

THE STATE OF SOUTH CAROLINA
In The Supreme Court
No. 2012-205647

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OCT 23 2013

S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas
Roger M. Young, Circuit Court Judge

Cases 2009-CP-10-07515, 2009-CP-10-07517,
2009-CP-10-07518 and 2010-CP-10-09959

2009-CP-10-07515

James J. Kerr, Crayton Walters, and J.T. Main, LLC, ... Appellants,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking
& Trust Company of SC, a/k/a BB&T, and James Edahl, ... Respondents.

2009-CP-10-07517

Ron Konersmann, ... Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking
& Trust Company of SC, a/k/a BB&T, and James Edahl, ... Respondents.

2009-CP-10-07518

John Voytko, ... Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking
& Trust Company of SC, a/k/a BB&T, and James Edahl, ... Respondents.

2010-CP-10-09959

Patricia Konersmann, ... Appellant,

v.

Branch Banking & Trust Company, Successor in merger to Branch Banking
& Trust Company of SC, a/k/a BB&T, and James Edahl, ... Respondents.

THESE APPELLANTS' MOTION TO REMAND TO THE HONORABLE ROGER M. YOUNG
OR, IN THE ALTERNATIVE, TO SUPPLEMENT RECORD ON APPEAL

Appellants James J. Kerr, Crayton Walters, J.T. Main, LLC, and Patricia Konersmann (collectively “these Appellants”) move this Court for an Order remanding this case so as to allow them to file an amended complaint in the form attached as “Exhibit A” or, in the alternative, Appellants ask the Court to rule upon the issues raised in this appeal, to include the application of the doctrines of judicial estoppel and waiver. As a final alternative, Appellants request this Court to allow them to supplement the Record on Appeal by filing the deposition of James Edahl attached as “Exhibit B.”¹

The Issue raised by this motion is as follows: Should § 37-10-107 Code of Laws preventing modification of a writing be applied when both parties to the agreement acknowledge the oral modification?

This motion is based on evidence recently discovered in the deposition of Mr. Edahl in a companion case; Mr. Edahl’s testimony repudiated and contradicted the Respondents’ answer in that case.² Respondents advised they would likely amend their answers, and Appellants’ counsel requested an amended answer if such a determination had been made. (*See* Letter Linton to Cherry and Mendonza dated September 25, 2013, attached hereto as “Exhibit C”).

These Appellants brought the present action against Respondent BB&T claiming certain bank officials (James Edahl in particular) misrepresented the terms under which BB&T would continue funding Skywaves I Corporation. These representations constituted oral modifications of a prior written loan agreement. For its part, Respondent BB&T denied any such modification and moved to dismiss these Appellants’ claims. On June 14, 2011, Judge Young issued his

¹ Appellants are pursuing additional depositions and documents. Although Respondents agreed to produce more documents, they have not done so thus far. Due to the availability of witnesses and opposing counsel, depositions have been tentatively set for the first week in December.

² Mr. Edahl is and was at the time of his tortious conduct an officer of Respondent Branch Banking & Trust Company, successor in merger to Branch Banking & Trust Company of SC, a/k/a BB&T (“BB&T”). Indeed BB&T is providing Mr. Edahl with a defense.

orders granting Respondents' Motions to Dismiss on the grounds that any evidence of an oral modification of the written loan agreement was barred by section 37-10-107 (the statute of frauds governing loans). All Appellants have appealed this ruling and oral argument is set for November 6, 2013.

While this appeal was pending, on September 19, 2013, Appellants counsel deposed James Edahl in a companion case (arising from the same transactions and common facts). In the course of the deposition, Mr. Edahl — for the first time — repudiated under oath the Factoring Agreement, the writing that BB&T claims bars these Appellants' reliance on an agreement outside of the Factoring Agreement. In doing so, Mr. Edahl confirmed these Appellants' position that the Factoring Agreement had been orally modified to provide funding on the basis of purchase orders and site plans. By his testimony, Mr. Edahl contradicted the underpinnings of Respondents' argument and the most essential fact relied upon by Judge Young in granting the Motion to Dismiss. The record now shows that BB&T had indeed agreed to loan money to Skywaves, not based upon the traditional requirement of invoices for completed products as provided for by the written loan agreement, but on the basis of maps showing where the products would be delivered when completed. These Appellants relied upon Mr. Edahl's representations concerning funding where they advanced further monies for the benefit of Skywaves.

In his deposition, Mr. Edahl testified:

Q. Were these site plans being financed under the fact -- under the existing factoring agreement?

A. Yes

Q. And was any written change to that factoring agreement?

A. No

(See Edahl Depo., at p.48 l.23 through p. 49, l.4, attached hereto as Exhibit A).

Q: Did you feel that after you made the agreement with Skywaves to finance site plans, as you have testified to, that the bank was then obligated to finance these plans?

A: Yes.

Q: And in fact, did the bank finance those plans?

A: Some sites, yes.

Q: Were there any sites that were turned down?

A: Not that I'm aware of.

(See Edahl Depo., at p.50 ll.12-22).

Q: Now, in January or February of 2008 did you intend to convey to your superiors that you didn't know about the site plan finance – financing and those were supposed to be purchase orders and that these were crooks?

A: No.

MS. CHERRY: Object to form.

THE WITNESS: Not my intentions, and I didn't convey that either.

BY MR. LINTON:

Q: Okay, What were you trying to convey when you were filling out information for your superiors to rely on regarding the site plan financing?

MS. CHERRY: Object to the form.

THE WITNESS: What I remembered, I was trying to convey the situation as I remembered it at that time.

BY MR. LINTON:

Q: At the time did you remember that site plan financing had been approved by you and Mr. Denning?

A: No, at that time I didn't. That recollection came as we were preparing for the – the deposition process and I've had a chance to look at all of the information that became available.

Q: I see. So what you're telling me is that the site plan financing had been approved by you and Mr. Denning and it had been administered by Cast – by Castlen Morris?

A: Uh-huh.

Q: But in January when Mr. Burke came over you had forgotten about that?

A: That's correct.

(See Edahl Depo., at p.80 l.2 through p. 81, l.11).

These Appellants recognize this Motion is uncommon.³ They are filing it to prevent an injustice. These Appellants respectfully suggest that, had Judge Young known that the Respondents do not dispute the Appellants' version of the agreement and that Mr. Edahl actually *agreed* with Appellants about the terms of financing, the Judge would have recognized that the banking statute of frauds (Section 37-10-107) did not apply. The purpose of the writing requirement of the statute of frauds is to protect a party from perjured evidence. Evidence against a party is unnecessary, however, where that party admits the facts in a judicial proceeding. *Trossbach v. Trossbach*, 185 Md. 47, 42 A.2d 905 (1945). The statute of frauds is satisfied “by admissions in the form of sworn testimony in court or on deposition, or in an answer to a complaint.” *Barranco v. Barranco*, 91 Md. App. 415, 420, 604 A.2d 931, 934 (1992) quoting *Litzenberg v. Litzenberg*, 307 Md. 408, 415, 514 A.2d 476 (1986); *see also Robert Harmon & Bore, Inc. v. Jenkins*, 282 S.C. 189, 193, 318 S.E.2d 371, 373 (Ct. App. 1984) (an admission in a pleading of a parol agreement that is within the statute of frauds may constitute a sufficient writing within the statute so as to enable the court to enforce the contract). Further, the protection afforded by the statute of frauds is a personal privilege of the parties to the agreement and may be waived by them. *Walker v. Preacher*, 188 S.C. 431, 199 S.E. 675, 677 (S.C.1938). Mr.

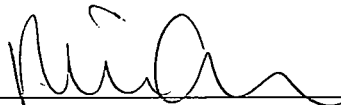
³ The remaining Appellants are filing with this Court a similar motion.

Edahl's sworn testimony that the terms of the financing had been modified by BB&T satisfies the statute of frauds and constitutes a waiver of this defense.

Accordingly, Appellants respectfully request this case be remanded so as to allow them to file an amended complaint in the form attached as "Exhibit A." In the alternative, Appellants seek leave to supplement the record and ask this Court to rule upon the issues raised in this appeal, to include the application of the doctrines of judicial estoppel and waiver.

Respectfully submitted by:

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Date: October ____, 2013
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT

JAMES J. KERR, CRAYTON WALTERS,)
J.T. MAIN, LLC, and PATRICIA KONERSMANN)

Plaintiffs,)

vs.)

BRANCH BANKING AND TRUST COMPANY,)
Successor in merger to BRANCH BANKING AND)
TRUST COMPANY OF SC, a/k/a BB&T, and)
JAMES EDAHL,)

Defendants.)

CA NO. 2009-CP-10-7515

SECOND
AMENDED COMPLAINT

The Plaintiffs, James J. Kerr ("Kerr"), Crayton Walters ("Walters"), J.T. Main, LLC ("Main"), and Patricia Konersmann ("Konersmann") complaining of the Defendant Branch Banking and Trust Company ("BB&T") and Defendant James Edahl ("Edahl") state and allege as follows:

1. Plaintiff James J. Kerr is a citizen and resident of Charleston County, South Carolina.
2. Plaintiff Crayton Walters is a citizen and resident of Charleston County, South Carolina.
3. Plaintiff J.T. Main, LLC is a South Carolina limited liability corporation listed in good standing with the South Carolina Secretary of State.
4. Plaintiff Patricia Konersmann is a citizen and resident of Charleston County, South Carolina.
5. Defendant BB&T is a corporation authorized to do business in South Carolina, listed in good standing with the South Carolina Secretary of State, and doing business in Charleston County, South Carolina.
6. James Edahl is an officer of BB&T who does business in Charleston County and is a citizen and resident of South Carolina.

FACTS COMMON TO ALL CAUSES OF ACTION

7. Skywaves developed an innovative product for the wireless telecommunications industry. Its customer base included Verizon, AT&T, Sprint/Nextel, as well as federal and state government entities.
8. On or about March 22, 2005, Skywaves and BB&T entered into a written factoring agreement, whereby BB&T purchased certain receivables of Skywaves at a discount and agreed to collect such receivables on Skywaves' behalf.
9. From 2005 through 2007, Skywaves and BB&T occasionally amended the terms of the factoring agreement via written modifications.
10. From 2005 through 2007 BB&T funded the working capital needs of Skywaves via the factoring agreement.
11. During that time period, BB&T also provided a designated relationship manager (Edahl) who assisted Skywaves in raising additional capital through investors.
12. In early 2007, Skywaves' Board of Directors determined that it would need an expanded financial commitments to provide capital infusion beyond those being currently provided by BB&T to meet the increasing number of Requests for Quotations it was receiving as a result of winning two General Dynamics contracts, one for \$12 million with the Navy/Coast Guard and the other a \$20 million multi-year homeland security initiative with the New York state SWN Police.
13. In early 2007 Skywaves solicited proposals for expanded financial commitments from various entities.
14. Skywaves received a proposal for a working capital investment from Hunt Capital.
15. Finally, Skywaves received a proposal to modify and expand the existing factoring agreement from BB&T.
16. In reasonable and foreseeable reliance upon BB&T's representations, Skywaves elected not to pursue the opportunities for capital investment or funding proposed by Wachovia or Hunt Capital.

17. In reasonable and foreseeable reliance upon BB&T's representations, Skywaves elected to use BB&T to raise additional operating capital, through modifications of the existing factoring agreement.

18. Between March and December of 2007, Skywaves and BB&T exchanged a series of emails, letters and documents, which memorialized the relevant and material terms of a new and expanded factoring agreement (or a modification of the prior agreement).

19. Under this modified factoring agreement, BB&T agreed, among other things, to provide capital infusions based on invoices, purchase orders, contracts and site plans.

20. Skywaves received numerous writings from BB&T containing the material terms and conditions of this promise, undertaking, accepted offer, commitment, or agreement. BB&T, or its duly authorized agent, signed those writings to the extent required by the law.

21. For example, BB&T sent numerous email messages confirming the relevant terms of the modifications to the existing factoring agreement.

22. On January 25, 2008 BB&T breached the terms and conditions of its factoring agreements — as modified — with Skywaves by asserting a SkyWaves default and by refusing to honor its further commitments to SkyWaves.

23. At that time, BB&T completely ended its business relationship with Skywaves.

24. Subsequently, BB&T continued to refuse to honor its obligations under the original factoring agreement and modifications thereto.

25. BB&T's conduct proximately caused Skywaves to submit to Bankruptcy liquidation proceedings, without the ability to reorganize and continue as an active business entity.

FOR A FIRST CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION
(Plaintiff v. BB&T and Edahl)

26. All of the allegations above (to the extent they are not inconsistent) are incorporated herein as if they had been set forth fully hereunder.

27. Before and in July 2007 James Edahl traveled to MacBee, South Carolina on behalf of BB&T for the purpose of making a presentation to Plaintiffs, who were potential Skywaves lenders and investors.

28. During that presentation Edahl told Plaintiffs that BB&T had devised a unique financing arrangement with Skywaves. This arrangement included BB&T's commitment to advance money to Skywaves based on invoices, purchase orders and site maps. Edahl represented that the financing arrangement was the equivalent of the funding that had previously been offered to Skywaves by either Wachovia or Hunt Capital.

29. During the presentation James Edahl told the Plaintiffs that based on these Defendants' own comprehensive review, BB&T believed that Skywaves would grow to become a successful company and a significant infrastructure supplier to the telecommunication and military markets

30. During the presentation James Edahl told the Plaintiffs that BB&T was fully and presently committed to meeting Skywaves short-term and long-term financial needs for growth and that BB&T was presently committed to acting as a partner in managing Skywaves' growth. Edahl further stated that BB&T was seeking investors to contribute capital or loans to Skywaves.

31. Edahl told Plaintiffs that if they agreed to contribute money to Skywaves, BB&T had the then-existing intention to continue its unique funding arrangement with Skywaves.

32. Plaintiffs relied on all of these material representations by Defendants when they were induced to purchase equity positions and to make loans to Skywaves.

33. The representations by these Defendants were false and untrue at the time they were made. Defendants knew, or in the exercise of reasonable care should have known, they were false.

