

Appendix Vol V

1 A YES SIR, I AM.

2 Q AND YOU PREVIOUSLY ARE RETIRED FROM THE FBI?

3 A NO SIR, I RETIRED FROM THE DRUG ENFORCEMENT
4 ADMINISTRATION.

5 Q THE DEA?

6 A YES, SIR.

7 Q AND YOU ARE ONE OF THE CASE AGENTS ON THIS CASE?

8 A YES, SIR.

9 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 23 WAS MARKED FOR
10 IDENTIFICATION.)

11 Q AGENT CATHEY, I WANT TO SHOW YOU WHAT I MARKED JUST
12 FOR IDENTIFICATION PURPOSES AS DEFENDANT'S EXHIBIT NUMBER
13 23 FOR ID, IN CASE YOU NEED TO USE THAT TO REFRESH YOUR
14 RECOLLECTION. MY QUESTION TO YOU, SIR, ON OCTOBER THE
15 27TH OF 2003, AS PART OF YOUR DUTIES WITH SLED DID YOU
16 INTERVIEW MR. GARRY RANK AT THE OFFICES OF ELLIOTT DAVIS
17 IN GREENVILLE, SOUTH CAROLINA?

18 A YES, I DID.

19 Q AND THAT WAS IN THE PRESENCE OF HIS ATTORNEYS, ARTHUR
20 JUSTICE AND WAYNE BYRD?

21 A THAT'S CORRECT.

22 Q AND WAS THE PURPOSE OF THE INTERVIEW TO QUESTION MR.
23 RANK REGARDING HIS KNOWLEDGE OF CAROLINA INVESTORS,
24 HOMEGOLD MATTERS?

25 A YES, SIR.

1 Q AND DURING THE COURSE OF THE INTERVIEW DID YOU
2 QUESTION MR. RANK ABOUT A YEAREND PREAUDIT MEETING THAT
3 WAS ATTENDED BY MR. SHEPPARD, MR. RANK AND OTHER
4 INDIVIDUALS?

5 A YES SIR, SHANE AND OTHERS.

6 Q SHANE SMITH AND OTHERS?

7 A YES, SIR.

8 Q AND DURING YOUR QUESTIONING OF MR. RANK DID YOU
9 SPECIFICALLY ASK MR. RANK IF HE HAD ANY RECOLLECTION OF
10 MR. SHEPPARD MAKING ANY COMMENTS ABOUT CUTTING AND RUNNING
11 DURING ANY OF THE MEETINGS ON THAT DAY?

12 A I ASKED HIM SPECIFICALLY ABOUT THE MEETING THAT
13 OCCURRED DURING THE POWERPOINT PRESENTATION. I HAD
14 ALREADY INTERVIEWED OTHER WITNESSES AND IT WAS BROUGHT TO
15 MY ATTENTION THAT SUCH STATEMENTS WERE MADE BY MR.
16 SHEPPARD ABOUT CUTTING AND RUNNING AND FILING CHAPTER 13
17 BANKRUPTCY. MR. RANK WAS AT THAT MEETING AND SO I ASKED
18 HIM, THAT BASED ON THAT MEETING DID HE HEAR ANY SUCH
19 COMMENTS.

20 Q ANY COMMENTS ABOUT CUTTING AND RUNNING?

21 A YES, SIR.

22 Q AND MR. RANK'S RESPONSE WAS WHAT?

23 A HIS RESPONSE WAS, THAT HE DID NOT HAVE ANY
24 RECOLLECTION OF MR. SHEPPARD MAKING ANY COMMENTS AT THAT
25 MEETING ABOUT CUTTING AND RUNNING. I CERTAINLY HEARD

1 OTHER WITNESSES LATER SAY THAT HE HAD MADE SUCH COMMENTS
2 BUT NOT AT THAT PARTICULAR MEETING.

3 Q WELL, IN THIS INTERVIEW DID MR. RANK ADVISE YOU THAT
4 HE MADE A CUTTING AND RUNNING STATEMENT SOMETIME SHORTLY
5 AFTER THAT MEETING, IN A CLOSED DOOR MEETING?

6 A NO SIR, I DIDN'T ASK HIM ABOUT THAT, ANYTHING ABOUT
7 THAT, JUST PARTICULARLY ABOUT THIS MEETING BECAUSE THAT
8 WAS THE INFORMATION THAT I HAD.

9 Q THAT IS ALL THAT I HAVE.

10 THE COURT: ANY CROSS?

11 MS. EVANS: YES, YOUR HONOR.

12 CROSS-EXAMINATION

13 BY MS. PORTER:

14 Q DURING YOUR SUBSEQUENT INVESTIGATION DID YOU LEARN
15 THAT THE TERM, CUTTING AND RUNNING WAS USED BY THE
16 DEFENDANT ON NUMEROUS OCCASIONS?

17 A YES, I DID.

18 Q THANK YOU.

19 THE COURT: ANY REDIRECT?

20 MR. GRIFFIN: NO, YOUR HONOR.

21 THE COURT: YOU MAY STEP DOWN. MADAM FORELADY AND
22 LADIES AND GENTLEMEN, TAKING TO THE ATTORNEYS, I KNEW
23 ABOUT HOW MANY WITNESSES TO BE CALLED TODAY. WE ARE IN A
24 POSITION TO STOP FOR THE WEEKEND. WE WILL START AT ON
25 MONDAY AT 10:00 O'CLOCK. PLEASE DON'T PAY ATTENTION TO

1 ANYTHING IN THE NEWSPAPER OR MEDIA, NEWSPAPER OR
2 TELEVISION AND RADIO. I TOLD YOU YESTERDAY THAT WE
3 ANTICIPATE THE CASE TO CONCLUDE SOMETIME NEXT WEEK. HAVE
4 A GOOD WEEKEND AND WE WILL SEE YOU AT 10:00 O'CLOCK MONDAY
5 MORNING. EVERYONE STAY SEATED WHILE THE JURY IS EXCUSED.

6 (WHEREUPON, THE JURY IS EXCUSED FROM OPEN COURT FOR
7 THE DAY.)

8 THE COURT: WE WILL SEE YOU ALL MONDAY MORNING.

9 (WHEREUPON, THE TRIAL WILL RESUME ON MONDAY MORNING
10 AT 10:00 A.M.)

11 THE COURT: IS THE STATE READY?

12 MS. EVANS: YES, YOUR HONOR.

13 THE COURT: THE DEFENSE?

14 MR. GRIFFIN: YES, SIR.

15 THE COURT: ANYTHING WE NEED TO DEAL WITH BEFORE THE
16 JURY IS BROUGHT BACK?

17 MR. GRIFFIN: YES SIR, THERE ARE TWO ISSUES. ONE,
18 OUR NEXT WITNESS IS OUR EXPERT, PROFESSOR DOUG BRANSON.
19 AND THE STATE HAS ASKED FOR A COUNSEL HEARING AND I AM
20 PREPARED TO DO IT EITHER WAY, GIVE THEM A PROFFER OF HIS
21 ANTICIPATED TESTIMONY, QUESTIONS THAT I WILL ASK HIM ON
22 THE STAND. THAT IS THE FIRST ISSUE. THE SECOND ISSUE IS,
23 THIS IS OUR LAST WITNESS, I HAVE CONSULTED WITH MR.
24 SHEPPARD OVER THE WEEKEND AND WE MADE THE DECISION FOR HIM
25 NOT TO TESTIFY. AND I DON'T KNOW IF YOUR HONOR WANTS TO

1 DO THE COLLOQUY ON THAT BEFORE THE JURY COMES IN OR DO YOU
2 WANT TO WAIT UNTIL WE GET THROUGH WITH MR. BRANSON'S
3 TESTIMONY. BUT THAT WOULD BE THE TWO MATTERS.

4 THE COURT: ALL RIGHT, LET ME DEAL WITH THE SECOND
5 ONE FIRST. I THINK I CAN GO AHEAD AND HAVE THE COLLOQUY,
6 I REALLY DON'T THINK IT IS REQUIRED UNLESS THE DEFENDANT
7 HAS GIVEN UP THAT RIGHT AND I HAVE TO BE SURE THAT THEY
8 UNDERSTAND IT WHEN THEY EXERCISE THEIR RIGHT. I THINK
9 THERE IS A PRESUMPTION THAT--

10 MR. GRIFFIN: HE WILL NOT TESTIFY.

11 THE COURT: I UNDERSTAND THAT. AND BUT I WILL GO
12 AHEAD, I NORMALLY DO, PARTICULARLY WHEN IT IS REQUESTED.
13 MR. SHEPPARD, LET ME JUST TALK TO YOU FOR A MOMENT, YOUR
14 ATTORNEY HAS INDICATED THAT YOU AND HE HAVE DISCUSSED OVER
15 THE WEEKEND, YOU DO HAVE A CONSTITUTIONAL RIGHT NOT TO
16 TESTIFY, YOUR SILENCE CANNOT BE USED AGAINST YOU IN ANY
17 WAY. THE JURY, IF YOU MAKE THAT DECISION, WILL BE
18 INSTRUCTED THAT THEY CANNOT HOLD YOUR SILENCE AGAINST YOU,
19 THEY CANNOT EVEN DISCUSS THAT IN THE JURY ROOM. MR.
20 GRIFFIN HAS INDICATED THAT THE TWO OF YOU HAVE DISCUSSED
21 IT AND YOU HAVE MADE THE DECISION TO EXERCISE THAT RIGHT
22 AND NOT TO TAKE THE STAND. IS THAT CORRECT?

23 MR. SHEPPARD: THAT'S CORRECT.

24 THE COURT: YOU ARE DOING THAT OF YOUR OWN FREE WILL?

25 MR. SHEPPARD: YES.

1 THE COURT: AND HAVE YOU HAD SUFFICIENT TIME TO
2 DISCUSS ALL OF THAT WITH MR. GRIFFIN?

3 MR. SHEPPARD: I HAVE.

4 THE COURT: ALL RIGHT. AND I THINK HE UNDERSTANDS
5 HIS RIGHT AND HE HAS CHOSEN TO EXERCISE THAT RIGHT. ALL
6 RIGHT, I WOULD BE INCLINED TO APPROACH THE COUNSEL HEARING
7 IN THE SAME MANNER WE DID FOR THE STATE'S EXPERT AND LET
8 YOU MAKE A PROFFER OF WHAT YOU INTEND AND IF I THINK I
9 NEED TESTIMONY WE WILL TAKE IT. WHY DON'T YOU SUMMARIZE
10 WHAT YOU WOULD INTEND TO ELICIT FROM YOUR EXPERT WITNESS
11 AND WE WILL GO FROM THERE.

12 MR. GRIFFIN: YES SIR, YOUR HONOR, OUR EXPERT IS
13 PROFESSOR DOUG BRANSON, HE IS A LAW SCHOOL PROFESSOR AT
14 THE UNIVERSITY OF PITTSBURG. HE TEACHES CORPORATIONS,
15 CORPORATE GOVERNANCE, PROGRESSIVE CORPORATE LAW, LAW AND
16 ACCOUNTING, CORPORATE FINANCING, SECURITIES REGULATIONS,
17 CIVIL PROCEDURE IN COMPLEX LITIGATION. HE ALSO HAS A
18 MASTERS OF LAW FROM THE UNIVERSITY OF VIRGINIA. HE HAS
19 WRITTEN A TEXT BOOK, THE FIRST TEACHING TEXT BOOK ON
20 CORPORATIONS. HE IS ALSO, HAS A NEW BOOK OUT REGARDING
21 CORPORATE GOVERNANCE AND WOMEN IN BOARD ROOMS IN AMERICA.
22 HE HAS A ARTICLE THAT IS PUBLISHED IN THE SOUTH CAROLINE
23 LAW REVIEW, TOO MANY BELLS, TOO MANY BELLS, CORPORATE
24 GOVERNANCE AND THE POST-ENRON, POST-WORLDCOM ERROR. HE
25 HAS PREVIOUSLY BEEN RETAINED BY THE STATE DEPARTMENT TO GO

1 TO OTHER COUNTRIES TO ASSIST WITH UPDATING THEIR CORPORATE
2 CODES. AND HE WILL BE OFFERED AS AN EXPERT IN CORPORATE
3 GOVERNANCE, PRACTICE AND PROCEDURES AS WELL AS AN EXPERT
4 IN SECURITIES, PRACTICE AND PROCEDURES. I WOULD ASK HIM
5 IN GENERAL TO EXPLAIN TO THE JURY WHAT IS A CORPORATION
6 STARTING FROM THE BASIC, COMPARE AND CONTRAST A NON-PUBLIC
7 CORPORATION WITH A PUBLIC CORPORATION AND COMPARE
8 HOMESENSE VERSUS HOMEGOLD. AS TO OPINIONS, YOUR HONOR, I
9 EXPECT TO ASK HIM DOES HE HAVE AN OPINION WHETHER MR.
10 SHEPPARD'S PRIOR EXPERIENCE AT HOMESENSE PREPARED HIM FOR
11 THE JOB OF CEO OF A PUBLIC CORPORATION. EXPLAIN WHAT AND
12 SOME OF THAT IS IN RESPONSE TO PROFESSOR FREEMAN'S
13 TESTIMONY. AND IN ADDITION, YOUR HONOR, THERE HAS BEEN
14 STUDIES THAT HE HAS PARTICIPATED IN THAT TAKES MOSTLY TWO
15 YEARS FOR SOMEONE WHO HAS NEVER BEEN A CEO TO LEARN THE
16 ROPES OF THE PUBLIC CORPORATION AND HE WILL EXPLAIN THAT
17 AND THAT IS BASED ON HIS EXPERIENCE. ALSO, ASK HIM HIS
18 OPINION WHETHER MR. SHEPPARD WAS GIVEN THE EXCLUSIVE POWER
19 OR AUTHORITY TO MANAGE ALL BUSINESS AFFAIRS OF HOMEGOLD
20 FINANCIAL. AND ANTICIPATE THAT MR. BRANSON WILL DISCUSS
21 MR. SHEPPARD'S ROLE AT HOMEGOLD, TO WRAP UP THE PRODUCTION
22 OF THE MORTGAGE DIVISION, THAT IS WHAT WAS REQUESTED OF
23 HIM AND THAT IS WHAT HE WENT ABOUT DOING. AND HE WILL
24 EXPLAIN IN THE CORPORATE STRUCTURE, PARTICULARLY IN THE
25 PUBLIC CORPORATION THAT THE BOARD IS THE ULTIMATE

1 AUTHORITY IN THE CORPORATION. AND MR. SHEPPARD IS NOT THE
2 MANAGEMENT, THE MANAGEMENT CONSIST OF A NUMBER OF PEOPLE
3 INCLUDING BOARD MEMBERS, SENIOR EXECUTIVES AND THAT MR.
4 SHEPPARD WAS A PART OF THE MANAGEMENT BUT HE, AS CEO, IS
5 NOT THE MANAGEMENT AS PREVIOUS QUESTIONS HAS BEEN ASKED IN
6 THIS CASE. IT WOULD GO THROUGH WHO THE BOARD WAS
7 COMPRISED OF AND PUT THAT IN PERSPECTIVE, HE WOULD EXPLAIN
8 THE ROLE OF THE AUDIT COMMITTEE, A PUBLIC CORPORATION,
9 EXPLAIN THAT THE CFO CAME TO HIRE AND FIRE BY THE CEO,
10 THAT HAS TO BE HIRED AND FIRED BY THE BOARD. AND HE WILL
11 DISCUSS THE COMPENSATION COMMITTEE. HE WILL GO THROUGH
12 SOME OF THE MAJOR TRANSACTIONS THAT HAD TO BE APPROVED BY
13 THE BOARD AS WELL AS THE INTERESTED PARTIES TRANSACTIONS
14 THAT IS REQUIRED BY THE BOARD'S APPROVAL. THEN HE WILL BE
15 ASKED WHETHER MR. SHEPPARD MANAGED OR CONTROLLED THE
16 OPERATIONS OF CAROLINA INVESTORS. ONCE AGAIN, HE WILL PUT
17 MR. SHEPPARD'S POSITION THAT IS A BOARD MEMBER OF CAROLINA
18 INVESTORS WITH OTHER BOARD MEMBERS, HE WILL BE ASKED IF
19 THE BOARD'S AUTHORITY UNDER THE BYLAWS OF CAROLINA
20 INVESTORS PROVIDES ONLY IN AN ADVISORY ROLE. AND HE WILL
21 EXPLAIN THAT CORPORATE GOVERNANCE AND THE STRUCTURE OF
22 CAROLINA INVESTORS, THESE WOULD BE MR. SHEPPARD'S ROLE
23 WITHIN THESE ENTITIES. HE WILL BE ASKED WHETHER THE
24 PERFORMANCE OF MR. SHEPPARD'S DUTIES AS CEO, WHETHER HE
25 RELIED UPON LEGAL AND ACCOUNTING PROFESSIONALS FOR

1 FINANCIAL REPORTING REQUIREMENTS. HE WILL EXPLAIN THE
2 ROLE OF IN-HOUSE ACCOUNTANTS AS WELL AS EXTERNAL AUDIT
3 FIRMS. AND HE WILL EXPLAIN THE ROLE OF IN-HOUSE LAWYERS
4 AS WELL AS OUTSIDE SECURITIES FIRMS. MR. BRANSON WILL BE
5 ASKED WHAT THE SEC PRACTICE FOR FILING Q'S AND K'S AND
6 GOES BACK TO THE ROLE OF THE PUBLIC ACCOUNTING FIRM OF
7 THAT PROCESS. HE WILL BE ASKED HOW THE INFORMATION WAS
8 DISTRIBUTED TO THE PUBLIC, PRESS CONFERENCES, CONFERENCE
9 CALLS, ETCETERA. HE WILL BE ASKED SPECIFICALLY ABOUT
10 PROJECTIONS AND THAT HOMEGOLD PROVIDED PROJECTIONS AND HE
11 IS GOING TO CONTRAST WHAT PROJECTIONS ARE IN THE MARKET
12 PLACE VERSUS WHAT DISCUSSIONS ARE IN BOARD MEETINGS AND
13 THE DIFFERENCE BETWEEN THE TWO. HE WILL BE ASKED TO
14 ADDRESS THE, IF THE PROSPECTUS IN 2002 IS BALANCED AND
15 CONFORMED WITH THE STANDARD OF PRACTICE AND PROCEDURES
16 WITH THE SECURITIES INDUSTRY WITH REGARD TO ITS DISCLOSURE
17 THROUGH THE PROSPECTUS AND GO THROUGH THE RISK FACTORS.
18 AND ADDRESS PROFESSOR FREEMAN'S CRITICISM OF NOTE TWO AND
19 WHERE PROFESSOR FREEMAN SAID IT WAS MISLEADING AND
20 UNBALANCED. AND THEN HE WILL BE ASKED LASTLY WHO APPROVED
21 THE EMMCO TRANSACTION, PEOPLE OF HOMEGOLD AND NOT MR.
22 SHEPPARD, DID MR. SHEPPARD PARTICIPATE IN THAT, DIDN'T
23 VOTE AND THAT WAS A DECISION MADE BY HOMEGOLD BOARD
24 MEMBERS.

25 THE COURT: ALL RIGHT, MS. EVANS.

1 MS. EVANS: OBVIOUSLY AS GOING THROUGH, ON THE
2 CORPORATE GOVERNANCE PRACTICES, AS LONG AS HE IS JUST
3 TALKING ABOUT A GENERAL PRACTICES MUCH LIKE FREEMAN AND
4 THE REQUIREMENTS BEHIND THEM AND NOT ANY SPECIFIC
5 CONCLUSIONS OF LAW, WE DON'T HAVE A PROBLEM. THE PUBLIC
6 VERSUS PRIVATE CERTAINLY DON'T HAVE A PROBLEM, THE
7 DIFFERENCE BETWEEN PRIVATE AND PRACTICE. THE THIRD THING
8 HE WAS THE OPINION, IN HIS OPINION WAS HE PREPARED TO BE
9 CEO OF A CORPORATION, AS LONG AS HE DOESN'T TALK ABOUT
10 LEGAL DUTIES AND TALKS ABOUT THE DEFENDANT'S FINANCIAL
11 SOPHISTICATION BUT I CLEARLY STAYED AWAY WITH PROFESSOR
12 FREEMAN ABOUT LEGAL DUTIES AND ROLES AS A CEO AND STAYS
13 WITH THE DEFENDANT'S FINANCIAL SOPHISTICATION. SO, WOULD
14 HAVE AN OBJECTION ON THAT THIRD ONE AS HE TALKS ABOUT THE
15 LEGAL DUTIES OF CEO'S AND HE JUST WANTS TO TALK ABOUT THE
16 DEFENDANT'S EITHER FINANCIAL SOPHISTICATION OR
17 UNSOPHISTICATION. I HAVE A PROBLEM WITH THE ROLE OF CEO
18 OF A CORPORATION BECAUSE THAT DRAWS FOR A LEGAL
19 REQUIREMENT BECAUSE THERE IS LEGAL DUTIES IMPOSED WITH A
20 CEO AS A BOARD MEMBER AND AS A BOARD MEMBER OF CAROLINA
21 INVESTORS. ABOUT THE STUDIES TWO YEARS TO LEARN THE
22 ROPES, AGAIN IF HE IS TALKING FROM A FINANCIAL STANDPOINT
23 I CERTAINLY DON'T HAVE A PROBLEM BUT IF HE IS TALKING FROM
24 A LEGAL STANDPOINT OF THE ROPES, MEANING THE LEGAL
25 REQUIREMENTS AND WHAT A CEO'S LEGAL REQUIREMENTS ARE I

1 WOULD OBJECT TO THAT LINE OF QUESTIONING. IF HE IS JUST
2 TALKING IN GENERAL TERMS ABOUT THE BYLAWS AND NOT ANY
3 LEGAL CONCLUSIONS ABOUT WHAT THAT MEANS, I DON'T HAVE ANY
4 OBJECTIONS TO THAT. I THINK HE SAID THAT HE WAS GOING TO
5 DISCUSS WHAT HIS UNDERSTANDING OF MR. SHEPPARD'S ROLE, AS
6 LONG AS IT DOESN'T TALK ABOUT LEGAL DUTIES, WHAT HE WAS
7 DOING, I DON'T HAVE A PROBLEM WITH THAT. THE CORPORATE
8 STRUCTURE, PART OF MANAGEMENT, AGAIN, WHEN HE TALKS ABOUT
9 CORPORATE STRUCTURE OF THE BOARD, THE CEO, BOARD OF
10 SUBSIDIARIES, I DON'T HAVE A PROBLEM OF HIM TALKING IN
11 GENERAL TERMS BUT IF HE IS GOING TO GO AND SAY LEGAL
12 DUTIES OR ANYTHING LIKE THAT I WOULD OBJECT TO THAT LINE
13 OF QUESTIONING. ESPECIALLY IF HE TALKS ABOUT THE ROLE OF
14 AUDIT COMMITTEES, THE ROLE OF OTHER COMMITTEES, IF YOU
15 TALK ABOUT THE LEGAL DUTIES OF THOSE THEN I WOULD HAVE AN
16 OBJECTION TO THAT. ABOUT TRANSACTION BEING APPROVED BY
17 THE BOARD, AGAIN HE IS JUST TALKING ABOUT IN GENERAL TERMS
18 THE BYLAWS I DON'T HAVE A PROBLEM WITH THAT. BUT IF HE IS
19 TALKING ABOUT THE LEGAL DUTIES OF BOARD OF DIRECTORS AND
20 THE LEGAL DUTIES THEY HAVE WHEN IT COMES TO MAKING THOSE
21 DECISIONS I WOULD OBJECT TO THAT LINE OF QUESTIONING.
22 AGAIN, THE CAROLINA INVESTORS AND HOMEGOLD, AS LONG AS HE
23 IS NOT TALKING ABOUT THE LEGAL DUTIES AND HE JUST TALKS
24 ABOUT THE CORPORATE STRUCTURE I HAVE NO PROBLEM WITH THAT.
25 BUT IF HE TALKS ABOUT THE LEGAL DUTIES ASSOCIATED I WOULD

1 OBJECT TO THAT. I STRONGLY OBJECT TO HIS GIVING AN
2 OPINION UPON RELIANCE OF ADVISE OF ACCOUNTANTS AND LEGAL
3 THINGS, THAT IS PURELY A LEGAL CONCLUSION. THE STATE MADE
4 A PRETRIAL MOTION FOR ANY EVIDENCE, THAT TO BE ESTABLISHED
5 UNLESS YOU DO FOLLOW THE TWO-PROG TEST, WHETHER THERE WAS
6 FULL DISCLOSURES AND WHETHER HE FOLLOWED THAT ADVICE.
7 THAT IS PURELY A LEGAL DECISION AND A DECISION THAT YOUR
8 HONOR HAS YET TO MAKE IN THIS CASE. SO, I OBJECT TO THAT
9 WHOLE LINE OF QUESTIONING. AS FAR AS SEC PRACTICING IN
10 10K'S, AS LONG AS HE IS TALKING ABOUT THE GENERAL PURPOSE,
11 I HAVE NO OBJECTION TO THAT. INFORMATION TO THE PUBLIC, I
12 CERTAINLY DON'T HAVE AN OBJECTION TO THAT. I AM A LITTLE
13 CONFUSED ABOUT THE PROJECTIONS HOMEGOLD PROVIDED,
14 PROJECTIONS VERSUS THE DISCUSSIONS ON THE BOARD. AS LONG
15 AS HE IS NOT GOING TO GO INTO ANY LEGAL MATTERS OF
16 DISCUSSIONS AT CAROLINA INVESTORS BOARD THAT THE LEGAL
17 REQUIREMENTS OF THE BOARD OF DIRECTORS OF WHAT THEY ARE
18 SUPPOSED TO DO ABOUT DISCLOSURE OF PROPER DISCLOSURE, IF
19 HE IS GOING THERE I WOULD HAVE A PROBLEM. BUT IF HE IS
20 JUST TALKING ABOUT THE DIFFERENCE BETWEEN WHAT IS SAID AT
21 CAROLINA INVESTORS BOARD MINUTES FACTUALLY AND WHAT IS
22 SAID AT PRESS RELEASES FACTUALLY, I DON'T HAVE AN
23 OBJECTION. TAKING IT TO THE NEXT STEP TO LEGALLY WHAT THE
24 DIFFERENCE AND HOW THAT INFORMATION CAN BE USED, THAT
25 WOULD DRAW FOR A LEGAL CONCLUSION. AT THE PROSPECTUS,

1 PROFESSOR FREEMAN DID NOT SAY IT WAS MISLEADING BUT
2 CLEARLY BEING ABLE TO TALK ABOUT WHAT IS MISLEADING AND
3 WHAT IS NOT MISLEADING, HE SAID THAT HE DID NOT FEEL, I
4 THINK HE SAID ACCURATELY. BUT THAT IS SECURITIES LAW,
5 WHETHER SOMETHING IS MISLEADING OR NOT MISLEADING. AND
6 FOR HIM TO ASK THAT QUESTION ABOUT THE PROSPECTUS BEING
7 MISLEADING WOULD BE CLEARLY FOR A, CALLING FOR AN OPINION
8 OF LAW ON SECURITIES ISSUES.

9 THE COURT: HOW IS THAT DIFFERENT FROM WHAT YOU JUST
10 SAID THAT FREEMAN TESTIFIED TO.

11 MS. EVANS: FREEMAN SAID IT WAS NOT BALANCED, BEING
12 BALANCED AND BEING MISLEADING, MISLEADING IS THE
13 SECURITIES TERM. BALANCED IS NOT A SECURITIES TERM, IT IS
14 NOT A LEGAL TERM, IT WAS JUST OPINION THAT PAGE WAS NOT
15 BALANCED, HE WAS SPECIFICALLY REFERRING TO ONE PAGE IN
16 THAT, FOR ONE REASON ALONE IN THOSE VALUATIONS. HE DID
17 NOT, I THINK THE ONLY TIME IT CAME OUT THAT THOSE WERE
18 MISLEADING IS WHEN MR. GRIFFIN ASKED MR. RANK, WHY DID YOU
19 OPPOSE THOSE PROJECTIONS GOING IN. AND HE GAVE TWO-PRONG
20 AS ONE. HE FELT THAT THERE WAS A PROBLEM THAT COULD BE
21 WITH THE INFORMATION, THE LANGUAGE IN IT AND IT COULD BE
22 MISLEADING. THAT TESTIMONY WAS HERE TODAY BUT THAT WAS A
23 QUESTION THAT MR. GRIFFIN ASKED MR. RANK OF WHY ELLIOTT
24 DAVIS DID THAT. SO, AS FAR AS JUST, IF HE THINKS IT IS
25 BALANCED I DON'T HAVE A PROBLEM. BUT THE QUESTION OF DO

1 YOU THINK IT IS MISLEADING IS THE ULTIMATE SECURITIES.
2 AND AS FAR AS THE EMMCO TRANSACTION, AGAIN AS LONG AS IT
3 IS NOT THAT THERE IS A LEGAL DUTY, IF HE IS JUST TALKING
4 ABOUT FACTUALLY, THAT THIS EMMCO TRANSACTION WAS PUT
5 TOGETHER, IT WAS APPROVED BY THE BOARD OF CAROLINA
6 INVESTORS AND IT WAS SIGNED BY, IT WAS APPROVED BY THE
7 BOARD OF HOMEGOLD AND IT WAS SIGNED OFF BY THE CAROLINA
8 INVESTORS BOARD. FROM A FACTUAL STANDPOINT I DO NOT HAVE
9 ANY PROBLEM WITH THAT. HOWEVER, IF HE WANTS TO GET INTO,
10 IS THAT THE PROPER, LEGAL WAY, WAS THAT DONE FOLLOWING THE
11 LEGAL REQUIREMENTS WE WOULD OBJECT. IF HE IS TALKING
12 ABOUT WHAT WAS DONE IN THAT EMMCO TRANSACTION FACTUALLY
13 AND THAT FACTUALLY THE DEFENDANT WAS NOT ON THE BOARD AT
14 THE TIME OF EITHER BOARD I HAVE NO OBJECTION TO THAT LINE
15 OF TESTIMONY.

16 THE COURT: MR. GRIFFIN.

17 MR. GRIFFIN: YOUR HONOR, AS TO THE PROSPECTUS AND
18 PROFESSOR FREEMAN SAYS, I WROTE, THE PUBLIC DID NOT GET
19 PROPER LEVEL OF DISCLOSURE, FOOTNOTE TALKS ABOUT THE VALUE
20 AND SAYS THE REFERENCES MADE THAT IT APPEARED THAT THE
21 COMPANY HAD ITS VALUE, THAT IS MY CHARACTERISTIC. BUT HE
22 SAYS, IT IS NOT THE PROPER LEVEL OF DISCLOSURE GIVEN IN
23 THE PROSPECTUS. NOW, I WON'T ASK IF IT IS MISLEADING. MY
24 QUESTION TO HIM IS, DID THE PROSPECTUS PROVIDE FULL AND
25 FAIR DISCLOSURE OF THE RISK ASSOCIATED. THAT IS MY

1 QUESTION. THE SAME TESTIMONY WAS ALLOWED WITH PROFESSOR
2 FREEMAN. AS TO THE RELIANCE ON THE ACCOUNTANTS, THAT IS A
3 FACTUAL QUESTION AS TO WHAT THE ROLE OF ACCOUNTANTS AND
4 LAWYERS IN A PUBLIC CORPORATION IN GENERAL IS WHAT HE WILL
5 TALK ABOUT. AND IN THIS CASE, SPECIFICALLY, WAS THERE
6 SUCH RELIANCE ON ACCOUNTANTS AND LAWYERS IN PREPARATION OF
7 THESE DOCUMENTS.

8 THE COURT: MOST OF THESE ISSUES WHERE I DON'T OBJECT
9 TO THIS BUT I WOULD OBJECT TO THAT. THEY ARE GOING TO
10 DEPEND ON WHAT QUESTIONS ARE ASKED AND HOW THE ANSWERS ARE
11 GIVEN, QUITE FRANKLY. AND I DON'T THINK I CAN RULE UNTIL
12 THEN. QUITE HONESTLY, I DON'T KNOW IF THERE IS ANY
13 NECESSITY IN TAKING THAT TESTIMONY BEFORE THEN. I THINK I
14 CAN MAKE THE RULINGS AS THE TESTIMONY IS PRESENTED. I
15 WOULD SIMPLY PRESUME MR. GRIFFIN WILL NOT BE OFFERING
16 ANYTHING THAT HE SO VIGOROUSLY ARGUED AGAINST WHEN MR.
17 FREEMAN TESTIFIED. ALL I AM TRYING TO DO IS GIVE YOU A
18 PLAYING FIELD AND HOPEFULLY THE SAME RULES WILL APPLY TO
19 THIS WITNESS AS APPLIED TO THE STATE'S WITNESS.

20 MR. GRIFFIN: I CERTAINLY WOULDN'T OFFER ANYTHING
21 THAT I OPPOSED AND YOU SUSTAINED THE OBJECTION.

22 THE COURT: I UNDERSTAND.

23 THE COURT: BRING THE JURY IN, PLEASE.

24 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
25 APPROXIMATELY 10:20 A.M.)

1 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.
2 BEFORE WE GET STARTED WITH THE TESTIMONY IN THE CASE LET
3 ME JUST INQUIRE WHETHER THERE IS ANY MEMBER OF THE JURY
4 WHO HAS EITHER PURPOSELY OR INADVERTENTLY VIOLATED THE
5 COURT'S ORDER NOT TO DISCUSS, READ OR WATCH OR LISTEN TO
6 ANYTHING ABOUT THE CASE?

7 (NO RESPONSE.)

8 THE COURT: THERE IS NO RESPONSE AND I APPRECIATE
9 THAT, WE WILL CONTINUE WITH THE TESTIMONY. MR. GRIFFIN,
10 CALL YOUR NEXT WITNESS, PLEASE.

11 MR. GRIFFIN: WE CALL DOUG BRANSON.

12 DOUG BRANSON, AFTER BEING DULY SWORN, TESTIFIED
13 AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. GRIFFIN:

16 Q GOOD MORNING.

17 A GOOD MORNING.

18 Q WHAT DO YOU DO?

19 A I AM A PROFESSOR OF LAW AT THE W. EDWARD SELL AND
20 BUSINESS LAW AT THE UNIVERSITY OF PITTSBURG AND I AM A
21 SECURITIES AND CORPORATE GOVERNANCE PRACTITIONER.

22 Q PROFESSOR, WOULD YOU PLEASE TELL THE JURY A LITTLE
23 BIT ABOUT YOUR EDUCATIONAL BACKGROUND. WHERE DID YOU GO
24 TO COLLEGE.

25 A I WAS RAISED ON A FARM IN OHIO, I WENT TO THE

1 UNIVERSITY OF NOTRE DAME, I GRADUATED WITH A DEGREE IN
2 ECONOMICS AND A MINOR IN ENGLISH.

3 Q WHAT DID YOU DO AFTER COLLEGE?

4 A I WAS COMMISSIONED IN THE NAVY, I SPENT THREE YEARS
5 IN THE NAVY, TWO YEARS ON A MINE SWEEPER AND ONE YEAR AS
6 AN ADVISER VIETNAMESE COSTAL PATROL FORCES IN VIETNAM.

7 Q AND AFTER YOUR SERVICE IN VIETNAM WHAT DID YOU DO?

8 A I CAME BACK AND I STARTED LAW SCHOOL FOUR DAYS LATER
9 WHICH WAS A BIG MISTAKE. BUT I WENT TO NORTHWESTERN LAW
10 SCHOOL IN CHICAGO AND I WAS GRADUATED FROM THERE IN 1970
11 AND I RAN ABOUT THIRTEENTH IN MY CLASS.

12 Q AND DID YOU ATTEND POSTGRADUATE LAWS?

13 A I DID. AFTER THREE AND A HALF YEARS OF PRACTICE I
14 WENT BACK TO SCHOOL AT THE UNIVERSITY OF VIRGINIA IN
15 CHARLOTTESVILLE AND I GOT A MASTERS OF LAW, STUDYING
16 CORPORATE AND SECURITIES LAW.

17 Q AND PROFESSOR BRANSON, HAVE YOU WRITTEN ANY
18 PUBLICATIONS?

19 A I HAVE WRITTEN ABOUT 9 BOOKS AND PROBABLY 75
20 ARTICLES, 50 OR 60 NEWSPAPER PIECES ALL ON CORPORATE
21 GOVERNANCE AND SECURITIES LAW.

22 Q HAVE YOU WRITTEN A TEACHING TEXT BOOK?

23 A I HAVE WRITTEN SEVERAL, I WROTE THE FIRST TREATISE OF
24 THE UNITED STATES ON CORPORATE GOVERNANCE IN 1993. AND
25 THEN IN 1997 I WROTE AND PUBLISHED, PROBLEMS ON CORPORATE

1 GOVERNANCE. AND THOSE TWO ARE USED TOGETHER ON SOME
2 PEOPLE INCLUDING MYSELF TO TEACH A CORPORATE GOVERNANCE
3 ELECTIVE. I ALSO WROTE BOOKS UNDERSTANDING CORPORATE LAW
4 WHICH IS A WIDELY USED TOP OF THE LINE STUDY AIDE. A LOT
5 OF MY DAUGHTER'S FRIENDS THAT GO TO LAW SCHOOL SAY I SAVED
6 THEIR LIFE. AND I ALSO WROTE A BOOK CALLED QUESTIONS AND
7 ANSWERS ON BUSINESS ORGANIZATIONS. I HAVE WRITTEN SEVERAL
8 OTHER CORPORATE GOVERNANCE BOOKS.

9 Q HAVE YOU WRITTEN ANY BOOKS REGARDING ROLES OF CEO'S
10 AND BOARD MEMBERS AND THINGS OF THAT NATURE?

11 A I WROTE A BOOK CALLED BOARD ROOM CHRONICLES. I
12 TAUGHT CORPORATE GOVERNANCE FOR ABOUT EIGHT YEARS AND I
13 HAD STUDENTS WRITE PAPERS ON CEO'S, WHAT CEO'S DID, THE
14 RELATIONS OF CEO'S WITH BOARD MEMBERS WHICH TAKE ALL KINDS
15 OF SHAPES AND FORMS. AND I MUST HAVE 200 OR 2200, 15 TO
16 20 PAGE PAPERS. AND THEN I WROTE SEVERAL BOOKS BUT ONE OF
17 THE FIRST BOOKS I WROTE WAS ON THE REMOVAL BY BOARDS OF
18 DIRECTORS OF CEO'S IN THE 1900'S INCLUDING JACK ACKERS AT
19 IBM, ROGER SMITH AND RITE AIDE AND JAMES ROBINSON,
20 AMERICAN EXPRESS.

21 Q DO YOU HAVE A NEW BOOK OUT?

22 A I DO, I JUST HAVE A BOOK APPEARING IN JANUARY, IT IS
23 CALLED NO SEAT AT THE TABLE AND HOW CORPORATE GOVERNANCE
24 AND LAW HAVE KEPT WOMEN OUT OF AMERICA'S BOARD ROOMS. AND
25 IT BASICALLY DEALS WITH DIRECTORS BUT ALSO WITH CEO'S,

1 THEIR EXTENSIVE DISCUSSIONS, 15 CEO'S INCLUDING CARELTON
2 FIORINAE AT HEWLETT PACKARD, BERNADETTE HEALY, PAT RUSSO
3 AT LUCENT, ANNE MULCAHY AT XEROX.

4 Q THESE ARE ALL WOMEN?

5 A YES AND SO THERE IS ALSO EXTENSIVE DISCUSSION IN THAT
6 BOOK ABOUT CEO'S WHO HAPPENED TO BE WOMEN.

7 Q AND DO YOU HAVE A RECENT ARTICLE IN THE SOUTH
8 CAROLINA LAW REVIEW?

9 A YES. THAT IS JUST CAME OUT AS WELL.

10 Q AND WHAT IS IT ABOUT?

11 A WELL, CORPORATE GOVERNANCE, I COULDN'T HELP HEARING
12 THE DISCUSSION, THE CORPORATE GOVERNANCE IS A PRACTICE
13 ABOUT GOOD PRACTICE, IT IS NOT ABOUT LAW, SOME OF IT IS
14 INFLUENCED BY THE LAW BUT IT IS WHAT BOARDS DO, WHAT CEO'S
15 DO AND THIS ARTICLE IS ABOUT ALL THE RECOMMENDATIONS THAT
16 HAVE BEEN COMING FORWARD IN THE LAST COUPLE OF YEARS ABOUT
17 WHAT BOARDS AND CEO'S SHOULD BE DOING. AND IF YOU ADD IT
18 ALL UP IT IS TOO MUCH, HUMAN BEINGS CAN'T DO IT, IT IS
19 ENTITLED TOO MANY BELLS? TOO MANY WHISTLES? CORPORATE
20 GOVERNANCE IN THE POST-ENRON, POST-WORLDCOM.

21 Q IN ADDITION TO WRITING IN THIS FIELD, DO YOU ALSO,
22 ARE YOU CONSULTED ABOUT CORPORATE GOVERNANCE MATTERS?

23 A YES. I HAVE BEEN FORTUNATE TO HAVE A NUMBER OF
24 PROSPECTIVES.

25 Q HAVE YOU DONE WORK WITH FOREIGN COUNTRIES?

1 A I HAVE, I HAVE WORKED FOR THE STATE DEPARTMENT, I
2 HAVE DONE THREE TRIPS TO INDONESIA, A COUPLE OF TRIPS TO
3 THE UKRAINE, I WENT TO SLOVAKIA LAST SUMMER AND I ADVISED
4 COUNTRIES AND MINISTERS AND BAR EXAMS, IT IS PART OF A
5 TEAM, IT IS NOT JUST ME, ON CORPORATIONS AND BUSINESS LAW
6 ON CORPORATE GOVERNANCE AND ON CAPITAL MARKETS. I ALSO DO
7 A LOT OF CORPORATE GOVERNANCE WORKSHOPS FOR BOARD OF
8 DIRECTORS. I ALSO SERVED ON A NUMBER OF STATE BAR
9 COMMITTEES, ON A CORPORATE LAW REVISION COMMITTEE IN
10 WASHINGTON STATE FOR 20 YEARS. I WAS ON TWO DIFFERENT
11 COMMITTEES FOR PROFIT CORPORATION LAW. I WAS ON THE STATE
12 SECURITIES COMMISSION FOR 8 YEARS. I ALSO HAVE STUDENT
13 INTERNS. I HAVE SIX TO EIGHT INTERNS OVER A YEAR AT THE
14 WASHINGTON STATE SECURITIES COMMISSION FOR TEN OR TWELVE
15 YEARS. THE SEC WOULD ONLY TAKE ONE BUT I ALWAYS HAD AN
16 INTERN AT THE SEC'S REGIONAL OFFICE IN SEATTLE. AND I
17 HAVE ALSO CONSULTED WITH 300 MAJOR TRANSACTION OF
18 CORPORATIONS, I HAVE ALWAYS BEEN FORTUNATE TO HAVE A FOOT
19 IN THE REAL WORLD AND A FOOT IN THE ACADEMIC WORLD.

20 Q HAVE YOU PREVIOUSLY SERVED AS A CONSULTANT AS AN
21 EXPERT WITNESS IN CIVIL MATTERS?

22 A I HAVE, I HAVE BEEN RETAINED AS AN EXPERT WITNESS, I
23 HAVE A LIST I THINK OF ABOUT 85 CASES BUT THAT IS NOT
24 EVERY CASE, IT IS ABOUT 100 CASES BUT THAT IS OVER 36
25 YEARS.

1 Q AND HAVE YOU HAD AN OPPORTUNITY TO SERVE ON THE
2 EXPERT WITNESS OR CONSULTANT IN CRIMINAL SECURITIES?

3 A I HAVE. I SERVED AS AN EXPERT WITNESS FOR THE U.S.
4 ATTORNEY'S OFFICE IN SEATTLE IN A COUPLE OF DIFFERENT
5 MATTERS. I SERVED AS A DEFENSE WITNESS IN A STATE INSIDER
6 TRADING PROSECUTION. I SERVED AS A DEFENSE WITNESS IN SEC
7 U.S. ATTORNEY PROSECUTION FOR INSIDER TRADING IN COLUMBUS,
8 OHIO.

9 Q AND HAVE YOU BEEN QUALIFIED AS AN EXPERT WITNESS IN
10 CORPORATE GOVERNANCE AND PRACTICE AS WELL AS THE PRACTICE
11 AND PROCEDURES IN THE SECURITIES INDUSTRY IN MANY STATES?

12 A YES, I HAVE BEEN QUALIFIED IN 22 OR 23 STATES AND
13 WITH ONE EXCEPTION.

14 Q I AM GOING TO SHOW YOU WHAT I HAVE MARKED AS
15 DEFENDANT'S EXHIBIT 24 FOR IDENTIFICATION. AND ASK IF
16 THIS IS A COPY OF YOUR CURRENT RESUME WITH ALL THE
17 PUBLICATIONS AND ARTICLES THAT YOU HAVE WRITTEN?

18 A YES, IT IS.

19 MR. GRIFFIN: YOUR HONOR, I WOULD MOVE EXHIBIT 24
20 INTO EVIDENCE.

21 MS. EVANS: NO OBJECTION, YOUR HONOR.

22 THE COURT: DEFENDANT'S 24 IS ADMITTED.

23 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 24 WAS ADMITTED
24 INTO EVIDENCE.)

25 Q MR. BRANSON, WERE YOU HIRED BY ME FOR THIS CASE?

1 A YES, I WAS.

2 Q AND ARE YOU BEING PAID FOR YOUR TIME?

3 A I AM.

4 Q HOW MUCH ARE YOU BEING PAID?

5 A \$350.00 DOLLARS AN HOUR.

6 Q AND ROUGHLY HOW MANY HOURS HAVE YOU SPENT ON THIS
7 CASE SO FAR?

8 A I HAVEN'T TOTALED UP, A BALL PARK GUESS WOULD BE 65
9 TO 70 HOURS.

10 Q AND HAVE YOU REVIEWED DOCUMENTS IN THIS CASE?

11 A I HAVE.

12 Q GENERALLY WHAT TYPE OF DOCUMENTS HAVE YOU REVIEWED?

13 A I HAVE REVIEWED ALL FILINGS BY GOLDEN TIE, NATIONAL
14 RAILROAD UTILIZATION CORPORATION, EMERGENT RESIDENTIAL,
15 CAROLINA INVESTORS, HOMEGOLD AND HOMEGOLD FINANCIAL. ALL
16 OF THOSE OTHER NAMES WERE PREDECESSOR CORPORATIONS, THAT
17 GREAT-GREAT-GREAT GRANDFATHER OF HOMEGOLD WAS FORMED BACK
18 IN THE 60'S AS GOLDEN TIE--

19 MS. EVANS: YOUR HONOR, BEFORE HE GIVES HIS TESTIMONY
20 HE HAS GOT TO OFFER HIM AS AN EXPERT.

21 THE COURT: WELL, HE IS TALKING ABOUT THE MATERIALS
22 THAT HE HAS REVIEWED. I DON'T KNOW IF YOU PLAN TO TENDER
23 HIM AFTER YOU GO THROUGH THAT.

24 MR. GRIFFIN: I PLAN AFTER STEPS.

25 THE COURT: GO AHEAD.

1 Q SO, YOU REVIEWED THE FILES OF HOMEGOLD AND ITS
2 GRANDFATHER, GREAT-GRANDFATHER.

3 A YES, I ASKED YOU TO GET ALL OF THOSE DOCUMENTS FROM
4 THE SOUTH CAROLINA SECRETARY OF THE STATE AND YOUR
5 ASSISTANT DID THAT AND THOSE WERE PROVIDED TO ME.

6 Q AND YOU REVIEWED THE FILES ALSO OF ALL OF THESE
7 COMPANIES?

8 A I READ THEM ALL, I READ ALL OF THEIR CORPORATE
9 MINUTES BACK TO MAYBE 1995 OF CAROLINA INVESTORS, HOMEGOLD
10 AND HOMEGOLD FINANCIAL AND PREDECESSORS. I READ ARTICLES
11 OF INCORPORATION, I READ BYLAWS, I READ AMENDED SETS OF
12 BYLAWS, I READ THE REORGANIZATION AGREEMENT THAT GOVERNED
13 THE MERGER OF HOMESENSE AND TO HOMEGOLD. I READ A LOT OF
14 CORRESPONDENCE, I READ EMAILS, I READ THE TESTIMONY OF THE
15 PROSECUTION WITNESS IN THE EARLE MORRIS CRIMINAL TRIAL, I
16 READ THE INSTRUCTIONS IN THAT TRIAL. I READ THE TESTIMONY
17 OF CAROLINA INVESTORS DIRECTORS, DON SHARPE AND MR. BOBO,
18 AND HIS TESTIMONY. I READ ALL THE PROSECUTIONS TRIAL
19 EXHIBITS IN THIS CASE. I WOULD ESTIMATE I WENT THROUGH A
20 SACK OF DOCUMENTS TWO FEET HIGH.

21 MR. GRIFFIN: YOUR HONOR, AT THIS TIME I WOULD LIKE
22 TO OFFER PROFESSOR BRANSON AS AN EXPERT IN THE FIELD OF
23 CORPORATE GOVERNANCE, QUALIFIED TO OFFER OPINIONS AND THE
24 PRACTICE AND PROCEDURES IN CORPORATE GOVERNANCE AS WELL AS
25 AN EXPERT IN THE SECURITIES INDUSTRY, QUALIFIED TO OFFER

1 OPINIONS IN PRACTICES AND PROCEDURES IN THAT FIELD.

2 THE COURT: ANY OBJECTION OR CROSS-EXAMINATION OF
3 QUALIFICATIONS.

4 MS. EVANS: JUST BRIEFLY.

5 CROSS-EXAMINATION

6 BY MS. EVANS:

7 Q MR. BRANSON, ARE YOU HERE TODAY TO DISCUSS ANY
8 MATTERS OF LAW?

9 A NO, CORPORATE GOVERNANCE IS NOT ABOUT LAW, IT IS
10 ABOUT BEST PRACTICES, GROUP PRACTICES.

11 Q AND YOU ARE NOT HERE TODAY TO GIVE ANY LEGAL
12 CONCLUSION?

13 A NO.

14 MS. EVANS: I HAVE NO FURTHER QUESTIONS AND I HAVE NO
15 OBJECTIONS.

16 THE COURT: ALL RIGHT. THEN THE WITNESS IS FOUND TO
17 BE QUALIFIED IN THE FIELDS OF CORPORATE GOVERNANCE AND
18 SECURITIES INDUSTRY, PRACTICES AND PROCEDURES IN THOSE
19 AREAS. MADAM FORELADY AND LADIES AND GENTLEMEN, LET ME
20 REMIND YOU THAT I TOLD YOU NORMALLY WITNESSES CANNOT VOICE
21 THEIR OPINIONS AND AN EXCEPTION TO THAT GENERAL RULE IS
22 WHEN A WITNESS HAS BEEN QUALIFIED AS AN EXPERT IN THE SAME
23 MANNER AS AGREED TO. THIS WITNESS IS AN EXPERT IN THOSE
24 FIELDS AND MAY VOICE HIS OPINIONS IN THOSE PARTICULAR
25 FIELDS. MR. GRIFFIN, YOU MAY CONTINUE.

1 BY MR. GRIFFIN:

2 Q PROFESSOR BRANSON, WHAT IS A CORPORATION?

3 A A CORPORATION, WHAT YOU LEARNED IN HIGH SCHOOL CIVIC
4 CLASSES IS A FICTIONAL BEING, IT REALLY ISN'T TOO HELPFUL.
5 IT IS A FICTIONAL BEING YOU FORM BY FILING PAPERS WITH AN
6 OFFICIAL, USUALLY IT IS THE SECRETARY OF STATE HERE IN
7 SOUTH CAROLINA. AND ONCE YOU FORM THAT FICTIONAL BEING,
8 ONE WAY OF LOOKING AT IT, IT IS LIKE A CARDBOARD BOX, IT
9 IS JUST LIKE AN EMPTY VEHICLE. AND THEN PEOPLE DO VARIOUS
10 THINGS WITH THAT EMPTY VEHICLE. SO, YOU PUT THINGS IN THE
11 BOX, IT CAN BE CASH, IT CAN BE LAND, IT CAN BE AN EXISTING
12 BUSINESS, IT COULD BE PATENTS. AND THEN YOU TAKE THINGS
13 OUT OF THE BOX WHICH ARE SHARES OF STOCKS WHICH ARE
14 REPRESENTED BY THE STOCK CERTIFICATES OR PROMISSORY NOTES.
15 AND THEN LATER ON IN THE LIFE OF A CORPORATION IT CAN
16 BECOME MORE COMPLICATED. YOU CAN HAVE THINGS LIKE
17 PREFERRED STOCK AND CONVERTIBLE SECURITIES. BUT BASICALLY
18 WHAT YOU ARE CREATING IS A FICTIONAL BEING THAT IS AN
19 EMPTY BOX THAT WILL BE, ITS BUSINESS AND AFFAIRS WILL BE
20 DIRECTED BY A BOARD OF DIRECTORS WHICH COMES FROM THE OLD
21 DAYS WHEN, IN THE 1700'S, A MAN MAY SIT ON A BOARD, TWO
22 STUMPS. THAT IS WHERE THE EXPRESSION, WHERE THE NAME,
23 BOARD, COMES FROM. AND THE BOARD CAN BE COMPRISED FROM 1
24 TO 25 INDIVIDUALS, BIGGER COMPANIES THE AVERAGE SIZE OF
25 THE BOARD IS 10.9 DIRECTORS. I ALSO TELL MY STUDENTS THEY

1 CUT ONE GUY'S ARM OFF. SMALLER PUBLIC COMPANIES, YOU SEE
2 5 DIRECTORS, 7 DIRECTORS, 9 DIRECTORS. MOM AND POP
3 PRIVATE COMPANIES YOU SEE 3 DIRECTORS, 2 DIRECTORS, 1
4 DIRECTORS. THE BOARD OF DIRECTORS MEET PERIODICALLY,
5 COMMON PATTERNS ARE QUARTERLY OR SIX TIMES A YEAR. AND
6 THEY MANAGE THE BUSINESS IN CORPORATION AND THEY, OR THEY
7 DOMINATE AND THEN OVERSEE THE MANAGEMENT OF THE
8 CORPORATION BY OTHER PEOPLE.

9 Q ARE ALL CORPORATIONS THE SAME?

10 A NO.

11 Q AND I THINK YOU DESCRIBED MOM AND POP VERSUS PUBLIC
12 CORPORATION. WHAT TYPE OF CORPORATION AND LET'S TALK
13 ABOUT THE YEAR OF 2000, WHAT TYPE OF CORPORATION WAS
14 HOMEGOLD FINANCIAL, INC. IN THE YEAR OF 2000, AS YOU
15 RECALL?

16 A HOMEGOLD FINANCIAL IS A SMALLER PUBLICLY HELD
17 COMPANY, IT MUST FILE REPORTS, 1 OF 16 THOUSAND ROUGHLY,
18 400 COMPANIES THAT FILE REPORTS WITH THE SEC BUT IT IS IN
19 THE SMALLER PORTION OF THAT LIST. ANY COMPANIES THAT HAS
20 OVER \$10 MILLION DOLLARS IN ASSETS AND A CLASS OF
21 SECURITIES HELD BY OVER 500 PERSONS HAS TO FILE QUARTERLY
22 AND ANNUAL REPORTS AND A PROXY AND OTHER THINGS IN
23 ACCORDANCE WITH THE FEDERAL REGULATIONS. HOMEGOLD HAD
24 ABOUT 450 CLASS OF SHARES HELD BY 450 PERSONS BUT YOU
25 DON'T WRAP BACK OUT OF THAT UNTIL YOU DROP DOWN TO 299.

1 SO THEY ARE TRADED, THEIR SHARES ARE TRADED ON WHAT IS
2 CALLED THE, OVER THE COUNTER BULLETIN BOARD. AND SO OF
3 THOSE 16 THOUSAND, 200, 300, 400 COMPANIES, HOMEGOLD WAS A
4 PUBLIC COMPANY BUT A SMALLER ONE BUT NOT THE SMALLEST.

5 Q DID IT HAVE A BOARD OF DIRECTORS?

6 A THEY DO.

7 Q AND HOW, STRUCTURALLY WAS THE HOMEGOLD FINANCIAL, HOW
8 WAS IT STRUCTURED?

9 A HOW WAS IT STRUCTURED?

10 Q YES, SIR.

11 A WELL, IT IS A PARENT COMPANY WHICH IS, I TALKED ABOUT
12 THE EMPTY BOX AND THE BOARD AND THEN AS COMPANIES GO UP
13 THEY MIGHT FORM OTHER COMPANIES. A COMPANY THAT OWNS THE
14 SHARES OF ANOTHER COMPANY WE CALL PARENT COMPANY AND THE
15 COMPANY IN WHICH THE SHARES ARE OWNED WE CALL A SUBSIDIARY
16 COMPANY. AND WE CAN HAVE PUBLIC COMPANIES THAT HAVE
17 SUBSIDISES THAT OWN SUBSIDIARIES THAT OWN SUBSIDIARIES.
18 WE SOMETIMES CALL THOSE THE CORPORATIONS, THE SUBSIDIARY,
19 THE PARENT, THE GRANDPARENT, THE GREAT-GREAT-GRANDPARENT
20 AND THE GREAT-GREAT-GREAT-GRANDPARENT AND OTHER PEOPLE
21 CALL THEM DIRECT OR INDIRECT SUBSIDIARY. HOMEGOLD HAD TWO
22 SUBSIDIARIES, HOMEGOLD FINANCIAL IS THE PARENT, HOMEGOLD
23 IS ONE SUBSIDIARY AND CAROLINA INVESTORS IS ANOTHER
24 SUBSIDIARY. NOW, THEY ARE BOTH WHAT IS CALLED
25 WHOLLY-OWNED SUBSIDIARY.

1 Q AND WHAT DOES THAT MEAN?

2 A WELL, YOU OWN 100 PERCENT OF THE STOCK RATHER THAN A
3 CONTROLLING INTEREST OF THE STOCK. SO, IF YOU OWN 51
4 PERCENT IT WOULD BE A SUBSIDIARY BUT IT WOULDN'T BE A
5 WHOLLY-OWNED SUBSIDIARY. IN FACT, YOU COULD CONTROL
6 ANOTHER CORPORATION WITH LESS THAN 50 PERCENT PLUS 1, YOU
7 CAN CONTROL A CORPORATION WITH THE NUMBERS THERE, FROM A
8 SITUATION, THIS SITUATION. A SUBSIDIARY IS A COMPANY THAT
9 IS CONTROLLED BY ANOTHER COMPANY BY VIRTUALLY STOCK
10 OWNERSHIP.

11 Q AND COMPARE THAT TO HOMESENSE, THE ENTITY THAT MR.
12 SHEPPARD MERGED INTO HOMEGOLD, WHAT WAS ITS STRUCTURE?

13 A HOMESENSE WAS A, WHAT WE CALLED A PRIVATELY HELD
14 COMPANY. ITS SHARES WERE HELD EXCLUSIVELY BY A SMALL
15 GROUP OF PEOPLE, MR. SHEPPARD MAINLY. AND THE BIG
16 DIFFERENCE OF A PRIVATE COMPANY, YOU DON'T HAVE TO MAKE
17 DISCLOSURES TO THE EXTENT YOU HAVE TO MAKE WHEN YOU ARE A
18 PUBLIC COMPANY AND YOU DON'T HAVE TO MAKE PERIODIC
19 DISCLOSURES. SO, PEOPLE CONTROL PRIVATE COMPANIES PRETTY
20 MUCH CAN DO WHAT THEY WANT. THEY CAN'T STEAL OR EMBEZZLE
21 OR THINGS LIKE THAT BUT IF THEY WANT TO USE THE CORPORATE
22 SKI LODGE FOR PERSONAL SKIING THEY CAN DO THAT. BUT THEY
23 CAN'T IN A PUBLIC COMPANY BECAUSE, ONE OF THE THINGS THAT
24 HAPPENS WHEN YOU BECOME PUBLIC IS YOU HAVE GONE FROM BEING
25 ABLE TO DO ANYTHING YOU WANT TO, LIFE IN THE GOLDFISH

1 BOWL. AND SO IT IS ALWAYS A BIG PROBLEM BECAUSE PEOPLE
2 AREN'T USED TO THAT.

3 Q I WANT TO ASK YOU ABOUT CAROLINA INVESTORS, WHAT WAS
4 ITS STRUCTURE?

5 A CAROLINA INVESTORS HAD A BOARD OF SIX PERSONS, SHARED
6 BY A GENTLEMAN BY THE NAME OF EARLE MORRIS. AND LARRY
7 OWEN, MR. SHEPPARD WAS ON THE BOARD FOR TWO YEARS, MR.
8 BOBO, A MR. SHARPE AND A MAN NAMED JACK STERLING FROM
9 GREENVILLE.

10 Q NOW, HAVE YOU REVIEWED THE BYLAWS OF CAROLINA
11 INVESTORS?

12 A I HAVE.

13 Q STRUCTURALLY WAS THE BOARD OF CAROLINA INVESTORS SET
14 UP AS AN ADVISORY BOARD?

15 A NO.

16 Q WHAT POWERS WERE GIVEN TO IT?

17 A SECTION 301 OF THE BYLAWS PROVIDED THAT THE BOARD OF
18 DIRECTORS SHALL HAVE ALL THE POWER TO MANAGE THE BUSINESS
19 IN AFFAIRS OF THE CORPORATION.

20 Q WHAT DOES THAT MEAN?

21 A THE BOARD OF DIRECTORS IS DESIGNED, THE BUCK STOPS
22 THERE AND THE BOARD OF DIRECTORS HAS POWER TO MERGE THE
23 COMPANY WITH OTHER COMPANIES, IT HAS THE POWER TO SELL ALL
24 THE AUDITS, ASSETS, IT HAS THE POWER TO HIRE AND FIRE WHAT
25 WE CALL BYLAW OFFICERS, WHATEVER TITLE YOU GIVE THEM,

1 PRESIDENT, CEO, CFO OR TREASURER, COO, EXECUTIVE
2 VICE-PRESIDENT. THE BOARD OF DIRECTORS HAS THE POWER TO
3 MANAGE THE BUSINESS IN THE AFFAIRS OF THE CORPORATION.
4 AND THEY DO THAT BY THOSE KINDS OF TRANSACTIONS BY
5 APPROVING MAJOR CONTRACTS AND THE LIKE.

6 Q NOW, WITH REGARD TO HOMEGOLD, DID IT ALSO HAVE A
7 BOARD OF DIRECTORS?

8 A HOMEGOLD FINANCIAL?

9 Q HOMEGOLD FINANCIAL.

10 A YES, IT DID.

11 Q AND WHAT WERE ITS AUTHORITY UNDER THE BYLAWS OF
12 HOMEGOLD FINANCIAL?

13 A IT WAS THE SAME, TO MANAGE, IT HAS THE ULTIMATE
14 AUTHORITY TO MANAGE THE BUSINESS IN AFFAIRS OF THE
15 CORPORATION. THE BYLAWS OF HOMEGOLD FINANCIAL, THE PARENT
16 COMPANY, AND CAROLINA INVESTORS, THE SUBSIDIARY. I READ
17 TWO DIFFERENT VERSIONS, '91 AND '95, I READ THE BYLAWS OF
18 HOMEGOLD FINANCIAL AND THEY ARE VIRTUALLY IDENTICAL.

19 Q LET ME ASK YOU, PROFESSOR BRANSON, DO YOU HAVE AN
20 OPINION AS TO WHETHER MR. SHEPPARD, PRIOR EXPERIENCE WITH
21 HOMESENSE PREPARED HIM FOR THE JOB OF CEO OF A PUBLIC
22 CORPORATION?

23 A I DO.

24 Q WHAT IS THAT OPINION?

25 A YES AND NO.

1 Q WILL YOU PLEASE EXPLAIN?

2 A WELL, MR. SHEPPARD KNOWS THE MORTGAGE BUSINESS AND HE
3 KNOWS HOW TO DEVELOPE THE REVENUE SIDE OF THE MORTGAGE
4 BUSINESS, HOW TO INCREASE SALES, OPEN OFFICES AND THAT
5 KIND OF THING. I DON'T THINK HE WAS A WELL ROUNDED
6 CORPORATE EXECUTIVE, HE DOESN'T HAVE AN OVERALL HIGHLY
7 DEVELOPED SENSE OF FINANCIAL MATTERS, I DON'T THINK HE HAS
8 A VERY WELL DEVELOPED SENSE OF LIKE HUMAN RESOURCE
9 MATTERS, TREATMENT OF SUBORDINATES. I DON'T THINK HE HAS
10 A VERY WELL DEVELOPED SENSE OF HOW MATURE CORPORATIONS
11 OPERATE.

12 Q ARE THERE STUDIES ON CEO'S COMING INTO PUBLIC
13 CORPORATIONS AND WHETHER IT TAKES AN AMOUNT OF TIME TO
14 MAKE THAT TRANSITION, ANY STUDIES OR RESEARCH ON THAT?

15 A YES, EVERY TEXT SHEET YOU PICK UP ON SECURITIES
16 REGULATIONS, TREATISE OR LAW SCHOOL CASES TALKS ABOUT
17 THAT, ABOUT THE TRANSITION FROM BEING A PRIVATE COMPANY TO
18 A PUBLIC COMPANY AND THE DIFFICULTIES THAT ARE ASSOCIATED
19 WITH THAT. AND ONE OF THE PRINCIPLE DIFFICULTIES IS
20 GETTING THE PERSONS WHO CONTROL THE COMPANY WHEN IT IS A
21 PRIVATE COMPANY TO CHANGE THEIR BEHAVIORS BECAUSE THEY
22 HAVE TO BE CHANGED ONCE YOU BECOME PUBLIC. AND THAT
23 ALWAYS TAKES A YEAR, A YEAR AND A HALF, TWO YEARS TO GET
24 THOSE PEOPLE WHERE YOU WANT THEM. AND ALL OF THE
25 MATERIALS TALK ABOUT THAT.

1 Q DO YOU HAVE AN OPINION AS TO WHETHER MR. SHEPPARD WAS
2 GIVEN EXCLUSIVE AUTHORITY TO MANAGE ALL THE BUSINESS
3 AFFAIRS WITH HOMEGOLD FINANCIAL, INC.

4 A I DO.

5 Q WHAT IS THAT OPINION?

6 A HE WAS HIRED WITH VERY DIFFERENT LOPSIDED
7 RESPONSIBILITIES. HE WAS HIRED TO DEVELOPE THE SALES SIDE
8 OF THE MORTGAGE BUSINESS, TO OPEN NEW OFFICES, TO INCREASE
9 PRODUCTION. HIS RESPONSIBILITIES WERE VERY LOPSIDED, I
10 SEE NO RESOLUTIONS OF THE BOARD GIVING HIM BROADER
11 DELEGATIONS. SO, HE BASICALLY HAD THE MISSION TO DEVELOPE
12 SALES AND HAVE POWERS OF A CEO WHICH ARE VERY LIMITED,
13 POWER TO HIRE AND FIRE BASIC EMPLOYEES, POWER TO ENGAGE IN
14 ORDINARY TRANSACTIONS. CEO'S, STANDING ALONE ARE VERY
15 POWERFUL, THE POWER IS THE BOARD.

16 Q DID MR. SHEPPARD HAVE THE POWER TO HIRE AND FIRE THE
17 CFO, THE CHIEF FINANCIAL OFFICER?

18 A NO, BECAUSE THAT IS A BYLAW OFFICER SO THE HIRING AND
19 FIRING WOULD BE IN THE BOARD OF DIRECTORS.

20 Q WHAT TYPE OF, A CEO, WHAT TYPE OF AUTHORITY DO THEY
21 GENERALLY HAVE WHEN IT COMES TO HIRING AND FIRING?

22 A WELL, MIDDLELEVEL, LOWER MIDDLE LEVEL EMPLOYEES COULD BE
23 DISMISSED BY THE CEO. IF YOU FIRED A BYLAW OFFICER IT
24 WOULD BE EQUIVALENT IN TAKING INTO YOUR OWN HANDS THE
25 AMENDMENT OF THE BYLAWS. YOU DON'T HAVE THE POWER TO DO

1 THAT.

2 Q AND WHAT ARE THE BYLAWS OFFICERS FOR?

3 A WELL, DESCRIBED WAY BACK WHEN, IN CREATING THIS
4 FICTIONAL BEING OF THE CORPORATION. THE DOCUMENT DOESN'T
5 HAVE TO BE A LAWYER, USUALLY IT IS A LAWYER FILES WITH THE
6 SECRETARY OF STATE, IT IS CALLED THE CERTIFICATE OF A
7 CORPORATION. BUT MOST PLACES IT IS CALLED THE ARTICLE OF
8 THE CORPORATION. MOST PLACES HAVE THE SAME CORPORATE LAW,
9 I THINK THEIR MODEL BUSINESS CORPORATION IS THE LAW OF 40
10 STATES INCLUDING SOUTH CAROLINA AND INCLUDING
11 PENNSYLVANIA, INCLUDING OHIO.

12 MS. EVANS: YOUR HONOR, HE IS SITTING THERE TALKING
13 ABOUT THE LAWS AND ACTUALLY MISQUOTED SOUTH CAROLINA LAWS
14 TO HOW CORPORATIONS ARE FORMED, I JUST ASK TO LIMIT THE
15 LINE OF TESTIMONY ABOUT CORPORATE LAWS.

16 THE COURT: MR. GRIFFIN, WHY DON'T YOU QUESTION HIM
17 RATHER THAN GOING FORWARD. JUST ASK HIM ANOTHER QUESTION.
18 I SUSTAIN THE OBJECTION AS TO THE LAST STATEMENT MADE.

19 Q PROFESSOR BRANSON, WITH REGARD TO THE BYLAWS HERE FOR
20 HOMEGOLD FINANCIAL, WHAT WERE THE OFFICERS OF THE BOARD
21 ITSELF, ONLY HAD THE AUTHORITY TO HIRE AND FIRE?

22 A THE OFFICERS THAT ARE NAMED IN THERE?

23 Q YES, IF YOU RECALL.

24 A IT IS A PRESIDENT AND I THINK LATER THE TITLE WAS
25 CHANGED AND ITS TITLE IS CEO. ONE OR MORE

1 VICE-PRESIDENTS, A TREASURER AND THAT TITLE MAY BE CHANGED
2 LATER TO CFO BUT AGAIN IT IS JUST A TITLE, IT DOESN'T HAVE
3 A LOT OF MEANING. AND THAT IS ALL I RECALL.

4 Q UNDER THE BYLAWS, WHAT TYPE OF FINANCIAL TRANSACTION
5 COULD MR. SHEPPARD AS CEO ENGAGE IN VERSUS WHAT WOULD BE
6 APPROVED BY AND DONE BY THE BOARD?

7 A WELL, I WOULD TELL HIM I WAS ADVISING HIM THAT HE
8 COULD DO DAY-TO-DAY TRANSACTIONS, ORDINARY TRANSACTIONS.
9 BUT ANYTHING THAT IS AN EXTRAORDINARY TRANSACTION HAS TO
10 BE APPROVED BY THE BOARD UNLESS THE BOARD HAS DELEGATED TO
11 HIM THE POWER. AND THE BOARD CAN DELEGATE IN TWO WAYS, BY
12 A FORMAL RESOLUTION OR BY ACTS OF PRACTICES OVER LONG
13 PERIODS OF TIME. THERE MAY BE COO'S BEEN IN OFFICE FOR
14 10, 12, 15 YEARS, THEY HAVE A LOT OF POWER, THERE ARE NO
15 FORMAL DELEGATIONS BUT IT IS BUILT UP OVER TIME. THEY
16 JUST DID THINGS AND THEY HAVE APPARENT AUTHORITY TO DO
17 THEM.

18 Q AND HOW LONG WAS MR. SHEPPARD AT HOMEGOLD FINANCIAL?

19 A 27 OR 28 MONTHS.

20 Q AND DO YOU RECALL THE BOARD MEMBERS OF HOMEGOLD
21 FINANCIAL, WERE THEY FROM YOUR REVIEW OF THE MINUTES AND
22 RESOLUTIONS, DID THEY PARTICIPATE IN THE GOVERNING AFFAIRS
23 OF HOMEGOLD FINANCIAL, THE BOARD MEMBERS?

24 A YES, THEY DID.

25 Q AND DID HOMEGOLD FINANCIAL HAVE AN AUDIT COMMITTEE?

1 A YES, THEY DID.

2 Q AND WHAT IS THE ROLE OF AN AUDIT COMMITTEE IN THE
3 WORLD OF A PUBLIC COMPANY?

4 A WELL, IT IS CHANGING, THIS CURRENT, THERE ARE ALMOST
5 TOO MANY RESPONSIBILITIES ON AUDIT COMMITTEES. AN AUDIT
6 COMMITTEE WAS ORIGINALLY CONCEIVED BY THE BOARD OF
7 DIRECTORS TO ASSIST THE BOARD OF DIRECTORS, ADDED CHECK ON
8 THE QUALITY OF FINANCIAL INFORMATION THAT WOULD COME TO
9 THE FULL BOARD. AND UPON WHICH IT COULD BASE ITS DECISION
10 TO FIRE THE CEO OR FIRE ANOTHER SENIOR OFFICER. THAT IS
11 STILL A PRINCIPLE, TASK OF AN AUDIT COMMITTEE. WHAT IS
12 HAPPENING NOW AT LEAST IN PUBLIC COMPANIES IS A LOT OF
13 OTHER PEOPLE ARE TRYING TO GIVE, OTHER THAN THE BOARD OF
14 DIRECTORS, ARE TRYING TO GIVE THIS COMMITTEE OF THE BOARD
15 ORDERS. AN AUDIT COMMITTEE AS ORIGINALLY CONCEIVED SHOULD
16 TAKE ITS ORDERS FROM THE BOARD, NOT FROM THE SEC OR NOT
17 FROM CONGRESS OR NOT FROM SOMEBODY ELSE. BUT THAT IS THE
18 ERROR WE LIVE IN NOW, THAT IS NOW.

19 Q NOW, AND YOU RECALL FROM YOUR REVIEW OF THE MINUTES
20 OF WHO HEADED UP THE AUDIT COMMITTEE, CHAIRMAN OF THE
21 AUDIT COMMITTEE?

22 A YES, I THINK IT WAS MR. PHILPOTT WHO WAS AN
23 INVESTMENT MANAGER FROM CHARLOTTE, NORTH CAROLINA.

24 Q AND DOES THE, THE ROLE OF THE AUDIT FIRM, ELLIOTT
25 DAVIS IN THIS INSTANCE, WHAT IS THEIR ROLE FOR PUBLIC

1 CORPORATION?

2 A A PUBLIC CORPORATION HAS TO FILE PERIODIC REPORTS
3 WITH THE SEC. THEY HAVE TO HAVE A CLEAN LETTER OF
4 OPINION. FINANCIAL STATEMENTS ARE PREPARED BY IN-HOUSE,
5 HOPEFULLY, ACCOUNTING PERSONNEL. BUT THEY ARE PREPARED
6 IN-HOUSE, THAT IS ALL YOU NEED UNLESS YOU COME INTO THIS
7 SEC DISCLOSURE SYSTEM. THEN YOU MUST GO AND HIRE A
8 CERTIFIED PUBLIC ACCOUNTANT WHO IS LICENSED BY THE STATE
9 AND HE HAS, HE OR HIS FIRM OR SHE HAVE TO BE INDEPENDENT.
10 SO YOU HAVE TO HAVE AN INDEPENDENT CERTIFIED PUBLIC
11 ACCOUNTANT. THEY THEN DO AN AUDIT, AN AUDIT IS TESTING
12 SAMPLE BASIS ON THE ACCOUNTS OF THE COMPANY. NOT TO
13 DISCOVER FRAUD BUT TO DISCOVER THE RISK OF FINANCIAL
14 STATEMENTS.

15 Q IN THIS STANCE DID HOMEGOLD FINANCIAL HAVE AN OUTSIDE
16 AUDIT FIRM?

17 A YES, THEY DID.

18 Q AND WHAT IS THE RELATIONSHIP BETWEEN AN AUDIT FIRM,
19 PUBLIC FIRM AND THE AUDIT COMMITTEE OF A PUBLIC
20 CORPORATION?

21 A THE AUDIT FIRM TODAY IS HIRED AND FIRED BY THE AUDIT
22 COMMITTEE BUT EVEN IN THE EVENTS IN THIS CASE THE AUDIT
23 COMMITTEE, THE BEST PRACTICE WOULD BE, GOOD PRACTICE WOULD
24 BE THE OUTSIDE AUDIT FIRM IN RENDERING ITS OPINION ON THE
25 FINANCIAL STATEMENTS, WOULD REPORT ANY PERCEIVED

1 EFFICIENCIES AND NEGOTIATE THAT OUT WITH THE AUDIT
2 COMMITTEE.

3 Q WAS THERE ALSO A COMPENSATION COMMITTEE ON THE BOARD
4 OF DIRECTORS OF HOMEGOLD FINANCIAL?

5 A YES, THERE WAS.

6 Q AND WHAT IS THE ROLE OF THE COMPENSATION COMMITTEE OF
7 THE BOARD OF A PUBLICLY TRADED COMPANY?

8 A IT IS A COMMITTEE OF A BOARD, COMPRISED OF WORK
9 NUMBERS AND IT MAKES RECOMMENDATIONS TO THE FULL BOARD AS
10 TO WHAT THE COMPENSATION OF SENIOR EXECUTIVE OFFICERS
11 SHOULD BE.

12 Q MOVING FORWARD A LITTLE BIT, PROFESSOR BRANSON, AND
13 ASK IF YOU HAVE AN OPINION AS TO WHETHER MR. SHEPPARD
14 MANAGED OR CONTROLLED THE OPERATIONS OF CAROLINA
15 INVESTORS?

16 A I DO.

17 Q WHAT IS THAT OPINION?

18 A THAT HE DID NOT.

19 Q AND WHAT DO YOU BASE THAT OPINION ON?

20 A HE WAS JUST ONE OF SIX BOARD MEMBERS, HIS NAME
21 DOESN'T EVEN APPEAR IN THE MINUTES OF CAROLINA INVESTORS
22 UNTIL OCTOBER 27TH OF 2000. I SAW NO EVIDENCE THAT MR.
23 SHEPPARD EVER DEALT WITH OR SPOKE TO ANY INVESTOR, THE
24 ONLY EVIDENCE I HAVE SEEN OF ANY ACTIVITY BY MR. SHEPPARD
25 WAS WHEN MR. GAFFNEY'S SUGGESTION THAT THE PROSPECTUS' BE

1 DISSEMINATED--

2 MS. EVANS: OBJECTION, YOUR HONOR. HE IS ELICITING
3 HEARSAY, MR. GAFFNEY'S SUGGESTION, TALKING ABOUT SOMETHING
4 MR. GAFFNEY HAS SAID.

5 THE COURT: HE CAN TALK ABOUT WHAT HE, HE DISCOVERED
6 THE ACTIONS THAT THE DEFENDANT TOOK. AND TO THAT DEGREE I
7 WILL PERMIT THAT ANSWER TO GO FORWARD BUT NOT TO GET INTO
8 ANY DISCUSSIONS WITH SOMEONE ELSE SUCH AS MR. GAFFNEY OR
9 SOMEONE ELSE. MAYBE REPHRASE YOUR QUESTION, MR. GRIFFIN.

10 Q TELL THE JURY THE ACTIVITIES THAT YOU SAW MR.
11 SHEPPARD TOOK WITH REGARD TO CAROLINA INVESTORS.

12 A WELL, HE DID THAT AND THERE WAS A BROCHURE CALLED THE
13 PEARL OF THE CAROLINA'S OR WHAT IS CALLED IN THE TRADE AS
14 A FREE WRITING. AND TRIED TO TONE DOWN THE USE OF
15 FLAMBOYANT STATEMENTS, HYPERBOLIC STATEMENTS. THAT WAS
16 LATER UPSTAGED BY ANOTHER COMMAND FROM THE LAWYERS WHO
17 SAID, DON'T USE IT AT ALL.

18 Q AND DID MR. SHEPPARD ATTEND BOARD MEETINGS?

19 A HE DID.

20 Q HOW MANY VOTES DID MR. SHEPPARD OR WOULD MR. SHEPPARD
21 HAVE AT A BOARD MEETING?

22 A ONE.

23 Q WAS THERE OFFICERS OF CAROLINA INVESTORS?

24 A YES.

25 Q WHO WERE THE OFFICERS?

1 A EARLE MORRIS WHO WAS CHAIRPERSON OF THE BOARD AND
2 LARRY OWEN WHO WAS THE CHIEF EXECUTIVE OFFICER.

3 Q AND UNDER THE BYLAWS OF CAROLINA INVESTORS WHAT IS
4 THE AUTHORITY GIVEN TO THE OFFICERS?

5 A THE AUTHORITY OF THE OFFICERS IS TO CARRY OUT THOSE
6 POWERS THAT ARE DELEGATED THAT ARE RUN BY THE BOARD OF
7 DIRECTORS AND THE POWERS CONTAINED IN THE BYLAWS, BUT THE
8 POWERS IN THE BYLAWS ARE PRETTY SKETCHY. SO, IT EVOLVES
9 OVER TIME, MR. OWEN HAD BEEN THE CEO OF CAROLINA INVESTORS
10 AS FAR BACK AS I SAW, THE EARLY 1990'S. AND MR. MORRIS
11 HAD BEEN THERE FOR QUITE A WHILE. SO THEY, OVER A NUMBER
12 OF YEARS, A WORKING RELATIONSHIP DEVELOPED BETWEEN THEM
13 AND THIS COLLECTIVE GROUP CALLED THE BOARD OF DIRECTORS
14 AND THAT IS THE WAY IT FUNCTIONED.

15 Q PROFESSOR BRANSON, WITH REGARD TO THE FINANCIAL
16 DISCLOSURES FOR HOMEGOLD AND YOU DESCRIBED THE ROLE OF AN
17 OUTSIDE AUDIT COMMITTEE, EXCUSE ME, AUDIT FIRM. WHAT WAS
18 THE ROLE OF THE WYCHE LAW FIRM IN THAT CAPACITY IN THIS
19 MANNER?

20 A WELL, THE FINANCIAL STATEMENTS ARE TECHNICALLY
21 PROVIDED BY THE COMPANY, OFTEN THEY ARE PROVIDED BY
22 AUDITORS WHO HAVE EXPRESSED AN OPINION THAT THEY REFLECT
23 THE ASSETS AND LIABILITIES OF THE COMPANY AND THE RESULTS
24 OF THE MOST RECENT ACCOUNTING. SO, AN OUTSIDE LAW FIRM
25 CAN HAVE ALL KINDS OF DIFFERENT RESPONSIBILITIES. I MEAN,

1 IT IS OUR QUESTION AND ANSWER BECAUSE IT VARIES FROM FIRM
2 TO FIRM. BUT THE USUAL PACKAGE WOULD BE, YOU DRAFT THE
3 SECURITIES DOCUMENTS, THE PROSPECTUS, THE 10Q'S WHICH HAVE
4 TO BE FILED WITH THE SEC, THE 10K WHICH HAS TO BE FILED
5 WITHIN 60 DAYS AT THE END OF THE YEAR. YOU DRAFT THE
6 ANNUAL PROXY STATEMENT TO SOLICIT AGENCIES TO HOLD SHARES.
7 YOU MAY OR MAY NOT ATTEND BOARD MEETINGS AND IN THIS CASE
8 A MEMBER OF THE FIRM, SPECIFICALLY MR. WYCHE ATTENDED
9 EVERY MEETING.

10 Q AND IN THE COURSE, IN PRACTICES OF CORPORATIONS, WHEN
11 IT COMES TO THESE PUBLIC CORPORATIONS, COMES TO THESE
12 FILINGS AND THEY ARE STRUNG BY THE DISCLOSURE STATEMENTS
13 OF QUARTERLY, ANNUALLY, JUST IN GENERAL FOR CORPORATIONS
14 WHAT ROLE DOES THE CEO PLAY IN THAT PROCESS, GENERALLY
15 INDUSTRY PRACTICES?

16 A THE INDUSTRY PRACTICING IS THE CFO PLAYS THE LARGEST
17 ROLE. THE CFO DURING TIME, PREPARATION OF THE PROSPECTUS
18 IS UNDER WAY, SPENDS OVER OF HER TIME ON AVERAGE ON THE
19 PROSPECTUS. THE STATISTICS THAT I HAVE SEEN SHOW THAT
20 CEO'S ON AVERAGE SPEND LESS THAN TWENTY PERCENT OF THEIR
21 TIME ON PREPARATION OF DISCLOSURE DOCUMENTS.

22 Q AND WITH REGARD TO YOUR REVIEW OF THE RECORDS IN THIS
23 CASE, HAVE YOU SEEN WHERE MR. SHEPPARD SPENT ANY TIME ON
24 THESE DISCLOSURE STATEMENTS?

25 A I HAVE SEEN NO EVIDENCE THAT HE SPENT ANY TIME ON THE

1 DISCLOSURE DOCUMENTS, INCLUDING A PROSPECTUS.

2 Q NOW, WITH REGARD, BACK TO HOMESENSE, DID MR.
3 SHEPPARD'S PREVIOUS COMPANY, DID IT HAVE TO FILE
4 DISCLOSURE DOCUMENTS TO GO THROUGH THE PROCESS THAT YOU
5 JUST DESCRIBED?

6 A NO, IT DID NOT, IT IS UNDER THE RADAR, IT IS SMALLER,
7 IT DOESN'T FILE ANY OF THOSE DOCUMENTS.

8 Q AND DID IT HAVE AN ARM OR DID IT SELL SECURITIES TO
9 RAISE MONEY THAT WERE SOLD WITH PROSPECTUS'?

10 A NO.

11 Q WHAT IS THE REASON FOR PUBLIC COMPANIES DISSEMINATING
12 FINANCIAL INFORMATION IN THESE QUARTERLY AND ANNUAL
13 FILINGS?

14 A WELL, THE REASON IS THAT IT IS WHAT IS CALLED THE
15 FILTRATION FACT IN THE TRADE. FINANCIAL STATEMENTS ARE
16 FILED, SEC HAS NO POWER TO SAY DO THIS, DO THAT. YOU FILE
17 DISCLOSURE DOCUMENTS AND THEN RESEARCH ANALYSTS AND FIRMS
18 THAT DO THIS READ THOSE AND ANALYZE THEM AND THEN THEY
19 MAKE SUGGESTIONS OR RECOMMENDATIONS TO BROKER DEALERS AND
20 FINANCIAL ADVISERS, INDIVIDUAL INVESTORS SOMETIMES READS,
21 SOMETIMES DON'T READ, YOU CAN'T MAKE PEOPLE READ STUFF,
22 READ THE DISCLOSURES ARE PART OF THEM. AND SO IN THAT WAY
23 THIS DISCLOSURE WANTS TO BE FILED IN WASHINGTON, D.C. AND
24 THEN FILTER OUT AND BENEFIT THE PUBLIC. IT IS CALLED THE
25 FILTRATION EFFECT, IT WORKS SOME OF THE TIME AND SOMETIMES

1 IT DOESN'T.

2 Q AND IN ADDITION TO THE FILING OF STATEMENTS, PUBLIC
3 COMPANIES FILING STATEMENTS WITH THE SEC, QUARTERLY AND
4 ANNUAL STATEMENTS. HOW ELSE DO COMPANIES DISSEMINATE
5 FINANCIAL INFORMATION?

6 A PRESS RELEASES, CONFERENCE CALLS, I USE A LOT OF
7 INTERNET SERVICES, YAHOO, FINANCE AND SWAB AND YOU KIND OF
8 MOVE DOWN THE SCREEN YOU WILL SEE THEY HAVE AN EARNING
9 CONFERENCE CALL SCHEDULED. AND SOMETIMES THEY WILL GIVE
10 YOU THE PHONE NUMBER AND THE PASS CODE. SO, IF I AM AN
11 INVESTOR, OR MAYBE I AM JUST A NERD AND I CALL IN AND GIVE
12 THE OPERATOR THAT NUMBER AND THEN I HEAR THAT IT IS
13 USUALLY THE CHIEF FINANCIAL OFFICER ONCE IN A WHILE THAT
14 CAN BE THE CEO. BUT IT IS USUALLY THE CHIEF FINANCIAL
15 OFFICER WILL READ A PRESS RELEASE AND THEN ANSWER
16 QUESTIONS. AND THEN THERE ARE SERVICES, ONE IS THOMPSON
17 FIRST CALL WHICH GATHERS ALL OF THE DIFFERENT PREDICTIONS
18 OF COMPANIES AND FOLLOW AND COMES UP WITH A CONSENSUS.
19 AND THAT HAS BECOME VERY BIG IN THE LAST FIVE YEARS,
20 WHETHER COMPANIES MEASURED UP TO THEIR CONSENSUS.

