTED VERDICT IF THIS IS THE TIME TO DO IT.

21 THE COURT: WELL ---

22 MR. WILSON: BUT CERTAINLY, ON THIS LIMITED ISSUE ---

23 THE COURT: THIS IS ONLY ON THE ISSUE OF ---

24 MR. WILSON: THERE'S NO BASIS WHATSOEVER IN THIS
25 RECORD TO SUBMIT PUNITIVE DAMAGES AGAINST TRAVIS POWELL.

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ROA 0575

APPENDIX 585

1 -- THAT'S RIGHT, TO DETERMINE THE WEIGHT OF THE EVIDENCE --
2 AND, YOUR HONOR, ONLY BE INTERESTED IN WHETHER OR NOT THERE
3 IS THE EXISTENCE OF EVIDENCE BY WHICH THE JURY COULD
4 LOGICALLY CONCLUDE THAT THERE IS EVIDENCE IN THIS RECORD TO
5 SUPPORT A PUNITIVE VERDICT.

6 JUDGE, THERE IS ALSO SOME LAW THAT WE BELIEVE ALSO
7 GIVES RISE THROUGH THE NOTION OF NEGLIGENCE PER SE IN THAT
8 THERE IS AT LEAST ONE SPECIFIC STATUTE THAT HAS BEEN
9 VIOLATED HERE. MS. KELLAHAN WILL ADDRESS THAT, AND I MAY
10 HAVE ONE OR TWO MORE COMMENTS AFTER SHE FINISHES.

11 THE COURT: ALL RIGHT. MS. KELLAHAN.

12 MS. KELLAHAN: YOUR HONOR, MAY IT PLEASE THE COURT.
13 WE HAVE MADE AN ARGUMENT PREVIOUS IN THIS CASE AND WOULD
14 FURTHER THAT ARGUMENT TODAY THAT THERE IS EVIDENCE IN THE
15 RECORD AT THIS TIME OF NEGLIGENCE PER SE.

16 WE HAD SUBMITTED TO YOUR HONOR REQUEST TO CHARGE THAT
17 CITES THE SOUTH CAROLINA CODE SECTION 62-5-423 AND THEN 62-
18 5-426. AND THE SENTENCE IN THAT STATUTE -- THE STATUTE IS
19 DEALING WITH PEOPLE WHO DEAL WITH CONSERVATORS. AND IT
20 SAYS THE FACT THAT A PERSON KNOWINGLY DEALS WITH A
21 CONSERVATOR DOES NOT ALONE REQUIRE THE PERSON TO INQUIRE
22 INTO THE EXISTENCE OF A POWER OR THE PROPRIETY OF ITS
23 EXERCISE EXCEPT THAT RESTRICTIONS ON POWERS OF CONSERVATORS
24 WHICH ARE ENDORSED ON LETTERS AS PROVIDED IN 62-5-426 ARE
25 EFFECTIVE AS TO THIRD PERSONS.

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ROA 0576

APPENDIX 586

1 AND THEN 62-5-426 STATES THAT THE COURT CAN LIMIT A
2 POWER SERVED ON A CONSERVATOR AND THE LIMITATIONS SHALL BE
3 ENDORSED ON THE LETTERS OF APPOINTMENT AND UPON ANY
4 CERTIFICATE EVIDENCING HIS APPOINTMENT.

5 IT WOULD BE OUR ARGUMENT, YOUR HONOR, THAT THAT
6 STATUTE -- THAT STATUTE IS DESIGNED TO PROTECT THE
7 INCOMPETENT OR THE MINOR, THE PROTECTED PERSON. IT'S
8 ACTUALLY INTENDED TO PROTECT HIM FROM EXACTLY WHAT HAS
9 HAPPENED HERE, THIS PRECISE TYPE OF INSTANCE.

10 IF THE PROBATE JUDGE -- AND YOU'VE HEARD THROUGHOUT
11 SOME OF THE CROSS EXAMINATION AN ATTEMPT TO SHIFT A
12 RESPONSIBILITY TO THE PROBATE JUDGE COULD HAVE DONE MORE,
13 SHOULD HAVE DONE MORE. WELL, SHE DID WHAT THE LAW REQUIRED
14 HER TO DO, AND SHE ENDORSED -- SHE REQUIRED THOSE
15 RESTRICTIONS TO BE PLACED ON THOSE AUTHORITY DOCUMENTS.
16 AND THAT STATUTE SPECIFICALLY SAYS, RESTRICTIONS ON THE
17 POWERS OF CONSERVATORS ENDORSED ON LETTERS ARE EFFECTIVE AS
18 TO THIRD PERSONS, WHICH WOULD BE THE BANK IN THIS
19 SITUATION, YOUR HONOR.

20 WE WOULD ARGUE THAT CODY P [REDACTED] IS A MEMBER OF THE
21 CLASS OF PERSONS THAT THAT STATUTE IS INTENDED TO PROTECT,
22 AND THAT THE ESSENTIAL PURPOSE OF THAT STATUTE, 62-5-423,
23 IS TO PROTECT FROM THE KIND OF HARM THAT CODY P [REDACTED] HAS
24 SUFFERED HERE TODAY.

25 AS YOUR HONOR IS AWARE, IF WE'VE GOT EVIDENCE OF A

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ROA 0577

APPENDIX 587

1 BREACH OF A DUTY THAT'S IMPOSED BY STATUTE, THEN THAT WOULD
2 GIVE THE COURT BASIS -- THE VIOLATION OF THAT STATUTE, OF
3 COURSE, DOESN'T CONSTITUTE RECKLESSNESS, WILFULNESS, OR
4 WANTONNESS, BUT THE VIOLATION IS EVIDENCE OF THAT. AND FOR
5 THAT REASON IN ADDITION TO THE REASONS ARTICULATED BY MR.
6 SABB, WE BELIEVE THAT PUNITIVE DAMAGES IS APPROPRIATE TO
7 SUBMIT TO THE JURY.

8 MR. DAVIS: YOUR HONOR.

9 MR. SABB: IF YOU DON'T MIND, JUST ONE MORE POINT AND
10 THEN I WILL YIELD.

11 JUDGE, THE OTHER PART OF IT THAT'S SIGNIFICANT FROM
12 OUR STANDPOINT IS THE SYSTEM THAT THE BANK OF AMERICA HAS
13 IN PLACE, AND THAT SYSTEM ESSENTIALLY REWARDS -- IT REWARDS
14 -- THEY CALL IT AN INCENTIVE. BUT IT ACTUALLY REWARDS
15 PERSONS TO CREATE ACCOUNTS.

16 IN THIS CASE ONE OF THE THINGS THAT CAME OUT FROM THE
17 TESTIMONY, JUDGE -- AND I'M NOT SURE THAT MR. HUBBS
18 COMPLETED WHAT HE STARTED TO SAY. BUT ESSENTIALLY, HE SAID
19 THE TELLER HAD TWO CHOICES WHEN CONFRONTED WITH THE NOTION
20 OF HAVING THE CHECKS BUT NOT THE DOCUMENTS. ONE CHOICE
21 WOULD HAVE BEEN, I'M SORRY WE CAN'T OPEN UP THIS ACCOUNT
22 NOW. YOU NEED TO GO GET THE DOCUMENTS, GET TRAVIS POWELL,
23 AND COME BACK TO SEE US.

24 BUT ACTUALLY, JUDGE, BECAUSE THEY HAVE AN INCENTIVE
25 PLAN IN PLACE -- AS THE COURT KNOWS, IF THIS LADY WANTED TO

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ROA 0578

APPENDIX 588

1 STEAL AND SHE COULDN'T STEAL FROM THE BANK OF AMERICA AND
2 THEY HAD CAUGHT HER TO THE EXTENT OF NOT ALLOWING HER TO DO
3 WHAT SHE WAS ATTEMPTING TO DO, SHE WOULD DO WHAT? GO SOME
4 PLACE ELSE WHERE SHE MIGHT BE ABLE TO GET AWAY WITH WHAT
5 SHE'S DOING. BUT BECAUSE THEY IN EFFECT ENCOURAGE ACCOUNTS
6 TO BE TAKEN AND THE MORE THE ACCOUNTS ARE TAKEN FOR, JUDGE,
7 THE MORE MONEY THEY GET AS A RESULT OF TAKING THE ACCOUNT
8 IN.

9 WE SUBMIT TO THE COURT THAT'S SOMETHING ELSE THAT THE
10 JURY OUGHT TO BE ABLE TO CONSIDER ON THIS NOTION OF A
11 CONSCIOUS DISREGARD FOR THE RIGHTS OF OTHERS.

12 THE COURT: MR. DAVIS.

13 MR. DAVIS: I WILL PASS IT OFF TO MY ---

14 THE COURT: ALL RIGHT. MR. JENKINSON.

15 MR. MCGEE: MAY IT PLEASE THE COURT, YOUR HONOR.

16 THE COURT: YES, SIR.

17 MR. MCGEE: YOUR HONOR, THE PLAINTIFFS HAVE SET FORTH
18 TWO BASES FOR THEIR REQUEST FOR PUNITIVE DAMAGES. ONE IS
19 NEGLIGENCE PER SE, THE VIOLATION OF THE CODE SECTION 62-5-
20 423.

21 HOWEVER, JUDGE, I THINK IT IS VERY IMPORTANT TO NOTE
22 THAT PLAINTIFFS HAVE NOT SHOWN BY ANY EVIDENCE THAT ANYBODY
23 AT BANK OF AMERICA HAD KNOWLEDGE OR WAS KNOWINGLY -- AND
24 THE STATUTE REQUIRES -- IT SAYS A PERSON -- EXCUSE ME. IT
25 SAYS A PERSON WHO IN GOOD FAITH EITHER ASSISTS A

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ROA 0579

APPENDIX 589

1 CONSERVATOR OR DEALS WITH HIM FOR VALUE IN ANY TRANSACTION
2 IS PROTECTED AS IF THE CONSERVATOR PROPERLY EXERCISED THE
3 POWER.

4 THE FACT THAT A PERSON KNOWINGLY DEALS WITH A
5 CONSERVATOR DOES NOT ALONE REQUIRE THE EXISTENCE OF A POWER
6 PROPRIETARY OF ITS EXERCISE EXCEPT THE RESTRICTIONS ON
7 POWERS OF CONSERVATORS WHICH ARE ENDORSED ON LETTERS ARE
8 EFFECTIVE AS TO THIRD PERSONS.

9 IN OTHER WORDS, JUDGE, THE PLAINTIFFS BEAR THE BURDEN
10 OF PROVING THAT WHEN THE BANK OF AMERICA PERSONAL BANKER
11 WAS DEALING WITH MS. UNRUE, SHE WAS KNOWING DEALING WITH A
12 CONSERVATOR.

13 I BELIEVE IF THERE IS ANYTHING THAT THE PARTIES IN
14 THIS CASE AGREE TO, IT'S THAT SHE DIDN'T KNOW THAT SHE WAS
15 A CONSERVATOR AT THAT TIME. SHE DIDN'T SET UP THE
16 CONSERVATOR ACCOUNT. SHE DIDN'T ASK FOR -- APPARENTLY
17 DIDN'T ASK FOR THE ORDER OR THE LETTERS.

18 NOW, THE WAY THAT I SEE THIS IS WHAT THE PLAINTIFFS
19 ARE TRYING TO SAY IS, WELL, SHE SHOULD HAVE KNOWN THAT SHE
20 WAS KNOWINGLY DEALING WITH A CONSERVATOR AT THAT TIME.
21 HOWEVER, THAT IS A NEGLIGENCE CLAIM; THAT IS NOT A
22 VIOLATION OF THE STATUTE. THERE IS NO EVIDENCE AND NO
23 TESTIMONY BEFORE THIS COURT THAT AT THE TIME THE BANK WAS
24 DEALING WITH MS. UNRUE THEY WERE KNOWINGLY DEALING WITH A
25 CONSERVATOR. IN FACT, ALL OF THE EVIDENCE FROM THE

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ROA 0580

APPENDIX 590

1 PLAINTIFFS AND THE DEFENDANT'S SIDE SHOWS THAT SHE DID NOT
2 KNOW THAT SHE WAS DEALING WITH A CONSERVATOR.

3 THEREFORE, THEY HAVE NOT PROVEN -- CARRIED THEIR
4 BURDEN OF PROOF THAT BANK OF AMERICA VIOLATED THE STATUTE,
5 BECAUSE THERE'S NO EVIDENCE BEFORE THIS COURT THAT THEY
6 KNOWINGLY WERE DEALING WITH A CONSERVATOR AT THAT TIME.

7 SECOND, JUDGE, THE BANK DID NOT HAVE NOTICE OR
8 KNOWLEDGE OF ANY COURT ORDER RESTRICTIONS AT THE TIME THAT
9 SHE CAME INTO THE BANK.

10 AGAIN, THIS GOES TO A NEGLIGENCE CLAIM. IT DOES NOT
11 DEAL WITH WHETHER OR NOT BANK OF AMERICA VIOLATED THAT
12 STATUTE. SO I THINK WHAT THEY'RE TRYING TO SAY IS THEY
13 BREACHED THIS STATUTE BECAUSE SHE SHOULD HAVE KNOWN, BUT
14 THAT'S NEGLIGENCE. THAT'S NOT VIOLATION OF THE STATUTE.

15 AND SO, THEREFORE, THEY HAVE NOT PROVEN THEIR
16 NEGLIGENCE PER SE OR THE VIOLATION OF THAT STATUTE.

17 THE SECOND BASIS, JUDGE, IS THAT THEY HAVE -- THE
18 PLAINTIFFS HAVE SET FORTH A SUFFICIENT AMOUNT OF EVIDENCE
19 THAT THE BANK'S ACTIONS CONSTITUTE A WILFUL, WANTON, AND
20 RECKLESS ACTS OR OMISSIONS, AND WE WOULD SUBMIT, YOUR
21 HONOR, THAT THAT SIMPLY IS NOT THE CASE AS A MATTER OF LAW.

22 JUDGE, SOUTH CAROLINA COURTS HAVE CONSISTENTLY HELD
23 THAT THE WORDS WILFUL, WANTON, AND RECKLESS ARE SYNONYMOUS.
24 AND THE SOUTH CAROLINA SUPREME COURT HAS HELD THAT
25 WHICHEVER TERM YOU PREFER, THEY ALL MEAN THE SAME THING,

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ROA 0581

APPENDIX 591

1 AND THAT IS THE CONSCIOUS FAILURE TO EXERCISE DUE CARE.

2 OTHER SOUTH CAROLINA SUPREME COURT CASES HAVE SAID --

3 AND I'LL SUBMIT THIS TO THE COURT AND MARK THIS AS A

4 DEFENDANT'S EXHIBIT OR COURT'S EXHIBIT AFTER THIS. BUT

5 OTHER COURTS HAVE HELD THAT IT'S A CONSCIOUS FAILURE TO

6 OBSERVE DUE CARE OR THE DOING OF A NEGLIGENT ACT KNOWINGLY.

7 AND, YOUR HONOR, THERE'S NO EVIDENCE HERE THAT THESE

8 FOLKS DID ANYTHING OTHER THAN MAKE AN HONEST MISTAKE; AND

9 THAT'S NEGLIGENCE.

10 THE WAY THE PLAINTIFFS ARE POSTURING THIS IS IF

11 THERE'S A RULE OUT THERE AND YOU HAVE COME ACROSS IT AND

12 YOU DON'T FOLLOW THAT RULE, THEN THAT'S NOT NEGLIGENCE,

13 THAT'S NOT EVEN GROSS NEGLIGENCE, THAT'S RECKLESS, AND

14 THAT'S NOT THE CASE.

15 SOUTH CAROLINA COURTS HAVE CONSISTENTLY HELD THAT

16 NEGLIGENT ACTS ARE THE FAILURE TO EXERCISE DUE CARE. GROSS

17 NEGLIGENCE IS NOT EVEN ENOUGH FOR PUNITIVE DAMAGES.

18 THEY'VE GOT TO PROVE RECKLESS ACTS.

19 IN THIS CASE, JUDGE, THEY HAVEN'T REACHED THAT. THE

20 FACT THAT THERE'S A RULE OUT THERE THAT THE BANK OF AMERICA

21 HAS OR THE STANDARD OF CARE IN THE INDUSTRY THAT THEY

22 DIDN'T COMPLY WITH THAT IS NOT IN AND OF ITSELF EVIDENCE

23 THAT THERE WAS RECKLESS BEHAVIOR.

24 AND IN THIS CASE, YOUR HONOR, THEY SIMPLY HAVE NOT

25 SUBMITTED ENOUGH EVIDENCE OR TESTIMONY TO GET PAST THE

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ROA 0582

APPENDIX 592

1 DIRECTED VERDICT STAGE.

2 YOUR HONOR, AGAIN, SOUTH CAROLINA COURT OF APPEALS HAS
3 EVEN HELD THAT IT'S THE PRESENT CONSCIOUSNESS OF WRONGDOING
4 THAT JUSTIFIES ASSESSMENT OF PUNITIVE DAMAGES AGAINST THE
5 TORT FEASOR.

6 AND MS. UNRUE IS NOT HERE. IF SHE WAS HERE, WOULD SHE
7 TESTIFY THAT I TOLD THE BANK THAT I WAS A CONSERVATOR AND
8 THEY JUST SAID, IT DOESN'T MATTER, THESE ARE ALL THE SAME
9 THINGS. THAT'S THEIR BURDEN OF PROOF TO COME HERE AND
10 PROVE THAT, IT'S THEIR BURDEN TO GET TIMELY DISCOVERY SO
11 THAT THESE FOLKS REMEMBER IT AND THEY SAY, YOU KNOW WHAT?
12 SHE DID SHOW ME THE COURT ORDER AND I KNEW ABOUT IT, BUT I
13 JUST DIDN'T THINK IT WAS THE RIGHT THING. THOSE ARE --
14 THAT'S EVIDENCE AND THAT'S TESTIMONY THAT WOULD SHOW A
15 PRESENT CONSCIOUSNESS THAT SOMEBODY'S RIGHTS ARE BEING
16 INVADED. AND THAT HAS NOT BEEN SHOWN HERE, JUDGE. THERE'S
17 NOTHING THAT'S BEEN SHOWN MORE THAN NEGLIGENCE, THE FAILURE
18 TO EXERCISE DUE CARE.

19 THEREFORE, YOUR HONOR, THE TWO BASES, THE VIOLATION OF
20 THE PROBATE COURT ORDER AND PER SE THAT WOULD ALLOW THE
21 JURY AND THE COURT TO BE A FACT QUESTION AS TO PUNITIVE
22 DAMAGES, THE PLAINTIFFS HAVE NOT PROVEN BY ANY EVIDENCE --
23 IN FACT, ALL THE EVIDENCE PRESENTED SHOWS THAT THE BANK WAS
24 NOT KNOWINGLY DEALING WITH A CONSERVATOR.

25 WERE THEY NEGLIGENT BECAUSE THEY DIDN'T KNOW IT?

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ROA 0583

APPENDIX 593

1 MAYBE. BUT THAT'S NOT -- THE STATUTE IS TO BE NARROWLY
2 CONSTRUED. AND IT SAYS KNOWINGLY DEALING WITH A
3 CONSERVATOR. AND EVERYBODY THAT HAS TESTIFIED HAS SAID
4 THAT THEY DIDN'T KNOW THAT AND DIDN'T OPEN A CONSERVATOR
5 ACCOUNT AND SO THAT BASIS SHOULD FAIL.

6 SECONDLY, THERE'S NOT ENOUGH EVIDENCE BEFORE THE COURT
7 TO SEND PUNITIVE DAMAGES TO THE JURY BECAUSE IT'S ONLY
8 EVIDENCE OF NEGLIGENCE HERE. THERE IS NOT A SUFFICIENT
9 AMOUNT OF EVIDENCE TO SHOW GROSS NEGLIGENCE, AND CERTAINLY
10 NOT RECKLESSNESS.

11 AND, THEREFORE, THE JUDGE, YOUR HONOR AS THE
12 GATEKEEPER, SHOULD EXERCISE YOUR AUTHORITY AND GRANT
13 DIRECTED VERDICT AS TO PUNITIVE DAMAGES ON BOTH OF THOSE
14 BASES BY THE PLAINTIFF. THANK YOU.

15 THE COURT: ALL RIGHT.

16 MR. MCGEE: AND, YOUR HONOR, IF I COULD HAVE THE COURT
17 REPORTER MARK THESE.

18 (MOTION FOR DIRECTED VERDICT: PUNITIVE DAMAGES,
19 MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 3.)

20 THE COURT: DO YOU HAVE THAT STIPULATION AS WELL?

21 (PAUSE.)

22 THE COURT: ALL RIGHT. REGARDING MR. POWELL, THE ONLY
23 ARGUMENT BEFORE ME IS MR. WILSON'S ARGUMENT. NO ONE HAS
24 ARGUED ANYTHING TO THE CONTRARY TO HIS POSITION. AND IT
25 APPEARS TO BE NO EVIDENCE TO SUGGEST THAT HIS CONDUCT WAS

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ROA 0584

APPENDIX 594

1 WILFUL, WANTON, OR RECKLESS.

2 I GRANT THE MOTION FOR DIRECTED VERDICT AS TO MR.
3 POWELL.

4 MR. WILSON: THANK YOU.

5 THE COURT: AS TO BANK OF AMERICA, OF COURSE, THE BANK
6 FUNCTIONS THROUGH ITS EMPLOYEES ACTING WITHIN THE SCOPE OF
7 THEIR EMPLOYMENT. SO THE CONDUCT OF THE BANK AS A WHOLE AS
8 WELL AS THE BANK THROUGH THE ACTIONS OF ITS EMPLOYEES MUST
9 BE EVALUATED ON THIS ISSUE.

10 I FIND THAT THE CHECKS THEMSELVES PUT THE BANK ON
11 NOTICE THAT THE BANK WAS DEALING WITH FUNDS THAT WERE NOT
12 FUNDS OF KAREN POWELL OR MS. UNRUE, THAT THESE WERE FUNDS
13 THAT WERE FOR THE BENEFIT OF THE MINOR CHILD AS INDICATED
14 IN THE CHECKS, AND THAT THERE IS EVIDENCE FROM WHICH THE
15 JURY COULD CONCLUDE THAT THE BANK ACTED EITHER IN RECKLESS
16 DISREGARD FOR THE -- RECKLESS DISREGARD CONCERNING THE
17 INTEREST OF THE CHILD IN PROPERLY PRESERVING THOSE FUNDS OR
18 THAT THE BANK THROUGH ITS AGENTS DID NOT APPRECIATE THE
19 HIGH DEGREE OF RISK INVOLVED IN THOSE FUNDS BEING STOLEN,
20 BY NOT ADHERING TO WHAT WAS REQUIRED BASED ON THE
21 INFORMATION PLACED ON THE FRONT OF THOSE CHECKS.

22 SOME OF THE TESTIMONY INDICATED THAT THE TELLER MAY
23 NOT HAVE LOOKED AT THE CHECKS, MAY HAVE SIMPLY LOOKED AT
24 THE AMOUNTS OF THE CHECK. WHEREAS HAD SHE LOOKED AT THE
25 CHECKS, SHE WOULD HAVE CLEARLY SEEN THAT THE CHECKS WERE AS

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ROA 0585

APPENDIX 595

1 CONSERVATOR FOR CODY POWELL.

2 SO IT'S AN ANALOGY THAT INVOLVES THE ACTIONS EITHER IN
3 RECKLESS DISREGARD OF THE INTEREST OF THE MINOR WHO WOULD
4 BE THE BENEFICIARY OF THOSE CHECKS OR A FAILURE TO
5 APPRECIATE THE HIGH DEGREE OF RISK AND SENSITIVITY TO THOSE
6 FUNDS SUCH AS TO PRESERVE THEM AS REFLECTED IN THE PAYOR'S
7 INSTRUCTIONS BY ISSUING THOSE CHECKS FOR THE BENEFIT OF THE
8 CHILD. AND THOUGH THE BANK EMPLOYEE MAY NOT HAVE ACTUALLY
9 KNOWN, A REASONABLE PERSON IN THE BANK EMPLOYEE'S POSITION
10 WOULD HAVE KNOWN. AND APPLYING THAT OBJECTIVE STANDARD IS
11 SUFFICIENT TO CONSTITUTE RECKLESSNESS.

12 THIS ANALYSIS IS BASED ON THE ANALYSIS GIVEN IN
13 SECTION 500 OF THE RESTATEMENT OF TORTS ON THAT ISSUE. AND
14 I FIND THAT IT APPLIES TO THIS PARTICULAR SITUATION, NOT
15 BASED ON THE STATUTE AS CITED BUT THE STATUTE AS CITED BY
16 MS. KELLAHAN DOES GIVE INSTRUCTION THAT THOSE WHO DEAL IN
17 CONSERVATORSHIP FUNDS, DEALING FUNDS FOR THE BENEFIT OF
18 OTHERS, IT IMPOSES UPON THEM A DUTY OF DISCERNMENT TO A
19 MUCH GREATER DEGREE EXHIBITED IN THIS CASE IF THE
20 PLAINTIFFS' EVIDENCE IS TO BE BELIEVED BY THE TRIERS OF
21 FACT.

22 SO THE MOTION FOR A DIRECTED VERDICT IS THEREFORE
23 DENIED AS TO BANK OF AMERICA.

24 MR. MCGEE: THANK YOU, YOUR HONOR. IF I MAY JUST
25 CLARIFY IS THE DENIAL ON BOTH BASES, OF NEGLIGENCE PER SE

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ROA 0586

APPENDIX 596

1 AND THE RECKLESS? I UNDERSTAND YOUR HONOR'S RULING ON
2 RECKLESS. I JUST WANTED TO ---
3 THE COURT: DENIED ON THE -- NOT BASED ON NEGLIGENCE
4 PER SE, BUT BASED ON THE OTHER ISSUE. I MADE NO RULING AT
5 THIS POINT AS TO THE APPLICABILITY OF NEGLIGENCE PER SE TO
6 THIS CASE, THOUGH IT IS -- I'M NOT BASING MY RULING ON
7 THAT. BUT I BELIEVE THE STATUTE IS INSTRUCTIVE TO THE
8 EXTENT THAT IT POINTS OUT THE LEGISLATIVE CONCERN FOR THOSE
9 WHO DEAL IN CONSERVATORSHIP FUNDS.
10 MR. MCGEE: THANK YOU, YOUR HONOR.
11 THE COURT: ALL RIGHT. NOW, THE OTHER ISSUE. MR.
12 DAVIS?
13 MR. DAVIS: THE REMAINING ISSUE DEALS WITH DR. WOOD,
14 YOUR HONOR.
15 MR. SABB: AND, JUDGE, AND MIGHT I JUST SHARE ONE
16 THING SO THAT WE'RE ALL ON THE SAME SHEET OF MUSIC. WHEN
17 MR. DAVIS REPRESENTS TO THE COURT THAT HE JUST GOT THIS
18 REPORT A WEEK OR TWO AGO ---
19 MR. DAVIS: THAT WAS IN ERROR.
20 MR. SABB: YES.
21 MR. DAVIS: THAT WAS IN ERROR.
22 MR. MCGEE: THE REPORT WAS DATE IS SEPTEMBER 22. I
23 THINK IT WAS EMAILED TO ME BY JENNIFER KELLAHAN.
24 MR. DAVIS: THAT WAS IN ERROR.
25 MR. SABB: BUT EVEN BEFORE THAT, WAY BACK WHEN, THERE

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ROA 0587

APPENDIX 597

1 WAS A REPORT GIVEN TO THEM AT THE TIME THEY TOOK DR. WOOD'S
2 DEPOSITION THAT ESSENTIALLY HAD IN IT MOST OF WHAT IS
3 CONTAINED IN IT NOW. THE ONLY DIFFERENCE BEING, DR. WOOD
4 HAS UPDATED IT SINCE THAT TIME. SO IT'S NOT NEW
5 INFORMATION IS WHAT I WANT TO MAKE CLEAR.

6 THE COURT: ALL RIGHT.

7 MR. DAVIS: ONE OF THE THINGS HE'S UPDATED IS THE
8 INCOME OF KEN LEWIS, WHO IS THE CEO OF BANK OF AMERICA.

9 THE COURT: I'M PREPARED TO RULE ON THAT ISSUE. I
10 THINK IN THIS TIME OF HEIGHTENED CITIZENS' ALERT TO THE
11 ISSUES OF GOLDEN PARACHUTES, RESCUE PLANS, BAILOUTS,
12 ETCETERA, THAT THE PREJUDICIAL EFFECT OF ADMITTING
13 TESTIMONY OUTLINING COMPENSATION OF BANK OF AMERICA
14 EXECUTIVES AND CORPORATE OPERATIVES WOULD GREATLY OUTWEIGH
15 ANY PROBATIVE VALUE OF THAT TESTIMONY, THAT THE TESTIMONY
16 IS NOT NECESSARY TO ESTABLISH THE ASSETS OF THE DEFENDANT
17 OR ON THE ISSUE AS OUTLINED IN THE STEVENSON -- IN THE
18 STEVENSON CASE, AND GAMBLE VERSUS ---

19 MR. JENKINSON: GAMBLE VERSUS STEVENSON.

20 THE COURT: YES, THE GAMBLE VERSUS STEVENSON CASE.
21 AND CERTAINLY IT IS NOT INCUMBENT UPON THE PLAINTIFF TO
22 ACCEPT THE STIPULATION AS TO THE WORTH OF THE DEFENDANT.
23 THE PLAINTIFF HAS THE RIGHT TO PRESENT ITS CASE.

24 BUT I SUSTAIN THE OBJECTION TO PERMITTING TESTIMONY
25 CONCERNING CORPORATE COMPENSATION.

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ROA 0588

APPENDIX 598

1 MR. SABB: WE UNDERSTAND, JUDGE. I BELIEVE DR. WOOD
2 UNDERSTANDS THE RULING AS WELL.

3 THE COURT: ALL RIGHT.

4 MR. MCGEE: AND WE UNDERSTAND THE RULING AS WELL, YOUR
5 HONOR. IF I COULD JUST PUT JUST A COUPLE THINGS JUST ON
6 THE RECORD.

7 THE COURT: ALL RIGHT.

8 MR. MCGEE: YOUR HONOR, WE UNDERSTAND THE COURT'S
9 RULING AND THANK THE COURT FOR THAT RULING. HOWEVER, AS IS
10 POINTED OUT IN AN EARLIER DISCUSSION, DR. WOOD'S NEW
11 OPINIONS -- OR HIS NEW REPORT ENDS WITH JUNE 30, 2008.

12 YOUR HONOR, WE WOULD SUBMIT THAT HIS OPINIONS AS TO
13 BANK OF AMERICA'S ABILITY TO PAY AND ITS FINANCIAL
14 CONDITION NOW IS ENTIRELY INACCURATE AND OUTDATED AS OF THE
15 EVENTS THAT HAVE TAKEN PLACE SINCE THAT TIME.

16 THE COURT: WELL, I'VE HEARD MR. DAVIS' ON THAT ISSUE
17 AND I'M HEARING YOUR TESTIMONY ON THAT ISSUE, AND I HAVEN'T
18 HEARD DR. WOOD'S TESTIMONY ON THAT ISSUE. AND IF IT'S AN
19 ISSUE OF -- IT APPEARS TO ME THAT IF THERE'S SOME QUESTION
20 AS TO THE CURRENTNESS OF HIS OPINION OR VALIDITY OF WHAT HE
21 HAS TO SAY, THAT THAT GOES TO THE WEIGHT OF HIS TESTIMONY
22 AND NOT TO THE ADMISSIBILITY OF THE TESTIMONY.

23 IF THE COURT WERE TO JUDGE ECONOMIC TESTIMONY BASED ON
24 DAILY TRENDS IN THE MARKET, I DON'T KNOW HOW ANY EXPERT
25 WITNESS WOULD EVER GET QUALIFIED; AND THAT'S THE NATURE OF

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ROA 0589

APPENDIX 599

1 WHAT WE DEAL WITH. AND PERHAPS ANY ASSETS OF ANY
2 CORPORATION IF WE HAVE TO DISCOUNT OR ELIMINATE THAT PERSON
3 FROM TESTIMONY BASED ON ANY CHANGES IN THE CORPORATE
4 FORTUNES.

5 I UNDERSTAND YOUR OBJECTION ON THAT, AND I OVERRULE
6 THAT OBJECTION.

7 MR. MCGEE: YES, YOUR HONOR. AND I APOLOGIZE.

8 THE COURT: IN RELATION TO ANY DISCOVERY ISSUE OR
9 FAILURE TO DISCLOSE, THEN THAT'S A SEPARATE SUBJECT.

10 MR. MCGEE: WELL, WE WOULD, JUDGE, BECAUSE THE UPDATED
11 REPORT WAS PROVIDED LESS THAN TWO WEEKS AGO. AND WE
12 UNDERSTAND THE COURT'S RULING. AND, AGAIN, WHAT WE WOULD
13 ASK -- AND I UNDERSTAND YOUR HONOR, BUT WE WOULD ASK THAT
14 DR. WOOD PROFFER HIS TESTIMONY SO THAT ---

15 THE COURT: YOU WANT HIM TO RESTRICT HIS OPINION AS TO
16 THE VALUE OF BANK OF AMERICA AS OF JUNE? OR WHAT DO YOU
17 WANT?

18 MR. MCGEE: WE ---

19 THE COURT: OR YOU JUST WANT TO OBJECT TO WHATEVER ---

20 MR. MCGEE: NO. NO. NO. JUDGE, WE -- I UNDERSTAND
21 THE COURT'S RULING. I'M NOT GOING TO RAISE ANY MORE ISSUES
22 THAN THAT WHATSOEVER. I'M CERTAINLY NOT GOING TO TELL THE
23 PLAINTIFFS WHAT ---

24 THE COURT: WHAT I'M SAYING IS I MAY NOT UNDERSTAND
25 YOUR OBJECTION IF YOU HAVE AN OBJECTION.

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ROA 0590

APPENDIX 600

1 MR. MCGEE: WELL, WE DO BUT YOUR HONOR HAS ---

2 THE COURT: TELL ME WHAT OBJECTION YOU HAVE TO MAKE
3 SURE I'VE RULED ON IT.

4 MR. MCGEE: THAT DR. WOOD'S TESTIMONY AS TO THE BANK
5 OF AMERICA -- THERE'S NOT BEEN SUFFICIENT AND RELIABLE
6 EVIDENCE DEVELOPED IN HIS REPORT THAT HE'S SHOWN US THAT
7 GOES TO BANK OF AMERICA'S ABILITY TO PAY OR ITS FINANCIAL
8 STATUS AS OF NOW.

9 I UNDERSTAND YOUR HONOR'S RULINGS.

10 THE COURT: MY RULING IS I HAVEN'T SEEN ANYTHING. I
11 HAVE NO BASIS TO RULE ON THAT. BUT IT APPEARS BASED ON
12 YOUR ARGUMENTS THAT THAT GOES TO THE WEIGHT OF HIS
13 TESTIMONY AND NOT ADMISSIBILITY.

14 MR. MCGEE: UNDERSTOOD. AND ALONG WITH THAT, WE WOULD
15 REQUEST THAT THERE BE A PROFFER FOR THAT.

16 THE COURT: YOU WANT HIM TO TESTIFY OUTSIDE THE
17 PRESENCE OF THE JURY?

18 MR. MCGEE: WELL ---

19 THE COURT: OR WHAT DO YOU WANT?

20 MR. DAVIS: COULD I HAVE A MOMENT, YOUR HONOR?

21 THE COURT: YES, SIR.

22 (PAUSE.)

23 MR. MCGEE: YOUR HONOR, WE WITHDRAW THAT. I
24 APOLOGIZE.

25 THE COURT: ALL RIGHT. ARE YOU ALL READY FOR THE JURY

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ROA 0591

APPENDIX 601

1 NOW?

2 MR. JENKINSON: YES, SIR, THE PLAINTIFFS' READY, YOUR
3 HONOR.

4 (THE JURY RETURNS TO THE COURTROOM AT 4:55 P.M.)

5 THE COURT: ALL RIGHT. THE JURY IS PRESENT. YOUR
6 NEXT WITNESS.

7 MR. SABB: THANK YOU, YOUR HONOR. IF IT PLEASE THE
8 COURT, WE CALL DR. OLIVER G. WOOD, JR., TO THE STAND.

9 OLIVER G. WOOD, JR., BEING
10 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 MR. SABB: MAY IT PLEASE THE COURT, YOUR HONOR.

12 THE COURT: YES, SIR.

13 MR. SABB: THANK YOU, JUDGE.

14 DIRECT EXAMINATION BY MR. SABB:

15 Q SIR, WOULD YOU PLEASE -- YOU ALL RIGHT?

16 A YES.

17 Q WOULD YOU PLEASE STATE YOUR NAME AND ADDRESS FOR THE
18 LADIES AND GENTLEMEN OF THE JURY PLEASE?

19 A OLIVER G. WOOD, JR.

20 Q AND WHERE ARE YOU ORIGINALLY FROM?

21 A GREER, SOUTH CAROLINA.

22 Q HOW LONG DID YOU LIVE THERE?

23 A 18 YEARS.

24 Q WOULD YOU PLEASE JUST GIVE THE JURY AND THE COURT A
25 BRIEF DESCRIPTION OF YOUR EDUCATIONAL BACKGROUND?

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ROA 0592

APPENDIX 602

1 A I HAVE A BACHELOR OF SCIENCE DEGREE IN BUSINESS
2 ADMINISTRATION FROM THE UNIVERSITY OF SOUTH CAROLINA.

3 Q YES, SIR.

4 A MASTERS DEGREE IN ECONOMICS FROM UNIVERSITY OF SOUTH
5 CAROLINA. DOCTORATE IN ECONOMICS, UNIVERSITY OF FLORIDA.

6 Q ALL RIGHT, SIR. DESCRIBE YOUR PROFESSIONAL BACKGROUND
7 FOR ME?

8 A I WAS HIRED BY THE UNIVERSITY OF SOUTH CAROLINA IN
9 1965 TO TEACH ECONOMICS AND BANKING AND FINANCE COURSES. I
10 TAUGHT THERE FOR 29 YEARS. I'M NOW DISTINGUISHED PROFESSOR
11 EMERITUS. THAT MEANS I'M RETIRED FROM TEACHING.

12 Q YES, SIR. DID YOU SERVE IN THE MILITARY, DR. WOOD?

13 A YES, I SERVED ON ACTIVE DUTY IN THE UNITED STATES NAVY
14 FROM 1959 TO 1961.

15 Q WHAT ABOUT THE RESERVES?

16 A I SERVED IN THE RESERVES FROM 1961 TO 1987, WHEN I
17 RETIRED.

18 Q WHAT WAS YOUR RANK IN THE NAVAL RESERVE AT THE TIME
19 YOU RETIRED?

20 A CAPTAIN.

21 Q WHAT PRACTICAL EXPERIENCE DO YOU HAVE IN THE BUSINESS
22 WORLD, DR. WOOD?

23 A I'VE HELPED SET UP 11 BANKS, 2 SAVINGS AND LOAN
24 ASSOCIATIONS, SERVED ON THE BOARD OF DIRECTORS OF REPUBLIC
25 NATIONAL BANK IN COLUMBIA FOR ABOUT 10 YEARS. THEN WE SOLD

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ROA 0593

APPENDIX 603

1 THAT BANK, AND I THEN WENT ON THE ADVISORY BOARD FOR THE
2 LEXINGTON STATE BANK.

3 Q YES, SIR.

4 A THEN THAT BANK WAS SOLD TO BB&T. THEN I WENT ON
5 BB&T'S ADVISORY BOARD. THEN WE STARTED A NEW BANK IN
6 SPARTANBURG CALLED FIRST SOUTH BANK, AND I WENT ON THEIR
7 ADVISORY BOARD. THEN 3 YEARS AGO WE ESTABLISHED A NEW
8 NATIONAL BANK IN COLUMBIA CALLED BANK MERIDIAN. I'M VICE
9 CHAIRMAN OF THAT BANK BOARD. I SERVED ON THE BOARD OF
10 DIRECTORS OF EDISTO FARM CREDIT IN ORANGEBURG. WE MADE
11 FARM LOANS IN THE LOWER PART OF THE STATE. SERVED ON THE
12 AG-FIRST INVESTMENT POLICY COMMITTEE -- THAT'S THE OLD
13 FEDERAL LAND BANK. THAT COMMITTEE SET INVESTMENT POLICY
14 FOR THE ACTIVE AND RETIRED EMPLOYEES. THEN LASTLY, I OWN
15 5 FARMS IN TENNESSEE WHICH ARE A BUSINESS.

16 Q DR. WOOD, I'M JUST KIND OF CURIOUS. THE LEXINGTON
17 STATE BANK AND THE BB&T BANK THAT YOU JUST REFERRED TO, IS
18 THAT THE SAME LEXINGTON STATE BANK THAT WAS BOUGHT OUT BY
19 BB&T THAT MR. HUBBS JUST TESTIFIED ABOUT?

20 A YES, IT IS.

21 Q I SEE. OKAY. IT'S KIND OF IRONIC. WHAT SPECIAL
22 EXPERIENCE HAVE YOU HAD IN THE FIELD OF INVESTMENT STOCK?

23 A I TAUGHT A GRADUATE COURSE ON MONEY, CAPITAL MARKETS
24 AT THE UNIVERSITY FOR ABOUT 27 YEARS. I TAUGHT BANK
25 MANAGEMENT FOR ABOUT 27 YEARS. I DIRECTED MBA FIELD

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0594

APPENDIX 604

1 STUDIES FOR ABOUT 20 YEARS. I TAUGHT IN SOUTH CAROLINA
2 BANKERS SCHOOL FOR 25 YEARS. I TAUGHT MONEY AND BANKING
3 FOR 30-PLUS YEARS, COUNTING MY GRADUATE STUDENT DAYS. AND
4 I PARTICIPATED IN AND ADVISED ON INVESTMENTS THAT ALL THE
5 BANKS THAT I'VE BEEN ASSOCIATED WITH.

6 Q YES, SIR. HAVE YOU WRITTEN ANY BOOKS, DR. WOOD, IN
7 THE FIELD OF ECONOMICS OR FINANCE?

8 A YES, I'VE AUTHORED OR CO-AUTHORED 7 BOOKS OR
9 MONOGRAPHS.

10 Q WHAT'S YOUR EXPERIENCE IN ESTIMATING THE ECONOMIC LOSS
11 AND FINANCIAL ASPECTS OF MATTERS SUCH AS PERSONAL INJURY,
12 WRONGFUL DEATH, OR BUSINESS LOSS CASES?

13 A THE LAST 39 YEARS I'VE MADE STUDIES IN CASES INVOLVING
14 WRONGFUL DEATH, PERSONAL INJURY, TERMINATION DUE TO EITHER
15 AGE, SEX, OR RACE, FAMILY COURT MATTERS, AND TESTIFIED
16 ABOUT MY FINDINGS.

17 Q WHAT EXPERIENCE HAVE YOU HAD WITH INSTRUCTING LAWYERS
18 IN THE AREA OF ECONOMIC LOSS AND THE FINANCIAL ASPECTS OF
19 PERSONAL INJURY, WRONGFUL DEATH, AND BUSINESS LOSS CASES?

20 A SINCE 1972 I'VE BEEN INVITED BY THE VARIOUS BAR
21 ASSOCIATION GROUPS TO APPEAR AT THEIR SEMINARS ABOUT 25
22 TIMES. I WAS A GUEST LECTURER IN THE DAMAGES COURSE AT THE
23 UNIVERSITY OF SOUTH CAROLINA LAW SCHOOL FROM 1970 TO 2004.
24 THEN THE PROFESSOR RETIRED AND WENT TO THE CHARLESTON
25 SCHOOL OF LAW.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0595

1 Q YES, SIR.

2 A SO THEN SINCE 2004 I HAVE BEEN A GUEST LECTURER DOWN
3 THERE. AND I THINK IT WAS 2 SUMMERS AGO THEY NAMED ME
4 THEIR ECONOMIST IN RESIDENCE.

5 Q I SEE. IS THE METHODOLOGY YOU USE TO EVALUATE THE
6 ECONOMIC LOSS ACCEPTABLE AMONG ECONOMISTS?

7 A YES.

8 MR. SABB: YOUR HONOR, WE WOULD SUBMIT DR. WOOD AS AN
9 EXPERT IN THE ECONOMIC ASPECTS OF PERSONAL INJURY, WRONGFUL
10 DEATH, AND BUSINESS LOSS CASES AND THE FINANCIAL CONDITION
11 OF CORPORATIONS.

12 THE COURT: WHAT SAY THE DEFENSE?

13 MR. DAVIS: NO OBJECTION, YOUR HONOR.

14 THE COURT: ALL RIGHT. HE IS SO ADMITTED.

15 Q DR. WOOD, WERE YOU HIRED BY US, THE LAWYERS, TO STUDY
16 THE ECONOMIC LOSS IN THIS CASE?

17 A YES.

18 Q AND DID YOU REVIEW A SIGNIFICANT AMOUNT OF DOCUMENTS
19 PROVIDED BY US THAT INCLUDED PLEADINGS, BANK RECORDS, CD
20 RATES, ETCETERA TO DETERMINE THE ECONOMIC LOSS THAT WAS
21 SUFFERED BY CODY POWELL?

22 A YES.

23 Q AND BASED UPON THOSE DOCUMENTS THAT YOU USED, IT'S MY
24 UNDERSTANDING THAT YOU REACHED AN OPINION TO A REASONABLE
25 DEGREE OF ECONOMIC CERTAINTY AS TO WHAT CODY POWELL'S LOSS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0596

APPENDIX 606

1 WAS?

2 A YES.

3 Q AND, DR. WOOD, I JUST WANTED TO INFORM YOU THAT
4 BECAUSE OF THE NUMBERS THAT YOU PROVIDED AND THE REPORT
5 THAT YOU HAVE PROVIDED, THE LAWYERS HAVE NOW STIPULATED
6 THAT THE NUMBER YOU GAVE IS IN FACT THE NUMBER THAT
7 REPRESENTS THE ACTUAL DAMAGES LOST AND SUFFERED BY CODY
8 POWELL. AND I BELIEVE THAT NUMBER IS -- LET ME MAKE SURE
9 THAT I STATE IT INTO THE RECORD -- \$205,735.37?

10 A THAT'S CORRECT.

11 THE COURT: LADIES AND GENTLEMEN, THE PARTIES HAVE
12 STIPULATED THAT THIS AMOUNT, \$205,735.37 IS THE AMOUNT OF
13 ACTUAL DAMAGES SUFFERED BY CODY STEVEN POWELL. WHERE THERE
14 IS A STIPULATION YOU MUST ACCEPT THAT AS BEING AN ACCURATE
15 AMOUNT, AND NO PROOF IS NECESSARY AS IT RELATES TO THAT
16 BEING THE AMOUNT OF ACTUAL DAMAGES.

17 MR. SABB: THANK YOU, YOUR HONOR.

18 THE COURT: ANYTHING FURTHER REGARDING THE STIPULATION
19 THAT COUNSEL WOULD LIKE FOR ME TO PUT ON THE RECORD?

20 MR. DAVIS: NO, YOUR HONOR. WE AGREE WITH IT.

21 THE COURT: ALL RIGHT. YOU MAY PROCEED.

22 MR. SABB: THANK YOU, JUDGE.

23 Q DR. WOOD, HAVING ESTABLISHED THAT, I'D LIKE TO MOVE
24 ONTO THE SECOND ASPECT OF WHY YOU WERE HIRED IN THIS CASE.
25 WHAT FINANCIAL DOCUMENTS HAVE YOU EXAMINED WITH REGARD TO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0597

APPENDIX 607

1 THE BANK OF AMERICA?

2 A I'VE EXAMINED THE ANNUAL 10K THAT THEY FILE WITH THE
3 SECURITIES AND EXCHANGE COMMISSION GIVING THE SECURITIES
4 AND EXCHANGE COMMISSION IN WASHINGTON THEIR ASSETS,
5 LIABILITIES, AND A DISCUSSION ABOUT THEIR BUSINESS.

6 Q YES, SIR.

7 A I ALSO LOOKED AT THE 10Q. THE 10Q GIVES YOU A
8 QUARTERLY UPDATE DURING THE YEAR AS TO THE ASSETS,
9 LIABILITIES, AND INCOME, AND SO FORTH OF CORPORATIONS IN
10 AMERICA.

11 Q YES, SIR.

12 A I LOOKED AT BOTH OF THOSE.

13 Q ALL RIGHT, SIR. AND, DR. WOOD, WOULD YOU PLEASE -- IF
14 YOU DON'T MIND, SHOW THE COURT AND THE JURY WHAT YOU
15 CONSIDER RELEVANT INFORMATION FROM THESE REPORTS?

16 (PAUSE.)

17 MR. SABB: JUDGE, MAY THE WITNESS COME DOWN?

18 THE COURT: YES.

19 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

20 MR. DAVIS: EXCUSE ME, YOUR HONOR. IF I COULD MOVE
21 WHERE I CAN SEE.

22 THE COURT: YES, SIR.

23 (PAUSE.)

24 A THIS FIRST CHART LOOKS AT THE ASSETS, LIABILITIES, AND
25 SHAREHOLDERS' EQUITY FOR THE BANK OF AMERICA CORPORATION

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0598

APPENDIX 608

1 FOR ITS FISCAL YEARS ENDING DECEMBER '03 TO '07 AND JUNE
2 30, 2008.

3 BANK OF AMERICA I BELIEVE IS THE LARGEST BANK IN
4 AMERICA. THE NAME BANK OF AMERICA COMES FROM CALIFORNIA,
5 AND A FRUIT SALESMAN OUT THERE 80 OR 90 YEARS AGO NAMED
6 A.P. GIANNINI SAID HE WANTED TO CREATE A BANK THAT EXTENDED
7 FROM THE WEST COAST TO THE EAST COAST.

8 THE FEDERAL RESERVE BLOCKED HIM FOR MANY, MANY YEARS.
9 TIMES CHANGED. AND SO THROUGH VARIOUS MERGERS, HIS NAME
10 ACTUALLY WENT ON THE BANK THAT RESULTS FROM HIS OPERATION
11 AND THE ONE ON THE EAST COAST.

12 THE END OF 2007 THEY HAD ASSETS OF \$1.6 TRILLION. A
13 TRILLION IS A THOUSAND BILLION.

14 ASSETS ARE THINGS OF VALUE. IN THE CASE OF A BANK,
15 THAT CONSISTS OF CASH, LOANS, INVESTMENT SECURITIES, REAL
16 ESTATE, AND OTHER THINGS OF VALUE.

17 LIABILITIES ARE WHAT THE BANK OWES. LIABILITIES ARE
18 DEPOSITS. DEPOSITS GIVE THE BANK THE ABILITY TO MAKE LOANS
19 AND BUY SECURITIES. ON THAT DATE THEY HAD \$1.465 TRILLION
20 IN LIABILITIES OF ALL SORTS.

21 YOU TAKE WHAT A BANK OWNS, SUBTRACT WHAT IT OWES, AND
22 YOU GET SHAREHOLDERS' EQUITY. SHAREHOLDERS' EQUITY ON THAT
23 DATE WAS \$136.66 BILLION. THIS IS THE SHAREHOLDERS'S
24 INTEREST OR EQUITY IN THOSE ASSETS.

25 ON JUNE 30 IT EXPANDED TO \$1.7 BILLION. AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0599

APPENDIX 609

1 SHAREHOLDERS'S EQUITY WAS \$1.63 BILLION. \$163 BILLION,
2 EXCUSE ME.

3 CHART 2 LOOKS AT THE REVENUE, NET OF INTEREST EXPENSE
4 RECEIVED BY THE BANK IN ITS PRETAX INCOME. FROM 2003 TO
5 2007 ITS PRETAX INCOME WENT UP FROM 38 BILLION TO 66
6 BILLION, AND THAT'S REVENUE, NET OF INTEREST EXPENSE. ITS
7 PRETAX INCOME WAS \$20.9 BILLION.

8 NOW, I'VE COMPARED HERE THE FIRST SIX MONTHS OF LAST
9 YEAR AND THE FIRST SIX MONTHS OF THIS YEAR. THE REVENUE IS
10 ABOUT THE SAME FOR SIX MONTHS, \$37 BILLION. THEIR PRETAX
11 INCOME WENT FROM 16 BILLION TO 6.7 BILLION. PRETAX INCOME
12 WENT DOWN. BUT IF YOU TAKE THIS SIX MONTHS OF PRETAX
13 INCOME, THAT'S LARGER THAN JUST ABOUT MOST BANKS IN THIS
14 COUNTRY FOR SIX MONTHS.

15 IF YOU TAKE BANK OF AMERICA'S PRETAX INCOME AND YOU
16 DIVIDE IT AND LOOK AT IT PER WEEK AND PER DAY AND PER HOUR
17 IN 2007 THEIR PRETAX INCOME WAS \$402 MILLION PER WEEK, \$57
18 MILLION A DAY, AND \$2.388 MILLION PER HOUR.

19 SO FAR THIS YEAR IF YOU DIVIDE IT THAT WAY -- EVEN
20 THOUGH THEY'RE DOWN, IT STILL AVERAGES \$258 MILLION A WEEK.
21 FOR THE FIRST SIX MONTHS, 36.9 PER DAY AND A MILLION 5 PER
22 HOUR.

23 IF YOU SAY, WELL, HOW MUCH DID THEY EARN IN A HALF
24 HOUR? WELL, YOU TAKE AN HOUR AND DIVIDE IT BY 2 AND YOU
25 GET \$769,125 AS THE AMOUNT THEY WOULD EARN IN 30 MINUTES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0600

APPENDIX 610

1 THIS IS THE JUNE 30TH BALANCE SHEET FOR BANK OF
2 AMERICA. CASH, \$39 BILLION. FED FUNDS SOLD AND SECURITIES
3 OF 107 BILLION. LOANS OF 853 BILLION, 717 IN OTHER ASSETS.
4 AND LIABILITIES OF 1 BILLION -- EXCUSE ME, I MIS-STATED
5 THAT. 1 TRILLION 7. LIABILITIES OF 1.5 TRILLION. AND NET
6 WORTH OF \$162 BILLION. THAT'S THE BALANCE SHEET PER THE
7 LAST 10Q THEY SUBMITTED TO THE SEC.

8 (THE WITNESS RETURNS TO THE WITNESS STAND.)

9 Q DR. WOOD, WHEN YOU MENTIONED THE DOCUMENTS THAT YOU
10 REVIEWED, I THINK YOU INDICATED 2Q ---

11 A 10Q.

12 Q --- AND 10Q?

13 A 10K AND 10Q.

14 Q 10K AND 10Q. AND THOSE ARE THE DOCUMENTS THAT YOU
15 EXAMINED TO GIVE RISE TO THE INFORMATION THAT YOU'VE SHARED
16 WITH THE JURORS?

17 A YES.

18 Q AND AS I UNDERSTOOD YOUR TESTIMONY -- PLEASE CORRECT
19 ME IF I'M WRONG -- THE NET WORTH OF SHAREHOLDERS' EQUITY AS
20 OF JUNE 30, 2008 WAS \$163 BILLION?

21 A YES.

22 Q AND YOU EXAMINED THE INCOME AS IT IS GENERATED BY THE
23 BANK OF AMERICA WHERE THE WEEKLY INCOME IS \$258,423,000 PER
24 WEEK?

25 A THAT'S CORRECT.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0601

APPENDIX 611

- 1 Q YES. \$258,423,000 PER WEEK?
- 2 A CORRECT.
- 3 Q WHICH, DR. WOOD, AS I UNDERSTOOD YOUR TESTIMONY
- 4 EQUATES INTO \$36,918,000 PER DAY?
- 5 A CORRECT.
- 6 Q WHICH FURTHER EQUATES OR EQUALS \$1,538,250 PER HOUR?
- 7 A CORRECT.
- 8 Q AND IF ONE WANTED TO KNOW WHAT THE BANK EARNS PER
- 9 EVERY 30 MINUTES, A HALF AN HOUR, IT WOULD BE A MATTER OF
- 10 DOING THE MATH AND DIVIDING THE \$1,538,250 BY 2?
- 11 A CORRECT.
- 12 Q WHICH WOULD EQUATE TO \$769,125 EVERY 30 MINUTES?
- 13 A CORRECT.
- 14 Q AND THE OPINIONS THAT YOU'VE SHARED WITH THE JURORS,
- 15 ARE THOSE OPINIONS TO A REASONABLE DEGREE OF ECONOMIC
- 16 CERTAINTY?
- 17 A YES.
- 18 Q DR. WOOD, YOU'RE HERE AS A MATTER OF HAVING BEEN HIRED
- 19 BY FIRM, THE LAW OFFICES OF RONNIE A. SABB, THE JENKINSON,
- 20 JAROD, AND KELLAHAN FIRM; IS THAT CORRECT?
- 21 A YES.
- 22 Q OF COURSE, YOU WORK. YOU DON'T WORK FOR FREE?
- 23 A NO.
- 24 Q WHAT IS YOUR HOURLY WAGE TO EXAMINE THESE RECORDS,
- 25 MAKE THESE DETERMINATIONS IN ORDER THAT YOU MIGHT BE ABLE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0602

APPENDIX 612

1 TO SHARE THIS INFORMATION WITH THE JURY?

2 A 300 AN HOUR.

3 Q AND DO YOU KNOW APPROXIMATELY WHAT YOUR BILL IS UP
4 UNTIL THIS POINT IN TIME?

5 A I BELIEVE ABOUT \$10,000. THAT COVERS ALL THE REPORTS
6 I'VE DONE, ANOTHER TRIAL, ALL KINDS OF DISCUSSIONS,
7 ETCETERA.

8 Q HAVE YOU BEEN INVOLVED IN THIS CASE MOST OF THE 5
9 YEARS THAT THIS BATTLE HAS BEEN GOING ON?

10 A YES.

11 MR. SABB: NOTHING FURTHER.

12 THE COURT: CROSS EXAMINATION.

13 MR. DAVIS: YES, SIR.

14 CROSS EXAMINATION BY MR. DAVIS:

15 Q DR. WOOD, THE FINANCIAL INFORMATION YOU GAVE TO THE
16 JURY, THAT'S BEFORE THE PAYMENT OF ANY INCOME TAXES?

17 A PRETAX, CORRECT.

18 Q AND BANK OF AMERICA DOES PAY A WHOLE LOT OF TAXES?

19 A THEY DO.

20 Q AND IT PAYS TAXES IN THE BILLIONS OF DOLLARS?

21 A YES.

22 Q OKAY. ALSO IT LOANS -- YOU'RE AWARE IT LOANS MONEY TO
23 SMALL BUSINESSES, CORRECT?

24 A CORRECT.

25 Q ALL OVER THIS COUNTRY?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0603

APPENDIX 613

- 1 A CORRECT.
- 2 Q IT DOES IT IN THE BIG CITIES?
- 3 A CORRECT.
- 4 Q AND IT ALSO DOES IT IN THE RURAL AREAS?
- 5 A CORRECT.
- 6 Q IT LENDS MONEY EVEN TO BUSINESSES HERE IN WILLIAMSBURG
- 7 COUNTY, DOESN'T IT?
- 8 A CORRECT.
- 9 Q IT CONTRIBUTES TO THE EDUCATION OF CHILDREN IN SOUTH
- 10 CAROLINA, DOESN'T IT?
- 11 A CORRECT.
- 12 Q IT CONTRIBUTES TO FIRST STEPS PROGRAM?
- 13 A CORRECT.
- 14 Q AND THE FIRST STEPS PROGRAM -- FIRST STEPS PROGRAM, AS
- 15 YOU'RE AWARE, HELPS TEACH CHILDREN -- UNDERPRIVILEGED
- 16 CHILDREN, POOR CHILDREN BEFORE THEY EVEN GET TO SCHOOL?
- 17 A CORRECT.
- 18 Q ALL RIGHT. AND IT IS THE MAJOR CONTRIBUTOR TO THAT
- 19 PROGRAM -- CORPORATE CONTRIBUTOR IN THIS STATE, ISN'T IT?
- 20 A I ACCEPT WHAT YOU SAY.
- 21 Q IT ALSO CONTRIBUTOR TO THE SOUTH CAROLINA GOVERNOR'S
- 22 SCHOOL FOR SCIENCE AND MATHEMATICS, DOESN'T IT?
- 23 A PROBABLY.
- 24 Q AND THAT'S WHERE YOU HAVE EVEN FROM RURAL COUNTIES GET
- 25 TO CHILDREN AND HELP SEND THEM TO SCHOOL?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0604

APPENDIX 614

- 1 A CORRECT.
- 2 Q IT PROVIDES SCHOLARSHIPS FOR TEENAGERS TO GO TO
- 3 COLLEGE, DOESN'T IT?
- 4 A CORRECT.
- 5 Q IT ALSO PROVIDES STUDENT LOANS THROUGHOUT THIS COUNTRY
- 6 FOR PEOPLE TO GO TO COLLEGE?
- 7 A CORRECT.
- 8 Q AND WHEN I SAY COLLEGE, I ALSO MEAN TECHNICAL SCHOOLS
- 9 AS WELL?
- 10 A CORRECT.
- 11 Q AND ALSO TRADE SCHOOLS?
- 12 A CORRECT.
- 13 Q IT LENDS MONEY FOR HOUSES?
- 14 A CORRECT.
- 15 Q IT LENDS MONEY FOR CARS?
- 16 A CORRECT.
- 17 Q IT LENDS MONEY JUST SO YOU CAN EVEN PAY YOUR BILLS?
- 18 A CORRECT.
- 19 Q IT IS ONE OF THE LARGEST -- THE WORD IS CALLED
- 20 PHIL ---
- 21 A PHILANTHROPIC.
- 22 Q PHILANTHROPIC MEANS WHAT?
- 23 A IT MEANS YOU'RE CHARITABLE AND DONATE TO GOOD CAUSES.
- 24 Q IT IS ONE OF THE -- IF NOT THE LARGEST PHILANTHROPIC
- 25 FUNDER IN THE UNITED STATES, ISN'T IT?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0605

APPENDIX 615

- 1 A PROBABLY IS.
- 2 Q SO IT TAKES THIS MONEY, AND IT PUTS IT BACK INTO THIS
- 3 COUNTRY, DOESN'T IT?
- 4 A OH, YES, IT HAS CHARITABLE PROGRAMS.
- 5 Q IT TAKES ITS MONEY AND IT PUTS IT BACK INTO THE STATE
- 6 OF SOUTH CAROLINA, DOESN'T IT?
- 7 A RIGHT. BUT IT ALSO REWARDS ITS SHAREHOLDERS, AND IT
- 8 REWARDS ITS EMPLOYEES.
- 9 Q AND ---
- 10 A AND ---
- 11 Q --- IT TAKES ---
- 12 MR. SABB: OBJECTION, I OBJECT TO HIM INTERFERING WITH
- 13 THE WITNESS' COMPLETE ANSWER TO HIS QUESTION. WE'D ASK
- 14 THAT THE WITNESS BE PERMITTED TO COMPLETE HIS ANSWER.
- 15 THE COURT: MR. DAVIS.
- 16 MR. DAVIS: YOUR HONOR, HE CAN COMPLETE HIS ANSWER.
- 17 THE COURT: YES, SIR. YOU MAY PROCEED.
- 18 A IT ALSO INVESTS A TREMENDOUS AMOUNT BACK IN ITSELF;
- 19 THAT'S HOW IT'S BEEN ABLE TO GROW AND BECOME THE POWERHOUSE
- 20 THAT IT IS IN THIS COUNTRY.
- 21 Q THAT'S RIGHT. AND IT ALSO INVESTS ITSELF INTO WHAT'S
- 22 CALLED COMMUNITY DEVELOPMENT PROGRAMS?
- 23 A YES.
- 24 Q AND THOSE COMMUNITY DEVELOPMENT PROGRAMS ARE
- 25 SPECIFICALLY GEARED TOWARDS COUNTIES SUCH AS WILLIAMSBURG?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0606

APPENDIX 616

1 A WELL, I THINK IT CONTRIBUTES ACROSS A BROAD SPECTRUM
2 FROM THE EAST COAST TO THE WEST COAST.

3 Q AND IT CONTRIBUTES TO A BROAD SPECTRUM ALSO TO
4 AFFORDABLE HOUSING?

5 A YES, THEY HAVE BEEN ACTIVE LENDERS IN THE HOUSING
6 MARKET FOR YEARS AND YEARS.

7 Q ALL RIGHT. NOW, YOU'RE NOT HERE TO TESTIFY ABOUT THE
8 FACTS OF THIS CASE, ARE YOU?

9 A NO.

10 Q YOU'RE NOT HERE TO TESTIFY ABOUT ANY ISSUES OF
11 LIABILITY IN THIS CASE, ARE YOU?

12 A CORRECT.

13 Q SO IF THE JURY FINDS THAT THE BANK OF AMERICA WAS ONLY
14 NEGLIGENT, THEN YOUR TESTIMONY DOESN'T MEAN ANYTHING IN
15 THIS CASE; IS THAT RIGHT?

16 A THAT'S OUTSIDE OF MY PURVIEW. I'M NOT THE JUDGE.

17 MR. DAVIS: THANK YOU.

18 THE COURT: ALL RIGHT. REDIRECT?

19 MR. SABB: YES, SIR.

20 REDIRECT EXAMINATION BY MR. SABB:

21 Q NOW, DR. WOOD, ONE OF THE THINGS -- I JUST WANT TO
22 FOLLOW UP ON WHAT COUNSEL WAS SAYING JUST A LITTLE BIT.
23 ONE OF THE THINGS THAT RELATES TO THE BANK AND LOANS THAT
24 IT MAKES TO PEOPLE, IS -- THERE ARE CONTRACTS ASSOCIATED
25 WITH THOSE LOANS, AREN'T THERE?

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0607

APPENDIX 617

- 1 A YES.
- 2 Q AND IF FOLKS DON'T DO WHAT THEY ARE LEGALLY OBLIGATED
3 AND RESPONSIBLE FOR, OFTENTIMES IF THEY HAVE A CAR, IT'S
4 TAKEN AWAY?
- 5 A CORRECT.
- 6 Q IF THEY'RE NOT MAKING THEIR PAYMENTS ON A HOUSE
7 BECAUSE THEY'VE NOT FOLLOWED THE RULES AND THE PROCEDURES
8 ASSOCIATED WITH THE CONTRACT, THEN THEIR CAR -- THEIR
9 HOUSES ARE FORECLOSED ON?
- 10 MR. DAVIS: YOUR HONOR ---
- 11 A CORRECT.
- 12 MR. DAVIS: --- I DON'T WANT TO OBJECT. I DON'T KNOW
13 WHAT THIS HAS TO DO WITH THIS CASE.
- 14 THE COURT: I SUSTAIN THE OBJECTION.
- 15 MR. SABB: YOUR HONOR, COULD WE APPROACH SIDE BAR?
- 16 THE COURT: YES.
- 17 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
18 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)
- 19 THE COURT: ALL RIGHT. YOU MAY PROCEED.
- 20 MR. SABB: THANK YOU, JUDGE.
- 21 Q AND, DR. WOOD, THE ONLY POINT I WAS TRYING TO MAKE
22 WITH REGARD TO THAT IS IN THE WORLD OF BUSINESS, THERE ARE
23 POLICIES AND PROCEDURES AND OBLIGATIONS THAT ARE ASSOCIATED
24 WITH THOSE MATTERS, AREN'T THERE?
- 25 A YES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0608

APPENDIX 618

1 MR. SABB: THAT'S ALL. THANK YOU.
2 THE COURT: ANYTHING FURTHER?
3 MR. DAVIS: NOTHING FROM BANK OF AMERICA.
4 THE COURT: ALL RIGHT.
5 MR. SABB: YOUR HONOR, WE WOULD ASK THAT DR. WOOD BE
6 EXCUSED.
7 THE COURT: ALL RIGHT. THE WITNESS IS EXCUSED.
8 (THE WITNESS LEAVES THE WITNESS STAND.)
9 THE COURT: YOUR NEXT WITNESS.
10 MR. SABB: IF YOUR HONOR PLEASE, JUDGE, THAT WOULD BE
11 THE PLAINTIFFS' CASE.
12 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE
13 HEARD THE PLAINTIFFS' CASE. I'M GOING TO HAVE YOU GO TO
14 THE JURY ROOM FOR A SHORT WHILE. WE'RE GOING TO BE THROUGH
15 IN A SHORT WHILE AS WELL, BUT FIRST I NEED YOU TO GO TO THE
16 JURY ROOM. PLEASE DO NOT DISCUSS THE CASE.
17 (THE JURY RETIRES TO THE JURY ROOM AT 5:27 P.M.)
18 THE COURT: ANY MOTIONS AT THIS TIME?
19 MR. MCGEE: MAY IT PLEASE THE COURT, JUDGE, ON BEHALF
20 OF BANK OF AMERICA WE DO HAVE TWO ADDITIONAL DIRECTED
21 VERDICT MOTIONS.
22 THE COURT: ALL RIGHT.
23 MR. MCGEE: IF YOUR HONOR WANTS TO HEAR THEM NOW OR IN
24 THE MORNING.
25 THE COURT: LET'S HEAR THEM NOW.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0609

APPENDIX 619

1 MR. MCGEE: YES, YOUR HONOR. FIRST, JUDGE, IS THE
2 MOTION FOR DIRECTED VERDICT AS TO BREACH OF FIDUCIARY CLAIM
3 THE PLAINTIFFS HAVE AGAINST BANK OF AMERICA.

4 YOUR HONOR, THE PLAINTIFFS HAVE HAD TWO CAUSES OF
5 ACTION AT THE INCEPTION OF THIS TRIAL, ONE IS NEGLIGENCE,
6 ONE IS BREACH OF FIDUCIARY DUTY. WE'RE MOVING RIGHT NOW
7 FOR DIRECTED VERDICT AS TO BREACH OF FIDUCIARY DUTY.