34. Defendants owed a duty of care to see that they communicated truthful information to Plaintiffs.

35. Defendants breached that duty by failing to exercise due care.

36. Plaintiffs believed all of these representations made by Defendants and had no reason to believe they were not true.

37. Plaintiffs relied on all of these material representations and were induced to invest money in Skywaves.

38. Defendants' representations were false and fraudulent at the time they were made, as evidenced by BB&T's subsequent denial that it had ever agreed to the financing commitment represented by Edahl.

39. As a direct and proximate result of these Defendants' representations and inducements Plaintiff J.T. Main, LLC lost its \$500,000 equity investment in Skywaves when Skywaves was forced into Chapter 7 Bankruptcy liquidation.

40. As a direct and proximate result of these Defendants' representations and inducements Plaintiff James J. Kerr lost the principal amount of \$250,000 lent to Skywaves when Skywaves was forced into Chapter 7 Bankruptcy liquidation.

41. As a direct and proximate result of these Defendants' representations and inducements Plaintiff Crayton Walters lost the principal amount of \$150,000 lent to Skywaves when Skywaves was forced into Chapter 7 Bankruptcy liquidation.

42. As a direct and proximate result of these Defendants' representations and inducements Plaintiff Patricia Konersmann lost \$228,730.

43. Plaintiffs request actual and punitive damages.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(Plaintiff v. BB&T)

44. All of the allegations above (to the extent they are not inconsistent) are incorporated herein as if they had been set forth fully hereunder.

45. BB&T represented that it had the present intention and ability to continue funding on the terms it outlined, if Plaintiffs invested funds in Skywaves. In reliance on this promise, Plaintiffs made the requested investment.

46. BB&T became contractually obligated to continue the funding arrangement.

47. BB&T breached the contract by unilaterally terminating its funding for Skywaves and denying that it had ever agreed to such financing terms in the first instance.

48. As a direct and proximate result of BB&T's actions as aforesaid, Plaintiffs have suffered damages as set forth above.

FOR A THIRD CAUSE OF ACTION
BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACTS
(Plaintiff v. BB&T)

49. BB&T's breach of the factoring agreement, alleged above, was done with fraudulent intent.

50. The justification advanced by BB&T was pretextual, if not outright false. Upon information and belief, BB&T's refusal to continue funding based on site plans and purchase orders was not due to the reasons asserted in the default letter, but was because BB&T was unhappy with and sought to renegotiate the parties' modified factoring agreement.

51. BB&T's breach of contract was accompanied by fraudulent acts characterized by dishonesty in fact and unfair dealing. While Skywaves was not in default, it was prepared to end the financial relationship with BB&T and had proposed a program that would have retired the BB&T debt in an orderly fashion, while at the same time allowing itself to secure alternate capital financing. However, BB&T would not allow for such an orderly transition. Instead, BB&T unilaterally ceased funding in such a way as to maximize the harm to Skywaves.

52. As a direct and proximate result of BB&T's breaches of the agreement to continue the unique funding arrangement with Skywaves these plaintiffs have incurred monetary damages.

53. These plaintiffs demands actual and punitive damages as a result of the fraudulent breaches by BB&T.

FOR A FOURTH CAUSE OF ACTION
PROMISSORY ESTOPPEL
(Plaintiff v. BB&T)

54. All of the allegations above (to the extent they are not inconsistent) are incorporated herein as if they had been set forth fully hereunder.

55. Defendant BB&T made unambiguous promises to Plaintiff that it would provide financing to Skywaves, as agreed to in the modified factoring agreement, which was memorialized in writing by the parties.

56. Plaintiff acted in reasonable reliance upon these promises by advancing money to Skywaves.

57. These acts of reliance by Plaintiffs constituted a definite and substantial detrimental action or forbearance.

58. Such reasonable reliance by Plaintiffs was expected and foreseeable by BB&T.

59. Plaintiff sustained injury as a direct and proximate result of its reliance upon Defendant BB&T's promises.

FOR A FIFTH CAUSE OF ACTION
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(Plaintiff v. BB&T)

60. All of the allegations above (to the extent they are not inconsistent) are incorporated herein as if they had been set forth fully hereunder.

61. Implied in the contract between the Plaintiffs and BB&T — described above — was a covenant of good faith and fair dealing.

62. In failing and refusing to honor the terms of the parties' agreement, Defendant BB&T breached the implied covenant of good faith and fair dealing.

63. By reason of the breach of this implied covenant, Defendant BB&T is liable to Plaintiffs for damages.

FOR A SIXTH CAUSE OF ACTION
FRAUD IN THE INDUCEMENT
(Plaintiffs v. BB&T and Edahl)

64. All of the allegations above (to the extent they are not inconsistent) are incorporated herein as if they had been set forth fully hereunder.

65. As detailed in the prior Cause of Action, Defendants made numerous misrepresentations to Plaintiff.

66. Defendants made the above-referenced fraudulent misrepresentations knowing them to be untrue.

67. Defendants made these fraudulent misrepresentations with the intention that Plaintiffs would rely thereon.

68. Plaintiffs, in fact, relied upon these fraudulent misrepresentations, as set forth in detail above.

69. Such reliance was reasonable under the circumstances.

70. As a direct and proximate result of its reliance upon Defendants' fraudulent misrepresentations, Plaintiffs have sustained damages.

FOR AN EIGHTH CAUSE OF ACTION
SCUTPA
(Plaintiff v. BB&T and Edahl)

71. All of the allegations above (to the extent they are not inconsistent) are incorporated herein as if they had been set forth fully hereunder.

72. The South Carolina Code, § 39-5-20 prohibits any unfair or deceptive trade practices in the conduct of any trade or commerce.

73. As detailed above, Defendants engaged in numerous misrepresentations to Plaintiffs.

74. The conduct of Defendants, as set forth above, constitutes an unfair or deceptive act or practice within the contemplation of South Carolina's Unfair Trade Practices Act.

75. Pursuant to the Code of Laws of South Carolina § 39-57-80(e), Defendants' violations of the provisions of Chapter 39-57 of the Code of Laws of South Carolina constitute an unfair trade practice actionable under the Code of Laws of South Carolina § 39-5-20.

76. The Code of Laws of South Carolina § 39-5-20 provides that any person suffering an ascertainable loss of money or property as a result of the use by another person of an unfair or deceptive method, act or practice may bring an action individually to recover actual damages.

77. The unfair acts and practices of Defendants have an impact on the public interest, have potential for repetition.

78. Defendants' conduct in perpetrating and perpetuating unfair and deceptive acts and practices is the actual and proximate cause of injury and damage to Plaintiff.

79. Defendants' unfair and deceptive acts and practices were conducted willfully and knowingly as those terms are utilized in the Code of Laws of South Carolina § 39-5-140(a).

80. Defendants' conduct as alleged herein constitutes violations of South Carolina's Unfair Trade Practices Act for which Defendants are liable to Plaintiff, and Plaintiff is entitled to recover from Defendants actual, special, and consequential damages, such damages being trebled.

WHEREFORE, Plaintiff requests the following relief:

- a) Judgment against Defendants for actual and punitive damages;
- b) For attorney fees and costs associated with its Bankruptcy;
- c) For interest, attorney fees and costs of this action; and
- d) For such other and further relief as the Court may deem proper.

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On this ____ day of October, 2013

Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
SKYWAVES I CORPORATION,

Plaintiff,

vs. CASE NO. 2009-CP-10-7516

BRANCH BANKING AND TRUST COMPANY, SUCCESSOR IN
MERGER TO BRANCH BANKING AND TRUST COMPANY OF
SC, A/K/A BB&T, AND JAMES EDAHL,

Defendants.

DEPOSITION OF: JAMES EDAHL

DATE: September 19, 2013

TIME: 9:16 AM

LOCATION: Law Offices of
ANDREW K. EPTING, JR., LLC
46A State Street
Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Roxanne M. Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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17 BRANCH BANKING AND TRUST COMPANY,
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20 AND JAMES EDAHL

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ALSO PRESENT:

Michael Hennessy, Rusty Bogue, Ron

Konersmann, Patty Konersmann

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does not waive reading and signing of this deposition.

* * * * *

VIDEOGRAPHER: We are now on the record. Today's date is September 19th, 2013. The time is approximately 9:16 a.m. This is the video deposition of James Edahl. The location is 46-A State Street, Charleston, South Carolina in the offices of Kefalos Law Firm.

My name is Steven Barksdale, legal videographer, representing A. William Roberts, Jr. & Associates. This deposition is taken in the matter of Skywaves I Corporation versus Branch Banking and Trust, Et Al., case number 2009-CP-10-7516.

Counsel, please introduce yourselves for the record.

MR. LINTON: John Linton for the

1 plaintiffs.

2 MR. KEFALOS: George Kefalos for
3 Skywaves.

4 MR. MENDOZA: Rick Mendoza for BB&T.

5 MS. CHERRY: Molly Cherry for BB&T and
6 Jim Edahl.

7 VIDEOGRAPHER: Would the court reporter
8 please swear in the witness.

9 JAMES EDAHL

10 being first duly sworn, testified as follows:

11 EXAMINATION

12 BY MR. LINTON:

13 Q. Mr. Edahl, we met at Mr. Konersmann's
14 deposition. I don't think we have met before
15 that. Is that your recollection?

16 A. I don't think.

17 Q. Okay. Have you ever given your
18 deposition before?

19 A. Yes.

20 Q. Okay. Was that involving a BB&T
21 matter?

22 A. No, it was not.

23 Q. What did it involve?

24 A. A client of ours, Don's Supply
25 Company. Two of their partners were in dispute

1 with each other and I was called in to be deposed
2 in that -- in their dispute.

3 Q. Well, under our rules any time you
4 need to have a break just ask and we'll give you
5 one.

6 A. Okay.

7 Q. And if you have a question because I'm
8 not asking my questions where you can understand
9 them, you can direct that to me, and I'll do my
10 best to correct it.

11 If you have any discussion with your
12 counsel other than for privileged matters, I'm
13 entitled to ask what that discussion was about.
14 So you're free to do it, but if you do so it would
15 be subject to, at the next break, after that break
16 me inquiring about that.

17 Do you have any questions that you'd
18 like to know about the deposition, form of the
19 deposition, break time, anything like that?

20 A. No.

21 Q. Okay. I understand that Nexsen Pruet
22 is representing you personally?

23 A. Yes.

24 Q. All right. Do you have a written
25 indemnity agreement with the bank for the bank to

1 pay any judgment that might be rendered against
2 you?

3 A. I'm not aware of one.

4 Q. Do you have any agreement with the
5 bank to pay if any judgment that might be rendered
6 against you?

7 A. I'm not aware of it.

8 Q. Have you had any discussion about your
9 personal liability in this case with -- with the
10 bank?

11 A. No.

12 VIDEOGRAPHER: Off the record at 9:19
13 a.m.

14 (A recess was taken.)

15 VIDEOGRAPHER: We are back on the
16 record at 9:21 a.m.

17 BY MR. LINTON:

18 Q. Mr. Edahl, what did you review to
19 prepare for this deposition, what documents?

20 A. Various forms and documents related to
21 our relationship with Skywaves.

22 Q. Did you make an effort to review all
23 of the emails and all of the agreements that might
24 be pertinent to your testimony?

25 A. Reviewed all of the files and -- and

1 emails that were presented, yes.

2 Q. About how much time do you -- did you
3 take to do that?

4 A. Probably eight to ten hours.

5 Q. And did you make any summary of your
6 investigation of those documents to assist you in
7 your testimony?

8 A. No.

9 Q. Okay. And I understood during Mr.
10 Konersmann's deposition that you were taking
11 notes?

12 A. Yes.

13 Q. Did you review those notes?

14 A. No.

15 Q. When you were taking those notes was
16 the purpose to note where you might disagree with
17 anything that -- that Ron was testifying to?

18 A. The purpose of the notes was just
19 notes to myself on various parts of the testimony.

20 Q. Where are those notes?

21 A. They -- they're either back at the
22 office or I threw them away last night at the
23 office.

24 Q. You said you threw the notes away that
25 you set through two days of deposition taking to

1 get rid of them before your deposition?

2 A. I threw the notes away -- I'm pretty
3 sure I threw the notes away last night at my
4 office, yes. But...

5 Q. Anybody -- did anybody suggest to you
6 that you should throw your notes away?

7 A. No.

8 Q. When you were deposed in the other
9 matter that you mentioned, did you make a summary
10 of your review of documents in that case before
11 you testified?

12 A. No.

13 Q. Did you attend any depositions in that
14 other matter?

15 A. No.

16 Q. Have you ever testified in any other
17 matter?

18 A. Back in the late '80s in a similar
19 circumstance a client was involved with -- in a
20 dispute with a vendor and -- and I was asked to --
21 or I was deposed in that.

22 Q. And that's the only time you've
23 testified?

24 A. Yes.

25 Q. So you've never been a party in a

1 litigation?

2 A. No.

3 Q. Other than this case?

4 A. That's correct.

5 Q. Okay. What is your present position?

6 A. I'm a senior vice president at BB&T.

7 Q. And do you have any plans to retire
8 any time soon?

9 A. No.

10 Q. How long have you been a senior VP?

11 A. Ten, fifteen years.

12 Q. Okay. I noticed your personnel file
13 was produced to us yesterday, and I wasn't able to
14 look through all of it. But as I recall, you
15 graduated from Chapel Hill; is that right?

16 A. Yes.

17 Q. And was on the dean's list for five
18 semesters?

19 A. Yes.

20 Q. And you've been in banking virtually
21 the whole time since graduation?

22 A. Since graduation from graduate school,
23 yes.

24 Q. From MBA school?

25 A. Yes, sir.

1 Q. Okay. And have you won any awards for
2 your work in banking?

3 A. Yes.

4 Q. Could you help me out on that and tell
5 me what they are?

6 A. There's a Sterling Performance Award
7 that the bank awards which I was awarded in 2003
8 and 1997 thereabouts.

9 Q. All right. And is that system wide?

10 A. Yes.

11 Q. Is -- is -- how many people are
12 selected for the Sterling Award in any particular
13 year?

14 A. It can range from 250 to 350 people.

15 Q. Uh-huh. And how about as far as any
16 like American Banking Association or -- or, you
17 know, professional associations, have you won any
18 awards or held any positions of distinction there?

