

Appendix
VO I IV

1 Q ABOUT MISREPRESENTATIONS THAT YOU HAD MADE, CORRECT?

2 A YES.

3 Q AND THEN YOU PLEAD GUILTY BUT AS OF MR. MORRIS' TRIAL
4 YOU WERE AWAITING YOUR SENTENCE, YOU HAD NOT BEEN
5 SENTENCED?

6 A THAT'S CORRECT.

7 Q AND YOU HAD HOPED THAT AT MR. MORRIS' TRIAL THAT YOUR
8 COOPERATION WOULD BE CONSIDERED FAVORABLY AND BY JUDGE
9 JOHNSON RENDERING YOUR SENTENCE, CORRECT?

10 A SURE.

11 Q NOW TODAY YOU HAVE BEEN SENTENCED, YOU GOT 8 YEARS?

12 A THAT'S RIGHT.

13 Q AND YOU ARE AT CAMPBELL WORK RELEASE?

14 A THAT'S CORRECT.

15 Q AND I BELIEVE THAT YOU WORK AT TGI FRIDAY'S OR
16 SOMETHING?

17 A I CAN'T DISCLOSE WHERE I WORK, I WORK AT AN OUTSIDE
18 JOB.

19 Q AND YOU HAVE A OUTSIDE JOB, YOU LEAVE THE PRISON
20 EVERY DAY AND GO TO WORK?

21 A FOUR DAYS A WEEK.

22 Q AND THE, YOU ARE COMING UP, YOU HAVE ONE PAROLE
23 HEARING AND YOU WERE DENIED, CORRECT?

24 A THAT'S RIGHT.

25 Q YOU HAVE GOT ANOTHER PAROLE HEARING COMING UP?

1 A IN THE SPRING.

2 Q SPRING, MAY?

3 A YES.

4 Q AND YOU ARE HOPEFUL THAT YOUR TESTIMONY HERE TODAY
5 WILL BE FAVORABLY CONSIDERED BY THE PAROLE BOARD?

6 A I CERTAINLY HOPE SO, YES.

7 Q AND THAT YOUR COOPERATION HERE TODAY WILL BE KNOWN TO
8 THE PAROLE BOARD BY THE ATTORNEY GENERALS OFFICE?

9 A SURE, I HAVE COOPERATED ALL ALONG FROM DAY ONE.

10 Q AND THAT THERE IS AN OPPORTUNITY FOR YOU TO GET OUT
11 OF PRISON THIS ~~SPRING~~ SPRING IF THE PAROLE BOARD GRANTS YOU
12 PAROLE?

13 A YES.

14 Q NOW YOU TESTIFIED THAT, LET'S BACK UP. DID YOU NOT
15 START LIEING TO INVESTORS IN 1998?

16 A I DON'T FEEL LIKE I DID BECAUSE IN 1998, AS I
17 REPORTED EARLIER, HOMEGOLD PRODUCED SOME VERY
18 SOPHISTICATED FINANCIAL STATEMENTS THAT ENABLED ME TO KEEP
19 UP WITH WHAT THEY WERE DOING TO REDUCE EXPENSES AND CREATE
20 CASH IN ORDER TO GET THEMSELVES IN BETTER SHAPE. I WAS
21 ABLE TO TRACK THAT FROM MONTH TO MONTH IN MINUTE DETAIL.

22 Q AND YOU WOULD AGREE THAT AT ANY POINT IN TIME DURING
23 THIS PERIOD STARTING '98 UP TO 2003 YOU HADN'T TOLD THE
24 FIRST PERSON WHO WOULD COME INTO CAROLINA INVESTORS DOORS
25 THAT, I AM WORRIED THAT YOUR MONEY IS NOT SAFE, THERE

1 WOULD OF BEEN AN IMMEDIATE RUN ON THE BANK?

2 A MAYBE NOT BUT I GUARANTEE YOU THERE WOULD OF BEEN
3 ONE, YES.

4 Q AND IT WOULD OF CLOSED OUT?

5 A YES.

6 Q OUT OF BUSINESS?

7 A POSSIBLY, YES.

8 Q AND IN FACT YOU FELT THAT RISK EXISTED TO SUCH A
9 DEGREE THAT THE DAY MR. SHEPPARD CAME ON BOARD AT HOMEGOLD
10 THAT YOU CHOSE NOT TO TAKE A BETTER JOB, A HIGHER PAYING
11 JOB BECAUSE YOU FELT THAT IF YOU HAD LEFT ON THE HEELS OF
12 THE MERGER THAT THE WORD WOULD OF GOTTEN OUT IN THE
13 COMMUNITY AND THE VOTE OF NO CONFIDENCE BY LARRY OWEN,
14 THERE WOULD OF BEEN A RUN ON THE MONEY?

15 A POSSIBLY, YES.

16 Q AND BEFORE MR. SHEPPARD ARRIVED ON THE SCENE CAROLINA
17 INVESTORS DIDN'T HAVE THE MONEY THERE TO REPAY THE MEN AND
18 WOMEN, THE FAMILIES WHO INVESTED AT CAROLINA INVESTORS?

19 A NO.

20 Q THEY WERE DEPENDANT UPON HOMEGOLD TO TURN THEIR
21 BUSINESS AROUND IN ORDER TO REPAY THOSE PEOPLE IN PICKENS
22 COUNTY?

23 A TRUE.

24 Q NOW STARTING IN 1998 WHEN HOMEGOLD WOULD HAVE THEIR
25 FINANCIALS FILED QUARTERLY AND ANNUALLY WITH THE

1 SECURITIES COMMISSION YOU WOULD SIT DOWN WITH MR. STERLING
2 AND MR. GIDDENS AND MR. MAST AND TO GO OVER THOSE
3 FINANCIALS, WOULD YOU NOT?

4 MS. EVANS: JUDGE, I OBJECT TO THE QUESTION, YOU SAID
5 QUARTERLY WITH THE SECURITIES COMMISSION.

6 THE COURT: I CAN'T HEAR YOU.

7 MS. EVANS: I OBJECT TO THE FORM OF THE QUESTION, HE
8 SAID QUARTERLY WITH THE SECURITIES COMMISSION, THAT'S NOT
9 TRUE. THERE IS NO--

10 THE COURT: WELL, HE IS ON CROSS-EXAMINATION, HE CAN
11 ASK HIS QUESTIONS. IF IT IS INCORRECT THE WITNESS ON THE
12 STAND, HE CAN CORRECT HIM. OVERRULED.

13 MS. EVANS: THANK YOU, YOUR HONOR.

14 Q I JUST HAD CORRECTED. THE FINANCIALS THAT ARE FILED
15 WITH THE SECURITIES AND EXCHANGE COMMISSION, QUARTERLY,
16 THE 10Q'S AND THE 10K'S. YOU KNOW WHAT I AM TALKING
17 ABOUT?

18 A YES.

19 Q YOU WOULD BE, STARTING IN 1998 AND PERHAPS EARLIER,
20 MR. STERLING AND MR. GIDDENS TO GO OVER THE INFORMATION
21 BEFORE IT WAS RELEASED PUBLICLY?

22 A GENERALLY THE EXTENT OF MY REVIEW WITH MR. STERLING
23 WITH THE 10K AND THE 10Q INVOLVED ANY NEWS RELEASES THAT
24 THEY WERE GOING TO DO AS FAR AS EARNINGS WERE CONCERNED.
25 HE NEVER ACTUALLY SAT DOWN WITH ME OR THEY NEVER ACTUALLY

1 SAT DOWN WITH ME AND WENT OVER THOSE REPORTS VERBATIM.
2 THE REPORTS THAT I WAS REFERRING TO WERE THE ONES THAT WE
3 GOT ON A MONTHLY BASIS AT CAROLINA INVESTORS.

4 Q WELL, YOU RECALL REFERRING TO THESE MEETINGS WITH MR.
5 STERLING AND MR. GIDDENS AS THE AMMO MEETINGS?

6 A I AM SORRY.

7 Q AMMO MEETINGS, DO YOU RECALL REFERRING TO THOSE AS
8 THE AMMO MEETINGS?

9 A NO.

10 Q IN ADDITION, MR. OWEN, TESTIFYING IN THE EARLE MORRIS
11 TRIAL YOU ALSO TESTIFIED BEFORE THE SOUTH CAROLINA STATE
12 GRAND JURY, HAD YOU NOT?

13 A YES.

14 Q AND BEFORE THE LOSSES WOULD COME OUT ON QUARTERLIES
15 YOU REPORTED TO HOMEGOLD, WOULD YOU NOT DISCUSS THOSE
16 FINANCIALS AHEAD OF TIME TO MR. GIDDENS AND MR. STERLING?

17 A NO, AS I MENTIONED MOST OF THE TIME MR. STERLING
18 WOULD CALL ME AND LET ME KNOW THAT THERE WAS A NEWS
19 RELEASE COMING OUT. AND HE GENERALLY FAXED ME A COPY OF
20 IT AND I WOULD LOOK IT OVER AND HE WOULD ASK ME TO CALL
21 HIM IF I, YOU KNOW, IF I EVER SAW ANYTHING ON THERE THAT
22 WAS CONCERNED ABOUT OR FELT LIKE MAYBE CHANGE IT OR
23 WHATEVER.

24 Q AND BEGINNING IN 1998 AND FORWARD YOU WERE
25 ENCOURAGED, WERE YOU NOT, IN ADVANCE OF THOSE EARNING

1 REPORTS ABOUT MR. STERLING, MR. GIDDENS, PUT A POSITIVE
2 SPIN ON THE INFORMATION THAT YOU HAD RECEIVED?

3 A WELL, THEY CALLED ME AND GAVE ME THE HEADS UP JUST
4 SIMPLY SO I WOULD BE AWARE OF WHAT WAS COMING OUT, I
5 GUESS, YOU KNOW HOW I USED IT WAS UP TO ME. THEY NEVER
6 DID ACTUALLY GIVE ME ADVICE ON WHAT TO SAY.

7 Q YOU WERE NEVER ENCOURAGED TO PUT A POSITIVE SPIN ON
8 THE INFORMATION AND TO DOWN PLAY THE NEGATIVE?

9 A I KNEW THAT WAS THE PURPOSE OF IT.

10 Q AND BEFORE 2000 YOU DID THAT, DID YOU NOT?

11 A YES.

12 Q IN 1998 YOU DID THAT?

13 A SURE.

14 Q IN 1999 YOU DID THAT?

15 A SURE, HOMEGOLD WAS SELLING COMPANIES AND GENERATING
16 CASH AND CUTTING EXPENSES, THEY WERE DOING A LOT OF THINGS
17 TO RETURN PROFITABILITY AND I CERTAINLY PASSED THOSE
18 POSITIVES ALONG.

19 Q NOW, ISN'T IT TRUE, MR. OWEN, THAT THERE HAS NEVER
20 BEEN A TIME SINCE 1998 THAT YOU EVER THOUGHT THAT HOMEGOLD
21 WAS IN GOOD FINANCIAL SHAPE?

22 A IN RETROSPECT THAT IS TRUE, YES.

23 Q AT THE TIME IT WAS TRUE?

24 A YES.

25 Q SO IN 1998 YOU KNEW THEY WERE IN BAD FINANCIAL SHAPE?

1 A YES.

2 Q IN 1999 YOU KNEW THEY WERE IN BAD FINANCIAL SHAPE?

3 A YES.

4 Q THE YEAR OF 2000 YOU KNEW THEY WERE IN BAD FINANCIAL
5 SHAPE?

6 A YES.

7 Q IN 2001 YOU KNEW THEY WERE IN BAD FINANCIAL SHAPE?

8 A YES.

9 Q IN 2002 YOU KNEW THEY WERE IN BAD FINANCIAL SHAPE?

10 A SURE.

11 Q IN 2003 WHEN YOU WENT TO THE BOARD MEETING WHERE YOU
12 CONTEMPLATED SUICIDE YOU ALREADY KNEW THAT HOMEGOLD WAS IN
13 BAD FINANCIAL SHAPE?

14 A I KNEW THEY WERE IN BAD FINANCIAL SHAPE, I DIDN'T
15 KNOW THEY WERE IN HORRIBLE SHAPE AS THEY WERE THAT DAY
16 THAT I FOUND OUT.

17 Q NOW, WHEN PEOPLE LIKE MR. GREGORY AND MS. MURPHREE
18 AND MR. LOUIE WATSON AND WOULD COME TO YOU AND ASK WHAT IS
19 THE CONDITION OF THE COMPANY, IS MY INVESTMENT SAFE. YOU
20 REPEATEDLY TOLD THEM THEY HAVE GOT NOTHING TO WORRY ABOUT
21 OR WORDS TO THAT EFFECT, DID YOU NOT?

22 A WELL, USUALLY I WOULD QUOTE TO THEM WHERE CAROLINA
23 INVESTORS STOOD ON PROFITABILITY, WHAT OUR OUTSTANDING
24 DEBT WAS WITH HOMEGOLD USUALLY AND THEN I WOULD RELATE TO
25 THEM WHAT HOMEGOLD WAS DOING TO TRY TO RETURN TO

1 PROFITABILITY BECAUSE MOST OF THE PEOPLE HAD READ THE
2 NEWSPAPER ARTICLES FROM TIME TO TIME AND THEY KNEW
3 HOMEGOLD WAS LOSING MONEY. SO, GENERALLY I TRIED TO
4 CONVEY TO THEM WHAT HOMEGOLD HAD TOLD US AT PRIOR BOARD
5 MEETINGS THAT THEY WERE DOING, POSITIVE NATURE TO RETURN
6 TO PROFITABILITY. OUTSIDE THE PROSPECTUS, THAT IS THE
7 ONLY INFORMATION I HAD TO GIVE TO THE INVESTORS.

8 Q AND THAT IS THE ULTIMATE, IS MY MONEY SAFE THERE?

9 A SURE.

10 Q AND YOU WOULD SAY YES?

11 A I HAD MINE THERE AND MR. BOBO HAD HIS THERE AND WE
12 CERTAINLY FELT LIKE AT THE TIME, BASED ON WHAT WE WERE
13 BEING TOLD THAT IT WAS.

14 Q WELL, MR. OWEN, AS SOON AS YOU SAID, NO, YOUR MONEY
15 IS NOT SAFE YOU KNEW THAT WOULD CAUSE A RUN ON THE BANK,
16 CORRECT?

17 A WELL, SURE.

18 Q SO, IT WAS A SELF-FULFILLING PROPHECY FOR YOU, IF YOU
19 HAD SAID TO ANYBODY IN THE COMMUNITY, WE HAVE GOT THESE
20 LOSSES, I HAVE KNOWN SINCE 1998 THAT HOMEGOLD IS IN BAD
21 FINANCIAL SHAPE. AND YOU DON'T NEED TO PUT ALL OF YOUR
22 EGGS IN THIS BASKET BECAUSE THIS IS A RISKY INVESTMENT.
23 THAT WOULD OF BEEN THE LOSS AND YOU WOULD OF LOST YOUR
24 MONEY, WOULD YOU NOT?

25 A I ADVISED A LOT OF INVESTORS NOT TO PUT ALL OF THEIR

1 MONEY IN ONE BASKET, NOT TO PUT ALL OF THEIR MONEY IN
2 CAROLINA INVESTORS. ALL OF THEM SPLIT IT UP THREE WAYS.

3 Q YOU TOLD THEM THERE WAS RISKS INVOLVED?

4 A SURE. I DIDN'T HESITATE TO TELL PEOPLE THAT HOMEGOLD
5 MADE SUBPRIME LOANS. I DESCRIBED TO THEM WHAT SUBPRIME
6 MORTGAGE LOANS WERE, I EXPLAINED TO THEM THAT OUR ACCOUNTS
7 WERE NOT INSURED. WE KEPT SIGNS ON TOP OF THE COUNTER AND
8 EVERYBODY KNEW THAT, WHEN THEY WALKED IN THAT OFFICE THEY
9 COULD READ THE SIGN AND SAY WE ARE NOT FDIC INSURED.

10 Q AND THAT YOU PAID MORE INTEREST RATES THAN OTHER,
11 THAN BANKS?

12 A SURE.

13 Q IN THE DIFFERENCE IN THE RATES WAS FOR THE RISKS THAT
14 PEOPLE MAKE?

15 A THAT'S RIGHT.

16 Q AND IN THE PROSPECTUS ITSELF OUTLINES SUBSTANTIAL
17 RISK, DOES IT NOT?

18 A THAT'S RIGHT.

19 Q THE PROSPECTUS ITSELF SAYS THAT IF YOU WANT A SAFE,
20 SECURE INVESTMENT THIS IS PERHAPS NOT FOR YOU?

21 A THAT'S RIGHT.

22 Q SO, YOU ARE TELLING US THAT YOU DID RELAY THIS
23 INFORMATION TO THE INVESTORS?

24 A SURE.

25 Q NOW, THERE WOULD BE, MR. OWEN, THERE WERE MEETINGS

1 WITH CAROLINA INVESTORS BOARD MEMBERS AND YOURSELF BEFORE
2 1998 AND, 1998 TO 2000. MR. SHEPPARD WAS NOT ON THE BOARD
3 OF CAROLINA INVESTORS, WAS HE, BEFORE 2000?

4 A YES.

5 Q HE WAS NOT THEN, CORRECT?

6 A THAT'S RIGHT.

7 Q AND THOSE BOARD MEMBERS CONSISTED OF YOURSELF, MR.
8 EARLE MORRIS, MR. JACK STERLING AND MR. BOBO AND MR. MAST,
9 EXCUSE ME, MR. BOBO AND MR. SHARPE AND KEITH GIDDENS,
10 CORRECT?

11 A THAT'S RIGHT.

12 Q EARLE MORRIS HAD BEEN ON THE BOARD FOR QUITE SOME
13 TIME, RIGHT, HE HAD BEEN ON THE BOARD FOR MANY, MANY
14 YEARS?

15 A YES.

16 Q BUT HE HAD NEVER BEEN AN OFFICER, AN EMPLOYEE OF
17 CAROLINA INVESTORS UP UNTIL HE RETIRED FROM HIS STATE
18 POSITION?

19 A THAT'S CORRECT.

20 Q STATE COMPTROLLER GENERAL?

21 A YES.

22 Q AND HE HAD PREVIOUSLY SERVED AS LIEUTENANT GOVERNOR
23 OF SOUTH CAROLINA, IS THAT CORRECT?

24 A SENATOR, HOUSE MEMBER.

25 Q AND HE WAS HIRED ON BY MR. GIDDENS AND MR. STERLING

1 IN 1998, 1999?

2 A THAT'S CORRECT.

3 Q AND IT WAS YOUR BELIEF THAT HE WAS HIRED ON TO SORT
4 OF, TO STOP THE BLEEDING AT CAROLINA INVESTORS?

5 A LIFT CUSTOMERS CONFIDENCE, YES.

6 Q STILL IN 1999 HOMEGOLD LOST ANOTHER \$30 SOMETHING
7 MILLION DOLLARS IN OPERATIONS?

8 A YES.

9 Q NOW, IN 2000 MR. SHEPPARD'S COMPANY IS MERGED. YOU
10 HAD RECEIVED A LETTER FROM, PREVIOUSLY RECEIVED A LETTER
11 FROM THE SOUTH CAROLINA SECURITIES COMMISSION IN DECEMBER
12 OF 1999 ASKING ABOUT THE SAFETY AND SECURITY OF THE
13 INVESTMENTS AT CAROLINA INVESTORS, CORRECT?

14 A YES.

15 Q AND THEN AS A RESPONSE THAT IS SIGNED BY YOU THAT WAS
16 SENT OUT IN JANUARY OF 2000 TO MR. ERIC PANTSARI OF THE
17 SECURITIES COMMISSION, CORRECT.

18 A YES.

19 Q AND IN THAT LETTER YOU ADVISED MR. PANTSARI THAT WE
20 HAD BEEN CLOSELY MONITORING THE FINANCIAL PERFORMANCE OF
21 HOMEGOLD, CORRECT?

22 A TRUE.

23 Q AND THAT WASN'T TRUE, WAS IT NOT?

24 A YES.

25 Q AND ALSO YOU IDENTIFY THE PLANS THAT HOMEGOLD HAS TO

1 TURN THINGS AROUND AND ONE BEING THERE ARE TWO
2 ACQUISITIONS ON THE HORIZON, DO YOU RECALL THAT?

3 A YES.

4 Q AND ONE OF THOSE ACQUISITIONS WAS MR. SHEPPARD'S
5 COMPANY?

6 A YES, IT WAS.

7 Q NOW, THAT LETTER, SIR, WAS NOT PENNED BY YOU, WAS IT?

8 A I AM NOT SURE EXACTLY WHICH LETTER YOU ARE REFERRING
9 TO, I HAVE SEEN SEVERAL LETTERS. ARE YOU TALKING ABOUT
10 THE BULLET POINT LETTER?

11 Q YES, SIR.

12 A NEITHER OF THOSE BULLET POINT LETTERS WAS ACTUALLY
13 PREPARED BY ME, I DID SIGN THEM BUT THEY WEREN'T PREPARED
14 BY ME.

15 Q AND THE LETTERS, AND WE WILL FIND THE LETTER, MR.
16 OWEN. BUT THE LETTER TO THE SECURITIES COMMISSION WAS,
17 THAT WAS DRAFTED BY SOMEBODY AT HOMEGOLD?

18 A YES.

19 Q REVIEWED BY THE WYCHE LAW FIRM?

20 A I ASSUME SO, I DON'T KNOW THAT.

21 Q AND THEN IT WAS PRESENTED TO YOU TO SIGN?

22 A THAT'S CORRECT.

23 Q AND THEN YOU SIGNED IT?

24 A YES.

25 Q AND THE INFORMATION, AND THAT ALL PREDATED THE MERGER

1 OF MR. SHEPPARD'S COMPANY?

2 A THAT'S CORRECT.

3 Q NOW, YOU WERE, DID YOU HAVE AN OPPORTUNITY TO MEET
4 MR. SHEPPARD PRIOR TO THE MERGER TAKING PLACE?

5 A NO, I DIDN'T.

6 Q WERE YOU ALLOWED TO, ON THE CII BOARD VOTE ON THE
7 ACQUISITION OF MR. SHEPPARD'S COMPANY?

8 A I REMEMBER CII VOTING ON IT, I DO REMEMBER THE
9 SHAREHOLDERS OF HOMEGOLD VOTING ON IT BUT I DON'T EVER
10 REMEMBER CAROLINA INVESTORS BOARD EVER VOTING ON IT.

11 Q WAS CAROLINA INVESTORS CONSULTED ABOUT IT, THE
12 HOMESENSE MERGER?

13 A I AM PRETTY SURE WE WERE AWARE OF IT, YES.

14 Q DID YOU HAVE A CHANCE TO REVIEW THE MERGER DOCUMENTS?

15 A NO. WE WERE TOLD THAT MR. SHEPPARD'S COMPANY WAS
16 BEING BOUGHT BECAUSE IT HAD A NET WORTH OF \$5 MILLION
17 DOLLARS AND IT WAS GOING TO CONTRIBUTE THAT MUCH TO THE
18 NET WORTH OF HOMEGOLD.

19 Q AND WHO MADE THOSE REPRESENTATIONS TO YOU?

20 A MR. GIDDENS AND MR. STERLING, FOR THAT MATTER.

21 Q AND THAT WAS IN A BOARD MEETING?

22 A YES.

23 Q PRIOR TO THE, AT ANY POINT DID YOU HAVE AN
24 OPPORTUNITY TO SHARE WITH MR. SHEPPARD BEFORE OR SOON
25 AFTER HIM COMING ON BOARD THAT YOU WERE GETTING LETTERS BY

1 THE SOUTH CAROLINA SECURITIES COMMISSION THAT THEY WANT
2 INFORMATION ABOUT HOW HOMEGOLD WAS DOING, TRACK THE SAFETY
3 AND SECURITY OF THE INVESTORS MONEY?

4 A I NEVER MET MR. SHEPPARD UNTIL OCTOBER OF 2000 WHEN
5 HE CAME TO HIS FIRST BOARD MEETING.

6 Q I BELIEVE IN JANUARY OF 2000, EXCUSE ME, DECEMBER,
7 SOMETIME IN 2000 THERE WAS A SECOND LETTER THAT YOU
8 RECEIVED FROM THE SECURITIES COMMISSION ONCE AGAIN ASKING
9 ABOUT THE PERFORMANCE OF HOMEGOLD, CORRECT?

10 A YES.

11 Q I WANT TO ~~FAST~~ FORWARD A LITTLE BIT, THE MARCH 14TH
12 MEETING AT THE WYCHE FIRM, DO YOU REMEMBER THAT?

13 A SURE.

14 Q I BELIEVE YOUR TESTIMONY ON DIRECT EXAMINATION OF MS.
15 EVANS, THE INFORMATION THAT YOU WERE GIVEN AT THE WYCHE
16 FIRM, YOU WERE SHOCKED TO LEARN OF THAT INFORMATION?

17 A YES.

18 Q NOW, ISN'T IT TRUE THOUGH, MR. OWEN, YOU WERE NOT
19 SHOCKED. IN FACT, THE BAD NEWS THAT WAS DELIVERED TO YOU
20 IN THE MARCH 14TH MEETING CAME AS ABSOLUTELY NO SURPRISE
21 TO YOU?

22 A IT CAME AS A SURPRISE TO ME, MR. GRIFFIN. IT WAS A
23 SHOCK TO ME.

24 Q YOU WERE SHOCKED?

25 A IT WAS A SHOCK TO ME AND EARLE MORRIS BOTH. WE KNEW

1 HOMEGOLD WAS LOSING MONEY BUT WE CERTAINLY DIDN'T KNOW
2 THAT THINGS HAD PROGRESSED TO THE POINT OF THE AUDITOR
3 PUTTING A GOING CONCERN IN THE PROSPECTUS.

4 Q WERE YOU UNDER OATH AT MR. EARLE MORRIS' TRIAL?

5 A YES, I WAS.

6 Q AND DID YOU TESTIFY TRUTHFULLY AT MR. MORRIS' TRIAL?

7 A TO THE BEST OF MY ABILITY, YES.

8 Q AND WHEN ASKED, THE MEETING WE ARE TALKING ABOUT IS
9 THE MARCH 14TH 2002, CORRECT?

10 A YES.

11 Q AND THAT WAS AT THE WYCHE FIRM, CORRECT?

12 A YES, IT WAS.

13 Q AND I WANT TO SHOW YOU, MR. OWEN, UNDER OATH ON PAGE
14 690 OF MR. EARLE MORRIS' TRIAL TRANSCRIPT TESTIMONY. WERE
15 YOU ASKED AT LINE 20, DID YOU ATTEND THE MEETING ON MARCH
16 14TH IN 2002. AND YOU ANSWERED, WHAT DID YOU ANSWER?

17 A YES.

18 Q YES, YOU DID?

19 A YES, I DID.

20 Q AND THEN IF YOU WILL TURN THE PAGE AND I AM NOT
21 READING VERBATIM EVERYTHING BUT IF YOU WILL TELL, JUST
22 GENERALLY TO THE JURY, YOU DESCRIBED WHO ELSE ATTENDED IN
23 YOUR TESTIMONY IN MR. MORRIS' TRIAL, DID YOU NOT?

24 A YES.

25 Q AND YOU DESCRIBED THE PERSONNEL FROM ELLIOTT DAVIS

1 WERE THERE, DID YOU NOT?

2 A YES, I DID.

3 Q AND YOU DESCRIBED THAT MR. MORRIS WAS PRESENTED, DID
4 YOU NOT?

5 A YES.

6 Q ALL RIGHT. AND THEN ONE MORE PAGE, ON PAGE 692 YOU
7 WERE ASKED, MR. OWEN, DID YOU HEAR ANY GOOD NEWS ABOUT THE
8 FINANCIAL CONDITION OF THE COMPANIES AT THIS MEETING. AND
9 YOUR ANSWER WAS WHAT?

10 A NO.

11 Q AND THEN YOU WERE ASKED, MR. OWEN, WAS THE BAD
12 INFORMATION COMING OUT, COMING AS A SURPRISE TO YOU. AND
13 YOUR ANSWER WAS UNDER OATH, SIR.

14 A NO.

15 Q AND THEN YOU WERE ASKED WHY NOT AND YOU ANSWERED?

16 A BECAUSE I HAVE BEEN KEEPING UP WITH HOMEGOLD'S LOSSES
17 AND I KNEW THEY WERE, KNEW WHAT THEY WERE.

18 Q AND YOU TESTIFIED JUST A MINUTE AGO THAT YOU WERE
19 SHOCKED TO LEARN THE BAD NEWS?

20 A WELL, I WAS SHOCKED TO LEARN ABOUT THE GOING CONCERN,
21 NOT THE FACT THAT HOMEGOLD WAS LOSING MONEY, THAT WAS
22 COMMON KNOWLEDGE, THAT WAS REPORTED IN THE GREENVILLE
23 NEWS. THE GOING CONCERN IS THE PART OF THE MEETING THAT
24 SHOCKED ME.

25 Q SO, THE FINANCIAL INFORMATION OF THE COMPANY CAME AS

1 TO NO SURPRISE?

2 A NO.

3 Q NOW, THE GOING CONCERN WAS A SHOCK TO YOU BECAUSE YOU
4 AND FRANKLY MOST OTHERS IN THE ROOM DID NOT BELIEVE WHAT
5 THE GOING CONCERN LANGUAGE IN THE FINANCIALS, THAT THE
6 ATTORNEY GENERALS OFFICE WOULD APPROVE THE RENEWAL OF THE
7 PROSPECTUS, CORRECT?

8 A CORRECT.

9 Q AND WITHOUT THE RENEWAL OF THE PROSPECTUS CAROLINA
10 INVESTORS WAS OUT OF BUSINESS, CORRECT?

11 A CORRECT.

12 Q AND ALL OF THOSE PEOPLE THAT YOU HAD BEEN LIEING TO
13 SINCE 1998 WOULD COME BACK AT YOU, WOULD THEY NOT?

14 A SURE.

15 Q AND BY HAVING CAROLINA INVESTORS, BECAUSE CAROLINA
16 INVESTORS COULD NOT STAY IN BUSINESS UNLESS THEY CONTINUED
17 TO SELL THESE NOTES AND DEBENTURES. NO QUESTION ABOUT IT,
18 WAS THERE?

19 A THAT'S RIGHT.

20 Q NOW, AT THE MEETING THERE WAS REAL CONCERN ABOUT
21 WHETHER THE PROSPECTUS AND REGISTRATION STATEMENT WOULD BE
22 RENEWED, CORRECT?

23 A CORRECT.

24 Q AND SUBSEQUENTLY THERE WAS A STAFF MEETING WHERE YOU
25 AND MR. GIDDENS, EXCUSE ME, YOU AND MR. STERLING AND MR.

1 KEVIN MARTIN AND OTHERS FROM CAROLINA INVESTORS ATTENDED,
2 RIGHT?

3 A CORRECT.

4 Q NOW, AT THE TIME OF THAT STAFF MEETING IT HAD ALREADY
5 BEEN DETERMINED THAT MR. PANTSARI AND THE SECURITIES
6 DIVISION AND THE ATTORNEY GENERALS OFFICE, THEY WERE GOING
7 TO ACCEPT AND RENEW THE PROSPECTUS EVEN WITH THE GOING
8 CONCERN LANGUAGE IN THERE, CORRECT?

9 A YES.

10 Q SO, THE DOOMSDAY ENVIRONMENT THAT EXISTED ON MARCH
11 THE 14TH WAS NOT ~~AS~~ GLOOMY AND DOOMY WHEN YOU MET WITH THE
12 INVESTMENT COUNSELORS FOR THE STAFF MEETING, WAS IT?

13 A WELL, THE FACT THAT I KNEW HOMEGOLD WAS LOSING MONEY,
14 I HAD KEPT UP WITH THEIR QUARTERLY REPORTS AND QUARTERLY
15 LOSSES AND I KNEW THEY WERE LOSING MONEY BASIS, AT THAT
16 TIME I KNEW WHAT THOSE QUARTER LOSSES WERE. AT THE MARCH
17 14TH MEETING WAS THE FIRST TIME I FOUND OUT WHAT THE
18 ANNUAL LOSS WAS GOING IN THE PROSPECTUS WAS GOING TO BE
19 FOR THE YEAR AND THAT ANNUAL LOSS FAR EXCEEDED WHAT I WAS
20 AWARE OF HAD BEEN LOST ON A QUARTERLY BASIS. AND THEY
21 LOST \$75 THOUSAND DOLLARS, I THINK, FOR THE YEAR.

22 Q \$75 MILLION.

23 A I MEAN, MILLION, I AM SORRY.

24 Q AND YOU UNDERSTAND THAT LOSS WAS TRIGGERED BY A LOT
25 OF THE ACCOUNTING ADJUSTMENTS BROUGHT ABOUT BY THE GOING

1 CONCERN QUALIFICATIONS, CORRECT?

2 A I NEVER KNEW WHAT CAUSED THE \$75 MILLION, I DIDN'T
3 KNOW WHAT ADJUSTMENTS WERE MADE, I NEVER DID SEE THOSE.

4 Q SO YOU DON'T KNOW THAT AS A RESULT OF THE GOING
5 CONCERN THAT THE NOL, THE DEFERRED TAX ASSET WAS WRITTEN
6 DOWN SOME \$22 MILLION DOLLARS?

7 A NO.

8 Q YOU DIDN'T KNOW THAT THERE WAS SOME \$20 MILLION
9 DOLLARS IN GOODWILL THAT HAD TO BE WRITTEN OFF BECAUSE OF
10 GOING CONCERN AND QUALIFICATIONS PUT IN BY ELLIOTT DAVIS?

11 A I WASN'T INVOLVED IN ALL OF THOSE, I DIDN'T KNOW
12 THOSE FIGURES.

13 Q SO, YOU JUST, LOOKING AT THE NUMBER AT THE BOTTOM OF
14 THE PAGE AND YOU ARE TELLING THE JURY THAT A FORMER BANK
15 EXAMINER AND ASTUTE, I ASSUME YOU HAVE BEEN READING THESE
16 FINANCIALS FREQUENTLY OVER THESE YEARS, THAT YOU DIDN'T
17 KNOW THAT THOSE ADJUSTMENTS WERE BEING MADE TO INCREASE
18 THAT LOSS NUMBER?

19 A NO, THE AUDITORS, THEY DIDN'T COME TO CAROLINA
20 INVESTORS AND THAT WAS THE FIRST AND ONLY TIME I HAD MET
21 GARRY RANK, THEY DID THEIR WORK AT HOMEGOLD IN GREENVILLE,
22 NOT CAROLINA INVESTORS AT PICKENS.

23 Q SO, THE SHOCK TO YOU, SIR, WAS THAT THE AUDITORS PUT
24 OUT THE GOING CONCERN QUALIFICATION IN THE FINANCIALS?

25 A YES.

1 Q NOT THAT HOMEGOLD HAD BEEN LOSING MONEY?

2 A WELL, IT WAS A SHOCK THAT THEY LOST THAT MUCH. BUT
3 AGAIN I KNEW OF THE QUARTERLY LOSSES BECAUSE I READ ABOUT
4 THOSE, I HADN'T SEEN THE FILE.

5 Q NOW, HAD YOU IN 1999 BEEN ADVISED BY KEVIN MAST, MR.
6 STERLING OR ANYONE ELSE THAT THE ELLIOTT DAVIS AND THAT
7 THE CFO OF HOMEGOLD HAD DONE A GOING CONCERN ANALYSIS OF
8 HOMEGOLD?

9 A NO, I FOUND THAT OUT DURING DISCOVERY BEFORE MY
10 TRIAL.

11 Q DID YOU KNOW IN 1998 THERE WAS A GOING CONCERN
12 LANGUAGE?

13 A NO. I NEVER KNEW ANYTHING ABOUT A GOING CONCERN
14 LANGUAGE UNTIL THAT MEETING ON MARCH 14TH AND I DIDN'T
15 KNOW HOW FAR BACK THOSE DISCUSSIONS WENT UNTIL WE WERE
16 DISCOVERING INFORMATION FROM MY TRIAL.

17 Q AND YOU LEARNED THAT TWO YEARS BEFORE MR. SHEPPARD
18 AND HOMEGOLD, THAT THOSE DISCUSSIONS WERE GOING ON?

19 A YES, THEY WERE GOING ON.

20 THE COURT: MR. GRIFFIN, DO YOU HAVE A GOOD BREAKING
21 POINT.

22 MR. GRIFFIN: YES, SIR.

23 THE COURT: I AM TOLD THE JURYS LUNCH HAS ARRIVED SO
24 WE WILL TAKE A BREAK, WE WILL GO UNTIL 1:45. IF YOU WILL
25 STEP OUT TO YOUR JURY ROOM AND WE WILL RESUME AT THAT

1 POINT AND TIME. PLEASE DON'T DISCUSS THE CASE, EVERY ONE
2 ELSE STAY SEATED, PLEASE.

3 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
4 A LUNCH BREAK.)

5 THE COURT: MR. OWEN, DON'T DISCUSS YOUR TESTIMONY
6 DURING THE BREAK. WE WILL START BACK AT 1:45.

7 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

8 THE COURT: IS THE STATE READY?

9 MS. EVANS: YES, YOUR HONOR.

10 THE COURT: THE DEFENSE?

11 MR. GRIFFIN: YES, YOUR HONOR.

12 THE COURT: BRING THE JURY IN, PLEASE.

13 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
14 APPROXIMATELY 1:55 P.M.)

15 THE COURT: MR. GRIFFIN, YOU MAY CONTINUE.

16 CONTINUE CROSS-EXAMINATION

17 BY MR. GRIFFIN:

18 Q MR. OWEN, I WANT TO BACK UP A LITTLE BIT, RIGHT
19 BEFORE THE BREAK, I WANT TO BACKTRACK FOR A MOMENT, A FEW
20 THINGS I LEFT OUT. BACK IN 1998 AND 1999 WHEN CAROLINA
21 INVESTORS, HOMEGOLD LOST SIGNIFICANT SUMS OF MONEY ISN'T
22 IT TRUE THAT MR. TOMMY WYCHE'S WIFE INVESTED SOME \$58
23 THOUSAND DOLLARS?

24 A SHE DID.

25 Q AND MR. BUCK MICKEL INVESTED SOME \$100 THOUSAND

1 DOLLARS?

2 A HE DID.

3 Q AND AS WELL AS MR. JACK STERLING INVESTED \$56
4 THOUSAND DOLLARS OR SO?

5 A I THINK HIS WIFE DID.

6 Q HIS WIFE. NOW, MR. TOMMY WYCHE WAS, HE IS THE NAMED
7 PARTNER IN THE WYCHE LAW FIRM, IS HE NOT?

8 A YES, HE IS.

9 Q AND THAT WAS THE LAWYERS FOR HOMEGOLD, CORRECT?

10 A AND CAROLINA INVESTORS.

11 Q FROM 1991 FORWARD?

12 A YES.

13 Q AND THEY DID THE SECURITIES WORK FOR HOMEGOLD, DID
14 THEY NOT?

15 A YES.

16 Q BEFORE THE BREAK I WAS LOOKING FOR A LETTER WHICH I
17 FOUND OVER THE BREAK AND IT IS IN EVIDENCE AS OF STATE'S
18 EXHIBIT 172 AND I DON'T KNOW, CAN YOU SEE THAT FROM BACK
19 THERE, MR. OWEN?

20 A YES.

21 Q AND THIS IS AND I TOLD YOU ON PAGE 2 IS A LETTER TO
22 MR. PANTSARI DATED JANUARY 5 OF 2000. AND I WANT TO GO
23 BACK, THE COVER LETTER, THE FACTS AS TO MR. JACK STERLING
24 FROM YOU, CORRECT?

25 A YES.

1 Q IT SAYS THIS WILL GO OUT IN TODAYS MAIL UNLESS I HEAR
2 OTHERWISE?

3 A YES.

4 Q SO, YOU ARE COMMUNICATING WITH MR. STERLING ABOUT
5 SENDING THIS LETTER TO MR. PANTSARI AND THIS LETTER WAS IN
6 RESPONSE TO PANTSARI'S LETTER TO YOU WHICH IS EXHIBIT 171
7 DATED DECEMBER THE 8TH OF 1999, RIGHT?

8 A YES.

9 Q AND THAT LETTER SAYS WE HAVE BEEN MONITORING FOR SOME
10 TIME THE PROGRESS OF HOMEGOLD FINANCIAL PARTICULARLY
11 BECAUSE THE AFFECT OF THEIR FINANCIAL FUTURE MAY HAVE ON
12 MANY SUBORDINATED DEBT HOLDERS OF CAROLINA INVESTORS, THAT
13 IS WHAT YOU UNDERSTOOD THE LETTER TO BE ABOUT, RIGHT?

14 A YES.

15 Q AND IN RESPONSE TO THAT THIS LETTER WAS SENT BACK AND
16 IT IS SIGNED BY YOU, CORRECT?

17 A YES.

18 Q AND JUST, CAN YOU READ THAT FROM BACK THERE, SIR?

19 A I REALLY CAN'T.

20 Q IT SAYS I AM TOLD IN CONFIDENCE THAT THERE IS AN
21 ACQUISITION OF FINAL NEGOTIATIONS WHICH WOULD
22 SIGNIFICANTLY STRENGTHEN THE COMPANY. DO YOU THINK YOU
23 WERE REFERRING TO THE HOMESENSE ACQUISITION?

24 A YES.

25 Q AND THIS LETTER SAYS TO MR. PANTSARI, SUCH

1 ACQUISITION WOULD ADD \$3 MILLION DOLLARS TO THE NET WORTH.
2 DO YOU RECALL THAT, THAT IS WHAT THE LETTER SAYS, DOESN'T
3 IT?

4 A YES.

5 Q NOW, A MINUTE AGO, RIGHT BEFORE LUNCH, YOU SAID THE
6 HOMESENSE MERGER WOULD ADD \$5 MILLION DOLLARS TO THAT?

7 A WELL, THE \$5 MILLION DOLLARS WAS MR. GIDDENS INITIAL
8 CONVERSATION WITH ME, WHEN THE VERY FIRST CONVERSATION WAS
9 STRUCK AROUND CHRISTMAS OF '99 HE TOLD ME THAT THE MERGING
10 COMPANY WOULD BRING IN A NET WORTH OF ABOUT \$5 MILLION
11 DOLLARS.

12 Q ALL RIGHT. NOW, AND IN JANUARY OF 2000 YOU ARE
13 TELLING MR. PANTSARI IT IS \$3 MILLION DOLLARS?

14 A WELL, OBVIOUSLY I HAD ANOTHER CONVERSATION WITH MR.
15 GIDDENS BECAUSE THAT WAS MY MAIN SOURCE OF INFORMATION AT
16 THAT TIME ABOUT THE MERGER.

17 Q AND YOUR CONVERSATION WITH THIS JURY THIS MORNING YOU
18 SAID IT WAS \$5 MILLION DOLLARS?

19 A WELL, IT LATER ON DISAPPEARED ALL TOGETHER.

20 Q YOU DON'T HAVE A VERY DIFFICULT TIME STRETCHING THE
21 TRUTH, DO YOU, MR. OWEN?

22 A NO I DON'T, I WAS RAISED IN A CHRISTIAN FAMILY, I WAS
23 TAUGHT TO TELL THE TRUTH AND I STRIVE TO TELL THE TRUTH
24 UNLESS I AM FORCED LIKE BY MR. SHEPPARD TO COMMENCE
25 LIEING.

1 Q LET ME ASK YOU ABOUT THIS LETTER TO MR. GREGORY. HE
2 FORCED YOU TO WRITE THAT LETTER, SIR, AND THIS WILL BE
3 STATE'S EXHIBIT 103.

4 A IS THAT THE ONE THAT WAS WRITTEN IN MAY OF 2002?

5 Q MAY 8TH OF 2002.

6 A I CORRESPONDED WITH FORREST FERRELL AND HE PUT THE
7 INFORMATION TOGETHER FOR ME TO WRITE THAT LETTER TO MR.
8 GREGORY.

9 Q AND YOU TOLD MR. GREGORY THAT YOU WOULD PERSONALLY
10 COMMIT TO SEEING THAT YOURS, HIS MONEY IS NOT AT RISK,
11 CORRECT?

12 A YES.

13 Q AND YOU ALSO TOLD HIM THAT, I HAVE BEEN WITH CAROLINA
14 INVESTORS FOR 32 YEARS AND IT IS MY FEELING THAT OUR
15 INVESTORS ARE JUST AS SAFE NOW AS THEY HAVE EVER BEEN.
16 THAT WAS A LIE, WASN'T IT?

17 A WELL, AT THE TIME I DIDN'T FEEL LIKE IT WAS BECAUSE
18 IF YOU RECALL IN MY PRIOR TESTIMONY I BELIEVED THAT I
19 TESTIFIED IN AUGUST AND SEPTEMBER OF 2001, MR. SHEPPARD
20 AND OTHERS AT HOMEGOLD HAD BEEN TELLING CAROLINA INVESTORS
21 THAT THEY WERE GOING TO BE PROFITABLE THE VERY NEXT MONTH.

22 Q MR. OWEN, THIS IS MAY 8TH, LESS THEN 3 MONTHS, LESS
23 THAN 3 MONTHS AFTER THIS MEETING AT THE WYCHE FIRM WHERE
24 YOU WERE SHOCKED AND DISMAYED, THAT YOU TESTIFIED IN THIS
25 TRIAL ABOUT THE FUTURE OF CAROLINA INVESTORS, RIGHT?

1 A YES.

2 Q OF COURSE, YOU ALSO TESTIFIED IN MORRIS' TRIAL YOU
3 WEREN'T SURPRISED A BIT ABOUT THE BAD FINANCIAL NEWS THAT
4 YOU RECEIVED?

5 A I THINK I EXPLAINED WHY I TESTIFIED THE WAY I DID IN
6 MR. MORRIS' TRIAL.

7 Q WELL, IS THIS A LIE, SIR, THAT AS OF MAY 8TH OF 2002
8 THAT YOU DID NOT FEEL THAT OUR INVESTORS ARE JUST AS SAFE
9 ON THAT DATE AS THEY HAD BEEN ANY DAY PREVIOUSLY TO MAY
10 8TH OF 2002?

11 A AT THE TIME, I WROTE THAT LETTER ON MAY 8TH THEY HAD
12 RECEIVED THE VALUATIONS ON THE RETAIL MORTGAGE DIVISION
13 AND ESTABLISHED WHAT I FELT LIKE AT THAT TIME WAS A STABLE
14 TRUE MARKET VALUE FOR THAT RETAIL MORTGAGE DIVISION.
15 LITTLE DID I KNOW THAT LATER ON THAT WAS GOING TO BE
16 PROVEN TO BE FALSE. BUT AT THAT TIME WE WERE RELYING
17 STRONGLY ON THE VALUES THAT WERE PUT IN THE PROSPECTUS AND
18 THOSE VALUES WERE STRONGLY URGED BY MR. SHEPPARD THAT WE
19 USE THEM.

20 Q SO, YOU DIDN'T LIE TO MR. GREGORY?

21 A NO, I DID NOT LIE TO MR. GREGORY. I FELT AT THAT
22 TIME THAT HOMEGOLD HAD THE BEST CHANCE THAT THEY HAVE HAD
23 IN THE PAST COUPLE OF YEARS TO RETURN BACK TO
24 PROFITABILITY OR AT LEAST BE ABLE TO SATISFY CAROLINA
25 INVESTORS DEBT.

1 Q AND IT WAS, IT IS YOUR TESTIMONY BEFORE THIS JURY
2 THAT YOU DIDN'T REALLY KNOW THE TRUE FINANCIAL CONDITION
3 OF HOMEGOLD DURING THIS PERIOD OF TIME?

4 A NO, I DIDN'T.

5 Q AND THAT YOU WERE KEPT IN THE DARK ABOUT THE TRUE
6 FINANCIAL CONDITION OF HOMEGOLD?

7 A I WAS NOT GIVEN THE INFORMATION THAT I NEEDED TO
8 SATISFY MYSELF AS TO HOMEGOLD'S TRUE FINANCIAL CONDITION.
9 IT IS TRUE THAT THEY PREPARED THE QUARTERLY STATEMENTS FOR
10 THE SECURITIES EXCHANGE COMMISSION BUT THEY WERE IN THE
11 HABIT OF TRANSFERRING ASSETS BACK AND FORTH BETWEEN OUR
12 BOOKS AND THEIR BOOKS. AND AS I MENTIONED EARLIER I WAS
13 NOT GETTING A REGULAR FINANCIAL STATEMENT ON A MONTHLY
14 BASIS TO BE ABLE TO TELL WHAT ASSETS WE HAD THIS MONTH AS
15 OPPOSED TO WHAT WE HAD NEXT MONTH. SO, IT IS TRUE, I
16 WASN'T ABLE TO TELL WHAT OUR TRUE FINANCIAL CONDITION WAS
17 NOR THEIRS.

18 Q AND ON NOVEMBER THE 5TH OF 2004 WHEN YOU TESTIFIED IN
19 MR. MORRIS' TRIAL, AFTER HAVING ALL THE BENEFIT OF
20 INFORMATION GETTING READY FOR YOUR TRIAL AND THEN THE
21 BENEFIT OF THE INFORMATION YOU READ FROM MR. MORRIS' TRIAL
22 ISN'T IT TRUE, SIR, THAT YOU TOLD THAT JURY THAT YOU WERE
23 NOT KEPT IN THE DARK ABOUT HOMEGOLD'S FINANCIAL CONDITION?

24 A I MAY HAVE.

25 Q YOU MAY HAVE. WELL, WERE YOU KEPT IN THE DARK OR

1 WEREN'T YOU KEPT IN THE DARK?

2 A TO SOME EXTENT I WAS.

3 Q SO, YOU LIED TO THE JURY IF YOU SAID I WAS NOT KEPT
4 IN THE DARK, WAS THAT A LIE UNDER OATH, SIR?

5 A NO, NOT REALLY.

6 Q WOULD IT BE TRUE THAT YOU ARE NOT KEPT IN THE DARK?

7 A PART OF BOTH REALLY.

8 Q PART OF BOTH?

9 A YES. I HAD WHAT INFORMATION THEY WANTED US TO HAVE.

10 Q WELL, AS OF NOVEMBER THE 5TH OF 2004 YOU HAD THE
11 BENEFIT OF A LOT MORE INFORMATION, DID YOU NOT, SIR?

12 A YES AND I HAVE LEARNED A LOT OF INFORMATION SINCE
13 THAT DATE AS WELL.

14 Q AND IN THE TESTIMONY OF MR. MORRIS' TRIAL, SIR, AT
15 PAGE 983, AT LINE 11 YOU WERE ASKED AND I WILL POINT IT
16 OUT TO YOU.

17 MS. EVANS: WHAT PAGE DID HE SAY?

18 MR. GRIFFIN: LINE 983, LINE 11 THROUGH 13.

19 Q ARE YOU THERE. YOU WERE ASKED UNDER OATH, DID
20 HOMEGOLD KEEP YOU IN THE DARK ABOUT THE FINANCIAL
21 CONDITION OF THE COMPANY. AND YOUR ANSWER WAS WHAT, SIR?

22 A NO, THAT WAS PUBLIC KNOWLEDGE.

23 Q NO, THAT WAS PUBLIC KNOWLEDGE. AND YOU WERE BEING
24 QUESTIONED BY, IT SAYS BY MS. LYDON. DO YOU REMEMBER WHO
25 SHE WORKED FOR?

1 A SURE.

2 Q SHE WAS A PROSECUTOR FOR THE ATTORNEY GENERALS
3 OFFICE, WAS SHE NOT?

4 A YES.

5 Q SHE WAS ASKING YOU, SIR, TO TELL THE JURY THAT YOU
6 WERE NOT KEPT IN THE DARK ABOUT HOMEGOLD'S FINANCIAL
7 CONDITION AND YOU AGREED AND NOT KEPT IN THE DARK, RIGHT?

8 A BASED ON WHAT I KNEW AT THAT TIME THAT IS THE WAY I
9 ANSWERED THAT, YES.

10 Q WELL, AT THAT TIME YOU HAD THE FULL BENEFIT OF
11 GETTING READY FOR YOUR OWN TRIAL, RIGHT?

12 A YES.

13 Q AND YOU HAD PLEAD GUILTY AFTER A COUPLE DAYS OF
14 TESTIMONY, RIGHT?

15 A FOUR OR FIVE DAYS, YES.

16 Q AND THEN YOU HAD THE BENEFIT OF GETTING READY TO
17 TESTIFY AT MR. EARLE MORRIS' TRIAL, CORRECT?

18 A YES.

19 Q AND YOU UNDERSTOOD THAT YOU BELIEVED THAT IT WOULD
20 BENEFIT YOU TO TELL THE JURY IN MR. EARLE MORRIS' TRIAL
21 THAT YOU WERE NOT KEPT IN THE DARK BECAUSE THAT WOULD BE
22 CONTRARY TO HIS DEFENSE IN THAT CASE, RIGHT?

23 A IF YOU SAY SO.

24 Q I AM ASKING WHAT YOU BELIEVED--

25 MS. EVANS: YOUR HONOR, OBJECTION, SPECULATIVE. HE

1 IS ASKING HIM SOMETHING AND THEN HE SAID IF YOU SAY SO.
2 AND CALLING FOR SPECULATION, I JUST ASK HIM TO REPHRASE
3 THE QUESTION AND THE DEFENDANT ANSWER IF HE KNOWS OR NOT.

4 THE COURT: IF THE WITNESS DOESN'T UNDERSTAND THE
5 QUESTION HE CAN ASK FOR IT TO BE REPHRASED. IF HE ANSWERS
6 THE COURT WILL PRESUME THAT HE UNDERSTANDS IT. GO HEAD.

7 MS. EVANS: THANK YOU, YOUR HONOR.

8 Q I AM ASKING WHAT YOU UNDERSTOOD, DID YOU UNDERSTAND
9 BY TELLING THE JURY IN THE EARLE MORRIS TRIAL THAT YOU
10 WERE NOT KEPT IN THE DARK, THAT WOULD BENEFIT THE STATE'S
11 CASE?

12 A I WAS NOT KEPT IN THE DARK THE EXTENT THAT THERE WERE
13 QUARTERLY STATEMENTS BEING FILED BY HOMEGOLD TO THE
14 SECURITIES EXCHANGE COMMISSION. THERE WAS NOT SUFFICIENT
15 FINANCIAL STATEMENTS BEING PROVIDED TO CAROLINA INVESTORS
16 OFFICERS AND ITS BOARD OF DIRECTORS. SO, TO ANSWER YOUR
17 QUESTION, IT IS STILL A YES AND A NO ANSWER.

18 Q SIR, MY QUESTION WAS, DID YOU BELIEVE WHEN YOU
19 ANSWERED NO, YOU WERE NOT KEPT IN THE DARK IN EARLE
20 MORRIS' TRIAL THAT ANSWER WOULD OF BENEFITED THE STATE'S
21 CASE AGAINST MR. MORRIS. AND THAT IS THE WAY YOU BELIEVED
22 AT THE TIME?

23 A I SUPPOSE IT WOULD, YES.

24 Q AND YOU ALSO BELIEVED THAT BY TESTIFYING HERE TODAY
25 THAT YOU WERE KEPT IN THE DARK THAT WOULD HELP THE STATE'S

1 CASE AGAINST MR. SHEPPARD, CORRECT?

2 A I WOULD THINK SO, YES.

3 Q SO DEPENDING ON WHAT RESULT YOU THINK THE STATE WANTS
4 YOU TO TAILOR YOUR TESTIMONY TO ACHIEVE THAT, DO YOU NOT,
5 SIR?

6 A NO AND I STILL RELY ON MY SAME ANSWER. WE RECEIVED
7 WHAT FINANCIAL INFORMATION THEY WANTED US TO RECEIVE. WE
8 DIDN'T RECEIVE THE ENTIRE STORY. IF I HAD RECEIVED
9 FINANCIAL STATEMENTS OR FINANCIAL INFORMATION TO BACK UP
10 THEIR TRUE FINANCIAL CONDITION I WOULD OF BEEN GONE LONG
11 AGO.

12 Q SIR, YOU RECEIVED QUARTERLY REPORTS THAT WERE FILED
13 BY HOMEGOLD, CORRECT?

14 A I DID.

15 Q AND THOSE QUARTERLY REPORTS SHOWED SUBSTANTIAL LOSSES
16 EVERY QUARTER SINCE 1998, ISN'T THAT TRUE?

17 A THAT'S TRUE.

18 Q AND THEY SHOWED LOSSES IN 2000 FOR THE WHOLE YEAR?

19 A YES.

20 Q AND IN 2001 AND 2002, CORRECT?

21 A YES.

22 Q AND THAT INFORMATION SHOWED PRETTY BAD FINANCIAL
23 RESULTS, CORRECT?

24 A IT SHOWED IMPROVING RESULTS AT LEAST ON A QUARTERLY
25 BASIS THROUGH 2001.

1 Q NOW, WASN'T IT THE CASE THAT YOU WERE NOT RECEIVING
2 THE KIND OF INFORMATION THAT YOU WANTED?

3 A WE DIDN'T, WHAT WE WERE NOT RECEIVING WAS MONTHLY
4 FINANCIAL STATEMENTS ON HOMEGOLD AND CAROLINA INVESTORS SO
5 THAT I COULD MAKE A RATIONAL DECISION BETWEEN WHAT WAS IN,
6 WHAT ASSETS OF CAROLINA INVESTORS WERE REMAINING ON
7 CAROLINA INVESTORS BOOKS AND WHAT ASSETS WERE BEING
8 TRANSFERRED FROM A MATTER OF CONVENIENCE TO HOMEGOLD'S
9 BOOKS TO DO THEIR QUARTERLY FILINGS WITH THE SECURITIES
10 EXCHANGE COMMISSION. BECAUSE ARBITRARILY FROM ONE QUARTER
11 TO THE NEXT AN ASSET THAT WAS ON OUR BOOKS ONE QUARTER
12 WOULD END UP ON THEIR BOOKS THE NEXT QUARTER. SO, THERE
13 IS NO WAY FOR ME TO CORRELATE THE FINANCIAL INFORMATION.
14 I HAVE TOLD YOU BUT I AM NOT A GUERRO THAT CAN LOOK INTO
15 THE FUTURE AND SEE WHAT THOSE THINGS MEAN.

16 Q THE FINANCIAL PERFORMANCE RECORDS, HOW MUCH MONEY WE
17 MADE THIS QUARTER. YOU HAD THAT AVAILABLE TO YOU EVERY
18 QUARTER FROM HOMEGOLD, EVEN UNDER MR. SHEPPARD'S TEAM, DID
19 YOU NOT?

20 A WELL, THEY WERE GENERALLY IN THE NEWSPAPERS, YES.

21 Q AND IT WAS PUBLIC FILINGS AND YOU HAD ACCESS TO THE
22 PUBLIC FILINGS?

23 A YES.

24 Q AND THAT INFORMATION SHOWED DISMAL FINANCIAL
25 PERFORMANCE, DID IT NOT, SIR?

1 A YES.

2 Q AND THAT WAS NOT THE KIND OF INFORMATION YOU FELT
3 LIKE YOU COULD SHARE WITH THESE INVESTORS BECAUSE IT WOULD
4 FURTHER SCARE THEM AWAY, RIGHT?

5 A WELL, AGAIN, MOST OF THE QUARTERLY EARNINGS
6 ANNOUNCEMENTS WERE DONE THROUGH NEWS RELEASES AND THEY
7 WERE PRINTED IN THE GREENVILLE NEWS.

8 Q WELL, YOU HAD MET IN ADVANCE OF THESE QUARTERLY
9 ANNOUNCEMENTS TO LEARN WHAT THE RESULTS WERE GOING TO BE
10 FOR ANY GIVEN QUARTER, CORRECT?

11 A WELL, MR. STERLING GENERALLY GAVE ME A HEADS UP.

12 Q AND THE POINT OF MY QUESTIONING IS, THAT YOU WERE
13 GIVEN SUFFICIENT FINANCIAL INFORMATION FOR YOU TO KNOW
14 THAT HOMEGOLD WAS PERFORMING VERY POORLY?

15 A SURE.

16 Q BEFORE MR. SHEPPARD AND DURING MR. SHEPPARD?

17 A YES.

18 Q AND THE INFORMATION THAT YOU WERE STARVING FOR IS
19 INFORMATION THAT WOULD SHOW SOMETHING DIFFERENT THAN WHAT
20 THE FACTS WERE THAT WERE BEING PRESENTED IN THE
21 FINANCIALS, ISN'T THAT RIGHT?

22 A MY EFFORTS IN REQUESTING FULL DISCLOSURE WAS TO GET
23 THE GOOD, BAD AND THE UGLY. I DIDN'T WANT TO BE SITTING
24 THERE JUST TELLING PEOPLE ALL OF THIS GOOD STUFF EVEN
25 THOUGH I KNEW SOME OF IT PROBABLY WAS GOING TO BE BAD. I

1 MEAN, YOU CAN'T SIT THERE AND MAKE A PICTURE LOOK GLOSSY
2 AND ROSY ALL THE TIME WHEN YOU KNOW THEY HAVE GOT LOSSES
3 INVOLVED. I JUST KNEW THAT BASED ON WHAT WE WERE GETTING,
4 THAT WE WEREN'T GETTING THE WHOLE STORY.

5 Q SIR, YOU GOT THE, THE STORY THAT YOU WERE GETTING IN
6 THE FINANCIALS WAS A BAD STORY, WAS IT NOT?

7 A TRUE, YES.

8 Q AND YOU WERE TRYING TO FIND A WAY, YOU WERE LOOKING
9 FOR THE SILVER LINING IN THE BAD STORY. THAT IS WHAT YOU
10 WERE STARVING FOR, ISN'T IT, SIR.

11 A WELL, WE ALWAYS WANTED TO GET GOOD INFORMATION THAT
12 WE COULD PASS ALONG TO OUR INVESTORS BUT WE WANTED IT TO
13 BE INFORMATION THAT WAS VERIFIABLE. AND INFORMATION LIKE
14 THE MORTGAGE VOLUME PROJECTIONS, WE WANTED THEM TO BE ABLE
15 TO HIT A PROJECTION AS THEY GAVE IT TO US THE PRIOR MONTH.
16 BUT THEY NEVER DID THAT, THEY NEVER DID HIT AN INCOME
17 PROJECTION.

18 Q YOUR COMPLAINT IS, THE PROJECTIONS WERE NEVER MET?

19 A THAT'S TRUE.

20 Q BUT YOU UNDERSTOOD ALL ALONG THAT THESE WERE
21 PROJECTIONS AND THAT THEY WERE NOT ACTUAL PERFORMANCES,
22 FORWARD LOOKING STATEMENTS?

23 A THAT IS WHAT THEY EXPECTED TO DO AND IF THEY DIDN'T
24 EXPECT TO DO IT THEN THEY SHOULDN'T HAVE CONVEYED THAT TO
25 CAROLINA INVESTORS BOARD BECAUSE THEY KNEW WE WERE LOOKING

1 FOR REALISTIC INFORMATION.

2 Q AND THE INFORMATION THAT YOU GOT, THE REALISTIC
3 NUMBER, YOU GOT INFORMATION SHOWING THE QUARTERLY LOSSES,
4 EVERY QUARTER. NO QUESTION ABOUT THAT?

5 A RIGHT.

6 Q AND YOU GOT INFORMATION FOR A PLAN TO TURN IT AROUND
7 IN EFFORTS THAT THEY WERE GOING TO TAKE TO ACCOMPLISH THAT
8 TURNAROUND?

9 A WELL, THEY GAVE US MORE THAN ONE PLAN TO TURN IT
10 AROUND, NONE OF THEM EVER PANNED OUT.

11 Q AND THIS COMPANY WAS HEADED IN THE WRONG DIRECTION
12 WELL BEFORE IT MET MR. SHEPPARD, CORRECT?

13 A IT WAS BUT IT GOT IN A LOT WORSE CONDITION AFTER HE
14 CAME ON BOARD.

15 Q NOW, SOME OF THE THINGS THAT HE DID DO WHEN HE CAME
16 ON BOARD IS HE PUT EVERYBODY TO WORK, DID HE NOT?

17 A WELL, AT LEAST FOR A COUPLE OF MONTHS WE GOT THAT
18 REPORT.

19 Q YOU NOTICED CERTAIN CHANGES, DRESS CODE AND LEVEL OF
20 DISCIPLINE AND THINGS THAT IMPRESSED YOU, CORRECT?

21 A YES.

22 Q NOW, YOU MENTIONED THAT MR. SHEPPARD, WHEN HE CAME ON
23 HE JUST CANCELED THE WAREHOUSE LENDING ARM OF HOMEGOLD,
24 AND YOU WERE SURPRISED TO LEARN THAT, CORRECT?

25 A WELL, I WAS SURPRISED THAT HE DID THAT QUICKLY BUT I

1 WAS, I REALLY WAS SURPRISED THAT HE DECIDED TO DROP THAT
2 MUCH MORTGAGE VOLUME ON THE SPUR OF THE MOMENT, CANCELED
3 CONTRACTS WITH SEVERAL HUNDRED BROKERS.

4 Q AND YOU ARE UNAWARE OF THE REASONS BEHIND THAT DROP
5 WAS THE CIT WAREHOUSE LOAN?

6 A I WAS NEVER GIVEN A REASON.

7 Q NEVER WERE ADVISED OF THAT?

8 A NO.

9 Q YOU DON'T RECALL ANY DISCUSSIONS IN ANY BOARD
10 MEETINGS ABOUT THE TROUBLES WITH THE WAREHOUSE LOANS?

11 A NO, NOT SPECIFICALLY.

12 Q NOW, YOU DO UNDERSTAND THAT HE WAS BROUGHT IN TO
13 INCREASE PRODUCTION AT HOMEGOLD, CORRECT?

14 A MR. SHEPPARD?

15 Q YES.

16 A WELL, I ASSUME BY MERGING HIS COMPANY INTO HOMEGOLD
17 THAT WAS THE INTENT TO INCREASE PRODUCTION, YES.

18 Q AND THAT IN THE PRIOR YEARS, PREDATING 1997 UNDER MR.
19 MCSHANE'S WATCH HOMEGOLD HAD A RAPID EXPANSION, CORRECT?

20 A CORRECT, RIGHT.

21 Q AND THEN HE PULLED OUT WITH SOME OF HIS KEY PERSONNEL
22 AND LEFT THE COMPANY WITH THIS MASSIVE INFRASTRUCTURE IN
23 PLACE, CORRECT?

24 A YES.

25 Q AND THEN IN THE FOLLOWING YEAR, '98, '99, CAN'T

1 REMEMBER WHICH BUT HOMEGOLD SLASHED EMPLOYEES, LAID OFF
2 200 AND SOME ODD EMPLOYEES?

3 A MAY 22ND OF '98.

4 Q '98. AND TRIED TO CUT EXPENSES, CORRECT?

5 A RIGHT.

6 Q STILL HAD \$35 MILLION DOLLARS, SOME ODD OPERATING
7 LOSS?

8 A FOR WHAT PERIOD?

9 Q I BELIEVE IT WAS FOR 1999.

10 A IT WAS \$30 OR \$31, SOMEWHERE ALONG IN THERE.

11 Q AND THAT WHEN YOU ARE WRITING MR. PANTSARI IN JANUARY
12 OF 2000, THE EFFORT IN LOCATING MR. SHEPPARD'S COMPANY
13 HERE IN LEXINGTON AND THAT WILL, WE BELIEVE, INCREASE
14 PRODUCTION TO MEET, TO OVERCOME OUR HIGH LEVEL OF
15 EXPENSES?

16 A THAT WAS THE HOPE, YES.

17 Q NOW, YOU WERE ALSO ASKED BY ANOTHER LETTER WHICH IS
18 IN EVIDENCE AS STATE'S EXHIBIT 62, THIS IS THE APRIL 3RD
19 2002 LETTER TO THE, ONCE AGAIN THIS IS, IT DOESN'T REALLY
20 HAVE A PERSON IT IS ADDRESSED TO. THIS IS THE FRONT PAGE
21 OF THE LETTER AND THIS IS THE ONE WITH THE BULLET POINTS
22 IN IT. DO YOU RECALL BEING ASKED ABOUT THIS LETTER IN
23 YOUR TESTIMONY?

24 A YES.

25 Q OKAY. THIS LETTER BEARS YOUR SIGNATURE AND IT ALSO

1 BEARS THE SIGNATURE OF OTHER DIRECTORS, MR. MORRIS, MR.
2 STERLING, MR. BOBO, MR. SHARPE, DOES IT NOT?

3 A YES, IT DOES.

4 Q AND THEN THERE IS A SEPARATE SIGNED LETTER, THE SAME
5 LETTER BUT IT HAS GOT MR. SHEPPARD'S SIGNATURE, RIGHT?

6 A RIGHT.

7 Q AND THIS SAME LETTER HAS GOT MR. SHEPPARD'S
8 SIGNATURE?

9 A RIGHT.

10 Q NOW, THIS LETTER, DO YOU KNOW WHO IT WAS DRAFTED BY?

11 A SOMEONE AT HOMEGOLD, I DON'T HAVE ANY IDEA WHO.

12 Q AND DO YOU KNOW IF THE LAWYERS REVIEWED THE LETTER
13 BEFORE IT WENT TO THE SECURITIES COMMISSION?

14 A I DON'T KNOW.

15 Q NOW, IN THIS LETTER, I AM GOING TO USE THE PAGE THAT
16 JUST HAS MR. SHEPPARD'S SIGNATURE ON IT BECAUSE IT IS THE
17 ONLY ONE THAT IS CLEAR. BUT IN THIS LETTER, WHOEVER
18 DRAFTED AND WHOEVER REVIEWED IT, IT CERTAINLY SAYS THAT
19 CAROLINA INVESTORS BELIEVES THAT THE STANCE OF ELLIOTT
20 DAVIS WHICH WE CONSIDER OVERLY CONSERVATIVE MIGHT OF BEEN
21 INFLUENCED BY THE ENRON-ARTHUR ANDERSON DEBACLE AND GLOBAL
22 CROSSING ACCOUNTING. WHAT DID YOU UNDERSTAND, DO YOU
23 RECALL SEEING THAT IN THE LETTER WHEN YOU SIGNED IT?

24 A YES.

25 Q AND YOU ALSO CARRIED THAT THEME IN YOUR INNER-OFFICE

1 MEMO THAT WAS PREPARED FOR THE EMPLOYEES AT CAROLINA
2 INVESTORS, DID YOU NOT?

3 A I THINK SO, I THINK IT WAS REFERENCED MADE TO THAT,
4 YES.

5 Q NOW, DID YOU PULL THE REFERENCE FROM THIS LETTER AND
6 I WILL SHOW YOU EXHIBIT 132.

7 A SINCE I DIDN'T PREPARE THE LETTER I DON'T KNOW WHERE
8 THE REFERENCE CAME FROM, I CAN'T ATTEST TO THAT.

9 Q I UNDERSTAND BUT I AM GOING TO EXHIBIT 132 WHICH IS
10 YOUR INFORMATION ON CI PROSPECTUS FOR STAFF USE ONLY MEMO.
11 THAT DOCUMENT, DO YOU SEE THAT, SIR?

12 A YES.

13 Q AND THE FIRST SENTENCE UP THERE SAYS, BECAUSE OF
14 WORLDWIDE PROBLEMS CREATED BY ENRON AND ARTHUR ANDERSON
15 THE AUDITING WORLD HAS CHANGED FOREVER. AUDITORS AND
16 COMPANIES ARE TAKING A CLOSER LOOK AT THEIR FINANCIAL
17 STATEMENTS TO MAKE SURE THAT THEY TELL THE EXACT STORY
18 THEY SHOULD. THAT, MY QUESTION TO YOU, SIR, IS THE
19 REFERENCE TO ENRON AND ARTHUR ANDERSON TO YOUR MEMO TO THE
20 EMPLOYEES, WAS IT DERIVED FROM THE INFORMATION OF THIS
21 LETTER WRITTEN TO MR. PANTSARI?

22 A NO, I THINK THAT WAS PICKED UP OUT OF THE MEMO THAT
23 WAS PREPARED FOR STAFF.

24 Q SIR, THIS IS THE MEMO THAT WAS PREPARED FOR STAFF.
25 SO, YOU BELIEVE THE LANGUAGE IN THE LETTER CAME FROM THE

1 MEMO?

2 A WHAT IS THE DATE OF THAT MEMO AGAIN?

3 Q SIR, IT IS NOT DATED.

4 A WELL, THERE WAS TWO MEMOS AND I AM NOT SURE WHICH ONE
5 THAT IS. THE ONE THAT WAS PREPARED IN MARCH OR THE ONE
6 THAT WAS PREPARED IN SEPTEMBER. DOES THAT ONE CONTAIN
7 ANYTHING ABOUT THE POTENTIAL SALE?

8 Q NO, SIR.

9 A OKAY, WELL, THAT IS THE ONE THAT WAS PREPARED FOR
10 STAFF THEN.

11 Q NOW, WELL FIRST IN THE LETTER TO MR. PANTSARI YOU
12 CERTAINLY DON'T SAY IN THIS, THIS LETTER CERTAINLY DOESN'T
13 SAY THAT ELLIOTT DAVIS WAS MAKING THE CLAIM BECAUSE OF
14 ENRON AND ARTHUR ANDERSON PROBLEMS THAT THEY ARE PUTTING
15 IN A GOING CONCERN IN THERE?

16 A NO.

17 Q WHAT YOU ARE SAYING HERE IS THAT IS WHAT THE BOARD OF
18 CAROLINA INVESTORS BELIEVES, ISN'T THAT CORRECT?

19 A I THINK THAT IS CORRECT, YES.

20 Q THAT IS WHAT YOU BELIEVED BACK IN APRIL OF 2002?

21 A I THINK THAT WAS THE CONSENSUS, YES.

22 Q BECAUSE IN APRIL OF 2002 THERE HAD BEEN A, THERE HAD
23 BEEN A TREMENDOUS SHAKEUP IN THE FINANCIAL WORLD AS IT
24 APPLIES TO PUBLIC ACCOUNTING FIRMS, CORRECT?

25 A SURE.

1 Q AND DID YOU BELIEVE THAT THE GOING CONCERN LETTER
2 PLACED BY THE ELLIOTT DAVIS FIRM WAS OVERLY CONSERVATIVE,
3 A REACTION TO WHAT IS HAPPENING IN THE FINANCIAL WORLD?

4 A YES OR FELT LIKE IT WAS AT THAT TIME.

5 Q AND JUST GOING THROUGH YOUR MEMO TO YOUR EMPLOYEES,
6 SIR, YOU DIRECT THE EMPLOYEES TO READ THE PROSPECTUS TO AN
7 INVESTOR, RIGHT, IF AN INVESTOR SHOULD ASK YOU WHAT ALL OF
8 THIS MEANS PLEASE ASK THEM TO PROMPTLY READ PAGE F11 OF
9 THE PROSPECTUS WHICH IS THE AUDITORS FOOTNOTE 2, CORRECT?

10 A CORRECT.

11 Q AND F11 IS [#]WHERE THIS MANAGEMENTS RESPONSE TO THE
12 GOING CONCERN, AND THIS IS A WHOLE GOING CONCERN PARAGRAPH
13 IN THE PROSPECTUS?

14 A WELL, IT WAS PREPARED ACTUALLY BY HOMEGOLD AND THE
15 AUDITORS, IT WASN'T ACTUALLY PREPARED BY MANAGEMENT OF
16 CAROLINA INVESTORS.

17 Q I UNDERSTAND BUT IT IS, IN THE AUDITED FINANCIALS
18 ATTACHED TO THE CAROLINA INVESTORS PROSPECTUS', ARE THEY
19 NOT?

20 A YES.

21 Q AND THESE AUDITED FINANCIALS, YOU KNOW, ARE SHOWING
22 EXHIBIT 132 AND THIS SAYS, F11 DOWN AT THE BOTTOM. IS
23 THAT THE PAGE YOU ARE REFERRING TO IN YOUR MEMO?

24 A YES, IT IS.

25 Q AND, AGAIN, THIS DOCUMENT WAS PREPARED IN

1 CONSULTATION WITH THE WYCHE LAW FIRM, NO QUESTION ABOUT
2 THAT?

3 A RIGHT.

4 Q AND WITH ELLIOTT DAVIS?

5 A RIGHT.

6 Q AND YOU FELT COMFORTABLE IN RELYING TO TELL YOUR
7 STAFF TO GO TO THIS DOCUMENT AND LOOK AT PAGE F11 WITH
8 INVESTORS TO EXPLAIN WHAT THIS GOING CONCERN LANGUAGE
9 MEANS?

10 A WELL, SURE, THAT IS WHAT MR. STERLING, MR. SHEPPARD,
11 MR. FERRELL, ALL ^{of} OF THEM ENCOURAGED US TO USE THAT.

12 Q USE THE PROSPECTUS?

13 A YES.

14 Q NOW, THE MEETING ON, THAT YOU HAD WITH THE STAFF
15 WHERE THIS INTERNAL MEMO WAS DISTRIBUTED, THE ONLY PERSONS
16 FROM HOMEGOLD WERE MR. STERLING, CORRECT AND MR. KEVIN
17 MARTIN?

18 A THAT'S RIGHT.

19 Q AND YOU SAID, YOU HANDED A COPY OF THIS MEMO, STATE'S
20 EXHIBIT 132, DID YOU NOT?

21 A YES.

22 Q AND THEY DID NOT OBJECT TO THE LANGUAGE IN THE MEMO,
23 DID THEY?

24 A NO.

25 Q AND THE, I AM NOT GOING TO ASK YOU WHAT IT IS, WAS

1 THERE SOME INFORMATION DELETED, DO YOU KNOW, THERE IS A
2 BIG GAP ON THE SECOND PAGE. I AM JUST CURIOUS, WAS
3 INFORMATION DELETED?

4 A NOT TO MY KNOWLEDGE.

5 Q NOW, YOU INDICATE THAT MR. STERLING ASK YOU IN
6 ADDITION TO ARRANGING A MEETING WITH THE EMPLOYEES BUT
7 THAT YOU MAY ARRANGE A MEETING WITH MR. DWIGHT HOLDER?

8 A THAT'S RIGHT.

9 Q AND YOU DID THAT AT THE REQUEST OF MR. STERLING,
10 CORRECT?

11 A YES.

12 Q AND FOLLOWING THE MEETING WITH MR. HOLDER, I GUESS IT
13 WAS SOME POINT IN TIME DURING THAT PROCESS WHERE YOU HAD
14 TAKEN THE REGISTRATION STATEMENT DOWN TO THE ATTORNEY
15 GENERALS OFFICE, THE SECURITIES DIVISION TO REGISTER, FOR
16 THE PROSPECTUS?

17 A I AM NOT SURE OF THE EXACT DATE BUT I ACTUALLY
18 DELIVERED IT DOWN THERE.

19 Q AND WHAT YOU DO WHEN YOU DELIVER THE REGISTRATION
20 STATEMENT, THERE IS A FORM THAT YOU COMPLETE, IS THERE NOT
21 AND WITH A NUMBER OF ATTACHMENTS TO THEM?

22 A WELL, THERE IS A REGISTRATION STATEMENT AND GENERALLY
23 BEHIND THAT IS ADVERTISEMENT DOCUMENTS, VARIOUS
24 RESOLUTIONS OF THE BOARD, AFFIDAVIT, SERVICE, AFFIDAVIT OF
25 SERVICE, THAT SORT OF THING.

1 Q AND THE ADVERTISEMENTS THAT WERE BEING USED TO
2 ADVERTISE THE CAROLINA INVESTORS NOTES AND DEBENTURES,
3 THOSE ARE FILED WITH THE SECURITIES COMMISSION?

4 A THAT'S RIGHT.

5 Q AND ONE OF THE THINGS THAT YOU DIDN'T FILE WAS THIS
6 SUPPLEMENTAL LETTER THAT YOU DID SOME TIME IN AUGUST,
7 SEPTEMBER OF 2002, CORRECT?

8 A THAT'S CORRECT.

9 Q AND YOU WERE INSTRUCTED TO GO DOWN AND MEET WITH MR.
10 PANTSARI, GIVE HIM A COPY OF THAT LETTER AND NOT USE IT
11 ANY MORE?

12 A THAT'S CORRECT.

13 Q AND THAT IS WHAT YOU DID?

14 A RIGHT.

15 Q NOW, THAT LETTER THAT YOU SENT, SIR, WAS IT IN
16 RESPONSE TO THE SUPPLEMENT THAT WAS REQUIRED TO BE FILED.
17 I WILL SHOW YOU WHAT IS EXHIBIT 51 WHICH IS A SUPPLEMENT
18 TO THE PROSPECTUS. CAN YOU SEE THAT FROM BACK THERE, SIR?

19 A I SEE THE DATE OF APRIL 1ST OF 2002.

20 Q YES, SIR. AND WHAT THIS IS IS A SUPPLEMENT THAT WAS
21 SUBSEQUENTLY FILED UPDATING AND IF YOU WILL SEE IN THE,
22 UNDER A THERE, SIR, IT SAYS SPECIAL RISK FACTORS BEGINNING
23 ON PAGE 2 IS SUPPLEMENTED BY THE FOLLOWING INFORMATION?

24 A YES.

25 Q AND THE INFORMATION BEING SUPPLEMENTS IS THE

1 FINANCIAL PERFORMANCE OF HOMEGOLD FOR THE SECOND QUARTER,
2 WAS THE FIRST SIX MONTHS OF 2002, RIGHT?

3 A YES.

4 Q AND SO, AND THIS WAS THE FIRST TIME IN THE 30 SOME
5 ODD YEARS THAT YOU HAD BEEN WORKING AT CAROLINA INVESTORS
6 WHERE IN MIDYEAR A SUPPLEMENT TO THE PROSPECTUS WAS
7 ATTACHED, ISN'T THAT CORRECT?

8 A NO, THAT IS NOT CORRECT.

9 Q THAT IS NOT CORRECT?

10 A NO.

11 Q IT HAD NOT ^ABEEN DONE PREVIOUSLY?

12 A YES.

13 Q HAD IT BEEN DONE TO SHOW THE FINANCIAL PERFORMANCE
14 DURING MIDYEAR?

15 A NO, IT HAD BEEN DONE FOR RATE CHANGES AND THAT SORT
16 OF THING.

17 Q BUT THIS WAS THE FIRST TIME DURING MIDYEAR THAT IT
18 HAD EVER BEEN DONE TO PURPORT FINANCIAL LOSSES?

19 A YES.

20 Q AND THE PURPOSE OF THIS SUPPLEMENT WOULD BE TO
21 INCLUDE IT WITHIN THE PROSPECTUS, ANYONE WHO CAME IN AND
22 WANTED TO BUY NOTES AND DEBENTURES FROM CAROLINA INVESTORS
23 AFTER THE FOLLOWING SIX MONTHS OF 2002?

24 A YES.

25 Q AND TO UPDATE, TO GIVE THE MOST RECENT INFORMATION, I

1 THINK YOU SAID EARLIER THAT THE INFORMATION IN THIS
2 PROSPECTUS WAS STALE, DIDN'T YOU SAY IT WAS STALE ON YOUR
3 DIRECT EXAMINATION?

4 A FOR INSTANCE IN 2001, YOU KNOW, IF WE WERE GIVING OUT
5 INFORMATION DURING THE ENTIRE YEAR OF 2001 WHERE THERE
6 WERE NO SUPPLEMENTS, THE PROSPECTUS CONTAINED ONLY
7 INFORMATION THAT WAS GOOD THROUGH 2000. AND IN THOSE
8 CASES THE INFORMATION BE POSSIBLY EIGHT OR NINE MONTHS
9 OLD.

10 Q BUT IN THIS CASE, THE FIRST TIME EVER IN MIDYEAR
11 CAROLINA INVESTORS SUPPLEMENTED THE PROSPECTUS, DIDN'T
12 THEY, TO UPDATE THE FINANCIAL INFORMATION, RIGHT?

13 A YES.

14 Q NOW, THAT WASN'T AT YOUR SUGGESTION, WAS IT?

15 A NO.

16 Q THAT WAS HOMEGOLD'S SUGGESTION, WAS IT NOT?

17 A I NEVER REALLY KNEW IF IT WAS HOMEGOLD OR THE WYCHE
18 FIRM.

19 Q AND IT SAYS IN THE VERY FIRST SPECIAL RISK FACTORS
20 AND SUPPLEMENT HOMEGOLD SUSTAINED OPERATING LOSSES OF
21 \$26.6 MILLION FOR THE SIX MONTHS END OF JUNE 30TH OF 2002?

22 A RIGHT.

23 Q SIX MONTHS AND \$26, THAT IS \$4 SOMETHING MILLION A
24 MONTH FOR THE SIX MONTHS, RIGHT?

25 A YES.

1 Q ONCE AGAIN, A VERY DISMAL FINANCIAL RESULT HERE?

2 A YES.

3 Q THAT ONLY TAKES US THROUGH, I GUESS, JUNE 30TH OF
4 2002?

5 A RIGHT.

6 Q AND I THINK YOU TESTIFIED THAT YOU WERE AWARE IN THE
7 SECOND QUARTER THEY LOST ANOTHER, HOW MANY MILLION DID
8 THEY LOSE?

9 A THAT IS THROUGH THE SECOND QUARTER THEY LOST \$9.6, I
10 BELIEVE IT WAS IN THE FIRST QUARTER, \$14.4 OR \$14.6 IN THE
11 SECOND QUARTER.

12 Q AND THEN YOU GO ON TO SAY THAT, THE DOCUMENT GOES ON
13 TO SAY THAT HOMEGOLD HAS INDICATED THAT IT MAY PURSUE
14 POTENTIAL BUYERS FOR ITS RETAIL MORTGAGE ORIGINATION
15 DIVISION AND WE WILL CONTINUE TO OPERATE UNTIL IT IS
16 GROWN, CORRECT?

17 A YES.

18 Q AND AGAIN THAT IS INFORMATION THAT IS BEING MADE
19 AVAILABLE THROUGH THE PROSPECTUS TO POTENTIAL INVESTORS,
20 CORRECT?

21 A RIGHT.

22 Q AND YOU ALSO KNEW AT THIS TIME THAT MR. PHILPOTT'S
23 FIRM HAD BEEN RETAINED TO DO, TO MARKET THE SALE OF THE
24 RETAIL MORTGAGE DIVISION?

25 A SURE.

1 Q AND THAT MR. PHILPOTT HAD BEEN ON THE BOARD FOR MANY
2 YEARS BEFORE MR. SHEPPARD EVER ARRIVED ON THE SCENE,
3 RIGHT?

4 A RIGHT.

5 Q AND HE WAS NOT SOMEBODY MR. SHEPPARD BROUGHT ON THE
6 SCENE?

7 A THAT'S CORRECT.

8 Q AND SO THAT EFFORT WAS UNDERWAY AND YOU HAD MET HIM,
9 I THINK YOU ATTENDED A MEETING WITH THE SECURITIES
10 COMMISSION WITH MR. PHILPOTT?

11 A THAT'S TRUE.

12 Q AND HE WAS ACTUALLY TRYING TO SELL THE RETAIL
13 MORTGAGE DIVISION, WAS HE NOT?

14 A YES.

15 Q AND AT THIS POINT AND TIME, THAT IS WHAT YOU BELIEVED
16 THAT THE SOURCE OF PROCEEDS, THAT WOULD BE ONE SOURCE
17 INCLUDING THE BEST SOURCE OF PROCEEDS TO REPAY THIS
18 INTER-COMPANY DEBT?

19 A YES.

20 Q SIR, YOU TALKED ABOUT SOME BONUSES THAT YOU HAD
21 RECEIVED IN 2002, DO YOU RECALL THAT?

22 A YES, I DO.

23 Q AND I THINK YOU SAID YOU GOT ONE BEFORE THANKSGIVING
24 AND ONE AFTER THANKSGIVING?

25 A NO, ACTUALLY I RECEIVED ONE IN MAY AND ONE JUST

1 BEFORE THANKSGIVING.

2 Q DO YOU REMEMBER THE DATE OF YOUR BONUSES?

3 A NO, NOT THE EXACT DATE.

4 Q AND DO YOU RECALL IT BEING AFTER THE DATE MR.
5 SHEPPARD RESIGNED?

6 A I REALLY DIDN'T KNOW THAT HE HAD RESIGNED UNTIL SOME
7 TIME UP IN DECEMBER. I JUST REMEMBER THE BONUS CAME IN
8 WITH THE BONUSES FOR THE LADIES JUST BEFORE THANKSGIVING.

9 Q AND THEN WITH REGARD TO THE, YOUR REQUEST FOR A SEAT
10 ON THE BOARD OF HOMEGOLD BACK--

11 A THE SPRING OF --

12 Q THE FIRST TIME, YOU MADE THAT REQUEST TO MR.
13 STERLING?

14 A THAT'S RIGHT.

15 Q AND MR. STERLING IS THE ONE WHO ADVISED YOU THERE WAS
16 NO SEATS AVAILABLE?

17 A THAT'S CORRECT.

18 Q AND THEN YOU DID GAIN A SEAT ON THE BOARD IN, I GUESS
19 IN JANUARY OF 2000, CORRECT?

20 A YES.

21 Q AND ONE OF THE THINGS THE BOARD DID WAS APPROVE AND
22 SENT EVIDENCE TO AMENDED, OR PURCHASE AGREEMENT OR SALE
23 AGREEMENT TO EMMCO?

24 A YES.

25 Q AND THAT WAS AN AMENDED AGREEMENT IN ORDER TO, THERE

1 WAS SOME ISSUES WITH THE EMPLOYEES NOT BEING BOUND BY
2 NON-COMPETE AGREEMENTS, DO YOU RECALL THAT?

3 A NO, I WASN'T INVOLVED IN THAT.

4 Q AND THE, BUT CLEARLY BY JANUARY 1 OF 2002 EMMCO WAS
5 UP AND RUNNING OUTSIDE THE UMBRELLA OF HOMEGOLD, WERE THEY
6 NOT?

7 A WELL, I DIDN'T REALLY KNOW WHAT THE TOTAL TRANSITION
8 WAS, I JUST KNEW THAT WHEN THE DOCUMENTS WERE BROUGHT TO
9 ME OR DELIVERED TO ME TO BE SIGNED IN JANUARY AS OF THE
10 END OF DECEMBER SOME FIGURES HAD CHANGED FROM WHAT THE
11 NOVEMBER 29TH ^{DEAL} WAS SUPPOSE TO HAVE BEEN. AND I MEAN
12 THERE WERE SUBSTANTIAL CHANGES AND TO THE BEST OF MY
13 KNOWLEDGE NOBODY EVER CAME BACK TO CAROLINA INVESTORS TO
14 GET A RE-APPROVAL OF THE INCREASE LIKE THE PREFERRED STOCK
15 FOR INSTANCE CHANGED.

16 Q AND YOU ALSO MENTIONED THAT TO THE BEST OF YOUR
17 KNOWLEDGE THE SHAREHOLDERS WERE NOT ASKED TO VOTE TO
18 RONNIE SHEPPARD?

19 A THAT'S CORRECT.

20 Q CLEARLY MR. SHEPPARD IS LONG GONE BY THE TIME THE
21 DECISION OF HOMEGOLD WHETHER TO SUBMIT THIS ISSUE TO THE
22 SHAREHOLDERS OR NOT BECAUSE HE IS ON THE OTHER END OF THIS
23 TRANSACTION, IS HE NOT.

24 A WELL, HE IS ON THE OTHER END OF THE TRANSACTION BUT
25 IT IS MY IMPRESSION THAT HE WAS STILL VERY AVAILABLE THERE

1 IN THE ORIGINATION, THERE WAS STILL A LOT OF INTERTWINED
2 ACTIVITIES STILL GOING ON UP INTO JANUARY.

3 Q SURE, BECAUSE THE MONIES THAT EMMCO WAS GOING TO EARN
4 OUT FROM UNDER THE DEBT CRISES OF HOMEGOLD, THE PLAN WAS
5 HE WOULD BE ABLE TO OPERATE AND GET SUFFICIENT WAREHOUSE
6 LINE FUNDING AND USE THE PROCEEDS TO HOMEGOLD WHO COULD
7 THEN COULD PAY CAROLINA INVESTORS.

8 A WELL, ONE OF THE PROMISES THAT HE MADE TO CAROLINA
9 INVESTORS ON NOVEMBER THE 19TH WAS THAT ONE OF THE ENTICES
10 THAT ENCOURAGED US TO SIGN OFF ON THE SALE TO EMMCO WAS
11 THE FACT THAT HE ^{WAS} ALREADY HAD \$135 MILLION DOLLARS WORTH OF
12 WAREHOUSE LINES SET UP READY TO GO. SO, WHY WOULD HE BE
13 HAVING TROUBLE WITH WAREHOUSE LINES IN DECEMBER AND
14 JANUARY IF HE HAD THEM SET UP FREE TO GO IN NOVEMBER.

15 Q AND DO YOU KNOW?

16 A I STILL DON'T KNOW IF HE HAD THEM SET UP AND READY TO
17 GO, I KIND OF DOUBT IT MYSELF.

18 Q YOU JUST, YOU JUST DOUBT IT, YOU DON'T KNOW?

19 A I DON'T KNOW.

20 Q NOW, IN THE SPRING OF 2003 HOMEGOLD, CAROLINA
21 INVESTORS CONTINUED TO OPERATE UP UNTIL MARCH, I BELIEVE,
22 THE 23RD?

23 A 21ST, YES.

24 Q 21ST. AND IN FEBRUARY OF 2003 YOU WENT TO TWO BOARD
25 MEETINGS, ONE BOARD MEETING YOU WENT TO WAS HOMEGOLD BOARD

1 MEETING?

2 A THAT'S RIGHT.

3 Q AND AT THAT BOARD MEETING YOU WERE GIVEN FINANCIAL
4 INFORMATION THAT AGAIN MADE YOU PRETTY DISTRAUGHT?

5 A ABSOLUTELY.

6 Q BUT I THINK YOU EXPLAINED THAT A LOT OF THOSE NUMBERS
7 WERE WRITE DOWNS, ACCOUNTING ADJUSTMENTS ONCE AGAIN THAT
8 WAS ACCOUNTED FOR A LOT OF THAT LOSS?

9 A ONE OF THEM WAS A \$19 MILLION DOLLAR GOODWILL.

10 Q AND THAT WAS A \$19 MILLION DOLLAR GOODWILL WRITE
11 DOWN?

12 A IN OTHER WORDS I THINK A \$2.6 MILLION DOLLAR WRITEOFF
13 ON A COMPUTER SYSTEM OR SOMETHING. THERE WERE SEVERAL
14 SIZABLE WRITE DOWNS.

15 Q WRITEOFF FOR THE SALE OF THE PELHAM ROAD BUILDING?

16 A YES.

17 Q BUT IN THAT MEETING YOU WERE ALSO GIVEN, THERE WAS A
18 FIVE YEAR PLAN, A STRATEGIC PLAN THEY HAD WORKED ON,
19 CORRECT?

20 A THAT IS WHAT THEY SAID.

21 Q AND THAT, AT THAT POINT AND TIME FORREST FERRELL IS
22 THEN CEO OF HOMEGOLD, CORRECT?

23 A RIGHT.

24 Q AND KAREN MILLER IS THE VICE-PRESIDENT.

25 A SHE HAD FOUR OR FIVE TITLES, I DON'T REALLY KNOW WHAT

1 SHE WAS CARRYING THAT DAY.

2 Q AND THEN MR. STERLING WAS STILL ON BOARD?

3 A YES.

4 Q AND MR. PHILPOTT WAS STILL ON BOARD?

5 A IN MY UNDERSTANDING MR. PHILPOTT LEFT AS OF JANUARY,
6 I AM NOT SURE, HE WASN'T AT THAT MEETING.

7 Q AND THEN YOU AND MR. FERRELL AND MS. MILLER WERE ON
8 BOARD?

9 A RIGHT.

10 Q AND IN FEBRUARY OF '03 THERE WAS A DECISION TO SETTLE
11 A CIVIL LAWSUIT, CORRECT?

12 A YES.

13 Q AND THAT WAS A \$10 MILLION DOLLAR SETTLEMENT, WAS IT
14 NOT?

15 A I AM SORRY?

16 Q A SETTLEMENT WAS FOR THE PAYMENT OF \$10 MILLION
17 DOLLARS?

18 A YES, \$10 MILLION I THINK PLUS LEGAL FEES.

19 Q AND THAT WAS A LAWSUIT THAT YOU SAID WAS FOR SMALL
20 LOANS AND THINGS THAT HAD BEEN AROUND FOR QUITE SOME TIME,
21 THAT LITIGATION HAD BEEN AROUND FOR QUITE SOME TIME?

22 A YES, I THINK IT STARTED MAYBE IN '98.

23 Q WELL, BEFORE MR. SHEPPARD ARRIVED?

24 A YES.

25 Q BUT SITTING THERE AND SELLING LAWSUITS WOULD APPEAR

1 TO YOU, THE PLAN IS NOT TO SHUT THIS COMPANY DOWN BUT TO
2 CONTINUE OPERATING, CORRECT?

3 A WELL, THAT WAS THEIR PLAN BUT OBVIOUSLY THEY HADN'T
4 THOUGHT THE THING THROUGH BECAUSE AT THAT POINT THEY WERE
5 TALKING ABOUT ANOTHER, A MINIMUM \$48 MILLION DOLLAR LOSS.
6 AND OUR ATTORNEY THAT CERTIFIED OUR PROSPECTUS HAD JUMPED
7 SHIP AND WE HADN'T BEEN SUCCESSFUL IN FINDING ANOTHER
8 ATTORNEY TO EVEN CERTIFY THE PROSPECTUS. SO, I DON'T KNOW
9 HOW THEY COULD RATIONALLY SIT THERE AND TRY TO SELL US A
10 FIVE YEAR STRATEGIC PLAN AND EVERYTHING WAS GOING TO BE
11 ROSY AND GREAT WITH FACING THOSE KINDS OF LOSSES.

12 Q AND THEN A FEW DAYS LATER YOU WENT TO THE CAROLINA
13 INVESTORS BOARD MEETING WHERE THAT FIVE YEAR STRATEGIC
14 PLAN WAS PRESENTED TO THEM, WAS IT NOT?

15 A WELL, SOME HIGHLIGHTS OF IT WAS PRESENTED.

16 Q NOW, YOU TESTIFIED EARLIER AND I WANT TO PUT MY HANDS
17 ON IT, ABOUT RECEIVING A CALL FROM MR. PANTSARI PERTAINING
18 TO HIS UNDERSTANDING OR REPORTS THAT CAROLINA INVESTORS
19 WAS STILL UPSTREAMING MONEY TO HOMEGOLD?

20 A YES.

21 Q AND YOU WROTE TO MR. PANTSARI WHICH IS STATE'S
22 EXHIBIT 196, THIS LETTER DATED FEBRUARY THE 26TH OF 2003,
23 CORRECT?

24 A YES.

25 Q AND IN THIS LETTER, WELL FIRST, YOU GOT THIS

1 INFORMATION FROM KAREN MILLER, DID YOU NOT?

2 A THAT'S RIGHT.

3 Q AND THE INFORMATION THAT YOU GOT FROM MS. MILLER,
4 WELL YOU HAVEN'T BEEN TAKING MONEY IN FROM CAROLINA
5 INVESTORS?

6 A WELL, SHE DIDN'T SEE IT THAT WAY. SHE SAID WE HAVE
7 ACTUALLY PAID BACK CAROLINA INVESTORS, MORE THAN WE HAVE
8 TAKEN. SO, IN MAKING THAT STATEMENT SHE DIDN'T MENTION
9 THAT THEY HAD TAKEN MONEY BUT BASED ON HER CALCULATION
10 THEY HAD PAID BACK MORE THAN THEY TOOK.

11 Q AND THERE IS, AND IN THIS LETTER THAT YOU WROTE, IT
12 SAYS AS CONFIRMED TO YOU VERBALLY IN MEETING WITH
13 REPRESENTATIVES FROM HOMEGOLD ON FEBRUARY 25TH, HOMEGOLD
14 HAS RETURNED \$1.6 MILLION SOMETHING TO CAROLINA INVESTORS
15 IN SEPTEMBER THE 3RD OF 2002, RIGHT?

16 A RIGHT.

17 Q AND THAT WAS INFORMATION THAT YOU THEN PROVIDED TO
18 HER?

19 A RIGHT.

20 Q AND THEN THERE IS A SPREADSHEET ATTACHED TO THIS
21 DOCUMENT THAT SUPPORTS THAT, CORRECT?

22 A BASED ON HER CALCULATIONS THAT RESOLVE WAS SHOT DOWN
23 BY THE BANKRUPTCY EXAMINER.

24 Q WELL, I APPRECIATE THAT EDITORIAL COMMENT, MR. OWEN,
25 YOU KNOW THAT SHE DID THE CALCULATIONS OR SOMEONE IN THE

1 ACCOUNTING DEPARTMENT AT HOMEGOLD DID THOSE?

2 A I DON'T KNOW WHO DID THEM.

3 Q AND YOU UNDERSTAND THAT HOMEGOLD DID NOT TAKE, DIDN'T
4 TAKE ANY NEW MONEY IN SINCE APPROXIMATELY BEFORE AUGUST OR
5 IN AUGUST OR SEPTEMBER 2002. NEW MONEY COMING IN OFF THE
6 STREET THAT HOMEGOLD DID NOT USE THAT MONEY AT CAROLINA
7 INVESTORS?

8 A CAROLINA INVESTORS DIDN'T USE IT, THEY TOOK IT.

9 Q ISN'T IT TRUE THAT IN AUGUST OF 2000 THAT CAROLINA
10 INVESTORS PAID BACK SOME \$10 MILLION DOLLARS?

11 A THAT'S TRUE.

12 Q PEOPLE ON THE STREET, IS THAT CORRECT?

13 A THAT'S CORRECT. HOMEGOLD WAS ALSO TAKING IN
14 COLLECTIONS ON LOANS THAT BELONGED TO CAROLINA INVESTORS
15 AND CAROLINA INVESTORS NEVER GOT THAT MONEY EITHER UNLESS
16 IT WAS IN A HIDDEN FORM.

17 Q AND THAT IS NOT MONEY COMING IN OFF THE STREET?

18 A NO.

19 Q THAT IS MONEY THAT IS BEING IN THESE RESIDUAL LOAN
20 POOLS AS COMING IN FROM HOMEGOLD THAT IS PROPERTY OF
21 CAROLINA INVESTORS, RIGHT?

22 A THAT'S TRUE. I MEAN IT IS MONEY THAT CAME IN OFF THE
23 STREET THAT WAS LOANED OUT WHICH IS NOW COMING BACK IN.

24 Q BUT NEW MONEY COMING IN OFF THE STREET IN SEPTEMBER
25 OF 2002?

1 A THAT'S CORRECT.

2 Q YOU UNDERSTAND HOMEGOLD DIDN'T TAKE ANY OF THAT AND
3 THEY ACTUALLY PAID BACK \$1.6 MILLION DOLLARS?

4 A WELL, I CAN'T CONFIRM THAT BECAUSE, LIKE I SAID, THAT
5 CALCULATION WAS CALLED INTO QUESTION AND I DIDN'T HAVE THE
6 BACKUP INFORMATION THAT WOULD VERIFY ANY OF IT REALLY.

7 Q NOW, YOU ALSO KNEW BEFORE MR. KEVIN MAST, EXCUSE ME,
8 KEVIN MARTIN SENT THAT RESIGNATION LETTER, YOU KNEW, YOU
9 HAD BEEN ADVISED THAT HE WAS GOING TO BE FIRED, HADN'T
10 YOU?

11 A THAT'S TRUE.

12 Q SO, BEFORE HIS SO CALLED RESIGNATION YOU HAD BEEN
13 CONSULTED ABOUT HIS FIRING?

14 A YES.

15 Q AND YOU DIDN'T THINK HE WAS COMPETENT TO BE A CFO TO
16 RUN A PUBLIC COMPANY, DID YOU?

17 A I REALLY DIDN'T.

18 Q SO, YOU WERE GLAD TO SEE HIM GO, CORRECT?

19 A WELL, I CAN'T SAY I CRIED ABOUT IT BECAUSE I HAD
20 COMPLAINED ABOUT HIS NOT COOPERATING WITH ME TO GET PROPER
21 FINANCIAL INFORMATION.

22 Q SO, FOR YOU TO TELL THIS JURY, HAD YOU KNOWN THAT HE
23 WROTE SOME LETTER THAT SAYS WHATEVER IT SAYS, THAT WHEN
24 YOU SAW THAT YOU WOULD OF RESIGNED ALSO. THAT IS JUST NOT
25 TRUE, IS IT, SIR?

1 A IT IS ABSOLUTELY TRUE. I HAD NO IDEA HE LEFT BECAUSE
2 HE DIDN'T HAVE ANY IDEA THAT HOMEGOLD WOULD EVER BE ABLE
3 TO REPAY THAT MONEY. I MEAN, HE WAS CHIEF FINANCIAL
4 OFFICER, HE HAD BEEN WORKING AROUND MR. SHEPPARD AND MR.
5 FERRELL AND MS. MILLER AND OTHERS IN THE ACCOUNTING
6 DEPARTMENT DOWN THERE AND HE HAD SEEN OBVIOUSLY EVERY
7 CHECK THAT CAME THROUGH THERE WAS UNDER HIS RESPONSIBILITY
8 AND HE KNEW A LOT MORE ABOUT THE CONDITION OF HOMEGOLD
9 THAN I COULD EVER DREAM TO KNOW. AND CERTAINLY IF HE HAD
10 THAT MUCH KNOWLEDGE UNDER HIS BELT AND FELT THAT WAY ABOUT
11 THE STABILITY OF HOMEGOLD AND HIS FUTURE ABILITIES I WOULD
12 OF HAD TO PLACE SOME CONFIDENCE IN HIM EVEN THOUGH I
13 DIDN'T FEEL LIKE HE SHOULD OF BEEN PUT IN THAT POSITION TO
14 BEGIN WITH.

15 Q WELL, WHEN YOU WERE TOLD, YOU KNEW AHEAD OF TIME HE
16 WAS GOING TO BE FIRED, CORRECT?

17 A A COUPLE OF WEEKS, I GUESS.

18 Q AND A COUPLE OF WEEKS AND THEN ONCE HE WAS GONE, IT
19 DIDN'T SURPRISE YOU THAT HE WAS GONE, CORRECT?

20 A NO.

21 Q AND IT WOULDN'T SURPRISE YOU THAT SOMEONE WHO IS
22 ABOUT TO BE FIRED WHO SENDS OUT A RESIGNATION LETTER WOULD
23 FIRE OFF SOME KIND OF NASTY TO HIS OR HER BOSS. THAT
24 DOESN'T SURPRISE YOU, DOES IT?

25 A WELL, I HEARD THAT HE KNEW HE WAS GOING TO BE FIRED.

1 I MEAN, THEIR LETTER SAID HE LEFT UNDER GOOD TERMS SO, YOU
2 KNOW, I WASN'T THERE SO I DON'T KNOW.

3 Q OKAY. THAT IS ALL I HAVE. THANK YOU.

4 THE COURT: ALL RIGHT, REDIRECT?

5 MS. EVANS: YES, YOUR HONOR.

6 REDIRECT EXAMINATION

7 BY MS. EVANS:

8 Q MR. OWEN, MR. GRIFFIN ASK YOU ABOUT THE PROSPECTUS,
9 THE AMENDMENT TO THE PROSPECTUS THAT WAS FILED IN AUGUST
10 OF 2002?

11 A YES, MA'AM.

12 Q MR. GRIFFIN TALKED TO YOU ABOUT THAT AND THAT WAS THE
13 FIRST TIME THAT YOU ALL HAD A FINANCIAL AMENDMENT TO THE
14 PROSPECTUS DONE?

15 A AS FAR AS I CAN RECALL.

16 Q WAS THAT THE FIRST YEAR YA'LL HAD GOING CONCERN PUT
17 INTO THE PROSPECTUS?

18 A YES, IT WAS.

19 Q AND THIS IS THE AMENDMENT THAT HE WAS TALKING ABOUT,
20 CORRECT?

21 A YES, IT IS.

22 Q AND GOING ON AND LOOKING AT THIS, UNDER A OF THE
23 AMENDMENT TO THE PROSPECTUS FILED AUGUST 2002, WILL YOU
24 TELL THE JURY WHAT THEY TALKED ABOUT THE LOAN PRODUCTION?

25 A THE LOAN PRODUCTION WAS ACTUALLY THE AMOUNT OF THE

1 MORTGAGE LOANS THAT THEY WERE DOING IN ANY GIVEN MONTH.
2 AT SOME POINT AFTER MR. SHEPPARD CAME ON BOARD THE
3 MORTGAGE VOLUME HAD DROPPED DOWN TO, I DON'T KNOW, MAYBE
4 \$15 TO \$20 MILLION DOLLARS PER MONTH. AND WHEN HE CAME ON
5 BOARD HIS COMPANY HELPED TO INCREASE THAT MONTHLY VOLUME
6 AND IT STARTED STEADILY GOING UP, IT WOULD GO UP \$3, \$5
7 MILLION A MONTH AND IT WAS GETTING ON UP TO \$30, \$35
8 MILLION PER MONTH. AND THEY TOLD US THAT WHEN IT HITS \$50
9 MILLION A MONTH THAT IS THE BREAK EVEN POINT, EVERYTHING
10 ABOVE THAT IS GOING TO BE PROFITABILITY.

11 Q DID YOU EVER HIT THAT PROFITABILITY POINT, MR. OWEN,
12 THAT MR. SHEPPARD WAS IN CHARGE?

13 A NO, SUBSEQUENT BOARD MEETINGS, THEY WOULD REPORT TO
14 US THE MORTGAGE VOLUME THAT THEY HAD LAST MONTH. AND I
15 DON'T RECALL ACTUALLY EVER HITTING A TARGET THAT THEY HAD
16 PROJECTED THE PRIOR MONTH.

17 Q I DRAW YOUR ATTENTION TO THIS PARAGRAPH, IF THIS
18 EXPECTED IMPROVEMENT. CAN YOU READ THAT, MR. OWEN?

19 A IF THIS EXPECTED IMPROVEMENT OCCURS IT SHOULD REDUCE
20 CONCERNS AS TO THE ABILITY OF THE COMPANY TO CONTINUE AS A
21 GOING CONCERN AND CONCERNED ABOUT THE ABILITY OF HOMEGOLD
22 FINANCIAL TO REPAY THE INTER-COMPANY LOANS.

23 Q SO, THIS AMENDMENT TO THE PROSPECTUS IS REGARDING
24 GOING CONCERN?

25 A YES.

1 Q AT NO OTHER TIME WAS GOING CONCERN, EXCEPT WHEN MR.
2 SHEPPARD WAS CEO YEAREND OF 2001 WAS GOING CONCERN PUT IN
3 THE PROSPECTUS?

4 A THAT'S CORRECT.

5 Q SO, DOES IT SURPRISE YOU THAT THERE IS SOMETHING PUT
6 OUT MIDYEAR TALKING ABOUT THE GOING CONCERN?

7 A WELL, IT DOESN'T SURPRISE ME ONCE THE GOING CONCERN
8 WAS PUT IN THERE, THAT THEY HAD MONITORED MORE CLOSELY AS
9 THINGS PROGRESSED, OF COURSE, THE SECURITIES COMMISSION
10 WOULD REQUIRE THAT THOSE CHANGES BE NOTED FOR THE
11 INVESTORS.

12 Q AND DON'T THEY ALSO TALK ABOUT POSITIVE THINGS THAT
13 ARE GOING ON IN THE COMPANY ABOUT AUGUST OF 2002?

14 A YES.

15 Q MR. OWEN, BASED UPON WHAT YOU REVIEWED AND WHAT YOU
16 KNOW WAS ANYTHING POSITIVE REALLY GOING AT HOMEGOLD IN
17 AUGUST OF 2002?

18 A NO.

19 Q YOU TALKED ABOUT THE QUARTERS AND THAT AT NO QUARTER
20 DID MR. SHEPPARD OR HOMEGOLD REPORT A PROFIT. DO YOU
21 REMEMBER THE THIRD QUARTER OF 2001 WHEN MR. SHEPPARD WAS
22 CEO?

23 A YES.

24 Q DID THEY REPORT A PROFIT THAT QUARTER, MR. OWEN?

25 A IF I REMEMBER CORRECTLY, KEEP IN MIND THAT IS THE

1 QUARTER THAT MR. STERLING AND THE REST OF THEM WERE
2 PROMISING THAT THE COMPANY WAS GOING TO HIT PROFITABILITY.
3 AND BY THE COMPANY WE ALWAYS ASSUMED THEY MEANT HOMEGOLD
4 FINANCIAL. THEY DID REPORT OVER A \$331 THOUSAND DOLLAR
5 PROFIT, I BELIEVE, FOR THAT QUARTER ENDING SEPTEMBER 30TH.

6 Q AND FROM YOUR UNDERSTANDING AND YOUR REVIEW OF THE
7 FILING WAS THAT LATER REVERSED BY THE AUDITORS?

8 A WELL, IT WAS REVERSED BY THE AUDITORS BUT IN THE
9 FIRST PLACE IT WASN'T FOR HOMEGOLD FINANCIAL. IT WAS JUST
10 FOR THE RETAIL MORTGAGE DIVISION.

11 Q AND BASED UPON YOUR KNOWLEDGE AND KEEPING UP WITH
12 HOMEGOLD AND HOMEGOLD FINANCIAL, IS THAT ONE OF THE FIRST
13 TIMES THEY JUST REPORTED THE HOMEGOLD, INC. FIGURES
14 SHOWING A PROFIT?

15 A YES.

16 Q AND BASED UPON YOUR REVIEW AND YOUR UNDERSTANDING OF
17 THAT WAS THAT PROFIT THAT THEY SHOWED ACTUALLY REVERSED
18 THAT YEAREND?

19 A IT WAS REVERSED AT YEAREND, YES.

20 Q AND DO YOU REMEMBER WHAT THAT PROFIT WAS BASED UPON?

21 A IT WAS ACTUALLY A RESERVE OF SOME SORT THAT THEY TOOK
22 PART OF THE RESERVE AND FLIPPED IT BACK TO INCOME.

23 Q AND THAT IS WHEN MR. SHEPPARD WAS CEO?

24 A YES.

25 Q MOVING ON YOU TALKED ABOUT 1998, HOMEGOLD HAD

1 FINANCIAL PROBLEMS.

2 A YES.

3 Q AND MR. GRIFFIN ASKED YOU THE QUESTION. IF ALL OF
4 THE CAROLINA INVESTORS HAD COME IN IN 1998 COULD YOU
5 ADHERE TO THE FIVE OR FIFTEEN MINUTE RULE AND DO YOU
6 REMEMBER WHAT YOUR ANSWER WAS?

7 A NO.

8 Q LET ME ASK YOU--

9 A IT WAS NO.

10 Q OKAY. LET ME ASK YOU THIS, DO YOU KNOW GOING BACK TO
11 THAT YEAR IF YA' ^{EL} HAD TO LIQUIDATE, DO YOU KNOW IF
12 HOMEGOLD COULD OF LIQUIDATED AND PAID BACK THE CAROLINA
13 INVESTORS IN 1998 BASED UPON YOUR KNOWLEDGE OF THE
14 FINANCIAL SITUATION AT THAT TIME AND THE APPROXIMATELY
15 \$80, \$60 MILLION TO \$80 MILLION DOLLAR INTER-COMPANY DEBT
16 AT THAT POINT?

17 A THEY ACTUALLY COULD HAD BECAUSE THEY SOLD THE
18 EMERGENT MORTGAGE BUSINESS CAPITAL, NOT EMERGENT MORTGAGE
19 BUSINESS CAPITAL, EMERGENT BUSINESS CAPITAL. IT IS MY
20 UNDERSTANDING IS THAT THEY SOLD IT TO TRANS AMERICA
21 COMPANY FOR SOMETHING LIKE \$96 MILLION DOLLARS.

22 Q MR. GRIFFIN ASKED YOU ABOUT NOT LEAVING FOR ANOTHER
23 POSITION FROM CAROLINA INVESTORS. WAS THAT DECISION MADE
24 TO DECEIVE CAROLINA INVESTORS?

25 A ABSOLUTELY NOT.

1 Q PLEASE EXPLAIN TO THE JURY WHY YOU MADE THE DECISION
2 TO STAY AT CAROLINA INVESTORS?

3 A MAINLY BECAUSE A LOT OF OUR INVESTORS, I HAD SPENT 30
4 YEARS BUILDING THEM.

5 Q YOUR DECISION NOT TO GO WITH A COMPETING COMPANY WAS
6 NOT BASED UPON TO DECEIVE INVESTORS?

7 A NO.

8 Q WHY DID YOU STAY THERE?

9 A I STAYED BECAUSE I HAD FAITH IN HOMEGOLD AND WHAT HE
10 WAS TELLING US.

11 Q AND WHY DID YOU STAY THROUGHOUT 2001?

12 A BASICALLY FOR THE SAME REASON, I JUST FELT LIKE THAT
13 I WAS HOPING AND PRAYING THAT THEY WOULD BE ABLE TO RETURN
14 TO PROFITABILITY.

15 Q WHY DID YOU STAY AFTER YOU LOST FAITH THAT THEY COULD
16 TURN AROUND?

17 A BECAUSE I DIDN'T WANT TO BE THE ONE TO LEAVE AND BE
18 ACCUSED OF CAUSING THE FAILURE.

19 Q YOU STAYED UNTIL THEY CLOSED THE DOORS?

20 A YES.

21 Q LET'S GO BACK AND I WANT TO CLEAR UP A COMMENT ABOUT
22 BEING KEPT IN THE DARK ABOUT THE FINANCIALS. WHEN YOU
23 TALK ABOUT FINANCIALS, MR. OWEN, ARE YOU TALKING ABOUT THE
24 QUARTERLY FILINGS, WHAT IS OUT THERE. IS THAT WHAT YOU
25 MEAN BY FINANCIALS?

1 A WHAT MAINLY I WAS TALKING ABOUT WAS DETAILED
2 FINANCIAL STATEMENTS FOR CAROLINA INVESTORS WHICH INCLUDED
3 OR HAD ALWAYS INCLUDED A BALANCE SHEET, PROFIT AND LOSS
4 STATEMENT, G&A EXPENSES WHICH IS GENERAL AND
5 ADMINISTRATIVE EXPENSES, IT SHOWED COLLECTION REPORTS, IT
6 SHOWED VARIOUS STATISTICAL INFORMATION IN ADDITION TO
7 HOMEGOLD'S STATEMENTS.

8 Q SO, WHEN HE WAS TALKING ABOUT YOUR PREVIOUS TESTIMONY
9 ABOUT BEING KEPT IN THE DARK AS YOU TESTIFIED HERE
10 YESTERDAY AND EARLIER THIS MORNING THAT YOU WEREN'T TOLD
11 THE TRUE FINANCIAL CONDITIONS. PLEASE EXPLAIN WHAT YOU
12 MEANT TO THE JURY.