21 Q IS THIS ALL PART OF THIS FILTRATION EFFECT THAT YOU
22 DESCRIBED EARLIER?

23 A YES, IT IS.

24 Q NOW, DO COMPANIES GIVE PROJECTIONS OF FUTURE
25 PERFORMANCE?

1 A YES, THEY DO.

2 Q IN WHAT WAYS?

3 A WELL, THEY FORMALLY STATE IN PUBLISHED DOCUMENTS THAT
4 THEY HAVE CERTAIN REALISTIC AND OBTAINABLE GOALS AND THAT
5 IS PUT OUT IN PRESS RELEASES, THE SEC RULE 175 AND ON,
6 THEY GIVE THAT TO NEWSPAPERS AND FINANCIAL ANALYSTS, OTHER
7 PEOPLE. THEY CAN ALSO DO IT IN FORMAL DISCLOSURE
8 DOCUMENTS, THEY CAN DO IT IN THEIR 10Q OR 10K, IF THEY
9 WISH TO.

10 Q AND IN YOUR REVIEW OF THE RECORDS DID YOU, HAVE YOU
11 SEEN ANY PROJECTIONS AS YOU DESCRIBED?

12 A I HAVE SEEN NO PROJECTIONS IN THIS CASE.

13 Q HAVE YOU SEEN MINUTES WHERE DISCUSSIONS OF FUTURE
14 PERFORMANCE WERE MADE IN MEETINGS?

15 A I HAVE SEEN INTERNAL DISCUSSIONS OF THEIR HOPES OR
16 THEIR WISHES OR THEIR DESIRES BUT THAT IS A FAR DIFFERENT
17 THING FROM PROJECTIONS.

18 Q AND WHAT IS THE DIFFERENCE?

19 A PROJECTION IS FORMALLY STATED AND IT IS PUBLISHED
20 EXTERNALLY. BOARD ROOM MEETINGS, ALL KINDS OF BACK AND
21 FORTH GOES ON. AND THE SALES GUY SAYS, WELL I THINK, I
22 HOPE WE CAN DO THIS AND THE OTHER BOARD MEMBERS WHO ARE,
23 KNOW THE COMPANY TOO MAY DISAGREE. SO, THERE IS, THERE IS
24 A LOT OF BACK AND FORTH AT BOARD MEETINGS ABOUT WISHES,
25 HOPES, OBJECTIVES, WANT TO BE, THIS AND THAT. THAT IS FAR

1 DIFFERENT FROM PROJECTIONS.

2 Q IS THAT A WELL ESTABLISHED REASONABLE PRACTICE TO
3 HAVE THESE TYPES OF DISCUSSIONS?

4 A YES, IT GOES ON IN EVERY COMPANY AND IF IT CAN'T GO
5 ON THEN MANY COMPANIES WOULD GRIND TO A HALT. YOU HAVE
6 GOT TO HAVE GIVE AND TAKE AND FREE DISCUSSION AT BOARD
7 MEETINGS.

8 Q WHAT IS A PROSPECTUS?

9 A A PROSPECTUS IS, I CAN'T SAY IT IS A LEGALLY REQUIRED
10 DOCUMENT, I AM NOT ALLOWED TO SAY THAT. BUT IT IS A
11 WRITTEN DOCUMENT REQUIRED BY REGULATORY AUTHORITIES THAT
12 DISCLOSES BOTH THE COMPANY AND THE PROPOSED TRANSACTION,
13 IN MANY CASES IT IS THE OFFERING OF SECURITIES. SO, IT
14 WILL DISCUSS WHAT SECURITIES WILL BE OFFERED, WHAT THE
15 PROCEEDS WILL BE USED FOR, HOW MUCH THEY INTEND TO RAISE,
16 HOW MUCH OF THAT MONEY WILL GO TO THE UNDERWRITERS, THE
17 PEOPLE WHO MANAGE THE SELLING EFFORT. AND IT IS GENERALLY
18 A FAIRLY THICK DOCUMENT OF 35, 45, 50 PAGES AND IT IS
19 GENERALLY PREPARED BY LAWYERS.

20 Q AND WHO IS THE AUDIENCE THAT IT IS WRITTEN TO?

21 A WELL, IT IS WRITTEN FOR THE PROTECTION OF INVESTORS
22 SO INVESTORS ARE THE, BUT INVESTORS ALWAYS DON'T READ IT.
23 THE AUDIENCE IS POTENTIAL INVESTORS OF THEIR FINANCIAL
24 ADVISERS, BROKER DEALERS, RESEARCH ANALYSTS, RESEARCH
25 DEPARTMENTS AT MAJOR FINANCIAL FIRMS, IT IS WIDE AUDIENCE

1 THAT GOES FROM PEOPLE WHO ARE NOT VERY SOPHISTICATED TO
2 PEOPLE WHO ARE VERY SOPHISTICATED. AND IT HAS TO AGGRESS
3 ITSELF TO ALL OF THOSE PEOPLE.

4 Q IS A PROSPECTUS ALSO SUBJECT TO THIS FILTRATION
5 EFFECT?

6 A YES, IT IS.

7 Q AND HAVE YOU REVIEWED THE PROSPECTUS FOR CAROLINA
8 INVESTORS AND IN PARTICULAR TURN YOUR ATTENTION TO APRIL
9 OF 2002?

10 A YES, I HAVE.

11 Q AND DO YOU HAVE AN OPINION AS TO WHETHER THAT
12 PROSPECTUS PROVIDED FULL AND FAIR DISCLOSURE OF THE RISK
13 ASSOCIATED WITH THE PURCHASE OF CAROLINA INVESTORS NOTE OR
14 DEBENTURE?

15 A YES, I DO.

16 Q AND WHAT IS YOUR OPINION?

17 MS. EVANS: OBJECTION, YOUR HONOR, THE TERM, FAIR
18 DISCLOSURE IS A SECURITIES LEGAL TERM.

19 THE COURT: I OVERRULE, I WILL PERMIT THE ANSWER TO
20 THAT QUESTION. GO AHEAD.

21 Q YOUR OPINION AS TO WHETHER THE PROSPECTUS PROVIDED
22 FULL AND FAIR DISCLOSURE OF THE RISK ASSOCIATED WITH THE
23 PURCHASE OF A NOTE AND DEBENTURE?

24 A YES, I DID.

25 Q AND WHAT IS YOUR OPINION?

1 A IT DISCLOSED THE RISKS AND IN THE TRADE WHERE WE
2 DRAFT THESE THINGS WE HAVE TO DETERMINE WHETHER OR NOT THE
3 DOCUMENT HAS FULL AND FAIR DISCLOSURE. AND TWO OF THE
4 RULES THAT WE USE ARE THE EQUAL PROMINENCE RULE, YOU GIVE
5 EQUAL PROMINENCE GOOD NEWS OR USUALLY BAD NEWS THAT IS
6 BURIED. BUT YOU HAVE EQUAL PROMINENCE TO GOOD NEWS AND
7 BAD NEWS, YOU HAVE TO GIVE EQUAL PROMINENCE. YOU HAVE TO
8 GIVE EQUAL PROMINENCE TO FACTS AS WELL AS MANAGEMENTS
9 OPINION OR PLANS. AND THE FLIP SIDE IS THE BURIED FACTS
10 DOCTRINE, YOU CAN'T BURY SOMETHING SO YOU CAN'T TAKE THE
11 GOOD NEWS AND PUT IT ON PAGE ONE AND PUT THE BAD NEWS BACK
12 ON THE FOOTNOTES TO THE FINANCIAL STATEMENTS. SO, THOSE
13 ARE THE TWO GUIDELINES THAT LAWYERS KEEP IN MIND WHEN THEY
14 DRAFT A PROSPECTUS.

15 Q NOW, WITH REGARD TO THE CAROLINA INVESTORS PROSPECTUS
16 OF APRIL OF 2002, IS IT BALANCED?

17 A YES.

18 Q AND IS THE, AND WHERE IS THE BAD NEWS DISCLOSED IN
19 THE PROSPECTUS?

20 A THE BAD NEWS IS DISCLOSED IN THE FOOTNOTES TO THE
21 FINANCIAL STATEMENT WHICH ACCORDING TO SURVEY IS THE LEAST
22 READ PART OF A, THE BAD NEWS IS RIGHT UP FRONT. THE BAD
23 NEWS IS RISK FACTOR NUMBER ONE, RISK FACTOR NUMBER TWO
24 PAGE AND THE STUDY SHOWS THAT THE RISK FACTOR STATEMENT IS
25 THE MOST READ PART OF THE PROSPECTUS BY INVESTORS.

1 Q THAT IS AS TO THIS ONE, IN INDUSTRY PRACTICE WHERE DO
2 YOU NORMALLY FIND THE BAD NEWS?

3 A I WOULD LIKE TO THINK THAT THE INDUSTRY LIKE HERE,
4 PUTS THE BAD NEWS WHERE PEOPLE WILL SEE IT BUT, YOU KNOW,
5 I DEAL WITH A LOT OF CASES AND I SEE A LOT OF CASES WHERE
6 THEY TRY TO BURY IT.

7 Q BUT IS THE BAD NEWS BURIED IN THE PROSPECTUS THAT WAS
8 FILED APRIL 8TH OF 2002?

9 A NO, IT IS NOT.

10 Q AND I AM GOING TO HAND YOU STATE'S EXHIBIT 50, SO YOU
11 CAN REFER TO IT. NOW, I WANT TO GO TO THE RISK FACTORS.
12 CAN YOU SEE THAT?

13 A YES.

14 Q LET ME ASK YOU TO EXPLAIN TO THE JURY, WHAT IS THE
15 PURPOSE OF THE RISK FACTOR SECTION OF A PROSPECTUS?

16 A THE RISK FACTOR STATEMENTS OF A PROSPECTUS PUTS IN
17 ONE PLACE ALL OF THE, IMPORTANT CONSIDERATIONS THAT AN
18 INVESTOR SHOULD CONSIDER WHEN SHE MAKES AN INVESTMENT IN
19 THE COMPANIES WHERE SECURITIES ARE BEING SOLD.

20 Q AND IN THIS INSTANCE RISK FACTOR NUMBER ONE, WHAT
21 DOES RISK FACTOR NUMBER ONE ADDRESS IN THIS PROSPECTUS?

22 A WELL, THE RISK FACTOR NUMBER ONE DISCLOSES THAT THE
23 ACCOUNTANTS HAVE ISSUED A GOING CONCERN LETTER WHICH IN
24 THE TRADE SETS OFF ALL KINDS OF BELLS AND WHISTLES. THAT
25 MEANS THAT IT IS MORE PROBABLE THAN NOT THAT BY THE END OF

1 THE NEXT ACCOUNTING PERIOD THIS COMPANY WILL BE INSOLVENT.

2 Q AND IN THE SPECIAL RISK FACTORS HERE, IN YOUR OPINION
3 PLACING IT IN RISK FACTOR NUMBER ONE, IS THAT APPROPRIATE?

4 A YES, IT IS MORE THAN APPROPRIATE, IT IS UPFRONT AND
5 CENTERING.

6 Q AND IN THIS RISK FACTOR DOES IT ALSO EXPLAIN THE RISK
7 OF WHAT COULD HAPPEN HAVING A GOING CONCERN QUALIFICATION
8 IN THE FINANCIALS?

9 A YES, IT DOES.

10 Q AND WHAT DOES IT SAY COULD HAPPEN AND YOU CAN READ
11 THE ONE IN FRONT OF YOU IF YOU WOULD LIKE.

12 A THEY MIGHT NOT BE ABLE TO SELL ALL OF THESE
13 SECURITIES SO THEY WOULDN'T HAVE THE PROCEEDS TO REDEEM
14 EARLIER SECURITIES. THAT THEY, THE LIQUIDITY WOULD DRY
15 UP, THEY WOULDN'T HAVE ENOUGH CASH TO PAY DEPOSITORS WHO
16 WANTED THEIR MONEY BACK, EITHER ON A MONTH TO MONTH OR DAY
17 TO DAY BASIS OR AT THE END OF THE TERM OF THEIR NOTES.

18 Q DOES RISK FACTOR NUMBER ONE ALSO GIVE MANAGERMENTS
19 VIEW OF MATTERS, I WILL READ IT. IT SAYS, MANAGEMENT
20 BELIEVES THAT THE STEPS BEING TAKEN BY THE COMPANY WILL
21 CREATE AN OPPORTUNITY TO COLLECT THE LOANS AND CONTINUE AS
22 A GOING CONCERN. AND THEN IT REFERS TO APPRAISALS OF THE
23 MORTGAGE ORIGINATION DIVISION AND IF YOU WILL READ THAT AT
24 THE BOTTOM. WHAT IS YOUR OPINION, IF ANY, ABOUT HAVING
25 SUCH A STATEMENT IN RISK FACTOR NUMBER ONE OF MANAGERMENTS

1 BELIEF?

2 A YOU HAVE TO GIVE MANAGEMENTS SIDE OF THE FACTS, YOU
3 HAVE TO GIVE THEIR OPINION, IT IS ONLY TWO SENTENCES OF
4 OUT OF 20 SENTENCES IN RISK FACTOR NUMBER ONE. THE POINT
5 IS TO BE BALANCED AND IN MY OPINION THIS RISK FACTOR IS
6 WAY BALANCED ON GIVING ATTENTION TO THE GOING CONCERN
7 LETTER.

8 Q LET ME ASK YOU, IN THIS INSTANCE, WHAT COMPANY IS
9 MAKING THE STATEMENTS WHEN IT SAYS MANAGEMENT BELIEVES?

10 A IT IS THE BOARD OF DIRECTORS.

11 Q OF WHAT COMPANY?

12 A OF THIS ONE, CAROLINA INVESTORS.

13 Q AND IS MANAGEMENT IN THIS INSTANCE, IS IT MR.
14 SHEPPARD?

15 A NO.

16 Q AND AGAIN THE BOARD OF DIRECTORS OF CAROLINA
17 INVESTORS CONSIST OF WHOM?

18 A IT CONSIST OF EARLE MORRIS, LARRY OWEN, MR. BOBO, MR.
19 SHARPE, MR. STERLING AND MR. SHEPPARD, SIX BOARD MEMBERS.

20 Q NOW, DO YOU HAVE A RISK FACTOR NUMBER TWO?

21 A YES, I DO.

22 Q AND WHAT IS RISK FACTOR NUMBER TWO?

23 A RISK FACTOR NUMBER TWO IS MORE OF THE BAD NEWS. THE
24 COMPANY AFFILIATES USED LOANS OF CAROLINA INVESTORS TO
25 MEET LIQUIDITY NEEDS TO OPERATE THEIR RESPECTIVE BUSINESS

1 IN A SOURCE OF WORKING CAPITAL TO FUND SECURITIZATION,
2 RESIDUAL ASSETS, PROPERTY AND EQUIPMENT AND LOANS. AS OF
3 DECEMBER 31ST OF 2001 LOANS OUTSTANDING FROM CAROLINA
4 INVESTORS TO HOMEGOLD FINANCIAL TOTAL \$144 MILLION
5 DOLLARS, \$144,284,665.00 DOLLARS. IT IS DECEMBER THE 31ST
6 OF 2001 HOMEGOLD FINANCIAL AND HOMEGOLD INCORPORATED HAVE
7 BORROWED \$13.9 MILLION FROM CAROLINA INVESTORS JUST
8 THROUGH MARCH 15TH OF--

9 Q STOP RIGHT THERE, AND THIS DOCUMENT IS FILED IN APRIL
10 OF 2000.

11 A APRIL 2ND, I THINK.

12 Q AND IT IS ADVISING THE READER THAT FROM DECEMBER TO
13 MARCH 15TH AN ADDITIONAL \$13.9 MILLION HAS BEEN BORROWED?

14 A YES.

15 Q AND PLEASE KEEP READING.

16 A WELL, IT GOES ON TO SAY, FAILURE BY HOMEGOLD TO REPAY
17 SUCH A DEBT COULD HAVE A MATERIAL ADVERSE EFFECT ON THE
18 COMPANY INCLUDING, WITHOUT LIMITATION, ITS ABILITY TO MEET
19 ITS OBLIGATION UNDER THE SERIES H DEBENTURES WHICH ARE
20 OFFERED BY THIS PROSPECTUS AND THE FLOATING NOTES OFFERED
21 HEREBY.

22 Q AND WHAT DOES THAT MEAN?

23 A WELL, THIS IS TRYING TO BORROW, SELL SECURITIES THAT
24 HAVE A TOTAL OF \$220 MILLION DOLLARS. AND IT IS SAYING
25 THAT IS IF THESE LOSSES CONTINUE AND YOU BUY THESE

1 SECURITIES THEN THERE IS A VERY HIGH RISK YOU MIGHT NOT
2 GET YOUR MONEY BACK.

3 Q TURN THE PAGE AND GO BACK TO, MOVE FORWARD TO RISK
4 FACTOR NUMBER EIGHT.

5 A OKAY, I HAVE IT.

6 Q GO UP TO NUMBER SEVEN AND IF YOU WILL READ THAT TO
7 THE JURY AND THEN EXPLAIN.

8 A NO SECONDARY MARKET EXIST OF THESE SECURITIES AND
9 NONE THESE SECURITIES MAY BE TRANSFERRED TO ANY OTHER
10 PERSON WITHOUT THE WRITTEN CONSENT OF THE COMPANY.
11 CONSEQUENTLY THE HOLDER OF A SERIES H DEBENTURE OR
12 FLOATING RATE NOTE MUST BE PREPARED TO HOLD SUCH
13 SECURITIES UNTIL THEIR MATURITY.

14 Q WHAT DOES IT MEAN THAT THERE IS NO SECONDARY MARKET?

15 A THAT MEANS YOU CAN'T GO TO YOUR BROKER DEALER AND
16 SELL THEM, THERE IS NO MARKET THAT HE OR SHE SELL THEM
17 INTO. THERE ARE RESTRICTIONS ON TRANSFERS SO YOU CAN'T
18 EVEN LOCK DOWN THE BLACK AND SELL THEM TO YOUR NEIGHBOR.
19 THE ONLY PERSON WHO WILL BUY THEM IS THE COMPANY, CAROLINA
20 INVESTORS, AND THEY WILL GIVE YOU YOUR MONEY BACK BUT HERE
21 IT SAYS THEY WILL ONLY DO THAT AFTER A YEAR HAS PASSED,
22 UNTIL MATURITY. SO, THERE ARE HIGHER RISK HERE THAN WHAT
23 THE COMMON STOCK WHERE A MARKET EXIST.

24 Q THEN NUMBER EIGHT, TALKING ABOUT SINKING FUNDS, IF
25 YOU WILL READ THAT AND THEN EXPLAIN WHAT SINKING FUNDS

1 ARE.

2 A NO SINKING FUNDS HAVE BEEN ESTABLISHED OF THE
3 RETIREMENT OF THE SECURITIES OR OTHER DEBT OF THE COMPANY.
4 THE COMPANY WILL RELY UPON THE CONTINUING SALES OF SERIES
5 H DEBENTURES AND FLOATING RATE NOTES, ITS EARNINGS AND
6 OTHER SOURCES OF CREDIT TO OBTAIN THE NECESSARY CAPITAL TO
7 RETIRE ITS OBLIGATIONS AS THEY MATURE. A SINKING FUND IS
8 A PROVISION PUT IN MANY OFFERINGS OF DEBTS SECURITIES,
9 THAT FROM THE TIME THEY ARE SOLD UNTIL THEY ARE MATURED,
10 THINK OF A CIGAR BOX. AND THE CIGAR BOX IS THAT SINKING
11 FUND AND THEY HAVE PUT AWAY FUNDS SO THAT WHEN THE
12 SECURITIES MATURE THERE WILL BE A SOURCE OF MONEY TO PAY
13 PEOPLE BACK. SO, IF THERE IS NO SINKING FUND THAT MEANS
14 HIGHER RISK.

15 Q AND THEN NUMBER NINE, IF YOU DON'T MIND READING THAT.

16 A LIQUIDITY OF THE COMPANY IS DEPENDENT ON THE SALE OF
17 ITS DEBTS SECURITIES. THE COLLECTION OF ITS OUTSTANDING
18 LOANS AND OTHER RECEIVABLES AND THE REPAYMENT OF DEBT FROM
19 AFFILIATED COMPANIES. NUMEROUS INVESTMENT ALTERNATIVES
20 HAVE GENERALLY CAUSED INVESTORS TO MORE CRITICALLY
21 EVALUATE INVESTMENT OPPORTUNITIES AND THERE CAN BE NO
22 ASSURANCE THAT THE SECURITIES OFFERED HEREBY WILL BE SOLD
23 FOR THAT FUTURE SECURITIES OFFERINGS WILL BE SUCCESSFUL.

24 Q NOW, IT SAYS, LIQUIDITY OF THE COMPANY, WHAT DOES
25 LIQUITIDY MEAN?

1 A LIQUIDITY IS CASH OR THE TURNING THINGS INTO CASH
2 VERY QUICKLY, IF THE NEED ARISES. IF YOUR SPOUSE HAS TO
3 GO TO THE HOSPITAL OR IF YOUR KIDS GET ACCEPTED TO SOME
4 FANCY COLLEGE OR SOMETHING. SOME INDIVIDUALS CAN HAVE A
5 LOT OF ASSETS, YOU HAVE HAERD THAT THEY ARE HOUSE POOR.
6 THAT MEANS IT IS ALL TIED UP IN A HOUSE AND THEY DON'T
7 HAVE A LOT OF MONEY IN THE BANK, THERE ARE NOT LIQUID,
8 THEY MAY BE RICH BUT THEY ARE NOT LIQUID. SO, LIQUIDITY
9 IS THE ABILITY TO GET YOUR HANDS ON CASH OR THINGS THAT
10 CAN BE TURNED INTO CASH.

11 Q AND THIS SENTENCE SAYS LIQUIDITY OF THE COMPANY IS
12 DEPENDENT ON THE SALE OF THE DEBTS SECURITIES, WHAT DEBT
13 SECURITIES IS BEING REFERRED TO?

14 A THAT IS FLOATING RATE NOTES AND THE SERIES H
15 DEBENTURES THAT ARE BEING OFFERED BY THIS PROSPECTUS.

16 Q AND THEN NUMBER TEN, IF YOU DON'T MIND READING THAT.

17 A THE SIGNIFICANT CURTAILMENT OR ONE OR MORE OF THE
18 SOURCES OF FUNDS DISCUSSED ABOVE COULD HAVE A MATERIALLY
19 ADVERSE EFFECT ON A COMPANIES ABILITY TO MEET ITS
20 OBLIGATIONS INCLUDING THE PAYMENT OF THE SECURITIES
21 OFFERED HEREBY.

22 Q AND THEN--

23 A PROCEEDS OF NOTE OFFERINGS WERE USED IN PART TO PAY
24 OFF THE PRINCIPLE OF PRIOR PURCHASERS OF NOTES. AND SO IF
25 THIS NOTE DRIES UP AND CAN'T BE SOLD IT WILL HURT THE

1 COMPANIES ABILITY TO PAY OFF PRIOR PURCHASERS OF NOTES AND
2 IT WILL STEAM ROLL.

3 Q AND THEN NUMBER ELEVEN SAYS, CAN YOU READ THAT?

4 A THE SECURITIES HEREBY ARE NOT INSURED BY ANY PRIVATE
5 OR PUBLIC ORGANIZATION. THE SECURITIES ARE NOT SECURED BY
6 THE PLEDGE OF ANY OF THE COMPANIES ASSETS NOR ITS
7 AFFILIATES ASSETS.

8 Q I WANT TO ASK YOU FIRST ABOUT INSURANCE BY PRIVATE OR
9 PUBLIC ORGANIZATION. WHAT PRIVATE OR PUBLIC ORGANIZATIONS
10 INSURE INVESTMENTS?

11 A WELL, BANKS ARE REQUIRED TO OBTAIN INSURANCE BY
12 FEDERAL DEPOSIT INSURANCE CORPORATION OR HAVE THAT GOLD
13 SEAL ON THEIR WINDOW, FDIC. AND THRIFT INSTITUTIONS,
14 SAVINGS AND LOANS, GO TO A SIMILAR FEDERAL INSURED
15 CORPORATION CALLED THE FEDERAL SAVINGS AND LOAN INSURANCE
16 CORPORATION. THEY HAVE TO BUY THAT INSURANCE, THEY PAY
17 MONEY FOR THAT. SO, THAT YOUR DEPOSITS ARE INSURED, THE
18 LAST TIME WE LOOKED UP TO \$100 THOUSAND DOLLARS, MAYBE
19 \$125 THOUSAND. THERE IS NO SUCH INSURANCE HERE WHICH
20 MEANS HIGHER RISK.

21 Q EXPLAIN WHAT A PLEDGE OF ANY COMPANY ASSET, WHAT IS
22 THAT?

23 A ONE WAY YOU DECREASE RISK FOR INVESTORS IS TO GIVE
24 THEM SPECIFIC ASSETS THAT THEY OR THEIR LAWYERS CAN LOOK
25 TO IN THE CASE OF DEFAULT AND SO YOU GIVE SECURITY WHEN

1 YOU TAKE OUT A CAR LOAN, THEY REQUIRE THAT THE BANKS
2 INTEREST BE NOTED UNDER CAR TITLE, THAT IS YOU GIVING THE
3 BANK A SECURITY INTEREST IN THE CAR. AND THEY ARE SAYING
4 WITH THESE NOTES THE COMPANY IS GIVING NO EXTRA ASSURANCE
5 LIKE THAT, HIGHER RISK, THERE IS NO SECURITY.

6 Q AND IF YOU DON'T MIND READING NUMBER TWELVE.

7 A THE ABILITY OF THE COMPANY TO GENERATE INCOME TO
8 REQUIRE THAT THE SECURITIES OFFERED HEREBY DEPENDS IN ITS
9 PART ON ITS ABILITY TO ATTRACT NOTE HOLDERS. THE MARKET
10 IN WHICH THE COMPANY PARTICIPATES IS HIGHLY COMPETITIVE
11 AND THERE CAN BE NO ASSURANCE THAT THE COMPANY WILL
12 ATTRACT AN ADEQUATE NUMBER OF NOTE HOLDERS.

13 Q AND THEN PLEASE READ NUMBER THIRTEEN.

14 A IN VIEW OF THE ABOVE FACTORS INVESTORS ARE CAUTIONED
15 THAT THE PURCHASE OF THE SERIES H DEBENTURES AND FLOATING
16 RATE NOTES SHOULD NOT BE MADE WHERE ANY INVESTOR DESIRED
17 AN INSURED OR NO RISK INVESTMENT OR WISHES TO REDEEM OR BE
18 ABLE TO SELL THE SECURITY AT ANY TIME PRIOR TO MATURITY.

19 Q AND IN THE COURSE OF PRACTICE, WHAT IS THIS TELLING
20 INVESTORS?

21 A WELL, A FINANCIAL ADVISER, I HAVE BEEN A FINANCIAL
22 ADVISER TO A NUMBER OF PEOPLE AND I WOULD TELL THEM THAT
23 THIS SAYS THERE IS A LOT OF RISK HERE. EITHER DON'T
24 INVEST OR BE DIVERSIFIED, DON'T PUT MORE THAN THREE
25 PERCENT OR FIVE PERCENT OF YOUR ASSETS IN THIS INVESTMENT.

1 BECAUSE THIS WHOLE RISK FACTOR STATEMENT SO FAR IS
2 DESCRIBING THIS AS A HIGH, HIGH RISK INVESTMENT.

3 Q IF YOU DON'T MIND TURNING TO PAGE F11. IF YOU DON'T
4 MIND EXPLAINING TO THE JURY WHAT, WHETHER THERE IS AN
5 AUDIT LETTER ATTACHED TO THE, IN THE PROSPECTUS?

6 A FOR ANY PROSPECTUS OR REGULATORY FILING, YOU HAVE TO
7 GET A CLEAN LETTER FROM THE AUDITORS AND THEY, REMEMBER IT
8 IS COMPANIES, A LOT OF PEOPLE THINK IT IS THE AUDITORS, IT
9 IS NOT. BUT THE COMPANIES THAT PREPARE THE FINANCIAL
10 STATEMENTS AND THEN THE AUDITORS TEST THEM THROUGH RANDOM
11 SAMPLING AND THEN THEY RENDER AN OPINION. THEY CAN REFUSE
12 TO RENDER AN OPINION OR THEY CAN RENDER A QUALIFIED
13 OPINION, THEY COULD SAY QUALIFIED AS AN AUDIT SCOPE, THEY
14 WOULDN'T PAY US TO LOOK AT EVERYTHING WE FILED, WE SHOULD
15 LOOK AT IT OR QUALIFIED AS TO ACCOUNTING PRINCIPLE. WE
16 DISAGREE WITH THEIR CHOICE OF PRINCIPLE FOR INVENTORY,
17 THEIR CHOICES OF PRINCIPLE FOR ALLOWANCE FOR BAD DEBTS.
18 BUT THE SEC AND THE INDUSTRY PRACTICE IS YOU HAVE TO GET A
19 CLEAN LETTER IF YOU ARE A PUBLIC COMPANY. THAT OPINION IS
20 ALWAYS INCLUDED IN THE REGULATORY FILINGS INCLUDING A
21 PROSPECTUS.

22 Q AND IS THERE A CLEAN LETTER IN THIS PROSPECTUS?

23 A YES, THERE IS.

24 Q AND CAN YOU GO TO IT, PLEASE.

25 A IF I CAN FIND IT.

1 Q YES, SIR.

2 A I AM THERE.

3 Q AND WHAT PAGE IS IT IN THE PROSPECTUS?

4 A IT IS THE BEGINNING OF APPENDIX F, IT IS PAGE F2.

5 Q AND DOES IT HAVE THE GOING CONCERN LANGUAGE IN IT?

6 A IT DOES.

7 Q WILL YOU TELL THE JURY, THE PROMINENCE, IF YOU WILL
8 THAT, IN THE INDUSTRY, THE PRACTICE THAT AN AUDIT LETTER
9 HAS FOR PERSONS REVIEWING A PROSPECTUS?

10 A WELL, A REPUTABLE PUBLIC ACCOUNTING FIRM IS SIGNED
11 OFF ON THE FINANCIAL STATEMENTS AND THERE IS A VERY SMALL
12 RISK OF ANY MATERIAL MISSTATEMENT. AND THE STUDIES SHOW
13 THAT AFTER THE RISK FACTOR STATEMENT THAT IS ONE OF THE
14 THINGS INVESTORS READ WHEN THEY READ PROSPECTUS.

15 Q NOW, IN THIS INSTANCE, DOES THIS, THE LETTER, THE
16 OPINION IS UNQUALIFIED BUT IS THERE A GOING CONCERN?

17 A YES, THERE IS.

18 Q AND WHAT DOES THAT INDICATE?

19 A THE FINAL PARAGRAPH, THE ACCOMPANYING CONSOLIDATED
20 FINANCIAL STATEMENTS HAVE BEEN PREPARED ASSUMING THAT THE
21 COMPANY WILL CONTINUE AS A GOING CONCERN. AS DISCUSSED IN
22 NOTE TWO OF THE CONSOLIDATED FINANCIAL STATEMENTS THE
23 COMPANIES PARENT HAS A REOCCURRING OPERATING LOSS, HAS
24 REOCCURRING OPERATING LOSSES AND HAS A DEFICIT IN
25 SHAREHOLDERS EQUITY OF APPROXIMATELY \$84 MILLION,

1 UNAUDITED AT DECEMBER 31ST OF 2001. THESE FACTORS RAISE
2 SUBSTANTIAL DOUBT ABOUT THE COMPANIES ABILITY TO CONTINUE
3 AS A GOING CONCERN. MANAGEMENTS PLANS IN THESE MATTERS
4 ARE ALSO DESCRIBED IN NOTE TWO, THE ACCOMPANYING
5 CONSOLIDATED FINANCIAL STATEMENTS DO NOT, THIS IS
6 IRRELEVANT, DO NOT INCLUDE ANY ADJUSTMENTS THAT MIGHT
7 RESULT FROM THE OUTCOME OF THIS UNCERTAINTY.

8 Q NOW, ARE THERE, WHAT DOES THIS LANGUAGE MEAN?

9 A TO ME, AS AN EXPERIENCED SECURITIES PRACTITIONER, A
10 FINANCIAL ADVISER, IT RINGS ALL KINDS OF BELLS. IT SAYS
11 THIS IS A VERY RISKY PROPOSITION, THAT THIS COMPANY MAY
12 NOT BE AROUND, IT MAY DISAPPEAR BETWEEN NOW AND THE END OF
13 THE YEAR.

14 Q NOW, THERE IS A REFERENCE TO MANAGEMENTS PLANS, IS
15 THAT STANDARD IN INDUSTRY TO HAVE A MANAGEMENT RESPONSE TO
16 THIS?

17 A YES. YOU HAVE TO PRESENT BOTH SIDES, I HAVE SEEN
18 GOING CONCERN LETTERS BEFORE.

19 Q AND IF YOU WILL GO TO PAGE F11 WHICH IS NOTE TWO. IS
20 THAT THE FOOTNOTE THAT IS BEING REFERRED TO?

21 A YES, IT IS FOOTNOTE NUMBER TWO ENTITLED GOING CONCERN
22 IN BOLD FACED TYPE.

23 Q NOW, ONCE AGAIN, IT REFERS TO, THERE IS A BULLET
24 POINT OF THINGS THAT MANAGEMENT, HGFN HAS TAKEN, DO YOU
25 SEE THAT?

1 A WHAT DO YOU WANT ME TO DO, READ THE BULLET POINTS.

2 Q I AM GOING TO ASK YOU, FIRST, WHO IS HGFN REFERRED TO
3 IN THIS DOCUMENT?

4 A HGFN IS THE STOCK EXCHANGE SYMBOL AND IT IS USED IN
5 THIS DOCUMENT TO REFER HOMEGOLD FINANCIAL, WHAT WE TERM
6 THE PARENT COMPANY.

7 Q AND THIS DOCUMENT SAYS, TAKING STEPS TO REVERSE
8 NEGATIVE TRENDS BY IMPLEMENTING THE NUMBER OF THINGS AND
9 THERE IS A BULLET LIST OF THINGS THEY HAVE DONE, CORRECT?

10 A YES.

11 Q AND I AM NOT GOING TO ASK YOU TO READ ALL OF THOSE.
12 BUT I WANT TO ASK YOU TO LOOK AT THE BOTTOM PARAGRAPH
13 BELOW THAT BULLET POINT THAT SAYS, IN ADDITION HGFN HAS
14 CONSIDERED THE DIVESTITURE OF THIS RETAIL MORTGAGE
15 DIVISION. IF YOU DON'T MIND READING THAT TO THE JURY.

16 A IN ADDITION HGFN HAS CONSIDERED THE DIVESTITURE OF
17 ITS RETAIL MORTGAGE DIVISION, IF NECESSARY, TO SATISFY ITS
18 NOTE PAYABLE TO THE COMPANY. RECENT INDEPENDENT
19 VALUATIONS HAVE VALUED THE DIVISION AT BETWEEN \$135
20 MILLION AND \$170 MILLION. HGFN MANAGEMENT MAY PURSUE
21 POTENTIAL INQUIRERS FOR THE DIVISION BEFORE CONTINUED TO
22 OPERATE AND GROW THE DIVISION UNTIL AND IF IT IS SOLD.

23 Q AND THEN JUST READ THE NEXT PARAGRAPH, THE OPERATING
24 LOSSES.

25 A THE OPERATING LOSSES AND THE DEFICIT EQUITY OF HGFN

1 HAVE CAUSED THE COMPANY TO CLOSELY MONITOR ITS ABILITY TO
2 COLLECT THE AMOUNTS DUE UNDER THE NOTES RECEIVABLE FROM
3 AFFILIATES. THESE CLOSELY MONITORED CIRCUMSTANCES OF
4 HGFN'S FINANCIAL CONDITION RAISE SUBSTANTIAL DOUBT ABOUT
5 THE COMPANIES ABILITY TO CONTINUE AS A GOING CONCERN.
6 MANAGEMENT OF THE COMPANY BELIEVES THE STEPS BEING TAKEN
7 BY HGFN WILL PROVIDE THE OPPORTUNITY FOR THE COMPANY TO
8 CONTINUE AS A GOING CONCERN.

9 Q MANAGEMENT OF THE COMPANY IS REFERRING TO WHOM?

10 A IT REFERS TO THE BOARD OF DIRECTORS, THE BOARD OF
11 DIRECTORS PLUS THE SENIOR OFFICIALS.

12 Q OF CAROLINA INVESTORS?

13 A YES, THE CEO AND THE CFO.

14 Q NOW, YOUR OPINION WITH REGARD TO WHETHER THIS
15 PROSPECTUS OVERALL IS FAIR AND BALANCED AND WHAT IS THAT
16 OPINION?

17 A I THINK IT IS BALANCED AGAINST THE COMPANY. I THINK
18 THERE IS TOO MUCH PROMINENCE GIVEN, NOT TOO MUCH
19 PROMINENCE BUT THE NEGATIVE NEWS IS GIVING PROMINENCE AND
20 THE FAVORABLE NEWS IS BURIED BACK IN THE FOOTNOTE. I
21 REVIEWED A NUMBER OF STUDIES REGARDING THE SEC'S PLAIN
22 LANGUAGE INITIATIVE AND THE FOOTNOTES TO THE FINANCIAL
23 STATEMENTS ARE THE LEAST READ PART OF THE FINANCIAL
24 STATEMENT. AND THAT IS WHERE THEY PUT THE GOOD NEWS. I
25 THINK THEY SHOULD OF HAD A MANAGEMENT DISCUSSION AND

1 ANALYSIS, WHAT WE CALL AN MD&A SECTION UP IN THE BODY OF
2 THE PROSPECTUS THAT SHOULD OF GIVEN THIS STUFF EQUAL
3 PROMINENCE WITH THE BAD NEWS.

4 Q BUT THE BAD NEWS IS MORE PROMINENTLY DISPLAYED?

5 A YES.

6 Q NOW, IN REVIEWING THE FILES AND RECORDS OF THIS CASE
7 HAVE YOU SEEN ANY OBJECTIVE EVIDENCE AS TO WHETHER THIS
8 INFORMATION CONTAINED IN THE PROSPECTUS HAD AN EFFECT ON
9 THE MARKET PLACE THROUGH THE FILTRATION FACTOR?

10 A I HAVE.

11 Q AND WHAT INFORMATION HAVE YOU FOUND?

12 A I REVIEWED THE BOARD MINUTES OF CAROLINA INVESTORS
13 AND I HAVE FOUND THE MINUTES OF THE BOARD MEETING OF JUNE
14 AND WHICH EARLE MORRIS AND LARRY OWEN SAY THE GOING
15 CONCERN LETTER IN THE PROSPECTUS IS CAUSING UNPRECEDENTED
16 WITHDRAWALS, WE HAD A MILLION DOLLARS WITHDRAWN IN MAY.
17 SO FAR IN THE MIDDLE OF JUNE WE ARE UP TO A MILLION AND WE
18 COULD BE TWO MILLION BY THE END OF THE MONTH. AND THEN
19 AGAIN, IN AUGUST AND SEPTEMBER OVER \$10 MILLION DOLLARS
20 WAS WITHDRAWN AND OVER THE YEAR OF 2002, \$80 MILLION
21 DOLLARS WAS WITHDRAWN FROM CAROLINA INVESTORS.

22 Q AND YOU HAVE TAKEN THOSE FACTS INTO CONSIDERATION IN
23 REFERRING YOUR OPINION THAT THE DISCLOSURES WERE FAIR AND
24 BALANCED IN THE PROSPECTUS?

25 A I DIDN'T HAVE TO BECAUSE I THOUGHT THEIR DISCLOSURES

1 STANDING ALONE ARE FAIR AND BALANCED OR OVERWEIGH THE
2 NEGATIVE STUFF. IT WAS KIND OF ICING ON THE CAKE, YES, IT
3 LOOKS LIKE THE GOING CONCERN LETTER WAS READ BY A LOT OF
4 INVESTORS AND THEY ACTED ON IT.

5 Q NOW, WAS THE REASONS THAT HOMEGOLD AND CAROLINA
6 INVESTORS FAILED, CLOSED THEIR DOORS, WERE THOSE REASONS
7 DISCLOSED IN THE PROSPECTUS UNDER THE RISK FACTORS?

8 A YES.

9 Q AND WHY, IN YOUR VIEW, DID THESE COMPANIES FAIL?

10 A WELL, THIS COMPANY FAILED BECAUSE THE WHOLE NAME OF
11 THE GAME IN THE MORTGAGE BUSINESS WAS GET BIG FAST. BEEN
12 THE EXPERT WITNESS IN THE FREDDIE MACK CASE, I WORKED ON
13 THE FANNIE MAE CASE, I HAVE A LOT OF EXPERIENCE IN THE
14 MORTGAGE INDUSTRY. PART OF IT IS INFORMATION TECHNOLOGY,
15 COMPANIES IN THE MORTGAGE BUSINESS HAVE TO GET REAL BIG
16 REAL FAST AND THIS COMPANY GOT A VERY LATE START. IT HAD
17 SOME SUCCESS BUT THE COST, IT WAS A HORSE RACE. THERE WAS
18 A BIG INCREASE IN PRODUCTION BUT IT WASN'T ENOUGH IN THE
19 LAST ANALYSIS AT THE END OF THE DAY.

20 Q AND YOUR VIEW OF THE MINUTES AND THE BOARD
21 RESOLUTIONS AND THINGS, DID MR. SHEPPARD DURING THE COURSE
22 OF HIS TENURE THERE PURSUE THE GOALS AND REQUEST OF THE
23 BOARD IN THIS EXPANSION?

24 A YES, HE DID.

25 Q DID MR. SHEPPARD'S EXECUTIVE COMPENSATION CAUSE THIS

1 COMPANY TO FAIL?

2 A NO, IT WAS QUITE MODEST BY A PUBLIC COMPANIES
3 STANDARDS. THE AVERAGE CEO MADE \$14 MILLION DOLLARS LAST
4 YEAR. MR. SHEPPARD MADE \$250 THOUSAND AND THEN HE WAS
5 BUMPED UP TO \$600 THOUSAND BUT IT WAS APPROVED BY THE
6 BOARD.

7 Q NOW, LASTLY, PROFESSOR BRANSON, I WANT TO ASK YOU
8 ABOUT THE EMMCO TRANSACTION, THE TRANSACTION WHERE MR.
9 SHEPPARD PURCHASED THE RETAIL MORTGAGE ORIGINATION
10 DIVISION. AND JUST, WHO DETERMINED AT HOMEGOLD THAT DEAL
11 WAS IN THE BEST INTEREST OF HOMEGOLD AND CAROLINA
12 INVESTORS?

13 A THE BOARD OF DIRECTORS DID.

14 Q AND DID MR. SHEPPARD PARTICIPATE IN THE VOTES
15 APPROVING THAT DEAL ON BEHALF OF THE BOARD OF DIRECTORS?

16 A NO, HE WAS ON THE OPPOSITE SIDE OF THE TABLE AND THAT
17 WAS MADE CLEAR BY THE MINUTES, IT WAS AT THE MEETING OF
18 NOVEMBER 19TH WHICH IN 2002 WHICH IS MISLABELED NOVEMBER
19 18TH. BUT IT IS CLEAR THAT THE BOARD IS ON ONE SIDE OF
20 THE TABLE AND MR. SHEPPARD IS ON THE OTHER SIDE OF THE
21 TABLE, BARGAINING HIM TO PURCHASE NOT ALL, TEN OF THE
22 SEVENTEEN BRANCHES. AND IT IS CLEAR THAT MR. SHEPPARD
23 DIDN'T PARTICIPATE IN APPROVING THAT.

24 Q WAS THAT TRANSACTION SUPPORTED BY A FAIRNESS OPINION?

25 A YES, IT WAS.

1 Q WHAT ARE FAIRNESS OPINIONS?

2 A FAIRNESS OPINION IS A, FROM LACK OF A BETTER WORD, IT
3 IS AN INSURANCE POLICY PEOPLE GET ESPECIALLY IN CASES IN
4 WHICH THERE MIGHT BE A PERCEPTION BY SOME PEOPLE, THAT
5 THERE WAS A CONFLICT OF INTEREST. SO, YOU GO TO A
6 NON-BIASED SOURCE, USUALLY AN INVESTMENT BANKER AND THEY
7 LOOK UP THE TRANSACTION AND THEY OPINE WHETHER IT IS FAIR
8 FROM A FINANCIAL POINT OF VIEW. THEY WILL SEND A TEAM
9 DOWN, THEY WILL LOOK AT THE COMPANY, THEY WILL RENDER AN
10 OPINION, DRAFT. AND THEN THEY USUALLY HAVE AN OPINION
11 COMMITTEE SO IT GETS A SECOND OR THIRD REVIEW IN-HOUSE.
12 AND IF THE OPINION COMMITTEE REVIEWS IT THAT IS DELIVERED
13 AND IT IS USED TO CLOSE A TRANSACTION, TO SHOW PEOPLE
14 THAT, YOU KNOW, HERE IS A OUTSIDE INDEPENDENT SOURCE THAT
15 SAYS THAT THE TERMS ARE FAIR.

16 Q THAT IS ALL I HAVE FOR YOU.

17 THE COURT: WE WILL TAKE A BRIEF BREAK, DON'T DISCUSS
18 THE CASE, YOU ARE EXCUSED TO YOUR JURY ROOM. EVERYONE
19 STAY SEATED WHILE THE JURY IS EXCUSED.

20 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
21 A BREAK.)

22 THE COURT: WE WILL TAKE ABOUT TEN MINUTES. YOU CAN
23 STEP DOWN, DON'T DISCUSS YOUR TESTIMONY, YOU WILL BE BACK
24 ON THE STAND WHEN WE RESUME.

25 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1 THE COURT: THE JURYS LUNCH HAS ARRIVED, WE ARE GOING
2 TO GO AHEAD AND BREAK FOR LUNCH. WE WILL START BACK AT
3 1:30.

4 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

5 THE COURT: IS THE STATE READY?

6 MS. EVANS: YES, YOUR HONOR.

7 THE COURT: THE DEFENSE?

8 MR. GRIFFIN: YES, SIR.

9 THE COURT: GET THE JURY IN, PLEASE.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
11 APPROXIMATELY 1:35 P.M.)

12 THE COURT: MS. EVANS, YOU MAY CROSS-EXAMINE.

13 CROSS-EXAMINATION

14 BY MS. EVANS:

15 Q MR. BRANSON, DID I HEAR YOU RIGHT, ON DIRECT
16 EXAMINATION, DID I HEAR YOU RIGHT WHEN YOU DESCRIBED GOING
17 CONCERN AS BASICALLY THAT THE COMPANY IS NOT GOING TO BE
18 IN BUSINESS FOR THE NEXT YEAR, BASICALLY IT WILL BE
19 BANKRUPT IN A YEAR?

20 A I DIDN'T SAY THAT.

21 Q HOW WOULD YOU DESCRIBE GOING CONCERN, WHAT DOES THAT
22 MEAN?

23 A MORE PROBABLE THAN NOT THAT BY THE END OF THE NEXT
24 TIME PERIOD THE ENTITY WILL BE INSOLVENT.

25 Q AND INSOLVENT, DOES THAT MEAN, IN ESSENCE,

1 BANKRUPTCY?

2 A IT COULD MEAN IN AN EQUITY SENSE THAT THEY ARE NOT
3 ABLE TO PAY THEIR DEBTS AS THEY COME TO OR THAT THEIR
4 LIABILITIES EXCEED THEIR ASSETS.

5 Q AND THAT IS A CLEAR CUT DEFINITION ACCORDING TO YOUR
6 EXPERT OPINION?

7 A THAT IS A CLEAR CUT DEFINITION, YES.

8 Q THIS IS STATE'S EXHIBIT 50 THAT YOU WERE TESTIFYING,
9 WHERE DOES IT SAY IN THAT PROSPECTUS THAT INFORMATION THAT
10 YOU JUST SAID ABOUT THEIR BEING INSOLVENT?

11 A IT SAYS THEY ARE NOT GOING TO BE A GOING CONCERN, A
12 GOING CONCERN IS ONE THAT PAYS ITS BILLS AND DOESN'T GET
13 THE DOORS SHUT. SO, GOING CONCERN SAYS IT ALL.

14 Q WHERE DOES IT SAY, THAT LANGUAGE THAT YOU JUST SAID
15 WHAT GOING CONCERN MEANS?

16 A IT IS NOT IN THERE.

17 Q NOW, THOSE, BASED UPON THAT PROSPECTUS, THOSE NOTES
18 AND DEBENTURES WERE CONTINUED TO BE SOLD, THAT WAS AS OF
19 DECEMBER THE 31ST, 2001, CORRECT, SIR?

20 A NO.

21 Q THAT PROSPECTUS WAS NOT THE DATE OF DECEMBER 31ST,
22 2001?

23 A NO.

24 Q WHAT WAS THE DATE OF THAT, I KNOW IT WAS ISSUED APRIL
25 1ST OF 2002. BUT IT WAS THE PROSPECTUS FROM 2001,

1 CORRECT?

2 A THE PROSPECTUS SPEAKS AS THE DATE OF ITS ISSUE AND
3 THE DATE OF ISSUE WAS APRIL 2ND OF 2002.

4 Q TURN TO THE FINANCIALS, WILL YOU PLEASE TELL THE JURY
5 WHAT THE FINANCIALS, WHAT DATE IS IN THAT PROSPECTUS
6 REGARDING?

7 A 12/31/2001.

8 Q OKAY. SO, SIR, THE FINANCIAL INFORMATION THAT YOU
9 TALKED ABOUT WAS PAINTED A LESS THAN ROSY PICTURE, SHOULD
10 OF PAINTED A MORE ROSY PICTURE, THAT WAS AS OF DECEMBER
11 THE 31ST OF 2001, ISN'T THAT CORRECT, SIR?

12 A NO, IT IS NOT CORRECT.

13 Q THE FINANCIAL STATEMENTS AS OF DECEMBER 31ST OF 2001?

14 A THAT IS A DIFFERENT QUESTION, THERE IS DISCLOSURE IN
15 HERE ABOUT WHAT HAPPENED, \$13 SOMETHING MILLION DOLLARS
16 HAD BEEN ADVANCED TO THE AFFILIATE BETWEEN DECEMBER 31ST
17 AND MARCH 15TH AND THAT IS FINANCIAL INFORMATION.

18 Q SO, THEY EXPLAINED THAT THERE WAS AN INCREASE IN DEBT
19 BY THE DATE THAT WAS FILED, CORRECT?

20 A YES.

21 Q AND IT WAS DATED APRIL 1ST, 2002?

22 A THAT IS CORRECT.

23 Q AND THEY CONTINUED TO SELL NOTES AND DEBENTURES AFTER
24 APRIL 1ST, ISN'T THAT CORRECT, SIR?

25 A THAT'S CORRECT.

1 Q AND ISN'T IT TRUE, SIR, THAT DURING THAT YEAR THEY
2 FILED THREE AMENDMENTS TO THAT PROSPECTUS?

3 A THAT IS CORRECT.

4 Q NOW, I AM GOING TO SHOW YOU, THEY FILED ONE AUGUST
5 THE 22ND OF 2002, ISN'T THAT CORRECT, STATE'S 51.

6 A YES, I HAVE SEEN THIS.

7 Q AND ISN'T IT TRUE, SIR, WHEN A COMPANY HAS GOING
8 CONCERN PUT IN, IT IS IMPORTANT TO UPDATE THAT PROSPECTUS
9 SO THE PEOPLE INVESTING IN THOSE NOTES AND DEBENTURES HAVE
10 A FULL AND ACCURATE IDEA OF WHAT IS GOING ON IN THE
11 COMPANY?

12 A YES, YOU HAVE THE DUTY TO UPDATE THE PROSPECTUS.

13 Q AND, AGAIN, AND I WILL SHOW YOU STATE'S EXHIBIT 53
14 AND 52, DID THEY NOT UPDATE THE PROSPECTUS TWO MORE TIMES
15 THAT YEAR?

16 A YES, THEY DID, IT IS THEIR DUTY TO DO THAT.

17 Q AND YOU TESTIFIED ON DIRECT EXAMINATION THAT THE CFO,
18 CHIEF FINANCIAL OFFICER IS THE ONE NORMALLY, THAT THE
19 INDEPENDENT AUDITOR AND THE ONE THAT IS NORMALLY REVIEWING
20 THAT INFORMATION?

21 A THE CFO'S ARE THE ONES WHO SPEND MORE TIME THAN
22 ANYBODY ELSE WORKING, THAT CAN BE A VARIETY OF THINGS.

23 Q AND ISN'T IT FAIR TO SAY THAT THE CFO OF A COMPANY,
24 WHEN IT COMES TO FINANCIALS IS AN IMPORTANT PERSON TO LOOK
25 AT REGARDING THE FINANCIAL CONDITION OF A COMPANY?

1 A YES.

2 Q I AM GOING TO SHOW YOU WHAT IS ENTERED INTO EVIDENCE
3 AS STATE'S EXHIBIT NUMBER 63.

4 A I WOULD NOTE THAT ONE OF THESE PROSPECTUS' IS AFTER
5 MR. SHEPPARD WAS NO LONGER INVOLVED WITH THE COMPANY, IT
6 IS NOVEMBER 25TH AND HE LEFT BY NOW.

7 Q HE RESIGNED AT THE BOARD OF DIRECTORS BUT HE WAS
8 STILL WITH THE COMPANY TO DECEMBER 2002, CORRECT?

9 A NO, NOT TO MY KNOWLEDGE. HE WAS MANAGING THE
10 COMPANY, HE WAS NOT AT THE COMPANY.

11 Q WHAT IS THE DATE ON THAT EXHIBIT THAT I HANDED YOU,
12 SIR.

13 A THIS IS AUGUST 29TH.

14 Q WAS THE DEFENDANT AT THE COMPANY THEN?

15 A YES, HE WAS.

16 Q AND WHO IS THAT LETTER ADDRESSED TO?

17 A IT IS ADDRESSED TO MR. SHEPPARD AS CHAIRPERSON OF THE
18 BOARD.

19 Q AND HAVE YOU SEEN THAT DOCUMENT BEFORE?

20 A I HAVE.

21 Q AND WHAT IS THAT DOCUMENT?

22 A IT IS A LETTER FROM KEVIN MARTIN, CPA RESIGNING I
23 THINK EFFECTIVE IMMEDIATELY.

24 Q AND ISN'T IT TRUE THAT THE REASON THAT HE GIVES THERE
25 AND PUTS THAT RESIGNATION LETTER, IT SAYS, AS OF TODAY WE

1 SHOULD STOP TAKING MONEY FROM CAROLINA INVESTORS AND HIS
2 BUSINESS PLAN IS NOT FUNCTIONING, IN ESSENCE, AND YOU CAN
3 READ THE LETTER, IF YOU WOULD LIKE TO, SIR.

4 A HE IS IN ERROR BECAUSE THEY STOPPED GIVING MONEY TO
5 HOUSE HOMEGOLD IN AUGUST, THIS IS OLD NEWS, THIS LETTER IS
6 NOT ACCURATE.

7 Q SIR, PLEASE ANSWER THE QUESTION THAT I ASK. IS THAT
8 WHAT THAT LETTER SAYS?

9 A I DON'T KNOW WHAT YOU ARE TALKING ABOUT, THAT, WHAT
10 IS THAT.

11 Q I WILL ASK YOU TO READ RIGHT HERE, WHERE IT SAYS, AS
12 OF TODAY. PLEASE READ THAT ONE SENTENCE TO THE JURY.

13 A AS OF TODAY IN MY OPINION WE HAVE TRANSITIONED FROM A
14 COMPANY THAT IS ACCEPTING ADDITIONAL FINANCING IN ORDER TO
15 EFFECT A TURNAROUND TO A COMPANY THAT HAS NO REALISTIC
16 EXPECTATIONS OF EVER TURNING AROUND.

17 Q THANK YOU FOR READING THAT. IS A RESIGNATION OF THE
18 CFO, BASED UPON THE FAILURE OF THE COMPANY TO BE ABLE TO
19 TURN ITSELF AROUND, SOMETHING THAT INVESTORS AT CAROLINA
20 INVESTORS WOULD LIKE TO KNOW?

21 A IF THE REASONS THAT HE STATES ARE ACCURATE, BUT THAT
22 DOESN'T BEAR ANY RELATION TO REALITY, THE COMPANY HAD
23 STOPPED ADVANCING MONEY AND HE IS SAYING WE ARE STILL
24 ADVANCING MONEY TO THIS TURNAROUND COMPANY. THEY STOPPED
25 THAT A FEW WEEKS BEFORE. AND SO HE IS RESIGNING ON THE

1 BASIS OF INFORMATION THAT IS NOT ACCURATE. AND SO, THE
2 RESIGNATION OF A CFO COULD BE A MATERIAL EVENT AND SOME
3 CASES IT COULD BE NOT A MATERIAL EVENT.

4 Q AND YOU HAVE NOT BEEN HERE FOR THE TRIAL IN WHICH
5 THEY, OTHER CFO'S AND PEOPLE WHO WERE AT THE COMPANY UNTIL
6 THE VERY END, THAT HAS TESTIFIED THAT THEY CONTINUED TO
7 TAKE CAROLINA INVESTORS MONEY UNTIL THE VERY END. AND IT
8 WAS JUST AN ACCOUNTING ERROR THAT DEMONSTRATED THAT THEY
9 WERE NOT TAKING CAROLINA INVESTORS MONEY.

10 MR. GRIFFIN: OBJECTION, YOUR HONOR, SHE IS
11 CHARACTERIZING TESTIMONY.

12 THE COURT: PUTS THE COURT IN A DIFFICULT SITUATION.
13 IF THE BASIS OF THE OBJECTION, I THINK THE JURY IS GOING
14 TO HAVE TO RECALL THE TESTIMONY AS THEY RECALL IT. FOR
15 THAT REASON I OVERRULE THE OBJECTION.

16 A I WAS NOT HERE FOR ANOTHER TRIAL.

17 Q FOR THIS TRIAL, SIR?

18 A OH THIS TRIAL.

19 Q THIS IS YOUR FIRST DAY BEING HERE AT THIS TRIAL?

20 A YES.

21 Q IN FACT, YOU JUST FLEW IN LAST NIGHT?

22 A I FLEW IN YESTERDAY MORNING.

23 Q NOW, YOU TALKED ABOUT THE CFO'S AND BOARD OF
24 DIRECTORS. WHAT IS THE CEO?

25 A THE CEO IS A OFFICER WHO HAS SUCH POWERS AS ARE

1 DELEGATED TO HIM BY THE BOARD OF DIRECTORS. AND IT CAN BE
2 VERY LITTLE OR IT CAN BE VERY MUCH. AND IT ALSO CAN
3 DEVELOPE OVER TIME THROUGH CUSTOM AND PRACTICE.

4 Q AND, SIR, ARE YOU AWARE IN THIS CASE WHERE THE
5 DEFENDANT CAME IN AS CEO AND STARTED DOING THINGS WITHOUT
6 GETTING PRIOR BOARD PERMISSION?

7 A I AM NOT AWARE OF ANYTHING, NO.

8 Q YOU DID TESTIFY THAT MR. GRIFFIN GAVE YOU BOARD
9 RESOLUTIONS, DID YOU NOT?

10 A NO, HE DIDN'T GIVE ME RESOLUTIONS, HE GAVE ME THE
11 MINUTES OF THE MEETING THAT CONTAINED THE RESOLUTIONS.

12 Q SO, HE DID NOT GIVE YOU ACTUAL RESOLUTIONS?

13 A NO, THEY WOULD BE IN THE MINUTES.

14 Q WHAT IS THE DATE OF THIS RESOLUTION?

15 A THIS IS A RESOLUTION BY, CONTAINED IN A DOCUMENT
16 WHICH IS USED IN LIEU OF BOARD MINUTES WHICH IS CALLED A
17 UNANIMOUS WRITTEN CONSENT AND DOESN'T HAVE A DATE IN THE
18 FRONT.

19 Q I WILL DRAW YOUR ATTENTION, SIR, WHEN IT WILL BE
20 EFFECTIVE?

21 A THE DATE IS, IT IS TO TAKE EFFECT MAY 1ST BUT IT IS
22 OBVIOUSLY BEFORE THAT. SIGNATURE LINE SAYS ON THE DATE
23 ABOVE FIRST WRITTEN, THERE IS NO DATE AT THE BEGINNING OF
24 IT. SO, IT IS SOMETIME, MY BEST GUESS WOULD IT WOULD BE
25 SOMETIME IN MAY.

1 Q MAY, WHAT YEAR, SIR?

2 A 2002.

3 Q SO, YOU WERE NOT AWARE AND YOU WERE NOT PROVIDED
4 INFORMATION BY MR. GRIFFIN THAT MR. SHEPPARD GAVE HIMSELF
5 A RAISE FROM \$250 THOUSAND DOLLARS A YEAR UP TO \$600
6 THOUSAND DOLLARS A YEAR AND IT WAS RETROACTIVELY APPROVED
7 BY THE BOARD. YOU WERE NOT GIVEN THAT INFORMATION?

8 A I WAS, IT WAS APPROVED BY THE BOARD AND HE GETS IT
9 RETROACTIVELY.

10 Q SO, WHEN I JUST ASKED YOU IF YOU HAD ANY IDEA IF THE
11 BOARD RETROACTIVELY RATIFIED THE DECISIONS OF MR.
12 SHEPPARD, THE CEO, YOUR ANSWER WOULD BE, YES, THEY DID.

13 MR. GRIFFIN: OBJECTION, YOUR HONOR, SHE IS NOT
14 ASKING A QUESTION OF THIS WITNESS AND SHE IS INSINUATING
15 THAT SHE ASKED HIM, SHE DIDN'T. OBJECTION.

16 THE COURT: I OVERRULE THE OBJECTION, GO AHEAD WITH
17 YOUR QUESTION.

18 Q ARE YOU AWARE THAT THE BOARD OF DIRECTORS
19 RETROACTIVELY APPROVED THE DEFENDANT'S RAISE THAT HE GAVE
20 HIMSELF FROM \$250 THOUSAND DOLLARS A YEAR TO \$600 THOUSAND
21 DOLLARS A YEAR?

22 A YES, I AM.

23 Q AND IN GENERAL TERMS, YOU WERE TALKING ABOUT A CEO,
24 DOES A CEO SPEAK FOR THE COMPANY, NORMALLY?

25 A NO.

1 Q HAVE YOU REVIEWED PRESS RELEASES IN THIS CASE?

2 A I HAVE SEEN A LOT OF THEM.

3 Q I WILL SHOW YOU THIS. IT IS A PRESS RELEASE, THIRD
4 QUARTER, 2000. CAN YOU PLEASE LOOK AT THAT AND READ TO
5 YOURSELF THAT SECOND PARAGRAPH.

6 A YES, IT QUOTES THE CHIEF EXECUTIVE OFFICER, RON
7 SHEPPARD SAID, THIS IS OUR--

8 Q READ IT TO YOURSELF, SIR.

9 A THERE IS NO WHERE WHERE IT INDICATES WHERE HE WROTE
10 THIS, NO. IT SAYS HE QUOTES HIM.

11 Q I DIDN'T ASK YOU WHO WROTE IT.

12 A YES, YOU DID. YOU SAID WHO WROTE THE PRESS RELEASES.

13 THE COURT: WAIT, WAIT, WAIT. DON'T ARGUE, YOU ASK
14 QUESTIONS, YOU ANSWER THE QUESTIONS THAT COUNSEL ASKED.
15 GO AHEAD, COUNSEL.

16 Q MY QUESTION WAS, DOES THE CEO SOMETIMES SPEAK FOR THE
17 COMPANY?

18 A SOMETIMES HE OR SHE MIGHT, YES.

19 Q AND PLEASE REVIEW THAT DOCUMENT.

20 A I CAN'T REVIEW THE WHOLE THING, IT IS A PAGE AND A
21 HALF, SINGLE SPACE. BUT THE ONLY REFERENCE TO MR.
22 SHEPPARD IS HE IS QUOTED IN A PARAGRAPH. THERE IS NO
23 INDICATION ON HERE THAT HE WROTE IT.

24 Q SIR, MY QUESTION WAS, IS THAT A QUOTE FROM THE
25 DEFENDANT, THE CEO OF HOMEGOLD IN A PRESS RELEASE?

1 A YES, IT IS.

2 Q AND WHAT IS IT A QUOTE IN GENERAL TERMS REGARDING?

3 A THIS IS THE FIRST QUARTER FOLLOWING THE MAY MERGER
4 WITH HOMESENSE FINANCIAL CORPORATION.

5 Q I WILL SHOW YOU ANOTHER PRESS RELEASE. WILL YOU LOOK
6 AT THE FIRST FULL PARAGRAPH?

7 A OKAY.

8 Q AND READ IT TO YOURSELF. WHO IS QUOTED IN THAT NEWS
9 RELEASE ARTICLE?

10 A MR. SHEPPARD IS.

11 Q PROFESSOR BRANSON, I AM GOING TO SHOW YOU ANOTHER
12 DATED MAY 2001, PLEASE READ THE SECOND PARAGRAPH OF THAT
13 PRESS RELEASE.

14 A OKAY.

15 Q AGAIN, WHO IS QUOTED AS SPEAKING FOR THE COMPANY?

16 A MR. SHEPPARD IS, NOW WAIT A MINUTE. MR. SHEPPARD IS
17 QUOTED, THERE ARE A LOT OF OTHER SPEECHES IN HERE AND THEY
18 COULD BE MADE BY THE CORPORATE SECRETARY OR SOMEBODY IN
19 THE INVESTOR RELATIONS OFFICE OR THE PR PERSON, I DON'T
20 KNOW THAT MR. SHEPPARD, HE IS QUOTED IN HERE AS PART OF A
21 BIGGER REPRESENTATION OF THE COMPANY. IT IS NOT ALL MR.
22 SHEPPARD.

23 Q IS THERE A QUOTE IN THERE BY MR. SHEPPARD AS CEO OF
24 HOMEGOLD?

25 A YES, BUT HE IS NOT SPEAKING FOR THE COMPANY, THERE IS

1 A QUOTATION THAT IS PART OF THIS BUT IT IS BIGGER THAN
2 WHAT HIS QUOTATION IS.

3 Q AGAIN, SIR. IS THERE A QUOTE BY MR. SHEPPARD AS CEO
4 OF HOMEGOLD IN THAT PRESS RELEASE, YES OR NO?

5 A THERE IS A QUOTATION, NOT A QUOTE, QUOTATION, YES.

6 Q AND I AM GOING TO SHOW YOU ONE MAY 23RD OF 2001, IN
7 THAT LAST PARAGRAPH. AGAIN, IS THERE A QUOTE BY THE
8 DEFENDANT AS CEO OF HOMEGOLD IN THAT LAST PARAGRAPH OF
9 THAT PRESS RELEASE?

10 A MR. SHEPPARD IS QUOTED, YES.

11 Q I AM GOING TO SHOW YOU ANOTHER PRESS RELEASE. AND
12 WHEN IS THAT PRESS RELEASE?

13 A THERE IS NO DATE ON IT.

14 Q WHAT IS IT REFERRING TO?

15 A SECOND QUARTER OF 2001.

16 Q AND, SIR, IN THAT SECOND PARAGRAPH--

17 A SO, IT WOULD BE ABOUT APRIL OF 2001.

18 Q AND IN THAT SECOND PARAGRAPH AND I BELIEVE IT IS
19 HIGHLIGHTED, IS THERE A QUOTE BY THE DEFENDANT AS CEO OF
20 HOMEGOLD IN THAT PRESS RELEASE?

21 A YES, IT IS.

22 Q AND I WILL SHOW YOU, ON THE BACK OF THAT, A DIFFERENT
23 PRESS RELEASE, THERE IS A DIFFERENT TITLE TO WHAT THEY ARE
24 REFERRING TO. AND, AGAIN--

25 A THIS IS A PRESS RELEASE DATED NOVEMBER 14TH OF 2001

1 AND THERE IS A SHORT PARAGRAPH QUOTING MR. SHEPPARD.

2 Q AS CEO OF HOMEGOLD?

3 A YES, WAIT A MINUTE, IT JUST SAYS CHIEF EXECUTIVE
4 OFFICER, YES IT SAYS HOMEGOLD FINANCIAL.

5 Q AND CHIEF EXECUTIVE OFFICER IS CEO?

6 A YES.

7 Q I AM GOING TO SHOW YOU ANOTHER PRESS RELEASE, I DON'T
8 BELIEVE IT IS A DATE BUT IF YOU COULD REVIEW THE TITLE,
9 SEE IF BASED UPON THE MATERIAL THAT YOU REVIEWED IF YOU
10 CAN THINK AROUND THE TIME FRAME THAT THAT WOULD OF COME
11 OUT?

12 A IT SAYS, ANNOUNCES THAT IT HAS RECEIVED A FORMAL BID
13 FOR THE PURCHASE OF THE RETAIL MORTGAGE UNIT. AND THAT
14 COULD BE DECEMBER OR THIS COULD REFER TO THE IMPAC WHICH
15 WOULD BE EARLIER. SO, I COULD JUST BALLPARK THE DATE
16 WOULD BE ANYWHERE BETWEEN AUGUST OF 2002 AND ABOUT THE
17 FIRST OF NOVEMBER. I DON'T THINK MR. SHEPPARD WAS AT THE
18 COMPANY AFTER THAT.

19 Q AND I WILL DRAW YOUR ATTENTION TO THE SECOND PAGE,
20 AND IS THERE A QUOTE BY MR. SHEPPARD AS CEO OF HOMEGOLD?

21 A NO, IT JUST SAYS WE HAVE A LIQUIDITY, IT DOESN'T
22 IDENTIFY WHO THE SPEAKER IS.

23 Q PLEASE READ, BACK UP.

24 A OKAY, IT IS IN THE TOP OF THE PARAGRAPH.

25 Q AND IS THERE A QUOTE BY RONNIE SHEPPARD, CEO OF

1 HOMEGOLD IN THAT PRESS RELEASE?

2 A THE ONE THAT I ALREADY TESTIFIED TO?

3 Q YES.

4 A YES, I TOLD YOU THAT.

5 Q AND IT GOES ON AND THERE IS ANOTHER QUOTATION, IT
6 DOESN'T SAY WHO IT IS ATTRIBUTED TO BUT PLEASE READ THE
7 HIGHLIGHTED PART.

8 A IT IS ALL ONE QUOTATION. IT JUST THAT, IT IS NOT TWO
9 QUOTATIONS, IT IS JUST THE WRITER WHO WAS NOT MR. SHEPPARD
10 BROKE IT UP A LITTLE BIT. SO, THE WHOLE QUOTATION, IS NOW
11 THAT OUR EXPANSION PLAN IS COMPLETE WE CAN FOCUS
12 ONE-HUNDRED PERCENT OF OUR RESOURCES TOWARDS INCREASING
13 PRODUCTION AND ENHANCING CORE COMPETENCIES. INDICATES MR.
14 SHEPPARD AND THEN IT GOES ON, AND IN DEVELOPING A
15 PORTFOLIO OF 17 GEOGRAPHICALLY DISPERSED PRODUCTION
16 CENTERS HOMEGOLD HAS THE PRODUCTION CAPACITY TO TAKE
17 ADVANTAGE OF WAREHOUSE CREDIT FACILITIES. AND WE HAVE THE
18 LIQUITIDY AND THE CAPACITY, NOW IT IS TIME FOR US TO
19 GENERATE THE LOAN VOLUME AND TAKE ADVANTAGE OF THESE
20 OPPORTUNITIES.

21 Q I BELIEVE IN YOUR TESTIMONY YOU DESCRIBED TO THE JURY
22 WHAT LIQUIDITY IS, WHAT IS LIQUIDITY AGAIN?

23 A LIQUIDITY IS THE ABILITY TO OBTAIN CASH OR OBTAIN
24 ASSETS THAT CAN BE QUICKLY CONVERTED INTO CASH.

25 Q AND ALTHOUGH NO TIME FRAME ON THIS BUT YOUR BEST

1 GUESS IT WOULD HAVE TO BE PRIOR TO WHEN HE LEFT THE
2 COMPANY BECAUSE HE IS QUOTED AS CEO OF THE COMPANY,
3 CORRECT?

4 A YOU INTRODUCED A LOT OF PRESS RELEASES, WHICH ONE ARE
5 YOU TALKING ABOUT.

6 Q THIS LAST ONE THAT YOU ARE JUST REFERRING TO WHERE IT
7 SAYS, HOMEGOLD FINANCIAL ANNOUNCES THAT IT HAS RECEIVED A
8 FORMAL BID FOR THE PURCHASE OF THE RETAIL MORTGAGE
9 DIVISION. I BELIEVE YOU JUST TESTIFIED THAT COULD OF BEEN
10 ANYWHERE FROM AUGUST UNTIL NOVEMBER?

11 A YES.

12 Q I AM SHOWING YOU WHAT HAS BEEN MOVED INTO EVIDENCE AS
13 STATE'S EXHIBIT 199. IS THAT SOMETHING THAT YOU REVIEWED?

14 A I DON'T THINK SO.

15 Q PLEASE TAKE A SECOND TO REVIEW THAT, PLEASE TELL THE
16 JURY WHAT IT IS?

17 A IT IS A BOARD OF DIRECTORS MEETING THAT TOOK PLACE
18 OVER THE TELEPHONE RATHER THAN AROUND THE TABLE. AND IT
19 IS HARD FOR ME TO READ TWO SINGLE SPACED PAGES, BUT I WILL
20 DO IT FOR YOU, I WILL TRY.

21 Q WHO DOES IT SAY THE CALL WAS CONDUCTED BY?

22 A THE CALL WAS CONDUCTED BY RONALD SHEPPARD, CHAIRMAN
23 OF THE BOARD OF DIRECTORS. FOLLOWING DIRECTORS WERE
24 PRESENT, RONALD SHEPPARD, J. ROBERT PHILPOTT, JACK
25 STERLING AND PAUL BANNINGER, FORREST FERRELL. KAREN

1 MILLER, EXECUTIVE VICE-PRESIDENT AND TOMMY WYCHE,
2 SECRETARY AND WILLIAM KEHL, ATTORNEY.

3 Q AND WILL YOU PLEASE READ THE TOP OF THE SECOND
4 PARAGRAPH TO THE JURY?

5 A RONALD J. SHEPPARD REPORTED THAT FREEMONT INVESTMENT
6 AND LOAN HAD WITHDRAWN THEIR OFFER TO PURCHASE THE RETAIL
7 MORTGAGE DIVISION. HIS DISCUSSION WITH MARK BISHOP WITH
8 THE IMPAC COMPANY SAID CONFERRED THAT THE IMPAC WAREHOUSE
9 LINE WAS BEING REDUCED BY \$5 MILLION IN NOVEMBER BEGINNING
10 NOVEMBER THE 4TH. IN ADDITION, MR. BISHOP CONFIRMED THAT
11 THE IMPAC LINE WOULD BE TERMINATED ON NOVEMBER 30TH.
12 FINALLY, MR. BISHOP STATED THAT THE PROPOSED WAREHOUSE
13 LINE OF CREDIT THAT WAS NEEDED FOR THE NEW COMPANY THAT HE
14 HAD PROPOSED IN THE ASSET PURCHASE AGREEMENT BEING
15 REVIEWED BY HOMEGOLD FINANCIAL, INC. HAD BEEN CANCELED DUE
16 TO CDC'S CONCERNS OVER CAROLINA INVESTORS. MR. BISHOP US
17 UNABLE TO ENTER INTO THE ASSET PURCHASE AGREEMENT GIVEN
18 THE CANCELLATION OF THE WAREHOUSE LINE, WHILE HOUSEHOLD
19 HAS VERBALLY INCREASED OUR LINE TO \$25 MILLION WE AREN'T
20 ABLE TO FULLY UTILIZE THE LINE AS LIMITED TO HOUSEHOLD
21 PRODUCTS. MEASURES HAVE BEEN TAKEN TO BEGIN TABLE
22 FUNDING, CONFORMING LOANS THROUGH SURETY MORTGAGES
23 RELATIONSHIP WITH RBMG WHENEVER POSSIBLE AND TO BROKER AS
24 MANY RETAIL MORTGAGE LOANS AS POSSIBLE IN ORDER TO PRODUCE
25 LOANS.

1 Q AND IN GENERAL TERMS, THAT WAS A PHONE CALL THAT WAS
2 CONDUCTED BY RONNIE SHEPPARD AND OTHER BOARD MEMBERS WHILE
3 HE WAS STILL CEO OF THE COMPANY?

4 A YES, IT WAS A CONFERENCE CALL WITH ALL OF THE
5 DIRECTORS.

6 Q AND YOU HAVE ALREADY SAID YOU HAVE SEEN STATE'S
7 EXHIBIT NUMBER 63 WHICH WAS KEVIN MARTIN'S, THE CFO'S
8 RESIGNATION LETTER, CORRECT?

9 A I HAVE SEEN THAT, YES.

10 Q I AM GOING TO SHOW YOU WHAT IS STATE'S EXHIBIT 190.
11 AND WHO IS THAT A LETTER FROM?

12 A THIS LETTER IS FROM FORREST FERRELL WHO IS THE
13 PRESIDENT OF HOMEGOLD, THAT IS THE SUBSIDIARY, THE
14 MORTGAGE COMPANY AND IT IS TO ERIC PANTSARI WHO IS AT THE
15 OFFICE OF THE ATTORNEY GENERAL BUT IN SOUTH CAROLINA THE
16 SECURITIES DIVISION IS WITHIN THE OFFICE OF THE ATTORNEY
17 GENERAL. AND I DON'T KNOW IF HE IS A LAWYER OR NOT BUT HE
18 IS AN EMPLOYEE OF THE SECURITIES DIVISION.

19 Q OKAY. AND IN THAT LETTER WILL YOU PLEASE READ THE
20 FIRST TWO SENTENCES OF THE SECOND PARAGRAPH?

21 A WHILE I WASN'T PART OF THE DISCUSSIONS WITH DAVID AND
22 KEVIN REGARDING THEIR RESIGNATIONS, I AM GENERALLY AWARE
23 THAT BOTH MEN LEFT ON GOOD TERMS AND WE CONTINUE TO HAVE A
24 GOOD RELATIONSHIP WITH EACH. HOMEGOLD IS CEASING THESE
25 OPPORTUNITIES TO FURTHER REDUCE ITS EXPENSIVE PHASE WHILE

1 MANAGING THROUGH TRANSITION PERIOD. WE ARE LEVERAGING
2 INTERNAL ASSETS TO FILL THE CFO AND LEGAL POSITIONS.

3 Q AND ARE YOU AWARE WHO BECAME THE NEXT CFO AFTER KEVIN
4 MARTIN GAVE HIS RESIGNATION LETTER ON AUGUST 29TH OF 2002?

5 A NO, I CAN'T BRING IT RIGHT TO MIND.

6 Q ISN'T IT TRUE THAT KAREN MILLER WAS PLACED AS CFO?

7 A I THOUGHT KAREN MILLER WAS AN EXECUTIVE
8 VICE-PRESIDENT.

9 Q SO, YOU WEREN'T AWARE THAT KARIN MILLER BECAME CFO
10 AFTER KEVIN MARTIN RESIGNED?

11 A I AM NOT AWARE, IT RINGS A BELL BUT YOU COULD BE
12 RIGHT.

13 Q WERE YOU AWARE THAT SHE AND FORREST FERRELL WERE BOTH
14 PLACED ON THE BOARD OF DIRECTORS?

15 A I THOUGHT THAT WAS IN JANUARY, THAT WASN'T RIGHT
16 AWAY.

17 Q DO YOU REMEMBER THE BOARD OF DIRECTORS THAT YOU WERE
18 JUST TALKING ABOUT DURING YOUR DIRECT EXAMINATION THAT
19 RONNIE SHEPPARD WAS SITTING ACROSS FROM THE BOARD OF
20 DIRECTORS WHEN THEY WERE DOING THE EMMCO TRANSACTION. DO
21 YOU REMEMBER WHO WAS ON THE BOARD AT THAT TIME?

22 A ON THE BOARD, SIROTA WENT OFF IN THE SUMMER, THAT IS
23 THE MAN FROM RAYMOND JAMES. SO IT IS JACK STERLING, IT IS
24 MR. PHILPOTT, I THINK MR. HOOPER HAD GONE OFF. SO, THERE
25 WAS MR. BANNINGER.

1 Q I THOUGHT YOU SAID MR. BANNINGER ON DIRECT
2 EXAMINATION RESIGNED WITH MR. SHEPPARD RESIGNED BECAUSE HE
3 WAS GOING TO EMMCO?

4 A I DON'T THINK I TESTIFIED ON DIRECT EXAMINATION ABOUT
5 THAT. BUT I WILL TAKE YOUR WORD FOR IT. SO, THERE WERE
6 NEW DIRECTORS. I KNOW THAT MILLER AND FERRELL WERE
7 DIRECTORS AS OF JANUARY, FEBRUARY. I HAVEN'T FOCUSED
8 SPECIFICALLY ON THE NOVEMBER, DECEMBER TIME FRAME. I WILL
9 TAKE YOUR WORD FOR IT.

10 Q AND AS PART OF YOUR REVIEW FOR YOUR EXPERT OPINION
11 HERE TODAY, DID YOU ALSO REVIEW SWORN STATEMENTS MADE BY
12 THE DEFENDANT?

13 A DID I REVIEW THE SWORN STATEMENT OF KEVIN MARTIN?

14 Q NO, SIR. I AM TALKING ABOUT THE DEFENDANT, RONNIE
15 SHEPPARD, HIS TWO SWORN STATEMENTS?

16 A NO.

17 Q SO YOU WERE NEVER SHOWN A COPY OF THE SWORN STATEMENT
18 HE GAVE MAY 1ST OF 2003 TO THE SECURITIES COMMISSION?

19 A NO.

20 Q SO, IN THAT STATEMENT YOU NEVER READ THAT STATEMENT
21 WHERE HE CONTINUALLY GOES THROUGH AND DISCUSSES ABOUT THE
22 TRANSACTION WITH HOMEGOLD AND HOW HE KNEW THE FINANCES.
23 YOU NEVER GOT TO SEE THAT IN REVIEWING YOUR EXPERT
24 TESTIMONY HERE TODAY?

25 A I DIDN'T HEAR YOU, CAN YOU SAY THAT AGAIN.

1 Q IN FORMING YOUR OPINION ABOUT WHETHER OR NOT THE
2 DEFENDANT COULD RUN A PUBLICLY TRADED COMPANY YOU NEVER
3 REVIEWED HIS SWORN STATEMENT GIVEN MAY 1ST OF 2003 TO THE
4 SOUTH CAROLINA SECURITIES COMMISSION?

5 A I NEVER GAVE ANY TESTIMONY ABOUT WHETHER HE COULD RUN
6 A PUBLIC COMPANY. I DIDN'T GIVE ANY TESTIMONY OF WHETHER
7 HE COULD OR COULDN'T. HE DID, I JUST GAVE TESTIMONY THAT
8 HE WAS GIVEN A LOPSIDED POWER OF RESPONSIBILITY TO
9 INCREASE SALES. I DIDN'T SAY HE WAS INCOMPETENT TO BE A
10 CEO, I NEVER TESTIFIED TO THAT. BUT I DID NOT SEE THE
11 STATEMENT, YOU ARE CORRECT. BUT THE PREDICATE OF YOUR
12 QUESTION IS FALSE.

13 Q WELL, I APOLOGIZE FOR THAT, I DID NOT MEAN TO MAKE IT
14 FALSE, I THOUGHT YOU TESTIFIED THAT HIS ABILITY TO BE A
15 CEO. LET ME ASK YOU--

16 A I DID TESTIFY THAT PEOPLE WHO OCCUPY THE CEO'S
17 POSITIONS HAVE VARIOUS KINDS OF ABILITIES. AND THEY VARY
18 IN AMOUNT, TO VERY LITTLE TO VERY MUCH IN TERMS OF POWER
19 AND RESPONSIBILITY. IT IS NOT ONE SIZE FITS ALL, A CEO IS
20 NOT A CEO IS NOT A CEO. IT DEPENDS UPON WHAT THE BOARD OF
21 DIRECTORS HAS DELEGATED TO THEM.

22 Q WHAT THEY HAVE DELEGATED. AND AS YOU SAID, THERE ARE
23 TWO DIFFERENT WAYS THEY CAN DELEGATE POWER EITHER BY JUST
24 GIVING IT OVER OR JUST BE A RESOLUTION, CORRECT?

25 A THEY CAN DELEGATE POWER BY, DELEGATION WOULD BE A

1 RESOLUTION. AND THEY CAN DELEGATE OVER THE COURSE OF
2 TIME, SEVERAL YEARS, THIS IS A VERY BRIEF WINDOW OF TIME
3 IN THE LIFE OF A CORPORATION BUT PEOPLE WHO BECOME VERY
4 POWERFUL IS CEO HAVE ACHIEVED THAT BUT NOT OVER TWO YEARS,
5 OVER TEN YEARS AND FIFTEEN YEARS AND TWENTY YEARS.

6 Q BUT YOU DID TESTIFY THAT THERE ARE TWO DIFFERENT WAYS
7 THAT A CEO CAN GAIN MORE POWER?

8 A YES.

9 Q AND IN THAT TESTIMONY YOU DIDN'T GET TO REVIEW WHERE
10 THE DEFENDANT SAID HE PLACED FORREST FERRELL AS A FIGURE
11 MAN IN GREENVILLE, DID YOU?

12 A YOU ARE SPEAKING TOO RAPIDLY.

13 Q I APOLOGIZE. IN THAT STATEMENT GIVEN TO THE
14 SECURITIES COMMISSION THAT YOU WERE NOT BEFORE COMING HERE
15 TO TESTIFY, YOU DIDN'T SEE IT, UNAWARE THAT MR. SHEPPARD
16 TESTIFIED UNDER OATH THAT HE STUCK FORREST FERRELL IN AS
17 PRESIDENT TO BE A FIGUREHEAD IN GREENVILLE?

18 A YOU ARE CORRECT, I DIDN'T SEE THAT.

19 Q WERE YOU GIVEN A COPY OF MR. SHEPPARD'S SWORN
20 STATEMENT THAT HE GAVE ON JUNE THE 29TH OF 2004?

21 A NO, I WASN'T.

22 Q AND SO YOU NEVER REVIEWED EITHER ONE OF THOSE TWO
23 STATEMENTS IN FORMULATING YOUR OPINION HERE TODAY?

24 A THAT IS CORRECT.

25 Q YOU TESTIFIED AND I AM TRYING TO GENERALIZE, YOU

1 TESTIFIED ABOUT THE PROSPECTUS, THE ONE THAT IS DATED
2 APRIL 1ST OF 2004, CORRECT?

3 A YES, I DID.

4 Q AND YOUR TESTIMONY AND YOUR OPINION WAS IT BASICALLY
5 WAS TWO GLOOMY, THAT THEY COULD OF PUT MORE, THE GOOD
6 INFORMATION IN THE FRONT OF THAT PROSPECTUS?

7 A MY PERSONAL OPINION AS A SECURITIES LAWYER WAS THAT
8 YOU COULD OF DRAFTED IT THAT WAY, THAT YOU COULD OF MOVED
9 THE POSITIVE INFORMATION TO A MORE PROMINENT SPOT.
10 INSTEAD IT WAS BURIED IN THE FOOTNOTES WHERE MOST PEOPLE
11 PROBABLY WOULDN'T READ IT.

12 Q DIDN'T YOU ALSO TESTIFY THAT QUITE OFTEN A LOT OF
13 INVESTORS JUST DON'T READ THE PROSPECTUS AT ALL?

14 A NO, I DIDN'T TESTIFY TO THAT.

15 Q WELL, ISN'T THAT TRUE, SIR, THAT A LOT OF TIMES
16 PEOPLE ARE GIVEN A PROSPECTUS AND IF THEY ARE
17 UNSOPHISTICATED THEY MIGHT NOT READ THE PROSPECTUS AT ALL.
18 ISN'T THAT TRUE?

19 A I THINK A LOT OF PEOPLE DON'T, SOME PEOPLE DON'T READ
20 IT AND SOME PEOPLE ONLY READ PART OF IT AND SOME PEOPLE
21 READ IT, SOME PEOPLE RELY ON THEIR BROKER DEALER OR THEIR
22 FINANCIAL ADVISER. SO, IT KIND OF VARIES ALL OF THE LOT.

23 Q SO, EVEN IF SOMETHING THAT IS PUT IN THE FOOTNOTE,
24 ISN'T IT TRUE THAT IF SOMEONE IS TOLD TO IGNORE EVERYTHING
25 IN THE FRONT PART AND JUST FOCUS ON THAT FOOTNOTE, ISN'T

1 IT TRUE THAT FOOTNOTE WOULD THEREFORE BECOME, THEY WOULD
2 SEE THAT THE FIRST THING IF THEY ARE SHOWN THAT PAGE
3 FIRST. ISN'T THAT TRUE?

4 A NO, THE PERSON WOULD HAVE TO BE AN IDIOT, THEY ARE
5 GIVEN A 45 PAGE OFFICIAL DOCUMENT THAT HAVE BEEN DRAFTED
6 BY LAWYERS, IT IS VERY SERIOUS LOOKING AND YOU ARE TELLING
7 ME THAT THEY WOULD LISTEN AND OBEY SOMEBODY WHO TOLD THEM
8 TO TURN TO A FOOTNOTE ON PAGE F11 OF THE APPENDICES AND
9 THAT IS WHERE THE DEAL IS. ANYBODY WHO DID THAT REALLY IS
10 FUNCTIONING IN A VERY, VERY, VERY LOW LEVEL AND IS VERY,
11 VERY GULLIBLE. AND I DON'T THINK THAT IS THE AVERAGE
12 INVESTOR.