19 A. No.

20 Q. Okay. Would you consider yourself an
21 astute, savvy, sophisticated banker?

22 MS. CHERRY: Object to form.

23 You can answer.

24 THE WITNESS: I would consider myself
25 an experienced banker.

1 BY MR. LINTON:

2 Q. So you don't consider yourself astute
3 as a banker?

4 A. I consider myself that I try and do a
5 good job.

6 Q. Well, have you been told by your
7 superiors that you are astute?

8 A. No.

9 Q. Do you consider yourself a
10 sophisticated banker?

11 A. I consider myself an experienced
12 banker.

13 Q. What would you have to achieve to
14 become a sophisticated banker?

15 A. That's a good question. I don't know.

16 Q. You don't know. How -- same question:
17 To be an astute banker, would you need more
18 training or more -- seems that you have all of the
19 experience that one would require.

20 A. Yes, sir.

21 Q. Is it more training or -- or exposure
22 to sophisticated matters or...

23 MS. CHERRY: Object to the form.

24 THE WITNESS: I don't know.

25 BY MR. LINTON:

1 Q. Okay. Have you taught any banking
2 courses?

3 A. No.

4 Q. Are you -- have you served in a
5 supervisory role over other loan officers?

6 A. Yes.

7 Q. Okay. And for what period of time?

8 A. Probably three to four years would be
9 my guess. It was a while back.

10 Q. I noticed at least in some periods of
11 time that there's both a bonus that you can
12 qualify for and then -- and some other merit style
13 compensation. Could you explain to me how that
14 works?

15 A. Yeah, our bonus is based on a matrix
16 that involves many different categories from loan
17 gross to deposit gross to noninterest income
18 gross, the fees, the credit quality. There are
19 many measures that go into that.

20 Q. Well, taking the -- the plaintiff here
21 just as an example, how would the growth of -- of
22 the credit relationship with the plaintiff impact
23 your compensation?

24 A. It might have some impact on the loans
25 part and compensation.

1 Q. Did it, in fact, in 2006 and '7 and '8
2 have a beneficiary ben -- impact?

3 A. Had no material impact.

4 Q. Did it have any impact?

5 A. It did have some impact, sure.

6 Q. Did you have any experience with
7 handling factoring accounts?

8 A. Very little.

9 Q. When did you first have experience
10 with factoring?

11 A. One time back in 19 -- late '80s.

12 Q. Am I using the right term, is -- would
13 you consider the plaintiff to have a factoring
14 account with BB&T?

15 A. The plaintiff had a factoring
16 agreement with BB&T.

17 Q. Okay. And your only experience with
18 factoring was one time in the 1980s?

19 A. That's correct.

20 Q. How did you acquaint yourself with the
21 -- any special consideration that a factoring
22 arrangement might entail?

23 A. In this particular case, at the
24 beginning of the relationship I felt that a
25 factoring relationship would be most appropriate

1 at that point in time.

2 Q. And why was that?

3 A. Given the relatively early stage,
4 nature of the company, and the type of credit that
5 I thought would best suit the need at the time.

6 Q. Did BB&T own a factoring entity?

7 A. Yes.

8 Q. At the time this started was -- was
9 that factoring company owned by BB&T or was it
10 just a third party?

11 A. It was owned by BB&T.

12 Q. Did you familiarize yourself with
13 whatever the manual is that instructs you how a
14 factoring account is to be handled?

15 A. No, that wasn't...

16 Q. Wasn't what?

17 A. My role.

18 Q. That wasn't your role. Whose role was
19 it?

20 A. The factoring division's.

21 Q. Was it -- do you remember who that
22 was?

23 A. I think it was Wyn Godwin on the
24 credit side and Castlen Morris on the
25 administrative side.

1 Q. Who was on the credit side?

2 A. I believe it was Wyn Godwin.

3 Q. Wyn Godwin?

4 A. Uh-huh.

5 Q. Okay. And did he remain at BB&T
6 through say January 2008?

7 A. I'm not sure.

8 Q. What kind of interaction would you
9 have with either Wyn Godwin or whomever was
10 handling the credit side for the factoring
11 component of BB&T?

12 A. Primarily on the credit side it was
13 Wyn at first, and then the factoring group was
14 consolidated or merged into the bank, and then the
15 credit decisions after that were made through the
16 bank channel.

17 Q. So there was a change in the way that
18 the credit side was handled?

19 A. Yes.

20 Q. Could you describe for me that change?

21 A. Just the change in credit officers
22 from Wyn to Walt Denning.

23 Q. To Walt Denning?

24 A. Uh-huh.

25 Q. And did -- once Walt Denning became

1 the credit person for factoring he -- he
2 maintained that relationship the whole time that
3 we're talking about here; is that right?

4 A. Yes.

5 Q. Where was Walt Denning located?

6 A. Winston-Salem.

7 Q. And how did you interact with him and
8 keep up with the credit side of -- of this
9 factoring relationship?

10 A. Through telephone calls or credit
11 packages.

12 Q. Okay. Did Walt Denning have any
13 experience in factoring prior to his taking over
14 that role?

15 A. I don't know.

16 Q. Is he still with the bank?

17 A. Yes.

18 Q. Now, Castlen Morris you said was also
19 involved in the factoring?

20 A. Yes.

21 Q. And that was a joint administration
22 or...

23 A. That was on the day-to-day
24 administration of the agreement.

25 Q. Okay. And so what was your role? If

1 you had Castlen Morris doing administration and
2 you had Walt Denning doing the credit, what was
3 your role?

4 A. I was the relationship manager.

5 Q. Would -- would Denning and Castlen
6 Morris report to you?

7 A. No.

8 Q. Would you report to them?

9 A. No, not on a personnel type basis.

10 Q. Who was in charge of -- you said you
11 were the relationship manager?

12 A. Uh-huh.

13 Q. I'm trying to get a handle on who is
14 in charge of this account. Is that the
15 relationship manager?

16 A. Yes.

17 Q. Okay. So at least in theory you
18 should know more about this account than anybody
19 else?

20 MS. CHERRY: Object to form.

21 BY MR. LINTON:

22 Q. In theory should you know more about
23 this account than anybody else?

24 A. Possibly in theory.

25 Q. Okay. In practice do you know of

1 anybody that knew more about this account than
2 you?

3 A. Not that I'm aware of.

4 Q. Okay. Is there anybody that you would
5 say they might not have known as much as I did,
6 but they knew a whole lot and -- and would be real
7 knowledgeable about the account?

8 A. Yeah. Castlen Morris.

9 Q. And what sort of -- and I'm not really
10 concerned about pay grade except that it might
11 represent the relative position in the bank.

12 Where was Castlen Morris's rank
13 compared to either you or Walt Denning in terms of
14 compensation?

15 A. I'm not sure.

16 Q. Do you think it would be substantially
17 less?

18 A. I don't know. That's -- that was
19 confidential information, so I --

20 Q. Well, I was just thinking in terms of
21 y'all have rankings I guess, don't you?

22 A. We have salary grades.

23 Q. Right. And -- and what is your salary
24 grade, not the amount, but the -- isn't it like 21
25 or 23 or something like that?

1 A. I think right now it's at 21.

2 Q. Okay. How long has it been 21?

3 A. Six or seven years.

4 Q. Okay. And what would you need to do
5 to become eligible for 22 or 23?

6 A. That would typically be a position
7 change like from a line role to a manager role or
8 something like that.

9 Q. Who in Charleston would be ranked at a
10 -- at a higher level than you?

11 A. I'm not sure, but several
12 possibilities. I guess the regional president
13 would be one, other regional officers perhaps.

14 Q. And they're headquartered in
15 Charleston?

16 A. Yes.

17 Q. Who do you report to now?

18 A. Tom Eller. Tom Eller.

19 Q. And is he the -- what is his position?

20 A. He is the South Carolina corporate
21 banking manager.

22 Q. And where is he located?

23 A. Greenville, South Carolina.

24 Q. Okay. How did you -- let's go back to
25 the inception, your first exposure to Skywaves.

1 How did you become acquainted with them?

2 A. I believe it was through a referral
3 from Bob Balderson at Grandbridge Realty.

4 Q. Did you say Don Balderson?

5 A. Bob Balderson.

6 Q. Bob. All right. And did you know
7 anything about him? Was it just a referral and
8 you -- and you were going to explore this as a
9 potential new client?

10 A. That's correct.

11 Q. Okay. And what did you do to learn
12 about Skywaves?

13 A. Talked to the officers and went out
14 and visited.

15 Q. Okay. And you mentioned that you had
16 decided that one relationship that was appropriate
17 was a factoring relationship because it was a
18 startup, among -- among other things; is that --

19 A. Yes.

20 Q. Did you consider asset-based
21 financing?

22 A. That could have been a possibility at
23 that time but didn't fit.

24 Q. Okay. So you considered it and it
25 just wasn't appropriate?

1 A. Correct.

2 Q. From the bank's standpoint?

3 A. Correct.

4 Q. Is factoring considered a higher risk
5 than asset-based financing or less risk?

6 A. It -- factoring can generally handle
7 clients of -- of higher risk.

8 Q. And how do you protect the bank's
9 interest if factoring generally deals with a
10 higher risk?

11 A. It's an assignment of the -- of
12 specific receivables that the bank purchases. And
13 so payment is from the client of the -- our client
14 directly to the bank.

15 Q. All right. So normally in a factoring
16 situation the -- the bank is getting an assignment
17 of the account of a -- of a receivable?

18 A. Uh-huh.

19 Q. And payment goes directly to the bank?

20 A. Yes.

21 Q. Okay. Have you ever known a situation
22 in the bank where it was permitted to -- to let
23 payments go directly to the customer?

24 A. Not that I'm aware of.

25 Q. You're aware that payments would go

1 directly to Skywaves?

2 A. We were aware that would happen from
3 time to time.

4 Q. Well, did it happen consistently?

5 A. Not that I'm aware of.

6 Q. Did you make any effort to keep up
7 with where payments were going for receivables?

8 A. Yes. I depended on Castlen Morris to
9 monitor that.

10 Q. Okay. And you've explained the
11 relationship with Castlen Morris. But would you
12 give him instructions about how you want the
13 account to be handled?

14 A. Castlen would handle the account
15 according to the factoring agreement, yes.

16 Q. And I think y'all did audits on a
17 regular basis, didn't you?

18 A. Yes.

19 Q. All right. Who would have been
20 involved in selecting the auditor?

21 A. That would have been our audit
22 department.

23 Q. Would that be through Castlen Morris
24 or a separate -- separate department?

25 A. Separate department.

1 Q. Okay. Who would be responsible for
2 coordinating that? You're the relationship
3 management. Say I'm the debtor.

4 A. Uh-huh.

5 Q. And some auditor is going to show up.
6 Do you call me and tell me, you know, we're going
7 to have quarterly audits, or does that come from
8 Castlen Morris or from the audit team?

9 A. Yeah, typically, you know, upfront we
10 let the client know what the audit frequency would
11 be, and then the auditor typically would call the
12 client when an audit needed to be done.

13 Q. Okay. And would you get a copy of the
14 audit report?

15 A. Yes.

16 Q. Would Castlen Morris get one?

17 A. I'm pretty sure he would.

18 Q. Would -- would Walt Denning get one?

19 A. Yes.

20 Q. Does anybody else? I guess somebody
21 in the audit department would?

22 A. Yes.

23 Q. And did y'all ever have discussions
24 about any audit that was done of Skywaves?

25 A. From time to time, yes.

1 Q. Were you always satisfied with the
2 results of the audits?

3 A. No, not always.

4 Q. When were you dissatisfied?

5 A. Well, specifically when one audit in
6 January of 2008 turned up that client funds that
7 had been received by Skywaves were not remitted to
8 the bank.

9 Q. Prior to receiving that audit did you
10 have any concern with the way in which Skywaves
11 was operating and receiving funds?

12 A. We would have some concern about -- I
13 think there was one other occasion in maybe
14 September of that year where a payment had been
15 received and not immediately remitted to the bank.

16 Q. Was that taken care of to your
17 satisfaction?

18 A. It was taken care of, yes.

19 Q. To your satisfaction or not?

20 A. We received the funds, yes.

21 Q. Did you ever say anything to the
22 debtor that I'm not satisfied with what you've
23 done?

24 A. I don't recall.

25 Q. If you express your dissatisfaction to

1 a customer would you memorialize it with a memo to
2 your file?

3 A. Not necessarily.

4 Q. Do you know of any memo to the file
5 where you expressed dissatisfaction with the
6 results of an audit to the debtor?

7 A. Not that I'm aware of.

8 Q. I think there's probably several
9 different types of bankers, some bankers who are
10 sticklers to details, others who seem to identify
11 with customer needs and have a lot more
12 flexibility just in their style of being a
13 relationship manager. Have you found that to be
14 true in your years of banking?

15 A. I think different bankers have
16 different styles, just like different individuals
17 have different personalities.

18 Q. Right. What -- how would you describe
19 your style?

20 A. I would describe my style as, you
21 know, empathetic and responsive to customers'
22 needs and trying to fit those appropriately within
23 the bank.

24 Q. All right. You would consider
25 yourself a professional?

1 A. Yes.

2 Q. And that engaging and have a
3 relationship with a client to build their
4 confidence in you and vice versa?

5 A. Yes.

6 Q. And was it one of your desires to
7 expand the credit relationship with Skywaves from
8 the -- from the inception?

9 A. No. It was my desire to meet the
10 needs of Skywaves as they were presented to us.

11 Q. Well, there were a number of different
12 relationships that you had over the years with
13 them, credit relationships; is that correct?

14 A. I'm not sure what you mean.

15 Q. Well, I'm thinking about, I think it
16 was a capital loan that was made. There were
17 credit cards that were changed over from another
18 company, another bank.