13 A WELL, I THOUGHT I HAD EARLIER BUT YOU CAN'T JUST LOOK
14 AT A QUARTERLY FILING WITH THE SECURITIES EXCHANGE
15 COMMISSION AND TELL WHAT IS GOING ON WITH THE COMPANY, I
16 DON'T CARE IF IT IS HOMEGOLD OR WHAT COMPANY IT IS. IF
17 THAT COMPANY HAS A DEBT LIKE HOMEGOLD HAD TO CAROLINA
18 INVESTORS YOU HAVE TO HAVE FINANCIAL STATEMENTS OF BOTH
19 COMPANIES TO BE ABLE TO TELL WHAT IS GOING ON ESPECIALLY
20 IF THE LARGER COMPANY, HOMEGOLD OWNS CAROLINA INVESTORS
21 ONE-HUNDRED PERCENT. AS I MENTIONED EARLIER, IT WAS
22 ROUTINE FOR HOMEGOLD, WHEN THEY WERE FILING THEIR
23 QUARTERLY STATEMENTS WITH THE SECURITIES EXCHANGE
24 COMMISSION TO FIND IT CONVENIENT TO MOVE ASSETS WHETHER IT
25 BE A BUILDING OR WHATEVER IT IS FROM CAROLINA INVESTORS

1 STATEMENT TO HOMEGOLD'S STATEMENT OR TO MOVE SOMETHING
2 FROM HOMEGOLD'S STATEMENT TO CAROLINA INVESTORS STATEMENT
3 IF IT IS SOMETHING THAT THEY FEEL LIKE THEY ARE GOING TO
4 GET QUESTIONED BY THE SECURITIES EXCHANGE COMMISSION. SO,
5 THEY WERE IN THE ROUTINE OF MOVING ASSETS BACK AND FORTH
6 FROM ONE BALANCE SHEET TO THE OTHER. AND I WILL GIVE YOU
7 AN EXAMPLE. SOMETIME TOWARD THE END OF 2002, I HAD ONE
8 VEHICLE AT CAROLINA INVESTORS, IT WAS A 2001 EXPLORER
9 WORTH ABOUT \$15 THOUSAND DOLLARS AND IT WAS A COMPANY
10 VEHICLE. AFTER THE OFFICE CLOSED VIA THE CREDITORS
11 COMMITTEE THEY GENERATED A FINANCIAL STATEMENT FOR
12 CAROLINA INVESTORS, THE BALANCE SHEET P&L FOR THE END OF
13 THE YEAR. AND THAT BALANCE SHEET P&L REFLECTED THAT ON
14 CAROLINA INVESTORS BOOKS THERE WAS VEHICLES TOTALING
15 ONE-MILLION, SIX. AND I SAID THAT IS IMPOSSIBLE, CAROLINA
16 INVESTORS HAS NEVER HAD THAT KIND OF VEHICLES. AND I
17 ASKED SHANE SMITH, I BELIEVE IT WAS, TO GENERATE ME A LIST
18 SHOWING WHAT VEHICLES WERE ACTUALLY CARRIED ON THE BOOKS
19 OF CAROLINA INVESTORS. AND WHEN I GOT THE LIST, NOT ONLY
20 DID IT HAVE MR. SHEPPARD'S MILLION DOLLAR MOTOR HOME BUT
21 IT HAD F-250 FORD PICKUP TRUCKS, F-354 PICKUP TRUCKS,
22 FLATBED TRAILERS, VANS, ALL KINDS OF VEHICLES WERE ON THAT
23 LIST. THERE WERE ON CAROLINA INVESTORS BALANCE SHEET AND
24 THEY WEREN'T SUPPOSE TO BE.
25 Q SO, THAT LOOKED LIKE IT WAS AN ASSET OF CAROLINA

1 INVESTORS WHEN IN REALITY IT WAS SOMETHING--

2 A IT WAS HOMEGOLD OR SOMEBODY ELSE'S, IT WASN'T OURS.

3 Q LET'S TALK ABOUT ASSETS FOR A SECOND. MR. GRIFFIN
4 BROUGHT UP THE PELHAM ROAD BUILDING. DO YOU REMEMBER WHO
5 SOLD THAT PELHAM ROAD PROPERTY?

6 A RONNIE SHEPPARD.

7 Q AND DO YOU REMEMBER WHEN HE DID THAT?

8 A IN DECEMBER OF '02.

9 Q AND WHO DID THAT PELHAM ROAD PROPERTY BELONG TO OR ON
10 THE BOOKS?

11 A IT WAS ON THE BOOKS OF CAROLINA INVESTORS.

12 Q WHO TOOK THE MONEY?

13 A HOMEGOLD.

14 Q IS THAT ANOTHER EXAMPLE YOU ARE TALKING ABOUT THE
15 FINANCIAL STATEMENTS?

16 A YES.

17 Q ANOTHER THING ABOUT FINANCIAL STATEMENTS, DO
18 FINANCIAL STATEMENTS SHOW CHARTERED AIR FLIGHTS?

19 A NO, I DIDN'T KNOW ABOUT THOSE UNTIL THREE OR FOUR
20 MONTHS AFTER WE CLOSED.

21 Q AND WHAT DID YOU LEARN ABOUT CHARTERED AIR FLIGHTS
22 THAT WAS GOING ON AT HOMEGOLD?

23 A I LEARNED THAT MR. SHEPPARD HAD TAKEN CHARTERED JET
24 FLIGHTS WITH HIM AND HIS FAMILY ALL OVER THE COUNTRY
25 TOTALING OVER \$875 THOUSAND DOLLARS.

1 Q AND IS THAT WHAT YOU MEANT WHEN YOU TESTIFIED EARLIER
2 ABOUT BEING KEPT IN THE DARK FINANCIALLY?

3 A TO A LARGE EXTENT.

4 MR. GRIFFIN: OBJECTION, LEADING, YOUR HONOR.

5 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

6 Q JUST PLEASE EXPLAIN, WHEN YOU WERE TALKING ABOUT YOUR
7 PREVIOUS TESTIMONY ABOUT BEING KEPT IN THE DARK
8 FINANCIALLY AND WHAT YOU TESTIFIED EARLIER TO?

9 A WELL, I FOUND OUT THAT HE OWNED A PERSONAL GYM FOR
10 INSTANCE AND WAS PAYING HIS PERSONAL TRAINER AN ENORMOUS
11 SALARY, OVER \$100⁰₀ THOUSAND DOLLARS A YEAR. HE HAD THE
12 MOTOR HOME WHICH WE WERE NOT AWARE OF. WE CERTAINLY
13 WEREN'T AWARE THAT HE TRADED THE MOTOR HOME EVERY YEAR AND
14 EACH YEAR GOT TO BE A MORE EXPENSIVE ONE. WE HAD, I MEAN
15 HE HAD A PIECE OF PROPERTY OUT ON LAKE MURRAY WHICH WE
16 WEREN'T AWARE OF. WE CERTAINLY WEREN'T AWARE OF THE \$875
17 THOUSAND DOLLARS WORTH OF CHARTERED JET TRIPS. JUST
18 LIVING AN OPULENT LIFE STYLE WHILE HOMEGOLD BLEED.

19 Q AND YOU STATED, MR. GRIFFIN ASKED YOU ABOUT WHAT WAS
20 TOLD TO YOU AT THE NOVEMBER 2002 ABOUT THE EMMCO DEAL AND
21 YOU SAID YOU KIND OF DOUBTED IT. WHAT DID YOU MEAN ABOUT
22 THAT STATEMENT WHEN YOU DOUBTED WHAT MR. SHEPPARD SAID?

23 A ON THE LINES OF CREDIT OR IN GENERAL?

24 Q ON THE LINES OF CREDIT OR IN GENERAL.

25 A WELL, BECAUSE MR. SHEPPARD, I GUESS, HAS QUITE AN EGO

1 AND DIDN'T HESITATE TO TOOT HIS OWN HORN QUITE A LOT BUT
2 HE DID TRY TO CONVINCE US THAT HE HAD \$135 MILLION DOLLARS
3 WORTH OF LINES OF CREDIT WITH VARIOUS INSTITUTIONS READY
4 TO FINANCE THE MORTGAGE VOLUME THAT IS GOING TO BE
5 GENERATED BY ALL OF THESE TEN OFFICES THAT HE WAS
6 PURCHASING FROM HOMEGOLD. WE HAD NO WAY TO VERIFY WHETHER
7 OR NOT HE ACTUALLY HAD THOSE LINES OF CREDIT. BUT YOU
8 KNOW THE MAN STOOD THERE AND TOLD US HE HAD THEM AND I AM
9 FROM THE MOUNTAINS AND I WAS RAISED BEING TAUGHT TO
10 BELIEVE WHAT PEOPLE TELL ME AND I GUESS I AM STUPID TO
11 SOME EXTENT.

12 Q LET ME ASK YOU ABOUT A COUPLE OF OTHER THINGS. MR.
13 GRIFFIN ASKED YOU IN 1998, BUCK MICKEL INVESTED IN
14 CAROLINA INVESTORS IN 1998?

15 A YES.

16 Q AND MR. WYCHE?

17 A YES.

18 Q AND MR. STERLING?

19 A YES, THEY WERE ALL DIRECTORS OF HOMEGOLD.

20 Q WERE YOU AWARE OF ANY OF THEM THAT TURNED AROUND AND
21 LOOKED AT THE MONEY FROM HOMEGOLD TO REIMBURSE THEMSELVES
22 FOR THOSE INVESTMENTS?

23 A ABSOLUTELY NOT.

24 Q I DON'T HAVE ANYTHING FURTHER?

25 THE COURT: ANY RECROSS?

1 MR. GRIFFIN: NO, YOUR HONOR.

2 THE COURT: YOU MAY STEP DOWN. MADAM FORELADY AND
3 LADIES AND GENTLEMEN, WE WILL TAKE A BREAK FOR TEN OR
4 FIFTEEN MINUTES. DON'T DISCUSS THE CASE AND YOU ARE
5 EXCUSED TO YOUR JURY ROOM. EVERYONE ELSE REMAIN SEATED
6 WHILE THE JURY IS EXCUSED.

7 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
8 A SHORT BREAK.)

9 THE COURT: WE WILL TAKE TEN OR FIFTEEN MINUTES.

10 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

11 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

12 MS. PORTER: THE STATE CALLS KAREN MILLER TO THE
13 STAND.

14 KAREN MILLER, AFTER BEING DULY SWORN, TESTIFIED
15 AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MS. PORTER:

18 Q MS. MILLER, WILL YOU PLEASE GIVE THE JURY A
19 BACKGROUND OF YOUR PERSONAL AND EDUCATIONAL HISTORY.

20 A I HAVE A BACHELORS FROM FURMAN UNIVERSITY IN ENGLISH,
21 I HAVE A MASTERS IN BUSINESS ADMINISTRATION FROM FURMAN
22 UNIVERSITY AND CLEMSON UNIVERSITY.

23 Q WHEN YOU BEGAN WORKING OUT IN THE REAL WORLD, WHAT
24 WAS YOUR PROFESSION?

25 A I BEGIN IN SAVINGS AND LOAN INDUSTRY IN THE '70'S, I

1 BEGAN AS A TELLER AND WORKED UP AS A PROCESSOR AND BECAME
2 A COMPUTER PROGRAMMER AND WENT TO WORK AT AMERICAN FEDERAL
3 IN THE COMPUTER DEPARTMENT AND BECAME A VICE-PRESIDENT OF
4 COMPUTERS AT AMERICAN FEDERAL. AND THEN 1996 I JOINED
5 EMERGENT GROUP AS THE CHIEF TECHNOLOGY OFFICER..

6 Q YOU SAID YOU BEGAN TO WORK FOR A COMPANY CALLED
7 EMERGENT IN 1996?

8 A YES, THAT IS CORRECT, JULY OF 1996.

9 Q AND IN WHAT POSITION DID YOU BEGIN TO WORK THERE?

10 A I WAS THE CHIEF TECHNOLOGY OFFICER, SO I WAS IN
11 CHARGE OF EVERYTHING THAT HAD TO DO WITH COMPUTERS AND
12 COPIERS AND FAXES AND ANYTHING ELECTRONIC IN TELEPHONES.

13 Q NOW, IS EMERGENT THE SAME COMPANY AS HOMEGOLD?

14 A IT IS A NAME CHANGE, THE NAME WAS CHANGED FROM
15 EMERGENT GROUP TO HOMEGOLD FINANCIAL.

16 Q AND WAS THAT IN 1998?

17 A YES, THAT IS CORRECT.

18 Q NOW, WHEN YOU WERE HIRED IN 1996 WHO WAS RUNNING THAT
19 COMPANY?

20 A JACK STERLING WAS THE CEO AND CHAIRMAN OF THE BOARD.
21 KEITH GIDDENS WAS THE PRESIDENT AND KEVIN MAST WAS CFO.

22 Q AND WHAT WAS THE STRUCTURE, WHAT WAS THE TYPE OF
23 COMPANY?

24 A IT WAS A VERY LARGE COMPANY, IT WAS WHAT YOU WOULD
25 CALL A CONGLOMERATE, IT OWNED PROBABLY AS MANY AS 18

1 DIFFERENT COMPANIES.

2 Q IN 1998?

3 A OH, I AM SORRY.

4 Q NO, IN 1998 DID YOU RECEIVE SOMEWHAT OF A PROMOTION?

5 A OH, IN 1998 MY TITLE WAS CHANGED TO EXECUTIVE
6 VICE-PRESIDENT.

7 Q THE SAME DUTIES?

8 A THE SAME DUTIES.

9 Q WAS THAT THE SAME YEAR THAT THE NAME WAS CHANGED?

10 A IT IS.

11 Q WHAT WAS THE FINANCIAL CONDITION OF HOMEGOLD IN 1998?

12 A IN 1998 HOMEGOLD EXPERIENCED PRETTY HEAVY LOSSES.

13 Q WAS THERE A SPECIFIC EVENT THAT CAUSED HOMEGOLD TO
14 EXPERIENCE THOSE LOSSES?

15 A YES, AT THE BEGINNING OF THE YEAR JOHN MCSHANE LEFT
16 THE COMPANY, HE PRODUCED THE MAJORITY OF THE RETAIL
17 MORTGAGE LOANS IN THE COMPANY. AND WHEN HE LEFT HE TOOK A
18 LOT OF HIS SENIOR MANAGERS WITH HIM. SO, THAT IMPACTED
19 MORTGAGE LOAN PRODUCTION.

20 Q IN ADDITION WAS THERE SOMETHING THAT HAPPENED TO THE
21 SUBPRIME LENDING MARKET?

22 A YES, THERE WAS A PROBLEM IN THE WORLDWIDE CAPITAL
23 MARKETS AND IT CAUSED SUBPRIME MORTGAGES TO NOT BE ABLE
24 TO, MORTGAGE COMPANIES TO NOT BE ABLE TO SECURE MORTGAGE
25 LOANS.

1 Q MOVING ON INTO 1999 WHAT WAS THE CONDITION OF
2 HOMEGOLD, FINANCIALLY SPEAKING?

3 A HOMEGOLD BEGAN TO CLOSE ITS OFFICES OUTSIDE OF SOUTH
4 CAROLINA IN LATE OF 1998, 1999. SO, PRODUCTION WAS
5 GREATLY REDUCED, WE WERE TRYING TO REDUCE EXPENSES, WE HAD
6 A SERIES OF LAYOFFS OF EMPLOYEES. WE WERE TRENCHING BACK
7 INTO THE GREENVILLE AREA.

8 Q AND, AGAIN, WHO IS IN CHARGE STILL IN 1998?

9 A IT IS STILL MR. STERLING AS CEO AND CHAIRMAN OF THE
10 BOARD AND KEITH GIDDENS AS PRESIDENT AND KEVIN MAST AS
11 CFO.

12 Q WITH THIS DOWNSIZING, SO TO SPEAK, HOW MANY
13 SUBSIDIARIES DID HOMEGOLD HAVE IN 1999?

14 A ALL OF THE OTHER SUBSIDIARIES WERE SOLD DURING THAT
15 PERIOD OF TIME, THE DECISION HAD BEEN MADE TO FOCUS ON THE
16 MORTGAGE DIVISION. AND SO BY THE END OF THE PERIOD OF
17 TIME WE HAD HOMEGOLD, INCORPORATED WHICH WAS THE MAIN
18 UNIT, THE MORTGAGE UNIT WHICH WAS WHOLESALE AND RETAIL AND
19 THERE WAS CAROLINA INVESTORS.

20 Q WHAT ELSE BESIDES DOWNSIZING WAS HOMEGOLD LOOKING TO
21 DO IN 1999 TO INCREASE PRODUCTION?

22 A BASICALLY MR. STERLING WAS ALSO LOOKING FOR A MERGER
23 PARTNER DURING THAT PERIOD OF TIME.

24 Q AND WHAT WAS THE THEORY OR RATIONALE OR IDEA BEHIND
25 LOOKING FOR ANOTHER COMPANY TO MERGE?

1 A THE IDEA WAS THAT YOU COULD GROW PRODUCTION IF YOU
2 MERGE WITH ANOTHER COMPANY AND ALSO WOULD IMPROVE YOUR
3 FINANCIAL POSITION, HOPEFULLY IMPROVING THE NET WORTH OF
4 THE COMPANY.

5 Q NOW, IN 1999 AT YEAREND DID HOMEGOLD HAVE AN
6 OPERATIONAL PROFIT?

7 A IT DID NOT HAVE AN OPERATIONAL PROFIT AT THE END OF
8 1999.

9 Q NOW, IN THE YEAREND 1999 WHAT WAS HOMEGOLD'S NET
10 WORTH, WAS IT POSITIVE OR NEGATIVE?

11 A I BELIEVE IT WAS POSITIVE AT THE END OF 1999.

12 Q WERE THEY LOOKING TO MERGE WITH ANOTHER COMPANY?

13 A YES.

14 Q OKAY. AND IN MAY OF 2000 DID HOMEGOLD INDEED MERGE?

15 A YES, ON MAY 9TH OF 2000 HOMEGOLD DID MERGE WITH
16 HOMESENSE FINANCIAL RUN BY MR. SHEPPARD.

17 Q DID YOU STAY ON AFTER THE MERGER?

18 A I DID.

19 Q AND DID CONTINUE AS THE HEAD OF THE TECHNOLOGY
20 DEPARTMENT?

21 A WELL, I BEGIN TO DO A LOT OF DIFFERENT THINGS AFTER
22 THEIR MERGER. MR. SHEPPARD DIDN'T PUT THE SAME EMPHASIS
23 ON TECHNOLOGY THAT MR. STERLING HAD PUT ON IT. BUT I DID
24 STILL WORK TO TRY TO INTEGRATE THE COMPUTER SYSTEMS
25 BETWEEN THE TWO COMPANIES. AND I HELPED WITH, THERE HAD

1 BEEN AN INTERNET LENDING INITIATIVE AND I STILL KIND OF
2 HELPED WITH THAT.

3 Q AND IN APRIL 2001 DID YOU RECEIVE ANOTHER PROMOTION?

4 A I DID, I BECAME THE CHIEF ADMINISTRATIVE OFFICER.

5 Q AND WHAT JOB DUTIES DID THAT ADD TO YOUR
6 RESPONSIBILITIES?

7 A MR. SHEPPARD HAD DECIDED TO MOVE THE CORPORATE
8 HEADQUARTERS OF THE COMPANY FROM GREENVILLE, SOUTH
9 CAROLINA TO LEXINGTON. AND I WAS GIVEN THE JOB TO MANAGE
10 THAT ENTIRE MOVE AND THAT INVOLVED DOWNSIZING IN
11 GREENVILLE AND FINDING PEOPLE TO HIRE IN LEXINGTON.

12 Q IN AUGUST OF 2002 DID YOU RECEIVE YET ANOTHER
13 PROMOTION?

14 A YES, AT THAT TIME I WAS INTERIM CFO AND THEN LATER
15 BECAME CFO OF HOMEGOLD.

16 Q AND WHAT MONTH DID YOU BECOME CFO?

17 A IT WAS SEPTEMBER OF 2002.

18 Q AND IN NOVEMBER OF 2002 WERE YOU PLACED ON THE BOARD
19 OF DIRECTORS OF HOMEGOLD?

20 A I WAS PLACED ON THE BOARD OF DIRECTORS IN NOVEMBER OF
21 2002.

22 Q NOW, MARCH OF 2003 WAS THERE A SIGNIFICANT EVENT?

23 A HOMEGOLD FINANCIAL AND HOMEGOLD INCORPORATED FILED
24 BANKRUPTCY IN MARCH OF 2003.

25 Q WHEN THEY FILED BANKRUPTCY WHAT HAPPENED TO HOMEGOLD?

1 A AT THE BEGINNING HOMEGOLD CONTINUED TO OPERATE AS
2 DEBTOR IN POSSESSION. AND THEN LATER IN SEPTEMBER OF 2003
3 MR. MCCULLOUGH BECAME THE TRUSTEE OF THE COMBINED HOMEGOLD
4 FINANCIAL AND OF CAROLINA INVESTORS.

5 Q DID YOU CONTINUE TO WORK AS AN OFFICER OF HOMEGOLD
6 THROUGHOUT THE BANKRUPTCY?

7 A I WAS THE LAST REMAINING OFFICER AT HOMEGOLD, I DID
8 WORK THROUGH THE FIRST PART OF THE BANKRUPTCY. I WORKED
9 FOR THE BANKRUPTCY EXAMINER FROM JULY UNTIL MR. MCCULLOUGH
10 BECAME THE TRUSTEE IN SEPTEMBER. AND THEN I CONTINUED TO
11 WORK FOR MR. MCCULLOUGH UNTIL THE END OF 2003 AND THEN
12 AFTER, IN 2004 I WORKED FOR MR. MCCULLOUGH AS A
13 CONSULTANT.

14 Q YOU STATED THAT IN JULY OF 2003 YOU WERE THE LAST
15 OFFICER AT HOMEGOLD, IS THAT CORRECT?

16 A I WAS THE LAST OFFICER REMAINING WITH THE COMPANY,
17 YES.

18 Q WHAT ABOUT ALL THE OTHER OFFICERS?

19 A THE VAST MAJORITY HAD RESIGNED AND UNFORTUNATELY MR.
20 FERRELL DIED.

21 Q AT THAT TIME DID YOU BECOME THE CUSTODIAN OF ALL OF
22 THE HOMEGOLD BUSINESS RECORDS?

23 A I WAS THE CUSTODIAN OF ALL RECORDS UNTIL WHICH TIME
24 MR. MCCULLOUGH BECAME TRUSTEE.

25 Q DO YOU HAVE A NICKNAME ABOUT THAT TIME FRAME, JULY OF

1 2003?

2 A I WAS THE CORPORATE EMORY, (PHONETIC).

3 Q AND WHEN YOU WORKED FOR THE BANKRUPTCY EXAMINER AND
4 THE BANKRUPTCY TRUSTEE WHAT, IF ANYTHING, DID YOU DO FOR
5 HIM?

6 A FOR THE BANKRUPTCY EXAMINER I HELPED HIM, THERE WERE
7 A NUMBER OF LEASES THAT WE WERE TRYING TO WORK THROUGH.
8 AND I HELPED WITH THAT AND I ALSO PRODUCED MARKETING
9 MATERIAL FOR THE FLEXCHECK ASSET, THE EXAMINER WAS TRYING
10 TO SELL THAT ASSET.

11 Q DID YOU ALSO CREATE BOOKS OF INFORMATION?

12 A FOR MR. MCCULLOUGH I PRODUCED A GREAT DEAL OF
13 INFORMATION WRITTEN, ANALYTICAL INFORMATION, I WAS GIVEN
14 FULL ACCESS TO ALL HOMEGOLD RECORDS FROM EVEN BEFORE THE
15 TIME I JOINED THE COMPANY. AND I ANALYZED THOSE RECORDS
16 AND PRODUCED DETAIL REPORTS FOR MR. MCCULLOUGH.

17 Q NOW, MS. MILLER, WERE YOU INDICTED IN INDICTMENT
18 NUMBER 2005-GS-47-11?

19 A I WAS.

20 Q AND WHAT WERE YOU INDICTED FOR?

21 A IT WAS COMMON LAW CONSPIRACY TO COMMIT SECURITIES
22 FRAUD.

23 Q AND WAS THAT IN CONNECTION WITH HOMEGOLD?

24 A IT WAS.

25 Q WHAT BECAME OF THOSE CHARGES?

1 A I PLEAD GUILTY TO THESE CHARGES.

2 Q AND DO YOU REMEMBER WHAT DATE YOU WERE INDICTED?

3 A I WAS INDICTED ON SEPTEMBER 13TH AND I PLEAD TO THOSE
4 CHARGES THAT AFTERNOON.

5 Q HAVE YOU BEEN SENTENCED?

6 A I HAVE NOT.

7 Q WHEN WILL YOU BE SENTENCED?

8 A AT THE END OF ALL OF THE HOMEGOLD TRIALS.

9 Q AND WHO WILL SENTENCE YOU?

10 A HIS HONOR, JUDGE JOHNSON.

11 Q DID YOU PLEAD GUILTY AS INDICTED?

12 A I DID.

13 Q WAS THERE ANY PLEA AGREEMENT WITH THE STATE?

14 A THERE WAS NOT.

15 Q AND IS THE STATE GOING TO MAKE ANY SENTENCING
16 RECOMMENDATION AT YOUR SENTENCING HEARING?

17 A IT IS NOT.

18 Q WHAT IS THE MAXIMUM AMOUNT OF TIME YOU ARE FACING IN
19 PRISON?

20 A FIVE YEARS.

21 Q AND WHAT IS THE MAXIMUM AMOUNT OF FINES YOU ARE
22 FACING?

23 A \$5 THOUSAND DOLLARS.

24 Q AND AT THIS TIME HAVE YOU AGREED TO COOPERATE WITH
25 THE STATE?

1 A I HAVE.

2 Q AND WHAT ARE YOU GETTING IN RETURN FOR THAT
3 COOPERATION?

4 A I HAVE NO PROMISES OF ANYTHING IN RETURN.

5 Q ARE YOU HOPING THAT JUDGE JOHNSON TAKES INTO
6 CONSIDERATION YOUR COOPERATION?

7 A I AM NATURALLY HOPING THAT BUT I HAVE NO ASSURANCE
8 THAT HE WILL.

9 Q IN 1999 DID THE HOMEGOLD FINANCIALS SHOW A PROFIT?

10 A IT DID SHOW A PROFIT, YES.

11 Q AND WHAT WAS DONE IN 1999 IN ORDER FOR HOMEGOLD TO
12 SHOW A PROFIT IF IT WAS OPERATIONALLY UNPROFITABLE?

13 A THERE WERE A SERIES OF PURCHASES OF THE SENIOR BONDS
14 AT CENTS ON THE DOLLAR.

15 Q WHAT DOES THAT MEAN?

16 A WHAT THAT MEANS IS THAT THERE ARE BONDS OUT IN THE
17 MARKET, MEANING THE BOND WAS WORTH A DOLLAR BUT BECAUSE OF
18 THE CREDIT RATING OF HOMEGOLD SOMEONE WOULD ONLY PAY .50
19 CENTS OR .45 CENTS FOR IT. SO, HOMEGOLD WAS ABLE TO GO
20 OUT AND USE CASH AND BUY THESE BONDS BACK. AND THE
21 DIFFERENCE BETWEEN THE DOLLAR THAT WAS ON THE FACE AND
22 WHAT HOMEGOLD PAID FOR IT REPRESENTED A PROFIT. SO THAT
23 BECAME INCOME THAT CAME INTO THE COMPANY.

24 Q IF HOMEGOLD HAD NOT BOUGHT BACK THESE BONDS AND THE
25 BONDS MATURED WHAT WOULD OF HAPPENED?

1 A THEY WOULD OF HAD TO PAY THE FULL DOLLAR AND THEY
2 ALSO WOULD OF HAD TO PAY THE INTEREST CHARGE ON THESE
3 BONDS FROM THE TIME THAT THEY WERE BOUGHT BACK TO THE TIME
4 OF INSURED.

5 Q SO, IN THE LONG RUN, DID THIS BUYING BACK OF BONDS
6 SAVE HOMEGOLD?

7 A IT DID, THE INTEREST ON THE BONDS WERE 10.45 PERCENT
8 WHICH WAS A PRETTY HIGH PERCENTAGE RATE EVEN BACK THEN.

9 Q AND YOU HAVE ALREADY TESTIFIED THAT AT THIS SAME TIME
10 HOMEGOLD IS LOOKING FOR A MERGER PARTNER?

11 A YES, THAT IS CORRECT.

12 Q DID YOU EVER SPEAK WITH ANYONE IN HOMEGOLD'S
13 MANAGEMENT REGARDING THE NEED FOR HOMEGOLD'S PARTNER?

14 A YES, I DISCUSSED IT WITH MR. STERLING WHO WAS THE
15 CHAIRMAN AND CEO OF THE COMPANY.

16 Q AND WHAT DID HE SAY?

17 A HE ADMITTED CLEAR TO ME THAT THE REASONS FOR MERGING
18 WERE TO INCREASE PRODUCTION AND TO GET A POSITIVE NET
19 WORTH. AND WE ALSO DISCUSSED THAT IF THERE WERE NOT A
20 GOOD MERGER IT COULD MEAN THAT HOMEGOLD MIGHT HAVE HAD TO
21 GO INTO BANKRUPTCY EVEN IN 2000.

22 Q NOW, IF HOMEGOLD HAD GONE INTO BANKRUPTCY AT THE END
23 OF 1999 WOULD IT, WELL, WOULD THE COMPANY HAD BEEN LIQUID
24 OR NON-LIQUID IN THE YEAREND OF 1999?

25 A THERE WAS, AT YEAR '99 THERE WAS A POSITIVE NET WORTH

1 SO THAT MEANS THAT IF ALL THE ASSETS WERE LIQUIDATED THEN
2 THERE WOULD BE ENOUGH MONEY TO PAY THE DEBTS.

3 Q DO YOU RECALL APPROXIMATELY HOW MUCH THE
4 INTER-COMPANY DEBT WAS IN YEAREND OF 1999?

5 A I DON'T RECALL EXACTLY, I DO HAVE NOTES WITH ME THAT
6 I COULD CONSULT, IF YOU LIKE.

7 Q WHAT TYPES OF NOTES DO YOU HAVE?

8 A THEY ARE NOTES THAT I PRODUCED, FIRST OF ALL, I WAS
9 WORKING WITH MR. MCCULLOUGH AND I JUST HAD THEM WITH ME
10 THROUGH ALL OF THESE YEARS AND I REFER TO THEM FROM TIME
11 TO TIME WHEN I ~~NEED~~^{NEED} TO REMEMBER THINGS.

12 Q BASED ON ~~WHAT~~^{WHAT} INFORMATION DID YOU MAKE THESE NOTES?

13 A THEY ARE ALL FROM EITHER PUBLIC RECORDS SUCH AS THE
14 SEC FILING OR THEY ARE BASED ON ACTUAL HOMEGOLD DOCUMENTS
15 THAT I WAS ABLE TO REVIEW.

16 Q DO YOU HAVE THOSE NOTES WITH YOU?

17 A I DO.

18 MS. PORTER: YOUR HONOR, MAY SHE REFRESH HER MEMORY
19 WITH HER NOTES?

20 THE COURT: SURE.

21 A AND YOUR QUESTION WAS ABOUT THE INTER-COMPANY DEBT AT
22 THE END OF 1999?

23 Q YES, MA'AM.

24 A IT WAS \$67.6 MILLION DOLLARS.

25 Q WHEN A COMPANY BEGINS TO LOOK FOR ANOTHER COMPANY TO

1 MERGE WITH DO THEY PERFORM WHAT IS CALLED DUE DILIGENCE?

2 A THEY DO.

3 Q AND CAN YOU VERY BRIEFLY EXPLAIN WHAT DUE DILIGENCE
4 IS?

5 A DUE DILIGENCE IS BASICALLY WHEN YOU GO INTO THE
6 COMPANY YOU ARE THINKING TO MERGE WITH AND YOU ASK THEM
7 ANY QUESTION YOU WANT, YOU GET TO SEE WHATEVER BUSINESS
8 RECORDS THEY HAVE, YOU GET TO MEET THE PEOPLE, GET A FEEL
9 FOR THEM. IT IS VERY MUCH LIKE IF YOU ARE GOING TO BUY A
10 HOUSE, YOU GO ALL THE WAY THROUGH THE HOUSE WITH YOUR
11 REALTOR AND YOU ~~MAY~~ EVEN PAY SOMEONE ELSE TO GO IN THERE
12 AND LOOK AT THE HOUSE FOR YOU, MAKE SURE IT IS ALL RIGHT.
13 IT IS VERY SIMILAR TO THAT.

14 Q ARE YOU AWARE OF ANY MERGER PARTNERS THAT AROSE?

15 A IN 1999, SORT OF TOWARDS THE MIDDLE OF THE YEAR THERE
16 WAS A COMPANY NAMED WESTMARK OUT OF FLORIDA. THEY
17 ACTUALLY CAME AND MET WITH SEVERAL OF THE PEOPLE IN
18 GREENVILLE BUT I NEVER HEARD OF ANYTHING THAT REALLY CAME
19 FROM THAT MEETING.

20 Q AFTER WEST MARK FIZZLED OUT WAS THERE ANOTHER MERGER
21 PARTNER POSSIBILITY?

22 A YES, THE NEXT NAME MERGER CREDITOR WAS A MORTGAGE
23 COMPANY OUT OF CALIFORNIA, IT WAS G&P MORTGAGE. AND THERE
24 WAS A MR. PENNINGTON WHO RAN THAT COMPANY. AND HE CAME TO
25 GREENVILLE AND MET WITH A LOT OF US AND WE GOT TO KNOW HIM

1 A LITTLE BIT. AND A GROUP FROM HOMEGOLD WENT OUT TO
2 CALIFORNIA AND MET WITH HIS PEOPLE AND ASKED QUESTIONS AND
3 PERFORMED DUE DILIGENCE OUT THERE.

4 Q AND WHEN THAT GROUP OF HOMEGOLD EMPLOYEES CAME BACK
5 FROM CALIFORNIA WHAT WAS THEIR RECOMMENDATION?

6 A THEY RECOMMENDED THAT THE MERGER NOT GO THROUGH.

7 Q AFTER THAT DID HOMEGOLD BEGIN TO LOOK AT HOMESENSE?

8 A YES, IT DID.

9 Q DID YOU HAVE DISCUSSIONS WITH HOMEGOLD MANAGEMENT
10 REGARDING THE MERGER OF HOMESENSE?

11 A YES, I HAD A PRIVATE DISCUSSION WITH MR. STERLING
12 PROBABLY RIGHT AT THE END OF JANUARY OF 2000, PERHAPS THE
13 VERY BEGINNING OF FEBRUARY OF 2000. AND HE TOLD ME THAT
14 HE WANTED THE MERGER WITH HOMESENSE TO BE SUCCESSFUL, THAT
15 HE HAD CHOSEN MR. SHEPPARD AS THE MERGER PARTNER. AND HE
16 ASKED ME TO GO DOWN TO LEXINGTON TO MEET WITH MR.
17 SHEPPARD. MR. STERLING SAID THAT HE HAD TOLD RONNIE THAT
18 HE HAD SOMEBODY WHO COULD HELP HIM WITH HIS COMPUTER
19 SYSTEMS. SO, MR. SHEPPARD WANTED ME TO GO DOWN THERE AND
20 MEET HIM AND LOOK AT HIS COMPUTER SYSTEM. MR. STERLING
21 ALSO TOLD ME THAT I WAS TO DO EVERYTHING I COULD TO MAKE
22 MR. SHEPPARD FEEL WELCOME BECAUSE HE WAS THE ONE THAT MR.
23 STERLING WANTED TO MERGE WITH.

24 Q AT THIS TIME WHAT WAS YOUR RELATIONSHIP WITH MR.
25 STERLING?

1 A I HAD A FAIRLY CLOSE WORKING RELATIONSHIP WITH MR.
2 STERLING BECAUSE I WORKED WITH HIM IN THE PRIOR YEAR, TO
3 START UP THE INTERNET LENDING GROUP AT HOMEGOLD BECAUSE I
4 AM THE COMPUTER PERSON, INTERNET LENDING IS JUST A NATURAL
5 ISSUE. MR. STERLING IS VERY INTERESTED IN TECHNOLOGY, WAS
6 VERY INTERESTED IN INTERNET LENDING AND I ACTUALLY
7 PERFORMED A CONTRACT WITH LENDING TREE OUT OF CHARLOTTE TO
8 GET LEADS FROM THE INTERNET. AND JOHN KRISTNER HAD FORMED
9 A LITTLE INTERNET LENDING GROUP THAT WAS UTILIZING THOSE
10 LEADS AND OTHERS. SO, BECAUSE OF THAT I GOT TO TALK WITH
11 MR. STERLING EVERY DAY THAT HE WAS THERE AND WE FORMED A
12 PRETTY CLOSE WORKING RELATIONSHIP.

13 Q WOULD IT BE FAIR TO CHARACTERIZE YOU AS JACK'S GO TO
14 GIRL?

15 A IN THIS PARTICULAR SITUATION THE OTHER SENIOR
16 EXECUTIVES OF HOMEGOLD HAD BEEN NEGATIVE ABOUT EVERY
17 MERGER CANDIDATE THAT HAD COME FORWARD. AND JACK KNEW
18 THAT HE COULD ASK ME TO BE GRACIOUS AND TO BE OPENMINDED.
19 AND JACK FELT COMFORTABLE THAT HE COULD ASK ME TO MAKE MR.
20 SHEPPARD FEEL WELCOME AND THAT I WOULD DO IT.

21 Q WHAT WAS YOUR ROLE, OTHER THAN WHAT YOU ALREADY
22 TESTIFIED TO, IN PERFORMING THE DUE DILIGENCE?

23 A IN ADDITION TO MEETING WITH MR. SHEPPARD AND LOOKING
24 AT HIS COMPUTER SYSTEMS AND I TALKED TO MANY OF THE
25 EMPLOYEES IN LEXINGTON AND LEARNED MORE ABOUT THEIR

1 SYSTEMS AND PROCEDURES. AND I ALSO REVIEWED ALL THE
2 LEASES THAT MR. SHEPPARD HAD ON EQUIPMENT.

3 Q IF MR. STERLING WAS THE DRIVING FORCE BEHIND THIS
4 MERGER WHAT WAS KEITH GIDDENS ROLE?

5 A KEITH GIDDENS WAS NEGATIVE ABOUT THE MERGER AT THE
6 BEGINNING AND HAD WORDS WITH MR. SHEPPARD AS TO THE BEST
7 WAY TO RUN A MORTGAGE COMPANY. AND IT WAS THE GENERAL
8 UNDERSTANDING THAT MR. GIDDENS WOULD NOT REMAIN WITH THE
9 COMPANY.

10 Q DID YOU EVER HAVE ANY DISCUSSIONS WITH THE DEFENDANT
11 ABOUT MR. GIDDENS PRIOR TO THE MERGER?

12 A I DID, I DID. MR. SHEPPARD BASICALLY SAID THAT HE
13 COULD NOT WORK WITH MR. GIDDENS.

14 Q WHAT WAS KEVIN MAST'S ROLE AS CFO?

15 A KEVIN DID PERFORM DUE DILIGENCE, THAT WAS HIS MAIN
16 ROLE IN THE MERGER THAT I SAW. HE HAD BOXES OF DUE
17 DILIGENCE MATERIAL AT HIS OFFICE. AND AT LEAST ONE TIME
18 THE FINANCIAL PEOPLE FROM HOMESENSE CAME TO GREENVILLE AND
19 MET WITH MR. MAST AND I WAS BROUGHT INTO THE MEETING FOR A
20 SHORT PERIOD OF TIME TO TALK ABOUT COMPUTER SYSTEMS.

21 Q LET ME BACK UP A SECOND. IN YOUR ROLE AS THE CHIEF
22 TECHNOLOGY OFFICER, DOES THAT REALLY TAKE YOU TO EVERY
23 ASPECT OF HOMEGOLD?

24 A IT DID, ESPECIALLY, WHEN I JOINED THE COMPANY I WAS
25 BROUGHT IN TO WORK AT AN EXECUTIVE LEVEL. THEY HAD BEEN

1 UNHAPPY WITH THE COMPUTER SYSTEMS IN THE PAST AND THEY
2 WANTED TO BRING IN SOMEBODY WHO COULD INTERACT WITH SENIOR
3 MANAGERS AND BE ON THE SAME LEVEL WITH SENIOR MANAGERS.
4 AND I BECAME INVOLVED IN MANY OF THE DIFFERENT COMPANIES,
5 I TRAVELED QUITE A BIT THROUGHOUT THE UNITED STATES, GOING
6 TO ALL OF THE OTHER COMPANIES AND WAS INVOLVED IN ONE WAY
7 OR THE OTHER IN JUST EVERY BIG PROJECT THAT WAS GOING ON
8 IN THE COMPANY.

9 Q IS IT FAIR TO SAY THAT YOU HAD A SNAPSHOT OF EACH AND
10 EVERY ASPECT OF HOMEGOLD'S BUSINESS?

11 A IT IS, IT IS FAIR TO SAY THAT.

12 Q AND IS THAT BECAUSE EVERY ASPECT NEEDED A COMPUTER?

13 A EVERY ASPECT NEEDED A COMPUTER. AND, YOU KNOW,
14 EXAMPLES, EVEN WHEN COMPANIES WERE BEING SOLD I WOULD BE
15 CALLED IN BECAUSE I WOULD HAVE TO TALK ABOUT THE COMPUTER
16 SYSTEM. SO, I EVEN MET PEOPLE THAT WERE BUYING ASSETS
17 FROM THE COMPANY.

18 Q WAS HOMESENSE A GOOD FIT FOR HOMEGOLD MERGER?

19 A HOMESENSE WAS A GOOD FIT FOR HOMEGOLD. THE COMPANY
20 ON THE SURFACE LOOKED VERY SIMILAR, BOTH OF THEM HAD A
21 RETAIL MORTGAGE DIVISION, BOTH OF THEM HAD A WHOLESALE
22 MORTGAGE DIVISION. MR. SHEPPARD HAD SEVERAL SMALL OFFICES
23 WHICH HAD THE PROMISE THAT THEY COULD BE GROWN TO BIGGER
24 OFFICES. HOMEGOLD DID INTERNET LENDING, HAD STARTED IT
25 AND WAS MAKING REAL INTERNET LOANS. MR. SHEPPARD WAS VERY

1 INTERESTED IN THAT POSSIBILITY TO EXPAND PRODUCTION. AND
2 A BIG PLUS OF HOMESENSE FINANCIAL IS THAT MR. SHEPPARD HAD
3 A LARGE TELEMARKING UNIT, HOMEGOLD MAILED, YOU KNOW, THE
4 HURTLE OF MARKETING MATERIALS YOU ALWAYS THROW OUT. BUT
5 HOMESENSE DID THE SAME THING BUT THEN FOLLOWED UP THAT
6 WITH TELEMARKETING. SO, IT WAS VERY EFFECTIVE AND WAS
7 ABLE TO PRODUCE MORE BUSINESS BECAUSE OF THE FOLLOW-UP.
8 SO, THIS WAS A VERY GOOD THING THAT MERGED TOGETHER.

9 Q AND WHEN DID THE TWO COMPANIES MERGE?

10 A THE MERGER WAS FINALIZED ON MAY 9TH OF 2000.

11 Q AND DID HOMEGOLD ASK THEIR SHAREHOLDERS TO VOTE ON
12 THE MERGER?

13 A YES, HOMEGOLD ISSUED A PROXY AND THEN ASKED FOR
14 SHAREHOLDER VOTE.

15 Q AND DID THAT PROXY CONTAIN A SET OF FINANCIALS FOR
16 BOTH COMPANIES?

17 A IT CONTAINED PRO FORMA FINANCIALS, YES.

18 Q AND WHAT DO YOU MEAN BY PRO FORMA?

19 A WELL, I WILL BACKTRACK AND SAY THAT THE PROXY DID
20 CONTAIN FINANCIAL INFORMATION AND FINANCIAL INFORMATION
21 THAT HOMESENSE WAS DATED THE END OF 1999.

22 Q WHAT DOES THE PROXY STATE THAT HOMESENSE IS WORTH AT
23 THE END OF '99?

24 A HOMESENSE HAD A POSITIVE NET WORTH IN THE PROXY AND
25 IF YOU WOULD LIKE I CAN LOOK UP THE EXACT NUMBER.

1 Q WELL, LET ME HAND YOU STATE'S EXHIBIT NUMBER 58.

2 WHAT WERE THE TERMS OF THE MERGER AS OF MAY 9TH OF 2000?

3 A I WILL GO OFF OF MEMORY IF IT IS OKAY. THERE WAS A
4 LARGE AMOUNT OF COMMON STOCK ISSUED TO MR. SHEPPARD.
5 THERE WERE \$10 MILLION SHARES OF PREFERRED STOCK ISSUED TO
6 MR. SHEPPARD. MR. SHEPPARD OBTAINED AN OPTION TO BUY
7 ADDITIONAL COMMON STOCK. THERE WAS A SHAREHOLDER NOTE OR
8 A \$5.7 MILLION DOLLAR NONRECOURSE NOTE FROM MR. SHEPPARD
9 TO THE COMPANY. THERE WAS A MUTUAL INDEMNIFICATION
10 AGREEMENT AS PART OF THE MERGER.

11 Q LET'S TALK ABOUT THE NONRECOURSE NOTE. WHAT IS THAT
12 SECURED BY?

13 A THE ONLY SECURITY FOR THAT NOTE WERE SOME COMMON
14 SHARES OF STOCK, IT WAS SECURED BY STOCK AND BY MR.
15 SHEPPARD.

16 Q SO, WHAT HAPPENED IF HE DIDN'T PAY BACK THE NOTE?

17 A IF HE DIDN'T PAY THE NOTE BACK HE WOULD NOT HAVE TO
18 PAY CASH. THE OFFSET FOR THE NOTE WOULD OF BEEN SHARES OF
19 STOCK.

20 Q LET'S TALK ABOUT THE \$5.7 MILLION DOLLARS, THAT LOAN.
21 WAS THAT ALL CASH?

22 A IT WAS CASH. MY UNDERSTANDING IS THAT MR. SHEPPARD
23 HAD BORROWED \$1.7 MILLION DOLLARS FROM HOMESENSE THAT WAS
24 CASH THAT HE HAD BORROWED THAT WAS INCURRED. AND THEN THE
25 OTHER, \$4 MILLION DOLLARS FROM HOMEGOLD TO MR. SHEPPARD.

1 Q AND SO IN ESSENCE HOMEGOLD ASSUMED \$1.7 MILLION
2 DOLLARS WORTH OF MR. SHEPPARD'S PERSONAL DEBT?

3 A THAT IS MY UNDERSTANDING, YES.

4 Q WAS IS A MUTUAL INDEMNITY AGREEMENT?

5 A BASICALLY THAT MEANS THAT IS THERE WERE, SAY IF
6 HOMEGOLD FOUND PROBLEMS WITH THE MERGER THAT WERE DUE TO
7 HOMESENSE IT COULD RECOVER THAT LOSS AND IT WAS THE OTHER
8 WAY AROUND FOR MR. SHEPPARD, IF MR. SHEPPARD FOUND
9 PROBLEMS IN THE MERGER THEN HE COULD GO AGAINST HOMEGOLD
10 FOR THOSE PROBLEMS.

11 Q JUST VERY BRIEFLY, EXPLAIN THE DIFFERENCE BETWEEN
12 PREFERRED STOCK AND COMMON STOCK.

13 A PREFERRED STOCK IS NOT STOCK THAT YOU CAN VOTE WITH.
14 IN OTHER WORDS, YOU DON'T HAVE VOTING RIGHTS WITH
15 PREFERRED STOCK AND THIS PREFERRED STOCK ALSO HAD A DEBIT
16 IN IT.

17 Q AFTER THE MERGER ARE YOU AWARE THE DEFENDANT IS HAPPY
18 OR UNHAPPY ABOUT THE NEW COMPANY?

19 A AFTER THE MERGER, A FEW MONTHS AFTER THE MERGER I
20 BECAME AWARE THAT HE WAS UNHAPPY WITH HOMEGOLD.

21 Q WELL, HOW DID YOU FIND OUT?

22 A I WAS WITH MR. FERRELL AND WITH MR. SHEPPARD WHEN
23 THEY BEGAN TALKING OR WHEN THIS CONVERSATION OCCURRED.

24 Q AND DO YOU REMEMBER APPROXIMATELY WHEN THAT WAS?

25 A I PLACE IT SOMEWHERE IN AUGUST OF 2000 TIME FRAME, I

1 DON'T EXACTLY REMEMBER THE DATE.

2 Q APPROXIMATELY THREE MONTHS AFTER THE MERGER?

3 A APPROXIMATELY, YES.

4 Q AND WHAT DID THE DEFENDANT TELL YOU?

5 A THE DEFENDANT SAID THAT WHEN HE CAME TO HOMEGOLD HE
6 HAD BEEN TOLD IT WAS A PUBLICLY TRADED COMPANY AND IT WAS
7 NOT. IT HAD BEEN DELISTED, HE HAD BEEN TOLD THAT THE
8 COMPANY HAD CASH AND IT DID NOT. AND HE HAD BEEN TOLD
9 THAT THE COMPANY HAD LINES OF CREDIT AND IT DID NOT.

10 Q WELL, LET'S SAY THOSE ONE AT A TIME. WAS THERE A
11 DOCUMENT CALLED ~~A~~ 8K FILED ON APRIL 20TH OF 2000,
12 APPROXIMATELY ~~A~~ COUPLE OF WEEKS BEFORE THE MERGER TOOK
13 PLACE?

14 A YES, THERE WAS.

15 Q AND WHAT WAS CONTAINED IN THAT 8K?

16 A THE 8K DISCLOSED THAT HOMEGOLD'S STOCK WAS NO LONGER
17 GOING TO BE LISTED ON THE NASDAQ STOCK EXCHANGE AND THE
18 COMPANY WAS NOT GOING TO PROTEST THAT DELISTING.

19 Q SO, IT WAS OUT IN THE PUBLIC THAT HOMEGOLD WAS
20 DELISTED?

21 A YES, THAT IS CORRECT.

22 Q SO, IS THAT AN ACCURATE STATEMENT THAT HE WAS TOLD
23 THAT IT WAS A PUBLICLY TRADED COMPANY?

24 A NO, IT WAS DELISTED PRIOR TO THE MERGER.

25 Q HE STATED THAT THERE WAS NO CASH?

1 A CORRECT.

2 Q DID HE NOT GET \$5.7 MILLION DOLLARS ON MAY 9TH OF
3 2000?

4 A HE CERTAINLY GOT \$4 MILLION DOLLARS ON MAY 9TH OF
5 2000.

6 Q AND HE SAID THAT THERE WERE NO WAREHOUSE LINES. AS
7 OF MAY 9TH OF 2000, WHAT WERE THE CONDITION OF HOMEGOLD'S
8 WAREHOUSE LINES?

9 A ON THAT DAY THE CIT LINE WAS STILL IN PLACE AT \$100
10 MILLION DOLLARS. IT WAS STEPPED DOWN AFTER THAT POINT AND
11 BACKDATED.

12 Q AND WE ARE GOING TO GET TO THAT. WERE YOU AWARE IF
13 HOMEGOLD WAS HAPPY OR UNHAPPY?

14 A I BECAME AWARE VERY SHORTLY AFTER THE MERGER THAT
15 HOMEGOLD WAS NOT HAPPY WITH THE MERGER.

16 Q HOW DO YOU KNOW?

17 A BECAUSE KEVIN MAST AND KIM BULLARD AND SOME OTHER
18 PEOPLE CAME TO ME AND TO MY PROGRAMERS SEARCHING FOR LOANS
19 THAT WERE SUPPOSE TO HAVE COME TO SERVICING FROM HOMESENSE
20 FINANCIAL. SO, IN OTHER WORDS, THESE ARE LOANS CLOSED BY
21 HOMESENSE THAT BECAUSE OF THE MERGER SHOULD HAVE GONE
22 THROUGH TO THE HOMEGOLD BOOKS.

23 Q AND WAS THERE A COMPUTER PROGRAM, JUST PLUG IT IN AND
24 ALL OF THIS POPS UP?

25 A WELL, THESE LOANS HAD TO BE BOARDED MANUALLY WHICH

1 MEANS THAT YOU COULDN'T JUST PRESS THE BUTTON AND GET THEM
2 THROUGH THE COMPUTER SYSTEM. BUT MY PROGRAMMERS WERE
3 ASKED TO TRY TO WRITE WHATEVER PROGRAM WE POSSIBLY COULD
4 TO TRY AND LOCATE THE MISSING LOANS, BOTH TO LOOK AT
5 HOMESENSE DATA AND TO LOOK AT HOMEGOLD DATA. AND WE NEVER
6 WERE ABLE TO LOCATE THOSE LOANS.

7 Q HOW MUCH MONEY ARE WE TALKING ABOUT?

8 A IT IS APPROXIMATELY \$10 MILLION DOLLARS WORTH OF
9 MORTGAGE LOANS.

10 Q NOW, WAS HOMEGOLD TRYING TO RECONCILE THE FINANCIALS
11 WITH HOMESENSE AND HOMEGOLD AT THIS TIME?

12 A YES, THEY WERE.

13 Q AND DURING THIS PROCESS WHAT, IF ANYTHING, DID
14 HOMEGOLD DISCOVER?

15 A WELL, I KNOW MORE ABOUT THIS AFTER THE FACT. AT THE
16 TIME I KNOW THAT THE ACCOUNTANTS WERE WORKING HARD TO
17 BALANCE THE BOOKS. AND I KNOW THAT IN THE END THERE WAS
18 AN ENTRY MADE FOR THE GOODWILL FROM THE MERGER, WAS
19 INCREASED TO \$19 MILLION DOLLARS. I KNOW IT WAS NOT
20 SUPPOSE TO HAVE BEEN THAT HIGH. AND MY UNDERSTANDING IS
21 THAT IT HAD TO BE INCREASED TO \$19 MILLION DOLLARS BECAUSE
22 THERE WAS NOT A POSITIVE NET WORTH IN HOMESENSE AND
23 BECAUSE OF THESE MISSING LOANS.

24 Q IS THIS BECAUSE HOMESENSE HAD A NEGATIVE NET WORTH AT
25 THE TIME OF THE MERGER?

1 A THAT WAS CERTAINLY ONE COMPONENT OF THAT AND THEN THE
2 MISSING NOTES WAS THE OTHER COMPONENT.

3 Q COULD HOMEGOLD HAVE DISCOVERED THROUGH PUBLIC FILINGS
4 THE MISSING LOANS AND THE NEGATIVE NET WORTH PRIOR TO THE
5 MERGER?

6 A NO, IT COULD NOT HAVE. MR. SHEPPARD'S COMPANY WAS A
7 SUBCHAPTER S, IT WAS PRIVATELY HELD, THERE WAS NO PUBLIC
8 FINANCIAL DATA.

9 Q IS IT FAIR TO SAY THAT HOMEGOLD HAD TO RELY ON THE
10 DEFENDANT'S REPRESENTATIONS?

11 A YES, THAT IS A TRUE STATEMENT.

12 Q AND WHAT WAS THAT DEFENDANT'S REPRESENTATION AT THE
13 TIME OF THE MERGER?

14 A THAT HIS COMPANY HAD A POSITIVE NET WORTH AND THAT
15 THESE LOANS DID EXIST.

16 Q AT THE TIME THAT THE DEFENDANT IS TELLING YOU HE IS
17 UNHAPPY AND HOMEGOLD IS TELLING YOU THAT THEY ARE UNHAPPY
18 WAS THERE A MUTUAL INDEMNITY AGREEMENT IN EFFECT?

19 A THERE WAS.

20 Q AND COULD BOTH PARTIES HAVE ADDRESSED THESE ISSUES
21 WITH EACH OTHER?

22 A THEY COULD HAVE, YES.

23 Q WHAT HAPPENED TO THAT MUTUAL INDEMNITY AGREEMENT?

24 A IN SETTLEMENT OF THESE VARIOUS DISPUTES, IN JANUARY
25 OF 2001 THAT MUTUAL INDEMNITY AGREEMENT WAS CANCELED.

1 Q I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
2 STATE'S EXHIBIT NUMBER 57 AND ASK YOU IF YOU CAN IDENTIFY
3 THAT?

4 A THIS IS--

5 Q DON'T SAY WHAT IT IS, DO YOU RECOGNIZE IT?

6 A YES, I DO.

7 Q AND IS THAT KEPT IN THE REGULAR COURSE OF BUSINESS?

8 A IT IS.

9 Q AND IS THAT ONE OF HOMEGOLD'S RECORDS?

10 A IT IS.

11 MS. PORTER: AT THIS TIME, YOUR HONOR, I WOULD LIKE
12 TO ENTER INTO EVIDENCE STATE'S EXHIBIT NUMBER 57.

13 THE COURT: ANY OBJECTION?

14 MR. GRIFFIN: NO OBJECTION.

15 THE COURT: STATE'S 57 IS ADMITTED.

16 (WHEREUPON, STATE'S EXHIBIT NO. 57 WAS ADMITTED INTO
17 EVIDENCE.)

18 Q PLEASE TELL THE JURY WHAT STATE'S 57 IS?

19 A IT IS AN AMENDMENT TO THE REORGANIZATION AGREEMENT
20 BETWEEN HOMEGOLD FINANCIAL AND HOMESENSE FINANCIAL. AND
21 IT IS DATED THE 1ST OF MAY OF 2000.

22 Q DOES THAT IN EFFECT CHANGE THE INITIAL TERMS OF THE
23 MERGER BETWEEN HOMESENSE AND HOMEGOLD?

24 A BASICALLY IT REDUCES THE EQUITY THAT HOMESENSE IS
25 SAYING IT HAD. IT IS DECREASING TO \$2.3 MILLION FROM \$3.3

1 MILLION, THAT IS ONE OF THE THINGS IT IS DOING.

2 Q IS IT ALSO CANCELING THE MUTUAL INDEMNITY AGREEMENT?

3 A THIS PARTICULAR ONE, I THINK IS EARLIER THAN, LET ME
4 READ IT A LITTLE BIT FURTHER HERE. THIS ONE IS DATED MAY
5 1ST OF 2000. SO, THIS ONE DOESN'T CANCEL THAT AGREEMENT.
6 IT DOES REFER TO A MUTUAL INDEMNITY AGREEMENT THAT WILL BE
7 ATTACHED AS APPENDIX G.

8 Q WE WILL COME BACK TO THAT.

9 A OKAY.

10 Q AS OF JUNE 30TH, I AM SORRY, AS OF JANUARY 30TH OF
11 2001 IS IT YOUR UNDERSTANDING THAT THE MUTUAL INDEMNITY
12 AGREEMENT WAS, IN FACT, CANCELED?

13 A IT WAS IN JANUARY OF 2001, THAT'S CORRECT.

14 Q AND WAS THERE ANY OTHER CHANGE TO THE TERMS OF THE
15 MERGER THAT OCCURRED AT THAT TIME?

16 A THERE WERE TWO OTHER CHANGES. MR. SHEPPARD'S OPTION
17 TO BUY ADDITIONAL SHARES WAS CANCELED. AND MR. SHEPPARD
18 AGREED TO REMAIN THE PERSONAL GUARANTOR OF THE HOMEGOLD
19 WAREHOUSE LINES.

20 Q DID THE SHAREHOLDERS OF HOMEGOLD EVER VOTE ON THOSE
21 FINAL TERMS?

22 A THEY DID NOT.

23 Q LET'S BACK UP TO THIS LOAN, THE \$5.7 MILLION DOLLAR
24 LOWN. DID YOU EVER HAVE A CONVERSATION WITH THE DEFENDANT
25 REGARDING THAT LOAN?

1 A I DID.

2 Q AND WHEN WAS THAT?

3 A IT WAS PROBABLY SOMETIME IN 2001.

4 Q AND WHAT WAS THE SUBSTANCE OF THAT CONVERSATION?

5 A THE SUBSTANCE WAS THAT MR. SHEPPARD SAID THAT HE
6 WOULD NEVER HAVE TO PAY THAT LOAN BACK, THAT HE HAD MR.
7 GAFFNEY WRITE THAT AGREEMENT FOR HIM AND HE KNEW THAT
8 BECAUSE DAVID HAD WRITTEN IT, THAT MR. SHEPPARD WOULD
9 NEVER HAVE TO PAY THAT MONEY BACK.

10 Q AND WHO IS DAVID GAFFNEY?

11 A HE WAS THE ATTORNEY OR THE IN-HOUSE COUNSEL THAT WAS
12 WITH HOMESENSE.

13 Q DID HE COME OVER WITH THE MERGER FOR HOMEGOLD AS
14 WELL?

15 A HE DID AND EVENTUALLY HE BECAME GENERAL COUNSEL OF
16 HOMEGOLD, A FEW MONTHS AFTER THE MERGER.

17 Q ARE YOU AWARE OF THE DEFENDANT EVER MAKING A PAYMENT
18 ON THE PRINCIPAL OF THAT MONEY?

19 A I AM NOT AWARE OF ANY PRINCIPAL PAYMENT THAT MR.
20 SHEPPARD MADE ON THAT LOAN.

21 Q DID HE MAKE INTEREST PAYMENTS?

22 A THERE WERE INTEREST PAYMENTS TAKEN OUT OF HIS
23 QUARTERLY BONUS THAT WERE APPLIED TO THE INTEREST ON THAT
24 LOAN.

25 Q SO, HE NEVER WROTE A CHECK?

1 A NOT TO MY KNOWLEDGE.

2 Q I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
3 STATE'S EXHIBIT NUMBER 197. DO YOU RECOGNIZE THAT?

4 A YES.

5 Q HOW DO YOU RECOGNIZE THAT?

6 A IT IS A BUSINESS RECORD OF HOMEGOLD.

7 MS. PORTER: AT THIS TIME I WOULD LIKE TO ENTER INTO
8 EVIDENCE EXHIBIT 197.

9 THE COURT: ANY OBJECTION?

10 MR. GRIFFIN: NO, YOUR HONOR.

11 THE COURT: ~~STATE'S~~ STATE'S 197 IS ADMITTED.

12 (WHEREUPON, STATE'S EXHIBIT NO. 197 WAS ADMITTED INTO
13 EVIDENCE.)

14 Q PLEASE TELL THE JURY WHAT THAT IS?

15 A THIS IS THE DOCUMENT THAT WE WERE DISCUSSING A LITTLE
16 WHILE AGO THAT CANCELED THAT MUTUAL INDEMNITY AGREEMENT.
17 AND THAT MEANS THAT BOTH PARTIES AGREE NOT TO SUE EACH
18 OTHER ABOUT ANYTHING THAT IS RELATED TO THE MERGER.

19 Q IT IS MUTUALLY BENEFICIAL?

20 A THAT'S RIGHT.

21 Q SO, THE DEFENDANT CAN'T COMPLAIN ABOUT WHAT HOMEGOLD
22 DIDN'T PROVIDE EVEN THOUGH IT WAS PUBLICLY OUT THERE?

23 A THAT'S CORRECT.

24 Q AND NOW HOMEGOLD CAN'T COMPLAIN ABOUT THE DEFENDANT
25 NOT BRINGING HIS MONEY OR LOANS?

1 A THAT'S CORRECT AND THEY RELEASE ALL CLAIMS AGAINST
2 EACH OTHER IN THAT DOCUMENT.

3 Q AND, AGAIN, THE SHAREHOLDERS NEVER GOT TO VOTE ON
4 THOSE TERMS, DID THEY?

5 A NO, THEY DID NOT.

6 MR. GRIFFIN: OBJECTION, LEADING.

7 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

8 Q DID YOU EVER HAVE A CONVERSATION SUBSEQUENT WITH
9 ANOTHER OFFICER AT HOMEGOLD REGARDING THIS \$5.7 MILLION
10 DOLLAR LOAN?

11 A I DID. I HAD A DISCUSSION WITH MR. STERLING IN 2003
12 ABOUT THAT LOAN.

13 Q AND HOW DID THAT CONVERSATION COME ABOUT?

14 A AFTER THE SELL TO EMMCO I BECAME CONCERNED THAT MR.
15 SHEPPARD WOULD ASK FOR PAYMENT OF HIS BONUS BECAUSE HE HAD
16 NOT SURRENDERED THE STOCK TO HOMEGOLD--

17 MR. GRIFFIN: I AM GOING TO OBJECT TO HEARSAY AS TO
18 WHAT MR. STERLING SAID.

19 A WELL, I WAS--

20 THE COURT: WAIT, WAIT, DON'T SAY ANYTHING.

21 MS. PORTER: YOUR HONOR, IT IS A STATEMENT OF A
22 COCONSPIRATOR.

23 THE COURT: OVERRULED.

24 A I DECIDED ON MY OWN TO RESEARCH THAT LOAN BECAUSE I
25 WAS AFRAID THAT MR. SHEPPARD WOULD MAKE DEMAND UPON

1 HOMEGOLD FOR A QUARTERLY BONUS. SO, I LOOKED UP THAT
2 LOAN, I HAD NEVER SEEN IT BEFORE AND I LOOKED AT IT ON
3 LINE AT THE SEC WEB SITE. AND WHEN I FOUND THE LOAN
4 DOCUMENT IT SAID THAT IT HAD A ONE YEAR TERM. SO, IT WAS
5 SIGNED IN 2000 AND IT ACTUALLY MATURED IN 2001. AND I WAS
6 LOOKING IN 2003 AND SO I BECAME VERY CONCERNED BECAUSE THE
7 LOAN HAD MATURED. SO, I CALLED MR. STERLING TO ASK HIM
8 ABOUT IT AND WHEN I DID AND I TOLD HIM IT HAD A ONE YEAR
9 TERM ALL HE SAID ABOUT IT WAS, WELL, THAT IS NOT MY
10 UNDERSTANDING OF THE LOAN.

11 Q A MOMENT AGO YOU WERE TAKING ABOUT WAREHOUSE LINES OF
12 CREDIT. AND WILL YOU PLEASE VERY BRIEFLY EXPLAIN TO THE
13 JURY WHAT A WAREHOUSE LINE OF CREDIT IS.

14 A WAREHOUSE LINE OF CREDIT IS JUST CRUCIAL TO THE
15 OPERATION OF THE MORTGAGE COMPANY. BECAUSE WHEN YOU CLOSE
16 A LOAN, WHEN YOU BUY A HOUSE OR YOU REFINANCE YOUR HOUSE
17 YOU EXPECT TO GO TO CLOSING AND GET A CHECK. THAT IS WHY
18 YOU ARE THERE. SO, MORTGAGE LENDERS USE WAREHOUSE LINES
19 TO GET THE MONEY TO PAY A CLOSING, TO DELIVER THE CHECK TO
20 CLOSING AND THEN PLEDGE AND RETURN THE MORTGAGE LOAN THAT
21 THEY MAKE. SO, MONEY IS DISBURSED AT CLOSING AND THEN THE
22 LENDER TAKES THE LOAN AND PUTS IT ON THE LINE AS SECURITY
23 FOR THE MONEY.

24 Q BASED UPON YOUR EXPERIENCE OF THE MORTGAGE INDUSTRY
25 RATE HOW IMPORTANT ARE WAREHOUSE LINES OF CREDIT ARE TO

1 THE MORTGAGE RETAIL BUSINESS, TEN BEING MOST IMPORTANT,
2 ZERO BEING LEAST IMPORTANT.

3 A THEY WOULD BE TEN AS MOST IMPORTANT.

4 Q PREMERGER, WHAT WERE THE CONDITION OF HOMEGOLD'S
5 WAREHOUSE LINES OF CREDIT?

6 A PREMERGER THERE WAS ONE LINE WITH CIT AND AT THE TIME
7 OF THE MERGER IT WAS \$100 MILLION DOLLARS OR JUST BEFORE
8 THE MERGER.

9 Q NOW, DID HOMESENSE BRING ANY WAREHOUSE LINES OF
10 CREDIT WITH IT?

11 A HOMESENSE DID HAVE A FEW LINES OF CREDIT, THERE WAS A
12 SMALL ONE WITH UNION PLANTERS, THERE WAS ONE WITH RMST, I
13 BELIEVE THERE WAS ONE WITH HOUSEHOLD.

14 Q AND WAS THE DEFENDANT PERSONALLY GUARANTEED ON ANY OF
15 THESE?

16 A I UNDERSTAND THAT HE WAS.

17 Q AFTER THE MERGER WHAT HAPPENED TO THE CONDITION OF
18 HOMEGOLD'S WAREHOUSE LINES OF CREDIT?

19 A AFTER THE MERGER CIT INFORMED HOMEGOLD THAT IT WAS
20 GOING TO STEP THEIR LINE DOWN.

21 Q AND HOW MUCH WERE THEY GOING TO STEP IT DOWN?

22 A INITIALLY IT WAS CUT IN HALF, BACK TO THE TIME OF THE
23 MERGER AND THEN IT WAS SUPPOSE TO END, I THINK, SOMETIME
24 AROUND THE BEGINNING OF 2001.

25 Q AND WHEN DID HOMEGOLD RECEIVE NOTICE OF CIT'S LINE?

1 A I KNOW THAT SEVERAL PEOPLE WENT TO NEW YORK FROM
2 HOMEGOLD AND THEY WERE, OR THEY MAY OF FOUND OUT BEFORE.
3 BUT I REMEMBER THAT SEVERAL PEOPLE WENT TO NEW YORK TO TRY
4 TO WORK OUT AN EXTENSION OF THAT LINE. AND WHEN THEY CAME
5 BACK THE ANSWER WAS IS THAT IT WOULD NOT BE EXTENDED.

6 Q ARE YOU AWARE OF WHY CIT REDUCED THE WAREHOUSE LINES
7 OF CREDIT?

8 A MY UNDERSTANDING IS THAT THEY HAD NOT APPROVED THE
9 MERGER WITH HOMESENSE FINANCIAL.

10 Q DID YOU EVER LOOK AT NEGATIVE COVENANTS THAT WERE
11 ATTACHED TO THE WAREHOUSE LINES OF CREDIT FOR CIT?

12 A YES, AS PART OF MY RESEARCH FOR THE BANKRUPTCY
13 TRUSTEE I DID LOOK AT THE WAREHOUSE AGREEMENTS AND THERE
14 WERE NEGATIVE COVENANTS CONCERNING CAROLINA INVESTORS, THE
15 INTER-COMPANY LOAN BALANCE OR THE BALANCE OF MONEY DUE TO
16 INVESTORS AND THOSE NEGATIVE COVENANTS.

17 Q IS IT FAIR TO SAY THAT CIT WAS CONCERNED ABOUT THE
18 INTER-COMPANY LOAN?

19 A YES, I THOUGHT IT WAS UNUSUAL TO SEE SUCH A COVENANT
20 IN A WAREHOUSE LINE.

21 Q AFTER CIT TERMINATES ITS WAREHOUSE LINE, WHAT ARE THE
22 CONDITIONS OF THE ABILITY OF THE RETAIL MORTGAGE DIVISION
23 TO PRODUCE LOANS?

24 A THE INITIAL REACTION WAS TO CLOSE THE WHOLESALE
25 DIVISION AND THAT WAS IN AUGUST OF 2000 BECAUSE THERE

1 WOULD NOT BE ADEQUATE WAREHOUSE LINES TO SUPPORT BOTH THE
2 RETAIL AND THE WHOLESALE DIVISION. AND THE RETAIL
3 DIVISION IS MORE PROFITABLE SO THAT WAS THE ONE THAT
4 SHOULD BE KEPT OPEN IF ONE HAS TO BE CLOSED. I KNOW MR.
5 FERRELL BEGAN SEARCHING FOR OTHER LINES, HOMEGOLD BEGAN
6 USING LINES THAT MR. SHEPPARD HAD AT HOMESENSE.

7 Q HOW WOULD YOU CHARACTERIZE THE STABILITY OF THESE
8 EXISTING WAREHOUSE LINES OF CREDIT AND THE ONES THAT CAME
9 AFTER THAT?

10 A THE WAREHOUSE LINES WERE NOT STABLE, I WAS FROM TIME
11 TO TIME WAS AWARE OF LINES BEING CLOSED DOWN ON SHORT
12 NOTICE OR THREATS TO CLOSE WAREHOUSE LINES DOWN. ONE
13 WOULD GET OPEN AND RUNNING, ONE WOULD SHUT DOWN AND THERE
14 WOULD BE A PROBLEM WITH ONE SUCH AS A LOAN THAT NEEDED TO
15 BE BOUGHT BACK AND SAID THEY WOULD FREEZE FOR A PERIOD OF
16 TIME. I KNOW THAT MR. FERRELL OBTAINED SHORT TERM
17 FINANCING FROM A VERY HIGH PRICED WAREHOUSE LENDER, JUST
18 SORT OF A BRIDGE KIND OF THING. BUT THERE WAS CONSTANT
19 STRESS TO FIND ADEQUATE WAREHOUSE LINES THAT WERE TO
20 ACHIEVE ANY KIND OF STABILITY WITH WAREHOUSE LINES.

21 Q WAS HOMEGOLD EVER ABLE TO RETURN STABILITY TO THE
22 WAREHOUSE LINES OF CREDIT FROM THE MERGER?

23 A I DO NOT RECALL ANY TIME WHEN THE WAREHOUSE LINES
24 SITUATION WAS WHAT YOU WOULD CALL STABLE.

25 Q WHAT EFFECT DID THIS HAVE ON THE RETAIL MORTGAGE

1 DIVISION?

2 A WHAT YOU HAVE WHEN YOU HAVE WAREHOUSE LINE PROBLEMS
3 IS THAT YOU MAY BE GETTING TO INCREASE PRODUCTION. AND
4 THEN IF YOU GET TOO MUCH PRODUCTION AND YOU DON'T HAVE
5 ENOUGH WAREHOUSE LINES THEN EVERYTHING SHUTS DOWN. SO,
6 WHAT YOU GET IS KIND OF AN UP AND DOWN KIND OF THING. YOU
7 ARE PRODUCING, YOU ARE INCREASING PRODUCTION AND THEN YOU
8 HIT THE WALL OF THE WAREHOUSE LINE AND THEN EVERYTHING
9 KIND OF ROLLS BACKWARD AGAIN. SO, YOU DON'T GET A STEADY
10 GROWTH IN PRODUCTION, YOU GET PROBLEMS AND YOU ROLL BACK.

11 Q WHEN SOMEONE PERSONALLY GUARANTEES A WAREHOUSE LINE
12 OF CREDIT, WHAT DOES THAT MEAN?

13 A IT MEANS THAT IF THERE WERE ANY LOSS ON THAT
14 WAREHOUSE LINE THAT COULD NOT BE RECOVERED FROM THE
15 MORTGAGE LOANS THAT ARE SECURITY FOR THE LINE OR THEY
16 COULD NOT BE RECOVERED FROM THE COMPANY THAT HAS SIGNED UP
17 FOR THAT LINE. THEN THE LENDER WOULD SEEK RECOVERY FROM
18 THE PERSON WHO GUARANTEED THE LOAN.

19 Q SO, THE PERSONAL GUARANTEE WOULD BE THIRD IN LINE?

20 A THIRD IN LINE.

21 Q AND ARE THERE ANY FEES ASSOCIATED WITH BEING A
22 PERSONAL GUARANTOR?

23 A NOT THAT I AM AWARE OF, NO.

24 Q AND WHAT ARE THE ODDS OF THE THIRD PERSON IN LINE
25 HAVING TO COME UP WITH SOME MONEY?

1 A I BELIEVE THEM TO BE VERY LOW, I PERSONALLY HAVE
2 NEVER SEEN THAT HAPPEN.

3 Q AND HOW WOULD YOU CHARACTERIZE THE SECURITY OF A
4 WAREHOUSE LINE OF CREDIT?

5 A WELL, THE WAREHOUSE LINE IS ALL SECURED BY THESE
6 MORTGAGE LOANS. AND THOSE WAREHOUSE LENDERS DO NOT
7 ADVANCE ONE-HUNDRED PERCENT OF THE LOANS. SO ALREADY THEY
8 HAVE LITTLE SECURITY BUILT IN THERE.

9 Q ONE OF THE CHANGES IN THE MERGER AGREEMENT WAS THAT
10 THE DEFENDANT REMAIN FIRST STREAM GUARANTEE ON THESE
11 WAREHOUSE LINES?

12 A YES.

13 Q DID YOU EVER HAVE A CONVERSATION WITH HIM ON THAT
14 SUBJECT?

15 A AT ONE POINT I DID HAVE A CONVERSATION WITH MR.
16 SHEPPARD ABOUT THAT. AND BASICALLY HE MADE IT CLEAR TO ME
17 THAT HE HAD NOT EXPECTED TO CONTINUE TO BE A PERSONAL
18 GUARANTOR AND HE SAID HE WOULD NEVER DO THAT AGAIN.

19 Q WERE THERE ANY OTHER OFFICERS AT HOMEGOLD THAT WERE
20 PERSONAL GUARANTORS OF WAREHOUSE LINES?

21 A YES.

22 Q AND WHO WAS THAT?

23 A FORREST FERRELL GUARANTEED AT LEAST ONE WAREHOUSE
24 LINE.

25 Q BASED UPON THIS CONSTANT STRESS ON THE WAREHOUSE

1 LINES OF CREDIT WAS HOMEGOLD FORCED TO LOOK FOR
2 ALTERNATIVES FOR FUNDING?

3 A YES.

4 Q AND DID THEY FIND ALTERNATIVE SOURCES OF FUNDING?

5 A FROM TIME TO TIME THEY WOULD FIND SHORT TERM SOURCES
6 AS I MENTIONED BEFORE. AND THERE WAS ALSO CAROLINA
7 INVESTORS WAS A SOURCE OF FUNDS.

8 Q AS OF MAY 9TH OF 2000 WHO WAS CEO OF HOMEGOLD?

9 A ON MAY 9TH OF 2000 MR. SHEPPARD BECAME CEO OF
10 HOMEGOLD FINANCIAL AND HOMEGOLD, INC.

11 Q AND DURING THE MERGER NEGOTIATIONS DID YOU HAVE AN
12 OPPORTUNITY TO SPEND A SUBSTANTIAL AMOUNT OF TIME WORKING
13 WITH THE DEFENDANT?

14 A I FROM TIME TO TIME DID GO TO LEXINGTON AND SPENT
15 TIME WITH THE DEFENDANT, MR. SHEPPARD. I HAD LUNCH WITH
16 HIM WITH OTHER PEOPLE, I HAD TIME ALONE WITH HIM AND I
17 MET, OF COURSE, A NUMBER OF PEOPLE DOWN IN LEXINGTON.

18 Q WHAT WAS HE LIKE AS A BOSS?

19 A AS A BOSS MR. SHEPPARD IS VERY DEMANDING. HE IS
20 CHAOTIC, HE IS CONSTANTLY IN TOUCH WITH YOU TO GET THINGS
21 DONE THAT HE WANTS, HE IS VERY, HE WATCHES YOU CLOSELY, HE
22 IS WHAT I WOULD CALL MICRO MANAGER, HE IS ALL OVER THE
23 PLACE LOOKING AT EVERYTHING AND JUST CHAOS AND ENERGY. HE
24 IS NOT AFRAID TO TELL SOMEBODY WHEN THEY HAVE DONE WRONG
25 AND HE IS NOT AFRAID OF FIRING PEOPLE AND HE IS NOT AFRAID

1 TO YELL AT PEOPLE IF HE NEEDS TO. FORTUNATELY HE DIDN'T
2 USE BAD LANGUAGE AROUND ME BUT HE HAS AROUND OTHER PEOPLE.
3 HE CAN BE A TERROR.

4 Q IF SOMEONE, AN EMPLOYEE OF HIS TOOK THE INITIATIVE
5 AND MADE A BIG DECISION WITHOUT HIS KNOWLEDGE WHAT WOULD
6 HAPPEN TO THAT EMPLOYEE?

7 A I CAN'T IMAGINE AN EMPLOYEE MAKING A BIG DECISION
8 WITHOUT MR. SHEPPARD'S KNOWLEDGE, THEY WOULD BE
9 IMMEDIATELY FIRED OR IF NOT IMMEDIATELY FIRED, CHASTISED
10 IN FRONT OF EVERYONE. IT IS JUST NOT SOMETHING THAT YOU
11 WOULD EVEN CONSIDER DOING.

12 Q AND WHAT WOULD HAPPEN IF AN EMPLOYEE CHALLENGED A
13 DECISION OF THE DEFENDANT?

14 A IF ANYONE CHALLENGED THE DEFENDANT IN PUBLIC IT WOULD
15 NOT BE A PRETTY SIGHT. VERY FEW PEOPLE WOULD EVER EVEN TO
16 THINK TO CHALLENGE MR. SHEPPARD IN PUBLIC. NOW, IN
17 PRIVATE, YOU COULD PRIVATELY TALK TO MR. SHEPPARD AND
18 STATE YOUR SIDE OF IT AND HAVE A GOOD CONVERSATION WITH
19 HIM IN PRIVATE.

20 Q WHAT WAS THE ATMOSPHERE FOR THE UPPER LEVEL
21 MANAGEMENT UNDER MR. SHEPPARD?

22 A THERE WAS SO MUCH STRESS AND SO MUCH TENSION, THE
23 PRESSURE WAS ALWAYS ON TO PRODUCE. NO MATTER WHAT YOUR
24 AREA OF PRODUCTION WAS THE PRESSURE WAS THERE TO PRODUCE.
25 THERE WAS TENSION THROUGHOUT WAREHOUSE LINES, JUST IN

1 GENERAL STRESS. AND MR. SHEPPARD WOULD VERY OFTEN DEMAND,
2 WHEN YOU THOUGHT YOU WERE GIVING ONE-HUNDRED PERCENT THERE
3 WAS TWO-HUNDRED PERCENT DEMANDED OF YOU. AND YOU JUST
4 STARTED WORKING HARDER TO TRY TO MEET THAT LINE, MEET THAT
5 LEVEL.

6 Q SPECIFICALLY, WHAT WAS THE POSITION OF CFO, THE
7 ATMOSPHERE AROUND THE CFO UNDER MR. SHEPPARD'S RANK?

8 A ARE YOU SPEAKING WHEN I BECAME CFO?

9 Q SURE, JUST IN GENERAL THAT POSITION, WHAT WAS THE
10 PRESSURE THAT WAS SURROUNDED AT HOMEGOLD UNDER MR.
11 SHEPPARD'S RANK?

12 A THERE WAS NATURALLY ALWAYS THE PRESSURE TO INCREASE,
13 DECREASE EXPENSES AND FIND WAYS TO INCREASE WHAT WAS SHOWN
14 AS INCOME ON THE BOOKS.

15 Q DID HOMEGOLD HAVE A SIMPLER COMPLEX STRUCTURE?

16 A HOMEGOLD HAD A VERY COMPLEX STRUCTURE. AS I SAID,
17 WHEN I CAME THERE THERE WAS SO MANY DIFFERENT COMPANIES
18 AND SO MANY, THE WAY THE FINANCIALS WERE PUT TOGETHER, ALL
19 OF THESE INTER-COMPANIES DEALINGS AND CONSOLIDATED ENTRIES
20 AND SECURITIZATION POOLS THEMSELVES ARE VERY COMPLICATED.
21 THERE ARE ALL KINDS OF COMPLICATED FINANCIAL MODELS THAT
22 THROW OFF ENTRIES, IT WAS VERY, VERY COMPLICATED.

23 Q AT THE TIME OF THE MERGER WHO WAS THE CFO OF
24 HOMEGOLD?

25 A IT WAS KEVIN MAST.

1 Q AND DID YOU HAVE SUBSTANTIAL DEALINGS WITH MR. MAST?

2 A MR. MAST WAS MY DIRECT BOSS PRIOR TO THE MERGER.

3 Q AFTER THE MERGER WHO WAS YOUR DIRECT BOSS?

4 A IT WAS MR. SHEPPARD.

5 Q WHAT TYPE OF WORKING RELATIONSHIP DID YOU HAVE WITH
6 MR. MAST?

7 A I HAD A PRETTY GOOD WORKING RELATIONSHIP WITH MR.
8 MAST UNTIL I GOT INVOLVED WITH MR. STERLING ON INTERNET
9 LENDING, MR. MAST WAS NOT REAL THRILLED ABOUT THAT. AND
10 NOT VERY SUPPORTIVE OF THAT AND WE HAD A FEW WORDS ABOUT
11 IT BUT NOTHING REALLY, YOU KNOW, NOTHING REALLY BAD.

12 Q DID MR. MAST, WAS A RIGHT-HAND MAN, SO TO SPEAK?

13 A I THINK THE CLOSEST TO RIGHT-HAND MAN WAS FOR MR.
14 MAST WOULD BE THE, HE DID A LOT OF THE BUDGETING PLANNING,
15 HELPED TO PRODUCE THE FINANCIAL BOOKS. HE IS THE CLOSEST
16 ONE.

17 Q IS IT FAIR TO SAY, ARE YOU AWARE OF ANYONE IN THE
18 ACCOUNTING DEPARTMENT WHO REALLY UNDERSTOOD WHAT MR. MAST
19 DID?

20 A MR. MAST WAS VERY HANDS ON, VERY DETAILED, HE KEPT A
21 LOT OF THINGS WITHIN HIS OWN CONTROL. I AM NOT AWARE OF
22 ANYONE AT THE COMPANY WHO COULD OF JUST STEPPED INTO KEVIN
23 MAST SHOES. KEVIN KNEW THE WHOLE PICTURE AND KNEW ALL OF
24 THESE COMPLICATIONS BETWEEN THE DIFFERENT COMPANIES AND
25 THE SECURITIZATION POOLS AND I KNOW OF NO ONE WHO REALLY

1 HAD THAT SAME LEVEL OF KNOWLEDGE.

2 Q ARE YOU AWARE OF ANY ISSUES THAT EXISTED BETWEEN MR.
3 MAST AND THE DEFENDANT?

4 A YES, THE TWO ISSUES WE HAVE ALREADY TALKED ABOUT, ONE
5 WHICH WAS THE MISSING MORTGAGE LOANS AT THE BEGINNING OF
6 THE MERGER. THE OTHER WAS AN ISSUE OF MR. SHEPPARD WANTED
7 THE ABILITY TO WRITE CHECKS IN LEXINGTON AND MR. MAST WAS
8 EMPHATICALLY OPPOSED TO THAT.

9 Q DID YOU HAVE ANY DISCUSSIONS WITH THE DEFENDANT ABOUT
10 FIRING MR. MAST?

11 A I DID.

12 Q AND PLEASE² TELL THE JURY THE SUBSTANCE OF THOSE
13 DISCUSSIONS.

14 A FROM TIME TO TIME MR. SHEPPARD WOULD TALK TO ME OF
15 HOW HE COULDN'T WORK WITH KEVIN MAST, COULDN'T WORK WITH
16 HIM. AND ONE DAY MR. SHEPPARD CALLED ME AND ASKED ME TO
17 GO TO A CONFERENCE ROOM AWAY FROM MY OFFICE. AND HE
18 TALKED TO ME ABOUT, YOU KNOW, HE JUST HAD IT, HE COULDN'T
19 TAKE IT ANYMORE, HE JUST COULDN'T WORK WITH KEVIN MAST,
20 YOU KNOW, HE WOULD HAVE TO LEAVE, HE JUST COULDN'T WORK
21 WITH MR. MAST. AND HE WANTED TO GET MR. STERLING AND
22 BRING MR. STERLING OVER AND THE PURPOSE WAS TO TALK TO MR.
23 STERLING ABOUT THE FACT THAT MR. SHEPPARD JUST HAD ENOUGH
24 AND JUST COULDN'T WORK WITH MR. MAST ANYMORE AND SOMETHING
25 HAD TO CHANGE. AND WHAT HAD TO CHANGE WAS THAT MR. MAST

1 NEEDED TO LEAVE.

2 Q AND DID HE INDEED LEAVE?

3 A HE DID.

4 Q AFTER MR. MAST LEFT WHAT HAPPENED TO THE UPPER LEVEL
5 MANAGEMENT IN THE ACCOUNTING DEPARTMENT?

6 A AFTER A SHORT PERIOD OF TIME THE UPPER LEVEL PEOPLE
7 THAT MR. MAST HAD, HIRED IN, LEFT. AND SOME OF THE NEWER
8 PEOPLE MIGHT OF STAYED BUT THE OLDER PEOPLE LEFT.

9 Q IS IT FAIR TO SAY THAT AFTER MR. MAST LEFT THE
10 ACCOUNTING DEPARTMENT HAD A TURNOVER AND RONNIE'S
11 ACCOUNTING EMPLOYEES WERE REPLACED?

12 A THERE WAS DEFINITELY TURNOVER IN THE ACCOUNTING
13 DEPARTMENT AND NEW PEOPLE WERE HIRED, SO THEY WERE HIRED
14 UNDER MR. SHEPPARD, MR. SHEPPARD AS CEO.

15 Q WHO BECAME THE NEXT CFO AFTER MR. MAST LEFT?

16 A IT WAS LARRY GOSNELL.

17 Q AND DO YOU REMEMBER APPROXIMATELY WHEN HE WAS, HE
18 BEGAN?

19 A IT WAS A VERY SHORT PERIOD OF TIME, I WAS ON VACATION
20 WHEN HE CAME, I TOOK A VACATION A FEW MONTHS LATER AND HE
21 WAS GONE.

22 Q DID YOU HAVE ANY SUBSTANTIAL DEALINGS WITH MR.
23 GOSNELL?

24 A I SAW HIM FROM TIME TO TIME, I TALKED WITH HIM AND I
25 WOULD ASK A FEW QUESTIONS. BUT IT WASN'T A DAY-TO-DAY

1 THING.

2 Q ABOUT THIS TIME IT IS NOVEMBER, IS HOMEGOLD GETTING
3 READY TO FILE THE THIRD QUARTER 10Q?

4 A IT WAS AT THAT TIME, YES.

5 Q AND THAT WAS THE YEAR FOR 2000?

6 A YES.

7 Q WAS THERE ANY PARTICULAR ACCOUNTING ENTRY BEING MADE
8 WITH THAT PARTICULAR 10Q?

9 A I WAS AWARE THAT THERE WERE DISCUSSIONS ABOUT TAKING
10 SOME OF THE DEFERRED ASSET AND PUTTING IT BACK ON THE
11 BOOKS AND THAT WOULD OF CREATED INCOME FOR THAT QUARTER.

12 Q DID YOU HAVE ANY DISCUSSIONS WITH HOMEGOLD'S
13 EXECUTIVE REGARDING THIS ISSUE?

14 A I OVERHEARD SOME TALKING ABOUT IT BUT ON THE DAY THAT
15 MR. GOSNELL RESIGNED I WAS ON VACATION AND MR. STERLING
16 CALLED ME ON MY CELL PHONE AND TOLD ME THAT LARRY WAS
17 GONE. AND I SAID, HE IS GONE, HE JUST CAME. AND MR.
18 STERLING TOLD ME THAT LARRY SAID HE HAD NO LOYALTY TO THE
19 COMPANY, HE HAD NEVER INTENDED TO SIGN ANYTHING, HAD
20 ALREADY FOUND ANOTHER JOB AND HE WAS GONE, HE WOULDN'T
21 SIGN THE 10Q. AND I SAID, WHAT HAPPENED. AND HE SAID
22 FORREST FERRELL SIGNED IT.

23 Q WHAT EFFECT DID INCREASING THE DEFERRED TAX ASSET
24 HAVE ON THAT THIRD QUARTER?

25 A IT MADE IT PROFITABLE.

1 Q DID YOU EVER HAVE ANY DISCUSSIONS WITH MR. STERLING
2 OR THE DEFENDANT REGARDING THE PROFITABILITY OF THAT
3 QUARTER?

4 A THERE HAD BEEN GENERAL DISCUSSIONS AND A GENERAL
5 UNDERSTANDING THAT IT WAS IMPORTANT TO BE PROFITABLE FOR
6 THE QUARTER AFTER THE MERGER.

7 Q WHEN MR. STERLING SAID THIS, THAT MR. GOSNELL WASN'T
8 LOYAL, WHAT DID YOU TAKE THAT TO MEAN?

9 A JUST HE WASN'T ON BOARD WITH HOMEGOLD MANAGEMENT,
10 THAT HE WASN'T IN SYNC WITH HOMEGOLD AND WASN'T WITH
11 SUCCESS WITH HOMEGOLD.

12 Q AT THAT TIME WOULD HOMEGOLD HAD SHOWN PROFITABILITY
13 BUT FOR THE DEFERRED TAX ASSET ADJUSTMENT?

14 A THERE WAS AN OPERATIONAL LOSS IN ANY CASE. BUT
15 WITHOUT THAT ENTRY THERE WOULD OF BEEN A LOSS.

16 Q WHO IS THE NEXT CFO?

17 A IT WOULD OF BEEN RHONDA JOHNSON.

18 Q AND DID SHE BEGAN AROUND JULY OF 2000?

19 A THAT IS PROBABLY CORRECT.

20 Q DID YOU HAVE SUBSTANTIAL DEALINGS WITH MS. JOHNSON?

21 A I DEALT WITH HER PROBABLY MORE THAN I DID WITH LARRY
22 GOSNELL. I THINK SHE WAS THERE A BIT LONGER.

23 Q AND WHILE SHE WAS CFO WHO, IF ANYBODY, CAME ON BOARD
24 IN THE ACCOUNTING DEPARTMENT?

25 A I BELIEVE SHE HIRED SHANE SMITH AND KEVIN MARTIN CAME

1 IN THAT PERIOD OF TIME. I AM NOT SURE IF RHONDA HIRED
2 KEVIN MARTIN OR NOT.

3 Q AND AROUND THIS TIME IN JULY OF 2000, WHAT ELSE WAS
4 GOING ON AT HOMEGOLD?

5 A IN JULY OF 2000?

6 Q I AM SORRY, STRIKE THAT QUESTION. HOW IS THE RETAIL
7 MORTGAGE DIVISION DOING?

8 A WE ARE SPEAKING OF 2001?

9 Q YEAREND OF 2000.

10 A WHEN MR. SHEPPARD FIRST CAME ON BOARD IN MAY OF 2000
11 THERE WAS A LITTLE POP IN PRODUCTION BECAUSE HE CAME TO
12 GREENVILLE, PEOPLE CAME TO GREENVILLE AND TOOK ADVANTAGE
13 OF MORTGAGE LEADS THAT HADN'T BEEN WORKED PROPERLY. AND
14 AFTER THAT THE MORTGAGE PRODUCTION KIND OF DIPPED DOWN
15 AGAIN. AND MR. SHEPPARD BEGAN WORKING TO OPEN OTHER
16 OFFICES AND THE FIRST ONE WOULD OF BEEN IN CINCINNATI, I
17 BELIEVE. SO, MR. SHEPPARD BEGAN BUILDING THE RETAIL
18 DIVISION. IN AUGUST OF 2000 THE WHOLESALE DIVISION WAS
19 CLOSED, AS I SAID BEFORE.

20 Q YEAREND 2000 WHAT DOES IT LOOK LIKE, THE NET WORTH OF
21 THE RETAIL MORTGAGE DIVISION?

22 A AT YEAREND 2000 I BELIEVE THERE WAS A NEGATIVE NET
23 WORTH AT THAT TIME.

24 Q AND THE RETAIL MORTGAGE DIVISION FINISHES THE YEAR
25 WITH A NEGATIVE NET WORTH, HOW DOES THAT AFFECT HIS

1 ABILITY TO ORIGINATE MORTGAGE LOANS?

2 A DOING BUSINESS, THE WAY HOMEGOLD DID IN SO MANY
3 DIFFERENT STATES. EACH STATE REQUIRES LICENSES AND MOST
4 STATES REQUIRE A POSITIVE NET WORTH TO BE LICENSED TO MAKE
5 MORTGAGE LOANS. IN ADDITION, HOMEGOLD HAD OBTAINED A HUD
6 MORTGAGE LICENSE EARLIER, BEFORE MR. SHEPPARD CAME ON
7 BOARD. AND HUD REQUIRES A POSITIVE NET WORTH TO STAY
8 LICENSED WITH HUD. WHAT HUD DOES FOR YOU, IT ALLOWS YOU
9 TO MAKE MORTGAGE LOANS IN STATE. SOME STATES, WITHOUT
10 GETTING INDIVIDUAL STATE LICENSES, SO A HUD LICENSE IS
11 VERY IMPORTANT. ~~SO~~ WITHOUT A POSITIVE NET WORTH AT SOME
12 POINT HOMEGOLD WOULD LOSE THE ABILITY TO MAKE LOANS IN
13 DIFFERENT STATES. AND IT WOULD ALSO IMPACT SURETY BONDS
14 AND DIFFERENT BONDS HAVING TO BE PUT IN DIFFERENT STATES.
15 SOME STATES REQUIRES SURETY BONDS.

16 Q WHAT, IF ANYTHING, DID MS. JOHNSON DO THAT ALLOWED
17 THE RETAIL MORTGAGE DIVISION TO FILE A POSITIVE NET WORTH
18 AT THE END OF 2000?

19 A RHONDA JOHNSON AND BILL LONG CAME UP WITH THE IDEA OF
20 MOVING THE DEBT THAT HOMEGOLD INCORPORATED HAD, MOVING IT
21 UP TO THE PARENT CORPORATION. IN OTHER WORDS, HOMEGOLD,
22 INC. WHICH IS THE COMPANY THAT NEEDED THE MORTGAGE
23 LICENSES WOULD HAVE A POSITIVE NET WORTH BECAUSE ITS DEBT
24 WOULD OF BEEN MOVED AWAY.

25 Q AND IN LAYMAN TERMS, ERASED?

1 A ERASED FROM HOMEGOLD, INC. AND MOVED TO HOMEGOLD
2 FINANCIAL.

3 Q DID THAT, IN EFFECT, ALLOW THE RETAIL MORTGAGE
4 DIVISION OF HOMEGOLD INCORPORATED TO CONTINUE ORIGINATING
5 LOANS?

6 A IT DID.

7 Q AND WHEN OBTAINING THESE HUD LICENSES WHOSE FINANCES
8 WOULD HOMEGOLD SEND?

9 A THEY WERE ADDED TO HOMEGOLD INCORPORATED FINANCIALS
10 THAT DID NOT INCLUDE THE DEBT.

11 Q MOVING INTO 2001 NOW. IN MARCH OF 2001 WHAT DID YOU
12 BEGIN WORKING?

13 A IN MARCH OF 2001 MR. SHEPPARD CAME TO ME AND SAID
14 THAT, WELL, HE HAD ALWAYS BEEN PRESSURED TO MOVE TO
15 GREENVILLE BECAUSE CORPORATE HEADQUARTERS WERE IN
16 GREENVILLE AND HE WAS THE CEO OF THE COMPANY. AND I HAD
17 EVEN FOUND A REALTOR FOR HIM TO START LOOKING FOR HOUSES.
18 BUT HE CAME TO ME AND SAID HE COULDN'T MOVE, HIS WIFE
19 DIDN'T WANT TO MOVE, HE WASN'T GOING TO MOVE. HE SAID THE
20 COMPANY NEEDED TO MOVE TO HIM, HE WAS TIRED OF DRIVING UP
21 TO GREENVILLE AND IT SHOULD MOVE TO HIM. AND I AGREED TO
22 MOVE WITH THE COMPANY AND MR. STERLING PERMITTED ME AND I
23 WAS GIVEN THE PROJECT OF ORCHESTRATING THE MOVE UP TO
24 CORPORATE, FROM GREENVILLE, SOUTH CAROLINA TO LEXINGTON.
25 Q HOW LONG DID IT TAKE YOU TO AFFECT THIS MOVE?

1 A A NUMBER OF PEOPLE MOVED IN MAY OF 2001. BY JULY OF
2 2001 WE WERE OPERATIONAL IN COLUMBIA, IN LEXINGTON AND
3 COLUMBIA. AND THE COMPUTER SYSTEM WAS THE LAST TO MOVE,
4 THE NETWORK AND THE COMPUTER SYSTEM, THE MAINFRAME
5 COMPUTER. IT DID NOT MOVE ACTUALLY UNTIL JULY OF 2002.

6 Q PRIOR TO THIS MOVE YOU WERE LIVING AND WORKING OUT OF
7 THE HEADQUARTERS IN GREENVILLE, IS THAT CORRECT?

8 A YES.

9 Q AND APPROXIMATELY HOW OFTEN WOULD YOU SEE THE
10 DEFENDANT?

11 A SEVERAL TIMES A WEEK. I WOULD IMAGINE WHILE I WAS
12 STILL IN GREENVILLE. AFTER I AGREED TO MOVE, I DID A LOT
13 OF DRIVING TO LEXINGTON AND I STAYED OVERNIGHT SEVERAL
14 TIMES IN HOTELS, MOTELS, WHATEVER. I DID A LOT OF
15 DRIVING.

16 Q AND ONCE YOU GOT DOWN TO LEXINGTON, HEADQUARTERS WAS
17 HERE AND YOU WERE WORKING HERE, HOW OFTEN WOULD YOU SEE
18 THE DEFENDANT?

19 A I WOULD SEE HIM EVERY DAY.

20 Q MS. JOHNSON, DID SHE RESIGN AROUND THE END, DO YOU
21 REMEMBER WHEN SHE RESIGNED?

22 A I KNOW THAT SHE DID NOT MOVE WITH THE COMPANY AND MY
23 UNDERSTANDING IS SHE WAS GOING TO OPEN HER OWN BUSINESS
24 AND SHE WAS ASKING MR. SHEPPARD IF SHE COULD DO LIKE
25 ACCOUNTS PAYABLE FOR HOMEGOLD.

1 Q WELL, YOU ARE AWARE THAT SHE RESIGNED AS CFO?

2 A I AM AWARE THAT SHE RESIGNED AS CFO, YES.

3 Q AND WHO WAS THE NEXT CFO?

4 A THAT WOULD OF BEEN KEVIN MARTIN.

5 Q AROUND THE TIME THAT YA'LL ARE MOVING, JULY OF 2001,
6 DO YOU ALSO BECOME INVOLVED IN THE ACCOUNTS PAYABLE
7 DEPARTMENT?

8 A MR. SHEPPARD WAS CONCERNED THAT BILLS WERE NOT BEING
9 PAID ON TIME, WHERE THOSE BILLS WERE BEING PAID FROM.
10 THERE WERE JUST SO MANY BILLS, THERE COULD OF BEEN
11 THOUSANDS LITERALLY OF APPRAISAL BILLS EVERY MONTH COMING
12 IN FROM ALL OVER THESE DIFFERENT CENTERS. AND SO, HE HAD
13 ME MEET WITH ACCOUNTS PAYABLE, THE MANAGER OF ACCOUNTS
14 PAYABLE AND THE CLERICAL PEOPLE THAT WORKED IN ACCOUNTS
15 PAYABLE THOSE BILLS WERE PAID FROM. WE WOULD GET TOGETHER
16 PRETTY MUCH EVERY WEEK AND GO THROUGH THINGS, FIGURE OUT
17 WHAT NEEDED TO BE PAID AND WHAT SHOULDN'T BE PAID AND TRY
18 TO ORGANIZE.

19 Q WHO WAS THE HEAD OF THE ACCOUNTS PAYABLE SECTION AT
20 THAT TIME?

21 A AFTER WE MOVED TO LEXINGTON TONYA BRAZELL WAS HIRED
22 AS THE ACCOUNTS PAYABLE MANAGER.

23 Q WERE YOU ABLE TO ORGANIZE THE ACCOUNTS PAYABLE?

24 A I NEVER ORGANIZED IT TO MY SATISFACTION, NO.

25 Q I BELIEVE KEVIN MARTIN BECAME CFO THE DAY OF 2001,

1 DOES THAT SOUND RIGHT?

2 A THAT IS PROBABLY RIGHT.

3 Q DID YOU HAVE SUBSTANTIAL DEALINGS WITH MR. MARTIN?

4 A I CERTAINLY SAW HIM JUST ABOUT EVERY DAY AND WOULD
5 INTERACT WITH HIM REGULARLY.

6 Q ARE YOU AWARE OF A MEETING THAT TOOK PLACE ON OCTOBER
7 4TH OF 2001 WITH ELLIOTT DAVIS?

8 A I WAS NOT IN ATTENDANCE AT THAT MEETING.

9 Q THE NEXT MONTH, NOVEMBER OF 2001, ARE YOU AWARE OF
10 WHAT THE ACCOUNTING DEPARTMENT WAS WORKING ON?

11 A I BECAME AWARE AROUND THE THIRD QUARTER OF THAT YEAR,
12 I THINK I FIRST HEARD IT FROM MR. SHEPPARD AND TODD LAKE
13 WAS A MARKETING MANAGER AND KEVIN MARTIN AND SHANE SMITH
14 THAT THEY WERE WORKING ON THE IDEA OF TAKING PREPAID
15 MARKETING EXPENSE AND MAKING IT AN ASSET ON THE HOMEGOLD
16 BOOKS.

17 Q DID THEY IMPLEMENT THAT ACCOUNTING?

18 A YES, THEY DID.

19 Q AND WHAT CHANGED ABOUT THE WAY THEY WERE REPORTING
20 THE PREPAID MARKETING?

21 A WELL, BASICALLY INSTEAD OF MARKETING EXPENSES, YOU
22 ARE SAYING THAT THOSE LEADS THAT YOU PURCHASED, THAT YOU
23 CREATED HAVE FUTURE VALUE. SO, YOU PUT THEM ON AS AN
24 ASSET OVER SOME LENGTH OF TIME AND ADVERTISE THEM OVER
25 THAT LENGTH OF TIME.

1 Q AND THE AMOUNT OF TIME, WAS IT CHANGED OF THE THIRD
2 QUARTER 10Q?

3 A YES.

4 Q FROM WHAT TO WHAT?

5 A I DON'T REMEMBER ALL OF THE ITERATIONS THAT IT WENT
6 THROUGH BUT I KNOW THAT INITIALLY, I THINK IT WAS A VERY
7 SHORT PERIOD OF TIME, OR IT WAS GOING TO BE A LONGER
8 PERIOD OF TIME AND IT WAS MADE SHORTER, I THINK IS THE WAY
9 IT WAS.

10 Q ARE YOU AWARE OF WHAT EFFECT THIS NEW TREATMENT OF
11 PREPAID MARKET EXPENSES HAD ON THE BOTTOM LINE?

12 A WELL, IT RESULTED IN THE THIRD QUARTER, THERE BEING
13 REPORTED THAT PROFIT FOR HOMEGOLD, INCORPORATED.

14 Q ARE YOU AWARE OF HOW ELLIOTT DAVIS TREATED THIS
15 MANEUVER BACK IN YEAREND 2001?

16 A I BECAME AWARE THAT ELLIOTT DAVIS ASKED FOR A GOOD
17 PORTION OF THAT TO BE WRITTEN OFF AT YEAREND.

18 Q AROUND THE YEAREND OF 2001, BEGINNING THE YEAR OF
19 2002 DID THE DEFENDANT HIRE A PRODUCTION CONSULTANT?

20 A YES, HE HIRED PAUL BANNIGER.

21 Q AND WHAT WAS MR. BANNIGER'S POSITION?

22 A HE WAS BROUGHT IN AS CEO OF HOMEGOLD, INCORPORATED.

23 Q AND WHAT WAS HE HIRED TO DO?

24 A HE WAS HIRED TO BUILD PRODUCTION OFFICES.

25 Q AND DID YOUR JOB DUTIES CHANGE?

1 A MR. SHEPPARD BASICALLY SAID TO MR. BANNIGER, YOU TAKE
2 EVERYBODY AND DECIDE WHAT YOU WANT THEM TO BE, YOU ARE
3 CEO, DO WHAT YOU WANT. AND MR. BANNIGER PUT ME IN CHARGE
4 OF THE VERY DETAILED PRODUCTION REPORTS THAT COULD BE USED
5 BY THE CENTER MANAGERS TO TRACK JUST ABOUT EVERY ASPECT OF
6 THE PRODUCTION THAT YOU COULD THINK OF. AND AT FIRST A
7 LOT OF THEM WERE MANUAL AND THEN MY PROGRAMMERS WERE ABLE
8 TO AUTOMATE SOME AND SOME WERE MADE MANUAL.

9 Q EVEN THOUGH PAUL BANNIGER WAS CEO, WAS HE MAKING
10 CHANGES IN ASKING EMPLOYEES TO DO PROJECTS UNBEKNOWNST TO
11 THE DEFENDANT? ~~4~~

12 A NO, MR. SHEPPARD KNEW WHAT MR. BANNIGER WAS DOING.

13 Q BASED UPON YOUR DUTIES DID YOU BECOME MORE INVOLVED
14 AND AWARE OF THE FINANCIAL CONDITION OF HOMEGOLD?

15 A I BECAME MORE AWARE OF HOW THE DAY-TO-DAY PRODUCTION
16 IMPACTED THE FINANCIAL POSITION, I BECAME MORE AWARE OF
17 RECOGNIZING INCOME AND LOOKING FOR EXPENSE REDUCTION AND
18 THINGS LIKE THAT.

19 Q IN JANUARY OF 2002 DID YOU ATTEND A MEETING WITH THE
20 DEFENDANT AND ELLIOTT DAVIS?

21 A I DID.

22 Q AND WHERE WAS THAT?

23 A IT WAS IN THE CHRISTY BUILDING IN COLUMBIA.

24 Q AND WAS THERE A POWERPOINT PRESENTATION?

25 A YES.

1 Q AND WHO PRESENTED THE POWERPOINT PRESENTATION?

2 A MR. SHEPPARD MADE THE PRESENTATION.

3 Q AND WHAT WAS THE SUBSTANCE OF MR. SHEPPARD'S
4 PRESENTATION.

5 A MR. SHEPPARD WAS PRESENTING THAT THE OLD HOMEGOLD
6 MANAGEMENT, WHICH HAD BEEN KEITH AND KEVIN HAD RAISED A
7 LOT OF MONEY THROUGH THE IPO AND THROUGH THE SELL OF THE
8 SENIOR BONDS AND HAD SPENT THAT MONEY, THEY HAD BUILT
9 BRANCHES AND THEN CLOSED THOSE BRANCHES. AS SOON AS THE
10 MONEY HAD BEEN RAISED IT HAD BEEN SPENT, NO VALUE FROM
11 THAT MONEY. BUT THAT MR. SHEPPARD HAD TAKEN MONEY, SPENT
12 MONEY AND BUILT A NETWORK OF BRANCHES THAT HAD THE
13 CAPABILITY TO PRODUCE AND HAD VALUE TO BE SOLD.

14 Q WHOSE MONEY HAD THE DEFENDANT SPENT?

15 A IT WAS MONEY FROM CAROLINA INVESTORS.

16 Q WHAT WAS ELLIOTT DAVIS' REACTION TO THAT POWERPOINT?

17 A ELLIOTT DAVIS BASICALLY SAID WE DON'T BELIEVE IN YOUR
18 PROJECTIONS, WE DON'T BELIEVE IN YOUR BUDGETS, YOU HAVE
19 NEVER MET ANY PROJECTIONS THAT YOU HAVE GIVEN US IN THE
20 PAST. AND THEY STARTED TALKING ABOUT THE NEED TO GET AN
21 OUTSIDE VALUATION.

22 Q AND AT THIS TIME THE DEFENDANT HAS BEEN CEO FOR HOW
23 LONG?

24 A WELL, SINCE MAY 9TH OF 2000.

25 Q A YEAR AND A HALF?

1 A YES.

2 Q BASED UPON THAT MEETING WHAT, IF ANYTHING, DID
3 HOMEGOLD DO?

4 A HOMEGOLD ASKED CBIZ TO DO A VALUATION OF THE RETAIL
5 MORTGAGE DIVISION.

6 Q VERY BRIEFLY, HOW DOES A VALUATION WORK?

7 A MY KNOWLEDGE OF THIS IS THAT HOMEGOLD PRODUCED A
8 BUDGET, A PROJECTION, NUMBERS THAT WOULD SHOW WHAT
9 PRODUCTION WOULD BE LIKE OVER A PERIOD OF TIME. AND THAT
10 INFORMATION WENT TO THE PERSON AT CBIZ WHO THEN EVALUATED
11 IT TO COME UP WITH WHAT THE POTENTIAL VALUE WAS.

12 Q WHO GAVE CBIZ THOSE PRODUCTION NUMBERS?

13 A IT WOULD OF COME FROM SENIOR MANAGERS AND PUT
14 TOGETHER BY CHAD BARRETT.

15 Q WHAT SENIOR MANAGERS?

16 A PRODUCTION NUMBERS WOULD OF COME FROM MR. SHEPPARD,
17 MR. STERLING, MR. BANNIGER.

18 Q DID THOSE NUMBERS REFLECT ANY RISK FACTORS ASSOCIATED
19 WITH THE RETAIL MORTGAGE DIVISION?

20 A I AM NOT AWARE OF ANY RISK FACTORS THAT WERE
21 INCORPORATED.

22 Q DID THOSE NUMBERS REFLECT ANY OVERHEAD EXPENSES
23 ASSOCIATED WITH THE RETAIL MORTGAGE DIVISION?

24 A IT DID NOT CONTAIN ANY CORPORATE OVERHEAD EXPENSES.

25 Q HOW MUCH DID CBIZ VALUE THE RETAIL MORTGAGE DIVISION?

1 A I CAN GO FROM MEMORY OR I CAN CONSULT MY NOTES.

2 Q PLEASE FEEL FREE TO CONSULT YOUR NOTES.

3 A CBIZ WAS IN RANGE OF \$160 TO \$170 MILLION DOLLARS.

4 Q ARE YOU AWARE OF HOW ELLIOTT DAVIS REACTED TO THIS
5 VALUATION?

6 A I KNOW THEY REQUESTED A SECOND VALUATION TO BE DONE.

7 Q AND DID HOMEGOLD OBTAIN A SECOND VALUATION?

8 A YES, FROM DELOITTE AND TOUCHE.

9 Q AND WHAT NUMBERS WERE GIVEN TO DELOITTE AND TOUCHE?

10 A I THINK THE SAME NUMBERS THAT WENT TO CBIZ.

11 Q AND WHAT WAS THE RESULT OF DELOITTE AND TOUCHE'S
12 VALUATION?

13 A IT CAME BACK WITH A VALUE BETWEEN \$135 MILLION AND
14 \$144 MILLION.

15 Q NOW, WHEN DID THAT VALUATION COME IN?

16 A IT WAS IN APRIL.

17 Q THE BEGINNING OF APRIL?

18 A I BELIEVE, MY NOTES SHOW APRIL 2ND.

19 Q OF 2002?

20 A YES.

21 Q WHAT DATE, WHEN THOSE VALUATIONS CAME IN, THEY VALUED
22 THE COMPANY AS OF THE DATE, WHAT WAS THAT DATE?

23 A I BELIEVE THAT THEIR PROJECTIONS STARTED AT THE FIRST
24 OF THAT YEAR.

25 Q SO, DECEMBER THE 31ST OR JANUARY THE 1ST?

1 A PROBABLY JANUARY THE 1ST, I WOULD IMAGINE.

2 Q NOW, THOSE VALUATIONS CAME IN APRIL?

3 A YES.

4 Q THEY WERE AS OF JANUARY?

5 A WELL, THEY WOULD OF STARTED AND GONE FORWARD.

6 Q SO, THE PROJECTIONS WOULD HAVE STARTED JANUARY 1ST
7 2002 PROJECTED FORWARD?

8 A YES.

9 Q STANDING IN APRIL, LOOKING AT THOSE VALUATIONS,
10 LOOKING BACK TO JANUARY.

11 A YES.

12 Q HAD THE RETAIL MORTGAGE DIVISION MET ONE OF THOSE
13 PROJECTIONS?

14 A I CAN TELL YOU DEFENSIVELY THAT WORKING WITH PAUL
15 BANNIGER, PAUL BANNIGER WOULD EVERY MONTH SET PRODUCTION
16 GOALS FOR EVERY CENTER. AND I WOULD GO OVER, AROUND THE
17 GOALS AND SHOW ON A DAILY BASIS HOW THE BRANCHES WERE
18 DOING. I AM NOT AWARE OF ANY MONTH THAT THE CENTERS MET
19 MR. BANNIGER'S PROJECTIONS.

20 Q I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
21 STATE'S EXHIBIT NUMBER 19. DO YOU RECOGNIZE THAT?

22 A IT IS A 10Q.

23 Q AND WHAT QUARTER 10Q IS THAT?

24 A FOR THE PERIOD ENDING SEPTEMBER 30TH OF 2002.

25 Q WE WILL GET TO THE THIRD QUARTER LATER. DO YOU

1 RECOGNIZE THAT?

2 A LET ME TAKE A LOOK AT IT. IS IT THE FIRST QUARTER
3 10Q FOR 2002?

4 Q YES.

5 A OKAY.

6 Q DOES THAT 10Q REPORT A LOSS FOR THE RETAIL MORTGAGE
7 DIVISION?

8 A FOR THE THREE MONTHS ENDING MARCH 31ST OF 2002 IT
9 SHOWS A LOSS OF \$9.4 MILLION AND THIS IS FOR, THIS IS THE
10 CONSOLIDATED. SO THIS WOULD BE FOR HOMEGOLD FINANCIAL BUT
11 AS YOU KNOW HOMEGOLD, INC. WAS THE NAME, OPERATING
12 COMPANY.

13 Q AND WHEN WAS THAT FILED?

14 A ON MAY 20TH OF 2002.

15 Q SO, AS OF MAY 20TH YOU HAVE GOT VALUATIONS THAT ARE A
16 MONTH OLD?

17 A YES.

18 Q AND WE HAVE GOT \$9 MILLION DOLLARS IN LOSSES?

19 A YES.

20 Q OKAY. I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
21 STATE'S EXHIBIT NUMBER 50. DO YOU RECOGNIZE THAT?

22 A THIS IS A COPY OF THE CAROLINA INVESTORS PROSPECTUS,
23 I BELIEVE.

24 Q AND CAN YOU TELL WHEN THAT PROSPECTUS WAS FILED?

25 A IT SAYS, THE DATE OF THE PROSPECTUS IS APRIL 1ST OF

1 2002.

2 Q AND WILL YOU PLEASE TURN TO PAGE F11.

3 A OKAY.

4 Q IF YOU WILL, ABOUT THE MIDDLE OF THE PAGE, UNDER RISK
5 FACTORS THERE IS LANGUAGE IN THERE DISCUSSING THE
6 VALUATION.

7 A YES, THERE IS. THIS IS IN THE SECTION ADDRESSING THE
8 GOING CONCERN. AND IT DOES TALK ABOUT THE VALUATIONS,
9 RECENT INDEPENDENT VALUATIONS ARE VALUED DIVISION BETWEEN
10 \$135 MILLION AND \$170 MILLION DOLLARS.

11 Q NOW, YOU JUST TESTIFIED THAT DELOITTE AND TOUCHE
12 VALUATION CAME BACK APRIL 2ND?

13 A RIGHT.

14 Q AND THAT PROSPECTUS WAS FILED, I BELIEVE IT WAS APRIL
15 1ST?

16 A IT IS DATED APRIL 1ST, RIGHT.

17 Q SO, WOULD IT HAD TO HAVE BEEN FILED AFTER THE
18 DELOITTE AND TOUCHE VALUATION?

19 A YES, IT WOULD HAVE TO BE.

20 Q AT THE TIME THAT WAS FILED, SOMETIME IN APRIL OF 2002
21 HAD HOMEGOLD MET ANY PROJECTIONS ON WHICH THE VALUATION
22 WAS BASED?