13 Q HAVE YOU MET ANY OF THE INVESTORS AT CAROLINA
14 INVESTORS?

15 A NO, I HAVEN'T.

16 Q HAVE YOU HEARD ANYTHING ABOUT THEIR DESCRIPTION AND
17 WHAT LEVEL OF SOPHISTICATION THEY HAD, SIR?

18 A I HAVE, I DON'T BELIEVE IT, I READ DONALD SHARPE'S
19 TESTIMONY FROM THE EARLE MORRIS TRIAL AND IT IS A CHARADE.
20 HE HAS A MASTERS DEGREE, HE MANAGES A BUSINESS WITH A \$2
21 MILLION DOLLAR ASSET, HE HAS BEEN A DIRECTOR AND INVESTOR
22 AT CAROLINA INVESTORS SINCE THE 90'S AND HE TRIED TO ACT
23 IN HIS TESTIMONY LIKE HE JUST FELL OFF THE TURNIP TRUCK.
24 AND THAT AND MR. BOBO'S TESTIMONY ARE REPRESENTATIVE OF
25 THE WAY THAT CAROLINA INVESTORS TESTIFY, THEY HAVE THEIR

1 OWN SELF INTEREST AT STAKE AND THEY ARE NOT TESTIFYING
2 HONESTLY IN MY OPINION.

3 Q LET ME STOP YOU RIGHT THERE. WERE MR. BOBO AND MR.
4 SHARPE ON THE BOARD OF CAROLINA INVESTORS?

5 A YES.

6 Q SO, WOULD THEY HAVE MORE KNOWLEDGE THAN THE AVERAGE
7 INVESTOR AT CAROLINA INVESTORS?

8 A THEY SHOULD, THEY SAY THEY DON'T BUT THEY DO.

9 Q ISN'T IT TRUE, SIR, THAT YOU SAID YOU REVIEWED THE
10 MINUTES?

11 A I DID.

12 Q AND IN GENERAL TERMS, REVIEWING THOSE MINUTES, WAS
13 THERE A POSITIVE PICTURE PAINTED ABOUT HOMEGOLD AND IS
14 WHAT WAS GOING ON IN THE FUTURE AT THOSE MEETINGS?

15 A GENERALLY THERE WAS A REPORT EVERY MEETING BY THE CFO
16 TO THE BOARD OF HOMEGOLD TO THE DIRECTORS OF CAROLINA
17 INVESTORS. AND MR. SHEPPARD WOULD ADD COMMENTS AT TIMES
18 AND THAT IS WHAT THE MINUTES REFLECT.

19 Q AND IN GENERAL TERMS, WERE THOSE POSITIVE FUTURE
20 FORECAST ABOUT WHAT HE WAS DOING WITH THE COMPANY?

21 A THEY WERE, NO, THEY WERE LOPSIDED, THEY WERE ABOUT
22 WHAT HE WAS DOING IN THE SALES PART, THAT IS WHAT IT WAS
23 ABOUT.

24 Q TALKING ABOUT MORTGAGE ORIGINATION?

25 A YES, THERE WAS VERY LITTLE IN THERE ABOUT THE COST

1 SIZE, THERE WAS NOTHING IN THERE ABOUT ALL OF THE OTHER
2 FACETS OF THE BUSINESS.

3 Q AND ARE YOU TESTIFYING HERE TODAY THAT YOU DID NOT
4 FIND ANYTHING THAT ANYBODY DID WRONG FROM CAROLINA
5 INVESTORS ABOUT WRITTEN MATERIAL THAT WAS GIVEN TO THE
6 INVESTORS?

7 A I DIDN'T TESTIFY, I THINK LARRY OWEN WAS A LOOSE
8 CANNON AND THEY TRIED, MR. STERLING GAVE HIM A TALKING TO
9 AND MR. SHEPPARD'S PRESENCE, NOT TO GO OFF AND TALK TO
10 PEOPLE AND IF HE DID MAKE ANY REPRESENTATIONS IT WAS IN
11 TERMS OF WISHES OR HOPES, NOT ATTAINABLE GOALS OR NOT
12 PROFITABILITY. LATER MR. KEHL WHO WAS A LAWYER AT THE
13 WYCHE FIRM IN GREENVILLE SENT A LETTER TO MR. OWEN TO TELL
14 HIM TO STOP MAKING REPRESENTATIONS AND I THINK HE MIGHT OF
15 SENT TWO LETTERS. HE TOLD HIM TO STOP USING A LETTER.
16 SO, YES, THERE WAS SOMEBODY FROM CAROLINA INVESTORS THAT
17 WAS MAKING REPRESENTATION TO THIRD PARTY INVESTORS AND IT
18 WAS SPECIFICALLY MR. OWEN AND TO SOME DEGREE MR. MORRIS.
19 THE DIRECTORS TRIED ON SEVERAL OCCASIONS TO GET HIM TO
20 STOP THAT AND I BELIEVE AT SOME POINT HE DID STOP IT.

21 Q WERE YOU AWARE OF THE BONUSES THAT WERE CONTINUED TO
22 GIVE TO BOTH MR. MORRIS AND MR. OWEN THROUGHOUT 2002
23 INCLUDING TO MORRIS A NEW CAR IN APPROXIMATELY IN JULY OF
24 2002?

25 A NO, I AM NOT AWARE OF THAT.

1 Q ISN'T IT TRUE THAT YOU REVIEWED THE BYLAWS OF
2 CAROLINA INVESTORS?

3 A I DID.

4 Q ISN'T IT TRUE THAT HOMEGOLD CONTROLLED WHO WOULD BE
5 ON THE BOARD OF DIRECTORS AT CAROLINA INVESTORS?

6 A THAT IS TRUE.

7 Q DID THEY REMOVE MR. OWEN AFTER FINDING THIS OUT AS A
8 BOARD OF DIRECTOR.

9 A NO, I DON'T BELIEVE SO.

10 Q AND ISN'T IT TRUE, AFTER FINDING OUT THIS INFORMATION
11 HE WAS ACTUALLY PLACED ON THE BOARD OF HOMEGOLD FINANCIAL
12 IN JANUARY OF 2003?

13 A I DON'T KNOW THAT, I DIDN'T LOOK AT 2003 BECAUSE MR.
14 SHEPPARD LEFT AROUND THE FIRST OF NOVEMBER.

15 Q AND DID YOU LOOK AT THE SAME TIME THAT MR. KEHL FROM
16 THE WYCHE LAW FIRM SENT LARRY OWEN A LETTER THAT HE WAS
17 GIVEN A \$25 THOUSAND DOLLAR BONUS FROM HOMEGOLD?

18 A I DON'T KNOW ONE WAY OR THE OTHER. THAT IS YOUR
19 TESTIMONY, I WILL BELIEVE IT. I DON'T KNOW, I HAVEN'T
20 SEEN ANYTHING THAT WOULD INDICATE THAT BUT I WILL TAKE
21 YOUR WORD FOR IT.

22 Q MR. GRIFFIN DID NOT SEND YOU ANY INFORMATION
23 REGARDING THE BONUSES THAT HOMEGOLD PAID CAROLINA
24 INVESTORS, SPECIFICALLY MR. MORRIS AND MR. OWEN?

25 A NO.

1 Q I ASKED YOU ABOUT WHEN DID MR. SHEPPARD LEAVE THE
2 COMPANY, I BELIEVE YOU TESTIFIED THAT HE RESIGNED IN
3 NOVEMBER OF 2002?

4 A YES.

5 Q HAVE YOU EVER SEEN THE AMENDED RESTATEMENT AFTER THAT
6 PURCHASE AGREEMENT BETWEEN HOMEGOLD AND EMMCO?

7 A I CAN TELL YOU IF I LOOK AT IT. I HAVE.

8 Q AND I WILL DRAW YOUR ATTENTION TO WHERE WE HAVE IT
9 MARKED. CAN YOU PLEASE TELL THE JURY WHO REMAINED ON AS
10 MANAGEMENT OR MANAGER OF HOMEGOLD FINANCIAL AND TO WHAT
11 DATE?

12 A UPON EXECUTION OF THIS AGREEMENT RONALD SHEPPARD,
13 CHAIRMAN OF THE BOARD AND CEO OF THE SELLERS PARENT SHALL
14 RESIGN FROM THE BOARD OF DIRECTORS AND FROM ALL OFFICERS
15 AND SELLER OR SELLERS AFFILIATE. FROM THAT DATE THIS
16 AGREEMENT IS EXECUTED WAS UNTIL THE CLOSING, FROM THAT
17 DATE, THE PURCHASER IS HEREBY GIVEN THE RIGHT TO MANAGE
18 THE BUSINESS AND DIRECT ITS OPERATION UTILIZING ITS
19 BUSINESS AND OFFICES, EMPLOYEES AND THE ASSETS.

20 Q AND WHAT WAS THE DATE OF THE FINAL MERGER AGREEMENT
21 BETWEEN EMMCO AND HOMEGOLD?

22 A I DON'T KNOW THAT, IT WAS AMENDED IN FEBRUARY AND I
23 REALLY DIDN'T LOOK CLOSELY TO EVENTS IN FEBRUARY AND
24 MARCH. I SAW AN AMENDMENT OF THIS AGREEMENT, A
25 SUBSTANTIAL AMENDMENT IN FEBRUARY.

1 Q AND AT THE END OF YOUR TESTIMONY, SIR, WHEN MR.
2 GRIFFIN WAS ASKING YOU QUESTIONS YOU TALKED ABOUT A
3 FAIRNESS OPINION THAT WAS DONE BY ALLISON SMITH, CORRECT?

4 A YES.

5 Q AND ISN'T IT TRUE THAT FAIRNESS OPINION WAS A
6 FAIRNESS OPINION TO THE SHAREHOLDERS OF HOMEGOLD, HOMEGOLD
7 FINANCIAL INCORPORATED?

8 A I DON'T KNOW, I THINK IT WOULD ORDINARILY GO TO THE
9 BOARD OF DIRECTORS, IT COULD BE ADDRESSED TO THE
10 SHAREHOLDERS.

11 Q SO IT IS A FAIRNESS OPINION ABOUT THE SHAREHOLDERS OF
12 HOMEGOLD AND NOT TO THE CREDITORS OF HOMEGOLD WHICH WOULD
13 INCLUDE CAROLINA INVESTORS AND OTHER SUCH CREDITORS ABOUT
14 IN THAT FAIRNESS OPINION, ISN'T THAT CORRECT?

15 A I HAVE NEVER HEARD OF AN INVESTMENT BANK WRITING A
16 FAIRNESS OPINION FOR CREDITORS, IT IS JUST NOT DONE, IT
17 DOESN'T HAPPEN.

18 Q AND, SIR, WEREN'T YOU AWARE OF THE FACT THAT MS.
19 SMITH, AND THAT THE FAIRNESS OPINION, LEFT TOWN AND WHEN
20 SHE CAME BACK, AS YOU JUST TESTIFIED TO, THE TERMS OF THAT
21 AGREEMENT HAD CHANGED?

22 A YOU LOST ME THERE, THE TERMS OF THE AGREEMENT HAD
23 CHANGED.

24 Q EMMCO/HOMESENSE AGREEMENT HAD CHANGED. I BELIEVE YOU
25 JUST TESTIFIED, THERE WERE CHANGES GOING ON UNTIL FEBRUARY

1 OF 2003?

2 A YES, I SAW A SUBSTANTIAL PACKET OF AMENDMENTS TO THIS
3 AGREEMENT DATED FEBRUARY 23RD OR FEBRUARY 25TH.

4 Q AND BASED UPON YOUR KNOWLEDGE WAS THAT EVER SENT BY
5 PROXY TO THE SHAREHOLDERS OF HOMEGOLD FINANCIAL?

6 A I DON'T KNOW, I SAW MR. SHEPPARD'S RESIGNATION BY
7 LETTER DATED NOVEMBER 14TH AND I REALLY, I KNOW HE MADE A
8 PROPOSAL TO BUY SOME OF THE ASSETS BUT HE WAS, FROM WHAT I
9 SEEN, HE WAS OUT OF HOMEGOLD IN EARLY NOVEMBER. SO, I
10 DIDN'T REALLY LOOK AT THE EMMCO STUFF CLOSELY.

11 Q AND YOU DIDN'T LOOK AT ANY OF HIS TESTIMONY BEFORE
12 THE SECURITIES COMMISSION OR BEFORE THE BANKRUPTCY
13 EXAMINER?

14 A I DID READ THE BANKRUPTCY EXAMINERS REPORT.

15 Q THE DEFENDANT'S SWORN TESTIMONY?

16 A I DID NOT SEE THAT, NO.

17 Q I DON'T HAVE ANY FURTHER QUESTIONS.

18 THE COURT: MR. GRIFFIN, YOU MAY REDIRECT.

19 REDIRECT EXAMINATION

20 BY MR. GRIFFIN:

21 Q PROFESSOR BRANSON, THE AGREEMENT THAT YOU WERE JUST
22 ASKED TO REVIEW WHERE MR. SHEPPARD RESIGNED FROM THE BOARD
23 IN ALL POSITIONS BUT AGREES TO STAY ON TO MANAGE THE
24 OPERATIONS OF THE MORTGAGE DIVISION. DO YOU RECALL BEING
25 SHOWN THAT DOCUMENT?

1 A YES.

2 Q IN HIS CAPACITY AS MANAGING A MORTGAGE DIVISION, IS
3 HE PART OF HOMEGOLD MANAGEMENT?

4 A NO.

5 Q AND WHY NOT?

6 A WELL, HE IS MANAGING A BASKET OF ASSETS THAT IS JUST
7 PART OF THE COMPANY THAT IS BEING EQUIVALENT TO A MIDDLE
8 LEVEL MANAGER OR A LOWER LEVEL SENIOR MANAGER. MANAGEMENT
9 OF THE COMPANY IS THE BOARD AND THE CEO AND THE CFO, THE
10 BYLAW OFFICER. BASED ON NOVEMBER 14TH, BASED UPON WHAT I
11 HAVE SEEN HE IS OUT OF THERE.

12 Q NOW, DIDN'T YOU HAVE AN OPINION THAT MR. SHEPPARD,
13 BASED ON HIS EXPERIENCED AT HOMESENSE, WHETHER HE WAS WELL
14 QUALIFIED OR TRAINED TO TAKE OVER A PUBLIC COMPANY?

15 A NO, NOT NECESSARILY.

16 Q THAT IS ALL I HAVE.

17 THE COURT: RECROSS, YOU ARE LIMITED THIS TIME,
18 COUNSEL.

19 RECROSS-EXAMINATION

20 BY MS. EVANS:

21 Q SIR, YOU JUST STATED THAT FROM YOUR UNDERSTANDING MR.
22 SHEPPARD STEPPED DOWN NOVEMBER 14TH FROM HOMEGOLD
23 FINANCIAL, IS THAT CORRECT?

24 A YES, I SEEN A LETTER THAT HE RESIGNED.

25 Q WERE YOU AWARE THAT HE SOLD THE PELHAM ROAD PROPERTY

1 THAT BELONGED TO HOMEGOLD FINANCIAL AND IT WAS ON THE
2 BOOKS OF CAROLINA INVESTORS ON NOVEMBER 19TH, SIR.

3 A NO, THE OPPOSITE, THE DEAL WAS, THE CONTRACT SIGNED
4 EARLIER BUT IT DIDN'T CLOSE UNTIL LATE DECEMBER WHEN MR.
5 SHEPPARD HAD VERY LITTLE TO DO WITH. AND IF YOU ARE AN
6 EXPERIENCED AS A LAWYER YOU KNOW A LOT OF THINGS CAN
7 HAPPEN AND THERE IS A HUGE DIFFERENCE IN JUST SIGNING A
8 CONTRACT ESPECIALLY WITH A COMMERCIAL PROPERTY AND THE
9 CLOSING THAT TAKES PLACE A COUPLE OF MONTHS LATER. SO, IT
10 IS NOT ACCURATE, HE DID NOT SELL THE PELHAM ROAD PROPERTY.

11 Q DID HE SIGN A CONTRACT AFTER NOVEMBER 14TH TO SELL
12 THE PELHAM ROAD PROPERTY?

13 A I DON'T KNOW WHETHER HE SIGNED THE CONTRACT AFTER OR
14 BEFORE.

15 Q THANK YOU.

16 A AND I DON'T KNOW WHETHER HE SIGNED THE CONTRACT, I
17 JUST HAVEN'T SEEN IT.

18 THE COURT: YOU MAY STEP DOWN, SIR. MR. GRIFFIN,
19 CALL YOUR NEXT WITNESS, PLEASE.

20 MR. GRIFFIN: YOUR HONOR, AT THIS TIME THE DEFENSE
21 REST.

22 THE COURT: ANYTHING FURTHER FROM THE STATE IN REPLY
23 OR REBUTTAL.

24 MS. EVANS: NO, YOUR HONOR, NOTHING FROM THE STATE
25 FROM REBUTTAL.

1 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
2 THE BOTTOM LINE OF ALL OF THAT IS ALL THE TESTIMONY IN
3 THIS CASE HAS BEEN PRESENTED TO YOU. IF YOU WILL THINK
4 BACK THREE WEEKS AND ONE DAY AGO, WHEN THIS CASE STARTED,
5 I TOLD YOU THAT AFTER ALL THE EVIDENCE HAD BEEN PRESENTED
6 TO YOU THE ATTORNEYS WOULD COME BACK AND MAKE CLOSING
7 ARGUMENTS TO YOU, I WOULD INSTRUCT YOU ON THE LAW AND THEN
8 YOU WILL BE SENT BACK TO DELIBERATE IN THE CASE. THAT IS
9 WHERE WE ARE. THERE ARE SOME ADDITIONAL MATTERS THAT I
10 NEED TO TAKE OUTSIDE OF YOUR PRESENCE. WE WILL BREAK FOR
11 THE DAY SO I CAN DEAL WITH THESE MATTERS. LET ME CAUTION
12 YOU NOT TO DISCUSS THE CASE EITHER AMONG YOURSELVES OR
13 WITH FAMILY OR FRIENDS OR WITH ANYONE ELSE. DON'T LISTEN
14 OR WATCH ANYTHING ABOUT THE CASE, READ ANYTHING OR DO ANY
15 RESEARCH ABOUT THE CASE. WE WILL START AT 9:30 IN THE
16 MORNING. YOU ARE EXCUSED, EVERYONE STAY SEATED.

17 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR
18 THE DAY.)

19 THE COURT: ANY MOTIONS, MR. GRIFFIN?

20 MR. GRIFFIN: YES, YOUR HONOR, AT THIS TIME WE WOULD
21 RENEW OUR MOTIONS FOR DIRECTED VERDICT OR JUDGMENT,
22 ACQUITTAL AS A MATTER OF LAW, THE SAME GROUNDS WE
23 PREVIOUSLY ARGUED. IN ADDITION, YOUR HONOR, I DON'T KNOW
24 WHAT THE COURT'S PRACTICES WITH REGARD TO SENDING THE
25 INDICTMENT BACK TO THE JURY.

1 THE COURT: IN THIS CASE I WILL NOT BE DOING THAT. I
2 DON'T DO THAT AND MY INSTRUCTIONS ARE SUCH THAT I CAN
3 EITHER INCLUDE LANGUAGE WHERE YOU HAVE GOT A SIMPLE CASE.
4 I NORMALLY USE A VERDICT FORM AND WE DO NOT SEND THE
5 INDICTMENT BACK AND I DON'T THINK IT IS REQUIRED SO I
6 DON'T INTEND TO DO THAT.

7 MR. GRIFFIN: I WOULD RENEW MY MOTIONS ON THE GROUNDS
8 PREVIOUSLY STATED WHERE THE THREE COUNTS, THE SECURITIES
9 CHARGE, OBTAINING GOODS BY FALSE PRETENSE. AND THE THIRD
10 CHARGE OF CONSPIRACY AND WITH REGARD TO THE FALSE PRETENSE
11 CHARGE, REEMPHASIZE, YOUR HONOR, THE MONIES THAT ARE
12 ALLEGED TO HAVE BEEN OBTAINED BY THE INVESTORS WENT TO THE
13 CORPORATE ENTITY, THEY DIDN'T GO TO MR. SHEPPARD
14 PERSONALLY. MONIES THAT WENT TO HIM PERSONALLY, THAT WAS
15 BASED ON ANY FALSE PRETENSES. SO, THAT IN ADDITION TO
16 FUTURE PROMISES AND OUR VIEW WOULD REQUIRE THAT JUDGMENT
17 BE ENTERED FOR MR. SHEPPARD AT THIS TIME ON THAT COUNT.
18 THANK YOU.

19 THE COURT: THE COURT'S RULING WOULD BE THE SAME AS
20 PREVIOUSLY MADE. TAKING IN THE ADDITIONAL ARGUMENT ON THE
21 FALSE PRETENSES CHARGES IN CONSIDERATION, THE MOTION FOR
22 DIRECTED VERDICT OR JUDGMENT OF ACQUITTAL ARE DENIED. ALL
23 RIGHT, WHY DON'T WE TAKE ABOUT TEN MINUTES AND THEN MEET
24 IN CHAMBERS AND GO OVER REQUEST TO CHARGE. WE WILL STAND
25 IN RECESS HERE UNTIL 9:30 TOMORROW MORNING.

1 (WHEREUPON, THE TRIAL WILL RESUME AT 9:30 THE NEXT
2 MORNING.)

3 THE COURT: IS THE STATE READY?

4 MS. EVANS: YES, YOUR HONOR.

5 THE COURT: THE DEFENSE, MR. GRIFFIN?

6 MR. GRIFFIN: YES, SIR.

7 THE COURT: LET'S GET THE JURY IN, PLEASE.

8 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
9 APPROXIMATELY 9:50 A.M.)

10 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
11 AT THIS TIME AS I INDICATED TO YOU YESTERDAY, YOU WILL
12 HEAR THE CLOSING ARGUMENTS FROM THE ATTORNEYS. YOU WILL
13 FIRST HEAR FROM THE STATE, THEY WILL MAKE THE FIRST
14 ARGUMENT TO YOU AND THEN YOU WILL HEAR FROM THE DEFENSE
15 AND THE STATE WILL HAVE THE RIGHT TO MAKE A FINAL ARGUMENT
16 TO YOU. I AM CERTAIN THAT THE ATTORNEYS, IN MAKING THEIR
17 CLOSING ARGUMENTS TO YOU ARE GOING TO GO OVER AND REVIEW
18 YOU THEIR RECOLLECTION OF WHAT THE TESTIMONY AND EVIDENCE
19 HAS BEEN, THEY HAVE A RIGHT TO DO THAT. I WOULD SIMPLY
20 POINT OUT TO YOU THAT THE ATTORNEYS ARE NOT TESTIFYING AND
21 IF YOUR MEMORY DIFFERS FROM THEIRS THEN YOU RELY ON YOUR
22 MEMORY. YOU WILL HAVE ALL THE EXHIBITS WITH YOU BACK IN
23 THE JURY ROOM WHEN YOU ARE SENT BACK TO DELIBERATE. I
24 ANTICIPATE THE ARGUMENTS WILL TAKE THE BETTER PART OF THE
25 MORNING, WE WILL BE TAKING BREAKS AND AFTER THE ARGUMENTS

1 WE WILL HAVE LUNCH AND THEN WE WILL COME BACK AND I WILL
2 INSTRUCT YOU ON THE LAW AND THEN YOU WILL BE SENT BACK TO
3 DELIBERATE AND REACH A VERDICT IN THE CASE. I WOULD ASK
4 YOU TO GIVE ALL THE ATTORNEYS YOUR FULL ATTENTION WHILE
5 THEY PRESENT THEIR ARGUMENTS TO YOU AND WE WILL PROCEED AT
6 THIS TIME. MS EVANS.

7 MS. EVANS: IF IT PLEASE THE COURT. GOOD MORNING,
8 LADIES AND GENTLEMEN. THIS IS MY FIRST OPPORTUNITY TO
9 COME HERE AND ADDRESS YOU. AND WHAT I GET TO DO ON MY
10 FIRST ARGUMENT IS TO TELL YOU A LITTLE BIT ABOUT THE LAW
11 AND THE LAW THAT WE, THE STATE OF SOUTH CAROLINA, HAS
12 CHARGED THE DEFENDANT VIOLATED. I KNOW YOU, THROUGHOUT
13 THIS TRIAL, HAVE HEARD A LOT OF OBJECTIONS ABOUT THE LAW
14 AND WHO CAN STATE THE LAW. I WILL TELL IT TO YOU, THAT
15 THE JUDGE IS THE SOLE JUDGE OF THE LAW IN THE CASE. THAT
16 SAME LAW THAT MAKES HIM THE JUDGE OF THE LAW IN THE CASE
17 MAKES YOU, AS JURORS, THE JUDGES OF THE FACTS IN THIS
18 CASE. WE TOLD YOU AT THE BEGINNING OF THIS TRIAL THAT
19 THIS TRIAL WAS ABOUT THE GOOD OLE CRIME OF STEALING. BUT,
20 LADIES AND GENTLEMEN, THERE IS NO STATUTORY GOOD OLE CRIME
21 OF STEALING IN SOUTH CAROLINA. SO, WE HAVE CHARGED THE
22 DEFENDANT WITH THREE CRIMES HERE. THE FIRST CRIME IS, AND
23 YOU HAVE HEARD A LOT ABOUT THIS CRIME, IS SECURITIES
24 FRAUD. AND, LADIES AND GENTLEMEN, YOU MIGHT ASK YOURSELF
25 WHAT IS SECURITIES FRAUD AND WHAT ARE WE CHARGING THE

1 DEFENDANT WITH. WHAT WE HAVE CHARGED THE DEFENDANT WITH
2 IN COUNT ONE IS A SCHEME TO DEFRAUD INVESTORS. LADIES AND
3 GENTLEMEN, A SCHEME TO DEFRAUD INVESTORS DIRECTLY OR
4 INDIRECTLY THAT CAUSES THE LOSS OF OVER \$20 THOUSAND
5 DOLLARS. LET ME GO ON TO EXPLAIN IN GENERAL TERMS WHAT A
6 SCHEME TO DEFRAUD MEANS. IN OTHER TERMS, WHEN SELLING A
7 SECURITY AND TAKING OTHER PEOPLES MONEY, THERE IS A DUTY
8 TO GIVE THEM THE WHOLE TRUTH, NOT TO WILLFULLY GIVE FALSE
9 INFORMATION TO INVESTORS WHEN THE INVESTORS ARE GIVING YOU
10 THE MONEY, TO TELL THE WHOLE TRUTH, TO SEE THE GOOD, THE
11 BAD, THE UGLY, WHATEVER IT MAY BE. BUT THEY HAVE A RIGHT,
12 WHEN INVESTORS SPENDS THEIR MONEY IN A SECURITIES TO KNOW
13 THE WHOLE TRUTH AND NOT TO BE WILLFULLY MISLEAD IN ANY WAY
14 WHATSOEVER. THAT IS WHAT THE LAW SAYS. WHAT I WANT TO GO
15 OVER TOO, IS THE LAW ALSO SAYS THIS CAN BE DONE DIRECTLY
16 OR INDIRECTLY. YA'LL HAVE HEARD A LOT OF TESTIMONY AND A
17 LOT OF WITNESSES TALKING ABOUT, SAYING, DID YOU TALK TO
18 THE DEFENDANT, THE LAW DOES NOT REQUIRE AND I WANT TO
19 REITERATE THIS, THE LAW DOES NOT REQUIRE THAT THE
20 DEFENDANT, IN ORDER TO BE FOUND GUILTY, IN A SCHEME TO
21 DEFRAUD ACTUALLY EVER HAS TO TALK TO ONE SINGLE INVESTOR.
22 THE LAW IS CLEAR IN THIS MATTER, THAT IF SOMEBODY DIRECTLY
23 OR INDIRECTLY HAS A SCHEME TO DEFRAUD THAT CAUSES A LOSS
24 TO AN INVESTOR OF OVER \$20 THOUSAND DOLLARS THEN THE
25 DEFENDANT IS GUILTY OF SECURITIES FRAUD. THERE IS

1 ABSOLUTELY NO DISTINCTION UNDER THE LAW, THROUGH THE
2 COURSE OF BUSINESS, WHETHER IT BE TELLING OTHER PEOPLE
3 MISREPRESENTATIONS, WILLFULLY MISLEADING THEM AND THAT IS
4 PASSED ALONG TO THE INVESTOR AND SITTING DOWN FACE TO FACE
5 AND WILLFULLY MISLEADING THEM. THERE IS NO, ABSOLUTELY NO
6 DISTINCTION WHEN IT COMES TO SECURITIES LAW. AND, AGAIN,
7 I REITERATE THAT WE HAVE TO PROVE TO YOU AND I WILL HAVE A
8 CHANCE TO COME BACK UP AND GO OVER THE EVIDENCE, I AM
9 GOING OVER THE LAW AS APPLIED TO THIS CASE. THAT WE HAVE
10 TO PROVE TO YOU THROUGH THE EVIDENCE AND, AGAIN, AS THE
11 JUDGE JUST TOLD YOU, WHAT I TELL YOU HERE TODAY IS NOT
12 EVIDENCE. WHAT MR. GRIFFIN TELLS YOU HERE TODAY IS NOT
13 EVIDENCE. WHAT IS EVIDENCE IS THE EXHIBITS AND THE
14 TESTIMONY THAT YOU HAVE HEARD FROM THE WITNESS STAND.

15 WE HAVE ALSO CHARGED THE DEFENDANT WITH OBTAINING
16 PROPERTY BY FALSE PRETENSES. THAT IS COUNT TWO OF THE
17 INDICTMENT. AND, LADIES AND GENTLEMEN, THE ESSENCE OF
18 THAT IS BASICALLY WHAT IT SAYS, THAT OBTAINING PROPERTY BY
19 THE USE OF FALSE PRETENSES. IT DOESN'T RELATE TO THE
20 SECURITIES FRAUD BUT IN THIS ALL PART AND PARCEL OF THE
21 SAME THING WHICH I WILL GO OVER IN OUR NEXT ONE WHICH IS
22 THE CONSPIRACY. AGAIN, WHAT WE HAVE TO PROVE IN THIS
23 CASE, THAT THE DEFENDANT WITH THE INTENTIONS TO PERPETRATE
24 A FRAUD RECEIVED MONEY, AND IN THIS CASE MONEY OVER \$5
25 THOUSAND DOLLARS UNDER FALSE PRETENSES. THAT FALSE

1 PRETENSES HAD TO BE KNOWN TO THE DEFENDANT AT THE TIME AND
2 HE HAD TO RECEIVE A BENEFIT FROM THOSE FALSE PRETENSES AT
3 THE TIME HE MADE THOSE FALSE PRETENSES. AGAIN, LADIES AND
4 GENTLEMEN, I WILL HAVE AN OPPORTUNITY AFTER MR. GRIFFIN
5 COMES UP AND TELLS YOU ABOUT HIS CLOSING, TO COME UP AND
6 TELL YOU ABOUT HOW WE FEEL WE HAVE PRESENTED EVIDENCE THAT
7 ESTABLISHES THAT THE DEFENDANT DID, IN FACT, OBTAIN MONEY
8 AND PROPERTY OVER \$5 THOUSAND DOLLARS UNDER FALSE
9 PRETENSES, THAT THE DEFENDANT KNEW AT THE TIME AND
10 CONVERTED THOSE FUNDS TO HIS USE AT THAT TIME.

11 THE THIRD CHARGE YOU WILL HAVE TO DECIDE WHEN YOU GO
12 BACK TO DELIBERATE IS CONSPIRACY. AND CONSPIRACY IS, AND
13 I THINK I SAID, WE TOLD YOU THE GOOD OLE TIMES BUT WE HAVE
14 TO GO BY THE CODE AND STATUTE. IT IS CODIFIED IN
15 16-17-410. THE LAW BASICALLY SAYS ABOUT CONSPIRACY, IS IF
16 TWO OR MORE PEOPLE GET TOGETHER AND EITHER ONE DECIDE TO
17 DO AN UNLAWFUL GOAL AND AN EXAMPLE OF THAT IS IF TWO
18 PEOPLE GET TOGETHER AND DECIDE TO GO ROB A BANK. AND THEY
19 GO ROB THE BANK, THAT WOULD BE BOTH ROBBERY AND
20 CONSPIRACY. THERE IS ANOTHER WAY THAT YOU CAN COMMIT
21 CONSPIRACY IS THAT TWO OR MORE PEOPLE GET TOGETHER AND
22 DECIDE TO DO SOMETHING THAT IS LEGAL BY ILLEGAL MEANS.
23 SO, THERE IS TWO DIFFERENT WAYS THAT YOU CAN GET INVOLVED
24 IN CONSPIRACY. AND, LADIES AND GENTLEMEN, UNDER SOUTH
25 CAROLINA LAW THERE DOES NOT HAVE TO BE AN OVERT ACT. THE

1 ESSENCE OF THE CONSPIRACY IS THE AGREEMENT, TWO PEOPLE
2 GETTING TOGETHER AND DECIDE EITHER TO BREAK THE LAW OR TO
3 DO SOMETHING THAT IS LAWFUL BY UNLAWFUL MEANS. THE CRUX
4 IS THAT IS THE AGREEMENT. AND YOU MAY ASK YOURSELF WHY IS
5 THAT IMPORTANT. WELL, THE AGREEMENT IS WHEN TWO OR MORE
6 PEOPLE GET TOGETHER IT MAKES THE CRIME EITHER EASIER TO
7 COMMIT AND IN SOME CASES MORE LIKELY TO BE COMMITTED. AND
8 YOU SEE THIS CONSPIRACY CHARGE, YOU WILL SOMETIMES HEAR
9 ABOUT LARGE DRUG CONSPIRACIES WHERE THERE IS A NEED FOR
10 MORE PEOPLE, SEVERAL DIFFERENT DISTRIBUTORS, CONSPIRACY TO
11 DISTRIBUTE DRUGS. AND IN A COMPLEX SECURITY CASE AND AS I
12 WILL BE ABLE TO COME BACK UP HERE AND TELL YOU ABOUT THE
13 EVIDENCE, A LOT OF THESE ACTIONS NEEDED SOMEBODY ELSE TO
14 PUT THE DEFENDANT'S SCHEME INTO PLACE. AND THAT IS WHAT
15 THE CRUX OF THE CONSPIRACY IS. I WILL ALSO TELL YOU ABOUT
16 CONSPIRACY LAW IS THAT YOU DON'T HAVE TO START THE
17 CONSPIRACY. IF YOU JOIN A CONSPIRACY YOU ARE IN ESSENCE
18 LIABLE FOR ALL THE ACTIONS OF THE CONSPIRACY. YOU DON'T
19 HAVE TO DIRECTLY DO THE OTHER THINGS THAT ARE PART OF THE
20 CONSPIRACY, AS LONG AS THERE IS THE AGREEMENT AND TO DO
21 SOMETHING EITHER UNLAWFUL OR SOMETHING LAWFUL BY AN
22 UNLAWFUL MEANS. AS I SAID, THE CRUX OF THAT CRIME IN
23 CASES LIKE THIS IN COMPLEX SECURITIES SCHEME TO DEFRAUD.
24 THERE NEEDS TO BE MORE THAN ONE PERSON AND THE DEFENDANT
25 NEED MORE THAN ONE PERSON TO COMMIT THIS SCHEME TO DEFRAUD

1 AND THAT IS THE THIRD CHARGE THAT YOU WILL CONSIDER WHEN
2 YOU GO BACK TO THE JURY ROOM AND START YOUR DELIBERATIONS
3 IN THIS CASE. AGAIN, I WILL BE ABLE TO COME BACK UP HERE
4 AFTER MR. GRIFFIN GETS TO TALK TO YOU AND TELL YOU THE
5 EVIDENCE THAT WE PRESENTED, THAT WE BELIEVE PROVES THE
6 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT THAT HE IS
7 GUILTY OF SECURITIES FRAUD WITH A SCHEME TO DEFRAUD THE
8 INVESTORS, THAT HE IS ALSO GUILTY OF OBTAINING GOODS UNDER
9 FALSE PRETENSES OVER \$5 THOUSAND DOLLARS. AND THE
10 DEFENDANT IS GUILTY OF CONSPIRACY. WHAT I WANT TO GO TO
11 IS JUST ABOUT THE BURDEN OF PROOF. HIS HONOR TOLD YOU
12 THAT WE, AS THE STATE, HAVE THE BURDEN OF PROOF TO
13 ESTABLISH THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.
14 AND I WELCOME THAT, WE TOLD YOU THAT IN OUR OPENING, WE
15 TOLD YOU THAT WE WOULD ESTABLISH OUR BURDEN OF PROOF, BY
16 PUTTING WITNESSES ON THE STAND, BY PUTTING EXHIBITS IN
17 EVIDENCE BEFORE YOU, TO ESTABLISH OUR BURDEN OF PROOF THAT
18 THE DEFENDANT IS IN FACT GUILTY OF A SCHEME TO DEFRAUD,
19 GUILTY OF OBTAINING GOODS UNDER FALSE PRETENSES AND GUILTY
20 OF CONSPIRACY. YOU HAVE HEARD THAT TERM, BEYOND A
21 REASONABLE DOUBT, AND IN ESSENCE WHAT BEYOND A REASONABLE
22 DOUBT MEANS, IT BASICALLY IS A DOUBT THAT WOULD CAUSE A
23 REASONABLE PERSON TO ACT. IT IS NOT BEYOND ALL DOUBT, IT
24 IS NOT BEHIND ANY DOUBT, IT IS A DOUBT THAT WOULD CAUSE A
25 REASONABLE PERSON TO ACT. AND, AGAIN, AT THE END OF THE

1 CASE HIS HONOR IS GOING TO INSTRUCT YOU WHAT REASONABLE
2 DOUBT IS. BUT THAT IS THE STANDARD OF PROOF HERE TODAY.
3 AND, AGAIN, LADIES AND GENTLEMEN, I SUBMIT TO YOU AND I
4 WILL BE ABLE TO COME BACK UP HERE AND TALK TO YOU, THROUGH
5 THE EVIDENCE WE HAVE ESTABLISHED THAT THE DEFENDANT IS IN
6 FACT GUILTY BEYOND A REASONABLE DOUBT OF SECURITIES FRAUD,
7 OBTAINING GOODS UNDER FALSE PRETENSES AND CONSPIRACY. I
8 HAVE ALREADY JUST BRIEFLY TALKED TO YOU ABOUT WHAT THE
9 EVIDENCE IS, NOT WHAT I SAY, NOT WHAT MR. GRIFFIN'S SAYS,
10 IT IS WHAT WAS PRESENTED TO YOU BY WITNESSES AND THROUGH
11 EXHIBITS. HIS HONOR IS GOING TO TELL YOU ABOUT THE
12 CREDITABILITY OF THE WITNESSES, AND THE CREDIBILITY OF THE
13 WITNESSES IS SOMETHING THAT YOU ALL DO EVERY DAY, IS BASIC
14 COMMON SENSE. IF YOU TALK TO SOMEBODY AND IF YOU HAVE MET
15 THEM BEFORE AND YOU KNOW THEM, YOU OBVIOUSLY KNOW THEIR
16 RELIABILITY. BUT THE CREDIBILITY OF THE WITNESSES IS WHAT
17 EACH AND EVERY ONE OF YOU HAVE TO DETERMINE. YOU CAN
18 BELIEVE SOME OF THE WITNESSES TESTIMONY, YOU CAN BELIEVE
19 NONE OF THE WITNESSES TESTIMONY OR YOU CAN BELIEVE ALL OF
20 THE WITNESSES TESTIMONY. CREDIBILITY OF THE WITNESS IS
21 FOR YOU TO DECIDE, THERE ARE CERTAIN THINGS THAT COME UP,
22 THEIR DEMEANOR, THEIR BIASED, WHAT THEY SAY, HOW THEY
23 ANSWER THE QUESTION. THOSE ARE THINGS THAT THE JUDGE WILL
24 INSTRUCT ABOUT THE CREDIBILITY OF THE WITNESS. AND THAT
25 IS SOMETHING THAT EACH AND EVERY ONE OF YOU, WITH EVERY

1 WITNESS THAT WAS EITHER CALLED BY THE STATE OR CALLED BY
2 THE DEFENSE IN THIS CASE WILL HAVE TO DETERMINE THE
3 CREDIBILITY OF THE WITNESS. YOU ALSO HEARD THREE EXPERTS
4 IN THIS CASE. HIS HONOR WILL INSTRUCT YOU ABOUT AS HE HAS
5 ALREADY DONE, THAT THE EXPERTS ONLY MEAN THAT THEY CAN
6 TESTIFY TO THEIR OPINION. THE EXPERTS TESTIMONY IS NO
7 MORE IMPORTANT THAN ANY OTHER WITNESS THAT CAME BEFORE
8 YOU. THERE IS ALSO SOMETHING ELSE THAT THE JUDGE IS GOING
9 TO INSTRUCT YOU ON AND THIS IS VERY IMPORTANT, LADIES AND
10 GENTLEMEN. MR. GRIFFIN IS GOING TO COME UP HERE AND TELL
11 YOU ABOUT HIS EVIDENCE AND WHAT HE THINKS THE FACTS SHOW.
12 AND THERE IS SOMETHING THAT IS UNDER SOUTH CAROLINA LAW
13 THAT IS RELIANCE UNDER ADVICE OF OTHERS. LADIES AND
14 GENTLEMEN, RELIANCE UNDER ADVICE OF OTHERS, IT IS A
15 TWO-PRONG TEST AND HIS HONOR WILL INSTRUCT YOU THAT THE
16 DEFENDANT, THAT BOTH PRONGS HAVE TO BE ESTABLISHED BEFORE
17 YOU ALL CONSIDER WHETHER THE RELIANCE ON OTHERS. AND THE
18 BOTH OF THEM ARE VERY IMPORTANT IN THIS CASE AND THAT IS
19 WHY I WANTED TO TAKE THIS OPPORTUNITY TO POINT THOSE OUT
20 TO YOU. FULL DISCLOSURE OF ALL PERTINENT FACTS TO THE
21 EXPERT, WHETHER IT BE AN EXPERT THAT CAME IN AND TESTIFIED
22 AS AN EXPERT OR SOMEONE THAT YOU WERE RELYING UPON, THEIR
23 EXPERT OPINION. THE SECOND PRONG AND HIS HONOR WILL
24 INSTRUCT IS THAT THERE HAS TO BE A GOOD FAITH RELIANCE ON
25 THAT PERSON'S OPINION. THAT IS VERY IMPORTANT AND I WANT

1 YOU TO KEEP THAT IN MIND WHEN YOU HEAR THE CLOSING
2 ARGUMENTS OF BOTH MYSELF AND MR. GRIFFIN. ANOTHER
3 IMPORTANT CONCEPT IN THIS CASE IS A CONCEPT REGARDING
4 FIDUCIARY DUTIES AND I KNOW YOU HAVE HEARD THAT TERM, AND
5 WE HAVE HEARD LOTS OF BIG FANCY TERMS AND OF ALL THE TERMS
6 YOU HAVE HEARD THIS ONE IS PRETTY EASY TO UNDERSTAND. IN
7 ESSENCE, HIS HONOR WILL INSTRUCT YOU WHAT A FIDUCIARY DUTY
8 IS. BUT WHEN YOU ARE AN OFFICER OR A DIRECTOR OF A
9 COMPANY THE LAW REQUIRES THAT YOU PUT THE INTEREST OF THE
10 COMPANY AHEAD OF ANY INTEREST OF YOUR OWN. SO THERE ARE
11 OFFICERS AND DIRECTORS OF COMPANIES CANNOT TO DO SELF
12 FEELINGS, OTHER THINGS LIKE THAT. THE LAW OF FIDUCIARY
13 DUTY IS THAT YOUR FIRST AND PRIMARY RESPONSIBILITY IS TO
14 ACT IN THE BEST INTEREST OF THE COMPANY, ITS SHAREHOLDERS
15 AND ITS INVESTORS. AND THAT INCLUDES BOTH HOMEGOLD AND
16 CAROLINA INVESTORS AND NOT TO ACT IN YOUR OWN BEST
17 INTEREST AGAINST YOUR FIDUCIARY DUTY TO THE COMPANY. THIS
18 IS A VERY IMPORTANT CONCEPT IN THIS CASE, LADIES AND
19 GENTLEMEN. AND I WILL COME BACK UP HERE AFTER MR. GRIFFIN
20 TALKS TO YOU AND EXPLAIN WHY THE ISSUE OF FIDUCIARY IS SO
21 IMPORTANT IN THIS CASE. ANOTHER THING THAT I JUST WANT TO
22 BRIEFLY TALK TO YOU ABOUT IS YOU HAVE HEARD SEVERAL
23 ALLEGATIONS IN THE SCHEME TO DEFRAUD. I KNOW AT THIS
24 POINT WE ARE IN OUR FORTH WEEK OF TRIAL AND YOU HAVE HEARD
25 13 DAYS, I BELIEVE OF TESTIMONY. YOU HAVE HEARD SEVERAL

1 DIFFERENT ALLEGATIONS, LADIES AND GENTLEMEN, THIS IS VERY
2 IMPORTANT. YOU JUST HAVE TO FIND ONE, ONE OF THE MANY
3 ALLEGATIONS THE STATE HAS SAID WERE PART OF HIS SCHEME TO
4 DEFRAUD IN ORDER TO FIND THE DEFENDANT GUILTY OF A SCHEME
5 TO DEFRAUD. NOW, YOU ALL HAVE TO AGREE ON WHAT THAT ONE
6 THING IS BUT THERE IS ONLY ONE THING YOU HAVE TO DETERMINE
7 OF ALL THE ALLEGATIONS THAT YOU HAVE HEARD THESE WITNESSES
8 TELL YOU. AND WHEN I COME BACK UP HERE I WILL GO OVER ALL
9 OF THOSE SEVERAL ALLEGATIONS BUT KEEP IN MIND IT JUST
10 TAKES ONE ACTION, LADIES AND GENTLEMEN, TO MAKE THE
11 DEFENDANT GUILTY OF A SCHEME TO DEFRAUD. NOW, YOU ALL
12 MUST AGREE THAT HE COMMITTED THAT ONE ACT BUT IT ONLY
13 TAKES ONE, LADIES AND GENTLEMEN, ONE OF THE 13 DAYS OF
14 ALLEGATIONS THAT YOU HEARD THE DEFENDANT ENGAGE IN A
15 SCHEME TO DEFRAUD THE INDIVIDUALS AT CAROLINA INVESTORS.
16 IT JUST TAKES ONE THAT YOU ALL HAVE TO AGREE UPON. AND AS
17 I TOLD YOU I GET AN OPPORTUNITY TO COME BACK AND EXPLAIN
18 THE EVIDENCE AFTER MR. GRIFFIN DOES AND I THANK YOU FOR
19 PAYING ATTENTION AND I THANK YOU FOR PAYING ATTENTION FOR
20 THE LAST 13 DAYS OF TRIAL TESTIMONY. AND I LOOK FORWARD
21 TO BEING ABLE TO COME BACK UP HERE AND EXPLAIN THE
22 EVIDENCE THAT WE PRESENTED AND HOW THAT EVIDENCE
23 ESTABLISHES OUR BURDEN OF PROOF BEYOND A REASONABLE DOUBT
24 THAT THE DEFENDANT IS GUILTY OF A SCHEME TO DEFRAUD
25 INVESTORS, HE IS GUILTY OF OBTAINING GOODS UNDER FALSE

1 PRETENSES AND HE IS GUILTY OF A CONSPIRACY IN THIS CASE.
2 THANK YOU VERY MUCH, LADIES AND GENTLEMEN.

3 THE COURT: MR. GRIFFIN.

4 MR. GRIFFIN: IF IT PLEASE THE COURT.

5 THE COURT: YES, SIR.

6 MR. GRIFFIN: LADIES AND GENTLEMEN OF THE JURY, GOOD
7 MORNING. WHEN I STOOD BEFORE YOU A LITTLE OVER THREE
8 WEEKS AGO I EXPLAINED TO YOU THAT YOU WOULD HEAR A STORY
9 ABOUT AN AMBITIOUS MAN, THAT YOU WOULD HEAR A STORY ABOUT
10 A MAN WHO HAD A DRIVE AND A DETERMINATION TO SUCCEED, THAT
11 TOOK HIM PLACES THAT HE NEVER DREAMED OF. THAT YOU WOULD
12 HEAR A STORY OF RAGS TO RICHES. AND YOU HAVE HEARD THAT
13 STORY AND YOU HAVE HEARD ABOUT AMBITION AND YOU HAVE HEARD
14 ABOUT WILL AND DRIVE TO SUCCEED AND YOU HAVE HEARD ABOUT
15 SUCCESS AND YOU HAVE HEARD ABOUT FAILURE. OVER THE COURSE
16 OF THESE PAST THREE WEEKS YOU HAVE ALSO HEARD THAT MR.
17 SHEPPARD WOULDN'T WIN ANY POPULARITY CONTEST WITH THE
18 PEOPLE THAT HE WORKED WITH. AND THAT BEING A BOSS
19 SOMETIMES IS NOT THE SAME AS BEING A FRIEND. AND THAT HE
20 DROVE PEOPLE AND THAT HE DIDN'T MAKE A LOT OF FRIENDS
21 ALONG THE WAY. AND YOU HEARD SOME OF THOSE PEOPLE COME
22 HERE IN THIS TRIAL AND TESTIFY. YOU ALSO HEARD ALONG THE
23 WAY THAT MR. SHEPPARD WAS A SHREWD BUSINESSMAN AND THAT HE
24 NEGOTIATED HIS WAY INTO DEALS AND HE NEGOTIATED HIS WAY
25 OUT OF DEALS. YOU WERE GIVEN A STORY ABOUT A MAN THAT WAS

1 SOPHISTICATED SUCH THAT HE KNEW EVERYTHING THAT HE WAS
2 DOING BUT YET YOU ALSO HEARD OF A MAN WHO WAS AN EXPERT IN
3 ONE THING AND WHO WAS OUT ON HIS ELEMENT WHEN HE GOES TO
4 RUN A PUBLIC CORPORATION WITH FINANCIAL REPORTING
5 REQUIREMENTS THAT HE WAS NOT ACCUSTOMED TO. HE WAS IN AN
6 ORGANIZATION WHERE THERE WAS LAYERS OF STRUCTURE AND
7 CHAINS OF COMMAND THAT HE WAS NOT USED TO, HE WAS USED TO
8 WORKING IN A ONE MAN SHOP. HE WENT TO WORK FOR A PUBLIC
9 COMPANY AND YOU HEARD THE DISTINCTION BETWEEN THOSE TWO.
10 AND ALONG THE WAY I AM SURE YOU HAVE ASKED YOURSELF, DID
11 HE MAKE THE RIGHT DECISIONS, SHOULD HE OF DONE THIS AND
12 SHOULD HE HAVE DONE THAT. AND WHEN I STOOD BEFORE YOU
13 THREE WEEKS AGO I EXPLAINED TO YOU THAT THIS CASE IS NOT
14 ABOUT SECOND GUESSING, NOT ABOUT WOULD OF, COULD OF,
15 SHOULD OF, IT IS NOT ABOUT WHAT YOU SHOULD OF DONE OR WHAT
16 YOU COULD OF DONE BUT IT IS A CRIMINAL CASE AND THE
17 QUESTIONS IS DID YOU DECEIVE, DID YOU LIE, DID YOU CHEAT,
18 DID YOU STEAL. NOW, WHEN YOU GO BACK TO THE JURY ROOM, IF
19 THIS CASE WAS GOING TO BE A POPULARITY CONTEST I SUSPECT
20 SOME OF YOU WOULD VOTE, I DON'T KNOW HOW YOU WOULD VOTE ON
21 MR. SHEPPARD'S POPULARITY BUT THAT IS NOT WHAT THIS CASE
22 IS ABOUT. NOW, IF YOU WOULD GO BACK AND TRY TO DECIDE IF
23 THIS IS SOMEONE I WANT TO GO TO WORK FOR, I DON'T KNOW HOW
24 YOU WOULD END UP. WHEN YOU HAVE GOT A STORY LIKE CHARLIE
25 SIDES, STARTED OUT MAKING \$35 THOUSAND DOLLARS AND ENDED

1 UP MAKING ALMOST \$500 THOUSAND DOLLARS. YET, AT THE END
2 OF THE DAY HE ENDS UP, ALONG THE WAY, HE DESCRIBED A BOSS
3 THAT IS PRETTY INSENSITIVE. AND YOU HEAR STORIES OF A GUY
4 NAMED STEVE WILSON, HE IS A TRADESMAN, HE STARTS OUT
5 MAKING GOOD MONEY AND HE JOKES IT IS HARD TO FIND SOMEONE
6 GOOD, TO FIND MANY PEOPLE TO SAY SOMETHING GOOD ABOUT MR.
7 SHEPPARD. THAT IS NOT, THOSE ISSUES ARE NOT WHAT IS
8 BEFORE YOU, WHAT IS BEFORE YOU IN THIS TRIAL ARE CRIMINAL
9 CHARGES. THAT IS MR. SHEPPARD SET ABOUT, SET UP AND
10 PARTICIPATED IN A COURSE OF BUSINESS THAT WAS DESIGNED TO
11 AND DID DEFRAUD INVESTORS OF CAROLINA INVESTORS. AND DID
12 HE ENGAGE IN ACTS OF PRACTICES THAT WERE INTENDED TO
13 DECEIVE PEOPLE AT CAROLINA INVESTORS.

14 NOW, IN MY ARGUMENT HERE BEFORE YOU, I HAVE A CHANCE
15 TO REVIEW THE FACTS AND I INTEND TO DO THAT. I KNOW THAT
16 YOU, LADIES AND GENTLEMEN, HAVE LISTENED ATTENTIVELY
17 THROUGHOUT THIS LAST THREE AND A HALF WEEKS. I CAN ASSURE
18 YOU, I HAVE BEEN TRYING CASES, THIS IS MY 20TH YEAR. I
19 HAVE TRIED CASES FOR THREE, FOUR WEEKS AND TWO MONTHS
20 BEFORE. I HAVE NEVER SEEN A JURY STAY AS FOCUSED AND
21 ATTENTIVE AS I HAVE SEEN YOU FOLKS DURING THIS TRIAL AND I
22 APPRECIATE THAT. AND I THINK THAT WHEN YOU REVIEW THE
23 EVIDENCE AND WHEN YOU GO BACK IN YOUR JURY ROOM TO
24 DELIBERATE THAT YOU WILL SEE THROUGH THE CLOUDS AND THE
25 SMOKE SCREENS AND THAT YOU WILL DO YOUR DUTY AND THAT YOU

1 WILL FOLLOW THE LAW AS THE JUDGE CHARGES YOU BECAUSE YOU
2 HAVE DONE SO FAR AND IT IS OBVIOUS TO EVERYONE IN THE
3 COURT ROOM THAT YOU HAVE. AND I TOLD YOU AT THE BEGINNING
4 OF THIS TRIAL THAT YOU ARE ABOUT TO UNDERTAKE A PROCESS
5 THAT IS UNNATURAL, THAT IS NOT NATURAL TO PRESUME SOMEONE
6 INNOCENT. BUT THAT IS WHAT THE LAW IS AND THAT IS WHAT
7 THE CONSTITUTION GRANTS ANY CITIZEN IN THIS STATE, ANY
8 RESIDENT OF LEXINGTON COUNTY. AND THAT PRESUMPTION
9 STARTED WITH MR. SHEPPARD ON THE FIRST DAY OF TRIAL, IT
10 CONTINUED WITH MR. SHEPPARD AT EVERY DAY OF TRIAL AND IT
11 SITS ON HIM AS A ROBE RIGHT NOW. AND THAT HE CAN ONLY BE
12 CONVICTED UPON A SHOWING OF PROOF BEYOND A REASONABLE
13 DOUBT. AND JUDGE JOHNSON WILL CHARGE YOU AS TO WHAT
14 REASONABLE DOUBT IS. AND IT IS PART OF THE DEFINITION, IS
15 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
16 HESITATE TO ACT, TO HESITATE TO ACT. THAT MEANS WHEN YOU
17 GO BACK TO THE JURY ROOM, AND IT IS A DOUBT AND IT IS AN
18 ANALYSIS AND IT IS A QUESTION THAT EACH ONE OF YOU OF THE
19 TWELVE ARE DELIBERATING DECIDES, INDEPENDENTLY OF THE
20 OTHER, IT IS YOUR DECISION, IT IS YOUR PERSONAL DECISION
21 AS TO WHETHER THE EVIDENCE PRESENTED BY THE STATE
22 SATISFIED YOU, CONVINCES YOU BEYOND A REASONABLE DOUBT.
23 AND THAT WHEN YOU WEIGH THAT EVIDENCE THAT YOU HAVE NO
24 REASON TO HESITATE.

25 A FRIEND OF MINE RECENTLY CAME BACK FROM SCOTLAND AND

1 HE WENT TO A CRIMINAL TRIAL OVER THERE, OUR LAWS IN THE
2 UNITED STATES AND SOUTH CAROLINA ARE DERIVED FROM ENGLAND,
3 OUR GREAT-GREAT-GREAT-GRANDFATHER, OUR ANCESTORS OF OUR
4 LAW COMES FROM ENGLAND AND HE WAS DESCRIBING A CRIMINAL
5 TRIAL IN ENGLAND, EXCUSE ME, IN SCOTLAND. HE SAID THE
6 JUDGE WEARS A ROBE AND A WIG AND THE LAWYERS WEAR WIGS BUT
7 OTHER THAN THAT MOST EVERYTHING IS THE SAME EXCEPT HE SAID
8 WHEN IT CAME TIME FOR THE JUDGE TO CHARGE THE JURY AND THE
9 DECISIONS OF THE JURY WAS GIVEN, IN ENGLAND AND IN
10 SCOTLAND THEY ARE GIVEN THREE CHOICES. ONE IS GUILTY, ONE
11 IS INNOCENT AND THE THIRD IS NOT PROVEN. AND IN THIS
12 COUNTRY WE HAVE GUILTY OR NOT GUILTY AND WE COLLAPSE THE
13 NOT PROVEN INTO THE NOT GUILTY. AND IT IS THE NOT PROVEN
14 IS WHAT HAS HAPPENED IN THIS TRIAL, THAT THERE HAS NOT
15 BEEN PROOF BEYOND A REASONABLE DOUBT THAT MR. SHEPPARD
16 ENGAGED IN THE COURSE OF BUSINESS INTENDING TO DEFRAUD
17 CAROLINA INVESTORS, INDIVIDUALS, INTENDED TO OBTAIN MONEY
18 OR PROPERTY THROUGH FALSE PRETENSES OR INTENDING TO
19 ENGAGING IN A CONSPIRACY WITH OTHERS TO DEFRAUD AND OBTAIN
20 MONEY OR PROPERTY OF FALSE PRETENSES.

21 NOW, WHEN I OPENED THE TRIAL I EXPLAINED TO YOU THAT
22 I WOULD, AND I SHOWED YOU TWO CHARTS AND I AM TRYING TO
23 PULL THEM UP HERE. AND I CALL IT THE TALE OF TWOS, THE
24 TALE OF TWO COMPANIES, THE TALE OF TWO CITIES, THE TALE OF
25 TWO CULTURES. AND YOU SAW ONE COMPANY, HOMEGOLD FINANCIAL

1 THAT WAS IN THE TANK WHEN IT MET MR. SHEPPARD AND THEY
2 CAME AFTER MR. SHEPPARD. AND I THINK YOU HEARD MS. MILLER
3 TESTIFY FROM THE STAND THAT JACK STERLING SAID, IF WE
4 DON'T DO THIS DEAL WE WILL BE BANKRUPT BY THE SUMMER. AND
5 BEFORE THEY EVER MET MR. SHEPPARD THEY WOULD RUN UP A
6 INTER-COMPANY DEBT OF SOME \$60, \$70, \$80 MILLION DOLLARS,
7 I FORGET THE NUMBER. BUT IT IS A SUBSTANTIAL AMOUNT AND
8 THAT THEY WERE PAIRING THAT DEBT DOWN BECAUSE IN 1998 THEY
9 LOST MORE THAN \$70 MILLION, THERE IS SOME TESTIMONY THAT
10 IT IS \$100 MILLION. BUT IT IS A WHOLE LOT OF MONEY AND
11 THAT THEY WERE MOVING ASSETS FROM HOMEGOLD BACK TO
12 CAROLINA INVESTORS TO KNOCK THAT INTER-COMPANY DEBT DOWN
13 BUT IT WAS SUBSTANTIAL. AND LARRY OWEN SAYS IT WAS A
14 MARRIAGE THAT WE BOTH NEEDED EACH OTHER. CAROLINA
15 INVESTORS NEEDED HOMEGOLD IN ORDER TO SURVIVE BECAUSE
16 THEY, BECAUSE HOMEGOLD WAS SO INDEBTED TO THEM. AND IF
17 HOMEGOLD COULDN'T TURN IT AROUND CAROLINA INVESTORS WAS
18 GOING UNDER. AND HOMEGOLD NEEDED CAROLINA INVESTORS TO
19 SURVIVE BECAUSE IT WAS, IT HAD EXPANDED AND IT HAD THIS
20 INFRASTRUCTURE, IT HAD THESE EMPLOYEES, IT HAD THESE
21 OFFICES THAT WHEN MR. MCSHANE PULLED OUT AND HIS PEOPLE
22 LEFT AND THE MARKET TURNED IT WAS LEFT WITH NO MONEY
23 COMING IN THE DOOR AND A LOT OF MONEY GOING OUT. AND THAT
24 IS THE COMPANY THAT IS PRESENTED TO MR. SHEPPARD. AND I
25 TOLD YOU HE WAS A MAN OF AMBITION. AND MANY OF YOU MAY

1 THINK THAT AMBITION BLINDED HIM, THAT THIS MOUNTAIN WAS
2 TOO HIGH FOR HIM TO CLIMB AND NEVER SHOULD OF CLIMBED IT.
3 I DON'T KNOW THAT THERE WOULD BE ANY DISAGREEMENT WITH
4 THAT. AND I ALSO EXPLAINED TO YOU THAT WHEN THEY MET MR.
5 SHEPPARD HE WAS DOING WELL. AND THERE WAS A DIP IN THE
6 MORTGAGE SUBPRIME LENDING INDUSTRY BUT IT WAS A BLIP ON
7 THE RADAR SCREEN FOR HOMESENSE AND IT WAS A ONE QUARTER
8 FLAT AND IT CONTINUED TO GROW. AND THE NUMBERS HERE
9 DERIVE FROM THE FINANCIAL STATEMENTS AND THEY ARE THERE
10 FOR YOU TO LOOK AT, AUDITED FINANCIAL STATEMENTS BY J.W.
11 HUNT, A COMPANY HERE IN THIS AREA. AND THEN MR. SHEPPARD
12 RECEIVES AN OFFER, AN OFFER THAT IN RETROSPECT IT TURNED
13 OUT NOT TO BE A GOOD DECISION FOR HIM. AND THIS OFFER
14 RESULTED ON HIS GETTING SHARES OF STOCK, COMING ON THE
15 BOARD OF HOMEGOLD BUT AS HOMEGOLD'S, IT WAS A CORPORATION,
16 IT WAS CONTROLLED BY ITS BOARD. AND THESE ARE THE BOARD
17 MEMBERS, MR. STERLING, MR. SIROTA, MR. PHILPOTT, MR.
18 HOOPER, ALL OF THOSE GREENVILLE BUSINESSMEN EXCEPT FOR MR.
19 SIROTA FROM FLORIDA WITH AN INVESTMENT GROUP THAT HAD BEEN
20 DOING WORK FOR HOMEGOLD FROM THE \$125 MILLION DOLLAR BOND
21 OFFERING FORWARD. AND THEN THERE IS RONNIE SHEPPARD, A
22 NINTH GRADE DROPOUT FROM CAYCE, SOUTH CAROLINA AND THEN
23 TWO OTHER PEOPLE JOINED AT THAT TIME. MR. CHILDRES COMES
24 ON AND FALLS OFF, MR. BANNINGER COMES ON AND FALLS OFF AND
25 TOWARD THE END, MR. SIROTA LEAVES AND MR. HOOPER LEAVES

1 AND MR. FORREST FERRELL COMES AT SOME POINT AND TIME. BUT
2 WHAT YOU HAVE IS, YOU HAVE A CORPORATION, YOU DON'T HAVE A
3 ONE MAN SHOP, YOU HAVE A CORPORATION. AND THIS
4 CORPORATION OWNED ANOTHER COMPANY, IT OWNED CAROLINA
5 INVESTORS. AND WHO IS THE CHAIRMAN THERE, MR. STERLING,
6 THIS IS HIS BABY. THIS IS THE MAN WHO TELLS MS. MILLER,
7 IF WE DON'T GO AND GET MR. SHEPPARD'S COMPANY WE ARE GOING
8 TO BE BANKRUPT BY THE SUMMER. AND THEN ON THIS BOARD YOU
9 HAVE GOT EARLE MORRIS AND LARRY OWEN AND MR. BOBO AND MR.
10 SHARPE AND OVER HERE YOU HAVE MR. SHEPPARD FROM CAYCE.
11 NEVER BEEN INVOLVED WITH A COMPANY LIKE CAROLINA
12 INVESTORS. AND CHARLIE SIDES TOLD YOU THAT HIS INTEREST
13 IN GOING TO HOMEGOLD WAS THE CAPACITY THAT THEY HAD, THE
14 GROWTH THAT HE COULD DO, WITH \$100 MILLION DOLLAR
15 WAREHOUSE LINE, \$20 MILLION DOLLARS IN THE BANK, THAT HE
16 COULD MAKE THAT COMPANY WORK BECAUSE THEY DIDN'T KNOW WHAT
17 THEY WERE DOING UP THERE. WAS HE TALKING ABOUT CAROLINA
18 INVESTORS, WAS HE INTERESTED IN CAROLINA INVESTORS. WHAT,
19 WE KNEW IT WAS AN ASSET OF THE COMPANY BUT THAT, HE DIDN'T
20 COME INTO THIS AND THEY PUT HIM ON THE BOARD IN OCTOBER OF
21 2000.

22 WE ARE GOING TO GO THROUGH A LOT OF FACTS THAT WERE
23 PRESENTED OVER THE LAST THREE WEEKS AND I WAS TRYING TO
24 ORGANIZE IT LAST NIGHT SO THAT I COULD PRESENT IT TO YOU
25 IN AN ORDERLY FASHION THAT WOULD BE UNDERSTANDABLE TO YOU

1 AND TO ME. AND AS I DID, I KEPT GOING BACK A FEW TIMES,
2 TRYING TO PUT THIS TOGETHER AND IT REMINDED ME WHEN I WAS
3 A CHILD. MY GRANDPARENTS LIVED IN ESTILL, SOUTH CAROLINA,
4 ACTUALLY IT IS OUTSIDE OF ESTILL, IT IS IN HAMPTON COUNTY
5 AND THEY LIVED ON A LONG DIRT ROAD AND THEY WERE FARMERS.
6 AND THEY LIVED OFF THE LAND AND THEY HAD CHICKENS AND COWS
7 AND PIGS AND THEY GREW SOY BEANS. AND I WOULD SPEND THE
8 SUMMERS, A MONTH EACH TIME THERE AND IT WAS THE MOST FUN I
9 EVER HAD LIVING OUT ON THE END OF A DIRT ROAD. AND I WAS
10 GOING THROUGH TRYING TO PIECE ALL OF THIS TOGETHER, WHAT
11 IT REMINDED ME OF IS WHEN WE WOULD GO OUT IN THE MORNING,
12 AFTER MY GRANDMOTHER WOULD GET THE EGGS OUT OF THE HEN
13 HOUSE, AND MY BROTHER AND I WOULD TRY TO CHASE THE
14 CHICKENS AND WE WOULD GO IN THE CHICKEN PEN AND THEY WOULD
15 SCATTER EVERY WHERE AND WE WOULD RUN, ONE WOULD GO THIS
16 WAY AND ONE WOULD GO THAT WAY AND THEN WE WOULD GO THIS
17 WAY AND THEN WE WOULD RUN BACK UNTIL MY GRANDMOTHER WOULD
18 SCREAM AND TELL US TO STOP, THE CHICKEN WON'T LAY EGGS IF
19 YOU ARE THERE MESSING AROUND WITH THE CHICKENS. AS I GO
20 BACK THROUGH AND TRY TO PIECE ALL OF THESE FACTS TOGETHER
21 BECAUSE WHAT YOU HAVE HEARD IS, HE DID THAT AND HE DID
22 THIS AND SHE DID THAT AND SHE DID THIS AND WHERE DOES IT
23 ALL LEAD US. AND I DON'T KNOW IF YOU WERE CONFUSED AS I
24 WAS DURING THE STATE'S TESTIMONY BUT AT TIMES IT WAS HEAD
25 SPINNING. I DON'T KNOW IF I HAVE DONE A GOOD JOB PULLING

1 IT TOGETHER BUT I AM TRYING. AND I KNOW THAT YOU KNOW
2 THAT THIS EVIDENCE IS NOT PROOF OF GUILT BEYOND A
3 REASONABLE DOUBT.

4 SHEPPARD COMES ON BOARD, CAROLINA INVESTORS, WE KNOW
5 HE WASN'T AN OFFICER, HE DIDN'T GIVE INSTRUCTIONS TO LARRY
6 OWEN, HE DIDN'T DRAFT OR EDIT PROSPECTUS'. AND HE DIDN'T
7 HAVE CONTACT WITH CAROLINA INVESTORS BOARD MEMBERS. NOW,
8 I AM NOT GOING TO TELL YOU THAT HE HAD TO SPEAK TO THEM
9 ACROSS THE TABLE BECAUSE THEY ARE RIGHT. IT IS DIRECT OR
10 INDIRECT AND IF HE IS IN THE BACK ROOM PULLING THE
11 STRINGS, ORCHESTRATING A FRAUD ON THIS CAROLINA INVESTORS
12 THEN THAT IS INDIRECT, THAT IS THE LAW. WE ARE GOING TO
13 SEE WHAT THE EVIDENCE IS ON THAT. BUT WE DO KNOW THAT HE
14 WAS ONLY ON THE BOARD, HE DIDN'T TELL, LARRY OWEN DIDN'T
15 COME IN HERE AND SAY, RONNIE SHEPPARD TOLD ME TO DO THIS
16 AND HE TOLD ME TO DO THAT AND HE ASKED ME TO DO THIS.
17 WHAT DID HE SAY, HE SAID WE WERE DYING FOR INFORMATION,
18 MR. OWEN, YOU HAVE GOT ALL THE INFORMATION THAT YOU NEED,
19 WE WERE DYING FOR MORE INFORMATION, HE JUST DIDN'T LIKE
20 THE BAD INFORMATION THAT YOU WERE GETTING, WE ARE STARVING
21 FOR INFORMATION. HE DIDN'T COME IN AND SAY, MR. SHEPPARD
22 TOLD ME TO TELL MR. GREGORY THAT HIS MONEY IS SAFE. AND
23 THE PROSPECTUS', THE EVIDENCE IS CLEAR AND WHEN YOU GO IN
24 THE JURY ROOM THE YELLOW STICKERS ARE THE DEFENDANT'S
25 STICKERS. AND WHAT YOU WILL SEE ARE THE BILLS FROM THE

1 WYCHE LAW FIRM, THERE WERE TWO PROSPECTUS' THAT WENT OUT
2 WHEN MR. SHEPPARD WAS AT HOMEGOLD. IN THE SPRING OF 2001,
3 AND ONE WAS IN THE SPRING OF 2002. AND EACH OF THOSE
4 PROSPECTUS' WERE REVIEWED BY, PREPARED AND SIGNED OFF BY
5 THE WYCHE LAW FIRM. AND LOOK AT THE BILLS, IN 2001 THE
6 BILL IS LIKE \$3 THOUSAND DOLLARS. LOOK WHO THEY ARE
7 TALKING TO ABOUT THE PROSPECTUS, THEY ARE NOT TALKING TO
8 MR. SHEPPARD. THEY ARE TALKING TO SUSANNE CAUGHMAN AND
9 KEVIN MARTIN AND OTHERS. AND THEN IN 2002 WHERE YOU HAVE
10 THIS GOING CONCERN QUALIFICATION, AND IT IS A \$20
11 SOMETHING THOUSAND DOLLAR BILL AND THERE IS A LOT OF LEGAL
12 WORK INVOLVED. AND THERE IS A LOT OF COMMUNICATION BACK
13 AND FORTH AND GO THROUGH THOSE BILLS LIKE I DID WITH MR.
14 KEHL, THE HARVARD COLLEGE GRADUATE, UVA LAW SCHOOL
15 GRADUATE. AND WHO IS HE TALKING TO, JACK STERLING, KEVIN
16 MARTIN, DAVID GAFFNEY WHO IS THE IN-HOUSE LAWYERS. SO,
17 THE DOCUMENTS THAT ARE THERE FOR FULL DISCLOSURE, TO BE
18 DELIVERED TO THE INVESTORS ARE DRAFTED BY LAWYERS,
19 IN-HOUSE, OUT-HOUSE, OUTSIDE LAWYERS, MR. STERLING'S HANDY
20 WORK IS IN THERE, YOU WILL SEE THOSE DRAFTS, EMAILS GOING
21 BACK AND FORTH ASKING TO TONE IT DOWN. YOU DON'T SEE MR.
22 SHEPPARD'S NAME IN THAT BECAUSE HE CAME ON TO RUN THE
23 MORTGAGE BUSINESS. HE WASN'T RUNNING CAROLINA INVESTORS,
24 HE WASN'T PULLING THE STRINGS BEHIND CAROLINA INVESTORS.
25 AND YOU HEARD PROFESSOR BRANSON, I DON'T KNOW THAT YOU

1 WILL FIND A MORE QUALIFIED EXPERT, TALK ABOUT HOW THOSE
2 DISCLOSURES WERE BALANCED. AND THAT THE BAD IS ON THE
3 FRONT AND IT IS BAD AND IT IS A HIGH RISK INVESTMENT AND
4 IT SPEAKS FOR ITSELF. AND YOU KNOW, AND IT IS A STORY OF
5 CONTRADICTIONS, YOU HEARD MS. MURPHREE, MORE SYMPATHETIC
6 PERSON YOU WILL EVER MEET. SHE TOLD YOU FROM THIS WITNESS
7 STAND THAT SHE HEARD THAT CAROLINA INVESTORS HAD CLOSED
8 ITS DOORS ON THE NEWS. SHE RUNS TO HER DESK AND PULLS OUT
9 HER PAPERWORK, SHE LOOKS AT IT AND STARTS READING IT FOR
10 THE FIRST TIME AND SHE STARTS CRYING BECAUSE SHE SEES
11 RIGHT THERE THAT WHAT SHE INVESTED IN WAS A HIGH RISK, NO
12 SECURITY INVESTMENT. AND SHE TOLD YOU IT WAS ALL RIGHT
13 THERE, SHE ALSO TOLD YOU THAT SHE PUT HER MONEY IN BECAUSE
14 SHE TRUSTED LARRY OWEN, SHE TRUSTED EARLE MORRIS. PEOPLE
15 THAT WENT TO THE COMPANY WHO HAD BEEN AT CAROLINA
16 INVESTORS SO LONG BEFORE MR. SHEPPARD HAD EVER ARRIVED ON
17 THE SCENE AND KNOWS ABOUT CAROLINA INVESTORS. WHEN MR.
18 SHEPPARD COMES ON HE TRIED TO TURN THIS SINKING SHIP
19 AROUND AND THAT WAS HIS DUTY, THAT IS WHAT HE WAS, THAT
20 WAS HIS MISSION, THAT IS WHAT THE TASK AT HAND FOR HIM
21 BECAUSE YOU HEARD THEY HAD BIG CAPACITY, MAKING \$100
22 MILLION DOLLARS A MONTH AND THEY WERE MAKING MONEY. AND
23 THEN MR. MCSHANE'S GROUP PULLS OUT. THEY TRY TO CUT COST
24 IN THE FOLLOWING YEAR OF 1999 AND THEY STILL LOST \$35
25 MILLION DOLLARS. SO, COMING IN 2000 THEY GO GET MR.

1 SHEPPARD AND SO HE TRIES AND AS THE HIGHER THE NUMBERS GET
2 THE HIGHER THE BREAK EVEN POINT GOT. BUT HE DID TRY AND
3 HE WORKED AND HE WORKED AND HE WORKED AND HE KEPT HITTING
4 HIS HEAD AGAINST THE WALL, HE KEPT HITTING HIS HEAD
5 AGAINST THE WALL. AND THEN IN OCTOBER, NOVEMBER OF 2001
6 WHEN HE COULDN'T HIT HIS HEAD AGAINST THE WALL ANYMORE AND
7 HE THOUGHT HE HAD TAKEN IT AS FAR AS HE COULD GO HE HIRED
8 PAUL BANNINGER WHO CAME IN HERE. AND MR. BANNINGER HAD
9 EXPERIENCE IN PUBLIC CORPORATIONS, COMES IN DECEMBER OF
10 2001. AND HE TAKES OVER THE REINS OF EXPANDING IT FURTHER
11 AND HE ALSO DOES SOME GOOD THINGS, HE RESTRUCTURED THE
12 COMPENSATION PACKAGE, HE ENGAGES AND STARTS CUTTING COST.
13 AND THEN WE HEAR THAT THIS EFFORT AT THE END OF 2001
14 CREATED VALUE, ACCORDING TO BUSINESS EXPERTS WHO DO THIS
15 KIND OF WORK, WHO MR. SHEPPARD NEVER MET BEFORE, MR.
16 SHEPPARD NEVER DEALT WITH BEFORE, CAME UP AND SAID THIS
17 COMPANY IS WORTH, BETWEEN THE TWO, SOME \$135 MILLION TO
18 \$170 MILLION DOLLARS. THE COMPANY IS THE RETAIL MORTGAGE
19 DIVISION, THE THING THAT MR. SHEPPARD WAS HIRED TO FIX.
20 YOU ARE GOING TO HEAR ABOUT THESE, THESE APPRAISALS WERE
21 BASED ON PROJECTIONS BUT YOU ALSO HEARD THAT KEVIN MARTIN,
22 THE CHIEF FINANCIAL OFFICER WHO WAS INVOLVED IN THAT
23 PROCESS SAID, THESE ARE PROJECTIONS, THESE ARE OPTIMISTIC
24 PROJECTIONS, DID YOU GIVE THEM A DOSE OF REALITY. AFTER
25 THAT WHOLE PROCESS, DID YOU THINK THAT THE END RESULT WAS

1 THE RESULT OF A FAIR PROCESS. AND THIS A MAN WHO HAS
2 TREMENDOUS ANIMOSITY THAT HE DISPLAYED FROM THE WITNESS
3 STAND TOWARDS MR. SHEPPARD. AND HE SAID, YES, I BELIEVE
4 IT WAS A FAIR PROCESS AND HE BELIEVED IN THESE NUMBERS,
5 THOUGHT THEY WERE HIGH AND WAS SURPRISED THAT THE VALUE
6 CAME IN THIS HIGH. ONE THING I LEFT OUT ABOUT THE
7 PROSPECTUS' AND THE DISCLOSURES IN PARTICULARLY IN 2002.
8 AND MS. EVANS ASKED PROFESSOR BRANSON ON THE STAND ABOUT,
9 WELL, PROFESSOR BRANSON, THE BAD INFORMATION IS BURIED ON
10 PAGE F11. AND YOU KNOW THAT THERE WAS A MEMO THAT MR.
11 OWEN HAD TO HIS EMPLOYEES AND SAID, IF THEY QUESTION YOU
12 TAKE THEM TO PAGE F11. AND HERE IS WHAT I WANT YOU TO
13 REMEMBER ABOUT THAT TESTIMONY AND IT GOES BACK TO MARTIN.
14 IS THAT MEMO WAS PREPARED AND IT WAS SHARED WITH MR.
15 STERLING, IT WAS SHARED BY MR. MARTIN, AND IT WAS IN THAT
16 MEETING. AND MR. MARTIN, ON THAT WITNESS STAND, ADMITTED
17 THAT HE TOLD THE GRAND JURY THAT MR. SHEPPARD WAS AT THAT
18 MEETING, WE KNOW NOW THAT HE WASN'T. WE KNOW THAT MR.
19 MARTIN WAS AT THE MEETING WITH SHARING THE MEMO,
20 INSTRUCTING THE EMPLOYEES TO GO TO PAGE F11. AND F11 IS
21 THE LANGUAGE IN A PROSPECTUS THAT WAS, YOU WILL SEE MR.
22 KEHL'S EMAIL TO JACK STERLING AND THE BODY OF THE EMAIL
23 SAYS FIFTH REVISION GOING CONCERN PARAGRAPH. FIFTH
24 REVISION AND THEN THE DOCUMENT, IN THE BODY SAYS, I TAKE
25 ONE MORE CUT OUT OF THIS AND THIS IS THE SIXTH REVISION OF

1 THE PARAGRAPH. WHAT I WANT YOU TO UNDERSTAND ABOUT THE
2 DISCLOSURES AND THIS INTERNAL MEMO, ONCE AGAIN, THERE IS
3 MR. MARTIN, MR. STERLING, MR. OWEN AND MR. SHEPPARD IS NO
4 WHERE AROUND, HE IS NOT CONSULTED, THERE IS NO EVIDENCE HE
5 IS CONSULTED. WELL, IN THE SUMMER AND FALL OF 2002 THINGS
6 START, AFTER GETTING THESE APPRAISALS AND SEEING THERE IS
7 VALUE THERE AND ELLIOTT DAVIS PUTTING A GOING CONCERN
8 PROVISION IN THE FINANCIALS, WHICH I WANT YOU TO PAY
9 SPECIAL ATTENTION TO DEFENDANT'S EXHIBIT NUMBER 3. THIS
10 IS THE DOCUMENT WHERE GARRY RANK WHO WORKED FOR ELLIOTT
11 DAVIS, INTERNALLY AT ELLIOTT DAVIS IS RECOMMENDING THAT
12 THIS GOING CONCERN PARAGRAPH BE PUT IN THERE. AND HE SAYS
13 THAT A GOING CONCERN OPINION COULD CREATE ENOUGH UNREST
14 THAT DEBENTURE HOLDERS WOULD RUSH TO CASH OUT THEIR
15 DEBENTURES UPON MATURITY IN EFFECT, THE GOING CONCERN
16 OPINION COULD HASTEN THE VERY RUSH TO CASH OUT AND COULD
17 BANKRUPT THE COMPANY. NOW, THAT IS WHAT HE WAS TELLING
18 HIS PEOPLE, WHEN WE PUT THAT OPINION IN THERE THAT COULD
19 PUT THIS COMPANY OUT OF BUSINESS. BUT WHAT THE COMPANY
20 DID, IS THEY DID AT THE REQUEST OF ELLIOTT DAVIS IS THAT
21 THEY GOT THESE INDEPENDENT VALUATIONS AND THEY FOUND VALUE
22 AND THEY SAID, WELL, LET'S GO SELL THIS THING, WE CAN PAY
23 OFF THE DEBT. AND YOU REMEMBER, MR. SHEPPARD TOLD MR.
24 BANNINGER BACK IN DECEMBER, WE WANT TO GROW IT SO WE CAN
25 SELL IT AND PAY OFF THE DEBT, PAY OFF THE DEBT, TO WHO, TO

1 CAROLINA INVESTORS. AND MR. PHILPOTT, WHO IS BACK ON THE
2 BOARD, THEIR ARE SOME SUITERS BUT IN THE IMPAC DEAL THAT
3 THERE WAS A LETTER OF INTENT SIGNED AND THE TOTAL AMOUNT
4 OF THE EARN OUT WOULD BE SUFFICIENT, IF ALL WORKS OUT TO
5 PAY OFF CAROLINA INVESTORS. THAT DEAL TANKS AND THEN WHAT
6 IS LEFT IS, IN THE FALL OF 2002, MR. SHEPPARD AGREES TO
7 TAKE OVER THE DEAL THAT IMPAC HAD PUT ON THE TABLE WITH
8 HIS PERSONAL GUARANTEES ON THE WAREHOUSE LINES AND
9 OPERATE. AND THE DEAL IS BETTER THAN THE IMPAC DEAL AND
10 YOU HEARD SOME CRITICISMS ABOUT THE TERMS OF THE DEAL BUT
11 THAT DEAL WAS STRUCK ARMS LENGTH AND THERE WAS SOME MONEY
12 UP FRONT BECAUSE WHAT MR. SHEPPARD WAS TAKING OVER WAS A
13 MILLION DOLLAR A MONTH PAYROLL, A MILLION DOLLAR A MONTH
14 PAYROLL. I DON'T KNOW WHAT KIND OF EXPERIENCE YOU HAVE
15 HAD IN RUNNING A BUSINESS, BUT A MILLION DOLLAR A MONTH
16 PAYROLL IS A PRETTY STEEP HILL TO CLIMB STARTING FROM
17 SCRATCH. SO, THERE IS MONEY UP FRONT, BUT THERE WAS MONEY
18 UP FRONT ON THE OTHER DEAL TOO. AND THIS DEAL WAS BETTER
19 THAN THE OTHER AND HOMEGOLD WOULD GET ONE-HALF OF THE
20 PROFITS UP TO \$170 MILLION DOLLARS AND HOMEGOLD HAD AN
21 INTEREST IN EMMCO. BUT WHAT HAPPENED WAS HOMEGOLD RAN OUT
22 OF MONEY AFTER THE DEAL, HOMEGOLD FILED BANKRUPTCY,
23 HOMEGOLD DIVERTED MORTGAGE PROCEEDS DURING THE FIRST
24 QUARTER OF EMMCO, YOU HEARD ABOUT THAT. AND AT THE TIME
25 THAT HOMEGOLD FILED BANKRUPTCY HOMEGOLD OWED EMMCO,

1 ACCORDING TO MS. MILLER'S CALCULATION, AT LEAST \$600
2 THOUSAND PLUS. AND YOU HEARD MR. BANNINGER SAY, WELL,
3 ONCE THE BANKRUPTCY WAS FILED THE WHOLE BUSINESS PLAN
4 COLLAPSES AND MR. BANNINGER TESTIFIED THAT IN 2003 EMMCO
5 LOST \$8 MILLION DOLLARS.