19 I'm just trying to ask you if you
20 weren't trying to grow the relationship on behalf
21 of the bank and consistent with Skywaves's needs?

22 A. We were trying to be sensitive to the
23 needs of Skywaves and respond to them as they
24 presented to us, sure.

25 Q. Are you telling me that you were not

1 trying to grow the relationship between Skywaves
2 and the bank because it would be profitable to the
3 bank and that's part of your job?

4 A. My primary job is helping our clients
5 and in their requests within the format of the
6 bank.

7 Q. Okay. Do you recall in that regard
8 being able to lower interest rates on certain
9 relationships you had to -- to offer a better
10 product to Skywaves?

11 A. I'm not sure I understand the
12 question.

13 Q. All right. Did you have any concern
14 at any time that Skywaves might go with a
15 competitive bank?

16 A. Yes.

17 Q. Okay. And as part of your
18 consideration of meeting their needs you also knew
19 you were in a very competitive situation and that
20 other banks might want your business?

21 A. That's what --

22 Q. That's true all the time?

23 A. -- Skywaves told me, yes.

24 Q. Well, I gather you believed them?

25 A. Yes.

1 Q. Any reason to doubt that now?

2 A. Not that I'm aware of.

3 Q. Okay.

4 A. Other than they -- I think in March of
5 2007 when we were, you know, informed by Skywaves
6 that other banks were looking at their needs and I
7 was led to believe that there were more solid
8 commitments in place than there actually were at
9 that point in time.

10 Q. Who led you to believe that?

11 A. Ron Konersmann.

12 Q. What did he tell you?

13 A. That they had commitments from other
14 institutions, specifically Wachovia and Hunt
15 Capital, I think it was, to meet their needs.

16 Q. And you don't believe that was true?

17 A. Well, given what I saw in the
18 testimony the other week, there was a varying
19 conditional term sheet from Hunt Capital and very
20 -- essentially a letter from Wachovia that says,
21 you know, you're not ready yet.

22 Q. Did you ask him for any documentation?

23 A. No. I trusted what he was telling me.

24 Q. What difference did that make to you
25 in -- in regards to what you did as a commitment

1 by BB&T?

2 A. I'm not sure I understand the
3 question.

4 Q. You indicated Mr. Konersmann mislead
5 you into thinking that Wachovia and Hunt Capital
6 had made definite proposals to them.

7 MS. CHERRY: Object to form.

8 THE WITNESS: No. I mentioned that the
9 testimony that was present -- presented a few days
10 ago was at variance with what he told me at the
11 time. At the time I didn't believe he was
12 misrepresenting anything, in 2007.

13 BY MR. LINTON:

14 Q. I'm trying to understand if you took
15 any action on behalf of the bank based on what Mr.
16 Konersmann told you in March of 2007 regarding
17 Wachovia or Hunt Capital?

18 A. Based on the needs that Ron felt -- he
19 thought he would have going forward, we increased
20 the factoring line I think to 3-and-a-half million
21 and the fee purchase order sub limit at 2 million
22 and increased the advance rate from 60 to 65
23 percent on purchase orders. Ron said he thought
24 that would allow us to continue to be their bank.

25 Q. And you thought that was a reasonable

1 thing to do on behalf of BB&T?

2 A. At the time, yes.

3 Q. What financial analysis did you make
4 in order to come to that conclusion?

5 A. We put together a credit package at
6 the time based on the financials that were
7 provided to us at that time.

8 Q. And insofar as you know were those
9 financials accurate?

10 A. So far as I knew at the time.

11 Q. Well, I'm talking about now. Is there
12 anything now that you know that you could say the
13 financial package that you were given in March of
14 2007 or thereabouts was inaccurate?

15 A. No. It was -- as far as I know, it
16 was accurate.

17 Q. Okay. I may not have been phrasing
18 that question very well. I'm trying to
19 understand -- I understand that in 2007 you
20 thought it was accurate?

21 A. Uh-huh.

22 Q. Do you still think it was accurate
23 based on anything you know today?

24 A. Yes.

25 Q. Okay. And you were willing to expand

1 the relationship greatly?

2 A. The bank was willing to expand the
3 relationship per the terms that I just mentioned,
4 yes.

5 Q. And were you the person who made that
6 recommendation?

7 A. Yes.

8 Q. And to whom did you make it?

9 A. Walt Denning.

10 Q. Okay. And -- and was there anybody
11 else that was -- had been involved in that
12 decision to expand the credit line?

13 A. Not from a credit approval
14 perspective.

15 Q. And did -- were you and Walt Denning
16 referred to as co either authors or -- or -- whose
17 signature was required for the -- that expansion
18 approval?

19 A. Walt's.

20 Q. Okay. Now, at the time he -- you were
21 expanding that, you knew that -- that Skywaves was
22 trying to expand rapidly and that's one of the
23 reasons they needed the additional credit?

24 A. Yes.

25 Q. Okay. And you were comfortable with

1 their financials and their operation to extend 65
2 percent payment rather than 60 percent?

3 MS. CHERRY: Object to form.

4 THE WITNESS: On purchase orders,
5 that's correct.

6 BY MR. LINTON:

7 Q. Okay. What is a purchase order, as
8 you use that term?

9 A. It's an order from a client to, in
10 this case, manufacture a shelter unit.

11 Q. All right. So you -- and you were
12 going to loan 65 percent of the -- of the --

13 A. Of the amount of that purchase order.

14 Q. Okay. And how long down the road
15 would it be before a purchase order converts into
16 a receivable?

17 A. Typically in that -- in Skywaves's
18 case the purchase order would take -- and Castlen
19 could answer that question more accurately than I
20 could -- but it seems around probably take 30 to
21 60 days to construct a shelter.

22 Q. Had you ever financed purchase orders
23 before?

24 A. No.

25 Q. Factoring normally finances

1 receivables, doesn't it?

2 A. Yes.

3 Q. What did you have to do to get
4 approval to finance purchase orders?

5 A. We had to get approval from credit to
6 do that.

7 Q. That would be Walt again?

8 A. Yes.

9 Q. Do you know if he had ever financed
10 purchase orders before?

11 A. I do not.

12 Q. How do you keep track from the bank's
13 standpoint of -- of your risk when you're
14 financing purchase orders?

15 A. I'm not sure I understand the
16 question.

17 Q. How -- how do you protect yourself as
18 the bank if you're financing purchase orders?

19 A. We -- in this case the purchase order
20 would come in and Castlen had a spreadsheet that
21 he would track that on, and then as the purchase
22 order converted to an invoice he would match up
23 the invoice with the purchase order and follow it
24 through to cycle, the payment cycle that way.

25 Q. Was the bank set up to monitor the

1 purchase orders?

2 A. Yes.

3 Q. And do you think that financing
4 purchase orders was a normal practice for the
5 factoring section of the bank?

6 A. No.

7 Q. Do you know of any other purchase
8 order financing that was done?

9 A. Not aware of one.

10 Q. Did you ever talk with Walt about is
11 this a good idea to finance purchase orders?

12 A. I'm certain it -- when that first came
13 up we discussed that and -- and felt that we could
14 in this case monitor it and structure it
15 appropriately and do that.

16 Q. So you had a lot of confidence in the
17 management as well as the customers?

18 A. Yes.

19 Q. And does anybody else handle factoring
20 at the bank, or is that all under Walt Denning?
21 I'm sure he's got people working for him.

22 A. Other people interact with the
23 factoring group.

24 Q. Uh-huh. But on something like
25 purchase -- if I wanted to find out has BB&T ever

1 financed purchase orders, I guess Walt Denning
2 would be the person to ask about that?

3 A. That would be a good place to start.

4 Q. Okay. Did you ever ask him whether he
5 ever financed purchase orders?

6 A. I don't recall.

7 Q. I'm trying to understand. If you
8 didn't have any experience financing purchase
9 orders and you don't believe Walt Denning did, how
10 do you make a recommendation let's go ahead and
11 finance purchase orders? You must have done
12 something by way of due diligence to say, yeah, we
13 can do this, the bank is set up to do this.

14 A. We felt that based on our previous
15 factoring history with the clients that we had
16 already factored that it was a logical step to
17 think about purchase -- or fact -- factoring the
18 purchase orders that generated those invoices.

19 Q. Was the factoring agreement changed in
20 writing to reflect the purchase orders would be
21 financed?

22 A. Not that I'm aware of.

23 Q. How did people in the bank know to
24 approve the payment for these purchase orders if
25 your written agreement wasn't amended to reflect

1 the agreement that you'd struck?

2 A. Well, it was -- the amendment
3 reflected the agreement we had struck with letters
4 that we sent to the company to sign based on the
5 agreement that we had come to.

6 Q. Did you ask for the -- the debtor to
7 sign any amendment to an agreement?

8 A. Yes, I believe so.

9 Q. Now, how about this -- this was March
10 of 2007, and shortly after that I think is the
11 time period you're talking about; is that right?

12 A. Well, from inception in 2005 through
13 2007.

14 Q. When did you first start financing
15 purchase orders?

16 A. I think it was probably late 2006,
17 somewhere in there.

18 Q. All right. And then 2007 you've
19 talked about how the credit line was increased
20 fairly dramatically; is that right?

21 MS. CHERRY: Object to form.

22 THE WITNESS: It was increased, yes.

23 BY MR. LINTON:

24 Q. Do you remember what it was before it
25 was increased?

1 A. No, not at this time.

2 Q. All right. Now did you sometime in
3 the summer of 2007 meet with some potential
4 investors?

5 A. I was asked to, by Ron, to accompany
6 him to a meeting in McBee, that he was going to
7 meet with some potential investors in the company
8 with.

9 Q. And consistent with your philosophy of
10 trying to work with the customers and be engaging
11 and available to them, you did go up to McBee and
12 attend that meeting?

13 MS. CHERRY: Object to form.

14 THE WITNESS: I agreed to -- I accepted
15 Ron's invitation to attend.

16 BY MR. LINTON:

17 Q. What did you understand your purpose
18 was in going to that meeting?

19 A. To answer any questions that he might
20 have about the banking relationship.

21 Q. And -- and to -- did you answer any
22 questions that they had?

23 A. Yes.

24 Q. What questions did they have?

25 A. Just the general form of the

1 structure.

2 Q. And you would have told them that you
3 were financing purchase orders?

4 A. I would have told them that we had an
5 agreement in place to finance the company.

6 Q. Including purchase orders?

7 A. I don't recall if we talked about
8 purchase orders specifically or not.

9 Q. Would you say that -- that overall
10 that your remarks were to make sure that -- that
11 these potential investors had confidence that
12 there was a strong banking relationship between
13 BB&T and Skywaves?

14 A. Well, that was up to them to decide.
15 My purpose was to answer questions that they had
16 about the banking arrangement.

17 Q. Well, the truth is it was a strong
18 relationship, wasn't it?

19 A. At that point in time I would
20 characterize it as good relationship.

21 Q. Strong, or was it just good?

22 A. A good relationship.

23 Q. Uh-huh. Did you have any customers
24 that had a better relationship in July of 2007
25 than Skywaves?

1 A. Well, that's very subjective. I don't
2 know how you want to measure that.

3 Q. You were the one that refused to say
4 it was an excellent relationship.

5 MS. CHERRY: Object to form.

6 BY MR. LINTON:

7 Q. Do you refuse to characterize the
8 relationship between Skywaves and BB&T as
9 excellent in July of 2007?

10 A. Good, excellent, it's --

11 Q. Doesn't matter?

12 A. -- the same thing.

13 Q. Okay. You had no reservations about
14 Skywaves in July 2007?

15 MS. CHERRY: Object to the form.

16 THE WITNESS: No material reservations
17 that I can recall.

18 BY MR. LINTON:

19 Q. Okay. And I think some of these
20 things are rather obvious. You wouldn't be
21 expanding the credit relationship unless you had
22 confidence in them and their customers; isn't that
23 the way you look at it?

24 A. Sure. Yeah.

25 Q. Okay. Were you aware that the people

1 in McBee were potential investors in Skywaves,
2 equity investors?

3 A. Yes.

4 Q. Did you discuss with Ron or anyone
5 else the potential for BB&T doing a public
6 offering?

7 A. Not at that time.

8 Q. When did you first discuss that?

9 A. I have no -- I know Ron wanted to
10 eventually, obviously, grow the company and -- and
11 into a public offering stage, and, you know, BB&T
12 had a capital markets group that could assist in
13 that possibly. And so when the -- that need was
14 identified I certainly let them know that we had
15 some capability that could meet -- possibly meet
16 that need.

17 Q. Do you recall telling him that he'd be
18 better off having the bank do it than some other
19 entity because the financial arrangement would be
20 more favorable through the bank?

21 A. No, I don't recall that specifically.
22 The bank certainly knew of the company, and so
23 we'd have more knowledge than an outside firm.

24 Q. Well, did you think that BB&T's --
25 that, what you call that, a capital group, or you

1 call that --

2 A. Capital markets.

3 Q. Capital markets, okay. Did you
4 communicate at all with anybody in the capital
5 markets group?

6 A. I had I believe one phone call early
7 on when I first heard that need just to talk about
8 the industry, the telecommunications industry and
9 what expertise we might have in that space.

10 Q. And who was that with?

11 A. I don't recall his name now.

12 Q. And so what you were trying to
13 determine is what capacity the bank had for a
14 telecommunications --

15 A. Correct.

16 Q. All right. And did you determine the
17 bank did have excellent capacity?

18 A. We had some capacity in that space.
19 It wasn't a huge space for us at that time, but we
20 had one or two folks that were familiar with the
21 space.

22 Q. Now, as a part of your just ordinary
23 approach to -- to customers and consistent with
24 the bank's policies, was it your desire to -- to
25 have the bank serve as -- in the capital markets

1 if they did have an initial public offering?

2 A. If it ever got to that point and we
3 could assist, sure.

4 Q. Okay. So expanding the relationship
5 with a good customer is something you're always
6 trying to do?

7 A. It's always a good thing.

8 Q. And part of your compensation is based
9 on being able to grow the relationship, including
10 growing it with other departments?