23 A NO.

24 Q IN AUGUST OF 2002, DID YOU HAVE A TELEPHONE
25 CONFERENCE WITH DAVID GAFFNEY, I AM SORRY, WITH CY BURGESS

1 FROM ELLIOTT DAVIS?

2 A YES, I WAS PRESENT WHEN ONE TOOK PLACE.

3 Q AND WHO ELSE WAS PRESENT WITH YOU WHILE YA'LL WERE
4 TALKING TO CY BURGESS?

5 A IT WAS DAVID GAFFNEY AND KEVIN MARTIN.

6 Q AND DURING THAT CONVERSATION WERE THE VALUATIONS
7 DISCUSSED, WITHOUT SAYING WHAT WAS SAID, WERE THEY
8 DISCUSSED?

9 A IT WAS AFTER THE CONVERSATION WITH CY BURGESS, HE HAD
10 DROPPED OUT OF THE CONVERSATION AND THEN THERE WAS THIS
11 DISCUSSION OF THE VALUATIONS.

12 Q AT THAT TIME WAS KEVIN MARTIN THE CFO?

13 A YES.

14 Q BASED UPON THAT CONVERSATION AND THE PERFORMANCE OF
15 THE RETAIL MORTGAGE DIVISION FROM JANUARY UNTIL AUGUST,
16 DID YOU FORM AN OPINION REGARDING THE VALUATION?

17 A I REALIZED THAT ACCOUNTING DID NOT HAVE FAITH IN THE
18 PROJECTIONS. AND IT WAS MY FIRST EXPOSURE TO AND
19 UNDERSTANDING OF THE POTENTIAL THAT ON THE CAROLINA
20 INVESTORS LOAN WOULD BE INCREASED IN THE FUTURE IF
21 PRODUCTION DIDN'T PICK UP.

22 Q NOW, AROUND THIS SAME TIME PERIOD, BEGINNING OF 2002
23 THROUGH THE FIRST OF THIS YEAR, OTHER THAN GROWING THE
24 RETAIL MORTGAGE DIVISION WHAT IS THE DEFENDANT DOING IN
25 ORDER TO TURN HOMEGOLD AROUND?

1 A HE BEGAN, ONE SMALL THING IS HE STARTED UP A
2 WHOLESALE MORTGAGE AGAIN, ON A VERY SMALL SCALE. HE SAID
3 THAT WAS, YOU KNOW, KIND OF ACTIVATED THAT AGAIN. BUT THE
4 MAIN THING WAS IS THAT HE BEGAN TO TALK ABOUT ENTERING THE
5 CASH ADVANCE INDUSTRY, STARTING UP SOME CASH ADVANCE
6 BUSINESS, PAYDAY ADVANCE BUSINESS, I THINK IS THE RIGHT
7 PHRASE.

8 Q AND WAS THAT BUSINESS NAMED FLEXCHECK?

9 A ULTIMATELY THE BUSINESS THAT WAS STARTING WAS
10 FLEXCHECK.

11 Q AND DO YOU KNOW APPROXIMATELY WHEN IT WAS STARTED?

12 A BRENDAN CARPENTER WAS HIRED TO RUN, TO START THAT
13 COMPANY AND RUN THAT COMPANY AND HE WAS HIRED IN DECEMBER
14 OF '01.

15 Q SO, IT WAS WELL ON ITS WAY HERE IN JANUARY?

16 A IT IS STARTED UP RUNNING AND THEY STARTED HIRING A
17 FEW MORE PEOPLE AND GETTING THE BUSINESS TOGETHER. I
18 WORKED WITH HIM SOME TO HELP HIM HOWEVER HE NEEDED. SO,
19 HE WAS GETTING HIS PLAN TOGETHER TO GET IT STARTED.

20 Q AND WHAT WAS THE IDEA BEHIND STARTING FLEXCHECK?

21 A BASICALLY IT WAS TO FIND ANOTHER, POTENTIAL
22 PROFITABLE BUSINESS THAT HOMEGOLD COULD ENTER INTO. BUT
23 THE IDEA OF THAT MONEY FROM THAT COMPANY WOULD BE USED TO
24 PAY BACK CAROLINA INVESTORS.

25 Q WHAT TYPE OF BUSINESS RELATIONSHIP EXISTED BETWEEN

1 HOMEGOLD AND FLEXCHECK?

2 A AT FIRST THE TALK WAS THAT BRENDAN CARPENTER WOULD
3 START UP ONE OR TWO OFFICES AND JUST SEE HOW, HOW THEY
4 WENT AND IT WOULD KIND OF BE UNDER HOMEGOLD. BUT BRENDAN
5 REALLY ENVISIONED IT BEING A SEPARATE COMPANY. AND IT WAS
6 ACTUALLY FORMED, THERE WAS ONE FORMED THAT WAS A WHOLLY
7 COMPANY AND THEN THERE WAS A SOUTH CAROLINA ONE FORMED AND
8 THEN LATER THERE WERE LLC'S FORMED FOR OTHER STATES.

9 Q WHEN THE OFFER AGREEMENT WAS REDUCED TO WRITING, WAS
10 FLEXCHECK A SUBSIDIARY OF HOMEGOLD?

11 A IT WAS NOT, ~~IT~~ IT WAS A SEPARATE COMPANY. WHEN IT WAS
12 REDUCED TO WRITING AND THE NEGOTIATIONS FOR THEM, MR.
13 STERLING HAD DECIDED THAT HE WOULD RATHER BE A LENDER TO
14 FLEXCHECK RATHER THAN A EQUITY INVESTOR. SO, HOMEGOLD
15 TOOK THE POSITION OF A LENDER TO FLEXCHECK.

16 Q WHY DID MR. STERLING WANT TO BE A LENDER RATHER THAN
17 AN INVESTOR?

18 A IT IS BECAUSE IT WAS A STARTUP COMPANY AND WOULD BE
19 SPENDING A LOT OF MONEY AT THE BEGINNING AND NOT MAKING A
20 PROFIT, IT WOULD BE LOSSES. AND MR. STERLING DID NOT WANT
21 TO TAKE THOSE LOSSES UNDER THE HOMEGOLD BOOKS.

22 Q AND IF HE SIMPLY LENTED, (PHONETIC), MONEY WOULD
23 THOSE LOSSES SHOW UP ON HOMEGOLD BOOKS?

24 A NO.

25 Q IN ESSENCE WOULD HE STILL BE SPENDING MONEY?

1 A YES.

2 Q WHO ELSE PLAYED A PART IN THIS OTHER THAN MR.
3 STERLING?

4 A WELL, MR. SHEPPARD MET REGULARLY WITH MR. CARPENTER.
5 I MEAN, THEY WERE BUSINESS PARTNERS. EVEN WHEN THE LLC,
6 THE FIRST LLC WAS FORMED MR. SHEPPARD AND MR. CARPENTER
7 WERE THE MANAGING MEMBERS.

8 Q AND WHEN THE OPERATING AGREEMENT WAS REDUCED TO
9 WRITING DID HOMEGOLD HAVE AN OPTION TO PURCHASE FLEXCHECK?

10 A YES, THERE WAS A SEPARATE DOCUMENT THAT WAS AN OPTION
11 FOR HOMEGOLD TO PURCHASE AN EIGHTY PERCENT EQUITY INTEREST
12 IN FLEXCHECK FOR \$100 THOUSAND DOLLARS.

13 Q WHAT EFFECTIVE DATE DID THE OPERATING AGREEMENT HAVE?

14 A IT WAS BACKDATED TO THE FIRST OF 2001.

15 Q SO, IN EFFECT WAS FLEXCHECK EVER A SUBSIDIARY OF
16 HOMEGOLD?

17 A NO.

18 Q NOW, IN AUGUST OF 2002, I AM SORRY, LET ME BACK UP.
19 WAS THERE EVER A TIME THAT FLEXCHECK WAS MADE A GUARANTOR
20 OF SOME SENIOR BONDS OF HOMEGOLD?

21 A YES.

22 Q AND APPROXIMATELY WHEN WAS THAT?

23 A I BECAME AWARE OF THAT FOR THE SECOND QUARTER 10Q
24 FILING AND THE BEST OF MY KNOWLEDGE ABOUT THE DETAILS THAT
25 THOSE COME FROM, INFORMATION I OBTAINED AFTER THE

1 BANKRUPTCY. BUT IT WAS DECIDED BETWEEN ACCOUNTING STAFF
2 AND THE WYCHE LAW FIRM THAT FLEXCHECK NEEDED TO BE A
3 GUARANTOR OF THOSE BONDS, SAYING THAT FLEXCHECK WAS A
4 SUBSIDIARY. MR. CARPENTER WAS OUT OF TOWN AND THE WYCHE
5 LAW FIRM PRODUCED DOCUMENTS THAT WOULD REMOVE MR.
6 CARPENTER AS A MANAGER AND MADE MR. SHEPPARD THE SOLE
7 MANAGER AND MR. SHEPPARD EXECUTED THE SUBSIDIARY GUARANTEE
8 FOR FLEXCHECK.

9 Q WHO SIGNED THE DOCUMENTS REMOVING BRENDAN CARPENTER?

10 A IT WOULD OF BEEN MR. SHEPPARD, HE WAS THE ONLY ONE
11 WITH AUTHORITY TO DO SO.

12 Q AND AFTER MR. SHEPPARD ENCUMBERED FLEXCHECK AS A
13 GUARANTOR OF THESE NOTES WHAT DID HE DO?

14 A HE REPLACED MR. CARPENTER AS MANAGER SO IT WAS
15 REVERSED BACK. BUT THE GUARANTEE STAYED IN PLACE.

16 Q ARE YOU AWARE IF MR. CARPENTER KNEW THIS WAS
17 HAPPENING?

18 MR. GRIFFIN: OBJECTION, YOUR HONOR.

19 THE COURT: SUSTAINED.

20 Q WAS THIS DONE, DID YOU EVER HAVE A CONVERSATION WITH
21 MR. CARPENTER REGARDING THIS?

22 A YES, AFTER THE BANKRUPTCY.

23 Q ARE YOU AWARE OF A MEETING THAT OCCURRED AT THE WYCHE
24 LAW FIRM ON MARCH 14TH OF 2002?

25 A I HAD BECOME AWARE OF THAT MEETING, YES.

1 Q DID YOU ATTEND THAT MEETING?

2 A I DID NOT.

3 Q ARE YOU AWARE OF A MEETING THAT OCCURRED ON MARCH THE
4 25TH OF 2002?

5 A AGAIN, I HAD BEEN MADE AWARE OF THAT MEETING BUT I
6 DID NOT ATTEND THAT MEETING.

7 Q AFTER THESE MEETINGS DID THE ACCOUNTING DEPARTMENT
8 BEGIN TO WORK ON FILING THE 10K FOR YEAREND OF 2001?

9 A I THINK THEY WERE WORKING ON IT EVEN BEFORE THOSE
10 MEETINGS.

11 Q AND BASED UPON THESE MEETINGS WAS THERE ANYTHING
12 SIGNIFICANT THAT WAS GOING TO BE INCLUDED IN THE 10K
13 FILING.

14 A THAT WAS WHEN HOMEGOLD MANAGEMENT WAS INFORMED THAT
15 THERE WOULD BE A GOING CONCERN LANGUAGE PLACED IN THE
16 FINANCIALS.

17 Q DID YOU SPEAK WITH ANYONE REGARDING THIS GOING
18 CONCERN LANGUAGE?

19 A AFTER PEOPLE GOT BACK FROM THAT MEETING, MR. FERRELL
20 CAME AND TALKED TO ME, IT WAS JUST A TERRIBLE MEETING,
21 JUST AN AWFUL MEETING. MR. SHEPPARD CAME AND TOLD ME THAT
22 THERE HAD BEEN A TERRIBLE MEETING AND THAT THE AUDITORS
23 HAD PRESSED SOMETHING ON US THAT WE DIDN'T KNOW ABOUT.
24 AND MR. STERLING CALLED ME SHORTLY AFTER THAT, IT COULD OF
25 BEEN THE NEXT DAY AND TALKED TO ME OR TOLD ME THAT A GOING

1 CONCERN WAS NOT BEING IN THE COMPANY, THAT IT WAS JUST
2 BECAUSE OF THE CLIMATE OF ARTHUR ANDERSON AND EVERYTHING,
3 THAT AUDITORS WERE JUST BEING EXTREMELY CONSERVATIVE. AND
4 THAT COMPANIES SURVIVE THE GOING CONCERN AND THAT I WAS
5 JUST SUPPOSE TO STAY FOCUSED ON MY JOB IN HELPING OUT AND,
6 YOU KNOW, STAY WORKING HARD AND BUILDING PROFIT AND KEEP
7 MY PEOPLE CALM AND EXPLAIN TO THEM THAT IT DIDN'T, IT
8 WASN'T REALLY THAT, IT DIDN'T MEAN THE END OF THE COMPANY.

9 Q AND AT THAT POINT WHAT DID YOU BECOME INVOLVED IN
10 WITH REGARDING TO HOMEGOLD?

11 A I AM SORRY?

12 Q DID YOU BECOME INVOLVED IN THE ACCOUNTING DEPARTMENT?

13 A OH, MY DUTIES ARE CHANGING QUITE RAPIDLY IN 2001
14 BECAUSE GARY ELLY, (PHONETIC), PASSED AWAY AND HE HAD BEEN
15 IN CHARGE OF TRAINING AND RECRUITING AND REALLY DOING ALL
16 OF THE LEASES FOR THE NEW BUSINESS, FOR THE NEW BRANCHES.
17 SO, I INHERITED HIS JOB WHEN HE PASSED AWAY. AND THEN AT
18 A POINT I WAS GIVEN HR PAYROLL TO MANAGE, MR. MARTIN HAD
19 BEEN MANAGING THAT AND IT WAS GIVEN TO ME INSTEAD. AND
20 THEN AT A POINT MR. BANNIGER CAME TO ME AND SAID THAT HE
21 NEEDED SOMEBODY TO MORE CLOSELY WATCH MR. MARTIN, THAT MR.
22 MARTIN WAS COMING IN LATE AND LEAVING EARLY AND SAYING HE
23 WAS COMING BACK TO WORK BUT NOT DOING THAT. AND MR.
24 BANNIGER WAS TOO BUSY TO WATCH HIM AND HE WANTED ME TO, HE
25 WANTED MR. MARTIN TO REPORT TO ME SO THAT I COULD REALLY

1 WATCH HIM AND MAKE SURE HE DID HIS WORK. SO, I BECAME
2 MORE AND MORE INVOLVED IN THE ACCOUNTING SIDE OF THINGS.

3 Q AND ARE YOU STILL RUNNING AND DEVELOPING REPORTS FOR
4 PAUL BANNIGER AS WELL?

5 A YES, WE HAD DEVELOPED A LITTLE SYSTEM IN FOXPRO THAT
6 WOULD TRACK BROKER LOANS AS FAR AS LENDING.

7 Q SPECIFICALLY ARE YOU REFERRING TO THE BROKER FEE
8 INCOME?

9 A WELL, THAT WAS THE NEXT PHASE OF THAT. THE FIRST
10 PHASE WAS TO IDENTIFY WHEN THESE FUNDS WERE OUT THERE SO
11 THAT THEY COULD BE PULLED INTO PRODUCTION REPORTS. THE
12 NEXT THING THAT I FOUND IS THAT ACCOUNTING WAS NOT
13 TRACKING THE POTENTIAL INCOME FROM X LOANS AT ANY POINT.
14 JUST IF A CHECK CAME IN THEY WOULD POST IT INTO INCOME.
15 BUT WE HAD THE ABILITY TO KNOW WHEN A LOAN WAS OUT THERE
16 READY TO BE CLOSED. AND SO THERE SHOULD OF BEEN AN
17 ACCOUNT RECEIVABLE SET UP. IT IS A TRACKING MECHANISM TO
18 BE SURE THAT MONEY THAT IS OUT THERE--

19 Q LET ME SLOW YOU DOWN. BROKER FEE INCOME, HOW MUCH IS
20 THIS FEE?

21 A IT WILL VARY WITH THE LENDER AND THE TYPE OF LOAN, IT
22 CAN BE ONE PERCENT OF A LOAN OR MORE, IT COULD BE A LITTLE
23 LESS. SO, IT ENDS UP TO BE SIGNIFICANT ENOUGH, WHEN YOU
24 ARE INCREASING YOUR BROKERAGES.

25 Q AND WHEN DO YOU GET THIS FEE?

1 A IT SHOULD BE SENT TO YOU AS SOON AS THAT LOAN CLOSES.

2 Q OKAY. NOW, IF YOU DON'T RECEIVE THE FEE ARE THERE A
3 LIMITED NUMBER OF REASONS WHY THAT OCCURS?

4 A YES, IT COULD BE THAT THE LOAN ACTUALLY DIDN'T CLOSE,
5 THAT IT FELL THROUGH AT THE LAST MINUTE. IT COULD BE THAT
6 THE MONEY JUST IS LOST OR YOU JUST NEED TO NAG SOMEBODY TO
7 GET YOUR MONEY. AND THEN THE THIRD POSSIBILITY IS THAT
8 THERE COULD BE FRAUD IN THE BRANCHES, LOAN OFFICERS ARE
9 TEMPTED BY THAT AMOUNT OF MONEY. IF THERE IS NOT A
10 TRACKING MECHANISM IN PLACE IT COULD END UP IN SOMEBODY'S
11 PERSONAL BANK ACCOUNT RATHER THAN IN THE COMPANIES BANK
12 ACCOUNT.

13 Q SO, THERE IS SPECIFIC REASONS WHY YOU NEED TO TRACK
14 WHEN THE LOAN CLOSES SO THAT YOU CAN ACCOUNT FOR THIS FEE
15 INCOME?

16 A YES.

17 Q AND YOU DEVELOPED THE PROGRAM TO DO THAT?

18 A YES, AND WHEN WE FOUND IT WASN'T BEING DONE IN
19 ACCOUNTING WE WORKED ON A PROCEDURE, PAUL GAVE ME A PERSON
20 TO WORK FOR ME TO DEVELOPE A GOOD PROCEDURE, BOTH IN THE
21 BRANCHES AND IN THE ACCOUNTING TO TRACK THAT INFORMATION
22 AND TO SET UP GENERAL LEDGER ACCOUNTS RECEIVABLE.

23 Q NOW, BACK UP, SO WHEN YOU ARE INTEGRATING THE
24 COMPUTER SYSTEM FROM HOMESENSE TO HOMEGOLD DID THEY TRACK
25 BROKER FEE INCOME AT HOMESENSE?

1 A THEY DID NOT HAVE A TRACKING SYSTEM THAT WAS
2 ANALOGOUS TO THE ONE THAT WE PUT IN PLACE. BUT THE VOLUME
3 WAS A LOT SMALLER AT THAT POINT AND TIME AND HOMEGOLD DID
4 NOT DO BROKER BUSINESS LIKE I AM TALKING ABOUT.

5 Q SO, ONCE YOU GOT THE MERGER YOU DON'T HAVE AN
6 ANALOGOUS TRACKING SYSTEM AND YOU HAVE GOT HUGE PLUS OF
7 THESE BROKER FEES?

8 A THAT IS CORRECT.

9 Q WERE THERE MILLIONS OF MISSING BROKER FEES OUT THERE?

10 A THE FIRST WEEK OUT THERE MIGHT BE A MILLION DOLLARS
11 AT RISK OUT THERE. AND PAUL GAVE ME, WE ACTUALLY SET UP
12 RECEIVABLES THAT WORKED THROUGH ALL OF THAT. AND I NEVER
13 HEARD THERE WAS A SIGNIFICANT AMOUNT OF MONEY OUT THERE
14 THAT WAS LOST. SO, IT TURNED OUT THAT IT WAS VERY GOOD TO
15 TRACK IT BUT IT TURNED OUT THERE WAS NOT A LOT OF MONEY
16 JUST LOST OUT THERE.

17 Q AND WAS THIS TRACKING SYSTEM TRULY JUST A WAY TO
18 RECOGNIZE INCOME QUICKER?

19 A YES, YES.

20 Q IN 2002, IN AUGUST OF 2002, WAS THAT A SIGNIFICANT
21 MONTH?

22 A IT WAS SIGNIFICANT IN A FEW RESPECTS. THE FIRST WAS,
23 BECAUSE OF THIS BROKER FEE INCOME ISSUE, WHEN I TOOK IT TO
24 MR. BANNIGER AND MR. SHEPPARD AND MR. FERRELL, MR.
25 BANNIGER FELT THAT THERE WAS PROBABLY BROKER FRAUD IN THE

1 BRANCHES. AND HE WAS VERY WORRIED ABOUT IT. AND IT WAS
2 SUCH A BIG ISSUE AND SUCH A POTENTIAL PROBLEM THAT IT WAS
3 TAKEN TO THE AUDIT COMMITTEE. AND THE AUDIT COMMITTEE
4 RECOMMENDED, BRENDAN CARPENTER BECAME, BRENDAN HAD BEEN A
5 CFO AND HE WAS GOOD ABOUT CONTROLS. AND THE AUDIT
6 COMMITTEE RECOMMENDED THAT KEVIN MARTIN BE FIRED.

7 Q DID YOU OR ANYONE ON THAT AUDIT COMMITTEE TELL KEVIN
8 MARTIN THAT HE WAS GOING TO BE FIRED?

9 A NO.

10 Q WHY NOT?

11 A WELL, FIRST OF ALL WE WANTED TO DO IT THE RIGHT WAY
12 WHICH IS YOU GET A LAWYER AND YOU TALK TO THE LAWYER ABOUT
13 WHAT NEEDS TO BE DONE AND YOU TALK ABOUT WHAT KIND OF
14 AGREEMENT DO WE NEED TO WORK OUT TO MAKE THIS HAPPEN. AND
15 SO, FORREST FERRELL AND I WERE SENT TO FIND DAVID GAFFNEY
16 TO START THAT PROCESS BECAUSE DAVID GAFFNEY WAS OUR
17 IN-HOUSE GENERAL COUNSEL AND WOULD BE THE RIGHT PERSON TO
18 GO TO.

19 Q DID YOU FIND DAVID GAFFNEY.

20 A WE DID NOT, WE FOUND HIS CELL PHONE AND LATER WE
21 FOUND THAT MR. GAFFNEY HAD RESIGNED.

22 Q LATER THAT SAME WEEK DID KEVIN MARTIN RESIGN?

23 A I THINK IT MAY HAVE BEEN THE FOLLOWING WEEK BUT IT
24 WAS SHORT, IT WASN'T MORE THAN TWO WEEKS DIFFERENT.
25 BECAUSE WE COULDN'T FIND DAVID WE DIDN'T HAVE THE

1 ATTORNEY, WE COULDN'T FIRE MR. MARTIN AND I WAS SENT TO
2 MEET WITH A LEGAL DEPARTMENT AND GET THAT AREA KIND OF
3 SETTLED DOWN A LITTLE BIT. AND I BEGAN TO WORK WITH AN
4 OUTSIDE ATTORNEY ON KEVIN MARTIN'S FIRING AND HE RESIGNED
5 BEFORE THAT WAS COMPLETE.

6 Q YOU SAID YOU WERE SENT TO A LEGAL DEPARTMENT?

7 A YES.

8 Q SO AFTER DAVID GAFFNEY RESIGNED?

9 A I GOT THE LEGAL DEPARTMENT.

10 Q SO, THE LEGAL DEPARTMENT REPORTED TO YOU AFTER THIS?

11 A YES.

12 Q AND WHO PUT YOU IN THAT POSITION?

13 A IT WAS MR. SHEPPARD.

14 Q DO YOU HAVE, AT THE TIME DID YOU HAVE A LEGAL DEGREE?

15 A NO, NO.

16 Q DID YOU HAVE ANY BACKGROUND IN LEGAL WORK?

17 A I HAD READ A LOT OF CONTRACTS AND WORKED WITH A LOT
18 OF ATTORNEYS BUT I WAS NOT AN ATTORNEY.

19 Q BUT THE DEFENDANT PROMOTED YOU?

20 A WELL, IT WAS JUST, TAKE THIS DEPARTMENT, CALM IT DOWN
21 AND MANAGE IT. FROM AN UPPER, HIGHER OF THE WHOLE
22 MANAGEMENT I MANAGED IT, CALMED PEOPLE DOWN, I WAS THEIR
23 SUPERVISOR. WE OBVIOUSLY WORKED WITH OUTSIDE ATTORNEYS AT
24 THAT POINT.

25 Q WHEN MR. MARTIN RESIGNED DID YOU RECEIVE A PROMOTION?

1 A WHEN HE RESIGNED I WAS MADE, AFTER A MONTH, CFO. THE
2 FIRST CONVERSATION WAS, I WAS INTERIM CFO JUST TO CALM THE
3 SITUATION DOWN. AND THERE WAS DISCUSSION WITH BRENDAN
4 CARPENTER ABOUT PERHAPS BECOMING CFO AND HE DECLINED. AND
5 SHANE SMITH WAS A CANDIDATE, HOWEVER THERE HAD BEEN AN
6 ISSUE BETWEEN SHANE SMITH AND MR. SHEPPARD. SO, HE WAS
7 NOT A VIABLE CANDIDATE AND I WAS JUST ABOUT THE LAST ONE
8 THERE SO I GOT IT.

9 Q AND, AGAIN, DO YOU HAVE AN ACCOUNTING DEGREE?

10 A NO, I DO NOT.

11 Q HOW MANY ACCOUNTING CLASSES HAVE YOU HAD IN YOUR
12 EDUCATION?

13 A I HAVE HAD TWO FORMAL ACCOUNTING CLASSES, ONE ON A
14 MASTER LEVEL AND ONE UNDERGRADUATE.

15 THE COURT: MS. PORTER, WHEN YOU GET TO A GOOD
16 STOPPING POINT, WE HAVE BEEN GOING A WHILE, IT IS LATE IN
17 THE AFTERNOON BUT I DON'T WANT TO INTERRUPT YOUR TRAIN OF
18 THOUGHT.

19 MS. PORTER: THIS IS A GOOD STOPPING POINT, YOUR
20 HONOR.

21 THE COURT: MADAM FORELAY, LADIES AND GENTLEMEN, WE
22 WILL CONTINUE AT 9:30, DON'T DISCUSS THE CASE, WE WILL SEE
23 YOU BACK IN YOUR JURY ROOM AT 9:30. EVERYONE ELSE STAY
24 SEATED, PLEASE.

25 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR

1 THE DAY.)

2 THE COURT: WE WILL START BACK AT 9:30, MS. MILLER,
3 DON'T DISCUSS YOUR TESTIMONY.

4 (WHEREUPON, THE TRIAL WILL RESUME THE NEXT MORNING AT
5 9:30.)

6 THE COURT: IS THE STATE READY TO PROCEED?

7 MS. PORTER: YOUR HONOR, OUR WITNESS HAS JUST LEFT TO
8 USE THE RESTROOM.

9 THE COURT: MR. GRIFFIN.

10 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO RAISE A
11 POINT WITH THE COURT. YESTERDAY IN MS. MILLER'S TESTIMONY
12 SHE SAID THERE WAS NO PLEA AGREEMENT, THAT WAS THE
13 REPRESENTATION THAT WAS PREVIOUSLY MADE TO ME AS WELL. I
14 LEARNED THIS MORNING THAT THERE IS A PLEA AGREEMENT THAT
15 WAS FILED WITH THE COURT ON SEPTEMBER THE 13TH OF 2005.
16 IT PROVIDES THAT MS. MILLER WILL COOPERATE, THAT SHE WILL
17 NOT BE, IT DOESN'T SAY SHE WILL BE CHARGED WITH ANYTHING
18 ELSE. BUT IT SAYS THE STATE ACKNOWLEDGES THAT THE
19 INDICTMENT ENCOMPASSES ALL VIOLATIONS OF STATE CRIMINAL
20 LAW ARISING FROM THE DEFENDANT'S EMPLOYMENT WITH HOMEGOLD.
21 I LEARNED IT THROUGH OTHER SOURCES AND I WANTED TO RAISE
22 TO THE COURT THAT ISSUE, OF COURSE, HERE WE ARE IN THE IN
23 THE THIRD WEEK OF TRIAL AND THERE IS GIGLIO MATERIAL THAT
24 I HAVE NOT BEEN PROVIDED. I HAD ALSO ASKED, PREVIOUSLY
25 YOUR HONOR, FOR INFORMATION PERTAINING TO THEIR EXPERT

1 WITNESS, MR. FREEMAN, GIGLIO, ANY CONVERSATION AGREEMENTS
2 THEY HAVE WITH HIM, ANY OPINIONS HE HAD RENDERED IN
3 CONNECTION WITH THE CIVIL LITIGATION PERTAINING TO LAWYERS
4 ON BEHALF OF MR. MCCULLOUGH. I HAVE GOTTEN NONE OF THAT
5 INFORMATION EITHER. I AM JUST PUTTING IT ON THE RECORD
6 BUT I AM DISTURBED AND I STILL DON'T HAVE A COPY OF THE
7 PLEA AGREEMENT. I UNDERSTAND THE CLERK'S OFFICE IS FAXING
8 IT OVER BUT I JUST WANT TO ALERT THE COURT OF THAT FACT.
9 AND I AM, AGAIN, REQUESTING GIGLIO MATERIALS FOR MR.
10 FREEMAN.

11 THE COURT: ~~A~~ALL RIGHT. WHO WANTS TO RESPOND.

12 MS. PORTER: I WILL RESPOND TO MS. MILLER. THAT WAS
13 A MISTAKE ON MY PART. IN THE EVENT THAT THERE IS A
14 DOCUMENT ENTITLED PLEA AGREEMENT THAT WAS ENTERED INTO, I
15 AM NOT ONE-HUNDRED PERCENT SURE OF THE DATE BUT I BELIEVE
16 IT WAS THE SAME DAY SHE WAS INDICTED AND PLEAD GUILTY.
17 THE AGREEMENT MAKES NO PROMISES WHATSOEVER. IT SIMPLY
18 STATES THAT THE INDICTMENT CONTAINS THE CHARGES FROM THIS,
19 FROM HER EMPLOYMENT. AND THAT SHE HAS AGREED TO
20 COOPERATE, IT IS MY DOCUMENT, I PROBABLY SHOULD HAVE
21 TITLED IT COOPERATION AGREEMENT RATHER THAN PLEA
22 AGREEMENT. BECAUSE THERE IS NO RECOMMENDATION BY THE
23 STATE, I BELIEVE THAT IS WHAT HAS BEEN RELAYED TO THE
24 DEFENSE THAT IS ACCURATE INFORMATION. I APOLOGIZE FOR NOT
25 GETTING THE SPECIFIC DOCUMENT TO MR. GRIFFIN. IT IS,

1 HOWEVER, FILED WITH THE CLERK OF COURT. HE HAS HAD FULL
2 ACCESS TO HER FILE UPON REQUEST, IT IS A PUBLIC DOCUMENT.
3 BUT SHE HAS TESTIFIED TRUTHFULLY THAT THERE IS NO
4 GUARANTEES OR PROMISES BY THE STATE.

5 THE COURT: ARE THEY ATTEMPTING TO GET A COPY OF THE
6 DOCUMENT?

7 MR. GRIFFIN: YES, SIR.

8 THE COURT: THERE IS NO QUESTION THAT THE DEFENSE IS
9 ENTITLED TO IT. IT MAY, I MEAN IF IT REFLECTS WHAT HAS
10 ALREADY BEEN TESTIFIED AND AN ACCURATE DESCRIPTION HAS
11 BEEN MADE THEN THE ERROR CAN NOT, NOT TURNING THAT OVER TO
12 THE DEFENSE MAY BE HARMLESS, WE WILL HAVE TO WAIT UNTIL WE
13 GET THE DOCUMENT. AND I NEED SOMEONE TO RESPOND TO HIS
14 REQUEST ON THE EXPERT WITNESS ALSO.

15 MS. EVANS: AS FAR AS FREEMAN, I THOUGHT WE WOULD
16 TAKE THAT UP INTO COUNSEL HEARING, HE WAS ABLE TO QUESTION
17 OUR OTHER EXPERT ABOUT WHAT THEY WERE PAID. I DON'T READ
18 NOTHING GIGLIO, GIGLIO SIMPLY TALKS ABOUT PLEA AGREEMENTS
19 AND THINGS LIKE THAT. NO WORD, IF HE CAN POINT ME TO IT
20 WHERE IT SAYS WE HAVE TO TURN OVER WHAT WE PAY EXPERTS.
21 HE HAD NOT TURNED OVER ANYTHING THAT HE HAS PAID ANY
22 EXPERT. HE CAN CERTAINLY DO IT LIKE HE DID MR. BURKETT ON
23 THE STAND.

24 THE COURT: MR. GRIFFIN.

25 MR. GRIFFIN: YOUR HONOR, GIGLIO IS A, IS WHAT IT

1 REQUIRES THE STATE TO PRODUCE ANY INFORMATION THAT WOULD
2 GO TO A WITNESSES BIASED OR PREJUDICED OR ANY MOTIVE THAT
3 THEY WOULD HAVE TO TESTIFY, IT IS NOT LIMITED TO THE PLEA
4 AGREEMENT. AND ANYTHING THAT CAN BE USED TO IMPEACH A
5 WITNESS, THAT IS WHAT GIGLIO TALKS ABOUT, IT IS NOT
6 LIMITED TO PLEA AGREEMENTS. AND IT IS IMPEACHMENT
7 MATERIAL. AND I HAVE ASKED, ANY OPINIONS THAT HE HAS
8 RENDERED IN THE HOMEGOLD INVESTIGATION IN CONNECTION, EVEN
9 ON THE CIVIL SIDE AND THEY HAVEN'T PRODUCED THAT AND
10 HAVEN'T BEEN WILLING TO PRODUCE IT.

11 MS. EVANS: ~~THE~~ THERE IS NO EXPERT OPINION RENDERED AS
12 PART, IN THIS CASE, ANY DOCUMENT PRODUCED TO US NOR IN THE
13 CIVIL MATTER, YOUR HONOR.

14 THE COURT: ALL RIGHT, WE WILL TAKE UP ADDITIONAL
15 ARGUMENT ON THAT PRIOR TO MR. FREEMAN TESTIFYING. I HAD
16 JUST BEEN HANDED A COPY OF WHAT YA'LL HAVE BEEN WAITING
17 ON. LET'S CONTINUE, MS. MILLER, IF YOU WILL COME UP ON
18 THE STAND, PLEASE.

19 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
20 APPROXIMATELY 10:00 A.M.)

21 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN, WE
22 WILL CONTINUE WITH THE TESTIMONY. MS. PORTER, YOU MANY
23 CONTINUE WITH DIRECT EXAMINATION.

24 CONTINUE DIRECT EXAMINATION
25 BY MS. PORTER:

1 Q I AM GOING TO HAND YOU A DOCUMENT THAT IS MARKED FOR
2 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 198. WITHOUT
3 SAYING WHAT IT IS DO YOU RECOGNIZE IT?

4 A YES.

5 Q AND HOW DO YOU RECOGNIZE IT?

6 A IT IS A HOMEGOLD FINANCIAL BUSINESS RECORD.

7 Q AND IS IT KEPT IN THE ORDINARY COURSE OF BUSINESS?

8 A YES, IT IS A BOARD OF DIRECTORS RESOLUTION.

9 MS. PORTER: AT THIS TIME I WOULD LIKE TO ENTER IN
10 STATE'S EXHIBIT 198.

11 MR. GRIFFIN: ~~4~~ NO OBJECTION.

12 THE COURT: WITHOUT OBJECTION, STATE'S 198 IS
13 ADMITTED.

14 (WHEREUPON, STATE'S EXHIBIT NO. 198 WAS ADMITTED INTO
15 EVIDENCE.)

16 Q YESTERDAY WE WERE TALKING ABOUT LOTS OF STUFF
17 INCLUDING THE DEFENDANT BECOMING CEO OF HOMEGOLD?

18 A YES.

19 Q AND WHEN HE BECAME CEO OF HOMEGOLD WHO WAS IN CHARGE
20 OF THE COMPANY?

21 A MR. SHEPPARD WAS IN CHARGE OF THE COMPANY.

22 Q WAS THERE ANY DOUBT ABOUT THAT?

23 A NO, THERE WAS NO DOUBT ABOUT THAT.

24 MS. PORTER: I BEG THE COURT'S INDULGENCE.

25 Q YOU SAID A MOMENT AGO THIS WAS A BOARD RESOLUTION?

1 A YES.

2 Q BRIEFLY WHAT DOES THAT MEAN?

3 A BOARD RESOLUTIONS ARE DONE ON SPECIAL CIRCUMSTANCES.

4 Q AND THIS ONE IS EFFECTIVE AS OF WHAT DATE?

5 A MAY THE 1ST OF 2002.

6 Q AND IF YOU WILL PLEASE READ FOR THE JURY STARTING
7 RIGHT HERE?

8 A WHEREAS ON JUNE 4TH, 2001 MR. SHEPPARD'S ANNUAL BASE
9 SALARY WAS INCREASED FROM \$250 THOUSAND DOLLARS TO \$600
10 THOUSAND DOLLARS. AND MR. SHEPPARD WAS AWARDED A BONUS OF
11 \$100 THOUSAND DOLLARS THE YEAR OF 2001. IN ADDITION TO
12 THE BONUSES ARE REQUIRED TO BE PAID TO HIM PURSUANT TO HIS
13 EMPLOYMENT CONTRACT WITH THE COMPANY.

14 Q AND IF YOU WILL SKIP DOWN AND READ THIS PARAGRAPH?

15 A WHEREAS THE BOARD BELIEVES THAT IT IS IN THE BEST
16 INTEREST OF THE COMPANY AND ITS SHAREHOLDERS TO RATIFY THE
17 INCREASE IN MR. SHEPPARD'S BASE SALARY IN 2001 AND THE
18 \$100 THOUSAND DOLLAR BONUS PAID TO MR. SHEPPARD IN 2001.

19 Q WHO GAVE MR. SHEPPARD A RAISE?

20 A MY UNDERSTANDING IS THAT MR. SHEPPARD GAVE HIMSELF
21 THAT RAISE.

22 Q AND THEN THE BOARD RETROACTIVELY APPROVED IT?

23 A THE BOARD RETROACTIVELY APPROVED IT, YES.

24 Q I WANT TO TAKE YOU FORWARD, BACK TO AUGUST OF 2002
25 WHEN KEVIN MARTIN RESIGNED. IN AUGUST ARE YOU STILL

1 DEVELOPING THESE REPORTS TO TRACK THE PRODUCTION OF THE
2 RETAIL MORTGAGE DIVISION?

3 A YES, I CONTINUED TO RUN THESE REPORTS AND TO
4 SUPERVISE THE PEOPLE THAT WORKED ON THEM ON A DAILY BASIS.

5 Q OKAY. AND THESE REPORTS, WHAT WERE THEY USED TO DO?

6 A THEY HAD A VARIETY OF PURPOSES, SOME WERE USED IN THE
7 BRANCHES THEMSELVES AS A MEASURE OF PRODUCTION. BUT MOST
8 IMPORTANTLY THEY WERE USED BY THE SENIOR MANAGERS TO TRACK
9 PRODUCTION SUCH AS MR. BANNIGER AND MR. FERRELL AND MR.
10 SHEPPARD.

11 Q AND WAS MR. SHEPPARD INVOLVED IN FORECASTING FUTURE
12 PROJECTIONS BASED UPON THOSE REPORTS?

13 A MR. SHEPPARD ACTUALLY ASKED FOR REPORTS TO BE CREATED
14 JUST ACCORDING TO HIS OWN SPECIFICATIONS. AND HE DID USE
15 THESE REPORTS.

16 Q AND SO THE PROJECTIONS THAT THE RETAIL MORTGAGE
17 DIVISION ARE TRYING TO REACH, WHO MADE THOSE PROJECTIONS?

18 A MR. BANNIGER WOULD SET A MONTHLY GOAL FOR EACH
19 CENTER, THAT WAS THE BEGINNING GOAL. AND THEN ALL OF
20 THESE REPORTS WERE MEANT TO TRACK HOW CLOSELY, MOVING
21 TOWARDS MEETING THAT GOAL FOR THE MONTH.

22 Q AND WHAT WAS THE WORKING RELATIONSHIP BETWEEN MR.
23 BANNIGER AND THE DEFENDANT?

24 A THERE WERE TIMES WHEN MR. BANNIGER AND MR. SHEPPARD
25 GOT ALONG VERY, VERY WELL. THERE WERE TIMES WHEN MR.

1 SHEPPARD WAS NOT HAPPY WITH MR. BANNIGER. I NEVER HEARD
2 MR. BANNIGER SAY ANYTHING NEGATIVE ABOUT MR. SHEPPARD.
3 BUT MR. SHEPPARD IS JUST THE TYPE OF MANAGER THAT HE CAN
4 BE ON HIS GOOD GRACES ONE DAY AND THE NEXT MINUTE NOT
5 BEING IN HIS GOOD GRACES AND THEN BACK IN HIS GOOD GRACES
6 AGAIN.

7 Q WOULD IT BE FAIR TO SAY THAT THE DEFENDANT KNEW WHAT
8 MR. BANNIGER--

9 MR. GRIFFIN: OBJECTION, YOUR HONOR.

10 THE COURT: SUSTAINED.

11 Q NOW, YESTERDAY YOU DISCUSSED MR. MARTIN RESIGNING.
12 ON THE DATE THAT HE RESIGNED, DID YOU HAVE A MEETING WITH
13 THE ACCOUNTING STAFF?

14 A I DID MEET WITH THE SENIOR MANAGES OF THE ACCOUNTING
15 SIDE WHICH WAS SHANE SMITH, CHAD BARRETT AND SUSANNE
16 CAUGHMAN. LATER I MET WITH THE ENTIRE DEPARTMENT.

17 Q AND AT THAT FIRST MEETING WHAT WAS THE TONE?

18 A AT THE FIRST MEETING I WAS VERY, VERY SERIOUS AND I
19 TOLD THEM THAT, WELL, THAT KEVIN HAD RESIGNED, THE PLAN
20 HAD BEEN TO FIRE MR. MARTIN. AND BASICALLY I TOLD THEM
21 THAT THE DEPARTMENT, MYSELF INCLUDED NEEDED TO BE SURE
22 THAT REPORTS WERE DONE IN A TIMELY MANNER, THEY HAD NOT
23 BEEN. AND IF WE DID NOT PRODUCE THE WORK ON TIME THAT WE
24 WOULD BE GONE. AND I DID SAY, WE, AND THAT INCLUDED ME.

25 Q YOU SAID IT WAS A SERIOUS TONE?

1 A IT WAS A VERY SERIOUS TONE.

2 Q AND YOU ALSO SAID LATER ON YOU HAD A MEETING WITH THE
3 ENTIRE STAFF?

4 A I DID.

5 Q AND WHERE WAS THAT LOCATED?

6 A IT WAS ACROSS THE STREET IN A PRIVATE ROOM, THE BIG
7 HOMEGOLD OFFICE.

8 Q AND WHERE WAS IT HELD WITHIN THAT BUILDING?

9 A IT WAS IN ACCOUNTING ITSELF.

10 Q WAS THE DEFENDANT PRESENT?

11 A NO, NOT AT THAT MEETING.

12 Q TELL US WHAT HAPPENED AT THAT MEETING?

13 A BASICALLY I JUST EXPLAINED THAT MR. MARTIN HAD
14 RESIGNED AND THAT SHANE AND CHAD AND SUSANNE WERE STILL
15 THERE. I DON'T REMEMBER MUCH OF IT OTHER THAN TO SAY WE
16 JUST NEED TO STAY AND FOCUS ON OUR JOB. THAT EVEN THOUGH
17 MR. MARTIN HAD RESIGNED WE WERE GOING TO JUST CONTINUE TO
18 DO OUR JOBS.

19 Q WAS THERE YET ANOTHER THIRD MEETING REGARDING MR.
20 MARTIN'S RESIGNATION?

21 A THERE WAS AND IT MAY OF BEEN THE NEXT DAY, I DON'T
22 PRECISELY REMEMBER, COULD OF BEEN THE SAME DAY, I DON'T
23 REMEMBER.

24 Q AND WHO RAN THAT MEETING?

25 A IT WAS MR. SHEPPARD'S MEETING. HE CALLED THE GROUP,

1 WE ALL WORKED IN COLUMBIA NEAR BROAD RIVER ROAD, TWO
2 DIFFERENT BUILDINGS BUT THE SAME LOCATION PRETTY MUCH. HE
3 CALLED ME, SHANE SMITH, CHAD BARRETT, SUSANNE CAUGHMAN AND
4 IT MAY OF BEEN FORREST FERRELL AS WELL. I DON'T REALLY
5 RECALL BUT CALLED US TO COME TO LEXINGTON TO MEET WITH
6 HIM.

7 Q AND WHO RAN THAT MEETING?

8 A IT WAS MR. SHEPPARD'S MEETING.

9 Q AND WHAT WAS THE MESSAGE OF HIS MEETING?

10 A THE INITIAL MESSAGE WAS THAT ACCOUNTING WOULD BE RUN
11 THE WAY HE WANTED⁸ IT RUN.

12 Q WHAT WAS THE TONE OF THAT MEETING?

13 A THE TONE WAS MUCH MORE SERIOUS IN MY OPINION THAN MY
14 TONE WAS IN MY MEETING. IT WAS ONE OF THOSE TIMES WHEN
15 MR. SHEPPARD WAS BEING SO SERIOUS AND SO FORCEFUL THAT YOU
16 WOULDN'T EVEN WANT TO MOVE A MUSCLE WHILE HE WAS TALKING,
17 YOU JUST WANTED TO SIT THERE AND LET HIM DO WHAT HE WAS
18 GOING TO DO AND THEN YOU COULD START BREATHING AFTER THAT.

19 Q DURING THIS PRESENTATION DID HE DISCUSS CONSEQUENCES?

20 A HE MADE IT CLEAR THAT EVERYONE WOULD BE FIRED IF IT
21 WASN'T DONE HIS WAY, ANYONE WOULD BE FIRED IF IT WASN'T
22 DONE HIS WAY.

23 Q AFTER THAT MEETING HOW DID YOU FEEL ABOUT YOUR JOB
24 SECURITY?

25 A WELL, I CERTAINLY WAS NOT CONFIDENT IN MY JOB

1 SECURITY BUT I HAD NOT EVER BEEN CONFIDENT IN MY JOB
2 SECURITY, CERTAINLY IT WAS MORE ON THE LINE AT THAT POINT.

3 Q AFTER THAT MEETING WAS THERE ANY DOUBT AS TO WHO WAS
4 IN CHARGE OF THE ACCOUNTING DEPARTMENT?

5 A MR. SHEPPARD.

6 Q AND AFTER THAT MEETING WAS THERE ANY DOUBT ABOUT WHO
7 MADE THE RULES?

8 A NO.

9 Q WHO MADE THE RULES?

10 A IT WAS MR. SHEPPARD.

11 Q AND IT IS AT THIS TIME THAT YOU WERE PROMOTED TO CFO,
12 IS THAT CORRECT?

13 A I BELIEVE THAT THE TECHNICAL PROMOTION WAS A LITTLE
14 BIT AFTER THAT MEETING, I WAS ACTING IN AN INTERIM BASIS
15 AT THAT TIME.

16 Q DO YOU HAVE AN ACCOUNTING BACKGROUND?

17 A I DO NOT.

18 Q AT THIS TIME HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP
19 WITH THE DEFENDANT?

20 A FOR THE MOST PART I HAD A GOOD WORKING RELATIONSHIP
21 WITH MR. SHEPPARD. HE WOULD GIVE ME TASK TO DO AND I
22 THINK HE THOUGHT THAT I COULD GET THEM DONE FOR HIM IN A
23 TIMELY MANNER. OCCASIONALLY I DISAPPOINTED HIM IN MY
24 PERFORMANCE, I HAD ONE VERY, SERIOUS FRIGHTENING
25 CONVERSATION WITH HIM ONE DAY WHEN I THOUGHT I WAS GOING

1 TO LOSE MY JOB THAT DAY. BUT FOR THE MOST PART IT WAS A
2 POSITIVE RELATIONSHIP. AND I THINK HE FELT CONFIDENT I
3 WOULD GET DONE WHATEVER HE ASKED ME TO GET DONE.

4 Q NOW, THAT YOU ARE CFO DID YOUR WORK ETHIC OR DID THE
5 DEMANDS ON YOUR WORK ETHIC CHANGE?

6 A I HAD A LOT OF DEMANDS ON ME, YOU HEARD ME TESTIFY
7 THAT I RAN A LOT OF DIFFERENT THINGS. AND WE WERE TRYING
8 TO MARKET THE MORTGAGE DIVISION AT THE TIME SO I WAS
9 INVOLVED WITH DUE DILIGENCE MATERIAL. I HAD A LOT OF
10 PRESSURE, HAD TO FIND A NEW OUTSIDE AUDIT FIRM BECAUSE
11 ELLIOTT DAVIS SAID^A THEY WANTED TO RESIGN, THAT IS A VERY
12 DIFFICULT PROCESS TO GO THROUGH TO FIND A NEW AUDIT FIRM,
13 A LOT OF PRESSURE. I WAS JUST UNDER A TREMENDOUS AMOUNT
14 OF PRESSURE AT THE TIME.

15 Q WHAT WERE THE HOURS THAT YOU WERE WORKING?

16 A MY BASIC WORK DAY WAS PROBABLY, YOU KNOW, 13, 14, 15
17 HOURS A DAY. I USUALLY WORKED EVERY WEEKEND, MAYBE NOT IN
18 THE OFFICE, PROBABLY NOT IN THE OFFICE BUT YET DOING A LOT
19 OF WORK AT HOME. IT WAS NOT UNUSUAL FOR ME TO WORK SEVEN
20 DAYS A WEEK.

21 Q HOW OFTEN WAS THE DEFENDANT IN CONTACT WITH YOU?

22 A MR. SHEPPARD CALLED WHENEVER HE WANTED, ANY TIME. I
23 HAVE BEEN CALLED ON WEEKENDS, I HAVE BEEN CALLED IN THE
24 EVENING, PROBABLY THE LATEST I EVER WAS CALLED BY HIM WAS
25 AFTER 11:00 ONE TIME. YOU KNOW, EARLY IN THE MORNINGS,

1 WEEKENDS, WHENEVER HE WANTED TO CALL ME HE WOULD CALL ME.

2 Q WHEN HE ASKED YOU TO PERFORM A TASK WHAT DID HE
3 EXPECT?

4 A HE EXPECTED ME TO DO AS WELL AS I COULD AND AS
5 QUICKLY AS I COULD AND AS ACCURATELY AS I COULD.

6 Q EVERYTHING THAT YOU HAVE DESCRIBED, DID THAT AFFECT
7 YOUR BEHAVIOR?

8 A WELL, I WAS A DEMANDING BOSS. I DEMANDED THE SAME
9 KIND OF WORK ETHIC FROM MY BEST EMPLOYEES THAT I WAS
10 GETTING MYSELF. THOSE THAT COULD NOT MEET THAT CRITERIA,
11 THAT COULD NOT GIVE THAT ONE-HUNDRED OR ONE-HUNDRED FIFTY
12 PERCENT DID NOT LIKE ME, FRANKLY.

13 Q IF YOU TOOK A POLL OF THE EMPLOYEES THAT WERE WORKING
14 UNDER YOU, HOW WOULD THEY DESCRIBE YOU?

15 A I THINK THAT SOME PERCENT WOULD DESCRIBE ME
16 POSITIVELY, THOSE ARE THE ONES THAT WERE WORKING REAL HARD
17 PROBABLY. THE OTHERS WOULD PROBABLY NOT USE PLEASANT
18 LANGUAGE TO DESCRIBE ME.

19 Q IF THE DEFENDANT HAD GIVEN YOU A TASK AND YOU RAN
20 INTO A ROAD BLOCK WHAT WOULD YOU DO?

21 A IF YOU COULDN'T GO AROUND THE ROAD BLOCK THEN YOU HAD
22 TO GET RID OF THE ROAD BLOCK BECAUSE IT IS NECESSARY TO
23 ACHIEVE WHAT HE NEEDED.

24 Q WHAT DO YOU MEAN BY GET RID OF THE ROAD BLOCK?

25 A WELL, YOU KNOW, IF YOU HAD TO FIRE SOMEBODY YOU WOULD

1 FIRE SOMEBODY. IF YOU HAD TO GO AROUND THAT PERSON YOU
2 WOULD GO AROUND THAT PERSON. HOMEGOLD IN GENERAL, AFTER
3 MR. SHEPPARD CAME, DID NOT RESPECT REPORTING LIES, THAT
4 SOMEONE WAS A BOSS TO SOMEONE ELSE. IT WAS NOT UNUSUAL TO
5 GO AROUND THE BOSS TO THE REAL PERSON THAT YOU NEEDED THE
6 INFORMATION FROM.

7 Q HOW WOULD YOU DESCRIBE YOUR AMBITION?

8 A I WAS UNDEBATABLEY AMBITIOUS, I MEAN A PERSON HAS TO
9 BE AMBITIOUS TO TAKE ON ALL OF THE DUTIES THAT I ALLOWED
10 MYSELF TO TAKE ON.

11 Q WHEN YOU BECAME CFO DID YOU IMPLEMENT AGGRESSIVE
12 ACCOUNTING MANEUVERS?

13 A YES.

14 Q AND WHO ASKED YOU TO IMPLEMENT THESE AGGRESSIVE
15 ACCOUNTING MANEUVERS?

16 A MR. SHEPPARD.

17 Q KNOWING WHAT YOU KNOW TODAY WAS THAT WRONG?

18 A YES.

19 Q IF YOU WILL PLEASE TELL THE JURY SOME OF THE
20 AGGRESSIVE ACCOUNTING MANEUVERS THAT WERE IN PLACE IN THE
21 ACCOUNTING DEPARTMENT WHEN YOU BECAME CFO?

22 A THE THINGS THAT WERE IN PLACE WHEN I BECAME CFO AND I
23 WILL JUST MENTION THE ONES THAT WILL COME IMMEDIATELY TO
24 MIND, WERE THAT CERTAIN ASSETS HAD BEEN MOVED FROM
25 HOMEGOLD TO CAROLINA INVESTORS AND YET LEGAL TITLE HAD NOT

1 BEEN MOVED TO CAROLINA INVESTORS. FOR EXAMPLE, I FOUND
2 THE BUILDING, REED AVENUE HAD BEEN TRANSFERRED BY AN
3 EARLIER CFO TO CAROLINA INVESTORS. AND I FOUND OUT THAT
4 IN 2003 THAT HOMEGOLD, INCORPORATED WAS STILL THE ACTUAL
5 OWNER OF THAT BUILDING. I FOUND THAT OUT LATER ON.

6 Q AND LET ME STOP YOU RIGHT THERE AND ASK YOU A
7 QUESTION. LEGAL TITLE HAD NOT BEEN TRANSFERRED?

8 A THAT'S CORRECT.

9 Q WELL, THEN WHAT WAS THE PURPOSE OF TRANSFERRING ON
10 THE BOOKS?

11 A IT WAS AN ASSET, IT BECAME AN ASSET ON THE CAROLINA
12 INVESTORS BALANCE SHEET. SO, THE BOARD OF CAROLINA
13 INVESTORS OR WHOEVER AT CAROLINA INVESTORS WOULD LOOK AT
14 THE CAROLINA INVESTORS FINANCIALS, WOULD SEE IT THERE AS
15 AN ASSET. THE SAME THING WAS IN PLACE FOR WHAT IS CALLED
16 RESTRICTED CASH. THE VARIOUS WAREHOUSE LINES THAT WE HAVE
17 SAID WERE VERY SHAKY, MANY OF THOSE LENDERS REQUESTED CASH
18 AS COLLATERAL FOR THOSE LINES. AND THAT CASH CAME FROM
19 CAROLINA INVESTORS AND REMAINED ON CAROLINA INVESTORS
20 FINANCIAL STATEMENTS UNDER A CATEGORY CALLED RESTRICTED
21 CASH. THE CASH WAS REALLY USED BY HOMEGOLD INCORPORATED
22 TO COLLATERALIZE WAREHOUSE LINES.

23 Q BOTTOM LINE, HOW DID THAT MAKE THE INTER-COMPANY DEBT
24 LOOK?

25 A THE INTER-COMPANY DEBT WAS NOT AS HIGH AS IT SHOULD

1 HAVE BEEN BECAUSE THOSE ASSETS WERE KEPT ON CAROLINA
2 INVESTORS BOOKS.

3 Q HOW ABOUT RESIDUAL POOLS?

4 A THE RESIDUAL POOLS, I RESEARCHED, RIGHT BEFORE THE
5 BANKRUPTCY AND DURING THE DISCUSSIONS ABOUT BANKRUPTCY AND
6 TO THE BEST OF MY KNOWLEDGE IT APPEARED THAT LEGALLY
7 CAROLINA INVESTORS OWNED THE RESIDUAL POOLS THAT HAD BEEN
8 TRANSFERRED TO THEM. HOWEVER, HOMEGOLD INCORPORATED STILL
9 RECEIVED ALL OF THE CASH FLOW FROM THOSE POOLS BECAUSE
10 THEY WERE ORIGINALLY IN EMERGENT MORTGAGE'S NAME OR
11 HOMEGOLD'S NAME. ~~THE~~ THE CASH CAME THROUGH TO HOMEGOLD AND IT
12 STAYED AT HOMEGOLD.

13 Q WHERE SHOULD THAT CASH LEGALLY HAVE GONE?

14 A IT SHOULD HAVE GONE BACK DOWN TO CAROLINA INVESTORS.

15 Q WHILE YOU WERE CFO WAS THERE A RECEIVABLE FROM A LOAN
16 MADE TO FLEXCHECK ON THE BOOKS?

17 A YES, THERE WAS.

18 Q AND DID YOU MOVE THAT RECEIVABLE?

19 A I MOVED THE PART OF THE RECEIVABLE THAT HAD NOT
20 ALREADY BEEN MOVED. I DID MOVE PART OF THAT RECEIVABLE TO
21 CAROLINA INVESTORS, YES.

22 Q AND WAS THAT RECEIVABLE GENERATED INCOME JUST LIKE
23 THE RESIDUAL POOLS?

24 A IT WAS ACCRUING INCOME ON A MONTHLY BASIS, IT WAS NOT
25 THROWING OFF CASH.

1 Q WHERE DID THAT INCOME GO?

2 A MY UNDERSTANDING NOW IS THAT IT REMAINED AT HOMEGOLD,
3 INC. BOOKS.

4 Q SO, EVEN THOSE THESE NOTES ARE BEING TRANSFERRED TO
5 CAROLINA INVESTORS THEY ARE NOT RECEIVING THE INCOME
6 GENERATED BY THOSE?

7 A THAT IS TRUE. IT IS BECAUSE THE WAY THE
8 INTER-COMPANY LOAN WORKED AND THE INTEREST SHOULD OF BEEN
9 TRANSFERRED BACK DOWN FOR THAT INTER-COMPANY LOAN BUT IT
10 WAS NOT.

11 Q LET'S TALK ~~ABOUT~~ A CAPITALIZATION OF ASSETS.

12 A YOU ASKED BEFORE WHAT WAS IN PLACE WHEN I BECAME CFO.
13 WE HAD MENTIONED BEFORE THAT PREPAID ASSET, THE MARKETING
14 EXPENSE. AND A GOOD DEAL OF THAT HAD BEEN WRITTEN OFF AND
15 THERE WAS STILL MILLIONS OF DOLLARS ON THE FINANCIAL
16 STATEMENT WHEN I TOOK OVER. AS WE BUILT THE BRANCHES, THE
17 NEW BRANCHES IN 2002, I BELIEVE THERE WERE TWELVE OPENED
18 IN 2002, THE EXPENSES RELATED TO OPENING UP THOSE OFFICES
19 WERE CAPITALIZED. KEVIN MAST IN THE PAST HAD EXPENSED
20 ITEMS LIKE THAT, THESE ITEMS WERE CAPITALIZED SO THAT
21 MEANT IT MADE INCOME LOOK HIGHER.

22 Q THESE AGGRESSIVE ACCOUNTING MANEUVERS, WERE THEY
23 INCOMPLIANCE WITH GAP?

24 MR. GRIFFIN: YOUR HONOR, I OBJECT UNLESS SHE IS
25 QUALIFIED TO SAY AND I AM NOT SURE THAT SHE IS.

1 THE COURT: AT THIS POINT I SUSTAIN UNLESS YOU CAN
2 ESTABLISH HER FAMILIARITY WITH REQUIREMENTS.

3 Q BASED UPON YOUR WORK AT HOMEGOLD IN THE ACCOUNTING
4 DEPARTMENT PRIOR TO YOU BECOMING CFO AND DURING YOUR
5 TENURE AS THE CHIEF FINANCIAL OFFICER, DID YOU BECOME
6 FAMILIAR WITH A TERM, GAP?

7 A I BECAME FAMILIAR WITH THE TERM GAP LONG BEFORE I
8 JOINED EMERGENT GROUP. I WORKED FOR A BANK, A PUBLICLY
9 HELD BANK AND I WAS FAMILIAR WITH GAP AND HAD WORKED ON
10 FASB 19 AND THINGS LIKE THAT. I WAS IN THE COMPUTER
11 DEPARTMENT AND WORKED ON SEVERAL SPECIFIC PROJECTS HAVING
12 TO DO WITH PIECES OF GAP REPORTING. I KNOW THAT AFTER I
13 BECAME CFO SOME OF THE ITEMS THAT WE PUT IN PLACE, THE NEW
14 ACCOUNTING FIRM WERE NOT IN COMPLIANCE WITH GAP AND WHEN
15 THEY--

16 Q HAVE YOU WORKED WITH GAP?

17 A I HAVE WORKED WITH DIFFERENT ASPECTS OF GAP, YES.

18 Q IN THE AGGRESSIVE MANEUVERS THAT YOU IMPLEMENTED OR
19 CONTINUED TO IMPLEMENT AS CFO WERE THOSE IN COMPLIANCE
20 WITH YOUR UNDERSTANDING WITH GAP.

21 MR. GRIFFIN: OBJECTION, YOUR HONOR.

22 THE COURT: I OVERRULE AS TO THE WAY THAT QUESTION IS
23 PHRASED, HER UNDERSTANDING OF GAP. YOU MAY ANSWER THAT
24 QUESTION.

25 A MY UNDERSTANDING IS THAT THESE WERE AGGRESSIVE.

1 Q WHAT DID THE OUTSIDE AUDITORS DO WITH REGARDS TO SOME
2 OF THESE MANEUVERS WHILE YOU WERE CFO?

3 A THERE WERE SOME ITEMS, PARTICULARLY RELATED TO TAKING
4 BACK INTO INCOME AND PREMATURELY ON A MONTHLY BASIS, THAT
5 WAS NOT IN COMPLIANCE WITH GAP. THE AUDITORS LET US KNOW
6 AND WE REVERSED THOSE.

7 Q AND IF YOU WILL, PLEASE EXPLAIN TO THE JURY A LITTLE
8 MORE IN DETAIL ABOUT WHAT YOU JUST MENTIONED.

9 A WHEN YOU MAKE A MORTGAGE LOAN THERE ARE TWO WAYS TO
10 MAKE INCOME ON YOUR MORTGAGE LOAN. THE FIRST IS THE FRONT
11 END FEES WHERE IF YOU HAVE TAKEN OUT A MORTGAGE AND YOU
12 HAVEN'T PAID ORIGINATION FEES AND POINTS, THAT IS THE
13 FRONT END. THE BACK END IS WHEN THE LENDER SELLS THE
14 MORTGAGE, HOPEFULLY FOR A PROFIT TO ANOTHER COMPANY. AND
15 SO THAT BACK END IS WHATEVER PROFIT THE COMPANY MAKES.
16 AND MR. SHEPPARD WAS AGGRESSIVE AND TRYING TO GET US TO
17 TAKE THAT INCOME IN BEFORE THE SELL OF THE LOAN WAS
18 COMPLETE.

19 Q WHEN YOU SAID MR. SHEPPARD, WAS THAT HIS IDEA?

20 A THAT WAS THE MAIN FOCUS THAT I REMEMBER OF THE
21 MEETING THAT WE DISCUSSED EARLIER, THE MEETING THAT MR.
22 SHEPPARD HELD IN LEXINGTON WITH THE ACCOUNTING GROUP. THE
23 MAIN CONVERSATION WAS ABOUT THE BACK END FEES AND THAT DAY
24 THERE WAS A COMPROMISE REACHED THAT THE ACCOUNTING
25 DEPARTMENT WOULD BOOK IT IN ADVANCE ON A MONTHLY BASIS BUT

1 FIX IT AT QUARTER END SO THAT THE REPORTS WOULD BE DONE
2 THE WAY WE FELT IT SHOULD BE.

3 Q SO, THE MONTH END FINANCIALS WERE NOT DONE THE WAY
4 YOU FELT THEY SHOULD BE?

5 A THAT IS TRUE, A CONSERVATIVE WAY TO DO IT WOULD TO BE
6 JUST WAIT AND TAKE IT IN THE INCOME WHEN IT WAS TRULY SOLD
7 AND FINALIZED.

8 Q AND YOUR OUTSIDE AUDITORS APPROACHED THIS ISSUE WITH
9 YOU?

10 A IT WASN'T WITH ME PERSONALLY, I GOT WORD THROUGH THE
11 ACCOUNTING MANAGERS THAT MOORE KIRKLAND HAD LOOKED AT THAT
12 ISSUE AND DECIDED THAT IT COULD NOT BE DONE THAT WAY.

13 Q WHAT WAS THE GOAL IN IMPLEMENTING THESE AGGRESSIVE
14 ACCOUNTING MANEUVERS?

15 A LOGICALLY THE GOAL IS IMPROVE INCOME, DECREASE
16 EXPENSES, GENERATE A PROFIT OR, YOU KNOW, LESS OF A LOSS.

17 Q IS THERE ANY PARTICULAR GOAL REGARDING THE
18 INTER-COMPANY LOAN?

19 A WELL, IT DOES IMPACT THE INTER-COMPANY LOAN BECAUSE
20 THE HIGHER THE LOSS THE MORE THE COMPANY IS BORROWING FROM
21 CAROLINA INVESTORS.

22 Q I DON'T THINK WE REALLY TALKED ABOUT THE
23 INTER-COMPANY LOAN YESTERDAY. SO, I WANT TO GO BACK A
24 LITTLE BIT IN TIME. IN 1995 WHO WERE THE INDIVIDUALS IN
25 CHARGE OF HOMEGOLD?

1 A IT WAS JACK STERLING AS CEO AND CHAIRMAN OF THE
2 BOARD, KEITH GIDDENS I DON'T BELIEVE WAS PRESIDENT YET IN
3 1995. AND I BELIEVE THAT KEVIN MAST WAS STILL THE CFO AT
4 THAT TIME.

5 Q AT THAT TIME DID THIS INTER-COMPANY LOAN BEGIN?

6 A IT WAS CERTAINLY ACTIVE IN 1995, YES.

7 Q AND WHO MADE THE DECISIONS REGARDING HOW MUCH
8 HOMEGOLD BORROWED FROM CAROLINA INVESTORS?

9 A MY UNDERSTANDING THAT IT WOULD BE THOSE THREE PEOPLE,
10 JACK STERLING, KEITH GIDDENS AND KEVIN MAST.

11 Q POST MERGER² POST MAY 9TH, 2000; WHO MADE THE
12 DECISIONS REGARDING HOW MUCH HOMEGOLD BORROWED FROM
13 CAROLINA INVESTORS?

14 A MR. SHEPPARD WAS CEO AFTER THE MERGER AND IN 2001 HE
15 BECAME CHAIRMAN OF THE BOARD AS WELL AS CEO.

16 Q IS THERE ANY CORRELATION BETWEEN THE LOSSES AT
17 HOMEGOLD AND THE INTER-COMPANY LOAN?

18 A MY UNDERSTANDING IS THAT LOSSES AT HOMEGOLD RESULTED
19 IN AN INCREASE IN THE INTER-COMPANY.

20 Q WHAT HAPPENED TO THE INTER-COMPANY DEBT WHILE THE
21 DEFENDANT WAS CEO?

22 A IT INCREASED DRAMATICALLY.

23 Q AND WHY DID IT INCREASE DRAMATICALLY?

24 A THE EXPENSES AT HOMEGOLD WERE INCREASING DUE TO THE
25 ADDITION OF THE BRANCHES. I THINK I MENTIONED YESTERDAY

1 THAT THE FIRST BRANCHES OPENED WERE NOT TOO LONG AFTER THE
2 MERGER, MAYBE IN SEPTEMBER, OCTOBER OF 2000. AND THEN
3 ANOTHER ONE OPENED AGAIN SHORTLY LATER. AND IN 2002 I
4 BELIEVE IT WAS TWELVE BRANCHES WERE OPENED. SO, IF YOU
5 CONSIDER THE PERSONNEL EXPENSE, THE HIRING EXPENSE, THE
6 LEASE EXPENSE, THERE WAS A LOT OF EXPENSE ASSOCIATED WITH
7 OPENING THE BRANCHES.

8 Q HOW WOULD YOU COMPARE THE RISING EXPENSES TO THE
9 RISING PRODUCTION LEVEL?

10 A THE PRODUCTION LEVELS NEVER MET THE PROJECTIONS SET
11 FOR THE INDIVIDUAL BRANCHES. AND SOME OF THE BRANCHES
12 WERE SO NEW THEY WEREN'T PRODUCING YET SO OBVIOUSLY THEY
13 WERE JUST AN EXPENSE AT THAT POINT.

14 Q SO, ARE THE EXPENSES INCREASING AT A HIGHER RATE THAN
15 THE PRODUCTION LOAN?

16 A DURING THE EXPANSION, YES THAT IS TRUE. THEY WERE
17 EXPENSES FOR AN, INCREASING FASTER THAN AN INCOME.

18 Q WHEN THE GOING CONCERN LANGUAGE AND LOAN IMPAIRMENT
19 WERE PUT INTO THE 2001 10K HOW DOES THAT AFFECT THE
20 AWARENESS OF THIS INTER-COMPANY LOAN?

21 A I KNOW FOR MY PART MR. STERLING CALLED ME AND FOCUSED
22 ME ON STAYING FOCUSED ON MY JOB TO HELP PRODUCTION, TO
23 HELP THE COMPANY SUCCEED SO THAT CAROLINA INVESTORS COULD
24 BE PAID BACK.

25 Q DURING YOUR TENURE AS CEO, SO FROM AUGUST 2002 ON--

1 A CFO.

2 Q I AM SORRY, EXCUSE ME, CFO. WHAT WAS, WHAT
3 FINANCIALS WERE GIVEN TO CAROLINA INVESTORS ON A MONTHLY
4 BASIS?

5 A I AM NOT AWARE OF WHAT FINANCIALS WERE GIVEN TO
6 CAROLINA INVESTORS ON A MONTHLY BASIS.

7 Q WELL, WHO IS CAROLINA INVESTORS MANAGEMENT AT THIS
8 POINT?

9 A IT WOULD OF BEEN, LARRY OWEN IS THE ONE YOU THINK OF
10 WHEN YOU THINK OF WHO IS THE MANAGER OF CAROLINA
11 INVESTORS. AND MR. MORRIS WAS ON BOARD AS THE CHAIRMAN OF
12 THE BOARD BUT IN MIND I ALWAYS THOUGHT OF MR. OWEN.

13 Q WHEN YOU BECAME CFO DID YOU ATTEND HOMEGOLD BOARD
14 MEETINGS?

15 A I WAS MADE SECRETARY OF THE COMPANY WHEN I BECAME
16 CFO, MR. MARTIN HAD BEEN SECRETARY SO I BEGAN TO ATTEND AS
17 A SECRETARY.

18 Q DID YOU ALSO PRESENT THE FINANCIAL CONDITION OF THE
19 COMPANY AT THESE BOARD MEETINGS?

20 A THE BOARD MEETINGS I REMEMBER WERE MORE SPECIALIZED
21 IN PURPOSE. I DON'T RECALL, THEY WERE CALLED FOR SPECIFIC
22 PURPOSES IN OTHER WORDS. AND I DON'T RECALL THERE BEING,
23 LIKE AT THE BANK I WAS USED TO A BOOK BEING DEVELOPED FOR
24 A BOARD MEETING THAT HAD ALL OF THE FINANCIALS. THESE
25 WERE SORT OF MORE IN PROMPT TO KINDS OF THINGS TO DISCUSS

1 SPECIFIC ISSUES. SO, I DON'T RECALL ANY IN DEPTH
2 DISCUSSIONS OTHER THAN PARTICULAR PROBLEMS.

3 Q BUT YOU DID TALK ABOUT THE FINANCIAL CONDITION OF
4 HOMEGOLD?

5 A YES.

6 Q AND DID THAT INCLUDE THE INTER-COMPANY DEBT?

7 A THE MEETINGS THAT I RECALL WERE NOT FOCUSED ON THAT
8 PARTICULAR QUESTION.

9 Q DID YOU ALSO ATTEND CAROLINA INVESTORS BOARD
10 MEETINGS?

11 A I ATTENDED ~~TWO~~ CAROLINA INVESTORS BOARD MEETINGS,
12 ALTHOUGH IN EARLY 1996 I HAD ATTENDED PART OF ONE TO MAKE
13 A TECHNOLOGY PRESENTATION.

14 Q DID YOU PRESENT A FINANCIAL STATEMENT OF THE COMPANY
15 TO THE CAROLINA INVESTORS BOARD?

16 A IN NOVEMBER OF 2002 I WENT WITH MR. SHEPPARD AND MR.
17 STERLING TO A CAROLINA INVESTORS BOARD MEETING TO DISCUSS
18 THE PENDING PURCHASE OF THE RETAIL MORTGAGE DIVISION BY
19 MR. SHEPPARD. I DID NOT TAKE FINANCIALS WITH ME. WHEN I
20 GOT THERE MR. OWEN ASKED ME IF I HAD BROUGHT THEM AND TOLD
21 HIM THAT MY UNDERSTANDING OF THE MEETING WAS JUST TO TALK
22 ABOUT EMMCO. AND HE DID BRING HIS COPY OF THE SEPTEMBER
23 MONTH END REPORTS TO THE BOARD MEETING AND TALKED ABOUT
24 THEM BRIEFLY.

25 Q AND YOU SAID THE SEPTEMBER MONTH END?

1 A 2002 QUARTER END REPORT FOR CAROLINA INVESTORS THAT
2 HE HAD BEEN SENT AT AN EARLIER TIME.

3 Q DID HE HAVE A COPY OF HOMEGOLD'S FINANCIALS?

4 A I DO NOT KNOW IF HE DID, I DID NOT SEE ONE.

5 Q BASED UPON YOUR EXPERIENCE AT THE HOMEGOLD BOARD
6 MEETINGS VERSUS THE CAROLINA INVESTORS, THE TWO BOARD
7 MEETINGS YOU ATTENDED AT CAROLINA INVESTORS. COMPARE AND
8 CONTRAST FOR THE JURY THE DEPTH OF INFORMATION REGARDING
9 THE FINANCIAL SITUATION OF THE COMPANY.

10 A DO YOU HAVE A SPECIFIC MEANING THAT YOU WOULD LIKE--

11 Q JUST IN GENERAL.

12 A IN GENERAL THE HOMEGOLD BOARD MEETINGS THAT I
13 ATTENDED WERE FRANK, TALKING ABOUT SPECIFIC PROBLEMS OR
14 ISSUES IN A FRANK MANNER. THE BOARD MEETING THAT I WENT
15 TO IN NOVEMBER AT CAROLINA INVESTORS WITH MR. SHEPPARD WAS
16 A HIGHER LEVEL PRESENTATION OF THE SELL, THE PENDING SELL
17 TO EMMCO. SO THERE WAS NOT ANY EMPHASIS ON THE
18 FINANCIALS, IT WAS ALL ON THE SELL OF EMMCO.

19 Q IS IT FAIR TO SAY THAT WAS ALL POSITIVE INFORMATION
20 AT THAT CAROLINA INVESTORS BOARD MEETING?

21 A THAT WAS POSITIVE INFORMATION, YES, THAT WAS ALL THAT
22 WAS PRESENTED.

23 Q AT THIS TIME AS CFO OF THE COMPANY IS THERE A TYPE OF
24 MOTTO IN REGARDING THE INFORMATION THAT FLOWS FROM
25 HOMEGOLD TO CAROLINA INVESTORS?

1 A WELL, WHETHER YOU CALL IT MOTTO OR NOT, BASICALLY THE
2 ATMOSPHERE WAS SUCH THAT IT WAS CLEAR THAT IT WAS ALWAYS
3 IMPORTANT TO GET POSITIVE RATHER THAN NEGATIVE INFORMATION
4 TO CAROLINA INVESTORS.

5 Q WAS IT EVER EMPHASIZED TO GIVE THE WHOLE PICTURE TO
6 CAROLINA INVESTORS?

7 A NO ONE EVER ASKED ME TO GIVE THE WHOLE PICTURE TO
8 CAROLINA INVESTORS, NO.

9 Q WHAT WERE YOU ASKED TO DO?

10 A TO STAY FOCUSED AND DO MY JOB AND NOT TALK TO ANYBODY
11 OUTSIDE OF THE COMPANY. AND MR. STERLING WOULD ALWAYS SAY
12 THIS IS TO PAY THE INVESTORS BACK, JUST TO PRESENT THAT
13 POSITIVE COMPETENT IMAGE.

14 Q OTHER THAN MR. STERLING DID ANYBODY ELSE ASK YOU TO
15 DO THAT?

16 A MR. SHEPPARD MADE IT CLEAR WHEN WE WENT TO THE
17 NOVEMBER BOARD MEETING THAT HE WANTED TO STAY A SHORTER
18 PERIOD OF TIME AS POSSIBLE. HE WANTED TO GET IN THERE AND
19 GET OUT OF THERE. MADE IT CLEAR THAT WE WERE TO DECLINE
20 ANY INVITATIONS TO GO TO LUNCH, TO STAY FOR ANY LENGTH, IT
21 WAS CLEAR THAT MR. SHEPPARD WANTED TO GO IN AND SAY JUST
22 WHAT HE WANTED TO SAY AND THEN HE WANTED TO LEAVE.

23 Q A MOMENT AGO YOU SAID YOU WEREN'T ALLOWED TO MAKE ANY
24 PUBLIC STATEMENTS OUTSIDE THE COMPANY?

25 A THAT IS TRUE.

1 Q WHO MANDATED THAT?

2 A IT HAD BEEN A LONGSTANDING MANDATE, IT WAS MADE CLEAR
3 TO ME EVEN BEFORE MR. SHEPPARD, MR. STERLING MADE IT
4 CLEAR, I WOULD NOT HAVE MADE ANY STATEMENTS OUTSIDE THE
5 COMPANY.

6 Q AND IF YOU WERE GOING TO MAKE A STATEMENT WOULD YOU
7 SEEK APPROVAL?

8 A I WOULD DEFINITELY SEEK APPROVAL.

9 Q FROM WHOM?

10 A IT WOULD BE FROM MR. SHEPPARD.

11 Q AND WHAT DOES OUTSIDE THE COMPANY MEAN?

12 A ANYONE BUT THE PEOPLE THAT YOU ARE DIRECTLY WORKING
13 WITH.

14 Q IS THAT HOMEGOLD, IS THAT HOMEGOLD AND THE RETAIL
15 MORTGAGE DIVISION AND CAROLINA INVESTORS, WHAT IS OUTSIDE
16 THE COMPANY?

17 A I WAS FOCUSED ON THE MORTGAGE DIVISION, I ONLY
18 THOUGHT IN TERMS OF THE MORTGAGE DIVISION.

19 Q AT SOME POINT DID HOMEGOLD DECIDE TO SELL THE RETAIL
20 MORTGAGE DIVISION?

21 A IN APRIL OF 2001 MR. BOB PHILPOTT WAS ENGAGED TO
22 MARKET THE RETAIL MORTGAGE DIVISION.

23 Q WAS IT APRIL 2001?

24 A IT WAS 2002, I APOLOGIZE.

25 Q SO, IN APRIL OF 2002 MR. PHILPOTT IS HIRED, WHAT DOES

1 HE DO?

2 A HE DID OUR MARKETING BOOK, WORKED WITH HOMEGOLD, IT
3 CONTAINED PROJECTIONS AND THINGS LIKE THAT. AND IT
4 CONTAINED BASIC INFORMATION THAT COULD BE SHOWN TO
5 POTENTIAL BUYERS.

6 Q DO YOU KNOW IF HE SENT THAT BOOK OUT TO ANYBODY?

7 A I DO, I HAD ACCESS TO HIS SPREAD SHEET THAT SHOWS
8 EVERYONE HE SENT IT TO.

9 Q APPROXIMATELY HOW MANY COMPANIES DID HE SEND IT TO?

10 A THERE WERE 36 PEOPLE, 36 COMPANIES WHO RECEIVED IT
11 WHO DECLINED TO PURSUE ANY KIND OF DISCUSSION. AND THERE
12 WERE SIX, AT LEAST INDICATED THAT THERE MIGHT BE A
13 POSSIBILITY TO TALK FURTHER.

14 Q AND OF THOSE SIX HOW MANY WANTED TO TALK FURTHER?

15 A THERE WAS, THE FIRST ONE THAT WE TALKED TO BRIEFLY
16 WAS WELLS FARGO. REPRESENTATIVES FROM WELLS FARGO CAME IN
17 TO COLUMBIA ONE DAY AND WE MET WITH THEM THROUGHOUT THE
18 DAY. AND WE DID NOT, WE DID NOT EVER HEAR BACK FROM THEM.

19 Q WHO IS THE SECOND COMPANY THAT WANTED TO TALK?

20 A THE SECOND COMPANY WAS IMPAC BANK, MARK BISHOP WHO
21 WORKED FOR IMPAC BANK HAD THE IDEA THAT HE WOULD FORM A
22 NEW COMPANY THAT WOULD BUY THE RETAIL MORTGAGE DIVISION.

23 Q AND DID IMPAC ACTUALLY MAKE AN OFFER?

24 A THERE WAS AN OFFER WITH A WRITTEN DOCUMENT.

25 Q AND ARE YOU FAMILIAR WITH THE TERMS OF THAT OFFER?

1 A I AM.

2 Q WHAT WERE THE TERMS OF THAT OFFER?

3 A IT WAS AN EARN-OUT WHICH MEANS YOU HAVE GOT TO GET
4 CASH UP FRONT. AS YOU GO THROUGH THE PERIOD OF TIME, IF
5 THERE IS MONEY EARNED THEN YOU GET A SHARE OF IT. THIS
6 PARTICULAR ONE WAS TO GET ONE-HALF OF THE AFTER TAX NET
7 INCOME THAT OVER A FOUR YEAR PERIOD, EACH QUARTER THAT
8 ONE-HALF AFTER TAX PROFIT WOULD BECOME A NOTE, IN OTHER
9 WORDS, A DEBT, A NOTE. AND EACH QUARTER THERE WOULD BE A
10 NEW NOTE. AT THE END OF THE FOURTH QUARTER, AT THE
11 BEGINNING OF THE FIFTH QUARTER THE FIRST NOTE WAS
12 REPLACED. SO, YOU ALWAYS ENDED UP WITH FOUR NOTES OVER
13 THE FOUR YEAR PERIOD. AT THE END OF THE FOUR YEAR PERIOD
14 YOU HAD THE MOST RECENT FOUR NOTES. AND THEN THE TOTAL OF
15 THOSE NOTES WOULD BE MULTIPLIED BY FOUR AND IF THEY
16 TOTALED MORE THAN \$160 MILLION DOLLARS ONLY \$160 MILLION
17 DOLLARS WOULD BE PAID. THE FIRST DOCUMENT HAD NO
18 PROVISION WHATSOEVER TO PAY CASH AT THE END OF THE FOUR
19 YEAR PERIOD. THE FIRST DOCUMENT THAT THIS COMPANY WOULD
20 GO TO THE CAPITAL MARKETS AND TRY TO RAISE THE MONEY TO
21 PAY THE DEBT. SO, THERE WAS NO PROMISE OF ANY CASH AT
22 ALL. AN ADDITIONAL FACTOR WAS THAT THIS COMPANY ASKED TO
23 BE LOANED \$5 MILLION DOLLARS TO START UP, THEY WANTED \$5
24 MILLION DOLLARS FROM HOMEGOLD AS WORKING CAPITAL TO BEGIN
25 THE COMPANY.

1 Q AND HOW WOULD THAT \$5 MILLION DOLLARS BE PAID BACK?

2 A IT WOULD NOT BE PAID BACK, IT IS JUST WHAT WOULD
3 HAPPEN AT THE END OF THE FOUR YEAR PERIOD.

4 Q ARE YOU AWARE OF WHETHER OR NOT THIS OFFER WAS
5 ACCEPTED, REJECTED, COUNTERED?

6 A CONVERSATION CONTAINED WITH MARK BISHOP ABOUT THIS,
7 MARK BISHOP AND A GROUP OF PEOPLE FROM CALIFORNIA CAME TO
8 HOMEGOLD IN COLUMBIA, LEXINGTON AND COLUMBIA AND PERFORMED
9 DUE DILIGENCE. SO, IT APPEARED THAT THIS OFFER MIGHT BE
10 PROGRESSING SOMEWHAT. IN THE MEANTIME I WORKED WITH THE
11 WYCHE LAW FIRM TO TRY TO IMPROVE THE OFFER, THE OFFER AS
12 IT WAS PRESENTED WAS A VERY NEGATIVE OFFER, THERE IS NO
13 PROMISE OF CASH. MR. KEHL AND I TRIED TO CHANGE THE
14 DOCUMENT TO TRY TO GET SOME CASH FOR SELLING THE MORTGAGE
15 DIVISION. WHEN WE RECEIVED THE AMENDED DOCUMENT BACK IT
16 WAS THE SAME, THERE WAS ONLY A PROMISE THAT WE WOULD PAY
17 IT AT THE END BUT THERE WAS NO PROVISION THAT WOULD BE
18 PAID. IN THE MEANTIME THERE WAS ANOTHER POTENTIAL OFFER
19 ON THE TABLE WHILE WE WERE STILL TALKING TO IMPAC.

20 Q AND WHO WAS THAT FROM?

21 A THAT WAS FROM FREMONT BANK. AGAIN, THEY ARE FROM
22 CALIFORNIA AND THEY HAD A UNIT DOWN IN FLORIDA. MR.
23 SHEPPARD HAD BEEN FAMILIAR WITH THE PERSON WHO WORKED, I
24 THINK A PERSON HAD ACTUALLY WORKED FOR MR. SHEPPARD BEFORE
25 AND CONTACTED MR. SHEPPARD ABOUT A POSSIBILITY OF BUYING

1 THE MORTGAGE DIVISION. PEOPLE WENT DOWN TO FLORIDA TO
2 MEET WITH FREMONT BANK. I FURNISHED PRODUCTION
3 INFORMATION TO THE ANALYST AT FREMONT BANK. AND MR.
4 PHILPOTT WAS INVOLVED IN ALL OF THIS, HE WENT TO FLORIDA
5 AS WELL. IT TURNED OUT THAT FREMONT MADE AN OFFER TO MR.
6 PHILPOTT. IT WAS \$5 MILLION DOLLARS CASH UPFRONT WITH A
7 ONE YEAR EARN-OUT AND THAT ONE YEAR EARN-OUT WOULD HAVE
8 BEEN ONE-HALF OF THE AFTER TAX INCOME. AND THEN YOU
9 SUBSTRACT THE \$5 MILLION DOLLARS. MR. PHILPOTT TURNED
10 THAT OFFER DOWN, AS FAR AS I UNDERSTAND HE TURNED IT DOWN
11 IMMEDIATELY.

12 Q NOW, WHEN WAS THAT OFFER MADE?

13 A IT WOULD OF BEEN PROBABLY THE END OF OCTOBER, VERY
14 BEGINNING OF NOVEMBER.

15 Q THE IMPAC OFFER, HAD THEY ACCEPTED IT, WHEN WOULD
16 HOMEGOLD HAVE RECEIVED CASH OR WHATEVER THE MARKET WOULD
17 BEAR UP ON THOSE FOUR NOTES?

18 A IT HAD A FOUR YEAR TERM. SO, FROM WHERE EVER IT
19 CLOSED, FOUR YEARS LATER WOULD BE WHEN YOU WOULD FIND OUT
20 WHAT YOU WOULD ACTUALLY EARN FOR THE SALE. AND AS I SAID
21 THERE WAS NO MECHANISM IN PLACE TO ACTUALLY HAVE CASH TO
22 PAY FOR THAT PURCHASE PRICE.

23 Q SO, HAD THAT BEEN ACCEPTED SOMEWHERE IN THAT LATER
24 PART OF 2006 HOMEGOLD MIGHT HAVE GOTTEN SOME CASH?

25 A YES.

1 Q NOW, BASED UPON THOSE TWO OFFERS WHAT DID HOMEGOLD
2 DECIDE TO DO?

3 A WELL, AT THIS POINT I BELIEVE THAT WE NEED TO TALK
4 ABOUT WHAT HAPPENED ON NOVEMBER 6TH, IF THAT IS ALL RIGHT.

5 Q SURE.

6 MR. GRIFFIN: YOUR HONOR, I JUST ASK THAT SHE RESPOND
7 TO THE QUESTION.

8 THE COURT: ALL RIGHT, COUNSEL, ASK QUESTIONS.

9 Q WHAT HAPPENED ON NOVEMBER 6TH?

10 A ON NOVEMBER 6TH MR. SHEPPARD CAME TO ME AND SAID THAT
11 I NEEDED TO ORGANIZE A MEETING OF THE BOARD OF DIRECTORS
12 THAT NEEDED TO BE HELD THAT DAY. AND I IMMEDIATELY I
13 WORKED ON ORGANIZING THAT MEETING, CALLED MR. STERLING,
14 ARRANGED FOR A PHONE CONFERENCE CALL. WE HELD THE MEETING
15 THAT DAY. MR. BANNIGER WAS THERE, MR. FERRELL WAS THERE,
16 I WAS THERE, MR. STERLING WAS CONNECTED BY PHONE AND MR.
17 STERLING INVITED TONY WYCHE AND BILL KEHL FROM THE WYCHE
18 LAW FIRM TO PARTICIPATE. I DID NOT KNOW THAT THEY WOULD
19 BE ON THE CALL BUT THEY WERE INVITED BY MR. STERLING. AND
20 MR. PHILPOTT DIALED IN AND OUT, HE WAS IN ANOTHER MEETING
21 BUT HE CAME OUT OF HIS MEETING TO PARTICIPATE FROM TIME TO
22 TIME BY PHONE IN THIS MEETING.

23 Q WHO RAN THIS MEETING ON THE PHONE CALL?

24 A MR. SHEPPARD RAN THE MEETING, IT WAS HIS MEETING.

25 Q AND WHAT WAS DISCUSSED AT THIS POINT?

1 A AT THIS MEETING MR. SHEPPARD OPENED THE MEETING BY
2 TELLING US THAT WE HAD EXPECTED, WE HAD BEEN EXPECTING
3 IMPAC, I MEAN FREMONT BANK TO COME BACK WITH A COUNTER
4 OFFER, THAT IS WHAT MR. PHILPOTT HAD EXPECTED. THE FIRST
5 THING THAT MR. SHEPPARD TOLD US WAS THAT FREMONT HAD NOT
6 COUNTER OFFERED BUT HAD WITHDRAWN THEIR OFFER. SO,
7 FREMONT WAS NO LONGER A POTENTIAL BUYER OF THE COMPANY.
8 HE ALSO TOLD US THAT MARK BISHOP HAD INFORMED HIM THAT A
9 COMPANY NAMED CDC WHICH MARK BISHOP AND MR. SHEPPARD HAD
10 GONE TO MEET WITH IN NEW YORK ABOUT A LINE OF CREDIT FOR
11 THE NEW COMPANY, CDC HAD DECIDED THAT THEY WOULD NOT MAKE
12 A \$100 MILLION DOLLAR LINE OF CREDIT FOR THE NEW COMPANY,
13 THEY HAD DECLINED TO LEND MONEY TO THE NEW COMPANY. AND
14 THAT MARK BISHOP NOW WAS UNABLE TO CONTINUE WITH ANY OFFER
15 TO BUY THE MORTGAGE DIVISION.

16 Q I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
17 STATE'S EXHIBIT 199, CAN YOU IDENTIFY THAT, PLEASE.

18 A YES, I CAN. I WROTE THIS IN WHAT I THOUGHT WAS THE
19 COURSE OF BUSINESS, THEIR OWN COURSE OF BUSINESS AT
20 HOMEGOLD.

21 Q AND THOSE ARE YOUR OWN PERSONAL NOTES?

22 A THEY ARE.

23 MS. PORTER: AT THIS TIME I WOULD LIKE TO ENTER IN
24 STATE'S EXHIBIT NUMBER 199.

25 MR. GRIFFIN: NO OBJECTION.

1 THE COURT: WITHOUT OBJECTION, STATE'S 199 IS
2 ADMITTED.

3 (WHEREUPON, STATE'S EXHIBIT NO. 199 WAS ADMITTED INTO
4 EVIDENCE.)

5 Q WHAT IS STATE'S EXHIBIT 199.

6 A WHEN I ATTENDED THAT MEETING I THOUGHT I WAS
7 ATTENDING A REAL BOARD MEETING AND I WAS THE SECRETARY OF
8 THE COMPANY. AND I THOUGHT IT WAS MY DUTY TO TAKE NOTES
9 AS SECRETARY AND I DID TAKE NOTES. I TOOK VERY DETAILED
10 NOTES AT THAT MEETING. AND I TRANSCRIBED THOSE, AND AS I
11 TYPED UP MY NOTES AND WHAT YOU SEE HERE ARE MY NOTES FROM
12 THAT MEETING TYPED UP THAT DAY FROM THAT MEETING.

13 Q WILL YOU PLEASE, WHAT ELSE WAS DISCUSSED AT THAT
14 MEETING OTHER THAN THE IMPAC OFFER BEING WITHDRAWN?

15 A AFTER MR. SHEPPARD MADE IT CLEAR FREMONT AND IMPAC
16 WERE NO LONGER EVEN IN THE RUNNING TO BUY THE MORTGAGE
17 COMPANY. MR. SHEPPARD MADE IT CLEAR THAT WE WERE AT A
18 REAL, A REALLY, A CRISIS MODE THAT BECAUSE OF THE
19 LIQUIDITY CONSTRAINTS, BECAUSE OF, THE OTHER THING, MR.
20 SHEPPARD MADE IT CLEAR, SAID THAT MARK BISHOP HAD TOLD HIM
21 THAT IMPAC WAREHOUSE LINE WHICH WAS OUR MAIN WAREHOUSE
22 LINE WOULD BE STEPPED DOWN EVERY WEEK IN THE MONTH OF
23 NOVEMBER AND WOULD GO TO ZERO BY THE END OF NOVEMBER. AND
24 THAT WAS OUR MAIN WAREHOUSE LINE, HOUSEHOLD WAS STILL IN
25 PLACE BUT AS YOU SEE IN THESE NOTES, YOU COULDN'T FULLY

1 UTILIZE THE HOUSEHOLD WAREHOUSE LINE. YOU COULD ONLY MAKE
2 CERTAIN KINDS OF PRODUCT THAT YOU COULD PUT ON THAT LINE.
3 MR. SHEPPARD SAID THAT WE COULD, OF COURSE, PRODUCE BY
4 MAKING BROKER LOANS, WE CAN PRODUCE CONFORMING LOANS THAT
5 WE COULD PRODUCE THROUGH SURETY MORTGAGE AND TO SELL THOSE
6 TO RPMG. HE DISCUSSED THAT, AN OPTION WAS TO INVOKE THE
7 CONSERVATORSHIP PLAN FOR CAROLINA INVESTORS. ANOTHER
8 OPTION IS JUST TO TRY TO RUN A MORTGAGE ON THE REDUCED
9 PRODUCTION, THAT WE COULD PRODUCE WITHOUT THE IMPAC LINE.
10 AND THEN HE SAID THAT THERE WAS AN OPTION THAT HE HAD BEEN
11 THINKING ABOUT ~~THAT~~ HE WAS PROPOSING AND THAT IS THAT HE
12 WOULD BUY THE RETAIL MORTGAGE DIVISION. SAID THAT ON THE
13 STRENGTH OF HIS PERSONAL OPINION WAS THAT HE COULD LINE UP
14 \$100 MILLION DOLLARS IN WAREHOUSE LINES, IT WOULD NOT BE
15 ANY ONE WAREHOUSE LINE LIKE THE ONE AT CDC BUT WITH THE
16 SERIES OF WAREHOUSE LINES THAT HE COULD PUT TOGETHER. HE
17 SAID THAT HE HAD ALREADY CONTACTED SOME OF THE LENDERS
18 THAT HE HAD DONE BUSINESS WITH IN THE PAST AND THAT HE HAD
19 EVERY REASON TO BELIEVE THAT HE COULD OBTAIN WAREHOUSE
20 LINES BASED ON HIS PERSONAL FINANCIALS. SO, THIS WAS WHEN
21 THE IDEA OF HIM PURCHASING THE MORTGAGE DIVISION WAS FIRST
22 PRESENTED TO SENIOR MANAGEMENT AND TO THE BOARD OF
23 DIRECTORS.

24 Q IF YOU WILL, THE IMPAC OFFER TO BUY THE RETAIL
25 MORTGAGE DIVISION, DID THAT INCLUDE THE DEFENDANT?

1 A MY UNDERSTANDING IS THAT MR. SHEPPARD WOULD HAVE GONE
2 WITH THE NEW COMPANY THAT HE WOULD OF LEFT HOMEGOLD TO GO
3 WITH AND THE IMPAC COMPANY.

4 Q AND IF YOU WILL PLEASE READ FOR ME THIS SENTENCE
5 STARTING WITH FINALLY.

6 A FINALLY MR. BISHOP STATED THAT THE PROPOSED WAREHOUSE
7 LINE OF CREDIT THAT WAS NEEDED FOR THE NEW COMPANY THAT HE
8 HAD PROPOSED--

9 COURT REPORTER: SLOW DOWN.

10 A I WILL START OVER. FINALLY, MR. BISHOP STATED THAT
11 THE PROPOSED WAREHOUSE LINE OF CREDIT THAT WAS NEEDED FOR
12 THE NEW COMPANY THAT HE HAD PROPOSED AND THE ASSET
13 PURCHASE AGREEMENT BEING REVIEWED BY HOMEGOLD FINANCIAL
14 INCORPORATED HAD BEEN CANCELED DUE TO CDC'S CONCERNS OVER
15 CAROLINA INVESTORS.

16 Q SO CDC WOULDN'T ISSUE THE \$100 MILLION DOLLAR
17 WAREHOUSE LINE OF CREDIT BECAUSE OF THE DEBT OWED TO
18 CAROLINA INVESTORS?

19 A THAT IS WHAT MR. SHEPPARD SAID AND THAT IS WHAT I
20 RECORDED IN THAT MEETING.

21 Q AND THEN IN THE SECOND PARAGRAPH WOULD YOU SAY THIS
22 WAS POSITIVE INFORMATION, THE OPTIONS THAT ARE RELATED TO
23 THE BOARD FOR THE FUTURE OF HOMEGOLD?

24 A THAT PARAGRAPH IS FRIGHTENING, YOU CAN READ IT. IT
25 SAYS IN THE ABSENCE OF VIABLE ALTERNATIVES. I DIDN'T MAKE

1 UP WORDS TO MAKE IT SOUND WORSE THAN IT WAS, THAT WAS THE
2 WAY IT WAS.

3 Q AND ONE OPTION IS TO IMPLEMENT?

4 A THE RECEIVERSHIP PLAN FOR CAROLINA INVESTORS. I KNOW
5 I ALWAYS CALL IT CONSERVATORSHIP PLAN AND IT IS THE SAME
6 THING.

7 Q AND HE DISCUSSED PRELIMINARY TERMS?

8 A YES, AS YOU CAN SEE THERE IT WAS A FIVE YEAR AMOUNT
9 CONSISTING OF ONE-HALF OF THE NET INCOME AND IT INVOLVED
10 QUARTERLY CASH PAYMENTS TO HOMEGOLD FINANCIAL.

11 Q AND WHAT DID THE BOARD DECIDE TO DO?

12 A THE BOARD DID NOT MAKE ANY OBJECTION TO WHAT HE WAS
13 SAYING AND THE BOARD ENCOURAGED HIM TO GO AHEAD AND LET
14 HIM CONTINUE TO EXPLORE THAT POSSIBILITY.

15 Q DID THEY ALSO AGREE TO DO SOMETHING REGARDING THE
16 RECEIVERSHIP PLAN?

17 A AS STATED THERE IT WAS AGREED THAT MR. RICK RAYBURN,
18 HE WAS THE ATTORNEY FROM NORTH CAROLINA WHO HAD COME IN
19 EARLIER THAT YEAR, THAT FALL AND PROPOSED THIS
20 RECEIVERSHIP PLAN THAT BILL KEHL, WILLIAM KEHL OF THE
21 WYCHE LAW FIRM WOULD CONTACT MR. RAYBURN AND LET HIM KNOW
22 ABOUT THIS DISCUSSION.

23 Q DID THE IMPAC WAREHOUSE LINES TERMINATE AS DESCRIBED
24 BY THE DEFENDANT AT THAT MEETING?

25 A NO.

1 Q DID THEY TERMINATE?

2 A THEY WERE STILL ACTIVE WHEN WE ENTERED BANKRUPTCY IN
3 2003.

4 Q WHAT WAS THE IDEA BEHIND EMMCO, WHY WAS THIS THE
5 VIABLE OPTION?

6 A MR. SHEPPARD STATED ON THE DAY THAT HE PRESENTED HIS
7 PLAN, HE PRESENTED AT THE CAROLINA INVESTORS BOARD MEETING
8 HE PRESENTED, MANY TIMES WHEN I WAS PRESENT THAT HE COULD
9 OBTAIN THE WAREHOUSE LINES ON THE BASIS OF HIS PERSONAL
10 FINANCIALS THAT WOULD ALLOW HIM TO TAKE HOMEGOLD AND
11 ACHIEVE THE PRODUCTION LEVELS THEY WERE CAPABLE OF
12 ACHIEVING BECAUSE OF THE NUMBER OF OFFICES AND THE NUMBER
13 OF LOAN OFFICERS. AND WITH ENOUGH WAREHOUSE LINES THAT
14 WERE SOLID AND IN PLACE AND USABLE HE PRESENTED THAT HE
15 COULD EARN THE KIND OF PROFIT THAT HAD BEEN TALKED ABOUT
16 AT HOMEGOLD.

17 Q WHAT WAS KEEPING HIM FROM EARNING THAT TYPE OF PROFIT
18 AT HOMEGOLD THAT WOULD MAKE IT WORK AT EMMCO?

19 A THE DIFFERENCE WAS ENTIRELY DUE TO WAREHOUSE LINES.

20 Q IF HE BOUGHT EMMCO OR THE RETAIL MORTGAGE DIVISION
21 AND MOVED IT AWAY FROM HOMEGOLD WHAT TYPE OF RELATIONSHIP
22 WOULD THAT HAVE TO CAROLINA INVESTORS?

23 A THERE WOULD BE AS THERE WAS, AN AGREEMENT PUT IN
24 PLACE. WHAT HE PROPOSED IN THAT PAPER THAT WE JUST LOOKED
25 AT WAS THAT THERE WOULD BE AN ASSET PURCHASE AGREEMENT

1 WHEREBY EMMCO WOULD PAY ONE-HALF OF THEIR AFTER TAX PROFIT
2 TO HOMEGOLD, THE CASH WOULD COME ON A QUARTERLY BASIS.

3 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
4 STATE'S EXHIBIT NUMBER 82. AND IF YOU WILL FLIP THROUGH
5 THAT AND TELL ME IF YOU RECOGNIZE IT.

6 A YES, I DO.

7 Q WHAT IS THIS?

8 A WHAT YOU ARE SEEING HERE IS AN INVOICE THAT I
9 RECEIVED FROM THE, IT WAS PASSED TO ME FROM THE WYCHE LAW
10 FIRM. IT IS AN INVOICE FOR A RETAINER FOR WHO I KNOW IS
11 SONNY GRAVES TO ~~RETAIN~~ RETAIN HIM IN CASE HIS SERVICES ARE NEEDED
12 TO BE, THE RECE^{*}IVER OR CONSERVATOR FOR CAROLINA INVESTORS.

13 Q AND WHO PAID THIS RETAINER?

14 A YOU SEE IT WAS PAID ON A HOMEGOLD, INCORPORATED
15 CHECK.

16 Q AND WHEN WAS THAT PAID?

17 A THE DAY, I BELIEVE I SEE IT AS NOVEMBER THE 15TH.

18 Q SO, IF MY MATH IS CORRECT, NINE DAYS AFTER THE
19 HOMEGOLD TELECONFERENCE?

20 A YES. SO, AS WE SAW ON THE DOCUMENT WE PUT UP, MR.
21 KEHL HAD SAID THAT HE WOULD BE CONTACTING MR. RAYBURN AND
22 I RECEIVED THAT AFTER.

23 Q NOT ONLY DID HE CONTACT HIM, HE HIRED HIM?

24 A HE HIRED SONNY GRAVES, YES.

25 Q NOT MR. KEHL.

1 A YES, YES.

2 Q NOW, ON NOVEMBER 19TH, FOUR DAYS AFTER HE HAS HIRED,
3 SONNY GRAVES ON BEHALF OF HOMEGOLD, I MEAN ON BEHALF OF
4 CAROLINA INVESTORS WAS THERE A BOARD MEETING OF THE
5 CAROLINA INVESTORS BOARD MEMBERS?

6 A YES.

7 Q AND DID YOU ATTEND?

8 A I ATTENDED WITH MR. FERRELL AND WITH MR. SHEPPARD.

9 Q I AM GOING TO SHOW YOU WHAT IS IN EVIDENCE AS STATE'S
10 EXHIBIT NUMBER 133, DO YOU RECOGNIZE THAT?

11 A YES.

12 Q AND WHAT IS THAT?

13 A IT APPEARS TO BE THE MINUTES OF THE CAROLINA
14 INVESTORS BOARD MEETING THAT WE ARE TALKING ABOUT.

15 Q WE, JUST A FEW MOMENTS AGO YOU DISCUSSED THIS BOARD
16 MEETING WHEN WE WERE TALKING ABOUT THE DIFFERENCE BETWEEN
17 A HOMEGOLD BOARD MEETING VERSUS A CAROLINA INVESTORS BOARD
18 MEETING?

19 A TRUE.

20 Q DID YOU ARRIVE TO THAT BOARD MEETING WITH ANYBODY?

21 A I WENT WITH MR. FERRELL AND MR. SHEPPARD.

22 Q AND WHAT WERE THE DISCUSSIONS IN THE CAR RIDE FROM
23 COLUMBIA TO PICKENS?

24 A WELL, IN PARTICULAR I REMEMBER IS THAT MR. SHEPPARD
25 BEING INSISTENCE THAT HE DID NOT WANT TO STAY LONG. THEY

1 WANTED TO GET IN AND OUT QUICKLY, PRETTY MUCH WHAT I SAID
2 BEFORE, THEY DIDN'T WANT TO ACCEPT AN INVITATION TO LUNCH.
3 WE JUST WANT TO GET IN THERE AND GET OUT, JUST WANT TO
4 TALK ABOUT EMMCO AND BE GONE.

5 Q SO, THE PURPOSE OF THIS MEETING WAS TO WHAT?

6 A TO TALK ABOUT EMMCO. MR. SHEPPARD WAS PRESENTING TO
7 THE CAROLINA INVESTORS BOARD HIS PLAN TO PURCHASE THE
8 RETAIL MORTGAGE DIVISION.

9 Q HOW DID THE PRESENTATION THAT WE HAVE JUST GONE OVER
10 ON THE TELEPHONE, TO THE HOMEGOLD BOARD DIFFER FROM THE
11 PRESENTATION TO THE CAROLINA INVESTORS BOARD.

12 A IF YOU PUT MY PAPER BACK UP, BASICALLY AS WE SAW, YOU
13 SEE ON THIS DOCUMENT THAT IN THE ABSENCE OF VIABLE
14 ALTERNATIVES YOU SEE THAT THERE ARE A FEW OPTIONS THAT MR.
15 SHEPPARD IS PRESENTING HIMSELF AS THE BEST OPTION AND THE
16 ONLY OPTION. THE PRESENTATION AT CAROLINA INVESTORS WAS
17 POSITIVE, I DON'T RECALL ANY MENTION OF, THIS IS THE LAST
18 OPTION THAT WE HAVE. I DON'T RECALL ANYTHING THAT WAS
19 NEGATIVE. IT WAS JUST ABOUT POSITIVE PRESENTATION OF MR.
20 SHEPPARD BEING POSITIVE AND BEING, YOU KNOW, PERSONABLE.
21 I HAVE OFFERED, I AM GOING TO BUY THE RETAIL MORTGAGE
22 DIVISION AND I AM GOING TO MAKE A PROFIT, I AM GOING TO
23 PAY, YOU KNOW, HOMEGOLD WILL BE ABLE TO PAY CAROLINA
24 INVESTORS BACK. THERE WAS NO DISCUSSION OF RISK, THERE
25 WAS NO DISCUSSION OF ANY OF THESE NEGATIVE THINGS.

1 Q IF YOU WILL LOOK IN THOSE MINUTES, WHERE IS THE
2 DISCUSSION ABOUT A CONSERVATORSHIP?

3 A I KNOW THAT THERE IS NO DISCUSSION OF THE
4 CONSERVATORSHIP IN THESE MINUTES.

5 Q WHERE IS THE DISCUSSION OF SONNY GRAVES BEING
6 RETAINED?

7 A THERE IS NO DISCUSSION OF THAT IN THESE MINUTES.

8 Q WELL, WASN'T THAT THE SECOND OPTION?

9 A YES, THAT WAS AN OPTION BUT IT WAS NOT DISCUSSED AT
10 THIS MEETING.

11 Q WHERE IS THE DISCUSSION ABOUT IMPAC CLOSING THE
12 WAREHOUSE LINES?

13 A I DON'T RECALL ANY DISCUSSION OF IMPAC CLOSING THE
14 WAREHOUSE LINES. I DO RECALL MR. SHEPPARD TALKING ABOUT
15 HIS ABILITY TO OBTAIN UP TO \$100 MILLION DOLLARS OF
16 WAREHOUSE LINES FOR THE NEW COMPANY. I REMEMBER HIM
17 TALKING ABOUT, IT WAS BASED ON THE STRENGTH OF HIS
18 PERSONAL FINANCIALS AND THAT HE HAD ALREADY MADE CONTACTS
19 AND FELT CONFIDENT THAT HE COULD SET UP THOSE WAREHOUSE
20 LINES.

21 Q WAS THE BOARD ASKED FOR THEIR OPINION?

22 A THERE WAS NO FORMAL VOTE TAKEN, IT WAS A VERY
23 FRIENDLY MEETING. I DID HEAR COMMENTS TO THE EFFECT THAT
24 SOME OF THEM WERE RELIEVED THAT IT WAS NOT A CALIFORNIA
25 BANK TO BUY THE COMPANY. THE MOOD WAS VERY UPBEAT, VERY

1 POSITIVE.

2 Q DID THIS CONFORM WITH THE MOTTO OF EMPHASIZED THE
3 POSITIVE?

4 A OBVIOUSLY THERE WAS ONLY POSITIVE INFORMATION
5 CONVEYED AT THAT MEETING.

6 Q YOU ARE THE CFO, AT ANY TIME DID YOU TELL THE BOARD
7 THE TRUE FINANCIAL CONDITION OF HOMEGOLD?

8 A I DID NOT TELL THE CAROLINA INVESTORS BOARD ABOUT THE
9 CONSERVATORSHIP PLAN AT THAT MEETING. I DID NOT MENTION
10 ANY KIND OF RISK AT THAT MEETING. I WAS JUST THERE AND
11 HELPED MR. SHEPPARD PRESENT THE EMMCO SELL.

12 Q WELL, ACCORDING TO THE TERMS THAT WERE PRESENTED TO
13 THE CAROLINA INVESTORS BOARD, IF EMMCO DID NOT MAKE A
14 PROFIT WHAT DID HOMEGOLD GET?

15 A IF EMMCO HAD NOT BEEN MADE A PROFIT THERE WOULD OF
16 BEEN NO PAYMENT TO HOMEGOLD, SO THERE WOULD OF BEEN NO
17 CASH PAYMENT TO HOMEGOLD.

18 Q WAS THAT RELATED TO CAROLINA INVESTORS?

19 A NO, IT WAS NOT EMPHASIZED. AS I SAID, THERE WAS NO
20 DISCUSSION OF RISK.

21 Q WHAT HAPPENED AFTER THIS MEETING?

22 A WE WENT THROUGH GREENVILLE, HAD LUNCH TOGETHER AND ON
23 THE WAY BACK I RECEIVED A TELEPHONE CALL FROM MR. KEHL.
24 AND FORREST FERRELL AND I HAD BEEN PLACED ON THE BOARD OF
25 DIRECTORS OF HOMEGOLD. WHEN WE GOT BACK TO LEXINGTON MR.

1 SHEPPARD SIGNED HIS RESIGNATION LETTER FROM HOMEGOLD AND
2 PAUL BANNIGER SIGNED HIS RESIGNATION LETTER FROM HOMEGOLD.

3 MS. PORTER: YOUR HONOR, MAY WE APPROACH.

4 THE COURT: WHY DON'T WE TAKE A BREAK. DON'T DISCUSS
5 THE CASE, LADIES AND GENTLEMEN. STEP BACK TO YOUR JURY
6 ROOM, EVERYONE ELSE STAY SEATED, PLEASE.

7 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
8 A BREAK.)

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

10 THE COURT: LET'S JUST NOTE THAT THERE ARE TWO
11 DOCUMENTS THAT ARE INCLUDED IN STATE'S 70 THAT WERE
12 INCLUDED BY THE STATE AND THEY WILL BE WITHDRAWN WITHOUT
13 OBJECTION. IS THAT CORRECT?

14 MR. GRIFFIN: THAT IS CORRECT.

15 THE COURT: THAT IS FINE. WE WILL TAKE ABOUT A TEN
16 MINUTE BREAK, DON'T DISCUSS YOUR TESTIMONY.

17 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

18 THE COURT: IS THE STATE READY?

19 MS. PORTER: YES, YOUR HONOR.

20 THE COURT: THE DEFENSE?

21 MR. GRIFFIN: YES, SIR.

22 THE COURT: BRING THE JURY IN, PLEASE.

23 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
24 APPROXIMATELY 11:30 A.M.)

25 CONTINUE DIRECT EXAMINATION

1 BY MS. PORTER:

2 Q MS. MILLER, DO YOU RECOGNIZE THIS DOCUMENT?

3 A YES, I DO.

4 MS. PORTER: YOUR HONOR, I WOULD LIKE TO MOVE THIS
5 INTO EVIDENCE AT THIS TIME, STATE'S 70.

6 MR. GRIFFIN: NO OBJECTION.

7 THE COURT: WITHOUT OBJECTION STATE'S 70 IS ADMITTED.
8 (WHEREUPON, STATE'S EXHIBIT NO. 70 WAS ADMITTED INTO
9 EVIDENCE.)

10 Q A MOMENT AGO YOU TESTIFIED THAT THE CAROLINA
11 INVESTORS BOARD MEETING, THERE WAS NOT REALLY A VOTE
12 TAKEN?

13 A THAT IS CORRECT.

14 Q OKAY. AS A PART OF THIS WAS AN ASSET PURCHASE
15 AGREEMENT ENTERED IN TO?

16 A YES, WHAT YOU HAVE DISPLAYED THERE IS THE FINAL
17 AGREEMENT THAT WAS REACHED.

18 Q AND WHAT DATE WAS THIS SIGNED OR MADE EFFECTIVE AS
19 OF?

20 A WELL, THE FIRST AGREEMENT WAS DATED ON NOVEMBER 19TH,
21 THAT WAS THE, RELATED BACK TO NOVEMBER 19TH. THE FIRST
22 AGREEMENT WAS THAT EMMCO WOULD OF BEEN A CORPORATION AND
23 THAT IS WHAT YOU SEE THERE, EMMCO CREDIT CORP. IS SIGNING
24 ITS--

25 Q LET ME REPHRASE.

1 A OKAY.

2 Q WHAT DATE DID THE DEFENDANT AND HOMEGOLD ENTER INTO
3 AN ASSET PURCHASE AGREEMENT?

4 A I ACTUALLY THOUGHT THAT THE AGREEMENT WAS SIGNED, THE
5 FIRST AGREEMENT WAS SIGNED AT THE END OF NOVEMBER AND THEN
6 RELATED BACK TO THAT NOVEMBER 19TH DATE.

7 Q SO, IT IS BACKDATED?

8 A THAT IS MY MEMORY, YES.

9 Q AS A PART OF THIS AGREEMENT WHO WAS GOING TO RUN
10 HOMEGOLD UNTIL THE TERMS WERE FINALIZED?

11 A MR. SHEPPARD⁸ REMAINED THE MANAGER AT HOMEGOLD UNTIL
12 THE FINAL AGREEMENT^{*} TOOK EFFECT ON DECEMBER 31ST OF 2002.
13 THAT WAS PART OF THE AGREEMENT.

14 Q SO, IN EFFECT, FROM NOVEMBER 19TH OF 2002 UNTIL THIS
15 WAS FINALIZED WHO IS RUNNING HOMEGOLD?

16 A MR. SHEPPARD.

17 Q AND WHAT DATE WAS THIS FINALIZED?

18 A ON, IT WAS THE EVENING, LATE EVENING OF DECEMBER 31ST
19 OF 2002 AND SOME THINGS WERE NOT FINALIZED UNTIL JANUARY
20 2ND OF 2003.

21 Q SO, WHO IS STILL IN CHARGE?

22 A MR. SHEPPARD.

23 Q JUST A MOMENT AGO YOU MENTIONED THAT THERE ARE TWO
24 AGREEMENTS, THAT THE ASSET PURCHASE AGREEMENT WAS AMENDED?

25 A YES, THAT IS CORRECT.

1 Q IF YOU WILL, WELL, ARE YOU FAMILIAR WITH THE TERMS OF
2 THE FIRST AGREEMENT?

3 A YES, I AM.

4 Q WHAT WERE THE TERMS OF THAT FIRST AGREEMENT?

5 A IN THE FIRST AGREEMENT WAS GOING TO FORM A
6 CORPORATION TO BUY THE RETAIL MORTGAGE DIVISION AND WOULD
7 PAY BACK ONE-HALF OF THE AFTER TAX NET INCOME TO HOMEGOLD
8 ON A QUARTERLY BASIS. IT WAS TO HAVE A FIVE YEAR TERM.
9 MR. SHEPPARD WAS TO HAVE ISSUED \$25 MILLION DOLLARS OF
10 PREFERRED STOCK AND THE EMMCO CORPORATION TO HOMEGOLD.
11 MR. SHEPPARD WAS ~~TO~~ TO HAVE SURRENDERED ALL OF HIS STOCK AT
12 HOMEGOLD.