6 NOW, THE QUESTION YOU WILL HAVE TO ADDRESS IS WERE
7 THE INVESTORS DEFRAUDED AS A RESULT OF THE COURSE OF
8 BUSINESS. AND IF SO DID THE STATE PROVE THAT MR. SHEPPARD
9 DID IT BEYOND A REASONABLE DOUBT. AND YOU WILL HAVE THE
10 PROSPECTUS BACK THERE AND YOU CAN READ IT AS AN INDICTMENT
11 THAT HAS ALL THE RED FLAGS THAT YOU CAN IMAGINE. IT IS A
12 DOCUMENT WRITTEN BY LAWYERS AND TECHNICAL COMPLIANCE OF
13 TECHNICAL RULES. AND THAT THE FINANCIALS DISCLOSED IN
14 THESE AND WE WILL GET TO SOME OF THAT IN A MINUTE. BUT IN
15 THESE FINANCIALS CLEARLY SHOW LOSSES UPON LOSSES UPON
16 LOSSES. AND THAT THE HIGH RISK OF THIS INVESTMENT IS
17 EVIDENCE BY THE RELATIVELY HIGH INTEREST RATE. AND I KEEP
18 GOING BACK TO MS. MURPHREE BECAUSE SHE SAID HER HUSBAND
19 JUST WANTED TO KEEP HIS MONEY IN THERE BECAUSE OF THE HIGH
20 INTEREST RATE IT WAS GETTING. AND I EXPLAINED IN OPENING,
21 THE INTEREST RATE IS THE RETURN THAT SOMEONE TRADES OFF
22 FOR THE RISK. SO, IT WAS A RISKY INVESTMENT. NOW, DID
23 LARRY OWEN LIE TO PEOPLE, HE ABSOLUTELY DID. LARRY OWEN
24 LIED, I SUBMIT TO YOU, THAT IS LARRY OWEN'S BUSINESS.
25 THAT WASN'T THE COURSE OF BUSINESS OF RONNIE SHEPPARD,

1 THAT WAS LARRY OWEN'S BUSINESS. AND LARRY OWEN IS
2 RESPONSIBLE FOR HIS OWN LIES AND HE IS PAYING THE PRICE
3 FOR THAT. AND AGAIN LARRY OWEN NEVER CLAIMED THAT HE LIED
4 TO ANY INVESTORS DIRECTLY, HE ADMITTED, HE TESTIFIED IN
5 EARLE MORRIS' TRIAL THAT HE HAD BEEN LIEING TO INVESTORS
6 SINCE 1998. AND BUT WHAT HE TOLD YOU WAS, I TOLD
7 INVESTORS THINGS THAT I THOUGHT WERE TRUE BECAUSE I WAS
8 KEPT IN THE DARK. I WAS SHOCKED WHEN I WENT TO THE WYCHE
9 MEETING, DIDN'T KNOW HOW BAD IT WAS. THAT IS WHAT HE TOLD
10 YOU, COMPLETE CONTRADICTION TO WHAT HE HAD TOLD TO ANOTHER
11 JURY IN A PREVIOUS TRIAL WHERE HE BELIEVED THAT IT WOULD
12 BE BETTER FOR THE STATE'S CASE FOR HIM TO TELL THAT HE WAS
13 NOT IN THE DARK, WHICH HE WASN'T, WHICH HE WAS NOT
14 SURPRISED, WHICH HE WASN'T, OF THE BAD FINANCIAL
15 CONDITION. AND THE SAME, THEY PUT THE SAME WITNESS UP TO
16 SAY TWO DIFFERENT THINGS AT TWO DIFFERENT TRIALS. LARRY
17 OWEN TRIED TO KEEP YOU IN THE DARK, HE SAYS ONCE HE IS
18 CONFRONTED WITH THESE CONTRADICTIONS HE SAYS, WELL, I WAS
19 JUST TALKING ABOUT THE GOING CONCERN LETTER. YOU KNOW
20 WHAT KAREN MILLER SAID, MR. SHEPPARD CAME BACK AND IT
21 COULD OF BEEN MS. MILLER, IT COULD OF BEEN ANOTHER
22 WITNESS, I APOLOGIZE, BUT ONE OF THE WITNESSES WAS, I
23 BELIEVE, MS. MILLER. SHE SAID MR. SHEPPARD CAME BACK AND
24 SAID WE WERE SURPRISED, SOMETHING THAT WE LEARNED IN THE
25 ACCOUNTING, THAT WE WERE SURPRISED ABOUT WHAT THE

1 ACCOUNTANTS WERE GOING TO DO. AND MR. STERLING SAID THEY
2 ARE GOING TO PUT UP GOING CONCERN, WE HAVE GOT TO WORK, WE
3 HAVE GOT TO WORK HARD AND WE HAVE GOT TO WORK HARD. AND
4 KEVIN MARTIN SAID, I WAS SURPRISED THAT GOING CONCERN WAS
5 GOING TO BE PUT IN THERE. SO, MR. OWEN COULD OF BEEN
6 SURPRISED ABOUT THE GOING CONCERN LANGUAGE BUT THE
7 EVIDENCE IS EVERYBODY ELSE WAS SURPRISED ABOUT THAT BUT HE
8 KNEW HOW BAD THE FINANCIAL CONDITION WAS WITH THE COMPANY,
9 THERE WAS NO QUESTION HE KNEW, HE HAD TO KNOW, HE HAD BEEN
10 FOLLOWING SINCE 1998 AND BEFORE. NOW, THERE IS SOME
11 ISSUES ABOUT COOKING THE BOOKS, WE HEARD THAT A MINUTE AGO
12 AND I THINK WE ARE GOING TO HEAR SOME MORE OF THAT,
13 COOKING THE BOOKS. THESE ARE QUESTIONS, ACCOUNTING
14 TRANSACTIONS. AND THEY ARE SOMEWHAT COMPLICATED BUT WHAT
15 IS NOT COMPLICATED IS WHEN YOU LOOK AT IT, IT IS WHO DID
16 IT, WHAT IS IN POSITION AND WHO APPROVED IT. MR. SHEPPARD
17 AND LET'S GO, DEFERRED TAX IN THE THIRD QUARTER OF 2002
18 AND YOU HEARD A LOT ABOUT THAT BUT THAT IS THE NET
19 OPERATING LOSS WAS ON THE BOOKS OF HOMEGOLD FOR UP TO \$10
20 MILLION DOLLARS. THE THIRD QUARTER OF 2002, NOW MR.
21 SHEPPARD HAS BEEN THERE FOR THREE OR FOUR MONTHS, MAX.
22 AND THE TESTIMONY IS THAT MR. STERLING HAD THE EFFORT, IT
23 WAS KEVIN MARTIN WAS THERE WORKING ON IT AND THAT THEY MET
24 WITH GARRY RANK AT ELLIOTT DAVIS AND THEY WERE THINKING
25 ABOUT TAKING IT TO \$22 MILLION AND HE SAID, WHY DON'T YOU

1 CONSIDER GOING HIGHER. AND THEY SETTLED ON \$22 MILLION.
2 AND MR. GOSNELL COMES ALONG AND HE IS UNCOMFORTABLE WITH
3 THAT AND HE RESIGNS BUT HE WRITES A MEMO TO THE LAWYER,
4 BILL LONG, THEN INTERIM CFO. AND WHAT DOES BILL LONG, HE
5 REACHES OUT TO THE ACCOUNTANTS AND HE SAID, I AM
6 COMFORTABLE AND HE SIGNED IT. AND TO PUT IT TO REST
7 ELLIOTT DAVIS, AT THE END OF THE YEAR, GAVE AN UNQUALIFIED
8 CLEAN AUDIT OF THAT \$22 MILLION DOLLARS.

9 ANOTHER ONE THAT THEY HAVE ADDRESSED IS THIS
10 ASSUMPTION AGREEMENT. AND, AGAIN, WE CALLED BILL LONG
11 ABOUT THAT. AND YOU HEARD TESTIMONY THAT THERE WAS SOME
12 NET EQUITY REQUIREMENTS FOR HOMEGOLD, THE MORTGAGE
13 BUSINESS TO GET LICENSED AND THAT COMES TO 2001, THERE WAS
14 AN ISSUE ABOUT WHETHER THEY COULD GET LICENSED UP BECAUSE
15 THEIR BALANCE SHEET WAS LOOKING IN THE RED. AND BILL LONG
16 SAYS, JACK STERLING CAME UP WITH THE IDEA TO SHIFT THE
17 DEBT FROM HOMEGOLD, INC. OVER TO THE PARENT WITH HOMEGOLD,
18 INC. BEING THE GUARANTOR. AND YOU WILL SEE DEFENDANT'S
19 EXHIBIT NUMBER 4, BILL LONG'S NOTES WHERE HE TALKS ABOUT
20 THE PROPOSAL. HE SAYS, ON 1/16/01, CALL FROM CY BURGESS,
21 APPROVED. HE SAYS ON 1/16/01, CALL ERIC GRABEN, OUTSIDE
22 LAW FIRM, APPROVED. AND YOU DON'T SEE MR. SHEPPARD ANY
23 WHERE IN THERE. CAPITALIZING THE LEAD DATA BASE AND THAT
24 IS THIRD QUARTER OF 2001 AND THAT IS BEFORE THESE
25 MARKETING EXPENSES WERE BEING STRETCHED OUT FOR SIX

1 THAT BACK IN LOAN FEES, THAT IS, THAT WAS SOMETHING THAT
2 MR. SHEPPARD JUST COULDN'T GET THROUGH HIS HEAD, WHY
3 HOMEGOLD HAD TO DO IT DIFFERENT THAN WHAT HOMESENSE DID.
4 AND YOU HEARD SHANE SMITH ADMIT THAT HE TESTIFIED BEFORE
5 THE SEC, THAT CAME TO SUCH A POINT THAT MS. SMITH
6 QUESTIONED MR. SHEPPARD'S INTELLIGENCE TO SUCH A DEGREE
7 THAT HE WONDERED IF HE COULD WALK AND CHEW GUM AT THE SAME
8 TIME. THAT IS THE CULTURE CLASH.

9 NOW, THE PELHAM ROAD BUILDING. LET'S TALK ABOUT
10 THAT. MS. MILLER SAID THAT BEFORE THE END OF THE THIRD
11 QUARTER WAS FILED THAT THE PELHAM ROAD BUILDING WAS AT \$10
12 MILLION DOLLARS. THAT ELLIOTT DAVIS HAD PREVIOUSLY
13 WRITTEN IT DOWN TO LIKE \$8 AND A HALF MILLION, THAT THEY
14 HAD A NEW ACCOUNTING FIRM BECAUSE ELLIOTT DAVIS PULLED OUT
15 ON THEM AND AS A RESULT SHE LOOKED AT SOME ROLES, CAME TO
16 THE CONCLUSION THAT BECAUSE THAT BUILDING WAS COLLATERAL
17 FOR THE WAREHOUSE LINE THAT IT WAS A PERFORMING ASSET,
18 MEANING IT PRODUCED INCOME FOR THE COMPANY AND SHE
19 EXPLAINED THAT PERFORMING ASSETS COULD BE CARRIED ON THE
20 BOOKS AT COST. IT DON'T HAVE TO BE DEPRECIATED DOWN LIKE
21 ELLIOTT DAVIS HAD DONE AND THAT IS HOW SHE TREATED IT.
22 NOW, SHE LEARNED BEFORE THE QUARTER WAS CLOSED THAT MR.
23 SHEPPARD HAD SIGNED A CONTRACT FOR SOME \$4 MILLION
24 DOLLARS. AND SHE SAID, YOU CAN'T DO THAT, YOU CAN'T DO
25 THAT BECAUSE THAT PROPERTY IS COLLATERAL ON ITS WAREHOUSE

1 MONTHS. AFTERWARDS, AFTER THERE IS A STUDY PERFORMED
2 KEVIN MARTIN AND SHANE SMITH GET COMFORTABLE, THERE IS
3 SOME DISAGREEMENT BETWEEN SHANE SMITH SAYS IT SHOULD BE
4 TWELVE MONTHS. KEVIN MARTIN AGREES OF TWENTY-FOUR MONTHS
5 BUT IT IS SIGNED OFF ON. THE CFO, KEVIN MARTIN APPROVED
6 IT, SIGNS THE THIRD QUARTER FINANCIALS. AND SHANE SMITH
7 SAYS THE ONLY ISSUE WAS WHETHER IT SHOULD BE TWENTY-FOUR
8 MONTHS OR TWELVE MONTHS. AND THAT IN THE FINANCIALS THEY
9 EXPLAIN WHAT THE DIFFERENCE IS, THE TREATMENT AND THAT
10 LEADS DATA BASE, WHAT THE DIFFERENCE WAS AND THERE IS A
11 PRESS RELEASE WHERE THEY POINT OUT THE RESULTS, THEY
12 SHOWED A PROFIT FOR THAT QUARTER WAS THE RESULT OF AN
13 ACCOUNTING TREATMENT CHANGE THAT THE CPA SIGNED OFF ON
14 AFTER A STUDY WAS DONE ON THE MARKETING DEPARTMENT. THERE
15 ARE OTHER ACCOUNTING ISSUES THAT HAVE BEEN ADDRESSED,
16 CAPITALIZING THE EXPANSION COST. AND THERE IS, WHEN THEY
17 ARE OPENING THESE NEW OFFICES AND KAREN MILLER GETS IN AND
18 SHE SAYS SHE DOES SOME AGGRESSIVE ACCOUNTING, THAT SHE
19 STARTS CAPITALIZING EXPENSES AS A WAY TO CUT DOWN ON THE
20 BOTTOM LINE ON EXPENSES. AND WHAT IS IMPORTANT FOR YOU TO
21 UNDERSTAND IS THAT SHANE SMITH WHO IS THERE THE WHOLE TIME
22 SAYS, EVERYTHING THAT HAS WENT OUT THE DOOR HAS MET GAAP.
23 KAREN MILLER WOULD COME IN AND DO THINGS AND WE WOULD HAVE
24 TO REDO THEM. AND THEN THIS RECOGNITION OF BACK IN LOAN
25 FEES, ONCE AGAIN EVERYTHING MET GAAP AS YOU HEARD. AND

1 LINES. YOU ALSO LEARNED THAT SIGNING A CONTRACT ISN'T THE
2 SELLING OF A COMPANY, SIGNING A CONTRACT IS AN AGREEMENT.
3 AND THEN THERE IS A LOT OF STEPS ALONG THE WAY AND THINGS
4 CAN FALL THREW, THE IMPAC DEAL FELL THROUGH. NOW, MS.
5 MILLER SAYS ON THE STAND, NOW LOOKING BACK ON IT I BELIEVE
6 I WAS WRONG. BUT HERE IS WHAT YOU DIDN'T HEAR, THEIR
7 FIRST WITNESS, RONALD BURKETT A CPA, AN EXPERT. HE DIDN'T
8 TELL YOU THAT THE TREATMENT OF THAT BUILDING IN THE THIRD
9 QUARTER WAS WRONG, THERE IS NO CPA WHO TESTIFIED ON THAT
10 WITNESS STAND THAT THE TREATMENT OF THAT BUILDING WAS
11 WRONG. MS. MILLER SAYS, NOW I BELIEVE IT IS WRONG, MS.
12 MILLER WHO HAS PLEAD GUILTY FOR WHAT SHE SAYS. AND I
13 DIDN'T REALLY UNDERSTAND WHAT SHE SAID SHE PLEAD GUILTY
14 FOR. ALTHOUGH WE DO KNOW THAT AFTER MR. SHEPPARD LEAVING
15 THE COMPANY IN NOVEMBER THAT SHE ATTENDS A BOARD MEETING
16 IN FEBRUARY, MONTHS BEFORE THE DOORS CLOSE GIVING
17 INFORMATION AND THAT SHE AND FORREST FERRELL ARE MEETING
18 WITH THE SECURITIES COMMISSION, TALKING ABOUT NOT TAKING
19 MONEY FROM HOMEGOLD YET SHANE SMITH TAKES \$250 THOUSAND
20 DOLLARS, EXCUSE ME, NOT TAKING MONEY FROM CAROLINA
21 INVESTORS YET SHANE SMITH DID TAKE \$250 THOUSAND DOLLARS
22 WHICH HE HADN'T PUT BACK.

23 AND THEN LASTLY, LOOK AT THE QUARTERLY FILING, MR.
24 SHEPPARD IS NOT AN OFFICER, DIRECTOR OF THE COMPANY, HE
25 DIDN'T FILE QUARTERLY FILINGS, HE HAD RESIGNED. AND YOU

1 ARE GOING TO, ON ALL OF THESE QUESTIONS, ACCOUNTING
2 TRANSACTIONS, ONE THING THAT YOU ARE GOING TO BE
3 INSTRUCTED ON THE LAW IS, ARE THEY MATERIAL, DID THEY MAKE
4 A DIFFERENCE. WHAT INFORMATION WAS OUT THERE TO AN
5 INVESTOR TO KNOW WHETHER AN INVESTOR, IS THERE A RISK IN
6 MY INVESTMENT AND WHAT THAT RISK IS AND DO I HAVE FAIR
7 INFORMATION. NOW, SO FAR I AM JUST TALKING ABOUT WHAT THE
8 TRANSACTIONS ARE. I HAVEN'T GOTTEN TO THE POINT OF WHAT
9 EVIDENCE IS THERE THAT MR. SHEPPARD INTENDED TO DEFRAUD
10 ANYBODY WITH THE ACCOUNTING DEPARTMENT, HE IS PUSHING, HE
11 IS AGGRESSIVE. MR. SHEPPARD KNOWS ONE SPEED AND THAT IS
12 FULL SPEED, THERE IS NO QUESTION ABOUT THAT. AND WE WILL
13 TALK MORE ABOUT THAT IN A MINUTE. THE OTHER ISSUE THAT
14 KEEPS COMING UP IS THESE DELOITTE AND TOUCHE AND CBIZ
15 APPRAISALS. AND I THINK WHAT IS IMPORTANT FOR THAT IS
16 THAT WHAT IS IN THE PROSPECTUS ABOUT THOSE APPRAISALS WAS
17 CLEANED UP, APPROVED BY THE LAWYERS, AND THE ACCOUNTANTS
18 AND IT IS IN THERE. AND THAT MR. SHEPPARD'S HANDWRITING
19 IS NO WHERE AROUND, MR. SHEPPARD IS NOT BEING CONSULTED
20 ABOUT THOSE THINGS AND THAT IT IS THE CFO, IT IS THE
21 IN-HOUSE LAWYERS, MR. STERLING AND THIS IS THE OUTSIDE
22 COUNSEL, MR. KEHL AND IT IS THE ELLIOTT DAVIS FIRM. AND
23 THAT THEY SENT THE LETTER TO THE ATTORNEY GENERALS OFFICE
24 AND WHAT I HAVE IN THERE, THE YELLOW STICKERS IS A DRAFT
25 OF THAT LETTER THAT MR. KEHL WORKED ON IT AND IN THAT

1 LETTER THEY REFERENCED THAT, THEY REFERENCED THE
2 APPRAISALS AND IN THAT LETTER THE DRAFT LETTER FROM MR.
3 KEHL AND IT ALSO TALKS ABOUT ENRON AND WORLDCOM AND THESE
4 OTHER THINGS AND MANAGEMENTS BELIEF OF WHAT, THAT ELLIOTT
5 DAVIS' STANCE. AND WHAT YOU HAVE GOT HERE IS A NO WIN
6 SITUATION. YOU HAVE GOT THE STATE SAYING, THEY ARE USING
7 INFORMATION THAT THEY SHOULDN'T USE. AND THEN THEY ARE
8 SAYING, THEY ARE HIDING INFORMATION. THE TRUTH IS THEY
9 ARE GETTING INFORMATION, THE FINANCIALS SHOW A COMPANY
10 THAT IS FAILING. NOW, THERE IS KEVIN MARTIN'S RESIGNATION
11 LETTER, WHAT DO WE KNOW ABOUT THAT. WE KNOW KEVIN MARTIN,
12 THE AUDIT COMMITTEE, NOT MR. SHEPPARD, THE AUDIT COMMITTEE
13 VOTED TO FIRE KEVIN MARTIN BEFORE HE WRITES THIS LETTER.
14 HE SAYS, I DIDN'T KNOW I WAS GOING TO BE FIRED BUT
15 CERTAINLY IT WASN'T RECEIVED IN THE COMPANY AS SOMETHING
16 CREDIBLE AND THE LETTER IS IN AND IT IS ADDRESSED TO
17 RONNIE. AND THEN HE SAYS, I AM THE FIRST ONE TO COME TO
18 THE CONCLUSION THAT WE CAN'T MAKE IT, WE TURN THE CORNER
19 FROM A COMPANY THAT IS TAKING MONEY, FROM A COMPANY THAT
20 IS TAKING MONEY TO A COMPANY TO EFFECT A TURNAROUND, TO A
21 COMPANY THAT IS JUST TAKING MONEY. THAT LETTER WAS SENT
22 TO STERLING AND PHILPOTT. NOW, STERLING AND PHILPOTT,
23 THEY ARE THE ONES WHO ARE DEALING WITH THE WYCHE FIRM AND
24 THERE IS A SUPPLEMENT FILED, ONCE AGAIN, A SUPPLEMENT
25 FILED WITH THE ATTORNEY GENERALS OFFICE IN AUGUST OF '02

1 ON THE HILLS OF THIS RESIGNATION LETTER. MR. SHEPPARD
2 HASN'T TOUCHED A PROSPECTUS YET AND THE CREDIBILITY ALL OF
3 A SUDDEN DOESN'T RISE UP AND TAKE OVER THE FILING AND THE
4 PREPARATION OF THE PROSPECTUS WHICH HE HAS NEVER DONE.
5 THAT WASN'T WHAT HE DID AT THE COMPANY, THAT IS WHAT OTHER
6 PEOPLE DID AT THE COMPANY. .AND MR. FREEMAN, THE STATE'S
7 LAW PROFESSOR, HE WAS ASKED, WHAT ABOUT THE RESIGNATION
8 LETTER. HE SAID, WELL, I HAVE LOOKED AT IT AND IT WASN'T
9 REQUIRED TO BE DISCLOSED. AND THEIR OWN WITNESS SAYS
10 THAT, THEIR OWN WITNESS SAYS THAT. AND ONE OTHER POINT
11 IS, MS. MILLER TESTIFIED TO THIS, THAT STARTING, SHE SAYS
12 SEPTEMBER 3RD OF 2002 THAT HOMEGOLD RETURNED, SHE TOLD THE
13 ATTORNEY GENERALS OFFICE SOME MILLION DOLLARS MORE THAN
14 THEY HAD RECEIVED. BUT SHE SAID THERE WAS AN ACCOUNTING
15 SNA FOO AND IT TURNS OUT TO BE ROUGHLY \$200 THOUSAND
16 DOLLARS MORE. BUT FROM THE DATE OF MR. MARTIN'S
17 RESIGNATION LETTER, THE FOLLOWING WEEK, SEPTEMBER, WE KNOW
18 FROM THAT POINT FORWARD HOMEGOLD SENDS MORE MONEY BACK TO
19 CAROLINA INVESTORS THAN IT RECEIVED.

20 ANOTHER THING YOU WILL HEAR, CUT AND RUN. CUT AND
21 RUN AND WHAT DOES IT MEAN, AND I ASK YOU WHAT DOES IT
22 MEAN. THIS IS WHAT THE EVIDENCE IS AND GARRY RANK SAYS
23 THAT THEY ARE HAVING THIS MEETING IN OCTOBER OF 2001 AND
24 IT IS A PREAUDIT MEETING AND IN THAT MEETING GARRY RANK
25 SAYS, WE ARE GOING TO HAVE TO TAKE A HARD LOOK AT THIS

1 DEBT BETWEEN HOMEGOLD AND CAROLINA INVESTORS. WE DON'T
2 THINK YOU ARE GOING TO TURN IT AROUND, YOU HAVEN'T SHOWED
3 US ANYTHING YET AND NOTHING BUT MORE AND MORE OF THE SAME.
4 AND WE ARE GOING TO HAVE TO IMPAIR IT AND WE THINK IT IS
5 ABOUT A \$50 MILLION DOLLAR IMPAIRMENT BUT YOU NEED TO GO
6 OUT AND GET AN ACCOUNTANT, YOU NEED TO GO OUT AND GET AN
7 APPRAISAL FIRM TO DO IT, WHICH THEY AGREED. THE WENT TO
8 RAYMOND JAMES WHO SAT ON IT FOR A WHILE BEFORE THEY SAID
9 WE CAN'T DO IT. AND IN THAT CONVERSATION MR. RANK SAYS,
10 AFTER A POWERPOINT PRESENTATION WAS GIVEN AND MR. SHANE
11 SMITH AND OTHERS IN THE ROOM AND THEN THEY LEAVE OR THEY
12 HAVE A MEETING IN THE ANTI ROOM OR SOMEWHERE ELSE. AND IN
13 THAT PRIVATE CONVERSATION WHAT WAS SUPPOSEDLY SAID BETWEEN
14 BURGESS WHO WE DIDN'T HEAR FROM IN THIS TRIAL AND MR. RANK
15 AND MR. SHEPPARD THAT MR. SHEPPARD SAYS, WELL, ELLIOTT
16 DAVIS IS WORRIED ABOUT CAROLINA INVESTORS. AND IF YOU
17 WANT TO LEAVE YOU BETTER GO AHEAD AND CUT AND RUN NOW
18 BECAUSE I DON'T SEE ANY WAY TO PAY THEM BACK. YOU BETTER
19 CUT AND RUN NOW BECAUSE I DON'T SEE ANY WAY TO PAY THEM
20 BACK. NOW, THERE IS A COUPLE OF WAYS TO REVIEW THAT
21 STATEMENT IF YOU BELIEVE IT WAS SAID. I POINTED OUT, YOU
22 NEVER SAID ANYTHING TO AGENT CATHEY AND I DON'T KNOW, I
23 DON'T REMEMBER. BUT WHAT MR. RANK DOES SAY IS, IT IS
24 CLEAR THAT HE WANTED TO GET RID OF US AND THAT IS THAT MR.
25 SHEPPARD'S WAY OF SAYING JUST GO AHEAD AND LEAVE NOW

1 BECAUSE YOU ARE GOING TO MAKE IT SUCH WHERE WE CAN'T PAY
2 THEM BACK. CY BURGESS' MEMO SAYS THAT, SAYS WE PUT THIS
3 GOING CONCERN LANGUAGE IN THERE, IT HAS A VERY LIKELY
4 POSSIBILITY THAT IT IS GOING TO PUT THIS COMPANY UNDER.
5 AND THAT IS WHAT HAPPENED, IT PREVENTED THEM FROM PAYING
6 BACK CAROLINA INVESTORS. AND MR. SHEPPARD SAYS, CUT AND
7 RUN AND GO AHEAD AND LEAVE NOW. AND SHANE SMITH SAYS, IN
8 THIS MEETING, MR. SHEPPARD SAYS, I AM GOING TO CUT AND RUN
9 AND FILE BANKRUPTCY. CY BURGESS SAYS, I DIDN'T EVER HEAR
10 ANYTHING ABOUT CUT AND RUN, I DIDN'T HEAR ANYTHING ABOUT
11 CUT AND RUN TO AGENT CATHEY.

12 MS. EVANS: OBJECTION, YOUR HONOR, STATED THAT MR.
13 BURGESS HAD TESTIFIED--

14 MR. GRIFFIN: I AM SORRY, MR. RANK. I STAND
15 CORRECTED. MR. RANK'S CONVERSATION WAS WITH AGENT CATHEY.
16 AND MR. RANK ALSO SAID, I ASKED MR. SHEPPARD, DO YOU HAVE
17 A BANKRUPTCY PLAN AND HE SAID, NO. NOW, MR. SMITH SAYS,
18 SHEPPARD HAS A BANKRUPTCY PLAN. THIS IS ALL OVER THE
19 PLACE, THIS IS LIKE THESE CHICKENS AT MY GRANDMOTHER'S
20 CHICKEN PEN. BUT WHAT WE DO KNOW, AFTER THIS STATEMENT,
21 IF IT WAS MADE. MR. SHEPPARD HIRED PAUL BANNINGER.
22 OCTOBER '01, DECEMBER OF '01 HIRED PAUL BANNINGER TO TAKE
23 IT TO THE LEVEL THAT MR. SHEPPARD COULDN'T TAKE IT. MR.
24 BANNINGER COMES IN AND STARTS CUTTING COST IN THE
25 EXPANDING BRANCHES, THEY HAD AN APPRAISAL DONE, TWO

1 APPRAISALS AND THE APPRAISAL COME IN AT HIGHER LEVELS THAN
2 ANYONE EXPECTED. GOOD NEWS, AND THE ATTORNEY GENERALS
3 OFFICE WITH THE LANGUAGE IN THE FINANCIALS THAT CY BURGESS
4 IN THIS MEMO SAYS, IT WILL BE REAL PROBLEMATIC. THE
5 ATTORNEY GENERALS OFFICE, THE SECURITIES DIVISION OF THE
6 ATTORNEY GENERALS OFFICE ACCEPTED THE REGISTRATION. AND
7 ALL OF THAT HAPPENS AFTER THIS MEETING OF OCTOBER OF '02.
8 AND THIS IS A VERY IMPORTANT PART BECAUSE YOU ARE GOING TO
9 HEAR THEM GET UP AND SAY, IN THAT PROSPECTUS MANAGEMENT
10 BELIEVES THAT THE MONEY COULD BE PAID BACK. MR. SHEPPARD
11 TOLD GARRY RANK, WE CAN'T PAY IT BACK, YOU ARE GOING TO
12 HEAR THAT MORE THAN ONCE, MORE THAN TWICE, PROBABLY THREE
13 TIMES. BUT WHAT THIS IS, THE STATEMENTS, IF IT WAS MADE,
14 IF IT WAS MADE AND THAT IS UP FOR YOU TO DECIDE, IF THEY
15 CAN PROVE IT WAS MADE BEYOND A REASONABLE DOUBT YOU HAVE
16 TO LOOK AT WHEN IT WAS MADE. IT WAS MADE OCTOBER OF '01,
17 DECEMBER OF '01 MR. BANNINGER COMES IN, JANUARY AND
18 FEBRUARY WE GET THESE APPRAISALS AND THE ATTORNEY GENERAL
19 ACCEPTS THE FILING OF THE PROSPECTUS WITH THE BAD LANGUAGE
20 IN HERE. AND YOU HEARD THAT NO ONE IN THE WYCHE MEETING
21 ON MARCH 14TH BELIEVED THAT THERE WAS A FUTURE OF ANY OF
22 THIS COMPANY BECAUSE THE ATTORNEY GENERALS OFFICE WOULD
23 NOT ACCEPT THE REGISTRATION WITH GOING CONCERN IN IT. AND
24 IT WAS A DOOMSDAY MEETING BUT THE SUBSEQUENT MEETING AT
25 CAROLINA INVESTORS WAS A DIFFERENT OUTLOOK. AND KEVIN

1 MARTIN SAID BECAUSE THINGS HAD TURNED AROUND, WE GOT
2 REGISTERED, WE ARE GOING TO BE IN BUSINESS, GOING FORWARD,
3 WE ARE GOING TO BE IN BUSINESS. LOOK AT THE PROSPECTUS
4 AND IT HAS GOT THE THINGS THAT MR. BANNINGER WAS DOING.
5 AND TALK ABOUT THE EXPANSION EFFORT, IT TALKS ABOUT
6 CUTTING COST AND CHANGING COMPENSATION PLANS. AND AS
7 PROFESSOR BRANSON TOLD YOU, MANAGEMENT IN THAT PROSPECTUS
8 IS NOT RONNIE SHEPPARD, IT IS MANAGEMENT OF CAROLINA
9 INVESTORS WHICH INCLUDES ALL THE PEOPLE THAT I SHOWED UP
10 ON ONE OF MY EARLIER SCREENS. IT IS NOT MR. SHEPPARD, IT
11 IS THE MANAGEMENT VOTED, MANAGEMENT DETERMINED, ONE OF
12 FIVE OR SIX ON THAT. AND THAT HOMEGOLD, THE PRODUCTION
13 END IS NOW BEING TURNED OVER TO PAUL BANNINGER. MR.
14 SHEPPARD CHANGED, THE MAN THAT COULDN'T CHANGE, COULDN'T
15 COMPROMISE, HE GOT SOMEONE ELSE IN WHO HAS GOT AN
16 EXPERIENCE IN BIGGER COMPANIES. SO, THINGS CHANGED FROM
17 THE OCTOBER MEETING, THINGS CHANGED FOR THE BETTER, IN THE
18 EYES OF THE FOLKS AT HOMEGOLD AND CAROLINA INVESTORS.

19 ANOTHER LEAPHART ROAD PROPERTY, HERE IS WHAT YOU NEED
20 TO KNOW AND THE DOCUMENTS IN THERE WAS APPROVED BY THE
21 BOARD, SIGNED OFF ON THE RESOLUTIONS. THERE IS, NO ONE
22 FROM THE BOARD GOT UP HERE AND SAID I DIDN'T KNOW THAT
23 THERE WAS A CONTRACT, I WAS MISLEAD. AND IT WAS SOLD AT A
24 FAIR PRICE BUT IN ADDITION IT WAS SOLD AT BOOK VALUE
25 MEANING WHAT THE PROPERTY IS ON THE BALANCE SHEET IN THESE

1 STATEMENTS, BOOK VALUE OF THE COMPANY SO THAT ANY
2 INVESTORS IS LOOKING AT THE BOOKS AND THEY SEE THE PRICE
3 OF THE PROPERTY, THE PROPERTY IS NOT OVER INFLATED. AND
4 THE PROPERTY IS SOLD FOR WHAT IT IS REPRESENTED TO THE
5 PUBLIC AS ITS VALUE. AND ONCE AGAIN, A CONTRACT OF SELL
6 IS NOT A SELL JUST LIKE A BIRD IN THE HAND VERSUS TWO IN
7 THE BUSH AND WHAT YOU HEARD IS THAT MR. SHEPPARD PAID
8 CASH, \$300 AND SOMETHING THOUSAND DOLLARS TO HOMEGOLD AND
9 THREE OR FOUR MONTHS LATER HE SOLD IT AND HE MADE \$60
10 THOUSAND DOLLARS. NOW, THE TRANSACTION MAY NOT SIT WELL
11 WITH, IT SHOWS A SHREWD BUSINESSMAN BUT WHAT IT ISN'T, IT
12 IS NOT IN CONNECTION WITH THE SELL OF ANY SECURITY, IT IS
13 NOT LINKED TO CAROLINA INVESTORS. IT IS ONE OF THESE
14 CHICKENS RUNNING AROUND IN THE CHICKEN PEN IS WHAT THIS
15 IS. AND MORE CHICKENS IN THE CHICKEN PEN, WALLPAPER AND
16 MILEAGE REIMBURSEMENT. NO QUESTION THAT MR. SHEPPARD WAS
17 ENTITLED TO IT, THE QUESTION IS IS HE GOT BAD TIMING. HE
18 SUBMITTED THESE REIMBURSEMENTS BETWEEN THE TIME OF THE
19 WYCHE MEETING AND THE TIME THE ATTORNEY GENERALS OFFICE
20 HAD ACCEPTED THE REGISTRATION OF THE PROSPECTUS. NOW, YOU
21 ARE GOING TO HEAR, HIS ACTIONS SPEAK LOUDER THAN HIS WORDS
22 BECAUSE HE KNOWS THIS COMPANY IS GOING UNDER BECAUSE HE IS
23 SUBMITTING THESE REIMBURSEMENTS. BUT WHAT PEOPLE TALKED
24 ABOUT AND WHAT WAS UNEXPECTED OR DID NOT KNOW IS HOW THE
25 ATTORNEY GENERALS OFFICE WAS GOING TO ACCEPT THE FILING OF

1 THE PROSPECTUS WITH THIS LANGUAGE IN IT AND THEY DID
2 ACCEPT IT AND THEY ALLOWED THE COMPANY TO CONTINUE IN
3 BUSINESS. AND THEN YOU HAVE GOT THIS, MR. SHEPPARD
4 PURCHASED \$200 THOUSAND DOLLARS OF NOTES, DEBENTURES.
5 THERE IS NO QUESTION HE DID, SHANE SMITH SAYS HE WROTE A
6 CHECK OF \$200 THOUSAND DOLLARS. AND THEN A MONTH LATER OR
7 SO HE GOT A LOAN FOR \$200 HUNDRED THOUSAND DOLLARS, THERE
8 IS NO, NO ONE SAID THAT TRANSACTION WAS NOT FOLLOWED
9 PROPERLY OR THAT HE DIDN'T BUY \$200 THOUSAND DOLLARS WORTH
10 OF NOTES, HE DID AND IT IS IN THE PROSPECTUS AND IT IS
11 TRUE, IT IS NOT UNTRUE THAT HE DID.

12 NOW, YOU NEED TO ASK WHERE IS THE EVIDENCE THAT
13 SHEPPARD ENGAGED IN THE COURSE OF BUSINESS TO DEFRAUD
14 INVESTORS. AGAIN, HE DIDN'T MAKE ANY ORAL REPRESENTATIONS
15 WITH THE CONNECTION OF THE OFFER OR SELL OF SECURITIES.
16 WHAT HE WAS ACCUSED OF DOING WAS GOING TO THE BOARD
17 MEETINGS AND GIVING INFORMATION ABOUT PROJECTIONS. BUT
18 AND YOU ARE GOING TO HEAR A CHARGE BY JUDGE JOHNSON, I
19 BELIEVE, INFORMATION AVAILABLE TO YOU, THE BESPEAKS
20 CAUTION DOCTRINE AND THAT THE FINANCIAL INFORMATION IS
21 AVAILABLE. YOU HAVE TO TAKE WHAT YOU HEAR AND WHAT YOU
22 ALREADY HAVE AND PUT IT ALL IN THE MIX. AND WHAT WE HAVE
23 HERE IS DAN SHARPE AND HIS TESTIMONY WAS THAT HE KNEW THE
24 SITUATION WAS CRITICAL AND DIRE, THOSE ARE THE WORDS THAT
25 HE USED FROM THE WITNESS STAND, CRITICAL AND DIRE. AND

1 THESE MEETINGS SHEPPARD DISCUSSES PLANS FOR RETURN
2 PROFITABILITY AND THEY WERE JUST THAT, PLANS. AND YOU
3 HEARD IN THESE MEETINGS THAT OWEN AND MORRIS WERE WARNED
4 NOT TO PROMISE INVESTORS WOULD ACHIEVE RESULTS, KEVIN
5 MARTIN TOLD YOU THAT. AND THEN YOU HAVE GOT MR. SHEPPARD
6 RELIED ON THE HOMEGOLD ACCOUNTING STAFF, IN-HOUSE COUNSEL
7 AND ELLIOTT DAVIS, OUTSIDE COUNSEL FOR THE PREPARATION OF
8 THE PROSPECTUS. NOW, LOOKING AT THE EVIDENCE WITH THE
9 INTENT TO DEFRAUD AND THEY HAVE TO PROVE BEYOND A
10 REASONABLE DOUBT, A DOUBT SUCH THAT A REASONABLE PERSON
11 WOULDN'T HESITATE TO ACT. AND THERE WE HAVE GOT, IN THIS
12 PROBLEM WAS CREATED WELL BEFORE MR. SHEPPARD ARRIVED ON
13 THE SCENE. MR. SHEPPARD DIDN'T GO IN AFTER CAROLINA
14 INVESTORS, HE TAKES ON AND TRIED TO GROW THE RETAIL
15 DIVISION AND HE REQUIRED 150 PERCENT OF HIMSELF AND THOSE
16 AROUND HIM. AND I WANT TO ASK YOU, IF SOMEBODY IS GOING
17 OUT TO DEFRAUD SOMEBODY WHY DON'T HE JUST SIT BACK AT THE
18 OFFICE AND COLLECT CHECKS, NOT WORK 80 HOURS A WEEK, TRY
19 TO MAKE IT WORK. HE DOES THINGS AND IF HE CAN'T GET HIS
20 HEADS TO DO HE GETS MORE PEOPLE IN, PAUL BANNINGER COMES
21 IN HERE AND TESTIFIES. AND WHAT HIS GOAL IS, WE HAVE GOT
22 TO GROW THE BUSINESS SO WE CAN SELL IT AND PAY BACK THE
23 DEBT, THAT IS HIS INTENT, TO PAY BACK THE DEBT. AND THEN
24 HE TAKES EMMCO BECAUSE THERE IS NO OTHER HOPE LEFT TO PAY
25 BACK THE DEBT. NOW, ON FALSE PRETENSES, THAT IS THE

1 SECOND CHARGE. MR. SHEPPARD OBTAINED MONEY OR PROPERTY BY
2 FALSE OR FRAUDULENT PRETENSES. NOW, THE JUDGE IS GOING TO
3 CHARGE YOU ON THAT, THAT FALSE OR FRAUDULENT PRETENSES IS
4 A STATEMENT OF FACT, EXISTING OR HISTORICAL FACTS. THE
5 PROMISE TO DO SOMETHING IN THE FUTURE IS NOT SUFFICIENT AS
6 A MATTER OF LAW TO FIND SOMEONE GUILTY OF OBTAINING MONEY
7 OR GOODS BY FALSE OR FRAUDULENT PRETENSES. AND THERE HAS
8 BEEN NO STATEMENTS THAT MR. SHEPPARD HAS MADE THAT WERE
9 FALSE, WAS PROVEN FALSE BY THIS PROSECUTION, PERIOD, OR
10 INTENDED TO BE FALSE. THERE ARE ISSUES ABOUT WHETHER HE
11 ACHIEVED THE GOALS THAT HE SET FOR HIMSELF AND THIS
12 COMPANY, WHETHER HE SHOULD OF DRIVEN 80 INSTEAD OF 100.
13 THERE IS NO EVIDENCE, THE MONEY THAT SHEPPARD GOT
14 PERSONALLY, THE MONEY THAT HE BARGAINED FOR AND THERE HAS
15 BEEN NO CLAIM THAT THERE WAS A MISREPRESENTATION
16 ASSOCIATED WITH THAT. AND THE THIRD CHARGE IS CONSPIRACY,
17 THERE IS NO EVIDENCE THAT SHEPPARD AGREED WITH ANYONE TO
18 OBTAIN MONEY BY FALSE PRETENSES OR PROMISES. LARRY OWEN'S
19 LIES WERE HIS OWN BUSINESS, ANN OWEN NEVER DISCUSSED
20 MATTERS WITH SHEPPARD, KAREN MILLER'S ACTIONS AFTER
21 SHEPPARD'S RESIGNATION, WAS NOT RONNIE'S BUSINESS. AND
22 THE, WHATEVER AGGRESSIVE ACCOUNTING ACTIONS THAT MS.
23 MILLER TOOK, THERE WERE NOT SHOWN TO BE MATERIAL OR THERE
24 IS NO EVIDENCE THAT THEY MADE IT OUT THE DOOR, HER
25 AGGRESSIVES WERE ALL REGARDS BY SHANE SMITH. ONE THING

1 THAT RONNIE SHEPPARD HAS DONE ALL OF HIS LIFE, IS HE HAS
2 BEEN AGGRESSIVE AND HE HAS LIVED EXTRAVAGANTLY AND HE HAS
3 BROUGHT ATTENTION TO HIMSELF AND HE HAS DONE THINGS IN
4 THIS CASE THAT BROUGHT ATTENTION TO HIMSELF. AND THAT
5 THOSE THINGS ARE SUCH THAT THESE PROSECUTORS WILL SEIZE ON
6 LIKE A WOLF ON RED MEAT ABOUT. HE IS DRIVING A BUS, HE
7 GETS ANOTHER BUS, HE HAS GOT A PERSONAL TRAINER, THOSE
8 THINGS THAT ARE JUST HEADLINES THAT JUST, THESE
9 PROSECUTORS ARE FOAMING AT THE MOUTH TO GET UP HERE AND
10 TALK ABOUT. WHAT THOSE THINGS ARE NOT, THEY ARE NOT
11 FRAUD, THOSE THINGS ARE NOT MISREPRESENTATIONS TO ANY
12 INVESTOR IN CAROLINA INVESTORS. WHAT THOSE THINGS ARE ARE
13 THINGS THAT MADE IT UNBELIEVABLY ATTRACTIVE FOR MR.
14 STERLING AND MR. PHILPOTT AND MR. HOOVER TO PASS OFF THESE
15 PROBLEMS THAT THEY CREATED TO A PERSON WHO WOULD BRING
16 ATTENTION TO THEMSELVES, TO A PERSON WHO HAS A NINTH GRADE
17 EDUCATION, TO A PERSON WHO IS EXTREMELY FOCUSED IN ONE
18 AREA OF HIS BUSINESS, WHO IS EXTREMELY CONFIDENT AND COCKY
19 AND THINKS THAT HE CAN DO EVERYTHING, THAT HE HAS GOT THE
20 MIDAS TOUCH. AND THEY HANDED MR. SHEPPARD A TICKING TIME
21 BOMB AND RAN FOR THE DOOR. YOU, LADIES AND GENTLEMEN, ARE
22 TO FOLLOW THE LAW AND YOU WILL SEE THROUGH THE SMOKE
23 SCREENS, YOU ARE GOING TO SEE THROUGH THE HEADLINES, AND
24 YOU ARE GOING TO SEE AS YOU REVIEW THE EVIDENCE WHAT
25 HAPPENED. BUT NONE OF YOU, NONE OF YOU, NOT A SINGLE ONE

1 OF YOU WANTS TO CONVICT AN INNOCENT MAN. AFTER THIS TRIAL
2 THESE FOLKS WILL TAKE THEIR TEAM AND THEY WILL GO
3 SOMEWHERE ELSE AND TAKE ON ANOTHER CASE. AND AFTER THIS
4 TRIAL I WILL TAKE MYSELF BACK TO THE OFFICE. BUT YOU, YOU
5 WILL LIVE WITH YOUR DECISION HERE TODAY FOR THE REST OF
6 YOUR LIVES. MR. SHEPPARD WILL LIVE WITH THE DECISION THAT
7 YOU MAKE TODAY FOR THE REST OF HIS LIFE. YOU DON'T WANT
8 TO CONVICT AN INNOCENT MAN. WHAT DO YOU HAVE, YOU HAVE
9 THE LAW, YOU HAVE A PRESUMPTION OF INNOCENCE THAT THE
10 CONSTITUTION DEMANDS AND YOU HAVE THE BURDEN OF PROOF THAT
11 THE CONSTITUTION DEMANDS AND THAT IN THIS CASE THE STATE
12 HASN'T MET ITS BURDEN OF PROOF. THIS IS A CASE OF NO
13 PROOF, THIS IS A CASE OF NOT GUILTY. YOU WILL REACH A
14 VERDICT AND YOU WILL GO HOME AND YOU CAN SLEEP EASY
15 KNOWING THAT YOU APPLIED THE LAW OF THE LAND, YOU UPHELD
16 THE LAW AND THAT THE VERDIT THAT YOU REACH IS WHAT THE LAW
17 REQUIRES AND THAT IS A VERDICT OF NOT GUILTY. THANK YOU.

18 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE WILL
19 TAKE ABOUT A TEN MINUTE RECESS AT THIS TIME. PLEASE DO
20 NOT DISCUSS THE CSE. YOU ARE EXCUSED TO YOUR JURY ROOM,
21 EVERYONE STAY SEATED WHILE THE JURY IS EXCUSED.

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

24 THE COURT: WE WILL TAKE ABOUT TEN MINUTES.

25 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

1 THE COURT: IS THE STATE READY?

2 MS. EVANS: YES, YOUR HONOR.

3 THE COURT: THE DEFENSE READY?

4 MR. GRIFFIN: YES, SIR.

5 THE COURT: GET THE JURY IN, PLEASE.

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 11:55 A.M.)

8 THE COURT: ALL RIGHT, MS. EVANS.

9 MS. EVANS: LADIES AND GENTLEMEN, THERE ARE TWO
10 THINGS THAT I AGREE WITH WHAT MR. GRIFFIN TOLD YOU. THE
11 FIRST IS THAT I DO WANT EACH AND EVERY ONE OF YOU TO GO
12 HOME TONIGHT KNOWING YOU MADE THE RIGHT DECISION. I TOO
13 DO NOT WANT YOU TO CONVICT AN INNOCENT MAN, WHAT I WANT
14 YOU TO DO IS CONVICT RONNIE SHEPPARD, TO CONVICT RONNIE
15 SHEPPARD FOR ALL THE CRIMES THAT HE COMMITTED AND THE
16 CRIMES THAT THE STATE HAS CHARGED HIM WITH. AND THE PROOF
17 THAT WE HAVE SHOWN TO YOU THROUGHOUT THIS TRIAL, THAT THE
18 DEFENDANT IS GUILTY. AND, LADIES AND GENTLEMEN, YOU CAN
19 GO HOME TONIGHT AND YOU CAN SLEEP WELL KNOWING THAT YOU
20 DID YOUR DUTY BY LISTENING TO THE EVIDENCE AND LISTENING
21 TO THE LAW AS THE JUDGE INSTRUCTS IT AND FINDING THE
22 DEFENDANT GUILTY FOR HIS ACTIONS THAT RESULTED ON THE
23 CLOSE ON MARCH 21ST OF 2003 OF CAROLINA INVESTORS AND
24 CAUSING OVER 8,000 INVESTORS OF WHICH YOU HEARD A HANDFUL
25 OF LOSE OVER \$250 MILLION DOLLARS. YOU CAN GO HOME AND

1 YOU CAN REST ASSURE THAT YOU DID THE RIGHT THING AFTER
2 LISTENING TO THAT EVIDENCE, LISTENING TO THE JUDGES
3 CHARGES, NOT CONVICT AN INNOCENT MAN BUT CONVICT RONALD J.
4 SHEPPARD FOR HIS ACTIONS AND WHAT HE DID AND HIS ROLE IN
5 THIS COURSE, THIS ROLE IN THIS CONSPIRACY AND HIS
6 OBTAINING GOODS UNDER FALSE PRETENSES. YOU WILL HAVE DONE
7 YOUR DUTY, LADIES AND GENTLEMEN, AND YOU CAN GO HOME AND
8 SLEEP WELL TONIGHT BY CONVICTING RONALD J. SHEPPARD. ONE
9 OTHER THING THAT I AGREE ABOUT, THIS IS A LOT LIKE A HEN
10 HOUSE, THE ONLY ANALOGY THAT THIS HAS TO A HEN HOUSE IS
11 THAT THEY LET THE FOX FIND ITS LIES AND TO SEEK INTO THAT
12 HEN HOUSE, LADIES AND GENTLEMEN.

13 AND NOW I AM GOING TO TAKE A CHANCE TO GO OVER THE
14 EVIDENCE, THE EVIDENCE THAT WE PRESENTED. AND THIS IS MY
15 OPPORTUNITY TO COME UP HERE AND KIND OF TELL YOU WHY WE
16 PRESENTED THE CASE, WHY WE CALLED THE EVIDENCE, EACH
17 WITNESS AND THE EVIDENCE WE PROJECTED AND HOW THAT TIES
18 TOGETHER TO THE LAW AS HIS HONOR WILL INSTRUCT YOU. WE
19 TOLD YOU IN THE OPENING OF THIS CASE, MR. PEAVY STOOD UP
20 HERE AND TOLD YOU THAT THIS WASN'T GOING TO BE A PERRY
21 MASON MOMENT, THERE WASN'T GOING TO BE ONE WITNESS THAT
22 CAME UP HERE AND WAS ABLE TO TELL YOU THIS WHOLE BIG
23 COURSE OF BUSINESS THAT SCHEMED AND INVOLVED OVER SEVERAL
24 YEARS THAT THE DEFENDANT WAS PART OF BY ONE WITNESS.
25 THERE WAS PIECES AND YOU HAD TO HEAR ALL OF THE PIECES OF

1 THAT PUZZLE AND AT THE END OF THE DAY YOU WOULD HAVE A
2 CLEAR PICTURE OF WHAT THE DEFENDANT DID. THIS CASE IS
3 VERY SIGNIFICANT, LADIES AND GENTLEMEN, MR. PEAVY TOLD YOU
4 THAT AFTER YOU LEAVE HERE TODAY, YOU MIGHT FORGET THE
5 DATE, MARCH 21ST OF 2003 BUT I TELL YOU, LADIES AND
6 GENTLEMEN, THERE ARE 8,000 PEOPLE THAT ARE LIVING IN THIS
7 STATE THAT WILL NEVER, NEVER FORGET THAT DAY. MR. PEAVY
8 TOLD YOU IN HIS OPENING, THIS ISN'T A MURDER CASE, THIS IS
9 SECURITIES FRAUD BUT PEOPLES LIVES HAVE BEEN DEVASTATED,
10 YOU HAVE HEARD FROM JUST A FEW OF THOSE PEOPLE AND I WILL
11 GO THROUGH THAT TESTIMONY IN A SECOND. IT IS ALSO
12 IMPORTANT IN THIS CASE IS WHAT THIS CASE BOILS DOWN TO, IS
13 THE DEFENDANT'S ACTIONS AND HIS WORDS, HIS ACTIONS
14 PRIVATELY VERSUS HIS ACTIONS PUBLICLY. HIS STATEMENTS
15 PRIVATELY, VERSUS HIS STATEMENTS PUBLICLY, THAT IS WHAT
16 THE COURSE OF BUSINESS WAS AND, LADIES AND GENTLEMEN, THAT
17 IS WHAT THIS CASE IS ABOUT. WE TOLD YOU IN OPENING IT IS
18 ABOUT THE GOOD OLE CRIME OF STEALING, MR. PEAVY TOLD YOU
19 ABOUT A PLAQUE THAT YOU SHALL NOT LIE, CHEAT OR STEAL OR
20 TOLERATE THOSE THAT DO. LADIES AND GENTLEMEN, THIS TRIAL
21 AND THIS TRIAL ALONE IS ABOUT RONALD J. SHEPPARD'S
22 ACTIONS. WE TOLD YOU THAT THIS WAS A HUGE COLLAPSE AND
23 THERE WAS A LOT OF BLAME TO GO AROUND, YOU HEARD FROM
24 THREE OTHER WITNESSES THAT TOOK PART OF THE BLAME. BUT,
25 LADIES AND GENTLEMEN, THE DEFENDANT'S ACTIONS AND HIS

1 WORDS SPEAKS VOLUMES IN THIS CASE AS TO WHAT HIS INTENT
2 WAS AND WHAT HE DID WHILE HE WAS CEO OF HOMEGOLD AND WHILE
3 HE SERVED ON THE BOARD OF DIRECTORS AT CAROLINA INVESTORS.
4 ONE THING THAT I DO WANT TO COVER BEFORE I START GOING
5 THROUGH THE EVIDENCE IS MR. GRIFFIN TOLD YOU IN OPENING HE
6 WAS GOING TO TELL YOU ABOUT ALL THE WAYS HIS CLIENT, WITH
7 HIS NINTH GRADE EDUCATION WAS FOOLED INTO COMING INTO
8 HOMEGOLD. HE EVEN BROUGHT UP SOMETHING ABOUT A LAWSUIT,
9 LADIES AND GENTLEMEN, REMEMBER WHAT WAS PROMISED TO YOU AT
10 THE BEGINNING OF THIS CASE AND WHAT WAS DELIVERED. I
11 THINK IT IS VERY IMPORTANT AND THIS CASE BOILS DOWN TO
12 SEVERAL KEY EVENTS, SEVERAL KEY EVENTS THAT THE DEFENDANT
13 WAS RESPONSIBLE FOR, THAT THE DEFENDANT WAS THERE. THIS
14 WHOLE NOTION THAT THE DEFENDANT IS SITTING IN THE
15 BACKGROUND NOT KNOWING WHAT IS GOING ON. EACH AND EVERY
16 ONE OF YOU HEARD FROM EVERY WITNESS INCLUDING THE
17 DEFENDANT'S OWN WITNESS, THERE WAS NO DOUBT, NO DOUBT IN
18 THIS CASE WHO WAS IN CHARGE, NO DOUBT. WHEN ASKED,
19 UNEMPHATICALLY EVERY WITNESS SAID IT WAS RONNIE, IT WAS
20 RONALD, IT WAS MR. SHEPPARD, OR WHATEVER THEY REFERRED TO
21 HIM AS, HE WAS IN CHARGE FROM THE MOMENT HE STEPPED IN
22 THERE.

23 AND, LADIES AND GENTLEMEN, I AM GOING TO GO THROUGH
24 SOME OF THE EVIDENCE THAT WE PRESENTED HERE TODAY. THE
25 FIRST KEY EVENT THAT I JUST BRIEFLY SPOKE ABOUT WAS THE

1 HOMESENSE/HOMEGOLD MERGER. IT WAS TOLD TO YOU THAT BEFORE
2 RONNIE SHEPPARD WITH HIS NINTH GRADE EDUCATION WAS
3 SUCKERED INTO COMING INTO THIS COMPANY, THAT HE DIDN'T
4 KNOW HOW BAD IT WAS. MR. GRIFFIN JUST SAID HE KNEW HOW
5 BAD IT WAS, THOSE RECORDS ARE PUBLIC. OUR FIRST WITNESS,
6 WE HAD A CHART TO SHOW EXACTLY WHAT THE FINANCIAL
7 CONDITION OF THE COMPANY WAS. YOU HAVE HEARD FROM SEVERAL
8 DIFFERENT WITNESSES THAT IS THE REASON THEY LOOKED FOR A
9 MERGER PARTNER, THEY LOOKED AT SEVERAL DIFFERENT OPTIONS
10 AND THEN THOUGH MR. SHEPPARD AND MR. STERLING AGREED TO
11 THIS, THERE HAVE BEEN NO EVIDENCE, EVEN THROUGH THIS
12 WITNESSES THAT HE CALLED, BILL LONG AND PARTICULARLY WHO
13 SENT ALL THE INFORMATION ABOUT HOMEGOLD TO THE DEFENDANT'S
14 DUE DILIGENCE TEAM. HE HAD FULL AND ADEQUATE INFORMATION.
15 HE WANTS TO SAY THAT HE DIDN'T KNOW ABOUT CERTAIN THINGS.
16 AND YES, LADIES AND GENTLEMEN, WE PRESENTED THOSE TO YOU,
17 SOME THINGS DID HAPPEN AFTER HE GOT THERE, THEY DID LOSE
18 THE WAREHOUSE LINE OF CREDIT. BUT I AM GOING TO GET INTO
19 THAT IN A SECOND, THAT HOMESENSE/HOMEGOLD MERGER SPEAKS
20 VOLUMES ABOUT THE ACTIONS AND THE WORDS OF THE DEFENDANT.
21 HE TOLD HOMEGOLD HE WAS BRINGING A POSITIVE NET EQUITY
22 INTO THE COMPANY. YOU HEARD FROM SEVERAL WITNESSES THAT
23 THAT JUST WASN'T THE CASE. AND WHEN HE WAS FOUND OUT, AND
24 I WILL GO BACK TO SOMETHING YOU HEARD FROM ONE OF HIS
25 WITNESSES, CHARLIE SIDES, I DON'T MEAN TO GET AHEAD,

1 REMEMBER HIS WORDS. WHAT DID HE TELL MR. SIDES, I WANT TO
2 RUN A PUBLIC COMPANY, I WANT TO BUILD MY COMPANY WITH
3 OTHER PEOPLES MONEY. HE TOLD YOU ABOUT THAT BB&T MERGER
4 WHERE HE WAS GETTING READY TO DO THAT. WHAT DID MR.
5 SHEPPARD DO, HE TOOK ALL OF HIS MONEY OUT. FORTUNATELY
6 FOR BB&T, THEY CAUGHT ON TO IT. UNFORTUNATELY HOMEGOLD
7 DIDN'T REALIZE IT UNTIL AFTER THEY LET THE FOX INTO THE
8 HEN HOUSE AND THAT FOX CONTINUED TO TAKE MONEY. I AM
9 GOING TO KEEP THIS UP HERE BECAUSE THERE HAS BEEN A LOT OF
10 TALK ABOUT THE DEBT TO CAROLINA INVESTORS AND I AM GOING
11 TO REFER TO THIS PERIODICALLY. HOMESENSE/HOMEGOLD MERGER
12 STARTED AND TALKED ABOUT DECEMBER 31ST OF 1999, THAT WAS
13 \$67 MILLION. THE DEFENDANT WANTS TO TELL YOU THAT HE GREW
14 THIS COMPANY, THAT HE GREW THIS COMPANY OFF OF HIS HARD
15 WORK. DON'T BUY THAT, LADIES AND GENTLEMEN, HE GREW THIS
16 COMPANY ALL RIGHT, BUT HOW DID HE GROW THIS COMPANY, HE
17 GREW THIS COMPANY OFF THE HARD WORK OF 8,000 PEOPLE IN
18 PICKENS COUNTY, 8,000 PEOPLE, A FEW THAT YOU HEARD FROM
19 THAT PUT THEIR LIFE SAVINGS INTO THE COMPANY. DID THE
20 DEFENDANT GROW THE COMPANY, HE MOST CERTAINLY DID. IN
21 2002 HE OPENED ALL OF THOSE BRANCHES. THE CHARTS, THE
22 FIGURES DON'T LIE. WHERE DID HE GET THE MONEY TO BUY
23 THOSE BRANCHES, IT CAME NOT FROM THE DEFENDANT'S HARD WORK
24 IT CAME FROM THE HARD WORK OF THOSE INVESTORS WHO PUT
25 THEIR MONEY INTO CAROLINA INVESTORS. LET'S GO TO SOME

1 OTHER EVIDENCE THAT MR. GRIFFIN DIDN'T TALK ABOUT. HE
2 WANTS TO TALK ABOUT, THE DEFENDANT DIDN'T HAVE ANY
3 CONTROL. HE WAS JUST A MINORITY PERSON ON THE BOARD, HE,
4 JUST ONE OF SIX PEOPLE AT CAROLINA INVESTORS, YOU HAVE
5 HEARD THE TESTIMONY. MR. RANK READ TO YOU ABOUT THE
6 CONTROLLING DOCUMENTS, MR. SHEPPARD HAD CONTROL OVER THE
7 BOARD, HE WAS ALLOWED TO APPOINT THREE MEMBERS AND HE WAS
8 ALLOWED TO APPOINT THE FORTH MEMBER WITH THE APPROVAL OF
9 THE BOARD, BUT THAT IS REALLY NOT WHAT THIS CASE IS ABOUT.
10 THIS CASE IS ABOUT HIM TAKING CONTROL OVER EVERY ASPECT
11 THAT WENT ON AT HOMEGOLD AND YOU CAN'T MAKE A DECISION AT
12 HOMEGOLD WITHOUT IMPACTING CAROLINA INVESTORS.

13 LET'S GO A LITTLE BIT ABOUT OUR FIRST WITNESS.
14 RONNIE BURKETT, RONNIE BURKETT CAME IN HERE, HE IS FROM
15 WEST COLUMBIA. HE CAME IN HERE AND HE EXPLAINED THE
16 OVERALL PICTURE OF THIS CASE FOR YOU. AND I KNOW THAT
17 PROBABLY THE FIRST COUPLE OF DAYS YOU THOUGHT, IF I LEARN
18 ANY MORE ABOUT ACCOUNTING AND ANY MORE ABOUT THESE ISSUES,
19 YOU PROBABLY KNOW FAR MORE ABOUT ACCOUNTING THAN YOU EVER
20 THOUGHT YOU WOULD OF KNOWN AND I DO TOO AS A CRIMINAL
21 PROSECUTOR AS THIS POINT. BUT, LADIES AND GENTLEMEN, THAT
22 IS THE CRUX OF THIS CASE, PART OF THIS IS THE COURSE OF
23 BUSINESS. AND IT IS IMPORTANT TO UNDERSTAND THE OVERALL
24 PICTURE OF WHAT THE DEFENDANT DID WHILE HE WAS THERE.
25 WHAT DID HE TESTIFY TO THAT WAS SIGNIFICANT. TALKED ABOUT

1 THE HOMESENSE, HOMEGOLD MERGER. HE TALKED ABOUT, HE DID
2 NOT BRING WHAT WAS PROMISED, LIES COMING INTO THE COMPANY.
3 HE ALSO TALKED ABOUT HOMEGOLD FULLY DISCLOSED THE
4 INFORMATION. HE STARTED TALKING ABOUT THE AGGRESSIVE
5 ACCOUNTING MEASURES THAT WERE DONE AFTER THE DEFENDANT
6 BECOMES IN CHARGE. AND LOW AND BEHOLD, WHAT ARE THEY VERY
7 MUCH LIKE, THEY ARE EXACTLY LIKE WHAT HE DID WHEN HE WAS
8 AT HOMESENSE. WHAT HE WAS TOLD WAS IMPROPER AND THAT YOU
9 COULDN'T DO. IT IS NOT THAT HE COULDN'T UNDERSTAND THAT
10 HE COULDN'T DO IT, AND I THINK MR. BURKETT SAID SOMETIMES
11 PEOPLE DON'T UNDERSTAND ACCOUNTING BUT THIS MAN UNDERSTOOD
12 THE BOTTOM LINE. AND EVERYTHING HE DID OFF OF HIS
13 AGGRESSIVE ACCOUNTING WAS DONE TO MAKE THE BOTTOM LINE
14 LOOK BETTER. EVERY SINGLE ACTION HE TOOK WAS TO MAKE THE
15 BOTTOM LINE LOOK BETTER. AND I WILL JUST TALK ABOUT ONE
16 POINT, THE THIRD QUARTER OF 2000 WHEN THE DEFERRED TAX
17 ASSET WAS INCREASED. AND I AM NOT GOING TO GET INTO A BIG
18 COMPLICATED OF WHAT, WHETHER WHO APPROVED IT OR WHAT. BUT
19 WHO IS THE ONE THAT SAID, WE NEED THAT INCREASED, IT NEEDS
20 TO LOOK GOOD TO PEOPLE. LADIES AND GENTLEMEN, THAT IS NOT
21 WHAT FULL DISCLOSURE IS, IT DOESN'T NEED TO LOOK GOOD, THE
22 COMPANIES RECORDS NEED TO BE ACCURATE, THAT IS WHAT THE
23 LAW ENTAILS AND THAT IS WHAT IS IMPORTANT. YOU SAW THE
24 CONTROL AS SOON AS HE GOT IT, THE FIRST THING THAT HE DID
25 WAS TAKE OVER THOSE BOOKS. HE GOT THE CHECKBOOK AND

1 LADIES AND GENTLEMEN, EVERYBODY CAN UNDERSTAND THAT TERM
2 ESPECIALLY IF YOU ARE MARRIED. THE PERSON WHO HAS GOT THE
3 CHECKBOOK HAS THE CONTROL, THEY CAN WRITE THE CHECKS, THAT
4 IS A SIMPLE TERM, YOU DON'T HAVE TO UNDERSTAND DEFERRED
5 TAX ASSET, FREE MARKETING THINGS, YOU CAN UNDERSTAND THAT
6 WHEN YOU GET THE CHECKBOOK YOU HAVE CONTROL. I AM GOING
7 TO COME BACK TO SOME OF THE OTHER ISSUES THAT MR. BURKETT
8 TALKED ABOUT BECAUSE I WANT TO TALK ABOUT THAT CONTROL
9 ISSUE BECAUSE THAT IS VERY IMPORTANT. NOT ONE WITNESS HAD
10 ANY DOUBT WHO WAS CALLING ALL THE DECISIONS, ALL THE
11 DECISIONS ABOUT MARKETING, ALL THE DECISIONS ABOUT
12 ACCOUNTING, ALL THE DECISIONS ABOUT EVERYTHING WENT ON
13 AFTER HE BECAME CEO. LADIES AND GENTLEMEN, I DON'T CARE
14 WHAT HIS EXPERT SAYS IS WHAT IS SUPPOSE TO HAPPEN IN
15 THEORY, WHAT HAPPENS IN TEXTBOOKS, WHAT HAPPENS IN LAW
16 SCHOOL CORPORATION CLASSROOMS, WHAT WE ARE HERE TO DEAL
17 WITH IS REAL LIFE, WHAT HAPPENED AT HOMEGOLD AND WHAT
18 HAPPENED TO CAROLINA INVESTORS, THAT IS WHAT WE ARE HERE
19 ABOUT TODAY.

20 YOU HEARD ABOUT THE MONEY THAT MR. SHEPPARD GOT WHEN
21 HE GOT IN. MR. SHEPPARD, WITH HIS UNSOPHISTICATED
22 FINANCIAL WAS ABLE TO ESTABLISH THAT HE GOT A \$5.7 MILLION
23 DOLLAR NONRECOURSE LOAN. WHICH MEANS HE DIDN'T HAVE TO
24 PAY ANY TAXES ON IT, HE DIDN'T EVER HAVE TO PAY IT BACK.
25 HE GOT IN THROUGH LIES AND GOT HIS MONEY AND I WILL GET TO

1 IT AND HE GOT OUT THROUGH LIES. AND WHAT DID HE GET, HE
2 GOT HIS MONEY. BUT LET'S TALK ABOUT WHAT HE DID WHEN HE
3 WAS THERE. YOU NEXT HEARD FROM GARRY RANK, AND GARRY RANK
4 WAS THE INDEPENDENT AUDITOR. THERE IS A LOT OF PEOPLE
5 THAT WANT TO SIT HERE AND POINT THE BLAME OF WHO DID WHAT
6 AND WHO DID THIS. GARRY RANK EXPLAINED TO YOU WHAT
7 INDEPENDENT AUDITORS FUNCTIONS ARE. THEY ARE NOT THE
8 STATEMENTS OF ELLIOTT DAVIS, THEY ARE NOT THE STATEMENTS
9 OF THE OUTSIDE LAWYERS. THEY ARE THE STATEMENTS OF
10 MANAGEMENT. THEY ARE THE STATEMENTS OF HOMEGOLD
11 MANAGEMENT AND LADIES AND GENTLEMEN, IT IS CLEAR WHO WAS
12 IN CHARGE AT HOMEGOLD DURING THE TIME FRAME THAT RONNIE
13 SHEPPARD WAS CEO. IT WAS RONNIE SHEPPARD IN EVERY ASPECT
14 OF THIS BUSINESS. LET'S TALK ABOUT MR. RANK'S TESTIMONY
15 FOR A SECOND. MR. RANK WAS ONE OF THE FIRST ONES AND I
16 THINK YOU WILL NOTICE THIS THEME, YOU DISAGREED WITH
17 RONNIE YOU ARE GONE. YOU REMEMBER A MEETING THAT WE
18 TALKED ABOUT IN AUGUST OF 2002, IT IS RONNIE'S WAY OR THE
19 HIGHWAY. THAT JUST DIDN'T COME UP IN AUGUST OF 2002, THAT
20 STARTED RIGHT WITH THE MERGER. WHAT HAPPENED, GARRY RANK
21 AND ELLIOTT DAVIS STARTED LOOKING AT THE HOMESENSE BOOKS,
22 THEY START QUESTIONING RONNIE. THE ONE THING I THINK
23 EVERYBODY KNOWS IS YOU DON'T QUESTION RONNIE SHEPPARD, IF
24 YOU DO, IF HE CAN'T ARGUE HIS WAY HE WILL RETREAT AND GET
25 HIS WAY TO GET BACK. FROM THE BEGINNING GARRY RANK IS

1 TELLING HIM YOU CAN'T BOOK THINGS LIKE THAT, THIS IS NOW A
2 PUBLIC COMPANY. HE WENT THROUGH AND EXPLAINED EVERYTHING
3 THAT THEY WENT THROUGH WITH HIM, HE WAS TRYING TO MAKE
4 THIS ARGUMENT THAT HOMESENSE WASN'T A PUBLIC COMPANY SO
5 THEREFORE THEY DIDN'T HAVE TO REALLY WORRY ABOUT THEIR
6 BOOKS. LADIES AND GENTLEMEN, GAAP THAT YOU NOW HAVE HEARD
7 ABOUT, HOPEFULLY AND UNDERSTAND APPLIES TO ALL COMPANIES.
8 AND IT APPLIES TO ANY COMPANY THAT IS GIVING FINANCIAL
9 STATEMENTS. HE IS TOLD BY GARRY RANK RIGHT AT THE FRONT,
10 YOU ARE DOING IT RIGHT, THAT IS SOMETHING THAT RONNIE
11 SHEPPARD LIKES TO HEAR. SO, ALREADY, THERE IS TENSION AND
12 HIS IDEA OF WHAT AM I GOING TO DO WITH THESE PEOPLE, THEY
13 ARE LOOKING OVER ME AT EVERY STEP OF THE WAY. WE WILL GET
14 TO KEVIN MAST IN A SECOND, HE WAS ABLE TO TAKE CARE OF
15 THAT PROBLEM PRETTY QUICKLY, HE FIRED HIM WITHIN TWO
16 MONTHS. GARRY RANK, THEY WERE HIS INDEPENDENT AUDITORS,
17 HE WAS KIND OF STUCK WITH THEM. AND WHAT DID HE TELL YOU,
18 BECAUSE OF WHAT THEY SAW, THE DEFENDANT, THEY PUT UP THEIR
19 INTENTS AND STARTING REVIEWING EVERYTHING THE DEFENDANT
20 WAS DOING AT THE COMPANY. AS YA'LL HAVE HEARD, WITNESS
21 AFTER WITNESS, RONNIE SHEPPARD DOESN'T LIKE SCRUTINY, HE
22 DOESN'T LIKE PEOPLE TELLING HIM HE IS WRONG. AND THAT IS
23 WHAT ELLIOTT DAVIS SAID. TALKED ABOUT THE TONE AND
24 FREQUENCY OF IT. MR. GRIFFIN TALKED A LOT ABOUT RELIANCE
25 OF OTHERS. RONNIE ONLY TOOK THE INFORMATION HE WANTED AND

1 IF IT WAS SOMETHING THAT HE WANTED HE WOULD RELY UPON IT,
2 IF IT WASN'T THEN HE WOULD JUST IGNORE THOSE PEOPLE AND DO
3 WHATEVER HE WANTED OR HE WOULD ONLY PROVIDE THE PEOPLE
4 WITH ENOUGH INFORMATION OF WHAT THEY WANTED.

5 MOVING FORWARD TO THAT OCTOBER 4TH 2001 PRESENTATION.
6 THAT IS A VERY SIGNIFICANT EVENT. MR. GRIFFIN WANTS TO
7 TELL YOU THAT MR. OWEN REALLY SHOULDN'T HAVE BEEN
8 SURPRISED AND EVERYBODY ELSE WAS SURPRISED. MR. OWEN
9 WASN'T INVITED TO THAT OCTOBER PRESENTATION, MR. MORRIS
10 WASN'T INVITED TO THAT OCTOBER PRESENTATION. YOU HAVE
11 THAT PRESENTATION IN EVIDENCE, IT TALKS ABOUT ALL THE
12 ISSUES THAT CAME UP AT THE MARCH 14TH MEETING. HE TELLS
13 THEM ABOUT GOING CONCERN, LOAN IMPAIRMENT, HE GOES THROUGH
14 ALL OF THOSE THINGS, EVERYTHING THAT IS TALKED ABOUT AT
15 THAT OCTOBER MEETING. AND WHY IS THAT OCTOBER MEETING SO
16 SIGNIFICANT, BECAUSE LADIES AND GENTLEMEN, AT THAT OCTOBER
17 MEETING THE ACTIONS AND THE WORDS OF THE DEFENDANT SPEAKS
18 VOLUMES. WHAT DOES HE DO. HE SITS THERE AFTER ELLIOTT
19 DAVIS TELLS THEM AND THEY HAVE BEEN HOUNDING HIM SINCE
20 THEY GOT THERE, TELLING HIM TO DO IT THE RIGHT WAY AND YOU
21 HEARD OTHER PEOPLE SAY, AS RONNIE WOULD SAY, WHEN I USED
22 TO DO IT MY WAY I MADE MONEY. WELL, OF COURSE, WHEN YOU
23 COOK THE BOOKS YOU MAKE MONEY. ELLIOTT DAVIS IS THERE AS
24 A WATCH DOG TRYING TO TELL HIM, YOU CAN'T DO THIS, YOU
25 CAN'T DO THAT. WHAT WE HAVE THAT OCTOBER 2001 MEETING IS

1 PIVOTAL. THAT IS WHEN IN PRIVATE, AND LADIES AND
2 GENTLEMEN, LET ME JUST CLEAR THIS UP ABOUT CUT AND RUN.
3 THERE WAS TWO DIFFERENT MEETINGS THAT DAY. SPECIAL AGENT
4 CATHEY TESTIFIED THAT WHEN HE ASKED MR. RANK, HE IS ASKING
5 DID HE HEAR THE COMMENT AT THE FIRST MEETING WITH THE
6 POWERPOINT PRESENTATION WHERE THE DEFENDANT SAID, CUT AND
7 RUN, BABY, CHAPTER 13. HE SAID HE COULDN'T RECALL WHETHER
8 OR NOT HE TOLD HIM THAT. SPECIAL AGENT CATHEY TOLD YOU, I
9 DIDN'T ASK HIM IF THERE WAS A SECOND OR SUBSEQUENT
10 MEETING. SPECIAL AGENT CATHEY ALSO TOLD YOU THROUGH THE
11 COURSE OF THIS INVESTIGATION THAT THE TERM, CUT AND RUN,
12 WAS SOMETHING THAT HE HEARD FROM SEVERAL DIFFERENT
13 WITNESSES WHEN SPEAKING ABOUT CAROLINA INVESTORS. WHY IS
14 THAT MEETING SO PIVOTAL FROM GARRY RANK'S TESTIMONY, IT IS
15 BECAUSE HE TELLS GARRY RANK, WE ARE NEVER GOING TO PAY
16 BACK CAROLINA INVESTORS. HE KNOWS IN OCTOBER OF 2001, IF
17 NOT BEFORE, BUT THAT IS THE FIRST TIME HE HAD MENTIONED IT
18 PUBLICLY, WE ARE NOT GOING TO PAY THEM BACK. AND ALL OF
19 HIS ACTIONS SPEAK TO THAT FACT. WHAT DOES HE DO, KNOWING
20 THAT HE IS NOT GOING TO PAY HIM BACK, HE CONTINUES TO TAKE
21 MONEY. MOVING ON, WITH MR. RANK'S TESTIMONY, HE HAS THE
22 BENEFIT, MR. SHEPPARD, OF WHAT MR. RANK TOLD HIM AT THAT
23 OCTOBER MEETING. GOING ON THROUGH 2001 HE SAID IT BECAME
24 CLEAR AT THIS POINT, WE HAVE HEARD A LOT ABOUT
25 PROJECTIONS. GARRY RANK'S TESTIMONY IS, IT BECAME CLEAR

1 THAT THEY WEREN'T GOING TO MEET THOSE PROJECTIONS. AND
2 THOSE PROJECTIONS ARE SIGNIFICANT FOR TWO VERY IMPORTANT
3 REASONS. LET'S GO BACK TO THAT DEFERRED TAX ASSET. GARRY
4 RANK TESTIFIED THAT WE WERE IN AGREEMENT WITH INCREASING
5 THE DEFERRED TAX ASSET BECAUSE AT THAT POINT MR. SHEPPARD
6 HAD JUST TOOK OVER THE COMPANY AND WE HAD NO REASON NOT TO
7 BELIEVE HIS PROJECTIONS. THEY TOOK THE DEFENDANT'S WORD
8 THAT HE WAS GOING TO HAVE CERTAIN PROJECTIONS, MEET
9 CERTAIN GOALS. AND AS ELLIOTT DAVIS, IT IS NOT OUR
10 DECISION, IT IS NOT ELLIOTT DAVIS' BOOKS, IT IS NOT
11 ELLIOTT DAVIS' STATEMENTS. BUT I WILL GET TO MR. GOSNELL
12 IN A SECOND. BUT THAT IS VERY SIGNIFICANT, HE TOLD YOU WE
13 RELIED UPON WHAT MR. SHEPPARD WAS TELLING US ABOUT WHAT
14 THE COMPANY WAS GOING TO DO AND THAT IS WHY WE SAID, IT
15 WAS DEFENSIBLE TO INCREASE IT. THE THIRD QUARTER OF 2001
16 WHEN YOU TALK ABOUT ADVICE OF OTHERS, WHEN THE DEFENDANT
17 DECIDES TO INCREASE THE PREPAID MARKETING EXPENSES AND
18 LADIES AND GENTLEMEN, ALL THE TESTIMONY WAS, IT WAS THE
19 DEFENDANT, IT WAS MR. MARTIN, MR. MARTIN TESTIFIED TO YOU
20 THAT HE WAS LIED TO BY THE DEFENDANT SAYING THAT THOSE
21 PREPAID MARKETING EXPENSES HAD A LIFE OF 24 MONTHS AND
22 THAT HE IS THE ONLY REASON HE WENT ALONG WITH THAT.
23 ELLIOTT DAVIS TOLD HIM, YOU CAN'T DO THIS AND WE ARE GOING
24 TO REVERSE YOU. WHAT DID THAT DO FOR THE THIRD QUARTER OF
25 2001, FIRST OF ALL, IT SHOWS HE DOESN'T LISTEN TO ELLIOTT

1 DAVIS, THEY STRONGLY DISAGREE AND SAYS WE ARE GOING TO
2 REVERSE IT AT YEAREND IF YOU DO IT. BUT WHAT DOES THE
3 DEFENDANT TO, HE LIES TO THE CFO, HE GETS THEM TO INCREASE
4 IT FROM SIX MONTHS TO TWENTY-FOUR MONTHS AND LOW AND
5 BEHOLD, THEY SHOW A PROFIT, A MINOR PROFIT, ABOUT \$329
6 THOUSAND DOLLARS BUT GUESS WHAT, THAT IS THE GOOD NEWS HE
7 CAN PASS ALONG TO LARRY AND EARLE. AND WE ARE GOING TO
8 GET TO THAT IN A SECOND. BUT THE BOTTOM LINE IS HE NEEDED
9 THAT GOOD NEWS, INCREASE IT AT ALL COST, I DON'T CARE WHAT
10 ELLIOTT DAVIS, I WANT IT TO LOOK GOOD, I WANT THAT THRID
11 QUARTER 2001 TO LOOK GOOD. THEY ARE ALSO TOLD AT THAT
12 OCTOBER MEETING ABOUT THE VALUATIONS. AND, LADIES AND
13 GENTLEMEN, I JUST WANT TO TAKE THE TIME RIGHT NOW TO CLEAR
14 UP THOSE VALUATIONS BECAUSE THOSE ARE IMPORTANT IN THIS
15 CASE. AND I TELL YOU WHY THEY ARE IMPORTANT, THOSE
16 VALUATIONS THAT WE DISCUSSED BY MR. BURKETT AND YOU HEARD
17 MR. BURKETT'S TESTIMONY, THOSE VALUATIONS SHOULD HAVE
18 NEVER, NEVER BEEN USED FOR THE PURPOSES THAT THEY WERE
19 USED. AND I AM NOT GOING THROUGH ALL THE DIFFERENT TYPES
20 OF VALUATIONS THAT THERE ARE. BUT I WILL GO THROUGH AND
21 THESE ARE IN EVIDENCE AND YOU CAN GO BACK AND READ THEM.
22 THE LANGUAGE ON THE DELOITTE AND TOUCHE AND THIS CAN'T BE
23 ANY CLEARER. ACCORDINGLY TALKING ABOUT HOW THESE COULD BE
24 USED, ACCORDINGLY OUR WORK PRODUCT IS NOT TO BE USED FOR
25 ANY OTHER PURPOSE EXCEPT FOR THE LOAN IMPAIRMENT AND

1 SHOULD NOT BE DISTRIBUTED TO ANY THIRD PARTY. THEY
2 CONTINUE TO SAY, THE FINANCIAL FORECAST USED IN OUR
3 ANALYSIS HAS BEEN PREPARED BY THE COMPANY, MR. SHEPPARD
4 WHO DID THE PROJECTIONS AND ARE THE SOLE RESPONSIBILITY OF
5 THE COMPANY. THAT IS THE DELOITTE AND TOUCHE, THAT WAS
6 THE ONE THAT WASN'T REJECTED BUT IT IS CLEAR THAT THOSE
7 VALUATIONS CANNOT BE USED FOR ANY OTHER PURPOSES EXCEPT
8 FOR INTERNAL MARKETING. AND WE WILL GET TO HOW HE USED
9 THEM IN A SECOND. LET'S JUST BRIEFLY TALK ABOUT THE CBIZ
10 AND THESE ARE BOTH IN EVIDENCE. THE CBIZ THAT I WILL
11 REMIND YOU WAS REJECTED AT THE MARCH 14TH MEETING. THAT
12 LANGUAGE IS CLEAR, AND REMEMBER THIS WAS A VALUATION THAT
13 WAS REJECTED. NEITHER THIS LETTER NOR ITS CONTENTS NOR
14 ANY REFERENCE TO THE APPRAISER OR CBIZ COUNSELORS MAY BE
15 REFERRED TO, QUOTED IN ANY REGISTRATION STATEMENT,
16 PROSPECTUS, OFFERING, MEMORANDUM, SALES BROCHURE, OTHER
17 APPRAISALS ARE GIVEN TO ANY THIRD PARTY. GARRY RANK TOLD
18 THEM HE DISAGREED WITH THEM USING THEM. AND WHEN ASKED
19 WHY, HE SAID TWO REASONS. NUMBER ONE, THAT IS NOT THE
20 PURPOSE FOR WHAT THEY WERE GOTTEN. AND NUMBER TWO, MOST
21 IMPORTANT AND WHY WE ARE HERE TODAY, IF THEY ARE USED THEY
22 COULD BE VERY MISLEADING TO THE INVESTORS, THE INVESTORS
23 AT CAROLINA INVESTORS THAT ARE BEING TOLD VALUATIONS THAT
24 WERE GOTTEN FOR A BAD PURPOSE WHICH WAS TO IMPAIR THE LOAN
25 SAYING YOU AREN'T DOING FINANCIALLY WELL, HE SPENDS THEM

1 AND USES THEM AND REPEATEDLY TELLS LARRY OWEN, KEEP ON
2 USING THOSE VALUATIONS, KEEP ON GIVING OUT THAT AMMUNITION
3 TO THOSE INVESTORS. THOSE VALUATIONS ARE VERY
4 SIGNIFICANT, LADIES AND GENTLEMEN BECAUSE THE DEFENDANT
5 KNEW HOW THEY COULD BE USED, HE WAS TOLD HOW THEY SHOULD
6 BE USED AND HE SPECIFICALLY INSTRUCTED KEVIN MARTIN TO
7 SAY, MAKE SURE THOSE VALUATIONS ARE IN THAT PROSPECTUS.
8 YOU HEARD BILL KEHL SAY HE NEVER SAW THOSE VALUATIONS
9 UNTIL SEVERAL YEARS AFTER, YOU HEARD HIM SAY THAT HE WAS
10 NEVER TOLD ABOUT GARRY RANK'S DISAGREEMENT ABOUT THEM
11 BEING PUT IN THE PROSPECTUS. LADIES AND GENTLEMEN, HIS
12 TESTIMONY WAS, THAT WOULD BE MISLEADING TO USE THOSE
13 VALUATIONS AND GIVE THEM TO INVESTORS. MOVING ON WITH MR.
14 RANK'S TESTIMONY AND IT IS IMPORTANT TO REALIZE ABOUT ALL
15 THE PROBLEMS THEY SEE AND THEY HAVE BEEN INDEPENDENT
16 AUDITORS. AND I AGREE WITH MR. GRIFFIN, THEY ARE WELL
17 THOUGHT OF. WHAT DID THEY DISAGREE WITH, THEY READ A
18 PRESS RELEASE WHERE HOMEGOLD AND YOU HEARD THEIR EXPERT
19 ALTHOUGH RELUCTANT TO SAY THAT RONNIE SHEPPARD WAS QUOTED
20 IN THE PRESS RELEASE, BUT EACH AND EVERY PRESS RELEASE IS
21 RONNIE SHEPPARD SPEAKING FOR HOMEGOLD. WHAT DID HE TELL
22 YOU, EARLY IN 2002 THEY ISSUED A PRESS RELEASE SAYING THAT
23 THE MORTGAGE DIVISION HAD MADE A PROFIT AND THERE WAS NO
24 FINANCIAL RECORDS TO SUPPORT THAT PROFITABILITY. AGAIN,
25 TOLD BY THE INDEPENDENT AUDITORS, YOU ARE PUTTING

1 MISLEADING INFORMATION OUT THERE, LIES, LIES OUT THERE TO
2 THE PUBLIC BY THEIR INDEPENDENT AUDITORS. THESE ARE ALL
3 THE CONCERNS THAT ARE LEADING ELLIOTT DAVIS UP TO MAKE A
4 DECISION TO RESIGN AND LOOKING AT THE FINANCIAL CONDITION
5 OF THE COMPANY, TO TELL THE WORLD, THIS IS A GOING
6 CONCERN, THIS LOAN IS IMPAIRED. AND LOOK AT THE REASONS
7 WHY HE TOLD YOU THEY RESIGNED. CONTINUED TO SUSTAIN HUGE
8 OPERATING LOSSES, PRODUCTION LEVEL LAG BEHIND PROJECTIONS.
9 LADIES AND GENTLEMEN, WHO WAS THE ONE THAT WAS ALWAYS
10 GIVING THE PROJECTIONS, IT WAS THE DEFENDANT. THEY OPENED
11 17 BRANCHES AND I AM GOING TO GET TO THAT PREPAID
12 EXPANSION BECAUSE YOU HEARD A LOT OF TESTIMONY AND A LOT
13 OF PEOPLE TELLING HIM NOT TO DO THAT. BUT WHY NOT, HE IS
14 BUILDING HIS COMPANY WITH OTHER PEOPLES MONEY. FOR SIX
15 MONTHS OF 2002 EXPENSES WERE 184 OF THE TOTAL REVENUE.
16 IMAGINE IF YOU RAN YOUR HOUSEHOLD LIKE THAT, THAT YOUR
17 EXPENSES WERE ALMOST TWICE AS THE MONEY YOU GOT IN. THIS
18 WHOLE TIME WHAT IS RONNIE SHEPPARD DOING, GOING UP TO
19 BOARD MEETINGS, GOING OUT TO THE PUBLIC SAYING WE ARE
20 TURNING A PROFIT, WE ARE SHOWING LIQUIDITY. 184 PERCENT
21 OF TOTAL PROFITS, THAT IS NOT CLOSE TO SHOWING A PROFIT,
22 LADIES AND GENTLEMEN. AGAIN, LIES. AND FINALLY AND MOST
23 IMPORTANT HOMEGOLD EXTREME RELIANCE AND LOOK AT 2002,
24 EXTREME RELIANCE ON CAROLINA INVESTORS. AND AGAIN, MR.
25 RANK REMINDED YOU AND IT IS NOT GOING ON REMINDING YOU

1 THAT IT IS NOT OUR FAULT, HE IS JUST TELLING AS OUR EXPERT
2 DID AND AS THEIR EXPERT DID, THE 10K'S, THE PROSPECTUS,
3 THOSE ARE MANagements STATEMENTS, THOSE ARE THE STATEMENTS
4 OF HOMEGOLD AND CAROLINA INVESTORS AND THERE IS NO DOUBT,
5 IT DOESN'T MATTER IF THEY ARE TALKING TO MR. MARTIN OR MR.
6 GAFFNEY, MR. MARTIN CAME HERE AND TOLD YOU WHO WAS IN
7 CHARGE OF ALL DECISIONS. MR. MARTIN DIDN'T RESPOND TO
8 HIM, HE WENT BEHIND MR. MARTIN'S BACK. .