11 A. Compensation is -- is based on factors
12 like that, yes.

13 Q. Okay. Did you have any direct
14 involvement with the capital markets department or
15 division?

16 A. No. Well, I'm not sure what you mean
17 by direct involvement.

18 Q. Let's say that Skywaves did go public
19 and that y'all were assisting. What role would
20 you play in that?

21 A. Simply refer the opportunity to the
22 investment bankers up there.

23 Q. And would you continue to be the
24 relationship manager?

25 A. Yes, for the company on the bank's

1 side.

2 Q. Now, Jimmy Kerr was an investor in
3 Skywaves; was he not?

4 A. Yes.

5 Q. Did you know Jimmy Kerr prior to your
6 involvement with Skywaves?

7 A. No.

8 Q. Was he a customer of the bank?

9 A. Not initially.

10 Q. How did he become a customer?

11 A. Through the interaction with Skywaves.

12 Q. And were you the relationship manager
13 for him?

14 A. Yes.

15 Q. Were there any other investors in
16 Skywaves that -- that became bank customers?

17 A. Not that I'm aware of.

18 Q. And how would you describe your
19 confidence in Jimmy Kerr?

20 A. High.

21 Q. And is that true today?

22 A. Yes.

23 Q. Is he still a customer of the bank?

24 A. Not that I'm aware of.

25 Q. Do you know why that relationship

1 terminated?

2 A. Because of the situation around
3 Skywaves in early 2008.

4 Q. And how did that become known to you?

5 A. I guess it was assumed somewhat on my
6 part in that we did have a loan request and Jimmy
7 had a loan request to us I believe on a Sherwin
8 Williams Paint store down in Beaufort in late 2007
9 and when things started to go wrong at Skywaves he
10 withdrew the request, that he was going to take it
11 to another bank.

12 Q. Do you have any interaction with him
13 at all?

14 A. I do not.

15 Q. Socially ever see him?

16 A. One time two or three years ago I saw
17 him at a Roper St. Francis gateway.

18 Q. Now, in July of 2007 after the McBee
19 meeting, tell me what discussions you had with Ron
20 about the General Dynamics contract.

21 A. We had discussions with Ron about the
22 General Dynamics contract earlier to that. I'm
23 not aware of any after that other than the fact
24 that General Dynamics under a New York State
25 Police contract kept delaying production for Ron

1 of getting the units to him to manufacture.

2 Q. Would that have been April or so 2007,
3 the discussions?

4 A. Yes.

5 Q. Okay. Tell me what you understood the
6 General Dynamics contract to be.

7 A. That Ron had a contract with General
8 Dynamics to purchase shelter units for the New
9 York State Police project up in New York I think
10 it was.

11 Q. Did you ever see the contract?

12 A. Yes.

13 Q. Would you have gotten a copy of it?

14 A. Yes.

15 Q. Studied it?

16 A. Would have read through it.

17 Q. Okay. About how long was it?

18 A. It was fairly thick, as I recall.

19 Q. Tell me what your understanding was
20 with the way that contract was going to work.

21 A. That General Dynamics had a contract
22 with the State of New York to purchase or to --to
23 deliver shelter units for their cell towers and
24 that as those towers were to come online they
25 would manufacture -- they would have Skywaves

1 manufacture the units and -- and ship them.

2 Q. At what point would those become
3 purchase orders?

4 A. When General Dynamics would have
5 issued a purchase order.

6 Q. So under -- excuse me. Did you
7 finish?

8 A. When they would order -- issue a
9 purchase order.

10 Q. So General Dynamics had discretion as
11 to when it wanted to place a purchase order?

12 A. Yes.

13 Q. And you understood that?

14 A. Yes.

15 Q. And at some point did you start
16 financing site plans?

17 A. Ron asked us to consider financing
18 site plans in the spring of 2007, and he said that
19 he was very certain that purchase orders would be
20 forthcoming very soon. He was anxious to get
21 production started on these units and asked if we
22 could consider lending against the sites that he
23 felt would turn into purchase orders very soon and
24 -- and consuming the cycle. And in the context
25 of, he -- well, yeah.

1 Q. And because the potential purchase
2 order was somebody like General Dynamics, who had
3 this contract with the state police, you felt that
4 was a reasonable risk of the bank to take?

5 A. Yes. At the time I thought it was
6 worth considering based on Ron's representations.

7 Q. And in fact, after you considered it
8 did you approve that?

9 A. Talked to Walt Denning about that
10 concept, and Walt's response was he was okay with
11 it if we could structure it like we had the
12 purchase orders and if we could track them. And
13 -- and we talked to Castlen and he felt that we
14 could monitor that okay, and -- and so we agreed
15 to factor the site plans at that time.

16 Q. And basically what you have, from a
17 business standpoint, you considered that the money
18 will be there, it's just a matter of timing when
19 the purchase order will be based and then the
20 thing will be made?

21 A. Yes. Ron assured us that purchase
22 orders would be forthcoming soon and that he
23 really wanted to get production started on these
24 units. And so, yes, we felt that under those
25 circumstances it was reasonable to consider

1 advancing on sites.

2 Q. Okay. And did you advance at 65
3 percent?

4 A. Yes.

5 Q. Did you ask Ron to get any
6 documentation from General Dynamics about a
7 schedule, when -- when you could expect?

8 A. Yes. Ron provided in those initial
9 discussions a site schedule from General Dynamics
10 that outlined all of the sites involved in the
11 contract and -- and provided that spreadsheet to
12 us, and that's how Castlen was to track the
13 advances on the sites.

14 Q. Was this financing of site plans, had
15 you ever done that before?

16 A. No.

17 Q. In your banking career?

18 A. No.

19 Q. Do you know if Walt Denning had ever
20 financed site plans?

21 A. Not to my knowledge.

22 Q. Was there any -- well, strike that.

23 Were these site plans being financed
24 under the fact -- under the existing factoring
25 agreement?

1 A. Yes.

2 Q. And was any written change to that
3 factoring agreement?

4 A. No.

5 Q. I -- I'm perplexed as to how people in
6 a bank who don't have any experiencing financing
7 site plans can agree to finance it and not have
8 anything in writing for an auditor to understand
9 what's being financed. So explain to me how that
10 worked.

11 A. The request from Ron came in the
12 context of the credit approval that we just
13 received in March of '07 to expand the line and
14 increase the percentage on purchase orders. We
15 had already had experience with General Dynamics
16 on purchase ordering, invoice factoring, and that
17 was a satisfactory experience.

18 We felt a high confidence level in Ron
19 and the company at that time. We felt we had good
20 experience with conversion of the POs to invoices
21 previously. We had experience with General
22 Dynamics that was good.

23 Q. So it all made perfect sense, it just
24 wasn't documented?

25 A. Well, at the time it made sense to us,

1 yes.

2 Q. But then a lot of things in hindsight
3 that don't make sense but at the time they seem to
4 make perfect business sense?

5 A. Within the context at the time, that
6 sometimes happens.

7 Q. Did you consider that after you made
8 this agreement with Skywaves to finance site plans
9 that the bank was obligated to finance those
10 plans?

11 A. I'm sorry, I didn't understand.

12 Q. Did you feel that after you made the
13 agreement with Skywaves to finance site plans, as
14 you have testified to, that the bank was then
15 obligated to finance these plans?

16 A. Yes.

17 Q. And in fact, did the bank finance
18 those plans?

19 A. Some sites, yes.

20 Q. Were there any sites that were turned
21 down?

22 A. Not that I'm aware of.

23 Q. I want to try to understand the
24 coordination between an audit department and the
25 credit and you as the relationship manager. In a

1 matter like this that I guess you would have to
2 say is highly unusual because y'all had never done
3 it before -- would you agree with that, highly
4 unusual?

5 A. Yes.

6 Q. Okay. . How does an auditor know what
7 the contract is between the bank and Skywaves when
8 they -- when they're doing their audit?

9 A. Yeah, I'm not sure how they look at
10 that.

11 Q. Well, you got the audits from them,
12 copies of it, didn't you?

13 A. Yes.

14 Q. Did you ever have any discussion with
15 the auditors?

16 A. Not about that particular issue, no.

17 Q. Prior to the January audit being
18 received by you did you have any concern about the
19 Skywaves account?

20 A. Probably beginning in September of '07
21 we were getting financial information, albeit on a
22 delayed basis, from 60 days, sometimes more, which
23 was a concern in and of itself that financial
24 reporting was becoming later, but the reporting
25 that we were getting on the financial condition of

1 the company was not -- the revenues were beginning
2 to decrease. Losses were increasing. And so that
3 started to raise some concern in my mind of what
4 was happening.

5 Q. But that concern was not a concern
6 about whether they were in default but just a
7 concern about the --

8 A. The general direction of the company,
9 correct.

10 Q. Right? You said that right?

11 A. That's correct.

12 Q. And I think in November '07 you had a
13 meeting with Ron updating you on the financials.
14 Do you remember that?

15 A. I agree. That's true. Yes.

16 Q. As I recall, there was some infusion
17 of equity at that time as well as some loans by
18 Jimmy Kerr and Crayton Walters?

19 A. That's what we were told.

20 Q. Well, those accounts were with BB&T,
21 weren't they?

22 A. Skywaves's checking account was with
23 BB&T, yes.

24 Q. Right. So when you say that's what
25 you were told, isn't, in fact, that's what

1 happened?

2 A. As far as I know.

3 Q. Okay. I didn't know if you meant
4 that, you know, now you found out that you have
5 been misled or something like that.

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

7 Q. Okay. Based on that infusion of
8 capital and subordinate debt, even your business
9 concerns were sort of on the backseat. You were
10 comfortable at the end of November 2007; is that a
11 fair statement?

12 A. It helped us feel better about how
13 they were addressing the operating losses.

14 Q. Right. Well, it's -- it's a pretty
15 serious effort on the part of Skywaves when they
16 get an equity infusion of whatever it was, 4 or
17 \$500,000, and two shareholders putting up \$250,000
18 or thereabouts of un-subordinate debt, that gave
19 you a lot of comfort, didn't it?

20 A. It certainly gave us some comfort that
21 they were addressing the problem.

22 Q. So between November and say the first
23 week in January, was there anything that happened
24 at Skywaves that you became aware of that gave you
25 any alarm?

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

2 Q. Okay. So the first thing that
3 happened that -- that startled you was when you
4 received the audit that was done in January 2008?

5 A. When I received that audit that
6 definitely startled me, yes.

7 Q. Did you have any discussion with Mr.
8 Morris about his knowledge of the financial
9 condition of the company?

10 A. No. He wasn't with us at that time.

11 Q. Well, who took his place?

12 A. Mike Burke.

13 Q. When did he come onboard?

14 A. I believe November of 2007.

15 Q. And was Mike Burke's first meeting
16 with Skywaves in -- in January of 2008?

17 A. I believe it was.

18 Q. Okay. Prior to the meeting with Mike
19 Burke did you communicate anything to him to
20 express alarm or concern about Skywaves?

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

22 Q. And how about Walt Denning, are you
23 aware of anything that he might have said to Mike
24 Burke?

25 A. I -- I wouldn't have been aware if he

1 talked to him, but I'm not aware of anything.

2 Q. Well, Mike Burke -- I think you made
3 the arrangements for the meeting when Mike Burke
4 came?

5 A. I think so, yes, sir.

6 Q. And did you meet with Mike Burke
7 preliminarily before you went out to see Ron?

8 A. I don't think I did, no.

9 Q. Did you share any information with
10 Mike Burke?

11 A. I'm sure I did of some type initially.
12 I don't recall exactly what that would have been.

13 Q. Where did the meeting take place
14 between you, Mike Burke, Ron, and probably Johnny?

15 A. I'm pretty sure it was at Skywaves.

16 Q. What did you believe the purpose of
17 that meeting was?

18 A. It was to introduce Mike as the new
19 factoring officer to replace Castlen.

20 Q. Did -- did Mike Burke know that the
21 bank was financing site plans?

22 A. At that time I don't think he did.

23 Q. Why do you say that?

24 A. Well, I guess the -- the correct
25 answer is I don't know if he did or didn't at that

1 point in time.

2 Q. Why did you say you don't think he
3 did?

4 A. I'm getting --

5 Q. Because when he was told he acted like
6 he was shocked during the meeting. Does that
7 resonate with you?

8 A. No, it doesn't, not during --

9 Q. Okay.

10 A. -- the meeting.

11 Q. When do -- when do you believe he
12 first learned that the bank had committed to
13 finance site plans and, in fact, had been
14 financing since July 2007?

15 A. Probably would have been in January
16 when we were going over the purchase order list
17 and were -- and when site plans were on that
18 purchase order list and they were getting old and
19 we inquired about the status of those advances and
20 learned at that point that ad -- advances had been
21 made and there were no shelters tied to -- that no
22 shelters had been started or constructed.

23 Q. So prior to the meeting out at
24 Skywaves had you told Mike Burke that, you know,
25 we finance site plans?

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

2 Q. And is there anybody in the bank that
3 would have known that you financed site plans
4 other than you and Denning?

5 A. Castlen Morris.

6 Q. But he had left, though?

7 A. Yes. He left in October/November I
8 guess of '07.

9 Q. We just had his personnel file
10 produced about ten minutes before this deposition.
11 Well, 30 minutes before, because we got delayed.

12 What was the circumstances under which
13 Mr. Morris left?

14 A. I don't know.

15 Q. How did you find him to deal with?

16 A. I found him good to deal with.

17 Q. Knowledgeable?

18 A. Yes, seemed to be.

19 Q. Detail oriented?

20 A. Yes.

21 Q. You -- you may not know the answer to
22 this. But when somebody leaves the bank did he --
23 do they have a report that they, you know, provide
24 to their successor to say, you know, these are the
25 accounts I'm working on, this is sort of the

1 current situation?

2 A. Yeah I, don't know for sure. I would
3 expect so, but I don't know for sure in that case.

4 Q. In the -- in the relationship business
5 I'm sure if somebody left and they were under you
6 and as a relationship manager you would say, well,
7 I want the successor to know the status of the
8 account, it's just common sense?