13 Q HOW MUCH STOCK WAS HOMEGOLD GOING TO GET AT EMMCO?

14 A IT WAS \$25 MILLION DOLLARS OF PREFERRED STOCK. I
15 BELIEVE THE DIVIDEND RATE WAS EIGHTY PERCENT.

16 Q AND LET ME BACK UP. HOW ARE YOU FAMILIAR WITH THE
17 TERMS OF THIS TRANSACTION?

18 A I WORKED WITH THE WYCHE LAW FIRM TO DRAW UP ALL OF
19 THE DOCUMENTS THAT WERE USED IN THE SELL OTHER THAN THE,
20 THERE WAS SOME DOCUMENTS FILED BY JOHN FISHER, ALL OF THE
21 DOCUMENTS THAT YOU HAD ATTACHED THERE I WORKED ON WITH THE
22 WYCHE LAW FIRM. AND IT WAS CARY HALL, I BELIEVE, THAT
23 DREW UP THE EMMCO LLC OPERATING AGREEMENT THAT YOU HAD ON
24 TOP.

25 Q WHO WERE THE KEY PLAYERS IN NEGOTIATING THE TERMS OF

1 THIS TRANSACTION?

2 A YOU HAD, BASICALLY MR. STERLING ON ONE SIDE AND MR.
3 SHEPPARD ON THE OTHER SIDE. AND I WENT IN BETWEEN THE TWO
4 AND WORKED WITH BILL KEHL AND SO I FELT LIKE I WAS SORT OF
5 A MEDIATOR OR A NEGOTIATOR BETWEEN THE TWO EXTREMES. IF
6 JACK WANTED SOMETHING HE WOULD GET ME TO BRING IT TO MR.
7 SHEPPARD AND PRETTY MUCH THE OTHER WAY.

8 Q NOW, WHAT WAS YOUR UNDERSTANDING. LET ME REPHRASE.
9 BASED UPON YOUR ROLE DID YOU BELIEVE THAT THE INITIAL
10 TERMS YOU JUST DISCUSSED WERE GOING TO BE THE DEAL?

11 A AT FIRST I DID BELIEVE THAT WAS GOING TO BE THE DEAL,
12 EVOLVED AND CHANGED IN DECEMBER OF 2002.

13 Q PLEASE TELL THE JURY ABOUT THE CIRCUMSTANCES UNDER
14 WHICH THAT EVOLVED AND CHANGED?

15 A MR. SHEPPARD CONSULTED HIS PERSONAL ACCOUNTANTS,
16 PARTICULARLY HIS TAX ACCOUNTANTS. AND HIS TAX ACCOUNTANTS
17 WERE THEN GRANT FORTON, (PHONETIC), AND THEY DID A
18 DETAILED ANALYSIS FOR MR. SHEPPARD. GRANT FORTON
19 DETERMINED THAT MR. SHEPPARD HAD NO TAX BASIS IN THE
20 HOMEGOLD STOCK. THAT MEANT THAT IF HE SURRENDERED THAT
21 STOCK HE WOULD HAVE A TAX BILL. AND BECAUSE OF THAT THEY
22 RECOMMENDED THAT, AND FOR OTHER TAX REASONS TOO THEY
23 RECOMMENDED THAT EMMCO NOT BE STRUCTURED AS A CORPORATION
24 BUT INSTEAD BE STRUCTURED AS AN LLC WHICH IS A LIMITED
25 LIABILITY COMPANY. THE ADVANTAGE OF THAT FOR HOMEGOLD IS

1 THAT HOMEGOLD WOULD RECEIVE PRETAX INCOME FROM EMMCO. AND
2 HOMEGOLD HAD A LARGE OPERATING LOSS AND DID NOT HAVE AN
3 INCOME TAX LIABILITY. SO, HOMEGOLD COULD OBTAIN MORE CASH
4 AND MORE INCOME WITH EMMCO STRUCTURED AS AN LLC. SO, IT
5 WAS ADVANTAGEOUS TO BOTH PARTIES TO CHANGE THIS STRUCTURE.
6 AS PART OF THE CHANGE MR. SHEPPARD DID NOT SURRENDER HIS
7 STOCK FOR THE TAX REASONS. INSTEAD HE SIGNED OR AGREED TO
8 SIGN A STOCKHOLDER VOTING AGREEMENT FOR A FIVE YEAR TERM,
9 HE AGREED TO VOTE AS THE HOMEGOLD FINANCIAL BOARD
10 RECOMMENDED BUT HE KEPT HIS STOCK. AND THE PREFERRED
11 ISSUE WAS RAISED⁸ TO \$35 MILLION FROM \$25 MILLION.
12 Q NOW, WHY WAS THE PREFERRED STOCK AMOUNT RAISED?
13 A THERE WERE A VARIETY OF REASONS. ONE REASON IS THAT
14 WHEN THE DÉAL WAS BEING STRUCTURED IT WOULD OF, THE PLAN
15 WAS TO ACCOUNT FOR THE SELL AS A PURCHASE TRANSACTION OR
16 AN ASSET PURCHASE SALE TRANSACTION. SO, HE WOULD USE A
17 SALES ACCOUNTING METHOD TO ACCOUNT FOR IT. THE PREFERRED
18 STOCK REPRESENTED AN INTEREST IN THE OTHER COMPANY THAT
19 COULD BECOME AN ASSET ON HOMEGOLD FINANCIALS BOOKS.
20 Q AT THAT YEAREND, AT THE YEAREND OF 2002 WAS HOMEGOLD
21 LOOKING AT A SUBSTANTIAL LOSS?
22 A AT THAT TIME THAT WE WERE NEGOTIATING HOMEGOLD, WE
23 DID NOT KNOW THE SIZE, THE POTENTIAL SIZE OF HOMEGOLD'S
24 LOSS. BUT I DID KNOW THAT IT WOULD BE A SIGNIFICANT LOSS,
25 I DID NOT KNOW THE FULL EXTENT OF THAT LOSS.

1 Q SO, ONCE AGAIN, HOW WAS THIS STRUCTURE TO BENEFIT THE
2 APPEARANCE OF HOMEGOLD'S BOOKS?

3 A IF THERE HAD NOT BEEN A PREFERRED INTEREST HOMEGOLD
4 COULD NOT HAVE RECOGNIZED IMMEDIATELY ANY INCOME FROM THE
5 SELL TO EMMCO. IT COULD ONLY HAVE RECOGNIZED INCOME AS IT
6 WAS PAID TO HOMEGOLD. WITH THE PREFERRED INTEREST
7 HOMEGOLD COULD BOOK AN ASSET THROUGH THE SELL WHICH WOULD
8 AFFECT THE BOTTOM LINE AND REDUCE THE LOSS.

9 Q WHY DID THIS TRANSACTION NEED TO BE CLOSED BY
10 DECEMBER 31ST OF 2002?

11 A SO THAT THE~~4~~ SELL OF PREFERRED STOCK COULD BE BOOKED
12 FOR THE END OF THE YEAR.

13 Q AND THE BENEFIT TO THE APPEARANCE OF THE BOOKS?

14 A IT WOULD PRODUCE THE ASSET ON THE BOOKS, YES. AND
15 DECREASE THE LOSS, YES.

16 Q AND THE MORE PREFERRED STOCK YOU HAVE, THE MORE
17 VALUABLE THE ASSET ON THE BOOKS, IS THAT ACCURATE.

18 A I PRESENTED TO THE AUDITORS, MOORE KIRKLAND, IN
19 DECEMBER AT THE AUDIT COMMITTEE MEETING. AND WE TALKED
20 ABOUT AT THE BOARD MEETING THEREAFTER THAT THE \$35 MILLION
21 DOLLAR DEFERRED WOULD BE BOOKED AS AN ASSET. THAT LATER
22 CHANGED WHEN MOORE KIRKLAND CONDUCTED AN AUDIT OF EMMCO.
23 AND THAT WAS A PLAN AND THAT IS WHAT WAS PRESENTED IN
24 DECEMBER.

25 Q WAS THERE A LOAN INCLUDED IN THIS AGREEMENT?

1 A YES. JUST AS WITH THE IMPAC AGREEMENT MR. SHEPPARD
2 DID ASK FOR \$5 MILLION DOLLARS TO BE LOANED TO, FOR THE
3 BENEFIT OF HIS NEW COMPANY. IN OTHER WORDS TO BORROW \$5
4 MILLION DOLLARS TO AFFECT HIS WORKING CAPITAL FOR HIS NEW
5 COMPANY.

6 Q IS THAT SIMILAR TO THE IMPAC DEAL THAT EVERYBODY
7 THOUGHT WAS HORRIBLE?

8 A WELL, YES. THE ONLY DIFFERENCE BETWEEN THE TWO DEALS
9 WAS THAT MR. SHEPPARD PROMISED TO PAY CASH EVERY QUARTER
10 AND THAT IT WAS STRUCTURED AS AN LLC SO THAT THE INCOME
11 WOULD BE PRETAX. THOSE WERE THE ONLY TWO MAJOR
12 DIFFERENCES BETWEEN THE TWO OF THEM. THERE WERE MINOR
13 DIFFERENCES BUT THAT'S IT.

14 Q NOW, LET'S TALK ABOUT THIS LOAN, WAS IT TO EMMCO?

15 A THE LOAN ENDED UP BEING MADE TO A COMPANY CALLED
16 R-DOC LLC WHICH IS A COMPANY THAT MR. SHEPPARD FORMED AN
17 LLC FOR THIS PURPOSE. HE HAD A COMPANY R-DOC BEFORE BUT I
18 BELIEVE IT WAS A CORPORATION. HE DID NOT, MR. SHEPPARD
19 DID NOT WANT THE EMMCO LLC BOOKS TO SHOW A LIABILITY. HE
20 WANTED THEM TO BE CLEAN OF LIABILITIES IN ORDER TO HELP
21 HIM WITH OBTAINING WAREHOUSE LINES. THEREFORE THE LOAN
22 WAS TO BE MADE TO R-DOC RATHER THAN TO EMMCO.

23 Q OTHER THAN MR. SHEPPARD OWNING BOTH EMMCO AND R-DOC,
24 WERE THEY CONNECTED?

25 A I BELIEVE THEM TO BE SEPARATE, UNCONNECTED COMPANIES

1 OTHER THAN MR. SHEPPARD WAS, I THINK WAS A MEMBER OF
2 R-DOC. AND MR. BANNIGER WAS A PERSONAL MEMBER OF EMMCO.

3 Q AND YOUR FIRST ASSET PURCHASE AGREEMENT, WHAT WAS
4 THIS LOAN TO R-DOC SECURED BY?

5 A I BELIEVE IN THE FIRST AGREEMENT THE LOAN WAS
6 PROBABLY GOING TO BE MADE TO EMMCO AND NOT TO R-DOC.

7 Q AND WHAT WOULD IT BE SECURED BY?

8 A IT WOULDN'T HAVE BEEN SECURED OTHER THAN HIM TO
9 PROMISE TO REPAY OVER TIME IN THE FIRST DEAL.

10 Q IN THE SECOND DEAL IT BECOMES FINAL, CORRECT?

11 A YES.

12 Q WHAT IS THIS LOAN TO R-DOC SECURED BY?

13 A I DON'T KNOW THAT YOU CAN USE THE TECHNICAL NAME
14 SECURED BUT THAT WAS PART OF THE REASON FOR INCREASING THE
15 PREFERRED BECAUSE THE PAYMENT OF THE R-DOC NOTE WAS
16 CONNECTED IN THE ASSET PURCHASE AGREEMENT. MR. SHEPPARD
17 WAS ALLOWED IN THAT AGREEMENT TO MAKE PAYMENT ON THE R-DOC
18 NOTE FROM MONEY THAT CAME FROM EMMCO. AND SO THE AMOUNT
19 OF THE R-DOC NOTE ACTUALLY ENDED UP IN EXCESS OF \$8
20 MILLION DOLLARS BECAUSE OF OTHER PROPERTY THAT WAS
21 ATTACHED IN THAT NOTE.

22 Q LET'S TALK ABOUT THE PROPERTY, WHAT ARE YOU TALKING
23 ABOUT, WHAT OTHER PROPERTY?

24 A MR. SHEPPARD IN DECEMBER WANTED TO, HE WANTED THE
25 REED AVENUE OFFICE BUILDING BACK, THAT IS THE BUILDING

1 THAT HE HAD AT THE BEGINNING OF THE HOMESENSE MERGER IN
2 LEXINGTON. IT WAS HIS HEADQUARTERS WHEN THE MERGER TOOK
3 PLACE IN 2000 AND WE HAD MOVED BACK INTO THAT BUILDING AND
4 MOVED OUT OF THAT BUILDING AND HE HAD MOVED BACK AGAIN TO
5 REED AVENUE. SO, HE WANTED TO OBTAIN THE REED AVENUE
6 PROPERTY AND WAS WILLING IN EFFECT TO BORROW THE MONEY TO
7 BUY IT. IT BECAME PART OF THE R-DOC NOTE. THERE WAS
8 ANOTHER PIECE OF PROPERTY THAT VERY LATE IN DECEMBER,
9 THERE WAS SOME VACANT LAND ON LEAPHART ROAD THAT HAD COME
10 TO HOMEGOLD AS PART OF THE HOMESENSE MERGER. AND MR.
11 SHEPPARD WANTED THAT PROPERTY TO COME BACK TO HIM SO THAT
12 WAS PUT IN THE R-DOC NOTE AS WELL. SO, THE AMOUNT WAS IN
13 EXCESS OF \$8 MILLION DOLLARS.

14 Q HOW MUCH OF THAT WAS ACTUAL CASH?

15 A THERE WOULD OF BEEN \$5 MILLION DOLLARS IN ACTUAL CASH
16 AND THE DIFFERENCE WAS THE TWO PIECES OF PROPERTY.

17 Q BUT DID HOMEGOLD WRITE A \$5 MILLION DOLLAR CHECK?

18 A HOMEGOLD DID NOT WRITE A \$5 MILLION DOLLAR CHECK. IN
19 SOMETIME AROUND THE BEGINNING OF JANUARY OF 2003 AFTER THE
20 SELL CLOSED, HOMEGOLD DID WRITE A \$3 MILLION DOLLAR CHECK.
21 AND THAT WAS GIVEN TO MR. SHEPPARD, IT WAS IN THE NAME OF
22 R-DOC. AND THEN OVER THE COURSE OF THE NEXT FEW MONTHS
23 ANOTHER \$2 MILLION DOLLARS IN CASH WAS ADVANCED FOR THE
24 BENEFIT OF EMMCO WHETHER IT WAS PAYING PAYROLL OR PAYING
25 OTHER INVOICES OR IN FEES THAT WERE DUE TO HOMEGOLD. SO,

1 IT EVENTUALLY, ANOTHER \$2 MILLION DOLLARS WAS ADVANCED FOR
2 THE BENEFIT OF EMMCO.

3 Q A MOMENT AGO, I AM GOING TO HAND YOU STATE'S EXHIBIT
4 NUMBER 70. YOU STATED THAT THERE WERE TWO PIECES OF
5 PROPERTY, THE REED AVENUE BUILDING AND LEAPHART ROAD
6 PROPERTY?

7 A YES, MY UNDERSTANDING IS THAT LEAPHART ROAD PROPERTY
8 IS VACANT PROPERTY SOMEWHERE IN LEXINGTON, WEST COLUMBIA.

9 Q AND IF YOU WILL TAKE A MOMENT TO REFRESH YOUR MEMORY
10 WITH THAT DOCUMENT, WAS IT THE LEAPHART ROAD PROPERTY OR
11 PERHAPS THE CLAPMAN ROAD, (PHONETIC), PROPERTY?

12 A I AM SORRY. IT WAS THE CLAPMAN, YOU ARE CORRECT.

13 Q SO, IF I UNDERSTAND THIS CORRECTLY THE RETAIL, THE
14 ENTIRE RETAIL MORTGAGE DIVISION IS GONE, ASSETS, HOW MANY
15 OF THE OUTLINING BRANCHES WENT WITH IT?

16 A MY MEMORY IS THAT FIVE BRANCHES REMAINED WITH
17 HOMEGOLD AS PART OF THE SELL AND I BELIEVE ONE OF THOSE
18 BRANCHES WAS CLOSED EITHER RIGHT BEFORE THE SELL OR RIGHT
19 AT THE TIME OF THE SELL.

20 Q WOULD YOU MIND CHECKING.

21 A IT IS MORE THAN I REMEMBERED, THERE WAS SEVEN
22 BRANCHES THAT DID NOT GO WITH THE SELL AND ONE OF THOSE,
23 OF MY MEMORY, PROBABLY HAD CLOSED RIGHT AT THE TIME OF THE
24 SELL, WE CLOSED IT DOWN.

25 Q THE ENTIRE RETAIL MORTGAGE DIVISION?

1 A EXCEPT FOR THOSE BRANCHES, YES.

2 Q FOR MORE THAN \$8 MILLION DOLLARS IN PROPERTY AND
3 CASH?

4 A YES.

5 Q AS AN LLC?

6 A YES.

7 Q HOW ABOUT SUBSIDIARIES, WAS THERE ANY SUBSIDIARIES
8 THAT WENT ALONG WITH THE RETAIL MORTGAGE DIVISION?

9 A YES, THERE WERE TWO SUBSIDIARIES AND THERE IS ANOTHER
10 THING AS WELL. BUT THE TWO SUBSIDIARIES, FIRST WAS SURETY
11 MORTGAGE WHICH WAS THE CONFORMING PRODUCTION EARNED OF THE
12 COMPANY. AND THE SECOND WAS CONNECTED INFORMATION
13 SYSTEMS, THAT WAS A STARTUP, PAUL BANNIGER HAD STARTED UP
14 A JOINT VENTURE WITH A TITLE COMPANY. IT HAD JUST STARTED
15 UP JUST A FEW MONTHS BEFORE THE SELL AT THE TIME. I HAD
16 HEARD BAD THINGS ABOUT IT THAT WASN'T BEING VERY
17 SUCCESSFUL SO THAT WENT WITH THE COMPANY, EMMCO.

18 Q PART OF THAT ASSET PURCHASE AGREEMENT, WAS THE
19 DEFENDANT REQUIRED TO OBTAIN A FAIRNESS OPINION?

20 A THE DEFENDANT WAS NOT REQUIRED TO, HOMEGOLD OBTAINED
21 FAIRNESS OPINION.

22 Q I AM SORRY, I MISSPOKE. WAS HOMEGOLD REQUIRED TO
23 OBTAIN A FAIRNESS OPINION?

24 A YES.

25 Q AND WHO AT HOMEGOLD HEADED UP THAT VENTURE?

1 A MR. PHILPOTT BROUGHT TO OUR ATTENTION ALLISON SMITH
2 AT SMITH CAPITAL AND APPARENTLY SHE HAD DONE WORK FOR
3 HOMEGOLD MANY YEARS BEFORE. I WOULD GUESS IN 1997 OR 1998
4 SHE IS FROM CHARLOTTE AS BOB PHILPOTT IS, THEY HAD WORKED
5 TOGETHER IN THE PAST AND HE BROUGHT HER IN. OBVIOUSLY
6 HOMEGOLD SIGNED THE CONTRACT WITH HER BUT SHE WAS BROUGHT
7 IN TO DO THE FAIRNESS OPINION.

8 Q DO YOU REMEMBER WHEN SHE WAS BROUGHT IN TO DO THIS
9 OPINION?

10 A IT WOULD OF BEEN IN LATE NOVEMBER AND IT WASN'T
11 FINISHED UNTIL SHE WENT OUT OF TOWN AT THE END OF DECEMBER
12 AND I HAD A FAX FROM HER BEFORE SHE LEFT THAT WOULD BE TO
13 GO WITH THE CLOSING DOCUMENTS. SO, IT WAS ALL VERY LATE
14 YEAR.

15 Q ROUGHLY A MONTH?

16 A I WOULD SAY A MONTH, MAYBE A LITTLE OVER A MONTH.

17 Q AND BRIEFLY WHAT IS A FAIRNESS OPINION?

18 A THEY ARE TRYING TO GET A THIRD PARTY OPINION, YOU ARE
19 TRYING TO GET AN INDEPENDENT OPINION AS TO WHETHER A DEAL
20 MAKES SENSE OR NOT, AS TO WHETHER STRUCTURED AS IT IS
21 STRUCTURED, IT WOULD BE A GOOD DEAL FOR THE SHAREHOLDERS
22 OF HOMEGOLD FINANCIAL IS WHAT IT REALLY ENDED UP BEING.
23 THIS IS A DEAL GOOD FOR THE SHAREHOLDERS.

24 Q FOR THE SHAREHOLDERS?

25 A YES.

1 Q NOT THE CREDITORS?

2 A RIGHT, JUST FOR THE SHAREHOLDERS. THAT IS MY
3 UNDERSTANDING OF WHAT A FAIRNESS OPINION IS FOR.

4 Q SO, ALL OF THE SHAREHOLDERS ARE THE INDIVIDUALS THAT
5 OWN HOMEGOLD STOCK?

6 A THAT IS CORRECT.

7 Q AND WHAT DID THE OPINION SAY?

8 A SHE FOUND THAT IT WAS FAIR THAT THE TRANSACTION AS
9 STRUCTURED WAS FAIR TO THE SHAREHOLDERS OF HOMEGOLD
10 FINANCIAL.

11 Q AND DID THIS BECOME FINAL ON DECEMBER 31ST OF 2002?

12 A IT DID BUT THERE WAS SOME, THERE WERE SOME, STILL
13 SOME CHANGES OR FINALIZATIONS DONE ON JANUARY THE 2ND.

14 Q AND WHO IMPLEMENTED THOSE CHANGES OR WHO MADE THE
15 DECISION TO IMPLEMENT THOSE CHANGES?

16 A WELL, ON THE NIGHT OF THE SELL, ON FAIRLY LATE IN THE
17 EVENING ON DECEMBER THE 31ST MR. SHEPPARD ASKED FOR THERE
18 NOT TO BE PREFERRED STOCK GIVEN TO HOMEGOLD. AND MR.
19 FERRELL AGREED TO NOT GIVE THEM OR NOT TAKE PREFERRED
20 STOCK IN EMMCO AND I MADE MR. STERLING AWARE OF THAT. AND
21 MR. STERLING BECAME QUITE ANGRY AND MR. SHEPPARD OVERHEARD
22 THE CONVERSATION THAT WAS IN MY OFFICE ON SPEAKER PHONE.
23 AND LATER THAT NIGHT MR. SHEPPARD CALLED ME AND SAID THAT
24 HE HAD CHANGED HIS MIND AND DID AGREE TO GIVE HOMEGOLD THE
25 PREFERRED STOCK.

1 Q MR. SHEPPARD OR MR. STERLING CALLED YOU?

2 A WELL, I CALLED, MR. SHEPPARD CALLED ME ON MY CELL
3 PHONE LATER THAT NIGHT AND TOLD ME HE HAD OVERHEARD WHAT
4 MR. STERLING SAID. AND HE HAD DECIDED THAT HE WOULD GIVE
5 HOMEGOLD THE PREFERRED STOCK. AND SO ON THE 2ND, WHEN YOU
6 LOOK AT THESE DOCUMENTS YOU SEE MR. SHEPPARD'S INITIALS
7 BECAUSE WE PUT THAT BACK IN AND I HAD HIM INITIAL EVERY
8 PLACE WHERE THAT WAS DONE.

9 Q NOW THAT HOMEGOLD NO LONGER HAS THE RETAIL MORTGAGE
10 DIVISION WHAT IS THE PLAN?

11 A THE PLAN WAS^{*} TO TRY TO GROW THE BRANCHES THAT WERE
12 LEFT ON THE RETAIL SIDE AS FAR AS WHETHER WE COULD OBTAIN
13 CREDIT LINES TO PRODUCE THAT WAY OR TO PRODUCE IN THE
14 BROKER CAPACITY WHICH IS WHAT WE ENDED UP DOING. THERE
15 WAS STILL THE BEGINNINGS OF A WHOLESALE LENDING DIVISION
16 AND IT REQUIRED A WAREHOUSE LINE TO BE PRODUCTIVE. AND
17 THERE WAS THE SERVICING UNIT THAT SERVICED THE LOAN POOLS.
18 THERE WERE SOME AGREEMENTS SIGNED BY MR. SHEPPARD THAT HE
19 WOULD UTILIZE HOMEGOLD SERVICES AND PAY FOR THOSE SERVICES
20 MONTHLY. ONE WAS A SERVICING AGREEMENT, A LOAN SERVICING
21 AGREEMENT THAT WOULD BRING IN INCOME AND THERE WAS ALSO A
22 MANAGEMENT SERVICES AGREEMENT THAT COVERED SUCH THINGS AS
23 ACCOUNTING SERVICES, PAYROLL AND THINGS LIKE THAT.

24 Q THIS IS ALL HAPPENING VERY QUICKLY BETWEEN NOVEMBER
25 AND DECEMBER?

1 A YES.

2 Q ALSO IN NOVEMBER ARE YOU AS CFO PREPARING TO FILE THE
3 THIRD QUARTER 10Q FOR 2002?

4 A YES.

5 Q NOW, DID YOU EVER HAVE A DISCUSSION WITH THE
6 DEFENDANT REGARDING THIS PARTICULAR 10Q FILING?

7 A YES.

8 Q AND APPROXIMATELY WHEN WAS THAT?

9 A IT WOULD OF BEEN EITHER IN MID OCTOBER, TOWARDS THE
10 END OF OCTOBER I WOULD IMAGE, I DON'T REMEMBER THE EXACT
11 DAY. BUT IT WAS ~~4~~ PRIOR TO THE FILING, IT WAS WHILE WE WERE
12 STILL WORKING ON THE NOVEMBERS THAT WOULD GO INTO THAT
13 REPORT.

14 Q AND AT THE SAME TIME WAS ANOTHER INDIVIDUAL PRESENT
15 AS WELL?

16 A YES.

17 Q WHO WAS THAT?

18 A MR. FERRELL WAS WITH HIM.

19 Q AND WHAT, IF ANYTHING, DID THEY ASK YOU TO DO
20 REGARDING THIS 10Q FILING?

21 A THEY CAME TO ME AND SAID THAT THERE WAS A PROBLEM
22 WITH THE THRID AND THEY SAID THAT THE PROBLEM WAS THAT THE
23 PRIOR YEAR DURING THE THRID QUARTER THERE HAD BEEN A
24 PROFIT RECORDED FOR HOMEGOLD, INCORPORATED. AND I CAN
25 TELL YOU NOW THAT WAS CAUSED BY THE PREPAID MARKETING

1 CHANGE THAT WAS MADE IN THE THIRD QUARTER OF 2001. THEY
2 CAME TO ME WITH A CONCERN THAT IF HOMEGOLD HAD A LARGE
3 LOSS IN THE THIRD QUARTER OF 2002 PEOPLE WOULD COMPARE IT
4 TO THE PRIOR YEAR AND THAT IT COULD SET OFF ANOTHER RUN AT
5 CAROLINA INVESTORS. SO, THEY ASKED ME TO WORK AS HARD AS
6 I COULD TO MAKE THE LOSS, WELL ACTUALLY THE IDEA WAS WE
7 CAN'T EVEN HAVE A LOSS THAT COMPARES TO THIRD QUARTER OF
8 THE PRIOR YEAR. AND THERE WAS NO WAY NOT TO HAVE THE
9 LOSS. BUT THEY--

10 Q WHAT DID THEY SAY, WHAT DID THEY ASK YOU TO DO?

11 A BASICALLY TO DO WHATEVER I COULD TO GET THE LOSS AS
12 SMALL AS POSSIBLE.

13 Q AND WHAT WAS YOUR REACTION?

14 A I REMEMBER THINKING, YOU KNOW, YA'LL CREATED THE
15 PROBLEM A YEAR AGO AND NOW YOU ARE COMING TO ME DROPPING
16 IT IN MY LAP. AND, YOU KNOW, WHAT AM I GOING TO DO.
17 WELL, I WORKED ON IT, I WORKED ON IT.

18 Q WHEN YOU SAY YOU WORKED ON IT, WHAT DO YOU MEAN?

19 A I MEAN THAT I ADOPTED AGGRESSIVE ACCOUNTING MEASURES.

20 Q AND KNOWING WHAT YOU KNOW NOW WAS THAT WRONG?

21 A YES.

22 Q I AM GOING TO HAND YOU WHAT IS MARKED AS STATE'S
23 EXHIBIT NUMBER 200. NOW WITHOUT SAYING WHAT THAT IS DO
24 YOU RECOGNIZE IT?

25 A YES.

1 Q AND IS IT A HOMEGOLD BUSINESS RECORD?

2 A YES.

3 MS. PORTER: AT THIS TIME, YOUR HONOR, I WOULD LIKE
4 TO INTRODUCE EXHIBIT NUMBER 200 INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MR. GRIFFIN: NO, YOUR HONOR.

7 THE COURT: STATE'S 200 IS ADMITTED.

8 (WHEREUPON, STATE'S EXHIBIT NO. 200 WAS ADMITTED INTO
9 EVIDENCE.)

10 Q I WILL HAND YOU WHAT HAS BEEN MARKED FOR
11 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NUMBER 201.
12 WITHOUT SAYING WHAT IT IS IS IT A HOMEGOLD, I AM SORRY, DO
13 YOU RECOGNIZE IT.

14 A YES.

15 Q AND IS IT A HOMEGOLD BUSINESS RECORD.

16 MS. PORTER: AT THIS TIME, YOUR HONOR, I WOULD LIKE
17 TO ENTER INTO EVIDENCE STATE'S EXHIBIT NUMBER 201.

18 MR. GRIFFIN: NO OBJECTION.

19 THE COURT: WITHOUT OBJECTION STATE'S 201 IS
20 ADMITTED.

21 (WHEREUPON, STATE'S EXHIBIT NO. 201 WAS ADMITTED INTO
22 EVIDENCE.)

23 Q AND THEN I WILL HAND YOU STATE'S EXHIBIT NUMBER 19,
24 CAN YOU IDENTIFY FOR THE JURY WHAT THAT IS?

25 A IT IS THE PRINTOUT FROM THE ONLINE OF THE 10Q THAT

1 WAS FILED ON, WELL 10Q ENDING SEPTEMBER 30TH OF 2002.

2 Q WHAT DATE WAS THAT FILED?

3 A IT APPEARS TO BE MISSING THE PAGE THAT HAS THE
4 INFORMATION WITH IT, THE DATE OF FILING. I REMEMBER WHEN
5 IT WAS FILED THOUGH.

6 Q WHEN WAS IT FILED?

7 A IT WAS NOVEMBER THE 19TH OF 2002.

8 Q IS THAT THE SAME DAY THAT THE DEFENDANT PITCHED THE
9 EMMCO IDEA TO THE CAROLINA BOARD INVESTORS?

10 A YES.

11 Q AND THE SAME~~8~~ THAT HE RESIGNED?

12 A YES.

13 Q AND THE SAME DAY THAT HE ENTERED INTO THE ASSET
14 PURCHASE AGREEMENT WITH HOMEGOLD?

15 A YES.

16 Q WHICH ALLOWED HIM TO CONTINUE MANAGING THE COMPANY?

17 A YES.

18 Q WHO SIGNS THAT 10Q?

19 A MR. FERRELL SIGNED IT AND I SIGNED.

20 Q AND WHAT WAS MR. FERRELL'S POSITION AT THAT TIME?

21 A WELL, MR. FERRELL TOOK ON THE ROLE OF CEO AND
22 CHAIRMAN OF THE BOARD OF HOMEGOLD UPON RESIGNATION OF MR.
23 SHEPPARD.

24 Q SPECIFICALLY WHAT MANEUVERS DID YOU IMPLEMENT IN THAT
25 10Q TO MAKE, WELL, FIRST OF ALL WHAT WAS THE LOSS THAT

1 QUARTER?

2 A I BELIEVE IT WAS AROUND \$4.9 MILLION.

3 Q AND SPECIFICALLY WHAT MANEUVERS DID YOU IMPLEMENT IN
4 THAT 10Q TO MAKE THE LOSS TO LOOK AS SMALL AS \$4.9
5 MILLION.

6 A WELL, I TOOK THE APPROACH OF NOT INCREASING ANY
7 RESERVES ON ANY RECEIVABLES, KINDS OF ASSETS.

8 Q IF YOU INCREASE A RESERVE WHAT DOES THAT DO TO THE
9 BOTTOM LINE?

10 A IF YOU INCREASE A RESERVE YOU ARE IN FACT ADDING TO
11 EXPENSE FOR THAT ~~4~~QUARTER SO THAT INCREASES YOUR LOSS IF
12 YOU DO THAT.

13 Q OKAY.

14 A SO, FOR EXAMPLE, ON THE FLEXCHECK NOTE I BELIEVED
15 TODAY THAT A CONSERVATIVE ACCOUNTANT WOULD HAVE PUT SOME
16 KIND OF RESERVE ON THE FLEXCHECK NOTE, THERE IS NO RESERVE
17 ON THAT NOTE. THERE WAS A, I REVERSED THE RESERVE ON
18 HERITAGE HOTEL IN ATLANTA BECAUSE THE PROPERTY WAS BEING
19 RUN, IT WAS ACTUALLY BEING RUN AS A HOTEL AND WAS BEING
20 MARKETING FOR SALE. AND THERE WERE SOME INTERESTED BUYERS
21 OUT THERE, A CONSERVATIVE ACCOUNTANT WOULD HAVE KEPT THE
22 RESERVE OR DECREASED IT SOMEWHAT. BUT WOULD PROBABLY KEPT
23 IT UNTIL THE ACTUAL SELL CLOSED, IT DID CLOSE BUT IT WAS
24 LATER IN 2003. I DID NOT INCREASE ANY RESERVES ON THE
25 DAYVIEW POOLS, THAT WAS AN ISSUE THAT ELLIOTT DAVIS HAD

1 WITH THE 2001 YEAREND REPORT. THEY HAD INCREASED THE
2 RESERVES ON THE DAYVIEW. I TALKED TO DIFFERENT ACCOUNTING
3 PEOPLE AND THEY FELT THAT THEY WERE FINE THE WAY THEY WERE
4 BUT I DID NOT TAKE A CONSERVATIVE STANCE AND ASK THEM TO
5 BE INCREASED. LIKE I THINK I MENTIONED BEFORE, KEVIN MAST
6 WOULD HAVE, I SAW THAT HE WOULD WRITE OFF A LOT OF THE
7 BRANCH EXPENDITURES WHEN THEY OPENED BRANCHES. I DID NOT
8 WRITE THOSE OFF.

9 Q DID YOU CAPITALIZE THEM INSTEAD?

10 A WELL, THEY WERE PROBABLY ALREADY CAPITALIZED BY THIS
11 TIME BECAUSE WE WERE PRETTY MUCH FINISHED. THERE WERE A
12 FEW IN THAT QUARTER PROBABLY IN CHICAGO, MAYBE ONE OTHER
13 BRANCH. BUT, YES, I DO CAPITALIZE THOSE THAT WERE IN THAT
14 QUARTER AND I DID NOT REVERSE ANYTHING FROM THE PRIOR
15 QUARTERS. AND WE ADOPTED SOMETHING THAT, I UNDERSTAND
16 FASB ALLOWS WHICH IS HAVING A FORWARD COMMITMENT ON LOAN
17 SALES WITH A DEFINITE SALES PRICE AND A DEFINITE PROFIT
18 YOU ARE GOING TO MAKE. YOU CAN BOOK THOSE IN ADVANCE. I
19 DID THAT, I DON'T KNOW IF A CONSERVATIVE ACCOUNTANT WOULD
20 DO THAT, PROBABLY A VERY CONSERVATIVE ACCOUNTANT WOULD NOT
21 DO THAT. AND I REVERSED THE RESERVE ON THE PELHAM ROAD
22 BUILDING.

23 Q I WANT TO TALK IN DEPTH ABOUT THIS PELHAM ROAD
24 BUILDING. WITH THE RESERVE ON THE BUILDING WHAT WOULD ITS
25 VALUE BE, IF YOU HAD NOT REVERSED THE RESERVE, WHAT WOULD

1 THE VALUE HAVE BEEN LISTED?

2 A I DON'T REMEMBER EXACTLY, \$7 OR \$8 MILLION, SOMETHING
3 LIKE THAT.

4 Q DID YOU HAVE APPRAISALS OF THAT BUILDING WHICH
5 ALLOWED FOR THE RESERVE?

6 A THE APPRAISALS AND I MAY NOT REMEMBER THE RIGHT
7 NUMBERS SO FORGIVE ME IF SOMETIME LATER SOMEBODY SAYS I
8 SAID THE WRONG NUMBER. BUT IN ANY CASE THERE WERE TWO
9 APPRAISALS DONE ON THE PROPERTY THAT WERE PROBABLY FROM
10 2000 AND 2001. AND NEITHER OF THOSE WAS THE FULL VALUE
11 THAT WAS ON THE BOOKS.

12 Q WHAT WAS THE FULL VALUE AS YOU REPORTED IT IN THE
13 10Q?

14 A I THINK IT WAS AROUND \$10 MILLION.

15 Q \$10 MILLION DOLLARS?

16 A I THINK SO, WE CAN LOOK IT UP IF YOU WOULD LIKE.

17 Q WHEN REPORTING A VALUE OF A FIXED ASSET SUCH AS THE
18 PELHAM ROAD BUILDING IN A 10Q, ARE YOU TO REPORT THE FAIR
19 MARKET VALUE, THE FAIR VALUE, THE STRATEGIC VALUE, WHAT
20 VALUE ARE YOU TO REPORT?

21 A I AM GOING TO TELL YOU WHAT WE DID WITH THIS BUILDING
22 AND IT WAS A DIFFERENT APPROACH THAN WHAT YOU ARE TALKING
23 ABOUT. AND WE TOOK AN AGGRESSIVE APPROACH ON IT BECAUSE
24 OF A SPECIAL FASB, THAT IF AN ASSET PRODUCES INCOME YOU DO
25 NOT HAVE TO MARKET THE WAY YOU ARE TALKING ABOUT, YOU

1 DON'T HAVE TO TAKE IT TO MARKET OR, IT WAS AN AGGRESSIVE
2 STANCE. SO, IT TOOK IT INTO A DIFFERENT REALM THAN YOU
3 ARE TALKING ABOUT, AN AGGRESSIVE REALM.

4 Q SO, WHAT TYPE, HOW WAS THIS BUILDING PRODUCING
5 INCOME?

6 A BECAUSE IT IS COLLATERAL FOR THE WAREHOUSE LINE. AND
7 WITHOUT THAT LINE THERE WOULD OF BEEN A DRASTIC REDUCTION
8 IN INCOME. AND AT THAT TIME THE HOUSEHOLD LINE WAS THE
9 MOST STABLE OF THE WAREHOUSE LINES THAT HOMEGOLD HAD.

10 Q SO, SINCE THE WAREHOUSE LINE OF CREDIT WAS PRODUCING
11 INCOME THE BUILDING WAS COLLATERAL?

12 A YES, AND THEN UNDER THIS SPECIAL FASB, I THINK IT IS
13 112, YOU COULD KEEP THE ASSET VALUED WITHOUT DECREASING
14 IT.

15 Q AS YOUR UNDERSTANDING OF THAT RULE IS THAT A GRAY
16 AREA STRETCHING THE CONNECTION BETWEEN THE BUILDING AND
17 THE INCOME PRODUCING LINE?

18 A WELL, I ALREADY SAID THAT IT WAS AGGRESSIVE, YES.

19 Q NOW, IN ADDITION TO THAT AGGRESSIVE MANEUVER WAS
20 THERE ANOTHER ISSUE WITH THE PELHAM ROAD BUILDING?

21 A YES.

22 Q AND WHAT WAS THAT?

23 A THAT MR. SHEPPARD HAD SIGNED THE SALES CONTRACT FOR
24 THAT BUILDING.

25 Q AT THIS TIME I WOULD LIKE TO PUBLISH STATE'S EXHIBIT

1 200 TO THE JURY.

2 THE COURT: IT IS ALREADY IN EVIDENCE, RIGHT?

3 MS. PORTER: YES, SIR.

4 THE COURT: ALL RIGHT.

5 Q IS THIS THE CONTRACT FOR SALE THAT YOU ARE
6 DISCUSSING?

7 A YES.

8 Q AND IF YOU WILL, WHAT IS THE PURCHASE PRICE OF THAT
9 BUILDING?

10 A IT LOOKS LIKE \$4 MILLION FROM HERE, IS IT \$4 MILLION,
11 IT IS KIND OF WAVY, \$4 MILLION.

12 Q OKAY. AND WHEN DID THE DEFENDANT SIGN THIS CONTRACT
13 FOR SALE?

14 A IT IS DATED NOVEMBER 17TH OF 2002.

15 Q AND IS THAT PRIOR TO THE FILING THAT 10Q?

16 A YES.

17 Q AND DID THE DEFENDANT TELL YOU HE HAD SIGNED THE
18 CONTRACT FOR SALE?

19 A THE DEFENDANT CAME INTO MY OFFICE, HE HAD BEEN IN HIS
20 OFFICE BEHIND CLOSED DOORS. HE CAME INTO MY OFFICE, SAID
21 HE HAD SIGNED THE CONTRACT TO SELL THE COMPANY AND I TOLD
22 HIM THAT HE COULD NOT SELL THE BUILDING BECAUSE IT WAS TO
23 THE WAREHOUSE LINE AND IT COULD NOT BE SOLD BECAUSE IT WAS
24 NOT FREE TO BE SOLD. I SAID, FRANKLY, YOU CANNOT SELL THE
25 BUILDING.

1 Q PRIOR TO THAT CONVERSATION WAS THE DEFENDANT AWARE OF
2 YOUR AGGRESSIVE ACCOUNTING MANEUVER, REMOVING THE RESERVE
3 ON THE PELHAM ROAD BUILDING?

4 A YES.

5 Q DID YA'LL HAVE A CONVERSATION REGARDING THAT?

6 A YES.

7 Q AND WHAT TOOK PLACE DURING THAT CONVERSATION?

8 A EARLIER IN THE PREPARATION OF THE REPORT AND THE
9 REPORT HAD BEEN COMPLETED AND READY TO BE FILED FOR
10 PROBABLY A WEEK BEFORE IT WAS FILED. THE AUDITORS HAD
11 ASKED JUST FOR ANOTHER WEEK JUST TO LOOK AT A WEEK, HE GOT
12 AN EXTENSION FOR THE BENEFIT OF THE AUDITORS, THEY WERE
13 THE NEW AUDITORS. SO, IT WAS COMPLETELY FINALIZED AND IT
14 WAS JUST SITTING AT THE WYCHE LAW FIRM READY FOR THE
15 BUTTON TO BE PRESSED. BUT BEFORE THAT TIME AND AFTER THE
16 CONVERSATION THAT WE FIRST TALKED ABOUT FROM MR. FERRELL
17 AND MR. SHEPPARD CAME TO ME, I WAS IN MR. FERRELL'S OFFICE
18 ONE DAY AND MR. SHEPPARD SAID THAT HE HAD TURNED DOWN AN
19 OFFER FROM MR. BRASHER TO SELL THE BUILDING. AND I
20 BELIEVE THAT OFFER HAD BEEN \$2 MILLION DOLLARS, HE SAID HE
21 HAD TURNED IT DOWN. AND I SAID, YOU KNOW, YOU KNOW WHAT
22 WE ARE GOING TO DO WITH THE BUILDING, YOU KNOW THAT WE ARE
23 GOING TO REVERSE THAT RESERVE. I DON'T WANT TO HEAR THE
24 SELL OF THE BUILDING. WE STARTED TO TALK ABOUT HOW THE
25 BUILDING COULD BE USED IN THE FUTURE AND WITH THE SELL, AT

1 THAT TIME IMPAC WAS STILL A POSSIBILITY AND HOMEGOLD
2 NEEDED OTHER AVENUES OF BUSINESS. THOUGHT ABOUT KEEPING
3 THE TELEMARKETING DEPARTMENT, THAT WOULD NOT BE, THAT
4 WOULD BE ABLE TO BE KEPT EVEN THOUGH THERE WAS A
5 NON-COMPETE WITH IMPAC. THAT WAS A DIFFERENT LINE OF
6 BUSINESS THAT YOU COULD USE FOR THAT BUILDING, IT WAS A
7 TERRIBLE TIME TO SELL COMMERCIAL PROPERTY. AND I EVEN
8 SUGGESTED THAT WE PARTNER WITH MR. BRASHER TO DEVELOPE
9 THAT BUILDING FOR THE BENEFIT OF CAROLINA INVESTORS. SO,
10 HE KNEW ABOUT THE BUILDING.

11 Q AND DID HE SAY ANYTHING WITH REGARDS TO WHETHER OR
12 NOT HE WOULD SELL THE BUILDING AT THAT MEETING?

13 A AT THAT MEETING MY IMPRESSIONS WAS THAT MR. BRASHER'S
14 OFFER WAS SO RIDICULOUS THAT IT WOULD NOT BE SOLD AND I
15 KNEW IT WAS PLEDGED TO THE WAREHOUSE LINE.

16 Q IF IT IS SOLD DO YOU HAVE TO REMOVE THAT COLLATERAL
17 FROM THE WAREHOUSE LOAN?

18 A THE ONLY WAY YOU CAN SELL IT IS TO REMOVE THAT
19 COLLATERAL. AND IN FACT IT COULDN'T CLOSE ON TIME BECAUSE
20 OF THAT COLLATERAL, I COULD NOT BE, COULDN'T BE SOLD
21 BECAUSE OF THAT COLLATERAL.

22 Q HOW DID MOVING THAT COLLATERAL FROM THE HOUSEHOLD
23 LINE AFFECT THAT WAREHOUSE LINE OF CREDIT?

24 A IN DECEMBER MR. BANNIGER AND THIS WAS AFTER MR.
25 SHEPPARD AND MR. BANNIGER HAD RESIGNED. AND AFTER THEY

1 WERE FORMING EMMCO BUT MR. SHEPPARD WAS STILL MANAGING
2 HOMEGOLD MR. BANNIGER, BECAUSE HE HAD PRIOR RELATIONSHIPS,
3 BUSINESS RELATIONSHIPS AND I THINK THAT WORKED FOR
4 HOUSEHOLD, SOMEHOW CONVINCED HOUSEHOLD TO RELIEVE ON THE
5 LIEN. I DO NOT KNOW WHAT ALL HE SAID OR HOW HE DID IT BUT
6 HE DID IT AND THE LIEN WAS RELEASED IN THE BUILDING.

7 Q DID THAT AFFECT THE STABILITY OF THAT HOUSEHOLD
8 WAREHOUSE LINE OF CREDIT?

9 A IT WAS CLEAR IN DECEMBER THAT THE LINE WAS TO HAVE
10 BEEN CLOSED. IN MY CONVERSATIONS WITH MR. FERRELL I TOOK
11 AWAY THE IMPRESSION THAT THE LINE WOULD BE CLOSED AS SOON
12 AS ALL THE LOANS WERE PAID OFF THAT, YOU KNOW, THERE WERE
13 LOANS ON THE WAREHOUSE LINE THAT HAD TO BE SOLD TO CLEAR
14 UP THE LINE. AND WE WERE IN THE PROCESS OF DOING THAT AND
15 ONCE THE LOANS CAME OFF THEN THE LINE WOULD BE CLOSED.

16 Q KNOWING WHAT AN ARM LINKS TRANSACTION VALUE, THE
17 PELHAM ROAD BUILDING.

18 A YES.

19 Q WHAT SHOULD HAVE BEEN DONE ONCE THIS CONTRACT WAS
20 SIGNED WITH REGARDS TO THE 10Q?

21 A I SHOULD OF WRITTEN THE ASSET DOWN TO THAT \$4 MILLION
22 DOLLAR FIGURE AND SUBTRACTED WHATEVER SALES COMMISSION, I
23 DON'T EVEN KNOW WHAT THEY ARE RIGHT NOW. BUT I SHOULD OF
24 DONE THAT.

25 Q WAS THAT 10Q FILED?

1 A YES.

2 Q DID THE DEFENDANT KNOW THE VALUE OF THAT BUILDING
3 THAT WAS CONTAINED IN THE 10Q?

4 A HE SIGNED THAT CONTRACT.

5 Q WAS THAT, BASED ON YOUR UNDERSTANDING IN COMPLIANCE
6 WITH GAP?

7 A BASED ON MY UNDERSTANDING, KNOWING THAT A CONTRACT
8 HAD BEEN SIGNED, IT SHOULD HAVE BEEN WRITTEN DOWN TO THE
9 \$4 MILLION DOLLAR FIGURE.

10 Q THIS IS STATE'S EXHIBIT 201 AND IT IS IN EVIDENCE.
11 DO YOU RECOGNIZE ~~WHAT~~ THIS IS?

12 A YES.

13 Q AND WHAT IS THE DATE ON THIS LETTER?

14 A NOVEMBER 18TH.

15 Q AND WHAT IS THIS LETTER?

16 A IT IS A MANAGEMENT LETTER FROM HOMEGOLD TO MOORE
17 KIRKLAND WHO, THEY WERE THE NEW AUDIT FIRM.

18 Q AND DID YOU SIGN THIS LETTER ON BEHALF OF HOMEGOLD?

19 A I DID.

20 Q AND WHO ELSE SIGNED THIS LETTER?

21 A MR. FERRELL.

22 Q AND, AGAIN, AT THIS TIME ON NOVEMBER THE 18TH OF 2002
23 WHO IS STILL MANAGING HOMEGOLD?

24 A MR. SHEPPARD.

25 Q IF YOU WILL PLEASE READ SUBSECTION B.

1 A THERE ARE NO MATERIAL TRANSACTION THAT HAVE NOT BEEN
2 PROPERLY REFLECTED IN THE CONSOLIDATED FINANCIAL
3 STATEMENTS.

4 Q IS THAT AN ACCURATE STATEMENT?

5 A IT IS NOT.

6 Q AND WHAT MATERIAL TRANSACTION WAS NOT REFLECTED IN
7 THE INCOME?

8 A THE PELHAM ROAD BUILDING.

9 Q AND WHO ASKED YOU TO MANIPULATE THAT FILING?

10 A MR. SHEPPARD.

11 MR. GRIFFIN⁸ OBJECTION TO THE FORM OF THE QUESTION.
12 THE COURT: OVERRULED.

13 Q WHO DID?

14 A MR. SHEPPARD.

15 Q AFTER THE EMMCO TRANSACTION IS FINALIZED, SO JANUARY
16 1ST OF 2003?

17 A YES.

18 Q THE RETAIL MORTGAGE DIVISION IS GONE?

19 A YES.

20 Q WHAT IS THE RELATIONSHIP BETWEEN HOMEGOLD AND THE
21 DEFENDANT AT THAT TIME?

22 A THERE WAS PRETTY MUCH CONSTANT COMMUNICATION WITH MR.
23 SHEPPARD.

24 Q WHAT DO YOU MEAN BY CONSTANT COMMUNICATION?

25 A HE STILL CALLED WHENEVER HE WANTED. ANY TIME HE HAD

1 ANY KIND OF PROBLEM AT EMMCO THAT HE THOUGHT THAT I COULD
2 HELP WITH HE CALLED ME.

3 Q DID YOU EVER TALK TO THE DEFENDANT ABOUT THE NEW
4 RELATIONSHIP WITH HOMEGOLD AND EMMCO?

5 A DID I EVER TALK TO HIM ABOUT THE--

6 Q YES, ABOUT THE RELATIONSHIP BETWEEN HOMEGOLD AND NOW
7 HIS NEW COMPANY, EMMCO?

8 A ON SEVERAL DIFFERENT OCCASIONS MR. SHEPPARD WOULD
9 TALK TO ME ABOUT THAT WE WERE STILL REALLY ONE COMPANY AND
10 THAT EVENTUALLY WE WOULD PROBABLY COME BACK TOGETHER.

11 Q AND I AM SORRY, WHAT WAS, WELL, TECHNICALLY THESE ARE
12 TWO SEPARATE COMPANIES THOUGH, IS THAT NOT CORRECT?

13 A YES, THAT IS CORRECT.

14 Q AND THE WHOLE IDEA IS THAT THEY WOULD BE SEPARATE?

15 A THEY WERE SEPARATE WITH THE AGREEMENT IN BETWEEN THEM
16 WHERE THERE WAS MONEY DUE FROM ONE TO THE OTHER.

17 Q THE EARN-OUT?

18 A YES.

19 Q ARE THERE ANY OTHER WAYS THAT HOMEGOLD IS STILL
20 CONNECTED TO EMMCO?

21 A YES, I THINK I HAVE ALREADY MENTIONED THAT SOME OF
22 THE AGREEMENTS THAT WERE IN PLACE. THE LOAN SERVICING
23 AGREEMENT, FOR EXAMPLE, HOMEGOLD WAS ACTIVELY SERVICING
24 EMMCO MORTGAGE LOANS. HOMEGOLD WAS STILL PERFORMING
25 PAYROLL AND HR SERVICES FOR EMMCO. HOMEGOLD AND YOU WILL

1 PROBABLY HEAR MR. SHEPPARD SAY THAT HOMEGOLD WAS NOT ABLE
2 TO LIVE UP AS FULLY TO THE AGREEMENT TO DO ACCOUNTING
3 BECAUSE HOMEGOLD WAS NOT GIVEN ACCESS TO ENOUGH
4 INFORMATION FROM EMMCO TO FULFILL THAT DUTY ADEQUATELY.
5 HOMEGOLD WAS PROVIDING LEGAL SERVICES FROM THE LEGAL STAFF
6 TO MR. BANNIGER--

7 MR. GRIFFIN: EXCUSE ME, YOUR HONOR, MAY WE APPROACH.
8 THE COURT: SURE.

9 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
11 JURY.)

12 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
13 THERE IS A MATTER OF LAW I NEED TO TAKE UP AT THIS TIME.
14 I NEED TO DO IT OUTSIDE OF YOUR PRESENCE. DEPENDING ON
15 WHEN LUNCH GETS HERE, WE MAY GO AHEAD AND BREAK FOR LUNCH,
16 I MAY BRING YOU BACK IN A FEW MINUTES AFTER I DEAL WITH
17 THIS. PLEASE DON'T DISCUSS THE CASE, YOU ARE EXCUSED TO
18 YOUR JURY ROOM. EVERYONE ELSE STAY SEATED.

19 (WHEREUPON, THE JURY IS EXCUSED FROM OPEN COURT.)

20 THE COURT: MR. GRIFFIN, YOU HAD A MATTER YOU WANTED
21 TO PUT ON THE RECORD.

22 MR. GRIFFIN: YES, YOUR HONOR. WHEN THIS WITNESS WAS
23 TESTIFYING SHE SAID TO THE JURY, AT SOME POINT YOU WILL
24 PROBABLY HEAR MR. SHEPPARD SAY THAT HOMEGOLD COULD NOT
25 LIVE UP TO THEIR END OF THE DEAL. YOUR HONOR, WE MOVE TO

1 STRIKE THAT TESTIMONY, THAT IS AN IMPROPER STATEMENT ON
2 THE DEFENDANT, YET HE HAS A RIGHT NOT TO TESTIFY. HE HAS
3 A PRESUMPTION OF INNOCENCE AND THE BURDEN IS ON THE STATE
4 TO PROVE THE GUILT. I WOULD ASK THAT YOU STRIKE THE
5 TESTIMONY, INSTRUCT THE JURY TO DISREGARD AND ALSO GIVE A
6 CURATIVE INSTRUCTION AND REMIND THE JURY THAT MR. SHEPPARD
7 IS PRESUMED INNOCENT, THAT HE IS NOT REQUIRED TO TESTIFY
8 AND THAT ANY COMMENT FROM THE STATE BY WHAT MR. SHEPPARD
9 MAY OR MAY NOT DO IS IMPROPER. THANK YOU.

10 THE COURT: ANY OBJECTION, ANY RESPONSE TO THAT, MS.
11 PORTER?

12 MS. PORTER: NO, YOUR HONOR. YOUR HONOR, BRIEFLY,
13 THERE IS SWORN TESTIMONY OF THE DEFENDANT AND WE BELIEVE
14 IT IS IN REGARDING THAT MATTER AS A STATEMENT. WE
15 CERTAINLY DON'T OBJECT TO THE CURATIVE INSTRUCTION.

16 THE COURT: THE OBJECTION DOESN'T HAVE ANYTHING TO DO
17 WITH THE TESTIMONY THAT MAY COME IN, IT HAS TO DO WHAT
18 COULD BE CONSTRUED AS SOME SORT OF BURDEN SHIFTING. AND I
19 THINK THE DEFENDANT IS ENTITLED TO REQUESTED INSTRUCTION
20 AND I AM JUST TRYING TO FIGURE OUT EXACTLY WHAT I AM GOING
21 TO TELL THE JURY. WHEN I BRING THE JURY IN I AM GOING TO
22 INSTRUCT THEM THAT THERE WAS A STATEMENT MADE BY THIS
23 WITNESS CONCERNING THAT YOU MIGHT HEAR SUBJECT FROM THE
24 DEFENDANT AND I AM GOING TO TELL THEM THAT THAT IS
25 IMPROPER STATEMENT, THAT IT WAS NOT IN RESPONSE TO ANY

1 QUESTION ASKED BY THE STATE. THAT THE DEFENDANT IS
2 PRESUMED INNOCENT OF THE CHARGES AGAINST HIM, HE IS NOT
3 REQUIRED TO PROVE ANYTHING, THE BURDEN OF PROOF IS UPON
4 THE STATE. AND I WILL ORDER THE JURY TO STRIKE THAT
5 STATEMENT AND TO REMOVE IT FROM THEIR MINDS.

6 MR. GRIFFIN: THANK YOU, YOUR HONOR.

7 THE COURT: BRING THE JURY IN, PLEASE.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 12:30 P.M.)

10 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
11 BEFORE WE PROCEED I NEED TO POINT OUT TO YOU THAT BEFORE
12 THE BREAK THAT THIS WITNESS MADE A STATEMENT THAT YOU
13 MIGHT HEAR THE DEFENDANT SAY AND THEN SHE WENT ON TO GO
14 INTO WHAT YOU MIGHT HEAR THAT THE DEFENDANT MIGHT SAY.
15 THAT WAS AN IMPROPER STATEMENT BY THIS WITNESS, IT WAS NOT
16 IN RESPONSE TO ANY QUESTION THAT WAS ASKED BY THE
17 ATTORNEY. I WILL POINT OUT TO YOU AS I DID IN THE
18 BEGINNING OF THIS TRIAL THAT THE DEFENDANT IS PRESUMED
19 INNOCENT OF THE CHARGES AGAINST HIM. HE IS NOT REQUIRED
20 TO PROVE ANYTHING, THE BURDEN OF PROOF IS ON THE STATE TO
21 PROVE THE GUILT BEYOND A REASONABLE DOUBT. AND I WOULD
22 INSTRUCT YOU TO STRIKE THAT STATEMENT BY THIS WITNESS AND
23 TO REMOVE IT FROM YOUR MINDS AND GIVE IT NO WEIGHT AT ALL.
24 MS. PORTER, YOU MAY CONTINUE.

25 MS. PORTER: THANK YOU, YOUR HONOR.

CONTINUE DIRECT EXAMINATION

BY MS. PORTER:

Q WE WERE DISCUSSING HOW EMMCO AND HOMEGOLD WERE STILL
CONNECTED. AFTER DECEMBER 31ST OF 2002 WAS EMMCO
UTILIZING ANY OF HOMEGOLD'S STATE LICENSES?

A YES, THEY WERE.

Q AND WHAT WERE THOSE STATE LICENSEES ENABLING EMMCO TO
DO?

A EMMCO WAS USING THE HOMEGOLD LICENSES TO MAKE LOANS
IN VARIOUS STATES IN WHICH THEY DID NOT HAVE THEIR OWN
LICENSES YET.

Q AND UP UNTIL WHEN DID EMMCO UTILIZE THESE LICENSES?

A SOME OF THEM WERE UTILIZED UP UNTIL THE BANKRUPTCY.

Q WAS EMMCO ALSO UTILIZING HOMEGOLD'S WAREHOUSE LINES
OF CREDIT?

A YES, THEY WERE. BOTH THE IMPAC LINE AND THE
HOUSEHOLD LINE.

Q IN TAKING THIS IDEA TO THE HOMEGOLD BOARD AND TO THE
CAROLINA INVESTORS BOARD, DID THE DEFENDANT MAKE
REPRESENTATIONS ABOUT OBTAINING WAREHOUSE LINES OF CREDIT?

A AS I TESTIFIED BEFORE AND MR. SHEPPARD SAID THAT HE
WOULD STRENGTHEN HIS FINANCIALS, OBTAIN UP TO \$100 MILLION
DOLLARS OF CREDIT, OF WAREHOUSE LINES.

Q BUT HE WAS USING HOMEGOLD?

A HE UTILIZED HOMEGOLD'S WAREHOUSE LINES UP UNTIL THE

1 BANKRUPTCY.

2 Q WAS HE ALSO SUBLEASING OFFICE SPACE FROM HOMEGOLD?

3 A HE DID.

4 Q AND IN WHAT, WHERE WAS THAT?

5 A HE HAD A PRODUCTION UNIT, A RETAIL UNIT AND A
6 TELEMARKETING UNIT LOCATED AT BROAD RIVER ROAD WHICH WAS A
7 HOMEGOLD OFFICE AND THERE WAS A SUBLEASE SIGNED AS PART OF
8 THAT AGREEMENT. IT IS PROBABLY IN THAT PILE OF PAPER FOR
9 EMMCO TO SUBLEASE THAT OFFICE SPACE.

10 Q AND WAS EMMCO ALSO LEASING EQUIPMENT AND PROPERTY
11 FROM HOMEGOLD?

12 A WELL, THE BRANCHES THAT EMMCO PURCHASED, EMMCO WAS
13 RESPONSIBLE FOR THE PROPERTY LEASES ON THESE PROPERTIES.
14 SO, WHATEVER CITIES THEY PURCHASED THE BRANCHES IN, THOSE
15 PROPERTY LEASES WOULD BE LIABILITIES OF EMMCO.

16 Q I AM GOING TO HAND YOU WHAT HAS BEEN MARKED AS
17 STATE'S EXHIBIT NUMBER 202, WITHOUT SAYING WHAT IT IS, CAN
18 YOU IDENTIFY IT?

19 A YES.

20 Q AND WHAT, WHO PREPARED THAT?

21 A IT WAS MOST LIKELY PREPARED BY, WELL IT WAS PREPARED
22 BY THE ACCOUNTING DEPARTMENT OF HOMEGOLD.

23 Q AND WAS IT KEPT AS A PART OF BUSINESS RECORDS?

24 A YES.

25 MS. PORTER: AT THIS TIME, YOUR HONOR, I WOULD LIKE

1 TO INTRODUCE INTO EVIDENCE STATE'S EXHIBIT NUMBER 202.

2 MR. GRIFFIN: NO OBJECTION.

3 THE COURT: WITHOUT OBJECTION STATE'S 202 IS
4 ADMITTED.

5 (WHEREUPON, STATE'S EXHIBIT NO. 202 WAS ADMITTED INTO
6 EVIDENCE.)

7 Q WOULD YOU PLEASE TELL THE JURY WHAT STATE'S 202 IS?

8 A BASICALLY IT IS A SPREAD SHEET THAT RECORDS THAT
9 MONEY THAT WAS LOANED TO R-DOC, IT STARTS WITH \$5 MILLION
10 DOLLARS THAT WAS LOANED TO R-DOC. AND IT HAS LINE ITEM BY
11 LINE ITEM, HOW ~~THAT~~⁴ MONEY WAS DISBURSED. YOU SEE THAT
12 INITIAL CHECK TO R-DOC, THERE ARE THE \$3 MILLION, THAT IS
13 THE \$3 MILLION CHECK THAT WE DISCUSSED EARLIER. YOU CAN
14 SEE JUST LINE BY LINE THE DIFFERENT FUNDS THAT WERE
15 DISBURSED FOR THE BENEFIT OF EMMCO AND IT PROBABLY GOES TO
16 A SECOND PAGE. AND AT THE END HOMEGOLD HAD DISBURSED,
17 ACTUALLY A LITTLE BIT OVER THE \$5 MILLION DOLLARS FOR THE
18 BENEFIT OF EMMCO AND ALL OF THAT WENT INTO THAT R-DOC
19 NOTE.

20 Q AND WHAT IS THE SECOND PAGE OR THIRD PAGE?

21 A THIS IS THE, A RECORD OF ACCOUNTS PAYABLE INVOICES
22 THAT WAS PUT TOGETHER AFTER THE BANKRUPTCY. THESE ARE
23 ITEMS, CHARGES FOR VARIOUS SERVICES, RATHER FOR, THERE IS
24 EVERYTHING ON THERE FOR LEASES TO LEASES OF EQUIPMENT.
25 THERE IS A LOT OF TELECOMMUNICATIONS CHARGES, A LOT OF

1 PHONE CHARGES, ALL OF THESE CHARGES WERE INCURRED AT EMMCO
2 BRANCHES, EMMCO LOCATIONS, THERE IS SOME ADVERTISING
3 THERE. IT IS JUST A CONGLOMERATION OF INVOICES THAT WERE
4 FOR THE BENEFIT OF EMMCO, THAT EMMCO CHARGED TO HOMEGOLD
5 ACCOUNTS. SO THAT SOME TOTAL THERE, THE \$610 THOUSAND AND
6 SOME DOLLARS, THEY BECAME CLAIMS AGAINST HOMEGOLD ESTATE
7 AND THE BANKRUPTCY.

8 Q AND THIS FINAL PAGE?

9 A THIS IS A RECONCILIATION THAT WAS PUT TOGETHER AT MY
10 REQUEST, CHAD BARRETT ON IT WITH ME. AS EMMCO UTILIZED
11 THE HOMEGOLD WAREHOUSE LINES, EMMCO IS ACTUALLY CLOSING
12 LOANS IN HOMEGOLD'S NAMES AND PUTTING THEM ON WAREHOUSE
13 LINES. SO, THE MONEY, WHEN THOSE LOANS WERE SOLD CAME
14 INTO HOMEGOLD. AND YOU CAN SEE THERE THAT NET OF
15 WAREHOUSE EXPENSES BECAUSE THERE WERE EXPENSES ON THE
16 WAREHOUSE, RATHER FEES OR INTEREST. EMMCO WAS OWED THAT
17 \$2.2, I AM HAVING TROUBLE READING THE FORTH NUMBERS.
18 WHATEVER THAT NUMBER IS, IT MIGHT BE A 6, THE \$2.2 MILLION
19 DOLLARS REPRESENTS MONEY THAT WOULD HAVE GONE TO EMMCO.
20 AND AS WE GO DOWN IT YOU CAN SEE THAT THERE WAS ACTUALLY
21 CASH GIVEN TO EMMCO OF THAT \$865 THOUSAND AND YOU CAN SEE
22 OTHER ITEMS THAT WERE PAID OUT TO EMMCO. DURING THE
23 BANKRUPTCY FILING HOMEGOLD, IN THE BANKRUPTCY FILING, AS
24 PART OF THE DOCUMENTS SAID THAT HOMEGOLD OWED EMMCO, LLC
25 \$600 THOUSAND DOLLARS. SO, HOMEGOLD REALIZED AND

1 RECOGNIZED THAT HOMEGOLD HAD NOT PAID EMMCO \$600 THOUSAND
2 DOLLARS OF THAT \$2.2 MILLION. AS YOU SEE THAT LARGE
3 NUMBER THERE, THE PROPERTY LEASE PROJECTION COST OF \$1.3
4 MILLION, EMMCO CLOSED ALL OF THE OUTLINING BRANCHES AT
5 SOME POINT IN 2003. I THINK THEY WERE MOSTLY CLOSED AFTER
6 THE BANKRUPTCY. BUT BY DOING THAT, EMMCO ABANDONED THE
7 PROPERTY LEASES THAT WERE OUT THERE FOR THE BRANCHES THAT
8 THEY HAD PURCHASED. SO, ULTIMATELY THERE WAS \$1.3 MILLION
9 DOLLARS OF LEASE PROJECTION COST DURING THE BANKRUPTCY
10 THAT BECAME A CLAIM AGAINST THE BANKRUPTCY ESTATE.

11 Q OKAY. I WANT TO MOVE ON.

12 A OKAY.

13 Q NOW, AS CFO OF HOMEGOLD, NOVEMBER, DECEMBER AND
14 JANUARY AND ON. YOU ARE STILL WORKING CLOSELY WITH THE
15 SUBSIDIARIES OF HOMEGOLD, IS THAT CORRECT?

16 A WITH THE SUBSIDIARIES OF HOMEGOLD, AS FAR AS THE
17 RETAIL, YES.

18 Q AND WITH THE RETAIL GOING AWAY, YOU ARE STILL WORKING
19 CLOSELY WITH CAROLINA INVESTORS?

20 A I AM WORKING, I WORK WITH CAROLINA INVESTORS BUT I
21 WAS WORKING MOST CLOSELY WITH THE REMAINING UNITS IN
22 HOMEGOLD, INCORPORATED.

23 Q IN NOVEMBER, LATE NOVEMBER OF 2002 WERE YOU MADE
24 AWARE OF A LETTER THAT WAS INCLUDED IN CAROLINA INVESTORS
25 PROSPECTUS?

1 A YES, I WAS.

2 Q AND WHO MADE YOU AWARE OF THAT LETTER?

3 A IT WAS BILL KEHL FROM THE WYCHE LAW FIRM.

4 Q AND DID HE COME TO YOU PERSONALLY, DID HE WRITE YOU A
5 LETTER, DID HE CALL YOU?

6 A HE CALLED ME.

7 Q WHAT WAS THE Demeanor OF THAT PHONE CALL?

8 A MR. KEHL'S Demeanor WAS ANGRY, ANGRY.

9 Q AND BASED UPON THAT CONVERSATION WHAT DID YOU DO?

10 A I WENT TO MR. SHEPPARD AND MR. FERRELL AND MADE THEM
11 AWARE THAT THE WYCHE FIRM HAD DISCOVERED A LETTER IN THE
12 PROSPECTUS THAT HAD NOT BEEN APPROVED BY THE SOUTH
13 CAROLINA SECURITIES COMMISSION. AND THAT THE WYCHE LAW
14 FIRM HAD DEMANDED OR WAS INSISTING THAT WE GO TO THE SOUTH
15 CAROLINA SECURITIES COMMISSION AND SHOW THEM THAT LETTER.
16 I DON'T REALLY REMEMBER ANY REACTION, NOTHING THAT STANDS
17 OUT.

18 Q AND DID MR. OWEN GO TO THE SECURITIES COMMISSION?

19 A I CALLED MR. OWEN AFTER I LEFT TALKING TO MR. FERRELL
20 AND MR. SHEPPARD AND MR. OWEN TOLD ME THAT HE WOULD GO AND
21 ASKED IF FORREST AND I COULD GO WITH HIM.

22 Q AND DID YA'LL GO?

23 A YES.

24 Q WHEN?

25 A I BELIEVE IT WAS THE NEXT DAY.

1 Q AND WHO DID YOU MEET WITH?

2 A THE INITIAL MEETING WAS WITH ERIC PANTSARI.

3 Q AND DID MR. OWEN TELL THE SECURITIES COMMISSION ABOUT
4 HIS LETTER?

5 A MR. OWEN HAD A PACKET OF INFORMATION THAT HAD THE
6 LETTER UNDERNEATH SOME NEWSPAPER REPORTS. AND HE GAVE IT
7 TO MR. PANTSARI AND TOLD HIM THAT HE HAD FOUND OUT FROM
8 THE WYCHE LAW FIRM HE WASN'T SUPPOSE TO WRITE THIS LETTER
9 AND THAT HE WOULDN'T DO IT AGAIN.

10 Q HOW WAS IT PRESENTED, WAS IT, OR HOW WAS IT
11 PRESENTED?

12 A I WAS SITTING FAR DOWN THE TABLE AND I COULD ONLY SEE
13 THE PACKET AND THE NEWSPAPER REPORTS ON THE TOP. I
14 REMEMBER MR. OWEN TALKING ABOUT, THERE HAD BEEN A LOT IN
15 THE PRESS AND HE HAD WRITTEN A LETTER IN RESPONSE TO THAT
16 PRESS AND HE UNDERSTOOD HE SHOULDN'T HAVE DONE IT. AND HE
17 HANDED THE PACKET TO MR. PANTSARI AND I THINK MR. PANTSARI
18 JUST KIND OF GLANCED DOWN IT AND SAID, WELL, THIS IS NO
19 BIG DEAL AND THAT WAS THE LAST THAT WAS SAID ABOUT THE
20 LETTER.

21 Q WHAT ELSE WAS SAID AT THAT MEETING?

22 A BASICALLY I TOOK WITH ME THE INFORMATION ABOUT THE
23 SELL TO EMMCO AND SO MR. ROLAND CORNING CAME INTO THE
24 MEETING ABOUT THAT TIME AND WE TALKED ABOUT THE SELL OF
25 THE EMMCO.

1 Q HOW LONG DID YA'LL TALK ABOUT THE SELL OF EMMCO?

2 A IT WOULD OF BEEN THE BULK OF THE MEETING, I DON'T
3 REMEMBER HOW LONG WE WERE THERE.

4 Q AND HOW LONG DID YOU FOCUS ON THIS LETTER?

5 A IT WAS JUST, AS I SAID, IT WAS VERY SHORT, IT WAS
6 BEFORE MR. CORNING CAME IN.

7 Q AFTER YA'LL LEFT, WHAT DID YOU DO?

8 A I CALLED MR. KEHL AT THE WYCHE FIRM TO TELL HIM THAT
9 LARRY HAD TAKEN THE LETTER TO THE SOUTH CAROLINA
10 SECURITIES COMMISSION.

11 Q AND WHAT WAS HIS REACTION?

12 A HE JUST KIND OF--

13 MR. GRIFFIN: OBJECTION, HEARSAY.

14 THE COURT: SUSTAINED.

15 Q IN FEBRUARY OF 2003 DID YOU ATTEND A HOMEGOLD BOARD
16 MEETING ON THE 19TH?

17 A I BELIEVE THE 19TH IS THE RIGHT DATE.

18 Q I AM GOING TO HAND YOU WHAT HAS BEEN MARKED FOR
19 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NUMBER 203. DO
20 YOU RECOGNIZE IT?

21 A YES.

22 Q AND HOW DO YOU RECOGNIZE IT?

23 A BECAUSE I CREATED IT.

24 Q AND WAS IT KEPT IN THE ORDINARY COURSE OF BUSINESS AT
25 HOMEGOLD?

1 A YES.

2 MS. PORTER: AT THIS TIME, YOUR HONOR, I WOULD LIKE
3 TO INTRODUCE INTO EVIDENCE STATE'S EXHIBIT NUMBER 203.

4 MR. GRIFFIN: NO OBJECTION.

5 THE COURT: NO OBJECTION, STATE'S 203 IS ADMITTED.

6 (WHEREUPON, STATE'S EXHIBIT NO. 203 WAS ADMITTED INTO
7 EVIDENCE.)

8 Q IS THIS THE TOP SHEET, THE AGENDA OF WHAT WAS
9 DISCUSSED AT THAT MEETING?

10 A YES, IT IS.

11 Q SO, YOU DISCUSS FLEXCHECK?

12 A YES.

13 Q AND AT THIS TIME IS FLEXCHECK ON THE BOOKS OF
14 CAROLINA INVESTORS?

15 A AT THAT TIME I BELIEVE THAT THE NOTE WAS ON THE BOOKS
16 AT CAROLINA INVESTORS.

17 Q AND YA'LL DISCUSSED THE TOMLIN SETTLEMENT?

18 A TOMLIN SETTLEMENT, YES.

19 Q WAS THAT A SUBSTANTIAL AMOUNT OF MONEY THAT HOMEGOLD
20 WAS GETTING READY TO HAVE TO PAY?

21 A YES, \$10 MILLION DOLLARS.

22 Q AND WAS ALL OF THIS MATERIAL MINUTES FROM THE AUDIT
23 COMMITTEE, WHAT IS THIS?

24 A THAT IS, YOU SAW ON THE AGENDA THAT WE WERE GOING TO
25 DISCOVER THE FORTH QUARTER LOSS FOR 2002 AND THAT IS WHAT

1 THAT DOCUMENT IS. IT SHOWS WHAT THE LOSS WAS PLANNED TO
2 BE AT THAT TIME, THERE IS SOME ITEMS ON THERE THAT THE
3 AUDITORS WERE STILL LOOKING AT.

4 Q WAS ALL OF THIS GIVEN TO THE INDIVIDUALS AT THE
5 MEETING?

6 A I THINK THAT YOU HAVE ONE DOCUMENT THAT WAS WRITTEN
7 AFTER, SO THE MINUTES OBVIOUSLY CAME AFTER. I DON'T KNOW
8 WHAT ELSE YOU HAVE BUT THE FORTH QUARTER THING IS
9 DEFINITELY IN FRONT OF IT.

10 Q IF YOU WILL TAKE A MOMENT AND LOOK THROUGH THAT.

11 A I THINK THAT^B THIS ACTION OF THE CAROLINA INVESTORS
12 BOARD IS PROBABLY OUT OF PLACE WITH THIS MATERIAL. I
13 DON'T KNOW HOW IT GOT WITH THIS AND YOU HAVE MULTIPLE
14 COPIES OF ONE THING BUT EVERYTHING ELSE IS PROBABLY RIGHT.

15 Q WAS THAT PHYSICALLY HANDED TO EACH, EACH PERSON HAD
16 THEIR OWN COPY?

17 A YES, PARTICULARLY OF THE FORTH QUARTER LOSS, YES.

18 Q WHO WAS PRESENT AT THAT BOARD MEETING?

19 A IT WAS MR. STERLING, MR. FERRELL, MYSELF AND LARRY
20 OWEN.

21 Q AND IS HE NOW ON THE HOMEGOLD BOARD?

22 A YES.

23 Q SUBSEQUENT TO THAT MEETING DID YOU ATTEND A CAROLINA
24 BOARD INVESTORS MEETING?

25 A YES.

1 Q DID YOU HAND OUT THE SAME PACKET?

2 A I DON'T RECALL HANDING OUT THE SAME PACKET, NO.

3 Q DID YOU DISCUSS THE FINANCIALS WITH CAROLINA
4 INVESTORS BOARD?

5 A I DID.

6 Q VERBALLY?

7 A YES.

8 Q AND DID YOU GO LINE BY LINE AND EXPLAIN IT IN
9 DETAILS?

10 A I TALKED ABOUT A GOOD NUMBER OF THESE LINES. I
11 WOULDN'T SAY THAT I DISCUSSED THEM IN DETAIL, I TOLD THEM
12 ABOUT THE TOTAL, I TOLD THEM ABOUT THE LARGEST ITEMS ON
13 THIS LIST AND ALSO TOLD THEM WHERE THE AUDITORS WERE STILL
14 DECIDING WHETHER WE WOULD DO IT OR NOT.

15 Q WHAT ELSE DID YOU DISCUSS AT THE CAROLINA BOARD
16 MEETING THAT DAY?

17 A THAT WAS THE DAY THAT THE TOMLIN SETTLEMENT, THERE
18 WAS A FAIRNESS HEARING IN NORTH CAROLINA IN THE TOMLIN
19 SETTLEMENT. AND I GOT CALLED OUT OF THE ROOM WITH GOOD
20 NEWS ABOUT THAT SETTLEMENT. WE TALKED ABOUT THAT
21 SETTLEMENT. WE TALKED ABOUT FLEXCHECK AND THE FAIRNESS
22 OPINION THERE.

23 Q LET'S BACK UP. THE SETTLEMENT, WHAT WAS THE GOOD
24 NEWS?

25 A WELL, THE TOMLIN LITIGATION HAD GONE ON PROBABLY

1 SINCE 1998 AND HAD BEEN, THE TOMLIN PLAINTIFFS HAD BEEN
2 CERTIFIED AS A CLASS ABOUT A YEAR AND A HALF BEFORE, A
3 CLASS ACTION, IT JUST A FRIGHTENING THING FOR A BUSINESS.
4 IT MEANS YOU HAVE A LOT OF PLAINTIFFS COME TOGETHER AND
5 THERE IS LIABLE GOING TO BE A HUGE JUDGMENT AGAINST A
6 COMPANY IF THERE IS A CLASS ACTION. THE COMPLICATION WITH
7 THIS IS THAT THERE WERE TWO OTHER DEFENDANTS IN THE
8 LAWSUIT--

9 Q DID YOU GET NEWS THAT THE SETTLEMENT WAS GOING
10 THROUGH?

11 A YES.

12 Q AND HOW WOULD THAT AFFECT THE FINANCIALS OF THE
13 COMPANY?

14 A IF THE SETTLEMENT HAD NOT GONE THROUGH THESE OTHER
15 DEFENDANTS WOULD HAVE FORCED HOMEGOLD INTO BANKRUPTCY AT
16 THAT TIME.

17 Q WHEN YOU RELAYED THAT THE TOMLIN SETTLEMENT HAD GONE
18 THROUGH, OR DID YOU RELAY THAT TO THE BOARD?

19 A YES.

20 Q DID YOU EVER MENTION THAT IF THIS FALLS THROUGH, WE
21 ARE GOING TO BE FORCED INTO BANKRUPTCY?

22 A I SAID IT THE OTHER WAY AROUND, THAT WE WOULD NOT GO
23 INTO BANKRUPTCY OVER THIS BECAUSE IT HAD BEEN SETTLED.
24 SO, NO, I DID NOT SAY THE DOWNSIDE OF IT, I SAID THE
25 UPSIDE OF IT.

1 THE COURT: MS. PORTER, WE NEED TO BREAK AT THIS
2 TIME. I THINK LUNCH IS HERE FOR THE JURY, WE WILL TAKE
3 UNTIL 2:00 O'CLOCK FOR LUNCH. DON'T DISCUSS THE CASE AND
4 STEP BACK TO YOUR JURY ROOM. EVERYONE ELSE REMAIN SEATED.

5 (WHEREUPON, THE JURY WAS EXCUSED FOR A LUNCH BREAK.)

6 THE COURT: DON'T DISCUSS YOUR TESTIMONY DURING THE
7 BREAK. COUNSEL, LET ME SEE YOU AT THE BENCH, PLEASE.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

9 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

10 THE COURT: IS THE STATE READY?

11 MS. PORTER: [#]~~4~~ YES, YOUR HONOR.

12 THE COURT: ^{*} IS THE DEFENSE READY?

13 MR. GRIFFIN: YES, SIR.

14 THE COURT: GET THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
16 APPROXIMATELY 2:10 P.M.)

17 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE WILL
18 CONTINUE. MS. PORTER.

19 MS. PORTER: THANK YOU, YOUR HONOR.

20 CONTINUE DIRECT EXAMINATION

21 BY MS. PORTER:

22 Q WHEN WE BROKE FOR LUNCH WE WERE DISCUSSING THE
23 FEBRUARY 2003 CAROLINA INVESTORS BOARD MEETING?

24 A YES.

25 Q AT THAT BOARD MEETING DID YOU PRESENT A FIVE YEAR

1 PLAN?

2 A I TALKED ABOUT A PLAN THAT WAS BEING DEVELOPED.

3 Q AND WHO WAS DEVELOPING THAT PLAN?

4 A I WAS DEVELOPING IT.

5 Q AND HOW WOULD YOU CHARACTERIZE THAT MEETING, POSITIVE
6 OR NEGATIVE.

7 A IT WAS A POSITIVE MEETING.

8 Q VERY BRIEFLY, WHO DID, DID YOU DEVELOPE THIS PLAN
9 SOLELY BY YOURSELF?

10 A YES, I WAS DEVELOPING IT BY MYSELF.

11 Q AND BASED UPON THAT PLAN WHAT, IF ANYTHING, DID YOU
12 REALIZE REGARDING THE INTER-COMPANY DEBT OF CAROLINA
13 INVESTORS?

14 A I BEGAN WORKING ON THIS PLAN THAT WOULD--

15 Q IF YOU WILL JUST DO ME A FAVOR AND ANSWER MY QUESTION
16 FIRST. WHAT DID YOU REALIZE BASED ON YOUR PLAN THAT YOU
17 DEVELOPED ABOUT THE INTER-COMPANY DEBT?

18 A I REALIZED THAT WHEN THE INTER-COMPANY DEBT BEGAN TO
19 BE, WOULD BE REDUCED BY PAYING BACK CAROLINA INVESTORS, IT
20 WOULD CAUSE CAROLINA INVESTORS TO LOSE MONEY, TO RECOGNIZE
21 LOSSES.

22 Q I AM GOING TO HAND YOU WHAT IS IN EVIDENCE AS STATE'S
23 EXHIBIT NUMBER 63. DO YOU RECOGNIZE THAT?

24 A I DO KNOW WHAT IT IS, YES.

25 Q AND IF YOU COULD, TAKE A MOMENT JUST TO READ THE

1 SECOND PARAGRAPH TO YOURSELF.

2 A ALL RIGHT.

3 Q YOU TESTIFIED THAT MR. MARTIN WAS ABOUT TO BE FIRED.

4 A YES, THAT IS TRUE.

5 Q AND STATE'S NUMBER 63 HIS RESIGNATION LETTER?

6 A IT IS.

7 Q AT THE TIME THAT HE RESIGNED WOULD YOU HAD AGREED
8 WITH THE REASONS SET FORTH IN THAT LETTER?

9 A AT THE TIME I WOULD NOT HAVE AGREED.

10 Q AT THE TIME THAT YOU CREATED THIS FIVE YEAR PLAN
11 WOULD YOU AGREE WITH THAT RESIGNATION LETTER?

12 A WHEN I WORKED ON MY MODEL AND GOT IT TO THE POINT IN
13 MARCH OF 2003 WHERE I GOT TO THE THIRD YEAR OF MY MODEL
14 AND SAW THAT PAYING BACK CAROLINA INVESTORS CAUSED THEM TO
15 LOSE MONEY THEN I WAS IN TOTAL AGREEMENT WITH KEVIN
16 MARTIN'S LETTER AND I ACTED ACCORDINGLY.

17 Q WHEN YOU SAY YOU ACTED ACCORDINGLY.

18 A YES.

19 Q ON MARCH 19TH, 20TH, AND 21ST, DID YOU ENGAGE IN A
20 SERIES OF PHONE CONVERSATIONS BETWEEN HOMEGOLD AND
21 CAROLINA INVESTORS?

22 A YES.

23 Q AND BASED UPON THOSE CONVERSATIONS WHAT DID HOMEGOLD
24 DO?

25 A ON MARCH THE 19TH, IN THE AFTERNOON, I ASKED MR. OWEN

1 TO STOP SELLING JUST AS KEVIN MARTIN HAD SUGGESTED HERE.
2 I ASKED HIM TO STOP SELLING.

3 Q AND WHAT DID HOMEGOLD DO ON MARCH THE 21ST OR ABOUT
4 THERE?

5 A ON MARCH 21ST UPON ADVICE OF SEVERAL OUTSIDE COUNSEL
6 AND AUDITORS AND MY OWN DECISION IT BECAME NECESSARY TO
7 TAKE DRASTIC ACTIONS TO TRY TO FORCE CAROLINA INVESTORS TO
8 STOP SELLING. AND IN A PHONE CONVERSATION WITH A LOT OF
9 PEOPLE ON, ATTORNEYS AND ACCOUNTANTS AND CAROLINA
10 INVESTORS BOARD, I TOLD CAROLINA INVESTORS THAT HOMEGOLD
11 WOULD NO LONGER GIVE MONEY TO CAROLINA INVESTORS.

12 Q AND SUBSEQUENTLY DID HOMEGOLD DECLARE BANKRUPTCY?

13 A THE NEXT WEEK, THE FOLLOWING WEDNESDAY IT WAS DECIDED
14 BETWEEN ALL OF THE PROFESSIONALS THAT HOMEGOLD WOULD
15 DECLARE BANKRUPTCY.

16 Q LET'S GO BACK TO STATE'S EXHIBIT 202. IN YOUR
17 CAPACITY AS CFO WITH HOMEGOLD, DID YOU TRY TO COLLECT ANY
18 OF THIS DEBT THAT WAS OWED TO IT BY EMMCO?

19 A I DID.

20 Q AND HOW DID YOU, DID YOU SEND THEM A BILL, DID YOU
21 CALL THEM UP, SEND THEM A FAX.

22 A I HAD SENT VARIOUS INVOICES TO EMMCO TO COLLECT
23 VARIOUS FEES. DURING THE BANKRUPTCY I WORKED WITH
24 ATTORNEYS TO MAKE MORE FORMAL DEMANDS. THIS PARTICULAR
25 SPREAD SHEET I TOOK WITH ME TO A MEETING WITH MR. SHEPPARD

1 AND MR. GRIFFIN, AND I TOOK MR. CALLAWAY WHO WAS THE
2 HOMEGOLD BANKRUPTCY ATTORNEY AND I MET WITH MR. SHEPPARD
3 ABOUT THIS.

4 Q WHAT WAS MR. SHEPPARD'S RESPONSE TO YOUR INVOICES?

5 A MR. SHEPPARD, AT THAT PARTICULAR MEETING, BECAME, HIS
6 REACTION WAS ANGRY AND THE ONLY NUMBER THAT HE WANTED TO
7 TALK ABOUT WAS THAT HOMEGOLD OWED HIM \$2.2 MILLION
8 DOLLARS. AND IT BECAME A VERY DIFFICULT MEETING. AND HE
9 TALKED ABOUT MANY THINGS AND AT THE END OF IT HE TALKED
10 ABOUT GIVING EMMCO BACK TO HOMEGOLD.

11 Q SUBSEQUENT ~~TO~~ THAT MEETING DID THE DEFENDANT MAIL
12 HOMEGOLD AN INVOICE?

13 A THE DEFENDANT FAXED AN INVOICE TO MY FAX NUMBER AND
14 WITHIN THE MINUTES OF IT BEING DELIVERED TO MY FAX HE SENT
15 AN EMMCO EMPLOYEE TO HAND DELIVER A COPY OF THAT INVOICE
16 TO ME.

17 Q DO YOU HAVE A COPY OF THAT WITH YOU TODAY?

18 A I DO.

19 Q PLEASE PRODUCE THAT INVOICE.

20 A THIS IS MY COPY.

21 MS. PORTER: AND IF I MAY MARK IT FOR IDENTIFICATION
22 PURPOSES. THIS IS 204. AT THIS TIME, YOUR HONOR, WE
23 WOULD LIKE TO ENTER IN STATE'S EXHIBIT NUMBER 204.

24 THE COURT: ANY OBJECTION?

25 MR. GRIFFIN: NO, YOUR HONOR.

1 THE COURT: STATE'S 204 IS ADMITTED.

2 (WHEREUPON, STATE'S EXHIBIT NO. 204 WAS ADMITTED INTO
3 EVIDENCE.)

4 Q WHERE HAS THIS BEEN KEPT?

5 A I HAVE CARRIED THAT INVOICE WITH ME FOR ALMOST FOUR
6 YEARS, IT HAS BEEN IN MY PURSE WITH ME, IT HAS NEVER BEEN
7 FAR FROM ME. THE ONLY TIME I WAS NOT ABLE TO HAVE MY
8 PURSE WITH ME WAS THE DAY THAT I PLEAD GUILTY BECAUSE I
9 WAS NOT ALLOWED TO TAKE MY PURSE INTO THE COURTROOM.

10 Q AND PLEASE TELL THE JURY WHAT THIS IS?

11 A I WANT TO TELL THE JURY THAT IN THIS INVOICE MR.
12 SHEPPARD WAS DEMANDING PAYMENT OF \$34 MILLION, \$400
13 THOUSAND DOLLARS, \$34,400,000.00 DOLLARS. I WANT YOU TO
14 UNDERSTAND THAT THAT REPRESENTS 12.78 CENTS ON EACH DOLLAR
15 THAT THE PEOPLE, THE THOUSANDS OF PEOPLE DEPOSITED INTO
16 CAROLINA INVESTORS, OR IT IS THAT MUCH OF THE DEBT THAT
17 WAS OWED TO THE THOUSANDS OF PEOPLE FROM CAROLINA
18 INVESTORS. 12.74 CENTS ON THE DOLLAR AND HE IS INVOICING
19 IT FOR WHAT HE SAYS IS HOMEGOLD USING WAREHOUSE LOANS THAT
20 HE PERSONALLY GUARANTEED.

21 Q PERSONAL GUARANTEE THAT COST HIM NOTHING?

22 A EXACTLY.

23 Q MS. MILLER, YOU HAVE TESTIFIED THAT YOU ARE
24 COOPERATING WITH THE STATE?

25 A I HAVE BEEN COOPERATING WITH THE STATE.

1 Q IS THERE A PLEA AGREEMENT IN EFFECT FOR YOUR
2 COOPERATION?

3 A I AM NOT AWARE OF ANY PLEA AGREEMENT IN EFFECT.

4 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
5 IDENTIFICATION PURPOSES ONLY, STATE'S EXHIBIT NUMBER 205
6 AND SEE IF THAT REFRESHES YOUR MEMORY?

7 A YES.

8 Q DID YOU SIGN THAT PLEA AGREEMENT?

9 A I DID.

10 Q AND WHAT DATE DID YOU SIGN THIS?

11 A ON SEPTEMBER 13TH.

12 Q IS THAT THE SAME DAY YOU WERE INDICTED AND PLEAD
13 GUILTY?

14 A YES.

15 Q AND WITHIN THAT PLEA AGREEMENT, DOES THE STATE, ANY
16 WHERE IN THERE IS THE STATE RECOMMENDING ANYTHING ON YOUR
17 SENTENCE?

18 A NO.

19 Q AND DOES IT MAKE ANY REFERENCE TO ANY PROMISES MADE
20 BY THE STATE?

21 A NO.

22 Q HAVE ANY PROMISES BEEN MADE TO YOU WHATSOEVER BY THE
23 STATE?

24 A NO.

25 MS. PORTER: AT THIS TIME, YOUR HONOR, I HAVE NO

1 FURTHER QUESTIONS. YOU CAN ANSWER ANY QUESTIONS THAT MR.
2 GRIFFIN MAY HAVE.

3 (WHEREUPON, STATE'S EXHIBIT NO. 205 WAS MARKED FOR
4 IDENTIFICATION ONLY.)

5 THE COURT: MR. GRIFFIN.

6 MR. GRIFFIN: THANK YOU, YOUR HONOR.

7 CROSS-EXAMINATION

8 BY MR. GRIFFIN:

9 Q MS. MILLER, AS PART OF THAT PLEA AGREEMENT, DID YOU
10 AGREE TO COOPERATE?

11 A YES, I DID ~~AGREE~~ TO COOPERATE.

12 Q IN EXCHANGE FOR THAT AGREEMENT THE STATE HAS AGREED
13 THAT THE INDICTMENT THAT YOU PLEAD GUILTY TO, AND WE ARE
14 LOOKING AT PARAGRAPH THREE. "ENCOMPASSES ALL VIOLATIONS
15 OF STATE CRIMINAL LAW ARISING FROM THE DEFENDANT'S
16 EMPLOYMENT AT HOMEGOLD AND ITS SUBSIDIARIES." ISN'T THAT
17 CORRECT?

18 A THAT IS WHAT IT SAYS, YES.

19 Q YOU UNDERSTAND THAT TO MEAN THAT YOU ARE NOT GOING TO
20 BE CHARGED FOR ANYTHING ELSE THAT YOU MAY5 OR COULD BE
21 CHARGED TO?

22 A I PLEAD GUILTY TO THE INDICTMENT THAT I WAS INDICTED
23 FOR.

24 Q AND THAT WAS A ONE COUNT OF CONSPIRACY?

25 A IT WAS.

1 Q AND YOU ARE YET TO BE SENTENCED ON THAT COUNT?

2 A THAT IS TRUE, I HAVE NOT.

3 Q PART OF YOUR PLEA AGREEMENT THEN, IS THAT YOUR
4 SENTENCE WOULD BE HELD, DEFERRED UNTIL AFTER YOU HAVE
5 TESTIFIED IN THIS CASE?

6 A THE DAY I WENT TO PLEAD GUILTY I FULLY EXPECTED, I
7 MEAN I DIDN'T KNOW, I DIDN'T KNOW IF I WOULD BE SENTENCED
8 THAT DAY OR NOT. IT WAS NOT UNTIL I ACTUALLY PLEAD GUILTY
9 IN THE COURTROOM THAT JUDGE JOHNSON ASKED IF THE ATTORNEYS
10 WANTED TO DELAY MY SENTENCING AND THEY SAID YES. AND HE
11 SAID THAT THEY COULD GET WITH HIM WHEN THEY WERE READY.
12 THAT WAS THE FIRST I KNEW ABOUT IT.

13 Q AND SINCE, WELL DO YOU EXPECT, DO YOU KNOW WHEN YOU
14 ARE GOING TO BE SENTENCED?

15 A I HAVE NO DEFINITE DATE, NO.

16 Q DO YOU EXPECT IT WOULD BE AFTER ANOTHER TRIAL IN
17 WHICH YOU COULD TESTIFY?

18 A I RECENTLY BELIEVED, FOR ABOUT A YEAR I JUST FLAT OUT
19 DIDN'T KNOW. BUT IN PREPARATION FOR THIS TRIAL I CAME TO
20 THE CONCLUSION THAT IT WILL BE AFTER ANOTHER TRIAL, YES.

21 Q NOW, AND I BELIEVE YOU ARE CURRENTLY A THIRD YEAR IN
22 LAW SCHOOL?

23 A I AM.

24 Q AND YOU ARE ON THE LAW REVIEW?

25 A I AM.

1 Q WHAT DOES THAT MEAN?

2 A IT MEANS THAT I MADE VERY GOOD GRADES AND WORKED VERY
3 HARD.

4 Q THANK YOU. GOING BACK, MS. MILLER, YOUR EMPLOYMENT
5 WITH HOMEGOLD. YOU BEGAN WORKING, I BELIEVE IN 1996?

6 A YES.

7 Q AND THEN YOU WORKED ALL THE WAY THROUGH, IT RUNS UP
8 TO AS VICE-PRESIDENT?

9 A I WAS HIRED AS A CHIEF TECHNOLOGY OFFICER AND THEN
10 RECEIVED ADDITIONAL PROMOTIONS.

11 Q AND THEN AT THE END, BY THE TIME OF BANKRUPTCY YOUR
12 POSITION WAS VICE-PRESIDENT?

13 A I BECAME AN EXECUTIVE VICE-PRESIDENT YEARS BEFORE AND
14 I HAD THAT TITLE AMONG MANY OTHERS.

15 Q AND YOU WERE ON THE BOARD OF HOMEGOLD?

16 A YES.

17 Q PRIOR TO MR. SHEPPARD'S COMPANY BEING MERGED WITH
18 HOMEGOLD, THE BOARD CONSISTED OF MR. JACK STERLING,
19 CORRECT?

20 A HE WAS THE CHAIRMAN OF THE BOARD, YES.

21 Q AND MR. TEE HOOPER?

22 A YES.

23 Q AND MR. PHILPOTT?

24 A HE CAME ON, I THINK HE WAS ON THE BOARD WHEN I JOINED
25 THE COMPANY.

1 Q SO, BACK IN '95 AND MR. HOOPER WAS ON THE BOARD IN
2 '95 AS WELL?

3 A I JOINED IN '96. AND YES, HE WAS ON THE BOARD THEN.

4 Q AND THEN IN ADDITION TO THOSE BOARD MEMBERS THERE
5 WERE SOME OTHERS WHO CAME OFF AT THE TIME OF THE MERGER?

6 A YES, THAT IS CORRECT.

7 Q AND THEN AT THE MERGER YOU STILL HAD MR. PHILPOTT,
8 MR. STERLING AND MR. HOOPER ON THE BOARD?

9 A YES, THEY WERE ALL STILL ON THE BOARD.

10 Q NOW, MR. STERLING WAS ON THE BOARD BEFORE THE MERGER,
11 WAS HE NOT?

12 A I BELIEVE SO.

13 Q AND HE WAS ON THE AUDIT COMMITTEE AFTER THE MERGER?

14 A YES.

15 Q MR. TEE HOOPER WAS ON THIS COMPENSATION COMMITTEE
16 BEFORE THE MERGER?

17 A HE MAY WELL HAVE BEEN, THEY CHANGED ROLES.

18 Q YOU DON'T KNOW?

19 A I DON'T KNOW FOR SURE, NO.

20 Q AND AFTER THE MERGER MR. STERLING WAS STILL CHAIRMAN
21 OF THE BOARD?

22 A YES, DIRECTLY AFTER THE MERGER HE WAS STILL CHAIRMAN
23 OF THE BOARD.

24 Q AND HE CAME IN THE OFFICE UP IN GREENVILLE THREE OR
25 FOUR DAYS A WEEK, HE WAS STILL ACTIVELY INVOLVED?

1 A HE WAS STILL ACTIVELY INVOLVED AT THAT TIME, YES.

2 Q NOW, WHEN THE ACCOUNTING DEPARTMENT MOVED DOWN TO
3 COLUMBIA IN THE SUMMER OF 2001, DID YOU, WAS HE STILL
4 INVOLVED LONG DISTANCE, IF YOU WILL.

5 A YES, HE WAS STILL INVOLVED LONG DISTANCE.

6 Q NOW, YOU WENT OVER THE TERMS OF THE HOMESENSE MERGER
7 WITH THE JURY AND ONE OF THE TERMS, AND I AM NOT SURE YOU
8 DISCUSSED. BUT THERE WAS, DO YOU RECALL THERE BEING A
9 VOTING AGREEMENT?

10 A THERE WAS A VOTING AGREEMENT. I COULDN'T TELL YOU
11 THE DETAILS, IT ~~IS~~ COMPLICATED AND THAT IS PROBABLY WHY I
12 DIDN'T MENTION IT.

13 Q OKAY. BUT COMPLICATED BUT NEVERTHELESS IT RESTRICTED
14 MR. SHEPPARD'S ABILITY TO VOTE THIS STOCK OF THE VOTERS?

15 A ONE THING THAT MR. STERLING TOLD ME IS THAT THERE WAS
16 STILL CONTROL OVER VOTING, SO, YES.

17 Q AND THAT IT WAS IMPORTANT THAT EVEN AFTER THE MERGER
18 THAT THE EXISTING COMPANY STILL BE, "IN CONTROL", TO
19 MAINTAIN THIS NOL OR DEFERRED TAX ASSET, CORRECT?

20 A YES, THERE IS INFORMATION IN THE PROXY ABOUT THE NOL.

21 Q AND THAT IF AS A RESULT OF THE MERGER, IF IT WAS
22 HOMEGOLD BEING PURCHASED BY HOMESENSE THEN THAT VALUABLE
23 ASSET WOULD OF BEEN LOST?

24 A THAT IS TRUE, IT IS TRUE.

25 Q SO, THE MERGER WAS STRUCTURED IN A WAY TO HAVE, NOT

1 ONLY THE MOST TAX ADVANTAGEOUS OUTCOME FOR HOMEGOLD,
2 RIGHT?

3 A THAT IS TRUE.

4 Q AND AS PART OF THAT STRUCTURE IT REQUIRED THAT
5 HOMEGOLD STILL BE IN CONTROL OF THE COMPANY, THE PEOPLE
6 AND THE SHAREHOLDERS PREEXISTING MR. SHEPPARD?

7 A YES, MY UNDERSTANDING IS THAT A CHANGE IN CONTROL
8 DOES END THE VALUE OF THE NOL.

9 Q AND THAT NOL WAS CONTINUED ON UP UNTIL THE, THE NOL
10 VALUE WAS CONTINUED ON UP UNTIL THE GOING CONCERN?

11 A IT ROLLS OFF IN A PERIOD OF TIME SO IT IS NOT LIKE
12 THE ONE THAT WAS THERE AT THE MERGER STAYED CONSTANT. YOU
13 ARE LOSING SOME, YOU ARE GAINING NEW.

14 Q NOW, YOU ALSO DISCUSSED THE DISSATISFACTIONS THAT MR.
15 SHEPPARD HAD WITH THE MERGER AS IT TURNED OUT. ONE THING
16 YOU MENTIONED OF THE STOCK HAD DELISTED?

17 A YES.

18 Q AND THERE WAS AN 8K THAT WAS FILED AND YOU WENT OVER
19 THAT WITH THE PROSECUTOR?

20 A YES.

21 Q AND BUT THE DAY THE 8K WAS FILED AND THE DELISTING
22 WAS JUST A FEW DAYS IN ADVANCE OF THE EFFECTIVE DATE OF
23 THE MERGER?

24 A IT WAS IN ADVANCE OF THE MERGER, YES.

25 Q BUT AT THE TIME THE AGREEMENTS HAD BEEN REACHED ABOUT

1 THESE ARE THE TERMS OF THE DEALINGS THAT WE WANT TO SUBMIT
2 TO THE SHAREHOLDERS, HOMEGOLD WAS STILL LISTED AND TRADED
3 PUBLICLY, WERE THEY NOT?

4 A WHEN THE PROXY, YES, IT WAS STILL TRADED PUBLICITY.

5 Q NOW, YOU ALSO MENTIONED THAT MR. SHEPPARD COMPLAINED
6 THAT THERE WAS LACK OF MONEY AVAILABLE?

7 A TRUE.

8 Q AND THEN YOU WERE ASKED, WELL, MR. SHEPPARD GOT HIS
9 \$3 OR \$4 MILLION DOLLARS. AND YOU SAID, YES, THAT IS
10 RIGHT, ON THAT TESTIMONY?

11 A YES.

12 Q NOW THAT IS NOT THE MONEY THAT MR. SHEPPARD WAS
13 COMPLAINING ABOUT?

14 A NO.

15 Q HE WAS COMPLAINING THERE NOT BE OPERATING CAPITAL
16 WITHIN THE COMPANY TO ALLOW THE COMPANY TO PAY THE BILLS
17 NECESSARY TO OPERATE AND TO MAKE THE LOANS REQUIRED TO BE
18 PROFITABLE?

19 A THAT WAS THE CONTEXT, YES.

20 Q SO, IT WASN'T THE QUESTION THAT HE GOT \$3 OR \$4
21 MILLION DOLLARS BUT THE QUESTION IS, IS THERE MONEY IN THE
22 BANK TO RUN THIS COMPANY?

23 A THAT WAS TRUE.

24 Q AND THEN THE LAST ISSUE THIS LACK OF WAREHOUSE LOANS?

25 A TRUE.

1 Q AND YOU WERE ASKED, WELL, ISN'T IT TRUE THAT IN MAY,
2 AT THE TIME OF THE MERGER WE HAD THIS CIT LINE WORTH \$100
3 MILLION DOLLARS?

4 A TRUE.

5 Q BUT ISN'T IT ALSO TRUE THAT WITHIN A FEW MONTHS OF
6 THAT THE CIT LINE OF \$100 MILLION DOLLARS IS SLOWLY
7 STEPPING DOWN BECAUSE CIT DID NOT WANT TO LOAN MONEY TO
8 HOMEGOLD ANYMORE, RIGHT?

9 A YES, I SAID THAT, YES.

10 Q AND THAT CREATED SIGNIFICANT PROBLEMS FROM HOMEGOLD'S
11 ABILITY TO OPERATE FROM THAT POINT FORWARD?

12 A YES.

13 Q AND YOU MENTIONED AS YOU REVIEWED THE CIT LINES AND
14 SOME COVENANTS, NEGATIVE COVENANTS THAT THERE IS A
15 PROVISION IN THERE PERTAINING TO THE INTER-COMPANY DEBT
16 BETWEEN CAROLINA INVESTORS AND HOMEGOLD?

17 A NO, IT RELATES TO THE AMOUNT OF DEBT TO THE
18 INVESTORS.

19 Q I SEE. AND NOW, THAT CIT LINE AND THAT COVENANT AND
20 THAT PREEXISTED MR. SHEPPARD EVER COMING ON HOMEGOLD?

21 A THERE WERE SEVERAL AMENDMENTS TO IT, I DO NOT
22 REMEMBER THE DATE OF THE LAST AMENDMENT.

23 Q AND LOSING THE CIT, \$100 MILLION DOLLAR WAREHOUSE
24 LINE, WAS IT JULY OR AUGUST OF 2000?

25 A IT WAS STEP DOWN, IT WAS STILL IN PLACE.

1 Q IT WAS STEPPED DOWN COMPLETELY BY THE END OF THE
2 YEAR?

3 A MR. STERLING ARRANGED FOR ALL LOANS TO BE PAID OFF
4 THE LINE AND TOWARDS THE END OF DECEMBER OF THAT YEAR.

5 Q AND WE ARE TALKING ABOUT 2000?

6 A YES.

7 Q AND MR. SHEPPARD, WELL LET ME BACK UP. MR. STERLING
8 TOLD YOU BEFORE THE MERGER, HAD THERE NOT BEEN A MERGER,
9 IF WE DON'T ACCOMPLISH THIS MERGER HOMEGOLD WILL PROBABLY
10 BE BANKRUPT?

11 A WE HAD THAT⁴ CONVERSATION.

12 Q DO YOU RECALL IN THESE DISCUSSIONS WITH MR. SHEPPARD
13 IN THE ADVANCE OF THE MERGER, DID YOU EVER TELL HIM, IF WE
14 DON'T DO THIS HOMEGOLD IS PROBABLY GOING TO BE BANKRUPT?

15 A WELL, DURING THAT DISCUSSION IS WHEN I WAS TALKING
16 ABOUT IT, THE ONE I MENTIONED.

17 Q THEN YOU HAVE GOT, MOVE FORWARD TO THE STEP DOWN OF
18 THE CIT WAREHOUSE LOAN. MR. SHEPPARD THEN HAS TO GO OUT
19 AND SECURE ADDITIONAL WAREHOUSE LINES TO ALLOW THE COMPANY
20 TO OPERATE, CORRECT?

21 A I BELIEVE THAT HOMEGOLD STARTED USING LINES THAT MR.
22 SHEPPARD HAD WITH HOMESENSE. RMST COMES TO MIND AND HE
23 HAD LINES WITH HOUSEHOLD AND I KNOW THAT THERE WAS A
24 HOUSEHOLD LINE. AND MR. FERRELL WENT OUT AND FOUND LIKE A
25 TEMPORARY LINE AT A HIGH RATE.

1 Q AND ALL OF THOSE LINES THAT WERE THEN SECURED FOR
2 HOMEGOLD WERE PERSONALLY GUARANTEED BY MR. SHEPPARD, WERE
3 THEY NOT?

4 A I DON'T BELIEVE HE PERSONALLY GUARANTEED THAT
5 TEMPORARY LINE BUT I AM SURE HE DID THE RMST AND THE
6 HOUSEHOLD.

7 Q AND YOU WERE SHOWN, YOU WERE, AND IT DESCRIBES A
8 WAREHOUSE USAGE FEE OF TWO PERCENT ON LOAN VOLUME.

9 A THAT IS WHAT THAT INVOICE HAS IN IT.

10 Q I UNDERSTAND IT. AND YOU WERE ALSO AWARE THAT
11 HOMEGOLD WAS PAYING THIS COMPANY CALLED NEW FREEDOM TWO
12 PERCENT TO USE THEIR WAREHOUSE LINES TO CLOSE?

13 A THAT COULD WELL BE THE LINE THAT, I REMEMBER IT AT A
14 HIGH INTEREST RATE.

15 Q AND AT THE TIME EMMCO WAS HAVING TO DO THE SAME THING
16 WITH U.S. MORTGAGE, PAY TWO PERCENT?

17 A I THINK ONE TIME MR. SHEPPARD TOLD ME THAT THEY WERE
18 DOING THAT.

19 Q AND YOU ALSO KNEW THAT THIS DISPUTE, THAT MR.
20 SHEPPARD WAS EXTREMELY DISSATISFIED ABOUT THE PERSONAL
21 GUARANTEE OF WAREHOUSE LINES OF A, OF WHAT HE THOUGHT TO
22 BE A PUBLICITY TRADED COMPANY AFTER THE MERGER?

23 A I KNEW HE WAS UNHAPPY ABOUT IT, YES.

24 Q AND YOU WERE SHOWN, AND YOU WERE ASKED QUESTIONS
25 ABOUT THIS INDEMNITY AGREEMENT THAT WAS CANCELED?

1 A YES.

2 Q AND SO MR. SHEPPARD SIGNED THE LEDGER, HE IS UPSET
3 ABOUT THE COMPANY BEING DELISTED AND NOT MAKING MUCH
4 OPERATING CAPITAL AND NOW HE IS HAVING PERSONAL GUARANTEE
5 WAREHOUSE LINES?

6 A TRUE.

7 Q AND HOMEGOLD ON THE OTHER HAND OF THE EQUATION IS
8 UPSET BECAUSE THEY THOUGHT HOMESENSE WAS BRINGING IN MORE,
9 BRINGING POSITIVE EQUITY TO THE BALANCE SHEET OF HOMEGOLD
10 BECAUSE OF ELLIOTT DAVIS' TREATMENT OF HOMESENSE BOOKS,
11 THAT DIDN'T TURN OUT TO BE THE CASE, CORRECT?

12 A I AM CONFUSED ABOUT THE VERY LAST PART OF YOUR
13 QUESTION. YOU SAID SOMETHING ABOUT ELLIOTT DAVIS.

14 Q WELL, HOMEGOLD WAS DISSATISFIED ABOUT THE EQUITY THAT
15 HOMESENSE BROUGHT TO THE MERGER?

16 A I KNEW THAT HOMEGOLD WAS LOOKING FOR \$10 MILLION
17 DOLLARS WORTH OF LOANS THAT WERE MISSING.

18 Q AND THAT IS THE EXTENT OF YOUR KNOWLEDGE ON THAT?

19 A I THINK I TALKED ABOUT THE FACT THAT THE GOODWILL HAD
20 TO BE HIGHER THAN WAS PLANNED.

21 Q AND THEN YOU, YOU WERE, A BOARD RESOLUTION WAS
22 INTRODUCED THROUGH YOU THAT, WHERE THE BOARD OF HOMEGOLD
23 APPROVED THIS CANCELLATION OF THE INDEMNIFICATION
24 AGREEMENT?

25 A YES.

1 Q AND THAT IS THE SAME RESOLUTION THAT ALSO APPROVED A
2 PAY INCREASE FOR MR. SHEPPARD?

3 A YOU WOULD HAVE TO SHOW ME THE DOCUMENT AGAIN.

4 Q IF I CAN FIND IT. MS. MILLER, IT IS STATE'S EXHIBIT
5 198 AND THAT IS THE, I MAY STAND CORRECTED BUT THIS IS THE
6 HOMEGOLD FINANCIAL, INC. UNANIMOUS WRITTEN CONSENT
7 RESOLUTION AND IT SAYS, PERTAINING TO THE ANNUAL
8 SHAREHOLDERS MEETING, THE SIZE OF THE BOARD, COMPENSATION
9 OF MR. SHEPPARD, NEW MEMBERS OF AUDIT, COMPENSATION
10 COMMITTEE, ETCETERA. AND DO YOU RECALL THAT DOCUMENT?

11 A MY RECOLLECT⁴ION OF THAT DOCUMENT IS THAT IS NOT THE
12 DOCUMENT THAT I AM LOOKING TO THE RESOLUTION OF THE
13 PROBLEMS FROM THE MERGER. I REMEMBER A DOCUMENT FROM
14 JANUARY OF 2001.

15 Q I THINK YOU ARE RIGHT. AND THERE WAS A SEPARATE
16 RESOLUTION AUTHORIZING THIS CANCELLATION OF THE
17 INDEMNIFICATION AGREEMENT?

18 A AND THE FACT THAT BOTH HOMEGOLD AND HOMESENSE AGREED
19 TO RELEASE ALL CLAIMS AGAINST EACH OTHER.

20 Q UNDER THE COMPENSATION PROVISION PARAGRAPH, AT THE
21 BOTTOM IT SAYS, ONCE AGAIN MR. SHEPPARD IS PERSONAL
22 GUARANTEE OF HOMEGOLD'S PERFORMANCE UNDER ITS WAREHOUSE
23 CREDIT FACILITY WITH HOUSEHOLD. AND INCREASES LINE OF
24 CREDIT WITH IMPAC FROM \$10 TO \$25 MILLION, A LINE OF
25 CREDIT FROM \$10 MILLION TO \$25 MILLION. AND THAT WAS PART

1 OF THE CONSIDERATION OF INCREASING MR. SHEPPARD'S PAY?

2 A MY MEMORY FROM THAT TIME IS THAT MR. STERLING FOUND
3 OUT THAT MR. SHEPPARD HAD GIVEN HIMSELF A RAISE. AND WENT
4 BACK AND WROTE LANGUAGE IN THE PROXY WHICH IS LANGUAGE
5 SIMILAR TO WHAT YOU SEE THERE THAT BACKDATED THE RAISE AND
6 MADE IT SUCH THAT THE COMPENSATION COMMITTEE APPEARED TO
7 IMPROVE THAT RAISE.

8 Q AND WE WILL GO THROUGH THE BOARD MEMBERS. BUT IT HAS
9 GOT MR. STERLING WHO OBVIOUSLY PREDATED MR. SHEPPARD AT
10 HOMEGOLD?

11 A YES.

12 Q AND YOU HAVE GOT MR. SHEPPARD AND PAUL BANNIGER WHO
13 WAS RECRUITED BY MR. SHEPPARD. AND THEN YOU HAVE GOT
14 SIGNATURES FOR MR. PHILPOTT WHO PREDATED MR. SHEPPARD.
15 AND YOU HAVE GOT A SIGNATURE FOR MR. HOOVER WHO PREDATED
16 MR. SHEPPARD?

17 A YES.

18 Q AND SO WE HAVE FIVE PEOPLE ON THE BOARD AND THREE ARE
19 GENTLEMEN WHO HAD BEEN WITH HOMEGOLD FOR QUITE SOME TIME
20 AND HAD NO PRIOR LEADS WHATSOEVER WITH MR. SHEPPARD?

21 A THAT'S TRUE.

22 Q AND THOSE THREE VOTED TO APPROVE?

23 A THAT'S TRUE.

24 Q NOW, I AM NOT GOING TO SPEND THE TIME GOING OVER THE
25 DOCUMENT BUT THERE WAS AN ASSUMPTION AGREEMENT THAT WAS

1 ENTERED INTO SOME TIME AROUND, I GUESS, SPRING OF 2001
2 WHERE THE DEBT FROM CAROLINA INVESTORS WAS ASSUMED BY THE
3 PARENT CORPORATION, HOMEGOLD?

4 A YES.

5 Q AND YOU TALKED ABOUT THAT. YOU EXPLAINED THAT THAT
6 WAS NEEDED TO BE DONE SO THAT HOMEGOLD, INC., THE MORTGAGE
7 ARM OF THE CONGLOMERATE COULD BE LICENSED IN STATES THAT
8 REQUIRE A POSITIVE NET WORTH?

9 A I HAD BEEN TOLD THAT THE REASON THE DEBT WAS MOVED
10 WAS TO GIVE HOMEGOLD, INCORPORATED A POSITIVE NET WORTH.

11 Q AND THAT THE FINANCIAL STATEMENTS THAT HAD TO BE
12 FILED WITH THOSE LICENSING AGENCIES HAD TO BE AUDITED
13 FINANCIAL STATEMENTS?