9 MOVING ON I TOLD YOU ONE OF THE BIG ISSUES WAS
10 CONTROL. AND I THINK ONE OF THE MOST IMPORTANT THINGS WAS
11 JUST HOW QUICKLY THE DEFENDANT WANTED TO GET CONTROL. IF
12 YOU REMEMBER, JENNIFER CHAMPAGNE CAME, SHE WAS ONLY THERE
13 FOR ONE MONTH WITH THE DEFENDANT. YOU HEARD ABOUT HER
14 BACKGROUND, HOW SHE HAD THE ABILITY, SHE KNEW ABOUT THE
15 INTERNAL CONTROLS, SHE KNEW HOW TO RUN A PUBLIC COMPANY.
16 I AM NOT SAYING THAT RONNIE SHEPPARD KNEW HOW TO RUN A
17 PUBLIC COMPANY WHEN HE WENT IN THERE. BUT I AM TELLING
18 YOU HE DID HAVE THE PEOPLE WHO KNEW HOW TO AND WHAT DID HE
19 DO. THIS IS ABOUT CONTROL, LADIES AND GENTLEMEN, THAT IS
20 ANOTHER KEY THING ABOUT THIS CASE, THE DEFENDANT'S
21 IMMEDIATE DESIRE TO GET FULL AND TOTAL CONTROL OVER
22 HOMEGOLD WHICH GAVE HIM CONTROL OVER CAROLINA INVESTORS.
23 FIRST THING HE DID, SHE TALKED ABOUT HOW IMPORTANT THE
24 ACCOUNTING AND INTERNAL CONTROLS WERE. HE DIDN'T CARE
25 ABOUT THAT, WHAT DID HE WANT, HE WANTED THE CHECKBOOK. AS

1 HER TESTIMONY SAYS, I GUESS OVERNIGHT WASN'T QUICK ENOUGH,
2 I GUESS MR. SHEPPARD COULDN'T JUST FAX THEM AN INVOICE AND
3 TELLS THEM TO PAY IT. LADIES AND GENTLEMEN, IT WASN'T A
4 WAY THAT THEY NEEDED TO GET THAT CHECK QUICKER, HE WANTED
5 THAT CHECKBOOK IN HIS POCKET SO THAT HE COULD TAKE CONTROL
6 OVER EVERY ASPECT OF THAT COMPANY AND THAT IS FURTHER
7 EXEMPLIFIED WHEN HE TAKES THE ENTIRE COMPANY AND MOVES IT
8 DOWN HERE TO LEXINGTON WHERE HE HAS FULL AND COMPLETE
9 CONTROL AT THAT POINT.

10 MOVING ON, YOU HEARD FROM PAT EVETT. AND PAT EVETT
11 HAD BEEN WITH CAROLINA INVESTORS FOR SEVERAL YEARS AND IN
12 FACT SHE USED TO WORK IN THE ACCOUNTING DEPARTMENT OF
13 HOMEGOLD. SHE TOLD YOU AS WE TOLD YOU, SHE TOOK YOU INTO
14 THE DOORS OF CAROLINA INVESTORS AND TELLS YOU HOW IT
15 WORKED. AND IT HAD BEEN A BUSINESS FOR ALMOST 40 YEARS
16 WHEN IT WENT OUT OF BUSINESS. IT WAS THAT OLD TIME, IT
17 LOOKED LIKE A BANK, THINGS HADN'T CHANGED AND A LOT OF
18 INVESTORS AND YES THEY DID, THEY DID TRUST EARLE MORRIS,
19 THEY DID TRUST LARRY OWEN. LARRY OWEN CAME HERE AND WE
20 WILL GET TO HIS TESTIMONY, AND TOLD YOU THEY DID. IT HAD
21 BEEN A BUSINESS, DWIGHT HOLDER FORMED IT IN 1963, LIKE I
22 SAID, BEEN IN BUSINESS FOR 40 YEARS. THE DEFENDANT WAS
23 WELL AWARE OF THAT BUSINESS AND THE SUCCESS OF THAT
24 BUSINESS AND HOW MUCH MONEY COULD BE BROUGHT IN THE DOOR
25 IF HE COULD ONLY KEEP UP, A., DOING BETTER BY COOKING THE

1 BOOKS OR, B., LET ME TELL YOU WHAT WE ARE DOING AND THIS
2 IS THE INFORMATION, THE AMMUNITION THAT YOU CAN TAKE BACK
3 TO THE INVESTORS. PAT EVETT KEPT HER MONEY IN THERE UNTIL
4 THE VERY END, SHE TOO LOST MONEY WHEN THE DOORS CLOSED.
5 SHE TOLD YOU CAROLINA INVESTORS DID NOT HAVE THE POWER,
6 THAT SLIDE, THE POWERPOINT THAT MR. GRIFFIN PUT US SAYING
7 THAT RONNIE SHEPPARD WAS JUST ONE VOTE OF MANY. LADIES
8 AND GENTLEMEN, EVERYBODY THAT CAME HERE SAID THAT WAS NOT
9 TRUE. HE CAME IN, GAVE THEM THE INFORMATION AND WENT OUT
10 AND AS SOON AS SOMEBODY CAME IN OFF THE STREETS OF
11 PICKENS, ANDERSON, OCONEE COUNTY AND WHEN THEY INVESTED
12 THEIR MONEY IT GOT SUCKED RIGHT UP TO HOMEGOLD. PAT EVETT
13 TOLD YOU, SHE DIDN'T HAVE THE BOOKS AT HOMEGOLD, SHE COULD
14 LOOK AT WHAT WAS GOING ON AT CAROLINA INVESTORS AND IT HAS
15 BEEN EXPLAINED TO YOU, IT IS VERY SIMPLE. MONEY COMES IN
16 AND MONEY GOES OUT, IT IS JUST LIKE LOOKING AT A
17 CHECKBOOK, IT IS CERTAINLY NOT LOOKING AT THE 10Q OR A 10K
18 WHICH WHEN YOU ARE BACK THERE IN THE JURY ROOM AND YOU
19 WOULD LIKE TO GO THROUGH THEM BY ALL MEANS DO. I PUT THEM
20 SO YOU COULD SEE WHAT THEY ARE SAYING IS, THE INFORMATION
21 IS OUT THERE, DO YOU REMEMBER WHEN WE ASKED MR. RANK TO
22 TRY TO FIND SOMETHING IN THERE, MR. RANK WHO IS A SENIOR
23 MANAGEMENT, HOW LONG IT TOOK HIM TO FIND SOMETHING IN A
24 10K, 10Q, THESE ARE COMPLICATED DOCUMENTS. SO, FOR RONNIE
25 SHEPPARD TO SIT HERE TODAY AND SAY, IT IS ALL OUT THERE,

1 IT WAS EASY TO UNDERSTAND. LADIES AND GENTLEMEN, WE HAD
2 EXPERTS COME IN AND QUITE FRANKLY, I THINK SOME OF THESE
3 ACCOUNTING FIRMS, I HOPE THEY WERE ABLE TO EXPLAIN TO YOU
4 SO YOU CAN UNDERSTAND IT, THESE ARE COMPLEX ISSUES,
5 COMPLEX ISSUES THAT THE DEFENDANT KNEW TO IMPLEMENT AND
6 WHAT IT WOULD DO TO THE BOTTOM LINE, ALWAYS DROVE IT UP.
7 SOME PEOPLE DON'T KNOW ABOUT ACCOUNTING AND THEY MIGHT
8 MAKE MISTAKES AND PLACE THINGS ON A DIFFERENT PART OF A
9 BALANCE SHEET, NOT THE DEFENDANT, HE ALWAYS PLACED IT A
10 THE RIGHT TIME, THE RIGHT COLUMN TO MAKE PROFITS LOOK
11 BETTER SO CAROLINA INVESTORS WOULD BE ASSURED AND THEY
12 WOULD KEEP PUTTING THEIR MONEY IN THERE. AND I WILL POINT
13 OUT, AS I TOLD YOU, WE HAVE TO PROVE BASED UPON THE
14 INFORMATION THAT WE GAVE THAT THERE WAS A LOSS, PAT EVETT
15 SAID THAT AT THE END OF THE DAY SHE HAD \$83 THOUSAND
16 DOLLARS INVESTED AT CAROLINA INVESTORS, HER LIFE SAVINGS.
17 SHE WAS THERE, WORKED DAY IN AND DAY OUT. WHO HAD CONTROL
18 OF CAROLINA INVESTORS, CERTAINLY NOT THE PEOPLE WORKING
19 THERE, CERTAINLY NOT THE PEOPLE WHO ARE GIVEN ONLY THE
20 INFORMATION THAT RONNIE SHEPPARD WANTS TO GIVE THEM.
21 MOVING ALONG, AND AGAIN, THAT GOES TO CONTROL. PAT EVETT
22 WORKED FOR CAROLINA INVESTORS FOR A LONG TIME. WHEN
23 RONNIE MOVES THE ACCOUNTING WHERE DOES HE MOVE HER TO, HE
24 SENDS HER OFF TO PICKENS BECAUSE SHE KNOWS THE PEOPLE AT
25 CAROLINA INVESTORS. AND IN FACT, ONE IMPORTANT THING TO

1 REMEMBER ABOUT HER, REMEMBER WHEN SHE TOLD YOU ABOUT
2 GETTING THAT BILL IN DECEMBER OF 2000 WHERE IT CAME AND IT
3 MENTIONED BANKRUPTCY. SHE SAID SHE WENT IMMEDIATELY TO
4 LARRY OWEN WHO WAS JUST AS SURPRISED. AND MR. GRIFFIN
5 WANTED YOU TO BELIEVE, WELL, WHEN YOU GOT THAT BILL RONNIE
6 SHEPPARD WAS NO LONGER THERE BECAUSE HE RESIGNED. LADIES
7 AND GENTLEMEN, I THINK IT IS CLEAR THAT RONNIE SHEPPARD
8 WAS IN CONTROL UNTIL THE END OF 2002 AND STILL IN CONTROL
9 BECAUSE OF THE EMMCO DEAL UNTIL THE DAY THAT CAROLINA
10 INVESTORS SHUT THEIR DOORS. BUT IF YOU REMEMBER, IT WAS
11 POINTED OUT, BANKRUPTCY COUNSEL MET WITH RONNIE J.
12 SHEPPARD IN SEPTEMBER. SO, MR. GRIFFIN'S ATTEMPT TO MAKE
13 IT SOUND LIKE THAT WAS A BILL THAT CAME AFTER RONNIE
14 SHEPPARD RESIGNED FROM THE BOARD JUST ISN'T TRUE, THEY
15 KEPT THAT FROM CAROLINA INVESTORS. AND IF THERE IS ONE
16 THING THAT IS MOST SIGNIFICANT ABOUT A COMPANY IS ITS END.
17 AND I THINK YOU CAN ALL KNOW THAT ABOUT HOW MANY PEOPLE
18 REMEMBER THAT DATE, MARCH 21ST OF 2003. THE DEFENDANT,
19 KAREN MILLER, FORREST FERRELL, JACK STERLING, WHAT ARE
20 THEY DOING, THEY ARE MEETING WITH BANKRUPTCY COUNSEL. DID
21 THEY INVITE LARRY OWEN TO THE MEETING, DO THEY INVITE
22 EARLE MORRIS TO THE MEETING, DO THEY INVITE BOBO, DO THEY
23 INVITE SHARPE, ABSOLUTELY NOT. THEY CAN'T TELL THOSE FOUR
24 THAT THEY ARE TALKING ABOUT BANKRUPTCY, THEY CAN'T LET
25 THEM KNOW THAT, THERE IS CERTAIN INFORMATION THAT THEY

1 KNOW THAT THEY CAN GIVE THEM. BUT THEY KNOW THERE IS
2 OTHER INFORMATION THAT THEY JUST CANNOT SHARE. AND I
3 THINK THAT WAS CLEAR WHEN THEY SHUT THE DOORS ON MARCH
4 21ST OF 2003.

5 NOW, GENE GREGORY, MR. GRIFFIN WANTS TO TELL YOU THAT
6 NO INVESTOR SUFFERED, THAT THE DEFENDANT NEVER TOLD LARRY
7 OWEN TO TELL THEM THE COMPANY WAS GOOD, THAT THE DEFENDANT
8 NEVER TOLD LARRY OWEN TO TELL THEM THAT. I BEG YOUR
9 DIFFERENCE, LADIES AND GENTLEMEN, THAT IS WHY THOSE
10 VALUATIONS WERE SO IMPORTANT. LARRY OWEN DIDN'T SEE THOSE
11 VALUATIONS, HE NEVER SAW THAT LANGUAGE IN THERE, HE DIDN'T
12 KNOW THAT COULD NOT BE USED. AND HE WAS REPEATEDLY TOLD
13 THROUGH FORREST FERRELL, BY RONNIE TELLING FORREST, TELL
14 LARRY TO KEEP ON USING THOSE VALUATIONS. AND, LADIES AND
15 GENTLEMEN, HE DID. YOU SAW MR. GENE GREGORY COME IN HERE,
16 HE INVESTED HIS MONEY IN 2001. MR. GREGORY OVER ONE
17 MILLION DOLLARS OF HIS MONEY IN 2001, HE HAD HEARD ABOUT
18 THIS. MR. GREGORY WAS SOMEONE THAT RAN A RESTAURANT IN
19 UNION AND SAVED UP ALL OF HIS MONEY. AND HE AND HIS
20 BROTHER HAD HEARD ABOUT THIS COMPANY CALLED CAROLINA
21 INVESTORS, HE WENT TO TALK TO LARRY OWEN. WHAT DID LARRY
22 OWEN TELL HIM, THERE IS A MAN NAMED RONNIE SHEPPARD THAT
23 IS RUNNING THIS COMPANY, I HAVE CONFIDENCE IN HIM AND HE
24 TELLS ME THAT THINGS ARE GOING WELL, THIS COMPANY IS GOING
25 TO TURN ITSELF AROUND. SO, MR. GRIFFIN'S CONTENTION THAT

1 MR. SHEPPARD WAS NOT GIVING INFORMATION TO LARRY OWEN TO
2 GIVE TO INVESTORS IS TOTALLY WITHOUT MERIT. YOU HEARD
3 TESTIMONY TIME AND TIME AGAIN AND YOU WILL HAVE THOSE
4 BOARD MINUTES IN THERE THAT SHOWS YOU THE INFORMATION THAT
5 RONNIE SHEPPARD WAS GETTING OUT. BUT HE IS TRYING TO SAY
6 THAT NO DIRECT OR INDIRECT SECURITIES FRAUD WAS COMMITTED.
7 LADIES AND GENTLEMEN, TWO APPRAISALS WERE PERFORMED BY
8 PROFESSIONAL APPRAISALS RECENTLY WHICH PUT THE VALUE OF
9 HOMEGOLD BETWEEN \$135 MILLION AND \$170. FIRST OF ALL,
10 THEY SHOULD OF NEVER SEEN THE LIGHT OF DAY, MR. OWEN DID
11 NOT KNOW THAT. SECOND OF ALL, THE CBIZ WAS REJECTED.
12 THEY SHOULDN'T OF BEEN IN THERE AND EVEN IF THEY HAD OF
13 GOTTEN PERMISSION WHICH THEY COULD OF BUT THEY DIDN'T GET
14 PERMISSION TO USE THEM, THIS ONE WAS REJECTED, LADIES AND
15 GENTLEMEN. WHY ARE THEY USED, I WILL TELL YOU WHY THEY
16 ARE USED, BECAUSE THEY KNOW THAT THOSE ARE SOME OF THE
17 BEST AMMUNITION AND I COME UP WITH THAT WORD. THAT WAS A
18 WORD THAT WAS USED AT HOMEGOLD, THOSE ARE SOME OF THE BEST
19 AMMUNITION TO KEEP ON HURLING AT THE INVESTORS. YOU HEARD
20 PROFESSOR FREEMAN SAY RONNIE SHEPPARD KNEW WHAT THEY WERE
21 HUNTING, THEY WERE HUNTING PEOPLE ON THE STREET OF PICKENS
22 AND OCONEE AND AREAS AROUND THE STATE, TO EITHER INVEST
23 NEW MONEY OR NOT TO PULL OUT THEIR MONEY. GENE GREGORY
24 CAME IN AND TOLD YOU ABOUT WHAT HIS LIFE IS LIKE TODAY, HE
25 WORKS SEVEN DAYS A WEEK AT A RESTAURANT THAT HE HAD MADE

1 ALL OF THAT MONEY AND LOST ALL OF THAT MONEY. AND IN MR.
2 GRIFFIN'S OPENING, HE ELUDED TO THE FACT THAT MR. SHEPPARD
3 HAS LOST AND HE IS JUST LIKE A CAROLINA INVESTORS VICTIM.
4 LADIES AND GENTLEMEN, DON'T BUY THAT, DON'T BUY THAT FOR
5 ONE SECOND, YOU SAW THOSE PEOPLE COME IN. THERE IS
6 NOTHING, NOTHING ABOUT THE DEFENDANT THAT LIES, GETS INTO
7 A CORPORATION, GETS MILLIONS, CONTINUES TO GET MILLIONS
8 FROM ELDERLY PEOPLE IN THE PICKENS AREA. THERE IS NOTHING
9 SIMILAR ABOUT MR. GREGORY AND THE DEFENDANT IN THE
10 COURTROOM HERE TODAY.

11 I WANT TO TALK ABOUT THE LEAPHART ROAD TRANSACTION
12 FOR A SECOND. I TOLD YOU THAT WHEN I WAS OPENING ON THE
13 LAW THE CONCEPT OF FIDUCIARY DUTY AND THAT IS WHY THAT
14 LEAPHART ROAD PROPERTY IS SO IMPORTANT. YOU WILL HEAR THE
15 JUDGE INSTRUCT YOU AS, I WAS PARAPHRASING AND HE WILL
16 INSTRUCT YOU ON WHAT THE LAW. WHEN YOU ARE A CEO, AN
17 OFFICER AND A DIRECTOR OF A COMPANY YOU OWE THE DUTY FIRST
18 AND FOREMOST TO THE COMPANY. I TOLD YOU BEFORE, WHAT MR.
19 SHEPPARD IS ABOUT IS HIS ACTIONS AND HIS WORDS. HE IS
20 TELLING EVERYBODY, GUESS WHAT, I WANT TO TURN THIS COMPANY
21 AROUND. I AM CUTTING DOWN ON EXPENSES AND WE WILL GET TO
22 THAT IN A SECOND. CUTTING DOWN ON EXPENSES, EVERYTHING
23 THAT I DO I AM WORKING WHATEVER HOUR DAYS HE SAYS HE IS
24 WORKING, GIVING 125 PERCENT OF HIMSELF TO MAKE THE COMPANY
25 TURN AROUND. LADIES AND GENTLEMEN, HIS ACTIONS AND HIS

1 WORDS DO NOT PROVE THAT. THIS TRANSACTION SAYS A LOT.
2 WHAT DOES HE DO, THIS IS PROPERTY THAT IS OWNED BY
3 HOMEGOLD IN 2001, A COMPANY THAT IS STRUGGLING
4 FINANCIALLY, A COMPANY THAT HAS TO BORROW OVER \$44 MILLION
5 DOLLARS JUST TO STAY IN BUSINESS SO RONNIE SHEPPARD CAN
6 KEEP HIS LIFESTYLE. BUT WHAT DOES HE DO, GIVEN THE FIRST
7 OPPORTUNITY, HE REALIZES THAT THEY HAVE THIS PROPERTY, HE
8 LIST IT ON MAY THE 30TH OF 2001 WITH EDENS AND AVANT TO
9 SELL THAT PROPERTY. AND DOES HE LIST IT AS CEO OF
10 HOMEGOLD, NO HE DOESN'T, HE LIST IT FOR HIMSELF. THEN ON
11 JUNE 6TH OF 2001 HE ENTERS INTO A CONTRACT TO SELL THAT
12 FOR \$438 THOUSAND DOLLARS FOR THAT PROPERTY OUT ON
13 LEAPHART ROAD, \$60 THOUSAND DOLLARS PER ACRE TO THE
14 SELLER. AND, LADIES AND GENTLEMEN, I UNDERSTAND IT IS
15 JUST A CONTRACT, I UNDERSTAND THINGS CAN GO DIFFERENT,
16 THEY DIDN'T THOUGH. BUT WHAT DOES HE DO, HE GOES AND GETS
17 HIS FRIEND WHO DABBLES IN REAL ESTATE TO DO A FAIR VALUE,
18 TO LOOK AT WHAT OTHER PROPERTY IS GOING FOR. DOES HE TELL
19 HIS FRIEND THAT HE HAS GOT A CONTRACT TO SELL IT, BECAUSE
20 WHAT IS THE BEST FAIR MARKET VALUE, IT IS WHAT SOMEONE IS
21 WANTING TO PAY FOR THE PROPERTY. NO, HE DOESN'T TELL HIS
22 FRIEND. HIS FRIEND TESTIFIED, THAT HAD I KNOWN HE DIDN'T
23 OWN IT I WOULD OF NEVER DONE THAT, I DID NOT KNOW. AGAIN,
24 LIES BY RONNIE SHEPPARD, SO HE GOES OUT, DOES AN ESTIMATE
25 OF WHAT IT IS WORTH AND HE COMES UP WITH \$308 THOUSAND

1 DOLLARS. AND THEN YOU HEARD WHAT WAS PRESENTED TO THE
2 BOARD. MR. SHEPPARD DOESN'T GO IN THERE AND SAY, NOW
3 THERE IS A FAIR MARKET VALUE OF \$308 THOUSAND. I HAVE GOT
4 THIS CONTRACT TO SELL IT FOR MORE BUT YA'LL DON'T WANT TO
5 BE IN THE BUSINESS OF SEELING REAL ESTATE, JUST GIVE IT TO
6 ME, I WILL GO TAKE CARE OF SELLING IT. NO, THAT IS NOT
7 WHAT HE DOES. HE GOES TO THE HOMEGOLD BOARD, THE BOARD OF
8 WHICH HE IS A MEMBER, THE BOARD OF WHICH HE OWES A
9 FIDUCIARY DUTY WHICH MEANS THE DUTY OF LOYALTY TO PUT THAT
10 COMPANY AND THAT BOARD BEFORE HIS OWN. AND WHAT DOES HE
11 DO, HE LIES TO THEM AND CONVINCES THEM TO SELL THAT
12 PROPERTY FOR OVER \$100 THOUSAND DOLLARS LESS THAN WHAT HE
13 KNOWS HE HAS A CONTRACT FOR. AND MR. WYCHE TESTIFIED THAT
14 THE SELL DID GO THROUGH AND THAT MR. SHEPPARD RECEIVED
15 PERSONAL BENEFIT OF \$60 THOUSAND DOLLARS. KEEP IN MIND,
16 LADIES AND GENTLEMEN, THIS IS IN 2001 WHEN THE DEFENDANT
17 FEELS HE IS DOING SUCH A GOOD JOB HE GIVES HIMSELF A RAISE
18 FROM \$250 THOUSAND DOLLARS TO \$600 THOUSAND DOLLARS
19 WITHOUT EVEN ASKING FOR BOARD APPROVAL, HE DOESN'T EVEN
20 TELL THEM THAT HE GOT THAT \$60 THOUSAND DOLLARS OUT FROM
21 UNDERNEATH THEM. LADIES AND GENTLEMEN, THESE ARE THE
22 COURSE OF BUSINESS, HIS ACTIONS AND HIS WORDS. THEY DO
23 NOT MATCH. HE IS SITTING THERE, HE IS GIVING IT ALL TO
24 THE COMPANY SO HE CAN TURN IT AROUND AND PAY THOSE
25 CAROLINA INVESTORS BACK. MEANWHILE HE IS GETTING \$60

1 THOUSAND DOLLARS ON PROPERTY THAT WAS OWNED BY HOMEGOLD,
2 THAT \$60 THOUSAND DOLLARS I KNOW DOESN'T MAKE A BIG DENT
3 IN THE \$250 MILLION DOLLARS THAT WAS LOST. BUT, LADIES
4 AND GENTLEMEN, IT IS HIS ACTIONS AND HIS WORDS, PUBLIC
5 VERSUS PRIVATE, PRIVATE HE GOES TO HIS GOOD FRIEND AND
6 SAYS, JUST GIVE ME A FAIR MARKET VALUE AND SEE WHAT IT IS
7 WORTH. PUBLICLY, HE GOES AND GETS THAT FALSE STATEMENT
8 WHILE HE IS TRYING TO TELL EVERYBODY AND CONVINCE, I HAVE
9 GOT THE BEST INTEREST OF THIS COMPANY IN MIND AND I AM
10 DEDICATED TO TURNING IT AROUND, THEY DON'T MIX. HIS
11 ACTIONS AND HIS WORDS DON'T MIX.

12 MOVING ON TO SHANE SMITH. AND SHANE SMITH DID GET UP
13 THERE AND TESTIFY AND I AM NOT GOING TO GO OVER EVERYTHING
14 THAT HE TESTIFIED TO BUT HE IS QUITE IMPORTANT. ONE OF
15 THE MAIN REASONS SHANE SMITH IS IMPORTANT IS BECAUSE HE
16 KNOWS WHAT THE DEFENDANT IS LIKE, HE TOLD YOU IT WAS
17 RONNIE'S WAY, HE WAS IN CONTROL. HE TRIED TO MAKE SURE AT
18 THE END OF DAY THAT EVERYTHING THAT WAS FILED WAS OKAY BUT
19 MONTH TO MONTH, YOU HEARD THE MONTHLY STATEMENTS WERE NOT
20 IN BALANCE, MONTH TO MONTH, THEY HAD TO MAKE A COMPROMISE
21 TO DO IT RONNIE'S WAY MONTH TO MONTH. WHEN WE DO THE
22 BOOKS MY WAY, COOKING THE BOOKS WE MADE MONEY. WHEN WE DO
23 IT YOUR WAY, THE RIGHT WAY, WE DON'T MAKE MONEY. SHANE
24 SMITH WAS IMPORTANT. AND, LADIES AND GENTLEMEN, MR.
25 GRIFFIN SAYS I AM GOING TO BE UP HERE USING THE TERM CUT

1 AND RUN AND I AM NOT. LADIES AND GENTLEMEN, THERE WAS TWO
2 MEETINGS THAT DAY AND MAYBE FOUR OR FIVE YEARS LATER THEIR
3 RECOLLECTIONS ARE MISTAKEN. BUT THE REAL SIGNIFICANCE OF
4 THAT IS THE DEFENDANT'S WORDS, CUT AND RUN, WHAT HE TOLD
5 SHANE SMITH, CUT AND RUN, CHAPTER 13, BABY. I HAVE GOT \$5
6 MILLION DOLLARS SITTING OVER AT BB&T SITTING IN A CD AND
7 NOT EVERYBODY IS GOING TO COME IN ON THE SAME DAY AND GET
8 THEIR MONEY. THAT IS A DIRECT RELATIONSHIP SAYING THEY
9 WILL BE OKAY. TWO DIFFERENT STATEMENTS, AGENT CATHEY SAID
10 THAT WAS A TERM THAT HE USED. NOW, LET'S LOOK AT HIS
11 ACTIONS, WHAT DOES HE DO, EXACTLY THAT. HE CUTS AND RUNS,
12 BABY BUT HE DOESN'T FILE CHAPTER 13, BABY, HE GETS THE
13 COMPANY, HE GETS \$8.4 MILLION DOLLARS AT THE END OF THE
14 DAY. THAT IS WHAT IS IMPORTANT ABOUT THE CASE, HIS
15 ACTIONS AND HIS WORDS, PRIVATELY VERSUS PUBLICLY. AGAIN,
16 SHANE SMITH WENT TO HIM AND AFTER THE MEETING AND SAID, DO
17 YOU NOT UNDERSTAND, DO YOU NOT UNDERSTAND WHAT THEY JUST
18 TOLD US, THEY ARE PUTTING GOING CONCERN, THEY ARE GOING TO
19 IMPAIR THAT LOAN, THIS IS IMPORTANT. ADVICE, ADVICE GIVEN
20 BY ONE OF HIS CPA'S. WHAT DOES RONNIE SAY, I WILL HANDLE
21 THEM. ANOTHER THING THAT IS VERY SIGNIFICANT IN THIS
22 CASE, IS THAT \$200 THOUSAND DOLLAR INVESTMENT. I TOLD YOU
23 ABOUT DIRECT AND INDIRECT SECURITIES FRAUD, WELL, LADIES
24 AND GENTLEMEN, RONNIE SHEPPARD PUTS \$200 THOUSAND DOLLARS
25 WHICH APPEARS IN THE PROSPECTUS AND YOU CAN GO BACK AND

1 LOOK AT THAT. I THINK IT IS STATE'S EXHIBIT NUMBER 50.
2 THE APRIL 1ST, 2001 PROSPECTUS WHERE IT IS LISTED THAT
3 RONNIE J. SHEPPARD IS AN INVESTOR AT CAROLINA INVESTORS TO
4 THE TUNE OF \$200 THOUSAND DOLLARS WHICH WOULD APPEAR AND
5 IF AN INVESTOR READ THE PROSPECTUS THAT SHOWS THAT HE HAS
6 CONFIDENCE IN THE COMPANY WHEN HE GOES OUT AND DOES THAT.
7 BUT WHAT THEY DON'T KNOW THAT IT WASN'T RONNIE'S MONEY, IT
8 WAS REALLY CAROLINA INVESTORS MONEY. BECAUSE WHAT DOES HE
9 DO, HE TURNS AROUND AND GETS NOT ONE, BUT TWO CHECKS FOR
10 \$200 THOUSAND DOLLARS EACH FOR THAT INVESTMENT. HE HAD NO
11 INTENTION OF INVESTING HIS MONEY IN CAROLINA INVESTORS.
12 BUT DID HE WANT THE FOLKS UP IN PICKENS AND EVERYBODY TO
13 THINK THAT HE HAD CONFIDENCE IN THE COMPANY, HE MOST
14 CERTAINLY DID. PRIVATE, THOSE ARE HIS PUBLIC ACTIONS, I
15 HAVE FAITH IN THE COMPANY. NOW, LET'S LOOK AND TURN
16 AROUND AND SEE WHAT HIS PRIVATE ACTIONS WERE. AFTER HE
17 HEARS THAT HE GOES AND HE SUBMITS INVOICES FROM 2000, WE
18 ARE IN 2002. HE IS TELLING THE PUBLIC, I AM RONNIE
19 SHEPPARD, I CAN DO IT ALL, I CAN TURN THIS COMPANY AROUND.
20 BUT WHAT IS HE DOING, HE IS SUBMITTING CHECKS FOR
21 WALLPAPER THAT HE SPENT \$17 THOUSAND DOLLARS OF WALLPAPER
22 FOR HIS OFFICES RIGHT AFTER HE HEARS BAD NEWS. MR.
23 GRIFFIN SAID HE NEVER RECEIVED ANY UNAUTHORIZED FUNDS,
24 LOOK AT THAT CHECK THAT HE RECEIVED FOR MILEAGE
25 REIMBURSEMENT, LADIES AND GENTLEMEN, \$7 THOUSAND DOLLARS

1 FOR MILEAGE REIMBURSEMENT BETWEEN JANUARY OF 2000 AND MAY
2 OF 2000. IF YOU WILL LOOK AT THOSE MERGER AGREEMENTS,
3 THOSE MERGER AGREEMENTS SAY THAT EACH PARTY, HOMESENSE,
4 RONNIE SHEPPARD AND HOMEGOLD, HAVE TO PAY THEIR OWN
5 EXPENSES LEADING UP TO THE MERGER. BUT RONNIE SHEPPARD
6 PRIVATELY HAS SUCH A LACK OF CONFIDENCE HE IS GOING TO GET
7 WHATEVER HE CAN AND HE IS GOING TO LIE AND GO TO KAREN
8 MILLER AND THE TESTIMONY FROM KEVIN MARTIN WAS GO AROUND
9 THE CFO'S BACK, GO AROUND HIS BACK, HAD HE, WOULD HE OF
10 KNOWN HE WASN'T ENTITLED TO THAT MONEY AND GET MONEY UNDER
11 FALSE PRETENSES SAYING THAT SOME HOW IN 2002 HE IS
12 ENTITLED TO MILEAGE REIMBURSEMENT WHEN HE WASN'T EVEN AT
13 THAT COMPANY. LADIES AND GENTLEMEN, THERE IS YOUR BREACH
14 OF TRUST, THAT ONE FACT ALONE ESTABLISHES THE BREACH OF
15 TRUST, HE WAS NOT ENTITLED TO THAT MILEAGE. THAT SHOWS
16 HIS PRIVATE ACTIONS ARE EXACTLY LIKE HIS PRIVATE COMMENTS
17 OF WE ARE NEVER GOING TO CHANGE THIS AROUND, WE CAN'T PAY
18 THEM BACK. BUT GUESS WHAT, I AM GOING TO GET MINE, I
19 DON'T CARE IF IT IS \$7 THOUSAND OR AT THE END, \$8.4
20 THOUSAND. I MISSPOKE ON THAT, THAT \$7 THOUSAND DOLLARS
21 THAT HE GOT FOR MILEAGE REIMBURSEMENT BETWEEN JANUARY OF
22 2000 AND MAY 2000 WAS OBTAINING PROPERTY UNDER FALSE
23 PRETENSES, I APOLOGIZE FOR MISSPEAKING ABOUT THE CHARGE.
24 IT IS OBTAINING PROPERTY UNDER FALSE PRETENSES, THAT IS
25 CLEARLY THE FALSE PRETENSES, GOES AROUND HIS CFO, GETS

1 MILEAGE THAT HE WAS NEVER ENTITLED TO. AND, LADIES AND
2 GENTLEMEN, DO NOT IGNORE THE TIMING OF THAT.

3 GOING ON TO 2002 AND WE WILL GET TO MARTIN'S
4 RESIGNATION LETTER. BUT IT IS VERY IMPORTANT TO
5 UNDERSTAND, WHAT DOES SHANE SMITH SAY, I STAYED ON BECAUSE
6 HE WASN'T GOING TO BE KEVIN MARTIN, LEAVE THE COMPANY AND
7 BE BLAMED FOR EVERYTHING AND HOW TRUE WAS THAT. WHEN
8 KEVIN MARTIN GOT ON THE STAND THEY TRIED TO BLAME HIM FOR
9 EVERYTHING. SHANE SMITH SAW WHAT THE DEFENDANT WAS LIKE,
10 HE WASN'T GOING TO DO THAT. AND EVEN MORE IMPORTANT,
11 ABOUT WHAT SHANE SMITH TESTIFIED, AFTER ALL THE CFO'S WERE
12 GONE AND THIS IS WHEN THE DEFENDANT PUTS HIS
13 COCONSPIRATOR, KAREN MILLER IN THERE, SHE CAME IN HERE,
14 THEY HAVE A MEETING THAT DAY, THEY ARE ALL BROUGHT INTO
15 THE ACCOUNTING ROOM AND WHAT ARE THEY TOLD, YOU ARE DOING
16 IT MY WAY. BECAUSE WHEN WE DO IT MY WAY, RONNIE'S WAY, WE
17 MAKE MONEY. AND THEN FROM THEN ON HE PUTS KAREN MILLER
18 WHO TOLD YOU THAT SHE DID NOT DO ANYTHING UNLESS RONNIE
19 TOLD HER TO DIRECTLY DO IT. AND SHE TOLD YOU THE WOMAN
20 SHE WAS AND I AM NOT STANDING UP HERE MAKING ANY EXCUSES
21 FOR KAREN MILLER'S BEHAVIOR. SHE TOLD YOU WHAT SHE DID
22 BUT EVERYTHING SHE DID WAS AT RONNIE SHEPPARD'S DIRECTION.
23 SHE SAID IF SOMETHING GOT IN MY WAY I EITHER WENT AROUND
24 IT OR I RAN OVER IT WHICH MEANS FIRE THEM. AND LET'S TALK
25 ABOUT WHAT RONNIE'S WAYS WERE. AGAIN, TALKING ABOUT THIS

1 PREPAID MARKETING EXPENSES. HE HAD TO MAKE THE BOOKS LOOK
2 GOOD, TO MAKE IT LOOK GOOD NEAR THE END. AND WHAT DOES HE
3 DO, HE LIES TO KEVIN MARTIN ABOUT INCREASING THEM. AND
4 WHAT DO THEY DO AFTER THEY GET RID OF KEVIN MARTIN, THE
5 CFO, THEY START TRANSFERRING FIXED ASSETS TO THE BOOKS OF
6 CAROLINA INVESTORS. YOU HEARD KEVIN MAST, HE SAID WE
7 TRANSFERRED ITEMS TO THE BOOKS OF CAROLINA INVESTORS BUT
8 THEY ALWAYS MADE THE MONEY OFF OF IT, NOT SO WHEN RONNIE
9 IS IN CHARGE. HOMEGOLD MADE THE MONEY OFF OF IT. THE
10 RESTRICTED CASH, I AM NOT GOING TO GO INTO ANY GREAT
11 DETAIL BECAUSE I REALLY DON'T UNDERSTAND THAT. ALL I
12 UNDERSTAND IS THAT AT THE END OF THE DAY THEY COULD NOT
13 USE THAT BUT IT WAS PLACED UPON THE BOOKS. SO, IF YOU
14 LOOK AT HOW MUCH THIS DEBT INCREASES, IT INCREASES FAR
15 MORE BECAUSE THEY ARE TRANSFERRING ASSETS BACK ON TO THE
16 BOOKS. AND THEY EXTEND THE TIME THE SIX MONTHS, THE
17 TWENTY-FOUR MONTHS, THEY MADE THEM CHANGE IT BACK. WHAT
18 DOES THE DEFENDANT SAY, STOP TELLING ME THINGS I CAN'T DO,
19 TELL ME THINGS THAT I CAN DO. HE WANTS IT HIS WAY OR THE
20 HIGHWAY.

21 I WILL BRIEFLY TALK ABOUT SUSANNE CAUGHMAN BECAUSE
22 THAT IS EXACTLY WHAT HAPPENED TO HER. SHE WOULDN'T DO IT
23 HIS WAY. SHE BECAME A ROADBLOCK FOR KAREN MILLER, SHE
24 KEPT ON CONFRONTING, THIS ISN'T THE RIGHT WAY, CONFRONTING
25 KAREN MILLER, THIS ISN'T THE WAY WE NEED TO DO THINGS.

1 WHAT HAPPENS TO HER, SHE BECOMES A ROADBLOCK, SHE BECOMES
2 A ROADBLOCK FOR KAREN MILLER. AND WHAT HAPPENS, RONNIE
3 SHEPPARD SAYS, WHO IS PAYING HER SALARY, I AM. YOU TELL
4 HER TO DO IT MY WAY OR SHE IS GONE. AND GUESS WHAT, SHE
5 IS GONE. AND THE DEFENDANT IS GOING TO TRY TO TELL YOU,
6 THAT WAS AFTER I RESIGNED FROM THE BOARD, I HAD NOTHING TO
7 DO WITH IT. LADIES AND GENTLEMEN, HE HAD EVERYTHING TO DO
8 WITH THAT.

9 ANOTHER BIG PART OF THIS CASE ARE THE CFO'S. THE
10 DEFENDANT WANTS YOU TO BELIEVE THAT HE IS RELYING UPON THE
11 ADVICE OF OTHERS, HE NEVER ONCE RELIED UPON THE ADVICE OF
12 OTHERS. IN FACT, HE DOES JUST THE OPPOSITE. KEVIN MAST,
13 YOU HEARD HIS TESTIMONY. TALKING ABOUT JUDGING THE
14 CREDIBILITY OF THE WITNESSES, HE CAME IN HERE AND HE WAS
15 ABLE TO EXPLAIN THE WAY EVERYTHING WAS GOING. AND WE
16 NEVER SAID HOMEGOLD WAS DOING GREAT IN 1998 OR 1999, WE
17 HAVE NEVER COME IN HERE AND SAID THAT, THEY WERE LOOKING
18 FOR WAYS TO TURN IT AROUND. BUT KEVIN MAST DID THE THINGS
19 THE RIGHT WAY AND RONNIE COULDN'T HAVE THAT. HE ALSO
20 FOUND OUT WHAT RONNIE WAS LIKE, THE PROBLEMS THAT HE HAD
21 WITH THE HOMESENSE/HOMEGOLD MERGER. HE CONFRONTED RONNIE
22 WITH THAT. WHAT ELSE DID HE DO, HE FOUND \$350 THOUSAND
23 DOLLARS IN ASSETS THAT SHOULD OF BEEN EXPENSES AND THAT
24 REDUCED THE NET WORTH. WHAT ELSE DID HE FIND, HE FOUND
25 \$10 MILLION DOLLARS OF MISSING LOANS THAT THE DEFENDANT

1 WAS SUPPOSED TO BRING IN TO THE HOMEGOLD/HOMESENSE MERGER
2 AND HE WANTS YOU TO BELIEVE HE WAS MISLEAD. AND WHAT WAS
3 KEVIN MAST WILLING TO DO, TWO MONTHS AFTER THE MERGER, A
4 MAN THAT HAD BEEN WITH THE COMPANY, A MAN THAT UNDERSTOOD
5 FINANCES, UNDERSTOOD THAT COMPANY, HE TOOK ONE LESS YEARS
6 SEVERANCE PACKAGE TO GET AWAY FROM THE DEFENDANT BECAUSE
7 HE KNEW WHAT THE DEFENDANT WAS GOING TO DO AND THAT SHOWS
8 THE DEFENDANT TAKING CONTROL. AND MOST IMPORTANTLY WHAT
9 DID KEVIN MAST DO WHEN HE LEFT, ALTHOUGH NOT REQUIRED, HE
10 FILED AN 8K TO LET THE WORLD KNOW, I AM OUT OF HERE.
11 LARRY GOSNELL, MR. GOSNELL DID NOT WANT TO BE HERE ONE
12 BIT. I DON'T BLAME THE MAN, SIX YEARS HE WORKED AT A
13 COMPANY CALLED HOMEGOLD FOR EIGHT WEEKS AND HE IS DRAGGED
14 DOWN TO LEXINGTON. BUT IN HIS SHORT EIGHT WEEKS, WHY HE
15 IS SO SIGNIFICANT, BECAUSE HE SAW IN JUST EIGHT WEEKS WHAT
16 THE DEFENDANT WAS DOING. HE SAW THE PROBLEM WITH THE
17 DEBT, HE TOLD YOU THAT HE WOULD ATTEND CAROLINA INVESTORS
18 JUST ONE BOARD MEETING WHERE THE FINANCES WERE HORRIBLE
19 BUT JACK STERLING AND THE DEFENDANT ARE UP THERE, CAROLINA
20 INVESTORS, EVERYTHING IS GOOD, HE SAID A ROSY PICTURE. HE
21 GETS IT IN JUST EIGHT WEEKS, HE RESIGNS. THEY WANT YOU TO
22 BELIEVE THAT HE DID GET ANOTHER JOB THAT DAY BUT HE TOOK A
23 25 TO 30 PERCENT CUT IN PAY CUT TO GET AWAY FROM RONNIE
24 SHEPPARD AND THE WAY HE WAS RUNNING THAT COMPANY. AND SO
25 YOU CAN'T DO MY AGGRESSIVE ACCOUNTING, THAT IS NOT A MAN

1 THAT DOES NOT KNOW WHAT HE IS DOING, LADIES AND GENTLEMEN,
2 THAT IS A MAN THAT KNOWS EXACTLY WHAT HE IS DOING AND HE
3 IS GOING TO PUT PEOPLE IN THAT ARE GOING TO DO IT HIS WAY.
4 AGAIN, GOING THROUGH THE CFO'S THAT KEEP ON COMING AND
5 GOING. RHONDA JOHNSON. SHE CONTINUES TO LOOK FOR THOSE
6 MISSING, SHE GETS THERE IN LATE OF 2000 AND BECOMES CFO IN
7 2001, STILL TRYING TO LOOK FOR THE MISSING LOANS FROM
8 HOMESENSE. THEY FINALLY HAVE TO GIVE UP AND TURN IT INTO
9 AN ACCOUNTING THING. SHE TOLD YOU THAT SHE FELT, BECAUSE
10 SHE HAD THE INTERNAL INFORMATION THAT ELLIOTT DAVIS DID
11 NOT HAVE THAT, AND HER OPINION IS THAT THE DEFERRED TAX AT
12 YEAREND WAS MISLEADING BECAUSE SHE SAW THE DEFENDANT AND
13 SHE KNEW HIS PROJECTIONS WERE NOT WHAT HE WAS TELLING
14 ELLIOTT DAVIS. AND WHAT DID ELLIOTT DAVIS TELL HER, THEY
15 ARE NOT OUR STATEMENTS, AT THE END OF THE DAY YOU NEED TO
16 MAKE THE DECISION ON WHETHER YOU ARE GOING TO SIGN THOSE
17 STATEMENTS. AND WHO SIGNED THEM, THE DEFENDANT SIGNED
18 THEM. MOVING ON TO KEVIN MARTIN AND HE IS VERY
19 SIGNIFICANT IN THIS CASE. THE SAME CONSISTENCIES,
20 PROJECTIONS ALWAYS HIGH, FAILS TO MEET PROJECTIONS, HE
21 TOLD YOU WHAT THE DEFENDANT WAS LIKE WHEN HE TRIED TO TALK
22 TO HIM ABOUT THOSE PROJECTIONS. THE DEFENDANT WAS
23 SPENDING MONEY AND INCURRING HUGE LOSSES, LADIES AND
24 GENTLEMEN, PUBLIC STATEMENTS, PRIVATE ACTIONS, WE ARE
25 DOING EVERYTHING TO CUT DOWN ON EXPENSES MEAN WHILE ONE

1 TRIP, JUST ONE TRIP ALONE COST \$30 TO \$40 THOUSAND DOLLARS
2 FOR THE DEFENDANT AND THREE OTHER PEOPLE TO FLY TO
3 CALIFORNIA, THAT WAS JUST THE AIRFARE. MR. MARTIN TOLD
4 YOU THAT DIDN'T INCLUDE THE EXPENSE, MEALS THEY HAD, THAT
5 DIDN'T INCLUDE ALL THE OTHER THINGS. HE WANTS YOU TO
6 BELIEVE THAT WE DID BUSINESS ON THERE, WE WERE ABLE TO DO
7 THAT, \$40 THOUSAND DOLLARS FOR THREE PEOPLE FOR AIRFARE
8 ALONE. PRIVATE ACTIONS, PUBLIC STATEMENTS, THE WHOLE TIME
9 HE IS TELLING THE WORLD, WE ARE CUTTING DOWN ON EXPENSES,
10 WE ARE DOING EVERYTHING TO MAKE THIS COMPANY PROFITABLE,
11 THOSE ARE LIES, LADIES AND GENTLEMEN. GOING ON TO WHAT
12 KEVIN MARTIN SAID AND THIS IS CONSISTENT WITH THE
13 DEFENDANT AND WHAT HE SAID. THEY HAD CONSISTENTLY BEEN
14 FIGHTING, FIGHTING ABOUT HOW THEY WERE GOING TO PAY
15 CAROLINA INVESTORS BACK. HE SAID HE HAD NUMEROUS
16 CONVERSATIONS WITH THE DEFENDANT, WHAT ARE YOU GOING TO DO
17 WHEN THIS ALL HAPPENS AND IT COMES OUT THAT YOU ARE HAVING
18 CHARTERED AIR FLIGHTS, THAT YOU HAVE A PERSONAL TRAINER,
19 THAT YOU HAVE THIS AND YOU HAVE ALL OF THESE PERKS, WHAT
20 ARE YOU GOING TO TELL THEM. HE HAD VARIOUS THINGS, AND AT
21 WHAT POINT WHAT DOES THE DEFENDANT SAY, HE SAID, SCREW THE
22 INVESTORS, THEY ARE GREEDY, THEY KNEW WHAT THEY WERE
23 GETTING INTO. THEY WANT TO INSINUATE BECAUSE THESE
24 INVESTORS WANTED TO GET A HIGHER RATE, ONE OF THE
25 INVESTORS ACTUALLY SAID HE WENT AND GOT A LOWER RATE, BUT

1 BECAUSE THEY WANTED TO GET A COUPLE OF PERCENTAGE RATES,
2 THEY ARE GREEDY AND THEY GOT WHAT THEY DESERVED. LADIES
3 AND GENTLEMEN, THERE IS GREED IN THIS TRIAL BUT I TELL
4 YOU, IT IS NOT POINTED AT THOSE CAROLINA INVESTORS THAT
5 LOST ALL OF THEIR MONEY. BUT THAT RANGES THROUGH EVERY
6 PRIVATE STATEMENT THAT THE DEFENDANT MADE WHILE CEO OF THE
7 COMPANY. HE KNEW THEY ARE NOT GOING TO PAY BACK THOSE
8 INVESTORS, HE TELLS HIS ACCOUNTANTS IN OCTOBER OF 2001, HE
9 REITERATES THROUGHOUT EVERY TIME SOMEONE BRINGS IT UP,
10 SCREW THE INVESTORS. IN OTHER WORDS, SCREW MR. GREGORY.
11 IN OTHER WORDS, SCREW LEWIS WATSON, YOU HEARD FROM HIM.
12 HE CAME IN AND THIS IS WHAT IS SO IMPORTANT. MR. GRIFFIN
13 WANTS YOU TO BELIEVE THAT THE INFORMATION THEY ARE GIVING
14 LARRY AND EARLE, THAT THEY ARE TELLING THEM NOT TO DIVULGE
15 TO THE PUBLIC. THAT IS NOT TRUE, THAT AMMUNITION EMAIL
16 PROVES IT ALL. THE CAROLINA INVESTORS BOARD MINUTES FROM
17 AUGUST OF 2002 PROVE IT. WHENEVER THERE IS GOOD NEWS THEY
18 FLY IN AND OUT OF CAROLINA INVESTORS AND TELL THEM THE
19 GOOD NEWS. WE ARE SELLING THE MORTGAGE DIVISION TO A BANK
20 IN CALIFORNIA, NO PROBLEM, YOUR MONEY IS SAFE, YOU ARE
21 GOING TO GET IT PAID BACK. THAT COMES DIRECTLY FROM THE
22 DEFENDANT. BUT WHAT DOES THE DEFENDANT THINK ABOUT THESE
23 PEOPLE, THEY ARE GREEDY AND THEY GOT WHAT THEY DESERVED.
24 THE SAME WITH MARTHA MURPHREE. SHE TOLD YOU SHE IS LIVING
25 IN A HOUSE TODAY WITH AN UNFINISHED KITCHEN. YES, IT WAS

1 LARRY OWEN THAT LIED TO HER AND LARRY OWEN CAME IN AND
2 TOLD YOU. AND WHAT DID LARRY OWEN TELL YOU, HE TOLD ME
3 THIS AND I BELIEVED WHAT HE TOLD ME. AT SOME POINT DID HE
4 KNOW IT WAS LIES, MOST DEFINITELY, AND YES HE IS PAYING
5 THE PRICE. AND I AM NOT GOING TO STAND HERE TODAY AND
6 MAKE ONE EXCUSE FOR LARRY OWEN BUT HE CAME IN AND TOLD YOU
7 WHERE HE GOT THAT INFORMATION. YOU SEE THOSE MINUTES,
8 THEY COME FROM THE DEFENDANT'S MOUTH AND THEY GO RIGHT TO
9 THE INVESTORS. AND THE DEFENDANT WANTED IT THAT WAY.
10 TOMMIE SUE BROWN, AGAIN, TOLD ABOUT THE BANK DEAL IN
11 CALIFORNIA, THAT IS WHAT THAT AUGUST MEETING WAS. AND
12 THEN THE AMMUNITION MEETING, TO TALK ABOUT THAT. THE
13 DEFENDANT KNEW EXACTLY WHAT LARRY AND EARLE WERE GOING TO
14 DO WITH THIS INFORMATION. I GO UP, I GIVE THEM THE
15 POSITIVES AND THEY ARE GOING TO TELL THE INVESTORS AND IT
16 IS GOING TO KEEP IT GOING. I BRIEFLY WANT TO TALK ABOUT
17 PAUL BANNINGER, PAUL BANNINGER WAS IMPORTANT. YOU HEARD A
18 LOT FROM THE DEFENSE EXPERT, THERE WAS THIS BOARD OF
19 DIRECTORS, PAUL BANNINGER TELLS YOU THAT BOARD OF
20 DIRECTORS WAS NO BOARD OF DIRECTORS, WHAT WOULD HAPPEN.
21 BUT MORE IMPORTANT, WHAT DOES PAUL BANNINGER TELL YOU, HE
22 TELLS YOU EVERY SINGLE MORNING THE DEFENDANT COMES IN AND
23 HE CHECKS WITH PAUL ABOUT PRODUCTION. BUT WHAT DOES HE
24 DO, HE ASKED FORREST FERRELL, WHAT IS GOING ON AT CAROLINA
25 INVESTORS. HE ASKED FORREST FERRELL ABOUT SPECIFIC

1 INVESTORS. HE KNOWS EXACTLY WHAT HE IS DOING, HE HAS GOT
2 TO KEEP THIS UP SO HE CAN GET OUT. AND, LADIES AND
3 GENTLEMEN, AGAIN, ACTIONS AND WORDS, THE WORDS THAT HE
4 TOLD KEVIN MARTIN WHEN KEVIN MARTIN GAVE HIS RESIGNATION
5 LETTER AND HE TOLD YOU HE HAD NO IDEA. AND NO TESTIMONY
6 HAS EVER BEEN ELICITED THAT MR. MARTIN WHEN HE RESIGNED
7 KNEW HE WAS GOING TO BE FIRED AND YOU HEARD FROM KAREN
8 MILLER IT TURNED OUT THE REASON THEY CAME UP WITH MILLIONS
9 MISSING, DIDN'T TURN OUT TO BE TRUE. BUT WHAT DID THE
10 DEFENDANT TELL KEVIN MARTIN WHEN HE RESIGNED, I AM WORKING
11 ON MY PLAN TO GET OUT OF HERE TOO. KEVIN MARTIN'S PLAN
12 WAS TO TELL THE TRUTH AND PUT IT IN A LETTER AND GIVE IT
13 TO RONNIE. AND MR. GRIFFIN, YOU DIDN'T GIVE IT TO
14 CAROLINA INVESTORS, AND HE SAID, NO, I DIDN'T. THE
15 DEFENDANT WAS GOING UP THERE THAT DAY, I THOUGHT HE WOULD
16 TELL THEM. NOW, MR. GRIFFIN WANTS TO BLAME MR. MARTIN FOR
17 CAROLINA INVESTORS NOT KNOWING, THAT LETTER WAS SENT TO
18 MR. SHEPPARD, HE IS CEO. MR. MARTIN IS NOT ON THE BOARD
19 OF CAROLINA INVESTORS, WHY WASN'T THAT LETTER SHARED. IF
20 HE THOUGHT IT WAS JUST LIES OF A DISGRUNTLED EMPLOYEE WHY
21 NOT SHARE THAT LETTER, WHY NOT SAY THIS IS A LETTER BUT IT
22 IS ALL FULL OF LIES. AND IT IS A DISGRUNTLED EMPLOYEE
23 BECAUSE HE FOUND OUT WE WERE GOING TO FIRE HIM, BECAUSE
24 THAT IS NOT TRUE. HE RECEIVED A BONUS RIGHT BEFORE THAT,
25 HOPING THAT WHAT MR. SHEPPARD DID WITH LARRY AND EARLE, BY

1 THROW MONEY AT HIM AND MAYBE HE WILL START DOING IT MY
2 WAY. PAUL BANNINGER TOLD YOU THE DEFENDANT'S MANAGEMENT
3 STYLE, NO DOUBT WHO WAS IN CONTROL. AND MOST IMPORTANTLY
4 WHAT PAUL BANNINGER TALKED ABOUT IS AFTER THE EMMCO
5 TRANSACTION TOOK PLACE AND A COMPANY CALLED CONNECTED
6 INFORMATION SERVICES THAT WAS UNDER THE UMBRELLA OF EMMCO
7 STARTED TO SHOW A PROFIT, WHAT DID RONNIE DO. I THOUGHT
8 IT WAS A GOOD INVESTMENT VALUE FOR ME SO I BOUGHT IT AND
9 PUT IT UNDER R-DOC. HE BOUGHT IT, IT WAS A GOOD
10 INVESTMENT VALUE AND IT WAS MAKING MONEY AND HE WOULDN'T
11 HAVE TO PAY BACK HOMEGOLD. THAT'S WHY HE BOUGHT THAT
12 COMPANY OUT FROM UNDER THE UMBRELLA OF EMMCO BECAUSE HE
13 HAD NO INTENTION OF EVER PAYING BACK A PENNY. AND I WILL
14 BRIEFLY GO THROUGH ANNE, SHE CAME IN HERE AND SHE ADMITTED
15 THAT SHE PLEAD GUILTY TO LIEING TO EIGHT INDIVIDUAL
16 INVESTORS. SHE WAS NOT PART OF THE PLAN OR THE SCHEME,
17 SHE JUST HAD INFORMATION AT THE TIME AND SHE TOLD THE
18 INVESTORS AND SHE ADMITTED HER GUILT AND SHE WAS PUNISHED.
19 I DON'T MAKE ANY EXCUSES FOR WHAT ANNE OWEN DID OR LARRY
20 OWEN DID. AND THEY CAME IN HERE AND THEY TOLD YOU WHERE
21 THEY GOT THAT INFORMATION AND THAT IS THE DEFENDANT.
22 LARRY OWEN, AS I SAID, AND I WILL REPEAT, I AM NOT MAKING
23 EXCUSES FOR WHAT LARRY OWEN DID. BUT YOU HEARD WHAT HE
24 SAID, AT THE TIME HE WAS TELLING ME THIS, AT THE TIME THAT
25 FORREST FERRELL IS TELLING ME ALL OF THIS GOOD

1 INFORMATION. AND, LADIES AND GENTLEMEN, READ THOSE BOARD
2 MINUTES, THERE IS NOTHING NEGATIVE EVER SUGGESTED, THAT IS
3 SECURITIES FRAUD, NOT GIVING THE TOTAL TRUTH IS A LIE. HE
4 BELIEVED THEM, HE THOUGHT THIS WAS REALLY HAPPENING. AND
5 AT SOME POINT, WHEN HE WAS PLACED UPON THE BOARD OF
6 HOMEGOLD, WHEN HE ATTENDED HIS FIRST MEETING, HE TOLD YOU
7 WHAT HE WANTED TO DO. HE GOT IN THE CAR AND REALIZED
8 EVERYTHING THAT THE DEFENDANT HAD BEEN FEEDING HIM FOR THE
9 TWO AND A HALF YEARS WERE LIES. HE THOUGHT ABOUT KILLING
10 HIMSELF, HE TOLD YOU ABOUT A LETTER OF AGONY THAT HE WROTE
11 BASED UPON WHAT HE LEARNED. AND ONE OTHER THING ABOUT
12 LARRY OWEN IS THEY WANT TO SOUND LIKE HE CONCOCTED THIS
13 PLAN, HE IS BEING TOLD BY THE WYCHE LAW FIRM TO STOP DOING
14 WHAT YOU ARE DOING, WHAT DOES THE DEFENDANT DO, HE GIVES
15 THEM BONUSSES. HE GIVES THEM BONUSSES FOR KEEPING THE
16 INVESTORS CALM BECAUSE THAT WAS LARRY'S JOB AND THAT WAS
17 EARLE'S JOB. THE SAME TIME HE GETS THIS LETTER ABOUT
18 PUTTING THIS INFORMATION IN THE PROSPECTUS HE IS GIVEN A
19 \$25 THOUSAND DOLLAR BONUS, HE IS DOING HIS JOB, HE IS
20 KEEPING THE INVESTORS CALM SO THE DEFENDANT CAN CONTINUE
21 TO GET HIS MONEY. LARRY OWEN TOLD YOU HE WAS NOT PROMISED
22 ANYTHING TO COME IN HERE AND TESTIFY, HE HAD ALREADY BEEN
23 SENTENCED. HE HAD HOPED THAT HIS COOPERATION WOULD HELP
24 HIM BUT HE HAS NOT BEEN PROMISED ANYTHING BY THE STATE AND
25 HE TOLD YOU WHAT HE DID BUT HE ALSO TOLD YOU WHERE HE GOT

1 THAT INFORMATION. AND MOVING ON TO KAREN MILLER AND I AM
2 GOING TO WRAP THIS UP SHORTLY BUT KAREN MILLER IS VERY
3 IMPORTANT. SHE IS IMPORTANT AT THE VERY BEGINNING, SHE IS
4 THE LIAISON BETWEEN MR. STERLING AND MR. SHEPPARD, SHE IS
5 THERE AND SHE IS INVOLVED IN ALL PARTS OF IT BECAUSE SHE
6 WORKS IN A COMPUTER AND SHE IS THERE AND SHE IS INVOLVED
7 IN ALL PARTS OF IT BECAUSE SHE WORKS IN THE COMPUTER AND
8 EVERY SINGLE DEPARTMENT HAS COMPUTERS. SLOWLY BUT SURELY
9 THE DEFENDANT REALIZES HE CAN'T CONTROL THE ACCOUNTANTS SO
10 WHAT DOES HE DO, HE CAN CONTROL KAREN MILLER. AND SHE GOT
11 UP ON THE STAND AND SAID SHE WAS INVOLVED IN A CONSPIRACY
12 AND CONSPIRACY TO MAKE THE BOOKS AT HOMEGOLD LOOK BETTER
13 AND WE ALL KNOW THE REASON WHY THEY HAD TO LOOK BETTER.
14 THE THIRD QUARTER OF 2002 SHE RECEIVED SPECIFIC
15 INSTRUCTIONS FROM THE DEFENDANT, DO WHATEVER YOU HAVE TO
16 DO TO MAKE THE THIRD QUARTER LOOK GOOD. HE HAD TO HAVE A
17 GOOD THIRD QUARTER OF 2002, MAKE THEM LOOK GOOD. THAT
18 PELHAM ROAD PROPERTY IS SIGNIFICANT, LADIES AND GENTLEMEN.
19 HE CAN SIT THERE AND TELL YOU IT WASN'T UP FOR SALE, YOU
20 HAVE TO REPORT THE FAIR MARKET VALUE. THEY ARE GETTING
21 OFFERS FOR \$2 AND \$4 MILLION DOLLARS, WHAT DOES KAREN
22 MILLER DO, EVEN AFTER SHE TOLD HIM NOT TO SELL IT. HE
23 SELLS IT BECAUSE HE IS GETTING OUT OF THE COMPANY, WHY
24 NOT, WE NEED SOME CASH IN THIS COMPANY BECAUSE GUESS WHAT,
25 I AM GETTING READY TO GET OUT WITH \$8.4 MILLION. HE

1 ENTERS INTO A CONTRACT TO SELL THE PELHAM ROAD PROPERTY.
2 LADIES AND GENTLEMEN, THE WAY THAT SHOULD OF BEEN
3 ACCOUNTED FOR IS INSTEAD OF SHOWING A \$4 MILLION DOLLAR
4 LOSS, THAT IS A DIFFERENCE OF \$6 MILLION, THEY WOULD OF
5 SHOWN A \$10 MILLION LOSS. FOR THAT JUST ONE ACCOUNTING
6 THING THAT WAS DONE IN THE THIRD QUARTER. MR. GRIFFIN
7 WANTS TO TELL YOU NOTHING WAS MATERIAL, LADIES AND
8 GENTLEMEN, IN MY WORLD \$6 MILLION DOLLARS IS MATERIAL.
9 AND IN CAROLINA INVESTORS WORLD \$6 MILLION DOLLARS IS
10 MATERIAL. LADIES AND GENTLEMEN, WHAT IS ALSO SIGNIFICANT
11 IS THAT THE DEFENDANT WANTS YOU TO BELIEVE THAT HE WAS
12 GONE WITH THE COMPANY NOVEMBER 17TH AND HIS EXPERT KEPT ON
13 SAYING THAT. THAT PELHAM ROAD PROPERTY WAS ENTERED INTO,
14 EXCUSE ME, HIS EXPERT WANTS YOU TO BELIEVE HE WAS GONE
15 NOVEMBER THE 14TH. HE ENTERED INTO THAT CONTRACT AS HEAD
16 OF HOMEGOLD TO SELL THAT PELHAM ROAD PROPERTY AFTER HIS
17 RESIGNATION. LADIES AND GENTLEMEN, HE DIDN'T LEAVE THAT
18 COMPANY, HE JUST RESIGNED SO THAT HE COULD LOOK LIKE HE
19 WAS DOING AN ARMS LENGTH TRANSACTION. WHO DOES HE PLACE
20 UPON THE BOARD, FORREST FERRELL, HIS FIGUREHEAD AND HE
21 TESTIFIED THAT WAS NEVER SHOWN TO HIS EXPERT ABOUT HIS
22 TESTIMONY. KAREN MILLER WAS PUT ON THE BOARD, LARRY OWEN
23 PUT ON THE BOARD. HE PUTS HIS COCONSPIRATORS ON THE BOARD
24 SO HE CAN GET OUT. AND SHE TOLD YOU THAT EVEN WHEN HE
25 LEFT THE COMPANY, ON A DAILY BASIS, THOSE TWO SIT THERE

1 AND TALK AND SHE TOLD YOU IN NO WAY DID HOMEGOLD BREACH
2 ITS OBLIGATIONS. SHE ADMITTED TO YOU AT THE TIME OF THE
3 BANKRUPTCY WE DID OWE HIM \$600 THOUSAND DOLLARS UNDERNEATH
4 THE TERMS OF THAT, SHE DIDN'T DENY THAT BUT THERE WAS A
5 LOT OF MONEY THAT WAS STILL OWED TO CAROLINA INVESTORS.
6 MR. GRIFFIN SAID IN HIS OPENING THAT THOSE VALUATIONS WERE
7 GREAT NEWS, THE COMPANY WAS WORTH \$175 MILLION DOLLARS.
8 IF IT WAS WORTH THAT WHY DID THE DEFENDANT GET \$8.4
9 MILLION DOLLARS FOR THAT COMPANY. THAT WAS HIS PLAN.
10 THAT WAS HIS PLAN THAT HE TOLD KEVIN MARTIN ABOUT, THAT
11 WAS HIS PLAN THAT HE TOLD GARRY RANK ABOUT. THAT WAS HIS
12 PLAN. I AM NOT GOING TO GO THROUGH BOBO AND SHARPE, THEY
13 WEREN'T INVITED TO ANY SIGNIFICANT MEETINGS, THEY WEREN'T
14 INVITED TO THE MARCH 14TH MEETING, THEY WEREN'T INVITED TO
15 THE AMMUNITION MEETING, THEY TRIED TO GET INFORMATION,
16 THEY COULD NOT GET INFORMATION. AND WHY, MR. BOBO TOLD
17 YOU WHY, BECAUSE I WOULDN'T OF DONE IT. I WOULD OF KEPT
18 MY MONEY IN THERE BECAUSE THAT WAS THE RIGHT THING TO DO.
19 BUT I WOULDN'T OF TOLD PEOPLE WE WERE A GOOD COMPANY ANY
20 MORE. AND PROFESSOR FREEMAN, HE TOLD YOU ABOUT ALL OF
21 THESE THINGS, HE TOLD YOU AND WHOSE INTEREST WAS THE
22 DEFENDANT DEALING WHEN HE DID THE LEAPHART ROAD
23 TRANSACTION. HE EXPLAINED TO YOU THE LAYERS OF FRAUD, NOT
24 JUST WITH COOKING THE BOOKS BUT WHAT IS TOLD TO THOSE
25 CAROLINA INVESTORS AT THOSE MEETINGS AND WHAT DIRECTLY

1 GEST PASSED TO THEM. AND I KNOW THAT, LADIES AND
2 GENTLEMEN, THAT LUNCH IS HERE AND I WANT TO WRAP THINGS UP
3 BUT I DO JUST WANT TO GO THROUGH AND TELL YOU WHAT IN
4 GENERAL TERMS, THE PURPOSE OF SECURITIES LAW IS TO TELL
5 THE TRUTH. THE WHOLE TRUTH, NOT JUST TO SUGAR COAT THE
6 TRUTH, NOT TO INTENTIONALLY MISLEAD. AND, LADIES AND
7 GENTLEMEN, THERE IS MORE AMPLE INFORMATION THAT THE
8 DEFENDANT DID EXACTLY THAT, HE TOOK CONTROL, HE TOOK OVER
9 THE BOOKS, HE TOOK THE MONEY, HE WASN'T GOING TO PAY IT
10 BACK BUT YET IN ONE YEAR ALONG EVEN WITH THE ACCOUNTING
11 TAKES \$100 MILLION DOLLARS OUT OF CAROLINA INVESTORS. THE
12 DEFENSE DID NOT HAVE TO PUT UP A CASE BUT THEY DID AND WHO
13 DID THEY PUT UP. CHARLIE SIDES, ANOTHER VICTIM OF RONNIE
14 SHEPPARD, HE TOOK HIS COMPANY AWAY FROM HIM. HE HAD PAID
15 \$100 THOUSAND DOLLARS FOR A COMPANY THAT HE SOLD TO EMMCO
16 AND CHARLIE SIDES DIDN'T GET A PENNY. CHARLIE SIDES TOLD
17 YOU ABOUT THE CIT MEETING IN AUGUST OF 2000 WHERE CIT TOLD
18 THE DEFENDANT, YOU ARE NOT GOING TO BE ABLE TO PAY THOSE
19 CAROLINA INVESTORS BACK, WE DON'T WANT TO BE STANDING IN A
20 CREDITORS LINE BEFORE CAROLINA INVESTORS, THAT WAS HIS
21 WITNESS. HE TOLD YOU THAT IN 1999 THE DEFENDANT SAID THAT
22 HE WANTED TO BUILD A COMPANY USING SOMEONE ELSE'S MONEY.
23 HE ALSO CALLED BILL LONG, HE TOLD YOU MR. SHEPPARD WAS NOT
24 DECEIVED IN ANY WAY WHATSOEVER. WE GAVE FULL DISCLOSURE
25 AT THE HOMESENSE/HOMEGOLD MEETING. AND WHAT DID HE TELL

1 YOU, HE LEFT THE COMPANY BECAUSE THE DEFENDANT FELT IT WAS
2 MORE IMPORTANT TO MOVE A WHOLE COMPANY DOWN TO LEXINGTON,
3 SOUTH CAROLINA RATHER THAN HIM LEAVE HIS HOUSE AND MOVE
4 BECAUSE HE IS CUTTING EXPENSE. HE WENT TO THE DEFENDANT
5 AND SAID, WHAT ARE YOUR PLANS FOR TURNING THIS COMPANY
6 AROUND, RONNIE SAID, I DON'T HAVE ANY PLANS, I JUST HAVE
7 OPTIONS. AND HE TOLD YOU THEY WENT JUST A FEW DAYS LATER
8 TO A CAROLINA INVESTORS MEETING WHERE RONNIE SHEPPARD
9 PITCHED HIS PLAN TO CUT EXPENSES BY MOVING THE COMPANY TO
10 LEXINGTON, SOUTH CAROLINA WHERE HE COULD HAVE TOTAL
11 CONTROL. AND, AGAIN, STEVE WILSON, HE TOLD YOU THAT THE
12 DEFENDANT BROUGHT HIM IN TO INSTALL A COMPUTER SOFTWARE SO
13 HE COULD MANIPULATE THE BOOKS AT HOMEGOLD BECAUSE HOMEGOLD
14 HAD THE BOOKS THAT BANKS WERE WORKING THAT THE DEFENDANT
15 COULDN'T MANIPULATE. HE WAS PAID ONE YEAR IN 2002, \$600
16 THOUSAND DOLLARS BY THE DEFENDANT FOR EVERYTHING. AND
17 YES, HE DID SAY THAT IN ALL THE YEARS OF HIM HE COULD OF
18 ONLY THINK OF ELEVEN SECONDS WORTH OF GOOD THINGS TO SAY
19 ABOUT HIM. AND WE HAVE ALREADY TALKED ABOUT THE WYCHE
20 LAWYERS AND WHAT THEY KNEW. IN ORDER TO HAVE THE LINE ON
21 OTHERS YOU HAVE TO GIVE FULL ADEQUATE DISCLOSURE AND YOU
22 HAVE TO RELY ON THAT INFORMATION. THE DEFENDANT DID
23 NEITHER WITH EVERY PROFESSIONAL INCLUDING HIS OWN EXPERT
24 THAT HE CALLED IN HERE. DIDN'T HAVE HIS OWN SWORN
25 STATEMENTS TO KNOW WHAT WAS IN THE DEFENDANT'S STATE OF

1 MIND. AND, LADIES AND GENTLEMEN, I WANT TO GO BACK TO
2 WHAT I TOLD YOU, THIS IS ABOUT THE OLD FASHION CRIME OF
3 STEALING, IT WAS DONE THROUGH LIES, HALF TRUTH, WITH THE
4 DEFENDANT'S FULL KNOWLEDGE OF WHAT HE WAS DOING, WHERE IT
5 WAS GOING. AND, LADIES AND GENTLEMEN, HIS PRIVATE WORDS
6 AND ACTIONS VERSUS HIS PUBLIC WORDS AND ACTIONS SAY IT
7 ALL. I AM TRYING TO TURN THE COMPANY AROUND, THAT IS HIS
8 PUBLIC. I AM GOING TO CUT AND RUN, THOSE INVESTORS ARE
9 GREEDY, SCREW THE INVESTORS, MOVES THE COMPANY TO
10 LEXINGTON TO SAVE MONEY AND ALL THE EXPENSE HE DID THE
11 WHOLE TIME DRAWING OVER ONE MILLION DOLLARS A YEAR BETWEEN
12 SALARY AND BONUS. HE GOT MILLIONS GOING IN, HE GOT
13 MILLIONS WHILE HE WAS THERE AND GOT MILLIONS GOING OUT,
14 LADIES AND GENTLEMEN. AND THAT IS THE STATE'S CASE. AND,
15 LADIES AND GENTLEMEN, YOU CAN GO BACK TO THE JURY ROOM AND
16 YOU CAN REVIEW THE EVIDENCE AND RETURN A VERDICT OF GUILTY
17 AGAINST THE DEFENDANT FOR SECURITIES FRAUD, FOR OBTAINING
18 PROPERTY UNDER FALSE PRETENSES, JUST FOR THAT ONE INVOICE
19 ALONE. AND, LADIES AND GENTLEMEN, CLEARLY YOU CAN GO BACK
20 AND RETURN A VERDICT OF GUILTY FOR HIS CONSPIRACY WITH HIS
21 ACTIONS WITH KAREN MILLER, FORREST FERRELL, LARRY OWEN,
22 JUST TO NAME A FEW. I AM CONFIDENT WHEN YOU GO BACK THERE
23 I TOO WANT YOU TO FULLY WEIGH THE EVIDENCE AND WHEN YOU DO
24 YOU WILL COME TO THE CONCLUSION BEYOND A REASONABLE DOUBT
25 THAT THE STATE HAS IN FACT PROVEN THE DEFENDANT GUILTY.

1 THANK YOU VERY MUCH FOR ALL YOUR TIME AND PATIENCE OVER
2 THESE LAST SEVERAL WEEKS.

3 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
4 WE WILL BREAK FOR LUNCH NOW. WE WILL TAKE ABOUT AN HOUR.
5 WHEN YOU COME BACK I WILL CHARGE YOU ON THE LAW AND THEN
6 THE CASE WILL BE SENT TO YOU FOR YOU TO DELIBERATE AND
7 REACH A VERDICT. AGAIN, AT THIS TIME IT IS NOT PROPER FOR
8 YOU TO DISCUSS THE CASE. HAVE A GOOD LUNCH. EVERYONE
9 ELSE IN THE COURTROOM STAY SEATED WHILE THE JURY IS
10 EXCUSED.

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

13 THE COURT: WE WILL BREAK FOR ONE HOUR.

14 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

15 THE COURT: IS THE STATE READY?

16 MS. EVANS: THE STATE IS READY, YOUR HONOR.

17 THE COURT: IS THE DEFENSE READY?

18 MR. GRIFFIN: YES, SIR.

19 THE COURT: BRING THE JURY IN, PLEASE.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
21 APPROXIMATELY 2:30 P.M.)

22 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
23 AT THIS STAGE OF THE TRIAL IT DOES BECOME THE DUTY OF THE
24 COURT TO CHARGE YOU AND THAT SIMPLY MEANS TO INSTRUCT YOU
25 ON THE LAW THAT DOES APPLY IN THIS CASE. NOW, I HAVE SEEN

1 JURIES IN SOME LOCATIONS HAVE A MISCONCEPTION THAT WHEN
2 THE CHARGE HAS BEEN COMPLETED AND YOU RETIRE TO THE JURY
3 ROOM THAT YOU WILL GET A WRITTEN COPY OF WHAT I AM ABOUT
4 TO GO OVER WITH YOU. THAT WILL NOT BE THE CASE. SOME
5 STATES DO THAT BUT IN SOUTH CAROLINA GENERALLY WE DO NOT.
6 SO, YOU ARE NOT GOING TO GET A COPY OF WHAT I AM ABOUT TO
7 GO OVER WITH YOU. I WILL EXPLAIN TO YOU AT THE CONCLUSION
8 OF THE CHARGE HOW TO DEAL WITH ANY QUESTIONS THAT YOU
9 MIGHT HAVE ABOUT THE LAW IF YOU DO HAVE ANY QUESTIONS.
10 PLEASE DON'T EXPECT THAT YOU WILL RECEIVE A COPY OF THE
11 INSTRUCTIONS THAT I AM ABOUT TO GO OVER WITH YOU. AGAIN,
12 AT THIS TIME IT DOES BECOME THE DUTY OF THE COURT UNDER
13 THE CONSTITUTION OF THIS STATE TO CHARGE YOU, WHICH SIMPLY
14 MEANS TO INSTRUCT YOU ON THE LAW THAT APPLIES IN THIS
15 CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE
16 LAW AS THE COURT IS NOW GOING TO STATE IT TO YOU. AND AS
17 JURORS IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL OF THE
18 ISSUES OF FACT IN THIS CASE. AND FOR THAT PURPOSE TO
19 DETERMINE THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH
20 OF THE EVIDENCE PRESENTED DURING THE TRIAL FOR BOTH THE
21 STATE OF SOUTH CAROLINA AND THE DEFENDANT, MR. SHEPPARD,
22 HAVE A RIGHT TO EXPECT THAT YOU WILL INDIVIDUALLY AND
23 COLLECTIVELY, CONSCIENTIOUSLY CONSIDER AND EVALUATE THE
24 EVIDENCE IN THIS CASE AND APPLY THE LAW OF THE CASE TO
25 THAT EVIDENCE TO THE END THAT BOTH THE STATE OF SOUTH

1 CAROLINA AND THE DEFENDANT, MR. SHEPPARD, WILL RECEIVE AND
2 OBTAIN A FAIR AND IMPARTIAL TRIAL IN THIS CASE.

3 I AM GOING TO BRIEFLY GO OVER THE CHARGES THAT ARE
4 MADE IN THE INDICTMENT IN THIS CASE. THE INDICTMENT IS
5 THE WRITTEN DOCUMENT THAT IS PROCESSED THIS CASE THROUGH
6 THE COURT SYSTEM. IT CONTAINS THE CHARGES OR THE
7 ALLEGATIONS THAT ARE MADE AGAINST THE DEFENDANT. THE
8 INDICTMENT HAS BEEN SERVED UPON THE DEFENDANT AND THE
9 DEFENSE ATTORNEY AT SOME TIME PRIOR TO THE CASE BEING
10 CALLED TO TRIAL TO PUT THEM ON NOTICE OF THE CHARGES THAT
11 WOULD BE CALLED FOR TRIAL AT THE TIME THE CASE IS CALLED
12 FOR TRIAL. THE INDICTMENT WILL NOT BE GOING BACK WITH YOU
13 IN THE JURY ROOM, AGAIN IT IS NOT EVIDENCE AND CANNOT BE
14 CONSIDERED BY THE JURY AS EVIDENCE OF THE CHARGES THAT IT
15 CONTAINS. THE INDICTMENT IN THIS CASE IS NUMBER
16 2005-GS-47-20 ENTITLED THE STATE VERSUS RONALD J.
17 SHEPPARD. THERE ARE THREE DIFFERENT CHARGES THAT ARE MADE
18 IN THE INDICTMENT, ONE OF SECURITIES FRAUD, ONE OF
19 OBTAINING GOODS UNDER FALSE PRETENSES AND ONE OF
20 CONSPIRACY. AND I WILL EXPLAIN THE LAW THAT PERTAINS TO
21 THOSE THREE CHARGES A LITTLE BIT LATER ON IN THE CHARGE.

22 WHEN I DO USE THE WORD, DEFENDANT, OF COURSE I AM
23 REFERRING TO RONALD J. SHEPPARD. TO THE CHARGES THAT HAVE
24 BEEN MADE IN THIS INDICTMENT THE DEFENDANT HAS ENTERED A
25 PLEA OF NOT GUILTY. THIS PLEA OF NOT GUILTY BY THE

1 DEFENDANT PLACES THE BURDEN OF PROOF ON THE STATE TO PROVE
2 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT
3 BEFORE YOU, THE JURY, CAN FIND THE DEFENDANT GUILTY. THE
4 DEFENDANT IS PRESUMED IN THE LAW INNOCENT OF THE CHARGES
5 MADE IN THE INDICTMENT.

6 . IT IS A CARDINAL AND A FUNDAMENTAL RULE OF THE LAW OF
7 EVIDENCE IN THIS STATE THAT A DEFENDANT REGARDLESS OF THE
8 CHARGE OR CHARGES AGAINST HIM WILL ALWAYS BE PRESUMED
9 INNOCENT OF THE OFFENSES FOR WHICH HE HAS BEEN INDICTED
10 UNLESS AND UNTIL THE GUILT OF THE DEFENDANT HAS BEEN
11 PROVEN BY EVIDENCE THAT SATISFIES YOU, THE JURY, OF HIS
12 GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF
13 INNOCENCE IS NOT JUST A MERE LEGAL THEORY, IT IS NOT JUST
14 A MERE LEGAL PHRASE BUT THE PRESUMPTION OF INNOCENCE IS A
15 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT INCLUDING MR.
16 SHEPPARD IS ENTITLED. THE SUPREME COURT OF THIS STATE HAS
17 DECLARED THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE
18 OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
19 DEFENDANT. AND IT REMAINS WITH THE DEFENDANT AND ASSIGNS
20 TO THE DEFENDANT TO THAT CLASS, THE INNOCENT, UNTIL THAT
21 PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED FROM
22 THE DEFENDANT'S PERSON BY EVIDENCE THAT SATISFIES YOU, THE
23 JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
24 DOUBT. THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE
25 DEFENDANT FROM THE TIME OF HIS ARRAIGNMENT, FROM THE TIME

1 OF HIS APPEARANCE IN THIS COURT AND THROUGHOUT EVERY STAGE
2 AT THE TRIAL AND CONTINUES WITH THE DEFENDANT EVEN AFTER
3 YOU HAVE RETIRED INTO THE JURY ROOM TO CONSIDER YOUR
4 VERDICT IN THIS CASE. THE PRESUMPTION OF INNOCENCE
5 CONTINUES TO EXIST TO THE BENEFIT OF THE DEFENDANT UNTIL
6 YOU, THE JURY, REACH THE CONCLUSION THAT THE STATE HAS
7 PROVEN THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE
8 DOUBT.

9 I WOULD INSTRUCT YOU, MADAM FORELADY AND LADIES AND
10 GENTLEMEN, THAT THE FACT THAT A DEFENDANT IN THE TRIAL OF
11 A CRIMINAL CASE DOES NOT TESTIFY IN HIS OWN BEHALF IS NOT
12 A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
13 DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF
14 THE GUILT OR THE INNOCENCE OF THE ACCUSED. IT MUST NOT BE
15 CONSIDERED BY YOU IN ANY MANNER AGAINST THE DEFENDANT OR
16 MITIGATE AGAINST HIM IN ANY RESPECT. A DEFENDANT HAS THE
17 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION OF
18 THAT CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE
19 CONSIDERED BY YOU IN YOUR DELIBERATIONS. UNDER YOUR OATH
20 YOU ARE TO REACH NO INFERENCE AND DRAW NO CONCLUSION FROM
21 THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY.
22 THE FACT THAT THE DEFENDANT DOES NOT TESTIFY SHOULD NOT
23 EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF,
24 AS I STATED TO YOU IS UPON THE STATE. IT IS NOT INCUMBENT
25 UPON AN ACCUSED TO PROVE HIS INNOCENCE. THE BURDEN OF

1 PROOF REMAINS UPON THE STATE TO PROVE GUILT BEYOND A
2 REASONABLE DOUBT. AND THE FACT THAT A DEFENDANT DOES NOT
3 TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN
4 DETERMINING THE GUILT OR THE INNOCENCE OF THE DEFENDANT.

5 THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF THE
6 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT
7 BEYOND A REASONABLE DOUBT. WHEN WE SAY THAT PROOF MUST BE
8 ESTABLISHED BEYOND A REASONABLE DOUBT THOSE WORDS SHOULD
9 BE GIVEN THEIR PLAIN AND ORDINARY MEANING. A REASONABLE
10 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
11 PERSON TO HESITATE TO ACT. A REASONABLE DOUBT CAN ARISE
12 FROM THE EVIDENCE PRESENTED IN THE CASE OR THE LACK OF
13 EVIDENCE IN THE CASE. TO THINK THAT A DEFENDANT IS
14 PROBABLY GUILTY OR THAT THE CIRCUMSTANCES ARE SUSPICIOUS
15 IS NOT ENOUGH. PROOF BEYOND A REASONABLE DOUBT IS PROOF
16 THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
17 THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH
18 ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT
19 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
20 BASED UPON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
21 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
22 OR CRIMES CHARGED YOU MUST FIND HIM GUILTY. IF ON THE
23 OTHER HAND YOU THINK THAT THERE IS A REAL POSSIBILITY THAT
24 HE IS NOT GUILTY YOU MUST GIVE HIM THE BENEFIT OF THE
25 DOUBT AND FIND HIM NOT GUILTY. YOU ALONE MUST MAKE THE

1 DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXIST AS
2 TO THE GUILT OF THE DEFENDANT. I WOULD INSTRUCT YOU THAT
3 THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT
4 ARISING IN THE WHOLE CASE. SO UPON ANY ISSUE OF FACT THAT
5 IS ESSENTIAL TO A CONVICTION AND A VERDIT OF GUILTY, IF
6 YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
7 RESOLVED IT WOULD BE YOUR DUTY TO RESOLVE THAT REASONABLE
8 DOUBT IN FAVOR OF THE DEFENDANT. THE DEFENDANT, LADIES
9 AND GENTLEMEN, IS NOT REQUIRED TO PROVE HIS INNOCENCE BUT
10 THE STATE IS REQUIRED UNDER THE LAW TO PROVE EVERY
11 ESSENTIAL ELEMENT OF THE OFFENSES CHARGED AGAINST HIM BY
12 EVIDENCE THAT SATISFIES YOU, THE JURY, OF THE GUILT OF THE
13 DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONVICT
14 THE DEFENDANT AND FIND HIM GUILTY. IF THEN UPON THE WHOLE
15 CASE YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OR THE
16 INNOCENCE OF THIS DEFENDANT HE IS ENTITLED TO THAT
17 REASONABLE DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL AND
18 A VERDICT OF NOT GUILTY. ON THE OTHER HAND, IF UPON THE
19 WHOLE CASE YOU FIND THAT THE STATE HAS PROVEN BY EVIDENCE
20 THAT SATISFIES YOU OF THE GUILT OF THIS DEFENDANT BEYOND A
21 REASONABLE DOUBT THEN IN THAT CIRCUMSTANCE IT WOULD
22 EQUALLY BE YOUR DUTY TO CONVICT THE DEFENDANT AND FIND HIM
23 GUILTY.

24 I INSTRUCT YOU AGAIN THAT THE INDICTMENT IN THIS CASE
25 IS NOT EVIDENCE IN THE CASE AND CANNOT BE CONSIDERED BY

1 YOU AS EVIDENCE OF THE CHARGES THAT IT CONTAINS. AGAIN,
2 THE INDICTMENT IS SIMPLY THE FORMAL INSTRUMENT THAT
3 CONTAINS THE CHARGE OR CHARGES MADE AGAINST THE DEFENDANT
4 AND IT SERVES AS A FORMAL DOCUMENT BY WHICH THE CASE HAS
5 BEEN PROCESSED OR BROUGHT INTO THE COURT.

6 NOW, DURING THE TRIAL, MADAM FORELADY AND LADIES AND
7 GENTLEMEN, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS A
8 TRIAL JUDGE IT IS MY RESPONSIBILITY TO PRESIDE OVER THE
9 TRIAL OF THE CASE, I ALSO HAVE THE DUTY TO RULE UPON OR
10 PASS UPON THE ADMISSIBILITY OF THE EVIDENCE THAT WAS
11 OFFERED DURING THE TRIAL. YOU ARE TO CONSIDER ONLY THE
12 COMPETENT EVIDENCE BEFORE YOU AND YOU ARE TO DISREGARD AND
13 DISABUSE FROM YOUR MIND ANY TESTIMONY ORDERED STRICKEN
14 FROM THE RECORD IN THIS CASE DURING THE PROGRESS OF THE
15 TRIAL IF THERE WAS ANY. AND YOU ARE TO CONSIDER ONLY THE
16 TESTIMONY THAT HAS BEEN PRESENTED FROM THE WITNESS STAND
17 TOGETHER WITH ANY EXHIBITS THAT HAVE BEEN MADE A PART OF
18 THE RECORD IN THIS CASE. I DO HAVE THE ADDITIONAL DUTY TO
19 CHARGE YOU THE LAW THAT APPLIES IN THIS CASE. AND AS
20 PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THE
21 CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE
22 LAW AS I AM NOW EXPLAINING IT TO YOU. IF YOU HAVE A
23 PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW
24 OUGHT TO BE AND THAT PRECONCEPTION DOES NOT AGREE WITH
25 WHAT I AM NOW EXPLAINING TO YOU THEN YOU ARE OBLIGATED

1 UNDER YOUR OATH WHICH YOU HAVE TAKEN TO ABANDON THAT
2 PRECONCEPTION ON YOUR PART BECAUSE YOU HAVE SWORN AND
3 AGREED TO ACCEPT AND APPLY THE LAW PRECISELY AS THE COURT
4 IS NOW EXPLAINING IT TO YOU.