8 JUDGE, PLAINTIFFS HAVE FAILED TO PRESENT ANY EVIDENCE
9 TO THIS COURT THAT THERE IS A FIDUCIARY RELATIONSHIP
10 BETWEEN CODY P [REDACTED] AND BANK OF AMERICA, THEREFORE, THE
11 BREACH OF FIDUCIARY DUTY CLAIM ---

12 THE COURT: LET ME ASK YOU. ASIDE FROM THE MOTION,
13 SOME OF WHICH MAY BE GRANTED OR JUST NORMAL MASSAGING THE
14 PLEADING, DO YOU ALL INTEND TO PUT UP OTHER WITNESSES?

15 (PAUSE.)

16 MR. DAVIS: YOUR HONOR, WHAT WE'RE GOING TO DO -- WE
17 WERE GOING TO MAKE THAT DECISION OVERNIGHT..

18 THE COURT: OKAY. THAT'S WHY I HAD THE JURY STILL
19 HERE. I WANT -- LET'S PROCEED WITH THE MOTIONS THEN. I
20 HAVE TO GIVE SOME DEFINITENESS TO THE JURY. AND IS THERE
21 LIKELY TO BE OTHER WITNESSES, THEN I CAN TELL THEM THAT.
22 OR IF THEY'RE COMING BACK TO HEAR ARGUMENTS AND CHARGE AND
23 DELIBERATE, THEN THEY'LL KNOW THAT. I WANT TO ---

24 MR. MCGEE: I CERTAINLY DON'T WANT TO SPEAK FOR MR.
25 WILSON, BUT I THINK THERE WAS GOING TO BE AT LEAST SOME

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0610

APPENDIX 620

1 JURY.

2 ALL RIGHT. YOU MAY CONTINUE, MR. MCGEE.

3 MR. MCGEE: YES, YOUR HONOR. JUDGE, THIS IS THE
4 BREACH OF FIDUCIARY CLAIM I WOULD LIKE TO HAND UP IF I
5 MIGHT.

6 THE COURT: ALL RIGHT.

7 MR. MCGEE: I'D ALSO HAVE ONE AS A COURT'S EXHIBIT.

8 THE COURT: THIS IS A NEW APPROACH WHERE THE JUDGE IS
9 EXPECTED TO RULE, BUT THE LAW IS GIVEN TO THE COURT
10 REPORTER.

11 MR. MCGEE: I APOLOGIZE, JUDGE. I'M VERY SORRY, YOUR
12 HONOR. I THOUGHT I MADE MORE COPIES.

13 (MOTION FOR DIRECTED VERDICT: BREACH OF FIDUCIARY
14 DUTY CLAIM, MARKED FOR IDENTIFICATION AS COURT'S EXHIBIT
15 NO. 4.)

16 THE COURT: ALL RIGHT.

17 MR. MCGEE: YES, JUDGE. THE GENERAL LAW IN SOUTH
18 CAROLINA, YOUR HONOR, THE ACCEPTED LAW IS THAT THE
19 RELATIONSHIP BETWEEN THE BANK AND ITS CUSTOMER IS ONE OF
20 CREDITOR OR DEBTOR IS NOT FIDUCIARY IN NATURE.

21 ON THE SECOND PAGE OF WHAT I HANDED UP TO YOUR HONOR,
22 IT GOES THROUGH ALL THE SOUTH CAROLINA COURT OF APPEALS AND
23 THE SUPREME COURT CASES THAT HAVE HELD THAT. THERE ARE TWO
24 EXCEPTIONS, JUDGE. COURTS HAVE HELD THAT IN LIMITED
25 CIRCUMSTANCES A BANK -- A BANK AND ITS DEPOSITOR CAN BE --

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ROA 0611

APPENDIX 621

1 CAN EQUATE TO A FIDUCIARY RELATIONSHIP. AND THOSE TWO
2 EXCEPTIONS ARE NARROW EXCEPTIONS, ARE NOT PRESENT IN THE
3 CASE, AND THERE IS NO EVIDENCE BEFORE THE COURT -- NO
4 TESTIMONY BEFORE THE COURT THAT THEY APPLY.

5 THE FIRST LIMITED CIRCUMSTANCE IS IF THE BANK
6 UNDERTAKES TO ADVISE THE CUSTOMER AS PART OF THE SERVICES
7 THE BANK OFFERS.

8 IN THIS CASE, JUDGE, ALL OF THE EVIDENCE THAT'S BEFORE
9 YOUR HONOR IS THAT KAREN UNRUE WENT TO THE BANK AND ASKED
10 FOR A CD ACCOUNT. THE BANK RIGHTLY OR WRONGLY OPENED A CD
11 ACCOUNT. THE BANK DID NOT OFFER ANY ADVICE. THE BANK DID
12 NOT -- THE BANK DID NOT OFFER ANY SERVICES AS FAR AS
13 ADVISING MS. UNRUE OR ANYONE ELSE AS TO WHAT ACCOUNT TO
14 OPEN.

15 SECONDLY, AND IMPORTANTLY, JUDGE, THE BURDEN OF
16 PROVING THAT THIS FIDUCIARY DUTY EXISTS IN ONE OF THESE
17 LIMITED CIRCUMSTANCES IS ON THE PLAINTIFF.

18 THE SECOND EXCEPTION, JUDGE, IS IF THE ASSETS ARE --
19 IF THERE IS A CLEAR AGREEMENT -- IN ABSENCE OF A CLEAR
20 AGREEMENT TO THE CONTRARY -- PARDON ME, JUDGE, I'M SORRY.
21 UNLESS -- I'M QUOTING, YOUR HONOR, ON THE SECOND PAGE.
22 UNLESS THE FUNDS ARE DEPOSITED INTO A SPECIAL ACCOUNT WHICH
23 SPECIFICALLY DESIGNATED TO BE KEPT SEPARATE, THE
24 RELATIONSHIP BETWEEN GENERAL DEPOSITOR AND THE BANK IS THAT
25 OF A CREDITOR/DEBTOR AND A TRUST IS NOT CREATED.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0612

APPENDIX 622

1 THE BURDEN OF PROVING AN ACCOUNT IS SPECIAL IS ON THE
2 ONE CLAIMING IT. EVEN IF THE FUNDS DEPOSITED ARE TO BE
3 USED FOR A PARTICULAR PURPOSE WHERE THE DEPOSITOR ASSENTS
4 TO THERE BEING COMMINGLED WITH GENERAL FUNDS OF THE BANK,
5 THE ABSENCE OF A CLEAR AGREEMENT TO THE CONTRARY EXPRESSLY
6 IS PRESUMED TO BE A GENERAL DEPOSIT.

7 IN THE CASE AT BAR, JUDGE, THERE HAS BEEN NO SHOWING
8 OF ANY CLEAR AGREEMENT THAT THESE FUNDS WERE TO BE KEPT
9 SEGREGATED FROM THE BANK'S GENERAL FUNDS. THERE HAS BEEN
10 NO EVIDENCE SET BEFORE THE COURT. MOREOVER, THERE IS NO
11 EVIDENCE BEFORE THE COURT THAT MS. UNRUE OR ANYONE ELSE
12 SOUGHT BANK OF AMERICA'S ADVICE AS TO WHICH ACCOUNT TO
13 OPEN.

14 NOW, I ANTICIPATE THAT WHAT THE PLAINTIFFS WILL ARGUE
15 IS THAT, WELL, IF THEY WOULD HAVE OPENED UP A CONSERVATOR
16 ACCOUNT, THEN THEY WOULD HAVE BEEN SEGREGATED; BUT THAT'S
17 NOT THE CASE. THERE'S NO EVIDENCE BEFORE THE COURT THAT
18 EVEN A CONSERVATOR ACCOUNT -- THAT THE ASSETS THEMSELVES
19 ARE KEPT SEGREGATED FROM THE GENERAL BANK ASSETS. THERE'S
20 NO EVIDENCE TO THAT.

21 MOREOVER, PLAINTIFFS MAY SAY, WELL, THE BANK DROPPED
22 THE BALL. THEY SHOULD HAVE TOLD MS. UNRUE, THIS NEEDS TO
23 BE A CONSERVATOR ACCOUNT, AND THEREFORE, THE BANK SHOULD
24 HAVE OFFERED SOME ADVICE AS TO WHICH ACCOUNT, BUT THAT
25 DIDN'T HAPPEN.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0613

APPENDIX 623

1 SO IN SHORT, JUDGE, I'VE GOT MY ARGUMENTS LAID OUT
2 MORE THOROUGHLY IN THE DOCUMENT THAT I HANDED UP. BUT
3 THERE IS NO EVIDENCE WHATSOEVER THAT THE BANK OFFERED ANY
4 ADVICE, AND THERE'S NO EVIDENCE THAT THESE FUNDS WERE
5 DESIGNATED TO BE KEPT SEPARATE FROM THE BANK'S GENERAL
6 ASSETS.

7 AND, THEREFORE, THE GENERAL RULE APPLIES, AND THIS IS
8 A DEBTOR/CREDITOR RELATIONSHIP AND NOT ONE OF FIDUCIARY IN
9 NATURE, AND THE BREACH OF FIDUCIARY CLAIM SHOULD BE
10 DISMISSED.

11 (PAUSE.)

12 MS. KELLAHAN: YOUR HONOR, CAN YOU JUST TELL ME WHEN
13 YOU'RE READY FOR ME TO START TALKING.

14 THE COURT: I'M READY.

15 MS. KELLAHAN: ALL RIGHT. THANK YOU, JUDGE. TO GIVE
16 YOU A LITTLE MORE INSIGHT IN TO WHAT WE'RE ARGUING ABOUT
17 NOW, THE PLAINTIFFS SURVIVED A SUMMARY JUDGMENT MOTION ON
18 THIS PRECISE ISSUE WITH THE PRECISE EVIDENCE THAT HAS BEEN
19 PUT BEFORE THE COURT TODAY WITH JUDGE KING BACK IN 2005. AT
20 THAT TIME ALL WE HAD WAS MS. FLORETTA DENNING'S DEPOSITION
21 AND THE SAME PORTIONS WERE READ INTO THE RECORD EARLIER IN
22 THIS TRIAL.

23 THERE WERE TWO CASES THAT I HANDED UP WITH THE REQUEST
24 TO CHARGE REGARDING THE BREACH OF FIDUCIARY DUTY, AND THOSE
25 TWO CASES ARE STEEL VERSUS VICTORY SAVINGS BANK, AND ALSO

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ROA 0614

APPENDIX 624

1 PAGE 14 THAT STATES THAT. THANK YOU.

2 THE COURT: ALL RIGHT.

3 MR. MCGEE: VERY BRIEFLY, JUDGE. RUSH VERSUS SOUTH
4 CAROLINA NATIONAL BANK REQUIRES THAT A CLEAR AGREEMENT THAT
5 THE SUBJECT FUNDS ARE TO BE PUT IN A SPECIAL ACCOUNT
6 SEGREGATED FROM THE BANK'S GENERAL FUNDS. THERE'S NO
7 EVIDENCE THAT THAT HAPPENED HERE. THERE'S NO EVIDENCE THAT
8 THERE'S A CLEAR AGREEMENT FOR THAT TO HAPPEN. IT DIDN'T
9 HAPPEN. THEREFORE, THE BREACH OF FIDUCIARY DUTY CLAIM
10 SHOULD FAIL.

11 THE COURT: MS. KELLAHAN, YOU'RE SAYING THAT THE --
12 ARE YOU SAYING THAT THE BANK SHOULD HAVE ESTABLISHED A
13 FIDUCIARY RELATIONSHIP BY DOING IT THE WAY THAT IT WAS
14 SUPPOSED TO BE DONE OR THAT THEY DID SET UP A FIDUCIARY
15 RELATIONSHIP THOUGH THEY DID NOT DO IT THE WAY IT WAS
16 SUPPOSED TO BE DONE? HOW DO YOU GET TO A FIDUCIARY
17 RELATIONSHIP WHEN THEY DID NOT SET UP THE ACCOUNT THE WAY
18 IT WAS SUPPOSED TO BE?

19 MS. KELLAHAN: HAD THE ACCOUNT BEEN SET UP
20 PROPERLY ---

21 THE COURT: ALL RIGHT.

22 MS. KELLAHAN: --- AND THERE'S NO QUESTION THAT IT WAS
23 SET UP IMPROPERLY. ANY BANK THAT ACCEPTED THOSE CHECKS
24 WITH THE COURT ORDER FOR A RESTRICTED ACCOUNT, THAT WOULD
25 CREATE A FIDUCIARY RELATIONSHIP BETWEEN CODY POWELL AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0615

APPENDIX 625

1 CODY STEVEN POWELL.

2 MR. MCGEE: YES, YOUR HONOR. JUDGE, I BELIEVE
3 PLAINTIFFS' COUNSEL IS ASSUMING THAT A CONSERVATOR ACCOUNT
4 IS NOT COMMINGLED WITH THE GENERAL FUNDS OF THE BANK, AND
5 THERE'S NO EVIDENCE TO THAT. THERE'S SIMPLY NO EVIDENCE.

6 THE SOUTH CAROLINA COURT OF APPEALS IN RUSH VERSUS
7 SOUTH CAROLINA NATIONAL BANK SAYS EVEN IF FUNDS DEPOSITED
8 ARE TO BE USED FOR A PARTICULAR PURPOSE, THE DEPOSITOR
9 CONSENTS TO THEM BEING COMMINGLED WITH THE GENERAL FUNDS OF
10 THE BANK IN THE ABSENCE OF A CLEAR AGREEMENT TO THE
11 CONTRARY EXPRESS OR IMPLIED, A DEPOSIT IS PRESUMED TO BE A
12 GENERAL DEPOSIT.

13 THIS WAS A CD ACCOUNT. CD ACCOUNTS -- THERE'S NO
14 EVIDENCE IN THE RECORD THAT IT IS KEPT SEGREGATED FROM THE
15 GENERAL FUNDS, THE GENERAL ASSETS OF THE BANK. THERE'S NO
16 EVIDENCE BEFORE THE COURT. AND I WOULD SUBMIT THAT THE
17 COURT SHOULD DECLINE TO SIMPLY ASSUME THAT BECAUSE
18 PLAINTIFFS' COUNSEL ARE ARGUING THAT. THERE'S NO EVIDENCE
19 OF THAT; THEREFORE, THE BREACH OF FIDUCIARY DUTY CLAIM
20 SHOULD BE DISMISSED.

21 AND THIS DOESN'T HAVE ANYTHING TO DO WITH THE
22 NEGLIGENCE CLAIM, ONLY THE BREACH OF FIDUCIARY CLAIM.

23 THE COURT: ALL RIGHT.

24 MR. SABB: YOUR HONOR, YOU NOTICE THE EXPRESS OR
25 IMPLIED LANGUAGE THAT HE SHARED WITH YOU, JUDGE. EXPRESS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0616

APPENDIX 626

1 OR IMPLIED. READ THAT PART AGAIN ABOUT EXPRESS OR IMPLIED
2 SO THE COURT HEARS EXACTLY WHAT YOU SAID, IF YOU DON'T MIND
3 OR GIVE IT TO ME AND I'LL READ IT.

4 MR. MCGEE: I'LL READ IT. IT'S RUSH VERSUS SOUTH
5 CAROLINA NATIONAL BANK. IT BEGINS ON PAGE ---

6 MR. SABB: READ THE EXPRESS ---

7 MR. MCGEE: I WAS JUST GOING TO -- IT'S PAGE 2, SECOND
8 FULL PARAGRAPH, LAST SENTENCE. EVEN IF FUNDS DEPOSITED ARE
9 TO BE USED FOR A PARTICULAR PURPOSE, WHERE THE DEPOSITOR
10 ASSENTS TO THEM BEING COMMINGLED WITH THE GENERAL FUNDS OF
11 THE BANK IN THE ABSENCE OF A CLEAR AGREEMENT TO THE
12 CONTRARY EXPRESS OR IMPLIED, A DEPOSIT IS PRESUMED TO BE A
13 GENERAL DEPOSIT.

14 THERE'S NO AGREEMENT HERE.

15 MR. SABB: MS. KELLAHAN HAS ONE MORE SWING, JUDGE.

16 THE COURT: ALL RIGHT.

17 MS. KELLAHAN: I'M SORRY. THEY WON'T LET ME TALK.

18 PAGE 2 ON THAT SAME RUSH CASE SPECIFICALLY SAYS, UNLESS THE
19 FUNDS ARE DEPOSITED INTO A SPECIAL ACCOUNT OR SPECIALLY
20 DESIGNATED TO BE KEPT SEPARATE, THE RELATIONSHIP BETWEEN
21 THE GENERAL DEPOSITOR AND THE BANK IS THAT OF JUST A
22 REGULAR CREDITOR/DEBTOR RELATIONSHIP.

23 AND MS. DENNING SPECIFICALLY SAID, COURT ORDER
24 RESTRICTED ACCOUNTS THAT THEY DO IN SOUTH CAROLINA A LOT
25 ARE KEPT SEPARATE. THEY ARE KEPT SEPARATE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0617

APPENDIX 627

1 NOW, I HAVE NOT HEARD ANY ADDITIONAL EVIDENCE TO THE
2 CONTRARY, BUT THAT IS IN THE RECORD AT THIS TIME.

3 THE COURT: WELL, WASN'T SHE JUST TALKING AS A GENERAL
4 PRINCIPLE AND NOT IN RELATION TO WHAT HAPPENED HERE?

5 MS. KELLAHAN: SHE TESTIFIED THAT SHE IS FAMILIAR WITH
6 ACCOUNTS WHERE A COURT ORDER IS REQUIRED TO MAKE
7 WITHDRAWALS, WHICH IS EXACTLY WHAT WE HAVE HERE.

8 THE COURT: ALL RIGHT.

9 MS. KELLAHAN: WHICH IS WHAT WE SHOULD HAVE HAD HERE.

10 THE COURT: ALL RIGHT. WELL, I'LL RULE ON THIS ISSUE
11 TOMORROW MORNING. AND I'LL TAKE TIME TO READ THROUGH THESE
12 CASES AND THINK ABOUT IT A LITTLE MORE OVERNIGHT. I WILL
13 SAY HOWEVER THAT THE FIDUCIARY CLAIM IS ON VERY THIN ICE,
14 AND I'LL RULE ON THAT TOMORROW MORNING.

15 MR. MCGEE: WE HAVE ONE MORE THAT IS SHORT, JUDGE.

16 THE COURT: ALL RIGHT.

17 MR. MCGEE: AND THAT IS A MOTION FOR A DIRECTED
18 VERDICT AS TO THE INTERVENING, UNFORESEEABLE ACT. AND,
19 YOUR HONOR, I WOULD POINT OUT THAT BANK OF AMERICA IS
20 ENTITLED TO A DIRECTED VERDICT AS TO THE PLAINTIFFS'
21 NEGLIGENCE CLAIM BECAUSE OF THE INTERVENING, WILFUL,
22 INTENTIONAL, AND CRIMINAL ACTS OF KAREN UNRUE BECAUSE THESE
23 INTERVENING CRIMINAL ACTS ARE FULLY UNFORESEEABLE. THEY
24 BROKE ANY CAUSAL CHAIN BETWEEN BANK OF AMERICA'S ACTS OR
25 OMISSIONS AND PLAINTIFFS' INJURY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0618

APPENDIX 628

1 AND I CITE TO THE COURT YOUNG VERSUS TIDECRAFT
2 (PHONETIC) ON THAT, AND I'LL MAKE SURE I HAND THAT UP TO
3 THE COURT AS WELL.

4 (MOTION FOR DIRECTED VERDICT: INTERVENING ACT, MARKED
5 FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 5.)

6 MR. MCGEE: THAT'S ALL I HAVE, JUDGE.

7 THE COURT: ALL RIGHT. I'LL READ THIS LATER, BUT I'M
8 GOING TO RULE ON THIS ONE NOW AND DENY THAT MOTION BASED ON
9 SOME OF THE SAME REASONING IN DENYING THE PUNITIVE DAMAGES
10 MOTION. THE CHECKS THEMSELVES INDICATED THAT THESE WERE
11 NOT KAREN UNRUE'S FUNDS. AND TAKING THE EVIDENCE IN THE
12 LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY, IT'S A JURY
13 ISSUE AS TO THE BANK'S RELIABILITY FOR THOSE FUNDS.

14 MR. MCGEE: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 MR. MCGEE: NOTHING FURTHER AT THIS TIME.

17 THE COURT: ALL RIGHT. MR. WILSON.

18 MR. WILSON: MAY IT PLEASE THE COURT.

19 THE COURT: YES, SIR.

20 MR. WILSON: FIRST OF ALL, I APPRECIATE THE COURT
21 RULING IN REGARD TO PUNITIVE DAMAGES, AND I WOULD LIKE TO
22 POINT OUT THAT IN THE COMPLAINT IN THIS MATTER -- THE
23 AMENDED COMPLAINT, THE CAUSE OF ACTION CALLED FRAUD HAS
24 ALREADY BEEN ELIMINATED. NO APPEAL HAS BEEN TAKEN TO THAT.
25 I NOW WOULD LIKE TO PUBLISH THE CAUSE OF ACTION

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ROA 0619

APPENDIX 629

1 AGAINST TRAVIS POWELL FOR CONVERSION. THERE IS ABSOLUTELY
2 NO EVIDENCE IN THIS RECORD OF ANY CONVERSION.

3 THE COURT: WHAT SAY THE PLAINTIFF ABOUT THAT?

4 MR. SABB: WE AGREE WITH THAT, JUDGE.

5 THE COURT: ALL RIGHT. IT'S GRANTED.

6 MR. WILSON: THANK YOU. ALSO ON CONSTRUCTIVE TRUST,
7 IT'S THE SAME LANGUAGE. HE NEVER CAME INTO POSSESSION OF
8 THE PROPERTY AND THAT PART OF IT. THE ONLY ARGUMENT THEY
9 MADE BEFORE AGAINST HIM HAD TO DO WITH A LOAN THAT'S NOT A
10 PART OF THIS CASE NOW. SO THERE'S NO CONSTRUCTIVE TRUST
11 INVOLVED HERE. HE DIDN'T POSSESS ANY OF THE CHECKS.
12 THERE'S NO EVIDENCE IN THE RECORD THAT TRAVIS POWELL
13 TOUCHED ANY OF IT.

14 THE COURT: ALL RIGHT. WHAT SAY THE PLAINTIFFS ABOUT
15 THAT?

16 MR. SABB: WE AGREE WITH THAT.

17 THE COURT: ALL RIGHT. GRANTED.

18 MR. WILSON: YOUR HONOR, I MOVED BEFORE ON PUNITIVE
19 DAMAGES. BUT I WANT TO MAKE SURE THAT THE RULING -- YOUR
20 HONOR'S RULING WAS AGAINST RECKLESS, WILFUL CONDUCT. I'M
21 SURE IT WAS, BUT I CORRECT THAT FOR THE RECORD.

22 THE COURT: YES, SIR.

23 MR. WILSON: SO NOW I'M ASKING FOR THE COURT TO
24 CONSIDER NEGLIGENCE. I KNOW THEY'RE GOING TO STAND UP.
25 BUT I WANT TO TALK TO YOU ABOUT THAT A LITTLE BIT.

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ROA 0620

APPENDIX 630

1 CONCERNED, WHO IN THE WORLD COULD FORESEE THAT HIS SISTER
2 THAT EVERYBODY TRUSTED WOULD RUN OFF WITH THE LITTLE BOY'S
3 MONEY OF HER DEAD BROTHER. HE DIDN'T THINK THAT. NONE OF
4 THEM THOUGHT THAT. AND TO PUT THAT TOGETHER TO SAY, WELL,
5 NEGLIGENCE THEN AND PROXIMATE CAUSE, I'M GOING TO ADD THAT
6 TO THE ARGUMENT ON HIS BEHALF. THERE'S NOTHING IN THIS
7 RECORD TO INDICATE THAT HE SHOULD HAVE KNOWN HIS SISTER WAS
8 GOING TO DO SOMETHING LIKE THIS.

9 NOBODY THOUGHT IT. AND AS SOON AS HE FOUND OUT, THEY
10 ASKED HIM ABOUT IT, AND HE HAS BEEN HERE EVER SINCE. HE
11 HADN'T DODGED A THING. HE'S DONE A DEPOSITION. HE'D BEEN
12 SUBPOENAED. NONE AT ALL.

13 THE COURT: ALL RIGHT. BASED ON ALL THE ARGUMENTS
14 MADE BY MR. WILSON, I GRANT THE MOTION AS TO TRAVIS POWELL.

15 MR. WILSON: THANK YOU.

16 THE COURT: WHAT ELSE TODAY?

17 MR. JENKINSON: NOTHING FROM THE PLAINTIFF, JUDGE.

18 THE COURT: ALL RIGHT. TOMORROW MORNING, DO YOU ALL
19 ANTICIPATE SOME WITNESSES?

20 MR. DAVIS: POSSIBLY, YOUR HONOR.

21 THE COURT: ALL RIGHT.

22 MR. DAVIS: YOU WANT US HERE AT ---

23 THE COURT: 9:30.

24 MR. DAVIS: --- 9:30.

25 THE COURT: OKAY. 9:30 WE WILL BE BACK.

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ROA 0621

APPENDIX 631

1 (COURT IS IN RECESS.)

2 (THURSDAY, OCTOBER 9, 2008.)

3 THE COURT: GOOD MORNING. WHAT MATTERS DO WE HAVE TO
4 TALK ABOUT?

5 MR. MCGEE: MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT: YES.

7 MR. MCGEE: WE JUST NEED TO DISCUSS, I BELIEVE, THE
8 JURY CHARGES AND THE PROPOSED VERDICT FORM. AND, OF
9 COURSE, SOME OF THAT WILL DEPEND ON YOUR HONOR'S RULING AS
10 TO SOME OF THE ISSUES THAT WERE ARGUED YESTERDAY.

11 THE COURT: ALL RIGHT.

12 MR. MCGEE: JUDGE, SPECIFICALLY ON THE BREACH OF
13 FIDUCIARY DUTY DIRECTED VERDICT MOTION AND THEN LOOKING AT
14 SOME OF THE PROPOSED JURY CHARGES BY THE PLAINTIFFS, I
15 BELIEVE THAT OUR OBJECTION TO THE NEGLIGENCE PER SE ASPECT
16 OF THE PUNITIVE DAMAGES DIRECTED VERDICT WOULD ALSO IMPACT
17 THE PROPOSED JURY CHARGES. AND I'VE GOT A PROPOSED VERDICT
18 FORM.

19 THE COURT: ALL RIGHT.

20 MR. MCGEE: THERE'S HANDWRITING ON ONE, BUT I CAN
21 CERTAINLY HAND IT UP.

22 THE COURT: ALL RIGHT. WITH REGARD TO BREACH OF
23 FIDUCIARY DUTY MOTION, I GRANT THAT MOTION. BASICALLY, THE
24 NEGLIGENCE CAUSE OF ACTION EXISTS BECAUSE THE FIDUCIARY
25 RELATIONSHIP WAS NOT PROPERLY SET UP SO THAT THE MONEYS

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ROA 0622

APPENDIX 632

1 COULD BE PROTECTED. AND THAT'S PART OF THE BASIS FOR THE
2 NEGLIGENCE CAUSE OF ACTION EXISTING. AND I THINK THE CASE
3 LAW IS FAIRLY CLEAR THAT ABSENT THE ESTABLISHMENT OF THE
4 FIDUCIARY RELATIONSHIP THROUGH SOMETHING MORE THAN A
5 DEPOSITOR -- THE DEPOSIT RELATIONSHIP WITH THE CUSTOMER,
6 THAT THERE IS NO -- CAN BE NO BREACH OF FIDUCIARY DUTY
7 SINCE THERE IS NO FIDUCIARY RELATIONSHIP. I GRANT THAT
8 MOTION.

9 MR. MCGEE: THANK YOU, YOUR HONOR.

10 THE COURT: WHAT WAS THE OTHER THING YOU MENTIONED?
11 NEGLIGENCE PER SE?

12 MR. MCGEE: YES, YOUR HONOR, JUST AS TO THE JURY
13 CHARGES. I UNDERSTAND YOUR HONOR'S RULING AS TO OUR
14 DIRECTED VERDICT ON PUNITIVE DAMAGES. WE OBJECT TO THE
15 JURY CHARGES AS PROPOSED BY THE PLAINTIFF THAT RELATE TO
16 THAT.

17 THE COURT: NEGLIGENCE PER SE. ALL RIGHT. WHAT ELSE
18 DO YOU WANT TO SAY ABOUT NEGLIGENCE PER SE IF ANYTHING?

19 MR. MCGEE: YOUR HONOR, I WOULD STAND ON OUR ARGUMENT
20 -- I MEAN, THE MOTION. IF YOUR HONOR WOULD LIKE ME TO GO
21 BACK THROUGH THAT, MY ARGUMENT WAS, JUDGE, THAT ---

22 THE COURT: RECAP YOUR STRONGEST POINTS FOR ME.

23 MR. MCGEE: YES, YOUR HONOR. THE STATUTE PLAINLY
24 REQUIRES THAT THE BANK -- THAT THE PLAINTIFFS PROVE THAT
25 THE BANK KNOWINGLY DEALT WITH A CONSERVATOR.

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ROA 0623

APPENDIX 633

1 AGAIN, JUDGE, IF THERE'S ANYTHING THAT THE PARTIES
2 AGREE IN THIS CASE, IS THAT THE BANK AS THE PLAINTIFF
3 ALLEGES THROUGH ITS NEGLIGENCE DID NOT KNOW THAT IT WAS
4 DEALING WITH A CONSERVATOR. IT DID NOT ASK FOR THE ORDER
5 APPOINTING THE CONSERVATOR. IT DID NOT -- THE BANK
6 EMPLOYEE DID NOT ASK FOR THE FIDUCIARY LETTERS. THE BANK
7 EMPLOYEE SAID THAT SHE DID NOT SET UP A CONSERVATOR
8 ACCOUNT, WHICH IS UNDISPUTED.

9 SO, THEREFORE, JUDGE, I BELIEVE THAT ALL THE EVIDENCE
10 IN THE RECORD SHOWS THAT THE BANK DID NOT KNOWINGLY DEAL
11 WITH A CONSERVATOR. AND, OF COURSE, THE STATUTES -- THE
12 COURT IN ITS CONSIDERATION MUST INTERPRET STATUTES VERY
13 NARROWLY AND VERY SPECIFICALLY. AND THE STATUTE COULD HAVE
14 SAID DEALT WITH A CONSERVATOR, BUT IT DIDN'T.

15 THE LEGISLATURE INCLUDED IN THE STATUTE KNOWING. AND,
16 THEREFORE, YOUR HONOR, BECAUSE THE BANK DID NOT KNOWINGLY
17 DEAL WITH A CONSERVATOR AT THAT TIME -- AGAIN, THE FACT
18 THAT MAYBE IT SHOULD HAVE KNOWN GOES TO THE NEGLIGENCE
19 CLAIM, PRECLUDES A NEGLIGENCE PER SE CHARGE AND PLAINTIFFS
20 HAVE FAILED AS A MATTER OF LAW TO CARRY THEIR BURDEN OF
21 PROOF IN VIOLATION OF THAT STATUTE.

22 THE COURT: ANY OTHER ARGUMENT ON THAT ISSUE, MS.
23 KELLAHAN?

24 MS. KELLAHAN: YES, YOUR HONOR. COUNSEL IS NOT
25 CALLING ATTENTION TO THE EXCEPT WORD IN THAT STATUTE. AND

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ROA 0624

APPENDIX 634

1 THE STATUTE IS ACTUALLY SET OUT IN PLAINTIFFS' REQUEST TO
2 CHARGE NO. 5. THE KNOWINGLY PART COMES BEFORE THE WORD
3 EXCEPT.

4 THE COURT: JUST A MOMENT, MS. KELLAHAN.

5 (PAUSE.)

6 THE COURT: I NEED TO BE LOOKING AT THE REQUEST TO
7 CHARGES WHILE YOU'RE TALKING.

8 (PAUSE.)

9 MS. KELLAHAN: YOUR HONOR, I CAN HAND UP A COPY OF THE
10 STATUTE.

11 THE COURT: ALL RIGHT.

12 (PAUSE.)

13 THE COURT: WHAT IS THAT STATUTE NUMBER AGAIN?

14 MS. KELLAHAN: 62-5-423.

15 THE COURT: ALL RIGHT. YOU CAN GO AHEAD.

16 MS. KELLAHAN: THANK YOU, YOUR HONOR. AGAIN, AS I
17 ARGUED YESTERDAY, THIS STATUTE DOES PUT A DUTY ON THE
18 PERSON THAT IS DEALING WITH THE CONSERVATOR TO INQUIRE IF
19 THERE ARE RESTRICTIONS, THOSE RESTRICTIONS ARE EFFECTIVE AS
20 TO THIRD PERSONS.

21 SO IT'S OUR ARGUMENT THAT THIS STATUTE DOES IMPOSE A
22 DUTY ON THE BANK WHEN THERE ARE RESTRICTIONS ENDORSED ON
23 THE LETTERS. THEY WOULDN'T KNOW THERE WERE RESTRICTIONS
24 ENDORSED ON THE LETTERS UNLESS THEY LOOKED AT THE ACTUAL
25 FIDUCIARY LETTERS. THEY HAVE TO LOOK AT THEM TO DETERMINE

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ROA 0625

APPENDIX 635

1 WHETHER THERE ARE ANY RESTRICTIONS ON THEM.

2 I DO NOT THINK THE KNOWINGLY WORD THAT MR. MCGEE IS
3 CALLING ATTENTION DEALS WITH THE SPECIFIC ISSUE THAT WE ARE
4 PRESENTING TO THE COURT.

5 THE FACT THAT A PERSON KNOWINGLY DEALS WITH A
6 CONSERVATOR DOESN'T ALONE REQUIRE THE PERSON TO INQUIRE IN
7 TO THE EXISTENCE OF A POWER OR THE PROPRIETY OF ITS
8 EXERCISE EXCEPT THAT RESTRICTIONS ON POWERS OF CONSERVATORS
9 ENDORSED ON LETTERS AS PROVIDED IN 62-5-426 ARE EFFECTIVE
10 AS TO THIRD PERSONS.

11 IT'S CLEARLY THE PURPOSE OF THAT QUALIFYING CLAUSE TO
12 PROTECT THOSE INCOMPETENT INDIVIDUALS WHOM THE COURTS
13 DETERMINE ARE IN NEED OF EXTRA PROTECTION THAT RESTRICTIVE
14 ENDORSEMENTS ON LETTERS CAN PROVIDE.

15 THE PLAINTIFF CODY IS A MEMBER OF THAT CLASS OF
16 PERSONS, AND THE BANK'S VIOLATION OF THE DUTY IMPOSED BY
17 THIS STATUTE WAS THE PROXIMATE CAUSE OF THE PLAINTIFFS'
18 INJURY, BECAUSE THE INJURY COULD CLEARLY HAVE BEEN
19 PREVENTED IF THE BANK HAD EXAMINED THE LETTERS FOR
20 RESTRICTIVE ENDORSEMENTS FOUND ON THE LETTERS.

21 AND ON THAT BASIS, YOUR HONOR, NEGLIGENCE PER SE IS AN
22 APPROPRIATE CHARGE IN THIS SITUATION.

23 THE COURT: YOUR ARGUMENT, THROUGH THIS STATUTE THE
24 BANK IS BOUND WITH THIS RELATIONSHIP THAT IS ESTABLISHED
25 THROUGH THE LETTERS THOUGH THE BANK NEVER SAW THE LETTERS?

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ROA 0626

APPENDIX 636

1 MS. KELLAHAN: YOUR HONOR, IT ALMOST SOUNDS IN STRICT
2 LIABILITY IN THAT IF THERE ARE RESTRICTIONS ON THE LETTERS,
3 THOSE THIRD PARTIES OUT THERE ARE BOUND BY THEM.

4 THE COURT: AND THE BANK IS THE THIRD PARTY?

5 MS. KELLAHAN: YES, SIR.

6 THE COURT: ALL RIGHT. AND THEY'RE BOUND BY THEM
7 THOUGH THEY NEVER SAW THEM?

8 MS. KELLAHAN: SO IMPLICIT IN THEM IS YOU HAVE GOT TO
9 ASK. IF YOU'RE GOING TO DEAL WITH A CONSERVATOR -- AND
10 CLEARLY THERE'S EVIDENCE IN THE RECORD THEY CLEARLY DEALT
11 WITH A CONSERVATOR BECAUSE THOSE CHECKS CLEARLY HAD THE
12 WORD ON THEM. THEY HAD A DUTY TO ASK.

13 AND IF THEY CHOSE NOT TO ASK, THEN THAT'S THEIR -- YOU
14 KNOW, THEY ARE BOUND BY THOSE RESTRICTIONS. THEY'RE
15 EFFECTIVE AS TO THIRD PERSONS.

16 (PAUSE.)

17 MS. KELLAHAN: YOUR HONOR, MAY I SAY ONE ADDITIONAL
18 THING, THAT THE BANK'S POSITION THAT IGNORANCE OF THE LAW
19 HERE WOULD BE NO EXCUSE. IT IS THE LAW. IT IS THE
20 STATUTE. AND IT IMPOSES THE DUTY.

21 MR. MCGEE: YOUR HONOR, OF COURSE, THE BANK IS NOT
22 CONTESTING OR DISPUTING WHAT THE STATUTE SAYS. BUT, AGAIN,
23 IT SPECIFICALLY STATES KNOWINGLY DEALT WITH A CONSERVATOR.
24 THERE'S NO EVIDENCE BEFORE THE COURT THAT THE BANK
25 KNOWINGLY DEALT WITH A CONSERVATOR.

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ROA 0627

APPENDIX 637

1 I THINK PLAINTIFFS' PRIMARY ARGUMENT IN THIS CASE IS
2 THAT THE BANK SHOULD HAVE KNOWN THAT IT WAS DEALING WITH A
3 CONSERVATOR; THEREFORE, THE STATUTE DOES NOT APPLY PER SE,
4 THE PUNITIVE DAMAGES CHARGE SHOULD NOT GO TO THE JURY.

5 MR. SABB: JUDGE, MAY I PLEASE?

6 THE COURT: JUST A MOMENT. JUST A MOMENT, EVERYONE,
7 JUST A MOMENT. I'M TRYING TO UNDERSTAND THE STATUTE, AND I
8 HAVE ONE ARGUMENT, TWO ARGUMENTS, NOW THREE ARGUMENTS.

9 MR. SABB: SORRY.

10 (PAUSE.)

11 THE COURT: ALL RIGHT. MR. SABB.

12 MR. SABB: YES, SIR, JUDGE. I WAS GOING TO MENTION
13 THE CLOSENESS OF THE QUESTION AS WE STRUGGLE WITH IT, IT
14 CLEARLY SEEMS THAT IT GIVES RISE TO A JURY QUESTION AND
15 THAT THE JURY OUGHT TO BE INSTRUCTED ON THE LAW AND ALLOW
16 THEM TO DEAL WITH THE QUESTION.

17 THANK YOU, YOUR HONOR.

18 THE COURT: ALL RIGHT. MR. MCGEE, ANY FURTHER
19 ARGUMENT?

20 MR. MCGEE: NO, SIR, JUDGE.

21 THE COURT: THIS NEGLIGENCE PER SE QUESTION -- WHAT'S
22 YOUR MOTION OR ARGUMENT, MR. MCGEE? WHAT'S YOUR MOTION?
23 WHAT DO YOU WANT ME TO DO?

24 MR. MCGEE: EXCLUDE THAT JURY CHARGE THAT THE
25 PLAINTIFFS HAVE PROPOSED. I BELIEVE IT'S 4 AND 5. AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0628

APPENDIX 638

1 THEREFORE, THE JURY WILL NOT CONSIDER NEGLIGENCE PER SE.
2 AND, AGAIN, WE OBJECTED TO ANY PUNITIVE DAMAGES GOING TO
3 THE JURY, BUT SPECIFICALLY AS TO THAT BASIS OF PUNITIVE
4 DAMAGES. I BELIEVE YOUR HONOR SAID THAT YOU HADN'T RULED
5 ON THAT YET.

6 THE COURT: ALL RIGHT.

7 MR. MCGEE: WE JUST WANTED TO NOTE OUR OBJECTION TO
8 THAT.

9 MS. KELLAHAN: ONE LAST THING, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 MS. KELLAHAN: THE PLAINTIFF ARGUES THAT IT MOST
12 DEFINITELY SHOULD BE ENTITLED TO THE STATUTE BEING CHARGED
13 TO THE JURY, BECAUSE IT TALKS ABOUT PEOPLE DEALING WITH
14 CONSERVATORS. AND IF WE SHOULD BE ENTITLED TO THE STATUTE
15 BEING CHARGED, YOUR HONOR, AND IT FOLLOWS AS A MATTER OF
16 COURSE, THAT WE SHOULD BE ENTITLED TO NEGLIGENCE PER SE,
17 YOUR HONOR.

18 THE COURT: THE WHOLE QUESTION IS WHETHER THIS STATUTE
19 IS RELEVANT TO THE CASE ON TRIAL.

20 MS. KELLAHAN: AND THE TITLE OF THE STATUTE IS PERSONS
21 DEALING WITH CONSERVATORS AND PROTECTION; THAT IS THIS
22 WHOLE CASE, YOUR HONOR. THAT IS A STATUTE THAT GOES TO THE
23 HEART OF THIS CASE. AND IF THE STATUTE SHOULD BE CHARGED
24 -- WHICH I JUST THINK IS ALMOST A NO-BRAINER, THEN IT ONLY
25 FOLLOWS THAT NEGLIGENCE PER SE SHOULD ALSO BE CHARGED.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0629

APPENDIX 639

1 THE COURT: BUT ---

2 MS. KELLAHAN: AND ALTERNATIVELY WE WOULD ARGUE, THAT
3 YOUR HONOR AT LEAST ALLOW THE STATUTE ITSELF TO BE CHARGED.

4 THE COURT: THE INTENT OF THE STATUTE IS NOT AS I SEE
5 IT -- IS NOT THE PROTECTION OF THE MINORS, PROTECTION OF
6 THE PERSON DEALING WITH MINORS. AND IT SAYS THAT A PERSON
7 WHO IN GOOD FAITH DEALS WITH A CONSERVATOR, IS ENTITLED TO
8 -- IS PROTECTED AS IF THE CONSERVATOR HAD PROPERLY
9 EXERCISED ITS POWERS WHETHER OR NOT THESE POWERS WERE
10 ACTUALLY GRANTED BY THE COURT EXCEPT TO THE EXTENT OF
11 LIMITATIONS PLACED IN THE LETTERS.

12 IN THIS INSTANCE THE BANK NEVER RECEIVED THE LETTERS,
13 AND NO ONE HAS TESTIFIED THAT THE BANK EVER RECEIVED THE
14 LETTERS.

15 MS. KELLAHAN: YOUR HONOR, THERE IS AMPLE TESTIMONY --
16 UNEQUIVOCAL TESTIMONY THAT THESE BANK PERSONNEL DEALT WITH
17 CONSERVATOR; THAT IS ---

18 THE COURT: NO QUESTION.

19 MS. KELLAHAN: NO QUESTION. SO I WOULD ARGUE THAT
20 WHETHER THEY KNEW OR DIDN'T KNOW, THAT GOES TO THE WEIGHT
21 OF THE EVIDENCE AND THAT IS SOMETHING THAT YOU DETERMINE BY
22 THE TRIER OF FACT. YOUR HONOR, THERE IS EVIDENCE IN THE
23 RECORD OF PERSONS DEALING WITH CONSERVATORS.

24 AND IF YOUR HONOR'S -- I'M NOT DISPUTING THAT THERE IS
25 A TENOR IN THIS STATUTE ABOUT PROTECTION OF THE PEOPLE THAT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0630

APPENDIX 640

1 DEAL WITH CONSERVATORS, BUT WHAT IS THE LANGUAGE EXCEPT --
2 THAT WHOLE LAST CLAUSE IN THAT STATUTE FOR? IT IS FOR
3 PLAINTIFFS AND INCAPACITATED PEOPLE LIKE CODY POWELL.

4 THE COURT: ALL RIGHT. LET'S STAND AT EASE FOR JUST A
5 MOMENT.

6 (PAUSE.)

7 THE COURT: THEY DID NOT SAY THAT NEGLIGENCE PER SE
8 STATUTE DOES NOT APPLY. NEGLIGENCE PER SE DOES NOT APPLY
9 TO THIS CASE AND THAT THIS STATUTE DOES NOT APPLY TO THIS
10 CASE, AND I GRANT THE MOTION REGARDING NEGLIGENCE PER SE.

11 MR. MCGEE: THANK YOU, YOUR HONOR.

12 MS. KELLAHAN: YOUR HONOR, IF I MAY JUST PUT MY
13 OBJECTION ON THE RECORD ONE TIME TO MAKE SURE THAT IT'S
14 CLEAR.

15 THE COURT: I THINK IT'S PRETTY CLEAR ON THE RECORD --
16 ALL THE ARGUMENTS LEADING UP TO IT. BUT GO AHEAD.

17 MS. KELLAHAN: ONE FINAL NOTE JUST FOR THE RECORD,
18 THAT THE VERY FACT IF THE TENOR OF THE STATUTE IS DESIGNED
19 TO PROTECT PEOPLE WHO DEAL WITH CONSERVATORS, I THINK THE
20 DEFENDANT BANK OF AMERICA WOULD CERTAINLY WANT IT TO BE
21 CHARGED. AND ALSO I BELIEVE THAT THE KNOWINGLY QUESTION
22 GOES TO THE WEIGHT OF THE EVIDENCE.

23 THE COURT: ALL RIGHT.

24 MS. KELLAHAN: THANK YOU.

25 THE COURT: ALL RIGHT. WHAT NEXT?

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ROA 0631

APPENDIX 641

1 TOOK THE BOAT OUT OF THE REPAIR SHOP AND THEY WERE TRYING
2 TO SUE THE MANUFACTURER.

3 AND IN THAT PARTICULAR CASE, THEY WERE ADDRESSING THE
4 QUESTION -- IT ALL HINGED ON FORESEEABILITY AND WHETHER
5 THEY ACTUALLY PROPOUND THE TEST OF FORESEEABILITY, THAT HAS
6 TWO FACTORS. ONE, IT DEALS WITH THE INJURY COMPLAINED OF.
7 AND THEN IT SAYS IF THE ACTS OF AN INTERVENING CAUSE WERE A
8 PROBABLE CONSEQUENCE. AND I DO NOT BELIEVE THE STATEMENT
9 ON REQUEST TO CHARGE NO. 19 IS AN ACCURATE STATEMENT OF THE
10 LAW AS PROPOUNDED BY THAT YOUNG VERSUS TIDECRAFT CASE,
11 PARTICULARLY ---

12 THE COURT: ASIDE FROM THAT CASE, WHO IS THE ORIGINAL
13 WRONGDOER IN THIS CASE?

14 MS. KELLAHAN: BANK OF AMERICA.

15 THE COURT: BANK OF AMERICA IS THE ORIGINAL WRONGDOER?

16 MS. KELLAHAN: THEY ARE THE ORIGINAL WRONGDOER.

17 THE COURT: ALL RIGHT.

18 MS. KELLAHAN: THE NEGLIGENT ACT OCCURRED BEFORE KAREN
19 UNRUE STOLE THE MONEY. AND I DON'T THINK THERE'S ANY
20 EVIDENCE TO THE CONTRARY.

21 THE COURT: I AM NOT GOING TO CHARGE THIS REQUEST TO
22 CHARGE.

23 MS. KELLAHAN: THANK YOU.

24 THE COURT: BUT I BELIEVE THE ORIGINAL WRONGDOER WAS
25 MS. UNRUE, BUT THAT'S NEITHER HERE NOR THERE.

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0632

APPENDIX 642

1 POWELL.

2 THE COURT: WHAT SAYS THE DEFENSE?

3 MR. DAVIS: YOUR HONOR, THERE IS ALSO AMPLE EVIDENCE
4 ABOUT AN INTERVENING ACT THAT THE ORIGINAL WRONGDOER WAS
5 KAREN UNRUE. THERE'S BEEN EVIDENCE THAT'S BEEN PRESENTED
6 WHERE THE JURY CAN INFER THAT SHE BEGAN FROM THE ONSET OF
7 THE DEATH OF HER BROTHER TO STEAL THIS MONEY. THERE'S BEEN
8 EVIDENCE PUT IN FRONT OF THEM ABOUT BRINGING IN --
9 BREACHING -- BRINGING IN HER FAMILY MEMBERS TO TRUST HER,
10 FORGING DOCUMENTS, NOT SHOWING DOCUMENTS TO THE BANK.

11 THERE ARE INTERVENING ACTS HERE WHICH THE JURY COULD
12 FIND AND NOT EVEN FIND THAT THE BANK IS NEGLIGENT EVEN
13 THOUGH A MISTAKE WAS MADE, WHERE HER CONDUCT WAS SO
14 EGREGIOUS THAT IT OVERRIDES ANY NEGLIGENCE IF THERE IS ANY
15 BY THE BANK.

16 THE COURT: ALL RIGHT. I DENY THE MOTION. I BELIEVE
17 IT'S A JURY QUESTION.

18 (PAUSE.)

19 THE COURT: ANYTHING ELSE?

20 MR. JENKINSON: NOT FROM THE PLAINTIFF, YOUR HONOR.

21 MR. DAVIS: NOT FROM THE DEFENDANT.

22 THE COURT: BRING THE JURY.

23 (THE JURY RETURNS TO THE COURTROOM AT 11:08 A.M.)

24 THE COURT: ALL RIGHT. GOOD MORNING.

25 JURORS: GOOD MORNING.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0633

APPENDIX 643

1 THE COURT: LADIES AND GENTLEMEN, YOU'VE HEARD THE
2 PLAINTIFFS' CASE. THE DEFENDANT TRAVIS POWELL IS NO LONGER
3 IN THIS CASE.

4 IT IS NOW THE DEFENDANT BANK OF AMERICA'S TURN. MR.
5 DAVIS.

6 MR. DAVIS: YOUR HONOR, WE BELIEVE THE JURY HAS HEARD
7 ENOUGH. WE ARE READY TO PROCEED TO CLOSING ARGUMENT.

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE
9 DEFENSE RESTS; THAT MEANS THAT YOU HAVE NOW HEARD ALL OF
10 THE EVIDENCE IN THIS CASE AND IT IS NOW TIME FOR CLOSING
11 ARGUMENTS. I WANT YOU TO GIVE THE LAWYERS YOUR ATTENTION.

12 YOU MAY PROCEED.

13 MR. JENKINSON: MAY IT PLEASE THE COURT, YOUR HONOR.

14 THE COURT: YES, SIR.

15 MR. JENKINSON: GOOD MORNING, LADIES AND GENTLEMEN.

16 JURORS: GOOD MORNING.

17 CLOSING ARGUMENTS BY MR. JENKINSON ON BEHALF OF THE
18 PLAINTIFFS:

19 I WOKE UP EARLY THIS MORNING, AND I HAD A LOT ON MY
20 MIND AND I'VE BEEN THINKING. I THOUGHT FIRST IT'S HARD TO
21 BELIEVE IT'S TAKEN SIX YEARS TO COME TO THIS DAY, FIVE
22 YEARS SINCE THIS LAWSUIT HAS BEEN FILED SEEKING JUSTICE FOR
23 A CHILD 8 YEARS OLD THEN WHOSE OWN AUNT AND THE LARGEST
24 BANK IN AMERICA HAD DONE TO HIM. I THOUGHT ABOUT THOSE
25 THINGS THIS MORNING. I THOUGHT ABOUT HOW LONG THE STRUGGLE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0634

APPENDIX 644

1 TO GET THIS CASE TO THIS MOMENT HAS TAKEN.

2 I STARTED THINKING OF THE LONG DAYS WE HAVE WORKED ON
3 THIS CASE, WHICH HAS TAKEN US TO COLUMBIA, SOUTH CAROLINA,
4 FLORENCE, SUMTER, CHARLESTON, SANFORD, NORTH CAROLINA, NEW
5 BRUNSWICK, NEW JERSEY IN TAKING THESE DEPOSITIONS, AND
6 HAVING HEARINGS, AND LOOKING AT EVIDENCE, AND BRINGING THIS
7 CASE TO YOU FOR A FULL FOUR-DAY TRIAL, INCLUDING TODAY.

8 I THOUGHT ABOUT THIS MORNING WHAT RONNIE SABB AND I
9 HAVE GOT TO DO TODAY IN THESE CLOSING ARGUMENTS, TO TAKE
10 THIS SIX YEARS AND THIS FOUR-DAY TRIAL AND PUT IT IN JUST A
11 FEW MINUTES OF CLOSING REMARKS TO YOU. AND I THOUGHT ABOUT
12 IT, WHAT I JUST WANT TO DO IS SEE IF RONNIE AND I CAN HELP
13 YOU MAKE A DECISION.

14 AS I LAID THERE THIS MORNING, I THOUGHT ABOUT MR.
15 DAVIS' WORDS IN HIS OPENING STATEMENT, THAT THE BANK OF
16 AMERICA WANTED TO MAKE CODY WHOLE SINCE DAY-ONE. I ALMOST
17 FELL OUT OF MY CHAIR. I'VE BEEN WAITING SIX YEARS TO HEAR
18 THAT.

19 WHY DID IT TAKE FIVE YEARS AFTER THIS LAWSUIT TO BEGIN
20 TO HEAR THOSE WORDS? I DON'T KNOW.

21 I THOUGHT OF ELIZABETH REEVES' WORDS YESTERDAY OF
22 APOLOGY TO CODY AND HIS MOTHER. AND WHY DID IT TAKE FIVE
23 YEARS FOR THOSE WORDS TO BE SPOKEN? WHY DID THEY WAIT TO
24 DO IT IN FRONT OF A JURY IN WILLIAMSBURG COUNTY?

25 I WONDERED WHY SOMEONE FROM CHARLOTTE, THE HOME OFFICE

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0635

APPENDIX 645

1 OF BANK OF AMERICA, DIDN'T COME IN HERE TO SAY THOSE WORDS.
2 I WONDERED WHY MS. YOURKO AND MEREDITH LAWRENCE, THE
3 TELLERS, AND THE BACK ROOM PEOPLE WHO CAUSED THIS CASE TO
4 OCCUR AGAINST THE BANK COULDN'T COME AND SAY ONE WORD OF
5 APOLOGY.

6 THE ONLY APOLOGY CAME FROM A BANK EMPLOYEE WHO LIVES
7 DOWN IN MT. PLEASANT, SOUTH CAROLINA, WHO HAS NOTHING TO DO
8 WITH THIS BANK UP IN PAWLEYS ISLAND. SHE'S NOT TALKED TO
9 ANY OF THESE WITNESSES. SHE'S NEVER HAD ANYTHING TO DO
10 WITH THE PAWLEYS ISLAND BRANCH. WHY WAS SHE THE ONE
11 DESIGNATED BY THE BANK OF AMERICA TO BE THEIR
12 REPRESENTATIVE?

13 IT WOULD SEEM TO ME THEY WOULD HAVE SOMEBODY THAT KNEW
14 ABOUT THIS CASE THAT HAD DONE SOME CHECKING INTO IT, THAT'S
15 FROM CHARLOTTE TO AT LEAST COME DOWN. THAT'S A HUGE
16 OFFICE, HUGE BUILDING UP THERE. SEEMED LIKE THEY COULD
17 FIND SOMEBODY.

18 I LAID THERE AND I THOUGHT THIS MORNING OF THE BANK
19 THROUGH THEIR LAWYERS TRYING TO SELL YOU AND THIS COURT ON
20 AN ARGUMENT THAT ALL THEY MADE WAS A SIMPLE MISTAKE, ONE
21 SIMPLE MISTAKE, AND THAT THE BANK TRUSTED KAREN UNRUE JUST
22 LIKE TRAVIS AND ELIZABETH HAD TRUSTED HER. AND JUST LIKE
23 THE PROBATE COURT HAD TRUSTED HER. AND I THOUGHT, I DON'T
24 THINK THIS JURY IS BUYING THAT ARGUMENT THAT THE BANK OF
25 AMERICA IS TRYING TO SELL TO YOU.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0636

APPENDIX 646

1 FINALLY, I THOUGHT THAT THIS IS A DAY IN WHICH CODY
2 P [REDACTED] WILL GET JUSTICE. YOU'VE HEARD WITH YOUR OWN EARS,
3 YOU HAVE SEEN WITH YOUR OWN EYES WHAT THIS CASE IS ABOUT.
4 IT IS A CONSCIOUS DISREGARD FOR THE RIGHTS OF A CHILD, CODY
5 POWELL. A CONSCIOUS DISREGARD, WHICH MEANS LOOKED AT
6 SOMETHING, SAW SOMETHING, AND SAID I AM NOT GOING TO GO
7 THAT WAY.

8 I DOUBT IF THERE'S NOTHING THAT I'M GOING TO BE ABLE
9 TO SAY HERE OR RONNIE SABB OR MR. DAVIS IS GOING TO BE
10 CHANGING YOUR MIND ABOUT ANYTHING. I ACTUALLY DON'T WANT
11 TO CHANGE YOUR MIND.

12 CODY P [REDACTED] AND THE LAWYERS WHO HAVE WORKED IN THIS
13 CASE TRUST YOU -- THEY TRUST YOUR EYES, THEY TRUST YOUR
14 EARS, THEY TRUST YOUR COMMON SENSE TO DO THE RIGHT THING.

15 WHEN YOU GO BACK INTO THAT JURY ROOM IN A LITTLE
16 WHILE, YOU'RE GOING TO TAKE WITH YOU THE TESTIMONY THAT
17 YOU'VE HEARD FROM THIS STAND. YOU'RE GOING TO TAKE THESE
18 EXHIBITS THAT HAVE BEEN PUT INTO EVIDENCE. I WANT YOU TO
19 LOOK AT THEM. YOU'RE GOING TO TAKE WHAT HIS HONOR GIVES
20 YOU IS THE LAW THAT APPLIES TO THIS CASE. AND YOU WILL
21 COME BACK WITH A VERDICT WITH ONE MORE THING THAT YOU'RE
22 GOING TO TAKE WITH YOU IN THAT JURY ROOM, AND THAT IS YOUR
23 COMMON SENSE, FOR IT IS YOUR COMMON SENSE THAT ALLOWS YOU
24 TO PUT IT TOGETHER AND COME OUT AND SPEAK THE JUSTICE AND
25 TRUE VERDICT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0637

APPENDIX 647

1 NOW, I WOULD SUGGEST THAT YOU MUST DETERMINE WHAT CODY
2 P [REDACTED] AND KELLY KELLEY, HIS CONSERVATOR, HAVE PROVEN IN
3 THIS CASE.

4 HIS HONOR, ONE OF THE FIRST WORDS OUT OF HIS MOUTH IS
5 GOING TO BE, THE PLAINTIFF WHO IS CODY AND KELLY KELLEY,
6 HAVE THE BURDEN OF PROOF IN THIS CASE.

7 AND YOU SAY, OKAY. THIS IS HOW YOU WEIGH WITH YOUR
8 COMMON SENSE A DECISION. IT'S VERY SIMPLE. IT'S LIKE
9 TAKING THE EVIDENCE AND TESTIMONY THAT YOU HEAR, AND YOU
10 WEIGH THAT IN YOUR MIND. AM I MORE LIKELY INCLINED TO
11 BELIEVE THE WITNESSES OF THE PLAINTIFF AS AGAINST THOSE
12 FROM THE BANK?

13 AND HIS HONOR WILL TELL YOU THE STANDARD IS THE
14 GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. WHAT THAT
15 SIMPLY MEANS IS THIS: YOU HAVE A SET OF SCALES. AND IF
16 THE SCALES TIP IN CODY'S FAVOR WHEN YOU WEIGH OUT THE
17 EVIDENCE AND THE TESTIMONY AND THE CREDIBILITY AND THE
18 BELIEVABILITY OF THESE WITNESSES AND IT TIP IN HIS FAVOR,
19 THEN HE'S MET HIS BURDEN OF PROOF.

20 THERE'S NO BURDEN OF PROOF THAT REQUIRES A HUNDRED
21 PERCENT OF ANYTHING, OR 75 PERCENT OF ANYTHING. SIMPLY
22 IT'S PROBABLY ABOUT 51 PERCENT, JUST ENOUGH TO TILT THOSE
23 SCALES.

24 SO OUR DUTY HERE TO YOU HAS BEEN TO PROVE A CASE AND
25 MEET THIS BURDEN OF PROOF BY A GREATER WEIGHT OR

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ROA 0638

APPENDIX 648

1 PREPONDERANCE OF THE EVIDENCE.

2 YOU HAVE A RIGHT TO BELIEVE WHAT ONE JUROR (SIC) SAYS
3 -- I MEAN, ONE WITNESS SAYS, HALF OF WHAT THEY SAY, NONE OF
4 WHAT THEY SAY. YOU WEIGH THAT IN YOUR MIND IN ARRIVING AT
5 A DECISION. IT'S A MENTAL PROCESS, AND YOU TRUST YOUR
6 COMMON SENSE.

7 CODY POWELL COMES INTO COURT PROVING WHAT? WHAT IS
8 HIS BURDEN OF PROOF? WE SAY THE BANK WAS NEGLIGENT AND
9 GROSSLY NEGLIGENT IN MANAGING HIS ACCOUNT. MANAGING CODY'S
10 MONEY.

11 NOW, WHAT IS NEGLIGENCE? IT IS SIMPLY THE ABSENCE OF
12 DUE CARE. THE BANK HAD A DUTY TO CODY P [REDACTED] AND IF THEY
13 VIOLATED THAT DUTY, THEN THAT'S NEGLIGENCE.

14 NOW, WHAT ARE THE ELEMENTS OF NEGLIGENCE THAT WE MUST
15 PROVE ON THIS SCREEN? FIRST, THAT THE BANK OF AMERICA WAS
16 NEGLIGENT, CARELESS, RECKLESS, AND WILFUL IN THE WAYS THAT
17 WE HAVE DESCRIBED HERE TODAY AND THESE LAST THREE DAYS TO
18 YOU; THAT THEY VIOLATED A DUTY THEY OWED CODY P [REDACTED] IN THE
19 WAYS THAT WE DESCRIBED THEM BY OPENING AN ACCOUNT AND
20 GIVING KAREN UNRUE HIS MONEY, BY NOT ASKING FOR A COURT
21 ORDER RESTRICTING THIS ACCOUNT, BY NOT REQUIRING ---

22 MR. DAVIS: YOUR HONOR ---

23 MR. JENKINSON: --- TRAVIS POWELL TO BE PRESENT.

24 MR. DAVIS: YOUR HONOR, IT IS EXTREMELY RARE FOR ME TO
25 OBJECT IN SOMEBODY'S CLOSING ARGUMENT. THE PLAINTIFF -- IF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0639

APPENDIX 649

1 I MAY APPROACH THE BENCH?

2 THE COURT: YES, SIR.

3 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
4 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

5 THE COURT: LADIES AND GENTLEMEN, I'M GOING TO HAVE
6 YOU GO TO THE JURY ROOM JUST FOR A MINUTE -- JUST ABOUT
7 2 MINUTES. PLEASE DO NOT DISCUSS THE CASE.

8 (THE JURY RETIRES TO THE JURY ROOM AT 11:22 A.M.)

9 THE COURT: ALL RIGHT. THE JURY'S OUT. MR. DAVIS.

10 MR. DAVIS: YOUR HONOR, THE JURY IS GOING TO BE
11 GETTING A GENERAL VERDICT FORM THAT DOES NOT ESSENTIALLY
12 ESTABLISH WHAT THE ELEMENTS ARE OR WHAT THE WEIGHT OF THE
13 EVIDENCE IS. THE PLAINTIFF HAS PUT IN FRONT OF THE JURY A
14 NEGLIGENCE -- ESSENTIALLY A SLIDE WHICH IT HAS IN BOLD ON
15 TOP OF IT, NEGLIGENCE. AND THEN IT HAS THREE PARAGRAPHS AS
16 IF THESE ARE THE THREE FACTORS THAT YOU ARE TO CONSIDER
17 WHEN YOU THINK ABOUT NEGLIGENCE.

18 AND ONE OF THOSE PARAGRAPHS SPECIFICALLY LAYS OUT THE
19 ELEMENTS OF GROSS NEGLIGENCE, WILFUL, WANTON, RECKLESS OR A
20 CONSCIOUS DISREGARD AS IF THAT IS THE NEGLIGENCE STANDARD.
21 THAT IS COMPLETELY INACCURATE. IT IS COMPLETELY MISLEADING
22 TO THIS JURY. IT HAS MISLED THIS JURY. HE'S PUT IT UP
23 THERE ON A SCREEN, ON POWER POINT. HE LEFT IT UP THERE
24 WHILE WE WERE EVEN HAVING A SIDE BAR WITH THE COURT IN THAT
25 REGARD.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0640

APPENDIX 650

1 REGRETTABLY, BASED ON THAT, WE HAVE TO MOVE FOR A
2 MISTRIAL.

3 THE COURT: ALL RIGHT. MR. JENKINSON.

4 MR. JENKINSON: IT HAS BEEN TAKEN DOWN. AND ALL WE'VE
5 GOT TO DO TO FIX IT IS PUT THE WORD GROSS IN FRONT OF IT
6 AND CONTINUE TO MARCH. AND I CAN DO THAT IN ABOUT 10
7 SECONDS WITH THE COMPUTER, AND PUT GROSS IN FRONT OF IT.
8 AND I WILL SAY, I MIS-SPOKE WHEN I SAID THIS WAS
9 NEGLIGENCE. IT IS GROSS NEGLIGENCE.

10 MR. DAVIS: ALL THAT IS GOING TO DO IS HIGHLIGHT IT.
11 IT CANNOT BE CURED, YOUR HONOR.

12 THE COURT: MR. SABB.

13 MR. SABB: YOUR HONOR, PLEASE. I THINK THE WAY THAT
14 MR. JENKINSON SUGGESTED CURES THE PROBLEM. CLEARLY, THE
15 COURT IS GOING TO CHARGE THEM ON THE LAW AT SOME POINT IN
16 TIME. AND I APPRECIATE THE COURT'S CONCERN WITH REGARD TO
17 THE USE OF SCREENS IN THESE TRIALS AS WELL.

18 JUDGE, IT WOULD BE ONE THING IF WE WERE DEALING WITH A
19 CASE WHERE GROSS NEGLIGENCE WAS NOT AN ISSUE AND ALL OF A
20 SUDDEN WE'VE GOT THIS STANDARD OUT THERE THAT REALLY JUST
21 TURNS ONE CASE INTO ONE THING AS OPPOSED TO SOMETHING ELSE.
22 BUT, CLEARLY, IN THIS CASE, JUDGE, WE'VE GOT TWO CAUSES.
23 AND SO WE THINK TO THAT EXTENT, IT IS A CURABLE ERROR AND
24 OBVIOUSLY JUST A SIMPLE MISTAKE THAT COUNSEL MADE.

25 THE COURT: WELL, THE GENERAL RULE -- WHAT ELSE DO YOU

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0641

APPENDIX 651

1 PLAN TO -- WHAT ELSE -- WHAT DO YOU HAVE ON THE SCREEN THAT
2 YOU PLAN TO USE?
3 MR. JENKINSON: JUST A MINUTE.
4 MR. DAVIS: IT NEEDS TO BE AN EXHIBIT, IT NEEDS TO BE
5 A PART OF THE RECORD.
6 (PAUSE.)
7 THE COURT: ALL RIGHT. ANYTHING ELSE?
8 MR. DAVIS: YOUR HONOR, HE'S AN EXPERIENCED LAWYER.
9 THEY KNOW WHAT THEY'RE DOING.
10 THE COURT: ALL RIGHT. WELL, WHATEVER THE OBJECTED
11 SLIDE WILL BE PRESERVED AND MADE A PART OF THE RECORD.
12 MR. JENKINSON: YES, SIR.
13 THE COURT: I OVERRULE THE MOTION FOR A MISTRIAL. I
14 WILL INSTRUCT THE JURY THAT THEY ARE TO GET THE LAW FROM
15 THE COURT.
16 MR. SABB: THANK YOU, JUDGE.
17 MR. DAVIS: YOUR HONOR, IN LIGHT OF -- IN LIGHT OF WE
18 BELIEVE -- IT'S OUR POSITION THIS WON'T CURE IT. WE WOULD
19 NOW HAVE TO PROCEED NOW WITHOUT -- IF YOU WOULD RECONSIDER
20 THE SPECIAL VERDICT FORM THAT WE SUBMITTED EARLIER. I KNOW
21 THE COURT HAS NOT CONSIDERED THIS A COMPLICATED CASE, BUT
22 WE THINK -- WE HAVE TO NOW -- IT'S NOW GOING BACK IN THE
23 JURY ROOM. WE NOW HAVE TO REOPEN OUR REQUEST FOR THAT
24 SPECIAL VERDICT FORM.
25 MR. JENKINSON: I DO NOT THINK THAT WOULD BE

CODY F. [REDACTED] VS. BANK OF AMERICA

ROA 0642

APPENDIX 652

1 APPROPRIATE. THAT WOULD JUST BE MORE CONFUSING. I THINK
2 YOU CAN CORRECT THE PROBLEM THEY ARE COMPLAINING OF BY
3 SIMPLE CURATIVE INSTRUCTION TO THEM. WE'LL TAKE THE SLIDE
4 DOWN AND NOT USE IT AT ALL. AND WE'LL MOVE ON.

5 MR. DAVIS: AND ALTHOUGH WE'RE MAKING THAT
6 RECOMMENDATION, I WANT TO MAKE SURE THE RECORD IS CLEAR.
7 WE DO NOT BELIEVE A SPECIAL VERDICT FORM WILL CURE IT, AND
8 WE DO MAKE THAT OBJECTION.