14 A YES.

15 Q AND THAT TRANSACTION AND ASSUMPTION OF THE DEBT WAS
16 AUDITED BY ELLIOTT DAVIS?

17 A YES.

18 Q AND YOU SAID, I BELIEVE, IT WAS THE IDEA OF BILL LONG
19 AND RHONDA JOHNSON?

20 A THAT WAS MY UNDERSTANDING FROM MR. STERLING.

21 Q AND THEN BILL LONG WAS THE GENERAL COUNSEL OF
22 HOMEGOLD, WAS HE NOT?

23 A AT THAT TIME, YES.

24 Q HE HAD BEEN THE GENERAL COUNSEL OF HOMEGOLD FOR WELL
25 BEFORE THE MERGER WITH MR. SHEPPARD'S COMPANY?

1 A PROBABLY A FEW MONTHS OR MAYBE EVEN A YEAR, YES.

2 Q AND I DON'T KNOW IF YOU HAVE SEEN IT, BUT EVEN THOUGH
3 STAND ALONE FINANCIALS FOR HOMEGOLD, INC. DISCLOSED THE
4 DEBT BECAUSE HOMEGOLD, INC. WAS A GUARANTOR OF THE DEBT
5 FROM THAT POINT FORWARD?

6 A I KNOW IT WAS TALKED ABOUT.

7 Q ARE YOU ALSO AWARE THAT CAROLING INVESTORS, THE NOTES
8 AND DEBENTURE ARM OF THE CONGLOMERATE, WHEN THEY FILED FOR
9 REGISTRATION STATEMENT AT THE ATTORNEY GENERALS OFFICE
10 SECURITIES DIVISION THEY WOULD ATTACH THAT COMPLETE SET OF
11 THE ASSUMPTION AGREEMENT, THE NOTE AND THE GUARANTEE
12 AGREEMENTS WITH THEIR REGISTRATION?

13 A I WAS NOT AWARE OF THAT, NO.

14 Q NOW, ANOTHER THING THAT YOU MENTIONED IN YOUR
15 TESTIMONY, MS. MILLER, WAS THAT YOU HAD CONVERSATIONS WITH
16 MR. SHEPPARD, MR. FERRELL AND MR. STERLING FOLLOWING THIS
17 MARCH MEETING AT THE WYCHE LAW FIRM WHERE THIS GOING
18 CONCERN CAME UP?

19 A YES.

20 Q AND I BELIEVE YOU TESTIFIED THAT MR. SHEPPARD'S
21 REACTION WAS THAT, SOMETHING TO THE EFFECT THAT THE
22 AUDITORS SPRUNG SOMETHING ON US?

23 A THAT IS WHAT I REMEMBER.

24 Q THAT THE GOING CONCERN WAS UNEXPECTED?

25 A THAT IS WHAT I REMEMBERED THEM SAYING, YES.

1 Q AND THAT MR. STERLING'S COMMENTS TO YOU WAS, WE JUST
2 HAVE TO WORK THAT MUCH HARDER?

3 A YOU PARAPHRASED WHAT I SAID.

4 Q DID I PARAPHRASE IT ACCURATELY?

5 A IT WAS TO STAY FOCUSED, TO NOT BE WORRIED THAT THE
6 COMPANY WAS GOING TO GO UNDER, JUST STAY FOCUSED AND WORK
7 HARD, THAT COMPANIES HAVE SURVIVED THAT.

8 Q YOU MENTIONED THAT MR. SHEPPARD DEMANDED FROM YOU
9 MORE THAN ONE-HUNDRED PERCENT?

10 A YES.

11 Q AND HE DEMANDED AND OTHERS FROM AROUND HIM MORE THAN
12 ONE-HUNDRED PERCENT?

13 A YES.

14 Q AND HE GAVE FROM HIMSELF MORE THAN ONE-HUNDRED
15 PERCENT?

16 A YES.

17 Q AND SO WHEN THIS GOING CONCERN ISSUE CAME IN THE
18 RATIONALE FROM MR. SHEPPARD WAS, LET'S JUST STOP WORKING
19 AND SEE HOW LONG WE CAN COLLECT MONEY, WASN'T IT?

20 A NO, WE ALL KEPT WORKING.

21 Q AND DOUBLED YOUR EFFORTS IN A LOT OF WAYS?

22 A YES.

23 Q AND IN EFFORTS TO MAKE THIS COMPANY SUCCEED?

24 A YES.

25 Q ANOTHER THING THAT YOU TALKED ABOUT WAS KEVIN MARTIN

1 AND THE RESIGNATION LETTER TO MR. MARTIN. AND YOU
2 MENTIONED THAT BEFORE THAT RESIGNATION LETTER, BEFORE HE
3 RESIGNED THAT THE AUDIT COMMITTEE HAD MET TO APPROVE MR.
4 MARTIN'S FIRING, CORRECT?

5 A THE AUDIT COMMITTEE DECIDED TO HAVE HIM FIRED, THAT
6 WAS THE RECOMMENDATION.

7 Q OKAY, THEY HAD MADE THAT RECOMMENDATION?

8 A YES.

9 Q AND HOW FAR IN ADVANCE WAS THAT, DO YOU RECALL MR.
10 MARTIN'S RESIGNATION?

11 A IT WAS NOT MORE THAN TWO WEEKS.

12 Q AND DURING THAT PROCESS DID YOU HAVE ANY DISCUSSION
13 WITH DAVID GAFFNEY ABOUT WE ARE TAKING THIS ISSUE UP OF
14 MR. MARTIN'S EMPLOYMENT?

15 A I DON'T RECALL TALKING TO DAVID GAFFNEY ABOUT IT, NO.

16 Q AT SOME POINT IN THAT TWO WEEK WINDOW BEFORE MR.
17 MARTIN RESIGNED, MR. GAFFNEY RESIGNED, DID HE NOT?

18 A YES.

19 Q I THINK YOU SAID PAUL BANNIGER WAS THE ONE THAT
20 RAISED CONCERNS ABOUT MR. MARTIN, HIM NOT GIVING
21 ONE-HUNDRED PERCENT?

22 A I HEARD THAT FROM MR. BANNIGER, YES.

23 Q AND THEN YOU WERE IN THE PROCESS OF TRACKING THESE
24 MORTGAGE, EXCUSE ME, BROKER LOAN FEES?

25 A YES.

1 Q AND THERE WERE CONCERNS FOR MR. BANNIGER THAT PERHAPS
2 THERE WAS FRAUD BEING COMMITTED?

3 A AT THE BRANCHES, YES.

4 Q AND SO THAT, AS LONG, IN ADDITION TO THE ACCOUNTS
5 RECEIVABLES, NO ONE WAS JUST ASKING FOR THE MONEY FROM
6 HOMEGOLD, IT WAS OWED TO THEM, CORRECT. THE ACCOUNTS
7 RECEIVABLES, RECORDS OF WHAT IS OWED TO HOMEGOLD IN THESE
8 TRANSACTIONS THAT WAS NOT BEING RECORDED ON THE BOOKS?

9 A THAT IS WHAT I FOUND, YES.

10 Q SO, THE EFFORT HAD TO GO BACK AND LOOK AT ALL OF
11 THOSE LOANS AND THEN ASK FOR THE MONEY?

12 A YES.

13 Q AND THAT GENERATED A FAIR AMOUNT OF MONEY THAT CAME
14 INTO HOMEGOLD?

15 A I THINK I TESTIFIED THAT WE DIDN'T FIND ANY FRAUD BUT
16 CERTAINLY WE BEGIN TO COLLECT FEES, YES.

17 Q MILLIONS OF FEES?

18 A THE NUMBER THAT I RECALL THAT WAS AN ISSUE WAS ABOUT
19 A MILLION DOLLARS IN CASH AND IT TURNED OUT NOT TO BE THAT
20 MUCH MONEY.

21 Q NOT MUCH MISSING OR NOT MUCH, YOU DIDN'T COLLECT
22 THAT?

23 A THE FEAR THAT IT COULD OF BEEN A MILLION DOLLARS OF
24 CASH THAT WAS MISSING. AND MY MEMORY IS THAT IT WAS NOT
25 THAT MUCH MONEY.

1 Q NOW, AFTER MR. MARTIN'S FIRING THERE WERE THREE
2 MEETINGS. TWO MEETINGS THAT YOU HAD WITH THE ACCOUNTING
3 STAFF?

4 A EXCUSE ME, BUT MR. MARTIN WAS ACTUALLY RESIGNED.

5 Q I APOLOGIZE, YOU ARE RIGHT. AFTER MR. MARTIN
6 RESIGNED THERE WERE TWO MEETINGS THAT YOU HELD WITH THE
7 ACCOUNTING STAFF?

8 A YES.

9 Q AND THE, MAYBE BOTH MEETINGS YOU SAID, WELL, HE WAS
10 GOING TO BE FIRED?

11 A I ONLY TOLD ^{AT} THAT TO THE SENIOR PEOPLE IN CONFIDENCE.

12 Q AND THIRDLY, AND SO THERE WAS A SENIOR PEOPLE MEETING
13 AND THEN THERE WAS A GENERAL ACCOUNTING STAFF MEETING?

14 A YES.

15 Q THEN THE THIRD MEETING WAS BACK OVER REED AVENUE HERE
16 IN LEXINGTON WITH MR. SHEPPARD AND HIS SENIOR ACCOUNTING
17 FOLKS?

18 A YES.

19 Q AND IN THAT MEETING THAT IS WHERE MR. SHEPPARD WAS
20 PUT ON HIS HARD FACE, WAS VERY STERN WITH THE ACCOUNTING
21 STAFF?

22 A THAT IS AN APPROPRIATE WAY, YES.

23 Q AND DURING THAT MEETING, THERE WERE ISSUES WITH THE
24 ACCOUNTING DEPARTMENT NOT PRODUCING REPORTS ON A TIMELY
25 FASHION?

1 A YES.

2 Q AND THE ACCOUNTING DEPARTMENT NOT GIVING ONE-HUNDRED
3 PERCENT?

4 A EXACTLY WHICH IS WHAT I ADDRESSED IN MY MEETING THAT
5 I HAD WITH THE SENIOR PEOPLE.

6 Q AND SO IN ADDITION, I GUESS, THE LINE OF FIRE, IF YOU
7 WILL, THAT YOU DID AND MR. SHEPPARD REITERATED, HE WAS
8 ALSO BROUGHT UP ONCE AGAIN HOW THE BACK END LOAN FEES WERE
9 BEING KEPT?

10 A THAT IS THE MAIN ISSUE THAT I REMEMBER BEING BROUGHT
11 UP, YES.

12 Q AND THAT HE WANTED THAT DONE HIS WAY?

13 A YES.

14 Q BUT YOU ALSO DESCRIBED THE COMPROMISE THAT WAS
15 REACHED IN THIS MEETING?

16 A YES, THERE WAS.

17 Q SO, THAT HE GAVE A LITTLE BIT?

18 A YES, HE DID.

19 Q AND THAT COMPROMISE WAS, INTERNAL TRACKING
20 MECHANISMS, WE ARE GOING TO TREAT INCOME, WHEN WE CLOSE
21 THE LOAN REGARDLESS IF IT COMES ON THE FRONT END OR THE
22 BACK END BUT WHEN WE HAVE TO REPORT PUBLICLY AND FOR
23 AUDITED AND PUBLIC FILINGS WE ARE GOING TO DO IT THE OLD
24 WAY, CORRECT?

25 A THE PROBLEM IS THAT INTERNAL REPORTING INCLUDES

1 REPORTS THAT GO TO CAROLINA INVESTORS.

2 Q IS THAT THE COMPROMISE THAT WAS REACHED?

3 A THE COMPROMISE THAT WAS REACHED WAS TO BRING IN THE
4 LOAN FEES EARLY AT THE MONTH END AND AT ANY POINT WHILE IT
5 WAS DONE THAT WAY AND IT WASN'T DONE THAT WAY VERY LONG
6 BECAUSE THE AUDITORS SAID NOT TO DO IT. BUT DURING THAT
7 PERIOD OF TIME HAD MR. OWEN ASKED FOR A FINANCIAL
8 STATEMENT OF CAROLINA INVESTORS, IT WOULD OF INCLUDED
9 THAT.

10 Q IS THAT THE COMPROMISE THAT WAS REACHED, MS. MILLER?

11 A THE COMPROMISE THAT WAS REACHED WAS TO BRING THE LOAN
12 FEE INCOME EARLY ON MONTHS WITHIN QUARTER.

13 Q FOR INTERNAL TRACKING?

14 A THOSE ARE INTERNAL REPORTS.

15 Q AND THAT FOR PUBLIC FILINGS AND THAT IT WOULD BE
16 ACCOUNTED FOR IN AN OLD WAY AND THE BACK END MONEY WOULD
17 NOT BE BOOKED UNTIL--

18 A THAT IS WHAT I SAID, BEFORE THE END OF THE QUARTER,
19 BEFORE THE PUBLIC REPORTS IT WOULD BE CORRECTED.

20 Q NOW, THE AUDITORS CAME IN AND THIS IS MOORE KIRKLAND?

21 A YES, MOORE KIRKLAND.

22 Q THEY SAID YOU CAN'T DO IT TWO WAYS, YOU HAVE TO DO IT
23 ONE WAY, IT HAS TO BE IN FRONT END AND BACK END?

24 A NO, MY UNDERSTANDING IS THAT YOU COULDN'T BRING IT IN
25 EARLY.

1 Q WELL, UNDER CERTAIN CIRCUMSTANCES YOU UNDERSTOOD THAT
2 YOU COULD BRING IT IN EARLY?

3 A WHEN THERE IS A LEGAL DOCUMENT IN PLACE AS THERE
4 BECAME ONE LATER ON, WHEN THERE IS A LEGAL DOCUMENT IN
5 PLACE THERE IS A SALES DOCUMENT THAT COMMITS TO BUY LOANS
6 AT A CERTAIN PRICE YOU CAN DO IT EARLY.

7 Q AND YOU HAD THAT DOCUMENT IN PLACE WHEN YOU WERE, FOR
8 THE THIRD QUARTER Q IN 2002?

9 A YES.

10 Q WE ARE GOING TO GET TO THAT IN A LITTLE BIT.

11 A OKAY.

12 Q BUT BACK END, I GUESS THE TIME PERIOD WE ARE TALKING
13 ABOUT IS AUGUST, SEPTEMBER?

14 A AUGUST.

15 Q AUGUST, WHICH IS ON THE THIRD QUARTER OF 2000?

16 A YES.

17 Q AND WE HAVE GOT THE SHORT WINDOW OF TIME WHEN
18 INTERNALLY IT IS BEING TRACKED, WHEN THE MONEY COMES IN,
19 EXCUSE ME, WHEN THE LOAN IS CLOSED WE ARE GOING TO COUNT
20 FRONT END MONEY AND BACK END MONEY?

21 A YES.

22 Q AND THAT LASTED HOW MANY WEEKS?

23 A I AM NOT SURE HOW MANY WEEKS. I KNOW I HEARD NOT
24 LONG AFTER THAT THE AUDITORS SAID YOU COULDN'T DO IT.

25 Q MR. MARTIN RESIGNED, WHAT, AUGUST 20TH?

1 A IT WAS SOMETIME TOWARDS THE END OF AUGUST, YES.

2 Q AND THE THIRD QUARTER CLOSES AT THE END OF SEPTEMBER?

3 A WELL, THE PROBLEM IS THAT EVEN THOUGH THE QUARTER
4 CLOSES ON SEPTEMBER 30TH YOU ARE STILL DOING MONTHLY
5 REPORTS, THE ACCOUNTING DEPARTMENT WAS SO FAR BEHIND IT
6 TOOK A LONG TIME AFTER MR. MARTIN LEFT FOR ME TO EVEN SEE
7 AN AUGUST REPORT.

8 Q AND WHAT WE ARE TALKING ABOUT ON THIS ACCOUNTING
9 TREATMENT IS BASICALLY, IT IS NOT MADE UP INCOME, IT IS
10 JUST THE TIMING OF WHEN YOU RECOGNIZED THE INCOME.

11 A WELL, IT WOULD BE MADE UP INCOME IF THAT LOAN DIDN'T
12 REALLY SELL OR IF THAT LOAN DIDN'T REALLY SELL AT THAT
13 PRICE. THAT IS WHY YOU CAN DO IT IF YOU HAVE A FIRM LEGAL
14 AGREEMENT IN PLACE.

15 Q SO, THEN AT SOME POINT AND TIME IN THE THIRD QUARTER
16 YOU GOT A FIRM LEGAL AGREEMENT IN PLACE?

17 A YES.

18 Q SO, YOU GOT THAT FIRM LEGAL AGREEMENT IN PLACE BEFORE
19 THE END OF SEPTEMBER THE 30TH, DID YOU NOT?

20 A I DON'T REMEMBER THE DATE OF IT BUT IT WAS IN PLACE
21 FOR THE Q'S. SO, IT HAD TO HAVE BEEN SOMEWHERE IN THAT
22 PERIOD OF TIME.

23 Q AND THE SEPTEMBER THE 30TH?

24 A IT CUTS OFF THE FINANCIALS AT SEPTEMBER THE 30TH.

25 Q SO, SOME TIME BETWEEN AUGUST THE 20TH AND SEPTEMBER

1 THE 30TH THERE WAS AN AGREEMENT STRUCK ON THE WAREHOUSE
2 LOANS?

3 A YES.

4 Q THAT IS A SIX WEEK PERIOD OF TIME, AUGUST 20TH TO
5 SEPTEMBER THE 30TH?

6 A YES.

7 Q BUT YOU DON'T REMEMBER WHEN THAT AGREEMENT WAS
8 STRUCK?

9 A NO, I AM SURE THERE MUST BE A COPY SOME WHERE.

10 Q OKAY. AND THAT WAS, AND SO THE THIRD QUARTER Q, WHEN
11 YOU ARE BOOKING ~~BACK~~ END MONEY, YOU ARE BOOKING IT BECAUSE
12 THERE IS AN AGREEMENT?

13 A YES, BOOKING IT ACCORDING TO THE AGREEMENT.

14 Q AND ACCORDING TO YOUR UNDERSTANDING OF THE GENERALLY
15 ACCEPTED ACCOUNTING PRINCIPLES?

16 A ACCORDING TO MY UNDERSTANDING, THAT IS IN COMPLIANCE.

17 Q NOW, YOU WERE NOT AN ACCOUNTANT BY TRAINING?

18 A NO.

19 Q AND YOU DID NOT HAVE A CPA?

20 A NO.

21 Q BUT THERE WERE ACCOUNTANTS BY TRAINING WORKING
22 UNDERNEATH YOU?

23 A YES.

24 Q IN THE ACCOUNTING DEPARTMENT?

25 A YES.

1 Q AND MR. SHANE SMITH WAS ONE?

2 A YES.

3 Q I DON'T KNOW WHO, CHAD BARRETT WAS ANOTHER ONE?

4 A YES.

5 Q THERE WERE MULTIPLE ACCOUNTING DEGREES, INDIVIDUALS
6 WORKING IN THE ACCOUNTING DEPARTMENT?

7 A YES.

8 Q SO, YOU ARE NOT GOING IT ALONE DURING THAT, YOU WERE
9 CONSULTING WITH TRAINED ACCOUNTANTS?

10 A YES.

11 Q AND YOU THREW OUT ACRONYMS LIKE FASB?

12 A FASB.

13 Q BUT YOU HAVE A GIVE AND TAKE WITH THE ACCOUNTANTS,
14 INTERNAL ACCOUNTANTS AND THEN THE OUTSIDE ACCOUNTING FIRM,
15 MOORE KIRKLAND?

16 A YES.

17 Q I AM GOING TO COME BACK TO THIS POINT, I AM GOING TO
18 GO BACK TO THE HOMESENSE MERGER, THIS IS ONE POINT I LEFT
19 OUT. YOU HAD TALKED ABOUT THE VOTING AGREEMENT AND YOU
20 MENTIONED THIS NONRECOURSE LOAN AMOUNT, RIGHT?

21 A YES.

22 Q AND IN THAT, UNDER THE ORIGINAL TERMS OF THE
23 AGREEMENT MR. SHEPPARD WAS RECEIVING PREFERRED STOCK OF
24 HOMEGOLD, CORRECT?

25 A YES, THERE WERE 10 MILLION SHARES ISSUED.

1 Q AND THAT PREFERRED STOCK WAS SUPPOSE TO GIVE A
2 GUARANTEED DIVIDEND OF \$200 THOUSAND DOLLARS A QUARTER,
3 \$800 THOUSAND DOLLARS A YEAR.

4 A IT HAD A RATE, I THINK, OF LIKE SEVEN AND A HALF
5 PERCENT, SOMEWHERE LIKE THAT.

6 Q WELL, IF IT WAS EIGHT PERCENT IT WOULD BE \$800
7 THOUSAND?

8 A OKAY. I DON'T THINK IT WAS EIGHT, BUT.

9 Q RIGHT AFTER THE MERGER IT WAS DISCOVERED THAT
10 HOMEGOLD COULDN'T PAY MR. SHEPPARD HIS \$750 THOUSAND OR
11 HIS \$800 THOUSAND DOLLAR DIVIDEND ON THIS PREFERRED STOCK?

12 A THAT IS TRUE, COULD NOT BE PAID.

13 Q SO WHAT HAPPENED WAS, INSTEAD OF GIVING A DIVIDEND ON
14 THE STOCK MR. SHEPPARD THEN GETS, "BONUS", A SALARY BONUS
15 FOR THE SAME AMOUNT?

16 A THAT IS MY UNDERSTANDING.

17 Q SO, IF THE PART OF HIS COMPENSATION, WHEN IT SAYS HE
18 GETS A SALARY OF X DOLLARS, A LARGE PART OF THAT, WHAT
19 SHOULD OF BEEN DIVIDENDS ON THE FIRST STOCK WOULD HAVE TO
20 BE CONVERTED TO A BONUS?

21 A THAT'S TRUE.

22 Q AND IN ADDITION TO THAT BONES AMOUNT, WHETHER IT IS
23 \$200 THOUSAND DOLLARS A QUARTER OR SOMETHING LESS, ROUGHLY
24 \$115 THOUSAND DOLLARS OF THAT WOULD BE WITHHELD AND
25 APPLIED TO THE INTEREST PAYMENTS ON THIS NOTE?

1 A THAT IS CORRECT.

2 Q AND YOU SAID NO PRINCIPAL WAS PAID DOWN ON THE NOTE
3 BUT OVER THE COURSE OF MR. SHEPPARD'S EMPLOYMENT WITH
4 HOMEGOLD THESE INTEREST PAYMENTS WERE APPLIED?

5 A THAT'S TRUE.

6 Q NOW, YOU MENTIONED THESE, WITH THE TRACKING REPORTS
7 THAT YOU PREPARED FOR MR. BANNIGER?

8 A YES.

9 Q THAT WAS TO TRACK, TO SEE HOW WELL WE ARE DOING ON
10 PROJECTIONS?

11 A WELL, IT COVERED ALL ASPECTS OF PRODUCTION.

12 Q AND THAT MR. BANNIGER WAS THE ONE WHO SET THE
13 PRODUCTION GOALS?

14 A HE DID.

15 Q AND YOU ALSO TALKED ABOUT WHEN YOU BECAME CFO BACK IN
16 SEPTEMBER OF 2002 THAT THERE WERE SOME AGGRESSIVE
17 ACCOUNTING TREATMENTS THAT YOU TOOK?

18 A YES.

19 Q AND BEING AGGRESSIVE, I GUESS AGGRESSIVE AS BEING
20 OPPOSED TO CONSERVATIVE?

21 A YES.

22 Q AND ONE THAT YOU DESCRIBED THAT HAD ALREADY BEEN
23 TAKEN PLACE WAS THE REED AVENUE, THE HOMEGOLD BUILDING OUT
24 HERE WAS BEING CARRIED ON THE BOOKS OF CAROLINA INVESTORS?

25 A YES.

1 Q BUT APPARENTLY THE TITLE HAD NEVER BEEN TRANSFERRED?

2 A I FOUND THAT OUT IN 2003.

3 Q AND YOU SAID THAT WAS DONE UNDER AN EARLIER CFO?

4 A YES.

5 Q IT WAS MR. MARTIN?

6 A I BELIEVE IT WAS RHONDA JOHNSON.

7 Q THEN YOU TALKED ABOUT HOW THIS RESTRICTED CASH HAD
8 BEEN TRANSFERRED OVER TO THE BOOKS OF CAROLINA INVESTORS?

9 A YES.

10 Q AND THIS CASH IS CASH ON THE DEPOSIT, IF YOU MISS THE
11 DEPOSIT MONEY ON ~~THESE~~ THESE WAREHOUSE LINES?

12 A YES.

13 Q THIS DEPOSIT MONEY OF THE WAREHOUSE LINES, THAT IF
14 THE LOANS OR SOMETHING FALLS APART ON THE WAREHOUSE LINES
15 THE LENDER CAN GO TO THE DEPOSIT?

16 A YES.

17 Q AND THESE WAREHOUSE LINES ALSO, IF THERE IS NOT
18 ENOUGH DEPOSIT THERE THEY CAN GO TO THE ONE THAT WHO IS
19 GIVING THE PERSONAL GUARANTEE?

20 A WELL, THEY WOULD PROBABLY GO MORTGAGE FIRST AND CASH
21 AND THEN THE COMPANY AND THEN THE PERSON.

22 Q NOW, YOU KNOW WAREHOUSE LENDERS AT ANY POINT AND TIME
23 AGREED TO ALLOW THIS MONEY TO BE ASSIGNED OVER TO CAROLINA
24 INVESTORS?

25 A I HAVE NO KNOWLEDGE OF THAT.

1 Q ANOTHER ITEM THAT YOU TALKED ABOUT WAS THE TREATMENT
2 OF RESIDUAL LOAN POOLS?

3 A YES.

4 Q NOW, THOSE RESIDUAL LOAN POOLS WERE ON THE BOOKS OF
5 CAROLINA INVESTORS PREDATING 2000?

6 A YES.

7 Q THEY WERE PUT THERE WHEN KEVIN MAST WAS CFO?

8 A EXCEPT FOR THE DAYVIEW SECURITIZATIONS THAT WERE
9 ORIGINATED AFTER MR. SHEPPARD CAME.

10 Q BUT THE BULK OF THEM FROM MR. GIDDENS AND MR. MAST?

11 A YES, THE BULK WERE, YES.

12 Q AND I THINK THAT YOU TESTIFIED THAT THE MONIES THAT
13 WERE COMING IN SHOULD OF GONE OVER TO CAROLINA INVESTORS?

14 A YES.

15 Q THEY WEREN'T GOING OVER TO CAROLINA INVESTORS?

16 A YES.

17 Q BUT WHAT WAS HAPPENING, THE BOOK ENTRY WAS BEING
18 MADE, WAS IT NOT, THAT WOULD INCREASE THE INTER-COMPANY
19 DEBT FOR MONIES THAT SHOULD OF GONE OVER TO CAROLINA
20 INVESTORS?

21 A YES.

22 Q IT WAS BEING ACCOUNTED FOR?

23 A YES.

24 Q IT JUST WASN'T GOING INTO THE, BACK TO THE BANK OF
25 AMERICA ACCOUNT?

1 A YES, AND THAT IS WHY THEY SAID THE CASH WAS NOT GOING
2 BACK.

3 Q AND THAT CAUSED THE INTER-COMPANY DEBT TO INCREASE?

4 A YES.

5 Q NOW, WHEN YOU SAT DOWN AND MET WITH THE SECURITIES
6 COMMISSION, SOME POINT AND TIME YOU WERE REQUESTED AND
7 ASKED TO REPORT IF HOMEGOLD WAS STILL TAKING MONEY FROM
8 CAROLINA INVESTORS?

9 A YES, THAT WAS IN FEBRUARY OF 2003.

10 Q AND YOU AND YOUR STAFF PREPARED A REPORT TO, THAT MR.
11 OWEN DELIVERED TO THE SECURITIES COMMISSION SHOWING THAT
12 FROM SEPTEMBER FORWARD THAT HOMEGOLD HAD ACTUALLY RETURNED
13 MORE THAN \$1.6 MILLION DOLLARS TO CAROLINA INVESTORS?

14 A THAT REPORT WAS PREPARED FOR ME BY SHANE SMITH AND I
15 ACTUALLY TOOK IT TO THE SECURITIES COMMISSION.

16 Q AND THAT REPORT WAS ACCURATE TO THE DEGREE THAT WE
17 ARE TALKING ABOUT MONEY COMING IN OFF OF THE STREET INTO
18 CAROLINA INVESTORS AND BEING UPLOADED TO HOMEGOLD?

19 A YES.

20 Q AND DURING THAT PERIOD OF TIME MORE MONEY WENT BACK
21 TO CAROLINA INVESTORS?

22 A THE SPREAD SHEET SHOWED ABOUT \$1.2 MILLION THAT HAD
23 GONE TO CAROLINA INVESTORS. THE PROBLEM WAS THE EXAMINER
24 FOUND AN ERROR IN THAT SPREAD SHEET THAT, THE ACTUAL
25 PERSON WHO WORKED ON THAT HAD MADE AN ERROR, A MILLION

1 DOLLAR ERROR THE WRONG WAY. SO IT ENDED UP JUST BEING
2 \$200 THOUSAND DOLLARS.

3 Q SO, WAS IT \$200 THOUSAND DOLLARS?

4 A GOING DOWN.

5 Q STILL GOING DOWN?

6 A YES.

7 Q SO, MORE MONEY WAS GOING DOWN, IT JUST WASN'T \$1.6,
8 IT WAS \$200 THOUSAND?

9 A IT WAS TRACKING MONEY ONLY FROM THE SEPTEMBER PERIOD
10 SO IT DID NOT REFLECT THE ENTIRE YEAR.

11 Q I UNDERSTAND. AND I GUESS IT ALSO DIDN'T ACCOUNT FOR
12 THE INCREASE IN THE INTER-COMPANY DEBT THAT IS BEING
13 CAUSED THROUGH THE USE OF THE MONEY COMING IN TO THE
14 RESIDUAL LOAN?

15 A RIGHT, IT WAS JUST TO LOOK AT THE MONEY COMING IN THE
16 DOOR.

17 Q NOW, FOR THE WHOLE YEAR OF 2002 CAROLINA INVESTORS
18 TOOK IN, I GUESS, NET CASH, MONEY IN LESS THAN WHAT THEY
19 PAID OUT, NET FOR THE WHOLE YEAR WAS ABOUT \$26 MILLION
20 DOLLARS, WAS IT NOT, FOR 2002?

21 A WE WOULD HAVE TO LOOK, I AM SURE THERE ARE CHARTS
22 SOMEWHERE THAT SHOW THAT.

23 Q I AM GOING TO SHOW YOU DEFENDANT'S EXHIBIT 16 AND ASK
24 YOU TO, IS THAT A SPREAD SHEET OF CAROLINA INVESTORS OF
25 2002?

1 A YES.

2 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO MOVE
3 DEFENDANT'S EXHIBIT 16 INTO EVIDENCE.

4 THE COURT: ANY OBJECTION?

5 MS. PORTER: NO, YOUR HONOR.

6 THE COURT: DEFENDANT'S 16 IS ADMITTED.

7 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 16 WAS ADMITTED
8 INTO EVIDENCE.)

9 Q NOW, WHAT THIS DOCUMENT SHOWS, MS. MILLER, DOES IT
10 NOT, THAT UNDER THE DEPOSIT CATEGORIES IS THE MONEY COMING
11 IN THE DOORS OF CAROLINA INVESTORS?

12 A YES.

13 Q AND UNDER THE REDEMPTIONS THAT IS MONEY GOING OUT THE
14 DOOR OF CAROLINA INVESTORS?

15 A YES.

16 Q AND THAT FOR THE YEAR STARTING IN JANUARY, FOR THE
17 YEAR ALL THE WAY DOWN TO THE BOTTOM THE TOTAL DEPOSITS ARE
18 \$107,527,058.00, CORRECT?

19 A YES.

20 Q AND THE TOTAL MONEY GOING OUT IS \$80,560,546.00
21 DOLLARS?

22 A YES, AND THAT IS THE LAST COLUMN THAT I CAN
23 PERSONALLY READ, BY THE WAY.

24 Q AND THEN, DO YOU SEE THE NET WOULD BE THE DIFFERENCE,
25 \$26,958,512.00 DOLLARS.

1 A I DO SEE THAT, I CAN'T QUITE TELL IF IT IS A 6 OR A 5
2 BUT I WILL TAKE YOUR WORD FOR IT.

3 Q SO, IN THE WHOLE YEAR OF 2002, FROM JANUARY TO
4 DECEMBER, ABOUT \$26.9 MILLION MORE CAME IN TO CAROLINA
5 INVESTORS THAN WENT OUT?

6 A YES.

7 Q NOW, AT THE BEGINNING OF THE YEAR, JANUARY, AT THE
8 END OF THE YEAR, DECEMBER OF 31 OF 2001 THE INTER-COMPANY
9 DEBT FROM HOMEGOLD OR THE PARENT COMPANY BACK TO CAROLINA
10 INVESTORS WAS ROUGHLY \$144 MILLION DOLLARS?

11 A AND AGAIN, YOU HAVE TO PUT THE SHEET UP OR THE CHART
12 UP FOR US TO BE SURE OR I CAN LOOK AT MY NOTES.

13 Q SURE, YOU CAN LOOK AT YOUR NOTES.

14 A AND YOU SAID THE END OF--

15 Q 12/31/01 AND IT IS THE DEBT THAT WAS IMPAIRED BY
16 ELLIOTT DAVIS.

17 A \$144.3 MILLION.

18 Q OKAY. NOW, YOU HAVE GOT \$144.3 MILLION OF
19 INTER-COMPANY DEBT AT 12/31/01?

20 A YES.

21 Q AND THEN IF YOU ADD \$26.9 MILLION OF NET CASH
22 RECEIVED DURING THE YEAR AND I CAN'T DO IT IN MY HEAD BUT
23 IT IS ROUGHLY \$170 SOMETHING MILLION DOLLARS, CORRECT?

24 A ROUGHLY YES.

25 Q IF YOU TAKE THE INTER-COMPANY DEBT AND THEN YOU ADD

1 CASH IN THE DOOR YOU GET A LITTLE NORTH OF \$170 MILLION
2 DOLLARS?

3 A I WOULD THINK SO WITHOUT TRYING TO ADD IT.

4 Q FROM YOUR NOTES THE INTER-COMPANY DEBT THAT WAS
5 CALCULATED AT THE EVE OF BANKRUPTCY IS NORTH OF \$250 OR
6 \$60 MILLION DOLLARS, WAS IT NOT?

7 A WELL, I THINK THAT NUMBER YOU ARE REFERRING TO WAS A
8 PRELIMINARY LOOK AT IT WHERE I THINK THAT THE RESIDUAL
9 POOLS WERE PUT IN THE WRONG CATEGORY. THE PROBLEM IN THE
10 BANKRUPTCY IS THAT THERE WAS NEVER ACTUALLY ANY YEAREND
11 NUMBER PUBLISHED⁴ AND THE CREDITORS COMMITTEES EVENTUALLY
12 JUST AGREED TO LET IT ALL BE RESOLVED UNDER ONE TRUSTEE.
13 SO, THERE WERE MANY INTERIM STATEMENTS THAT, THE BOTTOM
14 LINE IS THAT THE INVESTORS WERE OWED WHAT THEY WERE OWED
15 AND EVERYONE STOPPED FIGHTING ABOUT THE INTER-COMPANY.

16 Q BUT, SO THE BOTTOM LINE INTER-COMPANY DEBT NUMBER,
17 WHATEVER THAT IS AND IF YOU DON'T MIND, GET OUT YOUR NOTES
18 AND TELL THE JURY HOW THE NUMBERS, THE LAST INTER-COMPANY
19 DEBT NUMBER THAT WAS USED?

20 A FOR THE 2002?

21 Q SURE.

22 A MY NOTES ACTUALLY DON'T HAVE A NUMBER FOR THAT.

23 Q OKAY. BUT DO YOU RECALL THAT THE INTER-COMPANY, THE
24 LAST INTER-COMPANY DEBT NUMBER WAS, WAS NOT A NUMBER THAT
25 WAS AGREED UPON?

- 1 A RIGHT.
- 2 Q AND IT WASN'T--
- 3 A IT JUST WASN'T AGREED ON.
- 4 Q IT JUST WASN'T AGREED UPON?
- 5 A RIGHT.
- 6 Q AND SO THERE IS NO, IT JUST WASN'T AGREED UPON?
- 7 A THAT IS RIGHT.
- 8 Q THE LAST NUMBER AGREED UPON IS \$144 MILLION AT 12/31,
- 9 AT THE END OF '01?
- 10 A THAT WAS THE LAST YEAREND AUDIT, YES.
- 11 Q WHAT WE DO ^{KNOW} IS THAT THERE IS ANOTHER \$26 MILLION
- 12 DOLLARS THAT CAME IN THE DOOR?
- 13 A YES.
- 14 Q AND PROBABLY SOME MONEY USED ON THESE RESIDUAL POOLS?
- 15 A OH, YES.
- 16 Q AND THEN THERE IS JUST, HERE THERE IS ACCUMULATED
- 17 INTEREST?
- 18 A AND THAT INTEREST IS NOT THE INTER-COMPANY INTEREST.
- 19 SO YOU WILL KNOW, THAT WAS INTEREST THAT WAS ACCRUING ON
- 20 THE DEBT OWED TO THE INDIVIDUAL INVESTORS. SO, THAT IS
- 21 NOT THE SAME THING.
- 22 Q OKAY. BUT CLEARLY, LET'S BACK UP. IF YOU GO TO
- 23 THESE LAST FEW MONTHS, SAY WHEN, IF YOU LOOK AT AUGUST UP
- 24 THERE?
- 25 A YES.

1 Q IN THAT MONTH SOME \$9 MILLION DOLLARS CAME IN TO
2 CAROLINA INVESTORS BUT \$14 MILLION DOLLARS WENT OUT?

3 A YES.

4 Q AND THEN IN SEPTEMBER SOME \$7 MILLION DOLLARS CAME IN
5 AND ANOTHER \$10 MILLION WENT OUT?

6 A YES.

7 Q AND THEN THE LAST THREE MONTHS IT WAS \$6.1 MILLION
8 COMES IN AND \$5.1 MILLION GOES OUT?

9 A YES.

10 Q AND THEN \$5.4 MILLION COMES IN AND \$4.6 GOES OUT?

11 A YES.

12 Q AND THEN THE LAST DECEMBER MONTH, MORE MONEY GOES
13 OUT, \$5.6 ROUGHLY GOES OUT AND \$5.5 COMES IN?

14 A YES.

15 Q NOW, GETTING BACK TO THE THIRD QUARTER Q AND YOU
16 MENTIONED THAT YOU CAPITALIZE CERTAIN EXPENSES AND USING
17 AGGRESSIVE ACCOUNTING METHODS?

18 A YES.

19 Q AND ONE OF THE CAPITALIZATION THINGS THAT YOU DID
20 WERE THE OPENING OF NEW OFFICES THAT KEVIN MAST HAD
21 PREVIOUSLY KEPT EXPENSES ON OPENING THE OFFICES?

22 A NO, HE HAD EXPENSED THOSE ITEMS. THAT IS WHAT I
23 THOUGHT I TESTIFIED TO.

24 Q SO, HE HAD PREVIOUSLY EXPENSED THEM?

25 A YES.

1 Q AND YOU WERE CAPITALIZING THEM?

2 A YES.

3 Q AND CONSULTING WITH THE ACCOUNTANTS?

4 A I CAN'T SAY THAT I CONSULTED WITH ANY ACCOUNTANTS ON
5 THAT, I DO KNOW THAT MOORE KIRKLAND HAD ASKED TO REVERSE
6 SOME OF THE THINGS THAT WERE LIKE FOR PRIVATE JET TRIPS,
7 THOSE THINGS WERE REVERSED. SO, THE ACCOUNTANTS HAD
8 BOOKED THOSE ITEMS.

9 Q AND THEN YOU DESCRIBED THE TREATMENT OF THE PELHAM
10 ROAD BUILDING?

11 A YES.

12 Q NOW, THE PELHAM ROAD BUILDING HAD BEEN ON THE BOOKS
13 OF CAROLINA INVESTORS, HOMEGOLD, I AM NOT SURE WHAT IT IS
14 FOR, \$10 MILLION DOLLARS?

15 A AT ONE POINT IT WAS, YES.

16 Q AND THEN ELLIOTT DAVIS CAME IN AND SET UP A RESERVE
17 OF \$1.5?

18 A YES, THEY DID THAT AT THE YEAREND, THE PRIOR YEAREND.

19 Q YEAREND?

20 A 2001.

21 Q SO, AT YEAREND 2001 IT IS ON THE BOOKS OF \$8 AND A
22 HALF MILLION DOLLARS?

23 A YES.

24 Q AND BY TAKING THAT RESERVE THAT WAS, FOR THAT YEAR
25 WAS A \$1.5 MILLION DOLLAR EXPENSE ITEM?

1 A YES.

2 Q THEN THE THIRD QUARTER OF 2002 YOU REVERSED THAT
3 RESERVE?

4 A YES.

5 Q AND PUT IT BACK ON THE BOOKS OF \$10 MILLION DOLLARS?

6 A YES.

7 Q AND YOU DID THAT IN CONSULTATION WITH MOORE KIRKLAND?

8 A I DID THAT IN CONSULTATION WITH THE IN-HOUSE
9 ACCOUNTING STAFF.

10 Q AND YOU DESCRIBED A FASB RULING 112?

11 A I HOPE I HAVE THE RIGHT NUMBER.

12 Q BUT AT LEAST THERE WAS SOME ACCOUNTING STANDARD THAT
13 YOU HAD RESEARCHED AND GOTTEN SOME COMFORT?

14 A YES, AND I HAD WRITTEN DOCUMENTATION FOR MOORE
15 KIRKLAND TO LOOK AT ON THAT.

16 Q AND WHAT THIS ACCOUNTING STANDARD, AS YOU UNDERSTOOD
17 WAS THAT THE FAIR MARKET VALUE AT ANY POINT AND TIME WAS
18 NOT DETERMINATIVE IF IT IS AN INCOME PRODUCING ASSET?

19 A I AM TRYING TO THINK ABOUT THE RIGHT WORD THAT I NEED
20 TO THINK ABOUT. IT IS THAT, AN INCOME ASSET DOES NOT HAVE
21 TO IMPAIRED.

22 Q OKAY.

23 A THAT IS THE CORRECT TERM.

24 Q AND THAT THIS BUILDING UNDER AGGRESSIVE ACCOUNTING
25 TREATMENT, YOU CONSIDERED IT TO BE AN INCOME PRODUCING

1 ASSET OR THE COMPANY DID BECAUSE IT WAS PLEDGED AS
2 COLLATERAL FOR A WAREHOUSE LINE?

3 A YES.

4 Q AND THE WAREHOUSE LINE IS THE FUEL OF THE COMPANY?

5 A YES.

6 Q WHEN MR. SHEPPARD SIGNED A CONTRACT FOR THAT, THE
7 SELL OF THE BUILDING, IT WAS STILL SERVING AS COLLATERAL?

8 A YES.

9 Q IT WAS STILL CONSIDERED AN INCOME PRODUCING ASSET?

10 A YES.

11 Q AND UNDER YOUR UNDERSTANDING OF FASB RULING 112 IT
12 DID NOT NEED TO BE IMPAIRED?

13 A THE PROBLEM IS THAT I UNDERSTAND NOW THAT A
14 CONSERVATIVE ACCOUNTANT WOULD HAVE GIVEN PRIORITY TO THE
15 SALES CONTRACT.

16 Q AND AN AGGRESSIVE ACCOUNTANT MAY NOT GIVE PRIORITY TO
17 THE SALES CONTRACT?

18 A WELL, I DIDN'T.

19 Q YOU DIDN'T GIVE PRIORITY?

20 A I DID NOT.

21 Q AND IN FACT YOU TOLD MR. SHEPPARD, YOU CAN'T SELL IT?

22 A I DID, I TOLD HIM THAT TO HIS FACE.

23 Q AND IT WASN'T SOLD IN THE THIRD QUARTER?

24 A NO, IT DID NOT CLOSE IN THE THIRD QUARTER.

25 Q AND FRANKLY IT DID NOT CLOSE UNTIL SOMETIME IN MID OR

1 LATE DECEMBER?

2 A IT WAS PERHAPS DECEMBER THE 7TH, I DON'T REMEMBER THE
3 EXACT DATE.

4 Q IT CLOSED SOMETIME IN DECEMBER?

5 A DECEMBER THE 7TH WOULD BE AN APPROPRIATE DATE.

6 Q AND SO AT LEAST IN THE THIRD QUARTER, THERE WASN'T A
7 SELL OF THE BUILDING, IT WAS A CONTRACT TO SELL THE
8 BUILDING THAT WAS CONTINGENT UPON A LOT OF THINGS
9 INCLUDING HAVING IT RELEASED FROM THE WAREHOUSE LINES?

10 A I WANT YOU TO UNDERSTAND, MR. GRIFFIN, THAT THE MAIN
11 REASON WHY I PLEADED GUILTY WAS BECAUSE OF THE--

12 Q I AM NOT ASKING--

13 THE COURT: REPEAT THAT LAST QUESTION.

14 Q WHAT I AM ASKING YOU IS, THERE WERE CONTINGENCIES IN
15 THAT CONTRACT THAT HAD TO BE SATISFIED BEFORE THE BUILDING
16 COULD BE SOLD?

17 A THERE WERE TWO CONTINGENCIES.

18 Q AND ONE BEING IT HAD TO BE RELEASED FROM THE
19 WAREHOUSE LINES?

20 A IT HAD TO BE FREE AND CLEAR.

21 Q OKAY. NOW, MOVING FORWARD TO THE EMMCO TRANSACTION.
22 YOU DESCRIBED, FRANKLY, SOME PRETTY TESTY NEGOTIATIONS
23 BETWEEN MR. SHEPPARD AND MR. STERLING OVER THAT DEAL?

24 A YES.

25 Q SO, THAT WAS A NEGOTIATED TRANSACTION, WAS IT NOT?

1 A THERE WAS A LOT OF NEGOTIATION, YES.

2 Q AND THERE WAS AN AGREEMENT THAT WAS INTRODUCED OR WAS
3 ALREADY WAS INTRODUCED THAT AN EFFECTIVE DATE OF NOVEMBER
4 THE 19TH, DO YOU REMEMBER THAT?

5 A I DID SEE THAT AGREEMENT THIS MORNING, I BELIEVE.

6 Q BUT YOU AREN'T REPRESENTING TO THE JURY THAT IT WAS
7 SIGNED ON NOVEMBER THE 19TH?

8 A NO, MY MEMORY AND I THINK I SAID THAT THIS MORNING.
9 I REMEMBER NOVEMBER 30TH AND THAT APPEARED TO REFER BACK
10 TO NOVEMBER THE 19TH.

11 Q AND THAT TRANSACTION HAD, DID, THERE WERE A NUMBER OF
12 THINGS THAT HAD TO BE ACCOMPLISHED AND ONE OF THE THINGS
13 THAT HAPPENED ALONG THE WAY IS THAT THE CORPORATE
14 STRUCTURE OF THE BUYER OF EMMCO WAS CHANGED?

15 A YES.

16 Q AND IT WENT FROM A CORPORATION TO A LLC OR A LIMITED
17 LIABILITY CORPORATION?

18 A YES.

19 Q AND THERE ARE TAX CONSEQUENCES THAT WERE FAVORABLE
20 TO, APPARENTLY TO MR. SHEPPARD AND TO HOMEGOLD BECAUSE OF
21 THAT?

22 A YES.

23 Q BUT THAT SWITCH ALSO DELAYED EMMCO'S ABILITY TO GET,
24 HAD TO GO THROUGH THE LICENSING PROCESS?

25 A YES.

1 Q NOW, ISN'T IT ALSO TRUE THAT EMMCO, THAT ENTITY, THAT
2 HOMEGOLD HAD I GUESS FIFTY PERCENT INTEREST IN THAT
3 ENTITY?

4 A THE, WELL THAT LLC IS STRUCTURED. THERE ARE
5 DIFFERENT INTERESTS IN AN LLC, MEMBERS HAVE DIFFERENT
6 INTEREST. HOMEGOLD HAD TWO INTERESTS IN EMMCO, LLC. ONE
7 WAS A FIFTY PERCENT ECONOMIC INTEREST AND ONE WAS A
8 PREFERRED INTEREST, IT ENDED UP BEING \$35 MILLION.

9 Q AND THAT PREFERRED INTEREST HAD SOME GUARANTEED
10 PAYMENT, PRICE AND--

11 A IT HAD PRIORITY IN THE EVENT OF A SELL OF EMMCO AND
12 HOMEGOLD HAD APPROVAL RIGHTS OVER ANY SELL.

13 Q AND THE FIFTY PERCENT INTEREST, THE OTHER INTEREST
14 WAS A FIFTY PERCENT, I THINK NONVOTING ECONOMIC?

15 A IT WAS A NONVOTING ECONOMIC INTEREST, YES.

16 Q AS A RESULT IT ENTITLED, IT ENTITLED HOMEGOLD FIFTY
17 PERCENT OF EVERYTHING THAT EMMCO HAD?

18 A ANY PROFIT, THAT PROFIT THAT EMMCO PRODUCED, YES.

19 Q AND THE, BECAUSE OF THE CHANGE OF THE STRUCTURE AND
20 THE DELAY OF LICENSING THAT MADE IT NECESSARY FOR EMMCO TO
21 CLOSE LOANS ON EXISTING WAREHOUSE LINES AND STATES THAT
22 THEY HAD NOT YET COMPLETED A LICENSING PROCESS, CORRECT?

23 A YES, THE AGREEMENT PROVIDED FOR THAT.

24 Q NOW, THE, THESE WAREHOUSE LINES THAT HOMEGOLD STILL
25 HAD IN ITS NAME, MR. SHEPPARD ALSO REMAINED THE PERSONAL

1 GUARANTOR OF THOSE LOANS, THE ONES THAT WERE BEING USED IN
2 THE FIRST QUARTER OF 2003?

3 A I HAD NEVER EVEN THOUGHT ABOUT THAT UNTIL YOU ASKED
4 ME THAT QUESTION. I DO NOT KNOW IF HE WAS RELEASED FROM
5 THOSE LOANS.

6 Q YOU DON'T KNOW IF HE WAS STILL THE GUARANTOR ON THOSE
7 LINES OF CREDIT?

8 A I DO NOT.

9 Q AND IN ALL OF THE DOCUMENTS THAT YOU REVIEWED AS
10 CUSTODIAN OF RECORDS OR BANKRUPTCY TRUSTEE, DID YOU EVER
11 SEE ANY DOCUMENTS⁸ RELEASING HIM AS A PERSONAL GUARANTOR ON
12 ANY OF THOSE LOANS?

13 A I DID NOT.

14 Q AND THEN YOU HAVE, LET ME GET A DOCUMENT. I WANT TO
15 GO OVER THIS SPREAD SHEET THAT YOU PREPARED, STATE'S 202.
16 AND THIS IS CASH DUE TO EMMCO, WORDS TO THAT EFFECT?

17 A YES.

18 Q AND THIS, EMMCO RECONCILIATION PAGE, I WASN'T REAL
19 CLEAR ON YOUR DIRECT TESTIMONY BUT AS I UNDERSTOOD IT,
20 WHAT THIS DOCUMENT SHOWS IS ULTIMATELY THAT HOMEGOLD OWED
21 EMMCO SOME \$600 THOUSAND DOLLARS?

22 A THIS ACTUALLY SHOWS THAT EMMCO OWED HOMEGOLD \$626
23 THOUSAND DOLLARS. THAT IS WHAT THE NEGATIVE MEANS. BUT
24 WHEN HOMEGOLD FILED BANKRUPTCY, HOMEGOLD DID RECOGNIZE
25 THAT IT OWED EMMCO \$600 THOUSAND DOLLARS AND FILED IT AS A

1 DEBT TO EMMCO. THE DIFFERENCE THE BANKRUPTCY FILING AND
2 THIS IS THAT THIS WAS CREATED IN MAY AFTER THE BANKRUPTCY
3 AND I INCLUDED THOSE LEASE REJECTION COST AND THAT IS WHAT
4 SWUNG IT TO \$600 THOUSAND DOLLARS OWED FROM EMMCO TO
5 HOMEGOLD.

6 Q NOW, THESE LEASE REJECTION COST, PROPERTY LEASE
7 REJECTION COST, THESE ARE, THIS IS BASICALLY RENT THAT
8 LANDLORDS ARE ASKING TO BE PAID, THEY ARE ASKING HOMEGOLD
9 TO PAY IT BECAUSE HOMEGOLD IS ON THE LEASE, RIGHT?

10 A THAT'S CORRECT.

11 Q AND THOSE FACILITIES, THOSE LOCATIONS WERE REJECTED
12 BY EMMCO ONCE HOMEGOLD FILED BANKRUPTCY?

13 A I HAD NO KNOWLEDGE THAT EMMCO REJECTED THEM. I JUST
14 KNOW THAT EMMCO DID NOT PAY FOR THEM.

15 Q AND THAT, SO THAT WHEN HOMEGOLD FILED BANKRUPTCY,
16 THAT LEASE REJECTION COST WAS NOT IN THERE AND--

17 A WELL, THE LEASE REJECTION COST, THAT IS HOMEGOLD'S
18 LEASE REJECTION COST. THAT IS SAYING, AND YES THOSE WERE
19 INCLUDED IN THE BANKRUPTCY. WHAT THAT IS SAYING IS MR.
20 SHEPPARD HAD PURCHASED THOSE BRANCHES, IN THE EMMCO
21 TRANSACTION, THOSE BRANCHES HAD BEEN PURCHASED TO GO TO
22 EMMCO AND THEN EMMCO DID NOT PAY THE LEASE PAYMENTS ON
23 THOSE BRANCHES.

24 Q AND THOSE BRANCHES HAD TO BE CLOSED WHEN HOMEGOLD
25 FILED BANKRUPTCY?

1 A I DID NOT KNOW THE REASON WHY THEY WERE CLOSED.

2 Q THE BOTTOM LINE IS WHEN HOMEGOLD FILED BANKRUPTCY,
3 HOMEGOLD OWED EMMCO SOME \$600 THOUSAND DOLLARS ON THE DATE
4 OF FILE, CORRECT?

5 A I HAVE TESTIFIED THAT HOMEGOLD RECOGNIZED THE \$600
6 THOUSAND DOLLAR DEBT.

7 Q UNDER THIS AGREEMENT THAT MR. STERLING AND MR.
8 SHEPPARD NEGOTIATED, RIGHT, THE EMMCO TRANSACTION, THAT IS
9 WHERE THE MONEY, THAT IS WHY THE MONEY IS BEING OWED?

10 A NO, THE \$600 THOUSAND DOLLARS IS DUE TO MONEY, IT WAS
11 DUE TO THOSE ~~LOAN~~ SALES ON THE TOP, THE TOP.

12 Q I SEE.

13 A IT WAS NOT THE SALE AGREEMENT.

14 Q IT IS MONEY THAT WAS, MONIES THAT IS DUE UP HERE
15 UNDER THIS, \$256,920,000.00?

16 A IN OTHER WORDS, \$600 THOUSAND DOLLARS OF THAT WAS
17 OWED TO EMMCO.

18 Q OKAY. AND MR. SHEPPARD WAS CLAIMING \$200, THAT HE
19 WANTED THE WHOLE \$2., \$256 TO GO TO EMMCO?

20 A YES AND HE HAD ALREADY BEEN PAID.

21 Q THAT WAS A DISPUTE?

22 A WE HAVE HAD THAT DISPUTE.

23 Q AND YOU WERE ASKED QUESTIONS ABOUT THIS \$5 MILLION
24 DOLLARS UP FRONT AND I JUST WANT TO POINT OUT A FEW
25 THINGS. BUT THIS COLUMN, THESE ARE EXPENSES THAT ARE PAID

1 BY HOMEGOLD DURING THAT INITIAL WRAP UP FOR EMMCO, RIGHT?

2 A AS PART OF THAT R-DOC NOTE, MR. SHEPPARD WROTE \$5
3 MILLION DOLLARS FROM HOMEGOLD. AND THIS SPREAD SHEET
4 REPRESENTS WHAT THAT \$5 MILLION DOLLARS WAS MADE UP OF AND
5 HOW HOMEGOLD, OVER THAT PERIOD OF TIME ADVANCED MONEY TO
6 COME UP TO THE \$5 MILLION DOLLARS. SO, THAT IS WHY WE
7 START AT THE TOP OF THE \$5 MILLION AND THEN WE SHOW EACH
8 INDIVIDUAL LINE ITEM.

9 Q AND YOU SHOW A CHECK OF \$3 MILLION DOLLARS TO R-DOC?

10 A YES.

11 Q AND THEN ~~SOME~~[#] PAYROLL AMOUNTS, IT SAID NET PAYROLL
12 FUND, \$814,512.00 DOLLARS?

13 A YES.

14 Q WAS THAT A TWO WEEK PAYROLL?

15 A MY MEMORY IS THAT MR. FERRELL AND MR. SHEPPARD AGREED
16 THAT HOMEGOLD WOULD PAY THE FIRST PAYROLL SO THAT PROBABLY
17 WAS A TWO WEEK PAYROLL.

18 Q SO, THE PAYROLL AT EMMCO ASSUMED IN THE MERGER WAS
19 \$400 THOUSAND PLUS EVERY WEEK?

20 A WELL, THAT WAS, THAT WOULD BE JANUARY, IT PROBABLY
21 INCLUDING MONTHLY BONUS, IT WAS SOMEWHAT HIGHER BECAUSE OF
22 THAT.

23 Q IT WAS AT LEAST A MILLION DOLLAR MONTHS PAYROLL?

24 A YES.

25 Q AND THAT WAS THE NEED FOR THIS STARTUP LIQUIDITY WAS

1 BECAUSE EMMCO WAS TAKING THESE EMPLOYEES AND TAKING THIS
2 OVERHEAD WITH THEM?

3 A YES.

4 Q AND IT WASN'T THAT MR. SHEPPARD WAS GETTING \$5
5 MILLION DOLLARS OR \$3 MILLION DOLLARS JUST TO PUT IN HIS
6 POCKET?

7 A I TESTIFIED IT WAS WORKING CAPITAL.

8 Q I UNDERSTAND. AND THE MONEY THAT WAS USED FOR EMMCO,
9 WHICH HOMEGOLD HAD A FIFTY PERCENT INTEREST?

10 A THE FIFTY PERCENT ECONOMIC INTEREST.

11 Q THANK YOU. ~~JUST~~ JUST ONE SECOND. THAT IS ALL I HAVE.

12 THE COURT: REDIRECT.

13 MS. PORTER: BRIEFLY, YOUR HONOR.

14 REDIRECT EXAMINATION

15 BY MR. PORTER:

16 Q YOU WERE ASKED SOME QUESTIONS ABOUT THE NOL. AND THE
17 WAY THAT THE HOMEGOLD/HOMESENSE MERGER WAS STRUCTURED?

18 A YES.

19 Q THE NOL, DID THAT PERSONALLY BENEFIT JACK STERLING OR
20 BENEFIT HOMEGOLD?

21 A IT BENEFITED HOMEGOLD.

22 Q THE NONRECOURSE LOAN STRUCTURE, DID THAT PERSONALLY
23 BENEFIT THE DEFENDANT OR PERSONALLY BENEFIT HOMEGOLD?

24 A IT BENEFITED THE DEFENDANT.

25 Q NOW, THERE WAS THE ISSUE ABOUT WHETHER OR NOT

1 HOMEGOLD HAD CASH. DID THEY NOT HAVE CAROLINA INVESTORS?

2 A HOMEGOLD DID HAVE CAROLINA INVESTORS AT THAT TIME,
3 YES.

4 Q AND WAS THERE A NICKNAME REGARDING CAROLINA
5 INVESTORS?

6 A I DID NOT HEAR THIS AT THE TIME BUT I HAD--
7 MR. GRIFFIN: OBJECTION, YOUR HONOR, SHE DIDN'T HEAR
8 IT AT THE TIME, IT IS HEARSAY.

9 THE COURT: SUSTAINED.

10 Q AT THE TIME OF THE MERGER WAS HOMEGOLD BORROWING CASH
11 FROM CAROLINA INVESTORS?

12 A YES.

13 Q AND WAS CAROLINA INVESTORS, DID IT HAVE A NEGATIVE OR
14 POSITIVE NET WORTH AT THE TIME OF THE MERGER?

15 A DID CAROLINA INVESTORS HAVE A POSITIVE NET WORTH?

16 Q YES.

17 A YES.

18 Q SO, THERE WAS CASH?

19 A YES.

20 Q WAREHOUSE LINES OF CREDIT, ARE THEY THE COMPANIES OR
21 THE DEFENDANT'S? IS IT HOMEGOLD'S WAREHOUSE LINE OF
22 CREDIT OR IS IT RONNIE SHEPPARD'S WAREHOUSE LINES OF
23 CREDIT?

24 A THEY ARE SIGNED FOR BY HOMEGOLD.

25 Q HE IS JUST PERSONALLY GUARANTEEING THEM?

1 A YES.

2 Q NEW FREEDOM, ARE THEY NEW FREEDOM'S WAREHOUSE LINES
3 OF CREDIT THAT HOMEGOLD IS USING OR ARE THEY HOMEGOLD'S
4 WAREHOUSE LINES OF CREDIT THAT NEW FREEDOM IS
5 GUARANTEEING?

6 A NEW FREEDOM WAS A WAREHOUSE LENDER A SHORT TERM FOR
7 HOMEGOLD.

8 Q SO, THEY ARE CONTRACTED WITH NEW FREEDOM?

9 A YES.

10 Q OKAY. IS IT TYPICAL FOR A CEO OF A COMPANY TO CHARGE
11 THE COMPANY FOR THE COMPANIES WAREHOUSE LINES OF CREDIT?

12 A I HAVE NO KNOWLEDGE OF ANYTHING LIKE THAT IN THE
13 PAST.

14 Q AND THIS BILL, WHAT IS THAT FOR?

15 A MR. SHEPPARD IS BILLING HOMEGOLD FOR THE USE OF THE
16 WAREHOUSE LINES THAT WERE HOMEGOLD WAREHOUSE LINES.

17 Q SO, FOR HIS PERSONAL GUARANTEE HOMEGOLD OWES HIM \$34
18 MILLION DOLLARS?

19 A THE WHOLE PROBLEM WITH THIS INVOICE IS THAT MR.
20 SHEPPARD AGREED TO PERSONALLY GUARANTEE THE LINES IN THAT
21 AGREEMENT THAT WAS SIGNED IN JANUARY OF 2001 AND AGREED TO
22 RELEASE ALL CLAIMS AGAINST HOMEGOLD JUST AS HOMEGOLD
23 RELEASED ALL CLAIMS AGAINST MR. SHEPPARD. WHEN I FIRST
24 RECEIVED THIS SOME PEOPLE THOUGHT IT WAS A JOKE BUT I KNEW
25 IT WAS NOT A JOKE. AND IT WAS ALSO FAXED SIMULTANEOUSLY

1 TO THE HOMEGOLD BANKRUPTCY ATTORNEY. AND MR. SHEPPARD
2 FILED IT AS A CLAIM IN THE BANKRUPTCY.

3 Q WHEN YOU GO TO A BANK AND OBTAIN A LOAN YOU HAVE TO
4 PAY NOT ONLY THE LOAN BACK BUT INTEREST ON THE LOAN?

5 A YES.

6 Q BOTTOM LINE, PRINCIPAL AND INTEREST, WHAT WAS
7 CAROLINA INVESTORS OWED?

8 A PRINCIPAL AND INTEREST.

9 Q YOU CAN'T JUST PAY BACK THE PRINCIPAL, CAN YOU?

10 A NO.

11 Q WHEN YOU MADE THIS STATEMENT TO THE SOUTH CAROLINA
12 SECURITIES COMMISSION THAT HOMEGOLD WAS NO LONGER TAKING
13 MONEY THAT WALKED IN THE DOOR FROM CAROLINA INVESTORS,
14 WHAT MONTH WAS THAT?

15 A IT WAS FEBRUARY OF 2003.

16 Q WELL, WAS THIS A TREND, DECEMBER, THERE IS REALLY NO
17 CASH TO TAKE, IS THERE?

18 A THAT WAS MY POINT.

19 Q SO, IT IS NOT THAT HOMEGOLD DIDN'T WANT TO TAKE CASH,
20 THERE IS JUST NONE TO TAKE?

21 A THERE IS NONE TO TAKE BUT I ALSO HAD RESOLVED NOT TO
22 TAKE IT.

23 Q BECAUSE YOU HAD REALIZED WHAT?

24 A IN FEBRUARY, IT WAS BEFORE I CAME TO MY CONCLUSION,
25 HOWEVER I HAD DECIDED THAT I DID NOT WANT TO TAKE CAROLINA

1 INVESTORS CASH. AND IN FACT AFTER THIS MEETING MR. OWEN
2 CALLED ME AND TOLD ME THAT SHANE SMITH HAD MOVED \$250
3 THOUSAND DOLLARS OF CAROLINA INVESTORS MONEY TO HOMEGOLD.
4 AND I MADE SHANE PUT IT BACK AND IT TOOK HIM TWO DAYS.

5 Q YOU ALSO BRIEFLY SPOKE ABOUT THE PREFERRED INTEREST
6 THAT HOMEGOLD HAD IN EMMCO?

7 A YES.

8 Q AND THAT, BECAUSE OF THAT PREFERRED INTEREST EMMCO
9 COULD NOT SELL TO THE COMPANY WITHOUT ANY APPROVAL FROM
10 HOMEGOLD, DID YOU SAY SOMETHING ABOUT THAT?

11 A PART OF THE AGREEMENT WAS THAT EVEN THOUGH THAT
12 HOMEGOLD HAD NO VOTING RIGHTS UNDER THE ECONOMIC INTEREST,
13 IT DID HAVE VOTING RIGHTS AS TO THE FUTURE SELL OF EMMCO.
14 AND IF HOMEGOLD AGREED TO THE SELL THE PREFERRED HAD
15 PRIORITY. SO, IF MR. SHEPPARD HAD SOLD EMMCO FOR \$50
16 MILLION DOLLARS HOMEGOLD WOULD OF BEEN PAID \$35 MILLION
17 FIRST AND THEN THE DIFFERENCE, THE \$15 MILLION WOULD OF
18 BEEN SPLIT BETWEEN MR. SHEPPARD AND HOMEGOLD.

19 Q WERE YOU AWARE OF R-DOC PURCHASING CONNECTED
20 INFORMATION SOURCE?

21 A I HAVE ONLY RECENTLY BECOME AWARE OF THAT.

22 Q SHOULD YOU HAVE BEEN OR SHOULD HOMEGOLD HAVE BEEN
23 NOTIFIED OF THAT SELL?

24 A IT IS MY OPINION THAT HOMEGOLD SHOULD HAVE BEEN
25 NOTIFIED UNDER THE TERMS OF THE PURCHASE, ASSET PURCHASE

1 AGREEMENT, YES.

2 Q AND SHOULD HOMEGOLD HAVE RECEIVED SOME OF THE PROFITS
3 FROM THAT SELL IF THERE WERE ANY?

4 A YES.

5 Q AND LASTLY, THE PELHAM ROAD?

6 A YES.

7 Q REPORTING THE PELHAM ROAD BUILDING AT A VALUE OF \$10
8 MILLION DOLLARS. BASED ON YOUR UNDERSTANDING WAS THAT IN
9 COMPLIANCE WITH GAP?

10 A MY UNDERSTANDING, AS I UNDERSTAND IT TODAY IS THAT
11 WAS NOT IN COMPLIANCE WITH GAP.

12 Q AND DID THAT MANEUVER AFFECT YOUR DECISION TO PLEAD
13 GUILTY?

14 A IT WAS A MAJOR FACTOR IN MY DECISION, YES.

15 Q I HAVE NOTHING FURTHER.

16 THE COURT: ANY RECROSS?

17 MR. GRIFFIN: YES, YOUR HONOR.

18 RECROSS-EXAMINATION

19 BY MR. GRIFFIN:

20 Q MS. MILLER, THERE WAS NEVER AN ANNUAL 10K FILED FOR
21 THE YEAREND 2002, WAS THERE?

22 A NO, THERE WAS NOT.

23 Q THANK YOU, THAT IS ALL.

24 THE COURT: YOU MAY STEP DOWN.

25 MS. PORTER: YOUR HONOR, WE WOULD ASK THAT THIS

1 WITNESS BE EXCUSED.

2 THE COURT: YOU ARE EXCUSED. CALL YOUR NEXT WITNESS,
3 PLEASE.

4 MS. EVANS: OUR NEXT WITNESS IS PROFESSOR FREEMAN.

5 THE COURT: DO WE NEED TESTIMONY AT THIS POINT AND
6 TIME?

7 MS. EVANS: YOUR HONOR, I WILL JUST TELL YOU WHAT WE
8 WILL DO.

9 THE COURT: LET'S DO THAT BEFORE WE SWEAR IN
10 PROFESSOR FREEMAN, BEFORE WE DO THAT AND SEE. AS I
11 UNDERSTAND, THE DEFENSE HAS HANDED UP A MEMORANDUM, THE
12 STATE HAS REPLIED TO IT, I HAVE GONE THROUGH THAT
13 INFORMATION. NO OBJECTION TO HIM TESTIFYING, IT IS A
14 MATTER OF WHAT HE CAN TESTIFY TO, IS THAT RIGHT?

15 MR. GRIFFIN: YES SIR, THE SCOPE OF HIS TESTIMONY.

16 THE COURT: THE SCOPE OF THE TESTIMONY AND I THINK
17 THE STATE CAN JUST MAKE A PROFFER WITHOUT ACTUALLY
18 ELICITING THE TESTIMONY, IT MAY SHORTEN THE HEARING.

19 MS. EVANS: AND, YOUR HONOR, WE ARE ACTUALLY GOING TO
20 ASK PROFESSOR FREEMAN IF HE IS HERE TO TELL THE JURORS
21 WHAT THE LAW IS AND WHETHER HE IS HERE TO GIVE LEGAL
22 OPINIONS AND WHAT ARE YOU HERE TO DO. WE ARE SUBMITTING
23 TO THE COURT--

24 THE COURT: I ASSUME THE ANSWER TO THAT WOULD BE NO.

25 MS. EVANS: YES, I AM SORRY, I APOLOGIZE. THE ANSWER

1 TO ALL OF THOSE WILL BE NO. WE ARE SUBMITTING PROFESSOR
2 FREEMAN AS AN EXPERT IN THE FIELD OF CORPORATE GOVERNANCE,
3 DISCLOSURE PRACTICES FILED BY PUBLIC COMPANIES, THEIR
4 OFFICERS AND DIRECTORS, YOUR HONOR, AND THAT IS THE ONLY
5 FIELD THAT WE ARE LIMITED TO. WE WILL BE TALKING IN
6 GENERAL TERMS ABOUT CORPORATIONS AND GENERAL TERMS ABOUT
7 THE NECESSITY OF 8K'S AND THOSE THINGS. WE WILL ALSO BE
8 GOING ON ABOUT THE DEFENDANT'S KNOWLEDGE ABOUT WHAT HE,
9 EXCUSE ME, THE DEFENDANT'S KNOWLEDGE FROM A STANDPOINT OF
10 FINANCIALLY SOPHISTICATION. WE WOULD ALSO BE ELICITING
11 QUESTIONS REGARDING ABOUT HIS FINANCIAL SOPHISTICATION,
12 WHAT THE DEFENDANT KNEW AND WHETHER HE UNDERSTOOD, NOT
13 UNDERSTOOD BUT IMPORTANT EVENTS. WE WOULD JUST BE ASKING
14 QUESTIONS ABOUT IF HE HAS FORMED AN OPINION ABOUT
15 STATEMENTS MADE TO THE PUBLIC REGARDING THE BUSINESS OF
16 HOMEGOLD AND THE LEADING UP TO THE BANKRUPTCY, NOT ASKING
17 CONCLUSIONS OF LAW THAT, FOR INSTANCE, THAT HE IS GUILTY
18 OF SECURITIES FRAUD BUT OPINIONS ABOUT STATEMENTS MADE TO
19 THE PUBLIC. AND IN GENERAL TERMS, NOT LEGAL TERMS, ABOUT
20 THE FIDUCIARY DUTIES OF CEO'S OF CORPORATIONS AND IN
21 GENERAL TERMS, DID THE DEFENDANT ADHERE TO THAT. AND THAT
22 IS JUST THE GENERAL TESTIMONY THAT WE ARE GOING TO ELICIT,
23 NOT LEGAL CONCLUSIONS AT ALL. WE WOULD BE ASKING THAT
24 SPECIFIC CAVEAT. AND, YOUR HONOR, IN THIS CASE AS YOU
25 FOUND IN EARLE MORRIS' CASE, I THINK THIS CASE IS EVEN

1 MORE SO, IT IS MORE IMPORTANT TO UNDERSTAND THESE AREAS OF
2 CORPORATE GOVERNANCE AND PUBLIC COMPANIES AND CORPORATE
3 GOVERNANCE AND DISCLOSURE ISSUES EVEN MORE SO FROM THIS
4 STAND THAN IT WAS IN THE EARLE MORRIS TRIAL. BUT THAT IS
5 THE ONLY LIMITED SCOPE THAT WE WOULD BE CALLING PROFESSOR
6 FREEMAN.

7 THE COURT: MR. GRIFFIN.

8 MR. GRIFFIN: YOUR HONOR, I WILL TAKE THE LAST ONE
9 FIRST. HIS TESTIMONY ABOUT WHAT CORPORATE OFFICERS AND
10 FIDUCIARY DUTIES ARE AND DID THE DEFENDANT ADHERE TO THEM.
11 IT IS ADDRESSED CLEARLY IN THE DAWKINS V. FIELDS CASE
12 WHETHER THE SOUTH CAROLINA SUPREME COURT SAYS YOU CAN'T DO
13 THAT, THAT IS WHAT THEY ARE PROFFERING HIM FOR. I WOULD
14 POINT OUT THAT IS EXACTLY WHAT THE OPINION WAS ABOUT
15 PROFESSOR FREEMAN IN THE DAWKINS V. FIELDS CASE. IT WAS
16 THAT THE DEFENDANT VIOLATED HIS FIDUCIARY DUTIES OR THE
17 DEFENDANTS WERE VIOLATING THEIR FIDUCIARY DUTIES AND IN
18 THAT CASE, YOUR HONOR, THEY CITE A CASE CALLED
19 A-S-K-A-M-A-S-E V. F-A-T-J-O, WHICH IT SAYS THAT EXACTLY
20 ALSO. THAT YOU CAN'T, THAT IS A LEGAL CONCLUSION AS TO
21 WHETHER YOU ARE APPLYING FACTS TO THE LAW TO REACH THE
22 RESULT THAT IS GOING TO BE SUBMITTED TO THE JURY AND THAT
23 IS NOT PROPER EXPERT TESTIMONY. THE OPINIONS ABOUT
24 WHETHER PUBLIC STATEMENTS ARE FALSE AND MISLEADING, YOUR
25 HONOR, THAT DOESN'T REQUIRE EXPERT TESTIMONY. THAT IS NOT

1 WITHIN THE FIELD OF ANYTHING OTHER THAN WHAT THE FACTS ARE
2 GOING TO BE DETERMINED BY THE JURY, THAT IS WHAT THEY ARE
3 GOING TO HAVE TO DECIDE, WHETHER SOMETHING FALSE OR
4 MISLEADING, THAT DOESN'T REQUIRE ANY EXPERTISE WHATSOEVER.
5 AND ONCE AGAIN, THE STATUTE PROHIBITS FALSE AND MISLEADING
6 INFORMATION TO BE DISSEMINATED IN THE CONNECTION WITH THE
7 OFFER OR SELL OF SECURITIES. AND SO ONCE AGAIN, WHAT YOU
8 CAN'T DO IS SET THE STANDARD AND SAY WHICH IS A LEGAL
9 STANDARD AND SAY THE DEFENDANT VIOLATED THAT LEGAL
10 STANDARD. AND THAT IS WHAT THIS EXPERT PROPOSES TO DO
11 WITH REGARD TO OPINIONS ABOUT STATEMENTS MADE TO THE
12 PUBLIC, WHETHER THEY ARE FALSE OR MISLEADING. NOW, I AM
13 WORKING MY WAY BACK UP, YOUR HONOR, WITH REGARD TO
14 OPINIONS OF THE DEFENDANT'S KNOWLEDGE AND FINANCIAL
15 SOPHISTICATION AND WHAT THE DEFENDANT UNDERSTOOD ABOUT
16 IMPORTANT EVENTS. ONCE AGAIN, THAT IS THE DEFENDANT'S
17 STATE OF MIND, THAT IS NOT, THAT IS SOMETHING FOR THE JURY
18 TO DECIDE, THAT IS NOT SOMETHING THAT IS SUBJECT TO EXPERT
19 TESTIMONY UNLESS IT IS AN EXPERT INVOLVED IN PSYCHIATRY
20 WHO HAS DONE PSYCHIATRY EXAMINATION AS TO WHAT SOMEONE
21 KNEW OR DIDN'T KNOW, INTENDED OR DID NOT INTEND TO DO.
22 AND ONCE AGAIN, WE STRONGLY OBJECT TO THOSE THREE
23 CATEGORIES. WITH REGARDS TO DISCLOSURE PRACTICES IN
24 GENERAL AND CORPORATE GOVERNANCE AND GENERAL TERMS ABOUT
25 THESE FILINGS AND ABOUT THE REGISTRATION PROCESS AND WHAT

1 IS REQUIRED TO BE REGISTERED AND FILED AND THAT SORT OF
2 THING. THAT IS PROPER AREA PROVIDED IT IS LIMITED TO JUST
3 GENERAL PRACTICES, THE JURY HAS GOTTEN AN EAR FULL ABOUT
4 10K'S AND 10Q'S AND 8K'S AND EVERYTHING ELSE SO FAR. I
5 DON'T KNOW THAT IT IS REALLY NECESSARY. BUT, YOUR HONOR,
6 WHEN THEY OFFER EXPERT OPINION ABOUT THE LEGAL STANDARD
7 AND THIS DEFENDANT VIOLATED THE LEGAL STANDARD, THAT IS
8 CLEARLY INADMISSIBLE AND IT IS LEGAL TESTIMONY, THEY CAN'T
9 DO IT IN THE FORM OF A HYPOTHETICAL, THEY CAN'T DO IT IN A
10 FORM OF COUCHING TESTIMONY. SO, WE WOULD STRONGLY OPPOSE
11 THAT, YOUR HONOR. THE SECOND CIRCUIT DECISION IN 1991 AND
12 IT IS PROBABLY, THAT IS A SECURITIES CRIMINAL CASE. AND
13 THERE THE COURT SAYS, ALTHOUGH TESTIMONY CONCERNING THE
14 ORDINARY PRACTICES IN THE SECURITY INDUSTRY MAY BE
15 RECEIVED TO ENABLE THE JURY TO EVALUATE THE DEFENDANT'S
16 CONDUCT AGAINST THE STANDARDS OF ACCEPTED PRACTICE
17 TESTIMONY ENCOMPASSING ALL OF THE LEGAL CONCLUSIONS BASED
18 UPON THE FACTS OF THE CASE ARE NOT ADMISSIBLE AND NOT BE
19 MADE SO SIMPLE BECAUSE IT IS PRESENTED IN TERMS OF
20 INDUSTRY STANDARD PRACTICE. AND THERE THE COURT SAYS
21 SEVERAL HYPOTHETICAL QUESTIONS POSED TO MR. SPENCER
22 INCLUDED THE PARTICULAR TYPES ALLEGED IN THE INDICTMENT,
23 BETWEEN TESTIMONY REGARDING INDUSTRY PRACTICE IN THE
24 OPINION OF THE LEGALITY OF THE DEFENDANT'S CONDUCT. AND
25 THE COURT DID NOT ALLOW THE TESTIMONY OF AN EXPERT WITNESS

1 TO TESTIFY, THERE IS A FILING REQUIREMENT UNDER RULE 13D,
2 YOUR HONOR, IF SOMEONE OWNS MORE THAN FIVE PERCENT OF
3 BENEFICIAL OWNERSHIP OF A CORPORATION AND A QUESTION OF
4 WHAT THE PERSONAL FUNDS MEANT AND EVEN IF THEY WERE
5 PERSONAL FUNDS AND THAT IS A LEGAL CONCLUSION. THE JUDGE
6 CHARGES THE LAW AND THE JURY FINDS THE FACTS. AND THAT IS
7 WHAT THE 2003 DAWKINS V. FIELDS CASE SAYS. WE WOULD
8 STRONGLY OPPOSE ANY ATTEMPT FOR THEM TO OFFER ANY
9 TESTIMONY AS TO THE DEFENDANT VIOLATING SOME LEGAL
10 REQUIREMENT, WHETHER THEY COUCH IT IN TERMS OF INDUSTRY,
11 STANDARD OR PRACTICE OR OTHERWISE.

12 THE COURT: MS. EVANS.

13 MS. EVANS: YOUR HONOR, MR. GRIFFIN TWISTED WHAT I
14 WAS SAYING ABOUT WHAT WE WERE DOING. IN GENERAL TERMS THE
15 DEFENDANT'S ACTIONS SQUARE WITH ACCEPTED DISCLOSURE
16 PRACTICES AND ACCEPTED GOVERNANCE PRACTICES. THERE IS NO
17 ULTIMATE CONCLUSION OF LAW, THEREFORE HE BROKE THE
18 SECURITIES LAW, THAT IS WHAT THE FIELDS CASE SAYS. AND IN
19 THAT CASE IT IS DIFFERENT THAN THIS CASE TOO. BECAUSE IN
20 THAT CASE THAT WAS SOMETHING THAT WAS GIVEN TO THE JUDGE
21 WHERE CLEARLY THE JUDGE--

22 THE COURT: I THINK THAT CASE IS A MOTION FOR SUMMARY
23 JUDGMENT WHERE THE AFFIDAVIT FROM THE WITNESS IN ESSENCE
24 SAYS THERE IS AN INCLINATION OF MATERIAL FACT THAT IS A
25 LEGAL CONCLUSION AND CERTAINLY JUDGMENT SHOULDN'T BE

1 GRANTED. AS I RECALL THAT CASE AND I HAVEN'T READ IT IN
2 THE LAST 24 HOURS BUT THAT IS WHAT I RECALL IT SAYING.

3 MS. EVANS: THAT IS EXACTLY WHAT IT IS. AND MR.
4 GRIFFIN ALSO MISCHARACTERIZED ABOUT WHAT I SAID IS THAT
5 THIS EVIDENCE OF THE DEFENDANT'S SOPHISTICATION, MR.
6 GRIFFIN RAISED IN HIS OPENING AND THROUGHOUT THIS THAT HE
7 HAS A NINTH GRADE EDUCATION, HE DOESN'T KNOW WHAT HE IS
8 DOING AND THAT BASED UPON EVERYTHING THAT WE HAVE REVIEWED
9 WE ARE GOING TO ASK MR. FREEMAN, BASED UPON WHAT HE
10 REVIEWED, DOES HE SHOW A LEVEL OF FINANCIAL
11 SOPHISTICATION, THERE IS ABSOLUTELY NO CONCLUSION OF LAW
12 THERE. AND WHETHER OR NOT THE DEFENDANT'S ACTIONS SQUARE
13 WITH ACCEPTED DISCLOSURE PRACTICES AND ACCEPTED GOVERNANCE
14 PRACTICES IS IN GENERAL TERMS SPECIFICALLY. AND HERE IN
15 THIS CASE WHICH IS A COMPLEX SECURITIES VIOLATION OF
16 DIRECT AND COURSE OF BUSINESS THAT THIS DEFENDANT IS
17 ENGAGED IN, IT CLEARLY IS ADMISSIBLE BECAUSE RULE 702 SAYS
18 TESTIMONY OF EXPERTS, SCIENTIFIC, TECHNICAL OR OTHER
19 SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIERS OF FACTS TO
20 UNDERSTAND THE EVIDENCE. CLEARLY IN THIS CASE AND MR.
21 GRIFFIN HAS CONCEDED, THERE HAS BEEN A LOT OF TALK ABOUT
22 8K'S, 10K'S, VARIOUS SORTS OF THAT AND MR. FREEMAN IS HERE
23 TO BE ABLE TO EXPLAIN TO THE JURORS HOW THIS WRAPS IT UP
24 AND WHETHER THE DEFENDANT'S ACTIONS SQUARE WITH THE
25 ACCEPTED DISCLOSURE PRACTICES, ACCEPTED GOVERNMENT

1 PRACTICES. AND BASED UPON HIS REVIEW OF THE INFORMATION
2 IN THIS CASE DID THE EVIDENCE OF THE DEFENDANT'S FINANCIAL
3 SOPHISTICATION, IT IS CLEARLY ADMISSIBLE UNDER 702, WE ARE
4 GOING TO SPECIFICALLY ASK HIM THAT, THAT HE IS NOT GOING
5 TO DRAW CONCLUSIONS OF LAW SAYING BASED UPON THOSE ACTIONS
6 DID HE BREAK THE SECURITIES LAW, THERE IS NO QUESTION
7 ABOUT THAT. THIS CASE IS VERY DIFFERENT THAN THE FIELDS
8 CASE BECAUSE THIS IS GOING TO ASSIST THE TRIERS OF FACTS
9 IN A VERY COMPLICATED CASE TO WRAP UP A BUNCH OF TESTIMONY
10 THAT THEY HAVE HEARD ABOUT FINANCIAL TERMS THAT I HAVE
11 NEVER EVEN HEARD ABOUT BEFORE I WALKED INTO THIS
12 COURTROOM, LET ALONE A JURY. SECOND OF ALL, MR. GRIFFIN
13 HIMSELF HAS ASKED WITNESSES TO DRAW THE CONCLUSION, OF
14 CPA'S TO DRAW CONCLUSIONS OF LAW WHETHER THAT COMPORTED
15 WITH THE LAW OR DIDN'T. I THINK THAT IT IS CLEAR IN LIGHT
16 OF THAT TESTIMONY ELICITED BY MR. GRIFFIN OVER OUR
17 OBJECTIONS SHOULD BE ABLE TO ALLOW PROFESSOR FREEMAN TO
18 CLEAR UP THOSE GENERAL AREAS. AND THRID, ABOUT FIDUCIARY
19 DUTIES, JUST THE GENERAL CONCEPT OF FIDUCIARY DUTIES AND
20 WHY IT IS IMPORTANT TO GO THROUGH UPON WHAT HE REVIEWED,
21 DID HE COMPORT HIMSELF, NOT THAT HE VIOLATED THE LAW, NOT
22 THAT HE BREACHED IT, DID HE COMPORT HIMSELF WITH GENERALLY
23 ACCEPTED. I THINK IT IS CLEARLY ADMISSIBLE UNDER 702 AND
24 IT IS CLEARLY DIFFERENT THAN THE FIELDS CASE WHICH IS NOT
25 BLACK LETTER LAW WHICH WAS GIVEN TO A JUDGE, NOT THE TRIER

1 OF THE FACTS IN A COMPLEX CIVIL LITIGATION. AND TO
2 STRETCH IT TO THAT FIFTH CIRCUIT AND OTHER FEDERAL LAWS
3 UNDER FIELDS WHEN WE HAVE A SOUTH CAROLINA CASE ON POINT.
4 I THINK THAT LEVEL AND HOW WE ARE GOING TO LIMIT HIS
5 TESTIMONY IS CLEARLY ADMISSIBLE AND CLEARLY NEEDED IN THIS
6 CASE, YOUR HONOR, TO ASSIST THE TRIER OF FACTS.

7 MR. GRIFFIN: JUST BRIEFLY, YOUR HONOR, THE FIELDS
8 CASE ON THIS FIDUCIARY DUTY. THEY CITE THE FIFTH CIRCUIT
9 1997 OPINION AND THEY CITE IT. WHERE THE COURT SAYS IN
10 GENERAL EXPERT TESTIMONY ON ISSUES OF LAW IS INADMISSIBLE
11 AND THEN OUR SOUTH CAROLINA SUPREME COURT CITES THE FIFTH
12 CIRCUIT CASE. AND THEN IN PAREN, OUR SOUTH CARLINA
13 SUPREME COURT SAYS, CITES THAT CASE WITH A PROPOSITION
14 WHERE THE COURT DISALLOWED A LEGAL EXPERT'S OPINION ON
15 WHETHER CORPORATE OFFICERS AND DIRECTORS USE THEIR
16 FIDUCIARY DUTIES TO SUCH TESTIMONY IS A LEGAL OPINION AND
17 INADMISSIBLE. THAT IS THE LAST THING THAT THEY PLAN TO
18 DO, TO SAY HE BREACHED HIS FIDUCIARY DUTIES.

19 MS. EVANS: YOUR HONOR, AGAIN, HE IS MISSTATING IT, I
20 DID NOT SAY THAT WE WERE GOING TO ASK MR. FREEMAN IF HE
21 BREACHED THE FIDUCIARY DUTY, WHETHER OR NOT BASED UPON
22 WHAT HE REVIEWED, DID HE COMPORT HIMSELF WITH THOSE
23 FIDUCIARY DUTIES.

24 MR. GRIFFIN: THERE IS ABSOLUTE NO DIFFERENCE BETWEEN
25 THAT.

1 THE COURT: THAT WAS GOING TO BE MY NEXT QUESTION.
2 ARE YOU JUST SAYING THE SAME THING DIFFERENTLY?

3 MS. EVANS: NO, YOUR HONOR, I DO THINK IT IS A BIG
4 DIFFERENCE. IF HE SAYS THAT HE BREACHES FIDUCIARY DUTY,
5 THAT IS DRAWING A CONCLUSION SAYING BASED UPON THE REVIEW
6 AND THE GENERAL ACCEPTED TERMS DID HE COMPORT HIMSELF WITH
7 IT, NOT GOING TO THE BREACHES UPON IT, IS A DIFFERENT
8 THING AND A DIFFERENT LEGAL CONCLUSION IN THE WAY IT IS
9 CLEARLY WORDED IN THAT WAY. SO, I DON'T THINK IT IS A
10 MATTER OF SEMANTICS OF TALKING ABOUT IT IN GENERAL TERMS
11 AND THE BREACH OF FIDUCIARY DUTY GOES RIGHT TO THE
12 CONCLUSION OF LAW TO TALK ABOUT WHAT HE DID AND HOW THEY
13 SQUARE WITH THOSE GENERAL CORPORATE TERMS, NOT WHETHER HE
14 BREACHED THOSE AND HENCE VIOLATED THE LAW. I DON'T THINK
15 IT IS A MATTER OF SEMANTICS OVER THE WAY WE WORD THE
16 QUESTION.

17 THE COURT: ASSUMING THAT THE WITNESS IS QUALIFIED IN
18 THE FIELDS THAT IS INDICATED, I AM GOING TO PERMIT HIM TO
19 TESTIFY. I THINK A LOT OF THE RULINGS THAT I AM GOING TO
20 HAVE TO MAKE WILL DEPEND ON WHAT HAS COME IN, HOW THE
21 COURT RULES ON THOSE MATTERS COMING IN AND THEN EXACTLY
22 WHAT THE QUESTION IS. IF AN OBJECTION IS TAKEN AS TO AN
23 OPINION BEING OUTSIDE THE SCOPE OF WHAT IS PERMITTED UNDER
24 DAWKINS V. FIELDS AND I NEED ADDITIONAL ARGUMENT I WILL
25 SEND THE JURY OUT AND TAKE YOUR ARGUMENT. THERE MAY BE A

1 NUMBER OF ITEMS THAT THAT OBJECTION WOULD NOT BE SUITABLE
2 FOR BUT I'LL JUST DEAL WITH IT THE BEST I CAN. GENERALLY
3 SPEAKING IF HE IS QUALIFIED AS AN EXPERT IN THE FIELD OF
4 SECURITIES AND THESE OTHER FIELDS HE WILL BE PERMITTED TO
5 TESTIFY. BRING THE JURY IN, PLEASE.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 4:15 P.M.)

8 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
9 I HAD TO HOLD A BRIEF HEARING, WE HAVE RESOLVED THAT
10 MATTER, WE WILL CONTINUE. CALL YOUR NEXT WITNESS, PLEASE.

11 MS. EVANS: ^ATHE STATE CALLS PROFESSOR JOHN FREEMAN.

12 PROFESSOR JOHN FREEMAN, AFTER BEING DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. EVANS:

16 Q PROFESSOR FREEMAN, WHAT IS YOUR PROFESSION?

17 A I AM A LAWYER AND I AM A LAW PROFESSOR.

18 Q AND WHERE WERE YOU EDUCATED?

19 A AT NOTRE DAME UNDERGRADUATE AND NOTRE DAME LAW SCHOOL
20 AND I RECEIVED AN LL.M., A GRADUATE LAW DEGREE FROM THE
21 UNIVERSITY OF PENNSYLVANIA.

22 Q AND WHERE ARE SOME PLACES THAT YOU HAVE WORKED OVER
23 YOUR CAREER?

24 A WELL, I WORKED FOR A LAW FIRM IN CLEVELAND, OHIO. A
25 LARGE LAW FIRM KNOWN AS THE JONES DAY FIRM. I HAVE WORKED

1 AT THE UNIVERSITY OF TEXAS TEACHING LAW, I HAVE WORKED AT
2 LOYAL LAW SCHOOL IN CHICAGO TEACHING LAW. I HAVE WORKED
3 FOR THE SECURITIES AND EXCHANGE COMMISSION IN WASHINGTON,
4 D.C. AND I HAVE BEEN ON THE FACULTY AT THE UNIVERSITY OF
5 SOUTH CAROLINA LAW SCHOOL SINCE 1973.

6 Q AND WHAT AREAS IN THE PRIVATE PRACTICE AND IN
7 TEACHING DID YOU PRACTICE IN AND DO YOU TEACH?

8 A BUSINESS RELATED MATTERS, PRINCIPALLY AND IN PRACTICE
9 AS WELL. I HAD SOME MATTERS CONCERNING PROFESSIONAL
10 RESPONSIBILITY, PROFESSIONAL ETHICS. BOTH OF THOSE AREAS
11 ARE MAJOR AREAS.

12 Q HOW LONG HAVE YOU TAUGHT AT THE U.S.C. SCHOOL OF LAW?

13 A I AM IN MY 34TH YEAR.

14 Q AND WHAT GENERAL TYPE OF CLASSES DO YOU TEACH THERE?

15 A TODAY FOR EXAMPLE I TAUGHT A COURSE IN SECURITIES
16 REGULATION AND WHICH IS A BUSINESS INVESTMENT RELATED AND
17 PROFESSIONAL RESPONSIBILITY. I ALSO TEACH FOR OUR
18 CORPORATION'S COURSE, I TEACH LEGAL ACCOUNTING, I TEACH A
19 COURSE CALLED BUSINESS CRIME WHICH GETS INTO WHITE COLLAR
20 CRIME AND I TAUGHT OTHER COURSES AS WELL OVER THE YEARS.

21 Q WHAT HONORS OR AWARDS HAVE YOU RECEIVED WHILE
22 TEACHING AT THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF
23 LAW?

24 A I HAVE BEEN VOTED THE BEST TEACHER FOUR TIMES.

25 Q AND HOW MANY YEARS HAVE YOU TAUGHT CORPORATE LAW?

1 A THIS FALL I TAUGHT AND I THINK IT IS THE 34TH YEAR IN
2 A ROW.

3 Q DID YOU GET ANY OTHER ACADEMIC PROCEDURES BESIDES
4 YOUR TEACHING AT UNIVERSITIES?

5 A SURE. I WRITE ARTICLES OF VARIOUS TYPES, SOME DEAL
6 WITH BUSINESS. I WRITE A REGULAR LEGAL ETHICS COLUMN FOR
7 THE SOUTH CAROLINA LAWYERS MAGAZINE. I ALSO ENGAGE IN
8 PUBLIC SERVICE IN VARIOUS TYPES.

9 Q HAVE YOU ENGAGED IN ACTIVITIES SPECIFICALLY INVOLVING
10 CORPORATE GOVERNANCE OR DISCLOSURE ISSUES?

11 A YES, I HAVE.

12 Q AND WHAT ARE THOSE ACTIVITIES?

13 A FOR EXAMPLE, WHEN THE SOUTH CAROLINA LEGISLATURE
14 REVISED THE SOUTH CAROLINA CODE DEALING WITH CORPORATIONS
15 I WAS THE OFFICIAL REPORTER FOR THE SECTIONS DEALING WITH
16 SHAREHOLDERS RIGHTS AND TREATMENT AND ALSO DEALING WITH
17 THE DUTIES AND RESPONSIBILITIES OF OFFICERS AND DIRECTORS.
18 I GIVE LECTURES PERIODICALLY IN THE AREA OF, YOU KNOW,
19 BUSINESS RESPONSIBILITIES AND INVESTMENT RESPONSIBILITIES.
20 AGAIN, I WRITE A LOT IN THAT AREA TOO.

21 Q HAVE YOU WRITTEN ACADEMIC ARTICLES REGARDING
22 CORPORATE GOVERNANCE AND DISCLOSURE ISSUES?

23 A YES.

24 Q AND HAVE THEY BEEN PUBLISHED?

25 A THEY SURE HAVE.

1 Q WHERE?

2 A THE JOURNAL OF CORPORATION LAW IS A BIG ONE,
3 PUBLISHED IN 2001. THAT LED TO ME TESTIFYING BEFORE THE
4 U.S. SENATE ON GOVERNANCE ISSUES. I HAVE ANOTHER ARTICLE,
5 A VERY LARGE ONE COMING UP THERE, AGAIN, IN JUNE I
6 PUBLISHED AN ARTICLE DEALING WITH BUSINESS RELATED MATTERS
7 FOR LAWYERS, OPINION LETTERS PUBLISHED IN THE LAW JOURNAL
8 OF SOUTH CAROLINA AND OTHER PLACES.

9 Q AND HAVE YOU EVER TESTIFIED IN SOUTH CAROLINA COURTS
10 REGARDING THE ISSUE OF CORPORATE GOVERNANCE AND CORPORATE
11 DISCLOSURES?

12 A YES, I HAVE.

13 Q HOW MANY TIMES?

14 A IT IS HARD TO COUNT BUT THERE HAVE BEEN PLENTY OF
15 CASES OVER THE YEARS. AND THREE MAIN AREAS, FEDERAL
16 COURT, STATE COURT OR ARBITRATION PANELS.

17 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT IN THESE FIELDS
18 IN SOUTH CAROLINA COURTS?

19 A YES.

20 Q ON OCCASION HAVE YOU BEEN TESTIFIED AS AN EXPERT
21 INVOLVING CASES INVOLVING CORPORATE REPORTING, DISCLOSURE
22 ISSUES, WHAT TYPE OF BEHAVIOR HAVE YOU FOCUSED ON?

23 A TYPICALLY THE RESPONSIBILITIES THAT EXECUTIVES OWE
24 WHEN IT COMES TO DISCLOSURE ISSUES AND REPORTING.

25 Q PROFESSOR FREEMAN, ARE YOU HERE TO TELL THE JURY WHAT

1 THE LAW IS?

2 A NO, I AM NOT.

3 Q ARE YOU HERE TO GIVE A LEGAL OPINION TO THE JURY?

4 A I AM NOT HERE TO GIVE LEGAL OPINIONS TO THE JURY.

5 Q WHAT ARE YOU HERE TO DO, SIR?

6 A I AM HERE TO GIVE MY PROFESSIONAL OPINION AS TO THE
7 FACTS AS THEY HAVE COME TO ME IN REVIEWING MATERIALS IN
8 THIS CASE THAT HAVE BEEN FURNISHED TO ME AND ALSO BASED ON
9 THINGS THAT I HAVE SEEN HERE IN THE COURTROOM.

10 MS. EVANS: YOUR HONOR, AT THIS TIME I WOULD LIKE TO
11 SUBMIT PROFESSOR FREEMAN AS AN EXPERT IN THE FIELD OF
12 CORPORATE GOVERNANCE, DISCLOSURE PRACTICES FILED BY PUBLIC
13 COMPANIES, OFFICERS AND THEIR DIRECTORS.

14 THE COURT: ANY OBJECTION OR CROSS-EXAMINATION AS TO
15 QUALIFICATIONS AT THIS TIME, MR. GRIFFIN?

16 MR. GRIFFIN: YES, BRIEFLY, YOUR HONOR.

17 THE COURT: ALL RIGHT, YOU CAN CROSS-EXAMINE ONLY AS
18 TO QUALIFICATIONS. GO AHEAD.

19 CROSS-EXAMINATION

20 BY MR. GRIFFIN:

21 Q PROFESSOR FREEMAN, SINCE 1973 YOU HAVE TAUGHT?

22 A I HAVE.

23 Q HAVE YOU REPRESENTED ANY CORPORATIONS SINCE 1973?

24 A YES.

25 Q HAVE YOU ADVISED THE CORPORATIONS REGARDING THE

1 FILING OF DISCLOSURE STATEMENTS WITH STATE OR FEDERAL
2 AGENCIES?

3 A LET ME GIVE AN EXAMPLE. THE ANSWER IS YES. FOR
4 EXAMPLE, THERE WAS A MUTUAL FUND THAT WAS IN ATLANTA.
5 THEY GOT IN TROUBLE WITH THE SECURITIES AND EXCHANGE
6 COMMISSION AND AS A RESULT OF WORKING OUT THE PROBLEMS
7 WITH THE SECURITIES AND EXCHANGE COMMISSION I WAS PUT ON
8 THE BOARD OF DIRECTORS OF THAT MUTUAL FUND AND SERVED AS A
9 MEMBER OF THE BOARD OF DIRECTORS AND WAS INVOLVED IN
10 ISSUES OF DISCLOSURE AND COMPLIANCE WITH INVESTMENT LAWS.

11 Q HAVE YOU SERVED ON THE BOARDS OF ANY OTHER ENTITIES?

12 A LEGAL AIDE SOCIETY AND TYPES OF THINGS BUT NOT PUBLIC
13 COMPANIES, THAT WOULD BE THE ONLY PUBLIC COMPANY.

14 Q AND YOUR LAW WORK, IN PRIVATE PRACTICE, WAS IT JONES
15 DAY IN CLEVELAND?

16 A JONES DAY LAW FIRM, YES.

17 Q WERE YOU INVOLVED IN THE PREPARATION OF PROSPECTUS'?

18 A YES.

19 Q AND WHAT YEARS WERE THOSE?

20 A THAT WAS BACK IN THE EARLY 1970'S, PROXY STATEMENTS.

21 I WORKED ON PROSPECTUS' AND THERE MAY OF BEEN SOME

22 QUARTERLY REPORTS BACK THEN.

23 Q AND YOU ALSO, I BELIEVE, WORKED AT THE SEC?

24 A TRUE.

25 Q WAS IT A SUMMER JOB?

1 A I WAS HIRED THERE AS SPECIAL COUNSEL FOR TWO SUMMERS.

2 Q AND YOU WORKED IN WHAT CAPACITY?

3 A I WAS A SPECIAL COUNSEL, AT THE TIME THE MUTUAL FUND
4 INDUSTRY WAS IN TERRIBLE SHAPE AND THEY WERE LOOKING FOR
5 WAYS TO ASSIST UNDER THE SECURITIES LAWS TO CHANGE THE
6 SECURITIES LAWS. SOME MUTUAL FUNDS WHICH ARE PUBLIC
7 COMPANIES AND HOW THEY ARE REGULATED COULD HAVE AN IMPACT,
8 MORE EASE IN SELLING THEIR INVESTMENTS TO THE PUBLIC. I
9 WORKED ON THAT.

10 Q WAS IT ONE ARM OR THE OTHER OF THE SEC?

11 A IT WAS THE ~~D~~IVISION OF INVESTMENT MANAGEMENT.

12 Q AND WAS THAT THE DIVISION THAT REGULATES ADVISERS?

13 A AND MUTUAL FUNDS.

14 Q AND MUTUAL FUNDS?

15 A YES, SIR.

16 Q SINCE, LET ME ASK YOU ABOUT CORPORATE GOVERNANCE.
17 YOU SERVED ON A BOARD, HAVE YOU BEEN GENERAL COUNSEL OF
18 ANY CORPORATIONS ADVISING THEM?

19 A I HAVE NOT BEEN GENERAL COUNSEL TO A CORPORATION.

20 Q HAVE YOU WRITTEN ANY ARTICLES FOR CORPORATE?

21 A IN THE MUTUAL FUND AREA, YES, DEALING WITH THE
22 STANDARDS OF BEHAVIOR FOR ADVISORY FEES. AND MY LATEST
23 ONE COMING UP DEALS WITH FIDUCIARY RESPONSIBILITIES OF
24 DIRECTORS AMONG OTHER THINGS WHEN IT COMES TO WHAT ARE
25 CALLED DISTRIBUTION EXPENSES, THE MONEY THAT IS SPENT TO

1 SELL THESE MUTUAL FUNDS.

2 Q HAVE YOU WRITTEN ANY TEXT REGARDING CORPORATE
3 GOVERNANCE, TEXT BOOKS?

4 A NO, THE ONLY THING THAT I HAVE DONE IS A CHAPTER IN A
5 BOOK DEALING WITH LAWYERS OPINION, RESPONSIBILITIES WHICH
6 GETS INTO CORPORATE DISCLOSURES BUT IT IS MORE ADVICE TO
7 CORPORATE LAWYERS AS OPPOSED TO ADVICE TO, WRITTEN FOR THE
8 OFFICER AND DIRECTOR MARKET.

9 Q AND YOU HAVE AND I FORGOT THE THIRD CATEGORY,
10 CORPORATE GOVERNANCE, DISCLOSURE, WHAT WAS THE THIRD?

11 MS. EVANS: EXPERT IN THE FIELD OF CORPORATE
12 GOVERNANCE, DISCLOSURE PRACTICES FOLLOWED BY PUBLIC
13 COMPANIES, THEIR OFFICERS AND DIRECTORS.

14 MR. GRIFFIN: I DON'T HAVE ANYTHING FURTHER, YOUR
15 HONOR, I DON'T OBJECT.

16 THE COURT: ALL RIGHT, THEN THE COURT FINDS THE
17 WITNESS TO BE QUALIFIED AS AN EXPERT IN THOSE FIELDS.
18 MADAM FORELADY AND LADIES AND GENTLEMEN, LET ME EXPLAIN TO
19 YOU. NORMALLY, WITNESSES ARE NOT PERMITTED TO VOICE THEIR
20 OPINIONS. THERE IS AN EXCEPTION OF THAT GENERAL RULE,
21 WHEN A WITNESS IS QUALIFIED AS AN EXPERT THAT DOES GIVE
22 THAT WITNESS A RIGHT TO VOICE HIS OR HER OPINION IN THAT
23 PARTICULAR FIELD OR THOSE PARTICULAR FIELDS. I WILL HAVE
24 MORE INSTRUCTIONS ABOUT THAT DURING MY INSTRUCTIONS TO
25 YOU. BUT THIS WITNESS WILL BE ENTITLED TO VOICE HIS

1 OPINION IN THOSE FIELDS. YOU MAY CONTINUE, MS. EVANS.

2 MS. EVANS: THANK YOU, YOUR HONOR, IF IT PLEASES THE
3 COURT.

4 DIRECT EXAMINATION

5 BY MS. EVANS:

6 Q PROFESSOR FREEMAN, LET'S TALK ABOUT CORPORATIONS IN
7 GENERAL. WE HAVE HEARD A LOT ABOUT 10K'S, 10Q'S AND 8K'S.
8 PLEASE TELL THE JURY WHY WE HAVE THOSE?

9 A WE HAVE THOSE FOR PUBLIC PROTECTION. THESE COME FROM
10 A STATUTE THAT WAS ADOPTED AFTER THE CRASH, AFTER THE
11 DEPRESSION CONGRESS INVESTIGATED THE AFTERMATH OF THE
12 CRASH WHERE A LOT OF PEOPLE LOST A LOT OF MONEY ON
13 INVESTMENTS. AND THEY, CONGRESS DECIDED THAT THERE WAS
14 TIME FOR A CHANGE AND THAT THE FEDERAL GOVERNMENT WAS
15 GOING TO PLAY A ROLE. AND THEY DID THIS TWO WAYS. THEY
16 DID THIS BY ADOPTING SPECIAL LEGISLATION WHICH IS CALLED
17 THE SECURITIES ACT OF 1933 WHICH SAYS WHEN YOU SELL
18 INVESTMENTS TO INVESTORS, THE COMPANY SELLS THEM, YOU HAVE
19 SPECIAL OBLIGATIONS AND THAT IN THE SECURITIES AND
20 EXCHANGE ACT OF 1934 THEY SAID THAT ONCE THE SECURITIES
21 ARE OUT THERE AND THE COMPANY HAS GONE PUBLIC, IT IS NOW A
22 PUBLIC COMPANY AS HOMEGOLD WAS THERE IS A DUTY TO
23 CONTINUINGLY UPDATE WHAT INVESTORS KNOW ABOUT THE COMPANY
24 SO THE INVESTORS HAVE AN OPPORTUNITY TO UNDERSTAND WHERE
25 THE COMPANY IS HEADED. AND SOME INVESTORS MAY BE DECIDING

1 TO BUY THE STOCK OR TO SELL THE STOCK OR WHETHER THEY
2 SHOULD HOLD THE STOCK AND THIS INFORMATION IS
3 INTENTIONALLY, THE COMPANIES ARE FORCED TO PUT THIS
4 INFORMATION OUT, FIRST PUBLISH IT TO THE SEC BUT MAKING IT
5 AVAILABLE TO THE WORLD SO THAT THE MARKET PLACE AND THE
6 INVESTORS HAVE FRESH ACCURATE INFORMATION ABOUT THESE
7 INVESTMENT POSSIBILITIES.

8 Q AND HOW IS THE REGULATORY SYSTEM SUPPOSE TO WORK?

9 A IT IS SUPPOSE TO PROTECT INVESTORS BY PROVIDING
10 INVESTORS WITH THE TRUTH, WITH ACCURATE INFORMATION THAT
11 IS HONEST WITHOUT¹ BEING SHADED PLUS OR MINUS SO THAT THE
12 INVESTOR CAN MAKE THE BEST CHOICE AND SO THAT IN OUR
13 CABALISTIC SOCIETY THE MONEY WILL FLOW TO THE BEST
14 INVESTMENT AS OPPOSED TO BEING MISROUTED TO BAD
15 INVESTMENTS.

16 Q AND IS THAT REQUIREMENT OF CORPORATE DISCLOSURE?

17 A FOR PUBLIC COMPANIES THERE IS A REQUIREMENT OF THIS
18 PERIODIC REPORTING, FIRST OFF. WHEN YOU ARE SELLING
19 INVESTMENTS A REQUIREMENT OF DISCLOSURE AND THE
20 FUNDAMENTAL THEME IS, FULL AND FAIR DISCLOSURE TO
21 INVESTORS. THEY ARE ENTITLED TO THAT, THE OLD RULE OF
22 CAVEAT EMPTOR, BUYER BEWARE CHANGES. IT BECOMES CAVEAT
23 VENDITOR, LET THE SELLER ALSO BEWARE BECAUSE THERE ARE
24 RISK IF YOU DON'T OBEY THESE REQUIREMENTS.

25 Q AND THESE FILINGS WITH THE SEC OR SECURITIES

1 COMMISSION, IS THAT A STAMP OF APPROVAL, WHETHER IT IS A
2 GOOD INVESTMENT. PLEASE EXPLAIN THAT TO THE JURY.

3 A NO, BOTH AT THE FEDERAL AND STATE LEVEL, FIRST OF ALL
4 THE GOVERNMENT DOESN'T PUT A SEAL OF APPROVAL ON ANYTHING.
5 IN FACT IF YOU GET A FEDERAL PROSPECTUS, TYPICALLY IT WILL
6 HAVE A LEGEND ON IT THAT WILL SAY, EVEN THOUGH IT HAS
7 MAYBE PASSED THROUGH THE HANDS OF THE SECURITIES AND
8 EXCHANGE COMMISSION, THAT THE GOVERNMENT HASN'T APPROVED
9 THIS INVESTMENT, HASN'T PASSED ON THE MERITS OF THE
10 INVESTMENT AND IT IS A FEDERAL OFFENSE TO CLAIM THAT
11 HAPPENED. SO, ~~IT~~^{IS} IS A REAL STRICT RULE, NOT, A, THEY
12 DON'T APPROVE IT. AND B, YOU ARE NOT TO INSINUATE THAT
13 THEY DO.

14 Q AND BESIDES THESE PUBLIC FILINGS THAT WE HAVE HEARD
15 ABOUT, ARE THERE OTHER WAYS THAT CORPORATIONS SPEAK TO THE
16 PUBLIC?

17 A SURE.

18 Q AND WHAT IS THAT?

19 A FOR INSTANCE, THEY MAY GIVE AN INTERVIEW TO THE
20 NEWSPAPER, A PRESIDENT OF A COMPANY MAY GO ON A TV SHOW OR
21 THE COMPANY MAY CALL A PRESS CONFERENCE OR PUT OUT A PRESS
22 RELEASE TO HELP INVESTORS UNDERSTAND A NEW DEVELOPMENT IN
23 THE COMPANY THAT IS JUST CROPPED UP, PLUS OR MINUS.

24 Q AND IS THE SAME DUTY OWED TO SUBSIDIARIES OF
25 CORPORATIONS?

1 A WELL, SUBSIDIARIES OF A CORPORATION IS TIED TO THE
2 PARENT BECAUSE OF STOCK OWNERSHIP. YOU ARE NOT TO MISLEAD
3 ANYBODY AND THE SUBSIDIARY IS NOT TO BE MISLEADING IF IT
4 IS ISSUING SECURITIES. AND JUST BE REAL BLUNT ABOUT IT,
5 FALSEHOOD TOOK OUT NO PLACE IN THE INVESTMENT AREA, THAT
6 IS WHAT THE SECURITIES STANDARDS ARE, BOTH THE FEDERAL AND
7 STATE LEVEL, TO TRY TO PROTECT THE COUNTRY BY ELIMINATING
8 THIS.

9 Q OKAY. IN PREPARING FOR YOUR TESTIMONY HERE TODAY
10 WHAT HAVE YOU REVIEWED IN THIS CASE SPECIFICALLY?

11 A A WEALTH OF INFORMATION. MR. SHEPPARD TESTIFIED, FOR
12 EXAMPLE, BEFORE THE STATE SECURITIES COMMISSIONER AND OVER
13 THAT TESTIMONY HE TESTIFIED IN THE HOMEGOLD BANKRUPTCY. I
14 HAVE HIS DEPOSITION THERE. THERE HAVE BEEN A LOT OF SEC
15 DOCUMENTS THAT I HAVE REVIEWED, I HAVE REVIEWED TESTIMONY
16 OF OTHER PERSONS. I REVIEWED INTERVIEWS WITH SLED, FOR
17 EXAMPLE, AS WELL. A LOT OF CORPORATE DOCUMENTS, I HAVE
18 BEEN HERE IN THE COURTROOM, YOU KNOW, PERIODICALLY
19 LISTENING TO TESTIMONY. THE DOCUMENTATION THAT I HAVE IS
20 TWO BOXES, HEAVY BOXES FULL OF DOCUMENTATION.

21 Q AND DOES IT INCLUDE PROSPECTUS'?

22 A YES.

23 Q BYLAWS?

24 A YES.

25 Q DID YOU REVIEW VALUATIONS IN THIS CASE?

1 A YES, I LOOKED AT THE SMITH VALUATION IN PARTICULAR.

2 Q DID YOU ALSO LOOK AT CBIZ AND DELOITTE AND TOUCHE
3 VALUATION?

4 A YES, I DID.

5 Q OKAY. LET'S MOVE ON. BASED UPON ALL OF THOSE
6 DOCUMENTS THAT YOU HAVE REVIEWED AND THE TESTIMONY THAT
7 YOU HAVE REVIEWED, HAVE YOU, HAVE A CONCLUSION ABOUT
8 WHETHER THE DEFENDANT UNDERSTANDS, THE DEFENDANT'S
9 UNDERSTANDING REGARDING FINANCIAL MATTERS?

10 A YES, I HAVE--

11 MR. GRIFFIN: OBJECTION, YOUR HONOR, I MEAN, HE MAY
12 HAVE AN OPINION. I OBJECT TO WHAT IT IS UNDER THE
13 STANDARDS. IT IS NOT, EXPERT TESTIMONY, IT IS JUST THE
14 DEFENDANT'S STATE OF MIND.

15 THE COURT: I WILL OVERRULE THE OBJECTION, YOU MAY
16 CONTINUE.

17 Q DO YOU HAVE AN OPINION WHICH, ON FINANCIAL
18 SOPHISTICATION?

19 A I HAVE AN OPINION BASED ON WHAT I HAVE SEEN, THE
20 OBJECTIVE EVIDENCE THAT I HAVE SEEN AS TO THE DEFENDANT'S
21 FINANCIAL SOPHISTICATION.

22 Q AND WHAT IS THAT OPINION, PROFESSOR?

23 A THAT HE IS FINANCIALLY SOPHISTICATED.

24 Q WHAT SPECIFIC THINGS HAVE LED YOU TO THIS CONCLUSION?

25 A LOTS OF EVIDENCE.

1 Q PLEASE GO OVER SOME SPECIFICALLY WITH THE JURY.

2 A FIRST OF ALL, I HAVE HERE DURING OPENING STATEMENTS
3 AND IT WAS REPRESENTED THAT HE WAS A HIGHLY SUCCESSFUL
4 BUSINESSMAN WITH A FLOURISHING COMPANY, HOMESENSE THAT WAS
5 MERGED INTO HOMEGOLD. AND HE NEGOTIATED THAT TRANSACTION,
6 YOU HAVE GOT TO HAVE SOME SOPHISTICATION TO RUN A COMPANY,
7 HAVE A HUNDRED OR SO EMPLOYEES AND TO NEGOTIATE A
8 TRANSACTION LIKE THAT. WE KNOW THAT HE NEGOTIATED HIS WAY
9 AWAY FROM, LATER HOMEGOLD, AND THE TESTIMONY WHICH I WAS
10 IN THE COURTROOM LISTENING TO WAS THAT HE AND MR. STERLING
11 NEGOTIATED THAT OUT. THAT WAS A BIG TRANSACTION INVOLVING
12 A LOT OF JOBS, A LOT OF PEOPLE, A LOT OF DEBT, A LOT OF
13 EVERYTHING. AND YOU CANNOT DO THAT AND STRUCTURE THESE
14 THINGS WITH PREFERRED STOCK AND SO FORTH WITHOUT BEING
15 SOPHISTICATED. HE HAS HIS AUDITOR BACK AT HOMESENSE. IT
16 IS NOT LIKE HE WAS KEEPING THE BOOKS AND RECORDS IN A
17 SHOEBOX, HE HAD AN AUDITOR THERE. AND WHEN THE
18 TRANSACTION WITH HOMEGOLD WAS ARRANGED, HE DIDN'T JUST
19 COME ON HIS OWN EYESIGHT, HE ASSOCIATED OTHER PEOPLE TO
20 HELP HIM IN WHAT IS CALLED, THIS IS STANDARD, CALLED DUE
21 DILIGENCE WHICH MEANS CHECKING THINGS OUT AND THAT WAS
22 DONE. ONCE HE, HERE IS ANOTHER EXAMPLE, THE MOTOR HOME.
23 THERE IS A PART ABOUT THE MOTOR HOME. WELL, THE MOTOR
24 HOME, WHEN I READ HIS TESTIMONY IN THE EMMCO, EXCUSE ME,
25 IN THE BANKRUPTCY CASE, HOMEGOLD FINANCIAL BANKRUPTCY

1 CASE, IT STRUCK ME ABOUT THE MOTOR HOME. BECAUSE IF YOU
2 LOOK AT THE NAME OF THE MOTOR HOME, IT IS CALLED PREVOST,
3 P-R-E-V-O-S-T, MONTANA, LLC. NOW, WHAT IS WITH THIS. AND
4 IT TURNS OUT AND HE TESTIFIED TO IT THAT HE INCORPORATED
5 SETUP, NOT A CORPORATION, NOT A PARTNERSHIP, NOT A LIMITED
6 PARTNERSHIP BUT A LIMITED LIABILITY COMPANY IN THIS
7 FOREIGN STATE FOR THE PURPOSE OF IT OWNING THE MOTOR HOME.
8 SO, AND THEN HE TESTIFIED THAT, WHEN YOU BUY SOMETHING
9 LIKE THAT, IF YOU LICENSE THAT, HE SAYS, WE SET UP AN LLC
10 IN MONTANA, LIMITED LIABILITY COMPANY. SO, WHEN YOU DO
11 THAT YOU PAY NO SALES TAX AND YOU PAY NO PROPERTY TAX IN
12 THE STATE OF SOUTH CAROLINA. A PERSON ASKING THE
13 QUESTIONS SAID OKAY. HE SAYS, OKAY. SO, THAT IS THE
14 REASON THAT WAS SET UP SO THAT WE WOULD NOT BE PAYING
15 PROPERTY TAXES IN SOUTH CAROLINA BECAUSE ON THAT PROPERTY
16 TAX PROBABLY RUNS \$60 THOUSAND DOLLARS. WELL, THE AVERAGE
17 PERSON DOESN'T SET UP A MONTANA OR WHATEVER, THE LIMITED
18 LIABILITY COMPANY TO OWN YOUR CAR OR YOUR TRAILER OR
19 WHATEVER TO AVOID PROPERTY TAXES. THAT IS A DIFFERENT
20 LEVEL OF SOPHISTICATION THAT MOST PEOPLE DON'T HAVE OR
21 DON'T EVEN KNOW ABOUT. AND I TAKE THAT INTO ACCOUNT IN
22 EVALUATING THE MAN AND HIS BEHAVIOR.