5 IN EVERY CASE THAT IS TRIED IN THIS COURT BEFORE A
6 JURY, THE JURY BECOMES THE SOLE AND THE EXCLUSIVE JUDGE OF
7 THE FACTS IN A CASE AND YOU, THE JURY, ARE THE JUDGE OF
8 THE FACTS IN THIS CASE. THE COURT IS THE JUDGE OF THE LAW
9 OF THE CASE. THE CONSTITUTION OF THIS STATE DECLARES THAT
10 A TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON OR
11 MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A
12 CASE. AND SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE
13 FACTS OF THIS CASE YOU ARE NOT TO INFER FROM ANYTHING THAT
14 I HAVE SAID DURING THE PROGRESS OF THE TRIAL AND RULING
15 UPON THE ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR
16 ANYTHING THAT I SAY NOW DURING THE COURSE OF THESE
17 INSTRUCTIONS TO YOU THAT I HAVE ANY OPINION ABOUT THE
18 FACTS IN THIS CASE. THE LAW DOES NOT PERMIT ME TO HAVE AN
19 OPINION ABOUT THE FACTS OF THE CASE. THIS IS A MATTER
20 SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS THEN IT
21 IS YOUR DUTY AS I HAVE INSTRUCTED YOU TO DETERMINE THE
22 EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF THE
23 EVIDENCE PRESENTED DURING THE TRIAL.

24 BY NECESSITY YOU MUST ASSESS THE CREDIBILITY OF THE
25 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY IS

1 SIMPLY A LEGALISTIC TERM THAT MEANS BELIEVABILITY. IT
2 BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE
3 EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU
4 OF ITS TRUTH. I WOULD INSTRUCT YOU THAT IN DETERMINING
5 THE QUESTION OF THE CREDIBILITY OR BELIEVABILITY OF
6 WITNESSES WHO HAVE TESTIFIED IN THE CASE, YOU MAY BELIEVE
7 ONE WITNESS AS AGAINST SEVERAL OR SEVERAL WITNESSES AS
8 AGAINST ONE. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A
9 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
10 THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
11 WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A
12 WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY
13 WITNESS HAS EXHIBITED TO YOU ANY INTEREST, ANY MOTIVE, ANY
14 BIASED, ANY PREJUDICE IN THE CASE. YOU MAY CONSIDER
15 WHETHER A WITNESS HAS MADE A PRIOR STATEMENT, WHETHER
16 CONSISTENT OR INCONSISTENT. YOU MAY CONSIDER THE Demeanor
17 OF A WITNESS, THAT IS THE APPEARANCE OF A WITNESS FROM THE
18 WITNESS STAND. AND YOU MAY OF COURSE CONSIDER THE
19 OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT
20 WHICH A WITNESS HAS TESTIFIED. THESE CONSIDERATIONS YOU
21 DO NOT EXERCISE ARBITRARILY, BUT IN YOUR GOOD JUDGMENT,
22 THERE IS SOUND REASON IN THE RECORD OF THIS CASE FOR SO
23 DOING, THEN YOU MAY SO CONSIDER. YOUR OBJECTIVE, LADIES
24 AND GENTLEMEN, IS TO SEEK THE TRUTH REGARDLESS OF ITS
25 SOURCE AND IN DOING SO AND EXERCISING YOUR MENTAL

1 PROCESSES AND DETERMINING WHAT YOU CONSIDER TO BE TRUE THE
2 LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT
3 AND YOUR COMMON SENSE, YOUR SENSE OF LOGIC AND REASON AND
4 YOUR EXPERIENCES IN LIFE. AND YOU THEN APPLY THESE
5 ATTRIBUTES OF ABILITY TO THE EVIDENCE AND DETERMINE WHAT
6 YOU, THE JURY, CONSIDER TO BE TRUTHFUL EVIDENCE. AND TO
7 THIS STATE OF FACTS AS DETERMINED BY YOU, THE JURY, YOU
8 THEN TAKE AND APPLY THE LAW AS I NOW STATE IT TO YOU AND
9 THUS ARRIVE AT A TRUE VERDICT IN THE CASE.

10 THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
11 PRESENTED DURING A TRIAL. DIRECT EVIDENCE AND
12 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY
13 OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE
14 OF A FACT SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE
15 IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING
16 THE EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO
17 DISTINCTION BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN TO
18 EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE NOR IS A GREATER
19 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
20 THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE
21 EVIDENCE IN THE CASE, AFTER WEIGHING ALL OF THE EVIDENCE,
22 IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT
23 BEYOND A REASONABLE DOUBT THEN YOU MUST FIND THE DEFENDANT
24 NOT GUILTY.

25 DURING THE COURSE OF THE ARGUMENTS MADE BY COUNSEL,

1 COUNSEL REPRESENTING THE PARTIES HAVE DISCUSSED WITH YOU
2 THEIR UNDERSTANDING OF THE LAW AND ITS APPLICABILITY TO
3 THE FACTS THAT YOU MAY FIND FROM THE EVIDENCE. AN
4 ATTORNEY HAS THE RIGHT TO AND A DUTY TO THAT. I WOULD
5 CHARGE YOU HOWEVER, THAT REGARDLESS OF ANYTHING SAID BY
6 ANY ATTORNEY DURING THE COURSE OF ARGUMENTS, STATING OR
7 REGARDING WHAT THE LAW OF THE STATE OF SOUTH CAROLINA IS,
8 YOU MUST APPLY ONLY THE LAW AS I GIVE IT TO YOU AT THIS
9 TIME AND THIS IS NOT TO IMPLY THAT THE COURT DISAGREES
10 WITH ANY STATEMENT MADE BY COUNSEL AS TO WHAT THE LAW IS.
11 BUT IT IS SIMPLY MADE TO YOU TO EMPHASIZE THAT YOU MUST
12 TAKE THE LAW APPLICABLE AS I GIVE IT TO YOU AT THIS TIME.

13 YOU HAVE BEEN PERMITTED DURING THE COURSE OF THIS
14 TRIAL TO TAKE NOTES. IF YOU WISH TO DO SO THE NOTES WILL
15 BE AVAILABLE FOR YOU AND TO YOU DURING YOUR DELIBERATIONS.
16 HOWEVER, YOUR NOTES SHOULD BE USED ONLY AS AIDS TO YOUR
17 MEMORY AND SHOULD NOT BE ALLOWED TO TAKE PRECEDENCE OF
18 YOUR INDEPENDENT MEMORY OF THE FACTS OF THE CASE. YOUR
19 NOTES ARE ONLY FOR THE JURORS PERSONAL USE IN REFRESHING
20 YOUR RECOLLECTION OF THE EVIDENCE. WHEN IN DELIBERATIONS
21 DO NOT RELY ON RECOLLECTION OF JURORS WHO TOOK NOTES ABOUT
22 THE TESTIMONY OF A WITNESS SOLELY BECAUSE THAT JUROR TOOK
23 NOTES. YOU SHOULD NOT BE UNDULY INFLUENCED BY THE NOTES
24 OF OTHER JURORS, AS WE ALL KNOW THAT NOTES CAN SOMETIMES
25 BE WRONG. NOTES ARE NOT ENTITLED TO ANY GREATER WEIGHT

1 THAN EACH JURORS MEMORY OF THE EVIDENCE. THOSE JURORS WHO
2 DID NOT TAKE NOTES SHOULD RELY ON THEIR INDEPENDENT
3 RECOLLECTION OF THE EVIDENCE AND SHOULD NOT BE INFLUENCED
4 BY THE FACT THAT ANOTHER JUROR MAY OF TAKEN NOTES. KEEP
5 IN MIND THAT EVERY WORD THAT HAS BEEN SPOKEN IN THIS
6 COURTROOM HAS BEEN RECORDED BY THE COURT REPORTER. I WILL
7 ALSO INSTRUCT YOU, OF COURSE, THAT YOUR NOTES ARE NOT A
8 SUBSTITUTE FOR THE ADDITIONAL RECORD THAT HAS BEEN KEPT BY
9 THE COURT REPORTER. AFTER YOU HAVE COMPLETED YOUR
10 DELIBERATIONS YOUR NOTES ARE GOING TO BE TAKEN UP AND
11 DELIVERED TO ME AND THEY WILL BE DESTROYED AND NO ONE WILL
12 EVER READ WHAT YOUR NOTES HAVE BEEN.

13 I WOULD FURTHER CHARGE YOU, MADAM FORELADY AND LADIES
14 AND GENTLEMEN, THAT AT TIMES DURING THE COURSE OF THE
15 TRIAL THE ATTORNEYS MADE OBJECTIONS TO THE QUESTIONS THAT
16 WERE ASKED BY THE OTHER ATTORNEYS AND THE ANSWERS GIVEN BY
17 THE WITNESSES. THIS TYPICALLY MEANS THAT THE ATTORNEYS
18 REQUESTED THAT I MAKE A DECISION ON A PARTICULAR RULE OR
19 POINT OF LAW. YOU DO NOT DRAW ANY CONCLUSION FROM SUCH
20 OBJECTION OR MY RULING ON THOSE OBJECTIONS. IF I SUSTAIN
21 AN OBJECTION TO A QUESTION AND A WITNESS WAS NOT ALLOWED
22 TO ANSWER IT YOU ARE NOT PERMITTED TO ATTEMPT TO GUESS AT
23 WHAT THE ANSWER MIGHT HAVE BEEN IF I HAVE ALLOWED THE
24 QUESTION TO BE ANSWERED. AND SEVERAL TIMES DURING THE
25 COURSE OF THE TRIAL I INSTRUCTED YOU TO DISREGARD A

1 PARTICULAR STATEMENT OR STRIKE A PARTICULAR STATEMENT.
2 YOU WERE TOLD TO PUT THAT STATEMENT OUT OF YOUR MIND AND
3 YOU MAY NOT REFER TO THAT STATEMENT IN YOUR DELIBERATIONS.

4 DURING THE COURSE OF THIS TRIAL WE HAVE HAD WHAT WE
5 CALL EXPERT TESTIMONY AND I GAVE YOU BRIEF INSTRUCTIONS
6 ABOUT THAT TESTIMONY AT THAT TIME. IN CONNECTION WITH
7 EXPERT TESTIMONY I WILL TELL YOU THAT ORDINARILY WITNESSES
8 CAN NOT TESTIFY AS TO THEIR OPINION ON A PARTICULAR
9 MATTER. AN EXCEPTION TO THIS RULE IS WHEN A WITNESS HAS
10 BEEN QUALIFIED AS AN EXPERT. IN THAT EVENT THAT WITNESS
11 MAY VOICE HIS OR HER OPINION IN THAT PARTICULAR FIELD. AS
12 FAR AS OPINION EVIDENCE IS CONCERNED, THE EFFECT OF ANY
13 EXPERT THAT IS A MATTER OF OPINION, YOU ARE NOT TO PLACE
14 ANY OPINIONS ABOVE THE IDEA OF YOUR OWN OPINIONS ON THE
15 SUBJECT. YOU ARE TO CONSIDER THESE OPINIONS ALONG WITH
16 THE OTHER EVIDENCE IN THE CASE IN FORMING YOUR OWN
17 CONCLUSIONS. IN THIS CASE THERE MAY OF BEEN A CONFLICT IN
18 THE TESTIMONY OF EXPERT WITNESSES AND TO THAT END YOU MUST
19 WEIGH ONE EXPERTS TESTIMONY OR OPINION AGAINST THAT OF THE
20 OTHER. AND YOU MUST CONSIDER THE REASONS GIVEN BY ONE AS
21 COMPARED BY THOSE OF THE OTHER. YOU SHOULD CONSIDER THE
22 RELATIVE CREDIBILITY OF THE KNOWLEDGE OF THE EXPERTS WHO
23 HAVE TESTIFIED AND THEN YOU ARE ENTITLED TO GIVE THOSE
24 OPINIONS SUCH WEIGHT AS YOU, THE JURY, DETERMINE THEY
25 SHOULD RECEIVE.

1 I WILL FURTHER CHARGE YOU THAT THERE WAS ADMITTED
2 INTO THE RECORD OF THIS CASE EVIDENCE OF AN ALLEGED PRIOR
3 RECORD OF A WITNESS OR WITNESSES. THIS EVIDENCE WAS
4 ADMITTED FOR A LIMITED PURPOSE, THE EVIDENCE WAS ADMITTED
5 AND MAY BE CONSIDERED BY YOU, THE JURY, IF YOU CONCLUDE IT
6 TRUE ONLY FOR THE PURPOSE OF EVALUATING THE CREDIBILITY OR
7 THE BELIEVABILITY OF THAT WITNESS. YOU MAY GIVE TO THIS
8 EVIDENCE SUCH WEIGHT AND SUCH VALUE, IF ANY, WHICH YOU
9 FIND IT IS ENTITLED ON THE SOLE ISSUE OF THE CREDITABILITY
10 OR THE BELIEVABILITY OF THE TESTIMONY OFFERED BY THAT
11 WITNESS, HIMSELF OR HERSELF. I WOULD CHARGE YOU THAT A
12 WITNESS THAT HAS PLEAD GUILTY TO SIMILAR CHARGES DOES NOT
13 IN ANY WAY LESSON OR DIMINISH THE PRESUMPTION OF INNOCENCE
14 NOR DOES IT LESSON OR DIMINISH THE BURDEN OF PROOF THAT
15 THE STATE HAS IN THIS CASE. SUCH A PLEA DOES NOT IN AND
16 OF ITSELF PROVE THE GUILT OF THIS DEFENDANT. CREDIBILITY
17 AS I HAVE PREVIOUSLY EXPLAINED TO YOU IS A MATTER SOLELY
18 FOR YOU, THE JURY TO DETERMINE. I FURTHER CHARGE YOU THAT
19 THE STATE IS NOT REQUIRED TO PLACE UPON THE STAND EVERY
20 WITNESS WHO HAS KNOWLEDGE OF THE MATERIAL FACTS CONNECTED
21 WITH THE CRIME OR CRIMES CHARGED OR WHOSE NAME MAY BE
22 ENFORCED UPON THE INDICTMENT.

23 AS I HAVE PREVIOUSLY INSTRUCTED YOU, MADAM FORELADY
24 AND LADIES AND GENTLEMEN, THE INDICTMENT IN THIS CASE DOES
25 CONTAIN THREE SEPARATE CHARGES. EACH COUNT IS A SEPARATE

1 AND DISTINCT OFFENSE, YOU MUST DECIDE THAT COUNT
2 SEPARATELY ON THE EVIDENCE AND THAT LAW THAT APPLIES TO IT
3 UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER COUNT. THE
4 DEFENDANT MAY BE CONVICTED OR ACQUITED ON ANY OR ALL THE
5 OFFENSES CHARGED. YOU ARE GOING TO BE ASKED TO WRITE A
6 SEPARATE VERDICT OF GUILTY OR NOT GUILTY AS TO EACH COUNT.
7 AND I WILL GO OVER THAT WITH YOU AT THE CONCLUSION OF
8 THESE INSTRUCTIONS.

9 CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH CRIME
10 THAT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE
11 DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE
12 DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING
13 THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A
14 MATHEMATICAL CERTAINTY, THERE IS NO WAY THAT MEDICAL
15 SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT
16 THAT PERSON HAD IN MIND. SO THE LAW SAYS THAT CRIMINAL
17 INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES THAT ARE
18 SHOWN TO HAVE EXISTED. THIS IS HOW THE JURY MAKES THE
19 DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING
20 INTENT WAS PRESENT. CRIMINAL INTENT IS A STATE OF MIND
21 WHICH OPERATED JOINTLY WITH AN ACT IN THE COMMISSION OF A
22 CRIME. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
23 WRONGDOING, SO IT IS UP TO YOU, THE JURY, TO DETERMINE
24 WHAT THE DEFENDANT INTENDED TO DO BASED ON THE
25 CIRCUMSTANCES THAT ARE SHOWN TO HAVE EXISTED. THE STATE

1 MUST PROVE CRIMINAL INTENT BEYOND A REASONABLE DOUBT JUST
2 AS THE STATE MUST PROVE EVERY ELEMENT BEYOND A REASONABLE
3 DOUBT AS I HAVE PREVIOUSLY EXPLAINED THAT TO YOU.

4 AND LET ME GO OVER THE THREE OFFENSES THAT YOU ARE
5 CHARGED IN THE INDICTMENT. THE FIRST CHARGE IN THE
6 INDICTMENT IS THAT OF SECURITIES FRAUD. THIS IS FOUND IN
7 SECTION 35-1-1210 OF THE SOUTH CAROLINA CODE OF LAWS ALONG
8 WITH SECTION 35-1-1590 AND I WILL READ PART OF THAT
9 STATUTE, BOTH OF THE STATUTES TO YOU. IT IS UNLAWFUL FOR
10 ANY PERSON IN CONNECTION WITH THE OFFER, SALE OR PURCHASE
11 OF ANY SECURITY DIRECTLY OR INDIRECTLY TO WILLFULLY ENGAGE
12 IN ANY ACT, PRACTICE OR COURSE OF BUSINESS WHICH OPERATES
13 OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON.
14 BEFORE YOU CAN FIND THE DEFENDANT GUILTY OF THE CRIME OF
15 SECURITIES FRAUD AS ALLEGED IN THIS COUNT YOU MUST FIND
16 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ACTED
17 WILLFULLY IN CONNECTION WITH THE OFFER OR SALE OF A
18 SECURITY EITHER DIRECTLY OR INDIRECTLY AND ENGAGED IN AN
19 ACT, PRACTICE OR COURSE OF BUSINESS WHICH OPERATES OR
20 WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON. IF
21 YOU BELIEVE THAT THE EVIDENCE ESTABLISHES EACH AND EVERY
22 ONE OF THOSE ELEMENTS FOR THE CRIME OF SECURITIES FRAUD
23 BEYOND A REASONABLE DOUBT IT WOULD BE YOUR DUTY TO FIND
24 THE DEFENDANT GUILTY. ON THE OTHER HAND, IF THE EVIDENCE
25 HAS FAILED TO ESTABLISH ONE OR MORE OF THE ABOVE ELEMENTS

1 OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT IT WOULD
2 BE YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY OF THAT
3 OFFENSE.

4 YOU ARE INSTRUCTED WHILE A NUMBER OF MATERIAL
5 MISREPRESENTATIONS AND OMISSIONS ARE ALLEGED AS A BASIS
6 FOR THE CHARGE OF SECURITIES FRAUD, THE STATE IS NOT
7 REQUIRED TO PROVE EACH AND EVERY ONE OF THEM. THE STATE
8 MUST PROVE TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT
9 WITH REGARD TO THE CHARGE OF SECURITIES FRAUD THAT AT
10 LEAST ONE MATERIAL FALSE STATEMENT OR MATERIAL OMISSION
11 WAS MADE IN CONNECTION WITH THAT COUNT. I WOULD FURTHER
12 CHARGE YOU THAT A MATERIAL ELEMENT OF SECURITIES FRAUD, OF
13 THE SECURITIES FRAUD PROSECUTION IS A DEMONSTRATION OF THE
14 EXISTENCE OF WHAT IS CALLED SCIENTER. SCIENTER IS A
15 MENTAL STATE EMBRACING INTENT TO DECEIVE, MANIPULATE OR
16 DEFRAUD. MERE NEGLIGENCE WILL NOT SUFFICE FOR CONVICTION.
17 ALLEGATIONS OF SCIENTER MUST BE BASED ON THE SUBSTANTIAL
18 FACTUAL BASIS IN ORDER TO CREATE STRONG INFERENCE THAT THE
19 DEFENDANT ACTED WITH THE REQUIRED STATE OF MIND. I CHARGE
20 YOU THAT SCIENTER MAY BE ESTABLISHED BY A SHOWING OF
21 KNOWING MISCONDUCT OR SEVERE RECKLESSNESS. PROOF OF
22 SEVERE RECKLESSNESS WOULD REQUIRE A SHOWING THAT THE
23 DEFENDANT'S CONDUCT WAS AN EXTREME DEPARTURE OF ORDINARY
24 CARE WHICH WOULD PRESENT A DANGER OF MISLEADING BUYERS OR
25 SELLERS THAT IS KNOWN TO THE DEFENDANT OR SO OBVIOUS THAT

1 THE DEFENDANT MUST HAVE BEEN AWARE OF IT. YOU ARE FURTHER
2 INSTRUCTED THAT UNDER THE LAWS OF THE STATE OF SOUTH
3 CAROLINA THE FOLLOWING WORDS HAVE THE FOLLOWING MEANINGS.
4 A SALE OR SELL INCLUDES EVERY CONTRACT FOR SALE OR,
5 CONTRACTING TO SELL OR DISPOSITION OF A SECURITY OR AN
6 INTEREST IN SECURITY OR VALUE. AN OFFER OR OFFER TO SELL
7 INCLUDES EVERY ATTEMPT OR OFFER TO DISPOSE OF OR
8 SOLICITATION OF AN OFFER TO BUY A SECURITY OR INTEREST IN
9 A SECURITY OR VALUE. I WOULD CHARGE THAT SECURITY, UNDER
10 THE LAWS OF THE STATE OF SOUTH CAROLINA MEANS ANY NOTE,
11 STOCK, TREASURY STOCK, BOND, DEBENTURE, EVIDENCE OF
12 INDEBTEDNESS IN GENERAL, ANY INTEREST OR INSTRUMENT
13 COMMONLY KNOWN AS A SECURITY.

14 I WOULD FURTHER INSTRUCT YOU, MADAM FORELADY AND
15 LADIES AND GENTLEMEN, THAT FRAUD IS A MALFEASANCE, A
16 POSITIVE ACT RESULTING FROM A WILLFUL INTENT TO DECEIVE.
17 FRAUD MAY CONSISTS OF WORDS, ACTS OR THE SUPPRESSION OF
18 MATERIAL FACTS WITH THE INTENT TO MISLEAD OR DECEIVE.
19 THERE HAS TO BE INTENT AND THAT INTENT MUST BE PUT INTO
20 PRACTICE EITHER DIRECTLY OR THROUGH AN AGENT. I WOULD
21 FURTHER INSTRUCT YOU THAT NO PERSON WILL BE CONVICTED FOR
22 AN ACT DONE BY HIM BECAUSE OF A MISTAKE OR AN ACCIDENT BY
23 ANY OTHER REASON. HE HAS TO ACT KNOWINGLY, INTENTIONALLY
24 AND WILLFULLY, WILLFULLY MEANS KNOWINGLY. AND I WOULD
25 FURTHER CHARGE YOU THAT WILLFULNESS MAY BE SHOWN OR COULD

1 BE SHOWN TO EXIST WHERE A DEFENDANT HAS DEMONSTRATED AN
2 EXTREMELY RECKLESS DISREGARD OR AN EXTREME INDIFFERENCE TO
3 REPRESENTING THE TRUTH OR DID NOT USE THE MEANS AT HAND TO
4 DETERMINE THE TRUE FACTS. I WOULD FURTHER CHARGE YOU,
5 MADAM FORELADY AND LADIES AND GENTLEMEN, THAT THE
6 DEFINITION OF A LIE IS A FALSE STATEMENT DELIBERATELY
7 PRESENTED AS BEING TRUE.

8 I WOULD ALSO CHARGE YOU, MADAM FORELADY AND LADIES
9 AND GENTLEMEN, THAT AN ACT IS DONE WILLFULLY IF IT IS DONE
10 WITH A BAD PURPOSE, WITHOUT JUSTIFIABLE EXCUSE OR WITHOUT
11 GROUND BELIEVING THE ACT IN QUESTION IS UNLAWFUL. TO ACT
12 KNOWINGLY MEANS TO ACT VOLUNTARILY AND DELIBERATELY RATHER
13 THAN MISTAKENLY OR INADVERTENT. INTENT TO DEFRAUD IN THE
14 CONTEXT OF THE SECURITIES LAWS MEANS TO ACT KNOWINGLY AND
15 WITH THE INTENT TO DECEIVE. THE QUESTION OF WHETHER A
16 PERSON ACTED KNOWINGLY, WILLFULLY AND WITH INTENT TO
17 DEFRAUD IS A QUESTION OF FACT FOR YOU TO DETERMINE LIKE
18 ANY OTHER FACT QUESTION, THE QUESTION INVOLVES ONES STATE
19 OF MIND. THE ULTIMATE FACTS OF KNOWLEDGE IN CRIMINAL
20 INTENT, THE SUBJECTIVE, MAY BE ESTABLISHED BY
21 CIRCUMSTANTIAL EVIDENCE BASED UPON A PERSON'S OUTWARD
22 MANIFESTATIONS, HIS WORDS, HIS CONDUCT, HIS ACTS AND ALL
23 SURROUNDING CIRCUMSTANCES DISCLOSED BY THE EVIDENCE AND
24 THE RATIONAL OR LOGICAL INFERENCES TO BE DRAWN THEREFROM.
25 SINCE AN ELEMENT OF THE CRIME CHARGED IS INTENT TO DEFRAUD

1 IT FOLLOWS A GOOD FAITH ON THE PART OF THE DEFENDANT, IT
2 IS A COMPLETE DEFENSE TO THE CHARGE OF SECURITIES FRAUD.
3 THE DEFENDANT, HOWEVER, HAS NO BURDEN TO ESTABLISH THE
4 DEFENSE OF GOOD FAITH. THE BURDEN IS ON THE GOVERNMENT TO
5 PROVE FRAUDULENT INTENT AND CONSEQUENCE LACK OF GOOD FAITH
6 BEYOND A REASONABLE DOUBT. EVEN FALSE REPRESENTATIONS OR
7 STATEMENTS OR OMISSIONS OF MATERIAL FACT DO NOT AMOUNT TO
8 FRAUD UNLESS DONE WITH FRAUDULENT INTENT. HOWEVER,
9 MISLEADING OR DECEPTIVE A PLAN MAY BE IT IS NOT FRAUDULENT
10 IF IT WAS DEvised OR CARRIED OUT IN GOOD FAITH. AN HONEST
11 BELIEF AND THE TRUTH OF THE REPRESENTATIONS MADE BY A
12 DEFENDANT IS A GOOD DEFENSE HOWEVER INACCURATE THE
13 STATEMENTS MAY HAVE TURNED OUT TO BE. IN CONSIDERING
14 WHETHER OR NOT A DEFENDANT ACTED IN GOOD FAITH YOU WERE
15 INSTRUCTED THAT A BELIEF BY THE DEFENDANT, IF SUCH BELIEF
16 EXISTED, THAT ULTIMATELY EVERYTHING WOULD WORK OUT SO THAT
17 NO ONE WOULD LOSE ANY MONEY DOES NOT REQUIRE A FINDING BY
18 YOU THAT HE ACTED IN GOOD FAITH. NO AMOUNT OF HONEST
19 BELIEF ON THE PART OF A DEFENDANT THAT A SCHEME WILL
20 ULTIMATELY BE PROFITABLE WILL EXCUSE FRAUDULENT ACTIONS OR
21 FALSE REPRESENTATIONS BY HIM TO OBTAIN MONEY.

22 I WOULD FURTHER CHARGE YOU THAT A MATTER IS MATERIAL
23 IF A REASONABLE INVESTOR OUGHT TO BE INFORMED OF IT BEFORE
24 MAKING HIS OR HER INVESTMENT DECISION. TO DETERMINE IF A
25 FACT OR OMISSION IS MATERIAL EVIDENCE MUST BE PRESENTED

1 THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT A REASONABLE
2 INVESTOR WOULD CONSIDER IT IMPORTANT IN DECIDING WHETHER
3 OR NOT TO INVEST. AN OMITTED FACT IS MATERIAL IF THERE IS
4 A SUBSTANTIAL LIKELIHOOD THAT A REASONABLE INVESTOR WOULD
5 CONSIDER IT IMPORTANT. MATERIAL DISCLOSURES ARE THOSE
6 WHICH AN INVESTOR, WHICH WOULD ENABLE AN INVESTOR TO MAKE
7 AN INFORMED DECISION.

8 I WOULD CHARGE YOU, MADAM FORELADY AND LADIES AND
9 GENTLEMEN, THAT THERE IS A DOCTRINE IN THIS STATE THAT IS
10 RECOGNIZED, KNOWN AS THE BESPEAKS CAUTION DOCTRINE. I
11 WOULD CHARGE YOU THAT THE BESPEAKS CAUTION DOCTRINE
12 PROVIDES THAT CERTAIN MISREPRESENTATIONS OR OMISSIONS DO
13 NOT ESTABLISH SECURITIES FRAUD WHERE THESE COMMUNICATIONS
14 ARE ACCOMPANIED BY MEANINGFUL WARNINGS THAT CLEARLY
15 BESPEAK CAUTION. THEREFORE SECURITIES FRAUD DOES NOT
16 EXIST WHEN FORWARD LOOKING STATEMENTS SUCH AS FORECAST,
17 OPINIONS AND PROJECTIONS ARE ACCOMPANIED BY SUFFICIENT
18 CAUTIONARY LANGUAGE. ALLEGED MISREPRESENTATIONS AND
19 OMISSIONS REPORTEDLY RELIED UPON BY INVESTORS MUST BE
20 CONSIDERED IN THE FULL CONTEXT IN WHICH THEY WERE MADE. I
21 WOULD FURTHER CHARGE YOU, LADIES AND GENTLEMEN, THAT FRAUD
22 MAY NOT BE BASED ON STATEMENTS THAT ARE PROMISSORY IN
23 CHARACTER. ONLY WHEN THERE IS EVIDENCE OF A PRESENT
24 INTENTION TO FULFILL THE PROMISE OR WHETHER THE PROMISE OF
25 FUTURE ACTS IS MADE IN BAD FAITH CAN ACTIONABLE FRAUD BE

1 PREDICATED ON A PROMISE OF A FUTURE ACTION. I WOULD ALSO
2 CHARGE YOU, LADIES AND GENTLEMEN, THAT YOU HAVE HEARD
3 EVIDENCE THAT THE DEFENDANT RECEIVED ADVICE FROM LAWYERS
4 AND ACCOUNTANTS AND YOU MAY CONSIDER THAT EVIDENCE IN
5 DECIDING WHETHER THE DEFENDANT ACTED WILLFULLY AND WITH
6 KNOWLEDGE. THE MERE FACT THAT THE DEFENDANT MAY OF
7 RECEIVED LEGAL OR ACCOUNTING ADVICE DOES NOT IN AND OF
8 ITSELF NECESSARILY CONSTITUTE A COMPLETE DEFENSE. IT
9 REQUIRES THAT A DEFENDANT MADE FULL DISCLOSURE OF ALL
10 PERTINENT FACTS TO THE ACCOUNTANTS AND ATTORNEYS UPON WHOM
11 HE ALLEGEDLY RELIED. AND ALSO THAT HE RELIED ON THE
12 EXPERT'S ADVICE IN GOOD FAITH. YOU MUST ASK YOURSELVES
13 WHETHER THE DEFENDANT HONESTLY AND IN GOOD FAITH SOUGHT
14 THE ADVICE OF A LAWYER OR AN ACCOUNTANT AS TO WHAT HE MAY
15 LAWFULLY DO. WHETHER HE FULLY AND HONESTLY LAID ALL THE
16 FACTS BEFORE HIS LAWYER OR ACCOUNTANT AND WHETHER IN GOOD
17 FAITH HE HONESTLY FOLLOWED SUCH ADVICE RELYING UPON IT AND
18 BELIEVING IT TO BE CORRECT. IN SHORT, YOU CONSIDER
19 WHETHER IN SEEKING AND OBTAINING ADVICE FROM A LAWYER OR
20 ACCOUNTANT, THE DEFENDANT INTENDED HIS ACTS SHALL BE
21 LAWFUL. IF HE DID SO, THEN IT IS THE LAW THAT A DEFENDANT
22 CANNOT BE CONVICTED OF A CRIME WHICH INVOLVES WILLFUL AND
23 UNLAWFUL INTENT EVEN IF SUCH ADVICE WAS INACCURATE. ON
24 THE OTHER HAND, NO PERSON CAN WILLFULLY AND KNOWINGLY
25 VIOLATE THE LAW AND EXCUSE HIMSELF FROM THE CONSEQUENCES

1 OF HIS CONDUCT BY PLEADING THAT HE FOLLOWED THE ADVICE OF
2 HIS LAWYER OR ACCOUNTANT. WHETHER THE DEFENDANT ACTED IN
3 GOOD FAITH FOR THE PURPOSE OF SEEKING GUIDES AS TO THE
4 SPECIFIC ACTS IN THIS CASE AND WHETHER HE MADE A FULL AND
5 COMPLETE REPORT TO HIS LAWYER OR ACCOUNTANT AND WHETHER HE
6 ACTED SUBSTANTIALLY IN ACCORDANCE WITH THE ADVICE THAT HE
7 RECEIVED ARE QUESTIONS FOR YOU, THE JURY, TO DETERMINE.

8 I WOULD ALSO CHARGE YOU, MADAM FORELADY AND LADIES
9 AND GENTLEMEN, THAT A DIRECTOR OR OFFICER OF A CORPORATION
10 HAS CERTAIN FIDUCIARY DUTIES OWED TO THE CORPORATION. A
11 FIDUCIARY DUTY IS A DUTY TO ACT FOR SOMEONE ELSE'S BENEFIT
12 WHILE SUBORDINATING ONES PERSONAL INTEREST TO THAT OF THE
13 OTHER PERSON. ON THIS PARTICULAR CHARGE, MADAM FORELADY
14 AND LADIES AND GENTLEMEN, THAT OF SECURITIES FRAUD, IF YOU
15 UNANIMOUSLY FIND BEYOND A REASONABLE DOUBT THAT THE
16 DEFENDANT WILLFULLY VIOLATED SECTION 35-1-1210 OF THE
17 SOUTH CAROLINA CODE OF LAWS THEN YOU MUST ALSO DETERMINE
18 THE AMOUNT OF LOSS, IF ANY, THAT RESULTED FROM THE
19 DEFENDANT'S ACTIONS. SPECIFICALLY YOU MUST FIND WHETHER
20 THE DEFENDANT'S ACTIONS RESULTED IN A LOSS TO AN INVESTOR
21 OF ONE OF THE FOLLOWING AMOUNTS, MORE THAN \$20 THOUSAND
22 DOLLARS OR MORE THAN \$100 THOUSAND DOLLARS BUT LESS THAN
23 \$20 THOUSAND DOLLARS OR FROM 0 TO \$1 THOUSAND DOLLARS.
24 AND THE VERDIT FORM THAT HAS BEEN PREPARED WILL HAVE THAT
25 ON THERE AND I WILL EXPLAIN THAT TO YOU IN MORE DETAIL IN

1 JUST A MOMENT.

2 LET ME NOW TALK WITH YOU FOR JUST A MOMENT ABOUT THE
3 NEXT OFFENSE CHARGED IN THE INDICTMENT. THAT IS OBTAINING
4 GOODS UNDER FALSE PRETENSES. THAT OFFENSE IS FOUND IN
5 SECTION 16-13-240 OF THE SOUTH CAROLINA CODE OF LAWS. IT
6 READS IN PART AS FOLLOWS. ANY PERSON WHO SHALL BE ANY
7 FALSE PRETENSE OR REPRESENTATION OBTAIN THE SIGNATURE OF
8 ANY PERSON TO ANY WRITTEN INSTRUMENT OR SHALL OBTAIN FROM
9 ANY OTHER PERSON ANY CHATTEL, MONEY, VALUABLES, SECURITY
10 OR PUBLIC PROPERTY, REAL OR PERSONAL WITH THE INTENT TO
11 CHEAT AND DEFRAUD ANY PERSON OF SUCH PROPERTY SHALL BE
12 GUILTY OF THIS OFFENSE. BEFORE YOU CAN FIND THE DEFENDANT
13 GUILTY OF THE CRIME OF OBTAINING PROPERTY BY FALSE
14 PRETENSES AS ALLEGED IN THIS COUNT OF THE INDICTMENT YOU
15 MUST FIND THAT THE DEFENDANT WITH THE INTENT TO DEFRAUD
16 MADE A FALSE PRETENSE OR REPRESENTATION AND THEREBY
17 OBTAINED FROM A PERSON OR PERSONS ANY MONEY, SECURITY OR
18 PUBLIC PROPERTY. IF YOU BELIEVE THAT THE EVIDENCE
19 ESTABLISHES EACH AND EVERY ONE OF THESE ELEMENTS OF THE
20 CRIME OF OBTAINING PROPERTY BY FALSE PRETENSES BEYOND A
21 REASONABLE DOUBT IT WOULD BE YOUR DUTY TO FIND THE
22 DEFENDANT GUILTY OF THIS CHARGE. ON THE OTHER HAND IF THE
23 EVIDENCE HAS FAILED TO ESTABLISH ONE OR MORE OF THE ABOVE
24 ELEMENTS OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT
25 THEN IT WOULD BE YOUR DUTY TO FIND THE DEFENDANT NOT

1 GUILTY OF THIS CHARGE. AGAIN, THE ELEMENTS OF THIS CHARGE
2 MUST BE PROVEN BY THE STATE, BEYOND A REASONABLE DOUBT OR
3 THAT THE DEFENDANT DID MAKE A FALSE REPRESENTATION OF
4 FACT, IT MUST BE A FACT AND NOT OPINION. THE
5 REPRESENTATION MUST RELAY TO A PAST OR PRESENT FACT, NOT A
6 FUTURE ACT, A FALSE PROMISE TO DO A FUTURE ACT IS NOT
7 SUFFICIENT. ADDITIONALLY THE DEFENDANT MUST HAVE AN
8 INTENT TO DEFRAUD. THE VICTIM ALSO MUST BE DECEIVED AND
9 THE VICTIM MUST PART WITH SOMETHING OF VALUE. THOSE ARE
10 THE ELEMENTS OF THE OFFENSE OF OBTAINING PROPERTY BY FALSE
11 PRETENSES. A FALSE PRETENSE IS SUCH A FRAUDULENT
12 REPRESENTATION OF EXISTING OR PAST FACT BY ONE WHO KNOWS
13 IT NOT TO BE TRUE AS IT IS ADAPTED TO INDUCE THE PERSON TO
14 WHOM IT IS MADE TO PART WITH SOMETHING OF VALUE. AGAIN,
15 EACH OF THOSE ELEMENTS MUST BE PROVEN BY THE STATE BEYOND
16 A REASONABLE DOUBT BEFORE THE DEFENDANT CAN BE CONVICTED
17 OF THAT OFFENSE.

18 AND THE THIRD OFFENSE THAT IS ALLEGED IN THE
19 INDICTMENT, MADAM FORELADY AND LADIES AND GENTLEMEN, IS
20 THE CHARGE OF CONSPIRACY. I AM GOING TO EXPLAIN AND
21 DEFINE FOR YOU THE LAW OF CONSPIRACY. I WOULD INSTRUCT
22 YOU THAT THE CRIME OF CONSPIRACY AND CONSPIRACY ITSELF IS
23 AN ILLEGAL AGREEMENT. IN OTHER WORDS, IF TWO OR MORE
24 PEOPLE AGREE TO COMMIT A CRIMINAL ACT AND THEY WORK TO
25 ACCOMPLISH THAT GOAL THEN THEY HAVE CONSPIRED TOGETHER. I

1 WILL TELL YOU THAT THE CRIME IS THE AGREEMENT ITSELF AND
2 WHEN ONE PERSON AGREES WITH ANOTHER TO DO AN ILLEGAL ACT
3 THAT PERSON MAY BE FOUND GUILTY OF COMMITTING THE CRIME OF
4 CONSPIRACY. YOU SHOULD BE AWARE THAT IT IS NOT NECESSARY
5 FOR THE PEOPLE WHO ARE ENGAGED IN THE CONSPIRACY TO
6 ACTUALLY MEET AND HAVE A FORMAL, EXPRESSED CONTRACTUAL
7 AGREEMENT NOR IS IT NECESSARY FOR THE STATE TO TRY OR EVEN
8 INDICT ALL OF THE PARTICIPANTS THAT ARE IN CONSPIRACY
9 TOGETHER. IN ORDER FOR THERE TO BE A CRIME IT IS ONLY
10 NECESSARY THAT THE PARTICIPANTS OR COCONSPIRATORS COME TO
11 SOME MUTUAL UNDERSTANDING, TACIT OR OTHERWISE TO
12 ACCOMPLISH A COMMON AND UNLAWFUL END. BY TACIT, I MEAN
13 UNSPOKEN OR IMPLIED. IN OTHER WORDS, THE EVIDENCE IN THE
14 CASE NEED NOT SHOW THAT THE ALLEGED MEMBERS OF THE
15 CONSPIRACY ACTUALLY HAVE EXPRESSED AGREEMENT OR THAT THEY
16 DIRECTLY STATED BETWEEN THEMSELVES THE DETAILS OF THE
17 AGREEMENT AND THE OBJECT OF THE AGREEMENT OR THAT THEY
18 DETERMINED THE PRECISE MEANS BY WHICH THE OBJECT OR THE
19 PURPOSE WAS TO BE ACCOMPLISHED. SO, THEY CAN ALL HAVE HAD
20 ONE COMMON GOAL AND ALL MAY OF WORKED TOWARDS THAT END
21 WITHOUT KNOWING THE FULL DETAILS OF WHAT ALL OF THE OTHER
22 CONSPIRATORS WERE DOING. HOWEVER, BEFORE A PERSON CAN BE
23 FOUND GUILTY OF THIS CRIME IT MUST BE PROVEN TO YOUR
24 COMPLETE SATISFACTION BEYOND A REASONABLE DOUBT THAT THE
25 CONSPIRACY WAS FORMED AS ALLEGED IN THE INDICTMENT AND

1 THAT THE DEFENDANT WAS AN ACTIVE PARTY TO IT. ONLY YOU
2 MAY DECIDE THE FACTS OF THE CASE, ONLY YOU MAY DETERMINE
3 WHETHER OR NOT A CONSPIRACY EXISTED AND IF SO WHETHER OR
4 NOT THE DEFENDANT ON TRIAL HERE WAS INVOLVED IN IT. UNDER
5 THE INDICTMENT THE AGREEMENT ALONE CONSTITUTES THE
6 OFFENSE, THEREFORE BEFORE ANY DEFENDANT MAY BE CONVICTED
7 OF THIS OFFENSE IT MUST BE MADE TO APPEAR FROM THE
8 EVIDENCE BEYOND A REASONABLE DOUBT THAT THE CONSPIRACY
9 EXISTED AND THAT THE DEFENDANT WAS A KNOWING PART TO THE
10 CONSPIRACY. AGAIN, I INSTRUCT YOU THAT A TACIT UNSPOKEN
11 OR IMPLIED MUTUAL UNDERSTANDING OR AGREEMENT WHICH RESULTS
12 IN THE UNLAWFUL AND INTENTIONAL ADOPTION OF A COMMON GOAL
13 BY TWO OR MORE PERSONS IS SUFFICIENT UNDER THE LAW TO
14 CONSTITUTE A CONSPIRACY PROVIDED THAT THE COMMON PURPOSE
15 IS TO DO AN UNLAWFUL ACT EITHER AS A MEANS OR AS AN END.
16 I WILL FURTHER TELL YOU THAT A DEFENDANT IN AN ALLEGED
17 CONSPIRACY MUST HAVE HAD AN INTENT TO ADVANCE THE COMMON
18 GOAL OF THE AGREEMENT. IF THE PERSONS INVOLVED ARE NOT
19 ACTING IN CONCERT BUT ARE INSTEAD ACTING SEPARATELY AND
20 INDIVIDUALLY THEN YOU MAY RIGHTFULLY CONCLUDE THAT THEY
21 ARE NOT INVOLVED IN A CONSPIRACY. ON THE OTHER HAND IF
22 TWO OR MORE PERSONS PURSUE THE SAME UNLAWFUL GOAL, ONE
23 DOING ONE ACT AND ANOTHER PERSON PERFORMING ANOTHER ACT
24 THEN THE CONCLUSION THAT THEY ENGAGED IN A CONSPIRACY TO
25 ACHIEVE THAT UNLAWFUL GOAL IS JUSTIFIED. I WOULD INSTRUCT

1 YOU THAT COOPERATION IN SOME FORM OR MANNER MUST BE SHOWN.
2 I WOULD INSTRUCT YOU THAT THIS COOPERATION MAY BE SHOWN BY
3 CIRCUMSTANTIAL EVIDENCE, BY COOPERATION. THERE MUST BE A
4 INTENTIONAL PARTICIPATION IN TRANSACTION OR ACT, THAT
5 FURTHERS THE GOAL OF THE ALLEGED CONSPIRACY AND THAT THE
6 PARTICIPATION WAS DONE WITH A VIEW AND OF A PURPOSE OF
7 FURTHERING THE COMMON DESIGN AND FULFILLING THE AGREEMENT.
8 I WILL TELL YOU THAT A PERSON IN ANY MANNER ENCOURAGES,
9 ADVICES OR HELPS TO ASSIST IN A TRANSACTION OR SCHEME
10 WHICH HELPS TO ADVANCE THE GOAL OR DESIGN OF A CONSPIRACY
11 AND IF THAT PERSON UNDERSTANDS THAT THE TRANSACTION ITSELF
12 IS UNLAWFUL THEN THAT PERSON IS A CONSPIRATOR. AGAIN, IN
13 ORDER TO BECOME A PARTY TO A CONSPIRACY A PERSON MUST HAVE
14 SHOWN WITH SOMEONE ELSE TO ACHIEVE THE OBJECT OF THE
15 CONSPIRACY BY THE MEANS AGREED UPON. THERE IS NO
16 CONSPIRACY WHEN ONE INDIVIDUAL ACTS BY AND FOR HIMSELF
17 ALONE. A COMMON DESIGN OR GOAL IS THE ESSENCE OF THE
18 CHARGE OF CONSPIRACY. SO, THE EVIDENCE PRESENTED BY THE
19 STATE AS TO THE DEFENDANT SATISFIES YOU BEYOND A
20 REASONABLE DOUBT THAT A CONSPIRACY DID IN FACT EXIST AND
21 IF YOU FIND THAT THE DEFENDANT WAS A PARTY TO THE
22 CONSPIRACY THEN YOU MAY FIND HIM GUILTY AS CHARGED. I
23 WILL ALSO TELL YOU THAT IF THE EVIDENCE FAILS TO SATISFY
24 YOU THAT THE CONSPIRACY EXISTED OR IF YOU FIND THAT THE
25 DEFENDANT WAS NOT A PARTY TO THE CONSPIRACY AS ALLEGED

1 THEN YOU WILL FIND THE DEFENDANT NOT GUILTY OF THAT
2 CHARGE. I WILL CHARGE YOU A FEW OTHER MATTERS CONCERNING
3 THE LAW OF CONSPIRACY. AN ALLEGED MEMBER OF CONSPIRACY IS
4 RESPONSIBLE FOR EVERY CRIMINAL ACT KNOWN BY EVERY OTHER
5 MEMBER OF THE CONSPIRACY DURING ITS EXISTENCE AND WHILE
6 THE PERSON REMAINS IN THE CONSPIRACY. I WOULD ALSO
7 INSTRUCT YOU THAT A PERSON IS HELD BY THE LAW TO REMAIN IN
8 THE CONSPIRACY UNTIL THAT PERSON DOES SOME AFFIRMATIVE ACT
9 TO WITHDRAW FROM THE CONSPIRACY. ADDITIONALLY IF A PERSON
10 JOINS IN CONSPIRACY, UNDERSTANDING THE UNLAWFUL CHARACTER
11 OF THE AGREEMENT THEN THAT PERSON MAY BE CONVICTED OF THE
12 CRIME EVEN THOUGH THAT PERSON HAD NOT PARTICIPATED EARLIER
13 ON IN THE CONSPIRACY AND EVEN IF THE PERSON PLAYED ONLY A
14 MINOR ROLE IN THE CONSPIRACY. ADDITIONALLY, A PERSON MAY
15 BE A MEMBER OF THE CONSPIRACY WITHOUT HAVING THE FULL
16 KNOWLEDGE OF ALL OF THE DETAILS OF THE UNLAWFUL SCHEME OR
17 EVEN THE NAMES AND THE IDENTITIES OF ALL THE OTHER ALLEGED
18 CONSPIRATORS. AGAIN, THE ELEMENTS OF THE OFFENSE OF
19 CONSPIRACY MUST ALL BE PROVEN BY THE STATE BEYOND A
20 REASONABLE DOUBT BEFORE THE DEFENDANT CAN BE CONVICTED OF
21 THAT CHARGE.

22 AND FINALLY, MADAM FORELADY AND LADIES AND GENTLEMEN,
23 I WILL CHARGE YOU THAT PUNISHMENT PROVIDED BY LAW FOR THE
24 OFFENSE OR THE OFFENSES THAT ARE CHARGED IN THIS
25 INDICTMENT IS A MATTER EXCLUSIVELY WITHIN THE PROVINCE OF

1 THIS COURT AND SHOULD NEVER BE CONSIDERED BY THE JURY IN
2 ANY WAY WHATSOEVER IN ARRIVING AT A FAIR AND IMPARTIAL
3 VERDICT AS TO THE GUILT OR THE INNOCENCE OF THE DEFENDANT.

4 IN JUST A MOMENT YOU ARE GOING TO BE SENT BACK TO
5 YOUR JURY ROOM TO BEGIN YOUR DELIBERATIONS. AND MADAM
6 FORELADY AND LADIES AND GENTLEMEN, WHATEVER YOUR VERDICT
7 IS IN THIS CASE IT MUST BE UNANIMOUS WHICH SIMPLY MEANS
8 ALL TWELVE OF YOU MUST AGREE TO IT. IT CANNOT BE 10 TO 2
9 OR 7 TO 5 OR 8 TO 4, ANYTHING LESS THAN A UNANIMOUS
10 VERDICT. ONCE YOU HAVE DELIBERATED AND REACHED A
11 UNANIMOUS VERDICT AND HAVE COMPLETED THE VERDICT FORMS,
12 THEN MADAM FORELADY, YOU WILL SIMPLY KNOCK ON THE DOOR AND
13 TELL THE BAILIFF YOU HAVE A VERDICT, DON'T TELL HIM WHAT
14 IT IS AND WE WILL BRING YOU BACK IN THE COURTROOM TO TAKE
15 YOUR VERDICT AT THAT TIME. IN THIS CASE, AS I HAVE
16 PREVIOUSLY INDICATED TO YOU THERE ARE THREE SEPARATE
17 CHARGES AND I HAVE COMPLETED VERDICT FORMS FOR EACH OF THE
18 CHARGES, GOING OVER THEM IN THE ORDER THAT I EXPLAINED THE
19 LAW TO YOU. THE FIRST CHARGE IS SECURITIES FRAUD. AND
20 PLEASE DON'T ATTACH ANY SIGNIFICANCE TO THE ORDER THAT I
21 GIVE YOU THE POSSIBLE VERDICTS, I HAVE GOT TO GIVE THEM TO
22 YOU IN SOME ORDER. AND AS TO THAT CHARGE THERE ARE TWO
23 POSSIBLE VERDICTS, ONE IS NOT GUILTY AND THE OTHER IS
24 GUILTY. THERE ARE INSTRUCTIONS ON THE VERDICT FORM AS I
25 HAVE GONE OVER DURING MY INSTRUCTIONS TO YOU. AND IT

1 READS AS FOLLOWS, IF GUILTY INDICATE THE AMOUNT OF LOSS
2 RESULTING FROM THE DEFENDANT'S ACTIONS. AND IT IS THREE
3 DIFFERENT CATEGORIES, 0 TO \$1 THOUSAND DOLLARS, \$1
4 THOUSAND DOLLARS TO \$1,999 DOLLARS AND \$20 THOUSAND
5 DOLLARS OR MORE. IF YOU UNANIMOUSLY DECIDE THAT THE
6 DEFENDANT IS GUILTY OF THIS CHARGE THEN YOU WOULD GO
7 FURTHER ON THIS FORM AND INDICATE THE AMOUNT OF LOSS
8 RESULTING FROM THE DEFENDANT'S ACTIONS. AND MADAM
9 FORELADY, THE WAY YOU INDICATE THE VERDICT IS TO SIMPLY TO
10 SIGN YOUR NAME OUT BESIDE WHATEVER THE VERDIT IS. I THINK
11 IT WILL BE SELF EXPLANATORY WHEN YOU GET THE FORM. ON THE
12 OTHER TWO CHARGES, OBTAINING A SIGNATURE OR PROPERTY BY
13 FALSE PRETENSES AND CONSPIRACY, THERE ARE TWO POSSIBLE
14 VERDICTS. ONE IS NOT GUILTY AND ONE IS GUILTY. AGAIN,
15 YOU WOULD INDICATE THE JURYS UNANIMOUS VERDICT BY SIGNING
16 YOUR NAME TO WHATEVER THE VERDICT REACHED BY THE JURY IS.
17 IN MANY CASES THE JURY DOES NOT HAVE QUESTIONS ONCE THEY
18 GO BACK AND BEGIN THEIR DELIBERATIONS. SOMETIMES JURYS DO
19 HAVE QUESTIONS, IF YOU HAVE A QUESTION, NUMBER ONE KEEP IN
20 MIND THAT I CANNOT RESPOND TO ANY FACTUAL QUESTION, I
21 CAN'T COMMENT ON THE FACTS, I CANNOT RESPOND TO A FACTUAL
22 QUESTION, YOU HAVE TO DETERMINE WHAT THE FACTS ARE. IF
23 YOU DO HAVE A QUESTION WRITE IT DOWN AND HAND IT OUT TO
24 THE BAILIFF, WE WILL GIVE YOU PAPER AND PENCIL. HAND THAT
25 QUESTION OUT TO THE BAILIFF AND IF I AM PERMITTED TO

1 RESPOND TO THAT QUESTION I MAY BE ABLE TO DO THAT IN
2 WRITING, IT MAY BE NECESSARY FOR ME TO BRING YOU BACK IN
3 THE COURTROOM AND RESPOND TO THAT PARTICULAR QUESTION.
4 FROM TIME TO TIME I WILL HAVE JURYS ALSO WHO WILL SEND ME
5 OUT A NOTE THAT WE WOULD LIKE TO SEE MAYBE A CHART OR SOME
6 OTHER EXHIBIT THAT WAS USED BY THE ATTORNEYS WHEN THEY
7 WERE TALKING TO THE WITNESSES. I WILL INSURE YOU THAT
8 EVERY EXHIBIT THAT HAS BEEN ADMITTED INTO EVIDENCE WILL BE
9 WITH YOU IN THE JURY ROOM. BEYOND THAT IF THERE WAS
10 SOMETHING THAT AN ATTORNEY PREPARED WITH A CLOSING
11 ARGUMENT OR OPENING STATEMENT AND IT IS NOT IN EVIDENCE I
12 CANNOT SEND THAT BACK TO THE JURY ROOM BUT I WILL BE SURE
13 THAT ALL OF THE EXHIBITS THAT ARE ADMITTED INTO EVIDENCE
14 WILL BE WITH YOU IN THE JURY ROOM. NOW, I AM GETTING
15 READY TO SEND YOU TO YOUR JURY ROOM BUT I AM STILL GOING
16 TO INSTRUCT YOU NOT TO BEGIN THE DELIBERATIONS, I NEED TO
17 GO OVER WITH THE ATTORNEYS THE INSTRUCTIONS THAT I HAVE
18 GIVEN YOU. AND IF I HAVE OMITTED SOMETHING, IF I NEED TO
19 EXPLAIN SOMETHING IN MORE DETAIL I WILL DO THAT
20 IMMEDIATELY. IF THAT IS NOT NECESSARY THEN WHEN THE
21 BAILIFF OR THE CLERK BRINGS YOU THE EXHIBITS AND THE
22 VERDICT FORMS THAT IS YOUR SIGNAL TO BEGIN YOUR
23 DELIBERATIONS AND ONCE YOU HAVE REACHED A UNANIMOUS
24 VERDICT AND HAVE COMPLETED THE VERDICT FORMS SIMPLY TELL
25 THE BAILIFF THAT YOU HAVE REACHED A VERDICT AND WE WILL

1 BRING YOU BACK IN THE COURTROOM TO TAKE YOUR VERDICT AT
2 THAT TIME. WITH THOSE INSTRUCTIONS IF YOU WILL STEP BACK
3 TO YOUR JURY ROOM, MY ALTERNATE JUROR, SIR, IF YOU WILL
4 STAY WITH ME IN THE COURTROOM, PLEASE. THE REST OF YOU
5 ARE EXCUSED, EVERYONE STAY SEATED, PLEASE.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT.)

7 THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM THE
8 STATE?

9 MS. EVANS: YOUR HONOR, THERE IS JUST ONE THING THAT
10 I WANTED TO POINT OUT, AND I ASSUME SINCE THE DEFENDANT
11 DIDN'T REQUEST IT, HE DIDN'T WANT IT. BUT AS HE REQUESTED
12 ON THE SECURITIES FRAUD, THE LESSOR INCLUDED AMOUNTS, IN
13 THE OBTAINING PROPERTY UNDER FALSE PRETENSES THERE ARE TWO
14 LESSOR INCLUDED AMOUNTS BUT HE DID NOT REQUEST IT. I AM
15 JUST BRINGING IT TO THE COURT'S ATTENTION, I ASSUME HE DID
16 NOT WANT THOSE LESSOR INCLUDED AMOUNTS AND THEN OBTAINING
17 PROPERTY UNDER FALSE PRETENSES PRESENTED THE WAY HE DID
18 UNDER THE SECURITIES LAW. BUT I JUST WANTED TO BRING IT
19 TO THE COURT'S ATTENTION.

20 THE COURT: MR. GRIFFIN, YOU WANT TO BE HEARD ON
21 THAT?

22 MR. GRIFFIN: YOUR HONOR, WE DID NOT REQUEST IT.

23 THE COURT: I DON'T KNOW, QUITE FRANKLY, THAT A
24 DEFENDANT HAS TO REQUEST, IF THE EVIDENCE SUPPORTS A
25 PARTICULAR CHARGE. DURING OUR CHARGE CONFERENCE YESTERDAY

1 NOTHING WAS SAID ABOUT ANY LESSOR INCLUDED AND TECHNICALLY
2 AS FAR AS THE AMOUNTS OF SECURITIES FRAUD CHARGE IS
3 CONCERNED, I DON'T THINK THAT THOSE ARE LESSOR INCLUDED.
4 I THINK THE WAY IT HAS BEEN PHRASED TO THE JURY THEN THEY
5 UNDERSTAND WHAT THEIR DUTY IS. SO, I APPRECIATE YOU
6 POINTING THAT OUT BUT I AM NOT GOING TO MAKE ANY CHANGES
7 ON THAT. ANYTHING FURTHER FROM THE STATE?

8 MS. EVANS: NO, YOUR HONOR.

9 THE COURT: MR. GRIFFIN.

10 MR. GRIFFIN: YOUR HONOR, WITH REGARD TO THE
11 PRELIMINARY, YOU GAVE AN INSTRUCTION ON THE PLEA OF A
12 DEFENDANT TO SIMILAR CHARGES AND YOU EXPLAINED THAT IT
13 SHOULD NOT LESSON THE PRESUMPTION OF INNOCENCE AS THE
14 STATE'S BURDEN OF PROOF. AND WE HAD REQUESTED ALSO THAT
15 THE JURY BE INSTRUCTED THAT THE FACT OF THE PLEA COULD NOT
16 BE USED AS EVIDENCE AGAINST THE DEFENDANT. AND THAT WAS
17 NOT GIVEN.

18 THE COURT: I THINK I STATED TO THE JURY AND
19 PARAPHRASED A LITTLE BIT, I SAID THE PLEA IN AND OF ITSELF
20 DOES NOT PROVE THE GUILT OF THIS DEFENDANT.

21 MR. GRIFFIN: I UNDERSTAND AND WE HAVE TAKEN
22 EXCEPTION.

23 THE COURT: THAT IS FINE.

24 MR. GRIFFIN: YOUR HONOR, IN YOUR INSTRUCTION ON
25 WILLFULNESS, AT ONE POINT AND TIME YOU CHARGED WILLFULNESS

1 COULD BE, I THINK EXTREME RECKLESSNESSES OR WORDS TO THAT
2 EFFECT. AND WE TAKE EXCEPTION TO THAT, YOU DID CHARGE THE
3 INSTRUCTION THAT WE SUBMITTED IN OUR NUMBER ELEVEN WHICH
4 WE DON'T TAKE EXCEPTION TO BUT THE OTHER DEFINITION OF
5 WILLFULNESS WHICH WE THINK LOWERS THE STANDARDS.

6 THE COURT: I THINK WE HAD FULL DISCUSSION ON THAT
7 AND I UNDERSTAND WHAT YOUR ARGUMENT IS. AND CASES WERE
8 CITED BY THE STATE THAT I THINK SUPPORTS THAT CHARGE.
9 THAT EXCEPTION IS NOTED ALSO.

10 MR. GRIFFIN: AND, YOUR HONOR, WE TAKE EXCEPTION TO
11 THE COURT'S INSTRUCTION ON SCIENTER WITH REGARD TO
12 MISSTATEMENTS. THE DEFENDANT IS CHARGED UNDER THE (1) OR
13 (2) OF THE SECURITIES STATUTE WITH REGARD TO GIVING FALSE
14 STATEMENTS AND WE DON'T THINK SCIENTER IS AN ELEMENT OF
15 ENGAGED IN ACTS OF PRACTICE OR THE COURSE OF BUSINESS.
16 AND SO WE TAKE EXCEPTION TO THE SCIENTER CHARGE AND ALSO
17 THE DEFINITION OF SCIENTER WHICH INCLUDES THE LEVEL OF
18 RECKLESSNESS. WE THINK THAT ALSO, THAT LOWERS THE BURDEN
19 OF THE STATE'S PROOF AND WE TAKE EXCEPTION TO THAT.

20 THE COURT: LET ME HEAR FROM THE STATE ON THAT, YOUR
21 POSITION ON THE RECORD, PLEASE.

22 MS. EVANS: YOUR HONOR, I BELIEVE THAT WE TOLD YOU
23 THAT WAS PART OF THE COURSE OF BUSINESS THAT WE POINTED
24 OUT, FEDERAL LAW TO YOU IN THE BACK THAT WAS, WE THOUGHT
25 THAT WAS PERFECTLY REASONABLE. SCIENTER IS PART OF

1 SECURITIES FRAUD IN THE COURSE OF BUSINESS AND THE CASES
2 SUPPORTS THAT, YOUR HONOR.

3 THE COURT: AFTER REVIEWING IT LAST NIGHT I FELT LIKE
4 IT WAS APPROPRIATE TO CHARGE AND YOUR EXCEPTION IS NOTED.

5 MR. GRIFFIN: YOUR HONOR, WE WOULD ALSO ADVISE THE
6 COURT AHEAD OF TIME THAT WE TAKE EXCEPTION TO THE STATE'S
7 REQUEST TO CHARGE AND THE CHARGE THAT YOU DID GIVE ON
8 FIDUCIARY DUTIES AND THE OFFICER OF A CORPORATION. THE
9 DEFENDANT IS NOT CHARGED WITH VIOLATING HIS FIDUCIARY
10 DUTIES, WE THINK THAT IS PERHAPS 404(B) EVIDENCE. AND
11 THAT CHARGING, THAT WOULD ALLOW THE JURY TO FIND THE
12 DEFENDANT GUILTY OF THE OFFENSE THAT HE IS NOT ON TRIAL
13 FOR AND FOR THAT REASON WE TAKE EXCEPTION ON INSTRUCTING
14 THE LAW ON FIDUCIARY DUTY, OBLIGATION OF AN OFFICER AND
15 DIRECTOR OF A CORPORATION, IT IS THE FIDUCIARY DUTY TO THE
16 CORPORATION.

17 THE COURT: I BELIEVE THAT, FROM MY VIEW IT IS PART
18 OF THE LAW THAT WOULD GO TO A COURSE OF BUSINESS. AND
19 WETHER OR NOT THAT COURSE IS BUSINESS IS INTENDED TO
20 DEFRAUD AN INVESTOR, FOR THAT REASON I FELT THAT IT WAS
21 APPROPRIATE.

22 MR. GRIFFIN: YOUR HONOR, YESTERDAY ADDITIONAL
23 EXCEPTIONS, THE STATE SUBMITTED THEIR REQUEST TO CHARGE
24 NUMBER ONE REGARDING DIFFERENT WAYS THEY SOUGHT TO PROVE
25 THE COURSE OF BUSINESS, DIFFERENT ALLEGATIONS OF

1 MISCONDUCT. AND THAT THE JURY DOESN'T HAVE TO FIND ALL OF
2 THE ALLEGATIONS THAT THEY PRESENTED TO BE PROVEN, ONLY
3 ONE. AND I HAD REQUESTED THAT IF THAT CHARGE WAS GOING TO
4 BE GIVEN THAT IN ADDITION TO THAT THAT THE COURT INSTRUCT
5 THE JURY IF THEY FIND THAT ALL THE JURORS HAVE TO
6 UNANIMOUSLY AGREE UPON WHICH ONE IT IS. MS. EVANS MADE
7 THAT POINT IN HER CLOSING ARGUMENTS. BUT, YOUR HONOR, I
8 DON'T BELIEVE IT WAS CHARGED SO WE DO TAKE EXCEPTION TO
9 THAT INSTRUCTION ABSENT THE ADDITIONAL CAUTIONARY
10 INSTRUCTION THAT THE JURY HAS TO UNANIMOUSLY FIND WHICH
11 ONE. IT COULD BE CONFUSING TO FIND FROM A MENU AND THEY
12 REACH A UNANIMOUS VERDICT BUT THEY DON'T ALL AGREE ON THE
13 SAME POINT.

14 THE COURT: WHAT I DID IS PARAPHRASE AND I KNOW THAT
15 WE WERE LOOKING AT SOME OF THE LANGUAGE THAT WAS PRESENTED
16 YESTERDAY. AND I CHANGED THE SECOND PORTION OF THE
17 STATE'S REQUEST, THE STATE MUST PROVE TO YOUR SATISFACTION
18 BEYOND A REASONABLE DOUBT THAT AT LEAST ONE MATERIAL FALSE
19 STATEMENT OR MATERIAL OMISSION WAS MADE. AND I BELIEVE
20 THAT IS SUFFICIENT AND YOUR EXCEPTION IS NOTED.

21 MR. GRIFFIN: YES, SIR. YOUR HONOR, DEFENDANT HAD
22 SUBMITTED REQUEST TO CHARGE NUMBER 14 REQUESTING THAT THE
23 JURY BE INSTRUCTED THAT A PERSON IS RESPONSIBLE FOR
24 CONDUCT THAT HE PERSONALLY PERFORMED ON BEHALF OF THE
25 CORPORATION. HOWEVER, HE IS NOT RESPONSIBLE FOR THE

1 CONDUCT OF OTHERS PERFORMED ON BEHALF OF THE CORPORATION
2 MERELY BECAUSE THAT PERSON IS AN OFFICER OR EMPLOYEE AT
3 THE TIME. WE WOULD AGAIN REQUEST THAT CHARGE.

4 THE COURT: ALL RIGHT, I DIDN'T FEEL LIKE IT WAS
5 APPROPRIATE, I REALLY, I THINK IT WOULD BE DIFFICULT TO
6 GET THAT CHARGE IN CONJUNCTION WITH THE CONSPIRACY CHARGE.
7 THE EXCEPTION IS NOTED ON THAT.

8 MR. GRIFFIN: AND, YOUR HONOR, WE HAD SUBMITTED
9 REQUEST NUMBER 15 IN WHICH IS THE NO DUTY TO ACT, RULE
10 THAT A PERSON DOES NOT HAVE THE DUTY TO ACT OR COMMIT A
11 CRIMINAL CONDUCT OF ANOTHER OR TO PREVENT CONSEQUENCES OF
12 ANOTHER. IT MAY BE MORAL DUTY OF SUCH CIRCUMSTANCES AND
13 NOT LEGAL DUTY. AND THAT WAS OUR NUMBER 15 AND I WANTED
14 TO PUT THAT ON THE RECORD AND WE OBJECT TO THAT ONE.

15 THE COURT: ALL RIGHT.

16 MR. GRIFFIN: AND, YOUR HONOR, I REQUESTED 17 AND 18
17 AND 19, 17 IS A CHARGE OF CAUSATION OF FACT AND IT GOES TO
18 THE AMOUNT OF LOSS THAT THE STATE IS REQUIRED TO PROVE.
19 WE WOULD REQUEST THAT CHARGE.

20 THE COURT: AND THE OTHER TWO WERE PROXIMATE CAUSE
21 REQUEST?

22 MR. GRIFFIN: YES SIR, PROXIMATE CAUSE.

23 THE COURT: I KNOW THOSE REQUEST WERE MADE AND I KNOW
24 I INDICATED YESTERDAY THAT I WOULD NOT BE CHARGING THOSE.
25 DO YOU HAVE AN EXTRA COPY OF ALL OF YOUR REQUEST?

1 MR. GRIFFIN: YES, SIR.

2 THE COURT: IF YOU DO I WANT TO MAKE THEM A COURT
3 EXHIBIT AND THE STATE'S REQUEST FOR CHARGE, WE WILL MAKE
4 THAT A COURT EXHIBIT.

5 (WHEREUPON, COURT'S EXHIBIT NOS. 1 AND 2 WERE MARKED
6 FOR IDENTIFICATION.) .

7 THE COURT: ANYTHING FURTHER?

8 MR. GRIFFIN: THAT IS ALL ON THE CHARGES.

9 THE COURT: YA'LL HAVE A LOOK AT THESE VERDICT FORMS
10 AND BE SURE YOU DON'T HAVE ANY PROBLEMS THEN WE WILL STAND
11 IN RECESS UNTIL WE HEAR FROM THE JURY.

12 (WHEREUPON, THE JURY STARTED DELIBERATIONS AT
13 APPROXIMATELY 3:40 P.M.)

14 THE COURT: YOU ARE OUR ALTERNATE, YOU HAVE BEEN HERE
15 ON TIME EVERY TIME AND I APPRECIATE THAT. THE REASON YOU
16 HAVE BEEN HERE, YOU KNOW, WE USED DIFFERENT ALTERNATES BUT
17 SINCE THEY NOW HAVE THE CASE YOU ARE NOT GOING TO BE GOING
18 BACK AND MAKE A DECISION. YOU HAVE FULFILLED YOUR JUROR
19 DUTIES AND ON BEHALF OF THE COURT AND EVERYONE INVOLVED I
20 APPRECIATE IT. IF YOU WILL STEP BACK HERE AND I WANT TO
21 TALK TO YOU FOR JUST A SECOND AND THEN YOU WILL BE FREE TO
22 GO.

23 (WHEREUPON, THE ALTERNATE JUROR WAS EXCUSED FROM THE
24 TRIAL OF THE CASE.)

25 THE COURT: THE COURT HAS BEEN ADVISED THAT THE JURY

1 HAS REACHED A VERDICT IN THE CASE. OF COURSE, I HAVE NO
2 WAY OF KNOWING WHAT THE VERDICT MIGHT BE. BUT FOR THE
3 BENEFIT OF THOSE HERE IN THE COURTROOM, YOU DO NEED TO
4 UNDERSTAND THAT THE COURT CANNOT AND WILL NOT PERMIT ANY
5 KIND OF EMOTIONAL OUTBURST WHEN THE JURY IS ANNOUNCED. IF
6 THERE IS ANYONE WHO FILLS THAT THEY CANNOT CONTROL
7 THEMSELVES THEY NEED TO REMOVE THEMSELVES FROM THE
8 COURTROOM AT THIS TIME, IT SIMPLY WILL NOT BE TOLERATED.
9 BRING THE JURY IN, PLEASE.

10 (WHEREUPON, THE JURY CAME INTO OPEN COURT WITH THE
11 VERDICT AT APPROXIMATELY 5:30 P.M.)

12 THE COURT: MADAM FORELADY, I HAVE BEEN ADVISED THAT
13 THE JURY HAS REACHED A VERDICT IN THIS CASE, IS THAT
14 CORRECT?

15 MADAM FORELADY: CORRECT.

16 THE COURT: IS IT UNANIMOUS?

17 MADAM FORELADY: IT IS UNANIMOUS.

18 THE COURT: WILL YOU HAND THE VERDICT FORMS TO THE
19 BAILIFF, PLEASE. MR. GRIFFIN, IF YOU AND MR. SHEPPARD
20 WILL PLEASE STAND. IN CASE NUMBER 2005-GS-47-20, STATE
21 VERSUS RONALD J. SHEPPARD. ON THE CHARGE OF SECURITIES
22 FRAUD, THE VERDICT OF THE JURY IS GUILTY, INVOLVED IN THE
23 AMOUNT OF \$20 THOUSAND DOLLARS OR MORE LOSS RESULTING FROM
24 THE DEFENDANT'S ACTIONS. SIGNED BY THE FORELADY. MADAM
25 FORELADY IF THIS IS YOUR VERDICT AND THE VERDICT OF ALL

1 THE JURORS WILL YOU PLEASE INDICATE BY RAISING YOUR RIGHT
2 HAND ON THAT CHARGE, IF THAT IS YOUR VERDICT AND THE
3 VERDIT, ALL JURORS, IF THIS IS YOUR VERDICT RAISE YOUR
4 RIGHT HAND, PLEASE.

5 (WHEREUPON, ALL JURORS RAISED THEIR HAND.)

6 THE COURT: ALL JURORS HAVE RESPONDED. YOU MAY PUT
7 YOUR HANDS DOWN. ON THE NEXT CHARGE, OBTAINING SIGNATURE
8 OR PROPERTY BY FALSE PRETENSES, THE VERDICT IS GUILTY.
9 SIGNED BY THE FORELADY. AGAIN, MADAM FORELADY AND LADIES
10 AND GENTLEMEN, IF THIS IS YOUR VERDICT PLEASE INDICATE BY
11 RAISING YOUR RIGHT HAND, PLEASE.

12 (WHEREUPON, ALL JURORS RAISED THEIR HAND.)

13 THE COURT: ALL JURORS HAVE RESPONDED AFFIRMATIVELY.
14 ON THE THIRD CHARGE OF CONSPIRACY. THE VERDICT IS GUILTY.
15 SIGNED BY THE FORELADY. MADAM FORELADY AND LADIES AND
16 GENTLEMEN, IF THIS IS YOUR VERDICT PLEASE INDICATE BY
17 RAISING YOUR RIGHT HAND.

18 (WHEREUPON, ALL JURORS RAISED THEIR HAND.)

19 THE COURT: ALL TWELVE JURORS HAVE RESPONDED. MR.
20 GRIFFIN, DO YOU WISH TO HAVE THE JURY POLLED?

21 MR. GRIFFIN: YES, SIR.

22 THE COURT: YOU MAY HAVE A SEAT, MR. GRIFFIN AND MR.
23 SHEPPARD. MADAM FORELADY AND LADIES AND GENTLEMEN, THE
24 COURT IS GOING TO POLL THE JURY WHICH SIMPLY MEANS THAT I
25 AM GOING TO ASK YOU WHETHER THIS WAS YOUR VERDICT IN THE

1 JURY ROOM AND WHETHER IT IS STILL YOUR VERDICT. AND I
2 WILL DO THAT INDIVIDUALLY STARTING WITH THE FORELADY.

3 THE COURT: JULIE NARANG, WAS THIS YOUR VERDICT?

4 JUROR: YES.

5 THE COURT: IS IT STILL YOUR VERDICT?

6 JUROR: YES.

7 THE COURT: MICHELLE FALLAW, WAS THIS YOUR VERDICT?

8 JUROR: YES.

9 THE COURT: IS IT STILL YOUR VERDICT?

10 JUROR: YES.

11 THE COURT: KATHLEEN VARNADORE, WAS THIS YOUR
12 VERDICT?

13 JUROR: YES.

14 THE COURT: IS IT STILL YOUR VERDICT?

15 JUROR: YES.

16 THE COURT: LEROY YENNY, WAS THIS YOUR VERDICT?

17 JUROR: YES.

18 THE COURT: IS IT STILL YOUR VERDICT?

19 JUROR: YES.

20 THE COURT: ROBERT RIVERS, WAS THIS YOUR VERDICT?

21 JUROR: YES.

22 THE COURT: IS IT STILL YOUR VERDICT?

23 JUROR: YES.

24 THE COURT: LEO REED, WAS THIS YOUR VERDICT?

25 JUROR: YES.

1 THE COURT: IS IT STILL YOUR VERDICT?

2 JUROR: YES.

3 THE COURT: JAMES GLENN, WAS THIS YOUR VERDICT?

4 JUROR: YES.

5 THE COURT: IS IT STILL YOUR VERDICT?

6 JUROR: YES.

7 THE COURT: CAROL SMITH, WAS THIS YOUR VERDICT?

8 JUROR: YES.

9 THE COURT: IS IT STILL YOUR VERDICT?

10 JUROR: YES.

11 THE COURT: KATIE DAVIS, WAS THIS YOUR VERDICT?

12 JUROR: YES.

13 THE COURT: IS IT STILL YOUR VERDICT?

14 JUROR: YES.

15 THE COURT: ALICE KINGSLEY, WAS THIS YOUR VERDICT?

16 JUROR: YES.

17 THE COURT: IS IT STILL YOUR VERDICT?

18 JUROR: YES.

19 THE COURT: ALEX MORRIS, WAS THIS YOUR VERDICT?

20 JUROR: YES.

21 THE COURT: IS IT STILL YOUR VERDICT?

22 JUROR: YES.

23 THE COURT: SHEILA HOFFMAN, WAS THIS YOUR VERDICT?

24 JUROR: YES.

25 THE COURT: IS IT STILL YOUR VERDICT?

1 JUROR: YES.

2 THE COURT: THE JURY HAS BEEN POLLED AND HAS
3 INDICATED THAT THIS IS THEIR VERDICT. COUNSEL, LET ME
4 HAVE YA'LL STEP UP FOR JUST A MOMENT, PLEASE.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD IN THE
6 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE
7 JURY.)

8 THE COURT: MADAM FORELADY AND LADIES AND GENTLEMEN,
9 HAVING RECEIVED YOUR VERDICT THE COURT HAS ACCEPTED AND I
10 WOULD LIKE TO AT THIS TIME EXPRESS MY THANKS TO YOU. THIS
11 IS, I BELIEVE, THE LONGEST TRIAL THAT I HAVE BEEN INVOLVED
12 IN NEARLY 15 YEARS ON THE BENCH. I WAS JUST TALKING WITH
13 THE ATTORNEYS, THERE WILL BE SOME ADDITIONAL MATTERS OF
14 LAW FOR ME TO TAKE UP WITH THEM. THE ACTUAL SENTENCING IN
15 THIS CASE WILL TAKE PLACE TOMORROW MORNING. IF YOU WOULD
16 LIKE TO RETURN TOMORROW FOR THAT YOU CERTAINLY MAY BUT YOU
17 ARE NOT REQUIRED TO. I AM GOING TO EXCUSE YOU AT THIS
18 TIME, I AM GOING TO ASK YOU TO GO TO YOUR JURY ROOM, I
19 WOULD LIKE TO TALK WITH YOU FOR A FEW MINUTES, NOT ABOUT
20 THE CASE BUT ABOUT SOME PROCEDURAL THINGS. I WILL COME
21 BACK IN A FEW MINUTES AND SPEAK TO YOU AND THEN YOU WILL
22 BE EXCUSED. BUT YOU ARE EXCUSED AT THIS TIME WITH A
23 THANKS FROM THE COURT.

24 (WHEREUPON, THE JURY WAS EXCUSED FROM THE TRIAL OF
25 THE CASE.)

1 THE COURT: MR. GRIFFIN, WOULD YOU LIKE TO MAKE
2 MOTIONS TODAY OR WOULD YOU PREFER TO WAIT UNTIL THE
3 MORNING. I WILL LEAVE THAT UP TO YOU.

4 MR. GRIFFIN: YOUR HONOR, I PREFER THE MORNING.

5 THE COURT: WE WILL TAKE UP MOTIONS IN THE MORNING,
6 SENTENCING WILL BE SCHEDULED, THE COURT WILL RESUME AT
7 10:00 IN THE MORNING. THE DEFENDANT WILL BE HELD IN
8 CUSTODY UNTIL IN THE MORNING AT 10:00 O'CLOCK. ANYTHING
9 FURTHER FROM THE STATE AT THIS TIME?

10 MS. EVANS: NOTHING FROM THE STATE.

11 THE COURT: FROM THE DEFENSE?

12 MR. GRIFFIN: NO, YOUR HONOR.

13 THE COURT: WE WILL RESUME AT 10:00 TOMORROW MORNING.
14 (WHEREUPON, THE CASE WILL RESUME THE NEXT MORNING AT
15 10:00 A.M.)

16 THE COURT: ALL RIGHT, LET'S START WITH MOTIONS THIS
17 MORNING, MR. GRIFFIN.

18 MR. GRIFFIN: THANK YOU, YOUR HONOR. AT THIS TIME
19 THE DEFENDANT WOULD MOVE FOR UNDER RULE 29, FOR A MOTION
20 FOR A JUDGMENT OF ACQUITTAL OR IN THE ALTERNATE FOR A NEW
21 TRIAL ON THE THREE COUNTS THAT WERE PRESENTED TO THE JURY.
22 ON COURT ONE, THE SECURITIES COUNT, WE WOULD REQUEST THAT
23 THE COURT SATISFY THE VERDICT OR ENTER JUDGMENT OF
24 ACQUITTAL OR A NEW TRIAL ON THE BASIS THAT VIEWING THE
25 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE THAT A

1 REASONABLE JUROR COULD FIND THAT MR. SHEPPARD IS GUILTY
2 BEYOND A REASONABLE DOUBT OF SECURITIES FRAUD. I AM NOT
3 GOING TO REHASH THE EVIDENCE HERE BUT THE CHARGE WAS THAT
4 HE ENGAGED IN THE COURSE OF A BUSINESS, ACT OR PRACTICE
5 THAT OPERATED OR WOULD OPERATE TO DEFRAUD OR DECEIVE UPON
6 ANY PERSON. THE JURY WAS REQUIRED TO FIND THAT HE
7 WILLEFULLY VIOLATED THAT STATUTE. AND IN OUR VIEW, THAT
8 THE EVIDENCE DID NOT RISE TO THAT LEVEL. I WOULD ALSO
9 REQUEST ON THE BASIS FOR A NEW TRIAL THAT YOUR HONOR
10 RECONSIDER THE CHARGE OF FIDUCIARY DUTY, THE LEAPHART ROAD
11 TRANSACTION, THAT WAS, THE JURY WAS ALLOWED TO IMPROPERLY
12 CONSIDER THAT. AND THAT WOULD BE ON A BASIS FOR A NEW
13 TRIAL.

14 WITH REGARD TO THE SECOND COUNT PRESENTED TO THE
15 JURY, FALSE PRETENSES CHARGE WITH COUNT SEVEN IN THE
16 INDICTMENT. AGAIN, WE WOULD MAKE THE SAME MOTION AS COUNT
17 ONE AND THE BASIS FOR THAT MOTION IS THAT, AGAIN, VIEWING
18 THE EVIDENCE IN LIGHT MOST FAVORABLE TO THE STATE, NO
19 REASONABLE JURY COULD FIND THAT MR. SHEPPARD MADE ANY
20 FALSE OR FRAUDULENT PRETENSES OF CURRENT OR PAST ACTS.
21 AND THAT PROMISES OF FUTURE PAYMENT DO NOT QUALIFY UNDER
22 THE STATUTE. AND I WOULD SPECIFICALLY DIRECT YOUR
23 ATTENTION, YOUR HONOR, TO THE CHARGES IN THE INDICTMENT
24 WHICH WERE THAT INVESTORS PUT MONEY INTO CAROLINA
25 INVESTORS AND THAT WAS THE FRAUDULENT, THAT WAS THE MONEY

1 THAT WAS CONCEIVED FRAUDULENTLY, THOSE INVESTMENTS WERE
2 ALL BASED ON PROMISES TO REPAY IN THE FUTURE. AND THE
3 AUTHORITY THAT WE CITED AT THE DIRECTED VERDICT STAGE, WE
4 WOULD AGAIN RENEW THAT. AND REQUEST THE COURT TO ENTER A
5 JUDGMENT OF ACQUITTAL, IN THE ALTERNATIVE FOR A NEW TRIAL.
6 IN ADDITION, YOUR HONOR, WE WOULD ARGUE THAT THE STATE, IN
7 THEIR CLOSING ARGUMENTS, VARIED FROM THE INDICTMENT BY
8 ARGUING MR. SHEPPARD GOT MONEY, VARIED FROM THE
9 INDICTMENT, AN UNCONSTITUTIONAL VARIANCE FROM THE
10 INDICTMENT BY ARGUMENT THAT MR. SHEPPARD'S MONEY FROM,
11 MILEAGE REIMBURSEMENT OF \$8 THOUSAND DOLLARS THAT HE WAS
12 NOT ENTITLED TO. THAT WAS NOT CHARGED IN THE FALSE
13 PRETENSE STATUTE, EXCUSE ME, IN THE INDICTMENT. AND THE
14 STATE ARGUED IT AND IT DOES AMOUNT TO AN UNCONSTITUTIONAL
15 VARIANCE OF THE INDICTMENT. FOR THAT REASON WE DO REQUEST
16 A NEW TRIAL ON THE SECOND COUNT.

17 ON THE THIRD COUNT, CONSPIRACY. AGAIN, YOUR HONOR,
18 WE WOULD SIMPLY MOVE ON THE SAME BASIS AND SEEK THE SAME
19 RELIEF AS THE OTHER TWO IN THEIR FACTUAL BASIS, THAT NO
20 REASONABLE JUROR COULD FIND BASED ON THE EVIDENCE THAT MR.
21 SHEPPARD ENGAGED IN A CONSPIRACY TO, NOT EITHER PAY MONEY
22 OR PROPERTY BY FALSE PRETENSES BECAUSE OF THE FUTURE
23 PROMISES OR TO OBTAIN, PARTICIPATE IN A ACT, PRACTICE,
24 COURSE OF BUSINESS THAT OPERATING, FRAUD OR DECEIT IN THE
25 VIOLATION OF THE SECURITIES FRAUD STATUTE. THANK YOU.

1 THE COURT: THE DEFENSE MOTION AS TO THE SECURITIES
2 FRAUD COUNT AND THE CONSPIRACY COUNT, I THINK THERE IS
3 SUFFICIENT EVIDENCE. I MIGHT HEAR FROM THE STATE, THE
4 STATE'S RESPONSE PARTICULARLY TO THE POINT RAISED BY MR.
5 GRIFFIN ON THE ARGUMENT OF MILEAGE REIMBURSEMENT. MS.
6 EVANS.

7 MS. EVANS: YES, YOUR HONOR. THE STATE HAS ALLEGED
8 IN THAT COUNT AND IF YOU READ THAT COUNT, IT IS ALLEGING
9 EACH AND EVERY ALLEGATION AS PART OF OBTAINING MONEY UNDER
10 FALSE PRETENSES. AS OUR ARGUMENT ON THE DIRECTED VERDICT
11 STAGE, THAT MONEY THAT WAS BEING BROUGHT UP TO CAROLINA
12 INVESTORS WAS BEING USED BY FALSE PRETENSES. THE FALSE
13 PRETENSES WERE THAT IT WAS BEING USED TO RUN AND FURTHER
14 THE COURSE, THE BUSINESS AT CAROLINA INVESTORS, NOT
15 FRAUDULENTLY GOING TO THE DEFENDANT. SO, CLEARLY ANY
16 MONEY THAT HE OBTAINED, WHETHER IT BE THROUGH HIS OWN PAY
17 INCREASE, WHETHER IT WAS THROUGH MONEY THAT WAS NOT BEING
18 TOLD TO RUN THE BUSINESS THROUGH THE CHARTERED AIR
19 FLIGHTS, WHETHER IT BE FOR MILEAGE REIMBURSEMENTS,
20 WALLPAPER REIMBURSEMENTS OR ANY OTHER TYPE OF
21 REIMBURSEMENT. THAT MONEY, WHEN CAROLINA INVESTORS
22 INVESTED IT IN TO CAROLINA INVESTORS THOUGHT IT WAS BEING
23 SENT UP TO HOMEGOLD TO USE TO FURTHER THE COURSE OF
24 BUSINESS OF HOMEGOLD WHICH WAS TO LOAN MONEY OUT TO
25 MORTGAGES. AND IN RETURN BY LOANING THAT MONEY OUT THEY

1 WOULD BE ABLE TO MAKE MONEY TO REPAY THE INVESTORS. ANY
2 MONEY THAT WAS SENT UP AND THE TESTIMONY WAS VERY CLEAR,
3 IN THAT TIME FRAME THEY HAD AN OPERATIONAL NET LOSS. SO,
4 THEREFORE THE TESTIMONY WAS WELL ESTABLISHED THAT THE WAY
5 THAT THEY WERE STAYING IN BUSINESS AND THE DEFENSE'S OWN
6 CASE WAS IS THAT THEY WERE LOSING THEIR WAREHOUSE LINES OF
7 CREDIT. AND IT BECAME VERY CLEAR THAT CAROLINA INVESTORS,
8 DURING THIS TIME FRAME WHEN THE DEFENDANT WAS CEO OF THE
9 COMPANY, THAT THE MONEY THAT WAS BEING SENT UP OR THAT THE
10 MONEY THAT HOMEGOLD WAS FUNCTIONING ON WAS PURELY THE
11 MONEY IN LARGE PART OF CAROLINA INVESTORS. LARRY OWEN
12 TESTIFIED TO THE FACT THAT IF HE HAD KNOWN THAT MONEY WAS
13 BEING USED FOR OTHER PURPOSES RATHER THAN JUST TO LOAN
14 MONEY OUT AND MAKE MONEY OFF OF IT WITH A PROMISE TO REPAY
15 CAROLINA INVESTORS, AT THE END OF THE DAY HE WOULD OF AT
16 LEAST NUMBER ONE, HE SAID RESIGN. AND THERE IS AMPLE
17 TESTIMONY THAT WAS THE UNDERSTANDING OF EVERYBODY AT
18 CAROLINA INVESTORS, WHEN THEY LOAN THEIR MONEY UP IT WOULD
19 JUST BE USED TO FURTHER THE BUSINESS, NOT FURTHER THE
20 DEFENDANT GETTING MONEY FRAUDULENTLY FOR HIS OWN PURPOSE,
21 YOUR HONOR. SO, IT IS CLEARLY THE COURSE OF BUSINESS, IT
22 WAS CLEAR FROM ALL THE TESTIMONY THAT THE MONEY THAT THEY
23 WERE USING TO OPERATE THE BUSINESS, ESPECIALLY IN 2002
24 WHEN THAT TOOK PLACE. AND THAT IS JUST ONE OF SEVERAL
25 THAT TOOK PLACE WHERE HE OBTAINED MONEY DURING THAT TIME

1 FRAME. IT IS WELL ESTABLISHED IN 2002 THAT WAS, AT LEAST
2 IN THE BEGINNING PART THAT THEIR PRIMARY IF NOT FULL
3 SOURCE OF FUNDING AT THAT POINT. IT IS NOT A VARIANCE ON
4 IT AT ALL, IT IS CLEARLY THE MONEY THAT WAS COMING FROM
5 CAROLINA INVESTORS AND THERE WAS TESTIMONY AS TO,
6 SPECIALLY FROM LARRY OWEN SAYING THAT IF HE HAD KNOWN HOW
7 THAT MONEY WAS BEING USED, IT IS CLEARLY FALSE PRETENSES.
8 THE CFO MARTIN, SAID THAT THE DEFENDANT WENT AROUND HIS
9 BACK, SHANE SMITH SAID HE DID NOT KNOW WHAT IT WAS FOR.
10 AND KAREN MILLER, WHO WAS A COCONSPIRATOR IS THE ONE THAT,
11 WAS THE ONE THAT ORCHESTRATED SEVERAL OF THOSE APPROVALS
12 OF THAT.