9 THE COURT: ALL RIGHT. WELL, I WILL PLACE -- HAVE IT
10 AS A SPECIAL VERDICT FORM ONLY TO THE EXTENT THAT I WILL
11 ADOPT YOUR NO. 2 FROM YOUR VERDICT FORM REQUEST, AND
12 INSTRUCT THE JURY THAT THEY CAN ONLY AWARD PUNITIVE DAMAGES
13 IF THEY FIND THAT THE PLAINTIFF HAS PROVEN BY CLEAR AND
14 CONVINCING EVIDENCE THAT THE BANK OF AMERICA'S ACTS OR
15 OMISSIONS WERE WILFUL, WANTON, OR RECKLESS AS THE COURT
16 DEFINE THESE TERMS.

17 MR. DAVIS: YES, SIR.

18 THE COURT: ALL RIGHT. LET'S BRING THE JURY.

19 (THE JURY RETURNS TO THE COURTROOM AT 11:30 A.M.)

20 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU WENT
21 OUT AS SOME SLIDES WERE BEING SHOWN TO YOU AS MR. JENKINSON
22 WAS GIVING HIS CLOSING ARGUMENT.

23 I WANT TO CAUTION YOU AND ADVISE YOU THAT YOU ARE TO
24 GET THE LAW IN THIS CASE FROM ME AND SOLELY FROM ME.
25 CERTAINLY WHAT THE LAWYERS SAY IS IMPORTANT, BUT I WILL

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0643

APPENDIX 653

1 INSTRUCT YOU AS TO THE LAW THAT APPLIES TO THIS MATTER.

2 YOU MAY PROCEED.

3 MR. JENKINSON: THANK YOU, YOUR HONOR. MAY IT PLEASE
4 THE COURT.

5 THE COURT: YES, SIR.

6 CLOSING ARGUMENTS CONTINUED BY MR. JENKINSON ON BEHALF OF
7 THE PLAINTIFFS:

8 NOW, BACK TO WHERE WE WERE. WHAT MUST CODY P [REDACTED]
9 PROVE TO YOU? TWO THINGS. FIRST, IS NEGLIGENCE. HE MUST
10 PROVE THAT THE BANK WAS NEGLIGENT. HOW DOES HE PROVE THAT?

11 FIRST, WAS THERE A DUTY OWED TO CODY P [REDACTED] BY THE
12 BANK TO PROTECT HIS MONEY?

13 YOU'VE HEARD A LOT OF WITNESSES SAY -- PRACTICALLY
14 EVERY ONE OF THEM SAY, YES, THE BANK HAS A DUTY TO CODY
15 P [REDACTED], TO PROTECT CODY P [REDACTED] MONEY. YOU'VE SEEN A
16 WHOLE BOX OF BOOKS OF HOW THE BANK PROTECTS CODY'S MONEY.

17 YOU'VE HEARD BOTH THE BANK'S WITNESSES AND MR. HUBBS
18 SAY THE VERY REASON A BANK EXISTS IS TO PROTECT PEOPLES'
19 MONEY.

20 BANKS MAKE MONEY OFF OF PROTECTING PEOPLES' MONEY.
21 AND WHEN YOU PROVIDE SUCH A SERVICE, YOU HAVE A DUTY TO
22 YOUR PEOPLE WHO PUT MONEY THERE, WHO TRANSACT BUSINESS
23 THERE, TO PROTECT THEIR MONEY.

24 AND THE SECOND THING CODY MUST PROVE, THAT THE BANK
25 VIOLATED THAT DUTY, AND IN DOING SO CAUSED HIM DAMAGES.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0644

APPENDIX 654

1 AND WE ALL KNOW IN THIS PARTICULAR CASE CODY'S DAMAGES WERE
2 GOING TO BE JUST OVER 205,000 ACTUAL DAMAGES.

3 AND THIRDLY, THEY MUST PROVE -- CODY MUST PROVE THAT
4 THAT'S PROXIMATELY -- THAT THE BREACH OF THIS DUTY BY THE
5 BANK PROXIMATELY CAUSED HIS DAMAGE.

6 WHAT DO I MEAN BY THAT? THAT IF THE BANK WOULD HAVE
7 FOLLOWED WHAT THEY WERE SUPPOSED TO DO, WOULD CODY HAVE
8 LOST HIS MONEY? AND IF THE BANK HAD DONE WHAT THEY WERE
9 SUPPOSED TO DO IN THEIR DUTY, THEN WE COULDN'T HAVE PROVED
10 A BREACH OF A DUTY. AND IF THEY HAD BREACHED THEIR DUTY
11 AND THE BREACH OF THAT DUTY HAS CAUSED CODY TO LOSE HIS
12 MONEY, HE'S PROVED NEGLIGENCE. I'LL TALK MORE ABOUT THAT,
13 BUT THAT'S THE FIRST BURDEN OF PROOF THAT CODY HAS.

14 THE SECOND THING WE HAVE SAID ABOUT THE BANK IS NOT
15 ONLY HAVE THEY BEEN NEGLIGENT, BUT THEY HAVE BEEN GROSSLY
16 NEGLIGENT, CARELESS AND RECKLESS AND WILFUL IN HANDLING
17 CODY'S MONEY, THAT THERE WAS A CONSCIOUS DISREGARD FOR HIS
18 RIGHTS, THAT CODY POWELL WAS DAMAGED AND HE'S NOT ONLY
19 ENTITLED TO ACTUAL DAMAGES, BUT HE IS ENTITLED TO PUNITIVE
20 DAMAGES; AND THAT'S ONE OF THE ISSUES THAT I'M GOING TO
21 TAKE A LITTLE TIME AND EXPLAIN IN DETAIL BECAUSE YOU NEED
22 TO DECIDE THESE THINGS.

23 AND WHEN YOU GO BACK IN THE JURY ROOM, THE QUESTION
24 YOU MAY ASK YOURSELF IS: IN WHAT ORDER DO WE DECIDE THIS
25 CASE? HOW DO WE GET FROM THE BEGINNING TO THE END TO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0645

APPENDIX 655

1 DECIDE A VERDICT?

2 IT'S VERY SIMPLE. THE FIRST QUESTION YOU ASK YOURSELF
3 IS: HAS CODY P [REDACTED] PROVED THE BANK OF AMERICA BEING
4 NEGLIGENT BY A GREATER WEIGHT OR PREPONDERANCE OF THE
5 EVIDENCE?

6 THE SECOND QUESTION YOU ASK YOURSELF: IF THEY'VE
7 PROVED THAT THEY WERE NEGLIGENT, DID THEY BREACH THAT DUTY
8 AND DID IT PROXIMATELY CAUSE HIS DAMAGE OF \$205,000, WHICH
9 EVERYBODY ADMITS IS THE AMOUNT OF MONEY.

10 IF YOU SAY THAT, THEN YOU CHECK THE BOX. CHECK THE
11 BOX WHICH SAYS, CODY P [REDACTED] HAS PROVED THAT -- THAT'S THE
12 FIRST QUESTION. AND IF YOU SAY, WELL, CODY P [REDACTED] HASN'T
13 PROVED NEGLIGENCE, HADN'T PROVED HIS CASE, THEN YOU STOP,
14 AND WE GO HOME. CODY P [REDACTED] GETS ZERO.

15 BUT IF YOU DECIDE THAT HE HAS MET HIS BURDEN OF PROOF
16 ON NEGLIGENCE, YOU CHECK THE BOX AND SAY, YES, THE BANK OF
17 AMERICA IS LIABLE FOR HIS ACTUAL DAMAGES.

18 THE NEXT QUESTION YOU ASK YOURSELF: OKAY. HAS CODY
19 P [REDACTED] NOW PROVED TO US BY CLEAR AND CONVINCING EVIDENCE
20 THAT THERE IS GROSS NEGLIGENCE HERE, WILFULNESS AND
21 WANTONNESS, IN FAILING TO CONSCIOUSLY -- IN CONSCIOUSLY
22 DISREGARDING CODY'S RIGHTS. AND IF SO, THEN THAT'S HOW YOU
23 DETERMINE THAT ISSUE. AND I'M GOING TO HELP YOU A LITTLE
24 BIT WITH THAT ISSUE, BECAUSE THAT IS WHAT WE NEED TO LOOK
25 AT.

CODY P [REDACTED] VS. BANK OF AMERICA.

ROA 0646

APPENDIX 656

1 MOST IMPORTANTLY IS THE PROXIMATE CAUSE. PROXIMATE
2 CAUSE IS SIMPLY THIS. CODY WOULDN'T HAVE LOST HIS MONEY
3 BUT FOR. CODY WOULDN'T HAVE LOST HIS MONEY BUT FOR THE
4 BANK OF AMERICA NOT FOLLOWING THEIR OWN PROCEDURES AND
5 POLICIES. IF KAREN UNRUE WOULD HAVE WALKED IN -- AND IT'S
6 NOT A VIOLATION OF THE LAW TO WALK IN -- OR A DUTY FOR HER
7 TO WALK IN AND HAND THOSE CHECKS AND SAY, I WANT TO OPEN AN
8 ACCOUNT.

9 THE VIOLATIONS FIRST CAME WHEN THE BANK LOOKED AT
10 THOSE CHECKS AND MADE A CONSCIOUS DECISION NOT TO SEE THE
11 WORD CONSERVATOR FIVE TIMES. THE BANK MADE A CONSCIOUS
12 DECISION TO LOOK AND SEE, WHERE IS TRAVIS POWELL? WHEN THE
13 BANK MADE A CONSCIOUS DECISION OF NOT HAVING THE BACK OF
14 THE CHECK SIGNED BY TRAVIS POWELL LIKE THEY'RE SUPPOSED TO.
15 AND MAKING A CONSCIOUS DECISION TO PUT THE WRONG PERSON'S
16 NAME ON THE ACCOUNT AND NOT AS IT APPEARED ON THE FRONT OF
17 THOSE CHECKS. AND MAKING A CONSCIOUS DECISION OF LOOKING
18 AT THOSE CHECKS AND REALIZING THAT THERE WERE TWO CO-
19 PERSONAL REPRESENTATIVES ON SOME OF THEM AND ONLY ONE ON
20 OTHERS, WHICH WAS A BIG RED FLAG. I'VE GOT TWO DIFFERENT
21 KIND OF CHECKS HERE. AND MAKING A CONSCIOUS DECISION IN
22 LOOKING AT THE WORD CONSERVATOR AND SAYING, WAIT A MINUTE,
23 GO GET THE COURT ORDER. LET ME SEE WHAT THE COURT HAS TO
24 SAY ABOUT IT. THEN MAKING A CONSCIOUS DECISION AND NOT TO
25 FOLLOW THEIR TRAINING AND THEIR PROCEDURE AND POLICY, IN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0647

APPENDIX 657

1 MAKING A CONSCIOUS DECISION IN NOT PICKING UP THE TELEPHONE
2 AND CALLING AND ASK FOR HELP IF THEY DIDN'T UNDERSTAND
3 SOMETHING.

4 THESE PEOPLE GOT PAID A LOT OF MONEY IN THE BANK TO DO
5 IT RIGHT, AND DIDN'T DO IT. THE TELLERS GOT PAID MONEY,
6 AND DIDN'T DO IT. THE BACK PEOPLE IN THE BACK ROOM OF THE
7 BANK GOT PAID ITS MONEY AND DIDN'T DO IT.

8 SO IT IS -- NEXT YOU SAY, WELL, HOW ABOUT
9 FORESEEABILITY. IS IT FORESEEABLE FOR THE BANK TO THINK
10 THAT THEY -- THAT NOTHING IS GOING TO HAPPEN HERE. OR
11 SHOULD THEY HAVE FORESEEN SOMETHING COULD HAPPEN WITH
12 CODY'S MONEY?

13 WELL, IF YOU RECALL, I ASKED MS. REEVES YESTERDAY AND
14 I ASKED MR. HUBBS: IS IT FORESEEABLE FOR A BANK TO BELIEVE
15 THAT SOMEBODY IS GOING TO TRY TO TAKE A CHILD'S MONEY?

16 AND BOTH OF THEM SAID, YES, IT'S FORESEEABLE; THAT'S
17 WHY WE HAVE BANK REGULATIONS. THAT'S WHY WE HAVE VAULTS.
18 THAT'S WHY WE EVEN WATCH OUR OWN EMPLOYEES SO THEY WON'T
19 STEAL. THAT'S WHY WE WATCH AND HAVE THESE PROCEDURES IN
20 PLACE TO PROTECT OUR CUSTOMERS' MONEY, BECAUSE WE KNOW
21 PEOPLE WILL STEAL. WE KNOW PEOPLE ARE GOING TO STEAL. WE
22 KNOW SOMEBODY'S GOING TO STEAL SOMEBODY'S CHECK OUT OF
23 THEIR MAILBOX AND TRY TO COME FORGE IT IN A BANK AND TAKE
24 SOMEBODY'S MONEY. WE KNOW THAT CHILDREN CAN BE TAKEN
25 ADVANTAGE OF; THAT'S WHY WE HAVE THESE POLICIES AND

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0648

APPENDIX 658

1 PROCEDURES IN PLACE TO PROTECT CHILDREN AND PEOPLE AND
2 CUSTOMERS -- VERY FORESEEABLE BY THEIR OWN WORDS OUT OF
3 THEIR OWN MOUTH, SO THAT TEST HAS BEEN PASSED.

4 AND ONE OF THE ISSUES THAT COMES UP IN THIS CASE IS
5 KAREN UNRUE AND THE BANK. AND IT'S CALLED INTERVENING
6 NEGLIGENCE. DID KAREN UNRUE CAUSE THE BANK TO DO SOMETHING
7 WRONG? NO. KAREN UNRUE STOLE CODY'S MONEY AFTER THE BANK
8 HAD DONE SOMETHING WRONG. KAREN UNRUE'S CRIMINAL ACT
9 OCCURRED AFTER THE BANK LET HER IN THE DOOR -- LET HER IN
10 TO CODY'S MONEY, LET HER HAVE CODY'S MONEY. THEN THEY PUT
11 HER IN A POSITION TO STEAL.

12 NOW, SIMPLY PUT, KAREN UNRUE DID A WRONGFUL ACT, BUT
13 SHE DID IT AFTER -- SHE DIDN'T STEAL CODY'S MONEY UNTIL THE
14 BANK ALLOWED HER TO.

15 SO WHAT WE SEE HERE, THE BANK SHOULD HAVE FORESEEN
16 THAT PEOPLE LIKE KAREN UNRUE ARE GOING TO STEAL; AND THAT'S
17 WHY THEY HAVE THESE POLICIES AND PROCEDURES, AND HERE IT
18 TOOK TWO PEOPLE BY IT -- IT TOOK THE BANK ALLOWING THE
19 VAULT TO STAY OPEN, IN ALLOWING KAREN UNRUE TO GET TO
20 CODY'S MONEY.

21 AND IT'S NO DIFFERENT THAT TOMORROW AFTERNOON, ON
22 FRIDAY, THE BANK ACROSS THE STREET LEAVING THE VAULT OPEN,
23 TURNING THEIR ALARM OFF, LEAVING THAT SIDE DOOR OPEN, AND
24 WALKING OUT OF THE BANK. WHAT'S GOING TO HAPPEN? SOME
25 CRIMINAL CAN WALK IN THERE AND STEAL THE MONEY.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0649

APPENDIX 659

1 AND IN THIS PARTICULAR INSTANCE, THE BANK JUST LEFT --
2 LEFT CODY'S MONEY WIDE OPEN TO BE STOLEN IN VIOLATION OF A
3 COURT ORDER, IN VIOLATION OF THEIR PROCEDURES. SO IT TOOK
4 TWO TO ACT.

5 NOW, IF THE BANK WOULD HAVE DONE WHAT THEY WERE
6 SUPPOSED TO DO, WOULD THIS EVER HAPPEN? ASK YOURSELF THAT
7 QUESTION WHEN YOU GO INTO THE JURY ROOM. IF THE BANK WOULD
8 HAVE PUT THAT WALL UP OF PROCEDURES AND POLICIES, WOULD
9 KAREN UNRUE EVER STOLE A PENNY OF HIS MONEY? NOT OUT OF
10 THAT BANK SHE WOULDN'T HAVE, BECAUSE THAT'S WHY WE PUT
11 MONEY IN BANKS, SO IT WILL BE SAFE; THAT'S WHY JUDGE GAMBLE
12 DOWNSTAIRS PUT ON THAT COURT ORDER IN BOLD PRINT, YOU'RE
13 NOT TAKING THIS MONEY, THIS IS A RESTRICTED ACCOUNT.

14 AND YOU HEARD KELLY KELLEY DESCRIBE TO YOU HOW THAT
15 SYSTEM WORKS.

16 AS YOU SIT IN THE JURY ROOM LATER TODAY, GO THROUGH
17 THIS PROCESS THAT I'M DESCRIBING. IT'S IMPORTANT FOR YOU
18 TO TALK ABOUT WHAT HAPPENED IN THIS TRIAL. IT'S IMPORTANT
19 TO TALK ABOUT WHAT THESE WITNESSES SAY.

20 AND I WANT TO TALK A MINUTE ABOUT WHAT THE BANK OF
21 AMERICA WANTS YOU TO BELIEVE. I WANT TO TALK ABOUT WHAT
22 THEY WANT YOU TO BELIEVE. THEY WANT YOU TO BELIEVE THAT
23 THE BANK JUST MADE A SIMPLE MISTAKE, ONE MISTAKE IN
24 TRUSTING KAREN UNRUE, THE SAME MISTAKE ELIZABETH MADE,
25 TRAVIS MADE, AND JUDGE GAMBLE MADE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0650

APPENDIX 660

1 WELL, WAIT A MINUTE, THOSE ARE FAMILY MEMBERS. AND I
2 THINK YOU'RE SUPPOSED TO TRUST FAMILY MEMBERS. BUT JUDGE
3 GAMBLE DIDN'T TRUST ANYBODY DOWNSTAIRS. SHE PUT IT IN THE
4 COURT ORDER. SHE PUT IT IN THE COURT ORDER. AND THEY'RE
5 GOING TO SAY, WELL, THEY WANT YOU TO BELIEVE, WELL, SHE
6 DIDN'T PUT A BOND ON HER.

7 WELL, KELLY KELLEY DOESN'T HAVE A BOND ON HER EITHER.
8 YOU DON'T NEED A BOND IF YOU HAVE THAT RESTRICTIVE
9 LANGUAGE, BECAUSE THAT'S THE WAY -- WHY GO OUT AND BUY A
10 BOND IF IT'S ALREADY A RESTRICTED ACCOUNT? YOU CAN'T GET
11 THE MONEY. IT'S SAFE IN THE BANK. YOU CAN'T STEAL IT.
12 MAKES SENSE.

13 AND THEY TRY TO SAY, WELL, JUDGE GAMBLE DID SOMETHING
14 WRONG. OH, YEAH, THERE'S ANOTHER FORM, JUDGE GAMBLE. THEY
15 WANT YOU TO BELIEVE THAT JUDGE GAMBLE LEFT OUT A FORM --
16 THIS DEFENSE EXHIBIT NO. 1, WHICH DOESN'T EVEN APPLY.
17 DOESN'T EVEN APPLY. AND THEY WANT TO BLAME IT ON EVERYBODY
18 ELSE BUT THEMSELVES. THEY WANT YOU TO BELIEVE THAT. THEY
19 WANT YOU TO BELIEVE THAT THIS WAS A SIMPLE MISTAKE, AND THE
20 BANK IS -- YOU KNOW, THE BANK ISN'T SUPPOSED TO TRUST
21 ANYBODY. THEY DON'T TRUST THEIR OWN EMPLOYEES -- AND THEY
22 SHOULDN'T BECAUSE ONCE YOU START TRUSTING PEOPLE IN A BANK,
23 MONEY IS GOING TO WALK OUT THE DOOR.

24 BANKS DON'T GET PAID TO TRUST ANYBODY. THEY GET PAID
25 TO PROTECT PEOPLE FROM PEOPLE THAT WILL STEAL.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0651

APPENDIX 661

1 THE NEXT THING THE BANK WANTS YOU TO BELIEVE IS THAT
2 NOBODY SAW THIS COMING. THIS LADY WALKED IN THE BANK AND
3 DIDN'T EVEN GIVE THEIR EMPLOYEES THIS COURT ORDER. SHE HID
4 IT FROM THEM.

5 WELL, WAIT A MINUTE. THE BANK HAD A DUTY TO ASK FOR
6 IT IN THEIR OWN REGULATIONS. NOT TO SIT BACK AND NOT ASK
7 FOR IT; THAT'S THEIR DUTY -- THAT'S THEIR DUTY TO PROTECT
8 CODY.

9 THEY WANT YOU TO BELIEVE THAT THEY DIDN'T SEE IT
10 COMING. WELL, THEY HAD SEVEN CHECKS IN FRONT OF THEM.
11 THEY HAD ONE PERSON SITTING IN FRONT OF THEM, NOT TRAVIS
12 POWELL. THEY DIDN'T HAVE ANY I.D.'S. THEY HAVE A DUTY TO
13 DO THOSE THINGS TO PROTECT CODY.

14 THEY WANT YOU TO BELIEVE THAT MS. YOURKO AND MS.
15 LAWRENCE DID NOT SEE THE WORD CONSERVATOR ON THE CHECK.
16 LOOK AT THOSE CHECKS. OH, THESE TWO LADIES DIDN'T SEE THAT
17 WORD CONSERVATOR, THEY WERE JUST SITTING THERE ADDING UP
18 THE MONEY. THEY GET PAID TO LOOK AT THESE CHECKS. THEY'RE
19 REQUIRED TO LOOK AT THESE CHECKS. THEY'RE REQUIRED TO OPEN
20 THAT ACCOUNT EXACTLY AS IT APPEARS ON THE FRONT OF THE
21 CHECK. THEY WANT YOU TO BELIEVE THAT SHE COULDN'T REMEMBER
22 MUCH. SHE COULDN'T REMEMBER WHAT CONSERVATOR MEANT, BUT
23 YET SHE COULD REMEMBER THAT RIGHT BEFORE THE DEPOSITION SHE
24 LOOKED AT THIS PAPERWORK AND SHE TALKED TO HER LAWYER, BUT
25 SHE COULDN'T REMEMBER.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0652

APPENDIX 662

1 BUT LATER IN HER DEPOSITION SHE DID START REMEMBERING
2 WHAT A CONSERVATOR WAS. AND ALL SHE SAID WAS, WELL, I JUST
3 DID WHAT MY CUSTOMER WANTED TO DO. I JUST DID WHAT MY
4 CUSTOMER WANTED TO DO.

5 I PROMISE YOU, IF I WALKED INTO MY BANK AND SAID, I
6 JUST WANT YOU TO TAKE THE MONEY OUT OF MY WIFE'S ACCOUNT
7 AND PUT IT IN MY HAND, THEY WOULD SAY, WHAT PLANET ARE YOU
8 FROM? WE'RE NOT EVEN GIVING YOU YOUR WIFE'S MONEY. THAT
9 ISN'T YOUR MONEY. BANKS DON'T DO THAT. BUT YET, THIS IS
10 WHAT THESE EMPLOYEES WERE DOING, JUST WHATEVER YOU WANT;
11 THAT'S A QUARTER OF A MILLION DOLLARS COMING INTO OUR BANK;
12 LET'S TAKE IT ON. AND BY THE WAY, DON'T TELL ANYBODY BUT
13 I'M GETTING A REWARD FOR THIS. I'M GETTING A BIG BONUS ON
14 MY SALARY, I GET PAID EXTRA FOR THIS.

15 WELL, YOU KNOW WHAT THE BANK OF AMERICA DOES? THEY
16 PAY PEOPLE FOR TAKING IN THESE ACCOUNTS. THEY PAY PEOPLE
17 FOR TAKING IN THESE BIG DEPOSITS. THEY PAY PEOPLE FOR
18 OPENING ACCOUNTS. BUT GUESS WHAT THEY DON'T PAY THEM FOR?
19 THEY PAY THEM FOR INCOMPETENCE. THEY DON'T SIT THERE AND
20 SAY, WHEN YOU MESS UP, WE'RE GOING TO TAKE MONEY OUT OF
21 YOUR CHECK. ALL THEY DO IS REWARD INCOMPETENCE.

22 THERE'S NO SYSTEM IN PLACE TO TAKE IT AWAY WHEN THEY
23 MESS UP.

24 I DON'T -- IT'S JUST NOT RIGHT.

25 NOW, IT WAS JUST A SIMPLE MISTAKE, THEY SAY. AND, YOU

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ROA 0653

APPENDIX 663

1 KNOW, IT'S AMAZING, THIS LADY IN NORTH CAROLINA -- AND YOU
2 GO UP TO NEW BRUNSWICK, NEW JERSEY AND TAKE MS. MEREDITH
3 LAWRENCE'S DEPOSITION, AND SHE'S SAYING THE SAME THING.
4 BUT I DON'T REMEMBER. I DON'T REMEMBER WHAT CONSERVATOR
5 MEANS. I JUST DON'T REMEMBER. BUT, YOU KNOW, LATER SHE
6 DID.

7 AND THEN SHE SAID, I JUST DID WHAT MY CUSTOMER SAID.
8 SOUNDS LIKE A BROKEN RECORD COMING FROM MS. YOURKO.

9 I'M NOT SURE WHAT'S GOING ON THERE, BUT THAT'S WHAT
10 THEY WANT YOU TO BELIEVE.

11 NOW, THEY WANT YOU TO BELIEVE THAT MEREDITH LAWRENCE,
12 THIS LADY HAD SIX MONTHS TRAINING, AND SHE WAS THE HEAD OF
13 THAT BANK. MS. YOURKO WAS THE PERSONAL BANKER, AND SHE'D
14 BEEN THERE THREE MONTHS, AND THEY DIDN'T KNOW THESE THINGS.

15 WELL, THEY ALSO WANT YOU TO BELIEVE MS. ELIZABETH
16 REEVES, THE BANK'S REPRESENTATIVES IN CHARLOTTE, WHO'S
17 NEVER BEEN TO PAWLEYS ISLAND. SHE WASN'T THERE IN 2001,
18 BUT SHE CAN SIT HERE UNDER OATH AND SAY, WITH MY 30 YEARS
19 EXPERIENCE, I KNOW EXACTLY WHAT ORDER THESE CHECKS WERE
20 HANDED TO MS. YOURKO.

21 WERE YOU THERE AND SAW THAT, MA'AM?

22 NO.

23 WELL, MA'AM, YOU UNDERSTAND SHE HAD TO SIT THERE AND
24 GO THROUGH AND ADD UP AND SORT THESE CHECKS OUT. THEN YOU
25 WENT TO THE TELLER. AND THE TELLER'S CHECKING THEM

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0654

APPENDIX 664

1 THROUGH. AND THEN THEY GO TO CHARLOTTE WHERE THAT NUMBER
2 IS PUT ON THEM, AND YOU KNOW HOW THOSE CHECKS AND WHAT
3 ORDER THEY WERE IN?

4 WELL, IT IS WHAT IT IS.

5 SHE ALSO SAID, WELL, YOU KNOW, WE DON'T DO MANY
6 CONSERVATOR ACCOUNTS. I'VE ONLY DONE ONE OR TWO IN MY
7 LIFE.

8 WELL, YOU KNOW THAT'S STRANGE WHEN YOU COMPARE THAT
9 TESTIMONY TO MS. DENNING THAT WE READ TO YOU, THE OTHER
10 BANK'S REPRESENTATIVE. HER WORDS WERE THAT IT WAS VERY
11 COMMON IN SOUTH CAROLINA TO HAVE CHILDREN'S ACCOUNTS.

12 BUT YOU KNOW THE BANK OF AMERICA COULDN'T TELL US HOW
13 MANY CONSERVATOR ACCOUNTS THEY HAD. THEY DON'T KNOW.

14 I ASKED THIS BANK'S REPRESENTATIVE, WHAT DID YOU DO?
15 DID YOU GO TO PAWLEYS ISLAND TO FIND OUT WHAT'S GOING ON IN
16 PAWLEYS ISLAND? WHY THE PERSON WHO'S IN CHARGE, THE BRANCH
17 MANAGER, WHY THE PERSONAL BANKER, WHY THE TELLER CAN'T GET
18 IT RIGHT?

19 NOT THAT I KNOW OF.

20 ALL I KNOW, IF THAT WAS GOING ON IN MY BANK, I'D BE
21 ALL OVER IT.

22 WHAT HAPPENS HERE? THEY JUST DON'T CARE.

23 WELL, THEY WANT YOU TO BELIEVE MS. REEVES HAS GOT AN
24 EXCUSE FOR EVERYTHING. YOU SAW HER SIT THERE. HOW MANY
25 TIMES DID I ASK HER YESTERDAY, MS. REEVES, WASN'T IT A

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0655

APPENDIX 665

1 VIOLATION OF YOUR POLICIES AND PROCEDURES THAT YOU DIDN'T
2 OPEN THIS ACCOUNT RIGHT?

3 SHE STARTED TALKING ABOUT SOMETHING ELSE.

4 I'D ASK HER OVER AND OVER AND OVER. YOU KNOW, THEIR
5 WORDS WERE STUCK IN HER MOUTH. THOSE WORDS WERE TOO BIG TO
6 COME OUT OF HER MOUTH. SHE COULDN'T SIT HERE AND TELL YOU,
7 YES, IT WAS.

8 YOU KNOW, WHAT'S WRONG WITH SOMEBODY SPEAKING FOR A
9 BIG BANK THAT CAN'T ACCEPT RESPONSIBILITY WHEN YOU DO
10 WRONG? WELL, I KNOW 12 PEOPLE CAN FIX THAT. AND THEY'RE
11 SITTING RIGHT IN FRONT OF ME.

12 WHAT'S WRONG WITH SAYING, I MESSED UP? THOSE WORDS
13 WERE TOO BIG IN HER MOUTH YESTERDAY TO COME OUT.

14 I SAID, WELL, MS. REEVES, DIDN'T YOU TESTIFY UNDER
15 OATH IN A DEPOSITION THAT YOU MADE A HUGE MISTAKE?

16 I DON'T REMEMBER THAT.

17 I SAID, WELL, DIDN'T YOU READ THIS DEPOSITION BEFORE
18 YOU CAME TO COURT?

19 YEAH, BUT I DON'T REMEMBER THAT.

20 I GUARANTEE YOU, SHE REMEMBERS THAT, BECAUSE I SURE
21 REMEMBERED IT. I ALMOST FELL OUT OF MY CHAIR WHEN SHE SAID
22 IT BECAUSE I KNEW IT WAS A HUGE MISTAKE. REMEMBER WHEN I
23 TRIED TO READ IT TO HER YESTERDAY, SHE DIDN'T WANT TO LOOK
24 AT THOSE WORDS. THEY WERE TOO BIG TO COME OUT OF HER
25 MOUTH; THAT HUGE MISTAKE GOT STUCK IN HER MOUTH AGAIN.

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ROA 0656

APPENDIX 666

1 WELL, THAT'S WHAT THEY WANT YOU TO BELIEVE. BUT, YOU
2 KNOW WHAT? CODY P [REDACTED], KELLY KELLEY, AND THEIR LAWYERS
3 BELIEVE THAT AFTER THREE DAYS OF LISTENING TO THIS, THAT
4 THERE ARE 12 PEOPLE IN THIS COURTROOM THAT CAN OPEN A
5 CONSERVATOR ACCOUNT OR TELL SOMEBODY HOW TO DO IT. THERE
6 ARE 12 PEOPLE IN THIS COURTROOM CAN TELL A BANK THAT YOU'VE
7 GOT TO HAVE PEOPLE'S NAME ON A CHECK STANDING IN FRONT OF
8 THEM TO ENDORSE IT.

9 I'VE GOT 12 PEOPLE THAT KNOW WHAT FRAUD IS IN FORGING
10 SOMEBODY'S NAME.

11 I'VE GOT 12 PEOPLE THAT CAN READ THE WORD CONSERVATOR;
12 THAT'S WHAT I BELIEVE. I BELIEVE THAT THESE 12 PEOPLE KNOW
13 MORE IN THREE DAYS THAN WHAT THIS BANKER -- THESE TWO
14 BANKERS AND THESE TELLERS AND THE BACK ROOM PEOPLE KNOW
15 AFTER SIX MONTHS OF TRAINING AND AFTER THREE MONTHS OF
16 TRAINING. I BELIEVE YOU KNOW MORE IN THREE DAYS THAN WHAT
17 THEY KNOW IN THIS BANK; THAT'S AWFUL. YOU HEARD ME USE
18 THAT WORD. IT'S AWFUL. THIS KIND OF CONDUCT IS AWFUL.
19 AND I BELIEVE YOU KNOW THAT.

20 I DON'T HAVE TO WORRY ABOUT WHAT THE BANK WANTS YOU TO
21 BELIEVE. I TRUST YOU. CODY P [REDACTED] TRUSTS YOU AND WHAT YOU
22 KNOW AND WHAT YOU BELIEVE.

23 NOW, WHY -- I'M GOING TO TAKE THIS ONE STEP FURTHER.
24 WHY DOES THE BANK OF AMERICA WANT YOU TO BELIEVE THESE
25 THINGS? THEIR WHOLE DEFENSE IN THIS CASE IS ONE THING:

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ROA 0657

APPENDIX 667

1 YEAH, WE PROBABLY OWE CODY 203,000 (SIC), BUT DON'T BRING
2 BACK ANY PUNITIVE DAMAGES, BECAUSE IF YOU BELIEVE THAT THE
3 BANK CONSCIOUSLY DISREGARDED CODY'S RIGHTS IN OPENING THIS
4 ACCOUNT AND TAKING HIS MONEY, THEY ARE LIABLE FOR PUNITIVE
5 DAMAGES; AND THEY DON'T WANT YOU TO BELIEVE THAT. THEY
6 WANT YOU TO BELIEVE THAT THESE BANK PEOPLE DIDN'T SEE
7 ANYTHING, BECAUSE TO BE CONSCIOUSLY AWARE OF SOMETHING,
8 YOU'VE GOT TO LOOK AT IT.

9 NOW, YOU KNOW, IF YOU'RE SOMEWHERE ELSE AND COULDN'T
10 HAVE SEEN IT, THAT'S NOT CONSCIOUS AWARENESS. BUT LOOK HOW
11 MANY EYES OF THIS BANK WERE ON THESE CHECKS. HOW MANY
12 PEOPLE? AND NOT ONLY DID IT HAPPEN ON TIME, IT HAPPENED
13 TWO TIMES. THE BANK OF AMERICA DOESN'T WANT YOU TO
14 UNDERSTAND. THEY WANT YOU TO THINK IT'S A SIMPLE MISTAKE,
15 JUST THAT SIMPLE NEGLIGENCE, AND ALL THEY OWE IS \$205,000;
16 THAT'S ALL THEY WANT YOU TO THINK.

17 WELL, THEY WANT YOU TO THINK THAT BECAUSE THEY DON'T
18 WANT YOU TO BELIEVE THAT THESE BANKERS COULD HAVE SEEN
19 THESE THINGS. THE WORD CONSCIOUS FAILURE IS THE KEY TO
20 THIS WHOLE CASE.

21 YOU GO IN THAT JURY ROOM AND DECIDE WHETHER OR NOT
22 THERE WAS A CONSCIOUS FAILURE IN THIS CASE. WE BELIEVE
23 THAT AFTER A THREE-DAY TRIAL, YOU ARE VERY EQUIPPED TO MAKE
24 THAT DECISION.

25 NOW, LET'S GO BACK TO THIS CONSCIOUS FAILURE TO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0658

APPENDIX 668

1 RESPECT THE RIGHTS OF CODY P [REDACTED]. IF YOU ARE CONVINCED BY
2 THE GREATER WEIGHT OF THE EVIDENCE PRESENTED BY CODY P [REDACTED]
3 THAT HE HAS PROVEN HIS CASE BY A GREATER WEIGHT OR
4 PREPONDERANCE OF THE EVIDENCE, THEN HE'S ENTITLED TO THIS
5 \$205,000. THEN YOU MUST MOVE TO THIS NEXT LEVEL IN THIS
6 DECISION-MAKING PROCESS, LADIES AND GENTLEMEN.

7 JUST TAKING YOU, WALKING YOU THROUGH. THE NEXT STEP
8 IS PUNITIVE DAMAGES AND WHETHER OR NOT THERE'S BEEN A
9 CONSCIOUS, WILFUL FAILURE TO ACT IN CODY'S BEST INTEREST BY
10 LOOKING AT THESE CHECKS AND JUST IGNORING EVERYTHING.

11 AND THE NEXT DETERMINATION IF YOU HAVE DECIDED THAT
12 THIS CONDUCT WAS CONSCIOUS -- THAT MEANS RECKLESS. IT'S NO
13 DIFFERENT THAN RIDING DOWN THE ROAD. YOU SEE A STOP SIGN
14 UP THERE AND YOU SEE TRAFFIC COMING AND YOU SAY, I'M GOING
15 TO BEAT IT. I'M GOING TO RUN THAT STOP SIGN AND I'M GOING
16 TO GO RIGHT THROUGH IT. THAT'S A CONSCIOUS FAILURE BECAUSE
17 YOU SEE THAT STOP SIGN AND YOU HURT SOMEBODY, THAT'S
18 WILFUL, THAT'S RECKLESS. THAT'S A RECKLESS DISREGARD FOR
19 THE RIGHTS OF OTHERS.

20 THAT'S THE REASON THE BANK HAS -- AND THEY ARE LOOKING
21 AT THAT STOP SIGN, AND THEY JUST WENT RIGHT ON.

22 NOW, THE NEXT DETERMINATION YOU MUST MAKE ONCE YOU
23 HAVE ARRIVED AT THAT DECISION AFTER LISTENING TO THIS
24 EVIDENCE AND TESTIMONY, IS DAMAGES. NOW, WE'VE COVERED AND
25 YOU UNDERSTAND THIS \$205,000.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0659

APPENDIX 669

1 LET'S TALK ABOUT KAREN UNRUE A MINUTE, BECAUSE I'M
2 SURE YOU SAY, WELL, HOW DO WE HANDLE KAREN UNRUE? YOU DO
3 NOT HANDLE KAREN UNRUE. KAREN UNRUE IS BEING HANDLED
4 SEPARATELY. SHE DEFAULTED IN THIS CASE. WE DON'T KNOW
5 WHERE SHE IS. HER DAMAGES WILL BE DECIDED IN A SEPARATE
6 PROCEEDING. YOU DON'T GO THERE. NOR WILL HER DAMAGES AND
7 THE BANK'S DAMAGES BE ADDED TOGETHER; THAT IS NOT GOING TO
8 HAPPEN. THERE IS NO DOUBLE RECOVERY ALLOWED.

9 WHAT YOU'RE HERE TO DECIDE IS THE BANK'S DAMAGES TO
10 CODY P [REDACTED] ALONE. SO YOU WANT TO -- YOU KNOW ABOUT KAREN
11 UNRUE, BUT YOU DON'T HAVE TO WORRY ABOUT KAREN UNRUE.
12 KAREN UNRUE IS GOING TO GET PUNISHED -- AND I'M GOING TO
13 COME BACK AND TELL YOU ABOUT THAT IN A MINUTE. SHE'S GOING
14 TO PAY IF WE CAN FIND HER OR IF SHE'S GOT ANYTHING.

15 NOW, THERE'S NOT GOING TO BE A DOUBLE RECOVERY.
16 FIRST, YOU'VE GOT THE ACTUAL DAMAGES, AND THEN THERE ARE
17 THE PUNITIVE DAMAGES.

18 WHAT ARE PUNITIVE DAMAGES? THEY ARE TOTALLY SEPARATE
19 AND COMPLETE FROM ACTUAL DAMAGES.

20 NOW, THEY ARE VERY IMPORTANT IN A CASE LIKE THIS.
21 NOW, YOU CAN'T MIX THEM UP. ONE IS APPLES, ONE IS ORANGES.

22 ACTUAL DAMAGES, HIS HONOR IS GOING TO CHARGE YOU IS
23 WHAT CODY ACTUALLY LOST. YOU HEARD DR. WOOD TESTIFY TO
24 THAT YESTERDAY, THE \$205,000-AND-ODD DAMAGES. YOU GOT
25 THAT. OKAY. THAT IS THE ACTUAL DAMAGE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0660

APPENDIX 670

1 PUNITIVE DAMAGES IS COMPLETELY SOMETHING ELSE. FIRST,
2 YOU MUST DETERMINE WHAT IS CODY P [REDACTED] BURDEN OF PROOF
3 FOR PUNITIVE DAMAGES. JUST LIKE IN ACTUAL DAMAGES AND
4 SIMPLE NEGLIGENCE, IT'S ONE STANDARD. THE STANDARD IS
5 HIGHER FOR PUNITIVE DAMAGES.

6 NOW, CODY P [REDACTED] MUST PROVE BY CLEAR AND CONVINCING
7 EVIDENCE THAT THE BANK OF AMERICA'S ACTIONS WERE IN
8 RECKLESS DISREGARD FOR HIS RIGHTS. EXACTLY WHAT, YOU MAY
9 SAY, ARE PUNITIVE DAMAGES?

10 THESE ARE DAMAGES THAT ARE ALLOWED IN THE INTEREST OF
11 SOCIETY TO PUNISH A WRONGDOER.

12 NOW, UNDERSTAND THIS. IF YOU GO OUT THERE AND RUN
13 THAT STOP SIGN, THIS IS EXTRA PUNISHMENT. IT'S LIKE A
14 FINE. IT'S LIKE A FINE TO PUNISH A WRONGDOER.

15 SECONDLY, THEY ARE DAMAGES THAT SERVE TO VINDICATE A
16 PRIVATE RIGHT.

17 THIRDLY, THEY ARE DAMAGES TO SET AN EXAMPLE, TO KEEP A
18 WRONGDOER LIKE THE BANK OF AMERICA FROM DOING THIS AGAIN.

19 WHAT ARE THE IMPORTANT PURPOSES OF PUNITIVE DAMAGES?

20 FIRST, TO PUNISH RECKLESS, WILFUL CONDUCT.

21 SECONDLY, TO DETER THAT FUTURE CONDUCT.

22 AND TO COMPENSATE CODY P [REDACTED] FOR THE HARM THAT HE HAS
23 SUFFERED.

24 THE NEXT QUESTION YOU NEED TO ASK YOURSELF IS, WHAT IS
25 A RECKLESS DISREGARD OF CODY'S RIGHTS? RECKLESSNESS

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0661

APPENDIX 671

1 SIGNIFIES A CONSCIOUS FAILURE TO EXERCISE DUE CARE.
2 REMEMBER WHAT I TOLD YOU, THE BANK DOESN'T WANT THIS TO BE
3 CONSCIOUS BECAUSE IF IT IS, IT'S RECKLESS, AND IF IT'S
4 RECKLESS, IT'S PUNITIVE DAMAGES.

5 RECKLESSNESS IS A CONSCIOUS INDIFFERENCE TO THE RIGHTS
6 OF CODY P [REDACTED]. RECKLESSNESS IS AN AWARENESS OF WRONGFUL
7 CONDUCT. THE BANK, WERE THEY AWARE THAT THEY HAD POLICIES
8 AND PROCEDURES IN PLACE TO PROTECT CODY P [REDACTED]? SURE, THEY
9 WERE. AND THEY CONTINUED TO ACT REGARDLESS OF THIS
10 CONDUCT. THEY DID IT A WEEK LATER.

11 CODY P [REDACTED] HAS THE BURDEN OF PROVING THIS TYPE
12 CONDUCT, OF PUNITIVE DAMAGES BY CLEAR AND CONVINCING PROOF
13 OF GROSS NEGLIGENCE.

14 NOW, WHAT IS THE EVIDENCE THAT'S CLEAR AND CONVINCING?
15 TAKE THIS BACK INTO THE JURY ROOM IN YOUR MIND. IT'S THE
16 PERSONAL BANKER, MS. YOURKO'S CONSCIOUS FAILURE TO SEE THE
17 WORD CONSERVATOR OR ITS ABBREVIATION.

18 SHE SAID, OH, I DIDN'T SEE THAT. I DIDN'T UNDERSTAND
19 THAT CO-CN. WHY DIDN'T YOU PICK UP THE PHONE AND CALL?

20 THE BRANCH MANAGER'S CONSCIOUS FAILURE TO SEE THE WORD
21 CONSERVATOR.

22 THE PERSONAL BANKER'S FAILURE TO UNDERSTAND WHOSE
23 MONEY IT WAS, NOT KAREN UNRUE'S, BUT CODY P [REDACTED], WHOSE
24 NAME WAS ON EVERY ONE OF THOSE CHECKS.

25 THE PERSONAL BANKER'S FAILURE TO VERIFY THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0662

APPENDIX 672

1 ENDORSEMENT ON THE BACK OF THE CHECK AND NOT HAVE TRAVIS
2 POWELL PRESENT TO SIGN THEM, ALLOWING THAT MONEY TO BE
3 DEPOSITED IN KAREN POWELL'S NAME.

4 THE PERSONAL BANKER'S FAILURE TO OBTAIN APPROPRIATE
5 DOCUMENTATION, THE COURT ORDER.

6 HER FAILURE TO OBTAIN DOCUMENTATION THAT ALLOWED SEVEN
7 CHECKS PAYABLE TO A CONSERVATOR BE ALLOWED TO PURCHASE A
8 CD.

9 THE PERSONAL BANKER AND BRANCH MANAGER'S CONSCIOUS
10 FAILURE TO ASK FOR THE CONSERVATORSHIP ORDER FROM JUDGE
11 GAMBLE ON TWO SEPARATE OCCASIONS.

12 THE PERSONAL BANKER AND THE BRANCH MANAGER'S CONSCIOUS
13 FAILURE TO ASK FOR A CERTIFICATE OF APPOINTMENT ON TWO
14 SEPARATE OCCASIONS.

15 THE BANK OF AMERICA'S FAILURE TO KEEP A RECORD OF
16 COPIES OF THE SIGNATURE CARD.

17 BOTH EMPLOYEES FAILED TO USE THE CORRECT TAX I.D.
18 NUMBER.

19 THEY HAD A CONSCIOUS FAILURE TO PROPERLY ASK FOR AN
20 I.D.

21 BANK OF AMERICA'S TELLERS CONSCIOUSLY FAILED TO SEE
22 THIS.

23 BANK OF AMERICA'S BACK ROOM FAILED TO SEE THIS. BANK
24 OF AMERICA'S FAILURES WERE PRESCRIBED IN THEIR OWN MANUALS.

25 BANK OF AMERICA'S FAILURE TO OPEN ELIGIBLE PRODUCTS.

CODY P. [REDACTED] VS. BANK OF AMERICA

ROA 0663

APPENDIX 673

1 MS. ELIZABETH REEVES SAID IT RIGHT. THEY MADE A HUGE
2 MISTAKE, NOT A LITTLE SIMPLE MISTAKE, A HUGE RECKLESS
3 MISTAKE THAT CAUSED A CHILD TO LOSE OVER \$200,000 THAT HE
4 CAME IN TO BY HIS DADDY'S OWN DEATH. ISN'T THAT RIGHT?

5 NOW, UNDER OUR LAW, HIS HONOR IS GOING TO SAY, LADIES
6 AND GENTLEMEN, THERE ARE SOME FACTORS YOU NEED TO CONSIDER
7 WHEN YOU THINK ABOUT PUNITIVE DAMAGES. WHAT DID THE BANK
8 DO WRONG? I JUST TOLD YOU ALL THE CONSCIOUS FAILURES THAT
9 THEY DID WRONG. THEY JUST LEFT THE VAULT DOOR OPEN ON
10 CODY'S MONEY.

11 WHAT DAMAGE WAS DONE TO CODY? HE'S LOST \$205,735.37.
12 WAS THE BANK REALLY AT FAULT HERE? THEY ARE GOING TO SAY,
13 OH, IT WAS ALL KAREN POWELL UNRUE. I DON'T THINK SO. THEY
14 LET HER IN THE DOOR SO SHE COULD STEAL. IF THAT DOOR WOULD
15 HAVE BEEN CLOSED, THIS MONEY WOULD NEVER HAVE BEEN STOLEN.

16 YOU'RE REQUIRED IN EFFECT TO PUNISH OR FINE THE BANK.
17 LET ME TOUCH ON THAT A MINUTE. YOU SAY, HOW DO WE PUNISH
18 THE BANK? WELL, THERE'S TWO PEOPLE ARE GOING TO BE
19 PUNISHED HERE.

20 YOU SAY, WELL, HOW ABOUT KAREN UNRUE? HER PUNISHMENT
21 IS GOING TO BE FROM THAT WARRANT THAT KELLY KELLEY AND THE
22 SHERIFF HAS GOT LOOKING FOR HER. THEY'RE GOING TO PUT HER
23 IN JAIL. SHE'S GOING TO BE PUNISHED. I DON'T KNOW WHETHER
24 SHE'S GOING TO HAVE ANY MONEY TO HIRE A LAWYER LEFT. I
25 DON'T KNOW WHETHER SHE'LL HAVE ANY MONEY TO PAY CODY

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0664

APPENDIX 674

1 POWELL. BUT SHE'S GOING TO JAIL. SHE'S GOING TO BE
2 PUNISHED. YOU DON'T HAVE TO WORRY ABOUT THAT. YOU DON'T
3 HANDLE THAT; THAT'S CRIMINAL COURT. SHE'S GOING TO BE
4 PUNISHED.

5 BUT HOW DO YOU PUNISH A BANK? WELL, WE DON'T WANT TO
6 HURT BANK OF AMERICA. I DON'T WANT YOUR VERDICT TO HURT
7 THEM. WE'RE NOT HERE TO HURT ANYBODY. I KNOW PEOPLE --
8 THAT CHILD WAS HURT ENOUGH. I DON'T WANT YOUR VERDICT TO
9 HURT ANYBODY. UNDERSTAND ME THAT. BUT YOUR VERDICT IS TO
10 SEND A MESSAGE BY PUNISHMENT.

11 AND YOU SAY, COME ON, BILLY JENKINSON, TELL ME WHAT
12 YOU MEAN BY SEND A MESSAGE?

13 I WANT SOMEBODY IN CHARLOTTE TO HEAR FROM THIS JURY IN
14 THIS COURT AND SAY, YOU DID SOMETHING WRONG. THERE'S NOT
15 BUT ONE MESSAGE THIS BANK IS GOING TO UNDERSTAND. YOU CAN
16 GO BACK THERE AND WRITE THEM A LETTER IF YOU WANT TO AND WE
17 CAN PUT A POSTAGE STAMP ON IT AND MAIL IT UP TO CHARLOTTE.
18 WHERE DO YOU THINK IT'S GOING? IT AIN'T GOING IN ANY FILE.
19 IT'S GOING IN THE TRASH CAN.

20 YOU CAN GO HOME ON YOUR COMPUTER AND ALL 12 OF YOU CAN
21 EMAIL THE BANK OF AMERICA, BUT THAT THING IS GOING TO GET
22 DELETED.

23 THERE'S BUT ONE MESSAGE AND ONE MESSAGE ALONE A BANK
24 WILL UNDERSTAND. IT'S CALLED MONEY. IF YOU DRIVE TOO FAST
25 ON THE HIGHWAY, YOU GET A FINE AND POINTS. A FINE. AND SO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0665

APPENDIX 675

1 A FINE IS APPROPRIATE HERE, AND THAT'S WHAT THE LAW SEEKS
2 TO ADDRESS. YOU'VE GOT TO SEND A MESSAGE.

3 HOW LONG DID THESE TRANSACTIONS LAST AT THE BANK? IT
4 TOOK MONTHS FOR KAREN TO GET THIS MONEY OUT. SHE ACTUALLY
5 USED THE GIFT TO MINORS ACT ACCOUNT THAT SHE SET UP ON THE
6 SECOND DAY TO FUNNEL THE MONEY OUT. SHE CASHED IN THE CD,
7 DROPPED THE MONEY IN THAT, WROTE CHECKS, AND TOOK OFF TO
8 COLORADO.

9 THE BANK CREATED THE FUNNEL. SHE TOOK THE MONEY.

10 NOW, THAT TOOK A NUMBER OF MONTHS AS YOU'LL SEE FROM
11 THESE RECORDS. BUT WHAT THE BANK DID ONLY TOOK -- IF
12 THEY'D HAVE DONE IT RIGHT, YOU HEARD I ASKED A COUPLE OF
13 WITNESSES. IF YOU'D HAVE JUST TAKEN THE TIME TO ASK THE
14 QUESTIONS AND TO SET THIS ACCOUNT UP RIGHT, HOW LONG WOULD
15 IT HAVE TAKEN MS. YOURKO TO SET IT UP RIGHT? I THINK I
16 ASKED MS. REEVES THAT QUESTION. I THINK I ASKED MS.
17 LAWRENCE THAT QUESTION. ABOUT 30 MINUTES.

18 YOU HEARD KELLY KELLEY SAID SHE WENT TO THE BANK, IT
19 TOOK ABOUT 45 -- ABOUT TOOK HER LUNCH HOUR. BUT LET'S SAY
20 30 MINUTES. AND SHE GOES BACK IN AND SETS THE SECOND ONE
21 UP A WEEK LATER, HOW LONG WOULD THAT HAVE TAKEN? 30
22 MINUTES.

23 NOBODY WANTED TO TAKE THE TIME TO DO IT RIGHT. THEY
24 WANTED TO TAKE THE TIME TO GET THE MONEY IN THE BANK SO
25 THEY COULD MAKE SOME MONEY WITH IT THOUGH. HOW MUCH MONEY

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0666

APPENDIX 676

1 DO YOU RECKON THEY DID MAKE OFF CODY POWELL'S MONEY? I

2 DON'T KNOW. WAS THE BANK AWARE OF WHAT IT'S DOING? SURE,

3 THE BANK KNEW THESE CHECKS WERE PAYABLE TO CONSERVATORS.

4 SURE, THEY WERE IGNORING THE WORDS ON THE CHECK. SURE,

5 THEY WERE IGNORING THEIR POLICIES AND REGULATIONS.

6 HAD ANYTHING HAPPEN LIKE THIS BEFORE AT THE BANK? WE

7 DON'T KNOW. I ASKED MS. REEVES YESTERDAY. DID YOU GO DOWN

8 THERE AND CHECK AND FIND OUT WHAT'S GOING ON?

9 NO.

10 DO YOU KNOW ANYBODY DID?

11 NO.

12 HOW MANY CONSERVATOR ACCOUNTS YOU GOT?

13 WELL, ALL MS. DENNING COULD SAY WAS, WE GOT A BUNCH OF

14 THEM. BUT THEY DON'T EVEN KNOW. HOW MANY OTHER CHILDREN

15 ARE AT RISK? HOW MANY OTHER PEOPLE AT RISK BECAUSE THEY

16 DON'T KNOW, THEY'VE GOT TO WAIT UNTIL THEY GET TO BE 18

17 YEARS OLD BEFORE THEY FINALLY FIND OUT SOMEBODY STOLE THEIR

18 MONEY. HOW LONG DO THEY HAVE TO WAIT?

19 WILL AN AWARD OF PUNITIVE DAMAGES AGAINST THE BANK

20 KEEP THIS FROM HAPPENING AGAIN? I PRAY AND HOPE SO. IF

21 YOU SEND A MESSAGE THEY UNDERSTAND UP IN CHARLOTTE, IT

22 WILL.

23 KAREN UNRUE BELONGS IN JAIL; THAT'S THE MESSAGE SHE'S

24 GOING TO GET.

25 SEND A MESSAGE TO THE BANK. THE QUESTION THEN BECOMES

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0667

APPENDIX 677

1 -- AND MY WIFE ASKED ME THIS LAST NIGHT. SHE SAID, WHEN
2 YOU ASK THE JURY TO ACCESS PUNITIVE DAMAGES IN THIS CASE,
3 HOW ARE YOU GOING TO ASK THEM TO FAIRLY DO IT?

4 I SAID, I DON'T KNOW. I'M GOING TO THINK ABOUT THAT.
5 AND WE THOUGHT ABOUT IT. AND I SAID, THIS WAY: YOU WANT
6 TO PUNISH SOMEBODY PROPORTIONATE TO WHAT THEY HAVE DONE
7 WRONG. IF YOU WANT TO SEND A MESSAGE, LET'S SEND A REAL
8 MESSAGE.

9 NOW, I THOUGHT OF IT THIS WAY: TWO 30-MINUTE
10 TRANSACTIONS IF THEY'D HAVE DONE IT RIGHT, BUT THEY DIDN'T
11 DO IT RIGHT. IT'S ONE HOUR. AND THEN IT TOOK ME TO ONE
12 OTHER -- ONE OTHER QUESTION THAT I HAD IN MY MIND. YOU
13 HEARD DR. WOOD TESTIFY YESTERDAY HOW MUCH MONEY THIS BANK
14 HAS. AND ONE OF THE FACTORS YOU ARE TO CONSIDER IS THE
15 BANK'S ABILITY TO PAY.

16 IF THE BANK IN THIS CASE WAS SUPPOSEDLY JUST SUING
17 SOMEBODY AND ALL THEY HAD WAS \$5,000 AND THEY WERE MAKING
18 \$10 AN HOUR WORKING AND YOU PUNISH THEM WITH A MILLION
19 DOLLARS, THAT WOULD BE AWFUL. THAT WOULDN'T SEND A
20 MESSAGE. YOU PUNISH THEM BASED ON WHAT THEY MAKE, WHAT
21 THEY CAN PAY, AND THEIR ABILITY TO PAY BECAUSE WE DO NOT
22 WANT TO HURT THEM. AND IF YOU CHARGE THAT PERSON \$500 IN
23 PUNITIVE DAMAGES, WOULD THAT SEND A MESSAGE TO THEM? I
24 THINK THEY'D LISTEN TO THAT -- OR EVEN \$200.

25 BUT HOW DO WE MAKE A BANK THAT IS MAKING BILLIONS OF

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0668

APPENDIX 678

1 DOLLARS EVERY YEAR AND SEND THEM A MESSAGE THAT SOMEBODY IN
2 CHARLOTTE IS GOING TO LISTEN TO?

3 WELL, WE ASKED DR. WOOD THIS QUESTION. HOW MUCH DOES
4 THIS BANK MAKE A DAY? AND THEN WE SAID, WELL, DR. WOOD,
5 WHAT DOES THIS BANK MAKE PER HOUR -- THIS IS 24/7. ABOUT
6 THE TIME I'VE BEEN STANDING HERE TALKING, HOW MUCH HAS THE
7 BANK OF AMERICA MADE BASED ON WHAT HE TOLD US YESTERDAY IN
8 ONE HOUR? AND THAT IS \$1,538,250. 1,538,000. AND YOU
9 SAY, MY GOSH, THAT'S A HUGE SUM OF MONEY TO US. HOW MUCH
10 MONEY IS IT TO THE BANK OF AMERICA? NOTHING. ONE HOUR.
11 ONE HOUR OUT OF A WHOLE YEAR. 24 HOURS IN A DAY. I DON'T
12 KNOW HOW MANY HOURS -- AND THAT'S FINE. WE DON'T WANT TO
13 HURT THE BANK.

14 BUT IF WE SEND THEM A MESSAGE THAT'S GOT \$500 ON IT OR
15 SOME SMALL AMOUNT OF MONEY THAT DOESN'T GET THEIR
16 ATTENTION, THEY'RE GOING TO SAY, I DON'T CARE. THAT DON'T
17 MEAN NOTHING TO ME.

18 LADIES AND GENTLEMEN, IT IS YOUR DUTY TO FOLLOW THE
19 LAW OF THIS STATE THAT HIS HONOR GIVES YOU. IT IS YOUR
20 DUTY TO PUNISH FAIRLY AND APPROPRIATELY BASED UPON WHAT A
21 PERSON HAS AND THEIR ASSETS AND THEIR ABILITY TO PAY.

22 AND YOU SAY CODY P [REDACTED] DOESN'T DESERVE THAT AMOUNT OF
23 MONEY. IT'S NOT ABOUT THAT. REMEMBER, THIS IS TO PUNISH
24 WRONGFUL CONDUCT, TO KEEP IT FROM HAPPENING AGAIN, TO
25 PUNISH IT BASED UPON WHAT A PERSON HAS AND FOR WHAT THEY

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0669

APPENDIX 679

1 HAVE DONE WRONG AND TO SEND A MESSAGE.

2 NOW, YOU WILL HAVE A VERDICT FORM -- AND THIS AMOUNT.
3 AND LET ME SUGGEST THIS. I TOLD MY WIFE THIS LAST NIGHT,
4 SHE SAID, WELL, WHEN YOU SAY PUNITIVE DAMAGES SHOULD BE
5 THIS \$1,538,000, WHAT DO YOU MEAN?

6 I SAID, WHAT I MEAN IS THIS: THAT'S JUST WHAT I WANT
7 THE JURY TO CONSIDER. YOU CAN GIVE ANY -- YOU CAN WRITE A
8 VERDICT FOR WHAT YOU THINK IS RIGHT FROM YOUR JUDGMENT. I
9 JUST SAY CONSIDER THAT. IF IT'S LESS THAN THAT, IT'S LESS
10 THAN THAT. IF IT'S MORE THAN THAT, IT'S MORE THAN THAT. I
11 JUST WANT TO TIE THE BAD CONDUCT WITH THE BANK TO THE FINE
12 THAT THEY OUGHT TO PAY; THAT'S WHAT'S CALLED SENDING A
13 MESSAGE.

14 IF WE SAY, OH, LET'S JUST SAY, \$500,000, WHAT KIND OF
15 MESSAGE DOES THAT SEND? IT'S JUST MONEY. LET IT BE AN
16 UNUSUAL AMOUNT OF MONEY TO SEND A MESSAGE LIKE 1,538,000.
17 DON'T SEND IT \$1,500,000. PUT THAT 38 ON THERE, BECAUSE
18 THEN SOMEBODY IN CHARLOTTE WHEN THEY SEE THIS VERDICT,
19 THEY'RE GOING TO SAY, WHAT IS THAT JURY TRYING TO TELL ME?
20 WHAT MESSAGE ARE THEY SENDING TO ME? WHY DID THEY COME UP
21 WITH THIS AMOUNT OF MONEY?

22 THEY MAY BE PICKING UP THE PHONE, CALLING THEIR LAWYER
23 AND SAY, WHY DID THE JURY WRITE THE VERDICT THIS WAY?

24 AND THE LAWYER IS GOING TO HAVE TO SAY, PEOPLE AT THE
25 BANK, IT TOOK AN HOUR TO GET IT RIGHT. THE JURY FOUND THAT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0670

APPENDIX 680

1 YOU CONSCIOUSLY DISREGARDED AND VIOLATED CODY POWELL'S
2 RIGHTS, AND THAT CHILD LOST \$205,000 THAT HE FOUGHT FOR
3 FIVE YEARS, AND THEY WANTED TO SEND A MESSAGE TO THE BANK
4 OF AMERICA THAT YOU ARE BEING PUNISHED BY HAVING TO PAY
5 THIS AMOUNT OF MONEY TO SEND YOU A MESSAGE TO TAKE CARE OF
6 CHILDREN, TO MAKE SURE YOUR PEOPLE AT PAWLEYS ISLAND AND
7 THESE BRANCH BANKS, 5,900-AND-MORE OF THEM DO IT RIGHT.
8 WAKE UP. THAT IS YOUR WAKE-UP CALL, BANK OF AMERICA TO DO
9 IT RIGHT. WAKE UP, BECAUSE THAT'S THE MESSAGE THAT IS
10 BEING SENT TO YOU.

11 WHATEVER YOUR VERDICT IS, WHETHER IT BE LESS OR MORE,
12 I DON'T WANT TO GO THERE. I JUST WANT YOU TO UNDERSTAND
13 WHAT A MESSAGE IS. I WANT YOU TO UNDERSTAND THAT IF THIS
14 WAS SOME LITTLE BANK ACROSS THE STREET, WE WOULDN'T BE --
15 YOU KNOW, BECAUSE IT'S GOT TO SEND A MESSAGE. AND A VERY
16 RICH PERSON OR A VERY BIG BANK DOESN'T UNDERSTAND A
17 MESSAGE. I WANT HIM TO KNOW THAT THE PEOPLE IN
18 WILLIAMSBURG COUNTY CARE ABOUT CHILDREN, THEY CARE ABOUT
19 BANKS DOING THE RIGHT THING, THEY CARE THAT YOU DON'T
20 DISREGARD THE RIGHTS OF CHILDREN. AND YOU CAN REMEMBER
21 THIS AND YOU CAN FIX IT, BECAUSE I DO THINK THE BANK OF
22 AMERICA WILL FIX IT IF THIS MESSAGE IS DELIVERED.

23 NOW, YOU'RE GOING TO GET A VERDICT FORM TO CARRY BACK.
24 AND THAT VERDICT FORM WILL HAVE ON IT, THE JURY FINDS FOR
25 THE DEFENDANT BANK OF AMERICA IS THE FIRST LINE. IF YOU

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0671

APPENDIX 681

1 CHECK THAT BOX, THE CASE IS OVER.

2 BUT IF YOU CHECK THE SECOND BOX THAT SAYS THAT THE
3 JURY FINDS FOR CODY P [REDACTED], THE FIRST LINE YOU WILL SEE IS,
4 WE FIND ACTUAL DAMAGES FOR CODY [REDACTED] P [REDACTED] IN THE AMOUNT
5 OF \$205,735.37; THAT WILL ACTUALLY BE WRITTEN IN. SO TO
6 FIND THAT AMOUNT FOR CODY P [REDACTED] YOU CHECK THE FIRST BOX.

7 THE NEXT QUESTION ON THAT VERDICT FORM WILL SAY: DO
8 YOU FIND THAT THE PLAINTIFF, CODY P [REDACTED], HAS PROVEN BY
9 CLEAR AND CONVINCING EVIDENCE THAT THE BANK OF AMERICA'S
10 ACTS OR OMISSIONS WERE WILFUL, WANTON, AND RECKLESS AS THE
11 COURT HAS DEFINED THEM IN THESE TERMS? YES OR NO. IF IT'S
12 NO, YOU STOP. BUT IF YOU FIND THERE HAS BEEN A CONSCIOUS
13 DISREGARD, THEN YOU WOULD CHECK YES, AND GO TO THE NEXT
14 BLANK, WHICH SAYS: WE FIND PUNITIVE DAMAGES FOR CODY
15 [REDACTED] P [REDACTED] IN THE AMOUNT OF BLANK; THAT'S THE MESSAGE
16 BLANK.

17 PLEASE SEND A MESSAGE THAT WE'VE TAKEN AND WORKED FIVE
18 YEARS TO SEE THAT IT'S DELIVERED. PLEASE TAKE A MESSAGE
19 AND LET CODY P [REDACTED] SEND A MESSAGE TO THIS BANK, THIS
20 SHOULDN'T HAVE HAPPENED AND YOU'RE BEING PUNISHED IN THIS
21 AMOUNT OF MONEY, ONE HOUR -- JUST ONE HOUR, SO YOU WILL
22 KNOW THAT JUSTICE HAS BEEN DONE IN THIS CASE.

23 YOU WILL NOW HAVE THE OPPORTUNITY TO HEAR FROM MR.
24 DAVIS, THEN YOU'RE GOING TO HEAR FROM MY GOOD FRIEND,
25 RONNIE SABB, AND HIS HONOR, AND YOU WILL THEN GO BACK IN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0672

APPENDIX 682

1 THE JURY ROOM AND CONSIDER THESE THINGS. I JUST WANT TO
2 THANK YOU FOR YOUR ATTENTION THIS WEEK. I WANT TO THANK
3 YOU FOR LISTENING TO THESE WITNESSES AS CAREFULLY AS YOU
4 HAVE.

5 AND ON BEHALF OF CODY P [REDACTED], CODY SAYS THANK YOU.

6 THE COURT: LET'S TAKE ABOUT 2 MINUTES.

7 MR. DAVIS: YES, SIR.

8 THE COURT: ALL RIGHT. LET'S TAKE A SHORT BREAK,
9 ABOUT 2 OR 3 MINUTES. PLEASE DO NOT DISCUSS THE CASE.

10 (THE JURY RETIRES TO THE JURY ROOM AT 12:20 P.M.)

11 (A RECESS WAS TAKEN.)

12 (THE JURY RETURNS TO THE COURTROOM AT 12:34 P.M.)

13 THE COURT: THANK YOU. MR. DAVIS.

14 MR. DAVIS: MAY IT PLEASE THE COURT.

15 THE COURT: YES, SIR.

16 CLOSING ARGUMENTS BY MR. DAVIS ON BEHALF OF BANK OF
17 AMERICA:

18 BANK OF AMERICA DOES WANT TO MAKE CODY P [REDACTED] WHOLE.
19 THESE ARE NOT WORDS THAT WERE JUST SPOKEN AT THE BEGINNING
20 OF THIS CASE ON MONDAY. THESE WORDS HAVE BEEN SPOKEN FROM
21 THE BEGINNING OF THIS LITIGATION, OF THIS LAWSUIT. BUT AS
22 YOU'VE JUST HEARD, THIS CASE REALLY ISN'T ABOUT MAKING CODY
23 POWELL WHOLE. IT'S ABOUT SOMETHING ELSE, IT'S ABOUT
24 PUNISHING THE BANK FOR A MISTAKE THAT WAS MADE.

25 I FIND IT INTERESTING THAT PLAINTIFF COUNSEL COMES IN

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0673

APPENDIX 683

1 FRONT OF YOU LIKE HE HAS CODY P [REDACTED] INTEREST AT HAND;
2 THAT IS TOP PRIORITY. BUT, YET, YOU SAW A DEPOSITION OF
3 MS. YOURKO, THE PERSON THAT MADE A MISTAKE ON BEHALF OF THE
4 BANK, AND HE TOOK THAT DEPOSITION LIKE 14 -- 1,400-PLUS
5 DAYS AFTER THE EVENT TOOK PLACE. BUT, YET, HE SAYS HE HAS
6 THE CHILD'S INTEREST AT HEART.