23 Q AND WHY IS THAT SIGNIFICANT IN YOUR EXPERT OPINION?

24 A BECAUSE IT SHOWS THAT HE KNOWS HOW TO USE, TO ACHIEVE
25 AN END WHICH IS A LIMITING TAX OR AVOIDING TAX. I AM NOT

1 SAYING THAT THERE IS AN OBLIGATION TO PAY MORE TAX THAN
2 YOU OWE BUT IT IS THE STRUCTURING AND IT IS THE USE OF
3 BUSINESS ENTITIES FOR PERSONAL GAIN. AND THAT IS TO ME,
4 AN INDICATOR OF SOMEBODY WHO HAS GOT SOME FINANCIAL
5 SOPHISTICATION. ALSO, HE MOVED, THE RECORD IS CLEAR THAT
6 AFTER HE TOOK OVER AS CEO OF HOMEGOLD THE FINANCIAL
7 RECORDS MOVED FROM GREENVILLE WHERE HE COULD WATCH OVER
8 THEM IN LEXINGTON. THERE WAS SOME EVIDENCE THAT I SAW
9 THAT HE WAS HEAVILY INVOLVED IN FINANCIAL MATTERS AND
10 THERE WAS TESTIMONY FROM MS. MILLER THAT HE WANTED THE
11 FINANCIALS IN THE THIRD QUARTER, I BELIEVE IT WAS, IN
12 2002, THAT HE HAD A PROBLEM AND WANTED THAT WORKED ON FROM
13 A FINANCIAL STANDPOINT. AND WHEN YOU START DOING THESE
14 THINGS AND TAKING CLOSE EYE CONTACT AND CONTROL OVER
15 THINGS IT IS TELLING ME THAT YOU KNOW WHAT IS GOING ON.
16 ANOTHER THING THAT I TAKE INTO ACCOUNT IS TESTIMONY, SOME
17 EVIDENCE THAT I RAN ACROSS, THAT IN THE FALL OF 2001 HE
18 MET WITH MR. BURGESS AND MR. RANK OF ELLIOTT DAVIS AND
19 TOLD THEM THAT HE COULD NOT SEE THAT IT WOULD BE POSSIBLE
20 FOR HOMEGOLD TO PAY BACK THE MONEY THAT HAD BEEN BORROWED
21 FROM CAROLINA INVESTORS, THAT HE TOLD THE ACCOUNTANTS
22 THAT. ACCEPTING THAT IS TRUE, THAT WOULD BE AN INDICATION
23 THAT HE KNOWS WHAT IS GOING ON AND UNDERSTANDS WHAT IS
24 GOING ON AND SEES WHAT IS GOING ON AND RECOGNIZES THE DIRE
25 FINANCIAL CONDITION OF THE COMPANY. AND AS FAR AS I KNOW,

1 I WASN'T THERE BUT IF THAT HAPPENED THAT WOULD BE THE ONE
2 AND ONLY TIME THAT SOMEBODY AT HOMEGOLD SPOKE TO AN
3 OUTSIDER AND ADMITTED THE COLLAPSE, THAT THIS ACTUALLY,
4 THE MONEY WASN'T COMING HOME, THE MONEY COULDN'T BE PAID
5 BACK. AND I TAKE THAT INTO ACCOUNT.

6 Q AND WHY IS THAT SIGNIFICANT?

7 A IT IS SIGNIFICANT BECAUSE ONE INDICATOR THAT A
8 COMPANY IS BUSTED IS ITS INABILITY TO PAY ITS DEBTS. AND
9 IF HOMEGOLD'S CEO IS RECOGNIZED THAT WE HAVE GOT THIS
10 OBLIGATION THAT WE HAVE INCURRED WITH CAROLINA INVESTORS
11 AND WE ARE NOT GOING TO BE ABLE TO PAY THE MONEY BACK.
12 WHAT YOU HAVE DONE AT THAT POINT IS MOMENTOUS. BECAUSE AT
13 THAT POINT YOU HAVE RECOGNIZED, YOU ARE BUSTED. AND THEN
14 THERE IS KEVIN MARTIN, AND KEVIN MARTIN WRITES A LETTER IN
15 AUGUST AND I KNOW IT IS DISPUTED THAT HE WAS NO GOOD AND
16 HE HAS BEEN FIRED AND HE IS WORTHLESS AND ALL OF THIS.
17 BUT HE WRITES A LETTER AND SAYS, WE CAN'T, YOU KNOW, PAY
18 THE MONEY BACK. I RESIGNED AND WE JUST HAVE HAD IT. AND
19 WHAT I WAS READING FOR MY BACKGROUND AS AN EXPERT, THERE
20 WAS A VERY POIGNANT COMMENT THAT HE HAD MADE AT SOME PLACE
21 OR ANOTHER AND I BELIEVE HE WAS UNDER OATH WHEN HE DID IT,
22 MARTIN. AND HE SAID AT THAT POINT THERE, WE HAD TRIED
23 EVERYTHING, WE HAD TRIED THE, BRINGING ABOARD HOMESENSE.
24 WE HAD TRIED RAMPING UP, IT HADN'T WORKED. WE HAD TRIED
25 TO SELL THE COMPANY AND THAT WAS A FAILURE AND WE JUST HAD

1 NO MORE OPINIONS. AND HE SAID AT THAT POINT ALL WE ARE
2 DOING IS KEEPING THE DOORS OPEN, KEEPING THE COMPANY
3 RUNNING SO WE COULD MAKE SALARIES, MAKE OUR SALARIES AND I
4 HAD TO GET OUT.

5 MR. GRIFFIN: YOUR HONOR, I OBJECT, HE IS NOT
6 ANSWERING ANY QUESTION. HE IS ASTOUNDING ON THE EVIDENCE
7 IN THE CASE, GIVING CLOSING ARGUMENTS.

8 THE COURT: I SUSTAIN THE OBJECTION TO THAT AND WOULD
9 INSTRUCT THE JURY TO DISREGARD THE LAST STATEMENT. MS.
10 EVANS, ASK ANOTHER QUESTION, PLEASE.

11 Q YOU TALKED ABOUT THE HOMESENSE/HOMEGOLD MERGER. WHAT
12 ABOUT, SPECIFICALLY ABOUT THE HOMESENSE/HOMEGOLD MERGER
13 DID YOU, BASED UPON YOUR OPINIONS LED TO THE FINANCIAL
14 SOPHISTICATION OF THE DEFENDANT?

15 A WELL, THE TRANSACTION ITSELF IS COMPLICATED AND I
16 CAN'T, YOU CAN'T AGREE TO AND EXECUTE A TRANSACTION SUCH
17 AS THAT WITHOUT SOME SERIOUS KNOW HOW. AND THERE WERE
18 REPRESENTATIONS THAT WERE MADE THAT WERE TURNED OUT NOT TO
19 BE TRUE THAT WERE DEALT WITH AND NEGOTIATED OUT AND ALL OF
20 THIS IS WHAT SOPHISTICATED BUSINESS PEOPLE DO.

21 Q AND IS THE SAME TRUE ABOUT THE EMMCO TRANSACTION WHEN
22 HE LEFT HOMEGOLD?

23 A THE SAME THING, ALL SOPHISTICATED, NOT A SIMPLE
24 TRANSACTION, NOT SOMETHING THAT AN UNSOPHISTICATED PERSON
25 IN MY OPINION COULD NEGOTIATE.

1 Q AND IN FORMULATING THAT OPINION ARE YOU AWARE THAT
2 THE DEFENDANT DOES NOT HAVE MUCH OF A FORMAL EDUCATION?

3 A I AM AND I TAKE THAT INTO ACCOUNT. HOWEVER, THERE IS
4 A LOT OF SOPHISTICATION WHEN IT COMES TO THE LENDING
5 BUSINESS AND ONE WAY YOU CAN LEARN THINGS IS OJT, ON JOB
6 TRAINING AND PICKING THINGS UP AND I AM NOT SAYING THAT
7 THE MAN IS NOT A VERY SMART MAN. HE IS IN MY JUDGMENT
8 THAT.

9 Q AND THAT DID NOT AFFECT YOUR OPINION ABOUT HIS
10 FINANCIAL SOPHISTICATION?

11 A HIS FORMAL EDUCATION, I TOOK INTO ACCOUNT BUT I DON'T
12 THINK THAT CONTROLS.

13 Q OKAY. LET'S MOVE ON. DO YOU HAVE AN OPINION AS TO
14 WHETHER THE DEFENDANT KNEW THE IMPORTANT EVENTS THAT WERE
15 BEING TOLD TO HIM BY THE LAWYERS AND THE ACCOUNTANTS WHILE
16 HE WAS CEO OF HOMEGOLD?

17 A YES, I DO.

18 Q AND WHAT IS THAT OPINION?

19 MR. GRIFFIN: OBJECTION, YOUR HONOR, IT IS IMPROPER
20 OF EXPERT TESTIMONY AS TO WHAT SOMEONES STATE OF MIND IS.

21 THE COURT: OVERRULE, YOU MAY CONTINUE.

22 Q PLEASE ANSWER THE QUESTION, PROFESSOR FREEMAN.

23 A MY UNDERSTANDING IS THAT HE DID RECOGNIZE WHAT WAS
24 BEING TOLD TO HIM AT THE TIME BY OUTSIDERS, WHETHER THEY
25 ARE LAWYERS, ACCOUNTANTS OR WAREHOUSE LENDERS.

1 Q AND WHAT ARE SOME SIGNIFICANT EVENTS THAT YOU TOOK
2 INTO ACCOUNT IN FORMULATING THAT OPINION?

3 A ONE OF THE MOST REALLY DEALT WITH IS HIS
4 COMMUNICATIONS AND THE JURY HAS HEARD ABOUT IT MORE THAN
5 ONCE. WHERE THE CIT LINE OF CREDIT STARTED TO STEP DOWN
6 BEGINNING IN THE SUMMER OF 2000. AND MY INVESTIGATION IS
7 THAT THERE WAS A MEETING ATTENDED BY MR. SHEPPARD AND
8 OTHERS WITH CIT, IN NEW YORK WHEN THIS WAS EXPLAINED TO
9 THEM. AND THAT IN THE COURSE OF THAT INVESTIGATION
10 ESSENTIALLY CIT SAID, WE NEED TO GET OUT OF THIS, WE ARE
11 NOT GOING TO CONTINUE OR ENLARGE OUR DEALINGS WITH
12 HOMEGOLD. WE ARE FEARFUL ABOUT CAROLINA INVESTORS, WE
13 FORESEE A POSSIBLE COLLAPSE IN GETTING CAUGHT UP WITH
14 THOSE PEOPLE UNPAID AND TRYING TO ENDING UP, IN SO MANY
15 WORDS FIGHTING WITH MONEY OVER THEM. AND HE TALKED ABOUT
16 THAT TWICE IN HIS INTERVIEW NOTES WITH THE SECURITIES
17 COMMISSION. THE FACT THAT HE CAME BACK TO IT, SOMETIME
18 AFTER THE FACT, TOLD ME HE UNDERSTOOD EXACTLY WHAT WAS
19 BEING SAID AND THAT IT WAS VERY WORRISOME TO ME. SO THAT
20 IS A TELLING POINT.

21 Q WHAT ABOUT THE OCTOBER 2001 MEETING, I THINK YOU
22 BRIEFLY TALKED ABOUT IT WITH THE OUTSIDE AUDITORS?

23 A THE SAME THING, THAT IF I UNDERSTAND WHAT HAPPENED AT
24 THAT MEETING, HE REVEALED TO THEM HIS BELIEF THAT THERE
25 WAS JUST NOT THE ABILITY TO REPAY CAROLINA INVESTORS AND

1 THAT IS A VERY TELLING THING. WE KNOW THAT SUBSEQUENTLY
2 THE GOING CONCERN QUALIFICATION WAS ISSUED.

3 Q LET'S MOVE ON, DID YOU REVIEW THE MARCH 14TH, 2002.
4 DO YOU HAVE AN OPINION WHETHER THE DEFENDANT UNDERSTOOD
5 THE RAMIFICATIONS OF GOING CONCERN?

6 MR. GRIFFIN: THE SAME OBJECTION, YOUR HONOR.

7 THE COURT: OVERRULED.

8 A THE OBJECTIVE MANIFESTATIONS THAT I INTERPRETED WERE
9 THAT HE, AFTER THE MEETING THERE WAS A DISCUSSION ABOUT
10 GETTING RID OF ELLIOTT DAVIS, WAS ANGRY ABOUT IT AND
11 FURIOUS ABOUT IT⁴ AND REALIZED THAT LARRY OWEN WAS SO
12 UPSET HE EVEN CALLED LARRY AFTER THE MEETING TO TRY TO SEE
13 IF HE WAS ALL RIGHT. AND MY UNDERSTANDING WAS, HE KNEW
14 JUST THE IMPORTANCE OF THAT AND THE GRAVITY OF THAT.

15 Q AND WHY IS THAT SIGNIFICANT?

16 A AGAIN, BECAUSE YOU HAVE A COMPANY THAT IS ON LIFE
17 SUPPORT OR WORSE AND FRANKLY THERE IS EVIDENCE THAT HE
18 KNEW IT IN THE FALL, THE PREVIOUS FALL BUT CERTAINLY THAT
19 HAD TO COME HOME TO HIM AT THAT MEETING AS IT DID TO
20 OTHERS.

21 Q AND ARE YOU ALSO AWARE OF A MARCH 25TH, 2002 MEETING
22 THAT THE DEFENDANT ATTENDED?

23 A I REMEMBER THAT MEETING BUT I CAN'T RECALL THE FACTS
24 TO MIND RIGHT NOW.

25 Q DO YOU REMEMBER REVIEWING THE CBIZ AND DELOITTE AND

1 TOUCHE VALUATIONS?

2 A I DO REMEMBER THAT.

3 Q AND WHAT IS SIGNIFICANT FROM YOUR EXPERT OPINION
4 ABOUT THOSE VALUATIONS?

5 A SEVERAL THINGS. FOR ONE THING CBIZ WAS NOT REALLY
6 CREDITED BY ELLIOTT DAVIS, THEY FOUND FLAWS WITH THE
7 METHODOLOGY AND THAT IS HOW DELOITTE'S APPRAISAL OR
8 VALUATION CAME UP LATER. BUT THEN THAT GOT SPUN, THAT GOT
9 USED IN THE FOOTNOTE TO THE CAROLINA INVESTORS PROSPECTUS
10 WHERE THEY MENTIONED, AS KIND OF A CALMING EFFECT, THERE
11 IS A QUALIFICATION BUT WE HAVE GOT THESE PLANS AND THERE
12 ARE THESE VALUATIONS SAYING THAT HOMEGOLD, THE MORTGAGE
13 PART OF IT IS WORTH \$135 TO \$175 OR THERE ABOUTS MILLION
14 DOLLARS. AND IF YOU WERE AN INVESTOR YOU WOULD LOOK AT
15 THAT AND MAYBE PLACATE IT OR CALM DOWN.

16 MR. GRIFFIN: OBJECTION, YOUR HONOR, MOVE TO STRIKE.

17 THE COURT: I SUSTAIN THE OBJECTION TO THE LAST
18 STATEMENT, INSTRUCT THE JURY TO DISREGARD THAT. ASK
19 ANOTHER QUESTION, PLEASE, MS EVANS.

20 Q LET'S MOVE ON. WHAT ABOUT THE DEFENDANT'S ACTIONS
21 AFTER HE FOUND OUT ABOUT THE GOING CONCERN, SPECIFICALLY
22 ABOUT MONIES AT HOMEGOLD?

23 A PROBLEMS WITH THAT. HE SEEKS PAYMENT, PUTS IN AN
24 INVOICE TO BE COMPENSATED FOR MILEAGE THAT OCCURRED LIKE
25 TWO YEARS PERVIOUSLY, CASH AND WAS EXTRACTED FROM

1 HOMEGOLD.

2 MR. GRIFFIN: OBJECTION, YOUR HONOR, THAT IS NOT
3 BASED ON EXPERT OPINION.

4 THE COURT: I OVERRULE, IT IS GOING TO WHAT HE IS
5 VOICING HIS OPINION ON. GO AHEAD.

6 Q PLEASE CONTINUE ABOUT WHY THAT IS SIGNIFICANT.

7 A BECAUSE IT IS REAL CLEAR AND IT IS MAKING EVERYONE
8 CLEAR THAT THERE IS DIRE FINANCIAL PROBLEMS AT HOMEGOLD,
9 LIQUIDITY PROBLEMS, BILL PAYING PROBLEMS. AND YOU SEE
10 BILLS THEN BEING SUBMITTED FOR CASH REIMBURSEMENTS
11 PROMPTLY BY THE DEFENDANT.

12 Q DID YOU REVIEW A \$200 THOUSAND DOLLAR TRANSACTION?

13 A YES.

14 Q AND TELL THE JURY WHAT YOUR CONCLUSIONS WERE ABOUT
15 THAT.

16 A THAT CONCERNED THE INFUSION, THERE HAS BEEN
17 TESTIMONY, MR. OWEN TESTIFIED ABOUT DIFFERENT PEOPLE WOULD
18 MAKE INVESTMENTS IN CAROLINA INVESTORS AND THIS WAS LOOKED
19 AT BY, I GUESS, THE IDEA WAS THAT THE PUBLIC WOULD BELIEVE
20 THAT WAS A VOTE OF CONFIDENCE AND THEN THE ISSUE IS MR.
21 SHEPPARD GOING TO DO THAT. HE PUTS PUBLICLY \$200 THOUSAND
22 IN BUT THEN THE MONEY COMES BACK OUT AND I TOOK THAT INTO
23 ACCOUNT TO.

24 Q AND WAS THERE ANYTHING ELSE ABOUT THE SPENDING OR
25 REGARDING THE GOING CONCERN THAT YOU THOUGHT WAS

1 SIGNIFICANT?

2 A THOSE ARE THE HIGH POINTS.

3 Q I THINK YOU HAVE ALREADY TALKED ABOUT KEVIN MARTIN'S
4 RESIGNATION LETTER. IN GENERAL, IN YOUR EXPERT OPINION,
5 WAS THE DEFENDANT SOMEONE WHO HAD SUFFICIENT KNOWLEDGE AND
6 SOPHISTICATION TO DISCHARGE HIS RESPONSIBILITIES AND WAS
7 HE PROPERLY INFORMED?

8 A MY UNDERSTANDING, MY BELIEF IS THAT HE HAD THE
9 KNOWLEDGE OF SOPHISTICATION TO DO THE JOB THAT HE WAS
10 EXPECTED TO DO AS A HIGH CORPORATE OFFICIAL AND DID HAVE
11 THE PROPER INFORMATION WITH WHICH HE COULD OF PROPERLY
12 CARRIED OUT HIS RESPONSIBILITIES.

13 Q WHY IS THAT YOUR OPINION, SIR?

14 A BECAUSE HE KNEW, MY REVIEW OF A LOT OF DOCUMENTS IS
15 THAT THIS MAN KNEW WHAT WAS GOING ON ON A DAY-TO-DAY BASIS
16 AND HE JUST DIDN'T SEE THE TREES, HE SAW THE WHOLE FOREST
17 AND HE SAW EVERYTHING COMING AND DEVELOPING.

18 Q LET'S MOVE ON. HAVE YOU FORMED AN OPINION ABOUT
19 STATEMENTS MADE TO THE PUBLIC AND THE INVESTORS REGARDING
20 THE BUSINESS OF HOMEGOLD IN THE PERIOD LEADING UP TO THE
21 BANKRUPTCY?

22 A YES.

23 Q AND PLEASE TELL THE JURY WHAT THAT OPINION IS.

24 MR. GRIFFIN: OBJECTION, YOUR HONOR.

25 THE COURT: STATEMENTS ABOUT WHOM.

1 MS. EVANS: STATEMENTS MADE BY THE DEFENDANT,
2 HOMEGOLD IN GENERAL. I THINK YOU PREVIOUSLY TALKED ABOUT
3 HOW CORPORATIONS COMMUNICATE WITH THE PUBLIC ON 8K'S.

4 THE COURT: WITH THAT CLARIFICATION THE OBJECTION IS
5 OVERRULED, GO HEAD.

6 Q PLEASE CONTINUE, PROFESSOR FREEMAN.

7 A MY OPINION IS THAT THE PUBLIC DID NOT GET THE PROPER
8 LEVEL OF DISCLOSURE IT DESERVED LEADING UP TO THE HOMEGOLD
9 AND CAROLINA INVESTORS BANKRUPTCY.

10 Q AND TELL THE JURY SPECIFIC THINGS THAT YOU TOOK INTO
11 ACCOUNT?

12 A I REFERRED EARLIER TO THIS FOOTNOTE TO TRY TO
13 AMELIORATE OR LIMIT THE CONCERN OVER THE GOING CONCERN
14 QUALIFICATION AND THE TALK ABOUT THIS, THERE IS THE VALUE
15 THAT WE HAVE GOT THESE APPRAISALS. THEY SAY THIS MORTGAGE
16 UNIT IS WORTH A LARGE AMOUNT OF MONEY. AND THAT WAS A
17 REPRESENTATION THAT WAS MADE. AND WHAT I FIND IS SOME
18 EVIDENCE THAT WAS NOT A BALANCED REPRESENTATION, THAT IT
19 WAS DEFICIENT BECAUSE CERTAIN FACTS WERE NOT RELATED IN
20 THE SAME PLACE TO HELP PEOPLE UNDERSTAND THAT DISCLOSURE.
21 SHOULD I GO INTO THE SPECIFICS?

22 Q CERTAINLY.

23 A ONE SPECIFIC IS THAT ELLIOTT DAVIS HAD REAL PROBLEMS
24 WITH THE CBIZ VALUATION AND THAT WAS NEVER DISCLOSED. THE
25 VERY AUDITORS THAT WHO WERE AUDITING THE BOOKS HAD GOTTEN

1 A PROBLEM WITH THAT. ANOTHER PROBLEM WITH THE DISCLOSURE
2 IS THAT IT WOULD IMPLY THAT THE COMPANY CAN GET CASH, THAT
3 THERE ARE PEOPLE OUT THERE THAT WILL PAY THAT AMOUNT OF
4 CASH RIGHT NOW FOR THE MORTGAGE BUSINESS THAT HOMEGOLD
5 HAS. IT IS JUST SITTING THERE WAITING TO BE SOLD OFF.
6 THERE IS NOT EVIDENCE THAT WAS TRUE AT ALL AND AS FAR AS I
7 KNOW IT NEVER CAME CLOSE TO PROVING OUT. ANOTHER PROBLEM
8 IS THAT THE PEOPLE WHO HAD DONE THOSE VALUATIONS HADN'T
9 GIVEN PERMISSION FOR THOSE VALUATIONS TO BE USED THAT WAY,
10 TO THE BEST OF MY KNOWLEDGE, THEY HAD NEVER GIVEN THAT
11 PERMISSION. AND SO YOU ARE USING THINGS THAT, IN AN
12 UNAUTHORIZED WAY TO MAKE A POINT AND THAT I HAVE A PROBLEM
13 WITH.

14 Q DO YOU REMEMBER REVIEWING SOMETHING ABOUT AN
15 AMMUNITION MEETING IN AUGUST OF 2002?

16 A RIGHT, KEVIN MARTIN WENT AND WROTE AN EMAIL TALKING
17 ABOUT A MEETING TO GIVE AMMUNITION TO THE CAROLINA
18 INVESTORS FOLKS, MR. OWEN AND MR. MORRIS, TO TRY TO
19 PROVIDE THEM WITH, HE USED THE TERM AMMUNITION. NOW, WHEN
20 YOU NEED AMMUNITION, WHEN YOU ARE GOING HUNTING YOU NEED
21 AMMUNITION, WHAT WOULD THESE PEOPLE BE HUNTING FOR, THEY
22 WOULD BE HUNTING FOR NEW INVESTORS AT CAROLINA INVESTORS.
23 AND TO GIVE THEM AMMUNITION THERE WAS A TENDENCY TO BE
24 VERY GLOWING AND VERY POSITIVE ABOUT THE OUTLOOK OR THE
25 POSSIBILITIES OF THE LIKELY SELL, IMPENDING SELL OF THE

1 MORTGAGE DIVISION. NONE OF THAT HAD SUBSTANCE TO IT, NONE
2 OF THAT EVER HAPPENED. AND I TAKE THAT INTO ACCOUNT AS
3 WELL, OF EVIDENCE OF A LACK OF BALANCE IN THE DISCLOSURES
4 THAT I THINK WAS IMPROPER.

5 Q WHAT ABOUT THE FAILURE TO REPORT THE RESIGNATION
6 LETTER OF KEVIN MARTIN?

7 A AT THE TIME, FIRST OF ALL THAT IS A RED FLAG THAT
8 THERE IS WORRY. AND YOU CAN SAY, WELL, HE IS CRAZY OR HE
9 IS NO GOOD OR ANYTHING. BUT IT IS SERIOUS, THE FACT THAT
10 HE STATED, WE CAN'T PAY THE MONEY BACK QUICKLY PROVED OUT
11 TO BE TRUE. BUT THERE WAS NO, MY RESEARCH DID NOT
12 DISCLOSE THAT THERE WAS AT THAT TIME A LEGAL OBLIGATION TO
13 ISSUE A PERIODIC REPORT CALLING ATTENTION TO THAT.

14 Q DID YOU REVIEW THE COMPLICATIONS WITH THE BANKRUPTCY
15 COUNSEL BY HOMEGOLD REGARDING CAROLINA INVESTORS?

16 A I DID.

17 Q WAS THAT SIGNIFICANT TO YOU?

18 A IT WAS.

19 Q WHY?

20 A BECAUSE FOR ONE THING, THIS FALLS THROUGH WITH WHAT
21 MARTIN WAS SAYING AND THAT IS THE RISK THAT THIS ALL COULD
22 CAVE IN. THE HOMEGOLD PEOPLE HAVE CONNECTED DOTS AND
23 REALIZED HOW VULNERABLE EVERYBODY IS AND THAT ALL IT TAKES
24 IS FOR A RUN ON CAROLINA INVESTORS AND EVERYTHING COULD
25 COME TO A SCREECHING HALT. SO, THEY BRING IN MR. RAYBURN

1 WHO IS A QUALIFIED BANKRUPTCY REORGANIZED EXPERT OUT OF
2 CHARLOTTE TO ADVISE THEM ABOUT WHAT TO DO ABOUT CAROLINA
3 INVESTORS. AND IT IS INTERESTING THAT THE CAROLINA
4 INVESTORS PEOPLE ARE SCREENED AWAY FROM THAT MEETING AND
5 DID NOT EVEN SEEM TO KNOW ABOUT IT WHEN IT OCCURRED AND
6 DIDN'T LEARN ABOUT IT UNTIL MUCH LATER AND THAT I TOOK
7 INTO ACCOUNT. BECAUSE IT BASICALLY TELLS ME WHO IS
8 DRIVING THE BUS HERE. AND THE BUS IS BEING DRIVEN AND THE
9 DETAILS ARE BEING HANDLED AT THE HOMEGOLD LEVEL, NOT THE
10 CAROLINA INVESTORS LEVEL.

11 Q SPEAKING ABOUT CAROLINA INVESTORS, DID YOU REVIEW
12 CAROLINA INVESTORS MINUTES ABOUT WHAT WAS TOLD TO THE
13 CAROLINA INVESTORS BOARD?

14 A YES, I DID.

15 Q AND WAS THAT SOMETHING THAT DREW YOUR CONCLUSIONS
16 THAT YOU USED TO DRAW YOUR CONCLUSIONS?

17 A TO ME THE COMMUNICATIONS WERE UPBEAT AND VERY, VERY
18 POSITIVE, NOT BALANCED.

19 Q AND WHY IS THAT SIGNIFICANT?

20 A BECAUSE WHAT HOMEGOLD IS DOING IS EXTRACTING MONEY
21 THROUGH CAROLINA INVESTORS BY USING CAROLINA INVESTORS
22 FACILITIES TO PEOPLE. AND THESE PEOPLE WHO ARE TELLING
23 THE STORY TO THE PUBLIC, IF THEY ARE ONLY GETTING ONE SIDE
24 OF THE STORY THE ODDS ARE THEY ARE GOING TO END UP
25 MISLEADING THE PUBLIC AND YOU ARE DOING IT BY REMOTE

1 CONTROL.

2 Q AND DID YOU REVIEW PRESS RELEASES OF HOMEGOLD?

3 A I DID.

4 Q AND WERE THOSE SIGNIFICANT TO YOU?

5 A YES.

6 Q AND WHY IS THAT?

7 A EXTREMELY POSITIVE AND MISLEADING AND I CAN GIVE AN
8 EXAMPLE.

9 Q PLEASE GIVE AN EXAMPLE.

10 MR. GRIFFIN: OBJECTION AS TO THE OPINION ON
11 MISLEADING.

12 THE COURT: OVERRULED, GO HEAD.

13 A I HAVE A FINANCIAL PRESS RELEASE BY KEVIN MAST
14 TALKING ABOUT THE HOMEGOLD FINANCIAL, ANNOUNCING THE
15 MERGER WITH THE DEFENDANT'S COMPANY IN 2000. AND THIS
16 RELEASE IS DATED JANUARY 31 OF 2000. AND IT STATES AMONG
17 OTHER THINGS, IT TALKS ABOUT HOMESENSE--

18 THE COURT: HOLD ON ONE SECOND, COUNSEL, YA'LL COME
19 UP HERE FOR JUST A MINUTE.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
21 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
22 JURY.)

23 Q PROFESSOR FREEMAN, LET'S TALK ABOUT ANY PRESS
24 RELEASES THAT YOU REVIEWED AFTER THE DEFENDANT WAS AT
25 HOMEGOLD. DID YOU REVIEW ANY PRESS RELEASES THAT YOU

1 FOUND SIGNIFICANT AFTER THE DEFENDANT BECAME CEO OF
2 HOMEGOLD?

3 A AFTER HE BECAME--

4 Q AFTER MAY OF 2000?

5 A WELL, I REVIEWED PRESS RELEASES BUT IN TERMS OF MY
6 CONCERNS, MY BIGGEST CONCERN IS WITH THE ONE THAT TALKS
7 ABOUT HOMESENSE HERE.

8 Q LET'S NOT TALK ABOUT THAT. THAT WAS BEFORE THE
9 DEFENDANT CAME ON BOARD?

10 A RIGHT.

11 Q ALL RIGHT. ~~AND~~ IN GENERAL TERMS, EVERYTHING THAT YOU
12 REVIEWED, THE CAROLINA MINUTES, THE PRESS RELEASE, NOT
13 THAT SPECIFIC ONE AND JUST GENERAL STATEMENTS MADE TO MR.
14 OWEN, MR. MORRIS. IN YOUR EXPERT OPINION WHAT ARE THE
15 PURPOSES OF THOSE STATEMENTS BY HOMEGOLD AND SPECIFICALLY
16 THE DEFENDANT?

17 MR. GRIFFIN: OBJECTION, YOUR HONOR.

18 THE COURT: OVERRULED.

19 A THE ESSENTIAL REASON FOR CONVEYING INFORMATION IS TO
20 HELP TO EXPLAIN SO THE PERSON HEARING UNDERSTANDS. IN MY
21 JUDGMENT, WHAT I SAW WAS AN EFFORT TO GET OUT FOR THE
22 BENEFIT OF CONTINUING HOMEGOLD AND CAROLINA INVESTORS AND
23 CONTINUING TO BRING MONEY AND GET A POSITIVE INFORMATION
24 AND THE DOWNPLAY, ANY NEGATIVE INFORMATION.

25 Q AND WHILE THE DEFENDANT WAS CEO OF HOMEGOLD DID YOU

1 NOTICE ANYTHING OR DID IT COME TO YOUR EXPERT OPINION
2 REGARDING HIS SPENDING AND THE EXPENSES THAT HE WAS
3 INCURRING AS CEO OF HOMEGOLD?

4 A SURE.

5 Q AND WHAT WAS YOUR OPINION ABOUT THAT?

6 MR. GRIFFIN: OBJECTION, YOUR HONOR.

7 THE COURT: OVERRULED.

8 A SELFISHNESS AND LAVISH BEHAVIOR. YOU KNOW, CORPORATE
9 GEST AND I THINK MR. OWEN TESTIFIED THAT \$800 THOUSAND,
10 MR. OWEN TESTIFIED THAT HE DIDN'T EVEN KNOW ABOUT THIS
11 MONTANA LLC MOTOR HOME.

12 Q AND WHY IS THAT SIGNIFICANT?

13 A CERTAIN BEHAVIOR AND ORIENTATION ON THE PART OF THE
14 EXECUTIVE.

15 Q LET'S TALK ABOUT PROPER CORPORATE GOVERNANCE AND
16 DISCLOSURES. IN GENERAL TERMS WHAT IS MEANT BY THAT?

17 A WHAT IS MEANT BY THAT FROM THE STANDPOINT OF SOMEBODY
18 WHO IS IN CHARGE OF A BUSINESS IS TREATING THE PEOPLE WHO
19 HAVE GOT STAKES IN THE BUSINESS FAIRLY AND HONESTLY AND
20 NOT MISLEADING AND NOT PUTTING YOUR INTEREST IN FRONT OF
21 THEIRS.

22 Q AND THE DEFENDANT AS CEO OF HOMEGOLD, WHAT WAS HIS
23 PROPER CORPORATE GOVERNANCE AND DISCLOSURE, WHAT WAS HE
24 SUPPOSE TO DO?

25 A HE WAS SUPPOSE TO TELL THE TRUTH AND TO SEE THAT THE

1 PEOPLE BELOW TOLD THE TRUTH, TO BE HONEST IN THE REPORTS
2 THAT ARE MADE. AND NOT JUST EMPHASIZE THE GOOD OR EVEN
3 OVERSTATE THE GOOD. BUT JUST TO TELL THE TRUTH AND IF IT
4 IS BAD TO LET THAT BE KNOWN TO.

5 MR. GRIFFIN: OBJECTION AS TO DUTY AND MOVE TO
6 STRIKE, YOUR HONOR.

7 THE COURT: I OVERRULE AS TO THE LAST QUESTION.

8 Q AND WHY IS THAT AN IMPORTANT CONCEPT FOR A PUBLICLY
9 TRADED COMPANY?

10 A BECAUSE INVESTORS COUNT ON YOU TO SPEAK THE TRUTH SO
11 THAT THEY CAN MAKE DECISIONS ABOUT WHETHER THEY WANT TO
12 BUY MORE INVESTMENTS, CONTINUE TO HOLD WHAT THEY HAVE GOT
13 OR SELL.

14 Q AND IS THIS ANY DIFFERENT TO SUBSIDIARIES?

15 A NO, THE NOTE HOLDERS AND THE DEBENTURE HOLDERS IN
16 CAROLINA INVESTORS HAVE THE SAME INVESTMENT DECISIONS AS A
17 SHAREHOLDER IN HOMEGOLD.

18 Q AND IN YOUR EXPERT OPINION AS CEO OF A PUBLIC
19 COMPANY, DID THE DEFENDANT COMPORT HIMSELF WITH THE
20 CONCEPTS OF PROPER CORPORATE GOVERNANCE AND DISCLOSURE?

21 MR. GRIFFIN: OBJECTION, YOUR HONOR.

22 THE COURT: COME UP FOR JUST A MINUTE.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
25 JURY.)

1 THE COURT: OBJECTION IS SUSTAINED.

2 Q YOU WERE JUST TALKING ABOUT IN GENERAL TERMS ABOUT
3 PROPER CORPORATE GOVERNANCE AND DISCLOSURE. AS CEO WHAT
4 INTEREST ARE, IS A CEO SUPPOSE TO LOOK OUT FIRST AND
5 FOREMOST?

6 A FIRST AND FOREMOST THE INTEREST OF THE COMPANY AND
7 THE SHAREHOLDERS BUT THERE IS A QUALIFICATION.

8 Q AND WHAT IS THAT?

9 A THERE CAN COME A TIME IN A BUSINESS' LIFE WHEN THE
10 BUSINESS IS GOING TO FALL APART, CRASH.

11 MR. GRIFFIN: YOUR HONOR, MAY WE APPROACH.

12 THE COURT: SURE.

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
14 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
15 JURY.)

16 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
17 I AM GOING TO HAVE TO TAKE TESTIMONY ON THIS PARTICULAR
18 POINT. I AM GOING TO GO AHEAD AND SEND YOU TO YOUR JURY
19 ROOM, DON'T DISCUSS THE CASE, I MAY GO AHEAD AND EXCUSE
20 YOU FOR THE AFTERNOON. AND IF SO I WILL SEND WORD BACK TO
21 YOU. I HAVE BEEN TOLD UNLESS IT HAS BEEN CHANGED THAT
22 LEXINGTON COUNTY IS ON A TWO HOUR DELAY TOMORROW, WE WILL
23 PROBABLY WON'T START UNTIL 10:00 BUT I WILL SEND THAT WORD
24 BACK TO YOU ALSO. IF YOU WILL STEP UP TO YOUR JURY ROOM,
25 EVERYONE ELSE STAY SEATED, PLEASE.

1 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

2 THE COURT: LET ME TALK TO YA'LL ABOUT SCHEDULING
3 BEFORE WE HEAR THE ARGUMENTS ON THIS PARTICULAR POINT.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

5 THE COURT: TELL THE JURY THEY CAN GO HOME AND BE
6 HERE AT 10:00 O'CLOCK IN THE MORNING.

7 (WHEREUPON, THE JURY WAS EXCUSED FROM THE TRIAL OF
8 THE CASE FOR THE DAY.)

9 THE COURT: LET'S GET YOUR OBJECTION AND IF WE NEED
10 ANY FURTHER TESTIMONY, LET'S GET IT ON THE RECORD ALSO,
11 MR. GRIFFIN. ^B

12 MR. GRIFFIN: YOUR HONOR, JUST, THIS WITNESS WAS
13 ASKED BASICALLY AS TO SUBSIDIARIES AND THE CORPORATE
14 OFFICERS DUTIES AS TO SUBSIDIARIES AND TO THE COMPANY.
15 AND THEN HE WAS MOVING INTO ONE CAVEAT I WANT TO EXPLAIN
16 AND I BELIEVE HE WAS HEADED INTO THIS LEGAL THEORY OF A
17 DUTY OF A CORPORATE OFFICER WHO OWED TO CREDITORS OF THE
18 COMPANY WHEN THE COMPANY IS IN A PERIOD OF INSOLVENCY OR
19 DEEPENING INSOLVENCY. AND, YOUR HONOR, THAT IS CLEARLY A
20 LEGAL QUESTION AS TO WHAT AND THAT IS WHERE HE IS GOING.
21 IT IS NOT A PRACTIC ISSUE AT ALL, IT IS A LEGAL DUTY THAT
22 HE IS CHARGING THIS JURY AND HE DOESN'T HAVE A BLACK ROBE
23 ON AND THAT IS, IN A LOT OF HIS TESTIMONY BUT PARTICULARLY
24 THIS. AND WHEN THE STATUS OF THE SOUTH CAROLINA LAW IS
25 NOT SETTLED IN THIS AREA, CERTAINLY NOT SETTLED IN THIS

1 AREA AS TO ZONES IN DEEPENING INSOLVENCY.

2 THE COURT: MAYBE IT WILL BE SETTLED AFTER THIS CASE.

3 MR. GRIFFIN: IT MAY BE, YOUR HONOR, BUT IT SHOULDN'T
4 BE SETTLED IN THE CONTEXT OF THE EXPERT WITNESS GIVING
5 TESTIMONY. IT SHOULD BE SETTLED BY A JURY CHARGE.

6 THE COURT: ALL RIGHT, MS. EVANS.

7 MS. EVANS: YOUR HONOR, WHERE I WAS GOING WITH THIS,
8 WAS JUST TO WRAP THINGS UP WITH MR. FREEMAN. THIS WAS MY
9 LAST COUPLE OF QUESTIONS, JUST ABOUT OVERALL, NOT USING
10 PROPER GOVERNANCE AND THE DUTY OF CARE OWED BY A CEO AND
11 WHO IS THAT DUTY⁴ OWED TO. AND JUST IN GENERAL TERMS HE
12 HAS ALREADY TESTIFIED HE IS OWED TO THE CORPORATION AND I
13 WAS JUST GOING TO GO OVER JUST A COUPLE OF THINGS ABOUT
14 THE DEFENDANT, WHILE CEO, IF THAT, ONE THING THAT I AM
15 GOING TO GO OVER IS THIS LEAPHART ROAD TRANSACTION. AND
16 THAT WAS GOING TO BE THE END OF MY TESTIMONY AND NOT TO
17 DRAW ANY LEGAL CONCLUSIONS OR SAY ANYTHING ABOUT THAT.
18 JUST IN GENERAL TERMS AS A CEO AND CORPORATE GOVERNANCE
19 AND STANDARD AND CARE OF LOYALTY. NOT, IF IT GETS TO
20 THAT, AT A CERTAIN POINT DOES IT BECOME MORE IMPORTANT OR
21 LESS IMPORTANT. JUST IN GENERAL TERMS AND WHILE THE
22 DEFENDANT WAS CEO DID HE REVIEW ANYTHING SPECIFICALLY TO
23 THE LEAPHART ROAD PROPERTY AND THAT WAS THE END OF THE
24 QUESTIONING FOR MR. FREEMAN AND HIS CONCLUSIONS ABOUT THAT
25 AND THEN FROM THIS ONE ISSUE.

1 MR. GRIFFIN: WELL, THAT MAY BE WHERE SHE WAS GOING.
2 I BELIEVE THE WITNESS WAS HEADING IN A LITTLE BIT
3 DIFFERENT, I COULD OF JUMPED THE GUN. BUT IF THAT IS
4 WHERE SHE IS GOING THEN WE ARE RIGHT BACK TO THE DAWKINS
5 CASE AND THE FIFTH CIRCUIT CASE. THAT IS A DISGUISED
6 OPINION, A DISGUISED OPINION ON THE DEFENDANT BREACHES THE
7 FIDUCIARY DUTIES OF THE CORPORATION BY ENGAGING THE
8 LEAPHART ROAD TRANSACTION. AND THAT IS EXACTLY WHAT THE
9 SUPREME COURT, THAT AN EXPERT CANNOT SAY AND THEY ARE JUST
10 DRESSING IT UP IN A DIFFERENT LANGUAGE BUT THAT IS EXACTLY
11 WHAT THEY ARE TRYING TO ESTABLISH.

12 THE COURT: BASED ON MY OTHER RULING AND THE EFFORT
13 TO BE CONSISTENT. NUMBER ONE, I AM GOING TO SUSTAIN THE
14 OBJECTION TO THE, NOT NECESSARILY TO THE LAST QUESTION BUT
15 TO THE WHERE THE ANSWER SEEMED TO BE GOING, YOU CAN ASK
16 WHATEVER QUESTIONS YOU WANT TO. AND I THINK AGAIN TO BE
17 CONSISTENT, THE OBJECTION INTO THAT GENERAL ROUND WOULD BE
18 OVERRULED. SO, WE WILL START THERE IN THE MORNING. WE
19 WILL TRY TO START AT 10:00.

20 MR. GRIFFIN: YOUR HONOR, YOU JUST RULED ON THE
21 QUESTION PRESENTED AND I STILL GET TO OBJECT WHEN THEY GO
22 INTO THE LEAPHART ROAD AND ASK QUESTIONS.

23 THE COURT: YES, I THINK, I DON'T KNOW EXACTLY WHAT
24 THE QUESTION IS GOING TO BE. SOME MAY BE PROPER, SOME MAY
25 NOT BE PROPER SO YOU NEED TO MAKE YOUR OBJECTIONS AT THAT

1 TIME.

2 MR. GRIFFIN: YES SIR, THANK YOU.

3 THE COURT: MR. FREEMAN, DON'T DISCUSS YOUR TESTIMONY
4 DURING THE BREAK, PLEASE. YOU WILL BE BACK ON THE STAND
5 IN THE MORNING.

6 (WHEREUPON, THE TRIAL WILL RESUME THE NEXT MORNING.)

7 THE COURT: FOR THE RECORD, I HAVE SPOKEN WITH THE
8 JUROR, THERE IS ONE JUROR WHO IS NOT FEELING WELL AND SHE
9 HAS AGREED TO TRY TO CONTINUE. AND IF SHE IS NOT ABLE TO
10 PAY ATTENTION TO GET MY ATTENTION AND WE WILL GO FROM
11 THERE. BUT WE WILL CONTINUE AT THIS TIME. MR. FREEMAN,
12 IF YOU WILL COME BACK ON THE STAND, PLEASE. AS SOON AS HE
13 IS UP YOU CAN BRING THE JURY IN.

14 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
15 APPROXIMATELY 1:20 P.M.)

16 THE COURT: MS. EVANS, YOU MAY CONTINUE DIRECT
17 EXAMINATION.

18 MS. EVANS: THANK YOU, YOUR HONOR, IF IT PLEASE THE
19 COURT.

20 CONTINUE DIRECT EXAMINATION

21 BY MS. EVANS:

22 Q PROFESSOR FREEMAN, IN REVIEWING THE MATERIAL AND
23 PREPARATION FOR YOUR TESTIMONY TODAY, DID YOU REVIEW A
24 LEAPHART ROAD TRANSACTION?

25 A YES.

1 Q AND DO YOU HAVE AN OPINION, WHOSE INTEREST THE
2 DEFENDANT WAS SERVING BY THAT TRANSACTION?

3 A YES.

4 Q AND WHAT IS THAT OPINION, WHOSE INTEREST WAS HE
5 SERVING?

6 MR. GRIFFIN: OBJECTION, YOUR HONOR.

7 THE COURT: OVERRULED, HE MAY ANSWER THAT QUESTION.

8 A HIS OWN PRINCIPALLY.

9 Q IN REVIEWING KEY DECISIONS THAT WERE MADE WHILE THE
10 DEFENDANT WAS CEO DO YOU HAVE AN OPINION OF WHO WAS IN
11 CHARGE OF THOSE DECISIONS?

12 A YES, I DO.

13 Q AND WHAT IS THAT OPINION, SIR?

14 A THE DEFENDANT.

15 Q AND WHY?

16 A BECAUSE THE DEFENDANT WAS THE CEO, THE DEFENDANT WAS
17 CALLING THE SHOTS, THE DEFENDANT WAS DRIVING THE BUS WHEN
18 IT CAME TO HOMEGOLD AND THROUGH HOMEGOLD EFFECTING
19 CAROLINA INVESTORS. HE WAS THE MAIN MAN.

20 Q AND WHEN REVIEWING THE MATERIAL THAT YOU RECEIVED IN
21 THIS CASE AND BASED UPON THE DEFENDANT'S ACTIONS WAS HE
22 GIVEN ADVICE FROM BOTH INSIDE AND OUTSIDE PEOPLE REGARDING
23 KEY DECISIONS IN THIS CASE, DO YOU HAVE AN OPINION ABOUT
24 THAT?

25 A HE WAS GIVEN ADVICE FROM TIME TO TIME, YES.

1 Q AND DO YOU HAVE AN OPINION REGARDING WHAT HE DID
2 REGARDING FOLLOWING THAT ADVICE?

3 A IN TERMS OF FOLLOWING THAT ADVICE, YES, I HAVE AN
4 OPINION.

5 Q AND WHAT IS THAT OPINION?

6 A THE OPINION IS THAT, FROM TIME TO TIME HE DID FOLLOW
7 THE ADVICE AND THEN IN THE CASE OF, FOR EXAMPLE, THE GOING
8 CONCERN QUALIFICATION WHEN HE GOT ADVICE AND A POSITION
9 THAT HE DIDN'T LIKE, HE TOOK ACTION TO ELIMINATE THE FIRM
10 OR CERTAINLY THAT WAS ON HIS AGENDA AS HE TOLD MR. OWEN.

11 Q AND IN YOUR EXPERT OPINION, DID THE DEFENDANT HAVE
12 SUFFICIENT KNOWLEDGE AND SOPHISTICATION TO DISCHARGE HIS
13 DUTIES AND UNDERSTAND THE ADVICE THAT HE WAS GIVEN BY
14 OTHERS?

15 A YES.

16 MR. GRIFFIN: OBJECTION, YOUR HONOR.

17 THE COURT: I OVERRULE THE OBJECTION TO THAT
18 PARTICULAR QUESTION. YOU MAY ANSWER THE QUESTION.

19 A THE ANSWER IS YES.

20 Q AND WHAT IS THAT OPINION?

21 A THAT HE DID HAVE THE KNOWLEDGE AND SOPHISTICATION TO
22 FOLLOW ADVICE PROPERLY AND TO RUN THE COMPANY.

23 Q AND WHY DO YOU HAVE THAT OPINION?

24 A BASED ON EVERYTHING THAT I HAVE SEEN, HE IS A
25 SOPHISTICATED MAN. HE NEGOTIATED HIS WAY IN, HE

1 NEGOTIATED HIS WAY OUT, AFTER HE NEGOTIATED HIS WAY OUT HE
2 KNEW ENOUGH TO PREPARE EVEN A \$34 MILLION DOLLAR BILL FOR
3 SERVICES RENDERED. I SEE NO SIGN AT ALL THAT THIS IS A
4 PERSON WHO LACKS CAPACITY MENTALLY OR LACKS A SKILL SET TO
5 BE A CEO. HE HAD ALL OF THOSE TOOLS.

6 Q I HAVE NO FURTHER QUESTIONS, PROFESSOR FREEMAN,
7 PLEASE ANSWER ANY QUESTIONS MR. GRIFFIN HAS FOR YOU.

8 THE COURT: ALL RIGHT, MR. GRIFFIN.

9 CROSS-EXAMINATION

10 BY MR. GRIFFIN:

11 Q GOOD AFTERNOON.

12 A GOOD AFTERNOON, SIR.

13 Q JUST, I HAD A CHANCE BRIEFLY TO QUESTION YOU EARLIER
14 ON YOUR QUALIFICATIONS AND I WANT TO REVIEW THROUGH SOME
15 OF THESE SCHOLARLY ARTICLES THAT YOU HAVE WRITTEN. I
16 BELIEVE YOU HAVE WRITTEN AN ARTICLE IN MAY OF 2004, IT IS
17 A CONFLICT OF INTEREST FOR MONEY MANAGEMENT, SOME
18 EXECUTIVE MAGAZINE, IS THAT CORRECT.

19 A RIGHT, THAT CONCERNED WRONGDOING AND MY CRITICISM OF
20 THE MUTUAL FUND MANAGERS, THE MUTUAL FUND ADVISERS, THAT
21 IS A \$10 TRILLION DOLLAR MONEY MANAGEMENT INDUSTRY.

22 Q AND I THINK YOU HAVE A CHAPTER ON LEGAL OPINION
23 LIABILITY AND LEGAL OPINION LETTERS, A COMPREHENSION GUIDE
24 TO OPINION LETTER PRACTICE?

25 A YES, FOR CORPORATE LAWYERS.

1 Q AND THEN YOU HAVE A CHAPTER IN SOUTH CAROLINA
2 DAMAGES, ON DAMAGES IN SECURITIES CASES?

3 A SURE.

4 Q AND THEN YOU HAVE A WRITTEN ARTICLE ON THE ETHICS OF
5 USING JUDGES TO CONCEAL WRONGDOING?

6 A YES, I WROTE AN ARTICLE ON THAT.

7 Q AND YOU HAVE WRITTEN AN ARTICLE ON MUTUAL FUND
8 ADVISORY FEES, THE COST OF CONFLICTS OF INTEREST?

9 A YES, SIR.

10 Q AND YOU HAVE WRITTEN AN ARTICLE ON LIENS, FEES AND
11 TAXES FOR THE SOUTH CAROLINA TRIAL LAWYER?

12 A YES, SIR.

13 Q AND AN ARTICLE ON A BUSINESS LAWYER LOOKS AT THE
14 INTERNET?

15 A YES, SIR.

16 Q AN ARTICLE TO PAYMENTS ON MEDICARE, MEDICAL CARE
17 PROVIDERS, ONE OF THE LAWYERS OBLIGATIONS, IS THAT
18 CORRECT?

19 A YES, SIR.

20 Q AND THEN YOU WROTE AN ARTICLE ON TREBLE DAMAGES,
21 STATUTES WHICH CAN INCREASE TRUST RECOVERIES AND THAT WAS
22 FROM A PROBATE PRACTICE REPORTER. IS THAT CORRECT?

23 A YES, SIR.

24 Q AND THEN YOU WROTE AN ARTICLE ON HOW TO COMPUTERIZE
25 DATABASES, HOW THEY ARE REDEFINING DUE DILIGENCE. IS THAT

1 CORRECT?

2 A YES, SIR.

3 Q AND THEN YOU ALSO WRITE EXTENSIVE ON LEGAL ETHICS
4 MATTERS, DO YOU NOT?

5 A YES, SIR. YOU LEFT OUT SOME STUFF.

6 Q I DID AND I APOLOGIZE. YOU HAVE WRITTEN AN ARTICLE
7 ON SCIENTER IN PROFESSIONAL LIABILITY CASES?

8 A YES SIR, I HAVE.

9 Q YOU HAVE WRITTEN AN ARTICLE ON WHEN ARE LAWYERS'
10 GIFTS TO JUDGES IMPROPER?

11 A TRUE. ~~A~~

12 Q AND YOU HAVE WRITTEN AN ARTICLE ON THE CURRENT
13 DEVELOPMENTS IN LEGAL OPINION LIABILITY?

14 A YES, SIR.

15 Q AN ARTICLE ON UNDERSTANDING THE JOINT CLIENT
16 EXCEPTION TO THE ATTORNEY-CLIENT PRIVILEGE?

17 A YES, SIR.

18 Q AND YOU HAVE WRITTEN AN ARTICLE CALLED A RICO PRIMER?

19 A YES, SIR.

20 Q ARTICLE ON THE USE OF MUTUAL FUND ASSETS TO PAY
21 MARKETING COST?

22 A TRUE.

23 Q AND THAT WAS PUBLISHED IN THE CHICAGO LAW JOURNAL?

24 A TRUE.

25 Q AN ARTICLE ON MARKETING MUTUAL FUNDS AND INDIVIDUAL

1 LIFE INSURANCE OF THE SOUTH CAROLINA LAWYER?

2 A TRUE.

3 Q AS WELL AS AN ARTICLE ON OPINION LETTERS AND
4 PROFESSIONALISM FROM 1997, 1973 IN THE DUKE LAW JOURNAL?

5 A TRUE.

6 Q AND THAT WAS REPRINTED IN 1974 IN THE SECURITIES LAW
7 REVIEW?

8 A TRUE.

9 Q AND THEN THERE IS A MULTI STUDENT SURVEY OF THE
10 MUTUAL FUND INDUSTRY FOR THE NOTRE DAME LAWYER AND THAT
11 WAS BACK IN 1969?

12 A TRUE.

13 Q THAT WAS WHILE YOU WERE A STUDENT AT NOTRE DAME?

14 A TRUE.

15 Q AND THEN THERE WAS A CASE COMMENT ON A PARTICULAR
16 CASE THAT WAS PUBLISHED IN THE NOTRE DAME LAWYER, AGAIN IN
17 1968?

18 A AND THAT WAS ABOUT SELLING INVESTMENTS TO THE PUBLIC.

19 Q AND THEN NUMEROUS EXTENSIVE CLE'S AND SPEECHES AND
20 LEGAL ETHICS AND THINGS LIKE THAT?

21 A CORRECT, I HAVE ANOTHER ARTICLE COMING UP IN JUNE.

22 Q COMING UP IN JUNE?

23 A IN THE CORPORATION, JOURNAL CORPORATION.

24 Q AT DUKE?

25 A IT IS THE UNIVERSITY OF IOWA.

1 Q NOW, ARE YOU GETTING PAID?

2 A NO, SIR.

3 Q YOU ARE VOLUNTEERING YOUR TIME FOR THIS CASE?

4 A YES, SIR.

5 Q AND WHEN YOU REVIEWED THE FILES YOU VOLUNTEERED YOUR
6 TIME FOR THAT?

7 A YES, SIR.

8 Q AND YOU REVIEWED TWO BOXES OF MATERIALS?

9 A YES, SIR.

10 Q HOW WERE THOSE MATERIALS SELECTED FOR YOUR REVIEW,
11 MATTERS THAT YOU REQUESTED?

12 A IN SOME CASES, IN OTHER CASES IT WAS JUST MATERIAL AS
13 IT WAS GENERATED.

14 Q AND THROUGH THAT MATERIAL YOU DETERMINED, FROM YOUR
15 OBJECTIVE REVIEW OF IT THAT MR. SHEPPARD HAD PERHAPS A
16 NINTH GRADE EDUCATION, A HIGH LEVEL OF BUSINESS
17 SOPHISTICATION?

18 A HE DID AT THE TIMES THAT WE ARE TALKING ABOUT HERE,
19 YES SIR.

20 Q AND THAT YOU, AND YOU EXPLAINED TO THE JURY THAT ONE
21 DOESN'T HAVE TO GO TO COLLEGE OR GET A DEGREE BUT YOU CAN
22 LEARN BUSINESS THROUGH ON THE JOB TRAINING?

23 A THAT IS ONE WAY TO DO IT.

24 Q AND THAT IS THE WAY HE DID IT?

25 A THAT IS MY BELIEF, YES SIR.

1 Q AND THAT IS WHAT YOU DETERMINED BY REVIEWING THE TWO
2 BOXES OF MATERIAL?

3 A I DETERMINED MANY THINGS BUT THAT IS ONE OF THEM,
4 SIR.

5 Q I UNDERSTAND. NOW, THE ON THE JOB TRAINING, BEFORE
6 MR. SHEPPARD EVER MET HOMEGOLD WAS FIRST, IMMEDIATELY
7 PRECEDING THAT WAS A COMPANY CALLED HOMESENSE?

8 A TRUE.

9 Q NOW, HOMESENSE WAS A MORTGAGE COMPANY, WAS IT NOT?

10 A IT WAS.

11 Q IT WAS ENGAGED IN THE SUBPRIME LENDING MARKET, WAS IT
12 NOT?

13 A YES, SIR.

14 Q AND HOMESENSE WAS PRIMARILY A COMPANY OWNED BY MR.
15 SHEPPARD AND HIS FAMILY AND A FEW OTHER EMPLOYEES?

16 A YES, SIR.

17 Q HOMESENSE DID NOT HAVE A BOARD OF DIRECTORS, DID IT?

18 A I DON'T BELIEVE SO, NO SIR.

19 Q HOMESENSE WAS NEVER REQUIRED TO FILE ANY PUBLIC
20 FILINGS WITH THE SECURITIES AND EXCHANGE COMMISSION, WAS
21 IT?

22 A IT WAS NOT.

23 Q HOMESENSE DID NOT HAVE ANY SUBSIDIARIES THAT WAS
24 ENGAGED IN THE BUSINESS OF SELLING NOTES AND DEBENTURES,
25 SECURITIES TO INDIVIDUALS IN SOUTH CAROLINA OR ANYWHERE

1 ELSE, DID IT?

2 A NO, SIR.

3 Q HOMESENSE DID NOT HAVE A SUBSIDIARY THAT HAD A
4 SEPARATE BOARD OF DIRECTORS, DID IT?

5 A NO, SIR.

6 Q AND ANY OF YOUR ON THE JOB TRAINING REVIEW OF MR.
7 SHEPPARD, DID YOU EVER FIND THAT PRIOR TO HOMEGOLD HE
8 NEVER SERVED ON THE BOARD OF DIRECTORS OF ANY COMPANY?

9 A NO, I DID NOT.

10 Q AND AS TO ANY SUBSIDIARY OF HOMESENSE, DO YOU KNOW
11 WHETHER ANY OF THOSE COMPANIES HAD TO FILE PUBLIC FILINGS
12 WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SOUTH
13 CAROLINA ATTORNEY GENERALS OFFICE SECURITIES COMMISSION?

14 A TO MY KNOWLEDGE THEY DID NOT.

15 Q DO YOU KNOW IF ANY OF THOSE COMPANIES HAD A CFO?

16 A I DON'T REMEMBER READING ABOUT A CFO FOR THOSE
17 COMPANIES.

18 Q DO YOU KNOW IF THOSE COMPANIES HAD AN AUDIT
19 COMMITTEE?

20 A NO AUDIT COMMITTEE.

21 Q DO YOU KNOW IF THOSE COMPANIES HAD AN EXECUTIVE
22 COMPENSATION COMMITTEE?

23 A NO.

24 Q THEY DID NOT, CORRECT?

25 A THEY DID NOT, THOSE ARE EARMARKS OF A PUBLIC COMPANY.

1 Q AND CLEARLY BEFORE MR. SHEPPARD EVER ARRIVED AT
2 HOMEGOLD HE HAD NEVER SERVED IN ANY EXECUTIVE CAPACITY FOR
3 A PUBLIC COMPANY?

4 A CORRECT.

5 Q YOU DON'T EVEN KNOW WHETHER HE HAD EVER BEEN EMPLOYED
6 IN ANY CAPACITY FOR A PUBLIC COMPANY?

7 A TO MY KNOWLEDGE HE HAD NOT.

8 Q BESIDES HOMESENSE, WHAT OTHER ON THE JOB TRAINING ARE
9 YOU AWARE OF FOR MR. SHEPPARD?

10 A IT IS REALLY HIS WORK AT THE MORTGAGE BUSINESS AND
11 HIS WORK AT HOMESENSE.

12 Q CAN YOU TELL THE JURY WHAT OTHER COMPANIES HE WORKED
13 FOR IN THE MORTGAGE BUSINESS?

14 A JUST LEADING UP TO HOMESENSE.

15 Q BUT YOU DON'T KNOW ANY OF THE NAMES OF THE COMPANY?

16 A NO, I DON'T.

17 Q AND YOU KNOW--

18 A THERE ARE OTHER NAMES OUT THERE, I THINK, THAT I HAVE
19 SEEN.

20 Q AND DO YOU KNOW WHAT THE NAME OF HOMESENSE WAS BEFORE
21 IT BECAME HOMESENSE?

22 A IT MAY OF BEEN EMMCO, I HAVE SEEN A LETTERHEAD WITH
23 EMMCO ON IT.

24 Q NOW, YOU MENTIONED THAT MR. SHEPPARD WAS, HAD A LEVEL
25 OF SOPHISTICATION SUCH THAT HE WAS ABLE TO NEGOTIATE

1 HIMSELF INTO THIS HOMEGOLD TRANSACTION?

2 A HE DID.

3 Q AND ARE YOU AWARE OF YOUR TESTIMONY IN THIS CASE THAT
4 MR. SHEPPARD EXPRESSED DISAPPOINTMENT BECAUSE HE THOUGHT
5 GOING INTO IT THAT HOMEGOLD STOCK WAS BEING PUBLICLY
6 TRADED AND LISTED ON THE NASDAQ?

7 A I AM AWARE OF TESTIMONY THAT HAS COME OUT ABOUT THAT.

8 Q AND THAT SUBSEQUENTLY UPON HIS ARRIVAL THAT HOMEGOLD,
9 DAYS PREVIOUSLY THE STOCK WAS DELISTED?

10 A THAT IS WHAT I UNDERSTAND FROM THE TESTIMONY THAT I
11 HAVE HEARD.

12 Q AND A SOPHISTICATED BUSINESSMAN COULD OF RESEARCHED
13 PERHAPS A LITTLE FURTHER TO FIND OUT THAT, THAT THOSE
14 EFFORTS WERE UNDER WAY AT NASDAQ, PRECEDING THE MERGER,
15 CORRECT?

16 A IT IS POSSIBLE, YES SIR, OR ONE OF THE MEMBERS OF HIS
17 DUE DILIGENCE TEAM OF THE MEMBERS WHICH HE EMPLOYED.

18 Q NOW, YOU ALSO HAVE HEARD PERHAPS THAT MR. SHEPPARD
19 WAS LED TO BELIEVE THAT THERE WAS A HIGHER LEVEL OF
20 LIQUIDITY AT HOMEGOLD, MEANING OPERATING CAPITAL THAN
21 THERE ACTUALLY WAS. IS THAT NEWS TO YOU OR DO YOU AGREE
22 WITH THAT?

23 A I AM AWARE OF VARIOUS FRUSTRATIONS, THAT BEING ONE OF
24 THEM THAT HE HAD WHEN HE GOT TO HOMEGOLD.

25 Q NOW, YOU SOPHISTICATED THIS MAN, THIS MAN PERHAPS

1 COULD HAVE RESEARCHED THAT FURTHER TO DETERMINE THE LEVEL
2 OF LIQUIDITY AVAILABLE TO THE COMPANY PRIOR TO THE MERGER?

3 A YOU CAN ALWAYS RESEARCH SOMETHING FURTHER.

4 Q NOW, YOU ALSO UNDERSTAND THAT UPON ARRIVING AT
5 HOMEGOLD THE CIT, THE \$100 MILLION DOLLAR WAREHOUSE LINE
6 THAT WAS SHORTLY THERE WAS TERMINATED, SHORTLY AFTER HIS
7 ARRIVAL?

8 A I HAVE TESTIFIED ABOUT THAT, YES SIR.

9 Q AND CERTAINLY A SOPHISTICATED BUSINESSMAN COULD OF
10 MADE CONTACT OR LEARNED IF THERE WAS ANY COVENANT OR ANY
11 REASONS FOR CIT TO WANT TO STEP DOWN THE WAREHOUSE LINE AS
12 A RESULT OF THE MERGER, THOSE EFFORTS COULD OF BEEN
13 UNDERTAKEN, COULD THEY NOT?

14 A ARE YOU TALKING ABOUT IN ADVANCE OF THE MERGER. HE
15 PHYSICALLY WENT THERE TO SEE THEM.

16 Q IN ADVANCE OF THE MERGER.

17 A IN ADVANCE OF THE MERGER CIT COULD OF BEEN CONTACTED,
18 TRUE.

19 Q AND YOU ALSO UNDERSTAND THAT AS PART OF THE MERGER
20 DEAL THAT MR. SHEPPARD AGREED TO RECEIVE PREFERRED STOCK,
21 YOU TALKED ABOUT SOME PREFERRED STOCK?

22 A YES, SIR.

23 Q AND PART OF WHAT HE WAS GETTING FOR THE SALE OF HIS
24 COMPANY WAS PREFERRED STOCK IN HOMEGOLD?

25 A TRUE.

1 Q AND THAT PREFERRED STOCK THAT HE WAS GETTING
2 GUARANTEED CERTAIN DIVIDENDS FROM THE \$800 THOUSAND
3 DOLLARS A YEAR?

4 A ON THE FACE PROMISE AS DIVIDENDS.

5 Q RIGHT.

6 A PREFERRED IS REALLY NOT GUARANTEE.

7 Q HE RECEIVED A PROMISE TO GET DIVIDENDS?

8 A YES, SIR.

9 Q AND THEN UPON HIS ARRIVAL AT HOMEGOLD, SHORTLY TAKING
10 OVER THE KEYS TO THE BUS, IF YOU WILL, THAT HE LEARNS AND
11 HE IS INFORMED THAT THE COMPANY CAN'T DECLARE DIVIDENDS ON
12 THAT \$800 THOUSAND DOLLARS THAT, THE DIVIDENDS ON THE \$800
13 THOUSAND DOLLARS OR ANY AMOUNT, RIGHT?

14 A YES, SIR.

15 Q NOW, SOPHISTICATED DOESN'T, A MAN COULD PERHAPS LEARN
16 THAT AHEAD OF TIME OF A TRANSACTION, RIGHT?

17 A ASSUMING THAT THE FACTS WERE THERE AT THAT TIME, YES
18 SIR.

19 Q NOW, YOU ARE ALSO AWARE THAT GOING INTO THE MERGER
20 THAT MR. SHEPPARD DID NOT WANT TO PERSONALLY GUARANTEE ANY
21 MORE WAREHOUSE LOANS, DID YOU KNOW THAT?

22 A YES.

23 Q AND SHORTLY WHEN CIT STEPPED DOWN, THE ONLY WAY THE
24 COMPANY COULD CONTINUE TO OPERATE WAS FOR HIM TO PUT HIS
25 PERSONAL GUARANTEE ON THOSE WAREHOUSE LOANS?

1 A I AM AWARE THAT HE AGREED TO GUARANTEE HOMEGOLD
2 WAREHOUSE LINES, YES SIR, HE PROMISED TO DO THAT.

3 Q AND DID YOU EVER SEE ANYTHING IN THE RECORD THAT MR.
4 JACK STERLING OR MR. KEITH GIDDENS, ANY TIME BEFORE THE
5 MERGER HAD PUT THEIR NAME ON THE WAREHOUSE LINES OF
6 CREDIT, GUARANTEE?

7 A NO, SIR.

8 Q NOW, IN THE BOXES OF MATERIALS THAT YOU REVIEWED DID
9 YOU SEE THAT THE SOUTH CAROLINA ATTORNEY GENERALS OFFICE
10 HAD SENT LARRY OWEN AT CAROLINA INVESTORS A LETTER IN
11 DECEMBER OF 1999 SAYING WE ARE CONCERNED ABOUT HOMEGOLD'S
12 ABILITY TO REPAY THIS INTER-COMPANY DEBT?

13 A I AM AWARE OF THAT.

14 Q DID YOU SEE ANYTHING IN THE RECORD WHERE THAT
15 INFORMATION WAS DISCLOSED TO MR. SHEPPARD PRIOR TO THE
16 MERGER?

17 A I DON'T REMEMBER SEEING THAT, NO SIR.

18 Q AND HAVE YOU SEEN IN THE RECORD, IN THE TWO BOXES OF
19 MATERIAL THAT YOU HAVE BEEN PROVIDED THAT ELLIOTT DAVIS
20 HAD DONE GOING CONCERN ANALYSIS OF HOMEGOLD IN 1998 AND
21 1999?

22 A I AM AWARE THAT WAS A CONCERN.

23 Q AND DID YOU SEE ANYWHERE WHERE THAT INFORMATION, THAT
24 MR. SHEPPARD HAD LEARNED OF THAT INFORMATION IN ADVANCE OF
25 THE MERGER?

1 A NO.

2 Q AND DID YOU SEE IN THE RECORDS, IN THE TWO BOXES OF
3 MATERIALS THAT PRIOR, PRIOR TO THE YEAR OF 2000 THAT
4 HOMEGOLD UNDER MR. GIDDENS AND MR. STERLING AND MR. MAST
5 MOVED ASSETS FROM THE BOOKS OF HOMEGOLD OVER TO CAROLINA
6 INVESTORS TO REDUCE THE INTER-COMPANY DEBT?

7 A I BELIEVE THAT IS THE CASE.

8 Q NOW YOU DESCRIBED THAT YOU BELIEVED THAT MR. SHEPPARD
9 HAD A LEVEL OF SOPHISTICATION BECAUSE HE PURCHASED A MOTOR
10 HOME THAT COST A MILLION DOLLARS OR MORE AND SET UP A
11 COMPANY IN MONTANA, I BELIEVE, WHERE THEY DON'T HAVE CAR
12 TAXES?

13 A YES SIR, A LIMITED LIABILITY COMPANY.

14 Q OKAY. NOW, DO YOU KNOW WHETHER, WHEN YOU GO TO BUY A
15 MILLION DOLLAR BUS, A MILLION DOLLAR BUS SALESMAN CAN
16 ADVISE OR WOULD ADVISE YOU THAT PERHAPS YOU WOULD WANT TO
17 REGISTER THIS BUS IN A STATE THAT DOES NOT HAVE CAR TAXES?

18 A I HAVE NEVER BEEN IN THE MARKET FOR A MILLION DOLLAR
19 BUS SO I HAVE NO OPINION ON THAT.

20 Q BUT THAT DOES GET US ADVICE THAT THIS DEFENDANT OR
21 ANYONE IN BUSINESS CAN RECEIVE FROM THIRD PARTY
22 PROFESSIONS, RIGHT?

23 A YOU CAN RECEIVE ADVICE, YES SIR.

24 Q AND THAT IS, IN THE NORMAL PRACTICES AND PROCEDURES
25 OF AN EXECUTIVE, WHETHER IT IS AN EXECUTIVE OF A PUBLIC

1 COMPANY OR AN EXECUTIVE OF A MOM AND POP BUSINESS LIKE
2 HOMESENSE THAT A BUSINESSMAN CAN BE ADVISED BY LAWYERS AND
3 ACCOUNTANTS ON HOW TO CONDUCT THE AFFAIR OF HIS OR HER
4 BUSINESS. THAT IS STANDARD PRACTICE, IS IT NOT.

5 A IT IS STANDARD PRACTICE BUT I WISH TO MAKE IT CLEAR
6 THAT WHEN IT COMES TO RUNNING A BUSINESS IT IS THE
7 EXECUTIVE WHO IS RESPONSIBLE, NOT THE ADVISERS. AND THAT
8 YOU CAN ONLY RELY ON ADVISERS IF YOUR RELIANCE WOULD BE
9 REASONABLE.

10 Q WELL, LET'S TALK ABOUT THE ADVISERS TO HOMEGOLD.
11 PRIOR TO 2000 HOMEGOLD HAD AN OUTSIDE LAW FIRM TO THE
12 WYCHE, BURGESS LAW FIRM IN GREENVILLE?

13 A YES, SIR.

14 Q AND THAT IS A RESPECTIVE LAW FIRM IN SOUTH CAROLINA,
15 IS IT NOT?

16 A YES, SIR.

17 Q THEY HAVE A NUMBER OF IVY LEAGUE EDUCATED LAWYERS
18 WITHIN THAT FIRM, DO THEY NOT?

19 A YES, SIR.

20 Q THEY HAVE A NUMBER OF LAWYERS WHO CLERKED FOR THE
21 U.S. SUPREME COURT IN THEIR FIRM, DO THEY NOT?

22 A TRUE.

23 Q AND THEY ARE WELL KNOWN IN THE LEGAL COMMUNITY AS
24 PROVIDING HIGH LEVEL LEGAL, TRANSACTIONAL AND SECURITIES
25 AND CORPORATE WORK FOR BIG CORPORATIONS IN THE UPSTATE,

1 CORRECT?

2 A I AGREE THAT THEY HAVE A GOOD REPUTATION, YES.

3 Q AND THAT THE WYCHE FIRM WAS THE OUTSIDE SECURITIES
4 COUNSEL FOR HOMEGOLD BEFORE MR. SHEPPARD CAME TO THE
5 COMPANY?

6 A TRUE.

7 Q AND THAT THE WYCHE FIRM REMAINED THE SECURITIES, LET
8 ME BACK UP, EXCUSE ME. THE WYCHE FIRM WAS ALSO THE
9 SECURITIES COUNSEL FOR CAROLINA INVESTORS BEFORE MR.
10 SHEPPARD EVER MET THE COMPANY?

11 A CORRECT.

12 Q AND THAT AFTER THE MERGER THE WYCHE FIRM STAYED ON AS
13 LEGAL COUNSEL TO HOMEGOLD PRETTY MUCH ALL THE WAY THROUGH
14 THEN UNTIL THE BANKRUPTCY, CORRECT?

15 A YES, SIR.

16 Q AND THAT THE WYCHE FIRM STAYED LEGAL COUNSEL TO
17 CAROLINA INVESTORS UP UNTIL, I BELIEVE, TO JANUARY OF 2003
18 AFTER THE EMMCO TRANSACTION HAD BEEN STRUCK?

19 A YES, SIR.

20 Q OTHER OUTSIDE PROFESSIONALS AT HOMEGOLD, PRIOR TO MR.
21 SHEPPARD COMING ON BOARD WAS THE ACCOUNTING FIRM OF
22 ELLIOTT DAVIS, CORRECT?

23 A CORRECT.

24 Q AND THAT IS A SOUTH CAROLINA BASED ACCOUNTING FIRM,
25 CORRECT?

1 A YES, SIR.

2 Q AND IS IT THE ONLY SOUTH CAROLINA BASED HOMEGROWN
3 ACCOUNTING FIRM THAT IS QUALIFIED TO DO PUBLIC ACCOUNTING,
4 MEANING AUDITING BOOKS AND RECORDS OF COMPANIES THAT FILE
5 THEIR FINANCIALS WITH THE SECURITIES AND EXCHANGE
6 COMMISSION?

7 A I HAVEN'T RESEARCHED THAT, I DON'T KNOW.

8 Q WELL, CERTAINLY THEY ARE ONE THAT IS QUALIFIED?

9 A THEY ARE.

10 Q DO YOU KNOW OF ANY OTHERS SITTING HERE ON THIS
11 WITNESS STAND TODAY?

12 A I CAN'T GIVE YOU A NAME BUT THERE MIGHT BE SO I HAVE
13 TO ANSWER IT THE WAY THAT I DID.

14 Q I UNDERSTAND. AND THAT THE ELLIOTT DAVIS FIRM, NOT
15 ONLY DID THEY PERFORM WORK FOR HOMEGOLD PRIOR TO THE
16 MERGER, THE ALSO PERFORMED WORK FOR CAROLINA INVESTORS?

17 A TRUE.

18 Q SO, BOTH THE WYCHE LAW FIRM AND THE ELLIOTT DAVIS
19 FIRM HAD TWO CLIENTS BEFORE THEY EVER MET MR. SHEPPARD?

20 A YES.

21 Q ONE WAS HOMEGOLD AND ONE WAS CAROLINA INVESTORS?

22 A CORRECT.

23 Q AND THAT AFTER THE MERGER AND ON UP THROUGH THE TIMES
24 WE ARE TALKING ABOUT, THOSE FIRMS HAD TWO CLIENTS, UP
25 UNTIL THE END OF DECEMBER OF 2002. HOMEGOLD AND CAROLINA

1 INVESTORS, CORRECT?

2 A YES.

3 Q AND THOSE FIRMS OWED INDIVIDUAL OBLIGATIONS TO EACH
4 OF THOSE SEPARATE CLIENTS?

5 A YES.

6 Q NOW, IN NONE OF THOSE FIRMS, THE WYCHE LAW FIRM OR
7 THE ELLIOTT DAVIS FIRM REPRESENTED MR. SHEPPARD
8 PERSONALLY, CORRECT?

9 A NOT INDIVIDUALLY.

10 Q NOW, WITHIN HOMEGOLD, AFTER THE MERGER, THERE WERE
11 IN-HOUSE LAWYERS AS WELL, CORRECT?

12 A YES.

13 Q AND THAT THE IN-HOUSE LAWYERS WERE HOMEGOLD INCLUDED
14 A GENTLEMAN BY THE NAME OF BILL LONG, CORRECT?

15 A YES.

16 Q AND A GENTLEMAN BY THE NAME OF DAVID GAFFNEY?

17 A YES, FOR A PERIOD OF TIME.

18 Q FOR A PERIOD OF TIME. THEN THERE WERE IN-HOUSE
19 ACCOUNTANTS AT HOMEGOLD, CORRECT?

20 A YES.

21 Q AND THERE WERE MULTIPLE LEVELS OF ACCOUNTING STAFF AT
22 HOMEGOLD, CORRECT?

23 A YES, SIR.

24 Q AND YOU MENTIONED EARLIER THAT YOU HAVE REVIEWED MR.
25 SHEPPARD'S TESTIMONY WITH THE SECURITIES COMMISSION AND

1 BASED ON THAT THAT GAVE YOU SOME DEGREE OF OBJECTIVE
2 EVIDENCE THAT MR. SHEPPARD HAD WAS SOPHISTICATED IN THIS
3 REALM?

4 A THE EVIDENCE THAT I QUOTED TO THE JURY WAS FROM THE
5 HOMEGOLD BANKRUPTCY BUT I ALSO CERTAINLY REVIEWED HIS
6 TESTIMONY BEFORE THE SECURITIES COMMISSION, YES.

7 Q IN THE BOX OF MATERIAL, MR. FREEMAN, WERE YOU ABLE TO
8 REVIEW THE TESTIMONY OF SHANE SMITH WHO WAS IN THE
9 ACCOUNTING DEPARTMENT AT HOMEGOLD BEFORE THE SECURITIES
10 AND EXCHANGE COMMISSION WHERE HE SAYS, HE COMES TO
11 ACCOUNTING AND HE⁴ GENERALLY--

12 MS. EVANS: OBJECTION, YOUR HONOR, HEARSAY.

13 THE COURT: HE IS JUST ASKING IF HE HAS REVIEWED THIS
14 MATERIAL. HE CAN'T GO INTO WHAT IT WAS BUT HE CAN
15 DESCRIBE THE MATERIAL AND ASK HIM IF HE HAS REVIEWED IT.

16 MS. EVANS: I THINK HE STARTED TO SAY WHERE HE SAID.

17 THE COURT: I SUSTAIN THE OBJECTION TO THAT BUT YOU
18 CAN STILL DESCRIBE IT WITHOUT GOING INTO, IN OTHER WORDS
19 AN EXPERT CAN BASE HIS OPINION ON HEARSAY, IT DOESN'T MEAN
20 THAT HEARSAY ACTUALLY COMES IN. SO, I SUSTAIN THE
21 OBJECTION TO THAT EXTENT.

22 Q DID YOU REVIEW THE TESTIMONY OF SHANE SMITH THAT WAS
23 GIVEN BEFORE THE SECURITIES AND EXCHANGE COMMISSION?

24 A I DON'T BELIEVE SO.

25 Q DID YOU REVIEW ANY STATEMENTS FROM MR. SMITH WHERE HE

1 RELATED MR. SMITH'S UNDERSTANDING AND HIS LEVEL OF
2 INTELLIGENCE TO MR. SHEPPARD?

3 A NO.

4 Q NOW, AS TO THE CRITICISM THAT YOU HAVE PERTAINING TO
5 THE PROSPECTUS AND AFTER THE GOING CONCERN LANGUAGE?

6 A RIGHT.

7 Q FIRST YOU MENTIONED THAT THE AND I THINK THE PAGE IS
8 F11 AND NOTE 2 WITH THE, THAT IS REFERENCING AND THE
9 APPRAISALS THAT IS NOT BALANCED INFORMATION PROVIDED IN
10 THE PROSPECTUS. I DON'T WANT TO LIMIT YOUR OPINION BUT
11 GENERALLY.

12 A THAT IS A CRITICISM THAT I HAVE AND HOLD, YES SIR.

13 Q AND MY QUESTION TO YOU IS IN THE REVIEW OF THE TWO
14 BOXES OF MATERIALS, WERE YOU PROVIDED THE WORKING FILES OF
15 THE WYCHE LAW FIRM?

16 A NO, SIR.

17 Q DID YOU SEE ANY MATERIALS FROM THE WYCHE LAW FIRM
18 WHETHER THEY REVIEWED, MARKED UP, APPROVED THE LANGUAGE IN
19 THAT NOTE TO PAGE F11 OF THE PROSPECTUS?

20 A I DID NOT SEE THAT.

21 Q DID YOU REVIEW ANY BILLING RECORDS OF THE WYCHE LAW
22 FIRM?

23 A NO.

24 Q DID YOU REVIEW ANY OF THE ELLIOTT DAVIS WORKING FILES
25 WHEN IT COMES TO THAT LANGUAGE IN THE GOING CONCERN?

1 A THE ONLY THING THAT I RECALL IS A, IT BEARS ON THAT
2 IS A SEC FILING SPECIFYING THAT THE ELLIOTT DAVIS FIRM WAS
3 CRITICAL OF THAT F11 DESCRIPTION.

4 Q DID YOU EVER SEE ANY EMAILS WHERE THE ELLIOTT DAVIS
5 ACCOUNTANTS CHECKED OFF ON AND APPROVED THAT LANGUAGE
6 PRIOR TO IT BEING PUT IN THE PROSPECTUS?

7 A NO.

8 Q DID YOU SEE IN ANY OF THE DOCUMENTS THAT YOU WERE
9 PROVIDED WHERE MR. SHEPPARD GAVE ANY INPUT, HANDWRITTEN
10 NOTES, EMAILS, COMMUNICATIONS PERTAINING TO THE LANGUAGE
11 IN THE GOING CONCERN PARAGRAPH IN THE PROSPECTUS?

12 A NO.

13 Q THAT IS ALL I HAVE.

14 THE COURT: ANY REDIRECT?

15 MS. EVANS: JUST BRIEFLY.

16 REDIRECT EXAMINATION

17 BY MS. EVANS:

18 Q DOES ANY OF THAT MATERIAL OR ANY OF THAT INFORMATION
19 OR ANYTHING THAT HE ASKED YOU CHANGE YOUR OPINION IN ANY
20 WAY ABOUT THE DEFENDANT'S SOPHISTICATION, FINANCIALLY?

21 A ABSOLUTELY NOT.

22 Q AND THE PROSPECTUS' AND 10Q'S THAT ARE FILED, WHOSE
23 STATEMENTS ARE THOSE?

24 A MANAGEMENTS.

25 Q AND DURING THIS TIME FRAME WHO WAS MANAGEMENT?

1 A THE CEO WAS MR. SHEPPARD.

2 Q I HAVE NO FURTHER QUESTIONS.

3 THE COURT: ANYTHING FURTHER, MR. GRIFFIN?

4 MR. GRIFFIN: NO, YOUR HONOR.

5 THE COURT: MR. FREEMAN, YOU ARE EXCUSED. YOUR NEXT
6 WITNESS.

7 MS. EVANS: YOUR HONOR, AT THIS TIME THE STATE REST,
8 THERE ARE NO FURTHER WITNESSES TO CALL.

9 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
10 AT THIS STAGE OF THE TRIAL. THE STATE HAS RESTED, THERE
11 ARE MATTERS OF LAW THAT I AM REQUIRED TO TAKE UP OUTSIDE
12 OF YOUR PRESENCE AND I WILL DO THAT AND BECAUSE OF THE
13 ILLNESS OF THE JUROR WE WILL GO AHEAD AND BREAK. WE WILL
14 START BACK AT 10:00 A.M. IN THE MORNING. DON'T DISCUSS
15 THE CASE AND YOU ARE EXCUSED. EVERYONE ELSE STAY SEATED
16 WHILE THE JURY IS EXCUSED.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
18 THE DAY.)

19 THE COURT: ALL RIGHT, LET ME HEAR MOTIONS AT THIS
20 TIME, MR. GRIFFIN.

21 MR. GRIFFIN: YES, SIR. AT THIS TIME THE DEFENDANT
22 MOVES FOR A JUDGMENT OF ACQUITTAL, MATTER OF LAW AS TO
23 COUNT ONE, ALLEGING VIOLATION OF 35-1-1210, PARAGRAPH
24 THREE, I THINK IT IS CODIFIED DIFFERENTLY CURRENTLY IN THE
25 CODE BUT THAT IS HOW IT IS CHARGED IN THE STATUTE. IT IS A

1 CHARGE ALLEGING SECURITIES FRAUD. THE OTHER COUNT OF THE
2 INDICTMENT PERTAINING TO OBTAINING GOODS UNDER FALSE
3 PRETENSES. YOUR HONOR, I BELIEVE THIS IS COUNT SEVEN.
4 AND THEN THE LAST COUNT IS--

5 THE COURT: THAT IS THE LEAPHART ROAD PROPERTY.

6 MS. EVANS: NO, YOUR HONOR, THE LEAPHART ROAD
7 PROPERTY, THAT WAS A DIFFERENT OBTAINING GOODS UNDER FALSE
8 PRETENSES.

9 MR. GRIFFIN: COUNT SEVEN IS AN ALLEGATION THAT MR.
10 SHEPPARD OBTAINED MONIES FROM CAROLINA INVESTORS INVESTORS
11 UNDER FALSE FRAUDULENT PRETENSES. AND THEN COUNT ELEVEN
12 IS THE, THE ONE I WOULD LIKE TO ADDRESS FIRST, YOUR HONOR,
13 IS THE EASIEST ONE TO ADDRESS IS COUNT SEVEN, THE CHARGE
14 OF OBTAINING GOODS UNDER FALSE PRETENSES. AND I WANT TO
15 HAND UP TO YOU THE CASE OF THE STATE V. MCCUTCHEN, 264,
16 SC, 524. AND, YOUR HONOR, IN THAT CASE JUST LIKE THIS
17 CASE THE ALLEGATIONS AND THE FACTS PRESENTED WERE PROMISES
18 OF FUTURE PERFORMANCE, PROMISES THAT WE WOULD REPAY YOU IN
19 THE FUTURE. AND UNDER THE STATUTORY AND CHARGE OF
20 OBTAINING GOODS UNDER FALSE PRETENSE, THE FALSE PRETENSE
21 HAS TO BE A STATEMENT OF FACT EXISTING OR HISTORICAL FACT,
22 NOT A PROMISE OF FUTURE OF PERFORMANCE OR A PROMISE OF
23 SOMETHING THAT WILL HAPPEN IN THE FUTURE. AND IN THE 1985
24 DECISION ON THE STATE V. MCCUTCHEN, THE ISSUE THERE WAS,
25 BASICALLY THE FACTS WAS THAT A GENTLEMAN HAD ORDERED

1 GASOLINE FOR HIS STORE, HE WAS OUT OF GASOLINE, HE HAD NOT
2 PAID FOR PRIOR GASOLINE, THE GASOLINE MERCHANT WANTED A
3 CERTIFIED CHECK, THE PURCHASER SAID, I DON'T HAVE A
4 CERTIFIED CHECK, I WILL GIVE YOU, I CAN'T REMEMBER, A
5 POSTDATED CHECK OR A PROMISE TO PAY YOU THIS AMOUNT AND I
6 AM GOOD FOR IT, HE SAID I AM GOOD FOR IT. AND WHAT THE
7 SOUTH CAROLINA COURT OF APPEALS RULED RELYING ON AN 1885
8 CASE, STATE V. HAINES WAS THAT THIS--

9 THE COURT: YOU SAID 1885?

10 MR. GRIFFIN: 1885, THE STATE V. HAINES, I HAVE THAT,
11 YOUR HONOR. BUT THE MCCUTCHEN CASE IS 1985.

12 THE COURT: RIGHT, I HAVE GOT IT.

13 MR. GRIFFIN: BUT WHAT IT RELIED UPON, I BELIEVE, IS
14 THE HAINES CASE WHICH I WILL HAND UP, IT IS AN 1885 CASE.
15 BUT IT IS, AND THE COURT FOUND AS A MATTER OF LAW THAT
16 THIS DID NOT MEET THE REQUIREMENTS OF OBTAINING GOODS
17 UNDER FALSE PRETENSES BECAUSE IT WAS A REPRESENTATION AS
18 TO WHAT SOMEONE WOULD BE ABLE TO HANDLE FINANCIALLY ON A
19 FUTURE DATE, I AM GOOD FOR IT, I CAN PAY YOU AND IT IS
20 JUST IN THIS CASE IT IS THE SAME. AND THE ALLEGATIONS ARE
21 THAT CLEARLY THESE ITEMS THAT WERE BEING, THE NOTES AND
22 DEBENTURES ARE PROMISES TO PAY IN THE FUTURE. IT IS, THAT
23 IS WHAT THEY ARE. IT IS A LOAN OF MONEY, I WILL REPAY YOU
24 IN THE FUTURE. AND TO THE EXTENT THAT, AND SO ON ALL
25 SQUARES WE STRONGLY BELIEVE THAT STATE V. MCCUTCHEN TAKES

1 CARE OF COUNT NUMBER SEVEN. MORE OVER THERE IS NO
2 EVIDENCE IN THE RECORD THAT ANY, THAT ANY CURRENT FACTS
3 PROVIDED PUBLICLY IN THE PROSPECTUS OR OTHERWISE, THIS IS
4 MY STATE OF BEING THAT WAS FALSE. THE EVIDENCE IS
5 COMPLETELY LACKING OF THAT. THERE IS EVIDENCE OF AND OF
6 THAT MR. SHEPPARD WOULD MAKE PROJECTIONS THAT WE HOPED TO
7 TURN AROUND, THIS IS WHAT WE ARE SHOOTING FOR, WE HOPE
8 THIS WILL HAPPEN, WE HAVE GOT THESE PROJECTIONS IN THE
9 FUTURE. BUT YOU DON'T EVEN GET TO THAT PART OF THE CASE
10 UNDER THE OBTAINING GOODS UNDER FALSE PRETENSES BECAUSE
11 WHAT THAT OFFENSE IS FOR AND IS SOMEONE FALSIFYING, YOU
12 KNOW, THIS COMPUTER IS A GOOD COMPUTER, IT WORKS PERFECTLY
13 AND GIVE ME \$5 THOUSAND DOLLARS FOR IT. AND YOU ARE
14 SWITCHING THE LIES IS ABOUT THIS COMPUTER AND THERE IS A
15 HORSE CASE. THIS HORSE IS SAFE, THIS HORSE IS SOUND AND
16 THE PERSON GIVES \$500 DOLLARS FOR THE HORSE THAT IS
17 REPRESENTED TO BE SOUND. AND IT WASN'T SOUND, IT WAS NOT
18 A GOOD HORSE. THE OTHER AND I WILL HAND UP, YOUR HONOR,
19 THE STATE V. HAINES CASE. AND THERE IT IS A 1885 CASE AND
20 THERE THEY SAY A MERE PROMISE TO DO SOMETHING IN THE
21 FUTURE, FOR EXAMPLE, TO PAY FOR GOODS AT A FUTURE TIME
22 EVEN IF FALSE IS NOT SUCH A PRETENSE THAT WOULD BECOME
23 WITHIN THE TERMS OF THE STATUTE. SO, EVEN IF I AM LIEING
24 TO YOU, SAY I AM GOING TO PAY YOU BACK, I DON'T HAVE ANY
25 INTENTION OF PAYING YOU BACK. UNDER THE OBTAINING GOODS

1 UNDER FALSE PRETENSES STATUTE, THE ELEMENTS ARE NOT MET
2 AND THIS IS A STATE V. HAINES CASE, 1885. AND CITED IN
3 APPROVAL 100 YEARS LATER IN 1995. I DON'T KNOW IF YOU
4 WANT TO TAKE ONE AT A TIME, YOUR HONOR.

5 THE COURT: THAT IS WHAT I WANT TO DO.

6 MR. GRIFFIN: THANK YOU.

7 THE COURT: MS. EVANS.

8 MS. EVANS: YOUR HONOR, I THINK THE DEFENDANT'S
9 RELIANCE ON HAINES AND MCCUTCHEN IS WITHOUT MERIT IN THIS
10 CASE. WHAT THE STATE IS ALLEGING IS AT THE TIME, IT IS
11 NOT THE FUTURE PROMISE TO PAY, IT IS OBTAINING THE MONEY
12 AT THE TIME TO BE USED BY HOMEGOLD. AND HE DOES THIS, WE
13 HAVE TO GO THROUGH THE HISTORY OF WHAT HE KNOWS STARTING
14 AT THE CIT MEETING, HE IS TOLD IN JULY OR AUGUST OF 2000
15 THAT THERE IS A PROBLEM WITH PAYING BACK CAROLINA
16 INVESTORS. IT IS NOT THE FUTURE PROMISE TO PAY THEM BACK,
17 OBTAINING GOODS UNDER FALSE PRETENSES, IT IS THE FALSE
18 PRETENSES MADE AT THE TIME THAT HE OBTAINED THE MONEY AND
19 THE LOANS. BUT I DON'T KNOW WHAT EXHIBIT IT IS BUT IT IS
20 A MARCH 27TH, 2002, AFTER THE DEFENDANT HAS ALREADY HEARD
21 IN OCTOBER OF 2001 FROM ELLIOTT DAVIS ABOUT GOING CONCERN
22 LOAN IMPAIRMENT, THEN GOES TO THE MARCH 14TH MEETING AND
23 TOLD GOING CONCERN AND LOAN IMPAIRMENT IS IN THERE. THEN
24 THE ONLY FOUR PEOPLE THAT UNDERSTAND THAT AT THAT POINT ON
25 MARCH 27TH OF 2002, NEW CONTACT AND MORE MONEY IS OBTAINED

1 BY HOMEGOLD THAT THE DEFENDANT USES SHORTLY THEREAFTER TO
2 PURCHASE A NEW MILLION DOLLAR BUS, TO PAY HIMSELF TWO
3 DIFFERENT CHECKS OF \$400 THOUSAND DOLLARS, TO PAY HIMSELF
4 FOR MILEAGE AND REIMBURSEMENT THAT HE PRECEDED TWO YEARS
5 EARLIER, USES THAT MONEY FOR PURPOSES OTHER THAN INTENDED.
6 SO, THIS IS NOT ABOUT A FUTURE PROMISE TO PAY BACK, THIS
7 IS LIFE THAT HE KNOWS OF AT THE TIME AND HE GETS THE MONEY
8 FROM CAROLINA INVESTORS UPSTREAM FROM HOMEGOLD FOR WHICH
9 HE USES FOR PURPOSES OTHER THAN INTENDED WHICH WAS, THE
10 TESTIMONY WAS VERY CLEAR, THEY THOUGHT AND THE INITIAL
11 PURPOSE OF DOING THE LOAN WHAT THAT HOMEGOLD COULD USE THE
12 MONEY TO LEND IN AND AROUND THE STATE. SO, THE ALLEGATION
13 IS NOT THE FUTURE PROMISES, IT IS THE FALSE
14 MISREPRESENTATIONS IN ORDER TO GET CAROLINA INVESTORS TO
15 UPSTREAM THE MONEY TO THEM. MR. BOBO AND MR. SHARPE HAD
16 NO KNOWLEDGE OF WHAT HAD GONE ON AT THAT MARCH 14TH
17 MEETING. THEY SPECIFICALLY WERE NOT INVITED SO THERE IS
18 FALSE PRETENSES SPECIFICALLY TO MR. BOBO AND MR. SHARPE
19 AND THEY BOTH TESTIFIED, THEY WEREN'T AT THAT MEETING,
20 THEY DIDN'T HAVE KNOWLEDGE, SO IT IS FALSE PRETENSES AND
21 REPRESENTATIONS TO OBTAIN THE MONEY FROM CAROLINA
22 INVESTORS UP TO HOMEGOLD. THE PURPOSE THAT IT WAS SUPPOSE
23 TO BE USED FOR AT HOMEGOLD WAS TO LOAN OUT THROUGHOUT THE
24 COUNTRY AND THE TESTIMONY WAS THIS WAS ORIGINALLY DONE
25 BECAUSE CAROLINA INVESTORS COULD NOT USE THAT MONEY TO

1 LOAN INTERSTATE, THEY COULD ONLY USE THE MONEY FOR THE
2 INTRASTATE. SO, THE MERE, IT IS NOT THE MERE PRESENCE TO
3 PAY BACK. GOING FURTHER INTO 2002 WHEN THEY CONTINUE TO
4 GET MONEY WHEN MARTIN'S RESIGNATION LETTER, WHERE IT SAYS,
5 DO NOT ACCEPT WHETHER HE WAS SUPPOSED TO BE FIRED, THAT IS
6 IRRELEVANT. THE DIRECTED VERDICT STAGE IN TAKING THE
7 EVIDENCE MOST FAVORABLE TO THE STATE, ALL TESTIMONY IS
8 THAT MR. MARTIN RESIGNED AND SAID DO NOT TAKE ANY MORE
9 MONEY AS OF TODAY IS OVER. THEY CONTINUED TO TAKE MONEY
10 FROM CAROLINA INVESTORS. THE OTHER FALSE PRETENSES IS
11 WHEN HE IS DIRECTING TO THE HOMEGOLD BOARD THAT IMPAC IS
12 GOING TO TAKE OUT A WAREHOUSE LINES OF CREDIT, I AM YOUR
13 ONLY HOPE, GIVE ME \$8.4 MILLION DOLLARS IN PROPERTY, THAT
14 IS A FALSE PRETENSE. THAT IS NOT A PROMISE TO PAY BACK,
15 HE GOT THAT MONEY. MS. MILLER'S TESTIMONY CLEARLY
16 DEMONSTRATES HE GOT A CHECK FOR \$3 MILLION DOLLARS THAT,
17 THAT IS NOT A PROMISE TO PAY BACK, THAT IS GETTING MONEY
18 RIGHT THERE AND THEN. THAT MONEY AND ALL TESTIMONY WAS,
19 THERE IS NO MONEY AT HOMEGOLD EXCEPT FOR THE MONEY BY
20 CAROLINA INVESTORS. THEY WERE OPERATING AT A NEGATIVE NET
21 WORTH, THAT IS WHERE THE OBTAINING MONEY UNDER FALSE
22 PRETENSES IS. ANOTHER THING, HIS SALARY, INCREASING THAT
23 SALARY AND HAVING TO BE RETROACTIVELY APPROVED BY THE
24 BOARD, THAT IS GETTING MONEY AND GIVING IT TO HIMSELF.
25 SO, THAT IS NOT A PROMISE TO PAY BACK AS THE HAINES CASE

1 AND THE MCCUTCHEN'S CASE SAYS IT ALL. THAT IS OBTAINING
2 MONEY RIGHT THERE AND THEN UNDER FALSE PRETENSES.
3 ADDITIONALLY, I SKEPPED OVER THE MARCH 25TH MEETING ABOUT
4 THE VALUATIONS THAT ALSO GO TO THE MERE FACT AND WHAT THE
5 DEFENDANT KNOWS ABOUT THE STATE OF THE COMPANY AND
6 CONTINUES TO GET MONEY UP FROM CAROLINA INVESTORS BECAUSE
7 THERE IS NO OTHER PLACE. AND MS. MILLER TESTIFIED AND
8 OTHER PEOPLE, THEY STARTED USING THAT IN ESSENCE, AS A
9 WAREHOUSE LINE OF CREDIT. SO, EACH TIME THEY GET THE
10 MONEY, NOT REGARDLESS OF HIS EMMCO I PROMISE TO PAY YOU
11 FIFTY PERCENT OF THAT BACK IN THE FUTURE. THAT IS NOT THE
12 PURPOSE OF IT, HE CONTINUED TO KEEP ON DOING THAT. AND
13 ABOUT THE PROJECTIONS, THE PROJECTIONS GOES TO THE
14 SECURITIES FRAUD COUNT AND NOT THE OBTAINING MONEY UNDER
15 FALSE PRETENSES. IT IS CLEAR FROM THE TESTIMONY THAT THE
16 DEFENDANT DID OBTAIN MONEY, MONEY FOR HIMSELF IN THE WAY
17 OF AT LEAST RIGHT AFTER MARCH OF 2002 WHEN GOING CONCERN
18 IS GETTING READY TO BE PUT IN THE PROSPECTUS, OBTAIN MONEY
19 WHICH IS EVIDENCED BY THAT MARCH 27, 2002 NOTE SIGNED AND
20 GOT \$400 THOUSAND DOLLARS FOR HIMSELF NOT TO MENTION THE
21 MILEAGE REIMBURSEMENTS AND ALL OF THAT. THAT IS CLEARLY
22 FALSE PRETENSES AND NOT A FURTHER PROMISE TO REPAY, THAT
23 IS MONEY THAT HE GOT IN HIS POCKET RIGHT THERE AND THEN
24 AND SO IT IS NOT A FUTURE PROMISE TO PAY, IT IS OBTAINING
25 GOODS AND MONEY UNDER FALSE PRETENSES AND IT CONTINUES

1 FROM 2000 UNTIL TODAY, BUT UNTIL THROUGH THE BANKRUPTCY.
2 SO, IT IS NOT BASED UPON A FUTURE PROMISE TO REPAY. IT IS
3 BASED UPON SPECIFICALLY GETTING THE MONEY AND PUTTING IT
4 INTO HIS OWN POCKET, YOUR HONOR, IT IS NOT A FUTURE
5 PROMISE TO PAY, IT WAS FALSE, HE GOT THE MONEY AND HE USED
6 THAT MONEY AND IT IS NOT, THE CASE ON MCCUTCHEN AND HAINES
7 IS JUST NOT WHAT THE CASE IS ABOUT. AND THE PROJECTIONS,
8 AND THAT WAS MATERIAL THAT WAS ELICITED FROM THE
9 TESTIMONY, GOES MORE TO THE SECURITIES FRAUD OF THE CASE,
10 NOT THE OBTAINING MONEY UNDER FALSE PRETENSES. AND THERE
11 ARE SEVERAL PEOPLE THAT HAVE TESTIFIED ABOUT THE FALSE
12 INFORMATION THAT HE RELAYED JUST ABOUT SPECIFIC EVENTS TO
13 CERTAIN PEOPLE. NOW, SOME PEOPLE THAT WERE IN THE
14 CONSPIRACY WITH HIM IS NOT FALSE FOR THEM BUT FOR PEOPLE
15 WHO DID NOT HAVE KNOWLEDGE IT IS CLEARLY FALSE TO THOSE
16 PEOPLE. AND IT DOESN'T HAVE TO SAY HOW FALSE IT IS OR IF
17 IT IS TOTALLY FALSE TO EVERYBODY THAT HE GETS THE MONEY
18 FROM. IT IS CLEARLY FALSE TO SOME MEMBERS OF THE CAROLINA
19 INVESTORS BOARD AND CLEARLY FALSE TO THE INVESTORS THAT
20 KEEP ON PUTTING THEIR MONEY IN.

21 THE COURT: MR. GRIFFIN.

22 MR. GRIFFIN: YOUR HONOR, WHAT WE ARE HEARING ARE TWO
23 LEVELS OF ANALYSIS. ONE LEVEL OF ANALYSIS IS THE MONEY
24 THAT IS LOANED THAT NEEDS TO BE REPAID BACK, WHETHER IT IS
25 LOANS FROM MR. GREGORY AND OTHER INDIVIDUALS WHO ARE IN

1 THE PUBLIC, WHO PUT MONEY INTO CAROLINA INVESTORS. THAT
2 IS CLEARLY A PROMISE TO REPAY, MONEY THAT IS OR LOANED
3 FROM CAROLINA INVESTORS TO HOMEGOLD WITH THIS REVOLVING
4 NOTE THAT IS A PROMISE TO REPAY BACK TO CAROLINA
5 INVESTORS. AND I WOULD POINT OUT THAT IN NONE OF THOSE
6 DOCUMENTS PRESENTED FROM THE STATE IS THERE ANY
7 RESTRICTION ON THE USE OF THE MONEY OTHER THAN THE
8 INVESTORS ARE TOLD THAT YOU WILL GET YOUR MONEY BACK
9 WITHIN A YEAR OR SOMETIMES IT IS LONGER OR YOU CAN GET IT
10 BACK WITHIN FIFTEEN MINUTES. THERE IS NO RESTRICTION ON
11 WHAT THAT MONEY ~~IS~~ TO BE USED FOR, THE PROSPECTUS
12 DESCRIBES SOURCES OF USE FOR THAT MONEY AND ONE IS, THAT
13 IT WILL BE LOANED TO THE AFFILIATE TO FINANCE THIS
14 OPERATION. AND IT IS NOT RESTRICTED WHICH WOULD INCLUDE
15 PAYMENT OF COST AND EXPENSES AND EXECUTIVE SALARIES AND
16 EMPLOYEES SALARIES AND IT RUNS AGAIN. SO, THERE IS
17 NOTHING IN THE STATE'S CASE THAT SAYS, YOU HAVE GOT TO USE
18 THIS MONEY FOR A SPECIFIC PURPOSE AND ALL THERE IS IS A
19 PROMISE TO REPAY THAT MONEY AND IT IS NOT BASED UPON,
20 THERE IS NO EVIDENCE OF ANY MISREPRESENTATION OF AN
21 EXISTING OR HISTORICAL FACT. THE NEXT LEVEL I AM HEARING
22 THEM SAY, LET'S LOOK AT THE MONEY THAT MR. SHEPPARD GOT
23 THAT HE DIDN'T HAVE TO REPAY. AND LET'S LOOK AT THAT
24 MONEY. ONE IS HIS SALARY AND BONUSES AND THERE HAS BEEN
25 NO ALLIGATION IN THIS CASE THAT INFORMATION WAS FALSE,

1 THAT, THAT HE WASN'T ENTITLED TO IT. THERE IS ALLEGATIONS
2 AND THERE IS GOING TO BE ARGUMENTS, I SUSPECT, ABOUT HOW
3 COULD THIS MAN GET THIS MUCH MONEY WHEN EVERYONE IS LOSING
4 MONEY. BUT THERE IS NO CLAIM, THERE IS NO CLAIM THAT WHEN
5 HE ASKED FOR THE MONEY THAT HE LIED ABOUT WHERE IT WAS
6 GOING, IT WAS COMING TO HIM AND THAT HE SUBMITTED
7 REIMBURSEMENT FOR FURNITURE. AND THERE IS NO EVIDENCE
8 THAT WAS A FALSE REIMBURSEMENT SUBMISSION. THEY ARE
9 COMPLAINING THAT IT WAS UNTIMELY AND THAT THE FACT THAT HE
10 DID IT ON THE EVE OF THE PROSPECTUS, GOING CONCERN
11 LANGUAGE, ETCETERA SHOWS HIS KNOWLEDGE ON WHAT IS GOING TO
12 HAPPEN IN THE FUTURE. BUT THERE IS NO CLAIM THAT HE
13 FALSELY REPRESENTED HIS ENTITLEMENT TO THAT, WHETHER HE
14 FALSELY REPRESENTED HIS ENTITLEMENT TO, THROUGH THE
15 MILEAGE REIMBURSEMENT OR ANY OTHER MONEY THAT CAME TO HIM.
16 NOW, THEY TALK ABOUT THE NOTES AND ONCE AGAIN, YOUR HONOR,
17 THERE ARE NOTES WHICH ARE PROMISES TO REPAY THE MONEY BACK
18 TO HOMEGOLD. AND AGAIN WE ARE GETTING FAR FIELD FROM WHAT
19 THE INDICTMENT CHARGES IN COUNT SEVEN. IF YOU LOOK AT IT
20 AND THE MONEY THAT HE GETS WITH NOTHING TO HAVE TO REPAY
21 AND THEN, I GUESS IF YOU WANT TO BACK UP, THE HOMESENSE
22 TRANSACTION IS NOT CHARGED IN THIS ENTIRE INDICTMENT, IN
23 PARTICULARLY COUNT SEVEN, OBTAINING GOODS UNDER FALSE
24 PRETENSES, CLEARLY NOT, IT IS NOT CHARGED AS THAT. HE
25 WASN'T INDICTED FOR THAT UNDER COUNT SEVEN AND THAT IS NOT

1 WHAT WE--

2 THE COURT: THE STATE IS NOT ARGUING ANYTHING IN THAT
3 COUNT?

4 MS. EVANS: NO, YOUR HONOR. I WILL SAY THAT COUNT
5 SEVEN DOES INCORPORATE PARAGRAPHS 1 THROUGH 115 THAT DOES
6 TALK ABOUT THE HOMEGOLD/HOMESENSE MERGER.

7 THE COURT: YOU ARE NOT CHALLENGING THAT MERGER ON
8 THOSE GROUNDS?

9 MS. EVANS: NO, SIR.

10 MR. GRIFFIN: AND SO WHAT WE ARE LEFT WITH, WE ARE
11 LEFT WITH MR. SHEPPARD GETTING MONEY AND HE SAYS, I AM
12 GETTING MONEY FOR REIMBURSEMENT FOR WALLPAPER,
13 REIMBURSEMENT FOR MILEAGE, REIMBURSEMENT FOR FURNITURE AND
14 THE REST OF IT IS LOANED MONEY WITH PROMISES TO REPAY IN
15 THESE MEETINGS. HE KNEW THAT THEY COULD NOT EVER MAKE THE
16 MONEY AND REPAY IT. AND, YOUR HONOR, STATE V. HAINES AND
17 I WILL JUST READ. IT SAYS, A FALSE PRETENSE IS SUCH IF
18 FRAUDULENT REPRESENTATION OF AN EXISTING OR PAST FACT BY
19 ONE WHO KNOWS IT NOT TO BE TRUE. AND THEN GO, A MERE
20 PROMISE TO DO SOMETHING IN THE FUTURE, FOR EXAMPLE, TO PAY
21 FOR GOODS AT A FUTURE TIME EVEN IF FALSE, IS NOT SUCH A
22 PRETENSE WHICH WOULD COME IN THE STATUTE. EVEN IF HE
23 KNOWS IN HIS HEART AND HE KNOWS WITH PEOPLE AROUND HIM, WE
24 CAN'T PAY THIS MONEY BACK BUT WE ARE TELLING THEM WE ARE
25 GOING TO PAY YOU BACK, YOUR MONEY IS SAFE WITH US. IT

1 DOESN'T MEAN THE STATUTORY ELEMENT AND THE SOUTH CAROLINA
2 LAW IS CRYSTAL CLEAR ON THAT.

3 THE COURT: I WILL TAKE A LOOK AT THAT CASE AND RULE
4 ON THAT TOMORROW.

5 THE COURT: WHICH ONE WILL WE DO NEXT.

6 MR. GRIFFIN: THE SECURITIES FRAUD COUNT, YOUR HONOR,
7 AND I WOULD AND THE STATUTE ITSELF CONTAINS ESSENTIALLY
8 THREE COMPONENTS. ONE IS, THERE HAS TO BE, THAT IT IS
9 FALSE OR MISLEADING STATEMENTS IN CONNECTION WITH THE
10 OFFER OR SELL OF SECURITY. IT IS EITHER AND THEN IT SAYS,
11 FALSE OR FRAUDULENT, I AM SORRY, I DON'T HAVE THE STATUTE
12 WITH ME. AND THEN THE THIRD IS A COURSE OF BUSINESS BUT
13 ALL THREE HAVE TO BE WITHIN THE CONNECTION WITH THE SELL
14 OF SECURITIES. NOW, IN REGARD TO REPRESENTATIONS, YOUR
15 HONOR, THERE IS A REQUIREMENT IN THE STATUTE THAT THERE
16 HAS TO BE MATERIAL, THAT THE REPRESENTATIONS HAVE TO BE
17 MATERIAL AND THE LAW THAT HAS DEVELOPED ON MATERIALITY,
18 YOUR HONOR, IS ONCE AGAIN THE, IN THAT FUTURE STATEMENTS,
19 PREDICTIONS OF FUTURE PROJECTIONS ARE NOT STATEMENTS OF
20 FACT, EXISTING STATEMENTS OF FACT AND THAT THEY CANNOT BE
21 RELIED UPON FOR, TO ESTABLISH VIOLATIONS OF THE SECURITIES
22 STATUTE. THE CASES THAT I HAVE ON HERE, YOUR HONOR, AND
23 THE ONE THAT IS MOST ON POINT IS A FEDERAL CASE, THE FORTH
24 CIRCUIT. BUT IT DOES DISCUSS IN DETAIL PROJECTIONS. AND
25 IT IS HILLSON PARTNERS LIMITED VERSUS ADAGE INCORPORATED

1 AT 42 F3RD, 202. IT IS A CIVIL CASE BUT IT IS UNDER THE
2 CIVIL SECURITIES LAW CASE AND IN THAT STATUE AND IN THE
3 CASE, YOUR HONOR, AND I HAVE HIGHLIGHTED IT IN PERTINENT
4 LANGUAGE. BUT THERE IT IS, IT TALKS ABOUT SPECIFICALLY
5 PROMISES OF FUTURE PERFORMANCE AND IT SAYS, AND THERE WERE
6 REPRESENTATIONS PERTAINING TO FUTURE GROWTH AND THESE ARE
7 OUR TARGETS AND WE ARE ON TARGET AND WE ARE TURNING THINGS
8 AROUND. THAT IS WHAT THIS CASE IS ABOUT. AND THERE THEY
9 STATE AND I AM LOOKING AT PAGE 10 OF THE CASE AND IT SAYS,
10 WE KNOW THAT PREDICTIONS OF THE FUTURE GROWTH, NOT WORDED
11 AS A GUARANTEE AND GENERALLY NOT ACTIONABLE UNDER THE
12 SECURITIES LAWS.* IT SAYS WE DISTINGUISH EXPRESSIONS OF
13 BELIEF OR OPINION CONCERNING CURRENT FACTS. AND THEY GO
14 ON TO TALK ABOUT MISSTATEMENTS REGARDING ACTUAL PAST AND
15 PRESENT FACTS, THAT IS WHAT WAS COVERED. BUT FUTURE
16 PROJECTIONS UNLESS THEY ARE COVERED WITH A GUARANTEE THAT,
17 YOU KNOW, I GUARANTEE YOU ARE GOING TO DO THIS AND YOU
18 GIVE THEM THE GUARANTEE THEN THOSE DON'T RISE TO THE LEVEL
19 OF MATERIAL MISSTATEMENTS. AND IN THE MIX, IN ADDITION TO
20 PROJECTIONS, WHAT THE CASE LAW SAYS IS, THAT WHEN YOU ARE
21 GIVING STATEMENTS, YOU DON'T HAVE TO GIVE EVERYTHING THAT
22 IS ALREADY IN THE PUBLIC DOMAIN SUCH AS YOUR FINANCIAL
23 PERFORMANCE THAT HAS BEEN FILED PUBLICLY WITH EITHER THE
24 SECURITIES COMMISSION OR THE SEC WHICH IS WHAT WE HAVE
25 HERE, IS THE FACTUAL RECORD IN THIS CASE IS COMPLETE WITH

1 EXTENSIVE FINANCIAL DOCUMENTS SHOWING SIGNIFICANT LOSSES.
2 EVEN IN THE YEAR OF 2002 WHERE, WHICH IS THE YEAR THAT THE
3 GOING CONCERN CAME OUT, WHAT YOU HAVE IN A PROSPECTUS IS
4 LANGUAGE SAYING BUYER BEWARE, THAT THE ACCOUNTANTS THINK
5 THERE IS REAL CONCERN THAT THIS COMPANY ISN'T GOING TO BE
6 AROUND FOR ANOTHER YEAR. AND THEN THERE IS AN ADEQUATE
7 PORTRAYAL OF THE LOSSES AND YOUR HONOR, A LOT OF THE
8 EVIDENCE ABOUT PRESSURE ON THE ACCOUNTING DEPARTMENT,
9 PRESSURE ON THE STAFF AND ALL THE EVIDENCE IS, THAT ONE
10 GUY FILED WAS IN ACCORDANCE WITH GENERALLY ACCEPTING
11 ACCOUNTING PRINCIPLES. THEY HAVEN'T PRESENTED ANY
12 ACCOUNTING EXPERT TO COME IN AND SAY THE FILES PRESENTED
13 IN THIS CASE DID NOT MEET GENERALLY ACCEPTED ACCOUNTING
14 PRINCIPLES. AND SO YOU HAVE TO LOOK AT THE INFORMATION
15 THAT WAS PROVIDED AND WAS IT MISLEADING, DID IT OPERATE IN
16 A FRAUD OR DECEIT UPON ANY INVESTOR. AND THEN THE THIRD
17 IS, ENGAGING IN A COURSE OF BUSINESS OR PRACTICE THAT
18 WOULD OPERATE AS A FRAUD OR DECEIT AND MISLEADING
19 INVESTORS. AND THERE AGAIN, IT HAS TO BE IN CONNECTION
20 WITH THE SELL OF SECURITIES. NOW, THEY ARE MOST CRITICAL
21 OF MR. SHEPPARD'S FAILURE, AS THEY SEE IT, TO COMPLY WITH
22 HIS FIDUCIARY DUTY, PUTTING HIS INTEREST AHEAD OF THE
23 CORPORATE INTEREST, IF YOU WILL. THAT IS THEIR CASE, THAT
24 HE PUT HIMSELF ABOVE OTHERS AND THAT, BUT THOSE
25 ACTIVITIES, THEY WERE AND THAT, IT WAS A BUSINESS, HE WAS

1 DOING IT THE COURSE OF BUSINESS BUT THAT WAS NOT IN
2 CONNECTION WITH THE SELL OF ANY SECURITIES WHATSOEVER.
3 AND THE EVIDENCE IS, FROM THE ONLY INVESTORS THEY HAVE AND
4 THEY TESTIFIED, THEY DON'T KNOW WHO MR. SHEPPARD IS.