13 THE COURT: ANYTHING FURTHER ON THAT POINT, MR.
14 GRIFFIN?

15 MR. GRIFFIN: NO, YOUR HONOR. WELL, YES. AS WE
16 ARGUED IN PRETRIAL MOTIONS, YOUR HONOR, THE WAY THE
17 INDICTMENT WAS DRAFTED THAT THEY DO INCORPORATE AND HERE
18 WE ARE TALKING ABOUT COUNT SEVEN, THEY INCORPORATE
19 ALLEGATIONS OF 1 THROUGH 115 INTO COUNT SEVEN.
20 ALLEGATIONS 1 THROUGH 115 ALLEGE SIX SEPARATE COUNTS OF,
21 IN THE INDICTMENT. AND THEY STAND ALONE AND SO, YOU
22 CANNOT PERMISSIBLY INCORPORATE THOSE ALLEGATIONS INTO
23 COUNT SEVEN AND SAY THAT THE FALSE PRETENSES RELAY BACK TO
24 THE FACTUAL BASIS. BECAUSE THIS COUNT SEVEN, IF YOU WERE
25 TO INCORPORATE THE PARAGRAPHS THAT THEY CLAIM TO

1 INCORPORATE THEY, YOU JUST SIMPLY ADDED SIX CHARGES INTO
2 COUNT SEVEN WHICH IS LIKEWISE IMPERMISSIBLE. THANK YOU.

3 THE COURT: ALL RIGHT. IN THE COURT'S OPINION THERE
4 IS SUFFICIENT EVIDENCE IN THE RECORD, I DON'T BELIEVE THAT
5 ANY UNCONSTITUTIONAL ARGUMENT WAS MADE BY THE STATE AND
6 FOR THAT REASON THAT MOTION IS ALSO DENIED. BUT YOUR
7 POSITIONS ARE CLEAR ON THE RECORD. ANYTHING FURTHER
8 BEFORE WE GO TO THE SENTENCING.

9 MS. EVANS: NOTHING FROM THE STATE, YOUR HONOR.

10 THE COURT: I WILL BE GLAD TO HEAR FROM THE STATE
11 FIRST AND THEN MR. GRIFFIN.

12 MS. EVANS: YES, YOUR HONOR. AS FAR AS SENTENCING,
13 BASED UPON ALL THE TESTIMONY AND THE EVIDENCE THAT YOU
14 HAVE HEARD BEFORE YOU TODAY WE ARE ASKING FOR THE FULL 25
15 YEARS AND WOULD REQUEST THAT THIS COURT GIVE THE DEFENDANT
16 CONSECUTIVE TIME ON EACH OF THE COUNTS, 10 YEARS FOR THE
17 SECURITIES FRAUD, 10 YEARS AND A FULL \$50 THOUSAND DOLLAR
18 FINE FOR THAT. COUNT TWO, WE WOULD ASK THAT HE COULD
19 RECEIVE A CONSECUTIVE SENTENCE OF THE 10 YEARS AND I
20 BELIEVE IT IS A \$500 DOLLAR FINE FOR THAT. AND ON COUNT
21 THREE, THE FULL 5 YEARS AND THE \$5 THOUSAND DOLLAR FINE ON
22 THAT. AND ADDITION TO HAVING TO PAY FULL RESTITUTION. IF
23 I MAY BE JUST HEARD BRIEFLY ON EACH COUNT.

24 THE COURT: ALL RIGHT.

25 MS. EVANS: COUNT ONE, THE COURSE OF BUSINESS,

1 WITHOUT REHASHING ALL OF THE EVIDENCE THAT YOUR HONOR WAS
2 HERE TO HEAR ABOUT. THUS FAR AND ALL OF THE PEOPLE THAT
3 HAVE BEEN CONVICTED, MR. SHEPPARD WAS THE ONE, THE CEO
4 THAT WAS IN CHARGE OF HOMEGOLD AT THE TIME THIS DEBT WENT
5 FROM \$565 MILLION TO WHEN HE LEFT BEING APPROXIMATELY \$200
6 MILLION DOLLARS. THERE WAS TESTIMONY, BEFORE THE
7 DEFENDANT TOOK OVER THE COMPANY, THE COMPANY WAS LIQUID.
8 AND YOUR HONOR IS WELL AWARE THAT IF THEY HAD OF CLOSED
9 THE DOORS CAROLINA INVESTORS WOULD OF BEEN REPAID. IN ONE
10 YEAR ALONE THE DEFENDANT WAS CEO OF THE COMPANY, THE DEBT
11 WAS INCREASED \$100 MILLION DOLLARS, YOUR HONOR. FROM
12 EVERYBODY CONVICTED SO FAR IN THIS CASE THIS DEFENDANT IS
13 CLEARLY THE MOST CULPABLE FOR THE LOSS. IT WAS CLEAR THAT
14 THE DEFENDANT WAS IN TROUBLE OF EVERY ASPECT AS TO WHAT
15 WENT ON. IT IS CLEAR FROM THE DAY THAT HE STEPS INTO THE
16 DOOR AT HOMEGOLD, HE CONTINUED TO TAKE THE MONEY FROM
17 CAROLINA INVESTORS. AND THE STATE HAS ALLEGED AND THE
18 JURY HAS FOUND HIM GUILTY AS THAT WE SAY HE HAD NO
19 INTENTION OF EVER PAYING THAT MONEY BACK. AND THUS FAR OF
20 EVERYBODY CONVICTED, THE COURSE OF BUSINESS WAS THE TRUE
21 FRAUDULENT SCHEME HERE. THE THINGS THAT HE WAS DOING NOT
22 ONLY AT HOMEGOLD WHICH ACTED AS FRAUD ON THE 8,000
23 INVESTORS IN THE UPSTATE. BUT FOR THE INFORMATION THAT HE
24 WAS RELAYING TO THOSE THAT SPOKE TO THE INVESTORS. WE
25 HAVE DIRECT AND INDIRECT SECURITIES FRAUD AND FOR THE LOSS

1 AND THE MONEY HE RECEIVED PERSONALLY AS A BENEFIT IS
2 EXACTLY WHY THIS COURT SHOULD GIVE HIM THE FULL YEARS.
3 AND ANOTHER REASON, YOUR HONOR, IS THUS FAR ALL THE SELF
4 FEELINGS THAT THE DEFENDANT DID WHILE CEO, NOT ONLY
5 BREACHED HIS LEGAL DUTY BUT BREACHED OF WHAT HE WAS
6 TELLING NOT ONLY THE PEOPLE AT HOMEGOLD BUT HE WAS TELLING
7 THE INDIVIDUALS AT CAROLINA INVESTORS. THIS IS A MAN IN
8 2001 WHO TOOK PROPERTY OF HOMEGOLD, SOLD IT FOR HIS OWN
9 PERSONAL INTEREST, BENEFITED IN ADDITION OF OVER A MILLION
10 DOLLARS HE WAS BEING PAID IN SALARY, AN ADDITIONAL \$60
11 THOUSAND DOLLARS, HE GAVE HIMSELF HIS OWN RAISE. THIS IS
12 ALSO AN INDIVIDUAL THAT YOU HEARD PLENTY OF TESTIMONY
13 ABOUT HIS LAVISH SPENDING WHILE HE WAS TAKING THE MONEY
14 FROM CAROLINA INVESTORS. THIS INDIVIDUAL RECEIVED A GREAT
15 DEAL OF MONEY, HE IS VERY CULPABLE FOR THIS COURSE OF
16 BUSINESS THAT ACTED AS A FRAUD. AND THE DEBT UNDER HIS
17 TENURE INCREASE THE MOST DRAMATICALLY AND THE TESTIMONY
18 WAS CLEAR THAT BEFORE HE BECAME CEO THEY WERE LIQUID,
19 AFTER HE BECAME CEO AND HE WALKED OUT THE DOOR WITH
20 MILLIONS WITH A PROMISE TO PAY, CAROLINA INVESTORS CLOSED
21 DOWN SHORTLY THEREAFTER. AND IN ADDITION, I THINK THE
22 COURT HAS TAKEN INTO ACCOUNT NOT ONLY THE MONEY THAT HE
23 ACTUALLY GOT, THE MONEY THAT HE ATTEMPTED TO GET BY
24 SUBMITTING \$34 MILLION DOLLARS TO THE BANKRUPTCY COUNSEL
25 AFTER HE HAD TAKEN ALL OF THAT MONEY, SOME THROUGH

1 APPROVAL, SOME ILLEGALLY. AND WE FEEL THUS FAR EVERYBODY
2 CONVICTED, THIS DEFENDANT SHOULD RECEIVE A FULL 10 YEARS
3 FOR THAT OFFENSE. MOVING ON TO COUNT TWO, AND THIS IS A
4 SEPARATE AND DISTINCT CRIME AND I THINK DIFFERENTIATE THIS
5 DEFENDANT FORM THE OTHER PEOPLE THAT HAVE BEEN CONVICTED
6 THUS FAR. AND I THINK THAT IS WHY THIS COURT SHOULD GIVE
7 HIM CONSECUTIVE SENTENCES. WHILE HE WAS DOING THIS AND
8 BREACHES HIS DUTY, NOT ONLY DID HE GET SOME OF THE MONEY
9 THROUGH NEGOTIATIONS, ALTHOUGH THE STATE SUBMITS THAT IT
10 WAS FALSE NEGOTIATIONS, HE THEN WHILE HE IS GETTING THAT
11 MONEY OBTAINS OTHER MONEY UNDER FALSE PRETENSES. HE NOT
12 ONLY GETS THE MONEY THAT WE CONTEND HE LIED ABOUT IN THE
13 MERGER, HE GETS ADDITIONAL MONEY, WITH THIS MILLION DOLLAR
14 A YEAR SALARY. CLEARLY FROM ALL THE MONEY THAT HE
15 RECEIVED AND THAT IT WAS A SEPARATE, DISTINCT CRIME,
16 UNLIKE PEOPLE THAT HAVE BEEN CONVICTED SO FAR THAT HAVE
17 BEEN CONVICTED OF THE SAME CRIME WHICH HAS ALL BEEN
18 SECURITIES FRAUD AND THEIR CONDUCT WITH SECURITIES FRAUD.
19 THIS DEFENDANT HAS BEEN CONVICTED OF SEVERAL DIFFERENT
20 CRIMES AND FOR THAT REASON HE SHOULD RECEIVE A CONSECUTIVE
21 FULL 10 YEARS ON THE OBTAINING GOODS UNDER FALSE PRETENSES
22 OVER \$5 THOUSAND DOLLARS. AND THIRDLY, AGAIN, CONSPIRACY,
23 HE SHOULD RECEIVE FULL 5 YEARS CONSECUTIVELY ON THAT
24 CONSPIRACY, YOUR HONOR, FOR SEVERAL REASONS. FIRST OF
25 ALL, HE RECRUITED SEVERAL PEOPLE TO COME INTO HIS

1 CONSPIRACY WHICH ALLOWED HIM TO PERPETRATE THE COURSE OF
2 BUSINESS. ONE BEING KAREN MILLER WHO CAME IN AND
3 TESTIFIED ABOUT HOW THE DEFENDANT RECRUITED HER AND HER
4 ACTIONS, AFTER THE DEFENDANT RECRUITED HER. WE FEEL THAT
5 BASED UPON ALL OF THIS INFORMATION, ALL THE DEFENDANT'S
6 AFFIRMATIVE ACTIONS, NOT ONLY IN THE COURSE OF BUSINESS
7 BUT DEVIATING FROM THAT COURSE OF BUSINESS AND OBTAINING
8 MONEY UNDER FALSE PRETENSES FOR HIMSELF AND GETTING
9 INDIVIDUALS TO HELP HIM TO THIS, KAREN MILLER AND OTHERS
10 SPEAKS ABOUT THE DEFENDANT, HIS ONLY SELF FEELING, WHAT
11 THE DEFENDANT'S ACTIONS WERE, WHAT THE DEFENDANT'S LIES
12 WERE AND THE WAY HE WAS ABLE TO PERPETRATE THIS COURSE OF
13 BUSINESS AND THE FRAUD ON THE INVESTORS. AND THE FACT
14 THAT HE ACTUALLY RECRUITED PEOPLE TO COME INTO THE
15 CONSPIRACY AND TO COMMIT CRIMINAL ACTS. AND I THINK IT
16 SHOULD BE NOTED THAT OTHER PEOPLE THAT HE HAS RECRUITED
17 HAVE COOPERATED WITH THE STATE AND HAS COOPERATED TO LEAD
18 THIS INVESTIGATION FORWARD. AND I THINK THAT IS AN
19 IMPORTANT FACTOR AND FOR ALL OF THOSE REASONS WE THINK HE
20 SHOULD RECEIVE THE FULL 25 YEARS CONSECUTIVELY, THE FULL
21 AMOUNT OF THE FINE AND ORDER TO PAY FULL RESTITUTION TO
22 ALL OF THE VICTIMS IN THIS CASE. YOUR HONOR, I DO BELIEVE
23 AT THIS TIME, MS. MARTHA MURPHREE, DO YOU WANT TO ADDRESS
24 THE COURT.

25 THE COURT: IF YOU WILL STATE YOUR NAME AGAIN,

1 PLEASE, MA'AM.

2 MS. MURPHREE: MARTHA MURPHREE FROM GREENVILLE, SOUTH
3 CAROLINA. TODAY I STAND HERE IN GREAT SORROW AND MUCH
4 DISTRESS, IT IS UNFORTUNATE THAT I HAVE TO STAND HERE AND
5 THINK THAT IN ALL OF OUR WORKING, ME AND MY HUSBAND WORKED
6 AND SAVED FOR OUR RETIREMENT. AND THEN AFTER RETIREMENT
7 WE WERE ON A FIXED INCOME. AND WE WERE DEPENDING UPON OUR
8 MONEY TO HELP US AND MAYBE ONE OR TWO VACATIONS. THAT IS
9 ALL OVER, OUR LIVES HAVE BEEN CHANGED DRAMATICALLY. MY
10 HUSBAND IS IN DECLINING HEALTH, WE CAN'T WORK ANY MORE.
11 WE ARE NOT ABLE TO HOLD DOWN A DECENT JOB, I WAS TOLD BY
12 LARRY THAT EVERYTHING WAS GOING TO BE OKAY. BUT WE WERE
13 LIED TO. NOW, ALL THE RETIREMENT THAT WE THOUGHT WAS
14 GOING TO BE GOLDEN, IT IS CRUNCHED BECAUSE WE WERE LIED
15 TO. I TRUSTED CAROLINA INVESTORS, I THOUGHT THAT THEY
16 WOULD BE HONEST, I THOUGHT THIS WAS A GOOD BUSINESS BUT
17 NOW OUR LIVES HAVE BEEN SHATTERED AND NOW WITH OUR FIXED
18 INCOME WE SCRAPE ENOUGH TOGETHER TO KEEP OUR TAXES PAID
19 AND WE HAVE NOTHING EXTRA TO ENJOY OUR GOLDEN RETIREMENT.
20 SO, I AM HERE TODAY TO SEE JUSTICE DONE, WE DID NOT
21 DESERVE TO LOSE OUR MONEY. WE JUST THOUGHT THAT WE COULD
22 TRUST THESE PEOPLE AND WE WERE LET DOWN.

23 THE COURT: THANK YOU, MS. MURPHREE.

24 MS. EVANS: NOTHING FURTHER FROM THE STATE, AT THIS
25 TIME, YOUR HONOR.

1 THE COURT: MR. GRIFFIN.

2 MR. GRIFFIN: THANK YOU, YOUR HONOR. THIS IS A
3 DIFFICULT DAY FOR ME AS A LAWYER AND IT IS A DIFFICULT DAY
4 FOR MR. SHEPPARD AND HIS FAMILY WHO ARE HERE IN THE
5 COURTROOM SUPPORTING HIM. WHAT I WOULD LIKE TO DO IS GIVE
6 SOME COMMENTS FROM MY VIEW OF THE SITUATION. AND SOME
7 INFORMATION THAT I HAVE SINCE REPRESENTING MR. SHEPPARD
8 SINCE 2003, RIGHT AFTER THE DOORS OF CAROLINA INVESTORS
9 CLOSED. ONE THING THAT I DOUBT MANY PEOPLE KNOW ABOUT ME,
10 YOUR HONOR, IS THAT MY FAMILY IS FROM PICKENS COUNTY. THE
11 PICKENS COUNTY COURT HOUSE WAS ON LAND THAT THE GRIFFIN'S
12 DONATED TO THE COUNTY. I HAVE A LOT OF FRIENDS AND
13 RELATIVES WHO LOST MONEY IN CAROLINA INVESTORS. MY AUNT
14 WORKED FOR DWIGHT HOLDER AT CAROLINA INVESTORS IN THE
15 '60'S. AND WHEN I WAS FIRST APPROACHED BY THIS CASE AND
16 WHEN I MET MR. SHEPPARD, I DIDN'T REALLY KNOW A WHOLE LOT
17 ABOUT CAROLINA INVESTORS BUT I CAN ASSURE YOU THAT I GOT A
18 LOT OF PHONE CALLS FROM FRIENDS AND RELATIVES. AND I HAVE
19 HAD MANY CONVERSATIONS WITH MR. SHEPPARD SINCE 2003 ABOUT
20 THIS MATTER AND I HAVE GOTTEN TO KNOW HIM, YOU KNOW, MORE
21 THAN A CLIENT. AND I CAN ASSURE YOU THAT THINGS THAT WERE
22 SAID ABOUT HIM IN THE COURTROOM, SCREW THE INVESTORS AND
23 IF I HAD TO BELIEVE THAT ANY TIME DURING THE
24 REPRESENTATION THAT I WOULD NOT HAVE CONTINUED TO
25 REPRESENT HIM AND PURSUE HIM WITH THE PASSION THAT I HAVE

1 AND THAT I WILL CONTINUE. THAT IS NOT THE RONNIE SHEPPARD
2 THAT HIS EMPLOYEES WHO I HAVE INTERVIEWED, GETTING READY
3 FOR THIS TRIAL, THAT I HAVE GOTTEN TO KNOW OVER THE YEARS
4 DESCRIBED TO ME. AND I WILL TELL YOU, YOUR HONOR, CHARLIE
5 SIDES WHO TESTIFIED, AS I WAS TALKING TO HIM, GETTING
6 READY FOR THIS TRIAL. THOSE NEWSPAPER ARTICLES THAT CAME
7 OUT ABOUT RONNIE, SCREW THE INVESTORS. AND HE SAID TO ME,
8 I KNOW GOOD AND WELL HE WOULDN'T OF SAID THAT, THAT IS NOT
9 THE RONNIE SHEPPARD THAT I WORKED FOR THESE YEARS. AND
10 SO, THE MAN IS ON TRIAL FOR CRIMES, SERIOUS CRIMES BUT HE,
11 MY PERSONAL EXPERIENCE WITH HIM AND THE PEOPLE THAT I HAVE
12 GOTTEN TO KNOW WHO KNOW HIM THAT IS NOT THE TRUTH OF
13 RONNIE SHEPPARD. AND WE FULLY RESPECT THE JURYS VERDICT,
14 I MEAN WAS SHOCKED THAT THEY CAME BACK IN TWO HOURS. I
15 THOUGHT THIS CASE WAS MORE DIFFICULT THAN THAT, I THOUGHT
16 IT HAD CHALLENGES BUT I BELIEVED IN IT AND I WAS
17 COMPLETELY SHOCKED THAT THE JURY CAME BACK IN TWO HOURS.
18 BUT WE DO RESPECT THEIR VERDICT. I THINK WHAT WAS CLEAR
19 IN THE EVIDENCE THAT YOU SAW IS THAT, HAD CAROLINA
20 INVESTORS NEVER RUN INTO RONNIE SHEPPARD AND IF RONNIE
21 SHEPPARD HAD NEVER RUN INTO HOMEGOLD, WOULD HE STILL BE A
22 SUCCESSFUL BUSINESSMAN TODAY. AND OVER 200 PEOPLE IN
23 LEXINGTON COUNTY LOST THEIR JOBS THAT WERE WORKING AT
24 HOMESENSE AS A RESULT OF HOMEGOLD AND CAROLINA INVESTORS.
25 AND THAT, CAROLINA INVESTORS AND HOMEGOLD WAS NOT MR.

1 SHEPPARD'S DOING, IT WAS CERTAINLY HIS UNDOING. AND IT
2 WAS CLEAR IN THE EVIDENCE THAT YOUR HONOR SAW, HE COULD BE
3 QUESTIONED ABOUT WHETHER HE TOOK THE COMPANY ON A RECKLESS
4 COURSE, THIS EXPANSION AND DID HE SPEND MONEY WISELY AND
5 DID HE TAKE A PROBLEM AND MAKE IT WORSE. I AM SURE,
6 OBVIOUSLY, THAT CAN BE SAID ABOUT HIM. BUT HE FOUND
7 HIMSELF WITH A COMPANY, HOMESENSE THAT HE HAD CREATED,
8 OVER 15 YEARS THAT HAD PROVIDED HIM AND HIS FAMILY A NICE
9 LIFESTYLE AND PROVIDED A LOT OF PEOPLE JOBS IN LEXINGTON
10 COUNTY AND ELSEWHERE. AND AS THINGS START FALLING APART
11 AT HOMEGOLD, I MEAN SURE, LOOKING BACK ON IT HE COULD OF
12 CLOSED THE DOORS AND A LOT OF PEOPLE LOST MONEY BUT HE
13 KEPT TRYING. THE STORY THAT YOU HEARD FROM THE STAND FROM
14 THE STATE'S WITNESSES IS THAT HE WORKED AND HE WORKED
15 REALLY HARD AND HE WAS NOT SUCCESSFUL. I WOULD POINT OUT,
16 YOUR HONOR, THAT AFTER HOMEGOLD FILED FOR BANKRUPTCY, THE
17 BANKRUPTCY COURT APPOINTED THE BANKRUPTCY EXAMINER. WE
18 DID A THOROUGH FORENSIC ANALYSIS OF TRACING ALL THE MONEY.
19 AND THAT ON TOP OF THAT BANKRUPTCY, A TRUSTEE WAS
20 APPOINTED TO PURSUE AND COLLECT MONEY AND THEN THERE WAS A
21 FINANCIAL SETTLEMENT. AND THERE IS AN ORDER UNDER SEAL, I
22 AM UNDER ORDER OF JUDGE ROSS ANDERSON NOT TO TELL THE
23 AMOUNTS. AND IF IT IS SIGNIFICANT FOR YOUR HONOR'S
24 DECISION TODAY I WOULD ASK THE COURT TO GIVE US PERMISSION
25 BEFORE YOU GIVE A SENTENCE TO PETITION JUDGE ANDERSON TO

1 ALLOW THAT INFORMATION TO BE RELAYED. I UNDERSTAND THAT
2 MS. ANNE OWEN TRIED TO DO THAT AND WAS DENIED BY JUDGE
3 ANDERSON. AND THAT PUTS US IN A VERY DIFFICULT POSITION.
4 BUT WHAT I CAN TELL YOU IS THAT RALPH MCCULLOUGH SENT A
5 LETTER TO ALL CAROLINA INVESTORS SAYING THERE IS NO MONEY
6 THAT WAS HIDDEN, THERE WAS NO MONEY WAS MISSING, THAT ALL
7 THE MONEY WAS SPENT IN AN EFFORT TO RUN THE BUSINESS. I
8 AM SURE THERE ARE CLAIMS THAT IT WAS WASTED. AS TO THE
9 MONIES THAT MR. SHEPPARD GOT PERSONALLY, YOUR HONOR, THE
10 ONLY THING THAT I CAN SAY IS THAT IN THE CIVIL LITIGATION,
11 MR. MCCULLOUGH AND HIS TEAM OF HIS LAWYERS AND IT WAS A
12 LARGE TEAM WAS SATISFIED WITH THE CONTRIBUTIONS THAT MR.
13 SHEPPARD MADE PERSONALLY TO RESOLVE ANY FINANCIAL
14 LIABILITIES THAT HE MAY HAVE ASSOCIATED WITH MONIES THAT
15 HE RECEIVED FROM HOMEGOLD. THAT FINANCIAL SETTLEMENT WAS
16 APPROVED BY JUDGE ROSS ANDERSON. MR. SHEPPARD DOES NOT
17 HAVE A CRIMINAL RECORD, HE HAS NEVER BEEN IN TROUBLE WITH
18 THE LAW, HE HAS LIVED A LAW ABIDING LIFE AND THERE IS
19 OTHER THINGS, IN ADDITION TO JUST MAKING MONIES. THERE
20 HAS BEEN COUNTLESS ACTS OF KINDNESS THAT HE HAS ENGAGED IN
21 THAT PEOPLE JUST DON'T KNOW ABOUT. AND IN A MOMENT YOUR
22 HONOR, WILL HAVE DANA SHEPPARD COME UP AND TALK TO YOU
23 BRIEFLY. SHE WANTS TO TALK TO YOU ABOUT THE KIND OF
24 PERSON HE IS, KIND OF FATHER HE IS TO HIS SON. AND I CAN
25 TELL YOU JUST ON THE OUTSIDE LOOKING IN, HE HAS GOT ONE

1 SON WHOSE NAME IS SETH WHO IS SEATED HERE IN THE COURTROOM
2 AND I HAVE HAD AN OPPORTUNITY TO OBSERVE THEIR
3 RELATIONSHIP. AND THERE IS NOT A STRONGER FATHER/SON
4 RELATIONSHIP THAT I HAVE SEEN. AND A LOT OF IT GOES BACK
5 TO MR. SHEPPARD'S OWN CHILDHOOD, HE WAS KICKED OUT OF THE
6 HOUSE WHEN HE WAS 13 YEARS OLD. HE HAD TO MOVE IN WITH
7 NEIGHBORS, HE RAISED HIMSELF. AND HE AND MS. SHEPPARD
8 COULD NOT HAVE A CHILD AND THEY ADOPTED SETH AND JUDGE
9 WESTBROOK APPROVED THAT ADOPTION HERE, NOT IN THIS
10 COURTROOM BUT ACROSS THE STREET. MR. SHEPPARD WAS AN
11 ACTIVE MEMBER OF HIS CHURCH AND YOU HEARD STORIES ABOUT
12 THE LEAPHART ROAD TRANSACTION. THAT LAND WAS PURCHASED OF
13 HIS CHURCH TO HAVE A NEW PLACE AND THREE ACERS OF THAT
14 LEAPHART ROAD WAS DONATED TO THE CHURCH. AND MR. SHEPPARD
15 WROTE CHECKS AND I SHARED THEM WITH THE STATE OF \$250
16 THOUSAND DOLLARS TO HIS CHURCH IN ORDER TO BUILD A KINGDOM
17 HALL. PEOPLE WHO WERE IN NEED, WHO HAD CANCER IN THEIR
18 FAMILY OR OTHERS, HE WOULD GIVE ANONYMOUS DONATIONS AND
19 THIS WAS A MAN WHO GAVE FROM HIS HEART TO THIS COMMUNITY
20 AND HE ENGAGED WITH HIS EMPLOYEES. AND FROM SOME FORMER
21 EMPLOYEES AND ONE GUY SAID, WHEN THIS THING IS GOING DOWN
22 THE TUBES RONNIE SHEPPARD NEVER MISSED A PAYROLL. AND
23 YOUR HONOR, THE FACT THAT MR. AND MS. SHEPPARD PUT OVER \$2
24 MILLION DOLLARS OF THEIR OWN MONEY TO KEEP EMMCO ALIVE
25 AFTER HOMEGOLD FILED BANKRUPTCY AND THERE IS A STORY HERE

1 WHERE HE GOT A MILLION GOING IN AND HE MADE MILLIONS WHILE
2 HE WAS THERE AND HE TOOK MILLIONS GOING OUT. BUT THAT IS
3 NOT AN ACCURATE STORY, THIS TALK IN MILLIONS GOING OUT, HE
4 HAS LOST MILLIONS, HE HAS, HE IS NOT FINANCIALLY WEALTHY
5 TODAY. AND THE TRIAL, ON YOUR DOCKET NEXT WEEK IS A
6 COLLECTION CASE AGAINST MR. SHEPPARD FOR BILLS RELATING TO
7 SERVICES RENDERED AND HE HASN'T BEEN ABLE TO PAY. I WAS
8 NOT PAID UNTIL WE WERE ABLE TO SELL PROPERTY. SO, THE
9 PUBLIC IMAGE IS THAT MR. SHEPPARD WALKED AWAY WITH
10 MILLIONS WHILE POOR RETIREES WERE LEFT WITH NOTHING. AND
11 THEY WERE LEFT WITH NOTHING AND I SYMPATHIZE WITH THEM
12 BECAUSE THIS IS WHERE I GREW UP. AND I STILL SEE AUNTS
13 AND UNCLES WHO WERE THERE AND I AM ASSURED THAT WAS NOT
14 MR. SHEPPARD'S INTENT GOING THROUGH THIS. I WOULD LIKE
15 FOR MS. SHEPPARD TO COME UP TO SPEAK BRIEFLY AND THEN I
16 HAVE FURTHER COMMENTS REGARDING SENTENCING.

17 THE COURT: ALL RIGHT.

18 MS. SHEPPARD: I AM DANA SHEPPARD. RONNIE AND I
19 HAVE, WERE MARRIED FOR 26 YEARS AND I DIDN'T COME HERE
20 PREPARED TO SPEAK TO ANYONE. BUT I FELT LIKE I MUST. THE
21 ONLY REASON RONNIE, THE ONLY THING THAT HE IS TRULY GUILTY
22 ON AND WE ARE CURRENTLY SEPARATED AND HAVE BEEN FOR THE
23 PAST YEAR AND A HALF. BUT HE IS GUILTY OF BEING CARELESS
24 TO A FAULT, THE ONLY REASON HE IS HERE IS BECAUSE OF THAT.
25 AND WE HAVE PLENTY OF MONEY AT HOMEGOLD, WE HAD MILLIONS.

1 HE WAS THINKING ABOUT RETIRING AND HE WANTED HIS EMPLOYEES
2 TO HAVE A POSITION AFTER HE LEFT. AND HE CAME TO ME AND
3 HE TOLD ME ABOUT THIS MERGER AND I DIDN'T WANT HIM TO DO
4 IT BECAUSE I DIDN'T WANT HIM TO COMMIT HIMSELF TO PEOPLE
5 THAT WE DIDN'T KNOW. BUT HE SAID TO ME, DANA, THESE
6 PEOPLE ARE POOR PEOPLE, THESE POOR PEOPLE ARE GOING TO
7 LOSE ALL THEIR MONEY IF I DON'T HELP THEM. HE WAS VERY
8 EFFECTIVE IN THE TYPE OF BUSINESS. HE IS NOT A TYPE OF
9 MANAGER, I HAD TO DO ALL OF OUR FINANCES, I DID EVERYTHING
10 FROM ACCOUNTING OR BUILDING STANDPOINT, I HAD TO DO
11 EVERYTHING IN OUR HOUSEHOLD FOR 26 YEARS. HE WAS VERY
12 GOOD AT MAKING MORTGAGE LOANS AND THE PEOPLE, THEY CALLED
13 HIM AND SAID THAT HE WAS THE ONLY ONE THAT COULD SAVE
14 THESE POOR PEOPLES MONEY BECAUSE HE HAD A HISTORY IN THIS
15 STATE AT DOING WHAT THEY NEEDED DONE. AND I QUESTIONED
16 THAT, BECAUSE THEY SAID TWO YEARS PRIOR THESE PEOPLE
17 WOULDN'T EVEN SPEAK TO HIM, HE WAS AT A SEMINAR AND THE
18 SAME PEOPLE THAT WERE TRYING TO COURT HIM WOULD NOT EVEN
19 SPEAK TO HIM, HE WAS NOT GOOD ENOUGH. SO, WHY ARE THEY
20 INTERESTED IN THIS LITTLE BOY FROM WEST COLUMBIA, ALL OF A
21 SUDDEN AND YOU ARE SO WONDERFUL. HE SAID THEY HAD \$30
22 MILLION DOLLARS IN THE BANK. WELL, COME TO FIND OUT THAT
23 \$30 MILLION DOLLARS WAS ALL BORROWED MONEY, I WONDER IF
24 THAT COMPANY EVER MADE ANY MONEY OR IF THEY ALWAYS LIVED
25 OFF THE BORROWED FUNDS OF THEIR INVESTORS. I CHALLENGE

1 THE ONE TO FIND THAT OUT FOR ME. ANOTHER THING HE HAD
2 BEEN TRAVELING BACK AND FORTH TO GREENVILLE FOR NEARLY A
3 YEAR, COMMUTING, AND I ASKED HIM. WELL, HAS IT TURNED
4 AROUND, HAS IT TURNED AROUND. DO YOU THINK YOU ARE CLOSE
5 TO GETTING WHERE YOU NEED TO BE UNDER THE RED AND HE SAID,
6 I DON'T KNOW. I CAN'T GET NEAR THE ACCOUNTING DEPARTMENT,
7 KAREN MILLER HAS A WALL AROUND IT. AND I SAID, WELL, YOU
8 ARE THE CEO AND YOU CAN'T EVEN GET AN ACCOUNT OF FINANCIAL
9 STATEMENTS. THAT MAKES NO SENSE TO ME AND OF COURSE, IT
10 WOULDN'T MAKE ANY SENSE TO ANYONE. BUT THAT WAS THE CASE,
11 RONNIE DID NOT HAVE THE EXPERTISE, HE WASN'T GIVEN THE
12 JOB, ALL THOSE OTHER POSITIONS THAT THESE FOLKS OVER HERE
13 WANT TO PUT A HAT ON HIM FOR. HE WASN'T GIVEN THAT
14 POSITION, HE WAS GIVEN THE POSITION IN TRACING PRODUCTION
15 AND SALES BECAUSE THAT IS HOW THEY MAKE THEIR MONEY AND
16 THAT WAS THE ONLY WAY THESE POOR PEOPLE WERE GOING TO GET
17 THEIR MONEY BACK. ALSO, KAREN MILLER, I RAN INTO HER IN
18 THE BATHROOM ONE DAY. AND I SAID, KAREN, ARE WE CLOSE
19 BECAUSE RONNIE SAID HE CAN'T GET FINANCIAL STATEMENTS.
20 SHE WOULDN'T ANSWER MY QUESTION. SHE SAID, TWO MONTHS AGO
21 AFTER HE STARTED, THE REASON THEY WEREN'T OUT OF BUSINESS
22 IN TWO MONTHS, WENT OUT OF BUSINESS TO HIS COMING OR JUST
23 RIGHT AFTER HE WOULD OF COME IS BECAUSE HIS COMING GAVE
24 THEM TIME, IT PUT TIME BETWEEN THEM AND ALSO IT MADE THE
25 INVESTORS, THESE PEOPLE THAT LOST THEIR MONEY, IT MADE

1 THEM THINK THAT THINGS WERE WONDERFUL. THEY HAVE GOT A
2 NEW GUY ON THE JOB, EVERYTHING IS GOOD AND LET'S PUT OUR
3 MONEY IN THERE. WELL, THAT WASN'T RONNIE'S DOING, THAT
4 WAS THE PEOPLE THAT CORNERED HIM AND GAVE HIM THESE
5 POSITIONS AND MADE HIM THINK THAT HE COULD DO IT. AND HE
6 HAD DONE WELL, HE DIDN'T NEED THEIR MONEY AND WE DIDN'T
7 NEED HIM TO WORK ANY MORE. THE OTHER THING IS, I AM NOT
8 SURE WHAT THEY SAID ABOUT MERGER MONEY AND ALL OF THAT.
9 BUT USUALLY WHEN YOU SELL SOMETHING, WHEN YOU SELL A CAR
10 YOU GET PAID FOR IT. THAT IS WHAT RONNIE GOT MONEY FOR,
11 THE MONEY THAT HE WAS PAID FOR THE MERGER. HE DIDN'T HOLD
12 A GUN TO ANYBODYS HEAD AND TELL THEM TO PAY HIM. THAT IS
13 WHAT HE WAS PAID, THAT IS HOW IT WORKS. YOU DON'T PUT A
14 GUN TO SOMEONES HEAD AND TELL THEM TO PAY YOU SUCH AND
15 SUCH DOLLARS FOR YOUR, WHATEVER YOU ARE SELLING. AS FAR
16 AS ALL OF THESE OTHER THINGS, FRIVOLOUS THINGS, HE PAID
17 MILLIONS OF DOLLARS IN A CIVIL SUIT. HE PAID BACK IN A
18 CIVIL SUIT, IS HE NOT BEING TRIED TWICE FOR THE SAME, FOR
19 THE MATERIAL THAT IS ALREADY BEING TRIED FOR WHEN HE PAID
20 FOR IT. I DON'T KNOW THE LAW BUT IT SEEMS TO ME THAT IT
21 WOULD OF BEEN AND THAT IS A BIG QUESTION FOR SOMEONE TO
22 ANSWER FOR ME. RONNIE IS VERY GENEROUS, BEFORE HE EVER
23 MET HOMEGOLD HE WOULD DO THINGS FOR, SOMEONE WHO HE DIDN'T
24 KNOW NEEDED A MORTGAGE LOAN, SHE WAS LOSING HER FARM. IT
25 WAS HER HOUSE, IT WAS HER LIVELIHOOD, SHE AND HER HUSBAND

1 WERE ELDERLY AND RONNIE COULDN'T HELP HER, HE TOOK CARE OF
2 HER, PAYING THE TAX FOR HER AND GAVE HER THE PROPERTY BACK
3 FOR NO MORE THAN WHAT HE RETRIEVED IT FOR HER. MANY
4 TIMES, HE DID, HE WOULD BUY A PERSONS HOUSE AND SO THEY
5 COULD LIVE THERE. HE DIDN'T MAKE ANY MONEY ON THAT. WE
6 WERE IN THE HOSPITAL AND A FAMILY, HE PUT \$100 DOLLARS IN
7 THIS BABY'S BLANKET FOR THESE PARENTS TO BE ABLE TO GO TO
8 THE EMERGENCY ROOM. HE GETS UPSET ABOUT A GIRL, SHE IS A
9 WAITRESS, THAT SHE CAN'T, SHE IS CRYING AND HE LEAVES A
10 HUNDRED DOLLAR TIP ON THE TABLE. HE DID THINGS LIKE THAT
11 ALL THE TIME. THE MONEY THAT HE CONTRIBUTED TO OUR CHURCH
12 WAS DONE ANONYMOUSLY. IT WASN'T DONE SO HE COULD GET HIS
13 NAME ON A PLAQUE AND HUNG UP. HE IS A WONDERFUL FATHER, I
14 DON'T KNOW ANY ONE THAT IS A STABILITY TO HIS SON AS HE
15 HAS BEEN. I CAN'T SAY ANOTHER THING ABOUT HIM, I DON'T
16 KNOW THAT HIS INTENT TO HELP THESE PEOPLE NOT LOST THEIR
17 MONEY, THAT WAS HIS INTENT. IT WAS AFFECTING HIS
18 DEMANDING, YES. MAYBE HE IS DEMANDING, MAYBE THAT IS WHY
19 HE EXPECTS MORE FROM THEM. IF HE HAD BEEN DEMANDING AND
20 MANIPULATIVE WOULD HOMEGOLD HAVE SUCCEEDED. TODAY THEY
21 SAID IT IS A CRIME AND IT SHOULDN'T BE. AND ATTACHING HIS
22 CHARACTER, I MEAN THAT IS WHY THIS SOUNDS LIKE THIS, TO
23 CAUSE THE JURY TO DISLIKE HIM, TO BELIEVE HE IS ARROGANT.
24 PERHAPS HE LOOKS THAT WAY BUT HE IS NOT. HE IS A VERY
25 GOOD, THERE ARE A LOT OF PEOPLE THAT DO LOVE HIM. THE

1 PEOPLE THAT DON'T CARE FOR HIM ARE PROBABLY JUST JEALOUS.
2 AND THAT IS JUST PART OF HUMAN NATURE THAT WE CAN'T PULL
3 OURSELVES AWAY FROM IT. THAT IS JUST UNFORTUNATE THAT IS
4 THE WAY IT IS. SOMETIMES WHEN YOU HAVE MORE THAN OTHERS
5 AND YOU SET YOURSELF UP ABOVE A LEVEL OTHER PEOPLE ARE
6 RESENTFUL OF IT. RONNIE IS A WONDERFUL PERSON, I AM SURE
7 THERE ARE PEOPLE HERE THAT COULD TELL YOU THAT AS WELL.
8 AND I WOULD LIKE FOR YOU TO CONSIDER THAT AND THE FACT
9 THAT, THIS WAS NOT MALICIOUS. HIS MOTIVES WERE COMPLETE
10 PURE AND I KNOW THE FACT THE PEOPLE THAT LOST THEIR MONEY,
11 THEY DON'T UNDERSTAND THAT. KAREN MILLER SAID TO ME, SHE
12 SAID, WE WOULD OF BEEN OUT OF BUSINESS TWO MONTHS AGO.
13 WELL, WHAT DOES THAT MEAN, WERE THOSE PEOPLE STILL GOING
14 TO LOSE THEIR MONEY, I DON'T KNOW HOW MUCH IT WAS BUT I
15 THOUGHT IT WAS \$147 MILLION. SO IT WAS UP A LITTLE
16 HIGHER. THE POINT IS THAT THEY WERE GOING TO LOSE IT AND
17 THAT IS WHY THEY COME LOOKING FOR HIM.

18 THE COURT: THANK YOU. MR. GRIFFIN.

19 MR. GRIFFIN: YOUR HONOR, WITH THE STRUCTURE OF THE
20 SENTENCE, I WOULD REQUEST CONCURRENT SENTENCES. AND I
21 WOULD POINT OUT TO YOUR HONOR, THAT 17-25-50 OF THE SOUTH
22 CAROLINA CODE SAYS IN DETERMINING THE NUMBER OF OFFENSES
23 FOR THE PURPOSE OF IMPOSITION OF SENTENCE THE COURT SHALL
24 TREAT AS ONE OFFENSE, ANY NUMBER OF OFFENSES WHICH HAVE
25 COMMITTED AT THE TIME SO CLOSELY CONNECTED, AT THE POINT

1 OF TIME THEY MAY CONSIDER THE POINT OF THE OFFENSE AND
2 NOTWITHSTANDING UNDER THE LAW THAT THEY CONSTITUTE
3 SEPARATE AND DISTINCT OFFENSES. AND, YOUR HONOR, I WOULD
4 ASK THAT YOU CONSIDER THE STATUTE, IT HAS BEEN, IT HAS
5 BEEN ON THE BOOKS FOR QUITE SOME TIME, THERE IS A CASE
6 WHERE THE COURT, IN AN OFFENSE THAT INVOLVED ASSAULT AND
7 BATTERY WITH INTENT TO KILL, ATTEMPTED ARMED ROBBERY IN
8 1998. THE COURT SAID THAT THE TRIAL COURT STILL HAD
9 DISCRETION TO IMPOSE CONSECUTIVE SENTENCES FOR THOSE
10 OFFENSES BECAUSE THEY HAD DIFFERENT ELEMENTS. BUT IN THIS
11 CASE, YOUR HONOR, ALL THREE CHARGES ARE ESSENTIALLY THE
12 SAME OFFENSE. THEY ARE THE SAME OFFENSE CHARGED DIFFERENT
13 WAYS AND THE INDICTMENT SPEAKS TO THAT. AND COUNT ONE IS
14 CHARGES A SCHEME. COUNT SEVEN OR TWO, IF YOU WILL, FOR
15 THIS CASE IS THE FALSE PRETENSES IN CONNECTION WITH THAT
16 SCHEME. AND THE THIRD COUNT IS CONSPIRACY, AND SO WE
17 WOULD REQUEST AND WE WOULD ARGUE THAT UNDER THE LAW THAT
18 IT REQUIRES CONCURRENT SENTENCES AND WE WOULD ALSO
19 REQUEST, UNDER THE FACTS OF THIS CASE THAT YOU PROVIDE
20 CONCURRENT SENTENCES. YOUR HONOR, I CAN ASSURE YOU THAT
21 DURING THE COURSE OF THESE THREE WEEKS THAT WE WERE
22 CONFIDENT AND WE APPRECIATED THAT YOU GAVE US A FAIR
23 TRIAL. NO ARGUMENTS ABOUT THAT AND WE DON'T AND WE DO
24 APPRECIATE THAT AND WE KNEW THAT YOU WOULD. AND WE KNEW
25 THAT ANY JUDGE IN THE STATE WOULD BUT WE APPRECIATE THE

1 FAIR TRIAL THAT WE DID RECEIVE. THEY WERE ISSUES THAT WE
2 DISAGREED WITH ON THE LAW BUT YOUR HONOR, WE BELIEVE
3 STRONGLY AND STILL BELIEVE THAT YOU APPLYING AND BEING
4 CONSISTENT AND AS YOU HAVE THROUGHOUT ALL OF THESE CASES
5 THAT HAVE BEEN HANDED TO YOU FROM THE STATE GRAND JURY.
6 AND WE WOULD ASK THAT YOU CONTINUE THAT SAME FAIRNESS AND
7 CONSISTENCY APPROACH AS YOU SENTENCE MR. SHEPPARD. MR.
8 MORRIS GOT CONCURRENT SENTENCES AFTER A TRIAL, 44 MONTHS,
9 I BELIEVE. MR. OWEN GOT CONCURRENT SENTENCES, BOTH OF
10 THOSE INDIVIDUALS WERE THERE MANY, MANY, MANY YEARS BEFORE
11 MR. SHEPPARD WAS THERE FOR 28 MONTHS. AND WE WOULD JUST
12 ASK THAT YOU CONSIDER THAT AND THAT YOU FASHION A SENTENCE
13 THAT IS CONSISTENT WITH THE SENTENCES THAT YOU PREVIOUSLY
14 IMPOSED. THAT MR. SHEPPARD, LIKE MR. MORRIS SHOULD NOT BE
15 PUNISHED FOR GOING TO TRIAL. HE HAD A CONSTITUTIONAL
16 RIGHT TO A TRIAL, YOUR HONOR. AS I SAID BEFORE I THOUGHT
17 IT WAS A MUCH CLOSER TRIAL AND THE JURY, OBVIOUSLY DIDN'T
18 AGREE WITH ME. BUT MR. SHEPPARD HAS, WE HAD STRONG
19 FACTUAL DEFENSES AND WE PRESENTED THOSE. BUT WE WOULD
20 ASK, THERE ARE STILL OTHER CHARGES OUT THERE, YES, TO BE
21 RESOLVED SO WE WOULD ASK THAT YOU CONSIDER A CONCURRENT
22 SENTENCE. AND, YOUR HONOR, I HAVE SPOKEN TO MR. SHEPPARD
23 AND HE FRANKLY DOES NOT FEEL LIKE HE IS ABLE TO TALK THIS
24 MORNING. HE SLEPT ON THE FLOOR LAST NIGHT AND HE DIDN'T
25 GET A SHOWER, HE IS COMPLETELY DISTRAUGHT. BUT HE ASKED

1 ME TO ASK YOU ON HIS BEHALF TO BE TREATED LIKE THE OTHERS
2 WHO CAME BEFORE HIM AND WERE THERE LONG BEFORE HIM. AND
3 WE WOULD ASK THAT YOU, REMEMBER THAT CAROLINA INVESTORS
4 WAS NOT MR. SHEPPARD'S DOING, IT WAS HIS UNDOING AND WE
5 JUST REQUEST A CONCURRENT SENTENCE. THANK YOU.

6 THE COURT: ANYTHING FURTHER, MS. EVANS?

7 MS. EVANS: YOUR HONOR, I AM NOT GOING TO GO THROUGH
8 ALL OF THE CHARACTER EVIDENCE, WE WOULD CERTAINLY HAVE
9 PLENTY TO ESTABLISH. I JUST WANTED TO POINT OUT TO THE
10 COURT THAT MR. GRIFFIN, THIS COURT DOES HAVE EVERY
11 AUTHORITY TO GIVE CONSECUTIVE SENTENCES IN THIS CASE, YOUR
12 HONOR AND WE DISAGREE WITH THE LAW THAT MR. GRIFFIN TOLD
13 YOU. BUT AS FAR AS CHARACTER, WE ARE NOT GOING TO GO
14 THROUGH ALL OF THAT, YOUR HONOR.

15 THE COURT: ALL RIGHT. BEFORE THE COURT PRONOUNCES
16 SENTENCE, I WOULD AGAIN CAUTION THOSE IN THE AUDIENCE THAT
17 THE COURT WILL NOT PERMIT ANY KIND OF REACTION TO WHATEVER
18 THE SENTENCE IS THAT THE COURT DOES IMPOSE. AND I WAS
19 ADVISED YESTERDAY THAT THERE HAD BEEN SOME COMMENTS MADE
20 TO COUNSEL AFTER THE JURY RETURNED ITS VERDICT. AND I
21 WOULD DIRECT AND ORDER THOSE HERE IN THE COURTROOM NOT TO
22 MAKE ANY COMMENTS OR STATEMENTS EITHER TO THE ATTORNEYS OR
23 TO THE WITNESSES WHO MAY BE PRESENT HERE AT THE COURT
24 HOUSE. I AM NOT ONE TO EDITORIALIZE WHEN PRONOUNCING
25 SENTENCE AND I SIMPLY TRY TO DO WHAT I THINK IS FAIR AND

1 JUST AND I HAVE TRIED TO AFFORD BOTH THE DEFENDANT AND THE
2 STATE A FAIR TRIAL AND I THINK I HAVE DONE THAT. NOT A
3 PERFECT TRIAL, THE CONSTITUTION DOESN'T GUARANTEE ANY
4 PERFECT TRIALS AND I AM NOT SURE THERE HAS EVER BEEN ONE.
5 ON COUNT ONE, THE SECURITIES FRAUD, THE SENTENCE OF THE
6 COURT IS THAT THE DEFENDANT BE CONFINED TO THE DEPARTMENT
7 OF CORRECTIONS FOR A PERIOD OF 10 YEARS.

8 ON THE COUNT OF CONSPIRACY, THE SENTENCE OF THE COURT
9 IS THAT THE DEFENDANT BE CONFINED FOR A PERIOD OF FIVE
10 YEARS.

11 AND OBTAINING PROPERTY BY FALSE PRETENSES, THE
12 SENTENCE IS THAT THE DEFENDANT BE CONFINED TO THE
13 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 5 YEARS. EACH
14 OF THOSE SENTENCES WILL RUN CONSECUTIVELY. THE COURT WILL
15 STAND IN RECESS.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

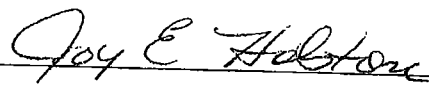
STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE
EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF STATE GRAND JURY FOR
LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF
JANUARY, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

AUGUST 18, 2007



JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

COPY

FILED

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS

2011 JUL 22 12:51

COUNTY OF LEXINGTON)

RONALD J. SHEPPARD,
INMATE NO.: 320057

(Full Name & Prison No. (if any) of Applicant)

v.

APPLICATION FOR POST
CONVICTION RELIEF

STATE OF SOUTH CAROLINA)

2011CP3202798

INSTRUCTIONS- READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may finish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Watkins Pre-Release Center, 1700 St. Andrews Terrace, Columbia, SC 29210
2. Name and location of Court which imposed sentence: Lexington County Court of General Sessions, 205 East Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any): Karen Miller; Earle Morris, Jr.; Anne Owen; Larry Owen; Jack Sterling
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2005-GS-47-20; Securities Fraud; Obtaining Property by False Pretenses

- (b) _____
(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) February 6, 2007; Sentenced to twenty (20) years
(b) _____
(c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
(b) after a plea of not guilty ✓
(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals, however case certified to
South Carolina Supreme Court
ii. _____
iii. _____

(b) the result in each such Court to which you appealed:

- i. Certified to South Carolina Supreme Court who affirmed
sentence
ii. _____
iii. _____

(c) the date of each such result:

- i. February 7, 2011
ii. _____
iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Opinion No. 26927
ii. _____
iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
(b) _____
(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel by failing to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report."
- (b) Ineffective assistance of counsel in that trial counsel failed to argue that the State Grand Jury did not have subject matter jurisdiction over Count Seven of the Indictment, Obtaining Property Under False Pretenses, and Count Eleven, Conspiracy, and therefore the convictions and sentences on these two counts should be vacated; nor did trial counsel properly preserve this issue for appeal.
- (c) Ineffective assistance of counsel in that trial counsel failed to argue or properly preserve for appeal the issue of S.C. Code § 14-7-1820, which applied the State Grand Jury system to offenses committed both before and after its effective date, violated Sheppard's constitutional right against the passage of ex post facto laws prohibited by S.C. Const. Art. I, § 4, U.S. Const. Art. I, § 10, and the due process clause of the Fourteenth Amendment of the United States Constitution, as Sheppard was disadvantaged by the infringement of his right to be indicted by a Grand Jury in the county wherein the alleged crimes occurred and by the enhanced State Grand Jury system which improved the ability of the State to detect and eliminate criminal activity by broader investigative authority and prosecution by the Office of the State Attorney General.
- (d) Ineffective assistance of counsel in that trial counsel failed to move for reconsideration or to make an objection to the trial courts imposition of consecutive sentences of ten years for Count One, five years for Count Two, and five years for Count Three, for a total prison sentence of twenty (20) years was disproportionate given that other co-defendants were given substantially lesser sentences.
- (e) Deprivation of Constitutional Right to a fair trial due to ineffective assistance of counsel in that trial counsel failed to make necessary motions on Defendant's behalf in order to properly preserve numerous issues for appeal.

11. State concisely and in the same order the facts which support each of the grounds set out in (10): SEE ATTACHMENT A

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. SC Court of Appeals, however, case certified by SC Supreme Court
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. Affirmed
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. February 7, 2011
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Opinion No. 26927
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Deprivation of Constitutional Right to a fair trial

ii. State Grand Jury did not have jurisdiction over case

iii. Ex Post Facto law

(b) the proceedings in which each ground was raised:

i. Direct Appeal

ii. Direct Appeal

iii. Direct Appeal

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

All grounds outlined below are based on ineffective assistance of counsel. The issues have not previously been presented as the proper forum in which to raise these issues is Post Conviction Relief.

(a) Ineffective Assistance of Counsel by failing to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report."

(b) Ineffective assistance of counsel in that trial counsel failed to argue that the State Grand Jury did not have subject matter jurisdiction over Count Seven of the Indictment, Obtaining Property Under False Pretenses, and Count Eleven, Conspiracy, and therefore the convictions and sentences on these two counts should be vacated; nor did trial counsel properly preserve this issue for appeal.

(c) Ineffective assistance of counsel in that trial counsel failed to argue or properly preserve for appeal the issue of S.C. Code § 14-7-1820, which applied the State Grand Jury system to offenses committed both before and after its effective date, violated Sheppard's constitutional right against the passage of *ex post facto* laws prohibited by S.C. Const. Art. I, § 4, U.S. Const. Art. I, § 10, and the due process clause of the Fourteenth Amendment of the United States Constitution, as Sheppard was disadvantaged by the infringement of his right to be indicted by a Grand Jury in the county wherein the alleged crimes occurred and by the enhanced State Grand Jury system which improved the ability of the State to detect and eliminate criminal activity by broader investigative authority and prosecution by the

Office of the State Attorney General.

- (d) Ineffective assistance of counsel in that trial counsel failed to move for reconsideration or to make an objection to the trial courts imposition of consecutive sentences of ten years for Count One, five years for Count Two, and five years for Count Three, for a total prison sentence of twenty (20) years was disproportionate given that other co-defendants were given substantially lesser sentences.
- (e) Deprivation of Constitutional Right to a fair trial due to ineffective assistance of counsel in that trial counsel failed to make necessary motions on Defendant's behalf in order to properly preserve numerous issues for appeal.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. James M. Griffin, Marlboro Building, 1116 Blanding Street, Suite 100, Columbia SC, 29201
 - ii. O. Grady Query & Michael W. Sautter, Query, Sautter, Gliserman & Price, LLC, 147 Wappoo Creek Drive, Suite 202, Charleston, SC 29412
 - (b) the proceedings at which each such attorney represented you:
 - i. Griffin - Trial and Sentencing
 - ii. Query & Sautter - Appeal and PCR
 - iii. _____
19. State clearly the relief you seek in filing this application: A determination that Defendant Sheppard is entitled to a new trial on the grounds set forth in this application.
20. Are you now under sentence from any other court that you have not challenged? No

PCR APPLICATION OF RONALD J. SHEPPARD (#320057)

ATTACHMENT A

11. (a) Defendant Sheppard was deprived of his constitutional right to a fair trial before a fair and impartial tribunal. During the trial of the initial case, there was improper contact and prejudicial information transferred from a spectator to one of the jurors. Although the juror brought the information to the attention of the court, the matter was never fully cured by the trial court even though the trial court specifically found it to be inappropriate.

Defendant's trial counsel was ineffective in that he failed to make a motion for mistrial, ask for a curative instruction, ask that the juror be questioned about the comment on the record or make any attempt to place the allegedly inappropriate comment on the record. Further, counsel took no steps to enter the discussion into the record, nor did he request a curative instruction be issued by the trial judge, thus failing to preserve the issue for appeal.

The right to trial by an impartial jury unaffected by extraneous information is perhaps the most important and essential tenet of criminal jurisprudence. It is of constitutional significance guaranteed by the Sixth and Fourteenth amendments of the Constitution of the United States of America and by Article I, Section Fourteen of the South Carolina Constitution. Whenever an infringement upon this constitutionally protected right occurs, it is critical to the guarantees of a fair trial afforded by the state and federal Constitutions that trial counsel insist that the trial court take such action as may be necessary, including the drastic remedy of declaring a mistrial, to insure that the impartiality of each and every juror is protected and assured.

- (b) The State Grand Jury did not have subject matter jurisdiction for the charges of obtaining property under false pretenses (count 7) and conspiracy (count 11) of the superseding indictment. Trial counsel for the Defendant was ineffective in that he failed to raise this issue in a timely manner as challenges to the State Grand Jury must be raised before the jury renders a verdict.

Although trial counsel filed a Motion to Quash the Indictment of the State Grand Jury alleging it lacked jurisdiction over the obtaining property under false pretenses and conspiracy charges. At that hearing on that motion, however, trial counsel conceded that the State Grand Jury did have jurisdiction over the charges and withdrew the motion. Because counsel withdrew the motion as to the counts and failed to raise the issue regarding the jurisdiction of the State Grand Jury indictment prior to the jury rendering its verdict, the issue was not properly preserved for review on appeal.

- (c) S.C. Code § 14-7-1820, which applied the State Grand Jury system to offenses committed both before and after its effective date, violated Sheppard's constitutional right against the passage of *ex post facto* laws prohibited by S.C. Const. Art. 1, § 4, U.S. Const. Art. I, § 10, and the due process clause of the Fourteenth Amendment of the United States Constitution, as Sheppard was disadvantaged by the infringement of his right to be indicted by a Grand Jury in the county wherein the alleged crimes occurred and by the enhanced State Grand Jury system with the stated purpose of improving the ability of the State to detect and eliminate criminal activity by broader investigative authority and prosecution by the Office of the

State Attorney General.

Defendant's trial counsel was ineffective in that he failed to raise the issue that the jurisdiction was created by the *ex post facto* statutory provision. The jurisdiction of the State Grand Jury and any resulting deficiency in the indictment must be raised prior to the jury rendering its verdict, which trial counsel failed to do.

- (d) The trial courts imposition of consecutive sentences of ten years for Count One, five years for Count Two, and five years for Count Three, for a total prison sentence of twenty (20) years was disproportionate given that other co-defendants were given substantially lesser sentences.

Defendant's trial counsel was ineffective in that he failed to move for reconsideration of Defendant's sentence, nor did counsel object on the basis that the sentence was disproportionate to the sentences of the Co-defendants or ask the court to modify the Defendant's sentence. In order to preserve a sentencing issue for appellate review, the Defendant or his counsel must object to his sentence, seek reconsideration of his sentence or ask the court to modify the sentence.

- (e) Defendant Sheppard suffered from ineffective assistance of counsel when his trial counsel, James Griffin, failed to take action on the Defendant's behalf as outlined in (a) through (d) above.

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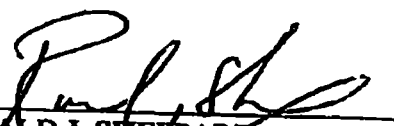
STATE OF SOUTH CAROLINA FILED

County of CHARLESTON

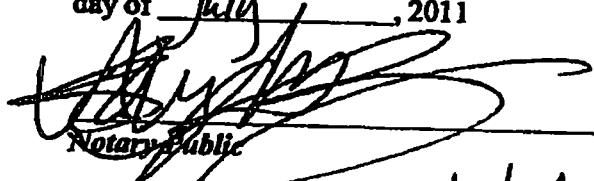
VERIFICATION

2011 JUL 22 12:52

I, Ronald J. Sheppard, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


RONALD J. SHEPPARD

SWORN to and subscribed before me this 15
day of July, 2011



(L.S.)
Notary Public

My Commission Expires: 8/14/18

2011CP3202798

COPY

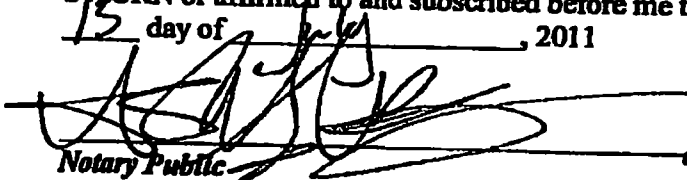
**APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND
AFFIDAVIT IN SUPPORT THEREOF**

I, Ronald J. Sheppard, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


RONALD J. SHEPPARD, APPLICANT

SWORN or affirmed to and subscribed before me this
15 day of July, 2011


Notary Public

My Commission Expires: 8/14/18

2011CP3202798

2011 JUL 22 7:12:52

FILED

**THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798**

Ronald J. Sheppard, #320057,

Applicant,

v.

State of South Carolina,

Respondent.

**RETURN AND
PARTIAL MOTION TO DISMISS**

The Respondent, making its Return and Partial Motion to Dismiss to the application for post-conviction relief (PCR) filed July 22, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of State Grand Jury Clerk of Court. The Applicant was initially indicted by the State Grand Jury on November 16, 2005, followed by a superseding indictment filed on February 21, 2006 for: Count 1 - Securities Fraud (violation of S.C. Code §35-1-1210 and §35-1-1590); Count 2 - Crime Against a Federally Chartered or Insured Financial Institution violation of S.C. Code §34-3-110); Counts 3 & 4 - Forgery; Counts 5 & 6 - Making a False Statement or Misrepresentation; Counts 7 & 8 - Obtaining Signature or Property by False Pretenses (violation of S.C. Code §16-13-240); Count 9 - Breach of Trust; Count 10 - Perjury; and Count 11 - Conspiracy. (2005-GS-40-20).

James M. Griffin, Esquire represented the Applicant. On January 16, 2007, the Applicant proceeded to trial on counts one, seven, and eleven after the Court granted the Applicant's Motion to Dismiss on the other eight charges. Applicant was found guilty on all three of the remaining counts. The Honorable James W. Johnson, Jr., consecutively sentenced the Applicant to confinement for a period of ten (10) years on count one - Securities Fraud; five years on count seven - Obtaining Property Under False Pretenses; and five years on count eleven - Conspiracy.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by O. Grady Query, Esquire and Michael W. Sautter, Esquire.

The Applicant raised the following issues on appeal:

1. Whether Applicant received a fair trial before an impartial jury when there was improper contact between a spectator and a juror which was not cured by the trial court;
2. Whether the State Grand Jury had subject matter jurisdiction over counts seven and eleven of the indictment and if not, should those sentences and convictions be vacated;
3. Whether South Carolina Code §14-7-1820 violates Applicant's constitutional rights against the passage of *ex post facto* laws; and
4. Whether the trial court abused its discretion by imposing a sentence on Applicant which was substantially disproportionate to the sentences of other co-conspirators?

The South Carolina Supreme Court affirmed Applicant's conviction and sentence. With respect to issue two the court held that Applicant was actually challenging the sufficiency of the indictment; that there was no question that the

Circuit Court had subject matter jurisdiction over the crimes charged; that because Applicant failed to timely challenge the three counts in the indictment and instead went to trial on the charges, he could not now, having lost at trial, come back to challenge the sufficiency of the indictment; and that the State Grand Jury had jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in section 14-7-1630, because they were committed in the same course of conduct as securities violations.

With respect to issues one, three and four the Court held that Applicant failed to preserve the issues for review. State v. Sheppard, Op. No. 26927 (S.C. Sup. Ct. filed Feb. 7, 2011). The Remittitur was issued on February 23, 2011.

Attached herewith and incorporated herein are the records of the South Carolina State Grand Jury Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from Applicant's direct appeal proceedings. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a) Failure to request a curative instruction or moving for a mistrial after the trial judge found that there had been an

inappropriate contact with a juror and stated, "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report;"

b) Failure to argue that the State Grand Jury did not have subject matter jurisdiction over Count seven of the Indictment, Obtaining Property Under False Pretenses, and Count Eleven, Conspiracy, and therefore the conviction and sentences on these two counts should be vacated; nor did trial counsel properly preserve this issue for appeal;

c) Failure to argue or properly preserve for appeal the issue of S.C. Code §14-7-1820, which applied the State Grand Jury system to offenses committed both before and after its effective date, violated Applicant's constitutional rights against the passage of *ex post facto* laws prohibited by S.C. Const. Art. I, §4, U.S. Const. Art. I, §10, and the due process clause of the Fourteenth Amendment of the United States Constitution, as Applicant was disadvantaged by the infringement of his right to be indicted by a Grand Jury in the county wherein the alleged crimes occurred and by the enhanced State Grand Jury system which improved the ability of the State to detect and eliminate criminal activity by broader investigative authority and prosecution by the Office of the State Attorney General;

d) Failure to move for reconsideration or to make an objection to the trial court's imposition of consecutive sentences of ten year for Count One, five years for Count Two, and five years for Count Three, for a total prison sentence of twenty (20) years was disproportionate given that the other co-defendants were given substantially lesser sentences.

e) Failure to make necessary motions on Applicant's behalf in order to preserve numerous issues for appeal, which deprived Applicant of his constitutional right to a fair trial.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813

(1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test applies in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV.

In his first issue, the Applicant claims that trial counsel was ineffective for failing to request a curative instruction or moving for a mistrial from the trial judge

regarding contact made with a juror. Immediately after the jury returned to the courtroom from a weekend break, the trial court stated: "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report." (T.1237; R. 1395).

The court next mentioned the issue of contact between the jury and spectators when court recessed for the day. The court stated:

Before we break, this is for the benefit of the audience. Apparently on Thursday when we broke there was a spectator who was on the elevator with one of the jurors who made an inappropriate comment. And I would direct all spectators, the juror cannot identify that individual. I don't know who it was, I have discussed it with counsel. I would direct all of those in the audience not to have any contact direct or indirect with any juror. If you go get on the elevator and there are jurors on the elevator wait for the next one. (T.1445-1446; R. 1603-1604) (emphasis added).

The trial judge's above statement clearly indicates a discussion took place with counsel. While a defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, the mere fact that some conversation occurs between a juror and a non-juror does not necessarily prejudice a defendant. *See State v. Johnson*, 302 S.C. 243, 250, 395 S.E.2d 167, 171 (1990) (finding a conversation between juror and witness for the State does not necessarily prejudice the defendant). Applicant fails to show how or even if, he was prejudiced by the comment to the juror.

However, this allegation probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to

fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

In allegation (b), the Applicant claims that the State Grand Jury did not have subject-matter jurisdiction for the charges of obtaining property under false pretenses (Count 7) and conspiracy (Count 11), and that trial counsel was ineffective for failing to raise this issue in a timely manner and for failing to properly preserve the issue for review on appeal. Even if trial counsel was ineffective for failing to preserve the record regarding this issue, there is no prejudice to the Applicant because this issue has already been ruled upon by the South Carolina Supreme Court.

Respondent submits that the doctrine of *res judicata* bars the Applicant's claim that the State Grand Jury did not have jurisdiction. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

On direct appeal the Applicant raised the issue of whether the State Grand Jury had subject-matter jurisdiction over counts seven and eleven of the indictment and if not, those sentences and convictions should be vacated. The Supreme Court ruled upon this issue and noted that the Applicant mischaracterizes this issue as

one regarding subject-matter jurisdiction¹ rather than posing the issue as to whether or not the State Grand Jury had the authority to investigate and indict. See State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16, (2011).

The South Carolina Supreme Court explained that "while the statute establishing the jurisdiction of the State Grand Jury plainly evidences the General Assembly's intent to limit said jurisdiction, we do not believe it intended to hinder the grand jury's ability to investigate and indict for crimes committed in the course of conduct of an enumerated crime." The Court found that the language "or a crime related to" is broad enough to encompass those crimes committed in the same course of conduct as an enumerated crime, and held that the State Grand Jury has jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in §14-7-1630, because they were committed in the same course of conduct as the securities violations. Id.

Since issue (b) was raised to and ruled upon by the South Carolina Supreme Court and the doctrine of *res judicata* applies, such that Applicant is barred from subsequent consideration of this issue in this PCR action. See Foran, *supra*. Therefore the Respondent requests summary dismissal of this issue.

VI.

In issue (c), Applicant claims that trial counsel was ineffective for not preserving the issue of whether or not the application of SC Code §14-7-1820 -

¹ Subject-matter jurisdiction is the power of a court to hear a particular class of cases. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

granting the State Grand Jury system investigative authority over securities crimes - violates the Constitutional provisions prohibiting *ex post facto* laws. Even if this issue had been for appeal, Applicant cannot show prejudice because he would not have been successful raising this issue before the appellate court.

For a law to present an *ex post facto* violation, the law must (1) be retrospective and apply to events taking place prior to its enactment and (2) work to disadvantage the offender. State v. Huiett, 302 S.C. 169, 171, 394 S.E.2d 486, 487 (1990). However, a change in the law does not run afoul of the *ex post facto* clause if it only affects a mode of procedure and does not alter "substantial personal rights." Huiett, 302 S.C. at 171, 394 S.E.2d at 487 (quoting Miller, 482 U.S. at 430). Furthermore, in order for the *ex post facto* clause to be implicated, the statute at issue must be criminal or penal in purpose and nature. Id. at 172, 394 S.E.2d at 487. "Even though a procedural change may have a detrimental impact on a defendant, a mere procedural change which does not affect substantial rights is not *ex post facto*." Id. at 171-72, 394 S.E.2d at 487.

In the Applicant's case, the application of §14-7-1820 is nothing more than a mere procedural change that allowed the State Grand Jury to investigate securities fraud and other related crimes. This code section did not in any way create or change the underlying substantive crimes of which the Applicant was ultimately convicted - securities fraud, obtaining property under false pretenses, and criminal conspiracy. Therefore, assuming arguendo that trial counsel was ineffective for not preserving this issue for appeal (which the Respondent in no way concedes), the

Applicant cannot prove prejudice because the Applicant would not have been successful in having his convictions overturned on appeal by raising this issue.

It is clear that §14-7-1820 is not in any way a violation of *ex post facto* since it is merely a statute affecting a mode of procedure. The Applicant could have been indicted for the same underlying crimes by a county Grand Jury whether or not the State Grand Jury had authority to investigate. As noted earlier, even if this issue had been preserved by trial counsel, the Applicant would not have been successful on appeal and thus the Applicant has suffered no prejudice. Therefore, the Respondent further requests that this issue be summarily dismissed.

VII.

In issue (d), the Applicant alleges that trial counsel was ineffective for failing to object to the trial judge's imposition of consecutive sentences. In essence, the Applicant complains that his sentence is too harsh. Even had trial counsel objected, the Applicant could not have raised this issue on appeal because the trial court has broad discretion in imposing criminal sentences. A sentence that falls within the limits provided by statute cannot be reviewed by an appellate court absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976) citing State v. Goodall, 221 S.C. 175, 69 S.E.2d 915, (1952). See also, State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Applicant has made no showing of partiality, prejudice, oppression or corrupt motive by Judge Johnson in imposing the sentencing upon the Applicant. (With the

exception of Applicant's co-defendant - John M. Sterling, Jr. - Judge Johnson presided over every other guilty plea and trial related to the HomeGold/Carolina Investors matter, and thus was very familiar with the facts of the case. *See also* Final Brief of Respondent, p. 31.) Since the Applicant has failed to show that his sentence did not fall within the statutory limits or that the trial court was somehow prejudiced in imposing its sentence, trial counsel cannot be ineffective for failing to preserve an issue for appeal that could not have been raised on appeal. Therefore, Respondent requests that this issue also be summarily dismissed.

VIII.

The Applicant is represented in this PCR action by O. Grady Query, Esquire, the same attorney who represented the Applicant on his direct appeal. The Respondent therefore requests that the PCR court advise the Applicant on the record that dual representation will result in a waiver of any claims of ineffective assistance of appellate counsel and require the Applicant state on the record whether he wishes to proceed and waive such claims. *See Carter v. State*, 293 S.C. 528, 362 S.E.2d 20 (1987).

IX.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test regarding issues (b), (c), and (d), and requests that these issues be summarily dismissed. However, the allegation of ineffective assistance of counsel regarding issues (a) - and to the extent issue (e) is relevant to issue (a) - probably raises questions of fact that the record does not conclusively

refute. Accordingly, the State therefore requests that this Court convene an evidentiary hearing solely on issues of ineffective assistance of counsel as to issues (a) and (e) and moves for summary dismissal of the remaining allegations. See Sharper, supra.

X.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

XI.

WHEREFORE, having made its Return, the State requests that a hearing be held as to issues (a) and (e), that the PCR court question and request a waiver of ineffective assistance of appellate counsel claims on the record, and that the remaining issues raised by the Applicant in his application be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: Ashley A. McMahon
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3693

March 30th, 2012.

**THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798**

Ronald J. Sheppard, #320057,

Applicant,

v.

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

O. Grady Query, Esquire
Query, Sautter, Gliserman, & Price, LLC
147 Wappoo Creek Dr., Ste. 202
Charleston, SC 29412

DATED this 30^h day of March, 2012.

~~Ashley A. McMahon~~
ASHLEY A. MCMAHAN
Assistant Attorney General

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Ronald J. Sheppard, #320057,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798

**STATE'S MOTION FOR A MORE
DEFINITE ANSWER**

The Respondent, making its Motion for a More Definite Answer pursuant to SCRCP 12(e), would respectfully show this Court:

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

a) Failure to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated, "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report;"

b) Failure to argue that the State Grand Jury did not have subject matter jurisdiction over Count seven of the Indictment, Obtaining Property Under False Pretenses, and Count Eleven, Conspiracy, and therefore the conviction and sentences on these two counts should be vacated; nor did trial counsel properly preserve this issue for appeal;

c) Failure to argue or properly preserve for appeal the issue of S.C. Code §14-7-1820, which applied the State Grand Jury system to offenses committed both before and after its effective

date, violated Applicant's constitutional rights against the passage of *ex post facto* laws prohibited by S.C. Const. Art. I, §4, U.S. Const. Art. I, §10, and the due process clause of the Fourteenth Amendment of the United States Constitution, as Applicant was disadvantaged by the infringement of his right to be indicted by a Grand Jury in the county wherein the alleged crimes occurred and by the enhanced State Grand Jury system which improved the ability of the State to detect and eliminate criminal activity by broader investigative authority and prosecution by the Office of the State Attorney General;

d) Failure to move for reconsideration or to make an objection to the trial court's imposition of consecutive sentences of ten year for Count One, five years for Count Two, and five years for Count Three, for a total prison sentence of twenty (20) years was disproportionate given that the other co-defendants were given substantially lesser sentences.

e) Failure to make necessary motions on Applicant's behalf in order to preserve numerous issues for appeal, which deprived Applicant of his constitutional right to a fair trial.

III.

The State made its Return and Motion to Dismiss on or about March 30, 2012. In its response, the State moved (and put forth argument accordingly) to dismiss all the allegations except for the general claim of Ineffective Assistance of Counsel and the one claim related to the juror issue. The vast majority of the Applicant's claims are ripe for summary dismissal because there are no genuine issues of material fact to warrant a hearing, as stated in the Return and Motion to Dismiss.

IV.

Based on the arguments put forth in its Return and Motion to Dismiss, Respondent now moves Applicant for a more definite statement pursuant to Rule

12(e) of the South Carolina Rules of Civil Procedure regarding the claim of ineffective assistance of counsel. "If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading." SCRCP 12(e).

Despite the 1500+ pages of transcript, the Applicant does not explain with any specificity whatsoever, the grounds upon which counsel was ineffective. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The allegation is now so vague that it is impossible for the State to respond. Considering the extensive record in this case, the amount of possible witnesses involved, the costs to the State for transporting the Applicant, etc., the Respondent requests that the PCR claims be amended prior to the hearing to allow an adequate time to research and prepare a reply, if any – prior to the hearing. The Respondent is calling this matter the week of November 12, 2012 and would like to avoid a continuance in the case.

XI.

WHEREFORE, having made its Motion, the State requests that the

Applicant give a more definite statement as to the particular allegations regarding ineffective assistance of counsel he intends to raise at the PCR hearing no later than October 13, 2012.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: Ashley A. McMahon
ATTORNEYS FOR RESPONDENT

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P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3693

Sept. 17th, 2012.

**THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798**

Applicant,

y.

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion for a More Definite Answer in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

O. Grady Query, Esquire
Query, Sautter, Gliserman, & Price, LLC
147 Wappoo Creek Dr., Ste. 202
Charleston, SC 29412

DATED this 17th day of September, 2012.

Ashley A. McMahon
ASHLEY A. McMAHAN
Assistant Attorney General

COUNTY OF LEXINGTON

IN THE CIVIL COURT

Applicant,

-VS-

Respondent.

TRANSCRIPT OF RECORD

11-CP-32-2798

October 15, 2012
Lexington, South Carolina

B E F O R E:

HONORABLE R. KNOX MCMAHON, Judge.

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

O. GRADY QUERY, Esquire
MICHAEL W. SAUTTER, Esquire
Attorney for the Applicant

ASHLEY A. McMAHAN, Asst. Attorney General
KAREN C. RATIGAN, Asst. Deputy Attorney General
Attorney for the State

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 October 15, 2012.)

3 THE COURT: This is 11-CP-32-2798, Sheppard
4 versus the State of South Carolina.

5 Ms. McMahan, would you prep the record in
6 regard to this case, please.

7 MS. McMAHAN: It's McMahan (phonetic), Your
8 Honor.

9 THE COURT: McMahan, I'm sorry.

10 MS. McMAHAN: This is the State's return and
11 motion for partial summary dismissal. Actually before
12 we begin, Mr. Query represents Mr. Sheppard. Mr. Query
13 represented him on the direct appeal. So any issue
14 relating to ineffective assistance of appellant counsel
15 needs to be waived before we go forward in my opinion.

16 THE COURT: I have not done that in the past.
17 Do I normally do that by questioning -- is that normally
18 done by questioning Mr. Sheppard?

19 MS. McMAHAN: Yes, Your Honor.

20 THE COURT: Mr. Sheppard, would you please
21 stand. Do you have any objections to taking an oath?

22 MR. SHEPPARD: No, sir.

23 THE COURT: Would you raise your right hand as
24 best you can.

25 RONALD JOE SHEPPARD is first

1 duly sworn.

2 THE COURT: You may remain standing there.
3 Would you tell me your full name, please.

4 MR. SHEPPARD: Ronald Joe Sheppard.

5 THE COURT: How old are you, Mr. Sheppard?

6 MR. SHEPPARD: Fifty-five.

7 THE COURT: How much education do you have?

8 MR. SHEPPARD: Ninth grade.

9 THE COURT: Ninth grade. Did you have any
10 training or experience, education beyond the ninth
11 grade?

12 MR. SHEPPARD: No, sir.

13 THE COURT: Where are you from?

14 MR. SHEPPARD: I'm from right here in
15 Lexington County.

16 THE COURT: In Lexington County?

17 MR. SHEPPARD: Yes, sir.

18 THE COURT: Well, I have been informed that I
19 see you have two attorneys there, Mr. Query and
20 Mr. Sautter. Is Mr. Query your attorney?

21 MR. SHEPPARD: Yes, sir.

22 THE COURT: And he also represented you on the
23 direct appeal?

24 MR. SHEPPARD: Yes, sir.

25 THE COURT: And Mr. Sautter, does he also

1 represent you?

2 MR. SHEPPARD: Yes, sir.

3 THE COURT: And did he represent you on direct
4 appeal?

5 MR. SHEPPARD: Yes, sir.

6 THE COURT: Do you understand in this P.C.R.
7 proceeding, you could have another independent attorney
8 to represent you in this matter? Do you understand
9 that?

10 MR. SHEPPARD: If you tell me that, I
11 understand it.

12 THE COURT: Well, I guess what I'm telling you
13 is there are times when you could perhaps bring an
14 action on post conviction relief for ineffective
15 assistance by appellate counsel.

16 MR. SHEPPARD: Yes, sir.

17 THE COURT: You are proceeding forward on this
18 P.C.R. with the same attorneys that represented you on
19 appeal.

20 MR. SHEPPARD: Yes, sir, that is correct.

21 THE COURT: So if you wanted an independent
22 attorney, you could get one. Do you understand that?

23 MR. SHEPPARD: Yes, sir.

24 THE COURT: Do you have any questions about
25 that?

1 MR. SHEPPARD: No, sir, I'm not wanting to
2 waive anything. No, sir.

3 THE COURT: You are not wanting to waive
4 anything?

5 MR. SHEPPARD: I'm saying I'm comfortable with
6 Mr. Query and Mr. Sautter.

7 THE COURT: You are comfortable with Mr. Query
8 and Mr. Sautter?

9 MR. SHEPPARD: Yes, sir.

10 THE COURT: Mr. Query, Mr. Sautter, any other
11 questions you would like me to ask or you would like to
12 ask Mr. Sheppard?

13 MR. QUERY: I don't believe so, Your Honor. I
14 am somewhat confused by the State's position in this. I
15 guess they are asking that you make a judicial
16 determination that by going forward with his P.C.R. on
17 the trial that he would somehow give up any right to
18 raise P.C.R. issues with regard to his appeal.

19 I think that is an awfully difficult position
20 for him to be in with having to ask me whether or not I
21 fouled up his appeal at this juncture. It seems to me
22 that he is entitled to have a P.C.R. with regard to what
23 happened in his trial, and that in all probability will
24 be the end of that. But should he realize that I made
25 some error in representing him in the appellate court,

1 he certainly should have the right to raise that.

2 THE COURT: All right. Ms. McMahan?

3 MS. McMAHAN: Your Honor, I believe it's
4 pretty self-explanatory. If Mr. Sheppard is going to go
5 forward represented by Mr. Query and will not waive his
6 right to raise claims of ineffective assistance of
7 appellate counsel, then we need to go ahead and get an
8 attorney appointed to represent him on that and join all
9 of these motions together into one thing and not have
10 four or five separate P.C.R.s on trial and appeal. It
11 all needs to be done at once -- judicial economy, same
12 witnesses, et cetera.

13 MR. SAUTTER: Your Honor, I was the appellate
14 counsel -- Michael Sautter here for Ronnie Sheppard.

15 THE COURT: Yes, sir, Mr. Sautter.

16 MR. SAUTTER: I also participated in the
17 P.C.R. petition. Our counsel -- we haven't raised any
18 questions concerning his appellate defense, and I think
19 that's what's Mr. Query was trying to get to. That
20 might have to be determined at a later date.

21 It's certainly not raised now, and I know
22 there are time limits on raising issues for P.C.R., and
23 all that might take care of itself as a matter of law.
24 I don't know how else to respond to it, Judge.

25 THE COURT: You may be seated, Mr. Sheppard.

1 MS. McMAHAN: There is a one-year Statute of
2 Limitations. As of now he has filed correctly within
3 the one year. If he then chooses to file another P.C.R.
4 claiming ineffective assistance of appeal counsel, it's
5 going to be outside of that one-year Statute of
6 Limitations.

7 If Mr. Sheppard has problems with the
8 representation that Mr. Query and them gave him during
9 the appeal, those need to be raised now and have another
10 attorney appointed for him or else he is going to lose
11 that right based on the Statute of Limitations or just
12 waive all these rights to even claim ineffective
13 assistance of appellate counsel before we go forward.

14 THE COURT: That is certainly the position the
15 State is taking, that by going forward on the petition
16 or the application that is presently pending before the
17 Court and not having presented any issues of ineffective
18 assistance by appellate counsel, that those are waived.

19 MS. McMAHAN: With the representation of
20 Mr. Query and Mr. Sautter at P.C.R., yes.

21 MR. QUERY: Your Honor, I don't doubt --

22 THE COURT: I don't know the answer to that
23 question quite frankly. I apologize. I did not know
24 that was an issue.

25 MR. QUERY: I don't know the answer either,

1 Your Honor, and don't propose to argue that I do.

2 However, it would seem that counsel may be correct; and
3 as a matter of law, simply by going forward, he may
4 extinguish any right to object to errors that we might
5 have made on representing him before the Supreme Court.

6 But I don't think he should be placed in a
7 position of having to make some waiver of that right at
8 this juncture just to be able to proceed with what we
9 all know is his right, and that is to proceed on the
10 P.C.R. with regard to the conduct of his trial.

11 THE COURT: Ms. McMahan is correct though that
12 he has a one-year Statute of Limitations to bring any
13 issues as to ineffective assistance of either trial
14 counsel or appellate counsel. Does that then control by
15 operation of law?

16 MS. McMAHAN: Yes, Your Honor.

17 THE COURT: As a waiver?

18 MS. McMAHAN: Yes, Your Honor.

19 MR. QUERY: It would appear to me that that
20 would be the case, Your Honor.

21 THE COURT: Do you understand that then,
22 Mr. Sheppard?

23 MR. SHEPPARD: Do you want to say it again,
24 Your Honor?

25 THE COURT: I will try. You have got -- the

1 P.C.R. is post conviction relief, as you know. You
2 might have a ninth grade education --

3 MR. SHEPPARD: I understand that.

4 THE COURT: -- someone else standing before me
5 had an eight grade education. So the amount of
6 education is not controlling, but you are an intelligent
7 young man.

8 Post conviction relief is a creature of
9 statute. There is a one-year Statute of Limitations
10 from the time of conviction until the time in which you
11 bring the action.

12 You have filed your petitions, perhaps amended
13 petitions and such. I'm not exactly sure. But be that
14 as it may, all those were timely filed, raising issues
15 concerning ineffective assistance of trial counsel.

16 You have not raised any issues as to
17 ineffective assistance of appellate counsel. Your
18 appellate counsel is representing you on the P.C.R. that
19 is pending before the Court as to trial counsel.