9 A. Sure.

10 Q. Do you know if Castlen Morris had any
11 interview with Mike Burke and told him all of the
12 details of that list?

13 A. I don't know.

14 Q. Did Mike Burke express alarm to you
15 that we shouldn't be financing site plans?

16 A. He ex -- he expressed alarm that we
17 had these monies out and there are shelters tied
18 to them.

19 Q. Did he indicate to you that I've never
20 heard of a bank financing site plans, what are you
21 talking about?

22 A. Yeah. No, he didn't say anything like
23 that.

24 Q. And did -- did you tell me that you
25 all typically did not finance purchase orders?

1 A. Correct.

2 Q. And did he express any alarm that
3 we've got all these purchase orders we're
4 financing, too?

5 A. No.

6 Q. What is his background?

7 A. I don't know.

8 Q. But he was taking over for Castlen
9 Morris?

10 A. Yes.

11 Q. Who would Castlen Morris have reported
12 to?

13 A. I'm not sure.

14 Q. Do you know who Mike Burke reported
15 to?

16 A. I can't recall at this time, no.

17 Q. Was he more senior in experience than
18 Castlen Morris?

19 A. I don't know.

20 Q. What -- by age, do you think he's
21 older than Castlen Morris, about the same age, or
22 younger?

23 A. I don't know.

24 Q. Okay. Did he have anybody with him
25 when he came over?

1 A. No.

2 Q. Did he have other accounts that he was
3 seeing?

4 A. Not that I'm aware of in the area.

5 Q. I guess if he's the factoring side and
6 this is the only factoring account that y'all had?

7 A. No, we had other factoring accounts.
8 I don't know how many other accounts he worked
9 with.

10 Q. I see. But you didn't have any other
11 factoring account?

12 A. No.

13 Q. Okay. So do you recall, you know,
14 typically if you go out of town and you try to be
15 efficient and you say I'm going to meet with Jim
16 on one account and I'm meeting with Molly on
17 another account. Was he doing that or this was
18 just a --

19 A. I don't know. I just know we arranged
20 a meeting with Skywaves and that's what we -- we
21 did.

22 Q. Okay. After that meeting did you have
23 any further involvement with Skywaves?

24 A. Yes.

25 Q. Okay. And what was that?

1 A. Well, normal. There was certainly
2 communication about the situation --

3 Q. Well, let me ask you something
4 specifically.

5 A. -- specifically.

6 Q. Yeah, that might be easier for you.
7 Do you recall that after the meeting with Mike
8 Burke and in the audit that you were told that it
9 was going to be a default letter? Do you remember
10 that?

11 A. We were -- yes.

12 Q. Okay. Did you express any opinions
13 about whether you thought there should be a
14 default letter or not?

15 A. I don't recall.

16 Q. Well, it looks like if you're the
17 relationship manager and there's a new guy taking
18 over on the factoring side and you have agreed for
19 the bank to factor site plans and purchase orders
20 that you would at least offer an opinion about
21 whether there should be a default letter?

22 A. Yeah. Well, what was happening in
23 that timeframe very close together was the
24 realization that we had monies out there tied to
25 site plans that weren't -- that there were no

1 shelters constructed for and also the audit that
2 we'd received in very close proximity to that
3 illustrating the problems with the company not
4 turning over cash to BB&T from their clients that
5 they were supposed to per their agreement.

6 We were also I believe in that same
7 time period received financial information that
8 showed a terrific decline in revenues and, in
9 fact, that showed a loss of \$1.4 million in 2007.

10 So there were a lot of concerns going
11 on at the same time. And based on those concerns,
12 yes, we thought it was time to address those
13 concerns.

14 Q. Did you agree that a default letter
15 should be issued?

16 A. Yes.

17 Q. And what was the reason that you
18 thought a default letter should be issued?

19 A. For the reasons I just mentioned: the
20 financial information that we'd received, the fact
21 that we had advances out there and no shelters
22 constructed, the fact that money wasn't being
23 remitted to BB&T from the payments they had
24 received on invoices.

25 Q. Well, as far as money being out there

1 for the -- for the shelters, that -- that was what
2 the deal was you had made, wasn't it, that you
3 were going to advance them on site plans?

4 A. Right, to construct shelters for those
5 sites.

6 Q. Was there any requirement that when
7 they were drawing down funds on site plans that --
8 that the funds couldn't be used for general
9 operating purposes?

10 A. No. They were supposed to be used for
11 specific shelters for those specific sites.
12 That's the reason we had the spreadsheet, and that
13 was Ron's request.

14 Q. And where is that in writing?

15 A. It -- it's just evidenced by the
16 spreadsheet that Ron gave us and the verbal
17 conversations that we had.

18 Q. And are you -- you're a fairly
19 prolific memo writer, aren't you?

20 MS. CHERRY: Object to form.

21 THE WITNESS: No, I don't think so, but
22 I try and...

23 BY MR. LINTON:

24 Q. You try to document things, don't you?

25 A. Yes.

1 Q. All right. Have you ever in your
2 history with BB&T had a credit relationship that
3 was as unusual as financing up to whatever it was,
4 \$3-and-a-half million, for site plans?

5 MS. CHERRY: Objection to form.

6 BY MR. LINTON:

7 Q. Go ahead.

8 A. The factoring relationship that we had
9 with Skywaves evolved from -- into an agreement
10 that also included purchase orders and site plans.

11 Q. Tell me what that agreement was. I
12 know that 65 percent of the potential site plan
13 would be advanced by you, right?

14 A. Right.

15 Q. And when was that payment due?

16 A. When it was converted to a purchase
17 order and invoice.

18 Q. Well, do you mean before the invoice
19 is paid?

20 A. No. It -- it's -- you know, it would
21 have been due when the site plan was converted
22 into a purchase order and the purchase order to an
23 invoice.

24 Q. Are you saying that Skywaves owed you
25 that 65 percent once they got an invoice -- once

1 they sent an invoice to General Dynamics?

2 A. No. They owed it to us when we
3 advanced it.

4 Q. But it wasn't due when you advanced
5 it, was it?

6 A. No.

7 Q. I'm trying to figure out when that
8 was --

9 A. Yeah.

10 Q. -- when they were required under your
11 contract to repay you.

12 A. Yeah, the requirement --

13 MS. CHERRY: Object to form.

14 THE WITNESS: Okay. They -- they were
15 expected to pay it back once the purchase order
16 for that site was received by Skywaves and then
17 turned into an invoice and the monies from that
18 invoice would be paid out.

19 BY MR. LINTON:

20 Q. Didn't they have 60 days from the date
21 that they received payment?

22 A. No.

23 Q. Did you ever have any discussion with
24 Ron about that?

25 A. No.

1 Q. With John?

2 A. No.

3 Q. With Castlen?

4 A. No.

5 Q. When they were financing the site
6 plans with you were checks to be made payable to
7 BB&T?

8 A. When we were financing -- if the site
9 plans had -- had turned into purchase orders and
10 the purchase orders had turned into invoices and
11 General Dynamics had sent payment, they were to
12 send it to BB&T's post office box.

13 Q. Was that done?

14 A. Not in the case of the site plans,
15 unfortunately, because I never converted it.

16 Q. But when payments were received you
17 were aware that payments were being received
18 directly by Skywaves, weren't you?

19 A. That was brought to my attention by
20 Castlen from time to time and that -- we addressed
21 that situation to try and correct that.

22 Q. How did you address it?

23 A. Primarily through Castlen's
24 interaction with John Voytko about, you know, this
25 is an unacceptable practice, we need to get the

1 cash sent to us, if it doesn't get sent to us you
2 need to remit to us immediately.

3 Q. And that component of this
4 relationship was dealt with by Castlen as opposed
5 to you?

6 A. That's correct, the monitoring of it.

7 Q. Did you ever have any discussion with
8 Ron or John where you said we cannot have these
9 checks made payable to you to Skywaves?

10 A. Not about checks made payable to
11 Skywaves, no.

12 Q. Well, when I say checks I'm talking
13 about they -- they're customers?

14 A. Uh-huh.

15 Q. Some of them would be issuing checks
16 to Skywaves. You were familiar with that?

17 A. I was made aware that checks would
18 come in to Skywaves from the customers from time
19 to time, but they needed to be remitted to us.

20 Q. Did you ever tell Ron or John that
21 it's not acceptable to have checks come directly
22 to Skywaves?

23 A. What I remember telling them is -- and
24 this is primarily through Castlen.

25 Q. I'm -- I'm asking about what you did.

1 We'll get to him.

2 A. Yeah.

3 Q. I want -- I want to know if you ever
4 told Ron or John, you're the relationship manager,
5 do not have your customers issue checks to
6 Skywaves. Did you ever tell them that?

7 A. Not that I recall.

8 Q. You were familiar with the fact that
9 the factoring agreement requires that they be sent
10 directly to BB&T, aren't you?

11 A. Yes.

12 Q. And, but it was okay with you because
13 of the overall relationship for them to operate
14 the way they had?

15 A. No. It was okay with us for them to
16 remit payment to us as soon as they got it. If it
17 didn't come to us, it was supposed to -- and it
18 went to them, it needed to be given to us
19 immediately.

20 Q. Did they have to endorse the check or
21 could they deposit it?

22 A. I'm not sure how they would do that.

23 Q. I mean, to be acceptable to the bank.
24 If they were depositing it it was going into a
25 BB&T account?

1 A. Yeah. I would assume Castlen would
2 then debit the account.

3 Q. So he had the ability to debit
4 accounts?

5 A. Yes.

6 Q. Without any consent from -- from
7 Skywaves?

8 MS. CHERRY: Object to the form.

9 BY MR. LINTON:

10 Q. Did he have to get consent from
11 Skywaves to debit their account?

12 A. I don't know.

13 Q. Did you ever have any discussions with
14 John or Ron about having a float; that is, where
15 they deposit receipts into the BB&T account and
16 they use up those funds for up to 60 days?

17 A. No.

18 Q. Did you ever have any discussions
19 about the concept of a float?

20 A. No.

21 Q. What -- what is a float?

22 A. In my mind a float is kiting checks,
23 when you're writing checks off of funds you don't
24 have in your account.

25 MS. CHERRY: John, when you get to a

1 stopping point.

2 MR. LINTON: Sure.

3 VIDEOGRAPHER: Off the record at 10:37
4 a.m.

5 (A recess was taken.)

6 VIDEOGRAPHER: We are back on the
7 record at 10:53 a.m.

8 BY MR. LINTON:

9 Q. Mr. Edahl, are you certain that you
10 threw your notes away?

11 A. Yes.

12 Q. And was that at your office?

13 A. Yes.

14 Q. And that was last night?

15 A. Yes.

16 Q. And has the trash been taken out?

17 A. Yes.

18 Q. What -- what time did you throw them
19 in the trash?

20 A. Probably around 5:00 o'clock.

21 Q. And was anybody with you?

22 A. No.

23 Q. Anybody ask you to throw them out?

24 A. No.

25 Q. Did you scan them?

1 A. No.

2 Q. There's no record of them?

3 A. That's correct.

4 Q. What was your purpose in doing that?

5 A. I felt they weren't relevant. And I
6 just jotted down notes to myself during the
7 deposition that I sat in on, and -- and I said,
8 well, I won't need these anymore and threw them in
9 the trash.

10 Q. Did you review them?

11 A. No.

12 Q. So after you made your notes they just
13 stayed with you, you didn't even look back over
14 them?

15 A. No. I was making notes as I went.
16 And last night I, at the office, I came across
17 them in my folder and I said, well, don't need
18 these anymore.

19 Q. Do you recall anything that you put in
20 your notes?

21 A. Frankly, not a whole lot at this point
22 because I didn't consider them relevant, so I
23 threw them away.

24 Q. Why were you taking notes if you
25 didn't consider them relevant?

1 A. I didn't -- I considered them -- I was
2 taking notes at the time because certainly wanted
3 to, you know, make notes to myself as testimony
4 was given, and then at the end of the process they
5 weren't relevant anymore, so.

6 Q. I want to move back to when Mr. Burke
7 came over here in January.

8 A. Uh-huh.

9 Q. I think it was maybe January the 19th.
10 Does that sound right?

11 A. Could be. Somewhere in that
12 timeframe. I don't recall the exact date.

13 Q. And you indicated you didn't meet with
14 him beforehand?

15 A. That's correct.

16 Q. And did not send him any information
17 beforehand that was in writing that you know of?

18 A. No, not that I remember.

19 Q. And when you had the meeting with Mr.
20 Konersmann and Mr. -- with John, it was just the
21 four of y'all?

22 A. As far as I remember.

23 Q. And did Mr. Burke express surprise
24 that I didn't know we were financing on site
25 plans?

1 A. No, not -- not that I recall.

2 Q. Well --

3 A. I think he expressed surprise -- I was
4 trying to remember from the meeting -- that we had
5 these advances outstanding and no shelters.

6 Q. Well, essentially when you were
7 advancing on the site plans this was a working
8 capital at that point, wasn't it?

9 A. A working capital that was to be used
10 for the construction of those shelters on those
11 sites.

12 Q. And where is it documented that --
13 that the funds had to be used on the shelters as
14 opposed to expansion and -- and paying salaries,
15 et cetera?

16 A. Yeah, that was just the understanding
17 that Ron and I had based on all of the other
18 advances we'd made over the last two-and-a-half
19 years, that each advance was tied into a specific
20 unit that was to be constructed, invoiced, and
21 collected.

22 Q. All right. Now, you weren't -- you
23 indicated Mr. Denning approved this?

24 A. Yes.

25 Q. So he both approved the purchase order

1 arrangement and he also approved the site plan
2 arrangement?

3 A. Yes.

4 Q. And so that I'm clear on it, the site
5 plans were designated as potential sites with no
6 specified schedule of when those orders would be
7 placed; is that right?

8 A. That's right.

9 Q. Okay. And that is a working capital
10 loan in banking terms, isn't it?

11 A. I guess could be construed that way.

12 Q. Well, didn't -- and that was the way
13 you considered it?

14 A. No. I considered it that the funds
15 would be used, again, to build specific shelters
16 for the specific sites that we were advancing.