7 YOU SAW THE DEPOSITION OF MS. LAWRENCE THAT WASN'T
8 TAKEN UNTIL 1,800-AND-SOMETHING-ODD DAYS AFTER THE EVENT,
9 WHEN MEMORIES FADE, WHEN PEOPLE MOVE ON, WHEN THEY ARE NO
10 LONGER EMPLOYED BY THE BANK, WHEN THEY'VE HAD TWINS AND HAD
11 ANOTHER CHILD, AND MOVED OUT OF STATE. BUT, YET, THEY
12 CLAIM TO HAVE THE INTEREST OF THE CHILD AT HEART.

13 MISTAKES HAVE BEEN MADE IN THIS CASE. NOBODY WANTS TO
14 BE HERE. I DON'T WANT TO BE HERE. MS. REEVES DOESN'T WANT
15 TO BE HERE. MS. DENNING, WHOSE DEPOSITION WAS READ,
16 DOESN'T WANT TO BE HERE. MS. JOANNA SMITH, WHO'S BEEN HERE
17 THE WHOLE TIME, THE PRESENT BRANCH MANAGER, THE BANKING
18 CENTER MANAGER UP AT PAWLEYS ISLAND DOESN'T WANT TO BE
19 HERE.

20 BUT WE ARE HERE BECAUSE THIS CASE HAS GONE BEYOND
21 MAKING THE CHILD WHOLE, WHICH IS WHAT BANK OF AMERICA WANTS
22 TO DO.

23 I WISH I COULD -- LIKE I DO ON MY TV SET WHEN MY WIFE
24 ALWAYS GETS ON ME BECAUSE I KEEP CLICKING THROUGH THE
25 STATIONS. I WISH I COULD CLICK AND MAKE THIS GO BACK INTO

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ROA 0674

APPENDIX 684

1 THE PAST.

2 I KNOW THAT MS. POWELL, THAT ELIZABETH POWELL, WOULD
3 LOVE TO GO BACK IN THE PAST WHERE THIS HAD NEVER HAPPENED
4 AND HAD NEVER TRUSTED HER SISTER-IN-LAW, THE ONE WHO
5 SUPPOSEDLY WAS EDUCATED, THE ONE WHO SUPPOSEDLY COULD RUN A
6 BUSINESS, THE ONE WHO SUPPOSEDLY COULD RUN FINANCES, AND
7 ENTRUSTED HER FINANCES, HER PERSONAL FINANCES, HER FAMILY'S
8 FINANCES, AND THE FINANCES OF HER YOUNG CHILD WITH HER. I
9 KNOW SHE WISHES THAT, BECAUSE THEN WE WOULD NEVER BE HERE.

10 I KNOW TRAVIS POWELL, WHO THANK GOODNESS IS NO LONGER
11 IN THIS LAWSUIT BECAUSE HE HAD NO BUSINESS HERE ANYWAY -- I
12 KNOW TRAVIS POWELL WISHES HE COULD GO BACK IN TIME AND
13 SECOND-GUESS HIMSELF AND NOT ENTRUST EVERYTHING TO HIS
14 SISTER, WHO HE ALSO TRUSTED, GAVE HER COMPLETE CONTROL OF
15 THE CHECKS, NEVER SAW A SINGLE CHECK, NEVER CONTACTED OR
16 EVER SAW OR TALKED TO AN INSURANCE COMPANY ABOUT ANY MONEY
17 COMING, NEVER SIGNED ANY CHECKS. I KNOW HE WISHES HE COULD
18 GO BACK IN TIME TO DEMAND THAT HE COULD SEE WHAT WAS COMING
19 THROUGH SO THAT HIS SIGNATURE WOULD NOT BE FORGED. I KNOW
20 TRAVIS POWELL WISHES HE COULD GO BACK IN TIME AND WISHES HE
21 HAD GONE WITH HIS SISTER TO THE BANK OR WHATEVER BANK SHE
22 WAS GOING TO GO TO, TO MAKE SURE THINGS WERE SET UP RIGHT,
23 TO MAKE SURE SHE TOOK A COURT ORDER WITH HER TO THE BANK,
24 SO THAT THINGS COULD BE SET UP RIGHT.

25 I KNOW THEY ALL WISH THEY COULD GO BACK IN TIME AND

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ROA 0675

APPENDIX 685

1 DEMAND A BOND OR AN INSURANCE POLICY SO THAT IF ANYTHING
2 HAPPENED TO THAT QUARTER OF A MILLION DOLLARS, IT WOULD BE
3 PAID AND IT WOULDN'T BE LOST. I KNOW THEY WISH THEY COULD
4 GO BACK IN TIME AND DO THAT, BECAUSE WE WOULDN'T BE HERE.

5 I WISH WE COULD GO BACK IN TIME EVEN TO THE PROBATE
6 COURT ITSELF AND HAVE THEM DO A DOCUMENT THAT -- THAT THE
7 EXPERT, EVEN THEIR EXPERT, MR. HUBBS EVEN SAID SHOULD HAVE
8 BEEN DONE, READ IT TO YOU FROM HIS NOTES AND SAID, SHOULD
9 HAVE BEEN DONE WHICH WOULD HAVE PROVIDED THAT THERE BE
10 VERIFICATION FROM BOTH THE BANK AS WELL AS THE CONSERVATOR
11 THAT THE PROPER ACCOUNT HAD BEEN SET UP. I KNOW THE COURT
12 WISHES IT COULD GO BACK IN TIME AND NOW DO THIS.

13 AND BANK OF AMERICA WISHES IT COULD PRESS A BUTTON AND
14 GO BACK IN TIME, AND WHEN MS. UNRUE WALKED INTO THAT BANK,
15 THAT WE DIDN'T JUST LOOK AT THE FIRST CHECK WHERE IT SAYS
16 CO-CN WHICH MEANS NOTHING TO ANYBODY.

17 YOU'VE HEARD MS. REEVES SAY, WHO'S BEEN IN THE
18 BUSINESS FOR 30-SOMETHING-ODD YEARS, WHO'S TOLD YOU THERE
19 JUST AREN'T THESE MANY ACCOUNTS OPENED.

20 I WISH WE COULD GO BACK IN TIME WHERE MAYBE SHE'D
21 QUESTION THAT CO-CN, WHICH IS NOT EVEN FOUND IN THE
22 GLOSSARY OF TERMS IN ALL OF THESE DOCUMENTS THAT ARE
23 PROVIDED IN THE TRAINING. BANK OF AMERICA WISHES WE COULD
24 GO BACK IN TIME WHERE SHE WOULD HAVE FLIPPED MAYBE TO THE
25 SECOND CHECK AND WOULD HAVE PAID CLOSER ATTENTION, NOT JUST

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ROA 0676

APPENDIX 686

1 TO THE WORDS MINOR AS THE ACCOUNT WAS SET UP, BUT ALSO PAY
2 ATTENTION TO THE WORD CONSERVATOR AND QUESTION IT AND MAYBE
3 HAVE GOTTEN ON A HOT LINE OR MAYBE HAVE GOTTEN INTO THE
4 BOOKS HERE.

5 I WISH WE COULD GO BACK IN TIME AND DO THAT, BUT WE
6 CAN'T. BUT EVEN SO, THE CHILD DOES NEED TO BE MADE WHOLE;
7 THAT HAS BEEN OUR POSITION FROM DAY-ONE OF THIS TRIAL, THAT
8 IS OUR POSITION NOW, AND THAT'S BEEN OUR POSITION FOR A
9 NUMBER OF YEARS PRECEDING THIS TRIAL. BUT THEY WANT MORE.

10 THERE HAS BEEN EGREGIOUS CONDUCT. IT IS NOT THE BANK
11 WHO STARTED THIS. IT IS NOT THE BANK THAT GOT ELIZABETH
12 POWELL TO TRUST. IT IS NOT THE BANK THAT GOT TRAVIS POWELL
13 TO TRUST. KAREN UNRUE DID ALL THAT. KAREN UNRUE IS THE
14 ONLY -- IS THE ONLY ONE -- ONLY NAME BEFORE YOU THAT DID
15 ANYTHING -- ANYTHING IN A CONSCIOUS MANNER, DID ANYTHING IN
16 A WILFUL MANNER, DID ANYTHING RECKLESSLY, DID ANYTHING
17 INTENTIONALLY, DID ANYTHING CRIMINALLY, DID ANYTHING WITH
18 MONEY IN HER POCKET.

19 THERE HAVE BEEN -- WE'VE TALKED ABOUT THE INCENTIVE
20 PROGRAMS BEFORE IN OPENING STATEMENT. WE'VE TALKED ABOUT
21 IT DURING THE TRIAL. THERE HAS BEEN NO EVIDENCE WHATSOEVER
22 BROUGHT IN FRONT OF YOU THAT MS. YOURKO MADE ANY MONEY --
23 ANY WHATSOEVER FROM OPENING THIS ACCOUNT OR ANY OTHER
24 ACCOUNT OR RECEIVED ANY BONUS WHATSOEVER. AND YOU BETTER
25 BELIEVE IF SHE'D HAVE RECEIVED A BONUS OR RECEIVED ANY

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ROA 0677

APPENDIX 687

1 EXTRA MONEY FOR OPENING UP ACCOUNTS, WHETHER THEY'RE CD
2 ACCOUNTS, WHETHER THEY'RE CONSERVATOR ACCOUNTS, OR WHETHER
3 THEY'RE GUARDIAN ACCOUNTS, OR ANY OTHER ACCOUNTS, IT WOULD
4 HAVE BEEN IN FRONT OF THIS COURTROOM. YOU DIDN'T SEE IT
5 BECAUSE IT DOES NOT EXIST.

6 KAREN UNRUE IS THE ONLY ONE THAT ACTED IN CONSCIOUS
7 DISREGARD, CONSCIOUS DISREGARD TO DO ONE THING, TO STEAL
8 MONEY FROM ELIZABETH POWELL, TO STEAL MONEY FROM YOUNG
9 CODY, AND TO BETRAY THE TRUST OF A YOUNGER BROTHER WHO WAS
10 STANDING IN THE SHOES OF YOUNG CODY'S FATHER.

11 YOU TOOK AN OATH. DID YOUR OATH SAY THAT YOU WILL
12 WELL AND TRULY TRY THE ISSUES JOINED IN THIS CASE ACCORDING
13 TO THE EVIDENCE AND LAW BECAUSE YOU FEEL SYMPATHETIC TOWARD
14 SOMEONE? NO.

15 DID YOU TAKE AN OATH THAT YOU WOULD HEAR THE EVIDENCE
16 AND YOU WOULD RULE IN FAVOR OF SOMEONE BECAUSE THEY'RE MORE
17 LOCAL, EITHER A LAWYER OR WHOMEVER? NO.

18 DID YOU TAKE AN OATH THAT YOU WOULD RENDER A VERDICT
19 SIMPLY BECAUSE FOR WHATEVER REASON YOU MIGHT BE A LITTLE
20 BIT MAD? NO.

21 YOU TOOK AN OATH WHICH SAID YOU SHALL WELL AND TRULY
22 TRY THE ISSUES JOINED IN THIS CASE AND A TRUE VERDICT
23 RENDER ACCORDING TO THE EVIDENCE AND THE LAW.

24 I WILL TELL YOU BASED ON MY EXPERIENCE, I KNOW IT IS
25 HARD TO PUT SOME OF THE ISSUES ASIDE AND DO THAT, BUT THAT

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ROA 0678

APPENDIX 688

1 WAS YOUR OATH. AND AT THE END OF THAT OATH ALL OF YOU
2 RAISED YOUR RIGHT HAND AND SAID, SO HELP ME GOD.

3 I WISH MS. UNRUE WAS IN THIS COURTROOM SO SHE COULD
4 PAY. AS MR. JENKINSON SAID, THAT'S FOR ANOTHER DAY AND
5 ANOTHER TIME. SHE'LL PAY ACCORDING TO LAW ENFORCEMENT,
6 ACCORDING TO A LAWSUIT, OR ONE DAY EITHER IN THIS LIFE OR
7 THE NEXT, SHE WILL ANSWER TO A HIGHER COURT AND A HIGHER
8 POWER. BUT THAT IS FOR ANOTHER DAY. SHE IS THE ONLY ONE
9 THAT ACTED INTENTIONALLY AND WILFULLY. SHE'S THE ONLY ONE
10 -- YOU'VE HEARD NO EVIDENCE OTHER THAN THAT. YOU'VE NOT
11 HEARD MS. YOURKO JUST DISREGARD REGULATIONS OR RULES. WHAT
12 YOU HEARD IS SHE OPENED UP THE WRONG KIND OF ACCOUNT. SHE
13 MADE A MISTAKE.

14 WHAT YOU HEARD IS THAT MEREDITH LAWRENCE, THE BRANCH
15 MANAGER, THEN COMES BEHIND HER AND BASED ON A PROFILE -- AN
16 ACCOUNT PROFILE WITH A PREEXISTING CUSTOMER OR PREEXISTING
17 CLIENT, OPENS UP A PROFILE BASED ON WHAT WAS DONE WRONG THE
18 FIRST TIME.

19 THEY SAY THE BANK DOES NOT COME FORWARD AND ADMIT WHAT
20 IT DID WRONG. WE SHOULD HAVE OPENED UP -- OR BANK OF
21 AMERICA SHOULD HAVE OPENED UP A CONSERVATORSHIP ACCOUNT,
22 SHOULD HAVE DONE IT, SHOULD HAVE REVIEWED THOSE CHECKS MORE
23 CLOSELY, SHOULD HAVE ASKED HERSELF QUESTIONS, SHOULD HAVE
24 GOTTEN HELP FROM OTHERS, SHOULD HAVE GOTTEN ON THE PHONE
25 AND SHOULD HAVE DONE IT AND DONE IT RIGHT.

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ROA 0679

APPENDIX 689

1 BUT EVEN IF IT WAS DONE RIGHT, IT DOESN'T MEAN THAT
2 THAT MONEY SOME KIND OF WAY WOULD NOT HAVE BEEN STOLEN,
3 BECAUSE WHEN SOMEONE WANTS TO DO YOU EVIL, NOTHING IS GOING
4 TO STOP THEM. IF SOMEBODY WANTS TO DO EVIL, THE FAMILY IS
5 NOT GOING TO STOP YOU. LAW ENFORCEMENT IS NOT GOING TO
6 STOP YOU. THE THREAT OF JAIL IS NOT GOING TO STOP YOU.
7 AND A BANK ISN'T GOING TO STOP YOU. WHEN YOU WANT TO DO
8 IT, YOU'RE GOING TO DO IT. YOU'RE GOING TO STEAL THE
9 MONEY. AND IF YOU HAVE TO -- IF YOU HAVE TO, YOU WILL
10 LEAVE YOUR OWN FAMILY BEHIND, NEVER EVER EVEN CONTACT THEM
11 AGAIN TO GET AWAY WITH IT.

12 YOU'LL GO ALL THE WAY TO COLORADO WITH THAT MONEY;
13 THAT'S THE KIND OF PERSON -- THAT'S THE PERSON THAT STARTED
14 ALL OF THIS MESS THAT WE'RE IN, THAT WE'RE TALKING ABOUT
15 RIGHT NOW.

16 YOU WILL HEAR THE JURY CHARGE. AND I WILL TELL YOU, I
17 AM NOT GOING TO TRY TO GIVE YOU MUCH OF THE LAW. THE
18 JUDGE, HE'S THE ONE WHO GIVES YOU THE LAW. AND I WILL TELL
19 YOU WHETHER YOU AGREE WITH IT OR NOT, BASED ON YOUR OATH,
20 YOU SHOULD FOLLOW IT -- OR YOU MUST FOLLOW IT.

21 AND HE IS GOING TO CHARGE YOU THAT ACTUAL DAMAGES ARE
22 PROPERLY CALLED COMPENSATORY DAMAGES, MEANING TO
23 COMPENSATE, TO MAKE THE INJURED PARTY WHOLE, TO PUT HIM IN
24 THE SAME POSITION HE WAS IN PRIOR TO THE DAMAGES RECEIVED
25 INSOFAR AS THIS IS MONETARILY POSSIBLE. IN OTHER WORDS,

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ROA 0680

APPENDIX 690

1 ACTUAL OR COMPENSATORY DAMAGES INCLUDE COMPENSATION FOR ALL
2 INJURIES WHICH ARE NATURALLY THE PROXIMATE RESULT OF THE
3 ALLEGED WRONGFUL CONDUCT OF THE DEFENDANT.

4 THE ACTUAL DAMAGES THAT WE HAVE AGREED TO -- WE DID
5 NOT FIGHT IT. WE AGREED TO IT. WE WHAT'S CALLED
6 STIPULATED TO IT. THOSE DAMAGES ARE \$205,735.37, WHICH
7 INCLUDES WHAT'S CALLED THE PRINCIPLE OF THE MONEY PLUS ANY
8 INTEREST THAT WOULD HAVE BEEN EARNED OVER THE COURSE OF
9 THAT PERIOD. WE HAVE AGREED THAT IS WHAT SHOULD BE PAID TO
10 MAKE CODY POWELL WHOLE, JUST AS IF NONE OF THIS WOULD HAVE
11 EVER HAPPENED. THAT IS WHAT BANK OF AMERICA HAS AGREED TO
12 DO.

13 THE PLAINTIFF CALLED DR. OLIVER WOOD. HE CALLED DR.
14 WOOD TO PUT BIG NUMBERS IN FRONT OF YOU. HE CALLED DR.
15 WOOD IN FRONT OF YOU TO TRY TO MAKE YOU MAD, BECAUSE BANK
16 OF AMERICA IS A BIG BANK. BANK OF AMERICA IS A SUCCESSFUL
17 BANK. IT'S SUCCESSFUL BECAUSE OF IT'S -- ONE REASON IT'S
18 SUCCESSFUL IS BECAUSE IT CREATES THESE COMMUNITY BANKING
19 CENTERS LIKE YOU HAVE IN PAWLEYS ISLAND AND MT. PLEASANT
20 AND OTHER PLACES IN SOUTH CAROLINA AND ALL ACROSS THIS
21 NATION, WHERE ITS EMPLOYEES LIVE AMONG THE PEOPLE THAT IT
22 SERVES.

23 HE TRIED TO -- MR. JENKINSON TRIED TO JUMP ON US THAT
24 NO ONE FROM CHARLOTTE CAME DOWN HERE. WHAT WAS BROUGHT IN
25 HERE WAS WHAT REPRESENTS THE BANKING COMMUNITY FOR BANK OF

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ROA 0681

APPENDIX 691

1 AMERICA IN SOUTH CAROLINA, A MS. REEVES.

2 IT'S AMAZING HOW HE WANTS TO CALL HER THE FACE OF THE
3 BANK BUT THEN WANTS TO STEP AWAY FROM IT AT THE SAME TIME.

4 LADIES AND GENTLEMEN, SHE IS BANK OF AMERICA.

5 EMPLOYEES LIKE HER ARE BANK OF AMERICA. ALL YOU HEARD WAS
6 CONSCIOUS DISREGARD, CONSCIOUS DISREGARD, CONSCIOUS
7 DISREGARD. MS. REEVES IS NOT CONSCIOUSLY DISREGARDING
8 ANYTHING. WHAT YOU SAW, WHAT YOU HEARD, WHAT YOU FELT,
9 WHAT YOU OBSERVED IS TYPICAL OF THE TYPE OF PEOPLE THAT
10 BANK OF AMERICA HIRES.

11 IT IS NOT BRICK AND MORTAR. IT IS COMPOSED OF PEOPLE
12 LIKE YOU AND OTHERS, MS. REEVES, MS. DENNING, MS. SMITH.
13 THAT'S BANK OF AMERICA.

14 BUT THEY WANT TO PUNISH BANK OF AMERICA BECAUSE IT
15 MAKES A LOT OF MONEY. THEY WANT TO PUNISH BANK OF AMERICA
16 BECAUSE IT PAYS BILLIONS OF DOLLARS IN TAXES. THEY WANT TO
17 PUNISH BANK OF AMERICA BECAUSE IT IS THE MAJOR CONTRIBUTOR
18 OF FIRST STEPS, WHICH HELPS EDUCATE OUR YOUNG CHILDREN
19 BEFORE THEY EVEN GET TO SCHOOL. IT WANTS TO PUNISH BANK OF
20 AMERICA BECAUSE IT IS THE PRIMARY CONTRIBUTOR OF THE FIRST
21 PRIVATE SCHOOL -- ONE OF THE FIRST SCHOOLS FOR BLACK SLAVES
22 TO GET US EDUCATED. IT WANTS TO PUNISH THEM FOR THAT. IT
23 WANTS TO PUNISH BANK OF AMERICA BECAUSE IT'S WILLING TO
24 TAKE SOME OF ITS PROFITS AND PUT BACK INTO THIS COMMUNITY
25 SO THAT THERE CAN BE AFFORDABLE HOUSING FOR PEOPLE WHO

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ROA 0682

APPENDIX 692

1 OTHERWISE MAY NOT BE ABLE TO QUALIFY OR EVEN HAVE A HOUSE.
2 IT WANTS TO PUNISH US FOR THAT SUCCESS, WHEN ALL WE WANT TO
3 DO IS TO MAKE THIS CHILD WHOLE.

4 THE COURT WILL INSTRUCT YOU ON PUNITIVE DAMAGES, THAT
5 IT WILL TAKE CLEAR AND CONVINCING EVIDENCE, NOT WHAT -- AND
6 I'M NOT SAYING MR. SABB DID -- MR. SABB EXPLAINED TO YOU
7 ABOUT -- ACTUALLY, I DO THE SAME THING. IT'S LIKE YOU SEE
8 THE BLIND LADY OF JUSTICE, AND SHE HAS SCALES. WHEN YOU
9 PUT THE EVIDENCE ON THE SCALE AND YOU WEIGH IT, THAT'S THE
10 PREPONDERANCE OF THE EVIDENCE. THAT'S WHAT YOU CONSIDER IN
11 REGARDS TO NEGLIGENCE. IF IT WEIGHS A LITTLE BIT MORE,
12 THEN THAT WOULD BE NEGLIGENCE. BUT THAT'S NOT CLEAR AND
13 CONVINCING. AND THERE IS NOTHING THAT HAS BEEN PRESENTED
14 TO YOU THAT IS CLEAR THAT MS. YOURKO CONSCIOUSLY
15 DISREGARDED ANY POLICY MANUAL.

16 THERE'S NOTHING CONVINCING THAT THE BANK MANAGER
17 CONSCIOUSLY DIDN'T GO BACK BEHIND A COMPUTER SCREEN TO MAKE
18 SURE IF THE INITIAL -- IF THERE WAS AN INITIAL MISTAKE.
19 THERE'S NOTHING CLEAR OR CONVINCING THAT'S BEEN PRESENTED
20 TO YOU IN THAT REGARD WARRANTING THAT THE BANK BE PUNISHED.
21 \$1.5 MILLION IN PUNISHMENT FOR A MISTAKE.

22 YOU HEARD THEIR OWN EXPERT WHO WAS IN CHARGE OF A
23 SMALL BANK WHO TOLD YOU HIS EMPLOYEES WERE TRAINED IN
24 POLICIES AND PROCEDURES, WHO TOLD YOU THAT EVEN THOUGH THEY
25 HAVE THAT TRAINING, HIS EMPLOYEES STILL MADE MISTAKES EVEN

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ROA 0683

APPENDIX 693

1 IN OPENING UP ACCOUNTS. THAT IS EXACTLY WHAT HAPPENED
2 HERE. THEY WANT US TO BE PUNISHED SO IT DOESN'T HAPPEN
3 AGAIN.

4 LADIES AND GENTLEMEN, HAVE THEY BROUGHT ANYTHING IN
5 THIS COURTROOM TO SHOW -- TO DEMONSTRATE TO YOU THAT IT HAS
6 HAPPENED AGAIN? WHERE IS THE EVIDENCE THAT A CONSERVATOR
7 ACCOUNT HAS BEEN MIS-MANAGED OR MIS-USED OR NOT OPENED
8 PROPERLY IN THE STATE OF SOUTH CAROLINA OTHER THAN THIS
9 CASE? WHERE IS IT? WHERE IS ANOTHER CASE IN THE STATE OF
10 NORTH CAROLINA WHERE BANK OF AMERICA IS PRIMARILY
11 HEADQUARTERED WHERE SOMEBODY'S IMPROPERLY OPENED AN ACCOUNT
12 AND A CHILD HAS BEEN HURT? WHERE IS IT?

13 WHERE IS THERE A CASE IN THE BIG STATE OF GEORGIA?
14 IT'S BIGGER THAN NORTH CAROLINA AND SOUTH CAROLINA, ALMOST
15 AS BIG AS BOTH OF THEM PUT TOGETHER. WHERE IS THE CASE?

16 YOU'VE HEARD THE EVIDENCE FROM MS. REEVES THAT IN HER
17 30 YEARS SHE'S ONLY SEEN TWO OF THESE THINGS. THE EVIDENCE
18 FROM MS. DENNING IS IT HAS TO DO WITH RESTRICTED ACCOUNTS.
19 IT DIDN'T JUST SAY CONSERVATOR ACCOUNTS.

20 BUT THEY HAVE PRESENTED NO EVIDENCE WHATSOEVER THAT
21 THIS IS A PERVASIVE PROBLEM OR HAS BEEN A PROBLEM IN THE
22 PAST, IN THE PRESENT, OR IN THE FUTURE. THEY'VE NOT
23 PRESENTED IT BECAUSE IT DOES NOT EXIST.

24 BANK OF AMERICA IS A SUCCESSFUL BANK BECAUSE IT IS A
25 GOOD BANK. IT HAS POLICIES AND PROCEDURES. AND THE ONE

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ROA 0684

APPENDIX 694

1 THING THAT DID NOT GET ATTACKED BY MR. HUBBS, HE COULDN'T
2 CRITICIZE THE TRAINING WHATSOEVER.

3 WHAT WE HAVE IS A SINGLE EMPLOYEE THAT CREATED
4 REGRETTABLY AN ENTIRE CHAIN OF EVENTS. BUT IT STARTED
5 BEFORE THAT EMPLOYEE. IT STARTED WITH MS. UNRUE.

6 MR. SABB WILL -- BECAUSE THEY HAVE WHAT'S CALLED THE
7 BURDEN OF PROOF, MR. SABB WILL GET A CHANCE NOW VERY
8 SHORTLY TO TALK TO YOU.

9 NOW, I'M GOING TO TELL YOU, I DID NOT CALL ANY
10 WITNESSES. I'VE GOT MS. DENNING HERE. BUT I DECIDED NOT
11 TO CALL ANY WITNESSES, BECAUSE WE'VE BEEN BEATEN.

12 YOU KNOW, ONE TIME I USED TO VISIT MY GRANDFATHER'S
13 FARM, AND THERE USED TO ALWAYS BE THIS DOG THAT USED TO
14 CHASE ME. I HATED THAT DOG. THAT DOG BIT ME ONE TIME TOO.
15 THE DOG GOT HIT BY A CAR. I WENT OUT TO SEE IF IT WAS DEAD
16 AND I WAS ABOUT TO KICK IT, AND MY GRANDFATHER STOPPED ME.
17 AND HE SAID, SON, YOU CAN KICK THAT DOG AND IT MIGHT MAKE
18 YOU FEEL BETTER, BUT IT AIN'T GOING TO DO YOU ANY GOOD.

19 I DIDN'T CALL ANY WITNESSES. I'LL TELL YOU BECAUSE,
20 NUMBER ONE, THEY HAD THE BURDEN OF PROOF. AND I SUBMIT TO
21 YOU THEY HADN'T PROVED IT ON THE CLEAR AND CONVINCING SIDE
22 AS IT RELATES TO PUNITIVE DAMAGES IN PARTICULAR.

23 AND YOU ALL HEARD THIS EVIDENCE. ALL YOU WOULD HAVE
24 HEARD OVER -- YOU WOULD HAVE HEARD IT ALL OVER AGAIN FOR
25 ANOTHER TWO OR THREE HOURS. SO, YES, I MADE THE DECISION,

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ROA 0685

APPENDIX 695

1 ENOUGH IS ENOUGH, LET'S PUT IT TO THE JURY, AND LET'S GO
2 FROM THERE.

3 NOW IN THAT REGARD, I VISIT KINGSTREE EVERY NOW AND
4 THEN BECAUSE MY WIFE HAS AN AUNT -- WELL, UNCLE WHO LIVES
5 HERE NOW. USED TO HAVE AN AUNT, SHE'S DECEASED. I WANT TO
6 TELL YOU -- AND I AM SERIOUS ABOUT THIS: THIS HAS BEEN A
7 HARD FOUGHT CASE AS IT'S SUPPOSED TO BE. THAT'S OUR SYSTEM
8 OF JUSTICE.

9 BUT YOU ARE MY SYSTEM OF JUSTICE. YOU'RE IT. IT'S
10 NOT THIS COURTHOUSE. IT'S YOU. AND I WANT TO TELL YOU, I
11 AM HONORED AS MR. MCGEE IS MY PARTNER AND HAVING PRESENTED
12 THE BANK OF AMERICA. BUT EVEN MORE SO I WILL TELL YOU --
13 I'M ABOUT TO END. I AM PRIVILEGED TO BE ABLE TO GET BEFORE
14 YOU AND PRESENT THIS CASE, TO SHOW YOU THAT BANK OF AMERICA
15 DOES WANT TO MAKE THIS CHILD WHOLE, BUT ALSO TO DEMONSTRATE
16 TO YOU WE SHOULD NOT BE PUNISHED FOR A MISTAKE WHICH SHOULD
17 MAKE THIS CHILD WHOLE.

18 I APPRECIATE YOU, YOU HAVE BEEN EXTREMELY ATTENTIVE
19 OVER THE PAST FEW DAYS. AS YOU ALL KNOW, I'VE BEEN
20 WATCHING YOU. OUR SYSTEM OF JUSTICE IS AMAZING. IT AIN'T
21 ALWAYS RIGHT, BUT IT'S RIGHT MOST OF THE TIME.

22 I WOULD ASK YOU TO LISTEN TO THE JUDGE CAREFULLY ON
23 HIS INSTRUCTION ON THE LAW.

24 I APPRECIATE YOU LISTENING TO ME. THANK YOU.

25 THE COURT: MR. SABB.

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ROA 0686

APPENDIX 696

1 MR. SABB: THANK YOU, YOUR HONOR.

2 THE COURT: LET'S STAND FOR JUST A MOMENT WHILE HE'S
3 GETTING STRAIGHT, JUST FOR A MOMENT.

4 (PAUSE.)

5 MR. SABB: MAY IT PLEASE THE COURT, YOUR HONOR.

6 THE COURT: YES, SIR.

7 MR. SABB: CO-COUNSEL, DEFENSE COUNSEL.

8 CLOSING ARGUMENTS BY MR. SABB ON BEHALF OF THE PLAINTIFFS:

9 MADAM FORELADY AND LADIES AND GENTLEMEN OF THE JURY,
10 GOOD AFTERNOON. I WOULD BE REMISS IF I DIDN'T TAKE THIS
11 OPPORTUNITY ON BEHALF OF ALL THE LAWYERS INVOLVED IN THIS
12 CASE TO SAY THANK YOU. THANK YOU FOR GIVING UP YOURSELVES
13 THE WAY THAT YOU HAVE. THANK YOU FOR AGREEING TO UPHOLD
14 THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA AND THE
15 CONSTITUTION OF THE UNITED STATES OF AMERICA.

16 YOU KNOW, I WANT YOU ALL TO KNOW THAT WHEN MR. DAVIS
17 MENTIONED TO YOU THROUGH THE QUESTIONING OF ONE OF HIS
18 WITNESSES WHEN THEY WERE READING THROUGH THE ANSWER IN THE
19 COMPLAINT -- YOU REMEMBER THE COMPLAINT ARE THE ALLEGATIONS
20 MADE ON BEHALF OF THE PLAINTIFF IN THE CASE. IN THIS CASE,
21 THAT'S CODY POWELL. THE ANSWER IN THE CASE ARE THE
22 ALLEGATIONS MADE BY THE BANK.

23 AND IF YOU RECALL, MR. JENKINSON READ WHAT WE SAID THE
24 BANK DID WRONG. DO YOU REMEMBER WHAT THE RESPONSE WAS?
25 DENY. DENY. DENY. DENY. PLEASE DON'T FORGET THAT.

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ROA 0687

APPENDIX 697

1 AND THEN REMEMBER WHAT MR. DAVIS SAID TO HIS WITNESS
2 AFTER THAT. HE SAID, THAT WAS WHAT KIND OF TALK IN THE
3 PAPERS? THAT WAS WHOSE TALK? I PROMISE YOU, HE SAID THAT
4 WAS LAWYERS' TALK IN THE PAPERS.

5 SO NOW, PLEASE, DON'T BE MISLED BY THIS NOTION OF
6 WANTING TO MAKE CODY WHOLE FROM DAY-ONE. IT IS SIMPLY A
7 SMOKE SCREEN. THE INDIANS IN THE OLD DAY SAID THAT WE
8 SPEAK WITH FORKED TONGUES -- OUT OF BOTH SIDES OF THE
9 CORNER OF OUR MOUTH.

10 LET ME TELL YOU ALL SOMETHING, IF THE BANK REALLY
11 WANTED TO ADMIT LIABILITY IN THIS CASE, THEY COULD HAVE
12 REMOVED THE POSSIBILITY FROM EACH AND EVERY ONE OF YOU. ON
13 THE VERDICT FORM, I PROMISE YOU THERE WILL BE AN AREA ON
14 THERE WHERE YOU CAN FIND IN FAVOR OF GUESS WHO? THAT'S
15 RIGHT, THE ONES WHO SAID FROM DAY-ONE THEY'RE WILLING TO
16 MAKE CODY WHOLE AND PAY HIS ACTUAL DAMAGES. THERE WILL BE
17 A PLACE ON THAT VERDICT FORM WHERE YOU CAN FIND FOR THEM.
18 DON'T BUY INTO THAT NOTION.

19 WE DIDN'T BEGIN THIS JOURNEY TOWARDS RIGHTING AN
20 INJUSTICE FOR NOTHING. WE DIDN'T TRAVEL TO NEW JERSEY FOR
21 NOTHING. WE DIDN'T TRAVEL TO NORTH CAROLINA FOR NOTHING,
22 AND WHEREVER ELSE THE WITNESSES WERE. I PROMISE YOU, WE
23 DIDN'T INVITE THIS FIGHT. THIS FIGHT CAME AS A RESULT OF
24 KELLY KELLEY GOING BEFORE JUDGE RUDEL GAMBLE ON BEHALF OF
25 THIS CHILD AND THE JUDGE SAYING TO KELLY: KELLY, YOU ARE

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ROA 0688

APPENDIX 698

1 REQUIRED TO HIRE LAWYERS AND YOU GO AFTER CODY'S MONEY.

2 AND YOU BETTER BELIEVE IF THE BANK OF AMERICA HAD
3 SAID, WE'RE STROKING A CHECK TODAY, KELLY, DON'T WORRY
4 ABOUT HIRING LAWYERS, WE WOULDN'T BE HERE.

5 WHEN KELLY KELLEY TOOK THAT WITNESS STAND AND SHE WAS
6 ASKED BY ATTORNEY KELLAHAN, JENNIFER, WERE YOU SURPRISED
7 WHEN THE BANK OF AMERICA MADE THE STATEMENT IN OPENING
8 STATEMENT SAYING WE WERE ALWAYS WILLING TO MAKE CODY WHOLE?
9 WHAT WAS HER RESPONSE? I WAS, WHAT? STUNNED, BECAUSE IT
10 NEVER HAPPENED.

11 AND I PROMISE YOU ALL, IF YOU ALL WERE NOT WHERE YOU
12 ARE TODAY AND THIS DAY DIDN'T COME FOR ANOTHER TWO YEARS,
13 FOUR YEARS, OR ANOTHER SEVEN YEARS, IT WOULD BE AT THAT
14 MOMENT IN TIME THAT THEY WOULD COME FORTH BEFORE A JURY AND
15 SAY THAT.

16 AND LET ME TELL YOU ALL WHY THEY'VE GOT THIS NOTION OF
17 FINDING FOR THE DEFENDANTS IN THERE. NOW, MR. JENKINSON
18 TOUCHED ON IT JUST A LITTLE BIT. BUT I JUST WANT TO
19 REITERATE IT. THEY TAKE THE POSITION THAT THERE WAS AN
20 INTERVENING UNFORESEEABLE CAUSE TO THIS THING.

21 BUT PLEASE UNDERSTAND WHAT WE HAD TO DO IN THIS CASE.
22 IN ADDITION TO THE TRAVELS, IN ADDITION TO GETTING ALL OF
23 THESE RECORDS TO MAKE ABSOLUTELY CERTAIN THAT WE COULD
24 PROVE OUR CASE, IN ADDITION TO EVERYTHING ELSE THAT WE
25 DONE, WE KNEW THAT WE HAD TO HIRE EXPERTS; THAT'S WHY WE

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ROA 0689

APPENDIX 699

1 HAD TO PAY THEM \$200 AN HOUR. WE'VE GOT TO GET SOMEBODY
2 WHO'S QUALIFIED TO COME IN AND EDUCATE THE JURY ON WHAT THE
3 REAL DEAL IS.

4 AND I PROMISE YOU -- AND I HOPE THAT YOU ALL FOUND
5 THAT MR. HUBBS WAS CREDIBLE, TRUTHFUL, AND HONEST. AND I
6 LIKE THE WAY HIS DEMEANOR WAS ON THE WITNESS STAND. HE
7 SMILED. THE MAN HAS A CLEAR CONSCIENCE ABOUT WHAT HE'S
8 TALKING ABOUT; AND THAT'S WHY HE CAN SMILE AND LOOK YOU ALL
9 IN THE EYE AND SAY UNDER NO UNCERTAIN TERMS THEY VIOLATED
10 THEIR POLICIES.

11 NOW, WHAT IN THE WORLD IS WRONG? IF YOU REALLY WANT
12 TO ADMIT LIABILITY, WHAT'S WRONG WITH SAYING, YES, WE
13 VIOLATED OUR POLICIES?

14 NOW, THINK ABOUT IT, WHEN WE WERE IN HIGH SCHOOL AND
15 YOU DIDN'T OBEY THE RULES OF THE SCHOOL, YOU DID WHAT?
16 VIOLATED THE RULES.

17 WHEN YOU'RE OUT HERE -- AND MR. JENKINSON WAS TALKING
18 ABOUT RUNNING THE STOP SIGN. BUT LET ME GO A STEP FURTHER.
19 IF YOU'RE JUST SPEEDING DOWN THE ROAD AND THE HIGHWAY
20 PATROL DOES HIS BLUE LIGHT THING ON YOU AND HE STOPS YOU,
21 GUESS WHAT HE'S GOING TO CITE YOU FOR? VIOLATING THE
22 SPEEDING LAWS OF THE STATE.

23 WHAT'S WRONG WITH THE WORD VIOLATE? THEY CAN'T USE
24 IT. MAKE NO MISTAKES ABOUT IT. THERE'S A LOT OF THINGS
25 GOING ON IN THIS CASE THAT YOU ALL NEED TO REALIZE AND

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ROA 0690

APPENDIX 700

1 UNDERSTAND, AND THAT'S WHY BILLY AND I WANT TO TRY TO HELP
2 YOU ON SOME OF THOSE THINGS. MAKE NO MISTAKE ABOUT IT,
3 THERE'S A REASON WHY THEY CAN'T USE THE TERM VIOLATE.

4 THERE'S AN OLD SAYING THAT SAYS -- LET ME SEE, HOW'S
5 IT GO. WHEN A LION ROARS, FEW BEASTS DARE TO SAY THE JUST
6 THING. WHEN A LION ROARS, FEW BEASTS -- YOU KNOW, HE'S
7 KING OF THE JUNGLE, FEW BEASTS DARE TO SAY THE JUST THING.

8 WHAT ARE WE TALKING ABOUT? GUESS WHO THE LION IS IN
9 THIS CASE? THE LION IS BANK OF AMERICA. MAKE NO IF, AND,
10 OR BUTS ABOUT IT. THEY CONTROL WHO THEY SEND HERE TO
11 TESTIFY. AND I ASSURE YOU, THEY ALSO CONTROL WHAT THEY SAY
12 ONCE THEY ARE THERE TO TESTIFY. SHE KNEW THAT IT WAS A
13 PROHIBITION TO USE THAT KIND OF LANGUAGE IN FRONT OF THIS
14 JURY, BECAUSE IT WOULD HAVE SENT A CLEAR SIGNAL THAT
15 THEY'RE WRONG, AND THEY DON'T INTEND TO SEND ANY CLEAR
16 SIGNALS. THEY INTEND TO DO ALL OF THOSE LITTLE SUBTLE
17 THINGS THAT DIVERT YOUR ATTENTION FROM WHAT THIS CASE IS
18 REALLY ABOUT.

19 THEN YOU MIGHT ASK YOURSELF THE QUESTION: WHY DID
20 THEY SEND MS. REEVES? SHE FIT THE PROFILE, FOLKS. SHE FIT
21 THE PROFILE. WHY WOULD THEY SEND A PERSON HERE WHO DOESN'T
22 HAVE ANY EXPERIENCE IN CONSERVATOR ACCOUNTS, WHO HAS NEVER
23 PUT ONE TOGETHER IN 15 YEARS? WHY SEND HER? WHY NOT SEND
24 SOMEBODY WHO KNOWS ABOUT IT, KNOW WHAT TO LOOK FOR SO YOU
25 ALL WILL GET AN UNDERSTANDING ABOUT THE INTELLECT OF BANK

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0691

APPENDIX 701

1 OF AMERICA. YOU DON'T BECOME THE LARGEST BANK IN THE
2 UNITED STATES OF AMERICA UNLESS YOU KNOW WHAT YOU'RE DOING,
3 UNLESS YOU'VE GOT TRAINED PEOPLE THAT HAVE AN UNDERSTANDING
4 OF HOW TO HANDLE FOLKS' FUNDS.

5 THEY WOULD HAVE YOU BELIEVE THAT THE ENTIRE BANK OF
6 AMERICA HAS NO KNOWLEDGE ABOUT ESTABLISHING CONSERVATOR
7 ACCOUNTS? HOW DIFFICULT CAN IT BE?

8 MR. JENKINSON WAS RIGHT WHEN HE TOLD YOU, YOU ALL
9 PROBABLY CAN DO IT. AND I BELIEVE EACH OF YOU CAN. BUT,
10 YOU KNOW, KNOWLEDGE IS MORE THAN ONE KIND. EITHER YOU KNOW
11 HOW TO DO SOMETHING OR YOU KNOW, WHAT? HOW TO FIND OUT
12 INFORMATION TO GET IT DONE.

13 SO ANY OF YOU WHO DON'T REMEMBER EXACTLY HOW TO SET IT
14 UP, YOU NOTICE YOU'VE GOT A WHAT? YOU'VE GOT A MANUAL THAT
15 YOU CAN GO TO. IF YOU PUT THE WORD IN THE COMPUTER, WHAT'S
16 THE COMPUTER GOING TO DO? IT'S GOING TO HELP YOU TO DECIDE
17 HOW TO DEAL WITH THAT.

18 YOU CAN GET ON THE PHONE AND CALL THE HELP LINE, ALL
19 THESE RESOURCES. BUT ALL OF A SUDDEN, THEIR DEFENSE IS,
20 IT'S UNUSUAL. WE DON'T KNOW HOW TO DO IT. YES, WE WENT TO
21 TRAINING FOR WEEKS AT A TIME, BUT WE HAVE NO IDEA ABOUT
22 WHAT THIS TERM CONSERVATOR IS.

23 FOLKS, DON'T BUY IT. DON'T BUY IT. THAT'S JUST A
24 PART OF THE SMOKE SCREEN THAT THEY'VE GOT IN THIS CASE.

25 AND HERE'S THE OTHER THING THAT'S GOING ON IN THIS

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ROA 0692

APPENDIX 702

1 CASE. YOU SEE, MY GOOD FRIEND -- AND I HAVE AN INCREDIBLE
2 AMOUNT OF RESPECT FOR THE LAWYERS YOU SEE AT THIS TABLE.
3 PART OF ME IS EXTREMELY PROUD OF WHAT THEY'VE DONE AND WHO
4 THEY NOW REPRESENT.

5 BUT LET'S TALK JUST FOR A SECOND ABOUT THE EVIDENCE IN
6 THE CASE -- AND THAT'S WHAT I LIKE TO TALK ABOUT. SEE,
7 THERE ARE A COUPLE OF THINGS GOING ON HERE.

8 WHEN I TALK ABOUT MS. REEVES AND FITTING THE PROFILE,
9 I MEAN NO DISRESPECT TO THIS LADY. BUT LET ME TELL YOU ALL
10 ABOUT THE PROFILE NOW. YOU SEE, SHE'S A SUCCESSFUL WOMAN
11 AT THE BANK OF AMERICA. SHE HAS GAINED THROUGH THE RANKS,
12 AND SO SHE CAN COME HERE AND SAY TO THIS JURY, GIVEN THE
13 MAKEUP THAT YOU ARE, IT IS A, WHAT? A WONDERFUL PLACE FOR
14 WHO TO WORK? WOMEN.

15 WHY IS IT THAT IT'S SO SIGNIFICANT THAT THEY NEED TO
16 TALK ABOUT THE BANK OF AMERICA AND WHAT IT DOES IN TERMS OF
17 THAT PENN CENTER PLACE, THE PLACE WHERE THEY EDUCATED THE
18 SLAVES. WHY IS IT SO IMPORTANT THAT THEY WOULD FIND IT
19 NECESSARY TO GIVE THAT INFORMATION TO YOU ALL ON THIS
20 OCCASION? WHY IS IT IMPORTANT THAT THEY WOULD TALK ABOUT
21 THE AMOUNT OF MONEY THAT THEY PUMP INTO THE EDUCATIONAL
22 SYSTEM HERE AND THERE, THE MONEY THAT THEY PUMP INTO THE
23 COMMUNITY HERE AND THERE. WHY IS IT SIGNIFICANT?

24 LET ME TELL YOU SOMETHING. THIS CASE IS BIGGER THAN
25 WE MIGHT THINK ABOUT. DO YOU ALL ACTUALLY BELIEVE FOR A

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0693

APPENDIX 703

1 MOMENT THAT THEY HAVEN'T STUDIED US; THAT THEY DON'T
2 UNDERSTAND THE MAKEUP OF WILLIAMSBURG COUNTY; THAT THEY
3 DON'T KNOW THAT MANY OF US COME FROM SINGLE PARENT HOMES;
4 THAT MANY OF US WOULD NOT BE ABLE TO GET AN EDUCATION BUT
5 FOR SCHOLARSHIPS AND HELP FROM FOLKS? DON'T YOU THINK THEY
6 KNOW ALL OF THAT?

7 THIS WHOLE NOTION ABOUT BEING A PHILANTHROPIST AND
8 BEING ONE OF THE BETTER PHILANTHROPISTS AND PAYING BILLIONS
9 OF DOLLARS IN TAXES SO THAT THE ECONOMY -- DON'T GET ME
10 WRONG. IT'S GOOD TO DO GOOD. BUT DON'T THINK FOR A MINUTE
11 THAT WHEN THEY CONTRIBUTE TO THESE SCHOLARSHIPS, WHEN THEY
12 PUT THESE MONEYS BACK IN THE COMMUNITY, WHAT KIND OF BREAKS
13 DO YOU THINK THEY GET ON THEIR TAXES? COME ON NOW. IT
14 AIN'T ALL ABOUT GIVING. SOME OF IT IS ABOUT RECEIVING.

15 AND ONE OF THE THINGS THAT WE WANTED TO MAKE
16 ABSOLUTELY CLEAR AS IT RELATES TO OLIVER WOOD. WHEN THEY
17 COME IN HERE AND START TALKING ABOUT THEIR PHILANTHROPICS,
18 THAT YOU NOT LOSE SIGHT ON THE FACT THAT THEY ARE A FOR-
19 PROFIT ORGANIZATION. THEY'RE NOT A CHARITABLE
20 ORGANIZATION. THEY'RE IN THE BUSINESS OF MAKING MONEY.
21 AND WE SUBMIT TO YOU THAT THAT ISSUE IS CLEAR.

22 NOW, FOLKS, WHEN THEY TALK ABOUT THIS LITIGATION AND
23 BEING HARD FOUGHT, THEY FOUGHT US ON EVERY SINGLE CORNER.

24 OLIVER WOOD, YEAH, WE HAD TO PAY HIM \$300 AN HOUR.
25 BUT ONE OF THE THINGS THAT WE KNOW IS THAT THE MAN KNOWS

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ROA 0694

APPENDIX 704

1 HIS STUFF, AND THAT IF WE HIRED HIM ON BEHALF OF CODY
2 POWELL, THAT CODY POWELL WILL HAVE SOME OF THE BEST EXPERTS
3 WORKING FOR HIM IN THE WORLD; AND THAT WHEN OLIVER COMES UP
4 WITH THOSE NUMBERS, WHAT GOOD WOULD IT DO FOR THEM TO
5 QUESTION IT? THEY'VE GOT NO CHOICE.

6 BUT, UNDERSTAND, WE WERE READY TO PRESENT OUR PROOF;
7 AND THAT'S BEEN OUR MISSION. OUR MISSION HAS BEEN LIKE
8 THAT FROM DAY-ONE.

9 WHEN I THINK ABOUT THE PROFILE OF THE YOUNG LADY AND
10 CRYING AND ALL OF THAT, I WANT HER TO KNOW MANY OF US
11 REJOICE IN HER SUCCESS AND HOW SHE HAS EDUCATED YOURSELF
12 AND WORKED HARD. I MEAN, WE ALL OUGHT TO REJOICE IN EACH
13 OTHER'S SUCCESSES, AND HOW SHE'S DEVELOPED AN AFFECTION AND
14 AN AFFINITY FOR THE FOLKS THAT SHE WORKS FOR; THAT'S A
15 WONDERFUL THING. BUT THEY KNEW THAT. THEY KNEW ABOUT HER
16 LOYALTY. THEY EVEN KNEW ABOUT HER EMOTION; AND THAT THERE
17 MAY COME A TIME IN THIS PROCESS BECAUSE OF THE WAY SHE
18 CARES FOR PEOPLE, THAT SHE COULD CRY ON BEHALF OF THE BANK
19 OF AMERICA.

20 WHY WOULD THEY WANT TO SEND SOMEBODY WHO THEY ARE THAT
21 FAMILIAR WITH DOWN HERE? IT'S BIGGER THAN WE SEE.

22 NOW, KELLY KELLEY, OF COURSE, SHE IS WITH CHILD. AND
23 SHE SHED A TEAR OR TWO WHEN SHE WAS UP THERE. BUT PLEASE
24 UNDERSTAND THIS, WHEN KELLY KELLEY HIRED THE JENKINSON LAW
25 FIRM, WHO GAVE ME THE PRIVILEGE OF WORKING WITH THEM ON

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0695

APPENDIX 705

1 THIS CASE, SHE DIDN'T SAY, I WANT YOU ALL TO GO IN THERE
2 AND BEG FOR CODY. SHE SAID, I WANT YOU ALL TO GO IN THERE
3 AND RIGHT THE UN-JUSTICES THAT HAVE BEEN DONE TO CODY; AND
4 THAT HAS BEEN OUR MISSION. YOU TALKING ABOUT FROM DAY-ONE
5 -- THAT HAS BEEN OUR MISSION.

6 THEY CAN TALK ALL THEY WANT FOR HOW MANY DAYS IT TOOK
7 US TO FIND THEIR EMPLOYEES -- US TO FIND THEIR EMPLOYEES.
8 THEY CAN TALK ABOUT IT. WHY CAN'T THEY SAY HOW THEY
9 BROUGHT THEM HERE TO WILLIAMSBURG COUNTY WHERE CODY POWELL
10 LIVES, FOR US TO TALK TO THEM AND HAVE THEIR DEPOSITIONS
11 AND STUFF TAKEN. COME ON. TRYING TO SHIFT THE BLAME.

12 LIKE AN OLD LADY SAID WHEN WE WERE IN BIBLE SCHOOL ONE
13 DAY AND SHE WAS TALKING AND WENT BACK TO ADAM AND EVE. SHE
14 SAID, YOU KNOW, THESE KINDS OF THINGS HAVE BEEN HAPPENING,
15 SHE SAID, OVER TIME. SHE SAID, WHAT WAS IT THAT ADAM SAID
16 TO GOD ONCE GOD REALIZED THAT ADAM HAD SINNED? WHAT WERE
17 THE FIRST THINGS OUT OF ADAM'S MOUTH? NOT THAT HE'S WRONG,
18 BUT IT WAS THAT WOMAN THAT YOU GAVE ME.

19 YOU SEE, IT'S ALL ABOUT THIS BUSINESS OF POINTING
20 FINGERS, SHIFTING RESPONSIBILITY TO SOMEBODY ELSE IN ORDER
21 THAT WE MIGHT AVOID RESPONSIBILITY. WE ALL AGREE ABOUT
22 KAREN UNRUE AND WHAT SHE HAS DONE AND HOW HORRIBLE IT IS
23 AND HOW HER DAY WILL COME. JUSTICE DELAYED FOR HER WILL
24 NOT BE JUSTICE DENIED, AND NEITHER WILL IT BE FOR CODY
25 POWELL.

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ROA 0696

APPENDIX 706

1 I HOPE THAT IT IS CLEAR TO YOU ALL THAT THE BANK IS AT
2 FAULT IN THIS CASE. THERE'S ANOTHER OLD ADAGE THAT SAYS
3 THAT THE EYES BELIEVE ITSELF AND THE EARS BELIEVE OTHER
4 PEOPLE.

5 I APPRECIATE THE COURT LETTING US BRING THE -- AND IT
6 DOESN'T ALWAYS WORK RIGHT. BUT I APPRECIATE THE COURT
7 LETTING US BRING IT IN HERE IN ORDER THAT WE MIGHT BE ABLE
8 TO BLOW IT UP, SO THAT YOU ALL COULD SEE CLEARLY THAT ALL
9 THE EYES HAD TO DO IS TRACK THE SYSTEM. OKAY. ALL IT HAD
10 TO DO IS TRACK THE SYSTEM. IT'S THERE IN PLAIN LANGUAGE.

11 I WANT YOU TO KNOW HOW FAR THEY'VE GONE THOUGH ON THIS
12 ISSUE OF CONSCIOUSNESS -- JUST LIKE MR. JENKINSON SAID.
13 THEY'VE GONE SO FAR AS TO SAY THAT THEY KNOW -- NOT THE
14 PERSON THAT HANDLED THE CHECKS, OKAY. YOU REMEMBER, MS.
15 YOURKO NEVER SAID SHE COULD TELL WHICH CHECK CAME FIRST,
16 SECOND, THIRD, FOURTH, OR FIFTH. SHE NEVER SAID IT. ALL
17 SHE SAID WAS THAT SHE COULDN'T REMEMBER IT.

18 BUT THEY WOULD BRING THEIR REPRESENTATIVE FROM MT.
19 PLEASANT, WHO WOULD SAY, WHAT? THE CHECKS WERE IN A
20 CERTAIN ORDER. THE ONE WITH CO-CN CAME FIRST. AND THAT
21 WHAT THE TELLER DID -- HOW SHE MADE JUST A MISTAKE, IS THAT
22 SHE DIDN'T KNOW WHAT CO-CN WAS, AND THAT SHE DIDN'T LOOK AT
23 THE OTHER CHECKS. ALL SHE DID WAS FLIP TO THE CORNERS,
24 JUST FLIP TO THE CORNERS. DON'T LOOK AT ANY OF THE
25 LANGUAGE, JUST FLIP TO THE CORNERS AND ADD THEM UP; AND

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ROA 0697

APPENDIX 707

1 THAT THAT CHECK CAME FIRST.

2 NOW, HOW IN THE WORLD CAN SOMEBODY WHO HADN'T SEEN THE
3 CHECKS FOR YEARS AND YEARS AND YEARS COME UP WITH THIS
4 THEORY?

5 BUT THE WHOLE BASIS, FOLKS, OF ALL OF THAT IS THEY
6 KNOW THAT IF WE ESTABLISH THAT THERE IS A CONSCIOUS
7 DISREGARD FOR THE RIGHTS OF OTHERS, THEN THAT'S CONSIDERED
8 TO BE RECKLESS CONDUCT WHICH GIVES RISE TO PUNITIVE DAMAGES
9 IN A CASE. AND I WANT TO TALK ABOUT THAT IN JUST A MINUTE.

10 BUT LET ME TELL YOU, TRAVIS POWELL -- THE OTHER GUY
11 THAT'S UP THERE. WHEN HE TESTIFIED THAT THE BANK BETRAYED
12 HIS TRUST AS WELL -- SEE, TRAVIS HAD RIGHTS IN THIS CASE
13 TOO. THEY NEVER SHOULD HAVE ACCEPTED A CHECK WITH HIS NAME
14 ON IT WITHOUT HIM BEING THERE, ESPECIALLY CHECKS OF THOSE
15 SIZES, WITHOUT HIM BEING PRESENT, NOT PUTTING HIS NAME
16 ANYWHERE ON THE ACCOUNT. YOU DON'T DO IT UNLESS -- I DON'T
17 CARE WHAT MR. DAVIS SAID IN HIS OPENING STATEMENT ABOUT
18 THERE NOT BEING AN INCENTIVE PROGRAM. YOU ALL REMEMBER
19 WHEN HE SAID THAT? WE KNOW THAT THERE IS.

20 NOW, THEY MIGHT NOT GIVE US ALL THE DETAILS OF IT.
21 YOU NOTICE EVERY PERSON THAT TALKED ABOUT THAT PROGRAM,
22 NONE OF THEM COULD TELL US THAT AFTER YOU GET YOUR 20
23 POINTS, IF YOU DEPOSIT "X" AMOUNT OF DOLLARS, YOU GET THIS
24 BONUS. IF YOU DEPOSIT "Y", YOU GET THIS AMOUNT. IF IT'S
25 FOR THIS PERIOD OF TIME -- HOW CAN WE FIND OUT THAT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0698

APPENDIX 708

1 INFORMATION UNLESS THEY TELL US? THEY KNOW THE PROGRAM
2 EXISTS. WHY ARE THEY HIDING IT? WHY ARE THEY HIDING THE
3 DETAILS OF IT?

4 WHAT WE KNOW ABOUT IT IS THAT IT ENCOURAGES PEOPLE --
5 LET ME JUST GIVE YOU A QUICK FOR INSTANCE. I HOPE NOT TO
6 BE BEFORE YOU TOO LONG, BUT I JUST -- THIS IS MY ONLY
7 OPPORTUNITY TO TALK ON BEHALF OF CODY. AND IF YOU ALL WILL
8 ALLOW ME, PLEASE, I JUST NEED TO TALK JUST A LITTLE BIT
9 LONGER.

10 BUT THEY -- THEY -- THEY KNOW. AND -- GOSH, LOST MY
11 TRAIN OF THOUGHT. WHERE WAS I? CAN YOU HELP ME ON MY LAST
12 SENTENCE PLEASE? THAT'S FINE. I'LL JUST GO ON TO
13 SOMETHING.

14 BUT I GUESS THE POINT THAT I WANTED TO TRY TO MAKE WAS
15 THAT THEY KNOW THAT WHEN IT COMES TO THE ISSUE OF
16 CONSCIOUSNESS -- OKAY. I WAS TALKING ABOUT TRAVIS POWELL
17 AND TRAVIS' RIGHTS AS IT RELATES TO THEM AND NOT REQUIRING
18 HIM TO BE THERE AND CREATING THE ACCOUNT WHERE TRAVIS IS
19 NOT A PART OF IT.

20 WHAT THEY KNOW IS THAT IF YOU ALL DETERMINE THAT THEY
21 ARE VIOLATING THE RIGHTS OF OTHERS, THEN YOU HAVE THE
22 OPPORTUNITY TO SAY TO THEM, DON'T DO IT THAT WAY. DO IT
23 THE RIGHT WAY. HAVE EVERYBODY BEFORE YOU AND DO IT THE
24 RIGHT WAY.

25 OKAY. I JUST HAVE ABOUT THREE MORE POINTS, AND THEN

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ROA 0699

APPENDIX 709

1 I'LL BE FINISHED.

2 JUST WANT TO FOLLOW UP ON ONE POINT THAT I MADE
3 EARLIER ABOUT THEM AND WATCHING THIS CASE AND WHAT ELSE IS
4 GOING ON. FOR THE FIRST TIME THIS WEEK THERE WAS A TEAR
5 SHED ON BEHALF OF CODY POWELL BY ONE OF A CARING BANK OF
6 AMERICA EMPLOYEE. I PROMISE YOU, THAT WAS THE FIRST TEAR.

7 YOU HEARD ANITA BAKER WHEN SHE SAID, NO MORE TEARS. I
8 PROMISE YOU, THAT WAS THE LAST TEAR THAT WILL BE SHED.

9 NOW, WHAT CAN HAPPEN IF YOU ALL DON'T FIND A PUNITIVE
10 DAMAGES VERDICT IN THIS CASE? THAT TEAR IN THE UPPER ROOM
11 AT BANK OF AMERICA, IT BECOMES LAUGHTER. YOU HEARD ABOUT
12 LAUGHING ALL THE WAY TO THE BANK. THEY WILL LAUGH ALL THE
13 WAY THERE, INSIDE, AND IN THE UPPER ROOM, BECAUSE THEY
14 WOULD HAVE BEEN SUCCESSFUL AT MAKING YOU ALL THINK THAT
15 THIS WAS JUST A SIMPLE MISTAKE, NOT A MISTAKE ROOTED IN
16 DISREGARDING THE RIGHTS OF PEOPLE, NOT A MISTAKE ROOTED IN
17 THE IDEA IF I DEPOSIT THIS MONEY, THAT I GET A BONUS. THE
18 WHOLE SYSTEM HAS PROBLEMS AND YOU CAN CHANGE THAT NOTION.

19 LET ME STICK TO MY SCRIPT FOR A SECOND, BECAUSE I
20 DON'T WANT TO BE BEFORE YOU TOO LONG.

21 THE ACTUAL DAMAGES IN THIS CASE ARE \$205,735.37. NOW,
22 MR. JENKINSON HAS GIVEN YOU ALL WHAT WE BELIEVE TO BE A
23 MEASURED RESPONSE TO THE PUNITIVE DAMAGES IN THIS CASE. IT
24 IS A MEASURED RESPONSE, YOU SEE. BECAUSE IN THOSE 30
25 MINUTES OF THE FIRST TRANSACTION, THAT WAS THE 30 MINUTES

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ROA 0700

APPENDIX 710

1 THAT MR. HUBBS SAID THEY GAVE CODY POWELL'S MONEY TO KAREN
2 UNRUE, BECAUSE THEY TOOK IT OUT OF THE RESTRICTIONS OF THE
3 COURT AND THEY PUT IT IN UNRUE'S NAME. THOSE 30 MINUTES
4 WERE 30 MINUTES THAT THEY TOOK CODY'S MONEY AWAY AND GAVE
5 IT TO KAREN; THAT'S THE SIGNIFICANCE OF THE FIRST 30
6 MINUTES.

7 THE SECOND 30 MINUTES, WHEN THEY CREATED THAT OTHER
8 ACCOUNT, YOU SEE, THAT WAS THE ACCOUNT THAT KAREN USED TO
9 TAKE THE MONEY OUT OF THE FIRST AND TO PUT THE MONEY IN THE
10 SECOND. IN THAT HOUR'S PERIOD OF TIME, CODY'S MONEY WENT
11 UP IN SMOKE; AND THAT'S A GOOD WAY FOR YOU TO SAY TO THE
12 BANK OF AMERICA, THOSE WERE THE PERIODS OF TIME YOU TOOK
13 HIS MONEY AWAY. WE WANT YOU TO UNDERSTAND THAT YOU OUGHT
14 NOT DO THAT AS IT RELATES TO HIM OR ANYONE ELSE.

15 NOW, MR. DAVIS -- AND I CAN'T OBJECT WHEN PEOPLE
16 MAKING THEIR OPENING ARGUMENT. AND I'M NOT BLAMING HIM FOR
17 -- CLOSING ARGUMENT. I'M NOT BLAMING HIM FOR WHAT HE DID
18 TO MR. JENKINSON. BUT WHAT I WANT YOU ALL TO KNOW IS, WHEN
19 HE STARTED TALKING ABOUT THIS NOTION OF IT NOT HAPPENING TO
20 ANY PLACE ELSE AND US NOT BEING ABLE TO PROVE THAT, NOT
21 BEING ABLE TO -- I WANTED TO JUMP UP. I HAD TO LOOK AT
22 JENNIFER AND HAVE HER TOUCH ME ON MY LEG, BECAUSE THIS CASE
23 IS NOT ABOUT THAT. THIS CASE IS ABOUT THOSE POSSIBILITIES.
24 AND I PROMISE YOU, IF YOU ALL HAVE LOOKED AT THE WAY THAT
25 THEY DO BUSINESS, WHEN IT COMES TO THESE CONSERVATOR

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ROA 0701

APPENDIX 711

1 ACCOUNTS, IF YOU ALL HAVE LOOKED AT IT, AND IF YOU ALL ARE
2 SATISFIED IN YOUR OWN MIND THAT THEY GIVE THEMSELVES THE
3 PROPER TRAINING TO BE ABLE TO MANAGE THESE ACCOUNTS, THAT
4 THEY LOOK AT THE SIGNATURES ON THESE ACCOUNTS AND MAKE SURE
5 THAT PEOPLE ARE THERE, THAT THEY GET THE PROPER
6 IDENTIFICATIONS TO MAKE SURE THE PEOPLE ARE THERE, THAT IF
7 CONSERVATOR IS ON THE ACCOUNT, THAT THEY WILL ASK FOR THE
8 COURT ORDER. IF YOU ALL ARE SATISFIED THAT THAT'S THE
9 PRACTICE THAT THEY ARE ENGAGING IN OVER AND OVER AND OVER
10 AGAIN, THEN HE'S RIGHT. OUR JOB WAS NOT TO BRING IN
11 ANYBODY ELSE WHOSE BEEN HARMED BY THE BANK OF AMERICA. OUR
12 JOB IS TO EXPOSE YOU ALL TO THE SYSTEM THAT PEOPLE COME IN
13 TO WHEN THEY GO THERE. AND IT'S THAT SYSTEM THAT WE ARE
14 ASKING YOU ALL TO EXAMINE.

15 AND SO WHEN WE LOOK AT THE ACTUAL DAMAGES OF \$205,000-
16 PLUS IN THIS CASE -- SEE, I KNOW WE'RE TALKING ABOUT MONEY.
17 BUT WHAT WOULD HAPPEN IF YOU CUT THE ACTUAL DAMAGES IN HALF
18 JUST BECAUSE IT'S LARGE? WHAT YOU'D HAVE THERE IS HALF
19 JUSTICE. AND, SEE, HALF JUSTICE IS AN INJUSTICE. AND AN
20 INJUSTICE IS SIMPLY NO JUSTICE AT ALL. SO YOU DON'T CUT IT
21 JUST BECAUSE OF ITS SIZE.

22 AND SO I SUBMIT TO YOU ALL, IF YOU BELIEVE AS BILLY,
23 JENNIFER, KELLY KELLEY, AND I BELIEVE THAT THAT IS A
24 REASONABLY MEASURED AMOUNT, THEN IT'S APPROPRIATE FOR YOU
25 TO FIND IT.

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ROA 0702

APPENDIX 712

1 I TELL YOU WHAT I LIKED ABOUT IT WHEN BILLY WAS
2 TELLING YOU HE WAS THINKING ABOUT IT. MY GRANDMOTHER HAS
3 THIS THING -- AND I BELIEVE THE AMOUNTS ARE \$1,538,000.
4 THAT'S WHAT BILLY SAYS WILL SEND A MESSAGE TO BANK OF
5 AMERICA.

6 MY GRANDMOTHER SAID, SON, WHEN YOU WANT SOMEBODY TO DO
7 SOMETHING, YOU DO IT A DIFFERENT SORT OF A WAY. AND THIS
8 IS THE WAY MY GRANDMOTHER TOLD ME TO DO IT. MY GRANDMOTHER
9 TOLD ME TO SAY PLEASE.

10 EACH ONE OF THESE FIGURES WILL REPRESENT A MESSAGE
11 FROM WILLIAMSBURG COUNTY TO THE UPPER ROOM AT BANK OF
12 AMERICA SAYING PLEASE, DON'T DISREGARD THE RIGHTS OF ANYONE
13 WHOSE NAME APPEARS ON A CHECK, WHETHER IT'S THE
14 CONSERVATOR, WHETHER IT'S TRAVIS POWELL. DON'T DISREGARD
15 THOSE NAMES ON THE CHECK. AND, OH, BY THE WAY, PLEASE,
16 EVEN IF YOU DISREGARD THE NAMES ON THE CHECK, AT LEAST
17 PROTECT THE PERSON BY PUTTING THEIR NAME ON THE ACCOUNT
18 THAT THE MONEY IS GOING TO COME OUT OF.

19 AND PLEASE DON'T COME BEFORE US, BANK OF AMERICA, AND
20 TELL US THAT YOU ALL ARE FOREIGN TO THIS NOTION OF
21 CONSERVATORS WHEN YOU'VE GOT A PERSON FROM NORTH CAROLINA
22 THAT'S HERE IN COURT RIGHT NOW THAT TESTIFIED UNDER OATH
23 THAT THEY HAVE LOTS OF THESE ACCOUNTS IN SOUTH CAROLINA.
24 DOESN'T IT MAKE SENSE? THINK ABOUT IT, ANY TIME SOMEBODY
25 GETS OLD -- ALZHEIMERS AND THEY'VE GOT A BUNCH OF MONEY.