5 THE COURT: IN REALITY, THE COURSE OF BUSINESS,
6 ANYTHING OF HOMEGOLD THAT FILTERED DOWN TO CAROLINA
7 INVESTORS, ALL OF THAT WAS INTERRELATED AND DEALT WITH THE
8 SELL OF THOSE SECURITIES, DID IT NOT.

9 MR. GRIFFIN: WITH REGARD TO THE PROJECTIONS AND THE
10 INFORMATION AND THE FINANCIAL PERFORMANCE, ABSOLUTELY.
11 BUT WHEN IT COMES TO MR. SHEPPARD DIDN'T TELL YOU ABOUT
12 THE BUS AND HE DIDN'T TELL YOU HE WAS TAKING \$650 THOUSAND
13 DOLLAR PLANE RIDES AND HE DIDN'T TELL YOU THAT HE HAD,
14 THAT THERE WAS A PERSONAL TRAINER AND A GYM UNDERNEATH
15 REED AVENUE. THOSE THINGS ARE NOT IN CONNECTION WITH THE
16 SELL OF SECURITIES, YOUR HONOR, THAT IS THE PART I AM
17 TALKING ABOUT. AND HE DIDN'T TELL YOU THAT HE WAS GOING
18 TO GET REIMBURSEMENTS FOR THESE THINGS. THAT IS THE PART
19 THAT I AM TALKING ABOUT PUTTING IN HIS INTEREST. THE
20 INFORMATION PROVIDED TO THE INVESTORS AND AVAILABLE TO THE
21 INVESTORS. THERE WE GET TO THE PROJECTIONS AND THERE WE
22 GET TO THE FORTH CIRCUIT DECISION AND THERE IS ANOTHER
23 DECISION RIGHT AFTER THAT A U.S. SUPREME COURT WHICH I
24 WILL HAND UP, YOUR HONOR, IT IS VIRGINIA BANK SHARES
25 VERSUS SANBURG, IT IS AT 111, SC 2749. AND THE THIRD, AND

1 I MENTIONED RAAB V. GENERAL. BUT THOSE, THAT GOES TO AND
2 IT IS BACK TO THE REPRESENTATIONS OF FACT AND PROJECTIONS
3 AND FUTURE PERFORMANCE. AND THE POINT MADE IN THOSE
4 CASES, YOUR HONOR, IS WHEN YOU ARE TALKING ABOUT
5 PROJECTIONS, IS THAT A COMPANY WILL NEVER, IT WOULD BE ONE
6 IN A MILLION YEARS THAT A COMPANY WILL MEET THE
7 PROJECTIONS. IF YOU PROFIT A THIRTY PERCENT GROWTH AND
8 YOU HIT THIRTY-FIVE PERCENT, AS THAT CASE DESCRIBES, THE
9 PEOPLE WHO SOLD THEIR STOCK THINKING YOU ARE ONLY GOING TO
10 GET THIRTY PERCENT GROWTH, THEY ARE GOING TO BE UPSET. IF
11 YOU PREDICTED A THIRTY PERCENT GROWTH AND YOU COME IN AT
12 TWENTY-FIVE PERCENT, THE PEOPLE WHO BOUGHT IT THINK YOU
13 ARE GOING TO GET THIRTY PERCENT AND GOING TO BE UPSET AT
14 TWENTY-FIVE PERCENT. AND SO PROJECTIONS OF FUTURE GROWTH
15 AND FUTURE PERFORMANCE ABSENT A GUARANTEE, THE
16 REPRESENTATION IS NOT A STATEMENT OF FACT AND IT IS NOT
17 ACTIONABLE CIVILLY OR CRIMINALLY FOR PURPOSES OF
18 SECURITIES FRAUD. AND THEN, YOUR HONOR, WE HAVE GOT
19 REQUIREMENT OF WILLFULLNESS IN THE STATUTE AND IT IS, DID
20 THIS DEFENDANT INTEND TO VIOLATE, INTEND TO CHEAT THESE
21 INVESTORS THROUGH THIS BUSINESS. AND WHAT YOU HAVE GOT IS
22 A LAYER BETWEEN THE INVESTORS, THE SELL OF THE SECURITIES,
23 YOU HAVE MULTIPLE LAYERS, YOU HAVE THE LAYER OF THE
24 PROSPECTUS THAT IS FILED, YOU HAVE A LAYER OF THE SOUTH
25 CAROLINA SECURITIES COMMISSION WHO ACCEPTS THE PROSPECTUS,

1 THEY DON'T BLESS IT AS A GOOD INVESTMENT, BUT THEY
2 CERTAINLY ACCEPT THE REGISTRATION THAT IS A GOOD
3 DISCLOSURE DOCUMENT. THE LAWYERS AND THE ACCOUNTANTS
4 WORKING ON A PROSPECTUS OUTSIDE, INSIDE YOU HAVE GOT
5 LAWYERS AND ACCOUNTANTS WORKING ON THE PROSPECTUS. AND
6 THEN ANY, AND THE REPRESENTATIONS THAT ARE MADE OUTSIDE
7 THE PROSPECTUS, YOU CAN'T JUST, THERE IS ROOM FOR THAT.
8 BUT YOU CANNOT JUST CONSIDER THOSE IN ISOLATION WITHOUT
9 WHAT IS IN THE PUBLIC DOMAIN. AND THE DOCUMENTS AND THE
10 PUBLIC DOMAIN CLEARLY, HISTORICAL CONCURRENT LOSSES OF A
11 HUGE MAGNITUDE. ~~SO~~ SO, THE JURY COULD FIND, BASED UPON THE
12 STATE'S LEVEL OF PROOF, THE DEFENDANT WILLFULLY VIOLATED
13 THE SECURITIES STATUTE, TO DEFRAUD THESE INVESTORS. THANK
14 YOU.

15 THE COURT: ON THIS, I AM NOT GOING TO HEAR FROM THE
16 STATE, I THINK THERE IS SUFFICIENT EVIDENCE IN THE RECORD
17 IF BELIEVED BY THE JURY TO SUPPORT THE CLAIM MADE UNDER
18 THAT SECURITIES FRAUD AND FOR THAT REASON, OF COURSE, I AM
19 NOT PERMITTED TO WEIGH THE EVIDENCE. AND I THINK, REALLY,
20 IN ORDER TO CONSIDER GRANTING THAT MOTION ON THAT COUNT IT
21 WOULD REQUIRE THE COURT TO DO THAT AND I AM NOT PERMITTED
22 TO DO THAT. FOR THAT REASON THAT, ON THE COUNT ONE IS
23 DENIED, THAT MOTION.

24 MR. GRIFFIN: AND THEN THE LAST COUNT, YOUR HONOR,
25 THE CONSPIRACY COUNT AND THERE IS JUST, AGAIN, A FAILURE

1 TO PROVE, THAT A REASONABLE JUROR COULD FIND BASED ON THE,
2 MR. OWEN TESTIFIED YESTERDAY THAT HE AND EARLE MORRIS HAD
3 A CONSPIRACY. AND THAT WAS THE SCOPE OF HIS TESTIMONY ON
4 CONSPIRACY, I KNOW THAT YOU CAN HAVE CONSPIRACY THAT ARE
5 BEYOND THIS VERBAL AGREEMENT. BUT THE STATE'S EVIDENCE
6 HAS FAILED, THE STATE HAS FAILED TO MEET THE BURDEN OF
7 PROOF IN THIS CASE.

8 THE COURT: ON THAT COUNT, WHAT IS YOUR ARGUMENT.

9 MS. EVANS: YOUR HONOR, CLEARLY ON THE CONSPIRACY, IT
10 HAS BEEN SHOWN, KAREN MILLER, HER TESTIMONY ALONE HAS SAID
11 THAT SHE, WITH ~~THE~~ DEFENDANT, LET'S JUST LOOK AT ONE
12 SPECIFIC THING THAT KAREN MILLER SAID THAT THEY DID
13 TOGETHER. THE THIRD QUARTER FILING OF 2002, SHE SAID IN
14 THE DIRECTION OF THE DEFENDANT THAT HE TOLD HER TO MAKE
15 THE BOOKS LOOK AS GOOD AS POSSIBLE. THE PELHAM ROAD
16 PROPERTY, THAT SHE TOLD THE DEFENDANT PERSONALLY NOT TO
17 SELL, HAD A CONTRACT FOR \$2 MILLION OR AN OFFER FOR \$2
18 MILLION. AND THEN \$4 MILLION BEFORE THAT THIRD QUARTER
19 FILING WAS SOLD, SHE STATED HERSELF THAT SHE SAID, I
20 BELIEVE, FROM HER TESTIMONY CLEARLY UNDER GAAP AND FASFA
21 AND WHATEVER ALL OF THOSE REGULATIONS ARE, THAT SHE HAS
22 ADMITTED THAT SHE IS INVOLVED IN THE CONSPIRACY. AND IT
23 WAS THE DEFENDANT, FORREST FERRELL, MR. STERLING, THAT WAS
24 ALSO INVOLVED IN THAT SAME ONE, TRYING TO MAKE THE BOOKS
25 LOOK AS GOOD AS THEY COULD FOR THE THIRD QUARTER. AND

1 THIS IS JUST ONE INSTANCE FOR THE THIRD QUARTER. LET'S GO
2 ABOUT THAT THIRD QUARTER, FOCUS ON A CONVERSATION THAT MS.
3 MILLER TESTIFIED TO ABOUT THE CONSPIRACY WHEN MR.
4 SHEPPARD, FORREST FERRELL AND MS. MILLER ARE DRIVING UP TO
5 CAROLINA INVESTORS. THE DEFENDANT'S OWN STATEMENT IS WE
6 ARE GOING TO GET IN AND WE ARE GOING TO GET OUT, WE DON'T
7 WANT TO ASK ANY QUESTIONS. HE GOES UP THERE AND THEY ALL
8 CONSPIRE TO GO IN THERE AND JUST TELL AS LITTLE AS
9 POSSIBLE ABOUT WHAT THEY KNOW ABOUT IT. THE CONSPIRACY
10 GOES BACK NOT JUST TO WHAT IS BEING DONE WITH THE BOOKS ON
11 A MONTHLY BASIS, I THINK THAT IS VERY CLEAR. MR. SHEPPARD
12 HAS A MEETING AND AS A PART OF THE CONSPIRACY THEY HAVE TO
13 ARRIVE AT A COMPROMISE BECAUSE THE ACCOUNTING STAFF IS
14 SAYING, YOU CAN'T DO THAT. AND WHAT THEY SAY IS, WELL, WE
15 WILL DO WHAT YOU WANT YOUR WAY FOR THE MONTHLY BUT THEN IN
16 ORDER TO FILE WE HAVE TO DO THAT. ALL OF THAT IN A
17 CONSPIRACY AND DEFINED BY STATUTE IS DEFINED, THE
18 COMBINATION BETWEEN TWO OR MORE PEOPLE FOR THE PURPOSES OF
19 ACCOMPLISHING AN UNLAWFUL OBJECT OR A LAWFUL OBJECT BY
20 UNLAWFUL MEANS. I THINK BY BOTH DEFINITIONS CLEARLY MS.
21 MILLER'S TESTIMONY ALONE IS SUFFICIENT TO ESTABLISH THE
22 CONSPIRACY. LET'S GO TO LARRY OWEN'S TESTIMONY. LARRY
23 OWEN TESTIFIED THAT HE AND MR. MORRIS--

24 THE COURT: YOU DON'T HAVE TO GO OVER EVERYTHING. I
25 WANTED TO KNOW WHAT, SORT OF WHAT THE STATE'S RESPONSE,

1 YOU WANT TO BE HEARD IN RESPONSE TO ANY OF THAT, MR.
2 GRIFFIN?

3 MR. GRIFFIN: NO, YOUR HONOR.

4 THE COURT: I THINK THERE IS SUFFICIENT EVIDENCE IN
5 THE RECORD THAT IF BELIEVED BY THE JURY IT WOULD FORM A
6 BASIS ON THAT PARTICULAR COUNT, THAT MOTION IS ALSO
7 OVERRULED. I WILL TAKE THE FIRST ONE, ON THE FALSE
8 PRETENSES UNDER CONSIDERATION AND RULE ON THAT TOMORROW
9 BEFORE GET STARTED. ANYTHING ELSE AT THIS TIME.

10 MS. EVANS: YOUR HONOR, I DID WANT TO ADD ONE THING
11 TO MY ARGUMENT ON THAT ONE. IS MR. MARTIN AND SHANE SMITH
12 DID TESTIFY AND THERE WAS A GREAT DEAL OF TESTIMONY ABOUT
13 MR. SHEPPARD GOING AROUND PEOPLE'S BACK, ESPECIALLY WHEN
14 MR. MARTIN WAS CFO, BEING ABLE TO GET DOUBLE PAYMENTS AND
15 THERE WAS SPECIFIC TESTIMONY OF GOING TO TWO DIFFERENT
16 PEOPLE TO GET THAT DOUBLE PAYMENT. AND I WOULD LIKE TO
17 POINT OUT, THAT THOSE TWO CASES THAT MR. GRIFFIN TALKS
18 ABOUT, THEY LOOK, IT IS NOT A GENERAL PROPOSITION OF
19 FUTURE PAYMENT, IT IS THE SPECIFIC CONVERSATIONS IN BOTH
20 OF THOSE CASES. I JUST WANTED TO POINT OUT THAT
21 ADDITIONAL TESTIMONY OF SHANE SMITH AND KEVIN MARTIN ABOUT
22 HOW HE WAS GOING BEHIND PEOPLE'S BACK AND TELLING THEM
23 CERTAIN THINGS AND NOT THE CFO OF THE COMPANY.

24 THE COURT: ALL RIGHT, I WILL TAKE A LOOK AT ALL OF
25 THAT AND RULE ON THAT TOMORROW MORNING.

1 MS. EVANS: THANK YOU, YOUR HONOR.

2 THE COURT: ANYTHING FURTHER THIS AFTERNOON?

3 MR. GRIFFIN: NO, SIR.

4 THE COURT: WE WILL START AT 10:00 IN THE MORNING.

5 (WHEREUPON, THE TRIAL WILL RESUME THE NEXT MORNING AT
6 10:00 A.M.)

7 THE COURT: DO WE NEED TO TAKE CARE OF ANYTHING
8 BEFORE I RULE ON THE MOTIONS. I AM NOT AWARE OF ANYTHING.

9 MS. EVANS: NOT FROM THE STATE.

10 MR. GRIFFIN: NO, SIR.

11 THE COURT: IT IS CLEAR FROM THE CASES ON THE CHART
12 THAT OBTAINING GOODS OR PROPERTY BY FALSE PRETENSES, THAT
13 IT MUST BE A FALSE PRETENSE RELATED TO EXISTING OR TO PAST
14 FACT AND A PROMISE TO PAY IN THE FUTURE BY CREATING A
15 BASIS FOR THAT. HOWEVER, THERE IS EVIDENCE IN THE RECORD
16 IN GOING BACK THROUGH MY NOTES AND MY RECOLLECTION OF
17 REPRESENTATIONS AND WHATNOT THAT WERE MADE CONCERNING BOTH
18 PAST AND PRESENT FACTS. FOR THAT REASON THE MOTION TO, TO
19 ISSUE A DIRECTED VERDICT ON THAT COUNT WILL BE DENIED. IS
20 THE DEFENSE READY TO PROCEED?

21 MR. GRIFFIN: YES, YOUR HONOR.

22 THE COURT: IS THE STATE READY?

23 MS. EVANS: YES, SIR.

24 THE COURT: YES, SIR.

25 MR. GRIFFIN: OUR THIRD WITNESS, YOUR HONOR, IS AN

1 ACCOUNTANT WITH GRANT THORNTON. HE DID, THAT FIRM DID THE
2 RETURNS FOR EMMCO AND MR. SHEPPARD. AND HE AND HIS FIRM
3 IS REPRESENTED BY A LAWYER AND WE JUST NEED TO PUT ON THE
4 RECORD FOR THEIR FIRMS SAKE THAT MR. SHEPPARD WAIVES ANY
5 CONFIDENTIALITY REGARDING THE PREPARATION OF THOSE RETURNS
6 AND RETURNS SO THAT HE CAN TESTIFY HERE TODAY. I WANTED
7 TO PUT THAT ON THE RECORD.

8 THE COURT: IS THAT CORRECT, MR. SHEPPARD?

9 MR. SHEPPARD: YES.

10 THE COURT: ALL RIGHT. THAT IS NOTED ON THE RECORD,
11 GET THE JURY IN.

12 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
13 APPROXIMATELY 10:10 A.M.)

14 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
15 WE WILL CONTINUE WITH THE CASE. MR. GRIFFIN, CALL YOUR
16 FIRST WITNESS PLEASE.

17 MR. GRIFFIN: WE WOULD CALL CHARLIE SIDES TO THE
18 STAND.

19 CHARLIE SIDES, AFTER BEING DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. GRIFFIN:

23 Q MR. SIDES, TELL THE JURY WHERE YOU ARE FROM, PLEASE.

24 A I LIVE HERE IN LEXINGTON, SOUTH CAROLINA.

25 Q HOW LONG HAVE YOU LIVED IN LEXINGTON?

1 A SINCE 1991.

2 Q AND WHERE DID YOU GROW UP?

3 A NORTH CAROLINA JUST ABOVE CHARLOTTE.

4 Q DID YOU GO TO COLLEGE?

5 A I DID, I ATTENDED THE CITADEL.

6 Q THE CITADEL?

7 A YES, SIR.

8 Q AND YOU GRADUATED FROM THERE?

9 A YES, SIR.

10 Q AND WHAT DID YOU DO UPON GRADUATION?

11 A MY FIRST JOB WAS WORKING WITH CAPTAINS D'S SEAFOOD

12 RESTAURANT, TOOK ME TO ATHENS, GEORGIA. AND FROM THERE I

13 GOT INTO FINANCE BUSINESS IN ABOUT 1986.

14 Q AT SOME POINT DID YOU MEET RONNIE SHEPPARD?

15 A I DID.

16 Q WHEN WAS THAT?

17 A IT WAS AROUND AUGUST OF 1992.

18 Q WHAT WERE YOU DOING IN AUGUST OF 1992?

19 A I WAS WORKING FOR UNTIED COMPANIES.

20 Q WHAT IS UNITED COMPANIES?

21 A IT WAS A MORTGAGE COMPANY.

22 Q AND WHAT BROUGHT YOU INTO CONTACT WITH MR. SHEPPARD?

23 A AT THE TIME I HAD A LOAN THAT WAS TRYING TO CLOSE AND

24 I COULDN'T FIND A HOME FOR IT AND MY BOSS, ED FLESHMAN,

25 SUGGESTED THAT I TAKE IT TO RONNIE AND SEE IF I COULD DO

1 SOMETHING WITH IT.

2 Q AND WHAT WAS MR. SHEPPARD DOING IN 1992?

3 A HE WAS RUNNING EQUITABLE MORTGAGE CORPORATION.

4 Q AND AT SOME POINT AND TIME DID YOU GO TO WORK FOR
5 EQUITABLE MORTGAGE CORPORATION?

6 A I DID, IN NOVEMBER OF THAT SAME YEAR.

7 Q OF 1992?

8 A YES, SIR.

9 Q TELL THE JURY HOW LARGE EQUITABLE MORTGAGE
10 CORPORATION WAS IN NOVEMBER OF 1992?

11 A AT THAT TIME² IT WAS MR. SHEPPARD, MERIDETH CASTEEN,
12 JOHN NEAL AND LEE LEAPHART.

13 Q AND SO THERE WERE THREE PEOPLE BEFORE YOU GOT THERE?

14 A YES.

15 Q AND THEN YOU WERE THE FORTH?

16 A YES.

17 Q AND MR. NEAL, WHAT WAS HE?

18 A HE WAS THE LOAN OFFICER.

19 Q AND WHAT WAS MR. LEAPHART?

20 A HE WAS AN OFFICE, CLERICAL, RUN AROUND GOFFER.

21 Q AND MS. CASTEEN?

22 A BOOKKEEPER.

23 Q SO, AND WHAT WAS MR. SHEPPARD DOING?

24 A EVERYTHING ELSE, HE WAS RUNNING THE COMPANY, HE WAS
25 SELLING LOANS, SOLICITING, REFERRALS, HELPING PLACE LOANS.

1 Q TELL THE JURY ABOUT, A LITTLE BIT OF HISTORY OF
2 EQUITABLE MORTGAGE, AND SAY LET'S TAKE IT FROM 1993 ON UP
3 TO 1996, WHAT WAS GOING ON AT EQUITABLE MORTGAGE?

4 A WHEN I STARTED WORK THERE, I CLOSED MY FIRST LOAN IN
5 DECEMBER AND WE BROUGHT IN, RONNIE ASKED ME IF I KNEW ANY
6 OTHER PEOPLE THAT WOULD LIKE TO COME TO WORK AND IT JUST
7 SO HAPPENED I DID. I HAD WORKED WITH A FINANCE COMPANY
8 HERE AND I KNEW FIVE PEOPLE THAT I TALKED TO OVER THE
9 COURSE OF THE NEXT TWO OR THREE MONTHS AND WE BROUGHT THEM
10 ALL ON BOARD TO WORK WITH US. AND WE STARTED, AT THAT
11 TIME WE WERE BREAKING LOANS TO COMMERCIAL CREDIT. AS WE
12 GREW THROUGHOUT THAT TIME PERIOD WE BEGAN TO HIRE MORE
13 PEOPLE, CLOSE MORE LOANS, BROADEN OUR FOOTPRINT, BEGAN TO
14 WORK IN OTHER STATES. ALONG THE WAY WE STARTED MAKING OUR
15 OWN LOANS INSTEAD OF BROKERING THE LOANS AND SELLING THEN
16 OFF TO OTHER INVESTORS. WE GREW OUT OF THE BUILDING WE
17 WERE IN, RONNIE BUILT A BUILDING NEXT DOOR TO US, WE
18 CONTINUED TO GROW, FILLED THAT BUILDING, WE GOT ANOTHER
19 BUILDING AROUND THAT SAME TIME, '96, '97.

20 Q TAKE US TO THE FIRST BUILDING, WHERE WAS IT LOCATED?

21 A ON SUNSET BOULEVARD IN WEST COLUMBIA.

22 Q AND THE SECOND BUILDING WAS LOCATED NEXT DOOR?

23 A RIGHT NEXT DOOR, CORRECT.

24 Q AND THE THIRD BUILDING?

25 A JUST DOWN THE STREET.

1 Q AND YOU MOVED IN THE THIRD BUILDING, ROUGHLY HOW MANY
2 PEOPLE WERE WORKING AT EQUITABLE MORTGAGE AT THIS TIME?

3 A IN THE THIRD BUILDING AT THAT TIME, THERE WERE
4 PROBABLY 100 AND 175 PEOPLE.

5 Q AND YOU STARTED IN LATE '92 WITH FIVE PEOPLE?

6 A CORRECT.

7 Q AND WE ARE TALKING ABOUT 1997, ROUGHLY?

8 A CORRECT.

9 Q IN 1992 YOU STARTED, WHAT WAS YOUR STARTING SALARY?

10 A AROUND \$35 THOUSAND DOLLARS.

11 Q NOW, THE LAST YEAR OF 1999, BEFORE THE MERGER WITH
12 HOMEGOLD, ROUGHLY, HOW MUCH MONEY WERE YOU MAKING?

13 A MY BASE PAY WAS \$150 THOUSAND DOLLARS PLUS PROFIT ON
14 MY BUSINESS UNIT.

15 Q AND WHAT DID THAT END UP BEING WITH YOU?

16 A I THINK THAT YEAR WAS AROUND \$430 THOUSAND.

17 Q TELL ME A LITTLE BIT ABOUT THE WORK HABITS OF YOU AND
18 MR. SHEPPARD AND OTHERS AT EQUITABLE MORTGAGE THAT ENABLED
19 YOU TO GROW, FROM THREE PEOPLE TO FIVE PEOPLE, MORE THAN A
20 HUNDRED?

21 A WE WORKED ALL THE TIME, WE WERE WORKING, ALL OF US,
22 80 HOURS A WEEK. WE WORKING ON SATURDAYS, WE WERE WORKING
23 ON SUNDAYS, WE WERE MOSTLY SINGLE OR MARRIED WITH NO
24 CHILDREN AND WE COULDN'T WORK ENOUGH AND THAT INCLUDED
25 RONNIE.

1 Q AND AT SOME POINT AND TIME, EQUITABLE, WAS IT A
2 STARTUP OF A WHOLESALE LENDING OR A WHOLESALE BUSINESS?

3 A CORRECT, RONNIE HAD AN IDEA TO START UP AN EQUITABLE
4 MORTGAGE FUNDING, EQUITABLE FUNDING CORP.

5 Q AND DID YOU TAKE OVER THAT?

6 A I HELPED GET IT OFF THE GROUND, WE HIRED SOMEBODY TO
7 RUN IT, HE DIDN'T DO A VERY GOOD JOB OF IT AND RONNIE
8 ASKED ME TO TAKE IT BACK OVER A YEAR LATER.

9 Q NOW, WHAT IS THE DIFFERENCE BETWEEN THE WHOLESALE
10 BUSINESS AND WHAT EQUITABLE WAS DOING, WHAT YEAR ARE WEE
11 TALKING, '96, '9~~7~~.

12 A THIS IS PROBABLY AROUND '95, THE RETAIL LENDER DEALS
13 DIRECTLY WITH THE PUBLIC, SOLICITING FOR LOAN BUSINESS OR
14 MAKING LOANS DIRECTLY TO THE PUBLIC. A WHOLESALE LENDER
15 WOULD GO TO BROKERS, MORTGAGE BROKERS TO SOLICIT THEIR
16 BUSINESS AND CLOSE LOANS FOR THEM.

17 Q AND SO IN '95, '96, THERE IS A STARTUP OF THIS
18 WHOLESALE ENTITY?

19 A YES.

20 Q AT SOME POINT AND TIME DID IT BECOME, CALLED EMMCO?

21 A YES, WE HAD A NAME CHANGE JUST BEFORE I TOOK IT OVER,
22 THE FELLOW IN CHARGE OF IT CAME UP WITH THE NAME, EMMCO
23 AND WE TRADE MARKED THAT NAME TO USE FOR WHOLESALE LENDING
24 PURPOSES.

25 Q SO, AT WHAT POINT AND TIME DID YOU TAKE OVER THAT

1 ENTITY?

2 A AROUND 1995.

3 Q DID YOU BECOME A PART OWNER OF THAT?

4 A I DID, WHEN WE STARTED THE COMPANY, I HAD AN
5 OPPORTUNITY TO BUY INTO IT FOR A PIECE OF OWNERSHIP.

6 Q AND WERE OTHERS IN THE COMPANY ALSO?

7 A YES, PEOPLE WHO HAD BEEN WITH US FOR A WHILE WERE
8 ALSO OFFERED AN OPPORTUNITY TO BUY INTO THAT ENTITY.

9 Q AND WHAT PERCENTAGE WAS YOUR OWNERSHIP?

10 A INITIALLY IT WAS FIVE PERCENT THAT I BOUGHT AND PAID
11 FOR AND FOR THE ACTUAL RUNNING THE OPERATION, I LATER
12 RECEIVED FIVE PERCENT MORE, BRING THE TOTAL TO TEN.

13 Q AND MOVING FORWARD, WAS THE EMMCO WHOLESALE ENTITY,
14 WAS IT SUCCESSFUL AS WELL?

15 A YES.

16 Q LET'S GO FAST FORWARD UP TO THE LATE 1999 AND YOU ARE
17 PART OF THE BUSINESS OPERATIONS OF, THAT INVOLVED MR.
18 SHEPPARD, CORRECT?

19 A THAT IS CORRECT.

20 Q WERE THERE COMPANIES THAT WERE INTERESTED IN
21 PURCHASING EQUITABLE MORTGAGE, WAS THERE A NAME CHANGE AT
22 SOME POINT AND TIME?

23 A YES, EQUITABLE MORTGAGE CHANGED ITS NAME TO
24 HOMESENSE.

25 Q AND WHEN WAS THAT?

1 A '97, '98, I AM NOT SURE THE EXACT DATE.

2 Q AND FROM NOW ON I AM GOING TO CALL IT HOMESENSE, IS
3 THAT OKAY?

4 A OKAY.

5 Q WERE THERE OTHER INSTITUTIONS INTERESTED IN
6 PURCHASING HOMESENSE AND EMMCO?

7 A YES, ON TWO OCCASIONS WE HAD BEEN APPROACHED.

8 Q CAN YOU GIVE ME THE NAMES?

9 A BB&T WAS THE FIRST THAT WAS TRYING TO ACQUIRE US AND
10 LATER ON WELLS FARGO.

11 Q AND THEN THE⁴ THIRD ENTITY COME ALONG AT SOME POINT
12 AND TIME?

13 A CAROLINA INVESTORS.

14 Q WAS IT CAROLINA INVESTORS?

15 A HOMEGOLD.

16 Q HOMEGOLD. I WANT TO TALK TO YOU, BEFORE THAT,
17 SOMETIME IN 2000, I WANT TO GO BACK AND ASK YOU IN 1998
18 THERE WAS A BIG SHAKE OUT IN THE SUBPRIME LENDING MARKET
19 AS THE JURY HAS ALREADY HEARD. DO YOU RECALL THAT?

20 A YES.

21 Q WHAT AFFECT DID THAT HAVE ON HOMESENSE AND YOUR
22 BUSINESS OPERATIONS?

23 A THE MARKET HAD CHANGED TO THE POINT WHERE THEY DID
24 NOT WANT TO PURCHASE LOANS AT A PREMIUM, IT SEVERELY
25 IMPACTED OUR PROFITABILITY FOR THAT FORTH QUARTER.

1 Q AND WAS THE FORTH QUARTER IN 1998?

2 A YES, THE CRASH WAS IN OCTOBER OF THAT YEAR.

3 Q AND DID HOMESENSE RECOVER IN 1999?

4 A YES.

5 Q AND WERE YOU DOING WELL FINANCIALLY IN 1999?

6 A YES.

7 MS. EVANS: YOUR HONOR, HE IS ASKING A SERIES OF
8 LEADING QUESTIONS, THIS IS DIRECT EXAMINATION, I JUST ASK
9 THAT HE NOT ASK LEADING QUESTIONS.

10 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.
11 GO AHEAD, MR. GRIFFIN.

12 Q HOW WERE YOU DOING IN 1999?

13 A WE WERE DOING WELL.

14 Q I WANT TO BACK UP, FROM '93 ON UP TO 1999, WHEN YOU
15 STARTED WITH MR. SHEPPARD IN 1993 WAS HE A FRUGAL PERSON,
16 DID HE SPEND A LOT OF MONEY--

17 MS. EVANS: OBJECTION, YOUR HONOR, LEADING QUESTIONS.

18 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

19 Q WHAT WAS MR. SHEPPARD'S SPENDING HABITS IN 1992,
20 1993?

21 A HE HAD A VERY LAVISH LIFESTYLE, HE ALWAYS DROVE
22 MERCEDES AND HE ALWAYS WORE EXPENSIVE SUITS.

23 Q AND WHEN DID THAT START?

24 A I DON'T KNOW WHEN IT STARTED, IT WAS SOME LIKE THAT
25 WHEN I MET HIM.

1 Q HOW DID HE TRAVEL IN 1992, 1993?

2 A I DON'T KNOW THAT HE TRAVELED IN 1992 BUT THE ONLY
3 TIME SINCE I HAVE EVER KNOWN HIM TO TRAVEL WAS NOT ON A
4 COMMERCIAL AIRCRAFT.

5 Q DID YOU EVER TRAVEL WITH HIM?

6 A YES.

7 Q HOW DID YA'LL TRAVEL?

8 A WHEN WE TRAVELED TOGETHER IT WOULD OF BEEN THROUGH
9 EAGLE AVIATION ON A PRIVATE PLANE.

10 Q WERE THESE PLEASURE OR BUSINESS TRIPS?

11 A BUSINESS TRIPS.

12 Q AND DO YOU KNOW WHY YOU WERE FLYING ON PRIVATE PLANES
13 ON BUSINESS TRIPS?

14 A IN THE INTEREST OF TIME, WHENEVER WE WENT SOMEWHERE
15 WE CAME, WE WOULD COME TO WORK AND WE WOULD WORK UNTIL IT
16 WAS TIME TO LEAVE, WE WOULD LEAVE THE OFFICE, GO TO THE
17 AIRPORT, GET ON THE PLANE, WORK ON THE PLANE, GO TO WHERE
18 WE WERE GOING, DO THE BUSINESS WE WERE THERE TO, GET BACK
19 ON THE PLANE, COME BACK TO THE AIRPORT AND GO RIGHT TO THE
20 OFFICE AND GO BACK TO WORK.

21 Q WERE ANY OF THESE PLEASURE TRIPS?

22 A I NEVER DID ANYTHING SOCIALLY LIKE THAT WITH RONNIE.

23 Q AND WITH REGARD TO, DID MR. SHEPPARD EXPLAIN HIS
24 BUSINESS DURING THIS PERIOD OF TIME?

25 A YES, AT ONE TIME WE WERE LENDING IN 28 STATES, WE HAD

1 200 EMPLOYEES, BOTH BUSINESS UNITS WERE WORKING WELL AND
2 MAKING MONEY. WE HAD A TREMENDOUS PERIOD OF GROWTH DURING
3 THOSE YEARS.

4 Q WERE YOU CONSULTED ABOUT, MOVING FORWARD, WERE YOU
5 CONSULTED ABOUT THE HOMEGOLD OFFER?

6 A YES.

7 Q AND WHY WERE YOU CONSULTED?

8 A AS A RULE, ANYTHING THAT WOULD TAKE PLACE, WOULD
9 AFFECT THE BUSINESS, RONNIE WOULD TALK TO ME ABOUT IT AND
10 IT CERTAINLY AFFECTED ME BECAUSE HE WOULD NEED MY
11 SIGNATURE AT SOME POINT TO, IF HE WERE GOING TO SELL THE
12 COMPANY, SINCE I WAS PART OWNER OF THAT COMPANY. AND HE
13 ASKED ME TO HELP HIM WITH THIS MERGER, ASKED ME WHAT I
14 THOUGHT ABOUT IT.

15 Q AND DID YOU DO SOME INVESTIGATIONS ON YOUR OWN?

16 A I WAS FAMILIAR WITH HOMEGOLD WITH THE WHOLESALE
17 BUSINESS AND WE HAD INTERACTION WITH THEM OFF AND ON
18 THROUGHOUT OUR TIME. I KNEW A LOT OF PEOPLE IN THE
19 INDUSTRY THAT WORKED WITH THEM, I KNEW EMPLOYEES, WE HAD
20 TRIED TO HIRE SOME OF THEIR EMPLOYEES THROUGHOUT OUR TIME.
21 SO, I WAS REALLY FAMILIAR WITH THE COMPANY AND HAD READ
22 SOME OF THE FINANCIALS WHEN WE TALKED ABOUT THE MERGER, I
23 WAS FAMILIAR WITH THEM.

24 Q DID YOU AGREE, WHAT DID YOU THINK ABOUT THE MERGER?

25 A I DIDN'T THINK IT WAS A GOOD IDEA.

1 Q WHY DIDN'T YOU THINK IT WAS A GOOD IDEA?

2 A BECAUSE THEY WERE LOSING MONEY, THEY WERE FAILING IN
3 THE INDUSTRY, THEIR REPUTATION WASN'T A GOOD REPUTATION, I
4 DIDN'T, AMONGST PEOPLE THAT I DEALT WITH AND MY CLIENTS
5 WHICH WERE BROKERS, I DIDN'T SEE ANY WAY THAT THEY COULD
6 IMPROVE OR ENHANCE OUR OPERATION.

7 Q DID YOU ULTIMATELY SIGN OFF ON THE MERGER?

8 A YES, I DID.

9 Q AND WHY?

10 A BECAUSE I WAS ASKED TO.

11 Q BY MR. SHEPARD?

12 A YES, CORRECT.

13 Q AND IN THESE DISCUSSIONS, WHAT WAS HIS INTEREST IN
14 THE MERGER AND THE OPPORTUNITIES?

15 A HE FELT THAT THEY HAD POTENTIAL TO GROW, HE LIKED THE
16 IDEA THAT THEY HAD MONEY IN THE BANK, THEY HAD CASH MONEY,
17 IN THEIR BANKING ACCOUNT THEY HAD \$20 MILLION DOLLARS,
18 THEY HAD A \$100 MILLION DOLLARS WAREHOUSE FACILITY, IT
19 WOULD NOT REQUIRE HIS PERSONAL GUARANTEES ON THAT
20 FACILITY. HE WOULD BE ABLE TO BE IN CHARGE OF THE
21 PUBLICLY TRADED COMPANY, HE WOULD NO LONGER BE REQUIRED TO
22 BE ONE-HUNDRED PERCENT ON HIS NET IN THE EVENT OF ANY
23 PROBLEMS. IT WOULD BE A WAY FOR HIM TO CONTINUE GROWING
24 AND CONTINUE WHAT WE WERE DOING, ONLY HE WOULD NO LONGER
25 BE SOLELY RESPONSIBLE FOR WHAT HAPPENED.

1 Q DURING THESE DISCUSSIONS WAS THE NAME, CAROLINA
2 INVESTORS, EVER BROUGHT UP?

3 A ONLY AS A LAUNDRY LIST OF ASSETS THAT THEY HAD. I
4 QUESTIONED THEM SIGNIFICANTLY ABOUT WHY HE WANTED TO DO
5 THIS MERGER.

6 Q THE, ONCE THE MERGER TOOK PLACE, HOW DID IT GO, HOW
7 DID THE MERGER GO?

8 A I SUPPOSE IT WAS LIKE ANY MERGER, IT WASN'T A SMOOTH
9 TRANSITION, EVERYBODY WAS UNSURE OF THEIR PLACE AND TO TRY
10 TO MAKE THE MOST OF WHAT WAS HAPPENING, WE WERE TRYING TO
11 MERGER TWO METHODS OF DOING BUSINESS, FOUR IF YOU COUNT
12 BOTH WHOLESALE OPERATIONS BECAUSE EACH COMPANY HAD A
13 WHOLESALE OPERATION. THEY HAD A SERVICING PLATFORM, WE
14 DID NOT, THEIR ACCOUNTING METHODS, THEIR FACILITIES AND
15 STRUCTURE, EVERYTHING WE HAD TO INTEGRATE, THEIR OPERATING
16 SYSTEM WAS DIFFERENT. THERE WERE ALMOST NO SIMILARITIES
17 IN ORDER TO DO BUSINESS OTHER THAN WE SOLD A SIMILAR
18 PRODUCT.

19 Q AFTER THE MERGER DID THE \$100 MILLION DOLLARS
20 WAREHOUSE LINE STAY IN PLACE?

21 A NO, IT DID NOT. CIT, THE PROVIDER OF THAT FACILITY
22 CANCELED THEIR AGREEMENT WITH HOMEGOLD AND TERMINATED THAT
23 ARRANGEMENT.

24 Q AND DID YOU ATTEND THE MEETING?

25 A I DID AND WE WENT BACK TO THE HEADQUARTERS IN NEW

1 YORK CITY.

2 Q HOW DID YOU GET THERE?

3 A WE FLEW PRIVATE JET.

4 Q DID YOU WORK BEFORE YOU GOT ON THE PLANE?

5 A YES.

6 Q DID YOU WORK ON THE PLANE?

7 A WE DID.

8 Q DID YOU WORK WHEN YOU GOT BACK?

9 A WE DID.

10 Q WHAT HAPPENED AFTER CIT SAID THEY WERE STEPPING DOWN?

11 A WE HAD TO FIND SOME WAY TO COME UP WITH ANOTHER
12 WAREHOUSE LINE, WE HAD A WAREHOUSE LINE PREVIOUSLY WITH
13 HOUSEHOLD IN CHICAGO SO WE WENT BACK TO CHICAGO TO MAKE A
14 PITCH TO EXTEND THE NEW FACILITY TO HOMEGOLD.

15 Q HOW MANY PEOPLE WENT TO CHICAGO?

16 A FOUR OR FIVE OR SIX.

17 Q HOW DID YOU GET THERE?

18 A TOOK A PRIVATE JET.

19 Q DID YOU WORK ON THE WAY THERE?

20 A WE DID.

21 Q WORK WHEN YOU GOT BACK?

22 A WE DID.

23 Q WORK ON THE PLANE?

24 A WE DID.

25 Q AND DID HOUSEHOLD ULTIMATELY PROVIDE A WAREHOUSE

1 LINE?

2 A YES, THEY DID.

3 Q THE CANCELLATION OF THE CIT LINE, HOW DID THAT AFFECT
4 THE WHOLESALE BUSINESS THAT YOU HAD GROWN WHEN YOU WERE AT
5 HOMESENSE?

6 A OUR WAREHOUSE FUNDS WERE NOW LIMITED SO THE AMOUNT OF
7 OVERALL MONIES THAT WE COULD LEND OUT WERE NOW LIMITED.
8 RETAIL BUSINESS YIELD TO HIGHER RETURN THAN WHOLESALE
9 BUSINESS. AND RONNIE ASKED ME TO SHUT DOWN THE WHOLESALE
10 BUSINESS, THAT WE NEEDED THE WAREHOUSE SPACE THAT WE HAD
11 FOR RETAIL BUSINESS, IT WAS IN THE INTEREST OF THE COMPANY
12 TO DO THAT.

13 Q AND HOW DID IT AFFECT YOUR POSITION AT HOMEGOLD AT
14 THAT POINT?

15 A THE UNIT THAT I WAS IN CHARGE OF WOULD NO LONGER
16 EXIST.

17 Q AND WHAT HAPPENED AFTER THAT?

18 A I WAS WORKING A SECONDARY MARKETING, SELLING LOANS TO
19 OUTSIDE INVESTORS AND AT SOME POINT DURING THAT YEAR I
20 BECAME IN CHARGE OF THE FEW RETAIL BRANCHES THAT WE HAD.

21 Q DID ULTIMATELY YOU RESIGN FROM HOMEGOLD?

22 A YES, I DID.

23 Q AND WHY DID YOU RESIGN?

24 A THERE REALLY WASN'T A PLACE FOR ME TO WORK THERE.

25 Q AND WHEN YOU GOT TO HOMEGOLD HOW MUCH MONEY WERE YOU

1 MAKING?

2 A MY SALARY WAS \$150 THOUSAND DOLLARS.

3 Q AND WERE YOU ABLE TO GET ANY OF THE BONUSES OR PROFIT
4 SHARING?

5 A ONCE WE BECAME HOMEGOLD?

6 Q YES.

7 A NO.

8 Q AS PART OF THE TRANSACTION, DID YOU GET STOCK AT
9 HOMEGOLD?

10 A YES, I DID.

11 Q HOW MANY SHARES OF STOCK?

12 A 115 THOUSAND SOME ODD SHARES.

13 Q HOW MUCH IS THAT WORTH TODAY?

14 A ZERO.

15 Q THAT IS ALL THE QUESTIONS THAT I HAVE.

16 THE COURT: MS. EVANS.

17 CROSS-EXAMINATION

18 BY MS. EVANS:

19 Q ISN'T IT TRUE, MR. SIDES, THAT THE DEFENDANT WHILE
20 WORKING AT HOMEGOLD HAD A DESIRE TO TAKE HIS COMPANY,
21 HOMESENSE, PUBLIC THROUGH AN IDEA?

22 A YES, WE HAD EXPLORED THAT POSSIBILITY.

23 Q AND ISN'T IT TRUE THAT HE SAID THAT HE WANTED TO GROW
24 HIS COMPANY USING OTHER PEOPLE'S MONEY AND NOT HIS MONEY?

25 A YES.

1 Q AND ISN'T IT TRUE THAT YA'LL DIDN'T DO THE IPO
2 BECAUSE IT WOULD COST A LOT OF MONEY TO TAKE HOMESENSE
3 PUBLICLY?

4 A YES, WE DID NOT HAVE THE INFRASTRUCTURE FOR THAT.

5 Q AND MR. GRIFFIN TALKED ABOUT PREVIOUS MERGERS, THE
6 BB&T MERGER, ISN'T IT TRUE, MR. SIDES, THAT THE BB&T
7 MERGER FELL THROUGH BECAUSE THE DEFENDANT TOOK ALL THE
8 MONEY OUT OF THE COMPANY RIGHT BEFORE THE MERGER AND BB&T
9 FOUND OUT ABOUT THE \$5 MILLION DOLLARS HE TOOK OUT OF THE
10 COMPANY?

11 A YES.

12 Q AND THAT IS WHY THAT MERGER FELL THROUGH?

13 A YES.

14 Q AND ISN'T IT TRUE, MR. SIDES, THAT YOU PAID \$100
15 THOUSAND DOLLARS TO HAVE A FIVE PERCENT INTEREST IN THE
16 COMPANY AND THE DEFENDANT TOLD YOU TO SIGN THOSE PAPERS
17 AND DIDN'T PAY YOU BACK THE \$100 THOUSAND DOLLARS YOU
18 INVESTED TO BE PART OWNER OF THE EMMCO BUSINESS WHEN HE
19 DID THE TRANSACTION TO HOMESENSE?

20 A THAT'S CORRECT.

21 Q HE JUST GAVE YOU SOME SHARES THAT, STOCKS THAT WERE
22 WORTHLESS, ISN'T THAT TRUE?

23 A ULTIMATELY WORTHLESS, YES.

24 Q SO, THAT \$100 THOUSAND DOLLARS THAT YOU PAID TO BE
25 PART OWNER OF THAT BUSINESS, THE DEFENDANT SOLD OUT FROM

1 UNDERNEATH YOU, ISN'T THAT TRUE?

2 A YES, MA'AM.

3 Q AND YOU WERE STILL PAYING ON THAT LOAN THAT YOU GOT,
4 PAID TO BE PART OF, PART OWNER OF THAT BUSINESS WHEN THE
5 DEFENDANT SOLD IT OUT?

6 A YES.

7 Q OVER YOUR OBJECTION?

8 A YES.

9 Q ISN'T IT TRUE THAT YOU TOLD HIM ABOUT THE THINGS THAT
10 YOU THOUGHT WERE A PROBLEM AT HOMEGOLD AND HE IGNORED YOUR
11 ADVICE AND WENT THROUGH?

12 A YES.

13 Q AND ISN'T IT TRUE THAT HOMEGOLD GAVE YOU ALL THE
14 FINANCIAL INFORMATION THAT YOU NEEDED, FOR YOUR PART OF
15 THE MERGER, THERE WAS NEVER ANY DOCUMENTS THAT YOU WANTED
16 THAT HE DIDN'T GET TO REVIEW WHEN YOU WERE DOING YOUR
17 HOMEGOLD MERGER?

18 A TO THE BEST OF MY KNOWLEDGE.

19 Q AND ISN'T IT TRUE THAT THE DEFENDANT HAD DUE
20 DILIGENCE TEAM REGARDING THE MERGER?

21 A YES.

22 Q AND ISN'T IT TRUE THAT YOU, MR. TONY PARKS, JACK
23 STERLING, THE DEFENDANT, WHO ELSE WENT UP TO THAT CIT
24 MEETING?

25 A DAVID GAFFNEY.

1 Q AND DAVID GAFFNEY, AND TONY PARKS CAME FROM HOMEGOLD,
2 CORRECT?

3 A CORRECT.

4 Q YOU CAME FROM HOMESENSE AND DAVID GAFFNEY AND THE
5 DEFENDANT CAME FROM HOMESENSE?

6 A CORRECT.

7 Q ONLY HOMEGOLD OFFICIALS THERE WAS MR. STERLING?

8 A CORRECT.

9 Q AND YOU WENT UP TO THIS MEETING AT CIT. ISN'T IT
10 TRUE THAT AT THE MEETING CIT YA'LL WERE TOLD, THIS IS
11 AFTER THE MERGER THAT THEY WERE DECREASING THEIR WAREHOUSE
12 LINES OF CREDIT BECAUSE THEY DID NOT WANT TO BE STANDING
13 AS CREDITOR IN FRONT OF A BUNCH OF ELDERLY PEOPLE IN
14 PICKENS COUNTY?

15 A AS A RESULT OF THE MERGER, THAT IS CORRECT.

16 Q THE DEFENDANT WAS WELL AWARE OF CAROLINA INVESTORS AT
17 THE TIME OF THE MERGER, YOU JUST STATED THAT WAS PART OF
18 THE ASSETS?

19 A RIGHT, AS IN TERMS OF WHAT THEY HAD, YES.

20 Q THAT WAS THE REASON THAT CIT WAS STEPPING DOWN THE
21 WAREHOUSE LINES OF CREDIT, IT WAS NOT SOMETHING THAT
22 OCCURRED PREMERGER, IS IT?

23 A REPHRASE THE QUESTION, PLEASE.

24 Q CIT STEPPING DOWN THE WAREHOUSE LINES OF CREDIT IS
25 NOT SOMETHING THAT OCCURRED PREMERGER, IT WAS AFTER YA'LL

1 WERE AT HOMEGOLD?

2 A IT WAS AS A RESULT OF THE MERGER, THAT WAS THE
3 TRIGGER THAT ALLOWED THEM TO DECREASE THEIR LINE.

4 Q AND ISN'T IT TRUE THAT AS PART OF THE DUE DILIGENCE
5 THE WAREHOUSE LINES OF CREDIT WERE THE THINGS THAT THE
6 DEFENDANT'S DUE DILIGENCE TEAM LOOK AT?

7 A YES.

8 Q AND ISN'T IT TRUE THAT YOU LEFT BECAUSE BASICALLY YOU
9 WERE AT A COMPANY THAT YOU DIDN'T WANT TO MERGE WITH AND
10 YOU FELT THAT THERE WAS NO PLACE FOR YOU AT THAT COMPANY?

11 A THAT'S CORRECT.

12 Q AND ISN'T IT TRUE, MR. SIDES, YOU HAVE ABSOLUTELY NO
13 IDEA WHAT HAPPENED AT HOMEGOLD DURING 2001?

14 A ONLY WHAT YOU READ IN THE PAPERS, I HAVE NO IDEA.

15 Q AND YOU HAVE NO IDEA WHAT HAPPENED WHEN THE DEFENDANT
16 WAS CEO OF HOMEGOLD IN 2002?

17 A NO.

18 Q LET'S TALK ABOUT THE DEFENDANT, WHAT WAS THE
19 DEFENDANT'S MANAGEMENT STYLE?

20 A VERY DEMANDING, VERY MANIPULATIVE, VERY DRIVEN, VERY
21 FOCUSED.

22 Q ISN'T IT TRUE THAT THE DEFENDANT WOULD OFTEN
23 HUMILIATE YOU IN PUBLIC MEETINGS IN FRONT OF OTHER
24 EMPLOYEES?

25 A YES.

1 Q GIVE ME SOME EXAMPLES OF WHAT HE WOULD DO TO
2 HUMILIATE YOU.

3 A IT WOULD OF BEEN A COMMON PRACTICE TO TALK ABOUT
4 ANYBODY THAT WAS NOT PRESENT IN SOME LESS FLIGHT RETURNS.

5 Q ISN'T TRUE THAT HE WOULD CALL YOU FAT BOY?

6 A ABSOLUTELY.

7 Q OTHER TERMS SUCH AS THAT?

8 A YES.

9 Q IN PUBLIC MEETINGS IN FRONT OF OTHER EMPLOYEES?

10 A YES.

11 Q AND YOU ARE SUPPOSE TO BE A BUSINESS PARTNER WITH
12 THIS INDIVIDUAL?

13 A YES.

14 Q AND DID HE CALL YOU THESE NAMES IN FRONT OF PEOPLE
15 THAT WORKED FOR YOU?

16 A ABSOLUTELY.

17 Q DID THAT CREATE A PROBLEM?

18 A YES.

19 Q DID THAT SHOW LACK OF RESPECT FROM YOUR EMPLOYEES?

20 A YES.

21 Q AND ISN'T IT TRUE THAT THE DEFENDANT WOULD OFTEN JUST
22 TALK ABOUT POSITIVE THINGS AND IGNORE THE NEGATIVE THINGS
23 WHEN TALKING ABOUT THE COMPANY, WHETHER AT HOMESENSE OR
24 HOMEGOLD?

25 A YES.

1 Q AND ISN'T IT TRUE THAT HE WOULD OVERSELL THE POSITIVE
2 THINGS ABOUT, WITH THE COMPANY, ISN'T THAT TRUE?

3 A YES.

4 Q DID YOU EVER ATTEND ANY CAROLINA INVESTORS MEETINGS
5 WITH THE DEFENDANT?

6 A NO.

7 Q YOU WERE ONLY AT THE COMPANY WHEN THE MERGER WENT
8 THROUGH IN MAY OF 2000?

9 A CORRECT, I LEFT IN NOVEMBER.

10 Q YOU LEFT IN NOVEMBER OF 2000. AND ISN'T IT TRUE THAT
11 THE DEFENDANT PAID YOU ONE YEARS SALARY WHEN YOU LEFT?

12 A YES.

13 Q AND YOU DIDN'T HAVE TO SIGN A NON COMPETE AGREEMENT
14 TO GET THAT ONE YEAR SALARY THAT YOU WERE BEING PAID BY
15 HOMEGOLD?

16 A YES, I DID. I HAD TO SIGN A NON, IT WAS A SPECIFIC
17 COMPETE AGREEMENT, I WAS ALLOWED TO OPEN A MORTGAGE
18 BROKERAGE COMPANY, IT LASTED FOR ONE YEAR. I COULD NOT
19 HIRE ANY HOMEGOLD PEOPLE, UNTIL I HAD BEEN SEPARATED FOR
20 SIX MONTHS. AND I AGREED ALL INDEMNIFICATIONS AGAINST MR.
21 SHEPPARD AND HOMEGOLD.

22 Q YOU SIGNED A COMPETE AGREEMENT, HE GAVE YOU ONE YEARS
23 SALARY TO GO OUT AND COMPETE, JUST FORM A BUSINESS TO
24 COMPETE AGAINST HOMEGOLD?

25 A WITH STIPULATIONS, YES.

1 Q YOU COULDN'T TAKE HOMEGOLD EMPLOYEES?

2 A CORRECT.

3 Q THAT WERE CURRENTLY WORKING THERE?

4 A CORRECT.

5 Q AND DID YOU ALL GO BEFORE THE BOARD OF DIRECTORS FOR
6 APPROVAL OF THIS PUBLIC, HE GAVE YOU \$150 THOUSAND
7 DOLLARS, THE DEFENDANT JUST GAVE YOU \$150 THOUSAND DOLLARS
8 TO GO OUT AND START A COMPETING BUSINESS?

9 A I AM SORRY.

10 Q ISN'T IT TRUE THAT THE DEFENDANT GAVE YOU \$150
11 THOUSAND DOLLARS AND ALLOWED YOU TO GO OUT AND COMPETE
12 AGAINST A PUBLICLY TRADED COMPANY, HOMEGOLD, AS LONG AS
13 YOU DIDN'T TAKE ANY HOMEGOLD EMPLOYEES?

14 A THAT'S CORRECT.

15 Q DID YOU EVER GO BEFORE THE BOARD OF DIRECTORS TO GET
16 THAT SEVERANCE PACKAGE APPROVED BY THE BOARD?

17 A I DID NOT.

18 Q AND WAS THAT SOMETHING THAT WAS PART OF YOUR CONTRACT
19 PRIOR TO YOU SITTING DOWN WITH THE DEFENDANT AND TELLING
20 HIM YOU WERE LEAVING AND HIM AGREEING TO GIVE YOU THAT
21 \$150 THOUSAND DOLLARS?

22 A I NEVER HAD A CONTRACT.

23 Q AND ISN'T IT TRUE THAT THE DEFENDANT TOOK YOUR FIVE
24 PRECENT OF THAT BUSINESS THAT YOU OWNED AT EMMCO AND SOLD
25 IT WITHOUT YOUR APPROVAL AND YOU WERE STILL PAYING \$100

1 MONTHS.

2 Q AND YOU CONTINUED TO RECEIVE YOUR SALARY FOR THE
3 YEAR?

4 A CORRECT, FOR ONE YEAR.

5 Q DID YOU GET A CHECK FOR \$150 THOUSAND DOLLARS?

6 A NO.

7 Q HOW WAS YOUR SEVERANCE PACKAGE, HOW DID YOU GET THE
8 MONEY?

9 A PAYROLL BY PAYROLL CHECK.

10 Q THANK YOU.

11 THE COURT: RECROSS?

12 MS. EVANS: " NOTHING FURTHER, YOUR HONOR.

13 THE COURT: SIR, YOU MAY STEP DOWN. CALL YOUR NEXT
14 WITNESS, PLEASE.

15 MR. GRIFFIN: CALL STEVE WILSON TO THE STAND.

16 STEVE WILSON, AFTER BEING DULY SWORN, TESTIFIED
17 AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. GRIFFIN:

20 Q MR. WILSON, WHERE ARE YOU FROM?

21 A COLUMBIA.

22 Q TELL US A LITTLE BIT ABOUT YOUR EDUCATIONAL
23 BACKGROUND?

24 A WENT TO IRMO, GRADUATED HIGH SCHOOL AND WENT TO TECH
25 AND BEEN TO A LOT OF VENDOR TYPE CERTIFICATION PROGRAMS

1 THOUSAND DOLLARS, PAYING FOR THAT LOAN THAT YOU HAD TO BUY
2 INTO THE DEFENDANT'S BUSINESS?

3 A YES.

4 Q AND HE DIDN'T GIVE YOU ANYTHING BUT STOCK AND NONE OF
5 YOUR MONEY BACK?

6 A THAT'S CORRECT.

7 Q I DON'T HAVE ANY FURTHER QUESTIONS.

8 THE COURT: REDIRECT.

9 REDIRECT EXAMINATION

10 BY MR. GRIFFIN:

11 Q MR. SIDES, TALK ABOUT MR. SHEPPARD'S MANAGEMENT
12 STYLE, DID HE CREATE COMPETITION IN THE WORK ENVIRONMENT?

13 A YES, HE DID.

14 Q AND DID THAT PRODUCE RESULTS?

15 A YES, IT DID.

16 Q VERY GOOD RESULTS?

17 A YES.

18 Q YOU DID RECEIVE SHARES OF STOCKS?

19 A YES, I DID.

20 Q THAT TURNED OUT TO BE WORTHLESS?

21 A YES, SIR.

22 Q AND LASTLY YOU, THIS NON-COMPETE, THE AGREEMENT WAS
23 FOR YOU TO NOT SOLICIT EMPLOYEES AWAY FROM HOMEGOLD?

24 A I WAS FORBIDDEN FROM HIRING ANY HOMEGOLD EMPLOYEES
25 UNTIL THEY HAD BEEN SEPARATED FROM THAT ENTITY FOR SIX

1 MONTHS.

2 Q AND YOU CONTINUED TO RECEIVE YOUR SALARY FOR THE
3 YEAR?

4 A CORRECT, FOR ONE YEAR.

5 Q DID YOU GET A CHECK FOR \$150 THOUSAND DOLLARS?

6 A NO.

7 Q HOW WAS YOUR SEVERANCE PACKAGE, HOW DID YOU GET THE
8 MONEY?

9 A PAYROLL BY PAYROLL CHECK.

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23 BACKGROUND?

24 A WENT TO IRMO, GRADUATED HIGH SCHOOL AND WENT TO TECH
25 AND BEEN TO A LOT OF VENDOR TYPE CERTIFICATION PROGRAMS

1 FOR COMPUTERS.

2 Q DO YOU HAVE A BUSINESS?

3 A I DO.

4 Q WHAT IS THE NAME OF THE BUSINESS?

5 A IT IS MYTECH COMPUTER SERVICES, INCORPORATED.

6 Q AND WHAT DO YOU DO?

7 A COMPUTERS.

8 Q AND HOW DID YOU LEARN TO WORK ON COMPUTERS?

9 A I WAS RAISED IN COLUMBIA AND MY FATHER HAD A THIRD
10 GENERATION ELECTRONIC BUSINESS IN TOWN AND I WENT FROM
11 ELECTRONICS AND WENT TO WORK FOR A COMPUTER COMPANY TO FIX
12 ELECTRONICS FOR HIM AND THEN ENDED UP LEARNING COMPUTERS
13 AND WENT ON MY OWN.

14 Q DO YOU KNOW RONNIE SHEPPARD?

15 A I MET HIM IN 1994.

16 Q AND WHAT CAPACITY DID YOU MEET HIM?

17 A HE HAD A SOFTWARE VENDOR THAT HELPED HIM WITH HIS
18 APPLICATION, A COMPUTER GUY WHO DID HARDWARE AND CABLING
19 AND THAT KIND OF THING. AND HE CONTACTED ME TO COME IN
20 AND DO SOME CABLE WORK.

21 Q WERE YOU EVER EMPLOYED FOR HIM?

22 A NO.

23 Q AND WHAT CAPACITY HAVE YOU ALWAYS WORKED?

24 A I HAVE ALWAYS DONE ON CALL BASIS FROM HIM BY THE
25 HOUR.

1 Q PRETTY SELDOM?

2 A THAT'S CORRECT. THERE WAS A SHORT PERIOD THAT I WENT
3 TO WORK FOR ANOTHER COMPANY AND HE WAS ONE OF MY CUSTOMERS
4 THAT WAS MOVED OVER TO THAT COMPANY I WENT TO WORK FOR
5 ABOUT A YEAR AND THEN I WENT BACK ON MY OWN.

6 Q EXPLAIN TO THE JURY HOW YOUR WORK RELATIONSHIP WITH
7 MR. SHEPPARD'S COMPANY, JUST CARRY US THROUGH A LITTLE
8 BIT.

9 A I ORIGINALLY WAS ON CALL BASIS AND I KIND OF WORKED
10 MY CUSTOMERS REALLY, I WORKED FOR HIM AND HIS CUSTOMER WAS
11 RONNIE SHEPPARD AND IT WAS EQUITABLE MORTGAGE COMPANY.

12 Q AND HOW MANY COMPUTERS?

13 A I THINK I CAME IN THERE TO WIRE HIS SEVENTH AND
14 EIGHTH COMPUTER, IT WAS PRETTY SMALL AT THAT TIME. AND
15 THEN I MET MERIDETH AND SHE STARTED CALLING ME DIRECT FOR
16 THE HARDWARE KINDS OF THINGS AND THAT IS SOMETHING THAT
17 THE OTHER GUY DIDN'T DO. SO, THEY MOVED FROM ONE BUILDING
18 TO THE NEXT BUILDING, THIS WAS NOT THE SAME BUILDING THEY
19 WERE TALKING ABOUT EARLIER, SUNSET BOULEVARD, SINGLE FLOOR
20 BUILDING. THEN HE BUILT A BUILDING RIGHT NEXT TO HIM, TWO
21 STORIES, I DID THE WIRING AND STUFF LIKE THAT AND THEN I
22 MOVED HIS COMPUTERS AND IT KEPT GROWING. AND FROM THERE
23 HE WENT TO ANOTHER BUILDING, THEY RENOVATED THE OLD
24 PIONEER MACHINERY BUILDING ON 378 UP ABOUT ANOTHER BLOCK
25 AND DID ALL THE STUFF FOR THAT. BY THAT TIME I THINK HE

1 WAS HITTING OVER 100 PEOPLE ON THAT. AND FROM THERE THAT
2 IS WHEN HE JUMPED FROM THERE TO THE REED AVENUE LOCATION.
3 BY THEN HE HAD SO MANY PEOPLE THAT HE WAS, HE BECAME OUR
4 NUMBER ONE CUSTOMER, AND BY THEN HE HAD CHANGED HIS NAME
5 TO HOMESENSE.

6 Q AND IN THE HOMESENSE DAYS DID YOU HAVE SOMEONE ON
7 STAFF THERE ALL THE TIME?

8 A JUST BEFORE THE MERGER, IT HAD GOTTEN, HE HAD BOTH
9 FLOORS IN EXCESS OF 200, 250 PEOPLE AT LEAST. AND, YES, I
10 THINK I DID PUT ONE OF MY LOWER LEVEL TECHS IN THERE ALL
11 THE TIME AT THAT POINT.

12 Q IN ADDITION TO WIRING, WHAT OTHER COMPUTER WORK DID
13 YOU DO FOR MR. SHEPPARD?

14 A WELL, I DID ALL THE SERVERS, EVALUATION OF THE SERVER
15 AND THE HIGH END PART OF THE DEAL, NOT JUST THE DESKTOP,
16 PC'S, THE NETWORKING, EVERY PART FROM START TO FINISH,
17 ENGINEERING, THAT TYPE OF STUFF.

18 Q WERE YOU EVER INVOLVED IN HELPING CREATE OR MODIFY
19 THE SOFTWARE FOR MANAGEMENT?

20 A DURING THAT PERIOD, THE LOAN ORIGATION SOFTWARE WAS
21 EVOLVING, HE USED A SHRINKWRAP PACKAGE CALLED CONTOUR AND
22 WE BASICALLY KEPT TWEAKING IT TO GET MORE OUT OF IT FOR
23 HIS NEEDS. HE ALWAYS, OF COURSE, PUSHED THE LIMIT ON WHAT
24 HE COULD GET, ALL ABOUT TIME, GETTING MORE AND MORE RIGHT
25 NOW, RIGHT NOW.

1 Q WHAT KIND OF REPORTS, AFTER TWEAKING THE SOFTWARE
2 WERE YOU GENERATING?

3 A WELL, ONE OF THE BIGGEST THINGS HE NEEDED WAS
4 REPORTING UP TO THE MINUTE ON WHERE EVERYTHING STOOD. BY
5 THE MINUTE, BY THE HOUR, BY THE DAY, THE PIPELINE REPORTS,
6 HOW MUCH HE LOOKED LIKE WAS MAKING, THE BOTTOM LINE
7 BASICALLY. THE SHRINKWRAP PACKAGE, OF COURSE, WAS THE
8 ONLY THING YOU COULD GET YOUR HANDS ON WITHOUT GOING TO
9 THE MAINFRAME STYLE BANKING SOFTWARE WHICH IS EXTREMELY
10 EXPENSIVE.

11 Q WHEN YOU SAY SHRINKWRAP, WHAT ARE YOU TALKING ABOUT?

12 A JUST SOMETHING YOU CAN PURCHASE OFF THE STREET, THAT
13 BASICALLY THE WHOLE INDUSTRY WAS USING, IT WAS A NUMBER
14 ONE SOFTWARE AT THE TIME CALLED CONTOUR.

15 Q AND YOU TWEAKED IT?

16 A YES AND WE ACTUALLY GOT SOME OUTSIDE PROGRAMERS TO
17 WORK ON IT TO GET REPORTS THE WAY HE NEEDED THEM.

18 Q WAS MR. SHEPPARD COMPUTER SAVED?

19 A ABSOLUTELY NOT, HE JUST WANTED, HE DIDN'T KNOW, HE
20 WAS GOING TO ASK THE QUESTION, THIS IS WHAT I WANT, WHY
21 CAN'T I HAVE IT.

22 Q AND JUST SORT OF GIVE THE JURY A FLAVOR OF THAT
23 MANAGEMENT STYLE WHEN IT CAME TO INFORMATION?

24 A WELL, HE KNEW THAT THE INFORMATION WAS THE KEY AND
25 THE BOTTOM LINE, HE COULD BASE HIS DECISION ON WHAT HE

1 COULD DO AND I THINK IT WAS A BIG STRUGGLE ABOUT THOSE
2 WAREHOUSE LINES AND BEING ABLE TO STAY ON TOP OF THAT KIND
3 OF THING. SO, IT WAS MY IMPRESSION, CRITICAL INFORMATION
4 FOR HIM TO BE ABLE TO MAKE DECISIONS, HE NEEDED TO HAVE IT
5 LIKE THAT. HE NEEDED HIS SUPERVISORS OVER THE TEAMS THAT
6 HE HAD TO HAVE THEIR INFORMATION IMMEDIATELY AND HE WAS
7 CONSTANTLY GETTING THE INFORMATION FROM THEM. SO, THEY
8 HAD TO GET THEIR PIPELINE REPORTS OF THEIR PEOPLE IN THEIR
9 TEAMS. AND EACH TEAM WAS COMPETITIVE AND IT WAS JUST, SO
10 EVERYBODY WANTED TO GET THE INFORMATION IMMEDIATELY SO
11 THEY COULD STAY ON TOP AND COMPETE WITH THE OTHER TEAMS
12 AND GET ALL OF THIS INFORMATION FOR RONNIE.

13 Q DID THE SHRINKWRAP COMPANY TAKE NOTICE OF THINGS THAT
14 YA'LL WERE DOING?

15 A WE WORKED SO MUCH WITH THEM, EVERY TIME WE RAN INTO A
16 LIMITATION, NOW I AM A HARDWARE GUY, A NETWORK GUY, A
17 SYSTEMS GUY. HE HAD EMPLOYEES THAT BASICALLY INVOLVED IN
18 BEING ADMINISTRATOR TYPE PEOPLE AND I WORKED CLOSELY WITH
19 THEM, ONE WAS DEIDRE COCHRAN AND SHE BASICALLY WORKED WITH
20 THEM BECAUSE SHE WAS AN EMPLOYEE WITH THEM. I COULD NOT
21 GUARANTEE TO BE THERE ON EVERY PROJECT SO WE WOULD WORK
22 WITH THE CONTOUR COMPANY TO GET THINGS TWEAKED AND WE RAN
23 INTO PROBLEMS AND WE UNCOVERED A LOT OF PROBLEMS IN THEIR
24 SOFTWARE. THEY WERE GROWING THROUGH THIS PERIOD TOO SO
25 PEOPLE LIKE US WHICH IS A BIGSHOT FOR THAT SOFTWARE, THEY

1 ARE OUT OF CALIFORNIA, WE WERE CALLING THEM A LOT. AND WE
2 HAD OUTSIDE PROGRAMMERS TO TWEAK THAT USED TO WORK FOR
3 THAT COMPANY TO TWEAK THIS STUFF. AND SOME OF THE CHANGES
4 THAT WE MADE, THEY ENDED UP INCORPORATING INTO THEIR
5 PRODUCT.

6 Q IN ADDITION TO THE TWEAKING AND MANAGEMENT SOFTWARE
7 INFORMATION DID YOU ALSO ASSIST MR. SHEPPARD AND HIS
8 COMPANY WITH EXPANSION OF OFFICES?

9 A WE SURE DID.

10 Q THE HOMESENSE DAYS.

11 A THE HOMESENSE DAYS, I WENT BACK THROUGH MY INVOICES
12 AND DAILY NOTES AND IN 1999 HE HAD SEVEN BRANCHES TO
13 HOMESENSE.

14 Q AND DID YOU, WERE YOU INVOLVED IN OPENING--

15 A YES, I SET EVERY ONE OF THEM UP.

16 Q NOW, IN ANY OF THOSE BRANCHES, HOW DID YOU GET TO
17 THEM?

18 A MOST OF THEM WERE DRIVABLE, THE ONLY ONE AND THAT WAS
19 THE FIRST TIME I HAD EVER FLOWN PRIVATE, WENT ON A PRIVATE
20 JET FROM EAGLE AVIATION TO THE JACKSONVILLE OFFICE,
21 JACKSONVILLE, TENNESSEE, I BELIEVE IT WAS. AND THAT WAS
22 THE FIRST TIME I HAD EVER FLOWN ON ONE OF THOSE PLANES.

23 Q AND WHAT DID YOU TAKE ON THE PLANE?

24 A TOOLS, AS A MATTER OF FACT ON THAT TRIP I EVEN TOOK A
25 LADDER.

1 Q AND HOW MANY PEOPLE GOT ON THE PLANE?

2 A IT WAS FULL, I WAS IN THE BACK AND I THINK IT WAS SIX
3 WITH THE BACKSEAT, SEVEN OF US.

4 Q AND YOU GO TO TENNESSEE?

5 A WE LOOKED AT THE PROPERTY THAT GARY ELLIOTT AND TOM
6 HAD SCOPED OUT AND WE WENT TO THERE TO LOOK AT WHAT IT WAS
7 GOING TO TAKE TO DO THINGS. AND THEY ALREADY HAD A LITTLE
8 BIT OF STUFF SO WE MOVED SOME THINGS AROUND AND THERE WAS
9 SOMETHING THAT I NEEDED TO FIX, I CAN'T REMEMBER WHAT IT
10 WAS BUT THEY DIDN'T HAVE ONE SO IN THE INTEREST OF TIME,
11 GOT DOWN THERE AND GET IT ALL DONE AND GOT BACK ON THE
12 PLANE AND CAME BACK.

13 Q NOW, ARE YOU FAMILIAR WHEN HOMESENSE MERGED WITH
14 HOMEGOLD?

15 A YES.

16 Q WERE YOU INVOLVED IN ANY WAY IN THE TECHNOLOGY
17 TRANSFER?

18 A YES, I WAS RONNIE'S I.T. DEPARTMENT.

19 Q HOW MANY WERE IN THE I.T. DEPARTMENT OF HOMESENSE?

20 A I HAD, AT THAT TIME I HAD TWO GUYS WORKING FOR ME, SO
21 I THINK I HAD ONE OF THEM THERE PRETTY MUCH EVERY DAY.
22 THERE WERE 200 AND SOME ODD PEOPLE SO I HAD SOMEONE WITH
23 THE COMPUTERS THERE ALL THE TIME AND I WAS IN AND OUT BUT
24 I SPENT A GOOD PORTION OF MY DAY THERE.

25 Q AND WHAT DID HE ASK YOU TO DO?

1 A DURING THAT PERIOD I WAS INVOLVED WITH MEDIA TEAM,
2 SHOWED UP TO DO THEIR DUE DILIGENCE ON BUYING THE COMPANY
3 AND TO DO A LOT OF REPORTING FOR THEM AND COME UP WITH ALL
4 OF THEIR ASSETS FOR COMPUTER STUFF. I WAS JUST PRE-2000
5 SO THE 2000 MILLENNIUM PROBLEM WAS ON EVERYBODY'S MIND
6 ESPECIALLY IN THE BANKING INDUSTRY. I REMEMBER SITTING IN
7 HOTEL ROOMS DOING DISCOVERY FOR THEM AND ASKING A LOT OF
8 QUESTIONS AND BEING IN SOME MEETINGS ABOUT WHAT WAS GOING
9 TO HAPPEN IN THE YEAR OF 2000, CLICKED OVER AND ALL THAT
10 KIND OF STUFF. AND THEN WHEN THE HOMEGOLD THING CAME
11 ALONG I NEEDED TO BE, KEEP HOMESENSE, THIS BRANCH SO TO
12 SPEAK OR WHATEVER, KEEP RUNNING AND THEN ACTUALLY MERGE
13 WITH THE PELHAM ROAD, GREENVILLE LOCATION AND DO THE DATA
14 LINES IN BETWEEN AND MOVE DATA BACK AND FORTH AND ALL THAT
15 KIND OF STUFF.

16 Q AND DID YOU GO UP TO THE PELHAM ROAD FACILITY AFTER
17 THE MERGER?

18 A YES, THE FIRST TIME I WENT UP THERE WAS IN FEBRUARY
19 OF 2000, THE FIRST TIME I MET MY COUNTERPARTS UP THERE,
20 AND PICKED UP 40 COMPUTERS AND BROUGHT THEM BACK TO
21 COLUMBIA.

22 Q AND DESCRIBE TO THE JURY WHAT THE I.T. DEPARTMENT AT
23 HOMEGOLD WAS?

24 A AT THAT TIME IT WAS TOO BIG FOR ME TO GET A GRIP ON
25 WHO WAS DOING WHAT. BUT I REMEMBER THE NUMBERS BEING 30

1 SOMETHING IN THE WHOLE I.T. GROUP.

2 Q AND WHAT KIND OF COMPUTER SYSTEMS DID HOMEGOLD HAVE?

3 A THEY HAD A MAINFRAME, UNIX BOX, RUNNING A PRODUCT
4 CALLED FLY SERVE WHICH IS USED IN THE BANKING INDUSTRY FOR
5 THAT TYPE OF THING. I GUESS MORTGAGING SERVICING, THAT
6 KIND OF THING. AND THEY WERE RUNNING A NETWORK SYSTEM AND
7 THEY WERE A PRETTY GOOD SIZE, LIVE EQUIPMENT.

8 Q WAS IT COMPLETELY, WAS IT SIMILAR TO THE THINGS THAT
9 WERE BEING USED AT HOMESENSE?

10 A NO, NOT REALLY, THE WORK STATIONS WERE ALONG THE SAME
11 STUFF BUT THE WHOLE SERVER OPERATING SYSTEM AND THE
12 PACKAGE THAT THEY USE FOR LOAN ORIGATION AND CONTOUR WAS
13 TOTALLY DIFFERENT. THEY HAD PROGRAMMERS AND EVERYTHING,
14 AND THEY HAD A MAINFRAME TYPE SETUP. THEY HAD A LOT OF
15 PEOPLE THAT COULD CONFIGURE AND THAT KIND OF THING, HE
16 USED THE SHRINKWRAP PACKAGE.

17 Q NOW, THEIR PROGRAM, WHAT WAS THAT CALLED?

18 A THAT WAS, THEY HAD DUBBED IT RHINO TRACK.

19 Q AND WHAT DID YOU UNDERSTAND WHEN YOU WENT IN RIGHT
20 AFTER THE MERGER, THE FUNCTION OF THE RHINO TRACK?

21 A THE SAME THINGS BUT THEY HAD NOT, I DON'T KNOW HOW
22 THEY GOT TO THAT PARTICULAR POINT BUT THAT SOFTWARE, IT
23 WAS KIND OF DIFFICULT TO USE AND CONFIGURE, IT WAS
24 CERTAINLY DIFFICULT IN THE SPEED THAT IT WAS RUNNING FOR
25 SOMETHING LIKE THAT TO HAVE TO GO INTO A PROGRAMMING

1930

1 DEPARTMENT. YOU REQUEST SOMETHING LIKE A REPORT CHANGE OR
2 SOMETHING AND IT WOULD TAKE A WHILE TO GET THROUGH THAT
3 WHOLE PROCESS AND THERE WOULD BE MEETINGS. THE
4 PROGRAMMERS WOULD HAVE TO PROGRAM AND DO SOME OF THAT KIND
5 OF STUFF.

6 Q DID THE RHINO TRACK SYSTEM, WAS IT PRODUCING THE TYPE
7 OF REPORTS THAT HAD BEEN TWEAKED AND FINE TUNED?

8 A AS I UNDERSTAND IT, IT JUST COULD NOT GIVE THE BOTTOM
9 LINE PICTURE AND IT COULD NOT MANIPULATE THE DATA THAT
10 RONNIE NEEDED TO SEE IT, BY DATE, BY TIME, BY LOAN
11 OFFICER, BY AMOUNT, THOSE KINDS OF CHANGES QUICKLY. HE
12 JUST COULDN'T GET THAT OUT OF THEM.

13 Q DID YOU NOTICE ANY FRUSTRATION?

14 A YES, THERE WAS A LOT OF FRUSTRATION ON HIS PART.

15 Q WHAT HAPPENED NEXT, TO RESOLVE, IF ANYTHING, HIS
16 FRUSTRATION?

17 A ORIGINALLY WE ALL KIND OF LOOKED AT THE FLY SERVE,
18 THE BIG LARGE UNITS DATA SERVER AND THE WHOLE MAINFRAME
19 SITUATION AS AN UPGRADE TO THAT HE WAS USING DOWN HERE.
20 AND I KEPT TRYING TO TELL HIM THAT WAS THE WAY TO GO, IF
21 WE COULD GET IT TO DO WHAT HE NEEDS IT TO DO. SO, HE CAN
22 GET THE KINDS OF THINGS HE WAS GETTING OUT OF HERE, IT
23 WOULD BE MUCH LARGER. WE WORKED REAL HARD FOR A PERIOD OF
24 TIME TRYING TO GET THERE BUT IT WAS VERY HARD TO GET ANY
25 OF THAT DONE IN THE KIND OF TIME FRAME WITHOUT TOTALLY

1931

1 RE-SCRAPPING THAT WHOLE RHINO TRACK PROGRAM THAT THEY HAD
2 WRITTEN. THAT WAS GOING TO COST TOO MUCH TIME AND MONEY
3 AND IT EVENTUALLY GOT TO THE POINT WHERE HE SAID WHY CAN'T
4 WE DO WHAT WE ARE DOING DOWN HERE UP THERE.

5 Q SO, WHAT WAS THE END RESULT?

6 A THE END RESULT WE CONVERTED OFF OF THAT BIG MAINFRAME
7 RHINO TRACK SITUATION AND TOOK THE SHRINKWRAP SYSTEM THAT
8 HE HAD DOWN HERE AND COOKIE CUTTED IT AND TURNED IT INTO
9 THE SAME THING AS UP THERE ON THE PRODUCTION SIDE.

10 Q THE RHINO TRACK INFORMATION SYSTEM, WAS IT
11 DISASSEMBLED?

12 A NO, IT WAS STILL IN PROCESS BECAUSE THEY HAD A
13 SERVICING ARM, THEY COULD SERVICE TO A LIFE OF A LOAN KIND
14 OF THING. WHICH YOU DIDN'T HAVE TO DO DOWN HERE THE WAY
15 HE DID IT BECAUSE HE SOLD OFF, BUT THESE GUYS ACTUALLY
16 BOOKED THESE LOANS AND HAD A SERVICING PART. AND THAT WAS
17 TIED IN WITH ALL OF THAT STUFF. I THINK THE CAROLINA
18 INVESTORS STUFF WAS RUNNING ON THAT, I DON'T KNOW HOW MANY
19 THINGS WERE RUNNING ON THAT.

20 Q NOW, AT SOME POINT AND TIME THAT I.T. DEPARTMENT
21 MOVED FROM GREENVILLE?

22 A YES, I REMEMBER A MEETING WHERE HE DECIDED TO GO TO
23 ANOTHER SHRINKWRAP PACKAGE DEAL AND HE LOOKED AT HOW MUCH
24 HE WAS PAYING DOWN HERE FOR THIS KIND OF I.T. EXPENDITURES
25 AS OPPOSED TO WHAT THEY WERE SPENDING AND HE WAS SPENDING

1 UNDER \$10 GRAND WITH WHAT HE WAS DOING DOWN HERE. AND
2 THEY WERE SPENDING OVER \$150 UP THERE. FOUR PEOPLE DOWN
3 HERE, AND 30 PLUS UP THERE AND HE MADE A DECISION THAT IT
4 WASN'T WORKING RIGHT. SO, WE CONVERTED IT AND I THINK
5 THEY LET GO OF A GOOD MANY PEOPLE OUT OF THAT GROUP.

6 Q MR. WILSON, DID YOU WORK AT HOMEGOLD ON THE EXPANSION
7 EFFORTS LIKE YOU HAD PREVIOUSLY WORKED AT HOMESENSE?

8 A RIGHT. HE WANTED TO, ALREADY WITH THE HOMESENSE
9 THINGS, FOUND OUT IF YOU WENT AND CREATED THESE PROFIT
10 CENTERS HE COULD MAKE MORE MONEY. IT WAS ALL ABOUT THE
11 BOTTOM LINE, HE WOULD LOOK AT THAT AS THE THING TO DO WITH
12 HOMEGOLD AND THEN HE DECIDED, SOME OF THE BRANCHES HE HAD
13 AS HOMESENSE DIED AWAY AND HE FOUND OUT HE DIDN'T NEED
14 THAT KIND OF AN OPERATION, ALL HE REALLY NEEDED WAS A
15 LICENSE IN THAT STATE AND HE COULD RUN.

16 Q DID YOU GO ASSIST AND OPEN THE OFFICES WITH HOMEGOLD?

17 A YES, I DID.

18 Q HOW DID YOU GET THERE?

19 A DROVE UP A GOOD MANY OF THEM, FLEW COMMERCIAL ON
20 MOST OF THEM AND FLEW ON SOME PRIVATE JETS.

21 Q AND WHEN YOU WOULD FLY THE PRIVATE JETS, WHO WOULD BE
22 WITH YOU?

23 A THE WHOLE TEAM, WE WOULD ALL, HIS EMPLOYEES, THE
24 ELECTRICAL AND THAT KIND OF THING. AND THEN ME AND MY
25 EMPLOYEES DO THE COMPUTER ASSEMBLY AND NETWORKING.

1 Q WOULD YOU TAKE THE EQUIPMENT ON THE PRIVATE PLANE?

2 A SOME OF THE TOOLS AND WE WOULD GO DOWN, HE WOULD GO
3 DOWN THERE WITH US ON ALL BUT ONE. I ONLY FOUND THREE
4 THROUGH MY NOTES BUT I THINK I WENT ON ONE OTHER ONE. BUT
5 I THINK THERE WAS ONLY ONE THAT HE WAS NOT ON, THE
6 PENNSYLVANIA TRIP.

7 Q ARE YOU DOING WORK FOR MR. SHEPPARD CURRENTLY?

8 A I STILL DO WORK.

9 Q AND WHERE ARE YOU DOING THAT WORK?

10 A HE IS NOW BACK ON 378 RENTING SOME SPACE.

11 Q HOW FAR IS ^{IT} FROM WHERE YOU STARTED?

12 A ABOUT A BLOCK.

13 Q AND HOW MANY COMPUTERS ARE YOU SERVICING NOW?

14 A THERE MIGHT BE MAYBE EIGHTEEN COMPUTERS IN THERE.

15 Q DECEMBER OF 2002, WAS MR. SHEPPARD, DID HE USE A
16 COMPUTER DURING HIS DAILY WORK?

17 A NO, HE DIDN'T BEGIN TO ACTUALLY TYPE ON A COMPUTER
18 UNTIL HE STARTED EMMCO AGAIN.

19 Q WOULD HE HAVE A COMPUTER?

20 A HE ALWAYS HAD A COMPUTER, EVERY TIME HE MOVED OR HAD
21 A DESK WE HOOKED UP A COMPUTER FOR HIM.

22 Q AND DID YOU PROGRAM IT FOR HIM?

23 A EVERY TIME WE MOVED IT OR TOUCHED IT WE ALWAYS ASKED
24 FOR HIS PASSWORD, HE NEVER REMEMBERED IT SO WE HAD TO
25 CREATE ANOTHER ONE. AND HE NEVER, I THINK WE ALSO SET UP

1 AN EMAIL ACCOUNT UP FOR HIM BUT HE DIDN'T USE IT.
2 Q THAT IS ALL I HAVE.

3 THE COURT: CROSS, MR. PEAVY.
4

CROSS-EXAMINATION

5 BY MR. PEAVY:

6 Q YOU ARE STEVEN ANTHONY WILSON?

7 A THAT IS RIGHT.

8 Q AND YOU LIVE AT 1028 DRAWDEBIL ROAD, THAT IS IN
9 GILBERT?

10 A THAT'S CORRECT.

11 Q YOU HAVE THIS COMPANY, IT USED TO BE CALLED ITC?
12 A THAT'S CORRECT.

13 Q AND THE COMPANY IS INVOLVED IN COMPUTER WORK AND
14 NETWORK MANAGEMENT AND YOU HAVE DONE WORK FOR MR. SHEPPARD
15 SINCE 1994?

16 A THAT IS CORRECT.

17 Q AND THAT WAS GOING BACK TO EQUITABLE MORTGAGE?
18 A YES.

19 Q NOW, YOU HAVE A SON NAMED RYAN, CORRECT?
20 A THAT IS CORRECT.

21 Q AND RYAN HAD DONE WORK FOR MR. SHEPPARD TOO, RIGHT?
22 A THAT'S CORRECT. HE WAS EMPLOYED BY ME, HE WAS ONE

23 THAT STAYED ON SITE EIGHT HOURS A DAY.

24 Q YOU ARE STILL WORKING FOR MR. SHEPPARD?
25 A YES.

1 Q AND HOW MANY OF HUNDREDS AND THOUSANDS OF DOLLARS
2 HAVE YOU MADE FROM MR. SHEPPARD THROUGHOUT THE YEARS?

3 A IT IS HARD FOR ME TO TELL, AS I TOLD YOU BEFORE, MY
4 BEST YEAR WAS A LITTLE OVER \$600 THOUSAND DOLLARS, HE WAS
5 MY NUMBER ONE CUSTOMER AT THAT TIME, THAT WAS I BELIEVE IN
6 2002, I WILL HAVE TO CHECK. A LOT OF HARDWARE WAS DONE AT
7 THAT TIME, THAT WAS MY BEST YEAR. I AM FIGURING PROBABLY
8 OVER THE WHOLE COURSE, YES, I MADE HUNDREDS OF THOUSANDS
9 OF DOLLARS WORKING HOMESENSE.

10 Q SO, 2002 ALONE, \$600 GRAND?

11 A THAT'S RIGHT.

12 Q YOU WORKED FOR HIM SINCE 1994, SO YOU MADE A LOT OF
13 MONEY FROM MR. SHEPPARD?

14 A YES.

15 Q YOU JUST TALKED A MOMENT AGO ABOUT THESE SOFTWARE
16 ISSUES, THE COMPATIBILITY AND THINGS OF THAT NATURE. THIS
17 EXPENSIVE SYSTEM THAT HOMEGOLD HAD, YOU JUST SAID IT WAS
18 AN EXPENSIVE LOAN TRACKING SYSTEM THAT MR. SHEPPARD
19 COULDN'T MANIPULATE TO GET THE DATA THAT HE WANTED?

20 A THAT'S RIGHT.

21 Q HE WAS TRYING TO MANIPULATE THAT INFORMATION?

22 A RIGHT.

23 Q NOW, ISN'T IT TRUE THAT THIS SOFTWARE PACKAGE THAT
24 YOU INSTALLED AT HOMEGOLD, WHEN YOU STARTED INSTALLING IT
25 AT HOMEGOLD, YOU ACTUALLY INSTALLED IT ILLEGALLY. YOU

1 DIDN'T HAVE THE LICENSES AND THEN IT COST HOMEGOLD
2 HUNDREDS AND HUNDREDS AND HUNDREDS OF THOUSANDS OF
3 DOLLARS, AT LEAST TENS OF THOUSANDS OF DOLLARS TO GET
4 THESE LICENSES RETROACTIVELY?

5 A I THINK WHAT WE DID IS, IT WAS KIND OF A RULE OF
6 THUMB WITH ALL THE PRODUCTS THAT WE HAD SO MANY PEOPLE AND
7 SO MANY COMPUTERS AND THAT WE DID AN IMAGE, WE WOULD LOAD
8 ALL THE SOFTWARE ON A COMPUTER AND IMAGE IT FOR EACH ONE SO
9 EVERYBODY WOULD GET THE SAME THING AND THEN WE WOULD
10 REMOVE WHAT THEY DIDN'T NEED. AND WHEN IT CAME TO THAT
11 PARTICULAR SHRINKWRAP PACKAGE IT WAS ONLY \$1,500 DOLLARS
12 TO BUY IT, UNLIMITED. WE DID INSTALL IT BUT TO GET THE
13 NAME CHANGED ON IT, SO IT REFLECTS ON THE DOCUMENTS, YOU
14 HAD TO PURCHASE THE NAME CHANGE THINGS SO YOU REALLY
15 COULDN'T BE USING IT WITHOUT PURCHASING IT.

16 Q AND THIS IS YOU, YOUR DRIVERS LICENSE PICTURE?

17 A YES.

18 Q YOU GOT A NUMBER OF CARS REGISTERED TO YOU?

19 A THAT'S CORRECT.

20 Q 1995 JEEP CHEROKEE, MOTORCYCLES, '81 CAMARO, AND YOU
21 HAVE GOT A 2002 FORD EXCURSION. AND ISN'T THAT THE CAR
22 THAT YOU BOUGHT FROM HOMEGOLD IN 2002?

23 A I AM NOT SURE I WROTE THE CHECK TO, BUT YES I BOUGHT
24 IT FROM RONNIE.

25 Q SO, THERE HAS BEEN SUBSTANTIAL BENEFITS TO YOU FROM

1 YOUR RELATIONSHIP WITH MR. SHEPPARD?

2 A ABSOLUTELY, HE PROVIDED ME A LOT OF BUSINESS.

3 Q OKAY. NOW, IN YOUR CAPACITY IN IT, I AM ASSUMING YOU
4 GOT TO WORK WITH A LOT OF DIFFERENT GROUPS AND
5 ORGANIZATIONS WITHIN HOMEGOLD AND HOMESENSE?

6 A THAT IS CORRECT.

7 Q YOU MET A LOT OF PEOPLE IN A LOT OF DIFFERENT AREAS?

8 A THAT'S CORRECT.

9 Q PEOPLE SUCH AS KAREN MILLER?

10 A YES.

11 Q CHAD BARRETT?

12 A YES.

13 Q SHANE SMITH?

14 A YES.

15 Q VAL FORNEY?

16 A YES.

17 Q WHO IS MR. FORNEY?

18 A HE RAN A COMPANY CALLED MERGE TECH, I DON'T KNOW HOW
19 THEY GOT TOGETHER BUT HE CAME IN AND HE PROVIDED CREDIT
20 REPORTING AND MERGED REPORTS ON PEOPLE'S CREDIT HISTORY.

21 Q DO YOU STILL STAY IN TOUCH WITH MR. FORNEY?

22 A I DO.

23 Q HOW DO YOU STAY IN TOUCH WITH HIM?

24 A EMAIL, JOKES, THAT KIND OF THING.

25 Q NOW, I WAS LOOKING AT SOME INFORMATION ON THE

1 INTERNET. YOU RECENTLY WERE QUOTED IN AN ARTICLE IN THE
2 STATE NEWSPAPER, IS THAT RIGHT?

3 A THAT'S CORRECT.

4 Q AND DID YOU DO AN INTERVIEW WITH MR. BEN WARNER?

5 A I NEVER MET MR. WARNER BUT I GOT A PHONE CALL FROM
6 HIM, OUR INTERVIEW WAS OVER THE PHONE.

7 Q YOU DID A TELEPHONE INTERVIEW WITH MR. WARNER?

8 A YES.

9 Q AND THAT INTERVIEW WAS IN REGARDS TO THIS CASE, IS
10 THAT RIGHT?

11 A YES, HE WAS[#] INTERESTED IN FINDING OUT ABOUT RONNIE
12 SHEPPARD.

13 Q OKAY. WELL, IN THAT INTERVIEW THAT YOU DID THAT
14 OCCURRED ON ABOUT JANUARY THE 7TH OF 2007, IS THAT RIGHT?

15 A YES.

16 Q NOW, MR. WILSON, ON JANUARY THE 10TH OF 2007 AT 7:22
17 A.M. DID YOU SEND AN EMAIL TO MR. FORNEY DISCUSSING YOUR
18 INTERVIEW?

19 A I MAY HAVE, BECAUSE WE HAD ALL BEEN TALKING ABOUT
20 THIS TRIAL.

21 Q NOW, MR. WILSON, DO YOU RECALL SAYING IN YOUR EMAIL,
22 I GOT A CALL FROM THE STATE NEWSPAPER MONDAY, IT SEEMS
23 LIKE THEY CAN'T FIND ANYONE WHO WILL SAY SOMETHING NICE
24 ABOUT RONNIE SHEPPARD, IMAGINE THAT. I COMBINED
25 EVERYTHING I KNEW THAT WAS NICE ABOUT RONNIE SHEPPARD AND

1 IT TOOK 11.5 SECONDS.

2 A THAT WAS A JOKE, IF YOU GOT THAT EMAIL I AM SURE YOU
3 GOT SOME OTHERS THAT WERE KIND OF JOKES ABOUT THAT KIND OF
4 THING.

5 Q BUT YOU DON'T DENY SAYING THAT?

6 A I DO NOT DENY SAYING IT. I THINK THAT CONVERSATION
7 WENT FOR AN HOUR AND A HALF OR AN HOUR AND FIFTEEN MINUTES
8 OR SO.

9 Q DURING THESE BUSINESS TRIPS THAT YOU TOOK TO THESE A
10 PROFIT CENTERS OR PRODUCTION CENTERS AROUND THE COUNTRY.
11 ON SOME OCCASIONS THE DEFENDANT WOULD LEAVE EARLIER,
12 RIGHT?

13 A YES, HE WOULD ALWAYS GET UP IN THERE AND GET US ALL
14 WORKED UP AND GET US WORKING AND THEN HE WOULD TAKE OFF.

15 Q AND WHEN HE TOOK OFF, HE TOOK THAT COMMERCIAL JET
16 BACK BY HIMSELF BACK, DIDN'T HE?

17 A YES, USUALLY WHEN HE WENT BACK HE WOULD GO BACK WITH
18 EITHER SOME OTHER MANAGEMENT THAT WENT WITH US OR BY
19 HIMSELF. YES, WE GOT LEFT TO FLY BACK COMMERCIAL.

20 Q YOU AND YOUR LADDERS?

21 A I ONLY TOOK THE LADDER ONE TIME.

22 Q OKAY. THAT IS ALL I HAVE.

23 THE COURT: REDIRECT?

24 REDIRECT EXAMINATION

25 BY MR. GRIFFIN:

1 Q MR. WILSON, WHEN YOU WOULD COME BACK, WOULD EVERYBODY
2 COME BACK AT THE SAME TIME, WOULD EVERYBODY FINISH THEIR
3 JOB AT THE SAME TIME?

4 A NO, THAT IS ONE OF THE REASONS WHY IT WORKED OUT THAT
5 WAY, THE OTHER GUYS WOULD GET DONE WITH THE CUBES AND THAT
6 KIND OF THING, THEY WOULD HIT THE ROAD AND COME BACK AND
7 WE WOULD STAY WITH THE COMPUTER SETUP AND THE REST OF THAT
8 CONFIGURATION.

9 Q THANK YOU.

10 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT
11 WITNESS.

12 MR. GRIFFIN: YOUR HONOR, WE WOULD CALL DAVID BEREZIN
13 TO THE STAND.

14 DAVID BEREZIN, AFTER BEING DULY SWORN, TESTIFIED
15 AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. GRIFFIN:

18 Q WHAT DO YOU DO, SIR?

19 A I AM A CPA AND I PREPARE TAX RETURNS.

20 Q AND WHO ARE YOU WITH?

21 A WITH GRANT THORNTON, LLP.

22 Q AND WHERE ARE YOU LOCATED?

23 A IN COLUMBIA.

24 Q AND WHAT SIZE ENTITY IS GRANT THORNTON, LLP.

25 A IT IS, I GUESS THE FIFTH LARGEST AFFILIATION OF FIRMS

1 TIME?

2 A I DON'T RECALL CIS.

3 Q HOW ABOUT VEHICLES THAT EMMCO PAID FOR THAT THE
4 DEFENDANT DROVE, YOU REMEMBER A MERCEDES OF ANY TYPE OF
5 VEHICLE THAT EMMCO PAID FOR?

6 A I THINK THERE WAS A MERCEDES, I DON'T RECALL EXACTLY
7 WHAT VEHICLES WERE THERE FOR SURE.

8 Q AND IN 2003, WELL LET ME ASK THIS, DID YA'LL ALSO
9 PREPARE HIS PERSONAL TAX RETURNS?

10 A WE DID.

11 Q ARE YOU AWARE OF THE LAST TWO YEARS, DID YOU PREPARE
12 THOSE?

13 A WHICH TWO YEARS WOULD YOU BE REFERRING TO.

14 Q 2006 AND 2005 AND 2004?

15 A NO.

16 Q NOTHING ELSE.

17 THE COURT: ANYTHING ELSE?

18 MR. GRIFFIN: NO, YOUR HONOR.

19 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
20 WE WILL TAKE A SHORT BREAK. EVERYONE STAY SEATED WHILE
21 THE JURY IS EXCUSED, DON'T DISCUSS THE CASE.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
23 A BREAK.)

24 THE COURT: WE WILL TAKE TEN OR FIFTEEN MINUTES.

25 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1 THE COURT: IS THE STATE READY?

2 MS. EVANS: YES, YOUR HONOR.

3 THE COURT: DEFENSE READY?

4 MR. GRIFFIN: YES, YOUR HONOR.

5 THE COURT: BRING THE JURY IN, PLEASE.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 11:35 A.M.)

8 THE COURT: CALL YOUR NEXT WITNESS, PLEASE.

9 MR. GRIFFIN: THE STATE CALLS BILL LONG TO THE STAND.

10 WILLIAM LONG, AFTER BEING DULY SWORN, TESTIFIED
11 AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. GRIFFIN:

14 Q GOOD MORNING, MR. LONG.

15 A GOOD MORNING.

16 Q WHAT DO YOU DO?

17 A I AM AN ATTORNEY.

18 Q WHEN DID YOU GRADUATE FROM LAW SCHOOL?

19 A GRADUATED FROM LAW SCHOOL IN 1985.

20 Q AND AT SOME POINT DID YOU GO TO WORK FOR HOMEGOLD?

21 A YES SIR, I DID.

22 Q AND WHAT YEAR DID YOU WORK FOR HOMEGOLD?

23 A I BEGAN TO WORK AS A SENIOR VICE-PRESIDENT IN 1999,
24 JANUARY.

25 Q AND DID YOU AT SOME POINT BECOME GENERAL COUNSEL OF

1 HOMEGOLD?

2 A YES, LATER THAT YEAR WHEN MR. KILLIAN, (PHONETIC),
3 EITHER RESIGNED OR WAS LET GO, I ASSUMED HIS ROLE AS
4 GENERAL COUNSEL OF THE COMPANY.

5 Q AND ARE YOU HERE TODAY PURSUANT TO A SUBPOENA?

6 A YES, SIR.

7 Q MR. LONG, YOU WERE GENERAL COUNSEL AT THE TIME OF THE
8 HOMEGOLD/HOMESENSE MERGER?

9 A YES, SIR.

10 Q AND AFTER THE MERGER, AROUND MAY OR JUNE OF 2000, AT
11 SOME POINT AFTER THE MERGER DID YOU RECEIVE ADDITIONAL
12 DUTIES AT HOMEGOLD?

13 A YES SIR, I DID.

14 Q WHAT ADDITIONAL DUTIES OR ADDITIONAL TITLE DID YOU
15 RECEIVE?

16 A WHEN MR. MAST LEFT THE COMPANY I WAS ASKED TO DO TWO
17 ADDITIONAL THINGS. FIRST I WAS ASKED TO SERVE AS INTERIM
18 CFO UNTIL A SUITABLE CFO WAS FOUND FOR THE COMPANY. AND
19 SECOND I WAS ASKED TO ASSUME ONE OF MR. MAST'S OTHER
20 DUTIES AS MANAGING HR, HUMAN RESOURCES.

21 Q AND MR. MAST, WHAT WAS HIS POSITION WITH THE COMPANY?

22 A MR. MAST WAS THE CHIEF FINANCIAL OFFICER OR CFO OF
23 HOMEGOLD.

24 Q AND DO YOU RECALL ROUGHLY WHEN HE LEFT?

25 A IT WOULD OF BEEN LATE JUNE, EARLY JULY OF 2000.

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1 Q AND AFTER MR. MAST LEFT DID ANY OTHER MEMBERS OF THE
2 ACCOUNTING DEPARTMENT LEAVE AS WELL?

3 A YES SIR, THEY DID.

4 Q ROUGHLY HOW MANY?

5 A TWO TO THREE THAT I AM AWARE OF IMMEDIATELY. AND
6 THAT IS WHY I HAD TO BEGIN HIRING ADDITIONAL PEOPLE, I
7 HIRED KEVIN MARTIN AND RHONDA JOHNSON TO RESTAFF THE
8 ACCOUNTING DEPARTMENT FOLLOWING THE DEPARTURE OF AT LEAST
9 TWO TO THREE PEOPLE.

10 Q AND IN YOUR ROLE AS INTERIM CFO WERE YOU AT SOME
11 POINT AND TIME REPLACED AS CFO?

12 A YES, I WAS REPLACED TWICE.

13 Q WHO WERE YOU REPLACED BY THE FIRST TIME?

14 A THE FIRST TIME MR. LARRY GOSNELL WAS HIRED AS CFO OF
15 THE COMPANY AND HE REPLACED ME. AND THEN WITH MR.
16 GOSNELL'S DEPARTURE I WAS REPLACED FOLLOWING A BRIEF
17 INTERIM PERIOD WITH RHONDA JOHNSON AS CHIEF FINANCIAL
18 OFFICER OF THE COMPANY.

19 Q SO YOU SERVED BEFORE MR. GOSNELL, AFTER MR. MAST LEFT
20 AND BEFORE MR. GOSNELL CAME ABOARD AS INTERIM CFO?

21 A YES.

22 Q AND THEN MR. GOSNELL LEFT AND THEN YOU ONCE AGAIN
23 TOOK THAT POSITION FOR A SHORT PERIOD OF TIME?

24 A YES.

25 Q AND THEN MR. RHONDA JOHNSON SUBSEQUENTLY BECAME CFO

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1 AFTER YOU?

2 A YES.

3 Q WERE YOU EVER GIVEN THAT DUTY ANY OTHER TIME?

4 A I WAS NOT ASKED TO ASSUME THAT ROLE AGAIN.

5 Q NOW, DO YOU REMEMBER MR. GOSNELL'S DEPARTURE?

6 A YES, I DO.

7 Q AND DO YOU REMEMBER THE CIRCUMSTANCES SURROUNDING HIS
8 DEPARTURE?

9 A YES, I DO.

10 Q AND DID YOU ASK HIM TO PREPARE A MEMO FOR YOU?

11 A YES, I DID.

12 Q AND WHAT DID YOU ASK HIM TO ADDRESS IN THAT MEMO?

13 A I ASKED HIM TO SUMMARIZE BASICALLY THE STEPS LEADING
14 UP TO HIS DECISION TO LEAVE. THERE WERE A LOT OF MEETINGS
15 THAT OCCURRED RELATIVE TO THIS DEFERRED TAX ASSET, AN
16 ISSUE AND I WANTED IT WRITTEN DOWN AS TO WHAT HAPPENED
17 BECAUSE I WASN'T IN ANY OF THOSE MEETINGS.

18 Q NOW WEEKS AGO, OR LAST WEEK A DOCUMENT WAS INTRODUCED
19 INTO EVIDENCE BY MR. GOSNELL, IT IS STATE'S EXHIBIT 96.
20 AND I WANT TO ASK, SIR, CAN YOU SEE IT FROM BACK THERE.

21 A YES SIR, I CAN.

22 Q IS THAT THE MEMO THAT MR. GOSNELL PREPARED FOR YOU?

23 A IT LOOKS LIKE THE FORMAT AND BASED UPON THE FIRST FEW
24 WORDS IT LOOKS LIKE WHAT--

25 Q I AM SORRY, LET ME GIVE YOU A COPY OF IT. TAKE YOUR

1 TIME AND LOOK AT IT AND ONCE YOU ARE THROUGH TELL THE JURY
2 ABOUT THIS MEMO.

3 A MAY I TAKE A MOMENT?

4 Q YES, ABSOLUTELY.

5 A YES, THIS IS IT.

6 Q AND THIS MEMO, JUST BRIEFLY, DOES IT SUMMARIZE THE
7 EVENTS THAT MR. GOSNELL RELATED TO YOU PERTAINING TO THE
8 DISCUSSIONS OF THE WRITEUP, THE REEVALUATION OF THIS
9 DEFERRED TAX ASSET?

10 A THIS IS WHAT MR. GOSNELL TOLD ME ABOUT THE MEETINGS
11 WHERE I WASN'T PRESENT.

12 Q AND WHAT WAS THE ISSUE, YOU MENTIONED SOME LANGUAGE
13 TO THE JURY AND EXPLAIN, WHAT WAS THE ISSUE WITH, THAT WAS
14 ADDRESSED IN THIS MEMO?

15 A HOMEGOLD HAD ON ITS BOOKS AN ASSET WHICH I REFERRED
16 TO AS THE DEFERRED TAX ASSET. WHAT IT BASICALLY WAS, AS I
17 UNDERSTOOD IT, WAS A LOSS FROM PRIOR YEARS THAT COULD BE
18 OFF SET AGAINST FUTURE INCOME FOR THE BENEFIT OF THE
19 COMPANY. SO, IT WAS ONLY WORTH SOMETHING TO THE EXTENT,
20 YOU BELIEVE YOU WOULD HAVE FUTURE INCOME GOING FORWARD TO
21 OFF SET AGAINST IT AND DERIVE THE BENEFIT. SO, THE ISSUE
22 AS I UNDERSTOOD IT AT THE TIME WAS, BECAUSE IT WAS A
23 FORWARD LOOKING STATEMENT BY DEFINITION AND NOT A
24 STATEMENT OF PRESENT FACT, IF THERE WAS MONEY IN THE BANK
25 OR NOT. FOR EXAMPLE, IT RELIED ON PROJECTIONS AND THE

1 REASONABILITY OF THOSE PROJECTIONS IN ORDER FOR THE
2 ACCOUNTANTS AND MANAGEMENT TO MAKE A DECISION WHETHER OR
3 NOT IT WAS APPROPRIATE TO RECOGNIZE NOW THAT THERE WOULD
4 BE BENEFIT TO THIS ASSET IN THE FUTURE. THAT IS AS BEST
5 AS I CAN DO GIVEN WHAT I UNDERSTOOD AT THE TIME.

6 Q AND DID YOU UNDERSTAND THAT MR. GOSNELL WAS
7 UNCOMFORTABLE SIGNING THE THIRD QUARTER QUARTERLY FILING
8 FOR THE SEC OVER THAT ISSUE?

9 A YES, I UNDERSTOOD THAT TO BE TRUE.

10 Q AND AFTER HE LEFT DID YOU, YOU WERE ONCE AGAIN GIVEN
11 THE HAT OF CFO?

12 MS. EVANS: YOUR HONOR, I OBJECT TO THE LEADING.

13 THE COURT: I WILL LET HIM ANSWER THAT QUESTION, GO
14 AHEAD.

15 Q ONCE YOU ARE CFO WHAT DID YOU DO IN RESPONSE TO
16 RECEIVING THIS MEMORANDUM?

17 A I GOT THAT MEMORANDUM A LITTLE LATER, IT IS A DATE, I
18 THINK NOVEMBER THE 15TH. SO, THE DISCUSSIONS THAT LARRY
19 AND I HAD AND THE DISCUSSIONS LEADING UP TO IT OCCURRED
20 ALL BEFORE THAT. I DIDN'T DO ANYTHING IN RESPONSE TO THAT
21 MEMO, THAT MEMO CAME KIND OF LATE IN THE DAY. BUT IN
22 RESPONSE TO THE CONCERNS THAT MR. GOSNELL ARTICULATED I,
23 ONCE I HAD THIS ROLE BACK AGAIN I WANTED TO SEE FOR MYSELF
24 AS BEST AS I COULD WHETHER OR NOT THIS WAS OR WAS NOT
25 SOMETHING THAT WAS APPROPRIATE. SO, I CONTACTED MR. RANK

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1 AT ELLIOTT DAVIS, I HAD A SERIES OF DISCUSSIONS WITH HIM.
2 I CONTACTED THREE OF THE ATTORNEYS AT THE WYCHE FIRM, I
3 CAN'T RECALL WHETHER THEY WERE ALL AT ONCE OR
4 SEQUENTIALLY. MR. HALL, MR. CRAWFORD AND MR. GRABEN ALL
5 LEADING UP TO THE DECISION TO SIGN THIS DOCUMENT.

6 Q AND AFTER YOU HAD DISCUSSIONS WITH THE ELLIOTT DAVIS,
7 MR. RANK AND THEN THE WYCHE LAWYERS, DID YOU SIGN IT?

8 A YES, I DID.

9 Q YOU SIGNED THE QUARTERLY REPORT?

10 A YES SIR, THE 10Q DATED SOMETIME IN MID-NOVEMBER.

11 Q AND WHY DID YOU SIGN IT?

12 A I WAS COMFORTABLE WITH ALL THE ADVICE GIVEN TO ME BY
13 THE PEOPLE THAT I MENTIONED, THAT IT WAS APPROPRIATE,
14 SUPPORTABLE, DEFENSIBLE, WHATEVER THE WORD IS.

15 Q AND AT THE END OF THE YEAR OF 2000 AND WE ARE TALKING
16 ABOUT THIRD QUARTER OF 2000, IS THAT RIGHT?

17 A YES.

18 Q AND AT THE END OF THE YEAR OF 2000 WAS THERE A FINAL
19 10K FILED WITH THE SECURITIES AND EXCHANGE COMMISSION?

20 A YES, THE END OF THE YEAR FILING IS CALLED THE 10K AND
21 IT WAS FILED WITH THE SEC AS WELL, I BELIEVE SOME TIME IN
22 MARCH BUT IT WAS EFFECTIVE AT THE END OF THE YEAR OF 2000.

23 Q AND WERE THE FINANCIALS AUDITED BY ELLIOTT DAVIS
24 BEFORE THAT 10K, FINANCIALS OF HOMEGOLD?

25 A BY THAT POINT I WAS OUT OF THE CFO WORLD AGAIN BUT

1 THAT IS MY BELIEF, YES. ELLIOTT DAVIS DID AUDIT IT, THEIR
2 NAME IS ON IT.

3 Q ALL RIGHT. AND DO YOU KNOW WHETHER THERE WAS ANY
4 WRITE DOWNS OF THIS?

5 A IT IS MY BEST RECOLLECTION THAT THE TAX ASSET STAYED
6 AT THE SAME LEVEL IT WAS AT THE THIRD QUARTER.

7 Q BY THE END OF THE YEAR OF 2000?

8 A END OF THE YEAR OF 2000.

9 Q NOW, MR. LONG, IN THE, WE REPORTED IN 2001 THAT YOU
10 HAD, YOU GO BACK, ARE YOU GENERAL COUNSEL OF THE COMPANY
11 OF HOMEGOLD?

12 A YES.

13 Q DID THERE COME A POINT AND TIME WHERE, LET ME ASK
14 YOU, DID AN ISSUE REGARDING HOMEGOLD'S ABILITY TO QUALIFY
15 FOR A STATE LICENSE FOR THE MORTGAGE BUSINESS?

16 A YES, SIR.

17 Q WHAT WAS THE ISSUE?

18 A WELL, MANY OF THE STATES, I CAN'T RECALL IF IT IS ALL
19 OF THE STATES, HAVE CERTAIN NET WORTH REQUIREMENTS FOR
20 THEIR LICENSED MORTGAGE LENDERS TO MAINTAIN IN ORDER TO BE
21 PERMITTED TO HAVE A STATE LICENSE. AS HOMEGOLD'S LOSSES
22 CONTINUED TOWARD THE END OF THE YEAR IT APPEARED TO ME AS
23 IF THAT NUMBER WAS GOING TO GO NEGATIVE AT SOME POINT OF
24 THE LICENSED ENTITY, HOMEGOLD, INC.

25 Q WHAT, IF ANYTHING, DID YOU DO TO ADDRESS THAT ISSUE?

1 A I MADE, I KNOW I MADE MR. STERLING AWARE OF IT. I
2 HONESTLY CAN'T RECALL IF I MADE MR. SHEPPARD AWARE OF IT,
3 BUT I KNOW I MADE MR. STERLING AWARE OF IT. AND MR.
4 STERLING HAD AN IDEA TO TRANSFER DEBT TO CAROLINA
5 INVESTORS FROM HOMEGOLD, INC. TO HOMEGOLD FINANCIAL AND
6 ALLOW HOMEGOLD, INC. TO GUARANTEE THAT DEBT. SO THAT ON A
7 CONSOLIDATED BASIS AMONG OTHER COMPANIES, IT DIDN'T REALLY
8 CHANGE ANYTHING BUT AS TO THE LICENSED ENTITY ITSELF IT
9 WOULD BE EFFECTIVELY AN EQUITY CONTRIBUTION TO THE
10 LICENSED ENTITY, HOMEGOLD, INC. AS IT WAS EXPLAINED TO ME.
11 Q AND DID YOU DISCUSS THAT ARRANGEMENT WITH ANY THIRD
12 PARTY?
13 A YES I DID, AFTER BEING PRESENTED WITH THAT
14 PROPOSITION BY MR. STERLING, I AGAIN GOT ON THE PHONE TO
15 ELLIOTT DAVIS AND TO THE WYCHE, BURGESS FIRM, RAN THIS BY
16 THEM TO SEE WHETHER OR NOT THIS WOULD WORK AS DESCRIBED TO
17 ME OR WAS APPROPRIATE.
18 Q AND WHO DID YOU DISCUSS THIS WITH AT ELLIOTT DAVIS?
19 A IT IS MY BEST RECOLLECTION THAT THE FIRST CALL WAS A
20 CONFERENCE CALL WITH MR. RANK AT ELLIOTT DAVIS AND MR.
21 HALL AT THE WYCHE, BURGESS FIRM. I TAKE IT BACK, IT MIGHT
22 OF BEEN CY BURGESS AT THE ELLIOTT DAVIS FIRM, I APOLOGIZE.
23 IT WAS, I HAVE NOTES, I CAN DO A BETTER JOB IF I HAVE MY
24 NOTES.
25 Q MR. LONG, DO YOU RECOGNIZE THAT DOCUMENT.