17 Q. Well, and is there any reason to
18 believe that they were used for corporate
19 purposes? For example, payroll, expansion,
20 materials?

21 A. Yeah, I don't know what they ended up
22 being used for.

23 Q. Did you ever make any investigation?

24 A. I didn't personally, no.

25 Q. Did you ever ask Ron or John for any

1 report regarding the use of those funds that were
2 site plan funds?

3 A. No, not regarding use of funds.

4 Q. Okay. But -- but you claim that the
5 bank had restricted them to use that simply for
6 the construction of site specific facilities; is
7 that right?

8 A. That's right.

9 Q. And there's not -- not a piece of
10 paper in the whole bank file that says that, is
11 there?

12 A. Not that specific sentence, not that
13 I'm aware of.

14 Q. Well, what in -- in the bank records
15 that you have seen as the relationship manager
16 that tells Skywaves that the funds that were
17 advanced for site plans have to be used for
18 materials? Is there anything?

19 A. There is nothing now in writing that
20 I'm aware of that's a document. What is in
21 writing is the site plans, the advances against
22 those site plans, and two-and-a-half years of
23 experience of every single advance that had ever
24 been made under our factoring agreement was tied
25 to the specific shelter.

1 Now what they used those funds for, we
2 assumed they were using them to, you know, build
3 shelters.

4 Q. And do you recall lying to Mike Burke
5 about not having knowledge of the site plans?

6 A. I'm sorry?

7 Q. Do you recall lying to Mike Burke and
8 telling him you -- you didn't know that there was
9 funding on site plans, you thought it were all
10 purchase orders?

11 A. At that time when we discovered that
12 there were purchase orders, that there were
13 advances out there under our factoring agreement
14 that weren't tied to shelters, again in
15 combination with the terrible financial results
16 that were coming in, and we were in pretty much
17 crisis mode at that point in the company's future.

18 They were again losing a lot of money.
19 They were not remitting funds to the bank when
20 they received them. Their payables were way
21 behind. It -- at that point in time my -- I was
22 pretty much focussed on we got money out here and
23 no shelters tied to the financial condition of the
24 company. It was deteriorating significantly and
25 rapidly. And at that point in time, you know, I

1 couldn't -- I didn't recall the -- the detail of
2 the site plan financing.

3 Q. I'm going to ask the question again.
4 Did you lie to Mike Burke and tell him that you
5 were unaware that there was site plan financing?

6 A. No, I did not lie to Mike Burke.

7 Q. Did you tell him that you weren't
8 aware of the site plan financing?

9 A. We didn't discuss site plan financing.

10 Q. You and Mike Burke didn't discuss
11 that?

12 A. No, not at that point.

13 Q. What did -- did you ever discuss it
14 with Mike Burke?

15 A. Yeah, I'm sure I did. I don't know
16 exactly when.

17 Q. Mr. Edahl, do you recall saying that
18 to Walt Denning, Frank Capel, and Mike Hennessy
19 that neither you or I had any idea that the GD
20 NYST purchase orders funded from July through
21 October were not documented and funded exactly
22 like the other purchase orders we had received and
23 funded over the last two years?

24 A. Yes, I do recall that. And they
25 weren't because no shelters were constructed.

1 Q. Are you -- are you trying to tell me
2 that you told Mike Burke that the site plan
3 funding had been approved so there's nothing
4 unusual about the site plan funding?

5 A. No, I'm not saying that.

6 Q. Did you tell Mike Burke, look, we --
7 we got off the factoring agreement and made a new
8 agreement where we're going to finance purchase
9 orders? Did you tell him about that?

10 A. No. That was in the record.

11 Q. Where was it in the record?

12 A. Various agreements that had been made
13 and memorialized.

14 Q. Okay. Did you tell Mike Burke that
15 thereafter we decided to finance site plans?

16 A. No.

17 Q. Did you lead him to believe that you
18 had no knowledge that that there was funding of
19 site plans?

20 A. No. At that point in time I do not
21 recall that the agreement to fund site plans.
22 Again, that was -- it was so much going on at that
23 point in time, a lot of things to deal with that.

24 Q. Do you recall being involved in the
25 preparation of material for a serious -- serious

1 incident report?

2 A. I'm sorry?

3 Q. Do you recall being involved in
4 filling out the serious incident report?

5 A. I don't recall that at the moment, no.

6 Q. Do you recall any statement that you
7 made regarding the site plan financing?

8 A. There are some other memos I think or
9 as we've moved through the process about trying to
10 address the situation that we mentioned that, yes.

11 Q. Do you recall claiming that you did
12 not have knowledge of the site plan financing?

13 A. Yes, I do.

14 Q. Was that truthful?

15 A. At the time it was.

16 Q. Explain that to me, because I thought
17 you -- you had testified that you approved the
18 site plan financing and that Mr. Denning approved
19 the site plan financing; is that correct?

20 A. Yes.

21 Q. And then you've gone into testimony
22 about your understanding of what the terms of that
23 said site plan financing?

24 A. Uh-huh.

25 Q. Right?

1 A. Yeah.

2 Q. Now, in January or February of 2008
3 did you intend to convey to your superiors that
4 you didn't know about the site plan finance --
5 financing and those were supposed to be purchase
6 orders and that these were crooks?

7 A. No.

8 MS. CHERRY: Object to form.

9 THE WITNESS: Not my intentions, and I
10 didn't convey that either.

11 BY MR. LINTON:

12 Q. Okay. What were you trying to convey
13 when you were filling out information for your
14 superiors to rely on regarding the site plan
15 financing?

16 MS. CHERRY: Object to the form.

17 THE WITNESS: What I remembered, I was
18 trying to convey the situation as I remembered it
19 at that time.

20 BY MR. LINTON:

21 Q. At the time did you remember that site
22 plan financing had been approved by you and Mr.
23 Denning?

24 A. No, at the time I didn't. That
25 recollection came as we were preparing for the --

1 the deposition process and I've had a chance to
2 look at all of the information that became
3 available.

4 Q. I see. So what you're telling me is
5 that the site plan financing had been approved by
6 you and Mr. Denning and it had been administered
7 by Cast -- by Castlen Morris?

8 A. Uh-huh.

9 Q. But in January when Mr. Burke came
10 over you had forgotten about that?

11 A. That's correct.

12 Q. And later when you filled out a
13 serious incident report you still had forgotten
14 about it?

15 MS. CHERRY: Object to the form.

16 BY MR. LINTON:

17 Q. Let me go ahead and rephrase that.
18 When did you first recall, oh, my God, I've made a
19 mistake, we did approve that site plan financing?

20 A. Yeah, as Ron was giving his testimony
21 last week.

22 Q. And did you make a note about that?

23 A. I don't recall.

24 Q. Come on now. This --

25 A. I don't.

1 Q. You don't recall whether you made a
2 note to yourself that there -- we did have site
3 plan financing?

4 A. Yeah, I know I made a mental note and
5 then -- about that and --

6 Q. So his testimony refreshed your
7 recollection?

8 A. Yes, it did.

9 Q. Okay. And you're clear as you can be
10 on it today that it had been approved?

11 A. Yes.

12 Q. At what point did you become
13 disengaged from Skywaves's account?

14 A. Probably by the time of the demand
15 letter had been issued, the account would have
16 been transferred from the bank to our asset
17 resolution group.

18 Q. Were you involved in the discussions
19 when there were proposed workouts?

20 A. A couple of them. I think I was
21 involved in a meeting that -- at Skywaves as --
22 during that process with I think Mike and some
23 others.

24 Q. When you had your recollection
25 refreshed last week, did you notify anybody at the

1 bank? Did you notify anybody at the bank, you
2 know, what he's saying is true and I may have
3 misled y'all unintentionally?

4 A. I notified Molly and -- and Molly
5 notified Mike.

6 Q. Have you had any discussions with Mike
7 about that?

8 A. Yes.

9 Q. Tell me about that.

10 MS. CHERRY: I'm going to instruct him
11 not to answer to the extent counsel was involved
12 in those communications.

13 So if you can answer the question
14 without revealing any discussions where counsel
15 was involved, you can. Otherwise...

16 MR. MENDOZA: I also would like to ask
17 for a clarification, which Mike. There are a
18 couple Mikes.

19 BY MR. LINTON:

20 Q. Good point. I'm assuming you were
21 talking about Mike Hennessy?

22 A. Yes. Well, all our -- any
23 conversation that related to that was in the
24 presence of -- of counsel. So I don't know how to
25 respond to your question.

1 Q. Have you been asked to prepare any
2 written statement by Mr. Hennessy?

3 A. No.

4 Q. Or anybody at the bank?

5 A. No.

6 Q. Have you looked at the serious
7 incident report that this bank filed?

8 A. No, I don't think I have.

9 Q. When you were discussing the Skywaves
10 situation with Mr. Burke did you tell him that you
11 knew from time to time that checks had been
12 received directly by Skywaves as opposed to being
13 to BB&T?

14 A. No, not that I recall.

15 Q. Do you recall telling him that from
16 time to time you were aware that Skywaves
17 deposited checks and would remit them and -- but
18 it may be 30 days?

19 A. No, I don't recall that at all.

20 Q. What do you recall about how you
21 introduced Mr. Burke to the situation at Skywaves?

22 A. Primarily we set up the meeting to
23 meet with them and the general parameters of the
24 credit exposure that we had and -- and give him a
25 chance to meet the management out there.

1 Q. Did you express confidence in
2 management?

3 A. I may have. I don't recall for sure.

4 Q. After that meeting do you recall
5 calling Ron Konersmann and talking with him?

6 A. Not specifically at this point in
7 time.

8 Q. Well, do you remember talking with him
9 and saying, Ron, we're going to send you a default
10 notice, but don't worry about it, it's a slap on
11 the wrist, everything will get worked out?

12 A. No, I don't recall that. What I do
13 recall is on the 18th, and I think that's in my
14 call log, I talked to Ron and John on the phone,
15 let them know that we were in a serious situation
16 and a demand letter would be coming, hopefully
17 that -- well.

18 Q. Do you remember in that conversation
19 saying something to the effect that this is really
20 a slap on the wrist, we -- we'll have everything
21 worked out?

22 A. What I remember is that --

23 Q. Do you remember that?

24 A. No, not -- not at all. My -- my
25 recollection of the phone call is that, you know,

1 it was a serious situation, that a demand letter
2 wasn't coming, we want -- we still want to work
3 with you. And in fact, we did.

4 We could have immediately demanded the
5 loan and exercised all of the rights under the
6 agreements, but all we chose to do at that point
7 was to stop funding under the agreement and give
8 them time to try and work something out.

9 Q. And in looking at your personnel file
10 which I -- which as I indicated I only did
11 briefly, I didn't see any reference in 2008's
12 review to Skywaves. Was -- was there any?

13 A. Not that I -- I don't remember. That
14 was six -- five, six years ago, and I haven't
15 reviewed that.

16 Q. Have you received any, you know, memo
17 to the file that, you know, you mishandled this
18 account?

19 A. Not that I'm aware of.

20 Q. In fact, I guess you had received a
21 bonus that year, didn't you, 2008?

22 A. If I did it would have been based on
23 2007 results. My recollection is that there was
24 no bonus the following year because of the charge
25 off that was taken.

1 Q. That was really just figuring into the
2 matrix?

3 A. Correct.

4 Q. Did anybody come to you and say, Jim,
5 we've got to have a serious conversation, the bank
6 may have lost a good bit of money because you
7 weren't tending to business? Did -- did you have
8 any conversation like that?

9 A. We had conversations of the
10 progression of the unusual nature of the credit,
11 that certainly in hindsight that may not be
12 something we do again. Obviously, took a large
13 loss on it, and we -- and tried to use it as a way
14 to, you know, how do we improve next time.

15 Those are general discussions among
16 all of the folks that were involved, as typically
17 happens when you have a large charge off.

18 Q. Are you involved in any factoring now?

19 A. No.

20 Q. All right. Is Mr. Denning?

21 A. Not that I'm aware of.

22 Q. And -- and how about Mr. Burke, is he
23 still in the factoring?

24 A. I'm not sure.

25 Q. Does he still work for the bank?

1 A. I'm not sure either on that.

2 Q. But Denning does?

3 A. Yes.

4 Q. Why don't we just go over the
5 different kinds of credit that were extended while
6 you were the relationship manager. Could -- could
7 you identify those for me?

8 A. Off the top of my head, I'll try. We,
9 of course, had the factoring agreement. That was
10 the primary credit at Skywaves. I know we had two
11 loans I think over time to KWK, LLC. Excuse me.
12 The first one was a line of credit that later was
13 converted to a term loan that was secured by real
14 estate, income-producing real estate owned by KWK,
15 and the proceeds of that income-producing property
16 serviced the debt.

17 I think it was KWK's intention to give
18 that money to Skywaves to help them in the growth
19 of their business. And I think later on we may
20 have done an equipment loan to KWK, who owned the
21 equipment, that some equipment that was used by
22 Skywaves.

23 Q. In each of those relationships did you
24 find that the debtor was forthcoming and
25 forthright?

1 A. Yes, in the KWK and -- and the fact
2 that -- yes. Uh-huh.

3 Q. Can you explain to me how you could
4 have financed so much money on these site plans
5 and had a lapse of memory that that had been
6 approved by Mr. Denning and you and -- and that
7 lapse lasted for almost five years?

8 A. Well, when you're in a crisis
9 situation like we were in January of 2008 with a
10 lot of things happening and a lot of information
11 flowing in that was negative, I mean, especially
12 the financial results and the audit, you -- you
13 know, I think -- you know, I don't think you --
14 one's memory is as clear in a crisis situation as
15 it could be when you've had a chance --

16 Q. Well, the crisis --

17 A. -- past the event to --

18 Q. The crisis abated at some point. And
19 what I'm wondering why in the last three or four
20 years it hasn't dawned on you that, wait a minute,
21 I made a mistake, we had approved all of the site
22 financing and I told my superiors something that
23 was inaccurate. I'm just trying to understand why
24 it takes hearing Mr. Konersmann's testimony last
25 week to refresh your recollection.