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ROA 0703

APPENDIX 713

1 GUESS WHO HAS TO BE APPOINTED FOR THEM? CONSERVATORS. ANY
2 TIME A CHILD IS INVOLVED IN A CAR ACCIDENT AND COMES IN TO
3 A SIZEABLE AMOUNT OF MONEY, GUESS WHO'S GOT TO BE APPOINTED
4 FOR THEM? CONSERVATORS. ANY TIME A PERSON'S PARENT DIES
5 AND THEY INHERIT A CERTAIN AMOUNT OF MONEY OR A CERTAIN
6 AMOUNT OF PROPERTY, GUESS WHO'S IN CHARGE OF THEM? AND IF
7 YOU FOR A MINUTE THINK THAT THE BIGGEST BANK IN THE UNITED
8 STATES OF AMERICA IS NOT FAMILIAR WITH THESE SITUATIONS,
9 YOU'VE GOT ANOTHER THOUGHT COMING. ANOTHER THOUGHT COMING.

10 I'M ABOUT FINISHED. AND I DO WANT TO LEAVE YOU ALL
11 WITH ONE LITTLE THING. I TELL YOU, BILLY JENKINSON,
12 JENNIFER KELLAHAN, RONNIE SABB, AND KELLY KELLEY HAVE DONE
13 EVERYTHING WE KNOW TO FIND EVERY PIECE OF EVIDENCE WE COULD
14 FIND TO PRESENT IT TO YOU ALL. WE TRIED TO DO IT IN AN
15 HONEST-TYPE FASHION. AND WE'VE GOT A CLEAR CONSCIENCE
16 ABOUT WHAT WE'VE DONE AND HOW WE'VE GONE ABOUT IT. AND
17 WE'RE COMFORTABLE WHERE WE ARE. WE HOPE THAT YOU ALL ARE
18 COMFORTABLE WITH WHERE YOU ARE.

19 AND WHILE I'M ON THAT SUBJECT, ONE MORE STORY AND THEN
20 I'LL SIT DOWN.

21 EVERY ONCE IN A WHILE WE ASK OURSELVES WHY ARE WHERE
22 WE ARE? AND I BELIEVE THAT WE ARE WHERE WE ARE FOR
23 SPECIFIC PURPOSES AT SPECIFIC TIMES. AND SO THERE'S THIS
24 STORY ABOUT A PREACHER. AND THE PREACHER HAD PASSED BY AN
25 ELDERLY LADY BALLED UP IN A CORNER. IT WAS COLD. SHE

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APPENDIX 714

1 APPEARED MALNOURISHED AND WAS DISHEVELED IN TERMS OF HOW
2 SHE DRESSED. AND THE PREACHER BEING A MAN WITH A
3 RELATIONSHIP WITH THE HIGHER PERSON, INDICATED, GOD, WHY
4 HAVEN'T YOU DONE SOMETHING?

5 AND THEN THE VOICE ANSWERED HIM AND SAID, I HAVE. I
6 MADE YOU.

7 FOLKS, YOU ALL HAVE BEEN QUALIFIED BY HIS HONOR TO
8 RENDER A VERDICT IN THIS CASE THAT SPEAKS THE TRUTH. DON'T
9 TAKE THAT LIGHTLY.

10 I AGREE WITH MY FRIEND, CLARENCE DAVIS, WHEN HE SAID
11 IN OPENING STATEMENT THAT WE ALL WANT YOU ALL TO RISE TO
12 THE HIGH CALLING THAT'S ASSOCIATED WITH THIS KIND OF
13 SERVICE. AND, MADAM FORELADY, YOU WILL BE GIVEN THE
14 VERDICT FORM BY THE JUDGE. SOMEWHERE THERE WILL BE A PEN.
15 WE SUBMIT TO YOU THAT PEN IS NO REGULAR PEN. FOR THAT PEN
16 CAN BE USED TO ANNIHILATE AND ERADICATE AN INJUSTICE THAT'S
17 BEEN TO CODY POWELL IN THIS CASE.

18 WE BELIEVE THAT EVERY PHARAOH HAS ITS MOMENTS. AND
19 JUST BECAUSE WE DON'T HAVE A ROD, THERE IS A PEN. AND THAT
20 PEN CAN REPRESENT TRUTH. THAT PEN CAN REPRESENT JUSTICE.
21 WE ASK THAT YOU ALL DO JUSTICE.

22 THANK YOU.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IT'S
24 1:30. WE ARE GOING TO BREAK FOR LUNCH FOR ABOUT 30 MINUTES
25 OR SO. THE FOOD IS ALREADY HERE. PLEASE DO NOT DISCUSS

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APPENDIX 715

1 THE CASE. WE'LL COME BACK FOR FURTHER INSTRUCTIONS.
2 (THE JURY RETIRES TO THE JURY ROOM AT 1:30 P.M.)
3 THE COURT: OKAY.
4 MR. SABB: JUDGE, MAY I BE EXCUSED PLEASE?
5 THE COURT: YES, SIR.
6 WE ARE GOING TO BREAK 35 MINUTES.
7 MR. JENKINSON: YOUR HONOR, PLEASE. FOR THE RECORD, I
8 THINK YOU WANTED A COPY OF THE SLIDE IN QUESTION.
9 THE COURT: ALL RIGHT.
10 MR. JENKINSON: AND I THINK IT WOULD ALSO BE
11 APPROPRIATE TO MARK THE FORMS OF VERDICT WE SUBMITTED
12 EARLIER FOR THE RECORD AS WELL.
13 THE COURT: ALL RIGHT.
14 MR. DAVIS: AND IN SUBMITTING THIS DOCUMENT, WE WOULD
15 RENEW OUR MOTION FOR A MISTRIAL.
16 THE COURT: ALL RIGHT. I RENEW MY DENIAL.
17 (HANDWRITTEN PROPOSED VERDICT FORM MARKED FOR
18 IDENTIFICATION AS COURT'S EXHIBIT NO. 6.)
19 (ONE PAGE ENTITLED, NEGLIGENCE, MARKED FOR
20 IDENTIFICATION AS COURT'S EXHIBIT NO. 7.)
21 (COURT IS IN RECESS FOR LUNCH.)
22 THE COURT: ALL RIGHT. BRING THE JURY.
23 (THE JURY RETURNS TO THE COURTROOM AT 2:30 P.M.)
24 CHARGE OF THE COURT:
25 MADAM FORELADY AND MEMBERS OF THE JURY, YOU'VE HEARD

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ROA 0706

APPENDIX 716

1 THE EVIDENCE AND THE ARGUMENTS OF BOTH PARTIES. I WILL NOW
2 EXPLAIN TO YOU THE LAW WHICH APPLIES TO THIS ACTION.

3 NOW, THE PLAINTIFF CLAIMS THAT HE'S BEEN DAMAGED BY
4 THE ACTIONS OF THE DEFENDANT. IN BRINGING THIS LAWSUIT,
5 THE PLAINTIFF CLAIMS THAT THE DEFENDANT SHOULD COMPENSATE
6 HIM FOR HIS DAMAGES.

7 NOW, I REMIND YOU THAT DURING THIS TRIAL YOU AND I
8 HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS
9 MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE,
10 AND TO RULE ON MATTERS INVOLVING THE EVIDENCE OFFERED
11 DURING THIS TRIAL.

12 YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE YOU. IF
13 THERE WAS TESTIMONY ORDERED STRICKEN FROM THE RECORD DURING
14 THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO
15 CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM
16 THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A
17 PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF
18 COUNSEL.

19 NOW, THE PARTIES HAVE STIPULATED ACTUAL DAMAGES IN
20 THIS CASE ARE \$205,735.37.

21 NOW, I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
22 APPLICABLE TO THIS CASE. AND IT YOUR DUTY AS JURORS TO
23 ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU
24 THINK YOU HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE
25 LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL

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ROA 0707

APPENDIX 717

1 YOU THE LAW IS, YOU MUST FORGET THAT IDEA, BECAUSE YOU ARE
2 SWORN TO ACCEPT AND APPLY THE LAW EXACTLY AS I STATE IT TO
3 YOU.

4 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE
5 JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS.
6 THE TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY STATEMENT
7 ABOUT THE FACTS IN A CASE.

8 SINCE YOU ARE THE SOLE JUDGES OF THE FACTS, DO NOT
9 THINK BY ANYTHING I HAVE SAID DURING THE TRIAL THAT I HAVE
10 AN OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT
11 ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS. THIS IS A
12 MATTER SOLELY FOR YOU THE JURY TO DECIDE.

13 NOW, THE PLAINTIFF HAS THE BURDEN OF PROVING HIS
14 CLAIMS IN THIS CASE. YOU MUST MEET THIS BURDEN AS TO
15 ACTUAL DAMAGES BY THE PREPONDERANCE OF THE EVIDENCE.

16 A PREPONDERANCE SIMPLY MEANS THE GREATER WEIGHT OF THE
17 EVIDENCE. IT IS THE EVIDENCE WHICH AS A WHOLE SHOWS THAT
18 THE FACTS SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT
19 TRUE.

20 AND THIS CAN BE ILLUSTRATED BY IMAGINING A SET OF
21 SCALES. WHEN THE CASE BEGINS, THE SCALES ARE EVEN. AFTER
22 ALL THE EVIDENCE HAS BEEN PRESENTED, IF THE SCALES SHOULD
23 REMAIN EVEN OR IF THEY TIP EVEN SLIGHTLY IN FAVOR OF THE
24 DEFENDANT, THEN THE PLAINTIFF HAS FAILED TO MEET HIS BURDEN
25 OF PROOF AND WOULD NOT BE ENTITLED TO RECOVER IN THIS CASE.

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APPENDIX 718

1 IF ON THE OTHER HAND THE SCALES TIP EVEN SLIGHTLY IN
2 FAVOR OF THE DEFENDANT (SIC), THE PLAINTIFF THEN WILL HAVE
3 MET THE BURDEN OF PROOF AND YOU SHOULD RETURN A VERDICT FOR
4 THE PLAINTIFF.

5 THE PREPONDERANCE OF THE EVIDENCE IS NOT DETERMINED BY
6 THE NUMBER OF WITNESSES. INSTEAD, IT MUST BE DETERMINED BY
7 THE GREATER WEIGHT OF ALL THE EVIDENCE.

8 NOW, NECESSARILY YOU MUST DETERMINE THE CREDIBILITY OF
9 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
10 SIMPLY MEANS BELIEVABILITY. AND IT BECOMES YOUR DUTY AS
11 JURORS TO EVALUATE THE EVIDENCE AND DETERMINE WHICH
12 EVIDENCE CONVINCES YOU IT IS TRUE.

13 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE
14 TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS AGAINST
15 SEVERAL WITNESSES, OR SEVERAL WITNESSES OVER ONE WITNESS.
16 YOU MAY BELIEVE PART OF THE TESTIMONY OF A WITNESS AND
17 REJECT THE REMAINING PART OF THE TESTIMONY OF THE SAME
18 WITNESS.

19 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
20 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
21 ENTIRETY.

22 YOU MAY CONSIDER WHETHER THE WITNESS HAS ANY INTEREST
23 IN THE RESULTS OF THE TRIAL, WHETHER THE WITNESS IS
24 PREJUDICED TOWARD EITHER THE PLAINTIFF OR THE DEFENDANT,
25 THE OPPORTUNITY OF THE WITNESS TO HAVE SEEN THE MATTERS AND

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APPENDIX 719

1 THINGS ABOUT WHICH A WITNESS MAY TESTIFY, AND THE
2 APPEARANCE AND DEMEANOR OF THE WITNESS ON THE WITNESS
3 STAND.

4 NOW, YOU'VE ALSO HEARD TESTIMONY OF WITNESSES WHO HAVE
5 SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, AND TRAINING, OR
6 EDUCATION IN THE FIELD OF A PARTICULAR PROFESSION OR
7 OCCUPATION, AND WHO HAVE GIVEN THEIR -- WHO HAVE GIVEN
8 THEIR OPINIONS AS EXPERTS ABOUT MATTERS IN WHICH THEY ARE
9 SKILLED.

10 IN DETERMINING THE WEIGHT TO BE GIVEN SUCH AN OPINION,
11 YOU SHOULD CONSIDER THE QUALIFICATIONS AND CREDIBILITY OF
12 THE EXPERTS AND THE REASON GIVEN FOR THEIR OPINION. YOU'RE
13 NOT BOUND BY SUCH OPINIONS. GIVE THEM THE WEIGHT IF ANY TO
14 WHICH YOU DEEM THEM TO BE ENTITLED.

15 YOU MUST NOT CONSIDER AS EVIDENCE ANY STATEMENT OF
16 COUNSEL MADE DURING THE TRIAL. STATEMENTS OF COUNSEL DO
17 NOT CONSTITUTE EVIDENCE. RATHER, COUNSEL IS ARTICULATING
18 THE POSITION AND CONTENTION OF HIS CLIENT OR HER CLIENT.
19 THIS RULE APPLIES TO THE OPENING STATEMENTS OF COUNSEL AND
20 CLOSING ARGUMENTS.

21 IN THIS CASE THE DEFENDANT IS A CORPORATION. UNDER
22 OUR LAWS A CORPORATION IS TREATED AS IF IT WERE A PERSON.
23 IT MAY SUE AND BE SUED IN A COURT OF LAW. THIS CASE SHOULD
24 BE CONSIDERED AND DECIDED BY YOU AS AN ACTION BETWEEN
25 PERSONS OF EQUAL STANDING IN THE COMMUNITY AND HOLDING THE

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ROA 0710

APPENDIX 720

1 SAME OR SIMILAR POSITIONS IN LIFE.

2 ALL PERSONS STAND EQUAL BEFORE THE LAW AND ARE TO BE
3 DEALT WITH AS EQUALS IN A COURT OF JUSTICE.

4 FURTHERMORE, A CORPORATION MAY BE LIABLE FOR THE
5 WRONGFUL ACTS OR OMISSIONS OF ITS OFFICERS, AGENTS, OR
6 EMPLOYEES IF THEY ARE ACTING WITHIN THE SCOPE OF THEIR
7 AUTHORITY OR IN THE COURSE OF THEIR EMPLOYMENT.

8 IN THIS CASE IF YOU FIND THE CORPORATION LIABLE FOR
9 THE ACTS OF ITS EMPLOYEES, YOU WOULD FIRST HAVE TO
10 DETERMINE WHETHER THAT INDIVIDUAL WAS ACTING WITHIN THE
11 SCOPE OF THEIR AUTHORITY OR IN THE COURSE OF THEIR
12 EMPLOYMENT AT THE TIME THE EVENT OCCURRED.

13 TO STATE A CAUSE OF ACTION AGAINST A DEFENDANT, THE
14 LAW REQUIRES A PLAINTIFF TO SET OUT IN HIS COMPLAINT THREE
15 ESSENTIAL CLAIMS. THESE ESSENTIAL CLAIMS ARE FIRST, THAT
16 THE DEFENDANT WAS NEGLIGENT IN ONE OR MORE OF THE WAYS
17 STATED IN THE COMPLAINT. AND LATER IN THIS INSTRUCTION, I
18 WILL EXPLAIN TO YOU WHAT IS MEANT BY NEGLIGENCE.

19 SECOND, THAT THE PLAINTIFF WAS PERSONALLY INJURED OR
20 DAMAGED.

21 AND, THIRD, THAT THE NEGLIGENCE OF THE DEFENDANT WAS
22 THE PROXIMATE CAUSE OF PLAINTIFFS' DAMAGES.

23 LATER IN THIS INSTRUCTION I WILL EXPLAIN PROXIMATE
24 CAUSE MORE FULLY.

25 IN HIS COMPLAINT, THE PLAINTIFF IN THIS ACTION HAS SET

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ROA 0711

APPENDIX 721

1 FORTH THESE THREE ESSENTIAL CLAIMS.

2 NOW, NEGLIGENCE MEANS THAT A PERSON -- LET ME STEP
3 BACK. THE PLAINTIFF HAS SET FORTH IN HIS COMPLAINT THREE
4 ESSENTIAL CLAIMS. THE DEFENDANT WHILE ACKNOWLEDGING THAT
5 THE PLAINTIFF HAS SUFFERED SOME DAMAGES, DENIES LIABILITY
6 FOR THOSE DAMAGES.

7 NOW, NEGLIGENCE MEANS THAT A PERSON DID NOT USE THE
8 SAME AMOUNT OF CARE THAT A PERSON OF ORDINARY REASON AND
9 PRUDENCE WOULD EXERCISE IN THE SAME CIRCUMSTANCES.

10 THE WORD CARELESS MEANS THE SAME THING. IT CAN BE
11 SAID THAT A NEGLIGENT PERSON HAS DONE SOMETHING THAT
12 REASONABLE PERSON WOULD NOT HAVE DONE IF FACED WITH THE
13 SAME SITUATION. ON THE OTHER HAND, THAT HE OR SHE HAS
14 FAILED TO DO SOMETHING THAT A REASONABLE PERSON WOULD HAVE
15 DONE OR BOTH.

16 TO DETERMINE WHETHER A PARTICULAR ACT IS NEGLIGENT,
17 YOU SHOULD COMPARE THAT ACT WITH THE MANNER IN WHICH A
18 PERSON OF ORDINARY REASON AND PRUDENCE WOULD HAVE ACTED IN
19 SIMILAR CIRCUMSTANCES.

20 TO RECOVER IN THIS CASE, THE PLAINTIFF MUST PROVE THAT
21 THE DEFENDANT WAS NEGLIGENT IN AT LEAST ONE OF THE WAYS
22 STATED IN THE PLAINTIFFS' COMPLAINT.

23 THE PLAINTIFF DOES NOT HAVE TO PROVE THEM ALL, BUT IF
24 YOU FIND THAT THE PLAINTIFF HAS NOT PROVEN AT LEAST ONE ACT
25 OF NEGLIGENCE, THEN YOUR VERDICT MUST BE FOR THE DEFENDANT.

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APPENDIX 722

1 EVEN IF YOU SHOULD FIND THAT THE PLAINTIFF HAS PROVED
2 THAT THE DEFENDANT TO HAVE BEEN NEGLIGENT, HE STILL WOULD
3 NOT BE ENTITLED TO A VERDICT UNLESS YOU FOUND THAT THE
4 DEFENDANT'S NEGLIGENCE WAS A PROXIMATE CAUSE OR A DIRECT
5 CAUSE OF THE PLAINTIFFS' DAMAGES.

6 LADIES AND GENTLEMEN, OF COURSE, THE ACTS OF
7 NEGLIGENCE CLAIMED BY THE PLAINTIFF WAS THE ACT OF
8 NEGLIGENCE IN THE HANDLING OF PLAINTIFFS' FUNDS THAT WERE
9 DEPOSITED.

10 NOW, THE LAW DEFINES PROXIMATE CAUSE OF DAMAGES TO BE
11 SOMETHING THAT PRODUCES A NATURAL CHAIN OF EVENTS WHICH IN
12 THE END BRINGS ABOUT THE DAMAGES.

13 IN OTHER WORDS, PROXIMATE CAUSE IS THE DIRECT CAUSE
14 WITHOUT WHICH THE DAMAGES WOULD NOT HAVE OCCURRED.

15 FORESEEABILITY OF SOME DAMAGE FROM ONE'S NEGLIGENCE IS
16 NECESSARY TO ITS BEING A PROXIMATE CAUSE OF DAMAGES FOR
17 WHICH RECOVERY IS SOUGHT. TO BE A PROXIMATE OR A DIRECT
18 CAUSE OF PLAINTIFFS' DAMAGES OR LOSS, IT MUST BE REASONABLY
19 FORESEEABLE THAT THE DEFENDANT'S NEGLIGENCE WOULD CAUSE
20 DAMAGES TO ANOTHER.

21 IN ORDER TO ESTABLISH RESPONSIBILITY FOR NEGLIGENCE,
22 IT IS NOT NECESSARY THAT THE PERSON OR ENTITY CHARGED WITH
23 NEGLIGENCE SHOULD HAVE CONTEMPLATED THE PARTICULAR ACT
24 WHICH OCCURRED. IT IS SUFFICIENT THAT IT SHOULD HAVE
25 FORESEEN THAT THEIR NEGLIGENCE WOULD PROBABLY CAUSE DAMAGES

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APPENDIX 723

1 TO SOMETHING OR SOMEONE, AND THAT SUCH DAMAGE OR LOSS WAS
2 THE NATURAL AND PROBABLE CONSEQUENCE OF ITS NEGLIGENCE.

3 NOW, TWO OR MORE SEPARATE AND DISTINCT ACTS OF
4 NEGLIGENCE OPERATING CONCURRENTLY MAY BOTH CONSTITUTE
5 PROXIMATE CAUSE OF THE DAMAGES.

6 CAUSES ARE CONCURRENT IF THEY ACT CONTEMPORANEOUSLY TO
7 PRODUCE A GIVEN RESULT. IN OTHER WORDS, THE INDIVIDUAL
8 ACTS OF NEGLIGENCE MUST COMBINE AND CAUSE THE DAMAGE.

9 WHERE TWO OR MORE CAUSES COMBINE TO PRODUCE DAMAGES, A
10 PERSON IS NOT RELIEVED FROM LIABILITY FOR NEGLIGENCE
11 BECAUSE HE OR SHE IS RESPONSIBLE FOR ONLY ONE OF THE
12 CAUSES. IT IS SUFFICIENT THAT HIS OR ITS NEGLIGENCE IS AN
13 EFFICIENT CAUSE WITHOUT WHICH THE DAMAGE WOULD NOT HAVE
14 RESULTED TO AS GREAT AN EXTENT.

15 CONSEQUENTLY, IF A PERSON'S NEGLIGENCE IS A PROXIMATE
16 CAUSE OF DAMAGES TO ANOTHER, THE FACT THAT THE NEGLIGENCE
17 OF A THIRD PARTY CONCURRED WITH ITS OWN NEGLIGENCE TO
18 PRODUCE THE HARM DOES NOT RELIEVE HIM OR IN THIS INSTANCE
19 IT OF LIABILITY.

20 IN SUCH CASES, BOTH WRONGDOERS ARE IN BREACH OF A DUTY
21 OF CARE OWED TO THE PLAINTIFF. AND BECAUSE THE NEGLIGENCE
22 OF BOTH CONCURRED TO PRODUCE THE DAMAGES, BOTH ARE LIABLE.

23 YOU WILL NOTE THAT I HAVE BEEN TALKING ABOUT THE
24 BURDEN OF PROOF AS IT RELATES TO THE PLAINTIFF. AS YOU
25 CONSIDER THE AFFIRMATIVE DEFENSE OF BANK OF AMERICA, WHICH

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ROA 0714

APPENDIX 724

1 IS INTERVENING CAUSE, THE BURDEN OF PROOF SHIFTS. AND ON
2 THAT ISSUE, THAT DEFENSE, THE DEFENDANT HAS THE BURDEN OF
3 PROVING THE DEFENSE BY THE GREATER WEIGHT OR THE
4 PREPONDERANCE OF THE EVIDENCE. THE BURDEN HAS SHIFTED IN
5 THAT REGARD, AND THE DEFENDANT HAS THE SAME BURDEN AS YOU
6 CONSIDER THE AFFIRMATIVE DEFENSE TO PROVE THE DEFENSE TO
7 YOUR SATISFACTION BY THE GREATER WEIGHT OR THE
8 PREPONDERANCE OF THE EVIDENCE.

9 THE DEFENDANT ASSERTS AS AN AFFIRMATIVE DEFENSE,
10 INTERVENING CAUSE. RESPONSIBILITY EXISTS FOR THE NATURAL
11 AND PROBABLE CONSEQUENCES OF NEGLIGENT ACTS OR FAILURES TO
12 ACT PROXIMATELY FLOWING FROM THAT NEGLIGENCE.

13 THE INTERVENING NEGLIGENCE OF A THIRD PERSON WILL NOT
14 EXCUSE THE FIRST WRONGDOER IF SUCH INTERVENTION OUGHT TO
15 HAVE BEEN FORESEEN IN THE EXERCISE OF DUE CARE.

16 IN SUCH CASE THE ORIGINAL NEGLIGENCE STILL REMAINS
17 ACTIVE AND A CONTRIBUTING CAUSE OF THE DAMAGES.

18 THE TEST IS TO BE FOUND IN THE PROBABLE CONSEQUENCES
19 REASONABLY TO BE ANTICIPATED AND NOT IN THE NUMBER OF EXACT
20 CHARACTER OF EVENTS SUBSEQUENTLY ARISING.

21 NOW, WHEN THE NEGLIGENCE APPEARS MERELY TO HAVE BEEN
22 BROUGHT ABOUT -- I'LL START OVER. WHEN THE NEGLIGENCE
23 APPEARS MERELY TO HAVE BROUGHT ABOUT A CONDITION OF AFFAIRS
24 OR A STIPULATION IN WHICH ANOTHER AND ENTIRELY INDEPENDENT
25 AND EFFICIENT AGENCY INTERVENES TO CAUSE THE DAMAGE, THE

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APPENDIX 725

1 LATTER IS TO BE DEEMED THE DIRECT OR PROXIMATE CAUSE AND
2 THE FORMER ONLY THE INDIRECT OR REMOTE CAUSE.

3 THE TEST, THEREFORE, BY WHICH THE NEGLIGENT CONDUCT OF
4 THE ORIGINAL WRONGDOER IS TO BE INSULATED AS A MATTER OF
5 LAW BY THE INDEPENDENT ACTS OF ANOTHER IS WHETHER THE
6 INTERVENING ACTS AND DAMAGES RESULTING THEREFROM ARE OF
7 SUCH CHARACTER THAT THE AUTHOR OF THE PRIMARY NEGLIGENCE
8 SHOULD HAVE REASONABLY FORESEEN AND ANTICIPATED THEM IN THE
9 LIGHT OF ATTENDANT CIRCUMSTANCES.

10 THE LAW REQUIRES ONLY REASONABLE FORESIGHT. AND WHEN
11 THE DAMAGE COMPLAINED OF IS NOT REASONABLY FORESEEABLE IN
12 THE EXERCISE OF DUE CARE, THERE IS NO RESPONSIBILITY. ONE
13 IS NOT CHARGED WITH FORESEEING THAT WHICH IS UNPREDICTABLE
14 OR THAT WHICH COULD NOT BE EXPECTED TO HAPPEN.

15 NOW, THE DEFENDANT KAREN POWELL UNRUE IS IN DEFAULT IN
16 THIS CASE. THE FACT THAT SHE IS IN DEFAULT MEANS THAT
17 SINCE SHE HAS NOT RESPONDED TO THE ALLEGATIONS CONTAINED IN
18 THE PLAINTIFFS' COMPLAINT, THE ALLEGATIONS MADE AGAINST HER
19 ARE DEEMED TO BE TRUE AS AGAINST KAREN POWELL UNRUE.

20 HOWEVER, THIS TRIAL HAS BEEN BIFURCATED OR DIVIDED AND
21 A DECISION AS TO A JUDGMENT AND/OR COLLECTION AGAINST KAREN
22 POWELL UNRUE WILL BE MADE AT A LATER TIME.

23 MADAM FORELADY AND MEMBERS OF THE JURY, SHOULD YOU
24 DECIDE THAT THE PLAINTIFF IS ENTITLED TO A VERDICT, YOUR
25 NEXT STEP WOULD BE TO DECIDE HOW MUCH MONEY THE DEFENDANT

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APPENDIX 726

1 SHOULD BE REQUIRED TO PAY. WE CALL SUCH AN AWARD DAMAGES.

2 DAMAGES ARE DIVIDED INTO TWO CATEGORIES, ACTUAL
3 DAMAGES AND PUNITIVE DAMAGES.

4 ACTUAL DAMAGES ARE INTENDED TO COMPENSATE THE INJURED
5 PARTY; THAT IS TO PUT HIM AS NEAR AS POSSIBLE IN THE SAME
6 POSITION THAT HE WAS IN BEFORE THE INCIDENT OCCURRED. IN
7 OTHER WORDS, ACTUAL DAMAGES WOULD BE THE ACTUAL LOSSES AND
8 EXPENSES WHICH THE PLAINTIFF HAS SUFFERED BECAUSE OF THE
9 DEFENDANT'S NEGLIGENCE.

10 THE PARTIES HAVE STIPULATED THAT THE PLAINTIFFS'
11 ACTUAL DAMAGES ARE \$205,735.37.

12 NOW, THE EXISTENCE, CAUSATION, OR AMOUNT OF DAMAGES
13 CANNOT BE LEFT TO CONJECTURE, GUESSWORK, OR SPECULATION.
14 HOWEVER, PROOF OF AN AMOUNT OF LOSS WITH ABSOLUTE
15 MATHEMATICAL CERTAINTY IS NOT REQUIRED. DAMAGES MUST BE
16 PROVED WITH A REASONABLE DEGREE OF CERTAINTY. THE EVIDENCE
17 PRESENTED BY THE PLAINTIFF MUST ENABLE YOU THE JURY TO
18 DETERMINE WHAT AMOUNT IS FAIR, JUST, AND REASONABLE.

19 IN THIS CASE THE PLAINTIFF SEEKS PUNITIVE DAMAGES IN
20 ADDITION TO ACTUAL DAMAGES. PUNITIVE DAMAGES ALSO KNOWN AS
21 EXEMPLARY DAMAGES ARE IMPOSED AS PUNISHMENT. THEY ARE NOT
22 INTENDED TO COMPENSATE.

23 PUNITIVE DAMAGES ARE ALLOWED IN THE INTEREST OF
24 SOCIETY, IN THE NATURE OF PUNISHMENT, AND AS A WARNING, AN
25 EXAMPLE TO DETER THE WRONGDOER AND OTHERS FROM COMMITTING

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APPENDIX 727

1 LIKE OFFENSES IN THE FUTURE. MOREOVER, THEY SERVE TO
2 VINDICATE A PRIVATE RIGHT BY REQUIRING THE WRONGDOER TO PAY
3 MONEY TO AN INJURED PARTY.

4 PUNITIVE DAMAGES SERVE AT LEAST THREE IMPORTANT
5 PURPOSES:

6 PUNISHMENT OF THE DEFENDANT'S RECKLESS, WILFUL, OR
7 WANTON -- WILFUL, WANTON, OR MALICIOUS CONDUCT; DETERRENCE
8 OF SIMILAR FUTURE CONDUCT BY THE DEFENDANT OR OTHERS; AND
9 COMPENSATION FOR THE RECKLESS OR WILFUL INVASION OF THE
10 PLAINTIFFS' PRIVATE RIGHTS.

11 THE PARAMOUNT PURPOSE FOR AWARDING PUNITIVE DAMAGES IS
12 NOT TO COMPENSATE THE PLAINTIFF, BUT TO PUNISH AND SET AN
13 EXAMPLE FOR OTHERS. WHERE PUNITIVE DAMAGES ARE CLAIMED,
14 THE PLAINTIFF HAS THE BURDEN OF PROVING SUCH DAMAGES BY
15 CLEAR AND CONVINCING EVIDENCE.

16 PUNITIVE DAMAGES CAN ONLY BE AWARDED WHERE THE
17 PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THE
18 DEFENDANT'S ACTIONS WERE WILFUL, WANTON, MALICIOUS, OR IN
19 RECKLESS DISREGARD FOR THE PLAINTIFFS' RIGHTS.

20 A CONSCIOUS FAILURE TO EXERCISE DUE CARE CONSTITUTES
21 WILFULNESS. IT IS THE PRESENT CONSCIOUSNESS OF WRONGDOING
22 THAT JUSTIFIES THE ASSESSMENT OF PUNITIVE DAMAGES AGAINST A
23 WRONGDOER.

24 PUNITIVE DAMAGES WILL BE ALLOWED EVEN WHEN THE
25 DEFENDANT DOES NOT REALIZE IT IS INVADING THE PLAINTIFFS'

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APPENDIX 728

1 RIGHTS SO LONG AS THE ACT IS COMMITTED IN SUCH A MANNER
2 THAT A PERSON OF ORDINARY PRUDENCE WOULD CONCLUDE IT WAS
3 DONE IN RECKLESS DISREGARD OF THE RIGHTS OF OTHERS.

4 NOW, THE PLAINTIFF CANNOT RECOVER PUNITIVE DAMAGES
5 BASED ON NEGLIGENT CONDUCT. NEGLIGENCE IS THE DOING OF
6 SOME ACT WHICH A PERSON OF ORDINARY PRUDENCE WOULD NOT HAVE
7 DONE UNDER SIMILAR CIRCUMSTANCES OR FAILURE TO DO WHAT A
8 PERSON OF ORDINARY PRUDENCE WOULD HAVE DONE UNDER SIMILAR
9 CIRCUMSTANCES.

10 MERE NEGLIGENCE WILL NOT SUPPORT A PUNITIVE DAMAGES
11 AWARD.

12 TO RECOVER PUNITIVE DAMAGES, THE PLAINTIFF MUST PROVE
13 BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT'S
14 ACTIONS WERE WILFUL, WANTON, OR RECKLESS. THE WORD
15 RECKLESS, WILFULNESS, AND WANTONNESS ARE SYNONYMOUS. THE
16 TERMS ARE USED TO DESCRIBE A CONSCIOUS FAILURE TO EXERCISE
17 AND OBSERVE REASONABLE OR DUE CARE.

18 RECKLESSNESS IS DISTINGUISHED FROM NEGLIGENCE.
19 NEGLIGENCE IS THE FAILURE TO USE DUE CARE. NEGLIGENCE IS
20 CARELESSNESS. NEGLIGENCE IS FAILURE BY OMISSION OR
21 COMMISSION TO EXERCISE DUE CARE AS A PERSON OF ORDINARY
22 REASON AND PRUDENCE WOULD EXERCISE IN THE SAME
23 CIRCUMSTANCES.

24 RECKLESSNESS IS A HIGHER DEGREE OF CULPABILITY AND
25 RESPONSIBILITY. RECKLESSNESS SIGNIFIES A CONSCIOUS FAILURE

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ROA 0719

APPENDIX 729

1 TO EXERCISE DUE CARE. RECKLESSNESS IS A CONSCIOUS
2 INDIFFERENCE TO THE RIGHTS OF THE PLAINTIFF OR A RECKLESS
3 DISREGARD OF THE RIGHTS OF THE PLAINTIFF.

4 RECKLESSNESS IS AN AWARENESS OF WRONGFUL CONDUCT, AND
5 A CONTINUATION TO ACT REGARDLESS OF CONSEQUENCES.

6 BEFORE YOU CAN AWARD PUNITIVE DAMAGES, YOU MUST FIND
7 THE PLAINTIFF IS ENTITLED TO ACTUAL OR NOMINAL DAMAGES.
8 THERE MUST BE AN AWARD OF ACTUAL OR NOMINAL DAMAGES FOR A
9 VERDICT OF PUNITIVE DAMAGES TO BE SUPPORTED.

10 THIS RULE IS PREMISED ON THE FACT THAT LIABILITY MUST
11 BE ESTABLISHED BEFORE A PLAINTIFF CAN SEEK PUNITIVE
12 DAMAGES. THEREFORE, IF YOU DO NOT AWARD ACTUAL OR NOMINAL
13 DAMAGES, THEN YOU CANNOT AWARD PUNITIVE DAMAGES.

14 THERE IS NO FORMULA OR STANDARD THAT CAN BE USED AS A
15 MEASURE OF ASSESSING PUNITIVE DAMAGES. HOWEVER, FACTORS
16 RELEVANT TO YOUR CONSIDERATION OF PUNITIVE DAMAGES ARE:

17 THE CHARACTER OF THE DEFENDANT'S ACTS.

18 THE NATURE AND EXTENT OF HARM TO PLAINTIFF WHICH THE
19 DEFENDANT CAUSED OR INTENDED TO CAUSE.

20 THE DEFENDANT'S DEGREE OF CULPABILITY.

21 THE PUNISHMENT THAT SHOULD BE IMPOSED, DURATION OF THE
22 CONDUCT, DEFENDANT'S AWARENESS OR CONCEALMENT.

23 THE EXISTENCE OF SIMILAR PAST CONDUCT.

24 THE LIKELIHOOD THE AWARD WILL DETER THE DEFENDANT OR
25 OTHERS FROM LIKE CONDUCT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0720

APPENDIX 730

1 WHETHER THE AWARD IS REASONABLY RELATED TO THE HARM
2 LIKELY TO RESULT FROM SUCH CONDUCT.

3 AND DEFENDANT'S WEALTH OR ABILITY TO PAY.

4 THE FINANCIAL CONDITION OF THE DEFENDANT IS A FACTOR
5 YOU SHOULD CONSIDER -- IS A FACTOR THAT YOU SHOULD CONSIDER
6 THAT THE DEFENDANT BY A PERSON -- LET'S SEE. EXCUSE ME A
7 MOMENT.

8 (PAUSE.)

9 LET ME START THAT THOUGHT OVER. THE FINANCIAL
10 CONDITION OF A DEFENDANT IS A FACTOR YOU SHOULD CONSIDER IN
11 AWARDING PUNITIVE DAMAGES. HOWEVER, THERE IS NO
12 REQUIREMENT THAT THE DEFENDANT BE A PERSON OF MEANS BEFORE
13 YOU ARE JUSTIFIED IN AWARDING PUNITIVE DAMAGES. WHILE THE
14 WEALTH OF A DEFENDANT IS A RELATIVE FACTOR -- A RELEVANT
15 FACTOR IN ASSESSING PUNITIVE DAMAGES, IT IS NOT NECESSARILY
16 CONTROLLING.

17 IN OTHER WORDS, THE FINANCIAL WORTH OF A DEFENDANT IS
18 A FACTOR TO BE CONSIDERED BY YOU IN DETERMINING THE AMOUNT
19 TO BE AWARDED AS PUNITIVE DAMAGES, BUT EVIDENCE OF NET
20 WORTH IS NOT A PREREQUISITE TO A PUNITIVE DAMAGE AWARD.

21 MADAM FORELADY AND MEMBERS OF THE JURY, AS YOU RETIRE
22 TO BEGIN YOUR DELIBERATIONS, I WISH TO EXPRESS THE HOPE
23 THAT EACH OF YOU WILL BE MINDFUL OF THE IMPORTANCE OF YOUR
24 RESPONSIBILITY.

25 YOU'RE NOT CALLED UPON TO SERVE AS JURORS VERY OFTEN.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0721

APPENDIX 731

1 AND THE PROPER PERFORMANCE OF THIS DUTY REQUIRES EACH OF
2 YOU TO REACH THE HEIGHT OF FREEING YOUR MIND OF ALL
3 IMPROPER INFLUENCES. YOU HAVE BEEN SWORN TO WELL AND DULY
4 TRY THIS CASE AND RENDER A VERDICT BASED ON THE LAW AND THE
5 EVIDENCE.

6 WHEN YOU HAVE DONE THAT, YOU WILL HAVE FAITHFULLY
7 DISCHARGED YOUR DUTY AS JURORS AND NO ONE WILL HAVE THE
8 RIGHT TO CRITICIZE YOUR VERDICT.

9 PLEASE REMEMBER THAT YOU HAVE NO FRIENDS TO REWARD OR
10 NO ENEMIES TO PUNISH. AND BOTH SIDES ARE ENTITLED TO A
11 FAIR AND IMPARTIAL TRIAL.

12 ANY VERDICT YOU REACH MUST BE A UNANIMOUS ONE, THAT IS
13 IT MUST BE AGREED TO BY ALL OF YOU.

14 AND, MADAM FORELADY, IT WILL BE YOUR DUTY TO PRESIDE
15 OVER THE DELIBERATIONS OF THE JURY. WHEN YOU REACH A
16 VERDICT, YOU MAY KNOCK ON THE DOOR AND WE WILL TAKE YOUR
17 VERDICT. OF COURSE, IF YOU HAVE ANY QUESTIONS BEFORE THAT,
18 ALSO KNOCK ON THE DOOR. WE'LL TAKE YOUR QUESTIONS, WHETHER
19 VERBALLY OR IN WRITING.

20 SO PLEASE RETIRE TO THE JURY ROOM ALL OF YOU, EXCEPT
21 FOR THE LAST TWO JURORS SELECTED. HOWEVER, DO NOT BEGIN
22 YOUR DELIBERATIONS UNTIL YOU ARE INSTRUCTED TO DO SO. AND
23 YOUR SIGNAL WILL BE WHEN YOU RECEIVE A COPY OF THESE
24 INSTRUCTIONS AS WELL AS THE EXHIBITS WHICH HAVE BEEN
25 INTRODUCED INTO EVIDENCE.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0722

APPENDIX 732

1 THERE'S A MATTER THAT I MUST FIRST TAKE UP WITH THE
2 ATTORNEYS. SO ALL OF YOU EXCEPT FOR THE ALTERNATES, PLEASE
3 GO TO THE JURY ROOM. WAIT FOR THE EXHIBITS AND JURY
4 INSTRUCTIONS TO BEGIN YOUR DELIBERATIONS.

5 (THE JURY RETIRES TO THE JURY ROOM AT 3:01 P.M.)

6 THE COURT: I'M GOING TO BRING THE JURY AND EXPLAIN
7 THE VERDICT FORM FIRST. HAVE THEM COME BACK AND LET ME
8 EXPLAIN THE VERDICT FORM.

9 DO YOU HAVE OTHER THINGS TOO?

10 MS. KELLAHAN: I HAVE ONE THING BEFORE THEY COME BACK
11 IN.

12 THE COURT: EVERYBODY DISAPPEARED, HUH-UH? HAVE THEM
13 HOLD THE JURY JUST FOR A SECOND. HOLD THEM RIGHT THERE AT
14 THE DOOR.

15 (PAUSE.)

16 MS. KELLAHAN: I HAD ONE MATTER, YOUR HONOR.

17 THE COURT: YES.

18 MS. KELLAHAN: WHEN YOU WERE CHARGING ACTUAL DAMAGES,
19 THERE'S NO QUESTION WE DID STIPULATE THE ACTUAL DAMAGES. I
20 THOUGHT THAT I HEARD YOU SAY ACTUAL LOSSES AND EXPENSES
21 THAT THE PLAINTIFF HAD INCURRED. AND THE ONLY REASON I
22 BRING THAT TO THE COURT'S ATTENTION IS THE STIPULATION WAS
23 THE ACTUAL LOSS THAT CODY POWELL HAD INCURRED, AND IT
24 REALLY GOES TO THE WHOLE ARGUMENT THAT MS. KELLEY MADE THAT
25 IT WOULD NOT MAKE HIM WHOLE. I DO RECOGNIZE THAT YOUR

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0723

APPENDIX 733

1 HONOR DID NOT CHARGE ACTUAL DAMAGES WILL MAKE THE PLAINTIFF
2 WHOLE. BUT I JUST WANTED TO CALL THAT TO YOUR ATTENTION,
3 BECAUSE I THOUGHT THAT'S WHAT I HEARD AND I WASN'T CERTAIN.

4 THE COURT: ALL RIGHT. BUT IF THEY AWARD THE ACTUAL
5 DAMAGES, IT HAS TO BE THE STIPULATED AMOUNT.

6 MS. KELLAHAN: NO QUESTION ABOUT IT, YOUR HONOR. IT'S
7 JUST THAT ACTUAL DAMAGES ARE THE PLAINTIFFS' ACTUAL LOSSES
8 AND EXPENSES HE INCURRED. AND THE STIPULATED ACTUAL
9 DAMAGES ARE NOT. THEY DO NOT INCLUDE COSTS, SPECIFICALLY
10 BECAUSE THEY ARE STIPULATED ACTUAL DAMAGES.

11 THE COURT: BUT THERE IS NO OTHER MEANS TO AWARD ANY
12 EXPENSES BECAUSE YOU ALL HAVE STIPULATED THAT THOSE ARE THE
13 ACTUAL DAMAGES. THE PUNITIVES WOULDN'T BE EXPENSES.

14 MS. KELLAHAN: NO, SIR. THE ACTUAL DAMAGES ARE THE
15 ACTUAL LOSSES THAT THE PLAINTIFF HAS INCURRED.

16 THE COURT: YOU DON'T WANT ME TO USE THE WORD
17 EXPENSES.

18 MS. KELLAHAN: WELL, WE JUST HAD TESTIMONY IN THE
19 RECORD ABOUT HAVING TO HIRE EXPERTS AND THINGS LIKE THAT,
20 AND THINK IT INTIMATES THAT THAT STIPULATED AMOUNT PUTS HIM
21 BACK TO WHERE HE WAS.

22 THE COURT: BUT THEY CAN'T AWARD PUNITIVE BASED ON THE
23 COST OF EXPERTS AND THINGS OF THAT NATURE.

24 MS. KELLAHAN: I AGREE WITH THAT, YOUR HONOR.

25 THE COURT: OKAY.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0724

APPENDIX 734

1 MS. KELLAHAN: I JUST WANTED TO CLARIFY THAT.

2 THE COURT: OKAY. I UNDERSTAND YOUR POINT. AND WHAT
3 DO YOU SAY ABOUT IT, MR. MCGEE?

4 MR. MCGEE: YES, YOUR HONOR. WE WOULD OBJECT TO THE
5 EXTENT THAT YOUR HONOR DID INCORPORATE THE JURY CHARGES
6 THAT WE SUBMITTED, BUT SPECIFICALLY, YOUR HONOR, WE WOULD
7 REQUEST ---

8 THE COURT: I MEAN SPECIFICALLY IN RESPONSE TO WHAT
9 SHE JUST SAID. DO YOU AGREE OR DISAGREE?

10 MR. MCGEE: I COMPLETELY AGREE WITH YOUR HONOR, IN
11 THAT ACTUAL DAMAGES, THERE IS NO WAY TO GET ATTORNEYS' FEES
12 OR EXPENSES IN A NEGLIGENCE CAUSE OF ACTION. ACTUAL
13 DAMAGES HAVE BEEN STIPULATED. SO I AGREE WITH YOUR HONOR'S
14 RULING.

15 THE COURT: WELL, THE ONE WORD MAY BE EXCESSIVE, BUT
16 IT'S PRETTY MUCH MEANINGLESS IN THE CONTEXT OF WHAT THEY'RE
17 ASKED TO DECIDE. ALL RIGHT.

18 MR. MCGEE: I APOLOGIZE FOR JUMPING AHEAD, JUDGE. I
19 DID WANT TO SPECIFICALLY REQUEST THAT YOUR HONOR
20 INCORPORATE PARAGRAPH 1 OF OUR JURY CHARGE NO. 9. ACTUAL
21 DAMAGES ARE PROPERLY CALLED COMPENSATORY DAMAGES MEANING TO
22 COMPENSATE, TO MAKE THE INJURED PARTY WHOLE, TO PUT HIM IN
23 THE SAME POSITION HE WAS IN PRIOR TO DAMAGES RECEIVED
24 INSOFAR AS THIS IS MONETARILY POSSIBLE.

25 THE COURT: ALL RIGHT. WELL, IF I BRING THEM BACK TO

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0725

APPENDIX 735

1 TELL THEM THAT, THEN I'M GOING TO -- I'LL TELL THEM THAT
2 PLUS TELL THEM WHAT MS. KELLAHAN WANTS ME TO TELL THEM.
3 MR. MCGEE: WE WITHDRAW THAT, JUST NOT TO POINT
4 ATTENTION TO BOTH OF THEM.
5 THE COURT: ALL RIGHT.
6 MR. MCGEE: AND, YOUR HONOR, JUST FOR THE RECORD, WE
7 WANTED TO PUT THE COURT'S EXHIBIT, THE LAST COURT'S EXHIBIT
8 THAT WAS PUT IN, MR. JENKINSON'S SLIDE. I THINK IT WAS
9 SHOWN DURING THE CLOSING.
10 THE COURT: ALL RIGHT. THAT'S A PART OF THE RECORD.
11 ALL RIGHT. I'M GOING TO BRING THEM BACK AND EXPLAIN
12 THE VERDICT FORM SINCE IT'S -- I'LL HAVE YOU ALL TAKE A
13 QUICK LOOK AT IT BY THE WAY IN CASE YOU WANT TO SEE IT.
14 (PAUSE.)
15 MS. KELLAHAN: I THINK WE ARE FINE.
16 MR. MCGEE: WE WOULD OBJECT, YOUR HONOR, JUST TO THE
17 EXTENT THAT IT'S NOT LIKE THE VERDICT FORM WE PUT IN.
18 THE COURT: ALL RIGHT.
19 MR. MCGEE: WE WOULD ALSO LIKE FOR THAT LAST LINE TO
20 BE NOT QUITE SO LONG.
21 THE COURT: I UNDERSTAND. ALL RIGHT. LET'S BRING
22 THEM BACK ONE MORE TIME.
23 (THE JURY RETURNS TO THE COURTROOM AT 3:08 P.M.)
24 THE COURT: LADIES AND GENTLEMEN, ONE OTHER THING I
25 WANTED TO DO BEFORE YOU GO BACK, AND THAT IS EXPLAIN THE

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0726

APPENDIX 736

1 VERDICT FORM THAT YOU WILL HAVE BACK THERE, MADAM FORELADY
2 AND MEMBERS OF THE JURY.

3 IT SAYS, WE THE JURY UNANIMOUSLY FIND -- THE FIRST BOX
4 THERE IS FOR THE DEFENDANT, BANK OF AMERICA. AND IF YOU
5 CHECK THIS BOX, YOU SIMPLY CHECK THAT BOX AND YOUR
6 DELIBERATIONS ARE OVER. GO NO FURTHER IF THAT'S YOUR
7 UNANIMOUS VERDICT.

8 THE SECOND BOX IS FOR THE PLAINTIFF IN THE AMOUNT OF
9 205,735.37 IN ACTUAL DAMAGES. IF YOU FIND FOR THE
10 PLAINTIFF, THEN THE PARTIES HAVE AGREED THAT THAT IS THE
11 AMOUNT OF ACTUAL DAMAGES.

12 THEN IF YOU CHECK THAT BOX, THEN THE NEXT THING ON THE
13 VERDICT FORM ASKS THE QUESTION: DO YOU FIND THAT THE
14 PLAINTIFF HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT
15 BANK OF AMERICA'S ACTS OR OMISSIONS WERE WILFUL, WANTON, OR
16 RECKLESS AS THE COURT HAS DESCRIBED THESE TERMS? AND YOU
17 ANSWER THAT QUESTION YES OR NO.

18 IF YOU CHECK NO, THEN YOU STOP AND GO NO FURTHER.
19 SIGN THE VERDICT FORM AND NOTIFY THE BAILIFF -- AND NOTIFY
20 THE BAILIFF.

21 IF YOU'VE CHECKED, YES, THEN YOU PROVIDE THE AMOUNT OF
22 PUNITIVE DAMAGES -- IF YOU CHECK YES, THEN PROVIDE THE
23 AMOUNT OF PUNITIVE DAMAGES YOU AWARD BASED UPON THE BANK OF
24 AMERICA'S ACT OR OMISSIONS. YOU WOULD PUT THAT AMOUNT ON
25 THE LINE AT THE BOTTOM. THEN YOU DATE AND SIGN THE VERDICT

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0727

APPENDIX 737

1 FORM, REMEMBERING THAT THE VERDICT MUST BE THE UNANIMOUS
2 VERDICT OF ALL THE JURORS.
3 MADAM FORELADY, YOU'RE NOT AUTHORIZED TO COMPLETE OR
4 FILL IN OR SIGN THE VERDICT FORM UNTIL ALL OF YOU HAVE
5 AGREED.
6 SO PLEASE GO TO THE JURY ROOM AND WAIT TO RECEIVE THE
7 DOCUMENTS TO BEGIN YOUR DELIBERATION.
8 (THE JURY RETIRES TO THE JURY ROOM AT 3:12 P.M.)
9 THE COURT: ALL RIGHT. ANY FURTHER MATTERS?
10 MR. DAVIS: YOUR HONOR, IF I COULD TAKE ONE LAST LOOK
11 AT THAT -- CAN I TAKE A LAST LOOK AT THE VERDICT FORM?
12 THE COURT: YES, SIR.
13 (PAUSE.)
14 MR. DAVIS: YOUR HONOR, IS THERE NO WAY TO SHORTEN
15 THAT LINE?
16 THE COURT: SHORTEN THE LINE?
17 MR. DAVIS: YES, SIR, THAT LONG LINE SAYS DOLLAR
18 SIGNS.
19 (PAUSE.)
20 THE COURT: WE'LL CUT IT IN HALF, HOW ABOUT THAT.
21 IF YOU ALL WILL CHECK THE EXHIBITS TO BE CERTAIN THAT
22 YOU AGREE.
23 (PAUSE.)
24 REPORTER: THEY HAVE GONE THROUGH THE EXHIBITS.
25 (PAUSE.)

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0728

APPENDIX 738

1 THE COURT: JUST HOLD IT FOR A MOMENT. THEY'VE MADE A
2 CORRECTION ON THE JURY INSTRUCTIONS, SO HOLD IT BEFORE YOU
3 TAKE THAT BACK.
4 (THE ALTERNATE JURORS WERE EXCUSED.)
5 (THE EXHIBITS, VERDICT FORM, AND JURY INSTRUCTIONS
6 WERE SENT TO THE JURY TO BEGIN DELIBERATIONS AT 3:25 P.M.)
7 (COURT IS AT EASE AWAITING THE VERDICT OF THE JURY.)
8 THE COURT: I UNDERSTAND THERE IS A VERDICT. LET'S
9 BRING THE JURY.
10 (THE JURY RETURNS TO THE COURTROOM AT 4:03 P.M.)
11 THE COURT: MADAM FORELADY, IF YOU WOULD REMAIN
12 STANDING FOR ME. FORELADY ONLY. HAVE YOU REACHED A
13 VERDICT?
14 FORELADY: YES, SIR.
15 THE COURT: IS IT A UNANIMOUS VERDICT?
16 FORELADY: YES, SIR.
17 THE COURT: ALL RIGHT. IF YOU WOULD PASS IT TO THE
18 CLERK, AND YOU MAY BE SEATED.
19 (COMPLIED.)
20 THE COURT: ALL RIGHT. MADAM FORELADY, IF YOU WOULD
21 WRITE OUT IN LONGHAND THE VERDICT AMOUNT UNDER THE FIGURE,
22 UNDERNEATH THAT AND ABOVE YOUR SIGNATURE ON THE LINE. IF
23 YOU WOULD WRITE OUT THE AMOUNT IN LONGHAND WHAT THE VERDICT
24 IS.
25 (COMPLIED.)

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0729

APPENDIX 739

1 THE COURT: ALL RIGHT. MADAM CLERK, YOU MAY PUBLISH
2 THE VERDICT.

3 VERDICT OF THE JURY:

4 CLERK: IN THE CASE OF CODY [REDACTED] P [REDACTED] VERSUS THE
5 BANK OF AMERICA, CASE NO. 2003-CP-45-207. WE THE JURY
6 UNANIMOUSLY FIND FOR THE PLAINTIFF IN THE AMOUNT OF
7 \$205,735.37 IN ACTUAL DAMAGES.

8 DO YOU FIND THAT THE PLAINTIFF HAS PROVEN BY CLEAR AND
9 CONVINCING EVIDENCE THAT THE BANK OF AMERICA'S ACTS OR
10 OMISSIONS WERE WILFUL, WANTON, OR RECKLESS AS THE COURT HAS
11 DEFINED THESE TERMS? YES. IN THE AMOUNT OF \$1,583,000.

12 FOREPERSON AND LADIES AND GENTLEMEN OF THE JURY, IF
13 THIS IS YOUR VERDICT AND STILL IS YOUR VERDICT, PLEASE
14 RAISE YOUR RIGHT HAND.

15 ALL HANDS ARE RAISED.

16 THE COURT: LET ME HAVE THE VERDICT FORM.

17 (PAUSE.)

18 THE COURT: AND THE VERDICT FORM SAYS IF YOU CHECK NO,
19 STOP, GO NO FURTHER, SIGN THE VERDICT FORM AND NOTIFY THE
20 BAILIFF.

21 IF YOU CHECK YES, PROVIDE THE AMOUNT OF PUNITIVE
22 DAMAGES YOU AWARD BASED UPON THE BANK OF AMERICA'S ACTS OR
23 OMISSIONS. AND THE JURY HAS AWARDED PUNITIVE DAMAGES OF
24 ONE MILLION FIVE HUNDRED AND EIGHTY-THREE DOLLARS.

25 IS ANY INDIVIDUAL POLLING REQUESTED OF THE JURY?

CODY [REDACTED] VS. BANK OF AMERICA

ROA 0730

APPENDIX 740

1 MR. DAVIS: YES, YOUR HONOR.
2 THE COURT: DEFENSE REQUESTS POLLING OF THE JURY.
3 CLERK: ROCHELLE CUNNINGHAM, IF THIS IS YOUR VERDICT
4 AND STILL IS YOUR VERDICT, PLEASE SIGNIFY BY SAYING YES.
5 JUROR: YES.
6 CLERK: CLAUDIA MCCREA, IF THIS IS YOUR VERDICT AND
7 STILL IS YOUR VERDICT?
8 JUROR: YES.
9 CLERK: LINDA CHATMAN, IS THIS YOUR VERDICT AND STILL
10 IS YOUR VERDICT?
11 JUROR: YES.
12 THE COURT: WAS THIS YOUR VERDICT AND IS IT STILL YOUR
13 VERDICT?
14 CLERK: THIS IS YOUR VERDICT ---
15 THE COURT: IS THIS YOUR VERDICT AND IS IT STILL YOUR
16 VERDICT?
17 CLERK: KATIE EDWARDS, THIS IS YOUR VERDICT AND STILL
18 IS YOUR VERDICT?
19 JUROR: YES.
20 CLERK: LATONYA NESMITH, THIS IS YOUR VERDICT AND
21 STILL IS YOUR VERDICT?
22 JUROR: YES.
23 CLERK: GLADYS POWELL, THIS IS YOUR VERDICT AND STILL
24 IS YOUR VERDICT?
25 JUROR: YES.

CODY F [REDACTED] VS. BANK OF AMERICA

ROA 0731

APPENDIX 741

1 CLERK: DANIEL WILLIAMS, THIS IS YOUR VERDICT AND
2 STILL IS YOUR VERDICT?
3 JUROR: YES.
4 CLERK: RYAN NESMITH, THIS IS YOUR VERDICT AND STILL
5 IS YOUR VERDICT?
6 JUROR: YES.
7 CLERK: NOAH TOMLINSON, THIS IS YOUR VERDICT AND STILL
8 IS YOUR VERDICT?
9 JUROR: YES.
10 CLERK: MELISSANT HARMON, THIS IS YOUR VERDICT AND
11 STILL IS YOUR VERDICT?
12 JUROR: YES.
13 CLERK: WYONA MCCLENDON, THIS IS YOUR VERDICT AND
14 STILL IS YOUR VERDICT?
15 JUROR: YES.
16 CLERK: MELISSA JONES, THIS IS YOUR VERDICT AND STILL
17 IS YOUR VERDICT?
18 JUROR: YES.
19 CLERK: THE JURY HAS BEEN POLLED.
20 THE COURT: ALL RIGHT. THE JURY HAS BEEN POLLED. THE
21 VERDICT APPEARS TO BE A UNANIMOUS VERDICT OF THE JURY.
22 ANY ADDITIONAL MATTERS FOR THE JURY?
23 MR. JENKINSON: NOT FROM THE PLAINTIFF, YOUR HONOR.
24 MR. DAVIS: NO, YOUR HONOR.
25 THE COURT: ALL RIGHT.

CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0732

APPENDIX 742

1 (THE JURY WAS EXCUSED.)
2 THE COURT: ALL RIGHT. ANY MATTERS AT THIS TIME?
3 MR. JENKINSON: YES, SIR, FROM THE PLAINTIFF, THANK
4 YOU, SIR. GOOD TRIAL.
5 THE COURT: ALL RIGHT. FROM THE DEFENSE?
6 MR. MCGEE: WE'D LIKE 10 DAYS, YOUR HONOR, FOR POST-
7 TRIAL MOTIONS.
8 THE COURT: ANY OBJECTION TO THAT REQUEST?
9 MR. JENKINSON: NO, SIR.
10 THE COURT: ALL RIGHT. THE DEFENSE WILL BE GIVEN 10
11 DAYS TO FILE ANY POST-TRIAL MOTIONS.
12 I ENJOYED WORKING WITH YOU ALL.
13 I THINK THAT TAKES CARE OF THE BUSINESS OF THE COURT,
14 UNLESS THERE IS ANYTHING ELSE, MR. MCGEE?
15 MR. MCGEE: NO, SIR.
16 THE COURT: MR. DAVIS?
17 MR. DAVIS: NO, SIR.
18 --- END OF TRANSCRIPT OF RECORD ---
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CODY P [REDACTED] VS. BANK OF AMERICA

ROA 0733

APPENDIX 743

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
<u>COUNTY OF WILLIAMSBURG</u>	)	
Cody P [REDACTED], et al,	)	
	)	PLAINTIFFS)
vs.	)	TRANSCRIPT OF RECORD
	)	
Bank of America,	)	
	)	DEFENDANT)

November 25, 2008
Kingstree, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

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

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Kathleen Richardson, RPR, CRR
Official Court Reporter

EXHIBITS

(No exhibits were marked.)

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ROA 0735

APPENDIX 745

1 THE COURT: All right. Ready?

2 MR. DAVIS: Mr. Brown here. He will hopefully
3 be my bailout specialist.

4 THE COURT: Okay. Very good. Mr. Brown, good
5 to see you.

6 MR. BROWN: Nice to see you, Judge.

7 THE COURT: Mrs. Kellahan, you have some...

8 MRS. KELLAHAN: Good morning, Your Honor. Yes.
9 Before we begin, I e-mailed -- this is a response.
10 But I just had an original one, and I wanted to hand
11 that to you because the e-mail didn't have that slide
12 attached to the back. Here's one for you.

13 THE COURT: All right. Yes, sir.

14 MR. BROWN: May it please the Court, Your Honor.
15 I'm Mitch Brown with Nelson, Mullins, Riley and
16 Scarborough along with Mr. Davis, Mr. McGee here
17 representing Bank of America in these post-trial
18 motions.

19 And Your Honor, before we get started -- may it
20 please the Court, I'd like to hand up a set of cases
21 that I'll be referring to so you will have those. I
22 will give a set to opposing counsel as well. Your
23 Honor, those are in order in the order in which I
24 referenced them for convenience.

25 Your Honor, we've made motions for JNOV, new

ROA 0736

APPENDIX 746

1 trial absolute, and for new trial nisi remittitur in
2 this matter. And as Your Honor knows, this is a
3 negligence case involving 205,000 and stipulated
4 actual damages and \$1,583,000 in punitive damages
5 which is about a 7.6 ratio of punitive to actual
6 damages.

7 First, Your Honor, we'd like to argue the JNOV,
8 our motion. And first as to liability itself in
9 totality, Your Honor.

10 The -- what we are addressing here is criminal
11 behavior by a third party, and that third party is
12 Karen Unrue who was the duly appointed conservator
13 for the minor child, Cody P [REDACTED], here.

14 Karen Unrue had been appointed by the probate
15 court to be the conservator. Obviously the probate
16 court doing that with the expectation that Karen
17 Unrue would not steal from the minor child.

18 The mother of the minor supported Mrs. Unrue,
19 obviously supporting her for this role, with the
20 expectation that she would not steal from the minor
21 child.

22 Mrs. Unrue was also -- the bond was waived as
23 Mrs. Unrue's appointment in further evidence that no
24 one believes she would steal from the minor child.
25 And of course, she was related. She was the paternal

ROA 0737

APPENDIX 747

1 aunt of Cody R[REDACTED].

2 So that is the fiduciary setting with which we
3 find this unfortunate criminal behavior by Mrs.
4 Unrue.

5 In South Carolina, Your Honor, the law on third
6 party or liability for third party criminal acts is
7 more developed in some specific areas than it is in
8 this particular one, but I think -- and we argue that
9 the same type of approach should apply.

10 In Mili Tek versus WalMart, which is the first
11 case, Your Honor, I handed up, what the Court there
12 said was they were dealing with law with respect to
13 merchants and third party criminal activity.

14 And basically, what our courts have held is that
15 unless you can show that the merchant has some
16 reasonable notice or constructive notice that the
17 third party is about to commit a crime on the
18 premises, then there is no liability for the merchant
19 for the third party criminal act.

20 And Your Honor, there's another case that I have
21 handed up from South Carolina that's somewhat similar
22 Stone versus Bethea from 1968 where the Court there
23 said that while it was negligence for a person to
24 leave their keys in their car and abandon the car for
25 a period of time, that negligence was superceded by

ROA 0738

APPENDIX 748

1 the third party criminal act of stealing the car and
2 then subsequently having a vehicle accident in it.

3 And so that third party crime, again, while
4 foreseeable in the ordinary sense perhaps was not
5 legally foreseeable or expected -- or expected, and
6 therefore there was no liability for the original
7 negligent act.

8 And Your Honor, I did find some cases from other
9 states, and those are the next three in the set, Your
10 Honor, I handed up. One is the Dolan title case from
11 Florida. The next is Newton versus Scott from New
12 York. And the third is Hubbard versus Home Federal
13 Savings and Loan from Kansas.

14 And Your Honor, in those cases, they are
15 actually applying the same concept of the need for
16 constructive notice being shown. In the guardian and
17 in the bank context, which we have here, of course,
18 in the Dolan case there was a guardian of a disabled
19 spouse involved, and there was a sale of real estate.

20 And the title company was on notice that it was
21 supposed to write out a check made payable to -- in
22 the name of the guardian and half the proceeds and
23 half the proceeds in the name of the disabled spouse
24 with the individual as guardian.

25 And instead of doing that, they wrote a check

ROA 0739

APPENDIX 749

1 just payable to the guardian's name, and the guardian
2 proceeded to go steal the money, misappropriate the
3 funds.

4 And what the Court there said in Dolan was they
5 applied the very -- very similar analysis as our
6 Court in the Mili Tek case applied in the third party
7 crime context with respect to merchants.

8 They said unless there's some type of facts
9 that's there that puts the title company on notice
10 that this person, this guardian, may steal this money
11 or misappropriate this money, we're not going to find
12 them liable for the guardian's criminal acts.

13 And what we have here, Your Honor, is the same
14 fact pattern because, because here Karen Unrue was a
15 customer of Bank of America for sometime. She had, I
16 think, two different accounts with the bank.

17 The bank knew her. They had all of her personal
18 identification information. There's no evidence
19 presented that she had passed a bad check, that she
20 was a -- an untrustworthy person, that the bank had
21 any reason to believe this individual might steal.

22 And of course, then we have the facts that I
23 have already mentioned about the conservatorship
24 being placed on the person.

25 And therefore, across the board, probate judge,

ROA 0740

APPENDIX 750

1 bank-relationship people, the mother of the child, no
2 one is expecting this person to go out to steal this
3 money. And there's not a -- there's no fact that
4 would place anyone on notice that might otherwise be
5 injected into the case that would put the
6 responsibility on the bank in this instance.

7 In the Newton versus Scott case, this is the way
8 the Court articulated the rules, Your Honor. They
9 said, it is settled law that a bank dealing with a
10 fiduciary is not bound to inquire whether fiduciary
11 is applying the fund for purposes of the trust unless
12 the bank has some notice of threatened
13 misappropriation, with that notice, aids the
14 misappropriation.

15 And they said, this rule does not relieve a
16 depository from all responsibility in connection with
17 fraudulent acts. It may not ignore acts which
18 indicate malfeasance.

19 So in other words, again, the Court is looking
20 for, is there something that happened with Karen
21 Unrue, did she say something like, I'm going to take
22 this money and buy a new car with it or did she make
23 a -- any kind of fact or is there any fact known
24 about her, whether she had a prior criminal
25 conviction, anything about her that might put them on

ROA 0741

APPENDIX 751

1 notice.

2 If there's not, then her third party criminal
3 activity is not considered to be attributable to the
4 bank. And this is especially so in the guardian
5 slash conservator context, Your Honor, where actually
6 the law is assuming and presuming that this person
7 has been duly appointed to protect the person. So
8 the expectation is protection by the guardian, not --
9 or conservator, not taking advantage of the person.

10 So for all those reasons, Your Honor, our first
11 argument is that there was -- literally was no
12 evidence put in that placed the bank on any kind of
13 notice that this guardian or I should say conservator
14 would potentially misappropriate money.

15 Did the bank do something in violation of its
16 policies in setting up the account? There was
17 certainly evidence of that. But did that mean that
18 they thought they would take -- that this conservator
19 would take the money and steal it and then disappear
20 being the paternal aunt and the duly appointed
21 conservator of this minor child?

22 Absolutely not. There's no expectation of that
23 as a result of setting up an account in that way.

24 And what the Court in the -- in -- the South
25 Carolina Supreme Court said in the Stone case, Your

ROA 0742

APPENDIX 752

1 Honor, that I handed up is that when you leave your
2 keys in the car, sure, we all know every day
3 experience, someone might look in there, see the keys
4 are in the ignition, drive the car, steal the car.
5 That's a known thing.

6 But that's not the expectation in the particular
7 context. And here we don't have any expectation
8 based on the facts of any criminal act by this
9 conservator.

10 Your Honor, that's the argument as to the JNOV
11 as to the entirety of the case. I can proceed
12 however Your Honor would wish me to with the punitive
13 damages JNOV part at this time or I can stop and
14 allow response, whatever Your Honor prefers.

15 THE COURT: All right. Let's stop at this point
16 and hear a response to that argument.

17 MRS. KELLAHAN: Thank you, Your Honor. May it
18 please the Court.

19 THE COURT: Yes.

20 MRS. KELLAHAN: To respond to the cases and the
21 argument that counsel cited, I think the main thing
22 the Court needs to look at is the bank's
23 foreseeability, whether or not -- and all these cases
24 that deal with an intervening criminal act -- whether
25 or not the bank was on notice that this kind of thing

ROA 0743

APPENDIX 753

1 Not only that, Your Honor, again the -- this
2 whole situation was a mistake. It was an error on
3 behalf of the bank. They all but admitted that, that
4 it was a mistake.