20 My understanding is that by going forward with
21 appellate counsel, you are waiving any right to bring
22 ineffective assistance of appellate counsel issues
23 before the Court. Perhaps you would be barred by the
24 Statute of Limitations if you don't bring them.

25 Well, you can't bring them -- you are not

1 bringing them now because you have got the same counsel,
2 and the attorney general is just pointing out that if
3 you are going to bring issues as to your appellate
4 counsel and whether or not they were or were not
5 ineffective, you would then need independent counsel
6 appointed to represent you.

7 Does that sum it up properly, Madame Attorney
8 General? Mr. Query?

9 MS. McMAHAN: Yes, Your Honor, I believe so.
10 Any claims that Mr. Sheppard may have against Mr. Query
11 or Mr. Sautter in the appeal need to be addressed now,
12 either with a new attorney appointed or be waived, if he
13 continues to go forward with Mr. Sautter and Mr. Query.

14 THE COURT: Do y'all want to talk with
15 Mr. Sheppard a few minutes, Mr. Query?

16 MR. QUERY: Well, Your Honor, I think the
17 difficulty is in putting us in the position to advise
18 him even with regard to that because obviously I hope
19 that I was effective, and I hope that Mr. Sheppard
20 thinks that I was effective.

21 I think the State is not legitimately raising
22 this question, Your Honor. What they are really saying
23 is: We are going to make Mr. Sheppard either fire
24 Mr. Query and Mr. Sautter or give up any right that he
25 has to object to the way they handled his appeal.

1 MS. McMAHAN: Your Honor, that's not what I'm
2 saying at all. If Mr. Query and Mr. Sautter wish to go
3 forward and represent Mr. Sheppard as to the allegations
4 of ineffective assistance of trial counsel, they may do
5 so.

6 If Mr. Sheppard would like to amend his
7 application and add ineffective assistance of appellate
8 counsel, then we are going to need an independent
9 attorney appointed to represent him for that half, and
10 they would all need to be joined into one hearing.

11 MR. QUERY: We probably do need a minute to
12 discuss that with him then, Your Honor, because aside
13 from assessing our performance, he needs to understand
14 what could happen time wise.

15 THE COURT: All right. I don't know where
16 there is -- is there a place they can meet, Sheriff?

17 SHERIFF: There might be a conference room
18 right inside the door.

19 THE COURT: Y'all may do so. I will step out.
20 Just let me know when you are ready.

21 MR. QUERY: Thank you very much, Your Honor.
22 We won't be but a few minutes. Thank you, sir.

23 (Whereupon there is a recess.)

24 THE COURT: Mr. Query, did you have the
25 opportunity to talk with your client, you and

1 Mr. Sautter?

2 MR. QUERY: I did, Your Honor -- or we did.
3 Thank you very much for allowing us to do that. Your
4 Honor, Mr. Sheppard tells me that he does not wish to
5 have independent counsel appointed. He wishes to go
6 forward with his P.C.R. He understands that that may
7 constitute a waiver of any right to raise any objections
8 to his representation on appeal.

9 THE COURT: Thank you. Mr. Sheppard, you may
10 remain seated there. You heard what your attorney just
11 placed on the record. Do you agree with that?

12 MR. SHEPPARD: Yes, sir, I do.

13 THE COURT: Did you have the opportunity to
14 talk with your lawyers about that?

15 MR. SHEPPARD: Just now?

16 THE COURT: Yes, sir.

17 MR. SHEPPARD: Yes, sir.

18 THE COURT: Is that your decision?

19 MR. SHEPPARD: Yes, sir, it's my decision.

20 THE COURT: Made of your own free will and
21 accord?

22 MR. SHEPPARD: Yes, sir.

23 THE COURT: Has anyone threatened you or
24 coerced you in any manner to get you to make that
25 decision?

1 MR. SHEPPARD: No, sir.

2 THE COURT: Has anyone used any promises or
3 hope of reward to get you to make that decision?

4 MR. SHEPPARD: No, sir.

5 THE COURT: Do you have any questions you
6 would like to ask me about the decision you have made?

7 MR. SHEPPARD: No, sir.

8 THE COURT: I find that Mr. Sheppard knowingly
9 and intelligently understands his right to have
10 independent counsel appointed to represent him on the
11 issue of any ineffective assistance of appellate
12 counsel.

13 He had the opportunity to speak with his
14 attorneys. They have discussed this matter with him.
15 He freely, voluntarily, and knowingly has waived his
16 right to independent counsel and waived his right to
17 bring up any issues as to ineffective assistance of
18 appellate counsel.

19 All right. Ms. McMahan.

20 MS. McMAHAN: Your Honor, do you have a copy
21 of my return? I have extras if you need one.

22 THE COURT: I've got a return and partial
23 motion to dismiss.

24 MS. McMAHAN: That's it, Your Honor.

25 THE COURT: Yes, ma'am.

1 MS. McMAHAN: Basically, Your Honor, if you
2 look under part two, I have rewritten what the
3 allegations are that the applicant wrote in his
4 application.

5 Specifically, there are five: The first one
6 being failure to request a curative instruction or
7 moving for a mistrial after inappropriate conduct with a
8 juror. We will just skip over that one. That is not
9 the subject of my request for summary dismissal.

10 (B), failure to argue State Grand Jury did not
11 have subject matter jurisdiction. That is the subject
12 of my request for summary dismissal. That starts on
13 page -- bear with me -- 7, under part (b)(5). I believe
14 my arguments are pretty straight forward on this count,
15 and basically res judicata applies on that one.

16 Although the Supreme Court ruled that the
17 issue was not necessarily preserved for the record, they
18 went ahead and ruled on it anyway and pointed out that
19 there was subject matter jurisdiction of the Court of
20 General Sessions to hear a criminal case, as set forth
21 in State v. Gentry. Basically this is an argument that
22 had already been raised on appeal and ruled on.

23 THE COURT: All right.

24 MS. McMAHAN: I don't know if you want me just
25 to go forward and continue to enumerate my arguments

1 that are in my return?

2 THE COURT: You can go to your next one.

3 MS. McMAHAN: The next issue would be -- I
4 lost my place -- would be the issue of whether or not
5 14-7-1820 violates ex post facto laws. Again, if you
6 look on page 8, it starts at Section 6.

7 I put forth my argument that this is not an ex
8 post facto violation because it doesn't change the law.
9 Substantially, it's just a procedural change in how they
10 were convicted.

11 Then to sum up my argument, again, in my
12 return the violation of securities laws did not change.
13 It was the mode of procedure in order to investigate
14 them or have it indicted through the statewide grand
15 jury.

16 Even if we had not indicted him through the
17 statewide grand jury, we certainly could have taken it
18 to a county court and had him indicted for the same
19 exact crimes that way.

20 Then the last issue that I am requesting
21 summary dismissal on is (D), trial counsel was
22 ineffective in failing on the imposition of consecutive
23 sentences.

24 Even if that was preserved for appeal, it
25 wouldn't be able to be raised on appeal, absent a

1 showing of prejudice, oppression, or corrupt motive by
2 the Court. Then I have several cases listed on page 10.

3 Judge Johnson did hear, with the exception of
4 Mr. Sterling's trial, all the cases related to the
5 Carolina Investors Home Gold issues. He was very
6 familiar with the facts of the case.

7 He failed to show on appeal -- he did raise
8 the issue on appeal and argued it; however, the Court
9 ruled it was not preserved. But even if it had been
10 preserved, it wouldn't have been successful on appeal,
11 and that's about it.

12 MR. QUERY: Your Honor, we will withdraw that
13 grounds for relief.

14 THE COURT: As far as the sentencing?

15 MR. QUERY: Yes, Your Honor.

16 THE COURT: All right.

17 MS. McMAHAN: Your Honor, that just leaves the
18 failure to argue State Grand Jury didn't have subject
19 matter jurisdiction, which I put forth as res judicata.
20 Then failure to argue State Grand Jury as ex post
21 facto -- obviously I am summarizing this -- and those
22 are the two that I am requesting summary dismissal on.

23 THE COURT: Thank you. Thank you very much.
24 Mr. Query.

25 MR. QUERY: Beg your indulgence one minute,

1 Your Honor.

2 (Pause.)

3 MR. SAUTTER: Your Honor, Michael Sautter for
4 Mr. Sheppard on this one. The attorney general is
5 absolutely correct. There are questions of fact as far
6 as the jury influence and the curative instruction.
7 That was the first part of her motion.

8 The second part is what I attempted to argue
9 in the appellate court, that the State Grand Jury did
10 not have subject matter jurisdiction over obtaining
11 property for false pretenses and the conspiracy charge,
12 which Mr. Sheppard was given five years each
13 consecutively.

14 She is correct. The Supreme Court did find
15 that those charges would be properly included within the
16 State Grand Jury jurisdiction because they are closely
17 related to the securities allegation, but I am not
18 prepared to concede the second argument because of the
19 third argument.

20 When they changed the securities laws, they
21 changed the prosecution of securities laws as a direct
22 result of this case. Home Gold had already collapsed.
23 Everybody was in a shambles. Larry Martin of Pickens
24 went to the legislature and got the law changed because
25 of the facts that Mr. Sheppard was involved in.

1 My argument to you, Your Honor, is that that
2 ex post facto argument and the third argument was never
3 addressed by the South Carolina Supreme Court. They
4 said it wasn't preserved for appeal.

5 That would hold true for the elements that
6 they included in the obtaining property by false
7 pretenses and the conspiracy, which I think were
8 indictments two and three of that.

9 So to the extent that the Supreme Court never
10 considered whether the changing of the securities
11 prosecution and laws as a result of this whole Carolina
12 Investor fiasco has never been addressed and was not
13 properly raised at the trial court, that is one of our
14 chief grounds for the P.C.R. petition.

15 Then they never would have had jurisdiction
16 also over obtaining property for false purposes and the
17 conspiracy that he was ultimately also convicted on. So
18 we feel like it's a novel question of law as far as the
19 ex post facto that has not been addressed.

20 That should be a matter to be determined after
21 a full hearing in this P.C.R. proceeding, those last
22 two: That the jury allegations should survive this
23 hearing; that her second allegations about those related
24 charges should survive.

25 Simply, the Supreme Court has not determined

1 whether or not it was an ex post facto constitutional
2 prohibition to change the securities laws the way they
3 did to get Mr. Sheppard's prosecution.

4 MS. McMAHAN: Your Honor, if I may add to my
5 argument?

6 THE COURT: Yes, ma'am.

7 MS. McMAHAN: The securities laws themselves
8 were not changed. The mode of procedure in order to
9 convict somebody under the securities laws has changed.
10 You can still convict somebody for securities laws in
11 county court, and we do it on a monthly basis.

12 The mode of procedure for investigating some
13 large scale securities matters was brought under the
14 realm of investigation of the State Grand Jury for
15 indictment.

16 It didn't change the underlying substantial
17 law. You can still be convicted for securities laws.
18 So it's not ex post facto; it's a procedural issue.
19 That's my argument.

20 As it relates to the subject matter
21 jurisdiction, I believe that is pretty clear. The
22 Supreme Court says it's not -- they are confusing
23 subject matter jurisdiction and procedure, subject
24 matter jurisdiction being the power of the Court to hear
25 a particular class of cases, State v. Gentry.

1 I believe that one is full on res judicata.
2 The second one, even if that one had been preserved for
3 appeal, it would not have been successful; and that's
4 just based on my arguments in my return.

5 THE COURT: Thank you. Thank you very much.
6 Anything further?

7 MR. SAUTTER: Just very briefly, Your Honor.
8 There has been no determination that the change they
9 made to prosecute the securities laws was simply a
10 matter of procedure.

11 Henry McMaster is part of the record on appeal
12 and talks about this is the most complex and most
13 expensive investigation ever for white collar crime. He
14 was certainly prejudiced.

15 There was a law enacted actually because of
16 the facts that they alleged against Mr. Sheppard. So we
17 submit all of those are proper for P.C.R. I could not
18 raise them on appeal. Believe me, we tried.

19 THE COURT: I'm sure you did.

20 MS. McMAHAN: Again, Your Honor, this
21 investigation to date -- as of today -- is not the most
22 expensive securities investigation we have ever had. We
23 have had more expensive ones.

24 However, it still does not change the
25 underlying charges, the securities violations. It's

1 just changing the umbrella of what the State Grand Jury
2 could investigate.

3 It's also been amended to add environmental
4 crimes up to \$2 million too. There are still crimes,
5 but if it's over \$2 million, now the State Grand Jury
6 can investigate it.

7 The securities were still crimes, but now when
8 it changed, it just changed it to add it under the gamut
9 of the State Grand Jury investigation. It still totally
10 could have gone forward with the Lexington County Grand
11 Jury and indicted it that way. All it did was a mere
12 procedural change.

13 THE COURT: Thank you. Thank you very much.
14 I also have a letter dated 17 September 12 for motion
15 for more definite answer?

16 MS. McMAHAN: Yes, Your Honor. I believe --
17 my apologies. I put the cart before the horse a little
18 bit on this one. If the Court was so inclined to grant
19 my motion for partial summary judgment, we are left with
20 the allegations related to the juror misconduct,
21 potential juror misconduct.

22 Then we are left with the allegation at the
23 very end of his application that said there are numerous
24 motions -- let me get the correct verbiage here --
25 failure to make necessary motions on the applicant's

1 behalf in order to preserve numerous issues for appeal
2 which deprived him of a right to a fair trial.

3 Other than these up here, this is overbroad
4 and needs to be more specific exactly as to what the
5 necessary motions were that Mr. Griffin should have
6 made. Then we are also left with just a blanket
7 ineffective assistance of counsel.

8 Just due to the amount of people involved in
9 this case, the amount of potential witnesses, the amount
10 of time we are looking at, the amount of victims that
11 have to be notified, the State is just asking for a more
12 definite answer as to exactly what the claims are that
13 he is planning on raising, besides the earlier ones at
14 the P.C.R. hearing.

15 THE COURT: Thank you. Thank you,
16 Ms. McMahan. Mr. Query? Mr. Sautter?

17 (Pause.)

18 MR. QUERY: Your Honor, those grounds we have
19 argued are the only grounds that we are raising on
20 P.C.R. There were certain motions that should have been
21 made with regard to those in our opinion, but they all
22 relate back to that.

23 I think we have made it as definite as we can,
24 and we would make it clear on this record that that
25 paragraph to which counsel objects does not raise

1 issues, other than that for the failure to in some
2 manner request a curative charge or some other action on
3 the part of the Court with regard to the improper remark
4 to the juror, the subject matter jurisdiction issue, or
5 the ex post facto application of the law.

6 THE COURT: All right.

7 MS. McMAHAN: Your Honor?

8 THE COURT: Does that answer your inquiry,
9 Ms. McMahan?

10 MS. McMAHAN: I just had one more housekeeping
11 issue, and I don't know when you want me to address
12 that.

13 THE COURT: You may address it now.

14 MS. McMAHAN: This case has been set for -- so
15 far it has been penciled in for November 15th. The
16 issue that we have now is that Mr. Griffin notified me
17 last Friday that he has been called to Federal court in
18 Charleston for that entire week. He is not available.

19 So that holds three possibilities. It would
20 either be -- go ahead and have the hearing in front of
21 Judge Dixon, have Judge Dixon hold the record open, and
22 allow us to come in at another time in front of him
23 somewhere else in the State and finish Mr. Griffin's
24 testimony at a later date; have this matter heard
25 outside of term in Lexington County before another

1 Lexington County judge or Your Honor; or have a
2 deposition of Mr. Griffin after November 15th.

3 Of the three the State is less preferable to
4 the third option, the deposition, mainly because we just
5 don't have a whole lot of funds laying around where we
6 can just hire a court reporter to come in and do that
7 type of thing. I think I am just asking for general
8 guidance of what you think would be the best way to do
9 this.

10 THE COURT: My general guidance is: (A), I
11 don't like leaving the record open. I don't know what
12 Judge Dixon's preferences are. I just don't like doing
13 that if it's me.

14 (B), I don't particularly like deposition
15 testimony either. (C), if y'all want it assigned to
16 another date and time, another judge, as chief civil
17 administrative judge, I would be glad to do that. I
18 don't know. I don't know what y'all's time frame is.
19 Y'all have got witnesses, I take it, that y'all are
20 going to present.

21 MS. McMAHAN: I have witnesses I plan to call.
22 I don't know if they are going to be presented or not.
23 This is more for -- P.C.R. court is kind of like herding
24 cats a little bit. I am just trying to get our ducks in
25 a row.

1 I don't want to take up this docket in front
2 of Judge Dixon when there are other cases that can be
3 called. If we put this one on here, it will have to be
4 held open; but at the same time the deposition is the
5 least desirable. The record would have to be held open
6 anyway in front of Judge Dixon to have the deposition.

7 If it has to be called outside of a regular
8 P.C.R. term in the Court of Common Pleas in Lexington,
9 then I would be available whatever date we could set.

10 THE COURT: What is y'all's position,
11 Mr. Query? Mr. Sautter?

12 MR. QUERY: Your Honor, of course, time is the
13 concern because of the situation of our client. I have
14 one underlying concern. There was a previous order of
15 the Supreme Court, I think, that assigned all matters
16 involving this case to Judge Cottingham.

17 I suspect that that is probably the simplest
18 solution. He is more available. He is frequently here
19 or we can hear it in Bennettsville. It would seem to me
20 that that is a practical solution that conforms to the
21 previous order of the Supreme Court.

22 If Your Honor does not consider that
23 appropriate, then I think we just would like to have
24 whatsoever is the most expeditious in terms of time.

25 MS. McMAHAN: Your Honor, I believe that order

1 only related to the underlying -- that actual general
2 sessions criminal matter. It's nothing related to the
3 civil side of it.

4 THE COURT: Well, a couple of things. (A), I
5 don't assign any judge but particularly Judge Cottingham
6 to anything. I like talking to him and whatever other
7 judge, number one.

8 Number two, he is actually out of the circuit,
9 I think, until probably next spring. That's not to say
10 he may not be available in Bennettsville or Horry
11 County. He tried Sterling; isn't that correct?

12 MS. McMAHAN: Yes, Your Honor.

13 (Pause.)

14 THE COURT: I think I will leave it like it
15 is. Just leave it on Judge Dixon's roster.

16 MS. McMAHAN: The 15th?

17 THE COURT: Whatever date.

18 MR. QUERY: Thank you, Your Honor.

19 THE COURT: Y'all set the actual date. He is
20 on for the week of the 12th. That's a short week.

21 MS. McMAHAN: Yes, Your Honor. Right now it's
22 actually set for the 15th of that week, that Thursday.

23 THE COURT: I will leave it like that.

24 MR. QUERY: Thank you, Your Honor.

25 MS. McMAHAN: I believe that's everything.

1 THE COURT: Do y'all want to submit proposed
2 orders by the end of the week?

3 MR. SAUTTER: We can, your Honor.

4 THE COURT: E-mail them to my law clerk. By
5 the way, Mr. Sheppard, me and the attorney general are
6 not related. My name is misspelled. Hers is spelled
7 correctly with an A.

8 MS. McMAHAN: Thank you.

9 THE COURT: Thank you. Thank you very much.
10 Thank you, Mr. Query.

11 MR. QUERY: Thank you very much, Your Honor.

12 THE COURT: Good luck to you, Mr. Sheppard.

13 MR. SHEPPARD: Thank you.

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 15th day of October, 2012.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

October 30, 2012

s/L. Coconut Pantsari

Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER GRANTING PARTIAL
SUMMARY DISMISSAL
AND A MORE DEFINITIVE ANSWER

FILED
2012 OCT 19 12:56
BETH A. CANTRELL
CLERK OF COURT
LEXINGTON

This matter comes before the undersigned by way of a Return and Partial Motion to Dismiss filed by the Respondent on or about March 30, 2012 and a Motion for a More Definitive Answer made by Respondent on or about September 17, 2012. A hearing was held at the Lexington County Courthouse on October 15, 2012. The Applicant was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire. The Respondent was represented by Assistant Attorneys General Ashley A. McMahan and Karen C. Ratigan. For the reasons forthcoming, the Respondent's Partial Motion to Dismiss is GRANTED.

Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the State Grand Jury Clerk of Court. The Applicant was initially indicted by the State Grand Jury on November 16, 2005, followed by a superseding indictment filed on February 21, 2006 for: Count 1 - Securities Fraud (violation of S.C. Code §35-1-1210 and §35-1-1590); Count 2 - Crime Against a Federally Chartered or Insured Financial Institution violation of S.C. Code



§34-3-110); Counts 3 & 4 - Forgery; Counts 5 & 6 - Making a False Statement or Misrepresentation; Counts 7 & 8 - Obtaining Signature or Property by False Pretenses (violation of S.C. Code §16-13-240); Count 9 - Breach of Trust; Count 10 - Perjury; and Count 11 - Conspiracy. (2005-GS-47-20).

James M. Griffin, Esquire represented the Applicant. On January 16, 2007, the Applicant proceeded to trial on counts one, seven, and eleven after the trial court granted the Applicant's Motion to Dismiss on the other eight charges. Applicant was found guilty on all three of the remaining counts. The Honorable James W. Johnson, Jr., consecutively sentenced the Applicant to confinement for a period of ten (10) years on count one - Securities Fraud; five years on count seven - Obtaining Property Under False Pretenses; and five years on count eleven - Conspiracy.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by O. Grady Query, Esquire and Michael W. Sautter, Esquire.

The Applicant raised the following issues on appeal:

1. Whether Applicant received a fair trial before an impartial jury when there was improper contact between a spectator and a juror which was not cured by the trial court;
2. Whether the State Grand Jury had subject matter jurisdiction over counts seven and eleven of the indictment and if not, should those sentences and convictions be vacated;
3. Whether South Carolina Code §14-7-1820 violates Applicant's constitutional rights against the passage of *ex post facto* laws; and
4. Whether the trial court abused its discretion by imposing a sentence on Applicant which was substantially disproportionate to the sentences of other co-conspirators?

The South Carolina Supreme Court affirmed Applicant's conviction and sentence. With respect to issue two the court held that Applicant was actually challenging the sufficiency of the indictment; that there was no question that the Circuit Court had subject matter jurisdiction over the crimes charged; that because Applicant failed to timely challenge the three counts in the indictment and instead went to trial on the charges, he could not now, having lost at trial, come back to challenge the sufficiency of the indictment; and that the State Grand Jury had jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in section 14-7-1630, because they were committed in the same course of conduct as securities violations.

With respect to issues one, three and four the Court held that Applicant failed to preserve the issues for review. State v. Sheppard, Op. No. 26927 (S.C. Sup. Ct. filed Feb. 7, 2011). The Remittitur was issued on February 23, 2011.

Current PCR Allegations

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

a) Failure to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated, "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report;"

b) Failure to argue that the State Grand Jury did not have subject matter jurisdiction over Count seven of the Indictment, Obtaining Property Under False Pretenses, and Count Eleven, Conspiracy,

and therefore the conviction and sentences on these two counts should be vacated; nor did trial counsel properly preserve this issue for appeal;

c) Failure to argue or properly preserve for appeal the issue of S.C. Code §14-7-1820, which applied the State Grand Jury system to offenses committed both before and after its effective date, violated Applicant's constitutional rights against the passage of *ex post facto* laws prohibited by S.C. Const. Art. I, §4, U.S. Const. Art. I, §10, and the due process clause of the Fourteenth Amendment of the United States Constitution, as Applicant was disadvantaged by the infringement of his right to be indicted by a Grand Jury in the county wherein the alleged crimes occurred and by the enhanced State Grand Jury system which improved the ability of the State to detect and eliminate criminal activity by broader investigative authority and prosecution by the Office of the State Attorney General;

d) Failure to move for reconsideration or to make an objection to the trial court's imposition of consecutive sentences of ten year for Count One, five years for Count Two, and five years for Count Three, for a total prison sentence of twenty (20) years was disproportionate given that the other co-defendants were given substantially lesser sentences.

e) Failure to make necessary motions on Applicant's behalf in order to preserve numerous issues for appeal, which deprived Applicant of his constitutional right to a fair trial

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided

representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Waiver of Ineffective Assistance of Appellate Counsel

The Applicant is represented in this PCR action by O. Grady Query, Esquire, and Michael W. Sautter, Esquire, the same attorneys who represented the Applicant on his direct appeal. Dual representation results in a waiver of any claims of ineffective assistance of appellate counsel. The Applicant stated on the record that he wishes to proceed and waived any claim to ineffective assistance of appellate counsel. See Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987).

Summary Dismissal as to Issue B

In allegation (b), the Applicant claims that the State Grand Jury did not have subject matter jurisdiction for the charges of obtaining property under false pretenses

(Count 7) and conspiracy (Count 11), and that trial counsel was ineffective for failing to raise this issue in a timely manner and for failing to properly preserve the issue for review on appeal. Even if trial counsel was ineffective for failing to preserve the record regarding this issue, there is no prejudice to the Applicant because this issue has already been ruled upon by the South Carolina Supreme Court.

The doctrine of *res judicata* bars the Applicant's claim that the State Grand Jury did not have jurisdiction. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

On direct appeal the Applicant raised the issue of whether the State Grand Jury had subject matter jurisdiction over counts seven and eleven of the indictment and if not, those sentences and convictions should be vacated. The Supreme Court ruled upon this issue and noted that the Applicant mischaracterized this issue as one regarding subject-matter jurisdiction¹ rather than posing the issue as to whether or not the State Grand Jury had the authority to investigate and indict. See State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16, (2011).

The South Carolina Supreme Court explained that "while the statute establishing the jurisdiction of the State Grand Jury plainly evidences the General Assembly's intent to limit said jurisdiction, we do not believe it intended to hinder the

¹ Subject-matter jurisdiction is the power of a court to hear a particular class of cases. "Circuit courts obviously have subject matter jurisdiction to try criminal matters." See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

grand jury's ability to investigate and indict for crimes committed in the course of conduct of an enumerated crime." The Court found that the language "or a crime related to" is broad enough to encompass those crimes committed in the same course of conduct as an enumerated crime, and held that the State Grand Jury has jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in §14-7-1630, because they were committed in the same course of conduct as the securities violations. Id.

Even though trial counsel may not have properly preserved this issue for appeal, there is no prejudice suffered by the Applicant because Applicant's issue (b) was raised to and ruled upon by the South Carolina Supreme Court. This Court finds that the doctrine of *res judicata* applies, such that Applicant is barred from subsequent consideration of this issue in this PCR action. See Foran, *supra*. Therefore Respondent's request for summary dismissal regarding this issue is GRANTED.

Summary Dismissal as to Issue C

In issue (c), Applicant claims that trial counsel was ineffective for not preserving the issue of whether or not the application of SC Code §14-7-1820 -granting the State Grand Jury system the ability to investigate offenses committed both before and after [the State Grand Jury's] effective date - violates the Constitutional provisions prohibiting *ex post facto* laws. Even if trial counsel had preserved this issue for appeal, Applicant would not have been successful raising this issue before the appellate court and therefore summary dismissal is proper.

For a law to present an *ex post facto* violation, the law must (1) be retrospective and apply to events taking place prior to its enactment and (2) work to disadvantage

the offender. State v. Huiett, 302 S.C. 169, 171, 394 S.E.2d 486, 487 (1990). However, a change in the law does not run afoul of the *ex post facto* clause if it only affects a mode of procedure and does not alter "substantial personal rights." Huiett, 302 S.C. at 171, 394 S.E.2d at 487 (quoting Miller, 482 U.S. at 430). Furthermore, in order for the *ex post facto* clause to be implicated, the statute at issue must be criminal or penal in purpose and nature. Id. at 172, 394 S.E.2d at 487. "Even though a procedural change may have a detrimental impact on a defendant, a mere procedural change which does not affect substantial rights is not *ex post facto*." Id. at 171-72, 394 S.E.2d at 487.

While the law is retrospective in nature, this code section did not in any way create or change the underlying substantive crimes of which the Applicant was ultimately convicted – securities fraud, obtaining property under false pretenses, and criminal conspiracy. In fact, securities fraud has been a crime in South Carolina since 1937², obtaining property by false pretenses has been a crime in some form or fashion since at least the late 1800s and early 1900s, and criminal conspiracy is part of this State's common law. Therefore, assuming arguendo that trial counsel was ineffective for not preserving this issue for appeal, the Applicant cannot prove prejudice because the Applicant would not have been successful in having his convictions overturned on appeal by raising this issue since all the crimes the Applicant was convicted of have been crimes in this state since before his birth.

It is clear that §14-7-1820 is not in any way a violation of *ex post facto* since it is

² The Uniform Sales of Securities Act enacted in 1937 was substantially revised in 1956 and it is this 1956 revision of securities fraud that is still used to criminally charge someone with securities fraud. The 2005 amendments to Title 35 (the Uniform Securities Act) largely left the criminal liability sections unchanged and dealt mainly with the freedom of information act and civil liability and renumbering of the sections to conform to the Uniform Securities Act. See SC Code 35-1-101 *et seq* and the Reporter's Comments to §35-1-508. In 2003, the SC Code relating to the jurisdiction of the State Grand Jury's investigatory powers was amended to add securities fraud. See 2003 Act No. 78, §1, eff June 4, 2003.

merely a statute affecting a mode of procedure by allowing the State Grand Jury to investigate and indict matters under its jurisdiction that occurred before and after the creation of the State Grand Jury. The Applicant could have been (and ultimately would have been) indicted for the underlying crimes by a county Grand Jury had the State Grand Jury not existed or had authority to investigate and indict. The Applicant has suffered no prejudice by trial counsel's failure to preserve this issue for appeal.

Further, this allegation is one based solely on legal argument and is ripe for summary dismissal. There is no factual argument that can be put forth that would assist in this Court's decision in granting summary dismissal pursuant to SC Code §17-27-70(b). Therefore Respondent's request for summary dismissal as to this issue is also GRANTED.

Withdrawal of Issue D

Applicant withdrew allegation D at the hearing on October 15, 2011.

Merger of Issue E with Issues B and C

Applicant notified the Court at the hearing that issue (e) - "Failure to make necessary motions on Applicant's behalf in order to preserve numerous issues for appeal, which deprived Applicant of his constitutional right to a fair trial," relates directly to issues (b) & (c).

Conclusion

This Court hereby grants the Respondent's Motion for Partial Summary Dismissal as to issues (b) & (c) and orders that a hearing be held as to issue (a). With the Applicant's merger of issue (e) with issues (b) & (c), issue (e) is also summarily

BETH A. GARRIGG
CLERK OF COURT
LEXINGTON, SC

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dismissed.

Regarding the Respondent's Motion for a More Definitive Answer related to the remaining claim of general ineffective assistance of counsel: Any amendments made to this application to more further define his allegation of ineffective assistance of counsel must be made and served on or before November 9, 2012.

IT IS SO ORDERED!


R. Knox McMahon
Chief Administrative Judge
Common Pleas
11th Judicial Circuit

18 Oct, 2012.
Lex, South Carolina

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2012 OCT 19 P 12:21

FILED

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FORM 5

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-32-2798

RONALD J. SHEPPARD,
INMATE NO.: 320057

(Full Name & Prison No. (if any) of Applicant)

v.

STATE OF SOUTH CAROLINA

BETH A. GUNDEL
CLERK OF COURT
LEXINGTON, SC

**AMENDED
APPLICATION FOR POST
CONVICTION RELIEF**

Pursuant to the October 18, 2012, Order of the Honorable Knox McMahon, Granting Partial Summary Dismissal and a More Definitive Answer, Applicant amends his application to more further define allegations as to ineffective assistance of counsel on surviving ground 10 (a) as follows while retaining all surviving allegations as set forth below:

INSTRUCTIONS- READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may finish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Watkins Pre-Release Center, 1700 St. Andrews Terrace, Columbia, SC 29210.

2. Name and location of Court which imposed sentence: Lexington County Court of General Sessions, 205 East Main Street, Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any): Karen Miller; Earle Morris, Jr.; Anne Owen; Larry Owen; Jack Sterling
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2005-GS-47-20; Securities Fraud; Obtaining Property by False Pretenses
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) February 6, 2007; Sentenced to twenty (20) years
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty ✓ _____
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. South Carolina Court of Appeals, however case certified to South Carolina Supreme Court
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. Certified to South Carolina Supreme Court who affirmed sentence, based in large part by trial counsel failing to preserve issues on the record for direct review. This is the first court to review the ineffective assistance of counsel; claims.
ii. _____
iii. _____
(c) the date of each such result:
i. February 7, 2011

- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Opinion No. 26927
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel by failing to timely place on the record any motion or request that the Trial Court on the record inquire into the inappropriate comment made by a spectator to a juror. Trial counsel was further ineffective by failing to request or move for a curative instruction or move for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report."

Trial counsel's failure to take any steps on the record after the inappropriate comment to a juror did nothing to restore the assurance of impartiality on the part of the jury. See *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989). With no contemporaneous objection, motion for curative instruction or motion for mistrial, Sheppard's trial counsel prevented the trial court from ascertaining the extent of the infection, and from taking appropriate measures to assure a fair trial. See *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979).

Trial counsel was further ineffective by failing to preserve any of the surviving issues on the trial record for consideration in applicant's direct appeal.

11. State concisely and in the same order the facts which support each of the grounds set out in (10): **SEE AMENDED ATTACHMENT A**

- (a) _____
(b) _____
(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct Appeal

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. SC Court of Appeals, however, case certified by SC Supreme Court

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. The conviction on all counts were affirmed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. February 7, 2011

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Opinion No. 26927

- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Deprivation of Constitutional Right to a fair trial which trial counsel failed to preserve for appeal.
- ii. State Grand Jury did not have jurisdiction over case
- iii. Ex Post Facto law

(b) the proceedings in which each ground was raised:

- i. Direct Appeal
- ii. Direct Appeal
- iii. Direct Appeal

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

All grounds outlined below are based on ineffective assistance of counsel. The issues have not previously been presented as the proper forum in which to raise these issues is Post Conviction Relief.

(a) Ineffective Assistance of Counsel by failing to move or request for an on the record inquiry or take any measures as to the inappropriate comment to the jury to assure that applicant was provided a fair, move for curative measures including mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that. I will deal with that and thank you for making that report."

(e) Deprivation of Constitutional Right to a fair trial due to ineffective assistance of counsel in that trial counsel failed to make necessary motions on Defendant's behalf in order to properly preserve numerous issues for appeal.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. James M. Griffin, Marlboro Building, 1116 Blanding Street, Suite 100, Columbia SC, 29201
- ii. O. Grady Query & Michael W. Sautter, Query, Sautter, Gliserman & Price, LLC, 147 Wappoo Creek Drive, Suite 202, Charleston, SC 29412

(b) the proceedings at which each such attorney represented you:

- i. Griffin - Trial and Sentencing
- ii. Query & Sautter - Appeal and PCR
- iii. _____

19. State clearly the relief you seek in filing this application: A determination that Defendant Sheppard is entitled to a new trial on the grounds set forth in this application.

20. Are you now under sentence from any other court that you have not challenged? No

PCR APPLICATION OF RONALD J. SHEPPARD (#320057)

AMENDED ATTACHMENT A

11. (a) Defendant Sheppard was deprived of his constitutional right to a fair trial before a fair and impartial jury. During the trial of the case the Court recessed on a Thursday to resume on the following Monday. When the jury was brought in on that Monday morning, the trial Court found there was improper contact with a juror by a spectator making an inappropriate comment to a juror on the elevator on Thursday, and the Court promised, "I will deal with that." The trial record is then silent as to any further inquiry or other measures directed to the jury as to the inappropriate comment.

Applicant's trial counsel was ineffective in that he failed to move for further inquiry, failed to move for curative measures or instructions, and failed to move for a mistrial. Trial counsel took no steps on the record to assure a fair trial and failed to preserve the issue for appeal.

The right to trial by an impartial jury unaffected by extraneous information is perhaps the most important and essential tenet of criminal jurisprudence. It is of constitutional significance guaranteed by the Sixth and Fourteenth amendments of the Constitution of the United States of America and by Article I, Section Fourteen of the South Carolina Constitution. Whenever an infringement upon this constitutionally protected right occurs, it is critical to the guarantees of a fair trial afforded by the state and federal Constitutions that trial counsel insist that the trial court take such action as may be necessary, including the drastic remedy of declaring a mistrial, to insure that the impartiality of each and every juror is protected and assured.

- (e) Defendant Sheppard suffered from ineffective assistance of counsel when his trial counsel, James Griffin, failed to take action on the applicant's behalf as outlined in (a) above.

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FILED

STATE OF SOUTH CAROLINA)

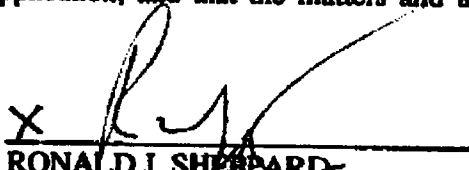
County of RICHLAND)

VERIFICATION

2012 NOV -7 P 12:45

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

I, Ronald J. Sheppard, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing amended application; that I know the contents thereof; that it includes every surviving ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X 
RONALD J. SHEPPARD

SWORN to and subscribed before me this ^{7th}
day of Nov, 2012


Notary Public

(L.S.)

My Commission Expires: 4-30-22

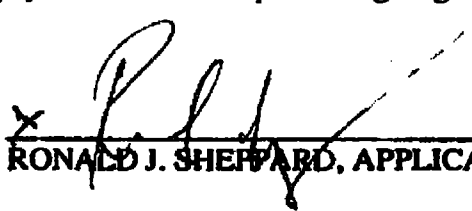
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**APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND
AFFIDAVIT IN SUPPORT THEREOF**

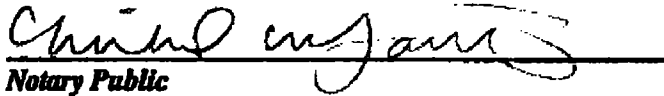
I, Ronald J. Sheppard, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefore. In support of my application I declare under penalty of perjury that the following facts are true:

2012 NOV - 7 P 12: 45
BETH A. CARLIGGS
CLERK OF COURT
LEXINGTON SC

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


RONALD J. SHEPPARD, APPLICANT

SWORN or affirmed to and subscribed before me this
7th day of Nov., 2012


Notary Public

My Commission Expires: 4-30-22

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Ronald J. Sheppard, #320057,

Applicant,
v.

State of South Carolina,

Respondent.

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798
2012 NOV -7 P 12:43

BETH A. C. BRIGGS
CLERK OF COURT
LEXINGTON SC

APPLICANT'S MOTION IN LIMINE

This is an action for Post Conviction Relief brought by applicant Ronald J. Sheppard, who on February 6, 2007, was found guilty by a jury of one count of Securities Fraud, one count of Obtaining Property by False Pretenses, and one count of Conspiracy. On February 7, 2007, Sheppard was sentenced by the trial judge to a combined twenty (20) year consecutive sentence.

MOTION TO EXCLUDE EVIDENCE NOT IN THE RECORD

Applicant by and through his undersigned counsel, hereby moves this Honorable Court for an Order in *Limine*, prohibiting the parties from introducing any and all evidence and/or testimony of any matters not included within the trial transcript of Ronald J. Sheppard, to include, but not be limited to, off the record conversations of Court and counsel.

Sheppard's trial was irreparably tainted when a spectator made an inappropriate comment to a juror on an elevator within the Courthouse after the trial was recessed on a Thursday, not to resume until the following Monday at 9:30 a.m.

When the trial resumed on Monday morning, the Trial Court addressed the jury as follows:

For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report.

(Trial Transcript p. 1237).

The trial judge therefore made a specific finding that there was an inappropriate comment to a juror.

The trial judge also explicitly found that corrective measures were necessary. There is no further mention of the inappropriate comment directed to the jury in the trial transcript.

The trial court made no inquiry on the record as to the prejudicial effect of the inappropriate comment on the juror or jurors, and trial counsel failed to move for such inquiry. Applicant's trial counsel was ineffective by failing to take any appropriate steps. Timely and contemporaneous weighing of the taint is necessary before curative measures can even be determined to cure the infection of the inappropriate comment.

The right to trial by an impartial jury unaffected by extraneous information is perhaps the most important and essential tenet of criminal jurisprudence. It is of constitutional significance guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States of America and by Article I, Section Fourteen of the South Carolina Constitution.

Trial counsel's failure to take any steps on the record after the inappropriate comment to a juror did nothing to restore the assurance of impartiality on the part of the jury. See *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989). With no contemporaneous objection, motion for curative instruction or motion for mistrial, Sheppard's trial counsel prevented the trial court from ascertaining the extent of the infection, and from taking appropriate measures to assure a fair trial. See *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979).

In *Salters*, the South Carolina Supreme Court found the trial judge's failure to ascertain whether the extraneous information was prejudicial to be improper. Essentially, the trial judge's failure to take precautionary measures against the juror taint undermined the fairness and impartiality of the trial.

Any and all discussions concerning the inappropriate jury contact, including in-camera discussions that were not made a part of the record and therefore not preserved, should be excluded and not considered by this Court in determining the merits of Sheppard's Post Conviction Relief

application. To insure a fair trial South Carolina law mandates that the trial court first determine or weigh the taint and then cure any infection. By the introduction of evidence of off the record discussions, counsel in this proceeding may not retroactively attempt to weigh the effect of the taint deemed by the trial judge to have occurred.

In this case it is uncontested that the trial court determined the taint by finding there was an inappropriate communication, the trial court thereafter took no curative action. Sheppard's trial counsel was ineffective by failing to move for an on the record inquiry into the prejudicial effect of the inappropriate comment. Trial counsel was ineffective for then failing to move for curative measures including mistrial.

The off the record statements would not be relevant to determine whether Sheppard received a fair trial by an impartial jury pursuant to Rule 402, SCRE, as our law mandates the contemporaneous weighing and curing of the taint on the record. Applicant submits there is no probative value in the off the record discussions, however any probative value of the off the record statements is far outweighed by the danger of unfair prejudice to applicant pursuant to Rule 403, SCRE. Finally, the trial judge and lead prosecutor have both passed away, all of their discussions as to the inappropriate comment by a spectator to a juror are obvious hearsay and inadmissible testimony pursuant to Rules 801 and 802, SCRE.

CONCLUSION

This Court may not consider remarks or discussions made off the record, by and between Court and counsel. This Court's determination of the effectiveness or ineffectiveness of trial counsel can only be determined by reference to the trial record, and not on any discussions and/or comments that were not preserved on the record.

This Court should grant applicant's Motion in *Limine* to exclude all off the record testimony and evidence from consideration in determining the merits of Sheppard's claims for Post Conviction

Relief.

Applicant so moves.

Respectfully Submitted,

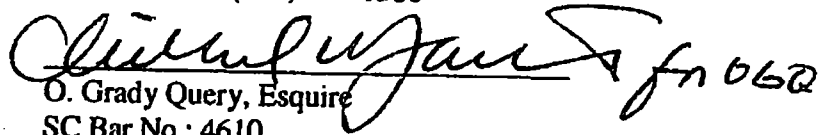
QUERY SAUTTER PRICE & FORSYTHE, LLC

147 Wappoo Creek Drive, Suite 202

Charleston, SC 29412

Telephone: (843) 795-9500

Facsimile: (843) 762-1500


O. Grady Query, Esquire
SC Bar No.: 4610

November 5, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
RONALD J. SHEPPARD, #320057)
Applicant)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 11-CP-32-2798

FILED

2012 NOV -7 P 12:45

CERTIFICATE OF MAILING

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

The undersigned hereby certifies that a copy of Applicant's Motion in Limine has been served upon Assistant Attorney General Ashley McMahan, via U.S. Mail, with sufficient postage affixed thereto, on this 7th day of November, 2012, and addressed as follows:

Assistant Attorney General Ashley McMahan
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211-1549


Ashley N. Ray

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,)
Applicant,)

REPLY TO MOTION *IN LIMINE*

v.)

State of South Carolina,)
Respondent.)

The State, by and through the undersigned, hereby replies with the following to the Applicant's Motion *in Limine*:

A post-conviction relief proceeding is not a substitute for a direct appeal and is therefore not limited to matters preserved in a record (like a direct appeal). The PCR statutes anticipate evidentiary hearings. "The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing." SC Code §17-27-80. In situations where an objection is not made due to alleged ineffective assistance of defense counsel ... the more preferable method of exploring this issue is via the avenue of an application for post-conviction relief.... It is in the context of an adversarial proceeding, such as in post-conviction relief, that a tribunal can make a truly well-informed judgment on whether defense counsel in a given instance was prejudicially ineffective, or whether the failure to object was a part of trial strategy. See State v. Torrence, 305 S.C. 45, 406 S.E.2d 315, 326, 327 (1991).

Further, this matter is a civil action and the State knows of no civil matter ever filed in this state where the record in a particular civil case has been limited to a transcript from a criminal matter. The Applicant cannot make allegations that the State must defend itself against and then request that the State be prohibited from defending itself by asking that "any and all evidence and/or testimony of any matters not included in the [criminal] trial transcript" be excluded. The concept of

exclusion of evidence and testimony at a PCR hearing is at direct odds with fundamental fairness that is to be afforded to the Respondent.

In conclusion, the State respectfully requests that the Applicant's motion be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: Ashley A. McMahon
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3693

Nov. 9th, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) THE COURT OF COMMON PLEAS
) FOR THE 11th JUDICIAL CIRCUIT
) Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,

)
)
) Applicant,

)
) v.

) State of South Carolina,

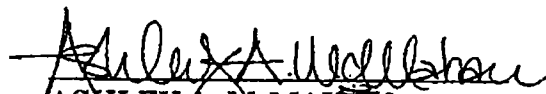
)
) Respondent.
)
)

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Reply to Motion in Limine in the above-captioned matter on the following person(s) via email & US Mail to:

Ashley N. Kay, Legal Assistant
(akay@qsglawyers.com)
O. Grady Query, Esquire
(gquery@qsglawyers.com)
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DATED this 9th day of November, 2012.


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Assistant Attorney General

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)
) COURT OF GENERAL SESSIONS
) 2011-GS-32-02798
)

RONALD J. SHEPPARD

vs.

STATE OF SOUTH CAROLINA

)
)
) TRANSCRIPT OF RECORD
)
)

November 15, 2012
Lexington, South Carolina

B E F O R E:

HON. EDGAR W. DICKSON, Judge.

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

O. GRADY QUERY, ESQ.
MICHAEL W. SAUTTER, ESQ.
Attorneys for the APPLICANT

ASHLEY A. McMAHAN, ASSISTANT ATTORNEY GENERAL
Attorney for the STATE

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

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EXHIBITS

(There were no exhibits marked.)

1 MS. McMAHAN: This is 2011-CP-32-2798, Ronnie
2 Sheppard versus the State of South Carolina. If you'll
3 bear with me, the procedural history is a little bit
4 complicated.

5 THE COURT: Okay.

6 MS. McMAHAN: He was indicted by the State-Wide
7 Grand Jury initially on November 16, 2005, followed by a
8 superseding indictment on February 21, 2006. And I will
9 just summarize the fact that he was charged with 11
10 counts; however, Mr. Griffin moved to dismiss eight of
11 those charges, and on January 16, 2007, Mr. Sheppard
12 proceeded to trial on Counts 1, 7, and 11, which are
13 securities fraud, obtaining a signature or property by
14 false pretenses, conspiracy, and I'm missing one. No,
15 that's correct. I'm sorry.

16 On February 7, 2007, he was found guilty on the
17 three remaining counts. He was consecutively sentenced in
18 total for 20 years. He filed an appeal. He was
19 represented at appeal by Mr. Query and Mr. Sautter, who
20 are sitting at the table.

21 The State filed its return and motion for
22 partial -- I'm sorry, the PCR was filed July 22, 2011.
23 The State made its return on or about March 30, 2012, with
24 a partial motion to dismiss -- and all of this is in front
25 of you -- then made a motion for a more definitive answer.

1 We had a hearing around October 15th of this year. There
2 is an order from that hearing, so that leaves us with the
3 sole issue of the juror. Mr. Sautter and Mr. Query were
4 allowed until November 9th to make any additional
5 amendments to the application; Your Honor and I both
6 received the motion in limine that was emailed to us on
7 Wednesday. There is an amended application for
8 post-conviction relief that the State received yesterday
9 afternoon that I included for you.

10 THE COURT: Oh, the amended?

11 MS. McMAHAN: Yes, Your Honor.

12 And I believe we're going to address the motion
13 in limine, but I would like to address the amended
14 application.

15 ~~THE COURT: Okay.~~

16 MS. McMAHAN: And I will turn it over to Mr.
17 Query and Mr. Sautter for their motion.

18 THE COURT: And who's going to be talking? Yes,
19 sir.

20 MR. QUERY: Grady Query, Your Honor, for
21 Mr. Sheppard.

22 THE COURT: Yes, sir.

23 MR. QUERY: Your Honor, as our motion in limine
24 addresses, the fact that a remark was apparently made to a
25 juror on the elevator during a recess, that was brought to

1 the attention of the trial judge. The trial judge in the
2 transcript stated that he had been made aware of an
3 inappropriate remark made to a juror and that he would
4 take care of that. That appears on page 1237 of the
5 transcript. No further mention is made of that occurrence
6 throughout the trial with the exception of a point at
7 which the judge addresses the spectators and admonishes
8 the spectators that any contact with jurors is
9 inappropriate. That would appear on page 1445 of the
10 transcript.

11 Of course, our allegation with regard to the
12 PCR, Your Honor, is that a motion should have been made
13 for the Court to either make appropriate inquiry of the
14 jurors and to correct any infection or taint of the jurors
15 ~~or the jury by curative charges or, in the alternative,~~
16 for a mistrial. No such motion was made, no curative
17 instruction was given, no mistrial was granted obviously.

18 And, Your Honor, the trial judge is deceased and
19 so our motion in limine addresses the fact that any
20 comments in camera that the judge may have made with
21 regard to this should be excluded as hearsay and that
22 there is no exception to the hearsay rule that would
23 permit anyone to now testify about what the judge may or
24 may not have said about the contact with the juror. And
25 that the Court should limit its inquiry to the fact that

1 the judge found it to be inappropriate, said that he would
2 fix it and didn't.

3 That's the essence of our motion, Your Honor.

4 THE COURT: Thank you, sir.

5 MS. McMAHAN: Your Honor, so I'm thinking this
6 is more of a motion for summary judgment and termed as a
7 motion in limine. However, if it is, I'll stand by my
8 reply to the motion in limine, which is this is an
9 adversarial hearing and I know of no civil case ever filed
10 in this state where that record was limited to a criminal
11 trial transcript.

12 Furthermore, Mr. Griffin is here. He was a
13 party to that conversation as was Ms. McCarthy, who was
14 the judge's law clerk. She's also here today.

15 ~~THE COURT: The judge's law clerk you said is~~
16 here as well?

17 MS. McMAHAN: Yes, Ms. McCarthy is present.

18 THE COURT: Okay. She's happy to be here, I
19 see.

20 MS. McMAHAN: She works for LLR, so she's
21 probably happy to get out today.

22 THE COURT: Okay.

23 MS. McMAHAN: In any event, if you just go on
24 the record, as you can tell, obviously based on page 1237
25 that there was an inappropriate comment made by a

1 spectator to a juror. However, it was the juror who
2 obviously reported it to the judge, so therefore, the
3 juror knows to follow instructions when someone makes an
4 inappropriate comment on the elevator when they're around.
5 That is why the Court then addressed the audience, which
6 are the people making inappropriate comments, and that's
7 why the jurors were then instructed to ride on the
8 elevator.

9 We also have a member of the jury panel here
10 today that was also there when Judge Johnson instructed
11 them to ride the elevator alone.

12 Anyway, in either event, the State will just do
13 whatever the Court deems us to do.

14 THE COURT: Well, what I'm going to do, I'm
15 going to take some testimony and find out kind of what's-
16 going on and reserve my judgment on what I'm going to do
17 with this motion until I've heard some testimony. I know
18 I've got an attorney that needs to leave, so what I'd like
19 to do is go ahead and take his testimony.

20 MS. McMAHAN: Your Honor, if I may, I just
21 wanted to address the amended application.

22 THE COURT: Okay.

23 MS. McMAHAN: I would actually move to strike
24 this; one being that the order from Judge McMahon said
25 it's served on or about November 9th. Your Honor and I

1 both got a copy of the motion in limine emailed to us on
2 November 7th, so we know that Mr. Sautter and Mr. Query's
3 office has the capability of scanning and emailing a
4 document in. Secondly, even though this was clocked in on
5 November 7th, it wasn't actually put in the mail until
6 November 8th per the envelope that I have. I did not
7 receive it until yesterday afternoon since Monday was a
8 federal holiday. So it was not served on me in time. I
9 had no chance to reply to this, even though it is somewhat
10 redundant, I will admit that, but I do not believe it has
11 been appropriately served on all the parties before we got
12 here today.

13 THE COURT: Well, I'm going to go forward. He's
14 got one shot to do a PCR. If you need to make any
15 ~~responses to it, I'll be happy to hear them. If I need to~~
16 leave the record open to keep this thing going, apparently
17 the record's been open, this thing's been going for a
18 while, so I'm just the one who's going to finalize this
19 thing one way or the other.

20 MS. McMAHAN: Thank you.

21 THE COURT: Thank you, ma'am.

22 Are you going to call the attorney or do you all
23 want to call the attorney, Mr. Query?

24 MR. QUERY: Your Honor, it doesn't really
25 matter.

1 THE COURT: Then I'll let you do it. Since I
2 know he's an adverse witness, you don't need to put that.
3 Just he's the attorney. So you ask him anything you want
4 to.

5 MR. QUERY: Thank you, Your Honor.

6 THE COURT: Thank you, sir.

7 MR. QUERY: Your Honor, we call Mr. Jim Griffin.

8 THE CLERK: Have a seat and state your name for
9 the record.

10 JIM GRIFFIN, after being duly sworn, testified
11 as follows:

12 THE WITNESS: My name is Jim Griffin,
13 G-R-I-F-F-I-N.

14 THE COURT: Your witness, Mr. Query.

15 ~~MR. QUERY: Thank you, Your Honor.~~

16 DIRECT EXAMINATION

17 BY MR. QUERY:

18 Q Good morning, Mr. Griffin.

19 A Good morning.

20 Q Mr. Griffin, you represented Ronnie Sheppard
21 throughout the proceedings regarding the charges brought
22 against him by the State Grand Jury; is that correct?

23 A Yes.

24 Q And you represented him throughout a rather long and
25 arduous trial involving some issues of first impression in

1 this state?

2 A That's correct.

3 Q And somewhere around the 1200 or 1225, if I remember
4 correctly, page of the transcript, the judge brought to
5 the attention of the Court that an inappropriate statement
6 had been made to a juror by a spectator on the elevator, I
7 believe. Do you recall that?

8 A I recall that statement being made in court, and I
9 have reviewed the transcript. I accept your word for the
10 page numbers, but there's something in the transcript to
11 that effect.

12 Q All right. And do you recall that Judge Johnson
13 indicated at that time that it was his intention to take
14 care of that?

15 A ~~You know, I have no independent recollection of that.~~
16 It is in the transcript.

17 Q All right, sir. And do you recall Judge Johnson ever
18 taking any further action with regard to that other than
19 his admonition to the spectators that they should have no
20 contact with the jurors?

21 A That's the only thing I recall Judge Johnson doing is
22 what's in the record and his admonition about spectators
23 not speaking to jurors.

24 Q All right, sir. And either contemporaneous with his
25 comment about the inappropriate remark or at the

1 conclusion of the trial, did Judge Johnson offer any
2 curative instruction to the individual juror or the jury
3 as a whole with regard to the inappropriate remarks?

4 A No, not that I recall, and I don't think it's in the
5 transcript either.

6 Q And do you recall his having made any inquiry of the
7 jury as a whole or of the individual juror with regard to
8 any prejudicial effect that that remark may have had on
9 any of the jurors?

10 A There was nothing in the courtroom, there's nothing
11 on the transcript. He did advise us that he had a
12 communication with a juror. Frankly, it's been five, six
13 years ago. I don't recall what he said about what the
14 juror informed him and whether the juror was impacted.

15 ~~I frankly -- it was a three-week trial. It was~~
16 strenuous, stressful, and this was a -- you know, it just
17 didn't -- subsequently looking back on it after you raised
18 this issue, it just sort of surprised me that it didn't --
19 I wasn't attuned to it at the time and, frankly, I just
20 don't have any independent recollection of exactly what
21 Judge Johnson said about this communication with the
22 juror.

23 Q But nothing appears in the record with regard to that
24 communication with the juror by the Court?

25 A That's correct.

1 Q And you are, of course, aware of the fact that you
2 had the right to request a curative charge?

3 A Sure.

4 Q And that the State, for that matter, had the right to
5 request a curative charge?

6 A Yes, sir.

7 Q And yet no such request was made by either the
8 defense or the State?

9 A That's correct.

10 Q And none was offered by the Court on its own motion?

11 A Apparently not.

12 Q And you were also aware, of course, as an experienced
13 trial lawyer that you had the right to move for a mistrial
14 as a result of this communication?

15 A ~~That's correct.~~

16 Q And the State, for that matter, had the right to move
17 for a mistrial as a result of that communication?

18 A I'm sure they could.

19 Q And yet neither did?

20 A That's correct.

21 Q All right, sir. And as you have just said, was that
22 merely a matter of oversight in this rather complex
23 litigation?

24 A Well, I frankly don't -- I didn't have -- I know I
25 didn't have a communication with my client about whether

1 we should move for a mistrial. I didn't consider it at
2 the time.

3 Q And only he could have waived that right?

4 A That's correct.

5 MR. QUERY: Thank you, sir. Please answer any
6 questions.

7 THE COURT: Anything on cross?

8 CROSS-EXAMINATION

9 BY MS. McMAHAN:

10 Q Mr. Griffin, do you recall whether or not the
11 spectator in the elevator was there to support the State
12 or Mr. Sheppard?

13 A My recollection is that the spectator was there on
14 behalf of -- either was a victim or a victim's family
15 member or a friend of a family of a victim.

16 Q And so the fact that the juror reported it to the
17 judge, did that play into anything that you recall?

18 A Well, the -- I mean, what it told me was that the
19 juror was contacted, followed instructions and reported it
20 to the judge, and that was -- the juror was following the
21 judge's preliminary instructions as the trial began was if
22 anyone makes any contact with you, then you notify the
23 Court, and that's what the juror did.

24 Q And as a result of this contact, did the judge change
25 any way that the jurors could come into the courthouse?

1 A You know, I heard you say that earlier. That does --
2 frankly, I don't know. I don't know.

3 Q And I apologize if this is a duplicate question, but
4 I was trying to take notes at one point so I couldn't hear
5 everything.

6 Do you recall the meeting with Judge Johnson at
7 all?

8 A I do recall him calling us back into chambers. I do
9 recall that whatever the comment was made to the juror,
10 that --

11 MR. QUERY: Your Honor, I object merely to
12 preserve our motion in limine and I won't continue to
13 interrupt.

14 THE COURT: Yes, sir.

15 ~~And just for the record just so we'll have it,~~
16 your objection is any testimony that he has regarding any
17 conversations with the judge in chambers and like that
18 you're objecting to; is that correct?

19 MR. QUERY: That's correct.

20 THE COURT: And that motion is noted. I'm going
21 to hear the testimony, but I want to make sure we got on
22 the record you objecting to it, and it is preserved.

23 MR. QUERY: I understand.

24 THE COURT: Thank you, sir.

25 MR. QUERY: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 BY MS. McMAHAN:

3 Q You can continue.

4 A What I recall of that in chambers conference was that
5 there was a report of a contact with the juror on the
6 elevator, the juror reported it, and that the contact was
7 made by someone friendly to him, the victim in the State's
8 case. That's really the extent of my recollection.

9 Q Do you recall if he said anything about he had spoken
10 to the jurors about it?

11 A You know, frankly, I don't recall that. I really
12 can't go beyond that. But I don't really have an
13 independent recollection of anything beyond what I've
14 said.

15 Q I understand. I know it was five or six years ago.

16 A Right.

17 MS. McMAHAN: Court's indulgence, Your Honor.

18 THE COURT: Take your time.

19 (Pause.)

20 BY MS. McMAHAN:

21 Q Were you satisfied with Judge Johnson admonishing the
22 audience, telling them not to ride with the jurors or
23 speak to them?

24 A I didn't make any further requests, so -- I mean, had
25 I had a concern about it, I would like to say that I would

1 have acted, but I didn't make any other requests and I
2 can't say five and a half years later that I was
3 satisfied. It just was not in my mental calculus at the
4 time.

5 Q And I understand hindsight is 20/20.

6 A Right.

7 MS. McMAHAN: Thank you.

8 THE COURT: Anything on redirect?

9 MR. QUERY: Nothing, Your Honor.

10 THE COURT: Thank you, Mr. Griffin.

11 May Mr. Griffin be excused?

12 MR. QUERY: We have no objection.

13 MS. McMAHAN: I have no objection.

14 THE WITNESS: Thank you.

15 ~~THE COURT: Thank you, sir.~~

16 What I'm going to do, ladies and gentlemen, is
17 we'll go off the record on this and then go back to the
18 first case we started with.

19 MS. RATIGAN: I think it might be easier just to
20 continue with Mr. Sheppard and we'll go back.

21 THE COURT: All right. Mr. Query, that means
22 the ball is in your court.

23 MR. QUERY: Thank you, sir.

24 Your Honor, the petitioner has no other
25 witnesses.

1 THE COURT: Okay. Any witnesses from the State?

2 MS. McMAHAN: Your Honor, the State calls
3 Ms. Hoffman to the stand.

4 THE COURT: Okay. Ms.?

5 MS. McMAHAN: Ms. Sheila Hoffman.

6 THE COURT: Okay. Ms. Hoffman was a juror?

7 MS. McMAHAN: Yes, Your Honor.

8 SHEILA HOFFMAN, after being duly sworn,
9 testified as follows:

10 THE CLERK: Have a seat and state your name for
11 the record.

12 THE WITNESS: Sheila Hoffman.

13 DIRECT EXAMINATION

14 BY MS. McMAHAN:

15 Q Ms. Hoffman —

16 MR. QUERY: Your Honor, we object to this
17 testimony in its entirety. Don't know whether this is
18 covered by our motion in limine, but whether it is or not,
19 we believe that this testimony is totally inappropriate in
20 the sense of having a single juror now speak, I suppose,
21 for the jury as a whole with regard to the -- whether or
22 not there was some prejudicial effect as a result of this
23 remark. Obviously, one juror cannot say whether any other
24 juror was affected and in what manner they were affected.

25 THE COURT: Well, and Ms. — go ahead.

1 MS. McMAHAN: I would appreciate if I could just
2 ask my two questions I'm going to ask Ms. Hoffman.

3 THE COURT: Well, but he just wants to make sure
4 that his objection to her testimony is preserved on the
5 record. And I will note your objection; it is preserved.
6 I'm going to let her testify again just so I can find out
7 what's going on. It might not be anything at all, but
8 we'll find out.

9 MR. QUERY: I understand and trust Your Honor to
10 give it such weight as appropriate.

11 THE COURT: Well, we hope so. Thank you, sir.

12 BY MS. McMAHAN:

13 Q Ms. Hoffman, you were a juror in the Ronnie Sheppard
14 trial, were you not?

15 A Correct.

16 Q And do you recall -- please do not tell me anything
17 about your deliberations or anything that has to do with
18 any of that. Do you recall Judge Johnson instructing you
19 not to ride in the elevator with spectators any more at
20 any point during the trial?

21 A That's correct.

22 Q And was that a result of this issue that had come up?

23 A It did happen right before that.

24 MS. McMAHAN: No further questions, Your Honor.

25 THE COURT: Okay. Mr. Query, you may ask her

1 any questions and still preserve your objection if you
2 wish to.

3 MR. QUERY: No questions.

4 THE COURT: Thank you, ma'am. You may step
5 down.

6 MS. McMAHAN: Nothing further from the State,
7 Your Honor.

8 THE COURT: Nothing further from the State.

9 All right. Well, I've got to tell you all,
10 except for all the reading material you all have given me,
11 this has been very brief and I've appreciated it.

12 Thank you all so much. What I will do is I will
13 read over this and I will get back to you all.

14 MR. QUERY: Your Honor, if you would bear with
15 me for one minute, I did want to call Your Honor's
16 attention -- and these are in our materials -- but State
17 versus Salters, I think, Your Honor, is probably the
18 leading case. It is favorably commented on subsequent to
19 that by Justice Waller in the -- I'm sorry, I think
20 Justice Rhodes wrote it, Judge Waller was the trial judge,
21 and that would be in Wasson -- State versus Wasson found
22 at 299 SC 508, 386 SE2nd 255, a 1989 case.

23 The Salters case, Your Honor, was a 1979 case,
24 and I would call your attention to some of the language,
25 Your Honor.

1 In that case the Court states, The defendant in
2 a criminal prosecution is constitutionally guaranteed a
3 fair trial by an impartial jury, and in order to fully
4 safeguard that basic protection, it is required that the
5 jury render its verdict free from outside influences.

6 That case goes on, Your Honor, to recite the
7 fact that the — to quote favorably a Fourth Circuit Court
8 case wherein that Court stated that the theory of our
9 system is that the conclusions to be reached in a case
10 will be induced only by evidence and argument in open
11 court and not by any outside influence, whether of private
12 talk or public print.

13 That case goes on, Your Honor, to say that it is
14 mandatory that the Court make inquiry with regard to the
15 specific prejudicial effect of any outside influence and
16 that the Court then make inquiry of the jury as to the
17 possible effect of that prejudicial information, and that
18 the Court then either by curative instruction to the jury
19 correct the infection to the jury or grant a mistrial.

20 And we believe, Your Honor, that in this case
21 post-conviction relief is compulsory because that
22 constitutional right was not preserved.

23 THE COURT: Thank you, Mr. Query.

24 MR. QUERY: Thank you, Your Honor.

25 THE COURT: Ms. McMahon.

1 MS. McMAHAN: Yes, Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. McMAHAN: This is not a direct appeal. This
4 is a PCR. And in a PCR you have a two-prong test you have
5 to meet which is the Strickland analysis: Was Mr. Griffin
6 ineffective, and was he so ineffective that prejudice
7 would have occurred; i.e., would the outcome of the trial
8 have been different. Would the outcome of the trial have
9 been different had Mr. Griffin objected on the record and
10 had a curative instruction done to the jury, no, because
11 the evidence is so overwhelming against Mr. Sheppard that
12 he would have been found guilty regardless. Plus, it was
13 a juror who admitted what the victims were saying to them,
14 not vice versa. This is not a direct appeal. You have to
15 prove Strickland. And I believe that the applicant has
16 kind of gotten off that track a little bit.

17 Nothing further.

18 THE COURT: Thank you, ma'am.

19 Yes, sir.

20 MR. QUERY: Your Honor, those same cases hold
21 that the prejudice exists when there is the contact to the
22 jury and that the Court must then fix it. And obviously
23 it is incumbent upon trial counsel to preserve the
24 defendant's rights by either asking for the curative
25 instruction or by moving for a mistrial, and essentially I

1 believe the witness admitted that through inadvertence
2 those things were not done and the prejudice is presumed
3 in this case, Your Honor.

4 MS. McMAHAN: Your Honor, we don't follow Nance
5 versus Ozmint in this -- well, we do under a certain
6 extremely limited situation, which is presumed prejudice,
7 and in this particular case you have to follow the
8 Strickland prong and you cannot prove that the outcome of
9 this trial would have been different.

10 Nothing further.

11 THE COURT: Anything else?

12 MR. QUERY: No, Your Honor.

13 THE COURT: Okay. Thank you all. What I will
14 do is I will read all this and I will get back to you all.
15 It will take me awhile, so you all just bear with me. And
16 if I need any further information or ask for any arguments
17 or memos from you all, are you going to need anything
18 after you read his amended? Anything else you need to
19 respond to?

20 MS. McMAHAN: I actually have a municipal trial
21 coming up, so if you could give me until maybe the middle
22 of next week, I let you know.

23 THE COURT: And you'll be able to respond to
24 anything she does?

25 MR. QUERY: Yes, sir.

1 Thank you, Your Honor.

2 THE COURT: Thank you all.

3 (The proceedings were concluded.)

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF LEXINGTON)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 15th day of
15 November, 2012.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819
20 April 15, 2014
2122
23 _____
24 CAROL M. THUEME, RPR
25 Circuit Court Reporter

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APPLICANT'S OBJECTIONS TO PROPOSED ORDER

the following Monday at 9:30 a.m.

When the trial resumed on Monday morning, the Trial Court addressed the jury as follows:

For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report.

(Trial Transcript p. 1237).

The trial judge therefore made a specific finding that there was an inappropriate comment to a juror. The trial judge also explicitly found that corrective measures were necessary. There is no further mention of any corrective action on the trial record to determine or correct the extent of the taint of the jury, that resulted from the inappropriate remark. There was no evidence in the hearing on the PCR application as to corrective measures taken off the record.

The right to trial by an impartial jury unaffected by extraneous information is perhaps the most important and essential tenet of criminal jurisprudence. It is of constitutional significance guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States of America and by Article I, Section Fourteen of the South Carolina Constitution.

Trial counsel's failure to take any steps on the record after the inappropriate comment to a juror did nothing to restore the assurance of impartiality on the part of the jury. See *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989). With no contemporaneous objection, motion for curative instruction or motion for mistrial, Sheppard's trial counsel prevented the trial court from ascertaining the extent of the infection, and from taking appropriate measures to assure a fair trial. See *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979).

In *Salters*, the South Carolina Supreme Court found the trial judge's failure to ascertain whether the extraneous information was prejudicial to be improper. Essentially, in *Salters*, as in this case, applicant argues that the trial judge's failure to take precautionary measures against the

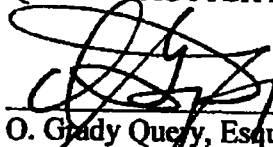
juror taint undermined the fairness and impartiality of the trial and that he was prejudiced and convicted by a tainted jury.

The state's proposed order found that trial counsel's performance was deficient, but then required applicant to show prejudice as a result of the trial deficiencies only by weighing evidence of guilt, which they label as overwhelming without specifically identifying any evidence against Sheppard, and without consideration that the deficiencies complained of deprived Sheppard of his constitutional right to a trial before a fair and impartial jury. The proposed order ignores the essential constitutional right of the applicant to have any and all evidence considered by a fair and impartial jury. The proposed order would substitute this Court as the judge of the facts, instead of having the facts considered by an untainted jury.

Applicant urges the Court to address and consider in any Order the Court issues on the merits of the application, the effect of the trial deficiencies on applicant's Constitutional right to a trial by a fair and impartial jury.

Respectfully Submitted,

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June 21, 2013
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I served a copy of the foregoing document upon Ashley A. McMahan, Assistant Attorney General, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows: Ashley A. McMahan, SC Attorney General's Office, PO Box 11549, Columbia, SC 29211-1549
Dated this the 21st day of June, 2013



EXHIBIT

1

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Ronald J. Sheppard, #320057,
Applicant,

v.

State of South Carolina,

Respondent.

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798

PROPOSED
ORDER OF DISMISSAL
SUBMITTED
By
STATE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 22, 2011 and amended on November 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about March 12, 2012.

An evidentiary hearing into the matter was convened on November 15, 2012, at the Lexington County Courthouse in Lexington, SC. The Applicant was present at the hearing and was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire. Ashley A. McMahan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Also testifying was James M. Griffin, Esquire and Sheila Hoffman. This Court also had before it a copy of the records of the State Grand Jury Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return and Partial Motion to Dismiss, the Order Granting Partial Summary Judgment, the Appellate Court records, and the trial transcript.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of State Grand Jury Clerk of Court. The Applicant was initially indicted by the State Grand Jury on November 16, 2005, followed by a superseding indictment filed on February 21, 2006 for: Count 1 - Securities Fraud (violation of S.C. Code §35-1-1210 and §35-1-1590); Count 2 - Crime Against a Federally Chartered or Insured Financial Institution violation of S.C. Code §34-3-110); Counts 3 & 4 - Forgery; Counts 5 & 6 - Making a False Statement or Misrepresentation; Counts 7 & 8 - Obtaining Signature or Property by False Pretenses (violation of S.C. Code §16-13-240); Count 9 - Breach of Trust; Count 10 - Perjury; and Count 11 - Conspiracy. (2005-GS-40-20).

James M. Griffin, Esquire represented the Applicant. On January 16, 2007, the Applicant proceeded to trial on counts one, seven, and eleven after the Court granted the Applicant's Motion to Dismiss on the other eight charges. Applicant was found guilty on all three of the remaining counts. The Honorable James W. Johnson, Jr., consecutively sentenced the Applicant to confinement for a period of ten (10) years on count one - Securities Fraud; five years on count seven - Obtaining Property Under False Pretenses; and five years on count eleven - Conspiracy.

A timely notice of appeal was filed on Applicant's behalf and an appeal was perfected. Applicant was represented on appeal by O. Grady Query, Esquire and Michael W. Sautter, Esquire.

The Applicant raised the following issues on appeal:

1. Whether Applicant received a fair trial before an impartial jury when there was improper contact between a spectator and a juror which was not cured by the trial court;
2. Whether the State Grand Jury had subject matter jurisdiction over counts seven and eleven of the indictment and if not, should those sentences and convictions be vacated;
3. Whether South Carolina Code §14-7-1820 violates Applicant's constitutional rights against the passage of *ex post facto* laws; and
4. Whether the trial court abused its discretion by imposing a sentence on Applicant which was substantially disproportionate to the sentences of other co-conspirators?

The South Carolina Supreme Court affirmed Applicant's conviction and sentence. With respect to issue two the court held that Applicant was actually challenging the sufficiency of the indictment; that there was no question that the Circuit Court had subject matter jurisdiction over the crimes charged; that because Applicant failed to timely challenge the three counts in the indictment and instead went to trial on the charges, he could not now, having lost at trial, come back to challenge the sufficiency of the indictment; and that the State Grand Jury had jurisdiction over the charges of obtaining property by false pretenses and conspiracy, even though those specific crimes may not be enumerated elsewhere in section 14-7-1630, because they were committed in the same course of conduct as securities violations.

With respect to issues one, three and four the Court held that Applicant failed to preserve the issues for review. State v. Sheppard, Op. No. 26927 (S.C. Sup.

Ct. filed Feb. 7, 2011). The Remittitur was issued on February 23, 2011.

In the present action, the Return and Partial Motion to Dismiss was filed by the Respondent on or about March 30, 2012 and a Motion for a More Definitive Answer made by Respondent on or about September 17, 2012. A hearing was held regarding these motions at the Lexington County Courthouse on October 15, 2012. The Applicant was represented by O. Grady Query, Esquire and Michael W. Sautter, Esquire¹. The Respondent was represented by Assistant Attorneys General Ashley A. McMahan and Karen C. Ratigan. The Respondent's motions were granted on October 19, 2012.

MOTION IN LIMINE

Applicant filed a Motion in Limine on or about November 5, 2012. The Respondent filed its reply on or about November 9, 2012. The Court is denying the Applicant's Motion in Limine based on the foregoing:

Applicant's pre-trial Motion is to exclude all testimony pertaining to events that took place off-the-record at Applicant's trial. Applicant merely cites Rules 402 and 403 of the South Carolina Rules of Evidence, arguing that any testimony thereto would be irrelevant and its probative value would be far outweighed by its danger of unfair prejudice. Contrary to Applicant's contention, the Court finds the testimony concerning off-the-record events at the trial highly relevant to the issue of whether Applicant's trial counsel was ineffective.

¹ At the hearing the Applicant waived any claim to ineffective assistance of appellate counsel since he is represented in his PCR by the same attorneys that represented him on appeal.

Whether counsel offered effective representation cannot be gleaned merely from a review of a trial record. Oftentimes, what trial counsel chooses not to introduce or argue at trial is as relevant to whether he provided effective representation as what was placed on the record. As such, the Court finds this testimony highly relevant. *See* SCRE 402. As to its prejudicial nature, the Court finds that the testimony is highly probative of trial counsel's effectiveness. This probative value is neither substantially outweighed nor nominally outweighed by any danger unfair prejudice. *See* SCRE 403. Accordingly, the Court is declining to exclude the testimony under these Rules.

As to the Applicant's contention that said testimony should be excluded as inadmissible hearsay, the Court finds that the testimony does not fall under the Rules of Evidence's definition of hearsay. The South Carolina Rules of Evidence define "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted" (emphasis added). SCRE 801(c).

The alleged-hearsay testimony offered in this case—concerning in-chambers conversations with the trial judge regarding an improper comment made to a member of the jury panel—has not been submitted for its truth, but rather for its effect on Applicant's trial counsel. *See, e.g. State v. Rice*, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007).

The truth of the matters asserted in the testimony is irrelevant. The purpose of the testimony is to examine how Applicant's trial counsel responded thereafter

and whether his response was that of a reasonably professional attorney. The Court hereby finds that all testimony of off-the-record and/or in-chambers conversations in this case are relevant and admissible and has taken them into consideration accordingly, along with the other evidence in the case. Therefore, the Motion in Limine is DENIED.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. 1. Ineffective Assistance of Counsel

a) Failure to request a curative instruction or moving for a mistrial after the trial judge found that there had been an inappropriate contact with a juror and stated, "For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a

preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

The heart of Applicant's PCR action deals with an improper comment made by a person associated with one of the victims in the case to one of the members of the jury. The comment was brought to the trial judge's attention, who apparently dealt with the matter in-chambers with the attorneys and off-the-record with the jury. On direct appeal, Applicant attempted to raise the issue of the trial court's failure to examine the juror-at-issue on the record to ensure Applicant was receiving a trial by a fair and impartial jury. However, the Supreme Court of South Carolina held that "Sheppard [had] not properly preserved this issue for appellate review. After the judge addressed the jury regarding the comment, Sheppard made no motion or objection...." State v. Sheppard, 391 S.C. 415, 420, 706 S.E.2d 16, 19 (2011). This failure to preserve the record is the crux of Applicant's ineffective assistance of counsel claim.

The Court finds that this failure to preserve the record fell below a reasonable professional standard under Strickland. However, the Applicant has failed to satisfy his burden of showing prejudice therefrom—that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068 (1984). In Post-Conviction Relief proceedings dealing with a failure to object or preserve the record, this different outcome seems to require the Court to weigh the potential prejudice of the error with overall strength of the evidence offered against the Applicant at trial. See, e.g. Lowry v.

State, 376 S.C. 499, 508, 675 S.E.2d 760, 765 (2008) (applying a two-pronged test where trial counsel erroneously failed to object to a jury charge unconstitutionally creating a presumption of malice: "(1) the Court must ask what evidence the jury actually considered in reaching its verdict, and (2) the Court must weigh the probative force of the evidence as against the probative forces of the presumption standing alone" (citing Yates v. Evatt, 500 U.S. 391, 111 S.Ct. 1884 (1991))); See also, e.g. Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) ("Although Green's trial strategy could be more effective in a retrial following a 'trial run,' his arguments are theoretical assumptions at best. They are not sufficient to cast doubt on the jury's verdict, especially coupled with the relative strength of the case against him.") (emphasis added).

While it is true that the comment at issue could have tainted the jury, the juror to whom the comment was made was not excused, and no curative instruction was given on the record, the Court finds that this potential effect on the Applicant's trial is vastly outweighed by the overwhelming evidence against him. The improper comment was made during the first week of a three-week trial (R. 1237). Additionally, the Court stated on the record, "For the Juror who reported an inappropriate comment on the elevator Thursday, I appreciate that, I will deal with that and thank you for making that report." (Id.). Furthermore, while it is difficult to discern how and with what evidence a jury makes its conclusions, the jury in this case deliberated for a mere 1 hour and 50 minutes. (R. 2250-51). Given the length of the trial itself, in the Court's view, the jury must have been firmly convinced of the

Applicant's guilt. The Court does not feel this short deliberative time was due to the improper comment or trial counsel's failure to object thereto and ask for a curative instruction, but indicative of the overwhelming evidence against the Applicant. Additionally, the State introduced hundreds of pages of documents and several witnesses, many of them former investors of the Applicant, detailing the Applicant's securities fraud, obtaining property by false pretenses, and conspiracy to do so. (R. 2538-3149). The Court is not satisfied that the Applicant has sustained his burden of proof showing that any potential prejudice from the juror comment and trial counsel's failure to object thereto and request a curative instruction would undermine confidence in the outcome of his jury verdict when faced with the significant evidence presented against him at trial.

Alternatively, although it was not made explicitly clear at the hearing, if the Applicant's contention that a "different result" in his proceeding would have been a successful appeal of his case with a properly-preserved record, the Court finds he failed to satisfy this burden as well. Presumably, an appellate court's analysis of the alleged errors would have been the same to the Court's balancing test conducted above. The Court is not convinced that the Applicant would have had a successful appeal of his trial but for trial counsel's error. The Court is therefore denying the Applicant's PCR action.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel finds trial counsel's testimony is credible. This Court further finds trial

counsel adequately conferred with the Applicant, and conducted a proper investigation. However, this Court finds that trial counsel's in effective in his failure to properly preserve the issue regarding the juror for appeal. Accordingly, this Court finds the Applicant has proven the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms.

Although trial counsel was ineffective in this regard, this Court finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. Applicant was not prejudiced by the deficient representation because there was overwhelming evidence of the Applicant's guilt. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); *See also* Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C.,1991). Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of

judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

Edgar W. Dickson
Presiding Circuit Court Judge

_____, 2013

_____, South Carolina

(2)
ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

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CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of

judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Edgar W. Dickson
Presiding Circuit Court Judge

June 17, 2013
Orangeburg, South Carolina

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Ronald J. Sheppard, #320057,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798

**APPLICANT'S MOTION TO
RECONSIDER AND ALTER
OR AMEND ORDER**

NOW COMES APPLICANT BY AND THROUGH HIS UNDERSIGNEDS COUNSEL and Moves pursuant to Rule 59(e), SCRCP, and the authority cited herein, for this Court to Reconsider and Alter or Amend the Order of Dismissal filed July 27, 2013, (hereinafter Order, attached as Exhibit 1) and received by counsel for applicant on July 2, 2013.

This underlying action was brought by applicant Ronald J. Sheppard, as an application for Post Conviction Relief (hereinafter PCR action). Mr. Sheppard was found guilty on February 6, 2007, by a jury of one count of Securities Fraud, one count of Obtaining Property by False Pretenses, and one count of Conspiracy. On February 7, 2007, Sheppard was sentenced by the trial judge to a combined consecutive sentences totaling twenty (20) years. Ronald Sheppard has now spent the last five and a half years in the South Carolina Department of Corrections.

This Motion is made on the grounds that the Trial Court Order in this PCR action, failed to consider the deprivation of applicant's fundamental constitutional right to a trial by a fair and impartial jury. In particular, after finding in the Order that trial counsel was defective, the Order erred by requiring applicant to show that he was prejudiced by a weighing of evidence after he was convicted by a tainted jury.

Applicant requests that the Trial Court reconsider and amend the Order as follows:

1. Finding that applicant's trial counsel was defective in failing to move or to take any

Page 1 of 4

action to determine and cure the improper jury contact.

2. Finding that applicant's trial counsel was defective in failing to preserve issues surrounding the improper jury contact for appeal.
3. Finding that applicant was denied his constitutional right to trial by a fair and impartial jury. And
4. Finding and Concluding that applicant's denial of the right to trial by a fair and impartial jury mandates this PCR Court to grant applicant a new trial.

THE FACTS

Sheppard's trial jury was tainted when a spectator made an inappropriate comment to a juror on an elevator within the Courthouse after the trial was recessed on a Thursday, not to resume until the following Monday at 9:30 a.m.

When the trial resumed on Monday morning, the Trial Court addressed the jury as follows:

For the juror who reported an inappropriate comment on the elevator on Thursday, I appreciate that, I will deal with that and thank you for making that report.

(Trial Transcript p. 1237).

The trial judge therefore made a specific finding that there was an inappropriate comment to a juror. The trial judge also explicitly found that corrective measures were necessary. There is no further mention of any corrective action on the trial record to determine or correct the extent of the taint of the jury, that resulted from the inappropriate remark. There was no evidence in the hearing on the PCR application as to corrective jury measures taken off the record.

THE LAW

The right to trial by an impartial jury unaffected by extraneous information is perhaps the most important and essential tenet of criminal jurisprudence. It is of constitutional significance

guaranteed by the Sixth and Fourteenth Amendments of the Constitution of the United States of America and by Article I, Section Fourteen of the South Carolina Constitution.

Trial counsel's failure to take any steps on the record after the inappropriate comment to a juror did nothing to restore the assurance of impartiality on the part of the jury. See *State v. Wasson*, 299 S.C. 508, 386 S.E.2d 255 (1989). With no contemporaneous objection, motion for curative instruction or motion for mistrial, Sheppard's trial counsel prevented the trial court from ascertaining the extent of the infection, and from taking appropriate measures to assure a fair trial. See *State v. Salters*, 273 S.C. 501, 257 S.E.2d 502 (1979).

In *Salters*, the South Carolina Supreme Court found the trial judge's failure to ascertain whether the extraneous information was prejudicial to be improper. Essentially, in *Salters*, as in this case, applicant argues that the trial judge's failure to take precautionary measures against the juror taint undermined the fairness and impartiality of the trial and that he was prejudiced and convicted by a tainted jury.

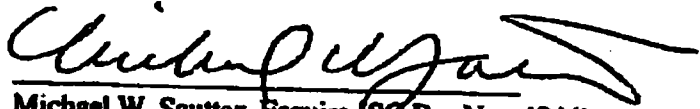
The Order found that trial counsel's performance was deficient, but then required applicant to show prejudice as a result of the trial deficiencies only by weighing evidence of guilt, which was labeled as "overwhelming" without specifically identifying any evidence against Sheppard, and without consideration that the deficiencies complained of deprived Sheppard of his constitutional right to a trial before a fair and impartial jury. The Order ignores the essential constitutional right of the applicant to have any and all evidence considered by a fair and impartial jury. The Order would substitute this Court as the judge of the facts, instead of having the facts considered by an untainted jury.

CONCLUSION

Applicant urges the Court to find and conclude in an Amended Order the effect of the trial deficiencies on applicant's Constitutional right to a trial by a fair and impartial jury, and to grant him a new trial on his Application for Post Conviction Relief.

Respectfully Submitted,

QUERY SAUTTER FORSYTHE, LLC



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Charleston, SC 29412

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Attorneys for Applicant

July 3, 2013

Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I served a copy of the foregoing document upon Ashley A. McMahan, Assistant Attorney General, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows: Ashley A. McMahan, SC Attorney General's Office, PO Box 11549, Columbia, SC 29211-1549

Dated this the 21st day of June, 2013

3rd July



CERTIFICATE OF SERVICE

I, the undersigned hereby certify that I served a copy of the foregoing document upon the Honorable Edgar W. Dickson by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

**The Honorable Edgar W. Dickson
First Judicial Circuit
Post Office Box 1949
Orangeburg, South Carolina 29116-1949**

Dated: July 3, 2013



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798

Ronald J. Sheppard, #320057,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

**REPLY TO APPLICANT'S
MOTION TO ALTER OR AMEND
THE JUDGMENT**

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP filed on or about July 3, 2013, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal dated June 17, 2013, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. *See also, McCray v. State*, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

Further, allegation 3 raised in Applicant's 59(e) motion is a new allegation that was not raised in the PCR application nor raised at the PCR hearing. A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial, (*see e.g. C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268 (1993); *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct.App.1990)).

III.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3693

February 6, 2014

**THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT
Case No: 2011-CP-32-2798**

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

THE COURT OF COMMON PLEAS
FOR THE 11th JUDICIAL CIRCUIT

Ronald J. Sheppard, #320057,

Applicant,

v.

State of South Carolina,

Respondent.

Case No: 2011-CP-32-2798

COPY

**ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER &
ALTER OR AMEND ORDER**

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP filed on or about July 3, 2013, in which he asks the Court reconsider and/or to alter or amend its Order dismissing his Application for post-conviction relief (PCR) filed on June 27, 2013. The Respondent replied on or about February 6, 2014¹.

After due deliberation, review of memoranda, case, exhibits and arguments of counsel, the Applicant's Motion to Alter or Amend the Judgment is DENIED.

Applicant argues that the Court erred when it found that Mr. Sheppard was not prejudiced by his counsel's failure to preserve the issue whether there existed taint in the jury pool sufficient to deny Mr. Sheppard a fair and impartial jury. The Court stands by its original ruling. The Court disagrees that it ignored Mr. Sheppard's right to an impartial jury, or that the Court is substituting its judgment for that of an impartial jury. Rather, the Court stands by its ruling that the evidence against Mr. Sheppard was overwhelming, and that his counsel's errors did not rise to the level that

¹ SCRCP 59 sets forth the time period for filing a motion as "not later than 10 days after the receipt of written notice of the entry of judgment or an order disposing of the action." However, SCRCP 59 does not set forth a time period for which an opposing party must file a return or a reply to a motion to alter or amend.

they undermined confidence in the outcome of the trial. See Strickland v. Washington, 466 U.S.668 (1984).

Therefore, this Court finds that the Order of Dismissal dated June 17, 2013, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (1976), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

IT IS THEREFORE ORDERED that the Motion to Reconsider and Alter or Amend Order denied.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

AND IT IS SO ORDERED!


Edgar W. Dickson
Presiding Circuit Court Judge

FILED
2014 APR 14 P 1:22
CLERK OF COURT
EDMUNDSON, SC

April 9, 2014
Orangeburg, South Carolina