1 A. Yeah, because there hasn't been the --
2 there hasn't been an opportunity for my
3 recollection to be refreshed until this particular
4 point.

5 Q. Well --

6 A. Once the loan was charged off and --

7 Q. I'm guess when the lawsuit was filed
8 and you went through the complaint with Molly or
9 somebody at Nexsen Pruet that you went through
10 those allegations?

11 A. Uh-huh. Yes.

12 Q. And that didn't refresh your
13 recollection, oh, yeah, we did approve these site
14 plan financing?

15 A. No, not at that time.

16 Q. And when you -- as your preparation,
17 you said ten or twelve hours for your deposition,
18 was that after Ron's testimony?

19 A. Yes.

20 Q. Did you have any preparation prior to
21 his testimony?

22 A. No.

23 MR. LINTON: Molly, I think we can take
24 a short break and we may just request that we have
25 an early lunch and I can determine whether or not

1 there's much more that we need to ask, if that's
2 okay with y'all.

3 MS. CHERRY: Sure.

4 VIDEOGRAPHER: Off the record at 11:20
5 a.m.

6 (A recess was taken.)

7 VIDEOGRAPHER: We are back on the
8 record at 11:39 a.m.

9 BY MR. LINTON:

10 Q. Mr. Edahl, you mentioned that the bank
11 had a huge loss as a consequence of the credit
12 extended. Do you know how much that was?

13 A. Not exactly. It was between 1 and \$2
14 million I believe.

15 Q. Where did that information come from?

16 A. There's a charge-off report, I'm sure,
17 that would have the exact number on it.

18 Q. But you think that's the net loss to
19 the bank after liquidation of all of the assets?

20 A. I believe so. I don't know for sure.

21 Q. During the meeting that you had with
22 Mr. Burke, Ron, and John, do you remember
23 discussion about the site plan funding and what
24 those proceeds had been used for?

25 A. No, not specifically.

1 Q. Do you remember saying anything to
2 them that in your judgment the funds had to be
3 used for purchasing materials for the improvements
4 at a particular site?

5 A. I don't recall saying that
6 specifically one way or the other at that meeting.

7 Q. How about Mr. Burke, did he say
8 anything about that?

9 A. I don't know.

10 Q. Did -- did you thereafter ever say
11 anything to Ron about I thought the funding of the
12 site plans was simply to buy materials for the
13 particular site?

14 A. There is a -- January 17th I believe
15 Ron met with Frank Capel and myself and that
16 question was addressed, why isn't, you know, the
17 site -- money wasn't used for to build these sites
18 and Ron said, no, they were used for working
19 capital.

20 Q. Okay. And at that time did you say,
21 well, Ron, they couldn't be used for working
22 capital, it had to be used to purchase materials
23 for a particular site? Did you say that?

24 A. No. No.

25 Q. You didn't confront him about in your

1 mind there's been a misuse of the funds?

2 A. No, that wasn't discussed at that
3 meeting.

4 Q. Well let me ask you this question. In
5 your mind was that a misuse of funds, that is to
6 use it for general corporate operating capital?

7 A. Yeah. I thought that the funds needed
8 be used for construction of the sites.

9 Q. And did you ever send any memo to Ron
10 to -- to say this is part of our agreement?

11 A. Not at that time.

12 Q. Is there anything in writing that says
13 that's part of your agreement?

14 A. Not that I'm aware of.

15 Q. Okay. And you said not at that time.

16 A. Well, not at any time that I'm aware
17 of.

18 Q. Okay. I'm going to read you something
19 and ask if you recall writing this: In July 2007
20 and over the next three months BB -- BB&T factors
21 advanced \$1,262,313 against a total of 36 General
22 Dynamics purchase orders. Castlen Morris, the
23 BB&T factors officer, left BB&T in November. A
24 new BB&T factors account officer, Mike Burke, and
25 I called on Skywaves in early January. In going

1 over the AR and purchase order ledgers on that
2 call with the company we learned that there were
3 no purchase orders for the General Dynamics
4 advances mentioned above but that Castlen had
5 advanced on 36 site referenced in a General
6 Dynamics contract with the State Police of New
7 York.

8 Per the terms of the contract, General
9 Dynamics is to deliver several hundred cell tower
10 buildings constructed by Skywaves over the next 24
11 months to various sites throughout New York. Per
12 Skywaves, they were expecting General Dynamics to
13 deliver purchase orders for the sites advanced
14 again -- against in the summer but that the
15 project was delayed and Skywaves admitted using
16 the funds for purposes other than constructing
17 units for this contract.

18 Do you recall writing that?

19 A. I think so. Can I see that document?

20 MS. CHERRY: No.

21 THE WITNESS: Okay. It sounds
22 familiar.

23 BY MR. LINTON:

24 Q. Do you recall telling your superiors
25 that these funds were restricted to purchase of

1 materials for site specific?

2 A. No, not specifically.

3 Q. When this was written had you
4 undergone this lapse of memory about the site
5 plans being funded?

6 A. I don't know when that was written.

7 Q. Well, it was in, let's say it was in
8 January of 2008.

9 A. Yes, that would be consistent.

10 Q. Uh-huh. All right. Now you mentioned
11 that Frank, what's his last name?

12 A. Capel.

13 Q. Well, you did mention Frank Capel.
14 But who is the credit officer who approved the
15 site plans?

16 A. Walt Denning.

17 Q. Walt Denning. I think I saw where he
18 was executive vice president of BB&T back then?

19 A. Yes.

20 Q. Is he still executive vice president?

21 A. As far as I know.

22 Q. And how did he communicate his
23 approval of the site plan financing?

24 A. It was verbally.

25 Q. Okay. Over the phone?

1 A. Yes.

2 MR. LINTON: Molly, I've got this email
3 that -- why don't you just look at it. It's
4 short. And I just want to ask him about it, but
5 you want him to have a copy of it.

6 MS. CHERRY: Yeah, I know what email
7 that is.

8 BY MR. LINTON:

9 Q. It's an email dated January 22 from
10 you to Walt Denning, Frank Capel, and Michael
11 Hennessy. After thanking Mike for the update you
12 say that you're copying the people I just
13 identified.

14 It says: As we discussed Friday,
15 neither you or I had any idea that the GD North
16 Carolina state purchase orders funded from July
17 through October were not documented and funded
18 exactly like the other purchase orders we had
19 received and funded over the last two years from
20 General Dynamics, Nextel, Verizon, et cetera.

21 So at that time you had no
22 recollection of the funding? When you -- when --
23 when you sent this email to Mr. Denning did you
24 have any conversation with him where he said, oh,
25 yeah, I remember it or, no, I didn't remember it

1 either?

2 A. No.

3 Q. You didn't have any conversations?

4 A. No.

5 Q. How about with Capel, did you have any
6 conversation with him about?

7 A. With who?

8 Q. With Capel, about the fact that
9 neither you or Denning recall?

10 A. With whom, I'm sorry? With Frank?

11 Q. Right.

12 A. Capel.

13 Q. Capel.

14 A. No.

15 Q. With Mr. Hennessy?

16 A. No.

17 Q. Did everybody just ignore your email?

18 I mean, you -- you're sending an email to these
19 people who are now in charge of this account and
20 telling them that you and Mr. Denning have no
21 recollection of the site plan funding being
22 approved, and you're tell me that nobody called
23 you to say, oh, it was approved or -- what
24 happened?

25 A. At that time I didn't have

1 recollection and I don't know about Mr. Denning
2 and his recollection.

3 Q. But he didn't call you to say, yeah, I
4 don't remember anything about this either?

5 A. No, he didn't call me.

6 Q. \$200,000 has been advanced on it?

7 A. He didn't call me that I recall, no.

8 Q. At any time up until now have you had
9 any discussion with Mr. Denning about whether he
10 recalls approving the site plan funding?

11 A. No.

12 Q. Have you talked with Mr. Denning about
13 Skywaves?

14 A. Probably not since 2008.

15 Q. Did you go over the complaint when
16 your answer was being submitted? The complaint is
17 the lawsuit in which you're named as a defendant.

18 A. Yes. Uh-huh. Yes.

19 Q. And have you ever had separate
20 counsel?

21 A. No.

22 Q. If you were me and wanted to establish
23 that Mr. Denning gave approval to you for the
24 funding of the site plans, what documents would
25 you look at?

1 A. I'm not sure I understand the
2 question, if I were you.

3 Q. Well, you're -- you're saying in that
4 email that Mr. Denning told you that he doesn't
5 have any recollection of having approved this.

6 A. I don't think I'm saying that in -- in
7 that email.

8 Q. Okay. Maybe I'm misunderstanding.
9 You're just saying that you don't have any
10 recollection?

11 A. That's correct.

12 Q. And you never have asked Mr. Denning
13 whether he does?

14 A. Not to my knowledge.

15 MR. LINTON: Unless you have anything,
16 that's all we have.

17 MS. CHERRY: Okay. I don't have any
18 questions.

19 MR. KEFALOS: Okay. That's it

20 VIDEOGRAPHER: This concludes the
21 video deposition of James Edahl. The time is
22 approximately 11:50 a.m. We are now off the
23 record.

24 (The deposition was concluded at 11:50
25 AM.)

SIGNATURE OF DEPONENT

DEPONENT: JAMES EDAHL
 DEPOSITION DATE: September 19, 2013
 REPORTER: ROXANNE M. EASTERWOOD, RPR
 CASE CAPTION: SKYWAVES I CORPORATION vs.
 BRANCH BANKING AND TRUST COMPANY, SUCCESSOR IN
 MERGER TO BRANCH BANKING AND TRUST COMPANY OF SC,
 A/K/A BB&T, AND JAMES EDAHL

(Please return both Signature of Deponent pages)

I, the undersigned, JAMES EDAHL, do hereby
 certify that I have read the foregoing deposition
 and find it to be a true and accurate
 transcription of my testimony, with the following
 corrections, if any:

PAGE	LINE	CHANGE	REASON
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SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: September 19, 2013
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A/K/A BB&T, AND JAMES EDAHL

PAGE	LINE	CHANGE	REASON
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JAMES EDAHL

Date

I, Roxanne M. Easterwood, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2015

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript, pages 1 through 103 is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 19th day of September 2013 at Charleston, Charleston County, South Carolina.

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2015

I N D E X

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STIPULATION	3	1
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REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

(No Exhibits Proffered)

EXHIBIT C

DUFFY & YOUNG LLC

96 BROAD STREET, CHARLESTON SC 29401

telephone 843-720-2044 facsimile 843-720-2047

ATTORNEYS AT LAW

September 25, 2013

Molly Hughes Cherry
205 King Street
Suite 400
Charleston, SC 29401

Rick Mendoza
1230 Main Street
Suite 700
Columbia, SC 29201

Dear Rick and Molly,

After the deposition of Mr. Edell, Rick advised that you were considering amending the answer or answers. I expect that we will consent to the amendment but of course we will need to look it over first.

We would like to take the depositions of the people listed below between October 30th and December 15th. We would like to video them and will take them whenever and wherever is most convenient to you, BB&T, Mr. Edall, and the witnesses. The consequences of the sequence of taking the witnesses are subordinate to completing the depositions in a timely fashion. I expect that each witness would not take more than four hours so that we could schedule two on any given day. We would prefer a long lunch break, say an hour and a half, between witnesses if two are scheduled in a day. Someone on our side will be available throughout the suggested period, and we would like to complete them before the Christmas Holiday season is in full thrust.

I believe we have requested personnel files of each of the requested deponents and would appreciate your advising when we can expect receipt of these documents.

I assume that you will want to take John's deposition. Please send a few dates which are convenient for you and we will do our best to have him available.

If you are going to amend the answer or answers, we would request that you do so by October 4th so that we can consider your position as we review the documents and prepare for depositions.

I think we need to have a conference regarding the privilege log and redacted documents. George and I are happy to come to your office for that conference and hope that it could be sometime during the week of October 7th.

jlinton@duffyandyoung.com

WWW.DUFFYANDYOUNG.COM

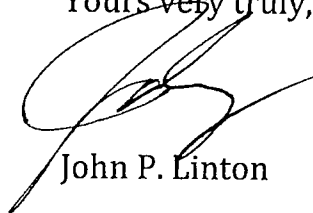
We will send you our concerns about your privilege log in advance of the meeting.

I am not going to be in the office until Monday, and may not have access to email after mid afternoon, but I imagine the others will. If there is anything we might discuss over the telephone, my mobile number is 843.343.4403.

Michael A. Sordillo, CPA
Michael Burke
Frank J. Caple
Michael Hennessey
Walter Denning
Tol Broome

With kindest regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to be 'J. P. Linton', written over the printed name.

John P. Linton

CC via email: George Kefalos, Andrew K. Epting, M. Dawes Cooke, Brian C. Duffy

THE STATE OF SOUTH CAROLINA
In The Supreme Court
No. 2012-205647

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas

Roger M. Young, Circuit Court Judge

Cases 2009-CP-10-07515, 2009-CP-10-07517,
2009-CP-10-07518 and 2010-CP-10-09959

2009-CP-10-07515

James J. Kerr, Crayton Walters, and J.T. Main, LLC, ...Appellants,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, ...Respondents.

2009-CP-10-07517

Ron Konersmann, ... Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, ...Respondents.

2009-CP-10-07518

John Voytko, ... Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, ...Respondents.

2010-CP-10-09959

Patricia Konersmann, ... Appellant,

v.

Branch Banking & Trust Company, Successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, ...Respondents.

RECEIVED

OCT 23 2013

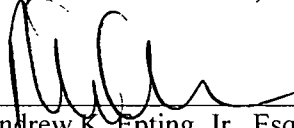
PROOF OF SERVICE

S.C. Supreme Court

I certify that I have served Appellants' Motion to Remand to the Honorable Roger M. Young or, in the Alternative, to Supplement the Record on Appeal by depositing a copy of it in the United States Mail, Postage prepaid, on October 22, 2013, addressed to their attorney of record as follows:

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