5 They did admit it actually that it was a
6 mistake, Your Honor, and we would just argue that the
7 intervening acts of the criminal law was charged to
8 the jury and they specifically found liability on
9 behalf of the Bank of America. Thank you.

10 *THE COURT:* All right. Mr. Brown?

11 *MR. BROWN:* Thank you, Judge. Just in very
12 brief response to that, Your Honor. It's the
13 foreseeability that opposing counsel is discussing
14 is -- is with all due respect more of a -- a general
15 abstract concept of foreseeability and not the legal
16 concept that the Court has been applying in the cases
17 like Mili Tek and in other instances.

18 For example, Mili Tek circumstances. A business
19 owner knows and we all know because we read the paper
20 every day that a crime is going to occur, and crime
21 may happen at their location, at their side of their
22 business. That is foreseeable that there may be
23 crime there.

24 Yet our court has not taken that very broad
25 basic understanding of the word foreseeability and

ROA 0744

APPENDIX 754

1 said, you're liable because you could have foreseen a
2 crime was going to happen on the property and you
3 didn't -- you didn't have adequate lighting or
4 whatever.

5 Instead the Court has required there to be a
6 constructive notice piece of evidence there, and if
7 that piece of evidence isn't there, then they have
8 said there's no liability in place.

9 And the same kind of thing, Your Honor, can be
10 seen throughout the threads in the law with respect
11 to foreign substances on floors, for example.
12 Everybody knows you get a bunch of grapes, a grape
13 might come off and fall on the floor and somebody
14 could slip and fall.

15 But our courts have been steadfast in requiring
16 there be constructive notice, proof that the
17 substance had been on the floor for some period of
18 time and that kind of thing.

19 Here what opposing counsel -- all they are
20 saying is you set up an account the wrong way,
21 someone can take advantage of it and withdraw money.
22 The bank had policies. They didn't follow those.

23 That's fine if it's as far as it goes. It
24 doesn't mean the legal test of foreseeability or
25 expectation that a third party, especially a

ROA 0745

APPENDIX 755

1 conservator, would steal money from this minor for
2 whom she had a blood relationship and for whom she
3 had been duly appointed as the conservator.

4 Moving on, Your Honor, to the--

5 *THE COURT:* Let me ask you this.

6 *MR. BROWN:* Yes, sir.

7 *THE COURT:* Looking at the New York case that
8 you handed up, Newton versus American Surety Company
9 of New York, the -- in the first page of that -- of
10 course, I haven't had a chance to read the entire
11 case that you handed up.

12 But the -- in the syllabus of that case on the
13 first full paragraph on the right hand side on the --
14 on page one, the rule that a bank dealing with a
15 fiduciary is not bound to inquire whether the
16 fiduciary is applying the fund for the purpose of the
17 trust does not permit the depository (sic) to ignore
18 acts by a trustee that indicates his malfeasance, and
19 then the second sentence that if a depository fails
20 to make a reasonable inquiry as a means of verifying
21 or dissipating the suspicion that the funds are about
22 to be misappropriated, the depository may be charged
23 with knowledge of the facts which reasonable inquiry
24 would have revealed, and it may be held responsible
25 for loss resulting from the trustee infidelity.

ROA 0746

APPENDIX 756

1 How do you interpret that paragraph?

2 MR. BROWN: Yes, sir. I think that's a very
3 good -- it's actually a better quote than what I read
4 to the Court -- to the Court about the rule.

5 What the Court is requiring there is that there
6 has to be some acts which indicates malfeasance is
7 about to occur. That's where -- that's what the
8 Court is looking for.

9 And then they say at the -- I know you used the
10 word bank instead of depositary because it's easier
11 to say it -- even if the bank fails to make an
12 inquiry as a means of verifying the suspicion that
13 the funds are about to be misappropriated.

14 So there has to be something creating the
15 suspicion first, and there's nothing in anything
16 here, nothing. Absolutely nothing.

17 THE COURT: So the duty does not -- there's no
18 duty imposed on the bank to make a reasonable inquiry
19 until the bank is put on notice of some likelihood of
20 misfeasance or malfeasance by the trustee?

21 MR. BROWN: Your Honor, I would say that that is
22 the case with respect to a conservator or a
23 fiduciary. And I'd also -- apologize for mixing this
24 concept up.

25 I'm also arguing at the same time that third

ROA 0747

APPENDIX 757

1 party criminal act can cut off any causation unless
2 there's some constructive notice, and therefore the
3 bank is facilitating the action by the wrongful act
4 in a way in which they know they're facilitating,
5 which is what the Court says later where -- in the
6 part that I read to the Court where they said that
7 if -- with notice they aid the misappropriation.

8 Here there was no notice at all that this person
9 could steal. No one was expecting this person who
10 was a bookkeeper, had a business account with the
11 bank, would just suddenly disappear and steal money
12 from this minor relative.

13 No one had any notice that she would do it. So
14 therefore there's no liability there, Your Honor,
15 under the law.

16 THE COURT: What do you say about that, Mrs.
17 Kellahan?

18 MRS. KELLAHAN: If I can respond, Your Honor. I
19 believe the problem here is the testimony and the
20 evidence submitted at trial was that they didn't even
21 acknowledge that they were dealing with a
22 conservator. They just blew right by that.

23 So when we're talking about notice of -- and
24 aiding her in some way, they ignored the very words
25 on the check. They didn't even acknowledge they were

ROA 0748

APPENDIX 758

1 is a question of fact for the jury to determine.

2 And I think that it was completely foreseeable
3 that someone would come into the bank with a check
4 made payable to someone else and do something that
5 they weren't supposed to with it, and that is
6 precisely -- it's so foreseeable that the bank has
7 all these safeguards set up to protect from that
8 precise thing happening that they ignored. Thank
9 you.

10 THE COURT: All right.

11 MR. BROWN: Your Honor, moving if we could to
12 the -- I would say with respect to her point because
13 she didn't raise this earlier, that we -- I think
14 their entire time case is grounded upon the fact that
15 the checks have the word conservator written on them
16 so -- and that that's what put us on notice and
17 should have set up the account that way.

18 So they can't make that case and then run away
19 from the fact that this person is a conservator at
20 the same time, Your Honor.

21 But any way, but moving to the JNOV as to the --
22 as to the punitive damages next, Your Honor. Of
23 course, we are dealing with a heightened standard
24 here of clear and convincing evidence being required.

25 And this court, as you know from the Gamble

ROA 0749

APPENDIX 759

1 versus Stevenson case and from later United States
2 Supreme Court cases, namely BMW versus Gore and State
3 Farm versus Campbell, this court is to undertake and
4 review an assessment of whether the punitive damages
5 are appropriate and should even be vacated or should
6 be reduced -- separate and apart from the jury by the
7 way.

8 And first of all, I'd like to list a couple of
9 additional facts that I would like to add to the list
10 of facts that I have already been over so I don't
11 repeat myself with respect to those, Your Honor.

12 But respect to punitive damages, in addition to
13 everything that's already been said about the absence
14 of notice to the bank and liability to the bank,
15 there was no evidence that any of the bank employees
16 were in a conspiracy with Mrs. Unrue.

17 There was no complicity shown by the plaintiffs
18 of any bank person attempting to assist with stealing
19 money from this minor. At best, they have evidence
20 that an account was not set up in the way it should
21 have been set up, but that doesn't mean that the
22 money will be taken out of the account and stolen.

23 And so there's no evidence of any of that.
24 There's no evidence of a managerial agent as that
25 term is understood in the restatement of second of

ROA 0750

APPENDIX 760

1 agency, Your Honor -- and I handed up that section on
2 that, section 217C of the restatement second of
3 agency, Your Honor, with respect to punitive damages.

4 It talks about the inappropriateness of
5 assessing punitive damages against a corporate
6 defendant when an employee has done something that's
7 being claimed to be wrongful.

8 And what they say there in the restatement is,
9 you shouldn't allow punitive damages to be assessed
10 against the employer, which would be Bank of America
11 unless one of the following is true.

12 That the employer authorized the manner of the
13 act, which we don't have any of that -- and I will
14 address the branch manager aspect in a moment. Or
15 two, the agent was unfit and the employer was
16 reckless in employing the agent. We don't have that
17 evidence.

18 Or three, the agent was employed in a managerial
19 capacity and was acting within scope of employment.
20 I will address that in just a second. And then last,
21 the principle or managerial agent ratified or
22 approved the act. We don't have that.

23 So what we address in the managerial agent, Your
24 Honor, there's a -- I think the best way to address
25 that is -- there's not any case in South Carolina on

ROA 0751

APPENDIX 761

1 this, Your Honor, that we can find, but there is a
2 case from the 11th Circuit that discusses what
3 managerial agent means.

4 I don't have multiple copies of it. I apologize
5 for that. But the cite is 919 F.2d 1517. 919 F.2d
6 1517. The name of it is Mr. Furniture Warehouse
7 versus Barclays.

8 And what the Court basically said there was that
9 an individual who manages the corporation as a whole
10 is what is contemplated as a managerial agent under
11 the restatement. A person who has merely managerial
12 responsibilities is not what's contemplated as a
13 managerial agent.

14 And they -- in that case they found that an
15 assistant vice president was not a managerial agent
16 because he was one of several vice presidents and was
17 subordinate to others in the cooperation.

18 Here the best they have is a Pawleys Island
19 branch manager who is obviously not somebody who is
20 an officer setting policies for Bank of America or
21 anything like that.

22 So we would say that under section 217C,
23 punitive damages are not appropriate in this case.

24 There was no evidence, Your Honor, of conscious
25 disregard or recklessness. For example, there wasn't

ROA 0752

APPENDIX 762

1 any evidence placed in that someone said to one of
2 the bank employees, hey, don't you remember you're --
3 here's the conservator policy account manual, and
4 don't you remember you're supposed to set it up this
5 way, and they said, oh, we don't care.

6 I mean, there's nothing like that. As counsel
7 stated, at best it is an accident or a mistake. And
8 so punitive damages don't float from that. The
9 failure to adhere to one's policies can certainly be
10 classified as careless, but it's not recklessness.

11 And Your Honor, I think the opposing counsel has
12 blend those propositions together and has set up a
13 scenario where there would be punitive damages any
14 time a conservator account is not set up properly
15 under their -- under their argument because all they
16 have is evidence that the account wasn't set up
17 properly. That's it.

18 So any time you set up a conservator account
19 improperly, under their view, there is punitive
20 damages going to be involved. And Your Honor, we
21 believe that there must be additional evidence in
22 that respect and -- for to find culpability for
23 punitive damages.

24 Going through, Your Honor, the Gamble versus
25 Stevenson factors. The first factor is the

ROA 0753

APPENDIX 763

1 defendant's degree of culpability, which we've
2 already stated or discussed.

3 I would point out that in the memorandum filed
4 by the plaintiffs, Your Honor, they -- they state,
5 quote, that these employees at the banks -- at the
6 bank had weeks of training in Charlotte and other
7 locations, they had manuals, computers, phone hot
8 lines, constant legal support and other individuals
9 in their branch to ask questions.

10 All of those things, Your Honor, actually work
11 in favor of not finding punitive damages. These are
12 examples of the corporation trying to have procedures
13 and guard against something like this.

14 They want to punish the bank for having manuals,
15 constant legal support, phone hot lines. They want
16 to punish the bank for that. That's something that
17 should be encouraged, not punished.

18 The second factor in the Gamble case, the
19 duration of the conduct, which is not material factor
20 here, Your Honor. This -- this was I think two
21 accounts set up, one taking place within a few weeks
22 of the other one.

23 And the plaintiff's counsel's argument in the
24 trial was, this is really all about one hour of time.
25 That's what their argument was. This is -- involves

ROA 0754

APPENDIX 764

1 an hour. It's all it would have taken to set up the
2 accounts the right way they argued.

3 So duration of conduct is not a factor that
4 means -- that should be weighed against Bank of
5 America here.

6 Next is -- the third factor in Gamble is the
7 defendant's awareness or concealment. There's no, no
8 evidence of that at all.

9 The next factor is the existence of similar past
10 conduct. I will quote the plaintiffs from page six
11 of their memorandum where they say, quote, there was
12 no evidence presented or other conservator accounts
13 being set up improperly as the one in this case. So
14 that factor goes in favor of Back of America.

15 The fifth factor is likelihood the award will
16 deter the defendants or others from like conduct.
17 Your Honor, I would submit that in this case where
18 the bank is -- if Your Honor affirms as to liability
19 of the bank for actual damages, that's 200 and some
20 odd thousand dollars that the bank is going to have
21 to pay out of its own money because it's stolen, it's
22 gone.

23 And that is sufficient deterrent, then there's
24 no need to have an additional punishment on the bank.
25 That \$200,000 they're going to have to pay out for

ROA 0755

APPENDIX 765

1 this.

2 It's not like another case where someone might
3 benefit from the wrong and then have to give out, you
4 know, pay that -- that benefit back. That's not what
5 happened here. Here we have the third party crime
6 that's occurred.

7 The sixth factor, Your Honor, is the -- whether
8 the award is reasonably related to the harm likely to
9 result from such conduct. And Your Honor, again we
10 feel strongly that this factor weighs in favor of
11 elimination of punitive damages toward the bank.

12 The plaintiff, Your Honor, argued that the
13 international banking operations of Bank of America
14 and it's pre-tax earnings on those international
15 banking operations for an hour somehow had some
16 relationship to the harm suffered by Cody P [REDACTED] in
17 this case.

18 And Your Honor, we would submit that that --
19 that is completely arbitrary and irrational and
20 random to say that the international banking
21 operations, the vast majority of which have nothing
22 to do with conservator accounts whatsoever, and
23 certainly are not even in South Carolina, that
24 somehow that has something to do with Cody P [REDACTED]
25 conservator account, then you should award punitive

ROA 0756

APPENDIX 766

1 damages in an amount that equates to those pre-tax
2 earnings for the international activities of a bank.

3 Your Honor, we submit that's absolutely not
4 appropriate and not reasonably related to the harm
5 that was suffered.

6 The seventh factor in Gamble is the defendant's
7 ability to pay. And what I just said, Your Honor, I
8 think applies to that.

9 They didn't limit their evidence to South
10 Carolina banking operations in any way. They went
11 outside the nation to the international banking
12 operations and put in evidence of that in support of
13 punitive damage in this case. That's not
14 appropriate.

15 And I will tell you, Your Honor if you would,
16 I'd like to reference the State Farm versus Campbell
17 case in that respect in addition as I go through the
18 three BMW versus Gore factors. We finished Gamble.

19 Now, the Gore factors are, one, ratio of
20 punitive damages to actual damages. The Court has
21 said in Gore, they said it in Pacific Life Insurance
22 versus Haslip and they said it in State Farm versus
23 Campbell that a four to one ratio is close to the
24 line of constitutional impropriety, that was the word
25 that they -- the US Supreme Court used.

ROA 0757

APPENDIX 767

1 And our -- by the way, our Supreme Court in
2 Atkinson versus Gore has adopted all this expressly
3 to apply here. Here we have a 7.6 to one ratio, so
4 we are over that line of constitutional impropriety
5 already.

6 The Campbell court further said that, quote,
7 when compensatory damages are substantial, then a
8 lesser ratio, perhaps only equal to compensatory
9 damages, can reach the outermost limit of due process
10 guarantee.

11 And Your Honor, we would submit that that would
12 be the -- if Your Honor is not going to vacate
13 punitive damages, because \$200,000 is a substantial
14 compensatory award, you should limit the punitive
15 damages to a one to one ratio as indicated by the US
16 Supreme Court in Campbell -- State Farm versus
17 Campbell.

18 The second of the three factors in Gore is the
19 difference between the award and the civil or
20 criminal actions that can be imposed for comparable
21 misconduct.

22 We don't believe -- Your Honor, we don't think
23 there is any civil penalty or criminal penalty that
24 would apply to a single act of setting up a
25 conservator account the wrong way.

ROA 0758

APPENDIX 768

1 So you -- you have a comparison of 1 million,
2 you know, whatever the \$1,583,000 to zero is what
3 you're comparison is, so that factor weighs in favor
4 of the Bank of America.

5 And the last factor is the reprehensibility of
6 the defendant's conduct. And Your Honor, in the BMW
7 versus Gore case, the US Supreme Court talks about
8 what does reprehensibility mean. And they made it
9 very clear, and it's good to walk through that as it
10 applies to this case.

11 First, they said, is the harm physical or is it
12 economic? It's physical, you got more of a -- you
13 should have more of punitive damage. Here it's not,
14 so you cannot.

15 Next they said, if there's tortuous conduct
16 events and indifference or reckless disregard for
17 health or safety. Answer, no. That weighs in favor
18 of the Bank of America.

19 Next, did the target of the conduct have
20 financial vulnerability? No evidence put in on that.
21 We know that the person was a minor, but we don't
22 have evidence that the minor was financially
23 vulnerable.

24 We don't know what the -- all the various
25 sources of income to the minor were, so there wasn't

ROA 0759

APPENDIX 769

1 any evidence on that.

2 Next, did the conduct involve repeated actions
3 or whether isolated incident. Your Honor, we submit
4 this is really isolated.

5 I believe they have tried to take this Karen
6 Unrue incident and break it down down into small
7 pieces so to try to create a repeated action
8 scenario, but we think is really an isolated
9 incident. It's just a single criminal act of
10 stealing from the account in the end is what it was.

11 And then last, was the harm the result of
12 intentional malice, trickery or deceit, or was it a
13 mere accident. Here we say, Your Honor, it was a
14 mere accident.

15 So when you look at the Gamble versus Stevenson
16 case, when you look at the Gore versus BMW factors,
17 BMW versus Gore rather -- I'm sorry -- all of those
18 factors virtually, Your Honor, if not all weigh in
19 favor of either elimination or substantial reduction
20 of punitive damages.

21 The last thing I will say about this, Your
22 Honor, is -- is that in State Farm versus Campbell
23 the Court stated that it was inappropriate to punish
24 or deter conduct if -- no relation to Campbell's harm
25 and a defendant's dissimilar acts independent from

ROA 0760

APPENDIX 770

1 the acts upon which liability was premised may not
2 serve as a basis for punitive damages.

3 And again, they put in evidence of the
4 international banking activities of the bank. Is
5 that totally dissimilar to what occurred here with
6 the minor.

7 Had they placed something in the record such
8 as -- even if they had tried to do something like
9 saying, well, what are the fees that the banks get
10 from conservator accounts or something like that,
11 maybe they would have an argument.

12 But here they didn't care about any of that.
13 They just asked for the pre-tax earnings number for
14 the bank's international activities. And then they
15 want punitive damages to be awarded based on that.

16 Specifically they state that the jury conveyed a
17 specific punitive damages message -- this is from
18 their brief, page seven -- that Bank of America
19 should be careful in following bank -- specific bank
20 policies and procedures when dealing with the child's
21 money.

22 But Your Honor, they then proceed to put in
23 evidence the things that have nothing to do with
24 dealing with children's money. The bank's just
25 general banking activities don't have any

ROA 0761

APPENDIX 771

1 relationship to that.

2 So Your Honor, for all those reasons we would
3 ask that punitive damages be vacated or reduced to a
4 one to one ratio.

5 THE COURT: All right. Mrs. Kellahan?

6 MRS. KELLAHAN: Thank you, Your Honor. I'm
7 going to follow through the response brief back in
8 responding to a lot of these points that have been
9 made.

10 The first items I want to go through are the
11 Gamble factors that were outlined by plaintiff --
12 defense counsel.

13 Regarding the bank's degree of culpability.
14 Again, this is kind of a repeated argument on some of
15 what we discussed before. The bank was responsible
16 for protecting this child's money. That is what
17 they're in the business of doing is protecting its
18 customers' money. They are anticipating this.

19 Counsel argued this was a simple mistake, it was
20 just an isolated -- type incident. The problem in
21 this case was it was a multitude of mistakes. It was
22 a tremendous number of mistakes to the point that it
23 evidenced a clear and conscious just complete
24 disregard for this child's money.

25 Again, we would argue the conservator's conduct,

ROA 0762

APPENDIX 772

1 there's no question it was criminal, but it was
2 completely foreseeable, and I think the evidence was
3 clear, particularly from the conservator, that had
4 the bank set the account up properly, that this could
5 not have happened.

6 The factor regarding the duration of the
7 conduct, this did -- it was a two-fold type of
8 scenario. Mrs. Unrue went on one day and dealt
9 specifically with a personal banker who was an
10 individual with tremendous responsibility at the
11 bank.

12 And we certainly don't dispute the evidence was
13 given by way of deposition testimony of these two
14 employees that they had undergone a good bit of
15 training, but I think that actually could be argued
16 and was argued in our response here that it almost
17 made it incredulous to the jury that these -- that
18 these bank employees didn't understand what they were
19 doing because they had had so much training.

20 The duration of the conduct. The first incident
21 happened on April 27th, and then another incident
22 where Karen Unrue went back, opened up a totally
23 different account with Mrs. Unrue, with the branch
24 manager.

25 And going back a moment to the -- that

ROA 0763

APPENDIX 773

1 restatement cited by counsel. Again, I have not
2 researched the definition of managerial agent, but I
3 would like to point out for the record that these two
4 individuals were the two most highest ranking
5 employees in the Bank of America branch of Pawleys
6 Island, and that branch manager was responsible for
7 the operations of that Pawleys Island branch.

8 So we would argue that Mrs. Meredith Lawrence
9 particularly as the branch manager would have been a
10 managerial agent of Bank of America for purposes of
11 that restatement definition.

12 Let me go back to the Gamble factors. So the
13 duration of the conduct -- we have two separate
14 occasions where Mrs. Unrue was in someone's office
15 setting up an account, and on both particular
16 occasions there were a multitude of errors committed.

17 The third factor on the defendant's awareness or
18 concealment. Certainly we don't have -- I don't know
19 that there was anything specifically where the
20 defendants were intentional in ignoring the words
21 conservator on the account.

22 However, I think that there was certainly enough
23 evidence in the record to show because of their
24 training and because of all the information that they
25 had available to them with the manuals and the hot

ROA 0764

APPENDIX 774

1 line and all that, that again it was almost
2 incredulous for the jury to believe that they didn't
3 know what they were doing, that they couldn't have
4 gotten one small piece of the account right, but
5 actually they just made a tremendous multitude of
6 errors.

7 The next factor to consider was existence of
8 similar past conduct. And as I stated in the
9 response, similar past conduct is not necessary.
10 It's not an absolutely necessary factor to prove.

11 And actually, in this case when evidence of a
12 similar past conduct isn't submitted to the jury, it
13 makes it clearer that the jury's award was based
14 solely on the wrongs done in this particular
15 transaction.

16 Here we're not punishing Bank of America for
17 something that was done to someone else. The only
18 evidence that was in the record before this jury was
19 the specific incidents that dealt with Cody P [REDACTED],
20 which I do not dispute that there was no evidence
21 presented of any other conservatorship accounts being
22 set up improperly like this one.

23 However, there was a lot of confusion I think
24 with the bank's position on how many conservatorship
25 accounts it had. And again, I think that just went

ROA 0765

APPENDIX 775

1 to the credibility of the bank, and that was
2 something that was weighed by the jury.

3 The next factor was the likelihood that the
4 award would defer the defendant or others from like
5 conduct. Here I argued in the response South
6 Carolina has a duty to make sure that banks take good
7 care of minors or its customers' money, but
8 particularly in this situation we're dealing with a
9 small child.

10 It has an interest in punishing these banks for
11 ignoring that. Again, Your Honor, there's a specific
12 statute that says, if the probate judge puts
13 restrictions on fiduciary letters, third parties are
14 bound by those restrictions.

15 And here with the bank, of course, evidence is
16 in the record about their ability to pay. With an
17 institution the size of Bank of America, the award
18 must be sufficiently high enough to deter their
19 conduct to even get their attention.

20 And that was why -- that's part of the reason
21 that I think the jury found the verdict that it did
22 was the one hour of the time, which is -- the
23 evidence was clear that each one of these
24 transactions that were completely botched up would
25 have taken about 30 minutes a piece, and one hour of

ROA 0766

APPENDIX 776

1 their time would be sufficient and good punishment
2 for the -- for the bank based on its actions.

3 Again, as we argued, we believe that the jury's
4 specific message was to pay attention, to be careful,
5 look at what -- follow your specific procedures,
6 don't treat accounts like this, and any customer's,
7 but particularly a small child's with such callous
8 conscious indifference and disregard.

9 Another factor was whether or not the award was
10 reasonably related to the harm likely to result from
11 the conduct. And again, Your Honor, I will just kind
12 of reiterate my earlier argument, that evidence was
13 clear that these transactions done properly would
14 have each taken 30 minutes.

15 Dr. Oliver Wood was available. I know counsel
16 objected to his testimony, but it was -- it was
17 certainly we argue was completely admissible, and I
18 think that their objection went more to the weight
19 and not the admissibility of it. He was subject to
20 vigorous cross-examination.

21 And an hour of the defendant's income at the
22 point of the end of the second quarter of 2008 was at
23 it's lowest point since 2001 when all this began.

24 Here we would argue the award was clearly
25 reasonably related to the harm caused. One hour

ROA 0767

APPENDIX 777

1 penalty for the one hour it would have taken to do it
2 right.

3 Another one of the factors deals with the
4 defendant's ability to pay. You know, again, I don't
5 think there was any question at all about the Bank of
6 America's ability to pay any kind of punitive damage
7 award.

8 However, Your Honor properly considered it at
9 the end of the case. It wasn't admitted until after
10 you found that there was clear and convincing
11 evidence of punitive damages going to the jury.

12 I cited some other factors to consider on page
13 nine of my response. The Gore case. These are some
14 factors that justify higher punitive damages award.
15 Where the injury is one that's difficult to detect
16 and easy to conceal, higher punitive damages awards
17 may be appropriate.

18 In this case the bank's conflicting evidence on
19 the number of conservatorship accounts that it has in
20 South Carolina is clear evidence that it's difficult
21 to detect and easy to conceal the kind of misconduct
22 that's led to this injury.

23 Also, normally in a case like this, in a uniform
24 gift to minors account type situation, children's
25 accounts may not have that much money in them. In

ROA 0768

APPENDIX 778

1 this particular case we do have a \$205,000 loss that
2 this child sustained. But other types of beneficiary
3 accounts or other conservatorship accounts may be
4 low.

5 And in this particular situation, compensatory
6 damages alone would often be insufficient to make
7 suing for compensatory damages practical.

8 Again, Your Honor, I would just like to
9 reiterate neither personal injury nor past similar
10 conduct are necessary factors to have to find
11 reprehensibility on behalf of the bank and to sustain
12 this punitive damage award.

13 Also dealing with the reprehensibility, Your
14 Honor, I would just argue that this wasn't just one
15 simple accident or simple mistake. Here we had
16 repeated evidence of grossly -- just careless,
17 conscious disregard on how many different things
18 these employees did wrong.

19 These -- the particular plaintiff in this
20 situation is a minor. I think that that deserves
21 some sort of heightened review. Or when you're
22 considering someone's financial vulnerability, there
23 wasn't any evidence in the record about this child
24 being financially vulnerable, but there was evidence
25 that he's a minor. He's a child. This was life

ROA 0769

APPENDIX 779

1 insurance proceeds from the death of his father.

2 Your Honor, I'd also like to note that there
3 was -- I don't recall an objection at trial to the
4 inclusion of the Bank of America's profits as a
5 whole.

6 The information was taken by Dr. Wood I think as
7 he testified from the Bank of America's financial
8 report. I don't recall a specific objection to
9 inclusion of any international banking profits. And
10 I believes that it. Thank you.

11 *THE COURT:* All right. Mr. Brown?

12 *MR. BROWN:* Thank you, Your Honor. The -- Your
13 Honor, in a South Carolina case, Webb versus CSX,
14 this is reported at 615 SE 2d 440, the 2005 South
15 Carolina Supreme Court case, they reversed the
16 punitive damages there and ordered a -- an entirely
17 new trial and stated that on retrial evidence sought
18 to be admitted on the issue of punitive damages
19 should be closely scrutinized for its relationship to
20 the particular harm suffered by the plaintiff.

21 And they said it's clear much of the evidence of
22 acts in other jurisdictions including CSX and other
23 railroads and acts unrelated to crossing safety --
24 which is the issue there -- in South Carolina
25 admitted in this trial is not constitutionally

ROA 0770

APPENDIX 780

1 permissible.

2 And again, Your Honor, they -- they have got
3 evidence in that they actually argued for the
4 punitive damages to be based on -- based on
5 activities that took place in other states, in the
6 west coast, in other continents, matters that have
7 nothing to do with the mistake that was involved in
8 the Pawleys Island branch with Cody P[REDACTED].

9 The reference, Your Honor, of counsel to those
10 cases in which multipliers can be larger when there's
11 a di-minimus amount of actual damages involved, those
12 are cases where like 1983 action cases and so on
13 where there is a nominal damage, so applying the four
14 to one multiplier doesn't make any sense because the
15 actual damages issue.

16 The conduct was extremely egregious, but the
17 actual damages is only, you know, \$10 or whatever, so
18 it doesn't make any sense in that case, and that is
19 what the Court was talking about. That has no
20 relationship to a \$200,000 actual damages awards that
21 we have here.

22 Your Honor, the -- I would argue last that there
23 should be a new trial absolute awarded in the case
24 for the following reasons.

25 First, we would request that Your Honor use Your

ROA 0771

APPENDIX 781

1 Honor's power under the 13th juror doctrine to
2 essentially disagree with this jury verdict on the
3 facts.

4 The plaintiff's counsel in their brief state --
5 at page 13 they said, it would be error for the Court
6 to hang the jury by refusing to agree with the jury's
7 unanimous verdict. That is completely wrong. That's
8 totally wrong.

9 The Court under *Folkens versus Hunt* and any
10 number of 13 juror cases is totally within your power
11 to disagree with the other juror -- with the juror --
12 excuse me -- if you sit as a 13th juror and you are
13 permitted -- if you disagree with the verdict based
14 upon the facts that you heard, you are totally
15 permitted -- and in fact, you don't even have to put
16 a reason other than I don't agree with the facts and
17 issue an order granting a new trial absolute.

18 So that is wrong that you don't have that power
19 and you would be reversed. You would absolutely be
20 affirmed. I have had judges do that very thing and
21 they have been affirmed without any problem
22 whatsoever.

23 The other two grounds, Your Honor -- not waiving
24 anything by not raising it. Your Honor been very
25 patient listening to this. But if I don't mention

ROA 0772

APPENDIX 782

1 something in our papers, we would rely upon the
2 papers. But there are two other things I'd like to
3 advance in favor of a new trial absolute.

4 One is the discussion by the plaintiff's counsel
5 of the bank being one of largest in the world.
6 That's inappropriate, Your Honor, and shouldn't have
7 been permitted, and unfairly prejudices the defendant
8 when that occurs.

9 The case I argued -- I think it was Howard
10 versus State Farm. It may have been Crossly versus
11 State Farm. One of those cases, Your Honor, the
12 opposing counsel stated something to the effect of
13 Nelson Mullins was a large -- largest law firm in
14 South Carolina, and the Supreme Court reversed that
15 and said you can't even talk about the lawyers.

16 So talking about the bank being one of the very
17 largest in the world is just something that
18 appeals -- and it's intentionally designed to appeal
19 to the jury to award something for an irrelevant
20 reason, that because they're one of the largest banks
21 in the world, that's what the purpose of saying that
22 is, and the Court has come out and said, don't do
23 that kind of thing, we're going reverse that if that
24 occurs.

25 The other thing that came in, Your Honor, was an

ROA 0773

APPENDIX 783

1 exhibit that was entered into evidence that discussed
2 the fact that the child was -- had special needs and
3 may need extensive surgery as a result of brain stem
4 problems and underneath acts.

5 That was put into evidence over objection, Your
6 Honor. And in a stipulated -- that factual --
7 sorry -- a stipulated actual damages case like this,
8 putting in that evidence in front of the jury was
9 specifically designed to inflame the jury and to have
10 them award something based on something other than
11 the evidence that they should have.

12 *THE COURT:* Do you have that particular exhibit?

13 *MR. BROWN:* Yes, sir. May I approach?

14 *THE COURT:* Yes, sir.

15 *MR. BROWN:* Your Honor, this was a page that was
16 attached to Exhibit 1 I'm told by counsel -- went
17 back with the jury over objection.

18 And as you can see, at the very bottom of the
19 paragraph it says, is anticipated this child may need
20 extensive surgery before the age of 10 to correct
21 brain defects to his brain stem.

22 This type of -- then there's a mention of him
23 being a special needs child having physical
24 disabilities.

25 This type of evidence, Your Honor, in this case

ROA 0774

APPENDIX 784

1 where there's stipulated actual damages is an appeal
2 to the passion and prejudices of the jury. It's
3 designed -- when they put it in, it is designed to
4 elicit an emotional response and to have the jury
5 give money to help this child that has a disability.

6 We can all understand why they put it in, but
7 it's not appropriate and -- but they shouldn't have
8 been allowed to. And Your Honor, we would ask for a
9 new trial absolute based upon that. That is -- that
10 concludes the arguments, Your Honor. Thank you.

11 *MRS. KELLAHAN:* In response to these two
12 arguments that have been set out for the new trial
13 absolute. Regarding the bank's position that it was
14 error for us to argue that the Bank of America was
15 one of the largest in the world, we would argue that
16 was completely proper.

17 It was not designed just to elicit a punitive
18 damages response. It was to show if anyone should
19 know better -- one of the witnesses had actually
20 testified that their standard was higher standards
21 during all of this.

22 If anybody should know better on how to deal
23 with things, this bank had it -- had it altogether.

24 This was the bank, kind of the benchmark of how
25 to do things, how to deal with people's money. Plus

ROA 0775

APPENDIX 785

1 it did go also to show the potential for this to
2 happen again. They obviously have to have a
3 multitude of conservatorship accounts like this.

4 Although we did not show specific incidences
5 where another conservatorship account had been
6 mishandled, the fact that the bank was one of the
7 largest in the world I don't think in any way overly
8 prejudiced them. I think it was completely within
9 Your Honor's pervuew to allow that testimony.

10 Also that -- the exhibit that's been argued
11 about the child having special needs. I do not
12 recall, and of course, I -- I may have missed it, but
13 I don't recall any other specific testimony or
14 anything other than this attachment to Exhibit 1,
15 which was the actual petition for the
16 conservatorship.

17 The reason that kind of that brought us all into
18 this court was this was the original petition that
19 was submitted to the probate court, part of the
20 probate court's record downstairs.

21 And counsel wanted to take off a page -- defense
22 counsel wanted to omit this page, and it was
23 specifically referred to in the document, and we
24 argued to let the document go in as a whole.

25 And I don't recall a specific objection to that

ROA 0776

APPENDIX 786

1 sheet at that point. But again, I may be wrong, but
2 I can tell Your Honor there was no other discussion
3 about the child's special needs when in fact there
4 were a multitude of special needs.

5 The conservator did not talk about all of the
6 thousands of medical bills that she is having to pay
7 and what medications he's on now and what else he
8 might need to care for himself.

9 So I believe that considering the record as a
10 whole, this is one sheet that was attached to one of
11 the multitude of exhibits that went back there. It
12 was not pointed out or argued or anything in front of
13 the jury other than that was part of the original
14 Court's Exhibit in the probate court below. Nothing
15 further, Your Honor.

16 MR. BROWN: Your Honor, we'd just submit that
17 having something as part of an original exhibit in
18 the courthouse does not mean it should have come into
19 evidence, and we specifically asked that it be taken
20 off of the exhibit, and plaintiff's counsel wanted
21 it to go in to the jury, and we think it should not
22 have, caused undue prejudice. Thank you, Your Honor.

23 THE COURT: Regarding your argument under Gore
24 that this case calls for a ratio of one to one, can
25 you recap that argument for me again?

ROA 0777

APPENDIX 787

1 MR. BROWN: Yes, sir. The case that discusses
2 this in particular is State Farm versus Campbell,
3 United States Supreme Court, where what the Court
4 said was they -- they went through a discussion, and
5 I have handed it, Your Honor, that case, I believe,
6 is one of the stack.

7 But they went through a discussion and they
8 mentioned several of their past cases, the -- one of
9 the earliest punitive damages constitutional review
10 cases Pacific Life versus Haslip.

11 They mentioned that case and they mentioned Gore
12 and they reiterated that four to one was close to the
13 line of constitutional impropriety. And then they
14 said further -- and Your Honor, looking for the exact
15 quote... but they said that, quote, when compensatory
16 damages are substantial, then a lesser ratio perhaps
17 only equal to compensatory damages, can reach the
18 outermost limit of the due process guarantee.

19 And Your Honor, the -- I appreciate Your Honor's
20 indulgence of time on all of this. The United States
21 Supreme Court as we know does not take many cases of
22 any kind, and they have gone back and forth on this
23 punitive damages issue many, many times.

24 This is very, very important that -- that Your
25 Honor does what Your Honor is doing and look

ROA 0778

APPENDIX 788

1 carefully at this and not say, well, it's -- I'm
2 going to defer to the jury. That would not be
3 appropriate.

4 And I would strongly advise, request that the
5 Court enforce this particular thought which is that a
6 one to one ratio is near the outermost limit when
7 they are -- there are substantial amount of
8 compensatory damages involved.

9 Here I don't think anyone would argue that
10 \$200,000 is substantial compensatory damages. And
11 again, this is not a case where the defendant has
12 retained that money from some wrongful act or may
13 have requested, give it back. This is \$200,000 they
14 are going to have to cut a check for that.

15 And so that is real damages they are paying.
16 It's very substantial. And so a one to one ratio, if
17 punitive damages are awarded, all should be proper
18 ratio, Your Honor.

19 *THE COURT:* Response?

20 *MRS. KELLAHAN:* Your Honor, if I may respond.
21 The Campbell case specifically stated few awards
22 exceeding -- let me back up for a minute. There is
23 no bright line test. There is no bright line test
24 about a one to one ratio.

25 One of the cases cited by bank's counsel, the

ROA 0779

APPENDIX 789

1 one.

2 I would just like to re-state, I do not believe
3 there is any bright line formula here for the Court
4 to consider other than if one exceeded the single
5 digit multiplier, I believe that would be
6 inappropriate.

7 But in this situation I think our particular --
8 well, it's 7.694 times the actual damages. We would
9 argue that it is specifically completely reasonably
10 related to the harm. Thank you.

11 *THE COURT:* All right. We're going to take a
12 few moments, minutes, for the Clerk -- for a few
13 minutes and we'll come back.

14 (Whereupon a recess was had.)

15 *THE COURT:* The judgment notwithstanding the
16 verdict seems to be made -- to made on three bases.
17 First, that an award of punitive damages is not
18 proper. Second, that at close of the evidence the
19 bank is entitled to a directed verdict. Further,
20 that there is insufficient clear and convincing
21 evidence to support an award of punitive damages.

22 I deny the motion for judgment notwithstanding
23 the verdict in that I find that an award of punitive
24 damages was proper in the case based on the evidence,
25 that the motions made for directed verdict during the

ROA 0780

APPENDIX 790

1 trial were properly denied by the Court, and that
2 clear and convincing evidence was supported -- was
3 submitted supporting an award of punitive damages.

4 Regarding the motion for new trial absolute on
5 the 13th juror principal, although the Court can hang
6 the jury and grant a new trial absolute based on the
7 13th juror doctrine, I find that the Court should not
8 interfere with the jury's verdict in this case and
9 that ample evidence was presented to the jury from
10 which the jury could render a verdict on behalf of
11 the plaintiff in this case and that the arguments
12 made in the motion for new trial absolute by the
13 defense does not entitle the defense to a new trial
14 absolute.

15 Regarding this motion for new trial nisi
16 remittitur on the basis that the -- where the award
17 was unduly liberal and merely excessive, then the
18 Judge has power and responsibility of reducing the
19 damages award, I do not grant the -- or deny the
20 motion for new trial nisi remittitur on that basis.

21 But I'm leaving open the question as to the
22 appropriateness of the punitive damages award and
23 whether or not the punitive damages award should be
24 reduced.

25 And I'm going to have the parties submit

ROA 0781

APPENDIX 791

1 proposed orders on that issue. The proposed orders
2 probably should also include the Court's ruling as to
3 the issues involving JNOV and new trial absolute and
4 remittitur issues.

5 But I more specifically would like to have the
6 proposed orders on this issue involving punitive
7 damages that will give me additional time to study
8 these cases in greater detail, think about the issue
9 more, and to have your proposed orders which I can
10 alter to fit what the ultimate ruling of the Court
11 might be.

12 And when would you all want to do that?

13 MR. BROWN: Your Honor, 10, 15 days in light of
14 the holidays.

15 THE COURT: All right.

16 MRS. KELLAHAN: That's fine.

17 MR. JENKINSON: Your Honor, please,
18 consideration also included a review of the Gamble
19 factors as well?

20 THE COURT: Yes, it is. Well, I have -- all of
21 that -- certainly we have spent this time this
22 morning reviewing the Gamble factors, and all of that
23 will be incorporated into a final order issued by the
24 Court on the issue of punitive damages.

25 And I'm sure y'all will include that in your

ROA 0782

APPENDIX 792

1 analysis and proposed orders.

2 The way I'd like to do the proposed order is
3 that I'd like for them to be submitted and also
4 served on opposing side and opposing side will have a
5 period to comment on the other's proposed orders and
6 make any additional proposed orders within a period
7 of 15 days from the time -- the initial submission so
8 that you will submit that within 15 days and then
9 have 15 days to further submit, argue, comment on
10 what has been submitted by the other side. Anything
11 else then?

12 MR. BROWN: No, Your Honor.

13 MRS. KELLAHAN: Your Honor, it's one other note.
14 We had corresponded with your Law Clerk about trying
15 to schedule a -- the damages hearing for Mrs. Unrue.

16 THE COURT: Right.

17 MRS. KELLAHAN: And I don't know -- I haven't
18 heard anything back. You had mentioned the only week
19 you were available would be December 15th, that week.
20 I believe. I'm... and that you...

21 THE COURT: That's the only other week that we
22 will have -- we'll be in session for court I think
23 the week after that. The final two weeks of the year
24 are in-chambers weeks and then I will be out of
25 pocket or out of the circuit beginning January 5th.

ROA 0783

APPENDIX 793

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

PROBATE COURT

FILED 13 AM 10:58

IN THE MATTER OF CODY P [REDACTED]
CASE NUMBER

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

PETITION FOR
☐ PROTECTIVE ORDER
☒ APPOINTMENT OF CONSERVATOR

Petitioner: Elizabeth Powell, by and through her attorney, Donna V. Sands

1. Nature of interest of undersigned: Mother

2. Information - Minor/Incapacitated Person

Name: Cody Powell Age: 5

Date of Birth: 6-12-95

Social Security Number: [REDACTED] 2696

Address: [REDACTED]

City/State/Zip: Andrews, SC [REDACTED]

Telephone: (Home) [REDACTED] Office/Other 843-221-7036

3. Venue for this proceeding is proper in this county because the above minor/incapacitated person:

☒ Resides in this county

☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any is:
The Petition is child's natural and legal guardian.

5. Information - Family (list nearest relative first), dates of birth of minors:

Name & Social Security #	Date of Birth	Address	Relationship

Travis Powell	[REDACTED]	Andrews, SC [REDACTED]	Uncle

Karen Powell	[REDACTED]	PO Box 3284, Pawleys Island, SC 29585	Aunt

Nellie Powell	[REDACTED]	Andrews, SC [REDACTED]	Grandmother

6. The following is a general statement of the property, assets and income of the above person, together with an estimate of the value thereof: (A full inventory, form #3550C, shall be completed and filed with the Court within thirty days of appointment.)

Description and location	Value
Insurance Proceeds	\$220,000.00 +/-

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment): See Attached



ROA 0784

APPENDIX 794

8. I request the appointment of:

Name: Karen Powell
Address: PO Box 3284
Pawleys Island, SC 29585
Telephone (O): 843-235-8940
(H): 843-543-0628 Cell

AND

Name: Travis Powell
Address: [REDACTED]
Andrews, SC [REDACTED]
Telephone (O): [REDACTED]
(H): 843-221-7036

whose priority of appointment is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides
☐ individual or corporation nominated by the protected person (if fourteen or more years of age and deemed mentally capable of making such choice)
☐ attorney in fact appointed by protected person (SCPC 5-501)
☐ spouse of protected person
☐ adult child of protected person
☐ parent of protected person or person nominated by will of deceased parent
☒ other relative of protected person (specify): Aunt and Uncle
☐ person nominated by the person who is caring for protected person or paying benefits
☐ nominated by one with priority to serve in his/her stead (specify): [REDACTED] ☐ Other (specify): [REDACTED]

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Travis Powell	<u>[REDACTED] Andrews, SC [REDACTED]</u>	Uncle
Karen Powell	<u>PO Box 3284, Pawleys Island, SC 29585</u>	Aunt
Nellie Powell	<u>[REDACTED] Andrews, SC [REDACTED]</u>	Grandmother

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservatorship is proper; that the Court appoint Karen Powell and Travis Powell as the conservator for the above minor/incapacitated person; and that Letters of Conservatorship be issued to the conservator.

Executed this 4 day of February, 2001

Signature: [REDACTED]

ROA 0785

APPENDIX 795

in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

Signature: Elizabeth Powell

Name: Elizabeth Powell

Address: [REDACTED]

Andrews, SC 29520

SWORN to before me this 28
day of January, 2001.

Telephone (O): _____

(H): _____

Notary Public for South Carolina
My Commission Expires: 10/02/02

ORDER FOR HEARING

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: March 13, 2001

TIME: 10:00 AM

PLACE: 125 W. Main Street, Kingstree, SC

Pursuant to SCPC Section 1-401, the Petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing date.

Executed this 28th day of February, 2001.

Bruce M. Hamble
Probate Court Judge

ORDER OF APPOINTMENT

After hearing, the Court finds that venue is proper, that the required notices have been given or waived, and
[] that the proposed protected person has assets requiring protective proceedings.

[x] That he/she is a person for whom appointment of a conservator is proper, and that the appointment of a conservator will be in his/her best interests.

THEREFORE, IT IS ORDERED:
(Enter protective order here)

FORM #540PC (7/87)

Page 3 of 4

(Strike following paragraph is not appointing a conservator)

IT IS FURTHER ORDERED that the Court appoints Kenn Powell & Travis Powell

ROA 0786

APPENDIX 796

as the conservator of the estate and affairs of the protected person and directs the issuance of Letters of Conservatorship to the conservator as follows:

Waiver of Bond

Bond is set in the amount of \$ -0-
The conservator shall not pay compensation to himself/herself from assets of the estate without Court approval.

Executed this 13th day of March, 2001.

Paul M. Gaskle

Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of Cody Powell.

Executed this 28 day of January, 2001.

Signature: *Travis Powell*
Name: TRAVIS POWELL
Address: [REDACTED]
Telephone (O): Andrews SC [REDACTED]
(H): 843-221-5394

SWORN to before me this 28th
day of January, 2001.

[Signature]
Notary Public for South Carolina
My Commission Expires: 10/2/02

Signature: *Karen L. Powell*
Name: KAREN M. POWELL
Address: PO BOX 3284
Lawrence Island, SC 29585
Telephone (O): 843-235-8940
(H): 843-357-9601

SWORN to before me this 28
day of January, 2001.

[Signature]
Notary Public for South Carolina
My Commission Expires: 10/2/02
FORM #540PC (7.87)

Page 4 of 4

ROA 0787

APPENDIX 797

**ATTACHMENT TO PETITION FOR CONSERVATOR
IN RE: CODY POWELL, A MINOR**

The Minor owns property which requires management by a competent adult person. The minor is legally unable to manage his own affairs. Furthermore, the minor suffers from emotional and physical disabilities which, upon information and belief, will render him unable to manage his affairs upon attaining the age of 18. It would be in the minor's best interest to have a conservator appointed to manage his assets until such time as he is able to manage them himself. Due to the child's disability, it would also be in his best interest to allow the Conservator to have the authority to disclaim property, to transfer property to an Irrevocable Special Needs Trust, and to otherwise manage the minor's property so as to protect and preserve the child's eligibility for government benefits, should the need arise. It is anticipated that the child may need extensive surgery before the age of 10 to correct birth defects to his brain stem.

ROA 0788

APPENDIX 798

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

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

01 MAR 29 PM 2:03

ED

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 0789

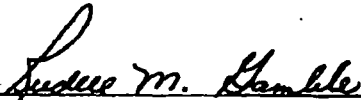
APPENDIX 799

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

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

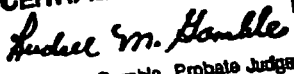
3. ORDERED that Bond is hereby waived;
 4. ORDERED that the Conservators are authorized and empowered to create a Special Needs Trust with the minor's assets, if the Conservators determine that the child is otherwise uninsurable and his assets are insufficient to provide adequate medical care for the 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 0790

APPENDIX 800

STATE OF SOUTH CAROLINA
COUNTY OF Williamsburg

FILED

PROBATE COURT

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 192001

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

Betty J. Matthews, ass.
Probate Court Judge

CERTIFIED TRUE COPY

Rudell M. Gamble

Rudell M. Gamble, Probate Judge
Williamsburg County SC



ROA 0791

APPENDIX 801

STATE OF SOUTH CAROLINA
COUNTY OF Williamsburg

PROBATE COURT

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

CASE NUMBER 2001GC4500003

FILED

61 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 fiduciar
by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the abov
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 A. Mattheis, Assoc.
Probate Court Judge

CERTIFIED TRUE COPY

Rudell M. Gamble
Rudell M. Gamble, Probate Judge
Williamsburg County SC

Best Copy Available

1012-09

04/13/2001 0000106863 62-24 311

*****99,000.00

DOLLARS

W. J. [Signature]

AUTHORIZED SIGNATURE

VOID IF NOT CASHED IN 30 MONTHS FROM MONTH OF ISSUE

6083047

6083047

261821003

15 5 11

9070 0676



ROA 0793

APPENDIX 803

THE BACK OF CHECKS WHICH HAVE A REPLICATED WATERMARK TO VIEW HOLD BY AN ANGLE

Wausau Insurance Companies

Check No. 3113258413

DATE APR 12, 2001

AMOUNT \$ 4,819.73

FOUR THOUSAND, EIGHT HUNDRED NINETEEN AND 73/100 DOLLARS

KAREN POWELL, AS CONSERVATOR OF
Estate of KAREN POWELL, A MINOR

EJ Williams

0000181973

6200120197

74707 01 12:18 CL OFFSET

15 277 5528 916 858 447 51

34026202



ROA 0794

APPENDIX 804

Wausau Insurance Companies

Check No. 3113268011

DATE APR 13, 2001

THE HUNDRED FIFTY-THREE AND 67/100 DOLLARS

KAREN M. POWELL, AS CONSERVATOR FOR
COOY. [REDACTED] A MINOR

EJ Williams

0000025367

6200128198

34048973

1260 0607

1260 0607



ROA 0795

APPENDIX 805

Wausau Insurance Companies

Check No. 3115250316

DATE APR 11, 2001

CASE NO. 011-022018

Insured: NICKSON CORPORATION

ONE HUNDRED FIFTY-THREE AND 67/100 DOLLARS

LAREN POWELL AS CONSERVATOR OF EODY P. A MINOR

EJ Williams

000000253672

9618210029

34011274

Laren Powell

06767



ROA 0797

APPENDIX 807

NATIONAL CASHIALTY COMPANY
 04/15/2001
 0000184862
 62-24
 311
 1012-09
 \$ 499,000.00
 DOLLARS
 FOUR HUNDRED AND NO/100THS
 W. J. [Signature]
 AUTHORIZED SIGNATURE
 GOOD IF NOT CASHED IN SIX MONTHS FROM MONTH OF ISSUE
 NEW HANNOVER BANK Delaware Wilmington De 19801
 .0003100300

[illegible]A rectangular stamp with a thick black border. The text "PLAINTIFF'S EXHIBIT" is printed in a bold, sans-serif font at the top. Below this, the number "10" is handwritten in a large, dark ink. At the bottom right, there is a handwritten signature or initials.

APPENDIX 808

[illegible]

6260128191

APR 26 1964

9670 06964

A rectangular stamp with a thick black border. The text "PLAINTIFF'S EXHIBIT" is printed in a bold, sans-serif font, with "PLAINTIFF'S" on the top line and "EXHIBIT" on the bottom line. A handwritten number "2" is written below the word "EXHIBIT". In the bottom right corner, the letters "du" are handwritten. The stamp is tilted slightly to the right.

APPENDIX 810

Bank of America		CD/IRA Withdrawal/Redemption - SC		DEBIT	
Branch: GARDEN CITY		Date: 6/25/01		1316754	
Account No. [REDACTED]		S		253,991.50	
Customer Name: KAREN M. UNRUE					
Contract Account No. [REDACTED] 2016					
Signed by: Mark McHorney		243-116-3241			
[REDACTED]		6034		00251991501	

2/5/50059

10/25/01

74700 002 627015 06-24-01 16134 CD REDEEMED 1253,991.50

PLAINTIFF'S
EXHIBIT
1/13
Lm

ROA 0801

APPENDIX 811

Bank of America
BANK OF AMERICA, N.A. (THE "BANK")

Personal Signature Card
with Substituted Form W-9

Account Number XXXXXXXXXXXX 8085 ☐ Temporary Signature Card (deposit accounts only)
Account Type CUSTOM SAVINGS
Account Title KAREN M LUNNIE - CUST
CODY LUNNIE - UMCA

By signing below, you acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents, as amended from time to time: (1) if this account is a deposit account, the Deposit Agreement and Disclosures, the Personal Schedule of Fees, and the Minimum Service Fees for Personal Accounts; (2) if this account is a Line of Credit, the Line of Credit Agreement and Disclosures. Furthermore, you acknowledge the receipt of these documents. By signing below, you also acknowledge and agree that the signature(s) will serve as verification for any transaction in connection with this account, any Line of Credit checks which you may sign, and as the certification text (with listing of the taxpayer identification number to which the word interest reported).

Substitute Form W-9. (Required only for Deposit Accounts). Certification: Under penalties of perjury, I certify that: (1) The number shown on this form is the correct taxpayer identification number (or I am waiting for a number to be issued to me), and (2) I am not subject to backup withholding because: (A) I am exempt from backup withholding, or (B) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (C) The IRS has notified me that I am no longer subject to backup withholding.

Confirmation Instructions: You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. See also IRS instructions for Substitute Form W-9 in the Deposit Agreement and Disclosures.

☒ Individual ☐ Joint with Survivorship ☐ Payable on Death ("POD")

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Tax Identification Number	Report Interest On	Signature	ATM/Check Card Requested? (Deposit Accounts Only)
1 <u>XXXXXXXXXXXX 8515</u>	☒ Yes	<u>Karen M. Lunnie</u>	☐
2 _____	☐ No	_____	☐
3 _____	☐ No	_____	☐
4 _____	☐ No	_____	☐
5 _____	☐ No	_____	☐
6 _____	☐ No	_____	☐

* By checking the box marked "ATM/Check Card Requested?", you hereby request an Automatic Teller Machine Card and/or a Check Card.

I/we agree the following person(s) is/are authorized to act on my/our behalf, superseding any prior designation:

Name of Agent

Agent's Social Security Number

Agent's Home Telephone Number

Agent's Mailing Address

(Please notify the Bank of any subsequent changes of beneficiary(ies)' address or telephone.)

APR MAY 04 2001

NOT
VALID



ROA 0802

APPENDIX 812

Bank Information

Customer 1
 Name KAREN M UMMOE
 Review Information APPROVED-EXISTING

Customer 2
 Name CODY STEVEN POWELL
 Review Information _____

Customer 3
 Name _____
 Review Information _____

Customer 4
 Name _____
 Review Information _____

Customer 5
 Name _____
 Review Information _____

Date 06/02/2001 Banking Center Name PAWLEY'S ISLAND
 Associate's Phone Number 843-237-1990 Associate's Name MEREDITH F LAWRENCE

BOA 164

ROA 0803

APPENDIX 813



Wausau Insurance Companies

Check No. 3113330770

DATE APR 27, 2001

Case No. AA-022215
Insured: KAREN POWELL

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

DOLLARS
\$ 000000253.67

E.J. Williams

00000025367

6600432374

Karen Powell

34251094



BOA 02943

ROA 0804

APPENDIX 814

Bank of America



Bank of America, N.A.
NC1-003-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

Page 1 of 2
Statement Period
05-02-01 through 05-22-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M LMRUE - CUST
CODY STEVEN POWELL - UNGA
HORNELLS INLET SC [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 TDD Hearing Impaired
1.800.688.6086 En Espa ol

Or you may write to:
Bank of America, N.A.
P.O. Box 1091
Charlotte, N.C. 28254-3489

KAREN M LMRUE - CUST
CODY STEVEN POWELL - UNGA

Your Account at a Glance

Account Number: [REDACTED] 8085 Annual Percentage Yield Earned this Statement
Beginning Balance on 05-02-01: \$ 0.00 Period: 1.02%
Deposits and Other Additions: + 253.81 Interest Paid Year to Date: \$0.14
Ending Balance on 05-22-01: \$ 253.81

Beginning July 2, 2001, the first ATM mini statement per monthly statement cycle is free and \$1 thereafter. Each ATM full statement will be \$2. Tax levies or garnishment, per occurrence will be \$75 or such other rate as may be set by law. This fee applies to each legal order or process that directs us to freeze, attach or withhold funds or other property.

Please call or stop by if you have any questions.

Custom Savings Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
05-02	253.67+	253.67	Deposit
05-22	0.14+	253.81	Interest Earned



ROA 0805

APPENDIX 815

H

Bank of America, N.A.
NCL-085-01-01
P.O. Box 1071
Charlotte, N.C. 28254-3409

Page 2 of 2
Statement Period
05-02-01 through 05-22-01
Number of checks enclosed: 0
B 14 0 A
Account Number: [REDACTED] 0085

KAREN M UNRUE - CUST
CODY [REDACTED] - UNDA

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	0.00	05-02	253.67	05-22	253.61

ROA 0806

APPENDIX 816

Bank of America, N.A.
NC1-003-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

Page 1 of 2
Statement Period
06-22-01 through 07-23-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

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
1.800.280.4808 TDD Hearing Impaired
1.800.688.6086 En Español

Or you may write to:
Bank of America, N.A.
P.O. Box 1091
Charlotte, N.C. 28254-3489

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 06-22-01..... \$ 1,522.98 Period: 1.47%
Deposits and Other Additions..... + 255,546.80 Interest Paid Year to Date: \$287.91
Other Subtractions..... - 1,000.00
Ending Balance on 07-23-01..... \$ 256,069.78

Beginning July 1, 2001, Bank of America customers can withdraw cash without a withdrawal fee or surcharge at thousands of ATMs worldwide. There is also no fee for balance inquiries or transfers between your Bank of America accounts, when these services are available.

Call customer service about current information on international banks participating in this program.

Money Market Savings Additions and Subtractions

Date Posted	Amount (\$)	Resulting Balance (\$)	Transaction
06-26	253,991.50+	255,514.48	Counter Credit
7-1	507.34+	256,021.82	Deposit
7-1	253.67+	256,275.49	Deposit
07-10	253.67+	256,529.16	Deposit



ROA 0808

APPENDIX 818

Bank of America, N.A.
 NCL-003-05-01
 P.O. Box 1091
 Charlotte, N.C. 28254-3489

Page 2 of 2
 Statement Period
 06-22-01 through 07-23-01
 Number of checks enclosed: 0
 B 14 0 A
 Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
 CODY [REDACTED] P [REDACTED] - UMGA

Money Market Savings Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
07-11	1,000.00-	255,529.16	Web Xfers [REDACTED] 9281
07-19	253.67+	255,782.83	Confirmation # 8521221674
07-23	286.95+	256,069.78	Deposit Interest Earned

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	1,522.98	07-09	256,275.43	07-19	255,782.83
06-26	255,514.48	07-10	256,529.16	07-23	256,069.78
06-27	256,021.82	07-11	255,529.16		
0					

ROA 0809

APPENDIX 819

Bank of America 		☒ Checking ☒ Savings Deposit ☐ CREDIT																			
Date <u>6/25/01</u>		Please Check Proper Box:																			
Name <u>KAREN M. JUNE</u>		All items subject to terms and conditions of card only or to regulations and special agreements.																			
Address <u>BRIDGEIDE BEACH SC 29525</u>		Save time in the shop, help us avoid errors. The next time you make a deposit, please use 3 new pre-printed deposit slips for your account.																			
City <u>BRIDGEIDE BEACH</u>		<table border="1"> <tr> <td>Check</td> <td><u>25399.150</u></td> </tr> <tr> <td>Cash</td> <td></td> </tr> <tr> <td>Debit</td> <td></td> </tr> <tr> <td>Transfer</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Sub Total</td> <td></td> </tr> <tr> <td>Less Cash</td> <td></td> </tr> <tr> <td>Less Fees</td> <td></td> </tr> <tr> <td>Total</td> <td></td> </tr> </table>		Check	<u>25399.150</u>	Cash		Debit		Transfer		Other		Sub Total		Less Cash		Less Fees		Total	
Check	<u>25399.150</u>																				
Cash																					
Debit																					
Transfer																					
Other																					
Sub Total																					
Less Cash																					
Less Fees																					
Total																					
Account Number <u>8085</u>		\$ <u>25399.150</u>																			
Signature <u>[Signature]</u>		Stamp <u>6085</u>																			

[illegible]

APPENDIX 820

Bank of America, N.A.
NC1-003-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

Page 1 of 1
Statement Period
07-24-01 through 08-23-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] P [REDACTED] - UMG
SUPERIOR, CO [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 TDD Hearing Impaired
1.800.688.6086 En Espanol

Or you may write to:
Bank of America, N.A.
P.O. Box 1091
Charlotte, N.C. 28254-3489

Money Market Savings

KAREN M UNRUE - CUST

CODY STEVEN POWELL - UMG

Your Account at a Glance

Account Number [REDACTED] 8085 Annual Percentage Yield Earned this Statement
Beginning Balance on 07-24-01 [REDACTED] 256,069.78 Period: 1.40%
Deposits and Other Additions + 1,310.36 Interest Paid Year to Date: \$587.57
Other Subtractions - 3,500.00
Ending Balance on 08-23-01 [REDACTED] 253,884.12

Money Market Savings Additions and Subtractions

Date Posted	Amount (\$)	Resulting Balance (\$)	Transaction
07-30	3,500.00-	252,569.78	Web Xfers [REDACTED] 9281 Confirmation # 8511495539
07-31	507.34+	253,077.12	Deposit
08-08	253.67+	253,330.79	Deposit
08-09	253.67+	253,584.46	Counter Credit
08-23	299.66+	253,884.12	Interest Earned

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	256,069.78	07-31	253,077.12	08-09	253,584.46
07-31	252,569.78	08-08	253,330.79	08-23	253,884.12



ROA 0811

APPENDIX 821

Bank of America, N.A.
NC1-003-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

Page 1 of 1
Statement Period
08-24-01 through 09-20-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] - UMCA
SUPERIOR CO [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 TDD Hearing Impaired
1.800.688.6086 En Español

Or you may write to:
Bank of America, N.A.
P.O. Box 1091
Charlotte, N.C. 28254-3489

Money Market Savings

KAREN M UNRUE - CUST

CODY STEVEN POWELL - UMCA

Your Account at a Glance

Account Number [REDACTED] 8085 Annual Percentage yield Earned this Statement
Beginning Balance on 08-24-01... \$ 253,884.12 Period: 1.40%
Deposits and Other Additions... + 1,535.62 Interest Paid Year to Date: \$854.84
Other Subtractions... - 4,000.00
Ending Balance on 09-20-01... \$ 251,419.74

Money Market Savings Additions and Subtractions

Date Posted	Amount (\$)	Resulting Balance (\$)	Transaction
08-27	4,000.00-	249,884.12	Web Xfers [REDACTED] 281 Confirmation # 8517554121
09-10	507.34+	250,391.46	Deposit
09-10	253.67+	250,645.13	Deposit
09-13	253.67+	250,898.80	Deposit
09-14	253.67+	251,152.47	Deposit
09-20	267.27+	251,419.74	Interest Earned

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	253,884.12	09-10	250,645.13	09-14	251,152.47
7	249,884.12	09-13	250,898.80	09-20	251,419.74



ROA 0812

APPENDIX 822

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

Page 1 of 2
Statement Period
10-24-01 through 11-21-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] - UNGA
SUPERIOR CO [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.709.PLUS (7587) Priority Telephone Banking
1.800.288.4408 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

KAREN M UNRUE - CUST Money Market Savings
CODY STEVEN POWELL - UNGA

Your Account at a Glance

Account Number.....	[REDACTED]	8085	Annual Percentage Yield Earned this Statement
Beginning Balance on 10-24-01....	\$	253,258.43	Period: 1.39%
Deposits and Other Additions....	+	985.84	Interest Paid Year to Date: \$1,396.34
Other Subtractions.....	-	200,000.00	
Ending Balance on 11-21-01.....	\$	54,244.27	

Get Card Smart. Get Photo Security free on your Check Card today. It's a secure and easy way to pay. Free Photo Security is also offered on Bank of America credit cards. Apply today and get a great introductory APR. Credit card offer through Bank of America NA (USA). Credit subject to approval. Member FDIC.

Bank of America is no longer participating in the STAR network. Your ATM/Check Card will continue to be accepted at all PLUS ATMs and all Interlink merchants throughout the U.S., and your Check Card will continue to be accepted at all Visa merchants and ATMs worldwide. Most ATMs accept PLUS, and most merchants accept Interlink.

Please notice your statement's new look. Some of our customers told us that blank spaces at the top of statement pages resulted in generation of an additional page. Thanks to this feedback, we are now printing statement information in those spaces, reducing the length of your statement and saving paper.



ROA 0813

APPENDIX 823

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

Page 2 of 2
Statement Period
10-24-01 through 11-21-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] P [REDACTED] - UNGA

Money Market Savings Additions and Subtractions

Date Posted	Amount (\$)	Resulting Balance (\$)	Transaction
10-31	253.67+	253,512.10	Deposit
11-06	253.67+	253,765.77	Deposit
11-14	253.67+	254,019.44	Counter Credit
11-15	99,000.00-	155,019.44	Online Banking transfer to 9281 Confirmation# 1005846024
11-15	75,000.00-	80,019.44	Online Banking transfer to 9281 Confirmation# 1005845936
11-15	26,000.00-	54,019.44	Online Banking transfer to 9281 Confirmation# 1005846126
11-21	224.83+	54,244.27	Interest Earned

Daily Balance Summary

	Balance	Date	Balance	Date	Balance
Beginning	253,258.43	11-06	253,765.77	11-15	54,019.44
10-31	253,512.10	11-14	254,019.44	11-21	54,244.27

ROA 0814

APPENDIX 824

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

Page 1 of 3
Statement Period
11-22-01 through 12-20-01
Number of checks enclosed: 0
B I O A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] P [REDACTED] - UMGA
[REDACTED]
BOULDER CO [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 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 11-22-01 \$ 54,244.27 Period: 1.17%
Deposits and Other Additions + 1,301.56 Interest Paid Year to Date: \$1,429.55
Service Charges and Other Fees - 20.00
Other Subtractions - 50,000.00
Ending Balance on 12-20-01 \$ 5,525.83
Q



ROA 0815

APPENDIX 825

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

Page 2 of 3
Statement Period
11-22-01 through 12-20-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8095

KAREN M UNRUE - CUST
COOY [REDACTED] P [REDACTED] - UNRGA

All of us at Bank of America extend our warmest wishes for a joyous holiday season and a peaceful, prosperous new year. Thank you for choosing Bank of America to help you realize your financial goals. We value your business and look forward to serving you in the future.

Get Photo Security free on your Check Card with your Bank of America checking account. It's a secure and easy way to pay. Free Photo Security is also offered on Bank of America credit cards. Apply today and get a great introductory APR. Credit card offer through Bank of America NA (USA). Credit subject to approval. Member FDIC.

Looking for a mortgage, financial tools, a new home or advice on moving? Bank of America HomeSolutions is your online resource. Learn more at bankofamerica.com/homesolutions.

Bank of America is committed to providing you greater security and confidentiality when mailing account statements to a foreign mailing address. Effective January 2002, account statements mailed to foreign addresses will be mailed in an envelope that does not display the Bank of America name or logo.

Many older Series E Savings Bonds have reached final maturity and are no longer earning interest, but they may be worth more than five times their face value. Use the free savings bond calculator at www.savingsbonds.gov to determine the current value of your bonds, when they increase in value, and when they stop earning interest.

Great news. Beginning with the 2002 tax year, the maximum contribution you can make to a Coverdell Education Savings Account (Education IRA) will increase to \$2000 annually.

Money Market Savings Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
11-23	253.67*	50,497.94	Counter Credit
11-29	253.67*	50,751.61	Counter Credit
12-04	253.67*	55,005.28	Counter Credit
12-10	50,000.00-	5,005.28	Online Banking transfer to Chk 9281 Confirmation# 1007869110
12-12	253.67*	5,258.95	Deposit
12-19	253.67*	5,512.62	Counter Credit
12-20	20.00-	5,492.62	Check ORDER00005; Des-fee ; ID=
12-20	33.21*	5,525.83	Eff Date: 011220; Indn: Karen M Unrue, Cust Interest Earned

ROA 0816

APPENDIX 826

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

Page 3 of 3
Statement Period
11-22-01 through 12-20-01
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] [REDACTED] - UNGA

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
----	-----	----	-----	----	-----
Beginning	54,244.27	12-04	55,005.28	12-19	5,312.62
11-23	54,497.94	12-10	5,005.28	12-20	5,525.83
11-29	54,751.61	12-12	5,258.95		

ROA 0817

APPENDIX 827

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

Page 1 of 2
Statement Period
04-23-02 through 05-22-02
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] - UMGA
BOULDER CO [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4608 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 04-23-02 \$ 9,857.28 Period: 1.00%
Deposits and Other Additions + 515.68 Interest Paid Year to Date: \$27.40
Ending Balance on 05-22-02 \$ 10,372.96

For statement cycles starting after July 5, 2002, avoid a monthly maintenance fee on your Money Market Savings account by keeping a minimum balance of \$2,500 or an average daily balance of \$5,000 in your account. For more information, please call the customer service number on this statement.