1 A YES, THESE ARE THE NOTES I WAS REFERRING TO THAT I
2 TOOK DOWN AT THE SAME TIME THAT I HAD THESE CONVERSATIONS
3 I REFERENCED EARLIER.

4 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO MOVE
5 DEFENDANT'S EXHIBIT NUMBER 4 INTO EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MS. EVANS: NO OBJECTION, YOUR HONOR.

8 THE COURT: DEFENDANT'S 4 IS ADMITTED.

9 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 4 WAS ADMITTED
10 INTO EVIDENCE.)

11 Q AND FROM THOSE NOTES CAN YOU TELL THE JURY WHO YOU
12 CONSULTED WITH REGARDING THIS ARRANGEMENT OF ADDRESSING
13 THE DEBT?

14 A YES SIR, ON JANUARY THE 15TH OF 2001 I CONTACTED CY
15 BURGESS AND CARY HALL. I POSED THE QUESTION TO THEM ABOUT
16 THE SHIFT OF THE PRIMARY OBLIGOR FOR THE DEBT BACKED AS A
17 CAPITAL CONTRIBUTION. I ASKED THE QUESTION, DOES THIS
18 TRANSACTION CREATE EQUITY AT HOMEGOLD, INC. THE FOLLOWING
19 DAY ON JANUARY 16TH I RECEIVED A CALL BACK FROM CY BURGESS
20 AND MY NOTES SAY, APPROVED. ON THE SAME DAY I GOT A CALL
21 BACK FROM ERIC GRABEN WHO IS WITH THE WYCHE FIRM ALONG
22 WITH MR. HALL AND HE SAID IT IS OKAY AS WELL. I HAD A
23 SIDE ISSUE AS TO WHETHER OR NOT THIS TRANSACTION WOULD
24 CREATE ANY PROBLEM UNDER SOME ADDITIONAL DEBT INSTRUMENTS
25 HOMEGOLD HAD AT THE TIME AND ERIC RESPONDED THAT IT WOULD

1 BE OKAY UNDER THOSE DEBT INSTRUMENTS AS WELL.

2 Q AND BASED UPON THESE CONSULTATIONS WITH THE
3 ACCOUNTANTS AND THE LAWYERS DID HOMEGOLD UNDERTAKE TO
4 TRANSFER THAT DEBT?

5 A I BELIEVE THAT IS WHAT OCCURRED. I WASN'T IN THE
6 ACCOUNTING DEPARTMENT AT THE TIME. I AM AWARE GENERALLY
7 THAT THE WYCHE FIRM PREPARED THE DOCUMENTATION, THAT IT
8 WAS SIGNED AND THE TRANSACTION WAS BOOKED AS SUGGESTED.

9 MS. EVANS: CAN WE APPROACH, YOUR HONOR.

10 THE COURT: YES.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
12 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
13 JURY.)

14 MR. GRIFFIN: YOUR HONOR, I HAVE MARKED DEFENDANT'S
15 EXHIBIT NUMBER 5 WHICH IS A CERTIFIED PUBLIC RECORD FROM
16 THE SECURITIES COMMISSION DIVISION OF THE SOUTH CAROLINA
17 ATTORNEY GENERALS OFFICE WHICH IS THE UNIFORM APPLICATION
18 OF REGISTERED SECURITIES, FORM U1 FILED IN 2001 WITH
19 EXHIBITS. AND I WOULD MOVE THAT INTO EVIDENCE AT THIS
20 TIME.

21 MS. EVANS: NO OBJECTION, YOUR HONOR.

22 THE COURT: DEFENDANT'S 5 IS ADMITTED WITHOUT
23 OBJECTION.

24 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 5 WAS ADMITTED
25 INTO EVIDENCE.)

1 Q MR. LONG, I AM GOING TO ASK YOU IF THIS DOCUMENT
2 ATTACHED TO THIS FORM U1 FILING, I WANT TO ASK, IT IS
3 ENTITLED ASSUMPTION OF DEBT AND CONTRIBUTION OF CAPITAL
4 AGREEMENT, IF THAT IS THE TRANSACTION THAT IS DOCUMENTED
5 THAT YOU ARE REFERRING TO?

6 A YES, THIS APPEARS TO BE IT.

7 Q CAN YOU TELL THE JURY, I AM NOT SURE IF YOU CAN READ
8 THE SIGNATURES BUT WILL YOU TELL THE JURY THE SIGNATURE,
9 WHAT ENTITIES ARE ON THE DOCUMENT FIRST?

10 A HOMEGOLD FINANCIAL, INC. SIGNED BY, I BELIEVE THIS IS
11 FORREST FERRELL, HOMEGOLD INC. WHICH IS THE LICENSED
12 ENTITY SIGNED AGAIN BY FORREST FERRELL. AND THEN CAROLINA
13 INVESTORS, INC. SIGNED BY LARRY OWEN.

14 Q THANK YOU. NOW, MR. LONG, HOW LONG DID YOU STAY WITH
15 HOMEGOLD?

16 A I RESIGNED IN EARLY JUNE OF 2000, I TENDERED MY
17 RESIGNATION IN MAY AND MY LAST DAY WAS JUNE 4TH OF 2001.

18 Q AND WHY DID YOU RESIGN?

19 A I HAD BEEN ASKED TO MOVE TO LEXINGTON AS PART OF THE
20 RELOCATION OF THE COMPANY HEADQUARTERS FROM GREENVILLE TO
21 LEXINGTON. AND I WASN'T COMFORTABLE MAKING THAT MOVE.

22 Q THANK YOU. THAT IS ALL THE QUESTIONS I HAVE, YOUR
23 HONOR.

24 THE COURT: ALL RIGHT, MS. EVANS.

25 MS. EVANS: THANK YOU, IF IT PLEASES THE COURT.

CROSS-EXAMINATION

BY MS. EVANS:

Q GOOD AFTERNOON, MR. LONG.

A GOOD AFTERNOON.

Q PREVIOUSLY YOU DISCUSSED TO THE JURY THAT YOU WERE
GENERAL COUNSEL DURING THE MERGER. ISN'T IT TRUE THAT YOU
WERE INVOLVED IN THE HOMEGOLD/HOMESENSE MERGER WHEN THAT
WAS TAKING PLACE IN THE BEGINNING PART OF 2000?

A YES, I HAD A ROLE IN IT.

Q AND DID HOMESENSE DUE DILIGENCE TEAM, DID THEY
REQUEST DOCUMENTS FROM HOMEGOLD?

A YES MA'AM, THEY DID.

Q AND WHAT, AND HOW WOULD YOU DESCRIBE THE AMOUNT OF
DOCUMENTS THAT THEY ASKED FOR?

A EXTENSIVE, VOLUMINOUS AND THOROUGH.

Q AND DID YOU AS PART OF DUE DILIGENCE ON THE HOMEGOLD
TEAM SIDE PROVIDE ALL OF THE DOCUMENTATION TO THE DUE
DILIGENCE TEAM AT THE PEOPLE AT HOMESENSE?

A YES, WE DID.

Q AND THE DEFENDANT HAD A DUE DILIGENCE TEAM THAT YOU
PROVIDED VOLUMINOUS AMOUNT OF INFORMATION REGARDING
EVERYTHING THAT WAS GOING ON AT HOMEGOLD, ISN'T THAT TRUE?

A YES, THEY WERE REPRESENTED BY THE FIRM, NEXSEN, PRUET
AND IT WAS A LOT OF REQUESTS.

Q AND THOSE REQUEST WOULD INCLUDE FINANCIAL STATEMENTS?

1 A YES, IT WAS VIRTUALLY EVERYTHING.

2 Q EVERYTHING THAT YOU HAD?

3 A CORRECT.

4 Q IS THERE ANYTHING THAT YOU HELD BACK FROM THE DUE
5 DILIGENCE TEAM THAT THE DEFENDANT HAD AT HOMESENSE?

6 A NO MA'AM, NOTHING WAS HELD BACK.

7 Q IS THERE ANY WAY IN WHICH ANY OF THE INFORMATION THAT
8 YOU GAVE THE DEFENDANT IN HIS DUE DILIGENCE TEAM, IS THERE
9 ANY INFORMATION THAT YOU PUT IN THERE OR ANY INFORMATION
10 THAT YOU ARE AWARE OF THAT WAS MISLEADING ABOUT HOMEGOLD?

11 A NO, MA'AM.

12 Q AND ISN'T IT TRUE THAT AT THE TIME OF THE MERGER YOU
13 ALL DID HAVE A \$100 MILLION DOLLAR WAREHOUSE LINE OF
14 CREDIT?

15 A THAT IS MY RECOLLECTION, YES MA'AM.

16 Q AND ISN'T IT TRUE THAT IT WAS ONLY AFTER THE MERGER
17 THAT WAREHOUSE LINE OF CREDIT WAS CUT?

18 A YES.

19 Q ISN'T IT TRUE THAT YOU HAD A CONVERSATION IN EARLY OF
20 2001 WITH THE DEFENDANT REGARDING EXPENSES AND THE WAY THE
21 COMPANY, THE DIRECTION OF THE COMPANY?

22 A THIS WOULD OF BEEN PART OF MY RESIGNATION MEETING IN
23 MAY.

24 Q AND ISN'T IT TRUE THAT YOUR CONCERNS WERE OVER THE
25 AMOUNT OF THE MONEY THAT THE COMPANY WAS SPENDING WHEN THE

1 DEFENDANT WAS CEO OF THE COMPANY AND YOU TALKED TO HIM
2 ABOUT NOT GOING TO RAPID EXPANSIONS AND THE NEED TO CUT
3 COST?

4 A YES MA'AM, THAT WAS PART OF THE DISCUSSION.

5 Q AND YOU SAT DOWN WITH THE DEFENDANT AND HAD
6 DISCUSSIONS ABOUT, JUST SUGGESTIONS THAT YOU HAD OF HOW HE
7 COULD DO THIS. IT WASN'T A PLAN BUT YOU GAVE HIM CERTAIN
8 SUGGESTIONS?

9 A THE MODEL I PUT TOGETHER SHOWED SOME THINGS THAT
10 MIGHT NEED TO BE DONE DIFFERENTLY IN ORDER TO RETURN TO
11 PROFITABILITY, YES.

12 Q LET'S GO BACK TO THE TIME OF THE MERGER, THE MERGER
13 TOOK PLACE ON MAY 9TH OF 2000, CORRECT?

14 A THAT SOUNDS ABOUT RIGHT, YES.

15 Q AND ISN'T IT TRUE ONE OF THE FIRST THINGS THAT THE
16 DEFENDANT ASKED YOU TO DO, NOT RIGHT AFTER THE MERGER BUT
17 ONE OF THE FIRST THINGS THAT THE DEFENDANT ASKED YOU TO DO
18 WAS TO GET RID OF KEVIN MAST?

19 A YES, MA'AM.

20 Q AND ISN'T IT TRUE THAT THE DEFENDANT TOLD YOU THAT HE
21 WANTED KEVIN MAST GONE AND FIRED?

22 A YES.

23 Q AND APPROXIMATELY HOW LONG WAS THAT AFTER THE MERGER?

24 A IT WOULD OF BEEN IN LATE JUNE, EARLY JULY AS I SAID,
25 AROUND THAT TIME.

1 Q LET'S GO BACK TO THIS DEFERRED TAX ASSET. YOU ARE
2 TALKING ABOUT THE THIRD QUARTER OF 2002 10Q THAT IS FILED?

3 A NO MA'AM, 2000.

4 Q EXCUSE ME, 2000, I AM SORRY. THE 2000 10Q THAT IS
5 FILED?

6 A YES, MA'AM.

7 Q AND HOW MUCH FINANCIAL BACKGROUND DO YOU HAVE AS AN
8 ATTORNEY?

9 A NONE.

10 Q AND IS THAT WHY YOU CALLED THE INDIVIDUALS THAT YOU
11 DID BECAUSE OF THE FACT THAT YOU DON'T REALLY HAVE A
12 FINANCIAL BACKGROUND?

13 A YES, MA'AM.

14 Q ARE YOU AWARE OF THE FACT THAT 10Q'S ARE NOT AUDITED
15 STATEMENTS OF COMPANIES, IT IS JUST THE 10K THAT IS
16 TECHNICALLY AN AUDITED STATEMENT OF THE COMPANY?

17 A YES MA'AM, I AM AWARE OF THAT.

18 Q SO, THIS 10Q WAS NOT AN AUDITED STATEMENT OF THE
19 COMPANY?

20 A YES.

21 Q AND CLEARLY 10K'S AND 10Q'S, THOSE ARE STATEMENTS OF
22 HOMEGOLD, CORRECT?

23 A YES, MA'AM.

24 Q WERE YOU BASICALLY IN CHARGE OF MR. GOSNELL OR DID HE
25 NOT REPORT TO YOU?

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1 A MR. GOSNELL DID NOT REPORT TO ME.

2 Q OKAY. BUT WHEN HE WAS LEAVING YOU DID ASK HIM TO
3 PREPARE THAT MEMO BECAUSE YOU HAD NOT BEEN INVOLVED IN
4 THOSE DISCUSSIONS ONCE THEY REPLACED, THEY GOT A FINANCIAL
5 PERSON IN THERE TO BE CFO?

6 A YES, MA'AM.

7 Q AND IN ESSENCE, HIS BASIC CONCERNS WERE ABOUT
8 INCREASING THE DEFERRED TAX ASSET, CORRECT?

9 A YES.

10 Q WERE YOU AWARE THAT ONE OF HIS CONCERNS WAS ALSO THE
11 INTER-COMPANY DEBT TO CAROLINA INVESTORS?

12 A YES MA'AM, HE HAD CONCERNS ABOUT THAT AS WELL.

13 Q AND ISN'T IT TRUE THAT WHILE YOU WERE THERE THAT WAS
14 ONE OF YOUR CONCERNS ALSO?

15 A YES MA'AM, IT WAS ON MY MIND.

16 Q LET'S MOVE FORWARD. MR. GOSNELL RESIGNS, YOU ARE
17 AGAIN WITH NO ACCOUNTING BACKGROUND IN THE ROLE OF INTERIM
18 CFO, YOU HAVE THESE DISCUSSIONS AND YOU FELT COMFORTABLE,
19 THE DISCUSSIONS AND YOU SIGNED THE 10Q?

20 A YES, MA'AM.

21 Q HOW LONG AFTER, SHORTLY THEREAFTER RHONDA JOHNSON
22 BECOMES CFO, CORRECT?

23 A YES, RHONDA HAD BEEN WORKING UNDER ME, SHE WAS HIRED
24 BEFORE MR. GOSNELL WAS.

25 Q YOU HIRED RHONDA JOHNSON?

- 1 A YES, MA'AM.
- 2 Q AND YOU HIRED KEVIN MARTIN?
- 3 A YES, I DID.
- 4 Q TO WORK IN THE ACCOUNTING DEPARTMENT?
- 5 A YES.
- 6 Q AND YOU BASICALLY, WHEN YOU HIRED THEM, PLEASE WATCH
- 7 WHAT I AM DOING, HELP ME OUT HERE?
- 8 A YES, I DID.
- 9 Q DID YOU HAVE A CLOSE WORKING RELATIONSHIP WITH RHONDA
- 10 JOHNSON AND KEVIN MARTIN?
- 11 A MORE SO RHONDA THAN KEVIN.
- 12 Q OKAY. AND THEN AFTER YOU WERE NAMED INTERIM CFO FOR
- 13 THAT THIRD QUARTER FILING, RHONDA JOHNSON HAD BECOME THE
- 14 CFO?
- 15 A YES, MA'AM.
- 16 Q AND AFTER THAT LUCKILY FOR YOU YOU NEVER HAD TO BE
- 17 INTERIM ACTING OR ANYTHING IN REGARDING CFO?
- 18 A THAT IS CORRECT.
- 19 Q YOU ARE PRETTY HAPPY ABOUT THAT, IS THAT CORRECT?
- 20 A YES, MA'AM.
- 21 Q OKAY. RHONDA JOHNSON IS THERE, APPROXIMATELY WHEN
- 22 DID YOU HIRE RHONDA JOHNSON?
- 23 A SEPTEMBER, OCTOBER, SOMETIME IN THERE.
- 24 Q OF 2000?
- 25 A THAT IS NOT TRUE. IT WAS SOONER THAN THAT, MAYBE

1 AUGUST.

2 Q AND WHILE SHE IS CFO, DOES THE SAME ISSUES REGARDING
3 HER CONCERNS ABOUT THE DEFERRED TAX ASSETS COME UP WHEN IT
4 IS TIME TO FILE THE 10K FOR YEAREND 2000?

5 A YES.

6 Q AND ISN'T IT TRUE THAT MS. JOHNSON REFUSES TO SIGN
7 THAT AND STEPS DOWN AS CFO BECAUSE SHE DOES NOT WANT TO
8 SIGN THAT?

9 A YES, AFTER THE END OF THE YEAR THE PROJECTIONS ON
10 WHICH THE TAKING OF THE ASSET IN THE THIRD QUARTER WERE
11 BASED WEREN'T PANNING OUT. SO, IT LOOKED LESS REASONABLE
12 FOR MS. JOHNSON'S PERSPECTIVE TO LEAVE IT AS IT WAS.

13 Q AND YOU WEREN'T INVOLVED IN ANY OF THE DISCUSSIONS
14 ABOUT THAT 10K BECAUSE YOU WERE NO LONGER INVOLVED IN
15 ACCOUNTING AT THAT POINT?

16 A I WASN'T INVOLVED IN THE DISCUSSIONS LEADING UP TO
17 THAT, NO MA'AM.

18 Q AND ISN'T IT TRUE THAT THE DEFENDANT WAS THE ONE THAT
19 WAS GIVING THE PROJECTIONS OF WHAT THE COMPANY WAS GOING
20 TO DO?

21 A IF IT WAS PRODUCTION RELATED MR. SHEPPARD WOULD OF
22 DONE THAT.

23 Q AND SHE REFUSED TO SIGN THAT 10K?

24 A YES, THAT IS CORRECT.

25 Q AND SHE RESIGNED AS CFO?

1 A YES, MA'AM.

2 Q AND ISN'T IT TRUE, SHE DID COME BACK ON A CONTRACT
3 BASIS AND WORK A LITTLE BIT FOR THE COMPANY?

4 A SHE STAYED ON ON A CONTRACT BASIS.

5 Q AND ISN'T IT TRUE THAT THE DEFENDANT AND OTHER
6 MEMBERS OF THE BOARD SIGNED THAT 10K, OR WERE YOU NOT
7 AWARE OF WHO SIGNED THAT 10K?

8 A I BELIEVE THE 10K WAS SIGNED OFF ON BY MR. SHEPPARD
9 AND MAYBE MR. STERLING.

10 Q THEY DIDN'T ASK YOU TO BE INTERIM CFO AT THAT POINT,
11 DID THEY?

12 A NO, MA'AM.

13 Q AND LET'S GO BACK, NOW WE ARE IN 2001 WHEN THIS
14 HAPPENS AND ISN'T IT TRUE THAT THE DEFENDANT DECIDES TO
15 MOVE THE ENTIRE COMPANY DOWN TO LEXINGTON RATHER THAN THE
16 DEFENDANT MOVE UP TO GREENVILLE WHERE THE COMPANY WAS
17 LOCATED?

18 A YES.

19 Q AND ISN'T IT TRUE THAT YOU HAD DISCUSSIONS ABOUT
20 COMING WITH HOMEGOLD DOWN HERE TO LEXINGTON?

21 A YES, I DID.

22 Q AND ISN'T IT TRUE THAT PART OF YOUR CONCERN WAS THAT
23 YOU HAD A FAMILY IN GREENVILLE?

24 A YES.

25 Q AND ISN'T IT TRUE THAT YOU SAT DOWN AND YOU HAD A

1 CONVERSATION WITH THE DEFENDANT AND YOU ASKED HIM WHAT HIS
2 PLAN WAS TO TURN THE COMPANY AROUND WHEN HE MOVED IT DOWN
3 TO LEXINGTON AND ISN'T IT TRUE THAT THE DEFENDANT TOLD YOU
4 HE DIDN'T HAVE A PLAN BUT HE HAD SOME OPTIONS?

5 A THAT'S CORRECT.

6 Q AND ISN'T IT TRUE, MR. LONG, THAT YOU HAD
7 SUBSEQUENTLY WENT TO CAROLINA INVESTORS BOARD MEETING WITH
8 THE DEFENDANT?

9 A YES.

10 Q AND ISN'T IT TRUE THAT THE DEFENDANT DID NOT TELL THE
11 CAROLINA INVESTORS BOARD MEETING THAT HE DID NOT HAVE A
12 PLAN, HE ONLY HAD OPTIONS. ISN'T IT TRUE THAT HE JUST
13 TOLD THEM THAT WE ARE MOVING THE COMPANY DOWN SO I CAN
14 TURN THE COMPANY AROUND?

15 A YES.

16 Q AND LET'S TALK ABOUT YOU SITTING DOWN AND TALKING
17 WITH THE DEFENDANT. ISN'T IT TRUE THAT YOU CAME DOWN AND
18 I DON'T WANT TO CALL IT A PLAN, YOU HAD SOME SUGGESTIONS
19 TO THE DEFENDANT ABOUT CUTTING DOWN ON THE FINANCIALS AND
20 THAT WHAT YOUR SUGGESTIONS WERE IS RAPID EXPANSION IS NOT
21 ONE WAY TO GO WHEN IT COMES TO TURNING THIS COMPANY AROUND
22 TO GET IT TO PROFITABILITY?

23 A CHANGING NOTHING ELSE, THE MODEL SHOWED RAPID
24 EXPANSION WOULD NOT.

25 Q WAS IT PART OF YOUR PLAN THAT THE DEFENDANT CUT DOWN

1 ON EXPENSES, WOULD HAVE A PERSONAL TRAINER THAT WAS HIRED
2 BY THE COMPANY, WAS THAT PART OF YOUR PLAN THAT YOU
3 DISCUSSED WITH THE DEFENDANT?

4 A WE DIDN'T DISCUSS A PERSONAL TRAINER.

5 Q AND WAS IT PART OF YOUR PLAN THAT THE DEFENDANT WOULD
6 CONTINUE TO CHARTER PRIVATE JETS TO FLY AROUND THE COMPANY
7 TO CUT DOWN ON EXPENSES?

8 A WE DIDN'T DISCUSS JETS.

9 Q AND ISN'T IT TRUE, MR. LONG, THAT THE REASON THAT YOU
10 RESIGNED WAS AFTER THAT CONVERSATION, LET ME, THAT
11 PLANNING MEETING, WHEN DID THAT OCCUR, APPROXIMATELY?

12 A WHICH PLANNING MEETING?

13 Q THAT YOU SAT DOWN WITH THE DEFENDANT TO GO OVER WAYS
14 OF TURNING THE COMPANY AROUND ONCE YOU MOVED IT TO
15 LEXINGTON.

16 A I BELIEVE IT WAS MAY THE 11TH WAS THE DAY ON THE
17 NOTES, IS THAT RIGHT. AND THAT WAS IN RESPONSE TO HIM
18 ASKING ME TO COME TO LEXINGTON AND VISIT WITH HIM AND I
19 DID. HE TOLD ME HE WAS MOVING THE COMPANY, WOULD I BE
20 WILLING TO MOVE, WHAT THE PLAN WAS. AND THAT IS HOW ALL
21 OF THAT DIALOGUE STARTED.

22 Q AND ISN'T IT TRUE AT THIS POINT YOU WERE CONCERNED
23 ABOUT TURNING THE COMPANY AROUND SO THAT THEY COULD PAY
24 BACK CAROLINA INVESTORS?

25 A YES, I WAS CONCERNED ABOUT THAT.

1 Q AND WAS IT ONE OF THE MAIN REASONS THAT YOU DIDN'T
2 MOVE TO LEXINGTON WAS THE FAMILY THAT YOU HAD UP THERE AND
3 THAT THE DEFENDANT TOLD YOU HE DIDN'T HAVE A PLAN AND HE
4 ONLY HAD OPTIONS?

5 A THE COMBINATION OF THE TWO, BASED ON THAT I WAS
6 UNWILLING TO EITHER COMMUTE OR MAKE AN EFFORT TO MOVE MY
7 FAMILY TO LEXINGTON.

8 Q AND THEN APPROXIMATELY A MONTH AFTER THAT MEETING YOU
9 RESIGNED FROM HOMEGOLD?

10 A I TOLD HIM AT THE TIME I WAS QUITTING BUT I STAYED ON
11 TO HELP WIND DOWN AND TRANSFER RESPONSIBILITIES TO MR.
12 GAFFNEY AND OTHERS.

13 Q I DON'T HAVE ANYTHING FURTHER.

14 THE COURT: REDIRECT.

15 MR. GRIFFIN: JUST BRIEFLY, YOUR HONOR.

16 REDIRECT EXAMINATION

17 BY MR. GRIFFIN:

18 Q IN YOUR DISCUSSIONS WITH MR. SHEPPARD ABOUT
19 TURNAROUND PLANS, YOU MENTIONED SOME STRUCTURAL CHANGES,
20 WHAT WERE YOU REFERRING TO?

21 A WHAT I HAD DONE WITH THE HELP OF ANOTHER ONE OF MY
22 EMPLOYEES, WE HAD PUT TOGETHER AND EXCEL SPREADSHEET BASED
23 UPON THE FINANCIALS AND WHAT THE LOAN OFFICER AND MANAGER
24 COMPENSATION PLANS WERE TO SHOW WHAT HAPPENED WHEN WE
25 WOULD GENERATE A DOLLAR, ONE-HUNDRED DOLLARS, MILLION

1967

1 DOLLARS WORTH OF LOAN VOLUME, WHAT WOULD HAPPEN, HOW THAT
2 WOULD TRANSLATE THROUGH THE FINANCIALS AND RESULT IN
3 EITHER A POSITIVE NUMBER OR A NEGATIVE NUMBER. AND WHAT
4 IT SHOWS IS THE WAY THE STRUCTURE WAS GIVEN THE FIXED G&A,
5 THE INTEREST, THE LOAN OFFICER COMPENSATION PLAN IS THAT
6 THE PLAN AS IT WAS WASN'T GOING TO GENERATE ENOUGH REVENUE
7 FOR THIS THING TO TURN THE CORNER EVEN IF YOU, I THINK,
8 DOUBLED THE LOAN VOLUME WITHOUT SOMETHING ELSE CHANGING,
9 LIKE MORE LOANS PER LOAN OFFICER, BY REDUCING THE AMOUNTS
10 THAT LOAN OFFICERS AND MANAGERS WERE MAKING FOR EVERY LOAN
11 OR FIGURING OUT A WAY TO CUT EXPENSES OTHERWISE. IT JUST
12 WASN'T GOING TO WORK IF YOU JUST STARTED MAKING MORE
13 LOANS, THAT WAS REALLY THE POINT OF THE DISCUSSION.

14 Q AND DO YOU KNOW WHETHER THE COMPENSATION STRUCTURE OF
15 LOAN OFFICERS WAS SUBSEQUENTLY CHANGED?

16 A NO SIR, I DON'T.

17 Q THAT IS ALL I HAVE.

18 THE COURT: ANYTHING ELSE, MS. EVANS?

19 MS. EVANS: NO, YOUR HONOR.

20 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT
21 WITNESS, PLEASE.

22 MR. GRIFFIN: THE DEFENSE WOULD CALL BILL KEHL TO THE
23 STAND.

24 BILL KEHL, AFTER BEING DULY SWORN, TESTIFIED AS
25 FOLLOWS:

1968

DIRECT EXAMINATION

BY MR. GRIFFIN:

Q MR. KEHL, WHAT DO YOU DO?

A I AM AN ATTORNEY.

Q WITH WHOM?

A WITH THE WYCHE, BURGESS, FREEMAN AND PARHAM LAW FIRM.

Q AND WHERE ARE YOU LOCATED?

A GREENVILLE, SOUTH CAROLINA.

Q HOW LONG HAVE YOU BEEN AN ATTORNEY, MR. KEHL?

A FORTY SOMETHING YEARS.

Q HOW LONG HAVE YOU BEEN WITH THE WYCHE LAW FIRM?

A ALL OF THAT TIME.

Q HOW MANY LAWYERS DOES YOUR FIRM HAVE?

A PRESENTLY 34.

Q WHAT TYPE OF WORK DOES YOUR FIRM DOES?

A THE FIRM DOES A FULL RANGE OF LEGAL WORK, CORPORATE, SECURITIES, LITIGATION, TRUST AND ESTATES, VIRTUALLY EVERYTHING EXCEPT DOMESTIC AND CRIMINAL.

Q GOOD FOR YOU. WHERE DID YOU GO TO SCHOOL?

A I WENT TO HARVARD COLLEGE AND THEN THE UNIVERSITY OF VIRGINIA LAW SCHOOL.

Q AND IS A MR. TOM WYCHE WITH YOUR FIRM AS WELL?

A YES, HE IS A SENIOR PARTNER IN THE FIRM.

Q DO YOU RECALL A COMPANY CALLED HOMEGOLD?

A YES, I DO.

1969

1 Q HOMEGOLD FINANCIAL, INC. AND HOMEGOLD, INC?

2 A I DO.

3 Q AND CAROLINA INVESTORS?

4 A YES, SIR.

5 Q AND DID YOUR FIRM DO LEGAL WORK FOR THOSE COMPANIES?

6 A YES, WE DID.

7 Q DO YOU ROUGHLY RECALL WHEN YOUR FIRM BEGAN DOING
8 LEGAL WORK FOR THOSE COMPANIES?

9 A FOR HOMEGOLD WE STARTED DOING LEGAL WORK IN 1973 WHEN
10 THE COMPANY WAS KNOWN AS NATIONAL RAILWAY UTILIZATION
11 CORPORATION.

12 Q AND WAS MR. WYCHE INVOLVED AS AN OFFICER OF THAT
13 ENTITY?

14 A NO, HE WAS NOT.

15 Q DID YOU COME TO LEARN THROUGH YOUR REPUTATION OF AN
16 ENTITY OF CAROLINA INVESTORS?

17 A YES, I BECAME AWARE OF CAROLINA INVESTORS WHEN THE
18 THEN EMERGENT CORPORATION ACQUIRED CAROLINA INVESTORS IN
19 1991.

20 Q AND DID YOUR FIRM BEGAN TO REPRESENT CAROLINA
21 INVESTORS AFTER THAT?

22 A YES, WE DID.

23 Q AND DID YOU CONTINUE TO REPRESENT CAROLINA INVESTORS
24 UP UNTIL JANUARY OF 2003?

25 A YES, WE DID.

1970

1 Q WHAT TYPE OF LEGAL WORK DID YOUR FIRM DO FOR CAROLINA
2 INVESTORS?

3 A THE PRIMARY WORK THAT WE DID WAS PREPARING THE ANNUAL
4 PROSPECTUS THAT ENABLED IT TO SELL ITS NOTES AND
5 DEBENTURES.

6 Q AND PRIOR TO YOUR FIRMS REPRESENTATIONS OF CAROLINA
7 INVESTORS HAS YOUR LAW FIRM BEEN INVOLVED IN THAT TYPE OF
8 LEGAL WORK BEFORE?

9 A YES, WE HAVE. FOR MANY YEARS, GOING BACK TO THE
10 1970'S.

11 Q WILL YOU TELL THE JURY WHAT A PROSPECTUS IS, PLEASE?

12 A A PROSPECTUS IS A DOCUMENT THAT DESCRIBES THE COMPANY
13 THAT IS GOING TO ISSUE THE SECURITIES OF THAT INVESTORS
14 CONSIDERING TO PURCHASE. THE PROSPECTUS DESCRIBES THE
15 COMPANIES OPERATIONS, IT CONTAINS FINANCIAL INFORMATION
16 AND PERHAPS MOST IMPORTANTLY IT CONTAINS THE RISK FACTORS
17 THAT ARE INVOLVED IN MAKING AN INVESTMENT IN THE COMPANY.

18 Q IN CAROLINA INVESTORS, WHAT ENTITY OR ENTITIES HAD
19 REGULATORY OVERSIGHT OVER THEIR PROSPECTUS?

20 A IF YOU ARE ASKING ABOUT THE SECURITIES ASPECT OF IT
21 IT WAS THE SOUTH CAROLINA SECURITIES COMMISSION.

22 Q AND WITH THE PROSPECTUS, IS THAT REQUIRED TO BE FILED
23 WITH THE SECURITIES COMMISSION?

24 A IT WAS REQUIRED TO BE FILED WITH THE SOUTH CAROLINA
25 SECURITIES COMMISSIONER.

1971

1 Q ARE OTHER DOCUMENTS RELATED TO THAT PROSPECTUS?

2 A ANYTHING RELATED TO THE SELL OF A SECURITY WAS
3 REQUIRED TO BE FILED.

4 Q AND GENERALLY, WHAT OTHER TYPES WERE REQUIRED TO BE
5 FILED?

6 A THAT WAS THE PRIMARY THING.

7 Q ADVERTISEMENTS REQUIRED TO BE FILED?

8 A YES, ADVERTISEMENTS WERE REQUIRED TO BE FILED.

9 Q LET'S JUMP FORWARD TO THE YEAR OF 2001, DID YOUR LAW
10 FIRM REPRESENT CAROLINA INVESTORS IN CONNECTION WITH THE
11 PREPARATION OF THE PROSPECTUS THAT WAS FILED IN 2001?

12 A YES.

13 Q DOES YOUR FIRM CHARGE MONEY FOR THIS LEGAL SERVICE?

14 A YES, OF COURSE.

15 Q AND THEY CHARGE CAROLINA INVESTORS FOR THE WORK IT
16 DID IN PREPARATION OF THE PROSPECTUS?

17 A YES, WE DID.

18 Q DOES THE FIRM KEEP BILLINGS AND SEND OUT BILLS THAT
19 HAVE DESCRIPTIONS OF THE WORK EFFORT ON BEHALF OF ITS
20 CLIENTS?

21 A YES.

22 Q I AM GOING TO SHOW YOU WHAT I HAVE MARKED AS
23 DEFENDANT'S EXHIBIT NUMBER 6 AND ASK IF YOU RECOGNIZE THAT
24 DOCUMENT?

25 A I RECOGNIZE IT HAS A BILL FROM THE LAW FIRM, I AM NOT

1972

1 SURE I HAVE SEEN THIS PARTICULAR BILL BUT IT IS CERTAINLY
2 A BILL WITH THE WYCHE, BURGESS LAW FIRM.

3 Q IT IS A BUSINESS RECORD OF YOUR FIRM?

4 A YES, IT IS.

5 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO MOVE
6 DEFENDANT'S EXHIBIT NUMBER 6 INTO EVIDENCE.

7 THE COURT: ANY OBJECTION?

8 MS. EVANS: I DON'T HAVE AN OBJECTION AS A BUSINESS
9 RECORD BUT I WOULD, I DON'T BELIEVE MR. KEHL WAS INVOLVED
10 WITH THE CAROLINA INVESTORS IN 2001.

11 THE COURT: YOU CAN CROSS-EXAMINE HIM ABOUT THAT. AS
12 FAR AS THE DOCUMENT.

13 MS. EVANS: I HAVE NO OBJECTION, NO SIR.

14 THE COURT: DEFENDANT'S 6 IS ADMITTED.

15 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 6 WAS ADMITTED
16 INTO EVIDENCE.)

17 Q MR. KEHL, I JUST PUT THE DOCUMENT UP HERE FOR THE
18 JURYS BENEFIT AND GENERALLY ASK, UNDER THE SECTION THAT
19 SAYS DESCRIPTION, THAT 2001 PROSPECTUS, CAN YOU SEE IT
20 BACK THERE, SIR.

21 A YES, BARELY.

22 Q AND WITH REGARD TO THE TOTAL AMOUNT, WAS IT JUST FOR
23 THE DOCUMENT, THE INVOICE WAS MAY 9TH OF 2001?

24 A I SEE THAT DATE ON THE BILL, YES SIR.

25 Q LET ME GIVE YOU A COPY. AND THEN ON THE NEXT PAGE IS

1973

1 THERE A DESCRIPTION OF SERVICES RENDERED?

2 A YES.

3 Q AND THERE ARE INITIALS OUT TO THE LEFT UNDER, WILL
4 YOU EXPLAIN TO THE JURY HOW YOUR FIRM KEEPS BILLING AND
5 WHAT THOSE INITIALS REPRESENT?

6 A THE INITIALS ARE THE INITIALS OF THE ATTORNEY DOING
7 THE PARTICULAR SERVICE AND IN THIS CASE IT APPEARS TO BE
8 EXCLUSIVELY ERIC GRABEN AND THE NEXT COLUMN IS THE DATE
9 THAT THE SERVICES WERE RENDERED. AND THE NEXT TEXT
10 IMPLICATES WHAT THOSE SERVICES WERE.

11 Q AND SO EKG IS ERIC GRABEN?

12 A YES, SIR.

13 Q AND THEN AT THE BOTTOM IT HAS PROFESSIONAL SERVICES
14 AND A DOLLAR AMOUNT, IN THIS INSTANCE IT IS \$3,307.50.

15 A YES, SIR.

16 Q AND HOW IS THAT DOLLAR AMOUNT ARRIVED FROM THIS COST?

17 A IT WAS BASED UPON THE AMOUNT OF TIME INVOLVED AND THE
18 OTHER FACTORS THAT LAWYERS CONSIDER SUCH AS THE COMPLEXITY
19 AND THE NOVELTY.

20 Q DO YOU MULTIPLE AN HOURLY RATE BY THE HOURS?

21 A HOURS ARE PART OF THE INGREDIENT BUT NOT THE SOLE
22 INGREDIENT.

23 Q AND IN FOR THE 2001 PROSPECTUS, THE TOTAL OF THE
24 BILL, THE GRAND TOTAL OF THE BILL IS WHAT, SIR?

25 A \$3,417.00.

1974

1 Q AND IT DOESN'T REFLECT, BACK TO THE DESCRIPTION ANY
2 SERVICES RENDERED BY YOU PERSONALLY, DOES IT?

3 A IT DOES NOT.

4 Q OKAY. WITH REGARD TO THESE ENTRIES WHERE IT
5 REFERENCES A REVISED DRAFT OF PROSPECTUS RECEIVED BY
6 RHONDA JOHNSON, CONFERENCES WITH BILL LONG, RHONDA JOHNSON
7 AND LARRY OWEN, CONFERENCE WITH CARY HALL. HOW DOES THAT,
8 IN A NORMAL COURSE OF BUSINESS, HOW DOES INFORMATION END
9 UP ON A BILL?

10 A THE ATTORNEY INVOLVED RECORDS AS HE GOES ALONG WHO HE
11 IS TALKING TO AND WHAT HE IS DOING.

12 Q NOW, WERE YOU INVOLVED IN THE PREPARATION OF THE
13 PROSPECTUS FOR 2002?

14 A YES, I WAS.

15 Q AND I WANT TO SHOW YOU A DOCUMENT, SIR. AND DO YOU
16 RECOGNIZE DEFENDANT'S EXHIBIT NUMBER 17?

17 A I DO.

18 Q AND WHAT IS IT, SIR?

19 A IT IS A BILLING DATED APRIL 12TH OF 2002 FOR SERVICES
20 IN CONNECTION WITH THE 2002 CAROLINA INVESTORS PROSPECTUS.

21 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO MOVE
22 DEFENDANT'S EXHIBIT 17 INTO EVIDENCE.

23 THE COURT: ANY OBJECTION?

24 MS. EVANS: NO OBJECTION, YOUR HONOR.

25 THE COURT: DEFENDANT'S 17 IS ADMITTED.

1 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 17 WAS ADMITTED
2 INTO EVIDENCE.)

3 Q MR. KEHL, WILL YOU TELL THE JURY WHAT THE GRAND TOTAL
4 OF THE INVOICE FOR THE 2002 PROSPECTUS?

5 A IT WAS \$24,500.00.

6 Q AND DO YOU RECALL THE COMPONENTS THAT WENT INTO THAT
7 BILL, WERE THEY SIMILAR AS TO THE PREVIOUS YEAR?

8 A SIMILAR BUT MORE EXTENSIVE.

9 Q AND IN WHAT WAY WAS IT MORE EXTENSIVE?

10 A MORE ACTIVITY, MORE PEOPLE INVOLVED.

11 Q AND IF YOU WILL IDENTIFY ONCE AGAIN THE INITIALS IN
12 THE LEFT-HAND COLUMN, CHH, WHO IS THAT?

13 A CHH IS MY PARTNER, CARY HALL.

14 Q AND WHO IS THIS?

15 A THAT IS ME, THAT IS I.

16 Q AND THE WORK IN THIS INSTANCE BEGAN ON WHAT DATE FOR
17 THIS INVOICE?

18 A IT LOOKS LIKE MARCH 18TH.

19 Q AND THEN ON THE 19TH OF MARCH IS THERE AN ENTRY FOR
20 YOU ON THIS INVOICE?

21 A YES, IT SHOWS A CONFERENCE WITH MY PARTNER CARY HALL,
22 REVIEW OF THE PROSPECTUS AND A TELEPHONE CONFERENCE WITH
23 SHANE SMITH, IT LOOKS LIKE.

24 Q AND SITTING HERE TODAY DO YOU RECALL WHO MR. SMITH
25 WAS?

1976

1 A YES, HE WAS IN THE FINANCIAL DEPARTMENT AT HOMEGOLD.

2 Q AND IS THERE A SEPARATE ENTRY FOR THE SAME DAY WITH A
3 CALL TO MR. SMITH?

4 A YES.

5 Q AND THEN MOVING DOWN ON THE 21ST, DO YOU HAVE AN
6 ENTRY OF A TELEPHONE CALL WITH MR. LARRY OWEN?

7 A YES.

8 Q AND THEN ON THE 22ND THERE IS A REFERENCE TO MS.
9 SUSANNE CAUGHMAN, DO YOU RECALL WHO SHE WAS?

10 A YES, I RECALL HER AS A PERSON IN THE FINANCIAL
11 DEPARTMENT AT HOMEGOLD.

12 Q AND THEN MOVING ON DOWN ON THE MARCH 25TH, 2002 THERE
13 IS ANOTHER ENTRY FOR YOU?

14 A YES, I SEE THAT.

15 Q AND THEN ON THE 27TH DOWN AT THE BOTTOM THERE IS A
16 REFERENCE OF A CONFERENCE CALL, MARCH 27TH OF 2002?

17 A YES.

18 Q CAN YOU IDENTIFY THIS, TELL THE JURY THE NAMES OF THE
19 PEOPLE?

20 A THAT ENTRY SHOWS A CONFERENCE CALL WITH DAVID GAFFNEY
21 WHO WAS THE GENERAL COUNSEL AT HOMEGOLD. SHANE SMITH WHOM
22 I HAVE IDENTIFIED BEFORE AND ALSO SUSANNE CAUGHMAN.

23 Q AND THERE WAS ANOTHER CONFERENCE WITH CHH AND EDG,
24 WHAT DOES THAT MEAN?

25 A THAT CONFERENCE WITH CARY HALL AND ERIC GRABEN.

1977

1 Q THE TWO OTHER LAWYERS IN YOUR LAW FIRM?

2 A YES.

3 Q AND THE FOLLOWING DAY THERE IS ANOTHER CALL TO MR.
4 GAFFNEY?

5 A YES.

6 Q AND THE TURNING THE PAGE, THERE IS ANOTHER ENTRY FOR
7 YOU ON APRIL THE 1ST OF 2002 IN, A CALL TO MR. GAFFNEY?

8 A YES, I SEE THAT.

9 Q AND ONCE AGAIN HE IS THE IN-HOUSE LAWYER FOR
10 HOMEGOLD?

11 A HE WAS THE GENERAL COUNSEL AT HOMEGOLD.

12 Q NOW, AND THEN THE NEXT ENTRY ON WKK OF 4/2/2002, CAN
13 YOU PLEASE READ THAT FOR THE JURY, SIR?

14 A IF WE ARE LOOKING AT THE SAME ONE IT IS A TELEPHONE
15 CONFERENCE WITH DAVID GAFFNEY AND DRAFTING REVISION TO
16 RISK FACTORS.

17 Q I WANT TO ASK YOU ABOUT THAT, REVISIONS TO RISK
18 FACTORS, WHAT ARE YOU REFERRING TO THERE?

19 A WELL, AS I EXPLAINED EARLIER, AN IMPORTANT ASPECT OF
20 ANY PROSPECTUS IS THE RISK FACTORS THAT DESCRIBE THE RISKS
21 THAT ARE INVOLVED IN MAKING THAT PARTICULAR INVESTMENT.

22 Q AND THEN THE ENTRY ON THE NEXT DATE, IT SAYS REVIEW
23 AND REVISIONS OF LETTERS OF THE SECURITIES COMMISSION. DO
24 YOU RECALL WHAT THAT MIGHT OF BEEN?

25 A YES, I WAS INFORMED BY LARRY OWEN THAT THE SECURITIES

1978

1 COMMISSION WANTED A LETTER SIGNED BY EVERY BOARD MEMBER OF
2 CAROLINA INVESTORS EXPRESSING THEIR BELIEF THAT THE
3 INTER-COMPANY LOAN WOULD BE REPAID.

4 Q AND DOES THIS ENTRY REFLECT YOUR WORK AND REVIEW AND
5 REVISION OF THAT PARTICULAR LETTER?

6 A YES.

7 Q AND THEN IT GOES ON, A TELEPHONE CONFERENCE WITH
8 DAVID GAFFNEY AND LARRY OWEN AND JACK STERLING, IS THAT
9 CORRECT?

10 A YES.

11 Q JUST FOR THE JURY WHO WAS MR. STERLING?

12 A MR. STERLING AT THAT TIME WAS THE CHAIRMAN OF THE
13 BOARD OF DIRECTORS OF HOMEGOLD.

14 Q WAS HE ALSO INVOLVED IN NATIONAL RAILWAY UTILIZATION
15 CORPORATION BACK IN THE EARLY 70'S?

16 A NOT THAT EARLY, HE BECAME INVOLVED WHEN THE COMPANY
17 EXITED THE RAILROAD BUSINESS.

18 Q DO YOU RECALL ROUGHLY WHAT TIME SPAN THAT WAS?

19 A SOMETIME IN THE 80'S.

20 Q AND THEN THE NEXT ENTRY, 4/4/02, IT SAYS WORK ON
21 GOING CONCERN DISCLOSURE. DO YOU RECALL WHAT THAT WORK
22 WAS ABOUT?

23 A YES, I DID, WE HAVE CONVERSATIONS, I DID, WITH PEOPLE
24 AT HOMEGOLD, DAVID GAFFNEY, THE IN-HOUSE COUNSEL AND KEVIN
25 MARTIN, THE CFO.

1 Q AND THEN THERE IS AN EKG AND THAT WOULD BE MR.
2 GRABEN?

3 A CORRECT.

4 Q AND THEN ON 4/5/02 THERE IS A TELEPHONE CONFERENCE
5 WITH MR. STERLING, MR. GAFFNEY, PAUL BANNINGER, DO YOU
6 RECALL WHO MR. BANNINGER WAS?

7 A HE WAS ONE OF THE OFFICERS AT HOMEGOLD.

8 Q AND THEN MR. CY BURGESS, DO YOU RECALL WHO HE WAS?

9 A YES, CY BURGESS WAS A PARTNER AT ELLIOTT DAVIS.

10 Q AND WAS A PROSPECTUS ULTIMATELY FILED FOR 2002?

11 A YES, SIR.

12 Q AND I WILL SHOW YOU WHAT IS IN EVIDENCE AS STATE'S
13 EXHIBIT NUMBER 50 AND ASK IF, IS THAT THE FINAL WORK
14 PRODUCT THAT RESULTED FROM, THAT WAS BILLED FOR THAT WAS
15 ON DEFENDANT'S 70?

16 A I BELIEVE SO.

17 Q OKAY. AND TURN TO PAGE F11. IS THAT NOTE ADDRESS
18 THE GOING CONCERN QUALIFICATION?

19 A YES, IT DOES.

20 Q I AM GOING TO STOP RIGHT THERE AND I WANT TO ASK YOU
21 TO LOOK AT ANOTHER DOCUMENT RIGHT QUICK. DO YOU RECOGNIZE
22 DEFENDANT'S EXHIBIT 18?

23 A I RECOGNIZE THE COVERSHEET AS BEING A FAX,
24 TRANSMITTAL COVERSHEET FROM DAVID GAFFNEY TO ME AND IT
25 REFERS TO FOUR DIFFERENT ATTACHMENTS, ONLY ONE OF WHICH IS

1980

1 ATTACHED BUT I DO RECOGNIZE THE ONE ATTACHMENT THAT
2 APPEARS.

3 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO MOVE INTO
4 EVIDENCE DEFENDANT'S 18.

5 MS. EVANS: YOUR HONOR, I THINK WE NEED TO APPROACH.
6 THE COURT: ALL RIGHT.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
8 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
9 JURY.)

10 THE COURT: WE ARE GOING TO BREAK FOR LUNCH AT THIS
11 TIME. DON'T DISCUSS THE CASE AND WE WILL START BACK AT 10
12 MINUTES UNTIL 2:00. YOU ARE EXCUSED AND EVERYONE ELSE
13 STAY SEATED, PLEASE.

14 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
15 A LUNCH BREAK.)

16 THE COURT: WE WILL BREAK UNTIL 1:50, MR. KEHL, DON'T
17 DISCUSS YOUR TESTIMONY DURING THE BREAK. LET ME SEE
18 COUNSEL UP HERE, PLEASE.

19 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

20 THE COURT: IS THE STATE READY?

21 MS. EVANS: YES, YOUR HONOR.

22 THE COURT: MR. GRIFFIN?

23 MR. GRIFFIN: YES, SIR.

24 THE COURT: BRING THE JURY IN, PLEASE.

25 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT

1 APPROXIMATELY 1:55 P.M.)

2 CONTINUE DIRECT EXAMINATION

3 BY MR. GRIFFIN:

4 Q MR. KEHL, BEFORE THE BREAK YOU WERE LOOKING AT
5 DEFENDANT'S EXHIBIT NUMBER 18 AND I JUST WANT TO ASK, IS
6 THAT DOCUMENT COME OUT OF THE CLIENT FILES OF CAROLINA
7 INVESTORS OR HOMEGOLD FROM YOUR FIRM?

8 A YES, IT CAME OUT OF THE WYCHE FILES, YOU CAN
9 RECOGNIZE IT IN PART BY THE STAMP ON IT.

10 Q AND WERE THOSE FILES KEPT IN THE ORDINARY COURSE OF
11 BUSINESS OF THE WYCHE FIRM?

12 A YES.

13 MR. GRIFFIN: AT THIS TIME I WOULD LIKE TO INTRODUCE
14 DEFENDANT'S NUMBER 18 INTO EVIDENCE.

15 THE COURT: ANY OBJECTION?

16 MS. EVANS: NO OBJECTION.

17 THE COURT: DEFENDANT'S 18 IS ADMITTED.

18 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 18 WAS ADMITTED
19 INTO EVIDENCE.)

20 Q I WOULD LIKE FOR YOU TO LOOK AT DEFENDANT'S 19 AS
21 WELL. IS THAT ALSO A COPY OF A CLIENT CORRESPONDENCE OF
22 CAROLINA INVESTORS AND HOMEGOLD FILE?

23 A YES.

24 Q AND WAS IT MAINTAINED IN THE CLIENT FILES IN YOUR
25 FIRM FOR THAT CLIENT IN THE ORDINARY COURSE OF BUSINESS?

1 A YES, SIR.

2 MR. GRIFFIN: I WOULD LIKE TO INTRODUCE DEFENDANT'S
3 19 INTO EVIDENCE.

4 THE COURT: ANY OBJECTION?

5 MS. EVANS: NO, OBJECTION, YOUR HONOR.

6 THE COURT: DEFENDANT'S 19 IS ADMITTED.

7 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 19 WAS ADMITTED
8 INTO EVIDENCE.)

9 Q I WILL SHOW YOU DEFENDANT'S EXHIBIT NUMBER 20 AND ASK
10 YOU, WHICH IS A STRING OF ELECTRONIC COMMUNICATIONS AND I
11 WANT TO ASK YOU, SIMILARLY, WAS THAT DOCUMENT, IT IS A
12 PAPER VERSION OF ELECTRONIC COMMUNICATIONS. BUT IS THAT
13 DOCUMENT KEPT IN THE CLIENT FILES FOR HOMEGOLD AND
14 CAROLINA INVESTORS OF YOUR LAW FIRM?

15 A YES.

16 Q AND WAS IT KEPT IN THE ORDINARY COURSE OF BUSINESS?
17 A YES, IT WAS.

18 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO INTRODUCE
19 DEFENDANT'S NUMBER 20.

20 THE COURT: ANY OBJECTION?

21 MS. EVANS: NO OBJECTION.

22 THE COURT: DEFENDANT'S EXHIBIT NUMBER 20 IS
23 ADMITTED.

24 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 20 WAS ADMITTED
25 INTO EVIDENCE.)

1 Q MR. KEHL, I BELIEVE NUMBER 18 IS AND IF YOU WILL TELL
2 THE JURY, I THINK YOU DID THIS AS A FACSIMILE TO YOU FROM
3 DAVID GAFFNEY, IS THAT CORRECT?

4 A THAT IS CORRECT.

5 Q AND IT IS DATED APRIL 3RD OF 2002?

6 A YES.

7 Q AND ON THE SECOND PAGE OF THE DOCUMENT IT IS, IT
8 CONTAINS SUGGESTED LANGUAGE FOR A GOING CONCERN PARAGRAPH,
9 DOES IT NOT?

10 A YES, IT DOES.

11 Q AND WAS THAT LANGUAGE PROVIDED TO YOU BY THE CLIENT?

12 A YES, IT WAS.

13 Q AND WAS, TO THE BEST OF YOUR RECOLLECTION, WAS THIS
14 THE INITIAL DRAFT SENT TO YOU FOR REVIEW?

15 A I DON'T KNOW IF IT WAS THE INITIAL DRAFT OR NOT BUT
16 IT WAS SENT TO ME FOR REVIEW BY THE CLIENT.

17 Q AND DEFENDANT'S 19, I BELIEVE, WHAT IS 19.

18 A IT IS ALSO A PRELIMINARY DRAFT OF THE NOTE TO GOING
19 CONCERN FOOTNOTE, THE FINANCIAL STATEMENTS.

20 Q I WILL ASK YOU TO LOOK AT THE FRONT PAGE OF 19 AND
21 ASK WHO IS THAT FACSIMILE FROM?

22 A IT WAS FROM JACK STERLING TO ME.

23 Q AND IS IT LIKEWISE DATED APRIL THE 3RD OF 2002?

24 A YES, IT IS.

25 Q AND AS BEST YOU RECALL, DOES IT HAVE MARKUPS OF THE

1984

1 PROPOSED GOING CONCERN LANGUAGE FROM THE, WHAT IS ATTACHED
2 TO DEFENDANT'S 18?

3 A YES, IT HAS A MARKUP OF SUGGESTED LANGUAGE.

4 Q WAS THIS, DO YOU RECALL IF THESE MARKUPS WERE MADE BY
5 MR. STERLING OR SENT BY HIM?

6 A IT IS MY RECOLLECTION THAT THEY WERE SENT BY MR.
7 STERLING OR HIS COMMENTS.

8 Q OKAY. AND THEN THE THIRD DOCUMENT IS DEFENDANT'S
9 EXHIBIT NUMBER 20, IS A STRING OF EMAILS COMMUNICATIONS,
10 IS THAT CORRECT?

11 A YES.

12 Q AND WHAT I WOULD LIKE TO DO IS START AT THE BOTTOM OF
13 THE ORIGINAL MESSAGE, DOWN AT THE VERY BOTTOM AND IT IS,
14 THIS IS DATED, THAT IS DATED APRIL THE 4TH OF 2002 AT 6:10
15 P.M.

16 A YES, IT IS.

17 Q AND IF YOU WILL READ FOR THE JURY THE MESSAGE WHICH
18 IS ON THE SECOND PAGE OF THIS DOCUMENT?

19 A THE MESSAGE, DAVID AND ALL, I HAVE MADE THE REVISIONS
20 THAT DAVID AND I DISCUSSED AND HAVE INCORPORATED CY
21 BURGESS' COMMENTS IN THE ATTACHED REVISION.

22 Q CY BURGESS WAS WITH WHOM, SIR?

23 A CY BURGESS IS A PARTNER AT ELLIOTT DAVIS.

24 Q AND THE SUBJECT OF THIS IS FIFTH REVISION TO GOING
25 CONCERN DISCLOSURE?

1 A YES.

2 Q AND IT IS A SUBJECT, WHAT DOES THAT REFER TO, FIFTH
3 REVISION?

4 A IT REFERS TO THE GOING CONCERN DISCLOSURE AND
5 SPECIFICALLY, APPARENTLY FOOTNOTE TWO TO THE FINANCIAL
6 STATEMENTS OF CAROLINA INVESTORS THAT DEAL WITH THE GOING
7 CONCERN ISSUE.

8 Q WERE THERE FOUR EARLIER VERSIONS OF THIS DOCUMENT
9 THAT YOU ARE WORKING ON?

10 A I WOULD ASSUME THAT.

11 Q YES, SIR. ⁸ NOW, COMING BACK TO THE FIRST PAGE OF THIS
12 EXHIBIT AND WORKING OUR WAY UP, THE FOLLOWING DAY ON
13 FRIDAY, APRIL THE 5TH AT 9:31 CAN YOU TELL WHO THAT
14 MESSAGE IS FROM?

15 A IT IS FROM DAVID GAFFNEY TO JOHN STERLING AND A COPY
16 TO ME.

17 Q AND ABOVE THAT, THAT MESSAGE IS A MESSAGE FROM WHOM?

18 A FROM JOHN STERLING TO DAVID GAFFNEY WITH A COPY TO
19 ME.

20 Q AND THAT MESSAGE, CAN YOU READ THAT TO THE JURY,
21 PLEASE?

22 A YES. THANKS, DID NOT REALLY UNDERSTAND, REASON TO
23 REPEAT AGAIN THE AUDITOR ON GOING CONCERN STUFF. BUT
24 TRUST YOUR AND BILL'S JUDGMENT IF YOU THINK NECESSARY.
25 OTHER RISK SECTIONS ALREADY DISCUSS AFFILIATE LOANS,

1 ETCETERA AND FINANCIAL PROBLEMS OF AFFILIATE. OPINION
2 LETTER ALSO REFERS READER TO THESE CONDITIONS. DO WHAT
3 YOU THINK IS NECESSARY BUT IF POSSIBLE DO NOT OVERKILL.

4 Q WHAT IS BEING REFERRED TO IN THAT MESSAGE?

5 A I BELIEVE WHAT HE IS REFERRING IS NOT THE TEXT OF THE
6 FINANCIAL STATEMENT FOOTNOTE BUT RATHER THE DISCUSSION
7 THAT APPEARS AS RISK FACTOR NUMBER ONE AT THE FRONT OF THE
8 PROSPECTUS.

9 Q AND WE WILL GET TO THAT IN A MOMENT. I WILL ASK YOU
10 TO LOOK AT THE FINAL MESSAGE, 10:40 A.M. AND TELL THE JURY
11 WHO IS THAT FROM ^{IT} AND TO WHOM IT IS SENT.

12 A IT IS FROM ME TO JOHN STERLING WITH A COPY TO DAVID
13 GAFFNEY.

14 Q COULD YOU PLEASE READ THAT TO THE JURY?

15 A YES. JACK, THE REASON FOR THE DISCLOSURES
16 SPECIFICALLY RELATED TO THE GOING CONCERN LIMITATION IS
17 BECAUSE THAT OPINION BY THE AUDITORS IS SO MATERIAL THAT
18 IT HAS TO BE HIGHLIGHTED AS A SEPARATE RISK EVEN THOUGH
19 CERTAIN ASPECTS OF THE RISK ARE DISCLOSED IN OTHER RISK
20 FACTORS. ALSO THE FACT THAT THE INFORMATION APPEARS IN
21 NOTES TO THE FINANCIAL STATEMENTS, IT IS NOT SUFFICIENT.
22 THE DISCLOSURE NEEDS TO BE ON THE FRONT PART OF THE
23 PROSPECTUS AND CONSISTENT TO WHAT IS SAID IN THE NOTES OF
24 THE FINANCIALS. I STAYED AWAKE A GOOD BIT LAST NIGHT
25 THINKING ABOUT HOW THE RISK FACTOR COULD BE SOFTENED. YOU

1987

1 WILL SEE THE RESULTS OF THAT SLEEPLESSNESS IN THE ATTACHED
2 SIXTH REVISION WHICH HAS BEEN ORALLY APPROVED BY ELLIOTT
3 DAVIS AND NOW SUBMITTED IN WRITING. DAVID AND I DISCUSSED
4 MORE AGGRESSIVE EFFORTS WITH CY BURGESS OF ELLIOTT DAVIS,
5 ED, WHICH WOULD HAVE POSITIONED THE COMPANY WITH A
6 DIFFERENT OPINION, THE OPINION OF ED. BUT THEY WERE NOT
7 SUCCESSFUL ABOUT OUR BEING WILLING TO HAVE THE ED ISSUE AN
8 ADVERSE OPINION. IN SHORT, OUR DISCUSSION COULDN'T BE IN
9 CONFLICT TO WHAT IS IN THE NOTES TO THE FINANCIALS. I
10 BELIEVE THAT EVERYONE WILL BE COMFORTABLE WITH, (OR AT
11 LEAST RECONCILE), THE PRESENT FORM OF THE DISCLOSURE.

12 Q AND WE ARE TALKING ABOUT THE DISCLOSURES OF THE RISK
13 FACTORS OF THE PROSPECTUS?

14 A YES.

15 Q AND THOSE DISCLOSURES, ACCORDING TO THIS DOCUMENT,
16 YOU GOT SOME APPROVAL FROM ELLIOTT DAVIS AS WELL?

17 A YES.

18 Q NOW, MR. KEHL, DURING THE PROCESS OF PREPARING THE
19 2002 PROSPECTUS DID YOU EVER SPEAK WITH MR. SHEPPARD?

20 A NO, I DID NOT.

21 Q HAVE YOU EVER SPOKE TO MR. SHEPPARD?

22 A NOT DIRECTLY THAT I RECALL.

23 Q I AM GOING TO SHOW YOU WHAT IS STATE'S EXHIBIT 50,
24 YOU HAVE SEEN IT BEFORE AND CAN YOU IDENTIFY FOR ME WHERE
25 THE DISCLOSURE OF THE GOING CONCERN PROVISIONS ARE LOCATED

1988

1 IN THE RISK FACTORS?

2 A IT IS LOCATED ON PAGE TWO, RISK FACTOR NUMBER ONE.

3 Q AND THIS IS THE FINAL VERSION OF THE DISCLOSURE OF
4 THE RISK FACTORS THAT YOUR FIRM APPROVED IN CONSULTATION
5 WITH ELLIOT DAVIS?

6 A I BELIEVE SO.

7 Q IN THIS DOCUMENT THE, WHAT IS THE PURPOSE OF SPECIAL
8 RISK FACTOR NUMBER ONE IN THIS PROSPECTUS?

9 A TO BRING TO THE ATTENTION OF THE PROSPECTIVE INVESTOR
10 THE RISK THAT THE COMPANY MAY NOT CONTINUE AS A GOING
11 CONCERN.

12 Q ON THE LAST PARAGRAPH, THE LAST SENTENCE OF THIS
13 DOCUMENT, THERE IS A REFERENCE THAT SAYS, MANAGEMENT ALSO
14 BELIEVES, BASED UPON INDEPENDENT APPRAISALS OF THE
15 MORTGAGE ORIGINATION DIVISION OF HGFI THAT IF NECESSARY,
16 THE SALE OF THAT DIVISION COULD PROVIDE PROCEEDS
17 SUFFICIENT TO REPAY THESE LOANS?

18 A CORRECT.

19 Q WERE YOU AWARE OF APPRAISALS THAT HAD BEEN PERFORMED
20 OF THE RETAIL MORTGAGE DIVISION?

21 A I HAD BEEN INFORMED ABOUT THEM.

22 Q HAD YOU PROVIDED DRAFTS OF THOSE DOCUMENTS?

23 A NOT AT THAT TIME.

24 Q MR. KEHL, I WILL SHOW YOU WHAT IS MARKED FOR
25 IDENTIFICATION AS DEFENDANT'S EXHIBIT NUMBER 21. AND JUST

1 ASK IF YOU CAN IDENTIFY THAT DOCUMENT AND WHETHER IT
2 REFRESHES YOUR RECOLLECTION, WHETHER YOU HAVE RECEIVED
3 THAT DRAFT.

4 A I HAVE SEEN IT SUBSEQUENT 2002, I DID NOT SEE IT AT
5 THAT TIME.

6 Q IS THAT DOCUMENT ADDRESSED TO YOU?

7 A IT APPEARS THAT KEVIN MARTIN'S NAME IS CROSSED OUT
8 AND MINE IS WRITTEN IN.

9 Q DOES IT BEAR A LEGEND IN THE RIGHT-HAND CORNER IN
10 WHICH INDICATE THAT DOCUMENT CAME OUT OF THE CLIENT FILES
11 OF CAROLINA INVESTORS OR HOMEGOLD FROM YOUR LAW FIRM?

12 A IT DOES.

13 Q SIMILARLY TO THE OTHER DOCUMENTS, SIMILAR LEGEND, WAS
14 KEPT IN THE NORMAL COURSE OF BUSINESS OF YOUR FIRM?

15 A IT WOULD BE APPEAR TO BE.

16 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO MOVE
17 DEFENDANT'S EXHIBIT NUMBER 21 INTO EVIDENCE.

18 THE COURT: ANY OBJECTION?

19 MS. EVANS: NO OBJECTION.

20 THE COURT: DEFENDANT'S 21 IS ADMITTED.

21 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 21 WAS ADMITTED
22 INTO EVIDENCE.)

23 Q THE LEGEND AT THE TOP OF THE PAGE, DOES IT INDICATE
24 THAT IT WAS FAXED ON APRIL 3RD OF 2002 AT 1200?

25 A YES, IT DOES.

1 Q AND THAT FAX IS 803-365-2503, WHOSE NUMBER IS THAT?

2 A I BELIEVE THAT IS A HOMEGOLD NUMBER.

3 Q AND DO YOU HAVE ANY RECOLLECTION OF WHEN YOUR FIRM
4 WOULD OF RECEIVED THIS DOCUMENT?

5 A I ASSUME THAT THE FIRM RECEIVED IT THE DAY IT WAS
6 SENT.

7 Q AND DID THE FAX COVERSHEET BEAR A DATE OF APRIL 3RD
8 OF 2002?

9 A IT DOES.

10 Q AND I AM SITTING HERE TODAY, YOU PERSONALLY DON'T
11 REMEMBER?

12 A I REALLY DO NOT.

13 Q THANK YOU. WITH REGARD TO THE DISCLOSED STATEMENT,
14 MR. KEHL, WHICH IS IN THE FINANCIALS OF THE 2002
15 PROSPECTUS AT PAGE F11 AND IN THIS DOCUMENT, THE NOTES TO
16 THE FINANCIALS AND THE DISCLOSURE STATEMENT, WERE THOSE
17 LIKEWISE--

18 MS. EVANS: OBJECTION, LEADING, YOUR HONOR.

19 THE COURT: I AM NOT SURE, LET HIM ASK THE QUESTION,
20 I AM NOT SURE WHAT THE QUESTION IS.

21 Q THESE NOTES TO THE FINANCIALS, WERE THEY REVIEWED BY
22 YOURSELF?

23 A YES.

24 THE COURT: I OVERRULE THE OBJECTION TO THAT
25 QUESTION.

1 Q AND JUST PUBLISHING FOR THE JURY THE LANGUAGE OF THE
2 DOCUMENT, IT SAYS RECENT INDEPENDENT VALUATIONS HAVE
3 VALUED THESE BETWEEN \$135 MILLION AND \$170 MILLION
4 DOLLARS, DO YOU RECALL REVIEWING THAT LANGUAGE IN THE
5 INITIAL DRAFTS AND THE FINAL DRAFTS OF THIS DISCLOSURE?

6 A YES, I DO.

7 Q AND YOUR FIRMS JUDGMENT AND YOUR JUDGMENT, DOES THIS
8 STATEMENT, WAS IT A FAIR REPRESENTATION OF THE FACTS AND
9 ADEQUATELY DISCLOSED REGARDING--

10 MS. EVANS: OBJECTION, CALL FOR A CONCLUSION OF LAW,
11 YOUR HONOR.

12 THE COURT: SUSTAINED TO THE FORM OF THE QUESTION.

13 Q MR. KEHL, DID YOUR FIRM APPROVE THIS LANGUAGE?

14 A YES, WE DID.

15 Q GOING BACK TO, WHAT IS DEFENDANT'S EXHIBIT NUMBER 17
16 WHICH IS YOUR FIRMS INVOICE OF DATED APRIL THE 12TH OF
17 2002. I HAD ASKED YOU BEFORE, BUT THE ENTRY OF 4/4/02
18 DISCUSSES WORK ON LETTER TO ATTORNEY GENERAL. DO YOU SEE
19 THAT, SIR?

20 A YES.

21 Q I AM GOING TO SHOW YOU WHAT IS MARKED AS DEFENDANT'S
22 EXHIBIT NUMBER 22 FOR IDENTIFICATION PURPOSES AND ASK IF
23 YOU RECOGNIZE THAT DOCUMENT?

24 A YES, I DO.

25 Q IS THAT A DOCUMENT THAT COMES OUT OF THE CLIENT FILES

1 OF CAROLINA INVESTORS OR HOMEGOLD OF YOUR LAW FIRM?

2 A YES.

3 Q IS IT MAINTAINED IN THE ORDINARY COURSE OF BUSINESS?

4 A YES.

5 MR. GRIFFIN: YOUR HONOR, I WOULD LIKE TO INTRODUCE
6 EXHIBIT NUMBER 22.

7 THE COURT: ANY OBJECTION?

8 MS. EVANS: NO OBJECTION.

9 THE COURT: DEFENDANT'S 22 IS ADMITTED.

10 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 22 WAS ADMITTED
11 INTO EVIDENCE.)

12 Q IS THIS A DRAFT OF THE LETTER THAT IS REFERENCING THE
13 BILLING TO THE ATTORNEY GENERAL THAT YOU REFERRED TO, THAT
14 WAS REFERRED TO IN THE BILLING?

15 A YES, IT IS A DRAFT OF THAT LETTER THAT WAS REFERRED
16 TO IN THE BILLING.

17 Q AND YOU RECALL WHO ORIGINATED THIS DRAFT?

18 A THERE WAS AN EARLIER DRAFT THAT CAME FROM CAROLINA
19 INVESTORS AND THIS IS NOT THAT EARLIER DRAFT. THIS IS A
20 DRAFT THAT REFLECTS SOME EDITORIAL REVISIONS THAT WERE
21 MADE AT THE FIRM.

22 Q WITHIN YOUR FIRM?

23 A YES.

24 Q AND THE SECOND PAGE OF THE DOCUMENT, THE LANGUAGE
25 THAT SAYS CAROLINA INVESTORS BELIEVES THAT THE STANCE OF

1993

1 ELLIOTT DAVIS THAT WE CONSIDER OVERLY CONSERVATIVE MIGHT
2 HAVE BEEN INFLUENCED BY THE ENRON-ARTHUR ANDERSON DEBACLE
3 AND GLOBAL CROSSING ACCOUNTING PROBLEMS. MY QUESTION TO
4 YOU AS TO THAT SENTENCE, DID YOUR FIRM MODIFY OR CHANGE OR
5 ADD TO THAT FROM THE DRAFT THAT YOU RECEIVED?

6 A I BELIEVE THAT WE DID, INCIDENTALLY THE DRAFT THAT WE
7 RECEIVED IS ATTACHED AS PAGE, THE THIRD PAGE OF THAT
8 EXHIBIT.

9 Q IN THE ORIGINAL THAT WAS PROVIDED TO YOU ON THE THIRD
10 PAGE OF THIS EXHIBIT SAYS WHAT, SIR?

11 A CII FEELS THAT THIS ADDED PRESSURE AND CONSERVATIVE
12 STANCE WAS BROUGHT ABOUT BY THE ENRON-ARTHUR ANDERSON
13 DEBACLE AND GLOBAL CROSSING ACCOUNTING PROBLEMS.

14 Q AND THEN THAT LANGUAGE WAS CHANGED TO SAY WHAT?

15 A THAT PARTICULAR LANGUAGE WAS CHANGED TO SAY, WHILE
16 THE FINANCIAL STATEMENTS OF CAROLINA INVESTORS ARE
17 PREPARED ON THE ASSUMPTION THAT CAROLINA INVESTORS WILL
18 CONTINUE AS A GOING CONCERN, THE OPINION OF ELLIOTT DAVIS,
19 APPARENTLY BASED ON ACCOUNTING REQUIREMENTS THAT SUGGEST
20 PRIOR YEARS OF OPERATING LOSS AT HOMEGOLD AMONG OTHER
21 MATTERS RAISED SUBSTANTIAL DOUBT ABOUT THE ABILITY OF
22 CAROLINA INVESTORS TO CONTINUE AS A GOING CONCERN.

23 Q AND WHAT PAGE WERE YOU READING FROM?

24 A THE FIRST PAGE OF THE EXHIBIT, THE FIRST PARAGRAPH.

25 Q AND ON THE SECOND PAGE OF THE EXHIBIT, THERE IS

1 LANGUAGE REFERRED ENRON AND ARTHUR ANDERSON STILL HERE,
2 SIR?

3 A YES, WOULD YOU LIKE FOR ME TO READ THAT?

4 Q YES.

5 A IT SAYS CAROLINA INVESTORS BELIEVES THAT THE STANCE
6 OF ELLIOTT DAVIS WHICH WE CONSIDER OVERLY CONSERVATIVE
7 MIGHT OF BEEN INFLUENCED BY THE ENRON-ARTHUR ANDERSON
8 DEBACLE AND GLOBAL CROSSING ACCOUNTING PROBLEMS.

9 Q NOW, I WILL SHOW YOU WHAT IS IN EVIDENCE AS STATE'S
10 EXHIBIT 62 AND ASK IF, JUST GIVE YOU A CHANCE TO REVIEW
11 IT. BUT IT IS A LETTER TO THE ATTORNEY GENERALS OFFICE.
12 WHAT IS THE DATE OF THAT LETTER?

13 A APRIL 3RD OF 2002.

14 Q AND DOES THAT LETTER, STATE'S EXHIBIT 62 APPEAR TO BE
15 THE FINAL VERSION OF THE DRAFT THAT WE JUST WENT OVER?

16 A IT APPEARS TO BE BUT I DON'T KNOW IF IT IS WORD FOR
17 WORD, IDENTICAL OF THAT, TAKING THE TIME TO COMPARE THEM.

18 Q WHAT I WOULD ASK YOU TO DO IS COMPARE THE LANGUAGE IN
19 THE DRAFT WHERE IT SAYS, CAROLINA INVESTORS BELIEVES THAT
20 THE STANCE OF ELLIOTT DAVIS, ETCETERA.

21 A YES, IT IS THE SAME AS IN THE EARLIER DRAFT.

22 Q NOW, MR. KEHL, AFTER THE FILING THE REGISTRATION OF
23 THE PROSPECTUS IN APRIL OF 2002, WERE SUPPLEMENTS TO THE
24 PROSPECTUS PREPARED AND FILED WITH THE ATTORNEY GENERALS
25 OFFICE?

1995

1 A YES.

2 Q AND I WANT TO SHOW YOU WHAT IS STATE'S EXHIBIT 51 IN
3 EVIDENCE AND ASK IF THAT IS ONE OF THE SUPPLEMENTS?

4 A YES, IT IS.

5 Q AND WHAT IS THE DATE OF THAT SUPPLEMENT?

6 A AUGUST THE 22ND OF 2002.

7 Q AND WHAT WAS THE PURPOSE OF FILING THAT SUPPLEMENT,
8 SIR?

9 A THE PURPOSE WAS TO PROVIDE UPDATING INFORMATION FROM
10 WHAT APPEARED IN THE PROSPECTUS AND IN PARTICULAR TO
11 DISCLOSE THAT THE PLANS TO REDUCE THE OPERATING LOSSES,
12 THE LOSSES WERE CONTINUING AND THAT THE INTER-COMPANY WAS
13 INCREASING.

14 Q AND ARE THE AMOUNT OF THE LOSSES DISCLOSED IN THAT
15 DOCUMENT?

16 A YES.

17 Q AND WHAT AMOUNT IS DISCLOSED?

18 A IT IS DISCLOSED THAT HOMEGOLD SUSTAINED OPERATING
19 LOSSES OF \$26.6 MILLION FOR THE SIX MONTHS ENDING JUNE
20 30TH OF 2002.

21 Q AND UP TO THIS POINT AND TIME CAROLINA INVESTORS,
22 WHILE YOUR FIRM WAS REPRESENTING THEM SUBMITTED A MIDYEAR
23 SUPPLEMENT TO UPDATE FINANCIAL INFORMATION.

24 A IT HAS ONLY BEEN DONE ONE TIME BEFORE.

25 Q AND THIS INSTANCE WHAT WAS THE REASONING BEHIND DOING

1 IT?

2 A THE REASON WAS THAT THE STATEMENTS OF THE COMPANY
3 MADE IN THE PROSPECTUS ABOUT ITS PLANS TO AVOID BEING ABLE
4 TO CONTINUE AS A GOING CONCERN HAD NOT PRODUCED RESULTS,
5 FAVORABLE RESULTS. INSTEAD THE LOSSES WERE CONTINUING AND
6 THE INTER-COMPANY DEBT WAS GROWING AND IT WAS FELT
7 IMPORTANT TO DISCLOSE THAT INFORMATION TO THE INVESTORS.

8 Q AND WAS IT ALSO DISCLOSED BY FILING TO THE ATTORNEY
9 GENERALS OFFICE?

10 A YES.

11 Q AND WHAT IS THE DATE OF THE DISCLOSURE?

12 A AUGUST THE 22ND OF 2002.

13 Q AND THEN WAS THERE, STATE'S EXHIBIT 52 AND 53, WERE
14 THERE TWO ADDITIONAL SUPPLEMENTS TO THE PROSPECTUS?

15 A YES.

16 Q AND WHAT WAS THE DATE OF THE FIRST OR THE NEXT
17 SUPPLEMENT TO THE PROSPECTUS?

18 A IT WAS NOVEMBER THE 25TH OF 2002.

19 Q AND WHAT WAS THE PURPOSE OF THAT SUPPLEMENT?

20 A THERE WERE TWO PURPOSES, FIRST TO DISCLOSE THE
21 CONTINUING LOSSES AND THE CONTINUING INCREASE IN THE
22 INTER-COMPANY DEBT. AND SECONDLY TO DISCLOSE THAT
23 HOMEGOLD HAD REACHED AN AGREEMENT IN PRINCIPLE TO SELL THE
24 RETAIL MORTGAGE DIVISION TO EMMCO CREDIT CORPORATION.

25 Q YES, SIR. AND THEN THE LAST SUPPLEMENT, DOES IT

1 INDICATE WHEN THAT WAS FILED?

2 A THE LAST SUPPLEMENT WAS DATED DECEMBER THE 31ST OF
3 2002.

4 Q AND WHAT WAS THE PURPOSE OF THAT SUPPLEMENT?

5 A THE PURPOSE BASICALLY WAS TO DISCLOSE THAT THE EMMCO
6 TRANSACTION ENCLOSED AND WHAT THE FINAL TERMS AND
7 CONDITIONS OF THAT TRANSACTION WERE.

8 Q THAT IS ALL I HAVE.

9 THE COURT: MS. EVANS.

10 CROSS-EXAMINATION

11 BY MS. EVANS:

12 Q MR. KEHL, THE 10Q'S AND THE 10K'S IN THE PROSPECTUS
13 THAT ARE FILED, ISN'T IT TRUE THAT THOSE ARE STATEMENTS OF
14 MANAGEMENT OF HOMEGOLD AND CAROLINA INVESTORS?

15 A YES.

16 Q AND THE WYCHE FIRM REVIEWS THOSE STATEMENTS OF
17 MANAGEMENT BUT THEY DON'T PREPARE THOSE STATEMENTS OF
18 MANAGEMENT?

19 A THAT'S CORRECT.

20 Q AND ISN'T IT TRUE THAT YOU ARE JUST REVIEWING THEM TO
21 MAKE SURE THAT THE INFORMATION IN THE FORM IS WHAT IT
22 SUPPOSE TO BE AND THE LANGUAGE THAT IT IS SUPPOSE TO BE
23 IN?

24 A YES AND THAT THE FACTS ARE DISCLOSED AS WE KNOW THEM
25 ARE CONSISTENT WITH WHAT IS IN THE DISCLOSURE.

1 Q AND THE FACTS AS YOU KNOW THEM?

2 A YES.

3 Q AND THE FACTS THAT YOU KNOW THEM, ISN'T IT TRUE THAT
4 THE FACTS THAT YOU KNOW THEM COMES FROM MANAGEMENT OR OF
5 EITHER MANAGEMENT OR CAROLINA INVESTORS.

6 A THAT IS SUBSTANTIALLY CORRECT.

7 Q AND HOW MANY CAROLINA INVESTORS BOARD MEETINGS DID
8 YOU ATTEND WITH THE DEFENDANT?

9 A I NEVER ATTENDED A CAROLINA INVESTORS BOARD MEETING.

10 Q HAVE YOU EVER ATTENDED A HOMEGOLD BOARD MEETING?

11 A IN EARLIER YEARS I HAD.

12 Q BUT NOT WHILE THE DEFENDANT WAS CEO OF THE COMPANY?

13 A NO.

14 Q AND ISN'T IT TRUE, NORMALLY WHEN YOU ARE DEALING WITH
15 THESE PROSPECTUS AND GETTING THEM READY AND THE 10K'S AND
16 10Q'S, ISN'T TRUE THAT YOU WOULD BE DEALING WITH IN-HOUSE
17 COUNSEL AS CFO OF THE COMPANY?

18 A YES.

19 Q SO, NORMALLY IT IS NOT THE CEO OF THE COMPANY THAT
20 YOU WOULD BE DEALING WITH?

21 A THAT IS CORRECT.

22 Q THERE WERE SOME CORRESPONDENCE WITH YOU AND JACK
23 STERLING, ISN'T IT TRUE THAT YOU AND JACK STERLING HAVE
24 KNOWN EACH OTHER FOR A LONG TIME?

25 A YES, WE HAVE.

1 Q SO, IS THAT WHY THERE IS CORRESPONDENCE WITH YOU AND
2 MR. STERLING?

3 A PROBABLY.

4 Q BUT ALL THE OTHER ONES YOU ARE REFERRING TO DAVID
5 GAFFNEY, HE WAS IN-HOUSE LEGAL COUNSEL AT THE TIME,
6 CORRECT?

7 A YES.

8 Q AND KEVIN MARTIN WHO WAS CFO AT THE TIME?

9 A YES, MA'AM.

10 Q AND ISN'T IT TRUE THAT NORMALLY WHAT YOU DO AS
11 OUTSIDE AUDITORS, OUTSIDE COUNSEL OF COMPANIES, THAT IS
12 NORMALLY WHO YOU DEAL WITH IS THE INTERNAL LEGAL STAFF AND
13 INTERNAL CFO'S?

14 A THAT'S CORRECT.

15 Q AND HOW MANY COMPANIES DOES THE WYCHE FIRM REPRESENT,
16 IN THE SAME MANNER, WHEN YOU ARE REVIEWING THE FILINGS?

17 A SECURITIES FILINGS?

18 Q SECURITIES FILINGS, YES.

19 A OVER THE YEARS, 25 OR 30 PRESENTLY.

20 Q ISN'T IT TRUE THAT THOSE 25 OR 30 COMPANIES, THE
21 NORMAL PEOPLE THAT YOU DEAL WITH WOULD BE THE IN-HOUSE
22 COUNSEL?

23 A YES, EITHER THAT OR THE FINANCIAL PEOPLE.

24 Q WERE YOU AWARE THAT DAVID GAFFNEY, IN-HOUSE COUNSEL
25 RESIGNED IN AUGUST?

1 A YES, I WAS AWARE THAT HE RESIGNED, WELL IT MAY OF
2 BEEN SEPTEMBER. IT WAS EITHER THE END OF AUGUST OR EARLY
3 SEPTEMBER.

4 Q AND HOW WERE YOU MADE AWARE OF THE FACT THAT DAVID
5 GAFFNEY RESIGNED?

6 A I DON'T REMEMBER.

7 Q AND MR. GRIFFIN SHOWED YOU AN EMAIL OF THE DELOITTE
8 AND TOUCHE VALUATION, DO YOU EVER REMEMBER SEEING THAT
9 DURING THE TIME THAT YOU WERE REVIEWING THESE STATEMENTS?

10 A I REALLY DON'T.

11 Q SO, YOU ARE NOT DOUBTING THAT IT WAS SENT, YOU DON'T
12 EVER REMEMBER REVIEWING IT AND PREPARING ANY OF THESE
13 STATEMENTS?

14 A I DON'T UNDERSTAND YOUR QUESTION, I DON'T REMEMBER
15 REVIEWING OR EVEN SEEING THAT APPRAISAL AT THE TIME I WAS
16 REVIEWING THE FILING.

17 Q AND I THINK YOU SAID IN YOUR TESTIMONY THAT YOU DO
18 REMEMBER SEEING, REVIEWING IT SOME TIME LATER IN 2002 BUT
19 THAT WAS NOT WHEN YOU WERE REVIEWING THE PROSPECTUS?

20 A I DON'T EVEN THINK IT WAS 2002.

21 Q IT WOULD OF BEEN AFTER THAT?

22 A YES.

23 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
24 STATE'S EXHIBIT NUMBER 63, CAN YOU REVIEW THAT, SIR.

25 A I HAVE NOT SEEN THIS BEFORE.

1 Q YOU HAVE NEVER SEEN THAT BEFORE. CAN YOU SEE WHO IT
2 IS ADDRESSED TO?

3 A DEAR RONNIE.

4 Q AND LOOKING UP AT THE ADDRESS PAGE, IS THAT RONNIE
5 SHEPPARD, THE DEFENDANT?

6 A I WOULD ASSUME SO.

7 Q DOES IT SAY RONNIE SHEPPARD?

8 A YES, IT DOES.

9 Q WHO IS IT A LETTER FROM?

10 A KEVIN MARTIN.

11 Q AND ISN'T IT^{IS} TRUE THAT KEVIN MARTIN WAS A CFO OF THE
12 COMPANY AT, BEFORE THIS TIME?

13 A YES, MA'AM.

14 Q AND HE WAS THE CFO YOU WERE DEALING WITH GETTING
15 THOSE PROSPECTUS' READY?

16 A YES.

17 Q AND YOU HAVE NEVER SEEN THIS LETTER BEFORE HERE
18 TODAY?

19 A NO, I HAVE NOT.

20 Q IS THIS A RESIGNATION LETTER OF KEVIN MARTIN?

21 A YES.

22 Q AND AS SOMEBODY THAT IS OUTSIDE COUNSEL, WOULD IT BE
23 SIGNIFICANT TO KNOW THAT A CFO RESIGNED AND SEEING THE
24 RESIGNATION LETTER WHERE THEY SAY, AS OF TODAY, IN MY
25 OPINION, WE HAVE TRANSITIONED FROM A COMPANY THAT IS

1 ACCEPTING ADDITIONAL FINANCE IN ORDER TO EFFECT THE
2 TURNAROUND TO A COMPANY THAT HAS NO REALISTIC EXPECTATION
3 OF EVER TURNING AROUND. IS THAT SOMETHING THAT WOULD OF
4 BEEN SIGNIFICANT AS OUTSIDE COUNSEL TO YOU?

5 A YES, IT WOULD.

6 Q AND THIS WAS SENT TO THE DEFENDANT, WHAT IS THE DATE
7 OF THAT LETTER, SIR?

8 A AUGUST 29TH.

9 Q AND YOU NEVER SAW THAT LETTER UNTIL FEBRUARY OF 2007,
10 HERE TODAY?

11 A I THINK THAT^{is} IS RIGHT.

12 Q AND ISN'T IT TRUE THAT WAS AROUND THE SAME TIME THAT
13 YOU WERE PREPARING THAT ADDITIONAL OR RIGHT AROUND THE
14 SAME TIME YOU WERE PREPARING AND FILING THAT FIRST
15 AMENDMENT TO THE PROSPECTUS IN 2002?

16 A IT WAS A WEEK OR SO LATER, THAT IS RIGHT.

17 Q BUT BY THE TIME IT IS FINAL IT IS ALMOST ABOUT THE
18 SAME TIME, THAT IS AUGUST 29TH, RIGHT AROUND THE SAME
19 TIME?

20 A I WOULD HAVE TO AGREE IT IS RIGHT AROUND THE SAME
21 TIME.

22 Q AND ISN'T IT TRUE THAT THIS IS THE FIRST TIME THAT
23 YOU ALL DID AN UPDATE TO THE PROSPECTUS OF CAROLINA
24 INVESTORS BUT ISN'T IT ALSO TRUE THAT THIS IS THE FIRST
25 TIME THAT GOING CONCERN HAD EVER BEEN PUT INTO THE

1 PROSPECTUS?

2 A YES.

3 Q AND ISN'T IT TRUE THAT WAS PART OF YOUR REASONING OF
4 UPDATING THE FINANCIAL IN AUGUST OF 2002?

5 A ABSOLUTELY.

6 Q AND THE OTHER AMENDMENTS, WERE THOSE REGARDING A SALE
7 OF THE RETAIL MORTGAGE DIVISION TO THE DEFENDANT, RONNIE
8 J. SHEPPARD?

9 A BOTH OF THOSE DID INVOLVE THAT SALE.

10 Q WERE YOU INVOLVED IN A TELECONFERENCE WITH THE
11 DEFENDANT WHEN HE FIRST BROUGHT UP THE DEAL ABOUT EMMCO?

12 A NOT THAT I AM AWARE OF.

13 Q YOU WERE NOT THERE, SO YOU DON'T KNOW IF YOU WERE
14 THERE WHEN THE DEFENDANT HAD TOLD EVERYBODY AND SOME
15 PEOPLE, LAWYERS AT YOUR FIRM THAT THEY WERE LOSING TO THE
16 IMPAC WAREHOUSE LINES OF CREDIT, YOU DON'T REMEMBER A
17 CONVERSATION AND A STATEMENT THAT THE DEFENDANT MADE ABOUT
18 THAT?

19 A I DON'T REMEMBER THAT.

20 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MOVED INTO
21 EVIDENCE AS STATE'S EXHIBIT 132. CAN YOU LOOK AT THAT.
22 HAVE YOU EVER SEEN THAT BEFORE?

23 A I HAVE NOT.

24 Q AND WHAT IS THAT ENTITLED?

25 A IT IS ENTITLED INFORMATION ON CII PROSPECTUS FOR

1 STAFF USE ONLY.

2 Q AND THAT WAS SOMETHING THAT WAS NEVER SHOWN TO YOU BY
3 CAROLINA INVESTORS OR ANYONE AT HOMEGOLD EITHER?

4 A THAT IS CORRECT.

5 Q AND FROM REVIEWING THAT, WAS THAT SOMETHING THAT YOU
6 WOULD FIND SIGNIFICANT OR AT LEAST ISN'T IT SOMETHING THAT
7 YOU WOULD LIKE TO KNOW AS OUTSIDE COUNSEL?

8 A YES.

9 Q AND SO BEING OUTSIDE COUNSEL YOU HAVE TO RELY ON WHAT
10 THE COMPANY IS TELLING YOU ABOUT THE COMPANY?

11 A EXCEPT THAT I MIGHT HAVE INDEPENDENT SOURCES OF
12 INFORMATION, THAT IS CORRECT.

13 Q BUT THERE IS TWO EXAMPLES RIGHT HERE, YOU DIDN'T HAVE
14 EITHER ONE OF THESE TWO INDEPENDENT SOURCES?

15 A NO, I DID NOT.

16 Q AND IN GENERAL TERMS, AS OUTSIDE COUNSEL, YOU ACCEPT
17 THE WORD OF MANAGEMENT AND WHAT THEY TELL YOU IS GOING ON
18 WITH THE COMPANY?

19 A YOU DO HAVE TO RELY ON IT SIGNIFICANTLY.

20 Q AND THE TWO BILLING STATEMENTS THAT MR. GRIFFIN
21 SHOWED YOU, THE ONE FROM, DURING THE YEAREND OF 2000 BILL
22 FROM THE WYCHE LAW FIRM WAS APPROXIMATELY \$3 THOUSAND
23 DOLLARS. THAT IS THE ONE THAT WAS BROUGHT MAINLY PREPARED
24 BY ERIC GRABEN?

25 A I THINK YOU MAY OF MISTAKEN THE DATE.

1 Q IT WOULD OF BEEN YEAREND 2000?

2 A YES.

3 Q SO, YEAREND 2000, THERE WAS NO GOING CONCERN,
4 CORRECT?

5 A THAT IS CORRECT.

6 Q IS IT MORE OF AN IN DEPTH ANALYSIS AND MORE WORK THAT
7 YOU ALL HAD TO DO FOR YEAREND OF 2001 WHICH WOULD OF BEEN
8 IN 2002?

9 A YES.

10 Q AND SO DID ERIC GRABEN AT THAT TIME, WAS HE
11 ASSOCIATED WITH THE FIRM?

12 A YES, HE WAS.

13 Q AND HIS HOURLY RATE, HOW DOES THAT DIFFER FROM YOUR
14 HOURLY RATE?

15 A IT IS LOWER.

16 Q WHAT WAS YOUR HOURLY RATE AT THAT TIME?

17 A \$350.

18 Q \$350 DOLLARS AN HOUR?

19 A YES.

20 Q AND APPROXIMATELY WHAT WOULD AN ASSOCIATE PERSON'S
21 RATE BE?

22 A IT WOULD DEPEND ON HIS EXPERIENCE, I THINK ERIC
23 GRABEN'S WAS PROBABLY IN THE RANGE OF \$250 OR \$225.

24 Q AND SO IT WAS A LOT MORE ANALYSIS THAT HAD TO GO ON
25 FOR YEAREND OF 2001 FOR THE \$34 THOUSAND DOLLAR BILL PLUS

1 YOUR INVOLVEMENT, MUCH HIGHER OF AN HOURLY RATE, CORRECT?

2 A YES, THE BILL WAS \$24 THOUSAND, NOT \$34.

3 Q I AM SORRY, \$24 THOUSAND DOLLARS?

4 A YES, BUT YOU ARE RIGHT, IT WOULD OF BEEN A LOT MORE
5 WORK.

6 Q AND CARY HALL WHO WAS INVOLVED IN THE YEAREND OF 2001
7 TO 2002 BILL, IS HE ALSO A PARTNER?

8 A YES, HE IS.

9 Q AND WHAT IS HIS HOURLY RATE COMPARED TO ERIC GRABEN'S
10 HOURLY RATE?

11 A IT IS HIGHER ALSO.

12 Q AND HE WAS ALSO INVOLVED IN THAT BILL THAT WAS
13 SUBMITTED IN 2002?

14 A YES, HE WAS.

15 Q AND BOTH OF THOSE BILLS AND I WILL SHOW THEM TO YOU.
16 THIS IS DEFENDANT'S NUMBER 6 AND THAT IS THE YEAREND 2000
17 SUBMITTED IN 2002, WHO IS THE CLIENT?

18 A CAROLINA INVESTORS.

19 Q WHO IS IT SENT TO, WHO DO YOU LIST AS CLIENT?

20 A WILLIAM LONG, JR., ESQUIRE.

21 Q AND WHO IS BILL LONG?

22 A HE WAS THE GENERAL COUNSEL OF HOMEGOLD.

23 Q AND ON THE DEFENDANT'S NUMBER 17, INVOICE DATE APRIL
24 12TH OF 2002, WHO DO YOU LIST AS THE CLIENT THERE?

25 A KEVIN MARTIN, HOMEGOLD.

1 Q AND THAT WAS SUBMITTED TO HOMEGOLD REGARDING THE
2 CAROLINA INVESTORS PROSPECTUS?

3 A APPARENTLY SO.

4 Q AND EXCEPT FOR, I THINK, TWO CONVERSATIONS IN THERE,
5 I BELIEVE THERE IS THREE AND YOU CAN REVIEW IT. THERE ARE
6 THREE CONVERSATIONS WITH LARRY OWEN OF CAROLINA INVESTORS.

7 A I RECALL THAT.

8 Q AND THE REST OF THE CONVERSATION, WHO ARE YOU HAVING
9 THOSE CONVERSATIONS WITH REGARDING THE CAROLINA INVESTORS
10 PROSPECTUS.

11 A DAVID GAFFNEY AND SHANE SMITH, SUSAN CAUGHMAN AND I
12 AM LOOKING FOR KEVIN MARTIN, YES, KEVIN MARTIN.

13 Q AND ALL OF THOSE PEOPLE ARE HOMEGOLD PEOPLE?

14 A YES.

15 Q HOW MANY TIMES DID YOU GO DOWN WITH ANYBODY FROM
16 CAROLINA INVESTORS OR ANYBODY TO HOMEGOLD TO MEET WITH THE
17 SECURITIES COMMISSION?

18 A I NEVER MET WITH THE SECURITIES COMMISSION IN THE
19 COMPANY OF THE PEOPLE FROM CAROLINA INVESTORS OR HOMEGOLD.

20 Q NEVER WENT DOWN TO THE SECURITIES COMMISSION?

21 A NO.

22 Q YOU NEVER WENT TO ANY CAROLINA INVESTORS BOARD
23 MEETINGS?

24 A NO, I DID NOT.

25 Q AND YOU HAVE NO IDEA, WHAT IF ANYTHING, THE DEFENDANT

1 MIGHT OF SAID IN A TELEPHONE CONFERENCE WITH SOMEONE FROM
2 YOUR LAW FIRM ABOUT THE IMPAC LINES OF CREDIT AS IT
3 PERTAINED TO THE EMMCO DEAL?

4 A I DIDN'T HEAR THE CONVERSATION BUT I WAS MADE AWARE
5 THAT THE IMPAC LINE OF CREDIT WAS GOING TO BE PULLED.

6 Q ISN'T IT TRUE THAT IMPAC LINE OF CREDIT WAS THERE AT
7 HOMEGOLD UNTIL THE DAY THAT THEY DECLARED BANKRUPTCY?

8 A I AM NOT CERTAIN ABOUT BUT I DO KNOW IT WAS NOT
9 IMMEDIATELY PULLED.

10 Q AND THOSE REVISIONS THAT YOU SHOWED, THOSE ORIGINAL
11 DRAFTS COME FROM HOMEGOLD AND SENT TO YA'LL AND YA'LL DO
12 THE REVISIONS OF THEM?

13 A WHICH LETTER ARE YOU TALKING ABOUT.

14 Q JUST IN GENERAL TERMS WHEN INFORMATION COMES FORM THE
15 PROSPECTUS DRAFTED AND YOU ARE SENT A DRAFT, YOU DON'T
16 DRAFT UP THE PROSPECTUS, ISN'T THAT TRUE?

17 A THAT IS CERTAINLY TRUE.

18 Q YOU REVIEW STATEMENTS OF MANAGEMENT WHETHER IT BE THE
19 10K FILINGS, THE 10Q'S OR THE PROSPECTUS' THAT ARE
20 PREPARED BY MANAGEMENT?

21 A CORRECT.

22 Q THAT IS ALL I HAVE.

23 THE COURT: ANY REDIRECT?

24 MR. GRIFFIN: NO, YOUR HONOR.

25 THE COURT: YOU MAY STEP DOWN. CALL YOUR NEXT

1 WITNESS.

2 MR. GRIFFIN: YOUR HONOR, WE CALL BOB CATHEY.

3 MS. EVANS: YOUR HONOR, MAY WE APPROACH.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
5 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
6 JURY.)

7 THE COURT: LADIES AND GENTLEMEN, I HAVE GOT A MATTER
8 TO TAKE UP OUTSIDE OF YOUR PRESENCE, STEP BACK IN THE JURY
9 ROOM, DON'T DISCUSS THE CASE, PLEASE. EVERYONE STAY
10 SEATED.

11 (WHEREUPON, ^{the}THE JURY WAS EXCUSED FROM OPEN COURT FOR
12 A BREAK.)

13 THE COURT: ALL RIGHT, THE OBJECTION.

14 MS. PORTER: YOUR HONOR, IT IS THE STATE'S BELIEF
15 THAT MR. CATHEY IS BEING CALLED TO REPUTE MR. RANK'S
16 CONSISTENT STATEMENT REGARDING THE CUT AND RUN. STATEMENT
17 THAT HE WAS EXTENSIVELY CROSS-EXAMINED ON REGARDING, NOT
18 ONLY HIS INTERVIEW WITH MR. CATHEY, ALSO WHAT HIS
19 TESTIMONY WAS AND HOW IT WAS, WHAT THE DEFENDANT WOULD SAY
20 IS INCONSISTENT WITH WHAT THE STATE BELIEVES IS
21 CONSISTENT. ACCORDING TO MY NOTES AND WE CAN HAVE IT READ
22 BACK FROM THE COURT REPORTER IF NECESSARY. BUT WHILE MR.
23 RANK IS ON THE STAND HE TESTIFIES ABOUT A COMMENT THAT THE
24 DEFENDANT MADE, CUT AND RUN, BABY REGARDING A MEETING
25 BETWEEN HIM, CY BURGESS AND THE DEFENDANT. NOW, THE

1 INTERVIEW THAT MR. CATHEY'S NOTES REFLECTS OF MR. RANK WAS
2 REGARDING THE OCTOBER 4TH MEETING IN WHICH MR. RANK GAVE A
3 POWERPOINT PRESENTATION. MR. RANK, UPON CROSS-EXAMINATION
4 DISTINGUISHED THE TWO MEETINGS AND HIS STATEMENT UNDER
5 OATH WAS, I DON'T RECALL THAT BEING SAID DURING THE
6 POWERPOINT PRESENTATION WHICH IS CONSISTENT WITH MR.
7 CATHEY'S MEETING AND INTERVIEW WITH HIM. NOW, IF YOU,
8 THAT WOULD BE A CONSISTENT STATEMENT. RULE 613(B) STATES
9 THAT IF A WITNESS ADMITS MAKING THE PRIOR STATEMENT,
10 EXTRINSIC EVIDENCE THAT THE PRIOR STATEMENT WAS MADE IS
11 INADMISSIBLE. AND THAT, THERE IS A CASE ON POINT WHICH IS
12 STATE V. LYNN, 277, SC, 222; 284 SE2ND 786 FROM 1981.
13 YOUR HONOR, WE WOULD OBJECT TO MR. CATHEY BEING CALLED IN
14 THIS CAPACITY BECAUSE THE DEFENSE IS TRYING TO GET IN
15 INADMISSIBLE EXTRINSIC EVIDENCE.

16 THE COURT: MR. GRIFFIN.

17 MR. GRIFFIN: YOUR HONOR, WELL, THEY ARE EXACTLY
18 RIGHT AS WHY I PLAN TO CALL AGENT CATHEY. THEY ARE WRONG
19 THAT I, ABOUT WHETHER I CAN OR NOT. MY NOTES REFLECT THAT
20 AGENT, EXCUSE ME, THAT MR. RANK TESTIFIED, HE WAS ASKED
21 ABOUT THIS PLANNING MEETING IN OCTOBER OF 2001. HE SAID
22 PRESENT WAS CY BURGESS, KEVIN MAST, GARRY RANK, HIMSELF
23 AND SHANE SMITH. AND THAT, THEN KEVIN MARTIN AND THEN
24 THEY LEFT THAT PLANNING MEETING AND THEN HE HAD A PRIVATE
25 CONVERSATION WITHIN THE PRESENCE OF MR. BURGESS. AND

1 DURING THAT CONVERSATION HE ASKED MR. SHEPPARD IF HE HAD
2 ANY THOUGHTS OF FILING BANKRUPTCY. MR. SHEPPARD QUOTED TO
3 MR. RANK'S TESTIMONY, SAID, NO, I HAVE NO THOUGHTS OF
4 FILING BANKRUPTCY. AND THEN HE MADE THE COMMENT, AND I
5 PUT IT IN QUOTES, IF ELLIOTT DAVIS IS CONCERNED YOU SHOULD
6 CUT AND RUN NOW BECAUSE CAROLINA INVESTORS WILL NEVER BE
7 PAID BACK. THAT IS WHAT MR. RANK TESTIFIED ON DIRECT. ON
8 CROSS-EXAMINATION I ASKED MR. RANK IF HE RECALLED BEING
9 INTERVIEWED BY AGENT CATHEY AND HE SAID HE DID. AND I
10 ASKED HIM, IN THAT INTERVIEW WITH AGENT CATHEY, DIDN'T
11 AGENT CATHEY ASK ⁸YOU IF MR. SHEPPARD MADE ANY COMMENTS AND
12 I WAS READING FROM THE REPORT OF INVESTIGATIONS ABOUT MR.
13 SHEPPARD SAYING CUTTING AND RUNNING IN ANY FORM OR
14 FASHION. MR. RANK SAYS, I DON'T REMEMBER HIM ASKING ME
15 ANYTHING LIKE THAT. BUT I FURTHER GO ON, AS I RECALL, I
16 AM NOT TAKING NOTES AT THIS TIME, I AM WORKING FROM MY
17 RECOLLECTION. AS I RECALL I GO ON FURTHER AND SAY, HAD HE
18 ASKED YOU SOMETHING LIKE, DID YOU HEAR MR. SHEPPARD SAY
19 COMMENTS OF CUTTING AND RUNNING IN THAT INTERVIEW SINCE IT
20 HAPPENED CLOSE AT THE POINT AND TIME IN 2003 YOU WOULD OF
21 SAID, YES, HE SAID CUT AND RUN. BUT HE DIDN'T ASK ME THAT
22 AND ACCORDING TO MR. CATHEY'S NOTES HE SAYS, THAT HE
23 TALKED ABOUT A POWERPOINT, HE IS INTERVIEWING MR. RANK AND
24 HE SAYS, AND THEN ACCORDING TO HIS NOTES IT SAYS RANK DOES
25 NOT HAVE ANY RECOLLECTION OF SHEPPARD MAKING ANY COMMENTS

1 ABOUT CUTTING AND RUNNING OR FILING CHAPTER 13 BANKRUPTCY.
2 THEN IT GOES ON TO SAY, RANK ASKED IF SHEPPARD HAD
3 CONVERSATIONS WITH HIS BOARD ABOUT SOME TYPE OF STRATEGY
4 AND THEN ASKED HIM ABOUT, RANK ASKED SHEPPARD IF SHEPPARD
5 HAD CONSIDERED LEGAL ADVICE ON BANKRUPTCY AND SHEPPARD
6 SAID NO, THAT HE HAD NOT THOUGHT OF BANKRUPTCY OR CHANGING
7 BUSINESS STRATEGY. THOSE COMMENTS AND MR. CATHEY'S NOTES,
8 I MEAN, LEAVE ME TO BELIEVE THIS IS ALL ONE CONVERSATION,
9 HE IS QUESTIONING MR. RANK. AND IT IS A PRIOR
10 INCONSISTENT STATEMENT AND IN A NUMBER OF WAYS. ONE, I
11 DID ASK HIM IF HE SAID IT AND HE SAID I DON'T REMEMBER.
12 SO, HE DID NOT ADMIT TO START WITH. AND THEN, HIS PRIOR
13 INCONSISTENT STATEMENT ON THOSE GROUNDS, ONE THING IF HE
14 ADMITS TO SAYING IT AND THEN HE CLAIMS WHY HE SAID IT, I
15 AGREE. BUT HE DIDN'T ADMIT IT, HE SAID I DON'T REMEMBER
16 BEING ASKED. THEN I GO ON FURTHER, WELL, IF YOU HAD OF
17 ASKED HIM YOU WOULD OF TOLD HIM OBVIOUSLY. AND HE SAID,
18 OH YES. WELL, CLEARLY HE WAS ASKED AND HE DIDN'T TELL HIM
19 SO IT IS IMPEACHMENT MATERIAL. THAT IS WHY WE WOULD CALL
20 HIM.

21 THE COURT: ALL RIGHT, LET ME HEAR BACK FROM THE
22 STATE. YOU ARE SAYING THERE ARE TWO DIFFERENT
23 CONVERSATIONS.

24 MS. PORTER: YES, YOUR HONOR. ONE IS THE POWERPOINT
25 PRESENTATION WHERE--

1 THE COURT: AND THEN A PRIVATE CONVERSATION?

2 MS. PORTER: AND THEN A PRIVATE CONVERSATION.

3 THE COURT: BUT THE CROSS-EXAMINATION OF THE WITNESS
4 WAS NOT LIMITED TO ONE OR THE OTHER, WAS IT?

5 MS. PORTER: NO, AS A MATTER OF FACT, HE HAD AN
6 OPPORTUNITY AND HE DID TAKE OPPORTUNITY TO CROSS-EXAMINE
7 MR. RANK EXTENSIVELY ABOUT BOTH MEETINGS AND ABOUT THIS
8 INTERVIEW AT WHICH TIME MR. RANK DID NOT DENY--

9 THE COURT: THE RULE DOESN'T SAY IF YOU DON'T DENY,
10 THE RULE SAYS IT IS NOT ADMISSIBLE UNLESS THE WITNESS IS
11 ADVISED OF THE ^ASUBSTANCE OF THE STATEMENT, TIME AND PLACE
12 HE MADE IT, THE PERSON TO WHOM IT IS MADE. AND IT SAYS IF
13 THE WITNESS DOES NOT ADMIT IT. AND I THINK THERE ARE
14 CASES, I HAVE HAD THIS ISSUE COME UP BEFORE, IF IT IS NOT
15 AN ADMISSIONS, IF IT IS SIMPLY I DON'T KNOW, I DON'T
16 REMEMBER, THE PURPOSES OF THIS RULE, I THINK THAT IS THE
17 EQUIVALENT OF DENYING IT. THAT IS MY UNDERSTANDING OF
18 THIS RULE. IT IS, IF YOU DON'T ADMIT IT AND THERE WAS NO
19 ADMISSION HERE. YOU AGREE TO THAT.

20 MS. PORTER: I BELIEVE THE TESTIMONY WAS THAT HE
21 BELIEVED THAT HE TOLD MR. CATHEY THAT HE DID NOT RECALL
22 SHEPPARD MAKING COMMENTS ABOUT CUTTING OR RUNNING OR
23 FILING CHAPTER 13 BANKRUPTCY AT THE POWERPOINT
24 PRESENTATION MEETING. THAT WOULD BE CONSISTENT WITH THIS
25 MEETING, THAT IS MY RECOLLECTION, ACCORDING TO MY NOTES

1 AND MEMORY OF MR. RANK'S TESTIMONY.

2 MR. GRIFFIN: THAT IS NOT MY RECOLLECTION, YOUR
3 HONOR. MY RECOLLECTION IS, HE DOES NOT SAY, YES, I TOLD
4 MR. CATHEY I DIDN'T RECALL. IF HE SAID THAT, YOUR HONOR,
5 I DON'T DISAGREE WITH IT, IF HE, BECAUSE THAT IS WHAT HE
6 SAYS IN THIS INTERVIEW. HE SAYS I DON'T RECALL HIM SAYING
7 ANYTHING. AND WHEN I SAT DOWN I WROTE, CALL BOB CATHEY TO
8 THE STAND BECAUSE THAT IS NOT WHAT HE SAID.

9 THE COURT: RANK WAS THE SECOND WITNESS.

10 MS. PORTER: SECOND WITNESS, YOUR HONOR, AND THIS
11 CONVERSATION ACTUALLY TOOK PLACE ON FRIDAY THE 19TH. AND
12 I BELIEVE ON DIRECT HE ASKED ABOUT RELATIVELY EARLY AND HE
13 WAS ASKED ALMOST IMMEDIATELY AFTER MR. GRIFFIN BEGAN TO
14 CROSS-EXAMINE HIM.

15 THE COURT: LET'S TAKE A BREAK AND LET ME LOOK AT IT.
16 WE WILL STAND IN RECESS.

17 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

18 THE COURT: AS I UNDERSTAND IT AS GOING THROUGH MY
19 NOTES AND GOING BACK OVER YOUR ARGUMENTS, MR. RANK
20 TESTIFIED ABOUT A CONVERSATION THAT HE HAD WITH THE
21 DEFENDANT. THE GEST OF WHICH IS THAT IF YOU DON'T WANT TO
22 BE ASSOCIATED WITH HOMEGOLD THEN YOU CAN CUT AND RUN.
23 SOMETHING TO THAT EFFECT. ON CROSS-EXAMINATION HE WAS
24 THEN ASKED WHETHER HE MADE ANY COMMENTS ABOUT CUTTING AND
25 RUNNING TO MR. CATHEY. AND HIS RESPONSE TO THAT WAS I

1 DON'T RECALL THAT, I DON'T REMEMBER DOING THAT. AND THEN
2 ON CROSS-EXAMINATION HE WAS ASKED SPECIFICALLY ABOUT TIME
3 AND PLACE OF THE CONVERSATION WITH MR. CATHEY, HE AGAIN
4 SAID I DON'T REMEMBER THAT, I DON'T RECALL THAT. AND AS I
5 UNDERSTAND THE NOTES AND WHAT YOUR PURPOSE IN CALLING THE
6 WITNESS IS TO IMPEACH HIM TO A PRIOR CONSISTENT STATEMENT
7 WHERE MR. CATHEY'S TESTIMONY AND THE NOTES REFLECT THAT NO
8 COMMENT WAS MADE BY THE DEFENDANT ABOUT THAT CONVERSATION
9 WITH CUTTING AND RUNNING, SOMETHING TO THAT EFFECT.

10 MR. GRIFFIN: HE WAS ASKED SPECIFICALLY, DO YOU
11 REMEMBER.

12 THE COURT: AND HE BEING, THE WITNESS, MR. RANK
13 DIDN'T REMEMBER THAT.

14 MR. GRIFFIN: HE SAID THAT TO MR. CATHEY.

15 THE COURT: IT SEEMS TO ME WHEN HE SAID, I DON'T
16 REMEMBER THAT HE HAS NOT ADMITTED IT, HE HAS NOT DENIED
17 IT, EXTRINSIC EVIDENCE OF THAT CONVERSATION CAN COME IN
18 REGARDLESS OF WHICH WAY IT GOES.

19 MS. PORTER: UNDER THAT ANALYSIS I DON'T DISAGREE BUT
20 I THINK IF YOU TAKE THE QUESTION AND INTERVIEW IN CONTEXT
21 IT IS SPECIFICALLY RELATED TO THE POWERPOINT MEETING.

22 THE COURT: FROM MY NOTES IT WASN'T LIMITED, IT WAS
23 TALKING IN GENERAL ABOUT CONVERSATIONS WITH MR. CATHEY.
24 THAT IS WHAT MY NOTES INDICATE. I AM GOING TO PERMIT IT.
25 AND ANY OTHER POINTS THAT YA'LL ARE AWARE OF THAT NEED TO

1 BE DISCUSSED AT THIS POINT ABOUT THIS TESTIMONY OF THIS
2 WITNESS.

3 MR. GRIFFIN: THE NEXT WITNESS THAT I WOULD CALL
4 AFTER MR. CATHEY IS MR. ERIC PANTSARI. AND THE SOLE
5 PURPOSE I WOULD CALL HIM IS TO INTRODUCE INTO EVIDENCE A
6 LETTER DATED SEPTEMBER 5 OF 2002 THAT MR. PANTSARI WROTE
7 TO AN INDIVIDUAL BY THE NAME OF DR. PHIL USEY, (PHONETIC),
8 HE IS DIRECTOR AND CHIEF OPERATING OFFICER OF CAPITAL
9 INVESTMENT FUNDING LLC. CAPITAL FUNDING INVESTMENT LLC
10 HAD WRITTEN A LETTER TO THEIR INVESTORS SAYING ESSENTIALLY
11 IT LOOKS LIKE CAROLINA INVESTORS IS GOING UNDER AND YOUR
12 MONEY WILL BE SAFE WITH US, WORDS TO THAT EFFECT. MR.
13 PANTSARI WROTE A LETTER, A CEASE AND DESIST ORDER TO THIS
14 COMPANY AND SAID, DON'T USE THE MATERIAL AND DON'T MAKE
15 ANY COMMENTS WRITTEN ON ORAL REGARDING CAROLINA INVESTORS
16 IN THE FUTURE AND THAT WAS DATED SEPTEMBER 5 OF 2002. I
17 WOULD OFFER IT THROUGH HIM TO SHOW THAT THE STATE IS DOING
18 THINGS THAT ARE CRITICAL OF THE DEFENSE.

19 THE COURT: LET ME HEAR FROM THE STATE.

20 MS. EVANS: WE WOULD OBJECT TO IT BEING IRRELEVANT,
21 LARRY OWEN TESTIFIED AND HAS PLEAD GUILTY TO MISLEADING
22 THE SECURITIES COMMISSION, THIS WAS A BROCHURE AND IT IS
23 ATTACHED TO THE LETTER, IT IS A BROCHURE IN WHICH HE IS
24 SAYING, THAT IS SET OUT BY CAPITAL INVESTMENT FUNDS, LLC
25 WHERE THEY TALK ABOUT IT. AND WHAT MR. PANTSARI SENDS IS

1 A LETTER TO DR. ARTHUR FIELDS, SEPTEMBER 5TH AFTER
2 RECEIVING THIS INFORMATION AND SAYING THIS WAS NOT
3 SUBMITTED TO THE SECURITIES DIVISION. AND BY TRYING TO
4 MAKE IT SOUND LIKE ERIC PANTSARI BY RECEIVING THIS THAT IT
5 WASN'T REGISTERED WITH THE SECURITIES COMMISSION, SAYING
6 STOP USING THAT MATERIAL AND THEREFORE BY THE LETTER WE
7 ARE PROVIDING YOU AND YOUR STAFF TO IMMEDIATELY DESIST AND
8 FURTHER CEASE FROM MAKING COMMENTS WRITTEN OR ORALLY--

9 THE COURT: I AM GOING TO LET YOU MARK IT, I SUSTAIN
10 THE OBJECTION TO THAT ON GROUNDS OF BOTH RELEVANCY AND THE
11 CONFUSION OF THE ⁴ISSUES TO THE JURY. IT WILL BE MARKED
12 AND BE MADE A PART OF THE RECORD.

13 MR. GRIFFIN: THANK YOU, YOUR HONOR.

14 THE COURT: BRING THE JURY IN, PLEASE.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
16 APPROXIMATELY 3:30 P.M.)

17 MR. GRIFFIN: WE CALL AGENT BOB CATHEY TO THE STAND.

18 BOB CATHEY, AFTER BEING DULY SWORN, TESTIFIED AS
19 FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. GRIFFIN:

22 Q STATE YOUR NAME, SIR.

23 A ROBERT CATHEY, C-A-T-H-E-Y.

24 Q ARE YOU A SLED AGENT WITH, ASSIGNED TO THE STATE
25 GRAND JURY WITH THE ATTORNEY GENERALS OFFICE?