Online Banking at www.bankofamerica.com lets you bank anytime, anywhere you have Internet access. View updated account information, transfer money, re-order checks and more - all in one secure place. You can even receive and pay your bills online from one easy screen - in just minutes. Get started today at www.bankofamerica.com/bankonline.

Money Market Savings Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
	253.67+	10,110.95	Deposit
	253.67+	10,364.62	Deposit
-22	8.36+	10,372.96	Interest Earned



BOA 131

ROA 0818

APPENDIX 828

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

Page 2 of 2
Statement Period
04-23-02 through 05-22-02
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] P [REDACTED] - UNGA

Daily Balance Summary

Date ----	Balance -----	Date ----	Balance -----
Beginning	9,857.28	05-02	10,364.62
04-24	10,110.95	05-22	10,372.96

BOA 132

ROA 0819

APPENDIX 829

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

Page 1 of 2
Statement Period
01-24-03 through 02-20-03
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] - UMGA
ANDREWS SC [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.800.333.6262 Express Service/Customer Service
1.800.288.4408 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

KAREN M UNRUE - CUST Money Market Savings
CODY STEVEN POWELL - UMGA

Your Account at a Glance

Account Number: [REDACTED] 8085 Annual Percentage Yield Earned this Statement
Beginning Balance on 01-24-03: \$ 10,437.58 Period: 0.754
Deposits and Other Additions: + 5.79 Interest Paid Year to Date: \$13.08
Other Subtractions: - 10,437.58
Ending Balance on 02-20-03: \$ 5.79

Tax season is upon us. Looking for an easy way to do your taxes this year, and save money, too?
Bank of America offers you 30% off Turbo Tax(R) for the Web(SM) service when you visit
www.bankofamerica.com/turbotax. Prepare and file your Turbo Tax returns online quickly,
conveniently and accurately. Plus get your refund fast with e-file, at no extra charge.

Online Banking at www.bankofamerica.com lets you bank anytime, anywhere you have Internet access.
View updated account information, transfer money and more - all in one secure place in just
minutes. Get started today at www.bankofamerica.com.

Money Market Savings Additions and Subtractions

Date Posted	Amount (\$)	Resulting Balance (\$)	Transaction
	10,437.58-	0.00	Court Ordered Judgment
2-20	5.79+	5.79	Fdes MNC 0503900 Mbk3JP8 Interest Earned



BOA 142

ROA 0820

APPENDIX 830

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

Page 2 of 2
Statement Period
01-24-03 through 02-20-03
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UHRUE - CUST
CODY [REDACTED] P [REDACTED] - UHGA

Daily Balance Summary

Date ----	Balance -----	Date ----	Balance -----
Beginning	10,437.58	02-20	5.79

BOA 143

ROA 0821

APPENDIX 831

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

Page 1 of 1
Statement Period
02-21-03 through 03-21-03
Number of checks enclosed: 0
B 14 0 A

Account Number: [REDACTED] 8085

KAREN M UNRUE - CUST
CODY [REDACTED] - UMCA
ANDREWS SC [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.800.333.6262 Express Service/Customer Service
1.800.288.4408 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

KAREN M UNRUE - CUST Money Market Savings
CODY STEVEN POWELL - UMCA

Your Account at a Glance

Account Number [REDACTED] 8085 Interest Paid Year to Date: \$13.08
Beginning Balance on 02-21-03... \$ 5.79
Service Charges and Other Fees... - 10.00
Ending Balance on 03-21-03... \$ 4.21-

ONLINE BANKING GUARANTEE: With our Online Banking service, you can be confident that your Bank of America accounts will be secure and protected. We guarantee \$0 liability for any unauthorized activity originating from Online Banking, including Bill Payment. For terms and conditions, or to learn more about Online Banking, visit www.bankofamerica.com.

Money Market Savings Additions and Subtractions

Date Posted	Amount (\$)	Resulting Balance (\$)	Transaction
03-21	10.00-	4.21-	Monthly Maintenance Fee

Daily Balance Summary

Date	Balance	Date	Balance
Beginning	5.79	03-21	4.21-



BOA 144

ROA 0822

APPENDIX 832

NationsBank
NATIONSBANK N.A.

Personal Signature Card
with Substituted Form W-9

Account Number 9281 ☐ Temporary Signature Card (deposit accounts only)
Account Type REGULAR CHECKING
Account Title KAREN M. POWELL
THOMAS JAY UNRUE JR

By signing below, I/we acknowledge and agree that this account is and shall be governed by the terms and conditions set forth in the following documents, as amended from time to time: (1) if this account is a deposit account, the Deposit Agreement and Disclosures and the Personal Accounts and Services Schedule of Fees; and (2) if this account is a Line of Credit, the Line of Credit Agreement and Disclosures. Furthermore, I/we acknowledge the receipt of these documents. By signing below, I/we also acknowledge and agree that the signature(s) will serve as verification for any transaction in connection with this account, any Line of Credit checks which I/we may sign, and as the certification set forth below of the taxpayer identification number to which I/we want interest reported.

Substituted Form W-9. (Required only for Deposit Accounts) Certification: Under penalties of perjury, I certify that:

(1) The number shown on this form is the correct taxpayer identification number for I am waiting for a number to be issued to me; and

(2) I am not subject to backup withholding because: (A) I am exempt from backup withholding, or (B) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (C) The IRS has notified me that I am no longer subject to backup withholding.

Certification Instructions:

You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. (See also IRS instructions for Substituted Form W-9 in the Deposit Agreement and Disclosures).

☐ Individual ☐ Joint with Survivorship ☐ Payable on Death ("POD")

Tax Identification Number	Report Interest On	Signature	ATM/Check Card Requested? * (Deposit Accounts Only)
1. <u>8515</u>	☒	<u>Karen M. Powell</u>	☐
2. <u>9670</u>	☐	<u>Thomas Jay Unrue Jr</u>	☐
3. _____	☐	_____	☐
4. _____	☐	_____	☐
5. _____	☐	_____	☐

* By checking the box marked "ATM/Check Card Requested", I/we hereby request an Automatic Teller Machine Card and/or a Check Card.

I/we name the following person(s) as beneficiary(ies) of this account, superseding any prior designations:

Beneficiary's Name _____
Beneficiary's Social Security Number _____ Beneficiary's Present Telephone Number _____
Beneficiary's Present Address _____

(Please notify NationsBank of any subsequent changes of beneficiary(ies)' address or telephone.)

AR JUN 10 1999



ROA 0823

APPENDIX 833

Bank Information

Customer 1
Name KAREN M POWELL
Review Information TRANS UNIONS APPROVED EXISTING

Customer 2
Name THOMAS JAY UNRUE JR
Review Information APPROVED EXISTING

Customer 3
Name _____
Review Information _____

Customer 4
Name _____
Review Information _____

Customer 5
Name _____
Review Information _____

Date 06/02/1999 Banking Center Name GEORGETOWN MAIN OFFICE
Associate's Phone Number 843-648-8001 Associate's Name DARLENE W HOWARD

ROA 0824

APPENDIX 834

Bank of America, N.A.
NC1403-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

Page 1 of 7
Statement Period
07-25-01 through 08-24-01
Number of checks enclosed: 58
B 15 D C 15 0081224

Account Number: [REDACTED] 9281

27005 001 SCH999 0

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE
[REDACTED]
SUPERIOR, CO [REDACTED]

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 TDD Hearing Impaired
1.800.688.6086 En Español

Or you may write to:
Bank of America, N.A.
P.O. Box 1091
Charlotte, N.C. 28254-3489

Your Bank of America Advantage Summary

Account Name	Account Number	Qualifying Balance*	Type of Balance	Date	Total
Deposit Accounts					
Regular Checking	[REDACTED] 9281	6,792.73	Average	08-23	
Money Market Savings	[REDACTED] 9055	4,043.49	Average**	08-23	
Fixed Term CD	[REDACTED] 6900	136,631.05	Principal**	08-23	
Fixed Term CD	[REDACTED] 7792	50,879.24	Principal**	08-23	
Total Deposit Account Balance					\$198,346.51

Thank you for banking with us. With the balances in your accounts, there is no monthly maintenance fee for Advantage.
* Balances in your linked accounts that are used to avoid a monthly maintenance fee are listed here. These balances reflect the average or principal balance in your account - for your actual ending account balances, please see the "Your Account at a Glance" section on your statement for each of your accounts.
** Detailed information about this account is not included in this statement.



ROA 0825

APPENDIX 835

Bank of America, N.A.
NC1-003-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

H
Page 2 of 7
Statement Period
07-25-01 through 08-24-01
Number of checks enclosed: 58
B 15 0 C 15 0081225
Account Number: 9281

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Regular Checking
KAREN M UNRUE DBA CAROLINA BOOKKEEPING SERVICE

Your Account at a Glance

Account Number.....	9281
Beginning Balance on 07-25-01.....	\$ 1,531.32
Deposits and Other Additions.....	+ 18,175.31
Checks Posted.....	8,097.06
ATM and Debit Card Subtractions.....	4,469.69
Other Subtractions.....	506.60
Ending Balance on 08-24-01.....	\$ 6,633.28

The monthly maintenance fee for your Regular Checking Account # 0007 7101 9281 will be waived when your average daily balance in combined checking and linked savings, Money Market Savings, CD or IRA accounts meets the balance level stated in the *Personal Schedule of Fees*. Your combined deposit balance for the statement cycle was \$198,346.51. As an Advantage customer, you also have other options such as using loan, line of credit and mortgage balances with us, to avoid the monthly maintenance fee. Please contact us if you would like to talk with us about your account.

Call us at 1.800.900.9000 to find out about new preferred rates on certificates of deposit (CDs) and how you can now qualify for the Advantage account with no monthly fee if you carry any outstanding balance on a first mortgage, as long as Bank of America, N.A. services your home mortgage loan.

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
07-25	4,000.00+	5,531.32	Web Xfer From 9055 Confirmation # 5523404946
07-25	104.48-	5,426.84	Check 62
07-26	900.00+	6,326.84	Deposit 62
07-26	30.00-	6,296.84	Check 56
07-26	31.49-	6,265.35	Check 55
07-26	30.15-	6,235.20	Check 54
07-26	18.75-	6,216.45	Check 61
07-26	810.45-	5,406.00	

ROA 0826

APPENDIX 836

H

Bank of America, N.A.
 NC1-003-05-01
 P.O. Box 1091
 Charlotte, N.C. 28254-3489

Page 3 of 7
 Statement Period
 07-25-01 through 08-24-01
 Number of checks enclosed: 58
 B 15 0 C 15 0081226

Account Number [REDACTED] 5281

KAREN M UNRUE
 DBA CAROLINA BOOKKEEPING SERVICE

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
07-27	45.00-	5,361.00	CheckCard 0725 Carolina Roadhouse Myrtle Beach SC 1000000190322427
07-27	38.49-	5,322.51	CheckCard 0725 Carolina Roadhouse Myrtle Beach SC 1000000190322426
07-27	15.00-	6,307.51	Check 58
07-27	15.00-	5,292.51	Check 59
07-30	3,500.00+	8,792.51	Web Xfer From SC [REDACTED] 0085 Confirmation # 8511495539
07-30	50.00-	8,742.51	Bk of America ATM 07/28 #000009214 Withdrwl Garden City Garden City SC
07-30	37.40-	8,705.11	CheckCard 0728 Amoco 0786 Surfside Beach SC 1000000190047934
07-30	10.00-	8,695.11	CheckCard 0727 Agent Fee 890813 Westerville OH 1000000190139028
07-30	10.00-	8,685.11	CheckCard 0727 Agent Fee 890813 Westerville OH 1000000190138944
07-30	9.45-	8,675.66	CheckCard 0728 Victoria Secret 800-888-1500 OH 1000000190015067
07-30	161.52-	8,514.14	Check 65
07-30	58.59-	8,455.55	Check 68
07-30	35.00-	8,420.55	Check 22
07-30	30.69-	8,389.86	Check 64
07-30	283.49-	8,106.37	Check 63
07-31	504.00+	8,610.37	Deposit
07-31	602.50-	8,107.87	CheckCard 0727 Vanguard Airlines 1800Vanguard MO 1000000190082782
07-31	602.50-	7,605.37	CheckCard 0727 Vanguard Airlines 1800Vanguard MO 1000000190082784
07-31	23.90-	7,581.47	CheckCard 0730 Aol*online Service 800-679-9444 VA 1000000190002551
07-31	31.49-	7,549.98	Check 66
07-31	20.00-	7,529.98	Check 49
08-01	610.00-	6,919.98	Check 10073
08-01	154.17-	6,765.81	Check 72
08-01	88.19-	6,677.62	Check 77
08-01	60.00-	6,627.62	Check 78
08-01	18.80-	6,608.82	Check 57
08-01	15.00-	6,593.82	Check 79
08-02	535.00-	6,058.82	Check 69
08-02	302.00-	5,756.82	Check 75

ROA 0827

APPENDIX 837

Bank of America, N.A.
 NC1-003-05-01
 P.O. Box 1091
 Charlotte, N.C. 28254-3489

Page 4 of 7
 Statement Period
 07-25-01 through 08-24-01
 Number of checks enclosed: 58
 B 15 0 C 15 0081227
 Account Number: [REDACTED] 9281

KAREN M UNRUE
 DBA CAROLINA BOOKKEEPING SERVICE

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
08-02	97.84-	5,658.98	Check 80
08-02	41.47-	5,617.51	Check 71
08-02	132.53-	5,484.98	Check 70
08-03	58.66-	5,426.33	CheckCard 0801 Safeway Store 0000 Denver Co 1000000190025271
08-03	74.00-	5,352.33	Check 76
08-06	74.51-	5,277.82	CheckCard 0803 Victorias SECR0000 Denver Co 1000000190008035
08-06	54.03-	5,223.79	CheckCard 0802 Lord&taylor Estee Broomfield Co 1000000190011167
08-06	26.00-	5,197.79	CheckCard 0804 Applebees 1210 Aurora Co 1000000190047822
08-06	17.12-	5,180.67	CheckCard 0803 Barnes & Noble #28 Denver Co 1000000190128997
08-07	555.00+	5,735.67	Deposit
08-07	761.96-	4,973.71	CheckCard 0805 Budget Rent-A-Car Denver Co 1000000190180021
08-07	305.52-	4,668.19	CheckCard 0805 Amerisuites-Da Aurora Co 1000000190403667
08-08	8,000.00+	12,668.19	Funds Transfer Credit Fdes Nmc 0627800 NBK348J
08-08	828.00-	11,840.19	Check 84
08-08	493.57-	11,346.62	Check 87
08-08	200.00-	11,146.62	Check 85
08-08	186.60-	10,960.02	ATM/Check Card Temporary Cr Reversal On 07/10/01 Card # 4744740000702583 Claim # 4284-12/JUL01
08-08	177.84-	10,782.18	Check 86
08-08	45.00-	10,737.18	Return Item Chargeback
08-08	335.00-	10,402.18	Check 74
08-08	234.96-	10,167.22	Check 151
08-08	13.16-	10,154.06	Check 88
08-09	400.00+	10,554.06	Deposit
08-09	275.00-	10,279.06	Return Item Chargeback
08-09	400.00-	9,879.06	Check 82
08-09	75.00-	9,804.06	Check 154
08-09	44.60-	9,759.46	Check 155
08-09	35.00-	9,724.46	Check 81
08-10	8.38-	9,716.08	CheckCard 0808 Food Lion #1610 Surfside Beacsc 1000000190209644
08-10	128.61-	9,587.47	Check 160

ROA 0828

APPENDIX 838

H

Bank of America, N.A.
 NC1-003-05-01
 P.O. Box 1091
 Charlotte, N.C. 28254-3489

Page 5 of 7
 Statement Period
 07-25-01 through 08-24-01
 Number of checks enclosed: 38
 B 15 0 C 15 0081228
 Account Number: [REDACTED] 9281

KAREN M UNRUE
 DBA CAROLINA BOOKKEEPING SERVICE

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
08-10	26.00-	9,561.47	Check 159
08-10	12.29-	9,549.18	Check 165
08-10	4.00-	9,545.18	Check 157
08-10	14.67-	9,530.51	Check 163
08-13	955.75-	8,574.76	CheckCard 0809 Ryder Climate Cont Surfside Beacsc 1000000190312102
08-13	35.00-	8,539.76	CheckCard 0807 Texas Roadhouse Of Garden City SC 1000000190431100
08-13	12.73-	8,527.03	CheckCard 0810 Scotchman 50 Georgetown SC 1000000190127690
08-13	35.85-	8,491.18	Check 164
08-13	20.99-	8,470.19	Check 161
08-13	19.95-	8,450.24	Check 162
08-14	550.00-	7,900.24	Check 152
08-14	107.00-	7,793.24	Check 156
08-14	100.00-	7,693.24	Check 163
08-14	67.75-	7,635.49	Check 158
08-14	40.28-	7,595.21	Check 90
08-14	39.88-	7,555.33	Check 89
08-14	20.00-	7,535.33	Check 166
08-17	162.47-	7,372.86	CheckCard 0816 Target 0001 Superior Co 1000000190254825
08-17	25.23-	7,347.63	CheckCard 0815 Conoco Superior Co 1000000190058327
08-21	492.71-	6,854.92	CheckCard 0818 Talbots #505 Broomfield Co 1000000190017965
08-21	64.44-	6,790.48	CheckCard 0819 Wolfgang Puck Cafe Denver Co 1000000190401221
08-21	63.07-	6,727.41	CheckCard 0818 Phillips 660986290 Broomfield Co 1000000190379693
08-21	9.19-	6,718.22	CheckCard 0819 Barnes & Noble #28 Denver Co 1000000190009079
08-21	3.88-	6,714.34	CheckCard 0819 Conoco #06471 Morrison Co 1000000190133632
08-21	3.66-	6,710.68	Check 9588
08-22	53.53+	6,764.21	CheckCard 0820 Target 0001 Superior Co 1000000190132139
08-22	79.09-	6,685.12	CheckCard 0820 Ryder Front Range Broomfield Co 1000000190440218

ROA 0829

APPENDIX 839

H

Bank of America, N.A.
 NC1-003-05-01
 P.O. Box 1091
 Charlotte, N.C. 28254-3489

Page 6 of 7
 Statement Period
 07-25-01 through 08-24-01
 Number of checks enclosed: 58
 B 15 0 C 15 0081229

Account Number: [REDACTED] 9281

KAREN M UNRUE
 DBA CAROLINA BOOKKEEPING SERVICE

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
08-22	20.00-	6,665.12	CheckCard 0820 Amoco 0133
			Denver Co 1000000190092042
08-22	10.72-	6,654.40	CheckCard 0820 Dana Michelle 113
			Denver Co 1000000190007929
08-22	177.07-	6,477.33	Check 169
08-23	183.69+	6,661.02	CheckCard 0821 Talbots #505
			Broomfield Co 1000000190298563
08-23	53.59-	6,607.43	Check 168
08-24	79.09+	6,686.52	ATM/Check Card Temporary Cr Adj On 08/22/01
			Card # 4744740000702583 Claim #2543-23AUG01
08-24	43.20-	6,643.32	Check 172
08-24	10.04-	6,633.28	Check 173

Checks Posted in Numerical Order

Check Number	Date Posted	Amount(\$)	Check Number	Date Posted	Amount(\$)	Check Number	Date Posted	Amount(\$)
22	07-30	36.00	74	08-08	335.00	155	08-09	44.60
49	07-31	20.00	75	08-02	302.00	156	08-14	107.00
52	07-25	104.48	76	08-03	74.00	157	08-10	4.00
54	07-26	18.75	77	08-01	88.19	158	08-14	57.75
55	07-26	30.15	78	08-01	50.00	159	08-10	26.00
56	07-26	31.49	79	08-01	15.00	160	08-10	128.61
57	08-01	18.80	80	08-02	97.84	161	08-13	20.99
58	07-27	16.00	81	08-09	35.00	162	08-13	19.95
59	07-27	15.00	82	08-09	400.00	163	08-10	14.67
61	07-26	810.45	84	08-08	828.00	164	08-13	35.85
62	07-26	30.00	85	08-08	200.00	165	08-10	12.29
63	07-30	283.49	86	08-08	177.84	166	08-14	20.00
64	07-30	30.69	87	08-08	493.57	168	08-23	53.69
65	07-30	161.52	88	08-08	13.16	169	08-22	177.07
66	07-31	31.49	89	08-14	39.88	172	08-24	43.20
68	07-30	58.59	90	08-14	40.28	173	08-24	10.04
69	08-02	535.00	151	08-08	234.96	9588	08-21	3.66
70	08-02	132.63	152	08-14	550.00	10073	08-01	610.00
71	08-02	41.47	153	08-14	100.00			
72	08-01	154.17	154	08-09	75.00			

ROA 0830

APPENDIX 840

Bank of America, N.A.
NC1-003-05-01
P.O. Box 1091
Charlotte, N.C. 28254-3489

Page 7 of 7
Statement Period
07-25-01 through 08-24-01
Number of checks enclosed: 58
B 15 0 C 15 0081230

Account Number: 9281

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Total Checks Posted

\$8,097.06

* The asterisk shows a break in the check number order. Your check may have been in a previous statement or may still be outstanding.

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	1,531.32	08-02	5,484.98	08-13	8,450.24
07-25	5,426.84	08-03	5,352.33	08-14	7,535.33
07-26	5,406.00	08-06	5,180.67	08-17	7,347.63
07-27	5,292.51	08-07	4,668.19	08-21	6,710.68
07-30	8,106.37	08-08	10,154.06	08-22	6,477.33
07-31	7,529.98	08-09	9,724.46	08-23	6,607.43
08-01	6,593.82	08-10	9,530.51	08-24	6,633.28

Investment Account Information As of 08-24-01

Time Deposits (CD's)

Account Owner/ Investment Type	Account Number	Interest Rate	Annual Percentage Yield*	Maturity Date	Current Balance
KAREN M UNRUE Fixed Term CD	6900	3.60%	3.66%	09-11-01	136,631.05
KAREN M UNRUE Fixed Term CD	7192	3.50%	3.56%	09-12-01	50,879.24

*The annual percentage yield shown assumes that interest is allowed to compound. If your interest is paid to another account by transfer or by check, your annual percentage yield may be lower.

ROA 0831

APPENDIX 841

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

Page 1 of 3
Statement Period
10-25-01 through 11-23-01
Number of checks enclosed: 0
B 15 0 C 15

Account Number: 9281



26005 001 SCH999 112 0

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE
SUPERIOR CO

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 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

Your Bank of America Advantage Summary

Account Name	Account Number	Qualifying Balance*	Type of Balance	Date	Total
Deposit Accounts					
Regular Checking	9281	56,237.59	Average	11-22	
Money Market Savings	9055	0.00	Average**	11-22	
Fixed Term CD	6900	0.00	Principal**	11-21	
Fixed Term CD	7792	0.00	Principal**	11-21	
Total Deposit Account Balance					\$56,237.59

Thank you for banking with us. With the balances in your accounts, there is no monthly maintenance fee for Advantage.

* Balances in your linked accounts that are used to avoid a monthly maintenance fee are listed here. These balances reflect the average or principal balance in your account - for your actual ending account balances, please see the "Your Account at a Glance" section on your statement for each of your accounts.
** Detailed information about this account is not included in this statement.

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Your Account at a Glance

Account Number..... 9281
Beginning Balance on 10-25-01..... \$ 2,569.71
Deposits and Other Additions..... + 201,590.00
ATM and Debit Card Subtractions..... - 1,040.20
Other Subtractions..... - 132.17
Ending Balance on 11-23-01..... \$ 202,987.34



ROA 0832

APPENDIX 842

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KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Page 2 of 3
Statement Period
10-25-01 through 11-23-01
Number of checks enclosed: 0
B 15 C 15

Account Number: [REDACTED] 9281

The monthly maintenance fee for your Regular Checking Account # 0007 7101 9281 will be waived when your average daily balance in combined checking and linked savings, Money Market Savings, CD or IRA accounts meets the balance level stated in the *Personal Schedule of Fees*. Your combined deposit balance for the statement cycle was \$56,237.59. As an Advantage customer, you also have other options such as using loan, line of credit and mortgage balances with us, to avoid the monthly maintenance fee. Please contact us if you would like to talk with us about your account.

Get Card Smart. Get Photo Security free on your Check Card today. It's a secure and easy way to pay. Free Photo Security is also offered on Bank of America credit cards. Apply today and get a great introductory APR. Credit card offer through Bank of America NA (USA). Credit subject to approval. Member FDIC.

SPECIAL MESSAGE: Call 1.800.735.2743 now to receive up to \$1,000 of Accidental Death Insurance for 2 years—at no cost to you. This basic coverage, underwritten by Monumental Life Insurance Company, is paid for by Bank of America, N.A. To enroll and hear about affordable group rates on additional insurance coverage, call by January 31, 2002.

FDIC Disclosure: Insurance is not insured by the FDIC, any other agency of the United States, or by the bank/affiliate; is not a deposit or other obligation of the bank/affiliate; and is not issued, guaranteed, or underwritten by the bank/affiliate or the FDIC.

Bank of America is no longer participating in the STAR network. Your ATM/Check Card will continue to be accepted at all PLUS ATMs and all Interlink merchants throughout the U.S., and your Check Card will continue to be accepted at all Visa merchants and ATMs worldwide. Most ATMs accept PLUS, and most merchants accept Interlink.

Please notice your statement's new look. Some of our customers told us that blank spaces at the top of statement pages resulted in generation of an additional page. Thanks to this feedback, we are now printing statement information in those spaces, reducing the length of your statement and saving paper.

View all of your Online Accounts, all in One Place. Introducing My Bank of America - a new free service that brings together all your online accounts from financial and non-financial institutions. Visit www.bankofamerica.com/mybankofamerica to learn more.

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
10-29	31.54-	2,538.17	CheckCard 1027 Safeway STORE0001 Superior Co 1000000190517781
10-30	43.75-	2,494.42	CheckCard 1029 Great Clips#487 Louisville Co 1000000190788186
11-05	100.00-	2,394.42	CheckCard 1103 Wolfgang Puck Cafe Denver Co 1000000191093273
11-05	18.00-	2,376.42	CheckCard 1101 Total 4564 Shamroc Superior Co 1000000190517361
11-09	1,500.00+	3,876.42	Counter Credit
11-13	90.00+	3,966.42	ATM/Check Card Misc. Cr Adj On 09/12/01 Card # 435640006940443 Claim #4453-14SEP01
11-13	132.17-	3,834.25	ATM/Check Card Temporary Cr Reversal On 09/12/01 Card # 435640006940443 Claim #4453-14SEP01
11-13	171.53-	3,662.72	CheckCard 1111 Safeway STORE0001 Superior Co 1000000190230170
11-13	8.55-	3,654.17	CheckCard 1111 Blockbuster Video Superior Co 1000000190722798

ROA 0833

APPENDIX 843

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Page 3 of 3
Statement Period
10-23-01 through 11-23-01
Number of checks enclosed: 0
B 15 0 C 15

Account Number: 9281

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
11-14	179.38-	3,474.79	CheckCard 1113 Suncom-Chas Cust C Charleston SC 1000000190645160
11-14	123.86-	3,350.93	CheckCard 1113 Suncom-Chas Cust C Charleston SC 1000000190645161
11-15	99,000.00+	102,350.93	Online Banking transfer from 8085 Confirmation# 1005846024
11-15	75,000.00+	177,350.93	Online Banking transfer from 8085 Confirmation# 1005845936
11-15	26,000.00+	203,350.93	Online Banking transfer from 8085 Confirmation# 1005846126
11-15	123.19-	203,227.74	CheckCard 1113 Ace Discount Liquor Boulder Co 1000000190265518
11-16	53.66-	203,174.08	CheckCard 1114 Bed Bath & Beyond Boulder Co 1000000190125088
11-19	69.17-	203,104.91	CheckCard 1115 Wherehouse Music # Boulder Co 1000000190574333
11-19	57.04-	203,047.87	CheckCard 1115 Target 0001 Superior Co 1000000190264891
11-19	29.29-	203,018.58	CheckCard 1115 Petsmart #1015 Superior Co 1000000190590010
11-19	1.84-	203,016.74	CheckCard 1117 Texaco Inc 5162822 Boulder Co 1000000191193795
11-21	29.40-	202,987.34	CheckCard 1119 Crafts By Jimmie Andrews SC 1000000190588865

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	2,569.71	11-09	3,876.42	11-16	203,174.08
10-29	2,538.17	11-13	3,654.17	11-19	203,016.74
10-30	2,494.42	11-14	3,350.93	11-21	202,987.34
11-05	2,376.42	11-15	203,227.74		

ROA 0834

APPENDIX 844

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

Page 1 of 4
Statement Period
11-24-01 through 12-21-01
Number of checks enclosed: 2
B 15 0 C 15

Account Number: 9281

74005 001 SCH999 1 23 0

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE
BOULDER CO

Customer Service Information

For additional information or service, you may call:
1.888.789.PLUS (7587) Priority Telephone Banking
1.800.288.4408 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

Your Bank of America Advantage Summary

Account Name	Account Number	Qualifying Balance*	Type of Balance	Date	Total
Deposit Accounts					
Regular Checking	9281	46,617.35	Average	12-20	
Fixed Term CD	6900	0.00	Principal**	12-20	
Fixed Term CD	7792	0.00	Principal**	12-20	
Total Deposit Account Balance					\$46,617.35

Thank you for banking with us. With the balances in your accounts, there is no monthly maintenance fee for Advantage.

* Balances in your linked accounts that are used to avoid a monthly maintenance fee are listed here. These balances reflect the average or principal balance in your account. For your actual ending account balances, please see the "Your Account at a Glance" section on your statement for each of your accounts.
** Detailed information about this account is not included in this statement.

Regular Checking

KAREN M UNRUE

DBA CAROLINA BOOKKEEPING SERVICE

Your Account at a Glance

Account Number.....9281
Beginning Balance on 11-24-01.....\$ 202,987.34
Deposits and Other Additions.....+ 51,545.57
Checks Posted.....- 200,025.00
ATM and Debit Card Subtractions.....- 3,332.16
Ending Balance on 12-21-01.....\$ 51,175.75



ROA 0835

APPENDIX 845

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Page 2 of 4
Statement Period
11-24-01 through 12-21-01
Number of checks enclosed: 2
B 15 0 C 15

Account Number: 9281

The monthly maintenance fee for your Regular Checking Account # 0007 7101 9281 will be waived when your average daily balance in combined checking and linked savings, Money Market Savings, CD or IRA accounts meets the balance level stated in the *Personal Schedule of Fees*. Your combined deposit balance for the statement cycle was \$46,617.35. As an Advantage customer, you also have other options such as using loan, line of credit and mortgage balances with us, to avoid the monthly maintenance fee. Please contact us if you would like to talk with us about your account.

All of us at Bank of America extend our warmest wishes for a joyous holiday season and a peaceful, prosperous new year. Thank you for choosing Bank of America to help you realize your financial goals. We value your business and look forward to serving you in the future.

Get Card Smart. Get Photo Security free on your Check Card today. It's a secure and easy way to pay. Free Photo Security is also offered on Bank of America credit cards. Apply today and get a great introductory APR. Credit card offer through Bank of America NA (USA). Credit subject to approval. Member FDIC.

Looking for a mortgage, financial tools, a new home or advice on moving? Bank of America HomeSolutions is your online resource. Learn more at bankofamerica.com/homesolutions.

Bank of America is committed to providing you greater security and confidentiality when mailing account statements to a foreign mailing address. Effective January 2002, account statements mailed to foreign addresses will be mailed in an envelope that does not display the Bank of America name or logo.

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
11-26	85.63-	202,901.71	CheckCard 1124 Office Max 0001 Superior Co 1000000190042312
11-26	37.46-	202,864.25	CheckCard 1121 Rock Creek Wine Sp Superior Co 1000000190234843
11-28	80.00-	202,784.25	CheckCard 1127 QWESTCOMM*DC211 800-244-1111 Co 1000000190001870
11-28	44.94-	202,739.31	CheckCard 1126 Office Max 0001 Superior Co 1000000190133820
11-28	200,000.00-	2,739.31	Check 5715
11-30	104.28-	2,635.03	CheckCard 1130 Kaldi Gourmet Coff 910-350-0990 NC 1000000190688255
11-30	15.54-	2,619.49	CheckCard 1129 Usps 0723550134 Boulder Co 1000000190635612
12-03	216.33-	2,403.16	CheckCard 1201 Foley'S Estes Boulder Co 1000000190384010
12-05	18.00-	2,385.16	CheckCard 1204 Total 4057 Shamroc Boulder Co 1000000190501271
12-07	34.60-	2,350.56	CheckCard 1205 Petsmart #1015 Superior Co 1000000190555938
12-10	1,500.00+	3,850.56	Counter Credit
12-10	50,000.00+	53,850.56	Online Banking transfer from Sav 8085 Confirmation# 1007869110
12-10	663.00-	53,187.56	CheckCard 1206 Delta Air 006706 Westerville OH 1000000190573504
12-10	122.33-	53,065.23	CheckCard 1207 Where The Buffalo Boulder Co 1000000190298057
12-10	30.53-	53,034.70	CheckCard 1207 Color The World Boulder Co 1000000190319796

ROA 0836

APPENDIX 846

KAREN M UNRUE
DBA CAROLINA BOOKKEEPING SERVICE

Page 3 of 4
Statement Period
11-24-01 through 12-21-01
Number of checks enclosed: 2
B 15 0 C 15

Account Number: 9281

Regular Checking Additions and Subtractions

Date Posted	Amount(\$)	Resulting Balance(\$)	Transaction
12-10	17.74-	53,016.96	CheckCard 1208 Office Max 0001 Superior Co 1000000191095357
12-10	10.00-	53,006.96	CheckCard 1206 Agent Fee 890814 Westerville OH 1000000190641876
12-11	331.95-	52,675.01	CheckCard 1210 LI Bean Mailorder 800-3414341 ME 1000000190432371
12-11	23.38-	52,651.63	CheckCard 1209 Taxaco Inc 9300265 Boulder Co 1000000190476932
12-13	85.00-	52,566.63	CheckCard 1212 LI Bean Mailorder 800-3414341 ME 1000000190164448
12-14	241.51-	52,325.12	CheckCard 1212 Foley'S Tommy Boulder Co 1000000190232642
12-14	64.41-	52,260.71	CheckCard 1212 Ann Taylor #419 Boulder Co 1000000190229570
12-14	17.17-	52,243.54	CheckCard 1212 Foley'S Foley Boulder Co 1000000190232641
12-17	37.57+	52,281.11	CheckCard 1213 Foley'S Tommy Boulder Co 1000000190186469
12-17	198.53-	52,082.58	CheckCard 1213 Dillards 987 Broomfield Co 1000000190760112
12-17	80.81-	52,001.77	CheckCard 1215 Redfish Boulder Co 1000000190882461
12-17	54.01-	51,947.76	CheckCard 1213 Banana Republic #8 Broomfield Co 1000000190268489
12-17	25.72-	51,922.04	CheckCard 1214 Office Depot #170 Boulder Co 1000000190496665
12-17	21.07-	51,900.97	CheckCard 1213 Lerner NY 0000 Broomfield Co 1000000190224136
12-17	2.92-	51,898.05	CheckCard 1213 Mastercuts 1000 Broomfield Co 1000000190598271
12-18	25.00-	51,873.05	Check 67
12-19	649.85-	51,223.20	CheckCard 1218 LI Bean Mailorder 800-3414341 ME 1000000190228295
12-19	4.16-	51,219.04	CheckCard 1217 Superior Liquor MA Superior Co 1000000190420520
12-20	13.04-	51,206.00	CheckCard 1219 Rocky Mountain Cbo Boulder Co 1000000190941699
12-20	1.00-	51,205.00	CheckCard 1218 Beyond Juice Boulder Co 1000000190444721
12-21	8.00+	51,213.00	CheckCard 1220 LI Bean Mailorder 800-3414341 ME 1000000190230121
12-21	37.25-	51,175.75	CheckCard 1219 Sally Beauty #2653 Boulder Co 1000000190947635

Checks Posted in Numerical Order

Check Number	Date Posted	Amount(\$)	Check Number	Date Posted	Amount(\$)
67	12-18	25.00	5715	11-28	200,000.00
Total Checks Posted			\$200,025.00		

* The asterisk shows a break in the check number order. Your check may have been in a previous statement or may still be outstanding.

ROA 0837

APPENDIX 847

H

KAREN M UNEUE
DBA CAROLINA BOOKKEEPING SERVICE

Page 4 of 4
Statement Period
11-24-01 through 12-21-01
Number of checks enclosed: 2
B 15 0 C 15

Account Number: [REDACTED] 9281

Daily Balance Summary

Date	Balance	Date	Balance	Date	Balance
Beginning	202,987.34	12-07	2,350.56	12-18	51,873.05
11-26	202,854.25	12-10	53,006.96	12-19	51,219.04
11-28	2,739.31	12-11	52,551.63	12-20	51,205.00
11-30	2,619.49	12-13	52,566.63	12-21	51,175.75
12-03	2,403.16	12-14	52,243.54		
12-05	2,385.16	12-17	51,898.05		

ROA 0838

APPENDIX 848

VECTRABANK
COLOR

KAREN MICHELLE UNRUE

BOULDER CO 80302-5302

The image(s) shown below
represent official copies of
original documents processed
by our institution.

Research Item Copy

DEPOSIT SLIP

KAREN M. UNRUE
THOMAS E. UNRUE, JR.
11/26/01
VECTRA BANK
200,000.00
200,000.00

11/26/01 Deposit 44700250 200000.00

KAREN M. UNRUE 5715
11/26/01
Vectra Bank
Two Hundred thousand + no/100
Bank of America
Karen M. Unrue
11/26/01 44700255 200000.00



ROA 0839

APPENDIX 849

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE PROBATE COURT
THIRD JUDICIAL CIRCUIT

IN THE MATTER OF: Conservatorship of Cody [REDACTED] P [REDACTED]

CASE NUMBER: 2002-GC-45-

**AMENDED EX PARTE ORDER REQUIRING CONSERVATOR TO APPEAR AND
SHOW CAUSE TO ACCOUNT FOR CONSERVATORSHIP MONIES AND
FREEZING CERTAIN ACCOUNTS, AND NOTICE OF HEARING**

PRESIDING JUDGE: The Honorable Rudell Gamble
ATTORNEY FOR PLAINTIFF: Jennifer R. Kellahan, Esquire

This matter is before the Court on a Petition for an Ex Parte Order filed with the Court April 16, 2002. Attached to the Petition is an Affidavit of the Petitioner. It appears that there is an immediate threat of harm to the protected person's monies. Based upon my review of the affidavit and the applicable law, I find that the monetary assets of the protected person are in danger of being lost.

Due to the facts set forth above, I find good cause for the issuance of an Ex Parte Order immediately suspending Karen Powell Unrue and Travis Powell as Conservator for Cody [REDACTED] P [REDACTED] until a hearing on the merits can be had. I further find good cause for the issuance of an Ex Parte Order immediately freezing the assets of the minor Cody [REDACTED] P [REDACTED] until a hearing on the merits can be held. A partial list of identified assets of the minor are listed on the attached Exhibit A. This Order freezes all assets on the attached list and any other accounts currently held in the name of Cody [REDACTED] P [REDACTED] and/or Karen Powell Unrue.

RECEIVED
PROBATE
CLERK
11-2-02



ROA 0840

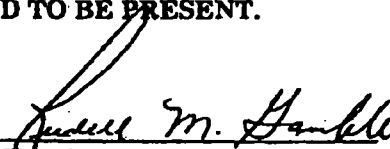
APPENDIX 850

As to the recurrent checks payable to the minor Cody [REDACTED] P [REDACTED] the funds may be paid into court or held by the issuing institution until a hearing on the merits can be held.

It appears that a hearing on the merits has been scheduled for May 14, 2002, at 10:00 a.m. at the Office of the Probate Judge for Williamsburg County, South Carolina, in the Williamsburg County Courthouse.

YOU ARE HEREBY NOTIFIED TO BE PRESENT.

AND IT IS SO ORDERED.


The Honorable Rudell Gamble
Probate Judge
Williamsburg County

April 24th 2002

ROA 0841

APPENDIX 851

Exhibit A.

**Met Life Insurance Company
Group Life Claims Division
Post Office Box 3016
Utica, NY 13504
Ref: Steven E. Powell
Claim # 1822359
Policy ██████████5912**

**CNA Group Benefits
Post Office Box 946790
Maitland, Florida 32794-6790
Ref: Steven E. Powell
Claim # 30-09019 and 30-09020
Policy ██████████7350
██████████7349**

**Bank of America
1306 Highmarket
Georgetown, SC 29440
Acct #s ██████████0116
Ref: Cody P ██████████ c/o Karen Unrue
██████████2016 Certificate of Deposit**

ROA 0842

APPENDIX 852

■ Glossary of Terms

Administrator	Court-appointed individual (also referred to as Executor or Personal Representative) who manages the funds, property, and affairs (known as an estate) of a deceased individual who died without a will.
Age of Majority or Maturity	The age at which a person is no longer a minor and acquires the capacity to enter into legal contracts.
Association	Group of individuals with a common interest who elect officers to represent this interest.
Beneficiary	Individual who has been named to receive funds upon an account owner's death. Individual for whose benefit an account is opened.
Bank of America® hold harmless form used for trust accounts that identifies the following: (00-14-3761NSB)	- Trust name and tax ID number - Names of the grantors and trustees - Notarized signature of the trustee - Oklahoma & Texas locations: Beneficiaries names are required
Contribution Account	Established for a specific charitable purpose (such as paying a child's medical bills or helping a homeless family).
Co-Owner Account	Established by two or more individuals who may or may not be related and own the account jointly.
Depository 69.031 Account <i>(Florida locations)</i>	Established upon a court order designating assets of an estate, guardianship, or contribution account be opened with a specific institution.
Estate Account	Account established by a court-appointed personal representative, administrator, or executor to manage the assets of a deceased individual's estate.
Executor	Court-appointed individual (also referred to as Administrator or Personal Representative) who manages the funds, property, and affairs (known as an estate) of a deceased individual who died with a will.
Conservator	Court-appointed individual who: - Cares for and/or manages the property and affairs of a minor or an incapacitated (physically or mentally) adult. - Manages the funds of an individual who is missing in action or has disappeared. Is also referred to as: Guardian or Curator.
Conservatorship Account (court order)	Established by a court-appointed guardian, conservator, or curator to manage the funds of a ward.

ACCOUNT OWNERSHIPS (PERSONAL)

• 4 •



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ROA 0843

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Curator	Court-appointed individual who: - Cares for and/or manages the property and affairs of a minor or an incapacitated (physically or mentally) adult. - Manages the funds of an individual who is missing in action or has disappeared. - Is also referred to as: Guardian or Conservator.
Guardianship (Court Appointed)	Established by a court-appointed guardian, conservator, or curator to manage the funds of a ward.
Custodian	Individual who deposits/manages funds for the exclusive benefit of a minor.
Formal Trust	An agreement created by the trustor/grantor/settlor. - Trustees manage the trust assets for the benefit of the beneficiary. - A formal trust is a separate legal entity that can be revocable or irrevocable. A formal trust can use the SSN or TIN of the grantor. An irrevocable trust must use an EIN.
Grantor	Individual who creates a trust (also referred to as a Settlor or Trustor).
Guardian	Court-appointed individual who: - Cares for and/or manages the property and affairs of a minor or an incapacitated (physically or mentally) adult. - Manages the funds of an individual who is missing in action or has disappeared. - Is also referred to as: Committee, Curator, or Conservator.
Guardianship (Accepted Court Order)	Established by a court-appointed guardian, conservator, or curator to manage the funds of a ward.
Guardianship (Natural)	Established without a court order by natural or adoptive parents (guardians) to manage the funds of their child.
Husband and Wife Ownership	Account jointly owned by a husband and wife. Upon the death of one spouse, the funds become the property of the surviving spouse. This ownership is the same as a joint account with rights of survivorship.
Individual Account	Established by one individual for <i>personal</i> use.
Informal Trust Account	Established by the account owners to designate one or more beneficiaries who receive the funds upon the last surviving owner's death. Also referred to as: - In Trust For (ITF) - Payable on Death (POD)

■ Guardianship/Conservatorship/Curatorship - Court-Appointed

Account Title Example	Junior G Doe John W Doe Guardian	Curator or Conservator may also be used, depending on the term used in the court document presented.
	If a court order is required for withdrawals, include "Court Restricted Account" in the title.	
Owner/Relationship	Child/incapacitated or missing adult - Ward (OWN) Guardian - Guardian (GUD)	
Defining General Information	Established by a court-appointed guardian, conservator, or curator to manage the funds of a minor, incapacitated adult, or individual who is missing in action or has disappeared.	
Signatories Required	Individuals authorized in the court document appointing the guardian/conservator/curator.	
Eligible Products	Economy Checking Interest Checking Regular Checking	Custom Savings Money Market Savings Regular Savings
Identification	Obtain acceptable primary ID from the guardian/conservator/curator. Refer to the IDENTIFICATION chapter of the <i>Platform Assistance Manual (PAM)</i> .	
Taxpayer Identification Number (TIN)	Ward's TIN Do <u>not</u> use the guardian's, conservator's, or curator's TIN.	
Ownership Box Designation	Mark "Individual" or leave blank.	
POA/ITF/POD	Power of Attorney (POA), In Trust For (ITF), and Payable on Death (POD) are <u>not</u> allowed.	
State-Specific Information	Georgia locations: The guardian may also be known as a "stand-by guardian." New Mexico locations: The guardian may also be known as a "kinship guardian."	

Required Documentation									
	■ Obtain a photocopy of the following document from the customer: <table border="1"> <thead> <tr> <th>Required Documentation</th> <th>Distribution</th> </tr> </thead> <tbody> <tr> <td>Original or Certified Copy of the court order appointing the guardian/conservator/curator containing the following: - Name of the guardian/conservator/curator - Name of the ward - Signature of a court official </td> <td>Forward to Account Records.</td> </tr> <tr> <td> - Certified seal and/or filing stamp - Statement indicating the guardian/conservator/curator is guardian over the "estate and/or property" of the ward </td> <td></td> </tr> </tbody> </table>	Required Documentation	Distribution	Original or Certified Copy of the court order appointing the guardian/conservator/curator containing the following: - Name of the guardian/conservator/curator - Name of the ward - Signature of a court official	Forward to Account Records.	- Certified seal and/or filing stamp - Statement indicating the guardian/conservator/curator is guardian over the "estate and/or property" of the ward			
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	Required Documentation	Distribution							
	Personal Signature Card (applicable version) signed only by the personal representative, guardian/conservator/curator	Forward to Account Records.							
	Appropriate Certificate of Foreign Status (Form W-8), if a W-8 signature card is completed for an interest-bearing account	Forward to Tax Reporting.							
Review Decision Details screen print.	Retain in the appropriate file or binder.								

Special Conditions/ Restrictions	■ Do <u>not</u> open the account if court documents indicate the guardian/conservator/curator is guardian over the "Person." ■ Only the guardian/conservator/curator may make withdrawals. <i>Contact National Helpline-Legal when:</i> ■ The court documents: - Name two or more guardians/conservators/curators <u>and</u> indicate they must act jointly - Appoint a temporary or limited guardian/conservator/curator - Were issued outside the state where being presented ■ Assistance is needed in reviewing legal documents. ■ <i>Georgia locations:</i> Stand-by guardian requirements exist. ■ <i>New Mexico locations:</i> Kinship guardian requirements exist. <i>Contact Banking Group Support-Legal Support when:</i> ■ Court documents contain restrictions. ■ A court order is required for withdrawal.

Guardianship/Conservatorship/Curatorship Account- Court-Appointed – Required Documentation

- Obtain a photocopy of the following document from the customer:
 - Original or Certified Copy of the court order appointing the guardian/conservator/curator containing the following:
 - Name of the guardian/ conservator/curator
 - Name of the ward
 - Signature of a court official
 - Certified seal and/or filing stamp
 - Statement indicating the guardian/conservator/curator is guardian over the "estate and/or property" of the ward

Existing customers: Determine whether the required documents were previously obtained, as follows:

- a. Review the account setup on Merlin to determine whether the existing account is titled exactly the same as the new account.
- b. Do one of the following:

Titles are Different	Request the appropriate documents from the customer.
Titles are the Same	• Contact Account Records (using <i>OneCall</i>) to request copies of the documentation on file for the existing account. • Upon receipt of the documentation, ensure the documents are applicable to the new account. • If the supporting documents are acceptable, mark through the existing account number; then write the new account number on the documents. ◦ A new signature card is always required. ◦ If the documents are <u>not</u> acceptable, request the appropriate documents from the customer.



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Informal Trust Account

- Established by the account owners to designate one or more beneficiaries who receive the funds upon the last surviving owner's death.
 - Multiple beneficiaries should be discouraged; however, if multiple beneficiaries are entered, type "and" between the names.
 - The beneficiary's name may be entered in the account title only.
- Also referred to as:
 - Informal or Totten Trust (ITF)
 - Pay/Payable on Death (POD)
- Power of Attorney (POA) is allowed.
- Discourage customers from adding a trust as the beneficiary; Banking Center Manager approval is required.

State Specific Information

- Restrictions regarding In Trust for (ITF) and Payable on Death (POD)

Informal Trust Account Opening Procedures

State Specific Information (ITF/POD)

Restrictions regarding In Trust for (ITF) and Payable on Death (POD)

Locations In	Designation/Account Type Used
• Arkansas • Kansas • Illinois • Oklahoma • Iowa • Tennessee	POD and ITF accounts may be opened.
• Arizona • Missouri • District of • S. Carolina - Columbia • Georgia • Virginia • Maryland • Texas	POD accounts may be opened; ITF accounts may be opened, but should be discouraged.
• Florida	ITF accounts may be opened. Do <u>not</u> open POD accounts.
Iowa	If the beneficiary is a minor, obtain consent of the trustee's legal representative before disbursing funds to the minor.
Illinois	One person (individual) may open a POD account; more than one person (co-owners) may open ITF accounts.
Nevada	ITF accounts may be opened; POD accounts may be opened, but should be discouraged.
New Mexico	POD accounts may be opened. Do <u>not</u> open ITF accounts.
N. Carolina	POD accounts may be opened; ITF accounts may be opened, but should be discouraged. Multiple beneficiaries are allowed. The statement designating the POD on the signature card must be signed. The right of survivorship section on the back of the signature card must be signed for joint accounts

Arizona, Arkansas, Illinois, Iowa, Kansas, Missouri, N. Carolina, Nevada, New Mexico, Oklahoma & Tennessee locations:

If the account owners choose to omit the POD designation from the account title, have the owners initial the Designated Omit line on the signature card.

Informal Trust Account Opening Procedures – U.S. Person

1. Do the following:
 - a. Obtain acceptable primary ID from each authorized signers. Retain the ID until all appropriate forms have been signed and ID has been documented.
 - If the customer does not have acceptable primary ID, do not open the account.
 - b. Obtain one form of acceptable secondary ID and retain until all appropriate forms have been signed and ID has been documented if either of the following apply:
 - Primary ID is less than 90 days old
 - Customer is new
2. Obtain the following:
 - a. Customer's country of citizenship
 - Refer to non-U.S. persons for information regarding account opening and residency status.
 - Refer to Opening Accounts for Nonresident Aliens or Resident Aliens, as applicable for account opening procedures.
 - b. A Social Security Number (SSN) from each owner.
 - A Social Security Number (SSN) is required for all U.S. citizens. If the customer indicates the SSN has been applied for, but not received, review a copy of the application (SS5).
 - If the customer can not provide a SSN or application, do not open the account.
 - To prevent back-up withholding on interest-bearing account, resident aliens must provide their SSN or Individual Taxpayer Identification Number (ITIN) within 30 days of account opening.
3. Select the desired products online. Discuss check safekeeping options. Click here if Merlin is unavailable.
4. Give the applicable Disclosures and Materials to the customer. Review all applicable fees.
 - If a customer opens a Regular Savings account for the benefit on a minor, explain that the discounted minor pricing applies only to the monthly maintenance fee; all other fees will be assessed (as applicable).
5. Complete or update the Customer Profile online
 - New Customer
 - Existing Customer
 - a. If uncomfortable with information provided by the customer, review Customer Verification
 - b. Enter the appropriate Owner/Rel Code

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APPENDIX 862

Co-Owner (COO)

Owner (OWN)

6. Review all messages/warning on the Review Decision Details screen, even if the system decision is "Approved"; then print the screen.

- If the Review Decision Details screen indicates the credit bureau or ChexSystems is unavailable and the system decision is "Approved" or "No Approval", do the following (as applicable):
 - Credit Bureau Error ("Unsuccessful Credit Bureau Request")
 - ChexSystem Error (various messages such as, "No Available Session Task")

7. Based on the system decision, do one of the following:

- Approved (all applicants)
- Declined (any or all applicants)
 - Refer to ChexSystems & Credit Bureaus for decision message response, new account override guidelines, and related information.
 - Do not use the "Nationsbank Debt Cleared" reason code for these overrides

8. Enter the account information online.

- a. Enter account titles following established guidelines.

Account Title Example	John W Doe Jane B Doe In Trust For Junior G Doe In Trust For or ITF must be entered <i>after</i> the last owner's name.
	Jane B Doe POD Junior G Doe POD must be entered <i>before</i> the beneficiary's name. Do <u>not</u> enter the word "beneficiary" in the account title

- b. For customers eligible for Group Banking, Newcomer, or Surepay, select the appropriate specialized sales information under General Account Information.
- c. For customer's eligible for discounted minor pricing (under age 18) on Regular Savings accounts, select "Minor Program" in the Specific Account Information section on page 2 of the Regular Savings Setup Details screen.
9. Determine the customer's Statement Preference and enter online
10. Order Checks and Account Supplies
11. Process cross sales:
- ATM or Check Card

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- Online Banking
 - Credit Cards
12. Link Advantage/Advantage for Seniors relationships to the primary Advantage account.
 13. Establish Access IDs for Online Banking and Telephone Banking.
 14. Print the signature card, Account Summary information, hold notice, and other forms required based on the products selected.
 - a. Information about signature card.
 - b. Mark the Ownership Box Designation as "Individual" or "Joint" (as applicable) and POD/ITF.
 15. Hand-write customer ID information in the Bank Information section of the signature card if not printed by Merlin and obtain the owner's signature.
 16. For each account signer, do one of the following:
 - All Account Owners Present
 - All Account Owners Not Present
 17. Obtain and process the initial deposit.
 18. Distribute Documentation - Informal Trust Account Opening Procedures

UTMA/UGMA Account Opening Procedure

Revised 6/17/04

1. Do the following:
 - a. Obtain acceptable primary ID from each authorized signers. Retain the ID until all forms are signed and ID is documented.
 - If the customer does not have acceptable primary ID, do not open the account.
 - b. Obtain one form of acceptable secondary ID and retain until all appropriate forms are signed and ID is documented if either of the following apply:
 - Primary ID is less than 90 days old
 - Customer is new
2. Obtain the following:
 - a. Customer's country of citizenship
 - Refer to non-U.S. persons for information regarding account opening and residency status.
 - Refer to opening account procedures for nonresident aliens or resident aliens.
 - b. The minor's Taxpayer Identification Number (TIN).
 - A Social Security Number (SSN) is required for all U.S. citizens. If the customer indicates the SSN has been applied for, but not received, review a copy of the application (SS5).
 - If the customer can not provide a SSN or application, do not open the account.
 - To prevent back-up withholding on interest-bearing account, resident aliens must provide their SSN or Individual Taxpayer Identification Number (ITIN) within 30 days of account opening.
3. Select the desired products online. Discuss check safekeeping options.
 - Click here if Merlin is unavailable.
4. Give the applicable disclosures and materials to the customer. Review all applicable fees.
5. Complete or update the Customer Profile online.
 - New customer
 - Existing customer
 - a. If uncomfortable with information provided by the customer, review customer verification procedures.
 - b. Enter the appropriate Owner/Rel Code:

- Custodian (CUS)
 - Beneficiary (BEN)
6. Review all messages/warning on the Review Decision Details screen, even if the system decision is "Approved"; then print the screen.
- If the Review Decision Details screen indicates the credit bureau or ChexSystems is unavailable and the system decision is "Approved" or "No Approval", do the following (as applicable):
 - Credit Bureau Error ("Unsuccessful Credit Bureau Request")
 - ChexSystem Error (various messages such as, "No Available Session Task")
7. Based on the system decision, do one of the following:
- Approved (all applicants)
 - Declined (any or all applicants)
 - Refer to ChexSystems & Credit Bureaus for decision message responses, new account override guidelines, and related information.
 - Do not use the "Nationsbank Debt Cleared" reason code for these overrides.
8. Enter the account information online.
- When opening Uniform Transfers/Gift to Minors Act (UTMA/UGMA) accounts, Merlin defaults to the customer's name and Taxpayer Identification Number (TIN) entered in the Name Line 1 field. To certify the beneficiary's TIN for tax reporting and to correct the titling (Arizona, Nevada & S. Carolina) do the following:
- a. At the Regular Savings Setup Details screen, select "Change Tax Info."

Account Title Examples:

Arizona Locations	John W Doe Cust Junior G Doe AUTMA
Nevada Locations	John W Doe Cust Junior G Doe NUTMA
Oregon Locations	John W Doe Cust Junior G Doe OUTMA
S. Carolina Locations	John W Doe Cust Junior G Doe UGMA
All Other Locations	John W Doe Cust Junior G Doe UTMA

- b. At the Tax Information screen, select the following:
- Tax ID Owner drop down
 - Minor's name

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- c. Select the Tax ID Owner Line Indicator drop down; then "Line 2."
- d. Select "OK" to advance to the next screen.

- 9. Determine the customer's statement preference and enter online
- 10. Order checks and account supplies.
- 11. Cross-sell products (as appropriate):

- ATM or Check Card
- Online Banking
- Credit Cards

Beneficiaries are not eligible to receive cards.

- 12. Print the signature card, Account Summary information, hold notice, and other forms required (based on the products selected). Refer to signature cards for additional information.

- a. Mark the Ownership Box Designation as "Individual" or leave blank.
- b. Hand-write customer ID information in the Bank Information section of the signature card it not printed by Merlin and obtain the custodian's signature. The minor or successor custodian may not be an authorized signer.

- The beneficiary does not sign; write "*minor*" in place of the beneficiary signature.
- If a Check Card/ATM Card or credit card is presented, document the following:
 - Last four digits of the card number
 - Name of the issuing financial institution

- c. For each account signer, do one of the following:

- All account owners present
- All account owners are not present

- 13. Obtain and process the initial deposit.
- 14. Distribute documentation (as appropriate).

Uniform Transfers/Gifts to Minors Act (UTMA/UGMA): General Information

- Established by a custodian who deposits/manages funds for the exclusive benefit on a minor as an irrevocable gift to the minor.
- One minor is allowed per account.
- Deposited funds are an irrevocable gift to the minor and must be used for the benefit of the minor, however, the minor may not access the funds.
- One custodian is allowed per account; do not attempt to add an additional custodian.
 - A successor custodian may be named by completing a Successor Custodian Designation Uniform Transfers/Gifts to Minors Act.
 - The successor custodian can not sign on the account until they have assumed responsibility as custodian.
- The custodian may close the account and distribute the funds to the minor when the minor reaches the age of majority, 18 or 21 years, based on state law. Contact National HelpLine to determine actual age requirements, as necessary.
 - Do not change the account title to transfer funds to the minor.

Uniform Transfers/Gifts to Minors Act (UTMA/UGMA) Account Opening Procedures

Uniform Transfers/Gifts to Minors Act (UTMA/UGMA) Account Opening Procedures

Revised 6/17/04

1. Do the following:
 - a. Obtain acceptable primary ID from each authorized signers. Retain the ID until all forms are signed and ID is documented.
 - If the customer does not have acceptable primary ID, do not open the account.
 - b. Obtain one form of acceptable secondary ID and retain until all appropriate forms are signed and ID is documented if either of the following apply:
 - Primary ID is less than 90 days old
 - Customer is new
2. Obtain the following:
 - a. Customer's country of citizenship
 - Refer to non-U.S. persons for information regarding account opening and residency status.
 - Refer to opening account procedures for nonresident aliens or resident aliens.
 - b. The minor's Taxpayer Identification Number (TIN).
 - A Social Security Number (SSN) is required for all U.S. citizens. If the customer indicates the SSN has been applied for, but not received, review a copy of the application (SS5).
 - If the customer can not provide a SSN or application, do not open the account.
 - To prevent back-up withholding on interest-bearing account, resident aliens must provide their SSN or Individual Taxpayer Identification Number (ITIN) within 30 days of account opening.
3. Select the desired products online. Discuss check safekeeping options.
 - Click here if Merlin is unavailable.
4. Give the applicable disclosures and materials to the customer. Review all applicable fees.
5. Complete or update the Customer Profile online.
 - New customer
 - Existing customer
 - a. If uncomfortable with information provided by the customer, review customer verification procedures.
 - b. Enter the appropriate Owner/Rel Code:

- Custodian (CUS)
 - Beneficiary (BEN)
6. Review all messages/warning on the Review Decision Details screen, even if the system decision is "Approved"; then print the screen.
- If the Review Decision Details screen indicates the credit bureau or ChexSystems is unavailable and the system decision is "Approved" or "No Approval", do the following (as applicable):
 - Credit Bureau Error ("Unsuccessful Credit Bureau Request")
 - ChexSystem Error (various messages such as, "No Available Session Task")
7. Based on the system decision, do one of the following:
- Approved (all applicants)
 - Declined (any or all applicants)
 - Refer to ChexSystems & Credit Bureaus for decision message responses, new account override guidelines, and related information.
 - Do not use the "Nationsbank Debt Cleared" reason code for these overrides.
8. Enter the account information online.
- When opening Uniform Transfers/Gift to Minors Act (UTMA/UGMA) accounts, Merlin defaults to the customer's name and Taxpayer Identification Number (TIN) entered in the Name Line 1 field. To certify the beneficiary's TIN for tax reporting and to correct the titling (Arizona, Nevada & S. Carolina) do the following:
 - a. At the Regular Savings Setup Details screen, select "Change Tax Info."

Account Title Examples:

Arizona Locations	John W Doe Cust Junior G Doe AUTMA
Nevada Locations	John W Doe Cust Junior G Doe NUTMA
Oregon Locations	John W Doe Cust Junior G Doe OUTMA
S. Carolina Locations	John W Doe Cust Junior G Doe UGMA
All Other Locations	John W Doe Cust Junior G Doe UTMA

- b. At the Tax Information screen, select the following:
 - Tax ID Owner drop down
 - Minor's name

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- c. Select the Tax ID Owner Line Indicator drop down; then "Line 2"
 - d. Select "OK" to advance to the next screen.
9. Determine the customer's statement preference and enter online
10. Order checks and account supplies.
11. Cross-sell products (as appropriate):
 - ATM or Check Card
 - Online Banking
 - Credit Cards
- Beneficiaries are not eligible to receive cards.
12. Print the signature card, Account Summary information, hold notice, and other forms required (based on the products selected). Refer to signature cards for additional information.
 - a. Mark the Ownership Box Designation as "Individual" or leave blank.
 - b. Hand-write customer ID information in the Bank Information section of the signature card it not printed by Merlin and obtain the custodian's signature. The minor or successor custodian may not be an authorized signer.
 - The beneficiary does not sign; write "*minor*" in place of the beneficiary signature.
 - If a Check Card/ATM Card or credit card is presented, document the following:
 - Last four digits of the card number
 - Name of the issuing financial institution
 - c. For each account signer, do one of the following:
 - All account owners present
 - All account owners are not present
13. Obtain and process the initial deposit.
14. Distribute documentation (as appropriate).

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ROA 0861

APPENDIX 871

■ Co-Owner

Overview	Established by two or more individuals who may or may <u>not</u> be related and own the account jointly.	
Eligible Products	- Economy Checking - Senior Economy Checking - Express Account - Student Checking - Regular Checking - Interest Checking - Regular Savings - Custom Savings - Money Market Savings	
Identification	Obtain acceptable primary ID from the persons opening the account. Refer to the IDENTIFICATION chapter of the <i>Platform Assistance Manual (PAM)</i> .	
Taxpayer Identification Number (TIN)	All owners' TINs - The TIN assigned to the account must belong to the person listed on the first or second title line.	
Required Documentation	- Personal Signature Card (applicable version) - Appropriate Certificate of Foreign Status (Merlin form) (if applicable) - Review Decision Details screen-print	

Example:

Given Name	Owner/Bef Code	Account Title
John W Doe	Co-Owner (COO)	John W Doe
Jane B Doe	Co-Owner (COO)	Jane B Doe



■ Guardianship - Court-Appointed



The ownership type does NOT apply to Georgia



Overview	- Established by a court-appointed guardian to manage the funds of a ward. - Only the guardian may make withdrawals Guardian (also referred to as Committee, Curator, Conservator or in Arkansas: Stand-By Guardian) Court-appointed individual who cares for and/or manages the property and affairs of a minor or an incapacitated (physically or mentally) adult. Ward Individual who is unable to manage their property and affairs effectively due to minority or physical/mental incapacity.
Eligible Products	- Economy Checking - Regular Checking - Interest Checking - Custom Savings - Regular Savings - Money Market Savings
Identification	Obtain acceptable primary ID from the persons opening the account. Refer to the IDENTIFICATION chapter of the <i>Platform Assistance Manual (PAM)</i>.
Required Identification Number (TIN)	Ward's TIN
Required Documentation	- Personal Signature Card (applicable version) - Appropriate Certificate of Foreign Status (Merlin form) (if applicable) - Review Decision Details screen-print - Certified Copy of the court order appointing the guardian - Notify Banking Group Support/Legal Support of any restrictions to the guardian's powers.

■ Endorsements

When negotiating items, the best way
★ to avoid fraud or a loss situation is to ★
"KNOW YOUR ENDORSER"

- An endorsement performs four functions:
 - Transfers ownership of the check
 - Certifies the endorser has no knowledge that the drawer's signature is unauthorized
 - Certifies the endorser has good title to the check and prior endorsements are present and genuine
 - Certifies the endorser will pay if the check is not paid (dishonored) and the proper notice is given to the endorser
- All endorsements must comply with Regulation CC guidelines. Refer to the REG CC chapter of the *Teller Operations Manual* (TOM) for additional information.
 - A hold will not protect the bank from questionable endorsements.
- The payee may endorse only in the area located on the back of the check extending 1 1/2 inches from the trailing edge (marked on the back of the check).
- The individual or business named on the "Payable to" line of a check is the payee and must endorse the check exactly as it is payable.
- The payee may transfer the right to receive payment to another party. That party (called a "holder") receives possession of the item. Each new holder can transfer the check to another party by a proper endorsement.
 - A supervisor must approve third-party endorsements.
- By cashing or accepting a check for deposit, the bank guarantees the endorsement to the paying financial institution. You must know the endorser in order to be able to collect the funds should the check be returned unpaid.
 - All endorsements must be verified or guaranteed when the payee and prior endorser of the check are not negotiating the item and recourse is uncertain. If the last endorser is well-known and a Deposit Hold/Do Not Cash recommendation was not received, obtain supervisor approval.
 - Endorsements by non-depositor business payees (including Sole Proprietors) must be endorsement-guaranteed by their financial institution for items over \$2,500. Refer to the CASHIER'S CHECK chapter of the *Teller Operations Manual* (TOM) for additional information.

BOA 02120

Payee	Example	Endorsement Requirements
Trust	The Wyle Warner Family Revocable Living Trust	■ Must be endorsed exactly as written and include the endorser's name and capacity (for example, The Wyle Warner Family Revocable Living Trust, Bill Warner, Trustee). ■ Verify the payee's authority indicated on the check before cashing.
Estate	Estate of Bill Warner, Wyle Warner, Conservator/Executor Estate of Bill Warner, Wyle Warner, Personal Representative Estate of Bill Warner, deceased	■ Endorsement must contain the following: - Estate Name - "By Conservator/Executor/Personal Representative" - Signature of Conservator/Personal Representative ■ Verify the payee's authority indicated on the check before cashing.
Business - Corporation, Organization, Agency, Partnership, or Association	Central Contractors, Inc.	■ Should be stamped "For Deposit Only" and include the business name or within named payee. ■ Must be deposited into an account titled the same.
Business - Sole Proprietor	Bill's Hardware Store	■ Must be endorsed exactly as the payee line is written, including owner (for example, Bill's Hardware Store, Bill Warner, Owner).
Cash, Bearer, Petty Cash, or blank payee line		■ Must be endorsed by the presenter if presented for encashment.
Payee with title	John Garcia, Guardian	■ Endorsement should include the title. ■ Payee's authority indicated on the check must be verified before cashing.
Bank of America	Bank of America	■ Request customers make future items payable to "Cash." ■ Checks made payable to the bank should only be accepted for payment to the maker's accounts. - If presented for cash or to purchase a Cashier's Check, verify the account ownership or signer's authority; then have the presenter endorse the item and indicate "For Cash."

BOA 02124

CHECK CASHING
• 14 •

TOM
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ROA 0865

APPENDIX 875

■ Types of Losses

Non-Credit Losses

- Non-credit losses occur as a result of doing business and include:

- Transactions processed within established thresholds and/or guidelines resulting in a loss (policy losses)
- Losses due to fraudulent transactions (such as forged endorsements or altered/raised checks)
- Teller cash overs and shorts
- Litigation settlements

Policy Losses

- Occur even though associates followed established policies and procedures. Policy losses include:

- Deposited check (appropriate hold placed) was returned after the hold expired
- Check cashed within established guidelines was returned
- Robbery
- Check paid within established guidelines is later identified by the customer as a forgery

Performance Losses

- Occur because associates did not follow established policies and procedures. Performance losses include:

- Deposited check was returned and an improper hold was placed or a hold was not placed and the item was within established guidelines for placing a hold
- Check cashed outside of established guidelines, without necessary approval, was returned by the receiving financial institution
- Associate embezzlement
- Losses on a new account opened with a ChexSystems override
- Losses on an account not closed upon Liability Risk Management recommendation
- Non-procedural losses
- Counterfeit currency accepted for deposit/exchange

BOA 02418

LOSS MANAGEMENT

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TOM

1/18/01

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ROA 0866

APPENDIX 876

Responsibilities

* Fraud awareness and prevention is the responsibility of every associate *

All Associates	■ Follow precautionary measures when: - Negotiating checks - Handling cash - Processing large or suspicious transactions - Overriding system warning messages ■ Promptly report losses or unusual incidents/situations that could cause losses. ■ Evaluate "remarks" placed on accounts. ■ Do <u>not</u> release holds placed by Liability Risk Management.
Banking Center	■ Review teller difference reports and records. ■ Prevent overdraft accounts by encouraging customers to apply for overdraft protection and closing mishandled accounts prior to overdraft. ■ Monitor and report losses to track trends and prevent future losses. ■ Provide information and documentation as requested by Liability Risk Management-Overdraft Services. ■ Warn transfer customers with confirmed check fraud to Liability Risk Management-Check Fraud Claims to initiate claim processing. ■ Close accounts with lost or stolen checkbooks, open new accounts, and link/un-link/order new cards. ■ Immediately block lost/stolen Check Cards/ATM cards, and issue new cards (as appropriate). ■ Refer customers with lost or stolen credit cards to Bank of America Credit Cards-Priority West. ■ All locations except California: - Weekly, review the Overdraft Report (IMRO15No). - Attempt to collect funds owed on charged-off accounts.

BOA 02420

LOSS MANAGEMENT
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TOM
1/18/01

ROA 0867

APPENDIX 877

UTMA/UGMA Account Opening Procedure

Revised 6/17/04

1. Do the following:
 - a. Obtain acceptable primary ID from each authorized signers. Retain the ID until all forms are signed and ID is documented:
 - If the customer does not have acceptable primary ID, do not open the account.
 - b. Obtain one form of acceptable secondary ID and retain until all appropriate forms are signed and ID is documented if either of the following apply:
 - Primary ID is less than 90 days old
 - Customer is new
2. Obtain the following:
 - a. Customer's country of citizenship
 - Refer to non-U.S. persons for information regarding account opening and residency status.
 - Refer to opening account procedures for nonresident aliens or resident aliens.
 - b. The minor's Taxpayer Identification Number (TIN).
 - A Social Security Number (SSN) is required for all U.S. citizens. If the customer indicates the SSN has been applied for, but not received, review a copy of the application (SS5).
 - If the customer can not provide a SSN or application, do not open the account.
 - To prevent back-up withholding on interest-bearing account, resident aliens must provide their SSN or Individual Taxpayer Identification Number (ITIN) within 30 days of account opening.
3. Select the desired products online. Discuss check safekeeping options.
 - Click here if Marlin is unavailable.
4. Give the applicable disclosures and materials to the customer. Review all applicable fees.
5. Complete or update the Customer Profile online
 - New customer
 - Existing customer
 - a. If uncomfortable with information provided by the customer, review customer verification procedures.
 - b. Enter the appropriate Owner/Rel Code:

Teller Operations Manual

Summary of Revisions – Model Bank

October 19, 2000 • Update 00-9

Check Cashing

- Retirement accounts do not qualify as deposit relationships for check cashing purposes.
- Information regarding the following has been added:
 - Check cashing recommendation guidelines
 - National signature verification limits
- Check cashing limits and identification requirements (including ID tracking) have been updated.
- When requesting ID, hand-write required information on each check if it is not input on the teller system.
- For Trust or Estate accounts, verify the payee's authority indicated on the check before cashing.
- **BranchTeller, MerlinTeller, PC Teller & TAPS:** Process all Model CreditLine checks by selecting the appropriate transactions on the teller system. If sufficient credit is not available, or stop payments or other remarks exist, a message will appear.
- Endorsements by non-depositor business payees (including Sole Proprietors) must be endorsement-guaranteed by their financial institution for amounts over \$2,500.
- A supervisor must approve third-party endorsements.
- Ensure payees endorse checks when "For Deposit Only" is used.
- A bank endorsement stamp ("Credited to the Account of the Within Named Payee") may be used for unendorsed items deposited into accounts on which the payees are authorized signers.
- Print signatures are not required for customers with the following relationships:

	On-Us Items	Not-On-Us Items
California	A <i>deposit</i> relationship with Bank of America.	A <i>deposit</i> relationship with Bank of America or an affiliate.
All Other Locations	A relationship with Bank of America, including the following: - Deposit account (checking, savings, or CD) - Investment account - Individual Retirement Account - Loan - Credit card - Mortgage - Safe deposit box	

BOA 01789



CLASSIFICATION: INTERNAL

ROA 0869

APPENDIX 879

■ Overview

- When cashing checks, adhere to Check Cashing and Freedom to Act Guidelines. Refer to the following guidelines and procedures:
 - Check Cashing Guidelines section of this chapter
 - FREEDOM TO ACT chapter of the *Teller Operations Manual (TOM)*
 - Always follow precautionary measures to avoid losses when cashing checks, especially for non-depositors.
-
- Losses may be avoided by carefully examining ID and being aware of red flags indicating check fraud. Refer to the LOSS MANAGEMENT chapter of TOM.

★ When negotiating items, the best way
to avoid fraud or a loss situation is to ★
"KNOW YOUR ENDORSER"

BOA 02113

TOM
11/16/00

CHECK CASHING
• 3 •

ROA 0870

APPENDIX 880

Depositors	■ When cashing not-on-us items for depositors, <u>always</u>: - Ask the customer to endorse the item in your presence (if items are pre-signed, ask the customer to sign again) - Obtain and document acceptable identification (when required); refer to the Identification and Check Cashing Guidelines sections of this chapter - Enter the recourse account number on the appropriate screen to obtain a "Cash/Do Not Cash" recommendation
Non-Depositors	■ When cashing on-us items for non-depositors, <u>always</u>: - Ask the customer to endorse the item in your presence (if items are pre-signed, ask the customer to sign again) - Obtain and document acceptable primary (and secondary, if applicable) identification (Refer to the Identification section of this chapter) - Obtain print signatures (Refer to the Print Signature Program section of this chapter) - If the transaction is suspicious <u>or</u> the signature can <u>not</u> be verified, (when applicable) consider contacting the maker by telephone - Encourage non-depositors to open Bank of America deposit accounts ■ Before refusing not-on-us items presented for cash, determine whether a check cashing agreement is on file. (Refer to the Payable-if-Desired (PID) Agreements section of this chapter.) ■ If you decide to refuse a transaction, remind the payee they may present the item at their own bank or that there are check cashing businesses available. ■ California: For items over \$200 (personal accounts) or over \$500 (business accounts), refer the customer to the domiciling banking center. ■ All Other Locations: Signature verification is required for items \$2,500 or more <u>or</u> \$10,000 or more (depending on location). (Refer to the Signature Verification section of this chapter.) - On an exception basis only, a supervisor may verify the validity of signatures on on-us checks presented for amounts less than \$2,500 by requesting a fax of the maker's signature.

BOA 02115

TOM
11/16/00

CHECK CASHING
• 5 •

ROA 0871

APPENDIX 881

■ Check Negotiability

Refer to the check sample on the following page.

① Current Date	■ A check with no date is negotiable; it is considered "payable on demand." ■ Check must be dated within the last <u>six months</u>; it is considered "stale-dated" if it is more than six months old. ■ Government checks become stale-dated after <u>one year</u>.
	■ If a check states an exception to the six-month standard, follow the instructions on the check (for example, "void after 30 days"). ■ A check is considered "post-dated" if dated for a future date.
② Payee	■ The payee line must indicate who is entitled to negotiate the check. ■ When payable to an individual, that person must endorse the check. Refer to the Endorsements section of this chapter for additional information. ■ When payable to cash or bearer, it is critical to obtain an endorsement on the back of the check from the person receiving the cash. ■ When payable to a business (other than a sole proprietor) or organization, the check can <u>not</u> be cashed. Checks must be deposited to an account opened under that business or organization name; less cash is <u>not</u> allowed. - On an exception basis (with supervisor approval), some sole proprietors may cash checks payable to their business. The associate must know the customer is the sole proprietor. ■ If cashing a personal check payable to Bank of America, the maker must endorse the item in the teller's presence. - Generally, checks payable to Bank of America should be accepted for payment (such as a loan payment) and <u>not</u> cashed.
③ Written/ Numeric Amounts	■ The written and numeric amounts must match. ■ If there is a discrepancy between the amounts, the written amount is the legal amount (a discrepancy may be a "red flag"). ■ Only the maker is allowed to make changes to the check and must initial the changes.

■ Endorsements

★ When negotiating items, the best way to avoid fraud or a loss situation is to ★
"KNOW YOUR ENDORSER"

■ An endorsement performs four functions:

- Transfers ownership of the check
- Certifies the endorser has no knowledge that the drawer's signature is unauthorized
- Certifies the endorser has good title to the check and prior endorsements are present and genuine
- Certifies the endorser will pay if the check is not paid (dishonored) and the proper notice is given to the endorser

■ All endorsements must comply with Regulation CC guidelines. Refer to the REG CC chapter of the *Teller Operations Manual (TOM)* for additional information.

- A hold will not protect the bank from questionable endorsements.

■ The payee may endorse only in the area located on the back of the check extending 1 ½ inches from the trailing edge (marked on the back of the check).

■ The individual or business named on the "Payable to" line of a check is the payee and must endorse the check exactly as it is payable.

■ The payee may transfer the right to receive payment to another party. That party (called a "holder") receives possession of the item. Each new holder can transfer the check to another party by a proper endorsement.

- A supervisor must approve third-party endorsements.

■ By cashing or accepting a check for deposit, the bank guarantees the endorsement to the paying financial institution. You must know the endorser in order to be able to collect the funds should the check be returned unpaid.

- All endorsements must be verified or guaranteed when the payee and prior endorser of the check are not negotiating the item and recourse is uncertain. If the last endorser is well-known and a Deposit Hold/Do Not Cash recommendation was not received, obtain supervisor approval.
- Endorsements by non-depositor business payees (including Sole Proprietors) must be endorsement-guaranteed by their financial institution for items over \$2,500. Refer to the CASHIER'S CHECK chapter of the *Teller Operations Manual (TOM)* for additional information.

BOA 02120

- Items containing restrictions (for example, a check payable to a woman as the "unmarried widow of....") may be accepted for collection only. Refer to the COLLECTIONS (DOMESTIC) chapter of the *Teller Operations Manual* (TOM).
- Ensure individuals negotiating items are entitled to the funds. (Refer to the "Endorsement Types" matrix in this section.)

ENDORSEMENT REQUIREMENTS

Deposit	Payee's handwritten <u>or</u> stamped signature. - Ensure payees endorse checks when "For Deposit Only" is used.
	A bank endorsement stamp ("Credited to the Account of the Within Named Payee") may be used for unendorsed items deposited into accounts on which the payees are authorized signers. - A bank endorsement stamp may <u>not</u> be used on items labeled "Personal Endorsement Required."
Encashment	Payee's handwritten signature. - A bank endorsement stamp is <u>not</u> acceptable.

BOA 02121

TOM
11/16/00

CHECK CASHING
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ROA 0874

APPENDIX 884

PAYEE/ENDORSEMENT EXAMPLES

Contact National Helpline using OneCall for payees/endorsements not covered by the examples below.

Payee	Example	Endorsement Requirements
One Individual	Bill Warner	Must be endorsed by the individual.
One Individual - Name Misspelled	Bill Warner (should be Bill Warner)	Must be endorsed exactly as written, then endorsed correctly.
Multiple Individuals - "Or," slash (/), hyphen (-), comma	Bill Warner or Wyle Warner Bill Warner or Joe's Automotive Bill Warner/Wyle Warner Bill Warner - Wyle Warner Bill Warner, Wyle Warner, Sue Warner	May be endorsed by any one payee.
Multiple Payees - "And," ampersand (&), plus sign (+), no punctuation	Bill Warner and Wyle Warner Bill Warner and Wyle Warner, JTWROS Bill Warner and American Insurance Bill Warner and Frank's Automotive Bill Warner Wyle Warner Bill Warner American Insurance	- Must be endorsed by <u>all</u> payees. - All payee endorsements must be verified and/or guaranteed. - If one payee is deceased, the check must be reissued. - Checks presented for deposit that are payable to multiple payees joined by "AND" may be accepted with only one endorsement under the following conditions: - Checks are deposited into a joint account owned by payees named on the check - Checks are endorsed "For Deposit Only" - Checks are <u>not</u> government checks or insurance drafts, and the item does not indicate endorsements from all payees are required - When in doubt, obtain all payee signatures.
Multiple Individuals - "FBO"	Bill Warner FBO Wyle Warner	FBO (For Benefit Of) - FBO is informational. In this example, Bill Warner must endorse the item.

BOA 02123

TOM
11/16/00

CHECK CASHING
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ROA 0875

APPENDIX 885

Payee	Example	Endorsement Requirements
Trust	The Wyle Warner Family Revocable Living Trust	- Must be endorsed exactly as written and include the endorser's name and capacity (for example, The Wyle Warner Family Revocable Living Trust, Bill Warner, Trustee). - Verify the payee's authority indicated on the check before cashing.
Estate	Estate of Bill Warner, Wyle Warner, Conservator/Executor Estate of Bill Warner, Wyle Warner, Personal Representative Estate of Bill Warner, deceased	- Endorsement must contain the following: - Estate Name <i>By Conservator/Executor/Personal Representative</i> - Signature of Conservator/Personal Representative - Verify the payee's authority indicated on the check before cashing.
Business - Corporation, Organization, Agency, Partnership, or Association	Central Contractors, Inc.	- Should be stamped <i>"For Deposit Only"</i> and include the business name or within named payee. - Must be deposited into an account titled the same.
Business - Sole Proprietor	Bill's Hardware Store	Must be endorsed exactly as the payee line is written, including owner. (for example, Bill's Hardware Store, Bill Warner, Owner).
Cash, Bearer, Petty Cash, or blank payee line	---	Must be endorsed by the presenter if presented for encashment.
Payee with title	John Garcia, Guardian	- Endorsement should include the title. - Payee's authority indicated on the check must be verified before cashing.
Bank of America	Bank of America	- Request customers make future items payable to "Cash." - Checks made payable to the bank should only be accepted for payment to the maker's accounts. - If presented for cash or to purchase a Cashier's Check, verify the account ownership or signer's authority; then have the presenter endorse the item and indicate "For Cash."

BOA 02124

CHECK CASHING

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TOM

11/16/00

ROA 0876

APPENDIX 886

■ Well-Known Customers

- ID is not required from well-known customers; write "W/K" and your initials next to the customer's endorsement.
- In order for a customer to be considered "well-known," associates must know all of the following:
 - Customer's name on sight
 - Where the customer lives or works
 - Customer is the account owner
 - Customer's account has a satisfactory history, including:
 - Account has been open at least six months
 - Average balance is equal to/greater than the item being cashed
 - No more than two OD/NSF occurrences in the last 12 months
 - Where to go for recourse if an item is returned

■ Non-Resident Aliens

- New customers who claim Non-Resident Alien (NRA) status must provide at least one form of acceptable primary identification to confirm their foreign status.
- If a foreign passport or Employment Authorization Card issued by the U.S. Government is not presented as primary identification, NRAs must present at least one of the acceptable non-resident alien IDs that will validate and confirm their NRA status. (Refer to the Identification - Acceptable section of this chapter.)
- All non-resident alien account signers must certify their foreign status by providing their permanent foreign address and completing the appropriate Certificate of Foreign Status.

BOA 01028

PAM
6/15/00

IDENTIFICATION
- 3 -

ROA 0877

APPENDIX 887

■ Types of Losses

Non-Credit Losses	■ Non-credit losses occur as a result of doing business and include: - Transactions processed within established thresholds and/or guidelines resulting in a loss (policy losses) - Losses due to fraudulent transactions (such as forged endorsements or altered/raised checks) - Teller cash overs and shorts - Litigation settlements
	Policy Losses ■ Occur even though associates followed established policies and procedures. Policy losses include: - Deposited check (appropriate hold placed) was returned after the hold expired - Check cashed within established guidelines was returned - Robbery - Check paid within established guidelines is later identified by the customer as a forgery Performance Losses ■ Occur because associates did <u>not</u> follow established policies and procedures. Performance losses include: - Deposited check was returned and an improper hold was placed <u>or</u> a hold was not placed and the item was within established guidelines for placing a hold - Check cashed outside of established guidelines, without necessary approval, was returned by the receiving financial institution - Associate embezzlement - Losses on a new account opened with a ChexSystems override - Losses on an account <u>not</u> closed upon Liability Risk Management recommendation - Non-procedural losses - Counterfeit currency accepted for deposit/exchange

BOA 02418

LOSS MANAGEMENT

• 4 •

TOM
1/18/01

ROA 0878

APPENDIX 888

■ Fraudulent Transactions

- Bank losses due to fraudulent transactions are usually the result of associate inexperience, carelessness, preoccupation, or distraction.
- When servicing customers, associates must:
 - Be polite.
 - Concentrate on one transaction at a time, especially when handling cash.
 - Be alert for any irregularities with the transaction.

LARGE & SUSPICIOUS TRANSACTIONS

- Large and suspicious transactions expose the bank to significant losses. Use caution when proposed large transactions are presented under suspicious circumstances.
- Individuals or entities attempt to carry out these transactions by submitting proposals to Bank of America escrow and representative offices via wire, telex, cable, facsimile machine, or in person.
- Proposals generally range between \$1 million and \$1.5 trillion and appear as fictitious letters written on bank stationery with forged signatures of authorized officers.
- Fraud operators who propose large transactions often ensure all documents appear legitimate and in order.
- Large and suspicious transactions typically involve third parties. Some cases include a victim of the fraudulent transaction contacting the bank, other cases involve contact persons who knowingly attempt to defraud the bank.
- Bank of America may be responsible for losses when:
 - The bank complies with a transaction that causes a customer or investor to be defrauded.
 - An account is opened for a fraudulent broker or investor who deposits stolen funds into the account.

BOA 02438

To: Floretta Dening
NCI-003-04-35
704.388.2593

Research Performed: Stacy Stultman
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] 7197 KAREN M POWELL	03/02/01	\$134,000.00			Dep from DDA [REDACTED] 9281/Doc and DDA Statement Provided
[REDACTED] 7197 KAREN M POWELL			03/15/01	\$134,201.40	Funded CD [REDACTED] 6900 Doc Provided
[REDACTED] 6900 KAREN M UNRUE	03/15/01	\$134,201.40			Funded from CD [REDACTED] 7197 Doc Provided
[REDACTED] 7792 KAREN M UNRUE	03/16/01	\$100,000.00			Dep from DDA [REDACTED] 9281
[REDACTED] 7792 KAREN M UNRUE	Withdrawal from account		04/13/01	\$49,891.36	Funds transferred to DDA [REDACTED] 9281 Doc Provided
[REDACTED] 2016 KAREN M UNRUE GUARDIAN CODY [REDACTED] P [REDACTED]	04/26/01	\$252,447.31			Funds received from 7 checks from various other institutes designated for Cody [REDACTED] P [REDACTED]
[REDACTED] 2016 KAREN M UNRUE GUARDIAN CODY [REDACTED] P [REDACTED]			06/25/01	\$253,991.50	Deposited to: DDA [REDACTED] 9085, No Closing Doc on-site.
[REDACTED] 6900 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 KAREN M UNRUE			09/12/01	\$51,020.73	



ROA 0880

APPENDIX 890

STATE OF SOUTH CAROLINA

COUNTY OF: WILLIAMSBURG

IN THE MATTER OF: Cody ██████ P█████

)
)
)
)
)

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2001GC4500003

This is to certify that

Kelly H. Kelley

is/are the duly qualified

- ☐ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☒ CONSERVATOR
☐ TRUSTEE

in the above matter and that this appointment, having been executed on the 23rd day of July, 2002, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

USE ONLY: Certificate of Appointment for collecting funds belonging to minor and initiating legal action to pursue funds belonging to the said minor. No disbursement will be released without court's approval.

Executed this 23rd day of July, 2002.

Rudell M. Gamble
Probate Court Judge

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

FORM #141PC (1/91)
62-1-305, 62-3-103, 62-5-304, 62-5-421, 62-7-201



ROA 0881

APPENDIX 891

IN THE MATTER OF: Cody ██████ P█████

CASE NUMBER: 2001GC4500003

**Personal Representative
Conservatorship
Trusteeship**

APPENDIX 892



ROA 0883

APPENDIX 893

STATE OF SOUTH CAROLINA

) IN THE PROBATE COURT

COUNTY OF LEXINGTON

) CASE NUMBER: _____

IN THE MATTER OF:

WHEREAS, _____, has petitioned to be appointed as Conservator for _____ and will be appointed by Court Order by the Lexington County Probate Court; and

WHEREAS, in order to avoid the necessity of posting a bond, the Conservator has agreed to deposit the assets of the conservatorship with a financial institution in a manner that prevents their unauthorized disposition, pursuant to South Carolina Code Section 62-5-411;

NOW, THEREFORE, THE PARTIES HERETO (BEING THE CONSERVATOR, THE FINANCIAL INSTITUTION AND THE COURT) AGREE AS FOLLOWS:

1. _____ (Financial Institution) agrees to establish a restricted account(s) in the name of _____ as Conservator for _____.

2. _____ (Financial Institution) and _____ as Conservator, expressly agree that any withdrawal from the account(s) shall be allowed only upon certified Order of the Lexington County Probate Court authorizing a specific withdrawal for a specific amount at a specific time.

3. _____ (Financial Institution) and _____ understand that the original of this document will be filed with the Lexington County Probate Court in order to induce the Court to appoint _____ as Conservator for _____ without the necessity of the posting of bond.

4. Notwithstanding the restrictions provided in this Agreement, the Conservator once appointed is permitted to (a) transfer funds to or from a money market, savings account or a Certificate of Deposit or renew an existing Certificate of Deposit, so long as the Certificate of Deposit is with _____ (Financial Institution) held in the name of _____ as Conservator for _____ and is subject to the withdrawal restrictions set forth above: (b) the Conservator is permitted to invest the funds in the following investments: Certificate of Deposit; Money Market accounts; Triple "A" rated Municipal



Bonds; US Agency Bonds; Government Bond Funds and Large Cap Mutual Funds invested primarily in S&P 500 companies.

5. The opening balance in the restricted account is \$ _____ as of _____, 20____; or if not yet deposited, it is expected to be in the amount of \$ _____. Deposit confirmation should be filed with the Court within thirty days.

6. The taxpayer identification number shall be the social security number of the incapacitated person or the minor.

7. The financial institution shall provide a duplicate statement to the Lexington County Probate Court, 205 East Main Street, Suite 134, Lexington, SC 29072, Attn: Conservatorship Division, upon request.

8. Should disbursements be made without a court order _____ (Financial Institution) may be potentially liable for the reimbursement of such unauthorized disbursements to the conservatorship account.

Executed this ____ day _____, 20__

Executed this ____ day _____, 20__

PROPOSED CONSERVATOR'S SIGNATURE

FINANCIAL INSTITUTION'S SIGNATURE

NAME (PRINT)

Address: _____

NAME (PRINT)

Address: _____

Telephone No.: _____

Telephone No.: _____

MOTION FOR DIRECTED VERDICT RE: PUNITIVE DAMAGES

I. Standard

When, at trial, the case presents only questions of law, the judge may direct a verdict. Rule 50(a), SCRPC. In ruling on a motion for directed verdict, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Wright v. Craft, 372 S.C. 1, 18, 640 S.E.2d 486, 496 (Ct. App. 2007). However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997).

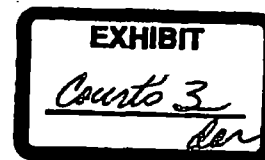
In ruling on a motion for directed verdict, the court "must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his favor." Wright, 372 S.C. at 18, 640 S.E.2d at 496 (quoting Jones v. General Elec. Co., 331 S.C. 351, 356, 503 S.E.2d 173, 176 (Ct. App. 1998)). Directed verdict is appropriate only if no evidence exists to support the ruling or if the decision was controlled by an error of law. Id. at 18, 640 S.E.2d at 496; Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). When considering directed verdict motions, the trial court has no authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Fickling v. City of Charleston, 372 S.C. 597, 603, 643 S.E.2d 110, 114 (Ct. App. 2007). "However, this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury." Id. "[W]hen only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court." Id.

II. Legal Discussion

Plaintiff has 2 bases for his request that punitive damages be sent to the jury: (1) BOA breached Section 62-5-423 in that it was bound by the restrictions set forth in the Probate Court Order and (2) BOA's conduct was willful, wanton or reckless. However, BOA is entitled to a directed verdict on both grounds and the Court should refuse to charge punitive damages to the jury.

A. There is no evidence that BOA "knowingly dealt with a conservator" as required by Section 62-5-423

There has been no evidence or testimony presented that indicates BOA had any knowledge of the Probate Court Order at issue or of the restrictions contained therein. Also, there is no evidence that BOA ever intended to harm Cody P. or otherwise acted in bad faith. More importantly, there is no evidence that BOA had knowledge that Karen Unrue was a conservator. Therefore, Plaintiff has failed to carry his burden of proving that BOA violated Section 62-5-423.



ROA 0886

APPENDIX 896

Section 62-5-423 provides, in part:

"A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in §§ 62-5-408 and 62-5-422, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require into the existence of a power or propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in § 62-5-426 are effective as to third persons."

First, neither Sections 62-5-408 or 422 apply in this case. Section 62-5-408 "gives specific powers to the court to take action with respect to the estate and affairs of a person if necessary even if that person has not yet been adjudged incompetent." Section 62-5-422 involves conflicts of interest in sales or encumbrances by a conservator. Therefore, BOA - who acted in good faith with Karen Unrue - "is protected as if the conservator properly exercised the power."

Second, BOA did not have notice or knowledge of any court order or restrictions at the time Karen Unrue came to the bank. Moreover, there is no evidence that Lee Ann Yourko (the personal banker who opened the CD account) or Meredith Lawrence (the manager who opened the second account) "knowingly dealt with a conservator" as is expressly required before restrictions "are effective as to third persons." More specifically, Ms. Yourko was asked to open a CD account, does not recall anything being asked about a conservator account, does not remember seeing anything indicating a conservator account was warranted and does not recall being presented with a court order.

Importantly, Plaintiff has the burden of proving that Ms. Yourko "knowingly dealt with a conservator." There is no evidence that Ms. Yourko knew she was dealing with a conservator because there is no evidence about what Ms. Unrue said or did at the time the account was opened. Ms. Yourko testified that she was looking at the numbers on the checks and there is no testimony or evidence before the court that Ms. Yourko knew Ms. Unrue was a conservator at the time the accounts were opened.

While it may or may not have been negligent for her to discover Ms. Unrue was a conservator and/or fail to ask about Ms. Unrue's authority as same, this is relevant only to Plaintiff's negligence claim - it is not proof that she "knowingly" dealt with a conservator. Accordingly, Plaintiff has failed to prove that BOA violated any statute. Therefore, this cannot be a basis for charging punitive damages to the jury.

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APPENDIX 897

B. There is insufficient evidence of willful, wanton or reckless acts or omissions to submit punitive damages to the jury.

Under South Carolina law, “[p]unitive damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant’s misconduct was willful, wanton, or in reckless disregard of the plaintiff’s rights.” Mellen v. Lane, 377 S.C. 261, 290, 659 S.E.2d 236, 251 (Ct. App. 2008); see also S.C. Code Ann. § 15-33-135.

South Carolina courts have consistently held that the words “willful,” “wanton,” and “reckless” are synonymous. Marcum v. Bowden, 372 S.C. 452, 458, 643 S.E.2d 85, 88 n.5 (2007); Yaun v. Baldrige, 243 S.C. 314, 316, 134 S.E.2d 248, 251 (S.C. 1964). “[W]hichever term you prefer, they all mean the same thing, that is, *the conscious failure to exercise due care.*” Yaun, 243 S.C. at 316, 134 S.E.2d at 251 (emphasis added); compare Parker v. Simmons, 163, S.C. 42, 161 S.E. 169, 170 (S.C. 1931) (“recklessness is the conscious failure to exercise due care”); DeLee v. Knight, 266 S.C. 103, 109, 221 S.E.2d 844, 846 (S.C. 1975) (recklessness is “the doing of a negligent act knowingly”), with Cummings v. Tweed, 10 S.E.2d 322, 326 (S.C. 1940) (wantonness means “a conscious failure to observe due care”), and Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996) (willfulness is “a conscious failure to exercise due care”).

Therefore, regardless of whether Plaintiff alleges Bank of America acted willfully, wantonly, or recklessly, Plaintiff cannot recover punitive damages unless he proves by clear and convincing evidence that the failure to open a restricted account “was committed in such a manner or under such circumstances that a person of ordinary reason and prudence would have been *conscious of it as an invasion of the plaintiff’s rights.*” See Taylor v. Medenica, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996) (emphasis added). Importantly, it is not enough to show that the defendant acted inadvertently or even that defendant was grossly negligent. Hicks v. McCandlish, 221 S.C. 410, 412, 70 S.E.2d 629, 631 (S.C.1952).

In order for a plaintiff to recover punitive damages in a negligence action, there must be evidence the defendant’s conduct was willful, wanton, or in reckless disregard of the plaintiff’s rights. Simple negligence affords no basis for an award of punitive damages ... It is the present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor.

Cohen v. Allendale Coca-Cola Bottling Co., 291 S.C. 35, 40, 351 S.E.2d 897, 900 (Ct. App. 1986) (emphasis added).

Although Plaintiff may or may not be able to prove to the jury that Bank of America was negligent or even grossly negligent in failing to prove to open a restricted account, Plaintiff cannot establish that Bank of America acted with conscious disregard of its duty of care. At the time the teller opened the account, neither Ms. Yourko nor the bank had the probate court’s order or other documents containing the restrictions on Ms. Unrue’s powers as conservator. Moreover, Ms. Unrue, the bank’s customer and the person charged by the court with protecting Plaintiff’s finances, specifically requested that the Bank open a Certificate of

ROA 0888

APPENDIX 898

Deposit Account and intentionally violated the probate court's order by concealing the court's instructions. Also, the only evidence in this case is that Ms. Yourko did not know that Ms. Unrue was a conservator. There is simply no evidence in the record that Ms. Yourko or any other BOA employee had any knowledge it was doing anything wrong at the time.

As such, Plaintiff cannot establish by clear and convincing evidence that the Bank realized it was acting negligently and continued to act in conscious disregard of its duty of care and of Plaintiff's rights. See DeLee, 266 S.C. at 109, 221 S.E.2d at 846 (a person acts recklessly or willfully when he "actually acts negligently and he realizes that he is acting negligently"). Therefore, Plaintiff is not entitled to punitive damages.

III. Conclusion

Viewing all the evidence presented in a light most favorable to the Plaintiff, there is insufficient evidence to support sending the issue of punitive damages against BOA to the jury. This is a textbook example of simple negligence or, at most, gross negligence. However, it is not - as a matter of law - willful, wanton or reckless conduct. Therefore, the Court should grant BOA's Motion for Directed Verdict.

MOTION FOR DIRECTED VERDICT RE: BREACH OF FIDUCIARY DUTY CLAIM

I. Standard

When, at trial, the case presents only questions of law, the judge may direct a verdict. Rule 50(a), SCRPC. In ruling on a motion for directed verdict, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Wright v. Craft, 372 S.C. 1, 18, 640 S.E.2d 486, 496 (Ct. App. 2007). However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997).

In ruling on a motion for directed verdict, the court "must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his favor." Wright, 372 S.C. at 18, 640 S.E.2d at 496 (quoting Jones v. General Elec. Co., 331 S.C. 351, 356, 503 S.E.2d 173, 176 (Ct. App. 1998)). Directed verdict is appropriate only if no evidence exists to support the ruling or if the decision was controlled by an error of law. Id. at 18, 640 S.E.2d at 496; Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). When considering directed verdict motions, the trial court has no authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Fickling v. City of Charleston, 372 S.C. 597, 603, 643 S.E.2d 110, 114 (Ct. App. 2007). "However, this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury." Id. "[W]hen only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court." Id.

II. Legal Discussion

- A. Because there is no fiduciary relationship between Plaintiffs and BOA, this claim must be dismissed.

In describing South Carolina law governing fiduciary relationships, the Court of Appeals has held:

"A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one reposing confidence. A relationship must be more than casual to equal a fiduciary relationship. As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him." Regions Bank v. Schumach, 354 S.C. 648, 582 S.E.2d 432, 444 (Ct.App. 2003) (citations omitted).



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APPENDIX 900

Importantly, the Regions Bank court noted that "South Carolina holds the normal relationship between the bank and its customer is one of creditor-debtor and not fiduciary in nature." Id. (emphasis added); C&S Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 443 S.E.2d 549, 551 (1994); American Fed. Bank v. Parker, 301 S.C. 509, 392 S.E.2d 798, 801 (Ct.App. 1990); Steele v. Victory Savings Bank, 295 S.C. 290, 368 S.E.2d 91, 93-94 (1988); Burwell v. S.C. Nat'l Bank, 288 S.C. 34, 340 S.E.2d 786, 790 (1986); Rush v. S.C. Nat'l Bank, 288 S.C. 560, 343 S.E.2d 667, 668-69 (Ct.App. 1986); Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E.2d 116 (1976).

"In limited circumstances, however, a fiduciary relationship may be created between a bank and a customer if the bank undertakes to advise the customer as part of the services the bank offers. Unless the funds are deposited into a special account or specifically designated to be kept separate, the relationship between a general depositor and the bank is that of creditor and debtor and a trust is not created." Rush, 343 S.E.2d at 668 (citations omitted). "The burden proving an account is special is on the one claiming it." Id. ~~Even if funds deposited are to be used for a particular purpose, where the depositor assents to their being commingled with the general funds of the bank, in the absence of a clear agreement to the contrary expressed or implied, a deposit is presumed to be a general deposit." Id.~~

Therefore, based on South Carolina law, unless Plaintiffs can show (1) that BOA offered Cody P. [REDACTED] advice as to the bank's services and (2) a clear agreement between Cody P. [REDACTED] and BOA that the funds be segregated from the bank's general assets in a special account, Plaintiffs' cause of action for breach of fiduciary duty must be dismissed. Because there is no evidence in the record to satisfy Plaintiffs' burden of proof in this regard, BOA's Motion for Summary Judgment as to this claim should be granted.

- i. There is no evidence that Ms. Unrue sought, or that BOA provided, advice as to services the bank offered.

All of the testimony and evidence in the case at bar supports the finding that Karen Unrue specifically requested a certificate of deposit (hereinafter "CD") account. Further, there is no evidence that BOA provided this advice to Ms. Unrue as to services the bank offered. Therefore, no fiduciary relationship has been proven.

For example, Travis Powell, Ms. Unrue's brother and co-conservator for Cody P. [REDACTED], testified that "I do remember my sister asking in court, because she wanted to invest the money in CDs or whatever to gain more interest, and they said that was fine, but not without court consent." Ex. 3 at p.19, ll. 21-24. This sworn testimony proves that Ms. Unrue knew well before the CD account was established on April 26, 2001 that she had made her decision as to the type of account she wanted to establish without advice from BOA. Furthermore, the teller who set up the CD account, Lee Ann Yourko, testified that Ms. Unrue specifically requested a CD account. Ex. 2 at p.10, ll. 16-18; p.66, ll. 16-19; p.70, ll. 10-11.

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APPENDIX 901

Importantly, Plaintiffs' own expert witness, Robert Hubbs, admits that he has no idea what was communicated between Ms. Unrue and Mr. Yourko during the meeting in which the CD account was established. Exhibit 5, Transcript of Robert N. Hubbs Deposition at p.92, l. 23 - p.93, l. 2. The minor Plaintiff's mother, Elizabeth Anne Powell, also testified that she knows nothing about the discussions between BOA and Ms. Unrue. Ex. 1 at p.44, l. 24 - p.45, l. 1.

In sum, there is no evidence before the court that proves Ms. Unrue or Cody P. sought BOA's advice as to services it offered. There is also no evidence that BOA offered such advice. On the contrary, all of the evidence and sworn testimony in this case - from all parties - establishes that Ms. Unrue knew well in advance of April 26, 2001 that she wanted to establish a CD account and that she specifically requested this type of account from BOA. Accordingly, the exception does not apply and this case involves a debtor-creditor relationship, not a fiduciary relationship, between Cody P. and BOA.

- ii. Plaintiff has failed to carry his burden of showing a "clear agreement" with BOA that the subject funds were to be segregated in a special account.

In order for Plaintiff Cody P. to establish that he had a fiduciary relationship with BOA, he will need to show a "clear agreement" that the subject funds were to be put into a special account segregated from the bank's general funds. Rush, 343 S.E.2d at 668. "Unless the funds are deposited into a special account or specifically designated to be kept separate, the relationship between a general depositor and the bank is that of creditor and debtor." Id.

In Rush, the plaintiff depositor alleged that the defendant bank improperly released deposited funds without all of the required signatures. Id. Plaintiff argued that because the bank released such funds without proper authorization, it had breached its fiduciary duty. Id. However, the Court of Appeals expressly rejected this argument and held that because the Plaintiff could show no clear agreement that the funds were to be kept in a special account, no fiduciary relationship was created. Id. at 668-69.

"To change a general account into a special account, there must be some act, at least on the part of the depositor, tending to segregate the funds in the possession of the bank and to segregate them for a particular purpose." Id. at 668. "Whether a general account becomes by some transaction a special account depends upon the intent of the parties and evidence of that intent may be what is said and done when the transaction took place." Id. "The burden of proving account is special is on the one claiming it." Id.

In the case at bar, Plaintiff has offered no evidence that either he or the depositor, Karen Unrue, gave any instructions to BOA that the subject funds were to be set aside for a specific purpose in a special account, segregated from BOA's general funds. On the contrary, all of the evidence before the Court proves that Ms. Unrue knew ahead of time that she wanted to set up a general CD account and that she requested the same of BOA. See

restricted accounts
case law

ROA 0892

APPENDIX 902

Ex. 3 at p.19, ll. 21-24 (Ms. Unrue's brother's testimony that she informed the Probate Court of her intent to open CD account); Ex. 2 at p.10, ll. 16-18; p.70, ll. 10-11 (BOA teller, Ms. Yourko, testified Ms. Unrue asked for CD account to be established). Importantly, neither Ms. Powell nor Mr. Hubbs, Plaintiffs' banking expert, can testify as to anything discussed between Ms. Unrue and BOA. Ex. 1 at p.44, l.24 - p.45, l. 1; Ex. 5 at p.92, l.23 - p. 93, l.2, respectively.

Plaintiff has the burden of proving a clear agreement that the funds were to be deposited into a special account segregated from the bank's general funds. Rush at 668. However, Plaintiff has not and cannot offer any such evidence. Because Plaintiff failed to meet his burden of proving a fiduciary relationship by clear and convincing evidence, his claim for breach of fiduciary duty must fail.

III. Conclusion

Viewing all the evidence presented in a light most favorable to the Plaintiff, there is insufficient evidence to support a verdict against BOA for breach of fiduciary duty. As a matter of law, there was no fiduciary relationship between Cody P. [REDACTED] and BOA.

****NOTE:** Plaintiff's counsel will try to say that BOA should have known it was a conservator situation or that it should have advised someone to open a restricted account. However, this is **NEGLIGENCE**, not a breach of fiduciary duty. Plaintiffs will try to muddy the line between these two claims, but we need to make sure the judge sees the distinction and the clear law supporting our position.

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APPENDIX 903

MOTION FOR DIRECTED VERDICT RE: INTERVENING ACT

I. Standard

When, at trial, the case presents only questions of law, the judge may direct a verdict. Rule 50(a), SCRPC. In ruling on a motion for directed verdict, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Wright v. Craft, 372 S.C. 1, 18, 640 S.E.2d 486, 496 (Ct. App. 2007). However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury. Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997).

In ruling on a motion for directed verdict, the court "must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his favor." Wright, 372 S.C. at 18, 640 S.E.2d at 496 (quoting Jones v. General Elec. Co., 331 S.C. 351, 356, 503 S.E.2d 173, 176 (Ct. App. 1998)). Directed verdict is appropriate only if no evidence exists to support the ruling or if the decision was controlled by an error of law. Id. at 18, 640 S.E.2d at 496; Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). When considering directed verdict motions, the trial court has no authority to decide credibility issues or to resolve conflicts in the testimony or evidence. Fickling v. City of Charleston, 372 S.C. 597, 603, 643 S.E.2d 110, 114 (Ct. App. 2007). "However, this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury." Id. "[W]hen only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court." Id.

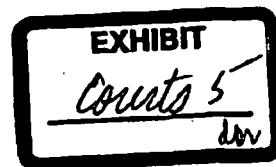
II. Legal Discussion

A. Karen Unrue's intervening and criminal acts were unforeseeable and relieve BOA of liability

BOA is entitled to a directed verdict as to Plaintiff's negligence claim because of the intervening, willful, intentional and criminal acts of Karen Unrue. Because Karen Unrue's intervening criminal acts were wholly unforeseeable, they broke any causal chain between BOA's acts/omissions and Plaintiff's injury. See Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978) (SC Supreme Court held that unforeseeable act of an intervening party broke the causal chain and relieved the non-intervening party accused of negligence). In the case at bar, all material allegations as to Karen Unrue's intervening criminal, willful, intentional acts have been deemed admitted and such actions relieve BOA of liability.

III. Conclusion

Viewing all the evidence presented in a light most favorable to the Plaintiff, there is insufficient evidence to support a verdict against BOA for negligence based on the unforeseeable intervening acts of Defendant Karen Unrue.



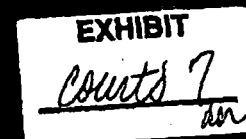
ROA 0894

APPENDIX 904

Negligence

There are three elements of the plaintiff's cause of action.

1. The defendant was negligent or careless and or reckless, willful or wanton in one or more of the alleged acts of wrongful conduct in the complaint.
2. The plaintiff was injured or damaged by the loss of his property (money).
3. The defendant's negligence or carelessness and/or recklessness, willfulness, and wantonness was the proximate cause of the plaintiff's injuries.



ROA 0895

APPENDIX 905

STATE OF SOUTH CAROLINA)

) IN THE

☒

COURT OF COMMON PLEAS

COUNTY OF WILLIAMSBURG)

☐

FAMILY COURT

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

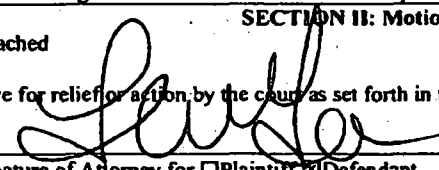
) Case No. 03-CP-45-207

) vs.

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

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

☒ Defendant

Plaintiff's Attorney: W. E. Jenkinson, III, Esquire, Bar No. Address 120 West Main Street, P. O. Drawer 669 Kingstree, SC 29556 phone: (843) 355-2000 fax: (843) 355-2010 e-mail: other:		Defendant's Attorney: Thomas William McGee, III, Esquire, Bar No. 11317 Address: 1320 Main Street, 17th Floor Columbia, SC 29201 phone: (803) 255-9431 fax: (803) 255-9031 e-mail: billy.mcgee@nelsonmullins.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Motion in Limine to Exclude References to Defendant's Size or Status as a Corporation</u> Estimated Time Needed: <u>Judge to address at trial</u> Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion Type ☒ Written motion attached ☐ Form Motion - I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff ☒ Defendant Date submitted <u>10/2/08</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: <u>\$ 25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ (print name) DATE FILED _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

ROA 0896

APPENDIX 906

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

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,

Defendants.

Civil Action No. 03-CP-45-207

DEFENDANT BANK OF AMERICA'S
MOTION IN LIMINE TO EXCLUDE
REFERENCES TO DEFENDANT'S
SIZE OR STATUS AS A
CORPORATION

Defendant Bank of America N.A., incorrectly identified as "Bank of America" ("BOA"), hereby moves this Court for an Order precluding Plaintiff from negatively commenting or referring to BOA's status as a corporation - such as to invoke a "David versus Goliath" sympathy, i.e., "Bank of America is the third largest bank in the country" - in any manner reasonably likely to bias the jury against Defendant.

INTRODUCTION

Bank of America anticipates Plaintiff will attempt to use BOA's status as a corporation to bias the jury against Defendant and invoke the jury's sympathy in favor of Plaintiff. BOA's size and status as a corporation are irrelevant to its alleged liability, would influence the jury to render a decision on an improper basis, and would deny BOA equal treatment under the law. Therefore, Defendant BOA requests that the Court instruct Plaintiff and its counsel that they are prohibiting from using its status as a corporation to prejudice the jury against BOA.

ROA 0897

APPENDIX 907

ARGUMENT

I. Statements about BOA's Corporate Status Would Deny BOA "Equal Justice" Under the Law

Any negative statements or comments about BOA's size or status as a corporation should be excluded because such statements will unduly bias the jury against BOA and deny BOA equal justice under the law. Civil actions must be tried as if they are between two corporations, or two individuals, that are of equal worth and equal standing. Lott v. Western Union Telegraph Co., 127 S.C. 238, 119 S.E. 870, 871 (S.C. 1923). This is because all parties, whether individuals or corporations, are entitled to be treated equally under the law.

See S.C. Recommended Jury Charges: 1.03.

One of the most sacred principles of law in this country is that all persons are entitled to equal justice under the law. This applies to corporations as well as individuals. Corporations, large or small, are legally persons and as such are entitled to equal treatment under the law. I instruct you that the parties in this case are entitled to your careful deliberation without regard to the fact that some are corporations while others are individuals. I charge you that the parties are equal under the law and it would be wrong and a violation of your oath to hold against a party or in any way consider their status as an individual or as a corporation.

Id.; see also Colburn v. Bunge Towing, Inc., 883 F.2d 372, 376 (5th Cir. 1989) (stating that "all persons, whether individuals or corporations, stand equal before the law and are to be dealt with as equals in a court of justice"); Collins v. Economic Opportunity Atlanta, Inc., 285 S.E.2d 562, 565 (Ga. Ct.App. 1981) (instructing the jury to consider the corporate defendant as an individual and that they must decide the case "as a lawsuit between persons of equal worth and equal standing").

Negative statements about BOA's size or status as a corporation would bias the jury against BOA. Such statements would influence the jury to rule against BOA not based on the facts of the case, but instead on its status as a corporation, thereby denying BOA equal treatment of the law. Therefore, all references to Defendant's status as corporation that are likely to prejudice the jury should be excluded.

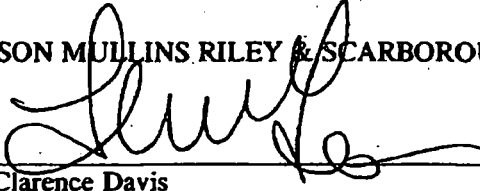
II. Statements about BOA's Corporate Status are Irrelevant to Liability and Would be Highly Prejudicial

In addition, negative comments about BOA's size or status as a corporation should be excluded because they are not probative of Defendant's alleged liability. BOA's size and status as a corporate entity have no tendency to make Defendant's alleged liability any more or less probable. See S.C. R. Evid. 401. Comments about BOA's corporate status are not relevant to the merits of this case, but instead would act solely to prejudice the jury and influence the jury to return a verdict against BOA on an improper basis. See S.C. R. Evid. 403. As such, any probative value that such statements could possibly have is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. See id. Therefore, all comments about BOA's size or status as a corporation likely to inflame the jury should be excluded.

CONCLUSION

For the reasons stated above, Bank of America respectfully requests that this Court exclude any and all references to BOA's size or status as a corporation that are reasonably likely to bias the jury against Defendant based on its status as a corporation.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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(803) 799-2000

Attorneys for Bank of America, N.A.

Columbia, South Carolina

October 2, 2008.

51001752

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Cody R
☐ Plaintiff

v.

Bank Of America, Et Al.
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2003-CP-45-207

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: W.E. Jenkinson Iii, Bar No. Address: Post Office Drawer 669, Kingstree SC 29556 phone: 843-355-2000 fax: 843-355-2010 e-mail: billy@jenkinsonlaw.com other:		Defendant's Attorney: C. Mitchell Brown, Bar No. 012872 Address: P.O. Box 11070, Columbia SC 29211 phone: 803-255-9595 fax: 803-255-9025 e-mail: mitch.brown@nelsonmullins.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Bank of America's Post-Trial Motions Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant _____ Date submitted _____			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE _____ CODE: _____ Date: ~~DATE~~ COPY	
Collected by: _____		CLERK'S VERIFICATION Date Filed: <i>William</i> <i>Carly</i> CAROLYN E. WILLIAMS CLERK OF COURT WILLIAMSBURG COUNTY	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

ROA 0901

APPENDIX 911

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT

Cody [REDACTED] P., 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,

Defendants,

Civil Action No. 03-CP-45-207

**BANK OF AMERICA'S POST TRIAL
MOTIONS**

Pursuant to Rules 50, 59, and all other applicable rules of the South Carolina Rules of Civil Procedure, the Defendant, Bank of America, N.A. (hereinafter "Bank of America") hereby moves this Court for judgment notwithstanding the verdict, for a new trial absolute, and, failing the above, new trial nisi remittitur. These motions are directed at the verdict and judgment on October 9, 2008, for \$ 1,788,735.37. The grounds for this motion are those set forth below, and any grounds asserted during and prior to the trial in this matter not herein listed should be considered renewed herein as if set forth verbatim.

This Motion is based on the filings and evidence before the Court, other documents as permitted by law, this Court's instructions, and any memorandum submitted later in support thereof.

ROA 0902

APPENDIX 912

Facts

On October 9, 2008, the jury in this case returned a verdict against Bank of America on the cause of action of negligence and/or gross negligence. The claims asserted by Plaintiff against Bank of America stemmed solely from allegations that Bank of America failed to properly open a conservator account. Plaintiff claimed that Bank of America was negligent in performing its duties with respect to opening the account. The jury returned a verdict for the Plaintiff for \$205,735.37 in actual damages (which actual damages were stipulated to in terms of amount if actual damages were awarded) and \$ 1,583,000 in punitive damages.

Law/Analysis

Bank of America moves this Court for an order altering or amending the Judgment in this case. The motion is based on the following grounds:

1. As required by Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991), as modified by Cooper Indus., Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001) (requiring de novo rather than deferential post trial review of punitive damage awards as a matter of U.S. Constitutional law), this Court must perform a post-verdict review of the punitive damages award to determine the propriety of the award. The Court should conclude after this de novo review that the punitive damages award is excessive, unreasonable, arbitrary, based on inappropriate evidence, and otherwise fails to comport with due process guarantees.

2. Under Gamble, when conducting the post-verdict review of the punitive damages award, the Court may consider the following factors: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or

concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. Gamble, 305 S.C. at 112-13. 406 S.E.2d at 354. Applying these factors to the jury's award of punitive damages requires that the judgment be vacated and a new trial granted;

(a) There has been no showing of any culpability on the part of Bank of America because the events in this action were the result of the criminal acts of Karen Unrue and were acts that otherwise cannot be attributed to Bank of America.

(b) There is no evidence that Bank of America attempted to conceal any of the alleged actions at issue in this case and/or no showing of similar past conduct.

(c) There is no likelihood that the punitive damages award will deter the alleged conduct in the future because the events giving rise to this matter were attributable to the criminal acts of Karen Unrue.

(d) The amount of punitive damages was arbitrarily set by the jury and the amount has no relation whatsoever to the proper assessment of punitive damages or to the Plaintiff. It was not reasonably related to the harm suffered as expressly required and was instead an inappropriate figure tied to the international net worth, net assets, and/or pre-tax earnings of Bank of America.

(e) An award of punitive damages in the amount of \$1,583,000 is grossly excessive and unfair in light of the lack of a clear and convincing showing of culpability, reprehensibility, recklessness, or any wrongdoing whatsoever

on the part of Bank of America. This is especially true because the actions complained of in this matter, if attributable to Bank of America, were the result of a new and/or inexperienced employees who did not act with gross negligence, conscious disregard, willfulness, or recklessness. Further, the award of punitive damages was improper against Bank of America because there was no showing of complicity by, with or between corporate officers with the actions of the employee or employees in opening the account or other related accounts. Courts apply a doctrine in this situation called the "complicity rule." This rule is based on Restatement (Second) of Agency § 217C, discussed above, and will not allow punitive damages to be imputed to a principal that did not act in complicity with the acts of its agent. In applying the complicity rule, courts have held that the "right of control," although sufficient "to state a claim for vicarious liability against [the corporate defendant]," was not sufficient to rise to the level of being 'the sort of deliberate action . . . which would bring [them] within the complicity rule.'" Mercury Skyline Yacht Charters v. The Dave Matthews Band, Inc., No. 05 C 1698, 2005 WL 3159680, at **14-16 (N.D. Ill. Nov. 22, 2005) (citing Brummerstedt v. Am. Airlines, Inc., 845 F. Supp. 532, 534 (N.D. Ill.1993)).

(f) It was inappropriate for the punitive damages award to be based, even in part, on Bank of America's international net worth, net assets, and/or pre-tax earnings as that company's activities outside South Carolina are not an appropriate consideration as to punitive damages.

Thus, the punitive damages award in this case should be set aside.

3. The Court must also review the constitutionality of the punitive damages award under the guideposts set forth in State Farm Mutual Insurance Co. v.

Campbell, 538 U.S. 408 (2003). This review is also de novo under Cooper Indus.

These guideposts include: (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 punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. In addition to all of the above grounds for setting aside the punitive damages, applying these guideposts to the jury's award of punitive damages requires that the judgment be vacated and/or a new trial granted:

(a) There has been no reprehensible conduct on the part of Bank of America. There has been no showing that there were actions Bank of America could have taken to prevent the alleged actions that were the direct result of the acts of Karen Unrue. Moreover, the injuries are economic only, and not physical, and, because of the unique circumstances of this case, it was an isolated event with little or no risk of the situation reoccurring to others. There also has been no showing of reckless or willful conduct or trickery or deceit on the part of Bank of America. Also there has been no showing of similar past conduct.

(b) The \$1,583,000 punitive damages award is disproportionate to the actual and potential harm, and is unconstitutional. This amount is excessive when considering, among other things, the fact that no personal injury was involved. The ratio to the dollar amount of actual damages is approximately 7.5:1. As stated by the U.S. Supreme Court in State Farm Mutual Insurance Co. v. Campbell, 538 U.S. 408 (2003), "When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due

process guarantee." Id. at 426. This 1 to 1 ratio was again implied as mandatory in the recent United States Supreme Court case of Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008). Moreover, the amount of punitive damages chosen by the jury had no relation to the actual or potential harm to the plaintiffs.

(c) Comparing potential civil or criminal penalties offers no support for sustaining the punitive damages award. There is no comparable criminal penalty for the alleged acts in this context, nor is there any governmental agency that would have jurisdiction and authority to impose a civil penalty for the alleged conduct.

Judgment Notwithstanding the Verdict (JNOV)

Bank of America renews its motion for directed verdict in full. First, as shown above, an award of punitive damages is not proper in this case. Second, and as also previously stated in Bank of America's motion for directed verdict at the close of evidence, it is entitled to a directed verdict as to Plaintiff's negligence and/or gross negligence claim because of the intervening acts of Karen Unrue. Because Karen Unrue's intervening, superseding acts were wholly unforeseeable, they broke any causal chain between BOA's acts/omissions and Plaintiff's injury. See Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978) (SC Supreme Court held that unforeseeable act of an intervening party broke the causal chain and relieved the non-intervening party accused of negligence). Further, there was insufficient clear and convincing evidence supporting an award of punitive damages in this matter. Thus, the motion for judgment notwithstanding the verdict should be granted.

New Trial Absolute

If this Court grants the motion for judgment notwithstanding the verdict, Bank of America also moves that the Court conditionally grant a new trial absolute pursuant to Rule 50(c), SCRPC. If this Court declines to grant Bank of America judgment notwithstanding the verdict, then Bank of America moves for a new trial absolute in this matter. In addition to the issues with respect to punitive damages in this matter set forth above, the motion for a new trial should be granted based on the following:

1. Bank of America expressly incorporates by reference and repeats each of the grounds set forth above for judgment notwithstanding the verdict.

2. This Court, as the "Thirteenth Juror" should grant a new trial because the evidence before the court did not justify the verdict. The thirteenth juror doctrine "entitles the trial judge to sit, in essence, as the thirteenth juror when he finds 'the evidence does not justify the verdict,' and then to grant a new trial based solely 'upon the facts.'" Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (quoting Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)). As the thirteenth juror, the trial judge hangs the jury by refusing to agree with the jury's unanimous verdict and casting his or her vote against it, resulting in a verdict which is no longer unanimous. Id. The 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. Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 722 (Ct. App. 1996). Under the doctrine, a new trial may be granted where the Court merely finds that "the verdict is unsupported by the evidence," that "the verdict is inconsistent and reflects the jury's confusion," or that "justice has not prevailed." Id. at 404, 477 S.E.2d at 722-

23. See also Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 552 593 S.E.2d 504, 508 (Ct. App. 2004) (granting new trial where "the evidence does not justify the verdict"); Norton, 350 S.C. at 480, 567 S.E.2d at 855 (granting new trial when court "disapprov[es] of the verdict on factual grounds"); McEntire v. Mooregard Exterminating Servs., Inc., 353 S.C. 629, 631, 578 S.E.2d 746, 747 (Ct. App. 2003) (characterizing use of doctrine as "granting a new trial upon the facts").

The Court's discretion in granting or denying a new trial under the thirteenth juror doctrine is "'founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them.'" Vinson, 324 S.C. at 404, 477 S.E.2d at 723 (quoting Fallon v. Rucks, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950)). Consequently, the Court is entitled to "weigh the evidence and rely on his or her view of the circumstances." Sorin Equip. Co. v. The Firm, Inc., 323 S.C. 359, 364, 474 S.E.2d 819, 822 (Ct. App. 1996).

In this case, the Court, as the thirteenth juror, should "hang" the jury and vacate the jury's verdict in this case for several specific reasons, including all those discussed previously in this memorandum. The evidence as to liability and damages "does not justify the verdict," Norton, 305 S.C. at 478, 367 S.E.2d at 854, as Plaintiff failed to prove any recklessness on the part of Bank of America and the damages awarded in this case far exceed any amount supported by the evidence.

3. Bank of America is entitled to a new trial because of Plaintiff counsel's inflammatory closing argument that was designed to appeal to the passions and prejudices of the jurors. Counsel's comments were directed toward the Bank of America's corporate witness, her background and the fact that she cried during trial.

These arguments were raised in an attempt to inflame the jury and a new trial is warranted. Toyota of Florence, Inc. v. Lynch, 314 S.C. 257, 442 S.E.2d 611 (1994) (stating a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice).

4. Bank of America is entitled to a new trial because this Court erred in allowing evidence relating to corporate wealth put forth by Plaintiff's expert, Oliver Wood. This evidence was based on mere speculation and therefore should have been excluded at trial. Further, the evidence was based on inappropriate information relating to Bank of America's international operations and not confined to its banking presence in South Carolina.

5. Bank of America is entitled to a new trial as the Judge erred in allowing, over objection, evidence that Bank of America is one of the largest banks in the world/nation.

6. Even if the acts of a Bank of America employee were negligent, the imposition of punitive damages was improper and a new trial is warranted because those acts, all pertaining to a single transaction—the establishment of a restricted access conservatorship account —cannot constitute willful, wanton, reckless conduct or a conscious disregard, when the acts as alleged violate company policies and procedures as stated in manuals, and there is no evidence that the manuals were consulted or that the employee involved called a company hotline for assistance.

7. The jury was unable to follow the Court's instructions or charges in rendering its verdict. Specifically, the jury failed to follow instructions regarding

punitive damages, because, among other things, they determined an amount of punitive damages unrelated to the actual harm suffered.

8. Further, a new trial is warranted because the Plaintiff misled the jury with respect to the standard for establishing negligence. During closing argument, Plaintiff's counsel put forth a power-point slide articulating that Plaintiff's injuries were caused by Bank of America's purported "recklessness, willfulness, and wantonness" under the heading "negligence" thereby confusing the jury on the elements of negligence. This error was not capable of remedy by curative instruction and a new trial absolute is warranted.

9. A new trial is warranted based on the failure to exclude evidence that Plaintiff is a special needs child. Such evidence was presented to appeal to the jury's passion, prejudice, and resulted in improper influence over the jury. The amount of actual damages, if awarded, was stipulated to by the parties. Thus, the fact that the Plaintiff is a special needs child had no relevance and caused passion, prejudice and caprice by the jury.

10. The testimony of Bank of America's corporate designee pursuant to Rule 30(b)(6) should not been admitted as it was. The designee topics were not set forth in the deposition notice and therefore, the deposition testimony of the witnesses presented was of their personal testimony, rather than of Bank of America. Hence, the Plaintiff's counsel should not have been permitted to read to the jury the testimony as if it were the testimony of a party. Rather, the Plaintiff needed to prove that the witness was unavailable in order to read their respective deposition testimony, and then it should have been made clear that such testimony was of the individual, rather than the

testimony of Bank of America. See e.g., Prokosch v. Catalina Lighting, Inc., 2000 U.S. Dist. LEXIS 9224, at *16 (D. Minn. May 24, 2000) ("The requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.")

11. The judgment should be vacated and a new trial granted based on several other errors occurring and objected to at trial, including:

(a) Evidence of the net worth of Bank of America was improperly admitted, and was completely irrelevant and highly prejudicial to the liability determination made.

(b) The Plaintiff's counsel improperly attempted to "instruct" the jury which had the effect of interfering with the jury's ability to reach a verdict not influenced by matters outside the evidence. See Crenshaw v. Southern Ry. Co., 214 S.C. 553, 53 S.E.2d 789, 791 (1949).

12. The Judge failed to properly charge the jury on the purpose of actual damages and the effect of intervening outrageous conduct of a third party.

13. The Court should order a new trial based on the cumulative impact of the above.

New Trial Nisi Remittitur

If this Court chooses not to grant JNOV to Bank of America and not to grant a new trial absolute, then this Court should, at minimum, grant a new trial nisi remittitur. As an initial matter, this motion is based on all other grounds previously set forth above that are consistent with the relief requested. In South Carolina, the trial judge "has the power, and with it the responsibility," of reducing a damages award that is "unduly

liberal" or "merely excessive." Easler v. Hejaz Temple of Greenville, 329 S.E.2d 753, 758 (1995); see also Becker v. Wal-Mart Stores, Inc., 529 S.E.2d 758, 762 (Ct. App. 2000).

Here, the total verdict awarded is far in excess of any actual damages proven. The jury verdict in this case was excessive, arbitrary, capricious, based on emotion and sentiment, unsupported by the evidence in the record, contradictory to the evidence in the record, not in accord with the Court's instructions, and was actuated by passion, caprice and prejudice.

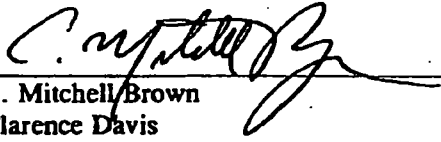
Consequently, if the Court declines to grant JNOV and further declines to order a new trial absolute, it should at minimum order a new trial nisi remittitur, and reduce the punitive damages verdict to \$205,735.37, which would reflect a 1 to 1 ratio of actual to punitive damages. Exxon Shipping Co. v. Baker, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008).

Conclusion

Based on the foregoing reasons, Bank of America respectfully requests that the Court grant its Motion to Alter or Amend the Judgment. The Court should vacate the punitive damages part of the judgment entirely. The Court should also have granted Bank of America's JNOV entirely, or, failing that, grant it in part. Failing the above, the Court should vacate the judgment and order a new trial absolute. Finally, failing all of the above, the Court should grant the new trial nisi motion.

Signature Page Attached

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

By: 

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Clarence Davis

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(803) 799-2000

Attorneys for Bank of America, N.A.

Columbia, South Carolina
October 20, 2008

CERTIFICATE OF SERVICE

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

Pleadings: Bank of America's Post-Trial Motions

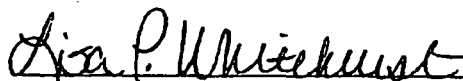
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Lisa P. Whitehurst
Administrative Assistant

October 20, 2008

ROA 0915

APPENDIX 925



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W. Ashley Boyd

McD 12/12/08
500/1756

December 10, 2008

VIA U.S. MAIL AND EMAIL

The Honorable Clifton Newman
125 West Main Street
Kingstree, SC 29556

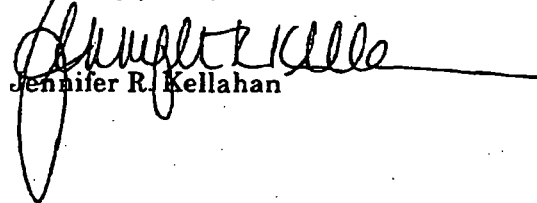
RE: Powell vs. Bank of America, et al
Case No.: 03-CP-45-207

Dear Judge Newman:

I am enclosing a proposed Order per your instructions at the Post Trial Motions hearing. By copy to opposing counsel, I am also forwarding them a copy. If you need anything else from me, please let me know.

With kind regards, I am

Sincerely yours,


Jennifer R. Kellahan

JRK/mgr

Pc: ✓ T. William McGee, III, Esq.
✓ Clarence Davis, Esq.
✓ C. Mitchell Brown, Esq.
Ronnie A. Sabb, Esq.

ROA 0916

APPENDIX 926

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	03-CP-45-207
COUNTY OF WILLIAMSBURG	)	
CODY [REDACTED] P [REDACTED],	)	
By and through his Conservator	)	
Kelly H. Kelley, and his natural	)	
and legal guardian Elizabeth Powell,	)	
	)	
PLAINTIFF,	)	ORDER
	)	
vs.	)	
	)	
BANK OF AMERICA, N.A.,	)	
	)	
DEFENDANT.	)	

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 25th 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),

ROA 0917

APPENDIX 927

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

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

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).

In the Stone case, Mr. Bethea left his keys in his car, a thief stole it and ran into Mr. Stone. Mr. Stone was injured, and the court found that the intervening criminal act of the thief absolved Mr. Bethea from liability reasoning that one is not charged with foreseeing that which is unpredictable or that which could not be expected to happen. The court held that the intervening act on the part of the thief who stole the vehicle was the sole, proximate and efficient cause of the injury to Mr. Stone and could not have been foreseen by Mr. Bethea and was not a proximate cause resulting from any act of negligence on the part of Mr. Bethea.

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 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 P[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. Minor children deserve and receive special protection in the law and also per the Bank's own specific policies and procedures that from the evidence presented were recklessly ignored in favor of gaining new business. Evidence was clear 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 a minimum of fourteen specific 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's failure to identify the term "conservator" or its abbreviation and its significance on the face of seven separate checks.
- The Branch Manager's failure to identify the term "conservator" and its significance on the face of the check used to open the savings account for the minor plaintiff.
- The Personal Banker's failure to understand whose money the seven separate checks constituted.
- Personal Banker's failure to verify endorsement of Travis Powell on three separate checks and allowing them to be deposited without seeing him sign the checks or acknowledging his signature.
- The Personal Banker's failure 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's and the Branch Manager's failure to obtain copy of conservatorship order on two separate occasions.
- The Personal Banker's and the Branch Manager's failure to obtain the certificate of appointment of conservators on two separate occasions.
- Bank of America's failure to keep on record copies of any conservatorship papers on two separate occasions.
- Bank of America's failure to keep on record copies of the signature card opening the CD account.
- Both employees' failure to use correct tax identification number on both the initial CD account and the savings account on separate occasions.
- The Personal Banker's failure to open an eligible product for conservatorship accounts per its bank manual.
- The Personal Banker's failure to verify identification, authority and endorsements on the checks and relying on the teller to whom she took the checks.

- Bank of America's failure 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's failure 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 word "conservator" was open and obvious on the checks and no 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."

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 level which will deter such banks from ignoring such restrictions. Thus, the award must be sufficiently high to deter the type of conduct that caused harm to this plaintiff. It also must be sufficiently high for the Bank not to find it profitable to ignore S.C. Code Ann. §§62-5-423 and 62-5-426 -- the statutes that allow our courts to restrict the actions of conservators and make such restrictions have teeth.

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, which has been a historically low period for bank profits, is reasonably related to deterring precisely the kind of conduct that caused this loss in the future.

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 and an affluent clientele. 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 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

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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 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.

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. SCRPC 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 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 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

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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, 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.¹ This "punishment" is reasonably related to the specific harm done to Cody P[REDACTED]. 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 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

¹ 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.

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 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 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, ____ 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 ration of 1:1 compensatory to

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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 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

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

AND IT IS SO ORDERED.

December ____, 2008
Kingstree, SC

Clifton Newman
Presiding Judge
Third Judicial Circuit

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. 2003-CP-45-207

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.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

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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

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Powell, ... Defendants.

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

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal complies with
Supreme Court Order dated August 13, 2007 regarding personal identifiers and
sensitive information.

October 8, 2009

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